

WILLIAM H. EVANS,)	IN THE CIRCUIT COURT OF
Plaintiff,)	BALDWIN COUNTY, ALABAMA
vs.)	AT LAW.
CHESTER F. HAWKINS,)	NO. 3464
Defendant.)	

AFFIDAVIT

Comes now the Plaintiff in the above styled cause and files this his affidavit to controvert the facts alleged in that certain motion to transfer this cause from the law side of this Honorable Court to the equity side thereof, heretofore filed in this cause on, to-wit, the 24th day of April, 1958:

Before me, Eleanor Helton, a Notary Public in and for the State of Alabama at Large, personally appeared William H. Evans, who is known to me and who, after being by me first duly and legally sworn, did depose and say under oath as follows:

My name is William H. Evans, and I am over the age of twenty-one years and a resident citizen of Mobile County, Alabama. I am one and the same person as the Plaintiff in that certain cause now pending in the Circuit Court of Baldwin County, Alabama, at Law, No. 3464, wherein William H. Evans is the Plaintiff and Chester F. Hawkins is the Defendant. I am also one and the same person as the William H. Evans in that certain contract of sale, a copy of which is attached to the motion hereinabove referred to, which was filed in the above styled cause on April 24, 1958. On January 10, 1958, acting by and through Bonnerae H. Roberts, my attorney and agent, I served notice of the cancellation of said contract on Chester F. Hawkins for and on account of the failure of the said Chester F. Hawkins to make the monthly payment due under said contract on December 23, 1957, and for his failure to pay taxes on said property, and the improvements located thereon, for portions of the years 1955, 1956 ~~and 1957~~ and for his failure to pay insurance premiums on said improvements for portions of the same years. The said Chester F. Hawkins has not made the payments due under the said

contract. On the contrary, the said Chester F. Hawkins has been delinquent in his monthly installments under said contract on at least two prior occasions, and I have been compelled to collect said back installments by turning the matter over to an attorney for collection on two occasions prior to the present litigation. The total taxes which have fallen due on said property since the date of the contract between us referred to above have amounted to the sum of \$182.42 for the years 1954, 1955, 1956 and 1957. Of that amount Chester F. Hawkins has paid only \$88.97, thus leaving a balance of \$93.45 which was in default at the time of filing this action. The total amount of insurance premiums which have fallen due on said improvements since the date of the aforesaid contract is \$238.54, covering insurance premiums during the years 1954, 1955, 1956 and 1957. Of this amount the said Chester F. Hawkins has paid only \$155.39, thus leaving a balance of \$83.15 for insurance premiums which was in default at the time of the filing of this action. In addition to these items, the said Chester F. Hawkins was in default for his December 23, 1957 monthly installment on said contract in the amount of \$60.00, thus making a total amount of \$236.60 which was in default at the time of the giving of said notice of cancellation on January 10, 1958, and on the date of the filing of this action. All of said monthly installments which have subsequently fallen due are still due and unpaid. The said Chester F. Hawkins is now, and was on January 10, 1958, and on the date of the filing of this action, in default under said contract, and he has made no offer since that date to pay the amounts due by him under said contract, or to reimburse me for payments which it was necessary that I make in order to protect and preserve said property.

The said Chester F. Hawkins obligated himself in said contract of sale to maintain the improvements on said property in a state of good repair. This he has utterly failed to do, but

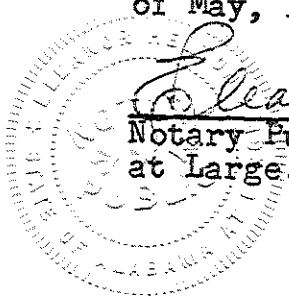
on the contrary has permitted the improvements to become run down, unpainted and disreputable in appearance.

William H. Evans
William H. Evans

Subscribed and sworn to before
me on this 19th day
of May, 1958.

Filed June 30, 1958
Alice J. Duck, clerk

Eleanor Helton
Notary Public, State of Alabama
at Large.




WILLIAM H. EVANS,)	IN THE
Plaintiff)	CIRCUIT COURT OF
vs -)	BALDWIN COUNTY, ALABAMA
CHESTER F. HAWKINS,)	
Defendant.)	NO. _____

The Plaintiff sues to recover possession of the following tract of land situated in Baldwin County, Alabama:

The Northwest Quarter (NW $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) of Section Twenty Seven (27), Township Six (6) South, Range Two (2) East, being land of the Fairhope Single Tax Corporation,

of which he was in possession, and upon which, pending such possession, and before the commencement of this suit, the Defendant entered and unlawfully withholds, together with Three Hundred and No/100 (\$300.00) Dollars for the detention thereof.

CHASON AND STONE
Attorneys for Plaintiff

BY: 

Plaintiff demands a trial by jury in this cause.

CHASON AND STONE
Attorneys for Plaintiff

BY: 

Defendant may be served at his residence on the property being sued for, which may be found in the following manner:

Proceed one mile East of the Fairhope City limits on Morphy Avenue and then proceed one additional mile to defendant's residence.

3464

WILLIAM H. EVANS,
Plaintiff,

vs.

CHESTER F. HAWKINS,
Defendant.

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

FILED
FEB 26 1958
ALICE J. BUCK, 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. 3464

TERM, 19

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon CHESTER F. HAWKINS

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

CHESTER F. HAWKINS

, Defendant.

by WILLIAM H. EVANS

, Plaintiff.

