| | | |
|---|---|---|
| ALTON E. SCHERMER, individually, and doing business as the Schermer Pecan Company<br><br>Plaintiff,<br><br>vs-<br><br>MAX K. LAWRENZ, SR., individually, and d/b/a Southport Seafoods Company and MAX K. LAWRENZ, JR., individually, and d/b/a Southport Seafoods Company and SOUTHPORT SEAFOODS COMPANY, a Corporation<br><br>Defendants | ) | IN THE CIRCUIT COURT<br>OF BALDWIN COUNTY,<br>ALABAMA<br>AT LAW |

Now comes Max K. Lawrenz, Sr., one of the Defendants in the above styled cause, and in answer to the interrogatories heretofore propounded by the Plaintiff, says as follows:

1. (a) I refuse to answer this question as this evidence would not be admissible according to advice of Counsel.

1. (b) I first became interested in a warehouse in Baldwin County, Alabama through owning stock in Southport Seafoods Company, a corporation which was organized on or about July 1, 1946.

1. (c) The warehouse referred to in the answer to interrogatory 1 (b) was located at the Canal near Gulf Shores, Baldwin County, Alabama.

1. (d) I refuse to answer this interrogatory on advice of Counsel as the answer would not be admissible.

1. (e) I refuse to answer this interrogatory on advice of Counsel as the answer would not be admissible.

1. (f) I refuse to answer this interrogatory on advice of Counsel as the answer would not be admissible.

1. (g) I refuse to answer this interrogatory on advice of Counsel as the answer would not be admissible.

1. (h) I refuse to answer this interrogatory on advice of Counsel as the answer would not be admissible.

2. (a) No.

2. (b) I do not know.

2. (c) I did not deliver any storage list.

2. (d) I do not know during what period this question refers to, nor to whose pecans or pecan product, therefore refuse

C. G. C.

to answer on advice of Counsel.

3. (a) I do not know what articles, nor whose articles are referred to in this question, therefore refuse to answer on advice of Counsel.

3. (b) I do not know what item, or whose items, are referred to in this question, therefore refuse to answer on advice of Counsel.

Max K. Lawrenz, Sr.

STATE OF ALABAMA

BALDWIN COUNTY

Personally appeared before me, Grances G. Mallory, a Notary Public in and for said County in said State, Max K. Lawrenz, Sr., who, being by me first fuly and legally sworn, deposes and says that the foregoing answers to interrogatories are true and correct.

Max K. Lawrenz, Sr.

Sworn to and subscribed before me on this the 14th day of February, 1956.

Notary Public, Baldwin County
State of Alabama

C. G. C.

ANSWERS TO INTERROGATORIES

**********

ALTON E. SCHERMER, individually, and doing business as the Schermer Pecan Company,

Plaintiff,

vs-

MAX K. LAWRENZ, SR., individually, and d/b/a Southport Seafoods Co. and MAX K. LAWRENZ, JR., individually, and d/b/a Southport Seafoods Company and SOUTHPORT SEAFOODS COMPANY, a Corporation

**********

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW - 2500

**********

Filed
2-21-5-L
Ann French
Clerk

CECIL G. CHASON
ATTORNEY AT LAW
FOLEY, ALABAMA

CIVIL SUBPOENA — ORIGINAL — In case witness shall wish to charge for attendance, he shall produce to the Clerk in term this Subpoena, or within five days after adjournment of Court, else he shall be barred.

**THE STATE OF ALABAMA**

**BALDWIN COUNTY**

**CIRCUIT COURT**

Case No. 2500 Jan. TERM, 1956

TO ANY SHERIFF OF THE STATE OF ALABAMA—GREETINGS:

You Are Hereby Commanded to Summon May K. Laurenzo, Jr. - Foley

Colond Duke, Foley

if to be found in your County, at the instance of the Pltf.

to be and appear before the Honorable, the Judge of the Circuit Court of Baldwin County, at the Court House thereof, by 2:30 o'clock of the forenoon, on the 10 day of Feb., 1956, and from day to day and term to term of said Court until discharged by law, then and there to testify, and the truth to say, in a certain cause pending, wherein Schurmer, Plaintiff and Laurenzo, Defendant.

Herein Fail Not, and have you then and there this Writ.

Given under my hand and seal, this 11 day of Jan., 1956

Alice J. Lucky Clerk.

D.C.

