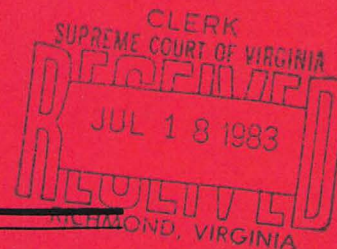


230VA495



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 822195

E. E. STUMP WELL DRILLING, INC.

Appellant,

v.

PATRICIA ANN WILLIS

Appellee.

WASHINGTON, D.C. LEE
LAW FIRM

JOINT APPENDIX

MAY 6 1986

ON PETITION FOR APPEAL FROM THE CIRCUIT COURT
OF THE COUNTY OF BEDFORD
Honorable William W. Sweeney, Judge

Robert T. Wandrei
Radford & Wandrei
112 South Bridge Street
Bedford, Virginia 24523
(703) 586-3151

Counsel for Appellant

Philip A. Wallace
Attorney at Law
163 West Main Street
Bedford, Virginia 24523

Counsel for Appellee

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filed August 6, 1981

BILL FOR SPECIFIC PERFORMANCE

TO THE HONORABLE JUDGES OF THE CIRCUIT COURT OF BEDFORD COUNTY:

Complainant, Patricia Ann Willis, complains against defendant, Raymond E. McDaniels, and for a first cause of action alleges:

1 (1) Complainant, Patricia Ann Willis, resides in the County of Bedford, Virginia.

? (2) Defendant, Raymond E. McDaniels, resides in the County of Bedford, at Route 1, Moneta, Virginia 24121.

(A) (3) That on February 16, 1981, defendant, Raymond E. McDaniels, and defendant, Marsha R. McDaniels, owned in fee simple absolute real property located in Lakes Magisterial District, Bedford County, Virginia, and more particularly described as follows:

All that certain lot or parcel of land, together with the appurtenances thereunto belonging, situate in Lakes Magisterial District, Bedford County, Virginia, located on the southeast side of Jason Terrace, containing 0.781 acre and designated as Lot 14, Section 2, of Lake View Estates, as shown on a plat of survey made by B. R. Shrader, Land Surveyor, entitled "PLAT LOT-14, SECTION-2, OF LAKE VIEW ESTATES" dated March 17, 1980, platted December 11, 1980, and recorded with a certain deed dated December 12, 1980, from Hanging Rock Swim Club, Inc., conveying the above described real estate to Raymond E. McDaniels and Marsha R. McDaniels, husband and wife, respectively, as tenants by the entirety, which deed is of record in the Clerk's Office of the Circuit Court of Bedford County in Deed Book 449, at page 132, and

BEING the same identical real estate conveyed unto Raymond E. McDaniels and Marsha R. McDaniels by deed dated December 12, 1980, from Hanging Rock Swim Club, Inc., which deed is of record in the aforesaid Clerk's Office in Deed Book 513, at page 441.

2 (4) That said Lot 14, Section 2, of Lake View Estates, which is the subject of the hereinafter described contract, is subject to the lien of a certain deed of trust of record in the aforesaid Clerk's Office in Deed Book 513, at page 444. The defendants, Raymond E. McDaniels and Marsha R. McDaniels, conveyed the above described real estate to Harry W. Garrett, Jr., and G. Carl Boggess, Trustees, both of Bedford, Virginia, to secure a certain promissory note of even date described therein in the amount of \$14,500.00. The legal holder of the note secured by said deed of trust is Hanging Rock Swim Club, Inc. This deed of trust recites that it is a deferred purchase money deed of trust.

2 (5) By written contract dated February 16, 1981, defendant, Raymond E. McDaniels, agreed to sell to complainant and complainant agreed to buy from defendant the property described in Paragraph (3) above. By the terms of this contract, defendant, Raymond E. McDaniels, further agreed to complete the house already under construction on Lot 14, Section 2, Lake View Estates, at the time of execution of the contract dated February 16, 1981, according to specifications attached to said contract. A true and correct copy of said contract and specifications is attached hereto, marked "EXHIBIT A", and incorporated by reference.

2 (6) Said contract provides that complainant shall pay to defendant, Raymond E. McDaniels, the sum of Eighty-four Thousand Five Hundred (\$84,500.00) Dollars, which figure includes the purchase price for Lot 14, Section 2, Lake View Estates, and the cost of completion of the house under construction at the time of execution of the agreement of February 16, 1981, and

acknowledges a deposit by plaintiff of One Thousand Eight Hundred (\$1,800.00) Dollars earnest money with the balance of the contract price to be paid as follows: \$21,000.00 to be paid by complainant by March 2, 1981; \$36,700.00 to be paid by April 2, 1981; the balance of \$25,000.00 to be paid upon completion of the house contemplated by the contract. The contract further contemplates that changes or additions to the work to be performed pursuant to the contract shall be effected only by a change order acknowledged by both the complainant and the defendant, Raymond E. McDaniels, prior to the commencement of such work.

1 (7) Complainant has performed all of her obligations under said contract, and complainant is ready, willing and able to pay to defendant, Raymond E. McDaniels, the balance of the purchase price as contemplated by the contract, less the amount of the outstanding deed of trust, the outstanding lien held by E. E. Stump, Well Drilling, Inc., and the cost of completing said house.

? (8) That said contract provides that the house contemplated by the same will be completed by May 1, 1981, or as soon thereafter as possible. That defendant, Raymond E. McDaniels, notified your complainant that the house would be ready for occupancy on June 15, 1981. Your complainant, relying upon Mr. McDaniels' assurance of completion by June 15, 1981, moved herself and all of her possessions to Moneta, Virginia, on June 13, 1981, and has since that date been compelled to find and pay for housing to accommodate her until such time as the house contemplated by the contract of February 16, 1981, is completed.

? (9) That the defendant, Raymond E. McDaniels, after

advising your complainant that the house would not be ready for occupancy on June 15, 1981, presented your complainant with a bill for alleged extra work and materials, which were not authorized by the complainant and he further refused and continues to refuse to complete said house until these unauthorized invoices have been paid.

? (10) That the house is incomplete and your complainant is advised and so alleges that it will take approximately Ten Thousand (\$10,000.00) Dollars to complete the house according to the terms and specifications of the contract of February 16, 1981, with authorized alterations and extras.

? (11) That complainant authorized extra work to be performed pursuant to the terms of the contract by document dated May 25, 1981, setting forth Four Thousand Two Hundred Fifty and 06/100 (\$4,250.06) Dollars for extras and additionally authorized extra work totaling One Thousand Nine Hundred Seventeen (\$1,917.00) Dollars by change order signed and dated by complainant on June 13, 1981. That no other authorization relative to change orders or additional work has been granted by your complainant.

(A) (12) Complainant would further show that on June 23, 1981, E. E. Stump, Well Drilling, Inc., of Route 1, Box 305, Goodview, Virginia 24095, filed a memorandum of mechanic's lien in the Clerk's Office of the Circuit Court of Bedford County in an amount of Two Thousand Six Hundred Fifty-seven (\$2,657.00) Dollars with interest which mechanic's lien is described as directly affecting Lot 14, Section 2, Lake View Estates. That this mechanic's lien constitutes an encumbrance against the real estate which is the subject of the February 16, 1981, contract between complainant and defendant, Raymond E. McDaniels.

