

SUMMONS AND COMPLAINT

THE STATE OF ALABAMA  
BALDWIN COUNTY

Circuit Court, Baldwin County

} No. 9672

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

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon BALDWIN FURNITURE CO., OF BAY MINETTE,  
INC., Bay Minette, Alabama

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.....

Baldwin Furniture Co., of Bay Minette, Inc. .. Defendant.....

by G. W. WOODSON and G. F. SMYTH

..... Plaintiff.....

Witness my hand this.....5th.....day of.....February.....19.71

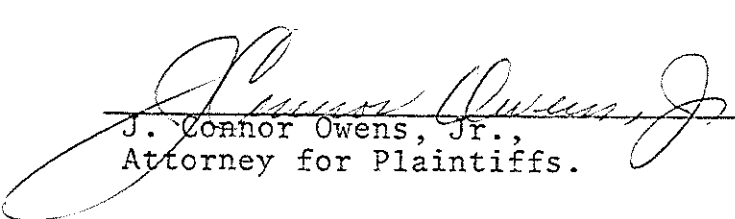
Service may be had on Defendant  
through Jon Knight as General  
Manager.

Ernie B. Blackburn Clerk

G. W. WOODSON and G. F. SMYTH,	)	
Plaintiffs,	)	IN THE CIRCUIT COURT OF
vs.	)	BALDWIN COUNTY, ALABAMA
BALDWIN FURNITURE CO. OF BAY	)	
MINETTE, INC., a Delaware	)	AT LAW. 9672
Corporation,	)	
Defendant.	)	

The Plaintiffs claim of the Defendant the sum of THIRTY THOUSAND AND NO/100 DOLLARS (\$30,000.00), due by promissory note made by it on November 25, 1969, and payable in equal annual installments, commencing November 25, 1970, with the interest thereon from November 25, 1969, at the rate of nine percent (9%) per annum; Plaintiffs further allege that in and by the terms of said note the failure to pay any installment accelerated the balance due under said note and that said Defendant defaulted on November 25, 1970, in its obligation to pay the installment as hereinabove set out.

Plaintiffs further allege that in and by the terms of said note, the Defendant agreed to pay all costs of collection, including a reasonable attorney's fee, and Plaintiff claims the benefit of the same in the amount of \$6,000.00.

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

FILED

FEB 5 1971

EUNICE B. BLACKMON CIRCUIT CLERK

9672

SUMMONS AND COMPLAINT

G. W. WOODSON and G. F. SMYTH,  
Plaintiffs,

vs.

BALDWIN FURNITURE CO. OF BAY  
MINETTE, INC., a Delaware  
Corporation,

Defendant.

\* \* \* \* \*

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

\* \* \* \* \*

FEB 5 1971

EUNICE B. BLACKMON  
CIRCUIT  
CLERK

J. CONNOR OWENS, JR.  
ATTORNEY AT LAW  
DAHLBERG BUILDING  
BAY MINETTE, ALABAMA

VOL 68 PAGE 526

Sheriff claims \_\_\_\_\_  
Ten Cents per mile Total \$ \_\_\_\_\_  
TAYLOR WILKINS, Sheriff  
Deputy Sheriff

Received \_\_\_\_\_  
and on \_\_\_\_\_ day of \_\_\_\_\_ 1971  
I served a copy of the within \_\_\_\_\_  
on \_\_\_\_\_  
Bad. Gun. Co.

By service on \_\_\_\_\_  
TAYLOR WILKINS, Sheriff  
BY \_\_\_\_\_  
\_\_\_\_\_

G. W. WOODSON and G. F. SMYTH,     )   IN THE CIRCUIT COURT OF  
   )   BALDWIN COUNTY, ALABAMA  
   )   AT LAW  
 VS.   )  
 BALDWIN FURNITURE COMPANY OF         )   CASE NO. 9672  
 BAY MINETTE, INC., A Delaware       )  
 Corporation,                             )  
   )   DEFENDANT.

Now comes the Defendant, and for answer to the complaint  
says as follows:

Plea I: That the Defendant tendered to the Plaintiffs the  
amount due to them, to-wit, \$5,673.53, before the action was  
commenced, and now brings this money into court.

