

## Motion For Directed Verdict

The Defendant moves the Court to direct a verdict in favor of the Defendant in this cause on the following grounds:

1. The plaintiff has failed to offer any evidence of any negligence on the part of the Defendant.

2. There is no evidence of any negligent conduct on the part of the ~~plaintiff~~ Defendant at the time and place complained of.

Filed: July 9, 1973.

Jeffrey G. Maslowski  
Dened. Jeffrey G. Maslowski

Chason, Stone & Chason  
by: John Earle Chason  
Way Minette, Alaska.

STATE OF ALABAMA

BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summons SUMAR CONTRACTORS, INC., a Corporation, to appear within thirty days from the service of this writ in the Circuit Court to be held for said County at the place of holding the same, then and there to answer the complaint of ALBERT L. MONTGOMERY and KENNETH MEIKLEJOHN d/b/a M & M Enterprises.

Witness my hand, this the 21 day of April, 1972.

Eunice B. Blackmon  
Clerk

ALBERT L. MONTGOMERY and  
KENNETH MEIKLEJOHN d/b/a  
M & M ENTERPRISES,

Plaintiffs,

vs.

SUMAR CONTRACTORS, INC.,  
a Corporation,

Defendant.

X

X

X

X

X

X

X

1.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. 10,357

The Plaintiffs claim of the Defendant the sum of SEVEN THOUSAND (\$7,000.00) DOLLARS, due from it by account on the 31st day of October, 1971, which sum of money, with the interest thereon is still unpaid.

2.

The Plaintiffs claim of the Defendant the sum of SEVEN THOUSAND (\$7,000.00) DOLLARS, due from it for work and labor done, and material furnished for the Defendant by the Plaintiffs, at its request, between the 1st day of October, 1971 and the 31st day of October, 1971, which sum of money, with the interest thereon is still unpaid.

WILTERS & BRANTLEY

Defendant may be served:

Raymond T. Gamble  
Superintendent for Sumar  
Contractors, Inc., Gulf Shores

BY:

Harry J. Wilters, Jr.  
Attorneys for Plaintiff

70-491

FILED

APR 21 1972

EUNICE B. BLACKMON  
CIRCUIT CLERK

(B8)

# 10,357

Albert L. Montgomery  
& Kenneth Meiklejohn  
d/b/a M + M Enterprises

vs:

Dumar Contractors, Inc.  
a corp.

FILED

APR 21 1972

EUNICE B. BLACKMON CIRCUIT CLERK

We the jury find  
for the plaintiff  
in this case the  
amount of \$7000.<sup>00</sup>

Julius L. Page  
Dorcas  
Walters + Brantley

APR 21 1972

TAYLOR WILKINS  
SHERIFF

Received 21 day of April 1972  
and on 13 day of April 1972  
I served a copy of the within  
on Raymond T. Dumar, as agent,  
Dumar Contractors, Inc.  
by service on Raymond Dumar

TAYLOR WILKINS, Sheriff

By H. L. [Signature] D.C.

