

LUXURY MOTELS, INC., a	)	
Florida Corporation,	)	IN THE CIRCUIT COURT OF
	)	
Plaintiff,	)	
	)	
vs.	)	BALDWIN COUNTY, ALABAMA
	)	
AMERICAN FIDELITY LIFE INSURANCE	)	
COMPANY, a Florida Corporation,	)	
	)	AT LAW. NO. 9567.
Defendant.	)	

REPLICATION:

Now comes the Plaintiff in the above styled cause and for replication to the answer of the Defendant herein, sets down and assigns, both separately and severally, the following to Pleas numbered 2 through 12, both inclusive:

1. The Plaintiff joins issues on said Pleas.
2. And further, by way of special replication to Pleas numbered 2 and 10 of the answer filed by the Defendant herein, the Plaintiff alleges as follows: That from the date of the loan application, to-wit, June 6, 1967, the Plaintiff herein furnished to the Defendant profit and loss statements covering its operations over requested periods of time, which statements were neither fully audited nor certified; that the Defendant, American Fidelity Life Insurance Company, registered no objections to the form or sufficiency of said statements; that on or about August 30, 1968, at the request of the Defendant, American Fidelity Life Insurance Company, a profit and loss statement was furnished which was not completely audited, nor certified, and that the Defendant, American Fidelity Life Insurance Company, registered no objections as to the form and sufficiency of said statement; that on or about January 6, 1969, the Defendant, American Fidelity Life Insurance Company, in writing, agreed to loan the Plaintiff the additional sum of \$250,000.00, at eight percent interest, provided said offer was accepted within thirty days, waiving the requirements of 5(b) and 5(c) of the loan commitment attached to complaint as Exhibit "A", and that the Plaintiff failed to sign said commitment on the inducement and representation of the Defendant that the loan amount could be

increased to \$300,000.00; the Plaintiff further alleges that because of said inducements and representations so made to increase said loan, the said loan agreement dated January 8, 1969, and waiver was not executed by it; Plaintiff further alleges that after expiration of the waiver and commitment dated January 8, 1969, it made repeated efforts to obtain action on said loan commitment and made repeated entreaties of the Defendant as to what steps should be taken and as a result of a communication from the Defendant, submitted a profit and loss statement which was in substantial accord insofar as form and contents are concerned, as to profit and loss statements previously submitted, said statement being forwarded to the Defendant on or about to-wit, April 28, 1969; that there after the Defendant made no objection to the form or sufficiency of said statement and made no additional request for financial information, nor did it ever discuss with the Plaintiff the matter of the alleged inadequacy of the said statements so furnished; Plaintiff further alleges that at a time unknown to the Plaintiff, Defendant acted upon said matter by refusing said loan and notified the Plaintiff of such action on or about July 25, 1969, and thereafter, although requested to do so, refused to inform the Plaintiff of its reasons of failing to approve the additional loan commitment.

WHEREFORE, the Defendant is estopped from claiming that the Plaintiff had failed to furnish or to have furnished audited and certified financial statements showing the operation of the motel sufficient to repay a \$500,000.00 loan.

HOLBERG and TULLY

-and-

J. CONNOR OWENS, JR.,

By:

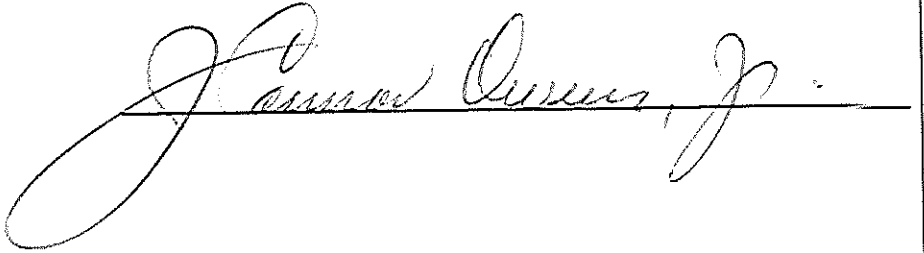
*J. Connor Owens, Jr.*  
Attorneys for Plaintiff.

FILED

JAN 5 - 1972

EUNICE B. BLACKMON CIRCUIT  
CLERK

I, the undersigned, one of the Attorneys of Record for the Plaintiff in the foregoing cause, do hereby certify that I have this day forwarded a copy of the foregoing replication to Donald F. Pierce, one of the Attorneys of Record for the Defendant in said cause, by placing the same in the United States Mail, properly addressed, with postage prepaid, this 4th day of January, 1972.

A handwritten signature in cursive script, reading "James O. Curry, Jr.", is written over a horizontal line.

**FILED**

**JAN 5 - 1972**

**EUNICE B. BLACKMON** CIRCUIT  
CLERK

LUXURY MOTELS, INC., a	)	IN THE CIRCUIT COURT OF
Florida Corporation,	)	
	)	BALDWIN COUNTY,
Plaintiff,	)	
	)	ALABAMA
-vs-	)	
	)	AT LAW
AMERICAN FIDELITY LIFE INSURANCE	)	
COMPANY, a Florida Corporation,	)	
	)	
Defendant.	)	CASE NO. 9567

ANSWER

Comes now the defendant in the above-styled cause, American Fidelity Life Insurance Company, and for answer to the complaint as last amended sets down and assigns the following separate and several pleas, separately and severally:

1. The material allegations of the complaint are untrue.

2. The contract under which plaintiff claims, a copy of which is attached hereto as Exhibit "A" and made a part hereof provides:

For additional loan of \$250,000.00, American Fidelity Life Insurance Company [defendant] will be furnished audited and certified financial statement showing operation of motel sufficient to repay \$500,000.00 loan.

Plaintiff has failed to furnish or to have furnished audited and certified financial statements showing operation of motel sufficient to repay \$500,000.00 loan and hence plaintiff

is not entitled to recover any damages for the refusal of defendant to loan plaintiff the second advance of \$250,000.00.

