

M. L. BROWN and JUANITA
F. BROWN,

PLAINTIFFS

VS

CITY OF FAIRHOPE, a municipal
corporation, and the WATER
WORKS & SEWER BOARD OF THE
CITY OF FAIRHOPE, A corpore-
tion,

DEFENDANTS

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW

NO.

25-26

This cause is submitted for decree upon demurrers of the Water Works & Sewer Board of the City of Fairhope filed February 26, 1955 and additional demurrers filed September 30, 1955, numbered 1 to 12 and A to F, and the same being considered by the Court the Court is of the opinion that the demurrers are well taken and should be sustained;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that the said several demurrers of the Water Works & Sewer Board of the City of Fairhope to plaintiffs' complaint and to each count thereof be and they are hereby sustained.

Done this the 7 day of Feb, 1956.

Hubert M. Hall
Judge

Because of the adverse ruling of the Court in sustaining the Defendant's demurrers to the Plaintiff's Complaint, the Plaintiff takes a non-suit and moves the Court for an order accordingly, whereupon it is ordered and adjudged by the Court that a non-suit be and the same is hereby entered in this cause in accordance with the Plaintiff's motion and that the Defendant go hence without day and have and recover of the Plaintiff all costs herein accrued for which execution may issue.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st Div., No. 771

THE WATER WORKS and SEWER BOARD of the CITY of FAIRHOPE, a Corporation

vs.

M. L. BROWN ET UX

From BALDWIN Circuit Court.

The State of Alabama,
City and County of Montgomery, }

I, J. Render Thomas, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages, numbered from one to NINE inclusive, contain a full, true and correct copy of the opinion of said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, J. Render Thomas, Clerk of the Supreme
Court of Alabama, this the 11th day of

SEPTEMBER, 1958
J. Render Thomas
Clerk of the Supreme Court of Alabama

M. L. BROWN and JUANITA
BROWN,

Plaintiffs.

vs

CITY OF FAIRHOPE, a municipal
corporation, and THE WATER
WORKS AND SEWER BOARD OF THE
CITY OF FAIRHOPE, a corporation,

Defendants

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IN THE CIRCUIT COURT

OF BALDWIN COUNTY,

ALABAMA

AT LAW.

GENERAL REPLICATION

Come the Plaintiffs for general replication to the
defendants' special plea, filed August 26, 1957, join issue
thereon.

FILED

AUG 27 1957

ALICE L. BECK, Register

John M. McLeod & John

Parson & Albino

Attorneys for the Plaintiff.

M. L. BROWN and JUANITA
F. BROWN,

PLAINTIFFS

VS

CITY OF FAIRHOPE, a municipal
corporation, and the WATER
WORKS AND SEWER BOARD OF THE
CITY OF FAIRHOPE, a corpor-
ation,

DEFENDANTS

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW

Comes the Water Works and Sewer Board of the City of Fairhope, a corporation, defendant in the above styled cause and by leave of court first had and obtained refiles its demurrers 1 to 12, filed February 2, 1955, and demurrers A to F, filed September 30, 1956.

And by leave of court first had and obtained further demurs to count one of the plaintiffs' complaint and as grounds therefor says:

G. That the said count does not allege how and in what manner the servants, agents or employees of the defendant were negligent.

H. Said count does not allege that the sewer line which caused or permitted to flood plaintiffs' home was owned by this defendant.

I. Said count does not allege that the negligence of the defendant's servants, agents or employees was in the maintenance and operation of the sewer lines owned and operated by this defendant.

J. Said count seeks damages alleged to have resulted from the negligence of the defendant's servants, agents or employees in the maintenance of a sewer line but does not allege that at the time of such negligence such servants, agents or employees of the defendant were engaged in work for this defendant.

K. That the said count neither alleges that the damages suffered by the plaintiffs was done or suffered through the neglect, carelessness or unskillfulness of some agent, servant or employee of the defendant engaged in work therefor; nor that the same was suffered through the

negligence, carelessness or failure to remedy some defect in the sewer line after the same had been called to the attention of this board or after the same had existed for such unreasonable length of time as to raise a presumption of knowledge of the defect on the part of the council.

L. Said count alleges no duty owing by this defendant to the plaintiffs and a breach thereof by this defendant resulting in the alleged damages to the plaintiffs.

And by leave of court first had and obtained defendant files further and additional demurrers to count two of plaintiffs' complaint and as grounds therefor says:

G. That the said complaint seeks damages of this defendant for negligent maintenance of a sewer line in the City of Fairhope but does not allege facts showing that the sewer line was not properly maintained.

H. Said count does not allege that this board, its officers or employees had knowledge of any defect in the maintenance of the sewer line alleged therein to have overflowed or that a defect therein had continued for such length of time as the officers or employees of this board should have known that the defect existed therein and had failed to remedy the same.

I. Said count claims damages for the negligent operation by the Water Works and Sewer Board of the City of Fairhope of sewer lines in the City of Fairhope but does not allege that this defendant owned such sewer lines.

J. Said count seeks damages for the negligent operation of the sewer line in the City of Fairhope but does not allege how and in what manner the said sewer line was negligently operated.

K. Said count seeks damages for the negligent maintenance by the defendant of a sewer line but does not allege that any defect had been called to the attention of this board or that the same had existed for such unreasonable length of time as to raise a presumption of knowledge of such defect on the part of this board.

L. Said count seeks damages for the negligent maintenance of a sewer line but does not allege that such damage resulted from the negligence, carelessness or failure to remedy some defect in such sewer line after the same had been called to the attention of the board or after the same had existed for such unreasonable length of time as to raise a presumption of knowledge of such defect on the part of this board.

M. That the said count neither alleges that the damages suffered by the plaintiffs was done or suffered through the neglect, carelessness or unskillfulness of some agent, servant or employee of the defendant engaged in work therefor; nor that the same was suffered through the negligence, carelessness or failure to remedy some defect in the sewer line after the same had been called to the attention of this board or after the same had existed for such unreasonable length of time as to raise a presumption of knowledge of the defect on the part of this board.

N. Said count alleges no duty owing by this defendant to the plaintiffs and a breach thereof by this defendant resulting in the alleged damages to the plaintiffs.

Beebe & Swearingen

By

W. C. Lube
Attorney for defendant

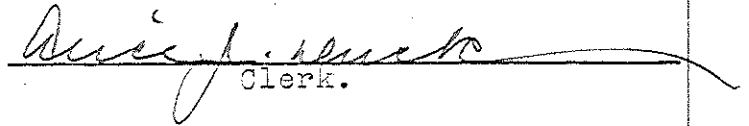
STATE OF ALABAMA)
BALDWIN COUNTY)

IN THE CIRCUIT COURT - LAW SIDE.

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon City of Fairhope, a municipal corporation, and the Water Works & Sewer Board of the City of Fairhope, 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 M. L. Brown and Juanita F. Brown.

Witness my hand this 29th day of January, 1955.


Clerk.

M. L. BROWN and JUANITA
F. BROWN,

Plaintiffs,

vs.

CITY OF FAIRHOPE, a municipal
corporation, and the WATER
WORKS & SEWER BOARD OF THE
CITY OF FAIRHOPE, a corpora-
tion,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

AT LAW. NO. _____

COUNT ONE

Plaintiffs, who are husband and wife, claim of the defendants the sum of TWO THOUSAND and no/100 (\$2,000.00) DOLLARS as damages for that on, to-wit, the 27th day of May, 1954, the servants, agents or employees of said defendants, while acting within the line and scope of their employment as such, negligently caused or allowed sewer lines, located within said City of Fairhope and maintained and operated by said defendants, to overflow or flood with raw sewage and refuse plaintiffs' home and residence at which they were then and there residing, located at 109 No. Summit Street in the City of Fairhope, Alabama, as a proximate result of which negligence the furniture, furnishings, personal effects in, and bathroom fixtures and floors of said dwelling house of plaintiffs were injured and damaged, causing foul and objectionable odors to said premises, and further causing plaintiffs to be put to great expense in renovating, cleaning and deodorizing said premises.

And plaintiffs allege that a statement of said claim was filed with each of said defendants within six (6) months after May 27, 1954, and that said claim was thereafter disallowed by the defendant, City of Fairhope, a municipal corporation, and the other defendant has failed or refused to pay the same.

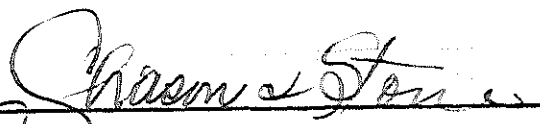
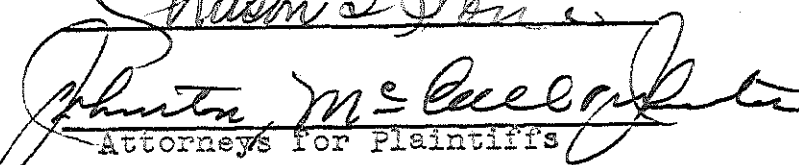
WHEREFORE, plaintiffs bring this suit and ask judgment in the above amount.

COUNT TWO

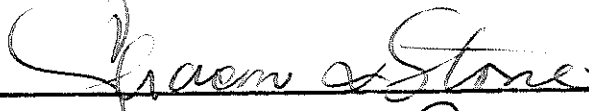
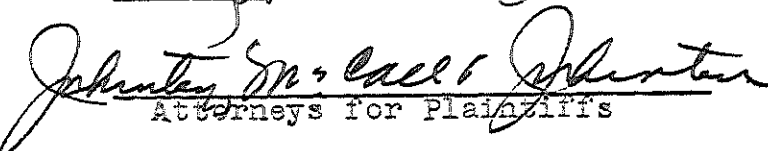
Plaintiffs, who are husband and wife, claim of the defendants the sum of TWO THOUSAND and no/100 (\$2,000.00) DOLLARS as damages for that on, to-wit, the 27th day of May, 1954, the defendants so negligently maintained or operated sewer lines in the City of Fairhope, Alabama, as to cause or allow said sewer lines to overflow or flood with raw sewage and refuse plaintiffs' home and residence where they then and there resided, located at 109 No. Summit Street in the City of Fairhope, Alabama, as a proximate result of which negligence the furniture, furnishings, personal effects in, and bathroom fixtures and floors of said dwelling house of plaintiffs were injured and damaged, causing foul and objectionable odors to said premises, and further causing plaintiffs to be put to great expense in renovating, cleaning and deodorizing said premises.

And, plaintiffs allege that a statement of said claim was filed with each of said defendants within six (6) months after May 27, 1954, and that said claim was thereafter disallowed by the defendant, City of Fairhope, a municipal corporation, and the other defendant has failed or refused to pay the same.

WHEREFORE, plaintiffs bring this suit and ask judgment in the above amount.



Attorneys for Plaintiffs

Plaintiffs demand a trial by jury in the above entitled cause.



Attorneys for Plaintiffs

2-7-55

#2526

SUMMONS AND COMPLAINT

M. L. BROWN and JUANITA F. BROWN,
Plaintiffs,

vs.

CITY OF FAIRHOPE, a municipal corporation, and the WATER WORKS & SEWER BOARD OF THE CITY OF FAIRHOPE a corporation,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW

Filed this 29th day of January, 1955.

