

BAILEY & TAYLOR  
ATTORNEYS AT LAW  
61 NORTH SECTION STREET  
P. O. BOX 361  
FAIRHOPE, ALABAMA 36532

ERNEST M. BAILEY  
LLOYD E. TAYLOR

PHONE  
FAIRHOPE 928-2393

9246  
9347

JUNE  
19TH  
1970

MRS. ALICE J. DUCK  
CLERK OF COURT  
BAY MINETTE, ALABAMA

CELIA SINCLAIR  
RE: SIDNEY SINCLAIR,  
VS DANIEL SLAY

DEAR MRS. DUCK:

PLEASE FILE AND HAVE SERVICE MADE OF A COPY OF THE  
ENCLOSED COMPLAINTS IN THE ABOVE MATTER.

THANKING YOU FOR YOUR ASSISTANCE IN THIS MATTER, I AM

VERY TRULY YOURS,

*Ernest M. Bailey*  
ERNEST M. BAILEY

EMB/w  
INCL: 4

BAILEY & TAYLOR  
ATTORNEYS AT LAW  
61 NORTH SECTION STREET  
P. O. BOX 361  
FAIRHOPE, ALABAMA 36532

DECEMBER 21, 1971

MRS. EUNICE BLACKMON,  
CLERK OF CIRCUIT COURT  
BALDWIN COUNTY  
BAY MNETTE, ALABAMA, 36507

RE: SINCLAIR, VS SLAY, ET AL  
CASE # 9346

DEAR EUNICE:

I WILL APPRECIATE YOU FILING THE ATTACHED  
AMENDED BILL OF COMPLAINT IN THE ABOVE  
CAUSE.

I HAVE THIS DATE FORWARDED A COPY OF SAME  
TO JOHN CHASON, ATTORNEY FOR DEFENDANTS.

THANKING YOU FOR YOUR ASSISTANCE IN THIS  
MATTER, I AM

VERY TRULY YOURS,

  
ERNEST M. BAILEY

EMB/w  
INCL: AS NOTED

CELIA SINCLAIR,

PLAINTIFF,

VS

DANIEL SLAY, D/B/A COLONIAL  
INN AND X, Y, AND Z, INDIVID-  
UALS OR CORPORATIONS WHOSE  
IDENTITIES ARE UNKNWON TO  
PLAINTIFF AT THIS TIME, BUT  
WHOSE TRUE NAMES WILL BE  
ADDED BY AMENDMENT WHEN AND  
IF ASCERTAINED,

DEFENDANTS

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

CASE NO: 9346

AMENDED COMPLAINT

COMES NOW THE PLAINTIFF IN THE ABOVE STYLEC CAUSE AND  
AMENDS THE BILL OF COMPLAINT HERETOFORE FILED IN THIS CAUSE TO  
STRIKE AS A PARTY DEFENDANT "X, Y, AND Z, INDIVIDUALS OR CORPORA-  
TIONS WHOSE IDENTITIES ARE UNKNOWN TO PLAINTIFF AT THIS TIME, BUT  
WHOSE TRUE NAMES WILL BE ADDED BY AMENDMENT WHEN AND IF ASCERTAIN-  
ED".

MATRANGA, HESS & SULLIVAN  
919 DAUPHIN STREET  
MOBILE, ALABAMA, 36604

FILED

DEC 22 1971

EUNICE B. BLACKMON CIRCUIT  
CLERK

BAILEY & TAYLOR  
FAIRHOPE, ALABAMA, 36532

By: Ernest M. Bailey  
ERNEST M. BAILEY  
ATTORNEYS FOR THE PLAINTIFF

CERTIFICATE OF SERVICE

I do hereby certify that I have on this Dec. 21, 1971  
served a copy of the foregoing on John Chason  
By mailing the same by United States Mail, Properly addressed, and First  
Class Postage Prepaid.

