

ETHEL M. LANE

(PLAINTIFF) APPELLANT

VS:

WOODIE C. LEE, D/B/A PILGRIM
CONSTRUCTION CO.

(DEFENDANT) APPELLEE

MOTION FOR EXTENTION OF TIME FOR FILING TRANSCRIPT OF THE RECORD

NOW COMES THE PLAINTIFF IN THE ABOVE STYLED CAUSE BY HER ATTORNEYS,
AND MOVES THIS HONORABLE COURT TO ENTER AN ORDER OF EXTENTION OF TIME FOR
FILING THE TRANSCRIPT OF THE RECORD IN THE APPELATE COURT, AND AS GROUNDS,
THEREFOR PLAINTIFF SHOWS THE FOLLOWING, TO-WIT:

1. THAT THE TRANSCRIPT OF RECORD IN THIS CAUSE IS DUE TO BE FILED ON
OR BEFORE FEBRUARY 14, 1973 IN THE CIVIL APPEALS COURT OF ALABAMA.

2. THAT THE ATTORNEYS FOR THE PLAINTIFF FILED THE ASSIGNMENT OF ERRORS
ON FEBRUARY 8, 1973 AND THAT THE CLERK OF THIS COURT PREPARED THE TRANSCRIPT
OF RECORD FOR MAILING TO THE CIVIL APPEALS COURT ON THAT DATE.

3. ON FEBRUARY 8, 1973 IT WAS BROUGHT TO THE ATTENTION OF THE CLERK
OF THIS HONORABLE COURT THAT CERTAIN PLEAS FILED BY THE DEFENDANT IN THIS
CAUSE DID NOT APPEAR IN THE TRANSCRIPT OF THE RECORD.

4. ON FEBRUARY 9, 1973, THE CLERK OF THIS HONORABLE COURT INFORMED
THE ATTORNEYS FOR THE PLAINTIFF THAT THE TRANSCRIPT OF RECORD WAS NOT
COMPLETE, AND ADDITIONAL TIME WOULD BE NECESSARY TO CORRECTLY PREPARE
SAID TRANSCRIPT OF THE RECORD.

DATED THIS THE 13 DAY OF FEBRUARY, 1973.

BAILEY & TAYLOR

BY: Lloyd E. Taylor

ATTORNEYS FOR PLAINTIFF

I HEREBY CERTIFY THAT A COPY OF THE ABOVE AND FOREGOING MOTION HAS
BEEN SERVED UPON THE ATTORNEYS FOR THE DEFENDANT IN THIS CAUSE ON THIS

13 DAY OF FEBRUARY, 1973.

Lloyd E. Taylor

ETHEL M. LANE

(PLAINTIFF) APPELLANT

VS

WOODIE C. LEE, D/B/A PILGRIM
CONSTRUCTION CO.

(DEFENDANT) APPELLEE

ORDER

THIS CAUSE COMING ON TO BE HEARD UPON THE MOTION OF THE PLAINTIFF
FOR AN EXTENTION OF TIME FOR FILING THE TRANSCRIPT OF THE RECORD IN THE
CIVIL APPEALS COURT OF ALABAMA, AND

ON CONSIDERING THE SAME, THE COURT IS OF THE OPINION THAT GOOD CAUSE
HAS BEEN SHOWN FOR AN EXTENTION OF TIME FOR FILING THE TRANSCRIPT, AND
DOES HEREBY ORDER, ADJUDGE AND DECREE THAT THE TIME FOR FILING THE TRANS-
SCRIPT OF THE RECORD IN THIS CAUSE, BE AND IS HEREBY EXTENDED FOR A PERIOD
OF THIRTY (30) ADDITIONAL DAYS.

DONE THIS 13th DAY OF FEBRUARY, 1973.

Telfair S. Mashburn
TELFAIR S. MASHBURN
JUDGE

MAY - 2 1973

THE STATE OF ALABAMA --- JUDICIAL DEPARTMENT

THE COURT OF CIVIL APPEALS

OCTOBER TERM, 1972-73

Civ. 117

Ethel M. Lane

v.

Woodie C. Lee, d/b/a Pilgrim Construction Co.

Appeal from Baldwin Circuit Court

HOLMES, J.

This case comes on appeal from a judgment in the Circuit Court of Baldwin County.

Appellant, plaintiff below, filed suit against the appellee-defendant based on a written contract to do certain work upon a building owned by appellant in Fairhope, Alabama.

The complaint, as amended, contained three counts. Count one was for a breach of written contract. Counts two and three concerned breach of

warranty with reference to the contract.

Demurrers to the amended complaint were overruled and the parties proceeded to trial and at the conclusion of the evidence the case was submitted to the jury under all three counts. The jury returned a verdict in favor of appellee-defendant and judgment in accordance with the verdict was entered.

