IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

LEON MORRIS and
JAMES MORRIS,

     Plaintiffs,

vs.   CIVIL ACTION NO. 7628

THE MERCHANTS NATIONAL BANK
OF MOBILE AS TRUSTEE, et al,

     Defendants.

MOTION FOR SUMMARY JUDGMENT

Come now the Defendants, The Merchants National Bank of Mobile, a national banking association, as Trustee, George E. Fuller and David B. Fuller, and without waiving any pleadings heretofore filed by them, and move the Court under Rule 56(b) ARCP to grant to them and to each of them, a summary judgment in their favor in this cause, and as grounds therefor aver that there is no genuine issue as to any material fact and that these Defendants are entitled to a judgment as a matter of law.

This motion is based upon the following:

I

It is alleged in the complaint that on March 20, 1946 the Plaintiffs (hereinafter for convenience referred to as Morrises) were operating a sawmill on Division "A" Fractional Section 25, Township 4 South, Range 1 East, when they were enjoined from doing so by the Defendants (hereinafter for convenience referred to as Fullers), the Fullers maintaining, according to the allegations of the complaint, that the sawmill operations were being carried out on lands belonging to the Fullers. It is further alleged in the complaint that as a

result of the injunction, which was dissolved on October 29, 1966, the entire sawmill operation was shut down and abandoned and the Morrises were damaged by reason thereof. Copies of the bill for injunction, the writ of injunction and the sworn answer of the Morrises are attached hereto as Exhibits A, B, and C. The property described in the bill for injunction (Exhibit A) consists of all of Section 38 known as the Alexis Trouillette Grant in Township 4 South of Ranges 1 and 2 East, all of Section 39 known as the Lefroy Trouillette Grant in Township 4 South of Ranges 1 and 2 East, excepting nine acres, along with other property. Division A Fractional Section 25, Township 4 South, Range 1 East was not described in the bill. The Morrises were, by the writ of injunction, (Exhibit B) enjoined from "taking down and removing any trees or timber situated on the property involved in this suit and from changing the character or status quo of the said property in any way."

In their sworn answer (Exhibit C) the Morrises denied that they were in any way interfering with property belonging to the Fullers but were confining their activities to property owned by them, or property upon which they have a lease and the right to occupy. Attached to their answer was a lease purporting to cover lands described as Subdivision A, Section 25, Township 4 South of Range 1 East in Baldwin County and about five acres from the North End of Subdivision B, and a deed purporting to convey about four acres in the Northwest corner of the Alexis Trouillette Grant, Township 4 South, Range 1 East, and it was further alleged that their operations were being carried out on these lands.

II

Title to the lands described in the bill for injunction was quieted in the Old Spanish Fort Development Company by decree of the Circuit Court of Baldwin County, in Equity, dated October 10, 1927, in Case Number 666. Attached hereto as Exhibits D and E are true and correct copies of the bill

of complaint and the decree in that case. In addition to said

decree, attached hereto and filed herewith are the following

instruments, which are furnished for the purpose of connecting

the title of the Fullers to Old Spanish Fort Development Company:

Official township plat of Township 4 South, Ranges 1

and 2 East as the same appeared of record in the Office of the

Judge of Probate of Baldwin County, Alabama on October 10, 1927,

Exhibits F and G respectively.

Mortgage foreclosure deed from Benjamin W. Martin

Auctioneer to Henry M. Soper dated February 8, 1934 as the same

appeared of record in the Office of the Judge of Probate of

Baldwin County, Alabama in Deed Book 55 at Pages 354-357,

Exhibit H.

Deed from Henry M. Soper and Ethel L. Soper, his wife,

to The Merchants National Bank of Mobile, as Trustee, dated

April 28, 1941 and recorded in Deed Book 75 at Pages 220-222

in said Probate Records, Exhibit I.

Deed from The Merchants National Bank of Mobile, as

Trustee, to George E. Fuller, dated May 23, 1944 and recorded

in Deed Book 98, Pages 301-307 in said Records, Exhibit J.

Deed from George E. Fuller and Patrice B. Fuller,

husband and wife, to The Merchants National Bank of Mobile,

as Trustee, dated July 18, 1944 and recorded in Deed Book 98

at Pages 309-313 in said Probate Records, Exhibit K.

III

On June 21, 1946, or about three months after the

writ of injunction was issued, the Fullers filed a suit in

ejectment against the Morrises in the Circuit Court of Baldwin

County, Alabama, Case Number 974 to recover possession of the

same lands described in the writ of injunction. On August 12,
1946 the Morrises filed an answer and disclaimer in the ejectment
suit, in which they disclaimed title to all of the property
described in the complaint except a certain parcel of land
described as lying between the South line of the Lefroy
Trouillette Grant, known as Section 39, Township 4 South, Range
1 East and the North line of the Alexis Trouillette Grant known
as Section 38, Township 4 South, Range 1 East, the range line
between Ranges 1 East and 2 East and the Appalachy River, being
Lot A, Section 25, Township 4 South, Range 1 East and a
specifically described four acre parcel containing about
four acres and lying within the Northwest corner of the Alexis
Trouillette Grant. This is the same property they claimed to own
or to be in lawful possession of in their sworn answer filed
in the injunction action (Exhibit C hereto). On December 2,
1946 a judgment was entered in the ejectment action in behalf
of the Fullers against the Morrises for all of the lands
described in the complaint except the four acre parcel lying
within the Northwest corner of the Alexis Trouillette Grant.
Attached hereto as Exhibits L, M and N are true and correct
copies of the complaint, the disclaimer and the judgment entered
on December 2, 1946.

IV

Following a jury trial in the ejectment action held
in the Circuit Court of Baldwin County on December 3, 1946
there was a jury verdict for the Morrises as to the four acre
parcel. A motion for new trial was granted by the court on
February 22, 1947, and following a second trial on April 16
and 17, 1947 there was a second jury verdict for the Morrises.

This judgment was reversed on appeal to the Supreme Court of Alabama in Merchants National Bank of Mobile, et al v. Morris, et al, 252 Ala. 566, 42 So.2d 240 (1949). Following a second trial held on April 10, 1956, a judgment was entered by the court for the Fullers on January 23, 1957. On appeal this was affirmed by the Supreme Court on May 22, 1958 in Morris, et al v. Merchants National Bank of Mobile, et al, 267 Ala. 542, 103 So.2d 310. Copies of the Supreme Court opinions in 252 Ala. 566 and 267 Ala. 542 are attached hereto as Exhibits O and P.

Attached hereto as Exhibits Q and R are copies of the complaint, disclaimer and judgment as they appeared in the transcript of the appeal from the 1956 ejectment trial filed in the Supreme Court which are identical to the pleadings from the initial ejectment trial. Both Leon Morris and James Morris, the Plaintiffs herein, testified in the trial of the ejectment suit held on April 16 and 17, 1947. A true and correct copy of the transcript of their testimony is attached hereto as Exhibit S. At the trial held in April 1956 only the Plaintiff James Morris testified, and a true and correct copy of the transcript of his testimony is hereto attached as Exhibit T.

V

On December 31, 1958, the Morrises filed a bill in equity in the Circuit Court of Baldwin County against the Fullers seeking to set aside the 1927 decree quieting title in The Old Spanish Fort Development Company. The Fullers demurrer thereto was overruled and on appeal the Supreme Court reversed and rendered in Merchants National Bank of

<u>Mobile, et al v. Morris</u>, 273 Ala. 117, 136 So.2d 193 (1961)

a copy of which is hereto attached as Exhibit U. In that

decision the Supreme Court held (273 Ala. 118):

> "The ejectment suit disposed of the question
> of title as between the parties, as we shall
> demonstrate. We, of course, judicially know
> the contents of the records of this Court in
> this particular litigation."

> * * * * *

and at 273 Ala. 120:

> "The bill of complaint is totally lacking
> in equity and the demurrers should have been
> sustained. In our opinion, the bill cannot
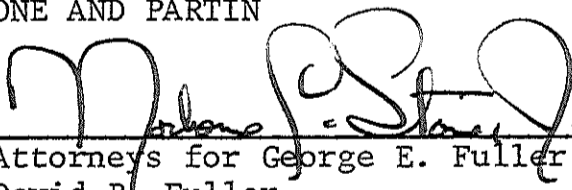> be amended so as to give it equity.

> Reversed and rendered."

VI

We earnestly insist that the above and foregoing

demonstrate that there is no dispute as to any material fact

herein; all of the issues relating to the injunction and any

other controversy between these parties has been resolved and

settled previously, and the court should enter a judgment herein

for all defendants.

NOTE: By agreement of counsel the necessity for
certification by appropriate officers of each of the above
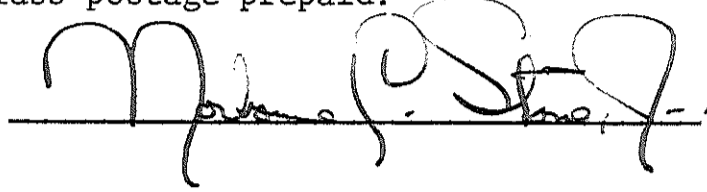copies has been dispensed with.

