

STATE OF ALABAMA

BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summons Johnnie G. Toler and Mildred P. Toler, to appear within thirty days from the service of this writ in the Circuit Court of Baldwin County, Alabama, to be held for said County at the place of holding the same, then and there to answer the Complaint of Frances G. Mallory.

WITNESS my hand, this the 16<sup>th</sup> day of November 1967.

Alice J. Duck  
Alice J. Duck, Clerk

FRANCES G. MALLORY,

Plaintiff,

vs.

JOHNNIE G. TOLER and  
MILDRED P. TOLER,

Defendants

X

X

X

X

X

X

1.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. 7851

The Plaintiff claims of the Defendants the sum of NINE HUNDRED DOLLARS (\$900.00), due from them by account on the 4th day of November, 1966, which sum of money, with the interest thereon, is still unpaid.

2.

The Plaintiff claims of the Defendants the sum of NINE HUNDRED DOLLARS (\$900.00), due from them for work and labor done for the Defendants, by the Plaintiff, from the 19th day of May, 1966 until the 4th day of November, 1966, which sum of money, with the interest thereon, is still unpaid.

WILTERS & BRANTLEY

**FILED**

Defendants address is:  
Foley, Alabama

NOV 16 1967

BY:

Wilton J. Wilters  
Attorneys for the Plaintiff

**ALICE J. DUCK**

CLERK  
REGISTER

805

24:1-3-68

*Daley*

received 16 day of Nov 1967  
and on 3 day of Jan 1968  
served a copy of the within S & C  
Johnnie G. Toler;  
Mildred P. Toler  
by service on Alouse

TAYLOR WILKINS, Sheriff  
By J. M. Eastburn  
Daley, Ala.

Sheriff claims 144 miles at  
Ten Cents per mile Total \$ 14.40  
TAYLOR WILKINS, Sheriff  
BY J. M. Eastburn  
DEPUTY SHERIFF

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. 7857

FRANCES G. MALLORY,  
Plaintiff,

vs.

JOHNNIE G. TOLER and  
MILDRED P. TOLER,

Defendants

SUMMONS AND COMPLAINT

WILTERS & BRANTLEY  
Attorneys at Law  
Bay Minette, Alabama

**FILED**

NOV 16 1967

**ALICE J. DUCK** CLERK  
REGISTER

FRANCES G. MALLORY,	)	
	)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
	)	
-vs-	)	BALDWIN COUNTY, ALABAMA
	)	
JOHNNIE G. TOLER and	)	AT LAW
MILDRED P. TOLER,	)	
	)	CASE NO. 7851
Defendants.	)	

Come the Defendants in the above styled cause and show unto this Honorable Court the following:-

That heretofore the Defendants were the owners of certain real estate in the City of Foley, Baldwin County, Alabama, described as Lots Sixteen (16), Seventeen (17), Eighteen (18), Nineteen (19), Twenty (20), and the South 86½ feet of Lots Four (4) and Five (5), all in Block One (1), according to a plat thereof of record in the office of the Judge of Probate of Baldwin County, Alabama.

Defendants further shows that on, to-wit, the 19th day of May, 1966, the Defendants, in writing, authorized and appointed the Frances G. Mallory Agency of Gulf Shores, Alabama, as our agent to sell said real estate in behalf of the defendants, which executed agreement further provided that the said Frances G. Mallory Agency should have exclusive control for a period of one hundred eighty (180) days from the date of execution, and continuing thereafter until written notice of the cancellation of contract of selling was given.

Defendants further show that said written instrument provided that if the property was sold within the one hundred eighty (180) days, or prior to the written notice, that they would pay to the said Frances G. Mallory Agency a commission of ten per cent (10%) of the selling price on Lots Eighteen (18), Nineteen (19) and Twenty (20) of said Block One (1), and a commission of five per cent (5%) on the remaining property.

Defendants further show that prior to the expiration of the one hundred eighty (180) days above referred to, that Charles J. Ebert, of Ebert Agency, Foley, Alabama, contacted the Defendants and asked the Defendants if their property was not for sale, and

the said Charles J. Ebert was informed at that time of the existence of the agency agreement above referred to; that subsequent to that time, and also prior to the expiration of the one hundred eighty (180) days, the said Charles J. Ebert informed the Defendants that he had reached an agreement with Frances G. Mallory of the Frances G. Mallory Agency for the sale and conveyance of the property to his prospective purchaser, and that therefore and on the basis of the information supplied to them by the said Charles J. Ebert, they did on or about the 9th day of November, 1966, make conveyance of this property to Gatlin Lumber Company, Inc., a corporation.

Defendants further show that in connection with said sale, there was paid to the said Charles J. Ebert, or to the Ebert Agency, as commission for the sale of said property, the sum of Nine Hundred Dollars (\$900.00), which Defendants were informed was for real estate agent's commission.

Defendants allege that this sum was paid to the said Charles J. Ebert, or to the Ebert Agency, with the explicit understanding on their part that any sums due to the said Frances G. Mallory Agency would be paid by the Ebert Agency, or by Charles J. Ebert, under an existing agreement between said Charles J. Ebert and the said Frances G. Mallory.

Defendants therefore show that they have paid the agreed commission on the sale of their real estate and that they should owe no other or further sums to anyone in connection with the sale of the said property, it being the sole responsibility of Charles J. Ebert, or the Ebert Agency, to satisfy any claim or make any payments which may be found to be due to the said Frances G. Mallory.

In order to prevent the multiplicity of suits and in order to establish the Defendants' equitable defense, Defendants pray that this cause may be transferred and removed from the Law Side of the Circuit Court of Baldwin County, Alabama, and that the Defendants may proceed to determination of this issue by a Bill of Complaint in Equity to be instituted against Charles J. Ebert,

the Ebert Agency, and the Plaintiff herein.

Johnnie G. Toler  
Mildred P. Toler  
Defendants

STATE OF ALABAMA

BALDWIN COUNTY

Before me, Janice L. Childress, a Notary Public in and for said County in said State, personally appeared Johnnie G. Toler and Mildred P. Toler, who are know to me, and who first being by me first duly and legally sworn, depose and say under oath as follows:- That the matters and facts set out in the foregoing petition are true and correct to the best of their knowledge, information, and belief.

Johnnie G. Toler  
Mildred P. Toler

Sworn to and subscribed before  
me on this the 23<sup>rd</sup> day of  
January, 1968.

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

FILED

JAN 25 1968

ALICE J. DUCK CLERK  
REGISTER