

2031

IN THE CIRCUIT COURT OF ST. CLAIR COUNTY
(PELL CITY DIVISION)
STATE OF ALABAMA

CHRYSLER FIRST COMMERCIAL CORP.,)

Plaintiff,)

VS.)

SENSIBLE HOUSING, INC., and)
MIKE MASKE,)

Defendants.)

CIVIL ACTION NO.
CV 91P-26

Nov 26 1991

FINAL JUDGEMENT

THIS CAUSE was submitted to the Court on the Pleadings, the Stipulation of Facts as signed and executed by the Attorneys of Record for the parties, the Motion for Judgement on the Pleading and Brief as filed by the Plaintiff, and the Motion for Judgement on the Pleading and Brief as filed by the individual Defendant, Mike Maske. The Court, having read and considered the above matters, finds that the Plaintiff is entitled to relief against both party Defendants. The Court finds that relief is due to be granted and makes the following findings:

1. That under the provision of Paragraph Two of the Stipulation of Facts, the Plaintiff is entitled to a monetary judgement against the Defendant, Sensible Housing, Inc in the Amount of \$27,027.00 plus interest of \$4999.99 through September 13, 1991 plus interest at the rate of \$16.67 per day from September 14, 1991 to November 20, 1991 for an additional interest of \$1,133.56. The total amount due to the Plaintiff as of November 20, 1991 is \$33,160.55.
2. That the Plaintiff is entitled to recover a reasonable attorney fee under the financing agreements. That the Court has determined from the attached affidavits, that a reasonable attorney fee for the Plaintiffs attorney, M. Wayne Wheeler, is fifteen (15%) percent of the judgment amount, or \$4,974.08.

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M. WAYNE WHEELER, P.C.

ATTORNEY AT LAW

2230 THIRTH E NORTH
BIRMINGHAM, A. 35203-3877

CHRYSLER V. SENSIBLE, et al.
CASE NO. CV-91P-26
FINAL JUDGMENT
PAGE TWO

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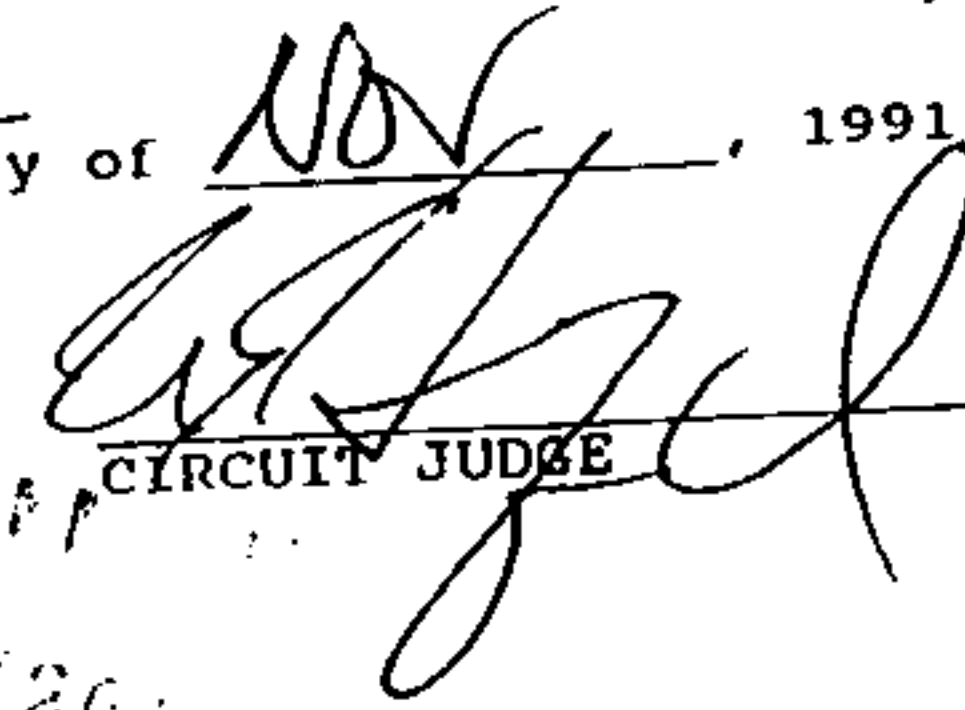
3. Further, the Court finds that the plain meaning of the financing documents involved in this transaction demonstrates an intention of the parties to personally bind the Defendant, Mike Maske. The Court finds the Guaranty Agreement would be meaningless without the personal liability of the individual Defendant, Mike Maske.
4. That under the terms and conditions of the financing documents, the Plaintiff is entitled to a monetary judgement against the individual Defendant, Mike Maske, in the same amounts that are set out in Paragraphs One and Two above.

