

2522

RAYMOND R. KENNEDY, ELIZABETH E. KENNEDY, CHARLES C. HAND, LIZZIE R. STUART, GWENDOLYN THOMAS, WINTERS F. THOMAS, J. E. YOUNG, ERNEST HOLMES, IRME Y. HOLMES, FORREST FOREMAN, HAZEL FOREMAN, D. A. STUART, J. D. HORN, INEZ HORN AND L. D. OWEN, Complainants,
BALDWIN COUNTY, ALABAMA
vs.
DOCTOR PERCY A. BRYANT, MRS. CLAIRE BRYANT, DENNIS LACEY and HONORABLE MAXWELL REID, as Mayor of the Town of Bay Minette, Alabama, Respondents.
IN EQUITY.

Come the Respondents, Doctor Percy A. Bryant, Mrs. Claire Bryant and Dennis Lackey, Respondents in the above styled cause and file this their demurrer to the Bill of Complaint filed in said cause and each and every paragraph thereof separately and severally and assign the following separate and several grounds, viz:

1. That said Bill of Complaint does not state a cause of action.
2. That there is no equity in the Bill of Complaint filed by Complainants in said cause.
3. That it is not alleged that Complainants do not have an adequate remedy at law.

4. That the Complainants fail to offer to do equity.
5. That it is not alleged that the acts complained of are violations of any State or Municipal law or that there will be any injury to the Complainants for which there is not an adequate remedy at law.

The Respondents, Doctor Percy A. Bryant, Mrs. Claire Bryant and Dennis Lackey, assign the following separate and several grounds of demurrer to the following aspects of the Bill of Complaint:

6. As to that aspect of the Bill of Complaint in which the Complainants allege in paragraph 2 that there is no other building located on said lot, said Respondents demur and assign the following separate and several grounds, viz:

(a) That it is immaterial whether there are any other buildings located on said lot.

7. As to that aspect of the Bill of Complaint as set out in paragraph 4 in which it is alleged that according to information obtained orally from the Honorable Maxwell Reid, Mayor, aforesaid, that no building permit has been issued to Doctor Percy A. Bryant or Mrs. Claire Bryant for the erection of a frame structure on Lot No. 4 in Hand Brothers subdivision to the Town of Bay Minette, Alabama, said Respondents demur and assign the following separate and several grounds, viz:

(a) That it is not stated when such information was obtained. (b) That it is not shown that such permit was not obtained before the filing of said Bill of Complaint. (c) That it is not alleged that such building permit was not issued before construction was started on such building..

8. As to that aspect of the Bill of Complaint as set out in paragraph 5 in which it is alleged that all residences within Hand Brothers subdivision and immediately adjacent thereto are of an approximate value of \$7,000.00 to \$9,000.00 and that said residential area is a fine residential area within the corporate limits of the Town of Bay Minette, Alabama, and that it is contrary to the custom and usage in the Town of Bay Minette to erect within said area any building not in keeping with the residences now existing, said Respondents demur and assign the following separate and several grounds, viz:

(a) That it is immaterial what the previous residences cost in said area. (b) That it is not shown that there is any zoning ordinance adopted by the Town of Bay Minette restricting the building which is sought to be erected on said lot. (c) That the cost and usage in the Town of Bay Minette, has no legal value in this cause.

9. As to that aspect of paragraph 5 of the Bill of Complaint in which it is alleged that the value would be materially lowered by the construction of any structure not in accordance with the existing residences in this area, said Respondents demur and assign the following separate and several grounds, viz:

(a) That it is not alleged that said Respondents do not have the right to use their property for any legal purpose.

(b) That it is not alleged that said Respondents are violating any City ordinance in erecting said building.

10. As to that aspect of paragraph 6 of the Bill of Complaint in which it is alleged that petitioners are informed that said structure is being erected for servant quarters and that servant quarters so located will damage sale or rental of petitioners property, said Respondents demur and assign the following separate and several grounds, viz:

(a) That it is not shown that said Respondents do not have the right to erect said building as it is being erected. (b) That the allegation that it will damage the sale or rental of petitioners property is but a conclusion of the pleader. (c) For aught appearing there is no zoning ordinance in the Town of Bay Minette which makes it unlawful for said Respondents to erect said building.

