

1784

G. H. BONIE, Doing business as
FOLEY BUILDING AND MANUFACTURING
COMPANY,

Complainant,

VS.

CALLA MAI TANNER,

Respondent.

IN THE
CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA.
IN EQUITY.
NO. 1784

The Complainant, by his original and amended complaint, claims of the Respondent EIGHT THOUSAND FORTY THREE AND 15/100 (\$8,043.15) DOLLARS under a contract to construct two cottages and for work and labor done on another building.

The Complainant contends that the contract and agreement were for a completed job, that is, lock and key, with the exception of certain minor items which he was prevented doing through the conduct of the Respondent.

The Complainant contends that the Respondent is indebted to him in the sum of EIGHT THOUSAND, FORTY THREE AND 15/100 (\$8,043.15) DOLLARS' together with interest thereon, and prays for a proper judgment and the fixing of a lien on the two cottages and the land on which they are situated to secure payment of the amount found to be due to him.

The Respondent, in her answer, denies that the work was done and completed in accordance with the agreement and also denies that there was any agreement as to what is termed additional work. However, does say that there was an agreement as to the payment of certain work on the old building, when completed.

The testimony of the Complainant, and also of the Respondent is some what indefinite; however, it is the tendency of the evidence on behalf of the Respondent that she paid to the Complainant, either by check or in cash, payments as follows: \$1500.00; \$750.00; \$750.00; \$500.00; \$500.00, and \$1,000.00, making a total of \$5,000.00; that in addition thereto, she

paid for materials used on the buildings for which she was to be given a credit, and to various items of labor: W. B. Lassiter, A. Hinkel Supply Company, Ringler Electric Company, Beasley Plumbing Company, Mobile Paint Company, Mr. Lawrence Lloyd Helton, Mr. Gregory, McGowin-Lyons Hardware Company and Red Mitchell, the sum of \$3,744.70, making a total paid out by the Respondent of \$8,744.70.

The evidence on behalf of the Respondent is that the Complainant did not complete the work in accordance with the contract and agreement and that the amount paid for the benefit of and to the Complainant far exceeded the actual amount due by the Respondent to the Complainant.

The Court, in arriving at a decree, has considered all of the testimony taken before a Commissioner, all of the pleadings, and documentary evidence offered to support the testimony of the witnesses, and after considering all, is of the opinion that the Complainant is not entitled to the relief prayed for.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the Complainant is not entitled to the relief prayed for and that his original and amended bill of complaint be and the same are hereby dismissed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Complainant pay the cost herein taxed, for which execution may issue.

Dated this the 10th day of August, 1954.

Hubert M. Hall

Judge of the 28th Judicial Circuit
of Alabama.

G. H. BONIE, doing business
as Foley Building and
Manufacturing Company,

Plaintiff,

vs.

CALLA MAI TANNER,

Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY.
No. 1784.

We, the undersigned, hereby acknowledge ourselves as
security for costs on the Appeal of the Respondent in the aforesaid
cause to the Supreme Court of Alabama, from the ruling of the
Circuit Judge of the 28th Judicial Circuit of Alabama, overruling
the demurrer filed by the Respondent, which Decree was rendered
on the 10th day of October, 1949.

Mrs. Calla Mai Tanner
A. J. Johnson
Mr. J. H. Harbun

Taken and approved this
29th day of October, 1949.

King L. Ruck
Register.

SECURITY FOR COSTS

G. H. BONIE, doing business
as Foley Building and
Manufacturing Company,

Plaintiff,

vs.

CALLA MAI TANNER,

Respondent.

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

Filed October 29, 1949

Register.

SECURITY FOR COSTS

G. H. BONIE, doing business
as Foley Building and
Manufacturing Company,

Plaintiff,

vs.

CALLA MAI TANNER,

Respondent.

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

Filed October 29, 1949

Register.

FOLEY BUILDING & MANUFACTURING CO.)	IN THE CIRCUIT COURT OF
G. H. BONIE, OWNER,)	BALDWIN COUNTY, ALABAMA
Plaintiff,)	IN EQUITY.
vs.)	
CALLA MAI TANNER,)	
Defendant.)	

Comes the Defendant in the above styled cause and demurs to the Bill of Complaint filed in said cause and each and every count thereof, separately and severally and assigns the following separate and several grounds, viz:-

ONE

That said Complaint does not state a cause of action.

TWO

That said Complaint is vague and indefinite.

THREE

That the Plaintiff has attempted to join in one Complaint an action at Law and a suit in Equity.

FOUR

That counts 1, 2 and 3 of the Complaint should have been brought on the Law side of the Court.

FIVE

That the agreement set out in count 4 of the Complaint fails to allege what building is to be repaired or where the same is located.

SIX

That the agreement set out in count 4 of the Complaint fails to allege when the agreement was entered into, when the Plaintiff will furnish the labor and materials to repair the same or when the consideration for such work shall be paid.

SEVEN

For aught appearing from count 4 of the Complaint, the repairs were^{not} made according to the instructions by the Defendant.

EIGHT

For aught appearing from count 4 of the Complaint the consideration for the repairs made by the Plaintiff, is not yet due.

NINE

That count 4 of said Complaint fails to allege the total cost of the work, including labor and materials, performed under the agreement set out therein and fails to allege the amount paid thereon by the Defendant.

TEN

That count 4 of the Complaint affirmatively shows that the Defendant made some payments to the Plaintiff but said count fails to set out the amount so paid.

ELEVEN

That count 5 of the Complaint fails to allege how much was paid by the Defendant to the Plaintiff for services rendered under the agreement set out therein.

TWELVE

That the agreement set out in count 5 of the Complaint affirmatively shows that the full consideration is not to be paid until the job has been completed and accepted and said Complaint fails to show that such work has been completed and accepted.

THIRTEEN

That count 5 of the Complaint fails to show what changes were made in the plans attached to the agreement and the amount of labor and materials required therefor.

FOURTEEN

That count 6 of the Complaint alleges that the property was known as the Defendants place at Bear Point but said count does not allege that the material and labor furnished for the repairs mentioned therein were at the request of the Defendant or that she had knowledge of the fact that he was to make such repairs.

FIFTEEN

That it does not appear that said tract of land described in the complaint is in a city, town or village.

SIXTEEN

That the claim or purported lien filed in the Probate Office of Baldwin County, Alabama, does not properly describe the lands upon which a lien is claimed.

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SEVENTEEN

That the purported lien or claim filed in the Probate Office of Baldwin County, Alabama, stipulates that it was for the collective work and material furnished on the several buildings situated upon the described premises and, consequently, does not comply with the requirements of the statute.

EIGHTEEN

That the purported lien or claim filed in the Probate Court of Baldwin County, Alabama, does not particularize as the statute requires as to what building or buildings said material was furnished for or work done on.

NINETEEN

That said purported lien or claim does not separately and severally designate the material and work furnished and done as to each building erected on said premises or what material and work was done in the repairing of each of the buildings on said premises.

TWENTY

That said purported claim or lien does not designate with that particularity that the statute requires as to the amount of material and work furnished and done as to the repairs and additions to the dwelling house on said premises, or separately and severally as to what material and work was done on the two new cottages claimed to be erected by the Plaintiff.

TWENTY-ONE

That said purported claim or lien does not designate as to the amount of material and work furnished and done on each of said buildings situated on said premises so as to show the separate and distinct claim that the Complainant has against each building on said premises.

TWENTY-TWO

That no lien has been filed against the property mentioned in the Complaint as provided for by the statute.

TWENTY-THREE

That the attempt to file a lien in the Probate Court of Baldwin County, Alabama, by the Plaintiff was abortive and void.

Deborah L. Shaver
Attorney's for Defendant.

Filed
Jan: 25, 1947
Alice J. Duck

FOLEY BUILDING & MANUFACTURING CO.)
G. H. BONIE, OWNER,)

Plaintiff,)

-VS-

CALLA MAI TANNER,)

Defendant.)

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

Comes the Respondent in the above styled cause and demurs to the amended Bill of Complaint filed in said cause and each and every count thereof, separately and severally and assigns the following separate and several grounds, viz:-

ONE:

That said Bill of Complaint does not contain equity.

TWO:

That said Bill of Complaint is vague and indefinite.

THREE:

That said Complaint affirmatively shows that the suit is based on an action at law.

FOUR:

That said Complaint should have been brought on the law side of the Court rather than on the equity side.

FIVE:

That said Complaint shows no valid lien had been filed in the Probate Court of Baldwin County, as the law requires; that the one acre of land upon which the houses are situated is not described with any definiteness whatsoever.

SIX:

That the description of the lands upon which the buildings are situated is not in conformity with the requirements of the statute.

SEVEN:

That said lands described in the Complaint are inter-urban property and should be so designated.

EIGHT:

That said lands described in the Complaint are not designated as being situated in any town, city or village and that

the acre of land upon which said house or houses are located should be designated so that they could be properly located.

NINE:

That the description of the property set out in Count Six of the Complaint is vague and indefinite.

TEN:

That count six of the Complaint does not show what materials and work was furnished and done on each of the buildings erected on said premises and what materials and work was done in the building or repair of each of said buildings.

ELEVEN:

That the proported lien or claim filed in the Probate Office of Baldwin County, Alabama, stipulates that it was for the collective work and materials furnished on more than one Contract and on several buildings situated upon the described premises and consequently does not comply with the requirements of the Statute.

TWELVE:

That the proposed lien or claim does not separately and severally designate the materials and work furnished and done as to each building erected on said premises or what materials and work was done in the building or repair on each of the buildings on said premises.

THIRTEEN:

That no lien has been filed against the property mentioned in Count Six of the Bill of Complaint as provided for by the Statutes of Alabama.

FOURTEEN:

That the lien filed in the Probate Court of Baldwin County, Alabama, affirmatively shows that the Complainant is attempting to subject 3.44 acres on two contracts.

Hybart & Chason

BY: 

Solicitors for Respondent.

Filed Sept. 30, 1947

C E R T I F I C A T E O F A P P E A L

I, Alice J. Duck, Register of the Circuit Court of Baldwin County, Alabama, hereby certify that the Respondent, CALLA MAE TANNER, in a cause wherein G. H. BONIE, d/b/a FOLEY BUILDING & MANUFACTURING CO. is Plaintiff and CALLA MAE TANNER is Respondent, in the Circuit Court of Baldwin County, Alabama, has taken an appeal to the Supreme Court of the State of Alabama, from a decree of the Circuit Court, rendered in this cause on the 10th day of October, 1949.

I further certify that the Appeal was taken and security for cost approved by the Register and filed on the 29th day October, 1949.

Given under my hand and seal this 29th, day of October, 1949.

Alice J. Duck
Register of the Circuit Court of Baldwin
County, Alabama.

242.92
 - 61.20
 200.94
 429.93
 499.56
 364.65
 1729.20

402.92
 242.92
 160.00

Manual
 54.33
 364.05
 299.10
 707.48

Mr. W.B. Lassiter ^{medical} College men not complete (85)
 not complete in women's manner (84)

Mr. Gregory ^{electrician} 700.00 electrical

Red Mitchell 3 men @ 15⁰⁰, 17⁰⁰ per h. 10⁰⁰ or 12⁰⁰
 15 @ 10⁰⁰ 150⁰⁰

Lawrence at 25⁰⁰ per h 60⁰⁰

Lassiter 1598.26 ✓
 A. Winick Sup. Co. 834.37
 Rungler Elec. Co. 130.00
 Beasley Plumbing Co. 158.07
 Noble Paint Co. 100.00
 Lawrence 250.00
 Lloyd Kellin 275.00
 Gregory 200.00
 McQuinn Lynn 99.00

College
 Lassiter 1386.26
 Manual 473.23
 Rungler 50.00
 Beasley 86.78

Red Mitchell?

3744.70

200.00 ✓

Bonie :

4 — 4043.15

4 — 4000.00

Extra labor (6)

~~\$8043.15~~

1000.00

Bonie admits — pay ment

\$1500

Total payment (14)

4000

Old House

Lumber (12) 1152.00 in house

110.00 front porch

added or changed — 200.00 or 200.00

Bonie was only written for Campfire

Contract for 7 Cottages

Old Cottages

Cost were & Mat + 10%

4500.00

Lein claims — Repair 4043.15

New 4500.00

add work 1000

→ Less Cost 1500

4000

8083.15

Nothing paid since 9/19/46. (5)

Pay the requested changes (5)

things additional work \$1000. (6)

Changed location (8)

Complete Cottages for \$4500

Pay did all work (1512) He pay them he did

Did not put in windows (16/1)

Can do windows on 1 more house

no oral agreement to erect building

Gene Brice \$1000.00 Est. 45 70m Park

Cash 1500 = 1st 40

did not complete 750 = 250

3000 =

New City

No alterations requested
Did not tell to move location
No change within
" " Parcel
" " Place

Was sind die Aufgaben?

