

NELSON & ROBBINS, INC., A
Corporation, and JOHN RAY
NELSON,

Plaintiffs,

vs.

THOMAS C. MUND, SR., LEE
CALLAWAY, MELVIN A. PLASH,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW

MOTION TO STRIKE

5316

Come the Defendants in the above styled cause and move the Court to strike that part of "COUNT ONE" and "COUNT TWO" of the complaint filed in said cause in which the Plaintiffs claim damages of the Defendants in the sum of \$122,417.27, and that part of each count thereof wherein such damages are itemized, and as grounds for such motion, say:

1. That the Plaintiffs claim nonrecoverable damages in said counts.

2. That said counts affirmatively show that the Defendants executed two injunction bonds totalling \$2,000.00 which is the limit of their liability under a suit on such bonds.

3. That said counts allege that the conditions of said bonds have been broken and then claim as a penalty a sum in excess of the total amount of said bonds.

Sharon A. Stone

Attorneys for Defendants

FILED

OCT 17 1962

ALICE L. DICK, CLERK
REGISTER

5316

NELSON & ROBBINS, INC.,
A Corporation, Et Al.,

Plaintiffs,

vs.

THOMAS C. MUND, SR., ET AL.,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW

MOTION TO STRIKE

FILED

OCT 17-62

ALICE L. DUCK, CLERK
REGISTER

SUMMONS AND COMPLAINT

Baldwin Times

THE STATE OF ALABAMA,
BALDWIN COUNTY

CIRCUIT COURT, BALDWIN COUNTY

No. 5316

TERM, 19

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Comanded to Summon

Thomas C. Mund, Sr., Lee Galloway, and Melvin Plash

to appear and plead, answer or demur, within thirty days from the service hereof, to the complaint filed in the

Circuit Court of Baldwin County, State of Alabama, at Bay Minette, against

Thomas C. Mund, Sr., Lee Galloway, and Melvin Plash

Defendant

by Nelson & Robbins and John Ray Nelson

Plaintiff

Witness my hand this 3rd day of October 19 62

Clerk

NELSON & ROBBINS, INC. A
Corporation and JOHN RAY
NELSON,

Plaintiffs

Vs.

THOMAS C. MUND, SR.,
LEE CALLAWAY, MELVIN A.
PLASH,

Defendants

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. 5316

COUNT ONE:

Plaintiffs claim of the defendants the sum of \$122,417.27 as damages, for that on, to-wit: the 9th day of February, 1961, Thomas C. Mund, Sr., one of said defendants, obtained from the Circuit Court of Baldwin County, in Equity, the issuance of a temporary writ of injunction enjoining the plaintiffs, its agents, servants and employees from, in any manner, going upon certain areas leased to the plaintiff, lying in the Southeast Quarter (SE $\frac{1}{4}$) of Section 9, the South half (S $\frac{1}{2}$) of Section 10, and the Southwest Quarter (SW $\frac{1}{4}$) of Section 11, all in Township 7 South, Range 1 East, Baldwin County, Alabama, or by any manner or means, going upon the property hereinabove described, or by any manner or means from taking, removing or attempting to take or remove any type, size or kind of oyster therefrom or from exercising any right or privilege attempted to be granted, to it under and by virtue of the terms of any lease, agreement, option, contract or other written instrument by the State of Alabama acting by and through William C. Younger, as the Director of the Department of Conservation or George W. Allen as Chief of the Seafoods Division of the State of Alabama: that in accordance with the order of said Circuit Court, said Thomas C. Mund, Sr. entered into bond with security, said defendants Lee Calloway and Melvin A. Plash being the sureties thereon in the sum of \$800.00 payable to your plaintiff which was approved by the Register of said Court; that said bond was conditioned as follows:

"THAT WHEREAS Thomas C. Mund, Sr., has filed a Bill of Complaint in the Circuit Court of Baldwin County, Alabama in Equity, and has obtained an order for the issuance of an injunction pendente lite from the Honorable Hubert M. Hall, Judge of said Court, to restrain and enjoin Nelson & Robbins, Inc., a corporation, and John

Ray Nelson, and their agents, servants, and employees, as prayed for in the Bill of Complaint filed by Thomas C. Mund, Sr., in said cause.

NOW THEREFORE, if the said Thomas C. Mund, Sr., his heirs, executors or administrators shall pay or cause to be paid all damages and costs which any person may sustain by the suing out of such injunction, if the same is dissolved, then this obligation to be void, otherwise to remain in full force and effect."