LAW OFFICES
HOLBERG, TULLY AND ALDRIDGE
SUITE 631-636 - FIRST NATIONAL BANK BLDG.
P. O. BOX 47
MOBILE 1, ALABAMA

RALPH G. HOLBERG, JR.
ALBERT J. TULLY
HENRI M. ALDRIDGE

JOHN W. MOBLEY

Nov.
3rd,
1955

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

Re: Schermer et al vs Lawrenz et al; No. 2500

Dear Miss Alice:

I telephoned your office today but found that you were out and so I delivered my message to the young lady there.

In short, I am getting ready to examine the defendant in the above-entitled matter according to the provisions of a new Act of the legislature approved on September 8, 1955. The Act in question is General Act No. 375 and is substantially identical to a similar provision in the Federal Rules of Civil Procedure.

You will notice that the original notice is sent directly to the Attorney on the other side rather than by filing it in the Office of the Clerk and requiring a service. However, in order that your records and information may be complete I am attaching a copy of my notice for your files. Under the further provisions of the Act in question the witness may be required to attend by the regular issuance of a subpeonae similar to any other Civil Case.

Done 11-4-55 by

I will, therefore, be grateful if you will cause a subpeonae to issue to Max K. Lawrenz, Sr. at Foley, Alabama requiring his attendance there at the Court Room on Friday, December 2nd, 1955, at 2:30 o'clock P.M.

Incidentially, I have also already notified by letter Judge Hall and Mrs. Dusenberry.

With every good wish and warmest regards, I remain,

Very sincerely yours,
HOLBERG, TULLY & ALDRIDGE

By H. M. Aldridge
H. M. ALDRIDGE

HMA/p enc.

CIVIL SUBPOENA — ORIGINAL — In case witness shall wish to charge for attendance, he shall produce to the Clerk in term this Subpoena, or within five days after adjournment of Court, else he shall be barred.

**THE STATE OF ALABAMA**

**BALDWIN COUNTY**

**CIRCUIT COURT**

Case No. 2500 Feb. TERM, 1956

TO ANY SHERIFF OF THE STATE OF ALABAMA—GREETINGS:

You Are Hereby Commanded to Summon Mr. Alton E. Scherner.

if to be found in your County, at the instance of the Deft.

to be and appear before the Honorable, the Judge of the Circuit Court of Baldwin County, at the Court House thereof, by 10:00 o'clock of the forenoon, on the 15 day of February, 1956, and from day to day and term to term of said Court until discharged by law, then and there to testify, and the truth to say, in a certain cause pending, wherein ~~Alton~~ Alton E. Scherner, Plaintiff and Mary K. Lowery, &c., Defendant.

Herein Fail Not, and have you then and there this Writ.

Given under my hand and seal, this 2 day of Feb., 1956.

Alice J. Clerk Clerk.

By

LAW OFFICES
HOLBERG, TULLY AND ALDRIDGE
SUITE 631-636 - FIRST NATIONAL BANK BLDG.
P. O. BOX 47
MOBILE 1, ALABAMA

RALPH G. HOLBERG, JR.
ALBERT J. TULLY
HENRI M. ALDRIDGE

JOHN W. MOBLEY

Jan.
10th,
1956

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

Re: Schermer vs Lawrenz; No. 2500

Dear Miss Alice:

There is herewith enclosed, in duplicate, a motion to require a medical examination of the Defendant in the above-entitled cause. I will be most grateful if you would file this motion in proper order in the case.

There is also enclosed for the records of your office a copy of two notices of the taking of oral depositions of Max K. Lawrenz, Jr. and Colons Duke before Mrs. Louise Dusenberry in the Court House at Bay Minette at 2:30 P.M. on Friday, February 10,1956. The original of this demand, in accordance with the statute, has been forwarded to Mr. Cecil Chason, attorney for the Defendant. Copies have also been forwarded to Mr. Lawrenz, Jr. and to Mr. Duke. I would also appreciate it if you would cause to be issued forthwith a subpoena to Max K. Lawrenz, Jr. and Colons Duke at Foley, Alabama requiring ~~them to be present in the Court House~~ at 2:30 P.M. on February 10th.

There is also enclosed an original and one copy of a motion requesting the Court to take action upon the Defendant's failure to answer Interrogatories. The original of this motion should be filed in the Court and a copy served on either Mr. John Chason or Mr. Cecil Chason as attorney for the several defendants.

If you have any questions, please do not hesitate to communicate with me.