2, (13) Complainant would allege that since real property is the subject matter of said contract, damages cannot adequately compensate complainant for defendant Raymond E. McDaniels' refusal to comply with said contract and to convey the real estate contemplated by the same. Therefore, complainant has no adequate remedy at law.

SECOND CAUSE OF ACTION:

Complainant complains against defendant, Raymond E. McDaniels, and for a second cause of action alleges:

(1) Complainant incorporates Paragraphs (1) through (13) of her first cause of action against defendant, Raymond E. McDaniels, and makes the same part hereof.

(2) As a direct and proximate result of defendant Raymond E. McDaniels' breach of said contract, complainant has sustained general damages of One Hundred Twenty-five Thousand (\$125,000.00) Dollars.

(3) As a direct and proximate result of defendant Raymond E. McDaniels' breach of said contract, complainant has sustained the following special damages: Five Thousand (\$5,000.00) Dollars due by reason of rent paid by your complainant as a result of not being able to move into the home to be constructed by Raymond E. McDaniels on or before June 15, 1981, as promised by the defendant, Raymond E. McDaniels. Three Thousand (\$3,000.00) Dollars expended for attorney's fees necessitated by defendant Raymond E. McDaniels' breach of the aforesaid contract.

WHEREFORE, complainant prays:

(a) For a temporary restraining order restraining defendant, Raymond E. McDaniels, and defendant, Marsha R.

McDaniels, from conveying or transferring any title to or interest in said property to any person, other than complainant, pending a hearing of this cause, and on such hearing for a temporary injunction of like import, pending a final determination herein, to preserve the status quo, the subject matter of this action, and the jurisdiction of this Court;

(b) That the Court enter a decree declaring that all right, title or interest in and to the property known as Lot 14, Section 2, Lake View Estates, vested in the defendants, Raymond E. McDaniels and Marsha R. McDaniels, by virtue of said deed from Hanging Rock Swim Club, Inc., which is of record in the Clerk's Office of the Circuit Court of Bedford County in Deed Book 513, at page 441, be impressed with a trust for complainant's benefit, and directing that defendants, Raymond E. McDaniels and Marsha R. McDaniels, execute said trust by making, executing and delivering to complainant a good and sufficient general warranty deed to said property;

(c) For her costs expended in this cause; and

(d) That the defendants, Raymond E. McDaniels and Marsha R. McDaniels, execute and deliver to complainant a good and sufficient general warranty deed conveying to complainant the property described in said contract to which they hold legal title, which property is more fully described in Paragraph (3) above, and that on defendants Raymond E. McDaniels' and Marsha R. McDaniels' refusal to so execute and deliver a deed, a Commissioner be appointed by this Court to execute such a deed and that the Commissioner's deed operate as a transfer of said property to complainant; and

(e) That the balance of the purchase price for said property calculated as stated in said contract be abated in an amount equal to the balance due on the aforementioned deed of trust held by Hanging Rock Swim Club, Inc., plus the amount owed E. E. Stump, Well Drilling, Inc., pursuant to the mechanic's lien hereinabove set forth, plus the amount necessary to finish construction of the home as set forth hereinabove; and

(f) For such other and further relief as the Court deems just and proper.

Respectfully submitted,

PATRICIA ANN WILLIS

By _____
Of Counsel

Philip A. Wallace
116½ East Main Street
P. O. Box 923
Bedford, Virginia 24523
Counsel for Complainant

ANSWER

FILED IN THE CLERK'S OFFICE

The 20th day of August, 1981

TESTE:

Helen M. Carter, Clerk

For answer to the Bill for Specific Performance exhibited against him and others by Patricia Ann Willis, your defendant, E. E. Stump Well Drilling, Inc., answers and says:

(1) That it neither admits nor denies the allegations contained in numbered paragraphs (1), (2), (4), (5), (6), (7), (8), (9), (10), (11), and (13), but demands strict proof of the same.

(2) That it admits the allegations contained in numbered paragraphs (3) and (12) of said Bill for Specific Performance.

WHEREFORE, your defendant prays that the property which is the subject of this proceeding be sold and that the Mechanic's Lien filed by your defendant as referred to in the Bill for Specific Performance be satisfied out of the net proceeds derived from sale of said property and that your defendant be granted such other and further relief as the nature of its cause or as to equity may seem meet and just.

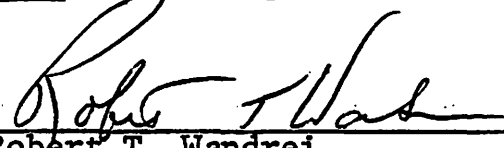
E. E. STUMP WELL DRILLING, INC.

BY Robert T. Wandrei
Counsel

Robert T. Wandrei, p.d.
Radford & Wandrei
P. O. Box 235
Bedford, Virginia 24523-0235

CERTIFICATE OF MAILING

I, Robert T. Wandrei, do hereby certify that a true and exact copy of the foregoing Answer was mailed to Philip A. Wallace, Esq., P. O. Box 923, Bedford, Virginia 24523, counsel for the complainant, this the 19th day of August, 1981.



Robert T. Wandrei

CROSS-BILL TO ENFORCE MECHANIC'S LIEN

Your defendant, E. E. Stump Well Drilling, Inc., files this Cross-Bill against Raymond E. McDaniels and others to enforce a Mechanic's Lien and in support thereof makes the following allegations:

(1) That your defendant is a Virginia corporation, with its principal office in the County of Bedford, Virginia.

(2) That the defendants Raymond E. McDaniels and Marsha R. McDaniels, are the owners of certain property in the County of Bedford, Virginia, being more particularly described as Lot 14, Section 2, of Lake View Estates, as more particularly shown on a plat of a survey made by B. R. Shrader, Land Surveyor, entitled "Plat Lot-14, Section-2, of Lake View Estates", Bedford County, Virginia.

(3) That the defendant, Hanging Rock Swimming Club, Inc., is the holder of a note in the principal amount of Fourteen Thousand Five Hundred Dollars (\$14,500.00), which is secured by a deed of trust against the aforesaid property recorded in the Clerk's Office of the Circuit Court of Bedford County, Virginia, in Deed Book 513 at page 444, in which the defendants, Harry W. Garrett, Jr. and G. Carl Boggess, are named as Trustees.

(4) That your defendant, at the request of Raymond E. McDaniels, drilled a well on the subject property to a depth of 530 feet which he capped; the price for said well being Five Dollars (\$5.00) per foot, with a charge of Seven Dollars

(\$7.00) for capping, for a total of Two Thousand Six Hundred Fifty-seven Dollars (\$2,657.00).

(5) That before the expiration of ninety (90) days from the date said well was drilled, a Memorandum of Mechanic's Lien was duly filed and recorded by the defendant in the aforesaid Clerk's Office in Deed Book 522 at page 283; a copy of said Memorandum is attached hereto as Exhibit A.

(6) An itemized statement of defendant's account is attached hereto as Exhibit B.

