

S U M M O N S

STATE OF ALABAMA     )  
COUNTY OF BALDWIN    )

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW, NO. 7192

TO ANY SHERIFF OF THE STATE OF ALABAMA:

YOU ARE HEREBY COMMANDED TO SUMMON Cole Construction, Inc., 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 Cole Construction, Inc., Defendant, by Magnolia Land Company, Inc, Plaintiff.

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

Alice J. Week Clerk

MAGNOLIA LAND COMPANY, INC.,  
a corporation,

PLAINTIFF,

vs

COLE CONSTRUCTION, INC.,  
a corporation,

DEFENDANT.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

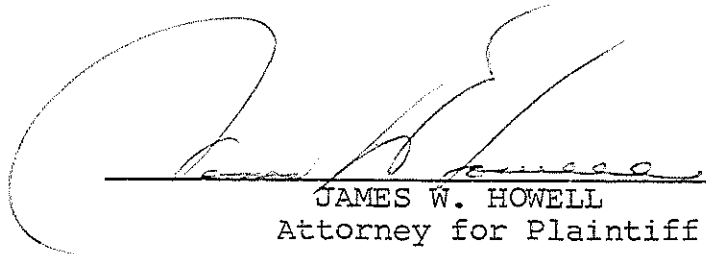
AT LAW, NO. 7192

COUNT ONE

The plaintiff claims of the defendant the sum of Five Thousand Dollars (\$5,000.00) as damages for a trespass by the defendant on the following described land, to-wit:

Northeast One Quarter (NE $\frac{1}{4}$ ) of the Southeast  
One Quarter (SE $\frac{1}{4}$ ), Section 19, Township 7  
South, Range 4 East,

belonging to the plaintiff, and for the cutting and destruction of several large Oak trees thereon, during the month of May or June, 1966.

  
JAMES W. HOWELL  
Attorney for Plaintiff

SUMMONS MAY BE SERVED AT MOBILE, ALABAMA,  
Theodore-Dawes Road

FILED

SEP 29 1966

ALB 1 DEK CLERK  
REGISTER

1 VOL

66 PAGE 241

24

9-29-66

RECEIVED

SEP 28 1966

TAYLOR WILKINS  
SHERIFF

*pdf*  
CASE NO. 7192 5626

MAGNOLIA LAND COMPANY, INC.,

A Corporation,

Plaintiff,

vs:

*245*  
COLE CONSTRUCTION, INC., A Corp.,

*m white co owner*

Defendant,

SUMMONS & COMPLAINT

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW, CASE NO. 7192

James W. Howell, Atty.

78 28 Sept 1966  
29 29 Sept 1966  
I received a copy of the within & C  
on Cole Construction, Inc.  
a corporation  
by service on m white co owner

RAY D. BRIDGES, Sheriff

*R. D. Bridges, D. S.*

BY  
SEP 28 8 19 PM '66  
REC'D. SHERIFF DEPT.  
BALDWIN COUNTY, ALA.

MAGNOLIA LAND COMPANY, INC., a corporation,	*	IN THE CIRCUIT COURT OF
	*	BALDWIN COUNTY, ALABAMA
Plaintiff,	*	
-VS-	*	
COLE CONSTRUCTION, INC., a corporation,	*	
	*	
Defendant and Third Party Plaintiff,	*	AT LAW
	*	
-VS-	*	
BYRD L. MOORE & CO., a corporation, and CITY OF FOLEY, ALABAMA, a municipal corporation, jointly and severally,	*	
	*	
Third-Party Defendants.	*	CASE NO. 7192

### THIRD PARTY COMPLAINT

Comes now the Defendant and Third-Party Plaintiff, COLE CONSTRUCTION, INC., in the above entitled cause and, for its third-party complaint against BYRD L. MOORE & CO., a corporation, and CITY OF FOLEY, ALABAMA, a municipal corporation, Third-Party Defendants herein, respectfully represents and shows unto the Court, on information and belief, as follows:

1. That on, to-wit: September 28, 1966, the Plaintiff herein commenced this action against this Defendant and Third-Party Plaintiff by filing his bill of complaint in the Circuit Court of Baldwin County, Alabama, a copy of which is hereto attached and made a part hereof. The Plaintiff alleges a trespass on its property and the destruction of trees on said property during May or June, 1966.
2. That prior to May or June, 1966, the Third-Party Defendant,

City of Foley, did engage the services of the Third-Party Defendant, Byrd L. Moore & Co., to design and supervise the construction of an airport for the City of Foley and the Third-Party Defendant, Byrd L. Moore & Co., did design said airport. Defendant and Third-Party Plaintiff Cole Construction, Inc. contracted with the City of Foley to construct said airport and did, during, to-wit the month of April, 1966, cut the trees of the Plaintiff. Defendant avers that the aforesaid trees were cut and destroyed upon the express direction and instructions of the Third-Party Defendant, Byrd L. Moore & Co., as the agent, servant or employee, acting within the line and scope of its employment for the Third-Party Defendant City of Foley.

