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January 28, 2004

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Via Hand Delivery

W.E. Davis
DeSoto County Chancery Clerk
2535 Hwy 51
Hernando, MS 38632

RE: Release of Construction Lien and Lis Pendens Notice
Chancery Court Cause Number: 03-6-0928(L)

Dear Mr. Davis:

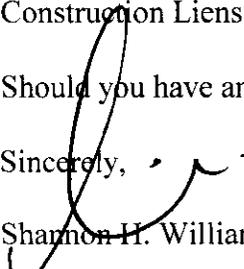
Please find attached a Final Judgment rendered in the above referenced matter, which fully and finally releases the following:

- Lis Pendens filed in Book 10 Page 411 in the Chancery Court of DeSoto County and enrolled on June 4, 2003;
- Original Construction Lien on record in Chancery Court of DeSoto County Book 11 Page 550, which was filed on June 6, 2003 in the amount of \$55,157.21; and
- Amended Construction Lien on record in Chancery Court of DeSoto County Book 11 Page 624, which was filed on August 7, 2003 in the amount of \$55,157.21.

Please stamp file the original Lis Pendens Notice as well as the Original and Amended Construction Liens as released.

Should you have any questions, please do not hesitate to contact me.

Sincerely,


Shannon H. Williams

CC: Jeff Frazier, Rick Sparkman, Christian Goeldner

STATE MS.-DESOTO CO.

STATE MS.-DESOTO CO.

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PG 12 PG 107
CH. CLK.

PG 10 PG 645
CH. CLK.

IN THE CHANCERY COURT OF DESOTO COUNTY, MISSISSIPPI

BRIAN K. JONES, et.al.
Plaintiffs

vs.

Civil Action No. 03-6-0928 (L)

MICHAEL P. HARIG, etc.
Defendant

JUDGMENT

THIS MATTER CAME ON for Trial on the Merits on Monday, August 18, 2003. The Court, having reviewed the pleadings, considered the evidence, and having heard argument of counsel, finds and adjudicates as follows in accordance with the opinion of the Court attached as Exhibit "A" hereto:

(1) Money Judgment is entered against Plaintiff MICHAEL P. HARIG in the sum of \$10,678,00 on a "quantum meruit" basis and the complaint against Defendant COMMUNITY BANK is dismissed.

(2) On Defendant HARIG'S Counterclaim, the Court finds that there is no legal basis on which relief can be granted and no judgment therefore is entered against the Plaintiffs.

(3) The Notice of Lis Pendens and the Notices of Construction Lien (both original and amended) filed and recorded by the Plaintiffs are cancelled.

(4) Neither Party is awarded any legal fees.

MINUTE BOOK 347 PAGE 344

FILED

SEP 23 2003

WE DAVIS, CLERK

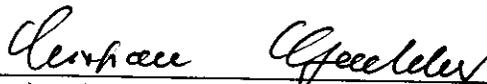
J. Sims

(5) Each party's costs are assessed against that party.

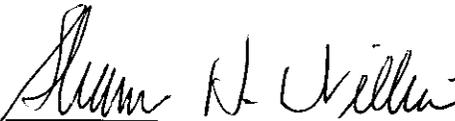
SO ORDERED, this the 23rd day of Sept, 2003.


CHANCELLOR

Submitted by:


Christian Goeldner
Attorney for Plaintiffs


Joseph W. Sparkman, Jr.
Attorney for Defendant Harig


Shannon H. Williams
Attorney for Defendant Community Bank

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IN THE CHANCERY COURT OF DESOTO COUNTY, MISSISSIPPI

BRIAN K. JONES, ET UX Plaintiff
 Vs. Cause No. 03-6-0928
 MICHAEL P. HARIG AND Defendants
 COMMUNITY BANK

RULING OF THE COURT

APPEARANCES:

PRESIDING: CHANCELLOR PERCY L. LYNCHARD, JR.

