

IN THE CHANCERY COURT OF THE STATE OF TENNESSEE
WILLIAMSON COUNTY

FILED
WILLIAMSON COUNTY
CLERK OF COURT
2007 OCT 22 PM 3:54

FRED C. GOAD.

Plaintiff,

v.

DONALD R. DEPRIEST and MARITIME
COMMUNICATIONS/LAND MOBILE, LLC

Defendant.

No. 34064

ENTERED _____

VERIFIED COMPLAINT

Plaintiff Fred C. Goad, states for his verified complaint against the Defendants, Donald R. DePriest and Maritime Communications/Land Mobile, LLC, as follows:

1. Plaintiff Fred C. Goad is a resident of Williamson County, Tennessee at 917 Stuart Ln, Brentwood, TN 37027.
2. Defendant Donald R. DePriest ("DePriest"), is an individual doing business at 206 8th St., N, Columbus, MS 39705.

3. Defendant Maritime Communications/Land Mobile, LLC, ("Maritime") is a limited liability company incorporated pursuant to the laws of Delaware doing business at 206 8th St. N, Columbus, MS 39705. The registered agent for service of process, as listed with the Delaware Secretary of State, is Corporation Service Company, 2711 Centerville Rd., Suite 400, Wilmington, DE 19808.

4. This Court has jurisdiction this matter and the Defendants. Defendant DePriest is an officer of Defendant Maritime and in his individual capacity as a guarantor and in his capacity as an officer of Defendant Maritime, Defendant DePriest has visited Plaintiff at his place of business at Voyent Partners, LLC, 5123 Virginia Way, Suite C-22, Brentwood, TN 37027 regarding this transaction.

Petitioners:
In response
to this
complaint,
DePriest
admits to
these
allegations
including
being a
guarantor
and officer of
MCLM.

5. Defendant Maritime executed a Promissory Note dated November 2, 2005 in the original principal amount of \$400,000.00. A true and correct copy of the Promissory Note is attached hereto as Exhibit A.

6. Defendant DePriest executed a Personal Guaranty dated on November 2, 2005, which guaranteed all obligations evidenced by the Promissory Note. A true and correct copy of the Personal Guaranty is attached hereto as Exhibit B.

7. Defendant Maritime executed a Warrant dated on November 2, 2005 entitling Plaintiff to purchase 22 Units of Maritime at the set price of \$1.00 per Unit. A true and correct copy of the Warrant is attached hereto as Exhibit C.

8. The obligations owed pursuant to the Promissory Note became due March 1, 2006. Defendants failed to make timely payments.

9. Plaintiff made demand for full payment by letter dated September 12, 2007 and also exercised his right to exercise the Warrant for 22 Units of Maritime. A true and correct copy of the letter by Plaintiff's counsel is attached hereto as Exhibit D.

10. Based on assurances by Defendant DePriest that he would make full payment by October 15, 2007, Plaintiff agreed to forebear until October 15, 2007 from seeking to collect the obligations evidenced by the Promissory Note and Personal Guaranty. A true and correct copy of the statement signed by Defendant DePriest at Plaintiff's office in William County, Tennessee is attached hereto as Exhibit E.

11. The outstanding amount owed by the Defendants to Plaintiff was \$503,028.08 as of October 15 2007.

12. Plaintiff is entitled to a judgment against Defendants, jointly and severally, in an amount not less than \$503,028.08, plus pre-judgment interest at the rate of 10%, and all reasonable legal fees and costs of collection.

Petitioners:
As shown in
the next
document,
DePriest
admits to
these
allegations.
The loan
amounts
were
obtained
during the
relevant
period of
MCLM's
601 and
some were
to obtain
the funds to
pay the
FCC the
bidding
credit
amount
MCLM lost.
Thus,
MCLM at
the time of
bidding did
not have
those funds
to bid and
later used
the
additional
time it
gained from
its
misrepresentations
about its
bidder size
to obtain
those funds.

13. . Plaintiff is entitled to the issuance of certificates of ownership of limited partnership equal to 22 Units of Defendant Maritime.

PRAYER FOR RELIEF

WHEREFORE Plaintiff respectfully requests that the following relief be granted:

1. That the Court award Plaintiff a monetary judgment against Defendants, jointly and severally, for the total outstanding balance owed under the Promissory Note plus pre-judgment interest, attorneys fees, and costs; and
2. That the Court award Plaintiff the equity interest in Defendant Maritime evidenced by the Warrant and order Defendants to cause appropriate certificates of ownership to be issued.
3. That the Court award Plaintiff such other and further relief as this Court deems just and equitable.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:  _____

William L. Norton (No. 10075)
Joel D. Eckert (No. 025365)
1600 Division Street, Suite 700
P.O. Box 340025
Nashville, Tennessee 37203
(615) 252-2397

Attorneys for Plaintiff.

VERIFICATION

STATE OF TENNESSEE)

COUNTY OF Williamson)

I, Fred C. Goad, being duly sworn, make oath and verify that I am the Plaintiff in this action, and that I have read the foregoing Complaint and reviewed the exhibits attached to the Complaint, and the facts stated therein are true and correct to the best of my knowledge and information.



Fred C. Goad
FRED C. GOAD

Sworn to and subscribed before me on the 17th day of October, 2007.

Rebecca Lynn Moriarty
Notary Public

My Commission Expires: 03-22-11

\$400,000.00

November 2, 2005

FILED 10-22-07

ENTERED 2:54

BOOK _____ PAGE _____
ELAINE B. BEELER, Clerk & Master

PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned, MARITIME COMMUNICATIONS/LAND MOBILE LLC, does hereby promise to pay in full on March 1, 2006, to the order of Fred C. Goad, 917 Stuart Lane, Brentwood, TN 37027, his heirs or assigns the sum of FOUR HUNDRED THOUSAND DOLLARS AND NO CENTS (\$400,000.00) at an interest rate of 10% to the address or addresses of the payees as so directed.

..This note is payable in full on the due date.

If, in case of default, this note is placed in the hands of an attorney for collection, the undersigned agrees to pay all reasonable legal fees and costs of collection to the extent permitted by Mississippi law.

The Debtor hereby waives presentment of this note, protest, dishonor and notice of dishonor.

This note shall take effect as a sealed instrument and be enforced in accordance with the laws of the state of Mississippi as of November 2, 2005.

MARITIME COMMUNICATIONS/LAND MOBILE, LLC

By: Communications Investments, Inc.

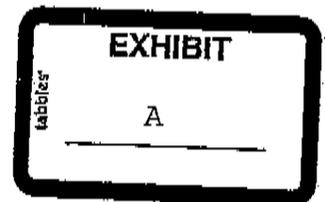
General Partner

M. Belinda Hudson, Treasurer

M. Belinda Hudson

Petitioners: Belinda Hudson, who in trial testimony says that she is Donald DePriest's executive secretary, signed as an Officer (Treasurer) of MCLM and its controlling interest holder Communications Investments, Inc. However, she was never disclosed on the Forms 175 or 601.

forms/promnotegoad



FILED 10-22-07
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LAINE B. BEELER, Clerk & Master

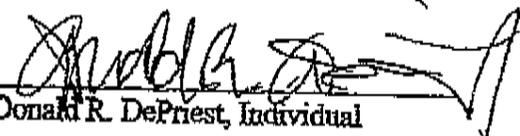
**INSTRUMENT
OF
PERSONAL GUARANTY**

In consideration of Fred C. Goad extending credit in the amount of \$400,000.00, as evidenced by Promissory Note Dated November 2, 2005, to Maritime Communications/Land Mobile, LLC, Donald R. DePriest hereby personally guarantees payment in full together with all interest of FOUR HUNDRED THOUSAND DOLLARS AND NO CENTS (\$400,000.00) due on March 1, 2006 to Fred C. Goad, 917 Stuart Lane, Brentwood, TN 37027.

It is expressly agreed that this Instrument of Personal Guaranty is absolute and complete, and that acceptance and notice hereof acceptance there of by Maritime Communications/Land Mobile, LLC are hereby expressly waived, and the same shall continue in force until written notice of its discontinuance shall be served upon the manager of Maritime Communications/Land Mobile, LLC.

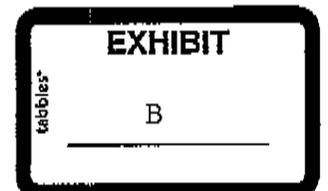
This Personal Guaranty shall take effect as a sealed instrument and be enforced in accordance with the laws of the state of Mississippi as of November 2, 2005.

IN TESTIMONY WHEREOF, I, Donald R. DePriest, have hereunto signed my name on this the 2nd day of November, 2005.


Donald R. DePriest, Individual

WITNESS: M. Belinda Hudson

forms/personalguarantygoad



Petitioners: Donald DePriest is personally guaranting loans to MCLM. This "Instrument" also states that written notice be served upon the "manager" of MCLM and Mr. DePriest in the "Warrant" that follows next signs as "Manager" of MCLM. This was done during the relevant period of MCLM's Forms 175 and 601 and when MCLM owed the difference in bidding credit amount for which it never qualified. Belinda Hudson is the witness. Since she states she is Mr. DePriest's executive secretary in trial testimony, it must be assumed that her role in MCLM, as an officer, was because Mr. DePriest controlled and owned MCLM.

FILED 10-22-07
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PAGE
CLAUDE B. BEELER, Clerk & Master

WARRANT

This Warrant issued from Maritime Communications/Land Mobile LLC ("MC/LMLLC") a Delaware Limited Liability Company to Fred C. Goad.

9/7/07
2002
20
CWA

WHEREAS, the parties hereto, pursuant to a transaction, have agreed that "MC/LMLLC" is providing this Warrant to Fred C. Goad to purchase 42 of 1,000 Units authorized and to be issued from said company at \$1.00 per Unit. This Warrant may be exercised at any time up to October 1, 2007 and must be exercised prior to filing of any documents related to an Initial Public Offering.

Witness our signature, this the November 2, 2005.

Communications Investments, Inc.
General Partner,
Maritime Communications/Land Mobile, LLC

2008 [Signature]

By: [Signature]
Donald R. DePriest, Manager

By: [Signature]
Fred C. Goad

Petitioners: Mr. DePriest signs this document as "Manager" and on behalf of both Communications Investments, Inc. and MCLM. He was providing ownership interests in MCLM to Mr. Goad and to others, including the "Maritime Communications Group" as that term is defined in the Oliver Phillips case documents provided with this Exhibit A. Only owners and officers of a company can give away ownership interests in a company.

