

SUMMONS AND COMPLAINT

MOORE PRINTING COMPANY - BAY MINETTE, ALA.

The State of Alabama, }

Baldwin County.

Circuit Court, Baldwin County

No.-----

August

TERM, 1961

TO ANY SHERIFF OF THE STATE OF ALABAMA

You Are Commanded to Summon Mabel Quates

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 -----

Mabel Quates -----, Defendant.---

by Baker Brownell -----

-----, Plaintiff.---

Witness my hand this 9 day of August 1961

Alice J. Duck Clerk

No. _____ Page _____

STATE of ALABAMA

Baldwin County

CIRCUIT COURT

Plaintiffs

vs.

Defendants

Summons and Complaint

Filed _____ 19____

Clerk

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

Received In Office

Sheriff.

I have executed this summons

this _____ 19____
by leaving a copy with

Sheriff.

Deputy Sheriff.

TELFAIR J. MASHBURN
ATTORNEY AT LAW
DAHLBERG BUILDING
BAY MINETTE, ALABAMA

TELEPHONE: 937-4661
937-6801

9 August 1961

41810

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

Re: L. H. Pugh and A. O. Ard
Vs: Niagara Fire Insurance Company
of New York, a Corporation
10 Pryor Street, S. W.
Atlanta 1, Georgia
P. O. Box 1680

Dear Mrs. Duck:

Attached hereto you will please find original and three copies of the summons and complaint in the above entitled cause, which I should like you to have served on the defendant by service on the Superintendent of Insurance, State of Alabama, Montgomery, Alabama, in accordance with the provisions of Paragraph 65 of Title 28 of the Code of Alabama of 1940

Thanking you in advance for your prompt attention to this matter, I am

Yours very truly,

Telfair J. Mashburn

Telfair J. Mashburn

TJM:m

STATE OF ALABAMA, |
 | TO ANY SHERIFF OF THE STATE OF ALABAMA:
COUNTY OF BALDWIN. |

You are hereby commanded to summon NIAGARA FIRE INSURANCE COMPANY OF NEW YORK, a Corporation, to appear within thirty days from the service of this writ in the Circuit Court, to be held for said County at the place of holding the same, then and there to answer the complaint of L. H. PUGH AND A. O. ARD.

Witness my hand this the 9 day of August, 1961.

Alice J. Duck

L. H. PUGH AND
A. O. ARD,

Plaintiffs,

VS.

NIAGARA FIRE INSURANCE COMPANY
OF NEW YORK, A Corporation,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW. NO. _____

C O U N T O N E

The plaintiffs claim of the defendant FIVE THOUSAND THREE HUNDRED AND NO/100ths (\$5,300.00) DOLLARS, THE value of a dwelling house, which the defendant, on the 16th day of June, 1960, insured against loss or injury by fire and other perils in the policy of insurance mentioned, issued to the plaintiff, L. H. PUGH, with mortgage clause payable to the plaintiff, A. O. ARD, as his interest might appear, for the term of five (5) years, which house was wholly destroyed by fire on, to-wit: the 20th day of August, 1960, of which the defendant has had notice, with interest thereon from the said 20th day of August, 1960.

Julius A. Madliburn
ATTORNEY FOR PLAINTIFFS

FILED

AUG 9 1961

ALICE J. DUCK, CLERK
REGISTER

L. H. PUGH AND
A. O. ARD,

Plaintiffs,

VS.

NIAGARA FIRE INSURANCE COMPANY
OF NEW YORK, a corporation,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW. NO. 4810

REPLICATION

Now comes the Plaintiffs in the above styled cause and, for special replication to the defendant's Plea in Abatement, say:

1. For replication to said plea in abatement, plaintiffs aver that within sixty days after the occurrence of the fire involved in this suit, and more than sixty days prior to/commencement of this suit, the defendant sent its adjuster, who had authority to bind the defendant, to investigate the loss, and said adjuster, acting within the scope of the business intrusted to him by defendant, after being fully informed of all conditions touching defendant's liability under the policy, informed plaintiffs that the defendant was not liable to them, on other grounds than that proof of loss was not made. And plaintiffs aver that the defendant waived the matter set up in said plea in abatement and the same are of no effect and have no force and application in this cause; and that the defendant is estopped to plead the provisions of said policy as set out in said plea in abatement.