Very truly yours,

HOLBERG, TULLY & ALDRIDGE

By H. M. Aldridge
H. M. ALDRIDGE

HMA/p
enc.

| | | |
|---|---|---|
| ALTON E. SCHERMER, individually and doing business as Schermer Pecan Company,<br><br>Plaintiff,<br><br>vs.<br><br>MAX K. LAWRENZ, SR., individually and doing business as Southport Seafoods Company, and MAX K. LAWRENZ, JR., individually and doing business as Southport Seafoods Company, and SOUTHPORT SEAFOODS COMPANY, a Corporation,<br><br>Defendants. | ) | IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW. |

Come the Defendants in the above styled cause and demur to the Complaint as last amended and to each and every count thereof, separately and severally, and assign the following separate and several grounds, viz:

1. That it is not alleged in Count One that the pecans were the property of the Plaintiff.

2. That the value of the pecans that were stored is not set out.

3. That the variety of the pecans that were stored is not alleged.

4. That the number of pounds of shelled and unshelled pecans is not set out.

5. That Counts Two and Three of said Complaint do not allege how many pounds of pecans were stored by the Plaintiff with the Defendants on November 19, 1953.

6. That said Complaint does not allege how many pounds of shelled and unshelled pecans were stored by the Plaintiff with the Defendants on November 20, 1953.

7. That said Complaint does not sufficiently set out when the other pecans sued for were stored by the Plaintiff with the Defendants.

8. The allegation in Counts One and Two of said Complaint that the Plaintiff stored pecans on "divers other occasions" with the Defendants is vague and indefinite, and does not apprise the Defendants sufficiently as to the claim of the Plaintiff.

9. The allegation in Count One of the Complaint, "all of which the Defendants agreed to keep for the Plaintiff," is vague and indefinite and does not sufficiently set out the terms of the agreement.

10. That said Complaint does not allege the quantity of the pecan products that became molded and rotten and unfit for human consumption.

11. That Count Two of said Complaint does not allege that the Defendants were public warehousemen between November, 1953, and the date that suit was filed.

12. That said Complaint does not allege the length of time that the Defendants agreed to store the pecans for the Plaintiff or that they were removed within the period of time that the Defendants agreed to store them.

13. That said Complaint does not allege how many pounds of pecan products had to be reprocessed.

14. That said Complaint does not state how much the reprocessing of such pecan products reduced their value.

15. That said Complaint does not allege that the Plaintiff did not know that the pecans he sold were damaged.

16. For aught that appears from said Complaint, the Defendants were not liable to the Plaintiff for his cost in selling the pecans.

17. That Count Three of the Complaint does not allege how many pounds of the pecan products became unsalable.

18. That said Complaint affirmatively shows that the Plaintiff is claiming specualted damages.

Neil F. Thurmon

Thurmon & Stone

Attorneys for Defendants.

ALTON E. SCHERMER,etc, ()
Plaintiff
()
vs ()
MAX K. LAWRENZ SR, etc., ()
Defendents

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
NO. 2500

Now comes Plaintiff in the above-emtitled cause and, with leave of the Court first had and obtained, amends his Complaint in the manner and form following, that is to say:

(1) By amending Counts ONE and Two by substituting the words "pecans, shelled and unshelled" in each and every instance where the words "pecan products" appear in each of said Counts, and by striking the existing words "pecan products" where the same appears.

Attorney for Plaintiff

ALTON E. SCHERMER, ind. &
d/b/a SCHERMERS PECAN CO.
Plaintiff.

VS.
MAX K. LAWRENZ SR. ind. d/b/a
SOUTHPORT SEAFOOD CO.
Defendant

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW
no 25-0 d

Now come the Defendants in the above styled cause, appearing specially and only for the purpose of filing this plea and say that the said Plaintiff ought not to have and maintain his action and as grounds show separately and severally the following:

FIRST:

That heretofore the Plaintiff filed the cause of action against the Defendants arising from the same matters and facts complained of in this suit and had service on the Defendants to which a Motion to Quash was filed. Plaintiff thereupon and before ruling on the Motion to Quash had served upon the Defendants another suit depending upon the same facts and being the same cause of action, but which said suit varied from that originally filed, and which bore a different date of filing. Plaintiff thereupon made motion to the court to dismiss the former and preceeding suits, which said dismissal by the court constitutes an adjudication, therefore Plaintiff can not now maintain this action which is based upon the same cause of action against the Defendants.

SECOND

That heretofore Plaintiff instituted an action against the Defendants and procured a return showing service upon said Defendants. Plaintiff thereupon filed another proceeding against the parties and based on the same cause of action which also was served on the Defendants. The Plaintiff thereupon filed this action on the Defendants based upon the same statement of facts and same cause of action, after which said filing of the third successive action Plaintiff orally petitioned the court, which was then in session to dismiss the former proceedings. No plea to the merits of any action has been filed by the Defendants, and no notice of

C. G. C.

intended dismissal or of dismissal was filed on the Defendants as is required by law in case of dismissals, which legally results in the Plaintiff voluntarily taking non-suit on the two former actions, and thereupon the dismissal thereon by the court is equal to a verdict in favor of the Defendant in this cause.

