

CASE NO. 35507 -

CHRYSLER CREDIT CORPORATION, a corporation

VS.

WALTER R. HARRIS & BETTY JEAN HARRIS,
separately and severally

STATE OF ALABAMA)

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

COUNTY OF MOBILE)

Mandeville
I, JOHN E. MANDEVILLE, Clerk of the Circuit Court of Mobile County, Alabama, hereby certify that the enclosed is a full, true and correct transcript of the orders, minutes and proceedings had in the above entitled cause and the enclosed papers Number One (1) through Three (3), inclusive are the original pleadings filed in this Court in the above entitled cause.

John E. Mandeville

CLERK, CIRCUIT COURT, MOBILE COUNTY, ALABAMA

999

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA, AT LAW

CASE NO. 35507 - ROBERTSON

PERLOFF, REID & BRISKMAN
BY: T. Dwight Reid

CHRYSLER CREDIT CORPORATION, a corporation

N.J.

VS. Suit for \$776.50 damages for breach of a written agreement
Atty's fee \$155.30

WILTERS, BRANTLY & NESBIT
BY: Mrs. Phyllis S. Nesbit
Attorney at Law
P.O. Box 555
Robertsdale, Alabama 36567

WALTER R. HARRIS & BETTY JEAN HARRIS, separately and severally

N.J.

PLEADINGS, PROCESS, ETC, * FILING DATE *

1. Complaint & Summons * 5-10-71 * C & S served on Walter R. Harris & Betty Jean Harris on June 10, 1971.
* * * * *
2. Plea in Abatement * * * * *
(Betty Harris) * 6-14-71 *
* * * * *
3. Plea in Abatement * * * * *
(Walter Harris) * 6-14-71 *
* * * * *
* * * * *
* * * * *
* * * * *
* * * * *
* * * * *

June 18, 1971 - Pleas in Abatement of Defendants confessed and sustained,
and case ordered transferred to Circuit Court of Baldwin
County. /s/ Hubert P. Robertson

43-429

FILED

JUN 22 1971

EUNICE B. BLACKMON CIRCUIT CLERK

I, JOHN E. MANDEVILLE, in my capacity as Clerk of the Circuit Court of Mobile County, Alabama, hereby certify that the above is a true and correct transcript of all the minutes, orders and other proceedings in the above styled case in this Court.

In Witness whereof I have hereunto set my hand and attached my Official Seal as such Clerk of said Court at Mobile, Mobile County, Alabama, on this the 21st day of June 1971.

John E. Mandeville Clerk

CHRYSLER CREDIT CORPORATION
a corporation

Plaintiff,

vs.

WALTER R. HARRIS & BETTY JEAN
HARRIS, separately & severally
Defendant

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

CASE NO.

35507

Plaintiff claims of the Defendants the sum of \$776.50
SEVEN HUNDRED SEVENTY-SIX AND 50/100 DOLLARS, damages
for the breach of a written agreement entered into by the Defendants
on, to-wit: July 15, 1967, by which they promised to pay to
~~XXXX~~ Chrysler Credit Corp., a corporation, the sum of, to-wit:
\$74.45 a month commencing on, to-wit: August 15, 1967
and continuing on the same day of each month thereafter until the sum
of, to-wit: \$2233.50 had been paid for the purchase of an automobile;
said written agreement provided that in case of default in said payments,
the entire unpaid balance would then become due, and Plaintiff could
take immediate possession of said automobile and sell same at a public
or private sale, with notice to Defendant, and apply the proceeds of
said sale, first to all expenses for retaking, repairing and selling
said automobile, including a reasonable attorney's fee, and the remainder
thereof to the balance due under said written agreement; and, in the event
of a deficiency, the Defendant agreed to pay the amount of the deficiency,
with interest thereon.

Plaintiff avers that said written agreement, together with all
rights thereunder, was assigned to it in writing by the said Mobile Dodge, Inc.
before default in said written agree-
ment, for a valuable consideration.

Plaintiff alleges that Defendant defaulted in said written
instrument in that they failed to make the payment provided for therein,
leaving a balance of principal due of, to-wit: \$2159.05; that the
said automobile was seized and sold, after notice of said sale was given
to the Defendant as provided under the Uniform Commercial Code, and
that the sum of, to-wit: \$1000.00 was received for said automobile,
which sum Plaintiff claims was the reasonable market value of said
automobile at the time of seizure and at the time of sale, and that after
applying the amount received from the sale of said automobile to the said
balance due, and allowing all just credits, a balance of, to-wit:
\$776.50 remains due and unpaid from, to-wit: January 30, 1971.

Plaintiff claims the additional sum of, to-wit: \$155.30
as a reasonable attorney's
fee, as provided for in said written agreement.

