

STATE OF ALABAMA)
BALDWIN COUNTY)

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon CHEROKEE INSURANCE COMPANY, a corporation to appear within thirty days from the date of this Writ in the Circuit Court to be held for said County at the place of holding same, then and there to answer the Complaint of MID-STATE HOMES, INC., a corporation

Witness my hand this 18 day of Aug, 1972.

Eunice B. Blackmon
CLERK

MID-STATE HOMES, INC.,
a corporation,
PLAINTIFF,
Vs.
CHEROKEE INSURANCE COMPANY,
a corporation,
DEFENDANT.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

CASE NO. 10,556

COMPLAINT

COUNT ONE: The Plaintiff claims of the Defendant \$5,000, the value of the dwelling house, which the Defendant on the 5th day of June, 1971 insured against loss or injury by fire and other perils in the policy of insurance mentioned, for the term of three years, which house was wholly destroyed by fire on the 30th day of November, 1971, of which the defendant has had notice.

R.A. Norred
R.A. Norred, Attorney for Plaintiff
616 2121 Building
2121 8th Avenue North
Birmingham, Alabama 35203

PLAINTIFF'S ADDRESS:
Mid-State Homes, Inc.
c/o R.A. Norred, Attorney
616 2121 Building
2121 8th Avenue North
Birmingham, Alabama 35203

DEFENDANT'S ADDRESS:
Cherokee Insurance Company
95 White Bridge Rd.
Nashville, Tennessee

FILED

AUG 18 1972

EUNICE B. BLACKMON CIRCUIT CLERK

VOL

69 PAGE 737

6:8-28-72

502

RECEIVED IN OFFICE
AUG 25 1972
M. S. BUTLER, Sheriff

MID-STATE HOMES, INC., A CORP.

VS:

CHEROKEE INSURANCE COMPANY

CASE #10,556

Executed by serving _____ copies of
the within on Beech
Superintendent
of Insurance, State of Alabama
This The 28 day of Aug 19 72
Sheriff of Montgomery County
M. S. Butler,
By Mc Math D. S.

M. S. Butler, Sheriff of Montgomery
County, Alabama, Claims \$1.50 each for
serving _____ process(es) and \$1.00
travel expense on each of _____
process(es) or a total of INS 2.50

Mc Math Deputy Sheriff

FILED

AUG 18 1972

EUNICE B. BLACKMON CIRCUIT CLERK

R. A. Norred
Attorney for Plaintiff

CHEROKEE INSURANCE COMPANY
2000 1ST AVENUE NORTH
NASHVILLE, TENNESSEE 37203
ATTORNEY: R. A. NORRED

RECEIVED
AUG 25 1972
M. S. BUTLER, Sheriff

FILED

AUG 18 1972

RECEIVED

AUG 18 1972

STATE OF ALABAMA
DEPARTMENT OF INSURANCE

I, the undersigned, as Commissioner of Insurance for the State of Alabama,
hereby certify that on the 28th day of August, 1972, I

sent by registered mail in an envelope as follows:

Cherokee Insurance Company
4108 Hillsboro Road
Nashville, Tennessee 37215

REGISTERED MAIL
RETURN RECEIPT REQUESTED

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

Mid-State Homes, Inc., Plaintiff CASE NO. 10556

in the Circuit Court of Baldwin County

VERSUS

(Name of Court)

Cherokee Insurance Company, Defendant

And that on the 5th day of September, 1972, I received
the return card showing receipt by the designated addressee of said envelope on
the 1st day of September, 1972.

Witness my hand and official seal this the 6th day of September,
1972.

John B. Bookout
COMMISSIONER OF INSURANCE

R. A. Norred

ATTORNEY

616 2121 BUILDING
2121 8TH AVENUE NORTH
BIRMINGHAM, ALABAMA 35203
TELEPHONE
323-4076

August 17, 1972

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

Re: Mid-State Homes, Inc. vs. Cherokee Insurance Company

Dear Mrs. Blackmon:

I enclose herein an original and three copies of a Summons and Complaint which I would like to have issued for service as provided by Title 28, Section 66 on the Superintendent of Insurance.

I will appreciate being advised of the filing date of this complaint, and also when service has been perfected.

Yours very truly,

R.A. Norred

RAN/kc

Encl.

