

GEORGE T. FOWLER
Plaintiff

vs

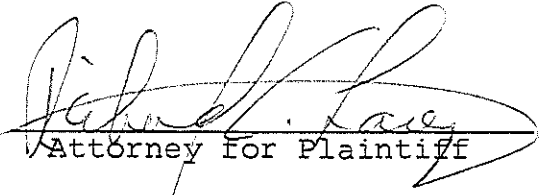
FAIRHOPE MEMORY GARDENS, INC.
A Corporation
Defendant

) IN THE CIRCUIT COURT OF
) BALDWIN COUNTY, ALABAMA
) AT LAW

5994

COUNT ONE:

The Plaintiff claims of the Defendant(\$15,000.00) FIFTEEN THOUSAND DOLLARS, for work and labor done for the Defendant by the Plaintiff from on to-wit, the first day of January, 1961, until on to-wit, the first day of January, 1964 at its request, which sum of money, with the interest thereon, is still unpaid.


Attorney for Plaintiff

Plaintiff respectfully demands
a trial by Jury in this cause.

Deft. may be served at
392 Fairhope Avenue.
Fairhope, Alabama

FILED

MAR 30 1964

ALICE L. DUCK, CLERK
REGISTER

We the Jury find in favor
of the Defendant

By J. Fullbright
for us

SUMMONS AND COMPLAINT

Moore Ptg. Co.

The State of Alabama, }

Baldwin County.

Circuit Court, Baldwin County

No. _____

_____ TERM, 19____

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon FAIRHOPE MEMORY GARDENS, INC.

A Corporation

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 _____

FAIRHOPE MEMORY GARDENS, INC. A Corporation, Defendant____

by _____

GEORGE T. FOWLER, Plaintiff____

Witness my hand this 30 day of March 1964

EX-4-3-64 Deane J. Smith, Clerk

No. 5994 Page _____

The State of Alabama

Baldwin County

CIRCUIT COURT

GEORGE T. FOWLER

Plaintiffs

vs.

FAIRHOPE MEMORY GARDENS, INC.

A Corporation

Defendants

Summons and Complaint

FILED

Filed _____ 19____

MAR 30 1964

ALICE J. DUCK CLERK
REGISTER Clerk

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at
392 Fairhope, Avenue
Fairhope, Alabama

Received In Office

3/30 19 64

_____, Sheriff

I have executed this summons

this 4-3 19 64

by leaving a copy with

Fairhope Memory
Gardens Inc. A Corp.
By personal serv.

Bobbie Fowler,
Asst. Sec.

70 miles
Sheriff Claims _____
Ten Cents per mile Total \$ 7.00
TAYLOR WILKINS, Sheriff
BY Taylor Wilkins DEPUTY SHERIFF

Taylor Wilkins Sheriff

Fred Seibach Deputy Sheriff

F. hopes

After Ed 2

GEORGE T. FOWLER	X	
Plaintiff	X	IN THE CIRCUIT COURT OF
vs	X	BALDWIN COUNTY, ALABAMA
FAIRHOPE MEMORY GARDENS, INC., a corporation	X	AT LAW NO <u>5994</u>
Defendant	X	
	X	

Now comes Fairhope Memory Gardens, Inc., a corporation,
~~defendant in the above styled cause~~, and files this petition,
verified by oath, showing unto the Court as follows:

1. That heretofore, on to-wit, May 14, 1964, a default judgment was rendered in the above styled cause by this Honorable Court in favor of the plaintiff herein and against the defendant herein for the sum of \$15,000.00.
2. That there has been no legal service of said complaint had against said corporation, the defendant.
3. That your petitioner was not informed of said action pending nor were any of the directors or officers of said corporation informed of said action.
4. That the said Bobbie Fowler is not an officer or director of said corporation and may not legally function as an officer or director of said corporation, said restriction being set forth in the charter of said corporation, copy attached and made a part hereof, to-wit, that the Board of Directors shall be composed of not less than three nor more than four stockholders, each stockholder owning not less than 15% of the issued stock. And further said charter and constitution provides that the Board of Directors shall have the power to make by-laws for the regulation and governing of said corporation of all of which the said plaintiff was informed.
5. That said Bobbie Fowler could not accept service for said corporation in that said individual is the recorded owner of only five hundred (500) shares of the par value of 5¢ per share and that the said Bobbie Fowler is the wife of the said plaintiff which plaintiff is the owner of 19,650 shares of the par value of 5¢ per share.
6. That the said plaintiff committed fraud on the said corporation and on the Court being without authority to appoint the said Bobbie Fowler as assistant secretary.

7. That the said plaintiff committed fraud on the court and on the said corporation by having a member of his immediate family to-wit, his wife, as a legal agent of said corporation which plaintiff had no authority to do.

8. That defendant was prevented from making its defense because of the fraud alleged herein to-wit, the service of plaintiff's wife as agent for said defendant.

9. That said officers of the said corporation had no knowledge of said action nor were they informed of said action by the plaintiff or by the plaintiff's said wife.

10. That defendant verily believes it has a good and meritorious defense to this cause of action.

11. That this petition is not filed for the purpose of hindering or delaying the plaintiff's cause of action, but in order that it may bring to this Honorable Court its said defense to this cause of action.

12. That this petition is brought under and by virtue of Code 1940, Tit. 7, Section 279.

WHEREFORE, THE PREMISES CONSIDERED, defendant respectfully prays that this Honorable Court will take jurisdiction of this petition; that upon a final hearing thereof, the court will set aside and annul the judgment by default heretofore rendered on, to-wit, May 14, 1964, and grant unto the defendant a new trial in said cause.

FILED

JUL 2 1964

ALICE J. DUCK, CLERK
REGISTER

THOMPSON & WHITE

BY:

Attorneys for defendant

STATE OF ALABAMA

MOBILE COUNTY

Before me, the undersigned authority, personally appeared Harold W. Ripps, who is known to me and who being duly sworn deposes and says:

That he is Harold W. Ripps, Vice President, an officer and director in the foregoing corporation and that he has read the foregoing petition and that the facts stated therein are true and correct.

