

JAMES WILSON BARROW,
Plaintiff,

vs.

L. J. SHIVER,
Defendant.

X
X
X
X
X

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. 7793

KNOW ALL MEN BY THESE PRESENTS, that we, L. J. Shiver as principal, and the undersigned as sureties, are held and firmly bound unto James Wilson Barrow in the sum of Thirteen Thousand Four Hundred Dollars (\$13,400.00), for the payment of which, well and duly to be made, we bind ourselves and each of us, our heirs, executors and administrators, jointly, severally and firmly by these presents, and as a part of this undertaking we hereby waive all our rights under the Constitution and laws of the State of Alabama, to have any of our property, real or personal, exempt from levy and sale in satisfaction hereof.

Sealed with our seals and dated this 13 day of September, 1969.

The condition of the above obligation is such, that

WHEREAS, at the June term, 1969, of the Circuit Court of Baldwin County, Alabama, on to-wit, the 12th day of June, 1969, the said James Wilson Barrow recovered a judgment in said Court against L. J. Shiver for the sum of Six Thousand Seven Hundred Dollars (\$6,700.00), damages, and the further sum of One Hundred Seventy-five Dollars (\$175.00), the cost in that behalf expended; and

WHEREAS, on this day the said L. J. Shiver as such Defendant, has made application for an appeal from said judgment to the next term of the Supreme Court, to be holden of and for said State, to reverse said judgment and also for a supersedeas of the execution of said judgment which has been granted on entering into this bond,

NOW, THEREFORE, if L. J. Shiver shall prosecute the said appeal to effect, and satisfy such judgment as the Supreme Court may render in this case, then the said obligation to be null and void, otherwise to remain in full force and effect.

L. J. Shiver (SEAL)
As Principal

Mrs. Jack Carlisle (SEAL)

J. B. Shiver (SEAL)

Walter T. Shiver (SEAL)
As Sureties

Taken and approved this the
15th day of Sept, 1969.

Alice J. Duck
Clerk, Circuit Court of Baldwin
County, Alabama

* * * * *

FILED

SEP 15 1969

ALICE J. DUCK CLERK
REGISTER

CHASON, STONE & CHASON
ATTORNEYS AT LAW
P. O. Box 120
BAY MINETTE, ALABAMA

THE STATE OF ALABAMA }
Baldwin County - Circuit Court }

TO ANY SHERIFF OF THE STATE OF ALABAMA—GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the
 12th day of June, 1969 ~~Monday~~ in, 19⁶⁹, in a cer-
 tain cause in said Court wherein James Wilson Barrow
 Plaintiff, and L. J. Shiver
 Defendant, a judgement was rendered against said
L. J. Shiver and on the 25th day of August, 1969, his Motion for New trial was
 denied,
 to reverse which judgment, the said L. J. Shiver
 applied for and obtained from this office an APPEAL, returnable to the next
 Term of our Supreme Court of the State of Alabama, to be held at Montgomery, on the
 day of, 19⁶⁹ next, and the necessary bond
 with
 having been given by the said L. J. Shiver, Mrs. Jack Carlisle, J. B. Shiver and
~~xxxx~~ Walter T. Shiver, sureties,

Now, You Are Hereby Commanded, without delay, to cite the said James Wilson Barrow
 or Wilters & Brantley
 attorneys to appear at the next Term of our
 said Supreme Court, to defend against the said Appeal, if they think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 15th
 day of September, A. D., 19⁶⁹.

Attest:

Alice J. Duck, Clerk.

770.7793

CIRCUIT COURT
Baldwin County, Alabama

James Wilson Darrow

Vs. } Citation in Appeal

L. J. Shiver

Issued _____ day of _____, 19____

Received 17 day of Sept 1969
and on 18 day of Sept 1969
I served a copy of the within
on Wilbert Brantley

By service on Wilbert Brantley

TAYLOR WILKINS, Sheriff
By W. A. Sellers D. S.

DIV. NO. _____

CERTIFICATE OF APPEAL. (Civil Cases.)

No. 7793

THE STATE OF ALABAMA

BALDWIN County.

I, Alice J. Duck, Clerk of the Circuit Court of Baldwin County, in and for said State and County, hereby certify that the foregoing pages numbered from one to _____, both inclusive, contain a full, true and complete transcript of the record and proceedings of said Court in a certain cause lately therein pending wherein James Wilson Barrow,

was plaintiff, and L. J. Shiver

was Defendant, as fully and completely as the same appears of record in said Court.