3. The contract under which plaintiff claims, a copy of which is attached hereto as Exhibit "A" and made a part hereof, provides:

American Fidelity Life Insurance Company  
[defendant] shall have the sole or entire  
discretion in determining that profits  
are sufficient for the increased loan of  
\$250,000.00.

Defendant in its sole or entire discretion determined that profits were not sufficient for the increased loan of \$250,000.00 and hence plaintiff is not entitled to recover any damages for the refusal of defendant to loan plaintiff the second advance of \$250,000.00.

4. The contract under which plaintiff claims, a copy of which is attached hereto as Exhibit "A" and made a part hereof, provides:

American Fidelity Life Insurance Company  
[defendant] shall have the sole or entire  
discretion in determining that profits are  
sufficient for the increased loan of  
\$250,000.00.

American Fidelity Life Insurance Company, in its sole or entire discretion, determined that profits were not sufficient for the increased loan of \$250,000.00 and in making such determination within its sole or entire discretion defendant did not act in an arbitrary manner and hence

plaintiff is not entitled to recover any damages for the refusal of defendant to loan plaintiff the second advance of \$250,000.00.

5. The contract under which plaintiff claims, a copy of which is attached hereto as Exhibit "A" and made a part hereof, provides:

American Fidelity Life Insurance Company  
[defendant] shall have the sole or entire  
discretion in determining that profits  
are sufficient for the increased loan of  
\$250,000.00.

American Fidelity Life Insurance Company, in its sole or entire discretion, determined that profits were not sufficient for the increased loan of \$250,000.00 and in making such determination within its sole or entire discretion, defendant did not act in bad faith and hence plaintiff is not entitled to recover any damages for the refusal of defendant to loan plaintiff the second advance of \$250,000.00.

6. The contract under which plaintiff claims, a copy of which is attached hereto as Exhibit "A" and made a part hereof, provides:

American Fidelity Life Insurance Company  
[defendant] shall have the sole or entire  
discretion in determining that profits are  
sufficient for the increased loan of  
\$250,000.00.

American Fidelity Life Insurance Company, in its sole or entire discretion, determined that profits were not sufficient for the increased loan of \$250,000.00 and in making such determination within its sole or entire discretion, defendant acted in good faith and hence plaintiff is not

entitled to recover any damages for the refusal of defendant to loan plaintiff the second advance of \$250,000.00.

7. The contract under which plaintiff claims, a copy of which is attached hereto as Exhibit "A" and made a part hereof, provides:

American Fidelity Life Insurance Company  
[defendant] shall have the sole or entire discretion in determining that profits are sufficient for the increased loan of \$250,000.00.

American Fidelity Life Insurance Company, in its sole or entire discretion, determined that profits were not sufficient for the increased loan of \$250,000.00 and in making such determination within its sole or entire discretion, defendant's determination was reasonable and hence plaintiff is not entitled to recover any damages for the refusal of defendant to loan plaintiff the second advance of \$250,000.00.

8. The contract under which plaintiff claims, a copy of which is attached hereto as Exhibit "A" and made a part hereof, provides:

American Fidelity Life Insurance Company  
[defendant] shall have the sole or entire discretion in determining that profits are sufficient for the increased loan of \$250,000.00.

American Fidelity Life Insurance Company, in its sole or entire discretion, determined that profits were not sufficient for the increased loan of \$250,000.00 and in making such determination within its sole or entire discretion, defendant's determination was genuine and hence plaintiff is not entitled to recover any damages for the refusal of

defendant to loan plaintiff the second advance of \$250,000.00.

9. The contract under which plaintiff claims, a copy of which is attached hereto as Exhibit "A" and made a part hereof, provides:

American Fidelity Life Insurance Company [defendant] shall have the sole or entire discretion in determining that profits are sufficient for the increased loan of \$250,000.00.

American Fidelity Life Insurance Company, in its sole or entire discretion, determined that profits were not sufficient for the increased loan of \$250,000.00 and in making such determination within its sole or entire discretion, defendant's determination was made in good faith and was not arbitrary, capricious or unreasonable and hence plaintiff is not entitled to recover any damages for the refusal of defendant to loan plaintiff the second advance of \$250,000.00.

10. The contract under which plaintiff claims, a copy of which is attached hereto as Exhibit "A" and made a part hereof, provides:

Financial statement of present operation signed and audited by certified public accountant to be furnished American Fidelity Life Insurance Company [defendant].

No financial statement of present operations signed and audited by certified public accountant was furnished to defendant and hence plaintiff ought not recover.



11. The contract under which plaintiff claims, a copy of which is attached hereto as Exhibit "A" and made a part hereof, provides:

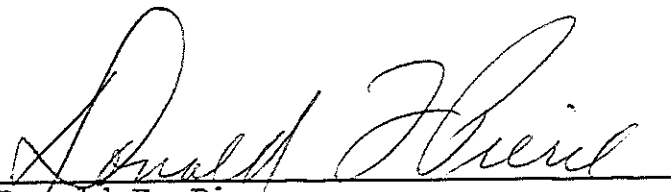
Applicant [plaintiff] will request additional loan of \$250,000.00 making total loan of \$500,000.00 approximately 12 months after conversion to Holiday Inn.

No request for additional loan of \$250,000.00 making total loan of \$500,000.00 was requested by plaintiff approximately 12 months after conversion to Holiday Inn and hence plaintiff ought not recover.

12. The contract under which plaintiff claims, a copy of which is attached hereto as Exhibit "A" and made a part hereof, provides:

All of the above subject to an appraisal in an amount satisfactory to American Fidelity Life Insurance Company [defendant].

No appraisal in an amount satisfactory to defendant was ever submitted to defendant and hence plaintiff ought not recover.

