

THE W. T. RAWLEIGH  
COMPANY, A CORPORATION,  
Plaintiff

VS

ALETHA HALL

Defendant

IN CIRCUIT COURT

BALDWIN COUNTY, ALABAMA

AT LAW

NUMBER 2875

---.

I

Plaintiff claims of Defendant the sum of FIVE HUNDRED THIRTY-ONE and TWENTY-EIGHT ONE-HUNDREDTHS (\$531.28) DOLLARS as balance due on a contract made March 29, 1954 between Plaintiff and Brewster Goodman whereon Defendant is surety and which is in words and figures as follows:

- (1) IN CONSIDERATION of the promises of the undersigned Buyer, THE W. T. RAWLEIGH COMPANY, an Illinois Corporation, agrees upon acceptance of this Contract, to sell and deliver f. o. b. Memphis, Tennessee, or at any other point or in any other manner agreed upon, subject to floods, strikes, war or other causes beyond its control, such reasonable quantities of its Products as the Buyer may order at current wholesale prices, and on time, and if desired will sell Buyer an Auto Body and/or Equipment, or sample cases, for cash or on time; and the Buyer in consideration of the above agreements hereby promises to pay Seller in full for all such Products so sold and delivered under this Contract, also promises and agrees to pay any balance due Seller at the date of the acceptance of this Renewal Contract for Products previously sold Buyer under any and all former Contracts, by cash or by installment payments satisfactory to Seller at Invoice prices and according to the terms and conditions thereof, including any transportation charges incurred, paid or furnished by Seller, and subject to such cash discounts as may be shown in current discount sheets.
- (2) It is mutually agreed that either party may terminate this Contract by written notice at any time, and when so terminated, all accounts incurred hereunder shall become due and payable immediately. If this Contract is not so terminated it shall expire on the 31st day of December, 1954, it being agreed that another Renewal Contract may be entered into providing business relations are mutually satisfactory and Buyer furnishes an acceptable Renewal Contract.
- (3) If the business relations be terminated for any reason, the Seller agrees to purchase from the Buyer at wholesale prices current when received, any merchantable Products Buyer may have on hand (Sample Cases, Auto Bodies and discontinued Products excepted) provided goods are returned promptly by prepaid freight to point designated by Seller, less 5% to cover cost of receiving, overhauling and inspecting same.
- (4) It is mutually understood and agreed that this is a Contract of Buyer and Seller, and not of Agency or consignment, and that the Buyer is in business for himself and that when the Products are delivered f.o.b. point of shipment, they belong to the Buyer, who has the exclusive right to determine where, at what price, and upon what terms and conditions he shall sell the Products purchased from Seller, and further expressly agrees, that any Sales Promotion or Service Letters or Bulletins, Advertising matter or other literature that Seller may send Buyer shall not change this relationship, nor be considered as orders, instructions or directions but only as suggestive, educational and advisory (which the Buyer may or may not follow as he may choose) and shall not alter, change or modify this Contract in any way.

(5) It is agreed and understood that if and when this Contract is accepted by the Seller, it shall constitute and be the sole, only and entire agreement between all parties hereto and that it can only be changed or modified by the agreement and consent of both parties in writing.

Accepted:

THE W. T. RAWLEIGH COMPANY

By A. L. Turner

Manager

(s) Brewster Goodman

P. O. Address Atmore, Alabama, Box 53

Date of Acceptance March 29, 1954

For and in consideration of the W. T. Rawleigh Company, accepting the above Contract, and/or in consideration of the above named Seller extending further credit to the said Buyer, and having read and acquainted ourselves with the nature, terms and conditions of this and the above agreement between the Buyer and Seller, and fully understanding same, we, the undersigned, do hereby jointly and severally enter ourselves as sureties, and not as guarantors, and unconditionally promise, guarantee and agree to pay said Seller for any and all goods, wares and merchandise sold said Buyer under the above and foregoing Contract, hereby expressly consenting and agreeing to all the terms, conditions, and provisions thereof; and we also specifically promise and agree to assume and pay any and all prior indebtedness that may be due and owing said Seller on the date of the acceptance of this Contract, for any and all goods, wares and merchandise previously sold to said Buyer under and by virtue of any and all prior Contracts or agreements; hereby binding our heirs, executors, administrators or assigns. We hereby expressly waive notice of the acceptance of this Contract, and of the shipment of goods to the Buyer, and of extension of credit to the Buyer, and of the extension of time in which to pay for the goods so purchased, and waive all notice of any nature whatsoever, including all right to claim exemption of real or personal property allowed by the constitution or laws of this or any other state, insofar as same can legally be done. We also agree that any statement made by the Buyer to the Seller in writing, as to the amount of indebtedness due at any time shall be binding upon us. We also agree that it shall not be necessary for the Seller to first exhaust its remedies against the Buyer before proceeding to collect from us. This undertaking is to be an open one and shall continue without regard to the residence of the Buyer, or the location or manner of conducting his business until the account is fully paid. It is mutually agreed that this Contract is conclusive and binding upon the party or parties who sign it, whether it is signed by any other party or parties or not, and that any statement or representations made to any of the undersigned sureties by any person or persons either as to who or how many parties will sign this surety agreement or as to any other matters not fully expressed herein shall not affect the rights of the Seller.

It is further understood that there are no conditions or limitations to this undertaking except those written or printed herein at the time of signing hereof, and that after execution no alteration, change or modification shall be made except as provided for in the terms of the foregoing Contract between the Buyer and Seller, and that any notice in any way affecting the rights of the Seller must be delivered by registered mail to the Seller at its office at Memphis, Tennessee.

IN WITNESS WHEREOF we have set our hands and seal in testimony hereof.

1 (s) W. F. Strength

510 N. Main St.  
Atmore, Alabama

Grocery, Service Station

2 (s) Aletha Hall

P. O. Box 387  
Bay Minette, Ala.

Retail Beer Dealer

The Sureties Are Entitled Upon Request At Any Time To A Statement Of Buyer's Account.

And the said contract was breached on or about February 31, 1955 in that the said Brewster Goodman failed or refused to pay the said sum then due, hence this suit.

## II

The Plaintiff claims of the Defendant the sum of FIVE HUNDRED THIRTY-ONE and TWENTY-EIGHT ONE HUNDREDTHS (\$531.28) DOLLARS, due on a contract made by Brewster Goodman, on the 29th day of March, 1954 for the payment of ONE THOUSAND SEVEN HUNDRED SEVENTY and FIFTY-FIVE ONE HUNDREDTHS (\$1,770.55) DOLLARS, whereon defendant became surety for the payment of sums due on the said contract, and the said Brewster Goodman failed or refused to pay the sum due on the said contract, hence this suit.

## III

The Plaintiff claims of Defendant, FIVE HUNDRED THIRTY-ONE and TWENTY-EIGHT (\$531.28) DOLLARS due on a contract between Brewster Goodman and Plaintiff whereon Defendant was surety for the performance of the said Brewster Goodman; And the said Brewster Goodman having failed or refused to pay the amount of FIVE HUNDRED THIRTY-ONE and TWENTY-EIGHT (\$531.28) DOLLARS due on the said contract, now Plaintiff claims this sum of Defendant, together with the interest thereon.

  
Attorney for Plaintiff

SUMMONS AND COMPLAINT

Moore Printing Co.

THE STATE OF ALABAMA,  
BALDWIN COUNTY

CIRCUIT COURT, BALDWIN COUNTY

No. 2875

March

TERM, 19 56

BOOK  
016  
PAGE 280

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon

ALETHA HALL

to appear and plead, answer or demur, within thirty days from the service hereof, to the complaint filed in  
the Circuit Court of Baldwin County, State of Alabama, at Bay Minette, against

ALETHA HALL

, Defendant

by THE W.T. RAWLEIGH COMPANY, A CORPORATION

, Plaintiff

Witness my hand this 6th. day of March 19 56.

*Alice J. Shuck*

, Clerk

THE W. T. RAWLEIGH COMPANY,  
A CORPORATION,

PLAINTIFF

VS

ALETHA HALL

DEFENDANT

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA,

AT LAW

NO. 2875

Comes now the Defendant and demurs to the Plaintiff's Complaint and to each and every count thereof separately and severally and assigns the following grounds to each count thereof separately and severally:

1.

