MCKEAN PAINT AND HARDWARE STORE, INC., a corporation,	)	IN THE CIRCUIT COURT OF
	)	BALDWIN COUNTY, ALABAMA
Plaintiff,	)	AT LAW
vs.	)	
DANIEL N. SLAY,	)	
Defendant.	)	CASE NO. 5560

COMPLAINT

COUNT ONE

Plaintiff claims of the Defendant SIX HUNDRED THIRTY EIGHT and 14/100 ($638.14) DOLLARS, due from him by account on the 1st day of September, 1961, which sum of money, with interest thereon, is still unpaid.

COUNT TWO

Plaintiff claims of the Defendant SIX HUNDRED THIRTY EIGHT and 14/100 ($638.14) DOLLARS, due from him on account stated between the Plaintiff and the Defendant on the 1st day of September, 1961, which sum of money, with interest thereon, is still unpaid.

COUNT THREE

Plaintiff claims of the Defendant SIX HUNDRED THIRTY EIGHT and 14/100 ($638.14) DOLLARS, for work and labor done for the Defendant by the Plaintiff on the 1st day of September, 1961, at his request, which sum of money, with interest thereon is still unpaid.

INGE, TWITTY & DUFFY

By Sydney R. Prince

Sydney R. Prince, III
Attorneys for the Plaintiff

FILED
MAY 8 1962
ALICE I. DUCK, CLERK
REGISTER

Defendant may be served at: Bullet Point, Alabama

SUMMONS AND COMPLAINT

MOORE PRINTING COMPANY - BAY MINETTE, ALA.

The State of Alabama,
Baldwin County.

Circuit Court, Baldwin County

No. 5560

_____ TERM, 19____

TO ANY SHERIFF OF THE STATE OF ALABAMA

You Are Commanded to Summon Daniel N. Slay

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

Daniel N. Slay, Defendant

by McKean Paint and Hardware Store, Inc., a Corporation

_____, Plaintiff

Witness my hand this 3rd day of May 19 63

Exp-5-17-63

Alice Tolbert, Clerk

077

No. 5560 Page

STATE of ALABAMA
Baldwin County

CIRCUIT COURT

MCKEAN PAINT & HARDWARE STORE, INC., A Corp.

XXXXXXXXXXXXXXXXX

Plaintiffs

vs.

DANIEL N. SLAY
Mullet Point, Ala.,
2 doors from Ben J. Dreading at Mullet Point

Defendants

Summons and Complaint

Filed May 3, 1963

Alice J. Duck Clerk

Inge, Twitty & Duffy
P.O. Box 1109 Plaintiff's Attorney
Mobile, Alabama

Defendant's Attorney

Defendant lives at

Received In Office

May 3, 1963

Sheriff.

I have executed this summons
this 17th day of May 1963
by leaving a copy with
Daniel Slay

Sheriff claims 80 miles at
Ten Cents per mile Total $ 8.00.
TAYLOR WILKINS, Sheriff

BY
DEPUTY SHERIFF

Taylor Wilkins Sheriff.

Fred Deibert

Tyler R. Clem Deputy Sheriff.

No. 5560 Page

STATE of ALABAMA
Baldwin County

CIRCUIT COURT

MCKEAN PAINT & HARDWARE STORE, INC., A Corp.

XXXXXXXXXXXXXXXXX

Plaintiffs

vs.

DANIEL N. SLAY
Mullet Point, Ala.,
2 doors from Ben J. Dreading at Mullet Point

Defendants

Summons and Complaint

Filed May 3, 1963

Alice J. Duck Clerk

Inge, Twitty & Duffy
P.O. Box 1109 Plaintiff's Attorney
Mobile, Alabama

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Defendant lives at

Received In Office

May 3, 1963

Sheriff.

I have executed this summons

this 17th day of May 1963

by leaving a copy with

Daniel Slay

Sheriff claims 80 miles at

Ten Cents per mile Total $ 8.00.

TAYLOR WILKINS, Sheriff

BY

DEPUTY SHERIFF

Taylor Wilkins Sheriff.

Deputy Sheriff.

THE STATE OF ALABAMA --- JUDICIAL DEPARTMENT

THE COURT OF CIVIL APPEALS

SPECIAL TERM, 1975

Civ. 515

Daniel N. Slay

v.

McKean Paint and Hardware Store, Inc.,
a Corporation

Appeal from Baldwin Circuit Court

HOLMES, JUDGE

This is an appeal from the Circuit Court of Baldwin County, granting appellee-corporation's motion to revive a judgment over ten years old.

Appellant, by his assignments of error, contends the trial court erred to reversal in allowing a certain letter to be introduced and, further, that the verdict is not supported by the evidence.

The record reveals that a default judgment was taken against the appellant in July of 1963. In May of 1974, a motion to revive the judgment was filed.

As to the appellant's first contention, the following pertinent facts are revealed from the record.

During direct examination the appellant testified, in effect, that he had satisfied the judgment by the payment of cash to the president of the corporation who is now deceased. This payment was allegedly made in late 1963. On cross-examination the appellant was asked if in fact, an attorney in 1964, representing appellant, had not written a letter to the attorney who was representing appellee suggesting a compromise settlement of the judgment. Appellant denied he authorized such a letter to be sent to appellee, although he did testify that he had "probably" authorized the attorney to settle some judgments against him. There was no objection to the foregoing question. The letter was then introduced over objections, apparently bottomed on the premise that the letter was not properly authenticated and/or authorized.

At best, in this instance, we consider the action of the trial court to be harmless error. Supreme Court Rule 45 and Rule 61 of the Alabama Rules of Civil Procedure require that no judgment may be reversed on the ground of improper admission of evidence unless, after examination of the entire cause, it should appear that the error complained of has

probably injuriously affected substantial rights of the parties. We find no such error. As will be seen from the following portion of this opinion, there was evidence to amply support the court's decree allowing the reviving of the judgment without the consideration of the aforementioned letter which was introduced on cross-examination of the appellant. Suffice it to say at this time the appellant testified the judgment was paid. A corporate officer familiar with the corporate books testified otherwise. The trial judge resolved the conflict in favor of the appellant-corporation.

Finally, the appellant argues that in view of Tit. 7, § 582, Code of Alabama 1940, there is insufficient evidence to overcome the presumption created by § 582.

Tit. 7, § 582, reads as follows:

> "If ten years have elapsed from the rendition of the judgment or decree without issue of execution, or, if ten years have elapsed since the date of the last execution issued, the judgment or decree must be presumed satisfied, and the burden of proving it not satisfied is upon the plaintiff."

Cases interpreting this Code section clearly indicate that the statutory presumption of payment of a judgment after ten years casts the burden on

the plaintiff of proving that it is not satisfied. See Hays v. McCarty, 239 Ala. 400, 195 So. 241; Gambill v. Cassimus, 247 Ala. 176, 22 So. 2d 909. Appellant argues that appellee did not meet this burden. We disagree.

Needless to say, the trial court's action is to be viewed with the attendant presumption of correctness. See 2A Ala. Dig., Appeal and Error, keys 1008.1(2), (6), and 1009(1).

The present corporate president testified he had been an officer of the corporation since its incorporation; that he has been president since the death of his father in 1964; that he was familiar with the books and records of the corporation (in fact, he kept the books); and that the aforesaid judgment was rendered and that it had not been paid in full. We believe the above is sufficient proof to overcome the burden created by § 582 of Tit. 7. Quite frankly, if it were not, a plaintiff-corporation could, in effect, rarely overcome the presumption created by Tit. 7, § 582.

As we noted earlier, the case is one of conflicting testimony. The judgment-creditor, through a qualified corporate officer, appropriately testified that the judgment was not paid. The judgment-debtor testified he paid the judgment by paying cash to the now deceased corporate president. It then became, in this instance, the duty of the trial judge to resolve this conflict. He did and we affirm.

All assignments of error properly argued having been considered, the case is due to be affirmed.

AFFIRMED.

Wright, P. J., and Bradley, J., concur.

I, John H. Wilkerson, Jr., Clerk of the Court of Civil Appeals of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said Court.

Witness my hand this 16th day of July, 1975.

John H. Wilkerson Jr.

Clerk, Court of Civil Appeals of Alabama

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE COURT OF CIVIL APPEALS OF ALABAMA

Special
x~~October~~ Term, 19 75

Div. No. Civ. 515

To the Clerk ~~Register~~ of the Circuit Court,

Baldwin County—Greeting:

Whereas, the Record and Proceedings of the Circuit Court of said county, in a certain cause lately pending in said Court between

Daniel N. Slay, Appellant,

and

McKean Paint and Hardware Store, Inc., a Corporation, Appellee,

wherein by said Court it was considered adversely to said appellant, were brought before the Court of Civil Appeals, by appeal taken, pursuant to law, on behalf of said appellant:

NOW, IT IS HEREBY CERTIFIED, That upon consideration thereof the Court of Civil Appeals, on the 16th day of July, 19 75, affirmed said cause, in all respects, and ordered that appellant Daniel N. Slay

and Wilson M. Hawkins, Jr.

sureties for the costs of appeal, pay the costs of appeal in this Court and in the Court below.

It is further certified that, it appearing that said parties have waived their rights of exemption under the laws of Alabama, it was ordered that execution issue accordingly.

Witness, John H. Wilkerson, Jr., Clerk of the Court of Civil Appeals of Alabama, this the 16th day of July, 19 75

John H. Wilkerson, Jr.
Clerk of the Court of Civil Appeals of Alabama.

THE COURT OF CIVIL APPEALS
OF ALABAMA

Special
~~October~~ Term, 19 75

_____ Div., No. Civ. 515

Daniel N. Slay

_____
Appellant,

vs.

McKean Paint and Hardware

Store, Inc., a Corporation
Appellee.

From Baldwin Circuit *Court.*

5560

CERTIFICATE OF AFFIRMANCE

The State of Alabama,
Baldwin *County.* } *Filed*

FILED

this _____ *day of* _____ *19*____

NOV 17, 1975

UNICE B. BLACKMON CIRCUIT CLERK

BROWN PRINTING CO., MONTGOMERY

_____Div. No._____ CERTIFICATE OF APPEAL. (Civil Cases,)

No. 5560

BALDWIN County, Circuit Court.

McKEAN PAINT AND HARDWARE STORE, INC., A CORPORATION
Plaintiff.
vs.

