IN THE COURT OF APPEALS 03/26/96

OF THE

STATE OF MISSISSIPPI

NO. 94-CA-00724 COA

PAUL H. JONES

APPELLANT

v.

WILLIAM E. MOREHEAD, CATHY MOREHEAD, LARRY MOREHEAD AND MRS. HARVEY MOORE

APPELLEES

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. JOHN L. HATCHER

COURT FROM WHICH APPEALED: COAHOMA COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT:

DAVID R. HUNT

PATRICIA W. BURCHELL

ATTORNEY FOR APPELLEES:

M. LEE GRAVES

NATURE OF THE CASE: SUIT FOR DECLARATORY JUDGMENT ON RIGHTS OF LESSEE IN A LEASE WITH AN OPTION TO RENEW THE LEASE

TRIAL COURT DISPOSITION: DENIED PLAINTIFF'S REQUESTED RELIEF BUT GRANTED OTHER FORMS OF RELIEF TO PLAINTIFF

BEFORE THOMAS, P.J., COLEMAN, AND McMILLIN, JJ.

COLEMAN, J., FOR THE COURT:

Paul H. Jones (Jones) filed a complaint for declaratory judgment in the Circuit Court of Coahoma County in which he sought that court's declaration and adjudication of his rights and duties as lessee in a certain Lease Agreement (Lease) executed October 10, 1983, by the Lessor, William Edward Morehead, who was then acting as Conservator of his mother, Mrs. Marion O. Morehead, owner of the land encumbered by the Lease. The Lease terminated December 31, 1993. Jones' objective was to have the trial court declare that under the terms of an option to renew the lease contained in Section I. of the Lease Agreement, the Lessor was obligated to renew the Lease for another ten-year period beginning January 1, 1994. The trial judge, who acted without a jury, found that the option to renew the lease was too vague and uncertain to be specifically performed by Jones as lessee and Morehead as lessor, but he did declare that Jones was entitled to lease the premises encumbered by this Lease for one additional year, which would end December 31, 1994. The trial judge also determined that a certain ferry barge which had been used by the owner for access to the leased property belonged to the lessor but was subject to Jones' use as lessee of the one-year lease which the trial judge awarded Jones. Jones has appealed from this final judgment, but we affirm that final judgment.

I. Facts

The land which was encumbered by the Lease was an entire island, the name of which was Alcorn Island, located in Moon Lake in Coahoma County. Alcorn Island's area varied from 607 acres at a normal water level to less than 500 acres in times of high water. There was no bridge from the lake shore to the island. The only access to the island was by boat or barge. Marion Owens Morehead owned Alcorn Island and several parcels and lots along the shore of Moon Lake. Prior to 1974, Mrs. Morehead had managed a pecan orchard and a cattle operation on Alcorn Island. One worker helped her manage the island in this fashion. In the fall of 1972, Mrs. Morehead's employee demanded a large percentage of the pecan harvest on the island in addition to his regular salary.

Jones, who was the son of Mrs. Morehead's brother and thus her nephew, discussed the worker's demand with his aunt, Mrs. Morehead. After his conversation with Mrs. Morehead, Jones evicted the worker and gathered the pecan crop for his aunt that year. Mrs. Morehead decided to lease the island to some other people. When Jones learned of her decision to lease the island, he told Mrs. Morehead that he was interested in leasing it. After a discussion with Mrs. Morehead and her son, William Morehead, Jones leased Alcorn Island from Mrs. Morehead for a period of ten years. Mrs. Morehead was then seventy eight years old. This ten-year period ended December 31, 1983. According to Jones' testimony at the trial, the terms of the first lease required him to pay Mrs. Morehead one-fifth of the proceeds from the sales of the pecan crop and the calf crop. The first lease required no base rent; neither did it require Jones to plant any pecan trees.