Plea II: The Defendant says that all of its capital stock  
is owned by Gunter-Dunn, Inc., a Delaware Corporation, and that  
the note sued upon was executed pursuant to the provisions of,  
and as a part of the consideration of, an agreement executed by  
the Plaintiffs on, to-wit, November 5, 1969, whereby the Plain-  
tiffs sold certain assets owned by the Plaintiffs to Gunter-Dunn,  
Inc., the parent corporation of the Defendant; and the Defendant  
avers that in said agreement the Plaintiffs warranted that there  
was no sales tax due to the State of Alabama which would consti-  
tute a lien on the assets sold by the Plaintiffs to Gunter-Dunn,  
Inc., the parent corporation of the Defendant, and agreed to  
pay any such sales taxes found to be due, and further agreed  
that in the event they did not pay such taxes, after notice to  
them and a reasonable opportunity afforded to them to contest  
the same, that the Defendant would be entitled to be credited  
with the amount of such sales tax liability on the note sued  
upon; and the Defendant avers that a sales tax liability in the  
amount of \$7,026.47 was assessed by the State of Alabama, which  
liability would have been a lien on the assets the Plaintiffs

sold under the above mentioned agreement, and which liability Gunter-Dunn, Inc., the parent corporation of Defendant, discharged by paying after giving the Plaintiffs notice and a reasonable opportunity to contest the same; and the Defendant avers that it is entitled to be credited with said sum of \$7,026.47 on the payment due the Plaintiffs on, to-wit, November 25, 1970, thereby leaving the sum of \$5,673.53 due to the Plaintiffs on November 25, 1970; and the Defendant further avers that prior to November 25, 1970, it tendered to the Plaintiffs the said sum of \$5,673.53, which sum was refused by the Plaintiffs; and the Defendant further avers that it has at all times before the filing of this action, been ready, willing, and able to pay to the Plaintiffs the said sum of \$5,673.53, of which the Plaintiffs have had notice; and the Defendant further avers that said sum of \$5,673.53 is now brought into court by the Defendant.

Plea III: The Defendant says that all of its capital stock is owned by Gunter-Dunn, Inc., a Delaware Corporation, and the note sued upon was executed pursuant to the provisions of an agreement executed by the Plaintiffs on, to-wit, November 5, 1969, by which the Plaintiffs sold all of the capital stock of Baldwin Furniture Company of Bay Minette, Alabama; Baldwin Furniture Company of Robertsdale; and Baldwin Furniture Company of Foley, all corporations organized under the laws of the State of Delaware to Gunter-Dunn, Inc., the parent corporation of the Defendant, and the Defendant avers that in said agreement the Plaintiffs warranted that the Baldwin Furniture Company of Bay Minette had filed or caused to be filed all Federal, State, and local tax returns which were required to be filed and had paid, or caused to be paid, or made provision for the payment of all taxes which had or would become due, and further agreed

to indemnify and hold harmless Gunter-Dunn, Inc., from any deficiency in any tax of any type, kind, or character that might be assessed against Baldwin Furniture Company of Bay Minette, Alabama, for and on account of business conducted prior to August 31, 1969; and the Defendant avers that at the time of the execution of said agreement there was an outstanding Alabama sales tax liability in the amount of \$7,026.47 arising from business conducted by Baldwin Furniture Company of Bay Minette prior to August 31, 1969; and the Defendant further avers that the Plaintiffs were given notice of said sales tax liability and they failed or refused to indemnify and save harmless Gunter-Dunn, Inc., the owner of Defendant, by paying said sales tax liability; wherefore Defendant says that pursuant to the terms of said agreement of November 5, 1969, it was entitled to a credit of \$7,026.47 on the payment due November 25, 1970, on the note sued upon thereby leaving a payment due on November 25, 1970, of the sum of \$5,673.53; and Defendant further avers that said sum of \$5,673.53 was tendered to the Plaintiffs before the filing of this action and that said sum of \$5,673.53 is now brought into court by this Defendant.