And I further certify that the said ~~15th~~ L. J. Shiver did on the 15th day of September, 1969, pray for and obtain Jury and Verdict for the Plaintiff for \$7,000.00 and for Defendant on plea of recoupment for an appeal from/the judgment of said Court to the Supreme Court \$300.00

_____ of Alabama to reverse said judgment of said Court upon entering into bond with L. J. Shiver, Mrs. Jack Carlisle, J. B. Shiver and Walter T. Shiver as surety thereon, which said bond has been approved by me.

Witness my hand and the seal of said Circuit Court of ~~15th~~ Baldwin County is hereto affixed, this the 15th day of September, 1969

Alice J. Duck

Clerk of the Circuit Court of

Baldwin County, Alabama.

(Code 1940, Title 7, Sec. 767)

| | | |
|----------------------|---|-------------------------|
| JAMES WILSON BARROW, | X | |
| | | IN THE CIRCUIT COURT OF |
| Plaintiff, | X | |
| | | BALDWIN COUNTY, ALABAMA |
| | X | |
| vs. | | AT LAW |
| | X | |
| | | CASE NO. 7793 |
| L. J. SHIVER, | X | |
| | | |
| Defendant. | X | |

Comes the Defendant in the above styled cause and files the following separate and several pleas to the amended complaint filed in said cause and says:

1. That the allegations of the amended complaint are untrue.
2. That the Defendant denies that the Plaintiff has performed all of the agreements made by him in the contract and further denies that the Plaintiff has paid the Defendant the amount agreed upon. The Defendant says that the Plaintiff has not paid him for the construction of two drive-ways, turn around area in the back, a sidewalk and the interest on construction costs as set out in the agreement, the cost of the construction of such drive-ways, turn around and sidewalk being approximately Five Hundred Dollars (\$500.00) and the interest to be paid as provided in such contract being approximately Seven Hundred and Fifty Dollars (\$750.00). The Plaintiff also failed to comply with such contract in that he did not pay the Defendant one-third of the total sum of Twenty-Six Thousand Three Hundred Dollars (\$26,300.00) when the foundation of the building had been completed, such foundation being completed approximately June 8, 1966 and the first payment made by the Plaintiff to the Defendant on or about June 10, 1966 being only the sum of Six Thousand Dollars (\$6,000.00) when in fact the payment due on such date would have been approximately Two Thousand Five Hundred Dollars (\$2,500.00) more than such amount. The Plaintiff further failed to comply with the terms of such contract in that he failed to pay an additional one-third of the total sum due when

the house had been framed, sheeted and felted, such house being framed, sheeted and felted on July 13, 1966 and the second payment made by the Plaintiff to the Defendant being approximately Six Thousand Dollars (\$6,000.00).

3. The Defendant claims of the Plaintiff Two Thousand Dollars (\$2,000.00) for work and labor done by the Defendant at the request of the Plaintiff, which sum of money, with the interest thereon, is due and unpaid.

James Stone & Chene
Attorneys for Defendant

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all parties to this proceeding, by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this 25 day

of July, 1968

[Signature]

FILED

JUL 25 1968

ALICE J. DUCK CLERK
REGISTER

7793

JAMES WILSON BARROW,

Plaintiff,

vs.

L. J. SHIVER,

Defendant.

* * * * *

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO: 7793

* * * * *

PLEA

* * * * *

JAMES WILSON BARROW,

X

Plaintiff,

X

IN THE CIRCUIT COURT OF

vs.

X

BALDWIN COUNTY, ALABAMA

L. J. SHIVER,

X


AT LAW CASE NO. 7793

Defendant.

X

Comes now the Defendant in the above styled cause and for plea to the amended complaint filed in said cause, separately and severally, says as follows:

1. The allegations of the amended complaint are untrue.
2. For further answer, and by way of recoupment, the Defendant claims of the Plaintiff One Thousand Dollars (\$1,000.00) as damages for the breach by the Plaintiff of the contract referred to in the amended complaint and for work and labor done by the Defendant at the request of the Plaintiff.


Attorneys for Defendant

FILED

MAR 5 1969

ALICE J. DUCK CLERK
REGISTER

JAMES WILSON BARROW,

Plaintiff,

vs.

L. J. SHIVER,

Defendant.

