

T. J. HILLEY,	)	IN THE CIRCUIT COURT OF
Plaintiff,	)	BALDWIN COUNTY, ALABAMA
VS.	)	AT LAW.
IRWIN K. CLISBY, INDIVIDUALLY,	)	NO. <u>2363</u>
and doing business as CLISBY	)	
AND COMPANY, and CLISBY	)	
ASSOCIATES, INC., A	)	
CORPORATION,	)	
Defendants.	)	

Come Irwin K. Clisby and Clisby Associates, Inc., a corporation, named defendants in the above styled cause, and appearing specially and only for the purpose of filing this plea in abatement to this said action, and to each count thereof, separately and severally, and for no other or further purpose, and say that the said T. J. Hiley, plaintiff, ought not to have and maintain this said action, and, separately and severally, say that said plaintiff ought not to have and maintain the action set forth in Count One of the complaint, and, separately and severally, say that said plaintiff ought not to have and maintain the action set forth in Count Two of the complaint, for that said defendants say as follows, to-wit:

That the defendant, Irwin K. Clisby is, and at all times mentioned in this action, and at the time of the service of the complaint and summons in this case, was a bona fide resident citizen of the County of Jefferson, State of Alabama, and was not prior to or at the time alleged in the complaint, or at the commencement of this suit, and is not now, and was not at any time between said dates, a resident of Baldwin County, Alabama; that said defendant was not at any of the times beforementioned doing business as Clisby and Company, a proprietorship, in any county of the State of Alabama.

That the defendant Clisby Associates, Inc., is a corporation in Jefferson County, Alabama, incorporated/under the laws of the State of Alabama with its office and principal place of business in the City of Birmingham, Jefferson County, Alabama, and said corporate defendant was not prior to or at the time alleged in the complaint, or at the commencement of this

suit, and is not now, and was not at any time between said dates, doing business by agent in Baldwin County, Alabama, and has never done business by agent in Baldwin County, Alabama. That the plaintiff has performed no work or labor for the named defendants, or either of them, in Baldwin County, Alabama.

WHEREFORE, defendants, separately and severally, say that the plaintiff's cause of action, if any, and each count thereof, should be brought in Jefferson County, Alabama, and the Circuit Court of Baldwin County, Alabama, is without jurisdiction to try and determine this cause, and that this said action, and the summons issued with respect thereto, should be abated, and defendants, separately, pray the judgment of this Honorable Court as to whether the plaintiff should be allowed to further maintain this suit.

Irwin K. Clisby
Irwin K. Clisby.

CLISBY ASSOCIATES, INC., a corporation

By Irwin K. Clisby
Its President.

Counsel for Defendants:

Smith Hand Arendall & Bedsole
SMITH, HAND, ARENDALL & BEDSOLE
622 First National Bank Bldg.
Mobile, Alabama

Robert C. Garrison
ROBERT C. GARRISON, ESQ.
Frank Nelson Building
Birmingham, Alabama

STATE OF ALABAMA)
COUNTY OF MOBILE)

Personally appeared before me, the undersigned authority in and for said County in said State, Irwin K. Clisby, known to me, who

upon first being duly sworn by me on oath deposes and says:

I am the President of Clisby Associates, Inc., which is one of the defendants in the foregoing cause, and I personally am the other defendant therein. Said Clisby Associates, Inc., is an Alabama corporation, and I was and am duly authorized to execute the plea hereinabove set forth in its name and on its behalf. I have personal knowledge of the facts set forth in such foregoing plea and the statements of fact therein contained are true.

Irwin K. Clisby
Irwin K. Clisby.

Subscribed and sworn to before me

this 20th day of September, 1954.

FILED

9-21-54

ALICE J. DUCK, Clerk

Barbara W. Rushorn

Notary Public. Mobile County, Ala.

T. J. HILEY,

Plaintiff,

vs.

IRWIN K. CLISBY, Individually,
and doing business as CLISBY
AND COMPANY, and CLISBY AS-
SOCIATES, INC., A Corporation,

Defendants.

X

X

IN THE CIRCUIT COURT OF

X

BALDWIN COUNTY, ALABAMA

X

AT LAW NO. 2363

X

X

X

MOTION TO STRIKE

Come now the Defendants in the above styled cause and appearing specially for the purpose of filing this Motion and for no other different object or purpose and move to strike all of the answer to the Plea In Abatement heretofore filed in this cause by the Defendants except that part which reads as follows: "That a part of the work and labor done was performed in Baldwin County, Alabama", and assign the following separate and several grounds in support of their Motion:

1. That said answer does not constitute a defense to the Plea In Abatement filed by the Defendants.

2. That the allegations of said answer are immaterial in that they do not constitute a defense to the Plea In Abatement heretofore filed by the Defendants.

