

**NEWSLETTER OF THE REAL PROPERTY SECTION
OF THE MISSISSIPPI BAR**

NOVEMBER 2015

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MESSAGE FROM CHAIR

As lawyers, our jobs can be the source of a lot of stress. Job stress, when combined with holiday stress, family dynamics, economic, health and other issues, has made suicide in our profession much more prevalent than we realize. In fiscal year 2014-2015, there were seven deaths of attorneys attributable to suicide, and that is only those of which we are aware. To address this crisis, the Real Property Section will host a QPR (Question, Persuade, and Refer) training program, teaching you three simple steps that anyone can learn to help save a life from suicide. This event will be held on Tuesday, December 8, 2015, at the Mississippi Bar Center from 9:00 -11:00 am. Attendance at the QPR training program will earn you two ethics hours of CLE credit. Just as people trained in CPR and the Heimlich maneuver help save thousands of lives each year, people trained in QPR learn how to recognize the warning signs of a suicide crisis and how to question, persuade, and refer someone to help. Each year thousands of Americans, like you, are saying “Yes” to saving the life of a friend, colleague, sibling, or neighbor. According to the Surgeon General’s National Strategy for Suicide Prevention (2001), a gatekeeper is someone in a position to recognize a crisis and the warning signs that someone may be contemplating suicide. As a QPR-trained Gatekeeper you will learn to: a) recognize the warning signs of suicide; b) know how to offer hope; and c) know how to get help and save a life.

I urge you to attend this program which truly can be a life saver. Hope to see you there.

QUIZ

Borrower owns an apartment building in which the apartments are leased for residential purposes to individuals. Borrower borrows loan from Lender. The loan is secured by a deed of trust on the real property and all personal property of Borrower. Borrower then leases an apartment to Tenant, who gives a security deposit to Borrower. Borrower defaults on its loan and Lender forecloses on the real and personal property collateral. Tenant’s lease is terminated by the foreclosure. Tenant makes demand on Lender for return of its security deposit. Who has the right to the security deposit, Tenant, Borrower or Lender?

WITHHOLDING STATUTE AMENDED

Section 27-7-308 of the Mississippi Code has been amended effective July 1, 2015. Prior to July 1, when the seller of real property in excess of \$100,000 was a foreign (not Mississippi) entity, the buyer had the obligation to withhold five percent of the purchase price and pay it to the Mississippi Department of Revenue for the seller’s benefit. The purpose of this statute was to try to collect any income tax that the seller may owe as a result of the sale. The seller was entitled to a credit on its income taxes for the amount withheld. The buyer was personally liable for the amount that should have been withheld and paid to the Department of Revenue if seller did not pay its income taxes.

Beginning July 1, 2015, the seller has the obligation to withhold five percent and pay this to the Department of Revenue. This represents a compromise. The bill to amend Section 27-7-308 originally provided that closing agents had the obligation to collect the

five percent at closing and pay it to the Department of Revenue. The final version of the bill provides that brokers and closing agents have no responsibility to comply with the statute and no liability if the seller fails to comply.

As long as the seller plans to pay its income taxes when due, why would a seller withhold five percent at closing and pay it to the Department of Revenue at closing? Because of the possibility that the Department of Revenue could impose penalties and interest if the seller did not withhold and pay the five percent at the time of closing.

RECENT CASES

Mississippi Supreme Court Revives Action for Inverse Condemnation

Ward Gulfport Properties, L.P v. Mississippi State Highway Comm'n, Miss. Supreme Court, No. 2014-CA-01001-SCT, 2015 WL 6388832, 2015 Miss. LEXIS 530 (Oct. 22, 2015). Ward owned 1300 acres of land in Harrison County, north of Gulfport. The Mississippi State Highway Commission (“MSHC”) wanted to build a road across wetlands. In order to build the road, MSHC had to obtain a permit from the Army Corp of Engineers (“ACE”). Without consulting Ward, MSHC pledged Ward’s property to ACE for wetlands mitigation. ACE issued the permit to MSHC subject to the condition that MSHC obtain rights to Ward’s property. MSHC filed an action to acquire Ward’s property through eminent domain. Ward filed an action in federal court against ACE to set aside the permit, and an action against MSHC in the Circuit Court of Harrison County for damages from taking. The federal district court vacated MSHC’s permit. In Ward’s state court action, MSHC filed a motion for summary judgment on the grounds that since MSHC’s permit had been vacated, the taking was only temporary, and that therefore Ward was not entitled to damages. The Circuit Court granted the MSHC’s motion for summary judgment. On appeal the Mississippi Supreme Court, in a unanimous decision by Justice Randolph, reversed the Circuit Court’s grant of summary judgment and remanded the case to the circuit court for further proceedings. Justice Randolph wrote that the Circuit Court failed to distinguish between a temporary moratorium on building, which is not a taking, and a permanent taking that was cut short (in this case by the revocation of the permit), which is compensable, and that a genuine issue of fact existed whether the taking was a permanent taking cut short. The Supreme Court also found that Ward had submitted sufficient evidence of causation and damages to defeat MSHC’s motion for summary judgment. The Supreme Court remanded the case back to the Circuit Court for proceedings consistent with its opinion.