DANIEL N. SLAY
Defendant.

I, Eunice B. Blackmon Clerk of Circuit Court, of Baldwin County, Alabama, hereby certify that in the cause of McKean Paint and Hardware Store, Inc., a corporation plaintiff, vs. Daniel N. Slay defendant, which was tried and determined in this Court on the 13th day of December 19 74, in which there was a judgment for Revived in the amount $493.84 with interest in the amount of $377.62 Dollars, in favor of the plaintiff, (or judgment for defendant,) the Lien on the 14th day of January 19 75, took an appeal to the Supreme Court of Alabama to be holden of and for said State.

I further certify that Daniel N. Slay filed security for cost of appeal, to the Supreme Court, on the 14th day of January 19 75, and that Wilson M. Hawkins, Jr., Daniel N. Slay, _____, are sureties on the appeal bond.

I further certify that notice of the said appeal was on the 20 day of January 1975, ~~served on~~ service accepted by James R. Owen as attorney of record for said appellee, and that the amount sued for was $733.84 Dollars. (Or certain lands) (Or personal property.)

Witness my hand and the seal of this Court, this the 20 day of January 1975.

Eunice B. Blackmon
Clerk of the Circuit Court of Baldwin County, Alabama.

AFFIDAVIT FOR GARNISHMENT ON JUDGMENT

STATE OF ALABAMA : CIRCUIT COURT OF

COUNTY OF BALDWIN : BALDWIN COUNTY, ALABAMA

Personally appeared before me, Eunice B. Blackmon, Clerk of the Circuit Court in and for Baldwin County and State aforesaid, James R. Owen, who being duly sworn on oath says, that on the 15th day of July, 1963, McKean Paint and Hardware Store, Inc. recovered judgment against Daniel N. Slay for the sum of SEVEN HUNDRED THIRTY THREE AND 84/100 ($733.84) DOLLARS besides cost of suit; that said judgment remains wholly unsatisfied and that a motion having been filed to revive the judgment, this Court has ordered that the process of garnishment be issued during the pendency of said motion; and that,

Honorable John E. Mandeville
Clerk, Circuit Court of
Mobile County
Mobile, Alabama

Don Hicks
1019 South Beltline Highway
Mobile, Alabama

T. O. Howell, Jr., Esquire
Post Office Box 1643
903 Commercial Guaranty
Bank Building
Mobile, Alabama 36601

Robert E. Mills
I-65 Motor Company
Corner of Cottage Hill Road
and West I-65 Service Road
Mobile, Alabama

Charles H. Erwin, Esquire
402 First Federal Tower
Mobile, Alabama 36606

Wilson M. Hawkins, Jr.
Post Office Box 4492
958 Dauphin Street
Mobile, Alabama 36604

are supposed to be indebted to or have effects of the said defendant, Daniel N. Slay, in their possession, or under their control, and that he believes process of garnishment against said garnishees is necessary to obtain satisfaction of said judgment.

James R. Owen
Post Office Drawer C
Bay Minette, Alabama 36507

Of Counsel:

OWEN AND BALL

Sworn to and subscribed this
_____ day of _____, 1974.

_____
Clerk

AFFIDAVIT FOR GARNISHMENT ON JUDGMENT

STATE OF ALABAMA : CIRCUIT COURT OF

COUNTY OF BALDWIN : BALDWIN COUNTY, ALABAMA

Personally appeared before me, Eunice B. Blackmon, Clerk of the Circuit Court in and for Baldwin County and State aforesaid, James R. Owen, who being duly sworn on oath says, that on the 15th day of July, 1963, McKean Paint and Hardware Store, Inc. recovered judgment against Daniel N. Slay for the sum of SEVEN HUNDRED THIRTY THREE AND 84/100 ($733.84) DOLLARS besides cost of suit; that said judgment remains wholly unsatisfied and that a motion having been filed to revive the judgment, this Court has ordered that the process of garnishment be issued during the pendency of said motion; and that,

Mr. Ben Bailey
c/o Colonial Inn
Bay Minette, Alabama

First National Bank of Bay Minette
Bay Minette, Alabama

are supposed to be indebted to or have effects of the said defendant, Daniel N. Slay, in their possesion, or under their control, and that he believes process of garnishment against said garnishees is necessary to obtain satisfaction of said judgment.

James R. Owen
Post Office Drawer C
Bay Minette, Alabama 36507

Of Counsel:

OWEN AND BALL

Sworn to and subscribed this
22 day of May 1974.

Eunice B. Blackmon
Clerk

MCKEAN PAINT AND HARDWARE STORE, INC., a corporation,	)	IN THE CIRCUIT COURT OF
	)	BALDWIN COUNTY, ALABAMA
Plaintiff,	)	AT LAW
vs.	)	
DANIEL N. SLAY,	)	
Defendant.	)	CASE NO._____

MOTION FOR DEFAULT JUDGMENT

Comes now the plaintiff in the above styled cause and moves the Court to enter a judgment by default and as grounds for said motion says as follows:

1. The defendant has failed to answer the plaintiff's complaint within the required period of time as required by the rules of this Honorable Court.

INGE, TWITTY & DUFFY

By Sydney R. Prince III

Sydney R. Prince, III
Attorney for Plaintiff

GARNISHMENT ON JUDGMENT

THE STATE OF ALABAMA
BALDWIN COUNTY

CIRCUIT COURT, BALDWIN COUNTY
SPRING TERM, 1974

To any Sheriff of the State of Alabama, Greetings:

WHEREAS, on, to-wit, the 15th day of July, 1963, McKean Paint and Hardware Store, Inc. recovered judgment against Daniel N. Slay for the sum of SEVEN HUNDRED THIRTY THREE AND 84/100 ($733.84) DOLLARS and costs of suit, an affidavit having been made by James R. Owen, Attorney, that process of garnishment is believed to be necessary to obtain satisfaction of said judgment, and that the following named persons or corporations, viz:

Honorable John E. Mandeville
Clerk, Circuit Court of Mobile County
Mobile, Alabama

Don Hicks
1019 South Beltline Highway
Mobile, Alabama

T. O. Howell, Esquire
Post Office Box 1643
903 Commercial Guaranty Bank Building
Mobile, Alabama

Robert E. Mills
I-65 Motor Company
Corner of Cottage Hill Road and West I-65 Service Road
Mobile, Alabama

Charles H. Erwin, Esquire
402 First Federal Tower
Mobile, Alabama

Wilson M. Hawkins, Jr.
Post Office Box 4492
958 Dauphin Street
Mobile, Alabama

have or are believed to have in their possesion, or under their control, money or effects belonging to said defendant, Daniel N. Slay, or that

they are, or are believed to be indebted to said defendant, Daniel N. Slay, or to be liable to him, on a judgment, on a contract for the delivery of personal property, on a contract for the payment ofmoney on a contract for the payment of money which may be discharged by the delivery of personal property, or which is payable in personal property.

You are therefore hereby commanded to summon:

Honorable John E. Mandeville
Clerk, Circuit Court of Mobile County
Mobile, Alabama

Don Hicks
1019 South Beltline Highway
Mobile, Alabama

T. O. Howell, Jr., Esquire
Post Office Box 1643
903 Commercial Guaranty Bank Building
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Corner of Cottage Hill Road and West I-65 Service Road
Mobile, Alabama

Charles H. Erwin, Esquire
402 First Federal Tower
Mobile, Alabama 36606

Wilson M. Hawkins, Jr.
Post Office Box 4492
958 Dauphin Street
Mobile, Alabama 36604

to file an answer in duplicate to the Circuit Court of Baldwin County, at the Courthouse thereof, in the City of Bay Minette, within thirty (30) days from the service of the garnishment, or at the making of such answer, or at any time intervening the time of serving the garnishment, and making the answer that respective garnishee was or was not indebted to said defendant, Daniel N. Slay, and whether said garnishee will not be indebted in the future to said defendant, Daniel N. Slay, by a judgment, by a contract then existing, or otherwise, and whether by a judgment, contract then existing, or otherwise, said garnishee is liable to said defendant for the payment of

money, for the delivery of personal property or for the payment of money which may be discharged by the delivery of personal property, or which is payable in personal property and whether said garnishee has not in his possession or under his control money or effects belonging to the defendant, Daniel N. Slay.

Herein fail not, and have you then and there this Writ.

Witness, Eunice B. Blackmon, Clerk, Clerk of this Court, this 22 day of May, A. D., 1974. Issued 22nd day of May A. D., 1974.

ATTEST:

Eunice B. Blackmon
Clerk

Hilda Baldwin Co. Farm.
#5560

For: NP
Don Hicks
1019 S. Bellline Hwy.
Out of Business

GARNISHMENT ON JUDGMENT

THE STATE OF ALABAMA
BALDWIN COUNTY

CIRCUIT COURT, BALDWIN COUNTY
SPRING TERM, 1974

To any Sheriff of the State of Alabama, Greetings:

WHEREAS, on, to-wit, the 15th day of July, 1963, McKean Paint and Hardware Store, Inc. recovered judgment against Daniel N. Slay for the sum of SEVEN HUNDRED THIRTY THREE AND 84/100 ($733.84) DOLLARS and costs of suit, an affidavit having been made by James R. Owen, Attorney, that process of garnishment is believed to be necessary to obtain satisfaction of said judgment, and that the following named persons or corporations, viz:

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Mobile, Alabama

Charles H. Erwin, Esquire
402 First Federal Tower
Mobile, Alabama

Wilson M. Hawkins, Jr.
Post Office Box 4492
958 Dauphin Street
Mobile, Alabama

have or are believed to have in their possesion, or under their control, money or effects belonging to said defendant, Daniel N. Slay, or that

they are, or are believed to be indebted to said defendant, Daniel N. Slay, or to be liable to him, on a judgment, on a contract for the delivery of personal property, on a contract for the payment ofmoney on a contract for the payment of money which may be discharged by the delivery of personal property, or which is payable in personal property.

