

STATE OF ALABAMA     )  
COUNTY OF SHELBY    )

ATTORNEY'S AFFIDAVIT

COMES NOW Mitchell A. Spears, a licensed practicing attorney within the State of Alabama, in good standing with the Alabama State Bar, as "Affiant" herein, and after first having been duly sworn, said Affiant does hereby depose and say as follows:

1. That said Affiant is over the age of nineteen (19) years, of sound mind, and has personal knowledge of the facts stated herein.

2. Heretofore, Pelham Marble Company, Inc., as Plaintiff, sued David M. Shirley, Lisa B. Shirley, Jack R. Williams and Rosella M. Williams, as Defendants, within the Circuit Court of Shelby County, Alabama, pursuant to Civil Action Number CV-91-033. On or about October 31, 1991, the above designated Plaintiff obtained a judgment only against Lisa B. Shirley in regard to said cause, and a copy of said judgment is attached hereto as Exhibit "A". The judgment which Plaintiff sought against Jack R. Williams and Rosella M. Williams (clients of the Attorney/Affiant herein), was denied by the Circuit Court of Shelby County, Alabama.

3. On or about December 9, 1991, the Plaintiff filed a Certificate of Judgment only against Lisa B. Shirley, being the party against whom Plaintiff had obtained its judgment. Said judgment designated Jack R. Williams and Rosella M. Williams of P. O. Box 316, Shelby, Alabama 35143, as Defendants under the cause of action. Such judgment was recorded at Book 376, Page 607, in the Office of the Probate Judge, Shelby County, Alabama.

4. The Affiant, on behalf of Jack R. Williams and Rosella M. Williams, demanded a Release of said parties from the judgment, and the attorney for Plaintiff, to-wit, Mark P. Williams, directed correspondence to the Affiant herein on or about January 16, 1992, indicating that he had included Jack R. Williams and Rosella M. Williams, as party-defendants, notwithstanding the fact that judgment was not obtained against said parties. Said Mark P. Williams

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cited Alabama Code Section 6-9-210 as his rational for entering the names and addresses of Jack R. Williams and Rosella M. Williams upon the face of the said Certificate of Judgment. Nevertheless, said Mark P. Williams did recognize the fact that the said recorded judgment did not extend to Jack R. Williams and Rosella M. Williams, as is evidenced by said counsel's January 16, 1992 correspondence attached hereto as Exhibit "B".

5. Consequently, in reference to the above designated matter, the Affiant states absolutely that the above cited Certificate of Judgment provides for no proper judgment lien against Jack R. Williams or Rosella M. Williams.

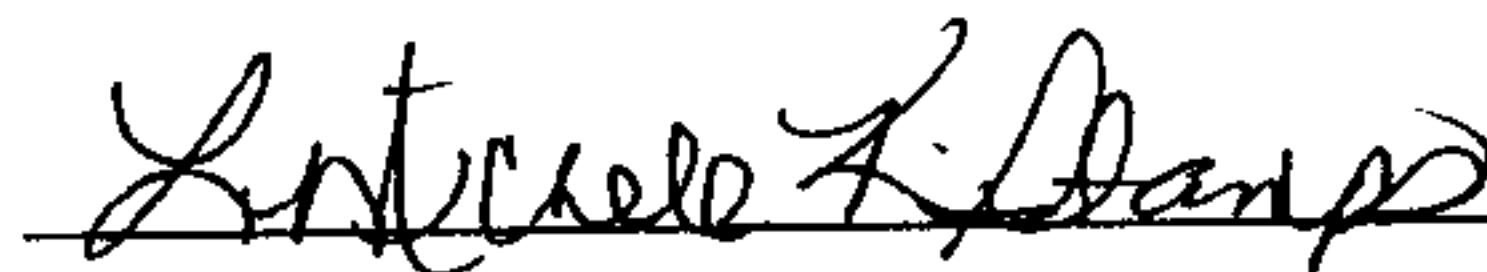
6. This Affidavit, with Exhibits attached, is made for the purpose of ensuring that the Certificate of Judgment recorded at Book 376, Page 607, in the Office of the Probate Judge, Shelby County, Alabama, does not impede the credit status, or future property transactions, involving Jack R. Williams or Rosella M. Williams.

