

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 15th day of January, 1971, ~~Monday~~, in a certain cause in said Court wherein Harry Ponds & Alice L. Ponds, Plaintiff, and Mid-State Homes, Inc., a Florida Corp. Defendant, a judgement was rendered against said Mid-State Homes, Inc., a Florida Corporation to reverse which Judgment, the said Mid-State Homes, Inc., a Florida corporation applied for and obtained from this office an APPEAL, returnable to the next Appeals Term of our Court of Civil Court of the State of Alabama, to be held at Montgomery, on the day of 19 next, and the necessary bond having been given by the said Mid-State Homes, Inc., a Florida Corporation with The Travelers Indemnity Company, by: W. C. Nelson, Attorney in fact, sureties,

Now, You Are Hereby Commanded, without delay, to cite the said Harry Ponds & Alice L. Ponds or Wilters & Brantley

attorney, to appear at the next Term of our Court of Civil Appeals said Supreme Court, to defend against the said Appeal, if they think proper.

Eunice B. Blackman
 Witness, ~~Alice J. Duck~~ Clerk of the Circuit Court of said County, this 18th

day of February, A. D., 1971.

Attest:

Eunice B. Blackman Clerk.

9147

CIRCUIT COURT
Baldwin County, Alabama

Harry Ponds + Alice L.
Ponds

Vs. { Citation in Appeal

Mid-State Homes, Inc.

Issued _____ day of _____, 19____

Serve. Tolbert M. Brantley
Atty -

Received 5 day of March 1971
and on 12 day of March 1971
I served a copy of the within Citation in Appeal
on Tolbert M. Brantley
By service on _____

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

JURY LIST - JANUARY 11, 1971 - SPRING TERM

- no 9147
Gary Poul
Mable Jones
- ~~1. Allen, Norman W., Farmer, Gateswood~~
 - ~~2. Hammonds, Sue, Cashier, Stockton~~
 3. Johnson, Claude, Hwy. Dept., Bay Minette
 4. Lewis, Glen M., Salesman, Fairhope
 - ~~5. Lipscomb, James W., Teacher, Fairhope~~
 6. Lipscomb, Sheldon, Farmer, Rt., 2, Foley
 7. Lipscomb, Wilmer, Jr., Farmer, Magnolia Springs
 - ~~8. Stokes, Carl B., Carpenter, Foley~~
 - ~~9. Styron, Jerald, Farmer, Foley~~
 10. Suttle, Walter T., Civil Service, Foley
 - ~~11. Taylor, Jack, Jr., Inspector, Foley~~
 - ~~12. Thompson, Lamar, Farmer, Foley~~
 - ~~13. Walters, Harold, Civil Service, Bon Secour~~
 - ~~14. Weeks, Mrs. Blanche, Chef, Magnolia Springs~~
 - ~~15. Weeks, Mrs. Olga, Housewife, Foley~~
 - ~~16. Anderson, Carl R., Robertsdale~~
 17. Smith, Samuel, Sr., Brookley Field, Daphne
 - ~~18. Stewart, Sheila L., Housewife, Bay Minette~~
 - ~~19. Mixon, O. V., Salesman, Foley~~
 20. Morris, Robert, Civil Service, Foley
 - ~~21. Osborne, Stanley, Riviera Utilities, Foley~~
 - ~~22. Purvis, William H., Contractor, Spanish Fort~~
 23. Reddick, Frank, Civil Service, Spanish Fort
 24. Fodar, Peter, Civil Service, Elberta
 25. Ellison, Charlie, Farmer, Rosinton
 - ~~26. Dyass, Albert, Merchant, Stapleton~~
 - ~~27. Durant, Earl, Brookley Field, Bay Minette~~
 28. Dean, Mary, Housewife, Bay Minette
 - ~~29. Callaway, Mrs. Ray, Housewife, Orange Beach~~
 - ~~30. Bryars, Nyla D., Housewife, Bay Minette~~
 - ~~31. Bianco, Cyril P., Conservation Dept., Foley~~
 - ~~32. Barnhill, Roger E., Jr., Farmer, Loxley~~
 33. Baker, Louis, Peoples Fertilizer, Foley
 - ~~34. Yelding, Bailey, Sr., Carpenter & Bricklayer, Daphne~~
 - ~~35. Sanders, William G., Real Estate, Foley~~
 - ~~36. Higbee, Rita B., Housewife, Belforest~~
 - ~~37. Bodiford, Charlie, Laborer, Foley~~
 - ~~38. Miller, Henry C., Salesman, Spanish Fort~~

38
31
12
25

XXXXX XXXXX XXV

XXXXX XXXXX XX

9147

DEFENDANT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

CASE NO. 9147

NOTICE OF APPEAL

Comes the defendant, Mid-State Homes, Inc., a corporation, and gives notice that it appeals from the judgment rendered in the above on the 15th day of January, 1971.

