

C-9 Pg 122

STATE NO. 0000000000

**NOTICE OF WITHDRAWAL OF CONSTRUCTION LIEN**

JAN 5 3 58 PM '99

**LIENOR: HERBERT MICHAEL HAWKS  
D/B/A HAWKS CONSTRUCTION COMPANY  
P. O. BOX 159  
HERNANDO, MS 38632**

*mk*  
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**OWNER: BRENT M. TOMLIN AND JULIETTE BUFFINGTON TOMLIN  
525 EAST BOURNE PLACE  
MEMPHIS, TN 38117**

WHEREAS, Herbert Michael Hawks d/b/a Hawks Construction Company filed a Notice of Construction Lien, dated September 22, 1998, and duly recorded in Construction Lien Book 9, Page 32, in the Office of the Chancery Clerk of DeSoto County, Mississippi; and

WHEREAS, Herbert Michael Hawks, Brent M. Tomlin and Juliette Buffington Tomlin have entered into an AGREEMENT dated November 18, 1998, which provides for the withdrawal by Herbert Michael Hawks of the aforesaid Construction Lien and which withdrawal shall be without prejudice as to any rights which the said Herbert Michael Hawks might have, including the right to re-file said lien and to pursue the same; and

WHEREAS, Herbert Michael Hawks, Brent M. Tomlin and Juliette Buffington Tomlin are all in agreement that this withdrawal shall be without prejudice and they have agreed to execute this withdrawal and that such withdrawal shall not be construed as a release of any rights the Lienor might have now or in the future as against any party arising out of said construction project as described in said Construction Lien.

NOW, THEREFORE, we, Herbert Michael Hawks d/b/a Hawks Construction Company and Brent M. Tomlin and Juliette Buffington Tomlin do hereby agree that the Construction Lien filed by Herbert Michael Hawks and duly recorded in Construction Lien Book 9, Page 32, in the Office of the Chancer Clerk of DeSoto County, Mississippi, is hereby withdrawn and that said withdrawal is without prejudice as to any rights, statutory or otherwise, which the Lienor may have against any party for the collection of any and all sums due to him by virtue of the services rendered, materials purchased, labor provided and supervision services extended by the Lienor pursuant to the Lienor's contract with the Owners. The Owners and Lienors do hereby covenant and agree that this withdrawal is without prejudice and shall not be deemed a release of any rights which the Lienor might now have or may hereafter have against any party arising out of said transaction as described in

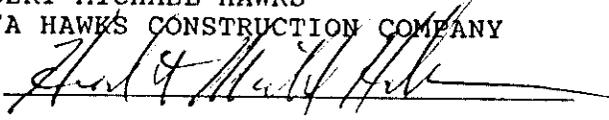
BK 9 Pg 123

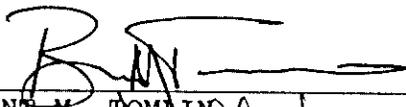
said Construction Lien.

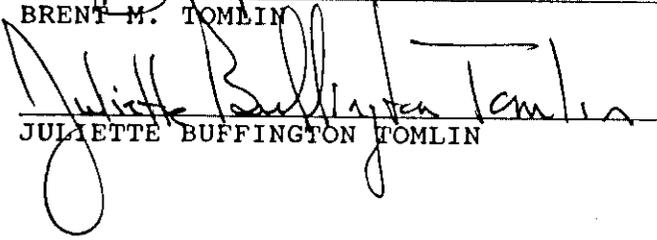
The Chancery Clerk of DeSoto County, Mississippi, is hereby authorized to make a marginal notation of this withdrawal on the face of the aforesaid Construction Lien.

DATED this the 18<sup>th</sup> day of November, 1998.

HERBERT MICHAEL HAWKS  
D/B/A HAWKS CONSTRUCTION COMPANY

BY: 

  
BRENT M. TOMLIN

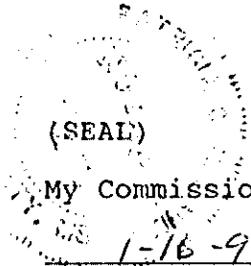
  
JULIETTE BUFFINGTON TOMLIN

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STATE OF MISSISSIPPI  
COUNTY OF DESOTO

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the said county and state, on this the 18<sup>th</sup> day of November, 1998, within my jurisdiction, the within named Herbert Michael Hawks d/b/a Hawks Construction Company, who acknowledged that he executed the above and foregoing instrument.