FURTHERMORE, the Affiant saith naught.

  
\_\_\_\_\_  
Mitchell A. Spears

STATE OF ALABAMA   )  
COUNTY OF SHELBY   )

Sworn to and subscribed before me by the above designated Affiant on this 11th day of September, 1996.

  
\_\_\_\_\_  
Notary Public

RETURN TO:  
MITCHELL A. SPEARS  
ATTORNEY AT LAW  
P. O. BOX 119  
MONTEVALLO, AL 35115

EXHIBIT "A"

PELHAM MARBLE COMPANY, INC.,  
PLAINTIFF,

VS.

DAVID M. SHIRLEY, LISA B.  
SHIRLEY, JACK R. WILLIAMS  
and ROSELLA M. WILLIAMS,  
DEFENDANTS.

IN THE CIRCUIT COURT FOR

SHELBY COUNTY, ALABAMA

CIVIL ACTION NUMBER

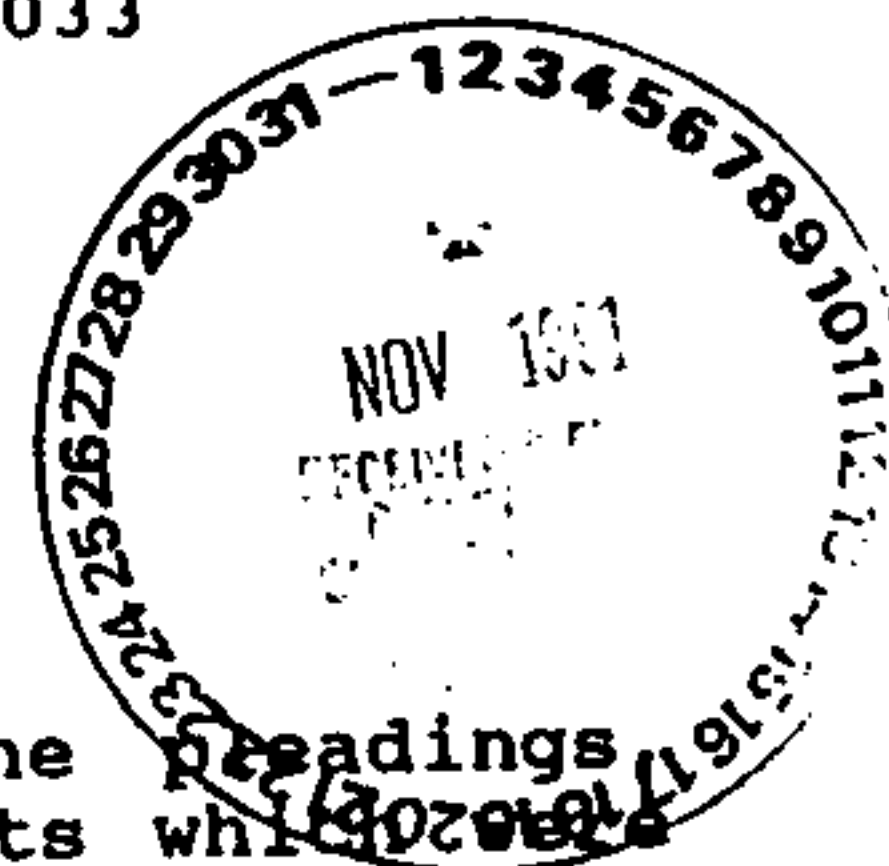
CV-91-033

JUDGMENT

This case was submitted to the Court on the pleadings, testimony of witnesses heard ore tenus, and Exhibits which were introduced into evidence, and upon consideration thereof, the Court FINDS, ORDERS, ADJUDGES and DECREES, as follows:

1. The plaintiff alleges its claim in the amount of One Thousand Four Hundred Forty-Seven Dollars and Sixty-Seven Cents (\$1,447.67) against the defendant Lisa B. Shirley for furnishing certain materials and supplies pursuant to an oral contract between the plaintiff and said Lisa B. Shirley and that said materials and supplies have become a part of the permanent improvements located on certain real estate situated in Shelby County, Alabama, owned by the defendants Lisa B. Shirley and her husband David M. Shirley, and further, that the defendants Jack R. Williams and Rosella M. Williams claim a mortgage interest in said real estate. The plaintiff further claims that the account for said materials and supplies was due and payable on or about July 24, 1990, and claims a mechanics and materialmen's lien on said real estate pursuant to statutory law by virtue of Verified Statements Of Lien which were filed in the Office of the Judge of Probate of Shelby County, Alabama, on November 9, 1990, and November 15, 1990.

2. The Court FINDS from the evidence that the oral contract between the plaintiff and said Lisa B. Shirley provided not only that the plaintiff would provide certain materials and supplies, but also that the plaintiff would install such materials and supplies in the residence dwelling of said Lisa B. Shirley, and further, that the plaintiff did not complete the installation work, which it had agreed to do until after said Verified Statements of Lien were filed in the Office of the Judge of Probate of Shelby County, as aforesaid. Said Lisa B. Shirley was not liable to pay the consideration for the contract on her part until the installation work had been completed by the defendant, and consequently, said Verified Statements of Lien were filed prematurely, and that the plaintiff is consequently not entitled to the mechanics and materialmen's lien which it seeks in this cause.

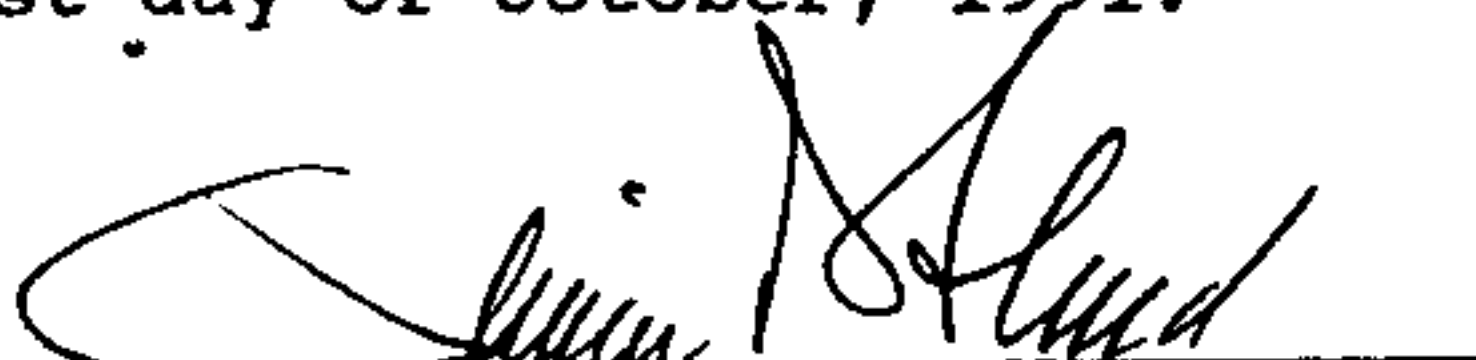


3. The Court further FINDS that the plaintiff did, on or about January 1, 1991, substantially complete the installation work which it agreed to do and did then substantially perform its contract with said Lisa B. Shirley and was, hence, entitled to payment of the contract price in the amount of One Thousand Four Hundred Forty-Seven Dollars and Sixty-Seven Cents (\$1,447.67) on January 1, 1991, less any credits for amounts necessary to make the materials and installation work conform to the contract specifications. Substantial evidence was presented by said Lisa B. Shirley that the plaintiff's materials and installation work was substandard in some respects, but said Lisa B. Shirley failed to provide sufficient proof as to the amount required to make such materials and installation work conform to the contract specifications.