STONE AND PARTIN

By_____
   Attorneys for George E. Fuller and
   David B. Fuller

JOHNSTONE, ADAMS, MAY, HOWARD & HILL

By_____
   Attorneys for The Merchants National
   Bank of Mobile as Trustee

CERTIFICATE OF SERVICE

I do hereby certify that I have on this _28_ day of
December, 1976 served a copy of the foregoing
pleading on counsel for all parties to this proceeding by
mailing a copy of same by United States mail, properly
addressed and first class postage prepaid.

FILED

DEC 28 1976

EUNICE B. BLACKMON CIRCUIT CLERK

076 PAGE 25

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

LEON MORRIS and JAMES)
MORRIS,
)
  Plaintiffs,
)
VS.   CIVIL ACTION NO. 7628
)
MERCHANTS NATIONAL BANK OF
MOBILE, AS TRUSTEE, et al.,)

  Defendants.   )

MOTION TO SET ASIDE ORDER GRANTING
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

  The Plaintiffs come now and move the Court to set aside this Court's Order Granting the Defendants' Motion for Summary Judgment and as grounds for said Motion, the Plaintiffs say:

  That they want to amend their Complaint and equity requires that this should be done. A copy of the Amendment the Plaintiffs propose to make in the event this Decree Granting Motion for Summary Judgment is set aside is attached hereto.

         C. LeNoir Thompson
         P. O. Box 359
         Bay Minette, Alabama 36507

FILED

JUN 10 1977

EUNICE B. BLACKMON CIRCUIT CLERK

         T. M. Brantley
         P. O. Box 968
         Bay Minette, Alabama 36507

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 10 day of June 197_ 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 with said postage prepaid.

    By: _____

VOL p76 PAGE 35

LEON MORRIS and JAMES   0   IN THE CIRCUIT COURT OF
MORRIS,   0

       Plaintiffs,   0   BALDWIN COUNTY, ALABAMA

Vs.   0   CIVIL ACTION NUMBER

MERCHANTS NATIONAL BANK   0   7628
OF MOBILE, as Trustee,   0
et al,   0

       Defendants.   0
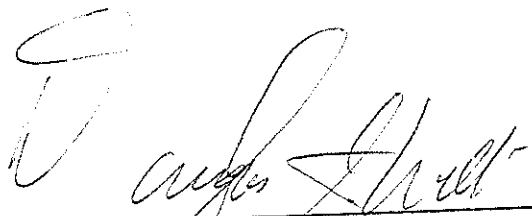
O R D E R

     This cause coming on to be heard on Motion for Re-
consideration and on Motion for Evidentiary Hearing filed
in the Circuit Court of Baldwin County, Alabama, on the
16th day of September, 1977, and the same being considered
by the Court it is;

     ORDERED, ADJUDGED AND DECREED that the same be and
the same are herewith denied.

     Done this the 20th day of September, 1977.

                               DOUGLAS S. WEBB
                               SPECIAL JUDGE

076   44

LEON MORRIS and JAMES   :   IN THE CIRCUIT COURT OF
MORRIS,

     Plaintiffs,   :   BALDWIN COUNTY, ALABAMA

  vs.   :

MERCHANTS NATIONAL BANK   :   CIVIL ACTION NUMBER
OF MOBILE, as Trustee,
et al,   :   7628

     Defendants.   :

MOTION FOR RECONSIDERATION

The Plaintiffs respectfully move the Court to reconsider the following: (1) Order of the Court dated May 13, 1977, granting Defendants' Motion for Summary Judgment, and (2) Order of the Court dated August 16, 1977, denying Plaintiffs' Motion to Set Aside the Order Granting Summary Judgment for Defendants, in order that Plaintiffs may amend their complaint.

As grounds for the above Plaintiffs show unto the Court as follows:

1. That Plaintiffs' Answer to the Motion for Summary Judgment reflected a factual dispute that could not be resolved by summary judgment.

2. The amended complaint of Plaintiffs reiterated a factual dispute that could not be resolved by summary judgment.

3. Reasonable grounds exist for the delay in this cause.

4. The amendment to the complaint which was filed May 27, 1977, did not unduly prejudice Defendants.

5. To rule otherwise would be contrary to law and equity.

Plaintiffs respectfully request oral argument on the above motion.

TAYLOR, BENTON & IRBY
305 North Section Street
Post Office Box 471
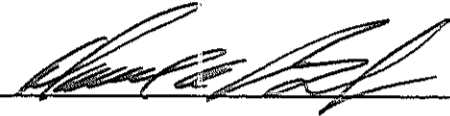Fairhope, Alabama 36532

Attorneys for Plaintiffs

By: _____

076   42

CERTIFICATE OF SERVICE

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

Dated this _15th_ day of _September_ , 1977.

[signature]

THE STATE OF ALABAMA – – – – – JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1977-78

Leon Morris, et al.

S. C. 2824   v.

Merchants National Bank
of Mobile, etc., et al.

Appeal from Baldwin Circuit Court

BEATTY, JUSTICE.

This is an appeal by the Morrises from a summary

judgment rendered against them and from an order denying

their post-trial motion to set aside that summary judgment.

The present action is an outgrowth of earlier liti-
gation, commenced in 1946, in which the Fullers sought in-
junctive relief against the Morrises. An injunction was
issued on March 20, 1946. On October 29, 1966, more than
twenty years later, this injunction was dissolved. There-
after the Morrises brought this present action to recover
damages, alleging a wrongful interruption of their business
and trespass to their property, all arising out of the
wrongful procurement and issuance of the injunction in the
earlier action.

In view of the reasons on which we have based our
decision to dismiss the appeal, it will be relevant to set
out the course of the pleadings which were filed in the in-
stant case.

The summons and complaint were filed on July 18,
1967. That complaint was demurred to on August 17, 1967.
Then the plaintiffs filed an amended complaint on November
22, 1968. This was followed on March 23, 1971 by the filing
of a motion to strike one of the defendants, and later, on
July 12, 1974, by the filing of a motion to dismiss by the
defendants. On December 15, 1975 the defendants moved for
summary judgment, supporting their motion with extensive
documentary and other evidence. Then, on April 12, 1976
the plaintiffs filed a second amended complaint, to which
the defendants filed a motion to dismiss on May 13, 1976.
This was followed by the filing by the defendants on December
28, 1976 of another motion for summary judgment. The plaintiffs

then filed on January 4, 1977 their answer to the defendants

second motion for summary judgment. In granting the defend-

ants' motion for summary judgment on May 12, 1977, the trial

court's order included the following findings:

> The Complaint filed by the Plaintiffs
> against the Defendants in this case
> seeks to recover substantial damages
> from the Defendants for maliciously
> and without probable cause obtaining
> an injunction enjoining the Plaintiffs
> from operating a sawmill on Division
> 'A' Fractional Section 25, Township 4
> South, Range 1 East in Baldwin County,
> Alabama (herein for convenience called
> Division A). The Bill for Injunction
> filed by the Defendants against the
> Plaintiffs in March of 1946, made no
> reference whatever to Division A and
> the Writ of Injunction issued on March
> 20, 1946, by the Circuit Court of
> Baldwin County, In Equity, referred only
> to the lands described in the Bill of
> Complaint which did not include Division
> A. An ejectment suit filed by the De-
> fendants on or about June 22, 1946
> against the Plaintiffs made no reference
> to Division A and the Plaintiffs dis-
> claimed, in such ejectment suit, any in-
> terest whatever in the lands described
> in the Complaint except Division A and
> four acres in the Northwest corner of
> Section 38, as to which two parcels the
> Plaintiffs pleaded general issue. And
> the Court having considered the Motion
> for Summary Judgment and the exhibits at-
> tached thereto, together with the Plain-
> tiffs' response thereto, the Court con-
> cludes that there is no genuine issue as
> to any material fact and that the Defend-
> ants are entitled to a judgment as a
> matter of law; . . . .

After the trial court had granted the defendants'

motion for summary judgment, the plaintiffs filed on May

27, 1977 an amended complaint, the preamble to which recited:

> The Plaintiffs now amend their Com-
> plaint and all its amendments by adding
> the following to each count or cause of
> action: . . . .

The defendants followed this by filing on June 9,
1977 a motion to strike the amended complaint, and alleged
two grounds: (1) that it was a nullity because the court
had theretofore granted summary judgment; and (2) that it
was filed without leave of court contrary to the requirements
contained in Rule 15, ARCP.

The plaintiffs on June 10, 1977 filed their "MOTION
TO SET ASIDE ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT," and asserted as their grounds: "That they want
to amend their Complaint and equity requires that this should
be done."