Thereafter, appellant moved for a new trial, and such motion was overruled. The appellant has assigned as error the trial court's denial of the motion for a new trial. This motion, as presented to the trial court, contained seven grounds.

As this court stated in Shiver v. Barrow, 45 Ala. App. 495, 497, 232 So. 2d 676, 677, the effect of such assignment "is to present as a separate assignment of error every ground stated in the motion for new trial. Therefore, the grounds set out in the motion must undergo scrutiny on review as if they were actually assignments of error. Their sufficiency to require review must be determined. They must specify the precise error alleged to have occurred, and must be properly argued. Allred v. Dobbs, 280 Ala. 159, 190 So. 2d 712; General Finance Corp. v. Bradwell, 279 Ala. 437, 186 So. 2d 150; Danley v. Marshall Lumber and Mill Co., 277 Ala. 551, 173 So. 2d 94."

Grounds six and seven of the motion for new trial filed by appellant in this case are not argued and therefore are waived. Supreme Court Rule 9; Burroughs v. Booth, 286 Ala. 110, 237 So. 2d 496; Thornton v. Tutt, 283 Ala. 72, 214 So. 2d 425.

Grounds one, two, three, four, and five of the motion for new trial filed by appellant are as follows:

"ONE

"The verdict of the jury is contrary to the uncontroverted evidence in this case.

"TWO

"The verdict of the jury is contrary to the law in this case.

"THREE

"The verdict of the jury is contrary to the great weight of the evidence in this case.

"FOUR

"The verdict of the jury is not sustained by the great preponderance of the evidence in this case.

"FIVE

"The verdict of the jury is contrary to the law and evidence in this case."

These grounds of the motion for new trial are general and insufficient to advise the trial court of any error it had committed, and thus fails to supply this court on review with any information as to error in the court below. See Thornton v. Tutt, supra; Thomas v. Brook, 274 Ala. 462, 149

So. 2d 809; Shiver v. Barrow, supra; Allred v. Dobbs, supra, (280 Ala. 159); General Finance Corp. v. Bradwell, supra, (279 Ala. 437); Grimes v. Jackson, 263 Ala. 22, 82 So. 2d 315.

In Alabama, under our present practice, an appellate court is limited to a review of those errors brought before it by a proper assignment of error. Supreme Court Rule 1; 2A Ala. Dig., Appeal and Error, Key 719(1); Hoefer v. Snellgrove, 288 Ala. 407, 261 So. 2d 431.

Appellant's assignments of error as presented to this court, numbered 3, 4, and 9, are as follows:

"3. The trial court erred in overruling and denying the Plaintiff's motion for a new trial for that the verdict of the jury is contrary to law.

"4. The trial court erred in overruling and denying the Plaintiff's motion for a new trial for that the verdict of the jury was contrary to uncontroverted evidence.

"9. The lower court erred in rendering its judgment of April 12, 1972, in that the same is not supported by the preponderance of legal, competent and material testimony."

These assignments of error are too uncertain and indefinite and present no particular error for our review. Self v. Hollis, ___ Ala. ___, 270 So. 2d 803;

Thornton v. Tutt, supra; Thomas v. Brook, supra.

Appellant's able counsel further assigns as error certain comments made by the trial court during appellant's closing argument. This court has carefully studied the record and has found no objection or exception taken by appellant, plaintiff below, to any remark by the trial judge.

Where no objection was made or exception taken to any remark by the trial judge, nothing is presented here for review. Thompson v. Havard, 285 Ala. 718, 235 So. 2d 853; Old Southern Life Insurance Company v. Free, 46 Ala. App. 622, 247 So. 2d 379; Rice v. Hill, 278 Ala. 342, 178 So. 2d 168; Page v. Hawk, 250 Ala. 26, 33 So. 2d 8.

Furthermore, it is a well settled principle of law that matters not objected to cannot be considered for the first time on appeal. Hoefer v. Snellgrove, supra.

Assignments of error numbered 5, 6, 7, and 8 are not argued in brief and are therefore waived. Supreme Court Rule 9; Burroughs v. Booth, supra.

The above is dispositive of all of appellant's properly presented and argued assignments of error and, while it is not necessary to this opinion, the following comments are deemed appropriate.

On appeal to this court, in this instance, all favorable presumptions are given in favor of the verdict of the jury and the verdict will not be disturbed unless it is plainly and manifestly unjust.

