

3855

SUMMONS AND COMPLAINT

BOOK 020 PAGE 464

THE STATE OF ALABAMA)
BALDWIN COUNTY)

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

TO ANY SHERIFF OF THE STATE OF ALABAMA, GREETING:

You are hereby commanded to summon Arthur C. Epperson and Jimmy Patterson to appear and plead, answer or demur, within thirty days from the service hereof, to the Bill of Complaint filed in the Circuit Court of Baldwin County, Alabama, In Equity, by J.H. Stacey, Jr. as Complainant, against Arthur C. Epperson and Jimmy Patterson, as Respondents.

Witness my hand this 20 day of August, 1956.

Archie J. Stacey
REGISTER

COMPLAINT

J.H. STACEY, JR.)
Complainant)
V.)
ARTHUR C. EPPERSON)
and JIMMY PATTERSON)
Respondents)

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY

TO THE HONORABLE HUBERT M. HALL, JUDGE OF THE SAID COURT IN EQUITY SITTING:

Comes your Complainant, J.H. Stacey, Jr., and respectfully shows and represents unto this Honorable Court as follows:

1. That your Complainant is over the age of Twenty-one years and is a resident of Baldwin County, Alabama; the Respondent, Arthur C. Epperson, is over the age of Twenty-one years and is a resident of Baldwin County, Alabama; the Respondent, Jimmy Patterson, is over the age of Twenty-one years and is a resident of Baldwin County, Alabama.

2. That on, to-wit, the 24th day of March, 1951, Alfred Neuman and Claude Peteet and the Respondent, Arthur C. Epperson, executed an instrument of lease whereby the said Alfred Neuman and Claude Peteet leased certain land together with space in a building in Foley, Alabama, to the said Respondent, Arthur C. Epperson, the land and space being more particularly described as, to-wit:

The East seventeen (17) feet of the ground floor of the Neuman-Peteet building in Foley, Alabama, together with any adjacent ground South and East of the aforesaid premises not occupied by a building.

The aforesaid instrument of lease is attached hereto and marked Exhibit "A", and made a part hereof, as though fully set forth herein.

3. That on, to-wit, the 21st day of September, 1954, your Complainant became successor in title to Lots One and Two in Block Five in the Magnolia Springs Addition to the Town of Foley, Alabama by three deeds of conveyance, executed respectively by Claude Peteet, unmarried; by Irene Neumann, as guardian of Alfred M. Neumann, a non compos mentis; and Irene Neumann, wife of Alfred M. Neumann, all dated September 21, 1954, and attached hereto and marked Exhibit "B", Exhibit "C", and Exhibit "D" respectively, and made a part hereof, as though fully set forth herein; that the aforesaid Lots One and Two include the land and building space described in Paragraph 2 hereof.

4. That under the provisions of the said lease attached hereto as Exhibit "A", and made a part hereof, as though fully set forth herein, the term or tenure of the leasehold was for an initial term of five years commencing on the 1st day of September, 1951, and ending on the 31st day of August, 1956; that the leasehold was to continue thereafter from year to year unless, as set forth in the said lease, "terminated by seasonable written notice"; that on, to-wit, the 31st day of May, 1956, your Complainant, as successor in title to the said Alfred Neumann and Claude Peteet, acting through his attorney, served seasonable written notice on the Respondent, Arthur C. Epperson, of his termination and cancellation of the said lease as of September 1, 1956, a copy of which notice, acknowledged by signature of the Respondent, Arthur C. Epperson, is attached hereto and marked Exhibit "E", and made a part hereof, as though fully set forth herein.

5. That the Respondent, Jimmy Patterson, has informed your Complainant that the Respondent, Arthur C. Epperson, has subleased the said premises to the Respondent, Jimmy Patterson, for a term of sixty-four months beginning in May, 1956, and ending in August, 1961; that your Complainant, acting through his attorney, notified in writing the Respondent, Jimmy Patterson, on June 4, 1956, of the cancellation and termination of the leasehold of the Respondent, Arthur C. Epperson, at the expiration of the initial term of the lease, to-wit, September 1, 1956.

6. That the Respondent, Arthur C. Epperson, has failed and refused to cancel or terminate his sublease of the said premises to the Respondent, Jimmy Patterson; that the Respondent, Arthur C. Epperson, has refused to surrender possession of the said premises to your Complainant under the terms of the aforesaid lease marked Exhibit "A", and has communicated his intention to remain in possession of the said premises; that the Respondent, Jimmy Patterson, has refused to surrender possession of the said premises to your Complainant, and has communicated his intention to remain in possession of the said premises under his said sublease from the Respondent, Arthur C. Epperson; and that there is subsisting an actual controversy between your Complainant and the Respondents, on which substantial property rights are dependent.

