

IN THE SUPREME COURT OF MISSISSIPPI

AND

THE MISSISSIPPI COURT OF APPEALS

No. 2013-TS-00446

COAT

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ROBERT LANG and  
BEVERLY LANG

APPELLANTS

VS.

TERESA BEASLEY

APPELLEE

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APPEAL FROM THE CIRCUIT COURT  
OF LINCOLN COUNTY, MISSISSIPPI

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BRIEF FOR APPELLANTS  
ROBERT LANG and BEVERLY LANG

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ORAL ARGUMENT REQUESTED

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VS.

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

Appellants:

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**Trial Court Judge:**

The Honorable David Strong  
Circuit Court Judge of Lincoln County, Mississippi  
Post Office Drawer 1387  
McComb, Mississippi 39649

SO CERTIFIED, this the 12<sup>th</sup> day of November, 2013.



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Eduardo A. Flechas,  
Attorney for Appellants

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## I. STATEMENT OF THE ISSUES

The issues presented for review are:

1. Did the trial court err in allowing Plaintiff's compensatory damages claim to be submitted to the jury?
2. Did the trial court err in allowing Plaintiff's claim for punitive damages to be submitted to the jury?
3. Whether the jury's verdict is evidence of an inflamed jury?
4. Whether cumulative error warrants a new trial ?

## II. STATEMENT OF THE CASE

### (A) **Course of Proceedings and Disposition of the Court Below**

On December 28, 2006, Teresa Beasley filed suit against Robert and Beverly Lang alleging claims for assault and battery, false imprisonment, conversion, negligent and intentional infliction of mental distress, and failure to carry out the business relationship in good faith against both Defendants.<sup>1</sup> R. 17.

This case is in a unique posture which centers around whether the Defendant, Robert Lang, was served with process. Accordingly, a concise summary of the proceedings is necessary in order to explain the actions taken by Robert Lang throughout the course of litigation.

On December 28, 2006, Teresa Beasley filed her Complaint in this matter. R. 17. Defendant, Beverly Lang, was served with process on February 6, 2007. R. 31. The case was removed to the United States District Court for the Southern District of Mississippi and was ultimately remanded back to the trial court on February 26, 2008. R. 55. Teresa Beasley contends that Mr. Lang was served with process on October 12, 2007. Mr. Lang contends that he was not served with process but that if he had been properly served, the Summons had expired and was invalid.

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<sup>1</sup> Cites to the Record are hereinafter referenced as "R. \_\_\_\_", cites to the hearing transcript are hereinafter referenced as "T. \_\_\_\_", and cites to Record Excerpts are hereinafter referenced as "R.E. Tab. \_\_\_\_".

First, the summons had expired and was invalid because the time limitation had expired in which it could be served. The original Complaint was filed and Summons were issued on December 28, 2006. R. 26. On April 24, 2007, a motion for extension of time in which to serve process was filed by Ms. Beasley. An order was entered which extended the time for service by forty-five (45) days, or until June 11, 2007. On June 21, 2007, ten days after the expiration of time in which to serve process, Ms. Beasley moved for a second extension of time in which to serve process. R. 112. At the time this second request was made, the Summons had expired. Pursuant to Rule 4 of the Mississippi Rules of Civil Procedure, the Complaint against Mr. Lang should have been dismissed upon the expiration of the originally extended deadline. *See* Miss. R. Civ. P. 4(h).

Next, as to Mr. Lang's arguments that the Summons was invalid, the individual whom allegedly served process upon Mr. Lang was on duty as a law enforcement officer at the time of the purported service of process. In addition to receiving his pay as a law enforcement officer, he additionally received \$300.00 for his services. T. 24 - 27 , 89 - 91. This is contrary to Miss. Code Ann. § 25-4-105 as noted in Attorney General Opinions 1993 WL 547446 and 1981 WL 39479.