Fuller v. Yancey, 281 Ala. 126, 199 So. 2d 666; 2A Ala. Dig., Appeal and Error, Key 999(1). Furthermore, when the trial judge refuses to grant a motion for new trial, such presumptions are strengthened. Shores v. Terry, 285 Ala. 417, 232 So. 2d 657; 2A Ala. Dig., Appeal and Error, Key 930(1). In this instance, we could not say the verdict is plainly and manifestly unjust.

Additionally, in this instance, on appeal from a judgment or a jury's verdict this court cannot decide fact issues, but only whether there is sufficient evidence on which a verdict may be predicated. Herrington v. Hudson, 262 Ala. 510, 80 So. 2d 519. Here, from our review of the evidence as presented by the record, there would be sufficient evidence on which the verdict could be predicated.

Further, as this court has stated on numerous occasions, it is our policy, where at all possible, to decide cases on their merits rather than what some have described as technicalities.

Portions of this decision could perhaps be classified as being decided on technicalities.

The legislature in 1971, by Act No. 964, Acts of Alabama 1971, Regular Session, approved September 7, 1971, conferred upon our supreme court power to adopt a new system of rules to govern procedure in appellate courts. These rules are to allow the appellate courts to better determine litigation on their merit, and such rules are presently in the

process of being completely formulated. In fact, on April 23, 1973, our supreme court adopted a new rule, Supreme Court Rule 52. However, until such additional needed rules are adopted prior decisions of the supreme court and this court must be followed. For us to do otherwise would not only be overruling prior decisions of the supreme court, which power we do not possess nor should possess, but would create a system of appellate practice without appropriate rules by which all must abide. Without an appropriate uniform appellate procedure and practice the appellate process would at best be divergent.

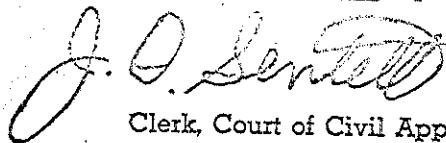
All assignments of error properly presented and argued having been considered, the judgment is due to be affirmed.

AFFIRMED.

Wright, P. J., and Bradley, J., concur.

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.

Witness my hand this 2 day of May 1973



Clerk, Court of Civil Appeals of Alabama

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE COURT OF CIVIL APPEALS OF ALABAMA

October Term, 1972-73

Div. No. Civ. 117

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
Ethel M. Lane, Appellant,

and
Woodie C. Lee, d/b/a Pilgrim Construction Co., 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 upon consideration thereof the Court of Civil Appeals,
on the 2nd day of May, 19 73, affirmed said cause, in all respects, and
ordered that appellant Ethel M. Lane

and Lloyd E. Taylor

sureties for the costs of appeal, pay the costs of appeal in this Court and in the Court below,
for which costs let execution issue.

~~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 Court of Civil
Appeals of Alabama, at the Judicial Building,
this the 2nd day of May, 19 73
J. O. Sentell
Clerk of the Court of Civil Appeals of Alabama.

THE COURT OF CIVIL APPEALS
OF ALABAMA

October Term, 19 72-73

Div., No. Civ. 117

Ethel M. Lane

Appellant,

vs.

Woodie C. Lee d/b/a Pilgrim

Construction Co.

Appellee.

From Baldwin Circuit Court.

No. 9619

**CERTIFICATE OF
AFFIRMANCE**

The State of Alabama,

FILED
County.

} Filed

this 10th day of May 1973 1973

EUNICE B. BLACKMON CIRCUIT
CLERK

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 12th day of April,
 Monday, 19...72, in a cer-
 tain cause in said Court wherein Ethel M. Lane
 Plaintiff, and Woodie C. Lee, d/b/a Pilgrim Construction Co.
 Defendant, a judgement was rendered against said
 Plaintiff
 to reverse which Judgment, the said filed motion for new trial, same
 was denied May 4, 1972, and the said Ethel M. Lane, Plaintiff
 applied for and obtained from this office an APPEAL, returnable to the next
 Court of Civil Appeals
 Term of our 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 Lloyd E. Taylor,

..... with surties

Now, You Are Hereby Commanded, without delay, to cite the said Woody C. Lee, d/b/a
 Pilgrim Construction Co. or Chason, Stone & Chason, Attorneys

..... 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. BLACKMON
 Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 26th
 day of October A. D., 1972

Attest:

Eunice B. Blackmon Clerk.

8 Nov. 1972
and on 9 day of Nov. 1972
I serve a copy of the within Cit. in Appeal
on Chason, Stone & Chason

By service on John Chason Jr.

TAYLOR WILKINS, Sheriff
D. W. O. Bell
D. S.

