

RALPH EASTBURN,
Plaintiff,
VS
FARMERS & MERCHANTS BANK,
a Corporation,
Defendant

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IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW
CASE NO. 8192

ORDER

The motion of the Defendant, Farmers & Merchants Bank, in the above action at law coming on to be heard before the undersigned judge presiding at the hearing of this action, the matter having been duly considered, the undersigned judge is of opinion that said motion should be granted. It is, therefore,

Considered, ordered, and adjudged:

(1) That the motion made by the said Defendant, Farmers & Merchants Bank, in cause, and filed herein on the ____ day of _____, 1968, sufficiently asserts and the proof shows an equitable right or defense, the decision of which should dispose of this action and which can not be disposed of on the Law Side of the Court.

(2) That the said motion be, and the same is hereby, granted.

(3) That the said action of Ralph Eastburn vs. Farmers & Merchants Bank be, and the same is hereby, transferred from the Law Side of the Court to the Equity Side of the Court, and to be docketed and proceed in the manner and form provided by statute and the rules of equity.

Dated this the 29 day of August, 1968.

J. W. Mansburn
Circuit Judge

RALPH EASTBURN)	IN THE CIRCUIT COURT OF
)	
PLAINTIFF)	BALDWIN COUNTY, ALABAMA
)	
VS)	AT LAW
)	
FARMERS & MERCHANTS BANK,)	CASE NO. 8192
a Corporation)	
)	
DEFENDANT)	

MOTION TO STRIKE

Comes now Plaintiff in the above styled cause and moves to strike Defendant's motion to remove the cause to the equity side of the Court and for grounds says:

1. Defendant alleges no grounds for the transfer to the equity side of the Court.
2. Defendant's allegation that it had an equitable defense is but a conclusion of the pleader.
3. Defendant does not describe with sufficient certainty its equitable defense.
4. Defendant's allegation that J. W. Watts must be joined as a party is but a conclusion of the pleader.
5. It appears from the motion to transfer that Defendant may set up its alleged defense from the law side.
6. Defendant's motion is multifarious.
7. Defendant's motion is immaterial.

W. H. Hays

 Attorney for Plaintiff

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 30th day of July 1927 served a copy of the foregoing pleading (in counsel) for all parties to this proceeding by mailing the same by United States Mail, properly addressed, with first class postage prepaid.

W. H. Hays

FILED
 JUL 31 1927

ALICE J. BUCK CLERK
 REGISTER

STATE OF ALABAMA

BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon Farmers & Merchants Bank, a Corporation 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 Ralph Eastburn.

Witness my hand this the 26 day of June, 1968.

Archie G. ...
CLERK

RALPH EASTBURN)	IN THE CIRCUIT COURT OF
)	
PLAINTIFF)	BALDWIN COUNTY, ALABAMA
)	
VS)	AT LAW
)	
FARMERS & MERCHANTS BANK,)	NUMBER: <u>8192</u>
a Corporation)	
)	
DEFENDANT)	

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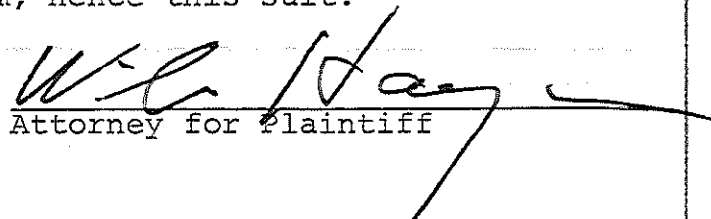
Plaintiff claims of the Defendant the sum of ONE-THOUSAND SEVEN-HUNDRED and NO/100 (\$1,700.00) DOLLARS due from it on to-wit February 24, 1968, for money received by the Defendant to the use of the Plaintiff, which sum of money with interest thereon is still unpaid.

II

Plaintiff claims of the Defendant the sum of ONE-THOUSAND SEVEN-HUNDRED and NO/100 (\$1,700.00) DOLLARS for that on to-wit the 22nd day of February, 1968 Plaintiff made a certain check or pay-order for ONE-THOUSAND SEVEN-HUNDRED and NO/100 (\$1,700.00) DOLLARS on Defendant, which was made payable to J. W. Watts; that Plaintiff had on deposit with Defendant sufficient funds for such pay-order; that Plaintiff made a timely verbal stop payment order to Defendant, which said stop payment order was made on to-wit the 23rd day of February, 1968 to an officer of Defendant, which stop payment order was acknowledged by Defendant; that contrary to Plaintiff's instruction, Defendant wrongfully paid the said check or pay-order, hence this suit.

III

Plaintiff claims of the Defendant the sum of ONE-THOUSAND SEVEN-HUNDRED and NO/100 (\$1,700.00) DOLLARS for that on to-wit the 23rd day of February, 1968 Plaintiff had a checking account with Defendant whereby Defendant agreed to honor checks or pay-orders by Plaintiff; that Plaintiff issued a check or pay-order on to-wit the 22nd day of February, 1968 to Defendant for ONE-THOUSAND SEVEN-HUNDRED and NO/100 (\$1,700.00) DOLLARS, payable to J. W. Watts; that subsequent to making the said pay-order and before the same was presented for payment; on to-wit the 23rd day of February, 1968 Plaintiff made a valid verbal stop payment order to Defendant, which said stop payment order was acknowledged by Defendant; that contrary to Plaintiff's stop payment order, Defendant wrongfully paid the said check or pay-order for ONE-THOUSAND SEVEN-HUNDRED and NO/100 (\$1,700.00) DOLLARS on to-wit the 24th day of February, 1968; that Defendant has failed or refused to re-pay the said sum, hence this suit.