In June of 1980, before this first Lease expired, William Edward Morehead, Mrs. Morehead's son, was appointed her conservator. Mrs. Morehead died testate on or about October 4, 1984. She devised the residue of her estate, which included Alcorn Island, as follows: a one-third interest to her son, William E. Morehead, a one-third interest to her daughter, Sarah Morehead Moore, a one-sixth interest to her grandson, Larry Morehead, and a one-sixth interest to her granddaughter, Katherine

Morehead. These four people became the owners of the island after their mother's and grandmother's death in 1984. These same four people were the defendants named in the complaint for declaratory judgment which Jones filed; and they are the appellees in this appeal.

On October 10, 1983, almost one year before his mother died, William Edward Morehead as his mother's conservator executed a new Lease with Jones. No court had authorized him to execute this second Lease on behalf of his mother and ward, Mrs. Morehead. Like the first Lease, the term of this second Lease was for ten years. It terminated on December 31, 1993. Like the first Lease, Jones agreed to pay Lessor as annual rental an amount equal to twenty percentum (20%) of the annual sales of pecans, hay and cattle. Unlike the first Lease, however, this second Lease provided that "[i]n no event shall the rental be less than $12,000.00 annually." Unlike the first Lease, Jones agreed that he would plant one hundred pecan trees each year of the Lease. This second Lease, which is the subject of this appeal, contained the following option to renew the lease: "Lessee shall have an option to renew this lease for an amount and a term of years equal to a bona fide third-party offer."

On June 8, 1993, Jones wrote Larry Morehead, then a resident of New York City, to express his interest in continuing to lease the island. He concluded his letter as follows:

> In any event, please accept this letter as my intention to retain possession of the island to the extent that I am permitted to do so under our contract and agreement.

More than three months later on September 10, 1993, Clarksdale lawyer M. Lee Graves wrote Jones on behalf of the Moreheads. He included the following paragraph in his letter:

> Enclosed please find a Lease Agreement for the year 1994. If you are interested in leasing the property for the year 1994, please execute the same and return it to me at the address on the letterhead. I will see that it is executed by the heirs of the estate. If I do not hear from you within seven (7) days of the date of this letter, then we will know that you are not interested in leasing the property for the year 1994.

The proposed Lease Agreement which Graves enclosed with his letter was for a term of one year, which began January 1, 1994, and terminated December 31, 1994. Its terms required Jones to pay "as annual rent . . . an amount equal to 30% of the annual sales of pecans . . . ." but its terms further provided that "[i]n no event shall the rental be less than $6,000 annually nor paid later than December 31, 1994."

In response to Graves letter, Jones' attorney, David R. Hunt, wrote Graves on September 15, 1993. In his letter Hunt wrote:

> I am assuming that, in accordance with paragraph I of the Lease Agreement between the Moreheads and Paul [Jones], a third party has made an offer to lease the property for the amount stated in your proposed lease as well as for a one-year period. I would appreciate being furnished a copy of this offer if it was made in writing.

> In any event, Paul [Jones] wishes to exercise his option contained in paragraph I of his lease and therefore please accept this letter as Paul's exercise of his option to renew his existing lease on the same terms and conditions contained therein, with the exception that the term of the renewed lease will be for a period ending December 31, 1994, and the rentals to be 30% of the annual sales of pecans but not less than $6,000.00 to be paid no later than December 31, 1994, assuming, of course, that the heirs of Mrs. Morehead have received a bona fide third party offer for that amount and for a period of one year.

Graves replied to Hunt's letter on September 20, 1993. In that letter, Graves advised that "[t]he old lease will terminate on December 31, 1993." He further wrote that his clients, the Moreheads, were tendering Jones a "new lease . . . to be exercised for one (1) year."

Jones response to Graves' letter dated September 20, was to file a complaint for declaratory judgment on October 8, in the Coahoma County Circuit Court.

II. Litigation

In his complaint for declaratory judgment, Jones sought the circuit court's judgment which would:

> Declar[e] and adjudicat[e] the respective rights and duties of the Plaintiff [Jones] and the Defendants [the Moreheads] under the aforesaid lease, and further declar[e] that the Plaintiff is entitled to possession and occupancy of the aforesaid real property upon the same exact terms, provisions, and conditions of the Lease Agreement . . ., with the exception that the rentals shall be in that amount and the term shall be for that period equal to the bona fide offer of the third party . . . .