On August 9, 1977 the trial court entered the fol-
lowing order (filed on August 16, 1977):

> This cause coming on to be heard on
> Motion of the Plaintiffs to set aside a
> Summary Judgment entered by this Court
> after careful consideration on May 12,
> 1977, in order that the Plaintiffs might
> again be allowed to amend their complaint
> and the same being considered by the Court
> the Court finds that the original complaint
> in this cause was filed on to wit: July 18,
> 1967, and thereafter amended by the Plain-
> tiffs on two different occasions, on
> November 22, 1968, and again on April 12,
> 1976. After said last amendment a volumi-
> nous Motion for Summary Judgment with Ex-
> hibits was filed by the Defendants on
> November 28, 1976, with said Motion being
> taken under advisement by this Court on
> January 4, 1977, after Plaintiffs had filed
> their answer to said Motion for Summary
> Judgment on said date. Summary Judgment

for the Defendants was entered by the Court
on to wit: May 12, 1977, after several months
of deliberation and study on grounds as set
forth in said Summary Judgment.

Under the circumstances as hereinabove
outlined it is the opinion of this Court that
the Plaintiffs have failed to exercise due
diligence in seeking to amend their complaint
and the suggestion being made to this Court on
this date that one of the Defendants, George
Fuller, Sr., died subsequent to the granting
of the said Summary Judgment and before the
filing of the last proposed amendment by the
Plaintiffs, it is this Court's opinion after
careful consideration that to allow such a
belated third amendment to the complaint as
originally filed would be unduly prejudicial
to the Defendants in this cause. Despite the
liberal rules with reference to the allowance
of amendments, it is this Court's opinion that
a Plaintiff should be able to decide and pre-
sent to the courts of this State the legal
issues in any cause within a period of eleven
years if a final disposition of any cause is
to be attained by the judiciary of this State
. . . .

Then on September 15, 1977 the plaintiffs filed a

"MOTION FOR EVIDENTIARY HEARING OR IN THE ALTERNATIVE LEAVE

OF COURT TO FILE AFFIDAVITS IN SUPPORT OF MOTION FOR RECON-

SIDERATION." As a ground for this motion the plaintiffs stated:

1. Justice requires that Plaintiffs be
allowed an evidentiary hearing to develop the
factual context behind the pleadings hereto-
fore filed in said cause in order to show the
Defendants would not be unduly prejudiced by
filing of an additional amendment to the com-
plaint in this matter.

That same day the plaintiffs filed their "MOTION FOR RECON-

SIDERATION" of (1) the order granting defendants' motion for

summary judgment and (2) the order denying plaintiffs' motion

to set aside so that another amended complaint could be filed.

The grounds in support of this final motion were:

1. That Plaintiffs' Answer to the Motion for Summary Judgment reflected a factual dispute that could not be resolved by summary judgment.

2. The amended complaint of Plaintiffs reiterated a factual dispute that could not be resolved by summary judgment.

3. Reasonable grounds exist for the delay in this cause.

4. The amendment to the complaint which was filed May 27, 1977, did not unduly prejudice Defendants.

5. To rule otherwise would be contrary to law and equity.

This motion was denied on September 20, 1977. Notice of appeal was filed on September 22, 1977.

The principal issue raised by this sequence of pleading is whether the plaintiffs' appeal was perfected within forty-two days of an appealable judgment in accord with Rule 4(a), ARAP. In a motion to dismiss the appeal, the defendants contend that the motions filed by the plaintiffs following the summary judgment did not suspend the running of the time for filing notice of appeal. On the other hand, the plaintiffs contend that their Motion to Set Aside Order Granting Defendants' Motion for Summary Judgment was a proper Rule 59(e) motion, and that their notice of appeal, filed on September 22, 1977, was filed within forty-two days of the trial court's order denying that motion (September 20, 1977).

Of course, the plaintiffs are correct in their contention that a proper motion for reconsideration filed under the authority of Rule 59(e) will extend the time for filing notice

of appeal, even though the motion for reconsideration follows

the grant of a summary judgment. Papastefan v. B. & L.

Construction Co., Inc., S. C. 2457, decided March 10, 1978,

12 ABR 932. Their argument, however, misconceives the appli-

cability of that principle to these pleadings. Examination

of the post-trial pleadings reveals that in manner and form

their purpose was either to file another amended complaint or

to obtain the trial court's consent to file another amended

complaint. They were not designed to have the trial court

reconsider the evidence on which the summary judgment was

based.

Although not directly in point, Clardy v. Duke

University, 299 F. 2d 368 (4th Cir. 1962) discloses the

reason why a motion to amend which follows summary judgment

should not be treated as a motion for reconsideration which

would extend the time for appeal. Following summary judgment

rendered against him in that case a party moved for recon-

sidaration, asking the trial court for leave to file an

amended complaint. The trial court's denial of the motion

was upheld on appeal, citing Rule 15(a), FRCP, cf. Rule 5(a),

ARCP. At pages 369-379 of the report this significant lan-

guage appears:

> If it should be held that plaintiff could
> amend without leave after a hearing and
> the granting of a summary judgment against
> him, the effect would be to clothe a liti-
> gant with the power, at any time, to re-
> open a case and possibly to set aside a
> judgment rendered against him by the court.
> Rule 15(a) is not to be construed so as
> to render Rule 12 meaningless and inef-
> fective. . . .

S. C. 2824

See also <u>Freeman</u> v. <u>Continental</u> <u>Gin</u> <u>Co</u>., 381 F. 2d 459,

469-470 (5th Cir. 1967).

Because the post-trial motions of plaintiffs did not

have the effect of extending the time for filing notice of

appeal, that time began to run from the date of the summary

judgment, or May 12, 1977. Forty-two days from that date

would have been June 23, 1977. Thus the plaintiffs' notice

of appeal filed on September 22, 1977 was too late. Timely

filing of the notice of appeal is jurisdictional. Rule 3,

ARAP.

The appeal must be dismissed.

APPEAL DISMISSED.

Maddox, Jones, Almon and Shores, JJ., concur.

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

LEON MORRIS and JAMES MORRIS,   )

        Plaintiffs,   )

VS.   )
                               CIVIL ACTION NO. 7628
THE MERCHANTS NATIONAL BANK OF   )
MOBILE AS TRUSTEE, et al,
)

        Defendants.   )

)

ANSWER TO MOTION FOR SUMMARY JUDGMENT

Case #666, a bill to quiet title, quieted title in Old Spanish Fort
Development Company to Section 38, Township 4 South, Ranges 1 and 2 East (Alexis
Trouillette Grant), Section 39, Township 4 South, Ranges 1 and 2 East (Lefroy
Trouillette - Idane Chestang Grant) except three acres described therein. See
Exhibit E in Defendants' Motion.

Case #1566, a suit for injunction, describes land in Sections 17, 18,
20, 29, 30, and Section 38, Township 4 South, Ranges 1 and 2 East (Alexis
Trouillette Grant) and Section 39, Township 4 South, Ranges 1 and 2 East (Lefroy
Trouillette Grant) less a 9 acre tract of land and except 9 parcels.

The ejectment suit, a copy of which is attached hereto, describes
Fractional Section 19, Township 4 South, Range 2 East, Subdivision F of Frac-
tional Section 30, Township 4 South, Range 2 East, Section 38, Township 4 South,
Ranges 1 and 2 East, (Alexis Trouillette Grant), Section 39, Township 4 South,
Ranges 1 and 2 East, (Lefroy Trouillette Grant) except 9 acres.

While all three suits include some of the same land, none of them
describe the same tracts of land.

The judgment entry referred to in Exhibit N does not include all the
land described in the Complaint except the four acres. If the Court will read
Exhibit N, it will see that the judgment entry says: "- - the Defendants dis-
claim all right, title and interest in and to all the property sued for except
the tract described in their disclaimer. It is therefore considered by the
Court that the Plaintiff have and recover of the Defendants the following des-
cribed land disclaimed by the Defendants - - ". This judgment entry does not

                                   76   20

include the property now under consideration.

The two ejectment suits which were appealed to the Supreme Court (42 So. 2d, 240, and 103 So. 2d, 310) dealt exclusively with the four acre tract of land referred to in one of the opinions as four acres of wild land and referred to as the Alexander property. This is not the land, however, under consideration today. This tract was specifically claimed by the Morrises in the ejectment suit. The jury found for the Morrises on two different occasions which, of necessity, included the land now in controversy.

As we have heretofore said, this piece of property was not included in the treatment on appeal to the Supreme Court and I submit to this Court that this is the first time the issue has been raised that the land which gives rise to the present law suit was ever considered by the juries, by the local court, or by the Supreme Court.