Sheriff claims 100 miles or

Ten Cents per mile Total \$ 10.00

TAYLOR WILKINS, Sheriff

BY H. L. [Signature] DEPUTY SHERIFF

Paul H. Stokes

JURY LIST - JULY CIVIL TERM- JULY 9, 1973

1. Morris, Robert L., Civil Service, Box 655, Foley, Ala., Pensacola, Fla.
2. Havens, Norman P., Clerk L&N RR 817 Van Av. Daphne, Mobile
3. Johnson, Claude, Ala. Hwy. Dept. 201 Dickman Rd. Bay Minette, Bay Minette P9
4. Evans, Willie Nell, School Bus Driver, Lillian Ala
5. Thompson, Albert M., Merchant, 600 E. 9th St. Bay Minette P3
6. Harris, Willie Jr., Janitor, 1209 Pecan St. Bay Minette, Courthouse
7. Dale, Percy, Mgr. Night Club, 618 Young St. Fairhope D6
8. Davis, Richard M., Insp. St. Hwy Dept. 813 Prospect Av. Fairhope P12
9. Emmons, Mary Maude, Florist, 311 E. 11th St. Bay Minette D3
10. Brooks, Mamie, Counsitor Little River, CA P. O. Box 741 Foley, Foley D10
11. Clark, J. W., Feed Store, P. O. Box 523, Robertsdale, Robertsdale D13
12. Shivers, James D., Pulpwood, Rt. 2 Bay Minette P3
13. Cabiness, Betty J., Dept. Mgr. Baldwin Lanes Old Carney Rd. Bay Minette P1
14. Sims, James F., Farmer, Rabon P8
15. Smith, Leroy, Elec. Ala. Dry Dock, Box 113-A-8, Fairhope, Mobile D12
16. Smith, Sam K., Jr., C.P.A. Stockton P5
17. Stacey, Linda L., Secretary Bald. Co. Bk. Stockton Hwy, Bay Minette, Bay Minette P2
18. Fuqua, Herbert W., Retired, 404 Oak St. Fairhope
19. Phillips, Hazel L., Vanity Fair, Star Rt. Stockton, Atmore D1
20. Presley, William Neal, Contractor, 910 Hoyle Ave. Bay Minette, Bay Minette
21. Nix, James P., Nix Florest & Garden Center, 415 Myrtle Ave. Fairhope, Fairhope D2
22. Anderson, Clarence, USN, P. O. Box Silverhill, Pensacola
23. Page, Harlan A., Harlan Page Furn. 709 Nixon Av. Bay Minette
24. Middleton, L. A., Independent Ins. 511 Hand Ave. Bay Minette P7
25. Shepherd, L. E., Jr., Printer, P. O. Drawer Foley
26. Woodson, G. W., Retired, 500 Hand Av. Bay Minette
27. Hall, Noble A., Hall Mart (Operator), P. O. Box 811, Foley, Foley
28. Swin, Irma W., Clk. Bedsole's 555 Jan Dr. Fairhope
29. Wilcox, Ray, Civil Service, Rt. 1 Robertsdale D7
30. Gribb, David L., Insp. Continental Mtrs., 210 Fairhope, Mobile
31. Foler, Johnnie G., Riveria Utilities, 510 S. Burrier St. Foley
32. Touchstone, Ottis, Tenneco, 1705 Collier Av. Bay Minette, Bay Minette
33. Keaton, Mildred J., Smstrs. Bay Slacks, 10 Pensacola Hwy, Bay Minette
34. Corte, Mrs. E. D., Housewife, 54 S. Church St. Box 25, Fairhope P4
35. Swoboda, Jim, Jr., Contractor, Rt. 1 Box 166, Silverhill D11
36. Brannon, Ned., Int. Paper Co., 1190 Hwy 31 So. Bay Minette P6
37. Cox, Ralph S., Retired, 507 N. Ingleside Dr. Fairhope
38. Cox, Rene B., Housewife, 507 N. Ingleside Dr. Fairhope
39. Jones, Harold P., Merchant (Jones Feed Store) Pine Grove Rd. Bay Minette
40. Foster, Walter H., Ford Dealer, 110 Hand Av. Bay Minette
41. Kelly, Mr. Marvin, Pres. 1st National Bank, P. O. Box 850, Bay Minette
42. Kral, William Sr., Farmer, Robertsdale, Ala. Rt. 1 Box 19, Pensacola, Fla.
43. Mancil, Frank J., Mech, Eng. Palmer & Baker Eng. 101 N. Engleside Dr. Fairhope, Mobile D
44. Martin, A. C., Civil Service, Rt 1 Box 113C, Robertsdale, Pensacola
45. Oliviera, Mrs. E. C., Restruant Mgr. P. O. Box 344, Fairhope
46. Owens, Thomas O., Eng. Aide St. Hwy Dept. 1504 Moog Av. Bay Minette P11
47. Becker, Earl V., Mailman, 509 Hall Av. Bay Minette
48. Becker, Ina H., Chf. Clk. Tax Assessor, 509 Hall Av. Bay Minette D8
49. Grubbs, Carlton, Custom Farm Service, Rt. 1 Robertsdale
50. Boeschon, Arthur, Farmer, Rt. 2 Box 308 Bay Minette D9
51. Bettis, Carrie, Housewife, 412 B. Anderson Blvd. Bay Minette D4
52. Bill, William D., Jr. C.P.A. P. O. Box 162 Robertsdale, P10

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ALBERT L. MONTGOMERY and  
KENNETH MEIKLEJOHN, d/b/a  
M & M ENTERPRISES,

Plaintiff,

vs.