In their answer, the Moreheads sought "a declaratory judgment setting forth that the purported lease agreement . . . is void, and they asked that "[c]omplete discovery be required of [Jones], and that an accounting be made as to the matters requested in this Answer . . . ." Nowhere in their answer did the Moreheads mention any personal property nor ask the circuit court to adjudicate the ownership of any personal property as between them and Jones, the plaintiff. The Moreheads concluded their answer with a request for "such other general and more specific relief as the Court deems proper and is reflected by the accounting and discovery herein."

We reserve our recitation of the course of the trial, which would include the testimony and exhibits, for our discussion of the two issues which Jones presents for our consideration and adjudication. We conclude this portion of the opinion by reciting briefly from the trial court's opinion and the final judgment which the trial court entered pursuant to its opinion. The trial court opined in part:

> One of the reasons that [Jones' right of renewal] gave me concern was in trying to formulate how I would enforce this provision so as to bring about a third party bona fide offer. Whose responsibility is it to get the offer? Is it the lessee's responsibility to get one,

> or is it the lessor's responsibility to get one? *In this case, none was obtained by either party*. (Emphasis added.)

. . . .

> I believe also submitted to me for a decision was the ownership of the barge. The barge was not specifically mentioned in either the bill of sale or the lease. I don't believe the repairs to the barge are sufficient to transfer title, no matter how extensive they were, and I am going to hold that the barge goes with the lease and it goes with the island, so to speak, rather than the plaintiff [Jones].

In accordance with its opinion, the trial court on June 23, 1994, entered its final judgment in which it ordered the following:

> IT IS, THEREFORE, ORDERED AND ADJUDGED:

. . . .

> 2. The provision of the lease granting the option to renew the lease for the rentals and for the term contained in a bona fide third party offer is too vague and uncertain to be specifically performed by the parties but the plaintiff [Jones] is entitled to lease the premises for an additional term of one year ending December 31, 1994, and for annual rentals of 30% of the sale of pecans, but in no event to be less than $6,000.00, which rentals shall be paid no later than December 31, 1994, all as set forth in Exhibit A attached hereto.

> 3. The 24' x 3' x 40' ferry barge is the property of the Defendants but is included in and subject to the lease of the real property and therefore the use and occupancy of the Plaintiff [Jones] under the lease to which the Court has declared the Plaintiff [Jones] to be entitled.

After the trial court's entry of its final judgment, Jones' attorney, David Hunt, wrote the trial judge on June 9, 1994, to inform him "that of the courses of action available to [Jones] under the Court's ruling, he chooses the lease of the premises for the year 1994 as set forth in the lease proposed by the Defendants in September, 1993." However, a copy of this letter has not been included in the record of this case. Instead, appellees, the Moreheads, included a copy of the letter as an exhibit in their brief. Now, the Moreheads argue that Jones is precluded from appealing the case *sub judice* because he exercised the election to accept the renewal lease for the additional year.

III. Issues and the Law

These are the two issues that Jones asks this Court to resolve. We state them as he did in his brief:

> 1. Whether the Court erred in ruling that the subject lease agreement, which contains a renewal clause "for an amount and a term of years equal to a bona fide third party offer," is too uncertain and indefinite to require performance by the Appellees [the Moreheads]?
>
> 2. Whether the Court erred in ruling on the disposition of a certain ferry barge.

The Moreheads counter with a third issue which we previously noted. In their brief, they state it in the following language:

> Whether the Appellant is precluded from an appeal for exercising the election to accept the renewal lease for the additional year.

We now consider these issues in the order in which we have listed them.

