

2391
J. M. PONDER,
Plaintiff

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

-VS-

C. M. NORTHCUTT,
Defendant.

COMPLAINT

The Plaintiff claims of the Defendant the sum of Four Hundred Fifty-nine and 97/100 (\$459.97) due by promissory note made by him on to-wit, the 24th day of November, 1953, and payable on to-wit, the 24th day of January, 1954, which note is assigned by endorsement to Plaintiff, and which Plaintiff claims together with the interest thereon since the 24th day of January, 1954, and the Plaintiff avers that in the said note and as a part of the consideration thereof, the Defendant has expressly waived his rights to claim personal property as exempt to him under the Constitution and laws of the State of Alabama and agreed to pay an attorneys fee for the collection thereof and the Plaintiff hereby claims the further sum of Seventy-five (\$75.00) Dollars as such attorneys fee.

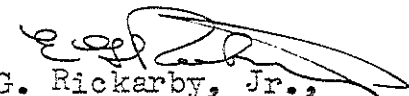
FILED

9-20-54

ALICE J. DUCK, Clerk

RICKARBY & RICKARBY

By:


E. G. Rickarby, Jr.,
Attorney for Plaintiff.

J. M. PONDER,

Plaintiff

-vs-

C. M. NORTHCUTT,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

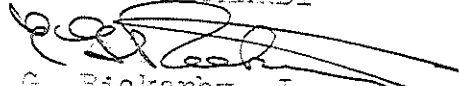
No. 2391

AMENDMENT

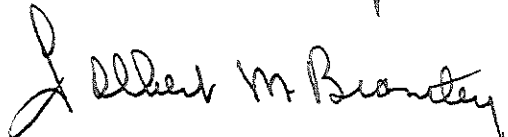
Comes the Plaintiff in the above styled cause and with leave of Court amends his complaint by having Count One to read as follows:

The Plaintiff claims of the Defendant the sum of Four Hundred Fifty-nine and 97/100 Dollars (\$459.97 due by promissory note made by him on to-wit, the 24th day of November, 1953, and payable to the Bank of Fairhope on to-wit, the 24th day of January, 1954, which note is assigned by endorsement by the Bank of Fairhope to the Plaintiff and which ^{sum}/the Plaintiff claims together with interest thereon since the 24th day of January, 1954, and the Plaintiff avers that in said note and as a part of the consideration thereof, the Defendant has expressly waived his right to claim personal property as exempt to him under the Constitution and laws of the State of Alabama and agreed to pay an attorney's fee for the collection thereof and the Plaintiff hereby claims the further sum of Seventy-five Dollars (\$75.00) as such attorney's fee and avers that the said note is now the property of the Plaintiff.

RICKARBY & RICKARBY

By: 

E. G. Rickarby, Jr.,
Attorney for Plaintiff.

I, Albert M. Brantley, one of the Attorneys for the Defendant in this cause, hereby accept service of this Amended Complaint, this 22 day of Nov 1954.


J. M. PONDER

PLAINTIFF

VS

C. M. NORTHCUTT

DEFENDANT

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

Comes now the Defendant, C. M. Northcutt, and files this motion to vacate and set aside a judgment rendered against him on to-wit, 28th day of October, 1954, in a cause therein pending entitled, J. M. Ponder, Plaintiff vs C. M. Northcutt, Defendant, and as grounds for this motion shows:

1.

That the summons in the cause is insufficient.

2.

That the summons is not dated.

3.

The Clerk failed to sign the summons in the complaint.

4.

The summons is not sufficient as a matter of law to sustain the judgment.

C. M. Northcutt
Defendant

STATE OF ALABAMA

BALDWIN COUNTY

Before me, the undersigned Notary Public, in and for said State and County this day personally appeared C. M. Northcutt, who is known to me and who being by me duly sworn, deposes and says that he has read and knows the allegations made in the foregoing motion to vacate and set aside judgment rendered against him on to-wit, 28th day of October, 1954, in a cause pending in the Circuit Court of Baldwin County, Alabama, wherein J. M. Ponder was the Plaintiff and this affiant was the Defendant, and that the facts therein stated are true.

C. M. Northcutt
Defendant

Sworn to and subscribed before me this 15 day of Nov., 1954.