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CASE NO. 9619

CIRCUIT COURT
Baldwin County, Alabama

ETHEL M. LANE,

RECEIVED
Plaintiff

NOV 8 1972

TAYLOR WILKINS
SHERIFF

Vs. } Citation in Appeal

WOODY C. LEE, d/b/a

PILGRIM CONSTRUCTION CO.,

Defendantx

Issued 26th day of Oct., 1972

serve: Chason, Stone & Chason

ETHEL M. LANE

PLAINTIFF

VS.

WOODIE C. LEE D/B/A
PILGRIM CONSTRUCTION CO.

DEFENDANT

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IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO: 9619

AMENDED COMPLAINT

COMES NOW THE PLAINTIFF IN THE ABOVE STYLED CAUSE AND AMENDS HER COMPLAINT HERETOFORE FILED IN SAID CAUSE SO THAT THE SAME SHALL READ AS FOLLOWS:

COUNT ONE:

THE PLAINTIFF CLAIMS OF THE DEFENDANT THE SUM OF THREE THOUSAND (\$3,000.00) DOLLARS AS DAMAGES FOR THE BREACH OF A WRITTEN CONTRACT ENTERED INTO BETWEEN THE PLAINTIFF AND THE DEFENDANT, ON TO-WIT, THE 20TH DAY OF FEBRUARY, 1970, A COPY OF WHICH SUCH AGREEMENT HAS HERETOFORE BEEN FILED IN THIS CAUSE AND IS HEREBY MADE A PART HEREOF AS FULLY AS THOUGH HERE SET OUT IN ITS ENTIRETY, BY THE TERMS OF WHICH SAID AGREEMENT THE CONTRACTOR AGREED TO REPAIR A BUILDING AS PER THE PLANS AND SPECIFICATIONS STATED IN SAID CONTRACT, FOR WHICH THE OWNER AGREED TO PAY THE SUM OF TWO THOUSAND ONE HUNDRED TWENTY (\$2,120.00) DOLLARS. AND THE PLAINTIFF SAYS THAT ALTHOUGH SHE HAS COMPLIED WITH ALL OF THE PROVISIONS OF SAID CONTRACT ON HER PART THE DEFENDANT HAS FAILED TO COMPLY WITH THE PROVISION OF SAID CONTRACT WHEREBY HE AGREED TO REPAIR THE BUILDING AS PER SAID PLANS AND SPECIFICATIONS FOR THAT THE ROOF LEAKS, ALL TO THE DAMAGE TO THE PLAINTIFF IN THE SUM ABOVE MENTIONED, HENCE THIS SUIT.

COUNT TWO:

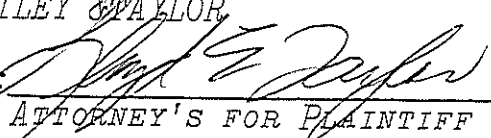
THE PLAINTIFF CLAIMS OF THE DEFENDANT THE SUM OF THREE THOUSAND DOLLARS (\$3,000.00) AS DAMAGES FOR THE BREACH OF A WARRANTY IN THE REPAIR OF A BUILDING BELONGING TO THE PLAINTIFF WHEREBY THE DEFENDANT ON, TO-WIT, THE 20TH DAY OF FEBRUARY, 1970, CONTRACTED TO REPAIR THE ROOF SO THAT IT WOULD NOT LEAK FOR TEN YEARS AND

SAID DEFENDANT HAS BREACHED SAID AGREEMENT IN THAT THE ROOF LEAKS DURING RAINS AND HAS CAUSED GREAT DAMAGE TO THE INTERIOR OF THE SAID BUILDING, ALL TO THE DAMAGE TO THE PLAINTIFF IN THE SUM ABOVE MENTIONED, HENCE THIS SUIT.

COUNT THREE:

THE PLAINTIFF CLAIMS OF THE DEFENDANT THE SUM OF THREE THOUSAND (\$3,000.00) DOLLARS, AS DAMAGES, FOR THE FAILURE OF THE DEFENDANT TO PERFORM CERTAIN REPAIRS IN A GOOD AND WORKMANLIKE MANNER ACCORDING TO THE TERMS AND CONDITIONS OF A CERTAIN WRITTEN CONTRACT ENTERED INTO BETWEEN THE PARTIES ON, TO-WIT, THE 20TH DAY OF FEBRUARY, 1970, WHEREBY THE DEFENDANT AGREED, AMONG OTHER THINGS, TO INSTALL A THIRTY (30) GALLON, GLASS-LINED WATER HEATER, WHICH WAS TO BE DONE IN AN APPROVED MANNER FOR STANDARDS OF FIRST CLASS WORKMANSHIP, WHICH THE PLAINTIFF ALLEGES WAS NOT DONE IN AN APPROVED MANNER FOR STANDARDS OF FIRST CLASS WORKMANSHIP IN THAT THE VENTILATION PIPE, INSTALLED UPON SAID WATER HEATER, LEAKS AND POURS WATER INTO THE BUILDING DURING RAINS THAT OCCUR FROM TIME TO TIME, ALL TO THE DAMAGE TO THE PLAINTIFF IN THE SUM ABOVE MENTIONED, HENCE THIS SUIT.

