

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

ORIGINAL

CASE NUMBER: 2017-M-781-SG

BRYAN K. ROBERTSON

FILED

PETITIONER/APPELLANT

VS.

JUN 08 2017

JEREME J. FOREMAN AND
CHRISTOPHER J. FOREMAN

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

RESPONDENTS/APPELLEES

PETITION FOR INTERLOCUTORY APPEAL BY PERMISSION

*Concerning Bryan K. Robertson vs. Jereme J. Foreman
and Christopher J. Foreman*

County Court of Hinds County, Mississippi
Civil Action Number 15-1757

Submitted by:

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MOTION#

2017

2242

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CASE NUMBER: _____

BRYAN K. ROBERTSON

PETITIONER/APPELLANT

VS.

JEREME J. FOREMAN AND
CHRISTOPHER J. FOREMAN

RESPONDENTS/APPELLEES

PETITION FOR INTERLOCUTORY APPEAL BY PERMISSION

COMES NOW Bryan K. Robertson, by and through counsel and pursuant to MRAP 5 as authorized by MURCCC 4.06 as it relates to interlocutory appeals from county courts, and files this his *Petition for Interlocutory Appeal by Permission* and in support thereof would show unto this honorable Court the following:

**STATEMENT OF THE FACTS NECESSARY TO AN
UNDERSTANDING OF THE QUESTION OF LAW DETERMINED
BY THE ORDER OF THE TRIAL COURT**

This case involves a rental dispute between Bryan K. Robertson (Plaintiff and Counter-Defendant hereunder, Petitioner and Appellant herein and hereinafter referred to as "Robertson"), the owner of a Hinds County rental property located at 8 River Run, Jackson, Mississippi, and leased by Jereme J. Foreman and Christopher J. Foreman (Defendants and Counter-Plaintiffs hereunder, Respondents and Appellees herein and hereinafter referred to as "the Foremans"). Robertson owned property which was leased by the Foremans and filed a Complaint for breach of the parties' lease agreement by failing to pay rent owed on and damages caused to his property by the Foremans. Robertson filed his Complaint on June 15, 2016.

The Foremans were later served with process of the Court pursuant to MRCP 4 and filed a timely *Motion For More Definite Statement, Affirmative Defenses, Answer And Counterclaim* on October 15,

2016, which was served on the undersigned Counsel by the MEC system. Said *Motion For More Definite Statement, Affirmative Defenses, Answer And Counterclaim* responded to the substantive portions of Robertson's *Complaint* by stating the Foremans were “without sufficient knowledge to confirm or deny the allegation[s]” of each paragraph and further asserted a counter-claim alleging breach of the parties' lease contract by Robertson under various statutory and common law theories as well as an associated claim for tortious interference with the parties' contractual relationship. In short, the parties all alleged claims against each other pursuant to the contractual lease agreement.

The Appellees' filed a *Motion for a Default Judgment* as to their counter-claim on November 19, 2015 after having the clerk make a docket entry of default. On November 30, 2015 and before the entry of any default judgment, Robertson filed his *Response To Motion For More Definite Statement, Answer To Counterclaim And Motion For Summary Judgment*. Robertson simultaneously filed his *Response To Motion For Default Judgment*. Thereafter, the Foremans set their *Motion for a Default Judgment* for a hearing held in open court but off-the-record on December 17, 2015, wherein the trial court summarily granted the requested default judgment. Said order, however, was not presented to the trial court by the Foremans and entered until January 27, 2017, some thirteen months and ten days later. Said Order further struck Robertson's responsive pleadings and a copy of same is attached hereto as Exhibit “A.”

Thereafter, Robertson filed a timely *Motion To Set Aside Default Judgment Or In The Alternative For A New Trial Or In The Alternative To Reconsider* (a copy of which is attached hereto as Exhibit “B”) and noticed his motion for hearing on May 4, 2017. No responsive pleading was filed by the Foremans. At said hearing, Robertson ensured a record of the proceeding was made, the matter was heard and the trial court summarily denied Robertson's *Motion To Set Aside Default Judgment Or In The Alternative For A New Trial Or In The Alternative To Reconsider*. Counsel for Robertson thereafter promptly drafted and submitted the Order (attached hereto as Exhibit “C”) denying his *Motion To Set Aside Default Judgment Or In The Alternative For A New Trial Or In The Alternative To Reconsider*, which was entered on May 18, 2017.