Mr. Lawrence	100	20
Mr. Gregory	100	20
Mr. Wells	250	20

Repairing bridge

50
 Cash
 Check
 Check

1000
 500
 500

50
 2000

Red Building

She said paint ^{Cher} ⁵⁰⁰⁰ 5000² (50) He ⁴⁰⁰⁰ 4000²
 429.93 Material new College

$$\begin{array}{r}
 31.20 \\
 202.95 \\
 182.65 \\
 409.56 \\
 \hline
 1386.26 \\
 212.26 \\
 \hline
 98.
 \end{array}$$

✓ 90.00⁰⁰ ✓
182.00 ✓

272.00 ✓

364.10 (5)

Loopy

G. H. BONIE, doing business as
FOLEY BUILDING & MANUFACTURING CO.
(signed) G. H. Bonie
Builder

Any deviations from Plans shall be considered as extra if additional labor and material is required and shall be paid for in addition to above stated amount.

The balance to be paid upon completion and acceptance of job.

When structures are housed in the amount of \$1500.00 equal to one third of above total amount.

Upon signing of this contract the amount of \$1500.00 equal to one third of above total amount.

Mrs. Calla Mai Tanner hereby agrees to pay to the Foley Building & Manufacturing Co. the above stated amount as set forth herewith below:

The Foley Building & Manufacturing Co. hereby agree to furnish all labor and materials necessary for a complete erection of Two (2) Cottages as shown on Plans and described on specifications herewith attached for the amount of \$4500.00.

This agreement entered into by and between the Foley Building & Manufacturing Co. and Mrs. Calla Mai Tanner.

AGREEMENT OF CONSTRUCTION

the Respondent entered into a written agreement as follows:

2. During the month of March, 1946 the Complainant and

bama.

over twenty-one years of age and a resident of Baldwin County, Alabama. The Respondent, Calla Mai Tanner, is

ly since prior to March 1, 1946 done business as the Foley Building a resident of Baldwin County, Alabama and is now and has continuous-

1. The Complainant is over twenty-one years of age and

will read as follows:

Complaint last filed by him in this cause so that, as amended, it Now comes the Complainant and amends the amended Bill of

AMENDED BILL OF COMPLAINT

G. H. BONIE, doing business as
FOLEY BUILDING AND MANUFACTUR-
ING COMPANY,
Complainant,)
VS.)
CALLA MAI TANNER,)
Respondent.)
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY NO. 1784

Accepted this the _____ day of March, 1946

(signed) Mrs. Calla Mai Tanner
Owner

Witness:

(signed) G. H. B.

SPECIFICATIONS

Foundation: Foundation as shown on plans shall be laid with concrete blocks. Walls shall be 8" thick.

A concrete slab 3" thick shall be laid on fill properly tamped. A 2" course of dry sand shall be spread over surface before concrete is poured. Slab shall be troweled to a smooth finish.

Walls & Framing: All outside walls shall be framed of 2 x 4 storm sheathed with 1" boards. All partitions shall also be framed of 2 x 4 studs. All ceiling joints shall be 2 x 4 spaced 2-0 o.c. Rafters shall also be spaced 2-0 o.c. and properly braced.

All walls outside shall be covered with asbestos siding. Before applying siding a layer of felt shall be laid on all surfaces.

All walls and partitions inside shall be covered with sheet rock applied as per manufacturer specifications. All doors and windows shall be of sizes as shown on Plans.

Roof shall be decked with 1" boards and a layer of felt shall be applied before shingle are laid.

Screening: All windows and front porch shall be screened. Screens to be made and laid on frames and hung so as to be removable for storage or cleaning.

Roof: Roof surface shall be covered with 210# composition shingle of color selected.

Wiring: A complete wiring circuit shall be installed. All outlets to be as shown on Plans. All cable to be Romex. Allow \$5.00 for electric fixtures.

Plumbing: A complete system of plumbing shall be installed including septic tank with proper disposal field. Plumbing fixtures shall consist of 1 toilet, 1 lavatory, 1 sink and one built in shower stall.

Painting: All wood work inside shall receive two coats of enamel, all wood outside shall receive two coats of oil paint. All walls and ceiling inside shall receive one coat of Kemtone paint of color selected."

After the said written agreement was made, the Complainant furnished labor, materials and fixtures and erected the two said cottages referred to in the said agreement on lands belonging to the Respondent situated in Baldwin County, Alabama and described as follows, to-wit:

"Beginning 50 feet from the regular high tide line of Bay Oronoca (Perdido Bay) on the South side of Bear Point, at the Southeast corner or East line of Lot 4, known as the Julia Hudson Lot, running in a Northern direction parallel along said lot 306 feet, thence North 65 degrees 30 ' East 500 feet, thence South 306 feet, running the same degrees as the aforesaid 306 feet line to the 50 feet avenue on Bay Oronoca, thence West to a point of beginning, containing 500 feet by 306 feet square or 3.44 acres, all in Townships 8 and 9 South, Range 5 East"

The contract price for the two said cottages was Forty-five Hundred Dollars (\$4500.00), as stated in the said agreement, but in addition thereto labor and materials used in making changes in the plans and specifications under instructions of the Respondent caused the Complainant to expend the further sum of One Thousand Dollars (\$1,000.00) for labor and materials on the said property and in the construction of the two said cottages, making the total amount due by the Respondent to the Complainant for the construction of the two said cottages amount to Fifty-five Hundred Dollars (\$5500.00), on which the Respondent paid to the Complainant the sum of Fifteen Hundred Dollars (\$1500.00), leaving a balance due the Complainant by the Respondent of the sum of Four Thousand Dollars (\$4,000.00) and interest thereon.

3. The Complainant and original contractor filed the Statement of Lien, a copy of which is hereto attached, marked "Exhibit A" and by reference made a part hereof as though fully incorporated herein, for record in the office of the Judge of Probate of Baldwin County, Alabama on September 19, 1946, which instrument is recorded in Book 3 of Exemptions and Liens at pages 31-2, which was within six months after the last item of work was performed and the last item of material was furnished by the Complainant for the Respondent in erecting the two new buildings described in the above

written agreement. The Complainant filed this suit in the Circuit Court of Baldwin County, Alabama, in Equity, on December 12, 1946, which was within six months after maturity of the entire indebtedness due by the Respondent to the Complainant for the materials furnished and labor done on the two said cottages.

4. The Complainant claims of the Respondent Eight Thousand Forty-three and 15/100 Dollars (\$8043.15) due from her by account on the 5th day of September, 1946, which sum of money, together with interest thereon, is still due and unpaid.

5. The Complainant claims of the Respondent Eight Thousand Forty-three and 15/100 dollars (\$8043.15) for merchandise, goods and chattels sold by the Complainant to the Respondent during the months of March, April, May, June and July, 1946, which sum of money, together with the interest thereon, is still due and unpaid.

6. The Complainant claims of the Respondent Eight Thousand Forty-three and 15/100 Dollars (\$8043.15) for work and labor done by the Complainant for the Respondent at her request during the months of March, April, May, June and July, 1946, which sum of money, together with the interest thereon, is still due and unpaid.

7. The Complainant claims of the Respondent the sum of Eight Thousand Forty-three and 15/100 Dollars (\$8043.15) for money had by the Respondent to the use of the Complainant during the months of March, April, May, June and July, 1946, which sum of money, together with the interest thereon, is still due and unpaid.

PRAYER FOR PROCESS

Complainant prays that the Respondent be required to appear and plead, answer or demur to this Bill of Complaint within the time prescribed by law.

PRAYER FOR RELIEF

Complainant prays for the following separate and several relief:

1. That this cause be referred to the Register of this Court with instructions to hold a Reference to ascertain the amount of the indebtedness due by the Respondent to the Complainant for work and labor done and materials furnished by the Complainant for the Respondent in erecting the two cottages referred to in the above described written agreement and will, by a proper decree, confirm the report of the Register and render a decree in favor of the Complainant and against the Respondent for the full amount due by the Respondent to the Complainant for work and labor done and materials furnished by the Complainant to the Respondent in erecting the two said cottages, together with interest thereon, and fix and establish a lien on the two said cottages and the land on which they are situated to secure payment of the amount found to be due by the Respondent to the Complainant.

2. That this Court will, by a proper decree, ascertain the amount due by the Respondent to the Complainant on open account and render a decree against the Respondent and in favor of the Complainant for the said indebtedness.

3. Complainant further prays for such other, further and general relief as he may be equitably entitled to, the premises considered.

Forest A. Christian

J. B. Blackburn

Solicitors for Complainant.

EXHIBIT "A"

THE STATE OF ALABAMA)
BALDWIN COUNTY.)

The Foley Building & Manufacturing Co., G. H. Bonie, Owner, files this statement in writing, verified by the oath of G. H. Bonie, who has personal knowledge of the facts herein set forth:

That the said Foley Building & Manufacturing Co. claims a lien upon the following property, situated in Baldwin County, Alabama, to-wit:

Beginning 50 feet from the regular tide line of Bay Oronoca (Perdido Bay) on the South side of Bear Point, at the Southeast corner or East line of Lot 4, known as the Julia Hudson Lot, running in a Northern direction parallel along said lot 306 feet, thence North 65 degrees 30 minutes East 500 feet, thence South 306 feet, running the same degrees as the aforesaid 306 feet line to the 50 feet avenue on Bay Oronoca, thence West to a point of beginning, containing 500 feet by 306 feet square or 3.44 acres, all in Township 8 and 9 South, Range 5 East.

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

That said lien is claimed to secure an indebtedness of \$8,043.15, with interest, from to wit the 1st day of July 1946, for:

Payroll Dates	Amount
3/22/46	\$ 61.60
3/29/46	39.40
4/5/46	143.40
4/12/46	390.29
4/19/46	427.80
4/26/46	519.12
5/3/46	412.08
5/11/46	403.72
5/17/46	441.66
5/24/46	355.70
5/31/46	383.42
6/7/46	169.73
6/14/46	178.54
6/21/46	64.67

Labor to 6/21/46 . . . \$3,991.13

Lumber:

Siding	2019 Ft.	175.05
Frame Lumber	4334 " at \$65.00	282.00
"	2000 "	130.00
Sheathing	5267 " 75.00	394.00
Ship-Lap	2000 " 85.00	170.00
	1750 "	148.00
	350 "	28.00
		<u>\$1,152.00</u>

MATERIALS FOR FRONT PORCH:

3 Pcs.	2x4x8-0	15 Ft.
24 "	2x4x12-0	192 "
34 "	2x4x3-0	68 "
44 "	2x2x3-0	44 "
64 "	2x4	43 "
48 "	2x4	32 "
		<u>394Ft. at 65.00 \$25.61</u>

500 ft. Decking	at 75.00	\$37.50
7 Columns	at 1.50	10.50
2 2/6x6/6 Doors & Hard.	" 7.00	14.00
Screen Frames for Porch		22.50
		<u>\$110.11</u>

75 Ft. f/Tile		\$ 9.00
5 L T. C Pipe		2.00
1 San. T 4"		1.10
3 L C/I Pipe 4"		6.75
1 S/Toilet bend 3#		.90
1 C/L Floor plate 4"		.30
10 Ft. 1 1/2" Pipe		3.40
6 1 1/2" Ls.		3.00
4 1 1/2" Ts.		2.20
6 1/2" Ls.		.90
6 1/2" Ts.		.90
2 Piling at 4 Ft.		
) 26 ft. at .38	9.78
3 " at 6 ft.		
1 1/2 Union		.40
1 1/2 Valve		1.25
1 1/2 x 3 Nipple		.10
1 2/6x6/6 Screen door and Hardware		4.50
10 2/4 Screen & Hard.		11.50
10 P s. 3x3 Butts		2.50
3 1/2 Valves		3.75
1 2/6 x 6/6 Screen Door & Hard.		4.50
2 Screens		2.00
4 Screens		4.00
1 2/8 x 6/8 Sc. Door & Hard.		4.50
2 D/W Frames		12.00
2 S/W "		10.00
2 6 ft		
2 5 ft Piling)	37 ft. at .38	14.06
	216 tiles 32.40	
1 Sept. Tank 2/3 CY Conc.	10.20	42.60
3 S/Ls 4"		3.30
1 S/Y 4"		1.05
18 ft. C/I kpipe 4"		8.10
20 ft. 1 1/2" G Pipe		5.60
6 1 1/2" Ls.		2.40
6 1 1/2" Ts.		2.40
12 1/2 Ls.		1.80
6 1/2" Ts.		.90
1 S/Toilet bend		1.25
1 L 4" C/I Pipe		2.25
1 S/T 4"		1.10
1 4x2 Red.		2.25
8 ft. 1/2 pipe		1.36
2 D/Screen and Frames		16.00
2 S. " " "		12.00
4 Doors & Hard.		27.68
1 Ins. door lock		1.50
3 Cl. Door Hardware sets		1.35
1 D/W Frame		6.00
1 Cl. Door Hard. set		.45
12 Screens		12.00
4 Screens		4.00
20 lb. Putty		1.00
50 lb. Nails (sheet rock)		3.50
10 lb. Filler		1.00
124 lb. assorted nails		9.92
Hauling lumber (T.W. Shipp)		25.00
Roofing nails and sinks		4.88
100 ft. Valley Tin		10.00
Tin Nails		5.61

Moldings 1/4	1.45
" 300	6.00
Cary and Co. (Fiber paper)	32.00
300" wind stop	4.50
60 Sc. molding	.60
5 Rolls brick siding	12.00
Hauling (Jr. Johnson)	12.50
Hauling (Clay Johnson)	10.00
" (Brantley)	20.00
" (Blackman)	20.00
" (Fowler)	6.00
1 2" T Cast iron	.75
1 2" L galvanized	.75
1 2" Plug cast iron	.50
3 1 1/2" L	1.80
8' 1 1/2" pipe galv.	2.24
8 1/2" L	.72
1 1/2" T	.09
1 1/2" Union	.40
14 1/2" L galv.	1.26
2 1/2" Coupling galv.	.18
7 1/2" Union galv.	2.80
4 1/2" T. Galv.	.36
5 1/2" Union Galv.	2.00
72 1/2" Pipe Galv.	7.20

\$479.62

8 1/2 C/Y Concrete in place

170.00

\$5,902.86

Plus 10% contractor's fee

590.29

\$6,493.15

Plus 10% contractor's fee on
materials furnished by Mrs.
Tanner, estimated at \$500.00

50.00

\$6,543.15

Less amounts paid by Mrs. Tanner

2,500.00

Balance due on contract for re-
pair of house and cottages

\$4,043.15

ON CONTRACT FOR CONSTRUCTION OF TWO NEW COTTAGES

Contract price, according to speci-
fication

4,500.00

Added for additional work done, not
called for in specifications

1,000.00

Total amount paid on cottages

\$5,500.00

Less amount paid on cottages

1,500.00

Balance due on cottages

\$4,000.00

The names of the owner or proprietor of said property is
Mrs. Calla Mai Tanner.

