

FRANK MUGGINS, JR.

Plaintiff,

vs

INDEPENDENT LIFE AND
ACCIDENT INSURANCE COMPANY,
A Florida Corporation, and
BENJAMIN T. SMITH,

Defendants.

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

AT LAW

Case No. 6093

COUNT ONE:

The Plaintiff claims of the defendants Twenty-five Thousand (\$25,000.00) Dollars, damages for maliciously, and without probable cause therefor, causing the plaintiff to be arrested under a warrant issued by Perry G. McClelland, a justice of the peace of Baldwin County, Alabama, on the 9th day of June, 1964, on a charge of robbery, which charge, before the commencement of this action, has been judicially investigated, and said prosecution ended, and the plaintiff discharged.

COUNT TWO:

Plaintiff claims of the Defendant Independent Life and Accident Insurance Company, a Florida corporation, Twenty-five Thousand (\$25,000.00) Dollars for that heretofore, on, to-wit, June 9th, 1964, the said defendant's agent, servant or employee, viz: Benjamin T. Smith, whose name to the plaintiff is otherwise unknown, while acting within the line and scope of his employment, wrongfully caused the plaintiff to be arrested and imprisoned on a charge of robbery. And the plaintiff says that as a proximate result of said wrong he was deprived of his liberty for a long time, to-wit, a part of one day, was compelled to remain under bond for his appearance at court for a long time, to-wit, four days, and was greatly frightened, humiliated, and chagrined, and was caused to appear in open court to defend said charge before divers persons, and was made nervous and sick, and caused to suffer

mental anguish, and was compelled to pay out money to an attorney to defend him against said charge, all to his damage aforesaid.

/s/ Frank Muggins, Jr.
Plaintiff

Plaintiff demands a trial
by jury in this cause.

/s/ Frank Muggins Jr.
Plaintiff

Defendants' address:
Benjamin T. Smith
165 Pinecrest Street
Fairhope, Alabama

Service upon Independent Life and
Accident Insurance Company maybe
had by service upon the Superin-
tendent of Insurance, State of
Alabama, Montgomery, Alabama

FILED

JUN 28 1964

ALICE L. JONES, CLERK
JUNE 28 1964, REGISTER

SUMMONS AND COMPLAINT

Baldwin Times

THE STATE OF ALABAMA,

BALDWIN COUNTY

CIRCUIT COURT, BALDWIN COUNTY

No. _____ June _____ TERM, 19 64

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon Benjamin T. Smith and Independent Life
and Accident Insurance Company, a Florida 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 Benjamin T. Smith and
Independent Life and Accident Insurance Company, Defendant.

by Frank Muggins, Jr.

_____, Plaintiff

Witness my hand this 19 day of June 19 64

EX-1-23-64 Alice J. Duck Clerk

THE STATE OF ALABAMA
BALDWIN COUNTY

CIRCUIT COURT

FRANK MUGGINS, JR.

Plaintiffs

vs.

INDEPENDENT LIFE AND ACCIDENT INSURANCE COMPANY, a Florida Corporation, and BENJAMIN T. SMITH,

Defendants

SUMMONS and COMPLAINT

FILED

Filed JUN 15 1964, 19

ALICE J. DUCK, CLERK
REGISTER

Plaintiff's Attorney

Defendant's Attorney

Benjamin T. Smith

Defendant lives at
165 Pinecrest St., Fairhope, Ala.
Service upon Independent Life &
Accident Insurance Company may be
had upon Superintendent of Insurance
State of Alabama at
Montgomery, Alabama

Sheriff

I have executed this summons

this 23rd day of June, 1964

by leaving a copy with

Benjamin T. Smith

Sheriff claims 70 miles @ 7.00

Ten Cents per mile Total \$ 7.00
TAYLOR WILKINS, Sheriff

BY Deputy DEPUTY SHERIFF

Sheriff

Deputy Sheriff

3 page

SUMMONS AND COMPLAINT

Baldwin Times

THE STATE OF ALABAMA,

BALDWIN COUNTY

CIRCUIT COURT, BALDWIN COUNTY

No. _____

June TERM, 19 64

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon Benjamin T. Smith and Independent Life
and Accident Insurance Company, a Florida 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 Benjamin T. Smith and
Independent Life and Accident Insurance Company, Defendant.

by Frank Muggins, Jr.

