Mississippi Case Law Update

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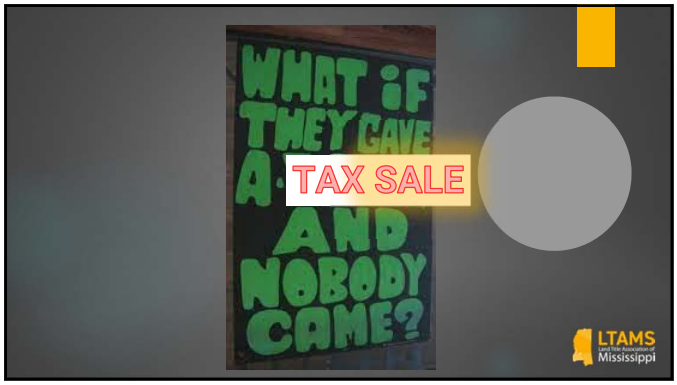

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HL&C Marion, LLC v. DIMA Homes, Inc.

- DIMA, constructed a home for the Kennedy's in Marion County on property they owned.
- The Kennedy's failed to pay DIMA per their Construction Contract and DIMA obtained a Judgment in Circuit Court which was duly enrolled in 2013.

5

HL&C Marion, LLC v. DIMA Homes, Inc.

- In 2016 the home was sold at the annual Tax Sale to ACC Tax Sales
- The property was not redeemed within the 2 year period and ACC RECEIVED A Tax Deed and quitclaimed to the Appellant, HL&C Marion in 2018
- Thereafter, HL&C Marion filed a confirmation suit

6

HL&C MARION, LLC v. DIMA HOMES, INC.

- DIMA answered and counterclaimed and asked the Court to allow DIMA to redeem and set aside the Tax Deed.
- DIMA's defense was that it was entitled to receive Notice of the maturing tax sale.
- The Chancellor ruled in DIMA's favor and HL&C Marion appealed.

7

HL&C MARION, LLC v. DIMA HOMES, INC.

- The CoA held that:
- The Chancery Clerk was aware of DIMA's Judgment
- That DIMA, as an "interested" party had the right to redeem the Tax Sale
- DIMA did not receive Notice of Maturity

8

HL&C MARION, LLC v. DIMA HOMES, INC.

- That there is "there is no statute that explicitly prohibits the extension of the redemption period"
- That it would be *inequitable* to not allow DIMCA to redeem since it had no notice of the Tax Sale

9

HL&C MARION, LLC v. DIMA HOMES, INC.

- Therefore, it was proper for the Chancellor to extend the Redemption Period and allow DIMA to redeem the tax sale and cancel the Tax Deed and QCD.

10

HL&C MARION, LLC v. DIMA HOMES, INC.

- The CoA declined to hold that § 27-43-1 requires the Clerk to search for Judgement liens
- It instead based its decision on what it perceived to be "equity" – with no mention of the equitable position of HL&C.

11

Durrant, Inc. v. Lee County

- Durrant Inc. bought a hotel property in Lee County at the 2016 Tax Sale for $58K
- In May 2019, Durrant filed a Complaint to set aside the Tax Sale and for the return of its funds

12

Durrant, Inc. V. Lee County

- Durrant's Complaint was based on the failure of the Lee Co. Chancery Clerk to send Notice of Maturity to the assessed Owner
- The Lower Court dismissed Durrant's Complaint because of the 2019 Amendment to Sec. 27-25-27

13

Durrant, Inc. V. Lee County

- That amendment reads:
- "[n]o purchaser of land at any tax sale . . . shall have any right of action to challenge the validity of the tax sale."

14

Durrant, Inc. V. Lee County

- The amendment was effective as of July 1, 2019 (Durrant filed in May of 2019)
- The Lower Court held that the amendment applied retroactively and dismissed Durrant's Complaint

15

Durrant, Inc. V. Lee County

- On appeal, the CoA held that the amendment could not be applied retroactively because it would "impair" a vested right, and that,
- "the validity of the . . . Tax Deed must be determined by the law in force at the time [of] the Sale . . ."

16

Tunica County v. S & S Properties

- S&S purchased several properties at the 2015 Tunica Co. Tax Sale
- In 2019 S&S Brought an action to set aside the Tax Sales and for the return of its funds
- Basis of the suit was the failure of the Clerk to give the statutory notices

17

Tunica County v. S & S Properties

- Lower Court ruled in favor of S&S
- On appeal the CoA affirmed the Lower Court, citing its previous decision in Durrant, Inc. v. Lee County

18

19

In Re: Est of Randle

- Lester Randle died in 2009, leaving no LWT.
- His intestate estate was opened by his Widow, Dorothy, in 2018
- Lester & Dorothy had one son: Raymond

20

In Re: Est of Randle

- Lester had 2 children from a previous marriage: Tumika and Sylvester
- Lester was listed on their Birth Certificates as the Father
- Lester had been ordered to pay child support for Tumika and Sylvester and did so until they were grown

21

In Re: Est of Randle

- The primary asset of Lester's Estate was a Wrongful Death Claim
- Dorothy filed a motion for a determination of heirship, alleging that Tumika and Sylvester were not Lester's Heirs
- Changing the position stated in her initial Petition

22

In Re: Est of Randle

- At the Hearing, another party appeared, Cederica Gilliam, and asserted that he was also an heir of Lester
- Accordingly, the Lower Court ordered DNA testing for the 4 putative children of Lester

23

In Re: Est of Randle

- At a 2nd Hearing Brandi Jones, the Owner of Capital DNA testified as to the results of the testing.