J. Dwight Reid
PERLOFF REID & BRISKMAN
Attorneys for the Plaintiff

Defendant may be served:
Box 111, Silverhill, Alabama

STATE OF ALA. MOBILE CO.
I CERTIFY THIS PLEADING
WAS FILED ON
MAY 10 10 03 AM '71
CLERK

70-413

THE STATE OF ALABAMA
MOBILE COUNTY

CIRCUIT COURT

To Any Sheriff of the State of Alabama:
You are hereby commanded to summon

WALTER R. HARRIS & BETTY JEAN HARRIS, separately and severally

to appear within thirty days from service of this process, in the Circuit Court of Mobile County, Alabama,
at the place of holding the same, then and there to answer the complaint of _____

CHRYSLER CREDIT CORPORATION a corporation

WITNESS: John E. Mandeville, Clerk of said Court, this 10 day of May, 1971

Attest: _____
Clerk

SHERIFF'S RETURN

Received _____ day of _____, 19____ and on _____ day
of _____, 19____, I served a copy of
the within _____ on _____
by service on _____

RAY D. BRIDGES, SHERIFF

By _____ D.S.

70-14

No. 35507-R
JUDGE [Signature] DOCKET
CIVIL DIVISION
CIRCUIT COURT
MOBILE COUNTY

CHRYSLER CREDIT CORPORATION
a corporation

VS. } Complaint and Summons

WALTER R. HARRIS &
BETTY JEAN HARRIS

Issued 10 day of May, 19 71

Defendant's Address

Box 111
Silverhill, Alabama

T. DWIGHT REID

Plaintiff's Attorney

Received 14 day of May, 19 71
and on 10 day of June, 19 71
I served a copy of the within 10
on Walter R. Harris
Betty Jean Harris
By service on _____

TAYLOR WILKINS, Sheriff
By [Signature] D.S.

TAYLOR WILKINS, SHERIFF OF BALDWIN
COUNTY, ALABAMA, CLAIM \$1.50 EACH
FOR SERVING 2 PROCESSES, AND

TRAVEL EXPENSE ON EACH OF \$ 6.00

11. MAY 1971 PROCEEDINGS, ON A TOTAL OF \$ 15.00

WYATT AND SONS
1210 E. 1ST ST.
MOBILE, ALA. 36682

62
[Signature]

CHRYSLER CREDIT CORPORATION
A corporation

Plaintiff

VS.

WALTER R. HARRIS & BETTY
JEAN HARRIS, Separately &
Severally

Defendants

IN THE CIRCUIT COURT OF

MOBILE COUNTY, ALABAMA

CASE NO. 35507

VERIFIED PLEA IN ABATEMENT

Comes now the Defendant, Betty Jean Harris, and files this, her Plea in Abatement, to the Complaint filed against her and for grounds therefore says:

1.

That this court is without jurisdiction to try this cause.

2.

That the Defendant, Betty Jean Harris, is a resident citizen of Baldwin County, Alabama, residing in Silverhill, Alabama, and has been residing in Baldwin County, Alabama, for the past eight (8) years. That the suit filed against her is based on a contract and this Court is without jurisdiction to try this cause.

3.

That this Court is without jurisdiction to try this matter, that this Court's jurisdictional limitations extend no further than the boundary of Mobile County.

The above pleas are entered for the following purposes: For the pleading to the jurisdiction of this Court and the Defendant reserves the right to file such other pleadings as they deem necessary in this cause.

Betty Jean Harris

COURT OF GENERAL
SESSION

JUN 14 1 35 PM '71

STATE OF ALABAMA

BALDWIN COUNTY

Before me, CAROL S. STALLINGS, a Notary Public, in and for said County in said State, personally appeared Betty Jean Harris, who having been by me first duly sworn deposes and says that she has read the foregoing Plea in Abatement and that the facts therein are true.

Betty Jean Harris

Sworn to and subscribed before me on this day the 11th day of June, 1971.

Carol S. Stallings
Notary Public, Baldwin County, Alabama

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 11 day of June 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.

WILTERS, BRANTLEY & NESSBIT

By: Phyllis S. Nessbit

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

JUN 14 2 49 PM '71

70-116

Forbes Marshall
CLERK

CHRYSLER CREDIT CORPORATION
A corporation

Plaintiff

IN THE CIRCUIT COURT OF
MOBILE COUNTY, ALABAMA

VS.

CASE NO. 35507

WALTER R. HARRIS & BETTY
JEAN HARRIS, Separately &
Severally

Defendants

VERIFIED PLEA IN ABATEMENT

Comes now the Defendant, Walter Ray Harris, and files this, his Plea in Abatement, to the Complaint filed against him and for grounds therefore says:

1.

That this Court is without jurisdiction to try this cause.

2.

That the Defendant, Walter Ray Harris, is a resident citizen of Baldwin County, Alabama, residing in Silverhill, Alabama, and has been residing in Baldwin County, Alabama, for the past seventeen (17) years. That the suit filed against him is based on a contract and this Court is without jurisdiction to try this cause.

3.

That this Court is without jurisdiction to try this matter, that this Court's jurisdictional limitations extend no further than the boundary of Mobile County.