3. That the claimed trespass and the matters and things complained of in the complaint of the Plaintiff herein were caused solely by the direction and instructions of the City of Foley acting by and through Byrd L. Moore & Co., their agent, servant or employee, acting within the line and scope of its employment.

4. Defendant and Third-Party Plaintiff alleges that its defense of this action should be assumed by the Third-Party Defendants.

WHEREFORE, Defendant and Third-Party Plaintiff prays that process in due form of law and in accordance with the rules of this Honorable Court may be issued against the Third-Party Defendants citing them to appear and answer all and singular the matters of this Third-Party Complaint, and if the Court finds that the Plaintiff is entitled to a judgment against the Defendant and Third-Party Plaintiff, then, in that event, that the Third-Party Plaintiff have full indemnity from these

Third-Party Defendants for the amount of such judgment, together with its costs.

ARMBRECHT, JACKSON & DeMOUY  
Attorneys for Defendant and Third-Party Plaintiff

BY 

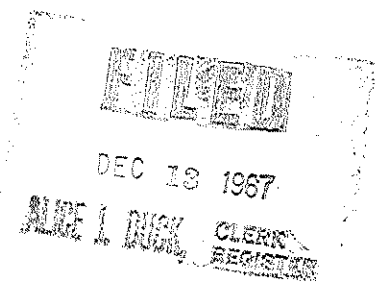
JOHN GROW

Third-Party Defendant City of Foley, Alabama,  
a municipal corporation, may be served by serving Mayor Henry Carson, at Foley, Alabama.

Third-Party Defendant Byrd L. Moore & Co.,  
may be served by serving Byrd L. Moore  
at 555 No. Section Street, Fairhope, Alabama.

CERTIFICATE OF SERVICE

I do hereby certify that I have on this.....day  
of....., 196....., served a copy of the  
foregoing pleading on counsel for all parties to this  
proceeding, by mailing the same by United States mail,  
properly addressed, and first class postage prepaid.



MAGNOLIA LAND COMPANY, INC.,  
a corporation,

PLAINTIFF,

vs

COLE CONSTRUCTION, INC.,  
a corporation,

DEFENDANT.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

AT LAW, NO. 7192

COURT ONE

The plaintiff claims of the defendant the sum of Five Thousand Dollars (\$5,000.00) as damages for a trespass by the defendant on the following described land, to-wit:

Northeast One Quarter (NW $\frac{1}{4}$ ) of the Southeast One Quarter (SE $\frac{1}{4}$ ), Section 19, Township 7 South, Range 4 East,

belonging to the plaintiff, and for the cutting and destruction of several large Oak trees thereon, during the month of May or June, 1966.

  
JAMES W. HOWELL  
Attorney for Plaintiff

SUMMONS MAY BE SERVED AT MOBILE, ALABAMA,  
Theodore-Dawes Road

FILED

SEP 25 1966

ALICE I. DUCK, CLERK  
REGISTER

SUMMONS AND COMPLAINT

Moore Printing Co. - Bay Minette, Ala.

STATE OF ALABAMA  
Baldwin County

Circuit Court, Baldwin County  
No. 7192

TERM, 19

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon

Byrd L. Moore & Company and City of Foley

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

Cole Construction Co., Byrd L. Moore & Co., and City of Foley Defendant

by Magnolia Land Company Inc. a corp

Plaintiff

Witness my hand this 15th day of December 1967

Alvin J. Smith Clerk

24/  
12-18-67



No. 7192.....

Page.....

STATE OF ALABAMA

Baldwin County

CIRCUIT COURT

MAGNOLIA LAND COMPANY, Inc, a Corp.

Plaintiffs

vs.

COLE CONSTRUCTION, INC A Corp.  
BYRD L. MOORE & Co and  
CITY OF FOLEY Defendants

SUMMONS AND COMPLAINT

Filed 12-13 1967

Alice J. Duck Clerk

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

RECEIVED

Received In Office  
DEC 13 1967

TAYLOR WILKINS  
SHERIFF

Sheriff

I have executed this summons

this Jan 5 1968

by leaving a copy with

Byrd L. Moore & Co.  
T. H. Ingram Jr  
Vice Pres.

City of Foley  
By serving  
Henry Carson  
Mayor  
Served on the above  
12-18-67

Taylor Wilkins Sheriff  
J. M. Eastman Deputy Sheriff  
Foley, Ala.

MAGNOLIA LAND COMPANY,  
INC., a corporation,

Plaintiff,

-VS-

COLE CONSTRUCTION, INC.,  
a corporation,

Defendant.

