

1778

PERRY COKER, individually,
and doing business under the
firm name of Coker Distribut-
ing Company,

Plaintiff,

vs.

LEO DAVIS,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

LAW SIDE.

PLEA ONE

The defendant for answer to the complaint filed in said cause says that the allegations of the complaint are untrue.

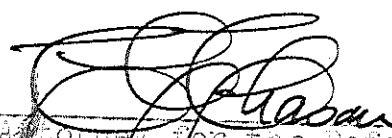
PLEA TWO

The defendant for answer to said complaint says that he has paid the debt for the recovery of which this suit was brought before the action was commenced.

The defendant as a further defense to the action of the plaintiff says that at the time said action was commenced the plaintiff was indebted to him in the sum of Ten Thousand Dollars (10,000) for Breach of Contract which he hereby offers to set off against the demand of the plaintiff and he claims judgment for the excess.

The defendant as a further defense to the action of the plaintiff says that at the time said action was commenced the plaintiff was indebted to him in the sum of Six Thousand Dollars (\$6,000.00) for the conversion by the plaintiff of gasoline, oil, automotive parts and equipment, tools, and other parts and equipment used in the operation of a filling station, the property of the plaintiff.

Defendant demands
trial by jury.


Attorney for the Defendant


Attorney for the Defendant

1799
RECORDED

ANSWER

PERRY COKER, individually,
and doing business under the
firm name of Coker Distribut-
ing Company,

Plaintiff,

vs.

LEO DAVIS,

Defendant.

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

FILED
JUN 13 1952
ALICE J. DUCK, Clerk

CECIL G. CHASON
ATTORNEY AT LAW
FOLEY, ALABAMA

PERRY COKER, individually,
and doing business under the
firm name of COKER DISTRIBUT-
ING COMPANY,

Plaintiff,

vs.

LEO DAVIS,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

LAW SIDE.

Comes the Plaintiff in the above styled cause and demurs to
plea two filed by the Defendant in said cause, and as grounds for
said demurrer says:

1. That said plea does not state a defense to the cause of
action.

2. That said plea seeks to join three separate defenses in
one plea.

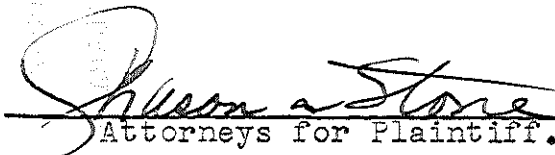
3. That said plea is not a proper plea in that it seeks to
join a plea of payment and a plea of set off or recoupment with a
plea for conversion.

4. That said plea fails to state how and in what manner
there was a breach of contract on the part of the Plaintiff.

5. That said plea fails to allege sufficient facts as the
basis for a plea of set off or recoupment.

6. That said plea fails to allege sufficient facts for a
plea for conversion.

7. That said plea is vague and indefinite.


Attorneys for Plaintiff.

RECORDED 79

DEMURRER

PERRY COKER, individually, and
doing business under the firm
name of COKER DISTRIBUTING
COMPANY,

Plaintiff,

vs.

LEO DAVIS,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

EAW SIDE.

*Filed 6-16-52
Alice J. Jener
Clerk*

PERRY COKER, individually,
and doing business under the
firm name of Coker Distributing
Company,

Plaintiff,

-vs-

LEO DAVIS,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

LAW SIDE

PLEA ONE

The Defendant, for answer to the complaint filed in
said cause, says that the allegations of the Complaint are untrue.

PLEA TWO

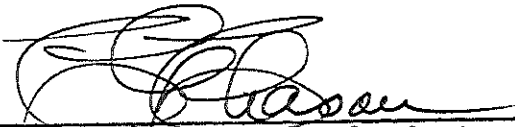
The Defendant, as a defense, says that at the time said
action was commenced Plaintiff was indebted to him in the sum of
Ten Thousand Dollars (\$10,000.00) for the breach of a contract
hereinafter more fully set forth, which the Defendant hereby
offers to set off against the demand of the Plaintiff and claims
judgment for the excess.