Plea IV: The Defendant says that all of its capital stock is owned by Gunter-Dunn, Inc., a Delaware Corporation, and the note sued upon was executed pursuant to the provisions of an agreement executed by the Plaintiffs on, to-wit, November 5, 1969, by which the Plaintiffs sold all of the capital stock of Baldwin Furniture Company of Bay Minette, Alabama; Baldwin Furniture Company of Robertsdale; and Baldwin Furniture Company of Foley, all corporations organized under the laws of the State of Delaware to Gunter-Dunn, Inc., the parent corporation of the Defendant, and the Defendant avers that in said agreement the

Plaintiffs warranted that a financial statement attached to the said agreement contained a complete listing of all liabilities of the three corporations as of August 31, 1969, and agreed that a credit could be taken against the note sued upon for any liability not reflected in said financial statement; and the Defendant avers that there was an outstanding Alabama sales tax liability in the amount of \$7,026.47 due by Baldwin Furniture Company of Bay Minette arising from business conducted prior to August 31, 1969, which was not reflected in the said financial statement, and the Defendant avers that pursuant to the terms of said agreement of November 5, 1969, it was entitled to a credit of \$7,026.47 on the payment due November 25, 1970, on the note sued upon thereby leaving a payment due on said note in the amount of \$5,673.53; and Defendant further avers that said sum of \$5,673.53 was tendered to the Plaintiffs before November 25, 1970, and was refused by the Plaintiffs, that said tender has at all times been kept open by the Defendant, and that said sum of \$5,673.53 is now brought into court by the Defendant.

W. H. Baldwin  
James R. Cain  
Attorneys for Defendant

Certificate of Service

I, W. H. Baldwin, Attorney for Defendant, hereby certify that I have served a copy of the foregoing pleas on Mr. J. Conner Owens, Attorney for Plaintiffs, by mailing a copy of the same, U. S. Mail, postage prepaid to his address at Bay Minette, Alabama, 36507.

W. H. Baldwin  
James R. Cain  
Attorneys for Defendant

**FILED**

MAR 2 1971

MAR 23 1972

THE STATE OF ALABAMA - - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1971-72

Baldwin Furniture Co. of Bay Minette,  
Inc., a Delaware Corp.

1 Div. 704

v.

G. W. Woodson, et al.

Appeal from Baldwin Circuit Court

PER CURIAM.

Plaintiffs, appellees, filed suit to recover from defendant, appellant, the sum of \$30,000.00, plus some incidentals, due by promissory note, which provided for such payment in three annual installments of \$10,000.00 each.

The trial court, sitting without the aid of a jury, entered



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judgment for the first installment plus interest and attorney's fee totaling \$13,909.97.

The issue created by the pleas was whether or not appellant was entitled to a credit of \$7,026.47 on the note, the subject of the suit, arising from an alleged sales tax liability to the State of Alabama, which Gunter-Dunn, Inc. (sometimes referred to as Gunter-Dunn), paid. Gunter-Dunn, Inc., at the time of such payment, was the parent corporation of defendant. Appellant, prior to suit, tendered to appellees the sum of \$5,673.53, which, together with \$7,026.47 that appellant claims, would have paid the first installment of the note in the sum of \$10,000.00, plus interest.

The issue between the parties hereto has its origin in a business transaction wherein Gunter-Dunn, Inc., acting through its president, negotiated with appellees to purchase their corporate stock and assets in three retail furniture corporations, wholly owned by appellees and located in Baldwin County. The negotiations culminated in a sale and transfer of all the corporate stock of appellees in these corporate outlets and the assets thereof. One of the outlets was appellant. Delivery of the assets to Gunter-Dunn followed the sale.

Appellees signed an indemnity agreement which purported to protect Gunter-Dunn, Inc., against any outstanding and unpaid sales tax liability. This contract contains paragraph 7(c) upon which appellant relies in asserting its defense to payment of the note. We quote that part of 7(c) which we think is pertinent to the issues created by appellant's pleas:

"(c) In the event of any examination or deficiency in taxes to be paid . . . . for income taxes . . . . Sellers (appellees) will indemnify . . . . the said Buyer (Gunter-Dunn) therefrom. In the event that Sellers fail to fully indemnify and hold harmless the said Buyer from any deficiency in income tax, or tax of any type, kind or character that may be assessed against the Corporations for and on account of either of the Corporations' actions or actions and activities of the Sellers prior to closing date, Buyer may pay such taxes after notice to said Sellers and a reasonable opportunity afforded to Sellers to contest the same and upon such payments shall be entitled to be credited with the amount of such payment as a payment on the note or notes of the Corporations, or either of them, to be delivered to Sellers at time of closing in payment of the balance due to Sellers by Corporations as reflected in said consolidated balance sheet dated August 31, 1969 under the item 'notes payable Stockholders' and provided for in Paragraph 4 hereof.

