

SUPREME COURT OF MISSISSIPPI
Case # 2014-CA-00103

CYNTHIA EASTERLING

APPELLANT

VS.

RHETT R. RUSSELL

APPELLEE

APPEALED FROM THE
CHANCERY COURT OF
LEE COUNTY, MISSISSIPPI
CAUSE NUMBER 13-1242-41

BRIEF OF APPELLANT

JOHN A. FERRELL
FERRELL & MARTIN, P.A.
POST OFFICE BOX 146
BOONEVILLE, MISSISSIPPI 38829
TELEPHONE (662) 728-5361
MISSISSIPPI STATE BAR #5181

Attorney for Appellant

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for Appellant, Cynthia Easterling, 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 the Judges of the Court of Appeals may evaluate possible disqualification or recusal:

- 1) Cynthia Easterling, Appellant
- 2) Rhett R. Russell, Appellee
- 3) John A. Ferrell and
J. Deborah Martin, Attorney's for Appellant
FERRELL & MARTIN, P.A.
Booneville, Mississippi
- 4) Honorable L.F. Sams, Jr., Attorney for Appellee
Mitchell, McNutt & Sams
- 5) Honorable Kenneth M. Burns, Special Chancellor

/s/ John A. Ferrell
JOHN A. FERRELL

FERRELL & MARTIN, P. A.
POST OFFICE BOX 146
BOONEVILLE, MS 38829
TELEPHONE (662) 728-5361
MISSISSIPPI STATE BAR #5181
ATTORNEY FOR APPELLANT

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I.

STATEMENT OF THE ISSUE

A. Whether or not the Special Chancellor below committed reversible error in granting the Motion for Summary Judgment filed by Appellee, Rhett R. Russell (Rhett), finding the existence of a binding contract between Rhett and Appellant, Cynthia R. Easterling (Cynthia).

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II.

STATEMENT OF THE CASE

A. Nature of the Case

This Appeal involves a Final Judgment rendered in this case wherein Special Chancellor Burns granted Rhett's Motion for Summary Judgment. In doing so, he found the existence of a binding contract between Cynthia and Rhett. The sole issue in this appeal is whether or not the Special Chancellor committed reversible error in granting Summary Judgment and in finding the existence of a contract between these parties.

B. Course of the Proceedings
and Disposition in the Court Below

On July 2, 2013, Cynthia filed a complaint in the Chancery Court of Pontotoc County, Mississippi against Rhett, her brother. (Tr. 191-214)

The relief sought in the Complaint concerned certain real property owned by an L.L.C., Meliotus, L.L.C. , which was formed due to Rhett and Cynthia's owning certain real property that had been purchased by them over the years for future development.

The Complaint concerned both a prayer to set aside two Quitclaim Deeds that Rhett had unilaterally prepared dividing up

the property of Meliotus, L.L.C. between Rhett and Cynthia and sought a judicial dissolution of the LLC instead of the unilateral dissolution that Rhett contended occurred by virtue of the alleged contract. (Tr.. 6-29)

Rhett, through counsel, filed a response to the Complaint alleging therein that the parties had entered into a binding contract relative to the disposition of the property owned by Meliotus, L.L.C. and its division between them and that the alleged contract amounted to a mutual dissolution agreement between the only members of the LLC. (Tr. 61-71)

Ultimately, the case was transferred to the Chancery Court of Lee County, Mississippi for further proceedings. (Tr. 4-5)

The parties engaged in some preliminary discovery and the depositions of both parties were taken. (Tr. 111-112, 113-114)

Subsequent thereto, Rhett filed a Motion for Summary Judgment contending that the actions of Rhett in preparing the Quitclaim Deeds dividing the L.L.C. property was based upon a binding contract between Rhett and Cynthia to dissolve the LLC. (Tr. 76-77)