That the Complaint fails to state a cause of action.

2.

That the Complaint is vague, indefinite, uncertain and ambiguous.

3.

That the Complaint fails to allege any consideration passing from the Plaintiff to the said Brewster Goodman whereby the Defendant is liable to the Plaintiff as surety for Brewster Goodman.

4.

That the Complaint fails to allege the fulfillment of conditions precedent by the Plaintiff as stated in the alleged contract, whereby the Defendant would be liable as surety for the said Brewster Goodman.

5.

That the Complaint fails to allege the consideration for the contract.

6.

Counts Two and Three fail to allege whether the contract sued on was in writing or verbal.

7.

That the Complaint fails to allege the sum sued for is still due and unpaid.

8.

That the Counts Two and Three fail to allege the nature of the contract sued on.

9.

For aught appearing in the Complaint, the alleged contract was executed prior to the Defendant becoming the surety on the same.

Wilters & Brantley

by:

*Ray J. Wilters*  
Attorneys for the Defendant

THE W. T. RAWLEIGH COMPANY,  
A CORPORATION,

PLAINTIFF

VS

ALETHA HALL

DEFENDANT

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW

CASE NO. 2875

Comes now the Defendant, and for answer to the Complaint Plead and says, in short, by consent, the general issue, with leave to give in evidence any matter that might be specially pleaded and to have effect as if so pleaded.

Walters & Brantley

BY: 

Attorney for the Defendant

THE W. T. RAWLEIGH  
COMPANY, A CORPORATION,  
Plaintiff

vs

ALETHA HALL

Defendant

IN CIRCUIT COURT

BALDWIN COUNTY, ALABAMA

AT LAW

NUMBER: \_\_\_\_\_

--- --

Comes now the Plaintiff in the above styled cause and amends the complaint to read as follows:

I

Plaintiff claims of Defendant the sum of FIVE-HUNDRED THIRTY-ONE and TWENTY-EIGHT ONE-HUNDREDTHS (\$531.28) DOLLARS as balance due on a contract made March 29, 1954 between Plaintiff and Brewster Goodman whereon Defendant is surety and which is in words and figures as follows:

- (1) IN CONSIDERATION of the promises of the undersigned Buyer, THE W. T. RAWLEIGH COMPANY, an Illinois Corporation, agrees upon acceptance of this Contract, to sell and deliver f. o. b. Memphis, Tennessee, or at any other point or in any other manner agreed upon, subject to floods, strikes, war or other causes beyond its control, such reasonable quantities of its Products as the Buyer may order at current wholesale prices, and on time, and if desired will sell buyer an Auto Body and/or Equipment, or sample cases, for cash or on time; and the Buyer in consideration of the above agreements hereby promises to pay Seller in full for all such Products so sold and delivered under this Contract, also promises and agrees to pay any balance due Seller at the date of the acceptance of this Renewal Contract for Products previously sold Buyer under any and all former Contracts, by cash or by installment payments satisfactory to Seller at Invoice prices and according to the terms and conditions thereof, including any transportation charges incurred, paid or furnished by Seller, and subject to such cash discounts as may be shown in current discount sheets.
- (2) It is mutually agreed that either party may terminate this Contract by written notice at any time, and when so terminated, all accounts incurred hereunder shall become due and payable immediately. If this Contract is not so terminated it shall expire on the 31st day of December, 1954, it being agreed that another Renewal Contract may be entered into providing business relations are mutually satisfactory and Buyer furnishes an acceptable Renewal Contract.
- (3) If the business relations be terminated for any reason, the Seller agrees to purchase from the Buyer at wholesale prices current when received, any merchantable Products Buyer may have on hand (Sample cases, Auto Bodies and discontinued Products excepted) provided goods are returned promptly by prepaid freight to point designated by Seller, less 5% to cover cost of receiving, overhauling and inspecting same.
- (4) (It is mutually understood and agreed that this is a Contract of Buyer and Seller, and not of Agency or consignment, and that the Buyer is in business for himself and that when the Products are delivered f.o.b. point of shipment, they belong to the Buyer, who has the exclusive right to determine where, at what price, and upon what terms and condition he shall sell the Products purchased from Seller, and further expressly agrees, that any Sales Promotion or Service Letters or Bulletins, Advertising matter or other literature that Seller may send Buyer shall not change this relationship, nor be considered as orders, instructions or directions but only as suggestive, educational and advisory (which the Buyer may or may not follow as he may choose) and shall not alter, change or modify this Contract in any way.

