

PAUL KAISER, JR.,

Plaintiff

vs

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

ANGELIC P. BERTOLLA, ALEX  
S. BERTOLLA, R. F. BERTOLLA  
and J. P. BERTOLLA, individ-  
ually and doing business as  
A. BERTOLLA & SONS,

Defendants

NO. 2417

Come the defendants in the above styled cause and  
answering plaintiff's complaint and each count thereof separately  
and severally say:

1. The matters alleged in the said complaint and each  
count thereof are untrue.

2. That the defendants have paid the debt for the re-  
covery of which this suit was brought before the action was  
commenced.

3. And further answering the plaintiff's complaint the  
defendants say that the plaintiff ought not to further prosecute  
this suit because the plaintiff sold and delivered to the de-  
fendants 12,140 one hundred pound bags of potatoes during the  
period commencing May 4, 1954 and June 12, 1954, and falsely and  
fraudulently represented to the defendants that the said potatoes  
were of commercial grade and the said representation was false and  
fraudulent in that the same were not commercial grade potatoes but  
were potatoes of a kind and condition known to the trade as un-  
classified potatoes and were of less or of no value, and the  
plaintiff's action is to recover on a basis of said potatoes  
being of a grade represented by him.

4. And further answering plaintiff's complaint and each  
count thereof the defendants say that the plaintiff ought not to  
further prosecute this suit because on to-wit the 7 day of  
August, 1955, the defendants paid to the plaintiff the sum

of \$20,676.25 in full settlement, satisfaction and accord of the demands sued on and the same was received and accepted by the plaintiff in full satisfaction of the claim sued on.

5. Defendants further say as a defense to the action of the plaintiff that at the time the said suit was commenced the plaintiff was indebted to the defendants in the sum of \$21,846.00 liquidated damages, in this, that on to-wit: Between the period commencing on the 31st day of May, 1954 and the 12th day of June, 1954, the plaintiff sold and delivered to the defendants 12,140 one hundred pound bags of potatoes and at the time of the sale represented to these defendants that the said potatoes were of commercial grade and the defendants believing such representation and relying thereon purchased the same at and for the price of commercial grade potatoes; that the said representation that the potatoes were of commercial grade was false and fraudulent in this, that, the said potatoes were not of commercial grade but were of a kind and condition known to the trade as unclassified and of less value than as represented in the amount of \$21,846.00, all to the damage of the defendants as aforesaid, and the defendants offer to set off the same as against the demand of the plaintiff and claim judgment for the excess.

FILED

Mar. 10, 1955

ALICE J. DUCK, Clerk

BIEBE & SWERINGEN

BY

*W. C. Beebe*  
Attorney for defendants

PAUL KAISER, JR.,	I	
Plaintiff,	I	
vs.	I	IN THE CIRCUIT COURT OF
ANGELO F. BERTOLLA, ALEX	I	BALDWIN COUNTY, ALABAMA
S. BERTOLLA, R. F. BERTOLLA	I	AT LAW
and J. F. BERTOLLA, Individ-		NO. 2417
ually and doing business as	I	
A. BERTOLLA & SONS,	I	
Defendants.	I	

DEMURRER

Comes now the Plaintiff in the above styled cause and demurs to Pleas numbered "3", "4" and "5" heretofore filed by the Defendants, and to each of said Pleas separately and severally, and assigns the following separate and several grounds in support thereof:

1. That said Pleas are immaterial.
2. That Plea "3" is immaterial.
3. That Plea "4" is immaterial.
4. That Plea "5" is immaterial.
5. That said Pleas do not constitute a defense to the complaint as last amended.
6. That Plea "3" does not constitute a defense to the complaint as last amended.
7. That Plea "4" does not constitute a defense to the complaint as last amended.
8. That Plea "5" does not constitute a defense to the complaint as last amended.
9. That the allegations of said Pleas are conclusions of the Pleader.
10. That the allegations of said Pleas are vague, indefinite and uncertain.
11. For aught that appears from the allegations of Plea "3" the Defendants did not rely upon the alleged representations of the Plaintiff.

12. For aught that appears from the allegations of Plea "3" the Defendants purchased potatoes graded as unclassified from the Plaintiff.

13. For aught that appears from the allegations of Plea "3" the Defendants agreed to purchase potatoes from the Plaintiff which were graded as unclassified.

