IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 2023-M-00158-SCT

ROBERT SULLIVANT, JR., PETITIONER

VS.

ROBERT SULLIVANT, SR., RESPONDENT

On Appeal from the Chancery Court of Lafayette County, Mississippi
Cause No. 2021-612(W)
Honorable Robert Q. Whitwell

RESPONDENT SULLIVANT, SR.'S ANSWER IN OPPOSITION TO PETITION FOR INTERLOCUTORY APPEAL

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Sullivant, Sr., Robert Sullivant, Sr. ("Sullivant, Sr.") files this answer in opposition to the Petition for Interlocutory Appeal (the "Petition") filed herein by Sullivant, Jr., Robert Sullivant, Jr. ("Sullivant, Jr."). In support hereof, Sullivant, Sr. states the following:

Preface and Summary of Opposition

The Sullivant, Jr. seeks interlocutory review of a non-final order of the Chancery Court of Lafayette County, Mississippi denying summary judgment. Despite extensive discovery, hearings and discussions, Sullivant, Jr. attempted but failed to prove that there was no genuine issue of material fact. The chancery court found that there were "some issues that the Court feels are substantially enough to override the motion for summary judgment based on the pleadings and what's been filed" and found several of the disputes to be factual issues to be determined at a trial.

The Petition should be denied because it fails to articulate a cognizable basis for the Court to grant permission to appeal the chancery court's interlocutory order denying summary judgment. Instead of explaining, pursuant to the requirements of M.R.A.P. 5, why the Court should grant them permission to immediately appeal a non-final order denying summary judgment, Sullivant, Jr. merely re-argues why he contends summary judgment should have been granted in his favor. Under M.R.A.P. 5, interlocutory appeals are rare and only permitted as to questions of law as to which appellate resolution may (i) materially advance the termination of the litigation, (ii) protect a party from substantial and irreparable harm, or (iii) resolve an issue of general importance in the administration of justice. Sullivant, Jr. neither argues, nor can he demonstrate, any of these threshold requirements for interim appeal of a non-final denial of summary judgment order from the trial court. Sullivant, Jr. also fails to identify any discrete question of law was to which they seek interlocutory appeal, instead basing his request for permission to appeal on the assertion that the Chancery Court should have granted summary judgment. For these reasons and others set out in more detail below, the Petition should be denied.

Finally, in his Petition for Interlocutory Appeal, Sullivant, Jr. referred to an IME performed by Dr. Perkins and attached the medical affidavit as an exhibit at Bates No. 359. Dr. Perkins's affidavit was signed on January 27, 2023 after the hearing on the Motion for Summary Judgment. Dr. Perkins's affidavit was not part of the record and should be stricken from the exhibits submitted by Sullivant, Jr.

Background Facts and Course of Proceedings

In the chancery action, Sullivant, Sr. filed his *Complaint* on October 25, 2021 and Sullivant, Jr. filed his *Answer, Affirmative Defenses and Counter-Claim* on December 9, 2021. On July 12, 2017, Sullivant, Sr. executed a General Durable Power of Attorney appointing his son, Sullivant, Jr., as his lawful agent and attorney in fact. Prior to filing his Complaint, it came to Sullivant, Sr.'s attention that Sullivant, Jr. was taking very large sums of money from Sullivant Sr.'s checking account. On or about May 19, 2021, Sullivant, Sr. opened a money market account with Regions Bank that was in his name only. That same day, Sullivant, Sr. transferred the sum of $230,000.00 from a Regions account in which Sullivant, Jr. had signature authority to his new money market account. On May 20, 2021, Sullivant, Sr. executed a Cancellation of Durable Power of Attorney, which was filed with the Panola County Chancery Clerk that same day. Sullivant, Sr. provided the Regions Bank in Batesville, Mississippi with a copy of the same. Apparently, Sullivant, Jr. went to the Regions Bank in Oxford, where he successfully withdrew and transferred the sum of $230,000.00 from Sullivant, Sr.'s new money market account to an account only in his name.

On December 8, 2022, Sullivant, Jr. moved for summary judgment in the trial court. (**Ex. 1**, without exhibits attached). On January 3, 2023, Sullivant, Sr. filed his Response in Opposition to Sullivant, Jr.'s Motion for Summary Judgment. (**Ex. 2**, without exhibits attached.) On January 9, 2023, Sullivant, Jr. filed his Rebuttal to Sullivant Sr.'s Response in Opposition to the Motion for Summary Judgment. (**Ex. 3**.) This motion was set for hearing on January 25, 2023.

In his Motion and Rebuttal, Sullivant, Jr. failed to adequately dispute the fact that the transfer of Sullivant, Sr.'s money by Sullivant, Jr. was done without Sullivant, Sr.'s consent and the transfer by Sullivant, Jr. was done without full disclosure by Sullivant, Jr so Sullivant, Sr. had to file a Complaint and request an Accounting. In contrast, at the hearing on summary judgment, counsel for the Sullivant, Sr. explained in detail why summary judgment should not be granted and was not appropriate for numerous reasons, including:

- The undisputed fact that the transfer of $230,000.00 of Sullivant, Sr.'s money by Sullivant, Jr. was done without Sullivant, Sr.'s consent.
- The undisputed fact that the transfer by Sullivant, Jr. was done without full disclosure by Sullivant, Jr and Sullivant, Sr. had to file a Complaint and request an Accounting.
- The undisputed fact that Sullivant, Jr. returned $50,000.00 by way of depositing it in Sullivant, Sr.'s TD Ameritrade account to which only Sullivant, Jr. had access, therefore Sullivant, Sr. was unaware of the deposit.
- An Agreed Order entered on November 17, 2021 required Sullivant Jr. to "provide a full sworn accounting of all monies that he has spent for the benefit of the Plaintiff, Robert Sullivant Sr. on or before December 10, 2021" and only as a result of the filing of the Complaint and this Order did Sullivant Jr. transfer another approximately $50,000.00 to Sullivant, Sr.
- Sullivant, Jr. claims to have paid $6,000.00 on behalf of his father, along with some utility bills, which is disputed.
- Sullivant, Jr. was not permitted to engage in undisclosed, self-dealing whether he knew or did not know the power-of-attorney had been revoked.

- Essentially, Sullivant Jr. has partially admitted to the wrongdoing by returning the money.

On January 26, 2023, the Chancery Court entered an order denying Sullivant Jr.'s motion for summary judgment. **(Ex. 4)**

Current Status of the Case

This case is ready to be set for trial on a mutually agreeable date in the Chancery Court of Lafayette County, Mississippi.

Timeliness of Petition

Sullivant, Sr. agrees that the Petition was filed within 21 days of entry of the interlocutory order denying Sullivant, Jr.'s motion for summary judgment.

Related Cases

There are no other cases or petitions for interlocutory appeal pending before this Court which are related to this matter.

The Petition for Interlocutory Appeal by Permission Should be Denied

M.R.A.P 5(a) provides the standard for consideration of a petition for interlocutory appeal:

> An appeal from an interlocutory order may be sought if a substantial basis exists for a difference of opinion on a question of law as to which appellate resolution may:
> (1) Materially advance the termination of the litigation and avoid exceptional expense to the parties; or
> (2) Protect a party from substantial and irreparable injury; or
> (3) Resolve an issue of general importance in the administration of justice.

M.R.A.P. 5(a). Given the restrictive language of M.R.A.P. 5(a), "[interlocutory] appeals will be allowed only under the most extraordinary circumstances." *Donald v. Reeves Transport Co.*, 538 So.2d 1191, 1194 (Miss. 1989)(quoting *Kilgore v. Barnes*, 490 So.2d 895, 896 (Miss. 1986)).

Sullivant, Jr. must first demonstrate a substantial basis for a difference of opinion as to a "question of law". M.R.A.P. 5(a). The question should not involve unresolved factual disputes. *Haynes v. Anderson*, 597 So.2d 615 (Miss. 1992. A question of law, for these purposes, includes the application of law to fact. *American Elec. v. Singarayar*, 530 So.2d 1319, 1322 (Miss. 1988). Still, however, interlocutory appeal of a question of law application to fact "ought ordinarily be granted only where at its core the question concerns a dispute regarding the content of applicable law." *Id.* at 1323.

Sullivant, Jr. does not satisfy the "question of law" requirement. He posit as questions for appeal whether he should have been granted summary judgment. Then, Sullivant, Jr. proceeds to re-argue summary judgment without identifying any discrete question of law or of law application to fact or explaining how the interlocutory resolution of same would satisfy the requirements of M.R.A.P. 5(a). First, arguments as to the merits of the decision, as opposed to explaining whether the procedural question whether interlocutory appeal should be permitted, do not support granting permission for interlocutory appeal. *American Elec. v. Singarayer*, 530 So.2d at 1324 (noting that arguing irreparable harm as a support for interlocutory appeal goes to the merits whether an injunction should issue and not whether the requirements of M.R.A.P. 5(a) are met). Sullivant, Jr.'s Petition makes only merits arguments, with no discussion or explanation of how the requirements of M.R.A.P. 5(a) are satisfied. Second, there is no substantial basis for a difference of opinion as to the standards under Mississippi law for granting or denying a motion for summary judgment, so the grounds for interlocutory review of same "evaporate". *Id.* at 1324. *American Elec. v. Singarayer*, 530 So.2d at 1324 (holding in a similar context that no substantial basis for a difference of opinion exists on the legal standards for grant or denial of a preliminary injunction). For each of these reasons, the Petition fails to satisfy the threshold requirement for interlocutory

appeal—that "a substantial basis exists for a difference of opinion on a question of law". M.R.A.P. 5(a).

