

CASE NO. 1090150

IN THE SUPREME COURT OF ALABAMA

RONDA MCMICHAEL

Petitioner

v.

JOHN THOMASON, EX OFFICIO CIRCUIT JUDGE

Respondent

IN RE: Forney McMichael v. Ronda McMichael

IN THE CIRCUIT COURT OF CALHOUN COUNTY, ALABAMA

CIVIL ACTION NO.: CV-09-340

CIVIL APPEALS NO.: 2090021

**PETITIONER RONDA MCMICHAEL'S
REPLY BRIEF**

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STATEMENT OF FACTS

On August 14, 2009, Forney McMichael filed his "Complaint for Divorce" ("Complaint") against Ronda McMichael, in the Domestic Relations Division of the Calhoun County Circuit Court ("Calhoun Divorce Court"). (Attachment 1.) He selected Calhoun County as the forum for the divorce notwithstanding that both parties reside in Talladega County. (Attachments 1 ¶¶ 1-2; 11 at 2.)

Availing himself and his property of the jurisdiction of a Divorce Court, Forney alleged he and Ronda "each own, as joint tenants with right of survivorship, 100 shares of MACS VACS LLC [sic]" ("Mac's Vacs" or the "Company"), and requested final judgment granting him "all right, title and interest in MACS VACS LLC [sic] and its business(es)." (Id.) Attached to the Complaint were copies of Mac's Vacs' Articles and Operating Agreement. (Id.) At all times relevant, Macs' Vacs was taxed as a partnership. (Attachments 5 at 10, 25.)

Filed with the Complaint was Forney's "Affidavit in Support of Motion for Ex Parte Temporary Restraining Order" ("Affidavit"). (Attachment 1.) Devoting half the allegations therein to issues involving management of Mac's

Vacs, Forney asked the Calhoun Divorce Court to protect his interest in the Company. (Id. at "Affidavit" ¶¶ 2-12.)

Later that day, a Family Court Judge issued an Ex Parte Temporary Restraining Order ("TRO"), restraining the parties, *inter alia*,

from disposing, transferring, spending, giving away, or secreting any property, ... including but not limited to money or other liquid financial assets, books and records of the business...

(Attachment 2 ¶ 1.) The TRO also made Forney "the sole operator" and Mac's Vacs' manager. (Id. ¶ 4.)

On August 25, 2009, McMichael v. McMichael was transferred "in its entirety" to Talladega County ("Talladega Divorce Court"). (Attachment 3.) The following day, Forney filed an "Action for Declaratory Judgment" ("Dec Action") in Calhoun County Civil Division ("Calhoun Court"), again, naming Ronda the defendant. (Attachment 4.)

In the Dec Action, Forney declares:

Petitioner is not seeking for himself MACS VAC LLC's [sic] reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief ... only a declaration of the rights and duties of the parties... Rather, Petitioner seeks to settle and obtain relief from uncertainty and insecurity with respects [sic] the rights, status, and other legal relations ... regarding ... MACS VACS, LLC.

(Id. ¶ 6) (emphasis added). Forney states "the dispute

between the parties [is] over the real property and business run by MACS VACS [sic]." (Id. ¶ 8.) He also mentions the parties' divorce, and pointedly regurgitates the Calhoun Divorce Court's TRO for the Calhoun Court, summarizing the TRO as providing that

the Plaintiff would be the sole operator of MACS VACS [sic] and the Defendant would not come onto the premises of MACS VACS [sic].

(Id. ¶ 9.)

Lastly, Forney asks the Calhoun Court to recreate the TRO by naming him "sole Manager, of MACS VACS LLC [sic]," and grant "that he and only he can take the necessary and appropriate action(s) to operate the LLC." (Id. at A, C.) Though Mac's Vacs is not a party to the Dec Action, Forney also seeks relief on claims such as breach of loyalty claims, breach of fiduciary duty claims, and a demand for an accounting. (Id. at D-F.)

On September 14, Forney appeared before the Talladega Divorce Court, agreeing to a Consent Order memorializing, in part, the Calhoun Divorce Court's TRO. (Attachment 6 ¶¶ 2-4.) The Talladega Divorce Court expanded its ruling beyond the TRO, however, insofar as it allowed Ronda to work in sales for Mac's Vacs, (id. ¶ 5), allowed visitation

with her son, Jarrod, (id. ¶ 6), and required Forney to (1) provide Ronda "a reconciliation of receipts received by the LLC from the Atlanta race," (id. ¶ 7), (2) to repay Mac's Vacs \$41,909 taken from the LLC by Forney, (id. ¶8), and (3) pay Ronda weekly compensation of \$2,500 from the LLC as well as \$8,314 per month toward a \$99,772.62 loan Ronda made to the LLC, (id. ¶¶ 9-10).