Please Note: Act #407 House Bill 198 of January 1, 1972 provides for \$5.00 fee for any papers served on Commission of Insurance. Please make your check payable to the Department of Insurance, State of Alabama. These papers will be held in my office until I receive such check.

Eunice B. Blackmon, Clerk

STATE OF ALABAMA)
BALDWIN COUNTY)

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon CHEROKEE INSURANCE COMPANY, a corporation to appear within thirty days from the date of this Writ in the Circuit Court to be held for said County at the place of holding same, then and there to answer the Complaint of MID-STATE HOMES, INC., a corporation

Witness my hand this 18 day of Aug, 1972.

Eunice B. Blackmon
CLERK

MID-STATE HOMES, INC.,
a corporation,
PLAINTIFF,
Vs.
CHEROKEE INSURANCE COMPANY,
a corporation,
DEFENDANT.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

CASE NO. 10556

COMPLAINT

COUNT ONE: The Plaintiff claims of the Defendant \$5,000, the value of the dwelling house, which the Defendant on the 5th day of June, 1971 insured against loss or injury by fire and other perils in the policy of insurance mentioned, for the term of three years, which house was wholly destroyed by fire on the 30th day of November, 1971, of which the defendant has had notice.

FILED

AUG 18 1972

EUNICE B. BLACKMON CLERK

R.A. Norred
R.A. Norred, Attorney for Plaintiff
616 2121 Building
2121 8th Avenue North
Birmingham, Alabama 35203

PLAINTIFF'S ADDRESS:
Mid-State Homes, Inc.
c/o R.A. Norred, Attorney
616 2121 Building
2121 8th Avenue North
Birmingham, Alabama 35203

DEFENDANT'S ADDRESS:
Cherokee Insurance Company
95 White Bridge Rd.
Nashville, Tennessee

LYONS, PIPES & COOK

ATTORNEYS AT LAW

2510 FIRST NATIONAL BANK BUILDING

MOBILE, ALABAMA

36601

JOSEPH H. LYONS (1900-1957)

SAM W. PIPES

WALTER M. COOK

GORDON B. KAHN

G. SAGE LYONS

AUGUSTINE MEAHER, III.

WESLEY PIPES

NORTON W. BROOKER, JR.

COOPER C. THURBER

AREA CODE 205

TEL. 432-4483

P. O. DRAWER 2727

September 11, 1972

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

RE: Mid-State Homes, Inc. vs. Cherokee Insurance Company
Case No. 10556

Dear Mrs. Blackmon:

We enclose our Answer in the above case and ask that it be filed in your Court. We also enclose an extra copy and request that you mark it FILED and return it to us in the enclosed, stamped envelope.

Very truly yours,

LYONS, PIPES AND COOK



Augustine Meaher, III

AM/ks

Enclosures

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

CASE NO. 10556

LYONS, PIPES & COOK

ATTORNEYS AT LAW

2510 FIRST NATIONAL BANK BUILDING

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JOSEPH H. LYONS (1900-1957)

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AUGUSTINE MEAHER, III

WESLEY PIPES

NORTON W. BROOKER, JR.

COOPER C. THURBER

AREA CODE 205

TEL. 432-4483

P. O. DRAWER 2727

November 27, 1972

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

RE: Mid-State Homes, Inc. vs. Cherokee Insurance Company
Case No. 10556

Dear Mrs. Blackmon:

We enclose our Motion to Produce in the above case and ask it to be filed in your Court. We would hope the motion could be granted so that the documents will be available to the Defendant for the trial of this cause.

Very truly yours,

LYONS, PIPES AND COOK



Augustine Meaher, III

AM/kh

Enclosure

MID-STATE HOMES, INC.,
a corporation,

Plaintiff,

-vs-

CHEROKEE INSURANCE COMPANY,
a corporation,

Defendant.

* IN THE CIRCUIT COURT OF
* BALDWIN COUNTY, ALABAMA
* AT LAW
*
*
* CASE NO. 10,556

MOTION FOR PRODUCTION OF DOCUMENTS

COMES NOW the Defendant in the above styled cause and moves this Honorable Court to order Plaintiff to produce for inspection and copying prior to trial the following documents in Plaintiff's custody or control:

The Notice of Cancellation dated November 17, 1971 sent to Plaintiff by Skipper Insurance Agency pertaining to the cancellation on the policy made the basis of this suit.