W. J. Stone
Clerk.

LAW OFFICES
CHASON & STONE
BAY MINETTE, ALABAMA

City of Fairhope a
Municipal Corp.
By Marie Moore - City Clerk
By Leigh Stedman

M. L. BROWN and JUANITA
F. BROWN,

PLAINTIFFS

VS

CITY OF FAIRHOPE, a municipal
corporation, and the WATER
WORKS AND SEWER BOARD OF THE
CITY OF FAIRHOPE, a corpor-
ation,

DEFENDANTS

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

Comes the City of Fairhope, a municipal corporation, defendant in the above styled cause and by leave of court first had and obtained refiles its demurrers 1 to 12, filed February 2, 1955, and demurrers A to F, filed September 30, 1956.

And by leave of court first had and obtained further demurs to count one of the plaintiffs' complaint and as grounds therefor says:

G. That the said count does not allege how and in what manner the servants, agents or employees of the defendant were negligent.

H. Said count does not allege that the sewer line which caused or permitted to flood plaintiffs' home was owned by this defendant.

I. Said count does not allege that the negligence of the defendant's servants, agents or employees was in the maintenance and operation of the sewer lines owned and operated by this defendant.

J. Said count seeks damages alleged to have resulted from the negligence of the defendant's servants, agents or employees in the maintenance of a sewer line but does not allege that at the time of such negligence such servants, agents or employees of the defendant were engaged in work for this defendant.

K. That the said count neither alleges that the damages suffered by the plaintiffs was done or suffered through the neglect, carelessness or unskillfulness of some agent, servant or employee of the defendant engaged in work therefor; nor that the same was suffered through the negligence, carelessness or failure to remedy some defect in the sewer line after the same had been called to the attention of the council or after the same had existed for such unreasonable length of time as

to raise a presumption of knowledge of the defect on the part of the council.

L. Said count alleges no duty owing by this defendant to the plaintiffs and a breach thereof by this defendant resulting in the alleged damages to the plaintiffs.

And by leave of court first had and obtained defendant files further and additional demurrers to count two of plaintiffs' complaint and as grounds therefor says:

G. That the said complaint seeks damages of this defendant for negligent maintenance of a sewer line in the City of Fairhope but does not allege facts showing that the sewer line was not properly maintained.

H. Said count does not allege that the City of Fairhope, its officers or employees had knowledge of any defect in the maintenance of the sewer line alleged therein to have overflowed or that a defect therein had continued for such length of time as the officers or employees of the City should have known that the defect existed therein and had failed to remedy the same.

I. Said count claims damages for the negligent operation by the City of Fairhope of sewer lines in the City of Fairhope but does not allege that this defendant owned such sewer lines.

J. Said count seeks damages for the negligent operation of the sewer line in the City of Fairhope but does not allege how and in what manner the said sewer line was negligently operated.

K. Said count seeks damages for the negligent maintenance by the defendant of a sewer line but does not allege that any defect had been called to the attention of the council or that the same had existed for such unreasonable length of time as to raise a presumption of knowledge of such defect on the part of the council.

L. Said count seeks damages for the negligent maintenance of a sewer line but does not allege that such damage resulted from the negligence, carelessness or failure to remedy some defect in such sewer line after the same had been called to the attention of the

council or after the same had existed for such unreasonable length of time as to raise a presumption of knowledge of such defect on the part of the council.

M. That the said count neither alleges that the damages suffered by the plaintiffs was done or suffered through the neglect, carelessness or unskillfulness of some agent, servant or employee of the defendant engaged in work therefor; nor that the same was suffered through the negligence, carelessness or failure to remedy some defect in the sewer line after the same had been called to the attention of the council or after the same had existed for such unreasonable length of time as to raise a presumption of knowledge of the defect on the part of the council.

N. Said count alleges no duty owing by this defendant to the plaintiffs and a breach thereof by this defendant resulting in the alleged damages to the plaintiffs.

Beebe & Swearingen

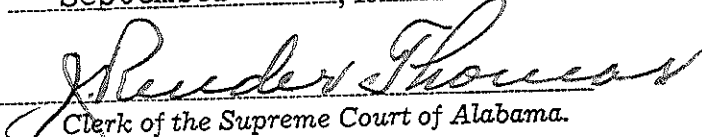
By

W. C. Beebe
Attorney for defendant.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

SPECIAL TERM 1957-58

~~October Term 19xxxx~~To the CLERK of the CIRCUIT Court,BALDWIN County—Greeting:Whereas, the Record and Proceedings of the CIRCUIT Court
of said county, in a certain cause lately pending in said Court betweenTHE WATER WORKS and SEWER BOARD OF THE CITY, Appellant,
OF FAIRHOPE, A CORPORATION,
andM. L. BROWN and JAUNITA F. BROWN, Appellee S,wherein by said Court it was considered adversely to said appellant, were brought before our
Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant:NOW, IT IS HEREBY CERTIFIED, That it was thereupon considered, ordered, and adjudged by
our Supreme Court, on the 11th day of September, 1958, that saidJUDGMENT of said CIRCUIT Court be in all things
affirmed, and that it was further considered, ordered, and adjudged that the appellant: ~~XXXXXXX~~The Water Works and Sewer Board of The City of Fairhope, a Corporation,
and The Fidelity and Casualty Company of New York, surety on the
supersedeas bond, pay the amount of the judgment of the Circuit Court,
and ten per centum [10%] damages thereon, and interest, andthe costs accruing on said appeal in this Court and in the Court below, for which costs let execution
issue.Witness, J. Render Thomas, Clerk of the Supreme
Court of Alabama, at the Judicial Department
Building, this the 11th day of
September, 1958.
Clerk of the Supreme Court of Alabama.

M. L. BROWN and JUANITA BROWN

PLAINTIFFS

VS

CITY OF FAIRHOPE, A MUNICIPAL
CORPORATION, and the WATER WORKS
AND SEWER BOARD OF THE CITY OF
FAIRHOPE, A ~~INCORPORATED~~ CORPORATION,

DEFENDANTS

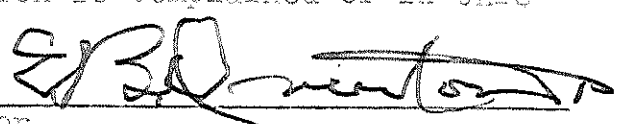
IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

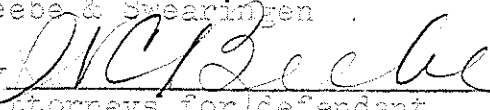
AT LAW

Comes the City of Fairhope, defendant in the above styled cause and files its separate and special plea in the above styled cause and says:

That the plaintiff ought not to further prosecute this suit against this defendant because this defendant acting under and by virtue of an ordinance No. 207, duly adopted and entered on the minutes of its meeting of August 7, 1950, and duly recorded in its book of ordinances, did by instrument dated August 29, 1950, and filed September 11, 1950 for record in the office of the Judge of Probate of Baldwin County, Alabama, and recorded in Deed Book 157 at pages 48-54, ~~did~~ sell, transfer and convey to The Water Works and Sewer Board of the City of Fairhope, a public corporation organized under the provisions of Sections 394 to 402, inclusive, of Title 37, Code 1940, the certificate of Incorporation of the same being dated May 22, 1950, and filed for record in the office of the Judge of Probate of Baldwin County May 30, 1950, and recorded in Corporation Record Book 5, at pages 77-9, all the sewer system theretofore owned and operated by the City of Fairhope, which said Water and Sewer system included the sewer main lines the overflowing of which is complained of in this cause; and that since the said date namely, September 11, 1950, this defendant has not owned and has had no interest in or control over the operation or maintenance of the sewer system or any part of the same, the overflowing of which is complained of in this cause.


Mayor

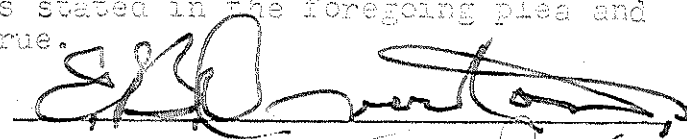
Beebe & Swearingen

By 
Attorneys for defendant

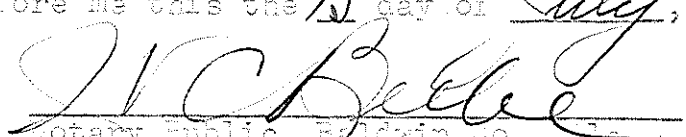
STATE OF ALABAMA

BALDWIN COUNTY

Before me, the undersigned Notary Public in and for said State and County, this day personally appeared E. B. Overton who being by me duly sworn deposes and says that he is Mayor of the City of Fairhope, that he has read and knows the facts stated in the foregoing plea and that the facts therein stated are true.


Sworn to and subscribed before me this the 15 day of July,

1957.


Notary Public, Baldwin Co., Ala.

M. L. BROWN and JUANITA
F. BROWN,

Plaintiffs

vs.

THE WATER and SEWER
BOARD of THE CITY OF
FAIRHOPE, a corporation

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW. NO. _____

Comes the defendant, the Water and Sewer Board of The City of Fairhope, and answering plaintiffs' complaint and each count thereof separately and severally, says:

This defendant is not guilty of the matters alleged in said complaint.

Beebe & Swearingen

By

J. C. Beebe
Attorney for Water and Sewer
Board of The City of Fairhope

M. L. BROWN AND JUANITA
F. BROWN,

PLAINTIFFS

VS

CITY OF FAIRHOPE, a municipal
corporation, and the WATER
WORKS & SEWER BOARD OF THE
CITY OF FAIRHOPE, a corporation

DEFENDANTS

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT

NO. _____

Comes the defendant, City of Fairhope, a municipal corporation, and by leave of court files additional demurrers to the plaintiffs' complaint and to each count thereof separately and severally says:

A. That the plaintiffs' complaint seeks to join two separate and distinct causes of action in the same count.

B. That the plaintiffs seek in each of said counts to join these parties as defendants for separate and distinct actions in tort.

C. Plaintiffs seek in each count to join the defendants as tort feasons and under the laws of the State of Alabama they cannot be joint tort feasons.

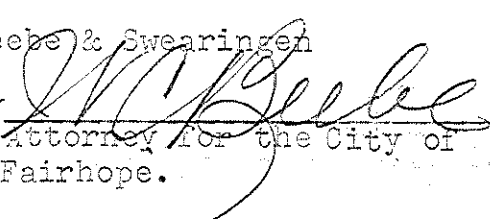
D. The complaint seeks in each count to join this defendant with the other defendant named therein as a joint tort feason with such defendant and under the laws of the State of Alabama this defendant cannot be a joint tort feason with the other defendant named therein.

E. For ought that appears from the said complaint the sewer line alleged to have been negligently operated by the defendant was a sanitary sewer line.

F. For that it does not appear in the said complaint whether the sewer line alleged to have been negligently operated was a storm sewer line or a drainage sewer line.

Beebe & Swearingen

By


Attorney for the City of
Fairhope.

