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4/22/2025 9:59 AM
58-CV-2023-900754.00
CIRCUIT COURT OF
SHELBY COUNTY, ALABAMA
MARY HARRIS, CLERK

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

AUTHENTIC RESTORATION, LLC,)

Plaintiff,)

v.)

JAMES CANTLEY, JR., EMOGENE)
CANTLEY, MATTHEW CANTLEY and)
JOLIE RICHERZHAGEN,)

Defendants.)



20250423000120550 1/4 \$33.00
Shelby Cnty Judge of Probate, AL
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CV-2023-900754

Order

Background

On September 4, 2023, the Plaintiff brought an action, by and through his attorney, Michael Kelly. The Defendants were properly served. The Defendants through their counsel answered the Complaint on September 27, 2023. On April 12, 2024, the Defendant gave Notice of Discovery to the Plaintiff and served that discovery on the Plaintiff's Counsel through the AlaFile electronic filing system. At no time has the Plaintiff answered that discovery.

On February 14, 2025, the defense counsel served notice to Plaintiff's counsel that answers to discovery had not been provided and gave fourteen days' notice to the Plaintiff to comply with the discovery request, and if discovery was not provided within that time frame, that the Defendant would seek a Motion to Compel from the Court. On February 21, 2025, Mr. Kelly responded to the defense counsel's correspondence and notified him that he intended to withdraw from the case. Later that day Mr. Kelly filed a Motion to Withdraw with this Court. In his Motion to Withdraw, Mr. Kelly provided the Plaintiff's address. On March 4, 2025, this Court granted Mr. Kelly's Motion to Withdraw.

On February 25, 2025, the Defendants counsel sent a letter to the Plaintiff giving him until March 12, 2025, to comply with the discovery request, or the Defendant would seek a Motion to Compel from the Court. This letter was sent via First Class Mail to the address provided by Mr. Kelly to the Plaintiff. That letter was returned as undeliverable. The Defendant has not responded to the letter or provided any discovery.

The Law

Alabama Rules of Civil Procedure, 5(b), holds that service upon the attorney, or the party, shall be made by delivering a copy to the attorney, or the party, or by mailing it to the attorney, or the party, at the attorney's, or the party's, last known address. Service by mail is complete upon

Certified a true and correct copy

Date: 04/23/25

Mary H. Harris
Mary H. Harris, Circuit Clerk
Shelby County, Alabama



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mailing. Additionally, if either the attorney, or the party, is a registered user of the electronic filing system, service may be made by electronic service.

The law governing sanctions for refusal to provide discovery is well settled and stated well in *Iverson v Xpert Tune, Inc.* 553 So. 2d, 82 (Ala 1989). The Supreme Court held in relevant part that, "The trial court is vested with broad and considerable discretion in controlling the discovery process and in making rulings on all matters pertaining to discovery, including authority to make such rulings as are necessary to protect the integrity of the discovery process." *Id.*, 87. Further, in *Iverson*, the Court held that "The sanction of dismissal, where properly employed, is justified on the theory the party's refusal to reveal material evidence tacitly admits his claim or defense is without merit." *Id.*, 89.

Analysis

In this case, the Defendant was initially served with notice through his attorney of record through the electronic filing system. Ten months passed between the time of service and Mr. Kelly's withdrawal from the case. Mr. Kelly was notified via email of the need to comply, before he withdrew. The Plaintiff was then notified via U.S. Mail of the need to comply and given fourteen (14) days' notice to comply before a Motion to Compel was sought. More than six weeks have now passed since the Plaintiff was given notice to comply with the discovery request. He was properly served at least two times and has had ample time to comply with this request.

The Defendants in this case have a lien that was placed on their home by the Plaintiff and are unable to have that lien removed until this case is disposed of. Without discovery, or the Plaintiff making himself available to this Court to prosecute the case he has brought, forbids the resolution of it through the normal course of action as provided by the Rules of Civil Procedure, and prejudices these Defendants and holds their property, their home, captive until a resolution of this matter is reached. Moreover, this Plaintiff refuses to cooperate in the very prosecution he has brought and as such is wrongly and unjustifiably harming the Defendants, leaving them without recourse.

Conclusion

The Defendant has complied with the Rules of Civil Procedure as it relates to service of both the request to produce discovery and the notice of intent to seek an Order to Compel production of requested discovery. The Defendants have been reasonable in their request, and they are being prejudiced by the lack of prosecution of the claims brought against them.

