

W. B. BURMEISTER,
Plaintiff

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

- vs -

DEMURRER OF DEFENDANT, DAVID
H. GAAR.

DAVID H. GAAR and JOHN J. LEWIS
Defendants

Comes now the defendant, David H. Gaar, and demurs to the bill of complaint, and to each and every count thereof separately and severally, and as ground for said demurrer says:

1. That said complaint does not state a cause of action.

David H. Gaar
Attorney for Defendants

177
King
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

W. B. BURMEISTER

Plaintiff

- vs -

DAVID H. GAAR & JOHN J. LEWIS

Defendants

DEMURRER OF DEFENDANT,
DAVID H. GAAR

Filed February 20 1934
Robert S. Duck
clerk

Lloyd A. Magney
Attorney
Foley, Alabama.

W. B. BURMEISTER,

Plaintiff

- vs -

DAVID H. GAAR and JOHN J. LEWIS

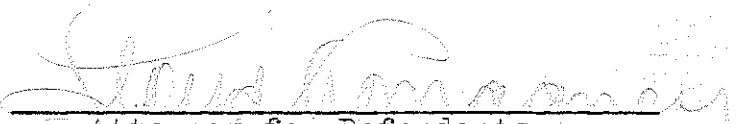
Defendants

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

DEMURRER OF DEFENDANT,
JOHN J. LEWIS

Comes now the defendant, John J. Lewis, and demurs to the bill of complaint, and to each and every count thereof separately and severally, and as ground for said demurrer says:

1. That said complaint does not state a cause of action.



Attorney for Defendants

~~RECORDED~~ 777 Jerry
Duck

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

W. B. BURMEISTER

Plaintiff

- vs -

DAVID H. GAAR and JOHN J. LEWIS

Defendants

DEMURRER OF DEFENDANT, JOHN.
J. LEWIS

John J. Lewis

Filed February 20 1935
Ruth L. Duck
clerk

Lloyd A. Magney
Attorney
Foley, Alabama.

W. B. BURMEISTER,

Plaintiff,

Versus

~~FARMERS & MERCHANTS BANK OF~~
~~FOLEY, a corporation,~~ DAVID H.
GAAR AND JOHN J. LEWIS,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW.

1. The plaintiff claims of the defendant the sum of Five Hundred and no/100 (\$500.00) Dollars, with interest thereon, for this, that heretofore on, to-wit, the 29th day of April, 1933, the ~~defendant~~, Farmers and Merchants Bank of Foley, a corporation, filed a bill of complaint against the plaintiff, W. B. Burmeister, in the Circuit Court of Baldwin County, Alabama, on the equity side thereof, praying a writ of injunction directed to the plaintiff to restrain him from cutting, removing, disposing of, or otherwise interfering with certain flowers, bulbs and other property described in said bill of complaint and further praying for the appointment of a Receiver to take charge and control of said property and to administer the same under the direction of the Circuit Court of Baldwin County, Sitting in Equity. And the plaintiff further avers that on, to-wit, the said 29th day of April, 1933, the ~~defendant~~, Farmers and Merchants Bank of Foley, a corporation, obtained an order from the Judge of said Circuit Court of Baldwin County, sitting in Equity, directed to the Register in Chancery of the Baldwin County Circuit Court, ordering and directing him, upon the said Farmers and Merchants Bank of Foley, a corporation, filing a bond in the sum of Five Hundred and no/100 (\$500.00) Dollars, to issue a writ of injunction, according to the prayer of said bill of complaint. Plaintiff avers that on, to-wit,

the 1st day of May, 1933, the said ~~defendant~~, Farmers and Merchants Bank of Foley, a corporation, with defendants, David H. Gaar, and John J. Lewis, as its sureties, entered into such bond in the penal sum of Five Hundred and no/100 (\$500.00) Dollars, payable to T. W. Richerson, Register of the Circuit Court, Equity Side, of Baldwin County, a copy of which said bond is hereto attached, marked Exhibit "A" and by reference expressly made a part hereof. And the plaintiff avers that thereupon on, to-wit, the 1st day of May, 1933, the said Register of the Circuit Court of Baldwin County, did issue a writ of injunction as prayed for in said bill of complaint and as ordered by the Judge of said Court, and plaintiff avers that thereafter on, to-wit, the 21st day of December, 1933, the Supreme Court of Alabama, on appeal by the plaintiff, dissolved said injunction. And the plaintiff avers that he has sustained damages by the suing out of said injunction as follows, namely:-