11. As to that aspect of the Bill of Complaint as set out in paragraph 6 in which it is alleged that the location of said structure is nearer to some of petitioners than to Bryants, and that by reason of its location that its occupants cannot be supervised by respondents and resulting confusion arising from servants quarters will further injure petitioners, said Respondents demur and assign the following separate and several grounds, viz:

(a) For aught appearing the Respondents are not violating any law of the State of Alabama or City of Bay Minette, and have the right to erect such structure. (b) That nothing appears to show that it would be necessary to supervise any occupants of such property. (c) That it is not shown that there is any injury to the petitioners.

12. As to that aspect of paragraph 7 of the Bill of Complaint in which it is alleged that there have been developed within the Town of Bay Minette, certain subdivisions suitable for Class A Zones, for one family residences, and that your petitioners own or occupy property within such subdivision, said Respondents demur and assign the following separate and several grounds, viz:

(a) That it is not alleged that such subdivisions have been approved by the City of Bay Minette as Class A Zones. (b) That it is not alleged that there is any zone law in effect in such subdivisions.

13. As to that aspect of paragraph 7 of the Bill of Complaint in which it is alleged that it is customary to erect servant houses in the back yard and on the lot with the residence in certain parts of Bay Minette but no where is it customary to erect such servant houses on other lots, said Respondents demur and assign the following separate and several grounds, viz:

(a) It is not shown that such usage has the effect of law. (b) That it is now shown that the said Respondents have violated any law of the State of Alabama or ordinance of the City of Bay Minette.

14. As to that aspect of paragraph 8 of the Bill of Complaint in which it is alleged that they are erecting a small residence, storehouse or miscellaneous building not in keeping with the other buildings in said area and that this erection is a nuisance, said Respondents demur and assign the following separate and several grounds, viz:

(a) For aught appearing from this allegation, said Respondents have a right to erect such building. (b) This allegation is but a conclusion of the pleader. (c) That it is not alleged that said Respondents are violating any ordinance of the City of Bay Minette.

15. As to that aspect of paragraph 9 of the Bill of Complaint in which it is alleged that such structure is very small and is not on the lot on which the Respondents Bryants live but is nearer the residence of petitioners, said Respondents demur and assign the following separate and several grounds, viz:

(a) That it is not alleged that said Respondents do not have the right to erect such building where they have erected it. (b) That it is affirmatively shown that said building has already been erected. (c) It is not shown that said Respondents violated any law of the State of Alabama or Zone law of the City of Bay

Minette, in the erection of such building.

Chason & Stone

BY:

As Solicitors for Doctor Percy
A. Bryant, Mrs. Claire Bryant
and Dennis Lackey, Respondents.

RAYMOND R. KENNEDY, ET AL,

Complainants

vs.

PERCY A. BRYANT, ET AL.

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY.

The motion filed by W. R. Stuart, as one of the Complainants in the above styled cause on August 10, 1950, which motion was for the purpose of striking the said W. R. Stuart as Complainant in said cause, is hereby granted and the said W. R. Stuart is stricken as a Complainant in the above styled cause.

Dated this 3rd day of November, 1950.

J. J. A. Massberry, Jr.
Judge.

RAYMOND R. KENNEDY, ET AL.

Complainants,

vs.

PERCY A. BRYANT, ET AL.

Respondents.

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

The motion filed by Charles C. Hand, Lizzie R. Stuart, Gwendolyn Thomas, Winters F. Thomas, J. E. Young, Ernest Holmes, Irene Y. Holmes, Forrest Foreman, Hazel Foreman, D. A. Stuart, J. D. Horn, Inez Horn and L. D. Owen, as Complainants in the above styled cause on November 1, 1950, which motion was for the purpose of striking the said Charles C. Hand, Lizzie R. Stuart, Gwendolyn Thomas, Winters F. Thomas, J. E. Young, Ernest Holmes, Irene Y. Holmes, Forrest Foreman, Hazel Foreman, D. A. Stuart, J. D. Horn, Inez Horn and L. D. Owen as Complainants in said cause, is hereby granted and the said Charles C. Hand, Lizzie R. Stuart, Gwendolyn Thomas, Winters F. Thomas, J. E. Young, Ernest Holmes, Irene Y. Holmes, Forrest Foreman, Hazel Foreman, D. A. Stuart, J. D. Horn, Inez Horn and L. D. Owen are stricken as Complainants in the above styled cause.

Dated this 3rd day of November, 1950.

Julian J. Maslowski Jr.
Judge.

