

IN THE CHANCERY COURT OF DESOTO COUNTY, MISSISSIPPI

THEODORE BRUCE BLACK,

PLAINTIFF

VS.

CAUSE NO. 06-10-1925

DELTA BLUFF APARTMENTS,  
DELTA BLUFF, L.P.,

DEFENDANTS

JUDGEMENT

**THIS CAUSE** came on this date upon the motion of Delta Bluff, L.P. to set aside the Clerk's entry of default, to dismiss Delta Bluff Apartments as a party in this cause and for summary judgment in favor of Delta Bluff, L.P. The Court having heard argument of counsel for Delta Bluff, L.P. and argument by Plaintiff/Counter-Defendant, Theodore Bruce Black, finds and orders as follows:

1. The Complaint of Theodore Bruce Black was filed on October 23, 2006. The Complaint seeks to enforce a construction lien filed in the DeSoto County Chancery Court by T.B. Black in his capacity as president of Steele and Roof Structures, a Tennessee Corporation. Process was issued to Delta Bluff Apartments and Delta Bluff, L.P., though there is no return in the court file indicating that either named defendant was properly served with process in this case. An Entry of Appearance of Counsel containing a general denial of the allegations in the Complaint was filed in this cause on December 19, 2006 by Delta Bluff, L.P.

2. On December 22, 2006, Plaintiff Theodore B. Black filed his Motion to Deny Defendants Request for Extension of Time to File an Answer to the Complaint and Motion for

**FILED**  
JUN 21 2007  
W E DAVIS, CLERK

*Myers Graves*

Default Judgement. On December 29, 2006, Theodore B. Black filed his Application to Clerk for Entry of Default Judgement. The Clerk's Docket Entry of Default was filed on that same date, December 29, 2006.

3. There having been no proper Service of Process on the named Defendants prior to the Docket Entry of Default on December 29, 2006, the Clerk's default was improper and should be set aside. The Defendant/Counter-Plaintiff, Delta Bluff, L.P., having now answered and filed a Counterclaim in this cause, any defense Delta Bluff L.D. may have had related to insufficiency of Service of Process is waived.

4. The Court finds from the undisputed facts and without objection by Plaintiff Black, that Delta Bluff Apartments is not a legal entity or person and should be dismissed as a named party in this cause. The proper party defendant in this cause is Delta Bluff, L.P.

5. Having reviewed the allegations of the Complaint, specifically that the Plaintiff, Theodore Bruce Black and/or the corporate entity Steel and Roof Structures, contracted with Steve Duncan d/b/a Panel Erectors to make improvements to property owned by Delta Bluff, L.P., having reviewed the content of the Notice of Lien filed by T.B. Black in his capacity as President of Steel and Roof Structures Corp., a Tennessee corporation, and the affidavit of Ann Holland filed in this cause, the Court finds there are no genuine issues of material fact in dispute in this cause.

6. Whether Plaintiff Theodore Bruce Black has standings to file this lawsuit seeking to enforce a lien that was filed by a Tennessee Corporate entity is a question that need not be addressed by this Court, as this Court finds that neither Theodore Black individually, nor the

Tennessee Corporation is entitled to the enforcement of a lien against Delta Bluff L.P., based upon the undisputed facts of this case.

7. In support of its Motion for Summary Judgement, Delta Bluff L.P. filed an itemization of undisputed facts. Black did not file any pleading or offer any evidence at the hearing on the Motion for Summary Judgement to dispute any of the facts contained in the itemization of undisputed facts.

8. It is undisputed fact that Theodore Bruce Black had no direct contract with Delta Bluff, L.P. to provide material or labor to Delta Bluff, L.P. Therefore, Theodore Bruce Black is not entitled to a lien on the property of Delta Bluff, L.P. under Mississippi law.

9. The undisputed and material facts before this Court are that the Plaintiff, Theodore Bruce Black and/or Steel and Roof Structures Corp., contracted with Steve Duncan d/b/a Panel Erectors to perform repair work on property owned by Delta Bluff, L.P. The repair work was completed and Delta Bluff, L.P. paid Steve Duncan d/b/a Panel Erectors in full in June 2006. The Notice of Lien filed in the Lien Books of the DeSoto County Chancery Clerk at Book 13, Page 340, by Steel and Roof Structures Corp., was not filed until July 14, 2006. The lien was improperly filed and should be released.

10. Plaintiff Theodore Bruce Black offered no evidence to this Court to dispute any of the facts contained in the itemization of Undisputed Facts, which are dispositive of the Plaintiff's Complaint and the Counterclaim of Delta Bluff, L.P. in this cause. Based upon the undisputed facts in this record, Delta Bluff, L.P. is entitled to a judgment as a matter of law on both the Complaint and the Counterclaim.

11. The Defendant, Delta Bluff, L.P. incurred attorney's fees in defense of the Complaint of Bruce Black and in prosecution of its Counterclaim and is entitled to an award of reasonable Attorney's fees.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. The Clerk's Docket Entry of Default entered in this cause on December 29, 2006 is hereby set aside.
2. Delta Bluff Apartments is dismissed as a party in this cause.
3. There being no genuine issue of any material fact, Delta Bluff, L.P. is entitled to a judgment as a matter of law on the Complaint filed against it by Theodore Bruce Black.
4. The Clerk of the Chancery Court is hereby ordered to immediately release the construction lien filed on July 14, 2006 in Construction Lien Book 13, Page 340.
5. There being no genuine issue of any material fact, Delta Bluff, L.P. is entitled to a judgment as a matter of law on its Counterclaim, entitling Delta Bluff, L.P. to recover its reasonable and necessary attorney's fees and other litigation expenses incurred as a result of the wrongful filing of the lien and the suit to enforce the lien by Theodore Bruce Black.
6. Within ten (10) days of the date of this Order, Delta Bluff, L.P., by and through counsel, shall submit a claim for attorney's fees directly to Theodore Bruce Black. If the claim is not paid within ten (10) days, the matter shall be scheduled before this Court for a hearing to determine the reasonable amount of attorney's fees and expenses incurred by Delta Bluff, L.P.
7. All costs of this cause shall be assessed to Theodore Bruce Black.

ORDERED, ADJUDGED AND DECREED this the 7<sup>th</sup> day of ~~April~~<sup>June</sup>, 2007, *nunc pro*

tunc to April 2, 2007.

Vicki B. Cobb  
VICKI COBB - CHANCELLOR

**AGREED AS TO FORM:**

(refused to sign)  
Theodore Bruce Black

**PRESENTED BY:**

William P. Myers  
WILLIAM P. MYERS, MBO. 3716  
Myers Graves, PLLC  
140 W. Center Street  
Hernando, MS 38632  
662-429-1994

STATE OF MISSISSIPPI, COUNTY OF DEBARK  
I HEREBY CERTIFY that the above and foregoing  
is a true copy of the original filed in this office  
This the 21 day of June 07  
W.E. Davis, Clerk of the chancery court  
BY: S. Patrick O.C.