WHEREFORE, your defendant prays that its debt be ascertained; that the aforesaid property be sold to satisfy the defendant's claim for Two Thousand Six Hundred Fifty-seven Dollars (\$2,657.00) plus interest from March 30, 1981, and costs, and for such other and further relief as to equity seems meet.

E. E. STUMP WELL DRILLING, INC.

BY E. E. Stump

Its PRES

Robert T. Wandrei, p.d.
Radford & Wandrei
P. O. Box 235
Bedford, Virginia 24523-0235

STATE OF VIRGINIA

CITY/COUNTY OF Bedford

Subscribed and sworn to before me this the 21st day
of August, 1981.

My commission expires: 10/26/81.

Janet U. Map
Notary Public

I was commissioned as Janet U. Hodges.

ORDER

This cause came on this day to be heard upon the papers formerly read, and specifically upon the motion of the complainant, Patricia Ann Willis, and the defendants, Raymond E. McDaniels and Marsha R. McDaniels, by counsel, that the complaint of Patricia Ann Willis for specific performance be dismissed from the docket of this Court; and was argued by counsel.

WHEREFORE, and it appearing to the Court that the said complainant, Patricia Ann Willis, and the said defendants, Raymond E. McDaniels and Marsha R. McDaniels, have settled all matters among them, it is accordingly ADJUDGED and ORDERED that this cause be, and the same hereby is, dismissed, with prejudice, as to these said parties; and this cause is continued as to the cross-bill to enforce mechanic's lien of the defendant, E. E. Stump Well Drilling, Inc.; and

It is further ADJUDGED and ORDERED that A. A. Rucker, Commissioner in Chancery, be, and he hereby is, relieved of any and all further duties and responsibilities which he may have in this cause.

And this cause is continued.

ENTER: This _____ day of _____,
1982.

J U D G E

We request the entry of this Order:

Gordon H. Shapiro,
Of Counsel for Defendants,
Raymond E. McDaniels
and Marsha R. McDaniels

Philip A. Wallace,
Of Counsel for Complainant
Patricia Ann Willis

Seen:

Robert T. Wandrei,
Of Counsel for Defendant,
E. E. Stump Well Drilling, Inc.

DECREE OF REFERENCE

This cause which has been regularly matured, came to be heard upon the papers former read and was argued by counsel.

UPON CONSIDERATION WHEREOF, it is hereby ORDERED that this cause be referred to A. A. Rucker, Commissioner in Chancery, to inquire into and report to the court as follows:

(1) Determine and report who the fee simple owners of the real estate described in the Bill for Specific Performance are;

(2) Determine and report if all of the proper parties are before the court so as to allow the court to effect the relief sought in the Bill for Specific Performance;

(3) Determine and report whether or not there are any liens against the real estate described in the Bill for Specific Performance;

(4) List and report all liens, in order of priority, the amounts thereof, if any;

(5) Determine and report if the mechanic's lien claimed by E. E. Stump Well Drilling, Inc. is valid and has been duly filed;

(6) Determine and report if E. E. Stump Well Drilling, Inc. is entitled to the relief prayed for in their bill of complaint;

(7) Any other matters deemed pertinent by your Commissioner and such matters which he is requested to report upon by any party in interest, if the same be pertinent to the issues in

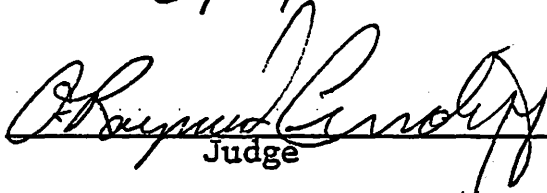
19 82, May 20th
ENTERED IN CHANCERY
ORDER BOOK.

No 47 Page 45

this cause. But before proceeding to execute the Reference,
the Commissioner shall give notices required by law of the
time and place fixed for executing the same.


And the Commissioner shall make his report to the court.


ENTER: 5/20/82


Judge

We ask for this:


Philip A. Wallace, counsel
for Complainant


Robert T. Wandrei, counsel
for Defendant, E. E. Stump
Well Drilling, Inc.


G. Carl Boggess, counsel
for Defendants, Harry W.
Garrett, Jr. and G. Carl Boggess

DEPOSITIONS

FILED IN THE CLERK'S OFFICE
The 28 day of June, 1982
TESTE: H. Street Clerk 67

The depositions of E. E. Stump and Patricia Ann Willis were taken before A. A. Rucker, Commissioner in Chancery of the Circuit Court of Bedford County, Virginia, on Tuesday, June 15, 1982, between the hours of 2:00 P.M. and 5:00 P.M. of that day, at the office of A. A. Rucker, located at 114 East Main Street, Bedford, Virginia, pursuant to notice herewith returned, to be read as evidence in a certain chancery cause under the above style now pending in the Circuit Court of Bedford County, Virginia.

PRESENT: A. A. Rucker, Commissioner in Chancery of the Circuit Court of Bedford County, Virginia

Robert T. Wandrei, Counsel for E. E. Stump

Philip A. Wallace, Counsel for Patricia Ann Willis

DeLois D. Coins, Stenographer

WITNESSES: Mr. E. E. Stump; Mrs. Patricia Ann Willis

E. E. STUMP, a witness of lawful age, first being duly sworn deposith and saith in answer to interrogatories as follows:

EXAMINATION BY MR. WANDREI:

Q: State your full name?

A: Emory Eugene Stump.

Q: Did you have occasion to enter---what is the business of your well drilling?

A: Well drilling.

Q: Did you have occasion to enter into a contract with Raymond McDaniels in March of last year?

A: Yes sir.

Q: Tell us what this contract was for?

A: It was for a well.

Q: Where was this well to be located---was this location Lot 14 of Lake View Estates?

A: Yes sir.

Q: What were the terms of this contract for the well?

A: The terms were \$6.00 per foot.

Q: Including casing and capping the well?

A: Yes sir.

Q: Did you drill the first hole, the first well?

A: Yessir.

Q: And this was a dry well?

A: Yes sir.

Q: Was this a bill for that dry well?

A: Yes sir.

(Complainant's Exhibit A presented to the Commissioner: March 24, 1981 Statement from E. E. Stump Well Drilling, Inc. to Raymond E. McDaniels.)

Q: After you hit this first dry well, did Mr. McDaniels ask you to drill a second well?

A: Yes sir.

Q: Who chose the location of this well?

A: Mr. McDaniels and I.

Q: And this location was in consideration of the Health Department requirements?

A: Yes.

Q: How deep was this second well?

A: Five hundred, thirty feet.

Q: How much was the cost per foot?

A: Same as the first one.

Q: Is this the bill you rendered to Mr. McDaniels for the second well?

A: Yes sir, that's the bill.

Q: Let me ask you this, I notice on the first bill you reduced the price to \$5.00 per foot and you did the same on the second bill also. Why?

A: Just to give him a break.

Q: On this second bill, did you not charge for casing?

A: No, I didn't. I pulled the casing from the first well.

(Complainant's Exhibit B presented to the Commissioner: March 30, 1981 Statement from E. E. Stump Well Drilling, Inc. to Raymond E. McDaniels.)