The damages herein claimed arise out of a contract
breached by the Plaintiff, entered into by and between the Plain-
tiff and Defendant on, to-wit, September 21, 1950, whereby the
Plaintiff agreed to execute a long term lease on a filling station
and to allow the Defendant four and one-half cents (4 1/2¢) per
gallon commission on regular gasoline sold and five cents (5¢)
per gallon commission on Ethyl gasoline sold, and to build a bunk-
house for truckers. At the time said contract was entered into,
and subsequent thereto, Defendant paid from his own funds the sum
of One Thousand Six Hundred Fifty Dollars (\$1,650.00), none of
which was income from the business, and that the Plaintiff fur-
nished certain original inventory and, subsequently thereto,
certain merchandise which was evidenced by the Promissory Note
dated June 27, 1951, on which Plaintiff sues.

Defendant further avers that he was ready, able and will-
ing to comply with all the terms of the contract and that he
suffered damages in the amount of Ten Thousand Dollars (\$10,000.00)
as aforesaid on the failure and refusal of the Plaintiff to comply
with the terms of the contract.

PLEA THREE

The Defendant, as a defense to the action of the Plaintiff, says that at the time said action was commenced the Plaintiff was indebted to him in the sum of Six Thousand Dollars (\$6,000.00) for the conversion by the Plaintiff on, to-wit, January 17, 1952, of gasoline, oil, automobile parts and equipment, tools and other parts and equipment used in the operation of a filling station, the property of the Defendant, and the Defendant hereby offers to set off against the demand of the Plaintiff and he hereby claims judgment for the excess.


Solicitor for Defendant

RECORDED

1799

A N S W E R

PERRY COKER, individually,
and doing business under
the firm name of Coker
Distributing Company,

Plaintiff,

-VS-

LEO DAVIS,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

LAW SIDE

Filed 9.18.52
Am. J. W. Smith
clerk

PERRY COKER, individually,
and doing business under the
firm name of Coker Distributing
Company,

Plaintiff,

vs.

LEO DAVIS.


Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

LAW SIDE.

Comes the Plaintiff in the above styled cause and demurs to
Pleas Two and Three filed by the Defendant in said cause on
September 18, 1952, and assigns the following separate and several
grounds, viz:

1. That Plea Two does not state a defense to the cause of
action.
2. That Plea Two is not a proper Plea of set-off.
3. That Plea Two attempts to set up a contract between
the parties but does not state the substance of such contract.
4. That Plea Two does not allege whether such contract was
oral or in writing and if in writing, it fails to attach a copy of
such contract.
5. That Plea Two does not allege ^{what} the Defendant agreed to
perform as his part of the contract.
6. For aught appearing from Plea Two the contract was in
violation of the Statute of Fraud.
7. That the allegation that the Defendant suffered damages
in the sum of \$10,000.00 is but a conclusion of the pleader.
8. That no facts are alleged to show the substance of the
contract referred to in Plea Two or how and in what manner the
Defendant was damaged.
9. That Plea Three does not sufficiently describe the
property which is referred to therein.
10. That Plea Three is not a proper defense to the cause of
action.


Attorneys for the Plaintiff.

4 RECORDED

DEMURRER

PERRY COKER, individually, and
doing business under the firm
name of Coker Distributing
Company,

Plaintiff,

vs.

LEO DAVIS,

Defendant.

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

Filed: September 19 1952.

Alice J. French.
Clerk.

PERRY COKER, individually,
and doing business under the
firm name of Coker Distributing
Company,

Plaintiff,

-vs-

LEO DAVIS,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

LAW SIDE

PLEA ONE

The Defendant, for answer to the complaint filed in
said cause, says that the allegations of the Complaint are untrue.

PLEA TWO

The Defendant, as a defense, says that at the time said
action was commenced Plaintiff was indebted to him in the sum of
Ten Thousand Dollars (\$10,000.00) for the breach of a contract
hereinafter more fully set forth, which the Defendant hereby
offers to set off against the demand of the Plaintiff and claims
judgment for the excess.