You are therefore hereby commanded to summon:

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Clerk, Circuit Court of Mobile County
Mobile, Alabama

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Mobile, Alabama

Charles H. Erwin, Esquire
402 First Federal Tower
Mobile, Alabama 36606

Wilson M. Hawkins, Jr.
Post Office Box 4492
958 Dauphin Street
Mobile, Alabama 36604

to file an answer in duplicate to the Circuit Court of Baldwin County, at the Courthouse thereof, in the City of Bay Minette, within thirty (30) days from the service of the garnishment, or at the making of such answer, or at any time intervening the time of serving the garnishment, and making the answer that respective garnishee was or was not indebted to said defendant, Daniel N. Slay, and whether said garnishee will not be indebted in the future to said defendant, Daniel N. Slay, by a judgment, by a contract then existing, or otherwise, and whether by a judgment, contract then existing, or otherwise, said garnishee is liable to said defendant for the payment of

money, for the delivery of personal property or for the payment of money which may be discharged by the delivery of personal property, or which is payable in personal property and whether said garnishee has not in his possession or under his control money or effects belonging to the defendant, Daniel N. Slay.

Herein fail not, and have you then and there this Writ.

Witness, Eunice B. Blackmon, Clerk, Clerk of this Court, this 22 day of May, A. D., 1974. Issued 22 day of May A. D., 1974.

ATTEST:

Eunice B. Blackmon
Clerk

GARNISHMENT ON JUDGMENT

THE STATE OF ALABAMA
BALDWIN COUNTY

CIRCUIT COURT, BALDWIN COUNTY
SPRING TERM, 1974

To any Sheriff of the State of Alabama, Greetings:

WHEREAS, on, to-wit, the 15th day of July, 1963, McKean Paint and Hardware Store, Inc. recovered judgment against Daniel N. Slay for the sum of SEVEN HUNDRED THIRTY THREE AND 84/100 ($733.84) DOLLARS and costs of suit, an affidavit having been made by James R. Owen, Attorney, that process of garnishment is believed to be necessary to obtain satisfaction of said judgment, and that the following named persons or corporations, viz:

Mr. Ben Bailey
c/o Colonial Inn
Bay Minette, Alabama

First National Bank of Bay Minette
Bay Minette, Alabama

have or are believed to have in their possession, or under their control, money or effects belonging to said defendant, Daniel N. Slay, or that they are, or are believed to be indebted to said defendant, Daniel N. Slay, or to be liable to him, on a judgment, on a contract for the delivery of personal property, on a contract for the payment of money on a contract for the payment of money which may be discharged by the delivery of personal property, or which is payable in personal property.

You are therefore hereby commanded to summon:

Mr. Ben Bailey
c/o Colonial Inn
Bay Minette, Alabama

First National Bank of Bay Minette
Bay Minette, Alabama

to file an answer in duplicate to the Circuit Court of Baldwin County, at the Courthouse thereof, in the City of Bay Minette, within thirty (30) days from the service of the garnishment, or at the making of such answer, or at any time intervening the time of serving the garnishment, and making the answer that respective garnishee was or was not indebted to said defendant, Daniel N. Slay, and whether said garnishee will not be indebted in the future to said defendant, Daniel N. Slay, by a judgment, by a contract then existing, or otherwise, and whether by a judgment, contract, then existing, or otherwise, said garnishee is liable to said defendant for the payment of money, for the delivery of personal property or for the payment of money which may be discharged by the delivery of personal property, or which is payable in personal property and whether said garnishee has not in his possession or under his control money or effects belonging to the defendant, Daniel N. Slay.

Herein fail not, and have you then and there this Writ.

Witness, Eunice B. Blackmon, Clerk, Clerk of this Court, this 22nd day of May, A.D., 1974. Issued 22nd day of May, A.D., 1974.

ATTEST:

Eunice B. Blackmon
Clerk

WILSON M. HAWKINS, JR.
ATTORNEY AT LAW
SUITE 205, VAN ANTWERP BUILDING
MOBILE, ALABAMA 36602
(205) 438-9706

January 14, 1975

Mrs. Eunice B. Blackmon
Clerk of the Circuit Court
Baldwin County Court House
Bay Minette, Alabama

Re: McKean Paint & Hardware Store, Inc.
Vs: Daniel N. Slay #5560

Dear Mrs. Blackmon:

Enclosed herewith please find Notice of Appeal which we have filed in the above styled cause. Pursuant to Title 7, Section 6, 767, please prepare for the appellant a full and complete transcript of the record and proceedings in this cause.

The appellant specifically desires to have a copy of the transcript for his own use as well as the other two copies provided by law.

Very truly yours,

WILSON M. HAWKINS, JR.

WMHJr/jkl

cc: Mrs. Dusenbury

FILED

JAN 14 1975

EUNICE B. BLACKMON CIRCUIT CLERK

WILSON M. HAWKINS, JR.
ATTORNEY AT LAW
SUITE 205, VAN ANTWERP BUILDING
MOBILE, ALABAMA 36602
(205) 438-9706

January 14, 1975

Mr. James R. Owen
Attorney At Law
P. O. Drawer C
Bay Minette, Alabama 36507

Re: McKean Paint & Hardware Store, Inc.
Vs: Daniel N. Slay #5560

Dear Jimmy:

I enclose herewith a copy of our notice of appeal and cost bond for an appeal to the Supreme Court of the State of Alabama from the judgment entered in the above styled cause.

Also enclosed herewith is a check drawn on Taylor D. Wilkins, Jr., in the sum of $873.96, which represents the judgment amount plus interest. This payment is being made solely to prevent you or McKean Paint & Hardware Store, Inc. from issuing an execution against Daniel N. Slay; and Daniel N. Slay specifically reserves his right to appeal as is shown by the notice of appeal which has been filed with the Clerk of the Circuit Court of Baldwin County, Alabama.

By separate check to Mrs. Blackmon we are paying the court costs incurred and billed to us for the sole purpose of preventing execution by the Clerk for the costs incurred in this matter.

Very truly yours,

WILSON M. HAWKINS, JR.

FILED
JAN 14 1975
EUNICE B. BLACKMON CIRCUIT CLERK

WMHJr/jkl

cc: Mrs. Eunice Blackmon

n/

MCKEAN PAINT AND HARDWARE STORE, INC., a corporation,	)	IN THE CIRCUIT COURT OF
Plaintiff,	)	BALDWIN COUNTY, ALABAMA
	)	AT LAW
vs.	)	
DANIEL N. SLAY,	)	
Defendant.		CASE NO._____

MOTION FOR DEFAULT JUDGMENT

Comes now the plaintiff in the above styled cause and moves the Court to enter a judgment by default and as grounds for said motion says as follows:

1. The defendant has failed to answer the plaintiff's complaint within the required period of time as required by the rules of this Honorable Court.

INGE, TWITTY & DUFFY

By Sydney R. Prince

Sydney R. Prince, III
Attorney for Plaintiff

Filed
7-15-63
Alice J. Hurk, Clerk

GARNISHMENT ON JUDGMENT

THE STATE OF ALABAMA
BALDWIN COUNTY

CIRCUIT COURT, BALDWIN COUNTY
SPRING TERM, 1974

To any Sheriff of the State of Alabama, Greetings:

WHEREAS, on, to-wit, the 15th day of July, 1963, McKean Paint and Hardware Store, Inc. recovered judgment against Daniel N. Slay for the sum of SEVEN HUNDRED THIRTY THREE AND 84/100 ($733.84) DOLLARS and costs of suit, an affidavit having been made by James R. Owen, Attorney, that process of garnishment is believed to be necessary to obtain satisfaction of said judgment, and that the following named persons or corporations, viz:

Honorable John E. Mandeville
Clerk, Circuit Court of Mobile County
Mobile, Alabama

Don Hicks
1019 South Beltline Highway
Mobile, Alabama

T. O. Howell, Esquire
Post Office Box 1643
903 Commercial Guaranty Bank Building
Mobile, Alabama

Robert E. Mills
I-65 Motor Company
Corner of Cottage Hill Road and West I-65 Service Road
Mobile, Alabama

Charles H. Erwin, Esquire
402 First Federal Tower
Mobile, Alabama

Wilson M. Hawkins, Jr.
Post Office Box 4492
958 Dauphin Street
Mobile, Alabama

have or are believed to have in their possesion, or under their control, money or effects belonging to said defendant, Daniel N. Slay, or that

they are, or are believed to be indebted to said defendant, Daniel N. Slay, or to be liable to him, on a judgment, on a contract for the delivery of personal property, on a contract for the payment ofmoney on a contract for the payment of money which may be discharged by the delivery of personal property, or which is payable in personal property.

You are therefore hereby commanded to summon:

Honorable John E. Mandeville
Clerk, Circuit Court of Mobile County
Mobile, Alabama

Don Hicks
1019 South Beltline Highway
Mobile, Alabama

T. O. Howell, Jr., Esquire
Post Office Box 1643
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Mobile, Alabama 36606

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958 Dauphin Street
Mobile, Alabama 36604

to file an answer in duplicate to the Circuit Court of Baldwin County, at the Courthouse thereof, in the City of Bay Minette, within thirty (30) days from the service of the garnishment, or at the making of such answer, or at any time intervening the time of serving the garnishment, and making the answer that respective garnishee was or was not indebted to said defendant, Daniel N. Slay, and whether said garnishee will not be indebted in the future to said defendant, Daniel N. Slay, by a judgment, by a contract then existing, or otherwise, and whether by a judgment, contract then existing, or otherwise, said garnishee is liable to said defendant for the payment of

money, for the delivery of personal property or for the payment of money which may be discharged by the delivery of personal property, or which is payable in personal property and whether said garnishee has not in his possession or under his control money or effects belonging to the defendant, Daniel N. Slay.

Herein fail not, and have you then and there this Writ.

Witness, Eunice B. Blackmon, Clerk, Clerk of this Court, this 22nd day of May, A. D., 1974. Issued 22nd day of May A. D., 1974.

ATTEST:

Eunice B. Blackmon
Clerk

J.J. Baldwin Co. Farm.
#5560

For: NF
Robert E. Mills
I-65 Motor Co.
Corner of Cottage Hill
and West I-65 Service
Road

Not Here NF
2D
#5456

CITATION OF APPEAL

Moore Printing Co. - Bay Minette, Ala

THE STATE OF ALABAMA,
Baldwin County - Circuit Court

TO ANY SHERIFF OF THE STATE OF ALABAMA—GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the 13th day of December ~~Monday xxxx~~, 19 74, in a certain cause in said Court wherein McKEAN PAINT AND HARDWARE STORE, INC., A CORP. Plaintiff, and DANIEL N. SLAY Defendant, a judgment was rendered against said Daniel N. Slay to reverse which Judgment, the said Daniel N. Slay applied for and obtained from this office an APPEAL, returnable to the next Term of our Supreme Court of the State of Alabama, to be held at Montgomery, on the ..... day of ....., 19..... next, and the necessary bond having been given by the said Daniel N. Slay with Wilson M. Hawkins, Jr., sureties.

