

4072

THE SPERRY AND HUTCHINSON
COMPANY, a corporation,

COMPLAINANT

VS

THE CITY OF FAIRHOPE, a
Municipal Corporation,

RESPONDENT

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY

Comes the defendant in the above styled cause and without waiving its demurrer heretofore filed January 16, 1958, to the bill of complaint, as amended, now files to the said complaint, as amended, the following additional demurrer.

a. That the allegations of the bill of complaint, as amended, alleges no facts showing that ordinance, Exhibit V, imposes an unreasonable, prohibitive and confiscatory tax on the complainant.

b. That the allegations of the bill of complaint, as amended, alleges no facts showing that the complainant is unable to do business in the City of Fairhope under the operations of the ordinance, Exhibit V.

c. That the allegations of the said complaint alleges that the ordinance, Exhibit V, imposes an unreasonable, prohibitive and confiscatory tax on the complainant is a conclusion of the pleader.

Respectfully submitted,

BEEBE & SWEARINGEN

BY W.C. Beebe
Solicitors for respondent.

FILED

OCT 28 1958

ALICE J. DUCK, CLERK
REGISTER

THE SPERRY AND HUTCHINSON
COMPANY, A Corporation,

Complainant,

vs.

THE CITY OF FAIRHOPE, A
Municipal Corporation,

Respondent.

X

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X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY NO.

Comes now the Complainant in the above styled cause and amends the Bill of Complaint heretofore filed by it by adding the following paragraph to said Bill of Complaint immediately following paragraph "10." and immediately preceding paragraph "11." of said Bill of Complaint:

"10a. The average margin of profit upon which S & H operates is five per centum (5%) of its gross receipts."

And by striking paragraph "22." of the Bill of Complaint and substituting therefor the following paragraph:

"22. The ordinance imposes an unreasonable, prohibitive and confiscatory tax on the complaint and other trading stamp companies and because of said ordinance and the tax imposed thereby the Complainant is unable to do business in the City of Fairhope and is informed and believes and upon such information and belief alleges that no other trading stamp company can do business in the City of Fairhope because of said ordinance and the tax imposed thereby."

Respectfully submitted,

CHASON & STONE

By: 

Filed
1-3-58

THE SPERRY AND HUTCHINSON
COMPANY, a corporation,

COMPLAINANT

VS

THE CITY OF FAIRHOPE, a
Municipal Corporation,

RESPONDENT

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY

Comes the defendant in the above styled cause and demurring to complainant's bill of complaint says:

1. There is no equity in the bill.
2. Said bill of complaint alleges no facts which, under the laws of the State of Alabama, entitles it to the relief prayed for.
3. That the facts alleged in the said bill of complaint are not sufficient under the laws of the State of Alabama to authorize this court to grant the relief prayed for in the bill of complaint.
4. That the allegations in the said bill of complaint that the said ordinance, Exhibit V, deprives the complainant of liberty and property without the due process of law is a conclusion of the pleader.
5. That the said bill of complaint sets up no facts showing that the ordinance complained of deprives the complainant of liberty and property without due process of law.
6. That the allegations in the said bill of complaint that the ordinance deprives the complainant of equal protection under the law is a conclusion of the pleader.
7. That the said bill of complaint sets up no facts showing that the ordinance, Exhibit V, deprives the complainant of equal protection under the law.
8. That the allegation in the bill of complaint that the said ordinance, Exhibit V, violates Section 1 of Article 1 of the Declaration of Rights of the Constitution of the State of Alabama is a conclusion of the pleader.
9. That the said bill of complaint sets up no facts showing that the ordinance complained of violates Section 1 of Article 1 of the Declaration of Rights of the Constitution of the State of Alabama.

10. That the allegation in the bill of complaint that the said ordinance violates Section 6 of Article 1 of the Declaration of Rights of the Constitution of the State of Alabama is a conclusion of the pleader.

11. That the said bill of complaint sets up no facts showing that the ordinance complained of violates Section 6 of Article 1 of the Declaration of Rights of the Constitution of the State of Alabama.

12. That the allegation of the bill of complaint that the said ordinance, Exhibit V, violates Section 13 of Article 1 of the Declaration of Rights of the Constitution of the State of Alabama is a conclusion of the pleader.

13. That the said bill of complaint sets up no facts showing that the said ordinance violates Section 13 of Article 1 of the Declaration of Rights of the constitution of the State of Alabama.

14. That the allegation of the bill of complaint that the said ordinance, Exhibit V, violates Section 35 of Article 1 of the Declaration of Rights of the Constitution of the State of Alabama is a conclusion of the pleader.

15. That the said bill of complaint sets up no facts showing that the said ordinance violates Section 35 of Article 1 of the Declaration of Rights of the Constitution of the State of Alabama.