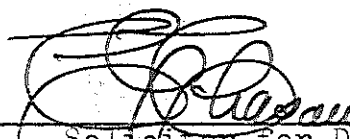
The damages herein claimed arise out of an oral contract
breached by the Plaintiff, entered into by and between the Plain-
tiff and Defendant on, to-wit, September 21, 1950, whereby the
Plaintiff agreed to execute a long term lease on a filling station
and to allow the Defendant four and one-half cents (4 1/2¢) per
gallon commission on regular gasoline sold and five cents (5¢)
per gallon commission on Ethyl gasoline sold, and to build a bunk-
house for truckers, for which Defendant was paying a monthly rental
originally set at One Hundred Fifty Dollars (\$150.00) for the fill-
ing station and Fifty Dollars (\$50.00) for the dwelling quarters,
but which was subsequently reduced by agreement to One Hundred Dol-
lars (\$100.00) for the filling station and Fifty Dollars (\$50.00)
for the dwelling unit. Plaintiff failed and refused to execute
the lease as agreed upon, failed and refused to allow the Defendant
the commission on gasoline sold as agreed upon, and failed and re-
fused to build the bunkhouse for truckers and the failure and re-
fusal, constituting the breach of this contract, continued though
repeated demand for compliance was made by the Defendant to the

Plaintiff. At the time said contract was entered into, and subsequent thereto, Defendant paid from his own funds the sum of One Thousand Six Hundred Fifty Dollars (\$1,650.00), none of which was income from the business, and that the Plaintiff furnished certain original inventory and, subsequently thereto, certain merchandise which was evidenced by the Promissory Note dated June 27, 1951, on which Plaintiff sues.

Defendant further avers that he was ready, able and willing to comply with all the terms of the contract and that he suffered damages in the amount of Ten Thousand Dollars (\$10,000.00) as aforesaid on the failure and refusal of the Plaintiff to comply with the terms of the contract.

PLEA THREE

The Defendant, as a defense to the action of the Plaintiff, says that at the time said action was commenced the Plaintiff was indebted to him in the sum of Six Thousand Dollars (\$6,000.00) for the conversion by the Plaintiff on, to-wit, January 17, 1952, of gasoline, oil, automobile parts and equipment, tools and other parts and equipment used in the operation of a filling station, the property of the Defendant, and the Defendant hereby offers to set off against the demand of the Plaintiff and he hereby claims judgment for the excess.



Solicitor for Defendant

5
RECORDED

ANSWER

PERRY COKER, individually,
and doing business under
the firm name of Coker
Distributing Company,

Plaintiff,

-VS-

LEO DAVIS,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
LAW SIDE

FILED

OCT 3 1952

ALICE J. DUCK, Clerk

PERRY COKER, individually,
and doing business under the
firm name of COKER DISTRIBUTING
COMPANY,

Plaintiff,

vs.

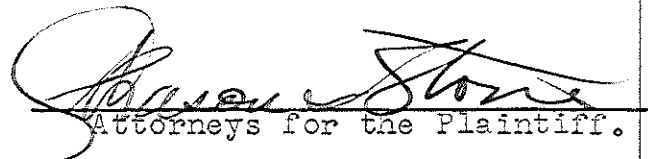
LEO DAVIS,

Defendant.

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

Comes the Defendant in the above styled cause and demurs to
Pleas Two and Three, separately and severally, and assigns the
following separate and several grounds, viz:

1. Plea Two does not state a defense to the cause of action.
2. That Plea Two comes within the Statute of Frauds.
3. That Plea Two affirmatively shows that it is based upon
an oral agreement which was not to be performed within one year.
4. That Plea Two fails to state what the Defendant agreed
to do as his part of the contract referred to.
5. That Plea Two fails to show any consideration for the
agreement referred to therein paid by the Defendant to the Plaintiff.
6. That Plea Two does not allege that the Defendant ever
took possession of the filling station referred to therein or
performed any services for the Plaintiff.
7. That Plea Two fails to state why the defendant paid the
sum of money referred to therein.
8. That Plea Three does not state a defense to the cause
of action.
9. That Plea Three fails to state that the property taken
over by the Plaintiff had a reasonable market value of \$6,000.00.
10. That Plea Three fails to sufficiently describe the proper-
ty referred to therein.


