

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 2008-CA-00832 *SCT E*

**J. CRISS BUILDER, INC. AND
JANIE CRISS, INDIVIDUALLY**

APPELLANTS

VS.

**WILLIAM P. WHITE AND
PATRICIA L. WHITE**

APPELLEES

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court or the judges on the Court of Appeals may evaluate possible disqualification or recusal:

1. J. Criss Builder, Inc , Appellant
2. Janie Criss, Individually, Appellant
3. William P. White, Appellee
4. Patricia L. White, Appellee
5. Honorable Samac S. Richardson, Circuit Judge
6. Paul E. Rogers, Attorney for Appellants
7. John W. Christopher, Attorney for Appellees
8. Homebuilders Association of Mississippi, Amicus Curiae
9. Steven H. Smith, Attorney for Amicus Curiae

Respectfully submitted,

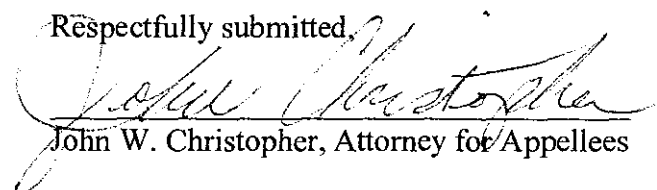

John W. Christopher, Attorney for Appellees

TABLE OF CONTENTS

	<u>PAGE</u>
CERTIFICATE OF INTERESTED PERSONS	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
STATEMENT OF ISSUES	1
STATEMENT OF THE CASE	2
STATEMENT OF FACTS	2
SUMMARY OF THE ARGUMENT	4
ARGUMENT	5
I. THE TRIAL COURT WAS CORRECT IN NOT DISMISSING THIS CASE BASED UPON MISSISSIPPI CODE ANNOTATED ¶15-1-14	5
II THE TRIAL COURT TRIAL COURT WAS CORRECT IN ITS REFUSAL TO DISMISS JANIE CRISS, INDIVIDUALLY, FROM THIS LAWSUIT	10
III THE TRIAL COURT WAS CORRECT IN GRANTING AN ADDITUR	12
CONCLUSIONS	13
CERTIFICATE OF SERVICE	16

TABLE OF AUTHORITIES

CASES CITED:	PAGE
<i>Air Comfort Systems, Inc. v. Honeywell, Inc.</i> , 760 So.2d 43 (¶ 12) (Miss.Ct.App. 2000)	5
<i>Anderson v. Fred Wagner & Roy Anderson, Jr., Inc.</i> , 402 So.2d 323 (Miss. 1981)	6
<i>Baldwin v. Holliman</i> , 913 So.2d 400 (Miss.Ct.App. 2005)	5, 6
<i>Burmaster v. Gravity Drainage Dist. No. 2</i> , 366 So.2d 1381, 1385-86 (La.1978)	6
<i>Deadeaux v. Pellerin Laundry, Inc.</i> , 947 So.2d 900 (Miss. 2007)	12
<i>Ferrell v. River City Roofing Company, Inc., et al.</i> 912 So.2d 448 (Miss. 2005)	6, 7
<i>Gilmore vs Garrett</i> 582 So.2d 387,396 (Miss. 1991)	11
<i>Rodgers v. Pascagoula Public School District</i> , 611 So.2d 942, 944 (Miss 1992)	13
<i>Ross-King-Walker v. Henson</i> , 672 So.2d 1188, 1193 (Miss. 1996)	13
<i>Stringer v. Crowson</i> , 797 So. 2d 368, 370 (Miss. Ct. App. 2001)	13
<i>Theunissen v. GSI Group</i> , 109 F.Supp.2d 505, 509 (N.D.Miss. 2000)	5
<i>West End Corporation, et al. v. Royals</i> , 450 So.2d 420, 424 (Miss. 1984)	9, 10
 OTHER AUTHORITIES	
Miss. Code Ann. § 73-59-1 (1972)	7
Miss. Code Ann. § 73-59-9 (1972)	8
Miss. Code Ann. § 75-59-3 (1972)	8, 10
Miss. Code Ann. § 15-1-41 (Supp. 1983)	7

STATEMENT OF ISSUES

Pursuant to MRAP 28 (b) appellees hereby advise the Court that they are not dissatisfied with the statement of the issues contained in the appellants brief and therefore appellees do not submit a separate statement of the issues.

