

JOHN PHILLIP BARBER,  
INDIVIDUALLY, AND doing  
business as NATIONAL HOME  
INSULATING COMPANY,

COMPLAINANT

VS

HORACE J. BURKEL AND  
ETHEL M. BURKEL

RESPONDENTS

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA,

IN EQUITY

NO. 3945

Comes now the Respondent in the above styled cause and for answer to  
the Complainant's Complaint says as follows:

1.

That they neither admit nor deny the allegations of Section 1.

2.

That they deny they allegations of Section 2.

3.

That they deny the allegations of Section 3 thereof and say further  
that the Complainant agreed by contract, with the Respondents to do certain  
work, construct, repairs and alterations on the building owned by the  
Respondents. That in this contract of agreement the Complainant agreed  
to extend and fix the septic lines, but this was not done in a workman  
like manner. The Complainant agreed to level the floors, he failed to  
do this. The Complainant put asbestos siding on the side of the Respondents'  
house but failed to put any felt, roofing or other subsurfacing material  
under this siding leaving it so the wind and rain comes through it. The  
Complainant agreed to replace the sills under the house of the Respondents,  
he failed to do this. The Complainant cut a louver in the end of the  
Respondents' house and cut the stud and support braces to his roof in  
doing so thereby weakening the Respondents' house. Kitchen cabinets were  
put in the house under the terms of this agreement, but this was not done  
in a workman like manner in that they are not level, no molding was put  
around them, the wood used in these cabinets was split and warped. The  
Complainant agreed to put a 12 foot closet in one of the bedrooms, but  
failed to do this. The Respondents say that the entire work done by the  
Complainant was done in a shoddy unworkman like manner and that inferior

material was used throughout. That the home of the Respondents was damaged more by the work of the Complainant than it was improved. That the Complainant has breached his contract as aforesaid.

4.

The Respondents neither admit nor deny the allegations of Section 4 of the Complaint.

5.

A. The Respondents say they do not own the Complainant the amount sued for in Section 5 of the Complaint nor any amount.

B. For further answer to Section 5 of the Complaint the Respondents adopt the Plea and Answer set out in Section 3 of this answer and incorporate it herein as fully as if it were here set out.

6.

A. The Respondents deny the allegations of Section 6 of the Complainant's Complaint and say further that they do not owe the Complainant the amount sued for therein nor any amount.

B. For further answer to Section 6 of the Complainant's Complaint the Respondents adopt Plea and Answer number 3 of this answer and incorporate it herewith in the same manner as if it were herein fully set out.

Wiltors & Brantley.

BY:

Robert M Brantley  
Solicitors for the Respondents

3945

JOHN PHILLIP BARBEE,  
individually, and d/b/a  
NATIONAL HOME INSULATING  
COMPLAINT,

COMPLAINANT

VS

HORACE J. BURKEL AND  
ETHEL M. BURKEL

RESPONDENTS

ANSWER

**FILED**

**JAN 25 1957**

**ALICE A. BUCK, Clerk**



installed a louver, built a stoop over the front door and did certain work inside the house.

The Court is of the opinion and to the conclusion that the Complainant has not completed the work in a work-man-like manner, however, he has performed certain services for the Respondents for which he is entitled to be paid.

The Court finds that the contract was for \$1475.00 and in addition thereto the Complainant has done extra work amounting to approximately \$200.00, making a total due on the contract and for work done, \$1675.00. The Complainant has refused to install closets in the room and the cost thereof, according to the testimony, would be \$600.00 and that according to the testimony of one of the witnesses the amount necessary to make certain improvements on the outside of the house would total \$102.50, making a total of \$702.50. In addition thereto the Court, without the aid of exact figures, has to approximate the amount that would be necessary to complete the work in a workmanlike manner as \$200.00.

IT IS the opinion of the Court that the Complainant is entitled to recover of the Respondents the sum of SEVEN HUNDRED SEVENTY TWO AND 50/100 (\$772.50) DOLLARS, being \$1675.00, less \$902.50.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the Complainant have and recover of the Respondents the sum of SEVEN HUNDRED SEVENTY TWO AND 50/100 (\$772.50) DOLLARS.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Respondents be, and they are hereby allowed 30 days in which to make payment of the amount herein due and if such amount is not paid within thirty days a lien upon the property described herein be and the same is hereby established and declared in favor of the Complainant, and the Register of this Court is authorized, empowered and direct to sell said property for the satisfaction of the

lien, which the court hereby establishes for the improvements to the property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the costs herein be taxed equally against the Complainant and the Respondents.

This 12th day of June, 1957.

*Hubert M. Hall*  
\_\_\_\_\_  
JUDGE

STATE OF ALABAMA

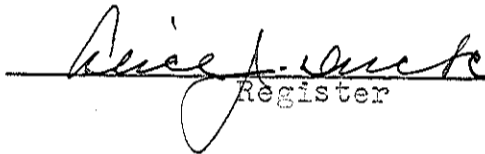
IN THE CIRCUIT COURT - IN EQUITY

BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon Horace J. Burkel and Ethel M. Burkel to appear and plead, answer or demur, within thirty days from the service hereof, to the Bill of Complaint filed in the Circuit Court of Baldwin County, Alabama, In Equity, by John Phillip Barbee, individually and doing business as National Home Insulating Company, as Complainant, against Horace J. Burkel and Ethel M. Burkel, as Respondents.