"It is further understood that the same indemnity, the same method of enforcing the indemnity, shall be effective as to any other

liabilities of the Corporations which have not been disclosed to Buyer, and which would affect the net assets position of the Corporations as shown by said consolidated balance sheet of August 31, 1969.

"It is further understood that the method of enforcing this indemnity by crediting the notes payable to Sellers in the amount of Sellers' liabilities, should any arise, afford a mere cumulative remedy or method of enforcement, and shall in no way affect other remedies available to Buyer or to the Corporations after they become fully owned by Buyer." (Par. Added)

Appellant filed four pleas to appellees' complaint.

Appellees joined issue on these pleas which in substance are as follows:

Plea I asserts a tender to appellees of \$5,673.53, representing the balance due on the first \$10,000.00 annual installment of the note.

Plea II, in essence, claims that under the indemnity agreement, supra, appellant is entitled to a credit on its note, the subject of the suit, for a sales tax liability in the sum of \$7,026.47 which was assessed by the State of Alabama against appellant. Gunter-Dunn, Inc., paid this assessment after demand on plaintiffs to pay, which they failed to do.

Plea III asserts that appellees, in their indemnity agreement, warranted that Baldwin Furniture Company of Bay Minette, Inc., one of the corporate outlets sold to Gunter-Dunn, had filed or caused to be filed and had paid, or caused to be paid, or made provision for the payment of all taxes which had or would become due, and further agreed to indemnify and hold harmless Gunter-Dunn, Inc., from any deficiency in any tax of any type, kind, or character that might be assessed against Baldwin Furniture Company of Bay Minette, Inc., for and on account of business conducted prior to August 31, 1969; and appellant averred that at the time of the execution of said agreement there was an outstanding Alabama sales tax liability in the amount of \$7,026.47 arising from business conducted by said Baldwin Furniture Company of Bay Minette, Inc., prior to August 31, 1969, of which appellees were given notice.

Plea IV asserts that appellees, in said indemnity agreement, warranted that a financial statement attached to said agreement of indemnity contained a complete listing of all liabilities of the three corporations as of August 31, 1969, and agreed that a credit could be taken against the note sued on for any liability not reflected in said financial statement. The plea also averred that there was an outstanding Alabama sales tax liability in the amount of \$7,026.47 due by appellant from business conducted prior to August 31, 1969, which was not reflected in said financial statement, for which amount appellant was entitled to credit

6.

on the first installment of the note sued on, thereby leaving due on said note the sum of \$5,673.53 which was tendered appellees.

We hold that, under the evidence, appellees carried their burden of proof pertinent to the complaint, and that appellant failed in its burden with respect to the pleas except Plea I. The trial court limited its judgment to the first installment of the note.

The evidence appearing in the record indicates that there was very little dispute, if any, about the essential facts. As we have observed, supra, there was no question about the tender to appellees, their refusal, and its payment into court. The main issue is whether or not there was a sales tax liability against appellant that falls within the purview of Pleas II, III, and IV, supra, and paragraph 7(c), supra, of the indemnity agreement. Appellant, in its argument in brief, bases its defense on paragraph 7(c) of the indemnity agreement. No other part of the agreement is referred to or pointed out. We confine our review to this paragraph.

Appellant offered expert witnesses in accounting, including an auditor for the Sales Tax Division of the State Department of Revenue of Alabama. One of the certified accountants testified that the accounts receivable, reflected in the consolidated balance sheet attached to the indemnity agreement, amounted to \$191,768.40, in which was included sales taxes in the sum of \$7,026.47; and that the balance sheet did not show a liability therefor.