Attorneys for the Plaintiff.

1799

RECORDED
DEMURRER

PERRY COKER, individually and
doing business as COKER
DISTRIBUTING COMPANY

Plaintiff,

vs.

LEO DAVID,

Defendant.

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

Filed: October 6, 1952.

David W. Wess
Clerk.

PERRY COKER, individually,
and doing business under the
firm name of Coker Distributing
Company,

Plaintiff,

-vs-

LEO DAVIS,

Defendant.

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

PLEA ONE

The Defendant, for answer to the complaint filed in said cause, says that the allegations of the Complaint are untrue.

PLEA TWO

The Defendant, as a defense, says that at the time said action was commenced Plaintiff was indebted to him in the sum of Five Thousand Dollars (\$5,000.00) for the breach of a contract hereinafter more fully set forth, which the Defendant hereby offers to set off against the demand of the Plaintiff and claims judgment for the excess.

The damages herein claimed arise out of an oral contract breached by the Plaintiff, entered into by and between the Plaintiff and Defendant on, to-wit, September 21, 1950, whereby the Plaintiff agreed to and did execute a long term lease to the Defendant on a filling station by the terms of which Defendant was to be allowed four and one-half cents (4 1/2¢) per gallon commission on regular gasoline sold and five cents (5¢) per gallon commission on Ethyl gasoline sold, and all profits from the sale of oil, grease and accessories, and to build a bunkhouse for truckers, for which Defendant was to pay, and did pay, a monthly rental originally agreed upon set at One Hundred Fifty Dollars (\$150.00) for the filling station and Fifty Dollars (\$50.00) for the dwelling quarters, but which was subsequently reduced by agreement to One Hundred Dollars (\$100.00) for the filling station and Fifty Dollars (\$50.00) for the dwelling unit, which Defendant paid. And Defendant was to pay, and did pay partially by cash and partially by note for the oil, grease, accessories, etc., on hand. Plaintiff failed and refused to allow

the Defendant this commission on gasoline sold as agreed upon, and failed and refused to build the bunkhouse for truckers and the failure and refusal, constituting the breach of this contract, continued though repeated demand for compliance was made by the Defendant to the Plaintiff. At the time said contract was entered into, and subsequent thereto, Defendant paid from his own funds the sum of One Thousand Six Hundred Fifty Dollars (\$1,650.00), none of which was income from the business, as partial consideration under the contract and agreement and that the Plaintiff furnished certain original inventory, part of which was paid for in cash, and, subsequently thereto, certain merchandise which, along with the remainder due on inventory, was evidenced by the promissory note dated June 27, 1951, on which Plaintiff sues. Defendant was put in possession of the premises and possession of the filling station was retaken by the Plaintiff without the consent of the Defendant and without notice of termination of the contract and agreement being given. No date of termination of the agreement had been specified. Defendant further avers that he was ready, able and willing to comply with all the terms of the contract and that he suffered damages in the amount of Five Thousand Dollars (\$5,000.00) as aforesaid on the failure and refusal of the Plaintiff to comply with the terms of the contract.

PLEA THREE

The Defendant, as a defense to the action of the Plaintiff, says that at the time said action was commenced the Plaintiff was indebted to him in the sum of Six Thousand Dollars (\$6,000.00) for the conversion by the Plaintiff, on, to-wit, January 17, 1952, of gasoline, oil, automobile parts and equipment, tools and other parts and equipment used in the operation of a filling station, the property of the Defendant, and the Defendant hereby offers to set off against the demand of the Plaintiff and he hereby claims judgment for the excess.


Solicitor for Defendant

1799

RECORDED

FILED

OCT 15 1952

ALICE J. DICK, Clerk

PERRY COKER, individually, and
doing business under the firm
name of Coker Distributing
Company,

Plaintiff,

vs.

LEO DAVIS,

Defendant.

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

Comes the Plaintiff in the above styled cause and demurs to
Plea Two filed by the Defendant in said cause on October 14, 1952,
and assigns the following separate and several grounds, viz:

1. That said plea does not state a defense to the cause
of action.

2. That it is affirmatively shown from said plea that the
agreement referred to therein was in violation of the Statute of
Fraud.