LYONS, PIPES AND COOK
Attorneys for Defendant

BY: Augustine Meaher III
Augustine Meaher, III

STATE OF ALABAMA

COUNTY OF MOBILE

Personally appeared before me, the undersigned authority, Augustine Meaher, III, who being by me first duly sworn did depose and say that he is an attorney of record for the Defendant in this cause and as such has authority to make this affidavit and that the production of the foregoing documents in the custody or control of Plaintiff will be necessary and material evidence for the Defendant at the time of trial in this cause.

Augustine Meaher III
Augustine Meaher, III

Subscribed and sworn to before me on this 27TH day of November,
1972.

Sharon E. Elman
NOTARY PUBLIC, MOBILE COUNTY, ALABAMA

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 27
day of Nov, 19 72, 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.

Augustine Meeker III

FILED

NOV 28 1972

EUNICE B. BLACKMON CLERK

FILED

NOV 28 1972

EUNICE B. BLACKMON CLERK

R. A. Norred

ATTORNEY

616 2121 BUILDING
2121 8TH AVENUE NORTH
BIRMINGHAM, ALABAMA 35203
TELEPHONE
323-4076

November 29, 1972

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

Re: Mid-State Homes, Inc. vs. Cherokee Insurance Co.
Case No. 10556

Dear Mrs. Blackmon:

I enclose herein a Motion for the Production of Documents which I would like to have filed in the above.

I also would appreciate it if you would cause subpoenas^{re} to issue to the following persons requesting them to appear as witnesses for the Plaintiff for the trial of the case on December 13, 1972:

Titsie Stewart--Perdido and Rabon Road, Perdido, Alabama.

John Stewart--Perdido and Rabon Road, Perdido, Alabama

Yours very truly,



R.A. Norred

RAN/kc

Encl.

LYONS, PIPES & COOK

ATTORNEYS AT LAW

2510 FIRST NATIONAL BANK BUILDING

MOBILE, ALABAMA

36601

JOSEPH H. LYONS (1900-1957)

SAM W. PIPES

WALTER M. COOK

GORDON B. KAHN

G. SAGE LYONS

AUGUSTINE MEAHER, III

WESLEY PIPES

NORTON W. BROOKER, JR.

COOPER C. THURBER

November 30, 1972

AREA CODE 205
TEL. 432-4483
P. O. DRAWER 2727

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

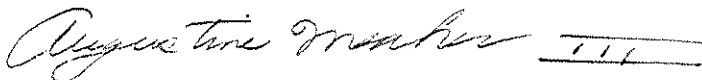
RE: Mid-State Homes, Inc. vs. Cherokee Insurance Company
Case No. 10556

Dear Mrs. Blackmon:

We enclose our Amended Answer in the above case and ask
that you kindly file it in the pleadings in the above case.

Very truly yours,

LYONS, PIPES AND COOK



Augustine Meaher, III

AM/kh

Enclosure - Amended Answer

at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and, if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged."

"SUIT. No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within twelve months next after inception of the loss."

Defendant avers that no written notice of the fire described in Plaintiff's Complaint and no proof of loss in the policy made the basis of this suit was given to Defendant within sixty days of the alleged date of the loss made the basis of this suit.

WHEREFORE, Defendant says that the provisions of the policy made the basis of this suit have not been complied with and Plaintiff ought not to have and recover.

LYONS, PIPES AND COOK
Attorneys for Defendant

BY: Augustine Meaher III
Augustine Meaher, III

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 30
day of Nov, 19 72, 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.

Augustine Meaher III

FILED

DEC 1 1972

EUNICE B. BLACKMON CIRCUIT
CLERK

DEFENDANT.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

CASE NO. 10556

NOTICE OF APPEAL

Comes the Plaintiff, Mid-State Homes, Inc., a corporation, and gives notice that it appeals from the Judgment of this Court entered on November 13, 1972.

~~R.A. Norred~~
Attorney for Plaintiff
616 2121 Building
2121 8th Avenue North
Birmingham, Alabama 35203

MID-STATE HOMES, INC.,
a corporation,

PLAINTIFF,

VS.

CHEROKEE INSURANCE COMPANY,
a corporation,

DEFENDANT.