BAILEY & TAYLOR  
By: Ernest M. Bailey

|                                |   |                         |
|--------------------------------|---|-------------------------|
| CELIA SINCLAIR,                | X |                         |
| Plaintiff,                     | X | IN THE CIRCUIT COURT OF |
| vs.                            | X |                         |
|                                | X | BALDWIN COUNTY, ALABAMA |
| DANIEL SLAY, doing business    | X |                         |
| as COLONIAL INN, and X, Y      |   |                         |
| and Z, Individuals or Corpora- | X | CASE NO. 9346           |
| tions whose identitites are    |   |                         |
| unknown to Plaintiff at this   | X |                         |
| time, but whose true names     |   |                         |
| will be added by amendment     | X |                         |
| when and if ascertained,       |   |                         |
| Defendants.                    | X |                         |

DEMURRER TO AMENDED COMPLAINT

Comes Daniel Slay, one of the Defendants in the above styled cause, and demurs to the amended Complaint filed in said cause and assigns the following separate and several grounds, viz:

1. That said amended Complaint does not state a cause of action.
2. That said Complaint claims damages of more than one Defendant, but does not allege which Defendant was the owner of the property referred to in such amended Complaint.
3. That said Complaint does not allege which Defendant operated the restaurant referred to.
4. That said Complaint does not allege any duty owing by Daniel Slay to the Plaintiff.
5. For aught that appears from the amended Complaint there was no negligence on the part of the Defendant, Daniel Slay, which caused the Plaintiff to slip on the step located at the exit of said restaurant.
6. For aught that appears from said amended Complaint the Plaintiff had entered the restaurant by the same door and knew or should have known that there was a strong return spring in the

door and should have taken precautions if any were necessary.

7. That said amended Complaint fails to state whether the door opens inwardly or outwardly at the point where the Plaintiff left the restaurant.

8. The allegation in the amended Complaint that the Defendants failed to use ordinary or reasonable care to keep his premises in a reasonably safe condition does not allege which Defendant is referred to and fails to state with sufficient certainty wherein there was any negligence on the part of the Defendant Daniel Slay.

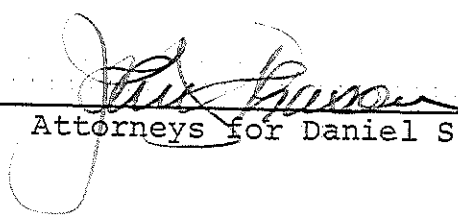
9. The allegation in the amended Complaint that the Defendants failed to have the premises reasonably free from danger in those areas where the Plaintiff was expected to go does not allege which Defendant failed to take such action or any casual or legal connection between the Defendants referred to in such amended Complaint.

10. The allegation that the Defendants were negligent in failing to warn the Plaintiff of the danger in the premises fails to allege which Defendant failed to warn her and fails to allege with sufficient certainty what the danger consisted of.

11. It affirmatively appears that the Plaintiff was leaving the restaurant at the same door where she entered and that she knew or should have known of the strong spring referred to in the amended Complaint.

CHASON, STONE & CHASON

BY:

  
Attorneys for Daniel Slay

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all parties to this proceeding, by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this 24 day of Sept 19 71

FILED

SEP 29 1971

EUNICE B. BLACKMON CIRCUIT CLERK

  
VOL

68 PAGE 183

CELIA SINCLAIR,

Plaintiff,

vs.

DANIEL SLAY, et. al.,

Defendants.

\* \* \* \* \*

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

CASE NO. 9346

\* \* \* \* \*

DEMURRER TO AMENDED COMPLAINT

\* \* \* \* \*

|                              |   |                         |
|------------------------------|---|-------------------------|
| CELIA SINCLAIR,              | ) |                         |
|                              | ) |                         |
| PLAINTIFF,                   | ) |                         |
| VS                           | ) | IN THE CIRCUIT COURT OF |
| DANIEL SLAY, DOING BUSINESS  | ) | BALDWIN COUNTY, ALABAMA |
| AS COLONIAL INN AND X, Y,    | ) |                         |
| AND Z, INDIVIDUALS OR COR-   | ) |                         |
| PORATIONS WHOSE IDENTITIES   | ) |                         |
| ARE UNKNOWN TO PLAINTIFF     | ) |                         |
| AT THIS TIME, BUT WHOSE TRUE | ) |                         |
| NAMES WILL BE ADDED BY       | ) |                         |
| AMENDMENT WHEN AND IF        | ) |                         |
| ASCERTAINED,                 | ) |                         |
|                              | ) | CASE NO: <u>9346</u>    |
| DEFENDANTS                   | ) |                         |