3. That the damages claimed in said plea are for the breach
of an oral contract which was not to be performed within one year
from the making thereof, according to said plea.

4. Said plea fails to state the terms of the lease referred
to therein.

5. That said plea alleges that the Plaintiff executed a
long term lease to the Defendant but it is not alleged that such
lease was executed by the Defendant.

6. That it is not alleged what filling station is referred
to therein or where the same is located.

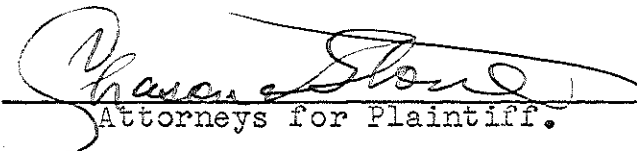
7. That it is not alleged that the Defendant ever sold any
gasoline, oil, grease or accessories while operating such filling
station.

8. That it is not alleged that the note referred to in
said plea was executed by the Defendant payable to the Plaintiff and
that said note has ever been paid by such Defendant.

9. That it is not alleged that the cash paid by the
Defendant was paid to the Plaintiff.

10. That it is not alleged that the Defendant had not
abandoned his possession as referred to in the plea when possession
was retaken by the Plaintiff.

11. For aught that appears from said Plea the period of time that such lease was to exist had expired before the time the Plaintiff was supposed to have taken such possession.


Attorneys for Plaintiff.

8
RECORDED

DEMURRER

PERRY COKER, individually, and
doing business under the firm
name of Coker Distributing
Company,

Plaintiff,

vs.

LEO DAVIS,

Defendant.

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

Filed: October 15, 1952.

Alice J. Renick
Clerk.

PERRY COKER, individually,
and doing business under the
firm name of Coker Distributing
Company,

Plaintiff,

-vs-

LEO DAVIS,

Defendant.

) IN THE CIRCUIT COURT OF

) BALDWIN COUNTY, ALABAMA

) LAW SIDE

Now comes LEO DAVIS, the Defendant in the above styled cause, and alleges that he has an equitable defense to said action which cannot be disposed of in the law side of the Court and which depends upon the assertion of an equitable right by said claimant.

The said LEO DAVIS avers and shows that the substance of his equitable defense is as follows:

That the Plaintiff and the Defendant entered into an oral contract and agreement by which the Plaintiff leased and rented to the Defendant certain real estate in Baldwin County, Alabama, to-wit, the filling station and dwelling unit which Defendant was to operate as a filling station, using therein petroleum products distributed by the Plaintiff, said filling station being located on Highway 90 approximately one mile North of Robertsdale, Alabama. As a part of said contract and agreement Defendant was to receive four and one-half cents (4 1/2¢) per gallon for regular gasoline sold and five cents (5¢) per gallon for Ethyl gasoline sold as a commission for selling, and was to receive all profits from the sale of accessories and other petroleum products, and was to pay to the Plaintiff the regular market price for these other petroleum products. Defendant was also to pay to the Plaintiff the sum of One Hundred Fifty Dollars (\$150.00) per month, which was later amended to One Hundred Dollars (\$100.00) per month, for the filling station and Fifty Dollars (\$50.00) per month for the dwelling unit, and was to pay for the inventory of petroleum products, accessories, etc. on hand at the time he was put into possession of the property.

Defendant, in compliance with the terms of this agreement which was entered on, to-wit, September 21, 1950, sold certain

properties that he had owned in Montgomery, Alabama, and came to Baldwin County, Alabama, and took possession of the property and paid over to the Plaintiff such sums as he had agreed to pay either in cash or by the execution and delivery of a Promissory Note payable to the Plaintiff. The Plaintiff had also agreed to construct a bunkhouse on the property which would materially increase Defendant's income.

Plaintiff failed and refused to construct the bunkhouse, failed and refused to allow the Defendant the commission on gasoline as he had agreed to do, evicted Defendant from the property without his agreement or consent and obtained Defendant's signature on a Promissory Note dated June 27, 1951, by coercion and duress and without making an accounting to the Defendant as Defendant demanded, and has and continues to fail and refuse to make to the Defendant a complete accounting of the amounts due at the time of the execution of the note, although repeated demand has been made therefor, and fails and refuses to allow to the Defendant such credits to which he believes himself to be entitled.