Mary Lucille Adams
Notary Public

TO GEORGE T. FOWLER OR RICHARD LACY, HIS ATTORNEY AT LAW:

You will please take notice that the foregoing petition will be called to the attention of the Honorable Hubert M. Hall, Judge of said Court, at his office in the Courthouse of Baldwin County, at Bay Minette, Alabama, on 14th day of July, 1964, at 9:30 A.M. at which time and place you may attend if you so desire.

Levin Thompson
Attorney for defendant.

I, Richard Lacy, attorney of record for plaintiff in the above styled cause, hereby accept service of a copy of the foregoing motion and notice and do hereby waive all other and further service of notice of same, and do consent and agree that the same be heard and determined by the court on July 14, 1964, at 9:30 A.M.

This 2nd day of July, 1964.

Richard Lacy
Attorney for plaintiff

The foregoing motion having been this day presented to me, the same is ordered filed in the court and is set down for hearing before me on July 14, 1964, at 9:30 A.M.

Dated this 2 day of July, 1964

Hubert M. Hall
Circuit Judge

FILED

JUL 2 1964

ALICE L. DUCK, CLERK
REGISTER

foregoing, this being the day set for a hearing of the
for a continuance of this matter, the same is
hereby continued and reset for a hearing on
the 12th day of August 1964 at 9:30 A.M.

Albert M. Brantley,
Special Judge

GEORGE T. FOWLER

VA

FAIRHOPE MEMORY GARDENS INC.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW NO. 5994

APPOINTMENT OF SPECIAL JUDGE

WHEREAS, it has been made known to me that Hon. Hubert M. Hall, Judge of Circuit Court of Baldwin County, Alabama, has declared himself incompetent due to illness and confinement to the hospital on the day set for hearing.

WHEREAS Hon. Telbert N. Brantley possesses the qualifications of a Circuit Judge, as provided by law, and is proper person to be appointed as Judge to hear said cause;

I Therefore appoint Hon. Telbert N. Brantley to preside as Judge in the above stated cause;

WITNESS my hand this 14th day of ~~December~~ ^{July}, 19~~64~~ ⁶⁴

Alfred J. Ruck
Register.

GEORGE T. FOWLER	X	
Plaintiff	X	IN THE CIRCUIT COURT OF
vs	X	BALDWIN COUNTY, ALABAMA
FAIRHOPE MEMORY GARDENS, INC.,	X	AT LAW
a Corporation	X	NO. <u>59943</u>
Defendant	X	

Now comes Fairhope Memory Gardens, Inc., a corporation, Defendant in the above-styled cause, and amends its Petition heretofore filed so as to make the same read as follows:

1. That heretofore, on to-wit, May 14, 1964, a default judgment was rendered in the above styled cause by this Honorable Court in favor of the plaintiff herein and against the defendant herein for the sum of \$15,000.00.
2. That there has been no legal service of said complaint had against said corporation, the defendant.
3. That your petitioner was not informed of said action pending nor were any of the directors or officers of said corporation informed of said action.
4. That the said Bobbie Fowler is not an officer or director of said corporation and may not legally function as an officer or director of said corporation, said restriction being set forth in the charter of said corporation, copy attached and made a part hereof, to-wit, that the Board of Directors shall be composed of not less than three nor more than four stockholders, each stockholder owning not less than 15% of the issued stock. And further said charter and constitution provides that the Board of Directors shall have the power to make by-laws for the regulation and governing of said corporation of all of which the said plaintiff was informed.
5. That said Bobbie Fowler could not accept service for said corporation in that said individual is the recorded owner of only five hundred (500) shares of the par value of 5¢ per share and that the said Bobbie Fowler is the wife of the said plaintiff which plaintiff is the owner of 19,650 shares of the par value of 5¢ per share.
6. That the said plaintiff committed fraud on the said corporation and on the Court being without authority to appoint the said Bobbie Fowler as assistant secretary.

7. That the said plaintiff committed fraud on the court and on the said corporation by having a member of his immediate family to-wit, his wife, as a legal agent of said corporation which plaintiff had no authority to do.

8. That defendant was prevented from making its defense because of the fraud alleged herein to-wit, the service of plaintiff's wife as agent for said defendant.

9. That said officers of the said corporation had no knowledge of said action nor were they informed of said action by the plaintiff or by the plaintiff's said wife.

10. That the complainant, as President and Director of said corporation and his wife, also a stockholder in said corporation committed fraud on the corporation by concealing said cause and the alleged service thereof from the other directors and other stockholders of the corporation for more than thirty days after service of said complaint on Bobbie Fowler, the wife of said plaintiff, President and Director in said corporation.

11. That this petition is not filed for the purpose of hindering or delaying the plaintiff's cause of action, but in order that it may bring to this Honorable Court its said defense to this cause of action.

12. That this petition is brought under and by virtue of Code 1940, Tit. 7, Section 279.

13. Defendant was prevented from making its defense in this case by surprise.

14. Defendant was prevented from making its defense by mistake.

15. Defendant was prevented from making its defense by fraud.

16. The failure of defendant to make any defense in this case was without fault on the part of defendant.

17. The defendant has a meritorious defense to said action in that:

(a) The allegations of the complaint in said cause are untrue.

(b) In accordance with the charter of said corporation and provisions thereunder in the By-Laws thereof, only the Board

of Directors could authorize an indebtedness against the Corporation; and the Plaintiff herein has not been authorized by the Board of Directors to incur any expense against the Corporation;

(c) The Board of Directors did not authorize the employment of the Plaintiff herein except for services for which Plaintiff has been paid in full;

(d) The Board of Directors did not authorize the employment of the Plaintiff in any capacity for work and labor which would authorize this suit against the Corporation;

(e) There has been an accounting between the Plaintiff and Defendant, and Plaintiff was paid in full by Defendant all amounts due him prior to this judgment.

18. The plaintiff is and was at all times since the filing of this suit, President of the Defendant Corporation, and as such the Plaintiff owes and owed Defendant a fiduciary duty to protect it, and to deal openly and justly and fairly with Defendant.

19. The Plaintiff is and was at all times since the filing of the Complaint herein a Director of the Defendant Corporation and as such owes and owed it a fiduciary duty to protect it, and to deal openly and justly and fairly with Defendant.

