

1342

IN THE CIRCUIT COURT FOR SHELBY COUNTY, ALABAMA

BIRMINGHAM LUMBER & BUILDING  
MATERIALS, INC.,

Plaintiff,

vs.

TOM TURNER CONSTRUCTION CO.  
OF ALABAMA, INC.; and TOM  
TURNER,

Defendants.

CIVIL ACTION NUMBER:

COMPLAINT

Comes now the Plaintiff in the above styled cause, by and through its attorney of record, J. Harry Blalock, and states unto this Honorable Court as follows:

Count One

1. Prior to January 31, 1991, the defendants were the owners of that certain lot located at:

Lot 41 The Magnolias of Brook Highlands on Magnolia Place.

2. The defendants were engaged in the erection and construction of a residence located on said lot.

3. Prior to January 31, 1991, at the special instance and request of defendants, plaintiff furnished to said defendants lumber and other building materials to be used by them in the erection and construction of the aforesaid residence.

4. The aforesaid materials are of the value of Seven Thousand One Hundred Seventy One and 95/100's Dollars (\$7,171.95) and said materials were actually used in the construction of the aforementioned residence.

5. Said materials were furnished by plaintiff by the authority and with the knowledge and consent of the Defendants.

6. On or about January 31, 1991, plaintiff, pursuant to Section 35-11-213, Code of Alabama, 1975, filed in the Office of the Probate Judge of Shelby County, Alabama, its verified statement of lien. A copy of same is attached as Exhibit "A" and was mailed to the Defendant on the same day.

Birmingham Lumber  
P.O. Box - 8329  
Birmingham, Al. 35218

7. There is now due and owing to plaintiff by and on account of the materials furnished, the sum of Seven Thousand One Hundred Seventy One and 95/100's Dollars (\$7,171.95) plus interest and a reasonable attorney's fee.

8. Plaintiff has requested payment from defendants, but they have failed or refused to accede to plaintiff's request.

WHEREFORE, PREMISES CONSIDERED, plaintiff prays:

A. That judgment be rendered against defendants in the sum of Seven Thousand One Hundred Seventy One and 95/100's Dollars (\$7,171.95) plus interest, cost, and a reasonable attorney's fee;

B. That plaintiff be adjudged to have a lien against the above-described premises for the sum of Seven Thousand One Hundred Seventy One and 95/100's Dollars (\$7,171.95) plus interest, and a reasonable attorney's fee;

C. That the above-described premises, to the extent of the interest of the defendants, be adjudged and decreed to be sold by the Sheriff of Shelby County, Alabama, and the proceeds be applied to the payment of the costs in this proceeding and of the lien of plaintiff so ascertained and adjudged; and

D. That plaintiff have such other and further relief as the Court shall decree proper.

#### Count Two

1. Prior to January 31, 1991, the plaintiff and defendants entered into a contract wherein the plaintiff would sale and deliver goods to the said defendants and said defendants would pay for said goods on or before the 30th day of the following month.

2. The defendants also agreed to pay a service charge of 1 and 1/2% per month on all past due charges and a reasonable attorney's fee and court cost in the event said past due amount was turned over to an attorney for collection. The defendant Tom Turner personally guaranteed the debt of defendant Tom Turner Construction Company of Alabama, Inc.

3. Defendants breached said contract by failing to pay for said goods as agreed.

4. The value of the goods delivered is Seven Thousand One Hundred Seventy One and 95/100's Dollars (\$7,171.95).

WHEREFORE, PREMISES CONSIDERED, Plaintiff demands judgment against defendants in the sum of Seven Thousand One Hundred Seventy One and 95/100's Dollars (\$7,171.95) plus a reasonable attorney fee, interest, and cost.

**Count Three**

1. Plaintiff adopts all of the allegations of Count One and Two of its Complaint as if fully set forth herein.

2. Defendants owe plaintiff the sum of Seven Thousand One Hundred Seventy One and 95/100's Dollars (\$7,171.95) for goods sold and delivered by plaintiff to defendants between January 1, 1990 and January 31, 1991.