AMENDED COMPLAINT

COMES NOW THE PLAINTIFF IN THE ABOVE STYLED CAUSE AND AMENDS THE BILL OF COMPLAINT HERETOFORE FILED IN THIS CAUSE TO READ AS FOLLOWS:

PLAINTIFF CLAIMS OF THE DEFENDANTS THE SUM OF FIFTY THOUSAND AND NO/100 (\$50,000.00) IN DAMAGES FOR THAT, HERETOFORE AND ON, TO-WIT: SEPTEMBER 17, 1969 THE PLAINTIFF ENTERED THE PREMISES OF THE DEFENDANTS AS A CUSTOMER FOR THE PURPOSE OF DINING. THE COLONIAL INN RESTAURANT IS LOCATED IN THE CITY OF BAY MINETTE, COUNTY OF BALDWIN, IN THE STATE OF ALABAMA, WHEREIN THE DEFENDANTS DID OPERATE A RESTAURANT OPEN TO THE PUBLIC WHEREIN MEALS WERE SERVED TO THE PUBLIC FOR A PROFIT AND TO WHICH THE PUBLIC GENERALLY WERE INVITED TO COME AND TRADE OR ON OTHER BUSINESS; THAT PLAINTIFF WAS AN INVITEE OF DEFENDANTS UPON SAID PREMISES, BEING THERE ON THE OCCASION COMPLAINED OF TO PURCHASE A MEAL FROM THE DEFENDANTS, AND WHILE IN SAID RESTAURANT AND ON SAID PREMISES, WHERE SHE WAS INVITED, SHE FELL OR WAS CAUSED TO FALL INTO OR OVER A STEP AT THE ENTRANCE OF SAID RESTAURANT, IN THIS; THE DEFENDANTS' PREMISES HAD A HEAVY DOOR WITH A STRONG RETURN SPRING THROUGH WHICH CUSTOMERS ENTER AND EXIT THE RESTAURANT; THAT IMMEDIATELY ON THE OUTSIDE OF SAID DOOR IT IS NECESSARY FOR A CUSTOMER TO STEP DOWN FROM THE INTERIOR FLOOR LEVEL; THAT UPON COMPLETION OF THE PLAINTIFF'S MEAL AT THE AFORESAID TIME AND PLACE,

PLAINTIFF THEN PROCEEDED TO EXIT THE COLONIAL INN RESTAURANT AND UPON MAKING HER EXIT, PLAINTIFF WAS CAUSED TO TRIP ON THE STEP LOCATED IN THE EXIT OF SAID RESTAURANT BY THE STRONG RETURN SPRING LOCATED ON THE HEAVY DOOR TO THE PREMISES STRIKING THE PLAINTIFF IN THE BACK CAUSING HER TO FALL TO THE GROUND. AS A RESULT OF THIS FALL, PLAINTIFF SUFFERED A FRACTURE OF HER LEFT ANKLE AND WAS CAUSED TO WEAR A CAST ON HER LEFT ANKLE FOR A PERIOD IN EXCESS OF ONE (1) MONTH; SHE SUFFERED GREAT MENTAL AND PHYSICAL PAIN AND ANGUISH, LOST TIME FROM HER EMPLOYMENT, SPENT OR BECAME LIABLE FOR A LARGE SUM OF MEDICINE AND MEDICAL ATTENTION IN AND ABOUT TREATING HER SAID INJURIES. AS A PROXIMATE RESULT OF THE WEARING OF THIS CAST, THE PLAINTIFF SUBSEQUENTLY DEVELOPED A CONDITION KNOWN AS PHLEBITIS WHICH CAUSES THE PLAINTIFF'S LEFT LEG TO SWELL AND RENDERS HER DISABLED, AND UNABLE TO ATTEND TO HER HOUSEHOLD DUTIES AND TO ATTEND TO THE NEEDS OF HER HUSBAND. PLAINTIFF AVERS THAT ALL OF HER SAID INJURIES AND DAMAGES WERE CAUSED AS A PROXIMATE CONSEQUENCE OF THE NEGLIGENCE OF THE DEFENDANTS AS FOLLOWS:

THAT THE DEFENDANTS FAILED TO USE ORDINARY OR REASONABLE CARE TO KEEP HIS PREMISES IN A REASONABLY SAFE CONDITION FOR THE CUSTOMERS PATRONIZING THIS ESTABLISHMENT; FURTHER, IN FAILING TO HAVE THE PREMISES REASONABLY FREE FROM DANGER IN THOSE AREAS WHERE THE PLAINTIFF WAS EXPECTED TO GO; THE DEFENDANTS WERE NEGLIGENT IN FAILING TO WARN THE PLAINTIFF OF THE DANGER IN THIS CONDITION WHICH IT KNEW OR SHOULD HAVE KNOWN AND OF WHICH WAS UNKNOWN TO THE PLAINTIFF; THAT THE DEFENDANTS WERE NEGLIGENT IN FAILING TO WARN THE PLAINTIFF OF THE STRONG RETURN SPRING LOCATED IN THE HEAVY DOOR WHERE CUSTOMERS ARE ALLOWED TO ENTER AND EXIT THE RESTAURANT, SAID HEAVY SPRING CAUSING THE DOOR TO RETURN RAPIDLY, A SITUATION READILY FORESEEABLE TO A REASONABLE PERSON THAT IT WOULD INJURE PATRONS OF THE RESTAURANT.

WHEREFORE, PLAINTIFF CLAIMS DAMAGES IN THE SUM AFORE-



SAID.

MATRANGA, HESS & SULLIVAN  
919 DAUPHIN STREET  
MOBILE, ALABAMA, 36604

BAILEY & TAYLOR  
FAIRHOPE, ALABAMA 36532

By: *Ernest M. Bailey*  
ERNEST M. BAILEY  
ATTORNEYS FOR THE PLAINTIFF

*Copy delivered to Mr John  
Cham on 9/29<sup>th</sup>/71.  
E M Bailey*

FILED

SEP 29 1971

EUNICE B. BLACKMON CIRCUIT  
CLERK

|                      |   |                         |          |
|----------------------|---|-------------------------|----------|
| CELIA SINCLAIR,      | X |                         |          |
| Plaintiff,           | X | IN THE CIRCUIT COURT OF |          |
|                      | X |                         |          |
| vs.                  | X | BALDWIN COUNTY, ALABAMA |          |
|                      | X |                         |          |
| DANIEL SLAY, et al., | X | AT LAW                  | NO. 9346 |
| Defendants.          | X |                         |          |

DEMURRER

Comes now the Defendant, Daniel Slay, doing business as Colonial Inn, by and through his attorneys of record, and demurs to the Complaint heretofore filed in said cause, separately and severally, and assigns the following separate and several grounds in support thereof, viz:

1. That said Complaint fails to state a cause of action.
2. That said Complaint does not allege any duty owing by the Defendant to the Plaintiff.
3. That said Complaint attempts to set out the quo modo of the negligence of the Defendant but fails to allege any negligence which, under the laws of the State of Alabama, would constitute liability on the part of such Defendant.
4. That said Complaint fails to allege what caused the Plaintiff to trip on a step located directly beneath the exit of said restaurant.
5. That the Complaint fails to allege in what manner the door on the premises struck the Plaintiff in her back.
6. For aught that appears from said Complaint, the premises operated by the Defendant were not dangerous to anyone exercising due care.
7. The allegations as to the cause of the Plaintiff's injuries are but conclusions of the pleader.

