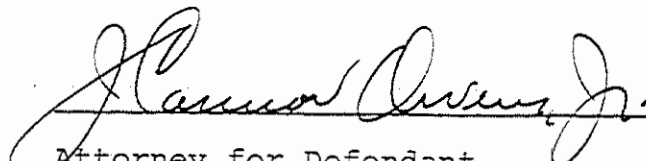


MRS. B. W. GAULT,	)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
vs.	)	BALDWIN COUNTY, ALABAMA
PAUL HAMBRICK,	)	
Defendant.	)	LAW SIDE. NO. 6946

Now comes the Defendant, by his Attorney, and for answer to the complaint filed in this cause, says:

1. Not guilty.
2. That he has paid the indebtedness for which this action is brought.

  
Attorney for Defendant.

I, the undersigned, Attorney for the Defendant in the above styled cause, do hereby certify that I have this day forwarded to James R. Owen, the Attorney of Record for the Plaintiff, a copy of the foregoing answer by United States mail, properly addressed, with postage prepaid, this 10th day of June, 1966.



FILED

JUN 10 1966

ALICE I. DICK, CLERK  
REGISTER

STATE OF ALABAMA )  
\*  
BALDWIN COUNTY )

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon Paul Hambrick to appear within thirty days from the service of this writ in the Circuit Court, to be held for said county at the place of holding the same, then and there to answer the complaint of Mrs. B. W. Gault.

WITNESS my hand this 28<sup>th</sup> day of April, 1966.

Alice I. Duck  
Clerk

Defendant may be served at Dahlberg Building,  
Bay Minette, Alabama.

\* \* \* \* \*

MRS. B. W. GAULT,  
Plaintiff,  
VS.  
PAUL HAMBRICK,  
Defendant.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW

6946

C O M P L A I N T

COUNT ONE

The plaintiff claims of the defendant Eight Hundred Twenty Dollars (\$820.00), the rent of the following described premises in the City of Birmingham, viz: 428 Raleigh, Homewood, Alabama, demised by the plaintiff to the defendant on the 27th day of August, 1965, said rent commencing on the 5th day of September, 1965, and ending on the 4th day of September, 1966.

Attorney for Plaintiff

FILED

APR 28 1966

ALICE I. DUCK

CLERK

Case No- 6946

Mrs. B. W. Gault  
Pltf.

vs.

Paul Hambrick  
Def

FILED

APR 28 1966

ALICE J. BUCK, CLERK  
REGISTER

J. R. Owen, Atty

Served on 28 day of April 66  
Served on 28 day of May 66  
Served a copy of the within  
Paul Hambrick  
service on

TAYLOR WILKINS, Sheriff  
By *[Signature]* D. S.  
oml

Returned  
Not found in my county and adjacent search and in-  
quiry.  
By *[Signature]* Taylor Wilkins, Sheriff  
Deputy Sheriff

MRS. B. W. GAULT, )  
Plaintiff, ) IN THE CIRCUIT COURT OF  
vs. ) BALDWIN COUNTY, ALABAMA  
PAUL HAMBRICK, )  
Defendant. ) LAW SIDE. NO. 6946.

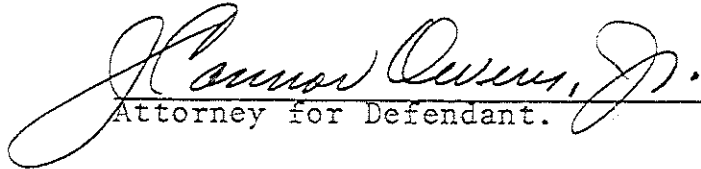
INTERROGATORIES:

Now comes the Defendant in the above styled cause, by his Attorney, and files with the Clerk of the Circuit Court of Baldwin County, Alabama, the following interrogatories to be propounded to CHARLES BELTNER, of 430 Raleigh Avenue, Birmingham, Alabama:

1. Please state your name and address.
2. Were you living at such address between September 5, 1965, and September 4, 1966?
3. Do you know Paul Hambrick? If your answer is yes, please state the occasion on which you first knew him.
4. Is 428 Raleigh Avenue, Birmingham, Alabama, the number of the house which is next door to the home in which you presently live, and in which you lived from September, 1965, to September, 1966?
5. In your best judgment, how long did Paul Hambrick reside next door to you?
6. Do you remember about when Paul Hambrick moved? If you do, please state in your best judgment the date on which he moved from 428 Raleigh Avenue, Birmingham, Alabama.
7. In your judgment, how long after he moved did the house known as 428 Raleigh Avenue, Birmingham, Alabama, remain vacant?
8. Do you remember the name or names of any other tenants of 428 Raleigh Avenue, Birmingham, Alabama, from the period beginning the first of February, 1966, until the 4th day of September 1966?
9. Can you state whether or not the house numbered 428 Raleigh Avenue, Birmingham, Alabama, during such period was offered for sale?

