

SUMMONS AND COMPLAINT

The State of Alabama

* Circuit Court

Baldwin Count

* No.

* _____ TERM, 1970

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon ROBERTSDALE LIVE-
STOCK AUCTION, INC., a corporation, 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 ROBERTSDALE LIVESTOCK
Defendant
AUCTION, INC., a corporation, /by MATTIE BELL TURNER, Plaintiff.

WITNESS my hand this 20 day of August, 1970.

Alice J. Clark
Clerk

MATTIE BELL TURNER

Plaintiff

vs

ROBERTSDALE LIVESTOCK AUCTION, INC.*
a corporation

Defendant

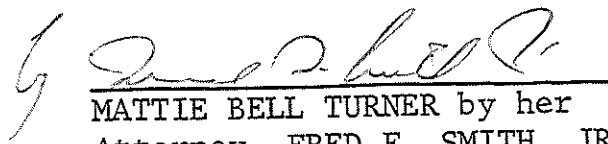
* IN THE CIRCUIT COURT
* OF BALDWIN COUNTY,
* ALABAMA, AT LAW

CASE NO. 9440

COUNT I

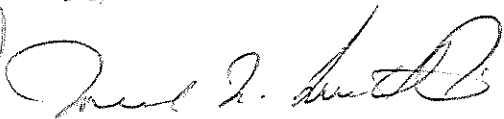
The Plaintiff claims of the Defendant ONE HUNDRED THOUSAND AND 00/100 DOLLARS (\$100,000.00) damages for that heretofore and on to wit: the 23rd day of November, 1969, the Plaintiff was an invitee on the premises of the Defendant delivering hogs to the said Defendant for sale at an auction to be held by the Defendant, and while such an invitee and while delivering the said hogs to the Defendant, the Defendant directed the Plaintiff by an agent, servant or employee who was then and there acting in the line and scope of his employment as such agent, servant or employee to proceed on down or along the passageway which was under cover and which was not lighted or improperly lighted. The Plaintiff avers that she was directed by the Defendant as to the path to take or the way to proceed and while so proceeding as directed by the Defendant she was caused to fall into a cattle dipping vat which was unlighted and which had no markings, fencing or railing so as to indicate its presence. The Plaintiff avers as a result of the said Defendant directing her on and along the unlighted way she was caused to fall into said dipping vat and as a proximate consequence of the negligence of the Defendant in failing to warn the Plaintiff or in failing to light the way or in failing to indicate the said

dipping vat by markings or fences or otherwise she was caused to fall in the said dipping vat and suffer damages in this to wit: her left leg was cut and injured, she was caused to suffer a back injury to a disk in her back, she suffered severe contusions and bruises of her body, she was caused to incur medical expenses, hospital expenses and doctor bills and expenses and will in the future incur medical, hospital and doctor expenses, she was caused to lose time from her work and employment and as a result thereof rendered unable and incapacitated from carrying out or being gainfully employed as she had been prior thereto, she suffered severe physical pain and mental anguish all as a proximate consequence of the negligence of the Defendant as aforesaid and all which she sues and claims damages for her injuries and hence this suit.


MATTIE BELL TURNER by her
Attorney, FRED F. SMITH, JR.

SERVE THE DEFENDANT:

Robertsdale Livestock Auction, Inc.
Robertsdale, Alabama 36567

*The plaintiff demands a
trial by jury in this cause*


FILED

AUG 20 1970

ALICE J. DUCK CLERK
REGISTER

Received 20 day of Aug 1970
and on 31 day of Aug 1970

I served a copy of the within W.C.
on Robertsdale Livestock Auction, Inc.

By service on Harmon P. Davis

TAYLOR WILKINS, Sheriff
By H. P. Roberts
Samuel R. T.
R. Dale

Sheriff's claims 50
Ten Cents per mile Total \$ 5.00
TAYLOR WILKINS, Sheriff
BY Brown
DEPUTY SHERIFF

9440

Mattie Bell Turner
Petz

vs.