Sullivant, Jr.'s Petition also fails to satisfy any of the other, additional requirements for securing permission to appeal an interlocutory order. M.R.A.P. 5(a)(1)-(3). Regarding the Rule 5(a)(1) requirement, Sullivant, Jr. is obligated to demonstrate that granting interlocutory appeal of the summary judgment would "materially advance the termination of the litigation and avoid exceptional expense to the parties." Yet, he is doing just the opposite and is in fact delaying the termination of the litigation and creating unnecessary additional expense to the parties, including the significant time and expense associated with responding to the Petition. *See Donald v. Reeves Transport Co.*, 538 So.2d 1191, 1194 (Miss. 1989) (holding that interlocutory review of denial of a motion for summary judgment would not materially advance the termination of the litigation). As the Court, in *Donald*, aptly observed in a similar context, "[w]hile one of the main purposes of interlocutory appeals is to promote judicial economy, this appeal has had the opposite effect." *Id.* at 1195. The same is true Sullivant, Jr.'s request that the Court conduct an interim review of the chancery court's denial of a motion for summary judgment.

Nor does Sullivant, Jr.'s Petition satisfy M.R.A.P. 5(a)(2)'s requirement that interlocutory appeal and review "[p]rotect a party from substantial and irreparable injury". Sullivant, Jr. has provided no evidence or argument that indicates interlocutory review would prevent irreparable injury. The only alleged harm Sullivant, Jr. argues is that he considers the Chancery Court to have improperly denied summary judgment—an argument with which Sullivant, Sr. disagrees, but one that goes only to the merits of the dispute and not to whether M.R.A.P. 5(a)'s requirements are met. Sullivant, Jr. certainly runs "no risk of irreparable injury by [the Supreme Court's] denial of interlocutory appeal." *Donald*, 538 So.2d at 1195. "Subsection 5(a)(2) applies primarily to

interlocutory review of rulings on injunctions, receivership matters, etc." *Id.* No such issues are in play regarding this matter.

Finally, Sullivant, Jr. has not argued, nor can he demonstrate, that interlocutory review of the summary judgment order would "[r]esolve an issue of general importance in the administration of justice." M.R.A.P. 5(b)(3). "Subsection 5(a)(3) allows the resolution of *conflicts among trial courts* and of questions which need to be promptly resolved for the future guidance of trial courts." *Donald v. Reeves Transport Co.*, 538 So.2d at 1195 (quoting Miss. Sup. Ct. Rule 5 comments)(emphasis in original). Only where a petition shows that immediate review is necessary to address a significant question of law for purposes of guidance of the trial courts is interlocutory appeal permitted. *See, e.g., McMillan v. Puckett*, 641 So.2d 757 (Miss. 1994) (granting a petition for interlocutory review to clarify and provide guidance as to when and where a cause of action accrues under a venue statute).

Sullivant, Jr.'s Petition, in contrast, challenges denial of summary judgment under well-established procedural law, Miss. R. Civ. P. 56, as informed by numerous pronouncements by this Court as to its application. The claims asserted by Sullivant, Sr. against Sullivant, Jr., are ordinary in nature to be resolved in the chancery court under well-established principles of Mississippi common and statutory law. Sullivant, Jr. fails to identify any issue of general importance in the administration of justice-- only that he feels aggrieved by the denial of summary judgment. As such, the Petition asking for interlocutory review should be denied.

For these reasons, Sullivant, Jr.'s request for interlocutory appeal should be denied.

This the 24th day of February, 2023.

ROBERT SULLIVANT, SR.,

BY: */s/ Kayla Ware*
SWAYZE ALFORD (MSB #8642)
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Counsel for Robert Sullivant, Sr.

CERTIFICATE OF SERVICE

I, Kayla Ware, do hereby certify that a true and correct copy of the foregoing has been furnished by E-Mail on this 24th day of February, 2023, to:

Robert Sullivant, Jr.
robert@steelandbarn.com

Honorable Robert Q. Whitwell
sweathersbee@lafayettecoms.com

/s/ Kayla Ware
KAYLA WARE (MSB #104241)

IN THE CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

ROBERT SULLIVANT, SR., PLAINTIFF

V. **CIVIL ACTION NO. 2021-612 (W)**

ROBERT SULLIVANT, JR., DEFENDANT

DEFENDANT'S MOTION FOR SUMMARY JUDGEMENT AS TO ALL COUNTS

COMES NOW, Defendant ROBERT SULLIVANT ("JR"), and requests that this court grant summary judgement against the Plaintiff, ROBERT SULLIVANT SR ("SR"), dismissing *with prejudice* all 13 counts charged against the Defendant.

This motion is brought pursuant to MRCP 56(b); and in consideration of the facts, the Defendant's affidavit in support, and the judicial notice, all filed concurrently with this Motion and Memorandum, the Defendant is entitled to summary judgement in this action as a matter of law, as no genuine issues of material fact remain.

The Defendant further provides the following memorandum in support of his request.

I. INTRODUCTION

This Plaintiff brought this action on October 25th, 2021, alleging thirteen (13) counts against the Defendant. These charges are premised on a series of financial transactions involving the two parties from a joint account they held together. This joint account was used to deposit the proceeds from the sale of a home that was jointly owned by both parties.

According to the Plaintiff's Complaint, on or about May 19, 2021, SR opened a money market account with Regions Bank that was in his name only. That same day, SR transferred the sum of $230,000.00 from the joint Regions account in which JR had signature authority to his new individual money market account (Complaint. ¶ 6).

Also according to the Plaintiff, on May 20, 2021, SR executed a Cancellation of Durable Power of Attorney, which was filed with the Panola County Chancery Clerk that same day. SR provided the Regions

Bank in Batesville, Mississippi with a copy of the same. (¶ 7). Notably, nowhere does the Plaintiff assert that notification was sent in any way or via any method, formal or informal, to the Defendant, of this revocation.

Of the $230,000 that SR transferred into his personal account, 50% belonged exclusively to the Defendant (see *Accounting*; Bates Nos.008-014).

Up to this point, SR had been displaying mental deficiencies that excluded him from making any coherent financial decisions without assistance. SR has over drafted his Regions Bank accounts, succumbed to thousands of dollars in mail scams, has failed to pay mortgage payments in 18 months, failed to file or pay 2020 and 2021 income tax, and substantially ran up credit cards that JR had paid down for him. This pernicious and destructive activity prompted JR using the Power of Attorney, as well as rights arising under certain joint accounts, to take steps to preserve SR's funds.

On June 9th, 2021, JR did in fact resecure the $230,000. He then promptly transferred $50,000 into SR's T.D. Ameri Trade account, paid SR's mortgage, and restored his car insurance which had lapsed. (*Accounting*, Bates Nos.015-025). He also transferred $5,000 back to SR's account at Regions Bank.

Despite all of the foregoing, including the glaring the fact that the Defendant was well within his legal rights to complete these transactions, the Plaintiff filed this action charging 13 different counts of violating his duty per the Power of Attorney. Since filing this case in October of 2021, the Plaintiff has failed to submit an Answer and as such was defaulted, as to the Defendant's crossclaims. He has failed to provide adequate discovery or to meaningfully conference and has failed to submit to a second court-ordered IME; all of this despite having over **one year** to do so. The Defendant has been more than cordial to the Plaintiff and his attorney, providing them with **over a year** to participate and cooperate in the action that *they filed*. In return, the Plaintiff and his attorney are continuing to ignore subpoenas, discovery requests, are defying a court order for the Plaintiff to attend a second medical evaluation and have not filed an answer or defended against any of the Defendant's counterclaims. As a result of this non-participation despite the extraordinary amount of time they have had, default by the Clerk was entered against the Plaintiff as to this Defendant's counterclaims on December 1st, 2022.

Furthermore, the general sloppiness of the Plaintiff's response to Defendant's first set of discovery request is disappointing, and shows a lack of interest in genuinely litigating this matter.

INTERROGATORY NO. 2: Please identify, by amount and date, each "very large sum of money" that you alleged Sullivant, Jr. has transferred from Sullivant, Sr.'s checking account, as described in Paragraph 6 of your complaint.

RESPONSE: To Plaintiff's knowledge, there was a $230,000 transfer on May 19, 2021. As discovery is ongoing in this matter, Plaintiff reserves the right to supplement this response.

By the above sworn statement this matter would moot, as May 19, 2021 was the day before the Plaintiff allegedly revoked Defendant's Power of Attorney. In addition the response to response to request for admission # 7 is left completely blank.

REQUEST FOR ADMISSION NO. 7: Please admit of deny that Sullivant, Sr. claimed to Sullivant, Jr. that none of the proceeds of the sale of the "farm house" in Panola County were property of Sullivant, Jr.

RESPONSE:

The response to this admission is significant to the matter. Sworn by JR in his accompanying affidavit (stmt #10), that Sr did state to JR emphatically that he transferred the money from the joint account, because the money was not his.

As a result of the plaintiff's disinterest in prosecuting his case or defending from the Defendant's counterclaims, Court intervention is necessary and summary judgement is appropriate.

II. STANDARD OF REVIEW

Rule 56(b) of the Mississippi Rules of Evidence provides that, "A party against whom a claim is asserted may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof." "As to issues on which the nonmovant bears the burden of proof at trial, the movant needs only to demonstrate an absence of evidence in the record to support an essential element of the movant's claim." Pride Oil, 761 So.2d at 191 (¶ 10).

