

MANDAMUS

BRIAN J. WATERS, MICHALE)
BREWTON, DONALD FINCH, and)
MARK WISEMAN, a Partnership)
d/b/a HUTSON SURF SHOP,)

Plaintiffs,)

VS.)

C. C. HORTON, Mayor,)
LOUISE GAIL WALKER, Clerk,)
FRANK MONTGOMERY, JR.,)
GARDNER HARTLEY, JOHN P.)
JACKSON, and JOHN H. HELTON,)
Councilmen, of the Town of)
Gulf Shores, Alabama,)

Defendants.)

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. 9824

Come now the Plaintiffs and respectfully show unto the Court as follows:

1.

That the Plaintiff's ages and places of residence are as follows:

Brian J. Waters - 18 years old - 720 N. Warrington Rd., Pensacola, Florida

Michale Brewton - 21 years old - Hutson Surf Shop, Gulf Shores, Alabama

Donald Findh - 20 years old - Hutson Surf Shop, Gulf Shores, Alabama

Mark Wiseman - 19 years old - 121 Beech Street, Pensacola, Florida

2.

That the Defendant, C. C. Horton, is the Mayor of Gulf Shores, Alabama. That the Defendant, Louise Gail Walker, is the Clerk of the Town of Gulf Shores, Alabama. That the Defendants, Frank Montgomery, Jr., Gardner Hartley, John P. Jackson, and John H. Helton, are council members of the Town of Gulf Shores, Alabama.

3.

That Your Petitioners owned and operated a place of business known as the Hutson Surf Shop in Gulf Shores, Alabama, during the calendar year 1970. That they made an application with the Defendants, or one of them, to renew their license or obtain a new license

for the year 1971, and that the Defendants, or one of them, will-fully and without just cause refused and continues to refuse to issue them a license so that they can legally operate their place of business.

WHEREFORE, your Petitioners respectfully pray that the Court will issue to said Defendants, in their official capacity as Mayor, Clerk and Council members of Gulf Shores, Alabama, its Alternative Writ of Mandamus compelling them to show cause why they should not be required to issue a license to your Petitioners.

WILTERS & BRANTLEY

BY:

S M Brantley
Attorney for Plaintiffs

STATE OF FLORIDA
ESCAMBIA COUNTY

Before me, a Notary Public, in and for said County and State, personally appeared Brian J. Waters, who is known to me, who being duly sworn deposes and says: That he is an agent for and one of the Partners of Brian J. Waters, Michale Brewton, Donald Finch, and Mark Wiseman, a Partnership d/b/a Hutson Surf Shop, which is the partnership in the foregoing Petition, and is authorized to make this affidavit, and as such agent and Partner has knowledge of the facts set out in the foregoing Petition, and that the facts therein set out are true and correct.

Brian J. Waters
Brian J. Waters

Sworn to and subscribed before me on this the 29th day of May,

71.

~~The property of property in
the State of Florida is
subject to the Statute
for Non Payment of
Taxes or Assessments.~~

~~Will be sold at Public Sale
Not less than 30 Days
before the date of sale.~~

~~Not subject to
Fire or Theft~~

Notary Public, State of Florida at Large
My Commission Expires Nov. 21, 1974
Bonded By American Fire & Casualty Co.

Chester J. Woyce
Notary Public

EUNICE B. BLACKMON
CIRCUIT CLERK

MAY 6 1971

FILED

Upon reading and consideration of the foregoing Petition or Complaint, it is my opinion that the Petitioners are entitled to the issuance of the Alternative Writ of Mandamus as therein prayed.

The Clerk will, therefore, issue an Alternative Writ of Mandamus as prayed for in said Petition and return the same to the Circuit Court of Baldwin County, Alabama, at 9:00 A.m. on the 18th day of May, 1971.