16. That the allegation of the said bill of complaint that the ordinance, Exhibit V, violates the 14th amendment of the Constitution of the United States is a conclusion of the pleader.

17. That the said bill of complaint sets up no facts showing that the said ordinance violates the 14th amendment of the Constitution of the United States.

18. That the allegation of the said bill of complaint that the ordinance complained of unduly burdens interstate commerce and violates Article 1, Section 8 of the Constitution of the United States is a conclusion of the pleader.

19. That the said bill of complaint sets up no facts showing that the said ordinance, Exhibit V, unduly burdens interstate

commerce and violates Article 1, Section 8 of the Constitution of the United States.

20. That the allegation of the said bill of complaint that the said ordinance, Exhibit V, violates Article 1, Section 10 of the constitution of the United States is a conclusion of the pleader.

21. That the said bill of complaint sets up no facts showing that the said ordinance, Exhibit V, violates Article 1, Section 10 of the Constitution of the United States.

22. That the bill of complaint shows on its face that this complainant does not come into this court with clean hands seeking relief at the hands of this court from the tax imposed on it, in that it does not allege that it holds itself out to render its services and to make its trading stamps available to all merchants who desire the same.

23. That the complaint shows on its face that the complainant does not come into court with clean hands in this that the complainant seeks redress at the hands of this court against the tax levied under the ordinance complained of on the ground that the said ordinance discriminates against the complainant and the said complaint shows on its face that the complainant in its operation makes its services available to only one merchant of a class thereby discriminating against all competing merchants, hence it does not come into this court with clean hands.

24. That the allegation of the said complaint shows that the tax levied under ordinance, Exhibit V, is operative on all persons, firms, and corporations engaged in the class of business taxed thereby.

25. That the allegation of the said bill of complaint shows on its face that the that the tax levied by ordinance, Exhibit V, is not discriminatory.

26. The complaint shows on its face that the tax levied under ordinance, Exhibit V, applies to all persons alike engaged in the business of marketing trading stamps to merchants in the City of Fairhope.

27. That the complaint shows on its face that the said

ordinance taxes persons engaged in the business of marketing trading stamps is a lawful exercise of the police power of the City of Fairhope.

28. The allegation of the said bill of complaint shows on its face that the tax levied under ordinance, Exhibit V, is a lawful exercise of the taxing power of the City of Fairhope.

29. The complaint shows on its face that the levy of the tax by the City of Fairhope on persons engaged in the business of marketing trading stamps is a lawful and reasonable classification.

30. That the said bill of complaint alleges no facts showing that the tax levied on all persons marketing trading stamps is discriminatory.

31. That the said bill of complaint alleges no facts showing that the tax levied on all persons marketing trading stamps is an unlawful exercise of the taxing power of the City of Fairhope.

32. Said bill of complaint shows on its face that the tax levied on that class of business and that business engaged in the marketing of trading stamps is a lawful tax on that class of business.

33. The fact, as alleged in the bill of complaint, that merchants issuing their own trading stamps and advertising devices are not taxed, does not under the laws of the State of Alabama render the tax levied by said ordinance, Exhibit V, on business engaged in the business of marketing trading stamps thereunder discriminatory and void.

34. The fact that Section 15 of the ordinance does not apply to persons issuing coupons or certificates furnished by a manufacturer or compounder as a part of an original package or item of merchandise and distributed in connection with that one commodity only, nor to persons issuing coupons or certificates exclusively on one private brand product only is not sufficient to authorize this court to grant the relief prayed for.

35. The fact that Section 15 of the ordinance does not apply to persons issuing coupons or certificates furnished by a manufacturer or compounder as a part of an original package or item of merchandise and distributed in connection with that one commodity only, nor to persons issuing coupons or certificates exclusively on one private brand product only does not invalidate the levy of the tax on this complainant.

36. The fact that the provisions of the ordinance are not applicable to merchants who issue their own stamps or similiar devises does not render the tax levied by the ordinance, Exhibit V, unconsitutional and is not an arbitrary, capricious and void classification without just basis or reason.

37. Even though the provisions of said ordinance not being applicable to merchants who issue their own stamps or similiar devises should render said provision unconstitutional such invalid provision would not invalidate the whole ordinance, nor render unconstitutional the tax levied thereby against the business engaged in by the complainant.

38. The allegation in the said bill of complaint, and the fact that the said ordinance privides that the local merchant shall be liable for the tax in the event he issues stamps on which the tax has not been paid is not sufficient to authorize this court to grant the relief prayed for.

Respectfully submitted,

BEEBE & SWEARINGEN

BY *W. C. Swearingen*
Solicitors for respondent.

Filed
7-30-57
Refiled
1-16-58