Ultimately, it was determined by the trial court that Robert Lang was served with process. R. 413. Mr. Lang unsuccessfully twice petitioned for Interlocutory Appeal on this issue. R. 157, 437. However, in an effort to preserve his jurisdictional arguments in this matter, Robert Lang participated very minimally in the litigation process. This

resulted in Robert Lang's Answer being stricken and Default Judgment being entered against him. R. 596.

Beverly Lang has never contested service of process and participated in the litigation. Mrs. Lang filed her Answer and gave her deposition on November 19, 2010. R. 953. On February 8, 2012, over five years after the Complaint had been filed, Ms. Beasley first propounded discovery to Mrs. Lang. R. 612. These discovery requests were untimely pursuant to U.R.C.C.C. 4.04 and, therefore, were not answered. Ms. Beasley filed a Motion to Compel on the discovery requests but when the basis for failing to answer the discovery requests was given, Ms. Beasley specifically withdrew the Motion to Compel. T. 147. As such, Mrs. Lang participated in the litigation in good faith.

Despite participating in the litigation process, and despite the Motion to Compel having been unequivocally withdrawn, the trial court would not allow Mrs. Lang to put forward any evidence of net worth during the punitive damages phase of the trial. T. 412. As a result, a verdict which serves as a financial deathblow to the Langs was returned. R. 916 - 917, R.E. Tab 1. It is from this verdict which the Langs now appeal.

**(B) Statement of Relevant Facts**

Robert and Beverly Lang are the owners of Robenee Hair Salon and Suntan Depot which are located together in Brookhaven, Mississippi. Teresa Beasley is the mother of Kristian Beasley, a standout basketball player who while in high school was

recruited to attend Brookhaven Academy to play basketball. Teresa and Kristian moved from Waynesboro to Brookhaven. In the spring of 2006, Ms. Beasley began renting space from the Langs for the operation of a nail salon. T. 329.

During the months that she was leasing space from the Langs, she and Robert Lang became friends and called one another very frequently. On several occasions, the Langs and Ms. Beasley went to dinner together. Mr. Lang ran a few errands for Ms. Beasley. In short, the Langs thought that Ms. Beasley was a friend and they were attempting to help her out as she was a single mother.

On one such occasion, Ms. Beasley was moving from a house to an apartment. Her new apartment was not able to house some of her excess personal belongings. The Langs offered to allow Ms. Beasley to store these items on the third floor of one of their building located in Crystal Springs. Ms. Beasley accepted their offer and stored a few boxes of her items in the building. T. 343, 347 - 348.

On a Friday afternoon in August, 2007 Ms. Beasley left to go the Mississippi Gulf Coast in order to attend an event commemorating the one year anniversary of Hurricane Katrina. T. 332. Ms. Beasley never returned to the salon for work. T. 332. Ms. Beasley did not tell anyone at the salon that she did not intend to come back. T. 332.

Shortly thereafter, Kristian Beasley came to the salon and retrieved practically all of the items which her mother left at the salon. T. 345 - 346. Left behind were some plaster or concrete pillars which are used to place plants on. T. 347.

Sometime later, Ms. Beasley returned to the salon to "get her things" and a Sheriff's Deputy contacted Mrs. Lang who was in Jackson at the time. Mrs. Lang and the Deputy decided that it would be best for either Mr. or Mrs. Lang to be present when her items were picked up to ensure that she was only taking her property. When the Deputy informed Ms. Beasley of this decision, she became irate and had to be restrained and placed in the patrol car.

The Langs scheduled several times for Ms. Beasley to retrieve her belongings that they allowed her to store in their Crystal Springs building. However, Ms. Beasley never showed up to any of the scheduled meetings. T. 350 - 352. Soon thereafter, Ms. Beasley filed this lawsuit alleging assault and battery, false imprisonment, conversion, negligent and intentional infliction of mental distress, and failure to carry out the business relationship in good faith.<sup>2</sup>

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<sup>2</sup> Ms. Beasley specifically abandoned her claim for false imprisonment. T. 139 - 140. The case was submitted to the jury on Ms. Beasley's claims for assault and battery, conversion, and negligent and intentional infliction of mental distress.

