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BOOK 018 PAGE 195

STATE OF ALABAMA

BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA, GREETINGS:

WE COMMAND YOU, that you summon C. D. Sweat, whose place of residence is Robertsedale, Baldwin County, Alabama, and the State Bank of Elberta, a state banking corporation, with its principal place of business in Elberta, Baldwin County, Alabama, to be and appear before the Judge of the Circuit Court of Baldwin County, Alabama, exercising Chancery jurisdiction within thirty days after the service of summons, and there to answer, plead or demur, without oath, to a bill of complaint lately exhibited by Baldwin Supply Company, a co-partnership, composed of Michael W. Baldwin and William F. Baldwin, against the said C. D. Sweat and the State Bank of Elberta, and further to do and perform what said Judge shall order and direct in that behalf and this the defendants shall in no wise omit, under penalty of the law; and we further command that you return this writ, with your endorsement thereof, to our said court immediately upon the execution thereof.

WITNESS, Alice J. Duck, Register of said Circuit Court,
this the 5th day of October, 1954.

Alice J. Duck
Register

BILL OF COMPLAINT

BALDWIN SUPPLY COMPANY, a
co-partnership, composed
of Michael W. Baldwin and
William P. Baldwin,

Complainant,

VS

C. D. SWEAT, and the STATE
BANK OF ELBERTA, a state
banking corporation,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

IN EQUITY

BOOK
018
PAGE 195

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

Comes Baldwin Supply Company, a co-partnership, composed of
Michael W. Baldwin and William P. Baldwin, doing business under the
laws of the State of Alabama, and humbly complaining against C. D.
Sweat and the State Bank of Elberta, a state banking corporation,
with its principal place of business at Elberta, Baldwin County, Ala-
bama, respectfully shows unto your Honor as follows:

FIRST

That your complainant, Baldwin Supply Company, is a co-partner-
ship, composed of Michael W. Baldwin and William P. Baldwin, organized
and doing business under the laws of the State of Alabama, with its
principal place of business at Robertsdale, Baldwin County, Alabama;
that the defendant, C. D. Sweat is over the age of 21 years and is a
resident of Robertsdale in Baldwin County, Alabama; that the defendant,
the State Bank of Elberta is a state banking corporation, organized
under the laws of the State of Alabama, with its principal place of
business in Elberta, Baldwin County, Alabama.

SECOND

That the defendant, C. D. Sweat, is the owner of Lots numbered
18 and 19 of Block 2, Robertsdale Terrace as per map thereof recorded
in Map Book 3, page 36, in the office of the Judge of Probate of
Baldwin County, Alabama, on which said property the defendant, the
State Bank of Elberta, claims to hold a mortgage, which said instrument
is dated October 16, 1953, recorded in Mortgage Book 230, pages 41-2,
in the amount of \$5,000.

THIRD

That on March 29, 1954, and prior thereto, the complainant furnished to the defendant, C. D. Sweat, upon the request of the said C. D. Sweat, lumber, paint, ceiling and various other miscellaneous building materials of the price and value of \$1052.28, to be used in the construction of a residence upon the above named lots in Roberts-dale Terrace, and such was used in the construction of said residence which was built on said property by the said defendant, C. D. Sweat; that said amount was due and payable from the said defendant, C. D. Sweat, on April 10, 1954.

FOURTH

That on to-wit, June 3, 1954 and July 14, 1954, the complainant filed in the office of the Judge of Probate of Baldwin County, Alabama, verified statements of liens in the principal amount of \$655.78 and \$396.50, copies of which are attached hereto, marked Exhibits "A" and "B", respectively, and made a part of this bill of complaint as though fully incorporated herein, which said statements are recorded in Exemptions and Liens Book 5, page 41 and Exemptions and Liens Book 5, page 57 of the records in the Probate Court of Baldwin County, Alabama; that on to-wit, the 25th day of August, 1954, the complainant, Baldwin Supply Company, a co-partnership, by Michael W. Baldwin, its manager, filed in the office of the Judge of Probate of Baldwin County, Alabama, an amended lien to secure the total indebtedness of \$1052.28, with interest thereon from April 10, 1954, which said lien was claimed separately and severally as to both the building and improvements thereon, and the said lands; that said amended lien, dated August 25, 1954, recorded Exemptions and Liens Book 5 page 69-70, was filed for the purpose of correcting the two former liens, dated June 3, 1954 and July 14, 1954, a copy of which said claim of lien last filed is hereto attached, marked Exhibit "C", and made a part of this bill of complaint.