20. The return of the Sheriff in this cause shows service on Bobbie Fowler, as Assistant Secretary of the Corporation. Said Bobbie Fowler is the wife of the Plaintiff. She has never been elected an Assistant Secretary of the Defendant and was not an Assistant Secretary at the time of the service of the Complaint upon her, and was never authorized by the Board of Directors to accept service of any complaint. She is neither an officer or a Director of the Corporation, and has never been elected such officer or Director of the Corporation and is not qualified, for the reasons given above to act as such, because of her lack of stock ownership, as required by the Certificate of Incorporation of the Corporation. For this reason the service is not valid, and the Defendant has filed and does hereby file a motion to quash the service of process in this cause.

21. The Directors and Officers of Defendant Corporation are residents of Alabama, and their names and addresses are well known to the Plaintiff, who is, as mentioned above, the President

and a Director and major stockholder of the Corporation.

22. The attorney for the Plaintiff, Mr. John Duck, is and has been for a long period of time a stockholder in the Defendant Corporation, and he also well knows the names and addresses of the Officers and Directors of Defendant.

23. Even if service on said Bobbie Fowler were technically service on the Defendant Corporation, neither she nor the Plaintiff nor the Plaintiff's attorney ever notified the Defendant of the suit, and the Defendant had no knowledge or notice of the suit until it received information from the First National Bank of Mobile that a garnishment had been filed against said First National Bank of Mobile, which notice was received on, to-wit, June 24, 1964.

Defendant alleges that the failure of said persons to notify Defendant of the pendency of this action so the Defendant could make its defense was so unjust and grossly unfair as to shock the conscience of this Court and to amount to fraud on Defendant.

24. The alleged service was had on Bobbie Fowler, wife of Plaintiff, the President of said corporation, whose interest was not to notify the defendant or any other director or officer thereof, and she did not in fact notify the defendant, nor any other director or officer thereof, thereby committing fraud on the corporation and on the several stockholders thereof; nor did the said Bobbie Fowler attempt to make any defense whatever or answer whatever. Wherefore, said alleged service was invalid.

WHEREFORE, the premises considered Defendant respectfully prays that this Honorable Court will take jurisdiction of this petition as amended, together with the supersedeas bond attached hereto; that execution may be stayed in this cause and said garnishment quashed and held for naught pending a final hearing herein and that upon a final hearing, the Court will set aside and annul the judgment by default heretofore rendered on, to-wit, May 14, 1964, and grant unto Defendant a new trial in this cause.

THOMPSON & WHITE

BY: 

Attorneys for defendant


Harold W. Ripps

STATE OF ALABAMA

MOBILE COUNTY

Before me, the undersigned authority, personally appeared
Harold W. Ripps, who is known to me, and who being duly sworn
deposes and says:

That he is Harold W. Ripps, Vice-President, an officer and
director in the foregoing corporation and that he has read the
foregoing petition and that the facts stated therein are true
and correct.

Mary Lucille Adams
Notary Public *State at Large*

FILED

AUG 3-44

ALICE J. DUCK, CLERK
REGISTRAR

GEORGE T. FOWLER	X	
Plaintiff	X	IN THE CIRCUIT COURT OF
vs	X	BALDWIN COUNTY, ALABAMA
FAIRHOPE MEMORY GARDENS, INC.,	X	AT LAW NO. _____
A corporation,	X	
Defendant	X	

Comes the defendant corporation and amends its petition heretofore filed to add the following count:

-25-

That said original complaint demanded a jury trial and that said jury demand was not withdrawn, Wherefore, said alleged judgment is not a final decree of said Court.

FILED

AUG 1 1964

THOMPSON & WHITE

BY:

[Signature]
Attorneys for defendant.