Cynthia responded to the Motion for Summary Judgment and filed a Counter-Motion for Summary Judgment requesting that the Court determine, as a matter of law that there was no binding contract between the parties and absent a binding contract, she was entitled to the relief sought in her Complaint. (Tr. 139-141)

Both parties filed Memorandum Briefs in support of their positions, Rhett's appearing in the Addendum to the Transcript at

pages 266 through 277, and Cynthia's appearing in the Transcript at pages 142 through 214. Rhett also filed a rebuttal to Cynthia's Memorandum (Tr. 215 through 242)

Ultimately, Special Chancellor Burns entered a Final Judgment sustaining Rhett's Motion for Summary Judgment based upon his finding of the existence of a valid contract between the parties. (R.E. 2-3; Tr. 243-244)

Cynthia filed a Motion to Alter or Amend the Final Judgment (Tr. 245-248) which Special Chancellor Burns denied. (R.E. 4; Tr. 252)

It is from this Final Judgment and denial of the Motion to Alter or Amend Judgment by Special Chancellor Burns that Cynthia has prosecuted this appeal.

C. Statement of Facts Relevant to the Issues Presented for Review

Cynthia and Rhett are sister and brother. Many years prior to the current controversy, they had begun acquiring property in Pontotoc County together, some of which was originally in the name of Cynthia's ex-husband, Wayne Easterling. (Rhett's Deposition Tr. 153-154)

The property was purchased at various times and was a large tract which they had intended to develop. (Rhett's Deposition Tr. 153-154)

They had plans to construct a lake in the middle of the property for future development. (Rhett's Deposition Tr. 153-154)

In the furtherance of this endeavor, an L.L.C. was formed in 2002, Meliotus, L.L.C. (Rhett's Deposition Tr. 154)

Rhett and Cynthia were co-managers of the L.L.C. and its only members. (Rhett's Deposition Tr. 154-155; Tr. 198-199, 200-203)

Ultimately, in November, 2009, Rhett sent an email to Cynthia advising that due to the downturn in the real estate market, because of his age, etc., that he was no longer interested in developing the property as they had discussed and did not wish to spend any more money towards the construction of a lake. (Rhett's Deposition Tr. 155, 169-170)

All of the land had previously been placed in Meliotus, L.L.C. though each of the parties also owned land individually in the same area as the Meliotus, L.L.C. property. (Tr. 169-170)

Beginning with the November, 2009 email, there were several more communications between the parties about how to dispose of the Meliotus property including an offer by Cynthia to Rhett in correspondence dated December 24, 2011, for a proposed division of the jointly owned property in Meliotus, L.L.C. (Rhett's Deposition Tr. 155-156, 171-173)

Rhett desired to have the land divided up by a Judge or a special commissioner as he believed that was the only way that they could agree on the division. (Rhett's Deposition Tr. 156)

In addition to the division of the land, there were other issues that developed between Rhett and Cynthia over the years including Rhett's claim that he had contributed more money to the purchase of some of the land by virtue legal fees that the seller

owed him. Rhett acknowledged that these issues were also unsettled and he wanted to settle everything between the parties at the time of the dividing up the land. (Rhett's Deposition Tr. 159-160)

The parties had never come to any agreement on that issue as well. (Tr. 160)

In December of 2011, Cynthia made a proposal on the division of the land (Tr. 161, 171-173) to which Rhett responded with a counter-proposal (Tr. 162, 176) which she accepted. (Tr. 162-163, 177)

In Cynthia's acceptance of Rhett's counter-proposal, she notes these other issues relating to assets and the affairs of the L.L.C. and other issues between them and advised that she wanted resolutions of those as well. (Tr. 177)

Additional issues that Rhett raised was his claim that Cynthia bought property individually that he contended was suppose to have gone into Meliotus. (Rhett's Deposition Tr. 164)

None of the Meliotus, L.L.C. property had ever been surveyed (Rhett's Deposition Tr. 156) in spite of Cynthia's desires throughout that a survey was necessary.