Patricia G. Pessum  
Notary Public



(SEAL)

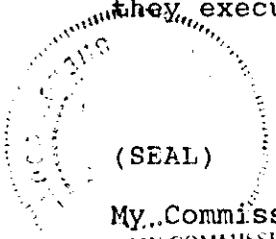
My Commission Expires:

1-16-99

STATE OF Tennessee  
COUNTY OF Shelby

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the said county and state, on this the 30<sup>th</sup> day of December, 1998, within my jurisdiction, the within named Brent M. Tomlin and Juliette Buffington Tomlin, who acknowledged that they executed the above and foregoing instrument.

[Signature]  
Notary Public



(SEAL)

My Commission Expires:

MY COMMISSION EXPIRES:  
August 13, 2002

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## AGREEMENT

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WHEREAS, Hawks Construction Company, a single proprietorship owned by Herbert Michael Hawks, contractor, entered into a written Building Contract with Brent and Juliette Tomlin on July 10, 1997; and

WHEREAS, said Building Contract called for Hawks Construction Company to construct a dwelling house located on Lot 27, Green T Lakes Subdivision, Section B, DeSoto County, Mississippi; and

WHEREAS, Brent and Juliette Tomlin did secure two constructions loans for the purpose of financing said construction from First Tennessee Bank National Association Mississippi, recorded in Real Estate Deed of Trust Book 919, Page 608, and Real Estate Deed of Trust Book 1011, Page 443, in the Office of the Chancery Clerk of DeSoto County, Mississippi; and

WHEREAS, on September 22, 1998, Herbert Michael Hawks filed a Notice of Construction Lien within the land records of DeSoto County, Mississippi, in Construction Lien Book 9, Page 32, in the Office of the Chancery Clerk of DeSoto County, Mississippi; and

WHEREAS, Hawks Construction Company has submitted its updated Job Cost Report dated October 27, 1998, showing a balance due of \$36,281.37 and subsequently updated to \$39,214.61 by the inclusion of Magnolia Lighting in the sum of \$2,933.24; and

WHEREAS, it will be necessary for Brent and Juliette Tomlin to secure a permanent loan as well as a home equity loan to satisfy the outstanding balance evidenced by Hawks Construction Job Cost

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Report of October 27, 1998, as well as the addition thereto of the Magnolia Lighting debt; and

WHEREAS, Brent and Juliette Tomlin cannot secure a home equity loan until such time as their construction loan is closed out and their permanent first mortgage financing is in place; and

WHEREAS, Smith & Wofford Plumbing & Industrial Supply, Inc. has filed a Notice of Materialman's Lien, alleging a debt owed by Brent M. Tomlin and Julie Buffington Tomlin in the sum of \$5,592.75, and duly recorded in Construction Lien Book 9, Page 1; and

WHEREAS, Brent and Juliette Tomlin cannot close out their construction loan and close their permanent first mortgage financing until such time as the Notice of Construction Lien filed by Herbert Michael Hawks, individually, and Smith & Wofford Plumbing & Industrial Supply, Inc. have been withdrawn and/or released; and

WHEREAS, Brent and Juliette Tomlin have agreed to satisfy the balance outstanding on the Hawks Construction Job Cost Report dated October 27, 1998, and addition thereto totaling \$39,214.61, immediately out of their home equity mortgage proceeds upon its closure.

NOW THEREFORE, in consideration of the premises the parties to this Agreement hereto agree to the following:

1. That Brent Tomlin and Juliette Tomlin, as an inducement to Herbert Michael Hawks to enter into this Agreement, do hereby covenant and agree as follows:

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A. That they have drawn all sums due under their construction loan with First Tennessee Bank National Association Mississippi as evidenced by the deeds of trust recorded in Real Estate Deed of Trust Book 919, Page 608, and Book 1011, Page 443, and that they shall not make any further draws under said loans and they will not increase the present debt obligation owed thereunder;

B. That they will, within five (5) business days of the date of this Agreement, close their permanent loan through FT Mortgage Companies d/b/a First Tennessee Mortgage Companies, Inc.

C. That they will not receive any funds individually from said permanent loan and that no laborer, materialman, subcontractor or lien holder (other than First Tennessee Bank National Association Mississippi) will be paid from said permanent financing. That in the event there are excess funds received at closing of the permanent loan, that any such funds shall be paid to and applied on the debt of Brent Tomlin and Juliette Tomlin to Herbert Michael Hawks in the sum of \$39,214.61.