Foley Building & Manufacturing
Co.

By: G. H. Bonie, Owner-claimant

Sworn and subscribed before me this 5th September, 1946.

Forest A. Christian
Notary Public

Seal

My commission expires 12-27-49

State of Alabama

Baldwin County Probate Court

Filed in office this 19 day of Sept. 1946 at 8 A.M. and duly recorded in Ex. and Lien Book 3 pages 31-32.

W. R. Stuart, Judge of Probate

STATE OF ALABAMA:

BALDWIN COUNTY:

I, W. R. STUART, JUDGE OF THE PROBATE COURT and Custodian of the records and files thereof, in and for said State and County, hereby certify that the above and foregoing is a true, correct and complete copy of Claim of lien as the same appears of record, now on file in the office of Judge of Probate of Baldwin County, Alabama. Book Ex & L pages 31-32.

Witness my hand and seal of said Court, this 26 day of Feby. 1949.

/s/ W. R. Stuart.

W. R. STUART, JUDGE OF PROBATE

Com
out
Phone 2922

Foley Building & Manufacturing Co.
GENERAL CONTRACTORS
P. O. BOX 785
FOLEY, ALA.

AGREEMENT OF CONSTRUCTION.

This agreement entered into by and between the
Foley Building & Manufacturing Co. and Mrs. ~~Calla~~ Mae
Tanner whereby:

The Foley Building & Manufacturing Co. hereby agree
to furnish all labor and materials necessary for a complete
erection of Two (2) Cottages as shown on Plans and described
on specifications herewith attached for the amount of
~~\$4800.00~~
4500.00

Mrs. ~~Calla~~ Mae Tanner hereby agrees to pay to the
Foley Building & Manufacturing Co. the above stated amount
as set forth herewith below:

Upon signing of this contract the amount of
\$1500.00 equal to one third of above total
amount.

When structures are housed in the amount of
\$1500.00 equal to one third of above total
amount.

The balance to be paid upon completion and
acceptance of job.

Any deviations from Plans shall be considered as
extra if additional labor and material is required and
shall be paid for in addition to above stated amount.

FOLEY BUILDING & MANUFACTURING CO.
G. J. Lewis
Builder.

Accepted at this the ___ day of March 1946,

Calla Mae Tanner.
Owner.

Witness:
[Signature]

Paid \$1500.00

3800.00

SPECIFICATIONS

Foundation: Foundation as shown on Plans shall be laid with concrete blocks. Walls shall be 8" thick.

A concrete slab 5" thick shall be laid on fill properly tamped. A 2" course of dry sand shall be spread over surface before concrete is poured. Slab shall be troweled to a smooth finish.

Walls & Framing: All outside walls shall be framed of 2 x 4 studs sheathed with 1" boards. All partitions shall be framed of 2 x 4 studs. All ceiling joists shall be 2 x 6 spaced 2-0 o.c. Rafters shall also be spaced 2-0 o.c. and properly braced.

All walls outside shall be covered with asbestos siding. Before applying siding a layer of felt shall be laid on all surfaces.

All walls and partitions inside shall be covered with sheet rock applied as per manufacturer specifications. All doors and windows shall be of sizes as shown on Plans.

Screening: Roof shall be decked with 1" boards and a layer of felt shall be applied before shingle are laid. All windows and front porch shall screened. Screens to made and laid on frames and hung so as to be removable for storage or cleaning.

Roof: Roof surface shall be covered with 210// Composition shingle of color selected.

Wiring: A complete wiring circuit shall be installed. All outlets to be as shown on Plans. All cable to be Romex. Allow \$5.00 for electric fixtures.

Plumbing: A complete system of plumbing shall be installed including septic tank with proper disposal field. Plumbing fixtures shall consists of 1 Toilet, 1 Lavatory 1 sink and one built in shower stall.

Painting: All wood work inside shall receive two coats of enamel, all wood outside shall receive two coats of oil paint. All walls and ceiling inside shall receive one coat of Kemtone paint of color selected.

Foley Building & Manufacturing Co.

GENERAL CONTRACTORS

Phone 2922

P. O. BOX 785

FOLEY, ALA.

Com Get W

This agreement between Foley Building & Manufacturing Co. and Mrs. Celia Mae Tanner whereby Foley Building & Manufacturing Co. hereby agree to furnish all labor and materials to repair an existing structure by altering and rendering necessary repairs as instructed by Mrs. Celia Mae Tanner.

Mrs. Celia Mae Tanner hereby agrees to pay said Foley Building & Manufacturing Co. the total cost of said work including labor and materials plus a fee of 10% of the total cost. All Federal Tax and State tax to be added to the 10% fee.

Foley Building & Manufacturing Co.

W. A. Bonni
Builders

Mrs. Celia Mae Tanner,

Mrs. Celia Mae Tanner
Owner.

CECIL G. CHASON

ATTORNEY AT LAW

FOLEY, ALABAMA

3 August, 1946

Com Cef 4

Mr. G. H. Bonie
Foley
Alabama

Dear Sir

Mrs. Tanner requested that I tell
you, as a reply to your letter concern-
ing the windows and doors that she ex-
pects you to install them as you have
agreed to do and that, upon completion
of your work, you will be paid in accord-
ance with your contract and agreement
with Mrs. Tanner.

Yours very truly

C. G. Chason
C. G. Chason

CGC:mlm

cc:

Forest Christian
Foley,
Alabama

G. H. BONIE, doing
business as Foley Building
& Manufacturing Company,

Plaintiff,

vs.

CALLA MAI TANNER,

Respondent.

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

Comes the Respondent in the above styled cause and demurs to the Bill of Complaint as amended and filed March 14, 1949, in said cause and each and every paragraph thereof separately and severally and assigns the following separate and several grounds, viz:

1. That said Bill of Complaint does not contain equity.
2. That said Bill of Complaint is vague and indefinite.
3. That said Bill of Complaint is multifarious.
4. That said Bill of Complaint affirmatively shows that the suit is based upon an action at law.
5. That said action should have been brought on the law side of the court rather than on the equity side.

The Respondent further demurs to the following separate and several aspects of said Bill of Complaint, viz:

6. As to that aspect of the Bill set out in paragraph 2 of said Bill of Complaint in which the Complainant sets out a written contract between the parties, which said contract referred to one structure and the further averments of Complainant that the Respondent then directed the Complainant to repair a large residence, hotel or lodge owned by her and two cabins used therewith, the Respondent demurs and assigns the following grounds:

(a) That the Complaint affirmatively shows that the buildings which were repaired are located on 3.44 acres of land and no one acre is described.

(b) That the description of the 3.44 acres is vague and indefinite and could not be located by such description.

(c) That it is not alleged in said description the Section in which such property is situated.

(d) That it is not alleged in such description whether it is located within or without a city, town or village.

7. As to that aspect of the Bill of Complaint set out in paragraph 2 in which Complainant alleges that he furnished labor and materials and repaired three buildings situated on said property in accordance with instructions given to him by the Respondent and the allegation which sets out the amount due by Respondent to Complainant, the Respondent demurs and assigns the following grounds:

(a) That there is a variance between these allegations and the contract set out in paragraph 2 in that the contract refers to only one building.

(b) That it is not alleged what agreement was entered into between the parties in regard to repairing the additional buildings.

(c) That it is not alleged that the work was done or materials furnished by the Complainant for Respondent in accordance with the contract set out in paragraph 2.

(d) That it is not alleged that the amount claimed by the Complainant is a reasonable charge for the work and labor furnished or that it was fixed by the contract.

8. As to that aspect of paragraph 2 of the Bill of Complaint in which the Complainant alleges that the work and labor done and materials furnished by Complainant for Respondent is itemized in a statement of lien filed in the Probate Office, a copy of which is marked as Exhibit "A" to the Bill and made a part of the Bill the Respondent demurs and assigns the following grounds:

(a) That the statement of lien attached as Exhibit "A" to the Bill affirmatively shows that it claims a lien on 3.44 acres of land which is not in conformity with the requirements of the Statute.

(b) That no valid lien was filed in the Probate Court of Baldwin County, Alabama, as required by law.

(c) That the lien does not allege whether the land described is inside or outside of a city, town or village.

(d) That the lien affirmatively shows that it is claimed on more than one contract.

9. As to that aspect of paragraph 2 of the Bill of Complaint in which the Complainant alleges that the three houses repair by the Complainant for the Respondent and two houses built for Respondent by Complainant are situated on the above tract of land and that they, together with the electric wiring, sewer lines, and water pipes are so situated that they cover the entire tract of land, which is under one fence, except for one acre thereof, the Respondent demurs and assigns the following grounds:

(a) That the lien filed attempts to subject more land to the lien that is allowed by the Statutes.

(b) That these allegations affirmatively shows that there was more than one contract.

(c) That the Statutes do not contemplate that electric wiring, sewer lines and water pipe would be considered in determining the land to be covered by the lien.

10. As to that aspect of paragraph 3 of the Bill of Complaint in which the Complainant alleges that while the Complainant was engaged in repairing the three buildings for the Respondent, the Complainant and Respondent entered into another written agreement which he set out in paragraph 3, the Respondent demurs and assigns the following grounds:

(a) That this allegation affirmatively shows that the Complainant and Respondent entered into more than one contract and that they were entered into at different times.

(b) That this allegation affirmatively shows that the amount claimed by this contract was also included in the lien which was filed by the Complainant.

(c) That the Complainant has an adequate remedy at law to enforce the contract referred to in paragraph 3 of said Bill of Complaint.

11. As to that aspect of the Bill of Complaint as set out in paragraph 3 of the Bill in which the Complainant alleges that the Complainant furnished the labor and materials to erect two cottages on the land of the Respondent and that the contract price of the two cottages and certain alterations amounted to a certain amount the Respondent demurs and assigns the following grounds:

(a) That it is affirmatively shown by this allegation that the Complainant has an adequate remedy at law.

(b) That such allegation affirmatively shows that the amount claimed by the Complainant is based upon more than one contract.

12. As to that aspect of the third paragraph of the Bill of Complaint in which the Complainant alleges that the three houses repaired and two houses constructed for Respondent by Complainant are all situated on said tract of land and said repairs and construction was done at approximately the same time, the Respondent demurs and assigns the following grounds:

(a) Said allegation fails to set out the land on which each building is located.

(b) That said allegation does not show that the repairs were completed or buildings erected prior to the filing of the lien.

(c) That said allegation is vague and indefinite.

13. As to paragraph 4 of said Complaint the Respondent demurs and assigns the following grounds:

(a) That said paragraph is based on what is known as a common count and should have been brought at law.

(b) That the Complainant has an adequate remedy at law for the amount claimed in paragraph 4.

14. As to paragraph 5 of said Complaint the Respondent demurs and assigns the following grounds:

(a) That said paragraph is based on what is known as a common count and should have been brought at law.

(b) That the Complainant has an adequate remedy at law for the amount claimed in paragraph 5.

15. As to paragraph 6 of said Complaint the Respondent demurs and assigns the following grounds:

(a) That said paragraph is based on what is known as a common count and should have been brought at law.

(b) That the Complainant has an adequate remedy at law for the amount claimed in paragraph 6.

16. As to paragraph 7 of said Complaint the Respondent demurs and assigns the following grounds:

(a) That said paragraph is based on what is known as a common count and should have been brought at law .

(b) That the Complainant has an adequate remedy at law for the amount claimed in paragraph 7.

