

M. P. STALLWORTH, SR.)	IN THE CIRCUIT COURT OF
)	
Complainant)	BALDWIN COUNTY, ALABAMA,
)	
-VS-)	IN EQUITY.
)	
J. E. MARENO)	
)	
Respondent)	

BILL OF COMPLAINT

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

Your Complainant, M. P. STALLWORTH, SR., respectfully shows unto your Honor and this Honorable Court as follows:

I

That your Complainant is over the age of twenty-one years and is a resident of Baldwin County, Alabama; that the Respondent, J. E. MARENO, is over the age of twenty-one years and is a resident of Baldwin County, Alabama.

II

That your Complainant purchased from the Respondent on the 19th day of September, 1958, the following described real property, situated in Baldwin County, Alabama.

From the Northwest Corner of Section 20, Township 5 South, Range 2 East, run South SEVENTEEN HUNDRED AND ONE AND SEVENTY-TWO HUNDREDTHS (1701.72) feet; thence run East TWENTY-FIVE (25) feet to a point on the East side of Alabama Highway #89; thence run South along said highway TWO HUNDRED AND FIFTY-FIVE (255) feet for a Point of Beginning; thence run North 89 degrees 41 minutes East TWO HUNDRED AND TWENTY-FIVE (225) feet; thence run South TWO HUNDRED AND EIGHTEEN AND TWENTY-TWO HUNDREDTHS (218.22) feet; thence South 89 degrees 12 minutes West TWO HUNDRED AND TWENTY-FIVE (225) feet to the East Side of said Highway; thence North TWO HUNDRED AND TWENTY (220) feet to the Point of Beginning; All in the Southwest Quarter of the Northwest Quarter (SW $\frac{1}{4}$ of NW $\frac{1}{4}$) of Section 20, Township 5 South, Range 2 East.

III

That the purchase price paid by the Complainant to the Respondent was SIX THOUSAND THREE HUNDRED SIXTY TWO and 75/100 (\$6,362.75) DOLLARS.

That as an inducement to the purchase of the said property by the Complainant, the Respondent wilfully and knowingly represented to your Complainant that the said property was zoned by

the town of Daphne, as business property, when in fact, the Town of Daphne had an ordinance zoning the said property for residential purposes only.

IV

That your Complainant in reliance upon the wilfull and reckless mis representation made by the Respondent expended various and divers sums of money totaling ONE THOUSAND ONE HUNDRED AND TEN and 56/100(\$1,110.56)DOLLARS, in preparation for the erection of a building on the said heretofore described property.

V

That the Respondent is a licensed Real Estate Broker of the State of Alabama and at all times during the negotiations of the sale of the said property your Complainant made known to the Respondent the purpose for which the heretofore described property would be used and that the Respondent wilfully and maliciously represented that the said property was zoned for business purposes.

VI

That your Complainant on to-wit the 5th day of October, 1958 submitted to the Town of Daphne plans and specifications and an application for a permit for the erection of the building on the heretofore described property; that your Complainant had employed the services of a building Contractor to erect the said building at an approximate cost of EIGHT THOUSAND (\$8,000.00)DOLLARS, over and above the ONE THOUSAND ONE HUNDRED AND TEN and 56/100(\$1,110.56)DOLLARS, already expended by your Complainant in preparation for the erection of the building.

That on, to wit, the 11th day of October, 1958, your Complainant received a letter from Mr. Felix Bigby, Clerk of the Town of Daphne, Alabama, notifying him that a meeting held by the Town Council and Mayor of the Town of Daphne, Alabama, on to wit: the 6th day of October, 1958, the Mayor and Town Council of the Town of Daphne, Alabama, refused your Complainant the permit to construct the said building on the above described property and as a reason therefor stated that the area was restricted by a Town ordinance to a residential area.

A copy of the said letter is hereto attached and marked Exhibit "A" and by reference made a part hereof as though fully incorporated herein.

That your complainant in reliance upon the wilfull and false representation of the said Respondent that the said heretofore described property was zoned for business, had previous to the time of submitting an application to the Town of Daphne, Alabama, for a building permit thereon had secured a prospective buyer and that the said buyer had agreed to pay to the Complainant approximately FIFTEEN THOUSAND (\$15,000.00)DOLLARS, for the said building after its erection.

WHEREFORE Your Complainant prays that this Court will make the Respondent J. E. Mareno, a party Respondent to this Bill of Complaint, by proper process requiring him to plead, answer or demur to the same within the time and under the penalties prescribed by law and the practice of this Honorable Court.