10. If the house was offered for sale, was the same sold?

11. If your answer is that the house was sold, will you please state the name of the purchaser and the approximate date of such sale, if any.

  
Attorney for Defendant.

I, the undersigned, Attorney of Record for the Plaintiff in the foregoing cause, do hereby accept service of the foregoing Interrogatories.

  
Attorney for Plaintiff.

FILED

AUG 21 1967

ALICE J. DUCK CLERK  
REGISTER

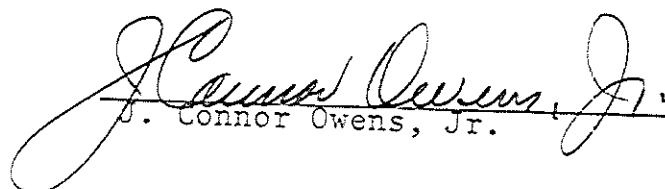
MRS. B. W. GAULT,	)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
vs.	)	
PAUL HAMBRICK,	)	BALDWIN COUNTY, ALABAMA
Defendant.	)	LAW SIDE. NO. 6946

AFFIDAVIT:

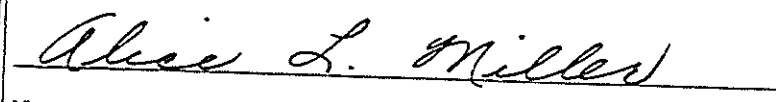
STATE OF ALABAMA )  
BALDWIN COUNTY )

Before me, Alice L. Miller, a Notary Public within and for said State and County, personally appeared J. CONNOR OWENS, JR., who is known to me and who after being by me first duly and legally sworn, doth depose and say under oath as follows:

That he is the Attorney for Paul Hambrick, the Defendant in that certain suit filed by Mrs. B. W. Gault, wherein the Plaintiff seeks to recofer of the Defendant certain sums of money alleged to be due on account of a written lease between the parties and that Charles Belter, who resides at 430 Raleigh Avenue, Birmingham, Alabama, who is a necessary and proper witness for the Defendant, and that said witness resides more than 100 miles from the place of trial computed by the route usually traveled and that the testimony of the said Charles Belter is material to the defense of this cause.

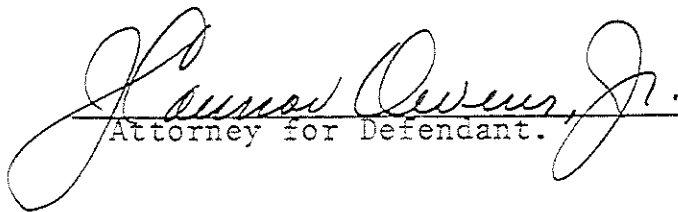
  
J. Connor Owens, Jr.

Sworn to and subscribed before  
me on this the 10th day of August,  
1967.

  
Notary Public, Baldwin County, Alabama.

Defendant suggest that Craig Knowles, whose address is 12 Office Park Circle, Suite 106, Birmingham, Alabama, is a suitable person to act as Commissioner in this cause and is not of counsel

nor or kin to any of the parties to this cause nor in any manner  
interested in the results thereof.

  
Attorney for Defendant.

FILED

AUG 10 1967

ALICE J. DICK

CLERK  
REGISTER

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW NO. 6946

Now comes the plaintiff in the above styled cause and amends the complaint heretofore filed in said cause by adding thereto the following:

The plaintiff claims of the defendant Eight Hundred Twenty Dollars (\$820.00) for the breach of a written lease made and entered into between the plaintiff and the defendant on August 27, 1965. A copy of the lease is attached hereto marked Exhibit A and made a part hereof as though fully rewritten here. Plaintiff avers that the defendant breached the said written lease by failing to make the payments due thereon from January 1, 1966, until September 4, 1966, and by failing to take good care of the said premises and committing waste thereon, all to the plaintiff's damage as aforesaid.