Attorney for Plaintiff

Plaintiff demands trial by

jury.

This the 26th day of June, 1968.


Attorney for Plaintiff

Defendant may be served in
Foley, Alabama

FILED

JUN 26 1968

ALICE J. DUCK CLERK
REGISTER

538

NUMBER: 8192

Received 26 day of June 1906
and on 28 day of June 1906
served a copy of the within AOC
Farmers & Merchants
Bank a Corp
by service on Frank Sanders per

RALPH EASTBURN

PLAINTIFF

VS

FARMERS & MERCHANTS BANK,
a Corporation

DEFENDANT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW

TAYLOR WILKINS, Sheriff
By Ralph Eastburn D. S.
Foley, Ala,

Sheriff claims 72 miles at
Ten Cents per mile Total \$ 7.20
TAYLOR WILKINS, Sheriff
BY Ralph Eastburn
DEPUTY SHERIFF

SUMMONS & COMPLAINT

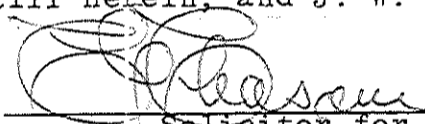
RALPH EASTBURN,)	
)	
Plaintiff,)	IN THE CIRCUIT COURT OF
)	
VS)	BALDWIN COUNTY, ALABAMA
)	
FARMERS & MERCHANTS BANK,)	AT LAW
a Corporation,)	
)	CASE NO. 8192
Defendant)	

Comes now the Farmers & Merchants Bank, the Defendant in the above styled cause, and alleges that it has an equitable defense to said action which can not be disposed of in the law side of the court, and which depends upon the assertion of an equitable right of said claimant, as follows:

That the Plaintiff, drawer, heretofore on the 22nd day of February, 1968, duly executed that certain bill of exchange in the amount of One Thousand, Seven Hundred Dollars (\$1,700.00) payable to J. W. Watts, payee, said bill of exchange drawn against the Defendant, drawee; that the Plaintiff in his complaint has alleged that on the 23rd day of February, 1968, the Defendant wrongfully honored the said bill of exchange after a verbal stop payment order from the Plaintiff; it being understood that the Defendant does not admit the validity of the Plaintiff's alleged verbal stop payment order; however, the Defendant respectfully requests that this Honorable Court take judicial notice of Section 4-407 of Title 7A of the Code of Alabama, 1940 (Recom. 1958) which in essence states that if a payor bank has paid an item over the stop payment order of the drawer, in order to prevent unjust enrichment, the payor bank is subrogated to the rights of the payee or any holder against the drawer either on the item or under the transaction out of which the item arose; and of the drawer against the payee or any holder with respect to the transaction. Thus, pursuant to the aforesaid Code Section, in order to determine the liability of the Defendant in this cause, if any, it is essential that the said J. W. Watts be joined as a party thereto so that the rights and liabilities of the said J. W. Watts and the Plaintiff with respect to their contract can be adjudicated and the Defendant contends that it is not liable to the Plaintiff for the honoring of the bill of

exchange, unless the said J. W. Watts does not have a defense against the Plaintiff pursuant to their transaction, while at the same time, he is not financially able to reimburse the Plaintiff. The Defendant has honored a check in the amount of One Thousand, Seven Hundred Dollars (\$1,700.00) payable to J. W. Watts for which it has been subjected to this suit; in order to prevent unjust enrichment the Defendant alleges and contends that real adversity in this cause is between the Plaintiff and J. W. Watts for a determination of their respective rights to the One Thousand, Seven Hundred Dollars (\$1,700.00) pursuant to their contract.

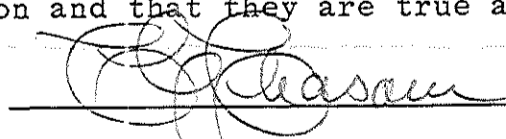
In order to prevent unjust enrichment, in order to prevent a multiplicity of suits, and in order for a just and equitable adjudication to be had in this cause with respect to the rights and liabilities of the three parties hereinabove named, the Defendant prays that this cause may be transferred and removed from the Law Side of the Circuit Court of Baldwin County, Alabama, and that the Defendant may proceed by a Bill of Complaint in Equity to be instituted against the Plaintiff herein, and J. W. Watts.


Solicitor for Defendant

STATE OF ALABAMA

BALDWIN COUNTY

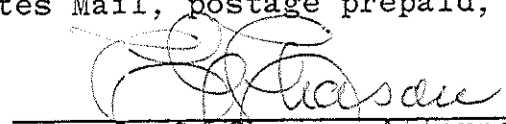
Before me, Janice L. Childress, a Notary Public in and for said County and State, personally appeared C. G. Chason, as attorney for the Farmers & Merchants Bank who, after being by me first duly and legally sworn, deposes and says under oath that he, as such attorney, is familiar with the allegations and facts contained in the foregoing motion and that they are true and correct.



Sworn to and subscribed before me on this 25 day of July, 1968.


Notary Public, Baldwin County, Alabama

I hereby certify that I have this day mailed a copy of the above motion to Mr. Wilson Hayes, Attorney for the Plaintiff, Bay Minette, Alabama 36507, by United States Mail, postage prepaid, on this the 25th day of July, 1968.


C. G. Chason, Attorney for Defendant

FILED
JUL 26 1968
ALICE J. DUCK
C. G. C.
CLERK
REGISTRAR