Your Complainant further prays that upon a final hearing hereof, your Honor will order a rescission of the said transaction of the heretofore described lands and require the Respondent, J. E. Mareno, to return to your Complainant the full purchase price of the said property and the cost incident to the transfer of the said property to your Complainant.

Your Complainant further prays that upon a final hearing hereof, your Honor will ascertain and find that the sum of FIVE THOUSAND EIGHT HUNDRED NINETY and 56/100(\$5,890.56)DOLLARS, is due the Complainant for damages from the Respondent as a direct and proximate loss being the difference that the building would have cost the Complainant and the purchase price for the sale of the building after completion.

Your Complainant further prays that upon a final hearing hereof, your Honor will determine that the Complainant has been damaged in the sum of THREE THOUSAND (\$3,000.00)DOLLARS, by the wrongfull wilfull representation of the said property by the said Respondent and that the Decree show said judgement is for the wilfull and malicious injury resulting from the said misrepresentation.

Your Complainant prays for such other further or different relief as to equity may seem just and proper.

M. P. Stallworth, Sr.
M. P. Stallworth, Sr.

[Signature]
Solicitor for Complainant

Defendant resides:
Daphne, Alabama.

STATE OF ALABAMA
BALDWIN COUNTY

Before me, [Signature], a Notary Public, in and for said County and State, personally appeared M. P. STALLWORTH, SR., who is known to me, and who being first duly sworn, deposes and says that he is the Complainant in the above styled cause, and he has read the above Bill and knows the contents thereof, and that the statements of fact contained therein are true.

M. P. Stallworth, Sr.
M. P. Stallworth, Sr.,

Sworn to and subscribed before me this
the 23RD day of Oct, 1958.

[Signature]
Notary Public
Baldwin County, Alabama

filed Oct 24, 1958
Alice J. Luck, Reg.
Executed Oct. 24, 1958
By sewing J. E. Marsland.
By Taylor Wilkins, S.
Acem. U.S.

EXHIBIT "A"

ARTHUR MANCI, MAYOR

P. O. Box 248

FELIX D. BIGBY, CLERK-PREAS.

TOWN OF DAPHNE
Telephone 8427
DAPHNE, ALABAMA
"Jubilee Town"

COUNCILMEN:

A. G. Allegri
L. W. Foster
A. Victor Guarisco
R. P. O'Connor
Donald E. Pruett

WATER BOARD:

M. L. Baggett
J. A. Chrestman
A. F. Trione

October 11, 1958

Mr. M. P. Stallworth, Sr.
Co/O Mr. G. T. Fowler
Fairhope, Alabama

Dear Mr. Stallworth:

At the regular meeting of the Mayor and Council of the Town of Daphne, Held Monday Night, Oct. 6, 1958, at 7:30 PM, the Council confirmed the action taken by the Mayor in ~~refusing your application for a building permit to construct a building for business purposes on the lot located in the 1400 block of Main Street. This area is restricted by Town Ordinance to a residential area.~~ We invite you to seek a more suitable location in our town for your building.

Yours truly,

Town of Daphne

/s/Felix D. Bigby

Felix D. Bigby, Clerk

FDB/s

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 J. E. MARENO

.....
.....
.....

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

J. E. MARENO, Defendant

by M. P. STALLWORTH, SR.

....., Plaintiff

Witness my hand this 24 day of Oct 1957

42

David H. ..., Clerk

No. 4409 Page _____

The State of Alabama
Baldwin County

CIRCUIT COURT

M. P. STALLWORTH, SR.

Plaintiffs

vs.

J. E. MARENO

Defendants

Summons and Complaint

Filed FILED 19

OCT 24 1958

Clerk

ALICE J. DUCK, CLERK
REGISTER

JOHN V. DUCK

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

Daphne, Alabama

Received In Office

10/24 1958

_____, Sheriff

I have executed this summons

this 24 Oct 1958

by leaving a copy with

J. E. Mareno

Sheriff claims 54 miles at

Ten Cents per mile Total \$ 5.40

Taylor Wilkins, Sheriff

BY Taylor Wilkins
DEPUTY SHERIFF

Taylor Wilkins Sheriff

J. P. Horn Deputy Sheriff

Daphne

M. P. STALLWORTH SR.,
Complainant

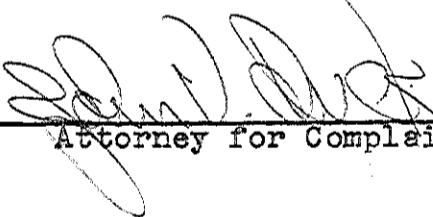
-VS-

J. E. MARENO
Respondent

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

TO: E. G. RICKARBY, ATTORNEY AT LAW, OF FAIRHOPE, ALABAMA.

