

VIRGINIA M. McLAIN,
Plaintiff,
VS.
HARLAN C. BANKESTER and
ANNIE A. BANKESTER,
Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW
NO. 3424

MOTION TO TRANSFER CAUSE TO EQUITY DOCKET

Now come the defendants and show unto the court that their defense in this suit depends upon the assertion of an equitable right or defense, the decision of which should dispose of this cause, and which cannot be disposed of on the law side of the court. The said equitable right or defense of the said defendants is as follows:

1. On, to-wit, June 23, 1949, the plaintiff, Virginia M. McLain, a widow, made, executed and delivered to the defendants a written contract whereby the said plaintiff agreed to sell to the said defendants, and the said defendants agreed to purchase from the said plaintiff, the property involved in this proceeding. A copy of the said contract is hereto attached, marked "Exhibit A," and by reference made a part hereof as though fully incorporated herein.

2. The said plaintiff in the said contract agreed to convey the property involved in this suit, which is the property described in the said contract, and which is situated in Baldwin County, Alabama, to the defendants by warranty deed, free from all liens and encumbrances, when the full consideration has been paid.

3. The defendants made one \$500.00 payment on the said contract on, to-wit, September 1, 1949, and commencing on, to-wit, September 1, 1949, made twenty-seven (27) monthly principal payments to apply on the said contract and the interest thereon. The last of said payments was made on, to-wit, February 2, 1952, which was the payment that became due on November 1, 1951. The said payments reduced the principal balance on the said contract to \$1555.00 as of November 1, 1951. On or about November 1, 1951, the defendants discovered that the property involved in this proceeding, and which the plaintiff had agreed to sell to them as provided in the said contract, was encumbered by a recorded tax lien in favor of the United States

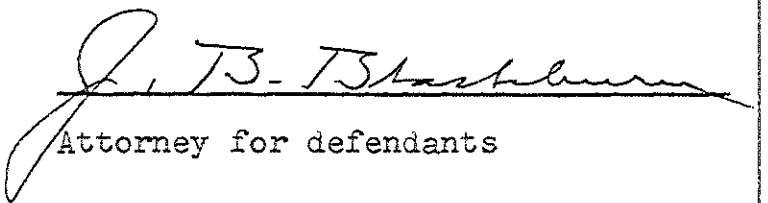
of America against Frazier Decorating Company, Wm. A. Frazier, in the amount of \$1434.33, which lien is recorded in Judgment Book 4 at page 187, Baldwin County, Alabama Records, and by a tax lien in favor of the United States of America against Wm. A. Frazier for \$315.62, which lien is recorded in Judgment Book 4 at page 218, Baldwin County, Alabama Records. The said liens have not been cancelled as of this date and are clouds on the plaintiff's title to the property involved in this suit and described in the said contract. The said Wm. A. Frazier, the party against whom the two said liens were filed, was a former owner of the above described property and the said liens had been recorded prior to the execution, delivery and recording of the warranty deed to the plaintiff, Virginia M. McLain, which said deed is dated April 12, 1949, and was filed for record on June 24, 1949, and which is recorded in Deed Book 142 at page 475, Baldwin County, Alabama Records.

4. The defendants are now ready, and have always been ready, to pay the balance due on their said contract with the plaintiff, and are still ready, able and willing to pay the amount due the plaintiff when she is able to convey the property described in the said contract to them, free from all liens and encumbrances, as the plaintiff agreed to do in the said contract.

5. The defendants offer to do equity.

6. The said plaintiff should be required to have the two said liens cancelled as clouds on her title to the said property and should then be compelled to specifically perform her contract with the defendants.

WHEREFORE, the defendants move this court to transfer this cause from the law side of this court to the equity side thereof in the manner provided by Title 13, Section 153 of the 1940 Code of Alabama, in order that the equitable defense set out above may be interposed by the defendants, and in order that they can compel the said plaintiff to specifically perform her contract with them.


Attorney for defendants

STATE OF ALABAMA)
*
BALDWIN COUNTY)

Before me, the undersigned authority, within and for said County in said State, personally appeared Harlan C. Bankester, who, after being by me first duly and legally sworn, deposes and says: he is one of the defendants in the above entitled cause; that he has read over the foregoing motion and that the facts stated therein are true.