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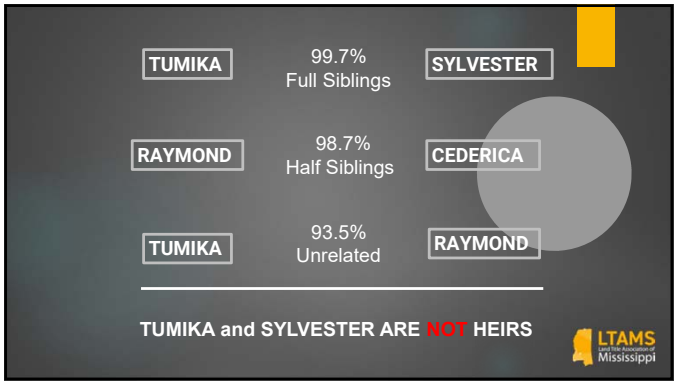

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In Re: Est of Randle

- "Strongest Presumption known to the law"
- Putative Father paid child support
- Lester did not contest paternity during his lifetime
- CoA held that the DNA evidence was sufficient to overcome those presumptions
- Did not really discuss the lapse in time between the birth of the children and the Petition to exclude them as heirs

26

Land v. Land

- Theresa and Michael jointly owned a home in Madison County which served as their homestead
- In 2014, Theresa left the marital home and filed for divorce
- Michael continued to live in the marital home

27

Land v. Land

- After some 5 years of litigation, the Chancery Court denied Theresa's Complaint
- Immediately thereafter, Theresa filed a Complaint for Partition and asked that the marital home be sold and the proceeds divided

28

Land v. Land

- At the close of Theresa's case the Chancellor granted Michael's motion to Dismiss as to the residence
- The Lower Court relied on Sec. 11-21-1 of the Miss. Code and the case of *Noone v. Noone*

29

Land v. Land

- Section 11-21-1 (2) states in part:
- (2) Homestead property exempted from execution that is owned by spouses shall be subject to partition pursuant to the provisions of this section only, and not otherwise.

30

Land v. Land

- Theresa argued on appeal that 11-21-1(2) should not apply since the SP was no longer her Homestead
- The CoA held that Theresa' s absence was irrelevant as was the potential for Theresa's creditors to attach her interest

31

Kelly v. Ocwen Loan Servicing

- In 2010 Harvey Lamb executed a deed conveying to himself and his spouse, a Life Estate in their homestead
- Lamb who had sole title at the time, conveyed the remainder interest to their daughter, Julia Kelly

32

Kelly v. Ocwen Loan Servicing

- Lamb's spouse did not join in the 2010 deed
- Lamb and his spouse divorced in 2012 and the spouse quitclaimed her interest to Lamb
- In 2015, Lamb executed a Reverse Mortgage, which was later assigned to Ocwen

33

Kelly v. Ocwen Loan Servicing

- Lamb passed away in 2017 and Kelly was appointed Administratrix of his Estate
- In 2019, Ocwen initiated a lawsuit to set aside the 2010 deed to Kelly and foreclose the reverse mortgage
- Kelly answered and Counterclaimed against Ocwen and others

34

Kelly v. Ocwen Loan Servicing

- Ocwen and the other parties filed motions for SJ which were granted by the Lower Court, and Kelly appealed
- On appeal, Kelly argued that the 2010 deed should not have been set aside because it was not a "present" conveyance of the homestead, and

35

Kelly v. Ocwen Loan Servicing

- Because the 2010 deed would not affect the spouse's interest during her lifetime
- The CoA rejected Kelly's arguments and held that a conveyance of any interest in the homestead, present or future, without the spouse's signature is "absolutely void"

36

Polk Productions Inc. v. Dowe

- Sale of 3.17 acres in Hinds County originally owned by Dowe
- Polk acquired and recorded a ROFR in 2012
- Ansh Property purchased the SP from Dowe in 2016
- Polk thereafter filed a suit for Specific Performance and damages

37

Polk Productions Inc. v. Dowe, Et Al.

- After a hearing, the Lower Court ruled against Polk and Polk appealed
- CoA agreed with the lower court, that Specific Performance was not an "appropriate remedy" . . .

38

Polk Productions Inc. v. Dowe, Et Al.

- Reasoning that performance at this point would entail action against other parties, and,
- Polk had not shown it was ready and willing to tender the $400K purchase price paid by the purchaser

39

Polk Productions Inc. v. Dowe, Et Al.

- The CoA further upheld the lower court's denial of damages, stating that Dowe had not put on sufficient proof of damages
- The C0A did not discuss the fact that the Purchaser had at least constructive notice of the ROFR

40

Erves v. Hosemann Et Al.

- The Erves' owned land in Warren County which lay on either side of the "Bovina Cutoff Road"
- According to an older Survey proffered by Erves, their land on the west side of the road, was approximately 150' in width

41

Erves v. Hosemann Et Al.

- Erves asserted that the 150' strip on the West side of the road was, historically, marked by a barbed wire fence, removed by Hosemann.
- The Hosemanns purchased property West of the road from the adjoining landowner
- And in 2016, Hoseman constructed a home and a driveway connecting to the BCR

42

Erves v. Hosemann Et Al.

- In 2017, Erves filed an action for an injunction against Hosemanns to prevent them from accessing the BCR using their driveways
- The Lower Court denied the injunction and ruled that Erves had not established ownership of the claimed 150' strip

43

Erves v. Hosemann Et Al.