Q: On your second statement to Mr. McDaniels showing a balance due of \$2,657.00, has that been paid; have you received any credits at all on that account?

A: No sir.

Q: What is this document?

A: That's a log on the second hole.

(Complainant's Exhibit C presented to the Commissioner: Drilling Experience Log)

Q: In looking at the log can you tell when the well or second hole was completed.

A: 3/30/81.

Q: I have no further questions.

CROSS-EXAMINATION BY MR. WALLACE:

Q: Mr. Stump, was the agreement for these wells with Mr. McDaniels in writing or orally?

A: Orally.

Q: How long have you been in business?

A: Seventy-nine.....in the drilling business.

Q: Were you in some other occupation before '79?

A: I sold pumps and installed pumps, but I have only been drilling since '79.

Q: Now, your agreement with Mr. McDaniels was an oral agreement?

A: Yes sir.

Q: Since you have been in this business since 1979, have you not had an occasion to drill a dry well?

A: Yes sir.

Q: Did you explain this to Mr. McDaniels?

A: Yes, yes sir.

Q: When did you complete the first hole?

A: A Week prior to the second hole.

Q: And on the same day you were paid?

A: No sir, in about a week.

Q: Did you make notation on the bill submitted "Paid in Full"?

A: It was paid in full 3/24/81.

Q: But, the notation was not made by Mr. McDaniels?

A: No sir.

Q: Was the well completed on that day---3/24/81---the first well?

A: Yes sir.

Q: Are you certain it was completed before you were paid?

A: Yes sir - the first well, yes sir.

Q: The well that is located on the property now, how far is it located from the home?

A: From the house? Approximately 100 feet.

Q: How do you determine the distance from a house a well is to be located?

A: There are no regulations as to how close to the house; there are State regulations as to how far from the drain field and so far from the septic tank.

Q: Isn't a well as close to a house as it can be placed, usually?

A: If the state permits.

Q: Why was this one so far from the house?

A: Because of state regulations.

Q: What about access from the well to the house. To get water it would require a pump. What size would ^{you} say it would require?

A: About a three ~~three~~ quarters horsepower. I don't know. I didn't put the pump in.

Q: But you said you had experience in pumps and installing them.

A: Maybe one half; but I didn't put the pump in.

Q: Was that something considered or discussed before you put the well in.....the need for a pump?

A: Yes sir.

Q: You stated that your agreement with Mr. McDaniels was \$6.00 per foot. Both bills have \$5.00 per foot. You did not show this as \$6.00 and then give a credit?

A: No sir.

Q: You all agreed to that?

A: On that dry hole I dropped the price.

Q: Did you have occasion to talk with Mr. McDaniels about this second bill?

A: No sir.

Q: Did he in fact tell you that he had paid for this well with the other check?

A: No Sir; he said he was going to put the pump in and try it, but he never did put the pump in it.

Q: If it did work, he was to pay for the well?

A: Yes sir.

Q: Did he tell you that the check in payment of the first invoice was all he owed you?

A: No sir.

Q: You did not know he filed an answer in this suit and this is what he alleged in his answer?

A: No sir.

Q: Did he deny owing any more money when you discussed it with him?

A: I haven't talked to him since three months prior to---. I filed a mechanic's lien. I sent him statements every thirty days. You couldn't negotiate with the man.

RE-DIRECT BY MR. WANDREI:

Q: Did you ever guarantee that you would hit water and the quantity? Have you ever guaranteed water?

A: No sir.

Q: Do you authorize the Notary to sign your name to your deposition? She will type it and then sign your name to it and you won't have to come back.

A: Yes sir.

And further this deponent saith not.


E. E. STUMP

By: 
STENOGRAPHER

(Complainant's Exhibit D presented to the Commissioner: Memorandum for Mechanic's Lien Claimed by General Contractor).

BY MR. WALLACE: This is the original contract with attachments. (Willis Exhibit A presented to the Commissioner: Contract dated 16th of February, 1981 between Raymond E. McDaniels and Patricia Ann Willis.)

PATRICIA ANN WILLIS, a witness of lawful age, first being duly sworn deposite and saith in answer to interrogatories as follows:

EXAMINATION BY MR. WALLACE:

Q: Mrs. Willis, the contract entered into between yourself and Mr. McDaniels is for Lot 14, Lake View Estates, Section 2 at a price of \$84,500.00, correct?

A: Yes sir.

Q: The contract had provisions for no moderations or extras. There were some extras; was this put in writing?

A: No sir.

Q: Did you agree to these extras?

A: Yes.

Q: Including the extras, what price did you pay for the house?

A: Approximately \$92,000.00.

Q: You acknowledge that the contract price, by agreement, had gone up to \$92,000.00 because of extras?

A: Yes.

Q: Please state whether or not the suit you filed was settled by agreement?

A: Yes.

Q: In the course of the settlement of that suit, you took a promissory note, the payment of which was secured by a deed of trust?

A: Yes sir.

Q: There was a default in the payment of this note?

A: Yes.

Q: You now have a trustee deed to the property?

A: Yes.

Q: By the time you assumed ownership to the deed, what was the state of completion of the house?

A: It needed approximately \$7,500.00 to complete it.

Q: Did you hire a contractor?

A: Yes.

Q: Who was this?

A: Bud Dunford; Mr. C. S. Dunford.

Q: Has he in fact completed the house?

A: Yes.

Q: Have you paid him?

A: Yes.

Q: What was the amount paid?

A: Seven thousand, five hundred dollars.

Q: Were there any other sums of money you had to expend?

A: Yes sir.

Q: What was the total of your expenses on this house?

A: Between \$110,000.00 and \$111,000.00.

Q: Did you have to expend money in connection with the well?

A: The amount spent on the pump was \$1,700.00 and I received estimates on the pump up to \$3,000.00. I was told that Mr. McDaniels---

BY MR. WANDREI: I object to that as hearsay. He is not here to defend himself.

BY THE COMMISSIONER: Sustained.

BY MR. WALLACE: Have you in fact had a pump installed?

Q: How much did you pay for it?

A: Seventeen hundred dollars. I thought it would be about \$700.00 or \$800.00, but it turned out to be \$1,700.00.

Q: What is the total amount of money in the house now?

A: It is now up to about \$111,000.00 and that was to get into the house.

CROSS-EXAMINATION BY MR. WANDREI:

Q: Have you ever met Mr. Stump before today?

A: No, I haven't.

Q: Prior to the filing of this suit, have you ever had a conversation with him?

A: No.

Q: You said the contract price on the house was \$92,000.00?

A: Eighty-four thousand, five hundred dollars.

Q: The extras brought it up to \$92,000.00?

A: Yes sir.

Q: Prior to the filing of your law suit, how much money had you expended on the house?

A: About \$73,000.00; a little over \$73,000.00.

Q: So, by the time you filed your suit there was almost another \$20,000.00 you expected to put into the house?

A: Yes.

BY THE COMMISSIONER: When, in fact, was the house completed?

A: When was the house completed? In March; March 26, 1982.

BY MR. WALLACE: Mrs. Willis, do you authorize the stenographer to sign your name to the deposition after transcribing it?

