IN THE SUPREME COURT OF MISSISSIPPI

NO. 2025-IA-00399-SCT

PRIORITYONE BANK AND HARVEY LOTT

v.

JSC-AMERICANZIL CONSTRUCTION, LLC, JOSE L. SILVA AND NANCY SILVA

DATE OF JUDGMENT:	03/21/2025
TRIAL JUDGE:	HON. STANLEY ALEX SOREY
TRIAL COURT ATTORNEYS:	JOHN M. DEAKLE RICHARD JOSEPH LAJAUNIE TANGI CARTER RUSSELL LAMAR JOHNSON RONALD VERDELL JOHNSON, IV AUDRY REGNAL BLACKLEDGE ANTHONY SAKALARIOS RICHARD D. UNDERWOOD PHILLIP BUFFINGTON TIMOTHY JAMES ANZENBERGER KYE CNEE' HANDY COREY DANIEL GIBSON NOAH LEE SANFORD
COURT FROM WHICH APPEALED:	COVINGTON COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	PHILLIP BUFFINGTON RICHARD D. UNDERWOOD TIMOTHY JAMES ANZENBERGER KYE CNEE' HANDY
ATTORNEYS FOR APPELLEE:	THOMAS LEWIS TULLOS, II ANTHONY SAKALARIOS
NATURE OF THE CASE:	CONTRACT
DISPOSITION:	REVERSED, RENDERED, AND REMANDED - 11/19/2026
MOTION FOR REHEARING FILED:	

BEFORE COLEMAN, P.J., SULLIVAN AND WILSON, JJ.

COLEMAN, PRESIDING JUSTICE, FOR THE COURT:

¶1. In a separate case, Harvey Lott, an employee of PriorityOne Bank, engaged in personal and professional business with JSC-Americanzil Construction, LLC. Lott hired JSC to construct his home and convinced JSC to obtain a construction loan for the project. Dissatisfied with the construction, Lott filed suit against JSC, and JSC counterclaimed against Lott. The parties executed a settlement disposing of all claims.

¶2. In the instant matter, Jason Ray Temple and his wife hired JSC and obtained a construction loan from PriorityOne Bank. After the settlement between JSC and Lott, JSC filed a cross-complaint against PriorityOne Bank and Lott. The circuit court denied PriorityOne Bank's motion to dismiss or, alternatively, for summary judgment as to the cross-complaint. PriorityOne Bank appeals and argues that the settlement agreement bars the claims filed against them in the cross-complaint. We agree, and accordingly, we reverse the trial court's denial of the motion to dismiss the cross-complaint or, alternatively, for summary judgment as to the cross-complaint and render summary judgment in favor of PriorityOne Bank. We remand the case to the circuit court for further proceedings.

FACTS

Lott Lawsuit

¶3. In the separate matter, *i.e.*, the Lott lawsuit, Harvey Lott and his wife entered into a contract on May 15, 2019, with JSC-Americanzil Construction, LLC, Jose Lazaro Silva, and Nancy Silva, *i.e.*, the contractors, to construct their home. A dispute arose regarding the quality of construction, the time of performance, and the amount owed, so the Lotts filed suit

against the contractors for breach of contract, breach of warranty, and negligent construction of the home in January 2020.

¶4. In their answer, the contractors brought a counterclaim against the Lotts. The counterclaim raised a variety of contract-related claims including fraud, detrimental reliance, unjust enrichment, breach of contract, and breach of the covenant of good faith and fair dealing. The contractors claims centered around the contention that Lott wrongfully pressured the contractors to take out a home equity line of credit from PriorityOne Bank, the bank that employed Lott as a loan officer, so that the contractors could purchase materials for and continue work on the Lott home. The pertinent paragraph from the counterclaim reads as follows:

> Harvey advised Lazaro that [Lazaro] needed a Line of Credit for JSC from the bank where Harvey worked, PriorityOne Bank, and that said Line of Credit would enable him to pay for and continue purchasing the materials, and make the other necessary expenditures to keep working on the home of the Lotts. Harvey advised Lazaro that he had prepared the paperwork for said Line of Credit and that Lazaro needed to come sign it. Based on the advice and assurance of Harvey, Lazaro entered into the Line of Credit for JSC, and became indebted for materials and other expenditures on said Line of Credit for the upgrades and changes that the Lotts kept insisting be made to the plan.