PRAYER FOR PROCESS

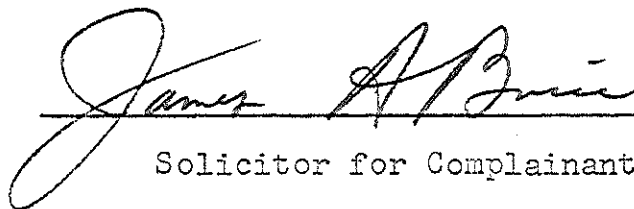
Wherefore, the premises considered, your Complainant prays that your Honor will cause the usual Writ or Process to issue to the said Respondents, Arthur C. Epperson and Jimmy Patterson, requiring them to appear, answer, plead, or demur within the time and in the manner required by law and the rules of this Honorable Court.

PRAYER FOR RELIEF

The premises considered, your Complainant would pray that on the final hearing of this cause, your Honor will: Render a declaratory judgment and decree defining the rights of the parties; determining whether your Complainant has any right to terminate

and cancel the said lease by seasonable written notice at the expiration of its initial term; and ordering the said Respondents to deliver up possession to the said premises.

And, if mistaken in the relief hereinabove prayed, your Complainant prays for such other, further, and general relief as to which in equity and good conscience he may be entitled.


Solicitor for Complainant

BOOK 020 PAGE 456

J. H. STACEY JR.,)	
Complainant	)	IN THE CIRCUIT COURT OF
)	
VS.	)	BALDWIN COUNTY, ALABAMA
)	
ARTHUR C. EPPERSON and	)	IN EQUITY
JIMMY PATTERSON)	
Respondents	)	No. 3855

STATE OF ALABAMA
BALDWIN COUNTY

KNOW ALL MEN BY THESE PRESENTS, That we, ARTHUR C. EPPERSON, J. S. (Jimmy) PATTERSON, EDWIN EPPERSON and JANET Z. BAGLEY are held and firmly bound unto ALICE J. DUCK, Register, in the just and full sum of \$2000.00 for the payment of which well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this the 11th day of December, 1956.

The condition of the above obligation is such that whereas J. H. STACEY, JR., obtained a decree in the above styled cause in the Circuit Court in Equity for said County on the 28th day of November, 1956, ordering the respondents to deliver up possession of premises, the basis of said suit before fifteen days from date of said decree and to pay to the complainant the sum of \$75.00 per month as reasonable rental for the detention of said premises, from which decree the said respondents have obtained an appeal to the Supreme Court of Alabama.

Now, therefore, if the said respondents shall prosecute the said appeal to effect and satisfy such decree as may be rendered against them by the Supreme Court and all such costs and damages as any party may sustain by reason of the wrongful appeal and suspension of the decree, then this obligation to be NULL and VOID, otherwise to remain in full force and effect.

And we, and each of us, hereby waive all rights to or claim of exemption as to personal property we or either of us have or may hereafter have or may hereafter have under the constitution and Laws of the Alabama, and we hereby severally certify that we have

free from all encumbrances property to the full amount of
the above bond.

Witness our hands and seals this the 11th day of December,
1956.

Arthur C. Epperson (SEAL)

R. S. Peterson (SEAL)

Edwin Epperson (SEAL)

Paul Bagley (SEAL)

Taken and approved this the 11 day of December, 1956.

Alvin J. Smith
Register

AUG 22 1957

THE STATE OF ALABAMA _____ JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

SPECIAL TERM, 1957

1 Div. 714

Arthur C. Epperson and
Jimmie Patterson, Appellants

v.

J. H. Stacey, Jr.

Appeal from Baldwin Circuit Court, In Equity

SIMPSON, JUSTICE

Appeal from a judgment rendered against the respondents in a declaratory judgment proceeding instituted in the Circuit Court in Equity of Baldwin County. The bill seeks interpretation of a written lease of real estate.

2.

Appellant Epperson was lessee of Alfred Newman and Claude Peteet. Appellant Patterson is the sub-lessee of Epperson. The lease was executed in 1951 and contained the following clause which is here in controversy:

"It is further understood and agreed that this lease is for an initial term of five years beginning on the first day of September, 1951, and will continue thereafter from year to year unless terminated by seasonable written notice; that the Lessors will not lease the aforesaid premises to a third party upon the expiration of any term of tenure under this lease without giving the lessee ample time to renew this lease."

