

ALABAMA TRACTOR CO. SOUTH,  
INC., a Corporation

PLAINTIFF

VS

RICHARD BREWTON,

DEFENDANT

) IN THE CIRCUIT COURT OF  
)  
) BALDWIN COUNTY, ALABAMA

) AT LAW

) CASE NO. 8794  
)  
)

ANSWER

Comes now Defendant in the above styled cause and for  
answer to the Complainant's Complaint says:

1. Not guilty.
2. The allegations contained in the complaint are  
untrue.

*Walter Hays*  
Attorney for ~~Plaintiff~~  
Defendant

Defendant demands trial  
by jury.

This the 19th day of August, 1969.

*Walter Hays*  
Attorney for Plaintiff

I do hereby certify that I have on this 20 day of  
August, 1969, served a copy of the foregoing pleading on counsel  
for all parties to this proceeding by mailing the same by United  
States Mail, properly addressed, with first class postage prepaid.

*Walter Hays*  
Attorney for Defendant

*Filed 8-20-69  
Alice J. Luck, Clerk*

ALABAMA TRACTOR CO. SOUTH,  
INC., a Corporation,

Plaintiff,

Vs.

RICHARD BREWTON,

Defendant.

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§

§

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. 8794

Comes now the Defendant, Richard Brewton, in the above styled cause and desiring the testimony of the Plaintiff, propounds further interrogatories as follows, to be answered by the Plaintiff under oath:

1. What is your name?
2. What is your position with the Plaintiff?
3. Was W. E. Small President of your Company on May 2, 1969?
4. Did you attempt to sell a John Deere Tractor traded in on the transaction involved in the purchase of a Case 1150 by Defendant from your Company?
5. Did you attempt to make a sale of the tractor traded by Defendant to you to a person named Pat Dickson? Did you make attempt to trade the tractor to anyone else? Did you ever put the tractor traded by Defendant to you in the possession of a person named Jimmy Zighars?
6. Is your Company still in business in Mobile, Alabama?
7. What is the present business of your Company?
8. Does your Company still sell tractors or any other equipment? If so, what equipment does it now sell.
9. Please attach a copy of the letter, dated May 2, 1969, addressed by your Company to Mr. Richard Brewton, Route 1, Summerdale, Alabama and signed by Alabama Tractor Co. South, Inc. by W. E. Small, President.
10. Did your Company attempt financing of the tractor, Case Tractor 1150, Tilt Dozer with 20 inch pads and guards?
11. State the name and address of all the Companies, persons or institutions to whom this financing proposal was submitted.
12. Was this transaction submitted to Credit Alliance Company of Atlanta, Georgia?

13. If the answer to the above question is yes, Please attach copies of the response of Credit Alliance Company of Atlanta to the proposal.

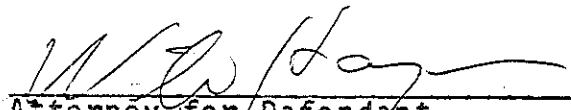
14. What was the response of Credit Alliance Company of Atlanta to your proposal?

15. What terms were offered to Defendant for the financing of the tractor proposed to be sold to him, new Case 1150, Tilt Dozer with 20 inch pads and guards?

16. Attach a copy of the contract signed by Richard Brewton at the time of the initial transaction on or about January 23, 1969.

17. Did you receive the original of the letter from Wilson Hayes to Alabama Tractor Co. South, 1101 Highway 43, Saraland, Alabama to the Attention of Mr. Bob Craig, dated June 9, 1969?

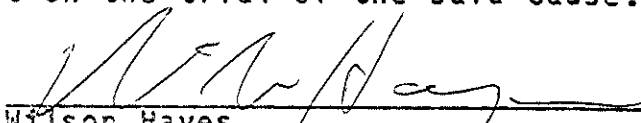
18. If the answer to the above question is yes, please attach a copy hereto.

  
Attorney for Defendant

STATE OF ALABAMA

BALDWIN COUNTY

Before me, the undersigned authority in and for said County in said State, personally appeared Wilson Hayes, who being known to me, stated under oath that he is the attorney for Defendant in this cause; that the answer to the foregoing interrogatories when well and truly made, will be material evidence for the said Defendant on the trial of the said cause.

  
Wilson Hayes

Sworn to and subscribed to before me this the \_\_\_\_\_ day of September, 1970.

  
Mary C. Stiers, Notary Public

Service of a copy of the foregoing interrogatories is hereby acknowledged, this \_\_\_\_\_ day of \_\_\_\_\_, 1970.