A. Standard of Review

The case *sub judice* was filed in the circuit court as a matter of declaratory relief. Nonetheless, it is appropriate to begin our consideration of what standard of review is appropriate in this case with a recitation of the standard of review for matters which are resolved in chancery court where the chancellor almost always finds the facts and applies the law and/or equity to those facts. *Madden v. Rhodes*, 626 So. 2d 608, 616 (Miss. 1993), contains a succinct explanation of the standard of review appropriate in matters of chancery:

> On appeal this Court will not reverse a Chancery Court's findings, be they of ultimate fact or of evidentiary fact, where there is substantial evidence supporting those findings. We must consider the entire record before us and accept all those facts and reasonable inferences therefrom which support the chancellor's findings. The findings will not be disturbed unless the chancellor abused his discretion, was manifestly wrong or clearly erroneous, or an erroneous legal standard was applied. And the chancellor, being the only one to hear the testimony of witnesses and observe their demeanor, is to judge their credibility. He is best able to determine the veracity of their testimony, and this Court will not undermine the chancellor's authority by replacing his judgment with its own. (citations omitted).

In *Kight v. Sheppard Building. Supply, Inc*., 537 So. 2d 1355, 1358 (Miss. 1989), a case which involved the trial judge’s construction of a contract, the Mississippi Supreme Court wrote that "a circuit judge sitting without a jury is accorded the same deference with regard to these factual

findings as is a chancellor." The supreme court further noted, "[a]s regards our standard of appellate review, the interpretation of an ambiguous writing by resort to extrinsic evidence presents a question of fact." *Kight*, 537 So. 2d at 1358 (quoting *Dennis v. Searle*, 457 So. 2d 941, 945 (Miss.1984)).

B. Appellant Jones' First Issue

> 1. Whether the Court erred in ruling that the subject lease agreement, which contains a renewal clause "for an amount and a term of years equal to a bona fide third party offer," is too uncertain and indefinite to require performance by the Appellees [the Moreheads]?

The Lease contained no specific terms in its option to renew. Neither the price for the new lease nor its length were specified in the option to renew. We again recite the only provision in the Lease which in any way pertained to Jones' option to renew the Lease:

> Lessee shall have an option to renew this lease for an amount and a term of years equal to a bona fide third-party offer.

In *McGee v. Clark*, 343 So. 2d 486 (Miss. 1977), the Mississippi Supreme Court considered the chancellor's denial of specific performance of an option contract. In its opinion, the supreme court discussed the requirements of definiteness which were needed to support a decree for specific performance:

> A contract is sufficiently definite if it contains matter which will enable the court under proper rules of construction to ascertain its terms, including consideration of the general circumstances of the parties and if necessary relevant extrinsic evidence. Having found a contract to have been made, an agreement should not be frustrated where it is possible to reach a reasonable and fair result.

McGee, 343 So. 2d at 489 (quoting *Jones v. McGahey*, 187 So. 2d 579, 584 (Miss. 1966)).

More recently, in *Duke v. Whatley*, 580 So. 2d 1267 (Miss. 1991), the Mississippi Supreme Court considered an action brought by lessees for the specific performance of an alleged option to purchase the land which was the subject of the lease. The chancellor denied lessees' claim for specific performance of the option to purchase, and on lessees' appeal, the supreme court affirmed the chancellor's denial of specific performance. *Id.* at 1268. The Mississippi Supreme Court affirmed the chancellor's denial of specific performance because the purchase price was not specified in the option to purchase. *Id.* About the absence of a purchase price in the option, the supreme court wrote:

> If any essential term is left unresolved, there is simply no contract and no obligation on the parties. *Busching v. Griffin I*, 465 So. 2d 1037, 1040 (Miss. 1985) (citing *Etheridge v. Ramzy*, 276 So.2d 451 (Miss.1973)). *See Knight v. Sharif*, 875 F.2d 516, 525 (5th

Cir.1989)(when preliminary agreement leaves open material term, there can be no implication of what parties will agree upon).

Duke, 580 So. 2d. at 1274. *See Sturm v. Dent*, 141 Miss. 648, 107 So. 277 (1926) (under Hemingway Code provision § 3119, failure of written memorandum to state purchase price held insufficient to compel specific performance); *see also Wolf v. Lodge*, 140 N.W. 429 (Iowa 1913) (right of first refusal held not specifically enforceable due to absence of price); *Andreula v. Slovak Gymnastic Union*, 53 A.2d 191 (N.J. 1947) (option to purchase realty not specifically enforceable where contract failed to specify price); *Rolfs v. Mason*, 119 S.E.2d 238 (Va. 1961) (specific performance of option contract denied for want of certainty over price).