Please take notice that at 2 o'clock ^{PM} on the 3rd day of December, 1958, at the Court house in Bay-Minette, Alabama, the Complainant, M. P. STALLWORTH SR., will take the deposition of FELIX T. BIGBY whose address is Daphne, Baldwin County, Alabama. Upon oral examination pursuant to an act of the Legislature of the State of Alabama, designated as Act number 375, regular session 1955, approved September the 8th, 1955, before Mrs. Louise Dusenbury, an officer authorized to administer oath in the County of Baldwin, State of Alabama, who is Court Reporter of Baldwin County, Alabama, duly authorized to take depositions and swear witnesses insaid County in said State. The oral examination will continue from day to day until completed and you are invited to attend and cross examine.



Attorney for Complainant

until I became Clerk and since that time I have tried to accumulate an Ordinance Book out of the Ordinances I have been able to accumulate and find.

Q. Mr. Bigsby, on or about the first of September of this year did Mr. M. P. Stallworth or his contractor submit to the town of Daphne an application for permit to erect a building in the 1400th. block in Daphne, Alabama?

A. Let me answer your question this way: The only thing I know about the request for building permit is by word of another person - that person is Mr. Mancini, the Mayor of the Town of Daphne. To my knowledge Mr. Stallworth has not made an application for a building permit.

Q. Did you or not, on the 11th day of October, this year, write to Mr. M. P. Stallworth stating by action of the town Council of the town of Daphne at a meeting held on the 6th day of October his application for permit to erect a building on the site in the 1400th. block on Main Street had been rejected, because there was an ordinance restricting the property to residences only?

A. At the request of Mr. George Fowler I addressed a letter to Mr. M. P. Stallworth in care of Mr. Filer in that regard.

Q. Do you have a copy of the Ordinance?

A. I have a copy of the Ordinance -- A certified copy.

Q. May I see it please?

REPORTER'S NOTE: Witness hands Mr. Duck Ordinance.

Q. Mr. Bigsby, under sub-section C. of Section 2 of this ordinance it says: "No structure or building hereinafter shall be erected for business purposes in the section of the town beginning with Mobile Bay on the west, the incorporation limits on the East, Dryer Avenue on the North and extending to the Town Limits on the South. Is that correct?"

A. Yes sir.

MR. RICKARBY: I object to that question. The instrument is the best evidence.

Q. Where are the Town limits on the South?

A. The Road -- County road leading to the bay; I don't know exactly how to tell you how it is; it is passed the colored negro school on the south - the first right hand road towards the Bay is the Town Limits.

Q. Then the 1400th. Block of Main Street is covered by this Ordinance?

A. Yes sir.

Q. Do You know Mr. J. E. Mareno, the Respondent in this Case?

A. I do.

Q. Has Mr. Mareno ever checked the Town Ordinances during the course of his business as a real estate agent or selling property in his own right prior to this transaction?

A. So far as I know I don't recall it.

Q. He has never checked the Ordinances on any sale that he has made

within the town of Daphne?

A. So far as I know personally, No.

Q. I will ask you this: Is this the only Ordinance that the Town has as far as zoning property?

A. It is.

Q. This is all inclusive ordinance zoning property?

A. It is.

ON CROSS EXAMINATION OF THIS WITNESS, HE TESTIFIED:

Examination by Mr. Rickarby.

Q. Has the Town of Daphne an Ordinance Book out of which you got this Ordinance?

A. Yes sir.

Q. It has?

A. Yes.

Q. When was that Ordinance Book Compiled?

A. As I stated previously, when I became the Town Clerk there was no Ordinance Book; in fact, the records were just in a trash box, you might say, and I attempted to find copies of everything that I could to make an ordinance book; I have been the Clerk for about five years.