FIFTH

That the complainant, Baldwin Supply Company, a co-partnership, claims of the defendant, C. D. Sweat, \$1052.28, due from said C. D. Sweat, for lumber, paint, ceiling and various other miscellaneous building materials sold by said complainant to the said defendant,

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C. D. Sweat, at the request of said defendant, C. D. Sweat, for the construction of said residence, which material was used for the construction of said residence on said lots 18 and 19 in Robertsdale Terrace, on to-wit, the 10th day of April, 1954, which sum of money with interest thereon is still unpaid.

SIXTH

Complainant further alleges that the mortgage claimed by the State Bank of Elberta is void and is not a valid lien against the said lots and the building thereon, separately and severally in that:

1. There was never any indebtedness owing under the said mortgage.
2. The said mortgage has been paid in full.
3. That at the time of the execution of the said mortgage, there was no house on the above described lots, and that the materials for which this action is brought were used in the construction of the building on the said lots, and greatly increased the value thereof, and the monies owing to this complainant and the lien of this complainant is prior and superior to any lien the said State Bank of Elberta may have on said building, and any lien which the said State Bank of Elberta may have on the said lots and building is subject and junior to the claim and lien of the complainant in this cause as to the building on the above described lots.

WHEREFORE, your complainant prays this Honorable Court take jurisdiction of the cause made by this Bill of Complaint and make the said C. D. Sweat and the said State Bank of Elberta parties defendant hereto, and by appropriate process require them to plead, answer or demur to this bill of complaint within the time and under the pains and penalties prescribed by law and the practice of this Honorable Court.

Complainant further prays that upon a final hearing of this cause, this Honorable Court will make and enter an order and decree adjudging and decreeing that the said defendant, C. D. Sweat, is indebted to the said complainant in the sum of \$1052.28, together with interest thereon from the 10th day of April, 1954, at the rate of

percent (6%); that the complainant, Baldwin Supply Company, a co-partnership, has a lien both separately and severally as to the building and improvements on said lots and said lands, in the sum of \$1052.28, together with interest thereon from April 10, 1954, for the security and satisfaction thereof and that such lien has priority over the mortgage to the said State Bank of Alberta, a corporation, defendant, that the same be required to be cancelled and that the said building and lots be ordered sold in the manner provided by title 33, section 38, of the 1940 Code of Alabama, and the proceeds be applied to the payment of the indebtedness owing by the said C. D. Sweat to this complainant.

Complainant further prays for such other, further or different relief to which it may be equitably entitled, the premises considered.

Beebe & Swearingen
by F. D. Swearingen
Solicitors for complainant

"EXHIBIT A"

EX 018 and 200

STATE OF ALABAMA

BALDWIN COUNTY

Baldwin Supply Company, a partnership, with its principal place of business at Robertsdale in Baldwin County, files this statement in writing, verified by the oath of Michael Baldwin; who has personal knowledge of the facts herein set forth;

The said Baldwin Supply Company claims a lien on the following described property situated in Robertsdale in Baldwin County, Alabama, to-wit: Lots 18 and 19 in Block 2 of Robertsdale Terrace as per map thereof recorded in Map Book 3, page 36 in the office of the Judge of Probate of Baldwin County, Alabama.

This lien is claimed, separately and severally, as to both the buildings and improvements thereon, and the said lands. The said lien is claimed to secure an indebtedness of \$655.78, with interest thereon from March 1, 1954, for materials furnished by Baldwin Supply Company for the construction of a residential building on the said lands. The name of the owner of the said property is C. D. Sweat, Robertsdale, Baldwin County, Alabama.

Baldwin Supply Company, a
partnership

by Sd/ Michael Baldwin
Its Manager

STATE OF ALABAMA

BALDWIN COUNTY

Before me, a Notary Public in and for said County and State, personally appeared Michael Baldwin, who being by me first duly sworn doth depose and say: that he has personal knowledge of the facts set forth in the foregoing statement of lien and that the same are true and correct to the best of his knowledge and belief.

Sd/ Michael Baldwin

Sworn to and subscribed before me on this the 3rd day of June, 1954.

Sd/ Floyd G. Swearingen
Notary Public, State of Alabama
at large

Filed: June 3, 1954

Recorded: Exemptions and Liens Book 5,
page 41

(SEAL)

"EXHIBIT B"

STATE OF ALABAMA

BOOK 018 p. 201

BALDWIN COUNTY

Baldwin Supply Company, a partnership, with its principal place of business at Robertsdale in Baldwin County, files this statement in writing, verified by the oath of Michael Baldwin, who has personal knowledge of the facts herein set forth;

The said Baldwin Supply Company claims a lien supplemental and in addition to the lien filed in the office of the Judge of Probate of Baldwin County, June 3, 1954, recorded in Exemptions and Liens Book 5 at page 41, on the following described property situated in Robertsdale in Baldwin County, Alabama, to-wit: Lots 18 and 19 in Block 2 of Robertsdale Terrace as per map thereof recorded in Map Book 3, page 36 in the office of the Judge of Probate of Baldwin County, Alabama.

