

STATE OF ALABAMA

BALDWIN COUNTY

WILLIAM J. HOOPER and  
GWENDOLYN R. HOOPER,

Plaintiffs,

vs.

SCHOLZ HOMES, INC., a  
corporation,

Defendant.

) IN THE CIRCUIT COURT OF  
)  
) BALDWIN COUNTY, ALABAMA  
)  
) AT LAW, CASE NO. 8895  
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TO: LOUISE DUESENBERY, GREETING:

Know ye, that we, reposing confidence in your integrity, skill and ability, have appointed you Commissioner to take the testimony of WILLIAM J. HOOPER, GWENDOLYN R. HOOPER and ODELL ROBINSON, in a suit pending in the Circuit Court of Baldwin County, Alabama, wherein WILLIAM J. HOOPER and GWENDOLYN R. HOOPER are the Plaintiffs, and SCHOLZ HOMES, INC., a corporation, is the Defendant, and we hereby authorize and empower you to call and cause to come before you WILLIAM J. HOOPER, GWENDOLYN R. HOOPER and ODELL ROBINSON, said witnesses, and their depositions on oath or affirmation to take, as well for the Defendant, touching upon their knowledge of the matters and things in controversy in said suit, which deposition, when so taken shall be signed by said witnesses and certified by you as Commissioner acting herein; and you are further commanded, the depositions, when so taken, with this commission, to return under your hand and seal to the Clerk of said Court, with all convenient speed.

WITNESS my hand this the \_\_\_\_\_ day of \_\_\_\_\_,  
1969.

\_\_\_\_\_  
CLERK OF THE CIRCUIT COURT, BALDWIN  
COUNTY, ALABAMA

Defendant.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW, CASE NO. 8895

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon GWENDOLYN R. HOOPER personally to be and appear before me as Commissioner, at 10 o'clock A.M. on the 2nd day of December, 1969, at the Law Library in the Baldwin County Court House in Bay Minette, Alabama, until discharged by due course of law, to give evidence and the truth to speak in behalf of the Defendant in a cause now pending in said Court, wherein WILLIAM J. HOOPER and GWENDOLYN R. HOOPER are Plaintiffs, and SCHOLZ HOMES, INC., a corporation, is Defendant, and have you then and there this Writ and with your endorsement thereon.

WITNESS my hand, this the 10 day of November,  
1969.

Lance Rosenberg  
COMMISSIONER

**F I**

NOV 10-69

**Alice**

2411-10-69

To be served  
on  
Brendelyn Hooper

no. 8895

William J. Hooper  
et al

vs.

Scholz Homes  
Inc

Received 18 day of Mar 1969  
and on 12 day of Mar 1969  
I served a copy of the within noting  
on Brendelyn Hooper  
By service on \_\_\_\_\_

TAYLOR WILKINS, Sheriff  
By W. A. Wilkins D. S.

J. D. Dole

DIV. NO. \_\_\_\_\_

CERTIFICATE OF APPEAL. (Civil Cases.)

No. 8895

THE STATE OF ALABAMA

BALDWIN County.

I, Alice J. Duck, Clerk of the Circuit Court of Baldwin County, in and for said State and County, hereby certify that the foregoing pages numbered from one to \_\_\_\_\_, both inclusive, contain a full, true and complete transcript of the record and proceedings of said Court in a certain cause lately therein pending wherein William J. Hooper and Gwendolyn R. Hooper

was plaintiff, and Scholz Homes, Inc., a corporation

was Defendant, as fully and completely as the same appears of record in said Court.

And I further certify that the said Scholz Homes, Inc., a corporation did on the 15th day of July, 1970, pray for and obtain an appeal from the judgment of said Court to the Supreme Court of Alabama to reverse said judgment of said Court upon entering into bond with Scholz Homes, Inc., a corp., as Principal and St. Paul Fire & Marine Insurance Co., as surety thereon, which said bond has been approved by me.

Witness my hand and the seal of said Circuit Court of Baldwin County is hereto affixed, this the 15 day of July, 1970

Alice J. Duck  
Clerk of the Circuit Court of  
BALDWIN County, Alabama.

(Code 1940, Title 7, Sec. 767)

Defendant.

AT LAW, CASE NO. 8895

COMMISSIONER

Received 10 day of Nov 1969  
and on 10 day of Nov 1969  
I served a copy of the within notice  
on Odell Robinson

By service on \_\_\_\_\_

TAYLOR WILKINS, Sheriff  
By W. A. Gilbert D. S.

John D. Doe

to be served  
on

Odell Robinson

no. 8895

William J. Hooper  
et al

vs

Scholz Homes  
Inc.

WILLIAM J. HOOPER and  
GWENDOLYN R. HOOPER,

Plaintiffs,

vs.

SCHOLZ HOMES, INC., a  
corporation,

Defendant.

) IN THE CIRCUIT COURT OF

) BALDWIN COUNTY, ALABAMA

) AT LAW, CASE NO. 8895

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon WILLIAM J. HOOPER personally to be and appear before me as Commissioner, at 10 o'clock A.M. on the 2nd day of December, 1969, at the Law Library in the Baldwin County Court House in Bay Minette, Alabama, until discharged by due course of law, to give evidence and the truth to speak in behalf of the Defendant in a cause now pending in said Court, wherein WILLIAM J. HOOPER and GWENDOLYN R. HOOPER are Plaintiffs, and SCHOLZ HOMES, INC., a corporation, is Defendant, and have you then and there this Writ and with your endorsement thereon.

WITNESS my hand, this the 10 day of November,  
1969.

Louise R. Rouse  
COMMISSIONER

FILED

NOV 10 1969

ALICE J. F. [unclear]

no. 8895

to be served on  
William J. Hooper

William J. Hooper  
et al

vs.  
Scholz Homes  
Inc.

Received 18 day of Nov 1969  
and on 18 day of Nov 1969  
I served a copy of the within Notice  
on William J. Hooper  
By service on \_\_\_\_\_

TAYLOR WILKINS, Sheriff  
By W. J. Wilkins D. S.

John V. Dock



WILLIAM J. HOOPER and )  
GWENDOLYN R. HOOPER,

Plaintiffs,

VS.

SCHOLZ HOMES, INC., a  
corporation,

Defendant. )

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW, CASE NO. 8895

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon GWENDOLYN R. HOOPER personally to be and appear before me as Commissioner, at 10 o'clock A.M. on the 2nd day of December, 1969, at the Law Library in the Baldwin County Court House in Bay Minette, Alabama, until discharged by due course of law, to give evidence and the truth to speak in behalf of the Defendant in a cause now pending in said Court, wherein WILLIAM J. HOOPER and GWENDOLYN R. HOOPER are Plaintiffs, and SCHOLZ HOMES, INC., a corporation, is Defendant, and have you then and there this Writ and with your endorsement thereon.

WITNESS my hand, this the 10 day of January.

