

858

NOTE OF EVIDENCE

No. 868.

McWANE CAST IRON PIPE COM-
PANY, INC.,

Complainant.

-vs-

OLD SPANISH FORT DEVELOPMENT
COMPANY, INC.,

Respondent.

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IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

IN EQUITY.

At the hearing of this cause the following note
of evidence was taken, to-wit:

FOR COMPLAINANT

Bill of Complaint.
Deposition of Carter Smith,
Statement of Lien

FOR RESPONDENT

Answer.

ATTEST:

T. W. [Signature]
Register.

TO THE HONORABLE F. W. HARE JUDGE OF THE TWENTY-
FIRST JUDICIAL CIRCUIT OF ALABAMA, SITTING IN EQUITY, BALDWIN
COUNTY.

Complainant, McWane Cast Iron Pipe Company, a corporation, brings this bill of complaint against Old Spanish Fort Development Company, a corporation and

respectfully shows unto your Honor that:

ONE

Complainant is a corporation under the laws of Alabama having its principal office at Birmingham. Respondent, Old Spanish Fort Development Company is a Delaware corporation having a place of business in Baldwin County. ~~Respondent, J. Carter Smith is over the age of twenty-one years and resides in Mobile, Alabama.~~

TWO

Respondent Development Company owned and possessed a certain tract of land situate in Baldwin County, Alabama particularly described as follows:

All that tract of land in Township four South of Range two East (T. 4 S., R. 2 E.) in Baldwin County, Alabama, being and comprising the South west quarter of the South west quarter of Section Seventeen (S. W. $\frac{1}{4}$ S. W. $\frac{1}{4}$ S. 17); the South east quarter of the South east quarter of Section eighteen (S. E. $\frac{1}{4}$ S. E. $\frac{1}{4}$ S. 18); and the North east quarter and the South half of Section Nineteen (N. E. $\frac{1}{4}$ S. 19 & S. $\frac{1}{2}$ S. 19); the West half of the North west quarter and the west half of the South west quarter of Section Twenty (W. $\frac{1}{2}$ N. W. $\frac{1}{4}$, W. $\frac{1}{2}$ S. W. $\frac{1}{4}$ S. 20) and the north half of the North half of Section Thirty (N. $\frac{1}{2}$ N. $\frac{1}{2}$ S. 30); comprising and containing all that land known as the Old Spanish Fort Golf Course.

THREE

Complainant furnished to the respondent Development Company materials and fixtures for an improvement on said land, namely for a system of water works, under and by virtue of a contract with the owner and proprietor thereof or its agent or architect, said materials consisting of a lot of water pipes and pipe connections and parts which were used by the said Development Company in altering or beautifying or improving said land.

FOUR

Within six months after the indebtedness for said materials accrued from the respondent Development Company to the complainant, your complainant filed in the office of the Judge of Probate of said County a statement in writing, verified by the oath of its treasurer A. T. McWane, a person having knowledge of the facts, containing the amount of the demand secured by the lien claimed by the complainant on said land and upon said water works system and upon the materials furnished by the complainant to the respondent Development Company, upon which there were and are no just credits; also containing a description of the property on which the lien is claimed in such a manner that the same may be identified, and the name of the owner thereof.

FIVE

Though complainant furnished to the respondent the aforesaid materials and the respondents used the same in the improvement of said property and promised to pay the complainant therefor upon the terms twenty-five percent at thirty days, twenty-five percent at sixty days and fifty percent at ninety days after delivery and said goods were delivered on, to-wit, June 4th, 1929 and the reasonable cost and value thereof which the respondents promised to pay amounted to One Thousand Six Hundred Twenty-one and 47/100 Dollars (\$1,621.47), yet the respondent Development Company has utterly failed to pay the same.

~~SIX~~

~~Respondents, J. Carter Smith~~

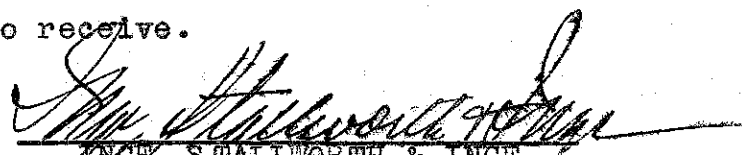
~~has or claims to have some interest, right, title, claim or estate into or out of the above described property but if there be any such claim or interest then it is second to and is subject to the lien claimed herein by the complainant.~~

PRAYER FOR PROCESS

Complainants pray that the respondents hereinabove named be made parties hereto and be required by the usual process to appear and make defense if any they have hereto as provided by law and the practice of this Honorable Court.