2. For replication to said plea in abatement, plaintiffs say that within sixty days after the fire involved in this suit, and prior to the commencement of this suit and before the expiration of the time of making proof of loss the defendant declined and refused to pay the damages claimed under the terms of said policy, on other grounds than that proof of loss was not made, and denied that defendant was liable to plaintiffs under the terms of said policy, and thereby waived compliance by plaintiffs of the stipulations of said policy as set out in said plea.

3. For replication to said plea in abatement, plaintiffs say: that after the occurrence of the fire involved in this suit, and prior to the bringing of this suit, and prior to the bringing of this suit, the defendant sent or caused to be sent an adjuster with full authority to bind defendant, to investigate the said loss and to adjust the same, and that said adjuster, while acting within the line and scope of his

authority as such, made a full investigation of said loss, and the matters pertaining thereto, questioned the plaintiff, L. H. PUGH, with reference to said loss and matters pertaining thereto and with reference to the claim of plaintiff under said policy.

Plaintiffs aver that said adjuster, acting within the line and scope of his authority as such, and after making a full investigation of said loss, and within sixty days after the occurrence of the fire, and prior to the commencement of this suit, informed plaintiff that defendant was liable for the loss incurred, but that there was another fire insurance policy on said house, owned by Norman S. Carter who is named in the Mortgage Clause in the policy involved in this suit; and that there was a question as to the value of the house destroyed and the amounts due the various interested parties; and that as soon as he could determine the amounts to which each of the interested parties was entitled the defendant would pay your plaintiffs the amount to which they were entitled. Plaintiff avers that he agreed to said settlement, but that said adjuster, nor the defendant, ever offered him any concrete sum, or definite amount;

Plaintiffs aver that they relied on the statements and representations of such adjuster or agent of the defendant and that they filed no proof of loss or other matters as set up in said plea in abatement prior to the bringing of this suit.

Hence plaintiffs aver that the defendant is estopped to plead the provisions of said policy as set up in said plea in abatement, and that defendant waived the provisions of said policy as set out in said plea of abatement prior to the commencement of this suit.

4. For replication to said plea in abatement, plaintiffs say: that after the occurrence of the fire involved in this suit, and prior to the bringing of this suit, the defendant sent or caused to be sent, and adjuster, with full authority to bind defendant, to investigate the said loss and to adjust the same, and that said adjuster, while acting within the line and scope of his authority as such, made a full investigation of said loss, and the matters pertaining thereto, questioned the plaintiff, L. H. PUGH, with reference to said loss and matters pertaining thereto and with reference to the claims of plaintiffs under said policy.

Plaintiffs aver that said adjuster, acting within the line and scope of his authority as such, and after making a full investigation of said loss, and within sixty days after the occurrence of the fire, and prior to the commencement of this suit, informed David R. Coley, III, who at that time was attorney for plaintiffs, that he needed no further information, admitted defendant's liability for the loss, and said that there were several claimants and more than one insurance policy, and that the only question was how to apportion the loss and the payments for the loss among the various claimants.

Plaintiffs aver that they relied on the statements and representations of such adjuster or agent of the defendant and that they filed no proof of loss or other matters as set up in said plea in abatement prior to the bringing of this suit.

Hence plaintiffs aver that the defendant is estopped to plead the provisions of said policy as set up in said plea of abatement, and that defendant waived the provisions of said policy as set out in said plea of abatement prior to the commencement of this suit.

Telfair J. Mashburn
ATTORNEY FOR PLAINTIFFS.

STATE OF ALABAMA, §
BALDWIN COUNTY. §

Before me, the undersigned authority in and for said County in said State, personally appeared Telfair J. Mashburn, whose name is signed to the foregoing Replications and who is known to me, and who, being by me first duly sworn, deposes and says, on oath: "That he is informed and believes, and, on such information and belief, avers that the allegations contained in the foregoing Special Replications, are true and correct."

