

LAW OFFICES
E. G. RICKARBY
BANK BUILDING
FAIRHOPE, ALABAMA
November 17, 1956

3016

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

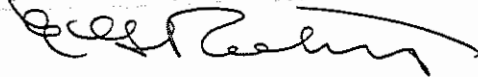
Dear Mrs. Duck:

Re: Equipment Finance Company
Vs: Gulf Produce Company
Our File: 3756

Enclosed find amended copy in the case of Equipment Finance Company, A Corporation, vs. B. E. Eastburn and W. M. Patterson, Individually and doing business as Gulf Produce Company.

Please mark same filed and oblige.

Yours very truly,



EGR/ts
11-30-56
cc: (dup) Equipment Finance Co.

LAW OFFICES
E. G. RICKARBY
BANK BUILDING
FAIRHOPE, ALABAMA

November 23, 1956

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

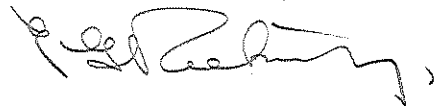
Dear Mrs. Duck:

Re: Equipment Finance Company
Vs: Gulf Produce Company
Our File: 3756

Just as soon as that Complaint comes back from the Sheriff's office in the matter of Equipment Finance Company vs. Gulf Produce Company, would you make a copy of it at my expense and mail it to "Lockwood Graders, Gering Nebraska, Attention: Mr. E. A. Barcell", with a statement of your charges (which, if not paid by them, I will take care of), and a copy of this letter?

Thanks.

Yours very truly,



EGR/ts
11-30-56
cc: Lockwood Graders

EQUIPMENT FINANCE COMPANY,
a corporation,

Plaintiff,

vs.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

B. E. EASTBURN and W. M. PAT-
TERSON, Individually and doing
business as GULF PRODUCE COMP-
ANY, A Partnership,

AT LAW

Defendants.

PLEAS

Come now the Defendants in the above styled cause, by their attorneys, and for answer to the Complaint as last amended heretofore filed against them, and to each count thereof, separately and severally, plead, separately and severally, as follows:

1. The allegations of the Complaint are untrue.

2. There was no consideration for the note sued on.

3. That the note described in the Complaint and herein sued on by the Plaintiff was given by the Defendants to Lockwood Grader Corporation, the indorser thereof, and at the time said note was accepted by Lockwood Grader Corporation and prior thereto it was a foreign corporation which had never complied with the provisions of Chapter 8, Title 10, Code of Alabama of 1940, and said note is null and void.

4. That the note described in the Complaint and herein sued on by the Plaintiff was given by the Defendants to Lockwood Grader Corporation, the indorser thereof, and at the time said note was accepted by Lockwood Grader Corporation and prior thereto it was a foreign corporation which had never complied with the provisions of Chapter 8, Title 10, Code of Alabama of 1940. That prior to the acceptance of this note the Defendants purchased from Lockwood Grader Corporation a potato bagging machine which was to be returned or replaced in the event that it did not function properly and in the event that said machine was returned the said note was not to be paid. That said machine did not function properly and it was returned to

Lockwood Grader Corporation. That the note herein sued on was given as the purchase price for said machine and in accordance with the agreement aforesaid and while said agreement was in full force and effect and before the said Lockwood Grader Corporation had complied with the above noted sections of the Code of Alabama, the Plaintiff accepted said note by indorsement from the said Lockwood Grader Corporation.

5. There was a failure of consideration for the note sued on.

6. That the note herein sued on was given by the Defendants to Lockwood Grader Corporation as the purchasers from said corporation of a potato bagging machine and as the purchase price for said machine and the full consideration for the execution of said note was the value of said machine which was sold to the Defendants with the express understanding an agreement that if said machine did not function properly and bag an average of Three Thousand (3000) ten pound sacks of potatoes per hour that they would not be liable for the purchase price thereof and that said understanding and agreement was in full force and effect at the time said note was assigned by indorsement to the Plaintiff. That said machine did not function properly and did not bag an average of Three Thousand (3000) ten pound sacks of potatoes per hour.