Les Bouchery  
COMMISSIONER

**FILED**

NOV 10 1969

ALICE J. BROWN

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW, CASE NO. 8892

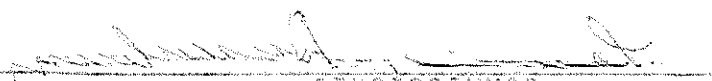
WILLIAM J. HOOPER and  
Gwendolyn R. Hooper,  
Plaintiffs,  
vs.  
SCHOLZ HOMES, INC., a  
corporation,  
Defendant.

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon GWENDOLYN R. HOOPER

personally to be and appear before me as Commissioner, at 10 o'clock  
A.M. on the 2nd day of December, 1968, at the Law Library in the  
Baldwin County Court House in Bay Minette, Alabama, until dis-  
charged by due course of law, to give evidence and the truth to  
speak in behalf of the Defendant in a cause now pending in said  
Court, wherein WILLIAM J. HOOPER and GWENDOLYN R. HOOPER are plain-  
tiffs, and SCHOLZ HOMES, INC., a corporation, is Defendant, and  
have you then and there this writ and with your endorsement there-  
on.

WITNESS my hand, this the 10 day of December,  
1968.

  
COMMISSIONER

FILED

NOV 10 1968

ALICE J. BROWN

8892



WILLIAM J. HOOPER and  
GWENDOLYN R. HOOPER,

Plaintiffs,

vs.

SCHOLZ HOMES, INC., a  
corporation,

Defendant.

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IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW, CASE NO. 8895

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon ODELL ROBINSON personally to be and appear before me as Commissioner, at 10 o'clock A.M. on the 2nd day of December, 1969, at the Law Library in the Baldwin County Court House in Bay Minette, Alabama, until discharged by due course of law, to give evidence and the truth to speak in behalf of the Defendant in a cause now pending in said Court, wherein WILLIAM J. HOOPER and GWENDOLYN R. HOOPER are Plaintiffs, and SCHOLZ HOMES, INC., a corporation, is Defendant, and have you then and there this Writ and with your endorsement thereon.

WITNESS my hand, this the 10 day of November,  
1969.

  
COMMISSIONER

no. 8895

Wm. J. Hooper  
vs. Schab, James Luc.

JURY LIST - JUNE 15, 1970

- ~~1. Anderson, Raymond, Farmer, Summerdale~~
- ~~2. Baggett, M. H., Civil Service, Stapleton~~
- ~~3. Barbarow, Cecil E., Retired, Bay Minette~~
- ~~4. Brasley, Nelson C., Store Owner, Bay Minette~~
- ~~5. Broughton, Joe N., Merchant, Cross Roads~~
- ~~6. Floyd, Bung, Merchant, Fairhope~~
- ~~7. Clopton, Eddie, Janitor, Bay Minette~~
- ~~8. Cox, V. A., Jr., Stockton~~
- ~~9. Fell, Neal J., Farmer, Lillian~~
- ~~10. Flowers, Elvin A., Farmer, Robertsdale~~
- ~~11. Hardy, Frankk, Janitor, Bay Minette~~
- ~~12. Head, Mary Lou, Stapleton~~
- ~~13. Johnson, Ralph R., Minister, Bay Minette~~
- ~~14. Lazzari, Joe, Jr., Farmer, Belforest~~
- ~~15. Leatherwood, L. J., Teacher, Bay Minette~~
- ~~16. Leatherwood, Ruby, Teacher, Bay Minette~~
- ~~17. Lynd, Joe E., Plumber, Bay Minette~~
- ~~18. Manning, Wesley W., Civil Service, Foley~~
- ~~19. Means, Vera, Teacher, Bay Minette~~
- ~~20. Morse, Wilson W., Civil Service, Foley~~
- ~~21. Palmer, James J., Farmer, Robertsdale~~
- ~~22. Roberts, Howard, Civil Service, Stapleton~~
- ~~23. Rockwell, Oliver M., Fairhope~~
- ~~24. Ruple, Leroy, Engineer, Bay Minette~~
- ~~25. Valrie, William, Daphne Pottery, Daphne~~
- ~~26. Whidbee, Ellis, Shipyard Worker, Perdido~~
- ~~27. Whidbee, Melzie, Shipyard Worker, Perdido~~
- ~~28. Wright, Justice D., Forester, Bay Minette~~
- ~~29. Brabner, Martin J., Jr., South Central Bell, Bay Minette~~
- ~~30. Calloway, John, Fisherman, Gulf Shores~~
- ~~31. Chestang, Jas. Paper Mill, Bay Minette~~
- ~~32. Day, Bernice, Stockton~~
- ~~33. Packler, Paul, W., Mechanic, Loxley~~
- ~~34. Friel, W.E., Retired, Bay Minette~~
- ~~35. Gilbert, Annie Ree, Housewife, Bay Minette~~
- ~~36. Hudson, Ethel, Maid, Bay Minette~~
- ~~37. Myrick, T.C., Fairhope~~
- ~~38. Smith, Columbus, Retired, Stockton~~
- ~~39. Therrell, E. L. Doris, Housewife, Daphne~~
- ~~40. Trawick, Emma D., Stockton~~
- ~~41. Ward, John, International Paper Spanish Fort~~
- ~~42. Whitten, Lewis S., Electrician, Fairhope~~
- ~~43. Wolff, Bernette K., Housewife, Stockton~~
- ~~44. Wrenn, Walter P., Retired, Bay Minette~~
- ~~45. Wrenn, Wynona Housewife, Bay Minette~~
- ~~46. Stacey, William B., Operator Union Carbide, Bay Minette~~

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STATE OF ALABAMA

BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon Scholz Homes, Inc., a Corporation to appear within thirty days from the service of this writ in the Circuit Court to be held for said County at the place of holding same, then and there to answer the Complaint of William J. Hooper and Gwendolyn R. Hooper.

Witness my hand, this the 26 day of Sept 1969.

Alice J. Luck  
CLERK

WILLIAM J. HOOPER and  
GWENDOLYN R. HOOPER

PLAINTIFFS

VS

SCHOLZ HOMES, INC.,  
A Corporation

DEFENDANT

) IN THE CIRCUIT COURT OF  
)  
) BALDWIN COUNTY, ALABAMA

) AT LAW

) NUMBER: 8895

1.

The Plaintiffs claim of the Defendant NINETEEN-THOUSAND NINE-HUNDRED EIGHTY-NINE and TWENTY-SIX/100 (\$19,989.26) DOLLARS damages, for that on to-wit: the 4th day of February, 1969 the Defendant represented to Plaintiffs that the cost of a certain home, viz, Defendant's House Plan known as Meadow Branch Inline Plan #51023 was the sum of FORTY-SEVEN-THOUSAND SIX-HUNDRED and NO/100 (\$47,600.00) DOLLARS.