The attorneys in this case have heretofore failed to raise this matter as an issue except in the Morris' claim to title in an ejectment suit and their claim to title in the injunction. In the injunction suit an affidavit was filed by Sam Burwell. His testimony clearly shows that the four acre tract of land and the parcel of land in litigation are two distinct tracts of land. His affidavit shows that the Worcester land faces on Appalachee River, lies between the South line Lefroy Trouillette Grant and North line of Alexis Trouillette Grant; that the Francisco land is immediately South of the North line of the Alexis Trouillette Grant and adjoins the Worcester land. I have underlined the pertinent parts of this witness's affidavit.

The affidavit of J. T. Worcester describes Subdivision A, Section 25, Township 4 South, Rangel East, as being on Appalachee River between Lefroy and Alexis Trouillette Grants; that there was an old wharf and boat landing immediately in front of Subdivision A, an old mill site on it; that 25 years before his affidavit was made (which was the 15th day of July, 1946) he took charge of this property for his sisters. He leased it in '32 to Purina Mills. His affidavit shows that this property was clearly marked around the boundaries. That he had leased this property to Morris Brothers in 1940; that tax was paid on this property by his sisters; that his sisters quieted title on this property the 17th of June, 1927. A copy of the Decree is attached to his affidavit. He says that a small parcel of land immediately South of Subdivision A,

Section 25, Township 4 South, Range 1 East, had been occupied by Sam Burwell for about 20 years. This shows distinctly that the four acre tract of land that was treated on the two appeals in Supreme Court is not the land we have in litigation today, if the affidavit of J. T. Worcester is believable. The pertinent parts of this affidavit are underlined.

Respectfully submitted,

T. M. Brantley
P. O. Box 968
Bay Minette, Alabama 36507
Attorney for the Plaintiffs

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 4 day of Ja 19 77 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.

T. M. BRANTLEY

By:

LEON MORRIS and JAMES MORRIS,   * IN THE CIRCUIT COURT OF

        Plaintiffs,   * BALDWIN COUNTY, ALABAMA

vs.   *

THE MERCHANTS NATIONAL BANK OF *
MOBILE AS TRUSTEE, et al,
                        *

        Defendants.   CIVIL ACTION NO. 7628
                        *

MOTION TO DISMISS

    Comes the Defendant The Merchants National Bank of

Mobile, as Trustee, and moves the Court to dismiss the complaint

in the above entitled matter as last amended and as grounds

therefor avers that said complaint, as last amended, fails to

state a claim upon which relief can be granted.

FILED

MAY 13 1976

EUNICE B. BLACKMON CIRCUIT CLERK

                     Charles B. Bailey, Jr.
                     Post Office Box 1988
                     Mobile, Alabama 36601

OF COUNSEL:

JOHNSTONE,ADAMS,MAY,HOWARD & HILL

CERTIFICATE OF SERVICE

    I do hereby certify that I have on this _12th_ day
of _May_ ,1976, 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.

                     Charles B. Bailey, Jr.

LEON MORRIS and   *   IN THE CIRCUIT COURT FOR
JAMES MORRIS,

                         *   BALDWIN COUNTY, ALABAMA

       Plaintiffs,

                         *

vs.

                         *

THE MERCHANTS NATIONAL
BANK OF MOBILE, AS TRUSTEE,   *
et al,

                         *

       Defendants.

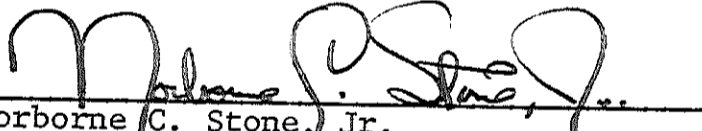   CIVIL ACTION NO. 7628

                         *

MOTION TO STRIKE AMENDED COMPLAINT

Come now the Defendants and move the Court to strike that certain pleading heretofore filed by the Plaintiffs on or about March 29, 1977 entitled Amended Complaint and as grounds therefor aver:

1. The purported amendment is a nullity and of no force and effect in that the Court on May 12, 1977 entered an order granting the Defendants' Motion for Summary Judgment.
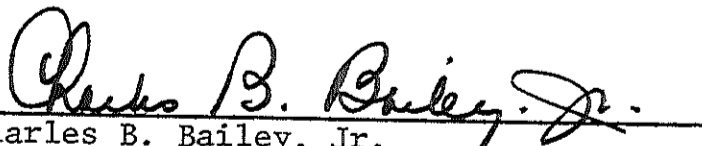
2. The purported amendment was filed by the Plaintiffs without leave of Court first had and obtained as required by Rule 15 Alabama Rules of Civil Procedure.

                       (signature)

             Norborne C. Stone, Jr.
             Attorney for Defendants George E. Fuller
             and David B. Fuller

OF COUNSEL:

STONE & PARTIN
Post Office Box 1109
Bay Minette, Alabama   36507

                       (signature)

             Charles B. Bailey, Jr.
             Attorney for Defendant The Merchants
             National Bank of Mobile as Trustee

OF COUNSEL:

JOHNSTONE, ADAMS, MAY, HOWARD & HILL
Post Office Box 1988
Mobile, Alabama   36601
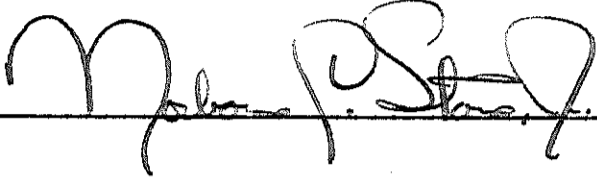
                       076   33

CERTIFICATE OF SERVICE

I do hereby certify that I have on this __9th__ day of
__June_____, 1977, served a copy of the foregoing pleading
on counsel for all parties to this proceeding by mailing a copy
of same by United States mail, properly addressed and first class
postage prepaid.

p76 34

IN THE CIRCUIT COURT OF BALDWIN COUNTY,
ALABAMA

LEON MORRIS and JAMES   X
MORRIS,

                          X

         Plaintiffs,

                          X

vs.   X   CASE NO. 7628

                          X

MERCHANTS NATIONAL BANK OF
MOBILE, a corporation, as   X
Trustee, et al.,

                          X

         Defendants.

                          X

FILED

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EUNICE B. BLACKMON CIRCUIT CLERK

<u>MOTION FOR SUMMARY JUDGMENT</u>

      Come now the Defendants, Merchants National Bank of

Mobile, a corporation, as Trustee, George E. Fuller and David

B. Fuller, by their attorneys, and without waiving any pleadings

heretofore filed by them, and moves the Court under Rule 56(b)

to grant to them and each of them, a summary judgment in their

favor and as grounds therefor says there is no genuine issue as

to any material fact and the Defendants are entitled to a judg-

ment as a matter of law.

      This motion is based upon the following:

      1. Final Decree of Circuit Court of Baldwin County,

Alabama, dated October 10, 1927, in that certain cause wherein

Old Spanish Fort Development Company, a corporation, was Com-

plainant and Sections 38 and 39, Township 4 South, Ranges 1 and

2 East (with other lands) et al. were Respondents; a copy of which

is attached hereto and marked Exhibit "A".

      2. Official Township Plats of Township 4 South,

Ranges 1 and 2 East as the same appeared of record in the Office

of the Judge of Probate of Baldwin County, Alabama, on October 10,

1927, copies of which are attached hereto and marked Exhibit "B"

and "C", respectively.

076 PAGE 11

3. Mortgage foreclosure deed from Benjamin W. Martin, Auctioneer, to Henry M. Soper, dated February 8, 1934, together with attachments thereto as the same appears of record in the Office of the Judge of Probate of Baldwin County, Alabama, in Deed Book 55, at Pages 354-357, a copy of which is attached hereto and marked Exhibit "D".

4. Deed from Henry M. Soper and Ethel L. Soper, his wife, to the Merchants National Bank of Mobile, as Trustee, dated April 28, 1941, and recorded in the Office of the Judge of Probate of Baldwin County, Alabama, in Deed Book 75, at Pages 220-222, a copy of which is attached hereto and marked Exhibit "E".

5. Deed from the Merchants National Bank of Mobile, Alabama, as Trustee, to George E. Fuller, dated May 23, 1944, and recorded in the Office of the Judge of Probate of Baldwin County, Alabama, in Deed Book 98, Pages 301-307, a copy of which is attached hereto and marked Exhibit "F".

6. Deed from George E. Fuller and Patrice B. Fuller, husband and wife, to the Merchants National Bank of Mobile, as Trustee, dated July 18, 1944, and recorded in the Office of the Judge of Probate of Baldwin County, Alabama, in Deed Book 98, at Pages 309-313, a copy of which is attached hereto and marked Exhibit "G".

NOTE: Each of the foregoing deeds are submitted for the purpose of connecting the title of the present Defendants to Old Spanish Fort Development Company.

7. Bill of Complaint in that certain cause wherein Merchants National Bank of Mobile, a corporation, as Trustee, et al., were Complainants and Leon Morris and James Morris were Respondents in the Circuit Court of Baldwin County, Alabama, covering lands in Sections 38 and 39, Township 4 South, Ranges 1 and 2 East, docketed as Case No. 1566, a copy of which is

attached hereto and marked Exhibit "H".

