

LONZO W. KELLEY,

Plaintiff,

VS.

CITY OF BAY MINETTE, ALABAMA,
a Municipal Corporation,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

NO. 6865

DEMURRER TO COMPLAINT

Now comes the defendant and for demurrer to the complaint sets down and assigns, separately and severally, the following:

1. It does not state a cause of action.
2. No facts are alleged to show that the plaintiff's claim was presented to the defendant within six months from the accrual thereof.
3. No facts are alleged to show a compliance by the plaintiff with the terms and provisions of Title 37, Section 476 of the Alabama Code.
4. No facts are alleged to show that the plaintiff's alleged injury was done or suffered through the neglect, carelessness or unskillfulness of some agent, officer or employee of the municipality engaged in work therefor and while acting within the line of his duty.

J. B. Blackburn
Attorney for Defendant

I hereby certify that I mailed a copy of the above and foregoing demurrer to Tolbert M. Brantley, attorney for the plaintiff, by first class mail, postage prepaid and properly addressed, on the 27 day of February, 1967.

FILED

FEB 27 1967

ALICE J. DICK, CLERK
REGISTER

J. B. Blackburn
Attorney for Defendant

VOL 63 PAGE 343

LONZO W. KELLEY,)	
)	IN THE CIRCUIT COURT OF
Complainant,)	
)	BALDWIN COUNTY, ALABAMA
VS.)	
)	AT LAW
CITY OF BAY MINETTE, ALABAMA,)	
a municipal corporation,)	CASE NO. _____
)	
Defendant.)	

AMENDED COMPLAINT

Comes now the Complainant in the above styled cause and amends his Complaint to read as follows:

COUNT I

Plaintiff sues to recover possession of the following described tract of land, to-wit:

The South 20 feet of the following described tract of land: A certain lot or parcel of land beginning at a point Seven hundred and ninety two (792) feet West of the Southeast corner of the Southwest quarter of the Southeast quarter (SW 1/4 of SE 1/4) of Section Sixteen (16) T 2 S, R 3 E, run East four hundred ninety (490) feet, thence North six hundred sixty (660) feet, thence West four hundred ninety (490) feet, and thence South six hundred sixty (660) feet to the point of beginning, being 7.43 acres, more or less, on the West side of that parcel of land acquired by deed from Carl White on Nov. 4, 1944 recorded in Deed Book 83, NS page 569, Baldwin County Probate Records.

of which he was in possession, and upon which, pending such possession, and before the commencement of this suit, the defendant, acting by and through its agents, servants or employees who were then and there acting within line and scope of their employment, did enter and unlawfully withholds.

COUNT II

Plaintiff sues to recover possession of the following described tract of land, to-wit:

The South 20 feet of the following described tract of land: A certain lot or parcel of land beginning at a point Seven hundred and ninety two (792) feet West of the Southeast corner of the Southwest quarter of the Southeast quarter (SW 1/4 of SE 1/4) of Section Sixteen (16) T 2 S, R 3 E, run East four hundred ninety (490) feet, thence North six hundred sixty (660) feet, thence West four hundred ninety (490) feet, and thence South six hundred sixty (660) feet to the point of beginning, being 7.43 acres, more or less, on the West side of

that parcel of land acquired by deed from Carl White on Nov. 4, 1944 recorded in Deed Book 83 NS page 569, Baldwin County Probate Records.

of which he was in possession, and upon which, pending such possession, and before the commencement of this suit, the defendant, acting by and through its agents, servants or employees who were then and there acting within line and scope of their employment, did enter and unlawfully withholds, together with \$500.00 for the detention thereof.

WALTERS & BRANTLEY

BY:

Samuel M. Brantley
Attorney for the Plaintiff

FILED

MAY 13 1957

CLERK
REGISTER

Sept. ~~Sept~~ 15, 1970

We the jury:

~~for~~ for the Plaintiff

Wendell E. Hardy

Tareman

Sept. 15, 1970

We the jury find for the Plaintiff
for the property sued for in the Complaint

Wendell E. Hardy

Tareman

6866

STATE OF ALABAMA
BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon the City of Bay Minette, Alabama, a municipal corporation, to appear within thirty days from the service of this writ in the Circuit Court, to be held for said county at the place of holding the same, then and there to answer the complaint of Lonzo W. Kelley.

WITNESS MY hand, this 15 day of February, 1966.