X
X
X
X
X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

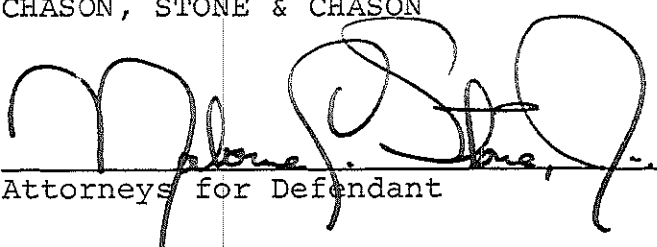
AT LAW

CASE NO. 7793

NOTICE OF APPEAL

Comes now the Defendant in the above styled cause, by his attorneys, and gives notice of appeal to the Supreme Court of Alabama from the judgment of the Circuit Court of Baldwin County, Alabama, rendered in the above styled cause on June 12, 1969, and from the order of said Court denying his motion for new trial entered on the 25th day of August, 1969.

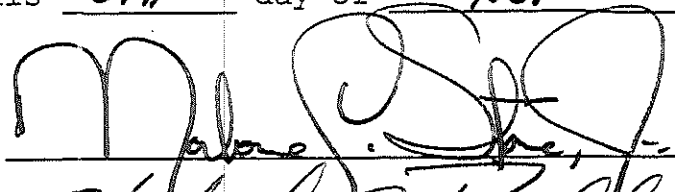
CHASON, STONE & CHASON

By: 
Attorneys for Defendant

SECURITY FOR COSTS

We, Norborne C. Stone, Jr., and Eberhard E. Ball, do hereby acknowledge ourselves, separately and severally, as security for the costs of said appeal.

Witness our hands this 8th day of AUGUST, 1969.


Eberhard E. Ball

Taken and approved this 15
day of Sept, 1969.


Clerk, Circuit Court of Baldwin County, Alabama

FILED

SEP 15 1969

ALICE J. DUCK CLERK
REGISTER

AMENDED COMPLAINT

| | | |
|----------------------|---|-------------------------|
| JAMES WILSON BARROW, |) | IN THE CIRCUIT COURT OF |
| Plaintiff, |) | BALDWIN COUNTY, ALABAMA |
| VS. |) | AT LAW |
| L. J. SHIVER, |) | CASE NO. 7793 |
| Defendant. |) | |

Comes now the Plaintiff in the above styled cause and amends his Complaint to read as follows:

The Plaintiff claims of the Defendant ~~ONE~~ ^{Twelve} THOUSAND DOLLARS ~~(\$12,000.00)~~ damages, breach of a covenant entered into by them on the 11th day of April, 1966. A copy of said Covenant is attached hereto marked Exhibit "A" and made a part hereof as if here fully set out.

The Plaintiff avers that he has performed all of the agreements made by him in said Covenant including paying the Defendant the amount agreed upon. The Plaintiff avers that the Defendant breached this Covenant in that he did not construct said residence in a workman like manner, nor use skilled workmen in construction of the same. The formica on the counter tops was not properly installed. The tile in the shower was not properly put down and it is coming up. The hot water heater was improperly installed and has forced water to be spilled into the house. The joints of the plumbing were not properly joined and they leak. The book case has defective material in it. The electrical wires were not properly installed. Mortar and cement were left on the brick. The roof of the house was not properly supported and it is sagging, causing the ceiling in the house to break loose. The tile on the floor was improperly installed and is coming up. There is a crack in the brick on the

side of the house. The switch box is not fastened to the wall.

The Defendant took more time to complete this house than was provided for by said contract; hence, this suit.

WILTERS & BRANTLEY

BY: Tolbert M. Brantley
Tolbert M. Brantley

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 27th day of June
1968 served a copy of the foregoing pleading on counsel for all
parties to this proceeding by mailing the same by United State
Mail, properly addressed, and first class postage prepaid.

WILTERS & BRANTLEY

By: Tolbert M. Brantley

STATE OF ALABAMA

BALDWIN COUNTY

BE IT HEREBY AND HEREINAFTER agreed between James Wilson Barrow, as owner and L. J. SHIVER, as contractor, as follows:

The said contractor agrees to construct and the said owner agrees to accept and to pay for said construction which shall be done in accordance and in the time and under the conditions as set out hereinafter:

The said contractor agrees to construct a residence on Lot 7 in Shivers Heights, a subdivision near Spanish Fort, Alabama. The said residence shall be constructed by skilled workmen in a skilled and workmanlike manner in accordance with the specifications set out in the application for the loan using the materials noted in said application as to quality and kind or equal thereof, such changes being subject to the approval of the architect and/or the owner.

