

CECIL G. CHASON

ATTORNEY-AT-LAW
FOLEY, ALABAMA 36535

October 2, 1967

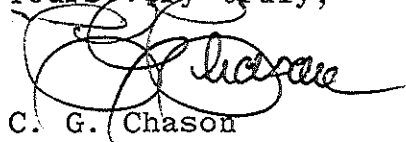
Mrs. Alice J. Duck
Clerk of Court
Bay Minette, Alabama 36507

Re: Totsh vs. Gatlin Lumber
Company - # 5605

Dear Mrs. Duck:

By letter of November 17, 1965, to you with a copy to Mr. Patterson of Gatlin Lumber Company, and a copy to you of my letter to Mr. Patterson of Gatlin Lumber Company, I withdrew from the above styled case. Please so indicate on the records. My withdrawal is of November 17, 1965.

Yours very truly,



C. G. Chason

CGC:jc

cc: Honorable Telfair J. Mashburn

Mr. Richard C. Lacey

CECIL G. CHASON

ATTORNEY-AT-LAW
FOLEY, ALABAMA

July 17, 1963

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

Dear Mrs. Duck:

Re: Totsch vs Gatlin, etc.

I am enclosing demurrer in the case of Chester E. Totsch d/b/a Totsch Boatworks vs Gatlin Lumber Company, Inc., a Corporation, and E. R. Patterson, a copy of which is being sent this day to the attorney for the Plaintiff.

Yours very truly,



C. G. Chason

CGC:dc

cc: Mr. Richard C. Lacey
Duck & Lacey, Attorneys
Fairhope, Alabama

CHESTER E. TOTSCH, d/b/a
TOTSCH BOATWORKS,

PLAINTIFF,

VS:

GATLIN LUMBER COMPANY, INC.,
a corporation, and E. R.
PATTERSON,

DEFENDANTS.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. 5605

MOTION TO SET ASIDE JUDGMENT

This Motion for new trial in no way concerns E. R. PATTERSON, individually since neither the undersigned attorney, nor M. S. GATLIN, nor GATLIN LUMBER COMPANY, INC. is authorized to represent the said E. R. PATTERSON, individually.

Comes the Defendant, GATLIN LUMBER COMPANY, INC., a corporation, by M. S. GATLIN, its president and owner and makes this motion to set aside the judgment rendered in this case in open Court on October 9, 1967, for the following reasons:

1. Neither the Defendant, GATLIN LUMBER COMPANY, INC., nor its president and owner, M.S. GATLIN, nor any of its officers, agents, employees or attorneys has notice of this suit or the withdrawal of appearance of C. G. CHASON, Esq.

2. The said Defendant had no knowledge that said case was pending nor that it was set for hearing on October 9, 1967.

3. That C. G. Chason, Esq. in a letter dated October 2, 1967, wrote Mrs. Alice J. Duck, Clerk of Court, Bay Minette, Alabama 36507, Re: Totsch Vs: Gatlin Lumber Company #5605, as follows:

"By letter of November 17, 1965, to you with a copy to Mr. Patterson of Gatlin Lumber Company, and a copy to you of my letter to Mr. Patterson of Gatlin Lumber Company, I withdrew from the above styled case. Please so indicate on the records. My withdrawal is of November 17, 1965."

A copy of letter dated October 2, 1967 was sent to Honorable Telfair J. Mashburn and Mr. Richard C. Lacey, and the original letter is in the Court file. It should be noted that the real party in interest, who is the Defendant, was not given notice by

a copy of this letter and in all fairness, C. G. CHASON, Esq. should have notified the Defendant of the pending action.

4. That the other Defendant, E. R. PATTERSON, one time president of said corporation and to whom the notice was given by letter dated November 17, 1965, of Mr. Chason's withdrawal, has been convicted in the criminal Court of Baldwin County, Alabama, of embezzlement and given a ten year sentence, as appears by the records of the criminal division of this Court. Mr. Chason knew of these facts, or should have known of them, since it is common knowledge in this county, and especially in the City of Foley.