Now, You Are Hereby Commanded, without delay, to cite the said Plaintiff or James R. Owen, attorney, to appeear at the next Term of our said Supreme Court, to defend against the said Appeal, if they think proper.

Witness, EUNICE B. BLACKMON, Clerk of the Circuit Court of said County, this 16th day of January, A. D., 19 75

Attest:

Eunice B. Blackmon Clerk

Service accepted 1/20/75
James R. Owen
Atty for McKean Paint & Hardware Store, Inc

INGE, TWITTY & DUFFY
LAWYERS

THOS. E. TWITTY
FRANCIS H. INGE (1902-1959)
RICHARD H. INGE
THOS. E. TWITTY, JR.
JAMES J. DUFFY, JR.
SYDNEY R. PRINCE, III

MERCHANTS NATIONAL BANK BUILDING
MOBILE, ALABAMA

MAILING ADDRESS:
P. O. BOX 1109
MOBILE, ALA.

CABLE ADDRESS:
TWINING
TELEPHONE:
HEMLOCK 3-5441

May 1, 1963

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

Re: McKean Paint and Hardware Store, Inc.
v. Daniel N. Slay

Dear Mrs. Duck:

Enclosed herewith are an original and two copies of a complaint prepared by us attorneys for McKean Paint and Hardware Store. Please file same for us. The Defendant may be served at Mullet Point, Alabama. A reliable source tells me that Mr. Slay lives two doors from Ben J. Dreading at Mullet Point.

We have reason to believe that this man will be very difficult to serve and that he will attempt to avoid the deputy if possible. We would appreciate it if you would ask the sheriff to serve this defendant as soon as possible.

Thank you for your kind cooperation.

Cordially yours,

Sydney R. Prince, III
for
INGE, TWITTY & DUFFY

SRP, III:lfg

Enclosures

5560

Please Return to
Mrs. Duck's office

COLLINS, GALLOWAY & MURPHY
ATTORNEYS AT LAW
958 DAUPHIN STREET
MOBILE, ALABAMA 36604

FRED G. COLLINS
THOMAS M. GALLOWAY
M. THOMAS MURPHY (1924 - 1956)
ROBERT H. SMITH
WILSON M. HAWKINS, JR.
THOMAS M. GALLOWAY, JR.

P. O. BOX 4492
TELEPHONE
432-0568
AREA CODE 205

June 17, 1974

Ms. Eunice Blackmon
Clerk, Circuit Court
Baldwin County Court House
Bay Minette, Alabama

Re: McKean Paint and Hardware Store, Inc.
Vs: Daniel N. Slay
Case No. 5560

Dear Ms. Blackmon:

Enclosed herewith is the original of the "Answer to Motion to Revive", "Motion to Strike Garnishment" and "Answer of Garnishment" in the above referenced matter. Please file the same and indicate that this has been done by returning the carbon copy of this letter in the enclosed self-addressed, stamped envelope.

Thank you very much.

no envelope enclosed sorry No return

Very truly yours,

COLLINS, GALLOWAY & MURPHY

BY: _____
Wilson M. Hawkins, Jr.

WMHJr/jkl
Enclosures

COLLINS, GALLOWAY & MURPHY
ATTORNEYS AT LAW
958 DAUPHIN STREET
MOBILE, ALABAMA 36604

FRED G. COLLINS
THOMAS M. GALLOWAY
M. THOMAS MURPHY (1924 - 1956)
ROBERT H. SMITH
WILSON M. HAWKINS, JR.
THOMAS M. GALLOWAY, JR.

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June 17, 1974

Ms. Eunice Blackmon
Clerk, Circuit Court
Baldwin County Court House
Bay Minette, Alabama

Re: McKean Paint and Hardware Store, Inc.
Vs: Daniel N. Slay
Case No. 5560

Dear Ms. Blackmon:

Enclosed herewith is the original of the "Answer to Motion to Revive", "Motion to Strike Garnishment" and "Answer of Garnishment" in the above referenced matter. Please file the same and indicate that this has been done by returning the carbon copy of this letter in the enclosed self-addressed, stamped envelope.

Thank you very much.

Very truly yours,

COLLINS, GALLOWAY & MURPHY

BY: Wilson M. Hawkins, Jr.

WMHJr/jkl
Enclosures

INGE, TWITTY & DUFFY
LAWYERS

THOS. E. TWITTY
FRANCIS H. INGE (1902-1959)
RICHARD H. INGE
THOS. E. TWITTY, JR.
JAMES J. DUFFY, JR.
SYDNEY R. PRINCE, III

MERCHANTS NATIONAL BANK BUILDING
MOBILE, ALABAMA

MAILING ADDRESS:
P. O. BOX 1109
MOBILE, ALA.

CABLE ADDRESS:
TWINING
TELEPHONE:
HEMLOCK 3-5441

June 21, 1963

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

Re: McKean Paint and Hardware v.
Daniel N. Slay; Case No. 5560

Dear Mrs. Duck:

This office was notified by your office that personal service was had on Mr. Slay on May 17, 1963. I am enclosing herewith a motion for default judgment in that matter if such a motion is appropriate. Thirty days has passed since the defendant was served in this case and to my knowledge no answer has been filed.

Yours very truly,

Sydney R. Prince 5

Sydney R. Prince, III
for
INGE, TWITTY & DUFFY

SRP, III:lfg

Enclosure

MOBILE STORE, INC., a corporation,	)	BALDWIN COUNTY, ALABAMA
Plaintiff,	)	AT LAW
vs.	)	
DANIEL N. SLAY,	)	
Defendant.	)	CASE NO._____

COMPLAINT

COUNT ONE

Plaintiff claims of the Defendant SIX HUNDRED THIRTY EIGHT and 14/100 ($638.14) DOLLARS, due from him by account on the 1st day of September, 1961, which sum of money, with interest thereon, is still unpaid.

COUNT TWO

Plaintiff claims of the Defendant SIX HUNDRED THIRTY EIGHT and 14/100 ($638.14) DOLLARS, due from him on account stated between the Plaintiff and the Defendant on the 1st day of September, 1961, which sum of money, with interest thereon, is still unpaid.

COUNT THREE

Plaintiff claims of the Defendant SIX HUNDRED THIRTY EIGHT and 14/100 ($638.14) DOLLARS, for work and labor done for the Defendant by the Plaintiff on the 1st day of September, 1961, at his request, which sum of money, with interest thereon is still unpaid.

INGE, TWITTY & DUFFY

By Sydney R. Prince, III
Sydney R. Prince, III
Attorneys for the Plaintiff

FILED
MAY 3 1963
ALICE J. DUCK, CLERK REGISTER

IN THE CIRCUIT COURT OF BALDWIN COUNTY
ALABAMA

McKEAN PAINT AND HARDWARE STORE, INC., a corporation,	:	
Plaintiff,	:	
vs.	:	CIVIL ACTION NO. 5560
DANIEL N. SLAY,	:	
Defendant.	:	

MOTION FOR LEAVE TO AMEND MOTION TO REVIVE JUDGMENT

Comes now the plaintiff in the above styled cause and shows unto the Court as follows:

The plaintiff owns a judgment obtained in the Court in case No. 5560 on the 15th day of July, 1963, for the sum of Seven Hundred Thirty Three and 84/100 ($733.84) Dollars against the above named defendant; and that said judgment remains unpaid and unsatisfied to the extent of Four Hundred Ninety Three and 84/100 ($493.84) Dollars. Exhibit I attached hereto and made a part hereof is the sworn supplemental affidavit of George H. McKean, President of McKean Paint and Hardware Store, Inc., stating that a credit toward the judgment was given the defendant for partial payments made during the period July, 1963 through December, 1963.

Wherefore, plaintiff prays that the Court grant the plaintiff leave to amend plaintiff's motion to revive judgment filed May 20, 1974, and servedon the defendant May 28, 1974, to reflect the partial payment of the defendant on the judgment and that such judgment be revived in the amount of Four Hundred Ninety Three and 84/100 ($493.84) Dollars plus interest and costs.

James R. Owen
Post Office Drawer C
Bay Minette, Alabama 36507

Of Counsel:
OWEN AND BALL

Filed; July 3, 1974
Lafair G. Washburn
Judge

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all parties to this proceeding, by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this 3 day of July, 1974.

Attorney for Relator

EXHIBIT I

STATE OF ALABAMA

COUNTY OF MOBILE

SUPPLEMENTAL AFFIDAVIT BY GEORGE H. McKEAN
PRESIDENT OF McKEAN PAINT AND HARDWARE STORE, INC.

Personally appeared before me, the undersigned authority in and for said county in said state, George H. McKean, who is known to me, and who, after having been duly sworn by me according to law, doth depose and say upon his oath that he is the President and Treasurer of McKean Paint and Hardware Store, Inc. and that he is familiar with the books and records of said corporation, and that he has been over the records relative to that certain judgment against Daniel N. Slay in the amount of $733.84 which was rendered on the 15th day of July, 1963, by the Circuit Court of Baldwin County, Alabama, in Case No. 5560 styled "McKean Paint and Hardware Store, Inc., a corporation, Plaintiff, vs. Daniel N. Slay, defendant" and says that after a further search of the books and records of said corporation a partial credit in the amount of $240.00 has been given to the defendant for payments made during the period July, 1963 through December, 1963 resulting in a balance due on said judgment in the amount of $493.84 plus interest and costs.

George H. McKean
GEORGE H. McKEAN

Sworn to and subscribed before me on this, the 2nd day of July, 1974.

Betty Richards Nauchman
Notary Public

IN THE CIRCUIT COURT OF BALDWIN COUNTY
ALABAMA

McKEAN PAINT AND HARDWARE STORE, INC., a corporation,	:	
Plaintiff,	:	
vs.	:	CIVIL ACTION NO. 5560
DANIEL N. SLAY,	:	
Defendant.	:	

JUDGMENT OF REVIVOR

This cause coming on to be heard upon the motion of McKean Paint and Hardware Store, Inc., Plaintiff - Movant, to revive the judgment heretofore rendered in the above entitled cause and described in said motion.