RAYMOND R. KENNEDY, etal,
Complainants

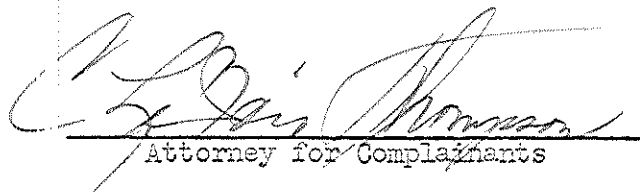
VS

PERCY A. BRYANT, etal,
Respondents

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY

MOTION

Comes Complainants, Charles C. Hand, Lizzie R. Stuart, Gwendolyn Thomas, Winters F. Thomas, J. E. Young, Ernest Holmes, Irene Y. Holmes, Forrest Foreman, Hazel Foreman, D. A. Stuart, J. D. Horn, Inez Horn and L. D. Owen, in the above styled cause by his attorney, C. LeNoir Thompson, and moves to strike from the style of said cause and from paragraph one of said bill of complaint the names of Charles C. Hand, Lizzie R. Stuart, Gwendolyn Thomas, Winters F. Thomas, J. E. Young, Ernest Holmes, Irene Y. Holmes, Forrest Foreman, Hazel Foreman, D. A. Stuart, J. D. Horn, Inez Horn and L. D. Owen, as Complainants thereto.


Attorney for Complainants

C. LeNoir Thompson
Attorney-At-Law
Bay Minette, Alabama

November 1, 1950

Mr. and Mrs. Raymond R. Kennedy
Bay Minette, Alabama

re: KENNEDY etal

VS

BRYANT etal

Dear Folks:

I have upon the instructions of the other complainants in this cause move the court to strike their names as complainants.

This will leave you in the cause as complainants and I am withdrawing from the case because I was not paid the fee agreed upon.

I suggest that you obtain other counsel to represent you in this matter.

Sincerely,



CLT/lp

Copy to: Judge Telfair J. Mashburn Jr.
Register in Chancery

FILED

NOV 1 1950

MAILED
NOV 1 1950

RAYMOND R. KENNEDY, et al,

Complainants

Vs

PERCY A. BRYANT, et al,

Respondents

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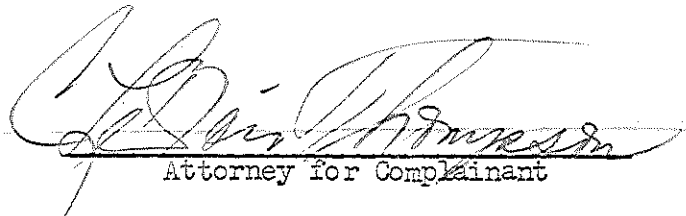
IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY

MOTION

Comes Complainant, W. R. Stuart, in the above styled cause by his attorney, C. LeNoir Thompson, and moves to strike from the style of said cause and from paragraph one of said bill of complaint the name of W. R. Stuart, as Complainant thereto.


Attorney for Complainant

RAYMOND R. KENNEDY, ELIZABETH E. KENNEDY,
CHARLES C. HAND, LIZZIE R. STUART, W. R.
STUART, GWENDOLYN THOMAS, WINTERS F. THOMAS,
J. E. YOUNG, ERNEST HOLMES, IRENE Y. HOLMES,
FORREST FOREMAN, HAZEL L. FOREMAN, D. A. STUART,
J. D. HORN, INEZ HORN and L. D. OWEN,

Complainants

vs

DOCTOR PERCY A. BRYANT, MRS. CLAIRE BRYANT,
DENNIS LACKEY and HONORABLE MAXWELL REID,
as MAYOR of the Town of Bay Minette, Alabama,

Respondents

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY

TO THE HONORABLE TELFAIR J. MASBURN, JR., JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY,
ALABAMA, IN EQUITY SITTING:

Your Petitioners, Raymond R. Kennedy, Elizabeth E. Kennedy, Charles C. Hand,
Lizzie R. Stuart, W. R. Stuart, Gwendolyn Thomas, Winters F. Thomas, J. E. Young, Ernest
Holmes, Irene Y. Holmes, Forrest Foreman, Hazel L. Foreman, D. A. Stuart, J. D. Horn,
Inez Horn and L. D. Owen, of Bay Minette, Alabama showeth:

1.

That your Petitioners are residents of the State of Alabama and of the Town
of Bay Minette, Alabama; and all of your Petitioners are over the age of twenty-one
years of age.

That Doctor Percy A. Bryant and Mrs. Claire Bryant are residents of the Town
of Bay Minette, Alabama, over the age of twenty-one years and the owners of Lot No. 4,
being a lot located in the Hand Brothers subdivision of the Town of Bay Minette, Alabama,
as well as other lots located in said subdivision.

