

CECIL PITMAN,
COMPLAINANT,
VS
VALENA KIRKMAN,
RESPONDENT.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY

~~TO THE HONORABLE H. M. HALL, JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY,~~
ALABAMA, IN EQUITY SITTING:

Comes the Respondent in the above styled cause and for demurrer to said complaint filed in said cause demurs to each and every count therein separately and severally thereof:

1.

That there is no equity in the bill of complaint.

2.

That for aught alleged in said bill of complaint that the said contract was uncertain as to the party furnishing the abstract on said property.

3.

That for aught alleged in said complaint, the description of said property on which specific performance is sought is vague and uncertain.

4.

For aught alleged in said complaint the description of said property constitutes a variance from the description of said property alleged in said contract as Exhibit "A".

5.

Complainant in said cause fails to allege a substantial compliance with the term of the contract.

6.

For aught alleged in said complaint the deposit alleged is insufficient and inequitable to act as a binder from the alleged date, November 10, 1952 to-date.

7.

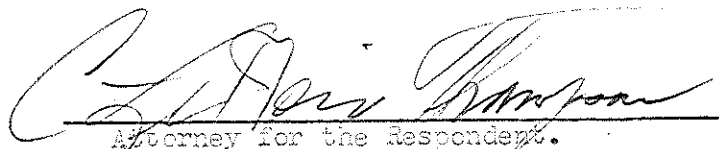
For aught alleged in said contract no date is specified for furnishing a title.

8.

For aught alleged in said contract complainant would be entitled to take the deed without making any payments therefor.

9.

For aught alleged in said contract no provision is made as to any
definite date for payment of the alleged consideration.


Attorney for the Respondent.

3366-

2

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

IN EQUITY

CECIL PITMAN,

COMPLAINANT,

VS

VALENA KIRKMAN,

RESPONDENT.

DEMURRERS

C. LeNoir Thompson
Attorney At Law
Bay Minette, Alabama

FILED

OCT 25 1954

WILLIAM J. DICK, Register

Cecil PittmanComplainant

vs.

Valena KirkmanRespondent

THE STATE OF ALABAMA
Baldwin County

IN EQUITY
Circuit Court of Baldwin County

This cause is submitted in behalf of Complaint upon the original Bill of Complaint, original Bill of Complaint, Amended Bill of Complaint, Answer to the Respondent's Cross Complaint, Complainant's Exhibits A being an offer to purchase the land involved by Cecil Pittman, and an acceptance by Valena Kirkman; Plaintiff's exhibit A being a deposition of Valena K. Reed, Plaintiff Exhibit B, affidavit of Valena K. Reed; Complainant's exhibit B public road deed Valena Kirkman to the Town of Fairhope; Complainant's Exhibit C, being an agreement as to boundary line dispute by Valena Kirkman, et al; Complainant's Exhibit 2 copy of marriage certificate of Chester A. Reed and Valena Kirkman, Complaint's Exhibit 3, certified copy of divorce decree Valena K. Reed vs Chester A. Reed; testimony of Complainant's witnesses Cecil Pittman, Mrs. Lenora Nemire; Claude W. Arnold, Herbert Kirkman, Mrs. E.S. Tunstall, Jack Arnold and John Huffman taken ore tenue before the court.

Walters & Brantley
by E. J. Walters, Jr.

Register
Register.

No.

3365

THE STATE OF ALABAMA

Baldwin County

IN EQUITY

Circuit Court of Baldwin County

Cecil Pittman

vs.

Valena Kirkman

NOTE OF TESTIMONY

Filed in Open Court this

FILED

day of AUG 18 1956, 194

ALICE I. BARK, Register

Register.

Printed By The Baldwin Times

CECIL PITMAN,
Complainant

vs.

VALENA KIRKMAN,
Respondent

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY

This cause coming on to be heard is submitted upon the demurrers of the Respondent to the Bill of Complaint on behalf of the Complainant.

The Court, after reading and considering the demurrers is of the opinion that the demurrers are not well taken and should be overruled.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the demurrers of the Respondent to the Bill of Complaint, be and the same are overruled.

It is further ORDERED that the Respondent be, and she is hereby given, twenty (20) days in which to file additional pleadings.

This 16 day of November, 1954

Hubert M. Hall

Judge

3365 (4)

DECREE OVERRULING DEMURRER

FILED
JAN 13 1955
ALICE L. DICK, Register

[Faint handwritten notes, possibly "3365" and "4"]

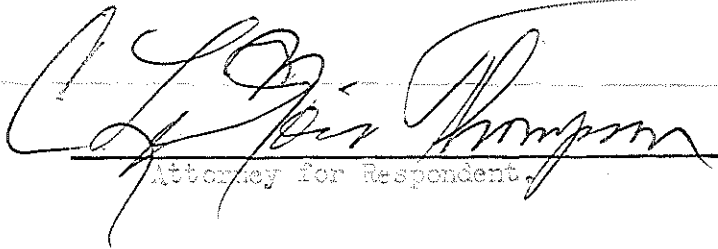
CECIL PITTMAN,
COMPLAINANT
VS
VALENA KIRKMAN,
RESPONDENT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY

Comes the Respondent and amends her answer heretofore filed in said cause by adding count seven to said cross-complaint:

7.

That the said Valena Kirkman is no longer the owner of the property described in the complaint, having conveyed same for a valuable consideration prior to the institution of this action, said conveyance being by warranty deed, same being of record in deed book 210 page 567 in the office of the Judge of Probate of Baldwin County, Alabama, having been filed therein on July 22, 1954, whereas the said action was not instituted until October 1, 1954.


Attorney for Respondent.

55

3365-

FILED

FEB 10 1955

ALICE J. BUCK, Clerk

CECIL PITMAN

COMPLAINANT

VS

VALENA KIRKMAN

RESPONDENT

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

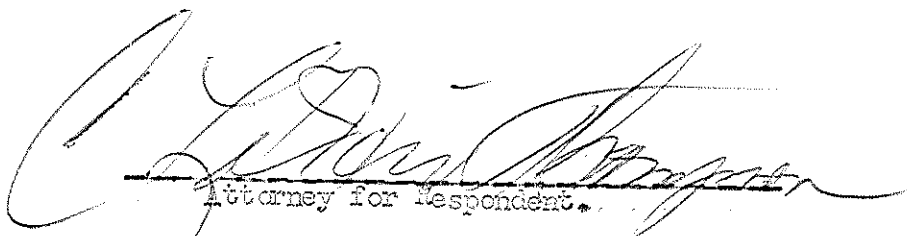
IN EQUITY.

CASE NO. _____

Comes Valena Kirkman, Respondent in the above styled cause by C. LeNoir Thompson, her attorney of record and hereby appeals to the Supreme Court of Alabama from the final decree and judgment from the Circuit Court of Baldwin County at law rendered in the above styled cause on the 29th day of November, 1956.


Attorney for Respondent.

I, C. LeNOIR THOMPSON, attorney At Law in the above styled cause hereby acknowledge myself security for cost in the foregoing appeal.


Attorney for Respondent.

Approved

12-29-56

Alice J. Duck
Register

CIVIL SUBPOENA — ORIGINAL — In case witness shall wish to charge for attendance, he shall produce to the Clerk in term this Subpoena, or within five days after adjournment of Court, else he shall be barred.

THE STATE OF ALABAMA

BALDWIN COUNTY

CIRCUIT COURT

Case No. 3365

Jan. TERM, 195 6

TO ANY SHERIFF OF THE STATE OF ALABAMA—GREETINGS:

You Are Hereby Commanded to Summon Mrs. Lena Sheffield, Fairhope, Ala.
John Fleming, Fairhope

if to be found in your County, at the instance of the Dist.

to be and appear before the Honorable, the Judge of the Circuit Court of Baldwin County, at the Court House thereof, by 2:00 o'clock of the ^{after} forenoon, on the 27 day of Jan., 195 6, and from day to day and term to term of said Court until discharged by law, then and there to testify, and the truth to say, in a certain cause pending, wherein Cecil Pitman, Plaintiff and Valena Kirkman, Defendant.

Herein Fail Not, and have you then and there this Writ.

Given under my hand and seal, this 25 day of Jan, 195 6.

Alia J. Duck

Clerk.

Received in office this 25 day of

Jan, 1956
Taylor Wilkins
SHERIFF

I have executed this writ:

Jan. 26, 1956
Mrs Lena Sheffield
John Fleming
Fairhope, Ala

Sheriff claims 140 miles at

Ten Cents per mile Total \$ 14.00

TAYLOR WILKINS, Sheriff

BY Stedham
DEPUTY SHERIFF

Taylor Wilkins
Elmer Stedham SHERIFF

Fairhope Ala

ORIGINAL

No. 5365

Page

THE STATE OF ALABAMA

Baldwin County

CIRCUIT COURT

Cecil Pitman

Plaintiff

Vs.

Valera Kirkman

Defendant

CIVIL SUBPOENA

Issued this 27 day of

January, 1956

Alvin J. Duck
Clerk

The State of Alabama, BALDWIN County

IN CIRCUIT COURT, IN EQUITY

To any Sheriff of the State of Alabama—Greeting:

You are hereby commanded to summon ANNIE MAE ALLEN, Fairhope, Ala.

to appear and answer, plead, or demur, within thirty days from the service hereof, to a Bill of Complaint filed in said Circuit Court, in equity, for said County of said State.

CECIL PITMAN

against ANNIE MAE ALLEN

Herein fail not. Due return make of this writ as the law directs.