And The Supreme Court of the State of Alabama by order dated March 22, 1961 increased the injunction bond in said cause by an additional \$1,200.00 by decree as follows:

"Come the appellants, by attorneys, and file in this Court a motion to increase the amount of the injunction bond filed by the complainant (appellee herein) in this cause and said motion being argued and submitted and duly examined and understood by the Court, it is considered and ordered that said motion be and the same is hereby granted; and that the complainant be and he is hereby ordered to give an additional injunction bond in the sum of \$1,200.00 with good and sufficient surety or sureties, payable to Respondents and to be approved by the Register of the Circuit Court of Baldwin County, Alabama, In Equity, on or before April 10, 1961."

That in accordance with the order of said Supreme Court, said Thomas C. Mund, Sr., entered into bond with security, said defendants Lee Calloway and Melvin Plash being the sureties thereon in the sum of \$1,200.00 payable to your Plaintiff, which was approved by the Register of said Court; that said bond was conditioned as follows:

"THAT WHEREAS Thomas C. Mund, Sr., has filed a Bill of Complaint in the Circuit Court of Baldwin County, Alabama, In Equity, and has obtained an order for the issuance of an injunction pendente lite from the Honorable Hubert M. Hall, Judge of said Court, to restrain and enjoin Nelson & Robbins, Inc., a Corporation, and John Ray Nelson and their agents, servants and employees as prayed for in the Bill of Complaint filed by Thomas C. Mund, Sr., in said cause; and the Supreme Court of Alabama, upon motion filed by the Respondents in said cause, did, on March 22, 1961, enter its order requiring the Complainant to give an additional injunction bond in the sum of \$1,200.00 with good and sufficient surety or sureties,

payable to the Respondents and to be approved by the Register of the Circuit Court of Baldwin County, Alabama, In Equity, on or before April 10, 1961;

NOW, THEREFORE, if the said Thomas C. Mund, Sr., his heirs, executors or administrators shall pay or cause to be paid all damages and costs which any person may sustain by the suing out of such injunction, if the same is dissolved, then this obligation to be void, otherwise to remain in full force and effect."

And Plaintiffs allege that the condition of said bonds have been broken in thus: that said injunction was dissolved by the Supreme Court of Alabama on, to-wit; November 16, 1961 and that neither the said Thomas C. Mund, Sr. nor the said Lee Calloway and Melvin A. Plash, the sureties on said bonds, have paid the Plaintiff the damages and costs, or any part thereof sustained by Plaintiffs by reason of the suing out of such injunction, which said damages and costs are as follows:

FIRST: Expense incurred in employing counsel to procure the dissolution of said injunction for which Plaintiff became liable, \$ 4,211.22

SECOND: Expenses incurred in prospecting areas in Mobile Bay suitable for raising oyster spawn; trip expenses for conferences with wholesalers and retailers developing a market for the planted oysters, 6,800.00

THIRD: Expenses incurred in conferences with the State Conservation Department, State of Alabama, and Montgomery, Alabama, and elsewhere, relative to seafood regulations and availability of suitable Mobile Bay oyster cultivation bottoms, 1,420.00

FOURTH: Expenses incurred in aeroplane fares by Corporate Officers conferring with attorneys on conduct of the defense of the injunction suit, 600.00

FIFTH: Expenses incurred on research trip to Louisiana by Plaintiffs in perfecting planting methods and to be employed on Plaintiff's leasehold

Mobile Bay Oyster bottom, and observing the catching and marketing processes and proceedings used in Louisiana, \$ 3,910.00

SIXTH: Expenses incurred by Plaintiffs in bringing the Oyster Dredge Boat, oil screw, "H. H. Robbins" from Port Norris, N. J. to Bon secour, Alabama, for the purpose of inaugurating the oystering program of the Plaintiffs, 3,632.00

SEVENTH: Telephone expenses incurred by Plaintiffs in discussing operation of the corporate properties and in discussing the conduct of the defense of the injunction suit with Plaintiffs Attorneys, 1,500.00

EIGHTH: Expenses incurred by Plaintiffs in employing surveyors to determine the boundary lines of the leasehold areas; expenses incurred by Plaintiffs in obtaining permits, bonds and attending bid openings, 4,150.00

NINTH: Plaintiff's annual rental expense for the leasehold area under injunction, 704.00

TENTH: Expenses incurred by Plaintiffs in preparing the leasehold area under injunction for the placement of oyster shells on the bottoms for the catching of oyster spawn, in the nature of wages and salaries paid laborers and the Captain of the Oil Screw "H. H. Robbins"; daily rental of the Oil Screw "H. H. Robbins"; purchase of boundary line stakes, labor involved in the placement of boundary line stakes and patrolling of leasehold areas, 20,490.05

ELEVENTH: Damages incurred by Plaintiffs from the loss of seed oysters caused by the prevention of the Plaintiffs by the injunction from exercising any right or control over the leasehold areas, 75,000.00

All to the great damage of the Plaintiffs as aforesaid; wherefore they bring this suit and ask judgment in the above amount, together with interest thereon from, to-wit: February 9, 1961.