Now come the parties, and it being made to appear to the Court that on, to-wit, July 15, 1963, a judgment was rendered in this Court in favor of the plaintiff, the movant, and against the defendant, Daniel N. Slay, in said cause, for the sum of $733.84, beside the further sum of $26 cost of court; that a partial payment has been made by defendant to the plaintiff in the amount of $240.00 in reduction of said judgment leaving a balance owed on the judgment in the amount of $493.84; and it further appearing to the Court that service was made upon the defendant to appear within the time required by law, to show cause, if any, why said judgment should not be revived, and that the defendant having failed to show said cause, and the Court being of the opinion that said motion should be rendered, it is, therefore,

CONSIDERED, ORDERED and ADJUDGED by the Court, and it is the judgment of the Court, that said judgment of $733.84 heretofore rendered in said cause on July 15, 1963, be hereby revived in the amount of $493.84 in favor of the plaintiff, against the defendant,

Daniel N. Slay, together with interest from July 15, 1963, and cost, and that execution or executions may issue thereon, and that all of the liens required in the premises be reserved. It is further,

CONSIDERED, ORDERED and ADJUDGED by the Court, and it is the judgment of the Court, that the plaintiff aforesaid have and recover of Daniel N. Slay the cost on this behalf expended, for all of which execution may issue.

Dated this 9th day of August, 1974.

Julian A. Washburn
Circuit Judge

FILED
AUG 9 1974
EUNICE B. BLACKMON CIRCUIT CLERK

Order
+
thru
V

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

McKEAN PAINT AND HARDWARE STORE, INC., a corporation,	:	
Plaintiff,	:	CIVIL ACTION NO. 5560
VS:	:	
DANIEL N. SLAY,		
Defendant.	:	

AFFIDAVIT

STATE OF ALABAMA:
BALDWIN COUNTY:

Personally appeared before me the undersigned authority in and for said County and State, Daniel N. Slay, who is known to me and who after being duly sworn by me doth depose and say upon his oath that the Plaintiff herein is not entitled to revive its judgment because I paid Harold McKean during 1973 or the early part of 1974. The exact date I cannot recall inasmuch as it has been quite a long time ago but I did give him $700.00 during this period. This payment was to satisfy any bills I had with Harold on account of any boat equipment I bought from him.

Daniel N. Slay
Daniel N. Slay

Subscribed and sworn to before me this 21st day of August, 1974.

Wilma Maxwell Hawkins
Notary Public

FILED

AUG 23 1974

EUNICE B. BLACKMON CIRCUIT CLERK

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

McKEAN PAINT AND HARDWARE STORE, INC., a corporation,	)	
Plaintiff,	)	
VS.	)	CIVIL ACTION NO. 5560
DANIEL N. SLAY,	)	
Defendant.	)	

JUDGMENT

This cause coming on to be heard on this date to revive the judgment heretofore rendered in the above styled cause and now come the parties and their attorneys and it being made to appear to the court that on to-wit: July 15, 1963 a judgment was rendered in this court in favor of the Plaintiff and against the Defendant in said cause for the sum of $733.84 besides the further sum of $26.00 costs of court; that a partial payment has been made by the Defendant to the Plaintiff in the amount of $240.00 in reduction of said judgment leaving a balance owed on the judgment of $493.84; together with interest and costs, it is, therefore,

ORDERED AND ADJUDGED by the court and it is the judgment of the court, that said judgment of $733.84 heretofore rendered in said cause on July 15, 1963 is hereby revived in the amount of $493.84 in favor of the Plaintiff and against the Defendant together with interest from July 15, 1963 in the amount of $377.62; the court costs of the original action in the amount of $26.00 and the costs of this action in the amount of $ 73.90 making a total of $ 971.36 for which execution may issue.

Dated this the ~~9th~~ 13th day of December, 1974.

Julian McPhillips
Circuit Judge

order
see DJ

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

McKEAN PAINT AND HARDWARE STORE, INC., a corporation,	:	
Plaintiff,	:	
VS:	:	CIVIL ACTION NO. 5560
DANIEL N. SLAY,	:	
Defendant.	:	

NOTICE OF APPEAL

COMES NOW the Defendant, Daniel N. Slay, in the above styled cause and gives notice of appeal to the Supreme Court of Alabama from the following judgments, orders, or decrees, separately and severally:

1. That judgment, order or decree, of the Circuit Court of Baldwin County, Alabama, entered on the 13th day of December, 1974, upon the Judge's verdict in this cause.

WILSON M. HAWKINS, JR., Attorney for the Defendant, DANIEL N. SLAY

BY: _____
Wilson M. Hawkins, Jr.

205 Van Antwerp Building
Mobile, Alabama 36602
438-9706

I hereby certify that I have on this the 14th day of January, 1975, served a copy of the foregoing Notice of Appeal upon the attorney for the Plaintiff, James R. Owen, by hand delivering a copy of the foregoing Notice of Appeal to the said James R. Owen at 410 Courthouse Square, Bay Minette, Alabama, on this 14th day of January, 1975.

_____
Wilson M. Hawkins, Jr.

FILED

JAN 14 1975

EUNICE B. BLACKMON CIRCUIT CLERK

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

McKEAN PAINT AND HARDWARE STORE, INC., a corporation,	:	
Plaintiff,	:	CIVIL ACTION NO. 5560
VS:		
DANIEL N. SLAY,	:	
Defendant.	:	

SECURITY FOR COST OF APPEAL TO THE SUPREME COURT OF ALABAMA

We, the undersigned, hereby acknowledge ourselves security for costs of appeal to the Supreme Court of Alabama from the following judgments, orders or decrees, separately and severally:

1. A judgment, order or decree of the Circuit Court of Baldwin County, Alabama, entered on the 13th day of December, 1974, upon the Judge's verdict in said cause; and we hereby agree to pay such costs. For payment of this bond we hereby waive our right of exemption to personal property under the constitution and the laws of the State of Alabama.

Witness our hands this 14th day of January, 1975.

FILED

JAN 14 1975

EUNICE B. BLACKMON CIRCUIT CLERK

Daniel N. Slay

Daniel N. Slay

Surety, Wilson M. Hawkins, Jr.

Taken and approved this 14 day of Jan., 1975.

Eunice B. Blackmon

Circuit Clerk

January 14,1975-

I, John E. Mandeville, Clerk of the Circuit Court of Mobile County, Alabama, hereby certify that if the above bond were presented to me, that I would accept same as good and sufficient.

John E. Mandeville

CLERK, CIRCUIT COURT, MOBILE COUNTY, ALABAMA.

Clerk's Note No Supersedeas Bond - Judgment being satisfied -

McKEAN PAINT AND HARDWARE STORE, INC.,	:	IN THE CIRCUIT COURT OF
	:	BALDWIN COUNTY, ALABAMA
Plaintiff,	:	
VS:		
DANIEL N. SLAY,	:	
Defendant.	:	CASE NO. 5 5 6 0

ANSWER TO MOTION TO REVIVE

Comes now the defendant, Daniel N. Slay, and denies that the plaintiff is entitled to revive the judgment mentioned in its motion. The defendant is not able to admit or deny the allegation in the affidavit of G.H. McKean because a copy thereof has not been served on him and neither will the plaintiff furnish him with one.

COLLINS, GALLOWAY & MURPHY

BY: _____
Wilson M. Hawkins, Jr.
ATTORNEYS FOR DEFENDANT

P.O. Box 4492 - 958 Dauphin St.
Mobile, Alabama 36604

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 18 day of _____, 1974, served a copy of the foregoing on James Owens, Attorney for the plaintiff, by mailing the same by United States Mail, properly addressed to Post Office Drawer C, Bay Minette, Alabama, 36507, first class postage prepaid.

_____
Wilson M. Hawkins, Jr.

FILED

18 1974

JANICE B. BLACKMON CIRCUIT CLERK

McKEAN PAINT AND HARDWARE STORE, INC.,	:	IN THE CIRCUIT COURT OF
	:	BALDWIN COUNTY, ALABAMA
Plaintiff,	:	
VS:	:	
DANIEL N. SLAY,		
Defendant.	:	CASE NO. 5 5 6 0

MOTION TO STRIKE GARNISHMENT

Comes now the defendant, Daniel N. Slay, and moves to strike those garnishments heretofore issued in this case and for grounds thereof would show the following:

1. That the judgment made a basis of the garnishment is presumed satisfied and the issuance of the garnishment is illegal.

2. That the court holds no authority to issue the garnishment because the judgment is presumed satisfied.

3. That the plaintiff has not posted a bond in double the amount of the judgment as required by law.

4. That there is no unsatisfied judgment on which to base a garnishment.

5. That said garnishments are illegal and in violation of the laws of the State of Alabama.

WHEREFORE, the defendant moves the Court to recall the said garnishments pending a full hearing on the revival of said judgment.

COLLINS, GALLOWAY & MURPHY

BY: _____
Wilson M. Hawkins, Jr.
ATTORNEYS FOR DEFENDANT

P.O. Box 4492 - 958 Dauphin St.
Mobile, Alabama 36604

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 17 day of March, 1974, served a copy of the foregoing pleading on James Owens, Attorney for the plaintiff, by mailing the same by United States Mail, properly addressed to Post Office Drawer C, Bay Minette, Alabama, 36507, first class postage prepaid.

Wilson M. Hawkins, Jr.

FILED

18 1974

VICE B. BLACKMON CIRCUIT CLERK

IN THE CIRCUIT COURT OF BALDWIN COUNTY
ALABAMA

McKEAN PAINT AND HARDWARE STORE, INC., a corporation,	:	
Plaintiff,	:	
vs.	:	CIVIL ACTION NO. 5560
DANIEL N. SLAY,	:	
Defendant.	:	

MOTION TO REVIVE JUDGMENT

Comes now the plaintiff in the above styled cause and shows unto the Court as follows:

That plaintiff owns a judgment obtained in the Court in cause No. 5560 on the 15th day of July, 1963, for the sum of $733.84 against the above named defendant; and that said judgment remains unpaid and unsatisfied. Exhibit I attached hereto and made a part hereof is the sworn affidavit of George H. McKean, President of McKean Paint and Hardware Store, Inc. That original execution was issued August 7, 1963, and that said original execution had not been returned as of May 15, 1974; and that ten (10) years have elapsed since the issuance of said original execution.