Note 1: The source of takings law under the United States Constitution are the Fifth Amendment and the Fourteenth Amendment. The Fifth Amendment provides in relevant part that no person shall “be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.” The Fourteenth Amendment provides in relevant part that “No State shall ...deprive any person of life, liberty or property, without due process of law;...” The Mississippi Constitution also provides protection against takings. Section 17 of the Mississippi Constitution provides in relevant part that “Private property shall not be taken or damaged for public

use, except on due compensation being first made to the owner or owners thereof, in a manner to be prescribed by law;...” In this decision the Mississippi Supreme Court only discussed federal case law.

Note 2: This case does not hold that a taking took place. It only holds that the trial court erred in granting the MSHC’s motion for summary judgment. Nevertheless, the editor believes that this case is significant for several reasons. First, it is the first time in a long time that the Mississippi Supreme Court has addressed the takings doctrine in a published case, and the first time that the Court has addressed the United States Supreme Court’s most recent decisions in this area. Most cases asserting a taking or inverse condemnation are brought in federal court rather than state court, in part because most of the case law is federal law. Second, the case is significant because it shows the type of proof that a plaintiff would need to have to survive a motion for summary judgment. Among the facts that the Mississippi Supreme Court found that Ward established by affidavit and deposition testimony were that MSHC had suggested to ACE using Ward’s land as mitigation lands without consulting Ward, that potential purchasers of Ward’s land lost interest once the ACE issued, the permit to MSHC, that Ward’s expert was ready to testify about Ward’s damages, and that MSHC had opposed Ward’s applications for a water permit for the land and Ward’s application to the City of Gulfport’s Planning Department. This decision arguably provides a valuable road map for future takings cases in state courts.

Note 3: The United States Supreme Court has issued numerous decisions over the years about what constitutes a taking. The cases are fact-specific and difficult to synthesize and are reputed to be difficult to win. On the other hand, as one respected land use attorney has reminded the editor, a prevailing plaintiff in a takings case is usually entitled to collect attorneys’ fees. The editor’s limited familiarity with these cases suggests that the Mississippi Supreme Court did a good job analyzing the relevant cases and got this decision right.

Note 4: This case has not been released for publication yet, and so it is possible that the Mississippi Supreme Court could change the opinion. However, it was a unanimous decision.

Is the Grantor of a Deed of Trust or the Owner of the Land
Entitled to the Surplus from Foreclosure?

Hinton v. Rolison, Miss. Supreme Court, No. 2013-CA-02153-SCT 2015, 2015 WL 5855522, 2015 Miss. LEXIS, 519 (Oct. 15, 2015) (*en banc*). Hinton in 2004 executed a deed of trust on land in Lamar County to Wells Fargo. The deed of trust provided that in the event of foreclosure, any surplus from the foreclosure sale would be paid to the grantor or his assigns. In 2007, Hinton conveyed the land to one corporation, which in turn conveyed the land to another corporation. The second corporation conveyed the land to Hinton's children. In 2013 Hinton and Rolison entered into an agreement to settle a dispute. As part of that agreement, the second corporation and Hinton’s children executed a quitclaim deed to the land to Rolison. The quitclaim deed provided that the grantors conveyed all of their “right, title and interest” in the land to Rolison. All of these

