

NOTICE OF INTENT TO APPEAL
THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM HORRY COUNTY

HONORABLE JOHN L. BREEDEN, JR., MASTER IN EQUITY

80-CP-26-1979

Justice Builders, Inc.,

Petitioner/Appellant

vs.

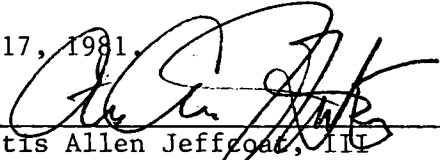
Joseph McKinley Bryan, Jr.,

Respondent.

8-1-1981

NOTICE OF INTENTION TO APPEAL

The Petitioner/Appellant hereby gives notice of its intention to appeal the within action to the Supreme Court of the State of South Carolina, said appeal being from the Order of the Honorable John L. Breeden, Jr., Master In Equity for Horry County, Dated November 17, 1981.


Otis Allen Jeffcoat, III
McKAY, SHERRILL, WALKER & TOWNSEND
Post Office Box 2937
502 63rd Avenue North
Myrtle Beach, South Carolina 29577

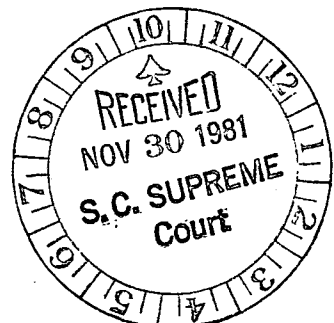
November 20, 1981

ATTORNEYS FOR JUSTICE BUILDERS, INC.

Other Counsel of Record Are:

Howell V. Bellamy, Jr., Esquire
Henrietta U. Golding, Esquire
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS
Post Office Box 357
Myrtle Beach, South Carolina 29577

ATTORNEYS FOR JOSEPH MCKINLEY BRYAN, JR.



Filed Nov. 25, 1981
Date of transmittal letter
Postmark date illegible

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY

HONORABLE JOHN L. BREEDEN, JR., MASTER IN EQUITY

80-CP-26-1979

Justice Builders, Inc.,

Petitioner/Appellant

vs.

Joseph McKinley Bryan, Jr.,

Respondent.

AFFIDAVIT OF SERVICE

PERSONALLY APPEARED BEFORE ME the undersigned Linda R. Davis, who, being duly sworn, deposes and says that she served a copy of the Notice of Intent to Appeal in the above captioned matter upon Howell V. Bellamy, Jr., attorney for the Respondent above named, by delivering and leaving a copy of the same with Terry Conner, secretary to the said Howell V. Bellamy, Jr., at the Law offices of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, Suite 303, Myrtle Offices, 16th Avenue North and Oak Streets, Myrtle Beach, South Carolina, on this 25th day of November, 1981; and, that she is not a party to this action.

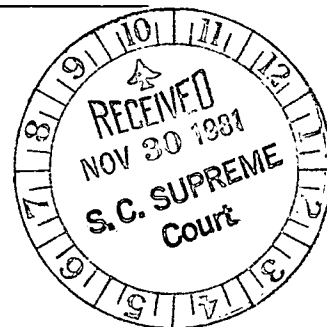
Linda R. Davis
Linda R. Davis

SWORN to before me this

25th day of November, 1981

Katherine M. Buehl (SEAL)
Notary Public for South Carolina

My Commission Expires: 12/18/90



THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY

HONORABLE JOHN L. BREEDEN, JR., MASTER IN EQUITY

80-CP-26-1979

Justice Builders, Inc.,

Petitioner/Appellant

vs.

Joseph McKinley Bryan, Jr.,

Respondent.

AFFIDAVIT OF SERVICE

PERSONALLY APPEARED BEFORE ME the undersigned Linda R. Davis, who, being duly sworn, deposes and says that she served a copy of the Notice of Intent to Appeal in the above captioned matter upon Henrietta U. Golding, attorney for the Respondent above named, by delivering and leaving a copy of the same with Terry Conner, secretary to the said Henrietta U. Golding, at the Law offices of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, Suite 303, Myrtle Offices, 16th Avenue North and Oak Streets, Myrtle Beach, South Carolina, on this 25th day of November, 1981; and, that she is not a party to this action.

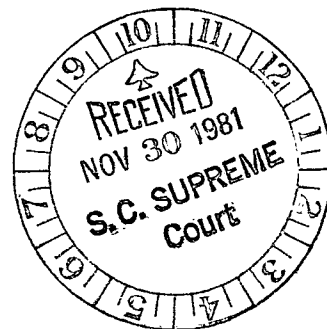
Linda R. Davis
Linda R. Davis

SWORN to before me this

25th day of November, 1981

Katherine M. Bradb (SEAL)
Notary Public for South Carolina

My Commission Expires: 12/18/90



THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY

HONORABLE JOHN L. BREEDEN, JR., MASTER IN EQUITY

80-CP-26-1979

Justice Builders, Inc.,

Petitioner/Appellant

vs.

Joseph McKinley Bryan, Jr.,

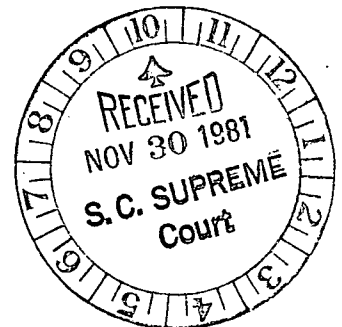
Respondent.

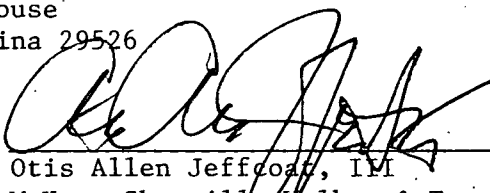
CERTIFICATE OF SERVICE BY MAIL

I certify that a copy of the Notice of Intent to Appeal in the above captioned matter has been served upon the following Clerks of Court by mailing a copy of the same to them, in the United States mail, first-class postage prepaid, addressed to them at their offices as shown below, on this 25th day of November, 1981.

The Honorable Francis H. Smith
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

The Honorable Billie G. Richardson
Clerk of Court of Common Pleas
Horry County Courthouse
Conway, South Carolina 29526




Otis Allen Jeffcoat, III
McKay, Sherrill Walker & Townsend
Post Office Box 2937
502 63rd Avenue North
Myrtle Beach, South Carolina 29577

ATTORNEYS FOR THE PETITIONER/APPELLANT
JUSTICE BUILDERS, INC.

LAW OFFICES
MCKAY, SHERRILL, WALKER & TOWNSEND

502 63RD AVENUE NORTH
POST OFFICE BOX 2937
MYRTLE BEACH, SOUTH CAROLINA 29577
TELEPHONE 803/449-4431

THE WILLIAMSBURG BUILDING
1340 BULL STREET
POST OFFICE DRAWER 447
COLUMBIA, SOUTH CAROLINA 29202
TELEPHONE 803/771-8880

December 21, 1981

REPLY TO:
MYRTLE BEACH, SOUTH CAROLINA

RECEIVED

DEC 22 1981

S. C. SUPREME COURT

Mrs. Bettye S. Gum
Verbatim Reporter
Post Office Box 338
N. Myrtle Beach, South Carolina 29582

Re: Transcript of testimony for Appeal to South Carolina
Supreme Court
Justice Builders, Inc. v. Joseph McKinley Bryan, Jr.
(80-CP-26-1979)
Our File No. 301-60

Dear Bettye:

Pursuant to the applicable Rules of Practice of the South Carolina Supreme Court, and on behalf of Justice Builders, Inc., the petitioner/appellant in the above referenced action now on appeal to the South Carolina Supreme Court, I am hereby requesting that you transcribe and deliver to me the entire transcript of testimony for the above action not later than thirty (30) days after the date of this letter. The transcript of testimony in this case is needed so that our client, Justice Builders, Inc. may perfect its appeal to the Supreme Court. If you have any questions about this request, please do contact me at any time.

By copy of this letter, I am informing the Clerk of the South Carolina Supreme Court and other counsel of record about the request contained herein.

Thanking you in advance for your assistance and with kindest regards for the holidays, I am

Very truly yours,


Otis Allen Jeffcoat, III

MCKAY, SHERRILL, WALKER & TOWNSEND
502 63rd Avenue North
Post Office Box 2937
Myrtle Beach, South Carolina 29577

Attorneys for Justice Builders, Inc.

OAJIII:leh

cc: Honorable Francis H. Smith ✓
Howell V. Bellamy, Esquire
Henrietta U. Golding, Esquire

LAW OFFICES
MCKAY, SHERRILL, WALKER & TOWNSEND

502 63RD AVENUE NORTH
POST OFFICE BOX 2937
MYRTLE BEACH, SOUTH CAROLINA 29577
TELEPHONE 803/449-4431

THE WILLIAMSBURG BUILDING
1340 BULL STREET
POST OFFICE DRAWER 447
COLUMBIA, SOUTH CAROLINA 29202
TELEPHONE 803/771-8880

January 15, 1982

REPLY TO:
MYRTLE BEACH, SOUTH CAROLINA

Mrs. Bettye S. Gum
Verbatim Reporter
Post Office Box 338
North Myrtle Beach, S.C. 29582

RE: Transcript of Testimony for Appeal to
South Carolina Supreme Court
Justice Builders, Inc. V. Joseph McKinley Bryan, Jr.
(80-CP-26-1979)
Our File No. 301-60

Dear Bettye:

Thank you for delivering the above referenced transcript to our offices this past Tuesday, January 12, 1982. By copy of this letter I am informing opposing counsel about our receipt of the transcript and that we shall be serving upon them our proposed case with exceptions pursuant to the applicable Supreme Court Rules.

With kind regards, I am

Very truly yours,

Allen J. E. Coat, III
Otis Allen J. E. Coat, III
MCKAY, SHERRILL, WALKER & TOWNSEND
502 63rd Avenue North
Post Office Box 2937
Myrtle Beach, South Carolina 29577

Attorneys for Justice Builders, Inc.