Witness this 2 day of May, 1955.

Assie J. [Signature], Register.

(Defendant is entitled to a copy of the bill on application to the Register.)

Received in office this 24 day of

Jan

1956

SHERIFF

I have executed this writ:

The 25. Jan, 1956
By Serving in full
Mr. R.C. Keeney Fairhope
Capt Joe Pace Fairhope
Mrs Rose Kemper Fairhope
Miss Hazel Council Doxphne

Sheriff claims 264 miles at

Ten Cents per mile Total \$ 26.40

TAYLOR WILKINS, Sheriff

BY

Edw. J. Steadman
DEPUTY SHERIFF

Taylor Wilkins
Edw. J. Steadman SHERIFF

ORIGINAL

No. 3365

Page

THE STATE OF ALABAMA

Baldwin County

CIRCUIT COURT

Cecil Pitman

Plaintiff

Vs.

Valena Kirkman

Defendant

CIVIL SUBPOENA

Issued this 24 day of

January, 1956

Alia J. Ruck

Clerk

CROHL PITMAN

COMPLAINANT

VS

VALENA KIRKMAN

RESPONDENT

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY

CASE NO. _____

Comes the Respondent and for a special plea in addition to the answer filed in said cause shows unto this Honorable Court as follows:

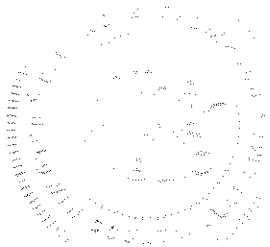
1.

The Respondent for answer to the complaint, saith that the instrument upon which this action was founded was not executed by her or by anyone authorized to bind her in the premises; and she makes oath that this plea is true.

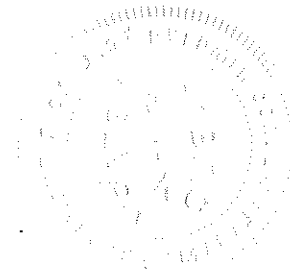
Valena Kirkman

Sworn to and subscribed before me this the 7th day of February, 1956.

[Signature]
Notary Public, Baldwin County, Alabama.



19



Filed 2/2/56
Hustace
Judge

CECIL PITMAN

COMPLAINANT

VS

VALENA KIRKMAN

RESPONDENT

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY.


CASE NO. 3365NOTICE TO PRODUCE WRITTEN INSTRUMENT

TO CECIL PITMAN, COMPLAINANT, AND TO ERNEST BAILEY, AS HIS SOLICITOR:

Notice is hereby given to you to produce on the trial of this cause on March 8, 1955, or on any date to which the said cause may be continued, the original letter from Valena Kirkman to Cecil Pitman, Fairhope, Alabama, dated January 6, 1953.

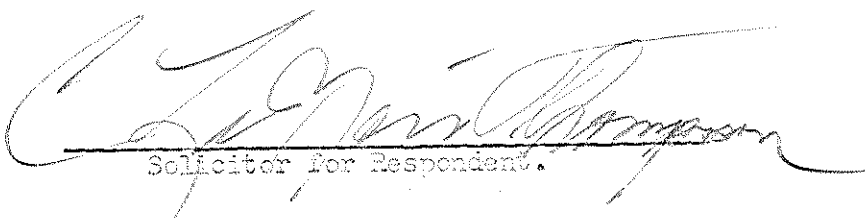
Upon your failure to produce the said original letter, secondary evidence of the said letter will be offered by the Respondent.

Dated this 29 day of February, 1956.


Solicitor for Respondent.

STATE OF ALABAMA
BALDWIN COUNTY

I hereby certify that I delivered a copy of the foregoing notice to Ernest Bailey, Esquire, Solicitor for the Complainant, on this the 29 day of February, 1956.


Solicitor for Respondent.

FILED

FEB 29 1956

ALICE I. DECK, Register

CECIL PITTMAN,
Complainant,
-VS-
VALINA KIRKMAN,
Respondent.

IN THE
CIRCUIT COURT OF BALDWIN COUNTY,
ALABAMA. IN EQUITY.
NO. 3365

This cause being regularly called, on this a regular day for the calling of the docket of this Court, and the parties not answering,

IT IS ORDERED by the Court that this cause be continued until April 26, 1956.

IT IS FURTHER ORDERED that this cause be, and it is hereby set down for the taking of testimony, and submission for final decree on April 26, 1956, at the Courthouse in Bay Minette, Alabama, beginning at 10 A. M.

IT IS FURTHER ORDERED that a copy of this order be mailed to the Solicitors for the Respective parties to this cause.

This 17th day of April, 1956.

Hubert M. Hall
Judge of the 28th Judicial Circuit

FILED
APR 18 1956
CLERK OF THE COURT

CECIL PITMAN

Complainant

vs

VALENA KIRKMAN and
ANNIE MAE ALLEN

Respondents

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY.

Comes your Respondent Annie Mae Allen, by her attorney of record and demurrers to the said complaint as last amended and to each and every phase thereof separately and severally:

1.

That there is no equity in the bill of complaint.

2.

That the complainant does not offer to do equity.

3.

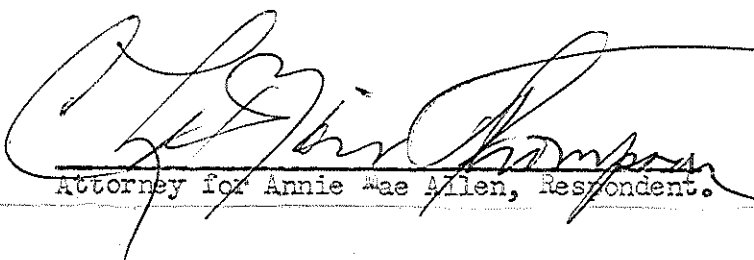
That for aught alleged in said bill of complaint your respondent is a purchaser for value without notice.

4.

That for aught alleged in said complaint the description of said property constitutes a variance from the description of said property alleged in said contract as exhibit "A".

5.

That for aught alleged in said complaint the description of said property constitutes a variance from the description of said property conveyed to your respondent by warranty deed.



Attorney for Annie Mae Allen, Respondent.

CECIL PITMAN

Complainant

vs

VALENA KIRKMAN and
ANNIE MAE ALLEN

Respondents

FILED

JUN 2 1955

ALICE J. DUCK, Clerk

From the law offices of
C. LeNoir Thompson
Attorney-At-Law
Bay Minette, Alabama

CECIL PITMAN

Complainant

vs

VALENA KIRKMAN and
ANNIE MAE ALLEN

Respondents

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY.

Comes your Respondent Valena Kirkman, by her attorney of record and demurrers to the said complaint as last amended and to each and every phase thereof separately and severally:

1.

There is no equity in the bill of complaint as last amended.

2.

That the said complainant does not offer to do equity.

3.

That there is a variance in the description of the property which complainant alleges he offered to purchase and the description set forth in the amended complaint.

4.

That for aught alleged in said bill of complaint as last amended, that the said contract was uncertain as to the party furnishing the abstract on said property.

5.

That for aught alleged in said complaint as last amended, the description of said property on which specific performance is sought is vague and uncertain.

6.

For aught alleged in said complaint as last amended, the description of said property constitutes a variance from the description of said property alleged in said contract as Exhibit "A".

7.

Complainant in said cause fails to allege in what particulars he has substantially complied with the terms of the alleged contract.

8.

For aught alleged in said complaint as last amended, the deposit alleged is insufficient and inequitable to act as a binder from the alleged date, November 10, 1952 to-date.

9.

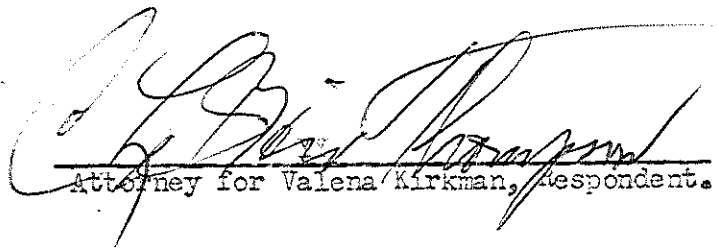
For aught alleged in said contract no date is specified for furnishing
a title.

10.

For aught alleged in said contract complainant would be entitled to take
the deed without making any payments therefor.

11.

For aught alleged in said contract no provision is made as to any definite
date for payment of the alleged consideration.


Attorney for Valena Kirkman, Respondent.

3365-

10

CECIL PITMAN

Complainant

VS

VALENA KIRKMAN and
ANNIE MAE ALLEN

Respondents

FILED

JUN 2 1955

ALICE J. DUCK, Clerk

From the law offices of
C. LeNoir Thompson
Attorney-At-Law
Bay Minette, Alabama

Div. No. _____

CERTIFICATE OF APPEAL. (Equity Cases.)

No. ~~2852~~ 3365

~~CECIL PITTMAN~~ Complainant.

VS.

~~VALENA KIRKMAN~~ Respondent.

I, ~~Alice J. Duck~~ Register of the Circuit Court In Equity,

~~Baldwin~~ County, Alabama, hereby certify that in the cause of

~~CECIL PITTMAN~~ Complainant,

VS.

~~VALENA KIRKMAN~~ Respondent,

which was tried and determined in this Court on the 29th day of

November 1956, in which there was a decree in favor of the

~~Complainant~~

On the 29th day of December 1956, the Respondent

took an appeal to the

~~Supreme~~ of Alabama, to be holden of and for said State.