The said house to be located on the Lot noted above in accordance with the agreement of the owner and the contractor.

No changes shall be made in the specifications and plans attached without the written approval of the said owner and/or architect and the said contractor agrees to construct the drive in accordance with the blueprints attached hereto.

The time of construction shall be four months from the date the loan is approved to the owner and the contractor is notified.

Any changes which the owner requires from the original blueprints and plans or specifications shall be determined at the time said change is requested together with the additional expense, if any, involved in the said changes.

It is further agreed that the owner shall undertake to assume the construction costs in the following steps:

One-third when the foundation has been completed; one-third when the house has been framed, sheeted and felted; and one-third when completely finished and the key is delivered on the date of payment.

Said contractor agrees that the said contract shall be in force and the contractor shall be paid in addition to the foregoing price, simple interest at 7% on the construction money of this

contract for the duration of the contract time of four months
and until payment is made for said construction.

The said house subject of this contract is to be constructed
by the said L. J. Shiver for the sum of \$26,300.00 in accordance
with all of the terms of said contract and specifications, plans
and blueprints as provided herein.

WITNESS our hands and seals this 11th day of April, 1966.

Mr. James W. Barrow
Owner

L. J. Shiver
Contractor

Executed in the presence of:

C. L. Davis
Notary Public, Baldwin County, Alabama

FILED

JUN 25 1966

ALICE J. DUCK

CLERK
REGISTER

38 JUN 10

JOV

~~Plaintiff~~ - \$~~7,000~~

We the jurors agree to give the
Plaintiff \$7,000⁰⁰ for damages.

From which \$300.00 will be
deducted for the defendant.

Kathryn Boone

We the jurors find for the plaintiff on his
complaint and assess his damages at \$7,000.00!

We further find for the Defendant on his
plea of recoupment in the amount of
\$300.00.

779

VOL 61 PAGE 85

Kathryn Boone
foreman

| | | |
|----------------------|---|-------------------------|
| JAMES WILSON BARROW, | X | |
| Plaintiff, | X | IN THE CIRCUIT COURT OF |
| | X | |
| vs. | X | BALDWIN COUNTY, ALABAMA |
| | X | |
| L. J. SHIVER, | X | AT LAW NO. 7793 |
| Defendant. | X | |

Comes the Defendant in the above styled cause and demurs to the Complaint filed in said cause and assigns the following separate and several grounds, viz:

1. That said complaint does not state a cause of action.
2. That said complaint does not allege that the covenant was entered into by and between both parties to the suit.
3. For aught that appears from said complaint, the Plaintiff did not perform all agreements made by him in such covenant.
4. That said complaint does not allege that the Plaintiff has paid the Defendant the amount agreed upon in such covenant.
5. That said complaint does not allege any duty owing by the Defendant to the Plaintiff.
6. It is not alleged in said complaint that the defects complained of were due to any negligence on the part of the Defendant.
7. For aught that appears from said complaint the work was performed strictly in accordance with the plans and specifications furnished the Defendant by the Plaintiff.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all parties to this proceeding by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this 6th day

of Nov 19 67

W. L. Shaver

Shaver, Shaver & Shaver
Attorneys for Defendant

JAMES WILSON BARROW,

Plaintiff,

vs.

L. J. SHIVER,

Defendant.

* * * * *

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW NO. 7793

* * * * *

DEMURRER

* * * * *

NOV 6 1967

STATE OF ALABAMA

BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon L. J. Shiver to appear within thirty days from the service of this writ in the Circuit Court to be held for said County at the place of holding the same, then and there to answer the complaint of James Wilson Barrow.

WITNESS my hand this 20 day of October, 1967.

Clerk

JAMES WILSON BARROW,

Plaintiff,

VS.