Telfair J. Mashburn
Telfair J. Mashburn, Circuit Judge

FILED

MAY 6 1971

EUNICE B. BLACKMON
CIRCUIT CLERK

ALTERNATIVE WRIT OF MANDAMUS

BRIAN J. WATERS, MICHAEL
BREWTON, DONALD FINCH, and
MARK WISEMAN, a Partnership
d/b/a HUTSON SURF SHOP,

Plaintiffs,

Vs.

C. C. Horton, Mayor
Louise Gail Walker, Clerk
Frank Montgomery, Jr.,
Gardner Hartley,
John P. Jackson, and
John H. Helton, Councilmen,
of the Town of Gulf Shores,
Alabama,

Defendants.

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IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

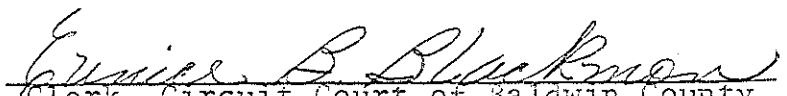
AT LAW

CASE NO. _____

TO: C. C. HORTON, Mayor, LOUISE GAIL WALKER, Clerk, FRANK MONTGOMERY, JR., GARDNER HARTLEY, JOHN P. JACKSON, and JOHN H. HELTON, Councilmen, of the Town of Gulf Shores, Alabama.

WHEREAS, Brian J. Waters, Michael Brewton, Donald Finch, and Mark Wiseman, a Partnership d/b/a Hutson Surf Shop, has filed in this Court and presented to the Honorable Telfair J. Mashburn, Judge of said Court, a Petition for an Alternative Writ of Mandamus, commanding and ordering as hereinafter set forth, and the said Judge of said Court has Ordered the issuance of said Alternative Writ so prayed for: You are hereby ordered and commanded forthwith to issue a license to Brian J. Waters, Michael Brewton, Donald Finch and Mark Wiseman, a Partnership d/b/a Hutson Surf Shop, or else appear before this Honorable Court on the 18 day of May, 1971, at 9:00 A.m. o'clock and show cause why you should not do so. A copy of Plaintiffs' Petition is attached hereto.

Witness my hand on this the 6 day of May, 1971.


Clerk, Circuit Court of Baldwin County,
Alabama

STATE OF ALABAMA
BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA - GREETINGS:

You are hereby commanded to serve a copy of the foregoing Writ of Mandamus on C. C. Horton, Mayor, Louise Gail Walker, Clerk, Frank

Montgomery, Jr., Gardner Hartley, John P. Jackson and John H. Helton, Councilmen, of the Town of Gulf Shores, Alabama.

Witness my hand this the 6 day of May, 1971.

Ernie B. Blackburn
Clerk, Circuit Court of Baldwin County,
Alabama

Executed on the date
indicated below by signing
a copy of this S+C on
the person stated:
C. C. Norton - 5-18-71

James Earl Baker - 5-18-71

Frank Montgomery Jr. - 5-18-71

Shadman Hatley - 5-18-71

John P. Jackson - 5-18-71

John H. Nelson - 5-18-71

Wayne Williams, Sheriff
Robert W. A. A. Deputy

Sherriff claims \$200
miles at
Ten Cents per mile Total \$20.00
BY Robert W. A. A. Deputy
TAYLOR WILKINS, Sheriff
DEPUTY SHERIFF

Received by Robert W. A. A. Deputy
on 18 day of May 1971
I certify a copy of the within Affidavits
to be served on All Parties listed
TAYLOR WILKINS, Sheriff
by Robert W. A. A. Deputy

TAYLOR WILKINS, SHERIFF OF BALDWIN
COUNTY, ALABAMA, CLAIM \$1.50 EACH
FOR SERVING 6 PROCESS(ES) AND
TRAVEL EXPENSE ON EACH OF \$ 10 /
PROCESS(ES) OR A TOTAL OF \$ 69.00

