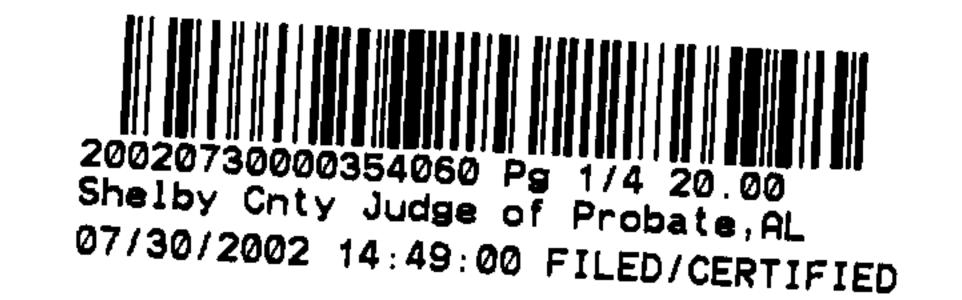
AVSO312

## ALABAMA JUDICIAL DATA CENTER JEFFERSON COUNTY CERTIFICATE OF JUDGEMENT



CV 2001 001916.00

ED RAMSEY

IN THE CIRCUIT COURT OF JEFFERSON

COUNTY

THE CARLISLE CORPORATION SMITH HOBART & BROWN INC VS ET AL

DEFENDANT

PARTY'S ATTORNEY:

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

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

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 \$36,123.56 DOLLARS FLUS SUM OF \$190.00 DOLLARS COURT COSTS, AND FLAINTIFF'S ATTORNEY(S) OF RECORD WAS: THAT THE 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

FLAINTIFF'S ATTORNEY:

CORRETTI DOUGLAS F 1804 7TH AVENUE NORTH BIRMINGHAM AL 35203 Jap

## IN THE CIRCUIT COURT FOR THE TENTH JUDICIAL CIRCUIT OF ALABAMA

THE CARLISLE CORPORATION,	)	Filed In Open Court
Plaintiff(s),	)	THIS 28 day of Jule 20 12
VS.	)	CIRCUIT JUDGE
SMITH, HOBART AND BROWN, INC.,	)	
Et al.,	)	CV 01-1916 ER JAN 28 2002
Defendant(s).	)	CV 01-1916 ER JUN 28 2002
	ODDED	

<u>ORDER</u>

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 tc-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.

COPIES TO:

Mr. Douglas Corretti 1804 7<sup>th</sup> 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

Deed Tax and Fee Amt. and \$ 12.00

12.00 Total \$ 12 MICHAEL F. BOLIN, Judge of Probate

200210/5219