

**IN THE CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI  
FIRST JUDICIAL DISTRICT**

**YVETTE MASON-SHERMAN, INDIVIDUALLY,  
AND ON BEHALF OF THE HEIRS AND  
WRONGFUL DEATH BENECIARIES OF  
CHARLES MCDONALD, JR., DECEASED, and  
THE ESTATE OF CHARLES MCDONALD, JR.**

**PLAINTIFFS**

**VS.**

**CIVIL ACTION NO.: 2017-156**

**PERFORMANCE OIL EQUIPMENT, INC., ET AL.**

**DEFENDANTS**

---

**ANSWER & AFFIRMATIVE DEFENSES OF JIMMY RATCLIFF**

---

Defendant, Jimmy Ratcliff (“Ratcliff”) files this, his Answer & Affirmative Defenses to Plaintiffs’ First Amended Complaint and would state unto the Court as follows:

**FIRST DEFENSE & MOTION TO DISMISS**

The First Amended Complaint fails to state a claim against Ratcliff upon which relief can be granted and should therefore be dismissed.

**SECOND DEFENSE  
ANSWER**

Ratcliff answers the allegations contained in the First Amended Complaint, paragraph by paragraph, as follows:

**PARTIES**

1.

Ratcliff is without sufficient information to admit or deny the allegations contained within paragraph 1 of the First Amended Complaint and therefore denies same.

2.

Paragraph 2 of the First Amended Complaint contains no allegations directed towards this Defendant. To the extent that this Court requires a response however, same is hereby denied.

3.

Ratcliff admits the allegations contained within paragraph 3 of the First Amended Complaint.

4.

Ratcliff admits the allegations contained within paragraph 4 of the First Amended Complaint.

#### JURISDICTION AND VENUE

5.

Ratcliff denies the allegations contained within paragraph 5 of the First Amended Complaint.

6.

Ratcliff denies the allegations contained in paragraph 6 of the First Amended Complaint.

#### STATEMENT OF FACTS

7.

Ratcliff admits the allegations contained in paragraph 7 of the First Amended Complaint.

8.

Ratcliff admits the allegations contained in paragraph 8 of the First Amended Complaint.

9.

Ratcliff admits that the Henley-Young Juvenile Justice Center is next door to Performance

Oil Equipment, Inc. Ratcliff is without sufficient information to admit or deny the remaining allegations contained within paragraph 9 of the First Amended Complaint and therefore denies same.

10.

Paragraph 10 of the First Amended Complaint contains no allegations directed towards Ratcliff. To the extent that this Court requires a response however, same is hereby denied.

11.

Paragraph 11 of the First Amended Complaint contains no allegations directed towards Ratcliff. To the extent that this Court requires a response however, same is hereby denied.

12.

Ratcliff admits that Decedent was a trespasser. Ratcliff denies the remaining allegations contained within paragraph 12 of the First Amended Complaint.

13.

Ratcliff denies the allegations contained in paragraph 13 of the First Amended Complaint.

14.

Ratcliff denies the allegations contained in paragraph 14 of the First Amended Complaint.

15.

Ratcliff denies the allegations contained in paragraph 15 of the First Amended Complaint.

16.

Ratcliff denies the allegations contained in paragraph 16 of the First Amended Complaint.

17.

Ratcliff denies the allegations contained in paragraph 17 of the First Amended Complaint.

18.

Ratcliff denies the allegations contained in paragraph 18 of the First Amended Complaint.

19.

Ratcliff denies the allegations contained in paragraph 19 of the First Amended Complaint.

#### CAUSES OF ACTION

20.

Ratcliff denies the allegations contained in paragraph 20 of the First Amended Complaint, including each subpart thereto.

21.

Ratcliff denies the allegations contained in paragraph 21 of the First Amended Complaint, including each subpart thereto.

#### DAMAGES

22.

Ratcliff denies the allegations contained in paragraph 22 of the First Amended Complaint, including each subpart thereto.

23.

Ratcliff denies the allegations contained in paragraph 23 of the First Amended Complaint, including each subpart thereto.

24.

Ratcliff denies the allegations contained in paragraph 24 of the First Amended Complaint, including each subpart thereto.

25.

Ratcliff denies the allegations contained in the unnumbered paragraph beginning “WHEREFORE PREMISES CONSIDERED,” and denies that Plaintiffs are entitled to any recovery from it whatsoever. Ratcliff prays for such further relief as it may be entitled in the premises.

**THIRD DEFENSE**

Ratcliff did not actively participate in the wrong alleged, nor the harm suffered, by any party.

**FOURTH DEFENSE**

Ratcliff, by way of affirmative defense, pleads the doctrines of laches, equitable estoppel, release, payment, acquiescence, waiver, accord and satisfaction, unclean hands and all other matters constituting an avoidance or affirmative defenses as may be shown by the facts in this matter.

**FIFTH DEFENSE**

Ratcliff, by way of affirmative defense, denies that Plaintiffs are entitled to any damages whatsoever, but would state that any damages which may hereafter be awarded to Plaintiffs should be apportioned pursuant to and in accordance with Section 85-5-7 of the Mississippi Code Annotated (1972).

**SIXTH DEFENSE**

Ratcliff, by way of affirmative defense, would show that the Plaintiffs may have failed to mitigate their damages, if any, and as such Ratcliff is not legally responsible for the avoidable consequences of any alleged actions or injuries.