FOR THE PLAINTIFF:

MR. CHRISTIAN GOELDNER
Attorney at Law
Post Office Box 1468
Southaven, Mississippi 38671-1468

FOR THE DEFENDANT, MICHAEL P. HARIG:

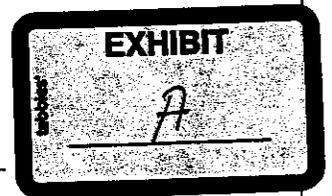
MR. RICK SPARKMAN
Attorney at Law
Post Office Box 266
Southaven, Mississippi 38671-0266

FOR THE DEFENDANT, COMMUNITY BANK:

MS. SHANNON WILLIAMS
Attorney at Law
6928 Cobblestone Drive, Suite 100
Southaven, Mississippi 38672

August 18, 2003

DeSoto County Courthouse
Hernando, Mississippi



ORIGINAL

* * *

1
2 THE COURT: With respect to Cause
3 Number 03-6-928, matter styled Brian K.
4 Jones, et ux versus Michael P. Harig and
5 Community Bank, the Court having heard
6 testimony elicited in open court on this
7 date, having received evidence and
8 considered the argument of counsel for all
9 parties hereby renders the following
10 opinion:

11 First of all, this Court has
12 jurisdiction of the subject matter hereof
13 and the parties hereto. The parties to this
14 action are as follows: Brian K. Jones and
15 wife, Sharon Jones, both adult resident
16 citizens of Memphis, Shelby County,
17 Tennessee. The defendant, Michael Harig,
18 doing business as Mike Harig Construction
19 Company, is a Mississippi resident and owner
20 of lot 4, Germanwood Station subdivision in
21 DeSoto County, Mississippi. The defendant,
22 Community Bank, is a state bank
23 incorporation joined as a necessary party
24 pursuant to the appropriate statute as a
25 vested lienholder to the subject property,
26 the same being lot 45 of Germanwoods Station
27 subdivision.

28 The Court finds that the parties
29 entered into a contract between Jones and

1 Harig on the 6th day of October of 2002 for
2 the construction of a single-family
3 residence on the subject property as
4 evidenced by Exhibit 1 of this cause. That
5 contract called for the sale -- construction
6 and sale of a single-family residence to be
7 constructed on lot 45 for \$250,000 built
8 according to the plans presented. The plans
9 presented called for the construction of a
10 3,522 square foot home. Subsequent thereto,
11 the buyers presented to the Defendant Harig
12 a second set of plans for the requested
13 construction enlarging the home to 5,283
14 square feet. The buyers were notified that
15 the cost would increase. The plaintiff
16 elected to proceed without agreement as to
17 the final cost in anticipation of reducing
18 the cost by self improvement, i.e.,
19 furnishings of the materials and labor by
20 the plaintiff for the construction of the
21 home.

22 Certain services were rendered by the
23 plaintiff for the benefit of the defendant's
24 property as follows: The staining of floors,
25 painting of certain rooms, tiling of the
26 bathrooms, three and a half baths and a
27 partial tiling of the master bath,
28 wallpapering in certain rooms, pre-wiring of
29 a sound system in five rooms including a

1 patio, and provision of certain materials
2 and fixtures in the construction of the
3 home.

4 In its complaint -- or rather I should
5 say its amended complaint, the plaintiff
6 seeks judgment for \$52,547.59 against Harig
7 together with prejudgment interest and
8 attorney fees. That figure is derived
9 following the oral amendment by counsel on
10 behalf of the plaintiff during the
11 proceedings had on this date. Defendant
12 Harig counterclaims against the plaintiff
13 alleging a breach of contract, material
14 representation, and slander of title, and
15 seeks actual and punitive damages as a
16 consequence of those actions.

17 Realizing in May of 2003 that the
18 buyers would not be able to purchase the
19 home for the cost originally agreed and for
20 which the cost of construction at that time
21 was in the \$320,000 range, Defendant Harig
22 barred the plaintiffs from the property. On
23 June 6 of 2003, the plaintiff filed a notice
24 of construction lien against the subject
25 property and instituted two days prior to
26 that the original complaint in this cause.

