

(3276)

ANNIE L. BLACKMON,	I	IN THE CIRCUIT COURT OF
Plaintiff,	I	
VS.	I	
GUARANTEE RESERVE LIFE IN-	I	BALDWIN COUNTY, ALABAMA,
SURANCE COMPANY, a corpora-	I	
tion, and CLIFTON W. FAUVER,	I	
Defendants.	I	AT LAW, NO. 3276.

Now come the Defendants in the above-styled cause and demur to the complaint heretofore filed by the Plaintiff in said cause and to each and every count thereof, separately and severally, and as grounds therefor assign separately and severally the following separate and several grounds:

1. There is a misjoinder of causes of action.
2. There is a misjoinder of causes of action as Count One of the complaint attempts to state a cause of action in contract, whereas Count Two of the complaint attempts to state a cause of action in tort.
3. From aught that appears the Defendants owed no duty to the Plaintiff.
4. From aught that appears the Defendant, Guarantee Reserve Life Insurance Company, owed no duty to the Plaintiff.
5. From aught that appears the Defendant, Clifton W. Fauver, owed no duty to the Plaintiff.
6. From aught that appears the Defendants have made no promise to the Plaintiff with which they have failed to comply.
7. From aught that appears the Defendant, Guarantee Reserve Life Insurance Company, has made no promise to the Plaintiff with which it has failed to comply.
8. From aught that appears the Defendant, Clifton W. Fauver, has made no promise to the Plaintiff with which he has failed to comply.
9. From aught that appears there was never any meeting of the minds between the Plaintiff and the Defendants.
10. From aught that appears there was never any meeting of the minds between the Plaintiff and the Defendant, Guarantee Reserve Life Insurance Company.

11. From aught that appears there was never any meeting of the minds between the Plaintiff and the Defendant, Clifton W. Fauver.

12. From aught that appears the Defendants have breached no promise made by them to the Plaintiff.

13. From aught that appears the Defendant, Guarantee Reserve Life Insurance Company, has breached no promise made by it to the Plaintiff.

14. From aught that appears the Defendant, Clifton W. Fauver, has breached no promise made by him to the Plaintiff.

15. From aught that appears the Plaintiff has suffered no damages as a result of any breach of any promise made by the Defendants to her.

16. From aught that appears the Plaintiff has suffered no damages as a result of any breach of any promise made by the Defendant, Guarantee Reserve Life Insurance Company, to her.

17. From aught that appears the Plaintiff has suffered no damages as a result of any breach of any promise made by the Defendant, Clifton W. Fauver, to her.

18. The complaint makes no allegations as to any claim against the Defendant, Clifton W. Fauver.

19. From aught that appears the Defendant, Guarantee Reserve Life Insurance Company was acting as its own agent or servant.

20. From aught that appears the Defendant, Guarantee Reserve Life Insurance Company, itself, made the alleged representations to the Plaintiff and there is no allegation that the Defendant, Clifton W. Fauver, made any representation whatever to the Plaintiff.

21. The Defendants are not sufficiently advised as to the cause of action or causes of action which they are called upon to defend.

22. The Defendants are not sufficiently advised of the terms of the insurance policy upon which the Plaintiff seeks to recover.

23. The Defendants are not sufficiently advised of the time of the occurrences complained of in the complaint.

24. The Defendants are not sufficiently advised of the place wherein the occurrences complained of in the complaint are supposed to have occurred.

25. The allegations in the complaint concerning fraud are mere conclusions of the pleader and insufficient to constitute legal fraud.

26. There is no allegation that the Defendants, or either of them, misrepresented to the Plaintiff any material fact, made wilfully to deceive, or recklessly without knowledge, which was acted on by the Plaintiff.

27. The allegation that "* * * the Defendant Company did represent to the Plaintiff that she was to receive a policy for \$10,000.00 * * *" is but a conclusion of the pleader.

28. The allegation "* * * for which the Plaintiff has a receipt." is mere surplusage.

29. The allegation " * * * for which the Plaintiff has a receipt." is a matter of proof and not of pleading.

30. The allegation that the Defendant, Guarantee Reserve Life Insurance Company "fraudulently" induced the Plaintiff to pay a \$19.00 premium to the Defendant, Clifton W. Fauver, is but a conclusion of the pleader, and fails to allege the existence of the elements which constitute legal fraud.

31. The allegation that the Plaintiff suffered complete loss of the entire sight of her right eye and that she suffered a loss for which she was insured is a mere conclusion of the pleader.

