

STATE OF ALABAMA  
BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon A. L. McCUE, 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 Therrell E. Malone.

Witness my hand this the 14<sup>th</sup> day of June, 1949.

Alice J. Smith  
Clerk

=====

Therrell E. Malone	Ø	IN THE CIRCUIT COURT OF
Plaintiff	Ø	Baldwin County, Alabama
VS.	Ø	AT LAW
A. L. McCue	Ø	
Defendant	Ø	

1.

The Plaintiff claims of the Defendant FORTY SEVEN HUNDRED (\$4700.00) DOLLARS, due from him by account on the 19th day of July, 1949, which sum of money with the interest thereon is still due and unpaid.

2.

The Plaintiff claims of the Defendant FORTY SEVEN HUNDRED (\$4700.00) DOLLARS, loaned by the Plaintiff to the Defendant on the 2nd day of January, 1943, which sum of money was to be repaid within 120 days from the date of written demand upon the Defendant, which written demand was made by the Plaintiff upon the Defendant on July 19, 1948, which sum of money with the interest thereon from July 19, 1948, is still due and unpaid.

3.

The Plaintiff claims of the Defendant FORTY SEVEN HUNDRED (\$4700.00) DOLLARS, on account stated between the Plaintiff and the Defendant on the 19th day of July, 1948, which sum of money with the interest thereon is still due and unpaid.

4.

The Plaintiff claims of the Defendant the sum of FORTY SEVEN HUNDRED (\$4700.00) DOLLARS, due from the Defendant to the Plaintiff by, under, and in accordance with the terms and conditions of a written contract in words and figures as follows:

Agreement made this 2nd day of January, A. D. 1943, by and between A. L. McCue, First Party, and Therrell E. Malone, Second Party, WITNESSETH:

Whereas First Party is the owner and operator of business known as The Baldwin County Beverage Company with place of business located in Roberts-dale, Alabama, And, Whereas Second Party has placed in the hands of First Party for use in connection with said business the sum of Four Thousand Seven Hundred (4700) Dollars, Now

Therefore, it is understood and agreed between the Parties hereto that, subject to conditions herein set forth, the Parties hereto shall divide equally the net profits of said business EXCEPTING, HOWEVER, THE PROFITS GAINED BY THE SALE OF ALL COOKS AND SCHLITZ BEER which said last named sales are specifically excluded from any agreement existing between the parties hereto, and FOR THE DURATION OF THIS AGREEMENT, Second Party shall devote his time and effort as salesman, driver and in such other capacity as may be necessary in connection with the conduct of said business, and It is understood and agreed by and between the parties hereto that within agreement shall endure until written demand shall be made by either party hereto to terminate same, Whereupon, First Party shall be expected to pay over to second party said sum of Four Thousand Seven Hundred (4700) Dollars plus all accrued profits due said Second Party within ONE HUNDRED AND TWENTY (120) DAYS from the date of such written demand and upon said payment by said First Party to Second Party, this agreement shall be at an end and of no further force and effect.

It is understood and agreed that said division of profits as hereinabove set forth shall be on a semi-annual basis.

The Within Agreement shall apply to and bind the heirs, executors, administrators and assigns of the respective parties.

In Witness Whereof, the Parties have hereunto set their hands and seals this 2nd day of January, A. D. 1943.

Signed, sealed and delivered

A. L. McCue (Seal)

in presence of:

Mrs. L. J. Postle  
H. I. Wilters

The Plaintiff alleges that written demand was made upon the Defendant on July 19, 1948; that said sum of money has not been paid by the Defendant to the Plaintiff; that said sum of money with the interest thereon from July 19th, 1948, is due and unpaid.

*J. M. Lee*  
Attorney for Plaintiff.

RECORDED

W 1363 6-16

6-16-49

Received in Sheriff's Office  
this 15 day of June, 1949  
TAYLOR WILKINS, Sheriff

SUMMONS AND COMPLAINT

THERRELL E. MALONE

PLAINTIFF

VS.

A. L. McCUE

DEFENDANT

Law office of H. M. Hall.

Executed 6-16 19 49  
by serving copy of within Summons and  
Complaint on

A. L. McCue

Taylor Wilkins Sheriff

By Bligh Steadman Deputy Sheriff

Filed 6-14-49  
A. J. Duck  
clerk

Therrell E. Malone

PLAINTIFF

VS

A. L. McCue

DEFENDANT

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW.