Mere allegations are insufficient to defeat a motion for summary judgment. Richardson v. Norfolk S. Ry., 923 So.2d 1002, 1008 (¶ 8) (Miss. 2006). The party opposing the motion must set forth specific facts that show that a genuine issue of fact exists. Id. To survive summary judgment, a claim must be based on more than a scintilla of evidence. Wilbourn v. Stennett, Wilkinson Ward, 687 So.2d 1205, 1214 (Miss. 1996). "It must be evidence upon which a fair-minded jury could return a favorable verdict." Id. Unsubstantiated assertions are insufficient. Cong Vo Van v. Grand Casinos of Miss., Inc., 767 So.2d 1014, 1024 (¶ 27) (Miss. 2000).

Once the Defendant has sufficiently alleged that no genuine issues of material fact remain, The burden then falls on the Plaintiff to present affirmative evidence to show that there were such genuine issues of material fact. Pride Oil, 761 So.2d at 191.

III. ARGUMENT

1. The Defendant Was Within His Legal Rights To Conduct The Subject Transaction

Mississippi Code Title 87, Ch.3; § 87-3-113, reads as follows:

> As to acts undertaken in good faith reliance thereon, **an affidavit executed by the attorney in fact under a power of attorney, durable or otherwise, stating that he did not have at the time of exercise of the power actual knowledge of the termination of the power by revocation or of the principal's death, disability, or incapacity is conclusive proof of the nonrevocation or nontermination of the power at that time.** If the exercise of the power of attorney requires execution and delivery of any instrument that is recordable, the affidavit when authenticated for record is likewise recordable. This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity.

The statute is quite unambiguous on this matter. The Defendant was given no notice of the Plaintiff's revocation of power of attorney and the agreement had been in place for 4 years at the time. The Plaintiff fails to assert anywhere in any of his pleadings that he noticed JR of the revocation. The Defendant has also attached an Affidavit, stating exactly such (Aff. of JR, ¶ 4, 5, 15, 16). The Plaintiff can assert no reason why the court should ignore this statutory mandate and allow him to proceed with his allegations, especially when he admitted through Interrogatory that he never informed JR that the power of attorney had been revoked.

The Defendant propounded interrogatories to the Plaintiff, to which the Plaintiff responded on January 13th, 2022. Interrogatory 3 states:

> **INTERROGATORY:** Please identify the date in which you notified Sullivant, Jr. of the revocation of your 2017 Power of Attorney, including the manner in which such notification was delivered.

RESPONSE: *I did not personally notify Sullivant, Jr. of the revocation.* Upon information and belief, someone at Regions Bank informed Sullivant, Jr. when he tried to access my account.

(See *Disc. Resp.* Bates No. 139)

Also Notable, is the Plaintiff's response to Interrogatory #7, from the same set of Interrogatories as above:

INTERROGATORY NO.7: Identify all facts upon which you rely in support of your claims in the Complaint or upon which you rely in defending against any portion of the counterclaim.

RESPONSE: *The Complaint speaks for itself,* also see attached Exhibit A-

Exhibit A refers to; the Power of Attorney, and the Revocation form for such submitted by SR; which indicates nothing other than The fact that the Plaintiff admits that the Complaint is all he has to rely upon makes this case ripe for summary judgement. The Plaintiff's complaint fails as a matter of law to establish any issues of material fact and he admittedly has nothing to offer outside of the weak allegation and conclusory statements contained therein.

It is undeniable from this answer that the Plaintiff did not inform JR of this revocation, which only speaks more to his unsound state of mind. This power of attorney was in effect without issue for 4 years. JR had no reason to even suspect it had been revoked and the Plaintiff fails to explain why he attempted to. The assertion that; "[U]pon information and belief, someone at Regions Bank informed Sullivant, Jr. when he tried to access my account", is not only absurd, but also insufficient and not supported by anything on the record.

The aforementioned Mississippi Code is intended to protect those who are under a power of attorney agreement from themselves, and from carelessly, mindlessly, or through undue influence, revoking this agreement to their own detriment. The instant case is a perfect example of the necessity of this legislation. More importantly, it expressly and authoritatively shuts down the claim that any of the transactions cited by the Plaintiff and carried out by the Defendant were illegal. They were not. They were made in good faith and the Plaintiff is better off financially and otherwise as a result of the Defendant's prompt actions to prevent severe financial damage to the Plaintiff.

2. Essential Elements Are Glaringly Absent From The Plaintiff's Claims.

As a preliminary note, it cannot be disputed that 50%, or roughly $115,000 of the Plaintiff's claim, in fact belongs solely to the Defendant (*Accounting*, Bates Nos.8-14); (Aff. of JR; ¶ 3).

The Plaintiff alleges 13 claims in his Complaint, all of which lack merit, are missing essential elements, and of which the Plaintiff has provided no proof, documentary or otherwise, let alone admissible evidence. They begin by alleging Breach of Fiduciary Duty and Breach of Duty of Care. Both of which fail based on the Affidavit of the Defendant and the Exhibits attached hereto. The Plaintiff, at all times, has acted in the best interest of SR and in this case, he saved him from himself. The Plaintiffs conclusory statements in this regard are not sufficient to survive summary judgement as no reasonable jury could return a verdict in his favor based on such statements, and the court should grant them no weight; particularly when the Plaintiff has had over one year to substantiate them and has hardly even attempted to do so.

Because the entire premise of the Complaint crumbles under the Defendant's evidence and Affidavit, as well as the Plaintiff's lack of any support or the possession of any admissible evidence from the Plaintiff; the Plaintiff cannot possibly establish the elements of *any of his claims*. The money he claims was stolen from him was, in fact, *actually stolen from the Defendant*, who then returned SR's portion while exercising his power of attorney, which as previously discussed was legally still in full force and effect. (Aff. of JR; ¶ 8, 9, 12). Even if it were not, the Plaintiff has failed to present any evidence of damages related to these transactions and would be entitled to no relief.

Each count in the Complaint is either a breach of care, negligence, and a claim for unjust enrichment and conversion. Again, each of these claims fail, as the Plaintiff has not shown, outside of mere allegations, that the Defendant breached any duty of care or loyalty, that he acted at all negligently, or that he attempted to unjustly enrich himself. All of the evidence presented to the Court shows the exact opposite.

In order to survive summary judgement, "[T]he non-moving party must produce specific facts showing that there is a genuine material issue for trial. M.R.C.P. 56(e); Fruchter v. Lynch Oil Co., 522 So.2d 195, 199 (Miss. 1988). The non-moving party's claim must be supported by more than a mere scintilla of colorable evidence; it must be evidence upon which a fair-minded jury could return a favorable verdict. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

At this point, "a mere scintilla of colorable evidence" would be *a massive improvement* to the Plaintiff's claims, but even that does not exist; and no sound minded jury could return a verdict against the Defendant given the fact pattern and evidence that has been presented to this point.

3. The Plaintiff Has Failed To Cooperate With Proper Procedure And Court Orders

The Plaintiff filed his Complaint in this matter on October 25th, 2021, well over a year ago. Independent Medical Evaluations (IME) on the Plaintiff, due to legitimate concerns about his cognition and ability to even participate in this action, were ordered by this Court on February 8th, 2022. The Plaintiff took one legitimate evaluation, with Dr. Brian Thomas, and the other opinion was stricken by this Court. Plaintiff has since has failed to even schedule a second one, despite a court order, an agreement between the parties to do so, and a motion to compel the Plaintiff to comply with said order. At this point, the Plaintiff has conceded to the sole opinion of Dr. Thomas.

The report of Dr. Thomas was unfavorable to the Plaintiff to say the least, and it seems that defying a court order and avoiding a second opinion is his strategy going forward. Dr. Thomas specifically reported that;

> "The examinee demonstrates marked cognitive decline from estimated premorbid functioning. While his intellectual functioning appears preserved, he demonstrates impairment in all other areas of cognition assessed with the exception of preserved spatial/constructional skills. **he does appear to be unable to manage complex financial affairs due to a decline in his ability to receive and evaluate information and communicate decisions.** He has a history of writing multiple checks to various organizations that he, upon review with me, had difficulty fully explaining why he wrote checks to some organizations noting "They wanted $5 every time you turn around" but "I don't do that anymore." Related to other purchases he noted, "I'm a sucker for stuff like that all right." The affidavit of his son provides his opinion that the examinee is making poor decisions and susceptible to being swindled. It is my opinion that the examinee is more susceptible to being swindled or taken advantage of because of his cognitive decline."
>
> (*Thomas Report*; Bates No.137).

Per documents subpoenaed from First Security Bank of Batesville on November 28th, 2022, the Plaintiff is still writing checks to mail scam solicitors. It obvious that the Plaintiff does not have capacity to control this compulsive behavior and make reasonable decisions. Hence, SR is still at risk of being the subject of the Ms. Steven's scams by bringing this suit against JR, and also, notably; this IME confirms that SR was not cognitively capable of revoking the power of attorney to begin with.

The Plaintiff has also failed to participate in discovery by not responding to one (1) interrogatory and one (1) document request, which were sent on April 4th, 2022, nearly 7 months ago. (Aff. of JR; ¶ 13).

These discovery requests are imperative and the Plaintiff's silence on them is disquieting, as is discussed in the following section (4).

OUTSTANDING INTERROGATORIES

9. Please state the balance in Plaintiffs TD Ameri Trade account at the time of the most recent statement, and along with the balance, provide the date of the most recent statement.

OUTSTANDING REQUESTS FOR PRODUCTION OF DOCUMENTS

6. Please produce all records relating to or reflecting any spending by Plaintiff in excess of $5,000.00 in a single transaction since the filing of this Complaint.