(5) It is agreed and understood that if and when this Contract is accepted by the Seller, it shall constitute and be the sole, only and entire agreement between all parties hereto and that it can only be changed or modified by the agreement and consent of both parties in writing.

Accepted:  
THE W. T. RAWLEIGH COMPANY

By A. L. Turner  
Manager

(s) Brewster Goodman

P.O. Address Atmore, Alabama, Box 55

Date of Acceptance March 29, 1954

For and in consideration of the W. T. Rawleigh Company, accepting the above Contract, and/or in consideration of the above named Seller extending further credit to the said Buyer, and having read and acquainted ourselves with the nature, terms and conditions of this and the above agreement between the Buyer and Seller, and fully understanding same, we, the undersigned, do hereby jointly and severally enter ourselves as sureties, and not as guarantors, and unconditionally promise, guarantee and agree to pay said Seller for any and all goods, wares and merchandise sold said Buyer under the above and foregoing Contract, hereby expressly consenting and agreeing to all the terms, conditions, and provisions thereof; and we also specifically promise and agree to assume and pay any and all prior indebtedness that may be due and owing said Seller on the date of the acceptance of this Contract, for any and all goods, wares and merchandise previously sold to said Buyer under and by virtue of any and all prior Contracts or agreements; hereby binding our heirs, executors, administrators or assigns. We hereby expressly waive notice of the acceptance of this Contract, and of the shipment of goods to the Buyer, and of extension of credit to the Buyer, and of the extension of time in which to pay for the goods so purchased, and waive all notice of any nature whatsoever, including all right to claim exemption of real or personal property allowed by the constitution or laws of this or any other state, insofar as same can legally be done. We also agree that any statement made by the Buyer to the Seller in writing, as to the amount of indebtedness due at any time shall be binding upon us. We also agree that it shall not be necessary for the Seller to first exhaust its remedies against the Buyer before proceeding to collect from us. This undertaking is to be an open one and shall continue without regard to the residence of the Buyer, or the location or manner of conducting his business until the account is fully paid. It is mutually agreed that this Contract is conclusive and binding upon the party or parties who sign it, whether it is signed by any other party or parties or not, and that any statement or representations made to any of the undersigned sureties by any person or persons either as to who or how many parties will sign this surety agreement or as to any other matters not fully expressed herein shall not affect the rights of the Seller.

It is further understood that there are no conditions or limitations to this undertaking except those written or printed herein at the time of signing hereof, and that after execution no alteration, change or modification shall be made except as provided for in the terms of the foregoing contract between the Buyer and Seller, and that any notice in any way affecting the rights of the Seller must be delivered by registered mail to the Seller at its office at Memphis, Tennessee.

IN WITNESS WHEREOF we have set our hands and seal in testimony hereof.

1 (s) <u>W. F. Strength</u>	<u>510 N. Main St.</u> <u>Atmore, Alabama</u>	<u>Grocery, Service Station</u>
2 (s) <u>Aletha Hall</u>	<u>P.O. Box 387</u> <u>Bay Minette, Ala.</u>	<u>Retail Beer Dealer</u>

The Sureties Are Entitles Upon Request At Any Time To A Statement Of Buyer's Account.

And the said contract was breached on or about February 31, 1955 in that the said Brewster Goodman failed or refused to pay the said sum then due, hence this suit.



II

Plaintiff claims of Defendant the sum of FIVE-HUNDRED THIRTY-ONE and TWENTY-EIGHT ONE-HUNDREDTES (\$531.28) DOLLARS as balance due on a contract made March 29, 1954 between Plaintiff and Brewster Goodman whereon Defendant is surety and which is in words and figures as follows:

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(4) It is mutually understood and agreed that this is a Contract of Buyer and Seller, and not of Agency or consignment, and that the Buyer is in business for himself and that when the Products are delivered f.o.b. point of shipment, they belong to the Buyer, who has the exclusive right to determine where, at what price, and upon what terms and conditions he shall sell the Products purchased from Seller, and further expressly agrees, that any Sales Promotion or Service Letters or Bulletins, Advertising matter or other literature that Seller may send Buyer shall not change this relationship, nor be considered as orders, instructions or directions but only as suggestive, educational and advisory (which the Buyer may or may not follow as he may choose) and shall not alter, change or modify this Contract in any way.