STATEMENT OF THE CASE

Pursuant to MRAP 28 (b) appellees advise the Court that they are not dissatisfied with the statement of the case by the appellants and therefore the appellees will not file a separate statement.

STATEMENT OF FACTS

William and Patricia White do not dispute the statement of facts offered by the Criss appellants, however, the Whites will supplement the statement of facts by supplying facts not stated by the appellants in their brief.

At the time the residence was constructed J. Criss Builder, Inc., a Mississippi corporation, was wholly owned by Janie Criss. (R. 398). Janie Criss was a licensed residential builder while the corporation did not hold a builder's license, all of which was stipulated by the parties. (R.E. 20-21)

Janie Criss began her career as a home builder in 1992. (R.356). Janie Criss oversaw the construction of the house and after it was completed J. Criss Builder, Inc. conveyed the property to Janie Criss individually (R.365), who later conveyed the property the William and Patricia White.

After the property was conveyed to William and Patricia White they began residing there. About a year after the Whites moved into the residence they noticed a hair line crack in the scored concrete floor and as time went by the crack grew larger. (R. 164) Mr. White hired Ladner Testing Laboratory to test the soils under the foundation and it was found that the house was constructed over soil which contained yazoo clay which is an expansive soil. (R. 164, 71-72).

The Whites then retained Advanced Engineering Resources in Madison, Mississippi to evaluate the foundation and make recommendation for its repair. Following the recommendation of Gary Rogers, an engineer with Advanced Engineering Resources, the Whites had the foundation

repaired by Foundation Repair Specialist. (R.271-279). The failure of the foundation caused the walls in the house to crack (R. 176-177) which also require repairs. After the foundation repairs were completed the Whites hired workmen to make the repairs to the walls, which included replacing or repairing sheet rock, painting and wall papering. While the repairs were being made to the house the Whites had to store their furniture and live in a motel (R. 176-190).

After the repairs were complete John Prater, a licensed real estate appraiser appraised the property and determined that after all repairs had been made there was a diminution in the value of the house of \$50,000. (R. 287-288).

The Whites then filed their complaint against J. Criss Builder, Inc. and Janie Criss, individually, for the defective construction of the residence. After trial the jury returned a verdict for the Whites against both defendants for \$30,000. The trial judge granted an additur and increased the amount of the judgment to \$103,701.82. From this judgment the Criss defendants/appellees filed their appeal.

SUMMARY OF THE ARGUMENT

The trial court was correct in denying the motion for summary judgment, the requested preemptory instruction at trial, and the post trial motion for a JNOV filed by J. Criss Builder, Inc. and Janie Criss individually. The trial court made a finding that Janie Criss, individually was the builder and therefore the statute of repose did not begin to run until she sold and conveyed the property to William P. and Patricia White. Janie Criss conveyed the property to the Whites on February 17, 1997 and the Whites filed a complaint alleging construction defects in the house on February 12, 2003, which was five days before the expiration of the statute of repose. It is therefore submitted that the Circuit Court was correct in its application of the statute of repose to the facts of this case and was correct in finding that the statute of repose did not begin to run until Janie Criss conveyed the house to the Whites.

2 . The trial court was correct in refusing Janie Criss's motion to be dismissed from the lawsuit. The trial court was correct on the ground that the Court made a determination that Janie Criss was the builder of the house for which the Whites filed a lawsuit and therefore it was a jury question as to whether or not Janie Criss was negligent in the construction of the house.