It further appears that the three corporate retail outlets, the subject of sale to Gunter-Dunn, Inc., had been paying sales tax to the State on a collection basis as provided by Title 51, § 786(7), Recompiled Code 1958, Pocket Parts, which, it appears, is the only plan of payment written in the Code. This section reads as follows:

"§ 786(7). Cash sales and credit collections to be reported.—Any person taxable under this article, having cash and credit sales, may report such cash sales, and the taxpayer shall thereafter include in each monthly report all credit collections made during the month preceding, and shall pay the taxes due thereon at the time of filing such report, but in no event shall the gross proceeds of credit sales be included in the measure of the tax to be paid until collections of such credit sales shall have been made."

Following sale and transfer of the stock to Gunter-Dunn, Inc., and the delivery of the assets of the involved outlets, the vendee decided to standardize the sales tax payments of these new acquisitions, so as to comport with the other outlets owned by said vendee, Gunter-Dunn. The vendee notified the State Department of Revenue, Sales Tax Division, that it wanted to pay the sales tax due by these stores on an accrual basis, that is, prepay the sales tax

8.

on the accounts receivable and not wait until collected as provided by the collection plan. In other words, the acquired stores were to be switched from a collection to an accrual plan.

Also, Gunter-Dunn, Inc., through its president, requested the State Department of Revenue, Sales Tax Division, to audit the books of the three acquired corporations and determine the amount of sales tax to be paid on the accounts receivable. The purpose was to pay the tax on these accounts receivable in advance and put the acquisitions thereafter on an accrual basis. The Department of Revenue, after completion of this requested audit, made an assessment in the sum of \$7,026.47, which amount Gunter-Dunn, Inc., paid and which appellees, after reasonable notice, declined or failed to pay.

The president of Gunter-Dunn, Inc., testified that, under the collection plan of paying sales tax used by appellant prior to the sale of its stock and prior to the execution of the indemnity agreement, no liability for payment of the tax accrued until the accounts receivable were collected. We are in accord with that statement. The only plan of payment provided by § 786(7), supra, on credit sales is after collection and not before.

We are of the opinion that the assessment made by the Department of Revenue, fixing the amount to be paid on an accrual basis at \$7,026.47, was not within the purview of the indemnity agreement for the reason that, on the date of the execution of said agreement, no change to an accrual

9.

basis was mentioned. It was not until sometime later, after Gunter-Dunn acquired the stock of the outlets and took over as the parent corporation, that the accrual plan was put into effect.

We fail to find any evidence that appellant, when its stock was sold to Gunter-Dunn, or thereafter, was delinquent in the payment of sales tax on its accounts receivable except about \$1,300.00 which appellees paid. There was no liability on appellant's credit sales, before the change to an accrual basis, until the accounts were collected in whole or in part. It is not shown that appellant suffered any loss because liability for the tax failed to appear in the balance sheet.

The assessment was a gratuitous entry, not based on any sales tax delinquency, but made to accommodate the accounting convenience of appellant. It is not binding on appellees under their indemnity agreement. For aught appearing in the evidence, appellant collected the sales tax on the accounts receivable if any were paid. If not paid, appellant should bear the loss arising from prepayment, because it elected to pay on an accrual plan which was not compulsory.

The judgment of the trial court is affirmed.

The foregoing opinion was prepared by Bowen W. Simmons, Supernumerary Circuit Judge, and was adopted by the Court as its opinion.

AFFIRMED.

Heflin, C. J., and Lawson, Coleman, Bloodworth, and McCall, JJ., concur.

I, J. O. Sentell, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said Court.

Witness my hand this 23 day of Mar 1972

*J. O. Sentell*



THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19<sup>71-72</sup>

1 Div. No. 704

To the Clerk Register of the Circuit Court,

Baldwin County—Greeting:

Whereas, the Record and Proceedings of the Circuit Court of said county, in a certain cause lately pending in said Court between Baldwin Furniture Co. of Bay Minette, Inc., Appellant,

and G. W. Woodson, et al, Appellee<sup>s</sup>,

wherein by said Court it was considered adversely to said appellant, were brought before the Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant:

NOW, IT IS HEREBY CERTIFIED, That upon consideration thereof the Supreme Court, on the 23rd day of March, 19<sup>72</sup>, affirmed said cause, in all respects, and ordered that appellant, Baldwin Furniture Company of Bay Minette, Inc., a Delaware Corporation, and James R. Owen, surety for the costs of appeal,

and

pay the costs of appeal in this Court and in the Court below, for which costs let execution issue.