I further certify that ~~C. LeNoir Thompson~~ Valena Kirkman

filed security for cost of appeal, to the Supreme Court,

on the 29th day of December 1956 and that C. LeNoir Thompson

are sureties on the appeal bond.

I further certify that notice of said appeal was on the

day of January, 1956, served on Hon. Ernest M. Bailey

as attorney of record for said appellee.

Witness my hand and the seal of this Court, this the 29th day

of December, 1956

Register of the Circuit Court In Equity of

Baldwin County, Alabama.

THE STATE OF ALABAMA,
BALDWIN COUNTY

IN THE CHANCERY COURT OF BALDWIN COUNTY

To Cecil Pittman

Or To Hon. Ernest M. Bailey, Solicitors of record.

Whereas, on the 29th day of December, 19 56,

Valena Kirkman

took an appeal from the decree rendered on the 29th day of November
19 56, by the Circuit Court of said county, in the cause of

CECIL PITTMAN

versus

VALENA KIRKMAN

Now, therefore, you are cited to appear as required by law, before the Supreme Court of Alabama, to defend on said appeal, if you think proper so to do.

Witness my hand this 29 TH day of December, 19 56.

Alice J. Hark
Register in Chancery.

ived. 2 day of Jan 1957
on 22 day of Jan 1957
ved a copy of the within Citation
Hon. E. Bailey
vice on _____

TAYLOR WILKINS, Sheriff
By Edmund Steadham D. S.
Fairhope Ala

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

W. 3365

CECIL PITTMAN Complainant

vs.

VALENA KIRKMAN Respondent

CITATION OF APPEAL

IN EQUITY

Issued _____ day of _____, 19____

To be served on
Hon. E. Bailey
Fairhope Ala

CECIL PITTMAN

COMPLAINANT

VS

VALENA KIRKMAN

RESPONDENT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,

IN EQUITY

CASE NO. 3356

AMENDED DECREE

This cause has been appealed to the Supreme Court of Alabama and a decree rendered by the Supreme Court on the 26th day of February, 1959, and a Motion for Rehearing filed in the Supreme Court, this motion for rehearing was denied May 14, 1959. The Supreme Court remanded this cause to the Circuit Court of Baldwin County, Alabama, in Equity, with directions to amend the decree of the Circuit Court in Equity to cause the description in the Court's decree to conform to the description set out in the Complainant's Amended Bill of Complaint. Pursuant to the directions and orders of the Supreme Court of Alabama as above set out, this Court now amends its decree heretofore rendered in this cause to read as follows:

CECIL PITTMAN

COMPLAINANT

VS

VALENA KIRKMAN

RESPONDENT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,

IN EQUITY

NO. 3365

This cause coming on to be heard is submitted for a final decree upon the original bill of complaint filed October 1, 1954, amendment to bill of complaint filed May 2, 1955, answer and cross bill filed December 14, 1954, amended answer filed April 18, 1955, answer of Annie Mae Allen filed November 15, 1955, amended answer of Annie Mae Allen filed January 5, 1956, special plea of Valena Kirkman filed March 2, 1956, amended answer filed March 20, 1956, answer to cross bill filed July 12, 1956, amended answer filed February 10, 1955, and testimony of the following witnesses: Cecil Pittman, Lenora Neimier, Robert Nahrgang, Joe Pose, Hazel Council, Rose C. Kamper, John Fleming, Lena W. Sheffield, Harris Thomas Stratling, Valena Kirkman, John Huffman, Claude W. Arnold, Herbert Kirkman, E. S. Tunstall,

Jack Arnold, J. O. Stinson, Mrs. Jack Stapleton, Percy Dale, Quinton Mitchell and Carrie L. Young.

The original suit was filed by Cecil Pittman, as Complainant against Valena Kirkman, as Respondent, which was later amended by naming Annie Mae Allen as a party respondent. Annie Mae Allen, in her answer filed November 15, 1955, admitted that the property involved was conveyed to her for a valuable consideration; however, in her answer filed January 5, 1956, she admitted that she re-conveyed said property Valena Kirkman as of December 15, 1955, as shown by deed of record in the office of the Probate Judge of Baldwin County, Alabama, in Deed Book 232 at page 86.

The Complainant, Cecil Pittman, in his original bill of complaint claimed under a written contract to convey, in words and figures as follows:

OFFER TO PURCHASE

AGENT:

DATE: 11/10/52

We agree to purchase the property known as: All that parcel belonging to Valena Kirkman that fronts Second Ave. (Church Street) being 300 feet more or less and running eastwardly to Section St. and fronting Section St. 300 feet more or less; also a small parcel lying east of Section St. The entire tract containing eleven (11) acres, more or less.

Consideration: \$7,000.00

Terms: Cash or, at seller's option, 29% down and the balance on three equally divided yearly payments. The unpaid balance to draw int. 5% Annum.

It is understood that a good and marketable title is to be furnished and deal is to be closed within 30 days from receipt of abstract to date.

Taxes, rents, insurance, and interest prorate to possession date. Possession to be given upon delivery of deed which will be upon payment of down payment or cash payment which ever seller elects. We hereby deposit with Valena Kirkman \$100.00 as earnest money, receipt of which is hereby acknowledged, to apply on the purchase price. Said earnest money shall be returned to us upon demand if this offer to purchase is not accepted by the owner within one (1) days from the date hereof, or, upon acceptance by the owner, shall be forfeited as liquidated damages if we fail to comply with the above terms.

(signed) _____ (SEAL)
Buyer
Cecil Pitman

(SEAL)

Buyer

(Signed)

Leanora D. Niemeyer

ACCEPTANCE

The foregoing offer is hereby accepted by us this 10th day of November, 1952.

(signed)

Owner

Valena Kirkman

Owner

Witnesses:

(Signed)

Leanora D. Niemeyer

That he was ready, willing and able to carry out and perform the terms, provisions and obligations of said contract and to comply in all respects with the contract and offered to do equity in the premises.

The tendency of the evidence on the part of the Complainant is that he entered into the contract to purchase said land on the date thereof, November 10, 1952, which the Court determines to be Monday; that on many occasions he tried to get the Respondent to complete the contract and she has refused.

The Respondent, as a defense to the allegations of the complaint sets out that: (1) That the contract was entered into on Sunday; (2) that the Respondent was a married woman and her husband did not join in the contract; (3) That there was no meeting of the minds of the parties; (4) That the contract was entered into as a result of undue influence exercised by the Complainant on the Respondent, and (5) that the consideration set out in the contract of purchase was inadequate; and that the Respondent had recinded the contract.

1. The contract or offer to purchase was introduced in evidence and bears date of a day other than Sunday, and the only evidence to overcome the written contract and the testimony on behalf of the Complainant is the parol testimony of Valena Kirkman and Herbert Kirkman and other evidence on

behalf of the Respondent, which, in the opinion of the court, is not sufficient to overcome the documentary evidence of the Complainant.

2. The evidence is clear, although Valena Kirkman was a married woman, her husband, for quite a length of time, had abandoned her and was, in fact, also a non-resident of the State of Alabama, which, according to the Laws of the State of Alabama, authorized the Respondent to enter into a contract of sale; then too, there is some serious question as to whether or not the property involved was the homestead of the Respondent, she at this time, and for many years having lived on a different piece of property.

3. The Respondent, in the opinion of the Court, taken from the evidence in the record and the circumstances involved, freely and voluntarily signed the contract or offer to purchase, which sets out a consideration of \$7,000.00, and the manner in which the same was to be paid, and was in accord with the price offered and the manner and terms of payment.

4. The Respondent, in her pleadings, sets up undue influence; however, about the only evidence offered is the difference in race of the parties and then too, that the consideration was so inadequate as to raise a question of undue influence.

5. There is much evidence in the nature of opinion evidence, as to the value of the property involved, ranging from \$7,000.00 to \$60,000.00; however, the Court is of the opinion that the price is not so inadequate, in the absence of proven fraud, to set aside the contract.

6. The Respondent has also tried to show a rescission of the contract by a return of the money. There is absolutely no evidence that the Complainant accepted this money and evidenced any intention or willingness to rescind the contract. The contract having been duly executed, the Respondent had no right, in the absence of the willingness or readiness on the part of the Complainant to rescind the contract.

The Court is, therefore, after considering all of the pleadings and the testimony, of the opinion and to the conclusion that the Complainant is entitled to the relief prayed for;

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED, by the court that the Respondent, Valena Kirkman, by a proper conveyance, convey to the Complainant,

25

Cecil Pittman, the property described in the bill of complaint, which, according to the testimony in the record is the same property as described in the contract of sale or offer to purchase entered into by and between the Complainant and the Respondent, to-wit:

All that parcel belonging to Valena Kirkman that fronts Second Avenue (Church Street) being 300 feet more or less and running eastwardly to Section Street and fronting Section Street 300 feet more or less; also, a small parcel lying East of Section Street. The entire tract containing eleven (11) acres, more or less.

and deliver abstract showing merchantable title vested in the Respondent, upon the payment to her by the Complainant of \$7,000.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that if the Respondent should fail or refuse to execute proper conveyance and deliver abstract of title to the property involved within thirty days from the date hereof, then the Register of the Circuit Court of Baldwin County, Alabama, is authorized, directed and empowered to execute proper conveyance to the Complainant, conveying all of the right, title and interest that the Complainant had, or has in and to said property, upon the payment of \$7,000.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that if the Complainant should fail or refuse to pay to the Respondent, within thirty days from the time deed and abstract is tendered to him by the Respondent, or within thirty days from the date in which the Register of the Circuit Court of Baldwin County, Alabama, is authorized to execute proper conveyance, then all rights of the Complainant in and to said property as herein granted are terminated and void, and the Respondent is relieved from any liability to convey said property as herein set out.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Respondent be and she hereby is taxed with the cost herein, for which execution may issue."