On May 31, 1956 the appellee, successor in title to the property, through his attorney, gave written notice to the appellant Epperson that the lease would be cancelled as of September 1, 1956, which date was the end of the original five year term. Appellant Epperson gave a written acknowledgment of receipt of this notice.

Subsequent to the receipt of this notice from appellee, the appellant Epperson notified him that he wished to exercise his option to renew the lease under the second phrase of the above quoted provision of the lease. The appellee refused to renew the lease and appellant refused to vacate the premises, claiming he had subleased the same to Patterson. The appellee brought this declaratory judgment proceeding as stated. The trial court found the lease had been duly terminated, that appellants Epperson and Patterson were illegally retaining possession of the property; and finally ordered that appellants pay a rental of \$75.00 per month for the actual time possession of the property is retained by them from September 1, 1956.

3.

It is first argued by the appellant Epperson that under the above quoted provisions of the lease "that the Lessors will not lease the aforesaid premises to a third party upon the expiration of any term of tenure under this lease without giving the lessee ample time to renew this lease", he had an option to renew regardless of the clause immediately preceding giving the right of termination to the lessors (and of course to their successor in title, the appellee). In this connection the appellants seem to insist that there was some understanding between the original parties that Epperson would have an opportunity to renew his lease for a succeeding period of five years. However, in the absence of fraud or mistake - not here claimed or shown - the terms of a written contract cannot be varied by parol evidence. - Griffin v. Tatum Chevrolet, 231 Ala. 534, 166 So. 49; Miles v. Sledge, 157 Ala. 528, 47 So. 595.

The primary contention of appellants is that the option to renew the lease quoted above took precedence over the prior provisions for termination. The rule is to the contrary. If there exists inconsistency between two clauses of a contract which cannot be reconciled, the inconsistency must be resolved in favor of the prior clause, unless an intention to thereafter qualify is plainly expressed. - Irwin v. Baggett, 231 Ala. 324, 164 So. 745; Lowery v. May, 213 Ala. 66, 104 So. 5. The controverted provision of the lease under consideration is governed by this principle. It is quite clear the lease was for an initial period of five years. - See Irwin v. Baggett,

4.

supra (6). Hence, in the light of the above noted rule of construction, it must be held that the termination provision of the lease took precedence over the provision for renewal. That is to say, as a converse, appellants' right of renewal was from year to year after the expiration of the original term, so long as the right of termination was not asserted by the lessor. See for analogy the following from other jurisdictions: Stewart v. Kuskin & Rotberg, Inc. (Ct. of Gov. App., Tex.), 106 S.W. 2d 1074; Jacob Dold Packing Co. v. King County Refrigerating Co., 176 App. Div. 407, 162 N.Y.S. 1035; Wilcox v. Montour Iron & Steel Co., (Penn.) 23 A. 840. It results that the lessor divested the lessee of his right to renew when he seasonably exercised his right of termination.

Indian Head Mills v. Hamilton, 212 Ala. 97, 101 So. 747 is distinguishable from the present situation in that the provision there concerned a right to terminate an existing lease, whereas here the question is the right, vel non, of the lessee to a continuation of an existing lease.

Error is also argued in the ruling of the Court in fixing the rental of the property at \$75.00 per month. In the light of the favorable presumption attending the finding below on conflicting evidence heard ore tenus, we would not be justified in overturning that ruling. - 2A Ala. Dig., Appeal & Error, § 931 (1 b).

Other assignments of error not argued in brief and are waived. - Supreme Court Rule 9, Tit. 7, Code 1940, 1955 Cum. Pocket Part.

We find no error.

Affirmed.

All the Justices concur except Stakely, J., not sitting.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st Div., No. 714

ARTHUR C. EPPERSON AND JIMMIE PATTERSON, Appellants

vs.

J. H. STACEY, JR., Appellee,

From BALDWIN IN EQUITY Circuit Court.

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 FOUR inclusive, contain a full, true and correct copy of the opinion of 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 22nd day of

AUGUST, 19 57

J. Render Thomas
Clerk of the Supreme Court of Alabama

THE SUPREME COURT OF ALABAMA

SPECIAL
~~October~~ Term, 19...57.

1st Div., No. 714

ARTHUR EPPERSON AND

JIMMIE PATTERSON

Appellant,

vs.

J. H. STACEY, JR.

Appellee.