Q. On the 28th day of August, 1946, were you the Town Clerk of the Town of Daphne?

A. No sir.

Q. Somebody else was?

A. Yes sir.

- Q. Do you remember who was Clerk at that time?
- A. No sir, I don't.
- Q. When you put this ordinance in the Ordinance book, is this the only copy you had of it?
- A. That is a certified copy of the one copy I do have.
- Q. You do have one copy of that?
- A. Yes sir.
- Q. Is that copy you have duly certified by the Clerk showing that it is an official copy?
- A. Mr. Rickarby, if we are trying to come to the fact that this is a legal ordinance that does not pertain to this case whatever as far as the legality of the ordinance, and so I think your question is along that line and I can't answer as far as the legality is concerned.
- Q. I asked you whether the copy you found was certified as being a true copy?
- A. No, merely a copy of an ordinance.
- Q. No certification at all?
- A. No sir.
- Q. Was there any certification that showed that that ordinance had been published?
- A. I can't say it was, but there is no certification on there; I believe it does state on the bottom of the ordinance that it was duly posted.

A. No, it says it shall be ---We don't know that it was?

A. No sir.

Q. You have no records?

A. No sir, I have no way of knowing whether it was or not; I had no connection with the Town at that time.

Q. Are there any records showing the minutes of the meeting of the Town Council of the Town of Daphne on the 28th day of August, 1946?

A. None that I can find.

Q. Mr. Bigsby, do you have an extra copy of this ordinance that I can get?

A. This one here is the extra copy.

Q. Did Mr. Fowler make an application relative to putting---
Did Mr. Stallworth make an application relative to putting some improvements on the property in the 1400th Block on Main Street?

A. As I said before, if there was any application for a building permit made it was made to the Mayor and not to me; the only thing I know about it is that at the meeting following this date that you have mentioned the Mayor explained to the Council what he had done and the Council agreed with him 100%; as far as any one making an application that is all that I can say - there has never been an application made prior to the time it was supposed to have been turned down in the Clerk's office and that's all I can say.

- Q. Did Mr. Fowler and Mr. Mareno come to your office prior to the Town Council turning this application down and ask you what action had been taken on it?
- A. Yes sir.
- Q. At that time isn't it a fact that you told them that the application was turned down because --- by the Mayor because it wasn't a suitable structure?
- A. No sir, I was informed by Mr. Mareno and Mr. Fowler that they had been turned down and wanted to know why and I told them I couldn't tell them why because I didn't have any knowledge of it.
- Q. When Mr. Mareno and Mr. Fowler came into your office to find out about the Ordinance didn't you read them Section 5 of that ordinance - this ordinance here?
- A. I read them a portion of the Ordinance.
- Q. Wasn't Section 5 the portion you read to them?
- A. I believe I did; I read them a part of it and it seemed like that was the one I was trying to bring to their attention; it was solely in the discretion of the Mayor if a permit was in order.
- Q. Did you see the drawing that was submitted with the application for improvements on this property?
- A. No sir, there was not a drawing, as I understand it, and I kept telling you at the time the application was made that I wasn't

aware there was an application, but there is nothing on record in the Town's Clerk's office at that time of a drawing after I understood Mr. Marenos and Mr. Fowler came that afternoon in regard to the permit; Mr. Fowler did bring back later on a drawing but the permit had been refused.

Q. When the drawing was handed to you?

A. Yes sir, it had already been refused.

Q. Has any application to this date been filed with the town on the part of Mr. Stallworth/^{or}by Mr. Stallworth?

A. To my knowledge not by Mr. Stallworth.

ON RE-DIRECT EXAMINATION OF THIS WITNESS HE TESTIFIED:

Examination by Mr. Duck.

Q. What you are telling us now is that the Mayor and the City Council refused a permit without an application ever being submitted?

A. I will tell you the story as I have had it explained to me since. The contractor was laying his lines out to put up a building; the policeman informed him that he had to have a building permit and stopped him from further work; on the same day Mr. Fowler applied to the Mayor for a building permit and was refused.

Q. It was refused under this Ordinance -- This particular Ordinance under the Mayor's power to refuse a permit?

A. Under the Mayor's power to refuse a permit.

Q. In the Town of Daphne?

A. Yes sir.

Q. Was it refused for Mr. Stallworth?

A. As I say, I don't know Mr. Stallworth; I never met Mr. Stallworth or knew that he was involved.

Q. Do you have a copy of the letter you wrote Mr. Stallworth?

A. Yes sir -- As a personal favor to Mr. Fowler I wrote him a letter and he requested that I address it to Mr. Stallworth in care of him.

Q. This is the ordinance?

A. That is a certified copy of an ordinance.

Q. Your letter confirms the action taken by the Mayor and Town Council of Daphne refusing the permit on the grounds that it was zoned for residential property?