(5) It is agreed and understood that if and when this Contract is accepted by the Seller, it shall constitute and be the sole, only and entire agreement between all parties hereto and that it can only be changed or modified by the agreement and consent of both parties in writing.

Accepted:

THE W. T. RAWLEIGH COMPANY

By: A. L. Turner

(s) Brewster Goodman

Date of Acceptance March 29, 1954

P.O. Address Atmore, Alabama, Box 53

For and in consideration of the W. T. Rawleigh Company, accepting the above Contract, and/or in consideration of the above named Seller extending further credit to the said Buyer, and having red and acquainted ourselves with the nature, terms and conditions of this and the above agreement between the buyer and Seller, and fully understanding same, we, the undersigned, do hereby jointly and severally enter ourselves as sureties, and not as guarantors, and unconditionally promise, guarantee and agree to pay said Seller for any and all goods, wares and merchandise sold said Buyer under the above and foregoing Contract, hereby expressly consenting and agreeing to all the terms, conditions, and provisions thereof; and we also specifically promise and agree to assume and pay any and all prior indebtedness that may be due and owing said Seller on the date of the acceptance of this Contract, for any and all goods, wares and merchandise previously sold to said Buyer under and by virtue of any and all prior Contracts or agreements; hereby binding our heirs, executors, administrators or assigns. We hereby expressly waive notice of the acceptance of this Contract, and of the shipment of goods to the Buyer, and of extension of credit to the Buyer, and of the extension of time in which to pay for the goods so purchased, and waive all notice of any nature whatsoever, including all right to claim exemption of real or personal property allowed by the constitution or laws of this or any other state, insofar as same can legally be done. We also agree that any statement made by the Buyer to the Seller in writing, as to the amount of indebtedness due at any time shall be binding upon us. We also agree that it shall not be necessary for the Seller to first exhaust its remedies against the Buyer before proceeding to collect from us. This undertaking is to be an open one and shall continue without regard to the residence of the Buyer, or the location or manner of conducting his business until the account is fully paid. It is mutually agreed that this Contract is conclusive and binding upon the party or parties who sign it, whether it is signed by any other party or parties or not, and that any statement or representations made to any of the undersigned sureties by any person or persons either as to who or how many parties will sign this surety agreement or as to any other matters not fully expressed herein shall not affect the rights of the Seller.

It is further understood that there are no conditions or limitations to this undertaking except those written or printed herein at the time of signing hereof, and that after execution no alteration, change or modification shall be made except as provided for in the terms of the foregoing Contract between the Buyer and Seller, and that any notice in any way affecting the rights of the Seller must be delivered by registered mail to the Seller at its office at Memphis, Tennessee.

IN WITNESS WHEREOF we have set our hands and seal in testimony hereof.

1	(s) <u>W. F. Strength</u>	<u>510 N. Main St.</u>	<u>Grocery, Service Station</u>
		<u>Atmore, Ala.</u>	
2	(s) <u>Aletha Hall</u>	<u>P.O. Box 387</u>	<u>Retail Beer Dealer</u>
		<u>Bay Minette, Ala.</u>	

The Sureties Are Entitled Upon Request At Any Time To A Statement Of Buyer's Account.

And Plaintiff did ship to the said Brewster Goodman from October 13, 1953 to August 25, 1954 goods and chattels as contemplated in the said contract in the amount of ONE-THOUSAND SEVEN-HUNDRED SEVENTY and FIFTY-FIVE ONE-HUNDREDTHS (\$1,770.55) DOLLARS and that Defendant did pay over to Plaintiff ONE-THOUSAND TWO-HUNDRED THIRTH-NINE and TWENTY-SEVEN ONE-HUNDREDTHS (\$1,239.27) DOLLARS in partial payment therefore and that there is a balance due and unpaid of FIVE-HUNDRED THIRTY-ONE and TWENTY-EIGHT ONE-HUNDREDTHS (\$531.28) DOLLARS since January 31, 1955.