BAILEY & TAYLOR

By: 
ATTORNEY'S FOR PLAINTIFF

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 6-30-71
served a copy of the foregoing on E. E. BALL
By mailing the same by United States Mail, Properly addressed, and First
Class Postage Prepaid.

BAILEY & TAYLOR

By: 

FILED

JUN 30 1971

EUNICE B. BLACKMON CIRCUIT
CLERK

We the Jury find for the Defendant

James E. Phipps
FOREMAN

6196

~~James E. Phipps~~
~~James E. Phipps~~

FOR THE DEFENDANT

James E. Phipps
James E. Phipps
James E. Phipps

~~James E. Phipps~~
~~James E. Phipps~~

James E. Phipps

James E. Phipps

James E. Phipps

323-63

ETHEL M. LANE, X
Plaintiff, X IN THE CIRCUIT COURT OF
X
vs. X
X BALDWIN COUNTY, ALABAMA
WOODIE C. LEE, d/b/a X
PILGRIM CONSTRUCTION COMPANY, X
X AT LAW
Defendant. 9619

DEMURRER TO AMENDED COMPLAINT

Comes now the Defendant in the above styled cause and demurs to the Complaint as last amended heretofore filed in this cause and to each count thereof, separately and severally, and re-files and re-assigns those grounds of demurrer, separately and severally heretofore filed by him.

CHASON, STONE & CHASON

BY

Eberhard E Ball

Attorneys for Defendant

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all parties to this proceeding, by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this 8 day

of July, 1971

Eberhard E Ball

FILED

JUL 8 1971

EUNICE B. BLACKMON CIRCUIT CLERK

STATE OF ALABAMA
COUNTY OF BALDWIN

Ø
Ø

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

9619

TO ANY SHERIFF OF THE STATE OF ALABAMA:

YOU ARE HEREBY COMMANDED TO SUMMON WOODIE C. LEE D/B/A
PILGRIM CONSTRUCTION CO. TO APPEAR AND ANSWER, PLEAD OR DEMUR, WITH-
IN THIRTY DAYS FROM THE SERVICE OF THIS WRIT, TO A BILL OF COMPLAINT
FILED AGAINST HIM IN CIRCUIT COURT, AT LAW, FOR SAID COUNTY AND
STATE BY ETHEL M. LANE,

HEREIN FAIL NOT. DUE RETURN OF THIS WRIT MAKE AS THE
LAW DIRECTS.

WITNESS MY HAND THIS THE 21 DAY OF Dec.,
1970.

Alice D. Duck
~~REGISTER~~ Clerk

ETHEL M. LANE

PLAINTIFF

VS.

WOODIE C. LEE D/B/A
PILGRIM CONSTRUCTION CO.

DEFENDANT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW

COUNT ONE:

THE PLAINTIFF CLAIMS OF THE DEFENDANT THE SUM OF THREE THOUSAND DOLLARS (\$3,000.00) AS DAMAGES FOR THE BREACH OF A WRITTEN CONTRACT ENTERED INTO BETWEEN THE PLAINTIFF AND THE DEFENDANT ON, TO-WIT, THE 20TH DAY OF FEBRUARY, 1970, A COPY OF WHICH SUCH AGREEMENT IS ATTACHED HERETO AND MADE A PART HEREOF AS FULLY AS THOUGH HERE SET OUT IN ITS ENTIRETY, BY THE TERMS OF WHICH SAID AGREEMENT THE CONTRACTOR AGREED TO REPAIR A BUILDING AS PER THE PLANS AND SPECIFICATIONS STATED IN SAID CONTRACT, FOR WHICH THE OWNER AGREED TO PAY THE SUM OF TWO THOUSAND ONE HUNDRED TWENTY (\$2,120.00) DOLLARS. AND THE PLAINTIFF SAYS THAT ALTHOUGH SHE HAS COMPLIED WITH ALL OF THE PROVISIONS OF SAID CONTRACT ON HER PART THE DEFENDANT HAS FAILED TO COMPLY WITH THE PROVISION OF SAID CONTRACT WHEREBY HE AGREED TO REPAIR THE BUILDING AS PER SAID PLANS AND SPECIFICATIONS FOR THAT THE ROOF LEAKS, THE EXHAUST PIPE ON THE WATER HEATER POURS WATER INTO THE BUILDING AND UPON THE WATER HEATER DURING RAINS, AND FURTHER THAT THE DEFENDANT SCRAPED PAINT OFF THE EXTERIOR WALLS RESULTING IN THE NEEDED REPAINTING OF THE ENTIRE EXTERIOR OF SAID BUILDING, ALL TO THE DAMAGE TO THE PLAINTIFF IN THE SUM ABOVE MENTIONED, HENCE THIS SUIT.