EXHIBIT
C



BOULT ■ CUMMINGS®
CONNERS ■ BERRY PLC

William L. Norton, III
(615) 252-2397
Fax: (615) 252-6397
Email: bnorton@boultcummings.com

September 12, 2007

Donald R. DePriest
Maritime Communications/
Land Mobile, LLC
P.O. Box 1076
Columbus, MS 39703

FILED 10-22-07
ENTERED 10-3-53 PM
BOOK _____ PAGE _____
ELAINE B. BEELER, Clerk & Master

Re: Fred C. Goad

Dear Mr. DePriest:

We represent Fred C. Goad and have been asked to correspond with you regarding a certain Promissory Note dated November 2, 2005 executed by Maritime Communications/Land Mobile, LLC and your personal guaranty of that obligation. As you know, this obligation in the original principal amount of \$400,000.00 was due and payable on March 1, 2006. To date, no payments have been made on the principal and interest obligations evidenced by that note.

It is my understanding that you have committed to make payment in full of this obligation on or before October 15, 2007. Based on this commitment, Mr. Goad is willing to forebear from taking any legal action against you provided payment in full is made by that date. The principal and interest obligation as of October 15, 2007, shall be \$503,028.08. Provided you make payment on October 15, 2007, no legal fees will be assessed. If payment is not made in full, as promised, we have been instructed to take such legal action as appropriate to collect the full amount of principal, interest and expenses, including attorneys fees, in collection this obligation.

Additionally, Mr. Goad has a Warrant for 22 units at the option price of \$1.00 per share. Mr. Goad is hereby exercising his option to convert this Warrant into unit shares and would appreciate a certificate evidencing the number of shares in this regard and a statement as to the percentage of equity ownership represented by those shares.

If you have any questions regarding this understanding, please let me know.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:

William L. Norton, III



9/17/07

MR. FRED GOAD
BRENTWOOD, TN,

FILED 10-22-07
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JOHN PAGE
ELAINE B. BEELER, Clerk & Master

DEAR FRED,

I EXPECT TO PAY THE
NOTE OWING YOU FROM MARITIME COMMUNICAT
LAND MOBILE LLC. ~~TO BE~~ ^{PAID} ON OR BEFORE
OCTOBER 15, 2007, EITHER DIRECTLY
FROM THE COMPANY OR FROM ME
AS GUARANTOR,

Donald R. [Signature]

Petitioners:
Mr. DePriest has the control to make MCLM pay the note or to pay it himself.



IN THE CHANCERY COURT OF WILLIAMSON COUNTY, TENNESSEE
AT FRANKLIN

FILED
WILLIAMSON COUNTY, TENNESSEE
2009 FEB -8 PM 3:48

FRED C. GOAD,)

Plaintiff,)

v.)

DONALD R. DEPRIEST and)
MARITIME COMMUNICATIONS/)
LAND MOBILE, LLC)

ENTERED _____

Docket No. 34064

ANSWER

Defendants Donald R. DePriest ("DePriest") and Maritime Communications/Land Mobile, LLC ("Maritime") (collectively referred to as "Defendants") hereby respond to the Complaint of Fred C. Goad ("Defendant") as follows:

- 1. Admitted upon information and belief.
- 2. Admitted.
- 3. Admitted.
- 4. Defendants respond that the allegations set forth in the first sentence of Paragraph

4 constitute a legal conclusion to which no response is required. As to the remaining allegations set forth in Paragraph 4, Defendants admit that he is authorized to sign legal documents on behalf of Maritime. Defendants admit that DePriest visited Plaintiff in Brentwood, Tennessee to discuss repayment of the note.

5. Defendants respond that the Promissory Note is a writing that speaks for itself and deny any allegations inconsistent therewith.

6. Defendants respond that the Personal Guaranty is a writing that speaks for itself and deny any allegations inconsistent therewith.

Petitioners: This is MCLM's and Mr. DePriest's answer to the above complaint. They admit to many of the allegations made by Mr. Goad.

Petitioners: Mr. DePriest admits here in 4 that he is an officer of MCLM, can sign legal docs. for MCLM and that he is a guarantor for MCLM. Mr. DePriest met with and discussed repayment of the MCLM note, not Sandra DePriest.

Petitioners: MCLM and Donald DePriest admit to the legitimacy of the Promissory Note and Personal Guaranty.

7

Petitioners: MCLM and DePriest
 admit to the legitimacy of the
 Warrant and other documents.

7. Defendants respond that the Warrant is a writing that speaks for itself and deny any allegations inconsistent therewith.

8. As to the allegations set forth in the first sentence of Paragraph 8, Defendants respond that the Promissory Note is a writing that speaks for itself and deny any allegations inconsistent therewith. Defendants admit that to date, they have not paid back the sum due and owing under the Promissory Note, but deny that the amount due is the amount claimed by Plaintiff.

9. Defendants respond that the September 12, 2007 letter is a writing that speaks for itself and deny any allegations inconsistent therewith.

10. Defendants respond that the statement signed by DePriest is a writing that speaks for itself and deny any allegations inconsistent therewith.

11. Denied.

12. Denied.

13. Defendants respond that the Warrant is a writing that speaks for itself and deny any allegations inconsistent therewith.

14. Defendants deny any and all other allegations contained in the Complaint not specifically admitted herein.

AFFIRMATIVE DEFENSES

1. Pursuant to Rule 12.02 of the Tennessee Rules of Civil Procedure, the Complaint fails to state a claim upon which relief may be granted.

2. Defendants respectfully reserve the right to amend their answer to add additional or other affirmative and/or special defenses as they deem appropriate after reasonable opportunity for discovery.

WHEREFORE, having fully answered, Defendants respectfully request that the Complaint against them be dismissed with no award to Plaintiff, that the costs of this case be taxed to Plaintiff and that Defendants be awarded their costs and any additional relief deemed appropriate and just by this Court.

VERIFICATIONS

Personally appeared before me, Belinda Hudson, as Treasurer of Maritime Communications/Land Mobile, LLC, who, being first duly sworn, did swear, state or affirm that the statements contained in the foregoing Answer are true and accurate, based on his or her personal knowledge, information and belief.

Belinda Hudson

Sworn to and subscribed before me this 7th day of February, 2008

Notary Public: Karen N. Winter

My Commission Expires: 9-29-2009



Personally appeared before me, Donald R. DePriest, who, being first duly sworn, did swear, state or affirm that the statements contained in the foregoing Answer are true and accurate, based on his personal knowledge, information and belief.

Donald R. DePriest

Sworn to and subscribed before me this 17th day of February, 2008

Notary Public: Belinda W. Hudson

My Commission Expires: _____

NOTARY PUBLIC STATE OF MISSISSIPPI AT LARGE
MY COMMISSION EXPIRES: Jan 4, 2009
BONDED THROUGH NOTARY PUBLIC UNDERWRITERS

Petitioners: Donald DePriest verifies the responses in the Answers. Note that Belinda Hudson serves as the Notary for Mr. DePriest.

Respectfully submitted,



Samuel P. Funk (No. 19777)
SHERRARD & ROE, PLC
424 Church Street, Suite 2000
Nashville, Tennessee 37219
(615) 742-4200

OF COUNSEL:

David L. Sanders
MITCHELL MCNUTT & SAMS, PA
P. O. Box 1366
215 5th Street North
Columbus, MS 39701
(662) 328-2316
(662) 328-8035 (fax)

Counsel for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of February, 2008, a true and correct copy of the foregoing was served via facsimile and regular mail, postage prepaid, upon:

William L. Norton, Esq.
Joel D. Eckert, Esq.
BOULT, CUMMINGS, CONNERS & BERRY, PLC
1600 Division Street, Ste. 700
P. O. Box 340025
Nashville, Tennessee 37203

Counsel for Plaintiff



Samuel P. Funk

IN THE CHANCERY COURT OF LOWNDES COUNTY, MISSISSIPPI

FILED
NOV 15 2007

DONALD R. DEPRIEST

PLAINTIFF

VERSUS

CAUSE NO. 2007-0526

OLIVER L. PHILLIPS, JR. AND HELEN PHILLIPS AND JOHN DOES 1-20
Steph Younger Neece
 Chancery Clerk

DEFENDANTS

**DONALD R. DEPRIEST'S RESPONSE
TO DEFENDANTS' MOTION TO DISMISS**

Oliver L. Phillips, Jr. and Helen Phillips have moved to dismiss Donald R. DePriest's complaint, but have failed to provide the Court with a standard of review or even to identify the Rule 12 basis for their relief. In arguing that DePriest failed to allege sufficient facts, or that his claims are barred by a statute of limitations, Phillips is clearly making a Rule 12(b)(6) challenge. In that context, it is clear why Phillips left out the standard of review; he cannot meet it, and therefore, his motion must be denied.

- I. **In reviewing a motion to dismiss for failure to state a claim, the allegations in the complaint must be taken as true, and the motion should not be granted unless it appears beyond doubt that the plaintiff will be unable to prove any set of facts in support of his claim.**

“When considering a motion to dismiss, the allegations in the complaint must be taken as true, and the motion should not be granted unless it appears beyond doubt that the plaintiff will be *unable to prove any set of facts* in support of his claim.” *Sennett v. United States Fid. & Guar. Co.*, 757 So.2d 206, 209 (Miss. 2000) (emphasis added). “To grant such a motion, there *must appear to a certainty* that the plaintiff is entitled to no relief under any set of facts that

could be proved in support of the claim.” *Cook v. Brown*, 909 So.2d 1075, 1078 (Miss. 2005) (emphasis added).

Thus, to dismiss DePriest’s complaint, the Court must determine, “beyond doubt” or “to a certainty,” that DePriest cannot prove *any set of facts* in support of his claims:

1. for a bill of peace,¹
2. for an equitable accounting,
3. for DePriest’s civil conspiracy / counterclaim damages, i.e. a constructive trust, and
4. to unwind Phillips and DePriest’s fiduciary relationship.

Only if the Court determines that DePriest cannot state a claim for all four of these claims is this case subject to dismissal.

II. DePriest has stated a claim upon which relief can be granted.

- A. For either an equitable accounting or constructive trust, DePriest is not required to allege a technical fiduciary duty – including dominion and control – in order to state a claim. He must merely allege a relationship of trust and confidence.

Phillips asserts that DePriest has failed to allege sufficient facts to establish a fiduciary relationship because DePriest has not alleged the requisite control. Motion Brief, p. 2. This argument is based upon the elements of a fiduciary relationship, which include an aspect of control. *See Robley v. Blue Cross Blue Shield of Miss.*, 935 So.2d 990, 995 (Miss. 2006) (finding that a fiduciary relationship between two parties arises any time “(1) the activities of the parties go beyond their operating on their own behalf, and the activities [are] for the benefit of both; (2)

¹ This claim is addressed in DePriest’s concurrently filed rebuttal in support of his motion for a bill of peace and other relief. In that brief, the bill of peace was examined under a subject matter jurisdiction standard, where Court takes the allegations of the well-pleaded complaint as true. The failure to state a claim standard is even more stringent, requiring findings “beyond doubt,” and Phillips’ inability to meet the subject matter jurisdiction standard necessarily means that he likewise cannot meet the failure to state a claim standard.

where the parties have a common interest and profit from the activities of the other; (3) where the parties repose trust in one another; and (4) where one party has dominion or control over the other.”). However, Phillips’ arguments fail in two ways: (1) an accounting does not require a technical fiduciary relationship and can be based merely on a relationship of trust and confidence, and (2) Phillips’ arguments overstate the control element of a fiduciary relationship.