M. L. BROWN AND JUANITA
F. BROWN,

Plaintiffs,

vs

CITY OF FAIRHOPE, a municipal
corporation, and (the WATER
WORKS & SEWER BOARD OF THE
CITY OF FAIRHOPE, a corpor-
ation,)

Defendants

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW

No. _____

Comes the City of Fairhope, a municipal corporation, de-
fendant, in the above styled cause and demurring to plaintiffs'
complaint and to each count thereof separately and severally says:

1. The said complaint shows on its face that there is a
misjoinder of parties defendant.
2. Said complaint is against the City of Fairhope and
the Water and Sewer Board of the City of Fairhope, each of which
is a separate and distinct corporation, and under the laws of
the State of Alabama are not jointly liable either for the
negligence of the other's agents, servants and employees.
3. Said complaint shows on its face that there is a non-
joinder of parties defendant.
4. Said complaint claims damages for the negligence of
the servant, agent or employee of defendant, but does not join
such servant, agent or employee of the parties defendant as re-
quired by law, nor shows any lawful excuse for not joining the
servant, agent or employee of the defendant, whose negligence is
complained of.
5. Said complaint does not allege any facts showing any
negligence on the part of defendant's servant, agent or employee.
6. Said complaint does not allege any facts, which, under
the laws of the State of Alabama, render this defendant responsible
to the plaintiff for damages.
7. Said complaint does not allege how and in what manner

the servants, agents or employees were negligent.

8. The allegation of negligence of the defendant's servants, agents and employees is but a conclusion of the pleader.

9. Said complaint does not allege facts upon which this defendant would be liable under the laws of the State of Alabama by the act of its agents, servants or employees in permitting or causing its sewer line to overflow or flood the home of the plaintiffs.

10. Said complaint does not state a cause of action.

11. For it appears in the complaint that the negligence complained of was in the operation of the defendant's servants, agents or employees of the defendant's sewer line and under the laws of the State of Alabama the defendant is not liable for negligence of servants, agents or employees in the operation of its sewer line.

12. For it appears in the said complaint that the negligence complained of was of the defendant's servants, agents or employees in the operation of defendant's sewer line and under the laws of the State of Alabama the operation of a sewer line is a municipal function and the defendant is not liable for negligence of its servants, agents and employees in the operation of the same.

BEEBE & SWEARINGEN

BY

W. C. Beebe
Attorney for defendant

M. L. BROWN, and JUANITA
F. BROWN,

PLAINTIFFS

VS

THE WATER WORKS &
SEWER BOARD OF THE
CITY OF FAIRHOPE, a
corporation.

IN THE CIRCUIT COURT OF

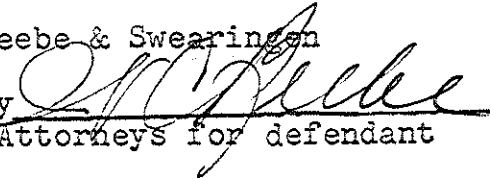
BALDWIN COUNTY, ALABAMA,

AT LAW

Come the defendant in the above styled cause and give notice of appeal to the Supreme Court of Alabama from the judgment of the Circuit Court of Baldwin County, Alabama, entered on the 9th day of September, 1957.

Beebe & Swearingen

By


Attorneys for defendant

Brown vs City of Mobile

JURY LIST FALL TERM 1957

- ~~1. Goodman, Ira C.~~
- ~~2. Langer, Stanley~~
3. King, Roy W.
- ~~4. Thompson, Albert M.~~
- ~~5. Porter, Willie~~
- ~~6. Rodiford, Charlie~~
- ~~7. Bell, Alonza~~
8. Larson, Arthur
9. Thames, Billy
- ~~10. Shirey, Bud~~
- ~~11. Harris, Solomon~~
12. Fell, Ray
- ~~13. King, Horace E.~~
14. Lipscomb, Glyde G.
- ~~15. Gilbert, Fred, Jr.~~
- ~~16. Diance, Cyril T.~~
- ~~17. Romero, Earnest E.~~
- ~~18. Griffin, Prince~~
- ~~19. Noonan, George L.~~
- ~~20. Cox, E. Cecil D. Sr.~~
- ~~21. Weerner, Paul~~
- ~~22. Rhodes, Martin E.~~
- ~~23. Rozone, William A. Jr.~~
- ~~24. Thompson, Earnest B.~~
- ~~25. Nelson, J. L.~~
- ~~26. Dean, David E.~~
- ~~27. Stewart, A. R.~~
28. Van Dyke, Vivian H.
- ~~29. Lipscomb, George E.~~
30. Waldrop, Jessie C.
- ~~31. Quinley, John E.~~
- ~~32. Yancey, Claude J.~~
33. Mosley, Rufus
34. Harrison, Millard
35. Haden, James T.
36. Hinote, Sherman R.
- ~~37. Hiles, Eddie L.~~
- ~~38. Kowaleski, Ted~~
39. Homes, Pierce E.
- ~~40. Driver, C. L.~~
- ~~41. Hayes, J. Otis~~
- ~~42. Dress, Walter D.~~
- ~~43. Andress, Herbert E.~~
- ~~44.~~

Newport
Machinst
Farmer
Merchant
Laborer
Laborer
Laborer
Farmer
Farmer
Laborer
Laborer
Laborer
Farmer
Farmer
Farmer
Conservation Dep't.
Motel PerOper.
Taxi Operator
Signs
Merchant
Farmer
Farmer
Merchant
Brookely Field
& Cleaner
Farmer
Farmer
Newport
Farmer

Farmer
Fisherman
Farmer
Farmer
Salesman
Butcher
Mechanic
Farmer
Electrician
Farmer
Farmer
Farmer
Farmer

Bay Minette, Ala
Robertsdale
Stapleton, Ala
Bay Minette
Foley
Foley
Bay Minette
Rosinton
Robertsdale
Elseaner
Foley
Summerdale
Mag. Spgs.
Mag. Spgs.
Elberta
Foley
Gulf Shores
Fairhope
Bay Minette
Stockton, Ala.
Elberta
Foley
Bay Minette
Fairhope
Fairhope
Lottie, Ala.
Rabon, Ala.
Bay Minette
Mag. Spgs.
Bay Minette
Bay Minette
Daphne
Stapleton
Summerdale
Robertsdale
Robertsdale
Robertsdale
Loxley
Summerdale
Stockton
Robertsdale
Perdid
Robertsdale
Foley

43
12
31

XXXX XXXXX XXXXXX

XXXX XXXXX XXXXX

42

M. L. BROWN and JUANITA F. BROWN, | IN THE CIRCUIT COURT OF
PLAINTIFFS |
VS | BALDWIN COUNTY, ALABAMA,
THE WATER WORKS & SEWER BOARD |
OF THE CITY OF FAIRHOPE, a | AT LAW
corporation. |

The defendant having given notice of appeal from the judgment of the Circuit Court in the above styled cause rendered on September 9, 1957, to the Supreme Court of Alabama, said appeal being taken from said judgment, the undersigned, The Water Works and Sewer Board of the City of Fairhope, a corporation, by Arthur C. Mannich as its Chairman, as principal, and The Fidelity and Casualty Company of New York, N.Y. and, as surety, acknowledge themselves security for all costs in said appeal in the penal sum of One Hundred (\$100.00) Dollars, as to which we hereby waive our right of exemption to personal property under the Constitution and laws of the State of Alabama this 14th day of January, 1958.

The Water Works & Sewer Board of
the City of Fairhope, a corporation

By: Arthur C. Mannich
Arthur C. Mannich
As its Chairman

As Principal

(SEAL)
THE FIDELITY & CASUALTY COMPANY
of NEW YORK, NEW YORK (SEAL)

BY: John S. Huffman (SEAL)
John S. Huffman, Attorney
As Surety

Taken and approved this
the 16 day of January, 1958.

Archie J. Wicks
Clerk

THE STATE OF ALABAMA }
Baldwin County - Circuit Court }

TO ANY SHERIFF OF THE STATE OF ALABAMA — GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the 17th.

~~Monday~~ April, 1945⁶, in a certain cause in said Court wherein M. L. BROWN & JUANITA BROWN

Plaintiff, and

CITY OF FAIRHOPE, et al Defendant, a judgment was rendered against said
Non-Suit

to reverse which, the said

M.L. BROWN & JUANITA BROWN

applied for and obtained from this office an APPEAL, returnable to the

Term of our SUPREME Court of the State of Alabama, to be held at Montgomery,

on the day of, 194 next, and the necessary bond

having been given by the said JUANITA BROWN & M.L. BROWN

with JOHN CHASON & NORBORNE STONE, sureties,

Now, You Are Hereby Commanded, without delay, to cite the said CITY OF FAIRHOPE,

a municipal corporation, and the Water Works & Sewer Board of the City of Fairhope, A Corp.

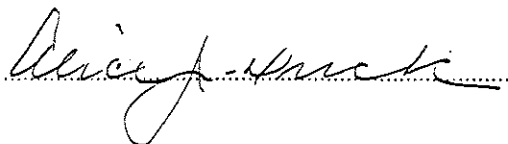
Beebe & Swearingen, attorney, to appear at the Term of our

said Supreme Court, to defend against the said Appeal, if they think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 18th

day of October, A. D., 1945⁶.

Attest:

 Clerk.

Received 20 day of Oct 1956
and on 22 day of Oct 1956
served a copy of the within Citation
Beebe & Associates

by service on Mr Beebe

TAYLOR WILKINS, Sheriff

By W. A. Tolbert D. S.
O m

W. 2526

CIRCUIT COURT
Baldwin County, Alabama

M. L. BROWN and JUANITA F. BROWN

Vs. } Citation in Appeal

CITY OF FAIRHOPE, a municipal corp.
and the WATER WORKS & SEWER BOARD OF
THE CITY OF FAIRHOPE, a corporation

Issued 18th day of Oct., 1956

15
Div. No. _____

CERTIFICATE OF APPEAL. (Civil Cases.)

No. 2526

THE STATE OF ALABAMA

Baldwin County.

I, Alice J. Duck, Clerk of the Circuit Court of Baldwin County, in and for said State and County, hereby certify that the foregoing pages numbered from one to _____, both inclusive, contain a full, true and complete transcript of the record and proceedings of said Court in a certain cause lately therein pending wherein M.L. BROWN AND JUANITA F. BROWN

was plaintiff, and CITY OF FAIRHOPE, a municipal corporation, and the WATER WORKS & SEWER BOARD OF THE CITY OF FAIRHOPE, A Corporation.

was Defendant, as fully and completely as the same appears of record in said Court.

And I further certify that the said City of Fairhope, a municipal corp. & the Water Works & Sewer Board of the City of Fairhope, a corporation did on the 16th day of January, 1958, pray for and obtain an appeal from the judgment of said Court to the Supreme

of Alabama to reverse said judgment of said Court upon entering into bond with Arthur C. Mannich & The Fidelity & Casualty Company of New York, N.Y. as surety thereon, which said bond has been approved by me.

Witness my hand and the seal of said Circuit Court of Baldwin County is hereto affixed, this the 24th day of JANUARY, 1958

Alice J. Duck

Clerk of the Circuit Court of

Baldwin County, Alabama.