He has been caused to incur an expense of Two Hundred and Fifty and no/100 (\$250.00) Dollars, in the employment of attorneys to defend said suit in the Circuit Court of Baldwin County, and to prosecute an appeal therefrom to the Supreme Court of Alabama; he has been caused expense in going to and from the place of trial of said cause; has been deprived of the use of his said property pending said suit, and has been caused to lose a large sum of money, to-wit, the sum of Five Hundred and no/100 (\$500.00) Dollars, by reason of his inability himself to market and sell the flowers, which he was so enjoined from selling or otherwise interfering with, and has further been caused to lose the sum of Three Hundred and no/100 (\$300.00) Dollars, paid out of the proceeds of the sale of said flowers, as commissions to the Receiver appointed by the Circuit Court of Baldwin County under and pursuant to said bill of complaint.

2. The plaintiff claims of the defendants the sum of Five Hundred and no/100 (\$500.00) Dollars, with interest

thereon, for this, that heretofore on, to-wit, the 29th day of April, 1933, the ~~defendant~~, Farmers and Merchants Bank of Foley, a corporation, filed a bill of complaint against the plaintiff, W. B. Burmeister, in the Circuit Court of Baldwin County, Alabama, on the equity side thereof, praying a writ of injunction directed to the plaintiff to restrain him from cutting, removing, disposing of, or otherwise interfering with certain flowers, bulbs and other property described in said bill of complaint, and further praying for the appointment of a Receiver to take charge and control of said property and to administer the same under the direction of the Circuit Court of Baldwin County, Sitting in Equity. And the plaintiff further avers that on, to-wit, the said 29th day of April, 1933, the ~~defendant~~, Farmers and Merchants Bank of Foley, a corporation, obtained an order from the Judge of said Circuit Court of Baldwin County, sitting in Equity, appointing one, A. A. Rich, Receiver of said property described and referred to in said complaint, authorizing and directing him, upon the said Farmers and Merchants Bank of Foley, a corporation, giving bond in the sum of Five Hundred and no/100 (\$500.00) Dollars, conditioned to pay plaintiff such damage as he may sustain by the appointment of said Receiver, if such appointment is vacated or said Receiver removed or discharged because improvidently appointed, to take possession, charge and control of said property and assets and to administer the same, subject to the orders of said Court. Plaintiff avers that on, to-wit, the 1st day of May, 1933, the said ~~defendant~~, Farmers and Merchants Bank of Foley, a corporation, entered into bond in the penal sum of Five Hundred and no/100 (\$500.00) Dollars, with defendants, David H. Gaar and John J. Lewis as its sureties, payable to T. W. Richerson, Register of the Circuit Court, Equity Side, of Baldwin County, conditioned as required by said order, a copy of which said bond is hereto attached, marked Exhibit "B"

and by reference expressly made a part hereof. And the plaintiff avers that thereupon on, to-wit, the 1st day of May, 1933, the said Receiver took possession of said property and kept and maintained the same until, to-wit, the 21st day of December, 1933 when his appointment was vacated by the Supreme Court of Alabama, on appeal by the plaintiff. And the plaintiff avers that he has sustained damages by the appointment of said Receiver as follows, namely:-

He has been caused to incur an expense of Two Hundred and Fifty and no/100 (\$250.00) Dollars, in the employment of attorneys to defend said suit in the Circuit Court of Baldwin County, and to prosecute an appeal therefrom to the Supreme Court of Alabama; he has been caused expense in going to and from the place of trial of said cause; has been deprived of the use of his said property pending said suit, and has been caused to lose a large sum of money, to-wit, the sum of Five Hundred and no/100 (\$500.00) Dollars, by reason of his inability himself to market and sell the flowers, which said Receiver took possession of under said appointment, and has further been caused to lose the sum of Three Hundred and no/100 (\$300.00) Dollars paid, out of the proceeds of the sale of said flowers, as commissions to the said Receiver so appointed by the Circuit Court of Baldwin County pursuant to said bill of complaint.