conveyances were subject to the deed of trust that Hinton granted to Wells Fargo. Wells Fargo foreclosed on the deed of trust in 2013. Rolison purchased the land at the foreclosure sale for an amount in excess of the debt to Wells Fargo. Both Hinton and Rolison claimed that they were entitled to the surplus. Wells Fargo interpleaded the surplus into the Chancery Court of Lamar County. Hinton argued that he was entitled to the surplus under the terms of the deed of trust. Rolison argued that Hinton had conveyed his right to the surplus when he conveyed the property, and that he (Rolison) was entitled to the surplus since he was the owner of the property at the time of the foreclosure sale. Hinton responded that his conveyance of the land did not divest him of his right to the surplus under the deed of trust. The chancellor held that Hinton's deed and the subsequent conveyances served to transfer the right to receive the surplus to Rolison, and granted Rolison's motion for judgment on the pleadings. On appeal the Mississippi Supreme Court, in 6-3 opinion by Justice Randolph, affirmed. Justice Randolph wrote that under the terms of the quitclaim deed, and Section 89-1-39, which defines the effect of a quitclaim deed, Hinton and his successors in interest had conveyed all of their rights in the land, including the right to receive the surplus from a foreclosure sale, to Rolison. Rolison therefore was entitled to the surplus.

Note 1: Justice Dickerson, joined by two other justices, dissented. Justice Dickerson wrote that it was inappropriate to grant a judgment on the pleadings because the 2007 deed from Hinton was not in the record and Hinton was not a party to the 2013 quitclaim deed. Justice Dickerson also questioned whether the grantors in the 2013 quitclaim deed intended to assign the right to receive the surplus.

Note 2: The opinion does not give any details about the 2007 deed from Hinton or the other deeds in the chain of title to Hinton's children.

Note 3: Despite the particularities of this case, the editor thinks that this case is support for the argument that if the grantor of the deed of trust conveys the land subject to the deed of trust, and the grantor conveys all of his rights and does not reserve the right to a surplus after foreclosure, then the grantee is entitled to the surplus.

Note 4: This case has not been released for publication yet, and so it is possible that the Mississippi Supreme Court could change the opinion.

Refinancing Lender Denied Subrogation

Community Trust Bank v. First National Bank of Clarksdale, 150 So. 3d 683 (Miss. 2014). In 2003, First National Bank of Oxford ("FNB Oxford") loaned a company owned by Abner White \$272,922.71 secured by first mortgage on land and improvements located in Oxford, Mississippi. In 2005, Community Trust Bank loaned another company owned by Abner \$361,616 secured by a second mortgage on the same property. In 2007, in connection his divorce settlement, Abner conveyed the land to his former wife, Karen White. First National Bank of Clarksdale ("FNB Clarksdale") loaned Karen \$808,893 secured by a deed of trust on the property. At this point FNB Oxford was in first priority, and Community Trust Bank was second. FNB Clarksdale retained an attorney to act as

closing attorney and issue a title insurance policy insuring its deed of trust. The attorney found the existing deed of trust to Community Trust Bank. Abner allegedly told the attorney that Abner was going to “move” this deed of trust to a “separate piece of collateral,” but this was not done. The attorney did not disclose the Community Trust Bank deed of trust as an exception on his title insurance commitment to FNB Clarksdale. At the loan closing, FNB Clarksdale, anticipating that its deed of trust would be a first priority position and unaware of the existing deed of trust to Community Trust Bank, applied \$205,448 of the \$808,893 loan to Karen to pay off the first priority deed of trust to FNB Oxford. The title insurance company issued its loan policy insuring FNB Clarksdale’s first priority without reference to Community Trust Bank’s prior deed of trust. In 2010 the loan to Community Trust Bank went into default. At this point FNB Clarksdale and Community Trust Bank became aware of each other’s deed of trust. Community Trust Bank commenced foreclosure proceedings. FNB Clarksdale filed an action in the Chancery Court of Lafayette County, Mississippi, claiming that it was entitled to be equitably subrogated to the position of FNB Oxford. The Chancery Court held that FNB Clarksdale was entitled to be equitably subrogated to the priority of FNB Oxford, to the extent that FNB Clarksdale paid off FNB Oxford, \$205,448. The chancellor summarized what he believed to be the relevant law as follows: “...If a junior lienholder would not be prejudiced and would essentially be put in the same position he held upon his obtaining judgment, or here the case is deed of trust, equitable subrogation may be applied. To allow the junior lienholder to benefit from the other’s mistake is inconsistent with the principals [sic] of equity and justice.” In other words, the chancellor would have allowed the refinancing lender, FNB Clarksdale, to “step into the shoes” of the lender whose loan it paid off, FNB Oxford, and succeed to FNB Oxford’s first priority. The chancellor determined that the attorney who issued the title commitment and closed the loan was not the attorney for FNB Clarksdale, and even if he were, his knowledge of the deed of trust to Community Trust Bank would not be imputed to FNB Clarksdale. On appeal by Community Trust Bank, the Mississippi Supreme Court, in a unanimous opinion by Justice Kitchens, reversed and rendered judgment for Community Trust Bank. Equitable subrogation “is awarded only after carefully weighing all of the facts and circumstances and deciding what the fairest result would be.” Justice Kitchens wrote. In this case, Community Trust Bank would be prejudiced if FNB Clarksdale was entitled to equitable subrogation because FNB Clarksdale would be entitled to priority for the full amount that it paid in 2007 to pay off FNB Oxford, \$205,488, while the loan by FNB Oxford would have been paid down to \$12,000 by that time. Community Trust Bank further would be prejudiced because, instead of being second in priority to a loan to Abner, who operated a profitable business on the property, and thus an incentive to pay the loan, it was now second in priority to a loan to Karen, who did not operate a business on the property and therefore did not have the same incentive or ability to pay the loan. Another factor weighing against allowing equitable subrogation is that FNB Clarksdale and the title insurance company had constructive notice of Community Trust Bank’s recorded deed of trust, and that the title insurance company had actual notice of the existing deed of trust through its agent. FNB Clarksdale argued that the existence of title insurance should not be a factor to consider in determining whether equitable subrogation should be applied as between the two lenders, but Justice Kitchens, citing cases from other states, rejected this argument and wrote that the existence of title insurance, and the alleged negligence of the title insurance company, were factors