Dated at Bay Minette, Alabama, this 4 day of June, 1959.

Hubert M. Hall
Judge, 28th Judicial Circuit of Ala.

CECIL PITTMAN

COMPLAINANT

VS

VALEMA KIRKMAN

RESPONDENT

Amended

DECREE

FILED

JUN 4 1959

ALICE J. DUCK, CLERK
REGISTERED

FEBRUARY 26, 1959

THE STATE OF ALABAMA - - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM 1958-59

1 DIV. 710

VALENA KIRKMAN

vs.

CECIL PITTMAN,

BALDWIN CIRCUIT COURT,
IN EQUITY.
No. 3365

Come the parties by Attorneys, and the record and matters therein assigned for errors, being submitted on briefs and duly examined and understood by the Court,

IT IS CONSIDERED, ORDERED, ADJUDGED, AND DECREED that the decree of the Circuit Court, In Equity, be and is hereby affirmed.

IT IS FURTHER CONSIDERED, ORDERED, ADJUDGED, AND DECREED that this cause be and is hereby remanded to the Circuit Court, In Equity, with directions to amend the decree of the Circuit Court, In Equity, to conform to the amended bill of complaint; as indicated in the opinion of this Court.

IT IS ALSO CONSIDERED, ORDERED, ADJUDGED, AND
DECREED that the appellant, Valena Kirkman, and C. Lenoir
Thompson, surety on the appeal bond, pay the costs of appeal
of this Court and of the Circuit Court, In Equity, for which
costs let execution issue accordingly.

STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM 1958-59

1st Div., No. 710

VALENA KIRKMAN

, Appellant,

v.

CECIL PITTMAN

, Appellee,

From

BALDWIN CIRCUIT

Court.

IN EQUITY

NO. 3365

The State of Alabama.

City and County of Montgomery. }

I, J. Render Thomas, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages numbered from one to t w o inclusive, contain a full, true, and correct

copy of the DECREE AFFIRMING THE DECREE OF THE CIRCUIT COURT, IN EQUITY, AND REMANDING THE CAUSE TO THE CIRCUIT COURT WITH DIRECTIONS TO AMEND THE DECREE OF THE CIRCUIT COURT, IN EQUITY, TO CONFORM TO THE AMENDED BILL OF COMPLAINT, AS INDICATED IN THE OPINION OF THIS COURT, MADE BY said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, J. Render Thomas, Clerk of the Supreme

Court of Alabama, this the 26th day of

FEBRUARY

19 59.

J. Render Thomas
Clerk of the Supreme Court of Alabama

39

OCTOBER TERM 1958-59
THE SUPREME COURT OF ALABAMA

1st Div., No. 710

VALENA KIRKMAN

Appellant,

v.

CECIL PITTMAN

Appellee.

From BALDWIN CIRCUIT Court.
IN EQUITY
NO. 3365

Certified Copy of

DECREE AFFIRMING THE DECREE OF THE
CIRCUIT COURT, IN EQUITY, AND
~~REMANDING THE CAUSE TO THE CIRCUIT~~
COURT, IN EQUITY, WITH DIRECTIONS TO
AMEND THE DECREE OF THE CIRCUIT COURT,
IN EQUITY, TO CONFORM TO THE AMENDED
BILL OF COMPLAINT, AS INDICATED IN THE
OPINION OF THIS COURT.

FEBRUARY 26, 1959

CECIL PITMAN

COMPLAINANT

VS

VALENA KIRKMAN

RESPONDENT

IN THE CIRCUIT COURT OF


BALDWIN COUNTY, ALABAMA

IN EQUITY.

CASE NO. _____

Now comes Valena Kirkman, and gives notice of appeal from the decree of the Circuit Court of Baldwin County, Alabama, in Equity, rendered in said cause on the 29th day of November, 1956.

Dated this 29th day of December, 1956.


Solicitor for Respondent.

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RECEIVED COMMUNICATIONS

FILED
DEC 29 1956
U.S. DEPT. OF JUSTICE

CECIL PITTMAN,

Complainant,

VS.

VALENA KIRKMAN,

Respondent.

IN THE

CIRCUIT COURT OF BALDWIN COUNTY,

ALABAMA. IN EQUITY

NO. 3365

This cause coming on to be heard is submitted for a final decree upon the original bill of complaint filed October 1, 1954, amendment to bill of complaint filed May 2, 1955, answer and cross bill filed December 14, 1954, amended answer filed April 18, 1955, answer of Annie Mae Allen filed November 15, 1955, amended answer of Annie Mae Allen filed January 5, 1956, special plea of Valena Kirkman filed March 2, 1956, amended answer filed March 20, 1956, answer to cross bill filed July 12, 1956, amended answer filed February 10, 1955, and testimony of the following witnesses: Cecil Pittman, Lenora Neimier, Robert Nahrgang, Joe Pose, Hazel Council, Rose C. Kamper, John Fleming, Lena W. Sheffield, Harris Thomas Stratling, Valena Kirkman, John Huffman, Claude W. Arnold, Herbert Kirkman, E. S. Tunstall, Jack Arnold, J. O. Stinson, Mrs. Jack Stapleton, Percy Dale, Quinton Mitchell and Carrie L. Young.

The original suit was filed by Cecil Pittman, as Complainant against Valena Kirkman, as Respondent, which was later amended by naming Annie Mae Allen as a party Respondent. Annie Mae Allen, in her answer filed November 15, 1955, admitted that the property involved was conveyed to her for a valuable consideration; however, in her answer filed January 5, 1956, she admitted that she re-conveyed said property to Valena Kirkman as of December 15, 1955, as shown by deed of record in the office of the Probate Judge of Baldwin County, Alabama, in Deed Book 232 at page 86.

The Complainant, Cecil Pittman, in his original bill

bill of complaint claimed under a written contract to convey, in words and figures as follows:

OFFER TO PURCHASE

AGENT:

DATE: 11/10/52

We agree to purchase the property known as: All that parcel belonging to Valena Kirkman that fronts Second Ave. (Church Street) being 300 feet more or less and running eastwardly to Section St. and fronting Section St. 300 feet more or less; also, a small parcel lying east of Section St. The entire tract containing eleven (11) acres more or less.

Consideration: \$7,000.00

Terms: Cash or, at seller's option, 29% down and the balance on three equally divided yearly payments. The unpaid balance to draw int. 5% Annum. It is understood that a good and marketable title is to be furnished and deal is to be closed within 30 days from receipt of abstract to date.

Taxes, rents, insurance, and interest prorate to possession date.

Possession to be given upon delivery of deed which will be upon payment of down payment or cash payment which ever seller elects.

We hereby deposit with Valena Kirkman \$100.00 as earnest money, receipt of which is hereby acknowledged, to apply on the purchase price. Said earnest money shall be returned to us upon demand if this offer to purchase is not accepted by the owner within one (1) days from the date hereof, or, upon acceptance by the owner, shall be forfeited as liquidated damages if we fail to comply with the above terms.

(signed)

(SEAL)

Buyer
Cecil Pitman

(SEAL)

Buyer

(Signed)

Leanora D. Niemeyer

ACCEPTANCE

The foregoing offer is hereby accepted by us this 10th day of November, 1952.

(signed)

Owner

Valena Kirkman

Owner

Witness:

(Signed)

Leanora D. Niemeyer

That he was ready, willing and able to carry out and perform the terms, provisions and obligations of said contract and to comply in all respects with the contract and offered to do equity in the premises.

The tendency of the evidence on the part of the Complainant is that he entered into the contract to purchase said land on the date thereof, November 10, 1952, which the Court determines to be Monday; that on many occasions he tried to get the Respondent to complete the contract and she has refused.

The Respondent, as a defense to the allegations of the complaint sets out that: (1) That the contract was entered into on Sunday; (2) that the Respondent was a married woman and her husband did not join in the contract; (3) That there was no meeting of the minds of the parties; (4) that the contract was entered into as a result of undue influence exercised by the Complainant on the Respondent, and (5) that the consideration set out in the contract of purchase was inadequate; and that the Respondent had recinded the contract.

1. The contract or offer to purchase was introduced in evidence and bears date of a day other than Sunday, and the only evidence to overcome the written contract and the testimony on behalf of the complainant is the parol testimony of Valena Kirkman and Herbert Kirkman and other evidence on behalf of the Respondent, which, in the opinion of the Court, is not sufficient to overcome the documentary evidence of the Complainant.

2. The evidence is clear, although Valena Kirkman was a married woman, her husband, for quite a length of time, had abandoned her and was, in fact, also a non-resident of the State of Alabama, which, according to the Laws of the State of Alabama, authorized the Respondent to enter into a contract of sale; then too, there is some serious question as to whether or not the property involved was the homestead of the Respondent, she at this time, and for many years having lived on a different piece of property.

3. The Respondent, in the opinion of the Court, taken from the evidence in the record and the circumstances involved, freely and voluntarily signed the contract or offer to purchase, which sets out a consideration of \$7,000.00, and the manner in which the same was to be paid, and was in accord with the price offered and the manner and terms of payment.

4. The Respondent, in her pleadings, sets up undue influence; however, about the only evidence offered is the difference in race of the parties and then too, that the consideration was so inadequate as to raise a question of undue influence.