R. A. Norred, Attorney for the Defendant

616 2121 Building
2121 8th Avenue North
Birmingham, Alabama 35203

Filed
Feb 18, 1971
Eunice B. Blackman

R. A. Norred

ATTORNEY

200 2121 BUILDING
2121 8TH AVENUE NORTH
BIRMINGHAM, ALABAMA 35203
TELEPHONE
323-4076

March 16, 1970

Mrs. Alice J. Doug
Clerk of the Court
Circuit Court of Baldwin County
Baldwin County Courthouse
Bay Minette, Alabama

Dear Mrs. Doug:

I enclose herein a Demurrer for filing. I would appreciate it very much if you would be kind enough to acknowledge receipt thereof and advise of the filing date of such Demurrer.

Yours very truly,

R. A. Norred
R.A. Norred

RAN/br
encl.

R. A. Norred
ATTORNEY

200 2121 BUILDING
2121 8TH AVENUE NORTH
BIRMINGHAM, ALABAMA 35203
TELEPHONE
323-4076

March 16, 1970

Mrs. Alice J. Doug
Clerk of the Court
Circuit Court of Baldwin County
Baldwin County Courthouse
Bay Minette, Alabama

Dear Mrs. Doug:

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Yours very truly,

R. A. Norred
R.A. Norred

RAN/br
encl.

HARRY PONDS and ALICE L.
PONDS

Plaintiffs

vs.

MID-STATE HOMES, INC., a
Florida Corporation

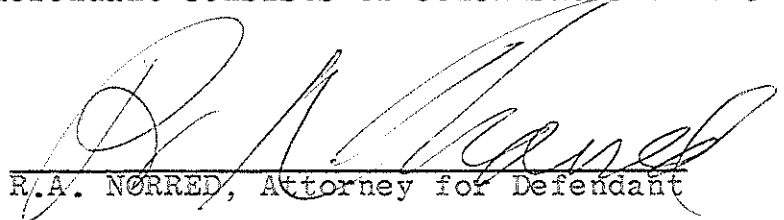
Defendant

)
)
) IN THE CIRCUIT COURT OF BALDWIN
)
) COUNTY, ALABAMA, AT LAW
)
) CASE NO. 9147
)
)
)

D E M U R R E R

Now comes the defendant, Mid-State Homes, Inc., a corporation, and demurrers to the complaint heretofore filed against it, and each count thereof, separately and severally, and for grounds for said demurrer does assign the following separate and severally grounds:

1. Said complaint fails to state a cause of action.
2. Said count fails to state a cause of action.
3. For that the allegation that the plaintiff has complied with all of the provisions of the contract is but a conclusion of the pleader.
4. For that the attempted averment of the alledged breech warranty charged to the defendant consists of conclusions of the pleader only.


R.A. NORRED, Attorney for Defendant

200 2121 Building
2121 8th Avenue North
Birmingham, Alabama 35203

CERTIFICATE OF ATTORNEY

I hereby certify that a true and correct copy of the above and foregoing Demurrer was mailed to Tolbert M. Brantley, Wilters and Brantley, P.O. Box 968, Bay Minette, Alabama 36507.


R.A. Norred

FILED

MAR 21 1970

ALICE J. DUCK CLERK
REGISTER

252

...the

[illegible][illegible]

1. *Journal of the American Medical Association*, 1997; 278: 1023-1028.

DISCUSSION

$$= \frac{A_0}{\pi} \int_{-\infty}^{\infty} d\omega' e^{i(\omega - \omega')t} \left(\sum_{n=-\infty}^{\infty} c_n \delta(\omega' - n) + \text{c.c.} \right)$$
[illegible]

Figure 1. The effect of the number of iterations on the accuracy of the proposed algorithm. The accuracy is measured by the percentage of correct solutions. The number of iterations is 10, 20, 30, 40, 50, 60, 70, 80, 90, 100, 110, 120, 130, 140, 150, 160, 170, 180, 190, 200, 210, 220, 230, 240, 250, 260, 270, 280, 290, 300, 310, 320, 330, 340, 350, 360, 370, 380, 390, 400, 410, 420, 430, 440, 450, 460, 470, 480, 490, 500, 510, 520, 530, 540, 550, 560, 570, 580, 590, 600, 610, 620, 630, 640, 650, 660, 670, 680, 690, 700, 710, 720, 730, 740, 750, 760, 770, 780, 790, 800, 810, 820, 830, 840, 850, 860, 870, 880, 890, 900, 910, 920, 930, 940, 950, 960, 970, 980, 990, 1000. The accuracy is 0.0, 0.1, 0.2, 0.3, 0.4, 0.5, 0.6, 0.7, 0.8, 0.9, 1.0.