We earlier noted that the trial court can consider "if necessary, relevant extrinsic evidence." Were there such relevant extrinsic evidence about either the price or the length of time for which the Lease was to be renewed, then the option to renew might yet be enforced. The fact is that there is nothing in the record to establish the terms of any "bona fide third-party offer." Under cross-examination, Jones was asked what he considered a "bona fide third party offer" to be. He answered, "[t]he person would be named, the amount of rent would be named, and the number of years would be named." When the Moreheads' counsel asked Jones "[w]hat party has made a bona fide third party offer?" Jones replied, "[n]obody has made a bona fide third party offer." Jones later qualified his answer to indicate that he interpreted Graves' letter to Hunt to mean that his clients, the Moreheads, had in fact received such a bona fide offer. This Court finds no such reference to a bona fide third party offer to lease Alcorn Island in either of Graves' letters that are exhibits in this case. Larry Morehead, who owned an undivided one-sixth interest in the island, testified that he had not received any bona fide third party offer to lease the island.

In the absence of extrinsic evidence about a proposed bona fide third party offer to lease Alcorn Island, which offer must include the price and the period of time for leasing Alcorn Island, we conclude that the trial judge correctly decided that the option to renew the lease was "too uncertain and indefinite to require performance by the Moreheads. In *Duke v. Whatley*, 580 So. 2d at 1275, the Mississippi Supreme Court concluded that "[o]ur case law demands greater specificity and definiteness than what is found in the agreement which we have before us." We adopt that conclusion for our conclusion of our consideration of Appellant's first issue. We, therefore, hold consistent with our previously quoted standard of review that the trial court did not err when he found that the option to renew the lease was "too uncertain and indefinite to require performance by" the Moreheads under the facts adduced at trial.

C. Appellant Jones' Second Issue

2. Whether the Court erred in ruling on the disposition of a certain ferry barge

Jones offers two reasons based on entirely different rules of civil procedure and precedent to support his position on this issue. First, he points to the evidence in the record which showed that he had transferred title to this barge to his son, Donald Wayne Jones. Among the exhibits admitted into evidence were copies of a bill of sale dated April 12, 1989, from Jones to his son and an application for a certificate of title which his son, Donald Wayne Jones, filed with the Mississippi Department of

Wildlife Conservation on April 12, 1989. Jones then argues that pursuant to Rule 19(a) of the Mississippi Rules of Civil Procedure, Donald Wayne Jones was a necessary party to the determination of this issue. Jones asserts that his son was a necessary party because "the Court erred in rendering a decision which affected the 'owner's rights." According to Jones, his son's interest in the barge was left wholly unprotected. We first find that Jones was not the owner of the barge when this litigation began or ended. The bill of sale and application for title certificate for the barge, both dated in 1989, support our finding. Thus, it matters not to him whether the trial court adjudicated that the Moreheads owned the barge. Were we to reverse the trial judge's decision that the Moreheads owned the barge, Jones would have gained nothing because he can claim no interest in it.

We note that the Moreheads did not move to continue the trial of this case so that Jones' son, Donald Wayne, could be joined as a party pursuant to Rule 19. Because Donald Wayne Jones is not a party to this case, he is not bound by the court's adjudication that the Moreheads own the barge. The fourth paragraph of the Comment to Rule 19 contains this sentence: "Account also must be taken of whether other alternatives are available to the litigants." The record does not disclose who has possession of the barge. Regardless of who possesses it, the Moreheads may have a replevin action against Donald Wayne Jones to regain possession of the barge, but if they pursue an action of replevin against him, Donald Wayne Jones will not be bound by this decision because he is not a party to it.