8. Injunction issued in the suit referred to in the last paragraph hereof, a copy of which is attached hereto and marked Exhibit "I".

9. Complaint in Ejectment in that certain cause wherein Merchants National Bank of Mobile, a corporation, as Trustee, et al., were Plaintiffs and Leon Morris and James Morris were Defendants, in the Circuit Court of Baldwin County, Alabama, filed on June 21, 1946, and covering lands in Sections 38 and 39, Township 4 South, Ranges 1 and 2 East, docketed as Case No. 974, a copy of which is attached hereto and marked Exhibit "J".

10. Disclaimer filed on behalf of Defendants in the Ejectment suit referred to in the preceding paragraph, a copy of which is attached hereto and marked Exhibit "K".

11. Opinion of the Supreme Court of Alabama rendered on December 21, 1961, in that certain cause wherein Merchants National Bank of Mobile, et al., were the Appellants and James D. Morris, et al, were the Appellees, a copy of which is attached hereto and marked Exhibit "L".

NOTE: By agreement of counsel the necessity for certification by appropriate officers of each of the foregoing copies has been dispensed with.

Respectfully submitted,

Charles B. Bailey, Jr.
Attorneys for Merchants National
Bank of Mobile, as Trustee
Merchants National Bank Building
Mobile, Alabama   36601

OF COUNSEL:

JOHNSTONE, ADAMS, MAY,
  HOWARD & HILL
Lawyers
Merchants National Bank Building
Mobile, Alabama   36601

Norborne C. Stone, Jr.
Attorney at Law
P. O. Box 1203
Bay Minette, Alabama   36507

OF COUNSEL:

CHASON, STONE, CHASON & PARTIN
Attorneys At Law
Bay Minette, Alabama   36507

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all parties in this proceeding, by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this 15 day of December, 1975.

IN THE CIRCUIT COURT FOR BALDWIN COUNTY,
ALABAMA

LEON MORRIS and JAMES   X
MORRIS,   X
                                   X
            Plaintiffs,   X
                                   X
                                   X
                                   X
     vs.   X   CIVIL ACTION NO. 7628
                                   X
                                   X
MERCHANTS NATIONAL BANK   X
MOBILE, A Corporation,   X
as Trustee, and GEORGE   X
E. FULLER and DAVID B. FULLER,   X
                                   X
            Defendants.   X

MOTION TO DISMISS

        Come now the Defendants, George E. Fuller and David B.

Fuller, by their attorney, and move this Court to dismiss the

Complaint heretofore filed against them and each count or para-

graph thereof, and assign the following ground:

        1. The Complaint fails to state a claim upon which re-

lief may be granted.

                                    _____
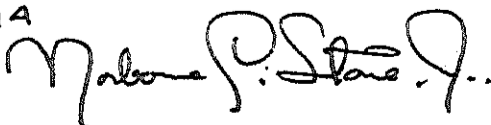   Norborne C. Stone, Jr.
                                    Attorney for Defendants,
                                     George E. Fuller and David B.
                                     Fuller
                                    P. O. Box 120
                                    Bay Minette, Alabama   36507

OF COUNSEL:

CHASON, STONE, CHASON & PARTIN
Attorneys at Law
P. O. Box 120
Bay Minette, Alabama   36507

Copy served on C.L. Thompson
by mail this 12th Day of
July, 1974

FILED

JUL 12 1974

EUNICE B. BLACKMON CIRCUIT CLERK

076 PAGE 10

LEON MORRIS and JAMES MORRIS,   )   IN THE CIRCUIT COURT OF

       Plaintiffs,   )

    -vs-   )   BALDWIN COUNTY, ALABAMA

MERCHANTS NATIONAL BANK OF MOBILE,)
a corporation, as Trustee and
GEORGE E. FULLER, PATRICE B.   )   AT LAW
FULLER, and DAVID B. FULLER,
)

       Defendants.   )   CASE NUMBER: 7628

Come the Plaintiffs in the above styled cause by
C. LeNoir Thompson, their attorney of record, and move
to strike the name of Patrice B. Fuller as defendant in
the above styled cause, being informed orally by Honorable
J. B. Blackburn, Attorney for the Defendant or Defendants,
that Mrs. Fuller was deceased. In making said motion your
movant is unaware of the exact date of the said defendant's
demise, no suggestion having been filed in behalf of defendant's
heirs.

                                            ATTORNEY FOR PLAINTIFFS.

I, C. LeNoir Thompson, Attorney for the Plaintiffs,
hereby certify that I have this day mailed a copy of the
foregoing Motion to Honorable J. B. Blackburn, Attorney for
the Defendant or Defendants, by depositing a copy of same
in the United States Mail, properly addressed and postage
prepaid.

3/23/71
                              C. LeNOIR THOMPSON

FILED

MAR 23 1971

076 PAGE 09

LEON MORRIS and JAMES MORRIS,　◊

　　　　　　　　Plaintiffs,　◊

VS.　　　　　　　　　　　　　　　◊　　　　IN THE CIRCUIT COURT OF

　　　　　　　　　　　　　　　　　◊　　　　BALDWIN COUNTY, ALABAMA

MERCHANTS NATIONAL BANK OF　　　◊

MOBILE, a corporation, as　　　　　　AT LAW　　　　NO. 7628

Trustee, and GEORGE E. FULLER,　◊

PATRICE B. FULLER and DAVID B.

FULLER,　　　　　　　　　　　　　◊

　　　　　　　　Defendants.　◊

DEMURRER

　　　　Now come the Merchants National Bank of Mobile, a corpor-
ation, as Trustee, and David B. Fuller, each separately and sever-
ally, by their attorney, and demur to the complaint heretofore filed
in this cause and as grounds of such demurrer set down and assign
the following:

　　　1.　It does not state a cause of action.

J. B. Blackburn
　　　Attorney for Merchants National Bank of
　　　Mobile, a corporation, as Trustee, and
　　　David B. Fuller

　　　　I hereby certify that I mailed a copy of the foregoing
demurrer to C. LeNoir Thompson, Esquire, Bay Minette, Alabama, by
first class mail, postage prepaid and properly addressed, on this
the 17th day of August, 1967.

J. B. Blackburn
　　　Attorney for Merchants National Bank of
　　　Mobile, a corporation, as Trustee, and
　　　David B. Fuller

IN THE CIRCUIT COURT FOR BALDWIN

COUNTY, ALABAMA

LEON MORRIS and   Ø
JAMES MORRIS,

           Ø

    Plaintiffs,

           Ø

VS.   CIVIL ACTION NO. 7628

           Ø

MERCHANTS NATIONAL BANK
OF MOBILE, as Trustee, et al., Ø

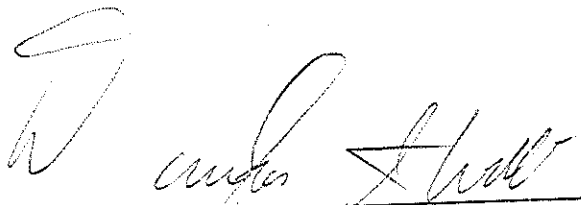   Defendants.   Ø

O R D E R

  This cause coming on to be heard on Motion of the Plaintiffs

to set aside a Summary Judgment entered by this Court after care-

ful consideration on May 12, 1977, in order that the Plaintiffs

might again be allowed to amend their complaint and the same being

considered by the Court the Court finds that the original complaint

in this cause was filed on to wit: July 18, 1967, and thereafter

amended by the Plaintiffs on two different occasions, on November 22,

1968, and again on April 12, 1976. After said last amendment a

voluminous Motion for Summary Judgment with Exhibits was filed by

the Defendants on November 28, 1976, with said Motion being taken

under advisement by this Court on January 4, 1977, after Plaintiffs

had filed their answer to said Motion for Summary Judgment on said

date. Summary Judgment for the Defendants was entered by the Court

on to wit: May 12, 1977, after several months of deliberation and

study on grounds as set forth in said Summary Judgment.

  Under the circumstances as hereinabove outlined it is the

opinion of this Court that the Plaintiffs have failed to exercise

due diligence in seeking to amend their complaint and the suggestion

being made to this Court on this date that one of the Defendants,

George Fuller, Sr., died subsequent to the granting of the said Summary Judgment and before the filing of the last proposed amendment by the Plaintiffs, it is this Court's opinion after careful consideration that to allow such a belated third amendment to the complaint as originally filed would be unduly prejudicial to the Defendants in this cause. Despite the liberal rules with reference to the allowance of amendments, it is this Court's opinion that a Plaintiff should be able to decide and present to the courts of this State the legal issues in any cause within a period of eleven years if a final disposition of any cause is to be attained by the judiciary of this State and it is therefore;

ORDERED AND DECREED by the Circuit Court of Baldwin County, Alabama, that the Motion of the Plaintiffs to set aside the Order of this Court granting the Defendants' Motion for Summary Judgment be and the same is herewith DENIED.