OAJIII:jw

cc: Honorable Francis H. Smith ✓
Howell V. Bellamy, Esquire
Henrietta U. Golding, Esquire

RECEIVED
JAN 18 1982
S. C. SUPREME COURT

CERTIFICATE OF SERVICE BY MAIL

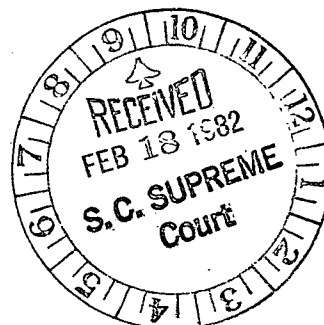
I hereby certify that on the 11th day of February, 1982, I served counsel for the Respondent Joseph McKinley Bryan, Jr., with the foregoing Proposed Case and Exceptions by mailing a copy of same by United States mail, property postage prepaid, to the following persons at the following address:

Howell V. Bellamy, Jr.
Henrietta U. Golding
BELLAMY, RUTENBERG, COPELAND, EPPS,
GRAVELY & BOWERS, P.A.
Suite 304, Myrtle Offices
1604 Oak Street
Post Office Box 357
Myrtle Beach, South Carolina 29577
ATTORNEYS FOR THE RESPONDENT,
JOSEPH MCKINLEY BRYAN, JR.



Otis Allen Jeffcoat, Jr.
SHERRILL, TOWNSEND, MOSES & JEFFCOAT
Post Office Box 2937,
502 63rd Avenue North
Myrtle Beach, South Carolina 29577

ATTORNEYS FOR THE APPELLANT
JUSTICE BUILDERS, INC.



Jeon

SHERRILL, TOWNSEND, MOSES & JEFFCOAT

HENRY F. SHERRILL
WILLIAM H. TOWNSEND
ALBERT L. MOSES
OTIS ALLEN JEFFCOAT, III

ATTORNEYS AT LAW
502 63RD AVENUE NORTH
POST OFFICE BOX 2837
MYRTLE BEACH, S.C. 29577
TELEPHONE 803/449-4431

COLUMBIA OFFICE
1340 BULL STREET
POST OFFICE DRAWER 447
COLUMBIA, S.C. 29202
TELEPHONE 803/771-8880

JOSEPH H. WATCHER, JR.

R. LARRY KNIGHT
(OF COUNSEL)

March 1, 1982

Howell V. Bellamy, Jr., Esquire
Henrietta U. Golding, Esquire
Bellamy, Rutenberg, Copeland, Epps,
Gravelly & Bowers, P.A.
Suite 303, Myrtle Offices
1604 Oak Street
Post Office Box 357
Myrtle Beach, South Carolina 29577

Re: Justice Builders, Inc. vs. Joseph M. Bryan, Jr. (80-CP-40-1979)
Your File No. 79-00393-1
Our File No. 301-60

Dear Skeets and Henri:

In connection with the above referenced matter now on appeal to the South Carolina Supreme Court, enclosed herewith please find a copy of the Motion to Settle Record for Appeal and Notice of Motion to Settle Record which are both this day being served upon you by mail.

With kind regards, I am

Sincerely yours,

Otis Allen Jeffcoat, III

RECEIVED

MAR 2 1982

S. C. SUPREME COURT

OAJ, III:gkr

Enclosures

cc: Honorable Frances Smith ✓
Clerk of Court

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY

HONORABLE JOHN L. BREEDEN, JR., MASTER IN EQUITY

CIVIL ACTION NO. 80-CP-26-1979

Justice Builders, Inc.,

Appellant,

-against-

Joseph McKinley Bryan, Jr.,

Respondent.

RECEIVED

MAR 2 1982

S. C. SUPREME COURT

MOTION TO SETTLE RECORD
FOR APPEAL

TO: THE HONORABLE CHIEF JUSTICE and ASSOCIATE JUSTICES OF THE SUPREME
COURT OF SOUTH CAROLINA

The appellant respectfully moves the Court for an Order settling the content of the Transcript of Record upon which this case will be based, in conformity with the appellant's proposed Case. As grounds for its motion, the appellant would respectfully show as follows:

1. The proposed Statement of the Case set forth by the appellant has been in large part rejected by the respondent, who has proposed certain amendments to which the appellant cannot agree. The appellant is informed and believes that, because of the differences of fact contained in the appellant's proposed Case and in the respondent's amendments, the assistance of Trial Court will be necessary to resolve the differences between the parties.

2. The respondent proposes to delete the Order of Reference and certain portions of the trial transcript in the prepared case which, in the opinion of the appellant, will prevent a clear understanding of the issues presented in the appeal.

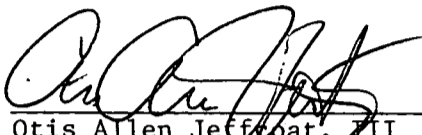
3. The respondent's propose to add additional portions of the trial transcript which, in the opinion of the appellant, contribute nothing to an understanding of the issues presented on the appeal and needlessly lengthen the appellate record.

DAVE
#1

4. Respondent has also proposed the inclusion of an exhibit which, in the opinion of the appellant, is unnecessary to an understanding of the issues on appeal.

5. The undersigned counsel for the Appellant, Justice Builders, Inc., hereby certifies that the proposed Case contains no irrelevant matter.

Respectfully submitted,

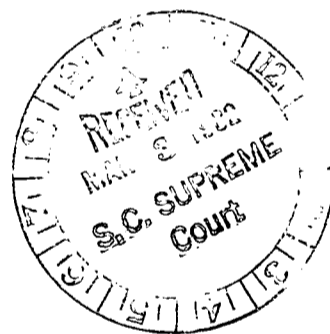


Otis Allen Jeffcoat, III

SHERRILL, TOWNSEND, MOSES & JEFFCOAT
502 63rd Avenue North, P.O. Box 2937
Myrtle Beach, South Carolina 29577
Telephone: (803) 449-4431

Attorneys for Appellant

March 1, 1982



THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY

HONORABLE JOHN L. BREEDEN, JR., MASTER IN EQUITY

CIVIL ACTION NO. 80-CP-26-1979

Justice Builders, Inc.,

Appellant,

-against-

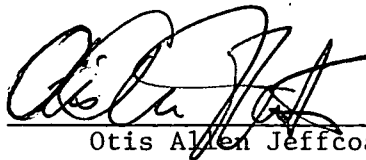
Joseph McKinley Bryan, Jr.,

Respondent.

NOTICE OF MOTION TO
SETTLE RECORD

TO: HOWELL V. BELLAMY, JR. AND HENRIETTA U. GOLDING, ATTORNEYS
FOR RESPONDENT:

PLEASE TAKE NOTICE that the appellant will hereafter file the
foregoing Motion to Settle Record for Appeal in this case, a copy of
which is this date served upon you, in the office of the Supreme Court
pursuant to the applicable Rules of Practice of the South Carolina
Supreme Court.

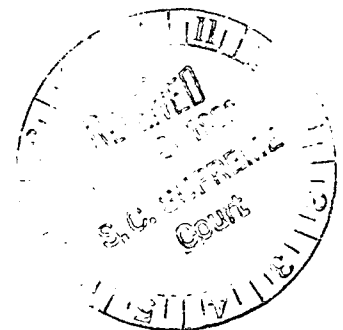


Otis Allen Jeffcoat, III

SHERRILL, TOWNSEND, MOSES & JEFFCOAT
502 63rd Avenue North, P.O. Box 2937
Myrtle Beach, South Carolina 29577
Telephone: (803) 449-4431

Attorneys for Appellant

March 1, 1982



THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY

HONORABLE JOHN L. BREEDEN, JR., MASTER IN EQUITY

CIVIL ACTION NO. 80-CP-26-1979

Justice Builders, Inc.,

Appellant,

-against-

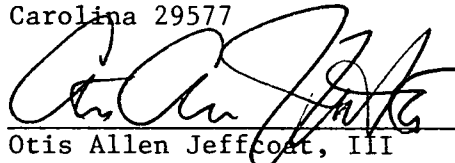
Joseph McKinley Bryan, Jr.,

Respondent.

CERTIFICATE OF SERVICE
BY MAIL

I, the undersigned attorney for the appellant, hereby certify that I served a copy of the foregoing Notice of Motion to Settle Record and Motion to Settle Record for Appeal by mailing a copy thereof, First Class postage prepaid, to the respondent's attorneys, at their address of record shown hereinbelow, this 1st day of March, 1982.

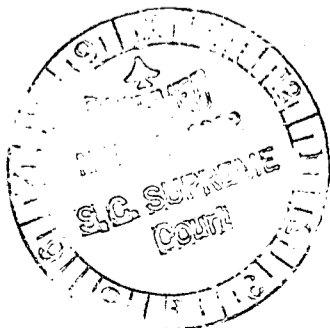
Howell V. Bellamy, Jr., Esquire
Henrietta U. Golding, Esquire
BELLAMY, RUTENBERG, COPELAND, EPPS,
GRAVELY & BOWERS, P.A.
Suite 303, Myrtle Offices
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Otis Allen Jeffcoat, III

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502 63rd Avenue North, P.O. Box 2937
Myrtle Beach, South Carolina 29577
Telephone: (803) 449-4431

Attorneys for Appellant

March 1, 1982



Law Offices of

HAM AND RICHARDSON

SUITE 1202 THE BARRINGER BUILDING

1338 MAIN STREET

COLUMBIA, SOUTH CAROLINA 29201

H. RAY HAM
JAMES B. RICHARDSON, JR.

799-9412
AREA CODE 803

March 3, 1982

Miss Frances H. Smith
Clerk of The Supreme Court
of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

RE: Justice Builders, Inc. v.
Joseph McKinley Bryan, Jr.
80-CP-26-1979

Dear Miss Smith:

Appellant's motion to settle the record was filed with you by mail this week, but without a copy of the proposed Case or the proposed amendments being attached. Mr. Wachter, one of appellant's attorneys, called me today from Myrtle Beach to ask that we hand-deliver these documents in his behalf.

Yours very truly,

Jim Richardson
James B. Richardson, Jr.