7. That the principal amount of the note herein sued on represents the purchase price of a potato bagging machine purchased by the Defendants from Lockwood Grader Corporation on the 1st day of April, 1956. That said note was given in consideration of the agreement of the said Lockwood Grader Corporation that if said machine did not function properly that the Defendants would not be liable on said note. And the Defendants allege that said machine did not, in fact, function properly and that the said Lockwood Grader Corporation had prompt notice of the fact that it did not function properly, and that because of the failure of the machine to so function there has been a complete and total failure of consideration for the said note and therefore the Plaintiff should not recover.

8. That the note described in the Complaint was secured

by a chattel mortgage conveying two Lockwood Sewing Machines, one Lockwood Special B agger and ten Lockwood Scale Heads which provided that in the event of default in the payment of the note the mortgagee was authorized to sell said property either at private or public sale; such sale to take place in Foley, Alabama, and pay said debt with expenses incurred; and said note further provided that if from any cause the property should fail to satisfy said debt and expense then the mortgagor agreed to pay the deficiency. And the Defendants allege that under and by virtue of the terms of said mortgage the title to the machinery described therein is now in the Plaintiff, or its assignor or indorser and that neither the Plaintiff or Lockwood Grader Corporation has complied with the terms of said mortgage in that they have not sold, or attempted to sell, the property described in said mortgage at either a public or private sale and therefore this action is premature and the Plaintiff should not recover.

9. Non est factum.

10. That part of the consideration for the note described in the Complaint was the execution of a chattel mortgage to secure the payment thereof and in the event of a default in the payment of said note the sale of the machinery conveyed thereby and an application of the proceeds of the sale, which sale was to be held in Foley, Alabama, to the payment of the amount then due on said note and expenses incurred. And the Defendants further allege that at the time of the acceptance of said note by Lockwood Grader Corporation and at the time of its indorsement to the Plaintiff herein, the Plaintiff was a foreign corporation and the said Lockwood Grader Corporation was a foreign corporation, and that neither of said corporations had at either of said times, or before or since said times, complied with the terms and provisions of Chapter 8, Title 10, Code of Alabama of 1940, and that by the acceptance of said note and the chattel mortgage to secure the same on property located in Baldwin County, Alabama, constituted the doing of business in the State of Alabama contrary to the terms and provisions of the statutory provisions hereinabove noted. And the Defendants further allege that the note and chattel mortgage herein referred to constituted one transaction

and was not severable, hence the Plaintiff should not recover.

11. The note described in the Complaint and herein sued on was given as evidence of a promise to pay Lockwood Grader Corporation as a result of a contract between said corporation and the Defendants wherein the Defendants agreed to purchase from said corporation the following personal property; viz: One (1) Lockwood Sewing Machine, SML0-50, Ser. #143 w/extension conveyor 22'; One (1) Lockwood Sewing Machine, SML0-50, Ser. #144 w/extension conveyor 9'; One (1) Lockwood Special Bagger, AB24-6, Ser. 100; and Ten (10) Lockwood Scale Heads at and for the price of Seven Thousand Nine Hundred and Twenty-one and 17/100 Dollars (\$7,921.17) and that in and by the terms of said agreement to purchase the said Lockwood Grader Corporation warranted that said personal property would produce or bag and have prepared for shipment an average of Three Thousand (3000) ten pound bags of potatoes per each hour of operation and did further agree that in the event that machinery did not function properly and in said operation did not bag an average of Three Thousand (3000) ten pound bags of potatoes per each hour of operation that there was to be no liability on the note. And the Defendants further allege that said machinery did not function properly and did not bag an average of Three Thousand (3000) ten pound bags of potatoes per each hour of operation and that the said Lockwood Grader Corporation was given prompt notice of such failure. That because of such failure and the agreement of the Defendants and said Lockwood Grader Corporation there has been a complete failure of the consideration for the execution and delivery of said note and the Plaintiff should not, therefore, recover.

CHASON & STONE

By: 666

Attorneys for Defendants

EQUIPMENT FINANCE COMPANY,
A corporation,

Plaintiff,
RECORDED

vs.

B. E. EASTBURN and W. M. PAT-
TERSON, Individually and doing
business as GULF PRODUCE COMP-
ANY, A Partnership,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW NO: 3016

PLEAS

FILED

FEB 25 1957

MISS. L. BUCK, CLERK

LAW OFFICES

3016

EQUIPMENT FINANCE COMPANY,
A Corporation,

PLAINTIFF

VS.