That Plaintiffs were thereby induced to purchase certain materials from Defendant for the construction of a home of the value of TWENTY-TWO-THOUSAND SIX-HUNDRED EIGHTY-EIGHT and SIXTY-ONE/100 (\$22,688.61) DOLLARS and to incur expenses for the construction of such home.

That said representation were false and were known to Defendant at the time they were made to be false and were made with the intent to deceive Plaintiffs.

That the Plaintiffs purchased the said materials from Defendant, that they engaged a Contractor approved by Defendant, that they performed all matters as directed and suggested by Defendant and employed Defendant's Engineer and Consultant for

the purpose of building said home and that the cost of building the said home exceeded SIXTY-SEVEN-THOUSAND SEVEN-HUNDRED EIGHTY-NINE and TWENTY-SIX/100 (\$67,789.26) DOLLARS, all to the damage of Plaintiffs.

2.

The Plaintiffs claim of the Defendant NINETEEN-THOUSAND NINE-HUNDRED EIGHTY-NINE and TWENTY-SIX/100 (\$19,989.26) dollars damages, for that on to-wit the 4th day of February, 1969 the Defendant acting by and through its agent, servant or employee who was then and there acting in the line and scope of his employment represented to the Plaintiffs that a certain home, viz, Defendant's House Plan known as Meadow Branch Inline Plan #51023 was the sum of FORTY-SEVEN-THOUSAND SIX-HUNDRED and NO/100 (\$47,600.00) DOLLARS.

That Plaintiffs were thereby induced to purchase certain materials from Defendant for the construction of a home of the value of TWENTY-TWO-THOUSAND SIX-HUNDRED EIGHTY-EIGHT and SIXTY-ONE/100 (\$22,688.61) DOLLARS and to incur expenses for the construction of such home

That said representation were false and were known to Defendant at the time they were made to be false and were made with the intent to deceive Plaintiffs.

That the Plaintiffs purchased the said materials from Defendant, that they engaged a Contractor approved by Defendant, that they performed all matters as directed and suggested by Defendant and employed Defendant's Engineer and Consultant for the purpose of building said home and that the cost of building the said home exceeded SIXTY-SEVEN-THOUSAND SEVEN-HUNDRED EIGHTY-NINE and TWENTY-SIX/100 (\$67,789.26) DOLLARS, all to the damage of Plaintiffs.

3.

The Plaintiffs claim of the Defendant the sum of NINETEEN-THOUSAND NINE-HUNDRED EIGHTY-NINE and TWENTY-SIX/100 (\$19,989.26) DOLLARS damages, for that on to-wit: the 4th day of February, 1969 and on divers days before and after that date the Defendant represented to Plaintiffs that the cost of a certain home, viz, Defendant's House Plan known as Meadow Branch Inline Plan #51023

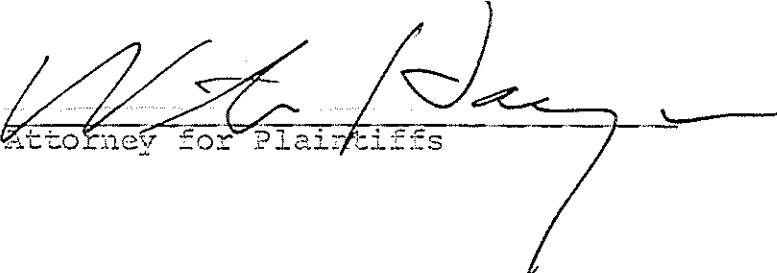
was the sum of FORTY-SEVEN-THOUSAND SIX-HUNDRED and NO/100  
(\$47,600.00) DOLLARS.

That the said representation was made to induce  
Plaintiffs to purchase certain materials for the construction of  
a home; that the representations were false, that they were made  
wilfully to deceive, or recklessly without knowledge, and that  
such representations were relied upon by Plaintiff and acted upon  
in that Plaintiffs purchased materials for the building of a  
home from Defendant and that the said home exceeded in costs the  
amount represented by Defendant, all to the damage of Plaintiffs.

  
Attorney for Plaintiffs

Plaintiffs demand trial by  
jury.

This the 26<sup>th</sup> day of September, 1969.

  
Attorney for Plaintiffs

FILED

SEP 26 1969

ALICE J. DUCK CLERK  
REGISTER



RECEIVED

SEP 26 1969

TAYLOR WILKINS  
SHERIFF

Courtney R. Remele

TAYLOR WILKINS, Sheriff  
By Deanna D.S.

By service on Courtney R. Remele

Received Sept 26 day of Sept 1969  
and on 3 day of Oct 1969  
I served a copy of the within 1969  
on Scholz Homes, Inc., Corp.

8895

Wm. J. Hooper  
of  
Dw. endolyn R. Hooper

vs.

Scholz Homes  
Inc. a corp.

FILED

SEP 26 1969

ALICE J. DUCK CLERK  
REGISTER

W. Hayes

use the jury find for the Plaintiff  
and award for his damages  
in the amount of \$13,500 plus  
interest

Mrs. Elvira Howell

WILLIAM J. HOOPER and )  
GWENDOLYN R. HOOPER, )  
Plaintiffs, )  
vs. )  
SCHOLZ HOMES, INC., a )  
corporation, )  
Defendant. )

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW, CASE NO. 8895

DEMURRER

Comes now the Defendant in the above styled cause, and demurs to the Bill of Complaint filed herein and for grounds thereof assigns the following separately and severally:

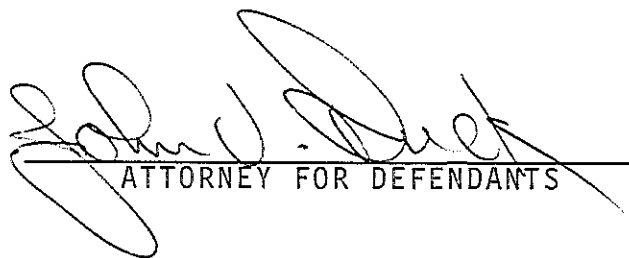
1. That Count One of the Bill of Complaint does not state a cause of action
2. That Count One of the said Bill of Complaint fails to allege by whom any false representation was made to the Plaintiffs.
3. That Count One of the said Bill of Complaint alleges no agency.
4. That Count One of the said Bill of Complaint fails to allege that the Plaintiffs acted on any misrepresentation by the Defendant.
5. That the allegations contained in Count One of the Bill of Complaint are mere conclusions of the pleader.
6. That Count Two of the Bill of Complaint does not state a cause of action.
7. That said Count Two fails to allege the name of any agent, servant or employee of the Defendant.
8. That said Count Two of the Bill of Complaint fails to allege that the Plaintiffs acted on any false representation made by the Defendant.
9. That said Count Two of the Bill of Complaint fails to allege any contractual obligation between the Plaintiff and the Defendant.

