

INGE, TWITTY, DUFFY & PRINCE

LAWYERS

MERCHANTS NATIONAL BANK BUILDING

MOBILE, ALABAMA

36602

THOS. E. TWITTY
FRANCIS H. INGE (1902-1959)
RICHARD H. INGE
THOS. E. TWITTY, JR.
JAMES J. DUFFY, JR.
SYDNEY R. PRINCE, III

MAILING ADDRESS:

P. O. BOX 1109
MOBILE, ALA.
36601

CABLE ADDRESS:

TWINING
TELEPHONE
433-5441

December 28, 1967

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

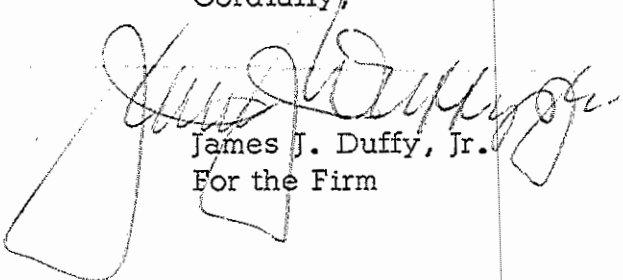
Re: McKensie Chastang vs. Jeroid Rob Garner
Case No. 7800

Dear Mrs. Duck:

I am enclosing herewith a demurrer in the captioned matter which I would appreciate your filing.

With much appreciation,

Cordially,



James J. Duffy, Jr.
For the Firm

JJD, jr:fy

Enclosure

HAYES & WILKINS

LAWYERS

P. O. BOX 300

BAY MINETTE, ALABAMA

36507

WILSON HAYES
TAYLOR D. WILKINS, JR.

TELEPHONE 937-5506

March 25, 1968

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

Dear Mrs. Duck:

Please dismiss the case of McKensie Chastang vs
Jeroid Rod Garner and tax the cost against the Defendant.

This has been settled by the parties.

The cost bill should be directed to Mr. James J.
Duffy, Jr., Lawyer, P. O. Box 1109, Mobile, Alabama, 36601.

I would be obliged if you would send to Mr. Duffy
a certificate that it has been dismissed.

With kindest regards, I am

Yours very truly,


Wilson Hayes

WH/rkh

cc: Mr. James J. Duffy, Jr.
Lawyer
P. O. Box 1109
Mobile, Alabama 36601

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MAILING ADDRESS:

P. O. BOX 1109
MOBILE, ALA.
36601

CABLE ADDRESS:

TWINING
TELEPHONE
433-5441

December 12, 1967

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

Dear Mrs. Duck:

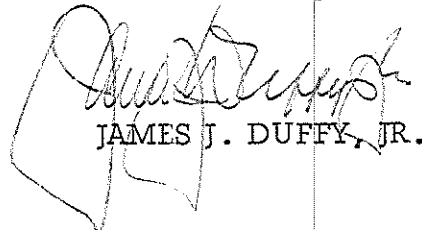
Re: Case No. 7800
McKensie vs. Garner.

I am enclosing herewith the Motion which I have prepared for filing in the above captioned cause and I request that you mark the same filed upon receipt and that you bring the said Motion to the attention of Judge Mashburn and that the hearing on said motion be continued, within thirty days from the filing of same, if this can be done within the term of Court. It is my understanding that a motion to set aside a judgment of any kind must be brought to the special attention of the Judge and that the Judge must specially continue the hearing on said motion.

I am sending a copy of this letter and the motion to Mr. Hayes, the attorney for the plaintiff, and to Judge Mashburn. I would appreciate your advice as to when the matter will be heard.

With much appreciation,

Yours cordially,



JAMES J. DUFFY, JR.

JJDjr:k
encl.
cc - Judge Mashburn
cc - Wilson Hayes, Esq.