JBR/jd
Enclosures

cc: Joseph H. Wachter, Jr., Esq.
Post Office Box 2937
Myrtle Beach, S.C. 29577

RECEIVED

MAR 03 1982

S. C. SUPREME COURT

1 THE STATE OF SOUTH CAROLINA

2 IN THE SUPREME COURT

3 APPEAL FROM HORRY COUNTY

4 HONORABLE JOHN L. BREEDEN, JR., MASTER IN EQUITY

5 _____
6 CIVIL ACTION NUMBER 80-CP-26-1979
7 _____

8 Justice Builders, Inc.,

Appellant,

9 Against

10 Joseph McKinley Bryan, Jr.,

11 Respondent.

12 _____
13 PROPOSED CASE AND EXCEPTIONS
14 _____

15 Otis Allen Jeffcoat, III
16 SHERRILL, TOWNSEND, MOSES & JEFFCOAT
17 Post Office Box 2937, 502 63rd Avenue North
18 Myrtle Beach, South Carolina 29577

19 ATTORNEYS FOR THE APPELLANT

20 Howell V. Bellamy, Jr.
21 Henrietta U. Golding
22 BELLAMY, RUTENBERG, COPELAND, EPPS,
23 GRAVELY & BOWERS, P.A.
24 Suite 304, Myrtle Offices
25 1604 Oak Street
26 Post Office Box 357
Myrtle Beach, South Carolina 29577

ATTORNEYS FOR THE RESPONDENT

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1 I. STATEMENT

2

3 On or about March 15, 1978, the Appellant contracted with

4 the Respondent to build an addition to a residence on real property

5 owned by the Respondent in Myrtle Beach, South Carolina. The

6 contract provided that the addition would be completed prior to

7 July 1, 1978, and the Respondent was to pay for the costs of all

8 labor and materials used in the construction then estimated to be

9 approximately Eighty Thousand and No/100 (\$80,000.00) Dollars. The

10 Appellant was to receive as compensation for its services a fee in

11 an amount equal to fifteen per cent (15%) of the cost of all labor

12 and material used in the addition. Construction continued well

13 beyond July 1, 1978, and the Respondent subsequently paid for all

14 labor and materials used in the addition and billed to him in the

15 amount of One Hundred Sixteen Thousand Fifty and 77/100

16 (\$116,050.77) Dollars; however, he refused to pay any part of the

17 Appellant's fee for services rendered under the contract. On

18 September 19, 1980 Appellant filed a Notice of Mechanic's Lien in

19 the Office of the Clerk of Court for Horry County for a sum

20 representing its fee for services rendered under the contract. This

21 action was commenced by the Appellant on or about December 5, 1980,

22 by service of a Lis Pendens, Summons and Petition to Foreclose

23 Mechanic's Lien; and, in its Petition the Appellant alleged that the

24 Respondent owed the sum of Eighteen Thousand One Hundred Sixty-Five

25 and 79/100 (\$18,165.79) Dollars and prayed that that sum be paid

26 from the proceeds of sale of the real property owned by the

1 Respondent and upon which the addition was situated, together with
2 legal fees and court costs.

3 In his Answer the Respondent generally denied the
4 allegations of the Appellant and as additional defenses alleged that
5 the Appellant had been paid for all work performed upon the property
6 of the Respondent and that the Appellant had breached its contract
7 with the Respondent and was not entitled to the payment of any
8 monies.

9 On or about December 11, 1980, the Respondent served
10 Interrogatories on the Appellant pursuant to Circuit Court Rule 90.
11 After obtaining an extension of time, an Answer to Interrogatories
12 was served on counsel for the Respondent on March 3, 1981. The
13 Appellant's answers indicated that at that time the Appellant did
14 not intend to use an expert witness at the trial of the case.

15 By Order dated June 24, 1981, the matter was referred to
16 the Honorable John L. Breeden, Jr., Master in Equity for Horry
17 County.

18 On or about September 28, 1981 the Appellant served a
19 Notice of Motion to enter upon the property of the Respondent and
20 inspect the addition pursuant to Circuit Court Rule 88. Shortly
21 after service of the foregoing Notice of Motion, counsel for
22 Respondent agreed to make the property in question available for
23 inspection by the Appellant at a time convenient to the Respondent,
24 who lived outside the State of South Carolina; and, on or about
25 October 15, 1981, the Appellant, his attorney and Earl O'Neal McCoy,
26 Jr., an engineer and President of the McCoy Construction Co., Inc.

1 in Myrtle Beach, South Carolina, visited the Respondent's residence
2 and inspected the addition thereto at the direction of and in the
3 presence of the Respondent and one of his attorneys.

4 On October 19, 1981, the matter was heard by the Master in
5 Equity. Prior to the start of the hearing, one of the attorneys for
6 the Respondent approached counsel for the Appellant and informed him
7 that he would not allow Earl O'Neal McCoy, Jr. to testify on behalf
8 of the Appellant since he had not been listed as an expert witness
9 on the Appellant's Answer to Interrogatories dated March 3, 1981.
10 Attorneys for both parties thereupon consulted with the Master in
11 Equity who was informed that Mr. McCoy was present at the trial to
12 offer expert testimony on behalf of the Appellant concerning:
13 construction of the addition; defects, if any, in construction; and,
14 the cost, if any, of repairing said defects. Mr. McCoy was a client
15 of counsel for the Respondent and counsel for the Appellant offered
16 to make him available for any questioning prior to the start of the
17 hearing but this offer was refused by Respondent's counsel. After
18 listening to argument, the Master in Equity, outside the presence of
19 the Court Reporter, ruled that Mr. McCoy would not be allowed to
20 testify since he had not been listed as an expert witness on the
21 Appellant's Answer to Interrogatories.

22 Following the hearing, the parties stipulated that the
23 Master in Equity could issue an Order with finality appealable
24 directly to the South Carolina Supreme Court. On or about
25 November 17, 1981, the Master in Equity issued his Order. The
26 Master found, among other things, that: the amount of the

1 Appellant's Mechanic Lien was Thirteen Thousand One Hundred
2 Fifty-Seven and 54/100 (\$13,157.54) Dollars; there were defects in
3 workmanship in the addition and the Appellant had failed to offer
4 any evidence to refute the existence of defective workmanship and
5 the costs that would be needed to correct or remedy the same; the
6 addition could have been completed in a timely fashion and the delay
7 in the construction of the addition affected the costs of materials
8 and labor which would have been lower had the addition been
9 completed in a timely fashion; and, the Appellant failed to
10 establish any reasonable basis for a delay in the construction of
11 the addition or why the costs of construction exceeded the estimates
12 contemplated by the parties at the time of entering into the
13 contract. Based, in part, on the foregoing findings the Master in
14 Equity dismissed the Appellant's Petition with prejudice.

15 It is from the ruling of the Master in Equity on
16 October 19, 1981, excluding the testimony of Earl O'Neal McCoy, Jr.
17 from the hearing in this matter and his subsequent Order filed
18 November 17, 1981 that the Appellant appeals. Counsel for Appellant
19 timely served Notice of Intent to Appeal on Respondent's counsel on
20 November 25, 1981.

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II. PLEADINGS

A. Here print Petitioner's Notice of Mechanic's Lien, omitting caption, verification and formal parts.

B. Here print Petitioner's Lis Pendens, omitting caption, verification and formal parts.

C. Here print Petition to Foreclose Mechanic's Lien, omitting caption, verification and formal parts.

D. Here print Respondent's Answer, omitting caption, verification and formal parts.

E. Here print Respondent's Interrogatories, omitting caption, verification and formal parts.

F. Here print Petitioner's Answer to Interrogatories, omitting caption and formal parts.

G. Here print Order of Reference, omitting caption and formal parts.

H. Here print Petitioner's Notice of Motion for Entry Upon and Inspection, Measurement, Survey and Photographing of Property, omitting caption and formal parts.

III. TESTIMONY

A. Here print Excerpts of Testimony presented at hearing before the Master in Equity, as follows:

<u>Page, Line</u>	through	<u>Page, Line</u>
63, 7	through	134, 24
135, 3	through	171, 21
172, 1	through	188, 8

1 188, 17 through 208, 4

2

3

IV. EXHIBITS

4

A. Here print the following selected Exhibits presented

5

at the hearing before the Master in Equity, as follows:

6

Party

Exhibit Numbers

7

Appellant

P-7 through P-13 (inclusive)

8

Respondent

R-1 through R-25 (inclusive)

9

10

V. ORDER OF HONORABLE JOHN L. BREEDEN, JR.

11

Here print the Order of the Honorable John L. Breeden,

12

Jr., Master in Equity, dated November 17, 1981, omitting caption and

13

formal parts.

14

15

VI. EXCEPTIONS

16

Exception No. 1

17

The trial judge abused his discretion in refusing to allow

18

the witness McCoy to offer expert testimony for the Appellant

19

because he was not listed in the Answer to Interrogatories. This

20

was error because the Respondent was not surprised by the offer of

21

the witness McCoy's testimony, the Respondent having known prior to

22

trial that this expert witness had been retained by Appellant to

23

inspect the construction work in question and the Respondent having

24

made no effort to depose or interview the witness before trial.

25

26

1 Exception No. 2

2 The trial judge erred in finding that the witness Marsh
3 testified that the construction work could have been completed in a
4 timely fashion and that the delay during construction affected the
5 cost of labor and materials which would have been lower had the work
6 been completed in a timely fashion. This was error because the
7 witness Marsh, upon which the trial judge relied in making this
8 finding, presented no such testimony.

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1 VII. AGREEMENT OF COUNSEL

2 The undersigned counsel for Justice Builders, Inc., and
3 Joseph McKinley Bryan, Jr., hereby stipulate and agree that the
4 foregoing Statement, Index, Pleadings, Testimony, Exhibits, Order
5 and Exceptions shall be the Case Containing Exceptions which will
6 constitute the "Transcript of Record" in this appeal. Counsel for
7 both parties hereby certify to the Court that the Proposed Case and
8 Exceptions contains no irrelevant matter and the requirements of
9 Rule 4 of the Rules of Practice for the Supreme Court of South
10 Carolina have been satisfied.

11 DATED as of the _____ day of February, 1982.

12
13 

14 Otis Allen Jeffcoat, III
15 SHERRILL, TOWNSEND, MOSES & JEFFCOAT
16 Post Office Box 2937,
17 502 63rd Avenue North
18 Myrtle Beach, South Carolina 29577

19 ATTORNEYS FOR THE APPELLANT

20 _____
21 Howell V. Bellamy, Jr.