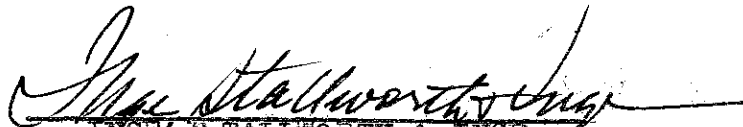
PRAYER FOR RELIEF

Complainant prays that upon the submission of this cause this Honorable Court will adjudge and decree that the respondent Old Spanish Fort Development Company is indebted to complainant in the amount and manner alleged together with interest thereon and that the complainant is entitled to a lien upon the hereinabove described property as provided by the Material-Man's Lien Law of the State of Alabama; that said lien is prior to the lien of the respondents or if the complainant be mistaken in alleging that his lien is superior to the claims of all of the respondents, then that the court by its decree will find, order and adjudge the respective rights and relations of the parties to the property hereinabove described; that the respondent Old Spanish Fort Development Company be required within some short time to pay complainant's lien together with the costs herein incurred, and failing so to do, that the Register of this Honorable Court be directed to sell said property and from the proceeds thereof satisfy and pay complainant's lien. Complainant prays for all such other, further and different relief as by the law and practice of this Honorable Court it is entitled to receive.


J. H. STALLWORTH & INGE,
Solicitors for Complainant,
Mobile, Alabama.

FOOT NOTE:

Respondents are required to answer the foregoing bill and each paragraph thereof, but answer under oath is expressly waived.


INGE, STALLWORTH & INGE,
Solicitors for Complainant,
Mobile, Alabama.

*Secretary of
Respondent Co.
is Carter Drutch - Mobile -*

McWANE CAST IRON PIPE
COMPANY, INC.,

Plaintiff.

-vs-

OLD SPANISH FORT DEVELOPMENT
COMPANY,

Defendant.

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IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

In Equity

NO. ____.

It is agreed by and between McWane Cast Iron Pipe Company through its solicitors, Inge, Stallworth & Inge, and Old Spanish Fort Development Company through its solicitor, Norborne Stone, Esq., in the above entitled cause that the testimony of Carter Smith, a witness for complainant may be taken upon oral interrogatories propounded to said witness, before Anita Guice, acting as Commissioner, without the issuance of any commission to her, said commission being hereby expressly waived. It is further agreed that no demand to take the testimony orally of said witness need be filed and that the said Anita Guice may proceed to take said testimony at any time and place and without any further or other notice to any of the parties or counsel in the cause. Said parties further waive the right to be present either in person or by agent or solicitor at the taking of said testimony. All notices, and the giving thereof, required by Rule 65 of the Rules

and Practice of Chancery Courts, are expressly waived.

The intention of this agreement is that the said Anita Guice may proceed to take said testimony at any time and place and without giving any of the notices required by law either to parties or Counsel, and that neither party need give any notice to the other regarding said testimony.

Given under our hands this 2nd day of May, 1930.

McWANE CAST IRON PIPE COMPANY, INC.,

By

Chas. R. Hallworth & Co.
As its Solicitors.

OLD SPANISH FORT DEVELOPMENT COMPANY,
INC.,

By

Robson Hall
As its Solicitor.

McWANE CAST IRON PIPE COMPANY, :
INC.,

Complainant. : IN THE CIRCUIT COURT OF

-VS-

: BALDWIN COUNTY, ALABAMA.

OLD SPANISH FORT DEVELOPMENT
COMPANY, INC.,

: IN EQUITY NO. ____.

Respondent.

:

THIS CAUSE COMING ON TO BE HEARD, was submitted for final decree on the pleadings, proceedings and proof as noted by the Register and upon consideration thereof the court is of the opinion that the complainant is entitled to relief.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court:

(a). That the complainant do have and recover of the respondent, Old Spanish Fort Development Company, Inc., the sum of \$ 1643⁰⁹, together with the costs of this cause, for all of which let execution issue.