### III. SUMMARY OF THE ARGUMENT

This appeal presents four issues for review, which are:

1. Did the trial court err in allowing Plaintiff's compensatory damages claim to be submitted to the jury?
2. Did the trial court err in allowing Plaintiff's claim for punitive damages to be submitted to the jury?
3. Whether the jury's verdict is evidence of an inflamed jury?
4. Whether cumulative error warrants a new trial ?

#### IV. ARGUMENT

##### 1. PLAINTIFF DID NOT PRODUCE EVIDENCE OF HER CONVERSION CLAIM.

###### **Standard of Review**

A de novo review of a trial court's grant or denial of a motion for a directed verdict is conducted by this Court. *Entergy Miss., Inc. v. Bolden*, 854 So.2d 1051, 1055 (¶7) (Miss.2003). In order to determine whether the motion for a directed verdict was properly denied, the reviewing Court must address whether Ms. Beasley put on sufficient evidence during her case-in-chief to create a question of fact with which reasonable jurors could disagree. *Canadian National/Illinois Cent. R. Co. v. Hall*, 953 So.2d 1084, 1090 (¶9) (Miss. 2007).

In this matter, Teresa Beasley made a claim for, and the jury returned a verdict for, the conversion of her personal property. Mississippi's well-settled law provides that "the measure of damages for conversion of personal property is the value of the property at the time and place of its conversion." *West v. Combs*, 642 So. 2d 917, 921 (Miss. 1994) (citing *PACCAR Financial Corp. v. Howard*, 615 So. 2d 583 (Miss. 1993)). However, the verdict returned in this matter is completely unsupported by any evidence. Ms. Beasley presented no evidence of ownership, no evidence of purchase or any other documentation which would prove the value of the items which she contends were converted. Rather, when asked about the value of these items, Ms. Beasley simply

responded that the jury would have to "take her word." This is not the legal standard and the jury was improperly allowed to consider this claim.

Under cross-examination at trial, Ms. Beasley was asked directly about the values which she was placing on the property she contends the Langs converted. Ms. Beasley testified as follows:

Q. What I'm trying to ask you is, just to cut right down to the nitty-gritty, where is the proof that these items were actually there and how much you paid for them?

A. You'd have to take my word for that. Or my receipts if I could get them.

T. 279, lines 11 - 15.

Q. Do you have anything here today? You're testifying here today. And it's your obligation to prove your damages. Now, where is the proof as to the value of these items?

A. My word for it, I guess.

T. 281, lines 25 - 28.

Q. What about these other items on this list? Do you have anything that you can show the ladies and gentlemen of this jury that would evidence the market value of these items at the time of conversion?

A. No.

T. 283, lines 14 - 18.

The Langs acknowledge that Plaintiffs can generally offer testimony regarding the value of their personal property in a property damage suit. However, Ms. Beasley has sued for conversion and in a conversion suit our courts have specified the proof

which a Plaintiff must provide. "In a suit for conversion, value of personal property at time and place of conversion must be shown to prove extent of damages." *Terrell v. Tschirn*, 656 So. 2d 1150, 1154 (Miss. 1995) (citing *PACCAR Financial Corp. v. Howard*, 615 So. 2d at 590; *Masonite Corporation v. Williamson*, 404 So. 2d 565 (Miss. 1981); *Georgia-Pacific Corp. v. Blakeney*, 353 So. 2d 769, 773 (Miss. 1978)).

At the close of Ms. Beasley's case in chief, the Langs moved for directed verdict on this issue. T. 306 - 314. The trial court denied the Langs' motion. T. 314. This issue was again raised by the Langs in their Motion for JNOV. R. 919 - 929; 950; T. 418 - 437. The trial court denied their request for relief a second time. R. 971.

In summary, Ms. Beasley failed to put on a single receipt or other type of document that would demonstrate the value or her ownership of any of the items she alleges were converted. She admitted multiple times that she could not provide the evidence which Mississippi's law specifically requires. As a result, the jury had to rely upon wholly speculative testimony as the basis for their award of damages. Accordingly, the jury's award of damages for conversion should be vacated.