Dated this the 9th day of August, 1977.

_____
DOUGLAS S. WEBB
SPECIAL JUDGE

FILED
AUG 16 1977

EUNICE B. BLACKMON CIR. CLER

076 37

IN THE CIRCUIT COURT FOR BALDWIN

COUNTY, ALABAMA

LEON MORRIS and   ⟩
JAMES MORRIS,
                                         ⟩
          Plaintiffs,
                                         ⟩
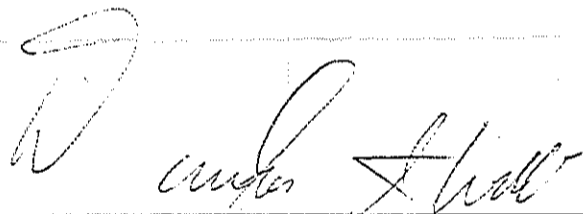VS.   CIVIL ACTION NO. 7628
                                         ⟩
MERCHANTS NATIONAL BANK
OF MOBILE, as Trustee, et al.,   ⟩

          Defendants.   ⟩

O R D E R

This cause coming on to be heard on Motion of the Plaintiffs

to set aside a Summary Judgment entered by this Court after care-

ful consideration on May 12, 1977, in order that the Plaintiffs

might again be allowed to amend their complaint and the same being

considered by the Court the Court finds that the original complaint

in this cause was filed on to wit: July 18, 1967, and thereafter

amended by the Plaintiffs on two different occasions, on November 22,

1968, and again on April 12, 1976. After said last amendment a

voluminous Motion for Summary Judgment with Exhibits was filed by

the Defendants on November 28, 1976, with said Motion being taken

under advisement by this Court on January 4, 1977, after Plaintiffs

had filed their answer to said Motion for Summary Judgment on said

date. Summary Judgment for the Defendants was entered by the Court

on to wit: May 12, 1977, after several months of deliberation and

study on grounds as set forth in said Summary Judgment.

Under the circumstances as hereinabove outlined it is the

opinion of this Court that the Plaintiffs have failed to exercise

due diligence in seeking to amend their complaint and the suggestion

being made to this Court on this date that one of the Defendants,

076 38

George Fuller, Sr., died subsequent to the granting of the said Summary Judgment and before the filing of the last proposed amendment by the Plaintiffs, it is this Court's opinion after careful consideration that to allow such a belated third amendment to the complaint as originally filed would be unduly prejudicial to the Defendants in this cause. Despite the liberal rules with reference to the allowance of amendments, it is this Court's opinion that a Plaintiff should be able to decide and present to the courts of this State the legal issues in any cause within a period of eleven years if a final disposition of any cause is to be attained by the judiciary of this State and it is therefore;

ORDERED AND DECREED by the Circuit Court of Baldwin County, Alabama, that the Motion of the Plaintiffs to set aside the Order of this Court granting the Defendants' Motion for Summary Judgment be and the same is herewith DENIED.

Dated this the 9th day of August, 1977.

_____
DOUGLAS S. WEBB
SPECIAL JUDGE

LEON MORRIS and JAMES   *   IN THE CIRCUIT COURT OF
MORRIS

          PLAINTIFFS   *   BALDWIN COUNTY, ALABAMA

      VS   *   AT LAW.

MERCHANTS NATIONAL BANK   *   CASE NO. 7626
MOBILE, A Corporation
as Trustee, and GEORGE   *
E. FULLER and DAVID B.
FULLER   *

        DEFENDANTS   *   *

Plaintiffs amend their complaint by adding the following:

COUNT TWO

The plaintiffs claim of the defendants the sum of $581,000.00
as actual damages and $500,000.00 as punitive damages because
on to-wit March 20, 1946 the defendants maliciously and without
probable cause filed a petition for injunction against the
plaintiffs, they executed a bond and obtained an order granting
an injunction. A copy of the writ, bond and order are attached
hereto as plaintiffs exhibit "A" "B" and "C" and made a part
hereof as if now fully set out. The plaintiffs made repeated
efforts to have this injunction dissolved and on the 29th day
of October 1966 this injunction was dissolved. A copy of order
is attached hereto as plaintiffs exhibit "D" and made a part
hereof as if now fully set out. The petitioners aver that the
petition was filed maliciously and without probable cause.

At the time the petition was filed by the defendants they
knew that the plaintiffs were operating a sawmill on Appalachee
River. Plaintiffs aver that the sawmill operations was located
on Division "A" Fractional Section 25 Township 4 South Range 1
East. Plaintiffs aver that the activity the defendants enjoined
was that which was taking place on this tract of land.

Plaintiffs aver that title to this tract of land was quieted
in Rosa and Olive Worchester on the 17th day of June 1927, a
copy of this decree is recorded in deed book 106 page 59 and 60
and a copy of this decree is attached hereto and marked plaintiffs
exhibit "E" and made a part hereof as if now fully set out.

Rosa and Olive Worchester leased this land to the Morris
Brothers who are Leon and James, a copy of this lease is attached
hereto as plaintiffs exhibit "F" and made a part hereof as if

now fully set out.

At the time the injunction was granted the defendants knew that the plaintiffs were in occupancy of and using said lands. They knew or should have known that the plaintiffs lessors had been in possession of said land prior to their occupancy. The plaintiffs aver that at the time the injunction was granted and at the present time the defendants maintain that the sawmill was located on lands belonging to defendants. The plaintiffs aver that as a direct result of the aforesaid injunction that entire sawmill operation was shut down and abandoned, they suffered a loss of income for an extended period of time, they were forced to sell their sawmill and allied equipment at a great loss. The expended monies for attorney fees to have the aforesaid injunction dissolved; hence this suit.

COUNT THREE

The plaintiffs claim of the defendants the sum of $581,000.00 as actual damages because on to-wit March 20, 1946 the defendants maliciously and without probable cause filed a petition for injunction against the plaintiffs, they executed a bond and obtained an order granting an injunction. A copy of the writ, bond and order are attached hereto as plaintiffs exhibit "A" "B" and "C" and made a part hereof as if now fully set out. The plaintiffs made repeated efforts to have this injunction dissolved and on the 29th day of October 1966 this injunction was dissolved. A copy of order is attached hereto as plaintiffs exhibit "D" and made a part hereof as if now fully set out. The petitioners aver that the petition was filed maliciously and without probable cause.

At the time the petition was filed by the defendants they knew that the plaintiffs were operating a sawmill on Appalachee River. Plaintiffs aver that the sawmill operations was located on Division "A" Fractional Section 25 Township 4 South Range 1 East. Plaintiffs aver that the activity the defendants enjoined was that which was taking place on this tract of land.

Plaintiffs aver that title to this tract of land was quieted in Rosa and Olive Worchester on the 17th day of June 1927, a copy of this decree is recorded in deed book 106 page 59 and 60

and a copy of this decree is attached hereto and marked plaintiffs exhibit "E" and made a part hereof as if now fully set out.

Rosa and Olive Worchester leased this land to the Morris Brothers who are Leon and James, a copy of this lease is attached hereto as plaintiffs exhibit "F" and made a part hereof as if now fully set out.

At the time the injunction was granted thedefendants knew that the plaintiffs were in occupancy of and using said lands. They knew or should have known that the plaintiffs lessors had been in possession of said land prior to their occupancy. The plaintiffs aver that at the time the injunction was granted and at the present time the defendants maintain that the sawmill was located on lands belonging to defendants. The plaintiffs aver that as a direct result of the aforesaid injunction that entire sawmill operation was shut down and abandoned, they suffered a loss of income for an extended period of time, they were forced to sell their sawmill and allied equipment at a great loss. The expended monies for attorney fees to have the aforesaid injunction dissolved; hence this suit.

COUNT FOUR

The plaintiffs claim of the defendants the sum of $581,000.00 as actual damages because on to-wit March 20, 1946 the defendants filed a petition for injunction against the plaintiffs, they executed a bond and obtained an order granting an injunction. A copy of the writ, bond and order are attached hereto as plaintiffs exhibit "A" "B" and "C" and made a part hereof as if now fully set out. The plaintiffs made repeated efforts to have this injunction dissolved and on the 29th day of October 1966 this injunction was dissolved. A copy of order is attached hereto as plaintiffs exhibit "D" and made a part hereof as if now fully set out. ~~The petitioners aver that the petition was filed maliciously and without probable cause.~~

At the time the petition was filed by the defendants they knew that the plaintiffs were operating a sawmill on Appalachee River. Plaintiffs aver that the sawmill operations was located on Division "A" Fractional Section 25 Township 4 South Range 1 East. Plaintiffs aver that the activity the defendants enjoined was that which was taking place on this tract of land.

