

**SEVENTH (7TH) CIRCUIT COURT  
SECOND JUDICIAL DISTRICT  
OF HINDS COUNTY, MISSISSIPPI**

**BETTY L. SMITH (FORMERLY HEARN)  
PLAINTIFF**

**Civil Action(s):  
Refiling: 25CH2:15-cv-000016  
25CH2:15-cv-000101**

**vs.**

**HINDS COUNTY BOARD OF SUPERVISORS  
SUPERVISORS ROBERT GRAHAM, BOBBY MCGOWAN,  
AND DEBORAH BUTLER-DIXON; DION QUINN (PUBLIC WORKS);  
THELMA OWENS (PRIVATE ACTOR);  
AND JOHN/JANE DOE(S)  
DEFENDANTS<sup>1</sup>**

**MOTION/PETITION TO RE-OPEN/FILE AND CONSOLIDATE  
CHANCERY CASES 25CH2:15-CV-000016 AND 25CH2:15-CV-000101,  
QUIET TITLE, INJUNCTIVE RELIEF, AND DAMAGES**

Comes now, Betty L. Smith (hereafter “Plaintiff”), *pro se*, to Re-Open/File and Consolidate Chancery Cases 25ch2:15-Cv-000016 and 25ch2:15-Cv-000101, to Quiet Title, and for Injunctive Relief and Damages, pursuant to Mississippi Constitution Art. 3, § 17, Fifth and Fourteenth Amendments to the U.S. Constitution, and all relevant Mississippi Codes, including §11-17-31 and §11-19-1. Both cases were dismissed, without prejudice, on August 28, 2023, alleging lack of prosecution, without notice to Plaintiff (Exhibit A). She will show: (1) this case centers upon three questions of law, (2) the dispute arises from Defendants’ misrepresentations, arbitrary and capricious due process abuses, and (3) said sanction, failure to prosecute, is unfair.

**I. Summary Statement**

Defendants failed to produce supporting Board Minutes or Orders, *as prescribed by law*, to support their slander upon Plaintiff, and her R-4 zoned, apartment business, private property.

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<sup>1</sup> Supervisors Tony Smith and Wanda Evers were excluded as Defendants. Plaintiff recommends their recusal due to potential conflicts. Mr. Smith and Plaintiff are family members. Also, during the nomination process, adding Smith Apartments to the National Registry of Historic Properties, Ms. Evers assisted with an interview, by Plaintiff and the Mississippi Department of Archives and History, of her now deceased father, Mr. Charles Evers. All others are included, consistent with law.

Under the color of law, Defendants misrepresented Plaintiff's property as "public" to use public resources for the private benefit of Ms. Owens (e.g., paved parking and additional uses). Plaintiff's driveway is .07 miles long. Defendants misrepresent this driveway as a legally acquired public road. It is not. Next, they colluded in criminal trespasses, *beyond* the .07 miles, onto Plaintiff's tenant parking lot. Without notice, Defendants arrived and destroyed a section of Plaintiff's business parking lot and installed a second paved entrance to the adjoining parcel of Ms. Owens. Two deputy sheriffs, accompanying Public Works supervisors, threatened Plaintiff with arrest, if she objected. This eliminated twelve (12) of twenty-four (24) crucially needed and contracted tenant parking spaces.

Plaintiff filed lawsuits, under diversity jurisdiction, in the U.S. District Court, to quiet title and for damages. That Court's Order stated, "The Court finds that [Plaintiff] sufficiently pleaded state-law property claims...and that the Defendants have not addressed those [state-law property] claims in their Rule 12(b)(6) motion." Specifically, Defendants failed to plead their condition precedent, in their Answer: "Smith Drive has been a public road since 1988, by prescription." Yet, Hinds County has kept Plaintiff's driveway, at .07 miles long, on their road inventory.

There are three issues at bar. Each is a question of law.

1. Any claim that Plaintiff's *.07 mile business driveway* was legally acquired, by prescription, or by any means, *must be denied*, and title confirmed to Plaintiff.
2. Any claim that Plaintiff's *tenant parking area, lying beyond said .07 miles* was legally acquired, by any means, *must be denied*.
3. All such claims are *barred by relevant law*, including, and not limited to, prescription, res judicata, and estoppel and *must be denied*. Additionally, all such criminal slander and trespasses upon Plaintiff, her title, business, and losses, acted upon and incited, are punishable by fines and imprisonment, and must be ejected, enjoined, and indemnified.

## II. Jurisdiction

4. This Court has jurisdiction to adjudicate civil and criminal claims against Board Supervisors, county employees, and the private actors with whom they collude (e.g., surveyor stake destruction), in related matters. Plaintiff's real property losses exceed \$250,000. Although she filed and maintained suits within all relevant statutes of limitations, all should be tolled. "The theory of equitable tolling provides that where a plaintiff's delay in filing is caused by the defendant's misrepresentation[s], the statute is tolled." *Smith v. Franklin Custodian Funds Inc.*, 726 So. 2d 144, 149 (¶19) (Miss. 1998).