**2. THE TRIAL COURT ERRED IN SUBMITTING PLAINTIFF'S CLAIM FOR PUNITIVE DAMAGES TO THE JURY.**

**Standard of Review**

Denial of a request for remittitur is reviewed for an abuse of discretion. *Entergy Miss., Inc. v. Bolden*, 854 So.2d 1051, 1058 (¶20) (Miss.2003). This review is conducted on a case-by-case basis to determine whether a particular jury award is excessive. *Id.* A

jury's award of damages will not be disturbed unless the size of the award, in comparison with the actual amount of damage, shocks the conscience of the Court. *Id.* If the proof offered to support the damage award is insufficient, remittitur is appropriate. *Id.*

**a. The punitive damages phase of the trial was fatally flawed.**

Without any type of evidence to consider or any type of argument presented, the trial court submitted the issue of punitive damages to the jury upon the simple reading of a punitive damages instruction. With no evidence or argument to guide them, the jury was forced to simply "pick a number" out of thin air. The jury picked a punitive damages verdict of \$245,000. R. 916 - 917, R.E. Tab 1. Despite the clear error in the verdict, the trial court summarily denied the Langs' request for J.N.O.V. or, alternatively, for remittitur.

The Mississippi Supreme Court has set forth the procedure that is to be followed during the punitive damages phase of trial. In the case of *Bradfield v. Schwartz*, the Supreme Court stated as follows:

If the jury awards compensatory damages, then **an evidentiary hearing is conducted in the presence of the jury**. At the close of this second phase of the trial, via an appropriate motion for a directed verdict, the judge, as gatekeeper, then ultimately decides whether the issue of punitive damages should be submitted to the trier-of-fact (jury). If the judge, from the record, should determine, as a matter of law, that the jury should not be allowed to consider the issue of punitive damages, a directed verdict shall be entered in favor of the defendant on the issue of punitive damages, and the case will end. If, on the other hand, the judge should allow the issue of punitive damages to be considered by the jury, then the

jury, upon being properly instructed by the judge on the punitive damages issue, may decide to award punitive damages, and if so, in what amount, or the jury may decide punitive damages.

*Bradfield v. Schwartz*, 936 So. 2d 931, 939 (¶23) (Miss. 2006) (emphasis added).

In the present matter, the jury returned its verdict for compensatory damages. Immediately afterwards, the trial court excused the jury and stated that it would entertain any testimony and argument regarding punitive damages. T. 405. Ms. Beasley declined to put on any evidence and the trial court forbid the Langs from putting forth any evidence. T. 405 - 412. The jury was then called back into the courtroom, read a punitive damages instruction, and sent out to deliberate their verdict. T. 413 - 415.

The manner in which the punitive damages phase of the trial was conducted is clearly contrary to Mississippi law. As a result, the jury returned a speculative verdict which is contrary to Miss. Code Ann. § 11-1-65.

**b. Evidence of the Langs' net worth was erroneously stricken by the trial court.**

On November 19, 2010, Beverly Lang's deposition was taken by counsel for Ms. Beasley. At her deposition, Mrs. Lang was asked about her assets. Mrs. Lang testified that she is the sole owner of Suntan Depot. R. 955, pages 6, line 14 - page 7, line 2. She testified that she also owns a tanning salon in Crystal Springs called Up the Creek. R. 955, page 8, lines 6 - 15. Mrs. Lang testified that she owns some rental houses. R. 955, page 8, line 25 - page 9, line 13. She testified that she has no stocks or bonds. R. 965, page 47, lines 14 - 15. She also testified that she does not possess any money market

accounts. R. 965, page 47, lines 19 - 21. She further testified that she owns no certificates of deposit. R. 965, page 47, lines 22 - 23. Mrs. Lang testified that she does not own any stocks. R. 965, page 47, lines 24 - 25. She also testified that she does not own any bonds. R. 965, page 48, lines 1 - 2. Finally, she testified that she does not own any other types of securities. R. 965, page 48, lines 3 - 4.