5. It appears from a balance sheet of GATLIN LUMBER COMPANY, INC. dated September 13, 1966, under bad accounts, Capt. C. E. TOTSCH in the amount of \$1,411.73, which could have been used as a set off, if the case were tried on merits. On July 18, 1963, Mr. Chason filed a demurrer which was never ruled upon. In addition to the grounds for demurrers filed by Mr. Chason, there appears to be several other demurrers that could be brought to the attention of the Court, among them are, to-wit: Item 9 of Counts One, Two, Three and Four, claims damages for "profits from sale of said vessels." This is not a measurable damage.

6. The Defendant, GATLIN LUMBER COMPANY, INC., believes that the Plaintiff did not testify to damages in open Court.

7. The Defendant believes that each of said Counts are demurrable, because they do not state a cause of action.

8. The Defendant believes that he has a meritorious defense to all counts.

WHEREFORE, the Defendant, GATLIN LUMBER COMPANY, INC., prays that this Honorable Court, after due notice to all parties, and hearing, will make and enter an order setting aside the judgment rendered on October 9, 1967, against GATLIN LUMBER COMPANY,

INC., and permit Defendant to file demurrers and try case on its merits.

GATLIN LUMBER COMPANY, INC.

BY: M. S. Gatlin
M. S. Gatlin, President & Owner

ATTORNEY FOR THE DEFENDANT, GATLIN LUMBER COMPANY, INC.

Forest A. Christian
Forest A. Christian

STATE OF ALABAMA,)

BALDWIN COUNTY.)

I, M. S. GATLIN, president and owner of the GATLIN LUMBER COMPANY, INC., a corporation, the Defendant, first being duly sworn, does depose and states under oath that he had read the foregoing motion to set aside judgment and believes that all statements made therein are true and correct to the best of his knowledge, information and belief.

M. S. Gatlin
M. S. Gatlin

Sworn to and subscribed before me on
this the 14th day of October, 1967.

Ruth Hollingsworth
Notary Public, Baldwin County, Alabama

CERTIFICATE OF SERVICE
This is to certify that I have this day served counsel for the opposing party in the foregoing matter with a copy of this pleading by depositing in the United States Mail a copy of same in a properly addressed envelope with adequate postage thereon.
this the 14th day of October, 1967

Forest A. Christian
Attorney for **Defendant**

Mr. Dick Jacey
Mr. C. G. Chason
Forest A. Christian

FILED

OCT 16 1967

ALICE J. DICK CLERK
REG. CLERK

10-16-67 Sit down for hearing at 10:00 A.M. on
Monday October 23, 1967. Jeffrey J. Marshall
Judge.

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

DEMURRER

Come the Defendants in the above styled cause and demur to the Bill of Complaint heretofore filed therein and each count thereof, separately and severally and as grounds for demurrer, show separately and severally the following:

1. That the Complaint is vague and indefinite.
2. That the terms of the alleged Parol Contract are not sufficiently set out.
3. That for aught that appears there was no consideration to the Defendants for entering into the alleged contract.
4. That for aught that appears the said alleged contract would be void under the statute of frauds.
5. That the alleged contract is uncertain as to the method of construction of the vessels.
6. That the alleged contract is uncertain as to the time of construction of the vessels.
7. That the alleged contract is uncertain as to the extent of the re-tooling and expansion of the shipyard of the Plaintiff.
8. That the alleged contract does not state when financing and materials were to be furnished by the Defendants.
9. That the alleged contract is uncertain as to what was to be furnished by each of the Defendants.
10. That the complaint does not show that demand was made on either of the Defendants.
11. That for aught that appears the expansion of the shipyard facilities has enhanced the value of said facilities

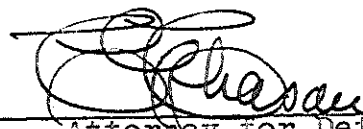
enuring only to the benefit of the Plaintiff.