Most importantly, DePriest has not simply filed a suit for an accounting, but has asked the Court to weigh and adjust all of the equities between the parties. In Counts II and III of his Complaint, he has alleged that “Oliver Phillips may have taken money from various sources which rightfully belong to DePriest.” Complaint, ¶32. Further, DePriest has alleged that Phillips has demanded and taken substantial payments, through threats and abuses of confidence, that he had no legal right to take. *Id.* at ¶¶ 14, 15, 18, and 19. Under Mississippi law:

A constructive trust is one that arises by operation of law against one who, by fraud, actual or constructive, by duress or abuse of confidence, by commission of wrong, or by any form of unconscionable conduct, artifice, concealment, or questionable means, or who in any way against equity and good conscience, either has obtained or holds the legal right to property which he ought not, in equity and good conscience, to hold and enjoy.

Allred v. Fairchild, 785 So.2d 1064, 1067 (Miss. 2001). One of the listed instances in which a constructive trust can arise is through the abuse of a relationship of trust or confidence. *Id.* at 1068. “An abuse of confidence within the rule may be an abuse of either a technical fiduciary relationship or of an informal relationship where one person trusts in and relies upon another, whether the relation is a moral, social, domestic, or merely personal one.” *Id.*

The trust relationship necessary to give rise to an equitable accounting, like that required in a constructive trust, is not necessarily a technical fiduciary relationship. Jurisdiction for the Chancery Court to perform an accounting is premised on “(1) the need of discovery, (2) the

complicated character of the accounts, and (3) the existence of a fiduciary or trust relation.” *Re/Max Real Estate Partners, Inc. v. Lindsley*, 840 So.2d 709, 712 (Miss. 2003) (emphasis added). In the case of an accounting, just as in a constructive trust, in order to meet its equitable purposes, the Court should not impose too narrow a definition of a confidential relationship. *See Allred*, 785 So.2d at 1068.

The *Allred v. Fairchild* case is highly instructive. In that case, the plaintiff sought the imposition of a constructive trust arising from a “special relationship based upon trust and mutual respect.” *Id.* at 1068. The plaintiff and defendant had done business together for more than 20 years on nothing more than a handshake. *Id.* The plaintiff and defendant had a handshake deal regarding plaintiff’s share of income from an oil and gas acquisition the plaintiff had developed. *Id.* The defendant put up the purchase money to acquire the producing oil and gas wells and he kept the books. Once the defendant recovered his investment, he was obligated to pay the plaintiff 10% of all subsequent income. *Id.* at 1067. Because the defendant received all income, the plaintiff relied upon the defendant to pay him his share when the time came. *Id.* The defendant began to collect income in 1974, but repeatedly reassured the plaintiff that he had not recovered his investment, and therefore, the plaintiff’s 10% payments were not due. *Id.* The plaintiff sued in 1990, asking for an accounting and stating that the defendant had breached their relationship of trust and confidence and asking that a constructive trust be established. *Id.* at 1068. In determining that the requisite confidential relationship existed, the Supreme Court stated,

Allred’s and Fairchild’s long and informal business relationship is a clear indication that a confidential relationship existed. After all, the two did business for over 20 years based on little more than a handshake. It was this confidential

relationship that allowed Fairchild to conceal the truth concerning payout for so long.

Id. Clearly, Allred, a prominent lawyer, was not required to allege that Fairchild had complete control over him.

B. Taking the allegations of his complaint as true, DePriest has alleged a sufficient relationship of trust and confidence to give rise to an equitable accounting or constructive trust.

Taking the allegations of DePriest's complaint as true, he can prove a set of facts in support of his claims for an equitable accounting or constructive trust. DePriest alleges, among other things, that "in the process of providing accounting services, Phillips took advantage of his relationship with DePriest, and DePriest's trust in him, to interject himself into all of DePriest's business dealings in a variety of ways and has profited excessively as a result." Complaint, ¶13. He also alleges that he gave Phillips full access to all of his personal and business records, and relied upon Phillips to maintain his businesses when DePriest was traveling. *Id.* at ¶12. Regarding the promissory notes, DePriest entrusted Phillips with the responsibility for acquiring financing for his businesses. *Id.* at ¶¶16-17. The promissory notes sued upon are mirror notes from loans Phillips took out in Phillips' name – often with DePriest's assets as collateral – for DePriest's businesses, with DePriest being responsible for paying both interest and principal.² Clearly, under these facts, Phillips was entrusted with substantial trust, confidence, and control over all aspects of DePriest's business.

Furthermore, like the twenty year business relationship between Allred and Fairchild, DePriest has alleged, "[f]or more than twenty years, Oliver L. Phillips, Jr. was Donald R.

² Although this is not explicitly pled in the complaint, it is supported by the affidavit of Stephanie Smith. Stephanie Smith is a certified public accountant who has reviewed DePriest's records and found that the promissory notes appear to merely be mirror notes obtained by Phillips in obtaining financing for DePriest's companies, using DePriest's assets as collateral. *See* Affidavit of Stephanie Smith, attached as Exhibit A, ¶6.

DePriest's personal friend, accountant, and trusted financial advisor. Phillips, DePriest, the two business entities sued in these cases, and numerous other business entities were involved in numerous interrelated and intertwined business transactions." Complaint, ¶5. Thus, under the facts as alleged, the question whether DePriest can prove any set of facts in support of his claim that a relationship of trust existed that could give rise to an equitable accounting or constructive trust must be answered in the affirmative.³

C. Complete control over the other party is not required to create a technical fiduciary duty.

Phillips also argues that for a fiduciary duty to exist, DePriest must allege that Phillips controlled all of DePriest's decisions in the transactions at issue. Motion Brief, pp. 5 and 7. This argument, that complete control over the other party is required, overstates Mississippi law and runs counter to all authority. In a fiduciary relationship, control is not limited to situations where one party controls all of the other's decisions, but encompasses any situation where the trust and confidence imposed would grant the power, that would otherwise not exist, to act to the other's detriment. As set forth by the Supreme Court:

Wherever one person is placed in such a relation to another by the act or consent of that other, or by the act of a third person, or of the law, that he becomes interested for him, or interested with him, in any subject of property or business, he is in such a fiduciary relation with him that he is prohibited from acquiring rights in that subject antagonistic to the person with whose interests he has become associated.

Parker v. Lewis Grocer Co., 153 So.2d 261, 276 (Miss. 1963) (emphasis omitted).

³ Phillips makes the argument that if the duties of an accountant are breached, it can only give rise to a malpractice suit. However, Phillips' role as an accountant is merely one small part of his business relationship with DePriest. Numerous courts have found that a fiduciary duty can arise in an accountant-client relationship under the right circumstances. *See, e.g., In re Cendant Corp. Sec. Litig.*, 139 F.Supp.2d 585, 609-10 (D.N.J. 2001). That an accountant-client relationship existed in no way means that no set of facts giving rise to a relationship of trust or confidence can be pled.

Petitioners: Mr. DePriest argues in this filing that Mr. Phillips and he had a partnership and that their businesses and relations were intertwined. Thus, Mr. Phillips was Mr. DePriest's affiliate per Mr. DePriest's own assertions, yet Mr. DePriest did not disclose Mr. Phillips on the MCLM Forms 175 or 601.

This is demonstrated by a partnership relationship, which imposes a fiduciary duty.⁴

Miss. Code Ann. § 79-12-41 provides:

Partner accountable as fiduciary.

(1) Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him...

On the other hand, “[c]ontrol by itself is not the exclusive indicator of partnership.” *Smith v. Redd*, 593 So.2d 989, 994 (Miss. 1991). “Generally, a partnership exists when two or more persons join together with their money, goods, labor, or skill for purposes of carrying on a trade, profession or business with a community interest in the profits and losses.” *Id.* at 993. “An expressed agreement is not required; intent may be implied, or established from the surrounding circumstances.” *Id.* at 994. “The ultimate question is: did the parties intend to do the acts that in law constitute partnership?” *Id.* The fiduciary relationship is created not because an individual partner controls the partnership, but because the partners are placed into a relationship of trust and confidence which could be subject to abuse.

D. Taking the allegations of DePriest’s complaint as true, he has properly pled a technical fiduciary duty.

Phillips contends on page 5 of his Brief that no fiduciary duty can exist because DePriest has not alleged sufficient control. However, in his Complaint and other documents supplied to the Court, DePriest has set forth numerous and sufficient facts to evidence Phillips’ control over his business dealings. In DePriest’s Complaint, ¶¶ 10-21, he has set forth detailed factual allegations giving rise to the fiduciary relationship between the two parties. First, Phillips was accountant to both DePriest personally and DePriest’s businesses. As such, Phillips had

⁴ Furthermore, the unwinding of a partnership invokes the jurisdiction of the Chancery Court. See Griffith, *Mississippi Chancery Practice*, §24, p. 25 (including within the list of traditional subjects of Chancery jurisdiction, “[s]uits between business partners with reference to the partnership business and to wind up insolvent or disrupted partnerships”).

Petitioners: Mr. DePriest shows in this case that Mr. Phillips had control over his business dealings, which since Mr. DePriest has control and ownership of MCLM, would extend to MCLM.

complete and full access to all of DePriest's financial records and other information. Complaint, ¶10. Phillips' role in DePriest's businesses increased to the point that Phillips was DePriest's financial manager. *Id.* at ¶12. Phillips took care of much of DePriest's business, presenting DePriest with numerous documents to sign whenever DePriest returned home from his extensive business travel. *Id.* at ¶12. DePriest relied upon Phillips to take care of those transactions and prepare the documents, often signing without a complete understanding of their importance, based on representations of Phillips. *Id.*

Regarding the promissory notes, they only exist as an exercise of Phillips' control over the obtaining of financing for DePriest and his businesses. *Id.* at ¶17. The promissory notes are mirror notes of bank loans, obtained by Phillips in his own name, but which DePriest was responsible to pay off and provide collateral for. *Id.* at ¶17; *see also* Exhibit A, ¶6. "In each instance, Phillips did all of the hands-on work, prepared and secured documents, and DePriest signed documents as Phillips requested." Complaint, ¶16. "While DePriest could have used his collateral directly to receive the loan, he did not question this indirect approach since he had complete trust and confidence in Phillips." *Id.* at ¶17. Clearly, under the facts alleged, the question whether DePriest can prove any set of facts in support of his claim of a fiduciary duty must be answered in the affirmative.