On February 8, 2012, Ms. Beasley propounded discovery to Mrs. Lang which was repetitious of her deposition testimony and was filed eighteen hundred and twenty-one (1821) days after the filing of the Complaint. These discovery requests were untimely pursuant to Rule 4.04(A) of the Mississippi Uniform Circuit and County Court Rules. These discovery requests sought the names of any businesses owned by her, information about checking, savings, or money market accounts, certificates of deposits, stocks, bonds, or other securities. These were the same questions covered in Mrs. Lang's deposition.

On September 28, 2012, (twelve days prior to trial) Ms. Beasley filed a Motion to Compel answers to these discovery requests. R. 615. It was explained that the discovery was not answered because it was untimely pursuant to U.R.C.C.C. 4.04(a). In response, Ms. Beasley's Motion to Compel was specifically withdrawn on the record. T. 147, R.E. Tab 2. "The effect of a withdrawal of a motion is to leave the record as it stood prior to its filing as though it had not been made." *Stoute v. City of New York*, 458 N.Y. S.3d 640, 641, 91 A.D.2d 1043 (2d Dept 1983) (citing *Altsman v. Kelly*, 336 Pa. 481, 9 A.2d 423 (Pa.

1939); *Farne v. Pennsylvania Lighting Co.*, 275 Pa. 444, 119 A. 537 (Pa. 1923); *People v. Steinhoff*, 38 Mich. App. 135, 195 N.W.2d 780 (Mich. App. 1972)). Accordingly, this issue was waived by Ms. Beasley.

The next day, when asked about what proof Ms. Beasley would like to put on with regard to punitive damages, Ms. Beasley's counsel stated that he did not wish to put forth any additional evidence because they did not have any evidence regarding the Langs' net worth. T. 412. The trial court immediately accepted Ms. Beasley's argument, and forbade the Langs from putting forth any evidence of their net worth during the punitive damages phase of trial. T. 412. The trial court erred in this ruling as there was no pending motion to compel before it. The motion had been withdrawn on the record the day before. T. 147.

Mississippi's law is well-settled regarding the withdrawal or abandonment of a motion. Our Court of Appeals has previously ruled that "the affirmative duty rests upon the party filing a motion to follow up his action by bringing it to the attention of the trial court." *Magee v. Covington County School Dist.*, 2012 WL 48026. The Mississippi Court of Appeals has further held that "it is the responsibility of the movant to obtain a ruling from the court on motions filed by him, and *failure to do so constitutes a waiver of the same.*" *Griffith v. Griffith*, 997 So. 2d 218, 225 (¶30) (Miss. Ct. App. 2008) (emphasis added).

In the present matter, rather than go forward on the Motion to Compel, it was specifically withdrawn by Ms. Beasley's counsel. T. 147. Despite the motion to compel being withdrawn, the trial court forbade the Langs from providing any punitive damages evidence. The trial court's ruling forbade Mrs. Lang from presenting any punitive damages evidence even though she had participated in the litigation. As a result, no evidence was placed before the jury during the punitive damages phase of the trial and an excessive and speculative punitive damages verdict was returned.

**c. The punitive damages verdict is contrary to Miss. Code Ann. § 11-1-65(3)(a)(vi).**

The verdict returned by the jury does not conform with Miss. Code. Ann. § 11-1-65(3)(a)(vi) which provides that punitive damages shall not exceed "two percent (2%) of the defendant's net worth for a defendant with a net worth of Fifty Million Dollars (\$50,000,000) or less." In order for the \$245,000 punitive damages award to comply with this statute, the Langs must have a net worth of at least \$12,250,000. Ms. Lang's deposition testimony demonstrates that the Langs' net worth is drastically below this amount.