12. That for aught that appears the Plaintiff has suffered no damages.

13. That for aught that appears there would be no net profit from the sale of the vessels.

14. That for aught that appears the alleged contract is solely for the benefit of the Plaintiff with no consideration to the Defendants.

15. That the complaint shows no meeting of the minds in the alleged contract.



Attorney for Defendants

FILED

JUL 18, 1963

ALICE J. DUCK

CLERK
REGISTER

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7205605

CHESTER E. TOTSCH
d/b/a TOTSCH BOAT-
WORKS.

Plaintiff

VS

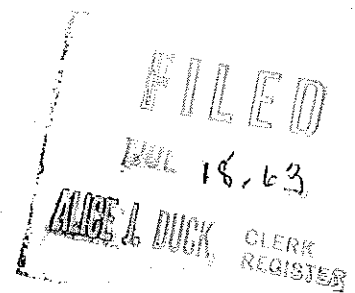
GATLIN LUMBER COMPANY, INC., A
Corp., and E. R. PATTERSON,

Defendants

DEMURRER

IN THE CIRCUIT BOURT OF
BALDWIN COUNTY, ALABAMA

AT LAW



CECIL G. CHASON
ATTORNEY AT LAW
FOLEY, ALABAMA

SUMMONS AND COMPLAINT

MOORE PRINTING COMPANY - BAY MINETTE, ALA.

The State of Alabama,
Baldwin County.

Circuit Court, Baldwin County

No. _____

_____ TERM, 19____

TO ANY SHERIFF OF THE STATE OF ALABAMA

You Are Commanded to Summon _____ GATLIN LUMBER COMPANY, INC., a Corporation,
and E. R. PATERSON

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 GATLIN LUMBER
COMPANY, INC., a Corporation and E. R. PATERSON
by _____, Defendant.

CHESTER E. TOTSCH d/b/a TOTSCH BOATWORKS
Witness my hand this _____ day of _____, Plaintiff.

June 1963
Allice J. Duck, Clerk

STATE of ALABAMA

Baldwin County

CIRCUIT COURT

CHESTER E. TOTSCH, d/b/a

TOTSCH BOATWORKS

Plaintiffs

vs.

GATLIN LUMBER COMPANY, INC.

A Corp, and E. R. PATERSON

Defendants

Summons and Complaint

Filed 6-18 1963

Reisner Clerk

Plaintiff's Attorney

Defendant's Attorney

"S"
Defendant lives at

Foley, Alabama

Received In Office

June 18, 1963

Sheriff.

I have executed this summons

this June 18 1963
by leaving a copy with

E Ray Patterson
Gatlin Lumber Co Inc
E.R. Patterson, mgr.

Sheriff claims 7.2 miles at
Ten Cents per mile Total \$ 7.20

TAYLOR WILKINS, Sheriff
BY *Childers*
DEPUTY SHERIFF

James Wilkins
Sheriff.

Deputy Sheriff.

CHESTER E. TOTSCH
d/b/a TOTSCH BOAT-
WORKS.

Plaintiff

-VS-

GATLIN LUMBER COMPANY, INC.
A Corporation, and E. R.
PATERSON.

Defendants

) IN THE CIRCUIT COURT OF
)
) BALDWIN COUNTY, ALABAMA,
)
) AT LAW.
)
) CASE NO. 5605
)
)
)

COUNT ONE:

The Plaintiff claims of the Defendants THREE THOUSAND FOUR HUNDRED and no/100 DOLLARS (\$3,400.00), damages for the breach of a Parol Contract entered into by the Plaintiff and Defendants during the month of July, 1962, in substance as follows:

1. That Plaintiff and Defendants would construct two (2) fishing vessels as a joint adventure.
2. That Plaintiff would re-tool and expand his facilities located on the Bon Secour River, Baldwin County, Alabama, to an extent that would be adequate to construct the said fishing vessels.
3. That the Plaintiff would purchase all of his lumber and building materials for the expansion of Plaintiff's facilities from Defendants.
4. That the Plaintiff would pay the Defendants for lumber and building materials purchased from the Defendants from the net profits realized from the construction of the said fishing vessels.
5. That the Defendants would finance the construction of the said fishing vessels by the Plaintiff, including the cost of all labor and materials.
6. That all building materials used by the Plaintiff in the construction of said fishing vessels would be purchased from Defendants.