22 _____
23 Henrietta V. Golding
24 BELLAMY, RUTENBERG, COPELAND, EPPS,
25 GRAVELY & BOWERS, P.A.
26 Suite 304, Myrtle Offices
1604 Oak Street
Myrtle Beach, South Carolina 29577

ATTORNEYS FOR THE RESPONDENT

VIII. NOTICE

TO: HOWELL V. BELLAMY, JR., AND HENRIETTA U. GOLDING, ATTORNEYS FOR
THE RESPONDENT JOSEPH MCKINLEY BRYAN, JR.:

PLEASE TAKE NOTICE that the Appellant, Justice Builders,
Inc., proposes the foregoing Case and Exceptions to constitute the
Transcript of Record on appeal of this action to the Supreme Court
of South Carolina.

DATED this 11th day of February, 1982.



Otis Allen Jeffcoat, III
SHERRILL, TOWNSEND, MOSES & JEFFCOAT
Post Office Box 2937,
502 63rd Avenue North
Myrtle Beach, South Carolina 29577

ATTORNEYS FOR THE APPELLANT
JUSTICE BUILDERS, INC.

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that on the 11th day of February, 1982, I served counsel for the Respondent Joseph McKinley Bryan, Jr., with the foregoing Proposed Case and Exceptions by mailing a copy of same by United States mail, property postage prepaid, to the following persons at the following address:

Howell V. Bellamy, Jr.
Henrietta U. Golding
BELLAMY, RUTENBERG, COPELAND, EPPS,
GRAVELY & BOWERS, P.A.
Suite 304, Myrtle Offices
1604 Oak Street
Post Office Box 357
Myrtle Beach, South Carolina 29577
ATTORNEYS FOR THE RESPONDENT,
JOSEPH MCKINLEY BRYAN, JR.



Otis Allen Jeffcoat, III
SHERRILL, TOWNSEND, MOSES & JEFFCOAT
Post Office Box 2937,
502 63rd Avenue North
Myrtle Beach, South Carolina 29577

ATTORNEYS FOR THE APPELLANT
JUSTICE BUILDERS, INC.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM HORRY COUNTY
HONORABLE JOHN L. BREEDEN, JR., MASTER-IN-EQUITY
NO. 80-CP-26-1979

Justice Builders, Inc.,

Petitioner-Appellant,

vs.

Joseph McKinley Bryan, Jr.,

Respondent-Respondent.

NOTICE OF AMENDMENT

TO: Otis Allen Jeffcoat, III, Esquire
Sherrill, Townsend, Moses & Jeffcoat
Post Office Box 2937
Myrtle Beach, South Carolina 29577
Attorneys for the Appellant

1 PLEASE TAKE NOTICE that the undersigned, attorney
2 for the Respondent, does not agree to the Proposed Transcript
3 of Record on Appeal and proposes the following amendments
4 and additions:

5 1. Omit from Page 2 of the Statement the sentence
6 beginning on Line 12 and ending on Line 14, which states
7 the following: "The Appellant's answers indicated that at
8 that time the Appellant did not intend to use an expert
9 witness at the time of trial of the case."

10 2. Omit from Page 2 of the Statement the sentence
11 beginning on Line 20 with the word "Shortly" and continuing
12 thereafter until the end of the paragraph on Page 3, line 3,
13 with the following being what should be omitted from the
14 Statement: "Shortly after service of the foregoing Notice
15 of Motion, counsel for Respondent agreed to make the property
16 in question available for inspection by the Appellant at a

1 time convenient to the Respondent, who lived outside the
2 State of South Carolina; and, on or about October 15, 1981,
3 the Appellant, his attorney and Earl O'Neal McCoy, Jr., an
4 engineer and President of McCoy Construction Co., Inc., in
5 Myrtle Beach, South Carolina, visited Respondent's residence
6 and inspected the addition thereto at the direction of and
7 in the presence of the Respondent and one of his attorneys."

8 3. Omit the entirety of the second paragraph of
9 Page 3 of the Statement which paragraph begins on Line 4 and
10 ends on Line 21 of Page 3 of the Statement, except for the
11 first sentence of the paragraph which states that "On October
12 19, 1981, the matter was heard by the Master-in-Equity."
13 Said statement is relevant but the remaining portion thereof
14 should be omitted for said is irrelevant.

15 4. Omit the sentence beginning on Line 25 of Page
16 3 of the Statement, which sentence continues up to and
17 including Line 14, of Page 4 and in place of said sentence
18 insert the following: Master found in favor of the Respondent
19 and dismissed the Petition with prejudice.

20 5. Omit from Page 4 of the Statement, beginning
21 with Line 15 the following words: "from the ruling of the
22 Master-in-Equity on October 19, 1981, excluding the testimony
23 of Earl O'Neal McCoy, Jr. from the hearing in this matter
24 and".

25 6. Omit from the pleadings the Order of Reference
26 which is set forth on Page 5, commencing with Line 14.

27 7. Omit the following pages and/or lines of the
28 Transcript of Testimony requested to be printed by the
29 Appellant:

1	Page 71	Lines 20 - 25
2	Page 72	Lines 1 - 13
3	Page 83	Lines 19 - 25
4	Page 84	Lines 1 - 24
5	Page 86	Lines 15 - 24
6	Page 87	Lines 20 - 25
7	Page 88	Lines 1 - 25
8	Page 89	Lines 1 - 25
9	Page 90	Lines 1 - 4
10	Page 103	Lines 1 - 25
11	Page 104	Lines 1 - 9
12	Page 105	Lines 1 - 25
13	Page 106	Lines 1 - 16
14	Page 108	Lines 11 - 25
15	Page 109	Lines 1 - 12
16	Page 121	Lines 1 - 25
17	Page 122	Lines 1 - 25
18	Page 123	Lines 1 - 4
19	Page 124	Lines 4 - 22
20	Page 129	Lines 3 - 22
21	Page 132	Lines 22 - 25
22	Page 133	Lines 1 - 3
23		Lines 12 - 23
24	Page 142	Lines 13 - 25
25	Page 143	Lines 1 - 9
26	Page 163	Lines 18 - 25
27	Page 169	Lines 22 - 25
28	Page 170	Lines 1 - 8
29	Page 180	Lines 17 - 25
30	Page 181	Lines 1 - 21
31	Page 185	Lines 15 - 25
32	Page 186	Lines 1 - 13
33		Lines 19 - 25
34	Page 187	Lines 1 - 21

35 8. Print the following pages and/or lines of the
36 Transcript of Testimony in addition to the inclusions not
37 above objected by the Respondent:

38	Page 19	Lines 6 - 25
39	Page 20	Lines 1 - 23
40	Page 51	Lines 12 - 25
41	Page 52	Lines 1 - 8
42		Lines 14 - 25
43	Page 230	Lines 2 - 25
44	Page 231	Lines 1 - 3

45 9. Print, in addition to the Exhibits set forth
46 in the Proposed Transcript, the following Exhibit:

47 Appellant's Exhibit Number One (1),
48 which was marked P-1.

1 BELLAMY, RUTENBERG, COPELAND,
2 EPPS, GRAVELY & BOWERS, P.A.
3 Post Office Box 357
4 Myrtle Beach, South Carolina 29577
5 Attorneys for the Respondent

6 /s/ HOWELL V. BELLAMY
7 Howell V. Bellamy, Jr.

8 /s/ HENRIETTA U GOLDING
9 Henrietta U. Golding

10 Myrtle Beach, South Carolina

11 February 22, 1982

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY

HONORABLE JOHN L. BREEDEN, JR., MASTER-IN-EQUITY

NO. 80-CP-26-1979

Justice Builders, Inc.,

Petitioner-Appellant,

vs.

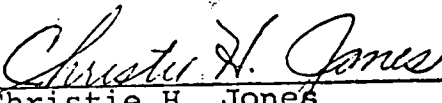
Joseph McKinley Bryan, Jr.,

Respondent-Respondent.

CERTIFICATE OF MAILING

I, Christie H. Jones, as an employee of the Law Firm of BELLAMY, RUTENBERG, COPELAND, EPPS, GRAVELY & BOWERS, P.A., counsel for the Respondent, Joseph McKinley Bryan, Jr., in the above entitled action, certify that I have this day mailed a copy of the Notice of Amendment to counsel for the Appellant, Justice Builders, Inc., at his address of record, with sufficient postage attached thereto, as follows:

Otis Allen Jeffcoat, III, Esquire
Sherrill, Townsent, Moses & Jeffcoat
Attorneys at Law
Post Office Box 2937
Myrtle Beach, South Carolina 29577


Christie H. Jones

Myrtle Beach, South Carolina

February 23, 1982

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P. A.

HOWELL V. BELLAMY, JR.
JOHN K. RUTENBERG
JOHN E. COPELAND
CLAUDE M. EPPS, JR.
DAVID R. GRAVELY
EDWARD B. BOWERS, JR.
BRADLEY D. KING
HENRIETTA U. GOLDING
R. MICHAEL MUNDEN

ATTORNEYS AT LAW
16TH AVENUE N. & OAK STREET
SUITE 303 MYRTLE OFFICES
P. O. BOX 357
MYRTLE BEACH, SOUTH CAROLINA 29577

AREA CODE 803
448-2406

March 8, 1982

Ms. Frances H. Smith
Clerk of Court
Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

Re: Justice Builders, Inc. v.
Joseph McKinley Bryan, Jr.
Our File No. 79-00393-1
CA# 80-CP-26-1979

Dear Ms. Smith:

In connection with the above mentioned action, enclosed herewith please find the original and two (2) copies of the Response to the Motion to Settle Record for Appeal along with the Certificate of Mailing, which I would appreciate you filing of record.

I am, by a copy of this letter and consistent with the attached Certificate of Mailing, forwarding a copy of the Response to the Motion to Otis Allen Jeffcoat, III, as attorney for the Appellant.

I would appreciate if you would return a clocked copy of the Response to the Motion to me in the envelope provided.

With kindest regards, I am

Yours truly,

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.