Four days later, Forney transferred \$100,000 from Mac's Vacs operating account in violation of the Consent Order. (Attachments 7, 18 ¶ 4.) On September 25, Forney filed his "Amended Action for Declaratory Judgment" ("Dec Action") in the Calhoun Court. (Attachment 8.) Four days later, Forney attempted to have law enforcement remove Ronda from Mac's Vac's premises when she arrived at the office to "assume a role in the sales' division of Mac's Vacs" per the Consent Order. (Attachment 18 ¶ 5.)

On September 29, Ronda filed a Motion to Dismiss or in the Alternative to Stay ("Motion to Dismiss") the Dec Action in the Calhoun Court on the basis that

Mac's Vacs is owned solely by these parties and is a marital asset, the disposition and operation of which is subject solely to the jurisdiction of the Circuit Court of Talladega County, Alabama, in this pending divorce.

(Attachment 9 ¶ 3.) In the Motion to Dismiss, Ronda also averred the Dec Action

is an attempt to circumvent the jurisdiction of the Talladega County Circuit Court, which has properly exercised jurisdiction over this marital asset.

(Id. ¶ 4.)

The Calhoun Court denied Ronda's Motion to Dismiss the following day without hearing. (Attachment 10.) This denial forms the basis of Ronda's Petition for Writ of Mandamus in the instant matter.

On October 2, a Pendente Lite Order issued from the Calhoun Court. (Attachment 11.) The Pendente Lite Order conflicts with the Consent Order in two important ways: (1) it alters the terms of the Operating Agreement by expressly allowing Forney to forbid Ronda entry to Mac's Vacs premises, even though it does allow Ronda to continue working in sales, (id. at 3-5); and (2) it does not require Forney (a) to repay Mac's Vacs the \$41,909.00 addressed in the Consent Order, (b) to pay any salary to Ronda, or (c) to make any monthly payments toward the \$94,572.05 loan.

On October 6, Forney failed to appear at a Rule Nisi Hearing in Talladega, though represented by counsel and properly served. (Attachment 18.) After the hearing, the

Talladega Divorce Court found that its earlier Consent Order

[i]n no way restricts the Defendant's role, nor enlarges the Plaintiff's responsibilities and duties which are controlled by the Operating Agreement of the LLC.

(Id. ¶ 3.) The court then found Forney in contempt of the Consent Order when he transferred \$100,000 out of Mac's Vacs operating account and when he instructed Ronda not to come onto Mac's Vacs premises. (Id. ¶¶ 4-5.)

SUMMARY OF ARGUMENT

Forney McMichael sought the jurisdiction of the Calhoun Divorce Court to determine his rights in marital property, Mac's Vacs, when he filed his Complaint for Divorce therein. The Calhoun Divorce Court thereby acquired exclusive jurisdiction over the Company as a marital asset, but transferred venue of the divorce action to Talladega County, the domicile of the parties, upon Ronda's Motion.

The following day, Forney filed his Dec Action in Calhoun County, notwithstanding the fact that Mac's Vacs is taxed as a partnership and both parties are domiciled in Talladega County. In filing the Dec Action, Forney has impermissibly invoked the Calhoun Court's exercise of concurrent jurisdiction over Mac's Vacs. Such exercise of

any such concurrent jurisdiction by the Calhoun Court under these circumstances is improper because the Talladega Divorce Court retains exclusive jurisdiction over Mac's Vacs, as marital property, "until that controversy is concluded, subject only to appellate review." Ex parte Liberty Nat'l Life Ins. Co., 631 So.2d 865, 867 (Ala. 1993).

Therefore, jurisdiction over Mac's Vacs is proper in the Talladega Divorce Court, and the Calhoun Court erred in denying Ronda's Motion to Dismiss.

ARGUMENT

For the following reasons, THE TALLADEGA COURT HAS EXCLUSIVE, SUBJECT MATTER JURISDICTION OVER THE PARTIES AND MAC'S VACS, L.L.C. Therefore, this Petition for Writ of Mandamus is due to be granted.

The Talladega Court has subject matter jurisdiction over Mac's Vacs, for the reasons set forth in Argument, Section II, Respondent Ronda McMichael's Answer and Brief, Ex Parte Forney McMichael, Case No. 1090179, adopted pursuant to Alabama Rule of Appellate Procedure 28(k).