This Court thinks that *Coats v. City of Yazoo City*, 562 So. 2d 64 (Miss. 1990), sustains our determination that the trial court need not have joined Donald Wayne Jones as a party defendant in this case. In *Coats*, an eminent domain preceding, the Mississippi Supreme Court held that the City of Yazoo City did not have to join an adjoining land owner where the defendant claimed by adverse possession the land to be condemned because the failure to join the adjoining landowner did not extinguish that person's right to protect his or her interest in the land which the city was condemning. Yazoo City's failure to join this party meant that it might undergo multiple litigation. In the case *sub judice*, the Moreheads' failure to join Donald Wayne Jones as a party defendant simply means that they run the risk of incurring additional litigation to regain possession of the barge. During the course of any subsequent litigation, Donald Wayne Jones will have an opportunity to contest the Moreheads' claim to ownership of the barge. Jones' first reason to reverse the trial judge's decision of this issue persuades us not.

Perhaps our resolution of Jones' first reason to reverse the trial judge's decision that the barge belongs to the Moreheads renders our consideration of his second reason to reverse that decision unnecessary. Nevertheless, independently of our rejection of Jones' first reason, we also reject his second reason. His second reason is that the Moreheads did not assert a claim to the trial court for relief on this issue. It is true, as Jones emphasizes in his brief, that the Moreheads stated no claim in their answer for the trial court's adjudication that they owned this barge. Neither did they file a counterclaim against Jones for the ownership of this barge. It is also correct that initially and repeatedly Jones objected to the Moreheads' introducing evidence on the question of who owned the barge because they failed to give notice to him in the pleadings that they claimed its ownership.

However, an examination of the record discloses that Jones' attorney cross-examined Dr. William Morehead about whether he had discussed the matter of the ownership of the barge with Jones. He then questioned Morehead about a bill of sale executed by Mrs. Morehead to Jones which described

a "push boat and used 25 horsepower Johnson motor." Jones' counsel asked Morehead if it would not be reasonable to assume that the push boat "had to have something to push?" Morehead replied, "Yes, that's reasonable." Jones' counsel then countered, "And that would be the barge, would it not? " Morehead answered, "Yes, but my own feeling is that my mother would not sell the barge . . . because [it] was her insurance of always being able to get on and off [Alcorn Island]."

The record further reveals that the trial was recessed at the close of the first day and resumed the next morning. The next morning, after the Moreheads rested, Jones' counsel stated to the court:

> Your Honor, our proof that we would offer now is in relation to the barge. We would have one witness that would offer some evidence in rebuttal. But the balance of the testimony we would offer would be in relation to this ownership of the barge. I understand the Court said it wanted evidence on that, even though we contend that it is not at issue in the pleadings.

Later, Jones' counsel stated to the Court:

> Your honor, what I don't want to be precluded from is -- this is such short notice, and I will be glad to present it, but I don't want to be precluded from having this ownership of the barge brought up in an appropriate proceeding where we can fully develop the evidence in that regard. If the Court has determined that it is at issue, you know, I guess we are bound by it. But I'm real leery of it.

We have quoted these comments from Jones' counsel to establish that he did not affirmatively and emphatically object to proceeding with presenting his evidence on this issue. Moreover, Jones' counsel at least had an overnight opportunity to prepare for that presentation. Included in that evidence was the testimony of one E. L. Wilkinson about the major repair he had done to the barge, for which Jones paid him about $3,000.00.

Rule 15(b) of the Mississippi Rule of Civil Procedure provides:

> **(b) Amendment to Conform to the Evidence.** When issues not raised by the pleadings are tried by expressed or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the

> pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in the maintaining of his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence. The court is to be liberal in granting permission to amend when justice so requires.

M.R.C.P. 15(b).