Wherefore, plaintiff prays that defendant show cause, if any, within thirty (30) days why said judgment should not be in all things revived and execution issued on the same, and that upon the hearing of this motion, if no legal reason be shown why said judgment should not be revived, an order reviving the same be entered with provisions for execution.

~~Post Office~~ Box
~~Mobile~~, Alabama ~~36601~~
Bay Minette 36507

Of Counsel:
INGE, TWITTY, DUFFY & PRINCE

Plaintiff may be served at:

702 Artillery Range
Spanish Fort, Alabama 36527

FILED

MAY 20 1974

EUNICE B. BLACKMON CIRCUIT CLERK

NOTICE OF GARNISHMENT

MOORE Prtg. Co., Bay Minette

STATE OF ALABAMA
Baldwin County

TO Daniel N. Slay Defendant:

YOU ARE HEREBY NOTIFIED that a Writ of Garnishment has been issued in the case of

McKean Paint and Hardware Store, Inc., a corporation, Plaintiff

versus Daniel N. Slay, Defendant

now pending in the Circuit Court of Baldwin County, Alabama, Law Side, in which The Clerk of the Circuit Court, Mobile Co., Don Hicks, T. O. Howell, Jr., Robert E. Mills, Charles H. Erwin, Wilson M. Hawkins, Jr., Ben Bailey, and the First National Bank of Bay Minette

have been named as Garnishees.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal on this the 22 day of May, 19 74

Eunice B. Blackman
Clerk of the Circuit Court.

SUMMONS

MOORE Prtg. Co., Bay Minette

McKEAN PAINT AND HARDWARE STORE, INC.. A CORP.

Plaintiff

Vs.

DANIEL N. SLAY

Defendant

Circuit Court, Baldwin County, Alabama

Civil Action No...5560.....

....., 19.....

To Any Sheriff or any person authorized by Rule 4 (a) (3) of the Alabama Rules of Civil Procedure to effect service in the State of Alabama:

You are hereby commanded to serve this summons and a copy of the ~~complaint~~ Motion to Revive Judgment in this action upon defendant Daniel N. Slay

Each defendant is required to serve a copy of a written answer to the ~~complaint~~ Motion upon James R. Owen, attorney of record for the plaintiff whose address is P.O. Box C- Bay Minette, Alabama 36507 within thirty (30) days after service of this summons excluding the day of service of the summons and to file the original of said written answer with the Clerk of this Court at the time of service of the answer upon the attorney of record for the Plaintiff or within a reasonable time thereafter. If any defendant fails to do so, a judgment by default may be entered against that defendant for the relief complained of in the complaint.

Dated May 22, 1974

Eunice B. Blackmon
Clerk of Circuit Court

Civil Action No. 5560

STATE OF ALABAMA
BALDWIN COUNTY

CIRCUIT COURT

McKEAN PAINT & HARDWARE STORE, INC., A CORP.

Plaintiffs

vs.

DANIEL N. SLAY

Defendants

SUMMONS - Notice + Motion

Filed MAY 22, 19 74

Eunice B. Blackmon Clerk

James R. Owen
Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

Received In Office
MAY 22 1974
TAYLOR WILKINS
Sheriff

19

I have executed this summons
this MAY 28 19 74
by leaving a copy with
Daniel Slay

Sheriff claims 4.4 fees as
Ten Cents per mile Total $ 4.40
TAYLOR WILKINS, SHERIFF
BY

Sheriff

Deputy Sheriff

MOORE Prtg. Co., Bay Minette

INGE, TWITTY, DUFFY & PRINCE
LAWYERS
MERCHANTS NATIONAL BANK BUILDING
MOBILE, ALABAMA
36602

THOS. E. TWITTY
JAMES J. DUFFY, JR.
SYDNEY R. PRINCE, III
JOHN N. LEACH, JR.
GEORGE H. McKEAN
E. L. McCAFFERTY, III

FRANCIS H. INGE (1902-1959)

RICHARD H. INGE
COUNSEL

MAILING ADDRESS:
P. O. BOX 1109
MOBILE, ALA.
36601

CABLE ADDRESS:
TWINING
TELEPHONE
433-5441

May 29, 1974

COPY

Mr. Wilson M. Hawkins, Jr.
Attorney at Law
Post Office Box 4492
Mobile, Alabama 36604

Re: McKean Paint and Hardware Store, Inc.
vs. Daniel N. Slay
Case No. 5560

Dear Wilson:

In response to your telephone call of May 28, 1974, I understand that you will be representing the defendant, Daniel N. Slay, in the above referenced case, and that you would like for me to send you a copy of the Motion to Revive Judgment which was filed May 20, 1974, and the Motion for Order of Garnishment which was filed on or about May 22, 1974. It is also my understanding that you will not accept service on behalf of your client and that you have been told by your client that he has not yet been served. James R. Owen of Bay Minette, Alabama, is the attorney of record representing the plaintiff in this case.

Cordially,

GEORGE H. McKEAN

GHMcK/brm

Enclosures

cc: James R. Owen, Esquire
Clerk of the Circuit Court, Baldwin County, Alabama

McKEAN PAINT AND HARDWARE STORE, INC.,	:	IN THE CIRCUIT COURT OF
Plaintiff,	:	BALDWIN COUNTY, ALABAMA
VS:	:	
DANIEL N. SLAY,	:	
Defendant.	:	CASE NO. 5 5 6 0 1/2

ANSWER OF GARNISHMENT

Comes now the garnishee, Wilson M. Hawkins, Jr., and answers the garnishment heretofore served on him and says as follows:

1. That I am the attorney of record in a case styled Daniel N. Slay vs Don Hicks, et al, that was tried recently in the Mobile County Circuit Court. That a judgment was entered in favor of Daniel N. Slay for over $13,000.00. That none of the judgment has been collected. That I have only a lien for an attorney's fee in said judgment. That if any money is collected it will be subject to a garnishment issued against John E. Mandeville by the plaintiff, McKean Paint and Hardware Store, Inc. That we would welcome any efforts on McKean Paint and Hardware Store, Inc., to help collect this judgment.

2. That I do not anticipate having any property of Daniel N. Slay and have no contract with him now and will not come into possession of any money or property of his in the future.

WHEREFORE, Wilson M. Hawkins, Jr., having answered this garnishment, prays that it now be dismissed against him.

Wilson M. Hawkins, Jr., Garnishee

FILED

18 1974

ERNICE B. BLACKMON CIRCUIT CLERK

THE STATE OF ALABAMA
BALDWIN COUNTY

CIRCUIT COURT, BALDWIN COUNTY
SPRING TERM, 1974

ANSWER OF GARNISHEE

Comes now T. O. Howell, Esquire, one of the Garnishees in the above styled cause, and for answer to the writ of garnishment served on him avers that at the time of the service of the writ of garnishment and at the time of this answer to said writ, he was not and is not indebted to Daniel N. Slay, and he will not be indebted in the future to the said Daniel N. Slay by any contract existing at the time of the serving of this garnishment or at the time of making this answer, and the said T. O. Howell, Esquire, does not have in his possession or under his control any personal property, money or effects belonging to the said Daniel N. Slay.

Dated this 6 day of June, 1974.

T. O. Howell
T. O. HOWELL,

Subscribed and sworn to before me
on this the 6 day of June, 1974

Joan Clayton Reid
NOTARY PUBLIC, STATE OF ALABAMA AT LARGE

FILED
JUN 7 1974
EUNICE B. BLACKMON CIRCUIT CLERK

HOWELL, JOHNSTON, LANGFORD,
FINKBOHNER & LAWLER
Attorneys for Garnishee

By: T. O. Howell
T. O. Howell, Jr.
P. O. Box 1643
Mobile, Alabama 36601

THE STATE OF ALABAMA
BALDWIN COUNTY

CIRCUIT COURT, BALDWIN COUNTY
SPRING TERM, 1974

IN RE:

McKEAN PAINT and HARDWARD STORE, INC.,

VS.

DANIEL N. SLAY,

GARNISHMENT ON JUDGMENT:

ANSWER OF GARNISHEE DEFENDANT CHARLES H. ERWIN

Comes now Charles H. Erwin, and for answer to garnishment served upon him in the matter of judgment entered on July 15, 1963, in behalf of McKean Paint and Hardware Store, Inc. against Daniel N. Slay for Seven Hundred Thirty Three and 84/100 ($733.84) and states that the said Charles H. Erwin does not have in his possession, or under his control, money or effects belonging to Daniel N. Slay and further that he is not indebted to Daniel N. Slay or liable to him,on a judgment, on a contract for delivery of personal property, contract for payment of money on a contract for the payment of money which may be discharged by the delivery of personal property, or payable in personal property.

The said Charles H. Erwin would state for the information of the Court that he was attorney of record for Robert E. Mills in an action in the Circuit Court of Mobile County, Alabama in which judgment was entered in favor of Daniel N. Slay and against Robert E. Mills and Don Hicks, in an amount in excess of Thirteen Thousand and No/100 ($13,000.00) Dollars, but that no part of said judgment has been paid through the office of Charles H. Erwin and no part of said judgment is expected to be paid through the office of said Charles H. Erwin.

WHEREFORE, the said Charles H. Erwin having made this answer

under oath prays that he shall be discharged from further obligation herein.

CHARLES H. ERWIN

Subscribed and sworn to before me this 31st day of May, 1974.

Frances M. Nelson
NOTARY PUBLIC, MOBILE COUNTY, ALABAMA

FILED

JUN 5 1974

EUNICE B. BLACKMON CIRCUIT CLERK

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 31 day of May, 1974 served a copy of the foregoing plea upon counsel for all parties to this proceeding by mailing the same by United States Mail properly addressed, and first class postage prepaid.

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

McKEAN PAINT AND HARDWARE STORE, INC., Plaintiff,	)	
vs.	)	
DANIEL N. SLAY,	)	CIVIL ACTION NO: 55603
Defendant,	)	
and	)	
FIRST NATIONAL BANK OF BAY MINETTE, a National Banking Association,	)	
Garnishee.	)	

ANSWER OF GARNISHEE:

Before me, the undersigned authority, within and for said State and County, personally appeared GRADY H. ZEANAH, who is known to me, and who, being first duly sworn, on oath, says as follows:

That his name is Grady H. Zeanah; that he is Cashier of the First National Bank of Bay Minette, a National Banking Association, and as such, has authority to make answer for the garnishee in the above styled matter and answering the garnishment therein says, that the garnishee is now indebted to the Defendant, Daniel N. Slay, and was indebted to the said Defendant at the time of the service of said garnishment; that said garnishee has in its possession and under its control, monies and effects belonging to the said Defendant, Daniel N. Slay, and holds the same subject to the further orders of this Court.

