


STATE OF ALABAMA


BALDWIN COUNTY

Before me, the undersigned authority, personally appeared John Earle Chason, who after being by me first duly and legally sworn, did depose and say under oath as follows:

That my name is John Earle Chason and I am attorney for the Plaintiff, Edward B. Hines, in that certain cause now pending in the Circuit Court of Baldwin County, Alabama, At Law, number 8659, wherein Edward B. Hines is Plaintiff and Bay Nautical Supply Company is Defendant and that as such I have knowledge of the facts concerning said cause and of the facts set forth in that certain motion to transfer heretofore filed by me in said cause and that the said facts set forth in said motion are true and correct.

  
John Earle Chason

Sworn to and subscribed before  
me this 28<sup>th</sup> day of August,  
1969.

  
Notary Public, Baldwin County, Alabama.

**FILED**

AUG 28 1969

**ALICE J. DUCK** CLERK  
REGISTER

**FILED**

AUG 28 1969

**ALICE J. DUCK** CLERK  
REGISTER

|                          |   |                         |
|--------------------------|---|-------------------------|
| EDWARD B. HINES,         | ) |                         |
|                          | ) | IN THE CIRCUIT COURT OF |
| PLAINTIFF                | ) |                         |
| VS                       | ) | BALDWIN COUNTY, ALABAMA |
|                          | ) |                         |
| BAY NAUTICAL SUPPLY CO., | ) | AT LAW                  |
|                          | ) |                         |
| DEFENDANT                | ) | CASE NO: 8659           |

DEMURRER TO MOTION TO TRANSFER

COMES NOW THE DEFENDANT, BAY NAUTICAL SUPPLY Co., IN THE ABOVE STYLED CAUSE, AND DEMURS TO THE PLAINTIFF'S MOTION TO TRANSFER, AND TO EACH COUNT THEREOF, SEPARATELY AND SEVERALLY, AND ASSIGNS THE FOLLOWING SEPARATE AND SEVERAL GROUNDS OF DEMURRER:

1. THERE IS CURRENTLY PENDING, AT LAW, THE CASE OF EDWARD B. HINES, VS BAY NAUTICAL SUPPLY Co., CASE No. 8659, IN WHICH THE PETITIONER, EDWARD B. HINES, CAN SEEK AND OBTAIN AN ADEQUATE REMEDY, IF HE BE SO ENTITLED.
2. THE PLAINTIFF HAS AN ADEQUATE REMEDY AT LAW, BASED UPON ANY INJURY INCURRED UNDER THE FACTS SET OUT IN HIS PETITION, OR IN HIS ORIGINAL COMPLAINT, OR AMENDMENTS THERETO.
3. THE ONLY REMEDY WHICH MAY BE SOUGHT BY THE PLAINTIFF HEREIN IS FOR DAMAGES, FOR WHICH AN ADEQUATE REMEDY AT LAW EXISTS.
4. SAID PETITION OR MOTION FAILS TO STATE THE SUBSTANCE OF THE EQUITABLE RIGHT SOUGHT BY THE PLAINTIFF, AS PROVIDED BY TITLE 13, SECTION 152, CODE OF ALABAMA.
5. SAID COUNT FAILS TO STATE THE SUBSTANCE OF THE EQUITABLE RIGHT SOUGHT BY THE PLAINTIFF AND FURTHER, SAID MOTION OR PETITION FAILS TO VERIFY BY THE AFFIDAVIT OF SOME PERSON HAVING KNOWLEDGE OF THE FACTS THE EQUITABLE RIGHT SOUGHT.
6. EVEN IF THERE BE AN EQUITABLE QUESTION OR RIGHT,

THIS CAUSE CAN BE DISPOSED OF IN THE LAW SIDE OF THE COURT.

7. PLAINTIFF SEEKS AS HIS ULTIMATE RELIEF DAMAGES,  
WHICH RELIEF MAY BE GRANTED ON THE LAW SIDE OF THE COURT.

8. AS STATED IN PLAINTIFF'S ORIGINAL BILL OF COMPLAINT  
IN COUNT ONE, PARAGRAPH 8, OR COUNT EIGHT OF SAID COMPLAINT,  
PLAINTIFF SEEKS ONLY MONEY FOR RELIEF, WHICH RELIEF MAY BE GRANTED  
ON THE LAW SIDE OF THE COURT.