Ray J. Wilkins
Notary Public, Baldwin County, Alabama

J. M. PONDER

PLAINTIFF

VS

C. M. NORTHCUTT

DEFENDANT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,

AT LAW

NO. 2391

~~Comes now the Defendant and demurs to the Plaintiff's complaint and~~
for grounds thereof says:

1.

That said complaint does not state a cause of action.

2.

That said complaint does not show that the indebtedness is due.

3.

That said complaint does not show that the indebtedness is due and payable.

4.

That said complaint does not show that a demand has been made on the
Defendant to pay the said note.

5.

That said complaint does not show that the Plaintiff is a holder in
due course.

6.

That said complaint does not state sufficient allegations to put the
Defendant on notice as to matters he should defend.

7.

That said complaint does not state sufficient allegations to enable
the Defendant to prepare an adequate defense.

Wilters & Brantley

By: Walter J. Wilters

Attorneys for the Defendant

Plaintiff demands a trial by jury.

*Walter J. Wilters
atty for Defendant*

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

PLAINTIFF

DEFENDANT

J. M. PONDER

-vs-

C. M. NORRIS

PLAINTIFF'S DEMURRERS TO DEFENDANT'S PLEA

Comes the Plaintiff in the above styled cause and offers the following separate and several demurrers to Defendant's pleas, and especially to Plea 4, and for Grounds for said demurrers, says:

1.

That said plea does not show the date when said sale was made or the date on which warranty was made.

2.

That said plea does not show that the Plaintiff warranted the

3.

That said plea does not show wherein said pump was not mechanically sound.

4.

That said plea does not show that the inconvenience, worry and expense were necessary.

5.

That said plea does not show the extent of any of the elements of damages, but vaguely lumps them together.

6.

That said plea claims damages that are not justified by the facts alleged.

7.

That said plea is vague, indefinite, and uncertain in its allegations as to warranty, breach, and damages.

RICKARBY AND RICKARBY

BY

E. G. Rickarby, Jr.
Attorney for the Plaintiff

J. M. PONDER

PLAINTIFF

VS

OW M. NORTHCUTT

DEFENDANT

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

Comes now the Defendant in the above styled cause and amends his plea to the Complainant's complaint by adding the following Plea:

4.

The Defendant says that the note upon which this suit is brought has wholly failed as to the consideration paid for the same in this; the consideration for the note was the purchase of a pump, and in the sale of said pump by the payee, the pump was warranted to be mechanically sound and in operating condition. The Defendant says that the said pump was not mechanically sound and was not in operating condition and as a proximate consequence of said breach of warranty the Defendant was put to much trouble, inconvenience, worry, and expense in repairing and replacing parts for the said pump, all to the damage of the Defendant in the sum of THREE HUNDRED FIFTY (\$350.00) DOLLARS, the defendant hereby offers to off set this against the claims of the Plaintiff.

Wilters & Brantley

BY:

John M Brantley
Attorneys for the Defendant

J. M. PONDER
PLAINTIFF
VS
C. M. NORTHCUTT
DEFENDANT

PLAINTIFF

VS

C. M. NORTHCUTT

DEFENDANT

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

PLEAS

10

The Defendant does not owe the Plaintiff the amount sued for.

2.

There was a failure of consideration for the note sued on.

3.

The instrument on which this suit is based is non-negotiable; hence the Plaintiff is not a holder in due course.

Wilters & Brantley

BY: Henry J. Winter
Attorneys for the Defendant

FILED

FEB 15 1955

ALICE I. BUCK, Clerk

LAW OFFICES

RICKARBY & RICKARBY

ELLIOTT G. RICKARBY
(DECEASED)

FAIRHOPE, ALABAMA

E. G. RICKARBY, JR.

17 September 1954

Mrs. Alice J. Duck
Clerk Circuit Court
Bay Minette, Ala.

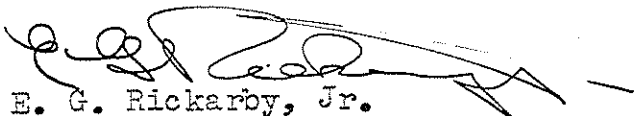
Dear Mrs. Duck:

Re: J. M. Ponder
Vs: C. M. Northcutt

Please process this summons and complaint, and hand
my letter to Mr. Wilkins together with summons to
Mr. Wilkins, so that we can get service.

Thanks.

Yours very truly,



E. G. Rickarby, Jr.

R/i
cc: Mr. J. M. Ponder
2009
30 Sept