Harlan C. Bankester

Sworn to and subscribed before me
on this the 20 day of October,
1958.

Glice L. Miller

Notary Public, Baldwin County, Alabama

Filed Oct. 21, 1958

VIRGINIA M. McLAIN,	X	IN THE CIRCUIT COURT OF	
Plaintiff,	X		
	X	BALDWIN COUNTY, ALABAMA	
vs.	X		
H. C. BANKESTER, ET AL.,	X	AT LAW	NO. 3424
Defendants.	X		

DEMURRER TO MOTION TO TRANSFER

Comes now the Plaintiff, by her attorneys, and demurs to the Motion to Transfer this cause to the Equity docket of this Honorable Court and assigns the following separate and several grounds in support thereof.

1. That said motion is not verified.
2. That said motion is not supported by an affidavit of some person having personal knowledge of the facts therein alleged.
3. That the facts alleged in said motion are not supported by an affidavit of some person having personal knowledge thereof.
4. It affirmatively appears from the allegations of said motion that the said property involved in this proceeding is not subject or encumbered by a recorded tax lien in favor of the United States of America which constitutes a cloud upon the title of the Plaintiff.
5. It affirmatively appears from the allegations of the motion that the tax liens therein referred to are not clouds upon the title of the Plaintiff.
6. No facts are alleged to show that any cloud exists upon the title of the Plaintiff which would constitute a lien or an encumbrance as contemplated by the parties in the contract, a copy of which was attached to said motion.
7. It affirmatively appears that the tax liens therein referred to are barred by the statute of limitations and do not constitute a cloud on the title of the Plaintiff.
8. For aught that appears from the allegations of the

complaint no action has been instituted by the United States of America to enforce the tax liens therein referred to and that said lands are barred by the statute of limitations of six years.

9. The allegation of the motion to transfer that "said liens have not been cancelled as of this date and are clouds on the Plaintiff's title to the property involved in this suit and described in the said contract" is a conclusion of the pleader and no facts are alleged in said motion to support such conclusion.

10. No facts are alleged in the motion to transfer this cause which entitle the Defendants to any equitable relief.

Filed Nov. 2, 1958
Alice J. Clark, clerk

Respectfully submitted,

CHASON & STONE

By: *Malcolm J. Stone*

3424

VIRGINIA M. MCLAIN,

Plaintiff,

vs.

H. C. BANKESTER, ET AL.,

Defendants

* * * * *

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 3424

* * * * *

DEMURRER TO MOTION TO TRANS-
FER

* * * * *

FILED

NOV 3 1958

ALICE J. DUCK, CLERK
REGISTER

LAW OFFICES

CHASON & STONE

BAY MINETTE, ALABAMA

VIRGINIA M. McLAIN,	1	
Plaintiff,	1	IN THE CIRCUIT COURT OF
vs.	1	BALDWIN COUNTY, ALABAMA
HARLAN C. BANKESTER and	1	AT LAW.
ANNIE A. BANKESTER,	1	NO. 3424.
Defendants.	1	

DEMURRER

Now come the Defendants in the above styled cause and demurs to the complaint filed in said cause and as grounds of such demurrer, assign separately and severally, the following:

1. It does not state a cause of action.

Filed Jan. 30, 1958
Alice J. Luck, Clerk J. B. Blackburn
 Attorney for Defendants.

VIRGINIA M. McLAIN,
Plaintiff,

vs.

HARLAN C. BANKESTER
and ANNIE A. BANKESTER,
Defendants.

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

COUNT ONE:

The Plaintiff sues to recover possession of the following tract of land:

Commencing at the Southeast corner of the Southwest Quarter of Section 22, Township 4 South of Range 2 East, thence running West along the Section line 209 feet to a point, thence North 418 feet to a point, thence East 209 feet to the East line of said Quarter Section, thence South 418 feet to the place of beginning.

of which she was in possession, and upon which, pending such possession, and before the commencement of this suit, the Defendants entered and unlawfully withhold, together with Two Thousand Dollars (\$2000.00) for the detention thereof.

CHASON & STONE

By:


Attorneys for Plaintiff.

100-5427
VIRGINIA M. McLAIN,
Plaintiff,

vs.

HARLAN C. BANKESTER and
ANNIE A. BANKESTER,
Defendants.