\* IN THE CIRCUIT COURT OF  
\*  
\* BALDWIN COUNTY, ALABAMA  
\*  
\*  
\*  
\* AT LAW  
\*  
\*  
\*  
\* CASE NO. 7192

PLEAS

The Defendant, for answer to the Complaint, saith that he is  
not guilty of the matters alleged therein.

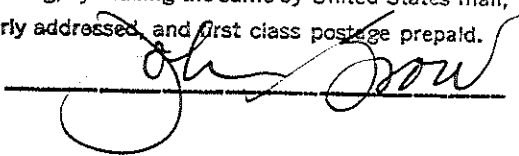
ARMBRECHT, JACKSON & DeMOUY

BY

  
JOHN GROW

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 12 day  
of Dec, 1967, served a copy of the  
foregoing pleading on counsel for all parties to this  
proceeding, by mailing the same by United States mail,  
properly addressed, and first class postage prepaid.



FILED  
DEC 18 1967  
AMEL DICK, CLERK & REGISTER

MAGNOLIA LAND COMPANY, INC.,	)	IN THE CIRCUIT COURT OF
a corporation,	)	BALDWIN COUNTY, ALABAMA
Plaintiff,	)	AT LAW, NO. 7192
-vs-	)	
COLE CONSTRUCTION, INC.,	)	
a corporation,	)	
Defendant and Third	)	
Party Plaintiff,	)	
-vs-	)	
BYRD L. MOORE & CO., a	)	
corporation, and CITY OF	)	
FOLEY, ALABAMA, a municipal	)	
corporation, jointly and	)	
severally,	)	
Third-Party Defendants.	)	

Comes now BYRD L. MOORE & CO., a corporation, one of the third-party defendants in this cause, and demurs to the Third-Party Complaint herein, and for grounds hereof, assigns the following separately and severally:

1. That it affirmatively appears from the Third-Party Complaint that the Defendant and Third-Party Plaintiff was an independent contractor representing CITY OF FOLEY, ALABAMA, a municipal corporation, one of the Third-Party Defendants herein.
2. That the said Third-Party Complaint does not state a cause of action against the Third-Party Defendant, BYRD L. MOORE & CO.
3. That the Third-Party Complaint affirmatively shows that the Defendant and Third-Party Plaintiff was acting as a direct agent, servant and employee of the Third-Party Defendant, CITY OF FOLEY, ALABAMA, a Municipal corporation.
4. That the Third-Party Complaint fails to allege that COLE CONSTRUCTION, INC. was acting as an agent, servant or employee of the Third-Party Defendant, BYRD L. MOORE & CO.

CERTIFICATE OF SERVICE

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

This 2nd day of February 1966

Attorney for

VOL

ATTORNEY FOR THIRD-PARTY DEFENDANT,  
BYRD L. MOORE & CO.

FEB 3 1966

66

PAGE 251

J. DICK

CLERK  
REGISTER

MAGNOLIA LAND COMPANY, INC., )  
a corporation,

Plaintiff, )

-vs-

COLE CONSTRUCTION, INC., a )  
corporation, )

Defendant and Third )  
Party Plaintiff, )

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

AT LAW

-vs-

BYRD L. MOORE & CO., a corpora- )  
tion, and CITY OF FOLEY, ALABAMA, )  
a municipal corporation, jointly )  
and severally, )

CASE NO. 7192

Third-Party Defendants)

PLEA IN ABATEMENT

Comes the CITY OF FOLEY, ALABAMA, a municipal corporation,  
joined in the above styled cause as a Third-Party Defendant, and  
appears specially for the purpose of filing this plea and for no  
other purpose and shows unto this Honorable Court the following:-


1. Section 476 of Title 37 of the Recompiled Code of  
Alabama of 1958, provides in part the following: " ... claims for  
damages growing out of torts shall be presented within six months  
from the accrual thereof or the same shall be barred". The action  
of trespass referred to in the complaint is alleged to have  
occurred during the months of May or June, 1966, and a suit for  
trespass was filed on, to-wit, September 28, 1966, against Cole  
Construction, Inc., a corporation, and no claim has been presented  
to the City of Foley until the service of the Third-Party Complaint  
on, to-wit, December 18, 1967.

2. Section 502 of Title 37 of the Recompiled Code of Alabama  
of 1958 provides that a city shall not be liable for the neglect,  
carelessness, or unskillfulness of some agent, officer or employee,  
unless he was then acting in the line of his duty. The City of  
Foley shows that it had no conveyance or easement of any kind on  
the property of Magnolia Land Company, Inc. at the point where  
the cutting and destruction of the trees allegedly occurred; there-  
fore, if cutting of the trees by Cole Construction, Inc., a

corporation, was on the direction and authorization of Byrd L. Moore & Co., the said Byrd L. Moore & Co. was not and could not have been acting in its line and scope of its employment with the said City.