COUNT TWO:

THE PLAINTIFF CLAIMS OF THE DEFENDANT THE SUM OF THREE THOUSAND DOLLARS (\$3,000.00) AS DAMAGES FOR THE BREACH OF A WARRANTY IN THE REPAIR OF A BUILDING FOR THE PLAINTIFF BY THE DEFENDANT WHEREBY THE DEFENDANT ON, TO-WIT, THE 20TH DAY OF FEBRUARY, 1970, CONTRACTED TO GUARANTEE THE ROOF REPAIR FOR TEN YEARS AND SAID DEFENDANT HAS BREACHED SAID GUARANTEE IN THAT THE ROOF LEAKS DURING RAINS AND HAS CAUSED GREAT DAMAGE TO THE INTERIOR OF THE SAID

PAGE -2-

BUILDING, ALL TO THE DAMAGE TO THE PLAINTIFF IN THE SUM ABOVE
MENTIONED, HENCE THIS SUIT.

BAILEY & TAYLOR

By: *Lloyd E. Taylor*
ATTORNEYS FOR PLAINTIFF

FILED

DEC 21 1970

ALICE J. DUCK CLERK
REGISTER

9.9 cc
CASE No: 9619 8503
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

RECEIVED
DEC 22 1970
TAYLOR WILKINS
SHERIFF

ETHEL M. LANE
PLAINTIFF
vs. 28140
WOODIE C. LEE D/B/A
PILGRIM CONSTRUCTION CO.

DEFENDANT MAY BE
SERVED AT:

2809 DEMETROPOLIS ROAD
MOBILE, ALABAMA

EXECUTED
This 25 day of Dec, 1970
by serving a copy of the within on
Woodie C. Lee
clerk Pilgrim Const Co
RAY
By J. Jackson D.S.

FILED

DEC 21 1970

FILED
CLERK
REGISTER

REC'D. SHERIFF DEPT
MOBILE COUNTY, ALA
Dec 23 10 48 AM '70
BY

THIS AGREEMENT, made and entered into on this 20 day of Feb. 1970
by and between Mrs Ethel M. Lane
hereinafter called "Owner" and Pilgrim Construction Co., hereinafter called "Contractor".

WITNESSETH THAT:

1. Contractor agrees to build and complete for owners at 311 Fairhope Ave in Fairhope Ala.
Remove old roof to deck and replace with 4 ply and
gravel and give 10 year guarantee. Paint and finish sheet rock
in two baths, rework kitchen, move one space heater, install
one 30 Gal glass lined water heater, remove two Comode seats.
Connect Gas stove. Build cabinet under window with Tall cabinet
on wall next to stove. Install hood over stove. Sand, scrape
patch & paint 4 rooms and 2 halls, install Dutch door between
two halls with key lock. Install door in wall between Bedroom & Hall.
Replace two window sash, rebuild 3 screens
2. Contractor agrees that he will furnish at his own expense all material, with the exceptions listed
below, and all labor necessary to perform his obligations under this agreement; all workmen and sub-contractors
shall be skilled in their trades and all work is to be done in an approved manner for standards of first class
workmanship, materials and methods of construction shall conform to and comply with all appro-
vable Building Codes. (see plan on back of this contract)?
Materials to be furnished by Owner:
2 Window sash
3. Contractor covenants with Owner that he will pay within a reasonable time all material and labor
bills as such bills are incurred, in order to prevent any claims of liens from being filed by such creditors or
employees of Contractor, insofar as the construction and installation of said improvements are concerned.
4. The parties hereto agree that if there are changes in the plans which increase the Contractor's costs,
such increased costs shall be paid by the Owner.
5. Owner agrees to pay the Contractor on the following basis:
\$2120.00 upon completion of work
6. In event this contract is cancelled by Owner before work is completed the Contractor shall be paid
in full at the time of cancellation his entire costs in connection therewith, plus a reasonable profit.
7. In event Owner should fail to pay according to the terms of this agreement he shall, in addition, pay
a reasonable attorney's fee for the enforcement of the terms hereof.

IN WITNESS WHEREOF, we have hereunto set our hands and seals.

This Contract replaces

all previous contracts between

Mrs Lane & Pilgrim Const. Co

Signed to and subscribed before

me this 17 day of April 1970.