The above pleas are entered for the following purposes: For the pleading to the jurisdiction of this Court and the Defendant reserves the right to file such other pleadings as they deem necessary in this cause.

Walter Ray Harris

STATE OF ALABAMA

BALDWIN COUNTY

Before me, CAROL S. STALLINGS, a Notary Public, in and for said County, in said State, personally appeared Walter Ray Harris, who having been by me first duly sworn deposes and says that he has fead the foregoing Plea in Abatement and that the facts stated therein are true.

Walter Ray Harris

Sworn to and subscribed before me on this day the 11th day of June, 1971.

Carol S. Stallings
Notary Public

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 11 day of June, 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.

WILTERS, BRANTLEY & NESBIT

By: Phyllis A. Nesbit

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

JUN 14 2 49 PM '71

John M. Mansville
CLERK

FRIDAY, JUNE 18, 1971

CHRYSLER CREDIT CORPORATION)	PLEAS IN ABATEMENT OF
)	DEFENDANTS CONFESSED AND
ROBERTSON -vs- 35507)	SUSTAINED, AND CASE ORDERED
)	TRANSFERRED TO THE CIRCUIT
WALTER R. HARRIS & BETTY JEAN)	COURT OF BALDWIN COUNTY
HARRIS, separately and severally)	

This day in open Court came the parties by their attorneys, and plaintiff in open Court on this day confessed defendants' Pleas in Abatement filed June 14, 1971, to the complaint in this cause; It is, therefore, ordered and adjudged by the Court that defendants' said Pleas in Abatement filed June 14, 1971, to the complaint in this cause be, and the same is hereby sustained, and case ordered transferred to the Circuit Court of Baldwin County, Alabama.

Minute Book 43

Page 429

STATE OF ALABAMA, }
COUNTY OF MOBILE }

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

I, JOHN E. MANDEVILLE, Clerk of the Circuit Court of Mobile County, Alabama, do hereby
certify that the foregoing is a full, true and correct copy of ORDER OF COURT

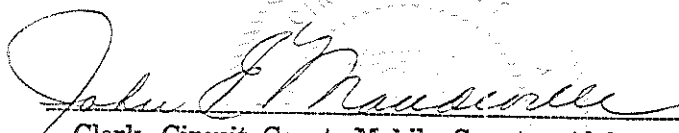
as rendered by the said Circuit Court on the 18th day of June, 19 71, in the cause
entitled No. 35507 - CHRYSLER CREDIT CORPORATION

_____, Plaintiff,
— versus — WALTER R. HARRIS & BETTY JEAN HARRIS, separately and
severally

Defendant, (~~Together with the CHRYSLER CREDIT CORPORATION~~), as the same remains of record in this office in
Minute Book No. 43, Page No. 429

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Court at office
in the City of Mobile, Alabama, on this the 21st day of June, 19 71.

ATTEST:


Clerk, Circuit Court, Mobile County, Alabama.

CIVIL DIVISION, CIRCUIT COURT, MOBILE COUNTY

No. 35507

CHRYSLER CREDIT CORPORATION, a corporation

Plaintiff

VS.

WALTER R. HARRIS & BETTY JEAN HARRIS,

Defendant

separately and severally

(Act No. 740, Reg. Session Ala. Legislature 1957
Appvd. Sept. 20, 1957)
(Amend Sec. 21, Title 11, Code Ala. 1940)

BILL OF COST

(Act No. 571, Reg. Ses. Leg. 1955)
(Amend Sec. 34 and 100, Title 11, Code Ala. 1940)

CLERK'S FEES	Pltff.	Deft.	SHERIFF'S FEES	Pltff.	Deft.
Suits for \$100 or less \$ 6.00			Mileage \$12.00		
Suits for over \$100 but less than \$1,000 10.00	10	00	Serving Summons & Complaint (2) \$ 1.50	15	00
Suits for \$1,000 and over 20.00			Serving Writ of Garnishment 1.50		
Suits in detinue, ejectment, etc. 10.00			Serving Sci Fa.-Notices 1.50		
Suits not otherwise provided 10.00			Levying Attachment & Return 6.25		
Writs, Mandamus, Prohibition, etc. 15.00			Executing Writ Possession 5.00		
Appeals from Court General Sessions 15.00			Seizing personal property under Writ of Detinue 6.00		
Appeals from Probate Court 20.00			Serving subpoenas, each .75		
Appeals from JP Courts 6.00			Impanelling Jury .75		
Appeals from State Dept of Pub. Safety, and other State Agencies 10.00			Taking & Approving Bond 2.00		
Workmen's Compensation Settle. 10.00			Collecting Costs Execution 1.50		
Garnishment on Judgment 6.00			Serving Contempt Writ 1.50		
Order of Sale, Motions to sell. 6.00			Making Deed for Property sold 2.50		
Recording executions from State Agencies 3.00			Commission, collecting money on executions, 1st \$200 5%; \$200 to \$500 4%; over \$500 3% \$		
Cert. Copy of Record - per 100 words .15	80				
Taking Appeal Bond .75			Total \$	15	00
Record for Supreme Court etc., per 100 words .15					
Add'l Copies of Record for Supreme Court, per 100 words .05			RECAPITULATION		
Checking - including Reporters Transcript of Evidence 10.00			Clerk	10	80
Certifying Abstract in lieu of Transcript on Appeal 5.00			Taylor Wilkins		
Collecting Money on Judgments over 30 days old, 1/2 the percentage allowed Sheriffs \$			Sheriff Baldwin County	15	00
			CT. ADM. FUND	2	00
			Inferior Civil Court		
			Justice Peace fees		
			Witness fees		
			Commissioner's fees		
			Certificate of Judgment		
			Judgment		
			10% Damages		
			Interest		
			Stenographer's fees (\$10.00 Day)		
			Library fee 1.50	1	50
			Trial Tax (County) 1.50	1	50
			Trial Tax (State) 1.50	1	50
			Advertisement		
			Garnishee's fees		
Total \$	10	80			