Furthermore, Phillips has alleged a joint venture between the parties exists, and the facts alleged by DePriest indicate that other partnerships and joint ventures could have arisen between himself and Phillips. Clearly, Phillips is much more than a mere accountant to DePriest and his businesses, and he cannot be considered a mere creditor. DePriest has alleged that Phillips became heavily interested in DePriest's affairs and has profited as a result. *Id.* at ¶13. Phillips

Petitioner:
s: Mr.
DePriest
and Mr.
Phillips
have joint
ventures
and
partnerships.

has claimed and taken \$6,000,000.00 from the Charisma Communications Corporation and is demanding \$5,000,000.00 more. *Id.* at ¶¶15 and 19; 2007-0096.⁵ Through his financing of DePriest's businesses, Phillips has appropriated numerous numbers of shares and units in those businesses, and collected millions. *Id.* at ¶14. Two of Phillips' complaints, 2007-0091 and 2007-0096, are premised on a joint venture between the parties. Taking the facts alleged by DePriest as true, for the purposes of this motion, a partnership exists.⁶ The fiduciary duty imposed by this partnership supports an equitable accounting, a constructive trust, and separately invokes the jurisdiction of this Court to dissolve a partnership.

Petitioners: Mr. DePriest asserts that a partnership exists between Mr. Phillips and himself. Thus, Mr. Phillips was his affiliate.

III. Phillips' other arguments are not appropriate in a motion to dismiss and can be dealt with summarily.

A. Phillips' statute of limitations arguments are inappropriate for a motion to dismiss.

In his Brief, pp. 9-10, Phillips argues that DePriest's claims are barred by the statute of limitations. However, the scope of DePriest's claims, reaching back to the 1984 joint venture agreement and other older business dealings between the parties, is wholly based on Phillips' complaints. Phillips has sued under a 1984 joint venture agreement, a 1996 promissory note, and 1997-8 indebtedness, but audaciously claims that the statute of limitations has run on DePriest's counterclaims based on the same transactions. He cannot have it both ways. In any event, statute of limitations arguments are inappropriate in this motion to dismiss – because fact based defenses are pertinent, including fraudulent concealment. *See Mooneyham v. Progressive Gulf*

⁵ 2007-0096 is the cause number of one of Phillips' complaints. Any citations to those documents are through their cause number.

⁶ Although the standard of review entails the taking of the allegations of DePriest's complaint as true, even if Phillips' contention, that he had no control over DePriest were true, he would simply be acting as DePriest's general agent under these circumstances. In that case, he would still owe a fiduciary duty to DePriest. *See Puckett v. Rufenacht, Bromagen & Hertz, Inc.*, 587 So.2d 273, 279 n.4 (Miss. 1991) ("in any principal/agent relationship, the duties which the agent is required to perform on behalf of the principal are fiduciary in nature.").

Ins. Co., 910 So.2d 1223, 1227 (Miss. App. 2005) ("The duty to disclose arises when one party has information that the other party is entitled to know because of a fiduciary or other similar relation of trust and confidence between them."). *See also Allred*, 785 So.2d at 1070-1 (tolling the statute of limitations to impose a constructive trust reaching back 17 years).

B. The doctrine of laches is an inappropriate subject for a motion to dismiss.

In his Brief, p. 12, Phillips argues that DePriest's claims are barred by the doctrine of laches. However, like the statute of limitations, the doctrine of laches is inappropriate at the pleading stage. However, having said that, it is difficult to see how DePriest has delayed in bringing his complaint for a bill of peace considering that Phillips only filed his ten suits at law in June of 2007. Phillips has sued based on a 1984 agreement, a 1996 promissory note, and 1997-98 indebtedness, but now argues that DePriest's counterclaims regarding the same transactions are barred by the doctrine of laches. Again, he cannot have it both ways.

C. The parol evidence rule pertains to admissibility of evidence and is wholly inappropriate in a motion to dismiss.

In his Brief, pp. 14-18, Phillips argues that the promissory notes are unambiguous and that parol evidence is inadmissible. However, it is difficult to see the relevance of the parol evidence rule to this motion, unless Phillips is suggesting that it would prevent DePriest from conducting discovery related to the promissory notes. That argument borders on frivolous. The parol evidence rule applies to the admissibility of outside evidence as to the intent of ambiguous words in a contract. It does not prevent the admission of evidence regarding the underlying consideration and other defenses to a contract, and has very little to do with discovery. In any event, a constructive trust "arises by implication from the relationship and conduct of the parties

and may be established by parol testimony notwithstanding the statute of frauds.” *In re Estate of Horrigan*, 757 So.2d 165, 170 (Miss. 1999).

- D. That DePriest’s defenses are duplicated in Phillips’ ten suits at law actually supports the invocation of this Court’s jurisdiction to enjoin a multiplicity of suits at law.

Phillips suggests on pp. 19-20 of his Brief that DePriest’s counterclaims render his Chancery complaint unnecessary. However, as set forth in DePriest’s rebuttal in support of his bill of peace, the common defense forms the basis for invoking this Court’s jurisdiction to enjoin a multiplicity of suits at law, and the Circuit Court cannot grant DePriest equivalent relief. Phillips has already served DePriest with ten separate sets of discovery in his Circuit court suits. The filing of ten lawsuits, nine in one day, can only be described as vexatious and harassing.

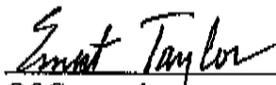
IV. In conclusion, Phillips’ motion to dismiss, when viewed through the proper standard of review, should be denied.

Phillips filed a motion to dismiss without providing a standard of review, or even identifying the basis under the Mississippi Rules of Civil Procedure. Nevertheless, it appears that Phillips contends that DePriest has failed to state a claim. Under the standard of review for such motions, Phillips can only prevail if, taking the allegations of DePriest’s complaint as true, he can show “beyond doubt” that DePriest can prove no set of facts in support of his claim. Phillips has failed to meet this legal standard, and therefore, his motion must be denied.

Respectfully submitted, this 12th day of November, 2007.

DONALD R. DEPRIEST 

BY: BALCH & BINGHAM LLP

BY: 
Of Counsel

William L. Smith (MS 7635)
Ernest Taylor (MS 7451)
Donald Alan Windham, Jr. (MS 100909)
BALCH & BINGHAM LLP
401 East Capitol Street
Suite 200
Jackson, MS 39201
Telephone: (601) 961-9900
Facsimile: (601) 961-4466

Robin Johnson (ASB-9232-H66R)
BALCH & BINGHAM LLP
1275 Pennsylvania Avenue NW
Tenth Floor
Washington, DC 20004
Telephone: (202) 347-6000
Facsimile: (202) 347-6001

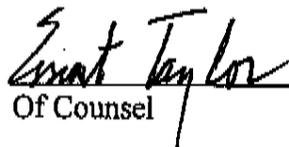
Timothy J. Segers
BALCH & BINGHAM LLP
Post Office Box 306
Birmingham, AL 35201-0306
Telephone: (205) 251-8100
Facsimile: (205) 226-8798
ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I, the undersigned counsel, do hereby certify that I have this day mailed, via electronic mail and U. S. mail, postage prepaid, a true and correct copy of the above and foregoing pleading to:

Aubrey E. Nichols, Esq.
M. Jay Nichols, Esq.
NICHOLS CROWELL GILLIS COOPER & AMOS
P. O. Box 1827
Columbus, MS 39703-1827

This the 12th day of November, 2007.


Of Counsel

IN THE CHANCERY COURT OF LOWNDES COUNTY, MISSISSIPPI

DONALD R. DEPRIEST

PLAINTIFF

VERSUS

CAUSE NO. 2007-0526-C

**OLIVER L. PHILLIPS, JR. AND HELEN
PHILLIPS AND JOHN DOES 1-20**

DEFENDANTS

AFFIDAVIT OF STEPHANIE SMITH, CPA

After first being duly sworn, the affiant states the following:

1. My name is Stephanie Smith, and I am an adult resident citizen of Hinds County, Mississippi.
2. I am a certified public accountant licensed to practice in the State of Mississippi, and a partner in the Jackson, Mississippi firm of Grantham, Poole, Randall, Reitano, Arrington & Cunningham, PLLC.
3. I have begun to review the business records of Donald R. DePriest ("DePriest"), personally, and of many of his businesses as well as the records subpoenaed in this litigation from Oliver L. Phillips, Jr.'s accounting firm, T. E. Lott & Company ("Lott"), related to work performed by the firm on behalf of DePriest, personally, and his numerous businesses. I have also reviewed the Stockholder's Agreement, Personnel Guide and Quality Control Procedures of T. E. Lott & Company. Oliver L. Phillips, Jr. ("Phillips") was a partner in Lott. These records include, among others, correspondence, e-mails, tax returns, financial statements, audit results, checks, offering memoranda, business valuations, promissory notes, contracts, joint venture agreements, partnership agreements and bank records. In addition, I have reviewed the pleadings



in the ten (10) cases filed by Phillips against DePriest and in this case. I have also reviewed the affidavit filed in this case by DePriest.

4. Although the records needed in this case are far from complete as I will show, the records I have reviewed to date clearly reveal that Phillips' role in the DePriest business empire and personal affairs goes far beyond that role normally played by an accountant and financial advisor. Phillips' relationship with DePriest impaired his independence and objectivity and created conflicts of interest.

5. These documents reveal that DePriest gave Phillips control over and access to his complete financial affairs and that of his businesses. For example, my review of e-mails and correspondence indicates that when DePriest would be away from home for extended periods of time (sometimes even out of the country), DePriest frequently gave Phillips authority to access his numerous bank accounts and to transfer funds to satisfy the needs of his companies or his creditors.

6. The documents I have reviewed to date indicate that on several occasions when borrowed capital was needed for a company, Phillips would borrow money from a bank in his own name, and when necessary, would use DePriest's assets as collateral. Phillips would then have DePriest sign a personal promissory note to Phillips mirroring the amount and terms of the bank loan. DePriest would pay the interest to the banks directly and ultimately would pay off the bank loan thus extinguishing the debt. It also appears that Mr. Phillips did not always cancel the corresponding promissory note from DePriest to Phillips, even though the debt had been paid. In fact, it appears that at least some of the notes that are the basis for Phillips' suits against DePriest fall into this category.

Petitioners:
Mr.
DePriest
attached
this expert
testimony
to support
his
arguments
that Mr.
Phillips and
he had a
partnership
and
intertwined
business
relationship
s. This
states that
DePriest
gave
Phillips
control over
Mr.
DePriest
businesses.