B. E. EASTBURN and
W. M. PATTERSON, Individually
and doing business as

GULF PRODUCE COMPANY,
A Partnership,

DEFENDANTS

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW

C O M P L A I N T

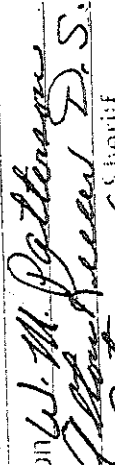
COUNT I

The Plaintiff claims of the Defendants the sum of SEVEN THOUSAND NINE HUNDRED TWENTY-ONE DOLLARS AND SEVENTEEN CENTS (\$7,921.17) due by promissory note made by Defendants payable to LOCKWOOD GRADER CORPORATION, GERING NEBRASKA, on the 1st day of April, 1956, and payable on, to-wit, the 15th day of June, 1956, with interest thereon at the rate of eight percent (8%) per annum from the 1st day of April, 1956, which said note is now the property of the Plaintiff, and Plaintiff avers that in said note, and as part of the consideration thereof, the Defendants agreed to pay a reasonable attorney's fee for the collection thereof and the Plaintiff hereby claims the further sum of ONE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$1,250.00) as such attorney's fee.



E. G. RICKABY
Attorney for the Plaintiff

Executed this 19 day
Sept. 1956 by serving
a copy of the within.


W. M. Patterson
Attorney for the Defendant

SUMMONS AND COMPLAINT

Moore Ptg. Co.

The State of Alabama, }

Baldwin County.

Circuit Court, Baldwin County

No.-----

----- TERM, 19-----

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon B. E. EASTBURN and W. M. PATTERSON

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 B. E. EASTBURN and

W. M. PATTERSON, Individually and d/b/a GULF PRODUCE COMPANY, Defendants.

by EQUIPMENT FINANCE COMPANY, a Corporation,

-----, Plaintiff.

Witness my hand this 28 day of Aug 19 56.

Arthur J. Duck, Clerk

EQUIPMENT FINANCE COMPANY,
A Corporation,

Plaintiff,

vs.

B. E. EASTBURN and W. M.
PATTERSON, individually and
doing business as GULF PRODUCE
COMPANY, a Partnership,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

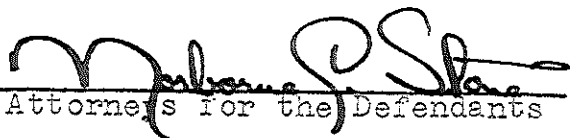
AT LAW NO. 3016

Come now the Defendants in the above style cause, by their attorneys, and demur to the complaint heretofore filed against them and assign the following separate and several grounds in support thereof:

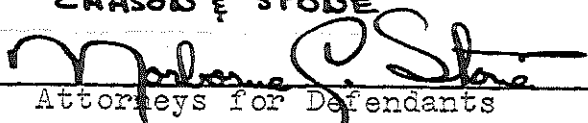
1. The complaint fails to state a cause of action.
2. For aught that appears from the complaint the alleged note has been paid.
3. For aught that appears from the complaint the alleged note was paid before it became the property of the Plaintiff.
4. For aught that appears from the complaint the alleged note was not assigned to the Plaintiff by the payee.
5. The complaint fails to allege when the alleged note became the property of the Plaintiff.

Respectfully submitted,

CHASON & STONE

By: 
Attorneys for the Defendants

The Defendants demand a trial of
this cause by jury.

CHASON & STONE
By: 
Attorneys for Defendants

RECORDED

EQUIPMENT FINANCE COMPANY, a
Corporation,

Plaintiff,

vs.

B. E. EASTBURN and W. M. PATTER-
SON, individually and doing
business as GULF PRODUCE COMPANY,
a Partnership,

Defendants,

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 3016

DEMURRER

FILED

SEP. 26 1956

ALICE J. DUCK, Clerk

LAW OFFICES

CHASON & STONE

BAY MINETTE, ALABAMA

EQUIPMENT FINANCE COMPANY, A
CORPORATION,

Plaintiff,

vs.

