

224 118-3

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
BESSEMER DIVISION

SWOPE ALABASTER SUPPLY, INC.;)
Plaintiff,)
vs.)
K. HYDE CONSTRUCTION)
INCORPORATED; KENNETH HYDE;)
ERNEST J. LEWIS; JAMES H.)
MCKELVEY, JR.; STEVE HOSEY;)
and MITZIE HOSEY,)
Defendants.)

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E.D. *ls*
CIVIL ACTION NO. CV 86-81
CIRCLER

SEP 19 1986

FINAL JUDGMENT

This matter having come before this Court on Plaintiff's Motion for Summary Judgment filed on July 16, 1986, and the Court having considered the following with respect to the Motion for Summary Judgment:

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- (1) Answer to Motion for Summary Judgment filed by J. H. McKelvey, Jr. on September 3, 1986;
 - (2) Order conditionally granting Swope Alabaster Supply, Inc. relief from the automatic stay dated August 28, 1986, signed by Clifford Fulford, United States Bankruptcy Judge; and
 - (3) The Affidavit of Dorothy Taylor attached to Plaintiff's Motion for Summary Judgment.

Upon consideration of the above, and the Pleadings and Discovery in this case, this Court determines that there is no genuine issue as to any material fact and that the Plaintiff is entitled to a Judgment as a matter of law on all counts of the Complaint. It is

ORDERED, ADJUDGED and DECREED that the following relief be granted to the Plaintiff:

Naggar

(a) That Plaintiff recover of Defendant, Kenneth Hyde, the sum of \$42,721.09 (which consists of \$32,082.00 principal, \$4,320.00 interest, and \$6,400.16 attorney's fee);

(b) That Plaintiff recover of Defendant, Ernest J. Lewis, the sum of \$42,721.09 (which consists of \$32,082.00 principal, \$4,320.00 interest, and \$6,400.16 attorney's fee);

(c) A materialman's lien is hereby created in favor of Swope Alabaster Supply, Inc. with respect to the following described property, situated in Jefferson County, Alabama, Bessemer Division, said lien being superior to the interest of the owner of said property, Defendant, James H. McKelvey, Jr., said lien being affixed to said real estate to secure the payment of an indebtedness owed by K. Hyde Construction, Inc. to the Plaintiff in the amount of \$7,703.72 (consisting of \$7,371.98 principal, \$331.74 interest), said property being more particularly described as follows:

Lot 28, less one acre, Jesse T. Bell's Estate, situated in the NW 1/4 of the SW 1/4 of Section 36, Township 19, Range 5 W, the map of same being recorded in Map Book 8, Page 3, in the Office of the Judge of Probate of Jefferson County, Alabama, Bessemer Division.

Lot 19, Jesse T. Bell's Estate, situated in the NE 1/4 of the SW 1/4 of Section 36, Township 19, Range 5 W, the map of same being recorded in Map Book 8, Page 3, in the Office of the Judge of Probate of Jefferson County, Alabama, Bessemer Division.

That part of the NW 1/4 of the SW 1/4 of Section 36, Township 19, Range 5 W,

described as follows: Commence 462 feet south to the NW corner of said quarter-quarter Section for the point of beginning, thence east 214.5 feet, thence south 214.5 feet, thence west 214.5 feet, thence north 214.5 feet to the point of beginning.

In the event that the above referenced indebtedness (\$7,703.72) is not paid within thirty days of this Order, the Clerk of this Court is hereby directed to sell the property described above and apply the proceeds to the satisfaction of the indebtedness mentioned above (\$7,703.72).

(d) A materialman's lien is hereby created in favor of Swope Alabaster Supply, Inc. with respect to the following described property, situated in Jefferson County, Alabama, Bessemer Division, said lien being superior to the interest of the owner of said property, Defendants, K. Hyde Construction, Inc., Steve Hosey and Mitzie Hosey, said lien being affixed to said real estate to secure the payment of an indebtedness owed by K. Hyde Construction, Inc. to the Plaintiff in the amount of \$23,510.63 (consisting of \$17,610.96 principal, \$2,377.48 interest, and \$3,522.19 attorney's fee), said property being more particularly described as follows:

Begin at the NE corner of Section 2, Township 20 South, Range 5 West; thence run west along the north line of said Section and azimuth of 270 degrees 14 minutes 17 seconds a distance of 370.76 feet to a point in the center of Old Huntsville Road; thence an azimuth of 185 degrees 2 minutes 34 seconds southwesterly along a cord of a curve to the left on said Old Huntsville Road a

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distance of 401.59 feet to a point in the center of said road; thence an azimuth of 127 degrees 6 minutes 52 seconds southeasterly a distance of 29.50 feet to the easterly right-of-way of said road, said point being the point of beginning; thence an azimuth of 94 degrees 46 minutes 42 seconds southeasterly a distance of 179.91 feet; thence an azimuth of 3 degrees 20 minutes northeasterly a distance of 242 feet; thence an azimuth of 274 degrees 46 minutes 42 seconds northwesterly a distance of 177 feet to the said easterly right-of-way of Old Huntsville Road; thence an azimuth of 184 degrees 1 minute 15 seconds southwesterly along the said right-of-way 241.94 feet to the point of beginning, said property contains 1.0 acres.

(e) In light of the bankruptcy Petition filed by K. Hyde Construction, Inc. in the United States Bankruptcy Court for the Northern District of Alabama, Southern Division, said case bearing Case No. 86-5003, this action is stayed with respect to any claim against K. Hyde Construction, Inc. with the exception of the lien mentioned in subparagraph (d) above; and

(f) Costs of this action are taxed against Defendants.

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED
90 MAY -3 PM 1:24
JUDGE OF PROBATE


RALPH D. COOK
Circuit Judge

1. Deed Tax	\$
2. Mtg. Tax	\$
3. Recording Fee	\$ 10.00
4. Indexing Fee	\$ 3.00
5. No Tax Fee	\$
6. Certified Fee	\$ 1.00
Total	\$ 14.00