~~It is further certified that, appearing that said parties have waived their rights of exemption under the laws of Alabama, it was ordered that execution issue accordingly.~~

Witness, J. O. Sentell, Clerk of the Supreme

Court of Alabama, this the 23rd day of March, 19<sup>72</sup>

J. O. Sentell  
Clerk of the Supreme Court of Alabama.

THE SUPREME COURT OF ALABAMA

October Term, 19 71-72

1 Div., No. 704

Baldwin Furniture Co., etc.

*Appellant,*

*vs.*

G. W. Woodson, et al

*Appellee.*

From Baldwin Circuit Court.  
No. 9672

CERTIFICATE OF  
AFFIRMANCE

The State of Alabama, }  
Baldwin County. } Filed

this        day of        19      

**FILED**

MAR 24 1972

EUNICE B. BLACKMON  
CIRCUIT CLERK

G. W. WOODSON and G. F. SMYTH, )  
 )  
Plaintiffs, )  
 )  
VS. )  
 )  
BALDWIN FURNITURE COMPANY OF )  
BAY MINETTE, INC., a Delaware )  
corporation, )  
 )  
Defendant. )

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW NO. 9672

SECURITY FOR COSTS OF APPEAL

I, the undersigned, hereby acknowledge myself security for all costs of appeal to the Supreme Court of Alabama from the judgment rendered in the above styled cause on the 18th day of June, 1971, and hereby agree to pay all such costs.

  
\_\_\_\_\_  
Attorney for Defendant

**FILED**

AUG 10 1971

EUNICE B. BLACKMON CIRCUIT  
CLERK

**THE STATE OF ALABAMA** }  
**Baldwin County - Circuit Court** }

TO ANY SHERIFF OF THE STATE OF ALABAMA—GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the 18th day of June, 1971  
 ..... Monday ..... 1971, in a cer-  
 tain cause in said Court wherein G. W. WOODSON & G. F. SMYTH  
 ..... Plaintiff, and BALDWIN FURNITURE CO. OF BAY MINETTE,  
 INC., A Delaware Corporation ..... Defendant, a judgement was rendered against said  
 Baldwin Furniture Company of Bay Minette, Inc., A Delaware Corporation  
 to reverse which Judgment, the said Baldwin Furniture Company of Bay Minette  
 Inc., a Delaware Corporation  
 .....  
 applied for and obtained from this office an APPEAL, returnable to the next  
 Term of our Supreme Court of the State of Alabama, to be held at Montgomery, on the .....  
 ..... day of ..... 19..... next, and the necessary bond  
 having been given by the said James R. Owen, Attorney for Defendant  
 ..... with ..... sureties, X

Now, You Are Hereby Commanded, without delay, to cite the said G. W. Woodson & G. F.  
 Smyth ..... or J. Connor Owens, Jr.  
 ..... attorney, to appear at the next ..... Term of our  
 said Supreme Court, to defend against the said Appeal, if they think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 13th  
 day of August, A. D., 1971.

Attest:

*Ernie B. Blackman* Clerk.

Accepted:  
 Aug 13, 1971  
*J. Connor Owens Jr.*

CASE NO. 9672

**CIRCUIT COURT**  
**Baldwin County, Alabama**

G. W. WOODSON & G. F. SMYTH

Vs.      {      Citation in Appeal

BALDWIN FURNITURE COMPANY OF BAY  
MINETTE, INC., A Delaware Corp.

Issued 13th day of August, 1971

No. 9672 \_\_\_\_\_

BALDWIN County, Circuit Court.

G. W. WOODSON & G. F. SMYTH  
Plaintiff.  
vs.  
BALDWIN FURNITURE COMPANY OF  
RAY MINETTE, INC., A Delaware  
Corporation  
Defendant.

