

IN THE CIRCUIT COURT OF SHELBY COUNTY

KENNETH H. WALTSGOTT and
MARILYN G. WALTSGOTT,

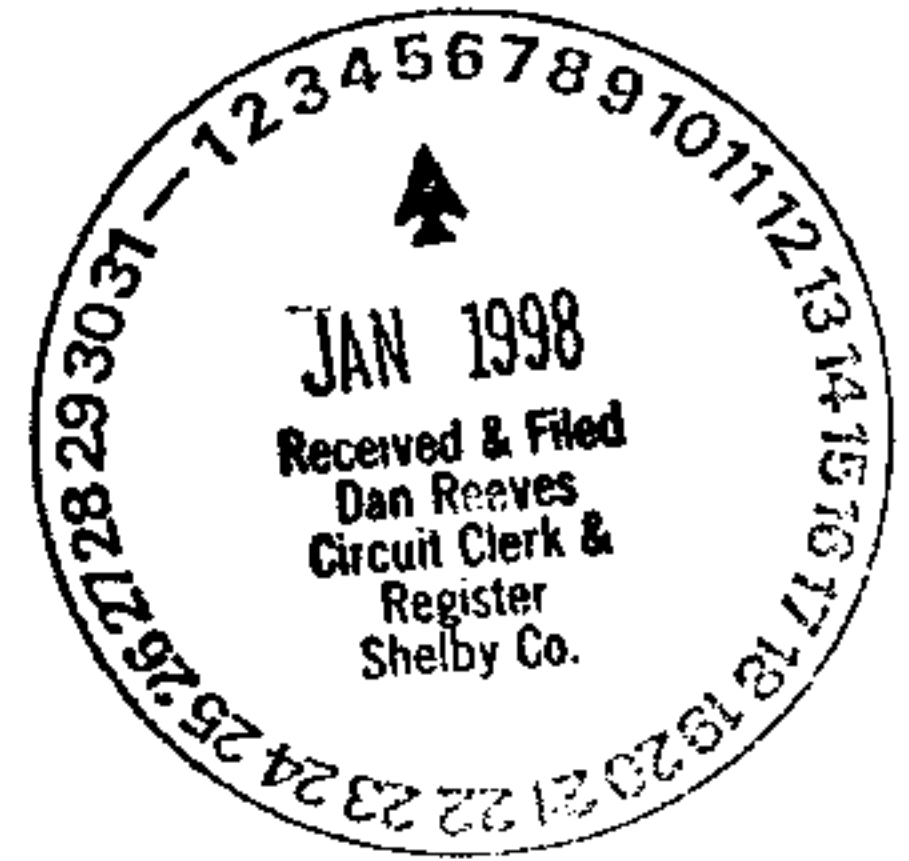
Plaintiffs,

V.

ALVIN GROSS, et al.,

Defendants.

CIVIL ACTION NO. 97-398



Inst # 1998-01269

FINAL JUDGMENT

This cause came to be heard on the issue of damages under the Order of Default Judgment entered on August 4, 1997, in favor of the plaintiffs, Kenneth and Marilyn Waltsgott, and against Gross Building Company, Inc. and Gross Home Builders Company, Inc., and the Order of Default Judgment entered on September 3, 1997, against Alvin Gross. Testimony was taken and other evidence received by the Court without a jury. The plaintiffs, Kenneth and Marilyn Waltsgott, and Mike Weathers, a contractor who prepared a bid for replacing and/or repairing several items throughout the house, testified.

Based on the evidence presented, the Court finds that the plaintiffs are entitled to a judgment for compensatory damages due to the defendants' gross negligence, misconduct and incompetence in the construction of the home of the Waltsgotts in the amount of Fifty Thousand and 00/100 Dollars (\$50,000.00); Twenty-five Thousand and 00/100 Dollars (\$25,000.00) for loss of value to the plaintiffs' home, lost time of the plaintiffs and mental anguish due to the defendants' breach of the contract to construct a new residence; and Seventy-Five Thousand and 00/100 Dollars

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(\$75,000.00) in punitive damages.

The compensatory damages due to the defendants' gross negligence, incompetence and misconduct are based on the consideration of the evidence presented through testimony, photographs, estimated costs of repairs, expenses incurred by the plaintiffs which were not covered in the estimates, and liens, claims and demands made by suppliers. The estimated costs of repairs include the following:

Custom Painting Unlimited	\$31,675.00
Birmingham Pressure Wash	250.00
Mike Nichols (bricklayer)	500.00
Central Builders (Floor Repairs)	5,800.00
Davidson Installation Co. (waterproofing)	1,125.00
Jim Hicks (Landscaping after waterproofing)	660.00
Coleman Overhead Door & Glass	149.50
Quality Marble	413.00

This Court found that the Waltsgotts incurred other expenses as a result of the defendants gross negligence, misconduct and incompetence including: (1) cabinet work- \$150.00; (2) gutters- \$1,205.00; (3) grading of yard - \$600.00; (4) landscaping of yard- \$2,000.00; (5) mortgage payments paid on the house due to the fact the house was not completed by the contract date - \$3,930.00; (6) storage cost for storing their furniture until the house was complete- \$90.00; and (7) \$350.00 for the cleaning of the interior of the house after the defendants walked off the job and failed to clean the house as agreed on. Other items that require repair due to the defendants gross negligence,

misconduct and incompetence, for which the Waltsgotts had not yet received written estimates include the bathroom exhaust fans being vented to the roof and additional support added underneath the deck, among other items.