(Code 1940, Title 7, Sec. 767)

THE STATE OF ALABAMA }
 Baldwin County - Circuit Court }

TO ANY SHERIFF OF THE STATE OF ALABAMA — GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the
 Second Monday in September, 1957, in a cer-
 tain cause in said Court wherein M.L. BROWN and JUANITA BROWN
 Plaintiff, and THE WATER WORKS & SEWER BOARD OF THE
 CITY OF FAIRHOPE, A Corporation Defendant, a judgement was rendered against said
 Defendant
 to reverse which Judgment, the said WATER WORKS & SEWER BOARD OF THE CITY
 OF FAIRHOPE, A Corporation
 applied for and obtained from this office an APPEAL, returnable to the next
 Term of our Supreme Court of the State of Alabama, to be held at Montgomery,
 on the day of , 1958 next, and the necessary bond
 with
 having been given by the said Arthur C. Mannich and The Fidelity & Casualty
 with Company of New York, New York, sureties,

Now, You Are Hereby Commanded, without delay, to cite the said
 M.L. BROWN AND JUANITA BROWN or CHASON & STONE, JOHNSTON McCALL & JOHNSTON
 , attorney, to appear at the next Term of our
 said Supreme Court, to defend against the said Appeal, if they think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 18th
 day of January, A. D., 1958.

Attest:

Alice J. Duck, Clerk.

2526

Received 21 day of Jan. 1958
on 3 day of Febr 1958

Received a copy of the within Citation
Chasant Stone

Service on Mr Stone

TAYLOR WILKINS, Sheriff
By W. Q. Tolbert D. S.
omi

CIRCUIT COURT
Baldwin County, Alabama

M. L. Brown
et al

Vs. Citation in Appeal

The Water Works
& Sewer Board of
Turkopolis

Issued _____ day of _____, 195_____

Perme
Chasant Stone

288/ 2251

THE STATE OF ALABAMA }
Baldwin County - Circuit Court }

TO ANY SHERIFF OF THE STATE OF ALABAMA — GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the
Second Monday Monday in September, 1957, in a cer-

tain cause in said Court wherein M. L. Brown and Juanita Brown

Plaintiff, and The Water Works & Sewer Board

Defendant, a judgement was rendered against said

Defendant

to reverse which judgment, the said M. L. BROWN and JUANITA BROWN

applied for and obtained from this office an APPEAL, returnable to the next

Term of our Supreme Court of the State of Alabama, to be held at Montgomery,

on the day of, 1957 next, and the necessary bond

having been given by the said M. L. Brown and Juanita Brown

with Fidelity and Casualty Company, sureties,

Now, You Are Hereby Commanded, without delay, to cite the said M. L. Brown and

Juanita Brown or Chason & Stone

, attorney, to appear at the next Term of our

said Supreme Court, to defend against the said Appeal, if they think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 18th

day of January, A. D., 1958.

Attest:

Alice J. Duck, Clerk.

THE STATE OF ALABAMA }
Baldwin County - Circuit Court }

TO ANY SHERIFF OF THE STATE OF ALABAMA — GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the

Second Monday in September, 1957, in a cer-

tain cause in said Court wherein M.L. BROWN and JUANITA BROWN

Plaintiff, and THE WATER WORKS & SEWER BOARD OF THE

CITY OF FAIRHOPE, A Corporation Defendant, a judgement was rendered against said

Defendant

to reverse which Judgment, the said WATER WORKS & SEWER BOARD OF THE CITY

OF FAIRHOPE, A Corporation

applied for and obtained from this office an APPEAL, returnable to the next

Term of our Supreme Court of the State of Alabama, to be held at Montgomery,

on the day of , 1957 next, and the necessary bond with

having been given by the said Arthur C. Mannich and The Fidelity & Casualty

with Company of New York, New York, sureties,

Now, You Are Hereby Commanded, without delay, to cite the said

M.L. BROWN AND JUANITA BROWN or CHASON & STONE, JOHNSTON McCALL & JOHNSTON

, attorney, to appear at the next Term of our

said Supreme Court, to defend against the said Appeal, if they think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 18th

day of January, A. D., 1958.

Attest:

Alice J. Duck, Clerk.

2524

Received 31 day of Jan. 1958
 d on 3 day of Feb. 1958
 served a copy of the within citation
Chasent & Stone
 service on Mr. Stone

TAYLOR WILKINS, Sheriff
 By W. A. Tolbert D. S.
omi

CIRCUIT COURT
Baldwin County, Alabama

M. L. Brown
et al

Vs. Citation in Appeal

The Water Works
& Sewer Board of
Turkopolis

Issued.....day of....., 195.....

Gene
Chasent & Stone

2881 2251

STATE OF ALABAMA

BALDWIN COUNTY

KNOW ALL MEN BY THESE PRESENTS, that The Water Works & Sewer Board of the City of Fairhope, a corporation, and, The Fidelity & Casualty Company of New York, New York, as surety, are held and firmly bound unto M. L. Brown and Juanita F. Brown, in the sum of \$3,000.00, the payment of which well and truly to be made we jointly and severally bind ourselves, our successors, and assigns:

Sealed with our seal and dated this the 14th day of January, 1958.

The condition of the above obligation is such that, whereas, on to-wit: the 9th day of September, 1957, in a suit pending in the Circuit Court of Baldwin County, Alabama, at law, wherein M. L. Brown and Juanita F. Brown, were plaintiffs, and the above bound The Water Works & Sewer Board of the City of Fairhope, defendant, the said M. L. Brown and Juanita F. Brown, plaintiffs, obtained a judgment against the above bound The Water Works & Sewer Board of the City of Fairhope, defendant, in the sum of \$1,500.00, and the said defendant has prayed for and obtained an appeal from such judgment rendered against them in the said Circuit Court of Baldwin County, at law, on the said 9th day of September, 1957;

Now therefore, if the said above bound principal shall well and truly prosecute such appeal to effect, or if they fail in said appeal, shall pay and satisfy such judgment as to debt and cost as the appellant court may render in said cause, them, and in either of said events, this obligation shall be null and void, otherwise the same shall remain in full force and effect.

Witness this the 14th day of January, 1958.

The Water Works & Sewer Board of the City of Fairhope, a corporation,

ByX Arthur C. Mannich
Arthur C. Mannich

As Principal

The Fidelity & Casualty Company of New York, New York

As Surety

BY: Jno. S. Huffman
Jno. S. Huffman, Attorney

Taken and approved this the

16th day of January, 1958.

Reice J. Brown
Clerk

M. L. BROWN and JUANITA
F. BROWN,

PLAINTIFFS

VS

CITY OF FAIRHOPE, a municipal
corporation, and the WATER
WORKS & SEWER BOARD OF THE
CITY OF FAIRHOPE, a corpora-
tion,

DEFENDANTS

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW

NO. 2526

This cause is submitted for decree upon demurrers of the City of Fairhope filed February 28, 1955 and additional demurrers filed September 30, 1955, numbered 1 to 12 and A to F, and the same being considered by the Court the Court is of the opinion that the demurrers are well taken and should be sustained;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that the said several demurrers of the City of Fairhope to plaintiffs' complaint and to each count thereof be and they are hereby sustained.

Done this the 1 day of Feb, 1956.

Shuler M. Shy
Judge

M. L. BROWN and JUANITA
F. BROWN,

Plaintiffs,

vs.

THE CITY OF FAIRHOPE, a
Municipal Corporation

Defendant

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

AT LAW. NO. _____

Comes the defendant, the City of Fairhope, and for *Further*
answer to plaintiffs' complaint and each count thereof,
separately and severally, says:

This defendant is not guilty of the matters alleged
in said complaint.

Beebe & Swearingen

By *W. C. Beebe*
Attorney for the
City of Fairhope

M. L. BROWN and JUANITA F. BROWN	X	IN THE CIRCUIT COURT OF
Plaintiffs,	X	
vs.	X	BALDWIN COUNTY, ALABAMA.
CITY OF FAIRHOPE, a municipal	X	
corporation, and the WATER	X	AT LAW.
WORKS & SEWER BOARD OF THE	X	
CITY OF FAIRHOPE, a corporation,	X	
Defendants.	X	NO. _____

SECURITY FOR COSTS

We, the undersigned M. L. BROWN and JUANITA F. BROWN, as principal, and JOHN CHASON and NORBORNE C. STONE, as sureties, hereby acknowledge ourselves as security for all costs of appeal to the Supreme Court of Alabama from the judgment of the Circuit Court of Baldwin County, Alabama, rendered in the above entitled cause on the 17th day of April, 1956, when the Plaintiffs took a non-suit because of an adverse ruling of the Court in sustaining the Defendant's demurrer to the Plaintiff's complaint.

WITNESS our hands and seals this 15th day of October, 1956

*Taken and
approved & filed
10-16-56
Alice F. Henck
Clerk*

Juanita F. Brown ()
M L Brown ()
John Chason ()
Norborne C. Stone ()

M. L. BROWN and JUANITA
F. BROWN,

PLAINTIFFS

VS

CITY OF FAIRHOPE, a municipal
corporation, and the WATER
WORKS & SEWER BOARD OF THE
CITY OF FAIRHOPE, A corpore-
tion,

DEFENDANTS

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW

NO.

2526

This cause is submitted for decree upon demurrers of the Water Works & Sewer Board of the City of Fairhope filed February 28, 1955 and additional demurrers filed September 30, 1955, numbered 1 to 12 and A to F, and the same being considered by the Court the Court is of the opinion that the demurrers are well taken and should be sustained;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that the said several demurrers of the Water Works & Sewer Board of the City of Fairhope to plaintiffs' complaint and to each count thereof be and they are hereby sustained.

Done this the 1 day of Feb, 1956.

Robert M. Hall
Judge

Because of the adverse ruling of the Court in sustaining the Defendant's demurrers to the Plaintiff's Complaint, the Plaintiff takes a non-suit and moves the Court for an order accordingly, whereupon it is ordered and adjudged by the Court that a non-suit be and the same is hereby entered in this cause in accordance with the Plaintiff's motion and that the Defendant go hence without day and have and recover of the Plaintiff all costs herein accrued for which execution may issue.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st Div., No. 771

THE WATER WORKS and SEWER BOARD of the CITY of FAIRHOPE, a Corporation, Appellant
vs.

M. L. BROWN ET UX, Appellee, s

From BALDWIN Circuit Court.

The State of Alabama,
City and County of Montgomery, }

I, J. Render Thomas, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages, numbered from one to NINE inclusive, contain a full, true and correct copy of the opinion of said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, J. Render Thomas, Clerk of the Supreme Court of Alabama, this the 11th day of

SEPTEMBER, 1958

J. Render Thomas
Clerk of the Supreme Court of Alabama

THE SUPREME COURT OF ALABAMA

SPECIAL

October Term, 19. 57-58

1st Div., No. 771

THE WATER WORKS and SEWER BOARD of the

CITY OF FAIRHOPE, a Corporation

Appellant,

vs.

M. L. BROWN ET UX

Appellee, s

From BALDWIN CIRCUIT Court.

COPY OF OPINION

M. L. BROWN and JUANITA
BROWN,

Plaintiffs.

vs

CITY OF FAIRHOPE, a municipal
corporation, and THE WATER
WORKS AND SEWER BOARD OF THE
CITY OF FAIRHOPE, a corporation,

Defendants

X

X

X

X

X

X

X

IN THE CIRCUIT COURT

OF BALDWIN COUNTY,

ALABAMA

AT LAW.

GENERAL REPLICATION

Come the Plaintiffs for general replication to the
defendants' special plea, filed August 26, 1957, join issue
thereon.

FILED
AUG 27 1957
ALICE L. BUCK, Register

Johnston, McCall & Smith

Parson & Albino
Attorneys for the Plaintiff.

