

STATE OF ALABAMA

BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summons Elbert E. Mattox, Jr. and Melba C. Mattox, 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 William C. Malone.

Witness my hand, this the 27 day of August 1970.

Alice J. Creek
Clerk,

WILLIAM C. MALONE,	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
vs.	X	BALDWIN COUNTY, ALABAMA
EBERT E. MATTOX, JR.,	X	AT LAW
and MELBA C. MATTOX,	X	CASE NO. <u>9453</u>
Defendants.	X	
	1.	

The Plaintiff claims of the Defendants, the sum of ONE HUNDRED FIFTY THOUSAND (\$150,000.00) DOLLARS, as damages for that, heretofore, on to-wit: August 31, 1969, at the invitation of the Defendants, Ebert E. Mattox, Jr. and Melba C. Mattox, the Plaintiff went to their premises at Gulf Shores, Baldwin County, Alabama, for the purpose of making an appraisal of wind damage done to the Defendants' said premises. The Plaintiff avers that, while making this inspection or appraisal, he stepped on the deck of a landing; the timber on this landing was rotten, and the Plaintiff fell through into a hole below said landing. As a direct result of said fall, the Plaintiff was severely injured and damaged as follows: His right heel was broken. He was hospitalized and was caused to expend large sums of money for doctors, drugs and hospitalization

in the treatment of his said injury. He suffered such mental and physical pain and anguish as a result of said injury. He lost a large sum of money because he was unable to work for an extended period of time. He was permanently injured.

The Plaintiff avers that, as an invitee as aforesaid, the Defendants owed him a duty to use reasonable care to have the premises in a reasonable safe condition for uses contemplated by said invitation, and to warn the Plaintiff of any danger in the condition of the said premises which were known to the Defendants, or which were desernable by the exercise of reasonable care on the part of the Defendants. The Plaintiff avers that the landing deck aforesaid was rotten and unsafe to persons using the same and that the Defendant knew this or should have known this, yet he negligently failed to warn the Plaintiff of this danger, and as a direct and proximate consequence of said negligence, the Plaintiff was injured and damaged as aforesaid.

2.

The Plaintiff claims of the Defendants, the sum of ONE HUNDRED FIFTY THOUSAND (\$150,000.00) DOLLARS, as damages for that, heretofore, on to-wit: August 31, 1969, the Plaintiff went upon the Defendants' premises at Gulf Shores, Alabama, at the Defendants' invitation and request. While on said premises, the Plaintiff stepped on a landing deck that had rotten boards on it. He avers that this condition was a hidden danger, and could not be observed by him in the exercise of ordinary care. The Plaintiff says further that he fell through the landing deck and was injured and damaged as follows: His right heel was broken. He was hospitalized, and caused to expend large sums of money for doctors, drugs and hospitalization in the treatment of his said injury. He suffered much mental and physical pain and anguish as a result of said injury. He lost a large sum of money because he was unable to work for an extended period of time. He was permanently injured.

The Plaintiff avers that his injuries and damages were the direct and proximate result of the negligence of the Defendants in negligently maintaining the landing deck where the Plaintiff fell at said time and place in an unsafe condition for use of invitees on said premises.

3.

The Plaintiff claims of the Defendants, the sum of ONE HUNDRED FIFTY THOUSAND (\$150,000.00) DOLLARS, as damages for that, heretofore, on to-wit: August 31, 1969, the Plaintiff went upon the Defendants' premises at Gulf Shores, Alabama, at the Defendants' invitation and request. While on said premises, the Plaintiff stepped on a landing deck that had rotten boards on it. He avers that this condition was a hidden danger, and could not be observed by him in the exercise of ordinary care. The Plaintiff says further that he fell through the landing deck and was injured and damaged as follows: His right heel was broken. He was hospitalized and was caused to expend large sums of money for doctors, drugs and hospitalization in the treatment of his said injury. He suffered much mental and physical pain and anguish as a result of said injury. He lost a large sum of money because he was unable to work for an extended period of time. He was permanently injured.

The Plaintiff avers that his injuries and damages were a direct and proximate consequence and result of the negligence of the Defendants in their negligently maintaining the landing deck in the condition it was in and in failing to warn the Plaintiff of this at the time and place heretofore alleged. The Plaintiff alleges that the condition of said premises were unsafe for the use of invitees.

4.

The Plaintiff claims of the Defendants, the sum of ONE HUNDRED FIFTY THOUSAND (\$150,000.00) DOLLARS, as damages for that,

heretofore, on to-wit: August 31, 1969, the Plaintiff went upon the Defendants' premises at Gulf Shores, Alabama, at the Defendants invitation and request. While on said premises, the Plaintiff stepped on a landing deck that had rotten boards on it. He avers that this condition was a hidden danger, and could not be observed by him in the exercise of ordinary care. The Plaintiff says further that he fell through the landing deck, and was injured and damaged as follows: His right heel was broken. He was hospitalized and was caused to expend large sums of money for doctors, drugs and hospitalization in the treatment of his said injury. He suffered much mental and physical pain and anguish as a result of said injury. He lost a large sum of money because he was unable to work for an extended period of time. He was permanently injured.