for a court to consider. The opinion concluded that “natural justice under the facts of this case inexorably weighs against subrogation...”

Note 1: There are several different types of subrogation. The classic definition in the Mississippi cases is that subrogation is the “substitution of one person in place of another, whether as a creditor or as the possessor of any rightful claim so that he who is substituted succeeds to the rights of the other in relation to the debt or claim, and its rights, remedies or securities.” *First National Bank v. Huff*, 441 So. 2d 1317, 1319 (Miss. 1983). There are two types of subrogation under the common law, conventional subrogation and equitable subrogation. Conventional subrogation is based on a contract. Cases involving conventional subrogation are rare. Most Mississippi cases involve equitable subrogation. Under the doctrine of equitable subrogation, a refinancing lender succeeds to the priority of the lender whose loan is being paid off. Cases in which the Mississippi Supreme Court has enforced the doctrine of equitable subrogation include *Home Owners Loan Corp. v. Moore*, 185 So. 253, 254 (Miss. 1939); *Prestridge v. Lazar*, 95 So. 837, 838 (Miss. 1923); and *Robertson v. Sullivan*, 59 So. 846, 847 (Miss. 1912). In addition to common-law subrogation, the Bankruptcy Code provides a right of subrogation. 11 U.S.C. § 509.

Note 2: One of the best analyses of Mississippi law of equitable subrogation is in a bankruptcy case by Judge Olack in *In re Shavers*, 418 B.R. 589, 605-08 (Bankr. S.D. Miss. 2009). While noting that cases regarding equitable subrogation are highly fact-specific, Judge Olack wrote that three elementary principles of Mississippi law are important to the subject of equitable subrogation: “First, constructive notice will not *per se* bar application of equitable subrogation, although actual notice of an intervening lien will. [citations omitted] Second, culpable negligence, or wrongful conduct, by the party seeking equitable subrogation will bar application of the doctrine. [citations omitted] Third, injury or prejudice to the intervening lienholder will bar application of the doctrine.” The *Community Trust* case adds a new factor in emphasizing the issue of whether the intervening lender who seeks equitable subrogation had title insurance. The editor has not been able to find a prior case in which a Mississippi court took this issue into account when considering whether to permit subrogation.

Note 3: The *Community Trust* court had harsh words for the title insurance company, and clearly expects the title company to take the loss. For example, the court wrote that “principles of equity required consideration of the negligence of a title insurance company which bungled the transaction in the first place”; “[e]ither they insure it or they don’t. It is not the province of the court to relieve a title insurance company of its contractual obligation” (quoting from an Indiana court); “[i]t is strange equity indeed, which would protect [the title insurance company] from the results of its negligence at the expense of [the party opposing subrogation], which is totally innocent in the matter” (quoting from a Missouri court); and “Those title insurers are engaged in the very profitable business of assuring that their lending institution customers receive a clear title by insuring such. If the title insurer’s examiners bungle the title search, no matter how innocent the mistake may be, then the title insurers must ultimately be held liable” (quoting from a Kentucky court).