3. It is not a defense to said Plea In Abatement that the contract sued on was entered into in Baldwin County, Alabama.

4. It is not a defense that the Plaintiff's headquarters at all times during the continuation of the contract were in Baldwin County, Alabama.

5. It is not a defense to said Plea In Abatement that none of the work and labor was performed in Jefferson County, Alabama.

6. It is not a defense to said Plea In Abatement that the Defendant, Irwin K. Clisby, made several trips to Baldwin County, Alabama, for the purpose of inducing the Plaintiff to enter into the said contract complained of.

FILED

Dec. 8, 1954

ALICE J. DUCK, Clerk

Respectfully submitted,

SMITH, HAND, ARNDALL & BEDSOLE

and

CHASON & STONE

By:


Attorneys for Defendants.

BOOK 003 PAGE 420

RECORDED

J. T. HILEY,

Plaintiff,

vs.

IRWIN K. CLISBY, Individually and
doing business as CLISBY AND COM-
PANY, and CLISBY ASSOCIATES, INC.,
A Corporation,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW NO. 2363

MOTION TO STRIKE

FILED

DEC 8 1954

ALICE J. DUCK, ~~Register~~
clerk

LAW OFFICES

CHASON & STONE

BAY MINETTE, ALABAMA

T. J. HILLEY,
Plaintiff,

VS.

IRWIN K. CLISBY, INDIVIDUALLY,
and doing business as CLISBY
AND COMPANY, and CLISBY
ASSOCIATES, INC., A
CORPORATION,

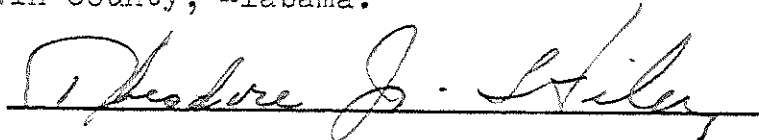
Defendants.

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

NO. 2363

Comes T. J. HILLEY, plaintiff in the above styled cause, and for answer to the plea and abatement heretofore filed in said cause by the said defendants, says: that the contract sued on in this cause was entered into in Baldwin County, Alabama, by and between the plaintiff, T. J. HILLEY and the defendants, IRWIN K. CLISBY, INDIVIDUALLY, and doing business as CLISBY AND COMPANY, and IRWIN K. CLISBY as agent for CLISBY ASSOCIATES, Inc., a corporation; that the said IRWIN K. CLISBY made several trips to Baldwin County for the purpose of inducing plaintiff to enter into the said contract complained of in the complaint heretofore filed in this cause; that the defendant, IRWIN K. CLISBY, had full authority to enter into this contract on behalf of CLISBY ASSOCIATES, INC., a corporation; that the plaintiff's headquarters at all times during the continuation of the contract complained of was in Baldwin County, Alabama; that none of the work and labor was performed in Jefferson County, Alabama; and that a part of the work and labor done was performed in Baldwin County, Alabama.

WHEREFORE, plaintiff says that the defendant's plea and abatement should be denied and overruled and plaintiff should be permitted to maintain his suit in Baldwin County, Alabama.



STATE OF ALABAMA, 0
County of BALDWIN. 0

Personally appeared before me, T. J. MASHBURN, JR., a Notary Public in and for County and State, T. J. HILLEY, who is known to me, and whose name is signed to the foregoing answer, and who being by me first duly sworn, deposes and says: I am the plaintiff in the

above styled cause, I have personal knowledge of the facts set forth in the foregoing answer to the defendant's plea and abatement, and I know that the facts alleged therein are true and correct.

Rhodore J. Hile

Sworn to and subscribed before me

FILED

on this the 13th day of
November, 1954.

Nov. 15, 1954
ALICE J. DUCK, Clerk

J. J. Madlener Jr.
Notary Public, Baldwin County, Alabama

STATE OF ALABAMA, 0
COUNTY OF BALDWIN. 0 TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon IRWIN K. CLISBY, Individually, and doing business as CLISBY AND COMPANY and CLISBY ASSOCIATES, INC., A CORPORATION, to appear within thirty days from the service of this writ in the Circuit Court of Baldwin County, Alabama, at the place of holding the same, then and there to answer the complaint of T. J. HILLEY.

Witness my hand this the 21st day of Aug, 1954.

Deice J. Hensley
C L E R K.

T. J. HILLEY,

Plaintiff,

VS.

IRWIN K. CLISBY, INDIVIDUALLY,
and doing business as CLISBY
AND COMPANY, and CLISBY
ASSOCIATES, INC., A
CORPORATION,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW.