Lucy McDonald
Notary Public, Mobile

Ethel M. Lane (SEAL)
Owner

PILGRIM CONSTRUCTION CO.

(SEAL)

ETHEL M. LANE,	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
	X	
vs.	X	BALDWIN COUNTY, ALABAMA
WOODIE C. LEE, d/b/a	X	
PILGRIM CONSTRUCTION COMPANY,	X	
Defendant.	X	AT LAW

9619

DEMURRER

Comes now the Defendant in the above styled cause and demurs to the Complaint heretofore filed against him and to each count thereof, separately and severally, and as grounds therefore assigns the following, separately and severally:

1. That the said Complaint does not state a cause of action.
2. The said Complaint does not allege any duty owing by the Defendant to the Plaintiff.
3. For aught that appears from said Complaint the Plaintiff did not perform all agreements made by her in the alleged contract.
4. It is not alleged in said Complaint that the defects complained of were due to or caused by any negligence or unworkmanlike conduct on the part of the Defendant.
5. For that there is a misjoinder of causes of action in said Complaint.
6. For aught that appears the Defendant never guaranteed the repairs but rather contracted to guarantee said repairs.
7. For aught that appears from the Bill of Complaint the Plaintiff has not complied with the provisions of the alleged guarantee.

CHASON, STONE & CHASON

By: Elmerhard E Ball
Attorneys for Defendant

Defendant respectfully demands a trial by
jury of this cause.

CHASON, STONE & CHASON

By: Elmerhard E Ball
Attorneys for Defendant

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing
pleading has been served upon counsel
for all parties to this proceeding, by
mailing the same to each by First Class
United States Mail, properly addressed
and postage prepaid on this 21 day
of JAN, 1971.

Elmerhard E Ball

FILED

JAN 21 1971

Ernice A. Blackman
Clerk

Div. No. _____

CERTIFICATE OF APPEAL. (Civil Cases,)

No. 9619

BALDWIN County, Circuit Court.

ETHEL M. LANE

Plaintiff.
vs.

WOODY C. LEE, d/b/a PILGRIM CONSTRUCTION CO.
Defendant.

I, Eunice B. Blackmon Clerk of Circuit Court,
of Baldwin County, Alabama, hereby certify that in the
cause of ETHEL M. LANE plaintiff
vs.

WOODIE C. LEE, d/b/a PILGRIM CONSTRUCTION CO. defendant,
which was tried and determined in this Court on the 12th day of
April 1972, in which there was a judgment for Defendant
Motion for a new trial filed and denied on the 4th day of May, 1972,
for defendant,) the Plaintiff on the 26th day of
October 1972, took an appeal to the Court of Civil Appeals
of Alabama to be holden of and for said State.

I further certify that Lloyd E. Taylor, as Attorney
filed security for cost of appeal, to the Court of Civil Appeals Court, on
the 26th day of October 1972, and that Lloyd E. Taylor,
was
~~and~~ surety on the appeal bond.

I further certify that notice of the said appeal was on the 9th
day of November 1972, served on John Earl Chason, Jr. for Chason, Stone & Ch
as attorney of record for said appellee, and that the amount sued for
was Three Thousand and no/100 - - - - - Dollars. (Or certain lands)
(Or personal property.)

Witness my hand and the seal of this Court, this the 9th
day of November 1972.

Eunice B. Blackmon
Clerk of the Circuit Court of
Baldwin County, Alabama.

VOL 69 PAGE 645

ETHEL M. LANE

PLAINTIFF

Vs

WOODY C. LEE D/B/A
PILGRIM CONSTRUCTION CO.

DEFENDANT

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IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO: 9619

NOTICE OF APPEAL

COMES NOW THE PLAINTIFF, ETHEL M. LANE, IN THE ABOVE STYLED CAUSE BY HER ATTORNEYS AT LAW, AND FILES NOTICE OF APPEAL FROM THE JUDGMENT OF THE CIRCUITE COURT OF BALDWIN COUNTY, ALABAMA, AT LAW IN THE ABOVE STYLED CAUSE RENDERED ON THE 12TH DAY OF APRIL, 1972, TO THE COURT OF CIVIL APPEALS OF ALABAMA.

(DONE THIS 26TH DAY OF OCTOBER, 1972.

BAILEY & TAYLOR

BY: Lloyd E. Taylor
ATTORNEYS FOR PLAINTIFF

FILED

FILED: _____

CLERK: OCT 26 1972

EUNICE B. BLACKMON CIRCUIT
CLERK

SECURITY FOR COSTS

I, LLOYD E. TAYLOR, DO HEREBY ACKNOWLEDGE MYSELF AS SECURITY FOR COSTS OF THE FOREGOING APPEAL.