06-19-2007

[illegible]

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[illegible][illegible][illegible]

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914-7

SUPERSEDEAS BOND TO SUPREME COURT AND SECURITY FOR COSTS.

The State of Alabama,
Baldwin
Jefferson County

CIRCUIT COURT
TWENTY-EIGHTH
JUDICIAL CIRCUIT OF ALABAMA

Know All Men by These Presents, That we, Mid-State Homes, Inc., a corporation

as Principal and

THE TRAVELERS INDEMNITY COMPANY

a corporation established under the laws of the State of Connecticut
and having its principal office in Hartford, Connecticut

as Sureties

are held and firmly bound unto Harry Ponds and Alice L. Ponds, his heirs, executors and administrators, in the sum of Six Thousand, Five Hundred and no/100-----Dollars, for the payment of which, we jointly and severally bind ourselves, our heirs, executors or administrators, firmly by these presents. The right of exemption under the Constitution and Laws of Alabama is hereby waived.

Sealed with our seals and dated this the 15th day of January, 19 71

The Condition of the Above Obligation is Such, That Whereas, the above bound

Mid-State Homes, Inc., a corporation has this day applied for and obtained an appeal returnable to the Supreme Court of Alabama, to supersede and reverse judgment recovered by the said Harry Ponds and Alice L. Ponds

against the said Mid-State Homes, Inc., a corporation on the 15th day of January, 19 71, of the Circuit Court for Three Thousand and no/100-----Dollars, besides costs.

Now, if the said Mid-State Homes, Inc., a corporation shall prosecute to effect his said suit in the Supreme Court of Alabama, and shall pay and satisfy such judgment as the Supreme Court shall render in this case, then this obligation to be void, otherwise to remain in full force full force and effect.

Taken and approved the 18 day

of February, 19 71

Ernest B. Blackburn
Circuit Clerk.

This is to certify that if the above Bond was presented to the Supreme Court of Alabama, I would approve same as good and sufficient.

Julian Swift
Circuit Clerk

Mid-State Homes, Inc., a corporation (L. S.)

By J. H. Kelley (L. S.)

Vice-President

THE TRAVELERS INDEMNITY COMPANY (L. S.)

W. C. NELSON (L. S.)
ATTORNEY-IN-FACT

No. _____

The State of Alabama
JEFFERSON COUNTY

CIRCUIT COURT

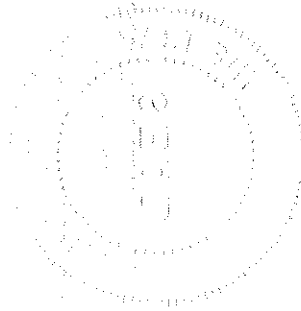
vs.

***Supersedeas Bond to Supreme
Court and Security for Costs***

Filed this _____ day of

_____, 19____

Clerk.



The Travelers Indemnity Company

Hartford, Connecticut

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That THE TRAVELERS INDEMNITY COMPANY, a corporation of the State of Connecticut, does hereby make, constitute and appoint

W. C. Nelson, Dorothy Cole, Beverly C. Elwell, all of Birmingham, Alabama, EACH

its true and lawful Attorney(s)-in-Fact, with full power and authority, for and on behalf of the Company as surety, to execute and deliver and affix the seal of the Company thereto, if a seal is required, bonds, undertakings, recognizances, consents of surety or other written obligations in the nature thereof, as follows:

Any and all bonds, undertakings, recognizances, consents of surety or other written obligations in the nature thereof

and to bind THE TRAVELERS INDEMNITY COMPANY thereby, and all of the acts of said Attorney(s)-in-Fact, pursuant to these presents, are hereby ratified and confirmed.

This appointment is made under and by authority of the following by-laws of the Company which by-laws are now in full force and effect:

ARTICLE IV, SECTION 13. The Chairman of the Board, the President, the Chairman of the Finance Committee, the Chairman of the Insurance Executive Committee, any Senior Vice President, any Vice President, any Second Vice President, any Secretary or any Department Secretary may appoint attorneys-in-fact or agents with power and authority, as defined or limited in their respective powers of attorney, for and on behalf of the Company to execute and deliver, and affix the seal of the Company thereto, bonds, undertakings, recognizances, consents of surety or other written obligations in the nature thereof and any of said officers may remove any such attorney-in-fact or agent and revoke the power and authority given to him.