On May 6, 2013, Cynthia wrote a letter to Rhett (R.E. 5-8; Tr. 178-181) which the Lower Court found to be an offer on her part for a division of the Meliotus property and the dissolution thereof. (R.E. 2-3; Tr. 243-244)

Rhett responded to Cynthia's May 6th letter on May 24, 2013, (R.E. 9; Tr. 182) which Special Chancellor Burns found to be an

acceptance on Rhett's part of Cynthia's offer forming a binding contract between them (R.E. 2-3; Tr. 243-244)

Rhett prepared and forwarded with his May 24th letter a Quitclaim Deed covering what he purported to be the property that he was to receive under Cynthia's offer. (R.E. 10-12; Tr. 183-185)

Rhett later signed for Meliotus on that property as well as a Quitclaim Deed that he prepared for the property that Cynthia was to receive and had those deeds recorded in the Chancery Clerk's office in Pontotoc County. (Tr. 204, 212-214, 205-211)

These are the deeds that Cynthia sought to have set aside in her Complaint. (Tr. 191-197)

The deed attached to what Rhett contends is his acceptance of Cynthia's offer contained numerous errors including errors in descriptions of the various tracts to be conveyed, errors as to quantity of land in certain of those tracts (Tr. 187-189) and even contained property that Cynthia already owned individually (Tr. 189, Rhett's Deposition Tr. 167)

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III.

SUMMARY OF THE ARGUMENT

The lower Court sustained Rhett's Motion for Summary Judgment based upon a finding that the parties entered into a binding contract by virtue of Cynthia's May 6, 2013 letter to Rhett and Rhett's May 24, 2013 letter to her. The Court held that her letter constituted an offer and his letter constituted an acceptance thereof.

The lower Court committed reversible error in this holding as it is obvious from a review of Cynthia's May 6th letter that there were several material terms contained in her offer other than a proposed division of the Meliotus property. Over the years, several issues had arisen between this brother and sister as acknowledged by both parties in their depositions and both had expressed a desire to have all issues resolved, not just the division of the property and the dissolution of the L.L.C. which they had formed. Rhett's letter of May 24th did not address any of the other terms of the offer except for the division of the property leaving unresolved the other issues between them. The net result is that there was no contract under Mississippi Contract Law

and the Lower Court committed reversible error in sustaining Rhett's Motion for Summary Judgment.

IV.

ARGUMENT

A. STANDARD OF REVIEW

The Supreme Court reviews a Trial Court's grant of Summary Judgment De Novo. Bullard v. Guardian Life Insurance Company of America 941 So. 2nd 812 ¶6 (Miss. 2006) Summary Judgment is only proper if the pleadings, depositions, and Answers to Interrogatories and Admissions on file together with the affidavits if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a Judgment as a matter of law. Rule 56(c) Mississippi Rules of Civil Procedure. Heritage Building Property, L.L.C. v. Prime Income Asset Management, Inc., 43 So. 3rd 1138 ¶6 (Miss. Ct. Appeals 2009)

On appellate review of a Chancellor's findings of facts, the Appellate Court will not disturb the findings of a Chancellor unless the Chancellor was manifestly wrong, clearly erroneous or if an erroneous legal standard was applied. Hunt v. Coker 741 So. 2nd 1011 ¶6 (Miss. Ct. Appeals 1999)

The Supreme Court has held that if a Trial Court is to err on a Motion for Summary Judgment ruling, it is better to err on the side of denying the Motion. When doubt exists whether there is a fact issue, the non-moving party gets its benefit. Indeed the party against whom the Summary Judgment is sought should be given the benefit of every reasonable doubt. Ratliff v. Ratliff 500 So. 2nd 981 (Miss. 1986)

B. ISSUE ON APPEAL

1. Whether or Not the Special Chancellor Below Committed Reversible Error in Granting the Motion for Summary Judgment Filed by Appellee, Rhett R. Russell, Finding the Existence of a Binding Contract Between Rhett and Appellant, Cynthia R. Easterling.

