

LAW OFFICE OF  
FOREST A. CHRISTIAN  
FOLEY, ALABAMA

October 18, 1954

2419

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

Re: Nathan Rosenberg  
vs: Mike Kaiser & Sons, a partnership  
composed of John Kaiser, Mike  
Kaiser & Mike Kaiser, Jr.

Dear Mrs. Duck:

Enclosed is a suit as above captioned. Kindly advise when the  
defendants have been served.

Thanks,

Yours very truly,

*Forest A. Christian*

FOREST A. CHRISTIAN

*Chas. C. C.*  
*enclosed,*

INTERROGATORIES TO ADVERSE PARTY

NATHAN ROSENBERG,

PLAINTIFF

VS:

MIKE KAISER & SONS, a partnership  
composed of JOHN KAISER, MIKE  
KAISER AND MIKE KAISER, JR.

DEFENDANTS

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

INTERROGATORIES FILED BY THE PLAINTIFF TO THE DEFENDANTS:

Now comes the plaintiff and files the following interrogatories to the defendants, Mike Kaiser and John Kaiser.

1. Did Mike Kaiser and John Kaiser, the defendants, execute a promissory note to Nathan Rosenberg of Chicago, Illinois, the plaintiff, on May 25, 1954, in the amount of \$5,000, due and payable 90 days after date, with interest at 6% per annum, from date, on a form note used by the Farmers & Merchants Bank of Foley, Alabama?
2. Did this note provide for a waiver of exemptions and reasonable attorney's fee?
3. Has any part of said note been paid? If so, state the amount of payment, when and how said payment was made.
4. Is the information stated under interrogatory one, above, substantially correct? If not, state the items that vary.
5. Do Mike Kaiser and John Kaiser owe Nathan Rosenberg the sum of \$5,000 due by promissory note?
6. Is said note dated on or about May 25, 1954?
7. Does said promissory note provide for interest at 6% per annum, from date?
8. Is said note past due?
9. Have any payments of principal or interest been made on said note?
10. Does said note provide for a waiver of exemptions and reasonable attorney's fee?
11. Did the plaintiff cause to be paid to Mike Kaiser & Sons, \$5,000 by check dated May 21, 1954, drawn on the Farmers & Merchants Bank of Foley, Alabama, signed by James Styron of Foley, Alabama?
12. Are Mike Kaiser and John Kaiser two of the three partners doing business as Mike Kaiser & Sons?
13. Was there full consideration for said promissory note?
14. Do defendants or any of them owe the plaintiff any obligations payable in money? If so, how much, and for what?

  
Attorney for Plaintiff

AFFIDAVIT

THE STATE OF ALABAMA, )  
BALDWIN COUNTY. )

Before me, Chas. J. Ebert, a Notary Public in and for said County and State, personally appeared Forest A. Christian, known to me, who being first duly sworn, deposes and says that he is of counsel for the plaintiff in the above styled cause; that the answers to the foregoing interrogatories truthfully made will be material evidence for the plaintiff in the trial of said cause.

  
Forest A. Christian

Sworn to and subscribed before me, a Notary  
Public in and for Baldwin County, Alabama,  
this the 26th day of January, 1955.

  
Notary Public

NATHAN ROSENBERG,

Plaintiff,

VS

MIKE KAISER & SONS, a  
partnership composed of  
John Kaiser, Mike Kaiser  
and Mike Kaiser, Jr.,

Defendants.

\* IN THE CIRCUIT COURT OF  
\* BALDWIN COUNTY, ALABAMA.  
\* AT LAW.  
\* NO. 2419  
\*  
\*  
\*

Now come the defendants in the above styled cause and file the following additional and supplemental plea and answer to the complaint heretofore filed in said cause by the plaintiff.

PLEA FOUR

The defendants, as a defense to the action of the plaintiff, saith that, at the time said action was commenced, the plaintiff was indebted to them in the sum of \$15,000.00 which said sum defendants claim from the plaintiff to be due from him by account on, to-wit, the 30th day of June, 1954, which sum of money, with the interest thereon, is still due and unpaid, and which said sum of money the defendants hereby offer to set off against the demand of the plaintiff and defendants claim judgment for the excess.

PLEA FIVE

Defendants, as a defense to action of the plaintiff, saith that, at the time said action was commenced, the plaintiff was indebted to them in the sum of \$15,000.00 for merchandise, goods and chattels sold by the defendants to the plaintiff during the period of time from, to-wit, the 4th day of June, 1954, and through to-wit, the 30th day of June, 1954, which sum of money with interest thereon, is still due and unpaid, and which said sum of money the defendants hereby offer to set off against the demand of the plaintiff, and they claim judgment for the excess.