WHEREFORE, the said Defendant files in this cause this his written motion and moves the Court to make and enter an appropriate order transferring this cause from the law side of the Court to the equity side of the Court.



Attorney for Defendant

STATE OF ALABAMA

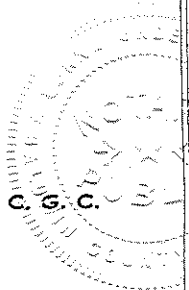
BALDWIN COUNTY

Before me, Lorna Underwood, a Notary Public in and for said County in said State, personally appeared C. G. Chason, who has knowledge of the facts set forth in the foregoing claim, and who being by me first duly sworn, says on oath that the facts hereinabove set forth are true and correct, according to the best of his knowledge, information and belief.

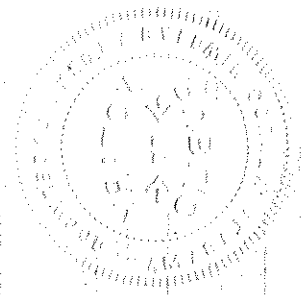
Sworn to and subscribed before
me, a Notary Public, on this
16th day of October, 1952.



Notary Public



RECORDED



Perry Carter
vs
Les Davis

Filed 10-16-52
Benjamin
Clark

PERRY COKER, individually,
and doing business under the
firm name of Coker Distributing
Company,

Plaintiff,

vs.

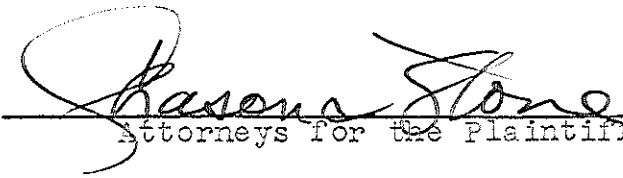
LEO DAVIS,

Defendant.

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

Comes the Plaintiff in the above styled cause and demurs
to Plea Two filed by the Defendant in said cause on October 16, 1952
and assigns the following separate and several grounds, viz:

1. That said Plea Two does not state a defense to the
cause of action.
2. That said Plea affirmatively shows that the agreement
referred to therein is void under the Statute of Frauds.
3. That said Plea affirmatively shows that the agreement
referred to therein was not to be performed within one year and that
no note or memorandum thereof in writing expressing the considera-
tion was executed by the parties thereto or by anyone duly authoriz-
ed by them.
4. That said Plea affirmatively shows that the contract
or agreement referred to therein was for no stipulated period of
time and could be terminated by the Plaintiff at any time he saw fit.
5. That said Plea fails to allege that the Plaintiff was
required to give the Defendant any notice of the termination of
such lease.
6. That said Plea fails to allege that the Defendant had
not abandoned the filling station referred to therein at the time
the Plaintiff retook possession thereof.


Attorneys for the Plaintiff.

10
RECORDED

DEMURRER TO AMENDED PLEA TWO

PERRY COKER, individually,
and doing business under the
firm name of COKER DISTRIBUTING
COMPANY,

Plaintiff,

vs.

LEO DAVIS,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

LAW SIDE.

Filed: October 16, 1952.

Alice J. Search
Clerk.

PERRY COKER, individually,
and doing business under the
firm name of Coker Distributing
Company,

Plaintiff,

vs.

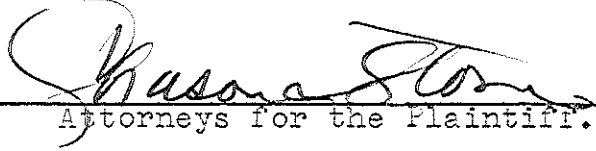
LEO DAVIS,

Defendant.