Plaintiff further avers that in and by the terms of said written lease the defendant agreed to pay the plaintiff a reasonable attorney's fee in the event of the employment of an attorney to collect any rent or damages that would become due from the defendant under the said lease, which said attorney's fee the plaintiff avers to be \$100.00 and which she herewith claims.

Filed: October 13, 1967.

Joseph J. Wallburr  
Judge.



Exhibit A.

## Form for Residences, Small Stores and Apartments, Where Heat, Etc., NOT FURNISHED

STATE OF ALABAMA, }  
JEFFERSON COUNTY. }

THIS LEASE, made this 27th day of August 1965 by and between

Mrs. B. W. Gault

(Party of the first part, hereinafter called "Lessor")

Paul Hambrick

(Party of the second part, hereinafter called "Lessee.")

WITNESSETH: That the LESSOR does hereby lease and rent unto the LESSEE the following described premises, in the City of Birmingham, viz: 428 Raleigh, Homewood, Alabama

for occupation and use as residence

and not otherwise

for and during the term of One Year

, to-wit.

From the 5th day of September 1965 to the 4th day of September 1966

IN CONSIDERATION WHEREOF, the LESSEE agrees to pay to said Agents for said LESSOR, AT THEIR OFFICE, in Birmingham, Alabama, on the FIRST DAY OF EACH MONTH of said term, in advance, as rent for the premises herein leased, the sum of One Hundred Fifteen and no/100 Dollars (\$ 115.00 ) per month. being at the rate of Thirteen Hundred Eighty and no/100 Dollars (\$1,380.00 ) per annum.