  
Donald F. Pierce

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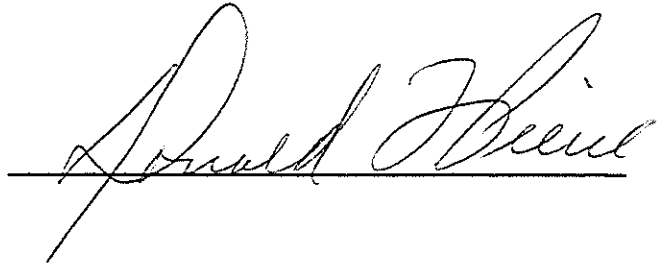
Trial Attorneys for Defendant

OF COUNSEL

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a true and correct copy of the foregoing answer to J. Connor Owens, Jr. and Albert J. Tully, Attorneys of Record, by depositing a copy of same in the United States mail, postage prepaid, addressed to said attorneys at their offices in Bay Minette, Alabama, and Mobile, Alabama, respectively, on this, the 28<sup>th</sup> day of December, 1971.



**FILED**

DEC 29 1971

EUNICE B. BLACKMON CIRCUIT  
CLERK

LUXURY MOTELS, INC.,	)	
A Florida Corporation,	)	IN THE CIRCUIT COURT OF
	)	
Plaintiff,	)	BALDWIN COUNTY, ALABAMA
vs.	)	
	)	
AMERICAN FIDELITY LIFE INSURANCE	)	AT LAW. NO. 9567.
COMPANY, a Florida Corporation,	)	
	)	
Defendant.	)	

AMENDED COMPLAINT:

The Plaintiff claims of the Defendant, the sum of TWO HUNDRED NINETY SEVEN THOUSAND DOLLARS (\$297,000.00) as damages for breach of a written agreement entered into by and between the Plaintiff and the Defendant on June 7, 1967, a copy of which said agreement is attached hereto, labeled Exhibit "A" and made a part of this amended complaint as if the same were specifically written herein; Plaintiff further alleges that on August 31, 1967, Plaintiff executed a note payable to the Defendant in the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) and executed the mortgages required under Exhibit "A" and that advances were subsequently made in accordance with the terms of the said note and mortgages; Plaintiff further alleges that on the 11th day of November, 1968, it received from the Holiday Inns of America, Inc., approval of its franchise and so informed the Defendant within a period of six weeks from said date; Plaintiff further alleges that it made oral application for the additional advance set forth in Exhibit "A" prior to January 8, 1969.

Plaintiff further alleges that although it complied with all of the terms and conditions of the said agreement, the Defendant herein breached the conditions of said agreement by refusing, in writing, on July 25, 1969, to loan the Plaintiff the second advance of Two Hundred Fifty Thousand Dollars (\$250,000.00) provided for in said written agreement and as a consequence of said breach, the Plaintiff was damaged in this: it was forced to borrow funds elsewhere at a higher interest rate; it incurred legal, brokerage

and commitment fees in securing other loans; it incurred salaried expenses arising directly from the delay caused in being required to seek other loan funds, all to the damage of the Plaintiff, hence this suit.

HOLBERG and TULLY  
and  
J. CONNOR OWENS, JR.

By: *J. Connor Owens, Jr.*  
Attorneys for the Plaintiff.

I, the undersigned, one of the Attorneys of Record for the Plaintiff in the foregoing cause, do hereby certify that I have caused a copy of the foregoing Amended Complaint to be served on Donald F. Pierce, one of the Attorneys of Record for the Defendant in said cause, by placing the same in the United States Mail, properly addressed, with postage prepaid, this 10th day of March, 1971.

*J. Connor Owens, Jr.*

**FILED**

MAR 10 1971

EUNICE B. BLACKMON CIRCUIT  
CLERK

EXHIBIT "A"  
**CONDITIONAL COMMITMENT**

Applicant: **Luxury Motels, Inc.**

Date: **June 7, 1967**

Mailing Address: **3939 Highway 90 West, Mobile, Alabama 36609**

Your application for a real estate mortgage loan has been approved as indicated below.

1. Security address: **See attached legal description.**
2. Amount: **\$250,000.00**
3. Interest rate: **7** percent per annum payable monthly.
4. Term: **20** years. Repayment required: \$ **2,316.80** interest and principal, monthly.
5. The security instrument shall be a first lien on the fee simple title satisfactory to us. We shall be furnished, without expense to us, with a title policy on a form, and by an insurer approved by us, with a complete survey showing the lot lines and location of all buildings. Title, survey and all papers must be approved by us before the loan proceeds are disbursed.
6. At the time the loan is closed, we shall be furnished with a one year paid up policy of fire and extended coverage insurance and such other kinds of insurance, in such companies, forms and amounts as we require. The policies with mortgage clauses attached are to be delivered to and held by us.
7. All taxes and all installments of assessments due and payable shall be paid in full prior to or at the time the loan is closed. Should taxes and/or assessments for the past years have been rearranged in installments, all installments, including all future maturities, shall be paid in full prior to or at the time the loan is closed.
8. Prepayment privilege: The Company reserves the right to charge one years' interest on the outstanding balance at the date of prepayment.
9. Subject to all conditions and regulations of the Veterans Administration and Federal Housing Administration governing the making of real estate loans, in the event the loan is government insured.
10. If new construction or repairs required unqualified compliance inspection report by designated person.
11. Loan to be closed by attorney or title company designated or approved by us. In the event the loan is not closed, all attorney fees and other expenses incurred shall be paid by the Applicant and American Fidelity Life Insurance Company shall be held harmless.
12. If the loan is not closed prior to the expiration of the commitment, then an amount equal to two percent of the loan is to be paid by the applicant as liquidated damages, or the Company may retain any "stand-by fee" held in it's possession as liquidated damages.
13. Other requirements: **See attached.**
14. This approval will expire automatically **June 12,** 19 **67**, without notice to the applicant and without liability to this Company if we have not been notified that it has been accepted. After acceptance, this commitment may be cancelled at our option without notice to the applicant and without liability to this Company, if the loan

has not been disbursed by **July 21**, 19 **67**.