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

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

1. That said motion fails to show that the Defendant has
an equitable defense to the cause of action.
2. That the Defendant has an adequate remedy at law.
3. That said motion affirmatively shows that the agreement
referred to therein is void under the Statute of Frauds.
4. That it is affirmatively shown by said motion that
the agreement referred to therein was an oral agreement which was
not to be performed within one year and that no written memorandum
thereof expressing the consideration was signed by the parties nor
by anyone duly authorized by them.
5. That said agreement is void for uncertainty.


Attorneys for the Plaintiff.

RECORDED

DEMURRER TO MOTION TO TRANSFER
CAUSE TO EQUITY

PERRY COKER, individually, and
doing business under the firm
name of Coker Distributing
Company,

Plaintiff,

vs.

LEO DAVIS,

Defendant.

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

Filed: October, 16th, 1952.

Alice J. Henrich
Clerk.

PERRY COKER, individually,
and doing business under the
firm name of COKER DISTRIBUTING
COMPANY,

Plaintiff,

vs.

LEO DAVIS,

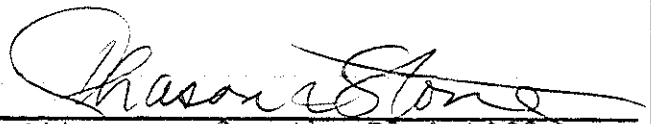
Defendant.

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

Comes the Plaintiff in the above styled cause and moves the Court to order said cause reinstated on the civil jury docket of this court and as grounds for said motion, shows unto this Court as follows:

1. That said cause was pending on the Law Side of said Court with a jury demand at the time a motion was filed by the Defendant in said cause, to transfer said case to the Equity Side of the Court, which motion was filed in said cause on the 16th day of Oct, 1952. That the Plaintiff filed a demurrer to such motion on the 16th day of Oct, 1952, which demurrer was overruled by this Court on the 16th day of Oct 1952. That no order was entered by said Court as provided for in Title 13 Section 153 of the 1940 Code of Alabama, and no Bill of Complaint has been filed by such Defendant within thirty days after the overruling of such demurrer or transfer of said cause, as provided in Title 13, Section 154 of the 1940 Code of Alabama.

WHEREFORE, the Plaintiff moves the Court to reinstate such cause on the civil jury docket in order that the same may be disposed of the next jury term of this Court.


Attorneys for the Plaintiff.

RECORDED

17991

FILED

JAN 28 - 1953

ALICE L. DUCK, Clerk

RECEIVED JAN 28 1953

PERRY COKER, individually,
and doing business under the
firm name of Coker Distributing
Company,

Plaintiff,

-vs-

LEO DAVIS,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

LAW SIDE

PLEA ONE

The Defendant, for answer to the complaint filed in said cause, says that the allegations of the complaint are untrue.

PLEA TWO

The Defendant, as a defense, says that at the time said action was commenced Plaintiff was indebted to him in the sum of Five Thousand Dollars (\$5,000.00) for the breach of a contract hereinafter more fully set forth, which the Defendant hereby offers to set off against the demand of the Plaintiff and claims judgment for the excess.

The damages herein claimed arise out of an oral contract breached by the Plaintiff, entered into by and between the Plaintiff and the Defendant on, to-wit, September 21, 1950, whereby the Plaintiff agreed to and did orally lease and rent to the Defendant a filling station and dwelling unit located in Baldwin County, Alabama, on Highway 90 approximately one mile North of the Town of Robertsdale, and being known as, among other things, Pan-Am Service Station, which said premises was the property of the Plaintiff, and by the terms of said lease and agreement the Defendant was to pay, and did pay to the Plaintiff, a monthly rental originally agreed upon at One Hundred Fifty Dollars (\$150.00) for the filling station and Fifty Dollars (\$50.00) for the dwelling quarters, but which was subsequently reduced by agreement to One Hundred Dollars (\$100.00) for the filling station and Fifty Dollars (\$50.00) for the dwelling unit. The Plaintiff was to furnish gasoline, oil and grease from his bulk plant located in Baldwin County, Alabama, North of and adjacent to the filling station, the said oil and grease to be furnished at the then market price. It had been agreed that the

gasoline sold by the Defendant from the filling station would be sold at the then prevailing market price and that he would be allowed thereon a commission of four and one-half cents (4 1/2¢) per gallon for regular gasoline and five cents (5¢) per gallon for Ethyl gasoline and the remainder was to be paid over to the Plaintiff. Plaintiff was also to furnish a bunkhouse for truckers which, as agreed between the Plaintiff and the Defendant, would increase Defendant's sale of gasoline, accessories and other petroleum products and thereby materially increase his income.