Robertsdale Livestock
Auction Inc. a Corp
Debt

FILED

AUG 20 1970

ALICE J. DUCK

CLERK
REGISTER

Bn

Fred J. Smith, Jr.
I hope - Atty

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

LAWYERS

30TH FLOOR FIRST NATIONAL BANK BUILDING

MOBILE, ALABAMA

36601

MAILING ADDRESS:
P. O. DRAWER C
OR P. O. BOX 123

CABLE ADDRESS:
HAB
TELEPHONE
432-5511
AREA CODE 205

CHAS. C. HAND
C. B. ARENDALL, JR.
T. MASSEY BEDSOLE
THOMAS G. GREAVES, JR.
VIVIAN G. JOHNSTON, JR.
PAUL W. BROCK
ALEX F. LANKFORD, III
EDMUND R. CANNON
LYMAN F. HOLLAND, JR.
J. THOMAS HINES, JR.
DONALD F. PIERCE
LOUIS E. BRASWELL
HAROLD D. PARKMAN
G. PORTER BROCK, JR.
HARWELL C. COALE, JR.
STEPHEN G. CRAWFORD
JERRY A. McDOWELL
W. RAMSEY MCKINNEY, JR.
LARRY U. SIMS
A. CLAY RANKIN, III
EDWARD A. HYNDMAN, JR.
MICHAEL D. KNIGHT
G. HAMP UZZELLE, III

April 11, 1972

Mrs. Eunice Blackmon, Clerk
Circuit Court of Baldwin County
Baldwin County Court House
Bay Minette, Alabama

Re: Mattie Belle Turner vs. Robertsdale Livestock
Auction, Case Number 9440

Dear Madam:

The above case has been settled and will be dismissed by the plaintiff. Please send me the cost bill, so that I can have this paid.

By copy of this letter to Mr. Smith, plaintiff's counsel, I am advising him of this request and am asking him to notify you to dismiss the case. Thank you for your help.

Yours very truly,

Paul Brock

For the Firm

PWB.rs

cc: Fred F. Smith, Esq.

Rec'd 4-11-72

MATTIE BELL TURNER,	§	IN THE CIRCUIT COURT OF
Plaintiff,	§	BALDWIN COUNTY, ALABAMA.
vs	§	AT LAW
ROBERTSDALE LIVESTOCK	§	
AUCTION, INC., a	§	
corporation,	§	
Defendant.	§	CASE NO. 9440

AMENDED DEMURRER

Comes now the defendant in the above cause and, leave of court having first been had and obtained, amends its demurrer previously filed herein by adding in support thereof the following additional, separate and several grounds of demurrer, separately and severally:

5. For that the allegation that the plaintiff was an invitee constitutes merely the conclusion of the pleader, insufficient facts being alleged in support thereof.

6. For that the allegation that said passageway was improperly lighted constitutes merely the conclusion of the pleader, insufficient facts being averred in support thereof.

7. For that no facts are alleged to show that this defendant caused the plaintiff to fall into a cattle dipping vat.

8. For that the allegation that the plaintiff was caused to fall into a cattle dipping vat by this defendant constitutes merely the conclusion of the pleader, insufficient facts being averred in support thereof.

9. For aught appearing, the presence of said cattle dipping vat was open and obvious.

10. For that no facts are alleged to show that the existence of said cattle dipping vat was other than an open and obvious condition.

11. For that there is no allegation that said cattle dipping vat was concealed or hidden or was other than open and obvious.

12. For that said complaint attempts to allege the quo modo of the negligence charged, and the facts alleged do not show negligence.

13. For that it affirmatively appears that the action of the plaintiff in conducting her own movements intervened between the alleged directions given to the plaintiff by the defendant and the plaintiff's fall into said dipping vat.

14. For that it affirmatively appears that there was an intervening proximate cause between the directions allegedly given by this defendant and the fall of the plaintiff into the dipping vat.

15. For that said complaint does not allege negligence, but at most assumes negligence.

16. For that said complaint does not properly characterize any act or action of this defendant as negligence.

17. For that the negligence of this defendant is, at most, assumed by the plaintiff.

18. For that the acts alleged do not constitute negligence as a matter of law and the acts of this defendant are not properly characterized as negligence.

19. For that negligence is therein alleged merely as a conclusion of the pleader.

20. For that it is vague, indefinite and uncertain, in that it does not apprise this defendant with sufficient

certainty against what act or acts of negligence defendant is called on to defend.