10. That the allegation in Paragraph Three of Count Two of the Bill of Complaint wherein it says "That said representation were false and were known to Defendant at the time they were made to be false and were made with the intent to deceive Plaintiffs", is a mere conclusion of the pleader.

11. That said Count Three of the Bill of Complaint does not state a cause of action.

12. That said Count Three fails to allege any agency on the part of the Defendant.

13. That said Count Three fails to allege any duty owing from the Defendant to the Plaintiff. That the said Bill of Complaint alleges only statements regarding a future event and not a material fact.

  
ATTORNEY FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the opposing party in the foregoing matter with a copy of this pleading by depositing in the United States Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 14 day of October 1969

  
Attorney for Defendant

FILED

OCT 15 1969

ALICE J. DUCK

CLERK  
REGISTER

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FILED

OCT 15 1969

ALICE J. BURK CLERK  
REGISTER

Defendant.


IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW, CASE NO. 8895

NOTICE OF TAKING DEPOSITION

TO: Honorable Wilson Hayes  
Attorney at Law  
Bay Minette, Alabama

You will please take notice that at 10 o'clock A.M. on the 2nd day of December, 1969, the Defendant will take the depositions of WILLIAM J. HOOPER, GWENDOLYN R. HOOPER and ODELL ROBINSON at the Law Library in the Baldwin County Court House in Bay Minette, Alabama pursuant to Act No. 375 of the Legislature of the State of Alabama, September 8, 1955, before LOUISE DUESENBERY, or such other officer authorized to administer oaths in the County of Baldwin, State of Alabama, and duly authorized to take depositions and swear witnesses in said County in said State. The oral examination will continue from day to day until completed and you are invited to attend and participate in the taking of said deposition.

Dated this the 7<sup>th</sup> day of November, 1969.

  
ATTORNEY FOR DEFENDANT

**CERTIFICATE OF SERVICE**

This is to certify that I have this day served counsel for the opposing party in the foregoing matter with a copy of this pleading by depositing in the United States Mail a copy of same in a properly addressed envelope with adequate postage thereon.

7<sup>th</sup>  
This..... day of..... November 60

Attorney for

**FILED**

NOV 19 1969

**ALICE J. BUCK** CLERK  
RLO 112

24 11-10-68

to be served  
on  
William Hayes

8895

William J. Hooper  
et al

VS

Scholey Homes  
Inc

FILED

NOV 10 1969

ALICE J. DUCK CLERK  
REGISTER

Scholey Homes

Received 10 day of Nov 1969  
and on 10 day of Nov 1969  
I served a copy of the within  
on William Hayes  
By service on  
TAYLOR WILKINS, Sheriff  
D. J.

STATE OF ALABAMA

BALDWIN COUNTY

WILLIAM J. HOOPER and  
GWENDOLYN R. HOOPER,

Plaintiffs,

vs.

SCHOLZ HOMES, INC., a  
corporation,

Defendant.

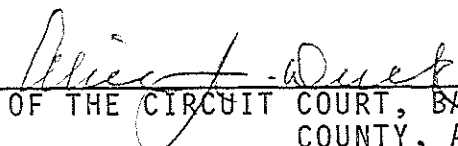
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IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW, CASE NO. 8895

TO: LOUISE DUESENBERRY, GREETING:

Know ye, that we, reposing confidence in your integrity, skill and ability, have appointed you Commissioner to take the testimony of WILLIAM J. HOOPER, GWENDOLYN R. HOOPER and ODELL ROBINSON, in a suit pending in the Circuit Court of Baldwin County, Alabama, wherein WILLIAM J. HOOPER and GWENDOLYN R. HOOPER are the Plaintiffs, and SCHOLZ HOMES, INC., a corporation, is the Defendant, and we hereby authorize and empower you to call and cause to come before you WILLIAM J. HOOPER, GWENDOLYN R. HOOPER and ODELL ROBINSON, said witnesses, and their depositions on oath or affirmation to take, as well for the Defendant, touching upon their knowledge of the matters and things in controversy in said suit, which deposition, when so taken shall be signed by said witnesses and certified by you as Commissioner acting herein; and you are further commanded, the depositions, when so taken, with this commission, to return under your hand and seal to the Clerk of said Court, with all convenient speed.

WITNESS my hand this the 10 day of Nov,  
1969.

  
CLERK OF THE CIRCUIT COURT, BALDWIN  
COUNTY, ALABAMA

No. 4895

William J. Hooper  
et al

vs

Scholz Ames  
Inc.

6/10/95



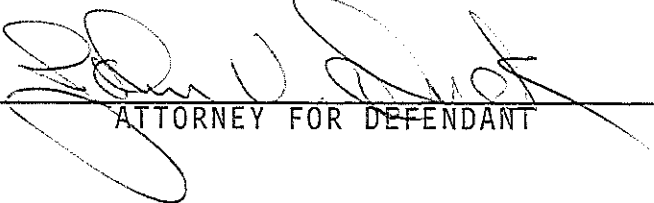
WILLIAM J. HOOPER and )  
GWENDOLYN R. HOOPER, )  
Plaintiffs, )  
vs. )  
SCHOLZ HOMES, INC., )  
a corporation, )  
Defendant. )

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW, CASE NO. 8895

PLEA

Comes now the Defendant in the above styled cause, and for plea to the Bill of Complaint filed herein, assigns the following separately and severally:

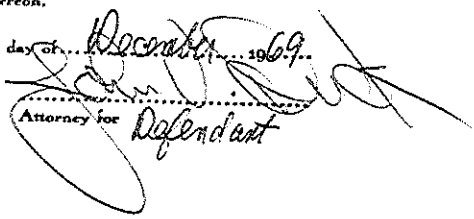
1. That the said Defendant pleads not guilty to each and every count of the said Bill of Complaint.

  
ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the opposing party in the foregoing matter with a copy of this pleading by depositing in the United States Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 10<sup>th</sup> day of December, 1969.

  
Attorney for Defendant

FILED

DEC 12 1969

ALICE J. DUCK

CLERK  
REGISTER

8895

WILLIAM J. HOOPER and  
GWENDOLYN R. HOOPER,

Plaintiffs,

vs.

SCHOLZ HOMES, INC., a  
corporation,

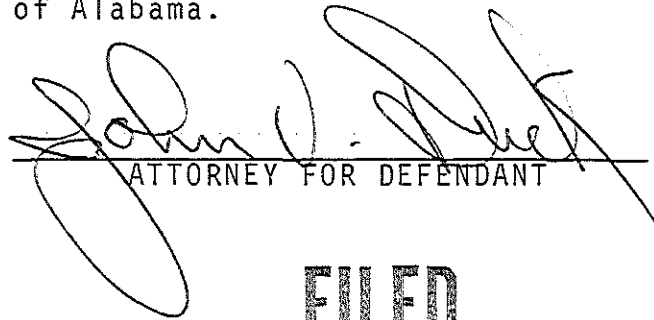
Defendant.