3 . The trial court was correct in granting the Whites' motion for an additur in that the amount of damages incurred by the Whites in repairing the defective foundation and house was never disputed by Janie Criss or J. Criss Builder, Inc. Therefore when the jury returned a verdict in favor of William and Patricia White but only awarded damages of \$30,000 when the undisputed proof was that the cost to repair plus other compensable economic damages were \$114,222.00 the trial court's additur was correct.

ARGUMENT

I. THE TRIAL COURT WAS CORRECT IN NOT DISMISSING THIS CASE BASED UPON MISSISSIPPI CODE ANNOTATED ¶15-1-14

The Whites agree that the statute of repose contained in §15-1-41, Mississippi code annotated, is correctly cited by Criss in her brief and will not be reproduced here. However the Whites do submit that the crucial question decided by the trial court and to be reviewed by this court is a determination as to the date when the statute of repose started to run against the Whites.

Both the Mississippi Court of Appeals and Supreme Court have given guidance in the application of the statute. The Court of Appeals addressed the statute in an opinion written by Presiding Judge Bridges, *Baldwin v. Holliman*, 913 So.2d 400 (Miss.Ct.App. 2005). In the *Baldwin* decision, presiding Judge Bridges, speaking for the Court, held that the statute of repose had terminated *Baldwin's* case before it was filed, reviewed the history of the statute, and had this to say:

“The Baldwins state that they discovered the cause of the drainage problem when they received American Lake Detection’s report in 2001 ‘after trying throughout the years to determine the cause and remedy it.’ The Baldwins claim that this is a material fact which tends to resolve the issue of the tolling of the statute of limitations. Holliman argues that the limitations period began to run when Wanda Baldwin took possession of the home and began occupying it.

Section 15-1-41 is a statute of repose. *Air Comfort Systems, Inc. v. Honeywell, Inc.*, 760 So.2d 43 (¶ 12) (Miss.Ct.App. 2000). ‘A statute of repose bars actions after a period of time beginning with the act of an alleged wrongdoer unrelated to the date of injury.’ *Theunissen v. GSI Group*, 109 F.Supp.2d 505, 509 (N.D.Miss. 2000) (citations and internal quotations omitted). Consequently, one who sues seeking damages for an injury due to defects in an improvement to real property must bring that action within a certain period of time of completion, regardless of when the injury occurs. *Air Comfort Systems, Inc.*, 760 So.2d at 43 (¶12).

Holliman is correct. Wanda Baldwin began her occupancy of the home after Holliman completed construction in 1992. There is no genuine issue of fact regarding the application of the statute of repose. The statutory language is clear. Wanda’s cause of action expired six years later in 1998. We agree with the circuit

court's decision to grant Holliman's motion for summary judgment." *Baldwin* at 407.

The Court of Appeals in the *Baldwin* case explained the general principal of the operation of the statute of repose.

On August 18, 2005, approximately four months after the Court of Appeals' decision in *Baldwin*, the Mississippi Supreme Court decided the case of *Ferrell v. River City Roofing, Inc., et al.*, in which it also addressed the application and interpretation of the same statute of repose. The Supreme Court discussed the legislative intent in adopting the statute and had this to say:

"This court, adopting the legislative intent as to the class of persons covered by the repose statute has reiterated and quoted the Louisiana Supreme Court's reasoning:

'We consider that there is a valid distinction between persons performing or furnishing the design, planning, supervision, inspection or observation of construction or the construction of an improvement to immovable property and a person in possession or control, as owner, lessor, tenant or otherwise, of such improvement at the time of the incident giving cause to the cause of action. After the date of registry in the mortgage office of acceptance of the work by the owner, there exists the possibility of neglect, abuse, poor maintenance, mishandling, improper modification, or unskilled repair of an improvement to immovable property by the owner, lessor or tenant. It is difficult for the architect or contractor to guard against any such occurrences because, after the acceptance by the owner, the architect or contractor ordinarily has neither control of the improvement nor the right to enter or inspect the improvement. It is thus reasonable for the legislative to have concluded that those with access to and control of improvements to immovable property (owner, lessor and tenant) should not be accorded the protection of the preemptive period established by La.R.S. 9:2772.'

