

JOHN D. FOX, JR.,

Complainant,

vs.

JULIUS C. WEBB, ET AL.,

Respondents.

X
X
X
X
X
X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY

NO. 3807

Come now the Respondents, each separately and severally, in the above styled cause, by their Solicitors, and for answer to the Bill of Complaint heretofore filed against them, say as follows:

1. The Respondents admit the allegations of paragraph "1" of the Bill of Complaint.

2. The Respondents deny the allegations of paragraph "2" of the Bill of Complaint.

3. The Respondents admit that the Complainant entered into a written contract with the Respondent, Julius Clarence Webb, on September 20, 1955, and that a copy of such contract is attached to the Bill of Complaint. Respondents deny that the Respondent Leila Glover Webb subsequently ratified, confirmed and adopted the terms and provisions of said written contract and they further deny that under the terms and provisions thereof the Complainant was to build a frame dwelling house for the Respondents. The Respondent Julius C. Webb further denies that the Complainant has complied in all respects with the provisions of said contract but, on the contrary, the Complainant breached said contract in that he failed to construct said frame dwelling in a good and workmanlike manner or in accordance with the plans and specifications for the construction thereof and as a result of said breach the Respondent, Julius C. Webb has been caused to suffer and did suffer damages in the amount of Four Thousand Six Hundred Dollars (\$4,600.00) said sum being the amount necessary to expend on said frame dwelling in order that the same, when completed, would comply in all respects with the terms and provisions of said contract. The Respondents deny each and every other allegation of said paragraph and demand strict proof thereof.

4. The Respondents deny the allegations of paragraph "4" of the Bill of Complaint and demand strict proof thereof.

For further answer to the Bill of Complaint the Respondent Julius C. Webb alleges that the Complainant John D. Fox, Jr., breached the contract, a copy of which is attached to the Bill of Complaint and marked "Exhibit A" and by reference made a part thereof in that he failed to erect and build said dwelling house in a substantial and workmanlike manner and in accordance with the description of materials therein referred to and the blueprints agreed to by and between the parties thereto and as a result of said breach of said contract the Respondent Julius C. Webb was damaged in the amount of Four Thousand Six Hundred Dollars (\$4,600.00) in that said sum would be required to complete said dwelling in a substantial and workmanlike manner and in accordance with the contract referred to above. And the Respondent Julius C. Webb further alleges that he has made repeated demands upon the Complainant to complete said dwelling in accordance with his contract but that he has failed and refused and continues to fail and refuse to do so, all to the damage of the Respondent Julius C. Webb.

The Respondent Julius C. Webb further alleges that in and by the terms of the contract hereinabove referred to that he has paid to the Complainant Six Thousand One Hundred and Sixty-five Dollars (\$6,165.00) but that he has not paid the remainder of Two Thousand Five Hundred Eighty-five Dollars (\$2,585.00) because of the abandonment by the Complainant of the contract and his obligations thereunder and his failure to complete said dwelling house in accordance with said contract.

WHEREFORE, the premises considered the Respondent Julius C. Webb respectfully prays that his answer be taken as a cross-bill against the Complainant John D. Fox, Jr., and that upon a final hearing of this cause that a judgment be rendered against the said Complainant for and in the amount of Four Thousand Six Hundred Dollars (\$4,600.00) as damages aforesaid for the breach by the Complainant of said contract. And the Respondent Julius C. Webb prays for such other, further and different relief to which, in equity, he might be entitled.

Respectfully submitted,

W. O. MACMAHON III
and
CHASON & STONE

By: 

Solicitors for Respondent

JOHN D. FOX, JR.,

Complainant,

VS.

JULIUS CLARENCE WEBB and
LEILA GLOVER WEBB,

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

IN EQUITY. NO. _____

A M E N D M E N T

Comes now the Complainant, JOHN D. FOX, JR., by his Solicitor, and amends Paragraph 3 of his Original Bill of Complaint so that, as amended, said paragraph 3 reads as follows:

3.

That on, to-wit: the 20th day of September, 1955, your complainant entered into a written contract with the respondent, JULIUS CLARENCE WEBB, a copy of which contract, marked Exhibit "A", is attached hereto, and, by reference, made a part hereof as though fully set out herein; that the respondent, LEILA GLOVER WEBB, subsequently, ratified, confirmed and adopted the terms and provisions of said written contract; that under the terms and provisions of said contract complainant was to build for the respondents a frame dwelling on the following described lot of land in the Town of Daphne, Baldwin County, Alabama, viz:

From the Northwest Corner of Section 20, Township 5 South, Range 2 East, run South along the West line of said Section 20, 265.7 feet to a point; thence run in a Westward Direction 422.4 feet to the Northeast Corner of the Dryer Subdivision; thence continuing Westwardly along the North Line of said Subdivision 162 feet to a point, said point being where the extension of the West Line of 6th Street as shown on the said Plat of Dryer Subdivision recorded in Map Book 1, Page 98, of the records in the Office of the Judge of the Probate Court of Baldwin County, Alabama, would intersect the North Line of said Subdivision; thence run in a Southwardly Direction along the extension thereof, and the West Line of 6th Street, 1351 feet to the North Line of College Street; thence run Westwardly along the North Line of said College Street 513.33 feet to the place of beginning of the property described herein; thence continue West along College Street 94.66 feet to the East Line of a Street sometimes called 4th Street; thence run North along the said East Line of 4th Street 150 feet to a point; thence run Eastwardly and parallel with College Street 94.66 feet to a point; thence run South and parallel with said 4th Street 150 feet to the point of beginning;

at and for a price of Eight Thousand Seven Hundred and Fifty

(~~\$8,750.00~~) Dollars, to be paid on a "Work completed in a satisfactory manner" basis; and complainant avers that he has complied in all respects with the provisions of said contract, but that the said respondents have failed and refused to comply with said contract in that they still owe to complainant a balance on said contract in the amount of Two Thousand Seven Hundred Thirty-six and Six One-hundredths (~~\$2,736.06~~) Dollars, which said amount the said respondents have failed and refused to pay; and complainant avers that said amount became due on, to-wit: the 18th day of May, 1956, which was the date on which complainant completed work on said contract as aforesaid, and that said amount, with the interest thereon, is still due and unpaid.

J. Allen A. Mable
Solicitor for Complainant.

4 (4)
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NO. 3807

JOHN D. FOX, JR.,
Complainant,
VS.

JULIUS CLARENCE WEBB and
LEILA GLOVER WEBB,
Respondents.

FILED
NOV 2 1956

ALICE H. DUCK, Register

AMENDMENT TO BILL OF COMPLAINT.

I certify that I have handed
a copy of the within to Hon.
Norborne Stone, Solicitor for
Respondents.

Refery M. M. Stone
Solicitor for Comp.

SEP 11 1958

THE STATE OF ALABAMA - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

SPECIAL TERM, 1958

1 Div. 745

John D. Fox, Jr.,

v.

Julius Clarence Webb and
Leila Glover Webb,

Appeal from Baldwin Circuit Court,
in Equity.

STAKELY, JUSTICE.

On the 20th day of September, 1955, John D. Fox, Jr. (appellant), as contractor, and Julius Clarence Webb (appellee) as purchaser, signed a building contract for the construction of a house to be built in Daphne, Alabama, on a lot jointly owned by Webb and his wife, Leila Glover Webb. As the work proceeded Webb

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became dissatisfied with the quality of the contractor's work and his failure to conform to the plans and specifications and when Fox terminated his work on the house, still refusing to make changes demanded of him, Webb withheld the last payment.

The contract shows that the agreed price was \$8,750.00. And it is agreed that the amount paid by Webb was \$6,171.50. This leaves a remainder of \$2,578.50, which Webb refused to pay.

The trial court found, and we think properly so, that the dwelling was not constructed in a workmanlike manner so as to substantially conform to the plans and specifications. To mention a few particulars, the court found as follows. The porch and carporte were to have "C Pine ceiling finish & three ct's L&O." Instead it was finished with quarter inch plywood. The hall walls were to be panel pine. Instead they were sheetrock. The counter tops in the kitchen were to be formica over fir plywood. Instead a different material was used over 1/4" plywood, which was critized during the trial as being "unworkmanlike." There were other unworkmanlike defects such as the roof sagged where a rafter had been spliced and not braced, walls were not plumb, tile in kitchen was bottom side up, ceramic tile in the bathroom was improperly installed, and a long board which had been nailed outside the diagonal sheeting had not been removed before the asbestos siding was installed, thus creating an unsightly ripple.

3.