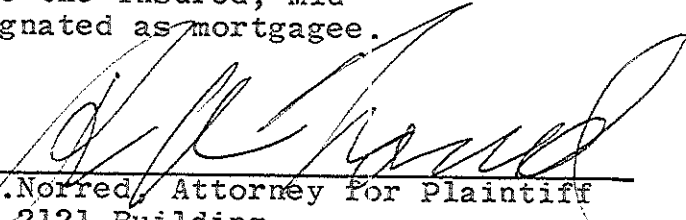
) IN THE CIRCUIT COURT OF
)
) BALDWIN COUNTY, ALABAMA
)
) AT LAW
)
)
)
)

CASE NO. 10,556

MOTION FOR PRODUCTION OF DOCUMENTS

Comes now the Plaintiff in the above styled cause and moves this Honorable Court to order Defendant to produce for inspection and copying prior to trial, and for use in the trial, the following documents in Defendant's custody or control:

Insurance Policy No. 33 62 51, wherein Cherokee Insurance Company is the Insuror, and John D. Stewart and Susie Stewart are the Insured, Mid-State Homes, Inc. being designated as mortgagee.

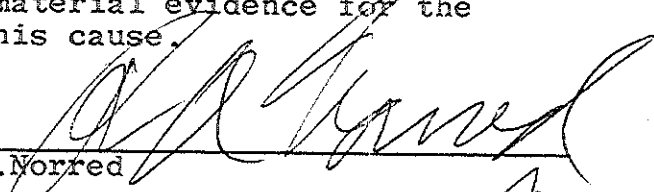


R.A. Norred, Attorney for Plaintiff
616 2121 Building
2121 8th Avenue North
Birmingham, Alabama 35203

STATE OF ALABAMA)


)
JEFFERSON COUNTY)

Personally appeared before me, the undersigned authority, R.A. Norred, who being by me first duly sworn did depose and say that he is an attorney of record for the Plaintiff in this cause and as such has authority to make this affidavit and that the production of the foregoing documents in the custody or control of Defendant will be necessary and material evidence for the Plaintiff at the time of trial in this cause.



R.A. Norred

Subscribed and sworn to before me on this
1972.

29 day of 



NOTARY PUBLIC

7-25-75

FILED

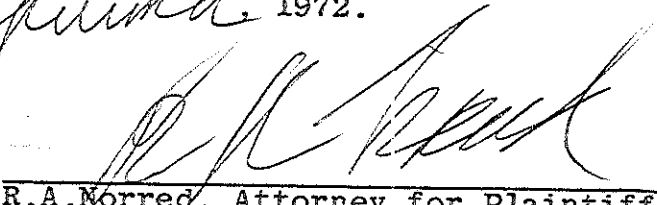
DEC 1 1972

EUNICE B. BLACKMON CIRCUIT
CLERK

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Motion has been mailed this day to the Honorable Augustine Meaher, III, as Attorney of Record for the Defendant at 25th Floor, 1st National Bank Building, Mobile, Alabama.

This the 29 day of January, 1972.


R.A. Norred, Attorney for Plaintiff

DEFENDANT.

CASE NO. 10556

Mortgagee Clause (This entire clause is void unless name of mortgagee or trustee is inserted on reverse in space provided)—Loss, if any on building items under this policy, shall be payable to the mortgagee trustee) as provided herein, as interest may appear, and this insurance, as to the interest of the mortgagee trustee) only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the wif described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, by any change in the title or ownership of the property, nor by the occupation of the premises for purposes n hazardous than are permitted by this policy: Provided, That in case the mortgagor or owner shall neglect to any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same.

Provided also, That the mortgagee (or trustee) shall notify this Company of any change of ownership, occupancy or increase of hazard, which shall come to the knowledge of said mortgagee (or trustee) and, ur permitted by this policy, it shall be noted thereon, and the mortgagee (or trustee) shall, on demand, pay the mium for such increased hazard for the term of the use thereof; otherwise, this policy shall be null and void.

This Company reserves the right to cancel this policy at any time as provided by its terms, but, in such this policy shall continue in force for the benefit only of the mortgagee (or trustee) for ten days after notic the mortgagee (or trustee) of such cancellation, and shall then cease, and this Company shall have the right like notice, to cancel this agreement.

Whenever this Company shall pay the mortgagee (or trustee) any sum for loss under this policy shall claim that, as to the mortgagor or owners, no liability therefor existed, this Company shall, to the ex of such payment, be thereupon legally subrogated to all the rights of the party to whom such payments shal made, under all securities held as collateral to the mortgage debt, or may at its option pay to the mortgagee trustee) the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the of the mortgagee (or trustee) to recover the full amount of his, her or their claim.