17. As to that aspect of the Bill of Complaint as set out in paragraph 8 in which the Complainant alleges that a lien was filed in the Probate Court by the Complainant within six months after the last item of work was performed and last item of material furnished for repairing the three old buildings and constructing the two new buildings the Respondent demurs and assigns the following grounds:

(a) That the statement of lien which is attached as an Exhibit and referred to is not filed as required by law.

(b) That it is affirmatively shown that such statement of lien was for the collective work and material furnished on more than one contract and on several buildings situated on the lands described therein and consequently does not comply with the requirements of the Statutes.

(c) That the proported lien does not separately and severally designate the materials and labor furnished and done as to each building erected on said premises or repaired.

18. As to that aspect of the prayer for relief set out in the Bill of Complaint in which the Complainant prays that this court will determine the amount of the indebtedness due by the Respondent to Complainant and will render a decree therefor and fix a lien therefor on the property described in the Bill and have such property sold for the satisfaction of such lien, if the amount due is not paid, the Respondent demurs and assigns the following grounds:

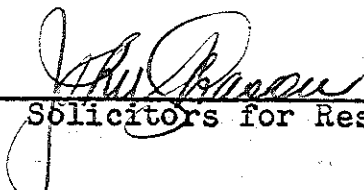
(a) That the Complainant has an adequate remedy at law and is not entitled to the things prayed for in such prayer for relief.

(b) That the lien filed in the Probate Court being of no valid force and effect this court does not have authority to order a reference as prayed for by Complainant.

(c) That the lien filed by Complainant does not comply with the laws of the State of Alabama which authorizes a lien and the court does not have the right at this time to fix a lien on said property.

Hybart, Chason & Stone

BY:


Solicitors for Respondent.

General Contractor
REPAIRS, PAINTING AND DECORATING

Phone 8-4381 621 Alabama Ave., S.W.
BIRMINGHAM, ALA.

June 25, 1946

Mrs. Tanner
Orange Beach, Ala.

*Respondents
Ex 1*

89 pcs. 4 x 8 - 3/8" Sheetrock	\$128.16
50 ft. 4" Drain Tile	5.00
250 ft. 4" TC Pipe	<u>40.00</u>
	\$173.16
Sales Tax	<u>3.46</u>
Total	\$176.62

100 lbs. 16 common nails	5.10
100 lbs. 20 " "	5.10
10 sq. roofing	<u>56.10</u>
	242.92

Paid By check 7/14 1946

W B Lassetter

General Contractor
REPAIRS, PAINTING AND DECORATING

Phone 8-4381 621 Alabama Ave., S.W.
BIRMINGHAM, ALA.

June 1, 1946

Mrs. Cella Mai Tanner
Orange Beach, Ala.

2 kegs 16 d common nails	\$20.40
2 " 8 d " "	20.40
1 " 8 d casing "	10.20
1 " 6 d " "	10.20
TOTAL	<u>\$61.20</u>

Paid in Full
W B Lassiter
Cella Tanner

W. E. L. ASSOCIATES
General Contractor
REPAIRS, PAINTING AND DECORATING

Phone 8-4381 621 Alabama Ave., S.W.,
BIRMINGHAM, ALA.

May 30, 1946

Mrs. Calla Mai Tanner
Orange Beach, Ala.

100 pcs. 4 x 8 - 3/8" Sheetrock

\$200.94

Calla

*Paid in Full
W B Tanner*

General Contractor
REPAIRS, PAINTING AND DECORATING

Phone 8-4381 621 Alabama Ave., S.W.

BIRMINGHAM, ALA.

May 23, 1946

Mrs. Calla Mai Tanner
Orange Beach, Ala.

200 pcs. 4 x 8 - 3/8" Sheetrock
5 boxes sheetrock tape
TOTAL

\$391.68

38.25

\$429.93

Paid in full.

W B Fassett

C. H. Hays

General Contractor
REPAIRS, PAINTING AND DECORATING

Phone 8-4381 621 Alabama Ave., S.W.

BIRMINGHAM, ALA.

May 22, 1947

Mrs. Calla Mai Tanner
Orange Beach, Ala.

1 door 2-0 x 6-8 - 1 3/8"	3 Panel	\$ 9.38
5 " 2-6 x 6-8 - "	"	54.02
1 " 2-8 x 6-8 - "	1 Panel Fir	10.76
1 " 2-0 x 6-6 - "	3 " #1 Fir	10.20
1 " 1-6 x 6-6 - "	2 "	5.25
9 lock sets		19.85
9 pr. 3 1/2 x 3 1/2 DB Butts		3.78
28 windows 8 x 10 - 12 lt. Cr.		149.24
4 " 30 x 23 - 1 3/8"	2 lt. Cr.	24.81
2 " 16 x 16 - "	" "	6.79
2 " 30 x 28 - "	" "	13.65
56 sash balances		140.00
7 windows 2-4 x 3-10 - 1 3/8"	12 lt. Cr.	33.60
2 pcs. 4" Clay 1/8 bends		2.00
91 lin. ft. lattice WP		1.82
1 drum trap & 2 1 1/2" Fittings		3.75
1 4" Clay Elbow		.86
Sales Tax		9.80
TOTAL		<u>499.56</u>

Paid Agri. Full.
W B Fassetter

General Contractor
REPAIRS, PAINTING AND DECORATING

Phone 8-4381 621 Alabama Ave., S.W.
BIRMINGHAM, ALA.

Sept. 7, 1946

Mrs. Calla Mai Tanner
Orange Beach, Ala.

1 roll 28" Bronze Screen wire	233 ft.	
1 roll 30" " " "	250 ft.	
4 " 36" " " "	1200 ft.	\$206.00
50 ft. 4" Drain Tile		7.65
250 ft. 4" TC Pipe		<u>51.00</u>
TOTAL		\$364.65

Paid in Full
W B Jassette

Charges

Foley, Ala., July 10 1946

M^{rs.} B. M. Tanner

Respondents
Est Orange Beach, Ala.
4

IN ACCOUNT WITH

BEESLEY'S PLUMBING CO.

APPLIANCES - FIXTURES - HEATERS - PIPE WORK

PHONE 111 - P. O. BOX 763

ROY A. BEESLEY, MGR.

FOLEY, ALA.

<u>July 10</u>				
2	3/4"	unions	50	1 00
1	3/4" X 1/2"	ell		20
1	3/4"	ell		19
3	3/4" X 5"	nipples	12	36
1	3/4"	Gas Valve		3 00
1	3/4" X 1/2"	flushing		19
1	1/2" X 5"	nipple		10
1	1/2"	tee		17
1	1/2"	4.5° ell		18
111'	3/4"	Galv. wrought iron Pipe	22	24 20
2	1/2" X 3/4"	reducers	18	36
2	3/4"	slip nuts & tail pieces	30	60
1	1/2"	st. ell		16
1	1/2" X 2 1/2"	nipple		06
				30 97
		204		62
				31 39

Foley, Ala., July 10, 1946

Mrs. L. M. Janner
Orange Beach, Ala.

IN ACCOUNT WITH

BEESLEY'S PLUMBING CO.

APPLIANCES - FIXTURES - HEATERS - PIPE WORK

PHONE 111 - P. O. BOX 763

ROY A. BEESLEY, MGR.

FOLEY, ALA.

Brought Forward		31	39
6	h.b. labor at 200	13	00
6	" " " 150	9	00
1	trip	2	00
Total		55	39

Foley, Ala., July 10 1946

Mrs. L. M. Turner

Orange Beach, Ala.

IN ACCOUNT WITH

BEESLEY'S PLUMBING CO.

APPLIANCES - FIXTURES - HEATERS - PIPE WORK

PHONE 111 - P. O. BOX 763

ROY A. BEESLEY, MGR.

FOLEY, ALA.

<u>July 10th</u>					
2	1/2" unions	50		1	00
1	3/4" X 1/2" ell				20
1	3/4" ell				19
3	3/4" X 5" nipples	12			36
1	3/4" Gas Valve			3	00
1	3/4" X 1/2" flushing				19
1	1/2" X 5" nipple				10
1	1/2" tee				17
1	1/2" 45° ell				18
63'	3/4" galv. wrought iron pipe	22 1/2		13	86
2	1/2" X 1/4" reducers	18			36
2	1/4" slip nuts + tail pieces	30			60
1	1/2" st. ell				16
1	1/2" X 2 1/2" nipple				06
				20	43
		20x			41
6 1/2	hrs labor			13	00
1	trip			2	00
Total				35	84

FOLEY BUILDING & MANUFACTURING)	
CO., G. H. Boni, owner,)	
)	
Plaintiff,)	IN THE CIRCUIT COURT OF
VS.)	BALDWIN COUNTY, ALABAMA
)	
CALLA MAI TANNER,)	IN EQUITY
)	
Defendant.)	

NOTE OF TESTIMONY

This cause is submitted on behalf of the complainant upon the following:

1. Bill of Complaint as last amended.
2. Stipulation between parties dated May 27, 1953, relative to the taking of testimony of all witnesses on the said date before Louise Dusenbury, acting as commissioner.
3. The testimony of G. H. Boni taken before Louise Dusenbury, acting as commissioner, on May 27, 1953, together with Exhibits Numbered 1, 2, 3 and 4 to the testimony of the said witness, all of which said exhibits are set out in his testimony.

Dated this 17 day of May, 1954.

[Signature]
Register.

[Signature]
[Signature]
Solicitors for complainant.

NOTE OF TESTIMONY

FOLEY BUILDING & MANUFACTURING
CO., G. H. Boni, owner,

VS.

Complainant,

CALLA MAI TANNER,

Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY

*Filed 5-17-54
Weigman
Reg.*

G. H. Bonie, doing business as
FOLEY BUILDING AND MANUFACTURING
COMPANY,

vs.

Complainant.

CALLA MAI TANNER,

Respondent.

THE STATE OF ALABAMA
Baldwin County

IN EQUITY
Circuit Court of Baldwin County

This cause is submitted in behalf of Complaint upon the original Bill of Complaint, _____

and in behalf of Defendant upon Answer filed February 23, 1951; stipulation
of parties; and testimony of Calla Mai Tanner Watts, W. B. Lassiter,
J. S. Gregory, and Union Lawrence, together with the exhibits to
their testimony which were offered in evidence.

Union Lawrence
Thasom Stone Register.
Ray Allen Thasom, Solicitor for Plaintiff

No.

THE STATE OF ALABAMA

Baldwin County

IN EQUITY

Circuit Court of Baldwin County

G.H. Bonie, doing business as

FOLEY BUILDING AND MANUFACTUR-

ing COMPANY

Complainant,

vs.

CALLA MAT TANNER,

Respondent.

NOTE OF TESTIMONY

Filed in Open Court this 1st

day of July, 1945

Register.

Printed By The Baldwin Times

G. H. BONIE, doing business
as FOLEY BUILDING AND MANU-
FACTURING COMPANY,

Complainant,

vs.

CALLA MAI TANNER,

Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

IN EQUITY.

No. 1784.

Comes the Respondent in the above styled cause and files this
her Demurrer, separately and severally, to the following aspects
of the Amended Bill of Complaint filed in said cause.

1. As to that part of paragraph 2 of the Amended Bill of
Complaint in which it is alleged, "after the said written agreement
was made the Complainant furnished labor, materials and fixtures and
erected the two said cottages referred to in said agreement", the
Respondent demurs and assigns the following separate and several
grounds, viz:

(a) That it is not alleged that the contract referred to was
complied with by Complainant. (b) That it is not alleged that the
cottages were erected in accordance with said contract. (c) That
it is not alleged that such cottages were ever completed and
accepted by the Respondent.

2. As to that aspect of paragraph 2 of the Amended Bill of
Complaint in which it is alleged, "the contract price for the two
said cottages was \$4500.00 as stated in said agreement but in
addition thereto labor and materials used in making changes in plans
and specifications under instruction of the Respondent caused the
Complainant to expend the further sum of \$1,000.00 for labor and
materials on said property and in the construction of the two said
cottages", the Respondent demurs and assigns the following separate
and several grounds, viz:

(a) That it is not alleged that the Complainant complied with
the contract referred to. (b) It is not alleged that the cottages
were completed and accepted by the Respondent. (c) It is not
alleged that the additional charges amount to \$1,000.00 was a
reasonable sum for such additions. (d) It is not alleged that the
cottages were erected as shown on the plans and specifications
except for changes requested by the Respondent.

CHASON & STONE

By: John H. Chason
Attorneys for Respondent.

DEMURRER

G. H. BONIE, doing business
as FOLEY BUILDING AND
MANUFACTURING COMPANY,

Complainant,

vs.

CALLA MAI TANNER,

Respondent.

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

Filed *June* 2, 1954.

W. J. [unclear]
Register.

G. H. BONIE, doing business as
FOLEY BUILDING AND MANUFACTURING
COMPANY,

Complainant,

VS.

CALLA MAI TANNER,

Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NO. 1784.