(See *Second Set of Disc.;* Bates Nos. 146-147)

The lack of response to these simple requests bears a strong indication that the Plaintiff finances are currently being unduly influenced by either his Attorney, Ms. Evelyn Stevens, or both. The Plaintiff's silence on this matter is a seriously concerning issue, one which is compounded by the deposition of Evelyn Stevens.

4. <u>The Plaintiff Is Still Acting Financially Reckless</u>

Ms. Mary H. "Evelyn" Stevens was a caretaker that JR employed and paid to assist SR with his day-to-day needs. Ms. Stevens worked for JR from 2018 until June 2021, when SR moved to an assisted living facility. Despite terminating her own employment, Ms. Stevens continued her relationship with SR. She then blocked JR's number from her phone, and from SR's phone (Aff. of JR, ¶ 11). Ms. Stevens admitted in her deposition that she remains active in SR's life and that she still works for him, although she does not receive any payment in return. Ms. Stevens admits that she has received gifts including automobiles from SR and has even put her name on his accounts as a joint party. More concerning, she admits that she reports none of these gifts or compensation to the IRS nor does she pay any taxes on them.

Ms. Stevens does not "work" for the Plaintiff, she is on a campaign to extract financial and material goods from a mentally deteriorating elderly man and Attorney Alford is at the very least complicit in this scheme, given the overwhelming amount of information and evidence he has received which undeniably shows that his client has no claims and is being taken advantage of.

Ms. Stevens accompanied SR to the law office of Jay Westfall, to discuss revoking the power of attorney, which he then attempted to do. (*Deposition*; 33:11-16).[1] Nothing about Ms. Stevens or her testimony settles well. She is strong evidence that the Plaintiff is highly susceptible to financial scamming and influence, and she herself admits to multiple tax frauds in her deposition. (*Deposition*; 51:8-20; 52:10-13)[2]. Again, despite this knowledge and the report from Dr. Thomas unambiguously and affirmatively declaring the Plaintiff incapable of managing his finances, Attorney Alford refuses to acknowledge that his client is actually suffering as a result of this lawsuit and that it should be ended promptly.

IV. CONCLUSION

The Plaintiff has failed to raise any issues of material fact, despite having more than ample time to investigate his claims, and this action was brought in bad faith. The Defendant has at all times acted in the best interests of SR and not a shred of evidence says otherwise.

The Plaintiff claims also fail to present any factual issues as Mississippi Code expressly allowed for each of the Defendant's transactions that are in question, and the Plaintiff has essentially admitted this. Moreover, even if this court rules that the Defendant's actions in transferring the money back did not comport with the law, absolutely no damages were suffered by the Plaintiff and he is not entitled to any relief. The Plaintiff has come forward with erroneous and false claims and is being influenced to villainize the one person, JR, who is dedicated to protecting him and has been for multiple years, and to great personal sacrifice.

It is no coincidence that Ms. Stevens was at every appointment with SR and Mr. Alford, drove SR to Attorney Westfall to revoke the power of attorney, and has received cars and gifts that she refuses to report as income, as well being placed on SR's bank accounts, giving her the ability to access his funds. All of this has taken place since this action was filed. Ms. Stevens is an admitted tax fraud who is seeking to financially and materially benefit from the continuing strain on the relationship between JR and SR that this action, and more notably the Plaintiff's intentional delays, have caused.

The Plaintiff has failed to come forward with any support for his allegations and conclusory statements, refuses to answer to discovery propounded 7 months ago, and cannot create any issues of fact to be considered. The Plaintiff has also failed to Answer the Defendants counterclaims which were filed

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[1] Bates No. 056
[2] Bates Nos. 074-075

concurrently with his Answer over one year ago, and default from the Clerk on those claims was certified on December 1st, 2022.

The Plaintiff's attempt to rest his case at the stage of the original complaint should and must be rejected. "A nonmoving party cannot rest on its pleadings, but must demonstrate that there is admissible evidence that will support its position. Tolle v. Carroll Touch, Inc., 23 F.3d 174, 178 (7th Cir. 1994). No such admissible evidence exists in this case and the Plaintiff isn't even feigning that it might.

Miss. R. Civ. P. Rule 56(c). provides that the judgment sought *shall be rendered forthwith* if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

The rule does not provide for evidence which *might* be introduced or developed at trial. The party resisting summary judgement must produce any such evidence in opposition to the motion. It is thus incumbent upon a Plaintiff to respond to a motion for summary judgment by demonstrating material factual disputes. The comment to Rule 56 also notably provides that summary judgment "serves as an instrument of discovery in calling forth quickly the disclosure on the merits of either a claim or defense on pain of loss of the case for failure to do so." Commercial Bank v. Hearn, 923 So. 2d 202 (Miss. 2006). This is exactly the Defendant's purpose with this Motion.

WHEREFORE, based on the foregoing motion and memorandum and the supporting documents filed concurrently, Plaintiff ROBERT SULLIVANT JR asserts that no genuine issues of material fact remain in this matter and that he is entitled to judgment as a matter of law. The Defendant thereby requests that his Motion for Summary Judgement be **GRANTED**, in its entirety, that nothing be taken from the Plaintiff's Complaint, and that this court dismiss counts 1-13 (each count) asserted against the Defendant therein; **with prejudice**.

Respectfully submitted.

Robert Sullivant, Jr., *Pro Se*

ROBERT SULLIVANT, JR.
robert@steelandbarn.com
1002 CRAWFORD CIRCLE
OXFORD, MS 38655

CERTIFICATE OF SERVICE

I do hereby certify that on November 25, 2022 I have served by hand delivery and/or email a true and correct copy of the above and foregoing document to:

Swayze Alford
1221 Madison Avenue
Oxford, MS 38655
Attorneys for Plaintiff Robert Sullivant, Sr.

Robert Sullivant, Jr., *Pro Se*

IN THE CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

ROBERT SULLIVANT, SR. — **PLAINTIFF**

VS. — **CAUSE NO.: 2021-612(W)**

ROBERT SULLIVANT, JR. — **DEFENDANT**

PLAINTIFF'S RESPONSE IN OPPOSITION TO THE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AS TO ALL COUNTS

COMES NOW Plaintiff, Robert Sullivant, Sr. ("Sullivant, Sr."), by and through undersigned counsel, and files his *Plaintiff's Response in Opposition to the Defendant's Motion for Summary Judgment as to all Accounts* against Defendant, Robert Sullivant, Jr. ("Sullivant, Jr."), and in support thereof would state as follows:

I. Introduction

Sullivant, Sr. filed his *Complaint* on October 25, 2021. Sullivant, Jr. filed his *Answer, Affirmative Defenses and Counter-Claim* on December 9, 2021. On July 12, 2017, Sullivant, Sr. executed a General Durable Power of Attorney appointing his son, Sullivant, Jr., as his lawful agent and attorney in fact. Prior to filing his Complaint, it came to Sullivant, Sr.'s attention that Sullivant, Jr. was taking very large sums of money from Sullivant Sr.'s checking account. On or about May 19, 2021, Sullivant, Sr. opened a money market account with Regions Bank that was in his name only. That same day, Sullivant, Sr. transferred the sum of $230,000.00 from a Regions account in which Sullivant, Jr. had signature authority to his new money market account. On May 20, 2021, Sullivant, Sr. executed a Cancellation of Durable Power of Attorney, which was filed with the Panola County Chancery Clerk that same day. Sullivant, Sr. provided the Regions Bank in Batesville, Mississippi with a copy of the same. Apparently, Sullivant, Jr. went to the Regions Bank in Oxford, where he successfully withdrew and transferred the sum of $230,000.00 from Sullivant, Sr.'s new money market account to an account only in his name.

II. Documents Relied on by Sullivant, Sr.

Sullivant, Sr. relies on the following documents in support of his Opposition to the Defendant's Motion for Summary Judgment:

1. General Durable Power of Attorney, Exhibit 1
2. Cancellation of Durable Power of Attorney, Exhibit 2
3. Regions Transactions, Exhibit 3
4. Transfer of $50,000.00 to TD Ameritrade, Exhibit 4
5. Transfer of $5,000.00 to Regions *8739, Exhibit 5
6. Sullivant, Sr.'s July 2021 Costco Credit Card, Exhibit 6
7. *Complaint* filed by Sullivant, Sr. on October 25, 2021, Exhibit 7
8. Accounting provided by Sullivant, Jr. on December 9, 2021, Exhibit 8
9. Letter from Brad Golmon dated November 12, 2021, Exhibit 9
10. Email from Brad Golmon dated December 10, 2021, Exhibit 10
11. *Agreed Order of Continuance and Resetting* filed November 17, 2021, Exhibit 11
12. *Agreed Order of Continuance and Resetting* filed December 9, 2021, Exhibit 12
13. Affidavit of Robert Sullivant, Sr., Exhibit 13
14. Email from Swayze Alford to Brad Golmon dated December 28, 2021, Exhibit 14
15. Text Messages between Kayla Ware and Brad Golmon, Exhibit 15
16. Sullivant, Sr.'s TD Ameritrade Credentials from Sullivant, Jr. dated December 10, 2021, Exhibit 16
17. *Agreed Order for Independent Medical Exams* filed February 8, 2022, Exhibit 17

III. Material and Undisputed Facts

The following material and undisputed facts that support the denying of Defendant's Motion for Summary Judgment:

1. On July 12, 2017, Sullivant, Sr. executed a General Durable Power of Attorney appointing Sullivant, Jr. as his agent and attorney in fact. (General Durable Power of Attorney, Exhibit 1)

2. On May 20, 2021, Sullivant, Sr. executed a Cancellation of Durable Power of Attorney. (Cancellation of Durable Power of Attorney, Exhibit 2)

3. On May 5, 2021, $238,272.57 was deposited into a joint bank account. (Regions Transactions, Exhibit 3)

4. On May 19, 2021, Sullivant, Sr. transferred $230,000.00 from a joint account with Sullivant, Jr. to an account only in Sullivant, Sr.'s name. (Regions Transactions, Exhibit 3).