9824

SHERRIFF OF BALDWIN COUNTY, ALABAMA
TAYLOR WILKINS, SHERIFF OF BALDWIN COUNTY, ALABAMA
DEPUTY SHERIFF
BY Robert W. A. A. Deputy
TAYLOR WILKINS, Sheriff
DEPUTY SHERIFF

CECIL G. CHASON

Attorney at Law

THOMAS W. UNDERWOOD, JR.
ASSOCIATE

September 15, 1971

P. O. DRAWER 458
216 W. LAUREL AVENUE
FOLEY, ALABAMA 36535
PHONE 205/943-3171

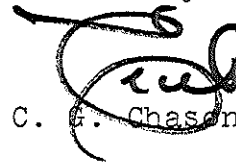
Judge
Mrs. Eunice Blackmon
Clerk of the Circuit Court
Baldwin County Courthouse
Bay Minette, Alabama

Re: Waters, et al, vs. Horton, et al,
Case No. 9824

Dear Eunice:

I am enclosing a Decree in the above styled cause.
Please present it to Judge Mashburn.

Yours very truly,


C. G. Chason

CGC/vd
Enc.

BRIAN J. WATERS, et al,) IN THE CIRCUIT COURT OF
Plaintiffs,) BALDWIN COUNTY, ALABAMA
vs.) AT LAW
C. C. HORTON, et al,)
Defendants.) CASE NO. 9824

DE CREE

This cause coming on to be heard on the 27th day of May, 1971, in open Court as provided in an order heretofore made by this Court, and the parties being present and represented by counsel, and testimony having been taken in open Court heard, understood, and considered by the Court, and the Court being satisfied from the testimony that the plaintiffs are not entitled to the relief prayed, it is, therefore,

ORDERED, ADJUDGED and DECREED by the Court that the Plaintiffs, BRIAN J. WATERS, MICHAEL BREWTON, DONALD FINCH, and MARK WISEMAN, a partnership, d/b/a HUTSON SURF SHOP, are not entitled to the relief prayed for in said cause. It is further ORDERED, ADJUDGED, and DECREED by the Court that the Defendants have shown sufficient cause to the Court why they, in their official capacity representing the Town of Gulf Shores, Alabama, should not be required to issue a license to the Plaintiffs as prayed for in said complaint. It is further ORDERED, ADJUDGED and DECREED by the Court that the Plaintiffs are hereby taxed with the costs of this proceeding for which let execution issue.

Telfair J. Mashburn, Circuit Judge

FILED

SEP 16 1971

EUNICE B. BLACKMON CIRCUIT
CLERK

ORDER OF CONTINUANCE

BRIAN J. WATERS, MICHAEL
BREWTON, DONALD FINCH, and
MARK WISEMAN, a Partnership
d/b/a HUTSON SURF SHOP,

Plaintiffs,

VS.

C. C. HORTON, Mayor,
LOUISE GAIL WALKER, Clerk,
FRANK MONTGOMERY, JR.,
GARDNER HARTLEY, JOHN P.
JACKSON and JOHN H. HELTON,
Councilmen of the Town of
Gulf Shores, Alabama,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. 9824

This case was heretofore set for a hearing on this the 18th day of May, 1971. Service was not had upon the Defendants in this cause. It is therefore:

ORDERED, ADJUDGED and DECREED that this matter be and the same is hereby continued and reset for a hearing in the Circuit Court of Baldwin County, Alabama, at 9 o'clock on the 27th day of May, 1971. It is further ORDERED, ADJUDGED and DECREED that the Sheriff of Baldwin County, Alabama, serve a copy of this Order together with the Mandamus and Alternative Writ of Mandamus upon the Defendants, C. C. Horton, Mayor, Louise Gail Walker, Clerk, Frank Montgomery, Jr., Gardner Hartley, John P. Jackson and John H. Helton, Councilmen of the Town of Gulf Shores, Alabama, instant and make a return of his actions to this Court.

Done this the 18th day of May, 1971.