The Talladega Divorce Court also has exclusive jurisdiction over the parties and their marital property,

including Mac's Vacs, for the pendency of the matter "until that controversy is concluded." Ex parte Liberty Nat'l Life Ins. Co., 631 So.2d at 867. Even if the Calhoun Court may have concurrent jurisdiction, the Talladega Divorce Court is not thereby deprived of its exclusive power to "resolve all issues placed before it," Floyd v. Floyd, 701 So.2d 1151, 1153 (Ala. Civ. App. 1997), and "do complete equity," Morrison v. Morrison, 251 So.2d 761, 763 (Ala. Civ. App. 1971). Therefore, the Calhoun Court abused its discretion when it denied Ronda's Motion to Dismiss the Dec Action.

When Forney filed a Complaint for Divorce in the Calhoun Divorce Court, he thereby availed Mac's Vacs and himself to "the equity jurisdiction of the trial court" with respect both to issues between the parties and to issues pertaining to the Company as a marital assets. Clements v. Clements, 990 So.2d 383, 396 (Ala. Civ. App. 2007). The Divorce Court's jurisdiction included the authority to decide ownership and control of Mac's Vacs. Indeed, Forney requested the Divorce Court grant him "all right, title and interest" in the Company submitting in support of his request an Affidavit asking the Divorce Court issue a TRO giving him control of Mac's Vacs.

(Attachment 1 at 2.)

The Divorce Court needs no additional power to decide all issues between Forney and Ronda, including determining ownership of Mac's Vacs because

a court of equity, vested with jurisdiction in a particular case, will proceed to resolve all issues placed before it and to "resolve all the equities between the parties."

Floyd, 701 So.2d at 1153 (emphasis added). And, "the division of marital property [is a matter] within the discretion of the trial court..." Clements, 990 So.2d at 390.

Mac's Vacs is undisputedly a marital asset of Ronda and Forney. In his Complaint, Forney avers the couple owned 100 shares each of the Company "as joint tenants with right of survivorship," and includes it in a list of business property acquired during the marriage. (Attachment 1 ¶¶ 11, 12). Attached as well are Mac's Vacs' Articles and Operating Agreement demonstrating they are, indeed, the only owners of the Company. (See also Attachment 4 ¶ 3.)

Notwithstanding these facts, Forney now argues the Talladega Divorce Court does not have jurisdiction over Mac's Vacs and cannot adequately protect his interests in the Company because it is a divorce court. In so arguing,

Forney challenges the Talladega Divorce Court's power over "marital assets in a divorce proceeding," when in fact,

[i]t is well settled that a trial [court's] ... only limitation is that the division of property must be equitable under the circumstances of the particular case. Further, it is the trial court that determines what is equitable.

Clements, 990 So.2d at 392-393. There is substantial additional authority contrary to Forney's position, holding that a divorce court has "a wide degree of discretion" over marital assets including the power to determine ownership of interests in limited liability companies and corporations. Clements, 990 So.2d at 392; TenEyck v. TenEyck, 885 So.2d 146 (Ala. Civ. App. 2003); Gibbs v. Gibbs, 653 So.2d 300 (Ala. Civ. App. 1994).

Divorce courts may, for example, assess the value of corporate assets in awarding alimony. Clements, 990 So.2d at 387-388, 390-391, 397. They also may issue rulings to preserve the value of marital asset businesses through the pendency of a trial. TenEyck, 885 So.2d at 153; Gibbs, 653 So.2d at 301. Finally, a divorce court may even force the sale of an ownership interest in a limited liability company from one spouse to the other. TenEyck, 885 So.2d at 151.

It is noteworthy that Forney did not challenge the jurisdiction of a Divorce Court over Mac's Vacs until the day after the divorce action was transferred "in its entirety" to the Talladega Divorce Court. Neither the transfer of the case nor the filing of Forney's Dec Action, however, deprived the Talladega Divorce Court of exclusive jurisdiction over the parties and Mac's Vacs.

[I]t is settled that ... when a court of equity obtains jurisdiction over domestic relations matters on equitable grounds, that it may proceed to do complete equity.

Morrison, 251 So.2d at 763. See also Wright v. Wright, 882 So.2d 361, 363 (Ala. Civ. App. 2003); Creel v. Creel, 342 So.2d 793, 794 (Ala. Civ. App. 1977).

The Dec Action was obviously filed to undermine the Talladega Divorce Court's jurisdiction and has clearly worked to challenge the integrity of the Divorce Court's proper exercise of authority. This is demonstrated in the fact that there are already competing orders relating to the rights and obligations of the parties. (Attachments 6, 11.) Furthermore, Forney's Dec Action is merely a cloaked version of the same relief he sought in his Complaint for Divorce. (Attachments 1, 4, 8.)