McKENsIE CHASTANG,	)	IN THE CIRCUIT COURT OF
Plaintiff	)	BALDWIN COUNTY, ALABAMA
vs.	)	AT LAW
JEROID ROB GARNER,)	
Defendant	)	CASE NO. 7800

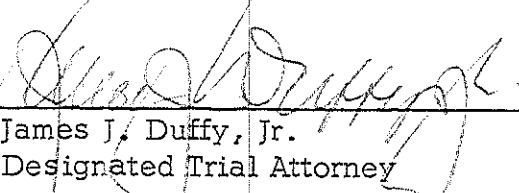
DEMURRER

Comes now the defendant in the above styled cause, and demurs to the complaint heretofore filed against him in said cause, and to each count thereof, separately and severally, and for grounds of demurrer sets down and assigns the following, separately and severally, to-wit:

1. That it does not state facts sufficient to constitute a cause of action.
2. For that negligence is therein alleged merely as a conclusion of the pleader.
3. For that it is vague, indefinite and uncertain, in that it does not apprise this defendant with sufficient certainty against what act or acts of negligence defendant is called on to defend.
4. For that it does not appear with sufficient certainty what duty, if any, defendant may have owed to the plaintiff.
5. For that it does not appear with sufficient certainty wherein defendant violated any duty he may have owed to the plaintiff.
6. For that it does not sufficiently appear that the defendant owed any duty to the plaintiff which defendant negligently failed to perform.
7. For that there does not appear sufficient causal connection between defendant's said breach of duty and plaintiff's injuries and damages.
8. No facts are alleged to show that plaintiff sustained any damage or injury as the proximate result of any negligence or breach of duty on the part of the defendant.

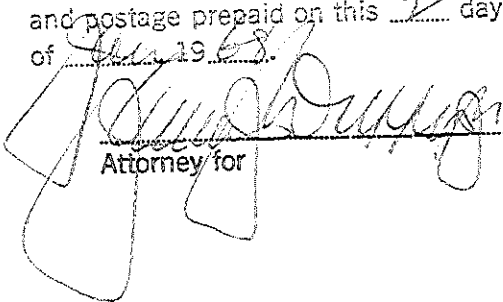
9. It is not alleged with sufficient certainty where said accident occurred.
10. It is not alleged that the negligence complained of proximately caused the accident, the injuries and damages complained of.
11. The averments thereof are conflicting and repugnant.
12. For that no causal connection appears between the defendant's alleged negligence and the injuries and damages complained of by the plaintiff.

INGE, TWITTY, DUFFY & PRINCE

BY: 
James J. Duffy, Jr.
Designated Trial Attorney

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all parties to this proceeding, by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this 2 day of January 1968.


Attorney for

FILED

JAN 2 1968

ALICE J. DUCK CLERK
REGISTER

STATE OF ALABAMA

BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon Jeriod Rob Garner to appear within thirty days from the service of this writ, in the Circuit Court to be held for said County at the place of holding the same, then and there to answer the complaint of McKensie Chastang.

Witness my hand this the 24 day of October, 1967.

Beice Jensen
CLERK

McKENSIE CHASTANG	)	IN THE CIRCUIT COURT OF
	)	BALDWIN COUNTY, ALABAMA
PLAINTIFF)	
	)	AT LAW
VS)	
	)	NUMBER: <u>7800</u>
JERIOD ROB GARNER)	
)	
DEFENDANT)	

.....
Plaintiff claims of the Defendant the sum of FIFTEEN-THOUSAND and NO/100 (\$15,000.00) DOLLARS for that on to-wit the 26th day of October 1966 at the intersection of Washington Avenue and Nellie Street Defendant so negligently operated an automobile, in which Plaintiff was then and there riding as a fare paying passanger, as to cause or allow the said automobile to run against the curb and a utility pole and that as a proximate consequence of Defendant's neglegent Plaintiff was injured in that he suffered cuts and bruises about his limbs and body and head and neck and that his back was wrenched all of which caused great pain and suffering to Plaintiff and that Plaintiff thereby incurred doctor, hospital and medical bills and charges, hence this suit.

W. L. Day
Attorney for Plaintiff

Plaintiff demands trial
by jury.

This the 29th day of October, 1967.

W. L. Day
Attorney for Plaintiff

Filed 10-24-67
Beice Jensen
Clerk
104

721.7800

Mc Rensie Chastang

vs

Jerrod Rob Gurney

Received 24 day of Oct. 1967
and on 6th day of Nov. 1967

I served a copy of the within
in Jerrod Robert Gurney

By service on

TAYLOR WILKINS, Sheriff
Winkel D.S.

FILED

OCT 24 1967

ALICE J. DICK
CLERK REGISTER

W. Hayes

105

McKENSIE CHASTANG,)	
)	
Plaintiff	)	IN THE CIRCUIT COURT OF
)	
vs.	)	BALDWIN COUNTY, ALABAMA
)	
JEROID ROB GARNER,	)	AT LAW, CASE #7800
)	
Defendant.)	