7. That Plaintiff would construct the vessels at shipyard facilities owned by the Plaintiff on the Bon Secour River, Baldwin County, Alabama.

8. That expected profits realized from the sale of the vessels after the construction would be divided one-half to Plaintiff and one-half to Defendants.

9. That Plaintiff would have complete charge of the construction of said fishing vessels, including purchasing materials and employing workmen.

And the Plaintiff says that, although he has complied with all the provisions of said parol contract, the Defendants has failed to comply with the following provisions thereof, viz:

The Defendants have refused to furnish Plaintiff with materials and money for labor to construct two (2) fishing vessels at ship yard facilities owned by the Plaintiff on the Bon Secour River, Baldwin County, Alabama, in accordance with the parol contract entered into by the Plaintiff and Defendants as aforesaid, and the Plaintiff, relying on said parol contract has expanded his ship yard facilities by expending Three Thousand Four Hundred Dollars (\$3,400.00) for materials and labor in said expansion all to his damage as aforesaid.

COUNT TWO:

The Plaintiff claims of the Defendants THREE THOUSAND SIX HUNDRED and no/100 DOLLARS (\$3,600.00), damages for the breach of a Parol Contract entered into by the Plaintiff and Defendants during the month of July, 1962, in substance as follows:

1. That Plaintiff and Defendants would construct two (2) fishing vessels as a joint adventure.

2. That Plaintiff would re-tool and expand his facilities located on the Bon Secour River, Baldwin County, Alabama, to an extent that would be adequate to construct the said fishing vessels.

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3. That the Plaintiff would purchase all of his lumber and building materials for the expansion of Plaintiff's facilities from Defendants.

4. That the Plaintiff would pay the Defendants for lumber and building materials purchased from the Defendants from the net profits realized from the construction of the said fishing vessels.

5. That the Defendants would finance the construction of the said fishing vessels by the Plaintiff, including the cost of all labor and materials.

6. That all building materials used by the Plaintiff in the construction of said fishing vessels would be purchased from Defendants.

7. That Plaintiff would construct the vessels at shipyard facilities owned by the Plaintiff on the Bon Secour River, Baldwin County, Alabama.

8. That expected profits realized from the sale of the vessels after the construction would be divided one-half to Plaintiff and one-half to Defendants.

9. That Plaintiff would have complete charge of the construction of said fishing vessels, including purchasing materials and employing workmen.

And the Plaintiff says that, although he has complied with all the provisions of said parol contract, the Defendants has failed to comply with the following provisions thereof, viz:

The Defendants have refused to furnish Plaintiff with materials and money for labor to construct two (2) fishing vessels at ship yard facilities owned by the Plaintiff on the Bon Secour River, Baldwin County, Alabama, in accordance with the parol contract entered into by the Plaintiff and Defendants as aforesaid, from which the expected minimum profit from the sale of said vessels would be Three Thousand Six Hundred Dollars (\$3,600.00) for each vessel resulting in Plaintiff's losing one-half of the profit for each fishing vessel or a total of Three Thousand Six

Hundred Dollars (\$3,600.00), to his damage as aforesaid.

COUNT THREE:

The Plaintiff claims of the Defendants TWO THOUSAND DOLLARS (\$2,000.00), damages for the breach of a Parol Contract entered into by the Plaintiff and Defendants during the month of July, 1962, in substance as follows:

1. That Plaintiff and Defendants would construct two (2) fishing vessels as a joint adventure.

2. That Plaintiff would re-tool and expand his facilities located on the Bon Secour River, Baldwin County, Alabama, to an extent that would be adequate to construct the said fishing vessels.