I respectfully beg to advise that if this bill for costs is not paid before 19....., it will be my unpleasant duty to issue execution for same.

JOHN E. MANDEVILLE, Clerk

\$32.30

CHRYSLER CREDIT CORP.,	:	IN THE CIRCUIT COURT OF
a corporation,	:	BALDWIN COUNTY,
Plaintiff,	:	ALABAMA
vs.	:	
WALTER R. HARRIS and BETTY	:	AT LAW
JEAN HARRIS, separately and	:	
severally,	:	
Defendants and Third	:	
Party Plaintiffs,	:	
vs.	:	
MOBILE DODGE, INC.,	:	
Third Party Defendant.	:	CASE NO. 9892

ANSWER OF MOBILE DODGE, INC., a corporation,
THIRD PARTY DEFENDANT

Comes now the Third Party Defendant, Mobile Dodge, Inc., a corporation, in the above styled cause and files the following pleas, separately and severally, to each count of the Third Party Complaint, and as to each count of the Third Party Complaint, says as follows, separately and severally:

1. The Third Party Defendant pleads not guilty.
2. The Third Party Defendant says that the allegations of the Complaint are untrue.
3. The Third Party Defendant, for answer to the Third Party Complaint, saith that the alleged cause of action for breach of warranty in the sale of a 1965 Mercury Montclair, four door hardtop, vehicle no. 5W58H525408, to the Defendant-Third Party Plaintiffs, is barred by the statute of limitations of four (4) years.
4. The Third Party Defendant says that the within action was commenced on, to-wit, the 24th day of August, 1971; the Third Party Defendant says further that the alleged cause of action is for breach of contract in the sale of a 1965 Mercury Montclair, four door hardtop, vehicle no. 5W58H525408, which

FILED

APR 11 1973

EUNICE B. BLACKMON
CIRCUIT
CLERK

70-234

contract was entered into between the parties on, to-wit, the 15th day of July, 1967; the Third Party Defendant says further that this action was not commenced within four (4) years after the alleged cause of action accrued and, by reason thereof, the same is barred by the provisions of Title 7A, Section 2-725, Code of Alabama 1940 (Recomp. 1958).

5. The Third Party Defendant says that the Defendant-Third Party Plaintiffs accepted the goods described in the Complaint on, to-wit, the 15th day of July, 1967 and that the Defendant-Third Party Plaintiff has not given the Third Party Defendant any notice of the alleged breach referred to in the Complaint, hence the Defendant-Third Party Plaintiff is barred from any and all remedies, by virtue of the Defendant-Third Party Plaintiffs' failure to give the Third Party Defendant said required notice.

6. The Third Party Defendant says that the sale of the 1965 Mercury Montclair, four door hardtop, vehicle no. 5W58H-525408, was made pursuant to a written contract executed on, to-wit, the 15th day of July, 1965; the Third Party Defendant says further that the said written contract excluded any and all warranties, express or implied, and excluded the warranties of merchantability and fitness for a particular purpose hence, by reason of said exclusions, the Defendant-Third Party Plaintiff is not liable to the Third Party Defendant for the breach of warranty complained of.

FILED

APR 11 1973

ENGEL AND SMITH
Attorneys for Mobile Dodge,
Inc., a corporation, Third
Party Defendant.

EUNICE B. BLACKMON CIRCUIT
CLERK

BY: W. Howard Donovan, III
W. HOWARD DONOVAN, III

CERTIFICATE OF SERVICE

I certify that on this 9th day of April 1973
copy of the foregoing pleading has been served upon counsel for all
adverse parties to this proceeding by mailing the same to each by
first class U.S. mail properly addressed and postage prepaid.

W. Howard Donovan, III

ENGEL & SMITH
ATTORNEYS AT LAW
SUITE 910
ANTWERP BUILDING
P. O. BOX 1045
BILE, ALABAMA 36601
TELEPHONE
A/C 205 438-3625

70-435

CHRYSLER CREDIT CORP.,
a corporation,

Plaintiff,

vs.