Additionally, the counterclaim alleged that "JSC has been in a professional relationship with Harvey and his employer, PriorityOne Bank. Through the years, JSC has sent customers to Harvey, and Harvey has referred construction work to JSC."

¶5. On February 23, 2021, Lott and the contractors entered into a settlement agreement

and executed a release disposing of the Lott lawsuit. It provides as follows:

FULL AND FINAL RELEASE AND SETTLEMENT AGREEMENT

For and in consideration of the mutual promises herein, we, Harvey Lott and Nicole Lott, Plaintiffs/Counter-Defendants in Covington County Circuit Cause No. 2020-016C-1, and JSC-Americanzil Construction, LLC, Jose Lazaro Silva a/k/a Jose Lazaro Da Silva, Nancy Silva a/k/a Nancy Da Silva, Defendants/Counter-Plaintiffs in the same suit, do hereby release, acquit, and forever discharge all opposing part(ies) and their officers, directors, employers, owners, heirs, successors, and/or assigns from any liability now accrued or hereafter to accrue on account of any and all claims or causes of action which we now or may hereafter have damages or loss of any kind or nature whatsoever, now known or unknown or that may hereafter develop, by any or all of us sustained or received, as a result of a certain contract and/or agreement(s) between the parties to construct—and the said construction itself—of a residential building/home located adjacent to Highway 49 and Cascio Road in Covington County, Mississippi, and any financing therefor. Further, we release acquit, and forever discharge PriorityOne Bank, PriorityOne Capital Corporation, and their successors and/or assigns from any and all liability, if any, now accrued or hereafter to accrue, regarding any loan(s) and/or financing in connection with the aforementioned subject construction and home, said release including but not limited to lender liability, fraud, misrepresentation, breach of implied covenant of good faith and fair dealing, and all other claims.

The release(s) between the parties shall include, but be not limited to, claims based in equity or law, including for specific performance, breach of contract, fraud, fraudulent inducement, negligence, professional negligence, lender liability, misrepresentation, breach of implied covenant of good faith and fair dealing, loss of use, and all other damages.

The aforementioned parties sign as their own free act, without influence in making this settlement by any representation of the party or parties released not included in this instrument. All agreements between the parties are made a part of this release. This instrument shall not be valid and final unless and until executed by all parties and properly acknowledged.

Temple Lawsuit

¶6. In September 2017, Jason Ray Temple and his wife also hired the contractors for the purpose of constructing their home. The Temples obtained a construction loan from PriorityOne Bank through Harvey Lott, a loan officer and soon-to-be president of the Covington branch. In July 2018, the contractors tendered the project as complete, but shortly thereafter, the Temples detected numerous construction-related problems with the house. In July 2020, after the commencement of the Lott lawsuit but prior to its settlement, Temple sued the contractors and PriorityOne Mortgage Corporation for negligence and breach of contract. The initial complaint named only the contractors and PriorityOne Mortgage Corporation as defendants. Subsequently, on May 3, 2024, Temple amended the complaint to name Harvey Lott and PriorityOne Bank as defendants, to broaden existing claims, and to assert additional causes of action.

¶7. On January 14, 2021, while both lawsuits were pending, the contractors' attorney emailed PriorityOne Bank's general counsel in an attempt "to avoid getting the bank involved in litigation between the president of the Collins branch, Harvey Lott, and my clients." Four days later, Lott's attorney emailed the contractors' attorney and proposed settling the Lott lawsuit. The contractors' attorney's reply indicated a potential willingness to settle but raised concerns regarding "that $75,000.00 loan that my people claim Harvey talked them into taking out to buy materials." Lott's attorney informed the contractors' attorney that "[he does not] believe Harvey has any authority to cancel or alter their debts."