Plaintiff.

Witness my hand this 19 day of June 1964

Clerk

Ex-6-22-64 - Superintendent of Prisons
Ex-6-22-64 - on Dept - Benjamin T. Smith

No. 6093

Page _____

THE STATE OF ALABAMA
BALDWIN COUNTY

CIRCUIT COURT

FRANK MUGGINS

Plaintiffs

vs.

INDEPENDENT LIFE & ACCIDENT INSURANCE COMPANY, A Florida corporation, and BENJAMIN T. SMITH,

Defendants

SUMMONS and COMPLAINT

Filed June 19 1964, 1964

ALICE J. DUCK

CLERK
REGISTER

Clerk

Kenneth Cooper
Bay Minette, Alabama

Plaintiff's Attorney

Defendant's Attorney

1247

Benjamin T. Smith

Defendant/lives at

165 Pincrest St., Fairhope, Ala.
Service upon Independent Life & Accident Insurance Company may be had upon Superintendent of Insurance State of Alabama in Office Montgomery Ala.

RECEIVED IN OFFICE

JUN 22 1964

M. S. BUTLER, Sheriff

this _____, 19____

by leaving a copy with

Executed by serving 2 copies of

the within on Walter S.

Heersel Superintendent of Insurance, State of Alabama

This The 22 day of June 1964

Sheriff of Montgomery County

M. S. Butler,

By J. H. H. H. H. H.

The Sheriff claims ✓

as follows at 10c per mile for a total

of \$ 20

M. S. Butler, Sheriff
Montgomery County, Ala.

Sheriff

Deputy Sheriff

mental anguish, and was compelled to pay out money to an attorney to defend him against said charge, all to his damage aforesaid.

Frank Muggio Jr
Plaintiff

Plaintiff demands a trial
by jury in this cause.

Frank Muggio Jr
Plaintiff

Defendants' address:

Benjamin T. Smith
165 Pinecrest Street
Fairhope, Alabama

Service upon Independent Life and
Accident Insurance Company may be
had by service upon the Superin-
tendent of Insurance, State of
Alabama, at Montgomery, Alabama.

FILED

JUN 19 1964

ALICE J. DUCK, CLERK
REGISTER

FRANK MUGGINS, JR

Plaintiff,

Vs.

INDEPENDENT LIFE AND
ACCIDENT INSURANCE COMPANY,
A Florida corporation, and
BENJAMIN T. SMITH,

Defendants.

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

AT LAW.

Case No. 6093

COUNT ONE:

The Plaintiff claims of the defendants Twenty-five Thousand (\$25,000.00) Dollars, damages for maliciously, and without probable cause therefor, causing the plaintiff to be arrested under a warrant issued by Perry G. McClelland, a justice of the peace of Baldwin County, Alabama, on the 9th day of June, 1964, on a charge of robbery, which charge, before the commencement of this action, has been judicially investigated, and said prosecution ended, and the plaintiff discharged.

COUNT TWO:

Plaintiff claims of the Defendant Independent Life and Accident Insurance Company, a Florida corporation, Twenty-five Thousand (\$25,000.00) Dollars for that heretofore, on, to-wit, June 9th, 1964, the said defendant's agent, servant or employee, viz: Benjamin T. Smith, whose name to the plaintiff is otherwise unknown, while acting within the line and scope of his employment, wrongfully caused the plaintiff to be arrested and imprisoned on a charge of robbery. And the plaintiff says that as a proximate result of said wrong he was deprived of his liberty for a long time, to-wit, a part of one day, was compelled to remain under bond for his appearance at court for a long time, to-wit, four days, and was greatly frightened, humiliated, and chagrined, and was caused to appear in open court to defend said charge before divers persons, and was made nervous and sick, and caused to suffer

FRANK MUGGINS, JR.,

Plaintiff,

vs.