3. That the Plaintiff would purchase all of his lumber and building materials for the expansion of Plaintiff's facilities from Defendants.

4. That the Plaintiff would pay the Defendants for lumber and building materials purchased from the Defendants from the net profits realized from the construction of the said fishing vessels.

5. That the Defendants would finance the construction of the said fishing vessels by the Plaintiff, including the cost of all labor and materials.

6. That all building materials used the Plaintiff in the construction of said fishing vessels would be purchased from Defendants.

7. That Plaintiff would construct the vessels at shipyard facilities owned by the Plaintiff on the Bon Secour River, Baldwin County, Alabama.

8. That expected profits realized from the sale of the vessels after the construction would be divided one-half to Plaintiff and one-half to Defendants.

9. That Plaintiff would have complete charge of the construction of said fishing vessels, including purchasing materials and employing workmen.

And the Plaintiff says that, although he has complied with all the provisions of said parol contract, the Defendants has failed to comply with the following provisions thereof, viz:

The Defendants have refused to furnish Plaintiff with materials and money for labor to construct two (2) fishing vessels at ship yard facilities owned by the Plaintiff on the Bon Secour River, Baldwin County, Alabama, in accordance with the parol contract entered into by the Plaintiff and Defendants, as aforesaid, in reliance upon which and acting in the expectation of constructing the two (2) fishing vessels, the Plaintiff refused one contract to build a vessel and two (2) vessels repair jobs which would have resulted in a net profit of Two Thousand Dollars (\$2,000.00) to the Plaintiff all to his damage as aforesaid:

COUNT FOUR:

The Plaintiff claims of the Defendants EIGHT HUNDRED AND ONE and 64/100 DOLLARS (\$801.64), damages for the breach of a Parol Contract entered into by the Plaintiff and Defendants during the month of July, 1962, in substance as follows:

1. That Plaintiff and Defendants would construct two (2) fishing vessels as a joint adventure.

2. That Plaintiff would re-tool and expand his facilities located on the Bond Secour River, Baldwin County, Alabama, to an extent that would be adequate to construct the said fishing vessels.

3. That the Plaintiff would purchase all of his lumber and building materials for the expansion of Plaintiff's facilities from Defendants.

4. That the Plaintiff would pay the Defendants for lumber and building materials purchased from the Defendants from the net profits realized from the construction of the said fishing vessels.

5. That the Defendants would finance the construction of the said fishing vessels by the Plaintiff, including the cost of all labor and materials.

6. That all building materials used by the Plaintiff in the construction of said fishing vessels would be purchased from Defendants.

7. That Plaintiff would construct the vessels at ship yard facilities owned by the Plaintiff on the Bon Secour River, Baldwin County, Alabama.

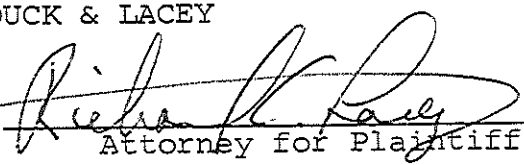
8. That expected profits realized from the sale of the vessels after the construction would be divided one-half to Plaintiff and one-half to Defendants.

9. That Plaintiff would have complete charge of the construction of said fishing vessels, including purchasing materials and employing workmen.

And the Plaintiff says that, although he has complied with all the provisions of said parol contract, the Defendants has failed to comply with the following provisions thereof, viz:

The Defendants have refused to furnish Plaintiff with materials and money for labor to construct two (2) fishing vessels at ship yard facilities owned by the Plaintiff on the Bon Secour River, Baldwin County, Alabama, in accordance with the parol contract entered into by the Plaintiff and Defendants, as aforesaid for that the Plaintiff purchased a stern bearing and a stuffing box for one of the vessels to be constructed and expended many hours of labor lofting plans for the construction of the vessels to a total cost of Eight Hundred and One and 64/100 (\$801.64) Dollars, all to his damage as aforesaid.