D. That the only outstanding debts owed and arising from the construction of said home (other than the aforesaid construction loans) are identified as follows:

- i. Herbert Michael Hawks d/b/a Hawks Construction Company: \$39,214.61 (which includes Magnolia Lighting)
- ii. Smith & Wofford Plumbing & Industrial Supply, Inc.: \$5,592.75 (Contracted by Tomlins and not included in \$39,214.61)

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E. That Hawks Construction Company shall indemnify and hold harmless Brent Tomlin and Juliette Tomlin against any other debts for labor, materials or services arising out of the construction of said home, provided, however, this will not include any labor, materials or services contracted by Brent and Juliette Tomlin which are not known by Michael Hawks.

2. That Brent Tomlin and Juliette Tomlin shall, within thirty (30) days from the date of this Agreement, apply for and close an equity line loan, using the real property (Lot 27, Section B, Green T. Lakes Subdivision) and all improvements thereon as collateral and which loan shall be of sufficient size to insure the payment in full of the claim of Herbert Michael Hawks d/b/a Hawks Construction Company and all subcontractors, materialmen and suppliers, as evidenced by Hawks Construction Job Cost Report of October 27, 1998, plus Magnolia Lighting, in the sum of \$39,214.61, and that Herbert Michael Hawks shall be paid first from said proceeds and the disbursement of said sum shall be made by the mortgage lender at closing in the form of joint checks payable to all unpaid subcontractors, materialmen and suppliers listed on Hawks Construction Job Cost Report of October 27, 1998, and Magnolia Lighting in the sum of \$2,933.24 and Hawks Construction Company attached hereto as Exhibit 1.

3. That the parties agree that they will jointly execute a withdrawal of the Notice of Construction Lien filed by Herbert Michael Hawks and which withdrawal shall be without prejudice and shall in no way prohibit the refiling of said notice by Herbert

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Michael Hawks d/b/a Hawks Construction Company in the event Brent Tomlin and Juliette Tomlin shall fail to pay in full the outstanding debt due and owing to the said Herbert Michael Hawks d/b/a Hawks Construction Company in the sum of \$39,214.61, net of all payments to subcontractors, materialmen and suppliers listed on October 27, 1998, Construction Job Cost Report and which payment shall be received within thirty (30) days of this Agreement.

4. In the event Brent Tomlin and Juliette Tomlin shall fail to pay the aforesaid debt of \$39,214.61 within said thirty (30) day period, then in such event Herbert Michael Hawks shall have all rights afforded to him by the contract executed by the parties and the laws of the State of Mississippi.

5. Notwithstanding any provision to the contrary contained herein, the parties mutually covenant and agree that \$2,000.00 of the aforesaid sum of \$39,214.61 shall be paid and delivered to A. Cinclair May (Escrow Agent) to be held in escrow pending completion of the "punch list" as prepared by Homeworks Home Inspections dated September 19, 1998, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference. That upon completion of said items, Brent Tomlin and Juliette Tomlin shall authorize the escrow agent to disburse said funds to Herbert Michael Hawks. That Herbert Michael Hawks shall have a reasonable period of time not to exceed sixty (60) days from the date of receipt of the sum of \$39,214.61 to complete said "punch list".

6. All of the parties hereto shall bear their own legal and all other costs and expenses arising out of, in connection with or

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related to this Agreement.

7. The provisions of this Agreement shall inure to the benefit of all heirs, agents, executors, administrators, assigns, trustees, successors, division, affiliated entities or companies, or wholly owned subsidiaries of all of the parties hereto, and shall be binding upon all heirs, agents, executors, administrators, assigns, trustees, successors, divisions, affiliated entities or companies, or wholly owned subsidiaries of the parties hereto.

8. The parties hereto agree to timely execute any and all further documentation which is reasonable, necessary or desirable to effectuate the purposes and the provisions of this Agreement.

9. This Agreement, and all rights, remedies or obligations provided for hereunder, shall be construed and enforced in accordance with the laws of the State of Mississippi.

10. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same written instrument. A photographic copy of a fully executed original of this Agreement shall be accepted as an original for all purposes in the absence of an original.

11. Notwithstanding anything to the contrary contained in this Agreement, the parties hereto acknowledge that an action in accord with the contract may be brought to enforce the terms of this Agreement.