No findings on the record were made pursuant to the case law and other authorities cited in Robertson's *Motion To Set Aside Default Judgment Or In The Alternative For A New Trial Or In The Alternative To Reconsider* (See Exhibit "B") on which a default judgment can be granted and Appellant prays the Court will grant him an interlocutory appeal and upon consideration, reverse the lower court's granting of a default judgment.

STATEMENT OF THE QUESTION OF LAW PRESENTED

Whether the trial court erred in granting the Formans a default judgment and further erred in denying Robertson's *Motion To Set Aside Default Judgment Or In The Alternative For A New Trial Or In The Alternative To Reconsider*.

STATEMENT OF THE CURRENT STATUS OF THE CASE

This case is not set for trial. Robertson's initial *Complaint* is still pending as he awaits the outcome of the present issue. The Foremans have been granted a default judgment; however, said judgment is not final and is interlocutory pursuant to MRCP 54(B) and the absence of any findings by the lower court pursuant to said Rule renders the default judgment "subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties."

In light of the foregoing, an Interlocutory Appeal pursuant to MRAP 5(A) and the setting aside of the trial court's *Default Judgment* is necessary in this case to:

1. Materially advance the termination of the litigation and avoid exceptional expense to the parties insofar as the litigation as it relates to both parties involves the same property and lease agreement and any substantiated claims of one party will necessarily mitigate any substantiated claims of the other;
2. Protect a party from substantial and irreparable injury insofar as Robertson, the owner of the property is very likely to suffer said injuries if any of his claims for damages are deemed viable and compensable at trial and given that the parties claims directly compete, comparative negligence could be a consideration when Robertson's claim is submitted to the ultimate finder of fact;

3. Resolve an issue of general importance in the administration of justice, which, in this case involves the Courts disfavor of default judgments, it's preference that parties claims be resolved by trial on the merits and to promote judicial economy in the case at bar insofar as the parties claims directly compete.

STATEMENT AS TO WHY THE PETITION FOR INTERLOCUTORY APPEAL IS TIMELY

The trial court order from which the interlocutory appeal is sought was entered on May 18, 2017. This Petition is filed within the time constraints of the MRAP.

OTHER RELATED CASES OR PETITIONS FOR INTERLOCUTORY APPEAL PENDING BEFORE THE APPELLATE COURT AND KNOWN TO THE PETITIONER

None.

ANNEXED RELATED FINDINGS OF FACT, CONCLUSIONS OF LAW OR OPINION

While the actual order granting a default judgment and the order denying Robertson's *Motion To Set Aside Default Judgment Or In The Alternative For A New Trial Or In The Alternative To Reconsider* are attached hereto as Exhibits, the lower court neither requested counsel draft nor individually drafted any findings of fact, conclusions of law or opinions with regard to its rulings on the default judgment or the motion to set aside. Furthermore, no record was made of the Foremans' hearing on their motion for a default. However, a complete record was requested to be made by Robertson's counsel at his hearing on the *Motion To Set Aside Default Judgment Or In The Alternative For A New Trial Or In The Alternative To Reconsider*, and said record as well as the pleadings in this cause should be reviewed by the Court if this appeal is granted and will be designated as part of the record for said review.

STATEMENT OF THE LAW AND ANALYSIS

Appellant would incorporate his *Motion To Set Aside Default Judgment Or In The Alternative For A New Trial Or In The Alternative To Reconsider* (Exhibit "B" hereto), for a statement of the law and Robertson's analysis thereof.

CONCLUSION

The parties to this case have directly competing claims. These claims compete to the extent that the

mere existence of Robertson's complaint constitutes a denial of the Foremans' counter-claim. The default judgment granted in the trial court was not granted based on the appropriate three-prong test as identified in Exhibit "B" hereto and a default judgment granted on a counter-claim when a response thereto was made a mere 15 days late is highly prejudicial to the Appellant in light of the absolute lack of prejudice shown in the record to the Formans claim resulting from the 15 day delay they endured due to the delayed filing. For the reasons stated and incorporated herein Petitioner requests this Court accept the interlocutory appeal, consider this cause, and upon consideration, that this honorable Court will reverse the trial court's granting of a default judgment and remand the matter to the lower court for a trial on the merits of all parties' claims.