21. For that it does not appear with sufficient certainty wherein this defendant violated any duty owed by this defendant to the plaintiff.

22. For that it does not sufficiently appear that this defendant owed any duty to the plaintiff which defendant negligently failed to perform.

23. For that the pleader sets out in what said negligence consisted, and the facts so set out do not show negligence.

24. For that there does not appear sufficient causal connection between this defendant's said breach of duty to plaintiff and the plaintiff's injuries and damages.

25. No facts are alleged to show that plaintiff sustained any damage or injury as the proximate result of negligence or breach of duty on the part of this defendant.

26. No facts are alleged to show that plaintiff sustained any damage as the proximate result of negligence or breach of duty on the part of this defendant to plaintiff.

27. It is not alleged with sufficient certainty where said accident occurred.

28. For that it affirmatively appears that the plaintiff placed herself in a position of peril as the result of her own negligent act.

29. For that no facts are alleged to show that this defendant knew or, in the exercise of reasonable care, should have known that the plaintiff would fall into said dipping vat.

30. For that this defendant had the right to presume that the plaintiff would use reasonable care in and about conducting her movements and would not fall into said dipping vat.

31. For that insufficient facts are alleged to show that any negligence of this defendant proximately caused the injuries and damages complained of by the plaintiff.

32. For that it affirmatively appears that the plaintiff was injured not as a result of any alleged negligence of this defendant, but as the result of her own actions in proceeding and falling into said dipping vat.

33. For that it affirmatively appears that the plaintiff was injured as the result of an open and obvious danger.

34. For that there is no allegation that the danger or condition resulting in injury to the plaintiff was hidden or latent.

35. For aught appearing, the plaintiff was a trespasser at the time and place alleged.

36. For that no facts are alleged to show that the receipt of the injuries and damages complained of by the plaintiff was foreseeable by this defendant.

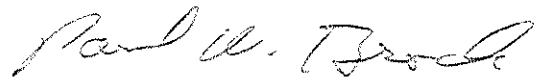
37. For aught appearing, the plaintiff was a mere licensee, as to whom this defendant owed no duty not to be negligent.

38. For aught appearing, the plaintiff was not an invitee at the particular place where she allegedly fell into the cattle dipping vat.

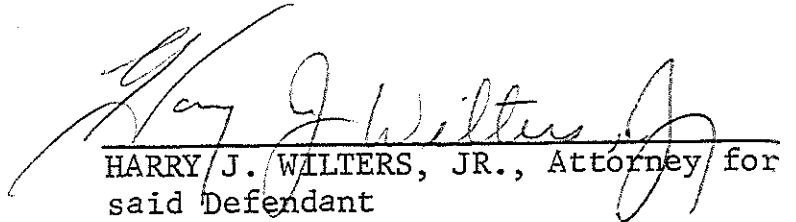
39. For aught appearing, the plaintiff had exceeded the scope of her invitation in going near or into said dipping vat.

40. For that no facts are alleged to show that the plaintiff had not exceeded the scope of her invitation at the time and place of the accident described in the complaint.

41. For aught appearing, the plaintiff proximately contributed to her own injuries and damages.



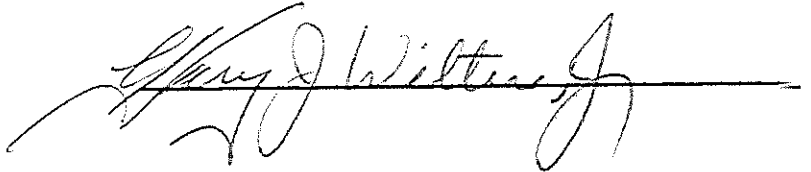
PAUL W. BROCK, Attorney for said Defendant



HARRY J. WILTERS, JR., Attorney for said Defendant

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a true and correct copy of the foregoing Amended Demurrer to Fred Smith, Esq., Attorney for Plaintiff, by depositing a copy of same in the United States mail, postage prepaid, addressed to said attorney at his office in Mobile, Alabama, on this 3 day of December November, 1970.



