IN THE SUPREME COURT OF MISSISSIPPI

NO. 2025-IA-00939-SCT

PRIORITY ONE BANK AND HARVEY LOTT

v.

DEREK DURAND HALL AND KEISHA HALL

DATE OF JUDGMENT:	08/04/2025
TRIAL JUDGE:	HON. PRENTISS GREENE HARRELL
TRIAL COURT ATTORNEYS:	TANGI A. CARTER RICHARD J. LAJAUNIE RONALD V. JOHNSON, IV RUSSELL L. JOHNSON JOHN M. DEAKLE AUDRY REGNAL BLACKLEDGE THOMAS LEWIS TULLOS, II ANTHONY SAKALARIOS TIMOTHY J. ANZENBERGER C. PHILLIP BUFFINGTON KYE CNEE' HANDY RICHARD D. UNDERWOOD
COURT FROM WHICH APPEALED:	JEFFERSON DAVIS COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANTS:	C. PHILLIP BUFFINGTON RICHARD D. UNDERWOOD TIMOTHY J. ANZENBERGER KYE CNEE' HANDY
ATTORNEYS FOR APPELLEES:	TANGI A. CARTER RONALD V. JOHNSON, IV JOHN M. DEAKLE RICHARD J. LAJAUNIE RUSSELL L. JOHNSON
NATURE OF THE CASE:	CIVIL - CONTRACT
DISPOSITION:	REVERSED AND REMANDED - 11/05/2026
MOTION FOR REHEARING FILED:	

EN BANC.

GRIFFIS, JUSTICE, FOR THE COURT:

¶1. Derek and Keisha Hall sued Priority One Bank, Harvey Lott, and Jose Silva for breach of contract and additional claims. The Halls moved to strike a provision of the contract. The trial court found that a provision of the contract was void, invalid, and unconscionable and granted the Halls' motion to strike. This Court granted the bank's petition for interlocutory appeal. Order, ***Priority One Bank v. Hall***, No. 2025-IA-00939-SCT (Miss. Aug. 18, 2025).

FACTS AND PROCEDURAL HISTORY

¶2. In 2018, the Halls hired Silva for the construction of their new home after they were referred to Silva by a family member. The Halls asserted in their complaint that Silva "not only recommended . . . , but highly encouraged" they obtain financing for the construction through Priority One Bank and Lott, a loan officer and division president of the bank. In his deposition, Derek stated that he used the bank because it was local and because he felt comfortable after his meeting with Lott but that the decision to use the bank for financing was not based on the recommendation from Silva.

¶3. The Halls were approved for a construction loan[1] and agreed on a house plan. In June 2018, the parties signed a Construction Loan Agreement.

¶4. Toward the end of the construction and after the Halls obtained additional financing, Silva's wife contacted Derek to ask for an increase in funding to finish the job. Derek testified that he then went to the bank to inquire about how much of the funds Silva had

[1] The initial loan amount was for $346,689.50. After modifications were made to the plans, the Halls requested and the Bank approved an increase to the principal. The amount was increased to $408,711.

withdrawn. Derek opined that his relationship with Silva "was going downhill" as the construction was coming to an end, but he did not have any issues with the bank or with Lott.

¶5. In January 2019, after moving into the home, the Halls had an outside home inspector complete an inspection report. The Halls alleged they "obtained an inspection report that detailed their issues with the . . . work on the home." Derek stated that there were issues with the air conditioning, ventilation, electrical outlets, woodwork, sinks, and plumbing.

¶6. The Halls filed a complaint[2] against Priority One Bank, Lott, Silva, and others for breach of contract and additional claims.[3] The Halls asserted that the defendants "were engaged in an ongoing secret conspiratorial relationship" in which the defendants "received substantial profits[.]" The Halls also claimed that Silva built the home "in a shoddy and unworkmanlike manner using substandard materials" so that they had to "secure additional financing." The Halls alleged that the bank and Lott's "failure to conduct adequate inspections of the construction" and the allowance of disbursements from the loan account without the Halls' approval resulted in damages. The bank and Lott answered, denying the allegations and raising affirmative defenses.

¶7. In an affidavit, Silva stated that he did business with Lott and that Lott knew neither

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[2] The original complaint was filed June 7, 2022. The amended complaint was filed June 28, 2022. The second amended complaint was filed February 9, 2024.