From BALDWIN CIRCUIT Court.
IN EQUITY
NO. 3855

COPY OF OPINION

J. H. STACEY, JR.M)
Complainant)
VS.)
ARTHUR C. EPPERSON and)
JIMMY PATTERSON)
Respondents)

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY
No. 3855

Comes the respondents in the above styled cause and hereby appeals to the Supreme Court of Alabama from the final decree and judgment of the Circuit Court of Baldwin County, Alabama, in Equity, rendered in the above styled cause on the 28th day of November, 1956.

Arthur C. Epperson
Attorney for the Respondents

We the undersigned hereby acknowledge ourselves security for costs of appeal to the Supreme Court of Alabama, from the decree rendered in the above styled cause on the 28th day of November, 1956; and hereby agree to pay all such costs. And for the payment of this bond, we hereby waive our right of exemption to personal property under the constitution and Laws of the State of Alabama.

Witness our hands and seals this the 18th day of December, 1956.

Arthur C. Epperson .(L.S.)
_____.(L.S.)
Henry W. Carson .(L.S.)
R. H. Agner - .(L.S.)

Taken and approved this the 19 day of December, 1956.

Denise J. Smith
Register.

RECEIVED

TO THE HONORABLE CLERK OF THE SUPREME COURT
STATE OF MISSISSIPPI
MEMPHIS, TENNESSEE

FILED
DEC 19 1956
ALICE A. DUCK, Clerk

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Div. No. _____

CERTIFICATE OF APPEAL. (Equity Cases.)

No. 3855

J.H. STACEY, JR.
Complainant.

vs.

ARTHUR EPPERSON & JIMMIE PATTERSON
Respondent.

I, Alice J. Duck Register of the Circuit Court In Equity,
Baldwin County, Alabama, hereby certify that in the cause of
J.H. STACEY, JR. Complainant,

vs.

ARTHUR EPPERSON & JIMMIE PATTERSON 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 19th day of Dec. 1956 the Respondents, ARTHUR C.
EPPERSON & JIMMIE PATTERSON took an appeal to the
SUPREME of Alabama, to be holden of and for said State.

I further certify that ARTHUR C. EPPERSON
filed security for cost of appeal, to the SUPREME Court,
on the 19th day of Dec. 1956, and that HENRY W. CARSON AND
E. H. AGEE,

are sureties on the appeal bond.

I further certify that notice of said appeal was on the _____
day of _____, 19____, served on J.A. BRICE
as attorney of record for said appellee.

Witness my hand and the seal of this Court, this the _____ day
of _____, 19____

Alice J. Duck
Register of the Circuit Court In Equity of
_____ County, Alabama.

THE STATE OF ALABAMA--JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

SPECIAL TERM 1956-57

~~X x @ m b k e r F o r m X x @ x x x x~~

To the REGISTER of the CIRCUIT Court,
MOBILE County—Greeting:

Whereas, the Record and Proceedings of the CIRCUIT Court IN EQUITY of said county, in a certain cause lately pending in said Court between

ARTHUR C. EPPERSON: Appellant S,
JIMMIE PATTERSON,
and

J. H. STACEY, JR., Appellee

wherein by said Court it was considered adversely to said appellant S, were brought before our Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant S:

NOW, IT IS HEREBY CERTIFIED, That it was thereupon considered, ordered, adjudged, and decreed by our Supreme Court, on the 22nd day of AUGUST, 19 57, that said

DECREE of said CIRCUIT Court be in all things affirmed, and that it was further considered, ordered, adjudged, and decreed that the appellant S,

~~xxx~~ Arthur C. Epperson and J. S. [Jimmie] Patterson, and Edwin Epperson and Janet Z. Bagley, sureties on the Supersedeas Bond, pay the amount of the monied decree of the Circuit Court, In Equity, and ten per centum [10%] damages thereon, and all the interest due on said monied decree; and that the costs of appeal of this Court and of the Circuit Court, In Equity, be and the same are hereby taxed against the appellant, Arthur C. Epperson, and Henry W. Carson and R. H. Agee, sureties on the appeal bond.

~~the record and proceedings of said appeal in this Court and in the Court below~~

It is further certified that, it appearing that said parties have waived their rights of exemption under the laws of Alabama, it was ordered that execution issue accordingly.

Witness, J. Render Thomas, Clerk of the Supreme Court of Alabama, this the 22nd day of

AUGUST, 19 57.

J. Render Thomas
Clerk of the Supreme Court of Alabama.

THE SUPREME COURT OF ALABAMA

SPECIAL TERM 1956-57

~~October Term, 1956~~

1st Div., No. 714

ARTHUR C. EPPERSON

JIMMIE PATTERSON,

Appellant, ^s

vs.