¶8. Between January 20 and January 28, 2021, the attorneys for Lott and the contractors exchanged several emails related to the proposed settlement. On January 26, 2021, Lott's attorney clarified his client's position with the following email:

> You may let the Silvas know so that it's not a surprise — a release from our end would require the Silvas releasing Harvey and also his employer for all claims involving the home and financing for it. I'm not sure there's any theory of liability on the bank's part anyway, but that would have to be included.

¶9. In his response, the contractors' attorney acknowledged that "[The contractors] are hot about the $75,000.00 note on their home that, according to them, Harvey talked them into to get material for his house. They are jumping to sue [PriorityOne Bank], and think if we dismiss Harvey it will hamper that suit." The contractors and the Lotts executed the release nearly one month later.

¶10. On April 5, 2023, more than two years after settling the Lott lawsuit, the contractors moved to amend their answer in the Temple lawsuit for the purpose of asserting a cross-complaint against codefendant PriorityOne Bank. Circuit Court Judge Matthew Sullivan granted permission to amend, and the contractors filed the cross-complaint on May 31, 2023. PriorityOne Bank moved to dismiss the cross-complaint or, alternatively, for summary judgment. On October 18, 2023, Judge Sullivan granted the motion to dismiss, finding that "Construction Defendants released the causes of action in the Cross-Complaint against the Bank."

¶11. On December 19, 2024, the Temples moved to recuse Judge Sullivan because he previously had obtained a construction loan from PriorityOne Bank. The contractors joined

in the Temples' motion to recuse and moved to reinstate the cross-complaint. Judge Sullivan found the Temples' motion contained erroneous claims and asserted his ability to act fairly and impartially, yet, nonetheless, he recused and transferred the matter to Judge Stanley Sorey.

¶12. On February 6, 2025, Judge Sorey reinstated the contractors' cross-complaint, and PriorityOne Bank promptly filed an additional motion to dismiss the cross-complaint or, alternatively, for summary judgment. On March 21, 2025, Judge Sorey denied the motion and ordered PriorityOne Bank to answer the cross-complaint within thirty days. PriorityOne Bank complied and filed their answer on April 28, 2025. On April 11, 2025, PriorityOne Bank was granted permission to bring the instant interlocutory appeal of the circuit court's March 21, 2025, order denying PriorityOne Bank's motion to dismiss or, alternatively, for summary judgment as to the cross-complaint.

STANDARD OF REVIEW

¶13. "A settlement is a contract." ***Hastings v. Guillot***, 825 So. 2d 20, 23 (¶ 12) (Miss. 2002) (citing ***McManus v. Howard***, 569 So. 2d 1213, 1215 (Miss. 1990)). "This Court has stated that questions concerning the construction and interpretation of contracts are questions of law." ***Royer Homes of Miss., Inc. v. Chandeleur Homes, Inc.***, 857 So. 2d 748, 751 (¶ 4) (Miss. 2003) (citing ***Warwick v. Gautier Util. Dist.***, 738 So. 2d 212, 214 (Miss. 1999); ***Miss. State Highway Comm'n v. Patterson Enters. Ltd.***, 627 So. 2d 261, 263 (Miss. 1993)). "We review questions of law de novo." ***Id.*** (citing ***Warwick***, 738 So. 2d at 214; ***Patterson***

Enters., 627 So. 2d at 263). Additionally, the Court reviews a trial court's decision to grant or deny summary judgment de novo. ***Monsanto Co. v. Hall***, 912 So. 2d 134, 136 (¶ 5) (Miss. 2005).

ANALYSIS

I. Under the plain language of the settlement agreement, the contractors released PriorityOne and Lott from the claims raised in the cross-complaint.

¶14. Neither party denies the existence of a valid, properly executed contractual agreement that disposed of the Lott lawsuit. However, the parties disagree as to whether the release extended to claims raised in the contractors' cross-complaint filed in the Temple lawsuit. Thus, before determining if the release extends to the claims in the Temple lawsuit, the Court must address any potential ambiguity in the release.