A. It was refused for two reasons.

Q. One according to your letter, Mr. Bigsby?

A. You want me to read you the minutes: This is my personal letter as a personal favor to Mr. Fowler: The building permit was refused by the Mayor in accordance to the Town Ordinance restricting the area to residential, and in accordance with the town ordinance in regard to building permits. Now I would take that in regard to building permits as to the type of building also. That is my interpretation. As I say I don't know on what grounds that the Mayor based his refusal - what specific items he based his refusal on.


Q. According to the minutes and your letter it was because of the residential section?

A. Yes and also in regard to the building permit.

C E R T I F I C A T E:

I hereby certify that the foregoing, consisting of pages 1 to 10 both inclusive, correctly sets forth a true and correct transcript of the deposition of Mr. Feliz Bigsby taken by me in Bay Minette, Alabama, on December 9, 1958, under Act 375 enacted by the Legislature of Alabama.

This 24th day of February, 1959.


Official Court Reporter, 28th
Judicial Circuit

LAW OFFICES
E. G. RICKARBY
BANK BUILDING
FAIRHOPE, ALABAMA

October 29, 1958

Mrs. Alice Duck
Clerk of the Circuit Court
Bay Minette, Alabama

Dear Mrs. Duck:

Inre: Stallworth
Vs : Moreno
Our File: 4583

Enclosed find the Demurrer and Motion to Strike
in the Equity Case of Stallworth versus Moreno.

Please file same.

A copy of these pleadings have this day been
sent to John V. Duck, Esq., attorney for Complain-
ant.

Yours very truly,



EGR/sl
cc: Mr. John Duck
encl.

M. P. STALLWORTH, SR., |
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IN THE CIRCUIT COURT OF
 BALDWIN COUNTY, ALABAMA,
 IN EQUITY.

-VS-

J. E. MARENO, |
 |
 |
 |
 |

Respondent. |

 D E M U R R E R S

Comes the Respondent and offers the following separate and several demurrers to the Complainant's Bill of Complaint, and shows that:

1. Said bill does not set out when or where the alleged representations were made.
2. Said bill quotes the substance of an alleged ordinance of the Town of Daphne, without setting out the ordinance or giving its date so it can be checked.
3. That the allegation in Paragraph III, " the Town of Daphne had an ordinance zoning said property for residential purposes" is a conclusion of the pleader.
4. That said allegation in Paragraph III quotes the legal effect on an alleged ordinance without setting out the ordinance, or stating where it can be found.
5. That said bill is vague, indefinite and uncertain in that it does not properly inform the Respondent of the facts charged.
6. That said bill does not state a cause of action in that the alleged misrepresentation is one of law and not actionable.
7. That the bill seeks a rescission of a transaction and damages for loss of benefits on the rescinded contract.

Respondent demurs to that aspect of the bill seeking a rescission of the transaction without offering to return the property acquired by the Complainant in the transaction.

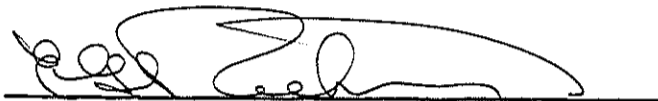
Respondent demurs to that aspect of the bill seeking damages and shows:

1. That Paragraph VI states that the Complainant "had secured a prospective buyer and that the said buyer had agreed to pay to the Complainant approximately FIFTEEN THOUSAND (\$15,000.00) DOLLARS, for the said building after its erection," and that said

allegation is (a), a conclusion of the pleader; (b) is so vague, indefinite and uncertain that it cannot be considered; (c) does not show with whom said agreement was made; (d) does not state whether it was an oral (and therefore, void), or a written agreement of purchase; and (e) that the amount claimed is not arithmetically justified.

2. That said bill seeks damages for prospective and uncertain profits.

3. That the damages claimed in the bill are the loss of profits which were not within the contemplation of both parties and the time of the transaction.


E. G. RICKARBY,
Attorney for Respondent.

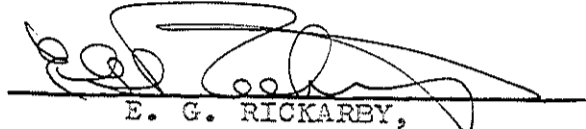
M. P. STALLWORTH, SR.,
Complainant,
-VS-
J. E. MARENO,
Respondent.

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

MOTION TO STRIKE

Comes the Respondent and moves the Court to strike the following portion of the Complainant's bill, namely:

1. Respondent moves to strike Paragraph VI and Exhibit "A", thereto, because said paragraph is irrelevant.


E. G. RICKAREY,
Attorney for Respondent.