Henrietta U. Golding

HUG:chj
cc: Otis Allen Jeffcoat, III, Esq.
Enclosures

RECEIVED

MAR 09 1982

S. C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM HORRY COUNTY
HONORABLE JOHN L. BREEDEN, JR., MASTER-IN-EQUITY
NO. 80-CP-26-1979

Justice Builders, Inc.,

Petitioner-Appellant,

vs.

Joseph McKinley Bryan, Jr.,

Respondent-Respondent.

RESPONSE TO THE MOTION TO SETTLE RECORD FOR APPEAL

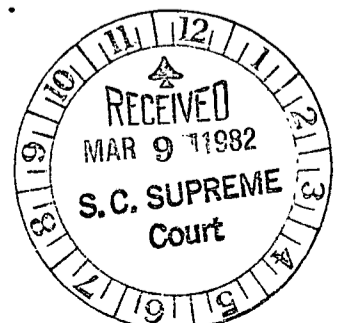
TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICE,
SUPREME COURT OF SOUTH CAROLINA:

BRCEG&B
1

The Respondent respectfully replies to the Appellant's
Motion to Settle the Record for Appeal as follows:

1. That the proposed amendments to the Statement of the Case, which are set forth in Paragraphs One, Two, Three, Four and Five (1, 2, 3, 4 & 5) of the Amendment of the Respondent, simply address matters that the Appellant has inserted which are not in the Testimony and not supported by the pleadings. Also, portions of the information are contested matters which should not be set forth in the Statement of the Case. Therefore, the Respondent respectfully requests that this Court omit the provisions as requested in the Amendments.

2. As to the second ground for the Motion of the Appellant, the Respondent seeks to delete the Order of Reference on the sole basis that there is no controversy with regard thereto and it would be utterly useless to have said Order within the Proposed Case and Exceptions.



3. The testimony set forth in Paragraph Seven (7) of the Respondent's Amendment, which testimony the Respondent requests be omitted from the Case and Exceptions has no bearing whatsoever to the issues presented in the appeal and would only constitute irrelevant matter upon which there is no necessity to review.

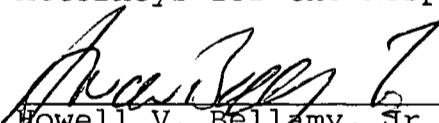
4. The Appellant objects to the six (6) additional pages which the Respondent requests portions of the testimony thereon be included in the appeal on the grounds that such would "lengthen" the appellate record. The additions would not lengthen the appellate appeal and would add a great deal to the understanding of the issues in the action and the Order of the Court.

5. The Respondent has requested the inclusion of Exhibit No. 1, which is the Contract upon which the Appellant brought suit and it is necessary to include the document for references to the Contract were made in the Order and will be made in the Briefs submitted by the parties.

BRCEG&B
2

Respectfully submitted,

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
Post Office Box 357
Myrtle Beach, South Carolina 29577
Attorneys for the Respondent



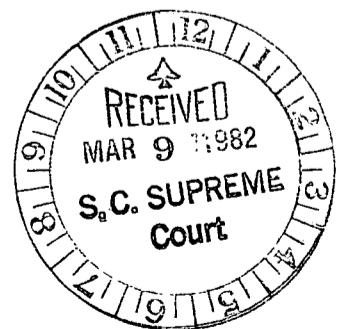
Howell V. Bellamy, Jr.



Henrietta U. Golding

Myrtle Beach, South Carolina

March 4, 1982



THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY

HONORABLE JOHN L. BREEDEN, JR., MASTER-IN-EQUITY

NO. 80-CP-26-1979

Justice Builders, Inc.,

Petitioner-Appellant,

vs.

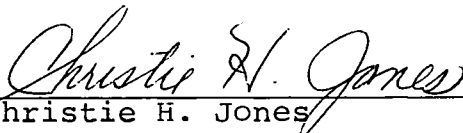
Joseph McKinley Bryan, Jr.,

Respondent-Respondent.

CERTIFICATE OF MAILING

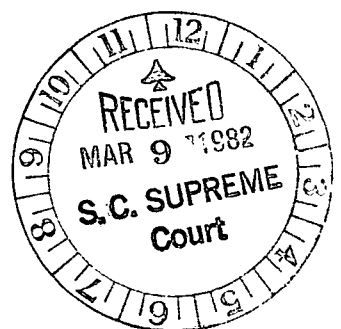
I, Christie H. Jones, as an employee of the Law Firm of BELLAMY, RUTENBERG, COPELAND, EPPS, GRAVELY & BOWERS, P.A., counsel for the Respondent, Joseph McKinley Bryan, Jr., in the above entitled action, certify that I have this day mailed a copy of the Response to the Motion to Settle Record for Appeal to counsel for the Appellant, Justice Builders, Inc., at his address of record, with sufficient postage attached thereto, as follows:

Otis Allen Jeffcoat, III, Esquire
Sherrill, Townsend, Moses & Jeffcoat
Attorneys at Law
Post Office Box 2937
Myrtle Beach, South Carolina 29577


Christie H. Jones

Myrtle Beach, South Carolina

March 8, 1982





The Supreme Court of South Carolina

FRANCES H. SMITH
CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211

March 26, 1982

Otis Allen Jeffcoat, III, Esquire
Messrs. McKay, Sherrill, Walker & Townsend
502 63rd Avenue North
P. O. Box 2937
Myrtle Beach, South Carolina 29577

Re: Justice Builders, Inc. v. Joseph McKinley Bryan, Jr.

Dear Mr. Jeffcoat:

Pursuant to the provisions of Section 3F of Rule 1 of the Rules of Practice, I enclose herewith certified copy of Order of Chief Justice Lewis remanding the above case to trial judge for the purpose of settling the record on appeal. By copy of this letter, all interested parties are notified of the Court's action. It is incumbent upon attorney for appellant to immediately contact Judge John L. Breeden, Jr. for the purpose of setting a hearing in this matter.

Very truly yours,

Frances H. Smith
CLERK

FHS/jjp

Enclosure

cc: Howell V. Bellamy, Jr., Esquire
Henrietta U. Golding, Attorney
Mrs. Billie G. Richardson
The Honorable John L. Breeden, Jr.

The Supreme Court of South Carolina

Justice Builders, Inc.,

Petitioner-Appellant,

v.

Joseph McKinley Bryan, Jr.,

Respondent-Respondent.

O R D E R

This matter comes before the Court by way of a Motion to Settle the Record on appeal. It appears that the nature of the points disputed by the parties concerning the contents of the record on appeal will require factual findings and findings concerning the relevancy of certain matter sought to be included which should be made by the lower court.

IT IS THEREFORE ORDERED that this motion be remanded to the lower court for the purpose of settling the record pursuant to Rule 1, Section 3 F of the Rules of Practice in this Court.

IT IS FURTHER ORDERED that the lower court should hold a hearing and report its findings to this Court on or before April 26, 1982. Copies of the Order settling the record should be sent by the lower court judge to all attorneys of record.

J. WOODROW LEWIS C.J.

Columbia, South Carolina

March 26, 1982

BY Reba D. Mims
Deputy CLERK

SHERRILL, TOWNSEND, MOSES & JEFFCOAT

HENRY F. SHERRILL
WILLIAM H. TOWNSEND
ALBERT L. MOSES
OTIS ALLEN JEFFCOAT, III

JOSEPH H. WACHTER, JR.

R. LARRY KIGHT
(OF COUNSEL)

ATTORNEYS AT LAW
1201 CHESTER STREET
POST OFFICE BOX 2937

MYRTLE BEACH, SOUTH CAROLINA 29577

TELEPHONE 803/626-9595

COLUMBIA OFFICE
1340 BULL STREET
POST OFFICE DRAWER 447
COLUMBIA, S.C. 29202
TELEPHONE 803/771-8880

April 7, 1982

Howell V. Bellamy, Jr., Esquire
and Henrietta U. Golding, Esquire
Bellamy, Rutenberg, Copeland, Epps,
Gravely & Bowers, P.A.
Suite 303, Myrtle Offices
1604 Oak Street
Post Office Box 357
Myrtle Beach, SC 29577

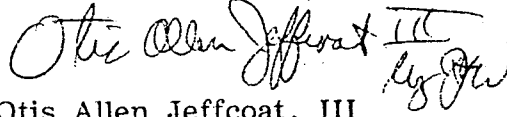
Re: Justice Builders, Inc. vs. Joseph M. Bryan, Jr.
(80-CP-40-1979)
Your File No. 79-00393-1
Our File No. 301-60

Dear Skeets and Henri:

Please note that a hearing has been scheduled before the Honorable John L. Breeden, Jr. on Thursday, April 15, 1982, at 9:30 o'clock a.m. for the purpose of settling the record on appeal for the above referenced action.

With kind regards, I am

Sincerely yours,



Otis Allen Jeffcoat, III

cc: Honorable Frances Smith
Honorable John L. Breeden, Jr.
Honorable Billie G. Richardson
Richard M. Lovelace, Jr., Esquire

RECEIVED
APR 09 1982
S. C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY

HONORABLE JOHN L. BREEDEN, JR., MASTER IN EQUITY

CIVIL ACTION NUMBER 80-CP-26-1979

Justice Builders, Inc.,

Appellant,

Against

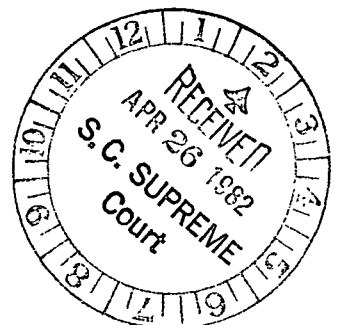
Joseph McKinley Bryan, Jr.,

Respondent.

ORDER SETTLING THE RECORD

This matter comes before this Court pursuant to the Order of the Honorable J. Woodrow Lewis, Chief Justice of the Supreme Court of South Carolina, remanding a Motion to Settle the Record on appeal to this Court for the purpose of settling the record pursuant to Rule 1, Section 3 F of the Rules of Practice of the Supreme Court of South Carolina. Pursuant to that Order this Court was to hold a hearing and report its findings to the Supreme Court on or before April 26, 1982, and copies of the Order settling the record were to be sent by this Court to all attorneys of record.