- Erves appealed the decision arguing that it was error for the Lower Court to allow Hosemann's expert witnesses to testify
- Erves only objection to the testimony of the expert witnesses was the "scant number of times" they had previously testified as experts.

44

Erves v. Hosemann Et Al.

- The CoA affirmed the Lower Court and held that it was within the Chancellor's discretion to evaluate the qualifications of expert witnesses and admit or exclude their testimony

45

Khalaf V. PRVWSD

- In 2018 Khalaf leased 2.09 acres in the Windward Bluff subdivision, abutting the Ross Barnett Reservoir
- Due to the collapse of a storm drain running beneath Khalaf's property, a sinkhole formed and silt began washing into the Reservoir

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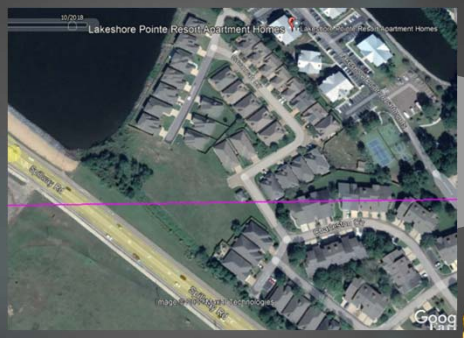

LTAMS Land Title Association of Mississippi

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Khalaf v. PRVWSD

- PRV demanded that Khalaf repair the pipe, and when he declined, made the repairs with the Windward Bluff PoA agreeing to pay half
- PRV then sued Khalaf for the cost of the repair, remediation and to cancel his lease

48

Khalaf v. PRVWSD

- The Lower Court dismissed PRV's Complaint as failing to state a claim for relief, and PRV appealed
- The MS Supreme Court affirmed the LC's ruling – agreeing that Khalaf's lease did not obligate him to make the repairs in question

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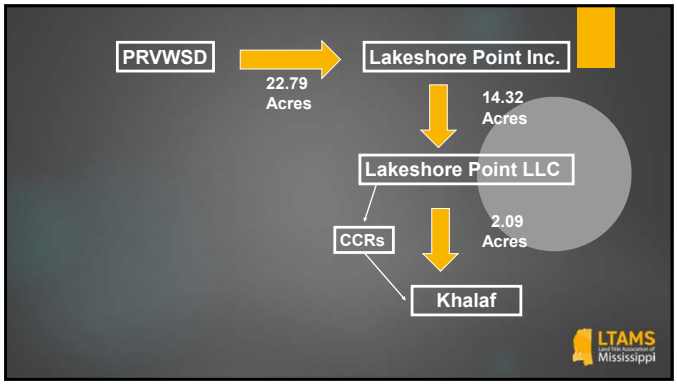

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Windward Bluff CCR's

- There is *hereby reserved to the Association and DISTRICTWSD blanket easements* upon, across, above and under all property subject to this Declaration for access, ingress, egress, installation, *repairing, replacing, and maintaining all utilities, serving the property subject to the Declaration* or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone, and electricity, *as well as storm drainage* ….

51

Trustmark v. Enlightened Properties

- EP was the owner of a fitness center located on 6 acres in Harrison Co.
- In 2008, EP sold the fitness center to a related entity "CLWF"
- The day to day operations of the Center where carried out by a 3rd related entity, "EFW"

52

LTAMS Mississippi

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LTAMS Mississippi

54

Trustmark v. Enlightened Properties

- CLWF entered into a loan agreement with Trustmark in 2008 as did EFW
- In addition to two D/T's on the fitness center, Trustmark received 2 D/T's on an adjoining 33 acres, still owned by EP - D/T 4097 and D/T 4104

55

Trustmark v. Enlightened Properties

- In 2011, Trustmark agreed to restructure the CLWF and EFW debt
- As a part of the restructuring, EP paid down some of the debt, and Trustmark filed a Release in favor of EP releasing EP's 33 acres
- Trustmark later cancelled D/T 4097 (one of the 2 D/T's on the EP 33 acres)

56

Trustmark v. Enlightened Properties

- In 2016, the CLWF and EFW loans went into default
- Trustmark filed an action seeking to reinstate D/T 4097, stating that it had been inadvertently cancelled and that D/T 4104, only, should have been cancelled

57

Trustmark v. Enlightened Properties

- Trustmark, after filing suit, then canceled D/T 4104
- EP answered and contended that the Release filed in 2011 was a release of both EP D/T's and TNB had no lien on EP's 33 acres

58

Trustmark v. Enlightened Properties

- The 2011 Release stated that it was a release of the D/T "attached as Exhibit B"
- The Exhibit B that was attached to the Release was a description of the EP 33 acres, not a D/T

59

Trustmark v. Enlightened Properties

- The Lower Court agreed with EP and Trustmark appealed
- The CoA first held that the Release was ambiguous because of numerous conflicting elements, including Exhibit B

60

Trustmark v. Enlightened Properties

- The CoA next examined the Release to resolve the ambiguity
- The Court considered the Release in light of these "Canons of Construction:
- *A contract should be construed most strongly against the party that drafted it*

61

Trustmark v. Enlightened Properties

- *That an expression of one thing is the exclusion of the other*
- *Specific language governs general language*
- *The conduct of the Parties after execution*

62

Trustmark v. Enlightened Properties

- The CoA then looked at the Parol Evidence
- Considering the testimony at trial, the CoA held that it would not disturb the Lower Court's finding that the Parol Evidence was in favor of EP