[3] The additional claims included failure to properly train and/or adequately supervise employees, fraudulent misrepresentation, negligent misrepresentation, breach of implied warranty for fitness for a particular purpose, conspiracy, fraud, breach of the duty of good faith and fair dealing, and negligent and intentional infliction of mental and emotional distress.

Silva nor his company were licensed contractors in Mississippi but still referred customers to Silva for projects that were funded through the bank. Silva testified via deposition that he first met Lott at the bank when seeking financing to build his own home. Silva and Lott became friends and referred people to each other's businesses. Silva testified that after referring customers to the bank for loans, Lott would ask for a tip. Silva gave Lott tips on "six to ten jobs[,]" including on the Halls' home. Silva could not remember how much of a tip he gave to Lott on the Halls' house.

¶8. Silva stated that Lott never failed him on a home inspection or required him to fix something before allowing him to draw more money from the loan. Silva opined that he never had a contractor's license in Mississippi but that he had a privilege license and insurance. He maintained that Lott knew he did not have a contractor's license. Silva testified that Lott, on behalf of the Bank, inspected the Halls' house for progress.

¶9. In his deposition, Derek stated that he learned that Lott and Silva "knew each other and maybe Mr. Silva was giving Mr. Lott money from the loan amount[.]" Derek and Keisha each testified that they had not seen evidence of a "kickback scheme" and were not aware of any.

¶10. Lott denied accepting any gifts, kickbacks, or tips from Silva. Lott also denied referring any customers to Silva but maintained that Silva referred customers to the bank. Lott learned in June 2018 that Silva did not have a contractor's license.

¶11. Lott testified that when a loan officer completes an inspection, "it is solely for the

benefit of the bank[.]" He opined that the purpose of an inspection by loan officers "is to make sure that progress is being made on the house[,]" not "scrutinizing the quality[.]" Lott stated that it is the responsibility of the homeowner to vet and hire their contractor.

¶12. Lott testified that in some cases, the bank advanced money to the contractor, as was the agreement with Silva, before work was completed if the contractor did not have enough capital to perform the work and otherwise would have to wait several weeks before being paid. Lott testified that he had "verbal communications" with Derek prior to advances being made to Silva. Lott testified that the Construction Loan Agreement does not require the bank to have the borrowers sign affidavits prior to giving advances to the contractor.

¶13. The bank filed a motion for summary judgment, arguing that no evidence supported that Silva had paid kickbacks to Lott. The bank also asserted that no evidence supported that it breached an express term of the loan documents, that no admissible summary-judgment evidence supported the conspiracy, that the Halls had waived their causes of action when they modified the loan, and that the claims were barred by the statute of limitations. The Court denied the bank's motion for summary judgment, finding that the bank had failed to show that no genuine issues of material fact existed.

¶14. The bank and Lott filed in this Court a petition for interlocutory appeal, which was denied. Order, ***Priority One Bank v. Hall***, No. 2024-M-01398-SCT (Miss. Jan. 10, 2025).

¶15. The Halls then filed a "Motion to Strike Contract Provision," asserting that "the provision is unconscionable and unenforceable, and therefore should be [struck] from the

Loan Agreement." The Halls argued that "the Loan Agreement contains a conflicting provision" that "is one-sided and oppressive; deprives the Halls of the benefits of the terms; strips them of any legal remedy; and by its very language alters the Halls' legal rights." As such, the Halls requested that the trial court (1) strike the provisions of the loan agreement that "attempt to purge the Bank and Lott from any responsibility regarding the requirements for advances" and (2) find "that the requirements for advances are applicable to all parties, including the Bank and Lott."

¶16. The bank responded to the motion to strike, arguing that it should be denied because

> (a) the Halls failed to plead unconscionability, so it is waived; (b) the correct procedure for seeking a ruling that a contract is unconscionable is through a dispositive motion, and the deadline for dispositive motions passed over a year ago; and (c) substantively, the clause at issue is not unconscionable and is a routine and common clause in construction loan agreements that has been enforced by courts across the nation for decades.

¶17. The court granted the Halls' motion to strike, finding that the following provision was "void, invalid, and unconscionable":

> This Agreement is for the sole benefit of Lender and Lender's successors and assigns, and binds Borrower and its successors, assigns, executors, heirs, administrators and personal representatives. All conditions to Lender's obligation to make any Advance are solely for Lender's benefit. No other person or entity shall have standing to require satisfaction of those conditions or be deemed to be the beneficiary of those conditions.