SUMAR CONTRACTORS, INC.,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 10,357

SUMAR CONTRACTORS, INC.,

Plaintiff,

vs.

ALBERT L. MONTGOMERY and  
KENNETH MEIKLEJOHN, d/b/a  
M & M ENTERPRISES

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 10,519

ORDER

This day came the attorneys for Sumar Contractors, Inc., a corporation, and move the Court for a consolidation of the above styled causes for trial and it appearing to the Court that said causes are, in all respects, such that the same are entitled to be consolidated for trial; it is, therefore,

ORDERED, ADJUDGED and DECREED that each of the cases hereinabove styled are consolidated for the purpose of trial at the next term of this Court or at any subsequent time to which the same shall be continued.

WITNESS my hand this 4<sup>th</sup> day of April, 1973.

Jeffery J. Madlison  
Circuit Judge

H. WILTERS

ALBERT L. MONTGOMERY and	X	
KENNETH MEIKLEJOHN, d/b/a	X	IN THE CIRCUIT COURT OF
M & M ENTERPRISES,	X	BALDWIN COUNTY, ALABAMA
Plaintiffs,	X	
vs.	X	AT LAW
SUMAR CONTRACTORS, INC.,	X	CASE NO. 10,357
a corporation,	X	
Defendant	X	

Comes now Kenneth Meiklejohn, and for answer to the Interrogatories heretofore propounded to him says:

1. M & M Enterprises was a partnership.
2. At the time the contract was entered into M & M Enterprises was a partnership composed of Albert L. Montgomery and Kenneth Meiklejohn, each owning an undivided one-half interest, since the suit was filed the partnership was dissolved, and Kenneth Meiklejohn assumed all the liabilities.
3. This is not a corporation.
5.
  - (a) Clay, 1878 yards, \$3,286.50.
  - (b) Site preparation, installation of base material for golf cart path; labor, approximately \$4,000.00.
  - (c) Yes.
6.
  - (a) Yes.
  - (b) Yes.
  - (c) No, due to non payment on the work done in accordance with the terms of the contract.
7.
  - (a) Same as 5 (b).
  - (b) Clay
  - (c) Yes.
  - (d) No. (same as 6 (c)).
  - (e) I do not understand this question.
8. Yes, \$7,000.00.
9. Yes, \$7,000.00, for the 30% estimate due under the terms of the contract.

10. By check
11. It was not included in the parties 1972 income tax return.
12. Yes.
13. All services were rendered by the Plaintiffs, or performed by their agents, servants or employees.

Kenneth Meiklejohn  
Kenneth Meiklejohn

STATE OF ALABAMA

BALDWIN COUNTY

Before me, the undersigned authority, personally appeared Kenneth Meiklejohn, who after being by me first duly sworn, deposes and says: That he has read the foregoing answers to the interrogatories propounded to him in the said cause, and that the answers are true to the best of his knowledge, information and belief, and that he does believe them to be true.

Kenneth Meiklejohn  
Kenneth Meiklejohn

Sworn to and subscribed before me on this the 31st day of May, 1973.

Ray J. Walters Jr.  
Notary Public, State of Alabama at Large

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 31st day of May, 1973, served a copy of the foregoing petition and answers to the parties to this proceeding by mailing the same by Registered State Mail, properly addressed, and first class postage prepaid.

WILTERS & BRANTLEY

By Ray J. Walters Jr.

FILED

MAY 31 1973

EUNICE B. BLACKMON CIRCUIT CLERK

ALBERT L. MONTGOMERY and	)	IN THE CIRCUIT COURT OF
KENNETH MEIKLEJOHN, d/b/a	)	
M & M ENTERPRISES,	)	BALDWIN COUNTY, ALABAMA
	)	
Plaintiffs,	)	AT LAW
	)	
v.	)	
	)	
SUMAR CONTRACTORS, INC.,	)	CASE NO. 10,357
a corporation,	)	
	)	
Defendant.	)	

INTERROGATORIES TO THE PLAINTIFFS

Comes now the defendant, Sumar Contractors, Inc., a corporation, in the above styled cause, and desiring the testimony of the plaintiffs propound to the plaintiffs the following interrogatories as provided under Section 47, et seq., of Title 7 of the Code of Alabama, to wit:

1. State what type of legal entity M & M Enterprises is.
2. If M & M Enterprises is a partnership, state the percentages owned by each of the plaintiffs.
3. If M & M Enterprises is a corporation, state the following:
  - (a) State in which incorporated.
  - (b) Date of incorporation.
  - (c) If it is not an Alabama corporation, state whether or not it is qualified to do business in Alabama.
5. In Count 1 of plaintiffs' complaint, you claim \$7,000.00 by account, with regard to this account, state the following, giving specific details as to amounts and cost:
  - (a) What materials were supplied?



(b) What services were rendered?

(c) Whether or not this account arose out of a contractual relationship between the plaintiffs and the defendant.

6. If the answer to Interrogatory 5(c) is affirmative, then state the following:

(a) Was the contract written?

(b) Were there any obligations made after the contract was entered into?

(c) Do plaintiffs claim they performed all of their obligations under said contract?

(d) If the answer to Interrogatory 6(c) is affirmative, then state what obligations plaintiffs performed.

7. In Count Two of plaintiffs' complaint, you claim \$7,000.00 for work and labor done, and materials furnished, with reference to this count, state the following:

(a) What work and labor was done?

(b) What materials were furnished?

(c) Did the claim in Count Two arise out of a contractual relationship between the plaintiffs and defendant?

(d) If the answer to Interrogatory 7(c) is affirmative, then state whether or not plaintiffs claimed they performed all the obligations under the contract.

(e) If the answer to Interrogatory 7(c) is negative, then state what obligations the plaintiffs failed to perform under the contract.

8. Have the plaintiffs received any monies from the defendant, if so, how much?

9. Have the plaintiffs made any demand on the defendant for the amount claimed, if so, when and how was such demand made?

10. If the answer to Interrogatory 8 was affirmative, then state the following, how did the defendant pay the plaintiffs?

11. How was the account alleged in Count One of plaintiffs' complaint handled on plaintiffs' 1972 Income Tax Return?

12. State whether or not the plaintiffs personally performed the services rendered as alleged in Count Two of their complaint?

13. If the answer to Interrogatory 13 is negative, then state who did perform the said services and their relationship to the plaintiffs.

DOMINICK, FLETCHER, YEILDING,  
DOMINICK, AND ACKER, P. A.

By *James N. D.*  
Attorneys for Defendant

CHASON, STONE, AND CHASON

By *John E. Chason*  
Attorneys for Defendant

Dominick, Fletcher, Yeilding,  
Dominick, and Acker, P. A.  
927 Brown-Marx Building  
Birmingham, Alabama 35203

Chason, Stone and Chason  
P. O. Box 120  
Bay Minette, Alabama 3-507

Of Counsel

FILED

MAY 22 1973

EUNICE B. BLACKMON CIRCUIT CLERK

*Service accepted for Kermith McElroy  
W. J. Waters Jr.  
his Attorney  
5/22/73*

*Service accepted for Albert McElroy  
22 May 73 - Blackmon*


STATE OF ALABAMA )

JEFFERSON COUNTY )

Before me, the undersigned authority in and for said  
County, in said State, this day personally appeared J. Fred  
Wood, Jr. who is known to me and who by me is first duly  
sworn, upon oath deposes and says that he is one of the  
attorneys for the defendant in the above entitled cause, and  
as such is authorized to make this affidavit; and that the  
answers of the plaintiff to the foregoing interrogatories  
when well and truly made and filed will be material for  
the defendant on the trial of this cause.



Sworn to and subscribed before me on  
this 18 day of May, 1973.

  
Notary Public

FILED

MAY 22 1973

EUNICE B. BLACKMON CIRCUIT  
CLERK

SUMAR CONTRACTORS, INC.,	X	
a corporation,	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
vs.	X	BALDWIN COUNTY, ALABAMA
	X	AT LAW
ALBERT L. MONTGOMERY and	X	
KENNETH MEIKLEJOHN, d/b/a	X	CASE NO. 10,519
M & M ENTERPRISES,	X	
Defendants	X	

Comes now the Defendants in the above styled cause, and for answer to the Complaint, says:

1.