PLEA

Comes the defendant in the above-entitled cause, appearing specially and only for the purpose of filing this plea, and says that the said Therrell E. Malone of Fairhope, Alabama, plaintiff in this cause, ought not to have and maintain his said action for the defendant says, separately and severally, as follows, to-wit:

That these causes arise from partnership agreements entered into between the plaintiff and defendant and that said partnership has not been dissolved as provided in the Code of Alabama, Title 43, Section 35, and that said partnership has had no final accounting wherefore the defendant moves the court to dismiss said actions against the defendant since an action at law will not lie by one against another partner.

Wherefore, defendant says that the Circuit Court of Baldwin County, Alabama, is without jurisdiction to try and determine this cause, and that this said action should be abated, and prays the judgment of this Honorable Court whether the plaintiff should be allowed to further maintain this suit.

  
Defendant.

  
Attorney for defendant.

THERRELL E. MALONE

PLAINTIFF

VS

A. L. McCUE

DEFENDANT

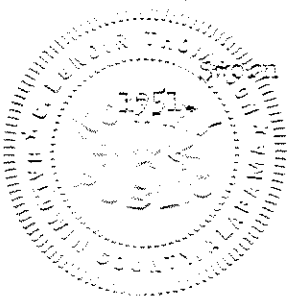
PLEA

From the law offices of  
C. Leloir Thompson  
Bay Minette, Alabama

STATE OF ALABAMA  
BALDWIN COUNTY

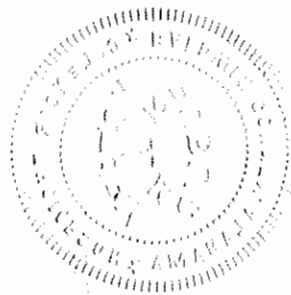
Before me, C. L. H. Thompson, a Notary Public, in and for  
Said State in said County, personally appeared A. L.  
McCre, who, being known to me, and by me first duly sworn, deposes and  
says on oath: That he is the defendant in the above entitled cause,  
and has personal knowledge of the facts stated in the foregoing pleas  
and that the said statements of fact therein contained are true.

A. L. McCre



Witness my hand and subscribed before me, this the 9 day of March,

C. L. H. Thompson  
Notary Public, Baldwin County, Alabama.



RECORDED

THERRELL E. MALONE

PLAINTIFF

VS

A. L. MCCUE

DEFENDANT

PLEA

From the law offices of  
C. LeNoir Thompson  
By Minette, Alabama

*Filed 3-9-51  
A. J. Rauch  
Clerk*



THERRELL E. MALONE

PLAINTIFF

VS

A. L. McCUE

DEFENDANT

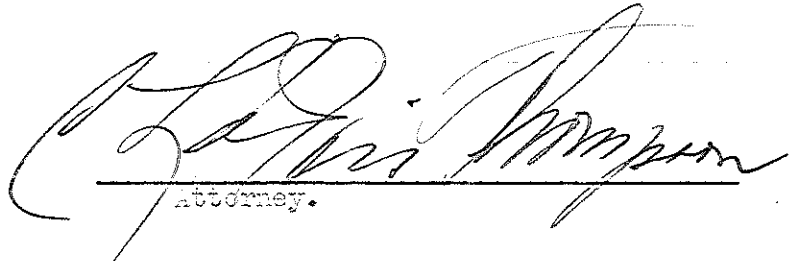
IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW.

MOTION

Comes the Defendant and moves the court for leave to file a plea in abatement and as cause for said motion C. LeNoir Thompson, as attorney for said Defendant says that he had no notice that said partnership had not been legally dissolved as provided by the 1940 Code of Alabama, Title 43, Section 35, and that he had no notice that said partnership had made no final accounting wherefore this motion for leave to file said plea in abatement.

  
Attorney.

RECORDED

1362

THERRELL E. MALONE

PLAINTIFF,

VS

A. I. MCCUE

DEFENDANT

NOTICE

From the law offices of  
C. LeNoir Thompson  
Day Linette, Alabama

FILED  
MAR 16 1951  
ALICE J. DUCK, Clerk

T. E. MALONE,

Plaintiff,

vs.

A. L. McCUE,

Defendant.

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IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
LAW SIDE.

Comes the Plaintiff in the above styled cause and demurs to the motion to transfer said cause to the Equity Court filed by the Defendant in said cause and assigns the following separate and several grounds of demurrer, viz:

1. That it is affirmatively shown by the motion that there is an adequate remedy at law.

2. That it is affirmatively shown by the motion that the Defendant can properly defend said cause of action on the law side of the court.

3. That the motion fails to show any grounds for transferring said cause to the equity side of the court.

4. That the Defendant would have a proper defense in the law side of the court for the matters set up in paragraph 2 of the motion.