3. The City of Foley further shows that there is an assumption on the part of Cole Construction, Inc., the Defendant and Third Party Plaintiff, of all liability of the City of Foley for property damage which may have arisen from operations under the contract in that it is a part of the specifications and contract documents that the contractor agreed to secure and maintain such insurance as will protect the owner (this being the City of Foley) from claims for bodily injury, death, or property damage which may arise from the operations under the contract, whether said injuries are caused by the contractor, sub-contractor, or any person or firm employed by either directly or indirectly, and said contractor was required to acquire and maintain public liability or property damage insurance.

The City of Foley therefore shows that Cole Construction Co. as Third Party Plaintiff should not be allowed to proceed against the City of Foley, Alabama, a municipal corporation, and the City of Foley therefore prays that the Third Party Complaint be abated and barred and that the City of Foley, Alabama, a municipal corporation, not be required to participate in any manner in the trial of this cause.

  
Attorney for Third Party Defendant,  
City of Foley, a municipal corporation

STATE OF ALABAMA

BALDWIN COUNTY

Before me, Janice L. Childress, a Notary Public in and for said County in said State, personally appeared C. G. Chason, who is known to me and who, after being by me first duly and legally sworn, deposes and says that the matters and facts set forth in the foregoing plea are true and correct to the best of his knowledge, information and belief.



C. G. C.

SWorn to and subscribed before me, a Notary Public, on this the 3<sup>rd</sup> day of ~~December~~ <sup>January</sup>, 1967.

(Affix Seal)

Janice L. Childers  
Notary Public, Baldwin County  
State of Alabama

Byrd L. Moore & Co. may be served with a copy of this plea at 555 N. Section St. Fairhope, Alabama

I hereby certify that I have sent a copy to James W. Howell, Foley, Alabama, attorney for the Plaintiff, and John Grow, Armbrecht, Jackson and DeMouy, Mobile, Alabama, attorney for Defendant and Third Party Plaintiff by mailing same by United States Mail, properly addressed and first class postage prepaid, on the 3<sup>rd</sup> day of ~~December~~ <sup>January</sup>, 1967.

[Signature]

**FILED**

JAN 4 1968

**ALICE J. DUCK** CLERK REGISTER

C. G. C.

VOL

66 PAGE 250

- 3 -

1-5-68

7192

Magnolia Land  
Co. Inc. a corp  
Plt

vs.

Colt Construction  
Inc.

vs.  
Sowe.

Byrd L. Moore & Co.

Received 4 day of Jan. 1968  
and on 5 day of Jan 1968  
I gave a copy of the within S.V.C.  
Byrd L. Moore & Co.

by service on T.H. Ingram  
Vice Pres.

TAYLOR WILKINS Sheriff  
By Roy Randall

Sheriff claims 70 miles at

Ten Cents per mile Total \$ 7.00

TAYLOR WILKINS Sheriff  
BY Roy Randall

FILED

JAN 4 1968

ALICE J. DUCK

CLERK  
REGISTER

MAGNOLIA LAND COMPANY, INC.,  
a corporation,

Plaintiff,

-VS-

COLE CONSTRUCTION, INC.,  
a corporation,

Defendant and Third  
Party Plaintiff,

-VS-

BYRD L. MOORE & CO., a corpora-  
tion, and CITY OF FOLEY, ALABAMA,  
a municipal corporation, jointly and  
severally,

Third-Party Defendants.

\* IN THE CIRCUIT COURT OF  
\* BALDWIN COUNTY, ALABAMA

\*

\*

\*

AT LAW

\*

\*

\*

\* CASE NO. 7192

\*

\*

#### MOTION TO SET ASIDE DEFAULT JUDGMENT

Comes now the Defendant, COLE CONSTRUCTION, INC., and  
moves the court to set aside the Default Judgment with Writ of Inquiry  
entered on August 31, 1967 and to reinstate the case on the docket of  
pending cases for trial, and for grounds thereof shows as follows, as  
supported by the Affidavit of John Grow, attorney for the Defendant,  
attached hereto and made a part hereof as Exhibit "A," viz:

1. Said judgment was taken by the attorney for the Plaintiff,  
James W. Howell, after said attorney had agreed not to take any action  
in the above suit without notifying the attorney for the Defendant.

2. The complaint in this action was filed on September 28,  
1966, and the default judgment was taken on August 31, 1967, at which



time it was interlocutory in character and no action has been taken to finalize said judgment since August 31, 1967.

3. On December 13, 1967, the Defendant filed its plea to the merits and sent a copy thereof to James W. Howell, attorney for the Plaintiff and received no reply or advices from said attorney advising of the taking of a default judgment and said attorney failed to take any action to make said judgment final.