In granting Summary Judgment to Rhett, Special Chancellor Burns found that there was a valid contract between Rhett and Cynthia and therefore, there were no fact issues to be tried. The Special Chancellor based the existence of a contract on the letter of May 6, 2013, (R.E. 5-8; Tr. 178-181) from Cynthia to Rhett and Rhett's return letter of May 24, 2013, to Cynthia. (R.E. 9; Tr. 182)

A determination as to the existence of a binding contract is not only a question of law which this Court reviews De Novo, but is also one of a factual analysis which is required in order to determine whether or not a contract exists based upon these two documents. Here, there was no contract under contract law of this state and therefore, finding the existence of one constitutes reversible error, especially in view of the fact that this is a ruling on a Motion for Summary Judgment. In addition, the Lower Court failed to consider several material terms of the offer concerning issues between these parties which Cynthia included as part of her offer in the May 6th letter. These terms were never addressed by Rhett much less accepted by him as required by law. Those terms that Rhett did not address in his purported acceptance

were material to the offer. His failure to accept them in his letter negates the existence of a contract.

The Court of Appeals in the Heritage case at ¶10 held: "A valid, enforceful contract requires an offer, acceptance of the offer and consideration." The Court went on to hold, "It is elemental that a contract is not formed until the offeree accepts the terms stated by the offeror." Citing Vice v. Hinton 811 So. 2nd 335 ¶12 (Miss. Ct. Appeals 2001).

In the case of Rottenberry v. Hooker 864 So. 2nd 266 ¶13 (Miss. 2003) this Court held, "The elements of a valid contract are (1) two or more contracting parties, (2) consideration, (3) an agreement that is sufficiently definite, (4) parties with the legal capacity to make a contract, (5) mutual assent and (6) no legal prohibition precluding contract formation."

In Hutton v. Hutton 239 Miss. 217, 119 So. 2nd 369, 374 (Miss. 1960) the Supreme Court held in a specific performance of contract case, "The contract must be specific and distinct in its terms, plain and definite in its meaning, and must show for certainty that the minds of the parties had met and mutually agreed as to all its details upon the offer made upon the one hand and accepted upon the other. If any of these requisites be lacking, specific performance will not be decreed by a Court of equity." Further in Hutton at pgs. 374-375, this Court citing Williston on Contracts Vol 1, §79, pg 261, held, "Frequently an offeree, while making a positive acceptance of the offer adds a request or suggestion that some addition or modification be made. So long as it is clear that the

meaning of the acceptance is positively and unequivocally to accept the offer whether such request is granted or not, a contract is formed. If an offer is accepted as made, (emphasis ours) the acceptance is not qualified or conditional because the expression of a hope, request or suggestion..."

In the Coker case at ¶8, the Mississippi Supreme Court held, "Before a Court may order specific performance of a contract, the contract must be sufficiently definite on material terms. A contract is sufficiently definite if it contains matter which will enable the Court under proper rules of construction to ascertain its terms. If the contract is not sufficiently definite or specific the Court must find it unenforceable and deny specific performance. If any essential terms are left unresolved (emphasis ours) then no contract exists."

Finally, the Court in the Heritage case held, "It is elemental that a contract is not formed until the offeree accepts the terms stated by the offeror." Heritage ¶10

It should be kept in mind that these siblings had been trying to resolve numerous issues between them for a number of years. There was the issue of Cynthia wanting a survey of all of the property to ascertain specific property lines. There was the issue of whether or not Rhett was entitled to credit for several thousands of dollars that he claimed he was entitled to because of bartering legal services for part of the purchase price for some Meliotus property. (Rhett's Deposition Tr. 159-160) There was the issue of whether or not Cynthia had purchased individually property

that was suppose to go into Meliotus. (Rhett's Deposition Tr. 164)
There was the issue of what was going to happen to the government money that the parties received annually on certain of the Meliotus property. (Cynthia's Deposition Pg 32, Tr. 225)

These were real issues not only of Cynthia's but of Rhett's. (Rhett's Deposition Tr. 160)

A review of Cynthia's letter of May 6, reveals that her offer contained terms to resolve all of the issues between these parties. Her offer consists of eight terms, only one of which pertains to the division of the Meliotus property. (R.E. 5-8; Tr. 178-181)

The other terms address these other issues between the parties and requires their resolution. These terms were just as much a part of the offer as the division of the Meliotus property.