Note 4: The specific issue of whether a refinancing lender should “step into the shoes” of the lender whose loan is being paid off has been a hot topic in scholarly articles. Grant Nelson and Dale Whitman, the authors of the standard textbook and treatise on real estate

finance and the Restatement of Mortgages, take the position that equitable subrogation should be liberally applied in residential refinancings, without regard to the refinancing lender's actual or current knowledge of the intervening lien, so that consumers can save the cost of title insurance. G. Nelson & D. Whitman, *Adopting Restatement Subrogation Principles: Saving Billions of Dollars for Refinancing Homeowners*, 2006 B.Y.U. L. Rev. 305 (2006). This principle is incorporated in Sections 7.3 and Section 7.5 of the Restatement of Mortgages. An article by John C. Murray reports that while some states have adopted the Restatement position, most states have not. See John C. Murray, *Equitable Subrogation: Can a Refinancing Mortgagee Establish Priority over Intervening Liens?* 45 Real Prop. Tr. & Est. L.J. 249 (2010). Mr. Murray writes that courts generally take one of three positions: the Restatement position; the position that a refinancing lender with actual knowledge of the intervening lien is not entitled to equitable subrogation, but a lender with only constructive notice can seek equitable subrogation; and the position that one with actual or constructive notice of the intervening lien is not entitled to equitable subrogation. 45 Real Prop. Tr. & Est. L.J. at 251-52. The Mississippi cases addressing equitable subrogation cover a multitude of different fact situations, but the editor's reading of the cases is that the Mississippi courts generally take the second position, and that constructive notice of a prior lien will not be a bar to subrogation. If constructive notice kept a lender from asserting equitable subrogation, the doctrine would rarely be available.

Note 5: The *Community Trust* court repeatedly states that FNB Clarksdale was negligent and failed to check for liens. But that's not correct. The bank appeared to have acted diligently in that it asked the title insurance company's agent to check for liens, the agent issued a clean commitment, and the bank purchased the policy. What did the bank do wrong here? The court is imputing the knowledge of the agent of the title insurance company to the bank. The court is not deciding the case based on the actions of the two lenders, but upon the fact that the lender seeking subrogation obtained title insurance. In the editor's humble opinion, whether equitable subrogation should be permitted should be based on the actions and equities of the parties, and not whether one of them has title insurance. The case mentions that Community Bank did no title work at the time it took its deed of trust. Under the *Community Trust* court's analysis, the refinancing lender arguably is being punished for being diligent.

Hartman Deficiency Rule Applied to Deeds of Trust Securing Guaranties

Fleisher v. Southern AgCredit, 108 So. 3d 948 (Miss. Ct. App. 2012)(*en banc*). In order to appreciate this case, one needs to recall *Hartman v. McInnis*, 996 So. 2d 704 (Miss. 2007) (*en banc*). In *Hartman*, the Mississippi Supreme Court held that in order to be entitled to a deficiency on a note following a foreclosure, the foreclosing lender had to prove that it paid the fair market value of the property at the foreclosure sale. The *Hartman* court found that a bid based on an appraisal that was one year old was not sufficient to prove fair market value at the time of the sale, and thus the lender was not entitled to a deficiency after the foreclosure. After *Hartman*, it is the editor's impression that many attorneys think that in order to be entitled to a deficiency, the lender must have a current

appraisal, and bid the appraised amount at the foreclosure sale. The question remained, after *Hartman*, whether the same rule would apply to an action on a guaranty following foreclosure; in other words, if a lender had a deed of trust on land to secure a guaranty, foreclosed on the land for less than the amount due under the guaranty, and then brought an action against the guarantor for the balance due under the guaranty, would the lender be required to bid the appraised value at the foreclosure sale in order to preserve its right to go after the guarantor for any remaining balance, just like a deficiency action against the borrower on a promissory note? The *Fleisher* case answers this question in the affirmative.