ACCEPTED: **LUXURY MOTELS, INC.**

**AMERICAN FIDELTY LIFE INSURANCE COMPANY**

By: *Frank T. Whorham*

By: *C. P. Woodbury*

By: *President*

APPLICANT

*June 8, 1967*  
DATE

#### ADDITIONAL STIPULATIONS

1. Holiday Inn franchise to be assigned to American Fidelity Life Insurance Company and assignment acknowledged by Holiday Inn, Inc. for the life of the mortgage.
2. Chattel Mortgage to be given American Fidelity Life Insurance Company on all furniture and fixtures in the motel.
3. Mortgage to be endorsed by Frank Hawkins and wife.
4. Financial statement of present operation signed and audited by certified public accountant to be furnished American Fidelity Life Insurance Company.
5. a. Applicant will request additional loan of \$250,000.00 making total loan of \$500,000.00 approximately 12 months after conversion to Holiday Inn.  
b. For additional loan of \$250,000.00, American Fidelity Life Insurance Company will be furnished audited and certified financial statement showing operation of motel sufficient to repay \$500,000.00 loan.  
c. American Fidelity Life Insurance Company shall have the sole or entire discretion in determining that profits are sufficient for the increased loan of \$250,000.00.
6. If loan is increased, American Fidelity Life Insurance Company will be paid \$2,500.00 as its expense for increasing said loan as above stated.
7. All of the above subject to an appraisal in an amount satisfactory to American Fidelity Life Insurance Company.

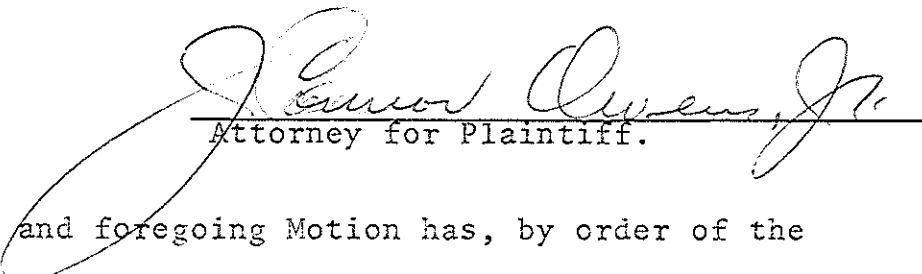
Commencing at a point on the North line of U. S. Highway 90 a distance of 108 feet from and at right angles to the center line at the East end of the concrete (North Highway) bridge over the Apalachee River, thence run South 79 degrees 04 minutes East along the North line of U. S. Highway 90 a distance of 3272 feet to the point of beginning; thence South 79 degrees 04 minutes East 204.1 feet to a point; thence North 10 degrees 56 minutes East 150 feet to a point; thence South 79 degrees 04 minutes East 150 feet to a point, thence North 10 degrees 56 minutes East 200 feet to a point; thence North 79 degrees 04 minutes West 154.1 feet to a point, thence North 10 degrees 56 minutes East 54.23 feet to a point; thence North 43 degrees West 162.68 feet to a point; thence North 79 degrees 04 minutes West 268.5 feet to a point; thence South 10 degrees 56 minutes West 300 feet to a point; thence South 79 degrees 04 minutes East 200 feet to a point; thence South 10 degrees 56 minutes West 200 feet to point of beginning; TOGETHER with all right, title and interest of Luxury Motels, Inc. in and to that certain thirty (30) foot easement granted by Causeway Howard Johnson, Inc. et al to Bayside Motel Corporation dated May 14, 1959 and recorded in Deed Book 278 page 255, Probate Court Records of Baldwin County, Alabama.

LUXURY MOTELS, INC.,	)		
A Florida Corporation,	)	IN THE CIRCUIT COURT OF	
	)		
Plaintiff,	)	BALDWIN COUNTY, ALABAMA	
	)		
vs.	)		
AMERICAN FIDELITY LIFE INSURANCE	)	AT LAW.	NO.. 9567
COMPANY, a Florida Corporation,	)		
	)		
Defendant.	)		

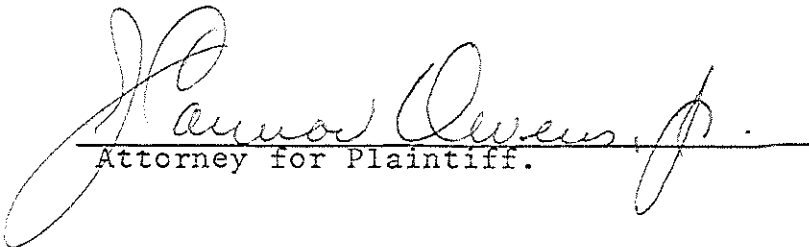
MOTION TO PRODUCE:

Comes the Plaintiff in the above styled cause, by and through its Attorney of Record, and moves the Court to enter an order requiring the Defendant, American Fidelity Life Insurance Company, to produce the items and documents hereinafter listed before this Court on Tuesday, May 4, 1971, at the hour of 2:00 o'clock P. M., for the purpose of examination by the Plaintiff:

- (1) All loan documents, papers, correspondence, and all written materials in connection with the loan or loans made by American Fidelity Life Insurance Company to Luxury Motels, Inc;
- (2) All Minutes of the meetings of the Finance Committee of American Fidelity Life Insurance Company in connection with transactions with Luxury Motels, Inc;
- (3) All Minutes of the Meetings of the Finance Committee of American Fidelity Life Insurance Company, dealing with Luxury Motels, Inc., between May 27, 1966, and November 20, 1970;
- (4) Copies of all audits and finance reports procured by American Fidelity Life Insurance Company on Luxury Motels, Inc., from whatever source, including, but not limited to, those furnished by Luxury Motels, Inc., from May 27, 1966, through November 20, 1970.