¶18. The bank filed a motion to stay proceedings during the pendency of its petition for interlocutory appeal to this Court. The trial court denied the motion. This Court granted the interlocutory appeal and granted the motion to stay. Order, ***Priority One Bank v. Hall***, No.

2025-IA-00939-SCT (Miss. Aug. 18, 2025).

STANDARD OF REVIEW

¶19. "Contract interpretation is a question of law and is reviewed *de novo*." ***Sanderson v. Sanderson***, 170 So. 3d 430, 434 (Miss. 2014) (citing ***Harris v. Harris***, 988 So. 2d 376, 378 (Miss. 2008)).

DISCUSSION

I. The motion to strike was not the appropriate avenue for relief.

¶20. The Motion to Strike Contract Provision filed by the Halls does not cite any rule of the Mississippi Rules of Civil Procedure that authorizes its filing. All we have is the title. The only rule of civil procedure that authorizes a motion to strike is Rule 12(f). It provides:

> **Motion to Strike.** Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within thirty days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

¶21. The bank argues that Mississippi Rule of Civil Procedure "12(f) is an improper procedural vehicle for seeking a ruling on a contract provision's enforceability." Further, the bank contends that "the parties' Agreement is not a 'pleading' subject to a motion to strike."

¶22. The Bank further argues that this "dispositive issue should have been resolved through a dispositive motion," such as a Mississippi Rule of Civil Procedure 12(c) motion for judgment on the pleadings or a Mississippi Rule of Civil Procedure 56 motion for summary judgment. M.R.C.P. 12(c); M.R.C.P. 56.

¶23. The Halls agree that "the Loan Agreement is not a pleading as defined by" Mississippi Rule of Civil Procedure 7(a). Although the Hall's titled their motion as a "Motion to Strike Contract Provision," they argue that the "request to strike the contract provision as unconscionable was not a motion pursuant to Rule 12(f)[.]" Instead, the Halls assert that the motion "was simply a request for the [c]ircuit [c]ourt to review a provision in the Loan Agreement and make a determination of whether it is unconscionable, and therefore unenforceable." Clearly, the circuit court reviewed it as if it were a motion for partial summary judgment under Mississippi Rule of Civil Procedure 56(c). Yet the circuit court did not require the movant to follow Rule 4.02 of the Uniform Civil Rules of Circuit and County Court Practice.

¶24. Before the circuit court and now this Court is the Halls' motion, which was titled Motion to Strike Contract Provision. The Halls did not allege in their initial or amended complaints that the loan agreement was unconscionable. It was not until the motion to strike that the Halls raised unconscionability for the first time.

¶25. We recognize that "the usual defenses to a contract such as fraud, unconscionability, duress, and lack of consideration may be applied to invalidate" a contract provision. ***E. Ford, Inc. v. Taylor***, 826 So. 2d 709, 714 (Miss. 2002). But "[m]otions [to strike] are generally appropriate only in the absence of remedies by regular pleadings and cannot be made available to settle important questions or to dispose of the merits of the case." ***Southland Broad. Co. v. Tracy***, 210 Miss. 836, 50 So. 2d 572, 574 (1951) (internal quotation

marks omitted).

¶26. We find only one Mississippi case that cites Rule 12(f), and it merely states that Rule "12(f) involves motions to strike pleadings before the court." ***Daigle v. Daigle***, 626 So. 2d 140, 144 (Miss. 1993). We find no Mississippi case that has ever been decided on a Rule 12(f) motion to strike or that would authorize such procedural action. Further, the dissent cites no cases on point. Instead, the cases cited refer to motions to compel arbitration and are simply not relevant to this case. The argument of the dissent is undermined by the fact that it does not cite one case that authorizes the use of the procedural rule that was used in this case. It is not too much to ask the bench and bar to cite and use the proper procedural rules to obtain relief. If we do not enforce the use of proper rules here, then we will weaken the foundation of all procedural rules.

¶27. Whether provisions of the Loan Agreement were unconscionable and unenforceable is an important substantive question that will impact the outcome of this case, and, therefore, the Halls' motion to strike was not the appropriate avenue for relief and "cannot be made available to settle important questions or to dispose of the merits of the case." ***Tracy***, 50 So. 2d at 574 (internal quotation mark omitted). This issue should have been raised through a dispositive motion. As a result, the trial court erred by striking the provision at issue.