A hearing for the purpose of settling the record in this matter was held before me on April 19, 1982, and was attended by attorneys representing the Appellant and the Respondent. Having reviewed the Appellant's Proposed Case and Exceptions dated February 11, 1982 and the Respondent's Notice of Amendment, dated February 22, 1982; and, having heard argument of counsel for the parties hereto it is hereby Ordered that the record on appeal in this matter shall be settled as follows:



1. The Statement of the said Proposed Case and Exceptions shall be amended and read in the Transcript of Record for the appeal as follows:

STATEMENT

On or about March 15, 1978, the Appellant contracted with the Respondent to build an addition to a residence on real property owned by the Respondent in Myrtle Beach, South Carolina. The contract provided that the addition would be completed prior to July 1, 1978, and the Respondent was to pay for the costs of all labor and materials used in the construction then estimated to be approximately Eighty Thousand and No/100 (\$80,000.00) Dollars. The Appellant was to receive as compensation for its services a fee in an amount equal to fifteen per cent (15%) of the cost of all labor and material used in the addition. Construction continued well beyond July 1, 1978, and the Respondent subsequently paid for all labor and materials used in the addition and billed to him in the amount of One Hundred Sixteen Thousand Fifty and 77/100 (\$116,050.77) Dollars; however, he refused to pay any part of the Appellant's fee for services rendered under the contract. On September 19, 1980 Appellant filed a Notice of Mechanic's Lien in the Office of the Clerk of Court for Horry County for a sum representing its fee for services rendered under the contract. This action was commenced by the Appellant on or about December 5, 1980, by service of a Lis Pendens, Summons and Petition to Foreclose Mechanic's Lien; and, in its Petition the Appellant alleged that the Respondent owed the sum of Eighteen Thousand One Hundred Sixty-Five and 79/100 (\$18,165.79) Dollars and prayed that that sum be paid from the proceeds of sale of the real property owned by the Respondent and upon which the addition was situated, together with legal fees and court costs.

JP
#2

In his Answer the Respondent generally denied the allegations of the Appellant and as additional defenses alleged that the Appellant had been paid for all work performed upon the property of the Respondent and that the Appellant had breached its contract with the Respondent and was not entitled to the payment of any monies.

On or about December 11, 1980, the Respondent served Interrogatories on the Appellant pursuant to Circuit Court Rule 90. After obtaining an extension of time, an Answer to Interrogatories was served on counsel for the Respondent on March 3, 1981. The Appellant's answers indicated that at that time the Appellant did not intend to use an expert witness at the trial of the case.

By Order dated June 24, 1981, the matter was referred to the Honorable John L. Breeden, Jr., Master in Equity for Horry County.

On or about September 28, 1981 the Appellant served a Notice of Motion to enter upon the property of the Respondent and inspect the addition pursuant to Circuit Court Rule 88. Thereafter, the property of the Respondent was made available for inspection; and, on or about October 15, 1981 the attorney for the Appellant and Earl O'Neal McCoy, Jr., president of a local construction company, visited the Respondent's residence and inspected the premises in question in the presence of the respondent and one of his attorneys.

On October 19, 1981, the matter was heard by the Master in Equity. Prior to the start of the hearing, one of the attorneys for the Respondent approached counsel for the Appellant and informed him that he would object to Earl O'Neal McCoy, Jr. testifying on behalf of the Appellant since he had not been listed as an expert witness on the Appellant's Answers to Interrogatories dated March 3, 1981. Attorneys for both parties thereupon consulted with the Master in Equity who was

informed that Mr. McCoy was present at the trial to offer expert testimony in the field of construction on behalf of the Appellant. The Appellant offered to make him available for any questions prior to the start of the hearing but this offer was declined by Respondent's counsel on the grounds of his not having deposed this witness since he had not been listed as an expert witness on the Appellant's Answer to Interrogatories. After listening to argument, the Master in Equity, outside the presence of the Court Reporter, ruled that Mr. McCoy would not be allowed to testify since he had not been listed as an expert witness on the Appellant's Answer to Interrogatories.

Following the hearing, the parties stipulated that the Master in Equity could issue an Order with finality appealable directly to the South Carolina Supreme Court. On or about November 17, 1981 the Master in Equity issued his Order and found in favor of the Respondent and dismissed the Appellant's Petition with prejudice.

It is from the Master in Equity's Order dated November 17, 1981 that the Appellant appeals, including the exclusion of McCoy as an expert witness and as to the Court's findings of fact. Counsel for Appellant timely served Notice of Intent to Appeal on Respondent's counsel on November 25, 1981.

2. The Order of Reference listed in the Pleadings section of the said Proposed Case and Exceptions shall be deleted from the Transcript of Record for the appeal.

3. The following excerpts of testimony shall be printed in the Transcript of Record for the appeal, as follows:

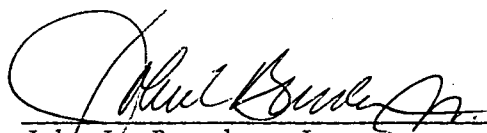
<u>Page, Line</u>	through	<u>Page, Line</u>
19, 6		20, 23
51, 12		52, 8
52, 14		52, 25
63, 7		134, 24
135, 3		171, 21
172, 1		188, 8
188, 17		208, 4
230, 2		231, 3

4. The following Exhibits shall be printed in the Transcript of Record for the appeal, as follows:

<u>Party</u>	<u>Exhibit Numbers</u>
Appellant	P-1, P-7 through P-13 (inclusive)
Respondent	R-1 through R-25 (inclusive)

5. The remainder of the Appellant's Proposed Case and Exceptions shall remain unchanged and shall be printed in the Transcript of Record for the appeal as originally proposed by the Appellant.

AND IT IS SO ORDERED.



 John L. Breeden, Jr.
 Master in Equity for Horry County,
 South Carolina

Conway, South Carolina

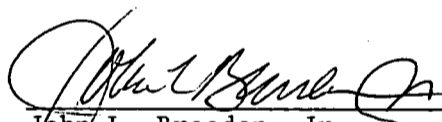
April 23rd, 1982

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that on the 23rd day of April, 1982, I served counsel for the Appellant and counsel for the Respondent with the foregoing Order Settling the Record by mailing a copy of same by United States mail, with return address and postage prepaid, to the following persons at the following addresses:

Otis Allen Jeffcoat, III
SHERRILL, TOWNSEND, MOSES & JEFFCOAT
Post Office Box 2937
1201 Chester Street
Myrtle Beach, South Carolina 29577
ATTORNEYS FOR THE APPELLANT,
JUSTICE BUILDERS, INC.

Howell V. Bellamy, Jr.
Henrietta U. Golding
BELLAMY, RUTENBERG, COPELAND, EPPS,
GRAVELY & BOWERS, P.A.
Post Office Box 357
Suite 304, Myrtle Offices
1604 Oak Street
Myrtle Beach, South Carolina 29577
ATTORNEYS FOR THE RESPONDENT,
JOSEPH MCKINLEY BRYAN, JR.



John L. Breeden, Jr.
Master in Equity for Horry County

Conway, South Carolina

April 23rd, 1982

NOTICE OF INTENT TO APPEAL
THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM HORRY COUNTY

HONORABLE JOHN L. BREEDEN, JR., MASTER IN EQUITY

80-CP-26-1979

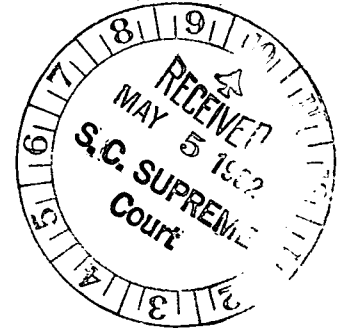
Justice Builders, Inc.,

Appellant

vs.

Joseph McKinley Bryan, Jr.,

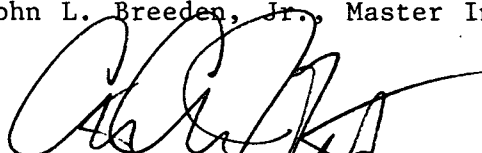
Respondent.



NOTICE OF INTENTION TO APPEAL

The Appellant above named hereby gives notice of its intention to appeal, and does hereby appeal, from the Order Settling the Record in the above referenced action of the Honorable John L. Breeden, Jr., Master In Equity for Horry County, Dated April 23, 1982.

82785



Otis Allen Jeffcoat, III
SHERRILL, TOWNSEND, MOSES & JEFFCOAT
Post Office Box 2937
1201 Chester Street
Myrtle Beach, South Carolina 29577

May 3, 1982

ATTORNEYS FOR THE APPELLANT, JUSTICE BUILDERS, INC.

Other Counsel of Record Are:

Howell V. Bellamy, Jr., Esquire
Henrietta U. Golding, Esquire
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS
Post Office Box 357
Myrtle Beach, South Carolina 29577

ATTORNEYS FOR THE RESPONDENT,
JOSEPH MCKINLEY BRYAN, JR.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM HORRY COUNTY
HONORABLE JOHN L. BREEDEN, JR., MASTER IN EQUITY

80-CP-26-1979

Justice Builders, Inc.,

Appellant

vs.

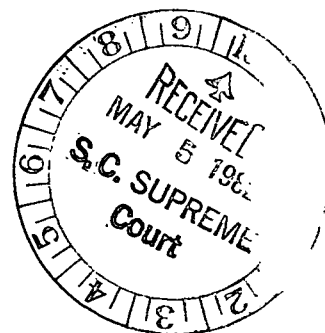
Joseph McKinley Bryan, Jr.,

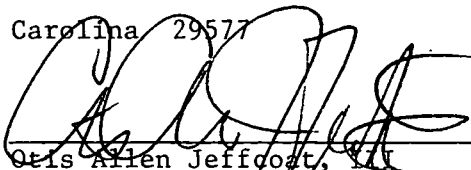
Respondent.