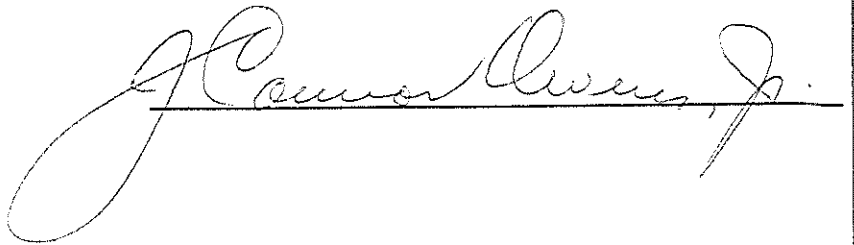
  
Attorney for Plaintiff.

The above and foregoing Motion has, by order of the Court, been set for hearing on Friday, April 30, 1971, at 9:30 o'clock A. M.

  
Attorney for Plaintiff.



I, the undersigned, Attorney of Record for the Plaintiff in the foregoing cause, do hereby certify that I have caused a copy of the foregoing motion and notice of hearing to be served on Donald F. Pierce, the Attorney of Record for the Defendant in said cause, by depositing the same in the United States Mail, properly addressed, with postage prepaid, this 26th day of April, 1971.

A handwritten signature in cursive script, reading "J. Cameron Lewis, Jr.", is written over a horizontal line.

**FILED**

APR 27 1971

EUNICE B. BLACKMON CIRCUIT  
CLERK

)

(

3

VS.

3

AT LAW.

3

Defendant.

LUXURY MOTELS, INC.,  
A Florida Corporation,

Plaintiff,

vs.

AMERICAN FIDELITY LIFE INSURANCE  
COMPANY, a Florida Corporation,

Defendant.

)

)

)

)

)

)

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW. NO. 9567

ORDER:

This cause coming on to be heard on Defendant's demurrer to the Amended Complaint of the Plaintiff, and the same having been considered by the Court, it is, therefore,

ORDERED, ADJUDGED AND DECREED by the Court that Defendant's demurrer be, and the same is hereby overruled.

DONE this 8th day of December, 1971.

*J. G. J. Madalena*

Circuit Judge.

**FILED**

JAN 6 - 1972

EUNICE B. BLACKMON CIRCUIT  
CLERK

STATE OF ALABAMA  
DEPARTMENT OF INSURANCE

9567

I, the undersigned as Superintendent of Insurance for the State of Alabama,  
hereby certify that on the 23rd day of November, 1970, I  
sent by registered mail in an envelope as follows:

American Fidelity Life Insurance Company  
1528 Barrancas Avenue  
Pensacola, Florida 32507

REGISTERED MAIL  
RETURN RECEIPT REQUESTED

bearing sufficient prepaid postage, a copy of a summons and complaint served upon  
me by the Sheriff of Montgomery County, Alabama, in a cause styled as follows:

Luxury Motels, Inc., Plaintiff

in the Circuit Court of Baldwin County

VERSUS

(Name of Court)

American Fidelity Life Insurance Company, Defendant

And that on the 30th day of November, 1970, I received  
the return card showing receipt by the designated addressee of said envelope on  
the        day of not shown, 1970.

Witness my hand and official seal this the 3rd day of December,  
1970.

R. Frank Unser  
SUPERINTENDENT OF INSURANCE

FILED

DEC 4 1970

ALICE J. DUCK

CLERK  
REGISTER

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

LAWYERS

30TH FLOOR-FIRST NATIONAL BANK BUILDING

MOBILE, ALABAMA

36601

November 30, 1971

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.  
~~XXXXXXXXXX~~  
VIVIAN O. 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  
O. PORTER BROCK, JR.  
HARWELL E. 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  
O. HAMP UZZELLE, III

Clerk  
Circuit Court of Baldwin County  
Bay Minette, Alabama

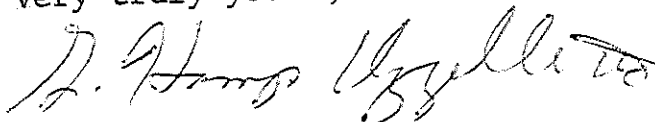
Re: Luxury Motels vs. American Fidelity Life  
Insurance Company

Gentlemen:

Please file the enclosed demurrer in the case of  
Luxury Motels, Inc. vs. American Fidelity Life Insurance  
Company, Case No. 9567. We would appreciate your acknow-  
ledging receipt and filing of this demurrer by returning  
an initialed copy of this letter which we enclose.

Thank you very much for your cooperation and assis-  
tance.

Very truly yours,



For the Firm

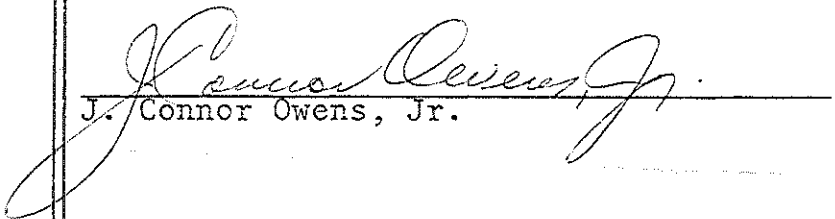
GHU:bc

Enclosure

9567

68 PAGE 334

Plaintiff demands this cause be  
tried by Jury.

  
J. Connor Owens, Jr.

FILED

NOV 20 1970

ALICE J. DUCK CLERK  
REGISTER

SUMMONS AND COMPLAINT

THE STATE OF ALABAMA  
BALDWIN COUNTY

Circuit Court, Baldwin County

No.....

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

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon AMERICAN FIDELITY LIFE INSURANCE COMPANY,

.....a Florida 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.....