8. The allegation in the Complaint that the Defendant failed to use ordinary or reasonable care to keep his premises in a reasonably safe condition is but a conclusion of the pleader and fails to allege facts, which as a matter of law, constitute such negligence.

9. The allegation in the complaint that the Defendant failed to have the premises reasonably free from danger in those areas where the Plaintiff was expected to go is but a conclusion of the pleader and fails to allege wherein the Defendant failed to keep such premises reasonably free from danger.

10. For aught that appears from said Complaint, the Plaintiff could see the condition of the premises and had she exercised reasonable care for her safety, she would not have been injured.

11. That said Complaint fails to set out what negligent condition existed in the premises which was unknown to the Plaintiff.

12. For aught that appears from the Complaint, the strong return spring in the door did not in anyway contribute to the injury of the Plaintiff.

13. That there is no connection shown between the injuries to the Plaintiff and any alleged defect in the premises owned by the Defendant.

*Rosen, Stone & Rosen*  
Attorneys for Defendant

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all parties to this proceeding, by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this 13 day

of July 1970

*Alice J. Duck*

FILED

JUL 13 1970

ALICE J. DUCK

CLERK  
REGISTER

CELIA SINCLAIR,

Plaintiff,

vs.

DANIEL SLAY, et al.,

Defendants.

\* \* \* \* \*

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW                      NO: 9346

\* \* \* \* \*

DEMURRER

\* \* \* \* \*

FILED

JUL 13 1970

ALICE J. SISK

CLERK  
REGISTER

CHASON, STONE & CHASON  
ATTORNEYS AT LAW  
P. O. Box 120  
BAY MINETTE, ALABAMA

|                        |   |                         |
|------------------------|---|-------------------------|
| CELIA SINCLAIR,        | ) | IN THE CIRCUIT COURT OF |
|                        | ) | BALDWIN COUNTY, ALABAMA |
| Plaintiff,             | ) |                         |
| vs.                    | ) |                         |
| DANIEL SLAY, doing     | ) |                         |
| business as COLONIAL   | ) |                         |
| INN and X, Y and Z,    | ) |                         |
| individuals or         | ) |                         |
| corporations whose     | ) |                         |
| identities are unknown | ) |                         |
| to plaintiff at this   | ) |                         |
| time, but whose true   | ) |                         |
| names will be added    | ) |                         |
| by amendment when      | ) |                         |
| and if ascertained,    | ) |                         |
| Defendants.            | ) | CASE NO. <u>9346</u>    |

Plaintiff claims of the defendants the sum of Fifty Thousand and No/100 (\$50,000.00) in damages for that, heretofore and on, to-wit: September 17, 1969 the plaintiff entered the premises of the defendants as a customer for the purpose of dining. The Colonial Inn restaurant is located in the City of Bay Minette, County of Baldwin, in the State of Alabama, wherein the defendants did operate a restaurant open to the public wherein meals were served to the public for a profit. Upon completion of the plaintiff's meal at the aforesaid time and place, plaintiff then proceeded to exit the Colonial Inn restaurant. Upon making her exit, plaintiff was caused to trip on a step located directly beneath the exit of said restaurant. At said exit is located a heavy door for the purpose of entering and leaving the premises. When the plaintiff tripped, the heavy door on the premises struck the plaintiff in the back causing her to fall to the ground. As a result of this fall, plaintiff suffered a fracture of her left ankle. As a result of the fracture, plaintiff was caused to wear a cast on her left ankle for a period in excess of one (1)

month. As a proximate result of the wearing of this cast, the plaintiff's subsequently developed a condition known as phlebitis which causes the plaintiff's left leg to swell and renders her disabled, and unable to attend to her household duties and to attend to the needs of her husband. Plaintiff avers that all of her said injuries and damages were caused as a proximate consequence of the negligence of the defendants as follows:

That the defendants failed to use ordinary or reasonable care to keep his premises in a reasonably safe condition for the customers patronizing this establishment; further, in failing to have the premises reasonably free from danger in those areas where the plaintiff was expected to go; the defendants were negligent in failing to warn the plaintiff of the danger in this condition which it knew or should have known and of which was unknown to the plaintiff; that the defendants were negligent in failing to warn the plaintiff of the strong return spring located in the heavy door where customers are allowed to enter and exit the restaurant, said heavy spring causing the door to return rapidly, a situation readily foreseeable to a reasonable person that it would injure patrons of the restaurant.