## THIS LEASE IS MADE UPON THE FOLLOWING TERMS, CONDITIONS, AND COVENANTS:

1. The Lessor covenants to keep the Lessee in possession of said premises during said term, provided, however, that the Lessor shall not be liable for the failure or inability of the Lessee to obtain possession thereof unless such failure or inability be due solely to the acts of the Lessor.
2. Nothing herein contained shall be construed as a warranty that said premises are in GOOD CONDITION or FIT or SUIT-ABLE for the use and purposes for which they are hereby let.
3. The Lessor shall not be REQUIRED to make any repairs or do any work on or about said premises or any part thereof, or on any premises connected therewith, but not hereby leased, unless and only to the extent hereinafter set out. However, the Lessee hereby gives the Lessor, or said Agents, the right to enter said premises at any reasonable hour to make such repairs and to do such work on or about said premises as Lessor may be lawfully required to make, or deem necessary. The Lessee hereby gives the Lessor, or said Agents, the right to VISIT and INSPECT said premises at all reasonable times and to show said premises to prospective tenants or purchasers, and to display "For Rent" and "For Sale" signs on or about said premises at any time.
4. The Lessee herein agrees NOT to make any ALTERATIONS in said building or premises, or on about any premises connected therewith, but not hereby leased, nor to paint upon or attach any signs, wires or other material, other structure, apparatus or radio antennae without the written consent of the Lessor, or said Agents.
5. The Lessee further agrees with the Lessor: That light housekeeping shall not be permitted or suffered in said premises and that only the kitchen shall be used for cooking without the written consent of said Lessor or his agents, that the Lessee will replace all glass broken and keys lost or broken, if, and when broken and lost, will pay all bills for water, gas and electricity used on or about said premises to take good care of said premises, commit no waste of property or permit same to be done, and to keep in good condition all water closets, lavatories, fixtures and other plumbing and all electrical wires and fixtures, and to clear all sewers that may become stopped; that Lessee will promptly repair and make good all injury or damage to said premises caused by the Lessee, members of Lessee's family, or any other person or persons on or about said premises, and that failing so to do the Lessor, by giving five days notice to the Lessee, may repair and make good the same at the cost of the Lessee, and such cost shall be considered as additional rent for said premises, secured by landlord's lien, and that the Lessee will pay the Lessor on the first day of the month following the month in which the same were incurred by the Lessor; that the Lessor shall have a lien upon all goods, furniture and effects and fixtures of the Lessee on said premises, or to be placed thereon during said term, for the rent for the full term hereof and for any other amounts owing or accruing hereunder, in addition to the statutory landlord's lien.
6. In the event the Lessee fails to pay any one or more of said installment or rent, or any other amount owing or accruing hereunder, as and when due, or if the Lessee removes, or attempts to remove, or permits to be removed from said premises, without the written consent of the Lessor or his agents, any of the goods, furniture, effects or other property of the Lessee brought thereon, without first paying in full all rent herein reserved for the entire term, or if an execution or other legal process is levied upon said goods and chattels, or upon the interest of the Lessee in this lease, or if a petition in bankruptcy is filed by or against Lessee, or an assignment for the benefit of creditors is made by Lessee, or if a receiver of Lessee's property is appointed, or if the Lessee uses or permits any part of the premises to be used for any immoral, illegal or purpose prohibited by State, County, City or Federal Laws, or if Lessee uses or permits the same to be used for any other purpose than for which the premises are hereby let, or if the Lessee vacates before the expiration of said term without the written consent of the Lessor or his agents, or if the Lessee fails to allow Lessor, or Agents, to show said premises, or if Lessee violates any of the other terms, conditions or covenants herein contained, then, and upon the happenings of any one or more of said events, Lessor or his agents may, at their option, mature and make due and payable, all rent reserved herein, immediately upon giving written notice to said Lessee. The Lessor or his agents may, whether the above option is exercised or not, terminate this lease upon the happenings of any one or more of the above events, and may upon giving twenty-four hours written notice to Lessee terminate this lease, re-enter, take possession and re-let said premises. The said rights of the Lessor or his agents to mature said rents and to terminate this lease, as above provided, shall be and remain in full force and effect continuously after the happenings of any one or more of the said events, and the failure of Lessor or his agents to exercise said rights, or either of them, shall not be deemed a waiver or relinquishment thereof. No re-entry hereunder shall bar the recovery of rent or damages for breach of any of the terms, conditions or covenants on the part of the Lessee herein contained. The receipt of rent after breach or condition broken shall not be deemed a waiver or forfeiture or a waiver of the right of the Lessor or his agents to terminate said lease, to re-enter or re-let said premises.
7. If the Lessee vacates said premises before the expiration of said term, without the written consent of the Lessor or his agents, the Lessor or his agents may re-enter, and re-let same, from time to time, without notice to the Lessee, as the Agent of Lessee, and such re-entry and re-letting shall not discharge the Lessee from any liability for rent nor from any of the terms, conditions or covenants of this lease; and the Lessee shall make good to the Lessor the difference, if any, between total as provided in the within contract and the total rental collected and remitted from such sub-contract or tenants.
8. Lessor may terminate this lease upon the expiration or termination of any terms for which Lessor or his agents may re-let the same as Agent of the Lessee, by giving two days notice thereof to the Lessee in writing.
9. The Lessee shall not under-lease, sub-let or sub-rent said premises, or any part thereof, or transfer or assign within lease, without the written consent of the Lessor or his agents. Each transfer and assignment, and each sub-letting or renting of said premises, unless the written consent of the Lessor or his agents be first obtained, shall be and is null and void, at the option of the Lessor or his agents. It is expressly understood and agreed that the Lessee is NOT RELEASED from any liability for rent or from any of the conditions and covenants of the within contract when so transferred.
10. THIS LEASE SHALL BECOME NULL AND VOID in the event the said building should be entirely destroyed or rendered entirely unfit or incapable of being used for the purpose for which the same is hereby let, by fire or other casualty, beyond the control of the Lessee, Lessee's family or other occupants of within leased premises, or in the event said building should be condemned and the Lessor or his agents be forced to tear down and remove said building by the State, County or City authorities, and the liability of the Lessee for the rents thereafter accruing hereunder shall cease upon the happening of either of said events and such con-



FILED

JAN 22 1968

ALICE J. DUCK CLERK  
REGISTER

MRS. B. W. GAULT,  
Plaintiff,  
VS.  
PAUL HAMBRICK,  
Defendant.

IN THE  
CIRCUIT COURT OF BALDWIN COUNTY,  
ALABAMA. AT LAW. NO. 6946

MRS. B. W. GAULT, THE PLAINTIFF, BEING FIRST DULY SWORN, TESTI-  
FIED AS FOLLOWS:

Examination by Mr. Owen.

Q. Is this Mrs. B. W. Gault?

A. Yes sir.

Q. Mrs. Gault, I show you exhibit A attached to the amended  
complaint which purports to be the lease from you to  
Paul Hambrick. Did you enter that lease, or did you  
have that lease entered into by your real estate agent?