L. J. SHIVER,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. 7793

The Plaintiff claims of the Defendant FIVE THOUSAND DOLLARS (\$5,000.00) damages, breach of a covenant entered into by him on the 11th day of April, 1966. A copy of said Covenant is attached hereto marked Exhibit "A" and made a part hereof as if here fully set out. The Plaintiff avers that the Defendant breached this Covenant in that he did not construct said residence in a workman like manner, nor use skilled workmen in construction of the same. The formica on the counter tops was not properly installed. The tile in the shower was not properly put down and it is coming up. The hot water heater was improperly installed and has forced water to be spilled into the house. The joints of the plumbing were not properly joined and they leak. The book case has defective material in it. The electrical wires were not properly installed. Mortar and cement were left on the brick. The roof of the house was not properly supported and it is sagging

causing the ceiling in the house to break loose. The tile on the floor was improperly installed and is coming up. There is a crack in the brick on the side of the house. The switch box is not fastened to the wall. The Defendant took more time to complete this house than was provided for by said contract; hence, this suit.

WILTERS & BRANTLEY

BY: Tolbert M. Brantley

The Plaintiff demands a trial by jury.

WILTERS & BRANTLEY

BY: Tolbert M. Brantley

The Defendant can be served at
Spanish Fort, Alabama

FILED

OCT 20 1967

ALICE J. TERRY CLERK
ALICE C. J. COOK REGISTER

Ex: 10-28-67

STATE OF ALABAMA

BALDWIN COUNTY

BE IT HEREBY AND HEREINAFTER agreed between James Wilson Barrow, as owner and L. J. SHIVER, as contractor, as follows:

The said contractor agrees to construct and the said owner agrees to accept and to pay for said construction which shall be done in accordance and in the time and under the conditions as set out hereinafter:

The said contractor agrees to construct a residence on Lot 7 in Shivers Heights, a subdivision near Spanish Fort, Alabama. The said residence shall be constructed by skilled workmen in a skilled and workmanlike manner in accordance with the specifications set out in the application for the loan using the materials noted in said application as to quality and kind or equal thereof, such changes being subject to the approval of the architect and/or the owner.

The said house to be located on the Lot noted above in accordance with the agreement of the owner and the contractor.

No changes shall be made in the specifications and plans attached without the written approval of the said owner and/or architect and the said contractor agrees to construct the drive in accordance with the blueprints attached hereto.

The time of construction shall be four months from the date the loan is approved to the owner and the contractor is notified.

Any changes which the owner requires from the original blueprints and plans or specifications shall be determined at the time said change is requested together with the additional expense, if any, involved in the said changes.

It is further agreed that the owner shall undertake to assume the construction costs in the following steps:

One-third when the foundation has been completed; one-third when the house has been framed, sheeted and felted; and one-third when completely finished and the key is delivered on the date of payment.

Said contractor agrees that the said contract shall be in force and the contractor shall be paid in addition to the foregoing price, simple interest at 7% on the construction money of this

contract for the duration of the contract time of four months
and until payment is made for said construction.

The said house subject of this contract is to be constructed
by the said L. J. Shiver for the sum of \$26,300.00 in accordance
with all of the terms of said contract and specifications, plans
and blueprints as provided herein.

WITNESS our hands and seals this 11th day of April, 1966.

Mr. James W. Barrow
Owner

L. J. Shiver
Contractor

Executed in the presence of:

C. L. Davis
Notary Public, Baldwin County, Alabama

7793

James Wilson Barrow
Pltf.

vs.

L. J. Shivers,
Def.

Summons & Complaint

FILED

OCT 20 1967

ALICE J. DUCK
CLERK
REGISTER

Winters & Brantley, Attys.

Received 20 day of Oct 1967
and on 28 day of Oct 1967
I served a copy of the within Dec
on L. J. Shivers

By service on Alphon
Sp. Short
TAYLOR WILKINS, Sheriff
By Roy Randall

check by Friday night

Sheriff's office 44 miles at
Tax Cents per mile 4.40
TAYLOR WILKINS, Sheriff
BY Roy Randall
DEPUTY SHERIFF