THIRD

That the statutes and laws of the State of Alabama provide that a dismissal of a cause shall be made by motion of a Plaintiff to the Clerk of Court, and notice of which motion given to any Defendant on which there has been service, therefore dismissal by the court of two previously filed summons and complaints without prior notice thereof to the Defendants who had been served, is not a dismissal, but a non-suit in each instance and therefore a verdict in favor of the Defendants and a bar to further action by the Plaintiff.

Wherefore the Defendants say that this cause of action should be abated, and that the actions previously dismissed should constitute a bar to the cause of action made the basis of this suit, and that no further proceeding should be had hereunder.

Attorney for Defendants

Max K. Lawrenz
One of the Defendants

STATE OF ALABAMA

BALDWIN COUNTY

Before me Graee Porter, a Notary Public in and for said County in said State, personally appeared Max K. Lawrenz, one of the Defendants in the above styled cause, who being by me first duly sworn, says on oath that the facts set forth in the foregoing plea are true and eorrect.

Max K. Lawrenz

Sworn to and subscribed before me on this the 3rd day of February, 1955.

Graee Porter
Notary Public, Baldwin County
State of Alabama

C. G. C.

ALTON E. SCHERMER, individually and doing business as Schermer Pecan Company,

Plaintiff,

vs.

MAX K. LAWRENZ, SR., individually and doing business as Southport Seafoods Company, and MAX K. LAWRENZ, JR., individually and doing business as Southport Seafoods Company, and SOUTHPORT SEAFOODS COMPANY, A Corporation,

Defendants.

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

MOTION TO REQUIRE THE PRODUCTION OF BOOKS AND WRITINGS

Come now the Defendants in the above styled cause, by their attorneys, and affidavit having been made by John Chason, one of the Attorneys of Record for the Defendants, and move this Honorable Court to compel, by order, the Plaintiff to produce before the trial of the above styled cause, at a time and place fixed by the Court, for inspection by the Defendants, all of the books, documents or writings in his possession, custody and control, which contain evidence pertinent to the issues herein involved and, in particular, to produce all originals and copies of the accounts, memoranda, including invoices, way bills, inspection reports, orders, sales slips, ledgers, journals, and all other such books and writings relative to any transaction had by the Plaintiff with the Defendants, or any of them, during the years 1953 and 1954, relative to the storing by the Defendants, or any of them, of pecans, shelled and unshelled, which were the property of the Plaintiff, and relative to the grading of such pecans and relative to the reprocessing of such pecans, and the sale thereof, including all records of all transactions which the Plaintiff had with any other person, firm or corporation in connection with the Plaintiff's buying such pecans or selling the same.

And the Defendants further move this Honorable Court to enter an order setting a day for the hearing of this motion and that notice of the filing thereof be given to the Honorable Ernest M. Bailey, Attorney at Law, Fairhope, Alabama, one of the attorneys for

the Plaintiff in said cause, and that notice of the filing thereof, and of the day upon which the same has been set for hearing by this Court.

Respectfully submitted,

CHASON & STONE

By: John Chason
Attorneys for Defendants.

STATE OF ALABAMA
BALDWIN COUNTY

Before me, HARRY M. DOlive, a Notary Public, in and for said County in said State, personally appeared John Chason, who is known to me and who, after being by me first duly and legally sworn, does depose and say under oath as follows:

That his name is John Chason and that he is one of the attorneys for the Defendants in that certain cause now pending in the Circuit Court of Baldwin County, Alabama, at law, wherein Alton E. Schermer, individually and doing business as Schermer Pecan Company, is the Plaintiff and Max K. Lawrenz, Sr., individually and doing business as Southport Seafoods Company, and Max K. Lawrenz, Jr. individually and doing business as Southport Seafoods Company, and Southport Seafoods Company, a Corporation, are the Defendants, and that he is informed and believes and upon such information and belief states that the Plaintiff has in his possession and under his control a statement or statements relative to a transaction or transactions had by and between the Plaintiff and the Defendants, or one of them, during the years 1953 and 1954, relative to the storing by the Plaintiff with the Defendants, or one of them, of certain pecans, shelled and unshelled, and that the Plaintiff has in his possession relative to such transaction or transactions invoices, way bills, inspection reports, orders, sales slips, ledgers, journals and other books, accounts, memoranda and writings relative thereto and that the Plaintiff has in his possession statements showing the amount he paid for such pecans and papers relative to his sale thereof,

which said instruments and writings and books are pertinent to the issues of said cause and are necessary and will be material evidence for the Defendants, or one of them, in said cause.