5. There is much evidence in the nature of opinion evidence, as to the value of the property involved, ranging from \$7,000.00 to \$60,000.00; however, the Court is of the opinion that the price is not so inadequate, in the absence of proven fraud, to set aside the contract.

6. The Respondent has also tried to show a rescission of the contract by a return of the money. There is absolutely no evidence that the complainant accepted this money and evidenced any intention or willingness to rescind the contract. The contract having been duly executed, the respondent had no right, in the absence of the willingness or readiness on the part of the complainant to rescind the contract.

The Court is, therefore, after considering all of the pleadings and the testimony, of the opinion and to the conclusion that the Complainant is entitled to the relief prayed for;

IT IS, THEREFORE, ORDERED ADJUDGED AND DECREED by the Court that the Respondent, Valena Kirkman, by a proper conveyance, convey to the Complainant, Cecil Pittman, the property described in the bill of complaint, which, according to the testimony in the record is the same property as described in the contract of sale or offer to purchase entered into by and between the complainant and the Respondent, to-wit:

From N.E. Corner 19-6-2 Run South 1433 feet from point of beginning then North along south side Kirkman Lane 1455 feet to Church Street or Second Avenue. Then South 37 deg. 17' West 330 feet, then South 57 deg. East 1725 feet to east line Section 19, then North 390 feet to beginning, Section 19, Township 6 Range Two East, being 11.3 acres more or less, situated in the Town of Fairhope, Baldwin County, Alabama,

and deliver abstract showing merchantable title vested in the Respondent, upon the payment to her by the Complainant of \$7,000.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that if the Respondent should fail or refuse to execute proper conveyance and deliver abstract of title to the property involved within thirty days from the date hereof, then the Register of the Circuit Court of Baldwin County, Alabama, is authorized, directed and empowered to execute proper conveyance to the complainant, conveying all of the right, title and interest that the Complainant had, or has in and to said property, upon the payment of \$7,000.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that if the Complainant should fail or refuse to pay to the Respondent, within thirty days from the time deed and abstract is tendered to him by the Respondent, or within thirty days from the date in which the Register of the Circuit Court of Baldwin County, Alabama, is authorized to execute proper conveyance, then all rights of the Complainant in and to said property as herein granted are terminated and void, and the Respondent is relieved from any liability to convey said property as herein set out.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Respondent be, and shehereby is taxed with the cost herein, for which execution may issue.

Dated at Bay Minette, Alabama, this 29th day of ~~October~~ November, 1956.

Hubert M. Hall
Judge, 28th Judicial Circuit of Alabama.

FILED

NOV 29 1956

ALICE A. BULL, Register

CECIL PITMAN,
Complainant

vs.

VALENA KIRKMAN and
ANNIE MAE ALLEN,
Respondents

I
I
I
I
I

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

IN EQUITY

Case No. 3365

DECREE OVERRULING DEMURRERS

This cause now comes on to be heard on the Demurrers of the Respondents, Valena Kirkman and Annie Mae Allen, to the Bill of Complaint heretofore filed on the second day of June, 1955; and comes the parties and submit the same for consideration of the court and the court is of the opinion that the said Demurrers, respectively, are not well taken.

It is, therefore, ORDERED, ADJUDGED AND DECREED by the court as follows:

1. That the Demurrers respectively filed by the Respondents herein be and the same are hereby overruled.

2. That the Respondents may have 20 days from this date to answer the Bill of Complaint as amended, if they so desire.

Done this 24 day of October, 1955.

Hubert M. Hall
Circuit Judge

ANSWER TO CROSS BILL

CECIL PITTMAN

COMPLAINANT

VS

VALEMA KIRKMAN

RESPONDENT

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY

CASE NO. 3365

Comes now the Complainant in the above styled cause and for answer to the Respondent's Amended Cross Bill filed April 18, 1955, and refiled November 15, 1955, and further amended by an Amendment filed January 7, 1956, says as follows:

1.

That he denies that he did coerce or intimidate the Respondent to cause her to execute a contract set out in the Bill of Complaint. For further answer to this section of the Respondent's Cross Bill, your Complainant says: that the contract was entered into by the Respondent freely and voluntarily, that there was a meeting of the minds.

2.

He denies the allegations of Section 2.

3.

He denies the allegations of Section 3.

4.

He admits the allegations of Section 4.

5.

For answer to Section 5 the Complainant says that at the time he and the Respondent entered into the contract that Chester A. Reed was a non-resident of the State of Alabama and had abandoned the Respondent many years prior to this time and that such abandonment was continuous to the date of the contract.

6.

Your Complainant denies the allegations of Section 6.

7.

The Complainant neither admits nor denies the allegations of Section 7 but demands strict proof of the same.

Ernest Bailey

Walter A. Brantley

By: *J. Oliver M. Brantley*
Attorneys for the Complainant

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CECIL PITTMAN

COMPLAINANT

VS

VALMIA KIRKMAN

RESPONDENT

ANSWER TO CROSS BILL

FILED

JUL 12 1956

ALICE J. DUCK, Register

2008 OCT 19 1956

Handwritten signature and date: 10/19/56

CECIL PITTMAN
COMPLAINANT
VS
VALENA KIRKMAN
RESPONDENT

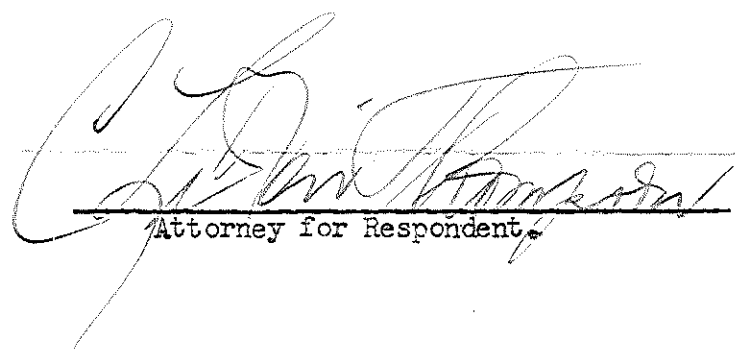
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY
CASE NO. _____

TO THE HONORABLE H. M. HALL, JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY,
ALABAMA, IN EQUITY SITTING:

Comes the Respondent in the above styled cause and amends paragraph seven of the answer last filed in said cause to read as follows:

7.

That the said Respondent was the wife of the said Chester A. Reed, on the date, to-wit, November 10, 1952, when the said Complainant alleges that he obtained the said Respondent's signature to an agreement to convey certain real property as alleged in the complaint herein, wherefore said agreement is void. Inasmuch as the said agreement does not bear the signature of the said husband, Chester A. Reed, as required by the 1940 Code of Alabama, as amended, restricting the conveyance of real property by a wife, nor does the said Complainant herein allege that he obtained the signature of the said husband, Chester A. Reed, to the alleged agreement to convey certain real property owned by the within named, Valena Kirkman, wife of the said Chester A. Reed, said alleged agreement to convey is void, because the said Valena Kirkman and husband Chester A. Reed lived upon said property during coverture and the said property was a portion of your Respondents homestead at the time the alleged agreement, subject of this action was executed, by the said Valena Kirkman.

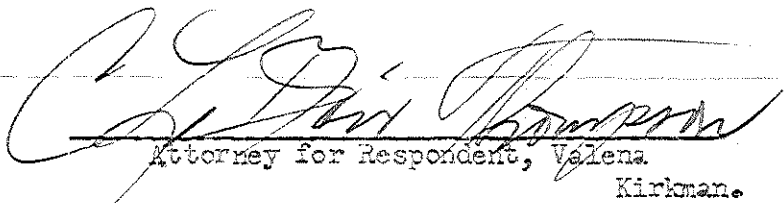

Attorney for Respondent.

CECIL PITTMAN
COMPLAINANT
VS
VALENA KIRKMAN
RESPONDENT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY.

Comes Respondent, Valena Kirkman and amends her cross-bill heretofore
filed in said cause by striking paragraph seven of said cross-bill and
adding the following paragraph:

That your Respondent had conveyed said property to Annie Mae Allen for
a valuable consideration prior to the filing of the original suit in this
cause but during the month of December 1955 your Respondent has recovered
said property from the said Annie Mae Allen by warranty deed dated December
15, 1955 and recorded in deed book 232 page 86 in the office of the Judge
of Probate of Baldwin County, Alabama.


Attorney for Respondent, Valena
Kirkman.

CECIL PITTMAN

COMPLAINANT

VS

VALENA KIRKMAN and
ANNIE MAE ALLEN

RESPONDENT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

IN EQUITY.

CASE. NO. 3365

Comes Annie Mae Allen, Respondent in said cause, and amends her answer previously filed in said cause to show unto this Honorable Court as follows:

1.

As to count one of the amended complaint she admits the allegations therein.

2.

As to count two of said amended complaint she says she was not a party to said facts and knows nothing thereof.

3.

As to count three of said amended complaint she denies the allegations therein.

4.

As to count four of said amended complaint she denies the allegations therein.

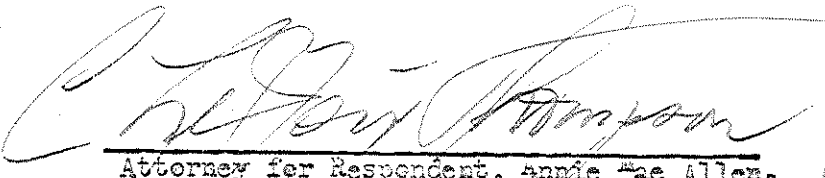
5.