M. L. BROWN and JUANITA
F. BROWN,

PLAINTIFFS

VS

CITY OF FAIRHOPE, a municipal
corporation, and the WATER
WORKS AND SEWER BOARD OF THE
CITY OF FAIRHOPE, a corpor-
ation,

DEFENDANTS

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW

Comes the Water Works and Sewer Board of the City of Fairhope, a corporation, defendant in the above styled cause and by leave of court first had and obtained refiles its demurrers 1 to 12, filed February 2, 1955, and demurrers A to F, filed September 30, 1956.

And by leave of court first had and obtained further demurs to count one of the plaintiffs' complaint and as grounds therefor says:

G. That the said count does not allege how and in what manner the servants, agents or employees of the defendant were negligent.

H. Said count does not allege that the sewer line which caused or permitted to flood plaintiffs' home was owned by this defendant.

I. Said count does not allege that the negligence of the defendant's servants, agents or employees was in the maintenance and operation of the sewer lines owned and operated by this defendant.

J. Said count seeks damages alleged to have resulted from the negligence of the defendant's servants, agents or employees in the maintenance of a sewer line but does not allege that at the time of such negligence such servants, agents or employees of the defendant were engaged in work for this defendant.

K. That the said count neither alleges that the damages suffered by the plaintiffs was done or suffered through the neglect, carelessness or unskillfulness of some agent, servant or employee of the defendant engaged in work therefor; nor that the same was suffered through the

negligence, carelessness or failure to remedy some defect in the sewer line after the same had been called to the attention of this board or after the same had existed for such unreasonable length of time as to raise a presumption of knowledge of the defect on the part of the council.

L. Said count alleges no duty owing by this defendant to the plaintiffs and a breach thereof by this defendant resulting in the alleged damages to the plaintiffs.

And by leave of court first had and obtained defendant files further and additional demurrers to count two of plaintiffs' complaint and as grounds therefor says:

G. That the said complaint seeks damages of this defendant for negligent maintenance of a sewer line in the City of Fairhope but does not allege facts showing that the sewer line was not properly maintained.

H. Said count does not allege that this board, its officers ~~or employees~~ had knowledge of any defect in the maintenance of the sewer line alleged therein to have overflowed or that a defect therein had continued for such length of time as the officers or employees of this board should have known that the defect existed therein and had failed to remedy the same.

I. Said count claims damages for the negligent operation by the Water Works and Sewer Board of the City of Fairhope of sewer lines in the City of Fairhope but does not allege that this defendant owned such sewer lines.

J. Said count seeks damages for the negligent operation of the sewer line in the City of Fairhope but does not allege how and in what manner the said sewer line was negligently operated.

K. Said count seeks damages for the negligent maintenance by the defendant of a sewer line but does not allege that any defect had been called to the attention of this board or that the same had existed for such unreasonable length of time as to raise a presumption of knowledge of such defect on the part of this board.

L. Said count seeks damages for the negligent maintenance of a sewer line but does not allege that such damage resulted from the negligence, carelessness or failure to remedy some defect in such sewer line after the same had been called to the attention of the board or after the same had existed for such unreasonable length of time as to raise a presumption of knowledge of such defect on the part of this board.

M. That the said count neither alleges that the damages suffered by the plaintiffs was done or suffered through the neglect, carelessness or unskillfulness of some agent, servant or employee of the defendant engaged in work therefor; nor that the same was suffered through the negligence, carelessness or failure to remedy some defect in the sewer line after the same had been called to the attention of this board or after the same had existed for such unreasonable length of time as to raise a presumption of knowledge of the defect on the part of this board.

N. Said count alleges no duty owing by this defendant to the plaintiffs and a breach thereof by this defendant resulting in the alleged damages to the plaintiffs.

Beebe & Swearingen

By W. C. Beebe
Attorney for defendant

STATE OF ALABAMA)
BALDWIN COUNTY)

IN THE CIRCUIT COURT - LAW SIDE.

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon City of Fairhope, a municipal corporation, and the Water Works & Sewer Board of the City of Fairhope, 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 M. L. Brown and Juanita F. Brown.

Witness my hand this 29th day of January, 1955.

David J. Smith
Clerk.

M. L. BROWN and JUANITA
F. BROWN,

Plaintiffs,

vs.

CITY OF FAIRHOPE, a municipal
corporation, and the WATER
WORKS & SEWER BOARD OF THE
CITY OF FAIRHOPE, a corpora-
tion,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

AT LAW. NO. _____

COUNT ONE

Plaintiffs, who are husband and wife, claim of the defendants the sum of TWO THOUSAND and no/100 (\$2,000.00) DOLLARS as damages for that on, to-wit, the 27th day of May, 1954, the servants, agents or employees of said defendants, while acting within the line and scope of their employment as such, negligently caused or allowed sewer lines, located within said City of Fairhope and maintained and operated by said defendants, to overflow or flood with raw sewage and refuse plaintiffs' home and residence at which they were then and there residing, located at 109 No. Summit Street in the City of Fairhope, Alabama, as a proximate result of which negligence the furniture, furnishings, personal effects in, and bathroom fixtures and floors of said dwelling house of plaintiffs were injured and damaged, causing foul and objectionable odors to said premises, and further causing plaintiffs to be put to great expense in renovating, cleaning and deodorizing said premises.

And plaintiffs allege that a statement of said claim was filed with each of said defendants within six (6) months after May 27, 1954, and that said claim was thereafter disallowed by the defendant, City of Fairhope, a municipal corporation, and the other defendant has failed or refused to pay the same.

WHEREFORE, plaintiffs bring this suit and ask judgment in the above amount.

COUNT TWO

Plaintiffs, who are husband and wife, claim of the defendants the sum of TWO THOUSAND and no/100 (\$2,000.00) DOLLARS as damages for that on, to-wit, the 27th day of May, 1954, the defendants so negligently maintained or operated sewer lines in the City of Fairhope, Alabama, as to cause or allow said sewer lines to overflow or flood with raw sewage and refuse plaintiffs' home and residence where they then and there resided, located at 109 No. Summit Street in the City of Fairhope, Alabama, as a proximate result of which negligence the furniture, furnishings, personal effects in, and bathroom fixtures and floors of said dwelling house of plaintiffs were injured and damaged, causing foul and objectionable odors to said premises, and further causing plaintiffs to be put to great expense in renovating, cleaning and deodorizing said premises.

And, plaintiffs allege that a statement of said claim was filed with each of said defendants within six (6) months after May 27, 1954, and that said claim was thereafter disallowed by the defendant, City of Fairhope, a municipal corporation, and the other defendant has failed or refused to pay the same.

WHEREFORE, plaintiffs bring this suit and ask judgment in the above amount.

Wason & Stone
Phinton, McCall & Phinton
Attorneys for Plaintiffs

Plaintiffs demand a trial by jury in the above entitled cause

Wason & Stone
Phinton, McCall & Phinton
Attorneys for Plaintiffs

#2536

SUMMONS AND COMPLAINT

M. L. BROWN and JUANITA F. BROWN,

Plaintiffs,

vs.

CITY OF FAIRHOPE, a municipal corporation, and the WATER WORKS & SEWER BOARD OF THE CITY OF FAIRHOPE, a corporation,

Defendants.

IN THE CIRCUIT COURT OF

BAWDWIN COUNTY, ALABAMA

AT LAW

Filed this 29th day of January, 1955.

Wm. H. Brown
Clerk.

LAW OFFICES
CHASON & STONE
BAY MINETTE, ALABAMA

2-9-55

29 Jan 1955

City of Fairhope & Municipal Corp.

Fairhope - City Clerk
By *Wm. H. Brown*

M. L. BROWN and JUANITA
F. BROWN,

PLAINTIFFS

VS

CITY OF FAIRHOPE, a municipal
corporation, and the WATER
WORKS AND SEWER BOARD OF THE
CITY OF FAIRHOPE, a corpor-
ation,

DEFENDANTS

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

Comes the City of Fairhope, a municipal corporation, defendant in the above styled cause and by leave of court first had and obtained refiles its demurrers 1 to 12, filed February 2, 1955, and demurrers A to F, filed September 30, 1956.

And by leave of court first had and obtained further demurs to count one of the plaintiffs' complaint and as grounds therefor says:

G. That the said count does not allege how and in what manner the servants, agents or employees of the defendant were negligent.

H. Said count does not allege that the sewer line which caused or permitted to flood plaintiffs' home was owned by this defendant.

I. Said count does not allege that the negligence of the defendant's servants, agents or employees was in the maintenance and operation of the sewer lines owned and operated by this defendant.

J. Said count seeks damages alleged to have resulted from the negligence of the defendant's servants, agents or employees in the maintenance of a sewer line but does not allege that at the time of such negligence such servants, agents or employees of the defendant were engaged in work for this defendant.

K. That the said count neither alleges that the damages suffered by the plaintiffs was done or suffered through the neglect, carelessness or unskillfulness of some agent, servant or employee of the defendant engaged in work therefor; nor that the same was suffered through the negligence, carelessness or failure to remedy some defect in the sewer line after the same had been called to the attention of the council or after the same had existed for such unreasonable length of time as

to raise a presumption of knowledge of the defect on the part of the council.

L. Said count alleges no duty owing by this defendant to the plaintiffs and a breach thereof by this defendant resulting in the alleged damages to the plaintiffs.

And by leave of court first had and obtained defendant files further and additional demurrers to count two of plaintiffs' complaint and as grounds therefor says:

G. That the said complaint seeks damages of this defendant for negligent maintenance of a sewer line in the City of Fairhope but does not allege facts showing that the sewer line was not properly maintained.

H. Said count does not allege that the City of Fairhope, its officers or employees had knowledge of any defect in the maintenance of the sewer line alleged therein to have overflowed or that a defect therein had continued for such length of time as the officers or employees of the City should have known that the defect existed therein and had failed to remedy the same.

I. Said count claims damages for the negligent operation by the City of Fairhope of sewer lines in the City of Fairhope but does not allege that this defendant owned such sewer lines.

J. Said count seeks damages for the negligent operation of the sewer line in the City of Fairhope but does not allege how and in what manner the said sewer line was negligently operated.

K. Said count seeks damages for the negligent maintenance by the defendant of a sewer line but does not allege that any defect had been called to the attention of the council or that the same had existed for such unreasonable length of time as to raise a presumption of knowledge of such defect on the part of the council.

L. Said count seeks damages for the negligent maintenance of a sewer line but does not allege that such damage resulted from the negligence, carelessness or failure to remedy some defect in such sewer line after the same had been called to the attention of the

council or after the same had existed for such unreasonable length of time as to raise a presumption of knowledge of such defect on the part of the council.

M. That the said count neither alleges that the damages suffered by the plaintiffs was done or suffered through the neglect, carelessness or unskillfulness of some agent, servant or employee of the defendant engaged in work therefor; nor that the same was suffered through the negligence, carelessness or failure to remedy some defect in the sewer line after the same had been called to the attention of the council or after the same had existed for such unreasonable length of time as to raise a presumption of knowledge of the defect on the part of the council.

N. Said count alleges no duty owing by this defendant to the plaintiffs and a breach thereof by this defendant resulting in the alleged damages to the plaintiffs.