Lloyd E. Taylor
LLOYD E. TAYLOR

Taken & approved this 26th
day of Oct. 1972
Eunice B. Blackmon,
Clerk

Ethel Lane
vs
Woodie C. Lee
9619

1. Bishop, Ethel, Merchant, 456 S. Section St., Fairhope, Ala. *D4*
2. Clay, Ray, Ast. Cstdn. VAW, 504 Equality St., Fairhope, Ala. *D1*
3. Coleman, Carolyn F., Housewife, 1801 Auburn Av., Bay Minette, Ala. *P3*
4. Crosby, Wm., N., Crosby Lbr. Co., 608 Mixon Av., Bay Minette, Ala. *P6*
5. Davidson, Audrey N., Clk. West Bros., 310 Mango St., Bay Minette, Ala. *P1*
6. Dorch, Alexander, Fisherman, 701 Dan Horne Lane, Fairhope, Ala.
7. Graves, Susie, Housewife, 914 S. Dobson, Bay Minette, Ala.
8. Higgins, Robert, Salesman, 40 S. Section St., Fairhope, Ala.
9. Hollingsworth, George H., Bob White Chev., 503 1st St., Bay Minette, Ala. *P5*
10. Lee, Richard E., Merc. Stockton, Stockton, Ala.
11. Leon, Willie, Musician Grand Hotel, 253 S. Section Fairhope, Ala. Point Clear
12. Lewis, Dollie S., Housewife, 1105 Marks Av., Bay Minette, Ala.
13. Long, Lee, Merc., Rabon St., Bay Minette, Ala.
14. McGurie, Edith S., Housewife, Tensaw, Alabama
15. McKenzie, Gene E., Purch. Agt. Pinto Island Mels, 113 Orange St., Fairhope, Ala. *D3*
16. McMillan, Raymond, Farmer, Stockton, Stockton, Alabama
17. Parker, Gertrude M., Bkpr. Bald. Co. Sav. & Loan, 8 North School St., Fairhope
18. Passmore, Lousie S., School Sec. P. O. Box 247, Silverhill, Ala. *D6*
19. Phillips, Maetha L., Vanity Fairh Star Rt. Stockton Atmore, Ala.
20. Pipkin, James E., PNAS Stockton, Ala. Pensacola, Fla.
21. Powell, John O, Kaiser Almn. 110 S. Day St., Bay Minette, Ala.
22. Robinson, Marlene B., Housewife, 155 Orange St., Fairhope *D5*
23. Rost, Charles H., Mech. NAAS 22 Fig St., Fairhope, Ala. Pensacola, Fla. *D2*
24. Smith, Sidney K., Retired Lee St., Bay Minette, Ala. *P4*
25. Stephens, Robert T., Acct. Cheveron Asphalt, 374 Ridgewood Cir. Fairhope, Ala.
26. Vick, Lloyd, Janitor F Hope High School, 306 Delmar, Fairhope, Ala. *P2*
27. Washington, John Ed., Retired, Blacksher Rt., Bay Minette, Ala.
28. Watts, McFarlan, Logger, 101 Banyan St., Bay Minette, Ala.
29. York, Annie W., Maid BCHS Tensaw, Ala. Bay Minette, Ala.
30. White, Elaine, Beauty Shop, Perdido
31. Brown, Hilard, Retired, Bay Minette
32. Dean, Mary, Housewife, Rabon
33. Eddins, Laura Lee, Clerk, Bay Minette
34. Weekley, Eleanor, Housewife, Perdido
35. Demko, Glenda, Housewife, Bay Minette
36. Bryars, Dollie Mae, Clerk, Bay Minette

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14
12 *6*

P XXXXX X

D XXXXX X J-

9619

THESE DOCUMENTS SONT
DEPOSES A LA BIBLIOTHEQUE
NATIONALE DE FRANCE
LE 10 MARS 1964
PAR LE SERVICE DE
DOCUMENTATION
DE LA PREFECTURE DE LA SEINE

ETHEL M. LAMT,

X

Plaintiff,

X

IN THE CIRCUIT COURT OF

X

VS.

BALDWIN COUNTY, ALABAMA.

X

~~ROBERT C. LEE, C/O/~~

~~X~~

~~AT LAW NO. 9612~~

~~PILCHER CONSTRUCTION~~

~~X~~

~~COMPANY,~~

Defendant.

X

Plea

Comes now the Defendant in the above styled cause and
for Plea to the Amended Complaint heretofore filed in said cause
and to each and every count thereof separately and severally,
says separately and severally as follows:

1. The allegations of the Complaint are untrue.

CHASON, STONE & CHASON

BY:

John E. Chason

Never filed in this case