CERTIFICATE OF SERVICE BY MAIL

I certify that a copy of the foregoing Notice of Intention to Appeal and letter dated May 3, 1982 in the above captioned matter have been served upon the Attorneys for the Respondent, Joseph McKinley Bryan, Jr., by mailing a copy of the same to them, in the United States mail, first-class postage prepaid, addressed to them at their offices as shown below, on this 3rd day of May, 1982:

Howell V. Bellamy, Jr., Esquire
Henrietta U. Golding, Esquire
Bellamy, Rutenberg, Copeland,
Epps, Gravely & Bowers, P.A.
Suite 303, Myrtle Offices
1604 Oak Street
Post Office Box 357
Myrtle Beach, South Carolina 29577

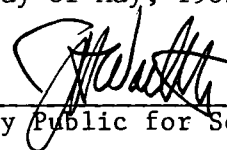



Otis Allen Jeffcoat,
McKay, Sherrill, Walker & Townsend
Post Office Box 2937
502 63rd Avenue North
Myrtle Beach, South Carolina 29577

ATTORNEYS FOR THE APPELLANT,
JUSTICE BUILDERS, INC.

Sworn to before me this

3rd day of May, 1982


Notary Public for South Carolina

My Commission Expires: 3-27-83

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM HORRY COUNTY
HONORABLE JOHN L. BREEDEN, JR., MASTER IN EQUITY

80-CP-26-1979

Justice Builders, Inc.,

Appellant

vs.

Joseph McKinley Bryan, Jr.,

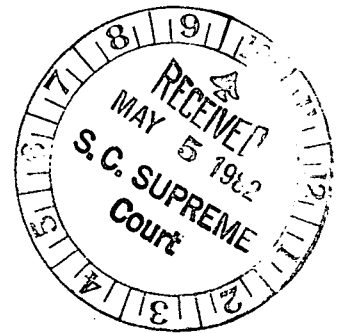
Respondent.

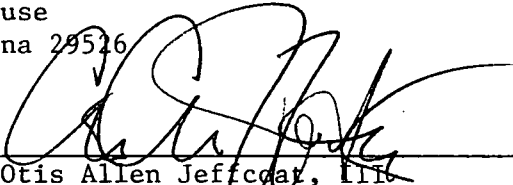
CERTIFICATE OF SERVICE BY MAIL

I certify that a copy of the foregoing Notice of Intention to Appeal in the above captioned matter has been served upon the following Clerks of Court by mailing a copy of the same to them, in the United States mail, first-class postage prepaid, addressed to them at their offices as shown below, on this 3rd day of May, 1982:

The Honorable Francis H. Smith
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

The Honorable Billie G. Richardson
Clerk of Court of Common Pleas
Horry County Courthouse
Conway, South Carolina 29526

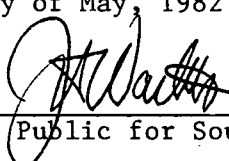



Otis Allen Jeffcoat, III
McKay, Sherrill, Walker & Townsend
Post Office Box 2937
502 63rd Avenue North
Myrtle Beach, South Carolina 29577

ATTORNEYS FOR THE APPELLANT
JUSTICE BUILDERS, INC.

Sworn to before me this

3rd day of May, 1982


Notary Public for South Carolina

My Commission Expires: 3-27-83

SHERRILL, TOWNSEND, MOSES & JEFFCOAT

HENRY F. SHERRILL
WILLIAM H. TOWNSEND
ALBERT L. MOSES
OTIS ALLEN JEFFCOAT, III

JOSEPH H. WACHTER, JR.

R. LARRY KIGHT
(OF COUNSEL)

ATTORNEYS AT LAW
1201 CHESTER STREET
POST OFFICE BOX 2937

MYRTLE BEACH, SOUTH CAROLINA 29577

TELEPHONE 803/626-9595

COLUMBIA OFFICE
1340 BULL STREET
POST OFFICE DRAWER 447
COLUMBIA, S.C. 29202
TELEPHONE 803/771-8880

May 3, 1982

Howell V. Bellamy, Jr., Esquire
Henrietta U. Golding, Esquire
Bellamy, Rutenberg, Copeland,
Epps, Gravely & Bowers, P.A.
Suite 303, Myrtle Offices
1604 Oak Street
Post Office Box 357
Myrtle Beach, South Carolina 29577

Re: Justice Builders, Inc. v Joseph McKinley Bryan, Jr.
(80-CP-40-1979)
Your File No. 79-00393-1
Our File No. 301-60

Dear Skeets and Henri:

Pursuant to the applicable Supreme Court Rules of Practice, you will please find enclosed a copy of our Notice of Intention to Appeal from the Order Settling the Record of the Honorable John L. Breeden, Jr., Master in Equity for Horry County, South Carolina, dated April 23, 1982. Pursuant to Rule 1, Section 3 F of the Rules of Practice of the Supreme Court we shall insert in an appendix to the case as settled by Judge Breeden's Order the following Exception and Excerpts of Testimony and Exhibits:

EXCEPTION

The trial judge erred in failing to include in his Order Settling the Record dated April 23, 1982, the following excerpts of testimony and exhibits which are relevant and necessary to a proper understanding of the issues on appeal:

TESTIMONY

(The following Excerpts of Testimony shall be printed in the Appendix to the Transcript of Record for the appeal, as follows:)

<u>Page, line</u>	<u>Through</u>	<u>Page, line</u>
20, 24	through	51, 11
4, 16	through	14, 18
208, 8	through	230, 1
231, 4	through	242, 24

RECEIVED
MAY 05 1982
S. C. SUPREME COURT

SHERRILL, TOWNSEND, MOSES & JEFFCOAT

Howell V. Bellamy, Jr., Esquire
Henrietta U. Golding, Esquire
May 3, 1982
Page Two

EXHIBITS

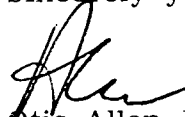
(the following Exhibits shall be printed in the Appendix to the Transcript of Record for the appeal, as follows:)

<u>Party</u>	<u>Exhibit Numbers</u>
Appellant	P-2 through P-6 (inclusive), P-14

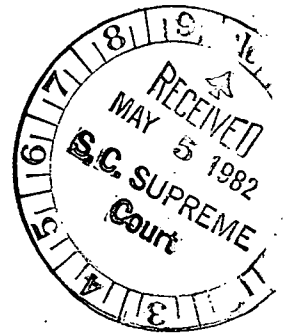
Please note that a copy of this letter and a copy of the Notice of Intention to Appeal is being served on you this date by mail. I am hereby requesting that the Clerk of the Supreme Court file the original Notice of Intention to Appeal which has been forwarded this date to her together with our Certificate of Service by Mail.

With kind regards, I am

Sincerely yours,



Otis Allen Jeffcoat, III



OAJIII:leh

Enclosures

cc: Honorable Frances H. Smith
Honorable Billie G. Richardson
Honorable John L. Breeden, Jr.

SHERRILL, TOWNSEND, MOSES & JEFFCOAT

HENRY F. SHERRILL
WILLIAM H. TOWNSEND
ALBERT L. MOSES
OTIS ALLEN JEFFCOAT, III

JOSEPH H. WACHTER, JR.

R. LARRY KIGHT
(OF COUNSEL)

ATTORNEYS AT LAW
THE WILLIAMSBURG BUILDING
1340 BULL STREET

POST OFFICE DRAWER 447
COLUMBIA, SOUTH CAROLINA 29202
TELEPHONE 803/771-8880

MYRTLE BEACH OFFICE
1201 CHESTER STREET
POST OFFICE BOX 2937
MYRTLE BEACH, S.C. 29577
TELEPHONE 803/626-9595

May 11, 1982

Reba D. Mims
Deputy Clerk
South Carolina Supreme Court
Columbia, South Carolina 29202

RE: Justice Builders, Inc. vs. Joseph McKinley
Bryan, Jr. - Docket No. 80-CP-26-1979

Dear Ms. Mims:

This is to confirm our telephone conversation earlier this day wherein I requested a one week extension of time to file the transcript of record in the above-referenced case. This extension would run from May 13, 1982 to May 20, 1982. This letter may be considered as a reaffirmation of that request in order that you may issue the appropriate order.

Thank you for your assistance.

Very truly yours,

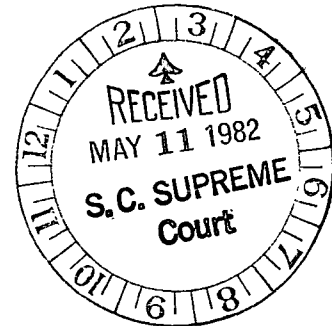
Joseph H. Wachter, Jr.
Joseph H. Wachter, Jr.

JHW, Jr./ah
CC: Howell V. Bellamy, Jr.
Henrietta U. Golding
James B. Richardson, Jr.

RECEIVED

MAY 11 1982

S. C. SUPREME COURT





The Supreme Court of South Carolina

FRANCES H. SMITH
CLERK

P. O. BOX 11330
COLUMBIA, S. C. 29211

Justice Builders, Inc.,

Appellant,

v.

Joseph McKinley Bryan, Jr.,

Respondent.

No. 80-CP-26-1979

O R D E R

For good cause having been shown, the time for submitting the Transcript of Record for docketing in the above case is extended until May 20, 1982.

IT IS SO ORDERED.

J. WOODROW LEWIS, CHIEF JUSTICE

By *Reba D. Sims*
Deputy CLERK

Columbia, South Carolina

May 13, 1982

Copy to: Joseph H. Wachter, Jr., Esquire
Howell V. Bellamy, Jr., Esquire
Henrietta U. Golding, Esquire
Otis Allen Jeffcoat, III, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Justice Builders, Inc., Appellant,
v.
Joseph McKinley Bryan, Jr., Respondent.

Appeal From Horry County
John L. Breeden, Jr., Master In Equity

Memorandum Opinion No. 84-MO-028
Heard June 27, 1984 Filed August 1, 1984

AFFIRMED

Otis Allen Jeffcoat, III, and B. Michael Brackett, both of Lumpkin & Sherrill, of Myrtle Beach, for appellant.

Howell V. Bellamy, Jr., and Henrietta U. Golding, both of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, of Myrtle Beach, for respondent.

PER CURIAM: This appeal presents the single question of whether the master erred in excluding the testimony of an expert witness. We affirm.

On or about December 5, 1980, appellant Justice Builders, Inc., sued respondent Joseph McKinley Bryan, Jr., to foreclose a mechanic's lein on his property. The mechanic's lein was for services which Justice allegedly rendered in building an addition to Bryan's residence pursuant to a contract entered into by the parties.