## III. Plaintiff Denies She "Failed" to Prosecute

See Mississippi § 43-37-3 (1) (h).

If an interest in real property is to be acquired by exercise of power of eminent domain, formal condemnation proceedings shall be instituted. The acquiring authority **"shall" not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.**

5. Chancery, court of the Board, erred in misrepresenting Plaintiff as "carrying the burden." Chancery knew or should know that Defendants owned the burden. There is no set schedule for constitutional cases with exhaustingly contumacious elected officials, who can rely on their cognitive bias benefits and deep (tax) pockets, and cause delay to disguise such conduct.
6. Additionally, Chancery, on its own motion, although dismissed without prejudice, without citing any grounds, *prejudicially* maligned Plaintiff, branding and burdening her, financially and otherwise, by invoking a "failure to prosecute" claim. Yet, dockets in the State, U.S. District, and U.S. Supreme court, establish the exhaustive expense, time, filings, and efforts of Plaintiff. As already found by the federal court, "only" the Defendants' have failed to prosecute, again<sup>2</sup>.

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<sup>2</sup> "We employ an abuse-of-discretion standard when reviewing a trial court's dismissal for failure to prosecute pursuant to Rule 41(b). *Am. Tel. & Tel. v. Days Inn of Winona*, 720 So.2d 178, 180 (Miss.1998) (citing *Wallace v. Jones*, 572 So.2d 371, 375 (Miss.1990)). "Because the law favors a trial of the issues on the merits, a dismissal for lack of prosecution is employed

7. Chancery literally denied Plaintiff's attempts to prosecute, so it had the authority to exercise lesser sanctions. Defense counsel refused availability for an open hearing request by Plaintiff. See Exhibit B. Nonetheless, Plaintiff scheduled it and mailed Notices to them with its purpose on its face—consolidation of cases. The court ignored Plaintiff's request to intervene. On its own motion it canceled Plaintiff's hearing, *by email*, and accused Plaintiff, as not having properly served notice. Plaintiff had not failed. She was financially, mentally, and emotionally burdened by the abuse she encountered to serve a community's needs. The court could have more easily used its authority to issue an order for a status hearing.
8. Plaintiff had previously filed notices for mail service. Also, Chancery refused to remove John Fike and Sherrie Prince, Defendant's lawyers, *as Plaintiff's attorneys*, so Chancery *willfully denied Plaintiff notice of its dismissals and closures for "want of prosecution."*

#### **IV. Background**

9. Smith Apartments, 1047 Smith Drive, Raymond, MS, 39154, was constructed in 1969 and approved for R-4 zoning in 1979, inclusive of said driveway and parking area. Plaintiff inherited it in the year 2000. Its driveway, said .07 miles, terminated 2 feet past the entry to Ms. Thelma Owens' family parcels and dead-ended into the Smith Apartments parking area.
10. Ms. Owens, a former Public Works employee, and John Fike, her lawyer, knew that the property, at bar, is private property. So, Plaintiff filed notice that his representation constituted a conflict. In or about 1996, as City Attorney, he coordinated Plaintiff's mother's signature of a limited utility easement to Raymond, underneath said .07 miles. So, he had long since 1988, determined its character as private. Also, both knew that Ms. Owens' family

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reluctantly." Miss. Dep't of Human Servs. v. Guidry, 830 So.2d 628, 632 (Miss.2002) (citing Am. Tel. & Tel., 720 So.2d at 180; Watson v. Lillard, 493 So.2d 1277, 1278 (Miss.1986)). Motions for failure to prosecute are considered on a case-by-case basis. Id. (citing Am. Tel. & Tel., 720 So.2d at 181 (citing Wallace, 572 So.2d at 376)). "There is no set time limit on the prosecution of an action once it has been filed, and dismissal for failure to prosecute will be upheld only where the record shows the plaintiff has been guilty of dilatory or contumacious conduct." Miss. Dep't of Human Servs., 830 So.2d at 632 (citing Watson, 493 So.2d at 1278). Finally, this Court also must consider whether lesser sanctions would suffice. Id. at 633 (citing Am. Tel. & Tel., 720 So.2d at 181-82). We also are "mindful of the fact that `dismissal with prejudice is an extreme and harsh sanction that deprives a litigant of the opportunity to pursue his claim..." Hoffman v. Paracelsus Health Care Corp., 752 So.2d 1030, 1034 (Miss.1999) (citing Wallace, 572 So.2d at 376)." *Holder v. Orange Grove Medical Specialties*, 54 So. 3d 192 - Miss: Supreme Court 2010

has enjoyed an easement by necessity, with ingress and egress, upon said .07 miles since the early 1960's, so there was no legal basis to make Plaintiff's property a public road.