I, Eunice B. Blackmon Clerk of Circuit Court,  
of Baldwin County, Alabama, hereby certify that in the  
cause of G. W. WOODSON & G. F. SMYTH plaintiff,  
vs.

BALDWIN FURNITURE COMPANY OF RAY MINETTE, INC., A Delaware Corp. defendant,  
which was tried and determined in this Court on the 18th day of  
June 1971 in which there was a judgment for (\$13,909.97) Thirteen  
97/100 -  
Thousand Nine Hundred Nine & Dollars, in favor of the plaintiff, (or judgment  
for defendant,) the Defendant on the 10th day of  
August 1971, took an appeal to the Supreme Court  
of Alabama to be holden of and for said State.

I further certify that ~~Baldwin~~ James R. Owen  
filed security for cost of appeal, to the Supreme Court, on  
the 10th day of August 1971, and that James R. Owen,  
is surety  
and sureties on the appeal bond.

I further certify that notice of the said appeal was on the 13  
day of August 1971, served on J. Connor Owens, Jr.  
as attorney of record for said appellee, and that the amount sued for  
was Thirty Thousand and no/100 - - - - - Dollars. (Or certain lands)  
(Or personal property.)

Witness my hand and the seal of this Court, this the 13th  
day of August 1971.

Eunice B. Blackmon  
Clerk of the Circuit Court of  
Baldwin County, Alabama.

G. W. WOODSON and G. F. SMYTH,

Plaintiffs,

VS.

BALDWIN FURNITURE COMPANY OF  
BAY MINETTE, INC., a Delaware  
corporation,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

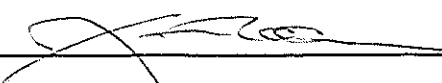
NO. 9672

NOTICE OF APPEAL

Now comes Baldwin Furniture Company of Bay Minette, Inc.,  
a Delaware corporation, the defendant in the above styled cause and  
hereby appeals to the Supreme Court of Alabama from the judgment  
entered by this court on June 18, 1971.

BALDWIN & BALDWIN and  
JAMES R. OWEN

By

  
Attorneys for Defendant.

**FILED**

AUG 10 1971

EUNICE B. BLACKMON CIRCUIT  
CLERK

Defendant.

AT LAW. NO. 9672.

JUDGMENT :

This cause coming on to be heard by the Court, and the Court having considered the same, it is, therefore,

ORDERED, ADJUDGED AND CONSIDERED that the Plaintiffs have and recover of the Defendant, the total sum of THIRTEEN THOUSAND NINE HUNDRED NINE AND 97/100 DOLLARS (\$13,909.97), said sum consisting of \$10,000.00 principal, being the first installment due under said note, together with interest from date of note for the first year in the sum of \$2700.00, and interest on said installment of \$10,000.00 from November 25, 1970, until June 18, 1971, in the sum of \$509.97, together with an attorney's fee in the sum of \$700.00;

It is further ORDERED, ADJUDGED AND CONSIDERED that the right of acceleration of the other installments of said note sought by Plaintiffs in this case which will become due, be, and is hereby denied.

DATED at Bay Minette, Alabama, this 18th day of June, 1971.

Josiah A. Madsen  
Circuit Judge.



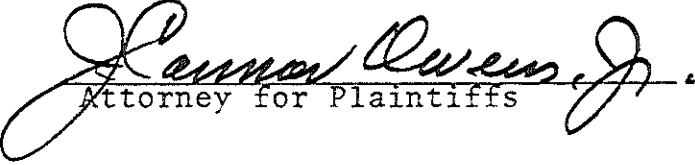
Book ~~12~~ 13  
Page 20

G. W. WOODSON and G. F. SMYTH,) IN THE CIRCUIT COURT OF  
PLAINTIFFS )  
VS. ) BALDWIN COUNTY, ALABAMA  
BALDWIN FURNITURE COMPANY OF )  
BAY MINETTE, INC. a Delaware )  
Corporation, )  
DEFENDANT ) IN LAW No. 9672

REPLICATION

Now come the Plaintiffs in this cause and for answer  
to the Pleas filed in this case, says as follows:

The Plaintiffs join issue on said pleas.