A: Yes.

And further this deponent saith not.

Patricia Ann Willis
PATRICIA ANN WILLIS

By: DeLois D. Coins
STENOGRAPHER

COMMONWEALTH OF VIRGINIA,
COUNTY OF BEDFORD, TO-WIT:

I, A. A. Rucker, a Commissioner in Chancery of the Circuit Court for Bedford County, Virginia, hereby do certify that the foregoing depositions of E. E. Stump and Patricia Ann Willis were taken before me at the time, place and for the purpose in the caption hereof mentioned, and pursuant to the notice hereto attached.

GIVEN under my hand this the 15th day of June,
1982.

A. A. Rucker
Commissioner in Chancery of the Circuit Court
for Bedford County, Virginia.

Stenographer's Fee: \$16.00
(Payable to DeLois D. Coins)

From E. E. Stump Well Drilling, Inc.

Rt. 1, Box 305

Goodview, Virginia 24095

Date

March 24, 1981

To Raymond E. McDaniels

Address 294 Isle of Pines

City Moneta, Va. 24121

Terms _____

statement

390	feet @ \$5.00 per foot	\$ 1,950.00
25	feet casing @	165.00
	Total	\$ 2,115.00

THANK YOU VERY MUCH!

*Paid 3/24/81
in full - check
deposited 4/10/81*

Compliments of A *100* *73*

E. E. Stump Well Drilling, Inc. 890-1291
From Rt. 1, Box 305
Goodview, Virginia 24095

Date March 30, 1981

To Raymond E. McDaniels

Address (294 Isle of Pines)

City Moneta, Va. 24121

Terms

Statement

530	feet @ \$5.00 per foot	\$ 2,650.00
1	cap	7.00
	Total	\$ 2,657.00

1/2 gallon per minute

THANK YOU VERY MUCH!

Compliments Exp. B

ATD

(T4)

DRILLING EXPERIENCE LOG

NAME: RAY Mc DANIELS
EXACT LOCATION: LAKE VIEW ESTATES
BEDFORD COUNTY
DATE STARTED: 3-27-81 DATE COMPLETED: 3-30-81 WORKING DAYS: 3

OPERATING CONDITIONS:

WEATHER CONDITIONS:	<u> </u> GOOD	<u>✓</u> MEDIUM	<u> </u> POOR
ROAD CONDITIONS:	<u>✓</u> GOOD	<u> </u> MEDIUM	<u> </u> POOR
LOCATION ACCESSIBILITY:	<u> </u> GOOD	<u> </u> MEDIUM	<u>✓</u> POOR
MUD SEAMS:	<u>✓</u> NONE	<u> </u> FEW	<u> </u> MANY
ROCK CAVES:	<u>✓</u> NONE	<u> </u> FEW	<u> </u> MANY
ROCK TYPE:	<u> </u> SHALE	<u> </u> LIMESTONE	<u>✓</u> GRANITE
DRILLING SPEED:	<u>✓</u> SLOW	<u> </u> AVERAGE	<u> </u> FAST

SPECIAL INFORMATION:

TOTAL DEPTH OF WELL:	<u>530</u>	
OVERBURDEN DEPTH:	<u>45</u>	
FT. OF CASING & SIZE:	<u>46 ft 6 5/8"</u>	
TOTAL GAL/MIN:	<u>12</u>	# OF HRS. TESTED: <u> </u>
LEVEL 1st WATER:	<u>290</u>	GAL/MIN: <u> </u>
LEVEL 2nd WATER:	<u> </u>	GAL/MIN: <u> </u>
TYPE BIT USED:	<u>✓</u> BUTTON	<u> </u> CHISEL <u> </u> CONE
# HRS. FOR BIT:	<u>20 19</u>	BIT #: <u>6"</u>
# HRS. FOR HAMMER:	<u>19</u>	
# HRS FOR DIESEL:	<u>24</u>	
# HRS. FOR COMPRESSOR:	<u>24</u>	
EXTRA MATERIAL USED ON JOB	<u>NONE</u>	

Compliment Ex. C
GAR

2435

MEMORANDUM FOR MECHANIC'S LIEN

CLAIMED BY GENERAL CONTRACTOR

Name of Owner: Raymond E. McDaniels and Marsha R. McDaniels

Address of Owner: Route 1, (Lakeview Estates), Moneta, Virginia 24121

Name of Claimant: E. E. Stump Well Drilling, Inc.

Address of Claimant: Route 1, Box 305, Goodview, Virginia 24095

(1). Type of materials or services furnished: Drilling of well 530 feet and capping.

(2). Amount claimed: \$2,657.00


(3). Type of structure on which work done or materials furnished: not applicable.

(4). Brief description and location of real property: Lot 14, Section 2, Lakeview Estates, containing 0.718 acres, as shown on a plat made by B. R. Shrader, C.L.S., dated March 17, 1980, and recorded in the Office of the Clerk, Circuit Court, Bedford County, Virginia in Deed Book 513 at page 443.

(5). Date from which interest on the above amount is claimed: March 30, 1981.

E. E. STUMP WELL DRILLING, INC.

BY


Robert T. Wandrei, attorney and agent

STATE OF VIRGINIA

COUNTY OF BEDFORD

I, Sharon E. Blankenship, a notary public, in and for the County of Bedford, State of Virginia, aforesaid, do certify that E. E. Stump Well Drilling, Inc., by Robert T. Wandrei, attorney and agent for claimant, this day made oath before me in my county aforesaid that Raymond E. McDaniels and Marsha R. McDaniels, is justly indebted to claimant in the sum of \$2,657.00, for the consideration stated in the foregoing memorandum, and that the same is payable as therein stated.

GIVEN under my hand this the 23rd day of June, 1981.

RADFORD & WANDREI
ATTORNEYS AT LAW
BEDFORD, VIRGINIA
24523

- 1 -

*Complainant's Ex D.
QAR*
Filed June 23, 1981

Willis Exhibit A

THIS CONTRACT made and entered into, this the 16th day of February, 1981 by and between Raymond E. McDaniels, party of the first part, the seller, and Patricia Ann Willis, party of the second part, the Purchaser, that for and in consideration of the sum of Eighty-Four Thousand Five Hundred Dollars (\$84,500.00) to be paid as follows:

\$1800 earnest money deposit, receipt of which is hereby acknowledged

\$21,000 to be paid by buyer by March 2, 1981

\$36,700 to be paid by buyer by April 2, 1981

The balance of \$25,000 to be financed through conventional financing to be paid upon completion of house.

The Contractor (Seller) does hereby agree to complete the house already under construction on Lot #14, Lakeview Estates, Section 2, situated in Bedford County, according to the specifications attached hereto. Any changes or additions to the work to be performed under this contract shall be adjusted by a change order acknowledged by both the buyer and seller prior to the commencement of such work.

The Contractor (Seller) shall provide and pay for all materials, labor, equipment, tools, machinery, appliances, utilities, and other necessary facilities, services and items to properly complete the work. The Contractor shall be solely responsible for all procedures and for coordinating all portions of the work under this contract. The Contractor warrants to the buyer that all materials and equipment incorporated in the work will be new unless otherwise specified, and that all work will be done in a workmanlike manner and will be of good quality and free from faults and defects.