As to count five of said amended complaint she admits that said property was conveyed to her for a valid consideration and as to the other phases of said allegations she denies same thereof.

6.

And further she has reconveyed said property to Valena Kirkman as of December 15, 1955 same being recorded in the office of the Judge of Probate of Baldwin County, Alabama on December 15, 1955 and is of record in said office in Deed Book 232 page 86, said conveyance covering the original property less a certain rights of way conveyed by your Respondent to Baldwin County, Alabama, the exact extent, of which is unknown to your Respondent.

WHEREFORE your Respondent prays her discharge as such by this Honorable Court.


Attorney for Respondent, Annie Mae Allen.

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FILED

APR 5 1956

ALICE J. DUCK, Register

CECIL PITTMAN

COMPLAINANT

VS

VALENA KIRKMAN and
ANNIE MAE ALLEN

RESPONDENT

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY.

NO. 3365

Comes Annie Mae Allen, Respondent in said cause and in answer to the amended complaint filed by Cecil Pittman against Valena Kirkman and Annie Mae Allen both respondents being colored shows unto this Honorable Court as follows:

1.

As to count one of the amended complaint she admits the allegations therein.

2.

As to count two of said amended complaint she says she was not a party to said facts and knows nothing thereof.

3.

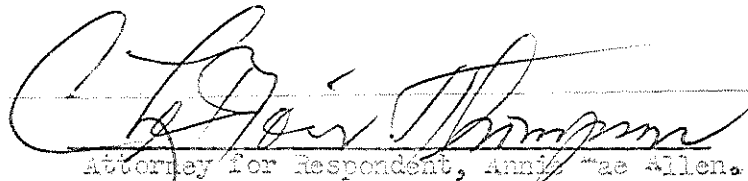
As to count three of said amended complaint she denies the allegations therein.

4.

As to count four of said amended complaint she denies the allegations therein.

5.

As to count five of said amended complaint she admits that said property was conveyed to her for a valid consideration and as to the other phases of said allegations she denies same thereof.


Attorney for Respondent, Annie Mae Allen.

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Answer

FILED
NOV 15 1910
ALICE J. DUCK, Register

AMENDED

CECIL PITTMAN,
COMPLAINANT
VS
VALENA KIRKMAN
RESPONDENT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY.

TO THE HONORABLE H. M. HALL, JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY,
ALABAMA, IN EQUITY SITTING:

Comes the Respondent and for amended answer to the petition filed in
said cause shows unto this Honorable Court as follows:

1.

As to Count One she admits the allegations therein.

2.

As to Count Two she denies the allegations therein.

3.

As to Count Three she denies the allegations therein.

4.

As to Count Four she denies the allegations therein.

And your Respondent further shows unto this Honorable Court in answer
unto the allegations of Counts 2, 3 and 4 of said complaint separately and
severally as follows:

5.

Your Respondent shows unto this Honorable Court that on the 27th day
of January, 1929 she was married to Chester A. Reed, at 65th St. Michael
Street, Mobile, Alabama, at the Emanuel Parsonage by Rev. C. D. Hayden, Minister,
and attaches hereto a photostatic copy of said marriage certificate and makes
same a part hereof. And your Respondent further shows unto this Honorable
Court that said marriage bonds still existed at the time the action alleged
herein arose.

6.

That on to-wit, Sunday, November 9, 1952, the said complainant, Cecil
Pittman, a white man came to the home of your respondent and instructed her
to get into his station wagon, whereupon he drove her by divers ways to his
office in Fairhope where he handed her an agreement in writing with instructions
to sign it and that being of the Negro race the respondent obeyed because the
said Cecil Pittman was a white man.

7.

That the said Respondent was the wife of the said Chester A. Reed, on the date, to-wit, November 10, 1952, when the said Complainant alleges that he obtained the said Respondent's signature to an agreement to convey certain real property as alleged in the complaint herein, wherefore said agreement is void. Inasmuch as the said agreement does not bear the signature of the said husband, Chester A. Reed, as required by the 1940 Code of Alabama, as amended, restricting the conveyance of real property by a wife, nor does the said Complainant herein allege that he obtained the signature of the said husband, Chester A. Reed, to the alleged agreement to convey certain real property owned by the within named, Valena Kirkman, wife of the said Chester A. Reed, said alleged agreement to convey is void.

8.

That the said agreement was executed on Sunday, to-wit, November 9, 1952, at which time the said Complainant required, of said Respondent, her signature whereof said agreement is void for having been executed on Sunday.

9.

Because your Complainant was an intelligent business man of affairs whereas the Respondent is a woman of the negro race, of slight stature and without much education, and she was not informed as to the contents of the agreement on that particular Sunday, to-wit, November 9, 1952, when she was called upon to execute said agreement.

10.

That your Respondent did promptly upon being informed that she had executed an agreement to dispose of certain real property, of great value for a fractional part of said value returned to the said Cecil Pittman, the sum of One Hundred (\$100.00) Dollars in money, by registered mail, receipt number 1067 together with a letter in words and figures as follows which your

Respondent signed:

Fairhope, Alabama
January 6, 1953

Mr. Cecil Pittman
Fairhope, Alabama

Dear Mr. Pittman:

You will find enclosed the \$100.00 (one hundred dollars) bill which you gave to me on November 9, (Sunday), 1952 and the papers which were signed on this same day and dated November 10, 1952.

This is not my agreement and not the price I quoted to you for this property and I cannot accept this amount. I find it will be necessary for me to have an advisor and if you are willing to come to our terms, I will consider

your offer.

BOOK 004 PAGE 163

Yours very truly,

Valena Kirkman

11.

That the said property described in the alleged agreement and also in the petition filed in said cause was of a value exceeding Twenty-five Thousand (\$25,000) Dollars at the time of the alleged agreement and that said consideration set forth in the alleged agreement in the amount of Seven Thousand (\$7,000) Dollars is grossly inadequate and your Respondent further shows unto this Honorable Court that to require specific performance for the said sum of Seven Thousand (\$7,000) Dollars would constitute a fraude on your Respondent.

PRAYER FOR PROCESS

And now having answered said complaint your Respondent and Cross-Complainant prays that the following portion of said answer be taken and treated in all respect as a cross bill and that the usual notice in the form and manner prescribed by law be given to the complainant, requiring him to appear and plead, answer or demur to this cross bill within the time required by law.

1.

That the said Cecil Pittman, a white man, did by coercion and intimidation require your Respondent and Cross-Complainant, a Negro woman to execute the alleged contract set forth in the original complaint in this cause and that your Cross-Complainant having promptly returned to said Cecil Pittman the said One Hundred (\$100.00) Dollars deposited with her by the said Cecil Pittman approximately two years prior to the time of this action.

2.

That said property generally described in said complaint is of great value having been worth over Twenty-Five Thousand (\$25,000) Dollars at the time the alleged transaction took place, wherefore the alleged Seven Thousand (\$7,000) Dollars is insufficient to constitute a reasonable compensation for the value of said property.

3.

That the allegations contained in the alleged agreement filed herein were not agreed to by your Respondent and Cross-Complainant and your Respondent and Cross-Complainant was not aware of the contents of said instrument at the time she signed it, the said Cecil Pittman having made an offer for said property and your Respondent having refused said offer there was no meeting of the minds as alleged in said agreement.

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4.

And further that the said Cecil Pittman, has filed for record as a cloud on the title of your Cross-Complainant's property the alleged agreement as attached to the original complaint herein.

5.

That at the time the alleged agreement was executed your Cross-Complainant was the lawful wife of Chester A. Reed, and that the Chester A. Reed, husband of the Cross-Complainant did not execute the said agreement to convey, wherefore the said agreement to convey is void.

6.

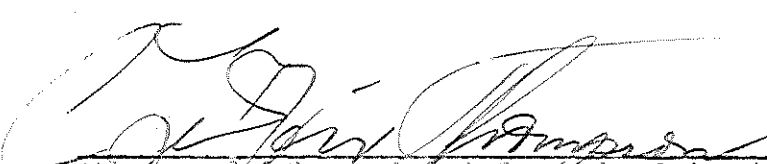
That the said agreement was executed on Sunday, to-wit, November 9, 1952, at which time the said Complainant required, of said Respondent, her signature whereof said agreement is void for having been executed on Sunday.

7.

That the said Valena Birkman is no longer the owner of the property described in the complaint, having conveyed same for a valuable consideration prior to the institution of this action, said conveyance being by warranty deed, same being of record in deed book 210 page 567 in the office of the Judge of Probate of Baldwin County, Alabama, having been filed therein on July 22, 1954, whereas the said action was not instituted until October 1, 1954.

WHEREFORE THE PREMISES CONSIDERED, your Respondent and Cross-Complainant prays for the following separate and severally:

1. That it be adjudged and decreed that the Complainant and Cross-Respondent be denied the relief prayed for in said original complaint.
2. That this Honorable Court will make and enter a proper order or decree directing said Complainant and Cross-Respondent to cancel on the record in the office of the Probate Judge of Baldwin County the alleged agreement set forth in the said original complaint, filed in said court, in order that cloud on the title to the property described in said complaint may be removed. And Cross-Complainant prays for such other, further or different relief as in equity and good conscience she may be entitled, as she will ever pray, etc.


Attorney for Respondent & Cross-Complainant.

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Pittman
vs.