INDEPENDENT LIFE & ACCIDENT
INSURANCE COMPANY, a Florida
corporation, and BENJAMIN
T. SMITH,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

Comes the Defendant, Independent Life & Accident Insurance Company, a Florida Corporation, in the above styled cause, by its attorneys, and demurs to the complaint heretofore filed in said cause and to each and every count thereof, separately and severally, and assigns the following separate and several grounds in support thereof:

1. That said complaint fails to state a cause of action.

CHASON, STONE & CHASON

FILED

JUL 22 1964

ALICE L. DUCK, CLERK
REGISTER

By:

John Earle Chason
As Its Attorneys

FRANK MUGGINS, JR.,

Plaintiff,

vs.

BENJAMIN T. SMITH, ET AL.,

Defendants.

¶

¶

¶

¶

¶

¶

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

DEMURRER:

Comes now the Defendant, Benjamin T. Smith, in the above styled cause, by his attorneys, and demurs to "COUNT ONE" of the complaint heretofore filed against him and assigns the following separate and several grounds in support thereof:

1. "COUNT ONE" of the complaint fails to state a cause of action.
2. "COUNT ONE" of the complaint fails to allege that the Plaintiff was damaged on account of the acts alleged therein.

Respectfully submitted,

CHASON, STONE & CHASON

FILED

JUL 28 1966

ALICE J. DUCK, CLERK
REGISTER

By:

John Earle Chason
Attorneys for Benjamin T. Smith

FRANK MUGGINS, JR.,	:	IN THE CIRCUIT COURT OF
Plaintiff,	:	BALDWIN COUNTY, ALABAMA
vs.	:	AT LAW
INDEPENDENT LIFE AND	:	
ACCIDENT INSURANCE	:	
COMPANY, a Florida	:	
corporation, and	:	
BENJAMIN T. SMITH,	:	
Defendants.	:	Case No. <u>6093</u>

D E M U R R E R

Comes now each of the following defendants, Independent Life and Accident Insurance Company, a Florida corporation, and Benjamin T. Smith, separately and severally, and amends its demurrer filed herein by assigning as separate and several grounds of demurrer to each separate and several count of the complaint filed herein, the following, separately and severally:

1. That it does not state facts sufficient to constitute a cause of action against this defendant.

2. That it does not appear with sufficient certainty what duty, if any, this defendant may have owed to the plaintiff.

3. For that it does not appear with sufficient certainty wherein this defendant violated any duty owed by this defendant to the plaintiff.

4. For that there does not appear sufficient causal connection between this defendant's said breach of duty and plaintiff's injuries and damages.

5. No facts are alleged to show that plaintiff suffered any damage or injury as the proximate result of any breach of duty on the part of this defendant.

6. It is not alleged with sufficient certainty where the activity complained of occurred.

7. For aught that appears, plaintiff had no right to be where plaintiff was at the time and place complained of.

8. For that said count is duplicitous.

9. For that there is a misjoinder of causes of action.

10. For that there is a misjoinder of parties defendant.

11. For that each count does not state a cause of action against each defendant.

12. For that no allegation whatsoever is made in said count concerning this defendant.

13. For that the allegation "wrongfully caused the plaintiff to be arrested and imprisoned" is vague, indefinite, and uncertain.

14. For that said count attempts to state a cause of action under the provisions of Act number 624 of the 1957 Regular Session of the Legislature of Alabama, and said Act is unconstitutional.

15. For that said count attempts to state a cause of action under the provisions of Act number 624 of the 1957 Regular Session of the Legislature of Alabama, as last amended, and said statute is invalid.