7. The records I have reviewed also indicate that on at least some occasions when Phillips borrowed money and got a corresponding, or off-setting, note from DePriest, not all of the proceeds would go to DePriest or one of his businesses, but rather would be taken by Phillips to use in his own businesses. The records from those banks, which DePriest has subpoenaed, should reflect the disbursement of the loan proceeds. When DePriest paid off those loans, the records do not reveal any repayment by Phillips to DePriest of those loan proceeds.

8. Further, documents I have reviewed, including an August 26, 2001 letter from First Commercial Bank to Oliver Phillips, Jr. and a December 21, 2001 guaranty signed by both Phillips and DePriest, show that DePriest guaranteed loans for businesses started by Phillips, such as Plantation Pointe. I have not seen any evidence that DePriest has an equity interest in Plantation Pointe.

9. The documents I have reviewed reflect significant proceeds in the amount of \$6,000,000.00 from the sale of one of the DePriest businesses, Charisma Communications Corporation ("Charisma"), were paid to Phillips. According to DePriest's affidavit, Phillips maintained he was owed that amount. The original Private Placement Memorandum for Charisma does not reflect that Phillips owned any equity interest in Charisma. Income tax returns from both parties from the relevant time period should indicate the nature of Mr. Phillips' claimed right to the \$6,000,000.00.

10. There is an urgent need to retrieve from multiple sources, including banks, documents generated by or on behalf of Lott, Phillips, and DePriest in order to insure the accuracy of the amounts owed between the parties. For example, in Cause No. 2007-0096, Phillips is suing DePriest on a \$5,000,000.00 note he claims DePriest personally executed in his

Petitioners: It appears that Mr. DePriest failed to disclose to the FCC the real ownership of Charisma Communications Corporation and that he had side deals with Mr. Phillips and Mr. Cooper. This would indicate a history by Mr. DePriest of failing to disclose the real ownership and control of FCC licensees he was involved with. The FCC should investigate Charisma.

favor in 1996. Documents produced by Lott include a file copy of DePriest's personal financial information prepared by Phillips dated September 10, 1997, for John Dumm, Vice President of First Union Corporation, a Virginia Bank. In the financial information, Phillips lists each note owed by DePriest at the time. However, the 1996 note for \$5,000,000 on which Phillips is now suing DePriest is not included in that list of notes DePriest owed on the 1997 financial statement prepared by Phillips. In addition, other documents reveal that both Phillips and DePriest borrowed significant sums together and individually through the years of their relationship. Bank records of their loans are likely to reveal other significant evidence in this case including whether Phillips claimed ownership of stock of DePriest companies now in dispute on personal financial statements he presented to the banks.

11. In Lowndes County Circuit Court Civil Action No. 2007-0091, Phillips claims he owns 70 units in MCT Investors LP, title to which vested in him in 1990. However, I have reviewed a document which appears to be the allocation of the 2002 tax year loss by the partnership interests of MCT Investors, LP. This schedule indicates that Phillips owns 2.5 units in his profit sharing plan, not 70 units personally as claimed in the lawsuit. A review of Phillips' individual income tax returns and the returns of MCT Investors, LP would resolve the inconsistent ownership claims.

12. The documents reveal that Phillips and DePriest commingled their borrowings, their creditworthiness, and their business efforts in many cases without documenting rights and obligations. In order to determine the balance of their accounts, a full accounting of all pertinent records including financial statements filed with regulated financial institutions, bank account records, loan files with disbursement records, and income tax returns is needed. Also interviews

Petitioners:
Mr. DePriest
and Mr.
Phillips
commingled
their
finances and
businesses,
etc.

Petitioners:
The accounting expert states that a "thorough review of all of the business records" is needed to determine the ownership interests that Mr. DePriest and Mr. Phillips have in their companies. This must include MCLM too since the business affairs of the two were so intertwined and since Mr. Phillips also sued MCLM.

or depositions of the principals and others with knowledge of the facts will be needed. A thorough review of all of the business records relating to the DePriest/Phillips dealings is required to accurately compute the ownership interest of the parties in their respective companies and who owes what to whom for either payments not yet paid or payments previously improperly made, in order to balance the accounts and wind up their business relationships.

13. Further affiant saith not.

Stephanie Smith
Stephanie Smith

STATE OF MISSISSIPPI

COUNTY OF Madison

SWORN to and subscribed before me, this the 12th day of November, 2007.

Joyce D. Robbins
Notary Public

My Commission Expires:

8-26-10



OF COUNSEL:

William L. Smith (MSB #7635)
Ernest Taylor (MSB #7451)
Donald Alan Windham, Jr. (MSB #100909)
BALCH & BINGHAM, LLP
401 East Capitol Street, Suite 200
Jackson, MS 39201
Telephone: (601) 961-9900
Facsimile: (601) 961-4466

Robert W. Johnson, II (DC Bar # 945170)

BALCH & BINGHAM, LLP

1275 Pennsylvania Ave., NW

Washington, DC 2004-2404

Telephone: (202) 347-6000

Facsimile: (202) 347-6001

Timothy J. Segers (ASB #ASB-2516-G52T)

BALCH & BINGHAM, LLP

1901 Sixth Avenue North, Suite 2600

Birmingham, Alabama 35203-2628

Telephone: (205) 251-8100

Facsimile: (205) 226-8799

ATTORNEYS FOR PLAINTIFF

IN THE CIRCUIT COURT OF LOWNDES COUNTY, MISSISSIPPI

OLIVER L. PHILLIPS, JR.

PLAINTIFF

VERSUS

CAUSE NO. 2007-0095-2V1

MARITIME COMMUNICATIONS/
LAND MOBILE, LLC and DONALD R. DEPRIEST

DEFENDANTS

COMPLAINT FOR COLLECTION ON PROMISSORY NOTE

The Plaintiff, Oliver L. Phillips, Jr., files this his Complaint against Maritime Communications/Land Mobile, LLC and Donald R. DePriest, Defendants, and in support hereof would show as follows:

I.

Plaintiff is an adult resident of Lowndes County, Mississippi.

II.

Defendant Maritime Communications/Land Mobile, LLC is a limited liability company. Defendant Maritime Communications/Land Mobile, LLC is available for service of process through Donald R. DePriest, its Manager.

III.

The individual defendant, Donald R. DePriest, is an adult resident of Lowndes County, Mississippi, and is available for service of process.

FILED
JUN 27 2007

Myahle M. Selzer
Circuit Clerk



Petitioners: the suit is against MCLM and Mr. DePriest, no mention of Sandra DePriest. Mr. DePriest is stated as Manager, which he admits to in his Answer.

Petitioners:
Mr. DePriest
was executing
promissory
notes and
other
documents for
MCLM and
personally
guaranteeing
them. The
Promissory
Note was
executed the
day before the
Auction No.
61 Final
payment
deadline.

IV.

On or about September 20, 2005, the Defendants executed a Promissory Note in the amount of \$737,000.00 payable to the Plaintiff and other designated parties. In addition to the principal, the Promissory Note provides for payment of interest and attorney's fees. A copy of the Promissory Note is attached hereto as **Exhibit "A"** and made a part hereof by this reference.

The Defendant, Donald R. DePriest, personally guaranteed the payment of the note. Said Defendant is, therefore, bound by all terms, provisions, and conditions of the Promissory Note. A copy of the executed personal guaranty is attached as **Exhibit "B"**.

V.

The total amount evidenced by said Promissory Note, is now due, payable, and delinquent notwithstanding repeated requests for payment made by the Plaintiff.

VI.

Plaintiff, as one of five designated payees, is entitled to \$200,000.00 of the total principal, plus interest due and payable under the provisions of the Promissory Note, together with all reasonable legal fees and costs of collection as specifically provided therein.

PREMISES CONSIDERED, Plaintiff requests judgment against the Defendants, jointly and severally, for the principal sum of \$200,000.00 representing his portion of the total principal evidenced by the Promissory Note, together with interest as provided in the Promissory Note and together with all reasonable legal fees and costs of collection as provided in the Promissory Note. In addition to the pre-judgment interest at the rate specified in the Promissory Note up to the date of judgment, Plaintiff requests that this Court allow and set post-judgment interest at the maximum amount allowed by law.

Plaintiff further requests that all court costs incurred in connection with this litigation be assessed to and against the Defendants.

Respectfully submitted this the 26th day of June, 2007.

OLIVER L. PHILLIPS, JR., *Plaintiff*

BY: *M. Jay Nichols*
M. Jay Nichols, MB #10066
Attorney for Plaintiff

OF COUNSEL:

Aubrey E. Nichols, MB #3842
Will T. Cooper, MB #9588
GHOLSON, HICKS & NICHOLS
Post Office Box 1111
Columbus, MS 39703
Phone: (662) 243-7300
Fax: (662) 327-6217

\$737,000.00

September 20, 2005

PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned, MARITIME COMMUNICATIONS/LAND MOBILE LLC, does hereby promise to pay in full on March 1, 2006, to the order of Oliver L. Phillips, Jr., Bart Wise, James L. Teel, Si Thomas and Russell Kyle ("the Maritime Communications Group"), their heirs or assigns the sum of SEVEN HUNDRED THIRTY SEVEN THOUSAND DOLLARS (\$737,000) [provided by each of the following members as follows: Oliver L. Phillips, Jr. \$200,000; Bart Wise, \$100,000; James L. Teel, \$200,000; Si Thomas and Russell Kyle \$237,000] at an interest rate of 10% to the address or addresses of the payees ("the Maritime Communications Group") as so directed.

This note is payable in full on the due date.

If, in case of default, this note is placed in the hands of an attorney for collection, the undersigned agrees to pay all reasonable legal fees and costs of collection to the extent permitted by Mississippi law.

The Debtor hereby waives presentment of this note, protest, dishonor and notice of dishonor.

This note shall take effect as a sealed instrument and be enforced in accordance with the laws of the state of Mississippi as of September 20, 2005.

MARITIME COMMUNICATIONS/LAND MOBILE, LLC
By: Communications Investments, Inc.
General Partner
M. Belinda Hudson, Treasurer

M. Belinda Hudson

Petitioners: Belinda Hudson, not Sandra DePriest, signs for both MCLM and ComI as an officer, but was not listed on the Forms 175 or 601 as required by FCC rules. Ms. Hudson, in deposition testimony, says that she has been employed as Mr. DePriest's executive secretary for the last 15-18 years.



Petitioners: Mr. DePriest personally guarantees the above promissory note. No one personally guarantees a promissory note for a company, unless they own and control the company or are getting some type of ownership or control in return. This was done the day before the Auction No. 61 final payment deadline, which meant MCLM had to raise this and other money to pay for all of its bids made with the 35% discount, but had it not had the 35% discount, as was later determined, then it probably would not have raised the additional funds that would have been needed. Note that Belinda Hudson is the witness to this.