J. H. STACEY, JR.,

Appellee.

From Baldwin Circuit Court.
In Equity

CERTIFICATE OF AFFIRMANCE

The State of Alabama,

} Filed

FILED County.

this day of AUG 24 1957

ALICE J. DUCK, Clerk

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J. H. STACEY, JR.)	
Complainant)	IN THE CIRCUIT COURT OF
)	
)	BALDWIN COUNTY, ALABAMA
VS.)	
	)	IN EQUITY
ARTHUR C. EPPERSON)	
And JIMMY PATTERSON)	
Respondents)	

Comes the Respondents in the above styled cause and files this their petition to set aside the decree pro confesso heretofore entered in the abovestyled cause, their answer and cross bill in said cause as follows:

1. Your respondents shows unto the Court that on the 20th day of November, 1956 a decree pro confesso was entered in the above styled cause against your respondents. Your respondents respectfully pray that this Honorable Court will set aside the said Decree pro confesso and hold the same cancelled and annulled.

2. For answer to said bill of complaint filed in this cause the respondents say:

A. They admit the allegations contained in paragraph one of the bill of complaint.

B. They admit the allegations contained in paragraph two of the bill of complaint.

C. The respondents neither admit or deny the allegation contained in paragraph three of the bill of complaint as copies thereof was not attached to the copy of the bill of complaint served on the defendants nor does the respondents have any knowledge of the averments contained in paragraph three of said bill of complaint.

D. For answer to paragraph four of the bill of complaint the respondents say: that the respondent Arthur C. Epperson entered into the said lease with the lessors with the common understanding of the parties thereto that the same provided for a renewal of the lease if the Lessee so desired at the close of the initial term of five years or any subsequent term and such was the intent of the parties to said lease; that said lease provided for a renewal of the lease as follows: "that the Lessors will not lease the afore said premises to a third party upon the expiration of any term of tenure under this lease without giving the lessee ample time to RENEW this lease"

the respondents further aver in answer to paragraph four of the bill of complaint that the clause as set out in the bill of complaint " unless terminated by seasonable written notice" was inserted in said lease so that said lease could be terminated at a minimum of ten years by the lessors or five by the Lessee and that said lease would not be indefinite as to termination or the same be a lease in perpetuity.

E. The respondents further aver in answer to paragraph ~~xxxxx~~ four of said bill of complaint that at the time of the execution of the said lease, the premises was occupied by the business known as the "Corner Cafe" and owned by Odis Ross and wife Hassie Ross and for which the said cafe was being offered for sale by the owners to the respondent Arthur C. Epperson who had made an acceptance of the offer depending upon the condition that said respondent obtain a lease for a minimum of ten years from the owners of the premises, Claude Beteet and Alfred Nuemann; that the said respondent did obtain the required lease as to intent and belief of the provisions of said lease and subsequently purchased said Cafe business from the said Odis and Hassie Ross for a valuable consideration in excess of its real worth.

F. The respondents for further answer to paragraph four of the bill of complaint avers that the complainant stands in the position of a third party to the leaseing of said premises; that the complainant and his attorney at the time of his purchase of said property set out in the bill of complaint was personally informed by the respondent Arthur C. Epperson that he had a lease on said property for an initial term of five years and the right of renewal and said respondent recorded his copy of said lease in the Office of the Judge of Probate of Baldwin County, Alabama on September 15, 1954 to give the complainant further notice prior to his purchase of said property which purchase was completed according to said bill of complaint on September 21, 1956.

G. The respondents further aver in answer to paragraph four that the said Arthur C. Epperson upon receiving written notice from the complainant ~~and~~ that he was cancelling the lease notified the complainant and his attorney that he was electing to renew the lease as provided in the lease and that the complaint ^{ANT}
page two

failed or refused to recognize that the respondent Arthur C. Epperson was entitled to a renewal of said lease and insisted that he could terminate said lease at any time.

H. The respondents further aver in answer to paragraph four of the bill of complaint that it was necessary for the respondent Arthur C. Epperson to obtain a lease on the premises for a period of five years or longer in order to obtain the agencies for the Greyhound Bus Company and Western Union Telegraph Co. which agencies were to be operated in said premises by the respondent Arthur C. Epperson, on the condition that a lease in excess of five years was obtained .

I. For answer to paragraph five of the bill of complaint the respondents avers that the complainant has no right to terminate the lease as of September 1, 1956 and that if the complainant does have the authority and right to terminate the lease as of that date the respondent Arthur C. Epperson is entitled to renew said lease.