American Fidelity Life Insurance Company ..... Defendant.....

by LUXURY MOTELS, INC., a Florida Corporation.....

..... Plaintiff.....

Witness my hand this 20th ..... day of November 19 70

*Alice J. Black* Clerk

SERVE SUPERINTENDENT OF INSURANCE  
MONTGOMERY, ALABAMA



No. 9567

Page.....

**THE STATE OF ALABAMA**  
**BALDWIN COUNTY**

**CIRCUIT COURT**

LUXURY MOTELS, INC., a  
Florida Corporation

Plaintiffs

vs.  
AMERICAN FIDELITY LIFE  
INSURANCE COMPANY, a Florida  
Corporation  
Defendants

**SUMMONS AND COMPLAINT**

Filed November 20 19 70

NOV 20 1970 Clerk

**ALICE J. DUCK**

CLERK  
REGISTER

M. SCONNOR SOWINS, Montgomery,  
P. O. BOX 729  
BAY MINETTE, ALA. 1.50 each for

serving 1 process(es) and \$1.00  
Plaintiff's Attorney

travel expense on each of 1

process(es) or a total 2.50  
Defendant's Attorney

17720  
Defendant lives at  
SERVE SUPERINTENDENT OF  
INSURANCE, MONTGOMERY, ALA.

RECEIVED IN OFFICE  
Recieved In Office

NOV 23 1970

20 19.70

M. S. Butler, Sheriff

I have executed this summons

this ..... 19.....

by leaving a copy with

..... Superintendent of Insur.

Executed by serving 2 copies of

the within on Frank Murray

Superintendent  
of Insurance, State of Alabama

This The 23 day of Nov 19 70

Sheriff of Montgomery County

M. S. Butler,

By W. P. Walker D. S.

~~The Sheriff claims \$2.00 travel ex...~~  
~~pense on each of~~

~~process(es) or a total of \$~~ Sheriff

M. S. Butler, Sheriff  
Montgomery County,  
Alabama.

Deputy Sheriff

W. P. Walker

Deputy Sheriff

LUXURY MOTELS, INC.,  
A Florida Corporation,

Plaintiff,

vs.

AMERICAN FIDELITY LIFE INSURANCE  
COMPANY, a Florida Corporation,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

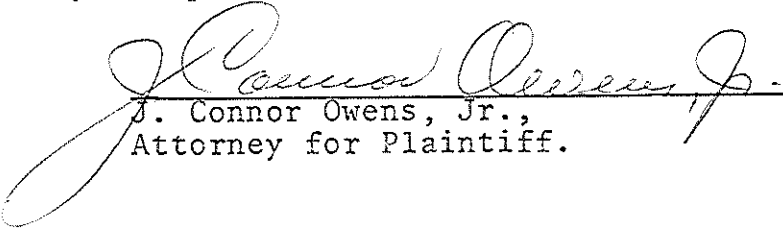
LAW SIDE. NO. 9567.

NOTICE OF DEPOSITION:

TO: MR. DONALD F. PIERCE  
ATTORNEY AT LAW  
P. O. BOX 123  
MOBILE, ALABAMA 36601

You are hereby notified that the Plaintiff, Luxury Motels, Inc., will take the deposition of Mr. Terry M. Richardson, Vice-President of American Fidelity Life Insurance Company, at the Law Library located in the Baldwin County Courthouse in Bay Minette, Alabama, on Tuesday, May 4, 1971, at the hour of 2:00 o'clock P. M., before Mrs. Louise Dusenbury, or before some other officer authorized by law to take depositions. The deposition is to be taken in accordance with and pursuant to Act No. 375 of the Alabama Legislature of 1955, as amended, and will continue from day to day until the completion of the same, and you are invited to attend and examine the deponent.

DATED this 23rd day of April, 1971.

  
J. Connor Owens, Jr.,  
Attorney for Plaintiff.

I, the undersigned, Attorney of Record for the Plaintiff in the foregoing cause, do hereby certify that I have caused a copy of the foregoing notice to be served on Donald F. Pierce, the Attorney of Record for the Defendant in said cause, by depositing the same in the United States Mail, properly addressed, with postage prepaid, this 23rd day of April, 1971.

**FILED**

APR 23 1971

FUNCE B. BLACKMON  
CIRCUIT  
CLERK

VOL

68 PAGE 347

LUXURY MOTELS, INC., a  
Florida Corporation,

Plaintiff,

vs.

AMERICAN FIDELITY LIFE INSURANCE  
COMPANY, a Florida Corporation,

Defendant.

)  
) IN THE CIRCUIT COURT OF

)  
) BALDWIN COUNTY, ALABAMA

)  
) AT LAW. NO. 9567

ORDER SUSTAINING DEMURRER:

This cause coming on to be heard on the demurrer filed by the Defendant to the complaint, and the same being considered by the Court, it is, therefore,

ORDERED, ADJUDGED AND DECREED by the Court that the demurrer filed by the Defendant to the complaint be, and the same is hereby sustained.

DONE this 16th day of February, 1971.

*Suzanne M. Blackmon*  
Circuit Judge.

**FILED**

FEB 16 1971

EUNICE B. BLACKMON CIRCUIT  
CLERK

LUXURY MOTELS, INC.,  
A Florida Corporation,

Plaintiff,

vs.

AMERICAN FIDELITY LIFE INSURANCE  
COMPANY, a Florida Corporation,

Defendant.

)  
) IN THE CIRCUIT COURT OF

)  
) BALDWIN COUNTY, ALABAMA

)  
) AT LAW. NO. 9567.