ALICE A. DUCK, CLERK
REGISTER

10/20/20

~~~~~

IN THE  
CIRCUIT COURT OF BALDWIN COUNTY,  
ALABAMA. AT LAW.  
NO. 5994

ALABAMA. AT LAW.

NO. 5994

DE C R E E:

Defendant's motion to set aside the judgment and grant a new trial in the above case having been presented and testimony in reference thereto having been heard by the Court ore tenus in open Court;

It is the opinion and judgment of the Court that said motion is well founded and should be granted; it is, therefore,

ORDERED, ADJUDGED AND DECREED by the Court that said motion be and the same is hereby granted, and that said judgment be and the same is hereby set aside and held for naught, and said case is hereby restored to the jury docket of said court for further proceedings.

Dated this 8th day of September, 1964.

E. F. Hilborn  
Special Judge

FILED

SEP 8 1964

**AUGUST 1, 1964** **CLERK**  
**REGISTER**

GEORGE T. FOWLER

Plaintiff

vs

FAIRHOPE MEMORY GARDENS, INC., a  
Corporation

Defendant

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW NO. 5994

Comes the defendant in the above styled cause and for answer to said complaint shows unto this Honorable Court as follows:

1. Plaintiff denies the allegations of said complaint.
2. That the Directors of said corporation did not authorize said plaintiff to receive any compensation other than the compensation of commissions and over-rides.
3. That the Directors of said corporation did not authorize the said plaintiff to incur any indebtedness against the corporation for work and labor.
4. That the Board of Directors of said corporation did not employ said plaintiff except under a compensation of commissions and over-rides on sales.
5. That the Board of Directors of said corporation did not authorize the employment of said plaintiff except for commissions and over-rides for which said plaintiff has been paid in full.
6. There has been an accounting between the plaintiff and the defendant on to-wit, April 23, 1964, and the said plaintiff was paid in full by the defendant all amounts due said defendant.
7. The defendant for answer to the said complaint, saith that it has paid the debt, for the recovery of which this suit was brought before the action was commenced.
8. Now comes the defendant and for answer to the complaint, and to each count thereof separately and severally, says there has been an accord and satisfaction of the demand upon which this suit is brought in this:

That heretofore, on to-wit, March 15, 1964, and before the filing of this suit; there was a bona fide dispute between the plaintiff and the defendant as to the amount of the plaintiff's claims; that the defendant prior to any notice of the filing of



suit paid to the plaintiff on to-wit, the 23rd day of April, 1964,  
the sum of plaintiff's demand and the plaintiff accepted said pay-  
ment of said sum in full satisfaction and discharge of said claim;  
wherefore, the plaintiff ought not to maintain this action.

THOMPSON & WHITE

BY: 

Attorneys for defendant

FILED

SEP 9 1964

ALICE L. DUCK, CLERK  
REGISTER

GEORGE T. FOWLER

Plaintiff

vs

FAIRHOPE MEMORY GARDENS

Defendant

FIRST NATIONAL BANK OF MOBILE &  
FIRST NATIONAL BANK OF FAIRHOPE

Garnishee

X

X

X

X

X

X

X

X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW NO. 5994½

TO THE HONORABLE, CIRCUIT JUDGE OF BALDWIN COUNTY, ALABAMA:

Comes the defendant in the above styled cause and moves this Honorable Court to quash the garnishment pending against said defendant and as grounds for said motion shows as follows:

1. That said garnishment was filed on a default judgment of the Circuit Court of Baldwin County and that on to-wit, the 8th day of September, 1964, the said default judgment was set aside and the cause restored to the Jury Docket of the said Circuit Court.

2. That said defendant filed with the Clerk of the Circuit Court a bond for the purpose of quashing the said garnishment which bond was made in Mobile County and duly acted upon by Honorable John Mandeville, Clerk of the Circuit Court of that County and then filed on August 3, 1964, with Honorable Alice J. Duck, Clerk of the Circuit Court of Baldwin County.

3. That process of garnishment is not necessary in the collection of a duly adjudicated claim against the defendant.

4. That said garnishment being issued on a judgment for the plaintiff against the defendant which judgment has been set aside and held for naught, there is no basis for the action of garnisheeing said defendant.

5. Said plaintiff has not filed a proper bond for a garnishment on a summons and complaint as provided by law.

Wherefore, this motion.

THOMPSON & WHITE

BY:

Attorneys for defendant.

FILED

SEP 10 1964

ALICE J. DUCK, CLERK  
REGISTER

GEORGE T. FOWLER ) IN THE CIRCUIT COURT OF  
 Plaintiff ) BALDWIN COUNTY, ALABAMA  
 vs. ) AT LAW  
 FAIRHOPE MEMORY GARDENS, INC. )  
 a Corporation, )  
 Defendant ) No. 5994 1/2

KNOW ALL MEN BY THESE PRESENTS, That we, Fairhope Memory  
 Gardens, Inc., a corporation, and M. A. Ripps and S. J. Ripps

---

are held and firmly bound unto George T. Fowler, his heirs, execu-  
 tors and administrators, in the sum of Ten Thousand Five Hundred  
 Thirty-Four and 62/100 Dollars (\$10,534.62) for the payment of which  
 we jointly and severally bind ourselves, our heirs, executors or  
 administrators, firmly by these presents.

Sealed with our seals, and dated the 30 day of July,  
 1964.

The condition of the above obligation is such, that where-  
 as the above bound Fairhope Memory Gardens, Inc., a corporation, has  
 on July 2, 1964, applied for a rehearing in that certain case Number  
 5994, Civil Jury Division which hearing was set by the Honorable  
 Hubert M. Hall, Judge of the Twenty-Eighth Circuit of Baldwin County,  
 Alabama, for hearing on July 14, 1964, and the said case being con-  
 tinued on July 14, 1964, by the Honorable Tolbert M. Brantley,  
 Special Circuit Judge, to a day certain on August 12, 1964, at 10:00  
 A.M. for hearing in the Circuit Court of Baldwin County; to supersede  
 and reverse a default judgment recovered by the said George T. Fowler  