4. Judgment is entered in favor of the plaintiff and against the defendant, Lisa B. Shirley, in the amount of One Thousand Four Hundred Forty-Seven Dollars and Sixty-Seven Cents (\$1,447.67), plus interest at six percent (6%) per annum subsequent to January 1, 1991, or in the total amount of One Thousand Five Hundred Twenty Dollars and Five Cents (\$1,520.05), with costs of Court taxed against said defendant, Lisa B. Shirley.

5. All other relief requested by the parties in the pleadings in this case which is not specifically granted is DENIED.

DONE and ORDERED this 31st day of October, 1991.

  
Oliver P. Head  
Circuit Judge

I, Mitchell A. Spears, hereby certify this to be a true and accurate copy of the original hereof.

  
Mitchell A. Spears

9/9/96



EXHIBIT "B"

LAW OFFICES

GORDON, SILBERMAN, WIGGINS & CHILDS

A PROFESSIONAL CORPORATION

WILBUR G. SILBERMAN  
BRUCE L. GORDON  
ROBERT L. WIGGINS, JR.  
ROBERT F. CHILDS, JR.  
A. J. BECK  
HARVEY L. WACHSMAN  
RAY D. GIBBONS  
C. MICHAEL QUINN  
DENNIS G. PANTAZIS  
TERRILL W. SANDERS  
JAMES MENDELSON  
RICHARD J. EBBINGHOUSE  
ANN K. NORTON  
PAUL H. WEBB  
MARK P. WILLIAMS  
SAMUEL FISHER  
ANN C. ROBERTSON  
TIMOTHY C. GANN  
SAMUEL C. CAMPISI  
TIMOTHY D. DAVIS  
NAOMI HILTON ARCHER  
JOSEPH CALVIN III  
LINDA J. PEACOCK  
ELIZABETH ANN EVANS

FOURTEEN HUNDRED SOUTHTRUST TOWER  
BIRMINGHAM, ALABAMA 35203-3204  
205-328-0640  
TELECOPIER / 205-254-1500

OF COUNSEL  
ROBERT H. LOEB

LOUIS SILBERMAN 1888-1978  
ROBERT B. GORDON 1914-1983

January 16, 1992

Mitchell A. Spears, Esq.  
P.O. Box 91  
Montevallo, AL 35115

RE: Pelham Marble Company, Inc.  
VS: Shirleys  
Civil Action No. Cv 91-033  
Our File No. 1751-1

Dear Mitchell:

Thank you for your letter of January 13, 1992. As we discussed, the Certificate of Judgment clearly states on its face that the only judgment which was rendered was that against Lisa B. Shirley. My inclusion of the name and addresses of all defendants in the Certificate of Judgment is in compliance with Alabama Code §6-9-210. As you are well aware, the case law requires strict compliance with the Code before a recorded Certificate of Judgment will constitute a judgment lien.

I will, therefore, not agree to amend the Certificate of Judgment which I have recorded since doing so could jeopardize Pelham Marble Company, Inc.'s judgment lien rights. If Mr. and Mrs. Williams feel that they are or have been harmed by any error in reporting, any cause of action or right to redress would lie against the particular reporting agency. As I mentioned to you, if any reporting agency or title company wishes to speak with me about this matter, I will be more than happy to advise them that Pelham Marble Company, Inc. asserts no claim whatsoever against Mr. and Mrs. Williams.

Once again, it was a pleasure to speak with you. Please call me if I can ever be of assistance to you.

I, Mitchell A. Spears, hereby certify this to be a true and accurate copy of the original hereof.

Sincerely yours,

Mitchell A. Spears

Mark P. Williams

MPW/cv

cc: Mr. Robert E. Hazelrigs w/enclosure

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