PLEA SIX

The defendants, as a defense to the action of the plaintiff, saith, that at the time said action was commenced, the plaintiff was indebted to them in the sum of \$15,000.00 on account stated between the defendant and the plaintiff on, to-wit, the 30th day of

June, 1954, which sum of money, with interest thereon, is still due and unpaid, and which said sum defendants hereby offer to set off against the demand of the plaintiff and they claim judgment for the excess.

#### PLEA SEVEN

The defendants, as a defense to the action to the plaintiff, saith that, at the time said action was commenced, the plaintiff was indebted to the defendants in the sum of \$15,000.00 which said sum the defendants claim of the plaintiff as damages for the conversion by the plaintiff, on, to-wit, the 30th day of June, 1954, of the following chattels; 5031 cartons of consumer package corn, 235 five dozen crates of corn, 1317 bags of corn, 32550 pounds of water-melons, the property of the plaintiff, which said amount defendants hereby offer to set off against the demand of the plaintiff and the defendants claim judgment for the excess.

#### PLEA EIGHT

The defendants, as a defense of the action of the plaintiff, saith that, at the time said action was commenced, the plaintiff was indebted to them in the sum of \$15,000.00 for money, to-wit, the 30th day of June, 1954, received by the plaintiff to the use of the defendant, which sum of money, with interest thereon, is still due and unpaid, and which said sum defendants hereby offer to set off against the demand of the plaintiff and they claim judgment for the excess.

#### PLEA NINE

Defendants claim of the plaintiff the sum of \$15,000.00 as damages for that theretofore during to-wit, the month of May, 1954, the plaintiff represented to the defendants that he was a partner in the firm of P. W. Copersmith and Company, commission merchants of Chicago, and plaintiff further represented to the defendants that his said firm could handle all of defendants' produce, and corn to be shipped by the defendants to his said firm in Chicago, and that they would get a price of \$2.50 per carton for all corn shipped by the defendants to the plaintiff and the

plaintiff further represented to the defendants that he could get a reasonable price on all watermelons shipped by the defendants to the plaintiff, for which said services defendants agreed to pay the plaintiff a 10% commission on said sale of their merchandise, and the defendants aver that in reliance on said representations they shipped to Copersmith and Rosenberg between the dates of June 4, 1954, and June 30, 1954, 5031 cartons of consumer package corn, 235 five dozen crates of corn, 1317 bags of corn, and one load of watermelons net weight 32550 pounds, and defendants aver that they have received of the plaintiff no compensation or money for said goods and that they did rely on the representation of the plaintiff to their detriment and damage as aforesaid.

#### PLEA TEN

Defendants claim of the plaintiff the sum of \$15,000.00 for breach of contract entered into by the plaintiff and the defendants during to-wit, the month of May, 1954, in substance as follows: The defendants agreed to ship to the plaintiff in Chicago all of their corn, and to ship such other produce, as defendants were then preparing to process for the defendants a minimum price of \$2.50 per carton of corn to be packaged three 7 inch ears per tray and 12 trays per carton, and plaintiff further agreed to get this price on all of the corn shipped to him by the defendants and agreed with the defendants that he would definitely handle all the corn shipped by them, and the plaintiff further agreed to get a reasonable price on such other produce as the defendants might ship to him in Chicago; and defendants agreed to pay the plaintiff a commission of 10% on all of their corn and produce handled by the plaintiff under the terms of said contract, and the defendants aver that they have complied with all of the provisions of the said contract on their part in that during and between the date of June 4, 1954, and June 30, 1954, they shipped to the plaintiff 5031 cartons of consumer package corn, 235 five dozen crates of corn, 1317 bags of corn, and one load of watermelons net weight 32550 pounds, but the plaintiff has failed to comply with the following provisions of

said contract on his part, viz: the plaintiff has failed to pay the defendants the agreed rate for the corn or a reasonable value for the watermelons, all to the defendants damages as aforesaid.

PLEA ELEVEN

Defendants claim of the plaintiff the sum of \$15,000.00 as damages for that heretofore during to-wit, the month of May, 1954, the defendants employed plaintiff as a commission broker to handle sales of defendants corn and produce in Chicago, and during to-wit the period of time from June 4, 1954, through June 30, 1954, the defendants shipped to the plaintiff their corn and watermelons of value of \$15,000.00, and the plaintiff so negligently handled the sales of said corn and watermelons, and so negligently failed to advise the defendants that plaintiff could not dispose of said merchandise, that as a direct and proximate result of said negligence of the plaintiff, as aforesaid part of the defendants' corn sold for greatly less than its market value and did not in fact bring a reasonable price, and part of the defendants' corn was entirely lost to the defendants and the defendants' watermelons were sold for greatly less than their market value, all to the defendants damages, hence this counter-claim.