5. That paragraph 2 of the motion is vague and indefinite.

6. That paragraph 3 of the motion does not set up any legal or equitable defense.

7. That paragraph 3 of the motion is vague and indefinite.

8. That paragraph 3 of the motion fails to set out the full contract or agreement referred to or the substance thereof.

9. That paragraph 3 of the motion fails to allege that any profits were made from the transaction therein referred to.

10. For aught that appears from paragraph 3 of the motion, the Plaintiff did complete the contract referred to.

11. That paragraph 4 of the motion is vague and indefinite.

12. That paragraph 4 sets up no legal or equitable defense to the cause of action.

13. That paragraph 4 of the motion fails to set out in full the agreement therein referred to or the substance thereof.

14. That paragraph 5 fails to allege what automobile business is referred to.

15. That paragraph 5 does not allege that any profit has been made from such business.

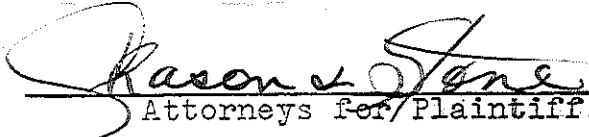
16. That paragraph 5 is vague and indefinite.

17. That paragraph 5 of the motion states no legal or equitable defense to the cause of action.

18. That paragraph 6 of the motion is a legal defense and not an equitable defense to the cause of action.

19. That paragraph 7 of the motion is a legal defense and not an equitable defense to the cause of action.

20. That paragraph 8 of the motion is a legal and not an equitable defense to the cause of action.

  
Attorneys for Plaintiff.

RECORDED

DEMURRER TO MOTION

T. E. MALONE,

Plaintiff,

vs.

A. L. McCUE,

Defendant.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
LAW SIDE.

Filed: March 1st, 1951.

Alice J. Smith  
Clerk.

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THERRELL E. MALONE  
PLAINTIFF

VS

A. L. MCCUE

DEFENDANT

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW. NO. \_\_\_\_\_

ANSWER ACTION FOUR SEVERAL TO COMPLAINT

1.

Comes your petitioner in the above styled cause and alleges that he has an equitable defense to said action which can not be disposed of in the law side of the court which depends upon the assertion of an equitable right by said complaint.

Your petitioner avers and shows that his equitable defense is as follows:

2.

That the plaintiff and your petitioner entered into an agreement on the 2nd day of January 1943 which agreement provided that the plaintiff place in the hands of your petitioner, A. L. McCue, the sum of \$4,700.00 to be used in connection with said business. Said agreement being cited in the original complaint filed in this cause by the plaintiff. That prior to the withdrawal of the plaintiff in this cause from participation in the business known as the Baldwin County Beverage Company, that the plaintiff had withdrawn funds from said business over and above his share of the profits from said business, according to the contract alleged above, said sum withdrawn being in excess of \$7,000.00 but that there has been no final accounting of said partnership as entered into between the parties to this cause on to-wit the 2nd day of January, 1943, a sum of money in excess of four thousand seven hundred dollars (\$4,700.00).

3.

Prior to the time of withdrawal by the plaintiff, Therrell E. Malone, your petitioner, A. L. McCue, arranged for the purchase of the Kaiser-Frazer Franchise Agency at Robertsdale, Alabama from the owner, A. G. Allegri and your petitioner paid the said A. G. Allegri the sum of \$1,000.00 as a binder with an agreed purchase price of \$4,000.00 and the further agreement that the purchaser did rent from the said A. G. Allegri the building occupied by said business for the sum of \$3,600.00 per annum. That your petitioner, A. L. McCue,

paid the sum of \$900.00 of said rents and placed the said plaintiff in this cause Therrell E. Malone, in possession of the Kaiser-Frazer Franchise Agency with the agreement that the said Therrell E. Malone would complete the contracts entered into with A. G. Allegri and the Kaiser-Frazer Corporation and that the said Therrell E. Malone would conduct a franchise automobile dealer's agency as a dealer for Kaiser-Frazer Corporation; that he would utilize the funds provided by the said A. L. McCue together with funds of his own, and would carry out the agreements made by the said A. L. McCue to the mutual advantage of both parties by carrying on the purchase and sale of new automobiles, the sale of automobile parts, the sale of used automobiles and the repair of automobiles, as is customarily done by franchise dealers to the mutual advantage to your petitioner and plaintiff, who had agreed that the plaintiff would receive 60% of the profits of said ventures and your petitioner would received 40% of said profits from said ventures.

4.