Upon consideration of the above matters. the Court finds that the relief is due to be granted to the Plaintiff.

IT IS THEREFORE ORDERED:

1. That a monetary judgement is hereby entered in favor of the Plaintiff, Chrysler First Commercial Corp., and against the Defendants, Sensible Housing, Inc. and Mike Maske, in the amount of \$38,134.63.
2. Costs taxed against the Defendants for which let execution issue.

DONE AND ORDERED THIS 26th day of NOV, 1991.


CIRCUIT JUDGE

cc: M. Wayne Wheeler
Ferris Ritchey, III

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Defendants.

CIVIL ACTION FILE

NUMBER CV 91 P-26

AFFIDAVIT OF ALLEN W. WOOD

STATE OF GEORGIA

COUNTY OF FULTON

PERSONALLY APPEARED before the undersigned duly authorized to
administer oaths, Allen W. Wood, who after being duly sworn,
deposes and states the following:

1.

I am employed as Senior Account Representative for Chrysler
First Commercial Corp. ("CFCC") and am authorized to testify on
behalf of CFCC regarding those accounts about which I have personal
knowledge.

2.

This affidavit is based on my personal knowledge and the
business records of CFCC and I am competent to testify to all
matters.

3.

I am the custodian of the business records at CFCC which
include the contract documents and account statements of the
defendants.

4.

Defendants' account at CFCC is maintained by me and entries are made on the account by a person with knowledge thereof under my supervision.

5.

Entries made to defendants' account of the debts owing are made at or near the time that the debt is incurred and the entries are subsequently reviewed by me for accuracy.

6.

The business records of defendants' account are made as part of the regular practice of CFCC and kept in the course of a regularly conducted business activity of CFCC.

7.

On February 14, 1989, plaintiff entered into a Security Agreement-Inventory (the "Agreement") with defendant Sensible Housing, Inc., a copy true and correct copy of which is attached hereto as Exhibit A and incorporated herein by reference.

8.

Pursuant to the Agreement, plaintiff obtained a security interest in all inventory it supplied in accordance with the Agreement.

9.

On February 14, 1989, Mike Maske signed a guaranty (the "Guaranty") personally guarantying payment of any and all obligations of Sensible Housing, Inc. to CFCC. A true and correct copy of the Guaranty is attached hereto as Exhibit B and incorporated herein by reference.

10.

Pursuant to the Agreement, Defendant Sensible Housing, Inc. agreed to pay Plaintiff for such inventory as the inventory was sold.

11.

Defendant Sensible Housing, Inc. sold inventory out-of-trust by failing to remit payment to Plaintiff for the inventory in accordance with a payment plan established pursuant to the Agreement.

12.

By virtue of the default in repayment and other breaches of the Agreement, Plaintiff accelerated the remaining debt owed by Defendant Sensible Housing, Inc.

13.

Defendants were given notice of the default and the acceleration by Plaintiff's counsel by letter dated December 6, 1990. A true and correct copy of the notice is attached hereto as Exhibit C.

14.

Defendants are indebted to the Plaintiff pursuant to the Agreement in the principal sum of \$27,027 with interest thereon in the amount of \$4,999.99 through September 13, 1991 and interest thereafter at the rate of \$16.67 per day.