The only substantive differences between the face of

the Complaint and that of the Dec Action are claims of breach of loyalty, breach of fiduciary duty, and a demand for an accounting, which are actually claims of the Company. Forney's repeated filing in Calhoun County is an attempt to circumvent the Talladega Divorce Court's authority over Mac's Vacs.

Nevertheless, Forney's Complaint first invoked the jurisdiction of the Divorce Court over the parties and their property. Therefore, the Divorce Court retains exclusive jurisdiction over Mac's Vacs "until the matter is finally and completely disposed of." Ex parte Liberty Nat'l Life Ins. Co., 631 So.2d at 867. As the first court to exercise jurisdiction in this matter, the Talladega Divorce Court retains its power notwithstanding that the Calhoun Court might have exercised concurrent jurisdiction.

"[W]hen a court of competent jurisdiction has become possessed of a case its authority continues, subject only to the appellate authority, until the matter is finally and completely disposed of, and no court of coordinate authority is at liberty to interfere with its action." ... "All the authorities recognize the importance of carefully preserving the boundary line between courts of concurrent jurisdiction, in order to prevent conflicts, and to preserve in harmony their relations to each other."

Id. quoting Ex parte Burch, 184 So. 694, 697 (Ala.

1938) (emphasis added).

The "boundary line between courts of concurrent jurisdiction" not only preserves comity between courts but also prevents waste of judicial resources. Progression of the instant cases in the respective courts has already or will likely result in one or more of the following: duplicative or competing rulings, as in the Consent Order and contradictory Pendente Lite Order; bars to further action under principals of collateral estoppel or *res judicata*; or the Dec Action being rendered moot should the Talladega Divorce Court compel one party to sell Mac's Vacs to the other, as did the court in TenEyck, 885 So.2d at 151.

Forney originally submitted himself and Mac's Vacs to the Divorce Court's jurisdiction. It was improper for him then to seek an alternative forum in Calhoun County after the divorce action was transferred to its proper venue in Talladega County. Although the Calhoun Court has not yet ruled on venue in the Dec Action, it is not the proper venue for that action either. See Ex parte Miller, Hamilton, Snider & Odom, L.L.C., 942 So.2d 334 (Ala. 2006). Finally, the Calhoun Court abused its discretion in denying

Ronda's Motion to Dismiss after the Talladega Divorce Court assumed exclusive jurisdiction over Mac's Vacs upon transfer from the Calhoun Divorce Court.

CONCLUSION

The Talladega Divorce Court acquired the Calhoun Divorce Court's exclusive jurisdiction over Mac's Vacs upon transfer of the matter. Accordingly, the Calhoun Court abused its discretion by denying Ronda's Motion to Dismiss the Dec Action when it did not have proper jurisdiction over the parties and Mac's Vacs. Therefore, this Court should grant this Petition for Writ of Mandamus.

For all of the aforementioned reasons, Respondent Ronda McMichael respectfully requests the Petition for Writ of Mandamus be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via U.S. Mail, postage prepaid, on this the 6th day of January, 2009, upon the following counsel of record:

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/s/ Susan P. Billeaud
Of Counsel

ATTACHMENTS

Adopted by reference, are all Attachments to Respondent Ronda McMichael's Answer and Brief, Ex Parte Forney McMichael, Case No. 1090179. Ala. R. App. P. 28(k).

Also attached to this Reply Brief are the following:

- 25. Copy of Mac's Vacs' 2007 U.S. Tax Return;
- 26. Copy of Motion to Transfer Venue, filed in Calhoun County Circuit Court on October 9, 2009.

ATTACHMENT 25

1065

U.S. Return of Partnership Income

OMB No. 1545-0099

2007

Form Department of the Treasury Internal Revenue Service

For calendar year 2007, or tax year beginning and ending

Header section containing: A Principal business activity (SEPTIC SVC), B Principal product or service (WASTE MGMT), C Business code number (562000), Name of partnership (MACS VACS, LLC), Address (2345 OLD AL HIGHWAY 21 S, OXFORD, AL 36203), D Employer identification number, E Date business started (01/01/2005), F Total assets (\$ 2,509,121.), G Check applicable boxes, H Check accounting method, I Number of Schedules K-1 (2), J Check if Schedule M-3 attached.

Caution: Include only trade or business income and expenses on lines 1a through 22 below. See the instructions for more information.