WALTER R. HARRIS &
BETTY JEAN HARRIS,
separately and
severally,

Defendants and Third
Party Plaintiffs,

vs.

MOBILE DODGE, INC.,

Third Party Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. 9892

PLEA IN ABATEMENT

Comes now, MOBILE DODGE, INC., a corporation, Third Party Defendant, in the above styled cause for the special purpose of filing the following pleas, separately and severally, to each count of the Third Party complaint in said cause and for no other purpose and states, separately and severally, as follows:

1. That said MOBILE DODGE, INC., a corporation, at the time said complaint was filed was a bona fide resident of Mobile County, Alabama and that the Circuit Court of Baldwin County, Alabama is without jurisdiction to try this matter.
2. That MOBILE DODGE, INC., a corporation, is a resident of Mobile County, Alabama and is not required to defend an action against it in the Circuit Court of Baldwin County, Alabama.
3. For that the venue is improper in that MOBILE DODGE, INC., a corporation, is a resident of Mobile County, Alabama and can not be required to defend a suit in the Circuit Court of Baldwin County, Alabama.
4. For that MOBILE DODGE, INC., a corporation, can not be subjected to the burden, inconvenience and harassment of

being required to defend an action in a County wherein it is not a resident.

5. The Third Party Plaintiff is required to bring this action in the Circuit Court of Mobile County, Alabama in order that venue may be proper and that MOBILE DODGE, INC., a corporation, which is a resident of Mobile County, Alabama will be properly subject to the jurisdiction of the Court of the County where it is a bona fide resident.

WHEREFORE, THE PREMISES CONSIDERED, MOBILE DODGE, INC., a corporation, moves that this action be abated.

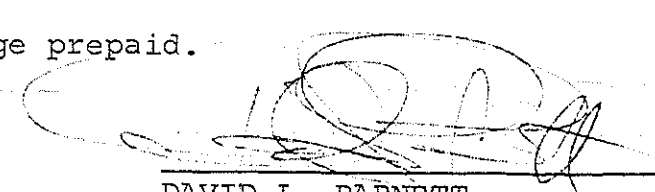
ENGEL AND SMITH

BY: 

DAVID L. BARNETT - Appearing specially for the purpose of filing the above noted Plea In Abatement and for no other purpose.

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 9th day of September, 1971, served a copy of the foregoing Plea In Abatement on the law firm of Wilters, Brantley & Nesbit, Attorneys for Defendants and Third Party Plaintiffs, by mailing the same by United States mail, properly addressed, and first class postage prepaid.


DAVID L. BARNETT

FILED

SEP 10 1971

EUNICE B. BLACKMON CIRCUIT CLERK

CHRYSLER CREDIT CORPORATION
a Corporation

Plaintiff

VS.

WALTER R. HARRIS and
BETTY JEAN HARRIS,
separately and severally

Defendants

I IN THE CIRCUIT COURT OF

I BALDWIN COUNTY, ALABAMA

I AT LAW

I CASE NO. 9892

ANSWER

Comes now the Defendants in the above styled cause
and files this their answer to the Plaintiffs Bill of Com-
plaint:

1.

The Defendants aver that the allegations of the
Complaint are untrue.

WILTERS, BRANTLEY & NESBIT

BY: 

Attorneys for Defendants

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 24 day of August
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.

WILTERS, BRANTLEY & NESBIT

By: 

FILED

AUG 24 1971

EUNICE B. BLACKMON CIRCUIT
CLERK

CHRYSLER CREDIT CORPORATION,
A Corporation
Plaintiff

VS.

WALTER R. HARRIS & BETTY JEAN
HARRIS, SEPARATELY AND SEVERALLY
Defendants and Third Party
Plaintiffs

VS.

MOBILE DODGE, INC.

Third Party Defendant

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. 9892

DEMURRER

Comes the Defendant and Third Party Complainant and demurs to the Plea in Abatement of the Third Party Defendant and to each count thereof, separately and severally and for grounds of said demurrer sets down and assigns the following, separately and severally:

1.

For that the averments, if true, are not sufficient under the law of third party practice to cause a removal for the suit from the district of the residence of the original Defendant.

2.

For that improper venue alleged therein is merely a conclusion of the pleader.

3.

For aught that appears, the Third Party Defendant had no right to complaint of venue as though the Third Party were the original Defendant.

WILTERS, BRANTLEY & NESBIT

BY:

Hydros L. Nesbit
Attorneys for Defendants and Third
Party Plaintiffs.

FILED

OCT 5 1972

EUNICE B. BLACKMON CIRCUIT
CLERK

CHRYSLER CREDIT CORP.
a Corporation

Plaintiff

VS

WALTER R. HARRIS & BETTY
JEAN HARRIS, SEPARATELY
AND SEVERALLY

Defendants and Third
Party Plaintiffs

VS.

MOBILE DODGE, INC.