  
ATTORNEYS FOR DEFENDANTS

NATHAN ROSENBERG, : IN THE CIRCUIT COURT OF  
Plaintiff. : BALDWIN COUNTY, ALABAMA.  
-vs- : AT LAW  
MIKE KAISER AND SONS, a : NO. 2419  
partnership composed of :  
JOHN KAISER, MIKE KAISER :  
AND MIKE KAISER, JR., :  
Defendants. :

Comes now the defendants herein, jointly and severally,  
and for answer to the complaint heretofore filed herein and to  
each count thereof set out the following, separately and severally:

1. That they are not guilty of the matters alleged there-  
in.
2. That the allegations thereof are untrue.
3. In short by consent, the general issue, with leave  
to give in evidence any matter that might be specially pleaded  
and to have effect as if so pleaded.

  
ATTORNEYS FOR DEFENDANTS



APPEARANCE  
State of Alabama---~~Mobile~~ Baldwin County  
BALDWIN

2419

CIRCUIT COURT — CIVIL DIVISION

NATHAN ROSENBERG,

Plaintiff.

vs.

MIKE KAISER & SONS, a partner-  
ship composed of John Kaiser,  
Mike Kaiser and Mike Kaiser,  
Jr.,

Defendants.

CASE NO. 2419

Bay Minette,

~~MOBILE~~, Ala., November 12 1954

Howell and Johnston

appear for

Mike Kaiser and Sons, a partnership  
composed of John Kaiser, Mike Kaiser  
and Mike Kaiser, Jr. and for Defendants  
the individuals named, defendants herein

in the above entitled cause and reserve the right to demur or plead specially.

Defendants demand a trial by jury of this cause.

Filed 11-13, 1954

Howell & Johnston

Attorneys for Defendants.

Deirdre - Clerk  
Clerk

NATHAN ROSENBERG,

Plaintiff.

-vs-

MIKE KAISER & SONS, a partner-  
ship composed of JOHN KAISER,  
MIKE KAISER and MIKE KAISER, JR.,  
Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
AT LAW. NO. 2419

Personally appeared before me, the undersigned authority,  
JOHN KAISER, who after having been duly sworn deposes and says:

That he is one of the defendants herein and that he makes  
this affidavit for and on behalf of himself and the other such  
defendants. That he and the said other defendants dispute and  
deny the correctness of the itemized, verified statement of  
account attached to the original complaint filed herein. That  
he and said defendants dispute and deny the whole account and  
each and every item or items thereof and deny any liability  
whatsoever to the plaintiff.

Dated this 9th. day of March, 1955.

  
JOHN KAISER

Subscribed and sworn to before me on this  
the 9th. day of March, 1955.

  
NOTARY PUBLIC, STATE OF ALABAMA AT LARGE

AMENDED  
AFFIDAVIT OF NATHAN ROSENBERG

THE STATE OF ILLINOIS, )  
COOK COUNTY. )

Before me, Joseph Rosenstem, a Notary Public in and for Cook County, Illinois, personally appeared NATHAN ROSENBERG, who being first duly sworn by me, does depose and say That he is the plaintiff in the case of NATHAN ROSENBERG VS: MIKE KAISER & SONS, a partnership composed of JOHN KAISER, MIKE KAISER AND MIKE KAISER, JR., which suit is brought on a promissory note; that said note has been lost or destroyed by accident: That on or about October 4, 1954, NATHAN ROSENBERG lost a wallet with all of his identification papers which included a note described below, and that at this time the note is still lost.

That said note has not been paid or otherwise discharged;

That said note was executed by Mike Kaiser and John Kaiser on May 25, 1954, and payable ninety (90) days from said date, with interest at six per cent (6%) per annum, from date until paid. Said note had printed on its face, among other things, that the makers waived all right of exemption under the Constitution and laws of Alabama, or any other state, and that they agreed to pay all costs of collecting or securing this note, including a reasonable attorney's fee.

Affiant further states that he authorized James Styron of Foley, Alabama, to pay to MIKE KAISER and JOHN KAISER, doing business as MIKE KAISER AND SONS of Foley, Alabama, the sum of FIVE THOUSAND DOLLARS (\$5,000), and on May 21, 1954, the said JAMES STYRON paid to the said MIKE KAISER & SONS the sum of FIVE THOUSAND DOLLARS (\$5,000). That, the same day the affiant sent the FIVE THOUSAND DOLLARS (\$5,000) to JAMES STYRON in payment of such check.