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IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW, CASE NO. 8895

NOTICE OF APPEAL

Comes now the Defendant, SCHOLZ HOMES, INC., a corporation,  
Defendant in the above styled cause, and gives notice of appeal  
from the judgment of the Circuit Court rendered on the 19th day of  
June, 1970, to the Supreme Court of Alabama.

  
ATTORNEY FOR DEFENDANT

**FILED**

JUL 15 1970

**ALICE J. DUCK** CLERK  
REGISTER

WILLIAM J. HOOPER and  
GWENDOLYN R. HOOPER,

Plaintiffs,

vs.

SCHOLZ HOMES, INC., a  
corporation,

Defendant.

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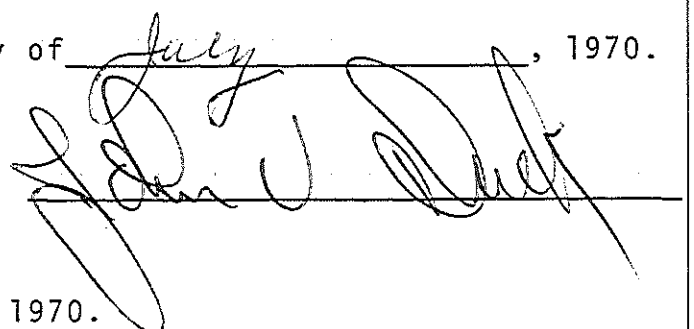
IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW, CASE NO. 8895

SECURITY FOR COSTS

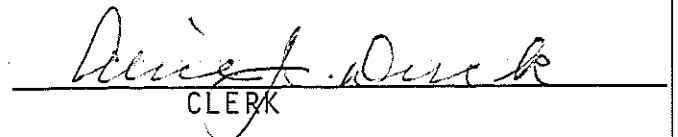
Comes now the Defendant, SCHOLZ HOMES, INC., a corporation,  
and appeals from the judgment of the Circuit Court of Baldwin  
County, Alabama on the 19th day of June, 1970.

The undersigned acknowledge themselves security for costs  
of this said appeal.

Done this the 15 day of July, 1970.



Approved 7-15-, 1970.

  
CLERK

WILLIAM J. HOOPER and )  
GWENDOLYN R. HOOPER, )  
Plaintiffs, )  
vs. )  
SCHOLZ HOMES, INC., a )  
corporation, )  
Defendant. )

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW, CASE NO. 8895

KNOW ALL MEN BY THESE PRESENTS:

That we, SCHOLZ HOMES, INC., a corporation, as Principal,  
and ST. PAUL FIRE & MARINE INSURANCE COMPANY,  
as Surety, are held and firmly bound unto WILLIAM J. HOOPER and  
GWENDOLYN R. HOOPER, Plaintiffs, in the sum of TWENTY-SEVEN THOU-  
SAND (\$27,000.00) DOLLARS, for the payment of which, well and truly  
to be made, we bind ourselves, and each of us, our successors and  
assigns, jointly, severally and firmly by these presents, and as  
part of this undertaking, we hereby waive all of our rights under  
the Constitution and Laws of the State of Alabama, to have any of  
our property, real or personal, exempt from levy, sale and satis-  
faction hereof.

Sealed with our seals and dated this the 3rd day of  
August, 1970.

WHEREAS, at the June term, 1970, of the Circuit Court of  
Baldwin County, Alabama, on, to-wit: the 19th day of June, 1970,  
the said WILLIAM J. HOOPER and wife, GWENDOLYN R. HOOPER, recovered  
a judgment in said Court against SCHOLZ HOMES, INC., a corporation,  
for the sum of THIRTEEN THOUSAND FIVE HUNDRED (\$13,500.00) DOLLARS,  
damages, and the cost in said suit; and whereas, on this day the  
said SCHOLZ HOMES, INC, a corporation, as such Defendant, has made  
application for an appeal from said judgment to the next term of  
the Supreme Court of Alabama, to be holden of and for said State,  
to reverse said judgment, and also for a supersedeas of the execu-  
tion of said judgment, which has been granted on entering into  
this bond.

at

Now, therefore, the condition of the foregoing obligation is such, that if the said SCHOLZ HOMES, INC., a corporation, said Defendant, shall prosecute its said appeal to effect, and satisfy such judgment as the Supreme Court may render in this case, then the said obligation to be null and void, otherwise to remain in full force and effect.

SCHOLZ HOMES, INC.

By James F. Weising  
As it's Vice President

ATTEST:

Daniel W. Jallard  
ASS'T. SECRETARY

A. Dragman  
ALABAMA RESIDENT AGENT

ST. PAUL FIRE & MARINE INSURANCE COMPANY

Anne G. Hagberg  
Anne G. Hagberg, Attorney in Fact

APPROVED:

Aug 25, 1970

Alice J. Luck  
CLERK OF CIRCUIT COURT

**CERTIFIED COPY OF POWER OF ATTORNEY**  
Original on File at Home Office of Company. See Certification.

FIDELITY AND SURETY  
DEPARTMENT

**ST. PAUL  
FIRE and MARINE  
Insurance Company**  
HOME OFFICE: ST. PAUL, MINNESOTA

KNOW ALL MEN BY THESE PRESENTS: That the St. Paul Fire and Marine Insurance Company, a corporation organized and existing under the laws of the State of Minnesota, and having its principal office in the City of Saint Paul, Minnesota, does hereby constitute and appoint

Del N. Shaw, Terry F. Vliek, Lawrence E. Wilburn, Harold E. Horner, Grace Hill,  
Nina Pizzurro, Anne G. Hagberg, individually, Cleveland, Ohio

its true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise, and the execution of such instrument(s) in pursuance of these presents, shall be as binding upon the said St. Paul Fire and Marine Insurance Company, as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal office.

This Power of Attorney is executed, and may be certified to and may be revoked, pursuant to and by authority of Article III, —Section 5(C), of the By-Laws adopted by the Board of Directors of the ST. PAUL FIRE AND MARINE INSURANCE COMPANY at a meeting called and held on the 3rd day of August, 1966, of which the following is a true transcript of said Section 5(C).

"The President or any Vice President, Assistant Vice President, Resident Vice President, Secretary or Resident Secretary, shall have power and authority

- (1) To appoint Attorneys-in-fact, and to authorize them to execute on behalf of the Company, and attach the Seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and
- (2) To appoint Special Attorneys-in-fact, who are hereby authorized to certify to copies of any power-of-attorney issued in pursuance of this section and/or any of the By-Laws of the Company, and
- (3) To remove, at any time, any such Attorney-in-fact or Special Attorney-in-fact and revoke the authority given him."

Further, this Power of Attorney is signed and sealed by facsimile pursuant to resolution of the Board of Directors of said Company adopted at a meeting duly called and held on the 6th day of May, 1959, of which the following is a true excerpt:

"Now therefore the signatures of such officers and the seal of the Company may be affixed to any such power of attorney or any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached."