Table with 22 rows and 3 columns. Rows 1-8: Income. Rows 9-21: Deductions (see instructions for limitations). Row 22: Ordinary business income (loss). Values include: 1a 4,466,809; 1b 805; 1c 4,466,004; 2 460,689; 3 4,005,315; 6 19,700; 7 37,381; 8 4,062,396; 9 588,742; 10 9,154; 11 187,016; 12 3,095; 13 39,637; 14 67,457; 15 18,584; 16a 573,092; 16b 573,092; 16c 573,092; 19 2,383; 20 626,043; 21 2,115,203; 22 1,947,193.

Sign Here section. Includes signature line for general partner or limited liability company member manager, date line, and a box for 'May the IRS discuss this return with the preparer shown below (see instr.)?' with Yes/No options.

Paid/Preparer's Use Only section. Includes Preparer's signature, Date (10/01/09), Check if self-employed, Preparer's SSN or PTIN (P00535604), Firm's name (WARREN, AVERETT, KIMBROUGH & MARINO, LLC), Address (415 E. 10TH STREET, ANNISTON, AL 36207), EIN, and Phone no. (256-241-0560).

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Form 1065 (2007)

Schedule A Cost of Goods Sold (see the instructions)

1	Inventory at beginning of year	1	
2	Purchases less cost of items withdrawn for personal use	2	
3	Cost of labor	3	
4	Additional section 263A costs (attach schedule)	4	
5	Other costs (attach schedule)	5	460,689.
6	Total. Add lines 1 through 5	6	460,689.
7	Inventory at end of year	7	
8	Cost of goods sold. Subtract line 7 from line 6. Enter here and on page 1, line 2	8	460,689.

- 9 a Check all methods used for valuing closing inventory:
- (i) Cost as described in Regulations section 1.471-3
 - (ii) Lower of cost or market as described in Regulations section 1.471-4
 - (iii) Other (specify method used and attach explanation) ▶
- b Check this box if there was a writedown of "subnormal" goods as described in Regulations section 1.471-2(c)
- c Check this box if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970)
- d Do the rules of section 263A (for property produced or acquired for resale) apply to the partnership? Yes No
- e Was there any change in determining quantities, cost, or valuations between opening and closing inventory? Yes No
- If "Yes," attach explanation.

Schedule B Other Information

		Yes	No
1	What type of entity is filing this return? Check the applicable box:		
a	<input type="checkbox"/> Domestic general partnership		
b	<input type="checkbox"/> Domestic limited partnership		
c	<input checked="" type="checkbox"/> Domestic limited liability company		
d	<input type="checkbox"/> Domestic limited liability partnership		
e	<input type="checkbox"/> Foreign partnership		
f	<input type="checkbox"/> Other ▶		
2	Are any partners in this partnership also partnerships?		X
3	During the partnership's tax year, did the partnership own any interest in another partnership or in any foreign entity that was disregarded as an entity separate from its owner under Regulations sections 301.7701-2 and 301.7701-3? If "Yes," see instructions for required attachment		X
4	Did the partnership file Form 8893, Election of Partnership Level Tax Treatment, or an election statement under section 6231(a)(1)(B)(ii) for partnership-level tax treatment, that is in effect for this tax year? See Form 8893 for more details		X
5	Does this partnership meet all three of the following requirements?		
a	The partnership's total receipts for the tax year were less than \$250,000;		
b	The partnership's total assets at the end of the tax year were less than \$600,000; and		
c	Schedules K-1 are filed with the return and furnished to the partners on or before the due date (including extensions) for the partnership return		X
	If "Yes," the partnership is not required to complete Schedules L, M-1, and M-2; Item F on page 1 of Form 1065; or Item L on Schedule K-1.		
6	Does this partnership have any foreign partners? If "Yes," the partnership may have to file Forms 8804, 8805 and 8813. See the instructions		X
7	Is this partnership a publicly traded partnership as defined in section 469(k)(2)?		X
8	Has this partnership filed, or is it required to file, a return under section 6111 to provide information on any reportable transaction?		X
9	At any time during calendar year 2007, did the partnership have an interest in or a signature or other authority over a financial account in a foreign country (such as a bank account, securities account, or other financial account)? See the instructions for exceptions and filing requirements for Form TD F 90-22.1. If "Yes," enter the name of the foreign country. ▶		X
10	During the tax year, did the partnership receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If "Yes," the partnership may have to file Form 3520. See the instructions		X
11	Was there a distribution of property or a transfer (for example, by sale or death) of a partnership interest during the tax year? If "Yes," you may elect to adjust the basis of the partnership's assets under section 754 by attaching the statement described under Elections Made By the Partnership in the instructions		X
12	Enter the number of Forms 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships, attached to this return ▶		