*Filed 9-21-70*  
*Alice J. Duck, Clerk*

\_\_\_\_\_  
Attorney of Record for Plaintiff

ALABAMA TRACTOR CO., SOUTH,  
INC., a corporation,

Plaintiff,

vs.

RICHARD BREWTON,

Defendant.

:

:

:

:

:

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

AT LAW


CASE NO. 8794

ANSWERS TO INTERROGATORIES

Comes now the plaintiff, Alabama Tractor Co. South, Inc.,  
a corporation, in the above-styled cause and for answers to  
interrogatories heretofore propounded by the defendant,  
separately and severally, says the following:

1. Robert L. Craig.
2. President.
3. Yes.
4. The defendant did not trade in a John Deere tractor to  
the plaintiff.
5. The defendant did not trade in a tractor to the plaintiff.
6. Irrelevant, incompetent, and immaterial.
7. Irrelevant, incompetent, and immaterial.
8. Irrelevant, incompetent, and immaterial.
9. The plaintiff does not have a copy of the letter of  
May 2, 1969.
10. The plaintiff checked with a financing institution to  
see whether the defendant was eligible for financing.
11. Credit Alliance Corporation, 1633 Tullie Circle, N. E.,  
Atlanta, Georgia.
12. Yes.
13. The response was not in writing.
14. Credit Alliance Corporation informed the plaintiff that  
it would not approve the defendant for financing and that the  
request concerning him was being rejected.

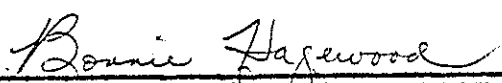
- 15. None.
- 16. Attached.
- 17. Yes.
- 18. Attached.


  
 ROBERT L. CRAIG

STATE OF Tennessee  
~~Alabama~~  
 COUNTY OF Davidson :

Personally appeared before me, Robert L. Craig, of Alabama Tractor Co. South, Inc., who, being duly deposed and sworn, doth say that he has read the foregoing answers to interrogatories, and that the matters stated therein are correct to the best of his knowledge, information and belief, on this the 20th day of November, 1970.

My Commission  
 Expires: 7-17-72

  
 NOTARY PUBLIC, Davidson COUNTY, Ch. Hage

  
 Attorney for Plaintiff  
 First National Bank Building  
 Mobile, Alabama

OF COUNSEL:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

CERTIFICATE OF SERVICE

I, Louis E. Braswell, hereby certify that a true and correct copy of the foregoing Answers to Interrogatories was served on the defendant's attorney, Honorable Wilson Hayes, by mailing a copy of same to him at his office, postage prepaid, on this \_\_\_\_ day of November, 1970.

Filed 11-24-70  
Alice J. Luck, Clerk

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE COURT OF CIVIL APPEALS OF ALABAMA

October Term, 1971-72

1 Div. No. 52

To the Clerk ~~Register~~ of the Circuit Court of \_\_\_\_\_  
Baldwin County, Greeting:

Whereas, the Record and Proceedings of the Circuit Court \_\_\_\_\_  
of said county, in a certain cause lately pending in said Court between  
Richard Brewton, Appellant,

and \_\_\_\_\_  
Alabama Tractor Company South, Inc., a Corporation, Appellee,

wherein by said Court it was considered adversely to said appellant, were brought before the  
Court of Civil Appeals, by appeal taken, pursuant to law, on behalf of said appellant;

Now, it is hereby certified:

That the Court of Civil Appeals on the 20th day of October, 1971, reversed  
and annulled the judgment of the Court below, and remanded the cause to said  
Court for further proceedings therein.

That the Court further ordered the appellee Alabama Tractor Company South,  
Inc., a Corporation

pay the costs accruing on said appeal in this Court and in the Court below, for which costs let  
execution issue.

Witness, J. O. Sentell, Clerk of the Court of Civil  
Appeals of Alabama, at the Judicial Department

Building, this the 20th day of \_\_\_\_\_

October, 19 71.

J. O. Sentell  
Clerk of the Court of Civil Appeals of Alabama.

THE COURT OF CIVIL APPEALS  
OF ALABAMA

October Term, 19 71-72

1 Div., No. 52

Richard Brewton

*Appellant,*

*vs.*

Alabama Tractor Company South,

Inc., a Corporation

*Appellee.*

*From* Baldwin Circuit *Court.*

No. 8794  
**CERTIFICATE OF  
REVERSAL**

The State of Alabama,

Baldwin County. } Filed

this 21 day of Oct. 1971

Ernie B. Blackmon  
clerk

OCT 20 1971

THE STATE OF ALABAMA --- JUDICIAL DEPARTMENT

THE COURT OF CIVIL APPEALS

OCTOBER TERM 1971-1972

1 Div. 52

Richard Brewton

v.