RESPECTFULLY SUBMITTED, this the 8th day of June, 2017.

BRYAN K. ROBERTSON

BY: 

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COUNSEL FOR BRYAN K. ROBERTSON

CERTIFICATE OF SERVICE

I, David L. Brewer, of counsel for Bryan K. Robertson, do hereby certify that I have this day served via United States mail, postage prepaid, a true and correct copy of the above-and foregoing pleading to:

Judge LaRita M Cooper-Stokes
Hinds County Court Judge
PO Box 327
Jackson, MS 39205-0327

Martin De Porres Perkins, Esq.
Flowers Watkins & Perkins
PO Box 2646
Jackson, MS 39207-2646

SO CERTIFIED, this the 8th day of June, 2017.



DAVID LEE BREWER

FILED

**IN THE COUNTY COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY MISSISSIPPI**

ZACK WALLACE, CIRCUIT CLERK
BY _____ J.C.

BRYAN K. ROBERTSON

PLAINTIFF

VS.

CAUSE NO. : 15-1757

**JEREME J. FOREMAN
CHRISTOPHER J. FOREMAN**

DEFENDANTS

ORDER

1. The Plaintiff filed this matter on 15 June 2015.
2. Summons was issued to the defendants on 15 September 2015.
3. The defendants filed a Motion for More Definite Statement, Answer Affirmative Defenses and Counterclaimed in due course on 15 October 2015.
4. The Plaintiff failed to file an answer to Defendants' counterclaim within the allotted time period.
5. The Defendants filed Application to Clerk for entry of Default and Supporting Affidavit on 19 November 2015.
6. A Clerk's entry of Default was filed on 19 November 2015.
7. Plaintiff filed an answer to Defendants' Counterclaim on November 30, 2015.
8. This matter came on for hearing Thursday, December 17, 2016 on Motion for Default Judgment.
9. The Court finds Defendants' Motion for Default Judgment is well taken and further that the Plaintiff's Answer, Motion for Summary Judgment be stricken for the docket as untimely filed and the Response to More Definite Statement be deemed moot.

IT IS SO ORDERED AND ADJUDGED that a default be entered against the Plaintiff in this matter this the 27th day of January 2017.

[Handwritten Signature]
County Court Judge

Prepared by:
Martin D. Poshie, #100340
4670 McWills, Jackson Mississippi
martindposhie@gmail.com

Approved by:
[Handwritten Signature]
David Lee Bowser

EXHIBIT "A"

**IN THE COUNTY COURT OF THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, STATE OF MISSISSIPPI**

BRYAN K. ROBERTSON

PLAINTIFF/COUNTER-DEFENDANT

VS.

CAUSE NO.: 15-1757

**JEREME J. FOREMAN AND
CHRISTOPHER J. FOREMAN**

DEFENDANT/COUNTER-PLAINTIFF

**MOTION TO SET ASIDE DEFAULT JUDGMENT
OR IN THE ALTERNATIVE FOR A NEW TRIAL
OR IN THE ALTERNATIVE TO RECONSIDER**

COMES NOW, the Plaintiff/Counter-Defendant, Bryan L. Robertson, and files this his *Motion To Set Aside Default Judgment Or In The Alternative For A New Trial Or In The Alternative To Reconsider* in this cause and would show unto this honorable Court as follows:

FACTS:

1. Plaintiff/Counter-Defendant filed this cause of action on June 15, 2015.
2. Defendants/Counter-Plaintiffs were served with process of this Court on September 21, 2015.
3. Defendants/Counter-Plaintiffs filed their *Motion For A More Definite Statement, Affirmative Defenses, Answer And Counterclaim* on October 15, 2015.
4. *Application to Clerk For Entry Of Default, Supporting Affidavit And Motion For Default Judgment* were filed by Defendants/Counter-Plaintiffs on November 19, 2015.
5. *Response To Motion For More Definite Statement, Answer To Counterclaim And Motion For Summary Judgment* was filed herein by Plaintiff/Counter-Defendant on November 30, 2016, a mere 45 days after service of the counterclaim is alleged to have been had in this cause.
6. Defendants/Counter-Plaintiffs filed a *Motion for Damages* on December 9, 2016.
7. On December 9, 2016, Defendants/Counter-Plaintiffs noticed a hearing on the *Motion*

for a Default Judgment and Motion for Damages for December 17, 2015.