WHEREFORE, PREMISES CONSIDERED, plaintiff demands judgment against defendants in the sum of Seven Thousand One Hundred Seventy One and 95/100's Dollars (\$7,171.95) plus a reasonable attorney fee, interest, and cost.

**Count Four**

1. Plaintiff adopts all of the allegations of Count One, Two and Three of its Complaint as if fully set forth herein.

2. Defendants owe plaintiff the sum of Seven Thousand One Hundred Seventy One and 95/100's Dollars (\$7,171.95) due by open account.

WHEREFORE, PREMISES CONSIDERED, Plaintiff demands judgment against defendants in the sum of Seven Thousand One Hundred Seventy One and 95/100's Dollars (\$7,171.95) plus a reasonable attorney fee, interest, and cost.

**Count Five**

1. Plaintiff adopts all of the allegations of Counts One, Two, Three and Four as if fully set forth herein.

2. Defendants owe plaintiff the sum of Seven Thousand One Hundred Seventy One and 95/100's Dollars (\$7,171.95) on an account stated between plaintiff and defendants on the 25th day of January, 1991.

WHEREFORE, PREMISES CONSIDERED, plaintiff demands judgment against defendants in the sum of Seven Thousand One Hundred Seventy One and 95/100's Dollars (\$7,171.95) plus a reasonable attorney fee, interest, and cost.

  
J. Harry Blalock  
Attorney for the Plaintiff  
Suite 214, 651 Beacon Parkway, West  
Post Office Box 59767  
Birmingham, Alabama 35259  
(205) 945-9922

**Plaintiff's Address:**

c/o Charles E. Glass  
Sherrlyn Drive  
Hoover, Alabama 35226

**Serve Defendant at:**

4040 Mountain Crest Road  
Sterrett, Alabama 35147

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VERIFIED STATEMENT OF MATERIALMEN'S LIEN

STATE OF ALABAMA:  
Shelby COUNTY:

Birmingham Lumber & Building Materials, Inc., files this statement in writing, verified by the oath of Charles E. Glass, President, who has personal knowledge of the facts herein set forth:

That said Birmingham Lumber & Building Materials, Inc., claims a lien upon the following property, situated in Shelby County, Alabama, to wit:

Lot 41 The Magnolias of Brook Highlands  
on Magnolia Place

1. Dead Tax \_\_\_\_\_  
2. Mtg. Tax \_\_\_\_\_  
3. Recording Fee \_\_\_\_\_  
4. Indexing Fee \_\_\_\_\_  
5. No Tax Fee \_\_\_\_\_  
6. Certified Fee \_\_\_\_\_  
Total \_\_\_\_\_

STATE OF ALA. SHELBY CO.  
I CERTIFY THIS  
INSTRUMENT WAS FILED

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This lien is claimed, separately and severally, as to both the buildings and improvements thereon and to the said land.

That said lien is claimed to secure an indebtedness of \$ 7171.95 along with attorney's fee and interest from to-wit: Jan. 30th, 1991, for building materials used in the construction of a building on said property or improvements thereto.

The name of the owner or proprietor of the said property is Tom Turner Construction Co. of Alabama and Tom Turner.

STATE OF ALA. SHELBY CO.  
I CERTIFY THIS  
INSTRUMENT WAS FILED

Birmingham Lumber & Building Materials, Inc.,  
Claimant

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JUDGE OF PROBATE

By: Charles E. Glass, President

Before me, Linda Lindsey Jones, a Notary Public in and for said County and State, personally appeared Charles E. Glass, president of Birmingham Lumber & Building Materials, Inc., who being duly sworn, doth depose and says: That he has personal knowledge of the facts set forth in the foregoing statement of lien, and that the same are true and correct to the best of his knowledge and belief.

1. Dead Tax \_\_\_\_\_  
2. Mtg. Tax \_\_\_\_\_  
3. Recording Fee \_\_\_\_\_  
4. Indexing Fee \_\_\_\_\_  
5. No Tax Fee \_\_\_\_\_  
6. Certified Fee \_\_\_\_\_  
Total \_\_\_\_\_

Charles E. Glass  
Charles E. Glass, Affiant

SUBSCRIBED and SWORN to before me on this the 30 day of January, 1991, by said affiant.

Linda Lindsey Jones  
Notary Public