

4478

CUNNINGHAM AND WILKINS
ATTORNEYS AT LAW
709 MERCHANTS NATIONAL BANK BUILDING
MOBILE, ALABAMA

January 9, 1959

ROBERT T. CUNNINGHAM
ROBERT E. WILKINS
D. RICHARD BOUNDS

HEMLOCK 8-2478

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

Re: Calhoun vs. Silver King Restaurant

Dear Mrs. Duck:

Enclosed is a bill of complaint in the above styled cause.
Will you please file this complaint in the Circuit Court of
Baldwin County, Alabama.

Very truly yours,

CUNNINGHAM & WILKINS



ROBERT T. CUNNINGHAM

RTC:cod
Enc. - 3

478

FILED

JAN 12 1959

ALICE J. DICK, CLERK
RECEIVED

ROY A. CALHOUN)	IN THE CIRCUIT COURT
Complainant)	OF BALDWIN COUNTY,
VS)	ALABAMA
SILVER KING RESTAURANT, INC., a corporation and CLARENCE V. EVANS, Jointly and severally)	IN EQUITY
Respondents)	NO.

DEMURRER OF RESPONDENT, CLARENCE V. EVANS

Comes now your respondent, Clarence V. Evans, and demurs to the bill of complaint as a whole, and to each aspect thereof, and assigns the following separate and several grounds of demurrer thereto, separately and severally:

1. There is no equity in the bill of complaint.
2. Complainant has a full, adequate and complete remedy at law.
3. The averments of the bill of complaint are vague, indefinite, ambiguous and uncertain.
4. From the facts as alleged in the bill of complaint, the complainant's lien is not superior to that of the respondent, Clarence V. Evans, as said respondent's said vendor's lien was recorded prior to that of complainant.

TONSMEIRE, HODNETTE & McFADDEN

Filed
March 18, 1959
Alice J. Cook, Reg.

By *William R. Tonsmeire*
Solicitors for Respondent, Clarence V.
Evans

4478

FILED

MAR 18 1959

ALICE J. DUCK, CLERK
REGISTER

ROY A. CALHOUN,		IN THE CIRCUIT COURT OF
Complainant,		BALDWIN COUNTY, ALABAMA
-vs-		
SILVER KING RESTAURANT, INC.,		IN EQUITY
a Corporation, and CLARENCE		CASE NO. _____
V. EVANS, Jointly and Severally,		
Respondents.		

22X
1000

ORIGINAL BILL OF COMPLAINT

Comes now your Complainant, Roy A. Calhoun, and shows unto the court as follows:

1. Complainant is over the age of twenty-one years and is a bona fide resident citizen of Mobile County, Alabama. The Silver King Restaurant, Inc. is an Alabama corporation with its principal office and place of business in Baldwin County, Alabama. The Respondent, Clarence V. Evans is over the age of twenty-one years and is a bona fide resident citizen of Mobile County, Alabama.

2. Complainant avers that heretofore and, to-wit, during the months of July, August, September and October, 1958, pursuant to a contract entered into between him and Silver King Restaurant, Inc., a Corporation, he furnished the materials and labor to blacktop the premises on which the Silver King Restaurant, Inc. was doing business, said premises being described as follows, to-wit:

Commencing at a point on the North right-of-way line of the Cochrane Bridge or Causeway, which point is twenty (20) feet East of the intersection of the East line of the front porch of the "Silver King" as now constructed, or the projection of such East line, which point is marked by an iron pipe set in a concrete block; thence running Westwardly along the said North right-of-way line of the said Cochrane Bridge or Causeway 275 feet to the East line of a lot heretofore conveyed by F. L. Spaulding, Jr. and wife to Laurence P. Stauter by deed dated December 23, 1943 and recorded in Deed Book 126 N.S. pages 283-4 of the Probate Records of Baldwin County, Alabama; thence running Northwardly and along the East line of said property of Stauter 200 feet to an iron pipe; thence Eastwardly and parallel with the North right-of-way line of said Cochrane Bridge or Causeway 25 feet, more or less, to the margin of the Chacatooshee Bay, thence running Eastwardly and Southeastwardly along the margin of said Chacatooshee Bay to a point which is

in a line drawn through the point of beginning and drawn perpendicular to the said North right-of-way line of said Cochrane Bridge or Causeway; and thence Southwardly to the point of beginning, said property being a part of Fractional Section 20, Township 4 South, Range 1 East.

3. Complainant avers that as consideration for said work Respondent, Silver King Restaurant, Inc., agreed to pay him the sum of FIVE THOUSAND ONE HUNDRED EIGHTEEN AND NO/100 (\$5,118.00) DOLLARS, such amount to be paid promptly upon completion of said work. Complainant avers that upon completion of said work on, to-wit, October 10, 1958, he demanded payment but since that date the said Silver King Restaurant, Inc. has failed and refused and does still fail and refuse to make payment.

4. Complainant avers that the Respondent, Clarence V. Evans, holds a vendor's lien on said property by vendor's lien deed dated May 28, 1958 and recorded in the Probate Court Records of Baldwin County, Alabama, on May 29, 1958 in Deed Book 265, pages 502-4 of the records in the office of the Judge of Probate, Baldwin County, Alabama.

5. Complainant avers that the improvements made to the property by the Complainant are inseparable from the land and the prior existing building thereon. Complainant further avers that the said improvements so placed on said land by him enhanced the market value of said property to an extent in excess of the cost of said improvements.

