

3878

ATLAS CONSTRUCTION CORP.,
a Corp.,

Plaintiff,

VS.

W. B. WILSON & MARTHA WILSON,

Defendants.

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

NO. 3878

It appearing to the Court that complaint in this cause was filed on September 21, 1956, and service perfected on defendants on September 22, 1956, and that the matter has been called regularly on Court days and the Complainant, at no time announced ready for trial; now on this January 21, 1958, being a regular call of the docket in this Court, and the case being called and the Complainant not appearing, it is the opinion of the Court that this cause should be dismissed for want of prosecution.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that this cause be, and the same is hereby dismissed with prejudice.

Dated this 21st day of January, 1958.

Hubert M. Stone
Judge, 28th Judicial Circuit of Alabama.

FILED
JAN 27 1958
EMMA L. WALKER, Clerk
[Signature]

October 12, 1956

Mrs. Alice S. Duck
Clerk of the Circuit Court of Baldwin County
County Court House
Bay Minette, Alabama

Re: Atlas Construction vs. W. B. Wilson

Dear Mrs. Duck:

I shall appreciate it if you will cause the enclosed answer to be filed in the above styled cause.

Very truly yours,

Joseph M. Hecklander

JMH - pmm

Enc.

October 12, 1936

Mrs. Alice S. Dick
Clerk of the Circuit Court of Baldwin County
County Courthouse
Bay Lenoir, Alabama

Re: Atlas Construction vs. W. B. Wilson

Dear Mrs. Dick:

I shall appreciate it if you will cause the enclosed
answer to be filed in the above styled cause.

Very truly yours,

Joseph H. Becklander

JHL - pm

Enc.

LAW OFFICES OF
D. R. COLEY, JR.

302-6 FIRST FEDERAL SAVINGS BUILDING

106 ST. JOSEPH STREET

MOBILE, ALABAMA

CHRIS C. DE LANEY
D. R. COLEY, III
JOSEPH M. HOCKLANDER

October 12, 1956

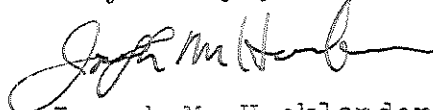
Mrs. Alice S. Duck
Clerk of the Circuit Court of Baldwin County
County Court House
Bay Minette, Alabama

Re: Atlas Construction vs. W. B. Wilson

Dear Mrs. Duck:

I shall appreciate it if you will cause the enclosed
answer to be filed in the above styled cause.

Very truly yours,


Joseph M. Hocklander

JMH - pmm

Enc.

ATLAS CONSTRUCTION CORPORATION
A CORPORATION,

Complainant,

vs

W. B. WILSON and MARTHA WILSON,
jointly and separately,

Respondents.

)
) IN THE CIRCUIT COURT

) BALDWIN COUNTY, ALABAMA

) IN EQUITY

) NUMBER:

-.-.-.-

Comes now the Complainant and moves the Court to strike the Respondents answer and the parts thereof and says in support of the motion as follows:

1. Complainant moves to strike aspect # (1) of Respondents answer for that it contains scandalous matter.

2. Complainant moves to strike aspect # (1) of Respondents complaint for that it is prolix.

3. Complainant moves to strike aspect # (2) of Respondents complaint for that it contains scandalous matter.

4. Complainant moves to strike aspect # (2) of Respondents complaint for that it is prolix.

5. Complainant moves to strike aspect # (3) of Respondents complaint for that it is prolix.

6. Complainant moves to strike aspect # (4) of Respondents complaint for that it is prolix.

7. Complainant moves to strike aspect # (5) of Respondents complaint for that it contains scandalous matter.

8. Complainant moves to strike aspect # (5) of Respondents complaint for that it is prolix.

9. Complainant moves to strike Respondent's answer for that it is prolix.

10. Complainant moves to strike Respondent's answer for that it contains scandalous matter.

11. Complainant moves to strike Respondent's answer for that it is incapable of being understood.


Solicitor for the Complainant

3878

ATLAS CONSTRUCTION CORPORATION
A CORPORATION,

Complainant

vs

W. B. WILSON and MARTHA WILSON,
jointly and separately,

Respondents

IN EQUITY

NUMBER:

MOTION TO STRIKE

FILED

NOV 7 1956

ALICE J. DUCK, Clerk

ATLAS CONSTRUCTION CORPORATION : IN THE CIRCUIT COURT
 A CORPORATION, :
 Complainant, : BALDWIN COUNTY, ALABAMA
 Vs. : IN EQUITY
 : NUMBER: 3878
 W. B. WILSON and MARTHA WILSON, :
 jointly and separately, :
 Respondents. :

Come now the Respondents in the above styled cause and for answer to the Bill of Complaint heretofore filed herein respectfully show unto the Honorable Court as follows:

1. Respondents admit that they are over the age of 21 years and are residents of Baldwin County, Alabama, they deny, however, that the Complainant is a corporation of the State of Alabama and show unto the Court that they believe the said Complainant is now a defunct corporation having been forced to go out of business because of their bad reputation for cheating people such as your Respondents, and they further show unto the Court that one C. Tanner, who signs for the Complainant, has been in business under the names of "Assured Development Corporation" and "Atlas Construction Corporation" and is presently doing business, unless he has again been forced to change his name or left the state, under the name of Globe Building and Remodeling Corp." Respondents demand strict proof that Complainant is presently authorized to do business in the State of Alabama and is presently a corporation in good standing in said state.

2. Respondents admit that they signed some form of paper which Complainant handed them but deny they were permitted to read same or have ever read same and deny that they entered into a valid and binding contract with Complainant and deny that the small amount of work ever done on their property by Complainant was worth the amount of \$470.00 but show unto the Court that the sloppy and unskilled workmanship and the cheap, useless material which Complainant caused to be nailed on to their house has materially decreased the value thereof.

3. Respondents deny that they ever entered into a valid and binding contract and show unto the Court that Complainant breached the agreement which was entered into by failing to reside their house in a workmanlike manner out of the type and quality of material which Complainant represented to Respondents would be used.

4. Respondents deny that work or labor of any value whatever was done on their house and that materials of any value were furnished and further deny that Complainant is entitled to liquidated damages because of the fraud Complainant committed upon them which said fraud is hereinafter described.

5. Respondents deny that Complainant is entitled to a lien of any nature whatever on Respondents' property and show unto the Court that any agreement which might have been entered into and any work which might have been done on Respondents' house was entered into or done through fraudulent and false representations on the part of Complainant which said representations were relied on by the Respondents and known to be false by the Complainant, or its agents, servants or employees while acting within the line and scope of their authority as such, at the time same were made; said false and fraudulent representations being as follows, to-wit:

Respondents aver that when Complainant's agents came to their house they represented to Respondents that Respondents' home would be used as a model for advertising purposes and that certain newly developed permanent siding material would be placed on their house and their house would be completely renovated so that same could be used for advertising purposes by Complainant; that Respondents were to be given a commission and all renovating jobs performed by Complainant because of the advertising of their work and that Respondents would make a profit out of permitting Complainant to work on their house rather than incur an expense; that Respondents told Complainant's agents that their house was in good condition and did not need any work or renovating and that they did not

want to incur and would not agree to pay Complainant for doing any work which Respondents aver was unnecessary; Respondents further aver that Complainant's agents spoke so swiftly and eloquently that without realizing what they were doing Respondents were talked into signing a piece of paper which purported to give Complainant the right to renovate their house for advertising purposes and Respondents further aver that there was never any agreement to pay to hire Complainant to do any residing or other work on their house and that Complainant has materially decreased the value of their house by nailing certain cardboard shingles on portions thereof.

Respondents further aver that their house and property has materially decreased in value because of the aforesaid shingles being nailed thereon and that Respondents have suffered damages in the sum of, to-wit, \$1500.00 all because and as a proximate consequence of the fraud of the Complainant as hereinbefore described and Respondents pray the Court will take this as their answer and cross-bill in this cause and upon a final hearing will decree that Complainant should pay to the Respondents the aforesaid sum as damages because of their aforesaid fraud.


SOLICITOR FOR THE RESPONDENTS

STATE OF ALABAMA

COUNTY OF BALDWIN

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon W. B. Wilson and Martha Wilson 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 same, then and there to answer the complaint of Atlas Construction Corporation.

Witness my hand, this the 21 day of Sept, 1956.

Alice J. Duck
CLERK

ATLAS CONSTRUCTION CORPORATION
A CORPORATION,

COMPLAINANT

VS

W.B. WILSON and MARTHA WILSON,
jointly and separately,

RESPONDENTS

IN THE CIRCUIT COURT
BALDWIN COUNTY, ALABAMA
IN EQUITY

NUMBER: 3878

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

Comes now your Complainant and makes known unto Your Honor as follows:

I

Complainant is a corporation of the State of Alabama, address, 653 Dauphin Street, Mobile, Alabama and the Respondents, W. B. Wilson and Martha Wilson, are over the age of 21 years and are residents of Baldwin County, Alabama, address, Route 1, Box 153, Daphne, Alabama.