Final grading shall include backfill around foundation and rough grading in those areas disturbed by Contractor in excavating for foundation and septic field. Any fine grading, seeding, and shrubbery shall be completed under separate contract.

The Contractor shall comply in all respects with the provisions of the Building Code of Bedford County, and with all provisions of any other codes, ordinances or said laws of said County, and the buyers shall have the right to have all phases of the construction inspected by a County Building Inspector.

It is agreed that construction under this contract will be completed by May 1, 1981 or as soon thereafter as possible, making allowances for any delays caused by adverse weather conditions or any delays unavoidable by the contractor, such as illness, delivery of materials, etc.

THIS CONTRACT made and entered into, this the 16th day of February, 1981 by and between Raymond E. McDaniels, party of the first part, the seller, and Patricia Ann Willis, party of the second part, the Purchaser, that for and in consideration of the sum of Eighty-Four Thousand Five Hundred Dollars (\$84,500.00) to be paid as follows:

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It is agreed that construction under this contract will be completed by May 1, 1981 or as soon thereafter as possible, making allowances for any delays caused by adverse weather conditions or any delays unavoidable by the contractor, such as illness, delivery of materials, etc.

This contract contains the final and entire agreement between the parties hereto, and neither party shall be bound by any terms, conditions or representations not expressly set forth herein. Any modifications to this contract shall be in writing and signed by both parties hereto.

WITNESSETH the hands and seals of the respective parties hereto.

Patricia Ann Miller

(PURCHASER)

Raymond E. McDaniel

CONTRACTOR (SELLER)

Witness

Stella M. M. M. M.
February 16, 1981

REPORT OF COMMISSIONER IN CHANCERY

The undersigned Commissioner was appointed to act as such in this cause by a decree of this Court which was entered on the 20th day of May, 1982. He fixed upon the 15th day of June, 1982, between the hours of 2:00 P.M. and 5:00 P.M. of that day as the time, and his office at 114 East Main Street, Bedford, Virginia, as the place for the taking of the accounts set forth in said decree. Your Commissioner gave due notice of the time and place of the taking of said accounts as required by law and by the terms of said decree, as is evidenced by the notice which is returned with this report.

Your Commissioner sat on the 15th day of June, 1982, and heard testimony concerning said accounts, which testimony was reduced to writing in the form of depositions returned herewith.

As a result of the evidence produced before him, and of the disclosures from your Commissioner's examination of the records in the Bedford County Clerk's Office and in the Bedford County Treasurer's Office, your Commissioner reports as follows:

(1) Determine and report who are the fee simple owners of the real estate described in the Bill for Specific Performance;

Your Commissioner reports that the fee simple owners of the real estate described in the Bill for Specific Performance are Patricia A. Willis and Lillian K. Webster, who own the same as joint tenants with the right of survivorship by virtue of a certain deed to them from Philip A. Wallace, sole acting trustee, dated March 25, 1982, recorded in the Bedford County

Clerk's Office June 4, 1982 at 11:15 A.M. in Deed Book 534 at Page 311,
said property being subject to a certain lien set forth below.

(2) Determine and report if all of the proper parties are before the court so as to allow the court to effect the relief sought in the Bill for Specific Performance;

Your Commissioner reports that all proper and necessary parties are before the Court in this cause so as to allow the Court to effect the relief sought in the Bill for Specific Performance. Your Commissioner further reports, however, that Specific Performance already has been attained in this cause and that the object of the moving party (E. E. Stump Well Drilling, Inc.) is no longer Specific Performance but is to obtain payment of the amount due it pursuant to its mechanic's lien. Your Commissioner further reports that all proper and necessary parties are before the Court in order to allow the Court to effect the relief sought by E. E. Stump Well Drilling, Inc.

(3) Determine and report whether or not there are any liens against the real estate described in the Bill for Specific Performance;

Your Commissioner reports that there is a certain lien against the real estate described in the Bill for Specific Performance, as set out below under Account No. (4).

(4) List and report all liens, in order of priority, the amounts thereof, if any;

Your Commissioner reports that there is only one lien on the subject real property, as follows:

(1) The lien of the Court of Bedford for real property taxes (to which must be added penalty and interest to the time of payment) as follow:

(A) For the year 1981 in the amount of \$76.25.

(B) For the year 1982 in an amount not yet ascertained by the taxing authorities, which will go delinquent December 5, 1982.

It is in evidence before your Commissioner that Patricia Ann Willis, one of the present co-owners of the subject property, on February 16, 1981 entered into a contract with Raymond E. McDaniels, who at that time was a co-owner of the subject real property along with his wife, Marsha R. McDaniels (as tenants by the entirety), under the terms of which contract dated February 16, 1981 the said Raymond E. McDaniels contracted to sell to Patricia Ann Willis the subject real property upon which a dwelling house then was under construction, the purchase price being stated as \$84,500.00 and the contract providing that the said Raymond E. McDaniels was to complete said house for this price and according to the specifications set forth in said contract of February 16, 1981. It further is in evidence before your Commissioner (and proved to his satisfaction) that the said Raymond E. McDaniels defaulted on his contract to complete said house according to the terms of said contract and abandoned the job after having received from Patricia Ann Willis the sum of approximately \$92,000.00 (which included certain extras over and above the original contract price) and that thereafter the said Patricia Ann Willis had to pay and did pay the sum of \$7,500.00 in order to have said construction completed. That the total amount paid by Patricia Ann Willis for this house and lot as finally completed was between \$110,000.00 and \$111,000.00.

Under the above stated condition of facts and in view of the provisions of Section 43-16 of the Code of Virginia of 1950 as amended, your Commissioner reports that the claim of Patricia Ann Willis in the amount of the \$7,500.00

which she had to expend and did expend in order to obtain the completion of the dwelling house on said property after the construction thereof was abandoned by Raymond E. McDaniels is an item which in the matter of priority is next after Lien No. (1) listed above.

(4)(A) There is of record in the Bedford County Clerk's Office in Deed Book 522 at Page 283, recorded June 23, 1981 at 2:50 P.M., a memorandum of mechanic's lien of E. E. Stump Well Drilling, Inc. against Raymond E. McDaniels and Marsha R. McDaniels, therein designated as "owner" concerning the subject real property, setting forth a claim of \$2,657.00 for drilling and capping a well. Interest is claimed from March 30, 1981 until paid.

(4)(B) There is of record in said Clerk's Office in Deed Book 525 at Page 5, dated August 17, 1981 and recorded August 18, 1981 at 8:30 A.M. a memorandum of mechanic's lien of Blue Stone Block, Inc. against Patricia Willis, owner, concerning the subject real property, and asserting a claim for building materials used on the subject real property in the amount of \$2,097.94.

(4)(C) There is of record in said Clerk's Office in Deed Book 528 at Page 344, dated November 12, 1981 and recorded November 13, 1981 at 10:00 A.M. a memorandum of mechanic's lien by Moneta Building Supply, Inc. against Raymond E. McDaniels and Marsha R. McDaniels, asserting a claim of \$155.58, plus interest from July 7, 1981.