 against the said Fairhope Memory Gardens, Inc., a corporation, at the  
 19th day of May, 1964, term of the Circuit Court of Baldwin County,

Alabama, and in the aid of the collection of said suit the said George T. Fowler having caused a garnishment to be issued against the First National Bank of Mobile, Alabama, and said garnishee having answered it was indebted to the said Fairhope Memory Gardens, Inc., a corporation, in the sum of Five Thousand Two Hundred Sixty-Seven and 31/100 Dollars (\$5,267.31) and upon filing its said answer awaits the further action of the Circuit Court of Baldwin County, (and the Court having issued an order superseding said garnishment and providing that said sum of Five Thousand Two Hundred Sixty-Seven and 31/100 Dollars (\$5,267.31) be paid to Defendant on condition of the filing of this bond)

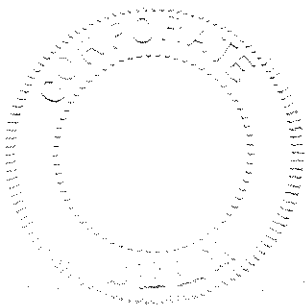
Now, if the above bound Fairhope Memory Gardens, Inc., a corporation, should be successful in said application for rehearing; or if it should be unsuccessful therein and should thereupon pay into Court the said sum of Five Thousand Two Hundred Sixty-Seven and 31/100 Dollars (\$5,267.31) with interest to abide the judgment of the Court and should pay the costs of said application, then in either such event this obligation to be null and void; otherwise to be and remain in full force and effect.

FAIRHOPE MEMORY GARDENS, INC.

By *Harold R. J.*  
Its Vice-President


*Markings*  
Surety

*[Signature]*  
Surety



**FILED**  
AUG 8 1964  
ALICE J. DICK, CLERK  
REGISTER

I certify that if requested to approve the above sureties on this bond in the Circuit Court of Mobile County, of which I am Clerk, I would approve the same.

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

FILED

AUG 3 1964

AUDIE J. DUCK, CLERK  
REGISTER

GEORGE T. FOWLER,  
PLAINTIFF,

Vs.

FAIRHOPE MEMORY GARDENS, INC.,  
A CORPORATION.  
Defendant.

In The Circuit Court of Baldwin County,  
Alabama. At Law

No. 5994.

D E C R E E

Defendant's motion to quash the garnishment pending against the defendant in this case having been duly submitted to and considered by the Court:

It is the opinion and judgment of the Court that said motion is well founded and should be granted; and it is, therefore,

ORDERED, ADJUDGED AND DECREED BY THE COURT that said motion be and the same is hereby granted, and that said garnishment be and the same is hereby set aside and held for naught.

Dated this the 12th day of September, 1961.

*E. F. Fildeth*  
Special Judge.

FILED

SEP 14 1961

ALICE I. DICK, CLERK  
REGISTER

**THE STATE OF ALABAMA**  
**Baldwin County**Before me, Alice J. Duckpersonally appeared John V. Duckwho, being duly sworn, deposeth and saith, that the said George T. Fowleron the 19th day of May, 1946recovered a judgment against Fairhope Memory Gardensfor the sum of Fifteen Thousand (\$15,000.00) Dollars,and the further sum of Thirty-three & 50/100 (\$33.50) Dollars,costs of suit; and that he believes process of garnishment against First National Bank  
of Fairhope is necessary to obtain satisfaction of saidjudgment, and that said First National Bank of Fairhope  
is supposed to be indebted to the defendant, or has effects of the defendant in his possession or under his control.Sworn to and subscribed before me this 19 day of June, 1946Alice J. Duck  
Alice J. Duck-Clerk

State of Alabama

BALDWIN COUNTY

TO FAIRHOPE MEMORY GARDENS, Defendant.....

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

GEORGE T. FOWLER

Plaintiff.....

versus FAIRHOPE MEMORY GARDENS, Defendant.....

now pending in the Circuit Court of Baldwin County, Alabama, Law Side, in which.....

First National Bank of Mobile

~~First National Bank of Fairhope~~

has..... been named as Garnishee.....

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal on this the 19...

day of June, 1964.

Deice J. Luck

Clerk of the Circuit Court.

64-7-1-64

533



RECEIVED

JUN 30 1964

SHERIFF'S OFFICE

Received 19 day of June 1964

and on 19 day of June 1964

I served a copy of the within Notice

on George T. Fowler

by service on Taylor Wilkins, Sheriff

TAYLOR WILKINS, Sheriff

By George T. Fowler

Received 30 Day of June 1964

and on 1st Day of July 1964

I served a Copy of the within Notice

on Mr E E Delaney

by service on Ray D. Bridges, Sheriff

RAY D. BRIDGES, Sheriff

By George T. Fowler D. S.

22d. M. 5994 1/2

2276

NOTICE

TO DEFENDANT OF GARNISHMENT

BY

CLERK OF CIRCUIT COURT

BALDWIN COUNTY, ALABAMA

TO

Fairhope Memory Gardens

George T. Fowler

Plaintiff.....

VS.

Fairhope Memory Gardens  
17/ Serve on E. E. Delaney  
in Mobile Co -

Defendant.....

First National Bank of Mobile  
and First National Bank of Fairhope  
Garnishers

RECEIVED

JUN 30 1964

SHERIFF'S OFFICE

Received 19 day of June 1964  
and on 19 day of June 1964  
I served a copy of the within Notice  
on George T. Fowler  
By service on George T. Fowler

TAYLOR WILKINS, Sheriff.

By

Received 30 Day of June 1964  
and on 1st Day of July 1964  
I served a Copy of the within Notice  
on Mr E E Delaney  
by service on Mr E E Delaney

RAY D. BRIDGES, Sheriff

By Ray D. Bridges D. S.

Ed. Mc. 5994 1/2

2276

NOTICE

TO DEFENDANT OF GARNISHMENT

BY

CLERK OF CIRCUIT COURT

BALDWIN COUNTY, ALABAMA

TO

Fairhope Memory Gardens

George T. Fowler

Plaintiff.....

VS.

Fairhope Memory Gardens  
17/ Serve on E.E. Delaney  
in Mobile Co -

Defendant.....

First National Bank of Mobile  
and First National Bank of Fairhope  
Garnishers

THE STATE OF ALABAMA, )  
Baldwin County )  
  
GEORGE T. FOWLER )  
Vs. )  
FAIRHOPE MEMORY GARDENS )

CIRCUIT COURT, BALDWIN COUNTY

Comes John D Terrell, Senior Vice President and Cashier of The First National Bank of Mobile, Mobile, Alabama, and says that he, as Senior Vice President and Cashier of The First National Bank of Mobile, is duly authorized by said The First National Bank of Mobile, to make this answer to garnishment for and on its behalf, answering the garnishment served on the bank, on the 22nd day of June 1964, in the above entitled cause, says that The First National Bank of Mobile is indebted to the said defendant in the above entitled cause in Checking Account in the amount Five Thousand Two Hundred Sixty-seven and 31/100 Dollars (\$5,267.31) in the name of Fairhope Memory Gardens, and at the time of making this its answer.