Witness my hand this 2 day of January, 1957.

  
Register

JOHN PHILLIP BARBEE, individually }  
and doing business as NATIONAL }  
HOME INSULATING COMPANY, }  
Complainant, }  
vs. }  
HORACE J. BURKEL and ETHEL M. }  
BURKEL, }  
Respondents. }

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
IN EQUITY

TO THE HONORABLE JUDGE OF SAID COURT, SITTING IN EQUITY:

Comes your Complainant, John Phillip Barbee, individually and doing business as National Home Insulating Company, and respectfully shows unto Your Honor as follows:

1. That Complainant is a bona fide resident of Mobile County, Alabama, over the age of 21 years; and that the Respondents are bona fide resident citizens of Baldwin County, Alabama, over the age of 21 years.

2. That your Complainant, under an agreement with the Respondents and at their request, furnished certain labor and material for the construction, repair and alteration of the building on that certain lot of real property situated in the City of Fairhope, County

of Baldwin, State of Alabama, more particularly described as follows:

Lot 26, Block 13, Volante, according to the plat thereof recorded in Miscellaneous Book 1, page 341, of the records in the Office of the Judge of Probate, Mobile, Mobile County, Alabama.

3. That although your Complainant has fully complied with

his said agreement with the Respondents and has completed the construction, repair and alteration of the building owned by the Respondents on the above described property, that the Respondents have failed and refused to comply with their agreement in that they have failed and refused to pay to your Complainant the balance due of the agreement price or One Thousand Four Hundred Seventy-five Dollars (\$1,475.00) for the work and labor done and the materials furnished by the Complainant under the terms of the agreement aforesaid. That said balance became due and payable on the 7th day of November, 1956.

4. Your Complainant heretofore, on, to-wit, the 20th day of December, 1956, filed a statement in writing duly verified by oath in the Office of the Judge of Probate of Baldwin County, Alabama, pursuant to Title 33, Section 31, Code of Alabama of 1940, claiming a lien separately and severally as to both the buildings and improvements thereon and said real property to secure the said indebtedness of One Thousand Four Hundred Seventy-five Dollars (\$1,475.00), together with interest thereon from, to-wit, November 7, 1956, which said statement in writing, verified by oath, was filed in the Office of the Judge of Probate of Baldwin County, Alabama, within six months after the date the last item of material was furnished and used in the construction of the buildings and improvements on said land and which was filed in said Probate Office and duly recorded in Book 5

of Exemptions and Liens at page 233.

5. The Complainant claims of the Respondents One Thousand Four Hundred Seventy-five Dollars (\$1,475.00) due from them by account on the 7th day of November, 1956, which sum of money with the interest thereon is still unpaid.

6. The Complainant claims of the Respondents One Thousand Four Hundred Seventy-five Dollars (\$1,475.00) due from them for work and labor done for the Respondents by the Complainants on the 7th day



of November, 1956, which sum of money, with the interest thereon is still unpaid.

PRAYER FOR PROCESS

To the end that equity may be done in the premises, Complainant respectfully prays that the said Horace J. Burkel and Ethel M. Burkel be made party Respondents to this Bill of Complaint, that due and appropriate legal process be issued and served upon them, requiring them to plead, answer or demur to this Bill of Complaint within the time required by law and in accordance with the rules and practices of this Honorable Court.

PRAYER FOR RELIEF

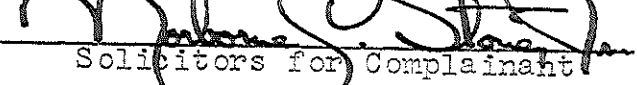
WHEREFORE, the premises considered, Complainant prays that upon the hearing of this complaint, this Honorable Court will be pleased to decree that the Complainant has a lien separately and severally upon both the buildings and improvements thereon and the said real property. And that the Respondents are indebted to the Complainant in the sum of One Thousand Four Hundred Seventy-five Dollars (\$1,475.00), with interest thereon from November 7, 1956, and that this Honorable Court will, in the said decree, set a limit to the time in which the Respondents be required to pay to the Complainant the aforesaid sum and decree that, on the Respondent's failure to pay said sum within the time limit so fixed, then the said real property, together with the buildings and improvements thereon be sold at public outcry to satisfy the said lien, and that the proceeds of said sale be paid to the Complainant to the extent of the amount due the Complainant, and the Complainant further prays for such other, further and different relief as he may be equitably entitled to receive.

TONSMEIRE & HODNETTE

and

CHASON & STONE

Respondent's address:  
509 Gayfer Avenue  
Fairhope, Alabama

By:   
Solicitors for Complainant