The above Mortgagee Clause DOES NOT apply to personal property.*

NOTE TO AGENTS—This line () must be voided when clause is made applicable to personal property.

(805)

R. A. Norred
ATTORNEY

616 2121 BUILDING
2121 8TH AVENUE NORTH
BIRMINGHAM, ALABAMA 35203
TELEPHONE
323-4076

May 30, 1973

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

Re: Mid-State Homes, Inc.
vs.
Cherokee Insurance Company
Case No. 10556

Dear Mrs. Blackmon:

Thank you for advising my secretary that Notice of Appeal and Security for Cost had been received in the above.

By separate copy of this letter I am asking that Mrs. Dusenberry file the transcript of the testimony with you.

Yours very truly,


R. A. Norred

RAN/tl

CC: Mrs. Dusenberry
Court Reporter
Bay Minette, Alabama

MID-STATE HOMES, INC.,
a corporation,

PLAINTIFF,

VS.

CHEROKEE INSURANCE COMPANY,
a corporation,

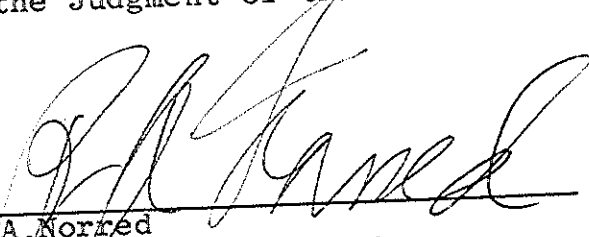
DEFENDANT.

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

CASE NO. 10556

NOTICE OF APPEAL

Comes the Plaintiff, Mid-State Homes, Inc., a corporation, and
gives notice that it appeals from the Judgment of this Court
entered on November 13, 1972.


R.A. Norred
Attorney for Plaintiff
616 2121 Building
2121 8th Avenue North
Birmingham, Alabama 35203

FILED

MAY 11 1973

EUNICE B. BLACKMON CIRCUIT
CLERK

R. A. Norred

ATTORNEY

616 2121 BUILDING
2121 8TH AVENUE NORTH
BIRMINGHAM, ALABAMA 35203
TELEPHONE
323-4076

May 10, 1973

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

Re: Mid-State Homes, Inc. vs. Cherokee Insurance Company
Case No. 10556

Dear Mrs. Blackmon:

I enclose herein Security for Costs and a Notice of Appeal in the above. I will appreciate it if you will acknowledge receipt thereof and advise of the filing date. Incidentally, if you wish me to prepare any of the forms in connection with the Appeal, please advise and I will be glad to cooperate.

Yours very truly,


RA Norred

RAN/kc

Encl.

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 13th
day of December ~~Monday~~ 19..73, in a cer-
tain cause in said Court wherein ..Mid-State Homes, Inc.....
..... Plaintiff, and ..Cherokee Insurance Co. A Corp.....
..... Defendant, a judgement was rendered against said
..... Plaintiff
to reverse which Judgment....., the said Plaintiff
.....
.....
applied for and obtained from this office an APPEAL, returnable to the next
Civil Court of Appeals
Term of our 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 ..Mid-State Homes, Inc. by O. C. King
.....
..... with Fidelity and Deposit Company of Maryland by Annie L. Reed- Attorney-In Fact
..... sureties,
.....
.....

Now, You Are Hereby Commanded, without delay, to cite the said Cherokee Insurance Co. A Corp.
..... or Lyons, Pipes & Cook by Augustine Meaher, III
....., attorney, to appear at the next Term of our
Civil
said ~~Supreme~~ Court, to defend against the said Appeal, ifthey..... think proper.
EUNICE B. BLACKMON
Witness, ~~AKPOE XXX DUCK~~, Clerk of the Circuit Court of said County, this 16th
day of May A. D., 19..... 73

Attest:

Eunice B. Blackmon Clerk.

RECEIVED

MAY 17 1973

TAYLOR WILKINS
SHERIFF

Wain

9952

Wain

#10,556

CIRCUIT COURT
Baldwin County, Alabama

Mid-State Homes, Inc.