15.

Pursuant to paragraph 7 of the Agreement, Plaintiff is entitled to reasonable attorney's fees and legal expenses incurred by Plaintiff in enforcing the Agreement after Defendants' default.

16.

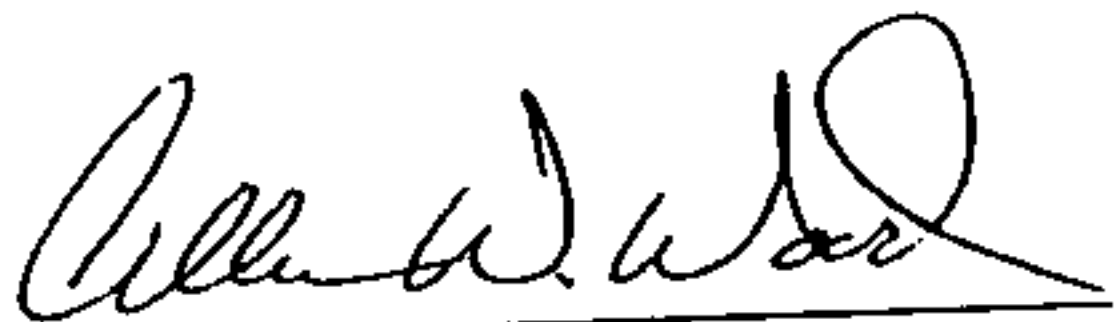
The Guaranty provides that should any claim against the guarantor be referred to an attorney for collection, the guarantor shall pay reasonable attorney's fees.

17.

Plaintiff has expended \$3,463.01 in attorney's fees as of September 16, 1991 in attempting to collect the amount owing on the account from the defendants.

FURTHER AFFIANT SAYETH NOT.

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ALLEN W. WOOD

Subscribed and sworn to and subscribed before me
this 16th day of September, 1991.



NOTARY PUBLIC
State of Georgia

My Commission Expires:

Notary Public, Gwinnett County, Georgia
My Commission Expires Sept. 11, 1994

(NOTARIAL SEAL)

ht\users\all\wood.aff

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VS.)
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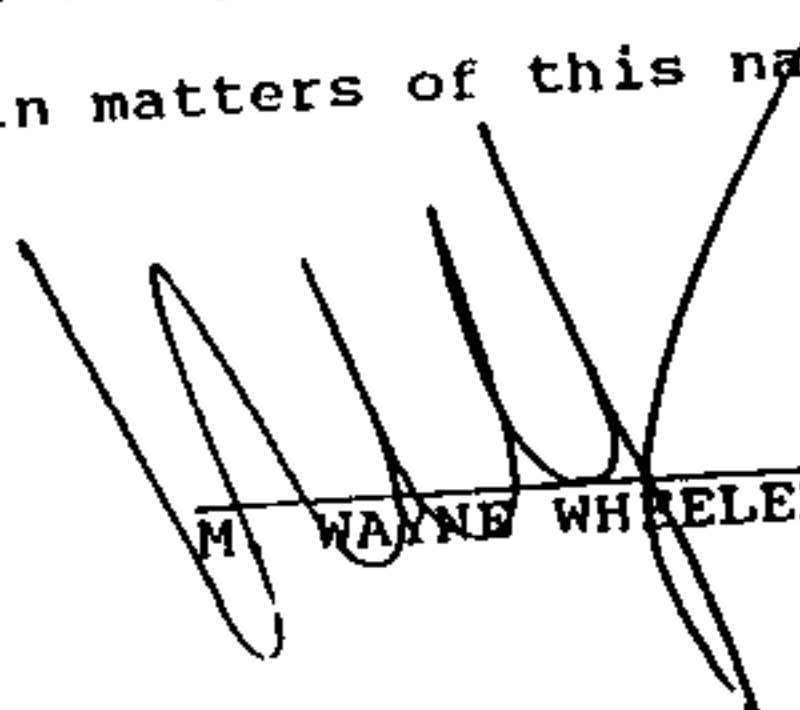
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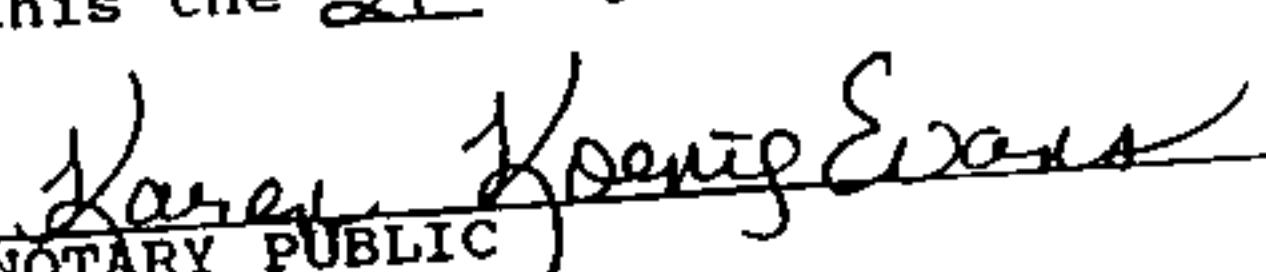
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AFFIDAVIT OF M. WAYNE WHEELER