In addition, Paragraph 5 addresses the mineral rights issue and proposes all mineral rights be split 50/50 on all of the Meliotus property. Paragraph 6 addresses what have been issues between these parties for years, including their various claims against the other for money, land, etc. set forth above. (R.E. 5-8; Tr. 178-181)

Similarly, Paragraph 7 addressed the term that the property all be surveyed due to the realization (Tr. 186-190) that there were issues with certain of the property descriptions and requires that the survey be completed prior to any closing documents being prepared. (R.E. 5-8; Tr. 178-181)

Rhett's alleged acceptance (Tr. 182) only addresses the first term of Cynthia's offer. It doesn't even mention the balance of

the terms addressed by her and therefore, there was no acceptance of Cynthia's offer "according to its terms". More than sixty days have passed since Cynthia's offer and Rhett has failed to accept the offer in full negating there being any acceptance thereof.

As noted in the Hunt decision at Paragraph 8, "If any essential terms are left unresolved, then no contract exists." [Citing Busching v. Griffin 465 So. 2nd 1037, 1040, (Miss. 1985)]

It is apparent that Special Chancellor Burns did not consider the other material terms of Cynthia's offer. Had he considered them, he could not have found the existence of a contract. Rhett's acceptance was an acceptance only of a part of the material terms of her offer.

Reviewing the issue of the existence of a contract De Novo, it is apparent that there was no acceptance by Rhett of Cynthia's offer according to its terms. The Lower Court committed reversible error in so holding. This is especially true when considering that this determination was made on a Motion for Summary Judgment and these other issues present, at the very least, genuine issues of material fact for determination after a full hearing of this case.

The Court committed reversible error in sustaining Rhett's Motion for Summary Judgment and the case should be reversed for further proceedings to consider the relief sought by Cynthia in her Complaint.

CONCLUSION

It is obvious from a review of the depositions, the answers to interrogatories and the documents themselves that there was never a contract entered into in this case. Rhett never accepted Cynthia's offer according to its terms and there were left unresolved several material issues which were a part of Cynthia's offer and went un-responded to by Rhett's alleged acceptance of her offer. Therefore, there was no binding contract entered into and as the time for Rhett to accept her offer (sixty days) has passed, the lower Court committed reversible error by finding there existed a valid contract. Therefore, the lower Court committed reversible error by sustaining Rhett's Motion for Summary Judgment and the case should be reversed and remanded for further proceedings herein.

Respectfully submitted,

FERRELL & MARTIN, P. A.
POST OFFICE BOX 146
BOONEVILLE, MISSISSIPPI 38829
TELEPHONE (662) 728-5361
MISSISSIPPI BAR NO. 5181

BY: /s/ John A. Ferrell
John A. Ferrell

CERTIFICATE OF SERVICE

I, John A. Ferrell, do hereby certify that I have this day electronically filed with the Clerk using the ECF system the above and foregoing Appellant's Brief which sent notification of such filing to Honorable L.F. Sams, Jr., and I further certify that I have this day forwarded by United States Mail, postage prepaid, a true and correct copy of the above and foregoing Appellant's Brief to the Honorable Kenneth M. Burns, at his usual mailing address of Post Office Drawer 110, Okolona, MS 38860-0110.

This the 6th day of August, 2014.

/s/ John A. Ferrell
JOHN A. FERRELL