63

DeSoto Co. v. Vinson

- Shaw, the Owner of Lot 40, A.E. Allison Subdivision, Part C, in Harrison Co., applied to the Bd of Supervisors for the division of Lot 40 into 2 lots
- The Board approved the application and an appeal to the Circuit Court was filed by Vinson, the Owner of Lot 21

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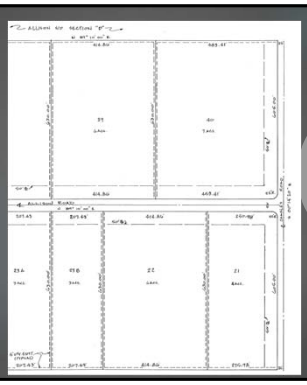

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DeSoto Co. v. Vinson

- The Circuit Court reversed the Board's decision, finding that :
- (1) the Application did not have the written approval of "directly interested" and/or "adversely affected" parties as required by Sec. 17-1-23, and would therefore need to be resubmitted with those approvals; OR,

66

DeSoto Co. v. Vinson

- (2) Shaw could proceed with a Chancery Court action pursuant to Sec. 18-27-31;
- The CoA affirmed the Circuit Court noting that the record indicated that Shaw had not contacted any of his neighbors with respect to the division of his lot

67

Lake Serene PoA v. Esplin

- Lake Serene is a platted residential subdivision in Lamar Co.
- It's CCR's are enforced by its PoA
- In 2018, the PoA became aware that Esplin, who owned a home in Lake Serene, was listing his property on *Airbnb,* an internet site for vacation properties

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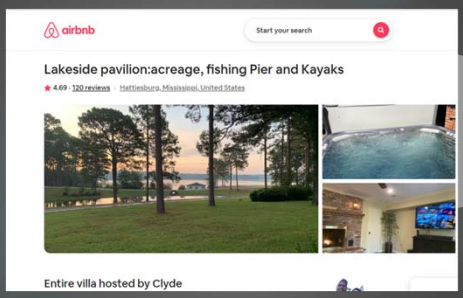

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Lake Serene PoA v. Esplin

- The PoA felt that this was a violation of the CCR's, which stated that properties could be used for *residential* purposes only.
- The PoA sent Esplin a number of notices stating that his use was in violation and threatening legal action

72

Lake Serene PoA v. Esplin

- The PoA amended it's bylaws to prohibit "short term rentals", i.e, under 180 days
- And, then filed suit to enjoin Esplin from continuing with short term rental of his property

73

Lake Serene PoA v. Esplin

- After a hearing, the Lower Court ruled that short term rentals were consistent with "residential purposes", and that Esplin's use did not violate the CCR's

74

Lake Serene PoA v. Esplin

- "*The chancellor also enjoined the LSPOA from preventing Esplin from renting his property short-term, harassing his tenants and keeping them from using the common-area facilities, and the chancellor prohibited the LSPOA from using the Lamar County Sheriff's Department to enforce its covenants.*"

75

Lake Serene PoA v. Esplin

- Lake Serene appealed, and the Supreme Court found:
- (1) Esplin's property was "being used as a place of abode" and the use was therefore "residential"

76

Lake Serene PoA v. Esplin

- (2) Since the use was residential it did not violate the CCRs no matter how short the rental term; and,
- (3) The PoA's adoption of a property use restriction in its Bylaws was invalid as use restrictions could only be changed by a vote of the property owners

77

In Re: Est of Walker

- In 2014, Charles Walker deeded his home to the Halls (reserving a Life Estate)
- In 2018 he executed a LW&T devising all of his real property to Cris Miller
- After Walker's death, Miller opened an Estate and filed a Petition to set aside the deed to the Halls

78

In Re: Est of Walker

- In her Petition, she alleged that the Halls had a confidential relationship with Walker and therefore there was a presumption of undue influence
- The Halls admitted the confidential relationship existed but denied that the deed was the product of undue influence

79

In Re: Est of Walker

- At the Hearing, the Halls testified, as did Miller
- The testimony of Miller and the Halls was diametrically opposed
- The deposition testimony of Attorney Thomas, the preparer of the deed, was admitted over Miller's objection

80

In Re: Est of Walker

- Thomas testified that when the Halls brought Walker to his office, he asked the Halls to step out and he discussed the deed with Walker out of their presence and made sure that Walker understood what he was doing and that giving the deed was his own idea.

81

In Re: Est of Walker

- Thomas further testified that at that meeting, he and Walker called Walker's son to discuss the matter with him and that the son was in agreement
- Walker met Thomas at the Chancery Clerk's office the next day and the deed was signed, acknowledged and recorded

82

In Re: Est of Walker

- The Lower Court, relying principally on the deposition testimony of Thomas, held that the Halls had rebutted the presumption of undue influence, and denied Miller's Petition
- Miller appealed on the basis that Thomas' deposition should not have been admitted and that the Halls' remaining evidence was insufficient to rebut the presumption

83

In Re: Est of Walker

- The CoA agreed that it was error to admit the deposition testimony of Thomas, as the Halls had not demonstrated a Rule 32 exception and Miller was not advised that the deposition was being taken for trial purposes

84

In Re: Est of Walker

- The CoA further held that without the testimony of Thomas the Halls had failed to meet their burden, and,
- The CoA remanded the matter back to the Lower Court for a new trial