COUNT TWO

Plaintiffs claim of the defendants separately and severally the sum of \$122,417.27 as damages, for that on, to-wit: the 9th day of February, 1961, Thomas C. Mund, Sr., one of said defendants, obtained from the Circuit Court of Baldwin County, In Equity, the issuance of a temporary writ of injunction enjoining the Plaintiffs, its agents, servants and employees from, in any manner, going upon certain areas leased to the plaintiff, lying in the Southeast Quarter (SE $\frac{1}{4}$) of Section 9, the South half (S $\frac{1}{2}$) of Section 10, and the Southwest Quarter (SW $\frac{1}{4}$) of Section 11, all in Township 7 South, Range 1 East, Baldwin County, Alabama, or by any manner or means from taking, removing or attempting to take or remove any type, size or kind of oyster therefrom or from exercising any right or privilege attempted to be granted to it under and by virtue of the terms of any lease, agreement, option, contract or other written instrument by the State of Alabama acting by and through William C. Younger, as the Director of the Department of Conservation or George W. Allen as Chief of the Seafoods Division of the State of Alabama; that in accordance with the order of said Circuit Court, said Thomas C. Mund, Sr., entered into bond with security, said Defendants Lee Calloway and Melvin A. Plash being the sureties thereon in the sum of \$800.00 payable to your plaintiff which was approved by the Register of said Court; that said bond was conditioned as follows:

"THAT WHEREAS Thomas C. Mund, Sr. has filed a Bill of Complaint in the Circuit Court of Baldwin County, Alabama In Equity, and has obtained an order for the issuance of an injunction pendente lite from the Honorable Hubert M. Hall, Judge of said Court, to restrain and enjoin Nelson & Robbins, Inc., a corporation, and John Ray Nelson, and their agents, servants, and employees, as prayed for in the Bill of Complaint filed by Thomas C. Mund, Sr., in said cause.

NOW THEREFORE, if the said Thomas C. Mund, Sr., his heirs, executors or administrators shall pay or cause to be paid all damages

and costs which any person may sustain by the suing out of such injunction, if the same is dissolved, then this obligation to be void, otherwise to remain in full force and effect."

And the Supreme Court of the State of Alabama by order dated March 22, 1961 increased the injunction bond in said cause by an additional \$1,200.00 by decree as follows:

"Come the appellants, by attorneys, and file in this Court a motion to increase the amount of the injunction bond filed by the complainant (appellee herein) in this cause and said motion being argued and submitted and duly examined and understood by the Court, it is considered and ordered that said motion be and the same is hereby granted; and that the complainant be and he is hereby ordered to give an additional injunction bond in the sum of \$1,200.00 with good and sufficient surety or sureties, payable to Respondents and to be approved by the Register of the Circuit Court of Baldwin County, Alabama, In Equity, on or before April 10, 1961."

That in accordance with the order of said Supreme Court, said Thomas C. Mund, Sr., entered into bond with security, said defendants Lee Calloway and Melvin Plash being the sureties thereon in the sum of \$1,200.00 payable to your Plaintiff, which was approved by the Register of said Court; that said bond was conditioned as follows:

"THAT WHEREAS Thomas C. Mund, Sr., has filed a Bill of Complaint in the Circuit Court of Baldwin County, Alabama, In Equity, and has obtained an order for the issuance of an injunction pendente lite from the Honorable Hubert M. Hall, Judge of said Court, to restrain and enjoin Nelson & Robbins, Inc., a Corporation, and John Ray Nelson and their agents, servants and employees as prayed for in the Bill of Complaint filed by Thomas C. Mund, Sr., in said cause; and the Supreme Court of Alabama, upon motion filed by the Respondents in said cause, did, on March 22, 1961, enter its order requiring the Complainant to give an additional injunction bond in the sum of \$1,200.00 with good and sufficient surety or sureties, payable to the Respondents and to be approved by the Register of the Circuit Court of Baldwin County, Alabama, In Equity, on or before April 10, 1961;

NOW THEREFORE, if the said Thomas C. Mund, Sr., his heirs, executors or administrators shall pay or cause to be paid all damages and costs which any person may sustain by the suing out of such injunction, if the same is dissolved, then this obligation to be void, otherwise to remain in full force and effect."