IN TESTIMONY WHEREOF, the St. Paul Fire and Marine Insurance Company has caused this

instrument to be signed and its corporate seal to be affixed by its authorized officer, this 8th  
day of October A. D. 19 69

ST. PAUL FIRE AND MARINE INSURANCE COMPANY

STATE OF MINNESOTA  
County of Ramsey

} ss.

*W. H. King*  
Vice President.

On this 8th day of October 1969, before me came the individual who executed the preceding instrument, to me personally known, and, being by me duly sworn, said that he is the therein described and authorized officer of the St. Paul Fire and Marine Insurance Company; that the seal affixed to said instrument is the Corporate Seal of said Company; that the said Corporate Seal and his signature were duly affixed by order of the Board of Directors of said Company.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal, at the City of Saint Paul, Minnesota, the day and year first above written.

*C. L. Jaeger*

C. L. JAEGER

Notary Public, Ramsey County, Minn.  
My Commission Expires June 2, 1974.

**CERTIFICATION**

I, the undersigned officer of the St. Paul Fire and Marine Insurance Company, do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Section of the By-Laws of said Company as set forth in said Power of Attorney,\* with the ORIGINALS ON FILE IN THE HOME OFFICE OF SAID COMPANY, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 3rd day of August 19 70

*Larry W. Crane*  
Secretary.

\*Unlimited as to character and amount.

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  
19th June, 1970 Monday, 1970, in a cer-  
tain cause in said Court wherein William J. Hooper and Gwendolyn R. Hooper  
Plaintiff, and Scholz Homes, Inc., a corporation  
Defendant, a judgement was rendered against said  
Scholz Homes, Inc., a corporation  
to reverse which Judgment the said Scholz Homes, Inc., a corporation  
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 , 1970 next, and the necessary bond  
having been given by the said Scholz Homes, Inc., a corporation  
By: Anne G. Hagbery, Attorney in fact  
with St. Paul Fire & Marine Insurance Company, sureties,

Now, You Are Hereby Commanded, without delay, to cite the said William J. Hooper & Gwendolyn  
R. Hooper or Wilson Hayes  
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 15th  
day of July, A. D., 1970.

Attest:  
Alice J. Duck, Clerk.

I hereby accept service of  
a copy of the within citation  
of appeal this 25th day of August  
1970,  
W. L. Hayes  
Att. for Appellee



CASE NO. 8895

---

**CIRCUIT COURT**  
*Baldwin County, Alabama*

---

WILLIAM J. HOOPER & GWENDOLYN R.  
HOOPER

Vs.    {    Citation in Appeal  
SCHOLZ HOMES, INC., A CORP.,

---

Issued 15th day of July, 1970

---

SERVE: Wilson Hayes, Atty

NOV 4 - 1971

THE STATE OF ALABAMA - - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1971-72

Scholz Homes, Inc., a Corp.

1 Div. 651

v.

William J. Hooper and  
Gwendolyn R. Hooper

Appeal from Baldwin Circuit Court

SIMPSON, JUSTICE.

This is an appeal by Scholz Homes, Inc., a corporation,  
from a judgment of the Circuit Court of Baldwin County against

2.

it and in favor of William J. Hooper and Gwendolyn Hooper in the sum of \$13,500. The judgment followed a jury verdict in like amount. There was no motion for a new trial. The appellant assigns as error two actions of the trial court.

The first error assigned is that the court erred in refusing to give appellant's requested written charge Number One which was as follows:

"I charge you Gentlemen of the Jury that any statements made by Dan White must have been to a material fact which was then existing at the time of the making of the said statement, and that if it was not a material fact at the time that the statements were made, then you cannot find for the Plaintiff under the Bill of Complaint."

The second error assigned is that the court erred in refusing to give appellant's requested written charge Number 1-A which is as follows:

"The Court charges you Gentlemen of the Jury that if you believe the evidence in this case, you must find for the Defendant."

We will treat these assignments in inverse order. The complaint consisted of three counts as follows:

"1.

"The Plaintiffs claim of the Defendant  
NINETEEN-THOUSAND NINE-HUNDRED EIGHTY-NINE AND

3.

TWENTY-SIX/100 (\$19,989.26) DOLLARS damages, for that on to-wit: the 4th day of February, 1969 the Defendant represented to Plaintiffs that the cost of a certain home, viz, Defendant's House Plan known as Meadow Branch Inline Plan #51023 was the sum of FORTY-SEVEN-THOUSAND SIX-HUNDRED and NO/100 (\$47,600.00) DOLLARS.

"That Plaintiffs were thereby induced to purchase certain materials from Defendant for the construction of a home of the value of TWENTY-TWO-THOUSAND SIX-HUNDRED EIGHTY-EIGHT and SIXTY ONE/100 (\$22,688.61) DOLLARS and to incur expenses for the construction of such home.

"That said representation [sic] were false and were known to Defendant at the time they were made to be false and were made with the intent to deceive Plaintiffs.

"That the Plaintiffs purchased the said materials from Defendant, that they engaged a Contractor approved by Defendant, that they performed all matters as directed and suggested by Defendant and employed Defendant's Engineer and Consultant for the purpose of building said home and that the cost of building the said home exceeded SIXTY-SEVEN-THOUSAND SEVEN-HUNDRED EIGHTY-NINE and TWENTY-SIX/100 (\$67,789.26) DOLLARS, all to the damage of Plaintiffs.

"2.

"The Plaintiffs claim of the Defendant NINETEEN-THOUSAND NINE-HUNDRED EIGHTY-NINE and TWENTY-SIX/100 (\$19,989.26) dollars damages, for that on to-wit the 4th day of February, 1969 the Defendant acting by and through its agent, servant or employee was then and there acting in the line and scope of his employment represented to the Plaintiffs that a certain home, viz, Defendant's House Plan known as Meadow Branch Inline Plan #51023 was the sum of FORTY-SEVEN-THOUSAND SIX-HUNDRED and NO/100 (\$47,600.00) DOLLARS.

"That Plaintiffs were thereby induced to purchase certain materials from Defendant for the construction of a home of the value of TWENTY-TWO-THOUSAND SIX-HUNDRED EIGHTY-EIGHT and SIXTY-ONE/100 (\$22,688.61) DOLLARS and to incur expenses for the construction of such home.

"That said representation [sic] were false and were known to Defendant at the time they were made to be false and were made with the intent to deceive Plaintiffs.

"That the Plaintiffs purchased the said materials from Defendant, that they engaged a Contractor approved by Defendant, that they

5.

performed all matters as directed and suggested by Defendant and employed Defendant's Engineer and Consultant for the purpose of building said home and that the cost of building the said home exceeded SIXTY-SEVEN-THOUSAND SEVEN-HUNDRED EIGHTY-NINE and TWENTY-SIX/100 (\$67,789.26) DOLLARS, ALL TO THE DAMAGE OF PLAINTIFFS.