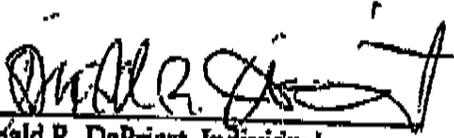
**INSTRUMENT
OF
PERSONAL GUARANTY**

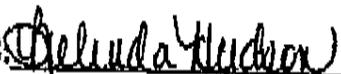
In consideration of The Maritime Communications Group ("The MC Group") extending credit in the amount of \$737,000, as evidenced by Promissory Note Dated September 20, 2005, to Maritime Communications/Land Mobile, LLC, Donald R. DePriest hereby personally guarantees payment in full together with all interest of SEVEN HUNDRED THIRTY SEVEN THOUSAND DOLLARS AND NO CENTS (\$737,000.00) due on March 1, 2006 to "The MC Group".

It is expressly agreed that this Instrument of Personal Guaranty is absolute and complete, and that acceptance and notice hereof acceptance there of by Maritime Communications/Land Mobile, LLC are hereby expressly waived, and the same shall continue in force until written notice of its discontinuance shall be served upon the manager of Maritime Communications/Land Mobile, LLC.

This Personal Guaranty shall take effect as a sealed instrument and be enforced in accordance with the laws of the state of Mississippi as of September 20, 2005.

IN TESTIMONY WHEREOF, I, Donald R. DePriest, have hereunto signed my name on this the 20th day of September, 2005.


Donald R. DePriest, Individual

WITNESS: 
Belinda Hudson



RECEIVED

IN THE CIRCUIT COURT OF LOWNDES COUNTY, MISSISSIPPI

JUN 26 2007

MARIALA N. SALAZAR

OLIVER L. PHILLIPS, JR.

PLAINTIFF

VERSUS

CAUSE NO. 2007-0095-v/

MARITIME COMMUNICATIONS/
LAND MOBILE, LLC and DONALD R. DEPRIEST

DEFENDANTS

file # 1568

COMPLAINT FOR COLLECTION ON PROMISSORY NOTE

The Plaintiff, Oliver L. Phillips, Jr., files this his Complaint against Maritime Communications/Land Mobile, LLC and Donald R. DePriest, Defendants, and in support hereof would show as follows:

I.

Plaintiff is an adult resident of Lowndes County, Mississippi.

II.

Defendant Maritime Communications/Land Mobile, LLC is a limited liability company. Defendant Maritime Communications/Land Mobile, LLC is available for service of process through Donald R. DePriest, its Manager.

III.

The individual defendant, Donald R. DePriest, is an adult resident of Lowndes County, Mississippi, and is available for service of process.

FILED JUN 27 2007

Mariala N. Salazar
Circuit Clerk

IV.

On or about September 20, 2005, the Defendants executed a Promissory Note in the amount of \$737,000.00 payable to the Plaintiff and other designated parties. In addition to the principal, the Promissory Note provides for payment of interest and attorney's fees. A copy of the Promissory Note is attached hereto as **Exhibit "A"** and made a part hereof by this reference.

The Defendant, Donald R. DePriest, personally guaranteed the payment of the note. Said Defendant is, therefore, bound by all terms, provisions, and conditions of the Promissory Note. A copy of the executed personal guaranty is attached as **Exhibit "B"**.

V.

The total amount evidenced by said Promissory Note, is now due, payable, and delinquent notwithstanding repeated requests for payment made by the Plaintiff.

VI.

Plaintiff, as one of five designated payees, is entitled to \$200,000.00 of the total principal, plus interest due and payable under the provisions of the Promissory Note, together with all reasonable legal fees and costs of collection as specifically provided therein.

PREMISES CONSIDERED, Plaintiff requests judgment against the Defendants, jointly and severally, for the principal sum of \$200,000.00 representing his portion of the total principal evidenced by the Promissory Note, together with interest as provided in the Promissory Note and together with all reasonable legal fees and costs of collection as provided in the Promissory Note. In addition to the pre-judgment interest at the rate specified in the Promissory Note up to the date of judgment, Plaintiff requests that this Court allow and set post-judgment interest at the maximum amount allowed by law.

FILED
JUN 27 2007

Michael W. Selzer
Circuit Clerk

Plaintiff further requests that all court costs incurred in connection with this litigation be assessed to and against the Defendants.

Respectfully submitted this the 26th day of June, 2007.

OLIVER L. PHILLIPS, JR., *Plaintiff*

BY: *M. Jay Nichols*

M. Jay Nichols, MB #10066

Attorney for Plaintiff

OF COUNSEL:

Aubrey E. Nichols, MB #3842

Will T. Cooper, MB #9588

GHOLSON, HICKS & NICHOLS

Post Office Box 1111

Columbus, MS 39703

Phone: (662) 243-7300

Fax: (662) 327-6217

W:\AllClients\25091-oliver phillips\007-Don DePriest matters\Complaint for Collection of Note - \$737,000.wpd

FILED
JUN 27 2007

Ophele M. ...
Circuit Clerk

\$737,000.00

September 20, 2005

PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned, MARITIME COMMUNICATIONS/LAND MOBILE LLC, does hereby promise to pay in full on March 1, 2006, to the order of Oliver L. Phillips, Jr., Bart Wise, James L. Teel, Si Thomas and Russell Kyle ("the Maritime Communications Group"), their heirs or assigns the sum of SEVEN HUNDRED THIRTY SEVEN THOUSAND DOLLARS (\$737,000) [provided by each of the following members as follows: Oliver L. Phillips, Jr. \$200,000; Bart Wise, \$100,000; James L. Teel, \$200,000; Si Thomas and Russell Kyle \$237,000] at an interest rate of 10% to the address or addresses of the payees ("the Maritime Communications Group") as so directed.

This note is payable in full on the due date.

If, in case of default, this note is placed in the hands of an attorney for collection, the undersigned agrees to pay all reasonable legal fees and costs of collection to the extent permitted by Mississippi law.

The Debtor hereby waives presentment of this note, protest, dishonor and notice of dishonor.

This note shall take effect as a sealed instrument and be enforced in accordance with the laws of the state of Mississippi as of September 20, 2005.

MARITIME COMMUNICATIONS/LAND MOBILE, LLC

By: Communications Investments, Inc.

General Partner

M. Belinda Hudson, Treasurer

M. Belinda Hudson

FILED
JUN 27 2007

Michelle M. Hartzler
Circuit Clerk



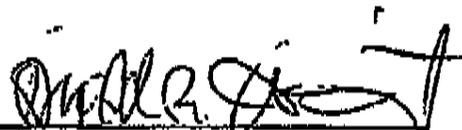
**INSTRUMENT
OF
PERSONAL GUARANTY**

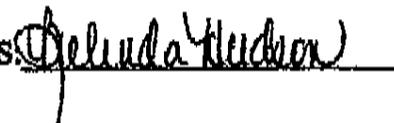
In consideration of The Maritime Communications Group ("The MC Group") extending credit in the amount of \$737,000, as evidenced by Promissory Note Dated September 20, 2005, to Maritime Communications/Land Mobile, LLC, Donald R. DePriest hereby personally guarantees payment in full together with all interest of SEVEN HUNDRED THIRTY SEVEN THOUSAND DOLLARS AND NO CENTS (\$737,000.00) due on March 1, 2006 to "The MC Group".

It is expressly agreed that this Instrument of Personal Guaranty is absolute and complete, and that acceptance and notice hereof acceptance there of by Maritime Communications/Land Mobile, LLC are hereby expressly waived, and the same shall continue in force until written notice of its discontinuance shall be served upon the manager of Maritime Communications/Land Mobile, LLC.

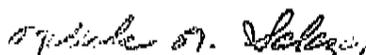
This Personal Guaranty shall take effect as a sealed instrument and be enforced in accordance with the laws of the state of Mississippi as of September 20, 2005.

IN TESTIMONY WHEREOF, I, Donald R. DePriest, have hereunto signed my name on this the 20th day of September, 2005.


Donald R. DePriest, Individual

WITNESS: 

FILE
JUN 27 2007


Circuit Clerk

ALL-STATE LEGAL®
EXHIBIT
"B"

GHOLSON, HICKS & NICHOLS

A PROFESSIONAL ASSOCIATION

Attorneys at Law

AmSouth Bank, Third Floor
710 Main Street
Columbus, MS 39701
Telephone: (662) 243-7300
Fax (662) 327-6217

June 26, 2007

Ms. Haley N. Salazar, Clerk
Lowndes County Circuit Court
Post Office Box 31
Columbus MS 39703-0031

Re: Oliver L. Phillips, Jr. vs. Donald R. DePriest and Maritime Communications/Land Mobile, LLC

Dear Haley:

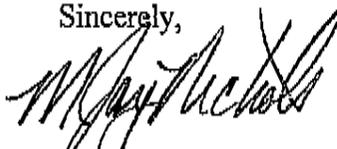
Enclosed are the original and one (1) copy of a Complaint in connection with the above referenced matter. Also enclosed is our draft in the amount of \$110.00 representing the filing fee together with a Civil Cover Sheet.

Process should issue to the individual Defendant, Donald R. DePriest, at his residence address of 206 8th Street North, Columbus, Mississippi 39701. Process should be issued for the Defendant, Maritime Communications/Land Mobile, LLC, to be served on Donald R. DePriest, its manager, at 206 8th Street North, Columbus, Mississippi 39701.

Please return a "filed" copy of the Complaint to me and return the original summons to me for service through a process server.

Should you have any questions please give me a call.

Sincerely,



M. Jay Nichols

Enclosures

cc: Mr. Oliver L. Phillips, Jr.