DECREE ON DEMURRER TO BILL OF COMPLAINT AS LAST
AMENDED

This cause coming on to be heard on this date is submitted by agreement of the parties on Respondent's Demurrer to the Bill of Complaint as Last Amended; upon consideration of which it is therefore

ORDERED, ADJUDGED AND DECREED by the Court as follows:

1. Respondent's Demurrer to the Bill of Complaint as Last Amended shall be and it is hereby overruled.

2. Respondent is allowed twenty days from this date in which to file an answer.

ORDERED, ADJUDGED AND DECREED on this the 23rd day of January, 1951.

Jeffrey J. Madlbery, Jr.
Judge

G. H. BONIE, doing business
as Foley Building and
Manufacturing Company,

Plaintiff,

vs.

CALLA MAI TANNER,

Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

IN EQUITY.

No. 1784.

Calla Mai Tanner, the Respondent in the above
styled cause hereby gives notice of Appeal to the Supreme Court
of the State of Alabama from the decree of the Circuit Judge of
the 28th Judicial Circuit of Alabama, rendered October 10, 1949,
overruling the demurrer filed by her in said cause.

Dated this 29th day of October, 1949.

Hybart, Chason & Stone

By: 

Solicitors for Respondent.

THE STATE OF ALABAMA }
Baldwin County - Circuit Court }

TO ANY SHERIFF OF THE STATE OF ALABAMA — GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the

Oct. 10, 1949

Monday in, 194....., in a cer-

tain cause in said Court wherein FOLEY BUILDING & MANUFACTURING CO.

G. H. BONIE, owner Plaintiff, and

MRS. CALLA MAE TANNER Defendant, a judgment was rendered against said

MRS. CALLA MAE TANNER

to reverse which, the said

applied for and obtained from this office an APPEAL, returnable to the NEXT

Term of our SUPREME Court of the State of Alabama, to be held at Montgomery,

on the day of, 194..... next, and the necessary bond

having been given by the said MRS. CALLA MAE TANNER

..... with O. S. HOLMES, MRS. J. L. HAMBURG, sureties,

Now, You Are Hereby Commanded, without delay, to cite the said

FOLEY BUILDING & MFG. CO., G. H. BONIE or FOREST A. CHRISTIAN
owner

....., attorney, to appear at the NEXT Term of our

said Supreme Court, to defend against the said Appeal, if THEY think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 29th

day of Oct., A. D., 1949.

Attest:

Alice J. Duck, Clerk.

By serving copy of the
within on Robert a Christian
attorney

Taylor Wilkins Sheriff
147 Hall P. 5.

Received in Sheriff's Office
this 31 day of Oct, 1949
TAYLOR WILKINS, Sheriff

1784

CIRCUIT COURT
Baldwin County, Alabama

G. H. BONIE, d/b/a FOLEY
BUILDING & MANUFACTURING CO.

Vs. } Citation in Appeal

CALLA MAE TANNER

Issued 31st day of Oct, 1949

FOLEY BUILDING AND MANUFACTURING
COMPANY, G. H. Bonie, Owners,

Plaintiff,

VS.

CALLA MAI TANNER,

Defendant.

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

This matter coming on for hearing on the Demurrer
filed by the Respondent to the Bill of Complaint and the Court
being of the opinion that the Demurrer should be sustained.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the
Court that the Demurrer is hereby sustained.

Dated this 17th day of July, 1947.



Judge.

X

DECREE SUSTAINING DEMURRER

FOLEY BUILDING AND MANUFACTURING COMPANY, G. H. BONIE,
Owner,

Plaintiff,

VS.

CALLA MAI TANNER,

Defendant.

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

Filed July 17, 1947

Alice J. Luck
Register

THE STATE OF ALABAMA,
BALDWIN COUNTY.

TO ANY SHERIFF OF THE STATE OF ALABAMA — GREETING:

WE COMMAND YOU, that you summon Calla Mat Fanner, to be and appear before the judge of the Circuit Court of Baldwin County, exercising chancery jurisdiction within thirty days after the service of the summons, and there to answer, plead, or demur without oath to a bill of complaint, lately exhibited by Foley Building & Manufacturing Co., G. H. Bonie, Owner, against the said Calla Mat Fanner, and further to do and perform what the said judge shall order and direct in that behalf, and this the Respondent shall in no wise omit, under penalty of the law. And we further command that you return this with with your execution thereof.

WITNESS, H. S. Duck, Register of said Court, this 23 day of November, 1946.

Handwritten signature: H. S. Duck
Register

FOLEY BUILDING & MANUFACTURING CO., G. H. BONIE, OWNER	Plaintiff	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA
Calla Mat Fanner	Defendant	IN EQUITY.

BILL OF COMPLAINT

TO THE HONORABLE F. W. HARR, JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, IN EQUITY.

COUNT ONE

Plaintiff claims of the defendant EIGHT THOUSAND FORTY-THREE & 45/100 DOLLARS (\$8043.15), due from her by account on the fifth day of September, 1946, which sum of money with interest thereon, is still unpaid.

COUNT TWO

The plaintiff claims of the defendant EIGHT THOUSAND FORTY-THREE & 45/100 DOLLARS (\$8043.15), for merchandise, goods, and chatties sold by the plaintiff to the defendant during the months of March, April, May, June and July, 1946, which sum of money with interest thereon is still unpaid.

COUNT THREE

The plaintiff claims of the defendant EIGHT THOUSAND FORTY-THREE & 15/100 DOLLARS (\$8043.15), for work and labor done for defendant by the plaintiff at her request during the months of March, April, May, June and July, 1946, which sum of money with interest thereon is still unpaid.

COUNT FOUR

The plaintiff claims of the defendant FOUR THOUSAND FORTY-THREE & 15/100 DOLLARS (\$4043.15), for breach of a written agreement entered into between the plaintiff and the defendant on, to-wit: During the month of March, 1946, which agreement was in substance; as follows:

This agreement between Foley Building & Manufacturing Co. and Mrs. Calla Mat Fanner whereby Foley Building & Manufacturing Co. hereby agree to furnish all labor and materials to repair an existing structure by altering and

rendering necessary repairs as instructed by Mrs. Calla Mai Tanner.

Mrs. Calla Mai Tanner hereby agrees to pay said Foley Building & Manufacturing Co. the total cost of said work including labor and materials plus a fee of 10% of the total cost. All Federal Tax and State Tax to be added to the 10% fee.

FOLEY BUILDING & MANUFACTURING CO.

(signed) G. H. Bonie
Builder

(signed) Mrs. Calla Mai Tanner
Owner

Plaintiff avers that he complied with his provision of said contract; that he did furnish material, labor and supervision all in accordance with said contract; that he has made demand upon said defendant for payment for the materials, labor and supervision furnished in compliance with said contract but that the defendant refused to pay for said materials, labor and supervision in complying with said contract and after allowing credit for all monies paid by the defendant there remains due the amount aforesaid which the plaintiff claims with interest from, to wit: September 5, 1946.

COUNT FIVE

Plaintiff claims of the defendant FOUR THOUSAND & 00/100 DOLLARS (\$4000.00) for material, labor and supervision expended under a written agreement entered into between the plaintiff and defendant during the month of March, 1946, which agreement was in substance as follows:

AGREEMENT OF CONSTRUCTION

This agreement entered into by and between the Foley Building & Manufacturing Co. and Mrs. Calla Mai Tanner.

The Foley Building & Manufacturing Co. hereby agree to furnish all labor and materials necessary for a complete erection of Two (2) Cottages as shown on Plans and described on specifications herewith attached for the amount of \$4500.00.

Mrs. Calla Mai Tanner hereby agrees to pay to the Foley Building & Manufacturing Co. the above stated amount as set forth herewith below:

Upon signing of this contract the amount of \$1500.00 equal to one third of above total amount.

When structures are housed in the amount of \$1500.00 equal to one third of above total amount.

The balance to be paid upon completion and acceptance of job.

Any deviations from Plans shall be considered as extra if additional labor and material is required and shall be paid for in addition to above stated amount.

FOLEY BUILDING & MANUFACTURING CO.

(signed) G. H. Bonie
Builder

Accepted this the ___ day of March, 1946,

(signed) Mrs. Calla Mai Tanner
Owner

Witness:

(signed) G. H. B.

SPECIFICATIONS

Foundation: Foundation as shown on plans shall be laid with concrete blocks. Walls shall be 8" thick.

A concrete slab 5" thick shall be laid on fill properly tamped. A 2" course of dry sand shall be spread over surface before concrete is poured. Slab shall be trowled to a smooth finish.

Walls & Framing: All outside walls shall be framed of 2 x 4 storm sheathed with 1" boards. All partitions shall also be framed of 2 x 4 studs. All ceiling joints shall be 2 x 6 spaced 2-0 o.c. Rafters shall also be spaced 2-0 o.c. and properly braced.

All walls outside shall be covered with asbestos siding. Before applying siding a layer of felt shall be laid on all surfaces.

All walls and partitions inside shall be covered with sheet rock applied as per manufacturer specifications. All doors and windows shall be of sizes as shown on Plans.

Roof shall be decked with 1" boards and a layer of felt shall be applied before shingle are laid.

Screening: All windows and front porch shall be screened. Screens to be made and laid on frames and hung so as to be removable for storage or cleaning.

Roof: Roof surface shall be covered with 210# composition shingle of color selected.

Wiring: A complete wiring circuit shall be installed. All outlets to be as shown on Plans. All cable to be Romex. Allow \$5.00 for electric fixtures.

Plumbing: A complete system of plumbing shall be installed including septic tank with proper disposal field. Plumbing fixtures shall consist of 1 toilet, 1 lavatory, 1 sink and one built in shower stall.

Painting: All wood work inside shall receive two coats of enamel, all wood outside shall receive two coats of oil ~~var~~ paint. All walls and ceiling inside shall receive one coat of Kentone paint of color selected.

The plaintiff avers that he complied with his provisions of said contract and he did furnish said materials, labor and supervision all in accordance with said contract; and that at the request and insistence of the defendant he deviated from the plans and specifications, which deviation caused him to expend additional amounts of material, labor and supervision to the extent of ONE THOUSAND DOLLARS (\$1000.00); and after allowing credit for all monies paid by the defendant there remains due the amount aforesaid which the plaintiff claims with interest from, to-wit: September 5, 1946.

COUNT SIX

The plaintiff alleges that he is the original contractor who repaired and made additions to a dwelling house and two cottages and built two new cottages and performed all of the concrete work, water and sewage disposal and electrical work. Said real property being known as Mrs. Calla Mai Tanner's place at Bear Point, Baldwin County, Alabama, described as follows; to-wit:

Beginning 50 feet from the regular high tide line of Bay Oronoca (Perdido Bay) on the South side of Bear Point, at the Southeast corner or East line of Lot 4, known as the Julia Hudson Lot, running in a Northern direction parallel along said lot 306 feet, thence North 65° 30' East 500 feet, thence South 306 feet, running the same degrees as the aforesaid 306 feet line to the 50 feet avenue on Bay Oronoca, thence West to a point of beginning, containing 500 feet by 306 feet square or 3.44 acres, all in Township 8 and 9 South, Range 5 East. It being the intention herein to describe the entire land upon which said buildings are situated.

The plaintiff alleges that he furnished the materials, labor and supervision for repairing, making additions to and building said buildings; that the defendant is the owner of the buildings and of the land upon which they are situated; that on September 5, 1946, there accrued an indebtedness due from defendant to plaintiff in the amount of (\$8043.15) EIGHT THOUSAND FORTY-THREE & 15/100 DOLLARS, which, with interest, is claimed by plaintiff from defendant for such work, materials, labor and supervision furnished by plaintiff as original contractor.

The plaintiff further alleges that within six months from the accrual of said indebtedness, and on, to-wit: September 19, 1946, plaintiff filed in the office of the Judge of Probate, Baldwin County, Alabama, a statement in writing, verified by oath of G. H. Bonie, a person having personal knowledge of the facts stated therein, containing the amount of the plaintiff's demand after all just credit had been given, together with the description of the property on which the lien is claimed in such manner that same may be located or identified and containing the name of Calla Mai Tanner, the owner of said buildings.

Plaintiff further alleges that no part of said indebtedness nor the interest thereon has been paid notwithstanding demand. And plaintiff claims a lien on property described and prays that it is established.

For G. H. Christian
 Forest A. Christian

J. B. Blackburn
 J. B. Blackburn *By F.A.C.*
 Attorneys for Plaintiff

An itemized statement of writing, verified by oath of G. H. Bonie, a person having personal knowledge of the facts stated therein, containing the amount of the Plaintiff's demand after all just credits have been given is attached and made a part hereof.

For G. H. Christian
J. B. Blackburn
By F.A.C.

Com
Exp 2

THE STATE OF ALABAMA,)
BALDWIN COUNTY.)

The Foley Building & Manufacturing Co., G. H. Bonie, Owner, files this statement in writing, verified by the oath of G. H. Bonie, who has personal knowledge of the facts herein set forth:

That the said Foley Building & Manufacturing Co., claims a lien upon the following property, situated in Baldwin County, Alabama, to wit:

Beginning 50 feet from the regular high tide line of Bay Oronoca (Perdido Bay) on the South side of Bear Point, at the Southeast corner or East line of Lot 4, known as the Julia Hudson Lot, running in a Northern direction parallel along said lot 306 feet, thence North 65° 30' East 500 feet, thence South 306 feet, running the same degrees as the aforesaid 306 feet line to the 50 feet avenue on Bay Oronoca, thence West to a point of beginning, containing 500 feet by 306 feet square or 3.44 acres, all in Township 8 and 9 South, Range 5 East.