B. E. EASTBURN and W. M.
PATTERSON, Individually and
doing business as GULF PRODUCE
COMPANY, A Partnership,

Defendants.

I

I

I

I

I

I

I

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 3016

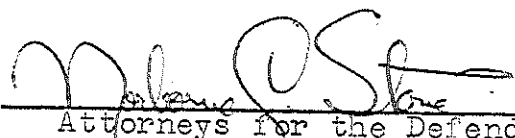
DEMURRER TO COMPLAINT AS AMENDED

Come now the Defendants in the above styled cause, by their attorneys, and demur to the complaint as last amended, and to each count thereof, separately and severally and assign the following separate and several grounds in support thereof:

1. The complaint fails to state a cause of action.
2. Count one of the complaint fails to state a cause of action.
3. Count two of the complaint fails to state a cause of action.
4. For aught that appears from the complaint the alleged note was paid before it became the property of the Plaintiff.
5. For aught that appears from the complaint the alleged note has been paid.
6. The complaint fails to allege when the note became the property of the Plaintiff.
7. The complaint fails to allege when the note was assigned to the Plaintiff.
8. The allegations of count two fail to allege when said note became due.
9. The allegations of count one fail to allege how the note became the property of the Plaintiff.

CHASON & STONE

By:


Attorneys for the Defendant

EQUIPMENT FINANCE COMPANY, A
CORPORATION,

Plaintiff,

vs.

B. E. EASTBURN and W. M. PATTER-
SON, Individually and doing bus-
iness as GULF PRODUCE COMPANY,
A Partnership,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 3016

DEMURRER TO COMPLAINT AS AMEND-
ED

FILED

DEC 5 1956

ALICE J. DUCK, Register

LAW OFFICES

CHASON & STONE

BAY MINETTE, ALABAMA

EQUIPMENT FINANCE COMPANY,
a Corporation,

Plaintiff,

VS.

B. E. EASTBURN and W. M. PAT-
TERSON, Individually and doing
business as GULF PRODUCE COMP-
ANY, a Partnership,

Defendants.

I
I
I
I
I
I
I

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

DEMURRERS

Comes the Plaintiff in the above styled cause and offers
the following separate and several demurrers to the Defendants'
pleas, separately and severally:

1. It is not verified.
2. It is not a sworn plea.
3. It is no defense to complaint and raises an immaterial
issue.
4. No facts are alledged to show that the property described
in complaint was sold to defendants in Alabama.
5. From aught that appears from the plea the sale of the
property described in plea was made in interstate commerce.
6. No facts are alledged to show that the sale of this pro-
perty described in the plea was made by Lockwood Grader
Corporation in Alabama.
7. No facts are alledged to show any duty to foreclose the
mortgage described in the plea.
8. It affirmatively appears that the pleas have not been
signed by the Defendants' attorneys.

E. G. Rickaby
E. G. RICKABY
ATTORNEY FOR PLAINTIFF.

EQUIPMENT FINANCE COMPANY,
A Corporation,

PLAINTIFF

VS.

B. E. EASTBURN and
W. M. PATTERSON, Individually
and doing business as

GULF PRODUCE COMPANY,
A Partnership,

DEFENDANTS

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA


AT LAW

C O M P L A I N T

Comes the Plaintiff and amends the Complaint by adding
Count Two:

COUNT II

The Plaintiff claims of the Defendants the sum of SEVEN THOUSAND NINE HUNDRED TWENTY-ONE DOLLARS AND SEVENTEEN CENTS (\$7,921.17) due by promissory note made by the Defendants on, to-wit, the 1st day of April, 1956, payable to the order of LOCKWOOD GRADER CORPORATION, as follows: THREE THOUSAND NINE HUNDRED AND SIXTY DOLLARS AND FIFTY-NINE CENTS (\$3,960.59) on the 15th day of May, 1956 and THREE THOUSAND NINE HUNDRED AND SIXTY DOLLARS AND FIFTY-EIGHT CENTS (\$3,960.58) on the 15th day of June, 1956, with interest at the rate of EIGHT PER CENT (8%) per annum after due and until paid, which said note was assigned by endorsement by the said LOCKWOOD GRADER CORPORATION to the Plaintiff and is due and unpaid.


E. G. RICKARBY,
Attorney for the Plaintiff.