The Plaintiff avers that his injuries and damages were the direct and proximate consequence and result of the negligence of the Defendants in negligently maintaining the rotten landing deck, which was a dangerous trap, not discernable by the exercise of ordinary care and negligently failing to warn the Plaintiff of this. The Plaintiff avers that, as an invitee, the Defendants owed him a duty to warn him of this hidden danger, and their failure to do so under the circumstance is negligence.

WILTERS & BRANTLEY

BY: 

Attorneys for the Plaintiff

FILED

AUG 27 1970

ALICE J. DUCK CLERK
REGISTER

251

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RECEIVED

AUG 28 1970

TAYLOR WILKINS
SHERIFF

EXECUTED

This 6 day of October, 1970
by serving a copy of the within on
Elbert E. Mattox, Jr.

RAY D. BRIDGES, Sheriff
By R. Harsh & D.S.
Mrs. Moss, D.S.

EXECUTED

This 8 day of October, 1970
by serving a copy of the within on
Melba C. Mattox

RAY D. BRIDGES, Sheriff
By J. Thomas D.S.

8311
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. 9453

WILLIAM C. MALONE,

Plaintiff,

vs.

ELBERT E. MATTOX, JR.
and MELBA C. MATTOX, 67

Defendants.

FILED

AUG 27 1970

ALICE J. DUCK & COMPANY
SUMMONS & COMPLAINT
REGISTER

WILTERS & BRANTLEY
Attorneys at Law
Bay Minette, Alabama

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MOBILE COUNTY, ALA.
SHERIFF'S DEPT.

WILLIAM C. MALONE,	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
vs.	X	
EBERT E. MATTOX, JR., and	X	BALDWIN COUNTY, ALABAMA
MELBA C. MATTOX,		
Defendants.	X	AT LAW CASE NO. 9453
	X	

DEMURRER

Come the Defendants in the above styled cause and demur to the Complaint filed in said cause and each and every count thereof separately and severally and assign the following separate and several grounds, viz:

1. That said Complaint does not state a cause of action.
2. That said Complaint attempts to set out the quo modo of the negligence of such Defendants but the allegations contained therein fail to state negligence under the laws of the State of Alabama.
3. That said Complaint does not allege any duty owing by the Defendants to the Plaintiff.
4. That Count "1." of the Complaint affirmatively shows that the Plaintiff was on the premises of the Defendants because such premises had been damaged by windstorm and that his injury occurred while making an inspection of such damages and said count fails to allege any negligence on the part of the Defendants which caused or allowed the landing to be in the condition it was in.
5. Count "1." of the Complaint does not allege that the Defendants failed to exercise due care or had any knowledge that they failed to impart to the Plaintiff which could have prevented the accident.
6. Count "1." of the Complaint seeks to recover of two Defendants but such count only charges negligence of one of the

Defendants without showing that such Defendant was an agent, servant or employee of the other at the time of the accident.

7. Count "2." of the Complaint fails to allege that either Defendant knew or should have known that the landing deck had rotten boards and was a hidden danger which could not be observed by the Plaintiff in the exercise of ordinary care.

8. Count "2." of the Complaint affirmatively shows that the injuries to the Plaintiff were not caused by the negligence of the Defendant.

9. For aught that appears from count "3." of the Complaint neither Defendant had any knowledge of the unsafe condition of the landing deck where the Plaintiff was injured.

10. The allegations in count "4." of the Complaint that the Defendants negligently maintained a rotten landing deck which was a dangerous trap, not discernible by the exercise of ordinary care, and negligently failed to warn the Plaintiff of this, is but a conclusion of the pleader and does not state negligence on the part of the Defendants as a matter of law.

11. For aught that appears from count "4." of the Complaint the Defendants neither knew nor should have known that the boards were rotten.

12. That the Complaint does not contain any allegations in any count to show any condition of the landing deck which would have been noticed by either Defendant that the boards were rotten or in dangerous condition.

13. For aught that appears from the Complaint the damage to the landing deck was caused by the windstorm that had occurred which required the presence of the Plaintiff on the property.

14. The Plaintiff knew or should have known that there was danger in the premises owned by the Defendants since he was there to appraise such damages and therefore should have used

extraordinary care while walking in or around such premises.

Chason, Stone & Chason
Attorneys for Defendants

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 22nd day of September 1970.

John Chason

Defendants demand a trial of this cause by a jury.

CHASON, STONE & CHASON

By: John Chason

FILED

SEP 28 1970

ALICE J. DUCK CLERK
REGISTER

WILLIAM C. MALONE,

Plaintiff,

vs.

EBERT E. MATTOX, JR., and MELBA C.
MATTOX,

Defendants.

* * * * *

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW CASE NO. 9453

* * * * *

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

4-11-54

Defendants address is:

5955 Chalet Drive
Mobile, Alabama 36608