In his answer dated December 10, 1980, Bryan generally denied the allegations of Justice and alleged Justice had been paid for all work performed on his property. Bryan further alleged that Justice had breached the contract and was not entitled to any further payment.

On December 11, 1980, Bryan served interrogatories on Justice pursuant to Circuit Court Rule 90. After obtaining an extension of time, Justice served answers to these interrogatories on March 3, 1981. The answers indicated that Justice did not intend to call an expert witness at trial.

On June 24, 1981, the case was referred to the master-in-equity for Horry County.

On or about September 28, 1981, Justice served a Notice of Motion on Bryant to enter and inspect his property. Thereafter, the property was made available for this purpose, and on or about October 15, 1981, the attorney for Justice and one Earl O'Neal McCoy, Jr., president of a local construction company, entered the property and inspected it in the presence of Bryan and one of his attorneys.

JUSTICE BUILDERS, INC. v. BRYAN

On October 19, 1981, the case was tried before the master. McCoy appeared at the trial, whereupon an attorney for Bryan approached an attorney for Justice and informed him that he would object to McCoy testifying as an expert witness on behalf of Justice since McCoy had not been so listed in the answers to interrogatories. The attorneys for the parties then consulted with the master and informed him that McCoy was present to offer expert testimony on behalf of Justice "in the field of construction." Justice then offered to make McCoy available before the start of trial for "any questions." This offer was declined by the attorney for Bryan who persisted in his objection, pointing out that there had been no opportunity for him to depose McCoy. After hearing argument, the master ruled that McCoy would not be allowed to testify and the case proceeded to trial without his testimony.

Following trial, the parties stipulated that the master could issue a final order, directly appealable.

Circuit Court Rule 90(e)(6) provides for a standard interrogatory requiring a list of the names and addresses of any expert witnesses a party proposes to "use as a witness at trial." Paragraph (c) of the rule further provides:

The interrogatories shall be deemed to continue from the time of service until the time of the trial of the case, so that information sought, which comes to the knowledge of a party, his representatives or attorney, after answers to interrogatories have been submitted, shall be promptly transmitted to the other party.

Thus, Rule 90 does not establish a cut-off point for furnishing the names of newly consulted experts but, instead, mandates prompt transmittal of the required information upon discovery of availability and usefulness of an unlisted witness. Jackson v. H & S Oil Company, Inc., 263 S.C. 407, 211 S.E.2d 223 (1975).

Interrogatories serve the dual purposes of promoting settlements by having the parties "lay their cards on the table" and promoting decisions on the merits after a full trial, should a case go to trial. Moran v. Jones, ___ S.C. ___, 315 S.E.2d 136 (S.C.App. 1984). While the exclusion of a witness is a sanction which should not be invoked lightly, the question of whether to impose this sanction for a failure to comply with Rule 90 is a matter left largely to the discretion of the trial judge. Moran.¹ Before ruling, the trial court should ascertain the type witness involved, the content of his evidence, the nature of failure, neglect or refusal to furnish the witness's

¹Our Supreme Court and this court have addressed this question in a total of seven cases. In some of these cases, the trial judge allowed the testimony of an undisclosed expert witness and in others he excluded the testimony. On appeal, the exercise of discretion by the trial judge, whether to allow or exclude the testimony, has been uniformly affirmed. See Moran; Reed v. Clark, 277 S.C. 310, 286 S.E.2d 384 (1982); Kirkland v. Peoples Gas Company, 269 S.C. 431, 237 S.E.2d 772 (1977); Martin v. Dunlap, 226 S.C. 230, 222 S.E.2d 8 (1976); Jackson; Laney v. Hefley, 262 S.C. 54, 202 S.E.2d 12 (1974); Edens v. Cole, 261 S.C. 556, 201 S.E.2d 382 (1973).

JUSTICE BUILDERS, INC. v. BRYAN


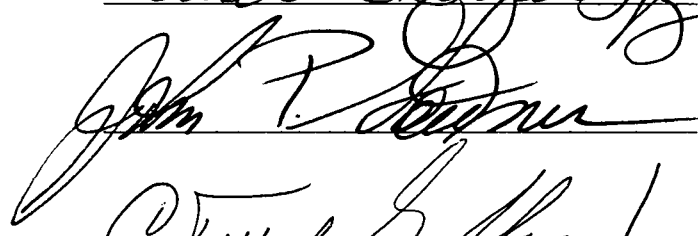
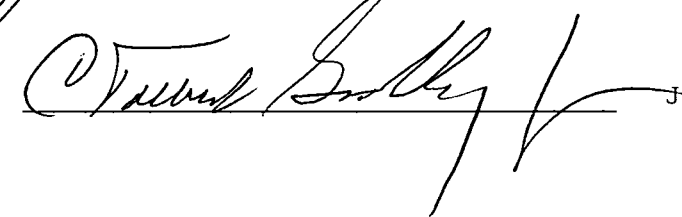
name, and the degree of surprise to the other party, including any prior knowledge of the name by the other party. Moran.

The record does not reflect that Justice ever supplied Bryan with the witness's name. It appears one of Bryan's attorneys may have had reason to suspect Justice might be planning to call McCoy as an expert witness, having observed him inspecting the property four days before trial and then seeing him at the trial. However, it does not appear Bryan had any prior knowledge, beyond this suspicion, that McCoy would be used by Justice as a witness.

The record is not otherwise adequate for us to determine the extent to which the master addressed these criteria. The matter was apparently heard before him in chambers before the trial began. Justice chose not to have the hearing transcribed or to proffer McCoy's testimony on the record. Reed is the most recent case in which our Supreme Court addressed the question of whether the trial judge abused his discretion in excluding testimony of an expert witness whose name was not supplied prior to trial. There, as here, the court was not presented with an adequate record on appeal. After noting the record did not "reveal the circumstances surrounding the exclusion" of the witness and "no offer of proof of the expert's proposed testimony is found in the transcript," the court held "under these circumstances, we cannot say the trial judge abused his discretion." 286 S.E.2d at 388. See also Germain v. Nichol, 278 S.C. 508, 299 S.E.2d 335 (1983) (appellant has the burden of providing a sufficient record on appeal upon which the court can make its decision).

Under the circumstances here we can find no abuse of discretion, and for this reason, the order of the master is

AFFIRMED.


Auland D. Boyd C.J.

John P. Burton J.

Thomas B. Kelly J.

No. 0349

Judgment AFFIRMED

The State of South Carolina

IN THE COURT OF APPEALS

JUNE

Term, 1984

HORRY

County

Justice Builders, Inc.,

Appellant,

vs.

Joseph McKinley Bryan, Jr.,

Respondent.

Opinion By

PER CURIAM

C.J.

We Concur:

_____ J.

_____ J.

We Dissent:

_____ J.

_____ J.

South Carolina Court of Appeals
Clerk's Office, Columbia, S. C.

FILED August 1, 1984

Raha D. Mims

Clerk

84-MO-028

August 14, 1984

The Honorable Billie G. Richardson
Clerk of Court, Horry County
P. O. Box 677
Conway, South Carolina 29526

Dear Mr. Richardson:

Enclosed is remittitur in the case of Justice Builders, Inc. v. Joseph McKinley Bryan, Jr. Also enclosed is approved copy of Statement of Costs. By copy of this letter counsel are being forwarded copies of these costs.

Very truly yours,

Reba D. Mims
Clerk

RDM/irc

Enclosures

cc: Otis Allen Jeffcoat, III, Esquire
B. Michael Brackett, Esquire
Howell V. Bellamy, Jr., Esquire
Ms. Henrietta U. Golding

file

ITEMIZED STATEMENT OF COSTS
THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

JUL 21 1982

S.C. SUPREME COURT

Justice Builders, Inc.,)
)
Petitioner-Appellant,)
vs.)
Joseph McKinley Bryan, Jr.,)
)
Respondent-Respondent.)

Docket No. 82-373

The Clerk is requested to tax the following costs concerning this appeal
against Appellant, Justice Builders, Inc.
(Appellant) (Respondent)

COSTS TAXABLE UNDER RULE 38	NO. OF PAGES	RATE	REQUESTED	ALLOWED (For Court use only)
Cost of Printing Transcript				
Cost of Printing Appellant's Brief				
Cost of Printing Respondent's Brief	357	.15 \$.25	53.55 \$89.25	APPROVED
Cost of Printing Appellant's Reply Brief				
Other (Specify)				
TOTAL	357	.15 \$.25	53.55 \$89.25	APPROVED

I Henrietta U. Golding do swear that the foregoing costs are correct and were necessarily incurred in this action. A copy was this day (mailed to/served upon) opposing counsel.

Henrietta U. Golding
(Signature)

Attorney for Respondent, Joseph McKinley Bryan, Jr.

Subscribed and sworn to before me this 19th day of July
A.D., 1982

Christie H. Jones
Notary Public

My Commission expires: 10-18-87

(Seal)

Approved:

Reba D. Mims
CLERK

Rule 38, Section 4 provides costs of appeal which are taxed in the lower court.

copy filed July 21 1982



The South Carolina Court of Appeals

REBA D. MIMS
CLERK

August 14, 1984

P.O. BOX 11629
COLUMBIA, S.C. 29211

Otis Allen Jeffcoat, III, Esquire
B. Michael Brackett, Esquire
Messrs. Lumpkin & Sherrill
P. O. Box 2937
Myrtle Beach, South Carolina 29577

Re: Justice Builders, Inc. v. Joseph McKinley Bryan, Jr.
Exhibits

Gentlemen:

Enclosed are the following exhibits which were filed by your firm
in the above referenced case:

- Exhibits R-1 through R-18 (Pictures)
- Exhibit R-24 (Four Sheets of Building Plans & Specifications)
- Exhibit R-25 (12 Estimate Sheets - 6 copies)

Please acknowledge receipt of these exhibits by signing the enclosed
copy of this letter and returning it to the Court of Appeals.

Very truly yours,

Reba D. Mims
Clerk

RDM/irc

Enclosure

Exhibits Received:

Signed: _____

Date: _____

8/16/84

RECEIVED
AUG 17 1984
S. C. Court of Appeals