Fox terminated his work on the house in May of 1956, and on June 5, 1956, filed a lien claim on the house and lot in the probate court for \$2,736.06 and on June 6, 1956, filed his bill of complaint in the circuit court for an equal amount. Attached to the bill as Exhibit A and made a part thereof is the contract between the parties. and as Exhibit B the claim of the lien filed in the probate court the previous day. Both Webb and his wife were named as respondents. They in turn filed a cross bill asking for damages in the amount required to complete the house in accordance with the plans and specifications set out in the contract.

The trial court entered a final decree in which he awarded Fox \$2,578.50, the remainder due under the contract plus \$147.90 for extras, a total of \$2,726.40. The court also awarded to Webb damages in the amount of \$3,798.54, which left a difference of \$1,072.14 and Fox was ordered to pay this amount to Webb.

On this appeal Fox submits three assignments of error:

- "1. The Court erred in sustaining appellees' demurrer to the appellant's original bill of complaint.
- "2. The Court erred in rendering the Final Decree in this cause dated May 22, 1957.
- "3. The Court erred in denying the relief sought by appellant in his bill of complaint as last amended."

4.

I. We shall consider the third and first assignments first. So far as the third assignment of error is concerned, the decree awarded to Fox the relief for which he prayed. It was only due to the fact that Webb's award was greater than the award to Fox that the final decree requires Fox to pay the difference to Webb.

The original bill of complaint alleged that both respondents entered into a contract with complainant and yet Exhibit A, the contract, shows on its face that only Webb had signed it. The original paragraph 3 contains the following allegation:

"That on, to-wit: the 20th day of September, 1955, your complainant entered into a written contract with the respondents, a copy of which marked Exhibit 'A' is attached hereto, and by reference made a part hereof as though fully set out herein. * * *." - (Emphasis supplied.)

The demurrer filed to the original bill of complaint takes the position that it affirmatively appears from the bill of complaint that there is no privity of contract between the complainant and the respondent Leila Glover Webb, and that it affirmatively appears that the work and labor alleged to have been done by the complainant was not done at the request of the respondent Leila Glover Webb.

The court sustained the demurrer to the original bill, which was then amended by Fox so that the third paragraph reads as follows:

"That, on, to-wit: the 20th day of September, 1955, your complainant entered into a written contract with the respondent, JULIUS CLARENCE WEBB, a copy of which contract, marked Exhibit 'A' is attached hereto, and, by reference, made a part hereof as though fully set out herein; that the respondent, Leila Glover Webb, subsequently, ratified, confirmed and adopted the terms and provisions of said written contract; * * *." (We have underscored to indicate the changes made.)

5.

In this state where appeals are allowable to a decree sustaining or overruling a demurrer to a bill in equity without awarding a final decree, the Alabama Code provides that "nothing in this section shall prevent an assignment of errors on such decrees on appeals taken on the final determination of the cause, if no appeal is taken under this section." —§ 755, Title 7, Code of 1940. It is enough for us to say that the action of the trial court in sustaining the demurrer to the original bill, if error, was error without injury because it does not appear that the error complained of has injuriously affected the substantial rights of the appellant. —Warren v. Crow, 202 Ala. 680, 81 So. 636; Supreme Court Rule 45, Code of 1940, Title 7, Appendix.

In this case Fox has received an award of the entire amount he asked for but due to the fact that judgment against him is in a greater amount, he is in the position of being required to pay, instead of receiving payment. It should make no difference to him whether he pays to Webb alone or to both Mr. and Mrs. Webb. Either way, he pays the same amount.

II. As to assignment of error number two, it is insisted by the appellant that the trial court erred in rendering its final decree in this cause for four reasons: (1) The bill of complaint should not have been dismissed as to the appellee Leila Glover Webb. (2) The court ignored the terms of the express contract between the

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appellant Fox and the appellee Webb. (3) The Court should not have awarded to appellees damages under their cross bill and (4) the Court erred in basing its decree on incompetent testimony.

Subheading (1)

The amended bill of complaint under which this cause was tried shows that appellee Leila Glover Webb was not a party to the contract for the erection of improvements on her property on which the appellant now claims a lien. It is contended by the appellant, however, that the evidence in this case establishes acts of ratification by Leila Glover Webb of such contract based upon her actions subsequent to the date of the contract and during the construction of the improvements thereunder.

We have considered the evidence very carefully as to whether or not Leila Glover Webb so ratified and confirmed the terms and provisions of the written contract as to make herself liable and to give the complainant the right to a lien on her property. It is our judgment that the evidence is not sufficient to give the complainant this right and is not sufficient to enable the complainant to establish a lien on her property, but we prefer to base our opinion on the proposition that if there was error in this action of the court, it was error without injury, because the substantial rights of Fox were not injuriously affected. —

7.

Supreme Court Rule 45, Code of 1940, Title 7, Appendix. Only in case the judgment were reversed on other grounds would this position of the complainant require consideration. As we have heretofore pointed out, Fox received an award of the entire amount he asked for. This being true, it should make no difference to him whether or not Mrs. Webb is held liable and a lien established on her property.

Subheading (2)

It is contended by appellant that the contract made and constituted the Federal Housing Authority an umpire as to whether the construction of the building was in accordance with the terms of the contract and that no mere error or mistake in judgment should vitiate its determination, without a showing of fraud or bad faith on its part in respect to its approval of the building. In support of this proposition appellant cites Alabama Chemical Co. v. International Agricultural Corp., 215 Ala. 381, 110 So. 614; Regional Agricultural Credit Corp. of Washington, D. C. v. Hendley, 251 Ala. 261, 37 So.2d 97. This contention appears to be based on the assumption that the house should be constructed subject to the approval of the Federal Housing Administration. If this were true, of course, the parties would be bound by the terms of their contract, but in no place in the contract do we find such a provision.

8.

We call attention to the pertinent parts of the contract which are paragraphs First, Second and Fourth. We find these provisions to be clear and unambiguous. The first paragraph provides that the house shall be constructed in accordance with certain FHA approved specifications and blue prints. The first paragraph is as follows:

"The contractor shall erect and build a dwelling house in a substantial and workmanlike manner * * * all in accordance with the description of materials set forth on FHA Form 2005, Case No. 1-505873 and the blue prints agreed to by and between the parties hereto and approved by FHA."

This does not mean that FHA is to approve the dwelling but that the dwelling is to conform to approved FHA plans and specifications, which the parties have placed in their contract.

Paragraph Second is as follows:

"The Contractor shall commence the work to be performed under this contract within one week from the date hereof, and shall in respect to the aforesaid work generally comply with the minimum building and other regulations of the Federal Housing Administration."

Paragraph Second provides that the contractor shall "generally comply with the minimum building and other regulations of the Federal Housing Administration." This merely adopts FHA standards. These standards are set out in FHA publications such as "Minimum Property Requirements," known in the trade as "MPR" and others. As administered under FHA inspectors they have come to exert a strong influence on the quality of work generally accepted in the building trade as workmanlike. The adoption, however, of FHA standards and placing them into a contract is quite different from agreeing to abide by the judgment of FHA inspectors.

9.

The Court of Appeals of Kentucky considered a very similar situation in Helm v. Speith, 298 Ky. 225, 182 SW.2d 635, and after remandment on second appeal, in Speith v. Helm, 301 Ky. 451, 192 SW.2d 376. There as here the dwelling was to be constructed to meet minimum FHA plans and specifications and the structure as completed by the contractor had been approved by the FHA inspectors. There as here the purchaser was not satisfied, the only difference being that there the defect was latent and not discovered until after the purchaser had "accepted" the building. The Kentucky Court laid down a rule that, "The fact that the FHA may have waived compliance with any of those specifications or provisions, or have accepted the building in ignorance of noncompliance, is not controlling." —Helm v. Speith, 298 Ky. 225, 182 SW.2d 637.

It then held that the determining factor was the fact that the dwelling constructed was not the result of a substantial performance of the contract.

This case was expressly followed by the Supreme Court of Mississippi in Montgomery v. Kinbrough Homes, 214 Miss. 519, 59 So.2d 273. The contract provided in Article 4:

"The said dwelling house shall be constructed to the satisfaction of Federal Housing Administration minimum standards and said institution shall be the final judge of any and all construction requirements." (Montgomery v. Kinbrough Homes, 214 Miss. 519, 59 So.2d 273, 276.

10.