4. Said judgment is interlocutory and this court has discretion to set the same aside in the cause of justice as the Defendant has a meritorious defense to said action as more fully appears from the Affidavit of John Grow, attorney for the Defendant, which is attached hereto and made a part hereof as Exhibit "A."

5. The failure to file pleadings prior to default was not occasioned by design or intent to avoid filing responsive pleadings or to delay or in any way hinder or harass the Plaintiff in the pursuit of his cause of action, but was by virtue of ascertaining facts of the case with the agreement of the attorney for the Plaintiff.

WHEREFORE, the Defendant respectfully prays that this Court will exercise its discretion as permitted by law and will set aside the interlocutory default judgment heretofore entered against this Defendant and will restore said case to the docket of the pending cases for trial.

ARMBRECHT, JACKSON & DeMOUY

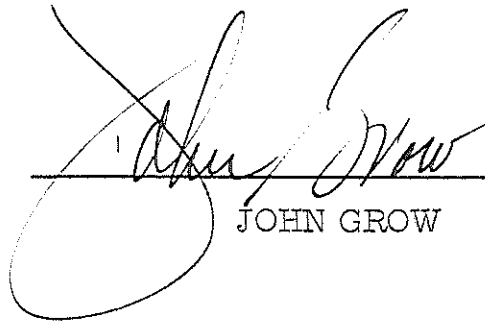
By  \_\_\_\_\_

JOHN GROW

STA TE OF ALABAMA )

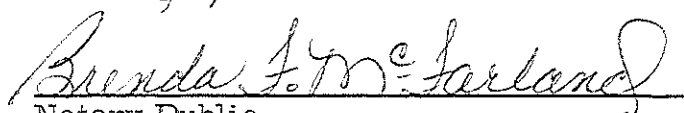
COUNTY OF MOBILE )

Before me, the undersigned Notary Public, personally appeared John Grow, who being first duly sworn, deposes and says that he has read the allegations set forth in the foregoing motion and they are true and correct.

  
JOHN GROW

SUBSCRIBED and SWORN

to before me on this 9th  
day of September, 1968.

  
Notary Public

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing Motion to Cecil G. Chason, Foley, Alabama, John V. Duck, Fairhope, Alabama, James W. Howell, Foley, Alabama and J. B. Foley, c/o Magnolia Land Company, Foley, Alabama by mailing same by United States mail, property addressed and first class postage prepaid on the 10th day of Sept, 1968.

  
JOHN GROW

EXHIBIT "A"

STATE OF ALABAMA )

COUNTY OF MOBILE )

Before me the undersigned authority personally appeared John Grow, who being first duly sworn does depose and say as follows:

1. On or about October 18, 1966, I received suit papers from our client, Cole Construction, Inc., wherein it had been sued by Magnolia Land Company, Inc. in the Circuit Court of Baldwin County, Alabama, At Law No. 7192 which claimed trespass to land of the Plaintiff by the Defendant. No jury trial was demanded.

2. On October 25, 1966, I telephoned James W. Howell, attorney for the Plaintiff, at Foley, Alabama, advising that I was representing the Defendant, Cole Construction, Inc., requesting that he not take a default judgment until he notified me as I needed additional time to investigate the case. Mr. Howell agreed to this. As I had information in my file that possibly Cole Construction, Inc. had acted at the direction of the City of Foley in any alleged trespass, I telephoned Mr. Cecil Chason on October 25, 1966, who I knew was the attorney for the City of Foley, and I discussed the case with him based on my knowledge at the time. On October 25, 1966, I wrote my client advising of Mr. Howell's agreement.

3. Subsequently, on November 3, 1966, I again telephoned Mr. James W. Howell in Foley relative to the case and inquiring why he

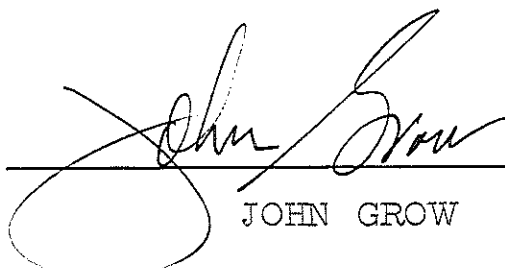
had not joined the City of Foley as a defendant, since Cole Construction, Inc. had done its work under a contract with that City and under its direction. Mr. Howell stated he did not want to voluntarily join the City or Byrd L. Moore & Co. as defendants. During this conversation Mr. Howell reconfirmed his agreement not to take any action without notifying me first.

4. After this, I conducted an investigation of the case and having belief of possible liability, on the part of Byrd L. Moore, Inc. and the City of Foley, Alabama, I prepared and filed a third-party complaint and answer to the original complaint on December 13, 1967. I had not heard from Mr. Howell during the interim and I served him with a copy of the answer and third-party complaint at the same time it was filed with the court.