3. Plaintiff claims of the defendants Five Hundred and no/100 (\$500.00) Dollars and interest thereon for the breach of the condition of a bond made by the defendants ^{as sureties} on, to-wit, the 1st day of May, 1933, payable to T. W. Richerson, as Register of the Circuit Court of Baldwin County, Alabama, in Equity, in that certain suit of Farmers and Merchants Bank of Foley, a corporation, against the plaintiff, heretofore pending in said

Circuit Court of Baldwin County in Equity, which said bond was conditioned as follows:-

"Now the condition of this obligation is that, whereas, the above bounden Farmers & Merchants Bank of Foley, a corporation, has filed its Bill of Complaint in the said Circuit Court, equity side, of Baldwin County, Alabama, and has obtained thereon from the Hon. F. W. Hare, Judge of said Court, an order for the issuance of an injunction to restrain and enjoin W. B. Burmeister from cutting, removing, disposing of or in any way interfering with any of the flowers, bulbs or other property now located in Baldwin County and known as the property of Premier Floral Company and from doing anything whatever to change the status now existing with reference to any of said property;

Now, if the said Farmers & Merchants Bank of Foley, its successors or assigns or any of them, shall pay or cause to be paid all damages which any person may sustain by the suing out of said injunction if the same is dissolved by the said Circuit Court, equity side, on the Bill of Complaint filed by the said Farmers & Merchants Bank of Foley, then this obligation shall be null and void but otherwise shall remain in full force and effect."

And the plaintiff says that the condition of said bond has been broken by the defendants in this, that said injunction has been dissolved by the Supreme Court of Alabama on appeal from the decision of the Circuit Court of Baldwin County, in Equity, in said cause, to the damage of the plaintiff in the aforesaid sum, wherefore he sues.

4. Plaintiff claims of the defendants Five Hundred and no/100 (\$500.00) Dollars and interest thereon for the breach of the condition of a bond made by the defendants ^{as sureties,} on, to-wit, the 1st day of May, 1933, payable to T. W. Richerson, as Register of the Circuit Court of Baldwin County, Alabama, in Equity, in that certain suit of Farmers and Merchants Bank of Foley, a corporation, against the plaintiff, heretofore pending in said Circuit Court of Baldwin County in Equity, which said bond was conditioned as follows:-

"Now the condition of this obligation is that, whereas, the above bounden Farmers & Merchants Bank of Foley, a corporation, has filed its Bill of Complaint in the said Circuit Court, Equity Side, of Baldwin County, Alabama, and has obtained thereon from the Hon. F. W. Hare, Judge of said Court, an order appointing A. A. Rich as Receiver of the business heretofore conducted under the trade name of Premier Floral Company and authorizing and directing the said A. A. Rich to take possession, charge and control of all of the property and assets of said business and to administer the same under and by direction of the further orders of said Court;

Now, if the said Farmers & Merchants Bank of Foley, its successors, or assigns or any of them, shall pay or cause to be paid to the said W. B. Burmeister all damages which he may sustain by the appointment of said Receiver if such appointment is vacated or the Receiver removed or discharged because improvidently appointed, then this obligation shall be null and void, but otherwise shall remain in full force and effect."

And the plaintiff says that the condition of said bond has been broken by the defendants in this, that the appointment of said Receiver has been vacated by the Supreme Court of Alabama on appeal from the decision of said Circuit Court of Baldwin County, in the aforesaid cause, because said Receiver was improvidently appointed, to the damage of the plaintiff as above stated.

Harry L. Smith & Caffey,
Wm. H. Allen
Attorneys for Plaintiff.

Plaintiff demands a trial by jury of the above entitled cause.

Harry L. Smith & Caffey
Wm. H. Allen
Attorneys for Plaintiff.

EXHIBIT "A"

INJUNCTION BOND.

KNOW ALL MEN BY THESE PRESENTS, That we, Farmers & Merchants Bank of Foley, a corporation, as principal and the undersigned as sureties are held and firmly bound unto T. W. Richerson, Register of the Circuit Court, equity side, of Baldwin County, State of Alabama, and his successors in office in the sum of \$500.00 for the payment of which to the said Register or his successors, we bind ourselves, our and each of our successors, executors and administrators jointly and severally firmly by these presents.

Sealed with our seals and dated this 1 day of May, 1933.