"3.

The Plaintiffs claim of the Defendant the sum of NINETEEN-THOUSAND NINE-HUNDRED EIGHTY-NINE and TWENTY-SIX/100 (\$19,989.26) DOLLARS damages, for that on to-wit: the 4th day of February, 1969 and on divers days before and after that date the Defendant represented to Plaintiffs that the cost of a certain home, viz, Defendant's House Plan known as Meadow Branch Inline plan #51023 was the sum of FORTY-SEVEN-THOUSAND SIX-HUNDRED and NO/100 (\$47,600.00) DOLLARS.

"That the said representation was made to induce Plaintiffs to purchase certain materials for the construction of a home; that the representations were false, that they were made wilfully to deceive, or recklessly without knowledge, and that such representations were relied upon by Plaintiff and acted upon in that Plaintiffs purchased materials for the building of a

6.

home from Defendant and that the said home exceeded in costs the amount represented by Defendant, all to the damage of Plaintiffs."

After filing demurrers, which are of no concern to us as this record does not show action taken on them nor are errors assigned pertaining to them, the defendant plead not guilty to each count of the complaint and the case proceeded to trial resulting in the judgment above set forth.

There being no motion for a new trial we will limit our review of the evidence to that introduced in proof of the averments of the complaint, in order to determine whether or not under the scintilla rule a jury question was presented. If so, and if the complaint stated a cause of action, the trial court did not err in refusing the general charge requested by the defendant.

A study of the evidence reveals testimony of witnesses favorable to the plaintiffs substantially as follows:

Scholz was in the business of selling packaged or pre-fabricated homes. The Hoopers, having seen a magazine advertisement of their product, ordered a brochure from them. This was followed by a personal call from Don White, a representative of the company, for a discussion of the various house plans available in package forms from Scholz. The first visit was followed by others. Various floor plans were discussed as was the fact that they were not inflexible. The Hoopers worked up one floor plan and inquired of White what

7.

it would cost. When advised that the total cost would be \$53,000 they replied that they could not build that much house because of its cost. They, the Hoopers, then worked up another and more modest plan using features they were told by White were available from Scholz. After this plan was submitted to White, he delivered to them the following instrument, typewritten on the stationery of the company:

"Distinction of Design

"SCHOLZ HOMES, Inc.

"Standard of Quality

2001 North Westwood - Toledo, Ohio 43607 - Area Code 419: 531-1601

"Dan White dist, sales mgr,  
554 east call  
Tallahassee Fla.

"CONTRACT ESTIMATE

"FOR HOUSE PLAN KNOWN AS MEADOW BROOK INLINE.  
PLAN #51023 Approximately 3700 Sq, feet of heated  
area, 484 sq, feet. GAR.

"According to plans and spec, \$47,600.00 home to be built

In 120 days from the date of approval.

The said house to be built in accordance with the custom [sic]  
and fame design of Scholz Homes Inc.

The contractor must be approved by Scholz Homes and

The purchaser.

"Dan White"

This written statement was in confirmation of an oral one in  
which White said to Hooper, "This house will cost you \$47,600."



8.

White had represented himself as being experienced in the construction business and knew it in and out.

The Hoopers and the salesman for the company then called a local contractor concerning the actual building of the house, using the "package" of Scholz. The contractor stated that he thought the total cost would be over \$60,000 but the representative of the company still insisted it would not be over \$47,600 if done on a cost plus 10 percent profit basis; that the difference between the contractor's estimate and that of the company resulted from the techniques of construction by using the packaged form which would save the difference. The contractor was awarded the contract to build on a cost plus basis, the Hoopers ordered and paid for the "package" which cost \$22,686.80. The "package" was shipped to the construction site, the contractor began and completed the building of the house and the Hoopers wound up with a total bill of \$67,789. The Hoopers wrote to the home office of Scholz concerning the excess in cost over the assurances of their representative and received the following letter in reply:

"SCHOLZ HOMES, INC.  
2001 North Westwood. Toledo, Ohio  
43607. Area Code 419: 531-1601

"Distinction of Design  
Standard of Quality

"September 12, 1969

"Mr. William H. Hooper, D.M.D.  
112 West Third Street,  
Bay Minette, Alabama 36507

9.

"Dear Dr. Hooper:

"We have your letter of September 2 and were pleased to read that you love your house, but distressed to realize the gross misunderstanding in the area of responsibilities in building your home.

"We market our homes through builders, and we sold our package for your home to Roberson Construction Company, who as builders would complete your home, and in fact, enter into a contract with you to build it. A copy of our Warranty Registration form is enclosed. This is the form you signed which indicates that the Warranty Form we extended on the materials we supply goes to you as the original home buyer as per the contract you have with Roberson Construction Company. I am also enclosing a copy of our published list of materials included in the Scholz Package which is sold to the builder. This, plus the Order Form, which the builder signed, represents the extent of the materials that are to be supplied by us.

"Actually, all of the items you mentioned in your letter which would indeed, represent a part of the total building contract, would have to be supplied by the builder and not by Scholz Homes. If this was not made clear to you, it could well represent one of the reasons that Mr. Dan White is no longer associated with our Company. Mr. White, on the other hand, could also have been acting as liaison [sic] between you and the builder, but all the items discussed, of course

10.

would be reflected in the final total contract that the builder entered into with you.

"Since what Scholz Homes supplies, in addition to the architectural and engineering service represents only about thirty per cent of the entire house, we must, of necessity, market our homes through a builder who takes the contract with the home owner for the complete home.

"Knowing the model you chose and from what you, yourself, implied in your letter, I am sure that you have a beautiful home and that the full value is reflected in the contract price. You have a home of exceptional design and high quality, which deserves above normal evaluation, contrary to what the local Savings & Loan indicated to you.

"I certainly hope your builder can work out your contract to your total satisfaction, and that you will enjoy many happy years in your new home.

"Yours truly,

"SCHOLZ HOMES, INC.

"s/ James G. Lyons  
Sales Administrator

"JGL: jc.

"Encls.

"CC Roberson Construction  
Route Two - Box 310  
Bay Minette, Alabama 36507

Mr. Robert Bales  
Regional Sales Manager  
Scholz Homes, Inc.  
Post Office Box 45094 AMFMA  
Atlanta, Georgia."

11.

There was also evidence that the Hoopers were unsophisticated as to building costs and methods and relied heavily on the statements made by Scholz acting through their agents that the cost of the completed house would not exceed the sum of \$47,600. Matching the above outlined evidence against the allegations of the complaint as above set forth it appears that the requirements of the scintilla rule have been more than met and that the court did not err in refusing the general charge because of lack of proof.