8. An off-the-record hearing was conducted by the court wherein the court summarily granted a Default Judgment without making any express (on the record) findings of fact or law on Defendants'/Counter Plaintiffs' *Motion For Default Judgment* on December 17, 2015.

9. On October 26, 2016, some ten and one half months after said hearing, counsel for Defendants/Counter-Plaintiffs forwarded a proposed *Order* to counsel for Plaintiff/Counter-Defendant and the undersigned approved of same as to form only and returned it to counsel for Defendants/Counter-Plaintiffs on November 2, 2016.

10. Finally, one year, one month and ten days after the off-the-record hearing on the *Motion for a Default Judgment*, an *Order Granting A Default Judgment* was entered by the court on January 27, 2017, from which, Plaintiff/Counter-Defendant files this his timely Motion for relief from said Order.

**REQUEST FOR RELIEF FROM DEFAULT
JUDGMENT PURSUANT TO MRCP 55(C)**

11. MRCP 55(c) provides, in relevant part, that "For good cause shown, the court may set aside an entry of default" and in support thereof, Plaintiff/Counter-Defendant would show as follows:

12. Counter-Defendant's counsel was served an electronic notice that the Foreman's counsel had filed a *Motion for a More Definite Statement, an Answer and a Counterclaim* on or shortly after October 15, 2015; however, upon initial receipt of same, the MEC system would not allow the undersigned to view the filed pleading.

13. The undersigned, being a neophyte with regard to the MEC, assumed that a hard-copy of the aforementioned documents would be sent via U.S. Mail and planned to make a timely response upon receipt of a physical copy of said documents; however, due to the fact that no physical mailing was forthcoming or required, and in light of the fact that the undersigned was unusually overburdened

with litigation and family matters, the undersigned neglected to respond to the Counterclaim filed herein.

14. That the lack of a timely written answer in this cause is not prejudicial to the Defendants/Counter-Plaintiffs in light of the fact that a *de facto* answer exists in the initial Complaint filed in this cause. In essence, the pleadings filed herein conflict to the extent that each party's claims for damages must be construed as a denial of the other party's claims.

15. That Rule 4 of the MRCP provides that "[a]fter a complaint is filed, the clerk is required to issue a separate summons for each defendant. . . . The summons must contain the information required by Rule 4(b), which requires the summons to notify the defendant that, among other things, a failure to appear will result in a judgment by default." In this cause, the Counter-Defendant made an "appearance" herein as required by Rule 4 by filing his Complaint; absolutely no notice of the possibility of a default judgment was provided pursuant to Rule 4; and, no summons was issued or served with the Counterclaim, which is required to seek a default judgment. In short, a default judgment on a counterclaim is an inappropriate remedy in this cause.

16. That no default judgment had been entered and Plaintiff/Counter-Defendant did, on November 30, 2016, file an *Answer to the Counterclaim* as well as a *Motion for Summary Judgment* as to said counterclaim and the entry of a default judgment was therefore unnecessary. Moreover, Mississippi jurisprudence disfavors deciding cases without considering them on the merits as outlined in *Flagstar Bank, FSB v. Danos*, 46 So.3d 348 (Miss.App. 2008):

The default judgment provides a means to deal with a party against whom affirmative relief is sought who does nothing or very little to respond to the complaint. On the other hand, however, there is a strong desire to decide cases on the merits rather than on procedural violations. *Manning v. Lovett*, 228 Miss. 191, 195, 87 So.2d 494, 496 (1956). For this reason, most courts, including our supreme court, disfavor the entry of a default judgment. This is a reflection of the often stated preference for resolving disputes on the merits. " Default is not favored as a way to settle lawsuits. It is the policy of our system of judicial administration to favor disposition of cases on their merits." *Wheat v. Eakin*, 491 So.2d 523, 526 (Miss.1986) (citing *Bell*, 467 So.2d at 661).

