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AUG 10 2009

James W. Fuhrmeister  
Judge of Probate

BRINDLEY CONSTRUCTION, LLC,

Plaintiff,

VS.

CIVIL ACTION NO. CV- 2008-900849

COBBLESTONE CREEK, LTD,  
HOUSING INVESTORS, INC., and  
COMPASS BANK,

Defendants.

## PETITION TO DETERMINE SUFFICIENCY OF CASH BOND

Plaintiff, Brindley Construction, LLC, petitions the Court pursuant to Alabama Code, Section 35-11-233(b) (1975), to determine the sufficiency of a cash bond recently posted by Defendants in attempted substitution for a mechanic's lien upon real property.

As grounds for this motion, Plaintiff shows the court as follows:

1. On October 6, 2008, Plaintiff recorded in the records of the Probate Court of Shelby County, Alabama, its Verified Statement of Lien securing an indebtedness in the amount of \$116,414.35, together with interest and any available attorney's fees. A copy of the recorded lien statement is attached hereto as Exhibit A.

2. On or about July 19, 2009, Defendants filed a motion to transfer said lien from the real property to a cash bond. Although undersigned counsel was later served with a copy of this petition, nothing in it reflects the amount of the bond, and no copy of the check constituting the cash bond was received.

3. On August 4, 2009, undersigned counsel received a copy of a certificate purportedly transferring the lien from the real property to the bond, a copy of which is attached hereto as Exhibit B. Although the certificate was signed by the Judge of Probate, the bond has now been transferred to this Court. For that matter, this Court, where “the action is brought,” had jurisdiction to consider such a proceeding under Ala. Code § 35-11-233(b), not the Probate Court.

4. Finally, on August 5, 2009, by calling the Office of the Clerk of the Probate Court, undersigned counsel was able to get a photocopy of the check and determine the amount thereof.

5. The check which Defendants have deposited as purported security for the transfer of the lien is in the amount of \$116,414.35, the exact amount of Plaintiff’s lien.

6. This bond amount is inaccurate and wholly insufficient to transfer the lien from the real property. Ala. Code § 35-11-233 (1975) requires that in order to transfer a lien, a person having an interest in the real property deposit either a sum of money, or a bond from a licensed surety, in either case in an amount equal to the amount demanded in the claim *plus interest thereon at eight percent (8%) per year for three years, plus \$100.00 to cover court costs*. The minimum amount that the lien transfer bond could have lawfully been was \$144,453.80.


7. Under the statute, the transfer is not effective until ten (10) days after Plaintiff’s receipt of the certificate have expired without the filing of this petition, so it is not presently effective.

WHEREFORE, Plaintiff petitions the Court to determine that the lien transfer bond should be increased to the sum of not less than \$144,453.80, as unmistakably required by Alabama statute.

/s/ W. Alexander Moseley  
W. ALEXANDER MOSELEY (MOS007)  
*Attorney for Plaintiff,*  
*Brindley Construction, LLC*

OF COUNSEL:

HAND ARENDALL LLC  
P. O. Box 123  
Mobile, Alabama 36601  
Phone: (251) 432-5511  
Facsimile: 251-694-6375

  
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Shelby Cnty Judge of Probate, AL  
08/11/2009 01:57:19 PM FILED/CERT



**CERTIFICATE OF SERVICE**

I hereby certify that on the 7<sup>th</sup> day of August, 2009, a copy of the foregoing pleading was served on counsel of record or on the parties in said cause if not represented by counsel, by depositing a copy of the same in the United States mails, postage prepaid, or via the Court's electronic filing system, as follows:

FOR DEFENDANTS, COBBLESTONE CREEK, LTD and  
HOUSING INVESTORS, INC :

A. Joe Peddy, Esq.  
Tamera K. Erskine, Esq.  
SMITH, SPIRES & PEDDY, P.C.  
2015 2nd Avenue North, Suite 200  
Birmingham, Alabama 35203

DEFENDANT COMPASS BANK:

COMPASS BANK  
c/o Jerry W. Powell, Registered Agent  
15 South 20th Street  
Birmingham, Alabama 35233

/s/ W. Alexander Moseley

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VERIFIED STATEMENT OF LIEN

STATE OF ALABAMA :

COUNTY OF SHELBY :

BRINDLEY CONSTRUCTION, LLC (herein referred to as "Claimant") files this statement in writing, verified by the oath of Ronnie Brindley, as a Member, who has personal knowledge of the facts herein set forth:

That said Claimant claims a lien upon the following property, situated in Shelby County, Alabama, to-wit:

Cobblestone Creek Apartments, 1600 Cobblestone Lane, Montevallo, Alabama. Also known as Lot 2C of a Resurvey of Lot 2, Old Wooley Estates, a subdivision located in Section 16, Township 22 South, Range 3 West, Shelby County, Alabama, as shown by plat of record in Map Book 33, at Page 48, in the Office of the Judge of Probate of Shelby County, Alabama.

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

That said lien is claimed to secure an indebtedness of, to-wit, ONE HUNDRED SIXTEEN THOUSAND, FOUR HUNDRED FOURTEEN AND 35/100 DOLLARS (\$116,414.35), with interest due from various dates prior to this date, together with any available attorneys' fees and costs, for construction administrative and management services for the construction of Cobblestone Creek Apartments, which services were sought in connection with, and contributed to, improvements to said property.

20081006000394080 2/2 \$14.00  
Shelby Cnty Judge of Probate, AL  
10/06/2008 11:50:30AM FILED/CERT

The name of the Owner or Proprietor of the said property is believed to be Cobblestone Creek, Ltd., an Alabama limited partnership, whose agent, Housing Investors, Inc., contracted with Claimant for the said services.

BRINDLEY CONSTRUCTION, LLC,  
Claimant

By: *Ronnie Brindley*  
A Member

STATE OF Tennessee :  
COUNTY OF Giles :

BEFORE ME, the undersigned Notary Public, in and for said County and State, personally appeared RONNIE BRINDLEY, who, being duly sworn, doth depose and say:

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.

*Ronnie Brindley*  
AFFIANT

SUBSCRIBED and sworn to before me on this the 1<sup>st</sup> day of October, 2008, by said Affiant



*Debora G. Gordon*  
NOTARY PUBLIC

This instrument prepared by:  
W. Alexander Moseley  
HAND ARENDALL LLC  
Post Office Box 123  
Mobile, AL 36601  
823758\_1

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Shelby Cnty Judge of Probate, AL  
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IN THE PROBATE COURT OF SHELBY COUNTY, ALABAMA

RE: Verified Statement of Lien Instrument No.: 20081006000394080;  
Lis pendens Instrument No.: 20081201000452660

CERTIFICATE OF TRANSFER OF LIEN


Pursuant to Ala. Code § 35-11-233 (1991 Repl. Vol.), the verified claim of lien, recorded in the Probate Court of Shelby County, at Instrument No. 20081006000394080 and accompanying lis pendens, at Instrument No. 20081201000452660, has been transferred from the real property upon which the alleged lien is sought to be imposed to the cash bond attached hereto.

The Clerk of Court is directed to mail a copy of this Certificate by certified mail to the claimant's attorney at the following address:

Brindley Construction, LLC  
c/o W. Alexander Moseley, Esq.  
HAND ARENDALL  
P. O. Box 123  
Mobile, Alabama 36601

The Clerk of Court is further directed to record a copy of said Certificate in the Probate Office.

Done and Ordered this the 29<sup>th</sup> day of JULY, 2009.

  
JUDGE JAMES FUHRMEISTER  
Shelby County Judge of Probate

ENTERED AND FILED

CG July

JUN 29 2009

KIMBERLY MELTON CHIEF CLERK  
PROBATE COURT  
SHELBY COUNTY ALABAMA



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Shelby Cnty Judge of Probate, AL  
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**EXHIBIT B**