As shown by Mrs. Lang's deposition, the Langs do not have any certificates of deposit, money market accounts, stocks, bonds, or any other types of securities. R. 965, page 47, lines 14 - 15; R. 965, page 47, lines 19 - 25; R. 965, page 48, lines 1 - 2. The Langs own ten rental houses which are mortgaged. R. 955, page 8, line 25 - page 9, line 13. Mrs. Lang also owns two tanning salons. R. 955, pages 6, lines 14 - page 7, line 2; R. 955,

page 8, lines 6 - 15. This was evidence which Ms. Beasley could have questioned Mrs. Lang about and properly place before the jury, yet chose not to. Rather than place before the jury that the Langs have very little other than some rental houses and a couple of tanning salons, Ms. Beasley consciously chose to allow the jury the return a completely speculative jury verdict which does not conform to Mississippi's statutory requirements.

Accordingly, the punitive damages verdict is erroneous due to Ms. Beasley's failure to put forth any evidence on the issue of net worth and the trial court's ruling that the Langs could not offer any such evidence. "Mississippi law does not favor punitive damages; they are considered an extraordinary remedy and are allowed with caution and within narrow limits." *Life & Cas. Ins. Co. of Tenn. v. Bristow*, 529 So.2d 620, 622 (Miss.1988). In light of the clear error in this verdict, and the disfavor of this type of award, the punitive damage award should be vacated.

### **3. THE JURY'S VERDICT EVIDENCES AN INFLAMED JURY.**

Teresa Beasley testified that the Langs converted her personal property. Ms. Beasley's estimate of the value of this property was \$17,120. Despite this testimony, the jury returned a compensatory damage verdict against Beverly Lang in the amount of \$35,000, nearly double the amount of her alleged damages. In addition, the jury returned a punitive damage verdict of \$245,000 against the Langs. Verdicts totaling

\$383,000 were returned against the Langs. These verdicts clearly evidence an inflamed jury.

**a. Use of a criminal act to describe a tort.**

Ms. Beasley contends that Robert Lang assaulted and battered her via a sexual advance. The Langs adamantly deny that this occurred. However, throughout trial Ms. Beasley referred to the torts of assault and battery as sexual assault and battery. This improperly insinuated to the jury that Robert Lang had been convicted of a criminal act.<sup>3</sup>

Prior to the commencement of trial, this issue was brought before the trial court. T. 135 - 147, R.E. Tab 3. The Langs urged the trial court, pursuant to M.R.E. 403, to enter an order precluding the use of the terms sexual assault or sexual battery as these terms may lead the jury to believe that Mr. Lang had been charged with or convicted of a crime. As a result, the prejudicial effect outweighs its probative value and the term should have been stricken pursuant to M.R.E. 403.

Throughout trial, the jury was exposed to the terms sexual battery, sexual assault, and sexual assault and battery twenty-two (22) times. (T. 168, 175, 211, 235, 250, 355, 357, 358, 360, 362, 363, 391, 392, 393, 394, 395, and 397). As this Court is well-aware,

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<sup>3</sup> Despite alleging that she was assaulted and batted, Ms. Beasley did not file a criminal complaint in Jackson, where she alleges that Mr. Lang attempted to sexually assault her. Rather, Ms. Beasley contends that she filed a complaint in Brookhaven; however, no such complaint was discovered throughout the course of litigation. T. 251. Regardless of whether such a complaint was or was not filed, no criminal charges were ever brought against Mr. Lang.

sexual battery is a crime as defined by Miss. Code Ann. §§ 97-3-95 through 97-3-103. The torts recognized in Mississippi are assault and battery. To use the name of a crime to define a tort clearly creates undue prejudice towards a defendant. This is akin to using the term murder during a civil trial to define the tort of wrongful death.

Although the trial court denied the Langs' Motion *in Limine* on this issue, defense counsel felt required to make a motion for mistrial due to the prejudicial effect of the use of these terms. R. 321 - 326, R.E. Tab 4. The request for a mistrial was denied. This issue was once again raised by the Langs in their Motion for Judgment Notwithstanding the Verdict, Motion for New Trial, or in the Alternative, Motion for Remittitur, and the supplement to this motion. R. 919 - 929; R. 950 - 966, R.E. Tab 5. The trial court denied the Langs' motion. R. 971, R.E. Tab 6.