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

That said lien is claimed to secure an indebtedness of \$8,043.15, with interest, from to wit the 1st day of July, 1946, for:

PAYROLL DATES	AMOUNT
3/22/46	\$ 61.60
3/29/46	39.40
4/5/46	143.40
4/12/46	390.29
4/19/46	427.30
4/26/46	519.12
5/3/46	412.08
5/11/46	403.72
5/17/46	441.66
5/24/46	355.70
5/31/46	383.42
6/7/46	169.73
6/14/46	178.54
6/21/46	64.67
Labor to 6/21/46 -----	\$5,991.13

LUMBER:

Siding	2019 Ft.		175.05
Frame Lumber	4334 "	at \$65.00	282.00
"	2000 "		130.00
Sheathing	5267 "	75.00	394.00
Ship-Lap	2000 "	85.00	170.00
	1750 "		148.00
	350 "		28.00
			\$1,152.00

MATERIALS FOR FRONT PORCH:

3 Pcs.	2x4x8-0	15 ft.	
24 "	2x4x12-0	192 "	
34 "	2x4x3-0	68 "	
44 "	2x2x3-0	44 "	
64 ft.	2x4	43 "	
48 "	2x4	32 "	
		394 Ft. at 65.00-	\$25.61
500 ft. Decking	"	75.00	37.50
7 Columns	"	1.50	10.50
2 2/6x6/6 Doors & Hard.	"	7.00	14.00
Screen Frames for Porch			22.50
			\$110.11

75 Ft. f/Tile	\$	9.00
5 L T C Pipe		2.00
1 San. T 4"		1.10
3 L C/I Pipe 4"		6.75
1 S/Toilet bend 5#		.90
1 C/L Floor plate 4"		.30
10 Ft. 1 1/2" Pipe		3.40
6 1 1/2" Ls.		3.00
4 1 1/2" Ts.		2.20
6 1 1/2" Ls.		.90
6 1 1/2" Ts.		.90
2 Piling at 4 ft.		
26 ft. at .38		9.78
3 " at 6 ft.		
1 1/2 Union		.40
1 1/2 Valve		1.25
1 1/2 x 3 Nipple		.10
1 2/6x6/6 Screen door & Hardware		4.50
10 2x4 Screen & Hard.		11.50
10 P s. 3x3 Butts		2.50
3 1/2 Valves		3.75
1 2/6 x 6/6 Screen Door & Hard.		4.50
2 Screens		2.00
4 Screens		4.00
1 2/8 x 6/8 Sc. Door & Hard.		4.50
2 D/W Frames		12.00
2 S/W "		10.00
2 6ft		
2 5ft Piling) 37 ft. at .38		14.06
216 tiles		32.40
1 Sept. Tank 2/3 CY Conc.		10.20
3 S/Ls 4"		3.30
1 S/Y 4"		1.05
18 ft. C/I pipe 4"		8.10
20 ft. 1 1/2" G. Pipe		5.60
6 1 1/2" Ls.		2.40
6 1 1/2" Ts.		2.40
12 1/2" Ls.		1.80
6 1/2" TS.		.90
1 S/Toilet bend		1.25
1 L 4" C/I Pipe		2.25
1 S/T 4"		1.10
1 4x2 Red.		2.25
8 ft. 1/2" pipe		1.36
2 D/Screen and Frames		16.00
2 S/ " " "		12.00
4 Doors & Hard.		27.68
1 Ins. door lock		1.50
3 Cl. Door Hardware sets		1.35
1 D/W Frame		6.00
1 Cl. Door Hard. set		.45
12 Screens		12.00
4 Screens		4.00
20 lb. Putty		1.00
50 lb. Nails (sheet rock)		3.50
10 lb. Filler		1.00
124 lb. assorted nails		9.92
Hauling lumber (T. W. Shipp)		25.00
Roofing nails and sinks		4.88
100 ft. Valley Tin		10.00
Tin Nails		5.61
Moldings 1/4		1.43
" 300		6.00
Cary and Co. (Fiber paper)		32.00
300 ' wind stop		4.50
60 Sc. molding		.60
5 Rolls brick siding		12.00
Hauling (Jr. Johnson)		12.50

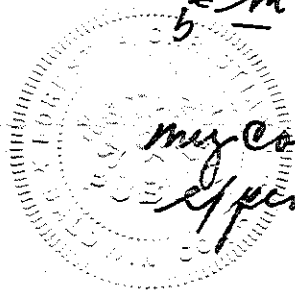
Hauling (Clay Johnson)	\$ 10.00
" (Brantley)	20.00
" (Blackman)	20.00
" (Fowler)	6.00
1 2" T cast iron	.75
1 2" L galvanized	.75
1 2" Plug cast iron	.50
3 1 1/2" L	1.80
8' 1 1/2" pipe galv.	2.24
8 1/2" L	.72
1 1/2" T	.09
1 1/2" Union	.40
14 1/2" L galv.	1.26
2 1/2" Coupling galv,	.18
7 1/2" Union galv.	2.80
4 1/2" T. Galv.	.36
5 1/2" Union Galv,	2.00
72 1/2" Pipe Galv.	7.20
	<u>\$ 479.62</u>
8 1/2" C/Y Concrete in place	170.00
	<u>\$5,902.86</u>
Plus 10% contractor's fee	590.29
	<u>\$6,493.15</u>
Plus 10% contractor's fee on materials furnished by Mrs. Tanner, estimated at \$500.00	50.00
	<u>\$6,543.15</u>
Less amounts paid by Mrs. Tanner	2,500.00
Balance due on contract for repair of house and cottages.	<u>\$4,043.15</u>
ON CONTRACT FOR CONSTRUCTION OF TWO NEW COTTAGES	
Contract price, according to specification	4,500.00
Added for additional work done, not called for in specifications	1,000.00
Total amount due on cottages	<u>\$5,500.00</u>
Less amount paid on cottages	1,500.00
Balance due on cottages	<u>\$4,000.00</u>

The names of the owner or proprietor of said property is Mrs. Calla Mai Tanner.

FOLEY BUILDING & MANUFACTURING CO.

BY: G. H. Bonie
G. H. Bonie, Owner-claimant

Sworn and Subscribed before me this
5th September, 1946



my Commission Expires: 12-27-49

Foley Building & Manufacturing Co.
Notary Public

STATE OF ALABAMA, BALDWIN COUNTY
Filed *Sept. 19, 1946* *8 a* M
Recorded *E. L. Linn* book *3* page *31-32*
W. B. Stult
Judge of Probate *W. B.*

HINKLE SUPPLY COMPANY, INC.

WHOLESALE DISTRIBUTORS

ROOFING • SHEET METAL • SUPPLIES
STOKERS • FURNACES
ATTIC FANS
Phone 4-4541 • 2923 Avenue E
BIRMINGHAM 1, ALA.

SOLD TO Mrs. Tanner
c/o H. M. Hamburg
Mutual Farmers Supply
Foley, Alabama

SHIPPED TO

Foley, Alabama			D T O		TERMS	
CUSTOMER'S ORDER NO.		OUR ORDER NO.	DATE	F. O. B.	VIA	
		2543	5/18/46		Murray	
QUANTITY	DESCRIPTION			PER UNIT	TOTAL	
11	Sqrs. Red Blend Thickbutt Shgls.			5.38	59.18	
	Less 10%				<u>5.92</u>	
					53.26	
	<i>Responsible of product 2</i>			S.T.	<u>1.07</u>	
					54.33	

*Respondents
exhibit 2*

INVOICE

GOODS COVERED BY THIS INVOICE WERE PRODUCED UNDER TERMS AND CONDITIONS OF EMPLOYMENT WHICH SATISFY ALL THE REQUIREMENTS OF THE FAIR LABOR STANDARDS ACT OF 1938.

ALLSET — MFD. BY THE EGRY REGISTER COMPANY, PATENTED

INKLE SUPPLY COMPANY, INC.

WHOLESALE DISTRIBUTORS

ROOFING • SHEET METAL • SUPPLIES
STOKERS • FURNACES
ATTIC FANS

Phone 4-4541 • 2923 Avenue E
BIRMINGHAM 1, ALA.

. Tanner
H. M. Hambu
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ual Farmers Supply
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DATE 4/12/46 T
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ER'S ORDER NO.

OUR ORDER NO.

F. O. B.

VIA

2142

Murray

TERMS

Y	DESCRIPTION	PER UNIT	TOTAL
	Keg 7/8" Galv. Roofing Nails		7.82
	Rolls 15# Tarred Felt	1.98	39.60
	Sqrs. Red Blend Thickbutt Shgls.	5.06	<u>349.14</u>
			396.56
		Less 10%	<u>39.65</u>
			356.91
		S.T.	<u>7.14</u>
			✓ 364.05

ICE

GOODS COVERED BY THIS INVOICE WERE PRODUCED UNDER TERMS AND CONDITIONS OF EMPLOYMENT
WHICH SATISFY ALL THE REQUIREMENTS OF THE FAIR LABOR STANDARDS ACT OF 1938.

ALL SET — MFD. BY THE EGRY REGISTER COMPANY, PATENTED

HINKLE SUPPLY COMPANY, INC.

WHOLESALE DISTRIBUTORS

ROOFING • SHEET METAL • SUPPLIES
STOKERS • FURNACES
ATTIC FANS

Phone 4-4541 • 2923 Avenue E
BIRMINGHAM 1, ALA.

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Mr. Tanner
c/o H. M. Hamburg
Mutual Farmers Supply
Foley, Alabama

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DATE 4/22/46

TERMS

CUSTOMER'S ORDER NO.

OUR ORDER NO.

F. O. B.

VIA

2350

Murray

QUANTITY	DESCRIPTION	PER UNIT	TOTAL
35	Sqrs. Dover White Asbestos Siding Shgls.	6.96	243.60
39	Cartons J. M. Rock Wool 1494.87 sq. ft.	55.00	<u>82.22</u>
			325.82
		Less 10%	<u>32.58</u>
			293.24
		S.T.	<u>5.86</u>
			299.10

INVOICE

GOODS COVERED BY THIS INVOICE WERE PRODUCED UNDER TERMS AND CONDITIONS OF EMPLOYMENT WHICH SATISFY ALL THE REQUIREMENTS OF THE FAIR LABOR STANDARDS ACT OF 1938.

ALLSET — MFD. BY THE EGRY REGISTER COMPANY, PATENTED

NOV 16 1950

THE STATE OF ALABAMA - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1950-51

1 Div.. 399

Calla Mai Tanner

v.

Foley Building and Manufacturing Company

Appeal from Baldwin Circuit Court, in Equity

SIMPSON, JUSTICE:

The amended bill seeks under one claim of lien to subject three and 44/100 acres of land and improvements thereon, not within a city, town or village, to a mechanic's and materialman's lien for work and labor done and materials furnished the defendant by the plaintiff under two separate contracts. The statement of lien is, "That the said Foley Building & Manufacturing Co. claims a lien upon the following property, situated in Baldwin County, Alabama, to wit: (describing by metes and bounds the three and 44/100 acres)." and, "This lien is claimed, separately and severally, as to both the buildings and improvements thereon." Then follows an itemized statement of the account.

THE SUPREME COURT OF ALABAMA

October Term, 19...50-51

1 Div., No. 399

Calla Mai Tanner

Appellant,

vs.

Foley Building and Manufactur-

ing Company

Appellee.

From Baldwin Circuit Court.
in Equity

COPY OF OPINION

BROWN PRINTING CO., MONTGOMERY 1950

*Filed 11-17-50
Ainsworth
Register*

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1 Div., No. 399,

Calla Mai Tanner, Appellant,

vs.

Foley Building and Manufacturing Co., 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 6 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 16th day of

November, 19 50

J. Render Thomas
Clerk of the Supreme Court of Alabama.

November 16, 1950

THE STATE OF ALABAMA - - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM 1950-51.

1 Div. 399

Calla Mai Tanner

vs.

Foley Building and Manufacturing
Company, G. H. Bonie, Owner, *appellee*

Baldwin Circuit Court,
In Equity.

No. 1784

Come the parties by attorneys, and the record and matters therein assigned for errors, being argued and submitted and duly examined and understood by the Court, it is considered that in the record and proceedings of the Circuit Court, In Equity, there is manifest error.

IT IS THEREFORE CONSIDERED, ORDERED, ADJUDGED, AND DECREED that the decree of said Circuit Court be reversed and annulled, and this Court proceeding to render the decree that the Circuit Court should have rendered, DOTH ORDER, ADJUDGE, AND DECREE that the defendant's demurrer to the plaintiff's Bill of Complaint as last amended be and the same is hereby sustained, and the cause is remanded to said Court for further proceedings therein.