MOTION TO PRODUCE:

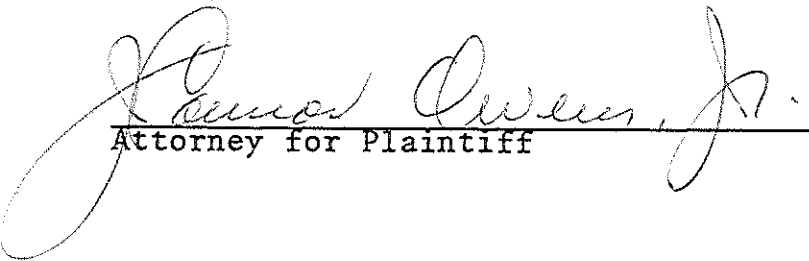
Comes the Plaintiff in the above styled cause, by and through its Attorney of Record, and moves the Court to enter an order requiring the Defendant, American Fidelity Life Insurance Company, to produce the items and documents hereinafter listed before this Court on Wednesday, January 19, 1972, at the hour of 9:00 o'clock A. M., in the trial of the above styled cause:

(1) All loan documents, papers, correspondence, and all written materials in connection with the loan or loans made by American Fidelity Life Insurance Company to Luxury Motels, Inc;

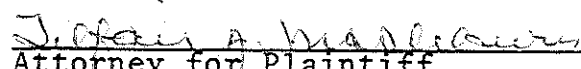
(2) All Minutes of the meetings of the Finance Committee of American Fidelity Life Insurance Company in connection with transactions with Luxury Motels, Inc;

(3) All Minutes of the meetings of the Finance Committee of American Fidelity Life Insurance Company, dealing with Luxury Motels, Inc., between May 27, 1966, and November 20, 1970;

(4) Copies of all audits and finance reports procured by American Fidelity Life Insurance Company on Luxury Motels, Inc., from whatever source, including, but not limited to, those furnished by Luxury Motels, Inc., from May 27, 1966, through November 20, 1970.

  
Attorney for Plaintiff

The above and foregoing Motion has, by order of the Court, been set for hearing on January 7, 1972, at 9:00 o'clock A. M.

  
Attorney for Plaintiff.

I, the undersigned, one of the Attorneys of Record for the Plaintiff in the foregoing cause, do hereby certify that I have caused a copy of the foregoing motion and notice to be served on Donald F. Pierce, the Attorney of Record for the Defendant in said cause, by depositing the same in the United States Mail, properly addressed, with postage prepaid, this 29th day of December, 1971.

*James Owens Jr.*

FILED

DEC 29 1971

EUNICE B. BLACKMON CIRCUIT  
CLERK

LUXURY MOTELS, INC., a  
Florida Corporation,

Plaintiff,

vs.

AMERICAN FIDELITY LIFE INSURANCE  
COMPANY, a Florida Corporation,

Defendant.

§

IN THE CIRCUIT COURT OF

§

BALDWIN COUNTY, ALABAMA

§

AT LAW

§

CASE NO. 9567

§

D E M U R R E R

Comes now the defendant in the above-styled cause,  
American Fidelity Life Insurance Company, and demurs to the  
complaint and to each count thereof, separately and severally,  
and for separate and several grounds of demurrer sets down  
and assigns the following separate and several grounds,  
separately and severally:

1. For that it does not state facts sufficient to constitute a cause of action against this defendant.

2. For that the alleged written agreement, the breach of which is the basis of this action, is not set out in the complaint in substance or a copy of such written agreement is not attached as an exhibit thereto.

3. For that the allegation that a valuable consideration was paid to the defendant by the plaintiff is merely a conclusion of the pleader unsupported by any factual allegation supporting same.

4. For that sufficient facts are not averred to show any consideration paid or given by the plaintiff to the defendant in support of the alleged written agreement upon which this action is based.

5. For that the allegation that plaintiff has complied with all of the conditions precedent of said agreement is a conclusion unsupported by factual averment.

6. For that the conditions of the alleged written agreement, for the breach of which plaintiff sues, are not set out in substance or in detail so that the allegation that plaintiff has complied with all of such conditions is but a conclusion.

7. For that the breach of said written agreement is not set out in sufficient detail with certainty to support plaintiff's cause of action.

8. For that it is not alleged in what manner, at what time and place and what conditions, if any, this defendant breached the alleged written agreement with plaintiff.

9. For that the time and place of the alleged breach of said written agreement by the defendant is not alleged with sufficient certainty.

10. For aught that appears from the allegations of the complaint defendant's refusal to the plaintiff of the second advance of \$250,000.00 provided for in said written agreement

was in accordance with the terms and conditions of said written agreement as a matter of law and does not allege a breach of said written agreement.

11. For aught that appears from the allegations of the complaint, defendant's alleged breach of said written agreement was in accordance with the terms and conditions of such agreement, which terms and conditions, if set out in substance or detail, would, as a matter of law, disclose plaintiff's prior breach thereof; therefore, plaintiff fails to state a cause of action against this defendant.

12. For that the pleader sets out in what said breach constituted and the facts so set out do not show any breach of said written agreement.

C. B. Arendall, Jr.  
C. B. Arendall, Jr.

Donald F. Pierce  
Donald F. Pierce  
Trial Attorneys for Defendant

OF COUNSEL

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

Defendant respectfully demands a trial by jury.

Donald F. Pierce

**FILED**

DEC 24 1970

VOL 68 PAGE 339

ALICE J. DUCK CLERK  
REGISTER



CERTIFICATE OF SERVICE

I hereby certify that I have mailed a true and correct copy of the foregoing demurrer to J. Connor Owens, Jr., Esquire, Attorney for plaintiff, by depositing a copy of same in the United States mail, postage prepaid, addressed to Mr. Owens at his office in Bay Minette, Alabama, on this, the 18th day of December, 1970.