5. On June 9, 2021, Sullivant, Jr. transferred the $230,000.00 back to the joint account and then to an account only in Sullivant, Jr.'s name. (Regions Transactions, Exhibit 3 and Sullivant, Jr.'s Motion for Summary Judgment).

6. The transfer of Sullivant, Sr.'s money by Sullivant, Jr. was done without the permission, knowledge or consent of Sullivant, Sr. (Complaint, Exhibit 7 and Affidavit of Robert Sullivant, Sr., Exhibit 13)

7. Sullivant, Jr. did not provide Sullivant, Sr. any information about the transfer until after Sullivant, Sr. filed his Complaint. (Letter from Brad Golmon dated November 12, 2021, Exhibit 9)

8. On June 9, 2021, Sullivant, Jr. transferred $50,000.00 to Sullivant, Sr.'s TD Ameritrade Account. (Transfer of $50,000.00 to TD Ameritrade, Exhibit 4)

9. Only Sullivant, Jr. had access to Sullivant Sr.'s TD Ameritrade account when he deposited the $50,000, and therefore, Sullivant, Sr. was unaware of the deposit. (Affidavit of Robert Sullivant, Sr., Exhibit 13, Email from Swayze Alford to Brad Golmon, Exhibit 14 and Text Messages between Kayla Ware and Brad Golmon, Exhibit 15)

10. On July 6, 2021, Sullivant Jr. transferred $5,000.00 to the joint account he has with Sullivant, Sr. (Transfer of $5,000.00 to Regions *8739, Exhibit 5)

11. Sullivant, Sr. moved to Elmcroft in July of 2021 and no longer lived at the home located at 1002 Crawford Circle, Oxford, Mississippi. (Sullivant, Sr.'s July 2021 Costco Credit Card, Exhibit 6)

12. Sullivant, Sr. requested an accounting in his Complaint filed on October 25, 2021, and Sullivant, Jr. provided the same on December 9, 2021. (Complaint, Exhibit 7 and Accounting, Exhibit 8)

13. Sullivant, Jr.'s Accounting showed that he still owed Sullivant, Sr. $51,035.70. (Accounting, Exhibit 8)

14. On December 10, 2021, former counsel for Sullivant, Jr., Brad Golmon, sent counsel for Sullivant, Sr. an email stating that Sullivant, Jr. would transfer the sum in the Accounting to Sullivant, Sr. the following day. (Email from Brad Golmon, Exhibit 10)

IV. Law and Legal Argument

A. Standard

The familiar standard of review involving a motion for summary judgment is as follows:

> Rule 56(c) of the Mississippi Rules of Civil Procedure provides that summary judgment shall be granted by a court *if* "the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact." M.R.C.P. 56(c); *see Saucier,* 708 So.2d at 1354. *The moving party has the burden of demonstrating there is no genuine issue of material fact, while the nonmoving party should be given the benefit of every reasonable doubt. Tucker v. Hinds County,* 558 So.2d 869, 872

(Miss. 1990); *see also Heigle v. Heigle,* 771 So.2d 341,345 (Miss.2000). *Buchanan v. Ameristar Casino Vicksburg, Inc.,* 959 So.2d 969, 975 (Miss. 2007) (emphasis added).

> A motion for summary judgment lies only when there is no genuine issue of material fact; *summary judgment is not a substitute for the trial of disputed fact issues. Accordingly, the court cannot try issues of fact on a Rule 56 motion; it may only determine whether there are issues to be tried.* Given this function, the court examines the affidavits or other evidence introduced on a Rule 56 motion simply to determine whether a triable issue exists, rather than for the purpose of resolving that issue. *Russell v. Orr,* 700 So.2d 619,626 (Miss. 1997), citing the *Miss. R. Evid.* 56 cmt. (emphasis added).

"All evidence is viewed in the light most favorable to the non-movant." *Dancy v. East Mississippi State Hosp.,* 944 So.2d 10, 15 (Miss. 2006) citing *Palmer v. Biloxi Reg'l Met! Ctr., Inc.,* 564 So.2d 1346, 1354 (Miss.1990). It has been held that summary judgment, when questionable, is not proper. See, *Brown v. Credit Center, Inc.* 444 So.2d 358, 362 (Miss. 1983) holding "[i]ndeed, the party against whom the summary judgment has been sought should be given the benefit of *every reasonable doubt."* (emphasis added), citing *Liberty Leasing Co. v. HiQsum Sales Corporation,* 380 F.2d 1013, 1015 (5th Cir.1967); *Heyward v. Public Housing Administration,* 238 F.2d 689,696 (5th Cir. 1956).

"Chancery Court is peculiarly capable of hearing the entire litigation on its facts and should view the granting of summary judgment with this peculiar capability in mind. Frequently a chancellor can hear the entire trial and provide this Court with a complete record in only slightly more time than the court could deal with a Motion for Summary Judgment. When this is the case, discretion gravitates toward a complete trial." *Martin v. Simmons,* 571 So.2d 254, 258 (Miss. 1990). **"[W]e recommend caution to all chancellors of this State in the granting of summary judgment."** *Id.* (emphasis added)

B. Applicable Case Law and Argument

Defendant's Assertion that he was within his Legal Right and Defendant's Assertion of Essential Elements Absent from Plaintiff's Claims

A durable power of attorney is a written document through which an individual (the "principal") gives another person (the "agent") the authority to act for the principal in accordance with the terms and conditions specified in the document. The connection between principal and agent is a particular type of agency relationship that is governed by the statutory requirements set forth in Title 87, Chapter 3 of the Mississippi Code. As with other principal-agent relationships, the party trusted with the responsibility in the power of attorney owes certain duties to the principal. See *In re Estate of Hemphill*, 186 So.3d 920, 933 (Miss. Ct. App. 2016) (citing Restatement (Third) of Agency § 8.07 (2006) ("An agent has a duty to act in accordance with the express and implied terms of any contract between the agent and the principal.")). The principal must perform all duties designated in the contract consistently with his role as a fiduciary.

In the case of *Rich v. Sheppard,* Rich, the decedent's "life partner," without express permission or notice to the decedent, accessed the accounts online and named himself as 98% beneficiary on decedent's Charles Schwab accounts. *Rich v. Sheppard*, Civil Action No. 3:16-CV-366, page 24 (S.D. Miss. 2018). Rich argues that he was not informed that his power of attorney had been stripped before he made the change, so he was under the impression that he was authorized to overrule the decedent's decision and make himself the beneficiary. The Court stated that "[i]t is fundamental law that an agent owes his principal absolute good faith and fidelity, and he cannot in the exercise of his authority as agent acquire property or interest therein rightfully belonging to his principal without full disclosure and free consent of his principal." *Id.* citing *McKinney v. King*, 498 So.2d 387, 388 (Miss. 1986).

This case is probably most analogous to the present case. Sullivant, Sr. was well within his right to transfer the $230,000.00 to an account only in his name as, under Mississippi law, when an account is held in the name of one depositor *or* the other, then "each depositor is allowed to treat joint property as if it were entirely his own." *Drummond v. Drummond*, 248 Miss. 25, 31, 156 So.2d 819, 821 (1963). He did not need Sullivant, Jr.'s consent to make the transfer. The issue is that Sullivant, Jr. misused his power of attorney to transfer the money into an account solely in his (Sullivant, Jr.'s) name. The power of attorney authorized the attorney-in-fact to do and perform "any and all banking business and transactions," and transferring the $230,000.00 is implicitly covered as banking business transaction. It was not disputed that Sullivant, Jr. had the "right" to conduct the transaction, *however*, this broad authority does not permit Sullivant, Jr. to engage in undisclosed, self-dealing activities. Again, "it is fundamental law that an agent owes his principal absolute good faith and fidelity, and he cannot in **the exercise of his authority as agent acquire property or interest therein rightfully belonging to his principal without full disclosure and free consent of his principal.**" *Estate of Johnson v. Johnson*, 237 So.3d 698, 707 (Miss. 2017) quoting *McKinney*, 498 So.2d at 388, (emphasis added.) If disputed, the attorney-in-fact's actions must be shown to be within the principal's intent when granting the power of attorney, in the best interests and for the benefit of the principal, and in accord with the duty of good faith owed by the attorney-in-fact to the principal. Any property or interest obtained in violation of the attorney-in-fact's fiduciary duty "thereby is voidable by, and may be set aside by the principal or his estate." *Id.*

It is undisputed that the transfer of Sullivant, Sr.'s money by Sullivant, Jr. was done without Sullivan, Sr.'s consent. It is also undisputed that the transfer by Sullivant, Jr. was done without full disclosure by Sullivant, Jr. Sullivant, Sr. had to file a Complaint and request an Accounting. The Agreed Order entered on November 17, 2021 required Sullivant Jr. to "provide a full sworn

accounting of all monies that he has spent for the benefit of the Plaintiff, Robert Sullivant Sr. on or before December 10, 2021; and [Sullivant, Jr.] shall provide a full sworn accounting of the remaining funds from the $230,000 transferred from [Sullivant, Sr.'s] account; and [Sullivant, Jr.] shall also provide a full sworn accounting of the monies from the Charles Schwab accounts 2454-6369 and 8175-1125." The Order also enjoined Sullivant, Jr. from transferring, disposing, selling, or depleting any monies in his possession that he had obtained from Sullivant, Sr.'s accounts. The same restraining language was included in the Order entered on December 9, 2021 as well. In December of 2021, and **only** as a result of the court ordered Accounting, did Sullivant, Jr. transfer another approximately $50,000.00 to Sullivant, Sr. Additionally, in Sullivant Jr.'s Answer and Counter-Complaint, he claims to have paid Sullivant, Sr.'s mortgage payments and utilities bills following the transfer of the money in June of 2021. In reality, Sullivant, Sr. lived at Elmcroft assisted living at this point and Sullivant, Jr. was simply paying the mortgage payment and the utility bills of where he alone lived. Sullivant, Sr. did not consent to Sullivant, Jr. using his funds to pay expenses at the house where only Sullivant, Jr. resided. Sullivant Sr. also never agreed with Sullivant, Jr.'s taking a credit of $6,000.00 for a payment on the Costco credit card and the credit taken by Sullivant, Jr. was without the consent of Sullivant, Sr.