Beebe & Swearingen

By

W. C. Beebe
Attorney for defendant.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

SPECIAL TERM 1957-58

~~October Term 19xxxx~~

To the CLERK of the CIRCUIT Court,

BALDWIN County—Greeting:

Whereas, the Record and Proceedings of the CIRCUIT Court of said county, in a certain cause lately pending in said Court between

THE WATER WORKS and SEWER BOARD OF THE CITY, Appellant,
OF FAIRHOPE, A CORPORATION,
and

M. L. BROWN and JAUNITA F. BROWN, Appellee S,

wherein by said Court it was considered adversely to said appellant, were brought before our Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant—:

NOW, IT IS HEREBY CERTIFIED, That it was thereupon considered, ordered, and adjudged by our Supreme Court, on the 11th day of September, 1958, that said

JUDGMENT of said CIRCUIT Court be in all things affirmed, and that it was further considered, ordered, and adjudged that the appellant: ~~XXXXXXX~~

The Water Works and Sewer Board of The City of Fairhope, a Corporation,
and The Fidelity and Casualty Company of New York, surety on the
supersedeas bond, pay the amount of the judgment of the Circuit Court,
and ten per centum [10%] damages thereon, and interest, and

the costs accruing on said appeal in this Court and in the Court below, for which costs let execution issue.

Witness, J. Render Thomas, Clerk of the Supreme
Court of Alabama, at the Judicial Department
Building, this the 11th day of
September, 19 58.

J. Render Thomas
Clerk of the Supreme Court of Alabama.

THE SUPREME COURT OF ALABAMA

SPECIAL TERM 1957-58

October 14, 1958

1st Div., No. 771

THE WATER WORKS and SEWER
BOARD OF THE CITY OF FAIRHOPE,
A CORPORATION,

Appellant,

vs.

M. L. BROWN and JAUNITA
F. BROWN,

Appellees

From BALDWIN CIRCUIT Court.

CERTIFICATE OF
AFFIRMANCE

The State of Alabama,

} Filed

Baldwin County.

this 12 day of Sept 19 58

David L. Smith

clerk

M. L. BROWN and JUANITA BROWN

PLAINTIFFS

VS

CITY OF FAIRHOPE, A MUNICIPAL
CORPORATION, and the WATER WORKS
AND SEWER BOARD OF THE CITY OF
FAIRHOPE, A CORPORATION,

DEFENDANTS

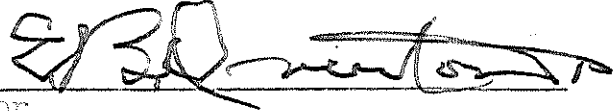
IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

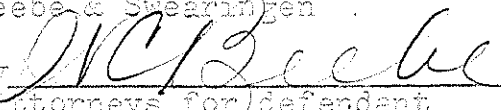
AT LAW

Comes the City of Fairhope, defendant in the above styled cause and files its separate and special plea in the above styled cause and says:

That the plaintiff ought not to further prosecute this suit against this defendant because this defendant acting under and by virtue of an ordinance No. 207, duly adopted and entered on the minutes of its meeting of August 7, 1950, and duly recorded in its book of ordinances, did by instrument dated August 29, 1950, and filed September 11, 1950 for record in the office of the Judge of Probate of Baldwin County, Alabama, and recorded in Deed Book 157 at pages 48-54, ~~and~~ sell, transfer and convey to The Water Works and Sewer Board of the City of Fairhope, a public corporation organized under the provisions of Sections 394 to 402, inclusive, of Title 37, Code 1940, the certificate of Incorporation of the same being dated May 22, 1950, and filed for record in the office of the Judge of Probate of Baldwin County May 30, 1950, and recorded in Corporation Record Book 5, at pages 77-9, all the sewer system theretofore owned and operated by the City of Fairhope, which said Water and Sewer system included the sewer main lines the overflowing of which is complained of in this cause; and that since the said date namely, September 11, 1950, this defendant has not owned and has had no interest in or control over the operation or maintenance of the sewer system or any part of the same, the overflowing of which is complained of in this cause.


Mayor

Beebe & Swearingen

By 
Attorneys for defendant

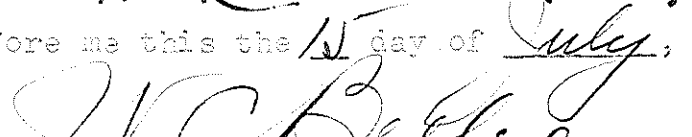
STATE OF ALABAMA

BALDWIN COUNTY

Before me, the undersigned Notary Public in and for said State and County, this day personally appeared E. B. Overton who being by me duly sworn deposes and says that he is Mayor of the City of Fairhope, that he has read and knows the facts stated in the foregoing plea and that the facts therein stated are true.

Sworn to and subscribed before me this the 15 day of July,

1957.


Notary Public, Baldwin Co., Ala.

2524
M L Brown et al
vs
City of Fairhope

Plea of Misdemeanor
of parties defendant

FILED
JUL 16 1957
ALICE J. DUCK, Clerk

M. L. BROWN and JUANITA
F. BROWN,

Plaintiffs

vs.

THE WATER and SEWER
BOARD of THE CITY OF
FAIRHOPE, a corporation

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW. NO. _____

Comes the defendant, the Water and Sewer Board of The
City of Fairhope, and answering plaintiffs' complaint
and each count thereof separately and severally, says:

This defendant is not guilty of the matters alleged in
said complaint.

Beebe & Swearingen

By

J. C. Beebe
Attorney for Water and Sewer
Board of The City of Fairhope

2526

M. L. Brown, et al

v2

The Water & Sewer
Board of the City
of Fairhope

Answer of Defendants
(General issue)

FILED
AUG 16 1957

ALICE J. DIXON, Clerk

M. L. BROWN AND JUANITA
F. BROWN,

PLAINTIFFS

VS

CITY OF FAIRHOPE, a municipal
corporation, and the WATER
WORKS & SEWER BOARD OF THE
CITY OF FAIRHOPE, a corporation

DEFENDANTS

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT

NO. _____

Comes the defendant, City of Fairhope, a municipal corpora-
tion, and by leave of court files additional demurrers to the
plaintiffs' complaint and to each count thereof separately and
severally says:

A. That the plaintiffs' complaint seeks to join two separate
and distinct causes of action in the same count.

B. That the plaintiffs seek in each of said counts to join
these parties as defendants for separate and distinct actions in
tort.

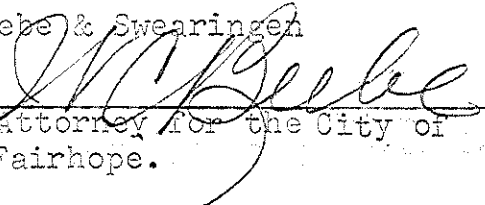
C. Plaintiffs seek in each count to join the defendants
as tort feasons and under the laws of the State of Alabama they
cannot be joint tort feasons.

D. The complaint seeks in each count to join this defendant
with the other defendant named therein as a joint tort feason with
such defendant and under the laws of the State of Alabama this
defendant cannot be a joint tort feason with the other defendant
named therein.

E. For ought that appears from the said complaint the sewer
line alleged to have been negligently operated by the defendant
was a sanitary sewer line.

F. For that it does not appear in the said complaint whether
the sewer line alleged to have been negligently operated was a
storm sewer line or a drainage sewer line.

Beebe & Swearingen

By 
Attorney for the City of
Fairhope.

M. L. BROWN AND JUANITA
F. BROWN,

Plaintiffs,

vs

CITY OF FAIRHOPE, a municipal
corporation, and the WATER
WORKS & SEWER BOARD OF THE
CITY OF FAIRHOPE, a corpor-
ation,)

Defendants

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW

No. _____

Comes the City of Fairhope, a municipal corporation, de-
fendant, in the above styled cause and demurring to plaintiffs'
complaint and to each count thereof separately and severally says:

1. The said complaint shows on its face that there is a
misjoinder of parties defendant.

2. Said complaint is against the City of Fairhope and
the Water and Sewer Board of the City of Fairhope, each of which
is a separate and distinct corporation, and under the laws of
the State of Alabama are not jointly liable either for the
negligence of the other's agents, servants and employees.

3. Said complaint shows on its face that there is a non-
joinder of parties defendant.

4. Said complaint claims damages for the negligence of
the servant, agent or employee of defendant, but does not join
such servant, agent or employee of the parties defendant as re-
quired by law, nor shows any lawful excuse for not joining the
servant, agent or employee of the defendant, whose negligence is
complained of.

5. Said complaint does not allege any facts showing any
negligence on the part of defendant's servant, agent or employee.

6. Said complaint does not allege any facts, which, under
the laws of the State of Alabama, render this defendant responsible
to the plaintiff for damages.

7. Said complaint does not allege how and in what manner

the servants, agents or employees were negligent.

8. The allegation of negligence of the defendant's servants, agents and employees is but a conclusion of the pleader.

9. Said complaint does not allege facts upon which this defendant would be liable under the laws of the State of Alabama by the act of its agents, servants or employees in permitting or causing its sewer line to overflow or flood the home of the plaintiffs.

10. Said complaint does not state a cause of action.

11. For it appears in the complaint that the negligence complained of was in the operation of the defendant's servants, agents or employees of the defendant's sewer line and under the laws of the State of Alabama the defendant is not liable for negligence of servants, agents or employees in the operation of its sewer line.

12. For it appears in the said complaint that the negligence complained of was of the defendant's servants, agents or employees in the operation of defendant's sewer line and under the laws of the State of Alabama the operation of a sewer line is a municipal function and the defendant is not liable for negligence of its servants, agents and employees in the operation of the same.

BEEBE & SWEARINGEN

BY J. C. Beebe
Attorney for defendant

2526

M. L. Brown & Juanita
J. Brown,

Plaintiffs

vs

City of Fairhope & Water
Work & Sewer Board

Defendants

Demurrers

Filed 2-28-58

Dee J. J. J. J.
Clerk

M. L. BROWN, and JUANITA
F. BROWN,

PLAINTIFFS

VS

THE WATER WORKS &
SEWER BOARD OF THE
CITY OF FAIRHOPE, a
corporation.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW

Come the defendant in the above styled cause and give notice of appeal to the Supreme Court of Alabama from the judgment of the Circuit Court of Baldwin County, Alabama, entered on the 9th day of September, 1957.