The trouble between the parties arose because the sheet of blueprints which showed the foundation gave dimensions of approximately 2 feet smaller than the sheet which showed the floor plan. The purchaser called the attention of the contractor to this discrepancy but the smaller building was constructed and purchaser under pressure to complete finance details, signed an affidavit certifying that the house had been completed according to plans and specifications. The purchaser brought suit in the county court and received a verdict of the jury under instructions which authorized them to find whether there had been a breach of the contract by the contractor. In the circuit court the contractor had judgment as a result of a peremptory charge in his favor but the Supreme Court of Mississippi rendered judgment for the purchaser on the basis that the contractor had breached the terms of the contract which required "contractor shall check and verify all dimensions."

Speaking of Article 4, set out supra, the Mississippi appellate court said:

"Such provision did not constitute the Federal Housing Administration as a final arbiter with respect to differences or legal rights of the parties inter sese, especially as to the size and arrangement of rooms. So long as the house was built in conformity with minimum standards of construction its approval would be forthcoming. Such approval in no sense absolved defendant of any legal duty owed to plaintiffs. The Administration could

11.

be satisfied by a compliance with requirements which fall short of the satisfaction of the plaintiff or of the legal duty of the defendant. Helm v. Speith, 298 Ky. 225, 182 S.W.2d 635; Speith v. Helm, 301 Ky. 451, 192 S.W.2d 376." — Montgomery v. Kimbrough Homes, 214 Miss. 519, 59 So.2d 273, 276-277.

In the case at bar we hold that FHA approval does not relieve the contractor of his duty to construct the dwelling in accordance with the specifications as set out in paragraph "First" of the contract.

Neither does paragraph "Fourth" provide that FHA shall act as an umpire. Paragraph Fourth is as follows:

"The Purchaser in consideration of the covenants and agreements herein contained hereby agrees to pay to the Contractor a sum in the amount of Eight Thousand Seven Hundred and Fifty Dollars (\$8,750.00) to be paid on a 'work completed in a satisfactory manner' basis as follows:

"(a) One-third of total amount on completion of first inspection by FHA authorities.

"(b) One-third of total amount on completion of second inspection by FHA authorities.

"(c) Balance of total amount on final FHA inspection and acceptance * * *."

This paragraph sets out the price and the schedule of payments. In our judgment this means that assuming the work to be completed in a satisfactory manner, Webb agreed to pay Fox one-third of the price at the time of the completion of the first inspection by FHA authorities, one-third of the price at the time of the completion of the second inspection by FHA authorities, and the balance of the price at the time of the completion of the final FHA inspection. We do not consider that this paragraph designated FHA as an umpire and it should not be so construed.

12.

According to our understanding of the record all witnesses except appellant recognized that FHA was only interested in the security of its guarantee to the mortgagee. The parties contemplated that the loan of the Merchants National Bank of Mobile would be guaranteed by FHA and they knew that FHA would not guarantee the loan unless the dwelling met certain FHA minimum building regulations. It was to the interest of both parties that FHA approve the building and for that reason it had to conform with FHA regulations, but this is not to say that appellant was contracting with FHA. His contract was with Webb to build the house in accordance with certain plans and specifications. No action on the part of the FHA authorities could absolve Fox from any legal duty which he owed to Webb.

In the Kentucky and Mississippi cases, supra, the purchaser had "accepted" the dwelling. In the case at bar Webb had agreed to pay at the time of certain FHA inspections, but the "acceptance" on the one hand and the agreement to pay on the other were conditional on the contractor constructing the building in a substantial and workmanlike manner. In our judgment the proper interpretation of the contract required Fox to build the house in accordance with the plans and specifications and FHA was not nominated or constituted an umpire.

Subheading (3)

Appellant assigns as error the conclusions of the trial court in awarding to the appellees damages under their cross bill. Included within this question is whether or not the evidence was sufficient to sustain the decree. In reaching a conclusion we shall consider whether there were errors in arithmetic and whether or not the correct measure of damages is applied.

13.

Carpenters and other experts in the building trade testified that the work Webb had done and the materials which he had purchased were necessary in order to complete the house in accordance with the plans which were a part of the contract. Some of these experts were people who had been hired to do the work, but in addition Cecil Mall, an admittedly reliable local contractor, testified in detail as to many items in the building which did not comply with the requirements of the plans and specifications. So far as we can ascertain none of the witnesses stated that the work as to which he was testifying was all that would be required in order to complete substantially the building in accordance with the plans and specifications.

The court found that the work had not been completed by the contractor in accordance with the terms and conditions of the contract. The evidence was heard orally before the court. Under these circumstances, the findings of the trial court have a presumption of correctness. —Tilley v. Tucker, 261 Ala. 287, 73 So.2d 923; Spradling v. May, 259 Ala. 10, 65 So.2d 494; Johnson v. Johnson, 259 Ala. 550, 60 So.2d 841.

The court found that the amount which was necessary to complete the building in accordance with the terms and conditions of the contract was \$3,798.54. It seems to us that the record substantiates such a conclusion. We are not willing to say that the findings of the court were palpably wrong.

14.

From \$3,798.54, the amount required to finish the house in accordance with the contract, we subtract \$2,726.50, the amount awarded Fox. The remainder is \$1,072.14, which is the amount of the decree against Fox.

On the question of damages this court has stated the general law applicable to the present situation as follows:

"If a contractor has failed to perform his part of the contract, or has performed it in a different manner from that provided by the contract, or abandons the work, the owner can refuse to accept it, and require performance, before being liable on the contract price or a quantum meruit; but he may by word or act, or by a failure to speak or act, accept the partial performance, or performance in a different manner, and thereby waive strict or full performance, and render himself liable on a quantum meruit, less such damages as he may sustain from the contractor's breach, but not for the contract price, unless so agreed, after breach on the part of the contractor. That which will make an owner liable on a quantum meruit, on a partial or incomplete performance on the part of the contractor, does not necessarily amount to a waiver of his right to recoup damages for the contractor's breach; and upon the whole he should certainly have such amount deducted from the contract price as will be equal to the difference between the value of the work agreed to be done, and that of the work done.' * * * ." --Braswell v. Malone, 262 Ala. 323, 327-328, 78 So.2d 631.

This court in Walstrom v. Oliver-Watts Construction Co., 161 Ala. 608, 619, 50 So. 46, said:

"* * *The authorities above cited are uniform in holding that an owner, who has sustained injury by reason of a breach of the building contract on the part of the builder, may recover in a separate action against the builder, or if

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sued by the builder on a quantum meruit, that he may recoup or set off such damages as are the proximate result of the breach, the amount of which, as above stated, being the difference between the value of the work furnished or building constructed and the value of that contracted for, or the reasonable value of the extra work occasioned the owner in making the building conform to the contract stipulations. — 6 Cyc. 113; Suth on Damages, §§ 709-799."

In regard to the case at bar it may be observed further that a distinction exists between a contract to construct a dwelling for the owner who plans to live therein and a contract to construct a commercial structure where the aesthetic taste of the owner is not so deeply involved. It seems to us that when an owner contracts to have a dwelling constructed he wants a particular structure, not just any structure that could be built for the same price. We, therefore, think that the trial court was correct in awarding damages equal to the amount required to reconstruct the dwelling so as to make it conform to the specifications, rather than adopting the difference in loan value on the dwelling as the measure of damages, as contended by appellant.

Subheading (4)

Appellant finally insists that the decree is based on illegal, irrelevant, and incompetent testimony in that "practically every question to appellee's witnesses was a leading question." In support of this position the appellant cites § 372 (1), Title 7, Code of 1940, Appendix, and Low v. Low, 255 Ala. 536, 27 So.2d 218.

16.

Low v. Low, supra, merely points out that under § 372 (1), Title 7, Code of 1940, Appendix, there is a presumption that where the trial court overruled an objection to illegal evidence such evidence was considered in arriving at the judgment and unless the remaining evidence is without conflict and sufficient to support the judgment, it will be reversed.

In Bessemer Theatres, Inc. v. City of Bessemer, 261 Ala. 632, 635, 75 So.2d 651, this court said:

"* * * The rule is in substance that it is not necessary to make objection to the testimony which is irrelevant, immaterial and incompetent, or have a ruling upon that question, and if no objection is made and no ruling is had it will be presumed that the trial court considered only such evidence as was relevant, material and competent, and on appeal this Court will so consider it. It is also provided that if specific objection is made and a ruling had thereon, that feature of the statute will not apply."

The result of this statute is to create a presumption in favor of the findings of the trial court. See Rudicell v. Rudicell, 262 Ala. 41, 43, 77 So.2d 339.

It should be observed that appellant is objecting to the form of the question whereby the testimony was offered rather than to the testimony itself.