5. I subsequently talked with both Mr. Chason and Mr. Duck, both representing third-party defendants and no mention was made of any default judgment. The first notice I had of a default judgment was on September 6, 1968 when Mr. Chason advised me by letter that he had examined the court records and it showed an entry of a default judgment with a writ of inquiry. On September 8, 1968, I telephoned the Clerk's office of the Baldwin County Circuit Clerk and was advised by Mrs. Blackmon that no damages had been proved in the case. I was also advised that Mr. Howell no longer represented anyone and no new attorney of record was listed for the Plaintiff.

6. I have been informed, but do not know it to be a fact, that Mr. Howell is no longer practicing law and has not practiced for several

months. There is presently on file a plea of not guilty to the complaint which plea is supported by a valid defense of no liability to the action of trespass, as the Defendant was acting as the agent of the City of Foley and/or Byrd L. Moore & Co., who was the supervising engineer.


  
JOHN GROW

SUBSCRIBED and SWORN

to be fore me on this 9th  
day of September, 1968.

**FILED**

SEP 10 1968

  
Notary Public

**ALICE J. DUCK** CLERK  
REGISTER

9-10-68 The above motion considered and  
set down for hearing at 9:00 A. M. O'clock,  
Monday, September 30, 1968.  
J. Fair J. Madison  
Judge.

MAGNOLIA LAND COMPANY, INC.,	)	IN THE CIRCUIT COURT OF
a corporation,	)	
	)	BALDWIN COUNTY, ALABAMA.
PLAINTIFF,	)	
	))	
vs	)	
	)	
COLE CONSTRUCTION, INC.,	)	
a corporation,	)	
	)	
DEFENDANT.	)	AT LAW, NO. <u>7192</u>

JUDGMENT BY DEFAULT WITH WRIT OF INQUIRY

Came the plaintiff by attorney and the defendant came not, but made default. It is therefore considered and adjudged by the Court that the plaintiff recover of the defendant the damages in this behalf expended; but inasmuch as such damages are unknown to the Court, let the plaintiff submit his proof, that the Court may inquire of and assess the damages.

DONE this the 31<sup>st</sup> day of August, 1967.

Julian J. Mashburn  
 Julian J. Mashburn  
 Judge, 28th Judicial Circuit

**FILED**

AUG 29 1968

**ALICE J. DUCK** CLERK  
 REGISTER

FILED

SEP 30 1968

ALICE J. DUCK CLERK  
REGISTER

MAGNOLIA LAND COMPANY, INC., a Corp.,

Plaintiff,

VS.

COLE CONSTRUCTION, INC., a Corp.,

Defendant & 3rd Party  
Plaintiff,

VS.

Byrd L. Moore & COMPANY, and  
The City of Foley, a Municipal  
Corporation, jointly and severally,

3rd Party Defendants.

IN THE

CIRCUIT COURT OF BALDWIN

COUNTY, ALABAMA.

NO. 7192

A P P E A R A N C E:

For the Plaintiff, Magnolia Land Co.

Hon. John Chason  
Chason, Stone & Chason,  
Bay Minette, Alabama

For the Defendant, &  
3rd party Plaintiff, Cole Construc-  
tion Co.,

Hon. John Grow,  
Armbrecht, Jackson &  
Demouy,  
Mobile, Alabama.

For Defendant, Byrd L. Moore &  
Company,

Hon. John Duck,  
Fairhope, Alabama.

For Defendant, City of Foley,

Hon. Cecil G. Chason,  
Foley, Alabama  
(Not present)

S T I P U L A T I O N

It is STIPULATED and AGREED by and between Magnolia Land Company, Inc., a Corporation, and Cole Construction Company, Inc., a Corporation, acting by and through their Attorneys, John Chason, as Attorney for Magnolia Land Company, and John Grow, as Attorney for the Cole Construction Company, Inc., as Follows:

1. That the Magnolia Land Company, Inc., a Corporation, filed a suit for damages against Cole Construction Company, Inc., a Corporation, on September 28, 1966; that suit papers were served on the defendant, Cole Construction, Inc., a Corporation, on October 18, 1966; no jury trial was demanded in the suit.

2. That Mr. John Grow will testify that on October 25, 1966, he telephoned Mr. James W. Howell, who was then the Attorney for the Magnolia Land Company, Inc. and advised Mr. Howell that he represented Cole Construction, Inc., and requested no default judgment be taken in the suit unless Mr. Howell notified Mr. Grow, as the defendant needed time to investigate the case, to which Mr. Howell agreed;

3. Mr. Grow will further testify that he again called Mr. Howell on November 3, 1966, inquiring as to why the City of Foley had not been joined as a defendant, and Mr. Howell stated that he did not want to voluntarily join the City or Byrd L. Moore & Company as defendants, and in this conversation Mr. Howell reconfirmed his agreement not to take any action without first notifying Mr. Grow.