Vs. { Citation in Appeal

Received 18 Day of May 1973
and on 11 Day of June 1973 Cherokee Insurance Co. A Corp.

I served a Copy of the within
on Lyons, Pipes & Cook

by service on Mr. Brooker, Asso.

RAY D. BRIDGES, Sheriff

By M. Wainwright D. S.

Issued 16th day of May, 19 73

Serve: Lyons, Pipes & Cook by Augustine Meaher, III
2510 First National Bank Building
Mobile, Alabama

Mr. Brooker, Asso.

RECEIVED
MOBILE COUNTY, ALA.
MAY 18 6 30 AM '73

BY

MID-STATE HOMES, INC.,
a corporation,

PLAINTIFF,

VS.

CHEROKEE INSURANCE COMPANY,
a corporation,

DEFENDANT.

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

CASE NO. 10556

SECURITY FOR COSTS

We hereby acknowledge ourselves security for costs of appeal to the Civil Court of Appeals of Alabama in the above case, returnable to the present term thereof, and for the payment of the above security, we hereby waive our right of exemption to personal property under the constitution and laws of the State of Alabama.

MID-STATE HOMES, INC.,

BY:

[Signature]
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Annie L. Reed
ANNIE L. REED

ATTORNEY-IN-FACT

[Signature]
Notary Public State of Florida et. Large
My Commission Expires Sept. 1, 1975
Bonded by Maryland Casualty Co.

FILED

MAY 11 1973

EUNICE B. BLACKMON CIRCUIT
CLERK

MID-STATE HOMES, INC.,
a corporation,

PLAINTIFF,

VS.

CHEROKEE INSURANCE COMPANY,
a corporation,

DEFENDANT.

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

) CASE NO. 20556
)

SECURITY FOR COSTS

We hereby acknowledge ourselves security for costs of appeal to the Civil Court of Appeals of Alabama in the above case, returnable to the present term thereof, and for the payment of the above security, we hereby waive our right of exemption to personal property under the constitution and laws of the State of Alabama.

MID-STATE HOMES, INC.,

BY: *Al King*

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Annie L. Reed

ANNIE L. REED

ATTORNEY-IN-FACT

Paula M. Brown

Notary Public State of Florida at Large
My Commission Expires Sept. 1, 1975
Bonded by Maryland Casualty Co.

Power of Attorney
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

HOME OFFICE: BALTIMORE, MD.

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by H. C. GARDE, Vice-President, and R. D. GILLISS, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which reads as follows:

"The President, or any one of the Executive Vice-Presidents, or any one of the additional Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Resident Assistant Secretaries and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertakings, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgments, decrees, mortgages and instruments in the nature of mortgages, and also all other instruments and documents which the business of the Company may require, and to affix the seal of the Company thereto."

does hereby nominate, constitute and appoint Annie L. Reed of Birmingham, Alabama.....

its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: any and all bonds and undertakings, each in a penalty not to exceed the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000).....

And the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons.

The said Assistant Secretary does hereby certify that the foregoing is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 27th day of May, A.D. 19 71.

ATTEST: **FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

(SIGNED)

R. D. GILLISS

By

H. C. GARDE

(SEAL)

Assistant Secretary

Vice-President

STATE OF MARYLAND }
CITY OF BALTIMORE } ss:

On this 27th day of May, A.D. 19 71, before the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore, duly commissioned and qualified, came the above-named Vice-President and Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself deposeth and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal, at the City of Baltimore, the day and year first above written.

(SIGNED)

ELENOR K. MITCHELL

(SEAL)

Notary Public Commission Expires July 1, 1974

CERTIFICATE

I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the original Power of Attorney of which the foregoing is a full, true and correct copy, is in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2 of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

This Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 16th day of July, 1969.

RESOLVED: "That the facsimile or mechanically reproduced signature of any Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said Company, this 10th day of May, 19 73.

Div. No. _____

CERTIFICATE OF APPEAL. (Civil Cases,)

No. 10,556

Baldwin County, Circuit Court.

MID-STATE HOMES, INC. A CORPORATION

Plaintiff.

vs.

CHEROKEE INSURANCE COMPANY

Defendant.

I, EUNICE B. BLACKMON Clerk of CIRCUIT Court,
of BALDWIN County, Alabama, hereby certify that in the
cause of Mid-State Homes, Inc. A Corporation plaintiff,
vs.