FILED

DEC 3 1970

ALICE J. DUCK CLERK
REGISTER

MATTIE BELL TURNER X
Plaintiff, X IN THE CIRCUIT COURT OF
vs. X BALDWIN COUNTY, ALABAMA
ROBERTSDALE LIVESTOCK X AT LAW
AUCTION, INC., a X
Corporation, X CASE NO. 9440
Defendant X

DEMURRER

Comes now the Defendant in the above styled cause, and files the following demurrer to the Plaintiff's Complaint, and for grounds thereof, says:

1.

That it does not state a cause of action.

2.

That it fails to allege what county the accident occurred in.

3.

It failed to allege the Defendant's principal place of business.

4.

It failed to allege the name of the agent, servant or employee who directed the Plaintiff.

PAUL W. BROCK
WILTERS & BRANTLEY

BY: *Paul W. Brock*

Attorneys for the Defendant

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 29 day of September, 1970, served a copy of the foregoing pleading on/counsel for all parties to this proceeding by mailing the same by United States Mail, properly addressed, and first class postage prepaid.

WILTERS & BRANTLEY

By: *Paul W. Brock*

FILED

SEP 29 1970

ALICE J. DUCK CLERK
REGISTER

MATTIE BELL TURNER * IN THE CIRCUIT COURT OF
Plaintiff * BALDWIN COUNTY, ALABAMA
vs * AT LAW
ROBERTSDALE LIVESTOCK AUCTION *
Defendant * CASE NO. 9440

Comes now the plaintiff and moves to strike the Motion for the production of her income tax returns and grounds therefore says as follows:

1. Said demand for the record or records are immaterial as to her earnings immediately prior to or at the time the plaintiff claims the said loss of earnings.

2. Said records are immaterial as to her earnings at the time of her injury.

3. Said records are immaterial as to the loss of earnings that the said plaintiff would have suffered from the time of her earnings to the present time.

Wherefore the plaintiff moves that the Court will strike this motion for the production of her income tax records.

Fred F. Smith, Jr.

FRED F. SMITH, JR.
Attorney for Plaintiff

ATTORNEY FOR DEFENDANT:

Paul W. Brock

Winters & Brantly

CERTIFICATE OF SERVICE
I do hereby certify that I have on this 14
day of Dec, 1970, served a copy
foregoing pleading on counsel for all parties
proceeding by mailing the same by United States
properly addressed, and first class postage paid.
(Signature)

FILED

DEC 15 1970

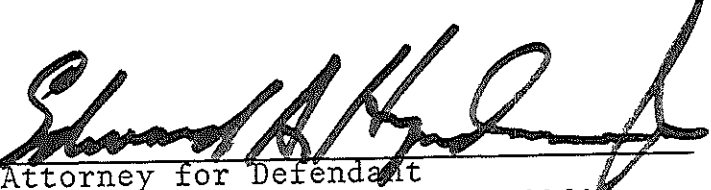
ALICE J. DUCK CLERK
REGISTER

MATTIE BELLE TURNER, : IN THE CIRCUIT COURT OF
Plaintiff, : BALDWIN COUNTY,
vs. : ALABAMA
ROBERTSDALE LIVESTOCK : AT LAW
AUCTION, :
Defendant. : CASE NO. 9440

N O T I C E

TO: Fred Smith, Esq.
Attorney at Law
111 Ellis Avenue
Prichard, Alabama

Please take notice that on the 31st day of August, 1971, in the office of Dr. Henry Mostellar at 1653 Springhill Avenue, Mobile, Alabama, the defendant, Robertsdale Livestock Auction, will take the deposition of Dr. Mostellar, at 5:00, a.m., upon oral examination pursuant to an Act of the Legislature of the State of Alabama, designated as Act No. 375, Regular Session 1955, Approved September 8, 1955, before Charles A. Howard, or another officer duly authorized to take depositions and swear witnesses in said County in said State. The oral examination will continue from day to day until completed and you are invited to attend and cross-examine.


Attorney for Defendant
3000 First National Bank Building
Mobile, Alabama 36602

Of Counsel:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

Please issue a subpoena duces tecum to Dr. Henry Mostellar, whose address is 1653 Springhill Avenue, Mobile, Alabama, to appear for the taking of his deposition and to have with him all records, reports, notes, x-rays and memoranda pertaining to his treatment of Mattie Belle Turner.