Beebe & Swearingen

By *W. M. Beebe*
Attorneys for defendant

Brown vs City of Hope

JURY LIST FALL TERM 1957

1. Goodman, Ira C.	Newport	Bay Minette, Ala
2. Langer, Stanley	Machinst	Robertsdale
3. King, Roy W.	Farmer	Stapleton, Ala
4. Thompson, Albert M.	Merchant	Bay Minette
5. Porter, Willie	Laborer	Foley
6. Bodiford, Charlie	Laborer	Foley
7. Bell, Alonza	Laborer	Bay Minette
8. Larson, Arthur	Farmer	Rosinton
9. Thames, Billy	Farmer	Robertsdale
10. Shirey, Bud	Laborer	Elseaner
11. Harris, Solomon	Laborer	Foley
12. Fell, Ray	Laborer	Summerdale
13. King, Horace E.	Farmer	Mag. Spgs.
14. Lipscomb, Glyde G.	Farmer	Mag. Spgs.
15. Gilbert, Fred, Jr.	Farmer	Elberta
16. Brance, Cyril P.	Conservation Dep't.	Foley
17. Romero, Earnest E.	Motel Oper.	Gulf Shores
18. Griffin, Prince	Taxi Operator	Fairhope
19. Noonan, George L.	Signs	Bay Minette
20. Cox, E Cecil D. Sr.	Merchant	Stockton, Ala.
21. Woerner, Paul	Farmer	Elberta
22. Rhodes, Martin E.	Farmer	Foley
23. Rozone, William A. Jr.	Merchant	Bay Minette
24. Thompson, Earnest B.	Brookely Fields	Fairhope
25. Nelson, J. Jr.	& Cleaner	Fairhope
26. Dean, David E.	Farmer	Lottie, Ala.
27. Stewart, A. F.	Farmer	Rabon, Ala.
28. Van Dyke, Vivian H.	Newport	Bay Minette
29. Lipscomb, George E.	Farmer	Mag. Spgs.
30. Waldrop, Jessie C.	Farmer	Bay Minette
31. Quinley, John E.	Fisherman	Bay Minette
32. Yancey, Claude J.	Farmer	Daphne
33. Mosley, Rufus	Farmer	Stapleton
34. Harrison, Millard	Farmer	Summerdale
35. Haden, James T.	Salesman	Robertsdale
36. Hinote, Sherman R.	Butcher	Robertsdale
37. Hiles, Eddie L.	Mechanic	Loxley
38. Kowaleski, Ted	Farmer	Summerdale
39. Homes, Pierce E.	Electrician	Stockton
40. Driver, C. L.	Farmer	Robertsdale
41. Hayes, J. Otis	Farmer	Perdido
42. Dyess, Walter D.	Farmer	Robertsdale
43. Andress, Herbert E.	Farmer	Foley

43
12
31

XXXX XXXXX XXXXXX

XXXX XXXXX XXXXX

42

M. L. BROWN and JUANITA F. BROWN, | IN THE CIRCUIT COURT OF
PLAINTIFFS |
BALDWIN COUNTY, ALABAMA,

VS

THE WATER WORKS & SEWER BOARD
OF THE CITY OF FAIRHOPE, a
corporation.

AT LAW

The defendant having given notice of appeal from the judgment of the Circuit Court in the above styled cause rendered on September 9, 1957, to the Supreme Court of Alabama, said appeal being taken from said judgment, the undersigned, The Water Works and Sewer Board of the City of Fairhope, a corporation, by Arthur C. Mannich as its
Chairman, as principal, and The Fidelity and Casualty Company of New York, N.Y. and,
as surety, acknowledge themselves security for all costs in said appeal in the penal sum of One Hundred (\$100.00) Dollars, as to which we hereby waive our right of exemption to personal property under the Constitution and laws of the State of Alabama this 14th day of January, 1958.

The Water Works & Sewer Board of
the City of Fairhope, a corporation

By Arthur C. Mannich
Arthur C. Mannich
As its Chairman

As Principal

THE FIDELITY & CASUALTY COMPANY (SEAL)
of NEW YORK, NEW YORK (SEAL)

BY: John S. Huffman (SEAL)
John S. Huffman, Attorney
As Surety

Taken and approved this
the 16 day of January, 1958.

James J. Smith
Clerk

THE STATE OF ALABAMA }
Baldwin County - Circuit Court }

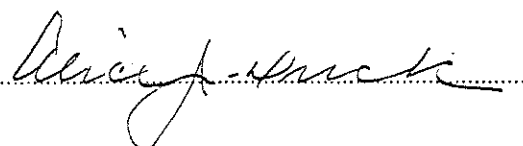
TO ANY SHERIFF OF THE STATE OF ALABAMA — GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the17th.....
.....~~November~~ April....., 1945⁵⁶, in a cer-
tain cause in said Court whereinM. L. BROWN & JUANITA BROWN.....
.....Plaintiff, and
CITY OF FAIRHOPE, et al.....Defendant, a judgment was rendered against said
Non-Suit
to reverse which....., the said
M.L. BROWN & JUANITA BROWN
.....
applied for and obtained from this office an APPEAL, returnable to the
Term of ourSUPREME..... Court of the State of Alabama, to be held at Montgomery,
on the day of, 194..... next, and the necessary bond
having been given by the said.....JUANITA BROWN & M.L. BROWN.....
..... withJOHN CHASON & NORBORNE STONE....., sureties,

Now, You Are Hereby Commanded, without delay, to cite the said CITY OF FAIRHOPE,
a municipal corporation, and the Water Works & Sewer Board of the City of Fairhope, A
Corp.
Beebe & Swearingen....., attorney, to appear at the.....Term of our
said Supreme Court, to defend against the said Appeal, ifthey..... think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this18th.....
day ofOctober....., A. D., 1945⁵⁶.

Attest:

....., Clerk.

colived 20 day of Oct 1956
d on 22 day of Oct 1956
erved a copy of the within Citation
Decker & Associates

service on Mr Beede

TAYLOR WILKINS, Sheriff
By W. A. Zeller D.S.
Om

W. 2526

CIRCUIT COURT
Baldwin County, Alabama

M. L. BROWN and JUANITA F. BROWN

Vs. } Citation in Appeal

CITY OF FAIRHOPE, a municipal corp.
and the WATER WORKS & SEWER BOARD OF
THE CITY OF FAIRHOPE, a corporation

Issued 18th day of Oct., 1956

THE STATE OF ALABAMA }
 Baldwin County - Circuit Court }

TO ANY SHERIFF OF THE STATE OF ALABAMA — GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the
~~Second Monday~~ Monday in September, 1957, in a cer-
 tain cause in said Court wherein M. L. Brown and Juanita Brown
~~Plaintiff~~ and The Water Works & Sewer Board
OF THE CITY OF FAIRHOPE, a corporation Defendant, a judgement was rendered against said
~~Defendant~~
 to reverse which judgment, the said M. L. BROWN and JUANITA BROWN
 applied for and obtained from this office an APPEAL, returnable to the next
 Term of our Supreme Court of the State of Alabama, to be held at Montgomery,
 on the _____ day of _____, 1957 next, and the necessary bond
 having been given by the said M. L. Brown and Juanita Brown
 with Fidelity and Casualty Company, sureties,

Now, You Are Hereby Commanded, without delay, to cite the said M. L. Brown and
Juanita Brown or Chason & Stone
 _____, attorney, to appear at the next Term of our
 said Supreme Court, to defend against the said Appeal, if they think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 18th
 day of January, A. D., 1958.

Attest:

Alice J. Duck, Clerk.

No. 2526

received 20 day of Jan 1958
d on 20 day of Jan 1958
received a copy of the within Citation
Chasor & Alton

service on John Chasor

TAYLOR WILKINS, Sheriff
By Will Robert D. S.
D. me

CIRCUIT COURT
Baldwin County, Alabama

M. L. BROWN and JUANITA BROWN

Vs. Citation in Appeal

THE WATER WORKS & SEWER BOARD
of THE CITY OF FAIRHOPE

Issued 18th day of January, 1958

To the plaintiff and
Chasor & Alton

THE STATE OF ALABAMA }
Baldwin County - Circuit Court }

TO ANY SHERIFF OF THE STATE OF ALABAMA — GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the

Second Monday in September, 1957, in a cer-

tain cause in said Court wherein M.L. BROWN and JUANITA BROWN

Plaintiff, and THE WATER WORKS & SEWER BOARD OF THE

CITY OF FAIRHOPE, A Corporation Defendant, a judgement was rendered against said

Defendant

to reverse which Judgment, the said WATER WORKS & SEWER BOARD OF THE CITY

OF FAIRHOPE, A Corporation

applied for and obtained from this office an APPEAL, returnable to the next

Term of our Supreme Court of the State of Alabama, to be held at Montgomery,

on the day of, 195 next, and the necessary bond

with

having been given by the said Arthur C. Mannich and The Fidelity & Casualty

with Company of New York, New York, sureties,

Now, You Are Hereby Commanded, without delay, to cite the said

M.L. BROWN AND JUANITA BROWN or CHASON & STONE, JOHNSTON McCALL & JOHNSTON

, attorney, to appear at the next Term of our

said Supreme Court, to defend against the said Appeal, if they think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 18th

day of January, A. D., 1958.

Attest:

Alice J. Duck, Clerk.

2526

Received 31 day of Jan. 1958
Served on 3 day of Feb. 1958
Served a copy of the within Citation
Chasont Stone

/ service on Mr Stone

TAYLOR WILKINS, Sheriff
By W. R. Tolbert D. S.
Deputy

CIRCUIT COURT
Baldwin County, Alabama

M. L. Brown
et al

Vs. } Citation in Appeal

The Water Works
& Sewer Board of
Turnhope

Issued _____ day of _____, 195_____

Perme
Chasont Stone

2881 2251

STATE OF ALABAMA

BALDWIN COUNTY

KNOW ALL MEN BY THESE PRESENTS, that The Water Works & Sewer Board of the City of Fairhope, a corporation, and, The Fidelity & Casualty Company of New York, New York, as surety, are held and firmly bound unto M. L. Brown and Juanita F. Brown, in the sum of \$3,000.00, the payment of which well and truly to be made we jointly and severally bind ourselves, our successors, and assigns:

Sealed with our seal and dated this the 14th day of January, 1958.

The condition of the above obligation is such that, whereas, on to-wit: the 9th day of September, 1957, in a suit pending in the Circuit Court of Baldwin County, Alabama, at law, wherein M. L. Brown and Juanita F. Brown, were plaintiffs, and the above bound The Water Works & Sewer Board of the City of Fairhope, defendant, the said M. L. Brown and Juanita F. Brown, plaintiffs, obtained a judgment against the above bound The Water Works & Sewer Board of the City of Fairhope, defendant, in the sum of \$1,500.00, and the said defendant has prayed for and obtained an appeal from such judgment rendered against them in the said Circuit Court of Baldwin County, at law, on the said 9th day of September, 1957;

Now therefore, if the said above bound principal shall well and truly prosecute such appeal to effect, or if they fail in said appeal, shall pay and satisfy such judgment as to debt and cost as the appellant court may render in said cause, them, and in either of said events, this obligation shall be null and void, otherwise the same shall remain in full force and effect.

Witness this the 14th day of January, 1958.

The Water Works & Sewer Board of the City of Fairhope, a corporation,

By Arthur C. Mammich
Arthur C. Mammich

As Principal

The Fidelity & Casualty Company of New York, New York

As Surety

By Jno. S. Huffman
Jno. S. Huffman, Attorney

Taken and approved this the

14th day of January, 1958.

Reice J. Smith
Clerk

M. L. BROWN and JUANITA
F. BROWN,

PLAINTIFFS

VS

CITY OF FAIRHOPE, a municipal
corporation, and the WATER
WORKS & SEWER BOARD OF THE
CITY OF FAIRHOPE, a corpora-
tion,

DEFENDANTS

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW

NO. 2526

This cause is submitted for decree upon demurrers of the City of Fairhope filed February 28, 1955 and additional demurrers filed September 30, 1955, numbered 1 to 12 and A to F, and the same being considered by the Court the Court is of the opinion that the demurrers are well taken and should be sustained;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that the said several demurrers of the City of Fairhope to plaintiffs' complaint and to each count thereof be and they are hereby sustained.

Done this the 1 day of Feb, 1956.

Hubert M. Hays
Judge

M. L. BROWN and JUANITA
F. BROWN,

Plaintiffs,

vs.