9. JURISDICTION OF THIS CAUSE EXISTS AT LAW, AND MAY  
BE PROPERLY DISPOSED OF ON THE LAW SIDE OF THE COURT.

10. SAID MOTION IS NOT VERIFIED BY THE AFFIDAVIT OF  
SOME PERSON HAVING KNOWLEDGE OF THE FACTS.

BAILEY & TAYLOR

By:

*Lloyd E. Taylor*  
LLOYD E. TAYLOR,

ATTORNEY FOR THE DEFENDANT

FILED

AUG 20 1969

ALICE J. DUCH CLERK  
RECORDER

*DEMURRER TO MOTION TO TRANSFER*

*IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA*

*AT LAW*

*CASE NO: 8659*

*EDWARD B. HINES,*

*PLAINTIFF*

*VS*

*BAY NAUTICAL SUPPLY CO.,*

*DEFENDANT*

EDWARD B. HINES, X  
Plaintiff, X IN THE CIRCUIT COURT OF  
vs. X BALDWIN COUNTY, ALABAMA  
BAY NAUTICAL SUPPLY COMPANY, X AT LAW NO. 8659  
Defendant. X

MOTION

Comes now the Plaintiff in the above styled cause and makes this his motion for the transfer of the above styled cause from the Law Side of the Court to the Equity Side of the Court and shows unto Your Honor and unto this Honorable Court the following grounds in support of said motion:

1. That said cause seeks the rescision of a contract procured by fraud or mistake and therefore the jurisdiction of said cause is properly in the Equity Court.
2. That the Plaintiff has no adequate remedy At Law upon which his claim may be founded.

Respectfully submitted,

CHASON, STONE & CHASON

By: John E. Chason  
Attorneys for Plaintiff

**FILED**

AUG 15 1969

**ALICE J. DUCK** CLERK  
REGISTER

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 15 day of August, 1969

John E. Chason

|                                |   |                         |
|--------------------------------|---|-------------------------|
| EDWARD B. HINES,               | ) |                         |
|                                | ) | IN THE CIRCUIT COURT OF |
| PLAINTIFF                      | ) | BALDWIN COUNTY, ALABAMA |
| VS                             | ) |                         |
|                                | ) | AT LAW                  |
| BAY NAUTICAL SUPPLY CO., INC., | ) |                         |
|                                | ) | CASE NO: 8559           |
| DEFENDANT,                     | ) |                         |

DEMURRER

Now comes the Defendant, Bay Nautical Supply Co., Inc., in the above styled cause and demurs to the Plaintiff's amended complaint, and to each count thereof separately and severally, and as grounds of such demurrer refiles and assigns separately and severally, grounds numbered one (1) through fifteen (15) of the demurrer filed to Plaintiff's original complaint as though specifically rewritten here.

BAILEY & TAYLOR

By: Lloyd E. Taylor  
LLOYD E. TAYLOR  
ATTORNEYS FOR THE DEFENDANT

**FILED**

JUN 16 1969

ALICE J. DICK CLERK  
REGISTER

DEMURRER

EDWARD B. HINES,

PLAINTIFF

VS

BAY NAUTICAL SUPPLY CO., INC.

DEFENDANT

IN THE CIRCUIT COURT

BALDWIN COUNTY, ALABAMA

CASE NO: 8659

FILED

JUN 16 1969

ALICE J. DUCK CLERK  
REGISTER

EDWARD B. HINES, )  
Complainant )  
vs. )  
BAY NAUTICAL SUPPLY CO., INC. )  
Respondent )

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
IN EQUITY  
NO. \_\_\_\_\_

ORDER

The Court, having received and understood the Petition of Edward B. Hines, for the removal to the Circuit Court of Baldwin County, Alabama, sitting in Equity, of said cause, it is,

ORDERED, ADJUDGED AND DECREED that the Law side of the Circuit Court of Baldwin County, Alabama, transfer all records, papers, matters, and things pertaining to this cause to Circuit Court of Baldwin County, Alabama, sitting in Equity.

Done this the . . . day of . . . , 1969.

*Telfair A. Mableberry*  
Judge of Circuit Court, Baldwin  
County, Alabama, In Equity



|                               |   |                         |
|-------------------------------|---|-------------------------|
| EDWARD B. HINES,              | ) |                         |
|                               | ) | IN THE CIRCUIT COURT OF |
| PLAINTIFF                     | ) | BALDWIN COUNTY ALABAMA  |
| VS                            | ) |                         |
|                               | ) | AT LAW                  |
| BAY NAUTICAL SUPPLY CO., INC. | ) |                         |
|                               | ) | CASE NO: 8659           |
| DEFENDANT,                    | ) |                         |