MOTION TO SET ASIDE JUDGMENT BY DEFAULT
AND FOR OTHER RELIEF

Comes now the Defendant in the above styled cause and respectfully represents and shows unto the Court that a judgment by default was rendered by this Court on the 7th day of December, 1967, and that damages were assessed by this Court on or about the same date against this Defendant in the amount of \$10,000.00, and this Defendant respectfully moves this Court to set aside said judgment against this Defendant and to reinstate this cause on the docket of this Court so that the same may be tried on its merits and, for grounds of said motion, sets down and assigns the following, separately and severally, that is to say:

1. This Defendant has a good and meritorious defense to the matters and things complained of in the bill of complaint of the plaintiff and would be unjustly deprived of presenting the same if said judgment by default is allowed to remain in force on the records of this Court.

2. This Defendant's legal representative had been in communication with counsel for the plaintiff in this cause and counsel for the plaintiff in said cause had stated that he had filed the lawsuit to protect his client from the tolling of the Statute of Limitations, and that he would continue to negotiate with this Defendant's legal representative. Instead, this Defendant represents and shows unto the Court that the plaintiff filed this cause on the 24th day of October, 1967; that on the 6th day of December, 1967, this Defendant, who was a non-resident of the State

of Alabama, was given the summons and complaint in said cause by his sister, an employee of the Sheriff's Department of Baldwin County; that in the bill of complaint of the plaintiff the plaintiff demands a trial by jury; that the demand for trial by jury was withdrawn by plaintiff or his counsel at a later date, and that on, to-wit, the 7th day of December, 1967, a judgment by default was entered by this Court and damages assessed against this Defendant in the amount of \$10,000.00; that this Defendant received no notice of the default judgment having been entered by this Court and did not consent to the entry of same or to the withdrawal by plaintiff or his counsel of the demand for trial by jury.

3. That counsel for the plaintiff knew that this Defendant was represented by legal counsel and knew that negotiations were under way on his part as well as on the part of this Defendant's representative to effectuate an amicable settlement of the issues involved in said cause but, in spite of said knowledge, took advantage of this defendant and the circumstances of the situation by seeking a default judgment from this Court.

4. This Defendant avers that he is free of any neglect in the handling of the summons and complaint and avers that he has a good and meritorious defense to the matters and things complained of in the complaint of the plaintiff in that this Defendant expects the evidence to show that he was driving the automobile in which the plaintiff was riding at the time and place complained of in the plaintiff's bill of complaint and that he was guilty of no act which makes him legally responsible for the damages, if any, sustained by the plaintiff, specifically, but without waiving the generality of the foregoing, this Defendant avers that he was not guilty at said time and place of any negligence or act of wanton misconduct which proximately

caused or contributed to the injuries and damages, if any, complained of by the plaintiff.

WHEREFORE, THE PREMISES CONSIDERED, this Defendant respectfully moves this honorable Court for an Order setting aside said judgment of this Court entered on the 7th day of December, 1967, and reinstating this cause on the docket of this Court so that the same may be tried on its merits; and this Defendant respectfully moves this honorable Court for such other, further and different relief as may be meet and proper.

INGE, TWITTY, DUFFY & PRINCE

BY: [Signature]
JAMES J. DUFFY, JR.
Designated Trial Attorney.

STATE OF ALABAMA:
COUNTY OF MOBILE:

Personally appeared before me, the undersigned authority in and for said county in said state, JAMES J. DUFFY, JR., who is known to me and who, after having been first duly sworn, stated, on oath, that the allegations contained in the foregoing Motion are true and correct to the best of his knowledge and belief.

Subscribed and sworn to before me this 12th day of December, 1967.

[Signature]
Notary Public, State of Alabama at Large

ORDER

The above and foregoing Motion filed by the Defendant has been filed in the Circuit Court of Baldwin County, Alabama, on this, the 13th day of December, 1967, the said Motion has been brought to my attention as Judge of the Circuit Court of Baldwin County, Alabama, and the hearing of said Motion has been specially continued until the 22nd day of December, 1967, at 10:00 A.M.

[Signature]
TELFAR J. MASHBURN, JUDGE.

FILED

DEC 18 1967

ALICE J. DUCK

CLERK
REGISTER

12-22-67 motion granted, without
opposition from Ms. Hayes, Attorney
for the Plaintiff.

[Signature]
Judge