This Court has broad discretion in controlling the discovery process and is responsible for ensuring the integrity of the discovery process. *Iverson*, 553 So. 2d 82, 87. If a party has acted willfully and deliberately with disregard of the efficient administration of justice, the application of a sanction as stringent as dismissal is justified. *Id.*, 87.



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In this case, the Plaintiff has had more than one year to respond to the request for discovery. More than two months have passed since the notice of intent to seek an Order to Compel in the first instance has passed, and more than six weeks since a second notice of intent to seek an Order to Compel. The Defendants have complied fully with their obligations under the Rules of Civil Procedure to notify the Plaintiff of their intent. The Defendants do not have a clear title to their home, as the Plaintiff has sought to cloud their title as part of this prosecution, and the Plaintiff now refuses to participate in the prosecution he brought. As such, the Defendants are due to have the case dismissed against them.

Requested Relief

The Defendants have requested that this Court lift the lien of \$26,091.04 that the Plaintiff caused to be placed on the property described as:

Lot 1640 according to the Survey of Strathaven at Ballentrae, Phase 2, as recorded in Map Book 41, Page 51, in the Office of the Judge of Probate of Shelby County, Alabama.

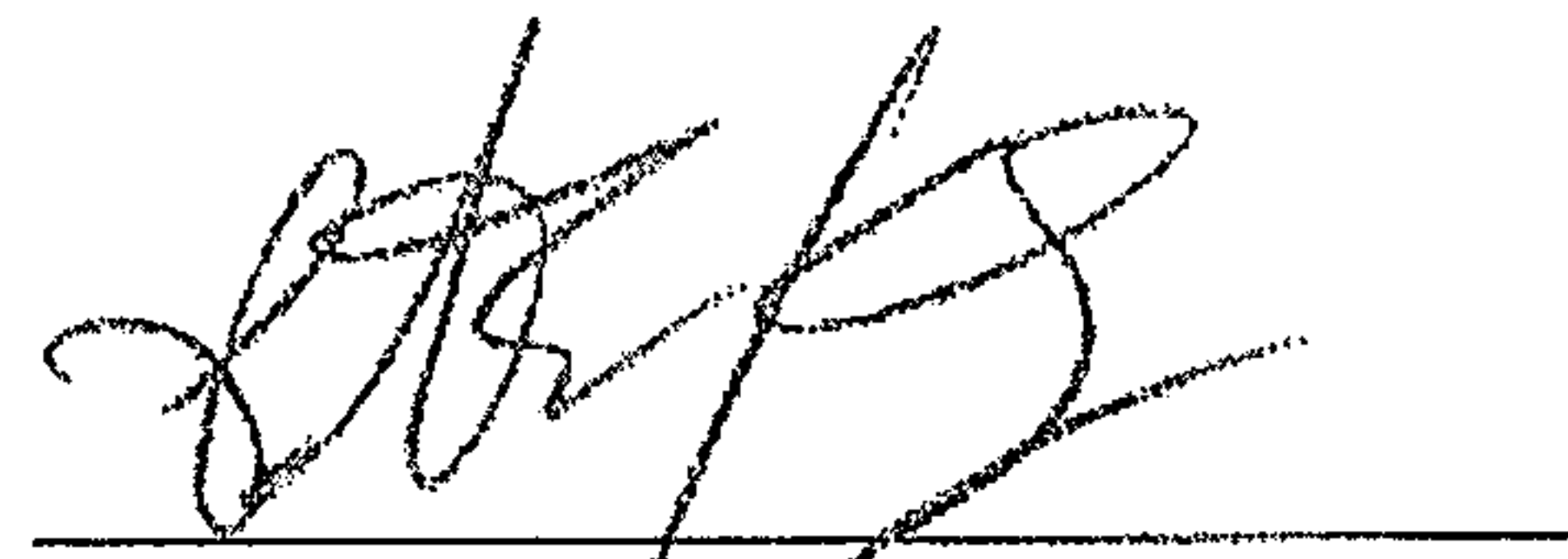
The Plaintiff has failed to respond to the request for discovery by the Defendant, of which they are entitled to seek, and has otherwise failed to prosecute the case for which he brought.

IT IS ORDERED, that this matter is dismissed with prejudice, and the Probate Clerk is hereby Ordered to lift the lien on the property described as:

Lot 1640 according to the Survey of Strathaven at Ballentrae, Phase 2, as recorded in Map Book 41, Page 51, in the Office of the Judge of Probate of Shelby County, Alabama.

In the amount of \$26,091.04, Claimed by the Plaintiff.

Costs are taxed as paid.


