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Shelby Cnty Judge of Probate, AL
02/28/2005 11:02:00 FILED/CERTIFIED

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

MARTIN L. PIERCE, et al.

*

Plaintiffs,

*

v.

*

Case No. CV 2004-780

RANDY W. RICHARDSON, et al.,

*

Defendants.

*

RECEIVED AND FILED
MARY H. HARRIS
FEB 28 2005
CIRCUIT & DISTRICT
COURT CLERK
SHELBY CO.

ORDER ON APPLICATION FOR DEFAULT JUDGMENT

This cause having come before the Court on the Application for Default Judgment filed by the Plaintiffs Martin L. Pierce and Anne-Marie Pierce, and upon the Defendants Randy W. Richardson's, R & R Surveying and Engineering Company, Inc.'s and Richardson Surveying and Engineering Company, Inc.'s failure to plead or otherwise defend as to the allegations contained in the Plaintiffs' Complaint, and upon testimony being received by the Court, the Court hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On or about the 10th day of June 2003, the Plaintiffs entered into a purchase agreement wherein the Plaintiffs agreed to purchase and EBSCO, Inc. agreed to sell that certain parcel of undeveloped real property located at 288 Linwood Road, Sterrett, Shelby County, Alabama, and more particularly described as Lot 429, Forest Parks Subdivision. Said purchase agreement was expressly contingent upon the Plaintiffs obtaining "approval by proper Health Department authorities for a permit for installation of a septic tank"..

2. On or about June 2003, Plaintiffs hired Defendants Randy W. Richardson, Richardson Surveying & Engineering Company, Inc. and/or R & R Surveying & Engineering Company, Inc. to perform percolation testing on the above-referenced property to determine whether said property was suitable for installing a septic system as required by the Shelby County Health Department in order for a home to be built on the property.

3. Closing on the subject property was scheduled for July 21, 2003. Prior to closing on said property, Plaintiffs were assured by Defendant Randy W. Richardson, via telephone, that the percolation test had been performed, the lot successfully percolated and there were no problems. Plaintiffs closed on the above-referenced property on July 21, 2003.

4. Plaintiffs received an invoice in the amount of Three Hundred Fifty and 00/100 Dollars (\$350.00) from R & R Surveying & Engineering Company, Inc. dated July 1, 2003 for a "Percolation [sic] Test-Soil Bore-Plot Plan".

5. On or about September 3, 2003, the Plaintiffs learned that their Permit to Install an Onsite Sewage Disposal System on the above-referenced property had been denied on July 7, 2003 by the Shelby County Health Department due to the failure of the lot to percolate.

6. Subsequent to receiving notice that the permit had been denied, Plaintiff Martin L. Pierce contacted Defendant Randy Richardson on several occasions in an attempt to remediate the problems with the percolation testing.

7. The Defendants breached said contract by providing Plaintiffs incorrect results for said percolation test.

8. Defendants negligently performed or caused to be performed the soil percolation test on the above-referenced property.

9. As a proximate result of said negligence, Plaintiffs suffered damages in that they purchased real property they would not otherwise have purchased, had to delay their plans for building a home on said property, will have to expend monies in the future to provide for alternate and more costly sewage disposal, and have lost value of their property.

10. Defendants negligently performed or caused to be performed the soil percolation test on the above-referenced property.

11. As a proximate result of said negligence, Plaintiffs suffered damages in that they purchased real property they would not otherwise have purchased, had to delay their plans for building a home on said property, will have to expend monies in the future to provide for alternate and more costly sewage disposal, and have lost value of their property.

12. The Defendants recklessly misrepresented to the Plaintiffs the actual condition of the subsurface soil conditions, for which the Plaintiffs reasonably relied to their detriment.