A. The release is not ambiguous.

¶15. "This Court applies contract law principles to settlement agreements." ***Union Carbide Corp. v. Nix***, 142 So. 3d 374, 392 (¶ 44) (Miss. 2014) (citing ***Chantey Music Publ'g, Inc. v. Malaco, Inc.***, 915 So. 2d 1052, 1056 (Miss. 2005)). "Thus, when examining a settlement agreement, the Court must first examine the four corners of the document." ***Id.*** (citing ***Rotenberry v. Hooker***, 864 So. 2d 266, 270 (Miss. 2003)). "[W]hen interpreting a contract, the court's concern is not nearly so much with what the parties may have intended but with what they said, since the words employed are by far the best resource for ascertaining the intent and assigning meaning with fairness and accuracy." ***HeartSouth, PLLC v. Boyd***, 865

So. 2d 1095, 1105 (¶ 27) (Miss. 2003) (internal quotation marks omitted) (quoting ***Warwick***, 738 So. 2d at 214). "Contracts must be interpreted by objective, not subjective standards, therefore '[c]ourts must ascertain the meaning of the language actually used, and not some possible but unexpressed intent of the parties.'" ***Id.*** (alteration in original) (quoting ***IP Timberlands Operating Co. v. Denmiss Corp.***, 726 So. 2d 96, 105 (Miss. 1998)). "The parties[']disagreement over the meaning of a word or provision, alone, does not render an instrument ambiguous." ***Id.*** (citing ***IP Timberlands***, 726 So. 2d at 105).

¶16. In accordance with ***Nix***, the Court must first examine the four corners of the release, which read as follows:

> For and in consideration of the mutual promises herein, **we**, . . . do hereby **release**, acquit, and forever discharge **all opposing part(ies) and their officers, directors, employers**, owners, heirs, successors, and/or assigns from any liability now accrued or hereafter to accrue on account of any and all claims or causes of action[,] . . . as a result of a certain contract and/or agreement(s) between the parties to construct—and the said construction itself—of a residential building/home located adjacent to Highway 49 and Cascio Road in Covington County, Mississippi, and any financing therefor. **Further, we release acquit, and forever discharge PriorityOne Bank, PriorityOne Capital Corporation**, and their successors and/or assigns from any and all liability, if any, now accrued or hereafter to accrue, **regarding any loan(s) and/or financing in connection with the aforementioned subject construction and home, said release including but not limited to lender liability, fraud, misrepresentation, breach of implied covenant of good faith and fair dealing, and all other claims.**

(Emphasis added.)

¶17. PriorityOne contends that the release unambiguously and completely extinguished the

claims, while the contractors argue that the release agreement's scope was strictly limited to resolving the Lott lawsuit and matters pertaining to the construction of the Lott residence. A plain reading of the agreement indicates that the contractors intended to release PriorityOne and the Lotts from all claims relating to the construction of the Lott home and any financing or loans in connection with the construction of the Lott home. Rather than containing ambiguous language, the release presents clear, specific terms that allow the Court to ascertain the parties' intent. The Court finds the contractors' argument is without merit.

B. PriorityOne may enforce the release.

¶18. The contractors argue PriorityOne's status as a nonsignatory precludes their ability to enforce the release. Prior to addressing whether PriorityOne's ability to enforce the release, the Court must address nonsignatories.

i. Nonsignatory versus Third-Party Beneficiary

¶19. When addressing third-party beneficiaries and nonsignatories in their briefs, both parties use the terms interchangeably. By equating nonsignatory status with third-party beneficiary status, each party misconstrues precedent, which in turn causes great confusion of a simple issue.

¶20. The Court mentions nonsignatories and their respective rights in numerous cases, yet few cases, if any, clearly define or interpret the term nonsignatory. While the meaning of the term appears self-evident, distinguishing the terms may alleviate any confusion.

¶21. "A person or entity that signs a document, personally or through an agent, and thereby

becomes a party to an agreement." *Signatory*, Black's Law Dictionary (12th ed. 2024). Thus, a nonsignatory is a person or entity that does not sign a document, personally or through an agent, and thereby does not become a party to the agreement. Accordingly, a distinction exists between a nonsignatory and a third-party beneficiary. Third-party beneficiary status encompasses a contract-based, meaningful relationship, whereas nonsignatory simply describes a person or entity who did not sign the agreement.

ii. PriorityOne may enforce the release as a third-party beneficiary.