85

Cooley v. Pine Belt Oil

- This case involves the Sunrise Trading Post, a service station in Petal, MS which has been in operation and selling gasoline since the 1920's

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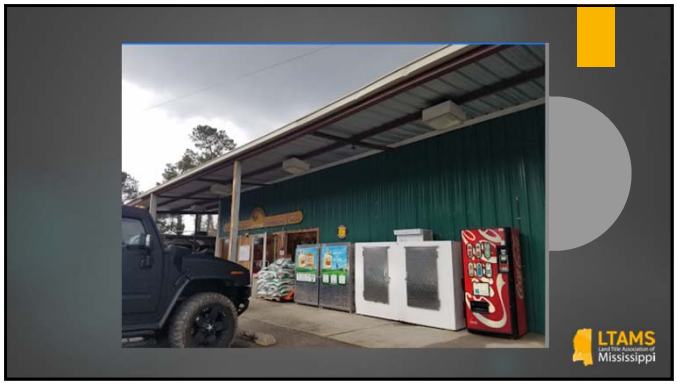

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Cooley v. Pine Belt Oil

- During the period in question, the SP was owned, in succession, by Pine Belt, Riley, Cooley and then again by Pine Belt.
- Pine Belt installed UST's in the 1980's and removed them in 1992
- In 1995 Riley installed an AST system

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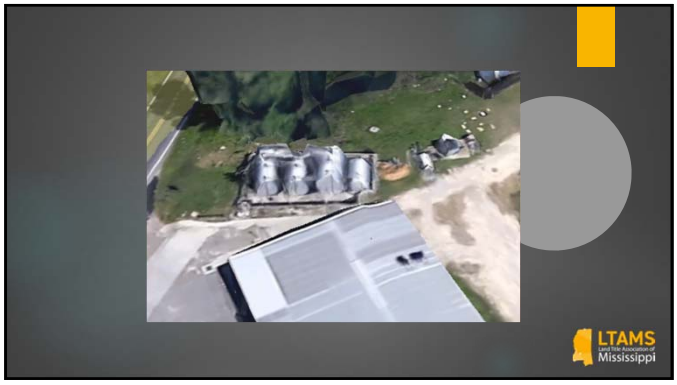

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Cooley v. Pine Belt Oil

- In 2008 it was discovered that gasoline was leaching into a pond on a nearby owner's land
- MDEQ advised Pine Belt of the release and requested a pressure test of the underground lines running to the ASTs, which they failed
- Pine Belt's Attorney sent a letter to the Cooley's advising them of the release and demanding they participate in the cleanup

91

Cooley v. Pine Belt Oil

- Ultimately, MDEQ issued an Administrative Order requiring Pine Belt and the Cooleys to remediate the gas leak
- In 2016 Pine Belt filed an action for an "implied indemnity" against the Cooleys, stating that the Cooleys were obligated to reimburse Pine Belt for the remediation costs

92

Cooley v. Pine Belt Oil

- The Cooleys filed a Motion for Summary Judgment, asserting that the 3-year SOL had run on Pine Belts claim
- The Lower Court denied the Cooleys motion and the Cooleys perfected an Interlocutory appeal to the Sup. Ct.

93

Cooley v. Pine Belt Oil

- The Supreme Court held:
- (1) That the action was governed by the 3-year general SOL
- (2) That the cause of action accrued in 2009 when the MDEQ remediation order was issued

94

Cooley v. Pine Belt Oil

- (3) The ongoing nature of the remediation costs did not toll the SOL
- (4) Pine Belt knew as early as 2008 that the Cooleys were potential Defendants
- (5) Pine Belt's claim for Implied Indemnity was barred by § 15-1-49

95

Okhuysen v. City Of Starkville

- In 2019, Jeff Lyles, a code enforcement officer for the City of Starkville, went onto Okhuysen's vacant property without Okhuysen's permission and without a warrant
- Lyles took photos of "code violations" existing on the property

96

97

Okhuysen v. City Of Starkville

- The City thereafter sent Okhuysen a series of letters demanding that he bring the property into "compliance"
- The City eventually filed an action in Municipal Court
- Okhuysen was found guilty by the Municipal Court Judge and was fined $1,000

98

Okhuysen v. City Of Starkville

- Okhuysen appealed the conviction to Circuit Court which affirmed the conviction
- Okhuysen then appealed, and argued that since Lyles had no warrant and had not been granted permission to enter his property, the photos should have been excluded from evidence, and,

99

Okhuysen v. City Of Starkville

- Without the photos, the City could not make its case
- The CoA agreed and found that Article
- 3, Section 23 of the Mississippi Constitution required the exclusion of the photographs, and reversed and rendered in favor of Okhuysen

100

Est. of Green v. Cooley

- In December 2003, Green executed 8 deeds to separate properties, to his sister, Shirley Cooley
- Green took possession of the 8 deeds, but, did not record them at that time
- In January of 2004, at the request of Green, Cooley executed deeds back to him for 6 of the properties

101

Est. of Green v. Cooley

- The 6 reconveyance deeds were not acknowledged or recorded
- Green took possession of the reconveyance deeds at the time of execution

102

Est. of Green v. Cooley

- On January 31, 2004, Green married his new Wife, Cristina
- On December 3, 2004, Green delivered the eight December 31, 2003 Deeds to his sister, at her home in Texas
- "The December 31, 2003 deeds were recorded on December 4, 2004, . . ."