(b). That the complainant has a mechanic's and materialman's lien for the said sum of \$ 1643⁰⁹ and the costs of court in this cause upon the lands hereinbelow described, together with the improvements upon said lands, said lands being more particularly described as follows, viz:

x
All that tract of land in Township Four South of Range two East (T. 4 S., R. 2 E.) in Baldwin County, Alabama, being and comprising the Southwest quarter of the Southwest quarter of Section Seventeen (S. W. $\frac{1}{4}$ S. W. $\frac{1}{4}$ S. 17); the Southeast quarter of the Southeast quarter of Section Eighteen (S. E. $\frac{1}{4}$ S. E. $\frac{1}{4}$ S. 18); and the Northeast quarter and the South half of Section Nineteen (N. E. $\frac{1}{4}$ S. 19 & S. $\frac{1}{2}$ S. 19); the West half of the Northwest quarter and the west half of the Southwest quarter of Section Twenty (W. $\frac{1}{2}$ N. W. $\frac{1}{4}$, W. $\frac{1}{2}$ S. W. $\frac{1}{4}$ S. 20) and the North half of the North half of Section Thirty (N. $\frac{1}{2}$ N. $\frac{1}{2}$ S. 30); comprising and containing all that land known as the Old Spanish Fort Gulf Course.

(c). That all of the right, title and interest in and

to the above described lands, together with the improvements thereon, on the part of the Respondent, Old Spanish Fort Development Company, Inc., be, and the same are, hereby expressly made subject to the prior lien on said lands and improvements thereon, which is hereby decreed to exist in favor of the complainant.

(d). That unless said sum of \$ 1643.09, with interest thereon at eight percent per annum from this date, and the costs of court of this cause, are paid to the complainant within thirty days from this date, the Register of this Court be, and he hereby is, ordered and directed to sell the said lands and improvements thereon hereinbefore described at public outcry, for cash, in front of the courthouse door of Baldwin County, Alabama, after first giving notice of the sale once a week for three successive weeks in a newspaper published in Baldwin County, Alabama, and by posting notice for thirty days at said courthouse door previous to said sale.

MAY 7th, 1930.

F. W. Hale
Judge of the Circuit Court of
Baldwin County, Alabama.

STATE OF ALABAMA,
BALDWIN COUNTY.

CIRCUIT COURT, IN EQUITY

I, T. W. Richerson, Register of said Circuit Court of said County, Alabama, do hereby certify that the above is a full, true and correct copy of the decree rendered by said Court on the 7th day of May, 1930, in the cause of MC WANE CAST IRON PIPE CO., INC., Complainant, vs. OLD SPANISH FORT DEVELOPMENT CO., INC., Defendant, as appears of record in said Court.

- Witness my hand and the seal of said Court, this the 10th day of May, 1930.

T. W. Richerson Register

McWANE CAST IRON PIPE COMPANY,
INC., A Corporation,

Complainant,

-VS-

THE OLD SPANISH FORT DEVELOP-
MENT COMPANY, INC., A Corpora-
tion,

Respondent.

IN THE CIRCUIT COURT-EQUITY SIDE

STATE OF ALABAMA

BALDWIN COUNTY.

It is agreed between the Complainant and Respondent,
by their respective Solicitors of Record, that this cause be sub-
mitted for Final Decree at this time, and that all papers be by the
Register forthwith transmitted to the Judge.

Aug. Stetson
Solicitors for Complainant.

Norman H. Lee
Solicitors for Respondent.

STATE OF ALABAMA :

COUNTY OF MOBILE :

By virtue of an agreement between the parties, by and through their respective counsels in the cause of McWane Cast Iron Pipe Company, Inc. vs. Old Spanish Fort Development Company, Inc. pending in the Circuit Court of Baldwin County, Alabama, sitting in equity, the undersigned, acting as Commissioner, has caused Carter Smith, a witness for the complainant in said cause, to come before me, who, being duly sworn true answer to make to the oral interrogatories propounded to him, deposes and answers as follows:

ON DIRECT EXAMINATION BY FRANCIS H. INGE,
ESQ., OF THE FIRM OF INGE, STALLWORTH &
INGE, SOLICITORS FOR COMPLAINANT.

Q. What is your name?

A. Carter Smith

Q. Were you ever connected with the defendant, Old Spanish Fort Development Company, a corporation, as an officer or employee?

