

Johnston, Johnston & Nettles

Lawyers

810 Van Antwerp Building

Mobile, Alabama 36601

Telephone 432-1811

August 22, 1967

Samuel M. Johnston  
William E. Johnston  
Samuel M. Johnston, Jr.  
Bert S. Nettles

Mailing Address  
P. O. Box 550  
Mobile, Alabama

Robert C. Kendall, III

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

Re: Marguerite C. Hays vs.  
Robert Glenn Lindsey, et al  
Case No. 7645

Dear Mrs. Duck:


I enclose you herewith demurrer which I would like for you to file in this case. I am enclosing a self-addressed, stamped envelope, and would thank you to advise me when this has been done.

I have sent the plaintiff's attorney a copy of this demurrer.

With kindest regards and best wishes, I remain

Yours very truly,

JOHNSTON, JOHNSTON & NETTLES

By   
William E. Johnston

WEJ/am  
Encl.

FILED

AUG 23 1967

ALICE J. DUCK

CLERK  
REGISTER

MARGUERITE C. HAYS,	:	IN THE CIRCUIT COURT OF
Plaintiff,	:	BALDWIN COUNTY, ALABAMA
vs.	:	AT LAW
ROBERT GLENN LINDSEY and	:	NO. 7645
MARY P. LINDSEY, jointly	:	
and individually,	:	
Defendants.	:	

Come the Defendants and demur to the complaint on the following separate and several grounds:

1. For aught that appears the repairs referred to in the complaint were done prior to J. M. Weldon leasing or taking possession of the premises where the Plaintiff was injured.

2. For aught that appears any repairs done at the place where the Plaintiff was injured was not negligently done.

3. For aught that appears there was no covenant on the part of the Defendants to keep the premises rented by J. M. Weldon repaired, and no repairs were performed after J. M. Weldon took possession of the premises where the Plaintiff was injured as a tenant.

4. Under the laws of the State of Alabama a landlord owes no higher duty to a guest of the tenant than he does to his tenant.

5. For that it affirmatively appears that the place where the Plaintiff tripped and fell was a patent and obvious condition which should have been known to the tenant and to his invitees.

6. It is not shown that the Plaintiff was injured by a latent defect which was known to the landlord and of which he did not advise the tenant.

7. For aught that appears the plaintiff was not injured by a latent defect which was unknown to the tenant.

8. It is not alleged that there was a covenant by the Defendants to keep the premises where the Plaintiff was injured in repair.

9. It is not alleged that the landlord voluntarily or gratuitously undertook to make repairs upon the wharf of the premises that he had leased to J. M. Weldon and that he made these repairs negligently after J. M. Weldon leased the premises and took possession of the same, and that this negligence proximately caused Plaintiff's injuries and damages.

10. Under the laws of Alabama a party who enters leased premises under the tenant's title has no better right than the tenant against the landlord.

11. The Defendants being the landlord, the principle controlling their liability for injuries to the tenant's invitee is that a landlord in the absence of a covenant to repair or to keep in repair is only liable for injuries resulting from latent defects known to him at the time of the leasing and which he conceals from the tenant, and there are no allegations in this complaint sufficient to support a judgment of liability against the Defendants under said principle.

FILED

AUG 23 1967

William E. Johnston  
Attorneys for Defendant

**ALICE J. DUCK** CLERK  
REGISTER

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 22<sup>nd</sup> day of August, 1967

Best L. Hester  
Attorney for

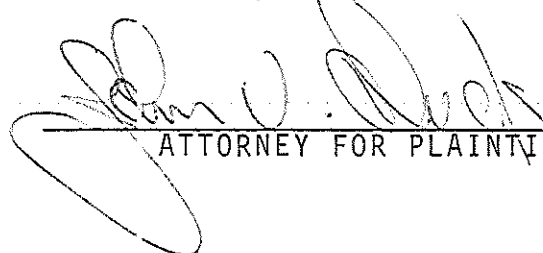
MARGUERITE C. HAYS,	)	IN THE CIRCUIT COURT OF
Plaintiff,	)	BALDWIN COUNTY, ALABAMA
vs.	)	AT LAW
ROBERT GLENN LINDSEY and	)	7645
MARY P. LINDSEY, jointly	)	
and individually,	)	
Defendants.	)	