James Borrow
vs. L. J. Shiver
JUNE 11, 1966 - JUNE 22, 1966 - JUNE 9, 1969

$$\begin{array}{r} 423 \\ 28 \\ \hline 118 \end{array}$$

P. XXXXX XXX

D. XXXXX XXX

720

1193

JURY LIST - SPRING SESSION, MARCH 10, 1969

James L. Shriver

- 1 Taylor, Frank, Printer, Stapleton
- 2 Sindall, Horace H., Farmer, Gulf Shores
- 3 Day, Warren W., Civil Service, Elberta
- 4 Drew, Norman Lee, Mechanic, Bay Minette
- 5 Lazzari, Angelo, Farmer, Belforest
- 6 Allen, Norman W., Farmer, Gateswood
- 7 Feilding, Bailey, Sr., Carpenter & Bricklayer, Daphne
- 8 Graham, James R., Laborer, Bay Minette
- 9 Andrews, Herbert E., Farmer, Foley
- 10 Williams, Samuel D., Gov't. Employee, Fairhope
- 11 Fletcher, Charles T., Gov't. Employee, Bay Minette
- 12 Gamble, E. Jack, Salesman, Bay Minette
- 13 Garrett, Malcolm, Farmer, Belforest
- 14 Underwood, J.D., Mechanic, Foley
- 15 Weatherford, Arthur C., New Port, Bay Minette
- 16 Harrison, Bibb, Farmer, Fairhope
- 17 Henry, J. W., Salesman, Fairhope
- 18 Winterlighter, Daniel C., Clerk, Bay Minette
- 19 Cain, Herman L., Mechanic, Bay Minette
- 20 Crank, Donald, Farmer, Bay Minette
- 21 Cabiness, Marvin, Laborer, Bay Minette
- 22 Larson, Henry L., Brick Layer, Elberta
- 23 Matthews, Reid, Furniture Store Oper., Robertsdale
- 24 McKenzie, Robert E., Meat Packer, Fairhope
- 25 Mitchel, Fred, Jr., Service Station, Stapleton
- 26 Mund, Andrew, Fisherman, Gulf Shores
- 27 Osborne, W. A., Civil Service, Foley
- 28 Pierce, Arthur, Insurance, Fairhope
- 29 Rayborn, Cecil, Farm Laborer, Robertsdale
- 30 Clemons, Frank, Grand Hotel, Fairhope
- 31 Boros, Anthony J., Farmer, Elberta
- 32 Burkhardt, John M., Farmer, Elberta
- 33 Allen, Leslie Sr., Clerk, Fairhope
- 34 Allen, James B., Jr., Farmer, Billian
- 35 Jones, George, Business Operator, Daphne
- 36 Wenzel, Emmett O., Merchant, Gulf Shores
- 37 Crenmons, W. P., Carpenter, Fairhope
- 38 Duck, Jos. Willison, Brookley Field, Bay Minette
- 39 Akers, Radus M., Insurance, Bay Minette
- 40 Chestang, Pelham D., Brookley Field, Bay Minette
- 41 Bryant, Woodrow, Farmer, Stockton

41
40
12
28
12
76

P XXXXX XXV
D XXXXX XX

July 2, 1970

I have deducted \$300 due me in the case of James Wilson Barrow vs:
L. J. Shiver from the Judgment which I paid in the same case.

L. J. Shiver

FILED

JUL 2 1970

ALICE J. DUCK

CLERK
REGISTER

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE COURT OF CIVIL APPEALS OF ALABAMA

October Term, 19 69-70

1 Div. No. 17

To the Clerk ~~Register~~ of the Circuit Court,

Baldwin County—Greeting:

Whereas, the Record and Proceedings of the Circuit Court
of said county, in a certain cause lately pending in said Court between
L. J. Shiver, Appellant,

and
James Wilson Barrow, Appellee,

wherein by said Court it was considered adversely to said appellant, were brought before the
Court of Civil Appeals, by appeal taken, pursuant to law, on behalf of said appellant:

NOW, IT IS HEREBY CERTIFIED, That upon consideration thereof the Court of Civil Appeals,
on the 4th day of March, 19 70, affirmed said cause, in all respects, and
ordered that appellant, L. J. Shiver, and Mrs. Jack Carlisle, J. B. Shiver
and Walter T. Shiver, sureties on the supersedeas bond, pay the
amount of the judgment of the Circuit Court and 10% damages thereon
and interest and

~~and~~
~~sureties for the costs of appeal, pay~~ the costs of appeal in this Court and in the Court below.

It is further certified that, it appearing that said parties have waived their rights of exemption
under the laws of Alabama, it was ordered that execution issue accordingly.

Witness, J. O. Sentell, Clerk of the Court of Civil
Appeals of Alabama, at the Judicial Building,
this the 4th day of March, 1970.
J. O. Sentell
Clerk of the Court of Civil Appeals of Alabama.

THE COURT OF CIVIL APPEALS
OF ALABAMA

October Term, 1969-70

1 Div., No. 17

L. J. Shiver

Appellant,

vs.