That said plaintiff under said partnership agreement has made substantial profits in conducting said ventures but has refused to report to your petitioner the said profits, or to turn over to the petitioner his share of the said profits; that the said plaintiff has not furnished the account books of said partnership ventures and that your petitioner has been unable to have access to said account books; that said plaintiff has failed and still refuses to make an account to the petitioner although requested to do so; that your petitioner does not know the amount of profits that has been made in said joint venture, but he is informed and upon such information and belief and avers that they exceed 7,000.00.

5.

That your petitioner, A. L. McCue, thereafter entered into negotiations with the Studebaker Corporation for a franchise to handle Studebaker automobiles and your petitioner, A. L. McCue, then arranged for this franchise to be handled by the plaintiff in this cause, Therrell E. Malone, that in accordance with the said efforts of your petitioner through which a dealers franchise to handle Studebaker automobiles was secured by your petitioner, the plaintiff abandoned the Kaiser-Frazer Franchise and continued to operate the business as a franchise dealer for the Studebaker automobiles in accordance with arrangements and agreements aforesaid.

entered into by your petitioner who had invested money as alleged aforesaid, together with further time and considerable effort to the considerable benefit of the said joint ventures of the plaintiff and your petitioner in the establishment and operation of the automobile businesses herein alleged.

6.

That your petitioner, A. L. McCue, put money, business experience, time, and effort into the establishment of the automobile businesses aforesaid and that the plaintiff in this cause, Therrell E. Malone, as at all times had possession of the funds of said ventures; that the plaintiff has had possession of all books and records pertaining to said venture, that the plaintiff has had possession of all office fixtures and equipments and of the shop fixtures and equipments; and that subsequently said plaintiff has removed all of which from the original premises at Robertsdale, Alabama to Fairhope, Alabama, both locations being in Baldwin County, Alabama; and has at no time furnished an accounting of the profits of said joint venture nor has he paid over to your petitioner, A. L. McCue, any profits accruing from said joint venture in which your petitioner, A. L. McCue, has invested money, time, experience and effort.

7.

That said partnership has not been dissolved as provided in the Code of Alabama, Title 43, Section 35 and that said partnership has had no final accounting whereby the funds of the plaintiff and of the defendant which were co-mingled in the operation of said partnership have not been segregated nor has a final accounting been made of said partnership funds.

8.

Further your petitioner, A. L. McCue, says under oath that there was no consideration for the execution of the promissory note alleged as due in original cause #1515 and consolidated with a previous cause between these parties.

9.

The defendant, as a defense to the action of the plaintiff, saith that, at the time said action was commenced, the plaintiff was indebted





to him in a sum of money, the exact amount of which is unknown but that said moneys are due as the result of the said services and payments stated in the preceding paragraph and maybe ascertained to be an exact amount upon proper determination by an accounting between said parties, all of which he hereby offers to set off against the demand of the plaintiff, and he claims judgments for the excess as maybe determined by said account petitioned supra.

10.

Prior to the institution of this suit, and on, to-wit: 120 days after the demand alleged by said plaintiff, the said plaintiff has withheld from the defendant his rightful share of said profits heretofore alleged from said venture, such moneys which if ascertained, defendant believes that together with the payments made by the defendant to the plaintiff as a refund on the original \$4,700.00 would exceed the amount of the demand made by the plaintiff in this cause.

WHEREFORE, petitioner files in this cause this his written motion and moves the court to make and enter into appropriate order transferring from the law side of the court to the equity side of the court so that an accounting may be had between said parties which will show the number of automobiles purchased by the plaintiff in said joint enterprise, purchase price paid for said automobiles and the number of said automobiles resold by the plaintiff and the money collected by him on accounts of such sales and the expenses of conducting business and the net profits earned in the said business.

  
PETITIONER.  
  
ATTORNEY FOR PETITIONER.

STATE OF ALABAMA    §  
BALDWIN COUNTY    §

Before me, C. LeMoir Thompson, a Notary Public, in and for said County, in said State, personally appeared, A. L. McCre, who, being known to me, and by me first duly sworn, deposes and says on oath: That he is the defendant in the above entitled cause, and has personal knowledge of the facts stated in the foregoing pleas and that the said statements of fact therein contained are true.

  
  
Notary Public, Baldwin County, Alabama.

Sworn to and subscribed before me, this the 9th day of March, 1951.

1363

THURRELL E. MALONE

PLAINTIFF

VS

A. L. MCCOY

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DEFENDANT.

AMENDED MOTION TO TRANSFER  
TO EQUITY.

From the law offices of  
C. LeBoir Thompson  
Birmingham, Alabama

FILED

MAR 2 1951

ALICE J. DUCK, Clerk



1363