(4)(D) There is of record in said Clerk's Office in Judgment Lien Docket 25 at Page 138 a record of a judgment of Keith D. Holman and Betty A. Holman against Raymond E. McDaniels and Marsha R. McDaniels, rendered July 23, 1981 and docketed August 7, 1981 at 1:10 P.M. in the

sum of \$1,125.96, plus 8% interest from July 23, 1981 until paid, plus costs which appear to be in the amount of \$7.50, plus \$200.00 attorney fee.

(4)(E) There is of record in said Clerk's Office in Judgment Lien Docket 25 at Page 204, rendered October 22, 1981, docketed November 5, 1981 at 2:35 P.M. a judgment of David Cassidy, T/A Hale's Ford Bridge Boat and Car Repair vs. Raymond E. McDaniels in the amount of \$715.00, plus 10% interest from September 10, 1981 until paid, plus costs which appear to be in the amount of \$7.50.

(4)(F) There is of record in said Clerk's Office in Judgment Lien Docket 25 at Page 396, rendered May 7, 1982 and docketed May 28, 1982 at 9:00 A.M. a judgment of Lutins, Shapiro, Albert and Kurtin vs. Raymond E. McDaniels and Marsha R. McDaniels in the sum of \$5,000.00, plus interest, attorney's fees and costs incurred per contract and quantum meruit, as to which the costs appear to be \$9.00.

As to the item listed above as (4)(A) your Commissioner reports that in view of the provisions of Section 43-16 of the Virginia Code the claim of Patricia Ann Willis for the \$7,500.00 which she expended to obtain the completion of the house after the job was abandoned by Raymond E. McDaniels comes before the (4)(A) claim listed above, in view of which fact said (4)(A) claim is not a lien on the subject real property.

As to the items listed above as (4)(B) and (4)(C), your Commissioner reports that these items do not constitute liens on the subject real property in view of the fact that proper steps were not taken to enforce these liens and in view of the fact that the \$7,500.00 claim of Patricia Ann Willis comes before them as provided for by Section 43-16 of the Code of Virginia.

As to items (4)(D), (4)(E) and (4)(F) listed above, your Commissioner

reports that they do not constitute liens on the subject real property in view of the fact that at the time they were rendered Raymond E. McDaniels and Marsha R. McDaniels were not possessed of a beneficial interest in the subject real property. Also, as to the item listed as (4)(E), it is against Raymond E. McDaniels only and the subject real property was conveyed to Raymond E. McDaniels and Marsha R. McDaniels as tenants by the entirety.

(5) Determine and report if the mechanic's lien claimed by E. E. Stump Well Drilling, Inc. is valid and has been duly filed;

Your Commissioner reports that the mechanic's lien claimed by E. E. Stump Well Drilling, Inc. duly was filed, but that, as set out above in account No. (4), it does not constitute a valid lien against the subject real property.

(6) Determine and report if E. E. Stump Well Drilling, Inc. is entitled to the relief prayed for in their bill of complaint;

For the reasons set out above in account No. (4), your Commissioner reports that E. E. Stump Well Drilling, Inc. is not entitled to the relief prayed for in its Bill of Complaint.

(7) Any other matters deemed pertinent by your Commissioner and such matters which he is requested to report upon by any party in interest, if the same be pertinent to the issues in this cause. But before proceeding to execute the Reference, the Commissioner shall give notices required by law of the time and place fixed for executing the same.

Your Commissioner was not asked to report upon any other account by any party in interest and he does not deem it pertinent that he report upon any other account.

Your Commissioner certifies, pursuant to the provisions of Rule 2:18(c) of the Supreme Court of Virginia that he has mailed or delivered to

counsel of record who still remain as such in this cause (being Philip A. Wallace, counsel for Patricia Ann Willis, Robert T. Wandrei, counsel for E. E. Stump Well Drilling, Inc. and G. Carl Boggess, counsel for Harry W. Garrett, Jr. and G. Carl Boggess, Trustees) a copy of this report, together with written notice of the filing of the same, there having been no party to appear in said cause not represented by counsel.

Respectfully submitted,

Commissioner in Chancery of the Circuit
Court for Bedford County, Virginia.

Commissioner's Fee:	\$150.00
Stenographer's Fees:	
Depositions -	16.00
Commissioner's Report -	<u>12.00</u>
	\$178.00

(Stenographer's fees as listed above payable to DeLois D. Coins.)

TWENTY-FOURTH JUDICIAL CIRCUIT
OF VIRGINIA

O. RAYMOND CUNDIFF, JUDGE
WILLIAM W. SWEENEY, JUDGE
LYNCHBURG CIRCUIT COURT
LYNCHBURG, VIRGINIA 24504



ROBERT C. GOAD, JUDGE
LOVINGSTON, VIRGINIA 22949
NORMAN K. MOON, JUDGE
RUSTBURG, VIRGINIA 24588

COMMONWEALTH OF VIRGINIA
CITIES OF LYNCHBURG, BEDFORD AND WAYNESBORO
COUNTIES OF AMHERST, BEDFORD, CAMPBELL AND NELSON

August 30, 1982

Philip A. Wallace, Esq.
Attorney at Law
Post Office Box 923
Bedford, Virginia 24523

Robert T. Wandrei, Esq.
Attorney at Law
Post Office Box 223
Bedford, Virginia 24523

Re: Patricia Ann Willis, Complainant
vs.
Raymond E. McDaniels, E. E. Stump Well
Drilling, Inc. etal, Defendants.
(Circuit Court of Bedford County)

Gentlemen:

Counsel for Stump Well Drilling excepts to the Commissioner in Chancery's report on the single ground that the complainant was not the "owner" of the property in question within the meaning of Virginia Code Section 43-16. This section gives a priority to owners who expend funds to complete improvements begun by defaulting contractors. Argument on exceptions was heard on July 13, 1982. According to the record, the date on which Stump's memorandum of mechanic's lien was filed was June 23, 1981, and not June 13, 1981, as stated in the Exceptions.

The sole issue is whether Willis was an "owner" entitled to priority under Section 43-16. The Commissioner heard evidence and ruled that she was. From my review of the record and the law, I agree.

Philip A. Wallace, Esq.
Robert T. Wandrei, Esq.
August 30, 1982
Page 2

Section 43-16 reads as follows:

"If the owner is compelled to complete his building, structure, or railroad, or any part thereof undertaken by a general contractor in consequence of the failure or refusal of the general contractor to do so, the amount expended by the owner for such completion shall have priority over all mechanics' liens which have been or may be placed on such building, structure, or railroad by such general contractor, a subcontractor under him, or any person furnishing labor or materials to either of them."

Briefly stated, the property was purchased by McDaniels in December 1980. By written contract in February 1981, McDaniels agreed to sell the property to Willis and to complete the house already under construction on the lot for a specified price. The contract obligation was \$84,500.00, which included the purchase price of the lot and the completion of the house by a certain date. Earnest money of \$1,800.00 was paid by Willis on the date of the execution of the contract with the balance to be paid at stated intervals. The contractor, McDaniels, abandoned the job, and Willis was forced to hire another contractor to complete the dwelling at a cost of \$7,500.00 plus some agreed upon "extras."

