

STATE OF NEW YORK

SUPREME COURT

COUNTY OF ST. LAWRENCE

Court's
EXHIBIT *5*
1-14-02

FREDERICK E. BIGGS and PATRICIA M. BIGGS,

Index No. 104598

Plaintiffs,

- against -

IAS# 44-1-1999-630

JAMES A. O'NEILL, Individually and d/b/a
CONSTRUCTION MANAGEMENT SERVICES,

Defendants.

1. What was the business entity that undertook to construct the shell home for Mr. and Mrs. Biggs?

(a) James A. O'Neill, individually, as a sole proprietor. _____

(b) James A. O'Neill, individually, as a sole proprietor,
doing business under the assumed name "Construction
Management Services." _____ ✓

(c) C.W. Augustine, Inc., doing business under the
assumed name "Construction Management Services." _____

(d) C.W. Augustine, Inc. _____

Dissent _____

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(At least five jurors must agree on this answer. Go to Question #2.)

2. Was the shell home constructed for Mr. and Mrs. Biggs constructed in a skillful manner?

YES _____

NO _____

Dissent _____

_____	_____
_____	_____
_____	_____

(At least five jurors must agree on this answer. Go to Question #3.)

3. Were the plumbing, electrical, heating and ventilation systems installed in a skillful manner?

YES _____

NO _____

Dissent _____

_____	_____
_____	_____
_____	_____

(At least five jurors must agree on this answer. Go to Question #4.)

4. Was the shell home constructed for Mr. and Mrs. Biggs free from material defects?

YES _____

NO _____

Dissent _____

_____	_____
_____	_____
_____	_____

(At least five jurors must agree on this answer. If your answer is "No," go to question #5. If "Yes," go to question #6.)

5. Was any material defect caused by the work of James O'Neill, his business or corporation?

YES _____

NO _____

Dissent _____

_____	_____
_____	_____
_____	_____

(At least five jurors must agree on this answer. (If your answer to both question #4 and question #5 is "No," go to question #7. If your answer is "Yes" to either question #4 and/or question #5, go to Question #6.)

6. Which of the following expenses paid by the Biggs were incurred as a result of failure of James O'Neill or his corporation to construct or install in a skillful manner or due to material defect?

(a) \$1,001.51 to Barner Remodeling for replacing headers. (Exhibit 36A)

YES NO

Dissent _____

_____	_____
_____	_____
_____	_____

(b) \$257.90 to Barner Remodeling to install pocket door and frame in closet in master bedroom. (Exhibit 36B)

YES NO

Dissent _____

_____	_____
_____	_____
_____	_____

(c) \$37.50 to Barner Remodeling for rebuilding headers for kitchen windows. (Exhibit 36C)

YES NO

Dissent _____

_____	_____
_____	_____
_____	_____

(d) \$2,835 to replace entire leach field.

YES NO

Dissent _____

_____	_____
_____	_____
_____	_____

(e) \$318.69 to Barner Remodeling to repair plumbing leaks. (Exhibit 36E)

YES NO

Dissent _____

_____	_____
_____	_____
_____	_____

(f) \$126.00 to Barner Remodeling for reframing a whole house fan. (Exhibit 36F)

YES NO

Dissent _____

_____	_____
_____	_____
_____	_____

(g) \$731.36 to Barner Remodeling to rebuild rough openings. (Exhibit 36G)

YES _____ NO _____

Dissent _____

_____	_____
_____	_____
_____	_____

(h) \$800.00 to Dennis Sharlow to repair foundation of entryway. (Exhibit 36P)

YES _____ NO _____

Dissent _____

_____	_____
_____	_____
_____	_____

(i) \$329.64 to Bronson Services for finding and repairing leaks. (Exhibit 36Q)

YES _____ NO _____

Dissent _____

_____	_____
_____	_____
_____	_____

(At least five jurors must agree on each of these answers. Go to Question #7.)

7. Was there an agreement between the parties to construct a shell building for a firm price of \$79,995.00?

YES NO

Dissent _____

_____	_____
_____	_____
_____	_____

(At least five jurors must agree on this answer. If your answer is "No," go no further but report your verdict. If your answer is "Yes," go to Question #8.)

8. Should the Biggs be given a net credit of \$714.00 for the replacement of a stainless steel chimney with a power vent?


YES NO

Dissent _____

_____	_____
_____	_____
_____	_____

(At least five jurors must agree on this answer. Report your verdict.)

Dated: January 14, 2002



Foreperson

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION THIRD DEPARTMENT

FREDERICK E. BIGGS AND PATRICIA M. BIGGS,
Petitioners/ Appellants,

**STIPULATION AS TO
CORRECTNESS OF
TRANSCRIPT**

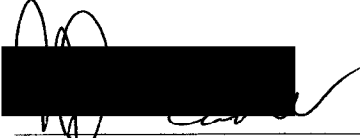
Index No. 104598

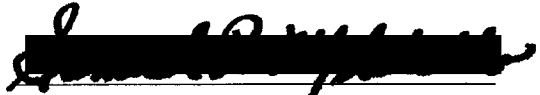
-against-

JAMES A. O'NEILL, Individually and
d/b/a CONSTRUCTION MANAGEMENT SERVICES
Defendants/Respondents.

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the
respective parties hereto that the foregoing Transcript is correct and complete.

Dated: ~~February 27~~^{April 22}, 2003


Henry J. Leader, Esq.
CASE & LEADER, LLP
Attorneys for Petitioners-Appellants
113 East Main Street, P.O. Box 13
Gouverneur, New York 13642-0013
Telephone: (315) 287-2000


Samuel P. Militello, Esq.
Militello Law Offices
Attorney for Defendant-Respondents
1619 Ohio Street
Watertown, New York 13601

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION THIRD DEPARTMENT

FREDERICK E. BIGGS AND PATRICIA M. BIGGS,
Petitioners/ Appellants,

**STIPULATION IN LIEU
OF CERTIFICATION**

-against-

Index No. 104598

JAMES A. O'NEILL, Individually and
d/b/a CONSTRUCTION MANAGEMENT SERVICES
Defendants/Respondents.

It is hereby stipulated, pursuant to CPLR 5532, that the foregoing constitute true and correct copies of the entire record on appeal (or any portion thereof).

Dated: ~~February~~ ^{April} 22, 2003

Henry J. Leader, Esq.
CASE & LEADER, LLP
Attorneys for Petitioners-Appellants
113 East Main Street, P.O. Box 13
Gouverneur, New York 13642-0013
Telephone: (315) 287-2000

Samuel P. Militello, Esq.
Militello Law Offices
Attorney for Defendant-Respondents
1619 Ohio Street
Watertown, New York 13601