2.

That the said Dennis Lackey is employed by Dr. Percy A. Bryant and/or Mrs.
Claire Bryant in the construction of a small frame building on Lot No. 4 in Hand
Brothers subdivision of the Town of Bay Minette, Alabama, and that there is no other
building located on said Lot No. 4, which lot fronts on Hand Avenue, in the town of
Bay Minette.

3.

That Maxwell Reid is the Mayor of the municipality incorporated under the
laws of the State of Alabama, as the Town of Bay Minette.

That said municipality has an ordinance, to-wit: No. 433 of the Town of
Bay Minette enacted May 6, 1941, containing Section 2 thereof which provides in
substance that no building or structure shall be erected within the corporate limits
of the Town of Bay Minette, Alabama without first obtaining from the Mayor of said
Town a building permit.

4.

Your Petitioners aver and show to the court that according to information obtained orally from the Honorable Maxwell Reid, Mayor, aforesaid that no building permit has been issued to Doctor Percy A. Bryant or Mrs. Claire Bryant for the erection of a frame structure on Lot No. 4 in Hand Brothers subdivision to the Town of Bay Minette, Alabama.

5.

Your Petitioners further aver and show thereto the court that within the Hand Brothers subdivision and immediately adjacent thereto all residences are of an approximate value from Seven Thousand and no/100 Dollars to Nine Thousand and no/100 Dollars and that said residential area is a fine residential area within the corporate limits of the Town of Bay Minette, Alabama. That it is contrary to the custom and usage in the Town of Bay Minette to erect within said area any building not in keeping with the residences now existing and that great and material damage would come to the owners of property within said area or adjacent thereto, if such be done. That its value would be materially lowered by the construction of any structure not in accordance with existing residences, in this exclusive and popular residential area.

6.

Your Petitioners further aver that they are informed that said structure is being erected for servants' quarters, and that servants' quarters so located, will damage the sale or rental of your Petitioners' property.

That the location of said structure on Lot No. 4, aforesaid is nearer to some of your Petitioners, than to Respondents Bryants. Your Petitioners further aver that by reason of the location of said structure complained of, that its occupants can not be closely supervised by Respondents Bryants and resulting confusion arising from servants' quarters will further injure your Petitioners, who own or occupy property in and adjacent to said subdivision to their material damage.

7.

That your Petitioners further aver and show unto your Honor that there have been developed within the Town of Bay Minette certain subdivisions, suitable for Class A. Zones, for one-family residences, and that your Petitioners own or occupy property within such subdivision. Your Petitioners further aver that it is customary to erect servant houses in the back yards and on the lot with the residence in certain parts of Bay Minette, but no where within the corporate limits of the town is it custom or usage to purchase lots alongside of other property owners, with fine homes approximating those existing in said Hand Brothers subdivision, and erect thereon servant houses at a point

closer to the neighbors than to the master's house, such as Respondents Bryants are doing.

8.

That Respondents, individually and jointly, being Doctor Percy A. Bryant and Mrs. Claire Bryant are in the process of erecting a small residence, storehouse, or miscellaneous building the sue of which your Petitioners are unable to verify, but which building is not in keeping with other buildings in said area, nor is it being erected in line with said other buildings, residences in said area. That this construction will be detrimental to the area aforesaid, constituting a nuisance thereto.

9.

That your Petitioners further aver and show that the erection of said structure, which is very small, is not within the curtilage of residences of Doctor Percy A. Bryant and Mrs. Claire Bryant, but on the contrary is on a separate lot fronting on Hand Avenue and said structure is nearer the residence of Petitioners Kennedys than it is to the residence of Respondents Bryants aforesaid.

10.

That by the action of beginning the erection of said structure Respondents Bryants and Respondent Lackey have violated Section 2 of aforesaid of City Ordinance No. 433 of the Town of Bay Minette, Alabama.

PRAYER FOR PROCESS

Your Orator prays that the usual process of this Honorable Court issue to the Respondents, requiring them to appear and answer, plead to or demur to the Bill of Complaint filed against them in this cause within the time and under the penalties prescribed by law and the rules of this Honorable Court.

PRAYER FOR RELIEF

That this Honorable Court will order a hearing in the matter aforesaid in accordance with the rules of this Honorable Court and that after a proper hearing that the Respondents shall be ordered to remove said structure from said lot and will be permanently enjoined from erecting a similar structure thereon.