Plaintiff claims of the Defendants the sum of TWENTY-FIVE THOUSAND (\$25,000.00) DOLLARS as damages, for that heretofore and on, to-wit: the 27th day of July, 1966 the Defendants owned a certain house, wharf and pier house connected therewith located at, to-wit: Lots 84 and 85 of subdivision known as and called Eastern Shore Parkway No. 1, according to plat thereof recorded in Map Book 1, Pages 156-57 in the office of the Judge of Probate of Baldwin County, Alabama, which house, wharf and pier house the Defendants shortly theretofore had leased to or let to J. M. WELDON for use and occupancy by him and such persons as he should lawfully thereto invite, and Defendants received rent therefor; that said pier became and was in a weak and decayed condition and thereby highly dangerous to the life or limb or persons using it and before the injuries hereinafter mentioned were received actually, the Defendants themselves, or by their servants or agents, engaged in or about repairing said pier and so negligently by themselves or agents, conducted themselves in and about making such repairs on such pier, which was on said July 27, 1966, weak and insecure and unsafe for use, and as a proximate consequence thereof, the Plaintiff stepped on said pier or wharf and tripped, and the Plaintiff, while she by the invitation of the said J. M. WELDON was rightfully and lawfully using the same on said day, during the time that the said J. M. WELDON was occupying said premises as a tenant of the Defendants under said leasing or letting, and as a proximate consequence thereof, Plaintiff suffered the following injuries and damages: She suffered three (3) fractures of the left ankle, she expended large sums of money in and about the treatment of her injuries for doctors, hospitals and nurses, she

suffered great pain and mental anguish, and she continues to suffer great pain and mental anguish, that she was permanently injured, all as a result of the negligence of the Defendants, hence this suit.

  
ATTORNEY FOR PLAINTIFF

Plaintiff respectfully demands a Trial by Jury.

  
ATTORNEY FOR PLAINTIFF

**FILED**

JUL 26 1967

**ALICE J. DUCK** CLERK  
REGISTER

SUMMONS AND COMPLAINT

MOORE PRINTING CO., BAY MINETTE, ALA.

STATE OF ALABAMA

Baldwin County

Circuit Court, Baldwin County

No. 2645

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

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon ROBERT GLENN LINDSEY and

MARY P. LINDSEY,

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.....

ROBERT GLENN LINDSEY and MARY P. LINDSEY....., Defendant.....

by MARGUERITE C. HAYS

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

Witness my hand this 26<sup>th</sup> day of July 1967

..... Clerk

24, 8-2-67

620

STATE OF ALABAMA

Baldwin County

CIRCUIT COURT

MARGUERITE C. HAYS,

Plaintiffs

vs.

*25 reg*  
ROBERT GLENN LINDSEY and  
MARY P. LINDSEY, Defendants  
~~jointly and individually,~~

SUMMONS AND COMPLAINT

Filed **FILED** 19.....

JUL 26 1967 Clerk

**ALICE J. DUCK**

CLERK  
REGISTER

JOHN V. DUCK

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

1017 Hillcrest Lane  
Mobile, Alabama

**RECEIVED**  
Received In Office

JUL 26 1967 19.....

TAYLOR WILKINS, Sheriff

SHERIFF

I have executed this summons

this *Aug 2* 19 *67*

by leaving a copy with

*Robert Glenn Lindsey*  
*Mary P. Lindsey*

*Ray H. Bridges* Sheriff

*R. Morgan* Deputy Sheriff

MARGUERITE C. HAYS,	)	IN THE CIRCUIT COURT OF
Plaintiff,	)	BALDWIN COUNTY, ALABAMA
vs.	)	AT LAW, CASE NO. 7645
ROBERT GLENN LINDSEY and	)	
MARY P. LINDSEY, jointly	)	
and individually,	)	
Defendants.	)	

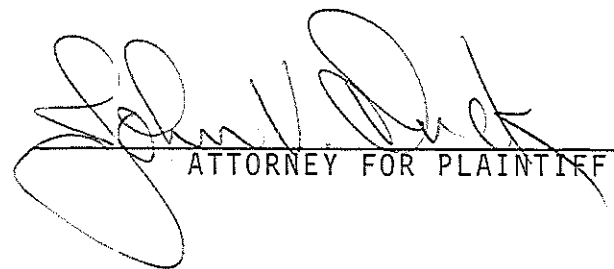
Comes now the Plaintiff in the above styled cause, and amends her Bill of Complaint heretofore filed to read as follows:

COUNT ONE

Plaintiff claims of the Defendants the sum of TWENTY-FIVE THOUSAND (\$25,000.00) DOLLARS, as damages, for that heretofore and on, to-wit: the 27th day of July, 1966, the Defendants owned a certain house, wharf and pier house connected therewith located at, to-wit: Lots 84 and 85 of a subdivision known as and called Eastern Shore Parkway No. 1, according to plat thereof recorded in Map Book 1, Pages 156-57 in the office of the Judge of Probate of Baldwin County, Alabama, which house, wharf and pier house the Defendants shortly theretofore had leased to or let unto J. M. WELDON for use and occupancy by him and such persons as he should lawfully invite thereto, and the Defendants received rent therefor; that the said pier house was in a weak and decayed condition known only to the Defendants herein, and that the Plaintiff had no notice that the pier house was in a weak and decayed condition, nor did the tenant, J. M. WELDON, know that the said pier house was in a weak and decayed condition, and that on, to-wit: the 27th day of July, 1966, the Plaintiff stepped on said pier or wharf or pier house, tripped over the latent defect on the premises and the Plaintiff, while she, by the invitation of the said J. M. WELDON, was rightfully and lawfully using the same on said day during the time that the said J. M. WELDON was occupying said premises as a tenant of the Defendants under the said leasing or letting, and as a proximate consequence thereof, the Plaintiff

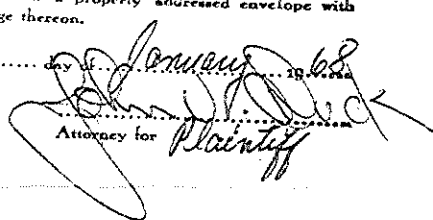


suffered the following injuries and damages: she suffered three (3) fractures of the left ankle, she expended large sums of money in and about the treatment of her injuries for doctors, hospitals and nurses, she suffered great pain and mental anguish, and she continues to suffer great pain and mental anguish, that she was permanently injured, all as a result of the latent defect in the premises known but to the Defendants, hence this suit.

  
ATTORNEY FOR PLAINTIFF

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.....16..... day of.....January.....1968  
  
Attorney for Plaintiff

FILED

JAN 18 1968

ALICE J. DUCK CLERK  
REGISTER

MARGUERITE C. HAYS, ) IN THE CIRCUIT COURT OF  
 Plaintiff, ) BALDWIN COUNTY, ALABAMA  
 -VS- ) AT LAW  
 ROBERT GLENN LINDSEY and )  
 MARY P. LINDSEY, jointly )  
 and individually, )  
 Defendants. ) CASE NO. 7645  
 )

D E M U R R E R

Come now the defendants in the above styled cause and demur to the complaint as last amended and assign the following separate and several grounds:

1. For that said count does not state a cause of action.
2. For aught that appears there was no covenant on the part of the defendants to keep the premises rented by J. M. Weldon repaired, and no repairs were performed after J. M. Weldon took possession of the premises where the plaintiff was injured as a tenant.
3. Under the laws of the State of Alabama a landlord owes no higher duty to a guest of the tenant than he does to his tenant, and no breach of any duty owed to the plaintiff is alleged.
4. It is not alleged that there was a covenant by the defendants to keep the premises where the plaintiff was injured in repair.
5. For that it is not shown what the alleged latent defect consisted of.
6. For that the allegation that the pier house was in a weak and decayed condition does not show any latent defect over which the plaintiff allegedly tripped.
7. For that the allegation that the plaintiff tripped over a latent defect is too vague, uncertain and indefinite to apprise the defendants of what defect it is claimed existed on the premises.
8. For that the allegation that the plaintiff tripped over a latent defect is a conclusion of the pleader.

9. For that no facts are alleged showing the existence of any specific latent defect.

JOHNSTON, JOHNSTON & NETTLES  
Attorneys for Defendants

BY *Wesley H. Hall*

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 20 day of February, 1968

*Wesley H. Hall*  
Attorney for

FEB 20 1968

*ALICE J. B. L. C. R. H. P.*

Johnston, Johnston & Nettles

Lawyers

810 San Andrew Building

Mobile, Alabama 36601

Telephone 432-1811

Samuel M. Johnston  
William F. Johnston  
Samuel M. Johnston, Jr.  
Vert S. Nettles

Mailing Address  
P. O. Box 550  
Mobile, Alabama

Robert G. Kendall, III

March 31, 1969

Mrs. Alice Duck  
Clerk  
Baldwin County Court House  
Bay Minette, Alabama

Re: Marguerite C. Hays, vs.  
Robert Glenn Lindsey and  
Mary P. Lindsey  
Case No. 7645

Dear Mrs. Duck:

The above case has been settled and we  
would appreciate your sending us a cost bill.

Thank you for your help.

Yours very truly,

JOHNSTON, JOHNSTON & NETTLES

BY

  
Robert G. Kendall

RGK:dm

cc: Mr. John V. Duck