¶28. Respectfully, the dissent is misplaced. The Halls agree and accept that they filed a motion to strike. Despite this admission, the dissent advocates a position not advocated by the Halls. With no citation of the record or authority, the dissent contends that "the [Halls']

motion to strike . . . filed in substance constituted what multiple generations of lawyers have called a motion *in limine*." Diss. Op. ¶ 37. Our review of the Halls' motion, the related documents filed before the trial court, the trial court's order, and the briefs filed before this Court simply do not use the words "in limine" or "exclude," which would lead to the dissent's conclusion.

¶29. The dissent cites several decisions from this Court. First, the dissent cites this Court's decision in ***Owens v. Mississippi Farm Bureau Casualty Insurance Co.***, 910 So. 2d 1065, 1077 (Miss. 2005), for the proposition that "[t]his Court has previously recognized motions *in limine*." Diss. Op. ¶ 37 n.4. In ***Owens***, this Court considered an appeal from the trial court's decision to deny the plaintiff's motion for a directed verdict and a jury verdict in favor of the defendant. ***Owens***, 910 So. 2d at 1069. The Court did not consider a motion *in limine* or a motion to strike. Instead, the Court simply recognized that a motion *in limine* could have been filed before the trial. ***Id.*** The Court's ruling is devoid of support for the dissenting opinion:

> ***III. Bias, passion and prejudice.***
>
> Finally, Mrs. Owens asserts that she is entitled to a new trial because this verdict was the result of bias, passion and prejudice. Mrs. Owens asserts that Farm Bureau's attorney made personal attacks on her and her husband at the trial. She further states that the attorney questioned them about irrelevant and immaterial aspects of their lives, and made repeated references to their economic status in an attempt to prejudice the jury.
>
> We have reviewed the entire transcript, and we find that, at times during the trial, both Farm Bureau's counsel and counsel for Mrs. Owens were verbally warned or reprimanded by the trial court for inappropriate remarks to

the court and/or a witness. At times, hostile attitudes were exhibited on the part of attorneys and witnesses. Through the questioning of jurors in voir dire, defense counsel was able to make the jury aware that the Owenses were members of a country club, traveled to Europe and other destinations, and had supported Republican politicians. *Although a carefully crafted motion in limine could have resulted in the information coming before the jury in a more benign manner*, we find the questions were reasonably calculated to learn information about jurors, and possible contacts, affiliations and beliefs which might bear on the decision to exercise peremptory strikes of jurors. We also find that the remarks and information complained of, taken individually or as a whole, do not justify a new trial.

Id. at 1077 (emphasis added). ***Owens*** does not support the dissenting opinion.

¶30. Second, in ***Tracy***, this Court ruled:

> Nearly a month and a half after the filing of this answer in which it was specifically charged that Leggett [the individual defendant]was drunk at the time of the wreck, and just before the trial of the case, the company [also a defendant] moved to strike from the declaration the allegations as to Leggett's drinking habits. The overruling of this motion and the admission of evidence to support this charge is assigned as error. The company had not only denied the charge and had made an issue on this point long before the filing of the motion but it had also affirmatively pleaded that Leggett was drunk on the occasion in question. Thereby it sought the benefit of Leggett's one occasion of alleged drunkenness and at the same time sought to cut off the plaintiff from proving that Leggett was an habitual drunkard. The plaintiff was clearly entitled to proceed upon the case charged by him in either of both counts of his declaration and in the light of the evidence offered at the trial we are of the opinion that the action of the trial judge was correct. In the case of ***McDowell v. Minor***, 158 Miss. 788, 792, 131 So. 278, 279 [(1930)], this Court said: 'We notice that in some districts both in law and in chancery *there is an occasional occurrence of this erroneous practice of attempting to substitute a motion to strike for the more appropriate method of a plenary pleading, whereas from the earliest times consistently down to this day that unauthorized procedure has been disapproved and discouraged in this jurisdiction*. It is true that where a pleading has been filed out of time without just excuse, or where a pleading is so manifestly sham and frivolous as to be in substance no pleading at all, or where clearly the pleading thus attacked can have no legitimate place in the proceedings under any possible view that may be taken of the case, the

> motion to strike is available. But in the absence of statute, a *motion is not a pleading and 'ought not to be permitted to usurp the place of regular formal pleading where they are appropriate.*' The rule in this state is that *the stringent remedy of striking finally from the files will be allowed only when there is no other available method by plenary pleading and when the justice of the motion to strike is so clear as to be fairly indisputable*. To state the rule in other words, it may be summarized in the language taken from page 671 in 19 Ruling Case Law: 'Motions are generally appropriate only in the absence of remedies by regular pleadings and cannot be made available to settle important questions or to dispose of the merits of the case.'"