A. Yes. From May 1st, 1927 until Aug. 31st, 1929 I was Secretary of the defendant corporation and, in addition to the regular duties of Secretary of a corporation, I was the representative of said corporation in charge of the handling and development of the real property owned by defendant in Baldwin County, Ala. of which the property described in paragraph two of the bill of complaint was and is a part. The part described in the

second paragraph of the bill was developed as a golf course under my supervision, and was and is owned and possessed by defendant.

Q. In connection with the construction of the golf course was it necessary to put in a system of water works?

A. Yes. It was necessary to install such water works throughout the golf course for the purpose of properly draining the golf course and furnishing a water supply so that the grass could be watered. This system of water works was for the purpose of, and had the effect of beautifying and improving the lands of defendant described in paragraph two of plaintiff's complaint, which has been exhibited to me.

Q. From whom were the pipe, pipe fittings and parts used in installing said waterworks, obtained or ordered?

A. Old Spanish Fort Development Company through its agent, A. G. Seifried, Inc. ordered a carload of pipe, pipe fittings and other parts from McWane Cast Iron Pipe Company, Inc. of Birmingham, Alabama, the complainant. The materials mentioned, together with the cost thereof and the terms of payment, are, according to my best recollection, correctly shown by the copy of complainant's invoice No. 17447, which has been exhibited to me and which I attach to this testimony and make a part of this answer.

Q. When were the items as shown by said invoice received by Old Spanish Fort Development Company?

A. The items as shown on the invoice were received, according

to my best recollection, by the defendant within one week after June 4th, 1929, which is the date of the invoice.

Q. What was done with the articles listed on the invoice after their receipt by the defendant?

A. I of course have no accurate knowledge as to exactly what was done with each particular article purchased but I do know that the items purchased from complainant, sometime between June 4th, 1929 and the time of filing of the bill of complaint in this case, were used in constructing the waterworks system which I have already described and became a part of said system. The pipe was laid in, and the fittings and other materials were used in that portion of defendants' property known as the golf course, which I believe to be correctly described as follows:

All that tract of land in Township Four South of Range Two East (T. 4 S., R. 2 E.) in Baldwin County, Alabama, being and comprising the Southwest quarter of the Southwest quarter of Section Seventeen (S. W. $\frac{1}{4}$ S. W. $\frac{1}{4}$ S. 17); the South east quarter of the Southeast quarter of Section Eighteen (S. E. $\frac{1}{4}$ S. E. $\frac{1}{4}$ S. 18); and the Northeast quarter and the South half of Section Nineteen (N. E. $\frac{1}{4}$ S. 19 & S. $\frac{1}{2}$ S. 19); the West half of the Northeast quarter and the West half of the Southwest quarter of Section Twenty (W. $\frac{1}{2}$ N. W. $\frac{1}{4}$ W. $\frac{1}{2}$ S. W. $\frac{1}{4}$ S. 20) and the North half of the North half of Section Thirty (N. $\frac{1}{2}$ N. $\frac{1}{2}$ S. 30); comprising and containing all that land known as the Old Spanish Fort Golf Course.

Q. State whether or not the defendant is indebted to the plaintiff in any sum for the items shown in said invoice and used in constructing the water system through the golf course?

A. The defendant is indebted to the plaintiff and was indebted

when this suit was brought in the sum of \$1,621.47 for said materials. This indebtedness was to be paid as follows: 25% thirty days after June 4th, 1929, 25% sixty days after said date, and 50% ninety days after said date. None of the amount has been paid. The defendant has never denied that said amount is the correct amount due and owing complainant nor that the items purchased were used in the way in which I have described. Other materials used in the system were obtained elsewhere.

Carter Smith

STATE OF ALABAMA :

COUNTY OF MOBILE :

I hereby certify that the foregoing was answered, subscribed and sworn to before me this 3rd day of May, 1930.

I do further certify that I am not of counsel nor of kin to any of the parties to this cause or the solicitors therein and that I am in no wise interested in the result of said suit.

I further certify that Norborne Stone, Esq., Solicitor for respondent, was present at the examination of said witness and waived the right to cross-examine said witness.

Given under my hand this 3rd day of May, 1930.

Anita Guice
Commissioner.

McWANE CAST IRON PIPE COMPANY

MANUFACTURERS OF

MCWANE PRECALKED JOINT CAST IRON PIPE**BIRMINGHAM, ALA.**

SOLD TO Old Spanish Fort Dev. Co.
 % A. G. Seifried, Inc.,
 Daphne, Ala.