That they deny that the Plaintiff was damaged for breach of contract in the amount of \$30,000.00. Defendants further say that the contract agreed on by and between the Plaintiff and Defendants amounted to approximately \$24,000.00. The Defendants further say that they did not complete the contract because of the non-payment on the part of the Plaintiff, and that they were at all times ready, able and willing to complete the contract had the Plaintiff paid them in accordance with the same. The Defendants deny all other allegations contained in count 1.

2.

The Defendants admit the allegations contained in count 2 pertaining to them entering into a contract as mentioned. The Defendants further aver that 60% of the work had been completed, but the Plaintiff had only paid them for 30% of the work, and that under the terms of the contract they were to be paid monthly. The Defendants admitt that the Plaintiff paid them \$7,000.00 less the credits allowed, but that on October 31, 1971, there was due the Defendants an additional sum of \$7,000.00. Defendants further say that they continually told the Plaintiff that they would complete the contract as soon as this amount was paid. Defendants deny that the Plaintiff was injured or damaged by their failure to perform the contract. Defendants further allege that they were at all times, ready, able and willing to complete the contract; that in fact they had left their equipment on the job in anticipation of the Plaintiff paying them the complete amount due.

WILTERS & BRANTLEY

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BY:

*[Signature]*

FILED

JUL 6 1973

EUNICE B. BLACKMON CLERK

ALBERT L. MONTGOMERY and  
KENNETH MEIKLEJOHN, d/b/a  
M & M ENTERPRISES,

Plaintiffs,

vs.

SUMAR CONTRACTORS, INC.,  
a corporation,

Defendant.

X

X

X

X

X

X

X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW CASE NO: 10,357

DEMURRER

Now comes the Defendant, Sumar Contractors, Inc., a corporation, and demurs to the Complaint heretofore filed in the above styled cause and to each count thereof separately and severally, and for grounds of said demurrer sets down and assigns the following grounds, separately and severally:

1. Said count does not state a cause of action against the Defendant.
2. Said count is vague, uncertain and indefinite.
3. Said count does not state facts sufficient to constitute a cause of action against the Defendant.
4. Said Complaint does not state what rate of interest the Plaintiffs are claiming of the Defendant.

FILED

JUL 10 1972

EUNICE B. BLACKMON CIRCUIT  
CLERK

Manly Yeilding  
Manly Yeilding

John Chason  
John Chason  
Attorneys for Defendant

Defendant demands trial of  
this cause by a jury.

Manly Yeilding  
John Chason

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all parties to this proceeding, by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this 10th day of July, 1972

70-492 John B. Chason

SUMAR CONTRACTORS, INC.,  
a Corporation,

Plaintiff,

vs.

ALBERT L. MONTGOMERY and  
KENNETH MEIKLEJOHN, d/b/a  
M & M ENTERPRISES,

Defendants,

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. 10,519

DEMURRER

Comes now the Defendants in the above styled cause and files the following demurrers to the Plaintiff's complaint to each count thereof seperately and severally, and for grounds thereof, says:

1.

That counts one and two do not state a cause of action.

2.

That count one does not state in what manner the Defendants work was performed negligently, or in an unworkmanlike manner.

3.

Count one fails to allege the terms and conditions of the said contract.

4.

Count two alleges that a copy of the contract is attached as Exhibit "A", and incorporated therein, but there is not a copy of the contract attached to the original complaint, or to the copies of the complaint.

WILTERS & BRANTLEY

BY: 

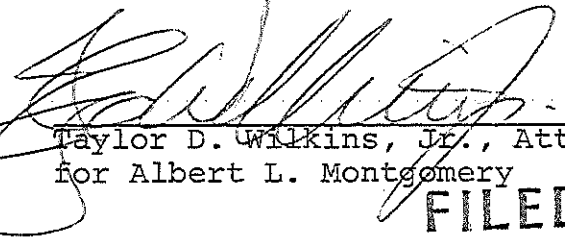
Attorneys for Kenneth Meiklejohn  
d/b/a M & M Enterprises

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 14th day of September 1972, 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

BY: 

  
Taylor D. Wilkins, Jr., Attorney  
for Albert L. Montgomery

FILED

SEP 14 1972

EUNICE B. BLACKMON CIRCUIT CLERK

70-493