Designation of Tax Matters Partner (see the instructions)

Enter below the general partner designated as the tax matters partner (TMP) for the tax year of this return:

Name of designated TMP ▶ **RONDA MCMICHAEL** Identifying number of TMP ▶ **[REDACTED]**

Address of designated TMP ▶ **2 HERITAGE WAY**

OXFORD, AL 36203

Schedule K | Partners' Distributive Share Items

		Total amount	
Income (Loss)	1 Ordinary business income (loss) (page 1, line 22)	1	1,947,193.
	2 Net rental real estate income (loss) (attach Form 8825)	2	
	3a Other gross rental income (loss)	3a	
	b Expenses from other rental activities (attach statement)	3b	
	c Other net rental income (loss). Subtract line 3b from line 3a	3c	
	4 Guaranteed payments	4	9,154.
	5 Interest income	5	4,359.
	6 Dividends: a Ordinary dividends	6a	
	b Qualified dividends	6b	
	7 Royalties	7	
	8 Net short-term capital gain (loss) (attach Schedule D (Form 1065))	8	
9a Net long-term capital gain (loss) (attach Schedule D (Form 1065))	9a		
b Collectibles (28%) gain (loss)	9b		
c Unrecaptured section 1250 gain (attach statement)	9c		
10 Net section 1231 gain (loss) (attach Form 4797)	10		
11 Other income (loss) (see instructions) Type ▶	11		
Deductions	12 Section 179 deduction (attach Form 4562)	12	
	13a Contributions	13a	2,072.
	b Investment interest expense	13b	
	c Section 59(e)(2) expenditures: (1) Type ▶ (2) Amount ▶	13c(2)	
d Other deductions (see instructions) Type ▶	13d		
Self-Employment	14a Net earnings (loss) from self-employment	14a	1,936,647.
	b Gross farming or fishing income	14b	
	c Gross nonfarm income	14c	4,042,696.
Credits	15a Low-income housing credit (section 42(j)(5))	15a	
	b Low-income housing credit (other)	15b	
	c Qualified rehabilitation expenditures (rental real estate) (attach Form 3468)	15c	
	d Other rental real estate credits (see instructions) Type ▶	15d	
	e Other rental credits (see instructions) Type ▶	15e	
	f Other credits (see instructions) Type ▶	15f	
Foreign Transactions	16a Name of country or U.S. possession ▶		
	b Gross income from all sources	16b	
	c Gross income sourced at partner level	16c	
	Foreign gross income sourced at partnership level		
	d Passive category ▶ e General category ▶ f Other ▶	16f	
	Deductions allocated and apportioned at partner level		
	g Interest expense ▶ h Other ▶	16h	
	Deductions allocated and apportioned at partnership level to foreign source income		
	i Passive category ▶ j General category ▶ k Other ▶	16k	
	l Total foreign taxes (check one): Paid <input type="checkbox"/> Accrued <input type="checkbox"/>	16l	
m Reduction in taxes available for credit (attach statement)	16m		
n Other foreign tax information (attach statement)			
Alternative Minimum Tax (AMT) Items	17a Post-1986 depreciation adjustment	17a	107,374.
	b Adjusted gain or loss	17b	
	c Depletion (other than oil and gas)	17c	
	d Oil, gas, and geothermal properties - gross income	17d	
	e Oil, gas, and geothermal properties - deductions	17e	
	f Other AMT items (attach statement)	17f	
Other Information	18a Tax-exempt interest income	18a	
	b Other tax-exempt income	18b	
	c Nondeductible expenses	18c	10,849.
	19a Distributions of cash and marketable securities	19a	1,220,774.
	b Distributions of other property	19b	
	20a Investment income	20a	4,359.
b Investment expenses	20b		
c Other items and amounts (attach statement)			

Analysis of Net Income (Loss)

1 Net income (loss). Combine Schedule K, lines 1 through 11. From the result, subtract the sum of Schedule K, lines 12 through 13d, and 16:						1	1,958,634.
2 Analysis by partner type:	(i) Corporate	(ii) Individual (active)	(iii) Individual (passive)	(iv) Partnership	(v) Exempt organization	(vi) Nominee/Other	
a General partners							
b Limited partners		1,958,634.					