Defendant's Assertion that Plaintiff has Failed to Cooperate with Procedure and Court Orders

An *Agreed Order for Independent Medical Exams* was entered on February 8, 2022, wherein the parties agreed to Dr. Hobbs and Dr. Thomas to conduct the IMEs on Sullivant, Sr. In summer of 2022, Dr. Hobbs retired from the practice of medicine due to medical reasons. Following Dr. Hobbs retirement, counsel for Sullivant, Sr. agreed to strike him as an expert. This occurred only a few months ago and not a year ago as stated by Sullivant, Jr.

There has been ongoing discussion regarding the need of a second IME for Sullivant, Sr. Additionally, an *Agreed Order Granting Motion to Exclude Testimony* was entered by this Court on October 31, 2022. Pursuant to said Order, the parties agreed not to use the any testimony of Dr. Hobbs. Only four days after the entry of the Order, on November 3, 2022, Sullivant Jr. filed his Motion requesting a second IME. Since that time, counsel for Sullivant, Sr. has provided Sullivant, Jr. with updates as to doctors that he has contacted regarding the IME. Sullivant, Jr. provides no support for his position that Sullivant, Sr. has conceded to the sole opinion of Dr. Thomas.

Defendant's Assertion that Plaintiff is still Acting Financially Reckless

It is important to note that Sullivant, Jr. never requested a conservator to be appointed for Sullivant, Sr. until after Sullivant, Sr. filed his Complaint. Sullivant, Jr. never objected to Sullivant, Sr. signing a Deed of Trust in 2020 following the purchase of a property, a Settlement Statement for the sale of a property in 2018, a Warranty Deed in 2021 following the sale of a property and a Warranty Deed in 2022 for the sale of a property, with Sullivant Sr. receiving money for the latter three. Sullivant, Jr. also received proceeds from the sale of property. But, Sullivant, Jr.'s own statements prove that Summary Judgment is not appropriate in this matter. It is apparent that Sullivant, Sr. is not of the opinion that Sullivant, Jr. has his best interests in mind.

The Mississippi Supreme Court has made it clear that that "where a party's intentional misconduct causes the opposing party to expend time and money needlessly, then attorney's fees and expenses should be awarded to the wronged party." *In re Estate of Thomas*, 28 So.3d 627, 637 (Miss. App. 2009) citing *Selleck v. S.F. Cockrell Trucking, Inc.*, 517 So.2d 558, 560 (Miss.1987); (see also *Ladner v. Ladner*, 436 So.2d 1366, 1370 (Miss.1983)). There is no argument that Sullivant, Jr.'s conduct was intentional and, if not for the filing of his Complaint, then Sullivant, Sr. would have no way to recoup his money from an account in only Sullivant, Jr.'s name. Wherefore, Sullivant, Sr. respectfully requests that the Court deny Sullivant, Jr.'s request for

summary judgment. Sullivant, Sr. seeks any other relief to which he may be entitled as set for in the Complaint filed in this matter.

RESPECTFULLY SUBMITTED this 3 day of January, 2023.

ROBERT SULLIVANT, SR., Plaintiff

BY: Swayze Alford
SWAYZE ALFORD (MSB #8642)
KAYLA WARE (MSB #104241)

OF COUNSEL:

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(662) 234-2025 phone
(662) 234-2198 fax

Counsel for Robert Sullivant, Sr.

CERTIFICATE OF SERVICE

I, Swayze Alford, attorney for Robert Sullivant Sr., do hereby certify that I have this day forwarded, via email, a true and correct copy of the above and foregoing *Plaintiff's Response in Opposition to the Defendant's Motion for Summary Judgment as to all Accounts* to the following:

Robert Sullivant, Jr.
robert@steelandbarn.com

SO CERTIFIED, this the 3 day of January, 2023.

Swayze Alford
SWAYZE ALFORD (MSB #8642)

IN THE CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

ROBERT SULLIVANT, SR., PLAINTIFF

V. CIVIL ACTION NO. 2021-612 (W)

ROBERT SULLIVANT, JR., DEFENDANT

DEFENDANT'S REBUTTAL TO PLAINTIFF'S OBJECTION TO MOTION FOR SUMMARY JUDGEMENT.

COMES NOW, Defendant Robert Sullivant JR, and hereby submits his rebuttal to the Plaintiff's opposition to his Motion for Summary Judgement.

I. INTRODUCTION

It is well settled that to survive summary judgment, "[t]he non-moving party's claim must be supported by more than a mere scintilla of colorable evidence; it must be evidence upon which a fair-minded jury could return a favorable verdict." Luvene v. Waldrup, 903 So.2d 745, 748 (¶ 10) (Miss. 2005) (quoting Wilbourn v. Stennett, Wilkinson Ward, 687 So.2d 1205, 1213-14 (Miss. 1996)). A plaintiff cannot survive a motion for summary judgment by relying on "unsworn allegations in the pleadings, or arguments and assertions in briefs or legal memoranda." Palmer v. Biloxi Reg'l Med. Ctr., Inc., 564 So.2d 1346, 1356 (Miss. 1990)

As a preliminary matter, the Plaintiff has admitted under oath and his Counsel repeated the allegation in his opposition, that on **May 19th, 2021**, Sullivant, Sr. **transferred $230,000.00** from a joint account with Sullivant, Jr. to an account only in Sullivant, Sr.'s name. (Oppo. ¶4); (Affidavit of Def.; ¶ 12).. However, the Plaintiff admits two paragraphs *prior to this*, that: "[O]n **May 20, 2021,** Sullivant, Sr. **executed a Cancellation of Durable Power of Attorney."**

Here, and in multiple other pleadings including their Complaint, the Plaintiff and his counsel have both alleged that the power of attorney was cancelled only after the Plaintiff's transfer was made. Thus, at the time the Plaintiff transferred the funds, he was still under the auspices of the POA. First, the Plaintiff **admits** to taking money that didn't belong to him ($115,000), out of a jointly held account between both parties, while still under power of attorney. Then, he **admits** to placing the Defendant's money into an account "in his name only" (Opposition, ¶4). This is theft.

Exhibit 3

In sum, the Plaintiff stole money that wasn't his from a joint bank account, and while under POA. He then transferred all of the money into an individual account so the Defendant could not access his own money. All of this was unprecedented by the Plaintiff. The Defendant became concerned in part because of the influence Evelyn Stevens was asserting over him and his finances; not to mention the timing of events being quite obviously premeditated in a way that the Plaintiff is not cognitively capable of scheming himself.

After consulting with his attorney, Tom Suszec of Holcomb Dunbar, and acting in accordance with his duty as power of attorney, the Defendant legally recouped the transferred funds; and when the Defendant did get his money back, he then legally dispersed the funds responsibly and in accordance with a POA that he had every reason to believe was still in effect; and the Plaintiff cannot provide a shred of evidence or even a statement that he attempted to notify the Defendant of the cancellation of the POA. Further, the Affidavit of the Defendant in regards to this matter is sufficient to withstand any challenge that his power of attorney had been cancelled at the time of the transaction.

II. SUMMARY OF PLAINTIFF'S OPPOSITION

The Plaintiff first relies on Martin v. Simmons, 571 So.2d 254, 258 (Miss. 1990), to attempt to differentiate the standard for summary judgement in Chancery Court, versus other venues and courts. They do this by omitting relevant parts of the Court's decision. The Plaintiff inserts into their opposition the following "quote" from *Martin*;

> "Chancery Court is peculiarly capable of hearing the entire litigation on its facts and should view the granting of summary judgment with this peculiar capability in mind. Frequently a chancellor can hear the entire trial and provide this Court with a complete record in only slightly more time than the court could deal with a Motion for Summary Judgment. When this is the case, discretion gravitates toward a complete trial." Martin v. Simmons, 571 So.2d 254, 258 (Miss. 1990). "[W]e recommend caution to all chancellors of this State in the granting of summary judgment." Id. (emphasis added)."
> (Opposition, p. 5).

However, this is not how the quote reads and the omitted verbiage is very important. The Court in *Martin* actually states:

> **Summary judgment is a laudable tool in the administration of justice but it should be used *wisely* and *sparingly.*** Chancery Court is peculiarly

> capable of hearing the entire litigation on its facts and should view the granting of summary judgment with this peculiar capability in mind. Frequently a chancellor can hear the entire trial and provide this Court with a complete record in only slightly more time than the court could deal with a Motion for Summary Judgment. When this is the case, discretion gravitates toward a complete trial. This is particularly true in a suit for adverse possession which is almost exclusively a factual issue. We urge caution in the granting of summary judgment in such cases. While we affirm the chancellor on deeming the request for admissions as admitted, we reverse his granting of the summary judgment on the basis that there does exist in the record a genuine issue of material fact. Further, we recommend caution to all chancellors of this State in the granting of summary judgment.