Circuit Judge



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COUNTY OF SHELBY
STATE OF ALABAMA

This instrument prepared by:
Michael S Kelly, Esq.
BRUMLOW LEGAL GROUP
137 Main Street, Suite 202
Trussville, AL 35173

VERIFIED STATEMENT OF LIEN

Authentic Restoration, LLC files this statement in writing, verified by the oath of Andrew Craney, Owner and Manager for Authentic Restoration, LLC, who has personal knowledge of the facts herein set forth:

That Authentic Restoration, LLC claims a lien upon the following property situated in SHELBY County, Alabama, to wit:

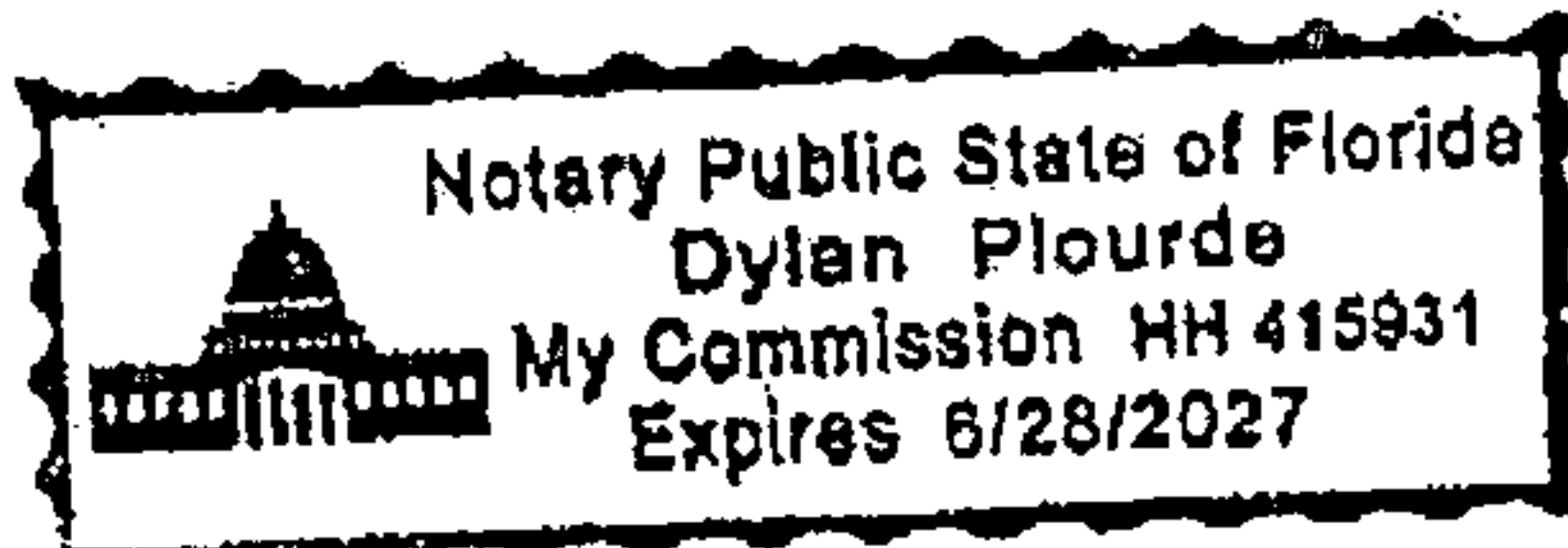
Lot 1640 according to the Survey of Strathaven at Ballantrae, Phase 2, as recorded in Map Book 41, Page 51, in the Office of the Judge of Probate of Shelby County, Alabama.

This lien is claimed, separately and severally, as to both the buildings and improvements thereon, and the said land. That said lien is claimed to secure the indebtedness of \$26,091.04, with interest from, to wit, April 17, 2023 for work, labor and materials furnished to James Cantley in the construction and erection of improvements on the hereinabove described real property, plus interest and attorney's fees if applicable.

The name of the owners or proprietors of the said property are James Cantley, Jr., Emogene Cantley, Matthew Cantley, and Jolie Richerzhagen.

VERIFICATION:

Claimant:



Andrew Craney,
Owner and Manager for Authentic Restoration, LLC

Before me, Dylan Plourde, a notary public in and for the county of Sarasota, State of Florida, personally appeared Andrew Craney, 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, and the records of the Claimant, for which he is the custodian.

Sworn to and subscribed before me on this the 29th day of August, 2023.

NOTARY PUBLIC

My Commission Expires: 6/28/27

BLG File No: 1140.013



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
09/01/2023 10:11:19 AM
\$24.00 PAYGE
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Allen S. Boyd