J. For answer to paragraph ~~five~~^{SIX} of the bill of complaint the respondents admit the allegations contained therein except that the respondent Arthur C. Epperson holds possession of said premises under the terms of said lease providing for a renewal of said lease.

3. The respondents further allege and aver that the respondent Arthur C. Epperson is entitled to renewal of the lease beginning September 1, 1956.

Your respondents pray that this honorable Court will find on the hearing of this cause that the respondent Arthur C. Epperson is entitled to a renewal of the lease and order the said complainant to renew the lease and the respondents further pray for specific performance of said contract of lease or such other further or different relief to which the respondents may be entitled.

Arthur C. Epperson

ATTORNEY FOR THE RESPONDENTS

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Alice J. Duck, Register

Answer

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J.H. STACEY, JR.
Complainant

vs.

ARTHUR C. EPPERSON
and JIMMY PATTERSON
Respondents

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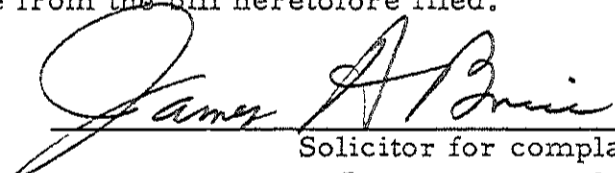
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY
No. 3855

Comes the complainant and demurs to the cross-bill of the respondents heretofore filed in this cause on this day, and separately and severally to each aspect thereof, and as grounds therefor assigns the following:

1. There is no equity in the cross-bill.
2. It affirmatively appears that the cross-complainant is not entitled to relief.

Comes the complainant and demurs to that aspect of the cross-bill seeking specific performance of that provision of said lease prohibiting the Lessors from leasing the premises to a third party upon the expiration of any term of tenure without giving the Lessee ample time to renew the lease, and for grounds of demurrer, separately and severally assigns the following:

1. There is no equity in said aspect of said cross-bill.
2. Said aspect is inconsistent with the answer of cross-complainants heretofore filed inasmuch as the answer avers that cross-complainant has in effect an option to renew the lease, and said aspect seeks to compel the complainant and cross-respondent to give the cross-complainant an opportunity to renew the lease.
3. Said averment that the complainant has failed and refused to give the cross-complainant ample time to renew the lease states no facts but is a mere conclusion of the pleader.
4. Said averment fails to show that cross-complainant is entitled to any relief that cannot be afforded by the bill of complaint.
5. Said averment is a departure from the bill heretofore filed.


Solicitor for complainant
and cross-respondent

CIRCUIT COURT COMPLAINT

Printed by the Baldwin Times, Bay Minette, Alabama.

J. H. STACEY, JR. Complainant,
Vs. ARTHUR C. EPPERSON & JIMMY PATTERSON Respondents

In the Circuit Court.
In Equity No. _____

DECREE PRO CONFESSO ON PERSONAL SERVICE.

In this cause, it appears to the Register, that service was had on the Respondent
ARTHUR C. EPPERSON & JIMMY PATTERSON

by the Sheriff of BALDWIN County, on the 22 day of August,
194 56

And it further appears to the Register, that that the said
ARTHUR C. EPPERSON & JIMMY PATTERSON

_____ the Respondent^S, having to the date hereof,
failed to plead, demur to or answer the Bill of Complaint filed in this cause, it is now, therefore,
on motion of JAMES A. BRICE Solicitors

for Complainant, ordered, and decreed by the Register that the Bill of Complaint in this cause be,
and it hereby is, in all things taken as confessed against the said
ARTHUR C. EPPERSON & JIMMY PATTERSON

This 29th day of November, 194 56

James A. Brice
Register.

No. _____

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

(4)

J.H. STACEY

Complainant,

Vs.

ARTHUR C. EPPERSON &

JIMMY PATTERSON

Respondent. S

**DECREE PRO CONFESSO ON
PERSONAL SERVICE.**

Issued this 20th day of November
19456.

Alice J. Duck

Register.

J.H. STACEY, JR.
COMPLAINANT

VS.

ARTHUR C. EPPERSON
and JIMMY PATTERSON
RESPONDENTS

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY

Now comes the complainant, J.H. Stacey, Jr., by James A. Brice, his solicitor of record, and shows unto the Register that a decree was rendered by this Court, on the 26th day of October, 1956, overruling the demurrer of respondents, Arthur C. Epperson and Jimmy Patterson to the bill of complaint, and allowing said respondents twenty days in which to further plead to the bill of complaint; and the said respondents, having failed, to this date, to further plead to the bill of complaint, complainant moves that a decree pro confesso be entered against said Arthur C. Epperson and Jimmy Patterson.