Alice J. Duck
Clerk

LONZO W. KELLEY,	X	
Complainant,	X	IN THE CIRCUIT COURT OF
Vs.	X	BALDWIN COUNTY, ALABAMA
CITY OF BAY MINETTE, ALABAMA,	X	AT LAW
a municipal corporation,		6865
Defendant.	X	

Plaintiff sues to recover possession of the following described tract of land, to-wit:

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of which he was in possession, and upon which, pending such possession, and before the commencement of this suit, the defendant entered and unlawfully withholds, together with \$500.00 for the detention thereof.

WILTERS & BRANTLEY

BY: Solomon M Brantley
Attorney for the Plaintiff

The Plaintiff demands a trial by jury.

WILTERS & BRANTLEY

BY: Solomon M Brantley
Attorney for the Plaintiff

FILED

FEB 27 1966

ALICE J. DUCK, CLERK

24-24-66

63 PAGE 342

6865

Longo W. Kelley
Compt.

25.

City of Bay Minette
Ala. a Municipal
Corp.

received 15 day of Feb 1966
on 24 day of Feb 1966

City of Bay Minette

Service on Sam Partridge, Mayor

TAYLOR WILKINS, JR.
By W. A. Gilbert D.S.
or

FILED

FEB 15 1966
ALICE L. DICK, CLERK
BAY MINETTE, ALA.

Winters + Brantley

LONZO W. KELLEY,

Plaintiff,

VS.

CITY OF BAY MINETTE, ALABAMA,
a Municipal Corporation,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 6865

DEMURRER TO AMENDED COMPLAINT

Now comes the defendant and demurs to the amended complaint heretofore filed in this cause by the plaintiff and to each and every count thereof, separately and severally, and as grounds of such demurrer assigns, separately and severally, the following:

1. It does not state a cause of action.

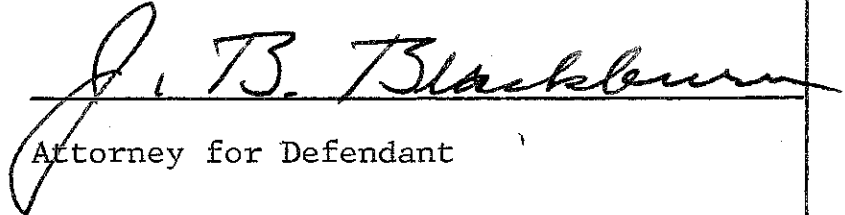
2. No facts are alleged to show that the plaintiff's claim was presented to the defendant within six months from the accrual thereof.

3. No facts are alleged to show a compliance by the plaintiff with the terms and provisions of Title 37, Section 476 of the Code of Alabama.

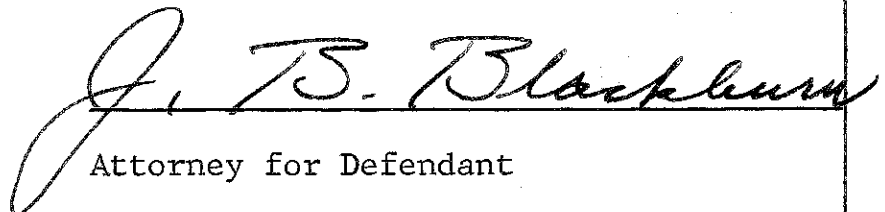
4. No facts are alleged to show that the plaintiff's alleged injury was done or suffered through the neglect, carelessness, or unskillfulness of some agent, officer or employee engaged in work therefor and while acting within the line of his duty.

5. No facts are alleged to show that the plaintiff's alleged injury or wrong was done or suffered through the neglect, carelessness or failure to remedy some defect in the streets, alleys, public ways or buildings of the defendant City after the same had been called to the attention of the Council, or after the same had existed for such unreasonable length of time as to raise a presumption of knowledge of such defect on the part of the Council of the said City.

6. It affirmatively appears that there is a nonjoinder of necessary parties defendant.


Attorney for Defendant

I hereby certify that I mailed a copy of the foregoing demurrer to Tolbert M. Brantley, attorney for the plaintiff, by first class mail, postage prepaid and properly addressed, on this the 29th day of November, 1967.