Telfair J. Mashburn

Sworn to and subscribed before me this the 20th day of September, 1961.

James A. Owens, Jr.
NOTARY PUBLIC, BALDWIN COUNTY, ALABAMA.

FILED

SEP 20 1961

ALICE J. DUCK, CLERK
REGISTER

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW. NO. 4810

L. H. PUGH AND
A. O. ARD,

Plaintiffs,

VS.

NIAGARA FIRE INSURANCE
COMPANY OF NEW YORK, A
Corporation,

Defendant.

REPLICATIONS.

HAND, ARENDALL, BEDSOLE,
GREAVES AND JOHNSTON
Attorneys for Defendant

FILED

SEP 20 1961

ALICE J. DUCK, CLERK
REGISTER

L. H. PUGH AND
A. O. ARD,

Plaintiffs

Vs.

NIAGARA FIRE INSURANCE COMPANY
OF NEW YORK, a corporation,

Defendant

) IN THE CIRCUIT COURT OF
) BALDWIN COUNTY, ALABAMA
) AT LAW
) NO. 4810
)
)

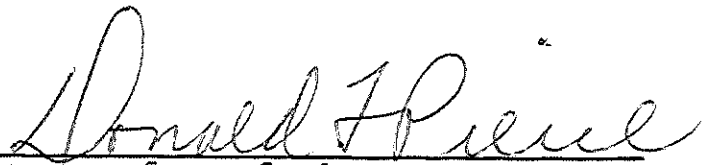
PLEA IN ABATEMENT

Comes now the defendant in the above styled cause and appears solely and specially for the purpose of filing the following plea in abatement, and for no other purpose, and, pleading in abatement, said defendant does say the following:

1. That said plaintiffs cannot maintain this action for that the policy of insurance which plaintiffs allege was issued to L. H. Pugh, with a mortgage clause payable to the plaintiff A. O. Ard, as his interest might appear, required that before any action on suit was brought on said policy of insurance for the recovery of any claim against the defendant, all of the requirements of the policy must have been complied with, and, said policy of insurance requires that a complete inventory of the destroyed, damaged and undamaged property showing in detail quantities, cost, actual cash value and amount of loss claimed shall be filed with the insurance company and that within sixty (60) days after the loss, unless such period of time is extended in writing by the insurance company, the insured is required by the terms of the policy to render to the insurance company a proof of loss, signed and sworn to by the insured, stating the time and origin of the loss, the interest of the

insured and all others in the property, the actual cash value of each item thereof, and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance whether valid or not, covering any of the property, any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of the said policy of insurance to the insured, and by whom and for what purpose any building insured by the alleged policy of insurance was used at the time of the loss, along with plans and specifications of any building, fixtures or machinery destroyed or damaged by the alleged fire.

Defendant states that the plaintiffs have not complied with any of the requirements as set out above, hence the plaintiffs cannot maintain this action.

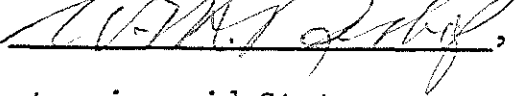

Attorney for Defendant

Of Counsel:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

STATE OF GEORGIA)

COUNTY OF Fulton)

Before me, , a Notary Public in and for said County, in said State, personally appeared _____

Victor W. Berg, an officer of Niagara Fire Insurance Company, who, after being duly sworn, deposes and says that he is an officer of Niagara Fire Insurance Company whose responsibility it is to supervise the fire losses and fire claims presented to Niagara Fire Insurance Company by its policy holders, and that as such officer of Niagara Fire Insurance Company and with full authority, on behalf of Niagara Fire Insurance Company, does say that the

facts set forth in the above Plea in Abatement are true and correct.

NIAGARA FIRE INSURANCE COMPANY

By: Victor W. Berg

Its: Assistant Secretary

Subscribed and sworn to before me on this 23 day of Aug, 1961.

M. M. Bishop
Notary Public, _____ County,
Georgia
Notary Public, Fulton County, Georgia
My Commission Expires March 26, 1965

FILED

AUG 31 1961

ALICE I. DUCK, CLERK
REGISTER