A. Yes.

Q. Was your real estate agent authorized to enter that  
lease?

A. Yes sir.

Q. After the lease was executed did Mr. Hambrick move in and  
occupy the property?

A. Yes sir.

Q. Did you receive any payments from him?

A. Yes sir.

Q. How many payments did you receive?

A. I received four.

Q. How much each?

A. \$115.00

Q. When did Mr. Hambrick vacate the premises?

A. He moved out the first of January.

Q. And what year was that?

A. 1966.

Q. And did he make any further payments to you after that?

A. No.

Q. Did you later sell the property?

A. Yes sir.

Q. When?

A. I sold it the first of June of 1966.

Q. Between the first of January and the First of June of 1966 did you make an effort to rent this property to some one else?

A. Yes I did.

Q. Did you rent it to some one else?

A. Yes sir.

Q. How much rent did you collect from January 1966 to June 1st?

A. Two month's rent.

Q. How much was that?

A. \$200.00 - - \$100.00 a month.

Q. \$200.00?

A. Yes sir.

Q. The blance of this under this lease is due and payable, is that correct?

A. That is true.

ON CROSS EXAMINATION OF THIS WITNESS, SHE TESTIFIED:

Examination by Mr. Owens.

Q. Mrs. Gault, you claim the sum really of \$375.00 as rent due, is that correct?

A. Yes sir.

Q. In your complaint you are claiming the sum of \$820.00 but you waive any excess over \$375.00?

MR. OWEN: That is all we have proved.

Q. Now would it be correct to say this property was sold on or about May 25th? - - Did you execute the deed about that time?

A. May 25th?

Q. Yes mam?

A. It was either the last of May or the first of June that it was sold.

Q. In otherwords, it could have been the latter part of

May that you signed the deed?

A. Could have been; it was some where around the first of June.

Q. What date did they - these tenants - move in?

A. They moved in in February.

Q. February?

A. Yes sir.

Q. You didn't receive rent for the month of January, but the tenants did move in in February?

A. That is right.

Q. When did they move out?

A. They moved out - - - It must have been the last of May.

Q. The last of May?

A. The last of May - - - Just before we sold the property.

Q. Did you advertise this property for sale before you sold it?

A. Oh sure.

Q. When did you start advertising this property for sale?

A. Well now Mr. Emerson handled it.

Q. Could it be as early as April that you started advertising it for sale?

A. Approximately of 1966.

Q. Yes mam - You sold it in May?

A. Sure.

Q. It was advertised for sale in April?

A. Yes.

Q. Then the actual months that this property was either not rented or offered for sale was the month of January and a part of February, is that correct?

A. Tht it was not rented?

Q. Yes mam or offered for sale.

THE COURT: I don't get that - - What effect would that have on the lease?

MR. OWENS: I take the position that the law is that the parties are bound to minimum damages under the lease and  
(page 3)

if they, in fact, decided not to lease further and offered the property for sale, they are not continuing to exercise what they are required to exercise - that is, to minimize the damages.

THE COURT: Do you mean to say - - He has this lease that runs out, we will say in September, and he moved out in December and she starts advertising it for sale in February, you say the minute she starts advertising it for sale she can no longer collect under the lease?

MR. OWENS: I'm claiming that the testimony is that in January and February - - -

THE COURT: I am asking you if you are claiming that her putting it up for sale that stops the lease?

MR. OWENS: Yes sir. Under the lease she is allowed to put it up for sale any time she wants --

THE COURT: I don't want her to collect for months that she collected from somebody else. You said somebody moved in in February?

A. Yes sir.

Q. And stayed there?

A. Yes sir, and we collected two months rent.

Q. Did the people move in when - were they delinquent or failed to pay you for any part of the time they were there?

A. Yes sir.

Q. How much would they have owed you?

A. They would have owed us for the rest of the time, except the two months.

Q. In other words, you had tenants in the house who failed to pay you as well when they were there?

A. Yes sir.

-----  
REPORTER'S NOTE: I have a note at the end of this testimony that says: "Add on \$50.00 for Attorney's fees."

C E R T I F I C A T E:.

I hereby certify that the foregoing, consisting of pages 1 to 4 both inclusive, correctly sets forth a true and correct transcript of the testimony as taken by me, in open Court, in the captioned cause, Hon. Telfair J. Mashburn, Judge of said Court, presiding. Case was tried 10/13/67

This the 16th day of January, 1968.

Lawrence D. [Signature]  
Court Reporter