Cherokee Insurance Company defendant,
which was tried and determined in this Court on the 13th day of
December 19 72, in which there was a judgment for
the Defendant Dollars, in favor of the plaintiff, (on judgment
for defendant, \$1100.00) on the 11th day of
MAY 19 73, took an appeal to the Civil Court
of Appeals
of Alabama to be holden of and for said State.

I further certify that Mid-State Homes, Inc. by O. C. King
filed security for cost of appeal, to the Civil Court of Appeals Court, on
the 11th day of May 19 73, and that Fidelity and Deposit Company
of Maryland by Annie L. Reed, Attorney-In-Fact,
are sureties on the appeal bond.

I further certify that notice of the said appeal was on the 11th
day of June 19 73, served on Lyons, Pipes & Cook
as attorney of record for said appellee, and that the amount sued for
was \$4,551.40 Dollars. (Or certain lands)
(Or personal property.)

Witness my hand and the seal of this Court, this the 12th
day of June 19 73.

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

R. A. Norred
ATTORNEY

616 2121 BUILDING
2121 8TH AVENUE NORTH
BIRMINGHAM, ALABAMA 35203
TELEPHONE
323-4076

July 16, 1973

Mrs. Eunice B. Blackmon
Clerk - Circuit Court
Baldwin County Courthouse
Bay Minette, Alabama 36507

Re: Mid-State Homes, Inc. vs. Cherokee Insurance Company 10,556

Dear Mrs. Blackmon:

I enclose herein Assignments of Error in connection with the above and will appreciate it if you will transmit the transcript to the Supreme Court.

Yours very truly,

R. A. Norred /kc

R.A. Norred

RAN/kc

Encl.

OCT 17 1973

THE STATE OF ALABAMA --- JUDICIAL DEPARTMENT

THE COURT OF CIVIL APPEALS

OCTOBER TERM, 1973-74

Civ. 225

Mid-State Homes, Inc., a Corporation

v.

Cherokee Insurance Company, a Corporation

Appeal from Baldwin Circuit Court

HOLMES, J.

Appellant sought recovery from the appellee under a fire insurance policy. The trial court heard the case without a jury and entered a judgment in favor of the appellee. It is from this judgment that this appeal is taken.

The appellant's dispositive assignment of error contends the trial court can be sustained only by a finding that the policy of insurance in question had been cancelled prior to the date of loss. Appellant asserts that the policy had not been so cancelled.

The facts are not in dispute and reveal the following:

A policy of insurance covering loss by fire was issued by the appellee on the house of John D. Stewart and Susie S. Stewart. Appellant held a mortgage on the house. Coverage was afforded the mortgagee under the terms of the policy. The house was destroyed by fire on November 30, 1971. A notice of cancellation from appellee-insurance company to appellant-mortgagee was mailed on November 17, 1971, and received by the appellant on November 19, 1971. The notice read as follows:

"DATE OF NOTICE: 11/17/71

"We hereby cancel the Mortgagee Agreement which is made part of the above policy and also the above mentioned policy issued to the insured named above on 6/5/71 covering on dwelling at Rt 1, Box 156, Perdido, Ala. 36562 and made payable to you as mortgagee (or trustee) in the event of loss.

"You will, therefore, please take notice that at the expiration of ten days from the receipt of this notice, the said agreement and the said policy, unless surrender thereof to us be sooner made, will terminate and cease to be in force.

11/30/71"

The policy of insurance in pertinent part provides as follows:

"If loss hereunder is made payable, in whole or in part, to a designated mortgagee not named herein as the insured, such interest in this policy may be cancelled by giving to such mortgagee a ten days' written notice of cancellation."

Two mortgagee endorsements are shown on the policy and include the following language:

"This Company reserves the right to cancel this policy at any time as provided by its terms, but, in such case this policy shall continue in force for the benefit only of the mortgagee (or Trustee) for ten days after notice to the mortgagee (or Trustee) of such cancellation, and shall then cease and this Company shall have the right, on like notice, to cancel this agreement."

Appellant contends the notice of cancellation by its terms is ambiguous and must be construed contra proferentem. Counsel for appellant makes this contention because of the parenthetical notation on the notice of cancellation reading, "11-30-71." He reasons that this notation gives coverage to appellant on the date of loss, to wit, 11-30-71. We cannot agree.