THE CITY OF FAIRHOPE, a
Municipal Corporation

Defendant

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

AT LAW. NO. _____

Comes the defendant, the City of Fairhope, and for *answer*
answer to plaintiffs' complaint and each count thereof,
separately and severally, says:

This defendant is not guilty of the matters alleged
in said complaint.

Beebe & Swearingen

By *W. C. Beebe*
Attorney for the
City of Fairhope

M. L. BROWN and JUANITA F. BROWN	I	IN THE CIRCUIT COURT OF
Plaintiffs,	I	
vs.	I	BALDWIN COUNTY, ALABAMA.
CITY OF FAIRHOPE, a municipal	I	
corporation, and the WATER	I	AT LAW.
WORKS & SEWER BOARD OF THE	I	
CITY OF FAIRHOPE, a corporation,	I	
Defendants.	I	NO. _____

SECURITY FOR COSTS

We, the undersigned M. L. BROWN and JUANITA F. BROWN, as principal, and JOHN CHASON and NORBORNE C. STONE, as sureties, hereby acknowledge ourselves as security for all costs of appeal to the Supreme Court of Alabama from the judgment of the Circuit Court of Baldwin County, Alabama, rendered in the above entitled cause on the 17th day of April, 1956, when the Plaintiffs took a non-suit because of an adverse ruling of the Court in sustaining the Defendant's demurrer to the Plaintiff's complaint.

WITNESS our hands and seals this 15th day of October, 1956

*Taken and
approved & filed
10-16-56
Annie Henck
Clerk*

Juanita F. Brown (S)
M L Brown (S)
John Chason (S)
Norborne C. Stone (S)

M. L. BROWN and JUANITA BROWN

IN THE CIRCUIT COURT OF

PLAINTIFFS

VS

BALDWIN COUNTY, ALABAMA,

CITY OF FAIRHOPE, A Municipal Corporation, and THE WATER WORKS AND SEWER BOARD OF THE CITY OF FAIRHOPE, a corporation

DEFENDANTS

AT LAW.

Comes the City of Fairhope, defendant in the above styled cause and answering plaintiffs' complaint and each count thereof separately and severally files this its special and separate plea in the above styled cause and says:

The plaintiffs ought not to further prosecute this suit against this defendant because this defendant is improperly made a party defendant thereto in this, that this defendant acting under and by virtue of an ordinance No 207, duly adopted and entered on the book of ordinances, did by instrument dated August 29, 1950, and filed September 11, 1950 for record in the office of the Judge of Probate of Baldwin County, Alabama, and recorded in Deed Book 157 at pages 48-54, sell, transfer and convey to The Water Works and Sewer Board of the City of Fairhope, a public corporation organized under the provisions of Sections 394 to 402, inclusive, of Title 37, Code 1940, the certificate of incorporation of the same being dated May 22, 1950, and filed for record in the office of the Judge of Probate of Baldwin County May 30, 1950, and recorded in Corporation Record Book 5, at pages 77-9, all the sewer system theretofore owned and operated by the City of Fairhope, which said Water and Sewer system included the sewer main lines the overflowing of which is complained of in this cause; and that since the said date namely, September 11, 1950, this defendant has not owned and has had no interest in or control over the operation or maintenance of the sewer system or any part of the same, the overflowing of which is complained of in this cause; that at no time since said date, namely: September 11, 1950, has this defendant, or any of its officers, agents, servants or employees acting within the line and scope of their employment operated or maintained or been responsible for the operation or maintenance of the sewer line the overflowing of which is complained of in this cause.

X E. B. Overton
Mayor

Beebe & Swearingen

By W. C. Beebe
Attorneys for defendant

STATE OF ALABAMA
BALDWIN COUNTY

Before me, the undersigned Notary Public in and for said State and County, this day personally appeared E. B. Overton who being by me duly sworn deposes and says that he is Mayor of the City of Fairhope, that he has read and knows the facts stated in the foregoing plea and that the facts therein stated are true.

X Marie Moore
My Commission expires 6-18-54
Sworn to and subscribed before me this the 24th day of August

1957.

Marie Moore
Notary Public, Baldwin Co. Ala.

M. L. BROWN and JUANITA
F. FROWN,

PLAINTIFFS.

VS

CITY OF FAIRHOPE, a municipal
corporation, and the WATER
WORKS & SEWER BOARD OF THE
~~CITY OF FAIRHOPE, a corporation~~

DEFENDANTS

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW.

NO. _____

Comes the Water Works & Sewer Board of the City of Fairhope, a corporation, defendant, in the above styled cause and demurring to plaintiffs' complaint and to each count thereof separately and severally says:

1. The said complaint shows on its face that there is a misjoinder of parties defendant.

2. Said complaint is against the City of Fairhope and the Water and Sewer Board of the City of Fairhope, each of which is a separate and distinct corporation, and under the laws of the State of Alabama are not jointly liable either for the negligence of the other's agents, servants and employees.

3. Said complaint shows on its face that there is a nonjoinder of parties defendant.

4. Said complaint claims damages for the negligence of the servant, agent or employee of defendant, but does not join such servant, agent or employee of the parties defendant as required by law, nor shows any lawful excuse for not joining the servant, agent or employee of the defendant, whose negligence is complained of.

5. Said complaint does not allege any facts showing any negligence on the part of defendant's servant, agent or employee.

6. Said complaint does not allege any facts which, under the laws of the State of Alabama, render this defendant responsible to the plaintiff for damages.

7. Said complaint does not allege how and in what manner

M. L. BROWN and JUANITA
F. BROWN,

Plaintiffs,

vs.

CITY OF FAIRHOPE, a municipal
corporation, and the WATER
WORKS & SEWER BOARD OF THE
CITY OF FAIRHOPE, a corpora-
tion,

Defendants.

X

X

X

X

X

X

X

X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 2526

Come the Plaintiffs in the above styled cause and demur to the plea filed by the City of Fairhope, Alabama, and assign the following separate and several grounds in support thereof:

1. That said plea does not state a defense to the cause of action.
2. That the matters alleged in the special plea could be proven under a plea of the general issue.
3. That said plea is immaterial.
4. That for aught that appears from said plea the City of Fairhope, acting by and through its agents, servants or employees, was guilty of the negligence complained of in the Plaintiffs complaint.
5. That such plea does not allege that the Plaintiffs were not damaged by the negligence of the agents, servants or employees of the City of Fairhope.

Huston, McCall & Huston
Sharon Stone
Attorneys for Plaintiffs

M. L. BROWN and JUANITA F.
BROWN,

Plaintiffs

vs.

CITY OF FAIRHOPE, a municipal
corporation, and the WATER WORKS
& SEWER BOARD OF THE CITY OF
FAIRHOPE, a corporation,

DEFENDANTS.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 2526

FILED

AUG 20 1957

ALICE J. DUCK, Clerk

LAW OFFICES

CHASON & STONE

BAY MINETTE, ALABAMA

M. L. BROWN AND JUANITA
F. BROWN,

PLAINTIFFS

VS

CITY OF FAIRHOPE, a municipal
corporation, and the WATER
WORKS & SEWER BOARD OF THE
CITY OF FAIRHOPE, a corporation

DEFENDANTS

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW

NO. _____

Comes the defendant, Water Works & Sewer Board of the
City of Fairhope, a corporation, and by leave of court files
additional demurrers to the plaintiffs' complaint and to each
count thereof separately and severally says:

A. That the plaintiffs' complaint seeks to join two separate
and distinct causes of action in the same count.

B. That the plaintiffs seek in each of said counts to
join these parties as defendants for separate and distinct actions
in tort.

C. Plaintiffs seek in each count to join the defendants
as joint tort feorsors and under the laws of the State of Alabama
they cannot be joint tort feorsors.

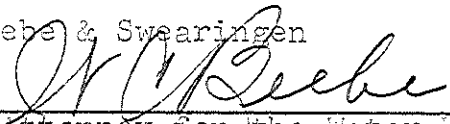
D. The complaint seeks in each count to join this defendant
with the other defendant named therein as a joint tort feorsor with
such defendant and under the laws of the State of Alabama this
defendant cannot be a joint tort feorsor with the other defendant
named therein.

E. For ought that appears from the said complaint the sewer
line alleged to have been negligently operated by the defendant
was a sanitary sewer line.

F. For that it does not appear in the said complaint whether
the sewer line alleged to have been negligently operated was a
storm sewer line or a drainage sewer line.

Beebe & Swearingen

By


Attorney for the Water Works &
Sewer Board of the City of Fairhope

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19 56-57

To the CLERK of the CIRCUIT Court of

BALDWIN County, Greeting:

Whereas, the Record and Proceedings of the CIRCUIT Court

of said county, in a certain cause lately pending in said Court between

M. L. BROWN, ET AL., Appellant.S,

and

CITY OF FAIRHOPE, A MUNICIPAL CORPORATION: WATER Appellee^S
WORKS AND SEWER BOARD OF THE CITY OF FAIRHOPE, A CORPORATION,
wherein by said Court it was considered adversely to said appellant.S., were brought before our
Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant.S.:

Now, it is hereby certified, That it was thereupon considered, ordered, and adjudged by our Su-
preme Court on the 7th day of MARCH, 19 57, that said JUDGMENT
of said CIRCUIT Court be reversed and annulled, and the cause remanded to said court

for further proceedings therein; and that it was further considered, ordered, and adjudged that the
appellee S ~~XXX~~ :- CITY OF FAIRHOPE, A MUNICIPAL CORPORATION,

and

WATER WORKS AND SEWER BOARD OF THE CITY OF
FAIRHOPE, A CORPORATION, PAY * * * * *

the costs accruing on said appeal in this Court and in the Court below, for which costs let execution
issue.

Witness, J. Render Thomas, Clerk of the Supreme
Court of Alabama, at the Judicial Department
Building, this the 7th day of

MARCH, 19 57

J. Render Thomas
Clerk of the Supreme Court of Alabama.

THE SUPREME COURT OF ALABAMA

October Term, 1956-57

1st Div., No. 693

M. L. BROWN, ET AL.,

Appellant, S

vs.

CITY OF FAIRHOPE, A MUNICIPAL
CORPORATION; WATER WORKS AND
SEWER BOARD OF THE CITY OF
FAIRHOPE, A CORPORATION,
Appellees

From Baldwin Circuit Court.

CERTIFICATE OF
REVERSAL

The State of Alabama,

FILED

County.

} Filed

this MAR 11 1957 day of 19

ALICE A. DUCK, Clerk

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st Div., No. 693

M. L. BROWN AND JAUNITA BROWN

, Appellant S

vs.

CITY OF FAIRHOPE ET AL.,

, Appellee, S

From

BALDWIN

NO. 2526

Circuit Court.

The State of Alabama, }
City and County of Montgomery, }

I, J. Render Thomas, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages, numbered from one to seven inclusive, contain a full, true and correct copy of the opinion of said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, J. Render Thomas, Clerk of the Supreme
Court of Alabama, this the 7th day of

March, 1957

J. Render Thomas
Clerk of the Supreme Court of Alabama

2524
THE SUPREME COURT OF ALABAMA

October Term, 1956-57

1st Div., No. 693

M. L. BROWN AND JUANITA F.

BROWN

Appellant, s

vs.

CITY OF FAIRHOPE, ET AL.

Appellee.s

From BALDWIN CIRCUIT Court.
NO. 2526

COPY OF OPINION