IT IS FURTHER ORDERED that the plaintiff be and is hereby granted twenty (20) days from the time that the certificate of this Court is filed with the Register of the Circuit Court within which to amend the Bill of Complaint.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the appellee pay the costs of appeal of this Court and of the Circuit Court, for which costs let execution issue.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st Div., No. 399

Calla Mai Tanner, Appellant,

v.

Foley Building and Manufacturing Company, Appellee,
G. H. Bonie, Owner,

From Baldwin Circuit Court.
In Equity
(No. 1784)

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 two inclusive, contain a full, true, and correct copy of the Decree of Reversal, Rendition, and Remandment made and entered November 16, 1950, by 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 16th day of

November 19 50.

J. Render Thomas

Clerk of the Supreme Court of Alabama.

THE SUPREME COURT OF ALABAMA

1st Div., No. 399

Calla Mai Turner

Appellant,

v.

Foley Building and Manu-
facturing Company, G. H.
Bonie, Owner,

Appellee.

From Baldwin Circuit Court.
In Equity
(No. 1784)

Certified Copy of

Reversal, Rendition, and
Remandment - Nov. 16, 1950

By the Printing Co., Montgomery, Ala., 1944

Filed 11-17-50
Acie-neuch
Cory

FOLEY BUILDING & MANUFACTURING CO.)	IN THE CIRCUIT COURT OF
G.H. BONIE, OWNER)	
Complainant)	BALDWIN COUNTY, ALABAMA
vs.)	
	IN EQUITY.
CALLA MAI TANNER)	
Respondent)	

AMENDED BILL OF COMPLAINT

TO THE HONORABLE F. W. HARE, JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, IN EQUITY.

COUNT ONE

Complainant claims of the Respondent EIGHT THOUSAND FORTY-THREE & 15/100 DOLLARS (\$8043.15), due from her by account on the fifth day of September, 1946, which sum of money with interest thereon, is still unpaid.

COUNT TWO

The Complainant claims of the Respondent EIGHT THOUSAND FORTY-THREE & 15/100 DOLLARS (\$8043.15), for merchandise, goods, and chattles sold by the Complainant to the Respondent during the months of March, April, May, June and July, 1946, which sum of money with interest thereon is still unpaid.

COUNT THREE

The Complainant claims of the Respondent EIGHT THOUSAND FORTY-THREE & 15/100 DOLLARS (\$8043.15), for work and labor done for Respondent by the Complainant at her request during the months of March, April, May, June, and July, 1946, which sum of money with interest thereon is still unpaid.

COUNT FOUR

The Complainant claims of the Respondent FOUR THOUSAND FORTY-THREE & 15/100 DOLLARS (\$4043.15), for breach of an undated written agreement entered into between the Complainant and the Respondent on, to-wit: During the month of March, 1946, which agreement was in substance as follows:

This agreement between Foley Building & Manufacturing Co. and Mrs. Calla Mai Tanner whereby Foley Building & Manufacturing Co. hereby agree to furnish all labor and materials to repair an existing structure by altering and rendering necessary repairs as instructed by Mrs. Calla Mai Tanner.

Mrs. Calla Mai Tanner hereby agrees to pay said Foley Building & Manufacturing Co. the total cost of said work including labor and materials plus a fee of 10% of the total cost. All Federal Tax and State Tax to be added to the 10% fee.

FOLEY BUILDING & MANUFACTURING CO.

(signed G.H. Bonie
Builder

(signed) Mrs. Calla Mai Tanner
Owner

Complainant avers that he complied with his provision of said contract; that he did furnish material, labor and supervision all in accordance

with said contract and as instructed by the Respondent; that he has made demand upon said Respondent for payment for the materials, labor and supervision furnished in compliance with said contract but that the Respondent refused to pay for said materials, labor and supervision in complying with said contract and after allowing credit for all monies paid by the Respondent there remains due the amount aforesaid which the Complainant claims with interest from, to wit: September 5, 1946.

The Complainant further avers that he had a verbal agreement with the Respondent as to which buildings were to be repaired and where they were located.

Complainant further avers that he had a verbal agreement with the Respondent that she was to pay for labor and materials and goods and merchandise on Saturday of each and every week.

The Complainant further alleges that the total of costs of work under this contract was FIVE THOUSAND NINE HUNDRED AND TWO & 86/100 DOLLARS (\$5,902.86), an itemized statement of which is shown in Exhibit A, which was filed as a part of the original bill of complaint, plus 10% of contractor's fee which amounted to FIVE HUNDRED NINETY & 29/100 DOLLARS (\$590.29), plus 10% contractor's fee on materials furnished by Respondent estimated at FIVE HUNDRED DOLLARS (\$500) or FIFTY DOLLARS (\$50), which make for a total cost under this contract of SIX THOUSAND FIVE HUNDRED FORTY-THREE & 15/100 DOLLARS (\$6,543.15). The Complainant further alleges that the Respondent has paid the sum of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500), under this agreement and further alleges and claims that there is a balance due on contract for repair of house and cottages of FOUR THOUSAND FORTY-THREE & 53/100 DOLLARS (\$4,043.53).

COUNT FIVE

Complainant claims of the Respondent FOUR THOUSAND & 00/100 DOLLARS (\$4000.00) for material, labor and supervision expended under an undated written agreement entered into between the Complainant and Respondent during the month of March, 1946, which agreement was in substance as follows:

AGREEMENT OF CONSTRUCTION

This agreement entered into by and between the Foley Building & Manufacturing Co. and Mrs. Calla Mai Tanner.

The Foley Building & Manufacturing Co. hereby agree to furnish all labor and materials necessary for a complete erection of Two (2) Cottages as shown on Plans and described on specifications herewith attached for the amount of \$4500.00.

Mrs. Calla Mai Tanner hereby agrees to pay to the Foley Building & Manufacturing Co. the above stated amount as set forth herewith below:

Upon signing of this contract the amount of \$1500.00 equal to one third of above total amount.

When structures are housed in the amount of \$1500.00 equal to one third of above total amount.

The balance to be paid upon completion and acceptance of job.

Any deviations from Plans shall be considered as extra if additional labor and material is required and shall be paid for in addition to above stated amount.

FOLEY BUILDING & MANUFACTURING CO.

(signed) G.H. Bonie

Builder

Accepted this the ____ day of March, 1946,

(signed) Mrs. Calla Mai Tanner

Owner

Witness:

(signed) G.H. B.

SPECIFICATION

Foundation: Foundation as shown on plans shall be laid with concrete blocks. Walls shall be 8" thick.

A concrete slab 5" thick shall be laid on fill properly tamped. A 2" course of dry sand shall be spread over surface before concrete is poured. Slab shall be trowled to a smooth finish.

Walls & Framing: All outside walls shall be framed of 2 x 4 storm sheathed with 1" boards. All partitions shall also be framed of 2 x 4 studs. All ceiling joints shall be 2 x 6 spaced 2-0 o.c. Rafters shall also be spaced 2-0 o.c. and properly braced.

All walls outside shall be covered with asbestos siding. Before applying siding a layer of felt shall be laid on all surfaces.

All walls and partitions inside shall be covered with sheet rock applied as per manufacturer specifications. All doors and windows shall be of sizes as shown on Plans.

Roof shall be decked with 1" boards and a layer of felt shall be applied before shingle are laid.

Screening: All windows and front porch shall be screened. Screens to be made and laid on frames and hung so as to be removable for storage or cleaning.

Roof: Roof surface shall be covered with 210# composition shingle of color selected.

Wiring: A complete wiring circuit shall be installed. All outlets to be as shown on Plans. All cable to be Romex. Allow \$5.00 for electric fixtures.

Plumbing: A complete system of plumbing shall be installed including septic tank with proper disposal field. Plumbing fixtures shall consist of 1 toilet, 1 lavatory, 1 sink and one built in shower stall.

Painting: All wood work inside shall receive two coats of enamel, all wood outside shall receive two coats of oil paint, All walls and ceiling inside shall receive one coat of Kentone paint of color selected.

The Complainant avers that he complied with his provisions of said contract and that he did furnish said materials, labor and supervision, all in accordance with said contract and that the Respondent accepted the said two completed cottages; and that at the request and insistence of the Respondent, he deviated from the plans and specifications, in that the Respondent requested him to erect the two cottages nearer the water on sloping ground which required much more material and labor to build up the front foundations of the cottages to the level of the ground at their rears and although the plans and specifications provided for open porches to the front of these cottages, at the request and insistence of the Respondent, he enclosed these

porches with glass windows all around and completed their interiors in much the same way as the interiors of the cottages themselves so as to make these "porches" in fact additional rooms to the cottages.

The Complainant further avers that the Respondent agreed to pay him FOUR THOUSAND FIVE HUNDRED & 00/100 DOLLARS (\$4,500) for erecting the cottages according to the plans and specifications and that she agreed to pay him for all additional labor and materials expended by him in deviating from the specifications which the Complainant alleges to be ONE THOUSAND & 00/100 DOLLARS (\$1,000) and the Complainant avers that the total amount owed by the Respondent for the two new cottages was FIVE THOUSAND FIVE HUNDRED & 00/100 DOLLARS (\$5,500) but the Complainant admits that the Respondent has paid him ONE THOUSAND FIVE HUNDRED & 00/100 DOLLARS (\$1,500) which leaves him a balance due him of FOUR THOUSAND & 00/100 DOLLARS (\$4,000) which he claims with interest from, to-wit: September 5, 1946.

COUNT SIX

The Complainant alleges that he is the original contractor who repaired and made additions to a dwelling house and two cottages and built two new cottages and performed all of the concrete work, water and sewage disposal and electrical work. Said real property being known as Mrs. Calla Mai Tanner's place at Bear Point, Baldwin County, Alabama, described as follows; to-wit:

Beginning 50 feet from the regular high tide line of Bay Oronoca (Perdido Bay) on the South side of Bear Point, at the Southeast corner or East line of Lot 4, known as the Julia Hudson Lot, running in a Northern direction parallel along said lot 306 feet, thence North 65° 30' East 500 feet, thence South 306 feet, running the same degrees as the aforesaid 306 feet line to the 50 feet avenue on Bay Oronoca, thence West to a point of beginning, containing 500 feet/square of 9.44 acres, all in Township 8 and 9 South, Range 5 East. It being the intention herein to describe the entire land upon which said buildings are situated.

The Complainant alleges that he furnished the materials, labor and supervision for repairing, making additions to and building said buildings at the request, insistence and with the knowledge of the Respondent; that the Respondent is the owner of the buildings and of the land upon which they are situated; that on September 5, 1946, there accrued an indebtedness due from Respondent to Complainant in the amount of EIGHT THOUSAND FORTY-THREE & 15/100 DOLLARS, (\$8,043.15), which, with interest, is claimed by Complainant from Respondent for such work, materials, labor and supervision furnished by Complainant as original contractor.

The Complainant further alleges that the main dwelling house, the old cottage, and the two new cottages and the water lines, sewers, and electrical wiring, all of which were either repaired or erected by the Complainant cover substantially all of the lands described above.

The Complainant further alleges that within six months from the accrual of said indebtedness, and on, to-wit: September 19, 1946, Complainant filed in the office of the Judge of Probate, Baldwin County, Alabama, a statement in writing, verified by oath of G.H. Bonie, a person having personal knowledge of the facts stated therein, containing the amount of the Complainant demand after all just credit had been given, together with the description of the property on which the lien is claimed in such manner that same may be located or identified and containing the name of Calla Mai Tanner, the owner of said buildings.

Complainant further alleges that no part of said indebtedness nor the interest thereon has been paid notwithstanding demand. And Complainant claims a lien on property described and prays that it is established.

PRAYER FOR PROCESS

To the end therefore, that equity be had in the premises, your Complainant prays that Your Honor will cause the usual writ of process to issue to the Respondent, requiring her to plead, answer or demur to the same within the time required by law and the practice of this Honorable Court.

PRAYER FOR RELIEF

Your Complainant further prays that on hearing of this cause will establish the Complainant's lien and condemn the property to sale for satisfaction thereof; but if Your Honor should find that your Complainant is not entitled to have a lien established and the property condemned to sale for satisfaction thereof, then your Complainant prays that you render a judgment in his favor for the amount of the indebtedness owed by the Respondent; your Complainant offers to do equity and further prays for such other, further, different and general relief as in equity may seem just and meet and Complainant will ever pray.

Forest A. Christian
Forest A. Christian

J. B. Blackburn
J.B. Blackburn
Attorneys for Complainant

An itemized statement of writing, verified by oath of G.H. Bonie, a person having personal knowledge of the facts stated therein, containing the amount of the Complainant's demand after all just credits have been given was attached and made a part of the original bill of complaint and is to be made a part hereof.

J. B. Blackburn

Filed 8-4-47
Alice J. Duck

1784

AMENDED BILL OF COMPLAINT

FOLEY BUILDING & MANUFACTURING CO.
G.H. BONIE, OWNER
Complainant

vs.

CALLA MAI TANNER

Respondent

Filed
8-4-47
Alice J. Neuch
Reg

G. H. BONIE, doing business as
FOLEY BUILDING AND MANUFACTUR-
ING COMPANY,

VS.

CALLA MAI TANNER,

Complainant,

Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NO. 1784.