MJN:ja

File No. 25,091-007

HUNTER M. GHOLSON *
DEWITT T. HICKS, JR.
AUBREY E. NICHOLS
JOHN W. CROWELL **
J. GORDON FLOWERS
KATHERINE S. KERBY
DAVID B. JOLLY
WILLIAM F. GILLIS
P. NELSON SMITH, JR.
MARC D. AMOS
WILLIAM T. COOPER
M. JAY NICHOLS
SCOTT F. SINGLEY ***
ELLEN A. BLACK
KRISTEN E. WOOD

* Also admitted in District of Columbia
** Also admitted in Arkansas
*** Also admitted in Alabama

MAILING ADDRESS:
P.O. Box 1111
Columbus, MS 39703-1111

RECEIVED

JUN 26 2007 4:00pm

MAHALA N. SALAZAR
CIRCUIT CLERK

25091.001 FLF

06/25/2007

110.00

110.00

0.00

CLAF 25-7-13

5.00

Total
\$110.00

Payment received from GHOLSON HICKS & NICHOLS

Transaction 8522 Received 6/27/2007 at 11:20 Drawer 1 I.D. DONNA

Account Balance Due 0.00 Receipt Amount \$110.00

By Donna C. Beatty D.C. Mahala N. Salazar, Circuit Clerk

Case # 2007-0095-CV1 Acct # Paid By CHECK Receipt No. 3469

SUMMONS
(Process Server)

IN THE CIRCUIT COURT OF LOWNDES COUNTY, MISSISSIPPI

OLIVER L. PHILLIPS, JR. Plaintiff(s)
Versus Civil Action Number: 2007-0095-CV1
MARITIME COMMUNICATIONS/LAND MOBILE, ETAL Defendant(s)

SUMMONS

The State of Mississippi

To: Maritime Communications/Land Mobile, LLC
Process Agent: Donald R. DePriest, Manager
206 8th Street North

Columbus MS 39701

NOTICE TO DEFENDANT(S)

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS.

You are required to mail or hand-deliver a copy of a written response to the Complaint to:

Hon. M. Jay Nichols 662-243-7300

the attorney for the Plaintiff(s), whose address is:
P. O. Box 1111

Columbus MS 39703

Your response must be mailed or delivered within thirty (30) days from the date of delivery of this summons and complaint or judgment by default will be entered against you for the money or other things demanded in the complaint.

You must also file the original of your response with the Clerk of this Court within a reasonable time afterward.

Issued under my hand and seal of said Court, this 27th day of June 2007.

Mahala (Haley) N. Salazar, Circuit Clerk
P. O. Box 31, Columbus, MS 39703

2SUMPS

By: Donna C. Beatty D. C.

SUMMONS
(Process Server)

IN THE CIRCUIT COURT OF LOWNDES COUNTY, MISSISSIPPI

OLIVER L. PHILLIPS, JR. Plaintiff(s)
Versus Civil Action Number: 2007-0095-CV1
MARITIME COMMUNICATIONS/LAND MOBILE, ETAL Defendant(s)

SUMMONS

The State of Mississippi
To: Donald R. DePriest

206 8th Street North
Columbus MS 39701

NOTICE TO DEFENDANT(S)

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS.

You are required to mail or hand-deliver a copy of a written response to the Complaint to:

Hon. M. Jay Nichols 662-243-7300

the attorney for the Plaintiff(s), whose address is:
P. O. Box 1111

Columbus MS 39703

Your response must be mailed or delivered within thirty (30) days from the date of delivery of this summons and complaint or judgment by default will be entered against you for the money or other things demanded in the complaint.

You must also file the original of your response with the Clerk of this Court within a reasonable time afterward.

Issued under my hand and seal of said Court, this 27th day of June 2007.

Mahala (Haley) N. Salazar, Circuit Clerk
P. O. Box 31, Columbus, MS 39703

2SUMPS

By: Donna C. Beatty D. C.

EXHIBIT A: PART 5

RECEIVED

IN THE CIRCUIT COURT OF LOWNDES COUNTY, MISSISSIPPI

AUG 20 2007

MAHALA N. SALAZAR
CIRCUIT CLERK

OLIVER L. PHILLIPS, JR.

PLAINTIFF

VERSUS

CIVIL ACTION NO. 2007-0095-CV1

MARITIME COMMUNICATIONS / LAND
MOBILE, LLC, and DONALD R.
DEPRIEST

DEFENDANTS /
COUNTER-PLAINTIFFS

VERSUS

OLIVER L. PHILLIPS, JR.; HELEN J.
PHILLIPS, his wife; and JOHN DOES 1-20.

COUNTER-DEFENDANTS

ANSWER AND COUNTERCLAIM

COME NOW Defendants Maritime Communications / Land Mobile, LLC and Donald R.

DePriest, and respond to the Plaintiff's Complaint as follows:

First Defense

This Complaint is one of ten filed in this Court by Oliver L. Phillips against Donald R.

DePriest and two of the business ventures DePriest is involved in. The style and civil action numbers of these cases are as follows:

Style	Civil Action No.
Oliver L. Phillips, Jr. vs. MCT Investors, L.P. and Donald R. DePriest	2007-0046
Oliver L. Phillips, Jr. vs. Donald R. DePriest	2007-0091
Oliver L. Phillips, Jr. vs. Donald R. DePriest	2007-0093
Oliver L. Phillips, Jr. vs. Maritime Communications / Land Mobile, LLC and Donald R. DePriest	2007-0095

Petitioners:
This is the
MCLM and
Mr.
DePriest
Answer to
the above
Phillips
complaint.
They admit
to many of
the
complaint's
allegations.

FILED
AUG 20 2007

Mahala N. Salazar
Circuit Clerk

Oliver L. Phillips, Jr. vs. Donald R. DePriest	2007-0096
Oliver L. Phillips, Jr. vs. Donald R. DePriest	2007-0097
Oliver L. Phillips, Jr. vs. Donald R. DePriest	2007-0098
Oliver L. Phillips, Jr. vs. Donald R. DePriest	2007-0100
Oliver L. Phillips, Jr. vs. Donald R. DePriest	2007-0102
Oliver L. Phillips, Jr. vs. Donald R. DePriest	2007-0104

For more than twenty years, Oliver L. Phillips, Jr. was Donald R. DePriest's personal friend, accountant, and trusted financial advisor. Phillips, DePriest, the two business entities sued in these cases, and numerous other business entities are involved in numerous interrelated and intertwined business transactions. These ten lawsuits result from a complex course of dealing arising from the same series of transactions and occurrences. Phillips has filed ten separate cases isolating specific notes and other documents to avoid the big picture which would reveal that the Plaintiff has received his hourly accounting fees plus \$1,000,000.00 and \$5,000,000.00 payments for his services. Accordingly, it is impossible for the Defendants to admit or deny most of the allegations contained in any one of the ten Complaints without extensive discovery relating to the Plaintiff's complicated business dealings with the Defendants and an opportunity to develop the interrelated payments for fees, shareholder distributions and other payments to Oliver Phillips by DePriest and his companies over a twenty-year period. A full accounting could reveal further defenses to all of these cases such as unconscionability, accord and satisfaction, fraud, and duress. In that case, numerous issues in equity arise relating to rescission or reformation of agreements, the imposition of constructive trusts, and injunctions. Defendant submits that this action, along with the other nine pending in this Court, should be stayed until a

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AUG 20 2007

on behalf of *Salazar*
Circuit Clerk

Petitioners
: MCLM
and Mr.
DePriest
admit here
that
Phillips,
DePriest
and
MCLM are
"involved
in
numerous
interrelate
d and
intertwine
d business
transactio
ns." This
indicates
affiliation
between
Phillips
and
DePriest
and
MCLM
and other
companie
s and
business
ventures.

full accounting can occur. Accordingly, the Defendants to these lawsuits have concurrently filed a separate proceeding in Chancery Court to enable one court to address the legal and equitable issues presented by this multiplicity of lawsuits.

Second Defense

Responding to the Plaintiff's Complaint paragraph by paragraph:

1.

Defendants admit the allegations of paragraph 1.

2.

Defendants admit the allegations of paragraph 2. ←

3.

Defendants admit the allegations of paragraph 3.

4.

Defendants admit that Donald DePriest signed the personal guarantee attached to the Plaintiff's Complaint. To the extent that Plaintiff has interpreted the language of the note, Defendants assert that the note speaks for itself and those allegations are therefore denied. All other allegations of this paragraph are denied. ←

5.

Pursuant to the Affirmative Defenses set forth herein and the Defendants' Counterclaim, Defendants deny the allegations of paragraph 5.

6.

Pursuant the Affirmative Defenses set forth herein and the Defendants' Counterclaim, Defendants deny the allegations of paragraph 6. Furthermore, Defendants expressly deny that

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Michelle M. Selinger
Circuit Clerk

Plaintiff is entitled to any of the relief requested in the unnumbered paragraph beginning "PREMISES CONSIDERED."

Third Defense

Defendants deny any allegation in the complaint not specifically admitted.

Fourth Defense

The Plaintiff has released the Defendants of any liability for this claim. See Exhibit 1 hereto.

Fifth Defense

The Defendants are entitled to a set off of monies owed by Phillips that DePriest has paid, and/or alternatively, DePriest is entitled to damages pursuant to his Counterclaim below.

COUNTERCLAIM

AND NOW, Defendant Donald R. DePriest brings the following Counterclaim against Oliver L. Phillips, Jr., his wife Helen J. Phillips, and Fictitious Parties 1-20, and in support thereof, plead as follows:

Parties

1.

Donald R. DePriest is an adult resident citizen of Lowndes County, Mississippi.

2.

Oliver L. Phillips, Jr. is an adult resident citizen of Lowndes County, Mississippi.

3.

Helen J. Phillips is an adult resident citizen of Lowndes County, Mississippi.

4.

4

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AUG 20 2007

Myahle M. Seliger
Circuit Clerk

Fictitious Parties 1-20 are other individuals or business entities, of which Counter-Plaintiffs are unaware of their identity, where assets of Donald R. DePriest have been transferred by Oliver and/or Helen Phillips, and/or who have conspired with Oliver and/or Helen Phillips to gain monies illegally from Donald R. DePriest.

Background

Oliver L. Phillips, Jr. had been Donald R. DePriest's close personal friend, trusted accountant, and financial advisor for over twenty years.

6.

Throughout their business dealings together, Phillips has been charging DePriest his hourly rate for services rendered, including preparing his personal tax returns. Phillips has also prepared financial statements for both DePriest and some of DePriest's business ventures. Over and above his hourly rate, Phillips demanded and received from DePriest \$1,000,000.00 in 1986 and \$5,000,000.00 in 1996. Furthermore, at Phillips' insistence, in addition to his investments in some of DePriest's business ventures, Phillips has received more shares in DePriest's companies completely without consideration and without any written agreement as to how DePriest would be paid. These equity positions in DePriest's companies alone have realized a considerable profit for Phillips in the millions of dollars. Finally, DePriest has repeatedly assisted Phillips in acquiring capital for other investments which have been very lucrative for Phillips.

7.

Assets acquired through DePriest have been transferred by Oliver Phillips to other parties, including Helen Phillips and possibly Fictitious Parties, John Does 1-20.

8.

Although Oliver Phillips has continued to bill DePriest for his time, his relationship with DePriest goes far beyond that of an accountant. Phillips has interjected himself into all of DePriest's business dealings and profited excessively as a result. DePriest's businesses stretch over many states and countries and involve numerous companies and other business entities. The requirements of running these businesses has left DePriest very stretched and has caused him to spend extended amounts of time on the road. This has often caused DePriest to leave Oliver Phillips to oversee his personal finances and business ventures in his absence.