DATE 6/4/29

INVOICE 17447

SHIPPED TO Same, Stapleton, Ala.

YOUR ORDER

OUR ORDER 11062-B

CAR Sou. 192571 VIA L&N

TERMS: 25% 30 Days
 25% 60 Days
 50% 90 Days

NOT RESPONSIBLE FOR DELAYS IN TRANSIT

200	pes.	3" 18" H&S	Drce, Screwed Jt. Pipe	3600' @	31¢ ft.	\$1116.00
240	"	3" 6" "	"	1440' "	31¢ "	446 40
10	"	3" 6" "	" Boss, tapt 1 1/2	60' "	31¢ "	18 60
	"		Tapping Above		1.00 tap	10 00
2	"	3" 45°	Bends Precalked		2.77 each	5 54
1	"	3" "	Cross "		5 03 "	5 03
4	"	3" "	Plugs tapped 1-1/4"		1 56 "	6 24
4	"	3" x2	Reducers Precalked		1 48 "	5 92
2	"	3" "	Tees		3 87 "	7 74
11	"	3" "	Galking Tools		NO CHARGE	
5	"	3" "	" "		" "	
						<u>\$1621.47</u>

F.O.B. STAPLETON, ALA.
 FREIGHT PREPAID \$164.64 X

ALL CLAIMS FOR WHICH WE MAY BE RESPONSIBLE MUST BE MADE WITHIN 10 DAYS FROM RECEIPT OF SHIPMENT.

FREIGHT ALLOWANCE IS BASED ON RATE QUOTED. CONSIGNEE ASSUMES RISK IN PAYING ANY ADDITIONAL AMOUNT WITHOUT OUR AUTHORITY. IN ORDER TO COLLECT FOR LOSS OR DAMAGE IN TRANSIT, NOTATION MUST BE MADE BY FREIGHT AGENT ON PAID EXPENSE BILL, AND THIS EXPENSE BILL MUST BE FORWARDED TO US IMMEDIATELY; OTHERWISE DEDUCTIONS FROM THIS INVOICE FOR LOSS OR DAMAGE CANNOT BE ALLOWED.

BY ORDER OF INTERSTATE COMMERCE COMMISSION, CARRIERS CANNOT PAY CLAIMS FOR LOSS OR DAMAGE UNLESS FILED WITH THEM WITHIN FOUR (4) MONTHS AFTER DELIVERY OF SHIPMENT, OR IN CASE OF FAILURE TO DELIVER, THEN WITHIN FOUR (4) MONTHS AFTER REASONABLE TIME FOR DELIVERY HAS ELAPSED.

We, the undersigned, do hereby guarantee that the articles or commodities listed herein were produced or manufactured in accordance with the Federal Child Labor Act of September 1, 1916.

McWANE CAST IRON PIPE CO.

MCWAIN CAST IRON PIPE COMPANY,
A Corporation,

Complainant,

-vs-

OLD SPANISH FORT DEVELOPMENT
COMPANY, A Corporation.

Respondent.

IN THE CIRCUIT COURT-

EQUITY SIDE,

STATE OF ALABAMA,

BALDWIN COUNTY.

NO. _____.

Comes the Respondent in the above styled cause and
for answer to the Original Bill of Complaint in this cause filed,
and to each and every paragraph thereof, separately and severally,
denies the allegations thereof.


Solicitor for Respondent.

IRON PIPE CO.,

No. 858 Complainant.

-vs-

OLD SPANISH FORT DEVELOPMENT
COMPANY, INC.,

Respondent.

In the Circuit Court of
Baldwin County, Alabama.

In Equity No. ____.

Deposition of Carter Smith,
Witness for Complainant.

INGE, STALLWORTH & INGE
ATTORNEYS AT LAW
309-13 VAN ANTWERP BUILDING
MOBILE, ALABAMA

Commissioner's fee \$5.00. Not Paid.

Register of the Circuit Court of Baldwin County, Ala.,

Bay Minette, Alabama.

Filed May 6/1900
J. W. Kimm
Chk

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Anita Guice (SEAL)
COMMISSIONER

Anita Guice (SEAL)
COMMISSIONER

Anita Guice (SEAL)
COMMISSIONER