AMENDED BILL OF COMPLAINT

Now comes the Complainant and amends the Bill of Complaint heretofore filed by him in this cause so that, as amended, it will read as follows:

1. The Complainant is over twenty-one years of age and a resident of Baldwin County, Alabama and is now and has continuously since prior to March 1, 1946 done business as Foley Building and Manufacturing Company. The Respondent, Calla Mai Tanner, is over twenty-one years of age and a resident of Baldwin County, Alabama.

2. During the month of March, 1946 and prior to March 22, 1946, the Complainant entered into a written agreement with the Respondent, which reads as follows:

"This agreement between Foley Building & Manufacturing Co. and Mrs. Calla Mai Tanner whereby Foley Building & Manufacturing Co. hereby agree to furnish all labor and materials to repair an existing structure by altering and rendering necessary repairs as instructed by Mrs. Calla Mai Tanner.

Mrs. Calla Mai Tanner hereby agrees to pay said Foley Building & Manufacturing Co. the total cost of said work including labor and materials plus a fee of 10% of the total cost. All Federal Tax and State Tax to be added to the 10% fee.

FOLEY BUILDING & MANUFACTURING CO.

(signed) G. H. Bonie
Builder

(signed) Mrs. Calla Mai Tanner"
Owner

After the said agreement was made and entered into between the Complainant and the Respondent, the Respondent directed the Complainant and his agents, servants and employees to repair a large residence, hotel or lodge owned by her and two cabins used

HINKLE SUPPLY COMPANY, INC.

WHOLESALE DISTRIBUTORS

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ATTIC FANS

Phone 4-4541 • 2923 Avenue E
BIRMINGHAM 1, ALA.

SOLD TO Mrs. Tanner
c/o H. M. Hamburg
Mutual Farmers Supply
Foley, Alabama

SHIPPED TO

Mutual Farmers Supply Foley, Alabama		D T O	TERMS	
DATE 4/12/46				
CUSTOMER'S ORDER NO.	OUR ORDER NO. 2142	F. O. B.	VIA Murray	
QUANTITY	DESCRIPTION		PER UNIT	TOTAL
1	Keg 7/8" Galv. Roofing Nails			7.82
20	Rolls 15# Tarred Felt		1.98	39.60
69	Sqrs. Red Blend Thickbutt Shgls.		5.06	<u>349.14</u>
				396.56
			Less 10%	<u>39.65</u>
				356.91
			S.T.	<u>7.14</u>
				✓ 364.05

INVOICE

GOODS COVERED BY THIS INVOICE WERE PRODUCED UNDER TERMS AND CONDITIONS OF EMPLOYMENT WHICH SATISFY ALL THE REQUIREMENTS OF THE FAIR LABOR STANDARDS ACT OF 1938.

ALLSET — MFD. BY THE EGGY REGISTER COMPANY, PATENTED

NOV 16 1950

THE STATE OF ALABAMA - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1950-51

1 Div.. 399

Callie Mai Tanner

v.

Foley Building and Manufacturing Company

Appeal from Baldwin Circuit Court, in Equity

SIMPSON, JUSTICE:

The amended bill seeks under one claim of lien to subject three and 44/100 acres of land and improvements thereon, not within a city, town or village, to a mechanic's and material-man's lien for work and labor done and materials furnished the defendant by the plaintiff under two separate contracts. The statement of lien is, "That the said Foley Building & Manufacturing Co. claims a lien upon the following property, situated in Baldwin County, Alabama, to wit: (describing by metes and bounds the three and 44/100 acres)." and, "This lien is claimed, separately and severally, as to both the buildings and improvements thereon." Then follows an itemized statement of the account.

According to the averments of the bill there were two contracts for the improvement of the property, one for the repair and alteration of a dwelling house and two appurtenant cottages, a balance due on which is claimed to be \$4,043.15, and a second contract executed the same month for the construction of two new cottages on the land, a balance due on which is alleged to be \$4,000. The claim of lien filed in the probate office is too indefinite in describing the buildings on which the \$4,043.15 is due, the only mention thereof being of a balance due on contract for repairs of house and cottages, \$4,043.15 - how many or whether these were the only existing buildings does not appear. The statement of lien, however, as to the new cottages is specific and shows the total price with credits and the balance due.

The effort of the bill is to enforce both liens under the one statement of lien against the entire three and 44/100 acres of land, together with the alleged three repaired houses and the two new structures on the averment that: "The three houses which were repaired by the Complainant for the Respondent and situated on the same tract of land and the two houses which were built by the Complainant for the Respondent and situated on the same tract of land . . . together with the electric wiring, sewer lines and water pipes, are so situated that they cover the entire tract of land which is under one fence, except for less than one acre thereof."

Against apt grounds of demurrer that (1) the property was not sufficiently described, (2) that it is not permissible to enforce the two liens under one claim of lien, (3) that the bill was without equity, and (4) that it was multifarious, the trial court held the bill good, and this appeal challenges the correctness of those rulings.

The law is further very specific that when the plaintiff seeks to enforce a lien not only on the building or improvement erected, repaired, or altered, etc., but also on the "one acre" allowed by the statute (§ 45), the statement of lien as well as the complaint must each describe the one acre with reasonable and convenient certainty so that it may be identified and separated from the residue of the tract; and since such a statutory lien is in derogation of the common law, it is to be strictly construed, all matters of substance of necessity to be complied with. - Fowler v. Mackenters, 233 Ala. 458, 172 So. 266; Badsole v. Peters, 79 Ala. 133; Turner v. Robbins, 78 Ala. 592; 84 A.L.R. 134, note 1; 37 C. J. 309.

From a review of the authorities, some of which are cited, it is made apparent that the bill is not good as one to subject the entire three and 44/100 acres of land to the claim of lien. Each claim of lien as regards the "one acre" of land must stand separate with a proper and definite description so that if the facts should warrant its condemnation, it would be specific and definite enough to be separated from the remainder of the land. In this the bill is singularly lacking. This case is readily distinguishable from the cases of Alabama State Fair & Agricultural Association v. Alabama Gas Fixture & Plumbing Co., 131 Ala. 256, 31 So. 26, where the unit of land sought to be subjected to the lien was one parcel of land within the city of Birmingham, all of which, under the statute, was subject to the lien; and Jefferson Plumbers & Mill Supply Co. v. Peebles, 195 Ala. 698, 72 So. 413, where the claim of lien under the two agreements was in the construction of one building.

But our cases are also agreed that if the description of the improvement and the land on which it is situate is sufficiently described in the statement of lien and the bill of

complaint, a lien may be enforced upon the improvement and the land on which the improvement rests, even though not as to the additional one acre. - Fowler v. Mackentepe, 233 Ala. 458, 462(4), 172 So. 266; Wood Lumber Co. v. Greathouse, 226 Ala. 644, 148 So. 125; Turner v. Robinson, *supra*; Bedgole v. Peters, *supra*; Robinson v. Crotwell Bros. Lumber Co., 167 Ala. 566, 52 So. 733.

We hold, therefore, that the bill is not good for the enforcement of a lien against the entire properties or against the three alleged repaired dwellings and one acre in addition thereto, or against the one acre adjacent to the two newly erected cottages, for the lack of a certain and definite description; nor is the lien enforceable on the buildings which it is alleged were repaired for like lack of a proper description of same.

But as to the two newly erected cottages and the land upon which situated, the description impresses us as being definite enough within the rule of the authorities to permit the enforcement of the \$4,000 lien against them and the land on which these cottages are situated. As to this right, we think the case of Fowler v. Mackenteps, *supra*, is controlling, where a lien was enforced against the building or improvement and the land on which situated (denying the claim for the additional one acre), the description of the land being one acre in addition to the land on which the building rested in an eighty-acre, more or less, tract. Here the lien is claimed on the two new cottages constructed under the contract and the land on which situated, described as being in the three and 44/100 acre tract. As was said in Fowler v. Mackentepe, 233 Ala., 462:

. . . The description employed in the claim filed in the probate office and that contained in the bill are definite as applied to the improvement and the land on which the improvement rests. And the lien may be enforced to that extent, and not to an additional acre of

6.

adjacent land. Wood Lumber Co. v. Great-house, 230 Ala. 362, 363, 161 So. 236. In the final decree, if the facts warrant, a lien may be enforced upon the improvement and the land on which that improvement rests; the enforcement of a lien upon the additional . . . land will be denied under the description thereof contained in the claim filed in the probate office and made an exhibit to this bill."

It results from the foregoing that the bill was demurrable seeking to enforce a lien on the entire three and 44/100 acres, the only lien subject to enforcement being that on the two new cottages and the land on which situated.

It is also clear that the bill does contain equity and when amended to seek enforcement of the single equitable right indicated above, it will not be multifarious.

A decree will be here entered sustaining the demurrer to the bill as amended.

Reversed, rendered and remanded.

Brown, Livingston, and Lawson, JJ., concur.

HINKLE SUPPLY COMPANY, INC.

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Phone 4-4541 • 2923 Avenue E
BIRMINGHAM 1, ALA.

S
O
L
D
T
O

Mr. Tanner
c/o H. M. Hamburg
Mutual Farmers Supply
Foley, Alabama

S
H
I
P
P
E
D
T
O

CUSTOMER'S ORDER NO.	OUR ORDER NO.	DATE	F. O. B.	VIA	TERMS
	2350	4/22/46		Murray	

QUANTITY	DESCRIPTION	PER UNIT	TOTAL
35	Sqrs. Dover White Asbestos Siding Shgls.	6.96	243.60
39	Cartons J. M. Rock Wool 1494.87 sq. ft.	55.00	<u>82.22</u>
			325.82
		Less 10%	<u>32.58</u>
			293.24
		S.T.	<u>5.86</u>
			299.10

INVOICE

GOODS COVERED BY THIS INVOICE WERE PRODUCED UNDER TERMS AND CONDITIONS OF EMPLOYMENT WHICH SATISFY ALL THE REQUIREMENTS OF THE FAIR LABOR STANDARDS ACT OF 1938.

ALLSET — MFD. BY THE EGRY REGISTER COMPANY, PATENTED

HINKLE SUPPLY COMPANY, INC.

WHOLESALE DISTRIBUTORS

ROOFING • SHEET METAL • SUPPLIES
STOKERS • FURNACES
ATTIC FANS

Phone 4-4541 • 2923 Avenue E
BIRMINGHAM 1, ALA.

SOLD TO Mrs. Tanner
c/o H. M. Hamburg
Mutual Farmers Supply
Foley, Alabama

SHIPPED TO

DATE 5/18/46

CUSTOMER'S ORDER NO.

OUR ORDER NO.

F. O. B.

VIA

2543

Murray

TERMS

QUANTITY	DESCRIPTION	PER UNIT	TOTAL
11	Sqrs. Red Blend Thickbutt Shgls.	5.38	59.18
	Less 10%		<u>5.92</u>
			53.26
		S.T.	<u>1.07</u>
			54.33

*Respondents
Exhibit 2*

INVOICE

GOODS COVERED BY THIS INVOICE WERE PRODUCED UNDER TERMS AND CONDITIONS OF EMPLOYMENT WHICH SATISFY ALL THE REQUIREMENTS OF THE FAIR LABOR STANDARDS ACT OF 1938.

ALLSET — MFD. BY THE EGGY REGISTER COMPANY, PATENTED

FOLEY, ALA.

May

1956

Mrs. C. Tanne

Bear Point, Ala

IN ACCOUNT WITH

RINGLER ELECTRIC CO.

• ELECTRICAL CONSTRUCTION

• MAINTENANCE

• REPAIRS

PHONE 280-G

FOLEY, ALABAMA

<i>Electrical Wiring</i>	<i>Lodges</i>
<i>and Extras on</i>	
<i>colleges</i>	<i>\$130.00</i>

Paid in Full

E. Ringler

Respondents
Exhibit 3



No. _____

FOLEY, ALA.

March 12th., 1936

PAY TO THE
ORDER OF

Foley Building & Manfg. Co.

\$ 1500.00

One Thousand Five Hundred and 00/100

DOLLARS

For Payment of Cottages.

to FARMERS & MERCHANTS BANK

FOLEY, ALA.

Two Ella Mae Tammes



FARMERS & MERCHANTS BANK 61-292

FOLEY, ALA. May 3rd 1946 No.

PAY TO THE
ORDER OF

Foley Bed & Bath Co.

\$750

00

Seven Hundred Fifty

DOLLARS

Mrs. Calla Mae Moore



FARMERS & MERCHANTS BANK 61-292

FOLEY, ALA. *May 10th* 19*46* NO.

PAY TO THE
ORDER OF

Foley Bldg Bldg Co.

\$750

00

Seven Hundred fifty

00

DOLLARS

Mrs. Calla Mai Tanner

THIS CHECK IS NOT VALID UNLESS SIGNED BY THE CASHIER



FARMERS & MERCHANTS BANK 61-292

FOLEY, ALA. *June 4th* 19*46* No. *00*

PAY TO THE
ORDER OF

Bonnie

\$1000

One Thousand

DOLLARS

Payment on repairs on
house;

Mrs. Calla Mae Tanner