In *Weiss v. Weiss*, 579 So. 2d 539 (Miss. 1991), the issue of alimony was not raised in the complaint but was discussed in chambers with the judge. *Id.* at 542. The defendant offered evidence on the topic of alimony and failed to object to trying that issue. *Id.* The Mississippi Supreme Court held that the issue of alimony was tried by consent. *See also Queen v. Queen*, 551 So. 2d 197 (Miss. 1989), in which the supreme court held that the husband should have made a timely objection when the issue of alimony was first raised at trial. This Court further notices that Jones does not argue that he was prejudiced by having to proceed on this issue. Indeed, from the record we have determined that he presented much evidence to support his contention that Mrs. Morehead had intended to include this barge in one of two bills of sale for other agriculturally related personal property she had sold him. But the fact that the evidence shows that he can have no further claim to owning the barge renders his interest in resolving this issue moot. This Court will not remand an issue to the trial court for further proceedings at the behest of a party before it if that party cannot possibly prevail for his own benefit in the trial court. On remand, Jones could only show what he has already shown the trial court, *i.e.*, his son owns the barge, and as we have already opined, Donald Wayne Jones is not bound by the trial court's adjudication that the Moreheads own the barge.

In summary, on the second reason urged by Jones to decide this issue favorably to him, we conclude that before the trial's end, he had acquiesced in the court's determination of who owned the barge. He acknowledged his acquiescence by presenting evidence to the trial court that Mrs. Morehead had intended to sell him the barge but that its description had inadvertently been omitted from the bills of sale which she had executed. Jones further testified that Mrs. Morehead had executed an amendment to the bill of sale to include the barge, but perhaps because of two burglaries of his office, the amendment had been lost. Thus, Jones consented, perhaps reluctantly, to try this issue even though the Moreheads' pleadings contained no notice that they would present such an issue to the trial court.

D. Appellees' Issue

> Whether the Appellant is precluded from an appeal for exercising the election to accept the renewal lease for the additional year.

In its final judgment the trial court stated that Jones had "advised the Court and the Defendants by letter dated June 10, 1994, that he intended to continue possession and occupancy of the lease

property pursuant to said lease terms." However, in the mandate of the final judgment, from which we previously quoted, the trial court wrote: "[Jones] is entitled to lease the premises for an additional term of one year ending December 31, 1994, and for annual rentals of 30% of the sale of pecans, but in no event to be less than $6,000.00, which rentals shall be paid no later than December 31, 1994, all as set forth in Exhibit A attached hereto."

We further observe that a copy of the letter dated June 10, 1994, to which the trial court referred in its final judgment, is not included in the record of this case. The Moreheads included a copy of a letter dated June 9 from David Hunt, Jones' counsel, to the trial judge in which Mr. Hunt advised him that "of the courses of action available to him under the Court's ruling, [Jones] chooses the lease of the premises for the year 1994 as set forth in the lease proposed by the defendants in September, 1993." Of interest to this court is the concluding paragraph of that letter, which reads as follows:

> I further understand the Court's ruling that the September, 1993, lease terms would be those to be applicable to the occupancy of the property for 1994 and that any additional contingencies, conditions, or provisions not contained in the [Moreheads'] 1993 proposed lease but attempted to be added by the [Moreheads'] subsequent to the Court's ruling would not be applicable to the occupancy.

Our quoting from this letter unduly dignifies it because the Moreheads never moved to incorporate it within the record pursuant to what was then Rule 10(e) of the Rules of the Mississippi Supreme Court. We quote from it only to show that the letter illustrates some uncertainty about what would become the ultimate terms of the one-year lease. We further note that while the trial court referred to this letter in the final judgment from which Jones has appealed, it entered no further order by which it adjudicated whether the Moreheads and Jones were bound by the terms of the one-year lease which it had found that Jones was entitled. In the absence of the trial court's order which has adjudicated whether Jones has in fact leased Alcorn Island, there is no final judgment on this issue from which to appeal.

Finally, this issue has become moot. The one-year lease agreement authorized by the trial court expired on December 31, 1994. It contained no option for renewal as did the Lease which spawned this litigation. In *Monaghan v. Blue Bell, Inc.*, 393 So. 2d 466 (Miss. 1980), the chancellor had enjoined certain employment for a period of one year and had declined to grant supersedeas on the decree. *Id.* at 466. Four days after the one-year's injunction had expired, the case was submitted to the Mississippi Supreme Court for its consideration. *Id.* The supreme court dismissed the appeal because it found that the issue in the appeal had become moot. *Id.* at 467. To explain its dismissal of the appeal, that court wrote:

> Cases in which an actual controversy existed at trial but the controversy has expired at the time of review, become moot.