14. That the allegation of Plea "3", "and the Plaintiff's action is to recover on a basis of said potatoes being of a grade represented by him", is but a conclusion of the Pleader.

15. That the allegation of Plea "3" that the Plaintiff "falsely and fraudulently represented to the Defendants that the said potatoes were of commercial grade", is but a conclusion of the Pleader and no facts are alleged that show wherein said alleged representation was fraudulent.

16. For aught that appears from the allegations of Plea "3" the Twelve Thousand One Hundred Forty (12,140) 100-pound bags of potatoes alleged therein are not the potatoes, the price of which is alleged in the complaint as last amended.

17. For aught that appears from the allegations of Plea "4" there was no agreement between the Plaintiff and Defendants that the sum allegedly accepted by the Plaintiff was accepted as full payment of a greater amount then due.

18. It affirmatively appears from the allegations of Plea "4" that there was no consideration for the alleged accord and satisfaction of the claim sued upon.

19. For aught that appears from the allegations of Plea "4" there was no consideration for the alleged acceptance by the Plaintiff in full satisfaction of the claim sued upon.

20. For aught that appears from the allegations of Plea "4" there was no dispute existing between the Plaintiff and the Defendants at the time of the alleged payment.

21. For aught that appears from the allegations of Plea "4" there was no controversy existing between the Plaintiff and the Defendants at the time of the alleged payment to the Plaintiff.

22. Plea "4" fails to allege that the said payment by the Defendants to the Plaintiff was in extinction of an obligation then existing of the Defendants to pay to the Plaintiff a greater sum than said alleged payment.

23. The allegations of Plea "4" are vague, indefinite and uncertain in that it does not appear from said Plea that the alleged payment was intended to embrace the particular claim of the Plaintiff in his complaint as last amended or that said payment was to control said claim.

24. The allegations of Plea "5" are vague, indefinite and uncertain in that it does not appear therefrom that the Plaintiff had agreed to sell commercial grade potatoes to the Defendants.

— 25. For aught that appears from the allegations of Plea "5" the Defendants have not paid to the Plaintiff the amount due for the potatoes alleged to have been sold to them by the Plaintiff.

26. It does not appear from the allegations of Plea "5" that the Defendants have paid to the Plaintiff the purchase price of the potatoes alleged therein to have been sold to the Defendants by the Plaintiff.

27. That Plea "5" does not state a cause of action against the Plaintiff.

28. For aught that appears from the allegations of Plea "5" there was no contract between the Plaintiff and the Defendants whereby the Plaintiff agreed to sell to the Defendants commercial grade potatoes.

29. That the allegation of Plea "5" that "the said representation that the potatoes were of commercial grade was false and fraudulent" is a conclusion of the Pleader in that the Defendants do not allege in said Plea that they had agreed to purchase commercial grade potatoes from the Plaintiff.

FILED

Mar. 10, 1955  
ALICE J. DUCK, Clerk

Respectfully submitted,

CHASON & STONE

By: Mahone S. Stone  
Attorneys for Plaintiff.

003  
PAG 193

PAUL KAISER, JR.,

Plaintiff,

vs.

ANGELO F. BERTOLLA, ALEX S. BERTOL-  
LA, R. F. BERTOLLA and J. F.  
BERTOLLA, Individually and doing  
business as A. BERTOLLA & SONS,

Defendants.

\*\*\*\*\*

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW                      NO. 2417

\*\*\*\*\*

DEEMED  
FILED

MAR 10 1955

ALICE L. RUCK, CLERK

LAW OFFICES

CHASON & STONE

BAY MINETTE, ALABAMA

Plea 4: And further answering plaintiff's complaint and each count thereof the defendants say that the plaintiff ought not to further prosecute this suit because the demands sued for grew out of the sale by the plaintiff to the defendants of 12,140 bags of potatoes during the period commencing May 4, 1954 and <sup>and ending</sup> June 12, 1954, and under the terms and agreement by the plaintiff and defendants the price therefor was the prevailing price of potatoes of the kind and condition the same were at the time and place of sale by the plaintiff to the defendant, and that <sup>bona fide</sup> a dispute arose and existed between the plaintiff and defendant, on the 7th day of August, 1954, the plaintiff contending that the potatoes should be paid at a price of commercial potatoes and the defendants contending that the said potatoes were not commercial potatoes, but were unclassified, and on said date the defendants paid to the plaintiff the sum of \$20,676.25 in full settlement, satisfaction and accord of the demands sued for, and the same was received and accepted by the plaintiff in full settlement, satisfaction and accord of the demands sued for.