Since there is in our judgment sufficient legal evidence upon which to base the decree, we find no merit in appellant's objection to the evidence.

17.

Appellant further insists that no testimony as to the amount expended by appellees should be considered after proof that FHA had made its final inspection of the house involved in the contract and had accepted it. We have already stated that whether or not FHA had made its final inspection of the house and accepted it was irrelevant to the issue of whether or not the house as constructed by Fox conformed to the plans and specifications.

We conclude that the decree of the court should be affirmed.

Affirmed.

Lawson, Merrill and Coleman, JJ., concur.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st Div., No. 745

JOHN D. FOX, JR., Appellant

vs.

JULIUS CLARENCE WEBB and
LEILA GLOVER WEBB, Appellee,

From BALDWIN Circuit Court.
IN EQUITY

The State of Alabama,
City and County of Montgomery, }

I, J. Render Thomas, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages, numbered from one to SEVENTEEN inclusive, contain a full, true and correct copy of the opinion of said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, J. Render Thomas, Clerk of the Supreme
Court of Alabama, this the 11th day of

SEPTEMBER, 19 58

J. Render Thomas
Clerk of the Supreme Court of Alabama

THE SUPREME COURT OF ALABAMA

SPECIAL

~~October~~ Term, 19.57-58

1st Div., No. 745

JOHN D. FOX, JR.

Appellant,

vs.

JULIUS CLARENCE WEBB
and

LEILA GLOVER WEBB

Appellees

From BALDWIN CIRCUIT Court.
IN EQUITY

COPY OF OPINION

JOHN D. FOX, JR.,	I	
Complainant,	I	IN THE CIRCUIT COURT OF
vs.	I	BALDWIN COUNTY, ALABAMA
JULIUS C. WEBB, ET AL.,	I	IN EQUITY
Respondents.	I	
	I	

DEMURRER TO COMPLAINT AS AMENDED

Come now the Respondents in the above styled cause, by their solicitors, and demur to the Bill of Complaint as last amended, and assign the following separate and several grounds in support thereof:

1. There is no equity in the bill.
2. It affirmatively appears from the allegations of the bill that there is no privity of contract between the Complainant and the Respondent, Leila Glover Webb.
3. It affirmatively appears from the allegations of the bill that the work and labor therein alleged to have been done was not done at the request of the Respondents.
4. It affirmatively appears from the allegations of the bill that the work and labor therein alleged to have been done was not done at the request of the Respondent Leila Glover Webb.
5. No facts are alleged to show how or in what manner the Respondent Leila Glover Webb ratified, confirmed and adopted the provisions of the contract therein referred to.
6. For aught that appears from the allegations of the bill the Complainant did not rely on the truth of any representations of the Respondent Julius C. Webb that he was the sole owner of the property therein described.
7. No facts are alleged to show that the Respondent Leila Glover Webb accepted the work and labor allegedly performed by the Complainant.
8. No facts are alleged to show that the Respondent Leila Glover Webb consented to the work and labor allegedly performed by the Complainant.

9. No facts are alleged to show that the Respondent Leila Glover Webb consented to and recognized an obligation to pay for the work and labor alleged to have been done by the Complainant.

10. No facts are alleged to show that the Respondent Leila Glover Webb has ever recognized an obligation on her part to pay for the work and labor alleged to have been done by the Complainant.

11. No facts are alleged entitling the Complainant to a mechanic and materialman's lien on the property of the Respondent Leila Glover Webb.

12. It affirmatively appears from the allegations of the bill that the Complainant is not entitled to a mechanic and materialman's lien on the property described in the bill.

13. It affirmatively appears from the allegations of the bill that the Complainant is not entitled to a mechanic and materialman's lien on the property of the Respondent Leila Glover Webb therein described.

14. It affirmatively appears from the allegations of the bill that the Complainant is attempting to impose a lien on the property of the Respondent Leila Glover Webb through the application of general equitable principles alone.

Comes now the Respondent Leila Glover Webb, by her solicitors, and demurs to that aspect of the Bill of Complaint as last amended in which the Complaint seeks to impose a lien on property alleged to belong to her, and assigns the following separate and several grounds in support thereof:

1. There is no equity in the bill.

2. It affirmatively appears from the allegations of the bill that the work and labor therein alleged to have been done was not done at the request of this Respondent.

3. No facts are alleged to show that this Respondent accepted the work and labor alleged to have been done.

4. No facts are alleged to show that this Respondent consented to the work and labor alleged to have been performed.

5. No facts are alleged to show that this Respondent recognized an obligation on her part to pay for the work and labor.

alleged to have been performed.

6. No facts are alleged to entitle the Complainant to a lien on the property of this Respondent.

7. It affirmatively appears from the allegations of the bill that the Complainant is not entitled to a lien on the property of this Respondent.

8. It affirmatively appears from the allegations of the bill that the Complainant is seeking to impose a lien on the property of the Respondent through the application of general equitable principles alone.

9. It affirmatively appears from the allegations of the bill that the Complainant is seeking to establish a lien on the property of this Respondent upon the basis of equitable estoppel or other general equitable principles.

10. For aught that appears from the allegations of the bill the Complainant never gave this Respondent notice that the alleged work and ^x labor was being performed, or that materials were being used on her property.

W. O. MACMAHON, III

and

CHASON & STONE

By: Malcolm P. Stone, Jr.

FILED

FEB 7 1957

RECEIVED A. DICK, CHAS

THE STATE OF ALABAMA,
BALDWIN COUNTY

IN THE CHANCERY COURT OF BALDWIN COUNTY

To Julius Clarence Webb and Leila Glover Webb

Or To Chason & Stone, Solicitors of record.

Whereas, on the 8th day of May July, 19 57,

John D. Fox, Jr.

took an appeal from the decree rendered on the 22nd day of May

19 57, by the Circuit Court of said county, in the cause of

JOHN D. FOX, Jr.

versus

JULIUS CLARENCE WEBB AND LEILA GLOVER WEBB

Now, therefore, you are cited to appear as required by law, before the Supreme Court of Alabama, to defend on said appeal, if you think proper so to do.

Witness my hand this 10th day of July, 19 57

Abigail - Stone
Register in Chancery.

We, Chason & Stone, do hereby accept service of a copy of
the above Citation of Appeal this the 11th day of July, 1957

CHASON & STONE

By: Marbone P. Stone, Jr.

m. 3807

John W. Fox, Jr. Complainant

vs.

Julius Clarence Webb et al. Respondent

CITATION OF APPEAL

IN EQUITY

Issued 10 day of July, 1957

JOHN D. FOX, JR.,

Complainant,

vs.

JULIUS C. WEBB, ET AL.,

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY

NO. 3807

NOTICE OF TAKING DEPOSITION UPON ORAL EXAMINATION


TO: HON. TELFAIR J. MASHBURN, JR., ATTORNEY AT LAW, BAY MINETTE, ALABAMA, ATTORNEY FOR JOHN D. FOX, JR., COMPLAINANT.

Please take notice that the deposition of JOHN W. CRAIG, in the above styled cause, will be taken upon oral examination on Tuesday, May 7, 1957, at 9:00 o'clock A. M. before Louise Dusenbury, a Notary Public in and for the State of Alabama at Large, who is hereby designated as the officer before whom such deposition shall be taken, at her office in the Court House in Bay Minette, Baldwin County, Alabama.

Dated this 23rd day of April, 1957.

CHASON & STONE

By:


Attorneys for Respondent

STATE OF ALABAMA

BALDWIN COUNTY

I, Norborne C. Stone, attorney of record for Julius C. Webb et al., Respondents in the above styled cause, do hereby certify that I have this day mailed a copy of the foregoing Notice of Taking Deposition Upon Oral Examination to Hon. Telfair J. Mashburn, Jr., attorney of record for the Complainant, postage prepaid and properly addressed to him at his office in Bay Minette, Alabama.

Done this the 23rd day of April, 1957.


Norborne C. Stone, Jr.

*Done
4-24-57*

JOHN D. FOX, JR.,

Complainant,

VS.