103

Est. of Green v. Cooley

- In 2007, Green updated his LW&T and devised the 8 properties to Cristina and his grandchildren
- Green passed away in 2010
- Cristina thereafter filed a Complaint to establish ownership of the disputed properties

104

Est. of Green v. Cooley

- At trial the lower Court held that Green had not accepted the reconveyance of the 6 properties in dispute because of his course of conduct afterwards
- On appeal, the CoA affirmed the Chancellor's finding

105

Est. of Green v. Cooley

- A Writ of Certiorari was then granted by the Miss. Supreme Court
- "It is undisputed that the January 15, 2004 deeds were not properly acknowledged and recorded. As a general matter, deeds that are not properly acknowledged and recorded are not valid. Miss. Code Ann. §89-5-3 . . ."

106

Est. of Green v. Cooley

- "However, 'as between the parties and their heirs, and as to all subsequent purchasers with notice or without valuable consideration said instruments shall nevertheless be valid and binding.'"

107

Est. of Green v. Cooley

- Supreme Court found that Green had accepted the 6 reconveyance deeds and that those properties would pass via Green's LW&T
- Two things to note here:

1. "Possession" by the Grantee may not amount to "delivery"
2. Supreme Court substituted its own findings of fact for that of the Lower Court

108

Parish Transport v. Jordan Carriers

- Parties exchanged a number of e-mails with respect to the purchase of "heavy hauling equipment"
- In one of the final e-mails Parish counter-offered to purchase the equipment for a stated price

109

Parish Transport v. Jordan Carriers

- In response Doug Jordan replied "OK. Let's do it . . . Sent from my iPhone"
- Subsequently, Jordan received a better offer and sold the equipment to another party

110

Parish Transport v. Jordan Carriers

- Parish filed a Complaint in Chancery Court for Specific Performance and a TRO enjoining the sale of the equipment to the other party which was later dismissed
- Jordan then filed a Declaratory Judgment action, seeking a determination that there was no contract between the parties

111

Parish Transport v. Jordan Carriers

- The lower court granted Summary Judgment and held that the e-mail exchanges did not constitute a sufficient contract under the Statute of Frauds

112

Parish Transport v. Jordan Carriers

- The CoA affirmed, holding that the Uniform Electronic Transactions Act defines an "electronic signature" as *"an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record."*
- And, that the phrase "*Sent from my iPhone*" did not meet this requirement.

113

Parish Transport v. Jordan Carriers

- Supreme Court granted Certiorari and reversed and remanded for a factual determination as to whether Seller's representative adopted the entire e-mail chain as a contract and whether he adopted his typed name on several of the e-mails as his signature or the phrase "Sent from my iPhone" .

114

Coleman v. Coleman

- Evelyn Coleman had 4 sons: Thomas, Frazier, Mike and Larry
- In 1987 Evelyn and her 4 sons signed a written agreement to forgive debts owed to her by Frazier, Mike and Larry, and to balance things out she agreed to convey certain real property to Thomas
- She thereafter delivered to Thomas a W/D for 40 acres

115

Coleman v. Coleman

- Upon Evelyn's death in 2012, Thomas was named Executor of her estate and thereafter discovered that at the time she executed the deed to the 40 acres she had only a Life Estate and the 4 sons were vested with the remainder interest

116

Coleman v. Coleman

- Thomas then requested that the 3 other sons deed their interest in the 40 acres to him per the agreement – Frazier did so, but, Mike and Larry declined
- Mike thereafter initiated an action to Quiet Title

117

Coleman v. Coleman

- The lower court entered an Order declaring Thomas to be the sole Owner based on the parties' intent when the 1987 agreement was executed
- On appeal, the CoA held that:
- (1) Evelyn could not convey fee title to Thomas since she had only a Life Estate

118

Coleman v. Coleman

- (2) The 1987 agreement could not operate as a conveyance of the interests of Mike, Frazier and Larry because it contained no conveyance language
- (3) Mutual mistake voided the agreement only as to the conveyance of the 40 acres – but that the agreement was "*viable in terms of debt forgiveness*"

119

Coleman v. WGST, LLC

- Dorothy and Keith Coleman were divorced in TN in 2010
- In 2012 Dorothy filed a Motion to Enroll a Foreign Judgement in DeSoto County
- In 2015, Keith sold real property in DeSoto Co. to WGST, LLC

120

Coleman v. WGST, LLC

- In 2019, Dorothy filed an action in DeSoto Co. to execute on the property sold by Keith in 2015
- Lower court dismissed Dorothy's action because it was time-barred by the applicable SoL, and Dorothy appealed

121

Coleman v. WGST, LLC

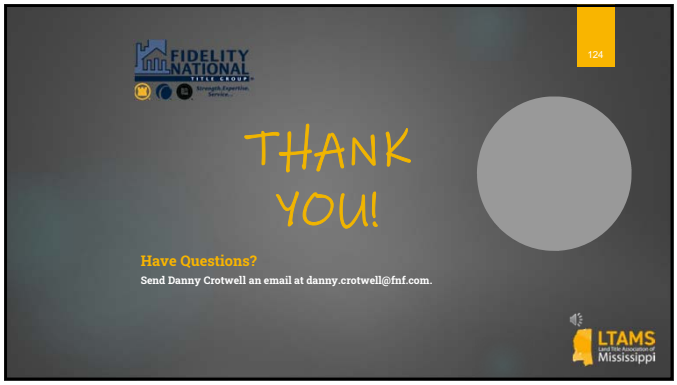
- The CoA agreed with the lower court and found that under Sec, 11-7-303 and Sec. 15-1-45 any action by Dorothy to enforce the TN Judgment had to be brought within 7 years of the rendition of the Judgment in TN