Plaintiffs aver that title to this tract of land was quieted in Rosa and Olive Worchester on the 17th day of June 1927, a copy of this decree is recorded in deed book 106 page 59 and 60 and a copy of this decree is attached hereto and marked plaintiffs exhibit "E" and made a part hereof as if now fully set out.
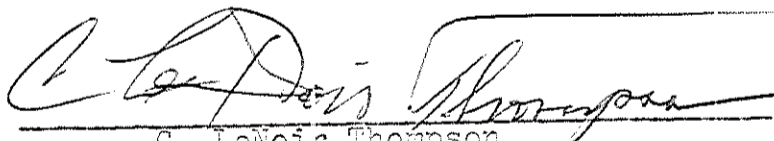
Rosa and Olive Worchester leased this land to the Morris Brothers who are Leon and James, a copy of this lease is attached hereto as plaintiffs exhibit "F" and made a part hereof as if now fully set out.
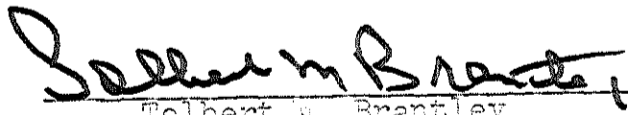
At the time the injunction was granted the defendants knew that the plaintiffs were in occupancy of and using said lands. They knew or should have known that the plaintiffs lessors had been in possession of said land prior to their occupancy. The plaintiffs aver that at the time the injunction was granted and at the present time the defendants maintain that the sawmill was located on lands belonging to defendants. The plaintiffs aver that as a direct result of the aforesaid injunction that entire sawmill operation was shut down and abandoned, they suffered a loss of income for an extended period of time, they were forced to sell their sawmill and allied equipment at a great loss. They expended monies for attorney fees to have the aforesaid injunction dissolved; hence this suit.
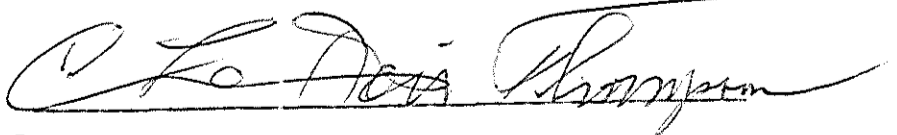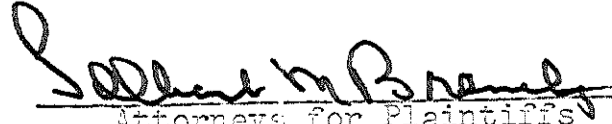
_____
C. LeNoir Thompson

_____
Tolbert M. Brantley
Attorneys for Plaintiffs
Bay Minette, Alabama

'I hereby certify that I have this the 12th day of April, 1976, served a copy of the foregoing amendment on Honorable Norborne C. Stone Jr., Attorney at Law, P. O. Box 120, Bay Minette, Alabama 36507, Attorney for George E. Fuller and David B, Fuller, by depositing a copy of same in the United States Mail postage prepaid.

_____

_____
Attorneys for Plaintiffs

VOL 076 PAGE 17

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

LEON MORRIS and   *
JAMES MORRIS,
                  *
        Plaintiffs,
                  *
    vs.   CIVIL ACTION NO. 7628
                  *
THE MERCHANTS NATIONAL
BANK OF MOBILE, AS   *
TRUSTEE, et. al.,
                  *
        Defendants.
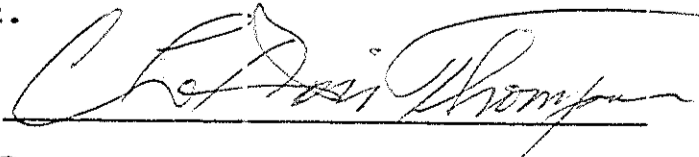   *

AMENDED COMPLAINT

The Plaintiffs now amend their Complaint and all
its amendments by adding the following to each count
or cause of action:

The bull-dozing and other activity referred to
in the suit for injunction was done on the aforesaid
land. At that time the defendants in this suit insisted
that this parcel of land belonged to them. That it
was encompassed in the Le Froy Truillotte and Idane
Chastang Grant #39 in Township 4 South, Ranges 1 and
2 East. At the time the injunction was granted the
Plaintiffs and Defendants claimed the same land.

The Fullers called it Le Froy Truillote Grant #39;
the Morrises called it Division "A", Fractional Section
#25.

It was on this land that the Plaintiffs were operating
and expanding their sawmill and bull-dozing. It was this
land that the Fullers wanted left undisturbed.

The Morris brothers, Leon and James, could have
defied the Court's Writ of Injunction and run the gauntlet
of a contempt citation. Their only other alternative was
to follow the route they traveled and they should now be
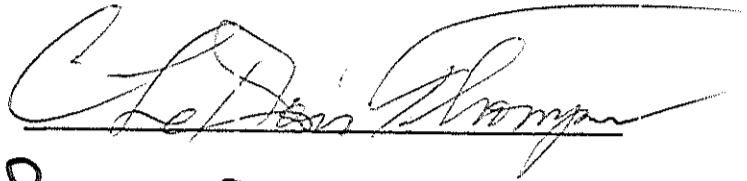allowed their day in court.

_____

_____
Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

We hereby certify that we have this the **27** day of
_____, 1977, served a copy of the aforegoing
Amended Complaint on Honorable Norborne C. Stone, Jr.,
Attorney for Defendants, George E. Fuller and David B.
Fuller, and Honorable Charles B. Bailey, Jr., Attorney
for Defendant, Merchants National Bank, by depositing
same in the United States Mail, postage prepaid.

_____

_____
Attorneys for Plaintiffs

076 PAGE 32

LEON MORRIS and   Ⅹ
JAMES MORRIS
                                       Ⅹ   IN THE CIRCUIT COURT OF
           Plaintiffs
                                       Ⅹ   BALDWIN COUNTY, ALABAMA
      vs
                                       Ⅹ   *AT LAW*
MERCHANTS NATIONAL BANK OF MOBILE,
a corporation, as Trustee and   Ⅹ   *#7628*
GEORGE E. FULLER, PATRICE B.
FULLER and DAVID B. FULLER   Ⅹ

           Defendants   Ⅹ
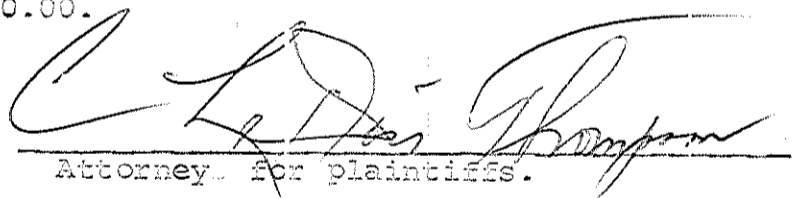
                                       Ⅹ

        Plaintiffs claim of the defendants the sum of Five Hundred

Eighty-one Thousand Five Hundred ($581,500.00) Dollars as

damages for that on the 20th day of March, 1946, the said

Merchants National Bank of Mobile, a corporation as trustee

and George E. Fuller and Patrice B. Fuller defendants, obtained

from the Circuit Court of Baldwin County, Alabama, in Equity,

the issuance of a Writ of Injunction enjoining said plaintiffs

and each of them and their agents, servants or employees from

removing trees and timber "the exact description of which

property was unknown to the said defendants" and further

enjoined your saidplaintiffs from changing the character or

status quo of said property in any way; and that, in accordance

with the order of the said Circuit Court, the said Merchants

National Bank of Mobile, a corporation as trustee together with

George E. Fuller, Patrice B. Fuller on the 20th day of March,

1946, entered into bond with security, said defendants the

Merchants National Bank of Mobile, a corporation, as Trustee,

George E. Fuller, Patrice B. Fuller and David B. Fuller being

the sureties thereon in the sum of Five Hundred ($500.00)

Dollars together with the requirement "to pay all damages

which any person may sustain by the issuing out of the said

injunction, ifthe same is dissolved by the Circuit Court in

Equity on the Bill filed by the said complainants as aforesaid,

then this obligation to be void otherwise to remain in full force and effect."
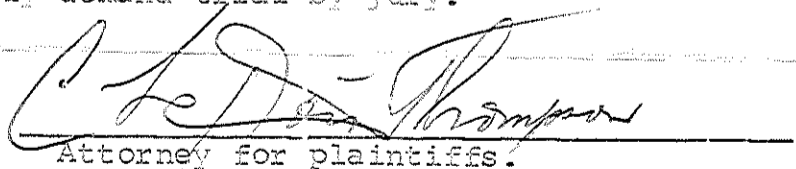
And Plaintiffs allege that the condition of said bond has been broken in thus:

That said injunction was dissolved and the Bill of Complaint praying same on, to-wit, 29th day of October, 1966, and that neither the said Merchants National Bank of Mobile, a corporation as Trustee nor George E. Fuller, Patrice B. Fuller or David B. Fuller, the sureties on said bond have paid the plaintiffs the damages and costs, or any part thereof, sustained by plaintiffs by reason of the suing out of said injunction, which damages and costs are as follows:

1. Expense incurred in employing counsel to procure the dissolution of said injunction for which plaintiffs became liable, $5,000.00;

2. Loss resulting from depreciation and disintegration of material and equipment, $76,500.00;

3. Net loss of income incurred through the loss of sawmill equipment, $500,000.00.

_____
Attorney for plaintiffs.

Plaintiffs respectfully demand trial by jury.