With the full quotation now presented, it is clear that the Plaintiffs reliance on *Martin* is misguided and their omission of the first sentence was intentional; as *concurring* Justice Blass explains in the decision:

> "I concur with the majority opinion and *write only because of the last sentence of the opinion where it is said, "Further, we recommend caution to all chancellors of this state in the granting of summary judgment*." Of course, all judgments should be rendered with caution but summary judgment as the majority opinion says, "is a laudable tool in the administration of justice but it should be used wisely and sparingly." *I concur in the word "wisely" but do not concur in the word "sparingly."* [1] (emphasis added).

In regards specifically to summary judgement, Justice Blass states that:

> "I think *trial courts should be encouraged* to utilize this relatively new judicial tool. The dockets of the courts are so crowded and the cost of litigation so great that it seems to me that the public interest requires that the courts should seek to find a suitable judicial resolution of the problem short of trial if that is possible. *Justice, in civil matters, is already priced beyond the means of most of our citizens.*" (Emphasis added).

The Plaintiff's reference to the decision in *Martin* does not change the standard for summary judgement. In fact, it reiterates it and Justice Blass even writes a separate decision encouraging it's use:

> "*Our law concerning summary judgment is well established.* The trial court must review carefully all of the evidentiary matters before it — admissions in pleadings, answers to interrogatories, depositions, affidavits,

[1] Martin v. Simmons, 571 So. 2d 254 (Miss. 1990)

> etc. The evidence must be viewed in the light most favorable to the party against whom the motion has been made. If in this view the moving party is entitled to judgment as a matter of law, summary judgment should forthwith be entered in his favor." (Id *257). (Emphasis added).

It goes without saying that misquoting the Courts and deliberately misrepresenting their decisions and opinions is not sufficient to overcome a motion for summary judgement, and that precisely is the bulk of the Plaintiff's opposition.

The Plaintiff next relies on the case of Rich v. Sheppard, CIVIL ACTION No. 3:16-CV-366-DPJ-LRA (S.D. Miss. Sep. 11, 2018). This case is not parallel to the instant case, despite the Plaintiff's claims that; "[T]his case is probably most analogous to the present case."

The issues being determined in Rich, as stated by the Court, are two-fold;

> "The first is a will contest in chancery court. The second is this case in which Rich says the Sheppards, along with Patricia's attorney Phillip Thomas, influenced Patricia to shut Rich out of her life and remove him from her will." Id.

Neither one of these issues presents in the case at hand. Moreover, the fact pattern in the *Rich* case as cited by the Plaintiff is vague, incorrect, and more accurately stated by the Court at ¶¶ 13 and 25;

> (1) Rich opened Patricia's mail from Charles Schwab while she was at the Mayo Clinic and discovered that she had removed him as the beneficiary to her accounts while adding the Sheppards; (2) Rich spoke with Patricia on April 10, 2014, to ask why she removed him from the accounts; (3) Patricia did not give Rich express permission to reinsert himself as a beneficiary, yet he accessed the Schwab accounts online and named himself as 98% beneficiary; (4) Rich wrote checks to himself from Patricia's bank accounts; and (5) according to Victoria's testimony, Rich said he cut the checks because he was "mad." (¶ 13).
>
> "[T]here is no dispute Rich opened Patricia's mail from Schwab on April 10; discovered that he had been removed as a beneficiary on the accounts; and then, without express permission or notice to Patricia, accessed the accounts online and named himself as 98% beneficiary.
> (Id. ¶ 25).

Not a single one of these facts is present in the instant case. Namely, the Defendant in *Rich* wrote checks to himself from the Plaintiff's personal account, "because he was mad"; and knew in advance from opening the Plaintiff's mail that he had been removed from the accounts. That is

nowhere close to what happened here and in fact, quite the opposite is true. The Defendant here has affirmatively shown that he promptly placed $50,000 in the Plaintiff's TD AmeriTrade account, paid $6,000 towards Plaintiff's credit card debt, and moved $5,000 into a joint account held by the parties. Notably, the Plaintiff has failed to properly deny these facts pursuant to MRCP 12(a) as alleged in Defendant's Answer and Counterclaims. (Affidavit of Def.; ¶¶ 8,9). [2]. Moreover, contrary to the Plaintiff's claims, these actions took place *prior* to the filing of his Complaint.

The Plaintiff then resumes their strategy of misquoting prior decisions and case law as means of persuading this Court to accept that any genuine issue of material fact exists. The Plaintiff "quotes" *Rich* accordingly:

> "[i]t is fundamental law that an agent owes his principal absolute good faith and fidelity, and he cannot in the exercise of his authority as agent acquire property or interest therein rightfully belonging to his principal without full disclosure and free consent of his principal." McKinney v. King, 498 So. 2d 387, 388 (Miss. 1986).

Notably missing from this quote is the sentence just prior and within the same paragraph which states; "*Rich fails to address the fact that even when he did have power of attorney, he shared it with Bud and Victoria.*"

There were two other parties who had durable POA over the Plaintiff in *Rich*, which is not the case here. Moreover, evidence that *Rich* had acted in bad faith simply because "he was mad", was indisputable. Again, that is not the case here and again, the opposite is true. (Affidavit of Def.; ¶ 8)

The Defendant has presented more than sufficient evidence that he acted in good faith at all times. Even more importantly, the Plaintiff has not shown evidence of his claim of the Defendant's lack of duty or self-dealing. Once he realized the Plaintiff had taken money that did not belong to him and adverse Defendan's duties of the POA, he corrected this by securing the money that was rightfully his, and depositing a significant amount in Plaintiff's TDA account and Regions joint account. (Affidavit of Def.; ¶¶ 7, 8, 9). This is a far cry from *Rich*, where the Defendant was "writing checks to himself because he was mad."

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[2] See also Defendant's Counterclaims; ¶10-18. Plaintiff was defaulted as to these claims on 12/01/2022.

What's worse for the Plaintiff in regards to *Rich*, is that it confirms the standard for summary judgement that the Plaintiff wants this Court to ignore in favor of their cherry-picked *mis*quotes. The Court in *Rich* reiterated that:

> "Summary judgment is warranted under Federal Rule of Civil Procedure 56(a) when the evidence reveals no genuine dispute regarding any material fact and that the moving party is entitled to judgment as a matter of law. The rule "**mandates** the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."[3]

The cautionary statement made by the Plaintiff against this Court granting summary judgement should be ignored, especially in a case such as this where: "the evidence reveals no genuine dispute regarding any material fact", according to the Plaintiff's own case reference. Further, the Court in *Rich* explicitly states that an entry of summary judgement is "*mandated* against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

The only parallels between the instant case and the case in *Rich*, is that the Defendant took money that may or may not have belonged to him. Even so, the Defendant legally did so to protect his Father in accordance with his duty of the POA. Every other fact is substantially different.

Also unpersuasive is the Plaintiff's attempt to use the case of McKinney v. King, 498 So. 2d 387 (Miss. 1986), to illicit some inference that the Defendant acted in bad faith and with infidelity in regards to the Plaintiff's finances. First, this allegation fails as a matter of fact as evidenced by the Affidavit and Exhibits submitted by the Defendant in his Motion; and the Plaintiff has not come forward with any sufficient evidence showing malfeasance or any unjust enrichment, or with anything that contradicts the Defendant's compelling evidence. Second, the fact pattern in *McKinney* was, yet again, completely different than what is seen in the instant case.

The case of *McKinney* was straight forward and concise; and a prime example of overt fraud and manipulation of a terminally ill, elderly man. This was a case where Appellant convinced her husband under false premises to sign a power of attorney while terminally ill; and then used that POA to execute a warranty deed explicitly adverse to his interests. The Court of Appeals first noted that:

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[3] FRCP 56(a) is nearly identical to MRCP 56(a).

> "At the hearing the chancellor pointedly asked counsel for Reba Faye how the execution of the warranty deed was in the best interest of William. Counsel never responded to the query." [4]

The Court then ruled that:

> "The execution of the warranty deed by Reba Faye was a blatantly fraudulent transaction against her dying husband and his estate." Id.

Notably different from *McKinney*, the parties in this matter had a POA in place for 4 years. Also different, is that the Defendant in this matter has explained, set forth fully, and provided admissible and compelling evidence that he complied with his POA duty, and had always acted in the best interest of the Plaintiff. Counsel for the Appellant in *McKinney* could not even answer that inquiry of how Reba Faye of how her actions were in the best interest of William.

More damaging to the Plaintiff's opposition, is his admission that the "power of attorney authorized the [Defendant] to do and perform "*any and all banking business and transactions,*" and transferring the $230,000.00 is implicitly covered as banking business transaction. *It was not disputed that Sullivant, Jr. had the "right" to conduct the transaction....*"

The Plaintiff then attempts to circumvent this very clear language in the POA by asserting, without any evidence in support, that the Defendant; "engaged in undisclosed, self-dealing activities." This assertion that the Defendant engaged in self-dealing activities with the Plaintiff's money is quite frankly absurd; and all of the evidence submitted shows the opposite. The Plaintiff claims that; "[O]n June 9, 2021, Sullivant, Jr. transferred the $230,000.00 back to the joint account and then to an account only in Sullivant, Jr.' s name (Opposition; ¶ 5). This is untrue. In the act of protecting his and the Plaintiff's money, the Defendant transferred $50,000 to Plaintiff's TDAmeritrade account and transferred $5,000 to the Regions joint account according to his duties memorialized within the parties POA, which was again, still legally in effect. (Aff. of Def.; ¶¶ 3, 8, 9)

This is not an issue of material fact sufficient to preclude summary judgement. The Plaintiff has essentially whittled his claims all the way down to "Defendant acted in bad faith by engaging in self dealing activities." However, despite over a year since filing his complaint and through the process of discovery conducted therein, the Plaintiff cannot present any evidence that the

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Defendant acted outside of his fiduciary duty, unjustly enriched himself, or engaged any "self-dealing activities." (Aff. Of Def.: ¶ 13).