DUCK & LACEY

By: 
Attorney for Plaintiff

Defendants reside at:

Foley, Alabama

RELEASE OF JUDGMENT

AND ALL CLAIMS

STATE OF ALABAMA,)

BALDWIN COUNTY.)

KNOW ALL MEN BY THESE PRESENTS, That CHESTER E. TOTSCH, d/b/a TOTSCH BOATWORKS, for and in consideration of the sum of TWO THOUSAND FIVE HUNDRED & 00/100 DOLLARS (\$2,500.00), receipt of which is hereby acknowledged, does hereby RELEASE AND FOREVER DISCHARGE the GATLIN LUMBER COMPANY, INC. of Foley, Alabama, from all further claims and liabilities in the case of CHESTER E. TOTSCH, d/b/a TOTSCH BOATWORKS vs- GATLIN LUMBER COMPANY, INC., et al., Case No. 5605, Circuit Court of Baldwin County, Alabama; and to RELEASE AND DISCHARGE any judgment recorded in said case promptly. This release shall in no way release R. E. (RAY) PATTERSON.

IN WITNESS WHEREOF, the said CHESTER E. TOTSCH, d/b/a TOTSCH BOATWORKS, and his attorney, RICHARD C. LACEY, Esq., have hereunto executed this release and discharge on this the 14th day of November, 1967.

Chester E. Totsch (SEAL)
Chester E. Totsch, d/b/a Totsch Boatworks
Richard C. Lacey (SEAL)
Richard C. Lacey

STATE OF ALABAMA,)

BALDWIN COUNTY.)

I, the undersigned Notary Public, in and for said County and State, do hereby certify that CHESTER E. TOTSCH, d/b/a TOTSCH BOATWORKS, and RICHARD C. LACEY, whose names are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of said instrument, they executed the same voluntarily on the same bears date.

Given under my hand and seal this the 14th of November, 1967.

Affix Seal:

Richard C. Lacey
Notary Public, Baldwin County, Alabama

RELEASE OF JUDGMENT

AND ALL CLAIMS

STATE OF ALABAMA,)

BALDWIN COUNTY.)

KNOW ALL MEN BY THESE PRESENTS, That CHESTER E. TOTSCH, d/b/a TOTSCH BOATWORKS, for and in consideration of the sum of TWO THOUSAND FIVE HUNDRED & 00/100 DOLLARS (\$2,500.00), receipt of which is hereby acknowledged, does hereby RELEASE AND FOREVER DISCHARGE the GATLIN LUMBER COMPANY, INC. of Foley, Alabama, from all further claims and liabilities in the case of CHESTER E. TOTSCH, d/b/a TOTSCH BOATWORKS vs- GATLIN LUMBER COMPANY, INC., et al., Case No. 5605, Circuit Court of Baldwin County, Alabama; and to RELEASE AND DISCHARGE any judgment recorded in said case promptly. This release shall in no way release R. E. (RAY) PATTERSON.

IN WITNESS WHEREOF, the said CHESTER E. TOTSCH, d/b/a TOTSCH BOATWORKS, and his attorney, RICHARD C. LACEY, Esq., have hereunto executed this release and discharge on this the 14th day of November, 1967.

Chester E. Totsch (SEAL)
Chester E. Totsch, d/b/a Totsch Boatworks
Richard C. Lacey (SEAL)
Richard C. Lacey

STATE OF ALABAMA,)

BALDWIN COUNTY.)

I, the undersigned Notary Public, in and for said County and State, do hereby certify that CHESTER E. TOTSCH, d/b/a TOTSCH BOATWORKS, and RICHARD C. LACEY, whose names are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the said instrument, they executed the same voluntarily on the day the same bears date.

Given under my hand and seal this the 14th day of November, 1967.

Affix Seal:

Ruth Hollingsworth
Notary Public, Baldwin County, Alabama

Filed
12-20-67
Reisbach
ccr

W

no. 5605

Latouche

US

Gatherer Lander &

Please