Kirkman

FILED

APR 18 1955

ALICE J. DUCK, Register

Refiled: 11/15/55
Alice J. Duck, Register

CECIL PITMAN,
Complainant

-vs-

VALENA KIRKMAN,
Respondent

BOOK 004 PAGE 168
IN THE CIRCUIT COURT OF

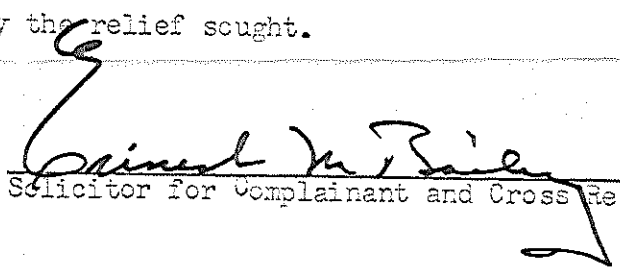
BALDWIN COUNTY, ALABAMA

IN EQUITY

BILL OF EXCEPTIONS TO ANSWER
AND MOTION TO STRIKE THE CROSS BILL

Comes now the Complainant and Cross Respondent in the above styled cause and makes this his exceptions to the respondent's answer and his motion to strike the said cross bill and as grounds therefor set down the following:

1. The allegations of the respondent's answer are prolix, repetitious, impertinent and scandalous.
2. The averments of the respondent's answer are not separated into appropriate sections, corresponding to the sections of the original bill and numbered correspondingly as required by Equity Rule 25.
3. The averments of the answer do not state in short and plain terms a defense to each claim asserted in the original bill as required by Equity Rule 25.
4. The averments of the answer pleads matters of evidence and inferences and conclusions drawn therefrom by the pleader.
5. The allegations contained in the cross bill are prolix, repetitious, impertinent and scandalous.
6. The allegations of the cross bill contain prolix statements and unnecessary and false allegations made to give color to the suit.
7. The allegations of the cross bill pleads matters of evidence and inferences and conclusions drawn therefrom by the pleader.
8. The allegations of the cross bill do not state a clear, orderly and unambiguous statement of the facts of convenient length for answering as required by the Equity Rules.
9. The Prayer for Relief does not contain a Prayer for Process to issue against the respondent to be bound by the relief sought.


Solicitor for Complainant and Cross Respondent

CECIL PITTMAN,
COMPLAINANT,
VS
VALERA KIRKMAN,
RESPONDENT.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY

TO THE HONORABLE H. F. RAIL, JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY,
ALABAMA, IN EQUITY SITTING:

Comes the Respondent and for answer to the petition filed in said cause
shows unto this Honorable Court as follows:

1.

As to Count One she admits the allegations therein.

2.

As to Count Two she denies the allegations therein.

3.

As to Count Three she denies the allegations therein.

4.

As to Count Four she denies the allegations therein.

And your Respondent further shows unto this Honorable Court in answer
unto the allegations of Counts 2, 3 and 4 of said complaint separately and
severally as follows:

5.

Your Respondent shows unto this Honorable Court that on the 27th day
of January, 1929 she was married to Chester A. Reed, at 654 St. Michael
Street, Mobile, Alabama, at the Emanuel Parsonage by Rev. C. D. Hayden, Minister,
and attaches hereto a photostatic copy of said marriage certificate and makes
same a part hereof. And your Respondent further shows unto this Honorable
Court that said marriage bonds still existed at the time the action alleged
herein arose.

6.

That, on to-wit, Sunday, November 9th, the said Complainant, Cecil Pittman,
a white man, came to the home of your Respondent and instructed her to get
into his station wagon, following which he drove from her home to that of Mr.
H. A. Chamberlin where Mrs. Roberta McQue was giving a party. From the side of
the party the said Cecil Pittman, a white man, drove your Respondent then to
his office where he handed her the agreement with instructions to sign it and
that being of the Negro race, that the Respondent obeyed because the said
Cecil Pittman was a white man.

7.

That the said Respondent was the wife of the said Chester A. Reed, on the date, to-wit, November 10, 1952, when the said Complainant alleges that he obtained the said Respondent's signature to an agreement to convey certain real property as alleged in the complaint herein, wherefore said agreement is void. Inasmuch as the said agreement does not bear the signature of the said husband, Chester A. Reed, as required by the 1940 Code of Alabama, as amended, restricting the conveyance of real property by a wife, nor does the said Complainant herein allege that he obtained the signature of the said husband, Chester A. Reed, to the alleged agreement to convey certain real property owned by the within named, Valena Kirkman, wife of the said Chester A. Reed, said alleged agreement to convey is void.

8.

That the said agreement was executed on Sunday, to-wit, November 9, 1952, at which time the said Complainant required, of said Respondent, her signature whereof said agreement is void for having been executed on Sunday.

9.

That undue influence was used by the Complainant against the Respondent to require her signature, because your Complainant is a white man whereas the Respondent is a Negro woman of slight stature and without much education, and she was not informed as to the contents of the agreement on that particular Sunday, to-wit, November 9, 1952, when she was called upon to execute said agreement.

10.

That the said Complainant, a white man, the said Cecil Pittman left town on the morning of November 10th and according to the Respondent's information left the State for an extended tour, remaining out of the State for some time the exact time which is unknown to your Respondent. That the said Petitioner Cecil Pittman, advised your Respondent not to discuss her signature to this paper when he carried her home on that certain Sunday, November 9th.

11.

That your Respondent did not discuss her signature to said paper for some days because of said warning but that overcoming said fear she showed the paper to a white person of good character, who informed her that she had executed an agreement to dispose of certain real property, whereupon your Respondent returned to the said Cecil Pittman, a white man, the sum of One Hundred (\$100.00) Dollars, in money by a registered mail, receipt No. 1067, together with a letter prepared by a white person of good character in words

and figures as follows which your Respondent signed.

BOOK 004 PAGE 172

Fairhope, Alabama
January 6, 1953.

Mr. Cecil Pittman
Fairhope, Alabama

Dear Mr. Pittman:

You will find enclosed the \$100.00 (one hundred dollars) bill which you gave to me on November 9, (Sunday), 1952 and the papers which were signed on this same day and dated November 10, 1952.

This is not my agreement and not the price I quoted to you for this property and I cannot accept this amount. I find it will be necessary for me to have an advisor and if you are willing to come to our terms, I will consider your offer.

Yours very truly,

Valena Kirkman

12.

That the said property described in the alleged agreement and also in the petition filed in said cause was of a value exceeding Twenty-five Thousand (\$25,000) Dollars at the time of the alleged agreement and that said consideration set forth in the alleged agreement in the amount of Seven Thousand (\$7,000) Dollars is grossly inadequate and your Respondent further shows unto this Honorable Court that to require specific performance for the said sum of Seven Thousand (\$7,000) Dollars would constitute a fraud on your Respondent.

And now having answered said complaint your Respondent and Cross-Complainant does by this Cross-Complaint show unto this Honorable Court as follows:

1.

That the said Cecil Pittman, a white man, did by coercion and intimidation require your Respondent and Cross-Complainant, a Negro woman to execute the alleged contract set forth in the original complaint in this cause and that your Cross-Complainant having promptly returned to said Cecil Pittman the said One Hundred (\$100.00) Dollars deposited with her by the said Cecil Pittman approximately two years prior to the time of this action.

2.

That said property generally described in said complaint is of great value having been worth over Twenty-Five Thousand (\$25,000) Dollars at the time the alleged transaction took place, wherefore the alleged Seven Thousand (\$7,000) Dollars is insufficient to constitute a reasonable compensation for the value of said property.

10

3.

That the allegations contained in the alleged agreement filed herein were not agreed to by your Respondent and Cross-Complainant and your Respondent and Cross-Complainant was not aware of the contents of said instrument at the time she signed it, the said Cecil Pittman having made an offer for said property and your Respondent having refused said offer there was no meeting of the minds as alleged in said agreement.

And further that the said Cecil Pittman, a white man, has filed for record as a cloud on the title of your Cross-Complainant's property the alleged agreement as attached to the original complaint herein.

4.

That at the time the alleged agreement was executed your Cross-Complainant was the lawful wife of Chester A. Reed, and that the Chester A. Reed, husband of the Cross-Complainant did not execute the said agreement to convey, wherefore the said agreement to convey is void.

6.

That the said agreement was executed on Sunday, to-wit, November 9, 1956, at which time the said Complainant required, of said Respondent, her signature whereof said agreement is void for having been executed on Sunday.

WHEREFORE THE PREMISES CONSIDERED Cross-Complainant prays that the said Complaint filed herein will be denied by this Honorable Court and further that this Honorable Court will order and direct said Complainant to cancel on the record in the Office of the Probate Judge of Baldwin County the alleged agreement filed therein in order that the cloud on the title to your Cross-Complainant's property may be removed. And Cross-Complainant prays for such other, further or different relief as in equity and good conscience she may be entitled, as she will ever pray, etc.

C. L. Thompson
Attorney for Respondent & Cross-Complainant.

Severice Russell
E. M. Bailey
Attorneys for Plaintiff

CECIL PITMAN,
Complainant

vs.

VALENA KIRKMAN,
Respondent

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IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY

AMENDMENT TO BILL OF COMPLAINT

This day came the Complainant by attorney and by leave of the Court first had and obtained amends the Complaint heretofore filed in the above styled cause by adding ANNIE MAE ALLEN as a party Respondent and other amendments so that the same shall read as follows:

CECIL PITMAN,
Complainant

vs.

VALENA KIRKMAN and
ANNIE MAE ALLEN,
Respondents

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IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY

To the Honorable Judges of the Circuit Court of Baldwin County,
in Equity Sitting:

Comes your Complainant, CECIL PITMAN, and respectfully represents and shows unto the Court as follows:

1.