Affiant further states that on May 25, 1954, MIKE KAISER and JOHN KAISER sent this Affiant the note for FIVE THOUSAND DOLLARS (\$5,000) mentioned above.

That there is attached hereto as Exhibit "A" a copy of said note.

Nathan Rosenberg  
Affiant

Sworn to and subscribed before me, this  
the 31<sup>st</sup> day of January, 1955.

Joseph Rosenstem  
Notary Public

Affix Seal:

My commission expires:

4/22/58

SUMMONS

THE STATE OF ALABAMA, )  
BALDWIN COUNTY. )

TO ANY SHERIFF OF THE STATE OF ALABAMA, GREETING:

You are hereby commanded to summon MIKE KAISER & SONS, a partnership composed of JOHN KAISER, MIKE KAISER and MIKE KAISER, JR., to appear and plead, answer or demur, within thirty days from the service hereof, to the complaint filed in the Circuit Court of Baldwin County, Alabama, at Bay Minette, against MIKE KAISER & SONS, a partnership composed of JOHN KAISER, MIKE KAISER, AND MIKE KAISER, JR., by NATHAN ROSENBERG.

Witness my hand this the 19 day of October, 1954.

Reese J. Huch  
Clerk

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COMPLAINT

NATHAN ROSENBERG,

PLAINTIFF

VS:

MIKE KAISER & SONS, a partnership  
composed of JOHN KAISER, MIKE  
KAISER AND MIKE KAISER, JR.

DEFENDANTS

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

COUNT I:

The plaintiff claims of the defendants ~~the sum of~~ FIVE THOUSAND & 00/100 DOLLARS (\$5,000), due by promissory note made by them on the 25th day of May, 1954, and payable ninety (90) days from date, with interest thereon at the rate of six per cent (6%) per annum, from date until paid.

Said note waives all right of exemption under the Constitution and laws of the State of Alabama, or any other state, as to personal property, and said note also provides for a reasonable attorney's fee, which plaintiff alleges to be \$800.00.

Said note has been lost by accident and there is attached as Exhibit "A", an affidavit by the plaintiff of such loss and destruction and the contents thereof and that the same has not been paid or otherwise discharged.

COUNT II:

The plaintiff claims of the defendants ~~the sum of~~ FIVE THOUSAND & 00/100 DOLLARS (\$5,000), due from them for money loaned by the plaintiff to the defendants on, to wit: the 25th day of May, 1954, which sum of money, with interest thereon, is still unpaid.

There is attached and made a part hereof an affidavit of the plaintiff showing the amount due by defendants after allowing all just credits.

Forney L. Miller  
Attorney for Plaintiff

The defendants live near  
Elberta, Alabama

STATE OF ILLINOIS     )  
                              )  
COUNTY OF COOK        )     SS

A F F I D A V I T

NATHAN ROSENBERG being first duly sworn, deposes and says that he is the same person with whom MIKE KAISER and JOHN KAISER executed a note for Five Thousand (\$5000.00) Dollars, dated May 25, 1954 and made payable in ninety (90) days from said date with interest at six (6) per cent per annum from date until paid. It also had printed on the face of said note, among others, that the payee is entitled to attorney's fees for collection of said item.

Affiant further states that he authorized JAMES STYRON of Foley, Alabama to pay to MIKE KAISER and JOHN KAISER, doing business as MIKE KAISER AND SONS of Foley, Alabama, the sum of Five Thousand (\$5,000.00) Dollars and that on May 21, 1954 the said JAMES STYRON paid to the said KAISER AND SONS the sum of Five Thousand (\$5,000.00) Dollars. That, the same day the Affiant sent the Five Thousand (\$5,000.00) Dollars to JAMES STYRON in payment of such check.

Affiant further states that on May 25, 1954 MIKE KAISER and JOHN KAISER sent this Affiant the note for Five Thousand (\$5,000.00) Dollars mentioned above.

Affiant further states that on or about October 4, 1954 he lost a wallet with all his identification papers and

Received 19 day of Oct 1954  
and on 22 day of Oct 1954  
I served a copy of the within 200  
on Mike Kaiser, Mike Kaiser Jr  
John Kaiser  
By service on John Kaiser  
TAYLOR WILKINS, Sheriff  
By Ed Hughes D.S.

RECORDED

No. 2419

SUMMONS AND COMPLAINT

NATHAN ROSENBERG,

PLAINTIFF

VS:

MIKE KAISER & SONS, a partnership  
composed of JOHN KAISER, MIKE KAISER,  
AND MIKE KAISER, JR.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

FILED  
10-19-54  
JUL 2 1954

LAW OFFICE OF  
FOREST A. CHRISTIAN  
FOLEY, ALABAMA