NO. _____

C O M P L A I N T.

C O U N T O N E.

The plaintiff claims of the defendants FIVE THOUSAND FIVE HUNDRED (\$5,500.00) DOLLARS for work and labor done by T. J. HILLEY for the defendants between, to-wit: November 1, 1953, and August 7, 1954, at their request, which sum of money, with the interest thereon, is still due and unpaid.

C O U N T T W O.

The plaintiff claims of the defendants the further sum of TEN THOUSAND (\$10,000.00) DOLLARS, as damages, for that, heretofore, on, to-wit: the 1st day of November, 1953, the plaintiff was engaged in the business of Manufacturer's Representative, and, as such, he had several profitable accounts, among which were J. A. ZURN MANUFACTURING COMPANY and AMERICAN FLEXIBLE COUPLING COMPANY of Erie, Pennsylvania; that these said accounts were paying the plaintiff a profit of approximately TWO HUNDRED (\$200.00) DOLLARS per month;

That on the aforesaid November 1, 1953, at Fairhope, Baldwin County, Alabama, the defendant, IRWIN K. CLISBY, INDIVIDUALLY, and

doing business as CLISBY AND COMPANY, and as an agent, servant or employee of CLISBY ASSOCIATES, INC., A CORPORATION, while acting within the line and scope of his employment as such, represented and held out to the plaintiff that the defendants were engaged in a competitive business with the plaintiff; that the defendants were solvent and had ample financial resources; that it would be to the financial advantage of the plaintiff, as well as the defendants, to turn over this accounts to the defendants and become a representative of the defendants; that, if the plaintiff would turn over his accounts and become associated with them as their representative, the defendants would furnish the plaintiff with ample financial backing so that he could properly work the territory allotted to him; that the defendants would allot to the plaintiff the following territory exclusively: All of Georgia, Alabama, Mississippi and Louisiana South of U. S. Highway Number 80 and all of the State of Florida; that the defendants would allow him 8¢ per mile for the use of his automobile, pay all of his travel expenses, allow him FOUR HUNDRED (\$400.00) DOLLARS per month advancements against his future earnings, and pay him a commission of 25% on all the sales within the territory allotted him as aforesaid; and that the defendants would enter into a written contract with the plaintiff on the basis of the terms hereinabove set forth;

That, relying on said representations as aforesaid, the plaintiff did, on, to-wit: the 1st day of November, 1953, transfer to the defendants all of his said accounts; and that the plaintiff went to work for the defendants on the aforesaid 1st day of November, 1953, and continued in their employ until, on, to-wit: August 7, 1954;

That the said representations were false and then known to be, or ought to have been known by the defendants to be, false; that the defendants were not in a sound financial condition and did not have ample financial resources; that the defendants have failed, or refused, to reimburse the plaintiff for the use of his automobile; that the defendants have failed, or refused, to reimburse the plaintiff for his travel expenses; that the defendants have failed, or refused, to pay to the plaintiff the \$400.00 per month advancements as they agreed; that the defendants have collected, and are continuing to collect, the income from the accounts of the J. A. ZURN MANUFACTURING COMPANY and

doing business as CLISBY AND COMPANY, and as an agent, servant or employee of CLISBY ASSOCIATES, INC., A CORPORATION, while acting within the line and scope of his employment as such, represented and held out to the plaintiff that the defendants were engaged in a competitive business with the plaintiff; that the defendants were solvent and had ample financial resources; that it would be to the financial advantage of the plaintiff, as well as the defendants, to turn over this accounts to the defendants and become a representative of the defendants; that, if the plaintiff would turn over his accounts and become associated with them as their representative, the defendants would furnish the plaintiff with ample financial backing so that he could properly work the territory allotted to him; that the defendants would allot to the plaintiff the following territory exclusively: All of Georgia, Alabama, Mississippi and Louisiana South of U. S. Highway Number 80 and all of the State of Florida; that the defendants would allow him 8¢ per mile for the use of his automobile, pay all of his travel expenses, allow him FOUR HUNDRED (\$400.00) DOLLARS per month advancements against his future earnings, and pay him a commission of 25% on all the sales within the territory allotted him as aforesaid; and that the defendants would enter into a written contract with the plaintiff on the basis of the terms hereinabove set forth;

That, relying on said representations as aforesaid, the plaintiff did, on, to-wit: the 1st day of November, 1953, transfer to the defendants all of his said accounts; and that the plaintiff went to work for the defendants on the aforesaid 1st day of November, 1953, and continued in their employ until, on, to-wit: August 7, 1954;