Tracy, 50 So. 2d at 574. ***Tracy*** is simply not applicable because it predates the Mississippi Rules of Civil Procedure by more than thirty years.

¶31. Next, the Chief Justice cites two cases that consider motions to compel arbitration. In these cases, the court considered whether arbitration agreements were unconscionable and unenforceable. This case does not involve an arbitration provision. In ***Covenant Health & Rehabilitation of Picayune, LP v. Estate of Moulds ex rel. Braddock***, 14 So. 3d 695, 701 (Miss. 2009), and in ***Caplin Enterprises, Inc. v. Arrington***, 145 So. 3d 608, 612 (Miss. 2014), the Court considered the trial court's decisions on motions to compel arbitration. Neither of these cases is applicable here or offers any guidance.

¶32. Based on this ruling, we decline to address whether the motion was timely, whether the claim was waived, or whether provisions of the Loan Agreement were unconscionable and unenforceable. The proper motion for the trial court and this Court to consider is a motion for partial summary judgment under Mississippi Rule of Civil Procedure 56(c) and (d), and the parties are required to follow the requirements of Rule 4.02 of the Uniform Civil Rules of Circuit and County Court Practice.

¶33. The judgment is reversed, and the case is remanded to the circuit court for further proceedings consistent with this opinion.

¶34. **REVERSED AND REMANDED.**

KING AND COLEMAN, P.JJ., ISHEE, SULLIVAN, BRANNING, WILSON AND TOLLISON, JJ., CONCUR. RANDOLPH, C.J., DISSENTS WITH SEPARATE WRITTEN OPINION.

RANDOLPH, CHIEF JUSTICE, DISSENTING:

¶35. The majority's finding abstains from considering unconscionability although that issue is before the Court. The motion to strike filed by Derek and Keisha Hall is not a dispositive effort to end the case. This a contract case that also contains allegations of fraud and other extracontractual claims. To determine whether the trial court erred requires an opinion from this court regarding the trial court's holding of unconscionability as to one clause of a multipage contract. I would uphold the trial judge's decision to strike that one clause as unconscionable. Thus, I respectfully dissent.

¶36. The issue in this contract is not dispositive. PriorityOne Bank agrees in its brief by arguing that the Halls' other claims are not affected by this clause. Mississippi courts have three options for remedying clauses deemed unconscionable:

> "If [a] court as a matter of law finds the contract to have been unconscionable . . . [it] may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result."

Covenant Health & Rehab. of Picayune, LP v. Est. of Moulds ex rel. Braddock, 14 So. 3d

695, 700 (Miss. 2009) (second and third alterations in original) (quoting 3 Jeffrey Jackson & Mary Miller, *Mississippi Practice Series: Encyclopedia of Mississippi Law* § 21.54 (2001)); *see also* ***Russell v. Performance Toyota, Inc.***, 826 So. 2d 719, 725 (Miss. 2002) (applying the second option and finding that "even if the limitation time period contained in the arbitration agreement were void, the arbitration agreement is still binding"). The trial court chose to exercise the second of these three options by deleting the only contested clause and allowing the case to proceed.

¶37. The Halls sought to declare unconscionable only one clause of a contract, and the motion to strike they filed in substance constituted what multiple generations of lawyers have called a motion *in limine*. Black's Law Dictionary defines *in limine*: "Preliminarily; presented to only the judge, before or during trial <a question to be decided in limine>." *In limine*, Black's Law Dictionary (12th ed. 2024). The Legal Information Institute at Cornell Law School also defines *in limine*: "In limine is a Latin term meaning 'at the threshold'. A motion in limine is a pretrial motion asking that certain evidence be found inadmissible, and that it not be referred to or offered at trial." *In limine*, Legal Information Institute (Jan. 2023), https://www.law.cornell.edu/wex/in_limine.[4] Arguing otherwise elevates form over substance. The rest of the contract remained in force for both the Halls and PriorityOne, and the proceedings on all other claims continued without the subject provision. *See* ***Southland***

[4] This Court has previously recognized motions *in limine*. *See* ***Owens v. Miss. Farm Bureau Cas. Ins. Co.***, 910 So. 2d 1065, 1077 (Miss. 2005).