32. The complaint is vague, uncertain and indefinite.

As additional grounds for demurrer to Count One of the complaint the Defendants assign separately and severally the following separate and several grounds:

33. There is no allegation in Count One of the complaint concerning the date of any of the alleged occurrences.

34. From aught that appears the Statute of Limitations has run against this claim.

35. From aught that appears the policy of insurance referred to/ⁱⁿCount One of the complaint was not in force at the time of the alleged loss.

36. Count One of the complaint fails to allege any promise on the part of the Defendants, or either of them, to pay any money to the Plaintiff under any circumstances.

37. There are no allegations in Count One of the complaint as to the conditions under which any money was to be paid by the Defendants, or either of them, to the Plaintiff.

As additional grounds for demurrer to Count Two of the complaint the Defendants assign separately and severally the following separate and several grounds:

38. There is no allegation as to who "fraudulently represented" to the Plaintiff any facts relating to a life insurance policy for \$10,000.00.

39. The phrase "When the policy came * * *" is an insufficient allegation as to time.

40. The phrase "Almost immediately thereafter, * * *" is an insufficient allegation as to time.

41. There is no allegation that any damages suffered by the Plaintiff were the proximate result of any acts on the part of the Defendants, or either of them.

42. There is a misjoinder of causes of action.

43. The Plaintiff seeks to recover on both contract and tort in the same Count.

McCORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS.

By :

Alex T. Howard
(Attorneys for Defendants.)

McCORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS
ATTORNEYS AT LAW
NINTH FLOOR MERCHANTS NATIONAL BANK BUILDING
HEMLOCK 3-5561 P. O. BOX 1070
MOBILE 6, ALABAMA

GESSNER T. McCORVEY
BEN D. TURNER
C. M. A. ROGERS (1891-1957)
C. A. L. JOHNSTONE, JR.
R. F. ADAMS
JAMES L. MAY, JR.
CHAUNCEY MOORE
ALEX T. HOWARD, JR.
J. JEPHIA HILL
CHARLES B. BAILEY, JR.

July 19th, 1957.

Honorable Alice Duck
Clerk of the Circuit Court
of Baldwin County
Bay Minette, Alabama.

Re : Mrs. Annie L. Blackmon, vs. Guarantee Reserve
Life Insurance Company of Hammond, a corporation
and Clifton W. Fauver - Cir. Crt. of Baldwin
County, Alabama, Case No. 3276.

Dear Mrs. Duck:

Enclosed is a demurrer which I have prepared for the
defendants in the above case.

Please file this demurrer and enter our firm's appearance
for both of the above defendants.

Thank you for your kind attention to the above.

Yours very truly,

McCORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS.

By : 
(Alex T. Howard, Jr.)

ATH, jr/le.
Enclosure

State of Alabama
County of Baldwin

To any Sheriff of the State of Alabama:

You are hereby commanded to summon Guarantee Reserve Life Insurance Company of Hammond, Indiana, a Corporation and Clifton W. Fauver, to appear and plead, answer or demur within thirty days to the bill of complaint filed in the Circuit Court of said County, by Mrs. Annie L. Blackmon as plaintiff and against the Guarantee Reserve Life Insurance Company of Hammond, Indiana, a Corporation and Clifton W. Fauver, as Defendants.

Witness my hand, this 20 day of June 1957.

Annie J. Blackmon
Clerk

Mrs. Annie L. Blackmon
Plaintiff

Vs

Guarantee Reserve Life
Insurance Company, a
Corporation,
and
Clifton W. Fauver

Defendants

In the Circuit Court of
Baldwin County, Alabama
At Law. No. _____

The Plaintiff claims of the Defendants \$2500.00, due on a policy of Life insurance, whereby the Defendant Company acting by and through Defendant, Clifton W. Fauver, while acting as its authorized agent or servant, while in the line and scope of his employment with the Defendant Company did represent to the Plaintiff that she was to receive a policy for \$10,000.00 and fraudulently induced the Plaintiff thereby to pay him \$19.00 premium, for which the Plaintiff has a receipt. When the policy came, it was for a principal sum of \$2500.00. A short time thereafter, the Plaintiff suffered a fall, resulting in the complete loss of the entire sight of her right eye, for which she was insured under said policy, for one fourth of the principal sum. She had paid for and had a receipt for a policy for \$10,000.00 and had not been in default in the payment of said premiums thereafter. A valuable consideration had been paid to said Defendant Company by the Plaintiff ~~therefor~~ for said insurance protection. The Plaintiff suffered a loss for which she was insured under said policy by the Defendant Company. The Defendant Company has had notice of her loss and has failed and refused to pay her therefor, all to the damage of the Plaintiff as aforesaid.