On June 23, 1981, Stump Well Drilling filed its Memo of Mechanics Lien naming McDaniels and wife as owners. It claimed \$2,657.00 plus interest for a well dug on the property for McDaniels. The first well was a dry well for which Stump was paid. The lien amount was for the second well. At the time Stump filed, legal record title was in McDaniels and wife. McDaniels and Willis settled their differences in this equity suit leaving only the question of priorities between Willis and Stump.

Stump claims, in effect, that Section 43-16 protects only legal title owners of record, and that since Willis was not the title owner when his claim was filed, she should not be favored. He argues that he should not have to go outside the record to determine ownership. In my opinion, this is not the point. The

Philip A. Wallace, Esq.
Robert T. Wandrei, Esq.
August 30, 1982
Page 3

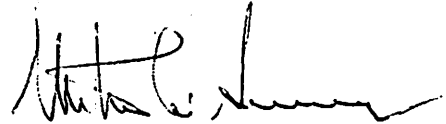
result would be the same whether Stump had named McDaniels, Willis, or both. The question is owner status not title status.

It is clear that Section 43-16 protects equitable owners as well as fee title owners. The chapter on mechanics liens states that trustees in deeds of trust are not "owners." Equitable owners are protected under the statute. See Blanton v. Owen, 203 Va. 73; Wallace v. Brumback, 177 Va. 36.

The fact that Willis was an equitable owner of the property with beneficial interests to be protected at the time the mechanic's lien was filed is fully supported by the record and the Commissioner's findings.

Counsel for Willis shall prepare a decree.

Yours very truly,

A handwritten signature in dark ink, appearing to read 'William W. Sweeney', written in a cursive style.

William W. Sweeney, Judge

WWS/n

TWENTY-FOURTH JUDICIAL CIRCUIT
OF VIRGINIA

O. RAYMOND CUNDIFF, JUDGE
WILLIAM W. SWEENEY, JUDGE
LYNCHBURG CIRCUIT COURT
LYNCHBURG, VIRGINIA 24504



ROBERT C. GOAD, JUDGE
LOVINGSTON, VIRGINIA 22949
NORMAN K. MOON, JUDGE
RUSTBURG, VIRGINIA 24588

COMMONWEALTH OF VIRGINIA
CITIES OF LYNCHBURG, BEDFORD AND WAYNESBORO
COUNTIES OF AMHERST, BEDFORD, CAMPBELL AND NELSON

September 15, 1982

Philip A. Wallace, Esq.
Attorney at Law
Post Office Box 923
Bedford, Virginia 24523

Robert T. Wandrei, Esq.
Attorney at Law
Post Office Box 223
Bedford, Virginia 24523

Re: Patricia Ann Willis, Complainant
vs.
Raymond E. McDaniels, E. E. Stump Well
Drilling, Inc., etal, Defendants.
(Circuit Court of Bedford County)

Gentlemen:

At the request of counsel for Stump Well Drilling, I have again reviewed this file, and I again conclude that the \$7,500 claim by Willis (whose equitable ownership has now become legal ownership) is entitled to priority over Stump's claim under Virginia Code Section 43-16. I do not conclude, as the Commissioner apparently did, that Stump's claim is invalid, but I do find that it is subordinate to the owner's claim for funds expended to complete her house. To hold that Stump should be paid before Willis would frustrate the obvious purpose of Section 43-16 -- to protect owners who are forced to complete their houses at their expense when the contractor abandons the job.

Philip A. Wallace, Esq.
Robert T. Wandrei, Esq.
September 15, 1982
Page 2

Mc Daniels is not a person to be protected by the statute. After he sold the land to Willis in February 1981, and agreed to complete the dwelling, he became the contractor and Willis became the owner. Neither Willis nor McDaniels was the legal title owner when Stump filed his lien in June 1981. The legal title was in the holder of the deed of trust on the property. However, as Section 43-1 now specifically states and as the Court in Loyola Fed. Sav. v. Herndon, 218 Va. 803, 241 S.E.2d 752 (1978) held, courts of equity will protect the beneficial or equitable owner rather than the person holding bare legal title.

Counsel for Stump insists that the Herndon case supports his position. I disagree. If anything, it weakens it because it clearly shows that the courts should look to the real parties in interest. The mere fact that Herndon defines an "owner" as one to whom the property was conveyed in fee does not rule out equitable owners where, as here, the fee simple owner had already conveyed the property to Willis by valid written contract before Stump even dug the well or filed his lien. Page three of the depositions shows that the second well was completed on March 30, 1981.

Although there appears to be an unresolved dispute between McDaniels and Stump as to whether Stump was entitled to be paid for the second well, the uncontradicted evidence was that the contract price, plus extras on the house and lot between McDaniels and Willis was \$92,000 (Depositions-p.6) and that Willis has expended over \$110,000 on the property.

While Stump's lien was validly filed, there are no withheld funds of the owner from which it can be satisfied. Willis has no obligation to McDaniels.

Philip A. Wallace, Esq.
Robert T. Wandrei, Esq.
September 15, 1982
Page 3

When the order herein was presented for entry, counsel for Stump, for the first time, orally raised an issue of estoppel concerning the dismissal of the specific performance suit of Willis against McDaniels on March 2, 1982. The effect of this dismissal was to settle differences between Willis and McDaniels. Willis never abandoned nor compromised her claim for additional funds spent to complete the house. In any event, this defense which was never plead, argued or mentioned in depositions or decree of reference comes too late.

Since counsel cannot agree on the wording of an order, I will enter an order incorporating by reference my written opinions. Without consent of both counsel, no further exhibits can be entered at this stage of the proceeding.

Yours very truly,


William W. Sweeney, Judge ✓

WWS/n

O R D E R

The exception to the Report of the Commissioner in Chancery is overruled for reasons stated in the court's opinion letters dated August 30, 1982, and September 15, 1982, both of which are incorporated herein by reference.

Counsel for E. E. Stump Well Drilling, Inc. objects to the action of this Court so ruling.

Copies of this final order have this day been mailed to both counsel of record.

✓
Entered: 9/15/82

W. C. Lacey
Judge

19 82 September 15th
ENTERED IN CHANCERY
ORDER BOOK.
No 47 Page 15-9

ASSIGNMENTS OF ERROR

The trial court erred in subordinating the claim of the appellant, E. E. Stump Well Drilling, Inc., for payment by virtue of its properly perfected Mechanic's Lien to the claim of the appellee, Patricia Ann Willis for set-off pursuant to Va. Code Ann. §43-16 because:

1. Mechanic's Lien statutes are to be read in conjunction with recording statutes which make unrecorded contracts void as to certain purchasers and creditors.

2. Va. Code Ann. §43-16, is inapplicable in the instant case because, E. E. Stump Well Drilling, Inc., is a general contractor who contracted directly with the owner of the property to drill and cap a well.

3. Va. Code Ann. §43-16 is not applicable because Willis' ownership of the subject property is not derived from the contract of February 16, 1981 with McDaniels.