122

Coleman v. WGST, LLC

- Dorothy argued on appeal that her action to enroll the TN Judgment in DeSoto Co. "restarted" the 7-year SoL, but, the CoA did not agree
- Note, that under Sec. 15-1-45 , the time limit to enforce a foreign judgment against a Defendant who was a **resident** of MS at the time the judgment was rendered is even shorter – 3 years

123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124
THANK YOU!
Have Questions?
Send Danny Crotwell an email at danny.crotwell@fnf.com.
LTAMS
Land Title Association of Mississippi

124

CURRENT MISSISSIPPI CASES AFFECTING REAL ESTATE

1. **HL&C Marion, LLC v. DIMA Homes, Inc**., No. 2020-CA-00750-COA (CoA 2021) – Judgment lien holder was entitled to notice of maturity of Tax Sale and could therefore redeem Subject Property outside 2 year redemption period. [**NOTE:** Request for re-hearing Denied, but, Opinion still subject to modification at this time.]

2. **Durrant, Inc. v. Lee County**, No. 2019-CA-01826-COA (CoA 2021) – Tax Sale Purchaser could challenge Tax Sale because of Clerk's failure to give statutory notices, even though Sec. 27-25-27 had been amended to disallow such action. Amendment could not be applied retroactively, and "validity . . . of Tax Deed must be determined by the law in force at the time [of] the Sale . . ."

3. **Tunica County v. S & S Properties, LLC**, No. 2021-CA-00033-COA (CoA 2022) – S&S purchased several properties at Tax Sale, and later brought an action to set aside sales because of Clerk's failure to give notices; Lower Court ruled in favor of S7S and CoA affirmed, citing its ruling in *Durrant, Inc. v. Lee County*, above.

4. **In Re: Est of Randle**, No. 2020-CA-00433-COA (CoA 2021) – "Cross referenced" DNA testing among putative children of decedent was sufficient to rebut presumption that children of married mother are the children of her Husband.

5. **Land v. Land**, No. 2021-CA-00402-COA (CoA 2022) – Wife, who was unable to obtain a Divorce, could not partition the marital home while Husband still resided there and claimed it as his Homestead.

6. **Trustmark National Bank v. Enlightened Properties, LLC** , 330 So.3d 772 (CoA 2021) – Recorded Release of Deed of Trust, which contained ambiguous and contradictory terms, did release hypothecated real property securing loans to related entities.

7. **Kelly v. Ocwen Loan Servicing**, 329 So.3d 439 (Sup.Ct. 2021) – Conveyance of Remainder Interest in homestead, without the signature of later deceased spouse was void, and therefore, Reverse Mortgage executed only by surviving spouse was valid and enforceable.

8. **Polk Productions Inc. v. Dowe**, 331 So.3d 1124 (CoA 2021) – Specific Performance was not an "appropriate remedy" for breach of a Right of First Refusal where Grantee had not demonstrated willingness and ability to pay purchase price, and, remedy would affect rights of 3rd party.

9. **Erves v. Hosemann Et Al.**, No. 2020-CA-00467-COA (CoA 2022) – it was not error to allow testimony of Expert Witnesses over objection that witnesses had very little experience testifying as experts.

10. **PRVWSD v. Khalaf**, 332 So.3d 263 (Sup.Ct. 2021) – Sub-Lessee was not obligated to repair stormwater drainage pipe which ran beneath his property, but, served other property, because CCR's trumped lease terms.

11. **DeSoto Co. v. Vinson**, No. 2021-CA-00122-COA (CoA 2022) – Board of Supervisors could not approve division of subdivision lot and alteration of plat where Lot Owner had not given proper notice to surrounding lot owners in subdivision.

12. **Lake Serene PoA v. Esplin**, NO. 2020-CA-00689-SCT (Sup.Ct. 2022) – "Short Term" rentals of home in platted subdivision, accomplished through AirBnb, VRBO and other internet services, did not violate Protective Covenants limiting use of properties to "residential purposes" where covenants did not otherwise define residential purposes, and, PoA board could not change Protective Covenants by amending its Bylaws.

13. **In Re: Est of Walker**, 331 So.3d 553 (CoA 2021) – it was improper for trial court to allow into evidence deposition testimony of attorney who prepared deed where no exception to Rule 32 was applicable and proponent had not given adequate notice that deposition would be offered in lieu of courtroom testimony.

14. **Cooley v. Pine Belt Oil**, No. 2019-IA-01835-SCT (Sup.Ct. 2022) – action for Implied Indemnity arising from environmental remediation of gasoline leak was governed by general statute of limitations, and, was barred 3 years from the date leak was discovered, even though testing to establish responsible party occurred much later, and, cleanup costs were ongoing.

15. **Okhuysen v. City of Starkville**, 333 So.3d 573 (CoA 2021) – photographs of alleged "code violations" existing on a vacant property should have been excluded from evidence under Article 3, Section 23 of the Mississippi Constitution, where city official did not have permission or a warrant allowing him to enter Defendant's property.

16. **Est. of Green v. Cooley,** 306 So.3d 665 (Sup.Ct. 2020) – Possession of Deed by Grantee was not sufficient in and of itself to establish acceptance of "delivery" where Grantee's conduct indicated otherwise.