ARTICLE IV, SECTION 15. Any bond, undertaking, recognizance, consent of surety or written obligation in the nature thereof shall be valid and binding upon the Company when signed by the Chairman of the Board, the President, the Chairman of the Finance Committee, the Chairman of the Insurance Executive Committee, any Senior Vice President, any Vice President or any Second Vice President and duly attested and sealed, if a seal is required, by any Secretary or any Department Secretary or any Assistant Secretary or when signed by the Chairman of the Board, the President, the Chairman of the Finance Committee, the Chairman of the Insurance Executive Committee, any Senior Vice President, any Vice President or any Second Vice President and countersigned and sealed, if a seal is required, by a duly authorized attorney-in-fact or agent; and any such bond, undertaking, recognizance, consent of surety or written obligation in the nature thereof shall be valid and binding upon the Company when duly executed and sealed, if a seal is required, by one or more attorneys-in-fact or agents pursuant to and within the limits of the authority granted by his or their power or powers of attorney.

This power of attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Directors of THE TRAVELERS INDEMNITY COMPANY at a meeting duly called and held on the 30th day of November, 1959:

VOTED: That the signature of any officer authorized by the By-Laws and the Company seal may be affixed by facsimile to any power of attorney or special power of attorney or certification of either given for the execution of any bond, undertaking, recognizance or other written obligation in the nature thereof; such signature and seal, when so used being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

This power of attorney revokes that dated April 3, 1967 on behalf of W. C. Nelson, Max Crabbe, Dorothy Eggert

IN WITNESS WHEREOF, THE TRAVELERS INDEMNITY COMPANY has caused these presents to be signed by its proper officer and its corporate seal to be hereunto affixed this 7th day of August 19 69 .



THE TRAVELERS INDEMNITY COMPANY

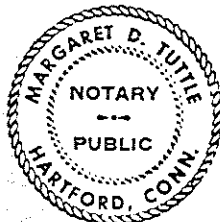
By

Wm A. Shrake

Secretary, Fidelity and Surety

State of Connecticut, County of Hartford—ss:

On this 7th day of August in the year 1969 before me personally came Wm. A. Shrake to me known, who, being by me duly sworn, did depose and say: that he resides in the State of Connecticut; that he is Secretary (Fidelity and Surety) of THE TRAVELERS INDEMNITY COMPANY, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of his office under the by-laws of said corporation, and that he signed his name thereto by like authority.



Margaret D. Tuttle

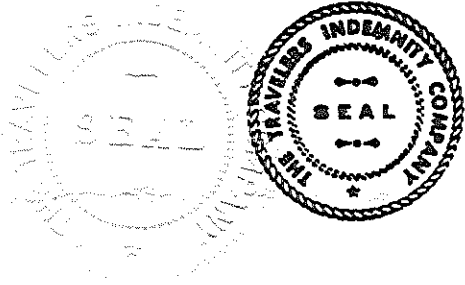
Notary Public

My commission expires April 1, 1974

CERTIFICATION

I, E. A. Houser III, Assistant Secretary (Fidelity and Surety) of THE TRAVELERS INDEMNITY COMPANY certify that the foregoing power of attorney, the above quoted Sections 13. and 15. of Article IV of the By-Laws and the Resolution of the Board of Directors of November 30, 1959 have not been abridged or revoked and are now in full force and effect.

Signed and Sealed at Hartford, Connecticut, this 15th day of January 1971 .



S-1869 (BACK)

Assistant Secretary, Fidelity and Surety

Harry Ponds and Alice L.
Ponds

Plaintiffs

vs.

Mid-State Homes, Inc., a
Florida Corporation

Defendant

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

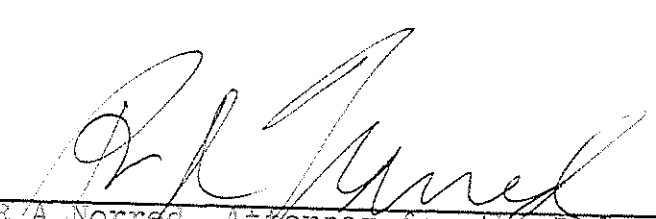
AT LAW

CASE NO. 9147

CITATION ON APPEAL

TO: The Honorable Tolbert M. Brantley
Wilters & Brantley
Bay Minette, Alabama

Please take notice that the defendant, Mid-State Homes,
Inc., a corporation has, on this date, taken an appeal from
the judgment rendered in the above on the 15th day of Jan-
uary, 1971.