6. Complainant heretofore, and on, to-wit, November 29, 1958, filed a statement in writing, duly verified by oath, in the office of the Judge of Probate of Baldwin County, Alabama pursuant to Title 33, Section 31, Code of Alabama of 1940, claiming a lien, separately and severally, as to the buildings and improvements on said real property to secure the said indebtedness of FIVE THOUSAND ONE HUNDRED EIGHTEEN AND NO/100 (\$5,118.00) DOLLARS, together with interest thereon from, to-wit, the 12th day of October, 1958. Said statement was filed within six months after the date the last

item of materials and labor was furnished and used in the improvements made on said land, and was duly filed and recorded in said Probate Office.

PRAYER FOR PROCESS

To the end that equity may be done in the premises, Complainant respectfully prays that the said Silver King Restaurant, Inc., a Corporation, and Clarence V. Evans be made party respondents to this bill of complaint; that due and appropriate legal process be issued and served upon them, requiring them to plead, answer or demur to this bill of complaint within the time required by law and in accordance with the rules and practices of this Honorable Court.

PRAYER FOR RELIEF

WHEREFORE, the premises considered, the Complainant prays that, upon the hearing of this complaint, this Honorable Court will be pleased to decree that the Complainant has a lien separately and severally upon both the buildings and improvements thereon and the said real property, and that the Respondent, Silver King Restaurant, Inc., is indebted to the Complainant in the sum of FIVE THOUSAND ONE HUNDRED EIGHTEEN AND NO/100 (\$5,118.00) DOLLARS, with interest thereon from, to-wit, the 12th day of October, 1958. Complainant prays that this Honorable Court will, in its decree, set a limit to the time in which the Respondent is required to pay to the Complainant the aforesaid sum, and decree, that on the Respondent's failure to pay said sum within the time limit so fixed, then the said real property, together with the buildings and improvements thereon shall be sold at public outcry to satisfy the said lien of the Complainant and the proceeds of said sale be paid to the Complainant to the extent of the amount due the Complainant; and the Complainant further prays for such other, further and different relief as it may be entitled to receive.

Filed Jan 12, 1959
Alice J. Duck, Reg.

ROBERT T. CUNNINGHAM

Robert T. Cunningham
Attorney for the Complainant

Respondent's addresses:

Floyd Wooley, President
Silver King Restaurant, Inc.
Bay Bridge Causeway
Mobile, Alabama

Clarence V. Evans
c/o Silver King Restaurant, Inc.
Bay Bridge Causeway
Mobile, Alabama

FILED

JAN 12 1958

WILLIAM L. DUCK, CLERK
RESISTANCE

SUMMONS AND COMPLAINT

Moore Ptg. Co.

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 Silver King Restaurant, Inc. A Corp

and Clarence V. Evans, Jointly and Severally

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 _____

Silver King Restaurant, Inc a corp and Clarence V. Evans

_____, Defendant _____

by Roy A. Calhoun

_____, Plaintiff _____

Witness my hand this 12th day of January 19 59

Executed
Jan. 24, 1959

Wm. J. Duck, Clerk

cd
1399

502

No. 4478 Page _____

The State of Alabama
Baldwin County

CIRCUIT COURT

~~XXXXXXXXXXXXXXXXXXXX~~

ROY A CALHOUN

Plaintiffs

vs.

24x
Davis

~~SILVER KING RESTAURANT, INC~~

21x
Wade

and CLARENCE V. EVANS

Defendants

Summons and Complaint

Filed 1-12-59 19__

Alice J. Duck Clerk

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

Received In Office

1-20 1959

Ray D. Bridges Sheriff
I have executed this summons

this 1-22 1959

by leaving a copy with

Returned 24 of Jan 1959
Not found in my county after diligent search and is
quilty as to debt

Floyd C. Woolley Sheriff

W. Wade Deputy Sheriff

Clarence V. Evans

EXECUTED

This 24 day of Jan, 1959

by serving a copy of the within on
Floyd C. Woolley, Pres
of Silver King Rest

RAY D. BRIDGES, Sheriff

By _____ D. S.

Ray D. Bridges Sheriff

W. Wade Deputy Sheriff

H. Davis

*off index
& mail to* →

CUNNINGHAM AND WILKINS
ATTORNEYS AT LAW
709 MERCHANTS NATIONAL BANK BUILDING
MOBILE, ALABAMA

July 6, 1959

HEMLOCK B-247B

ROBERT T. CUNNINGHAM
ROBERT B. WILKINS
D. RICHARD BOUNDS

Clerk of the Circuit Court
County Court House
Bay Minette, Alabama

Dear Sir:

Re: Roy A. Calhoun vs. Silver King
Restaurant

Will you please dismiss the above styled cause on motion of the
Complainant?

If you will send me your bill for costs of court, I shall see
that these costs are paid.

Very truly yours,

CUNNINGHAM AND WILKINS



ROBERT T. CUNNINGHAM

RTC:DW

CUNNINGHAM AND WILKINS
ATTORNEYS AT LAW
709 MERCHANTS NATIONAL BANK BUILDING
MOBILE, ALABAMA

January 15, 1959

HEMLOCK 8-247B

ROBERT T. CUNNINGHAM
ROBERT E. WILKINS
D. RICHARD BOUNDS

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

Re: Calhoun vs. Silver King Restaurant

Dear Mrs. Duck;

The address of Floyd E. Wooley as listed on the original bill of complaint sent you on January 9th was in error.

His correct address is:

Floyd E. Wooley
1506 Flowers Drive
Mobile, Alabama

Very truly yours,

CUNNINGHAM & WILKINS

Robert T. Cunningham
ROBERT T. CUNNINGHAM

RTC:cod