And Plaintiffs allege that the condition of said bonds have been broken in thus: that said injunction was dissolved by the Supreme Court of Alabama on, to-wit; November 16, 1961 and that neither the said Thomas C. Mund, Sr. nor the said Lee Calloway and Melvin A. Flash, the sureties on said bonds, have paid the Plaintiff the damages and costs, or any part thereof sustained by Plaintiffs by reason of the suing out of such injunction, which said damages and costs are as follows:

FIRST: Expense incurred in employing counsel to procure the dissolution of said injunction for which Plaintiff became liable, \$ 4,211.22

SECOND: Expenses incurred in prospecting areas in Mobile Bay suitable for raising oyster spawn; trip expenses for conferences with wholesalers and retailers developing a market for the planted oysters, 6,800.00

THIRD: Expenses incurred in conferences with the State Conservation Department, State of Alabama, and Montgomery, Alabama, and elsewhere, relative to seafood regulations and availability of suitable Mobile Bay oyster cultivation bottoms, 1,420.00

FOURTH: Expenses incurred in aeroplane fares by Corporate Officers conferring with attorneys on conduct of the defense of the injunction suit, 600.00

FIFTH: Expenses incurred on research trip to Louisiana by Plaintiffs in perfecting planting methods and to be employed on Plaintiff's leasehold Mobile Bay Oyster bottom, and observing the catching and marketing processes and procedures used in Louisiana, 3,910.00

SIXTH: Expenses incurred by Plaintiffs in bringing the Oyster Dredge Boat, oil screw, "H. H. Robbins" from Port Norris, N. J. to Bon Secour, Alabama, for the purpose of inaugurating the oystering program of the Plaintiffs, \$ 3,632.00

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NINTH: Plaintiffs' annual rental expense for the leasehold area under injunction, 704.00

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ELEVENTH: Damages incurred by Plaintiffs from the loss of seed oysters caused by the prevention of the Plaintiffs by the injunction from exercising any right or control over the leasehold areas, 75,000.00

All to the great damage of the Plaintiffs as aforesaid; wherefore they bring this suit and ask judgment in the above amount,

together with interest thereon from to-wit: February 9, 1961.

BAILEY & LACEY

BY: Richard K. Lacey
Attorneys for Plaintiffs

Defendants Thomas C. Mund, Sr.
and Melvin A. Plash reside at
Route # 3, Foley, Alabama.
Defendant Lee Callaway resides
at Gulf Shores, Alabama

Plaintiffs demand a trial by jury.

FILED

OCT 2 1962

Alice L. Duck, CLERK

BAILEY & LACEY

BY: Richard K. Lacey
Attorneys for Plaintiffs

Received 3 day of Oct 1962
and on 5 day of Oct 1962

I served a copy of the within S+C
on Thomas C. Mund, Sr. 10-9-62
+ Melvin A. Plash 10-5-62

By service on _____

TAYLOR WILKINS, Sheriff

By: Charles C. Cresson

Bon Securon

Received 3 day of Oct 1962
and on 5 day of Oct 1962

I served a copy of the within S+C
on Lee Callaway

By service on _____

TAYLOR WILKINS, Sheriff

By: Charles C. Cresson

Gulf Shores

Sheriff claims 272 miles at

Ten Cents per mile Total \$ 27.20

TAYLOR WILKINS, Sheriff

BY DEPUTY SHERIFF

M. 15376

BILL OF COMPLAINT

NELSON & ROBBINS, INC., A
Corporation, and JOHN RAY
NELSON,

Plaintiffs

Vs.

THOMAS C. MUND, SR., LEE
CALLAWAY, MELVIN A. PLASH

In the Circuit Court of
Baldwin County, Alabama
At Law

Case No. _____

LAW OFFICES
BAILEY & LACEY
P. O. BOX 161
FAIRHOPE, ALABAMA

LAW OFFICES
BAILEY & LACEY
P. O. BOX 161
FAIRHOPE, ALABAMA

October 2nd, 1962

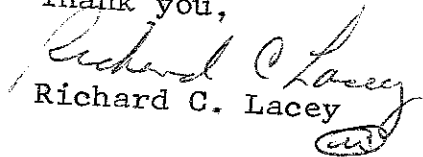
Mrs. Alice Duck
Clerk of Circuit Court
Bay Minette, Alabama

Re: Nelson & Robbins, Inc.,
a Corporation & John
Ray Nelson, Vs. Thomas
C. Mund, SR., Lee Calla-
way, Melvin A. Plash

Dear Mrs. Duck:

Please have service made on the attached
Bill of Complaint.

Thank you,


Richard C. Lacey