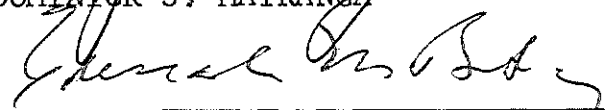
WHEREFORE, plaintiff claims damages in the sum aforesaid.

MATRANGA, HESS & SULLIVAN  
Attorneys for the Plaintiff  
919 Dauphin Street  
Mobile, Alabama 36604

BY

  
DOMINICK J. MATRANGA

BY

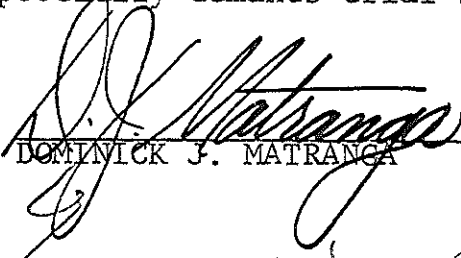
  
ERNEST M. BAILEY  
Attorney for the Plaintiff  
Fairhope, Alabama

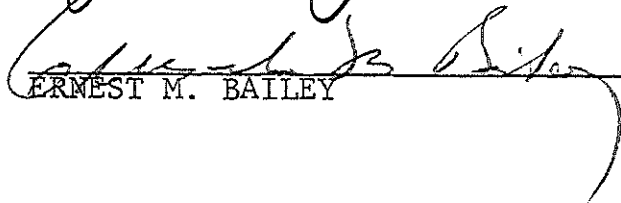
FILED

JUN 22 1970

ALICE J. DUCK CLERK  
REGISTER

Plaintiff respectfully demands trial by jury.

  
DOMINICK J. MATRANGA

  
ERNEST M. BAILEY

The defendant Daniel Slay may be served at the Colonial  
Inn restaurant located in Bay Minette, Alabama

SUMMONS AND COMPLAINT

Moore Printing Co. - Bay Minette, Ala.

STATE OF ALABAMA  
Baldwin County

Circuit Court, Baldwin County

No.....

.....TERM, 19.....

TO ANY SHERIFF OF THE STATE OF ALABAMA:

DANIEL SLAY, ET AL

You Are Hereby Commanded to Summon .....

to appear and plead, answer or demur, within thirty days from the service hereof, to the complaint  
filed in the Circuit Court of Baldwin County, State of Alabama, at Bay Minette, against.....

DANIEL SLAY, ET AL ..... Defendant.....

by .....

CELIA SINCLAIR ..... Plaintiff.....

Witness my hand this 22 day of JUNE 19 70

*Celia Sinclair* ..... Clerk



No. 9346

Page.....

STATE OF ALABAMA

Baldwin County

CIRCUIT COURT

CELIA SINCLAIR,

Plaintiffs

vs.

DANIEL SLAY, ET AL

Defendants

SUMMONS AND COMPLAINT

Filed ..... 19.....

JUN 22 1970 ..... Clerk

ALICE J. DUCK CLERK REGISTER

MATRANGA, HESS & SULLIVAN  
BAILEY & TAYLOR

Plaintiff's Attorney

Defendant's Attorney

MAY BE SERVED

Defendant <sup>XX</sup> lives at  
COLONIAL INN,  
BAY MINETTE, ALABAMA

Received In Office

June 22 1970  
Taylor Wilkins Sheriff

I have executed this summons

this June 22 1970  
by leaving a copy with  
Daniel Slay

Taylor Wilkins Sheriff  
W. A. Zolner Deputy Sheriff

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