James Wilson Barrow

Appellee.

From Baldwin Circuit Court.

No. 7793

**CERTIFICATE OF
AFFIRMANCE**

The State of Alabama,

County.

} Filed

this FILED day of 19

MAR 5 1970

ALICE J. DUCK

CLERK

REGISTER

DOWN PRINTING CO. - MONTGOMERY

Alice J. Duck

MAR - 4 1970

THE STATE OF ALABAMA --- JUDICIAL DEPARTMENT

THE COURT OF CIVIL APPEALS

OCTOBER TERM, 1969-70

1 Div. 17

L. J. Shiver

v.

James Wilson Barrow

Appeal From Baldwin Circuit Court

WRIGHT, JUDGE

This case comes on appeal from a judgment in the Circuit Court of Baldwin County, Alabama.

Plaintiff, appellee, James Wilson Barrow, filed suit in assumpsit against L. J. Shiver, based on a contract for the construction of a house at Spanish Fort, Baldwin County, Alabama. The alleged breach of the contract consisted of the failure of appellant to construct the house in a workmanlike manner.

The complaint was originally filed on October 20, 1967. The house was completed and occupied by appellee in the latter part of 1966. The amount claimed as damages originally was \$5,000, which was amended in March, 1969, to a claim for \$12,000. To the complaint, appellant filed

plea of the general issue, failure of appellee to pay full consideration and recoupment for work and labor for \$2,000.

Upon trial by jury, verdict was returned for plaintiff-appellee in the amount of \$7,000, and for defendant-appellant on his plea of recoupment in the amount of \$300. Judgment in accordance with the verdict was entered. Motion for new trial filed by appellant was denied, and this appeal followed on September 15, 1969.

Appellant has filed three assignments of error. Assignment of error 1 charges error in the trial court's denial of a motion for a new trial.

The motion contained eight grounds, all of which were predicated upon the premise that the verdict of the jury was contrary to the law and evidence, and was excessive as a result of bias, passion and prejudice against the defendant.

The effect of assignment 1 is to present as a separate assignment of error every ground stated in the motion for new trial. Therefore, the grounds set out in the motion must undergo scrutiny on review as if they were actually assignments of error. Their sufficiency to require review must be determined. They must specify the precise error alleged to have occurred, and must be properly argued. Allred v. Dobbs, 280 Ala. 159, 190 So. 2d 712; General Finance Corp. v. Bradwell, 279 Ala. 437, 186 So. 2d 150; Danley v. Marshall Lumber and Mill Co., 277 Ala. 551, 173 So. 2d 94.

The grounds of the motion for new trial filed by appellant in this case are utterly general and totally

insufficient to advise the trial court of any error it had committed, and thus fails to supply this Court on review with any information as to error in the court below. The ground that the jury's verdict was contrary to the law presents nothing for review. Allred v. Dobbs, supra; General Finance Corp. v. Bradwell, supra; Grimes v. Jackson, 263 Ala. 22, 82 So. 2d 315.

The only grounds in the motion for a new trial which are possibly sufficient for review here, are those which allege the verdict of the jury is contrary to the facts and is excessive. Though questionable as to right of review, we will consider the evidence as to its insufficiency to support the verdict, and whether the verdict was excessive.

Briefly, the evidence was, though in conflict, that the appellant built appellee a house; that appellee moved into the house, and shortly thereafter defects began to appear. The plumbing leaked, resulting in damage to floors and ceilings. The hot water heater was hooked up wrong and would not function. The wiring was insufficient, in that circuits were overloaded, junction and terminal boxes were not covered or attached. The main beam in the family room was improperly trussed and was insufficient size to provide support for ceiling and roof. As a result, the ceiling cracked, the roof sagged, and supports were placed to provide additional support. Floor and bathroom tile broke and came loose. Various other defects appeared.

These defects had developed over the period of time since construction, and were getting progressively worse. It was stated that appellant had been advised of some of these problems, but had done nothing.

Appellee's witness stated that it would require from eight to twelve thousand dollars to repair the defects, which in his opinion, as a builder of twenty-five years experience, were due to unworkmanlike construction.

No ground for new trial is more carefully considered than that of the insufficiency of the evidence to support the verdict. Verdicts are presumed to be correct. When the trial judge refuses to grant a new trial, that presumption is strengthened. Cobb v. Malone, 92 Ala. 630, 9 So. 738; Allred v. Dobbs, supra.