JULIUS CLARENCE WEBB and
LEILA GLOVER WEBB,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NO. 3807

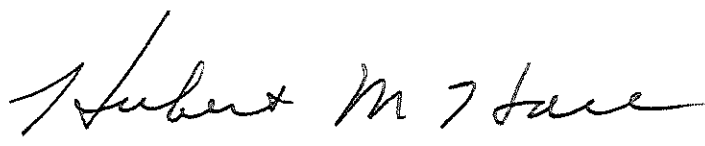
DECREE

This cause coming on to be heard is submitted on the Complainant's Bill of Complaint, as Amended, and the Respondents' Demurrer thereto, and the same being considered and understood by the Court, and the Court being of the opinion that said Demurrer is not well taken and is due to be overruled; IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED BY THE COURT AS FOLLOWS:

1. That the Respondents' Demurrer to the Complainant's Bill as Amended, of Complaint/be and it is hereby overruled.

2. That the said respondents be, and they are hereby, given twenty days to file additional pleading if they so desire.

DONE AND ORDERED this 19th day of February, 1957.


JUDGE.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NO. 3807

JOHN D. FOX, JR.,
Complainant,

VS.

JULIUS C. WEBB and
LEILA GLOVER WEBB,
Respondents.

DECREE.

FILED

FEB 21 1957

ALICE J. DICK, Register

JOHN D. FOX, JR.,

Complainant,

vs.

JULIUS C. WEBB, ET AL.,

Respondents.

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IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY NO. 3807

ORDER TO SUBPOENA WITNESS

TO: ALICE J. DUCK AS REGISTER OF THE CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA, IN EQUITY.

Comes now the Respondents in the above styled cause, by their attorneys, notice having been given to the adverse party as required by law of the Taking of the Deposition Upon Oral Examination of John W. Craig, whose address is Fairhope, Alabama, at the office of Louise Dusenbury in the Courthouse in Bay Minette, Baldwin County, Alabama, on May 7, 1957, at 9:00 o'clock A. M. and hereby file their order for the said John W. Craig to be subpoenaed by the Register of the Court in which the above styled cause is now pending.

Dated this 23rd day of April, 1957.

CHASON & STONE

By:


Attorneys for Respondents

Done - 4-24-57
J.B.

JOHN D. FOX, JR.,
Complainant,
VS.
JULIUS C. WEBB, ET AL.,
Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NO. 3807

ANSWER TO CROSS-BILL

Comes the complainant, JOHN D. FOX, JR., and, for answer to the cross-bill heretofore filed in this cause, says:

1. That he admits that the complainants have paid him Six Thousand One Hundred Sixty-five and No/100ths (\$6,165.00) Dollars on the contract in this cause.

2. That he denies each and every other allegation of said cross-bill and demands strict proof thereof.

Julius C. Webb
SOLICITOR FOR COMPLAINANT.

7
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NO. 3807

JOHN D. FOX, JR.,
Complainant,

VS.

JULIUS C. WEBB, ET AL.,
Respondents.

ANSWER TO CROSS-BILL.

FILED

MAY 13 1957

ALICE J. DUCK, Clerk

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

SPECIAL TERM 1957-58

~~October Term 19XXXX~~

To the REGISTER of the CIRCUIT Court,
BALDWIN County—Greeting:

Whereas, the Record and Proceedings of the CIRCUIT Court IN EQUITY
of said county, in a certain cause lately pending in said Court between
JOHN D. FOX, JR., Appellant,
and

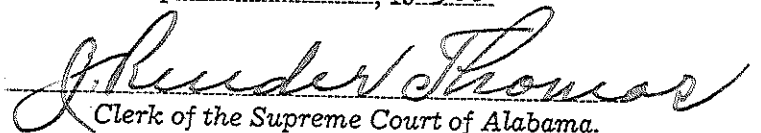
JULIUS CLARENCE WEBB: Appellee S,
LEILA GLOVER WEBB,
wherein by said Court it was considered adversely to said appellant, were brought before our
Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant, and

Leave having been granted appellant to sever in the A/E:-
NOW, IT IS HEREBY CERTIFIED, That it was thereupon considered, ordered, adjudged, and de-
creed by our Supreme Court, on the 11th day of September, 19 58, that said
DECREE of said CIRCUIT Court be in all things

affirmed, and that it was further considered, ordered, adjudged, and decreed that the appellant is,
~~xxx~~ John D. Fox, Jr., and The Fidelity and Casualty Company of
New York, surety on the supersedeas bond, pay the amount of
the monied decree of the Circuit Court, In Equity, and ten
per centum [10%] damages thereon, and interest, and

the costs accruing on said appeal in this Court and in the Court below, for which costs let execution
issue.

Witness, J. Render Thomas, Clerk of the Supreme
Court of Alabama, at the Judicial Department
Building, this the 11th day of
September, 19 58.


Clerk of the Supreme Court of Alabama.

THE SUPREME COURT OF ALABAMA
SPECIAL TERM 1957-58
~~OCTOBER TERM, 1957~~

1st Div., No. 745

JOHN D. FOX, JR.,

Appellant,

vs.

JULIUS CLARENCE WEBB:

LEILA GLOVER WEBB,

Appellee. S

From BALDWIN CIRCUIT Court.

In Equity

No. 3807

CERTIFICATE OF
AFFIRMANCE

The State of Alabama,

Baldwin County.

} Filed

this 13 day of Sept 19 58

Beir J. Smith
Clerk

JOHN D. FOX, JR.,

Complainant,

VS.

JULIUS CLARENCE WEBB and
LEILA GLOVER WEBB,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY. NO. 3807

Comes now JOHN D. FOX, JR., Complainant and Cross-respondent in the above styled cause, and hereby appeals to the Supreme Court of Alabama from the final decree and judgment in the Circuit Court of Baldwin County, Alabama, in Equity, rendered in the above styled cause on the 22nd day of May, 1957.

W. J. Masliburn, Jr.
SOLICITOR FOR COMPLAINANT AND CROSS-RESPONDENT.

We hereby acknowledge ourselves securities for costs of the foregoing appeal.

W. J. Masliburn, Jr.
PRINCIPAL

W. J. Masliburn, Jr.
SURETY

Taken and approved this 8 day of July, 1957.

W. J. Masliburn, Jr.
REGISTER.

RECEIVED
[Signature]

taken and approved this 8 day of December.

COURT

CLERK

the foregoing sheet.

no party acknowledge entrance received for costs of

APPEAL WITH SECURITY FOR COSTS.

FILED

JUL 8 1957

MARK A. ROCK, Register

JULIUS CLARENCE WEBB and
LEILA GLOVER WEBB,
Respondents and
Cross-Complainants.

VS.
JOHN D. FOX, JR.,
Complainant and
Cross-Respondent,

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NO. 2807

Respondence

TRITTY GLOVER WEBB,
JULIUS CLARENCE WEBB and

AR.

Complaint

JOHN D. FOX, JR.

IN EQUITY. NO. 2807
BALDWIN COUNTY, ALABAMA
IN THE CIRCUIT COURT OF

after copy

JOHN D. FOK, JR.

Complainant,

vs.

JULIUS C. WEBB, et al.,

Respondents.

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IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY

NO. 3807

Come now the Respondents and demur to the Bill of Complaint heretofore filed against them and to each and every aspect thereof, separately and severally, and assign the following separate and several grounds in support thereof:

1. There is no equity in the bill.
2. It affirmatively appears from the Bill of Complaint that there is no privity of contract between the Complainant and the Respondent, Leila G. Webb.
3. It affirmatively appears that the work and labor alleged to have been done by the Complainant was not done at the request of the Respondent, Leila G. Webb.

Respectfully submitted,

CHASON & STONE

By: /s/ Norborne C. Stone, Jr.
Solicitors for the Respondents

23/01/15

JOHN D. FOX, JR.,

Complainant,

VS.

JULIUS CLARENCE WEBB and
LEILA GLOVER WEBB,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY. NO. 3807

DECREE

This cause coming on to be heard is submitted on the Com-
plainant's Bill of Complaint, as Amended, and the Respondents'
Demurrer thereto, and the same being considered and understood
by the Court, and the Court being of the opinion that said
Demurrer is not well taken and is due to be overruled; IT IS,
THEREFORE, ORDERED, ADJUDGED AND DECREED BY THE COURT AS FOLLOWS:

1. That the Respondents' Demurrer to the Complainant's Bill
as Amended,
of Complaint/be and it is hereby overruled.

2. That the said respondents be, and they are hereby, given
twenty days to file additional pleading if they so desire.

DONE AND ORDERED this 19th day of February, 1957.

Hubert M. Free
JUDGE.

INDEX

2572 M. K. Smith

DONE AND ORDERED THIS 10th day of February, 1927.

WHEREFORE, the undersigned prays that the Court will grant the same.

5. That the said respondents be, and they are hereby, stayed of compliance with any and all orders of the Court.

DEGREE.

JULIUS C. WEBB and
LEILA GLOVER WEBB,
Respondents.