Anderson v. Fred Wagner & Roy Anderson, Jr., Inc., 402 So.2d 323 (Miss. 1981) (quoting *Burmaster v. Gravity Drainage Dist. No. 2*, 366 So.2d 1381, 1385-86 (La.1978)) (emphasis added). Additionally, this Court has stated:

'Section 15-1-41 was intended by the legislative to protect architects, builders and the like who have completed their jobs and who have relinquished access and control of the improvements. This section was not designed to proscribe all suits initiated ten years after completion of the defective improvement. In enacting § 15-1-41, the legislature explicitly exempted from the statute's operation 'Any

person, firm or corporation in actual possession and control as owner, tenant or otherwise, of the improvement at the time of the defective and unsafe condition if such improvement causes injury.” Miss. Code Ann. § 15-1-41 (Supp. 1983). *Ferrell v. River City Roofing Company, Inc., et al.* 912 So.2d 448 (Miss. 2005) at 452-453.

According to the Supreme Court’s interpretation of the statute of repose, it was the legislative intent that the statute begin to run once the contractor, architect or builder had relinquished access and control to the property. Therefore, the question to be determined next is who was the contractor as between Janie Criss individually and J. Criss Builder, Inc., and when did the contractor relinquish control of the property.

a. Identity of the Contractor

The Whites submit to the Court that it is necessary to determine the identity of the contractor in the construction of the White residence as the first step in determining when the six year statute of repose began to run. The state legislature has regulated licensing of contractors and providing the procedure by which a license can be received by a contractor and the privileges afforded to one who holds a license.

Section 73-59-1, *et seq.*, Miss. Code Ann. (1972) governs residential builders and remodelers and the license requirements of each. Section 73-59-1 establishes the definitions to be used in the chapter which provides the following:

“(b) ‘Residential builder’ means any corporation, partnership or individual who constructs a building or structure for sale for use by another as a residence or who, for a fixed price, commission, fee, wage or other compensation, undertakes or offers to undertake the construction or superintending of the construction, of any building or structure which is not more than three (3) floors in height, to be used by another as a residence, when the cost of the undertaking exceeds Fifty Thousand Dollars (\$50,000.00).

(d) ‘Residential construction’ means any undertaking described in paragraph (b) of

this section performed by a residential builder.”

Section 75-59-3 of the Code provides the licensing requirements for builders and remodelers.

The statute in pertinent part states:

“(1) Except as otherwise provided in Section 73-59-15, persons who perform residential construction or residential improvement **shall be licensed by the board annually**, and, as a prerequisite to obtaining a license or renewal thereof, each shall submit to the Board.” (documents not necessary to cite herein) (emphasis added).

Section 73-59-9, Miss. Code, provides that:

“Any residential builder who undertakes or attempts to undertake the business of residential construction without having a valid license as required by this chapter, or who knowingly presents to the board, or files with the board, false information for the purpose of obtaining such license, shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than One Hundred Dollars (\$100.00) and not more than Five Thousand Dollars (\$5,000.00) or be in prison for not less than thirty (30) nor more than sixty (60) days in the county jail, or both.”

The same section further provides the following:

“(3) A residential builder or remodeler who does not have the license provided by this chapter may not bring any action, either at law or in equity, to enforce any contract for residential building or remodeling or to enforce a sales contract.”