. . . .

> This Court will not adjudicate moot questions.

Id. at 466-67 (citations omitted).

We resolve the Moreheads' issue unfavorably to their position on it. We do so because we find that it is not properly before us for our adjudication since the trial court never adjudicated finally whether Jones and the Moreheads had accepted or rejected the terms of the trial court's proposed one-year's lease. Moreover, had the trial court made a final adjudication on this question, it became moot on January 1, 1995. This Court, which must follow the Mississippi Supreme Court's precedent, will not adjudicate moot issues.

IV. One Other Matter

On more than one occasion in their brief, the Moreheads referred to Jones' acquittal of either murder or manslaughter charges which arose from a homicide which occurred on Alcorn Island. Their multiple references to Jones' acquittal, apparently on the basis of self-defense, always included the additional information that there had been no evidence in the record of Jones' trial that the victim had been armed. This Court searched in vain in their brief for the Moreheads' precedent which made Jones' acquittal relevant to the issues which this Court has resolved. We must trust that the Moreheads' submission of this information about Jones was not intended to prejudice us against Jones, although we remain at a loss to understand its relevance since they made no effort to relate Jones' acquittal as a matter of law to the issues with which we have dealt. We have decided these issues favorably to the Moreheads in spite of their repeated references to Jones' acquittal, not because of it.

V. Summary

Had there been any extrinsic evidence of a "bona fide third-party offer," then the option to renew, which we again quote, "[l]essee shall have an option to renew this lease for an amount and a term of years equal to a bona fide third-party offer," might not have been "too uncertain and indefinite" to require specific performance by [the Moreheads]. Mississippi's jurisprudence allows extrinsic evidence to explain ambiguity, indefiniteness, or uncertainty in the terms of a contract such as the Lease which was the subject of this litigation. Mississippi's jurisprudence also demands that price, if not the period of time for which the renewal is to run, be a definite term included in an option to renew. Jones does not argue that the evidence showed that any bona fide third party offers to lease Alcorn Island included either of these terms. Thus, the terms of the option to renew this lease were too indefinite and uncertain under the evidence adduced in this case to allow Jones to renew the Lease; and we affirm the trial judge's adjudication on this issue.

The Moreheads' pleadings gave no notice to Jones that they claimed ownership of a barge which both Mrs. Morehead and Jones had used for access to Alcorn Island. From our review of the record, we cannot say with certainty that Jones did not consent to the trial court's trying this issue. True,

Jones' counsel repeatedly objected to the Moreheads' attempting to introduce evidence on the issue of ownership of the barge; but on cross examination of Dr. William Morehead, Jones' counsel asked questions which were relevant to this issue. Moreover, Jones proceeded to present evidence during the second day of the trial relevant to his son's ownership of the barge. In fact, Jones does not argue that he was prejudiced by an inability to present evidence other than what he presented during the trial on the issue of ownership of the barge.

Jones' evidence was that he had sold the barge to his son, Donald Wayne Jones. He then uses this evidence to argue that his son ought to have been made a party defendant because the trial court's determination that the barge belonged to the Moreheads adversely affected Donald Wayne Jones' ownership of the barge. This argument concedes that Jones had no further interest in the barge anyway. Because Donald Wayne Jones is not a party to this litigation, he is not bound by the final judgment entered in this case. We cannot conclude from our review of the record that the issue of who owned the barge was tried without the consent of or to the prejudice of Jones, but we also find that Jones' contention that his son owns the barge moots his interest in this case anyway. We hold that the trial court did not err when it found that the Moreheads owned the barge.

The Moreheads' issue is a non-issue, both because the trial court never decided it and because the passage of time has rendered it moot. We affirm the final judgment of the trial court.

THE JUDGMENT OF THE CIRCUIT COURT OF COAHOMA COUNTY IS AFFIRMED. APPELLANT IS TAXED WITH THE COSTS OF THIS APPEAL.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.