11. In 2004, the Public Works Director presented Plaintiff a copy of a road inventory attached to the Board Minutes of February 1988. It included Smith Drive. He stated this .07 miles was acquired by "prescription" when they changed their road processes. The Minutes made no mention of it, as prescribed by law. However, this had little impact on Plaintiff's business.
12. Ms. Owens illegally removed the ancient fence between her parcel and Plaintiff's parcel, and she tossed Plaintiff's surveyor's stakes toward tenant vehicles. Plaintiff had commissioned the survey to replace the fence.
13. Ms. Owens asked Plaintiff for permission to have Public Works install a second culverted entrance, beyond .07 miles, off Plaintiff's private tenant parking area, to create a roundabout driveway in her yard. Plaintiff denied the request to avoid her loss of crucial tenant parking spaces, complicating tenant maneuverability, and compromising Plaintiff's R-4 zoning. Further, it is illegal to use public resources for culverts between private parcels.
14. In 2009, Hinds County Public Works intervened for Ms. Owens. Without a Board hearing, Minutes or Order, Ms. Owens' "friends" in Public Works *simply appeared* with sheriff deputies. The Public Works' Director misrepresented "his authority" to rescind the former decision to deny Ms. Owens' request and to proceed with installing her second paved/culverted entrance. The sheriff banged on tenant' doors and ordered them to remove their cars from the Smith Apartments parking lot. They installed said entrance eliminating twelve (12) of Plaintiff's twenty four (24) tenant "private" parking spaces.
15. In 2011, unable to resolve this with Defendants, Plaintiff filed her suits in the U.S. District Court. Plaintiff refused Defendants' strategy that she re-file her state-law property claims under the Mississippi Tort Claim Act (MTCA).

16. In 2012, as Defendants had failed to plead state-law property condition precedent, the federal Court ruled on only the MTCA arguments. Plaintiff was granted the right to appeal the denial to address her state-law property rights. The cases were dismissed without prejudice.
17. Plaintiff appealed to the Fifth Circuit and the U.S. Supreme Court. See Exhibit A.
18. In 2015, Plaintiff moved the case back to State Court to quiet title under Article 3 of the Mississippi Constitution and the Fifth and Fourteenth Amendments of the U.S. Constitution.
19. See Exhibit D. In 2020, Smith Apartments was entered into the U.S. National Registry of Historic Properties. Only two Black owned properties are “State level” significant in Mississippi, the Medgar Evers’ House and now Historic Smith Apartments. It is the first “commercial” apartment property, built, privately funded, owned, and continuing in operation by a Black man, woman, and now, their heirs. Subsequently, the Defendants actions have also delayed Plaintiff’s preservation opportunities
20. In June 2024, again, Defendants criminally trespassed and installed a third culverted entrance to Ms. Owens’ property, beyond the second one of 2009, already beyond .07 miles.

## **V. Summary**

21. The Defendants’ claims and criminal trespasses are unsupported, as prescribed by law.
22. This case was complicated by collusion, fraud, and misrepresentations employed by the Defendants to destroy Historic Smith Apartments on behalf of their former employee, Ms. Owens. There has never been support for public road claims on Plaintiff’s property.

This Court recently has held that it is a general rule of statutory construction that where there is doubt of the right to exercise the power of eminent domain, the statutes will be strictly construed most favorably to the landowner....There was no public necessity for the taking of the particular property or part thereof. The property was not being taken for "public use" and was not ... a use for which private property may be taken or damaged. *Mississippi Power & Light Co. v. Conerly*, 460 So. 2d 107 (1984).

23. The Historic Smith Apartments property, including its driveway and parking area, is owed protection by constitutional and real property law, zoning ordinance, and preservation statute.

24. Plaintiff's related losses are significant and burdensome, including approximately \$100,000 in property taxes since these abuses commenced.

25. Plaintiff requests a judgment confirming title to her, removal of her property from Defendants' inventory, injunctions ejecting and prohibiting unauthorized trespasses, including the second and third culvert installed beyond .07 miles of driveway, Owens' child play, basketball goal, trash, trash storage, and parking, and payment for Plaintiff's losses.

#### **VI. Certification**

I certify that I served, on July 9, 2024, to Mr. Robert Graham, President, Hinds County Board of Supervisors, 316 S. President Street, Jackson, MS 39201 and Ms. Thelma Owens, 1072 Smith Drive, Raymond, MS 39154; and a "potentially interested" party, Ms. Isla Tullos, Mayor, Raymond, MS, 39154, 110 Courtyard Square, Raymond, MS 39154.

Respectfully Submitted,

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Betty L. Smith (formerly Hearn)  
13014 N Dale Mabry Hwy, 321  
Tampa, Florida 33618  
813-451-2337

STATE OF MISSISSIPPI; COUNTY OF \_\_\_\_\_

Sworn to or affirmed and signed before me by \_\_\_\_\_ on

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NOTARY PUBLIC or DEPUTY CLERK

Personally known \_\_\_\_\_ Produced identification \_\_\_\_\_ Type of ID \_\_\_\_\_