R.A. Norred, Attorney for the Defendant

616 2121 Building
2121 8th Avenue North
Birmingham, Alabama 35203

R. A. NORRED, ATTORNEY

616 ~~XXX~~ 2121 BUILDING
2121 8TH AVE., NORTH
BIRMINGHAM, ALABAMA 35203

To

┌ Mrs. Alice J. Duck
Clerk - Circuit Court
Baldwin County Courthouse
Bay Minette, Alabama

└ _____
DATE 2/16/71 SUBJECT Harry Ponds and Alice L. Ponds
VS.
Mid-State Homes, Inc.
Case No. 9147

Dear Mrs. Duck:

I enclose herein the Supersedeas Bond with the requested stamp on
said Bond.

Yours very truly,

R. A. Norred
R.A. Norred

RAN/hn

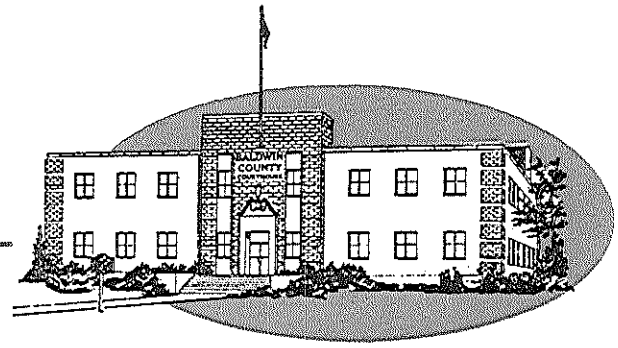
Enclosures

CIRCUIT CLERK

BALDWIN COUNTY

BAY MINETTE, ALABAMA

36507



EUNICE B. BLACKMON
Clerk—Circuit Court

March 3, 1971

Hon. R. A. Norred
616 2121 Building
2121 8th Avenue North
Birmingham, Alabama 35203

Re: Harry Ponds and Alice L. Ponds
vs.
Mid-State Homes, Inc.

Dear Mr. Norred,

As per our telephone conversation a few days ago, I have received your supersedeas bond and security for cost in the above styled case; but as of this date, I have not received your formal notice of appeal. I am therefore awaiting said notice before proceeding further on said appeal. Please mail this notice at your earliest convenience.

Yours very truly,

Circuit Clerk of Baldwin County

EBB/asg

R. A. Norred
ATTORNEY

*Waiting his call
on Notice of Appeal*

616

~~200~~ 2121 BUILDING
2121 8TH AVENUE NORTH
BIRMINGHAM, ALABAMA 35203
TELEPHONE
323-4076

February 9, 1971

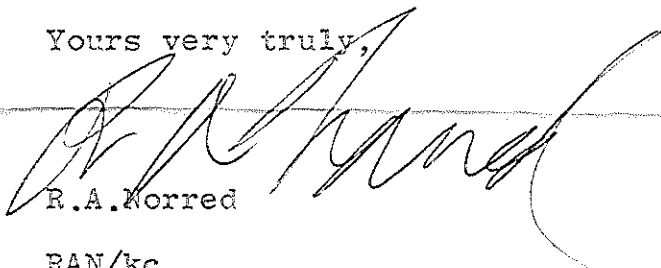
Mrs. Alice J. Duck
Clerk, Circuit Court of
Baldwin County
Baldwin County Court House
Bay Minette, Alabama

Re: Harry Ponds and Alice L. Ponds
vs.
Mid-State Homes, Inc.
Case No. 9147

Dear Mrs. Duck:

I enclose herein a Supersedeas Bond in connection with the above. I would appreciate it if you will advise when same has been filed. Also enclosed is a notice of appeal for service on Attorney Tolbert Brantley. I will appreciate it if you would issue same for service.

Yours very truly,


R.A. Norred

RAN/kc

Enc.

NOTE: In checking the probate registrations of bonds we fail to find where The Travelers Indemnity Company has registered to do business in Baldwin County, therefore, please have your clerk stamp this bond approved if same were presented to him, I will then accept said bond.

Circuit Clerk

Harry Ponds and Alice L.
Ponds

Plaintiffs

vs.

Mid-State Homes, Inc., a
Florida Corporation

Defendant

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. 9147

CITATION ON APPEAL

TO: The Honorable Tolbert M. Brantley
Wilters & Brantley
Bay Minette, Alabama

Please take notice that the defendant, Mid-State Homes, Inc., a corporation has, on this date, taken an appeal from the judgment rendered in the above on the 15th day of January, 1971.

R.A. Norred, Attorney for the Defendant

616 2121 Building
2121 8th Avenue North
Birmingham, Alabama 35203

DIV. NO. _____

CERTIFICATE OF APPEAL. (Civil Cases.)

No. 9147

THE STATE OF ALABAMA

BALDWIN County.