My name is M. Wayne Wheeler and I am attorney of record for the Plaintiff in the above styled matter. As of September 16, 1991, the Plaintiffs have expended \$3,463.01 for attorney fees. Since that date I have expended approximately \$1,700.00 in additional fees in connection with this matter. The sum of \$4,974.09 as set out in the Final Judgment is a fair and reasonable fee in connection with this matter and is consistent with my time billing of approximately \$5,400.00. and the general procedure of allowing fees of fifteen (15%) percent in matters of this nature.


M. WAYNE WHEELER

Sworn to and subscribed before me
this the 21st day of November, 1991.


NOTARY PUBLIC
State of Alabama

My Commission Expires: _____

Nov 26 1991

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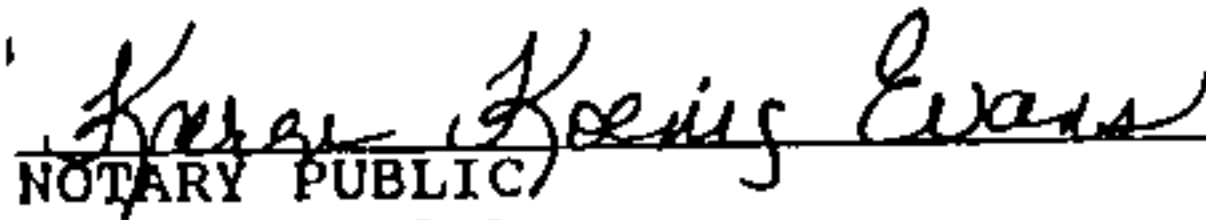
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AFFIDAVIT OF JOHN R. CHRISTIAN

My name is John R. Christian and I have practiced law in Alabama for thirty-five years. I am generally familiar with the award of attorney fees in Alabama. I have examined the file of M. Wayne Wheeler in connection with this matter and the requirements of Peoples v. Miley, 439 So.2d 137. After consideration of all these factors, it is my opinion that a fee award of \$4,974.08 is a fair and reasonable attorney fee award.


JOHN R. CHRISTIAN

Sworn to and subscribed before me
this the 21st day of November, 1991.


NOTARY PUBLIC
State of Alabama

My Commission Expires: _____

1. Deed Tax _____ \$
2. Mtg. Tax _____ \$
3. Recording Fee _____ \$ 20.00
4. Indexing Fee _____ \$ 3.00
5. No Tax Fee _____ \$
6. Certified Fee _____ \$ 1.00
Total _____ \$ 24.00

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED
91 DEC -5 AM 9:38
JUDGE OF PROBATE