Now the condition of this obligation is that, whereas, the above bounden Farmers & Merchants Bank of Foley, a corporation, has filed its Bill of Complaint in the said Circuit Court, equity side, of Baldwin County, Alabama and has obtained thereon from the Hon. F. W. Hare, Judge of said Court, an order for the issuance of an injunction to restrain and enjoin W. B. Burmeister from cutting, removing, disposing of or in any way interfering with any of the flowers, bulbs or other property now located in Baldwin County and known as the property of Premier Floral Company and from doing anything whatever to change the status now existing with reference to any of said property;

Now, if the said Farmers & Merchants Bank of Foley, its successors or assigns or any of them, shall pay or cause to be paid all damages which any person may sustain by the suing out of said injunction if the same is dissolved by the said Circuit Court, equity side, on the Bill of Complaint,

filed by the said Farmers & Merchants Bank of Foley, then this obligation shall be null and void but otherwise shall remain in full force and effect.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the day and date first above written.

FARMERS & MERCHANTS BANK OF FOLEY,
A Corporation

By E. F. SANDERS
Its Cashier.

(SEAL)

DAVID H. GAAR (SEAL)

JOHN J. LEWIS (SEAL)

Taken and approved this 1st day of May, 1933.

EXHIBIT "B"

BOND ON APPOINTMENT OF RECEIVER.

KNOW ALL MEN BY THESE PRESENTS, That we, Farmers & Merchants Bank of Foley, a corporation, as principal and the undersigned as sureties, are held and firmly bound unto T. W. Richerson, Register of the Circuit Court, Equity Side, of Baldwin County, State of Alabama, and his successors in office in the sum of \$500.00 for the payment of which to the said Register or his successors, we bind ourselves, our and each of our successors, executors and administrators jointly and severally firmly by these presents.

Sealed with our seals and dated this 1st day of May, 1933.

Now the condition of this obligation is that, whereas, the above bounden Farmers & Merchants Bank of Foley, a corporation, has filed its Bill of Complaint in the said Circuit Court, Equity Side, of Baldwin County, Alabama, and has obtained thereon from the Hon. F. W. Hare, Judge of said Court, an order appointing A. A. Rich as Receiver of the business heretofore conducted under the trade name of Premier Floral Company and authorizing and directing the said A. A. Rich to take possession, charge and control of all of the property and assets of said business and to administer the same under and by direction of the further orders of said Court;

Now, if the said Farmers & Merchants Bank of Foley, its successors, or assigns or any of them, shall pay or cause to be paid to the said W. B. Burmeister all damages which he may sustain by the appointment of said Receiver if such appointment is vacated or the Receiver removed or discharged because improvidently appointed, then this obligation shall

be null and void, but otherwise shall remain in full force and effect.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the day and date first above written.

FARMERS & MERCHANTS BANK OF FOLEY,
A Corporation

By E. F. SANDERS
Its Cashier.

(SEAL)

DAVID H. GAAR (SEAL)

JOHN J. LEWIS (SEAL)

Taken and approved this 1st day of May, 1933.

T. W. RICHESON

Register.

THE STATE OF ALABAMA,
Baldwin County.

No. 126

CIRCUIT COURT

January 15th.

1934

To Any Sheriff of the State of Alabama:

You are hereby commanded to summon David H. Garr and John J. Lewis

to appear and plead, answer or demur, within thirty day from the service hereof, to the Complaint filed in
the Circuit Court of Baldwin County, State of Alabama at Bay Minette, Ala., against David H.
Garr and John J. Lewis Defendant by W. B. Burmeister,

Plaintiff

Witness my hand this 15th day of January 1935

Clerk.

COMPLAINT

Plaintiff versus

The Plaintiff claims of the Defendant

Dollars, due by

Plaintiff's Attorney.

Shiff Civil Writ Docket Page 1
Original
Book

No. *116* *117*

THE STATE OF ALABAMA
BALDWIN COUNTY

CIRCUIT COURT

W.B. Burmeister

PLAINTIFF

VS.

David H. Garr, and

John J. Lewis

DEFENDANT

Summons and Complaint

Filed, *January 15th, 1935*

Rahut A. Deuch, Clerk.

Defendant Lives at

Foley

John N. Allen,

Plaintiff's Attorney.

Defendant's Attorney

RECEIVED IN OFFICE

, 193

, Sheriff

I have executed this Writ

this *Jan 22*, 193*5*

by leaving a copy of the within Summons and Complaint with

David H. Garr
and John J. Lewis
Defendants.

M. H. Wilkerson, Sheriff.

C. N. Anderson, Deputy Sheriff.