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AVS0312

ALABAMA JUDICIAL DATA CENTER
JEFFERSON COUNTY
CERTIFICATE OF JUDGEMENT

20020730000354060 Pg 1/4 20.00
Shelby Cnty Judge of Probate, AL
07/30/2002 14:49:00 FILED/CERTIFIED

CV 2001 001916.00
ED RAMSEY

IN THE CIRCUIT COURT OF JEFFERSON COUNTY

THE CARLISLE CORPORATION VS SMITH HOBART & BROWN INC ET AL

DEFENDANT

SMITH HOBART & BROWN INC A Corp
2410 FAIRWAY DRIVE
SUITE 104
MTN BROOK ,AL 35213-0000

PARTY'S ATTORNEY:

WALKER MARION F
SOUTHTRUST TWR/SUITE 1600
420 20TH STREET NORTH
BIRMINGHAM ,AL 35203

I, ANNE-MARIE ADAMS , CLERK OF THE ABOVE NAMED COURT HEREBY
CERTIFY THAT ON 06/28/2002 PLAINTIFF, CARLISLE CORPORATION THE RECOVERED
OF DEFENDANT IN SAID COURT A JUDGEMENT WITHOUT WAIVER OF EXEMPTIONS FOR THE
SUM OF \$36,123.56 DOLLARS PLUS \$190.00 DOLLARS COURT COSTS, AND
THAT THE PLAINTIFF'S ATTORNEY(S) OF RECORD WAS: CORRETTI DOUGLAS P

06/28/2002 JUDGMENT IS RENDERED IN FAVOR OF THE PLAINTIFF AND
AGAINST THE DEFENDANT. ORDER PER SEPARATE PAPER, SEE ATTACHED
ORDER.

JUDGE RAMSEY

GIVEN UNDER MY HAND THIS DATE 07/26/2002

Anne-Marie Adams

CLERK: ANNE-MARIE ADAMS
RM 400 JEFF CO COURTHOUSE
BIRMINGHAM AL 35203
(205)325-5355

OPERATOR: EDH
PREPARED: 07/26/2002

PLAINTIFF'S ATTORNEY:

CORRETTI DOUGLAS P
1804 7TH AVENUE NORTH
BIRMINGHAM AL 35203

C
JH

IN THE CIRCUIT COURT FOR THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

THE CARLISLE CORPORATION,

Plaintiff(s),

vs.

SMITH, HOBART AND BROWN, INC.,

Et al.,

Defendant(s).

Filed In Open Court

THIS 28 day of June 20 02

ED RAMSEY
CIRCUIT JUDGE

CIVIL ACTION NO.

FILED IN OFFICE

CV 01-1916 ER

JUN 28 2002

ANNE-MARIE ADAMS
CLERK

ORDER

This matter came before the Court for trial on June 24 and 25, 2002.

Plaintiff contends that defendants owe \$35,000.00 plus interest and attorneys' fees on a note dated June 12, 2000.

Defendants contend that there has been a failure of consideration and fraud in the procurement of the note. Defendants also counterclaim for breach of contract in work performed on their home in Shelby County.

The Court finds that there is insufficient evidence to support a finding that Dennis Carlisle, Jr., was acting as an agent for The Carlisle Corporation when work was done on the house of Timothy Brown and Richard Smith. Therefore, the counterclaim against The Carlisle Corporation is denied.

The Court finds that there was consideration for the note signed by defendants Smith, Hobart and Brown, Inc.; Timothy Brown; and Richard Smith. There was a dispute between the parties with regard to the amount owed and what additional work needed to be done. The note and security agreement provided a resolution of the dispute.

Defendants also contend that plaintiff fraudulently misrepresented the amount of money

which had been paid by defendants. However, defendants had access to the same information as plaintiff concerning the amount already paid. The Court finds there was no reliance by defendants on any representation by plaintiff. In Leo v. Neill, 480 So. 2d 572 (Ala. 1985), it was held there was no reliance that would be justified on any representation of the number of square feet in a house where the buyer had an opportunity to measure the house. The court said when the means and sources are equally accessible to both parties, the ignorance of the purchaser is regarded as self-deception unless art or artifice is employed to prevent investigation or stifle information.

Therefore, defendants' claim that the note and agreement were procured by fraud is denied.

The Court finds that defendants signed a note by which they agreed to pay \$100,000.00. The defendants have paid \$65,000.00, which left a balance owed in the amount of \$35,000.00.

Plaintiff did agree to make certain additional repairs, including painting, enclosing the hot water heater, and repairing baseboards. The agreement was ambiguous with regard to the duty to apply one coat or two coats of paint. The Court finds that defendants are entitled to set off the reasonable cost of repairs that were not performed by plaintiff. The Court finds that the reasonable cost of repairs was \$5,000.00.

The Court finds that a reasonable attorney fee under the note in this case is \$1,500.00.

Therefore, judgment is entered in favor of plaintiff, The Carlisle Corporation, and against defendants, Smith, Hobart and Brown, Inc.; Timothy Brown; and Richard Smith, for \$30,000.00 in principal, \$4,623.56 in interest, and \$1,500.00 in attorney's fees, for a total judgment in the amount of \$36,123.56.

Costs of court incurred are taxed against the defendants.


Done this 28 day of June, 2002.

Edward L. Ramsey
CIRCUIT JUDGE

COPIES TO:

Mr. Douglas Corretti
1804 7th Avenue North
Birmingham, AL 35203

Ms. Marion Walker
1600 SouthTrust Tower
Birmingham, AL 35203

State of Alabama - Jefferson County
I certify this instrument filed on:
2002 JUL 26 P.M. 16:00
Recorded and \$ Mtg. Tax
and \$ Deed Tax and Fee Amt.
\$ 12.00 Total \$ 12.00
MICHAEL F. BOLIN, Judge of Probate

200210/5219