In the *Fleisher* case, David Fleisher guaranteed four loans made by Southern AgCredit to four separate borrowers. Each loan was secured by property in Stone County. All four borrowers defaulted on their loans and filed bankruptcy. The lender had the stay lifted and foreclosed on three of the properties, but the borrower who owned the fourth property filed a plan of reorganization before the lender could have the stay lifted, thus keeping the lender from having the stay lifted. The lender filed an action against Fleisher on his guaranty in the Circuit Court of Stone County, and sought deficiencies on the three properties that it had foreclosed upon, and the full amount of the guaranty for the fourth property. Fleisher argued that the fair market value of the three properties exceeded the amount of the debt, and therefore the lender was not entitled to a deficiency. The Circuit Court of Stone County held that the lender had satisfied its burden of proving that it bid the fair market value of the property securing the three loans that were not in bankruptcy, and awarded the lender a judgment for \$351,300. The Circuit Court did not rule on the fourth loan since that borrower's case was still in bankruptcy. Fleisher appealed the Circuit Court's decision. The lender appealed the court's decision not to award a judgment against Fleisher on his guaranty of the fourth loan. On appeal the Mississippi Court of Appeals, in a 8-1 decision by Justice Fair with one justice concurring in the result only without opinion, and one justice dissenting without opinion, affirmed the Circuit Court's holding regarding the deficiency on the first three loans, but reversed the Circuit Court's decision not to award a deficiency on the fourth loan. The Circuit Court reasoned that it would be inequitable to award a judgment against Fleisher because the bankruptcy court could reinstate the loan or adjust the terms of the loan in a manner that benefited Fleisher. The Court of Appeals held that speculation about what the bankruptcy court would do in the future was not sufficient to deny the lender its contractual right to a judgment on the guaranty. The Court of Appeals remanded the case to the Circuit Court for a determination of the amount due by Fleisher on his guaranty of the fourth loan and the entry of a judgment in favor of the lender for that amount.

Note 1: The editor thinks that this case is significant because it not only addresses the issue of whether *Hartman* applies to post-foreclosure actions on guaranties, but also because it shows how the lower courts are applying *Hartman*. The issue of whether *Hartman* applies to an action on a guaranty when the lender does not foreclose also is important.

Note 2: This case has bad news and good news for lenders. The bad news is that if the lender forecloses and brings an action for the unpaid balance of the debt against a guarantor, the lender has to prove that it tried to recover the fair market value of the property by getting an appraisal and bidding the appraised amount. The good news is that

the *Fleisher* court showed more flexibility regarding the appraisal than the *Hartman* court did. In *Fleisher* the appraisals were more than more than two years old. On two of the properties the lender bid 98% of the appraised value, but on the other property the lender only bid 69% of the appraised value. The appraisals were prepared by an employee of the lender and not an independent third party.

Note 3: The Court of Appeals' decision in *Fleisher* was dated April 10, 2012. While the case is not fresh off the presses, it has had an unusual subsequent history. The Mississippi Supreme Court granted *Fleisher's* petition for certiorari on November 15, 2012, but dismissed the writ of certiorari on March 7, 2013.

NEW TITLE INSURANCE ENDORSEMENTS

The American Land Title Association has issued the following title insurance endorsements:

<u>ALTA NO.</u>	<u>NAME</u>	<u>EFFECTIVE</u>
9.6.1-06	Private Rights-Current Assessments Loan Policy	4/2/15
19.2-06	Contiguity – Specified Parcels	4/2/15
28.3-06	Encroachments – Boundaries and Easements – Described Improvement and Land Under Development	4/2/15
46-06	Options	8/1/15

Copies of these endorsements are on the ALTA website www.alta.org.

ANSWER TO QUIZ

Answer: The editor thinks that Tenant is probably entitled to the security deposit. Miss. Code Ann. § 89-8-21(2), part of the Residential Landlord-Tenant Act, provides in relevant part that the claim of a Tenant to a security deposit is prior to the claim of any creditor of the landlord. Arguably the result would be different in a lease not subject to the Residential Landlord-Tenant Act.

GENERAL

This Newsletter is a publication of the Real Property Section of The Mississippi Bar for the benefit of the Section's members. Members are welcomed and encouraged to send their corrections, comments, articles or news to the editor, Rod Clement, by mail to 188 East Capitol Street, Suite 400, Jackson, Mississippi 39201, or by email to rclement@babc.com. Although an earnest effort has been made to ensure the accuracy of the matters contained herein, no representation or warranty is made that the contents are comprehensive or without error. Summaries of cases or statutes are intended only to bring current issues to the attention of the Section's members for their further study and are not intended to and should not be relied upon by readers as authority for their own or their client's legal matters; rather, readers should review the full text of the cases or statutes referred to herein before relying on these cases or statutes in their own matters or in advising clients. All commentary reflects only the personal opinion of the editor and does not represent a position of the Real Property Section, The Mississippi Bar or the editor's law firm.