This the 16th day of November, 1956.

James A. Brice
Solicitor for Complainant.

*I certify that I mailed
a copy to this motion to
Mr. Arthur C. Epperson, solicitor
of record for himself and
for Jimmy Patterson, this
17th day of November, 1956.
James A. Brice*

3853-

Recue Ou Confess

③

FILED

NOV 19 1956

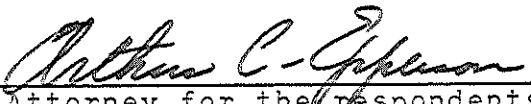
MADE IN U.S.A.

J. H. STACEY, JR.)
 COMPLAINANT)
 VS.)
 ARTHUR C. EPPERSON)
 and JIMMY PATTERSON)
 RESPONDENTS)

IN THE CIRCUIT COURT OF
 BALDWIN COUNTY, ALABAMA
 IN EQUITY

Comes the respondents and demurs to the bill of complaint as a whole and for the grounds of demurrer sets down and assigns the following separately and severally:

- (1) There is no equity in the bill.
- (2) The complainant does not offer to do equity.
- (3) There has been no exhibits or copies thereof as made a part of the bill of complaint, served on the respondents.
- (4) The bill is not sworn to.
- (5) The complainant/^{has}other adequate remedies.
- (6) The bill does not show that a decree rendered herein will terminate the controversy.
- (7) A decree will not terminate the controversy between the parties, for ought that is shown.
- (8) For ought that is shown a declaratory judgment will not be binding on the parties.
- (9) The bill does not contain a prayer advising the Court of the relief desired.
- (10) The bill fails to contain a prayer showing what is desired that the Court shall declare and decree as to the rights of the parties.


 Attorney for the respondents

Copy mailed to
 James Brice
 Attorney
 Foley, Alabama.
 Sept. 20, 1956

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FILED

SEP 22 1956

ANNE J. MCK. *Registe*

J. H. STACEY, JR.,
Complainant,
VS.
ARTHUR EPPERSON AND
JIMMIE PATTERSON,
Respondents.

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

No. 3855

This cause coming on to be heard is submitted for a final decree upon the original bill of complaint, answer and cross bill, and the testimony of witnesses taken ore tenus.

The court, after considering the matter, is of the opinion and finds that on March 24, 1951 Alfred M. Newman and Claude Peteet entered into a contract or lease with the Respondent, Arthur C. Epperson, leasing to him certain property described in the bill of complaint for an initial term of five years, beginning on the first day of September, 1951, and continuing from year to year unless terminated by seasonable written notice.

That the Complainant is the owner of said premises, having purchased the same from the lessors, Alfred Newman and Claude Peteet;

That on May 31, 1956, the Complainant, acting by and through his Attorney, gave notice that he was cancelling the said lease in accordance with the terms of the same as of September 1, 1956; that the Respondent, Arthur Epperson, accepted notice of said cancellation;

That Arthur Epperson, one of the Complainants, appeared, pro se and as Solicitor for Jimmie Patterson, the other Respondent;

That the Respondents have failed or refused to deliver possession of the said property to the Complainant in ac-

cordance with the terms and conditions of the lease under which the said Arthur C. Epperson acquired possession of said property;

That SEVENTY-FIVE (\$75.00) DOLLARS per month is a reasonable rental for said property.

The Court is of the opinion and to the conclusion that the Complainant is entitled to the relief prayed for;

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the lease under which the Respondents hold has been duly terminated and Respondents' right to possession of the property involved ceased and terminated on September 1, 1956;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Respondent, Arthur C. Epperson and Jimmie Patterson are illegally retaining possession of said property;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Respondents, Arthur C. Epperson and Jimmie Patterson, forthwith deliver the possession of the property described in the bill of complaint, situated in the Town of Foley, Baldwin County, Alabama, to-wit:

The East Seventeen (17) feet of the ground floor of the Numan-Peteet building in Foley, Alabama, (Now occupied by the Corner Cafe) together with any adjacent ground south and east of the aforesaid premises not occupied by a building.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that if the Respondents fail or refuse to deliver possession of the said premises in a good state of repair, within 15 days from the date hereof, that the Register of this Court immediately issue an order to the Sheriff of Baldwin County, Alabama, commanding him to restore the possession of the said property to the Complainant, together with damages for its detention since September 1, 1956.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a reasonable rental to be paid by the Respondents to the Complainant for the period of time since September 1, 1956, until possession is actually delivered to the Complainant is SEVENTY-FIVE (\$75.00)

DOLLARS per month.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Respondents pay the costs herein, for which execution may issue.