II

On to-wit January 12, 1956 Respondents made with Complainant a contract, a copy of which is attached hereto as Complainants exhibit "A", whereby Complainant was to re-side Respondents' house, seal and caulk all openings, re-nail the siding of the house, replace rotted window sills and reroof Respondents' house and Respondents' were to pay Complainant the sum of ONE-THOUSAND, SIX-HUNDRED, SEVENTY-FIVE and NO/100 (\$1675.00) DOLLARS and Complainant further avers that the said contract provided in the event that Respondents refused to permit Complainant to continue the work provided for in the contract Respondents would pay to the Complainant, in addition to a proportionate part of the contract price based on per cent of completion, liquidated damages in the amount of 25%

of the balance of the contract price; that the work described in the said contract was performed by Complainant to the amount of FOUR-HUNDRED, SEVENTY and NO/100 (\$470.00) DOLLARS; and that the said house whereon the above described work was to be done is located on the following real property in Baldwin County, Alabama, to-wit:

Begin at the Northwest corner of the Northeast Quarter of Section 26, Township 4 South, Range 2 East, thence run South 210 feet to a point; thence run East 210 feet to a point, thence run North 210 feet to a point; thence run West 210 feet to a point of beginning all in Section 26, Township 4 South, Range 2 East and contains 1 acre more or less.

III

Complainant further avers that Respondents refused to allow Complainant to complete work under the said contract and that they breached the said contract as contemplated therein, and that Complainant performed the said contract in the amount of FOUR-HUNDRED, SEVENTY and NO/100 (\$470.00) DOLLARS before Respondents refused to allow Complainant to complete the said work.

IV

Complainant further avers that the said amount of FOUR-HUNDRED, SEVENTY and NO/100 (\$470.00) DOLLARS for work and labor done and material furnished is still due and unpaid and that the liquidated damages of 25% of the balance of the said contract price, to-wit TWO-HUNDRED, NINETY-EIGHT and NO/100 (\$298.00) DOLLARS, contemplated in the contract for such breach is still due and unpaid.

V

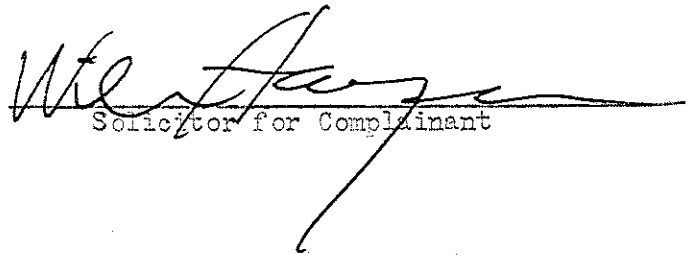
Complainant claims a lien for labor and materials on the building and lot described in paragraph II of this bill; and complainant further avers that it caused to be filed a claim of lien in the office of the Judge of Probate of Baldwin County, Alabama on June 7, 1956, a copy of which lien is attached hereto as exhibit "B".

VI

Complainant avers that the said Respondents W. B. Wilson and Martha Wilson were at the time of making of the said contract, and are now, in possession of the said house and lot and were the owners for proprietor thereof, within the meaning of the Mechanics' and Material Man's law.

THE PREMISES CONSIDERED Complainant prays that the said W. B. Wilson and Martha Wilson be made parties Respondents hereto, and that process issue to them commanding them to plead, answer or demur to this bill of complaint within the time and in the manner provided by law and the practice of this Honorable Court, or failing therein, that a decree pro confesso be entered against them;

that upon a final hearing hereof this Court make and enter a decree in favor of Complainant and against the Respondents for the indebtedness for work and labor done and material furnished as aforesaid together with interest thereon, and for liquidated damages as aforesaid together with interest thereon, and declaring, fixing and establishing a lien upon said real property and the said building and improvements thereon, and condemning the said property to the satisfaction thereof and directing that the same be sold in the manner and form provided by law to the end that Complainant's said, demand, claim, and lien be satisfied, and Complainant does further pray for such other, further, general or different relief to which it may be in equity and good conscious entitled.


Solicitor for Complainant

Complainant's Exhibit "A"

WORK ORDER

CONTRACTOR: Atlas Construction Corporation
653 Dauphin Street, Mobile, Alabama

Date: January 12, 1956

PROPERTY
OWNER W. B. Wilson

Property
Address Route 1 Box 153, Daphne, Alabama Phone: He- 8-4041

The above named and undersigned owner hereby enters an order with the above named Contractor to do the following work on the owner's property situated at the property address above specified:

Re-side House complete briksite stone white, seal and caulk all opinings, renail siding, replace all rotted window sills, reroof house complete 210 lb. shingles green blend, main roof and kitchen tear off and resheet.

	Cash Price \$1675.00
The additional specifications, if any, appearing on	Credit
the back hereof are made part of this instrument when in-	Carrying
itialled by the owner and the contractor, the same as is	charge \$
written herein.	TIME
	Sale Price \$

All work is to be done in a workmanlike manner and in accordance with standard practice, with labor covered by Workman's Compensation Insurance.