The Waltsgotts also introduced into evidence proof of claims, liens and demands by suppliers as a result of the defendants' gross negligence, misconduct and incompetence in the total amount of \$11,682.15.

The damages for loss of value, lost time of the plaintiffs and mental anguish are based on the consideration of the continuing damages and loss of value to the home due to the defendants' negligent workmanship, the testimony of the Waltsgotts regarding time spent meeting with subcontractors to repair or replace the damages caused by the defendants and normal mental anguish in the failure to obtain a new home in the condition contemplated by the parties.

Clear and convincing evidence was presented of a sufficient degree of reprehensible conduct by the defendants to establish a high degree of culpability supporting punitive damages without violating the due process clause on the counts included in the complaint where the plaintiffs plead for punitive damages including the defendants' gross negligence and fraudulent actions.

It is therefore ORDERED, ADJUDGED AND DECREED by the Court as follows:

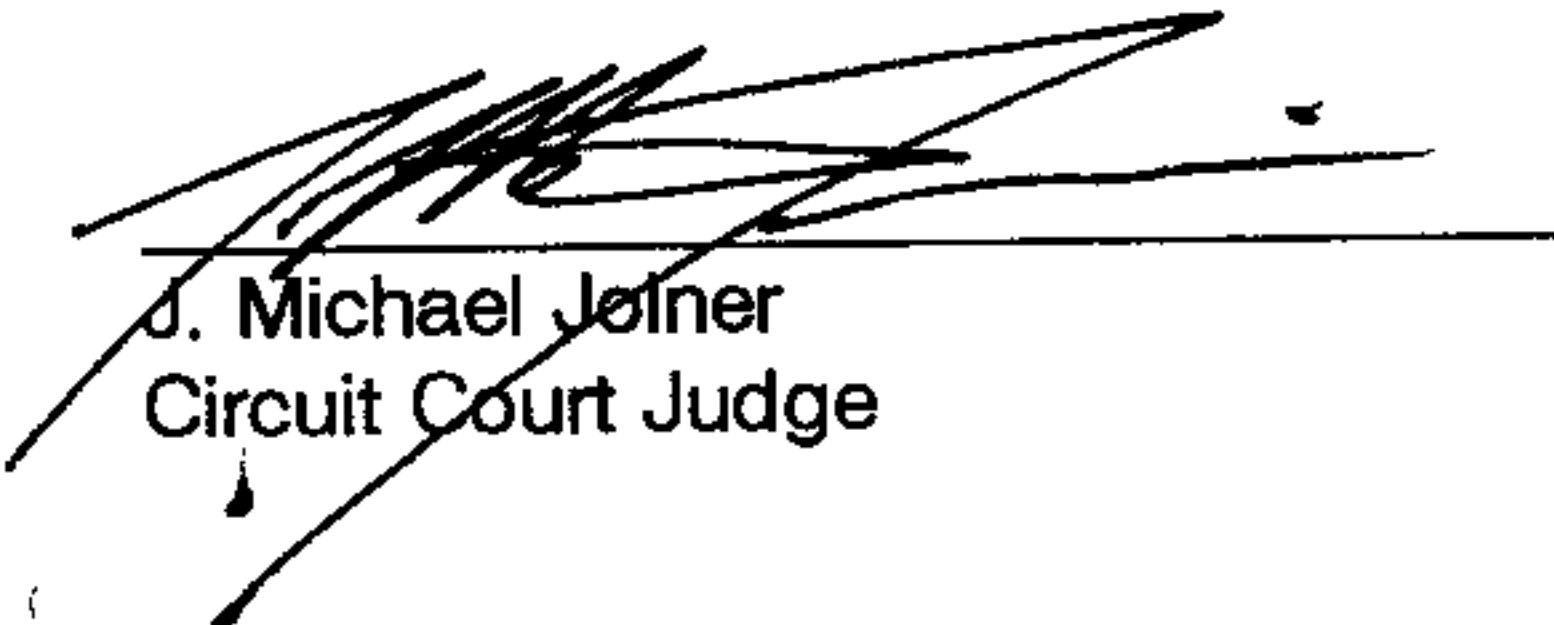
ONE: Judgment in the amount of FIFTY THOUSAND and 00/100 Dollars (\$50,000.00) is rendered in favor of the plaintiffs and against the defendants for compensatory damages suffered by the plaintiffs as a result of the defendants' gross negligence, misconduct and incompetence;

TWO: Judgment in the amount of TWENTY-FIVE THOUSAND and 00/100 Dollars (\$25,000.00) is rendered in favor of the plaintiffs and against the defendants for loss of value, lost time and mental anguish;

THREE: Judgment in the amount of SEVENTY-FIVE THOUSAND and 00/100 Dollars (\$75,000.00) is rendered in favor of the plaintiffs and against the defendants for punitive damages.

FOUR: Costs of this action are taxed as paid.

DONE and ORDERED, this the 5th day of January 1998, ~~December, 1997.~~


J. Michael Joiner
Circuit Court Judge

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Copies to:

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c/o Alvin Gross
2108 Rocky Ridge Road
Birmingham, AL 35216

Gross Home Builders Co., Inc.
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Certified a true and correct copy

Date: January 13, 1998



Dan Reeves, Circuit Clerk
Shelby County, Alabama