¶22. The contractors claim that PriorityOne's failure to participate in the negotiations, provide consideration, and sign the Lott settlement demonstrates a lack of intent by the contracting parties—the Lotts and the contractors—to extend the protection of the release to PriorityOne.

¶23. "A third person may enforce a promise made for his benefit even though he is a stranger to the contract or to the consideration." ***Cope v. Thrasher Constr., Inc.***, 231 So. 3d 989, 993 (¶ 7) (Miss. 2017) (internal quotation marks omitted) (quoting ***Miss. High Sch. Activities Ass'n v. Farris***, 501 So. 2d 393, 395-96 (Miss. 1987)). "To enforce the promise, the third-party's beneficiary status 'must spring from the terms of the contract itself.'" ***Id.*** (quoting ***Burns v. Wash. Sav.***, 251 Miss. 789, 796, 171 So. 2d 322, 325 (1965)). The Court applies the following analysis to determine third-party beneficiary status:

> (1) When the terms of the contract are expressly broad enough to include the third party either by name as one of a specified class, and (2) the said third party was evidently within the intent of the terms so used, the said third party will be within its benefits, if (3) the promisee had, in fact, a substantial and

> articulate interest in the welfare of the said third party in respect to the subject of the contract.

Id. (quoting ***Simmons Hous., Inc. v. Shelton ex rel. Shelton***, 36 So. 3d 1283, 1286 (¶ 10) (Miss. 2010)).

¶24. Thus, the Court must determine whether PriorityOne qualifies to receive third-party beneficiary status. The terms of the release expressly name PriorityOne, which satisfies the first element. PriorityOne correctly notes that neither party may dispute the point. However, the contractors vigorously contest the second element. The contractors contend that the release fails to exhibit a clear manifestation of intent to extend the benefits of the agreement to PriorityOne. The Court held that "in a release contract a party releases only those parties whom he intends to release." ***Smith v. Falke***, 474 So. 2d 1044, 1047 (Miss. 1985). Again, "when examining a settlement, the Court must first examine the four corners of the document." ***Nix***, 142 So. 3d at 392 (¶ 44) (citing ***Rotenberry***, 864 So. 2d at 270).

¶25. The release specifically identifies PriorityOne, and, as determined previously, the terms and conditions clearly and unambiguously display the parties' intent to release PriorityOne from all claims related to the financing and construction of the Lott residence. We find that the plain language of the Agreement exhibits the contractors' intent to release PriorityOne.

¶26. Finally, PriorityOne qualifies as an intended third-party beneficiary "if . . . the promisee had, in fact, a substantial and articulate interest in the welfare of the said third party in respect to the subject of the contract." ***Shelton***, 36 So. 3d at 1286 (quoting ***Yazoo & Miss.***

Valley R.R. Co. v. Sideboard, 161 Miss. 4, 133 So. 669, 671 (1931)). Lott, the promissee in the release, possessed a substantial and articulable interest in the welfare of PriorityOne, his employer. He sought the release of his employer from liability of claims that allegedly arose from his conduct and, thus, satisfies the third element.

¶27. Furthermore, the ***Shelton*** Court held that "[a] third-party beneficiary also must benefit directly from the contract" and that "[a] mere incidental or consequential benefit is insufficient." ***Shelton***, 36 So. 3d at 1286 (¶ 11) (citing ***Adams v. Greenpoint Credit, LLC***, 943 So. 2d 703, 708-09 (Miss. 2006)).

¶28. Since we established that PriorityOne receives third-party beneficiary status, we must now determine whether PriorityOne directly benefitted from the release. Here, the release extinguished liability from potential litigation, which clearly classifies as beneficial. Therefore, we find that PriorityOne qualifies as a third-party beneficiary and may enforce the release.