Plea 5: Defendants further say as a defense to the action of the plaintiff that at the time the said suit was commenced the plaintiff was indebted to the defendants in the sum of \$21,846.00 liquidated damages, in this, that on to-wit: Between the period commencing on the 31st day of May, 1954 and <sup>ending</sup> the 12th day of June, 1954, the plaintiff sold and delivered to the defendants 12,140 one hundred pound bags of potatoes, that as an inducement to the defendants to purchase the said potatoes and at the time of the sale the plaintiff ~~represented to these defendants that the said~~ potatoes were of commercial grade and the defendants believing such representation and relying thereon purchased the same at and for the price of commercial grade potatoes; that the said representation that the potatoes were of commercial grade was false and fraudulent in this, that, the said potatoes were not of commercial grade but were of a kind and condition known to the trade as unclassified

PAUL KAISER, JR.,

Plaintiff

vs

ANGELO F. BERTOLLA, ALEX  
S. BERTOLLA, R. F. BERTOLLA  
and J. F. BERTOLLA, individ-  
ually and doing business as  
A. BERTOLLA & SONS

Defendants

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW

NO. 2417

Come the defendants in the above styled cause and amend  
pleas 1, 2, 3, 4 and 5 to read as follows:

Plea 1: The matters alleged in said complaint and each  
count thereof are untrue.

Plea 2: That the defendants have paid the debt for  
the recovery of which this suit was brought before the action  
was commenced.

Plea 3: And further answering the plaintiff's complaint  
the defendants say that the plaintiff ought not to further prosecute  
this suit, in this, that, this suit is for 12,140 bags of potatoes  
purchased by the defendants from the plaintiff during the period  
commencing May 4, 1954 and ending June 12, 1954, and that as an  
inducement to the defendants to buy the said potatoes the plaintiff  
represented that the said potatoes were commercial grade potatoes  
and the defendants relying upon the said representation purchased  
the same; that the said representation was false in that the said  
potatoes were not commercial grade potatoes, but were of a kind  
and condition known to the trade as unclassified, and that the  
said potatoes at the prevailing price, at the time and place of  
sale thereof by the plaintiff to the defendants, was \$20,676.25;  
and the defendants have paid to the plaintiff for the said potatoes  
in full, and this action by the plaintiff against the defendants is  
to recover the difference between the value of the said potatoes  
as their kind and condition actually were, and the value of the  
potatoes which would properly classify as commercial potatoes.



and of less value than as represented in the amount of \$21,846.00, all to the damage of the defendants as aforesaid, and the defendants offer to set off the same as against the demand of the plaintiff and claim judgment for the excess.

And further answering plaintiff's complaint and each count thereof separately and severally say:

A. That the plaintiff ought not to further prosecute this suit, in this, that, this suit is for 12,140 bags of potatoes purchased by the defendants from the plaintiff during the period commencing May 4, 1954 and ending June 12, 1954, and that as an inducement to the defendants to buy the said potatoes the plaintiff, acting through and by his servants, agents or employees being thereunto duly authorized, represented that the said potatoes were *believing such representations and* commercial grade potatoes and the defendants relying upon the said representation purchased the same; that the said representation was false in that the said potatoes were not commercial grade potatoes, but were of a kind and condition known to the trade as unclassified, and that the said potatoes at the prevailing price, at the time and place of sale thereof by the plaintiff to the defendants, was \$20,676.25; and the defendants have paid to the plaintiff for the said potatoes in full, and this action by the plaintiff against the defendants is to recover the difference between the value of the said potatoes as their kind and condition actually were, and the value of the potatoes which would properly classify as commercial potatoes.

B. Defendants further say as a defense to the action of the plaintiff that at the time the said suit was commenced the plaintiff was indebted to the defendants in the sum of \$21,846.00 liquidated damages, in this, that on to-wit: Between the period commencing on the 31st day of May, 1954 and the 12th day of June, 1954, the plaintiff sold and delivered to the defendants 12,140 one hundred pound bags of potatoes, that as an inducement to the defendants to purchase the said potatoes and at the time of the sale the plaintiff, acting through and by his servants, agents and employees, being thereunto duly authorized, represented to these