The probative value of Ms. Beasley's counsel's continuous use of the words sexual assault and battery is substantially outweighed by the danger of unfair prejudice and the potential to mislead the jury. The use of these terms should have been precluded by the trial court pursuant to M.R.E. 403.

**b. Unfounded inflammatory allegations.**

Additionally, the jury was exposed to hearsay testimony regarding alleged "peepholes" in the salon operated by the Langs. This testimony has no basis in fact, was completely unsupported by any evidence, and was placed before the jury solely to create prejudice against the Langs. Although no such "peepholes" exist, even if this

were true, such allegations of prior bad acts are clearly inadmissible under Rules 404 and 608 of the Mississippi Rules of evidence.

Plaintiff's use of the name of a criminal charge to define a tort as well as exposing the jury to completely unfounded and inflammatory allegations caused clear prejudice against the Langs in their defense to the present action. Accordingly, the Langs respectfully suggest that reversal of the jury's verdict is appropriate.

#### 4. **CUMULATIVE ERROR WARRANTS A NEW TRIAL.**

This case presents a compensatory damage award based upon speculative testimony and unsupported by the evidence, a punitive damage verdict which was based upon zero evidence, and comments made in front of a jury, the intention of which were to inflame the jury's passions. This resulted in jury verdicts totaling \$383,000.

Under Mississippi's cumulative error doctrine, multiple errors at trial, although individually not reversible, can combine to create reversible error. *Blake v. Clein*, 903 So. 2d 710, 718-19 (¶16) (Miss. 2005). In the event that the Court determines that the individual errors addressed above do not constitute reversible error, the Langs respectfully submit that the doctrine of cumulative error warrants reversal for a new trial.

#### V. **CONCLUSION**

In summary, this case presents a compensatory damages jury verdict which is completely unsupported by the evidence. Ms. Beasley admitted three times under

cross-examination that she could not put forth the evidence required under Mississippi jurisprudence. In light of such, the jury's verdict is unsupported by the evidence and contrary to Mississippi law. The Langs respectfully request that the jury's verdict awarding damages for conversion be vacated.

Additionally, Ms. Beasley decided not to put forth the evidence which she had in her possession regarding the Langs' net worth. This problem was compounded when the trial court erroneously disallowed Mrs. Lang from putting forth any such evidence. Due to this error, the jury was left without any guidance in reaching their verdict and it is, therefore, a product of mere speculation. Additionally, the verdict greatly exceeds the limits of such verdicts as set forth by Miss. Code Ann. § 11-1-65(3)(a)(vi). Due to the errors in the punitive damages verdict, and the trial court's denial of their request for remittitur, the Langs respectfully suggest that the punitive damages verdict should be vacated.

In addition, the jury's verdicts are clearly a product of the inflammatory comments which were placed before the jury. Throughout trial, the jury was repeatedly exposed to the name of a criminal act to describe a tort. To compound this problem, completely unfounded, and irrelevant, allegations regarding peepholes were placed before the jury. The undue prejudice created by these improper and inflammatory comments are clearly demonstrated by the verdicts which the jury returned.

Finally, in the event these individual errors are not determined to constitute reversible error independently, the Langs respectfully suggest that reversal is warranted pursuant to the cumulative error doctrine. Accordingly, the Langs respectfully request that the jury verdicts in this matter be reversed.

Respectfully submitted, this the 12<sup>th</sup> day of November, 2013.



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CERTIFICATE OF SERVICE

I, Eduardo A. Flechas, attorney for Appellants, do hereby certify that I have forwarded via First Class United States Mail, postage prepaid, an original and three (3) copies of the Brief of Appellants and an original and three (3) copies of the Record Excerpts to the Clerk of the Mississippi Supreme Court and Mississippi Court of Appeals and have also forwarded via First Class United States Mail, postage prepaid, one (1) copy of the above and foregoing Brief of the Appellants and one (1) copy of the Record Excerpts to the following:

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Honorable David Strong  
Lincoln County Circuit Court Judge  
P.O. Box 1387  
McComb, Mississippi 39648

So certified, this the 12<sup>th</sup> day of November, 2013.

  
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Eduardo A. Flechas