The statement in the home office letter that the items furnished by Scholz, in addition to architectural and engineering service normally represents only thirty per cent of the entire cost would certainly justify the jury in finding willful misrepresentation on the part of their agent when he stated that the cost of the house would not exceed \$47,600, having before him a contract price for the Scholz items in the amount of \$22,686.80.

The appellant's main argument is that the statements made by White that the cost of the house was \$47,600 could not have been a false statement because the house had not been built and no one could know what the cost would be in view of the fact that the erection was done on a cost plus basis. The appellant further reasons that because of the above fact the plaintiffs failed to prove the allegations of their complaint and that such failure entitled the defendant to the affirmative charge. We see the point but we do not

12.

think it has merit and is a matter of semantics rather than substance. It is clear to us from the allegations of the complaint that the word "was" was used in the sense of "would be" or "will be". All knew that the sale of the "package" pertained to a house yet to be built rather than one already built. We are cited by the appellant the case of Birmingham Broadcasting Company v. Bell, 259 Ala. 656, 68 So.2d 314, and to §§ 108 and 110 of Title 7, Code of Alabama as recompiled in 1958 as authority for the proposition that deceit must be based on a material fact then in existence at the time misrepresentations are made. We do not find Birmingham Broadcasting Co. v. Bell apt authority under the pleadings and proof in the present case. In that case there was no allegation of intentional deception or that the facts represented were better known to one party than to the other. We consider the case of Shepherd v. Kendrick, 236 Ala. 289, 181 So. 782 more pertinent to our consideration. There we find quoted with approval language from Kefuss v. Whitley, 220 Michigan 67, 189 N.W. 76, which is as follows:

"It is material to observe that it is often fallaciously assumed that a statement of opinion cannot involve the statement of a fact.

\* \* \* If the facts are not equally known to both sides, then a statement of opinion by the one who knows the facts best involves very often a statement of a material fact, for he

impliedly states that he knows facts which justify his opinion."

Quoting further from Shepherd v. Kendrick, we find:

"If one makes a statement regarding an event to take place in the future, obviously the statement should ordinarily be regarded merely as an expression of opinion, and the courts will frequently stop at this point and hold that such a statement cannot serve as a basis on which to predicate fraud. But if there are circumstances tending to show an actual fraudulent intent at the time the promise or representation regarding a future event is made, then the situation is entirely changed. According to the weight of authority, if the person making the promise or statement as to a future event is guilty of an actual fraudulent intent, and makes the promise or misrepresentation with the intention of deceiving and defrauding the other party, and accomplishes this result, to the latter's injury, fraud may, under many circumstances, be predicated thereon, notwithstanding the future nature of the representations. This result is reached frequently on the theory that a person's intention or belief is a matter of fact, and that, therefore, if a

misrepresentation is made with regard to the same, the misrepresentation is one of fact. But the particular circumstances determine largely the result in this class of cases. This seems to be true, partly, at least, for the reason that the questions whether a representation should be regarded as a mere expression of opinion, and whether one to whom it is made ordinarily does and has a right to rely thereon, depend on the nature of the representation and the relation of the parties."

From the foregoing we are persuaded that the proof of the allegations in the complaint was sufficient to present a jury question. We do not find reversible error in assignment of error number two and will now proceed to consider the other assignment of error which is based on the refusal of the trial court to give the requested special charge which is set forth above.

Charge one was properly refused as it would, if given tend to mislead the jury. It cannot be the law in such cases that every statement made by the seller or his agent must relate to a material fact. For example had the salesman White remarked that it was a pleasant day, the effect of the requested charge literally construed would require the jury to find for the defendant unless such remark pertained to a

15.

material fact. Charge one is also defective as being abstract and not properly hypothesized on the evidence.

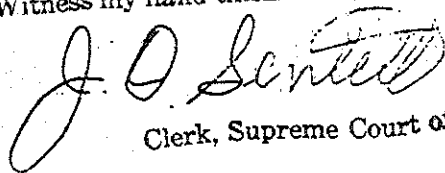
The judgment of the trial court is due to be affirmed.

AFFIRMED.

Heflin, C.J., Coleman, Bloodworth, and McCall, JJ.,  
concur.

I, J. O. Sentell, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said Court.

Witness my hand this 4 day of Nov. 1971



Clerk, Supreme Court of Alabama



THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19<sup>71-72</sup>  
1 651

Div. No. \_\_\_\_\_

To the Clerk Register of the \_\_\_\_\_ Circuit \_\_\_\_\_ Court,  
\_\_\_\_\_ Baldwin \_\_\_\_\_ County—Greeting:

Whereas, the Record and Proceedings of the \_\_\_\_\_ Circuit \_\_\_\_\_ Court \_\_\_\_\_  
of said county, in a certain cause lately pending in said Court between  
Scholz Homes, Inc., a Corporation \_\_\_\_\_, Appellant \_\_\_\_\_,

\_\_\_\_\_ and \_\_\_\_\_  
William J. Hooper, et al \_\_\_\_\_, Appellee \_\_\_\_\_,

wherein by said Court it was considered adversely to said appellant \_\_\_\_\_, were brought before the  
Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant \_\_\_\_\_:

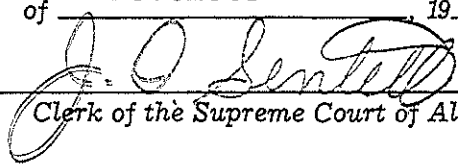
NOW, IT IS HEREBY CERTIFIED, That upon consideration thereof the Supreme Court, on the  
4th \_\_\_\_\_ day of \_\_\_\_\_ November \_\_\_\_\_ 71  
\_\_\_\_\_ 19\_\_\_\_\_, affirmed said cause, in all respects, and  
ordered that appellant \_\_\_\_\_, Scholz Homes, Inc., a Corporation, and St. Paul Fire  
& Marine Insurance Company, surety on the supersedeas bond, pay the  
amount of the judgment of the Circuit Court and 10 percent damages  
thereon and interest and the costs accruing on said appeal in this  
court and in the Court below, for which let execution issue.

~~and~~

~~execution for the costs of appeal pay the costs of appeal in this Court and in the Court below~~

~~It is further certified that it appearing that said parties have waived their rights of exemption~~  
~~under the laws of Alabama, it was ordered that execution issue accordingly~~

Witness, J. O. Sentell, Clerk of the Supreme  
Court of Alabama, this the 4th \_\_\_\_\_ day  
of \_\_\_\_\_ November \_\_\_\_\_ 19<sup>71</sup>

  
Clerk of the Supreme Court of Alabama.

THE SUPREME COURT OF ALABAMA

October Term, 19 71-72

1 651  
Div., No.

Scholz Homes, Inc.

Appellant,

vs.

William J. Hoper, et al

Appellee.

From Baldwin #8895 Court.

CERTIFICATE OF  
AFFIRMANCE

The State of Alabama, }  
Baldwin County. } Filed

this 5 day of Nov 1971

Ernie B. Blackmon  
Clerk

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