Schedule L Balance Sheets per Books

Assets	Beginning of tax year		End of tax year	
	(a)	(b)	(c)	(d)
1 Cash		95,064.		158,090.
2a Trade notes and accounts receivable				
b Less allowance for bad debts				
3 Inventories				
4 U.S. government obligations				
5 Tax-exempt securities				
6 Other current assets (attach statement)	STATEMENT 8	491,723.		721,351.
7 Mortgage and real estate loans				
8 Other investments (attach statement)				
9a Buildings and other depreciable assets	1,926,217.		2,729,875.	
b Less accumulated depreciation	527,103.	1,399,114.	1,100,195.	1,629,680.
10a Depletable assets				
b Less accumulated depletion				
11 Land (net of any amortization)				
12a Intangible assets (amortizable only)				
b Less accumulated amortization				
13 Other assets (attach statement)	STATEMENT 9	1,500.		
14 Total assets		1,987,401.		2,509,121.
Liabilities and Capital				
15 Accounts payable				
16 Mortgages, notes, bonds payable in less than 1 year				
17 Other current liabilities (attach statement)	STATEMENT 10	405,818.		66,995.
18 All nonrecourse loans				
19 Mortgages, notes, bonds payable in 1 year or more		758,835.		901,521.
20 Other liabilities (attach statement)				
21 Partners' capital accounts		822,748.		1,540,605.
22 Total liabilities and capital		1,987,401.		2,509,121.

Schedule M-1 Reconciliation of Income (Loss) per Books With Income (Loss) per Return

Note: Schedule M-3 may be required instead of Schedule M-1 (see instructions).

1 Net income (loss) per books	1,938,631.	6 Income recorded on books this year not included on Schedule K, lines 1 through 11 (itemize):	
2 Income included on Schedule K, lines 1, 2, 3c, 5, 6a, 7, 8, 9a, 10, and 11, not recorded on books this year (itemize):		a Tax-exempt interest \$	
3 Guaranteed payments (other than health insurance)	9,154.	7 Deductions included on Schedule K, lines 1 through 13d, and 16l, not charged against book income this year (itemize):	
4 Expenses recorded on books this year not included on Schedule K, lines 1 through 13d, and 16l (itemize):		a Depreciation \$	
a Depreciation \$		8 Add lines 6 and 7	
b Travel and entertainment \$ 2,276.		9 Income (loss) (Analysis of Net Income (Loss), line 1). Subtract line 8 from line 5	1,958,634.
STMT 11 8,573.	10,849.		
5 Add lines 1 through 4	1,958,634.		

Schedule M-2 Analysis of Partners' Capital Accounts

1 Balance at beginning of year	822,748.	6 Distributions: a Cash	1,220,774.
2 Capital contributed: a Cash		b Property	
b Property		7 Other decreases (itemize):	
3 Net income (loss) per books	1,938,631.	8 Add lines 6 and 7	1,220,774.
4 Other increases (itemize):		9 Balance at end of year. Subtract line 8 from line 5	1,540,605.
5 Add lines 1 through 4	2,761,379.		

ATTACHMENT 26



IN THE CIRCUIT COURT OF CALHOUN COUNTY,

FORNEY MCMICHAEL,)	
)	
Plaintiff,)	
)	
vs.)	CASE NO.: CV-2009-340-JCT
)	
RONDA MCMICHAEL,)	
)	
Defendant.)	

MOTION TO TRANSFER VENUE

Comes now the Defendant and moves this Honorable Court to transfer this action to Talladega County on the following grounds:

1. Venue of this action lies in Talladega County, Alabama, not Calhoun County, Alabama because of the following:

- A. The Articles of Organization of the LLC were filed in Calhoun County, Alabama although the statute requires that before an LLC comes into existence it must file the Articles of Organization in the county of the residence of the registered agent. Title 10-12-9, Code of Alabama.
- B. The registered agent of this LLC lives in Talladega County, Alabama.
- C. The Articles of Organization have been re-recorded as of September 30, 2009, in Talladega County, Alabama.
- D. The LLC came into legal existence on September 30, 2009, not at the time the original Articles of Organization were filed in Calhoun County, Alabama. Title 10-12-14(a), Code of Alabama.

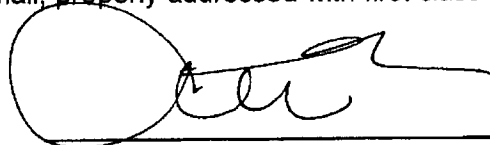
2. The Complaint claims that venue of this action is in Calhoun County, Alabama because its Articles were filed here. It is not legally in existence here, that not being true nor the case factually, but now it is recorded in Talladega County, Alabama as required by law and adopting the Plaintiff's argument, then the venue of this action must be in Talladega County,

CERTIFICATE OF SERVICE

I hereby certify that I have this 9th day of October, 2009, electronically served a copy of the foregoing on

Christopher M. Hopkins
Post Office Box 2003
Anniston, AL 36202
Attorney for Plaintiff

or placed a copy of same in the United States mail, properly addressed with first class postage prepaid.