17. That in light of the foregoing, a the entry of an *Order Granting Default Judgment* was procedurally improper, unnecessary because a response has been made and would be made in contravention of our states' disfavor of judgments which are not made on the merits. As such, for each reason outlined herein as well as all reasons collectively, Counter-Defendant prays the Court will set aside the Default Judgment entered herein pursuant to MRCP 55(c) insofar as good cause exists to set aside same.

**BRYAN K. ROBERTSON MEETS THE THREE-PRONG STANDARD
TO SET ASIDE A DEFAULT JUDGMENT ORDER**

18. The Supreme Court has acknowledged three prongs to consider in a motion to set aside a default judgment, which are (1) the nature and legitimacy of the defendant's reasons for his default, i.e., whether the defendant has good cause for default, (2) whether [the] defendant in fact has a colorable defense to the merits of the claim, and (3) the nature and extent of prejudice which may be suffered by the plaintiff if the default judgment is set aside. *H & W Transfer & Cartage Serv., Inc.*, 511 So.2d 895, 898 (Miss. 1987).

Prong One – Good Cause

19. For the reasons enumerated in the foregoing paragraphs and as may be shown at a hearing on the record of this matter, it is apparent that the Defendants/Counter-Plaintiff's were not at all prejudiced by the mere 15 day delay in the filing of a response to the counter-claim, that counsel for Plaintiff/Counter-Defendant was unable to view the pleading in a timely manner due to technical problems with the MEC, the responsive pleading was filed prior to the entry of the Order granting default, the Complaint itself serves as a *de facto* responsive pleading as anticipated by the MRCP and the short delay in responding was due in part to accident or mistake. All which, constitute good cause for setting aside the Order granting a default judgment.

Prong Two – Whether Bryan K. Robertson Has A Colorable Defense

20. This cause of action was filed by Bryan K. Robertson. Bryan K. Robertson owns the property which is the subject of this litigation and Defendants admit they were lessees of the premises in their answer to the initial complaint. Both parties allege a breach of contract involving the same contract. Taken all these facts as a whole, it is obvious that Bryan K. Robertson has a colorable defense to the counterclaim filed herein.

Prong Three- Prejudice to Defendants

21. Absolutely no prejudice to the Defendants' case can be shown by the mere 15 day delay in responding to their counter-claim. Moreover, if any delay in this case has been prejudicial to any of the parties, the unexplained ten and one half month delay in submitting the Order which is the subject of this pleading would be significantly more prejudicial to all parties.

22. Applying the appropriate test as espoused by our State Supreme Court, there is no justification to let the Order granting default stand.

**REQUEST FOR RELIEF FROM DEFAULT
JUDGMENT PURSUANT TO MRCP 60(B)**

23. MRCP 55(c) also allows relief from a default judgment pursuant to Rule 60(b) which states, in relevant part:

(b) Mistakes; inadvertence; newly discovered evidence; fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:(1) fraud, misrepresentation, or other misconduct of an adverse party;(2) accident or mistake;(3) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);(4) the judgment is void;(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;(6) any other reason justifying relief from the judgment.

24. Plaintiff/Counter-Defendant specifically asserts that the filing of a response to the counterclaim was fifteen days late due to "accident or mistake" as specified in paragraphs 12, 13 and 14, above; that upon the filing of an answer to the counterclaim, which was 45 days after the alleged

service of the counterclaim and 18 days prior to the hearing on the Motion for Default Judgment, it was “no longer equitable that the judgment should have prospective application”; and, that the totality of the circumstances in this cause constitute “other reason[s] justifying relief from the judgment.”