Nothing further was done by Mr. Howell or by Mr. Grow until approximately nine months later, at which time on August 31st, 1967, Mr. Howell secured a default judgment in favor of Magnolia Land Company, Inc., against Cole Construction, Inc., but no writ of inquiry was exercised to ascertain the amount of damages; nothing further was done after August 31, 1967, until on December 13, 1967, some three and one half months later, when Mr. Grow, on behalf of Cole Construction, Inc. filed its pleas to the merits of the suit and made Byrd L. Moore and the City of Foley third party defendants; at that time Mr. Grow had no knowledge of the default judgment against Cole Construction Inc. Again the suit remained dormant from December 13, 1967, until September 6, 1968, at which time Cecil Chason informed Mr. Grow by letter concerning the default judgment; Mr. Grow telephoned Mrs Duck, the Clerk of the Court, who confirmed the above proceedings and Mr. Grow then filed his motion to set aside the default judgment, on which hearing we are now engaged in.



FILED

SEP 30 1968

ALICE J. DUCK

CLERK  
REGISTER

MAGNOLIA LAND COMPANY, INC., a Corp.,

Plaintiff,

VS.

COLE CONSTRUCTION, INC., a Corp.,

Defendant & 3rd Party  
Plaintiff,

VS.

Byrd L. Moore & COMPANY, and  
The City of Foley, a Municipal  
Corporation, jointly and severally,

3rd Party Defendants.

IN THE

CIRCUIT COURT OF BALDWIN

COUNTY, ALABAMA.

NO. 7192

A P P E A R A N C E:

For the Plaintiff, Magnolia Land Co.

Hon. John Chason  
Chason, Stone & Chason,  
Bay Minette, Alabama

For the Defendant, &  
3rd party Plaintiff, Cole Construc-  
tion Co.,

Hon. John Grow,  
Armbrecht, Jackson &  
Demouy,  
Mobile, Alabama.

For Defendant, Byrd L. Moore &  
Company,

Hon. John Duck,  
Fairhope, Alabama.

For Defendant, City of Foley,

Hon. Cecil G. Chason,  
Foley, Alabama  
(Not present)

S T I P U L A T I O N

It is STIPULATED and AGREED by and between Magnolia Land Company, Inc., a Corporation, and Cole Construction Company, Inc., a Corporation, acting by and through their Attorneys, John Chason, as Attorney for Magnolia Land Company, and John Grow, as Attorney for the Cole Construction Company, Inc., as Follows:

1. That the Magnolia Land Company, Inc., a Corporation, filed a suit for damages against Cole Construction Company, Inc., a Corporation, on September 28, 1966; that suit papers were served on the defendant, Cole Construction, Inc., a Corporation, on October 18, 1966; no jury trial was demanded in the suit.

2. That Mr. John Grow will testify that on October 25, 1966, he telephoned Mr. James W. Howell, who was then the Attorney for the Magnolia Land Company, Inc. and advised Mr. Howell that he represented Cole Construction, Inc., and requested no default judgment be taken in the suit unless Mr. Howell notified Mr. Grow, as the defendant needed time to investigate the case, to which Mr. Howell agreed;

3. Mr. Grow will further testify that he again called Mr. Howell on November 3, 1966, inquiring as to why the City of Foley had not been joined as a defendant, and Mr. Howell stated that he did not want to voluntarily join the City or Byrd L. Moore & Company as defendants, and in this conversation Mr. Howell reconfirmed his agreement not to take any action without first notifying Mr. Grow.

Nothing further was done by Mr. Howell or by Mr. Grow until approximately nine months later, at which time on August 31st, 1967, Mr. Howell secured a default judgment in favor of Magnolia Land Company, Inc., against Cole Construction, Inc., but no writ of inquiry was exercised to ascertain the amount of damages; nothing further was done after August 31, 1967, until on December 13, 1967, some three and one half months later, when Mr. Grow, on behalf of Cole Construction, Inc. filed its pleas to the merits of the suit and made Byrd L. Moore and the City of Foley third party defendants; at that time Mr. Grow had no knowledge of the default judgment against Cole Construction Inc. Again the suit remained dormant from December 13, 1967, until September 6, 1968, at which time Cecil Chason informed Mr. Grow by letter concerning the default judgment; Mr. Grow telephoned Mrs Duck, the Clerk of the Court, who confirmed the above proceedings and Mr. Grow then filed his motion to set aside the default judgment, on which hearing we are now engaged in.