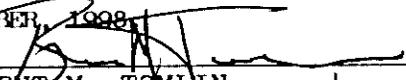
12. The undersigned hereby warrant that they have the express and unqualified authority to bind their respective organizations to

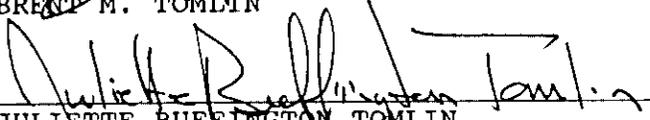
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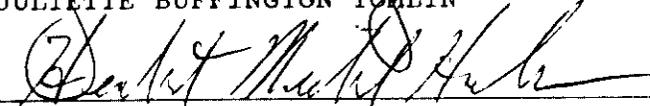
this Agreement.

13. Execution of this document shall not be deemed to be a waiver or release of any cause of action which the parties may now have or may later accrue arising out of the construction of the dwelling house located in Green T Subdivision, but is executed for the sole purpose of facilitating the satisfaction of the expenses set forth in the October 27, 1998, with addition, Hawks Construction Job Cost Report in the sum of \$39,214.61.

DATED THIS THE 18th DAY OF NOVEMBER, 1998.

  
BRENT M. TOMLIN

  
JULIETTE BUFFINGTON TOMLIN

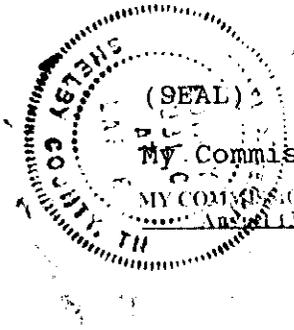
  
HERBERT MICHAEL HAWKS D/B/A  
HAWKS CONSTRUCTION COMPANY

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STATE OF Tennessee  
COUNTY OF Shelby

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the said county and state, on this the 30th day of December, 1998, within my jurisdiction, the within named Brent M. Tomlin and Juliette Buffington Tomlin, who acknowledged that they executed the above and foregoing instrument.

[Signature]  
Notary Public

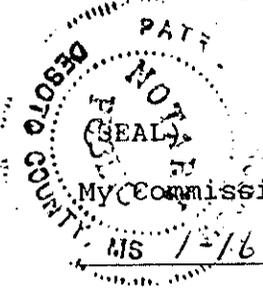


My Commission Expires:  
MY COMMISSION EXPIRES:  
April 13, 2002

STATE OF MISSISSIPPI  
COUNTY OF DESOTO

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the said county and state, on this the 18th day of November, 1998, within my jurisdiction, the within named Herbert Michael Hawks d/b/a Hawks Construction Company, who acknowledged that he executed the above and foregoing instrument.

[Signature]  
Notary Public



My Commission Expires:  
MS 12-16-99

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HAWKS CONSTRUCTION  
JOB COST REPORT  
LOT 27 GREEN -T

October 27, 1998

BALANCE FORWARD:		\$34,403.59
SAFETY LIGHTS	FINAL-(CLEAN-UP) TOILETS	57.78
DESOTO PAVING	LIMESTONE	1820.00
	BALANCE DUE:	\$36,281.37

EXHIBIT 1



HOMEWORK

0014000000

P. 00

Heating & Cooling

- 1. No filter at A/C unit in attic. — Bobbit Mechanical / NORA Bobbit
- 2. Gas supply lines have not been cleared and turned on at furnaces.

Other Conditions

Whoever did you tile

Owner landscape

- 1. Voids in tile grout at left side of kitchen sink backsplash.
- 2. Louvers have not been installed at crawl space vents under screened porch. — No need for louvers when Billy underpins screen porch
- 3. No vapor barrier has been installed at crawl space. — I will correct.
- 4. Screen door drags at screened porch. — Billy Deane
- 5. No floor covering in living room. — your carpet people
- 6. Negative grade exist at exterior foundation wall. (Front of Dwelling)
- 7. Grids and screens were noted to be missing from some windows. — Phyllis & Gene
- 8. Kickplate has not been installed at dishwasher. — has been installed - who removed
- 9. Dryer vent hose not properly connected to vent collar. — Homeowner responsibility
- 10. Plastic plumbing flange off at washer connection. I will correct this

Note: It was noted that a water pressure booster pump has been installed, however, no loss of functional flow was detected. Client was concerned with low water pressure at showers. It is recommended that water pressure be evaluated without the benefit of the booster pump after water saver features are removed from shower heads.

Bobbit. I am going to have Kohler and Delta come check out your fixtures. I will let you know when I have had contact with them

Thank  
Michael