

IN THE CHANCERY COURT OF COUNTY, MISSISSIPPI

and

vs.

NO.

and

**PLAINTIFFS' RESPONSE TO DEFENDANTS'
MOTION FOR PARTIAL SUMMARY JUDGMENT**

COMES NOW Plaintiffs, , and by and through counsel and file this their Response to Defendants' Motion for Partial Summary Judgment, pursuant to Rule 56 of the Mississippi Rules of Civil Procedure and in support of said motion would show the following, to-wit:

I.

Defendants raise two issues that they claim are ripe for Summary Judgment. These issues are as follows:

1. Whether the notes attached to their Motion as Exhibits "C" and "D" should be reformed in the manner alleged in Defendants' counterclaim; and
2. Whether and are individually liable for the insurance proceeds in dispute.

II.

With regard to the issue raised on the reformation of the Notes, Plaintiffs have agreed the notes should be reformed, however, Plaintiffs are entitled to an offset of the monies owed from the notes, and therefore, there is a material issue of fact as to the amount actually payable to Defendants.

III.

Defendants are also not entitled to Summary Judgment on the issue of individual liability as a matter of law. Defendants assert several positions in their Brief in Support of their Summary Judgment Motion and each will be addressed below.

1. Defendants first assert that the fact that and did not expressly sign the agreement and the Addendum in their representative capacities does not control which party, if any, is liable for the disputed proceeds. It is true that Defendants did not sign in their representative capacities, and although it may not be controlling, it is an important factor in assessing individual liability. This will be discussed in more detail in response to Defendants' third contention as set forth in paragraph three (3) below.

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