JOHN D. FOX, JR.,
Complainant,

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. No. 3807

FILED
FEB 21 1927

W. H. MCK, Register

Respondence.

LEILA GLOVER WEBB,
JULIUS C. WEBB and
JULIUS C. WEBB and

AS

COMPLAINT.

JOHN D. FOX, JR.

IN EQUITY. NO. 3807

BALDWIN COUNTY, ALABAMA.

IN THE CIRCUIT COURT OF

JOHN D. FOX, JR.,

Complainant,

VS.

JULIUS CLARENCE WEBB and
LEILA GLOVER WEBB,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY NO. 3807

SUPERSEDEAS BOND

STATE OF ALABAMA)


BALDWIN COUNTY)

KNOW ALL MEN BY THESE PRESENTS: That we, John D. Fox, Jr., as Principal, and The Fidelity and Casualty Company of New York, a corporation, as Surety, are held and firmly bound unto Julius Clarence Webb in the sum of Twenty-two Hundred Fifty Dollars (\$2250.00), for the payment of which well and truly to be made the Principal binds himself, his heirs and assigns, and the Surety binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 29 day of August, 1957.

The condition of the above obligation is such that, Whereas, Julius Clarence Webb obtained a decree in the above styled cause in the Circuit Court of Baldwin County, Alabama, Equity Side, on the 22nd day of May, 1957, from which judgment the said complainant, John D. Fox, Jr., has obtained and appeal, returnable to the next term of the Supreme Court of Alabama:

NOW, THEREFORE, if the complainant, John D. Fox, Jr., shall prosecute the said appeal to effect and satisfy such decree as may be rendered against him in this said cause by the Supreme Court of Alabama, then this obligation to be void, otherwise to remain in full force and effect.


As Principal

(SEAL)

THE FIDELITY AND CASUALTY COMPANY OF NEW YORK, a corporation,

(SEAL)

By 

As its Attorney in Fact
As Surety.

Taken and approved on this the
4th day of Sept., 1957.

Reese J. Smith

As Register of the Circuit Court of
Baldwin County, Alabama, in Equity.

JOHN D. FOX, JR.,

Complainant,

VS.

JULIUS CLARENCE WEBB and
LEILA GLOVER WEBB,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NO. 3807

Comes now JOHN D. FOX, JR., Complainant and Cross-respon-
dent in the above styled cause, and hereby appeals to the
Supreme Court of Alabama from the final decree and judgment
in the Circuit Court of Baldwin County, Alabama, in Equity,
rendered in the above styled cause on the 22nd day of May, 1957.

Julius J. Madlener Jr.
SOLICITOR FOR COMPLAINANT AND CROSS-
RESPONDENT.

We hereby acknowledge ourselves securities for costs of
the foregoing appeal.

John D. Fox Jr.
PRINCIPAL
Julius J. Madlener Jr.
SURETY

Taken and approved this 8th day of July, 1957.

David J. Hester
REGISTER.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NO. 3807

JOHN D. FOX, JR.,

Complainant and
Cross-Respondent,

VS.

JULIUS CLARENCE WEBB and
LEILA GLOVER WEBB,

Respondents and
Cross-Complainants.

APPEAL WITH SECURITY FOR COSTS.

FILED

JUL 8 1957

ALICE J. DUCK, Register

Div. No. _____

CERTIFICATE OF APPEAL. (Equity Cases.)

No. 3807

JOHN D. FOX, JR.,

Complainant.

vs.

JULIUS CLARENCE WEBB and LEILA GLOVER WEBB

Respondent.

I, Alice J. Duck

Register of the Circuit Court in Equity,

Baldwin

County, Alabama, hereby certify that in the cause of

JOHN D. FOX, Jr.,

Complainant,

vs.

JULIUS CLARENCE WEBB AND LEILA GLOVER WEBB

Respondent,

which was tried and determined in this Court on the 22nd day of

May

19 57,

in which there was a decree in favor of the

Respondent

On the 8th

day of July

19 57,

the

Complainant

took an appeal to the

Supreme

Court of Alabama, to be holden of and for said State.

I further certify that JOHN D. FOX, JR.,

filed security for cost of appeal, to the Supreme Court,

on the 8th day of July 19 57, and that

John D. Fox, Jr., and Telfair J. Mashburn, Jr

are sureties on the appeal bond.

I further certify that notice of said appeal was on the 10th

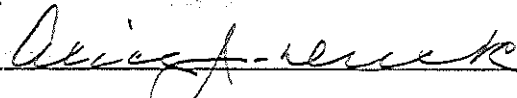
day of July 19 57, served on Norborne C. Stone

as attorney of record for said appellee.

Witness my hand and the seal of this Court, this the 10th day of

July

19 57



Register of the Circuit Court In Equity of

Baldwin

County, Alabama.

JOHN D. FOX, JR.,

Complainant,

VS.

JULIUS CLARENCE WEBB and
LEILA GLOVER WEBB,

Respondents.

IN THE CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA. IN EQUITY

NO. 3807

FINAL DECREE

This cause coming on to be heard was submitted upon the original and amended bill of complaint, answer and cross bill, answer to cross bill, and testimony of the witnesses both for the Complainant and the Respondent, taken ore tenus, and testimony of John W. Craig, taken in accordance with stipulation entered into by and between the Solicitors for the respective parties.

The Court, after considering all of the pleadings and the testimony of the witnesses finds as follows:

That on September 20, 1955, the Complainant and the Respondent, Julius Clarence Webb, entered into a contract to build, in which it was stipulated that "the contractor shall erect and build a dwelling house in a substantial and work-man-like manner on that certain property of the Respondent, in Daphne, Alabama -----".

The Complainant, John D. Fox, Jr., was the contractor, and the Respondent, Julius Clarence Webb, the purchaser.

The Complainant by his pleading attempts to establish the fact that Leila Glover Webb, while not a party to the written contract, ratified the same by her conduct and should be held liable thereunder.

There is no evidence sufficient to connect the Respondent, Leila Glover Webb, with the contract, and she is not bound by the terms thereof.

The Complainant, in an effort to comply with the contract, went upon the property and constructed thereon a building,

however, before beginning the operation and during the progress thereof, it became necessary that he spend ONE HUNDRED FORTY-SEVEN AND 90/100 (\$147.90) DOLLARS on work not included in the contract, and is entitled to be paid therefor.

There is much effort on the part of the Complainant to establish the fact that he has complied with all of the terms and conditions of the contract, however, it is conclusively shown that the building was not constructed in a substantial and workman-like manner.

The original contract price was EIGHT THOUSAND SEVEN HUNDRED FIFTY AND NO/100 (\$8,750.00) DOLLARS, to be paid on the work completed in a satisfactory manner, and in addition thereto Complainant is entitled to ONE HUNDRED FORTY-SEVEN AND 90/100 (\$147.90) DOLLARS for extra work, which would have made a total due the Complainant upon the completion of the building in a substantial and work -man-like manner of EIGHT THOUSAND, EIGHT HUNDRED NINETY-SEVEN AND 90/100 (\$8,897.90) DOLLARS.

✓ The Complainant has not completed the work in accordance with the terms and conditions of the contract.

The amount necessary to complete the building in accordance with the terms and conditions of the contract is THREE THOUSAND THREE HUNDRED FORTY-NINE (\$3,349.00) DOLLARS, (as testified to by Cecil Nall) and the additional sum, not included in Nall's estimate, of FOUR HUNDRED FORTY-NINE AND 54/100 (\$449.54) DOLLARS paid by the Respondent and Cross Complainant, Julius Clarence Webb, for additional work to complete the building, making a total necessary to complete the building in accordance with the terms and conditions of the contract of THREE THOUSAND SEVEN HUNDRED NINETY-EIGHT AND 54/100 (\$3798.54) DOLLARS.

The Respondent and Cross Complainant, James Clarence Webb, has, according to the record, paid the Complainant and Cross Respondent SIX THOUSAND ONE HUNDRED SEVENTY-ONE AND 50/100 (\$6,171.50) DOLLARS, which, together with the amount necessary to complete the building in accordance with the terms and con-

ditions of the contract of THREE THOUSAND SEVEN HUNDRED NINETY-EIGHT AND 54/100 (\$3,798.54) DOLLARS, making a total of NINE THOUSAND, NINE HUNDRED SEVENTY AND 40/100 (\$9,970.40) DOLLARS.