Defendant did pay the rental as agreed upon and for the gasoline, oil and grease delivered to the premises and sold by him, and did pay the monthly rentals as agreed, and did pay, as agreed with the Plaintiff, for the oil, grease, gasoline, accessories, tools, etc. on hand at the time he was put into possession of the property. Plaintiff failed and refused to allow the Defendant the commission of four and one-half cents (4 1/2¢) per gallon and five cents (5¢) per gallon on Ethyl gasoline as agreed, and failed and refused to provide the bunkhouse as he had agreed to do, and the failure and refusal constituting the breach of the agreement continued though repeated demand for compliance was made by the Defendant to the Plaintiff. The sums paid by the Defendant to the Plaintiff were paid partially by cash and partially by Promissory Note executed by the Defendant, payable to the Plaintiff, which said note was dated June 27, 1951, and on which Plaintiff sues. There was no date of termination of the agreement agreed upon, however possession of the filling station was retaken by the Plaintiff without the consent of the Defendant, without notice of termination of the contract and agreement being given and while the Defendant was still in the possession and operating the filling station, all to Defendant's damage.

Defendant further avers that he was ready, able and willing to comply with all the terms of the contract and that he suffered damages in the amount of Five Thousand Dollars (\$5,000.00) as aforesaid on the failure and refusal of the Plaintiff to comply with the terms thereof.

12 RECORDED

Filed 10-16-52
Eric French
clerk

STATE OF ALABAMA

BALDWIN COUNTY

IN THE CIRCUIT COURT - LAW SIDE

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon Leo Davis 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 same, then and there to answer the complaint of Perry Coker, individually, and doing business under the firm name of Coker Distributing Company.

Witness my hand this 7th day of May, 1952.

Beijing W. W. W.
Clerk.

COMPLAINT

PERRY COKER, individually,
and doing business under the
firm name of Coker Distribut-
ing Company,

Plaintiff,

vs.

LEO DAVIS,

Defendant.

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

COUNT ONE:

The Plaintiff claims of the Defendant Four Thousand, One Hundred Fifty-six and 12/100 Dollars (\$4,156.12) due by Promissory Note made by him on the 27th day of June, 1951, and payable on demand, which sum of money, together with the interest thereon, is still unpaid.

The Plaintiff avers that in, by and as a part of said note the Defendant agreed to pay all costs of collecting or securing or attempting to collect or secure said note, including a reasonable attorney's fee whether the same be collected or secured by suit or otherwise and the Plaintiff further claims of the Defendant the further and additional sum of Seven Hundred Fifty Dollars (\$750.00) as such reasonable attorney's fee.

The Plaintiff further avers that in, by and as a part of said note the Defendant waived as to this debt or any renewal thereof, all rights to exemption under the Constitution and Laws of Alabama as to personal property and of this waiver the Plaintiff now claims the benefit.

Harmon Stone
Attorneys for Plaintiff.

this 7 day of May 1952
TAYLOR WILKINS, Sheriff

Executed 5-13-1952
by serving copy of within Summons and
Complaint on

Leo Davis

Taylor Wilkins Sheriff
Edleigh Steadman Deputy Sheriff

566-1

SUMMONS & COMPLAINT

PERRY COKER, individually and
doing business under the firm
name of Coker Distributing
Company,

Plaintiff,

vs,

LEO DAVIS.

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
LAW SIDE. #1799

Filed: May 7, 1952.

Alice J. Duck
Clerk.

LAW OFFICES
~~HYBERT~~, CHASON & STONE
BAY MINETTE, ALABAMA

We the Jury find Plaintiff entitled
to Principal of note \$4,156.12 plus
interest @ 8% \$608.16 Plus Attorney Fee
\$450.00 Total \$5214.28

John Ed Smith
Foreman.