Sworn to and subscribed
before me this 2nd day
of February, 1956.

Notary Public, Baldwin County, Ala.

| | | |
|---|---|---|
| ALTON E. SCHERMER, individually and doing business as Schermer Pecan Company, | ) | |
| Plaintiff, | ) | |
| vs. | ) | IN THE CIRCUIT COURT OF |
| MAX K. LAWRENZ, SR., individually and doing business as Southport Seafoods Company, and MAX K. LAWRENZ, JR., individually and doing business as Southport Seafoods Company, and SOUTHPORT SEAFOODS COMPANY, a Corporation, | ) | BALDWIN COUNTY, ALABAMA |
| | ) | AT LAW. |
| Defendants. | ) | |

ORDER

This day came the Defendants in the above styled cause, by their attorneys, and affidavit having been made and filed as required by law, and filed a motion under the provisions of Title 7, Section 426, of the 1940 Code of Alabama, to require the Plaintiff to produce certain books, papers, memoranda and documents, and the same having this day been called to the attention of the Court, and the Court being of the opinion that notice should be given to the Honorable Ernest M. Bailey, Attorney at Law, Fairhope, Alabama, one of the Attorneys of Record for the Plaintiff in said cause, of the filing of the motion and of the day set for hearing of the same.

It is, therefore, ORDERED by the Court that the 15th day of February, 1956, at 10:00 o'clock A.M., be and the same hereby is set down as the date for the hearing of said motion heretofore filed by the Defendants in the above styled cause and it is further ORDERED by the Court that the Honorable Ernest M. Bailey, Attorney at Law, Fairhope, Alabama, be given notice of the filing of said motion by service upon him of a copy of the same and that he be given notice of the day set for hearing of said motion by service upon him of a copy of this order.

Done this February 2, 1956.

Hubert M Hall
Circuit Judge.

| | | |
|---|---|---|
| ALTON E. SCHERMER, etc., Plaintiff | ) | IN THE CIRCUIT COURT OF |
| | ) | BALDWIN COUNTY, ALABAMA |
| vs | ) | |
| MAX K. LAWRENZ, SR., etc., Defendants. | ) | AT LAW NO. 2500 |

Now comes Plaintiff in the above-entitled cause and respectfully represents and shows unto your Honor as follows:

1. That on, to-wit, November 4, 1955, and pursuant to the provision of General Act No. 375 of Alabama (approved September 8, 1955), Plaintiff gave notice of demand to take testimony on oral examination of the Defendant, MAX K. LAWRENZ, SR., at 2:30 o'clock P.M. on Friday, December 2, 1955, a copy of which said demand being served by registered mail on CECIL CHASON, ESQ., of counsel to the Defendant, all as more fully appears from the file in this cause.

2. Thereafter, and shortly before the date set for the taking of the testimony aforesaid, Plaintiff was advised by JOHN CHASON, ESQ., also of counsel to Defendant, that the Defendant, MAX K. LAWRENZ, SR. was ill and could not attend at the time set, so that this Plaintiff voluntarily, and as an accomodation to Defendant, voluntarily consented to a continuance of the said examination until January 12, 1956, at the same time and place.

3. That, under date of January 6, 1956 Plaintiff received a letter from CECIL CHASON, ESQ., of counsel to Defendant, enclosing therein a signed copy of a letter addressed to the Court over the signature of one W. C. HOLMES, M. D. in substance stating that the Defendant, MAX K. LAWRENZ, SR. was, by reason of his physical condition, unable to participate "for several months" in any type of "court proceeding". The statement of the physican aforesaid was not verified nor does it describe in any detail or technical precision the type of physical disability under which Defendant, MAX K. LAWRENZ, SR., is purportedly suffering.

*WHEREFORE, Plaintiff respectfully prays that this Honorable Court, in order that the records of the Court may be precise and accurate with respect to the physical condition of the said Defendant, will cause an order to be issued appointing a competent physican of the Court's own selection, to examine the said MAX K. LAWRENZ, SR. and to report to the Court the physical condition of this said Defendant, particularly with respect to whether or not this said Defendant is capable of being amendable to the normal processes and proceedings of the Court and, if not capable of such at present, to advise the Court of a date upon which said Defendant will be so available; Movant further prays that an order be issued, upon the appointment of the physican aforesaid, unto the Defendnat, MAX K. LAWRENZ, SR., appointing and designating a time and place for the said Defendant to be examined by the physican of the Court's appointment.*