The Court is of the opinion that the Complainant and Cross Respondent, John D. Fox, Jr., is indebted to the Respondent and Cross Complainant, Julius Clarence Webb, in the sum of ONE THOUSAND SEVENTY-TWO AND 14/100 (1,072.14) DOLLARS.

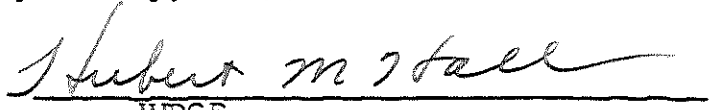
The Court is of the further opinion that the Complainant and Cross Respondent is not entitled to the relief prayed for in his bill of complaint. It is

THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the complaint, on behalf of the Complainant and Cross Respondent, John D. Fox, Jr., be, and the same is dismissed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Respondent and Cross Complainant, Julius Clarence Webb, have and recover of the Complainant and Cross Respondent, John D. Fox, Jr., the sum of ONE THOUSAND SEVENTY-TWO AND 14/100 (\$1,072.14) DOLLARS.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Complainant and Cross Respondent, John D. Fox, Jr., pay the cost herein, for which execution may issue.

Dated this 22nd day of May, 1957.

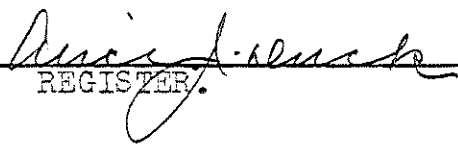

JUDGE

STATE OF ALABAMA, 0
 0 IN THE CIRCUIT COURT -- IN EQUITY.
COUNTY OF BALDWIN. 0

TO ANY SHERIFF OF THE STATE OF ALABAMA--GREETING:

You are hereby commanded to summon JULIUS CLARENCE WEBB
AND LEILA GLOVER WEBB to appear and plead, answer or demur,
within thirty days from the service hereof, to the Bill of Com-
plaint filed in the Circuit Court of Baldwin County, Alabama,
in Equity, by JOHN D. FOX, JR., as Complainant, against JULIUS
CLARENCE WEBB AND LEILA GLOVER WEBB, as respondents.

Witness my hand this 7th day of June, 1956.


REGISTER.

JOHN D. FOX, JR.,	0	
Complainant,	0	IN THE CIRCUIT COURT OF
VS.	0	BALDWIN COUNTY, ALABAMA.
JULIUS CLARENCE WEBB and	0	IN EQUITY. NO. _____
LEILA GLOVER WEBB,	0	
Respondents.	0	

TO THE HONORABLE HUBERT M. HALL, JUDGE OF THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA, IN EQUITY SITTING:

Comes now the complainant, JOHN D. FOX, JR., by his Solicitor,
and respectfully represents and shows unto your Honor and this
Honorable Court as follows:

1.

That your complainant is over the age of twenty-one years and
is a bona fide resident citizen of Baldwin County, Alabama. That
the respondents are both over the age of twenty-one years and reside
at or near Daphne, Alabama, in Baldwin County.

2.

The complainant claims of the respondents Two Thousand Seven
Hundred Thirty-six Dollars and Six Cents (\$2736.06) for work and
labor done for the respondents by the complainant between, to-wit:
the 20th day of September, 1955, and the 18th day of May, 1956, at
their request; which sum of money, with the interest thereon, is --

still due and unpaid.

BOOK 922 PAGE 409

3.

That on, to-wit: the 20th day of September, 1955, your complainant entered into a written contract with the respondents, a copy of which, Marked Exhibit "A", is attached hereto, and by reference made a part hereof as though fully set out herein, whereby complainant was to build for the respondents a frame dwelling on the following described lot of land in the Town of Daphne, Baldwin County, Alabama, viz:

From the Northwest Corner of Section 20, Township 5 South, Range 2 East, run South along the West line of said Section 20, 265.7 feet to a point; thence run in a Westward Direction 422.4 feet to the Northeast Corner of the Dryer Subdivision; thence continuing Westwardly along the North Line of said Subdivision 162 feet to a point, said point being where the extension of the West Line of 6th Street as shown on the said Plat of Dryer Subdivision recorded in Map Book 1, Page 98, of the Records in the Office of the Judge of the Probate Court of Baldwin County, Alabama, would intersect the North Line of said Subdivision; thence run in a Southwardly Direction along the extension thereof, and the West Line of 6th Street, 1351 feet to the North line of College Street; thence run Westwardly along the North Line of said College Street 513.33 feet to the place of beginning of the property described herein; thence continue West along College Street 94.66 feet to the East line of a Street sometimes called 4th Street; thence run North along the said East Line of 4th Street 150 feet to a point; thence run Eastwardly and parallel with College Street 94.66 feet to a point; thence run South and parallel with said 4th Street 150 feet to the point of beginning;

atand for a price of Eight Thousand Seven Hundred and Fifty Dollars (\$8,750.00) to be paid on a "work completed in a satisfactory manner"; And complainant avers that he has complied in all respects with the provisions of said contract, but that the said respondents have failed and refused to comply with said contract in that they still owe to complainant a balance on said contract in the amount of Two Thousand Seven Hundred ^h Tirty-six Dollars and Six Cents (\$2736.06), which said amount the said respondents have failed and refused to pay; and complainant avers that said amount became due on, to-wit: the 18th day of May, 1956, which was the date on which complainant completed work of said contract as aforesaid, and that said amount is due and unpaid.

That your complainant was the original contractor for the building of the house referred to above and that, as such, he has filed a statement of lien, a copy of which is attached hereto, marked Exhibit "B", and by reference made a part hereof as though fully set out herein; that said statement of lien was filed for record in the Office of the Judge of Probate of Baldwin County, Alabama, on, to-wit: the 5th day of June, 1956, and that the same is recorded in Book 5 of Exemptions and Liens, at pages 197-198; and that it was filed within six (6) months after the maturity of the entire indebtedness due from the respondents to the complainant and within six (6) months after the last work was done by complainant for the respondents on the house referred to above. That all of the work and labor done on the house referred to above by the complainant was done for the respondents at their request and that said work and labor was done on the house located on the land described in paragraph 3 hereof, in Daphne, Alabama.

PRAYER FOR PROCESS

THE PREMISES CONSIDERED, your Complainant prays that the respondents, JULIUS CLARENCE WEBB AND LEILA GLOVER WEBB, be made party respondents to this his bill of complaint and that, by proper process, they be required to appear and plead, answer or demur to this bill of complaint within the time allowed by law and the practice of this Honorable Court.

PRAYER FOR RELIEF

Complainant prays further that, on a final hearing of this cause, this Honorable Court will make and enter an appropriate Order or Decree ascertaining and fixing the amount due by the respondents, or either of them, to your complainant for and on account of the work done by the complainant for the respondents under the contract referred to above, and will render a decree against the respondents, or either of them, and in favor of the complainant for said amount. Your complainant prays further that this Court will fix and establish a lien on the frame dwelling house located on

and upon the property described in paragraph 3 of this Bill of Complaint to secure the payment of any amount due by the respondents, or either of them, to the complainant, and that if the said amount is not paid within a time to be specified therein by the Court that the above described property be sold to satisfy said lien. The Complainant prays for such other, further, different or general relief as in Equity and good conscience he may be entitled to receive and which will be meet and proper in the premises, and, as in duty bound, he will ever pray, etc.

Frederic A. MacDermott, Jr.
SOLICITOR FOR COMPLAINANT.

STATE OF ALABAMA)
BALDWIN COUNTY)

CONTRACT TO BUILD

THIS AGREEMENT AND CONTRACT, made and entered into on this 20th day of September, 1955 between JULIUS WEBB, hereinafter referred to as the Purchaser and JOHN D. FOX, JR., hereinafter referred to as the Contractor,

WITNESSETH:

The Contractor and Purchaser, in consideration of the covenants herein contained and the sum hereinafter named, agree as follows:

FIRST: The Contractor shall erect and build a dwelling house in a substantial and workmanlike manner on that certain property of the Purchaser in Daphne, Alabama described as that parcel of land owned by the Purchaser in the Dryer tract Section 41, Township 5, Range 2 East in the City of Daphne, Alabama, being a parcel of land 94.66 feet by 150 feet, all in accordance with the description of materials set forth on FHA Form 2005, Case Number 61-505873 and the blueprints agreed to by and between the parties hereto and approved by FHA.

SECOND: The Contractor shall commence the work to be performed under this contract within one week from the date hereof, and shall in respect to the aforesaid work generally comply with the minimum building and other regulations of the Federal Housing Administration.