Third Party Defendant

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. 9892

FILED

AUG 24 1971

EUNICE B. BLACKMON CIRCUIT
CLERK

1.

The Third Party Plaintiffs claim of the Third Party Defendant SEVEN HUNDRED SEVENTY SIX and 50/100 DOLLARS (\$776.50) and Attorney's fees, for which sum the Third Party Defendant is liable to the Third Party Plaintiffs for the Plaintiffs original claim against them, for Breach of an Implied Warranty by the Third Party Defendant on to-wit, the 15th day of July, 1967, in substance as follows:

The Third Party Defendant agreed to sell and deliver to the Third Party Plaintiffs a 1965 Mercury Montclair 4 door Hardtop, Vehicle #5W58H525408 which the Third Party Defendant warranted was reasonably fit for the purposes for which it was sold, when in fact, said property was not reasonably fit for the purposes for which it was sold and for which it was purchased in that said automobile was defective and would not run, and could not be repaired and used for the purposes for which it was intended and thereby the Third Party Defendant breached the said warranty.

2.

That the said Mobile Dodge, Inc. is liable to the Third Party Plaintiffs for all the claims asserted in the Complaint by the Plaintiff against the Third Party Plaintiffs and the Third Party Plaintiffs asks judgment against the Third Party Defendant for such sum and Attorneys fees, if any, as the Plaintiff shall be awarded in the above entitled action against this Third Party Defendant.

Mobile Dodge, Inc.
maybe served at 3118
Government Blvd. (or
Highway 90 West)

WILTERS, BRANTLEY & NESBIT

BY:

Attorneys for Defendants and Third
Party Plaintiffs

SUMMONS AND COMPLAINT

THE STATE OF ALABAMA
BALDWIN COUNTY

Circuit Court, Baldwin County

No. 9892

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

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon Mobile Dodge, Inc.

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 Mobile Dodge, Inc.,

Third Party Defendant -by: Walter R. Harris & Betty Jean Harris, Defendant.s... and
Third Party Plaintiffs
xy wherein - Chrysler Credit Corporation, a Corporation

....., Plaintiff.....

Witness my hand this 24th day of August 19 71

Ernie B. Blackmon Clerk

248-27-71

70-427

THE STATE OF ALABAMA

BALDWIN COUNTY

CIRCUIT COURT

CHRYSLER CREDIT CORPORATION, A CORP.

Plaintiffs

vs.

WALTER R. HARRIS & BETTY JEAN HARRIS
Defts & Third Party Plaintiffs

Mobile Dodge, Inc., 3rd Party Defendants

SUMMONS AND COMPLAINT

Mr. C. L. Miller

Filed August 24, 1971

Eunice B. Blackmon Clerk

AUG 24 1971

TAYLOR WILKINS
SHERIFF

As

Plaintiff's Attorney

11. HADDE 07 000

Wilters, Brantley & Nesbit

Defendant's Attorney

ATTORNEY GENERAL
ALABAMA

avey

Defendant lives at
serve: Mobile Dodge, Inc.

Received In Office

19.....

Sheriff

I have executed this summons

this 19.....

by leaving a copy with

Received
and on
I served a copy of this summons
on
by service on
Day of
1971
Sheriff
Deputy Sheriff

CHRYSLER CREDIT CORPORATION,
a corporation,

Plaintiff,

vs.

WALTER R. HARRIS and BETTY
JEAN HARRIS, separately and
severally,

Defendants and Third
Party Plaintiffs,

vs.

MOBILE DODGE, INC., a
corporation,

Third Party Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY,

ALABAMA

AT LAW

CASE NO. 9892

DEMURRERS

Comes now the Third Party Defendant, Mobile Dodge, Inc.
and demurs to the Third Party Plaintiffs' complaint and to
each count thereof, separately and severally, and for grounds
of demurrer, separately and severally, assigns the following:

1. The complaint does not state a cause of action against
the Defendant.

2. The allegations are mere conclusions of the pleader.

3. The allegations are so vague, indefinite and uncertain
that the Defendant does not know what it is called upon to
defend.

4. For aught that appears the Third Party Defendant is
not apprised of whether the alleged warranty was in writing
or oral.

5. For aught that appears the Third Party Defendant is
not apprised of what it is called upon to defend and cannot
formulate a defense based on the allegations.

6. For aught that appears the Third Party Plaintiff is
attempting to alter the terms of a written instrument without
putting forth allegations of misrepresentation or fraud.

7. For aught that appears Defendants owe the Plaintiff
for failure to pay as per agreement on a written instrument

and has breached its obligation to the Plaintiff and thus has no claim against Third Party Defendant.

8. For aught that appears the vehicle in question was sold under a contract of expressed warranty.

9. For aught that appears the Third Party Plaintiffs do not specifically set out the quo modo of the breach to sufficiently apprise the Third Party Defendant as to what it is called upon to defend.

10. For aught that appears Third Party Plaintiff is attempting to allege a set-off against Third Party Defendant which said allegations or claim are inconsistent with Third Party practice.