D E M U R R E R

COMES NOW THE DEFENDANT, BAY NAUTICAL SUPPLY Co., Inc., AN ALABAMA CORPORATION, IN THE ABOVE STYLED CAUSE AND DEMURS TO THE PLAINTIFF'S COMPLAINT, AND TO EACH COUNT THEREOF SEPARATELY AND SEVERALLY, AND ASSIGNS THE FOLLOWING SEPARATE AND SEVERAL GROUNDS OF DEMURRER:

1. SAID COUNT IS VAGUE AND INDEFINITE.
2. SAID COUNT DOES NOT STATE A CAUSE OF ACTION.
3. SAID COUNT IS SO VAGUE AND INDEFINITE AS TO FAIL TO APPRAISE THIS DEFENDANT OF WHAT IT IS CALLED UPON TO DEFEND.
4. SAID COUNT IS SO UNCERTAIN AS TO BE UNCLEAR AS TO WHETHER IT IS FOUNDED IN CONTRACT OR IN TORT.
5. SAID COUNT IS DUPLICITOUS.
6. THERE IS A MISJOINDER OF CAUSES OF ACTION.
7. NO FACTS ARE ALLEGED TO SHOW THAT PLAINTIFF SUSTAINED ANY DAMAGE OR INJURY AS THE PROXIMATE RESULT OF ANY NEGLIGENCE, BREACH OF CONTRACT, EXPRESSED OR IMPLIED, ON THE PART OF THE DEFENDANT.
8. SAID COUNT STATES NO CAUSE OF ACTION AGAINST THE DEFENDANT.
9. THE ALLEGED MISREPRESENTATIONS OF THE DEFENDANT ARE NOT SET FORTH WITH SUFFICIENT CERTAINTY.
10. THE AVERMENTS OF A BREACH OF WARRANTY, EXPRESS OR IMPLIED, ARE MERELY THE CONCLUSION OF THE PLAINTIFF, WITH NO FACTS ALLEGED IN SUPPORT THEREOF.

11. SAID COUNT DOES NOT ALLEGE WITH SUFFICIENT CERTAINTY IN WHAT CAPACITY DEFENDANT IS SUED.

12. SAID COUNT DOES NOT ALLEGE THAT JACK GLOVER WAS ACTING IN THE LINE AND SCOPE OF HIS AUTHORITY AT THE TIME THE ALLEGED STATEMENT OF THE AGE OF THE BOAT WAS MADE TO PLAINTIFF.

13. SAID COUNT DOES NOT ALLEGE THAT JACK GLOVER WAS AN AGENT OF THE DEFENDANT AT THE TIME ANY STATEMENT WAS MADE BY THE SAID JACK GLOVER CONCERNING THE AGE OF THE VESSEL IN QUESTION.

14. SAID COUNT DOES NOT ALLEGE THAT PLAINTIFF RELIED UPON ANY MISREPRESENTATION OF THE DEFENDANT OR ANY AGENT ACTING IN THE LINE AND SCOPE OF HIS AUTHORITY OF THE DEFENDANT.

15. SAID COUNT DOES NOT SUFFICIENTLY ALLEGE ANY INJURY OR DAMAGE SUFFERED BY THE PLAINTIFF.

BAILEY & TAYLOR

BY

*Lloyd E. Taylor*  
LLOYD E. TAYLOR

#### CERTIFICATE OF SERVICE

I, LLOYD E. TAYLOR, ATTORNEY OF RECORD FOR THE DEFENDANT, IN THE ABOVE CAUSE, DO HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A COPY OF THE FOREGOING DEMURRER ON DANIEL E. ROBISON, ATTORNEY OF RECORD FOR THE PLAINTIFF, OF FOLEY, ALABAMA, TO THIS PROCEEDING BY MAILING THE SAME BY UNITED STATES MAIL, PROPERLY ADDRESSED, AND FIRST CLASS POSTAGE PREPAID.

*Lloyd E. Taylor*  
LLOYD E. TAYLOR

FILED

MAY 16 1909

ALICE J. DUKER CLERK  
RECEIVED

*D E M U R R E R*

*EDWARD B. HINES,*

*PLAINTIFF*

*VS*

*BAY NAUTICAL SUPPLY CO., INC.*

*DEFENDANT*

*IN THE CIRCUIT COURT OF*

*BALDWIN COUNTY, ALABAMA*

*AT LAW*

*CASE NO: 8659*

|                               |   |                         |
|-------------------------------|---|-------------------------|
| EDWARD B. HINES               | ) | IN THE CIRCUIT COURT OF |
| Plaintiff,                    | ) | BALDWIN COUNTY, ALABAMA |
| vs.                           | ) | AT LAW                  |
| BAY NAUTICAL SUPPLY CO., INC. | ) | No. 8659                |
| Defendant,                    | ) |                         |

AMENDMENT TO COMPLAINT

Comes now the Plaintiff in the above styled cause and amends his complaint heretofore filed in said cause by adding immediately after the words in Paragraph 6 "he would never have entered into the contract," the following: and even if the boat is insurable, Plaintiff would never have entered a contract to buy a boat 40 years old of whatever condition, but was misled by the representations of Jack Glover, manager of the Defendant business.