The statutory construction makes it clear that at the time the residence was constructed, state law required that the builder have a license issued by the State Board of Contractors. Janie Criss and all other parties stipulated that J. Criss Builder, Inc., which was the title owner of the property, did not have a builders license. (R.E. 19-21) However, Janie Criss further stipulated that she individually had a builder’s license issued by the Board of Contractors. (R.E. 19-21)

It is submitted that as between Janie Criss and J. Criss Builders, Inc., her solely owned corporation, Janie Criss was the one holding the builder’s license and was, therefore, the only one authorized by state law to serve as contractor in the construction of the house purchased by the

Whites. The fact that the building permit was issued to J. Criss Builder, Inc., does not answer the question as to who was the contractor. J. Criss Builder, Inc., as the owner of the property, had standing to ask for a building permit and in fact, under the county ordinance, the building permit is issued to the owner of the property and not the contractor. It is the owner who is given permission by the permit department to construct the residence while the contractor or builder performs the task of constructing the residence.

It is respectfully submitted from the evidence that it is clear that J. Criss Builder, Inc., was the owner of the property and Janie Criss, individually, was the builder who constructed the residence.

The statute of repose did not begin to run until Janie Criss, individually, conveyed the property to the Whites on February 17, 1997. The Whites' complaint was filed on February 12, 2003, which was less than six (6) years from the date the property was conveyed to them.

The Supreme Court in *Ferrell, supra*, clearly stated that the legislative intent was that the running of the statute of repose began when the builder "relinquished access and control of the improvements", which occurred when Janie Criss conveyed the property to the Whites on February 17, 1997.

b. Application of Statute of Repose Where the Builder is the Owner

It is further submitted that Janie Criss was the builder who also became the owner of the house upon its completion. The Mississippi Supreme Court in *West End Corporation, et al. v. Royals*, 450 So.2d 420, 424 (Miss. 1984) addressed the application of § 15-1-41, at a time when the statute of repose was a period of ten years rather than the current six years. There the Supreme Court held:

“This brings us to the case at bar where the builder is also the owner. We hold that § 15-1-41 does not provide the applicable statute of limitations where the owner is the builder. We reach this result by addressing the purpose of § 15-1-41. The builder who usually no longer has control over, nor access to, the property, is absolved from liability after the proscription period; however, under the statute, the owner remains responsible for the defective condition, thus insuring a plaintiff will not lose his day in court before injury ever occurs. Where the builder is also the owner, the distinction which gives rise to this dichotomy disappear. The builder, being the same entity as the owner, necessarily has equal access to control over the defective condition. Consequently, a builder/owner is not within the purview of § 15-1-41.”

Under the Supreme Court’s holding in *West End Corporation*, the statute of repose did not begin to run so long as Janie Criss, the builder, owned the property, and it is only upon her conveying the property to the Whites that the proscriptive period of the statute of repose began to run.

Under this analysis, it is clear that the statute of repose is not a bar to the Whites’ claim.

II THE TRIAL COURT TRIAL COURT WAS CORRECT IN ITS REFUSAL TO DISMISS JANIE CRISS, INDIVIDUALLY, FROM THIS LAWSUIT

In her brief Janie Criss overlooks the simple fact that she was the licensed builder in the construction of the house purchased by the Whites. Janie Criss was licensed by the State Board of Contractors as a residential builder while J. Criss Builder, Inc. was not. § 73-59-3 Mississippi Code Annotated requires that “persons who perform residential construction or residential improvement shall be licensed by the board annually ***” and further provides that before a license will be issued the residential builder is required to show proof of workers compensation insurance, if applicable, and a federal employee identification number or social security number. The reasonable inference to be drawn from the evidence in the case is that Janie Criss, individually, provided the State Board of Contractors with the prerequisite documentation required by the statute and therefore no such documentation would have been provided by the corporation. Janie Criss owned 100% of the stock in J.Criss Builder, Inc. (R. 398). Even though the corporation may have

owned the lot it is undisputed, and is a stipulated fact that Janie Criss held a residential builders license and was therefore the builder . (R. E. 20-21).