11. For aught that appears the Third Party Defendant is not liable to the Third Party Plaintiff for any part of the Plaintiffs' claim against the Defendant and Third Party Plaintiff and hence said cross claim is inappropriate.

12. For aught that appears Third Party Plaintiff breached its agreement with Plaintiff by failing and refusing to pay as contracted and allegations that the Third Party Defendant is liable to such Third Party Plaintiff or all of part of the Plaintiffs' claim against them is inappropriate.

13. For aught that appears Defendants' allegations in their third party complaint does not allege facts to show that the Third Party Defendant was or could be liable to Defendants for Plaintiffs' claim against Defendant.

ENGEL AND SMITH
Attorneys for Third Party
Defendant, MOBILE DODGE, INC.

BY: Leo A. Smith
LEO A. SMITH, JR. **FILED**

CERTIFICATE OF SERVICE

FEB 14 1973

I certify that on this 13th day of February 19 73,
a copy of the foregoing pleading has been served upon counsel for all
adverse parties to this proceeding by mailing the same to each by
first class U. S. mail properly addressed and postage prepaid.

EUNICE B. BLACKMON **SIRCHIE**
CLERK

70-430

CHRYSLER CREDIT CORP.,
a corporation,

Plaintiff,

vs.

WALTER R. HARRIS and
BETTY JEAN HARRIS,
separately and severally,

Defendants and Third
Party Plaintiffs,

vs.

MOBILE DODGE, INC.,

Third Party Defendant.

* IN THE CIRCUIT COURT OF
BALDWIN COUNTY,
* ALABAMA

* AT LAW

* CASE NO. 9892

DEMURRERS

Comes now the Third Party Defendant, Mobile Dodge, Inc., and files additional demurrers to the Third Party Plaintiffs' complaint and to each count thereof, separately and severally, and for grounds of demurrer, separately and severally, assigns the following:

14. For that Count Two of the Defendant-Third Party Plaintiffs' complaint fails to allege with particularity in what manner the Third Party Defendant, Mobile Dodge, Inc., is or may be liable over to the Defendant-Third Party Plaintiff for all or part of the Plaintiff's claim against the Defendant-Third Party Plaintiff.

15. For that the complaint of the Defendant-Third Party Plaintiff wholly fails to apprise the Third Party Defendant, Mobile Dodge, Inc., of any theory of fact or law upon which the Third Party Defendant, Mobile Dodge, Inc., is or may be liable to the Defendant-Third Party Plaintiff for all or any part of the Plaintiff's claim against the Defendant-Third Party Plaintiff.

16. For that it affirmatively appears from the face of the Defendant-Third Party Plaintiffs' complaint that the contract

of sale between the Defendant-Third Party Plaintiff and the Third Party Defendant, Mobile Dodge, Inc., was entered into on July 15, 1967, and further affirmatively appears from the face of the complaint that the Defendant-Third Party Plaintiff filed its complaint against the Third Party Defendant, Mobile Dodge, Inc., on August 4, 1971, more than four (4) years after the Defendant-Third Party Plaintiffs' cause of action, if any, accrued and hence the Defendant-Third Party Plaintiffs' claim is forever barred.

17. For that it affirmatively appears from the face of the complaint that the Defendant-Third Party Plaintiff and the Third Party Defendant, Mobile Dodge, Inc., entered into the contract of sale involved in this suit on July 15, 1967, and that the complaint was filed more than four (4) years after July 15, 1967 and hence any claim that the Defendant-Third Party Plaintiff may have had against the Third Party Defendant, Mobile Dodge, Inc., is forever barred.

18. For aught appearing upon the face of the complaint the Defendant-Third Party Plaintiffs' failed and omitted to notify within a reasonable time the Third Party Defendant, Mobile Dodge, Inc., of any alleged breach of warranty in connection with the sale of the 1965 Mercury Montclair, four door hardtop, vehicle no. 5W58H525408.

19. For that it affirmatively appears upon the face of the complaint that the Defendant-Third Party Plaintiff accepted the 1965 Mercury Montclair, four door hardtop, vehicle no. 5W58H525408, and therefore the Defendant-Third Party Plaintiff cannot maintain a cause of action for breach of warranty.

20. For that it affirmatively appears from the face of the complaint that the Defendant-Third Party Plaintiff failed to apprise the Third Party Defendant, Mobile Dodge, Inc., by

seasonable notice of any alleged defects in the 1965 Mercury Montclair, four door hardtop, vehicle no. 5W58H525408.

ENGEL AND SMITH
Attorneys for Mobile Dodge, Inc.

BY: Howard Donovan
HOWARD DONOVAN

CERTIFICATE OF SERVICE

I certify that on this 16 day of March 1973 a copy of the foregoing pleading has been served upon counsel for all adverse parties to this proceeding by mailing the same to each by first class U. S. mail properly addressed and postage prepaid.