This lien is claimed, separately and severally, as to both the building and improvements thereon, and the said lands. The said lien is claimed to secure an indebtedness of \$396.50, with interest thereon from March 15, 1954, for materials furnished by Baldwin Supply Company for the construction of a residential building on the said lands. The name of the owner of the said property is C. D. Sweat, Robertsdale, Baldwin County, Alabama.

Baldwin Supply Company, a
partnership

by Sd/ Michael Baldwin
Its Manager

STATE OF ALABAMA

BALDWIN COUNTY

Before me, a Notary Public in and for said County and State, personally appeared Michael Baldwin, who being by me first duly sworn doth depose and say: that he has personal knowledge of the facts set forth in the foregoing statement of lien and that the same are true and correct to the best of his knowledge and belief.

Sd/ Michael Baldwin

Sworn to and subscribed before me on this the 14 day of
July, 1954.

(SEAL)

Sd/ F. G. Swearingen
Notary Public, State of Alabama
at Large

Filed: July 14, 1954

Recorded: Exemptions and Liens Book 5, page 57.

"EXHIBIT C"

BOOK 018 PAGE 202

STATE OF ALABAMA

BALDWIN COUNTY

WHEREAS, heretofore on to-wit: the 3rd day of June, 1954, and July 14, 1954, Baldwin Supply Company, a co-partnership, by Michael Baldwin, its manager, filed in the office of the Judge of Probate of Baldwin County, Alabama, in Exemption & Lien Book 5, page 41, and Exemption & Lien Book 5, page 57, claim of line on Lots 18 and 19 of Block 2, Robertsdale Terrace as per map thereof recorded in Map Book 3, page 36, in the office of the Judge of Probate of Baldwin County, separately and severally, both as to buildings and improvements thereon, and the said lands, for materials furnished by Baldwin Supply Company for the construction of a residential building on the said lands, one in the sum of \$655.78, and the other in the sum of \$396.50, claiming interest from March 1, 1954 on one, and on the other from March 15, 1954, both said claims constitution one transaction; and

WHEREAS, the certificates were in error as to the due date of the said account, the last transaction in the furnishing of the materials for such building was on March 29, 1954 and the whole of the said account, under both said liens was due April 10, 1954, and should and do bear interest from April 10, 1954;

NOW THEREFORE, to correct the clerical error in the dates of the aforesaid claims of lien the Baldwin Supply Company files this amended claim of lien and the Baldwin Supply Company, a co-partnership, with its principal place of business at Robertsdale in Baldwin County, files this statement in writing, verified by the oath of Michael Baldwin, who has personal knowledge of the facts herein set forth;

The said Baldwin Supply Company claims a lien on the following described property situated in Robertsdale in Baldwin County, Alabama, to-wit: Lots 18 and 19 in Block 2 of Robertsdale, Terrace as per map thereof recorded in Map Book 3, page 36 in the office of the Judge of Probate of Baldwin County, Alabama.

This lien is claimed, separately and severally, as to both the buildings and improvements thereon, and the said lands. The said lien is claimed to secure an indebtedness of \$1052.28, with interest thereon from April 10, 1954, for materials furnished by Baldwin Supply Company for the construction of a residential building on the said lands. The name of the owner of the said property is C. D. Sweat, Robertsedale, Baldwin County, Alabama.

Baldwin Supply Company, a
co-partnership.

By Sd/ Michael Baldwin
Its Manager

STATE OF ALABAMA

BALDWIN COUNTY

Before me, a Notary Public in and for said County and State, personally appeared Michael Baldwin, who being by me first duly sworn doth depose and say: that he has personal knowledge of the facts set forth in the foregoing statement of lien and that the same are true and correct to the best of his knowledge and belief.

Michael Baldwin

Sworn to and subscribed before me on this the 25 day of August, 1954.

Sd/ Floyd G. Swearingen
Notary Public, State of Alabama
at large.

SEAL

Filed: August 25, 1954
Recorded: Ex. and Lien Book 5, page 69-70

BALDWIN SUPPLY COMPANY, a
co-partnership, composed
of Michael W. Baldwin and
William P. Baldwin,

Complainant,

VS.