27 The Court finds based upon the
28 evidence presented that on the 12th day --
29 or rather the 2nd day of December of 2003,

1 the plaintiffs breached the contract between
2 themselves and Defendant Harig by failing to
3 tender an additional \$19,000 to the
4 defendant as called for in Paragraph 13 of
5 the contract, which is Exhibit 1 to this
6 cause. Nevertheless, and perhaps unwisely,
7 the defendant allowed the plaintiff to
8 perform certain services and to provide
9 certain materials in an attempt to sell the
10 home to the plaintiff for as low a price as
11 possible and for which they could afford.

12 The Court finds that their services
13 included the following: Staining of floors
14 throughout, 2,700 square feet at \$2.50 per
15 square foot for a total of \$6,750. Although
16 they request materials and labor for tiling,
17 with the exception of \$500, which was
18 acceptable to the plaintiff, the Court finds
19 that the installation of the tile throughout
20 was substandard and unacceptable and nothing
21 is awarded for that. With respect to the
22 painting, likewise ~~it~~ is incomplete and
23 unacceptable, and no materials, nor labor is
24 awarded to them.

25 With respect to their request for the
26 payment of \$6,827.97 for an audiovisual
27 system, that is a contract entered into
28 between the plaintiffs and a private
29 individual for the installation of that.

1 They tendered that amount to the third party
2 and now expect the Defendant Harig to pay
3 for same. There's very little testimony or
4 very little evidence before the Court with
5 respect to what was actually performed and
6 added to the home, and accordingly, the
7 Court disallows the payment of anything for
8 the audiovisual system.

9 With respect to their request for the
10 payment of services for cleanup, the Court
11 finds that the maximum amount allowed would
12 be one-half of 1 percent of the original
13 contract cost of \$250,000, which is \$1,250.

14 With respect to their request for the
15 award of damages for contributions by way of
16 the floor plan, the Court finds that their
17 actions in substituting the plans gave rise
18 to the majority of the problems that are
19 experienced herein, and accordingly, they
20 are awarded nothing for that.

21 With respect to the request for
22 services for the installation of wallpaper,
23 the Court finds that it is substandard and
24 unacceptable and that it has, if anything,
25 decreased the value of the property, and
26 accordingly, they are awarded nothing there.

27 With the request for an award of the
28 pre-wiring of sound, the Court finds that
29 the amount of \$500 is an appropriate amount

1 for that pre-wiring of the five rooms plus
2 the patio.

3 With the request to the award for
4 materials and supplies, the Court finds that
5 \$2,800 has been tendered on behalf of the
6 plaintiffs for the installation of certain
7 iron works to the premises, and they are
8 entitled to be reimbursed that amount.
9 Likewise, they have furnished a number of
10 fixtures for lighting, and although they
11 claim more, the contract which they entered
12 into calls for a credit of \$3,000 and they
13 are limited to that amount, but are given
14 credit for that.

15 And lastly, they are awarded \$150 for
16 the repair of the shower wall for a total
17 award of \$14,950 for services which they
18 rendered. Now, it should be noted that this
19 award is -- even though they are in breach
20 of contract is based on a quantum merit or
21 under just enrichment theory for which they
22 have contributed those amounts which are
23 acceptable and which improve the property
24 and for that only.

25 Now, as a result of damages for the
26 plaintiffs' breach of the contract, the
27 defendant is entitled, first of all, to \$56
28 per day in interest which they have accrued
29 since the 12th day of June of 2003, which if

1 my calculation is correct, that is 67 days
2 for a total of \$3,752. Further, the cost to
3 be torn out or the cost for them to tear out
4 and repair the tile, wallpaper, and
5 paintings and repair what has been inflicted
6 by the plaintiffs is a total of \$520 which
7 constitutes damage. Although the Defendant
8 Harig seeks an award for slander of title,
9 that claim is baseless as the plaintiffs at
10 least had an arguable claim to an interest
11 in the property for the goods and services
12 contributed thereto.