In as much as Janie Criss was the licensed builder it was not necessary to pierce the corporate veil to hold her individually liable as her liability arises by virtue of her status as the licensed builder and not as an employee of a builder. The fact that the corporation held title to the lot does not qualified it as the builder. The defective condition of the White's residence was the result of the house having been constructed on a building site which contained Yazoo Clay. Janie Criss testified that she knew that Yazoo Clay was present in the building site yet she did nothing to remove it or stabilize it.(R. 400) The Mississippi Supreme Court in *Gilmore vs Garrett* 582 So.2d 387,396 (Miss. 1991) held that a builder was liable to the homeowner for damage to the residence which was constructed on a site containing Yazoo Clay. Since the Gilmore decision builders and contractors in this state have known that they have a duty in the construction of a residence to make sure the constructed house will not be adversely impacted by Yazoo Clay which may be in the foundation site. Janie Criss admitted that she knew of this hazard yet the uncontradicted testimony was that Yazoo Clay under the foundation caused the White's residence to develop a cracked foundation which grew worse with time until it was repaired by the Whites.

The trial court was correct in denying Janie Criss's motion to dismiss her individually in light of the fact that she was the licensed builder . Therefore it is respectfully submitted that this argument is without merit.

III THE TRIAL COURT WAS CORRECT IN GRANTING AN ADDITUR

In regard to the standard to be applied by the trial court when considering a motion for a remittitur or additur the Mississippi Supreme Court in *Deadeaux v. Pellerin Laundry, Inc.*, 947 So.2d 900 (Miss. 2007) held the following:

We thus state, hopefully with clarity, the procedure to be hereafter followed by the trial bench and bar when confronted with the post-trial issues of additurs and remittiturs. Any party aggrieved by the amount of damages awarded pursuant to a jury verdict may file a motion for an additur or remittitur. Miss. Code Ann. §11-1-55. If the trial judge grants a motion for an additur, such grant shall take effect only if accepted by all the parties. If all of the parties do not agree to the additur or the remittitur, then each party shall have the right either demand a new trial on damages, or appeal the order asserting an abuse of discretion on the part of the trial judge. Likewise, if a trial judge determines that a grant of an additur or remittitur is required, then in arriving at the appropriate amount of the additur or remittitur, the trial judge should not be bound by the restrictions which we have heretofore placed on trial judges by having to consider the amount of which “should be added or subtracted from the jury’s verdict to make it legal and no more.” (citation omitted) By eliminating these so-called guidelines for trial judges to utilize in attempting to arrive at the appropriate amount of the additur or remittitur, this unbridled procedure “would promote a suggested award which is fairly responsive to the evidence rather than one targeted to a minimum [or maximum] sustainable verdict. Finally, this rule announced today does not impinge upon a party’s right to appeal the jury verdict and the trial court judgment on the issue of liability.”*** *Id.* At 908-909.

The undisputed evidence is that the Whites paid \$31,233 the foundation repair plus \$31,989.23 the repairs to the house after the foundation was fixed and in addition John Prater, plaintiff’s expert appraiser, testified that after the house was fully repaired there remains a diminution in value of \$50,000. (R. 287-288). Based upon the actual out-of-pocket costs paid by the Whites plus the diminution in value resulted in an actual loss by the Whites of \$114,222. The jury returned a verdict for the Whites in the sum of \$30,000 or \$84,222 less than the than their proven damages. Based upon this the Whites filed a motion for an additur which was granted in part in that the trial judge increased the amount of the judgment from \$30,000 to the sum of \$103,701.82. The

Criss appellees argue that the trial court should have been more detailed in giving his reasons for granting the additur in the first place and the amount of the additur in the second place, but it is submitted that that was not necessary in light of the fact that the amount of damages proven by the Whites was never contested or disputed.

The test to be used by the trial court is whether or not the jury verdict was contrary to the overwhelming weight of the credible evidence. *Rodgers v. Pascagoula Public School District*, 611 So.2d 942, 944 (Miss 1992). While it may have been of assistance to the parties and this honorable Court for the trial judge to have stated in a findings of facts and conclusions of law that the additur was granted because the verdict was against the overwhelming weight of the credible evidence § 11-1-55 Miss. Code Ann. (1972) did not require that he do so. Without any contradictory evidence that the damages proven by the Whites at trial were either unreasonable or excessive the verdict of \$30,000 was against the overwhelming weight of evidence when the proven damages were \$114,222.00.