On appeal, all favorable presumptions are given in favor of the verdict of the jury, and the verdict will not be disturbed unless it is plainly and manifestly unjust. Allred v. Dobbs, supra; Decker v. Hays, 282 Ala. 93, 209 So. 2d 378; Fuller v. Yancey, 281 Ala. 126, 199 So. 2d 666.

After allowing all favorable presumptions in favor of the correctness of the verdict, we fail to find it contrary to the preponderance of the evidence or manifestly unjust. There is no indication that the jury was swayed or influenced by bias, prejudice or passion.

Assignment of error 2 charges error in the admission into evidence, over objection of appellant, several photographs taken by appellee over a period of time, showing conditions then existing in the house. These were introduced to show matters resulting from the alleged poor workmanship of appellant.

The basis of appellant's objection at the time of introduction, and argued on appeal, was that the photographs were taken after construction of the house was completed and turned over to appellee, and therefore did

not accurately portray the condition of the house at the time of completion. It is contended that from aught that appeared, appellee or someone else could have contributed to conditions shown in the photographs.

This argument is not sound and is not seriously argued in brief. Of course, the photographs did not portray the condition of the house at the time of completion and occupancy. It is unlikely that appellee would have accepted the house had these conditions been apparent. The purpose of introducing them was to show defects which had developed and appeared since construction, and which were presumably latent at that time. If the conditions shown by the photographs were not the result of the poor workmanship of appellant, or were caused or contributed to by acts of appellee, such was subject to be established by voir dire or cross-examination, or by counter-evidence by appellant. The propositions of law and authorities cited by appellant in support of this assignment of error are valid, but not applicable to this case. There was no error in admission of the photographs over objection of appellant on the ground assigned.

Assignment of error 3 is addressed to the admission of evidence as to damages to the house resulting from leaky plumbing. Appellant contends that the complaint charged only faulty plumbing that leaked, and did not charge damages resulting from such leaky plumbing.

The propositions of law supporting this assignment are (a) that damages not claimed are not recoverable, and (b) special damages have to be set out and claimed in the complaint so that the defendant, who could not anticipate them, might have proper notice and opportunity

to prepare to meet their proof at trial.

The rule as to recoverable damages in an action for breach of contract is -- damages recoverable are such as are the natural and proximate consequences of the breach, and such as may reasonably have been contemplated by the parties as the probable result of the breach. Winslett v. Rice, 128 So. 2d 94, 272 Ala. 25; Mixon v. Trawick, 84 So. 2d 760, 264 Ala. 82.

There can be no question but that there was a right of recovery for damages resulting from leaky plumbing, when the leaky plumbing was due to the failure of appellant to perform his contract in a workmanlike manner. Taylor v. Lunsford, 26 Ala. App. 127, 154 So. 608.

The gravamen of appellant's position under this assignment of error appears to be that the proof of damage to the floor and ceiling resulting from the leaky plumbing, were special damages rather than general, and must be pleaded specifically before proof is admissible. He contends that the only proof admissible under the allegations of the complaint as to damages from leaking plumbing, would be the cost of repairing the plumbing. It appears to us, that this proposition is as leaky as appellee's plumbing.

The complaint charges, in this respect, as follows, ". . . The joints of the plumbing were not properly joined and they leak . . ."

Proof of damages to the house resulting from the leaking, flows naturally and reasonably from the charged fact of a leak. This constitutes general damages reasonably within the contemplation of the parties to the contract, in our opinion, and we so hold.

The authority of Crommelin v. Montgomery Independent Telecasters, Inc. 280 Ala. 391, 194 So. 2d 548, cited by appellant is not applicable to the matter under consideration here. In the Crommelin case there was testimony of "how much other damages" plaintiff suffered resulting from an alleged breach of contract, without any allegation in the complaint specifying the nature or extent of such damages.

In this case, when appellant was charged with failing to perform in a workmanlike manner, and a portion of such failure consisted of not properly joining joints in the plumbing causing them to leak, he cannot be heard to claim surprise when proof is offered to show damage resulting from the leak.

We find no merit in the assignments of error. The judgment of the trial court is affirmed.

AFFIRMED.

I, J. O. Sentell, Clerk of the Court of Civil Appeals of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said Court.

Witness my hand this 4th day of March 19 70

J. O. Sentell

Clerk, Court of Civil Appeals of Alabama