2.

The Plaintiff claims of the Defendants \$5,000.00 as damages, for that on to wit September 13, 1956, the Defendant Company, acting through its authorized agent or servant, Clifton W. Fauver, did fraudulently induce her to pay a valuable consideration, to wit Nineteen dollars, as premium for what was fraudulently represented to her to be a policy of Life Insurance for \$10,000.00. When the policy came, it was for a principal sum of \$2500.00. Almost immediately thereafter, the Plaintiff suffered the loss of the entire sight of her right eye. The Defendant Company had notice thereof and has failed and refused

after demand, to pay the Plaintiff the one fourth of the principal sum the policy provided for, to be paid upon the loss of the entire sight of one eye. For these fraudulent practices, the Plaintiff sues to recover the amount of \$5,000.00 compensatory and punitive damages from the Defendants, which said loss and fraudulent practices resulted in the damage to the Plaintiff as aforesaid.

Richard T. McLeary
Attorney for the Plaintiff ✓

Plaintiff demands a trial by jury.

Richard T. McLeary
Attorney for the Plaintiff ✓

32-76

Mrs. Annie Blackmon
Plaintiff

Vs

Guarantee Reserve Life Insurance
Company, a Corporation and

Clifton W. Fauver

Defendants

Summons and Complaint

FILED

JUN 20 1957

ALICE L. BUCK, Clerk

SHERIFF'S RETURN

Received on the 21st day of June, 1957, and on the 2nd day of July, 1957, this writ was executed by serving a copy of the same on Guar-
antee Reserve Life Insurance Company by service on Clifton W. Fauver
agent for the company and a copy of the same on Clifton W. Fauver
and this writ is herewith returned to court.

RAY D. BRIDGES, SHERIFF

BY: D. E. FAUVER
D.S.

The Sheriff claims
miles at _____ per mile for
a total of \$ 2.00
Ray Bridges, Sheriff
Mobile County, Alabama

Mrs. Annie L. Blackmon
Plaintiff

Vs

Guarantee Reserve Life
Insurance Company, a
Corporation, and
Clifton W. Fauver
Defendants

In the Circuit Court of
Baldwin County, Alabama
At Law. No. _____

Now comes the Plaintiff in the above styled cause and moves this Hon. Court to transfer this cause from the Law to the Equity division of said court and for grounds for this motion assigns:

1.

That on to wit 8/13/56, the Defendant Corporation, acting through its duly authorized agent or servant, Clifton W. Fauver, did solicit from the Plaintiff the purchase of a policy of insurance, purporting to be for \$10,000, accepted the initial premium of \$19.00 and gave her a receipt therefor, stating on the receipt that it was for a policy for the principal sum of \$10,000. When the policy came, it was for a principal sum of \$2500. Under both the policy applied for and the one received, one fourth the principal sum was to be paid for the loss of the entire sight of one eye ~~XXXXXXXXXXXXXXXXXXXX~~ of the Plaintiff.

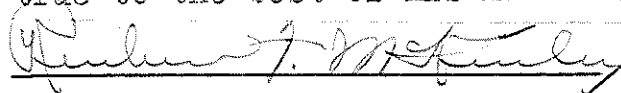
On to wit 9/18/56, your ~~XXXXXXXXXXXX~~ Plaintiff suffered a fall and a few days later, suffered the loss of the entire sight of her right eye. After demand being made to them for payment for the loss of the sight of the eye, by the Plaintiff, the Defendant Corporation has both failed and refused to pay her therefor.

In view of the above described set of facts, the Plaintiff does not have an adequate remedy at law, but must have said policy reformed to conform to the original intentions of the parties and receive payment thereunder for the loss of the sight of her eye.


Attorney for the Plaintiff

State of Alabama
County of Baldwin

Before me, Emmett Thompson, a Notary Public, in and for said County, in said State, personally appeared Reuben F. McKinley, who being personally known to me, deposes and says that he has personal knowledge of the legal facts in said case and not having medical knowledge or training cannot swear to any fact of loss of the eye, but with that exception, all of the facts stated herein are true to the best of his knowledge and belief.



Subscribed and sworn to before me on this the 29th day of November, 1957


Notary Public, Baldwin County, Alabama