DATED THIS 28th day of November, 1956.

Hubert M. Hall

Judge, 28th Judicial Circuit of
Alabama.

FILED

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ALICE J. DUCK, Register

J.H. STACEY, JR.)	
Complainant)	IN THE CIRCUIT COURT OF
)	
VS.)	BALDWIN COUNTY, ALABAMA
)	
ARTHUR C. EPPERSON	)	IN EQUITY
and JIMMY PATTERSON)	
Respondents)	

This cause was submitted upon petition of respondents to set aside the decree pro confesso entered in the above styled cause on the 20th day of November, 1956, and the same being considered and understood by the Court and the respondents having filed a good and sufficient answer, the Court is of the opinion that the relief should be granted.

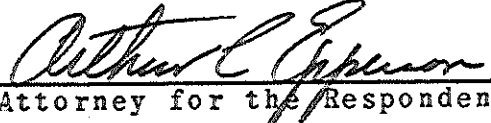
It is therefore ordered, adjudged and decreed by the Court that the decree pro confesso heretofore entered in the above styled cause on the 20th day of November, 1956, be and it is hereby set aside, cancelled and annulled.

Done and ordered this the 26th day of November, 1956.

Robert M. Hance
Circuit Judge in Equity Sitting.

J. H. STACEY, JR.,)	
Complainant	)	IN THE CIRCUIT COURT
)	
VS	)	OF BALDWIN COUNTY, ALA.
)	
	)	IN EQUITY
ARTHUR C. EPPERSON and)	
JIMMIE PATTERSON,)	
Respondents.	)	No. 3855

Now comes the respondents and shows unto the Court that they desire to appeal to the Supreme Court of Alabama from the final decree made and entered in this cause on November 28, 1956. Respondents desire to appeal and supersede said judgment or decree and moves the Court for an order fixing the amount of bond to be filed in this cause to supersede said decree or judgment.

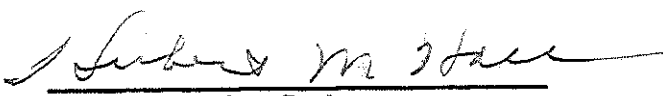

Arthur C. Epperson
 Attorney for the Respondents

The respondents having applied to this Court for an order fixing the amount of appeal bond in this cause to supersede and suspend the decree of this Court of November 28, 1956, it is,

ORDERED, ADJUDGED and DECREED that upon the filing of an appeal bond with the Register, with good and sufficient suréties, in the sum of \$2000⁰⁰, payable to the register and to be approved by her, and conditioned that if Respondents fail in the appeal they will pay such judgment as the appellate Court may render in the premises and all such costs and damages as any party main sustain by reason of the wrongful appeal and suspension of the decree, the decree shall be and the same is, upon the filing of said bond, hereby suspended pending said appeal; and the complainant excepts.

The register will enter this order on the minutes of the Court.

ORDERED this the 11th day of December, 1956.


J. H. Stacey
 Circuit Judge.

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ALICE J. BECK, Register

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THE STATE OF ALABAMA,
BALDWIN COUNTY

IN THE CHANCERY COURT OF BALDWIN COUNTY

To J.H. STACEY, JR. BRICE

Or To J.A. BRICE, Solicitors of record.

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

ARTHUR EPPERSON AND JIMMIE PATTERSON

took an appeal from the decree rendered on the 29th. day of October

19 56, by the Circuit Court of said county, in the cause of

J.H. STACEY, JR.

versus

ARTHUR EPPERSON AND JIMMIE PATTERSON

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 19 day of Dec, 19 56

David J. Brice
Register in Chancery.

Received 20 day of Dec 1956
and on 4 day of Jan 1957
I served a copy of the within Citation
on J.P. Price - Atty.

By service on _____
TAYLOR WILKINS, Sheriff
By Chickman D. S.

Price

Sheriff claims 72 miles at
Ten Cents per mile Total \$ 7.20
TAYLOR WILKINS, Sheriff
BY Chickman
DEPUTY SHERIFF

No. 3858
K

J.H. STACEY, JR. Complainant
vs.
ARTHUR EPPERSON & JIMMIE PATTERSON Respondent

CITATION OF APPEAL

IN EQUITY

Issued 19th. day of Dec., 19 56