**SEVENTH DEFENSE**

Ratcliff, by way of affirmative defense, would state that the sole proximate cause of the alleged damages and injuries alleged by the Plaintiffs were due to the actions or inactions of Plaintiffs and/or others for which this Defendant cannot be held responsible.

**EIGHTH DEFENSE**

Ratcliff, by way of affirmative defense, would show that Plaintiffs may have failed to join an indispensable party needed for a just adjudication of this action.

**NINTH DEFENSE**

Ratcliff, by way of affirmative defense, would state that an intervening or supervening event or events may have proximately caused and/or contributed to the damages and injuries alleged in Plaintiffs' First Amended Complaint for which Ratcliff is not responsible.

**TENTH DEFENSE**

If the Plaintiffs have heretofore settled or should hereafter settle for any alleged injuries and damages with any parties, Ratcliff is entitled to a credit in the amount of said settlement.

**ELEVENTH DEFENSE**

Ratcliff, by way of affirmative defense, would show that the relief being sought by Plaintiffs is not recognized as recoverable damages and should therefore be denied.

**TWELFTH DEFENSE**

Ratcliff gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery and thus reserves the right to amend this Answer to assert such defenses.

**THIRTEENTH DEFENSE**

To the extent proven applicable by investigation and discovery, Ratcliff asserts as a defense the doctrine of spoliation of evidence in the event that Plaintiffs or any other party or any party not joined in this matter has failed to properly preserve relevant evidence in post-incident condition.

**FOURTEENTH DEFENSE**

Plaintiffs' claims are barred, in whole or in part, because at all relevant times Ratcliff acted reasonably and in good faith with due care for the rights and safety of others.

**FIFTEENTH DEFENSE**

Ratcliff did not violate or breach any duty which he may have owed to the Plaintiffs, including but not limited to, any duty alleged under common law or any applicable state statutes or regulations. Strict proof of the alleged acts of negligence or breach of duty is demanded.

**SIXTEENTH DEFENSE**

To the extent Plaintiffs seek punitive or exemplary damages against Ratcliff, Plaintiffs have failed to plead an adequate basis for such damages. An award of punitive or exemplary damages could violate this Defendant's state and federal constitutional rights and would constitute an undue burden on interstate commerce. Thus, any claims for punitive or exemplary damages are governed by and limited in accordance with *State Farm Auto Insurance Co. v. Campbell*, 538 U.S. 408, 123 S. Ct. 1573 (2003) and its progeny, as well as by Section 11-1-65 of the Mississippi Code Annotated.

**SEVENTEENTH DEFENSE**

There should be no recovery of punitive damages against Ratcliff because such a recovery

would violate the Fifth, Eighth and Fourteenth Amendment to the Constitution of the United States, and the Mississippi Constitution.

**EIGHTEENTH DEFENSE**

Plaintiffs' claims are barred and/or limited by the doctrines of comparative and/or contributory negligence.

**NINETEENTH DEFENSE**

Ratcliff pleads all applicable provisions of Section 11-1-69 of the Mississippi Code Annotated, which bars the recovery of hedonic damages.

**TWENTIETH DEFENSE**

Ratcliff intends to rely on all other affirmative defenses that may become available or apparent during the course of discovery, and therefore reserves the right to amend his Answer to assert all such defenses.

**TWENTY-FIRST DEFENSE**

Plaintiff lacks standing to bring the First Amended Complaint.

**TWENTY-SECOND DEFENSE**

The acts complained of were beyond the scope of authority of any employee, agent or partner of Ratcliff and occurred beyond what is usually done in the management of Ratcliff's trade or business.

WHEREFORE, Ratcliff prays that the First Amended Complaint be dismissed with prejudice and all costs of court be taxed to the Plaintiffs.



THIS, the 10<sup>th</sup> day of May, 2017.

**JIMMY RATCLIFF, *Defendant***

By: /s/ Edderek L. Cole  
Edderek L. "Beau" Cole, MSB# 100444  
John C. McCants, MSB#104811  
Darryl Wilson, MSB#104902

OF COUNSEL:

MARON MARVEL BRADLEY ANDERSON & TARDY, LLC  
200 South Lamar Street  
City Centre  
Post Office Box 2803  
Jackson, Mississippi 39225  
Telephone: (601) 974-8732  
Facsimile: (601) 206-0119  
[bcole@maronmarvel.com](mailto:bcole@maronmarvel.com)  
[jmcants@maronmarvel.com](mailto:jmcants@maronmarvel.com)  
[dwilson@maronmarvel.com](mailto:dwilson@maronmarvel.com)

**CERTIFICATE OF SERVICE**

I hereby certify that I have served all counsel of record via electronic correspondence and have mailed via U.S. mail, postage prepaid, a true and correct copy of the foregoing pleading to:

Carlos Moore  
Tucker Moore Law Group, LLP  
P.O. Box 1487  
Grenada, MS 39802  
[carlos@carlosmoorelaw.com](mailto:carlos@carlosmoorelaw.com)

Michael S. Carr  
Carr & Calderon  
P.O. Box 1818  
Cleveland, MS 38732  
[mcarr@carrcalderon.com](mailto:mcarr@carrcalderon.com)  
*Attorneys for Plaintiffs*

THIS, the 10<sup>th</sup> day of May, 2017.

/s/ Edderek L. Cole