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

Garnishee claims a fee of \$3.00.

  
John D. Terrell, Senior Vice President and Cashier  
The First National Bank of Mobile, Mobile, Alabama.

Subscribed and sworn to before me  
on this 13<sup>th</sup> day of July 1964.

  
Notary Public, Mobile County, Alabama

FILED

JUL 14 1964

ALICE I. DUCK, CLERK  
REGISTER

GEORGE T. FOWLER

Plaintiff

vs

FAIRHOPE MEMORY GARDENS

Defendant

FIRST NATIONAL BANK OF MOBILE &  
FIRST NATIONAL BANK OF FAIRHOPE,

Garnishee

X

X

X

X

X

X

X

X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW NO. 5994½

Comes the defendant, Fairhope Memory Gardens, Inc., a corporation by C. LeNoir Thompson, its attorney of record and moves this Honorable Court to strike the service of garnishment on the garnishee, the First National Bank of Mobile and as grounds for said motion shows unto this Honorable Court as follows:

1. That the service on said garnishee was served on "a Mr. Davis, bookkeeper" which said service is contrary to the 1940 Code of Alabama as amended in that service was not had on an authorized agent or an officer of said corporation.  
Wherefore, this motion.

THOMPSON & WHITE

FILED

JUL 16 1964

ALICE J. DUCK, CLERK  
REGISTER

BY:

  
Attorneys for defendant.

GEORGE T. FOWLER,  
Plaintiff,  
-VS-  
FAIRHOPE MEMORY GARDENS,  
Defendant,  
FIRST NATIONAL BANK OF  
FAIRHOPE, Fairhope, Ala-  
bama,  
Garnishee.

Q

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Q

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Q

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Q

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW.

ANSWER OF GARNISHEE

NOW, on this day, comes the FIRST NATIONAL BANK OF FAIRHOPE, Fairhope, Alabama, garnishee in the above stated cause, and for answer to the writ of garnishment served upon it, on the 7<sup>th</sup> day of July, 1964, upon oath, says that it was not indebted to the above named defendant, at the time of the service of the garnishment in the above stated cause, or at the time of making its answer hereto: and that it will not be indebted in future to the said defendant by a contract then existing, or at the time of this summons; and that it has not in its possession, or under its control, personal or real property, or things in action, belonging to the said FAIRHOPE MEMORY GARDENS.

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

FIRST NATIONAL BANK OF FAIRHOPE,  
Fairhope, Alabama,

By:

H. G. Bishop  
H. G. BISHOP, President.

STATE OF ALABAMA,  
BALDWIN COUNTY.

Before me, the undersigned notary public, personally appeared H. G. BISHOP, who being first duly sworn, deposes and says:

That he is the President of the FIRST NATIONAL BANK OF FAIRHOPE, Fairhope, Alabama, and as such, is authorized to answer garnishments served upon the bank, and that the facts stated in the foregoing affidavit are true and correct and that he has knowledge of the same.

H. G. Bishop  
Affiant

Subscribed and sworn to before me, this 7th day of July, 1964.

FILED

JUL 10 1964

ALICE J. DUCK, CLERK  
REGISTER

Dorothy J. Kanne  
Notary Public, Baldwin County, Alabama.

Plaintiff,

-VS-

FAIRHOPE MEMORY GARDENS,

Defendant,

FIRST NATIONAL BANK OF  
FAIRHOPE, Fairhope, Ala-  
bama,

Garnishee.

ANSWER OF GARNISHEE

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E. G. RICKARBY

LAWYER

FAIRHOPE, ALABAMA

Garnishment on Judgment.

The State of Alabama,  
Baldwin County

CIRCUIT COURT, BALDWIN COUNTY

May

TERM, 1964

To any Sheriff of the State of Alabama, Greeting:

WHEREAS, at a regular May Term, 1964, of the Circuit Court of Baldwin County,  
to-wit: On the 19th day of May, 1964, being a regular day of  
said term, George T. Fowler

recovered judgment against Fairhope Memory Gardens

for the sum of Fifteen Thousand & no/100 (\$15,000.00) Dollars, and cost of suit,  
and affidavit having been made by John V. Duck  
that process of garnishment is believed to be necessary to obtain satisfaction of such Judgment, and that the  
following named persons or corporations, viz:

First National Bank ofv Fairhope, Fairhope, Alabama

G

has or is believed to have in its possession, or under its control money  
or effects belonging to said defendant it is, or  
is believed to be indebted to said defendant it or to be liable to them, or to one of them on a  
contract for the delivery of personal property, or 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

First National Bank of Fairhope

to be and appear before the honorable Judge of the Circuit Court for Baldwin County, at the Court House  
thereof, in the city of Bay Minette, on the Monday in June A. D. 1964,  
then and there within the three first days of the term, to answer on oath, whether at the time of the service  
of the garnishment, or at the time making its answer, or at any time intervening the time of serv-  
ing the garnishment, and making the answer it was or is indebted to said defendant  
it and whether it will not be indebted in future to said defendant  
by a contract then existing, and whether by a contract then existing  
is, or are, liable to said defendants 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 it has not in its possession or under its control money or  
effects belonging to the defendant Fairhope Memory Gardens

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

Witness, ALICE J. DUCK, Clerk of said Court, this 19 day of June, A. D., 1964

Issued 19 day of June A. D., 1964.

ATTEST:

64-6-23-64

534

Alice J. Duck, Clerk.

Received 19th day of June 1964  
on 23rd day of June 1964  
I received a copy of the within Writ  
First National Bank  
of Fairhope  
y service on John Beasley,  
CASHIER

TAYLOR WILKINS, Sheriff  
By Leibert D. S.  
F. H. H. H.

Sheriff claims 70 miles at  