Attorney for Defendant

FILED

NOV 30 1967

ALICE J. DUCK CLERK
REGISTER

LONZO W. KELLEY,)
 Plaintiff,) IN THE CIRCUIT COURT OF
 VS.) BALDWIN COUNTY, ALABAMA
 CITY OF BAY MINETTE, ALABAMA,) AT LAW
 a Municipal Corporation,) CASE NO. 6865
 Defendant.)

DEMURRERS

1.

The decision of the defenses offered in this motion will not dispose of the matter before the Court.

2.

The proper answer to an action in the nature of an action in ejectment is not guilty.

3.

The determination of the issues raised in the Defendant's motion will not determine who has right of possession of the property involved in the litigation.

4.

The validity of the defense offered in said motion can not be determined until after it has been decided who owns the property involved in this litigation.

WILTERS & BRANTLEY

BY: Tolbert M. Brantley
 Tolbert M. Brantley

CERTIFICATE OF SERVICE

I do hereby certify that on 4th September 1969, served a copy of the foregoing by mail to the parties to the proceeding by and to the Mail, properly addressed, to the following persons:

WILTERS & BRANTLEY

By: T. M. Brantley

FILED

SEP 5 1969

ALICE J. DUCK CLERK
 REGISTER

LONZO W. KELLEY,

Q

Plaintiff,

VS.

Q

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

CITY OF BAY MINETTE, ALABAMA, Q
a Municipal Corporation,

AT LAW

NO. 6865

Defendant. Q

MOTION TO TRANSFER CASE TO EQUITY DOCKET

Now comes the defendant, by its attorney, and shows unto the court as follows:

1. Its defense in this case is an equitable right which cannot be asserted on the Law Side of this court.

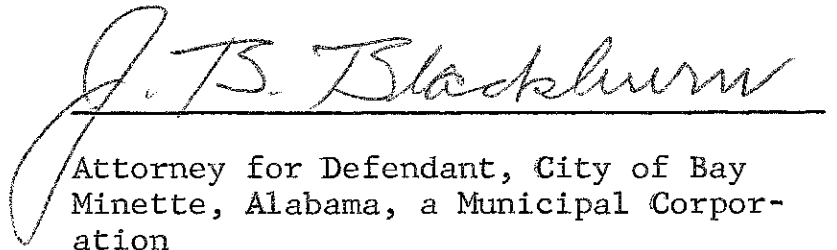
2. The defendant's defense to this suit is that it has a paving assessment against the property of the ~~defendant~~ ^{Plaintiff}, which assessment was made and established as provided in and by Chapter 11 of Title 37 of the Code of Alabama, for street improvement purposes.

The City of Bay Minette, Alabama, a Municipal Corporation, in establishing its lien against the said property of the ~~defendant~~ ^{Plaintiff}, commenced with the adoption of its ordinance No. 588 on, to-wit, September 3, 1963; subsequently, the adoption of its ordinance No. 589, adopted on October 1, 1963; its ordinance No. 594 adopted on February 18, 1964, which is known and designated as "Street Improvement Assessment Ordinance of February 18, 1964"; and a resolution adopted by the City Council of the City of Bay Minette, Alabama, on March 17, 1964, designated "Final Assessment Resolution of March 17, 1964."

3. The plaintiff paid one installment of \$45.00 on the said paving assessment, leaving a balance due thereon of \$200.00, together with interest thereon, as provided in the said ordinances and other proceedings establishing the lien, all of which indebtedness is past due and unpaid.

4. Prior to the filing of this suit, Myrtle Boone and C. L. Boone, her husband, conveyed to Lonzo W. Kelley, the same person as the plaintiff, by deed dated September 15, 1965, which is recorded in Deed Book 360 at pages 761-2, Baldwin County, Alabama Records, two tracts of land on which the City of Bay Minette, Alabama, has a lien for street improvement purposes under the ordinances and proceedings set out above, which liens are past due and unpaid. The principal balance due on the two said liens is \$451.00, together with interest thereon, as provided in the said ordinances and other proceedings establishing and perfecting the said liens.

WHEREFORE, the defendant, City of Bay Minette, Alabama, moves the court to make and enter a proper order or decree, as provided by Title 13, Section 153 of the Code of Alabama, transferring this cause from the Law Side of this court to the Equity Side thereof, so that the three liens described above can be foreclosed in this said proceeding.