The premises considered Petitioners pray for all orders and proceedings necessary herein that a writ of mandatory injunction may issue in the premises to each of the Respondents, Bryants and Lackey, to cease and desist in the erection of said building and to Respondent Reid, Mayor, of the Town of Bay Minette, to require a public hearing before granting a building permit to the Respondents Bryants and Lackey for erection of a structure on the lot aforesaid.

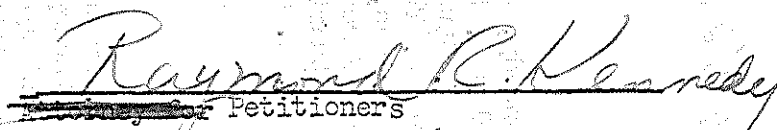
And if Petitioners are in any manner mistaken in the relief herein prayed for then they pray for such other further, different and general relief as in equity and good conscience may deem meet and proper to grant.


Attorney for Petitioners

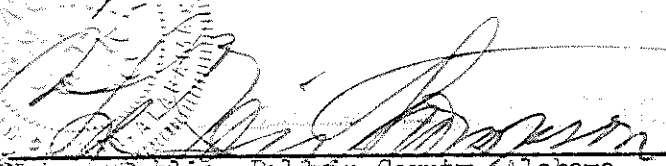
STATE OF ALABAMA)

BALDWIN COUNTY)

Before the undersigned officer, duly and legally authorized to take and certify affidavits, personally appeared Raymond R. Kennedy, who having been duly sworn, deposes and says that he is one of the Petitioners in this matter, and that he is over the age of twenty-one years, and resides in the Town of Bay Minette, Alabama; that he has knowledge of the facts and that the allegations averred as facts in the foregoing petition are true and that insofar as its allegations are on information and belief, or may be conclusions, that he is informed and believes and upon such information and belief states the same to be true.


Petitioners

Sworn to and subscribed before me
this 7 day of August, 1950.


Notary Public, Baldwin County, Alabama.

W 2522

Raymond R. Kennedy, Elizabeth E.
Kennedy, Charles C. Hand, Lizzie
R. Stuart, W. R. Stuart, Gwendolyn
Thomas, Winters F. Thomas, J. E.
Young, Ernest Holmes, Irene Y.
Holmes, Forrest Foreman, Hazel L.
Foreman, D. A. Stuart, J. D. Horn,
Inez Horn and L. D. Owen,

Complainants

Vs

Doctor Percy A. Bryant, Mrs. Claire
Bryant, Dennis Lackey and Honorable
Maxwell Reid, as Mayor of the Town
of Bay Minette, Alabama,

Respondents

COMPLAINT

FILED

AUG 7 1950

ALICE J. DUCK, Register

From the law office of
C. LeNoir Thompson
Bay Minette, Alabama

SUMMONS AND COMPLAINT

Baldwin Times

THE STATE OF ALABAMA,

BALDWIN COUNTY

CIRCUIT COURT, BALDWIN COUNTY

No.

.....TERM, 19.....

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon DOCTOR PERCY A. BRYANT, ET ALS.

DOCTOR PERCY A. BRYANT, ET ALS.

to appear and plead, answer or demur, within thirty days from the service hereof, to the complaint filed in
the Circuit Court of Baldwin County, State of Alabama, at Bay Minette, against _____

DOCTOR PERCY A. BRYANT, ET ALS.

_____, Defendant

by RAYMOND B. KENNEDY, ET ALS.

_____, Plaintiff.....

Witness my hand this 7th day of August 19 50

Alice J. Smith, Clerk

THE STATE OF ALABAMA
BALDWIN COUNTY

CIRCUIT COURT

RAYMOND R. KENNEDY , ET ALS

Plaintiffs

vs.

DOCTOR PERCY A. BRYANT, ETALS

Defendants

SUMMONS and COMPLAINT

Filed Aug. 7, 19 50

Alfred J. Merrick, Clerk

C. LE NOIR THOMPSON

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

RECEIVED IN OFFICE

Aug 7, 1950
Taylor Wilkins, Sheriff
I have executed this summons

this _____, 19_____

by leaving a copy with 8-7-50

Mrs. Claire Bryant 8-7-50

Dennis Foreman 8-7-50

Maxwell Reed 8-7-50

Mayor of Bay Minette

Dr. Percy A. Bryant 8-8-50

Taylor Wilkins, Sheriff

W. F. Hall, Deputy Sheriff