13 With respect to the issue of attorney
14 fees and with respect to all parties, there
15 are four incidences in which this Court may
16 award attorney fees. First of all, where
17 the contract calls for the payment of same,
18 and unfortunately, this contract is silent
19 with respect to that issue; secondly, when
20 there is a finding of contempt by this
21 Court, and there is no such finding on any
22 party at this time; where the suit brought
23 either by way of original complaint or
24 counterclaim is in violation of the
25 Mississippi Litigation Accountability Act
26 for which this Court would have to find that
27 there's no substantial justification
28 whatsoever for the bringing of the action,
29 and the Court cannot say that that is the

1 case in this instance; or when punitive
2 damages are awarded for the gross misconduct
3 by either party. The Court cannot say that
4 that is the case. Accordingly, all parties
5 are responsible for the payment of their own
6 and exclusive attorney fees.

7 Now, with respect to Community Bank,
8 the relief sought in this action named the
9 bank as a statutory defendant because they
10 had a vested lien on the property. That is
11 required by the appropriate statute. There
12 was never any time any request for relief
13 against the said Community Bank. Relief
14 requested is controlled by the pleadings and
15 not by the assertions of counsel, and
16 accordingly, there can be no attorney fees
17 awarded with respect thereto, again under
18 the theories which I just enumerated.

19 Accordingly, a judgment for the
20 plaintiff on a quantum merit or unjust
21 enrichment theory is granted in the total
22 amount of \$14,950 offset by \$4,272 due the
23 defendant as a result of the plaintiffs'
24 breach for a total judgment to the plaintiff
25 for \$10,678. The lis pendens and notice of
26 construction lien is hereby canceled as of
27 this time.

28 Mr. Goeldner, you are directed to
29 prepare an order commensurate with that

1 finding. After having done so, furnish to
2 Mr. Sparkman as well as Ms. Williams for
3 their agreement as to form and not as to
4 content, and tender to me for entry within
5 ten days pursuant to the Uniform Chancery
6 Court Rules. Any questions, counselors?

7 MR. GOELDNER: Yes, Your Honor, one
8 question. When the Court gave the opinion
9 on the award of legal fees, I think the
10 Court did not address a fifth instance and
11 that is for successful construction lien
12 claimant. The statute, and I believe I
13 showed the Court the authority, calls for an
14 award to the prevailing claimant, but never
15 to the prevailing defendant. It's a
16 one-sided statute and we know it may not be
17 fair, but that's the law. Could the Court
18 kindly address that issue?

19 THE COURT: Yes, sir. I interpret
20 that statute to mean where there is an
21 ownership interest by way of owner of the
22 property against a builder; whereas, in this
23 instance, he is seeking relief as a third
24 party, not as an owner of the property, and
25 it's distinguishable for that reason. Any
26 other questions? If there's nothing
27 further, I anticipate an order in due
28 course, and we will stand adjourned.

29 MR. GOELDNER: Thank you.

(COURT ADJOURNED.)

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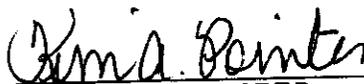
CERTIFICATE OF COURT REPORTER

1
2 I, KIM A. POINTER, Official Court Reporter in
3 and for the THIRD CHANCERY COURT DISTRICT, STATE OF
4 MISSISSIPPI, do hereby certify that the foregoing
5 pages, and including this page, contain a true and
6 correct transcript of the proceedings, as taken by me
7 at the time and place heretofore stated in the
8 aforementioned matter, by machine shorthand with
9 electronic verification, with the assistance of
10 computer-aided transcription, to the best of my skill
11 and ability.

12 I further certify that I am not in the employ
13 of, or related to, any counsel or party in this
14 matter, and have no interest, monetary or otherwise,
15 in the final outcome of this proceeding.

16 Witness my signature, on this the 21st day of

17 August, 2003.

18
19 

20 KIM A. POINTER
21 OFFICIAL COURT REPORTER
22 CSR #1271
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