By *Daniel E. Robison*  
Daniel E. Robison

CERTIFICATE OF SERVICE

I, Daniel E. Robison, Attorney of Record for the Plaintiff, in the above cause, do hereby certify that I have this day served a copy of the foregoing Amendment on Lloyd E. Taylor, Attorney of Record for the Defendant, of Fairhope, Alabama, to this proceeding by mailing the same by United States mail, properly addressed, and first class postage prepaid.

*Daniel E. Robison*  
Daniel E. Robison

**FILED**

JUN 5 1969

**ALICE J. DUCK** CLERK  
REGISTER

STATE OF ALABAMA

BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

YOU ARE HEREBY COMMANDED TO SUMMON Bay Nautical Supply Company,  
doing business at Fairhope, Baldwin County, Alabama, to appear within  
~~thirty days after the service of this summons~~ in the Circuit Court  
to be held for said County, at the place of holding the same, then  
and there to demur or plead to the complaint of Edward B. Hines.

WITNESS MY HAND this 15 day of Apr, 1969.

Wm. J. Duck  
CLERK, CIRCUIT COURT

EDWARD B. HINES                    )  
Plaintiff                            )

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

v.

BAY NAUTICAL SUPPLY COMPANY    )  
Defendant                         )

AT LAW

NO. 4659

COUNT ONE: The Plaintiff, Edward B. Hines, claims of the Defendant, Bay Nautical Supply Company, the sum of SIX THOUSAND AND FORTY-SIX DOLLARS(\$6,046.00); together with a reasonable attorney's fee for misrepresentation in the sale of a boat, "Gamecock," representing to the Plaintiff that it was not more than twenty(20) years old, which Defendant knew or should have known was untrue, to wit:

1.

Plaintiff avers that on January 29, 1969, he came to Defendant's place of business, in the City of Fairhope, Baldwin County, Alabama, seeking to purchase a boat.

2.

J.D.(Jack) Glover, manager of Defendant business, acting in line and scope of his authority, offered to sell an Alden 30 foot wooden sloop, named the "Gamecock," to the Plaintiff for \$6,000. He said he would be willing to take Plaintiff's 16 foot Boston Whaler and trailer as trade-in, worth \$3,000, and accept \$3,000 cash, with \$46, as tax, for the balance.

3.

In response to Plaintiff's question as to the age of the "Gamecock," Jack Glover stated that the boat was not more than twenty(20) years old, with intent to induce Plaintiff to purchase the boat.

4.

Relying on this representation, Plaintiff purchased the "Gamecock," giving Defendant immediate possession of the Plaintiff's 16 foot Boston Whaler, and sending him a check on February 22, 1969, for the balance of \$3,046.

5.

After this the Plaintiff discovered that the "Gamecock" had actually been built by the Britt Brothers in 1929, and thus was not 20 years old, but 40 years old. Consequently, Plaintiff is unable to obtain marine insurance for it.

6.

Plaintiff avers that the misrepresentation as to the age of the boat was instrumental in causing him to purchase it, and had he known that the boat was 40 years old, and uninsurable, he would never have entered into the contract. \*

7.

Plaintiff avers he has not sailed the boat, nor exercised ownership.

8.

Plaintiff wishes to place the "Gamecock" into custody of the Circuit Court, and the Defendant Bay Nautical Supply Company be brought before the Court, and refund the purchase price, \$6,046.00 and pay reasonable attorney's fee in the sum of \$600.00. Hence this suit.

Daniel E. Robison

DANIEL E. ROBISON,  
ATTORNEY FOR PLAINTIFF

FILED

APR 15 1969

ALICE J. DUCK CLERK  
REGISTER

8659

Edward B. Hines

VS.

Bay Nautical Supply

Received 15 day of April 1969  
and on 22 day of April 1969  
I served a copy of the within Summons  
on Bay Nautical Supply  
By service on John C. Hines  
Pres.  
TAYLOR WILKINS, Sheriff  
By Roy Randall  
G. Hines D. S.

Sheriff claims 70 miles at  
Ten Cents per mile Total \$ 7.00  
TAYLOR WILKINS, Sheriff  
BY Randall  
DEPUTY SHERIFF

FILED

APR 15 1969

ALICE J. DUCK  
CLERK  
REGISTER

Daniel Robinson