  
Attorney for Plaintiffs

*Filed, June 18, 1971:*  
*Jeffery J. Maddeben*  
*Jedg*

G. W. WOODSON and G. F. SMYTH,            ) IN THE CIRCUIT COURT OF  
   ) BALDWIN COUNTY, ALABAMA  
   ) AT LAW  
 VS.    )  
 BALDWIN FURNITURE COMPANY OF                ) CASE NO. 9672  
 BAY MINETTE, INC., A Delaware                )  
 Corporation,                                    )  
   ) DEFENDANT.  
   )

Now comes the Defendant and for further answer to the  
 complaint says as follows:

Plea V: The Defendant says that all of its capital stock  
 is owned by Gunter-Dunn, Inc., a Delaware Corporation, and the  
 note sued upon was executed pursuant to the provisions of an  
 agreement executed by the Plaintiffs on, to-wit, November 5,  
 1969, by which the Plaintiffs sold all of the capital stock of  
 Baldwin Furniture Company of Bay Minette, Alabama; Baldwin  
 Furniture Company of Robertsdale; and Baldwin Furniture Company  
 of Foley, all corporations organized under the laws of the State  
 of Delaware to Gunter-Dunn, Inc., the parent corporation of  
 the Defendant, Defendant avers that in said agreement the  
 Plaintiffs warranted that a consolidated balance sheet attached  
 to said agreement contained a complete listing of all liabilities  
 of the three corporations as of August 31, 1969, and agreed  
 that a credit could be taken against the note sued upon for  
 any liability not reflected in said consolidated balance sheet  
 which would affect the net assets position of the corporations  
 as shown by said consolidated balance sheet of August 31, 1969;  
 and the Defendant avers that there was an outstanding Alabama  
 sales tax liability in the amount of \$7,026.47 which was not  
 reflected in the said consolidated balance sheet which affected  
 the net assets position of the corporations as shown by said  
 consolidated balance sheet; and the Defendant avers that pur-  
 suant to the terms of said agreement of November 5, 1969, it

was entitled to a credit of \$7,026.47 on the payment due November 25, 1970, on the note sued upon thereby leaving a payment due on said note in the amount of \$5,673.53; and Defendant further avers that said sum of \$5,673.53 was tendered to the Plaintiffs before November 25, 1970, and was refused by the Plaintiffs, that said tender has at all times been kept open by the Defendant, and that said sum of \$5,673.53 has been brought into court by the Defendant.

W. H. Baldwin  
[Signature]  
Attorneys for Defendant

CERTIFICATE OF SERVICE

I, W. H. Baldwin, Attorney for Defendant, hereby certify that I have served a copy of the foregoing plea on Hon. J. Conner Owens, Attorney for Plaintiffs, by delivering a copy to him.

W. H. Baldwin  
[Signature]  
Attorneys for Defendant

FILED


JUN 18 1971

EUNICE B. BLACKMON CIRCUIT  
CLERK

G. W. WOODSON and G. F. SMYTH,	)	
	)	
Plaintiffs,	)	IN THE CIRCUIT COURT OF
	)	
VS.	)	BALDWIN COUNTY, ALABAMA
	)	
BALDWIN FURNITURE COMPANY OF	)	AT LAW
BAY MINETTE,	)	NO. 9672
	)	
Defendant.	)	

STATE OF ALABAMA )  
 \*  
 BALDWIN COUNTY )

Before me, the undersigned authority, personally appeared James R. Owen, who first being duly and legally sworn deposes and says: That he is one of the attorneys for the defendant in the above styled cause; that Sidney H. Walker of Ozark, Alabama, and James E. Grimes of Dothan, Alabama, two witnesses for the defendant in this cause, reside more than 100 miles from the place of trial, computed by the route usually traveled; that the personal attendance of each of the said witnesses is necessary for a proper decision of this cause and that their depositions would be insufficient for that purpose.



Sworn to and subscribed before me on  
 this the 27th day of May, 1971.

Ernestine R. Sims  
 Notary Public, Baldwin County, Alabama

*Filed May 28, 1971*  
*Ernie B. Blackburn*  
*clerk*