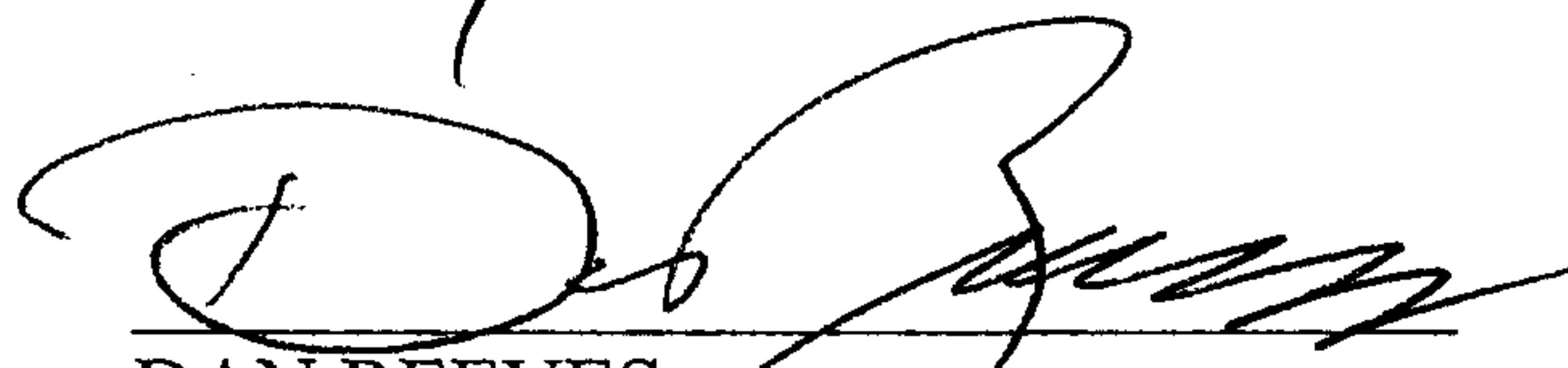
13. As a proximate result of said misrepresentation, the Plaintiffs have suffered damages in that they purchased real property they would not otherwise have purchased, had to delay their plans for building a home on said property, will have to expend monies in the future to provide for alternate and more costly sewage disposal, and have lost value of their

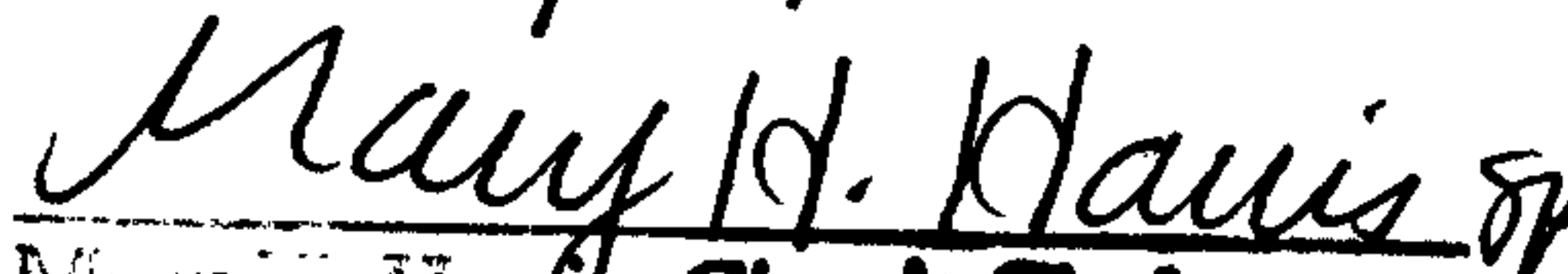
property. The plaintiffs also have unnecessarily suffered aggravation and mental anguish due to the Defendants wrongful acts.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND
DECREED as follows:

1. A judgment is hereby entered in favor of the Plaintiffs Martin L. Pierce and Anne-Marie Pierce for compensatory in the amount of \$42,380.48.
2. That costs of this proceeding are taxed against the Defendants.

DONE this the 28th day of February, 2005.


DAN REEVES
Circuit Judge

Certified a true and correct copy
Date: 2/28/05

Mary H. Harris, Circuit Clerk
Shelby County, Alabama