CECIL G. CHASON

ATTORNEY-AT-LAW  
FOLEY, ALABAMA 36535

December 29, 1967

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

Re: Magnolia Land Company,  
Inc. vs. Cole Construction,  
Inc., vs. Byrd L. Moore &  
Co. and City of Foley, Ala.  
Case No. 7192

Dear Mrs. Duck:

Enclosed is Plea in Abatement in the above styled  
cause, copies of which I am this day mailing to James W.  
Howell, Attorney for the Plaintiff, and John Grow, Attorney  
for Defendant and Third-Party Plaintiff.

Yours very truly,



C. G. Chason

CGC:jc

Encl: as stated

cc: Mr. James W. Howell  
Attorney at Law  
Foley, Alabama 36535

Mr. John Grow  
Armbrecht, Jackson and DeMouy  
Attorneys at Law  
Mobile, Alabama

ARMBRECHT, JACKSON & DEMOUY  
LAWYERS

MERCHANTS NATIONAL BANK BUILDING

P. O. BOX 290

MOBILE, ALABAMA

36601

WM. H. ARMBRECHT  
THEODORE K. JACKSON  
MARSHALL J. DEMOUY  
WM. H. ARMBRECHT, III  
RAE M. CROWE  
BROOK G. HOLMES  
W. BOYD REEVES  
JOHN GROW  
LOUIS H. ANDERS, JR.  
FRANK B. McRIGHT  
Y. D. LOTT, JR.  
CLIFFORD FOSTER, III  
T. K. JACKSON, III  
E. B. PEEBLES, III

TELEPHONE  
AREA CODE 205  
432 6751  
CABLE ADDRESS  
SEALAW

December 12, 1967

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

Re: Magnolia Land Company, Inc. v.  
Cole Construction, Inc.  
Case No. 7192

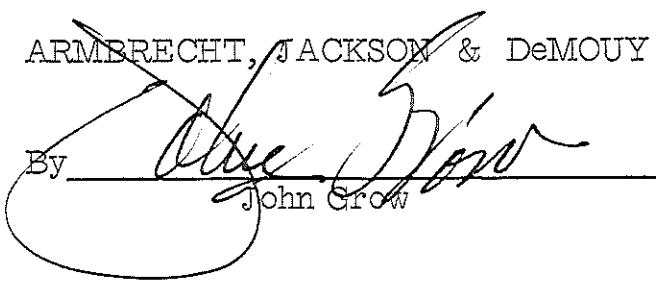
Dear Mrs. Duck:

Enclosed please find Answer and Third Party Complaint which  
we would appreciate your filing and having served upon the Third-Party  
Defendants as shown on the Third Party Complaint.

Very truly yours,

ARMBRECHT, JACKSON & DeMOUY

By

  
John Grow

JG/bm  
Enclosure

cc: (w/encl) James W. Howell, Esquire  
Foley, Alabama

~~EXHIBIT~~

JAMES W. HOWELL  
ATTORNEY AT LAW  
FOLEY, ALABAMA 36535

POST OFFICE BOX 206

AREA CODE 205-943-3602

September 26, 1966

Mrs. Alice Duck  
Circuit Clerk  
Bay Minette, Alabama

7192

RE: Summons & Complaint, Magnolia Land Co., Inc. vs Cole Construction

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Enclosed please find Summons and Complaint in the above referenced matter.

Thank you very much.

  
James W. Howell

JWH:ec  
encs:

Defendant.

\* IN THE CIRCUIT COURT OF  
\*  
\* BALDWIN COUNTY, ALABAMA  
\*

AT LAW

CASE NO. 7192

PLEAS

The Defendant, for answer to the Complaint, saith that he is not guilty of the matters alleged therein.

ARMBRECHT, JACKSON & DeMOUY

BY

~~JOHN~~ GROW

**CERTIFICATE OF SERVICE**

I do hereby certify that I have on this 12<sup>th</sup> day of Dec, 1967, served a copy of the foregoing pleading on counsel for all parties to this proceeding, by mailing the same by United States mail, properly addressed, and first class postage prepaid.

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DEC 13 1967

ALICE L. DUCK, CLERK  
REGISTER

MAGNOLIA LAND COMPANY,  
INC., a corporation,

Plaintiff,

-VS-

COLE CONSTRUCTION, INC.,  
a corporation,

Defendant.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. 7192

PLEAS

The Defendant, for answer to the Complaint, saith that he is  
not guilty of the matters alleged therein.

ARMBRECHT, JACKSON & DeMOUY

BY

JOHN GROW

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 12th day  
of Dec, 1967, served a copy of the  
foregoing pleading on counsel for all parties to this  
proceeding, by mailing the same by United States mail,  
properly addressed, and first class postage prepaid.

John Grow

FILED

DEC 18 1967

CLERK  
REGISTER