I, Eunice B. Blackmon, 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 HARRY PONDS & ALICE L. PONDS

was plaintiff, and MID-STATE HOMES, INC., A Florida Corporation

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

And I further certify that the said Mid-State Homes, Inc., a corp. did on the 18th day of February, 19 71 pray for and obtain an appeal from the judgment of said Court to the Court of Civil Appeals of Alabama to reverse said judgment of said Court upon entering into bond with The Travelers Indemnity Company fact,
By: W. C. Nelson, Attorney in 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 18th day of February, 19 71

Eunice B. Blackmon

Clerk of the Circuit Court of
Baldwin County, Alabama.

(Code 1940, Title 7, Sec. 767)

| | | |
|--|---|-------------------------|
| HARRY PONDS and ALICE L. PONDS, |) | |
| |) | IN THE CIRCUIT COURT OF |
| Plaintiffs, |) | BALDWIN COUNTY, ALABAMA |
| VS. |) | AT LAW |
| MID-STATE HOMES, INC., a Florida Corporation, |) | CASE NO. <u>9147</u> |
| Defendant. |) | |

1.

The Plaintiff claims of the Defendant FIVE THOUSAND DOLLARS (\$5,000.00) damages for breach of a covenant entered into by them on the 3rd day of August, 1962, which is in substance as follows:

SALE CONTRACT

MID-STATE HOMES INCORPORATED

THIS AGREEMENT made this 3rd day of August, 1962, between Harry Ponds & wife Alice L. hereinafter designated "Buyer" and MID-STATE HOMES INC. a Florida corporation of Tampa, Florida, hereinafter designated "Seller,"

WITNESSETH:

1.

That Seller agrees to sell a house located at Bay Minette (Baldwin County) Ala.

Arlee Massey repo

Legal description of property as follows:

Beginning at the NW corner of the SW¹/₄ of Sec. 27, T2S, Range 3 E. run thence North 717 feet to point of beginning; thence continue N 75 feet to a corner, thence 320 feet to a corner, thence S 75 feet to a corner, thence W 320 feet to the point of beginning.

2.

The Seller warrants that it owns the property above described free and clear of all liens and encumbrances except taxes for 1961 and subsequent years and regulations, restrictions and easements of record.

3.

The Buyer agrees to pay for the above described property, the sum of \$3822.80 payable as follows: 50.00 upon signing of this agreement, receipt of which is hereby acknowledged.

(a) The balance of \$3772.80 by a promissory note payable in 144 monthly installments of 26.20 which note shall be secured by a first (Mortgage), (Deed to Secure Debt), (Deed of Trust) upon the aforementioned property. The note and (Mortgage), (Deed to Secure Debt), (Deed of Trust), shall have the customary covenants and conditions therein and shall bear interest from maturity at 6% per annum until paid.

OR

(b) The Buyer and Seller shall execute an agreement for deed wherein the

buyer shall make monthly payments in the amount of \$26.20 each month until the total amount of \$3772.80 is paid and at that time the seller shall execute a deed to the buyer. First pmt. due Sept 15th 1962

4.

This written contract contains the price and all the terms and conditions agreed on by the Buyer and the Seller, and no statement, representation or promise not set forth in this written contract has been made to induce either party to sign this contract. In the event a credit report on the Buyer unsatisfactory to the Seller is received within thirty days from date of contract, Seller may at its option with 10 days notice, cancel this agreement, upon returning to Buyer all of the deposit except the costs of the credit report.

IN WITNESS WHEREOF, the Buyer and Seller have hereunto set their hands and seals at Mobile, Ala. this 3rd day of August, 1962.

X Harry Ponds SEAL
BUYER

MID-STATE Homes, Inc.

X Alice L. Ponds

Witness:

BY: X O. C. King SEAL
SELLER

Jerry Bullock
Walt Sanders
Paul Bentley

The Plaintiff says that, although he has complied with all the provisions on his part, the Defendant has failed to comply with the provisions of said contract in that it warranted that it owned the property above described free and clear of all liens and encumbrances, etc.; whereas, in truth, and fact, the Defendant did not and does not own the said property. Hence this suit.

WILTERS & BRANTLEY

BY: *William M. Brantley*
Attorneys for Plaintiffs

The Plaintiff demands a trial by jury.

WILTERS & BRANTLEY

BY: *William M. Brantley*
Attorneys for Plaintiffs

FILED

FEB 25 1970

ALICE J. DUCK CLERK
REGISTER

THE COURT OF COMMONS

IN SENATE

THE LORDS OF THE KING

1813

We the jury find for the
plaintiff damages in the amount
of \$3000

L. Baker, Foreman

1813

1813

1813

SUMMONS AND COMPLAINT

THE STATE OF ALABAMA
BALDWIN COUNTY

Circuit Court, Baldwin County

No.

.....TERM, 19.....