17. **Parish Transport LLC v. Jordan Carriers Inc.,** 327 So.3d 45 (Sup.Ct. 2021) - It was a question of fact, to be determined by a jury, whether Seller of heavy equipment

adopted e-mail chain as a contract and whether or not such a contract had been electronically signed as allowed by the Uniform Electronic Transactions Act.

18. **Coleman v. Coleman**, No. 2020-CA-00389-COA (8/31/2021) - Agreement between Mother and four Sons that one son would have title to 40 acres in exchange for forgiveness of debts in favor of the other 3 sons would not convey fee title to fourth son where Mother had only a Life Estate.

19. **Coleman v. WGST, LLC**, 328 So.3d 698 (CoA 2021) - under Sec, 11-7-303 and Sec. 15-1-45 any action to enforce TN Judgment of Divorce had to be brought within 7 years of the rendition of the Judgment in TN.

20. **Briggs v. Hughes**, 316 So.3d 193, (Sup.Ct. 2021) - Mississippi Right to Farm Act, Miss. Code Ann. § 95-3-29, barred suit to enjoin use of propane cannons in a farming operation which had been established for more than one year.

21. **Crotwell v. T & W Homes**, 318 So.3d 1117 (Sup.Ct. 2021) – reservation of right to convey fee in warranty deed reserving a Life Estate was invalid, but, Grantee had acquired title by adverse possession.

22. **Williams v. City of Batesville**, 313 So.3d 479 (Sup.Ct. 2021) – City's decision to try less expensive methods of preventing sewage from flowing into Williams' home was not protected by Mississippi Tort Claims Act and Williams was entitled to present evidence of negligence in maintaining City sewer system.

23. **ABG Contractors v. I-55 Development**, 302 So.3d 691 (CoA 2020) – Contractor filed a Notice of Construction Lien and Owner filed a Petition to expunge "False Lien". Chancellor heard arguments of counsel at telephonic hearing, but heard no testimony, and expunged C/L after the hearing. CoA found that under Sec. 85-7-429 Lower Court must make findings of fact before expunging lien.

24. **Hughes v. Shipp**, 324 So.3d 286 (Sup.Ct. 2021) – Supreme Court held that unjust enrichment requires a determination that the Defendants are "in possession of money or property which in good conscience and justice [they] should not retain".

25. **Sturdivant v. Coahoma Co.**, 303 So.3d 1124 (CoA 2020) – Negligence and Inverse Condemnation actions for damage to water lines serving property were barred by applicable statutes of limitation.

26. **Briggs v. Hughes**, 316 So.3d 193, (Sup.Ct. 2021) - Mississippi Right to Farm Act, Miss. Code Ann. § 95-3-29, barred suit to enjoin use of propane cannons in a farming operation which had been established for more than one year.

27. **Est. of Callender v. Callender**, 309 So.3d 131 (2020) – Property Settlement Agreement terminated Right of Survivorship as to jointly held mineral interests.

28. **Holcomb Dunbar v. 400 So. Lamar Mad Hatter Partners**, ___ So.3d ___, 2021 WL 1976195 – Law firm breached commercial office lease by moving out and ceasing rental payments. CoA affirmed Summary Judgment in favor of Landlord and declined to address any duty of Landlord to mitigate damages. [**NOTE:** Writ of Certorari granted by the Sup.Ct.]

29. **Osby v. Janes**, 323 So.3d 1084 (Sup.Ct. 2021) – Chancellor's confirmation of partition sale conducted during COVID-19 State of Emergency was not an abuse of discretion where no party asked that the sale be delayed

30. **L & D, LLC v. Tackett**, 308 So.3d 445 (2020) – Adjoining landowner had established prescriptive easement over adjoining lot by demonstrating sufficient use of the property and was not required to prove possession of the adjoining property.

31. **Mississippi Sand Solutions v. Otis**, 312 So.3d 349 (Sup.Ct. 2020) – Petitioner was collaterally estopped from acquiring an easement across neighbor's land via private condemnation where it had been determined in previous actions that Petitioner has alternate access to its property; Sup.Ct. further held that access by permissive use of neighbor's private road would prohibit private condemnation.

32. **Britt v. Orrison**, 323 So.3d 1135 (CoA 2021) – Agreed Order arising from action for specific performance of agreement to exchange real property for cabin to be relocated was enforceable and did not violate Statute if Frauds even though Agreed Order did not contain a complete legal description of the real property.

33. **Beckworth v. Beckworth**, 312 So.3d 391 (CoA 2021) – where brother alleged oral contract to purchase interest in home from his sister, he was entitle to present evidence of Equitable Estoppel, even though oral contract for the purchase of real property violated the Statute of Frauds (Sec. 15-3-1).

34. **Est. of Stephens v. Est. of Palmer**, ___ So.3d ___, 2021 WL 2660418 – CoA affirmed that Trustee is a necessary party to action to set aside a foreclosure, and failure to join the Trustee properly resulted in dismissal of the action, even though Statute of limitations for maintaining an action against the Trustee had run in the interim.

35. **Soffra v. Tingstrom**, 314 So.3d 129 (CoA 2020) - foreclosure was properly set aside where Borrower was not given the 30-day notice required under the terms of the D/T, even though statutory foreclosure procedure was followed.

36. **Thoden v. Halford**, 310 So.3d 1156 (Sup.Ct. 2021) – Tax Sale purchaser whose sale was set aside was not entitled to recover 5% penalty under Section 27-45-3, and might be entitled to recover other, non-statutory, damages.