16. For that said count attempts to state a cause of action under the provisions of Act 624 of the 1957 Regular Session of the Legislature of Alabama, as last amended, and said statute is unconstitutional in that it is not germane to its title.

17. For that said count attempts to state a cause of action under the provisions of Title 7, Section 217 (1) of the 1940 Code of Alabama, as last amended, and said statute is invalid in that its title is not germane to its contents.

18. For that said grounds attempt to state a cause of action under the provisions of Act 624 of the 1957 Regular Session of the Legislature of Alabama, as last amended, and said statute is unconstitutional in that it would permit the deprivation of this defendant of property of the defendant without due process of law.

19. For that said count fails to state whether suit is brought as a statutory suit against principal and agent or master and servant.

20. For that said count fails to show whether suit is brought as a statutory suit against principal and agent or

master and servant as provided by the General Acts of Alabama of 1957.

21. For that said count fails to show whether suit is brought as a statutory suit against principal and agent or master and servant as provided by Title 7, Sections ¹³⁸156 (1)-(6), of the Code of Alabama of 1940, as last amended.

CHASON, STONE & CHASON

By: John Earle Chason

Louis E. Brunell
622 First National Bank Building
Mobile, Alabama
Attorneys for the Defendants

Of Counsel:

HAND, ARENDALL, BEDSOLE,
GREAVES & JOHNSTON

FILED

AUG 7 1964

Alice J. Duck, CLERK
REGISTER

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a true and correct copy of the foregoing pleading to.....
....., Esq., Attorney for Plaintiff
by depositing a copy of same in the United States mail, postage prepaid, addressed to said attorney at his office in Mobile, Alabama on this, the.....day of
....., 19.....

FRANK MUGGINS,	:	IN THE CIRCUIT COURT OF
	:	
Plaintiff,	:	BALDWIN COUNTY, ALABAMA
	:	
Vs.	:	
	:	AT LAW
INDEPENDENT LIFE AND	:	
ACCIDENT INSURANCE COMPANY,	:	
A Florida corporation, and	:	CASE NO. 4920
BENJAMIN T. SMITH,	:	
	:	
Defendants.	:	

Comes now the Plaintiff in above styled cause, by ^{his} ~~their~~ attorney, and amends ^{his} ~~their~~ complaint heretofore filed in this cause, to read as follows:

FRANK MUGGINS,	:	IN THE CIRCUIT COURT OF
	:	
Plaintiff,	:	BALDWIN COUNTY, ALABAMA
	:	
Vs.	:	
	:	AT LAW
INDEPENDENT LIFE AND	:	
ACCIDENT INSURANCE COMPANY,	:	
A Florida corporation, and	:	CASE NO. _____
BENJAMIN T. SMITH, Individually, and as Servant, Agent	:	
or Employee of said INDEPENDENT	:	
LIFE AND ACCIDENT INSURANCE CO.,:	:	
	:	
Defendants.	:	

AMENDED COUNT ONE:

The plaintiff claims of the defendants, INDEPENDENT LIFE AND ACCIDENT INSURANCE COMPANY, A Florida Corporation, and BENJAMIN T. SMITH, Individually and as servant, agent or employee, of INDEPENDENT LIFE AND ACCIDENT INSURANCE COMPANY, A Florida Corporation, TWENTY-FIVE THOUSANT (\$25,000.00) DOLLARS, damages for unlawfully causing plaintiff to be arrested and imprisoned on a charge of Robbery, for a part of one day, on, to-wit the 9th day of June, 1964.

AMENDED COUNT TWO:

The Plaintiff claims of the defendants TWENTY-FIVE THOUSAND (\$25,000.00) DOLLARS, damages for maliciously, and without probable

cause therefor, causing the plaintiff to be arrested under a warrant issued by Perry G. McClelland, a justice of the peace of Baldwin County, Alabama, on the 9th day of June, 1964, on a charge of robbery, which charge, before the commencement of this action had been judicially investigated, and said prosecution ended, and the plaintiff discharged.