Jeffery M. McQueen
Circuit Judge

Received 18 day of May 1971

and on 22 day of May 1971

I served a copy of the within Order

on CC Horton Lois H. Walker John Helton

Frank Montgomery Jr Gardner Hartley John Jackson

By service on CC Horton - Lois Walker - John Helton -

Frank Montgomery Jr - Gardner Hartley - John Jackson

TAYLOR WILKINS, Sheriff

By J. M. Byrd D. S.

TAYLOR WILKINS, SHERIFF OF BALDWIN
COUNTY, ALABAMA, CLAIM \$1.50 EACH
FOR SERVING 6 PROCESS(ES) AND
TRAVEL EXPENSE ON EACH OF \$ 100
PROCESS(ES) OR A TOTAL OF \$ 69.09

BRIAN J. WATERS, ET AL,)	
Plaintiffs,)	IN THE CIRCUIT COURT OF
vs.)	BALDWIN COUNTY, ALABAMA
)	AT LAW
C. C. HORTON, Mayor, ET AL,)	CASE NO. 9824
Defendants.)	

Comes Lois Gail Walker, one of the Defendants in the above styled cause and shows unto this Honorable Court as follows:

That the petition for mandamus and attached orders were served on the Defendants, C. C. Horton, Frank Montgomery, Jr., Gardner Hartley, John H. Helton, and Lois Gail Walker, at 9:00 P.M. on the 18th day of May, 1971; that she has no knowledge of the service on the Defendant, John P. Jackson.

She further shows unto this Honorable Court that the Town of Gulf Shores, a municipal corporation, and the Defendants in the above styled cause have good and sufficient cause for not issuing the license referred to in the petition. Operation of this business constitutes a nusiance.

The Defendants, acting by and through the said Lois Gail Walker, as Clerk of the Town of Gulf Shores, and C. G. Chason, as attorney for the Town of Gulf Shores, therefore pray that a date be set for the hearing of this petition for mandamus; that the alternative writ of mandamus be revoked and suspended pending a hearing. Defendants deny all material allegations of the petition not herein specifically admitted.

Lois Gail Walker
 Lois Gail Walker
C. G. Chason
 C. G. Chason

STATE OF ALABAMA
 BALDWIN COUNTY

Before me, Janice L. Childress, a Notary Public in and for said County in said State, personally appeared Lois Gail Walker, who is known to me and who, after being by me first duly and legally sworn, deposes and says under oath that the matters and facts set out in the foregoing answer are true.

Lois Gail Walker

Sworn to and subscribed before me on this 21st day of May, 1971.

Janice L. Childress
 Janice L. Childress
 Notary Public, Baldwin County, Alabama

FILED

MAY 26 1971

EUNICE B. BLACKMON
 CIRCUIT CLERK

c. g. c.

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CASE NO. 9824

ORDER

On affidavit of Lois Gail Walker, Town Clerk of the Town of Gulf Shores, that the Defendants have good and sufficient cause for not issuing the license referred to in the petition for mandamus heretofore filed, the alternative writ of mandamus is hereby revoked and suspended pending a hearing hereon.

That the 27th day of May, 1971, at 9:00 o'clock,
is hereby set and fixed as a time and place that this writ of
mandamus and any defense thereto shall be heard.

DONE this the 26th day of May, 1971.

Julius G. Washburn
Judge, Twenty-eighth Judicial
Circuit

CECIL G. CHASON

Attorney at Law

THOMAS W. UNDERWOOD, JR.
ASSOCIATE

P. O. DRAWER 458
216 W. LAUREL AVENUE
FOLEY, ALABAMA 36535
PHONE 205/943-3171

May 21, 1971

Mrs. Eunice Blackmon
Clerk of Court
Bay Minette, Alabama

Re: Waters, et al vs. Horton, et al
Case No. 9824

Dear Eunice:

Please submit the enclosed answer and proposed
order to the Judge and send me a copy if he signs it.

~~Yours very truly,~~


C. G. Chason

CGC:jc
Encl.

*call
C. G. Chason*