SUMMONS and COMPLAINT

FILED
DEC. 9 1957
ALICE J. DUCK, Clerk

LAW OFFICES
CHASON & STONE
BAY MINETTE, ALABAMA

SUMMONS AND COMPLAINT

Moore Ptg. Co.

The State of Alabama, }

Baldwin County.

Circuit Court, Baldwin County

No. 3424

TERM, 19

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon HARLAN C. BANKESTER AND ANNIE A. BANKESTER

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

HARLAN C. BANKESTER AND ANNIE A. BANKESTER

, Defendant.

by VIRGINIA M. McLain

, Plaintiff.

Witness my hand this 9th day of Dec. 1957.

Entered Dec. 27, 1957 Cliff J. Davis, Clerk

EXHIBIT A

SALES CONTRACT

THIS AGREEMENT, made and entered into this 23rd day of June, 1949, between Virginia M. McLain, a widow, party of the first part, and Harlan C. Bankester and Annie A. Bankester, husband and wife, parties of the second part, WITNESSETH:

That the party of the first part, for and in consideration of the sum of \$500.00, the receipt of which is hereby acknowledged hereby agrees to sell and convey unto the said party of the second part as tenants in common with equal interests for the period or term that said parties of the second part shall both survive and unto the survivor of said parties at the death of the other, all that real property situated in the County of Baldwin, State of Alabama, described as follows, to-wit:

Commencing at the Southeast corner of the Southwest Quarter of Section 22, Township 4 South, Range 2 East, thence running West along the Section line 209 feet to a point, thence running North 418 feet to a point, thence East 209 feet to the East line of said Quarter Section, thence South 418 feet to the point of beginning.

The consideration for said sale being the sum of \$3500.00 of which sum \$500.00 hereinabove mentioned is paid on account, the balance \$3000.00 shall be paid as follows: \$500.00 seventy days from the date of this instrument with interest at the rate of 7% per annum, monthly amortizing, and the balance of \$2500.00 shall be payable as follows: Beginning on the 1st day of September, 1949 the sum of \$35.00 and the sum of \$35.00 on the 1st day of each month thereafter, until the principal indebtedness hereby secured has been fully paid, with interest on the principal sum at the rate of 7% per annum payable with each monthly payment.

Privilege is given to make additional payments on said principal sum at any interest payment date; such additional payments, however, to be made in multiples of \$35.00

The party of the first part agrees to convey the above described property by a Warranty Deed free from all encumbrances when the full consideration has been paid.

All taxes, insurance premiums and rents are to be prorated as of the date and delivery of this instrument.

Parties of the second part agree to keep the buildings on, or which may hereafter be erected upon, said premises insured against fire and tornado in the sum of, not less than, the amount due the party of first part, by policies made payable to and deposited with the party of the first part and to pay all premiums, taxes and assessments that may be levied against the premises from the date of this agreement. Parties of the second part agree to keep all buildings erected hereon in good repair.

In the event the parties of the second part default for a period of sixty days after same becomes due and payable, in making any installment payments provided herein, or fails to perform any of the duties herein specified, the party of the first part may at his/their option declare this agreement null and void and of no further effect, and the amount paid under this agreement up to that time shall be retained by the party of the first part as liquidated damages for the breach of this agreement and the parties of the second part agree to give up quiet and peaceable possession, and hereby authorizes the party of the first part to enter upon and take possession of said premises.

It is understood and agreed that the parties of the second part shall have the right, at any time to pay in advance any payments that may be due the party of the first part with interest to the date of the said payment.

It is understood and agreed that this agreement shall include the heirs, executors and assigns of the parties herein named.

In Witness Whereof the parties have hereunto set their hands and seals, in duplicate, the day and date first above written.

Mrs. Virginia M. McLain (Seal)

Harlan C. Bankester (Seal)

This instrument is evidenced
by note of even date.

Annie A. Bankester (Seal)

WITNESSES: Two.

DOCKET

VIRGINIA M. McLAIN,

Plaintiff,

VS.

HARLAN C. BANKESTER and ANNIE A.
BANKESTER,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW NO. 3424

FILED

OCT 21 1958

ALICE J. DUCK, CLERK
REGISTER

J. B. BLACKBURN
ATTORNEY AT LAW
BAY MINETTE, ALABAMA