AMENDED COUNT THREE:

Plaintiff claims of the Defendant, INDEPENDENT LIFE AND ACCIDENT INSURANCE COMPANY, A Florida corporation, TWENTY-FIVE THOUSAND (\$25,000.00) DOLLARS, for that heretofore, on, to-wit, June 9th, 1964, the said defendant's servant, agent or employee, viz: BENJAMIN T. SMITH, whose name to the plaintiff is otherwise unknown, while acting within the line and scope of his said employment, wrongfully caused the plaintiff to be arrested and imprisoned on a charge of robbery. And the plaintiff says that as a proximate result of said wrong, he was deprived of his liberty for a long time, to-wit, a part of one day, was compelled to remain under bond for his appearance at court for a long time, to-wit, four days, and was greatly frightened, humiliated, and chagrined, and was caused to appear in open court to defend said charge before divers persons, and was made nervous and sick, and caused to suffer mental anguish, and was compelled to pay out money to an attorney to defend him against said charge, all to his damage aforesaid, hence this suit.

In all other respects the complaint remains unchanged.

Kenneth G. G...
Attorney For Plaintiff

Attorney for Defendant
Hon John Earl Chason
Bay Minette, Alabama.

FILED

OCT 20 1965

ALICE L. DICK, CLERK
REGISTER

FRANK MUGGINS, : IN THE CIRCUIT COURT OF
 Plaintiff : BALDWIN COUNTY, ALABAMA
 v. : AT LAW
 INDEPENDENT LIFE AND :
 ACCIDENT INSURANCE :
 COMPANY, a Florida :
 corporation, et al,
 Defendants. : Case No. 6093

A N S W E R

Comes now each of the following separate and several defendants, Independent Life and Accident Insurance Company, a Florida corporation, and Benjamin T. Smith, separately and severally, and for answer to each separate and several count of the complaint filed herein, as last amended, assigns the following separate and several pleas, separately and severally:

1. Not guilty.
2. The material allegations thereof are untrue.

John Earle Chason
Louis E. Braswell

The defendants demand a trial by jury.

John Earle Chason
 John Earle Chason
Louis E. Braswell
 622 First National Bank Building
 Mobile, Alabama

Of Counsel:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

FILED

NOV 12 1965

CLERK

CERTIFICATE OF SERVICE

I, one of the attorneys for the defendants, hereby certify that I have mailed a true and correct copy of the foregoing pleading to the attorney for the plaintiff, Kenneth Cooper, at his address in Bay Minette, Alabama, postage prepaid, on this 12th day of November, 1965.

John Earle Chasan

FILED

NOV 12 1965

ALICE L. DICK, CLERK
REGISTER

STATE OF ALABAMA

DEPARTMENT OF INSURANCE

I, the undersigned as Superintendent of Insurance for the State of Alabama, hereby certify that on the 22nd day of June, 1964, I sent by registered mail in an envelope as follows:

Independent Life & Accident Insurance Company
233 West Duval Street
Jacksonville, Florida

REGISTERED MAIL
RETURN RECEIPT REQUESTED

bearing sufficient prepaid postage, a copy of a summons and complaint served upon me by the Sheriff of Montgomery County, Alabama, in a cause styled as follows:

Frank Muggins, Jr., Plaintiff

VERSUS

in the Circuit Court of Baldwin County

Independent Life and Accident Insurance Company, a (Name of Court)
Florida corporation, and Benjamin T. Smith, Defendants

And that on the 25th day of June, 1964, I received the return card showing receipt by the designated addressee of said envelope on the 24th day of June, 1964.

Witness my hand and official seal this the 26th day of June, 1964.

Walter S. Houseal
SUPERINTENDENT OF INSURANCE

FILED
JUN 29 1964

ALICE J. DUCK
CLERK
REGISTER