Attorney for Defendant, City of Bay
Minette, Alabama, a Municipal Corporation

STATE OF ALABAMA Ø
 *
BALDWIN COUNTY Ø

Before me, the undersigned authority, within and for said County in said State, personally appeared SAM C. PRUETTE, who, after being by me first duly and legally sworn, deposes and says: That he is Mayor of the City of Bay Minette, Alabama; that he, as such officer, is authorized to make this affidavit for and on behalf of

the said corporation, and that the facts stated in the foregoing motion are true.



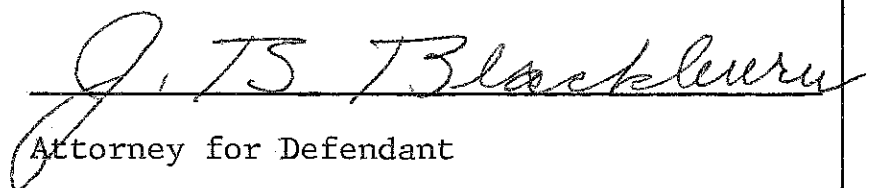
Sam C. Pruette

Sworn to and subscribed before me on this the 28th day of May, 1969.



Notary Public, Baldwin County, Alabama

I hereby certify that I mailed a copy of the foregoing motion to Tolbert M. Brantley, Esquire, attorney for the plaintiff, Bay Minette, Alabama, by first class mail, postage prepaid and properly addressed, on this the 28th day of May, 1969.


Attorney for Defendant

FILED

MAY 28 1969

ALICE J. [illegible]

LONZO W. KELLEY,

Ø

Plaintiff,

VS.

Ø

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

CITY OF BAY MINETTE, ALABAMA,
a Municipal Corporation,

Ø

AT LAW

NO. 6865

Defendant.

Ø

PLEA

Now comes the defendant and for answer to the complaint
as last amended, says:

1. Not guilty.

J. B. Blackburn
Attorney for Defendant

I hereby certify that I delivered a copy of the foregoing
plea to Tolbert M. Brantley, Esquire, attorney for the plaintiff,
on this the 14th day of September, 1970.

J. B. Blackburn
Attorney for Defendant

Filed
9-14-70
Alice J. Duck,
Clerk

351C

CITY OF BAY MINETTE, ALABAMA)	
a Municipal Corporation,)	IN THE CIRCUIT COURT OF
Complainant,)	BALDWIN COUNTY, ALABAMA
VS.)	IN EQUITY
LONZO W. KELLEY,)	CASE NO. 10,767
Respondent.)	

Pursuant to a Decree rendered by the Supreme Court of Alabama in this cause on the 28th day of May, 1970, Lonzo W. Kelley is entitled to have this matter tried on the Law Side of the Docket. It is therefore:

ORDERED, ADJUDGED and DECREED:

1. That this cause be and the same is hereby retransferred to the Law Side of the Court in which said cause was originally filed.
2. That said cause be docketed on the Law Side of the Court where the said cause was originally filed and to proceed to final judgment or Decree therein.
3. That all the costs now accrued in this cause be and the same are hereby taxed against the City of Bay Minette for which let execution issue.

Done this the 20th day of July, 1970.

Judge

John J. Madburn

LONZO W. KELLEY,

Ø

Plaintiff,

VS.

Ø

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

CITY OF BAY MINETTE, ALABAMA,
a Municipal Corporation,

Ø

AT LAW

NO. 6865

Defendant.

Ø

DEMURRER TO AMENDED COMPLAINT

Now comes the defendant, by its attorney, and demurs to the complaint as last amended and as grounds of such demurrer assigns, separately and severally, the following:

1. It does not state a cause of action.
2. No facts are alleged to show that plaintiff's alleged injury or wrong was suffered through the neglect, carelessness or unskillfulness of some agent, officer or employee of the defendant municipality engaged in work therefor and while acting in the line of his duty.
3. No facts are alleged to show that the plaintiff's alleged injury or wrong was done or suffered through the neglect, carelessness or failure of the defendant to remedy some defect in the streets, alleys, public ways or buildings after the same had been called to the attention of the Council or after the same had existed for such unreasonable length of time as to raise a presumption of knowledge of such defect on the part of the defendant's City Council.
4. No facts are alleged to show that any other person or corporation is liable to the plaintiff for his alleged injury and damage.
5. No facts are alleged to show the name or names of any other person or corporation who may be liable to the plaintiff for his alleged injury and damage.

6. No facts are alleged to show that the defendant became liable by ratifying the alleged wrongful act of its officers, agents or servants or that of other persons.