25. Furthermore, default judgments are not favored by the Courts. The Supreme Court has stated that “where there is a reasonable doubt as to whether or not a default judgment should be vacated, the doubt should be resolved in favor of opening the judgment and hearing the case on its merits.” *McCain v. Dauzat*, 791 So.2d 839, 843 (Miss.2001). There is an abundance of reasonable doubt in this matter insofar as the counter-claimants herein are claiming damages for facts and circumstances relating to property to which they hold no title or other ownership interest and therefore they have no standing to assert a claim, there are multiple claims herein which compete and should be resolved as anticipated by MRCP 54, and the Court should vacate the entry of default.

**REQUEST FOR RELIEF FROM DEFAULT
JUDGMENT PURSUANT TO MRCP 54(B)**

26. MRCP 54(B) provides guidance in cases involving counterclaims between parties stating:

When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an expressed determination that there is no just reason for delay and upon an expressed direction for the entry of the judgment. In the absence of such determination and direction, any order or other form of decision, however designated which adjudicates fewer than all of the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

27. The instant case involves an initial claim for damages to the property owned by the Plaintiff/Counter-Defendant and a counter-claim by the Defendants/Counter-Plaintiffs. As such, for a judgment to be final, the Court must make an expressed determination that there is no just reason for

delay. In the absence of an express or written record, no express findings exist regarding a default judgment in this case, the Plaintiff's/Counter Defendant's initial claim is still pending and the "Order" granting a default judgment is subject "to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties" and is not final.

28. In light of MRCP 54(b)'s specific provisions and requirements due to the counter-claims pending herein and in the absence of any express written record in this matter, the previous order of this Court should be set aside.

**REQUEST FOR RELIEF FROM DEFAULT
JUDGMENT PURSUANT TO MRCP 59(A)**

29. For the reasons hereinabove stated, the Plaintiff/Counter-Defendant submits that an additional appropriate alternative form of relief would be in granting this his *Motion for a New Trial*, which would necessitate setting aside the Order granting default.

**REQUEST FOR RELIEF FROM DEFAULT
JUDGMENT PURSUANT TO MRCP 59(E)**

30. In the event that none of the foregoing requests for relief are granted, Plaintiff/Counter-Defendant submits that the Order entered by this Court on January 27, 2017 should be amended in that it erroneously states "and further that the Plaintiffs Answer, Motion for Summary Judgment be stricken for the docket as untimely filed and the Response to More Definite Statement be deemed moot."

31. At the hearing held off-the-record over one year prior, the undersigned recollects that the Court merely summarily granted a default and did not address the Motion for Damages and did not order any pleadings to be stricken.

32. In light of the foregoing, the Court should set aside it's previous order and let this cause proceed to trial on the merits; however, if for some reason the Court does not grant relief pursuant to the body of reasons hereinabove enumerated, the Court should amend its order appropriately by removing any reference to striking any pleading.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff/Counter-Defendant requests that this Court hear this matter and grant the relief requested herein and/or any such other relief to which the movant is entitled at law or equity.

RESPECTFULLY SUBMITTED, this the 6th day of February, 2017.

BRYAN K. ROBERTSON



BY: DAVID LEE BREWER

OF COUNSEL:

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Fax: 866.545.7876

CERTIFICATE OF SERVICE

I, David L. Brewer, do hereby certify that I have this day caused a copy of the foregoing document to be delivered via the MEC system to Hon. Martin D. Perkins.

SO CERTIFIED, this the 6th day of February, 2017.



DAVID LEE BREWER

**IN THE COUNTY COURT OF THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, STATE OF MISSISSIPPI**

BRYAN K. ROBERTSON

PLAINTIFF

VS.

CAUSE NO.: 15-1757

**JEREME J. FOREMAN AND
CHRISTOPHER J. FOREMAN**

DEFENDANT

ORDER


THIS CAUSE, having come on for hearing on the 4th day of May, 2017 on the *Plaintiff/Counter-Defendant's Motion To Set Aside Default Judgment Or In The Alternative For A New Trial Or In the Alternative To Reconsider*, and the Court having considered the same does find that said *Motion* is not well-taken and for the reasons cited on the record, should be and hereby is denied.

SO ORDERED AND ADJUDGED this the 18th day of May, 2017



COUNTY COURT JUDGE

OF COUNSEL:



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EXHIBIT "C"