_____
Attorney for plaintiffs.

SUMMONS AND COMPLAINT

STATE OF ALABAMA

Baldwin County

Circuit Court, Baldwin County

No. 7628

...............................TERM, 19.........

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon .....Merchants National Bank of Mobile,.........

.....a corporation, as Trustee and George E. Fuller, Patrice B.........

.....Fuller and David B. Fuller.....

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.....Merchants

National Bank of Mobile, a corporation, as Trustee and George E.

.....Fuller, Patrice B. Fuller and David B. Fuller......................, Defendant......

by .....Leon Morris and James Morris.....

...., Plaintiff......

Witness my hand this.....18th.....day of.....July.....1967

.....Alice J. Duck.....Clerk

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STATE OF ALABAMA
Baldwin County

CIRCUIT COURT

LEON MORRIS and JAMES
MORRES,

                                    Plaintiffs

vs.

MERCHANTS NATIONAL BANK OF MOBILE,
A corp., as trustee, and George E.
Fuller, Patrice B. Fuller and David
B. Fuller   Defendants

SUMMONS AND COMPLAINT

Filed .... 19..........

.... Clerk

FILED

JUL 1 8 1967

ALICE J. DUCK CLERK REGISTER

C. L. Thompson
                    Plaintiff's Attorney

....
                    Defendant's Attorney

Sheriff claims ..... 132 ..... miles at
Ten Cents per mile Total $ 13.20

TAYLOR WILKINS, Sheriff
BY Defendant lives at Ray Randall
                    DEPUTY SHERIFF

JUL 20 10 29 AM 67

BY Received In Office

7/18 .... 19.....

.... Sheriff

I have executed this summons

this July 21 19.67

by leaving a copy with

Merchants National Bank
of Mobile
by service on
Mr. Burch, Vice-President

George E Fuller 7-28-67
Patricia B Fuller 7-28-67
David B Fuller 7-28-67
Spanish Fort

Taylor Wilkins Sheriff
Roy Randall D. S.

Ray L. Bridges Sheriff

S. Howell .... Deputy Sheriff

LEON MORRIS and JAMES MORRIS   X

            Plaintiffs   X   IN THE CIRCUIT COURT OF

     vs   X   BALDWIN COUNTY, ALABAMA

MERCHANTS NATIONAL BANK OF MOBILE,   X   AT LAW
a corporation, as Trustee and
GEORGE E. FULLER, PATRICE B.   X   76-2-8
FULLER and DAVID B. FULLER
                                      X
            Defendants
                                      X

          Come the plaintiffs in the above styled cause and amend

their complaint heretofore filed in said cause to read as

follows:

          1. Plaintiffs claim of the defendants the sum of Five

Hundred Eighty-one Thousand Five Hundred ($581,500.00) Dollars

as damages for that on the 20th day of March, 1946, the said

Merchants National Bank of Mobile, a corporation as trustee

and George E. Fuller and Patrice B. Fuller, defendants, obtained

from the Circuit Court of Baldwin County, Alabama, in Equity,

the issuance of a Writ of Injunction enjoining said plaintiffs

and each of them and their agents, servants or employees from

removing trees and timber "the exact description of which

property was unknown to the said defendants" and further

enjoined your said plaintiffs from changing the character or

status quo of said property in any way; and that, in accordance

with the order of the said Circuit Court, the said Merchants

National Bank of Mobile, a corporation as trustee together with

George E. Fuller, Patrice B. Fuller on the 20th day of March,

1946, entered into bond with security; said defendants the

Merchants National Bank of Mobile, a corporation, as Trustee,

George E. Fuller, Patrice B. Fuller and David B. Fuller being

the sureties thereon in the sum of Five Hundred ($500.00)

Dollars together with the requirement "to pay all damages

which any person may sustain by the issuing out of the said

injunction, if the same is dissolved by the Circuit Court in

Equity on the Bill filed by the said complainants as aforesaid,

then this obligation to be void otherwise to remain in full

force and effect."

And plaintiffs allege that the condition of said bond has been broken in thus:

That said injunction was dissolved and the Bill of Complaint praying same on, to-wit, 29th day of October, 1966, and that neither the said Merchants National Bank of Mobile, a corporation as Trustee nor George E. Fuller, Patrice B. Fuller or David B. Fuller, the sureties on said bond have paid the plaintiffs the damages and costs, or any part thereof, sustained by plaintiffs by reason of the suing out of said injunction, which damages and costs are as follows:

(1) Expense incurred in employing counsel to procure the dissolution of said injunction for which plaintiffs became liable, $5,000.00;

(2) Loss resulting from depreciation and disintegration of material and equipment, $76,500.00;

(3) Net loss of income incurred through the loss of sawmill equipment, $500,000.00.

2. The plaintiffs claim of the defendants Five Hundred Eighty-one Thousand Five Hundred ($581,500.00) Dollars for a trespass by the defendants on the following tract of land, to-wit, viz:

> All of Subdivision A, Section 25, Township 4 South,
> of Range 1 East in Baldwin County, Alabama, also
> about 5 acres from the North end of Subdivision
> B of the same Township, Range and Section.

belonging to the said plaintiffs.

3. The plaintiffs claim of the defendants Five Hundred Eighty-one Thousand Five Hundred ($581,500.00) Dollars for a trespass by the defendants on the following tract of land, to-wit, viz:

> All of Subdivision A, Section 25, Township 4 South,
> of Range 1 East in Baldwin County, Alabama, also
> about 5 acres from the North end of Subdivision
> B of the same Township, Range and Section

belonging to the plaintiffs and depriving the said plaintiffs of the use of said land and of the use by said plaintiffs of the said appurtenances erected on said land.

4. The plaintiffs claim of the defendants Five Hundred Eighty-one Thousand Five Hundred ($581,500.00) Dollars for a trespass by the defendants on the following tract of land, to-wit, viz:
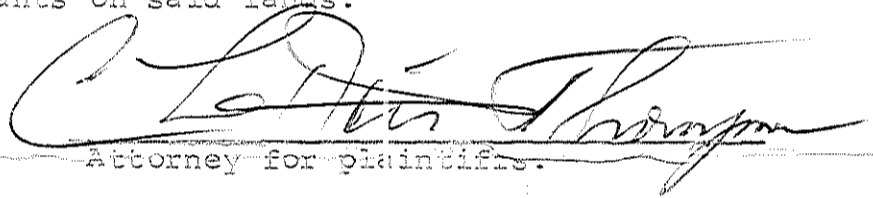
All of Subdivision A, Section 25, Township 4 South, of
Range 1 East in Baldwin County, Alabama, also
about 5 acres from the North end of Subdivision
B of the same Township, Range and Section

belonging to the said plaintiffs and for damages accruing

from the loss of the use of said lands and of said appur-

tenances thereunto and the equipment installed thereon and

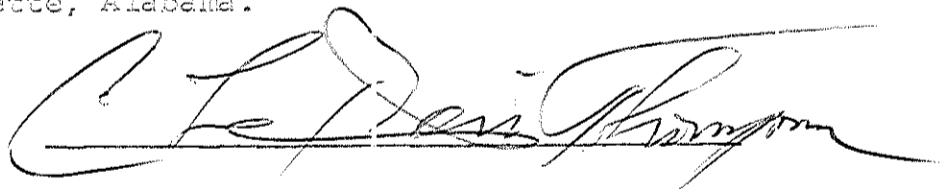for the loss of the materials located on said lands.

    5. The plaintiffs claim of the defendants Five Hundred

Eighty-one Thousand Five Hundred ($581,500.00) Dollars for a

trespass by the defendants on the following tract of land,

to-wit, viz:

All of Subdivision A, Section 25, Township 4 South,
of Range 1 East in Baldwin County, Alabama, also
about 5 acres from the North end of Subdivision
B of the same Township, Range and Section

belonging to the plaintiffs and for the losses incurred by the

said plaintiffs resulting from the losses arising from the

trespass by said defendants on said lands.

                                                        Attorney for plaintiffs.

    I hereby certify that I have this 21 day of November, 1968,
served a copy of the foregoing amended complaint on Honorable
J. B. Blackburn, attorney for defendants, by depositing copy
of same in the U. S. Mail, postage prepaid, properly addressed
to his office in Bay Minette, Alabama.