That the said representations were false and then known to be, or ought to have been known by the defendants to be, false; that the defendants were not in a sound financial condition and did not have ample financial resources; that the defendants have failed, or refused, to reimburse the plaintiff for the use of his automobile; that the defendants have failed, or refused, to reimburse the plaintiff for his travel expenses; that the defendants have failed, or refused, to pay to the plaintiff the \$400.00 per month advancements as they agreed; that the defendants have collected, and are continuing to collect, the income from the accounts of the J. A. ZURN MANUFACTURING COMPANY and

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AMERICAN FLEXIBLE COUPLING COMPANY; that the defendants have failed, or refused, to enter into a written contract with the plaintiff embodying the terms hereinabove set forth; that from, to-wit: the 1st day of November, 1953, until, to-wit: the 7th day of August, 1954, the defendants have paid to the plaintiff less than FOUR HUNDRED (\$400.00) DOLLARS for the use of his automobile, travel expenses and advancements;

That, because of the failure of the defendants to furnish the plaintiff with ample financial backing, as agreed, he has had to use up all of his private resources, including borrowing all of loan value of three of his life insurance policies; that, because of the failure of the defendants to furnish the plaintiff with ample financial backing, as agreed, he has not been able to work the territory allotted to him as he should have, and, consequently, the sales have fallen off; all to the damage of the plaintiff as aforesaid; hence this suit.

Jelfair A. Mashburn, Jr.
Attorney for Plaintiff.

Plaintiff respectfully requests that this cause be tried by a jury.

FILED
Aug. 21, 1954
ALICE J. DUCK, Clerk

Jelfair A. Mashburn, Jr.
Attorney for Plaintiff.

Received 21 day of Aug 1954
and 19 day of 19
I served a copy of the within
on _____

By service on _____
TAYLOR WILKINS, Sheriff
By _____ D.S.

*I hereby accept service
for Irvin K. Clisby
aka Clisby & Co. and
Clisby Associates, Inc.
Mary J. Gullaham
Secretary*

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

NO. 2363

T. J. HILLEY,
Plaintiff,
VS.

IRVIN K. CLISBY, INDIVIDUALLY,
and doing business as CLISBY
AND COMPANY, and CLISBY
ASSOCIATES, INC., A
CORPORATION, Defendants.

SUMMONS AND COMPLAINT.

FILED
AUG 21 1954
MADE J. GUCK, Clerk

TELFAIR J. MASHBURN, JR.
ATTORNEY-AT-LAW
BAY MINETTE, ALABAMA
*Pls. can be served at
1308 First Avenue, North,
Birmingham, Alabama*

EXECUTED this the

day of _____ 1954
by leaving a copy of the within, with

HOLT A. McDOWELL, Sheriff
Jefferson County, Alabama

By _____ D.S.

Executed this the 24 day of Aug 1954
on Irvin K. Clisby & Co. and
Clisby Associates, Inc.

by leaving a copy of within with
Mary J. Gullaham
Secretary
of said company.

HOLT A. McDOWELL, Sheriff
Jefferson County, Alabama

By M. J. Gullaham D.S.

Executed this the 24 day of Aug 1954
on Clisby Associates, Inc.
a corp.

by leaving a copy of within with
Mary J. Gullaham

of said company.

HOLT A. McDOWELL, Sheriff
Jefferson County, Alabama

By M. J. Gullaham D.S.

SMITH, HAND, ARENDALL & BEDSOLE
LAWYERS

HARRY H. SMITH
COUNSELOR
CHAS. C. HAND
C. B. ARENDALL, JR.
T. MASSEY BEDSOLE
THOMAS G. GREAVES, JR.
WM. BREVARD HAND
VIVIAN G. JOHNSTON, JR.
J. JEPHTHA HILL
PAUL W. BROCK

SUITE 622 FIRST NATIONAL BANK BUILDING
MOBILE, ALABAMA

MAILING ADDRESS

P. O. BOX 123
MOBILE, ALA.

CABLE ADDRESS:
HAB

September 20, 1954

Mrs. Alice J. Duck, Clerk
Circuit Court of Baldwin County
Bay Minette, Alabama

Re: T. J. Hilley
Vs. Irwin K. Clisby et al

Dear Mrs. Duck:

We enclose herewith original and copy of plea
in abatement which we desire to file in this case.

It would be appreciated if you would acknowledge
the receipt and filing of this plea in the space pro-
vided below on the copy of this letter, and return the
same in the enclosed envelope for our file.

Thank you.

Yours very truly,

SMITH, HAND, ARENDALL & BEDSOLE

By *2. m. Buler*

TMB/dd
Encl.