Ten Cents per mile Total \$ 7.00

TAYLOR WILKINS, Sheriff  
BY Leibert  
DEPUTY SHERIFF

Circuit Court, Baldwin County

No. 5994 1/2

George T. Fowler

VS. } Garnishment On Judgment

Fairhope Memory Gardens

First National Bank of Fairhope  
Garnishee

Issued \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

Returnable \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

John V. Duelt  
Attorney



Garnishment on Judgment.

The State of Alabama,  
Baldwin County

CIRCUIT COURT, BALDWIN COUNTY

May

TERM, 19-64

To any Sheriff of the State of Alabama, Greeting:

WHEREAS, at a regular May Term, 19-64, of the Circuit Court of Baldwin County,  
to-wit: On the 19th day of May, 1964, being a regular day of  
said term, George T. Fowler

recovered judgment against Fairhope Memory Gardens

for the sum of Fifteen Thousand & no/100 - - - - Dollars, and cost of suit,  
and affidavit having been made by John V. Duck  
that process of garnishment is believed to be necessary to obtain satisfaction of such Judgment, and that the  
following named persons or corporations, viz:

First National Bank of Mobile

Mobile, Alabama

has or is believed to have in its possession, or under its control money  
or effects belonging to said defendant or that it is, or  
is believed to be indebted to said defendant or to be liable to them, or to one of them on a  
contract for the delivery of personal property, or 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

First National Bank of Mobile

to be and appear before the honorable Judge of the Circuit Court for Baldwin County, at the Court House  
thereof, in the city of Bay Minette, on the within 30 days Monday in June A. D. 1964,

then and there within the three first days of the term, to answer on oath, whether at the time of the service  
of the garnishment, or at the time making its answer, or at any time intervening the time of serv-  
ing the garnishment, and making the answer it was or is indebted to said defendant  
and whether it will not be indebted in future to said defendant

by a contract then existing, and whether by a contract then existing  
is, or are, liable to said defendants 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 it has not in its possession or under control money or  
effects belonging to the defendant Fairhope Memory Gardens

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

Witness, ALICE J. DUCK, Clerk of said Court, this 19 day of June, A. D., 1964

Issued 19 day of June A. D., 1964.

ATTEST:

Alice J. Duck, Clerk.

64-6-22-64

Received 22 Day of June 19 64  
and on 22 Day of June 19 64  
I served a Copy of the within Garnishment  
on First National Bank of  
Mobile  
by service on Mr. J. J. Harper  
Bookkeeper  
RAY D. BRIDGES, Sheriff  
By C. J. Miller D. S.

Ray 2266  
Circuit Court, Baldwin County

No. 5994 1/4

George T. Fowler  
VS. } Garnishment On Judgment  
Fairhope Memory Gardens  
231 1/2 N. Louis, Bk  
First National Bank of Mobile  
Garnish on

Issued \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

Returnable \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

RECEIVED

JUN 22 1964

SHERIFF'S OFFICE

Richard D. Dyer

Attorney

SENDER: WRITE (OR TYPE) MESSAGE, PULL OUT YELLOW SHEET, MAIL THE OTHER TWO.  
RECIPIENT: WRITE YOUR REPLY AT BOTTOM, MAIL BACK WHITE SHEET AND KEEP THE PINK.

**JOHN V. DUCK  
& RICHARD C. LACEY**  
Attorneys At Law  
319 Magnolia Avenue  
FAIRHOPE, ALABAMA

Message  
Reply

DATE:

June ~~xxx~~ 17, 1964

FILE NO:

**PRIORITY**

☐ URGENT!  
☐ SOON AS POSSIBLE  
☐ NO REPLY NEEDED

**ATTENTION:**

**SUBJECT:**

GEorge T. Fowler- Fairhope Memory  
Gardens

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

Dear Mrs. Duck:

Enclosed you will find garnishment proceedings on the above.  
Please file and have served.

JVD/og  
Encl:

Sincerely,

**SIGNED:**

DATE OF REPLY:

REPLY TO:

/John V. Duck

**SIGNED:**

SENDER: MAIL RECIPIENT WHITE AND PINK SHEETS

RECIPIENT: WRITE REPLY. RETURN WHITE TO SENDER. KEEP THIS PINK COPY.

State of Alabama

BALDWIN COUNTY

TO FAIRHOPE MEMORY GARDEBS, Defendant:

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

George T. Fowler, Plaintiff,

versus Fairhope Memory Gardens, Defendant,

now pending in the Circuit Court of Baldwin County, Alabama, Law Side, in which

First National Bank of Fairhope

has been named as Garnishee.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal on this the

day of , 194

Clerk of the Circuit Court.

State of Alabama  
BALDWIN COUNTY

TO FAIRHOPE MEMORY GARDEBS, Defendant:

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

George T. Fowler, Plaintiff,

versus Fairhope Memory Gardens, Defendant,

now pending in the Circuit Court of Baldwin County, Alabama, Law Side, in which

First National Bank of Fairhope

has been named as Garnishee.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal on this the

day of , 194

Clerk of the Circuit Court.

E. G. RICKARBY

392 FAIRHOPE AVENUE  
FAIRHOPE, ALABAMA 36532

July 8, 1964

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

Dear Mrs. Duck:

Inre: George T. Fowler  
Vs: Fairhope Memory Gardens


First National Bank of Fairhope,  
Fairhope, Alabama, Garnishee

Case No: 5994½  
Our File: 64-166

With this we are handing you Answer of Garnishee,  
Case Number 5994½.

A copy of this Answer has this day been sent to  
Messrs. Duck and Lacey, Attorneys for the Plaintiff.

Yours very truly,



EGR/ts

Encl.

cc: Mr. John Duck

E. F. Hildreth

THOMPSON & WHITE

Attorneys-At-Law

BAY MINETTE, ALABAMA

C. LeNoir Thompson

36507

Mary Thompson White

September 10, 1964

937-3921  
Phones : 937-7487  
937-8355

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

Re: George Fowler v.  
Fairhope Memory Gardens, Inc.  
Case No. 5994½

Dear Mrs. Duck:

Examination of the record in the George Fowler v. Fairhope Memory Gardens reveals that about the time a motion for rehearing was filed by the defendant in this case a garnishment on a judgment was filed by the plaintiff.

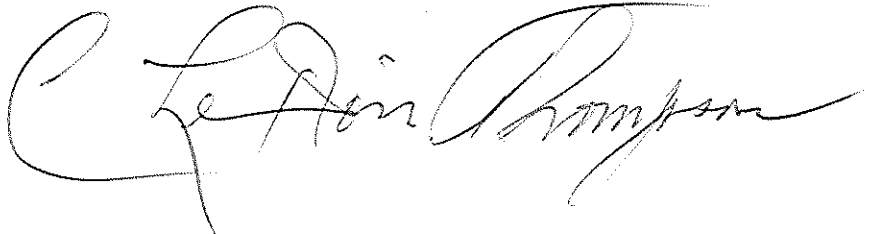