The trial court's decision on granting the additur is reviewed on appeal under the abuse of discretion standard. *Stringer v. Crowson*, 797 So. 2d 368, 370 (Miss. Ct. App. 2001) (citing *Ross-King-Walker v. Henson*, 672 So.2d 1188, 1193 (Miss. 1996)).

The circuit judge cannot be said to have abused his discretion by granting an additur and increasing the total amount of the judgment to \$103,701.82 which is less than the amount of damages proven at trial . It is submitted that this assignment is without merit.

CONCLUSIONS

The issue of the statute of repose and its application in this case was ruled upon by the Circuit Court on at least three occasions with the first occasion being when the Criss defendants file their

motion for summary judgment. In denying the motion for summary judgment based upon the statute of repose the circuit judge stated *inter alia*

“ So, I’m going to say that the statute of repose in this case would begin to run on the date that it was sold to the Whites because that is an arms-length transaction. The first transaction is not an arms-length transaction. It’s kept in the family, sort of speak, (sic) and I don’t think that was the intent of the statute of repose. I think it’s to give the initial first owner occupant/third-party a fair opportunity to live in the house for that six years. ***” (R.E. 13; R. 283)

The circuit judge, recognizing that Janie Criss was the licensed builder of the house and also the seller of the house correctly applied Mississippi law and started the running of the statute with the date Janie Criss sold the house to William and Patricia White. The complaint for the defective construction of the house was filed less than six years later and therefore the Criss argument must fail on this point.

In as much as Janie Criss was the licensed builder she was the one who was held to the standard of care of a builder, the jury found that she breached her duties and as a result the Whites sustained their damages. If J. Criss builder, Inc., had been the builder it would have had the license and Janie Criss would have been an employee which would have required the piercing the corporate veil to hold Janie Criss personally liable. However, such is not the case which renders the Criss appellants argument about piercing the corporate veil inapplicable and misplaced. Like their first argument, this argument too is without merit.

Under the facts of this case the trial court was correct in granting an additur of damages which was supported by the evidence. Therefore, this point is also without merit.

Upon review of the record in this case the Court must find that the final judgment, which includes the additur, is supported by the evidence and the trial court did not abuse its discretion by


increasing the amount of the judgment to conform to the proof. Further, upon review this Court should find that there is no reversible error and should affirm the judgment of the Circuit Court of Madison County.

Respectfully submitted,

William P. White and Patricia L. White, Appellees

BY: 

John W. Christopher

John W. Christopher, MSB # 
750 Avignon Drive, Suite 3
P.O. Box 982
Ridgeland, MS 39158
Telephone: (601) 898-3303
Facsimile: (601) 898-3306j
jchristopher@jchristopherlaw.com

CERTIFICATE OF SERVICE

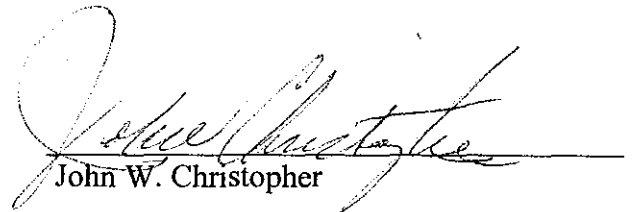
I., John W. Christopher, do hereby certify that I have this day caused to be served by United States mail, postage prepaid, a true and correct copy of the above and foregoing brief to the following:

Honorable Samac S. Richardson
Madison County Circuit Judge
P.O. Box 1885
Brandon, MS 39043

Paul E. Rogers, Esquire
P.O. Box 2810
Jackson, MS 39207

Steven H. Smith, Esquire
1855 Lakeland Drive
Suite R-309
Jackson, MS 39216

This the 17th day of December, 2008.


John W. Christopher