*HOLBERG, TULLY & ALDRIDGE*
*Of counsel to Plaintiff*

*By* H. W. Aldridge
*Member Appearing*

| | | |
|---|---|---|
| ALTON E. SCHERMER, etc., Plaintiff | ) | IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA |
| vs | ) | |
| MAX K. LAWRENZ, SR., etc., Defendants. | ) | AT LAW NO. 2500 |

Now comes Plaintiff in the above-entitled cause, and represents and shows unto the Court as follows:

1. That under date of, to-wit, the 7th day of January, 1955, Plaintiff filed in this proceeding certain Interrogatories unto the Defendants, and each of them, separately and severally, supported by the affidavit of E. M. BAILEY, ESQ., one of counsel of record to Plaintiff, that the answers to the Interrogatories aforesaid, if well and truthfully made, would be material evidence for Plaintiff in this said cause.

2. That Defendants, separately and severally, have failed and refused to answer the said Interrogatories and that more than sixty (60) days have elapsed since the service thereof an these Defendants.

WHEREFORE, Plaintiff prays that this Honorable Court will be pleased to enter an order attaching the said Defendants, and each of them, causing them to answer fully in open court, or to tax them, and each of them, with so much cause as may be just, and continue the cause until full answers are made, or direct a non-suit or judgment by default to be entered in said cause, or render such judgment or decree as would be appropriate as if such defaulting Defendants offered no evidence, or to make and enter such other orders and decrees as to the Court may appear meet and proper, all pursuant to and in accordance with the provision of Title 7, Section 483, of the 1940 Code of Alabama.

HOLBERG, TULLY & ALDRIDGE
Of counsel to Plaintiff

By _____
Member Appearing

| | |
|---|---|
| ALTON E. SCHERMER, individually, and doing business as the Schermer Pecan Company,<br><br>Plaintiff,<br><br>VS-<br><br>MAX K. LAWRENZ, SR., individudly, and doing business as the South-port Sea Foods Company, et al<br><br>Defendants. | IN THE CIRCUIT COURT<br>OF BALDWIN COUNTY,<br>ALABAMA<br>AT LAW<br><br>CASE NO. 1500 |

Now comes Plaintiff in the above-entitled cause and demurs to the alleged PLEA IN ABATEMENT heretofore filed by Defendants herein, and to each ground thereof, separately and severally, and as grounds for said demurrer, separately and severally, assigns the following:

1. For that said PLEA sets forth insufficient facts, as a matter of law, to abate this action.

2. For that the facts as set forth in said PLEA, and in each alleged ground thereof, constitutes no grounds for abatement for the instant action as a matter of law.

3. For that it affirmatively appears that the actions of Plaintiff as set forth in said PLEA constitutes nothing more than a dismissal and not a non-suit.

4. For that it affirmatively appears that the alleged actions of Plaintiff constitute nothing more than a discontinuance.

5. It affirmatively appears that the Defendant has taken no non-suits in any of the alleged proceedings complained about.

6. The allegation that the dismissal by the Court constituted an adjudication is a conclusion of law.

7. The mere allegation that the dismissal by the Court of the alleged initial action constitutes an adjudication of the said cause so that Plaintiffs cannot now maintain the

instant action is a mere conclusion of the Pleader.

8. For that in nowhere appears that Plaintiff was in anywise proscribed, as a matter of law, from doing and performing the things described in said PLEA or that such actions worked an abatement or bar of any other actions as described in said PLEAS.

9. It affirmatively appearing that no plea or hearing on the merits of said cause have been had, the Plaintiff was in no wise prohibited, as a matter of law, from dismissing any previously filed actions.

10. The allegation that Plaintiff voluntarily took non-suit on the alleged two former actions is a mere conclusion of the Pleader.

11. For that it affirmatively appears that if this Defendant was not served with notice of the proposed dismissal that the order of dismissal is a void action and Defendant has not been, in anywise, prejudiced thereby.

12. It affirmatively appears that this Plaintiff has taken no non-suits in any instant as described by Defendants.

E. M. BAILEY

HOLBERG, TULLY & AEDRIDGE

By _____
Member appearing.

Attorneys for Plaintiffs

ALTON E. SCHERMER, individually, and doing business as the Schermer Pecan Company

Plaintiff,

VS-

MAX K. LAWRENZ, SR., individually and d/b/a Southport Seafoods Company and MAX K. LAWRENZ, JR., individually, and d/b/a Southport Seafoods Company and SOUTHPORT SEAFOODS COMPANY, a Corporation

Defendants

IN THE CIRCUIT COURT

OF BALDWIN COUNTY,

ALABAMA

AT LAW

Come the Defendants in the above styled cause separately and severally and demurr to the last ammended Bill of Complaint filed therein and to each count thereof, and as grounds of demurrer set up separately and severally the following separate and several counts.