The owner may elect a CASH PRICE for the performance hereunder, or a TIME PRICE. By executing this proposal, the owner elects to pay the TIME Price.

In the event the owner elects the CASH PRICE, he shall execute a Satisfaction Certificate when the work is completed, and payment in full shall be made to the contractor within _____ days after the work is completed.

In the event the owner elects the TIME PRICE, the amount thereof shall be paid by the owner in 60 monthly payments of \$40.87 each, beginning _____ days after completion of the work, and execution by the owner of a Satisfaction Certificate as hereinafter provided for.

In the event the owner elects the TIME PRICE, upon completion of the work provided for herein, the owner agrees to execute the following:

1. A Satisfaction Certificate, the execution of which shall be conclusive evidence of the satisfactory completion of said work in accordance with this agreement.
2. A Promissory note in form acceptable to the contractor.
3. Deed to Secure Debt conveying to the contractor the property improved as security for said promissory note, in form acceptable to the contractor.

This proposal shall not be binding upon the contractor until accepted by the contractor, at which time it shall become a binding contract between the contractor and the owner.

It is understood and recognized by the owner that damage to the contractor for breach of this agreement by the owner is difficult of computation and it is therefore agreed that if the owner should breach such contract by refusing to permit the contractor to continue the work provided for herein after acceptance of this proposal by the contractor, the owner shall pay to the contractor in addition to a proportionate part of the contract price based on per cent of completion, liquidated damages in the amount of twenty-five per cent (25%) of the balance of contract price.

The contractor shall not be liable for any damage to owner's property except that which is directly caused by it or its employees in the course of carrying out this work.

No work is to be done other than specified in this contract without additional charges, and any changes to be made after work has started will be made only at the expense of the owner.

There are NO VERBAL AGREEMENTS regarding this contract, all verbal agreements being merged herein; and the contractor will be bound only to do what is written in this proposal.

The owner warrants that no promises or representations have been offered as an inducement for signing this proposal, it being the intent and agreement of the parties that the contents of this instrument and attachments shall constitute the entire agreement and understanding of the parties as to the work to be performed, and the consideration to be paid therefor. Owner further warrants that this proposal is signed without any reliance upon representations or promises of the contractor except as may be specifically written hereof.

Owner understands that if the TIME PRICE is elected, the contractor, if he deem it advisable from a credit standpoint, and if such is available, will undertake to have a diminishing term life insurance policy issued on the life of the owner in and amount equal to that outstanding on the note given by the owner to the contractor.

If this proposal shall be signed by more than one person as owner, the term "owner" as used throughout shall be considered in the plural and this contract shall constitute a joint and several undertaking as to each owner so signing.

IN WITNESS WHEREOF, the owner has hereunto set his (their) hand(s) and seal(s) on the date written above.

Witness (s) J. E. Larson
salesman

(s) W. B. Wilson
Property owner

ACCEPTED:

Contractor (s) Atlas Construction Corp.

(s) Martha Wilson
Property Owner's Wife

By C. Tanner

HOME OWNER

1. READ BEFORE SIGNING.
2. DO NOT SIGN UNLESS ALL BLANKS ARE FILLED IN.
3. ASK FOR A FILLED IN COPY OF THIS CONTRACT.
4. CHECK CONTRACT COPY TO BE SURE IT IS SAME AS ORIGINAL.

MECHANICS LIEN

STATE OF ALABAMA

COUNTY OF BALDWIN

The Atlas Construction Corporation, a Corporation of the State of Alabama, files this statement in writing verified by the oath of C. Tanner who has personal knowledge of the facts herein set forth:

That the said Atlas Construction Corporation claims a lien upon the following property situated in Baldwin County, Alabama, to-wit:

Begin at the Northwest corner of the Northeast Quarter of Section 26, Township 4 South, Range 2 East, thence run South 210 feet to a point; thence run East 210 feet to a point, thence run North 210 feet to a point; thence run West 210 feet to a point of beginning all in Section 26, Township 4 South, Range 2 East and contains 1 acre more or less.

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

The said lien is claimed to secure and indebtedness of \$470.00 with interest, from to-wit the 17th day of January 1956 for work and labor done and materials furnished.

The names of the owners or proprietors of the said property are W. B. Wilson and Martha Wilson, his wife.

(s) C. Tanner

Atlas Construction Corporation,
Claimant

Before me George R. Marshall, Jr. a Notary Public in and for the said County of Mobile, State of Alabama, personally appeared C. Tanner 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 best of his knowledge and belief.

(s) C. Tanner

C. Tanner, Sec.

Subscribed and sworn to and before me on this the 15th day of May, 1956. by said Affiant.

(s) George R. Marshall, Jr.

Notary Public