FIRST NATIONAL BANK OF BAY MINETTE,
A National Banking Association,

By: Grady H. Zeanah
Grady H. Zeanah,
As its Cashier.

Sworn to and subscribed before
me this 28th day of May, 1974.

Alice L. Miller
Notary Public, Baldwin County, Alabama.

I, the undersigned Attorney of Record for the Garnishee, First National Bank of Bay Minette, named in the foregoing garnishment, do hereby certify that I have caused a copy of the foregoing answer to be served on James R. Owen, the Attorney of Record for the Plaintiff in said cause, by placing the same in the United States Mail, properly addressed, with postage prepaid, this 28th day of May, 1974.

J. Connor Owens, Jr.

J. Connor Owens, Jr.
P. O. Box 729, Bay Minette, Alabama 36507,
ATTORNEY FOR GARNISHEE.

FILED

MAY 28 1974

EUNICE B. BLACKMON CIRCUIT CLERK

1M—2-67

Answer of Garnishee

STATE OF ALABAMA
COUNTY OF MOBILE } IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

McKean Paint & Hardware Store, Inc., Plaintiff

VS. No. 5560 (In the Circuit Court of Baldwin County, Alabama)

DANIEL N. SLAY,

, Defendant

And now, on this day, comes JOHN E. MANDEVILLE, Clerk, Circuit Court of Mobile County, Alabama,

Garnishee in the above stated cause, and for answer to the writ of Garnishment served upon him on the 24th day of May, 1974 upon oath, says that he is not indebted to the above named Defendant at the time of the service of the writ of Garnishment in the above stated cause, or at the time of making his answer hereto but that very well could be indebted in the future to the said Defendant as follows: and that he has not in his possession, or under his control, personal or real property, or things in action belonging to the said DANIEL N. SLAY,

HOWEVER, this Garnishee states the following facts, viz:
In Circuit Court Civil Case No. 41,732 entitled DANIEL SLAY, Plaintiff, Versus. DON HICKS; and ROBERT E. MILLS, Defendants, which was a suit for greach of warranty and also for damages, was tried by a jury in this Court on May 16th, 1974 and the Jury rendered a verdict in favor of the Plaintiff, Daniel Slay, against the Defendants, Don Hicks and Robert E. Mills, for the sum of $13,394.68, and which said judgment stands as a judgment on the Minutes of this Court for said Date, and which said judgment for said amount has been recorded by Plaintiff against said defendants in the Probate Court of Mobile County, Alabama, and, of course, because of such facts stated above, it is possible that at some future date part of or all of said judgment could be paid into this Clerk's office for payment by this office to the said plaintiff or his attorney therein, but of course this garnishee cannot state this will happen with any certainty.

And Garnishee having fully answered, prays to be discharged with his reasonable costs in this behalf expended.

JOHN E. MANDEVILLE, Clerk, Circuit Court,
Mobile County, Alabama.

Subscribed and sworn to before me, this 24th day of May, 1974

Clerk, Circuit Court, Mobile County, Alabama.

FILED
MAY 27 1974
EUNICE B. BLACKMON CIRCUIT CLERK

No. 5560

Circuit Court, ~~Mobile~~ BALDWIN County

MC KEAN PAINT & HDWE. STORE, INC.,

VS. (Answer of Garnishee
JOHN E. MANDEVILLE, Clerk,
Circuit Court Mobile County, Ala.)

DANIEL N. SLAY,

Filed _____ day of _____, 19____

Clerk, Circuit Court of ~~Baldwin~~ Baldwin County, Alabama.

GARNISHMENT ON JUDGMENT

THE STATE OF ALABAMA
BALDWIN COUNTY

CIRCUIT COURT, BALDWIN COUNTY
SPRING TERM, 1974

To any Sheriff of the State of Alabama, Greetings:

WHEREAS, on, to-wit, the 15th day of July, 1963, McKean Paint and Hardware Store, Inc. recovered judgment against Daniel N. Slay for the sum of SEVEN HUNDRED THIRTY THREE AND 84/100 ($733.84) DOLLARS and costs of suit, an affidavit having been made by James R. Owen, Attorney, that process of garnishment is believed to be necessary to obtain satisfaction of said judgment, and that the following named persons or corporations, viz:

Mr. Ben Bailey
c/o Colonial Inn
Bay Minette, Alabama

First National Bank of Bay Minette
Bay Minette, Alabama

have or are believed to have in their possession, or under their control, money or effects belonging to said defendant, Daniel N. Slay, or that they are, or are believed to be indebted to said defendant, Daniel N. Slay, or to be liable to him, on a judgment, on a contract for the delivery of personal property, on a contract for the payment of money on a contract for the payment of money which may be discharged by the delivery of personal property, or which is payable in personal property.

You are therefore hereby commanded to summon:

Mr. Ben Bailey
c/o Colonial Inn
Bay Minette, Alabama

First National Bank of Bay Minette
Bay Minette, Alabama

to file an answer in duplicate to the Circuit Court of Baldwin County, at the Courthouse thereof, in the City of Bay Minette, within thirty (30) days from the service of the garnishment, or at the making of such answer, or at any time intervening the time of serving the garnishment, and making the answer that respective garnishee was or was not indebted to said defendant, Daniel N. Slay, and whether said garnishee will not be indebted in the future to said defendant, Daniel N. Slay, by a judgment, by a contract then existing, or otherwise, and whether by a judgment, contract, then existing, or otherwise, said garnishee is liable to said defendant for the payment of money, for the delivery of personal property or for the payment of money which may be discharged by the delivery of personal property, or which is payable in personal property and whether said garnishee has not in his possession or under his control money or effects belonging to the defendant, Daniel N. Slay.

Herein fail not, and have you then and there this Writ.

Witness, Eunice B. Blackmon, Clerk, Clerk of this Court, this 22nd day of May, A.D., 1974. Issued 22nd day of May, A.D., 1974.

ATTEST:

Eunice B. Blackmon
Clerk

Wall

RECEIVED

MAY 22 1974

TAYLOR WILKINS
SHERIFF

McKean Paint and Hardware
Store, Inc.,

Plaintiff,

vs.

Daniel N. Slay,

Defendant.

Case No. 5560

Writ of Garnishment
Serve garnishees listed
inside.

Received 22 day of May 1974
and on 22 day of May 1974
I served a copy of the within
on Ben Barber
By serving the within on Ben Barber
By Ben Barber
TAYLOR WILKINS, Sheriff
By [illegible]

Received 22 day of May 1974
and on 27 day of May 1974
I served a copy of the within
on Zaid Mathews Oil Co.
By service on Bill Cullum
TAYLOR WILKINS, Sheriff
By [illegible]

J. R. [illegible], Attorney

GARNISHMENT ON JUDGMENT

THE STATE OF ALABAMA
BALDWIN COUNTY

CIRCUIT COURT, BALDWIN COUNTY
SPRING TERM, 1974

To any Sheriff of the State of Alabama, Greetings:

WHEREAS, on, to-wit, the 15th day of July, 1963, McKean Paint and Hardware Store, Inc. recovered judgment against Daniel N. Slay for the sum of SEVEN HUNDRED THIRTY THREE AND 84/100 ($733.84) DOLLARS and costs of suit, an affidavit having been made by James R. Owen, Attorney, that process of garnishment is believed to be necessary to obtain satisfaction of said judgment, and that the following named persons or corporations, viz:

Honorable John E. Mandeville
Clerk, Circuit Court of Mobile County
Mobile, Alabama

Don Hicks
1019 South Beltline Highway
Mobile, Alabama

T. O. Howell, Esquire
Post Office Box 1643
903 Commercial Guaranty Bank Building
Mobile, Alabama

Robert E. Mills
I-65 Motor Company
Corner of Cottage Hill Road and West I-65 Service Road
Mobile, Alabama

Charles H. Erwin, Esquire
402 First Federal Tower
Mobile, Alabama

Wilson M. Hawkins, Jr.
Post Office Box 4492
958 Dauphin Street
Mobile, Alabama

have or are believed to have in their possesion, or under their control, money or effects belonging to said defendant, Daniel N. Slay, or that

they are, or are believed to be indebted to said defendant, Daniel N. Slay, or to be liable to him, on a judgment, on a contract for the delivery of personal property, on a contract for the payment ofmoney on a contract for the payment of money which may be discharged by the delivery of personal property, or which is payable in personal property.

You are therefore hereby commanded to summon:

Honorable John E. Mandeville
Clerk, Circuit Court of Mobile County
Mobile, Alabama

Don Hicks
1019 South Beltline Highway
Mobile, Alabama

T. O. Howell, Jr., Esquire
Post Office Box 1643
903 Commercial Guaranty Bank Building
Mobile, Alabama

Robert E. Mills
I-65 Motor Company
Corner of Cottage Hill Road and West I-65 Service Road
Mobile, Alabama

Charles H. Erwin, Esquire
402 First Federal Tower
Mobile, Alabama 36606

Wilson M. Hawkins, Jr.
Post Office Box 4492
958 Dauphin Street
Mobile, Alabama 36604

to file an answer in duplicate to the Circuit Court of Baldwin County, at the Courthouse thereof, in the City of Bay Minette, within thirty (30) days from the service of the garnishment, or at the making of such answer, or at any time intervening the time of serving the garnishment, and making the answer that respective garnishee was or was not indebted to said defendant, Daniel N. Slay, and whether said garnishee will not be indebted in the future to said defendant, Daniel N. Slay, by a judgment, by a contract then existing, or otherwise, and whether by a judgment, contract then existing, or otherwise, said garnishee is liable to said defendant for the payment of

McKean Paint and Hardware
Store, Inc.,

Plaintiff,

vs.

Daniel N. Slay,

Defendant.

Case No. 5560

money, for the delivery of personal property or for the payment of money which may be discharged by the delivery of personal property, or which is payable in personal property and whether said garnishee has not in his possession or under his control money or effects belonging to the defendant, Daniel N. Slay.

Herein fail not, and have you then and there this Writ.