III. NO GENUINE ISSUES OF MATERIAL FACT REMAIN

Even it were true, as the Plaintiff claims, that;

> "It is undisputed that the transfer of Sullivant, Sr.' s money by Sullivant, Jr. was done without Sullivan, Sr.'s consent. It is also undisputed that the transfer by Sullivant, Jr. was done without full disclosure by Sullivant, Jr.";

this would not rise to the level of a material fact that would warrant a denial of judgement; as the Plaintiff states right before this that his consent was not required; "power of attorney (indisputably) authorized the [Defendant] to do and perform "*any and all banking business and transactions.*" Nowhere does it follow that this must be done; "with the express consent of the principal." Further to the Plaintiff's issue of "without full disclosure", the Plaintiff comes to this court without "clean hands", as he took $115,000 of the Defendant's funds in question illegally and without full disclosure to the Defendant on May 19th 2021.

The Plaintiff also fails to consider that the Defendant had a fiduciary duty to protect Plaintiff's money and finances from others and from the Plaintiff's own self-destruction . These duties are outlined by the agreement, including, but not limited to;

> To do and perform at or with any bank, trust company, business trust, savings and loan association and/or other depository institution (any of the foregoing referred to hereinafter as depository institution 11) of my attorney's selection any and all banking business and transactions, including, but not necessarily limited to, authority (1) to borrow money (as provided more fully hereinafter), (2) to draw, sign, accept, endorse and negotiate checks, drafts, bills or exchange, promissory notes, bonds and all other negotiable instruments, orders, directions and obligations for the payment of money or the delivery of property on whomsoever drawn and to whomsoever payable or directed or deliverable, (3) to receive and make and give valid receipts and acquittances for all of same, or the proceeds thereof, (4) to deposit the same, or the proceeds thereof, at any depository institution of my attorney's selection, (5) *to withdraw the whole or any part of all balances now or hereafter on deposit to my credit at any depository institution* and (6) to demand and receive accountings thereof; and;
>
> To pay all sums of money which may now or hereafter be owing by me to any person, partnership, association, limited liability company, corporation, government agency or other legal entity upon any debt or obligation, in whatever manner evidenced, including, but not necessarily limited to, the expenses of my maintenance, support, medical, surgical, hospital or other institutional care and those similar expenses for those

> whom I am then legally obligated to maintain, support, educate or otherwise provide for;
>
> To enter into, make, sign, execute, acknowledge, deliver and perform any contracts (*including, but not necessarily limited to, contracts for the purchase, sale or lease of any real estate or interest in real estate* ***owned by me***), agreements or undertakings that may, in the unrestricted discretion of my attorney, *be advisable or necessary with respect to any of* ***my*** *property, real or personal, tangible or intangible*;

Every action taken by the Defendant was in full coherence of his counsel's advisement and in compliance with the parties POA which is quite unambiguous to the Defendant's authority. The explicit language in the parties contract actually *does* authorize the Defendant to "acquire property or interest therein rightfully belonging to his principal without full disclosure and free consent of his principal", despite the Plaintiff's numerous attempts to cite this passage from *McKinney* against the Defendant. There is no restriction in the parties POA as to the acquisition or sale of property, in fact, the intent of the parties is clearly to allow for the Defendant to have unrestricted authority over these aspects of the Plaintiff's estates and finances. The lack of hardly any restrictive language in the parties' agreement is very noteworthy.

More to this point of the express language in the POA is the fact that "our law regards as valid and enforceable as a power of attorney any written instrument signed by the principal and '*expressing plainly the authority conferred.*'" Miss. Care Ctr. of Greenville, LLC v. Hinyub, 975 So.2d 211, 216 (¶ 12) (Miss. 2008) (quoting Kountouris v. Varvaris, 476 So.2d 599, 603 (Miss. 1985)); see Miss. Code Ann. § 87-3-7 (Rev. 1999).

The Plaintiff seems to be under the impression that a power of attorney is a boilerplate contract which can be interpreted without actually reading it. It is not. Each case cited by the Plaintiff refers to matters that bear little to no resemblance to the one here. Moreover, the Plaintiff seems to be claiming that the Defendant *should have* violated his fiduciary duty by leaving the money alone, which is exactly what that would have been given the Plaintiff's historical (and current), reckless financial spending that prompted the parties POA in the first place; not to mention the language of the agreement "*expressing plainly the authority conferred.*"

The POA between the parties is a contract that may be readily analyzed by the Court; and "[T]he analysis of contract terms often lends itself to summary judgments and judicial efficiency." Yazoo Prop. v. Katz Besthoff , No. 284, 644 So. 2d 429 (Miss. 1994)

Finally, the Plaintiff erroneously asserts in their opposition that; "Sullivant, Jr. provides no support for his position that Sullivant, Sr. has conceded to the sole opinion of Dr. Thomas."

This statement is puzzling as there is no other way to read the Plaintiff's recently filed *Motion for Conservatorship*, other than to conclude that he is fully relying on the opinion of Dr. Thomas. It contains only six paragraphs, stating:

1. The Plaintiff, Robert Sullivant, Sr., is an adult resident citizen of Lafayette County, Mississippi.
2. That on or about October 25, 2021, Sullivant, Sr. filed his Complaint in this matter when he discovered that Sullivant, Jr. had withdrawn $230,000.00 from an account in Sullivant Sr.'s name alone using a Power of Attorney that Sullivant, Sr. had cancelled.
3. On or about December 9, 2021, Sullivant, Jr. filed his Answer, Affirmative Defenses, and Counter-Claim, wherein he requested a Conservator be appointed for his father, Sullivant Sr.
4. That on February 8, 2022, the parties entered into an Agreed Order for Independent Medical Exams wherein the Court appointed two physicians, including Dr. Brian Thomas, to conduct said IMEs of Sullivant, Sr.
5. Following an evaluation of Sullivant, Sr., Dr. Thomas found that Sullivant, Sr. was in need of a. conservator for his financial affairs.
6. Sullivant, Sr. is in agreement for a conservator to be appointed for the sole purpose.

The only doctor mentioned in this filing is Dr. Thomas. If the Plaintiff is not "conceding to the sole opinion of Dr. Thomas", as he claims, then he should come forward with whatever or whoever else he is relying upon that he omitted from this filing. This Motion is clearly and expressly requested on the basis of the opinion of Dr. Thomas, and of his opinion alone.

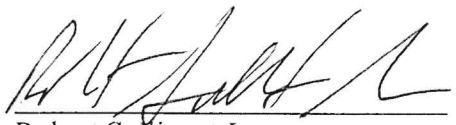
IV. CONCLUSION

The remainder of the Plaintiff's opposition is ripe with speculation and meaningless assertions. They claim that the transfer was made without the Plaintiff's consent, and without a full disclosure. However, the POA between the parties expressly allows for the transaction made by the Defendant; and again, the Plaintiff admits this when he states that; *"it was not disputed that Sullivant, Jr. had the "right" to conduct the transaction..."*. The Plaintiff infers here that the issue of fact that remains, is whether or not the Defendant conducted the foregoing transaction in accordance with the POA and the law which governs it. This is not an issue of fact. The Defendant has proven that he acted in the Plaintiff's best interest at all times and no reasonable fact-finder, based on the evidence in record, could determine otherwise.

The Plaintiff's own Opposition contains multiple admissions that there are actually no genuine issues of material fact which remain. Their attempts to misconstrue, misquote, and cherry pick case law are unpersuasive and contradictory to their own arguments. Further, their reliance on a baseless assertions that the Defendant acted in bad faith and in "self-dealing activities" are not, and **will not** be supported by even a mere scintilla of colorable evidence.

WHEREFORE, Defendant ROBERT SULLIVANT JR. reiterates his request for Summary Judgement in his favor, and against the Plaintiff as to all claims.

DATED: January 9th, 2023



Robert Sullivant Jr.
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CERTIFICATE OF SERVICE

I do hereby certify that on January 9, 2023 I have served by hand delivery and/or email a true and correct copy of the above and foregoing document to:

Swayze Alford
1221 Madison Avenue
Oxford, MS 38655
Attorneys for Plaintiff Robert Sullivant, Sr.

Robert Sullivant, Jr., *Pro Se*

IN THE CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

ROBERT SULLIVANT, SR.	PLAINTIFF
V.	CAUSE NO. 2021-612(W)
ROBERT SULLIVANT, JR.	DEFENDANT

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

CAME ON for hearing Defendant's Motion for Summary Judgment. The court having reviewed the Motion, having heard arguments of counsel, and having considered the pleadings, affidavits of parties, the facts, the case law, and the relevant statutes, finds that there are issues involving disputed facts and that said Motion is not well-taken.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant's Motion for Summary Judgment is **DENIED.**

SO ORDERED this the 26 day of January, 2023.

Robert L. Whitwell
CHANCELLOR

APPROVED AS TO FORM:

ROBERT SULLIVANT, JR
Pro Se

Swayze Alford
SWAYZE ALFORD (MSB #8642)
KAYLA WARE (MSB #104241)
Counsel for Plaintiff