9.

Since nearly the beginning of DePriest's business ventures, Phillips has been his trusted accountant and advisor. During this time, DePriest's businesses and other ventures have led to three significant multi-million dollar payoffs. Despite contributing virtually no capital into any of these businesses, Phillips has continually demanded and received substantial payments from DePriest each time DePriest has received major payments and settlements. These lawsuits are merely the latest round.

10.

Over the years, the considerable confidence and trust Donald R. DePriest has placed in Oliver Phillips has resulted in DePriest being extremely dependent on Phillips in the handling of his financial affairs. At times, and possibly even now, Oliver Phillips has had DePriest's financial records in his personal possession and control and/or that of T. E. Lott & Company, the accounting firm in which Phillips is or was a partner. Accordingly, having been sued by Oliver

Petitioners: Mr. DePriest says that he has made "substantial payments" to Phillips even though Phillips provided almost no capital. No one would do this unless the other party had some leverage. Petitioners believe Phillips knew that Mr. DePriest had not accurately disclosed Charisma Communications Corporation's ownership to the FCC (see Phillips trial testimony provided as an exhibit to this petition), and possibly for other businesses too including MCLM, and that if it Phillips disclosed the truth, then it would have resulted in dismissal of Charisma's applications or licenses, which resulted in the bulk of Mr. DePriest's money. Petitioners are investigating these matters, but also believe the FCC, based on the admissions and evidence provided in this petition, should conduct its own investigation.

Petitioners: MCLM and Mr. DePriest assert that Mr. Phillips is closely involved in Mr. DePriest's businesses. Thus, Mr. Phillips, under FCC rules, was an affiliate. Also, Mr. DePriest admits to having numerous businesses in many states and countries; however, he did not disclose any foreign companies on the MCLM Forms 175 and 601. Mr. DePriest needs to fully disclose these numerous businesses.

68404.1 FILED AUG 20 2007
Michael M. Holzman
 Circuit Clerk

Phillips, DePriest must now go back through all of his records, without the aid of the person he would otherwise turn to in these situations, Oliver Phillips.

11.

Oliver Phillips, as accountant and financial advisor has had unfettered access to DePriest's books. Through those dealings with DePriest, Oliver Phillips was able to obtain completely one-sided written agreements, with notes evidencing a debt, but no written evidence of his own consideration or mutual promise. After this lawsuit was filed, DePriest began to review the various transactions and it now appears as though many of those transactions allowed Phillips to take excessive payments as a result of his fraud. In any event, a full accounting of the business relationships between Oliver Phillips and DePriest is required to determine whether either party owes the other anything.

12.

Oliver Phillips was entrusted by DePriest with substantial confidence and control over his financial matters. DePriest relied upon Phillips to help manage his finances and allow DePriest to focus on the bigger picture of his various business dealings. In return, without any written agreement defining Phillips's role, Phillips received his hourly rate in addition to various substantial payouts from DePriest. It appears as though Phillips has purposefully betrayed that trust and therefore breached his professional and fiduciary duties owed to DePriest. If an accounting bears that out, Phillips should have to disgorge all fees and other monies he received from DePriest.

Accounting

13.

As noted in the First Defense to Plaintiff's Complaint, the business relationship between Oliver Phillips, Donald R. DePriest, and the various business entities they are associated with is extremely complicated. Furthermore, Phillips has acted as personal accountant for both DePriest and some of the various businesses, despite taking a substantial interest therein.

14.

By taking an interest in his client's business, Phillips, a certified public accountant, failed to maintain the independence and objectivity required by the ethical rules of his profession. DePriest imposed overarching trust and confidence in Phillips by entrusting him with virtually complete oversight of his finances.

15.

Now, Phillips has sued his former client DePriest in ten lawsuits filed in this Circuit to collect on numerous promissory notes and other transactions in which he took an interest while acting as fiduciary to DePriest and these various business entities. Because Phillips was entrusted with such a high level of trust and confidence, and, while acting as an accountant, had superior access and control over the books, much of his activity is obscure to DePriest. Nevertheless, it now appears that Phillips entered many transactions with both DePriest and these various business entities procured by fraud and/or duress.

16.

Without an accounting, it will be impossible to unravel the numerous interconnected relationships between these various entities and determine whether either party owes the other anything.

17.

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AUG 20 2007

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Michael W. Selzer
Circuit Clerk

Petitioners:
MCLM and
DePriest
assert that
Phillips was
a fiduciary
to MCLM.

Defendant has concurrently filed an action in Chancery Court for an accounting, noting the related allegations contained herein. Due to the multiplicity of lawsuits, Defendant submits that a full accounting of the full business relation is necessary before these individual lawsuits may proceed. The determination of exactly what each party owes each other can best be determined by one action before the Chancellor. Accordingly, Defendant asks that this case, and the other nine cases filed in this Court, be stayed until such time as the accounting occurs and other appropriate action is taken in the Chancery Court.

Civil Conspiracy

18.

Helen and Oliver Phillips have formed a combination with the illegal purpose of acquiring assets of DePriest through abuses of the relationship of trust and confidence that arose because of Oliver Phillips's fiduciary relationship with DePriest.

19.

In addition to those wrongful acts of Oliver Phillips, described elsewhere in this Answer, Helen Phillips has taken and endorsed checks written by DePriest to Oliver Phillips and has otherwise had some of the proceeds transferred to her. Helen Phillips has been an active participant in Oliver Phillips's dealings regarding DePriest.

20.

When DePriest wrote the \$1,000,000.00 check payable to Oliver Phillips in 1986, Helen Phillips personally picked up the check and said she was going to deposit it with a Birmingham bank. Ten years later, in 1996, when Oliver Phillips demanded another multi-million dollar payment, DePriest asked him what had happened to the 1986 million-dollar check, since

DePriest could not locate it. Phillips said he would look for it and ultimately delivered DePriest's cancelled check, which Phillips found in the attic of Oliver and Helen Phillips' home. The check, which was payable to Oliver Phillips, was endorsed by both Oliver and Helen Phillips, thus indicating that it may have been deposited in a bank account in Helen Phillips' name.

21.

A full accounting could reveal further conspirators to be substituted for Fictitious Parties, John Does 1-20 once their identities and involvement are ascertained.

Set-Offs/Counterclaim Damages

22.

It now appears that throughout his business dealings with DePriest, Oliver Phillips may have taken money from various sources which in good conscience should belong to DePriest.

23.

Defendant believe that a full accounting will reveal that, once all of the related transactions and payments to Phillips are accounted for and the legal and equitable rights of the parties considered, these set offs and adjustments will more than cover the amounts claimed by Phillips.

24.

Helen Phillips has been intimately involved in and taken part of the proceeds from many of Oliver Phillips's transactions with DePriest.

25.

A full accounting could reveal further individuals or business entities who have taken proceeds from Oliver Phillips transactions with DePriest. These individuals or business entities

will be substituted for Fictitious Parties, John Does 1-20 once their identities and involvement are ascertained.

WHEREFORE, PREMISES CONSIDERED, Counter-Plaintiff Donald R. DePriest demands judgment against Oliver L. Phillips, Jr., Helen J. Phillips, and Fictitious Parties, John Does 1-20 for restitution of those funds by which they have been unjustly enriched at the Defendant's expense, for all damages arising from their civil conspiracy, and for an accounting. Furthermore, Counter-Plaintiff asks the Court to stay this action until such time as an accounting can occur in Chancery Court. Finally, Counter-Plaintiff requests all other relief appropriate in the premises.

Respectfully submitted, this 17th day of August, 2007.

MARITIME COMMUNICATIONS / LAND
MOBILE, LLC AND DONALD R. DEPRIEST

BY: BALCH & BINGHAM LLP

BY: William L. Smith
Of Counsel

William L. Smith
Ernest Taylor
Donald Alan Windham, Jr.
BALCH & BINGHAM LLP
401 East Capitol Street
Suite 200
Jackson, MS 39201
Telephone: (601) 961-9900
Facsimile: (601) 961-4466

Robert W. Johnson, II
BALCH & BINGHAM LLP
1275 Pennsylvania Avenue NW
Tenth Floor
Washington, DC 20004

Telephone: (202) 347-6000
Facsimile: (202) 347-6001

Timothy J. Segers
BALCH & BINGHAM LLP
Post Office Box 306
Birmingham, AL 35201-0306
Telephone: (205) 251-8100
Facsimile: (205) 226-8798

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AUG 20 2007

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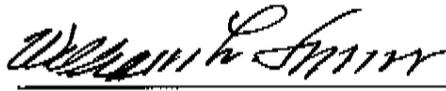
Timothy J. Segers
Circuit Clerk

CERTIFICATE OF SERVICE

I, the undersigned counsel, do hereby certify that I have this day mailed, via United States Mail, postage prepaid, a true and correct copy of the above and foregoing pleading to:

Aubrey E. Nichols, Esq.
M. Jay Nichols, Esq.
Will T. Cooper, Esq.
Gholson, Hicks & Nichols
Post Office Box 1111
Columbus, MS 39703

This the 17th day of August, 2007.

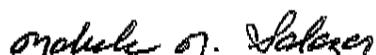


Of Counsel

68404.1

FILED
AUG 20 2007

13


Circuit Clerk

RELEASE

The undersigned party on this 15th day of APRIL, 1996, covenants and agrees as follows:

For good and valid consideration, receipt of which is hereby acknowledged, the undersigned (the "Releasing Party") agrees to release DONALD R. DEPRIEST (the "Released Party") and the Released Party's affiliates, successors, assigns, investee companies, business ventures, heirs, administrators, executors, employees, attorneys, agents and representatives, past and present, from any and all claims, demands, and/or causes of action, present or future, known or unknown, whether accrued or hereafter to accrue, whether anticipated or unanticipated, whether in law or equity, which the Releasing Party ever had, now has, or which the Releasing Party or the Releasing Party's affiliates, successors, assigns, investee companies, business ventures, heirs, administrators, executors, employees, attorneys, agents, and representatives, past and present, can, shall, or may have for or by reason of any matter, cause, or anything whatsoever, from the beginning of the world to the date of this release.

The undersigned represents that the Releasing Party has not assigned to any person or entity any actions, cause of action, suit, claim, contract, agreement, demand, or damages such person ever had, now has, or may have against the Released Party. To the extent any action, cause of action, suit, claim, contract, agreement, demand or damages, whether accrued or hereafter to accrue, or whether known or unknown against the Released Party, may not have been validly released by this Release, the Releasing Party hereby irrevocably assigns to the Released Party all right, title and interest in any such action, suit, claim, contract, agreement, demand or damages.

Henry R. Phillips Jr.

F I L E D
AUG 20 2007

Michael M. Selzer
Circuit Clerk