While it is true that in an action on an insurance policy when the insurer sets up cancellation as a defense, the insurer has the burden of proving the policy was cancelled, United States Fidelity & Guaranty Co. v. Williams, 43 Ala. App. 205, 186 So. 2d 738, it is equally true that in the absence of a restrictive statutory provision, the parties to an insurance contract may specify the method by which it may be cancelled and the parties are thereby bound. 45 C. J. S., Insurance, § 442. Put another way, an insurance policy may be cancelled according to its terms. Hanover Fire Insurance Co. v. Wood, 209 Ala. 380, 96 So. 250; McCord v. Travelers Ins. Co., 244 Ala. 164, 12 So. 2d 413.

In the instant case, the parties contracted as to the method of cancellation and this method, as we view it, was followed. The inclusion of the notation, "11-30-71", does not create any ambiguity, but simply states the date on which there would be no further coverage. In this instance, the date conforms

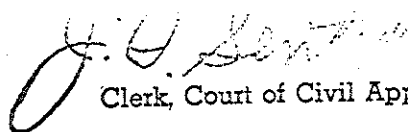
to the provision of the policy requiring ten days notice. The notice of cancellation is positive and unequivocal as is required. See Reserve Life Ins. Co. v. Peavy, 97 S. E. 2d 542; Great National Life Ins. Co. v. Harrell, 157 S. W. 2d 427. The notice was received by appellant on November 19. Applying the ten day grace period, the last day of coverage would be November 29. November 30 would be the first day no coverage existed. As stated in the notice, the policy "will terminate and cease to be in force" which we take to mean 11-30-71. While ambiguities must be construed most favorably to the insured and against the insurer, no strained construction should be indulged to raise doubt. Furthermore, words employed in an insurance policy or notice of cancellation are to be construed in their natural and usual import. Tiarks v. First National Bank of Mobile, 279 Ala. 100, 182 So. 2d 366; Canal Ins. Co. v. Stidham, 281 Ala. 493, 205 So. 2d 516.

All assignments of error having been considered, the judgment is affirmed.

AFFIRMED.

Wright, P. J., and Bradley, J., concur.

I, J. O. Sentell, Clerk of the Court of Civil Appeals 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 as recorded in said Court, *th*
Witness my hand this 17 day of Oct. 19 73


Clerk, Court of Civil Appeals of Alabama

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE COURT OF CIVIL APPEALS OF ALABAMA

October Term, 19 73-74

Div. No. Civ. 225

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
Mid-State Homes, Inc., a Corporation, Appellant,
and
Cherokee Insurance Company, a Corporation, Appellee,
wherein by said Court it was considered adversely to said appellant, were brought before the
Court of Civil Appeals, by appeal taken, pursuant to law, on behalf of said appellant:

NOW, IT IS HEREBY CERTIFIED, That upon consideration thereof the Court of Civil Appeals,
on the 17th day of October, 19 73, affirmed said cause, in all respects, and
ordered that appellant Mid-State Homes, Inc.

and Fidelity and Deposit Company of Maryland

sureties for the costs of appeal, pay the costs of appeal in this Court and in the Court below

It is further certified that, it 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 Court of Civil
Appeals of Alabama, at the Judicial Building,
this the 17th day of October 19 73
Clerk of the Court of Civil Appeals of Alabama.

THE COURT OF CIVIL APPEALS
OF ALABAMA

October Term, 19 73-74

Div., No. Civ. 225

Mid-State Homes, Inc.,

a Corporation

Appellant,

vs.

Cherokee Insurance Company,

a Corporation

Appellee.

From Baldwin Circuit *Court.*

No. 10,556
**CERTIFICATE OF
AFFIRMANCE**

The State of Alabama,

Baldwin County.

} *Filed*

this 19 day of Oct 1973

Ernie B. Blackman
Clerk

Bay Minette, Ala.,

May 17 1951

To the Sheriff of Mobile County, Alabama

I enclose herewith

a citation in appeal
for service on Lyons, Piers +
Cook by Augustine Meaher, III
2510 11th St. Bldg. - Mobile

Please serve and return as early as possible.

#10,536

Saylor Wilkins
Sheriff, Baldwin County, Alabama

(If not found in your county, please advise promptly giving information as to present location if possible)

REC'D. SHERIFF DEPT
MOBILE COUNTY, ALA.

MAY 18 8 50 AM '73

BY _____