1. That the Complaint is vague and indefinite.

2. Complaint is indefinite in that it does not set out product, material, or merchandise alleged to have been stored.

3. That the recital that the Defendants are "public warehousemen" is vague and indefinite.

4. That the recital "other occasions subsequent thereto" is vague and indefinite.

5. That the recital "agreed to keep and to exercise ordinary care and deligence" is a conclusion of the Plaintiff.

6. That the Bill of Complaint presumes a contract through use of wording such as "agreed" and "keep", and no contract is set out in the Complaint.

7. For ought that appears damage was not a proximate result of any negligence of the Defendants, their servants, agents, or employees.

8. An agreement is referred to in the Complaint which is not set out therein, nor are its terms and conditions.

9. For ought that appears a "reward" only was being paid by the Plaintiff to the Defendants for the storage of the pecan products, which does not presume a contract, nor does it presume that a reasonable and fair price was being paid.

C. G. C.

10. The terms of an alleged bailment are vague, uncertain, and indefinite.

11. That said Bill of Complaint is merely a conclusion of the pleader.

12. That the recital "implied warranted to the Plaintiff that they were properly and adequately equipped for the cold storage of pecan products and the Plaintiff, acting on this warranty of the Defendants, did store pecan products, the said products being unshelled pecans and shelled pecan meats, in the facilities warranted by the Defendants" is vague and indefinite in that it does not set out or specify the terms and conditions of the implied warranty.

13. No warranty as referred to in the Complaint is set out therein.

Attorney for Defendants

C. G. C.

2500

DEMURRER

ALTON E. SCHERMER, individually, and doing business as the Schermer Pecan Company,

Plaintiff,

-vs-

MAX K. LAWRENZ, SR., individually, and d/b/a Southport Seafoods Company, and MAX K. LAWRENZ, JR., individually, and d/b/a/ Southport Seafoods Company, and SOUTHPORT SEAFOODS COMPANY, a Corporation,

Defendants.

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IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

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STATE OF ALABAMA )
BALDWIN COUNTY )

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon MAX K. LAWRENZ, SR., individually, and d/b/a Southport Seafoods Company, and MAX K. LAWRENZ, JR., individually, and d/b/a Southport Seafoods Company, and SOUTHPORT SEAFOODS COMPANY, a Corporation, to appear within thirty days from the service 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 ALTON E. SCHERMER, individually, and d/b/a Schermer Pecan Company.

Witness my hand, this 3rd day of January, 1957

Clerk of Court

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ALTON E. SCHERMER, individually, and d/b/a Schermer Pecan Company.
Plaintiff

vs.

MAX K. LAWRENZ, SR., individually, and d/b/a Southport Seafoods Company, and MAX K. LAWRENZ, JR., individually, and d/b/a Southport Seafoods Company, and SOUTHPORT SEAFOODS COMPANY, a Corporation.
Defendants

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

COUNT ONE

The Plaintiff claims of the Defendants the sum of Fifty Thousand Dollars ($50,000.00) for that the Defendants are now, and were during the month of November, 1953, and in the interim, engaged in the business of public warehousemen, and storing, handling, and caring for stored products for a reward, and on, to-wit, the 19th day of November, 1953, the Plaintiff stored with the Defendants in its warehouse in Gulf Shores, Alabama, 44,172 pounds of pecan products, and, on to-wit, the 20th day of November, 1953, and divers other occasions subsequent thereto, the Plaintiff stored with the Defendants in its said warehouse certain pecan products, all of which the Defendants agreed to keep for the Plaintiff and to exercise ordinary care and diligence in the care of the same; and the Plaintiff paid to the Defendants the charges required and demanded of him for such service.

And Plaintiff avers that through lack of ordinary care and diligence the said pecan products, while at the Defendants' warehouse, became molded and rotten and unfit for human consumption, and decreased in value to his damage as aforesaid.