C. The release extends to claims brought forth in the cross-complaint.

¶29. After determining that the release was unambiguous and enforceable, the Court must determine whether the release shields PriorityOne from the claims raised in the Temple cross-complaint. The contractors argue that the release tethers itself to the specific Lott construction project, while the Temple cross-complaint arises from several ongoing projects, which they classify as "umbrella issues." PriorityOne contends that the contractors' cross-complaint constitutes a second attempt to litigate claims previously disposed of by the release

when settling the Lott lawsuit. Ascertaining the answer requires reviewing the foundation of the contractors' counterclaim filed in the Lott lawsuit.

¶30. After the Lotts sued the contractors for negligent construction in the Lott lawsuit, the contractors filed a counterclaim. In the counterclaim, the contractors alleged that Harvey Lott wrongfully induced them to take out a loan from PriorityOne Bank for the purpose of funding the construction of the home. The causes of action raised in the counterclaim centered on financial damage caused by Lott's nonpayment of materials purchased with the loan.

¶31. Next, the Court must review the core of the claims raised in the cross-complaint of the current suit and compare them to the claims raised in the Lott lawsuit. In the factual section of their cross-complaint, the contractors mention an arrangement with Lott in which the two parties exchanged referrals. The contractors allege that Lott acted in the course and scope of his employment when he performed inspections of homes built by the contractors and approved their construction loans. The contractors allege that several omissions and errors resulted in three lawsuits involving homebuilders who hired the contractors and obtained construction loans from PriorityOne. While the contractors name three different cases in support of their position, they limit their specific factual allegations to facts involving the construction of the Lott home.

¶32. Although the contractors characterize the issues underlying the cross-complaint as broader than and distinct from the ones raised in the counterclaim, the factual allegations in

the cross-complaint pertain only to issues previously addressed in the counterclaim of the Lott lawsuit and settled in the release.

¶33. "The law favors settlement of disputes by agreement of the parties and, ordinarily, will enforce the agreement which the parties have made, absent any fraud, mistake, or overreaching." ***Welsh v. Mounger***, 883 So. 2d 46, 48 (¶ 7) (Miss. 2004) (citing ***Hastings***, 825 So. 2d at 24). Reviewing a trial court's grant or denial of summary judgment "requires examination of all evidentiary matters in the record, including admissions in pleadings, answers to interrogatories, depositions, affidavits and exhibits." ***City of Jackson v. Maxie ex rel. M.Y.***, 412 So. 3d 1156, 1159 (¶ 11) (Miss. 2025) (citing ***Turner v. Johnson***, 498 So. 2d 389, 391 (Miss. 1986)). "[T]he moving party bears the burden of demonstrating that no genuine issue of material fact exists." ***Maxie***, 412 So. 3d at 1159 (¶ 12) (alteration in original) (internal quotation marks omitted) (quoting ***Anderson v. Wiggins***, 331 So. 3d 1, 4 (Miss. 2020)). To prevent summary judgment, "the non-moving party must establish that a genuine issue of material fact [exists] within the means allowable under [Rule 56 of the Mississippi Rules of Civil Procedure]." ***Id.*** (second alteration in original) (internal quotation marks omitted) (quoting ***Gorman-Rupp Co. v. Hall***, 908 So. 2d 749, 754 (Miss. 2005)).

¶34. After reviewing the record, the Court holds that the contractors, the nonmoving party, failed to establish a genuine issue of material fact. The cross-complaint raises allegations that pertain to issues previously addressed in the counterclaim of the Lott lawsuit that subsequently settled. Therefore, no genuine issue of material fact exists, and PriorityOne is

entitled to summary judgment as a matter of law.

CONCLUSION

¶35. The Court reverses the trial court's denial of the motion to dismiss the cross-complaint or, alternatively, for summary judgment as to the cross-complaint and renders summary judgment in favor of PriorityOne Bank. The case is remanded for further proceedings.

¶36. **REVERSED, RENDERED, AND REMANDED.**

RANDOLPH, C.J., KING, P.J., ISHEE, GRIFFIS, SULLIVAN, BRANNING WILSON AND TOLLISON, JJ., CONCUR.