C. D. SWEAT, ET AL,

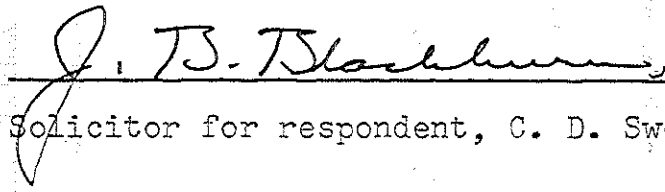
Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY NO. 3376

DEMURRER

Now comes C. D. Sweat, one of the respondents named in the above entitled cause, and for demurrer to that aspect or phase of the said Bill of Complaint whereby complainant is seeking the establishment of a lien, assigns, separately and severally, the following:

1. There is no equity in the Bill of Complaint.
2. The allegations of the Bill of Complaint are vague, indefinite and uncertain.
3. It affirmatively appears from the allegations of the Bill of Complaint that the statement of lien required by Title 33, Section 41 of the 1940 Code of Alabama, was not filed within four months from the date in which the indebtedness referred to therein became due.


Solicitor for respondent, C. D. Sweat.

DEMURRER

BALDWIN SUPPLY COMPANY, a co-
partnership, composed of
Michael W. Baldwin and William P.
Baldwin,

Complainant,

VS.

C. D. SWEAT, ET AL,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY NO. 3376

FILED
NOV 15 1954
ALICE J. DUCK, Register

BALDWIN SUPPLY COMPANY, a
co-partnership, composed
of Michael W. Baldwin and
William P. Baldwin,

Complainant,

VS

C. D. SWEAT, and the STATE
BANK OF ELBERTA, a state
banking corporation,

Defendants

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

IN EQUITY

TO WHOM IT MAY CONCERN:

Notice is hereby given that Baldwin Supply Company, a co-partnership, operating and doing business in Robertsdale, Baldwin County, Alabama, did on this day file a bill of complaint in the Circuit Court of Baldwin County, Alabama, Equity side, against C. D. Sweat, owner, and the State Bank of Elberta, Elberta, Baldwin County, Alabama, alleging that it has and claims a lien upon Lots 18 and 19 of Block 2, Robertsdale Terrace as per map thereof recorded in Map Book 3, page 36, in the office of the Judge of Probate of Baldwin County, Alabama, and the building thereon for materials furnished by Baldwin Supply Company to C. D. Sweat, owner, for and used in the construction of a resident building on the above described Lots, and alleging and claiming that the mortgage claimed by said State Bank of Elberta, dated October 16, 1953, and recorded in the office of the Judge of Probate in Mortgage Book 230, pages 41-2, is void and subject and junior to the lien and claim of Baldwin Supply Company, and praying that the above described lands and the building be sold and the proceeds thereof be applied to the payment of the indebtedness owing by the said C. D. Sweat to the Baldwin Supply Company.

Witness this the 2nd day of Oct., 1954.

STATE OF ALABAMA, BALDWIN COUNTY

Filed 10-9-54 10:30 A.M.

Recorded Ex. + Lin book 5 page 82

J. M. Stewart
Judge of Probate

BALDWIN SUPPLY COMPANY, a co-partnership

Decker Swearing
By J. D. Swearing
Solicitor for Complainant

2533

BALDWIN SUPPLY COMPANY, a
co-partnership, composed
of Michael W. Baldwin and
William P. Baldwin,

Complainant,

VS

C. D. SWEAT, and the STATE
BANK OF ELBERTA, a state
banking corporation,

Defendants

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

IN EQUITY

TO WHOM IT MAY CONCERN:

Notice is hereby given that Baldwin Supply Company, a co-partnership, operating and doing business in Robertsdale, Baldwin County, Alabama, did on this day file a bill of complaint in the Circuit Court of Baldwin County, Alabama, Equity side, against C. D. Sweat, owner, and the State Bank of Elberta, Elberta, Baldwin County, Alabama, alleging that it has and claims a lien upon Lots 18 and 19 of Block 2, Robertsdale Terrace as per map thereof recorded in Map Book 3, page 36, in the office of the Judge of Probate of Baldwin County, Alabama, and the building thereon for materials furnished by Baldwin Supply Company to C. D. Sweat, owner, for and used in the construction of a resident building on the above described Lots, and alleging and claiming that the mortgage claimed by said State Bank of Elberta, dated October 16, 1953, and recorded in the office of the Judge of Probate in Mortgage Book 230, pages 41-2, is void and subject and junior to the lien and claim of Baldwin Supply Company, and praying that the above described lands and the building be sold and the proceeds thereof be applied to the payment of the indebtedness owing by the said C. D. Sweat to the Baldwin Supply Company.

Witness this the 8th day of Oct., 1954.

BALDWIN SUPPLY COMPANY, a co-partnership

By *F. L. Sweasman*
Solicitor for Complainant