THIRD: The Contractor shall complete and deliver possession of the said dwelling within a reasonable time unless prevented by strikes, accidents, weather, and other reasonable causes, in which case the Contractor shall have the power to extend the date of possession accordingly.

FOURTH: The Purchaser in consideration of the covenants and agreements herein contained hereby agrees to pay to the Contractor a sum in the amount of Eight Thousand Seven Hundred and Fifty Dollars (\$8,750.00) to be paid on a "work completed in a satisfactory manner" as follows:

(a) One-third of total amount on completion of first inspection by FHA Authorities.

(b) One-third of total amount on completion of second inspection by FHA Authorities.

(c) Balance of total amount on final FHA inspection and acceptance.

FIFTH: Should the Purchaser fail to obtain a FHA insured loan and the buildings thereon having in all manner complied with and been properly certified by the FHA, then upon rejection of said mortgage loan, the Purchaser shall have fifteen (15) days in which to complete his part of the agreement by means other than a FHA insured mortgage loan.

SIXTH: Should the said Purchaser or the Contractor fail to perform this agreement promptly on their parts and in the manner herein stated, the property specified above will be evaluated at the fair marketable price, less the value of any appurtenances, hereditaments, and tenements thereon, and the Purchaser shall be reimbursed in that amount, and the Purchaser does hereby agree for himself, his heirs and assigns, to convey the said premises to the Contractor by good and sufficient Warranty Deed with full release of all dower interests.

SEVENTH: It is agreed by and between the parties that the title to all building materials brought onto the Purchasers lot for the use in building the said house shall and will remain in the Contractor.

EIGHTH: The above mentioned blueprints and description of materials, together with this agreement constitute the contract and such blueprints and description are as fully a part of this contract as if hereto attached or herein repeated. If there are changes or deviations from the blueprints or description of materials, Purchaser does hereby agree that he will equitably assume the cost and an adjustment of the contract price will be made and the Purchaser does further agree to pay for such additional construction.

NINTH: Before the final payment is made the Contractor shall submit evidence satisfactory to the Purchaser that all payrolls, materials and other indebtedness connected with the work are fully paid or will be paid from the final payment.

TENTH: It is further mutually agreed between the parties hereto that the sum to be paid by the Purchaser as stated above does not include any loan procurement or closing costs, (J.D.F.--J. C. W.) any costs for clearing the premises on which the house is to be constructed, landscaping nor construction of a shell driveway and the

Purchaser does agree to have the said work done at his own expense and in such a manner as to not delay the completion of construction by the Contractor nor to delay the final inspection heretofore referred to and will generally comply with the minimum regulations of the FHA.

ELEVENTH: The above mentioned specifications of materials and plans together with this agreement constitute the contract and such specifications of materials and plans are as fully a part of this contract as if hereto attached or herein repeated.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate on the day and year first above written.

/s/ Julius Webb (Seal)
Julius Webb, Purchaser

/s/ John D. Fox, Jr. (Seal)
John D. Fox, Jr.

STATE OF ALABAMA)
BALDWIN COUNTY)

I, the undersigned notary public in and for the state of Alabama at Large, certify that Julius Webb and John D. Fox, Jr., whose names are signed to the foregoing contract and who are known to me, acknowledged before me on this day that, being informed of the contents of the contract, they executed the same voluntarily on the day the same bears date.

Given under my hand this 20th day of September, 1955.

My commission expires 14 July 1958.

SEAL

/s/ Ernest M. Bailey
Notary Public

STATE OF ALABAMA)
BALDWIN COUNTY)

BOOK 022 PAGE 415

THIS AGREEMENT made and entered into this ____ day of September, 1955 by and between JULIUS WEBB, hereinafter referred to as the Purchaser and JOHN D. FOX, JR., hereinafter referred to as the Contractor, WITNESSETH:

That whereas the parties have this day entered into an agreement whereby Contractor is to construct a dwelling house on certain premises named therein and owned by Purchaser, the parties further agree as follows:

That the Contractor will install a 65,000.00 BTU floor furnace in the dwelling to be constructed in lieu of a 50,000.00 BTU furnace.

(1) Two-radiant wall gas heater in the bathroom and a Three-
/s/ J.D.Foxx radiant wall gas heater in the kitchen.
(1) Ceiling light in dining room

This agreement is made a part of the referred to contract as if attached or repeated therein.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate on the day and year first above written.

/s/ Julius Webb (Seal)
Julius Webb, Purchaser

/s/ John D. Fox, Jr. (Seal)
John D. Fox, Jr.

ATTESTED BY:

The prime or original contract referred to above is subject to the approval of Mr. Haas, Merchants National Bank of Mobile.

/s/ Julius Webb

/s/ John D. Fox, Jr.

STATE OF ALABAMA, 0
COUNTY OF BALDWIN. 0

JOHN D. FOX, JR., files this statement in writing, verified by the oath of John D. Fox, Jr., who has personal knowledge of the facts herein set forth:

That said JOHN D. FOX, JR., claims a lien upon the following property, situated in Daphne, Baldwin County, Alabama, to-wit:

From the Northwest Corner of Section 20, Township 5 South, Range 2 East, run South along the West line of said Section 20, 265.7 feet to a point; thence run in a Westward direction 422.4 feet to the Northeast Corner of the Dryer Subdivision; thence continuing Westwardly along the North Line of said Subdivision 162 feet to a point, said point being where an Extension of the West Line of 6th Street as shown on the said Plat of Dryer Subdivision recorded in Map Book 1, Page 98 of the Records in the Office of the Judge of the Probate Court of Baldwin County, Alabama, would intersect the North Line of said Subdivision; thence run in a Southwardly Direction along the extension thereof, and the West Line of 6th Street 1351 feet to the North Line of College Street; thence run Westwardly along the North Line of said College Street 513.33 feet to the place of beginning of the property described herein; thence continue West along College Street 94.66 feet to the East Line of a Street sometimes called 4th Street; thence run North along the said East line of 4th Street 150 to a point; thence run Eastwardly and parallel with College Street 94.66 feet to a point; thence run South and parallel with said 4th Street 150 feet to the point of beginning.

This lien is claimed, separately and severally, as to both the buildings and improvements thereon, and the said land.

That said lien is claimed to secure and indebtedness of \$ 2736.06, with interest from to-wit: the 18th day of May, 1956.

That the names of the owners of said property are JULIUS CLARENCE WEBB AND LEILA GLOVER WEBB.

/s/ John D. Fox, Jr.
CLAIMANT.

Before me, T. J. Mashburn, Jr., a Notary Public in and for the County of Baldwin, State of Alabama, personally appeared

JOHN D. FOX, JR., WHO being duly sworn, doth depose and say:
That he has personal knowledge of the facts set forth in the
foregoing statement of lien, and that the same are true and
correct to the best of his knowledge and belief.

/s/ John D. Fox, Jr.
AFFIANT.

Subscribed and sworn to before me on this the 4th day of
June, 1956, by said Affiant.

/s/ T. J. Mashburn, Jr.
Notary Public, Baldwin County, Ala.

JOHN D. JOK, JR.

Complainant,

vs.

JULIAN C. WEBB, ET AL.,

Respondents.

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IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY.

NO. 3807.

DECREE SUSTAINING DEMURRER

This cause coming on to be heard was submitted on the Bill of Complaint and the demurrer thereto filed by the Respondents herein and the Court having considered the same is of the opinion that the demurrer to the Complaint should be sustained; it is, therefore

ORDERED, ADJUDGED and DECREED by the Circuit Court of Baldwin County, Alabama, In Equity, that the demurrer of the Respondents to the Bill of Complaint be and the same hereby is, sustained.

It is further ORDERED, ADJUDGED and DECREED by the Court that the Complainant shall have twenty days in which to amend his Bill of Complaint.

Done this 18th day of October, 1956.

Hubert M. Hall 11
Judge

JOHN D. FOX, JR.

Complainant,

vs.

JULIUS C. WEBB, et al.,

Respondents.

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IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY

NO. 3807

Come now the Respondents and demur to the Bill of Complaint heretofore filed against them and to each and every aspect thereof, separately and severally, and assign the following separate and several grounds in support thereof:

1. There is no equity in the bill.

2. It affirmatively appears from the Bill of Complaint that there is no privity of contract between the Complainant and the Respondent, Leila G. Webb.

3. It affirmatively appears that the work and labor alleged to have been done by the Complainant was not done at the request of the Respondent, Leila G. Webb.

Respectfully submitted,

CHASON & STONE

FILED

JUL 10 1956

ALICE J. DUCK, Register

By:


 Solicitors for the Respondents