Donald J. Pierce

**FILED**

DEC 21 1970

**ALICE J. DUCK** CLERK  
REGISTER

LUXURY MOTELS, INC., a	)	IN THE CIRCUIT COURT OF
Florida Corporation,	)	
	)	
Plaintiff,	)	BALDWIN COUNTY, ALABAMA
	)	
vs.	)	
	)	AT LAW
AMERICAN FIDELITY LIFE INSURANCE	)	
COMPANY, a Florida Corporation,	)	
	)	
Defendant.	)	CASE NO. 9567

D E M U R R E R

Comes now the defendant in the above-styled cause, American Fidelity Life Insurance Company, and demurs to the complaint as last amended and for separate and several grounds of demurrer, sets down and assigns the following separate and several grounds, separately and severally:

1. For that it does not state facts sufficient to constitute a cause of action against this defendant.

2. For that the allegation that plaintiff has complied with all of the conditions precedent of the agreement is a conclusion unsupported by factual averment.

3. For that the breach of said written agreement is not set out in sufficient detail with certainty to support the plaintiff's cause of action.

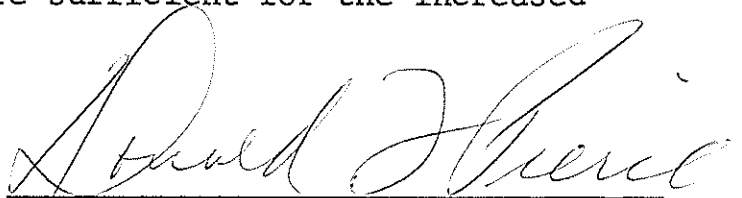
4. For aught that appears from the allegation of the complaint defendant's refusal to the plaintiff of the second advance of \$250,000.00 allegedly provided for in said written agreement was in accordance with the terms and conditions of said written agreement as a matter of law and does not allege a breach of said written contract.

5. For that the complaint sets out the facts allegedly constituting the breach and the facts so set out do not show any breach of said written agreement.

6. For that the written agreement, which is attached to the complaint as Exhibit A, affirmatively shows that the defendant was not obligated to make the additional advance of \$250,000.00 and therefore the allegation of the complaint that defendant breached the agreement "by refusing, in writing, on July 25, 1969, to loan the plaintiff the second advance of Two Hundred Fifty Thousand Dollars (\$250,000.00) provided for in said written agreement," conflicts with the provisions of the written agreement between the parties.

7. For that the written agreement, attached to the complaint as Exhibit A, did not obligate the defendant to loan to the plaintiff the second advance of \$250,000.00.

8. For that the written agreement, attached to the complaint as Exhibit A, provided: "American Fidelity Life Insurance Company shall have the sole or entire discretion in determining that profits are sufficient for the increased loan of \$250,000.00."



DONALD F. PIERCE  
P. O. Box 123  
Mobile, Alabama



G. HAMP UZZELLE, *IPP*  
P. O. Box 123  
Mobile, Alabama

Trial Attorneys for Defendant

OF COUNSEL:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 30th day of November, 1971, 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.

*J. Hampton Bell*

**FILED**

DEC 3 1971

EUNICE B. BLACKMON CIRCUIT  
CLERK

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 C. BRASWELL  
HAROLD D. PARKMAN  
G. PORTER BROCK, JR.  
HARWELL E. COALE, JR.  
STEPHEN G. CRAWFORD  
JERRY A. MCDOWELL  
W. RAMSEY MCKINNEY, JR.  
LARRY D. SIMS  
A. CLAY RANKIN, III  
EDWARD A. HYNDMAN, JR.  
MICHAEL D. KNIGHT  
G. HAMP UZZELLE, III

December 28, 1971

Mrs. Eunice B. Blackmon  
Circuit Clerk and Register of  
Baldwin County  
Bay Minette, Alabama

Re: Luxury Motels, Inc., a Florida  
Corporation vs. American Fidelity  
Life Insurance Company, a Florida  
Corporation - In the Circuit Court  
of Baldwin County, Alabama - Case  
No. 9567 ----- At Law

Dear Mrs. Blackmon:

Enclosed please find the answer of the defendant in  
the above-styled case which I would appreciate your  
filing.

With best regards,

Very truly yours,

  
For the Firm

DFP/dm  
Encl.

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

LAWYERS

30TH FLOOR - FIRST NATIONAL BANK BUILDING

MOBILE, ALABAMA

36601

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THOMAS GUY GREAVES, III

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P. O. DRAWER C  
OR P. O. BOX 123

CABLE ADDRESS:  
HAB

TELEPHONE  
432-5511  
AREA CODE 205

December 17, 1970

Mrs. Alice Duck, Clerk  
Circuit Court of Baldwin County  
Bay Minette, Alabama

Re: Luxury Motels, Inc., Plaintiff, vs.  
American Fidelity Life Insurance Company,  
Defendant - Case No. 9567 - In the  
Circuit Court of Baldwin County, Alabama

Dear Mrs. Duck:

Enclosed please find a demurrer we have prepared in the above-referenced action. Would you please file same in the Circuit Court of Baldwin County, Alabama. You will note that we have forwarded a copy of this demurrer to the plaintiff's attorney, J. Connor Owens, Jr.

Would you please indicate receipt of this pleading and the date filed on the duplicate copy of this letter enclosed herewith and forward same to my attention.

With best regards,

Very truly yours,  
ORIGINAL SIGNED BY

DONALD F. PIERCE

For the Firm

DFP/dm  
Encl.

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON  
LAWYERS

30TH FLOOR-FIRST NATIONAL BANK BUILDING

MOBILE, ALABAMA

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G. HAMP UZZELLE, III

December 17, 1970

Mrs. Alice Duck, Clerk  
Circuit Court of Baldwin County  
Bay Minette, Alabama

Re: Luxury Motels, Inc., Plaintiff, vs.  
American Fidelity Life Insurance Company,  
Defendant - Case No. 9567 - In the  
Circuit Court of Baldwin County, Alabama

Dear Mrs. Duck:

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Would you please indicate receipt of this pleading and the date filed on the duplicate copy of this letter enclosed herewith and forward same to my attention.

With best regards,

Very truly yours,



For the Firm

DFP/dm  
Encl.