STATE OF ALA. MOBILE CO.
I CERTIFY THIS PLEADING
WAS FILED ON

AUG 10 4 19 PM '71



CLERK

MATTIE BELLE TURNER, : IN THE CIRCUIT COURT OF
Plaintiff, : BALDWIN COUNTY,
vs. : ALABAMA
ROBERTSDALE LIVESTOCK : AT LAW
AUCTION,
Defendant. : CASE NO. 9440

N O T I C E

TO: Fred Smith, Esq.
Attorney at Law
111 Ellis Avenue
Prichard, Alabama

Please take notice that on the 19th day of August, 1971, in the office of Dr. Lloyd Russell at 1710 Center Street, Mobile, Alabama, the defendant, Robertsdale Livestock Auction, will take the deposition of Dr. Russell, at 1:30, a.m., upon oral examination pursuant to an Act of the Legislature of the State of Alabama, designated as Act No. 375, Regular Session 1955, Approved September 8, 1955, before Charles A. Howard, or another officer duly authorized to take depositions and swear witnesses in said County in said State. The oral examination will continue from day to day until completed and you are invited to attend and cross-examine.


Attorney for Defendant
3000 First National Bank Building
Mobile, Alabama 36602

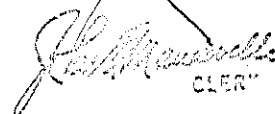
Of Counsel:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

Please issue a subpoena duces tecum to Dr. Lloyd Russell, whose address is 1710 Center Street, Mobile, Alabama, to appear for the taking of his deposition and to have with him all records, reports, notes, x-rays and memoranda pertaining to his treatment of Mattie Belle Turner.

STATE OF ALA. MOBILE CO.
I CERTIFY THIS PLEADING
WAS FILED ON

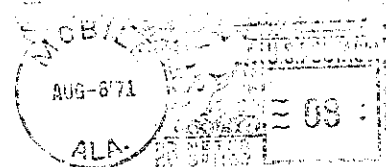
AUG 10 4 15 PM '71


CLERK

MOBILE INFIRMARY

POST OFFICE BOX 7542

MOBILE, ALABAMA 36607



Place on file

MRS. E B BLACKMON
CIR CRT OF BALDWIN CTY
BAY MINETTE ALA

9/4/76

**X-RAY DEPARTMENT
RADIOLOGISTS**

DR. JOHN DAY PEAKE
DR. MARSHALL ESKRIDGE
DR. JAMES K. V. WILLSON
DR. WILLIAM J. WETTA
DR. JOSEPH W. MAXWELL
DR. DONALD L. STONE
DR. PRESCOTT MILLER

STATEMENT
MOBILE INFIRMARY

LOUISELLE STREET P. O. BOX 7542 PHONE 433-3511

MOBILE, ALABAMA 36607

TO INSURE PROPER CREDIT, INSERT
THIS STUB IN ENCLOSED ENVELOPE
WITH YOUR REMITTANCE

**CLINICAL LABORATORY
PATHOLOGISTS**

DR. EARL B. WERT
DR. EDWIN L. SCOTT
DR. BRIAN K. MONTGOMERY

STATEMENT DATE

MRS. E B BLACKMON
CIR CRT OF BALDWIN CTY
BAY MINETTE ALA

09/08/71 AS OF 09/06/71

DETACH
HERE

PATIENT TURNER MATTIE

ACC'T. No. A381508 **DOCTOR**

DETACH
HERE

DATE	DESCRIPTION	CHARGES	CREDIT	BALANCE
08/23/71	MEDICAL RECORD-COURT CERT	2.50		
08/23/71	MEDICAL RECORD-ADD COPIES	4.75		
08/23/71	7.25 PROMISED 03/05/72			
DATE OF LAST PAYMENT				7.25

MAKE ALL CHECKS PAYABLE TO: **MOBILE INFIRMARY** AND MAIL TO: P. O. BOX 7542, MOBILE, ALABAMA 36607

TO AVOID A LATE PAYMENT CHARGE OF \$1.50, PAYMENT MUST BE RECEIVED BEFORE 03/15/72.