Witness, Eunice B. Blackmon, Clerk, Clerk of this Court, this 23rd day of May, A. D., 1974. Issued 23rd day of May, A. D., 1974.

ATTEST:

Eunice B. Blackmon
Clerk

EXECUTED
This 24 day of May, 1974
by serving a copy of the within on
Leo John E. Vandeville
RAY D. BRIDGES, Sheriff
By M. Wainwright D.S.

RETURNED 6-20-74
Not found in my County after diligent search and inquiry.
RAY D. BRIDGES, Sheriff
By J. Libbs D.S.

EXECUTED
This 4 day of June, 1974
by serving a copy of the within on
L. N. Howell
RAY D. BRIDGES, Sheriff
By M. Wainwright D.S.

RETURNED 6-20-74
Not found in my County after diligent search and inquiry.
RAY D. BRIDGES, Sheriff
By J. Jackson D.S.

10694-696

McKean Paint and Hardware
Store, Inc.,

Plaintiff,

vs.

Daniel N. Slay,

Defendant.

Case No. 5560

Writ of Garnishment
Serve garnishees
listed on Page 2

J. R. Cleveland

MOBILE SHERIFF'S OFF.
MOBILE COUNTY, ALA.
RECEIVED '74
MAY 23
~~MAY 22 1974~~
TAYLOR WILKINS
SHERIFF

EXECUTED
This 27 day of May, 1974
by serving a copy of the within on
Charles H. Ermin
RAY D. BRIDGES, Sheriff
By J. Libbs D.S.

EXECUTED
This 24 day of May, 1974
by serving a copy of the within on
Wilson M. Hawkins Jr.
RAY D. BRIDGES, Sheriff
By R. Schultz D.S.

IN THE CIRCUIT COURT OF BALDWIN COUNTY
ALABAMA

McKEAN PAINT AND HARDWARE STORE, INC., a corporation,	:	
Plaintiff,	:	
vs.	:	CIVIL ACTION NO. 5560
DANIEL N. SLAY,	:	
Defendant.	:	

ORDER

This cause coming on to be heard upon the motion of McKean Paint and Hardware Store, Inc., plaintiff, to have process of garnishment issued during the pendency of the plaintiff's Motion to Revive Plaintiff's Judgment in the above styled cause obtained in this Court on the 15th day of July, 1963.

Now comes the plaintiff, and it being made to appear to the Court that on, to-wit, July 15, 1963, a judgment was rendered in this Court in favor of the plaintiff, and against the defendant, Daniel N. Slay, in said cause for the sum of $733.84, beside the further sum of $26.00 cost of Court; and it further appearing to the Court that said judgment remains unpaid and unsatisfied as evidenced by the sworn affidavit of George H. McKean, President of McKean Paint and Hardware Store, Inc.; and it further appears to the Court that plaintiff believes it to be in the best interest of justice that the process of garnishment be issued during the pendency of plaintiff's said motion to revive the judgment;

IT IS THEREFORE ORDERED, ADJUDGED and DECREED by the Court that the clerk issue such garnishments as requested by the plaintiff.

Dated this 22nd day of May, 1974.

J. Blair Hasselburn
Circuit Judge

FILED

MAY 22 1974

EUNICE B. BLACKMON CIRCUIT CLERK

AFFIDAVIT FOR GARNISHMENT ON JUDGMENT

STATE OF ALABAMA : CIRCUIT COURT OF

COUNTY OF BALDWIN : BALDWIN COUNTY, ALABAMA

Personally appeared before me, Eunice B. Blackmon, Clerk of the Circuit Court in and for Baldwin County and State aforesaid, James R. Owen, who being duly sworn on oath says, that on the 15th day of July, 1963, McKean Paint and Hardware Store, Inc. recovered judgment against Daniel N. Slay for the sum of SEVEN HUNDRED THIRTY THREE AND 84/100 ($733.84) DOLLARS besides cost of suit; that said judgment remains wholly unsatisfied and that a motion having been filed to revive the judgment, this Court has ordered that the process of garnishment be issued during the pendency of said motion; and that,

Honorable John E. Mandeville
Clerk, Circuit Court of
Mobile County
Mobile, Alabama

Don Hicks
1019 South Beltline Highway
Mobile, Alabama

T. O. Howell, Jr., Esquire
Post Office Box 1643
903 Commercial Guaranty
Bank Building
Mobile, Alabama 36601

Robert E. Mills
I-65 Motor Company
Corner of Cottage Hill Road
and West I-65 Service Road
Mobile, Alabama

Charles H. Erwin, Esquire
402 First Federal Tower
Mobile, Alabama 36606

Wilson M. Hawkins, Jr.
Post Office Box 4492
958 Dauphin Street
Mobile, Alabama 36604

are supposed to be indebted to or have effects of the said defendant, Daniel N. Slay, in their possession, or under their control, and that he believes process of garnishment against said garnishees is necessary to obtain satisfaction of said judgment.

James R. Owen
Post Office Drawer C
Bay Minette, Alabama 36507

Of Counsel:

OWEN AND BALL

Sworn to and subscribed this
22 day of May, 1974.

Eunice B. Blackmon
Clerk

FILED

MAY 22 1974

EUNICE B. BLACKMON CIRCUIT CLERK

AFFIDAVIT FOR GARNISHMENT ON JUDGMENT

STATE OF ALABAMA : CIRCUIT COURT OF

COUNTY OF BALDWIN : BALDWIN COUNTY, ALABAMA

Personally appeared before me, Eunice B. Blackmon, Clerk of the Circuit Court in and for Baldwin County and State aforesaid, James R. Owen, who being duly sworn on oath says, that on the 15th day of July, 1963, McKean Paint and Hardware Store, Inc. recovered judgment against Daniel N. Slay for the sum of SEVEN HUNDRED THIRTY THREE AND 84/100 ($733.84) DOLLARS besides cost of suit; that said judgment remains wholly unsatisfied and that a motion having been filed to revive the judgment, this Court has ordered that the process of garnishment be issued during the pendency of said motion; and that,

Mr. Ben Bailey
c/o Colonial Inn
Bay Minette, Alabama

First National Bank of Bay Minette
Bay Minette, Alabama

are supposed to be indebted to or have effects of the said defendant, Daniel N. Slay, in their possesion, or under their control, and that he believes process of garnishment against said garnishees is necessary to obtain satisfaction of said judgment.

James R. Owen
Post Office Drawer C
Bay Minette, Alabama 36507

Of Counsel:

OWEN AND BALL

Sworn to and subscribed this
22 day of May, 1974.

Eunice B. Blackmon
Clerk

IN THE CIRCUIT COURT OF BALDWIN COUNTY
ALABAMA

McKEAN PAINT AND HARDWARE STORE, INC., a corporation,	:	
Plaintiff,	:	
vs.	:	CIVIL ACTION NO. 5560
DANIEL N. SLAY,	:	
Defendant.	:	

MOTION FOR ORDER OF GARNISHMENT

Comes now the plaintiff in the above styled cause and shows unto the Court as follows:

That plaintiff owns a judgment obtained in this Court in cause No. 5560 on the 15th day of July, 1963, for the sum of $733.84 against the above named defendant; that original execution was issued August 7, 1963; that said judgment remains unpaid and unsatisfied; that ten (10) years have elapsed since the issuance of said original execution; and that the plaintiff filed May 20, 1974, a Motion to Revive Judgment which said motion included sworn affidavit of George H. McKean, President of McKean Paint and Hardware Store, Inc., that said Judgment remains unpaid and unsatisfied.

That plaintiff has had a great deal of difficulty locating assets of said defendant in the past and believes that it would be in the best interest of justice to allow the plaintiff to avail himself of the process of garnishment during the pendency of the plaintiff's motion to revive judgment.

WHEREFORE, plaintiff prays that this Court issue an order allowing plaintiff to file a garnishment against certain known parties

believed to have in their possession, or under their control, money or effects belonging to said defendant, or that said parties are believed to be indebted or liable to said defendant.

James R. Owen
Post Office Drawer C
Bay Minette, Alabama 36507

Of Counsel:

OWEN AND BALL

FILED

MAY 22 1974

EUNICE B. BLACKMON CIRCUIT CLERK

EXHIBIT I

STATE OF ALABAMA :

COUNTY OF BALDWIN :

AFFIDAVITS BY GEORGE H. McKEAN, PRESIDENT OF
McKEAN PAINT AND HARDWARE STORE, INC.
THAT JUDGMENT AGAINST DANIEL N. SLAY REMAINS
UNPAID AND UNSATISFIED

Personally appeared before me, the undersigned authority in and for said county in said state, George H. McKean, who is known to me, and who, after having been duly sworn by me according to law, doth depose and say upon his oath that he is the President and Treasurer of McKean Paint and Hardware Store, Inc. and that he is familiar with the books and records of said corporation, and that he has been over the records relative to that certain judgment against Daniel N. Slay in the amount of $733.84 which was rendered on the 15th day of July, 1963, by the Circuit Court of Baldwin County, Alabama, in cause No. 5560 styled "McKean Paint and Hardware Store, Inc., a corporation, Plaintiff, vs. Daniel N. Slay, Defendant" and says that said judgment remains unpaid and unsatisfied.

GEORGE H. McKEAN

Sworn to and subscribed before me on this, the 17th day of May, 1974.

Betty Richards Marchman
Notary Public
State at Large, Alabama

FILED
MAY 20 1974
EUNICE B. BLACKMON CIRCUIT CLERK

George H. McKeen
P. O. Box 1109
Mobile, Ala. 36601

5560

Motion to Strike
Garnishment

1 copy

FROM THE DESK OF
JOHN E. MANDEVILLE, Mobile, Ala.
P.O.Box 298, 36601

5/24/74

Dear Miss Eunice,

Herewith original and 1 copy of my answer to writ of garnishment I received from our Sheriff from your office in Civil Case #5560 entitled: McKean Paint & Hdwe Store Inc. Vs. Daniel N.Slay this morning, which speaks for itself.

Should I receive any money on this judgment I will of course make a Supplemental Answer as Garnishee when and if such occurs.

By the way, I am still holding a Witness Certificate for $5.00 from Mrs.Duck from March 12,1969 when I appeared there as witness for Deft in Case No.7692, Hazel Short Vs. Earl D.Dillabough, and if costs have been paid in this case I will be glad to receive said witness fee & send said wit cert endorsed back to you. Thank you.

JEM

John