Broad. Co. v. Tracy, 210 Miss. 836, 843, 50 So. 2d 572, 574 (1951). While striking a contract provision may in some cases bring a case to conclusion, that is not true in this case. *See* ***id.*** Thus, the trial court's decision was not dispositive. *See* ***id.***

¶38. Some would argue that the clause is not unconscionable and meets most banks' standards; however, the subject provision meets the definition of unconscionability, albeit subtly. The *amicus* brief of the Mississippi Bankers Association (MBA) reveals this critical distinction between the language in PriorityOne's clause and the language of Fannie Mae[5] agreements: Fannie Mae language includes "**and me**." (Emphasis added.) The subject contractual provision does not. It does not include the "and me" language, which explicitly protects the lender and the borrower from some third party.

¶39. This Court has defined unconscionability as "an absence of meaningful choice on the part of one of the parties together with contract terms [that] are unreasonably favorable to the other party." ***Caplin Enters., Inc. v. Arrington***, 145 So. 3d 608, 614 (Miss. 2014) (internal quotation marks omitted) (quoting ***Entergy Miss., Inc. v. Burdette Gin Co.***, 726 So. 2d 1202, 1207 (Miss. 1998)). More specifically, a party proves unconscionability "by oppressive contract terms such that 'there is a one-side agreement whereby one party is deprived of all the benefits of the agreement or left without a remedy for another party's nonperformance or breach[.]'" ***Est. of Moulds***, 14 So. 3d at 699-700 (quoting ***Bank of Ind., Nat'l Ass'n v.***

[5] Fannie Mae is a large provider of mortgage financing in the United States. Fannie Mae, *Who We Are*, https://www.fanniemae.com/about-us/who-we-are (last visited Nov. 3, 2026).

Holyfield, 476 F. Supp. 104, 110 (S.D. Miss. 1979)). This Court looks "within the four corners of an agreement in order to discover any abuses relating to the specific terms which violate the expectations of, or cause gross disparity between, the contracting parties" when determining unconscionability. ***Arrington***, 145 So. 3d at 614 (internal quotation mark omitted) (quoting ***Est. of Moulds***, 14 So. 3d at 699).

¶40. The language of the clause fits the definition of unconscionability as previously set out by this Court. The subject provision reads, "This Agreement is for the *sole* benefit of Lender and Lender's successors and assigns, and binds Borrower and its successors, assigns, executors, heirs, administrators and personal representatives." This clause unequivocally asserts that the contract exists only to benefit the Bank, however. The language is to protect banks from third parties seeking to bring an action based on the contract. Such a provision is necessary, but the language of the clause in the case *sub judice* explicitly states that the borrower receives no benefit. The contract is "for the *sole* benefit of Lender."

¶41. Because the subject provision states that the contract only benefits the Bank, the provision "unreasonably favor[s]" the Bank. ***Id.*** at 614 (quoting ***Entergy Miss., Inc.***, 726 at 1207). The provision further attempts to deprive the Halls "the benefit[] of the agreement[,]" ***Est. of Moulds***, 14 So. 3d at 700 (quoting ***Holyfield***, 476 F. Supp at 110), and "cause[s] gross disparity between[] the contracting parties." ***Arrington***, 145 So. 3d at 614 (internal quotation mark omitted) (quoting ***Est. of Moulds***, 14 So. 3d at 699). This clause violates reasonable expectations by only benefitting one party, fitting the definition of unconscionability. ***Id.***

¶42. As highlighted by the *amicus* brief of the MBA, however, lenders need provisions like the subject one to protect them from risk in construction agreements as well as third-party claimants. The Fannie Mae example agreement as cited by the MBA reveals the subtle distinction. There is one critical difference between the language of the PriorityOne provision and the language used in the Fannie Mae agreement. PriorityOne's provision in the case *sub judice* states, "This Agreement is for the sole benefit of Lender and Lender's successors and assigns, and binds Borrow and its successors, assigns, executors, heirs, administrators and personal representatives." The Fannie Mae agreement reads, "This Loan Agreement is for the sole benefit of Lender **and me** and is not for the benefit of anyone else." (Emphasis added.) The language in the subject provision critically excludes the "and me" language included in the Fannie Mae agreement. The inclusion of the "and me" language would extinguish any unconscionability question and protect the rights of both the lender and the borrower.

¶43. This Court should uphold the trial court's decision to continue for trial without the subject provision. Although that language is necessary to protect lenders in construction agreements, the omission of "and me" is critical. Unconscionability exists because the language of the subject provision meets the definition by not protecting both the lender and the borrower against third parties.