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to SummonMID-STATE HOMES, INC., a Florida corporation,

.....
.....
.....

to appear and plead, answer or demur, within thirty days from the service hereof, to the complaint

filed in the Circuit Court of Baldwin County, State of Alabama, at Bay Minette against.....

.....MID-STATE HOMES, INC., a Florida corporation,..... Defendant.....

by

.....HARRY PONDS and ALICE L. PONDS....., Plaintiffs.....

Witness my hand this.....25.....day of.....February.....1970.

Alice L. Ponds Clerk

No. 9147

Page.....

THE STATE OF ALABAMA
BALDWIN COUNTY
CIRCUIT COURT

Harry Bonds and Alice
L. Bonds
Plaintiffs

vs.
Mid-State Homes, Inc.
Florida Corporation
Defendants

SUMMONS AND COMPLAINT

FILED

Filed 19.....

FEB 25 1970

Clerk

A. S. **ALICE J. DUCK** CLERK
REGISTER

County, Alabama, Claim \$1.50 each for

serving _____ process(es) and \$1.00

travel expense on each of _____

process(es) or a total of _____

Hilters & Brantley
Plaintiff's Attorney

Defendant's Attorney

1847

Defendant lives at
% Fred or Richard Ball
Statutory Agents
200 S. Salisbury St.
Montgomery, Alabama
Received In Office
FEB 26 1970

..... 19.....
M. S. BUTLER, Sheriff
Sheriff

I have executed this summons
this 27th 1970
by leaving a copy with

Fred Ball
or at for
Mid State Homes
Inc

M. S. Butler Sheriff
McSmith Deputy Sheriff

JUL 28 1971

THE STATE OF ALABAMA --- JUDICIAL DEPARTMENT
THE COURT OF CIVIL APPEALS
SPECIAL TERM 1971

1 Div. 41

Mid-State Homes, Incorporated

v.

Harry Ponds and Alice L. Ponds

Appeal From Baldwin Circuit Court

WRIGHT, JUDGE

Suit was begun in the Circuit Court of Baldwin County, Alabama, by Harry and Alice L. Ponds against Mid-State Homes, Incorporated. Suit was on the law side for breach of a covenant in a contract for sale of real property.

Appellees-plaintiffs below, on the 3rd day of August 1962, entered into a sale contract with appellant for the purchase of a house and lot in Bay Minette, Alabama. The lot was described in the contract by metes and bounds. The contract provided for a small down payment, with the balance to be paid monthly at 6% interest. The remainder was to be secured by either a note and mortgage or by seller retaining title with an agreement for deed

upon payment of total price and interest. There was a warranty in the contract that the seller owned the property described free and clear of all liens and encumbrances, except taxes for 1961 and restrictions and easements of record. On the same date as the sale contract, the parties entered into an agreement for deed whereby upon payment of the purchase price and performance of certain other conditions by the purchaser, seller covenanted to convey fee simple title free of all encumbrances to purchaser.

Purchaser was placed in possession of a house and lot and lived there for some six years. Payments were made as due and were not in arrears as of the time of trial.

The complaint of appellee is not upon the agreement for deed, but upon the warranty in the sales contract that the seller owned the property described at the time of sale. Whether there was a right of action on the sales contract after execution of the agreement for deed is not an issue.

There was no rescission of the contract involved but merely an action for damages for breach of warranty of ownership of title.

Upon trial, plaintiffs-appellees introduced into evidence the agreement for deed and the sales contract. Evidence was presented that prior to suit appellees had secured the services of a licensed surveyor who had surveyed and determined that the property described in the contract was not the property of which they were in possession. There was parol evidence, admitted over objection, that someone was claiming the property appellees occupied. There was no evidence of what the claim consisted. The propriety of admission of such parol evidence was not assigned as error on appeal. There was no evidence of any adverse title or encumbrance of record. No one had challenged appellees

possession or right to possession in any manner, but merely that appellees had heard of some claim. There was no evidence that appellant did not own either the property described, or that possessed at the time of the making of the contract, or at the time of trial. There was no offer of return of possession by appellees. There was no proof of damages other than the payments made on the purchase price.

In its oral charge to the jury the court stated it did not know what the proper measure of damages would be in such a case, but that appellees had sued for all their money back, plus interest at 6%. A part of the charge was as follows:

" . . . But I am going to leave it up to you. You jurors are put in this box because you are reasonable and because you are thought to have good judgment, and I just want you to do justice as you swore when you took the oath to try the case as fairly and impartially and do justice between the plaintiffs and the defendant. Whatever you determine is a reasonable amount to reimburse these people for the fact they were sold something the defendant doesn't own. There is no proof that anybody is attempting to run them off but there is proof that they are not where they were sold and somebody might come in today or tomorrow and try to move them and the whole thing is, when you buy something you are entitled to get what you bought, . . ."