Alabama Tractor Company South, Incorporated

Appeal From Baldwin Circuit Court

WRIGHT, JUDGE

An action in detinue was filed by Alabama Tractor Company South, Incorporated, against Richard Brewton to recover possession of a Case Bulldozer. Defendant failing to provide bond, plaintiff made bond as required by Title 7, Section 920, Alabama Code 1940, and the sheriff delivered the property to it.

To the complaint of one count in detinue, defendant answered with the general issue. Upon submission of the evidence to a jury the following verdict was returned:

"We the Jury find for the defendant with these stipulations, possession of (1) one case 1150 Tilt Dozer: Credits \$1,000.00 cash, \$2,000.00 lease, \$2,160.00 Equity on John Deere



\$4,800.00 loss of Income, \$2,800.00 depreciation Total \$12,760.00. Cost of Case \$20,760.00 Credit for Defendant \$12,760.00 Balance due Alabama Tractor Co. South, Inc., a Corp. \$8,000.00 to be financed. . ."

Following the verdict, judgment was entered as follows:

"Jury and Verdict for the Defendant for the case Bulldozer - with defendant to pay Plaintiff \$8,000.00. Telfair J. Mashburn, Judge."

Defendant moved for new trial which motion was denied. Defendant appealed and plaintiff assigned cross-errors as provided by Title 7, Section 746, Code of Alabama 1940.

Defendant-appellant has assigned as error that the verdict and the judgment are contrary to law in that each fails to assess the alternate value of the property sued for as required by Section 921, Title 7, Code of Alabama 1940. Plaintiff-appellee charges error in the refusal of the trial judge to give at its request the affirmative charge with hypothesis.

The evidence offered in the trial was in conflict in many areas. The essence of plaintiff's evidence was that it was the holder of title to the bulldozer sued for. That defendant had obtained possession under a rental agreement for a period of three months at a monthly rental of \$1,000. Two months rent had been paid, but the third month was past due and unpaid at the time suit was filed.

Though defendant contended he was a conditional sale vendee of the dozer, he did not suggest that the jury ascertain

the amount of the unpaid balance due on the purchase price as provided by Section 929, Title 7, Code of Alabama 1940. Defendant presented testimony of a conditional sale of the dozer to him with a trade-in allowance for a tractor delivered by him to plaintiff. The existence of such a contract was in conflict. There was an absence of proof as to the terms of the alleged contract and when it was to become effective. There were introduced certain memoranda as to negotiation of a conditional sales contract between the parties. Such memoranda included the signature of defendant upon blank conditional sales contract and security instrument forms.

From the state of the evidence it appears that the case was tried as if the provisions of Section 929 of Title 7 were invoked. We find no objection to the introduction of such evidence on the ground of the absence of proper pleadings. All indications are that the trial proceeded on the theory that Section 929 was applicable. The parties to a case may try it upon whatever theory they desire when no objection is presented.

The verdict of the jury, insofar as it is intelligible, appears to be an effort to adjust equities between the parties and determine the amount of the unpaid purchase price of the dozer sold.

With the filing of the plea of general issue, defendant admitted possession of the property sued for at the time suit was filed. Title 7, Section 934, Code of Alabama 1940. At the same time such plea places in issue the title of plaintiff and its right to possession. Webb v. Webb, 263 Ala. 607, 83 So. 2d 325. Though the title of plaintiff to the dozer

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appears by the evidence to be without serious question, its right to possession is another matter. The evidence as to that issue was in conflict, confusing and incomplete to say the least. Because of such material conflict in the evidence, we do not think appellee was entitled to have given the affirmative charge as requested.

We are of the opinion that the verdict is so confusing, ineptly worded, including matters of recommendation rather than findings of fact, and is otherwise so inappropriate as to be contrary to law and unable to support a judgment. It is clear the verdict should never have been accepted in such form by the court. The judgment is equally inept and improper and must be set aside as contrary to law. Title 7, Section 921, Code of Alabama 1940. The insufficiency of the verdict and judgment appears to this Court to be so clear and obvious as to require no further comment.