And the said contract was breached on or about February 31, 1955 in that the said Brewster Goodman failed or refused to pay the said sum then due, hence this suit.

III

The Plaintiff claims of the Defendant the sum of FIVE-HUNDRED THIRTY-ONE and TWENTY-EIGHT ONE-HUNDREDTHS (\$531.28) DOLLARS, due on a contract made by Brewster Goodman, on the 29th day of March, 1954 for the payment of ONE-THOUSAND SEVEN-HUNDRED SEVENTY and FIFTY-FIVE ONE-HUNDREDTHS (\$1,770.55) DOLLARS, whereon defendant became surety for the payment of sums due on the said contract, and the said Brewster Goodman failed or refused to pay the sum due on the said contract, hence this suit.

IV

The Plaintiff claims of Defendant, FIVE-HUNDRED THIRTY-ONE and TWENTY-EIGHT (\$531.28) DOLLARS due on a contract between Brewster Goodman and Plaintiff whereon Defendant was surety for the performance of the said Brewster Goodman; And the said Brewster Goodman having failed or refused to pay the amount of FIVE-HUNDRED THIRTY-ONE and TWENTY-EIGHT (\$531.28) DOLLARS due on the said contract, now Plaintiff claims this sum of Defendant, together with the interest thereon.

V

The Plaintiff claims of the Defendant the sum of FIVE-HUNDRED THIRTY-ONE and TWENTY-EIGHT ONE-HUNDREDTHS (\$531.28) DOLLARS, due on a contract in writing made by Brewster Goodman, on the 29th day of March, 1954 for the payment of ONE-THOUSAND SEVEN-HUNDRED SEVENTY and FIFTY-FIVE ONE-HUNDREDTHS (\$1,770.55) DOLLARS, whereon defendant became surety for the payment of sums due on the said contract, and the said Brewster Goodman failed or refused to pay the sum due on the said contract, hence this suit.

VI

The Plaintiff claims of Defendant, FIVE-HUNDRED THIRTY-ONE and TWENTY-EIGHT (\$531.28) DOLLARS due on a contract in writing between Brewster Goodman and Plaintiff whereon Defendant was surety for the performance of the said Brewster Goodman; And the said Brewster Goodman having failed or refused to pay the amount of FIVE-HUNDRED THIRTY-ONE and TWENTY-EIGHT (\$531.28) DOLLARS due on the said contract, now Plaintiff claims this sum of Defendant, together with the interest thereon.

\_\_\_\_\_  
Attorney for Plaintiff

HOWARD E. LANGHAM	)	IN THE CIRCUIT COURT OF
Plaintiff	)	
vs	)	BALDWIN COUNTY, ALABAMA
HARVEY UNDERWOOD and	)	AT LAW
LOWELL THOMAS UNDERWOOD	)	
jointly and individually	)	CASE NO. 2,876
Defendants	)	

MOTION TO REQUIRE DEFENDANT TO ANSWER INTERROGATORIES

Now comes the plaintiff in the above styled cause and says that plaintiff filed interrogatories to the defendant Lowell Thomas Underwood on September 13, 1956 under the provisions of Title 7, Section 477, together with an affidavit that the answer to said interrogatories propounded would be material testimony for the plaintiff in said cause, and plaintiff further says that said interrogatories were served on the said defendant on September 17, 1956, and that defendant has failed to answer said interrogatories within sixty (60) days of service of said interrogatories upon said defendant and that plaintiff now moves that the court either require the defendant to answer said interrogatories in open court, enter a judgment by default, or render such judgment or decree as would be appropriate if such defaulting party offered no evidence, as provided by Title 7, Section 483, Code of Alabama 1940.

McCONNELL & FOREMAN

BY

*Alvin McConnell*  
Attorneys for the Plaintiff

Defendant's attorney:

Cecil G. Chasen  
Foley, Alabama

FILED  
DEC. 14 1956

DANCE L. DUCK, Clerk