7. No facts are alleged to show of what the alleged wrong consisted, what the acts were which constituted it, who committed the acts, or what relation they had to the defendant.

J. B. Blackburn
Attorney for Defendant

I hereby certify that I delivered a copy of the foregoing demurrer to Tolbert M. Brantley, Esquire, attorney for plaintiff, on this the 14th day of September, 1970.

J. B. Blackburn
Attorney for Defendant

Filed
9-14-70
Alice J. Duck,
Clerk

6865

Lorenzo W. Kelley vs City of B.M.

JURY LIST - FALL SESSION, SEPTEMBER 14, 1970

- ~~1. Abernethy, Thomas V., Jr., Dry Cleaners, Robertsdale D⁶~~
- ~~2. Cabiness, Norvellie, Laborer, Bay Minette~~
- ~~3. Childress, Julius, Farmer, Robertsdale~~
- ~~4. Cooper, Gilbert, Farmer, Rosinton D¹~~
- ~~5. Sanks, Sarah, Housewife, Bay Minette D²~~
- ~~6. McGill, C. T., Merchant, Perdido P⁹~~
- ~~7. Quinley, Lyman, Farmer, Bay Minette P⁴~~
- ~~8. Rhodes, Charles R., Farmer, Foley~~
- ~~9. Hester, Horace B., Fairhope~~
- ~~10. Higbee, Rita B., Housewife, Belforest~~
- ~~11. Flowers, Homer, Farmer, Foley~~
- ~~12. Foley, J. B., Industrialist, Foley P¹~~
- ~~13. Franklin, Kenneth, Waiter, Foley~~
- ~~14. Garner, June A., School Teacher, Fairhope~~
- ~~15. Golden, Mrs. David, Housewife, Foley~~
- ~~16. Griffiths, Doyle, Foreman, Foley~~
- ~~17. Hagle, A. R., Employment Service, Foley P⁵~~
- ~~18. Doering, Richard, Tire Store Operator, Foley~~
- ~~19. Drinkard, Everette E., Farmer, Bay Minette D²~~
- ~~20. Dusek, Frank J., Jr., Civil Service, Lillian~~
- ~~21. Early, L. J., Jr., L. Irwin & Son, Foley P⁶~~
- ~~22. Roberson, Mutt, Laborer, Robertsdale~~
- ~~23. Boesch, Lawrence F., Farmer, Bay Minette~~
- ~~24. Boone, Annie E., Stockton D¹⁰~~
- ~~25. Byrd, Clifton M., Farmer, Perdido D⁹~~
- ~~26. Baumann, Fred, Civil Service, Elberta P⁷~~
- ~~27. Bishop, Earnest E., Meat Packer, Fairhope~~
- ~~28. Blalock, Greene C., Carpenter, Fairhope~~
- ~~29. Hardy, Wendell B., Salesman, Bay Minette~~
- ~~30. Emmons, Isaac, Farmer, Silverhill~~
- ~~31. Amos, Roy A., Farmer, Foley~~
- ~~32. Armstead, George, Employee Fairhope Hardware, Daphne P¹⁰~~
- ~~33. Mikkelsen, Einer, Farmer, Summerdale D¹¹~~
- ~~34. Phillips, Mayben, Farmer, Little River P²~~
- ~~35. Pizotti, Anthony, Farmer, Fairhope~~
- ~~36. Provanich, Matthew, Reserve Fleet, Perdido~~
- ~~37. Moorer, Eunice, Courthouse, Bay Minette P¹²~~
- ~~38. Nelson, Martin, Cleaners, Fairhope D⁸~~
- ~~39. Orem, Harley, Brookleaf Field, Bay Minette D⁴~~
- ~~40. Packer, Thomas, Meat Cutter, Perdido D⁵~~
- ~~41. Lee, Cecil E., Farmer, Gateswood~~
- ~~42. Kochler, Frank, Farmer, Lillian P⁸~~
- ~~43. Gilbert, Jimmy, Insurance, Robertsdale P³~~
- ~~44. Hobbs, W. D., Farmer, Rosinton D³~~
- ~~45. Germany, Ruth, Saleslady, Foley P¹¹~~
- ~~46. McLean, James K. Jr., Hotel Official, Fairhope~~
47. Anderson, Arthur, Machinist, Foley

P. XXXXX XXXXX XY
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