Your record shows that the defendant filed a bond made in Mobile County and duly acted upon by the Clerk of the Circuit Court there, Honorable John Mandeville.

The record further shows that on the 8th day of September Honorable Emmett Hildreth, Circuit Judge appointed specially to consider this case, granted the defendant's motion and set aside the default judgment restoring the case to the docket.

I am attaching hereto a motion to quash the garnishment inasmuch as it was filed on a judgment and the judgment no longer exists together with other points raised in the motion.

Will you please forward the original file in this case together with the motion attached to Judge Emmett Hildreth. A copy of the motion is attached for forwarding to the attorneys for the plaintiff.

Sincerely,



CLT/hm

cc: Judge Emmett Hildreth  
Eutaw, Alabama



AFFIDAVIT FOR GARNISHMENT ON JUDGMENT

Moore Printing Co.

THE STATE OF ALABAMA {  
Baldwin County

Before me, Alice J. Duck

personally appeared John V. Duck

who, being duly sworn, deposeth and saith, that the said George T. Fowler

on the 19th day of May, 1964

recovered a judgment against Fairhope Memory Gardens

for the sum of Fifteen Thousand (\$15,000.00) Dollars,

and the further sum of Thirty-three & 50/100 (\$33.50) Dollars,

costs of suit; and that he believes process of garnishment against First National Bank

of Mobile is necessary to obtain satisfaction of said

judgment, and that said First National Bank of Mobile

is supposed to be indebted to the defendant, or has effects of the defendant in his possession or under his control.

Sworn to and subscribed before me this 19 day of June, 1964.

Alice J. Duck  
Clerk

xxxxxx  
Notary Public.

CERTIFICATE OF AMENDMENT  
OF  
CERTIFICATE OF INCORPORATION  
BY UNANIMOUS CONSENT OF STOCKHOLDERS  
TO THE HONORABLE JUDGE OF THE PROBATE COURT OF BALDWIN COUNTY,  
ALABAMA:

FAIRHOPE MEMORY GARDENS, INC., an Alabama corporation, the certificate of incorporation of which was filed and recorded in the office of the Judge of Probate of Baldwin County, State of Alabama, on the 5th day of October, 1957, Hereby Report:

FIRST: That the Board of Directors of said corporation by the unanimous written consent of its members filed with the minutes of the board adopted a resolution proposing and declaring advisable the following amendment to the Article of Incorporation of said corporation:

RESOLVED, that the Articles of Incorporation of this Corporation be amended by changing the Article thereof numbered "VI" so that, as amended, said Article shall be and read as follows:

"VI: The amount of the capital stock of said corporation shall be Ten Thousand & 00/100 (\$10,000.00) Dollars divided into Two Hundred Thousand shares (200,000) of the face value of Five Cents (5c) per share, to be held, sold and paid for at such time and in such manner as the Board of Directors may from time to time determine.

SECOND: That the said amendment has been consented to and authorized by the holders of all the issued and outstanding stock, entitled to vote, by a written consent given in accordance with the provisions of Section 20 of the Alabama Business Corporation Act, Title 10, Section 21 (19) (20), Code of Alabama, 1940, as amended.

STATE OF ALABAMA,  
BALDWIN COUNTY

I certify that this instrument was filed on

AUG 28 1963

8:20 A M

and that no tax was collected. Recorded in

Book 13

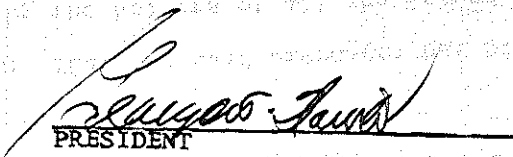
Page 15-16

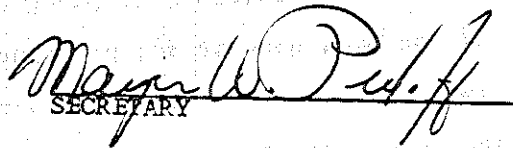
Judge of Probate

By

YAR

IN WITNESS WHEREOF, the said officers have hereunto placed their hands and seals and have hereunto affixed the corporate seal of said corporation on the 6 day of August, 1963.

  
PRESIDENT

  
SECRETARY

(Corporate Seal)

BOOK 013 PAGE 16

STATE OF ALABAMA  
Baldwin County

PROBATE COURT

I, L. D. OWEN, JR., Judge of Probate Court in and for said State and County, hereby

certify that the within and foregoing two pages

contain a full, true and complete copy of the Certificate of Amendment of  
Fairhope Memory Gardens, Inc., recorded in Corp. 13, pages 15-16

as the same appears of record in my office.

Given under my hand and seal of office, this 1st day of July, 19 64.

L. D. Owen, Jr.  
Judge of Probate

Geo. J. Towler  
 15  
 Fairhope Memory Garden  
 JURY LIST - SEPTEMBER 13, 1965

1. Cleverdon, Paul L., Farmer, Summerdale
2. Clark, J.W., Jr., Merchant, Robertsdale
3. Boone, W.A., Farmer, Little River
4. Bankester, Artie, Retired, Robertsdale
5. Armstrong, Charles, Ins. Salesman, Robertsdale
6. Fullbright, Lex J., Army-Retired, Gulf Shores
7. Frank, Lawrence J., Farmer, Elberta
8. Gideon, Elijah M., Laborer, Bay Minette
9. Black, Rufus M., Farmer, Loxley
10. Bauer, Hilbert, Farmer, Summerdale
11. Good, John, Jr., Farmer, Elberta
12. Cottler, Joe, Farmer, Elberta
13. Guthrie, Hershey H., Farmer, Foley
14. Hatchcock, Roy, Laborer, Summerdale
15. Hobbs, Tom, Farmer, Rosinton
16. Hinkelman, Howard, Civil Service, Elberta
17. Herron, John L., Chemstrand, Bay Minette
18. Kaechale, John F., Mechanic, Elberta
19. Ingram, Charles C., Linesman, Foley
20. Horne, Thomas B., Fleet, Crossroad
21. Chestang, J.D., Paper Mill, Bay Minette
22. Keenam, Ruben A., Oil Dealer, Robertsdale
23. Lyles, O.C., Real Estate, Bay Minette
24. Hastings, Donald E., Farmer, Rosinton
25. Erdmann, Rudolph C., Plumber, Mag. Spgs.
26. Capps, James C., Merchant, Bay Minette
27. Calloway, Lawrence E., Fisherman, Gulf Shores
28. Byrd, Claude, Newport, Bay Minette
29. Burns, Guy, Farmer, Summerdale
30. Brantley, E.R., Contractor, Bay Minette
31. Ebentheuer, Henry A., Trk. Driver, Elberta
32. Dyer, Ted, Mechanic, Fairhope
33. Dvork, Joseph, Jr., Salesman, Belforest
34. Day, Gladden, Salesman, Bay Minette
35. Crotwell, Alfred, Carpenter, Gulf Shores
36. Conway, Wm. Brookley Field, Bay Minette
37. Armstead, George, Emp. Fairhope Hardware, Daphne
38. Evans, Clovice, Newport Industry, Bay Minette
39. Hudson, Homer, Standard Furniture Co., Bay Minette
40. Benton, George H., Fisherman, Gulf Shores
41. Lindsey, Walter M., Abstractor, Bay Minette
42. Gissner, Courtney, Jr., Farmer, Foley

P XXXXX XXXX

D XXXXX XXX