Howard Donovan

FILED

MAR 19 1973

EUNICE B. BLACKMON CIRCUIT
CLERK

CHRYSLER CREDIT CORP.,
a corporation,

Plaintiff,

vs.

WALTER R. HARRIS &
BETTY JEAN HARRIS,
separately and
severally,

Defendants and Third
Party Plaintiffs,

vs.

MOBILE DODGE, INC.,

Third Party Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. 9892

PLEA IN ABATEMENT

Comes now, MOBILE DODGE, INC., a corporation, Third Party Defendant, in the above styled cause for the special purpose of filing the following pleas, separately and severally, to each count of the Third Party complaint in said cause and for no other purpose and states, separately and severally, as follows:

1. That said MOBILE DODGE, INC., a corporation, at the time said complaint was filed was a bona fide resident of Mobile County, Alabama and that the Circuit Court of Baldwin County, Alabama is without jurisdiction to try this matter.

2. That MOBILE DODGE, INC., a corporation, is a resident of Mobile County, Alabama and is not required to defend an action against it in the Circuit Court of Baldwin County, Alabama.

3. For that the venue is improper in that MOBILE DODGE, INC., a corporation, is a resident of Mobile County, Alabama and can not be required to defend a suit in the Circuit Court of Baldwin County, Alabama.

4. For that MOBILE DODGE, INC., a corporation, can not be subjected to the burden, inconvenience and harassment of

being required to defend an action in a County wherein it is not a resident.

5. The Third Party Plaintiff is required to bring this action in the Circuit Court of Mobile County, Alabama in order that venue may be proper and that MOBILE DODGE, INC., a corporation, which is a resident of Mobile County, Alabama will be properly subject to the jurisdiction of the Court of the County where it is a bona fide resident.

WHEREFORE, THE PREMISES CONSIDERED, MOBILE DODGE, INC., a corporation, moves that this action be abated.


ENGEL AND SMITH

BY: 

DAVID L. BARNETT - Appearing specially for the purpose of filing the above noted Plea In Abatement and for no other purpose.

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 9th day of September, 1971, served a copy of the foregoing Plea In Abatement on the law firm of Wilters, Brantley & Nesbit, Attorneys for Defendants and Third Party Plaintiffs, by mailing the same by United States mail, properly addressed, and first class postage prepaid.


DAVID L. BARNETT

FILED

SEP 10 1971

EUNICE B. BLACKMON CIRCUIT CLERK

ENGEL AND SMITH
ATTORNEYS AT LAW
SUITE 910 VAN ANTWERP BUILDING
P. O. BOX 1045
MOBILE, ALABAMA 36601

MYLAN R. ENGEL
LEO A. SMITH, JR.
DAVID L. BARNETT

TELEPHONE
AREA CODE 205
438-3625

February 27, 1973

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

To Continue

Re: Chrysler Credit Corporation -vs- Walter R.
Harris, et al, -vs- Mobile Dodge, Inc.,
Third Party Defendant, Case #9892

Dear Mrs. Blackmon:

With reference to our conversation on Tuesday, February 27, 1973, regarding case of Chrysler Credit Corporation versus Walter R. Harris, et al, Mobile Dodge, Inc., Third Party Defendant, Case Number 9892. I would appreciate you putting this letter with the file and in accordance with our conversation the pleading is not settled in this matter, however we note that the case is set for trial on Monday, March 12, 1973.

Originally, it was our understanding that Judge Mashburn would have a motion docket on March 7th but you have stated that he would be out of town on that date.

Sincerely yours,

ENGEL AND SMITH

Leo A. Smith, Jr.
Leo A. Smith, Jr.
LASjr/d

ENGEL AND SMITH
ATTORNEYS AT LAW
SUITE 910 VAN ANTWERP BUILDING
P. O. BOX 1045
MOBILE, ALABAMA 36601

MYLAN R. ENGEL
LEO A. SMITH, JR.
DAVID L. BARNETT

TELEPHONE
AREA CODE 205
438-3625

March 30, 1973

Honorable Telfair J. Mashburn
Circuit Court Judge
Baldwin County Courthouse
Bay Minette, Alabama

Re: Chrysler Credit Corp. v. Walter R. Harris,
et al, v. Mobile Dodge, Inc., Third Party
Defendant, Case Number 9892

Dear Judge Mashburn:

Our office has received the Baldwin County Circuit Court motion docket for April 4, 1973. The demurrers interposed in the above styled cause on behalf of Mobile Dodge, Inc., are set to be argued on that date. I talked with Mrs. Blackmon today and told her that all of Mobile Dodge's demurrers had been argued on March 21, 1973, and had been overruled. She indicated that no ruling had been put on the docket sheet with respect to our demurrers. Accordingly, unless advised otherwise I will not be there on April 4, 1973 to argue our demurrers, but will file the appropriate answer within the near future.

Sincerely,

ENGEL AND SMITH

Howard Donovan

Howard Donovan

HD/d

cc: Mrs. Eunice Blackmon

cc: Mrs. Phyllis S. Nesbit