COUNT TWO

The Plaintiff claims of the Defendants the sum of Fifty Thousand Dollars ($50,000.00) as damages for this: Plaintiff avers that, on to-wit, the 19th day of November, 1953, and , on to-wit, the 20th day of November, 1953, and divers other occasions subsequent thereto, the Plaintiff, as bailor, delivered to the Defendants who are now, and were during the month of November, 1953, engaged in the business of public warehousemen, and storing, handling, and caring for stored products, as bailee, the possession, custody, and control of certain pecan products belonging to the Plaintiff. Plaintiff further avers that he agreed to pay the Defendants a reward in consideration thereof at the time of the delivery of the said pecan products to Defendants as aforesaid and the Defendants agreed to keep the said pecan products for the Plaintiff and to exercise ordinary care and diligence in the care of the same while in Defendants' possession and to safeguard said pecan products against damage, for the period of time covered by said bailment.

Plaintiff further avers that Defendants breached the said agreement in this: That before the expiration of said bailment and while said pecan products were in the possession of the Defendants, the Defendants failed to use ordinary care and diligence in safeguarding said products against damage and through negligence allowed said pecan products to be damaged while in their possession, and that as a proximate consequence of said breach of said agreement, Plaintiff's pecan products became greatly damaged, molded and rotten and unfit for human consumption, all as a consequence of the Defendants' negligence as aforesaid.

Plaintiff further avers that it became necessary to reprocess the said pecan products for a long period of time to again make them salable and fit for human consumption, and that he incurred great expense in reprocessing the said products, wherefore Plaintiff also claims damages for the expense of reprocessing said pecan products and for the reduced salable value of the reprocessed pecan products. Plaintiff further avers that he sold great quantities of the damaged pecan products and that as a proximate consequence of said breach the Plaintiff suffered damage to his good reputation as a seller and shipper of pecan products and that he incurred great expense in connection with such sales, wherefore the Plaintiff claims damages for loss of reputation as a seller and shipper of pecan products, and for the expense in connection with said sales.

COUNT THREE

The Plaintiff claims of the Defendants the sum of Fifty Thousand Dollars ($50,000.00) as damages for that the Defendants heretofore, on to-wit, the 13th day of November, 1953, the Defendants, acting by and through one or more of its agents, servants or employees while acting within the line and scope of their employment as such, impliedly warranted to the Plaintiff that they were properly and adequately equipped for the cold storage of pecan products and the Plaintiff, acting on this warranty of the Defendants, did store pecan products, said products being unshelled pecans and shelled pecan meats in the facilities warranted by the Defendants. And the Plaintiff further avers that the said warranty has been breached by the Defendants in that the said pecan products, while in the possession of the Defendants became molded, damaged, rotten and unfit for human consumption and that as a proximate result of said breach by said Defendants, the property of the Plaintiff became unsalable. Plaintiff further avers that it was necessary for him to reprocess the damaged pecan products for a long period of time in order to make them salable and fit for human consumption and that he incurred great expense in reprocessing said pecan products and that it was necessary for him to sell the pecan products at a lower market value, wherefore the Plaintiff also claims damages for the expense in reprocessing the said pecan products and for the difference in the salable value of the reprocessed pecan products. The Plaintiff further avers that he sold great quantities of the damaged pecan products and as a proximate consequence of said breach by said Defendants the Plaintiff has incurred damage to his good reputation as a seller and shipper of pecan products and that he incurred great expense as a result of the sale of the damaged pecan products, wherefore the Plaintiff claims damages for loss of reputation as a seller and shipper of pecan products, and for the expense in connection with said sales.

Attorney for Plaintiff

AND FOR THIS SUIT THE PLAINTIFF DEMANDS TRIAL BY JURY.

Attorney for Plaintiff

Received 3 day of Jan 1955
and on 4 day of Jan 1955
I served a copy of the within
on Max K. Lawrenz Jr, May K
Lawrenz Sr. May K Lawrenz
Respondent d/b/a Southport Seafoods
Co

TAYLOR WILKINS Sheriff
By Carlisle Chadwick D. S.
Pelleigh Steadham

Received 3 day of Jan 1955
and on 4 day of Jan 1955
I served a copy of the within Bill of Compt.
to Southport Seafoods Co.
by handing on
Max K Lawrenz Jr. an officer
[illegible]

TAYLOR WILKINS Sheriff
By Carlisle Chadwick D. S.

2500

ALTON E, SCHERMER, IND.
and d/b/a Schermer Pecan
Co.

Plaintiff

Vs

MAX K. LAWRENZ , SR.,ind.
and d/b/a Southport Sea-
foods Co., and MAX K. LAW-
RENZ.,JR., ind. and d/b/a
Southport Seafoods Co. and
SOUTHPORT SEAFOODS COMPANY,
a Corporation.

Defendants

BILL OF COMPLAINT

FILED
JAN 3 1955
ALICE J. DUCK, Clerk

ERNEST M. BAILEY
ATTORNEY AT LAW
FAIRHOPE, ALABAMA