That he is over the age of twenty-one years and is a resident of Baldwin County, Alabama; that the Respondents, VALENA KIRKMAN and ANNIE MAE ALLEN, are over the ages of twenty-one years and are also residents of Baldwin County, Alabama.

2.

That heretofore on, to-wit, December 10th, 1952, the Complainant did enter into a certain contract in writing with the Respondent, VALENA KIRKMAN, by which the Complainant agreed to buy and the Respondent agreed to sell that certain real estate situated in the City of Fairhope, County of Baldwin, State of Alabama, and described as follows, to-wit:

5

All that parcel belonging to Valena Kirkman that fronts Second Aveune (Church Street) being 300 feet more or less and running eastwardly to Section Street and fronting Section Street 300 feet more or less; also, a small parcel lying East of Section Street. The entire tract containing eleven (11) acres, more or less.

That there is hereto attached and made a part hereof and identified as Exhibit "A" hereto, a true and correct copy of the said contract above referred to for the sale of said property.

3.

Complainant further avers and shows unto the Court that he is now, and has been at all times since the date of said contract, ready, willing and able to carry out and perform the terms, provisions, and obligations of said contract, and to comply in all respects with his part of the contract; that he has offered to perform the same and has demanded of said Respondent that she do perform and carry out her said contract with Complainant; but that said Respondent has failed and refused to do and perform said contract.

4.

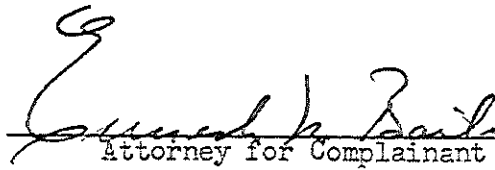
Complainant further avers and shows unto the Court that he is entitled to the specific performance of said contract on the part of said Respondent.

5.

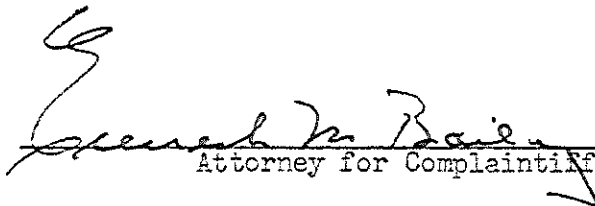
Complainant further avers that on, to-wit, July 22, 1954, the Respondent VALENA KIRKMAN entered into an agreement whereby she conveyed, among other things, the property described above to the Respondent ANNIE MAE ALLEN, said conveyance being by warranty deed, same being on record in Deed Book 210, page 567, in the Office of the Judge of Probate, Baldwin County, Alabama, and that on and prior to the execution of the deed as aforesaid the Complainant informed the Respondent that he intended to enforce specific performance of the contract to convey said land, and that prior to the execution of the deed your Complainant had filed in the Office of the Judge of Probate of Baldwin County, Alabama a copy of the contract to convey such lands; that a confidential relationship existed between the said Respondent VALENA KIRKMAN and the Respondent ANNIE MAE ALLEN and the conveyance of the property by the Respondent, VALENA KIRKMAN, was accomplished for the purpose of depriving the Complainant of all his rights and reliefs before this Honorable Court.

The premises considered, Complainant makes the said VALENA KIRKMAN and the said ANNIE MAE ALLEN party Respondents to this Bill of Complaint, and in order that Complainant may have the relief hereinafter prayed for, may it please Your Honor to cause the State's Writ of Subpoena to be issued on this Bill of Complaint, commanding them to plead, answer or demur to this Bill of Complaint within time allowed by

law and the rule of this Honorable Court, for failing therein that a decree pro confesso be taken against them. Complainant prays that upon final hearing of this cause Your Honor will make and enter an order for decree holding that the said deed as aforesaid to be NULL AND VOID and will cancel the deed and restore the property to the Respondent VALENA KIRKMAN, and upon the hearing hereof may it please the Court to order and direct the specific performance of said contract heretofore mentioned in this Bill of Complaint in all respects as herein provided, and further, that the Court order and direct the execution of a deed by said Respondent, VALENA KIRKMAN, conveying said real estate herein above described to the Complainant, upon payment by the Complainant of the purchase price which he herewith offers to pay; and he offers to do equity in the premises. And Complainant prays for such other, further, general, special, or different relief as may seem meet and proper, and the facts of the case justify and, as in duty bound Complainant will ever pray.


Attorney for Complainant

I certify that I have served a copy of the within by mailing a copy thereof to LeNoir Thompson, Attorney of Record, for the Respondent, VALENA KIRKMAN, this 28th day of April, 1955.


Attorney for Complainant

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STATE OF ALABAMA)
BALDWIN COUNTY)

BOOK 004 PAGE 176

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon VALENA KIRKMAN to appear within thirty days from the service of this writ in the Circuit Court to be held for said County, Equity Side, then and there to answer the Bill of Complaint filed against her by CECIL PITMAN.

Dated this 1st day of Oct, 1954.

Deice J. Duck
Register

CECIL PITMAN,
Complainant
vs.
VALENA KIRKMAN,
Respondent

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY

To the Honorable Judges of the Circuit Court of Baldwin County,
in Equity Sitting:

Comes your complainant, CECIL PITMAN, and respectfully represents
and shows unto the Court as follows:

1.

That he is over the age of twenty-one years and is a resident of
Baldwin County, Alabama; that the respondent, VALENA KIRKMAN, is over the age
of twenty-one years and is also a resident of Baldwin County, Alabama.

2.

That heretofore on, to-wit, December 10th, 1952, the complainant
did enter into a certain contract in writing with the respondent by which the
complainant agreed to buy and the respondent agreed to sell that certain real
estate situated in the City of Fairhope, County of Baldwin, State of Alabama,
and described as follows, to-wit:

From N. E. Corner 19-6-2 Run South 1433 feet from
point of beginning then North along South side
Kirkman Lane 1455 feet to Church Street or Second
Avenue. Then South 37° 17 ' West 330 feet, then
South 57° East 1725 feet to East Line Section 19,
then North 390 feet to Beginning, Section 19, Town-
ship 6, Range Two East, being 11.3 acres more or less.

That there is hereto attached and made a part hereof and identified
as "Exhibit A" hereto, a true and correct copy of the said contract above
referred to for the sale of said property.

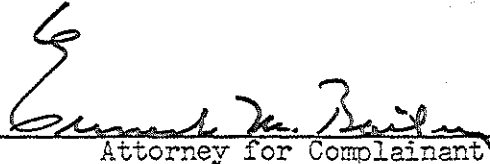
3.

Complainant further avers and shows unto the Court that he is now,
and has been at all times since the date of said contract, ready, willing, and
able to carry out and perform the terms, provisions, and obligations of said
contract and to comply in all respects with his part of the contract; that he
has offered to perform the same and has demanded of said respondent that she
do perform and carry out her said contract with complainant; but that said
respondent has failed and refused to do and perform said contract.

4.

Complainant further avers and shows unto the Court that he is entitled to the specific performance of said contract on the part of said respondent.

Wherefore, the premises considered, complainant makes the said VALENA KIRKMAN party respondent to this his bill of complaint and in order that he may have the relief hereinafter prayed for, he prays that the State's writ of subpoena may be issued, directed to said respondent requiring her to appear and plead, answer or demur to this bill of complaint within the time required by law and the rules of this Honorable Court; and upon the hearing hereof may it please the Court to order and direct the specific performance of said contract by said respondent in all respects as therein provided, and further that the Court order and direct the execution of a deed by said respondent, conveying said real estate hereinabove described to the complainant, upon payment by the complainant of the purchase price which he herewith offers to pay; and he offers to do equity in the premises. And complainant prays for such other, further or different relief as in equity and good conscience he may be entitled, as he will ever pray, etc.


Attorney for Complainant

BOOK 004 PAGE 178

EXHIBIT A

C
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Y

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Y

Book 012 Page 249

OFFER TO PURCHASE

AGENT:

DATE: 11/10/52

We agree to purchase the property known as: All that parcel belonging to Valena Kirkman That fronts Second Ave. (Church Street) being 300 feet more or less and running eastwardly to Section St. and fronting Section St. 300 ft. more or less; also a small parcel lying East of Section St. The entire tract containing eleven (11) Acres more or less.

Consideration: \$7,000.00

Terms: Cash or, at seller's option, 29% down and the balance on three equally divided yearly payments. The unpaid balance to draw int. 5% Annum. It is understood that a good and marketable title is to be furnished and deal is to be closed within 30 days from receipt of abstract to date.

Taxes, rents, insurance, and interest prorated to possession date.

Possession to be given upon delivery of deed which will be upon payment of down payment or cash payment whichever seller elects.

We hereby deposit with Valena Kirkman \$100.00 as earnest money, receipt of which is hereby acknowledged, to apply on the purchase price. Said earnest money shall be returned to us upon demand if this offer to purchase is not accepted by the owner within one (1) days from the date hereof, or, upon acceptance by the owner, shall be forfeited as liquidated damages if we fail to comply with the above terms.

(signed)

(SEAL)

Buyer
Cecil Pitman

(SEAL)

Buyer

(signed)

Leanora D. Niemeyer

ACCEPTANCE

The foregoing offer is hereby accepted by us this 10th day of November, 1952

(signed)

Owner
Valena Kirkman

Owner

Witness:

(signed)

Leanora D. Niemeyer

CERTIFIED TRUE COPY

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