Appellant's written request for the general affirmative charge was refused.

The jury returned a verdict in favor of appellees and assessed their damages at the sum of \$3000.00.

Appellant has assigned as error the court's refusal of its request to give the general affirmative charge. We consider the assignment as well taken.

The issue presented by the pleadings in this case involves only an alleged breach of warranty, that appellant, at the time of entering into the sales contract had title to the property described therein free from all liens and encumbrances. There was nothing else presented in the complaint. There was no claim for mistake or error in description or delivery. Apparently appellees were placed in possession of the property contemplated when the sale was made. There is no claim for breach of the entire contract. There is no rescission, misrepresentation, fraud, cancellation or reformation of the contract involved. The sole issue presented is whether appellant owned title to the property described in the contract on the date thereof.

There is no proof whatever in the evidence that appellant did not have title as warranted. Though unnecessary to disposition, we further comment there was no evidence that appellant did not own the property which appellees went into possession of and lived on for six years and which they still lived on at the time of trial. The court, in its oral charge to the jury quoted above, stated the condition of the evidence when it said "There is no proof that anybody is attempting to run them off but there is proof that they are not where they were sold and somebody might come in today or tomorrow and try to move them. . ."

The latter statement of the court was not an issue raised by the pleadings. The fact that "nobody is attempting to run them off" was not the issue raised by the complaint either.

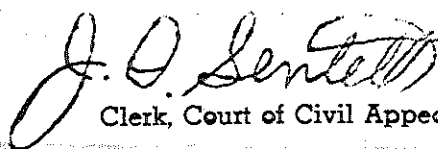
As stated, the issue was whether at the time of making the contract, made the basis of the suit, appellant had title to the property described. The burden of proving a breach of the warranty sued upon was on the appellees. Alger-Sullivan Lumber Co. v. Union Trust Co. 209 Ala. 432, 96 So. 436; Anderson v. Knox, 20 Ala. 156; Wolff v. Woodruff, 258 Ala. 1, 61 So. 2d 69. Appellees presented no legal evidence that appellant did not have title as warranted. Under such state of the evidence, appellant-defendant was entitled to have given the general affirmative charge. Fidelity & Cas. Co. v. Bank of Commerce, 285 Ala. 580, 234 So. 2d 871; Anniston Soil Pipe Co. v. Central Foundry Co. 275 Ala. 545, 156 So. 2d 637.

For improper refusal of appellant's written request for the general affirmative charge, the verdict and judgment of the trial court is reversed and judgment is rendered in favor of defendant below.

REVERSED AND RENDERED.

I, J. O. Sentell, Clerk of the Court of Civil Appeals 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, th

Witness my hand this 28 day of July 19 21



Clerk, Court of Civil Appeals of Alabama

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE COURT OF CIVIL APPEALS OF ALABAMA

Special
~~October~~ Term, 1971

Div. No.

To the Clerk ~~Register~~ of the Circuit Court of 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 Mid-State Homes, Incorporated, Appellant,

and Harry Ponds and Alice L. Ponds, Appellee,

wherein by said Court it was considered adversely to said appellant, were brought before the Court of Civil Appeals, by appeal taken, pursuant to law, on behalf of said appellant;

Now, it is hereby certified:

That the Court of Civil Appeals on the 28th day of July, 1971, reversed and annulled the judgment of the Court below, ~~and remanded the cause to said Court for further proceedings therein.~~

and this Court proceeding to render the judgment that the Circuit Court should have rendered now Orders and Adjudges that the judgment be, and the same is hereby rendered for the defendant; and that the defendant recover of the plaintiff the costs expended in this behalf, for which costs let execution issue.

That the Court further ordered the appellee s. Harry Ponds and Alice L. Ponds

pay the costs accruing on said appeal in this Court and in the Court below, for which costs let execution issue.

Witness, J. O. Sentell, Clerk of the Court of Civil Appeals of Alabama, at the Judicial Department

Building, this the 28th day of July, 1971

J. O. Sentell
Clerk of the Court of Civil Appeals of Alabama.

THE COURT OF CIVIL APPEALS
OF ALABAMA
Special
~~October~~ Term, 19 71

1 Div., No. 41

Mid-State Homes, Incorporated

Appellant,

vs.

Harry Ponds and Alice L.

Ponds

Appellee.

From Baldwin Circuit Court.

No. 9147

**CERTIFICATE OF
REVERSAL**

The State of Alabama,

Baldwin County. } Filed

this 30 day of July 1971

Ernie B. Blackmon

Clerk