ARTHUR F. FITE, III

ARTICLES OF ORGANIZATION

OF

MAC'S VACS, LLC

The undersigned, desiring to form a Limited Liability Company under and pursuant to Section 10-12 of the Code of Alabama, do hereby certify as follows:

FIRST: The name of said limited liability company shall be Mac's Vacs, LLC. The names and addresses of the Members are as follows:

Forney L. McMichael
#2 Heritage Way
Oxford, AL 36203

Ronda McMichael
#2 Heritage Way
Oxford, AL 36203

CORP 47 51
Recorded In Above Book and Page
09/30/2009 08:12:50 AM
Billy Atkinson
Probate Judge
Talladega County, AL

SECOND: Mac's Vacs, LLC shall have a duration of fifty years from the date of the filing of these Articles of Organization.

THIRD: Copies of the Operating Agreement of Mac's Vacs, LLC may be obtained from the Managing Member via a written request mailed to #2 Heritage Way, Oxford, Alabama 36203. The place in the State of Alabama where the principal office of the company is located is #2 Heritage Way, Oxford, Alabama 36203.

FOURTH: The purposes for which Mac's Vacs, LLC is formed are:

(A) to own and operate a septic tank business and service septic tanks; and

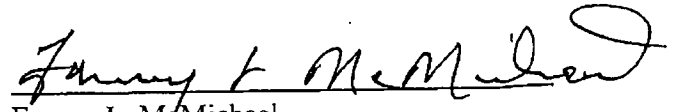
(B) to engage in such other lawful acts or activities for which limited liability companies may be formed under Section 10-12 of the Code of Alabama.

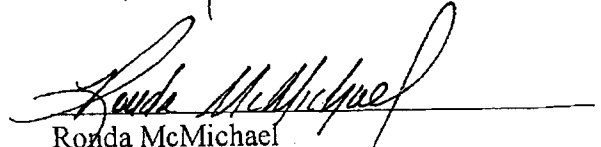
FIFTH: The maximum number of ownership units which Mac's Vacs, LLC, is authorized to have is one hundred (100). Forney L. McMichael and Ronda McMichael shall jointly own one hundred (100) units with right of survivorship.

SIXTH: The registered agent for Mac's Vacs, LLC is Forney L. McMichael whose address is #2 Heritage Way, Oxford, Alabama 36203. The address of the principal office of Mac's Vacs, LLC is #2 Heritage Way, Oxford, Alabama, 36203.

Recording Fee 38.00
TOTAL 38.00

IN WITNESS WHEREOF, we have hereunto subscribed our names this 3 day of
Dec, 2004.


Forney L. McMichael


Ronda McMichael

CORP 47 52
Recorded In Above Book and Page
09/30/2009 08:12:50 AM
Billy Atkinson
Probate Judge
Talladega County, AL

Recording Fee 44.00
TOTAL 44.00



Talladega County
GIS Internet Report



Assessment Information

PARCEL NUMBER: 06-01-01-0-000-018.011 TAX YEAR:
 OLD PARCEL NUMBER: 0000000000000000
 ACCOUNT NUMBER: 80780
 PPIN NUMBER: 4626

Legal Description	
119.57' X 286.39' IRR LOT 42 THE PLANTATIONS S1 T17S R7E	

Owner Information	
Owner:	MCMICHAEL RHONDA & FORNEY L
Mailing Address:	2 HERTIAGE WAY OXFORD, AL 36203
Property Address:	2 HERTIAGE WAY

Other Information	
Total Acres:	0
Use Value:	\$0
Land Value:	\$30,000
Improvement Value:	\$288,500
Total Taxable Value:	\$318,500
Assessment Value:	\$31,860
Tax District:	11
Millage Rate	.039

Subdivision Information	
Name:	
Lot:	
Block:	
Year/Book/Page:	10774 / 0000367
Section:	0-0-0



Talladega County
GIS Internet Report



Building Components Information

Owner Name: MCMICHAEL RHONDA & FORNEY L
 Parcel Number: 06-01-01-0-000-018.011 PPIN Number:: 4626 Account Number:: 80780
 Acreage: 0

Total Parcel Data	
Current Use:	\$0
Land Value:	\$30,000
Improvement Value:	\$288,500
Total Appraised Value:	\$318,500