REVERSED AND REMANDED.

I, J. O. Sentell, Clerk of the Court of Civil Appeals of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said Court, *du*

Witness my hand this 20 day of Oct. 19 71

*J. O. Sentell*

Clerk, Court of Civil Appeals of Alabama

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON  
LAWYERS

30TH FLOOR - FIRST NATIONAL BANK BUILDING

MOBILE, ALABAMA

36601

July 9, 1969

MAILING ADDRESS:  
P. O. DRAWER C  
OR P. O. BOX 123

CABLE ADDRESS:  
HAB  
TELEPHONE  
432-5511  
AREA CODE 205

CHAS. C. HAND  
C. B. ARENDALL, JR.  
T. MASSEY BEDSOLE  
THOMAS G. GREAVES, JR.  
WM. BREVARD HAND  
VIVIAN G. JOHNSTON, JR.  
PAUL W. BROCK  
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HARWELL E. COALE, JR.  
STEPHEN G. CRAWFORD  
JERRY A. McDOWELL  
W. RAMSEY MCKINNEY, JR.  
LARRY U. SIMS  
A. CLAY RANKIN, III  
EDWARD A. HYNDMAN, JR.  
MICHAEL D. KNIGHT

*No 8794*

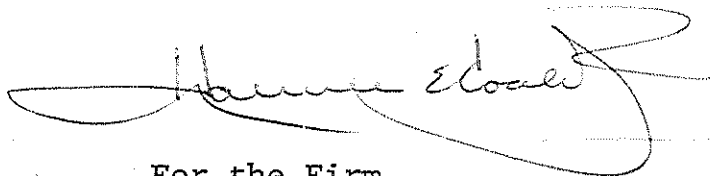
Clerk, Circuit Court of  
Baldwin County  
Bay Minette, Alabama

Re: Alabama Tractor Co. South, Inc.  
v. Richard Brewton

Dear Sir:

Enclosed are suit papers for filing in your office.  
Wilson Hayes has volunteered to assist the Sheriff in  
locating the property involved in this matter. Thank  
you for your assistance in this matter.

Yours very truly,



For the Firm

HEC.sp

Enc.

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON  
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MICHAEL D. KNIGHT

September 15, 1969

Mrs. Alice J. Duck, Clerk  
Circuit Court of Baldwin County  
Bay Minette, Alabama 36507

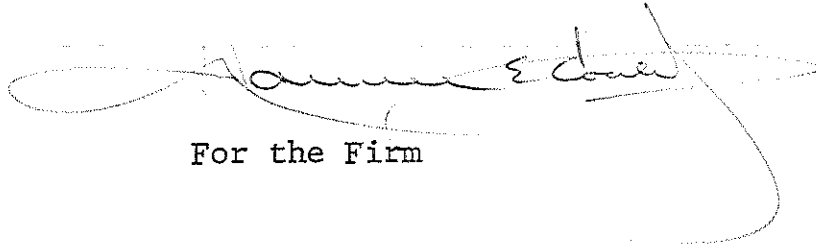
Re: Alabama Tractor Co., South, Inc. v.  
Richard Brewton, Case No. 8794

Dear Mrs. Duck:

Enclosed for filing is a document containing answers to interrogatories propounded by the defendant against the plaintiff in the above-referenced matter. A copy of this has been sent to the defendant's attorney.

We would appreciate your advising when this case will be set for trial.

Yours very truly,



For the Firm

HEC.sp  
Enc.  
cc: Robert Craig

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON  
LAWYERS

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MICHAEL D. KNIGHT

September 24, 1969

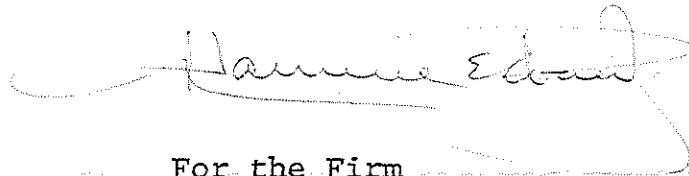
Alice Duck, Clerk  
Circuit Court Baldwin County  
Bay Minette, Alabama

Re: Alabama Tractor Co. South, Inc.  
vs. Richard Brewton, Case No. 8794

Dear Mrs. Duck:

We are enclosing herein interrogatories propounded  
by the defendant, service of which we accepted on behalf  
of the plaintiff.

Yours very truly,

  
For the Firm

HEC.sp

Enc.