Witness my hand this 26th day of February 19 58

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Alvin J. Hester, Clerk

Executed April 1, 1958

WILLIAM H. EVANS,

Plaintiff,

vs.

CHESTER F. HAWKINS,

Defendant.

X
X
X
X
X
X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 3464

Comes now the Plaintiff, by his attorneys, and demurs to the motion to transfer this cause from the law side of this Honorable Court to the equity side thereof, and assigns the following separate and several grounds in support thereof:

1. Said motion and the proof submitted therewith do not sufficiently assert and show an equitable question or right, the decision of which should dispose of this cause and which cannot be disposed of in the law side of the Court.

2. The motion fails to allege that at the time the Defendant allegedly offered to make all of the payments due under the contract therein referred to that he was not in default under said contract.

3. For aught that appears from the motion the Defendant was in default under said contract and the same has been declared null and void.

4. For aught that appears from the allegations of said motion the agreement attached thereto had been declared null, void and at an end prior to the commencement of this action.

5. Said motion fails to assert an equitable right or defense by the Defendant.

6. Said Motion is not properly verified.

7. Said motion is not properly verified by the affidavit of some person having knowledge of the facts therein alleged.

8. No facts are alleged which would entitle the Defendant to have this cause transferred to the equity side of this Honorable Court as a matter of right.

Respectfully submitted,

PILLANS, REAMS, TAPPAN, WOOD & ROBERTS

and

CHASON & STONE

FILED

MAY 21 1958

ALICE J. DUCK, CLERK
REGISTER

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By: Mark S. Stone, Jr.

WILLIAM E. EVANS,
Plaintiff,

VS.

CHESTER F. HAWKINS,
Defendant.

DEMURRER

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW NO. 3464

FILED
MAY 21 1958
ALICE L. DUCK, Clerk

LAW OFFICES
CHASON & STONE
BAY MINETTE, ALABAMA

WILLIAM H. EVANS,

Plaintiff,

vs.

CHESTER F. HAWKINS,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW.

NO. 3464.

MOTION TO TRANSFER CAUSE FROM LAW SIDE TO EQUITY
SIDE OF COURT:

Now comes Chester F. Hawkins, the Defendant in the above styled cause, and alleges that he has an equitable defense to said action which cannot be disposed of on the law side of this court and which depends upon the assertion of an equitable right by said defendant.

The said defendant avers and shows that the substance of his equitable defense is as follows:

1. Plaintiff and the Defendant are each over the age of twenty-one years and residents of Baldwin County, Alabama.

2. That heretofore, on, to-wit, January 23, 1954, the Plaintiff, William H. Evans and his wife, Launa Evans, and the Defendant, Chester F. Hawkins, entered into a written contract for the sale by the Plaintiff and his wife, to the Defendant of the property described in the original complaint in this cause. A copy of the said contract is attached hereto, marked Exhibit "A" and made a part hereof as though fully incorporated herein.

3. Immediately after the said contract was made and entered into by the parties thereto the Defendant went into the actual possession of the said property and has remained therein until the date hereof. The Defendant has made the payments due under the said contract but alleges that he is now in default under the said contract due to the fact that the Plaintiff has refused to accept any further payments under the said contract, although the Defendant has been ready, willing and able to make said payments and has offered the payments to the said Plaintiff.

4. The Defendant offers to do equity.

WHEREFORE, the said Defendant files in this cause his written motion and moves the court to make and enter an appropriate order transferring this cause from the law side of the court to the equity side of the court.

James R. Owen
Attorney for the Defendant.

STATE OF ALABAMA

BALDWIN COUNTY

Before me, the undersigned authority, personally appeared James R. Owen, who has knowledge of the facts set forth in the foregoing motion, and who, being by me first duly and legally sworn, says that the facts hereinabove set forth are true and correct, according to the best of his information, knowledge and belief.

James R. Owen

Sworn to and subscribed before
me on this the 24 day of
April, 1958.

Miss L. Miller
Notary Public, Baldwin County, Alabama.

FILED

APR 24 1958

ALICE J. DUCK, CLERK
REGISTER

EXHIBIT "A"

Agreement made this 23rd day of January, 1954, by and between William H. Evans and Launa Evans, husband and wife, hereinafter called Vendors, and Chester F. Hawkins, hereinafter called Vendee.

W I T N E S S E T H:

The Vendors hereby agree to sell and convey and the Vendee to purchase all of the buildings and improvements located upon and the leasehold interest in and to that certain property located in Baldwin County, Alabama, described as follows, to-wit:

The Northwest Quarter of the Northwest Quarter of Section Twenty Seven (27), Township Six (6) South, Range Two (2) East, being land of The Fairhope Single Tax Corporation.

The purchase price is Eight Thousand Five Hundred (\$8500) Dollars, payable as follows: Five Hundred (500) Dollars upon the signing of this agreement, receipt thereof being hereby acknowledged by Vendors, and the balance in monthly instalments of not less than Sixty (60) Dollars, each, including interest at six per cent per annum (6%) on the unpaid balance, commencing February 23rd, 1954; it being also agreed that Vendee shall pay toward said unpaid balance the amount of net profit realized by him out of the sale of pecans each year from said above described property.

Vendee assumes and agrees to pay all ground rent, taxes, assessments and insurance premiums affecting said property from date hereof.

Vendors agree to place Vendee in possession of said premises within sixty (60) days from date hereof.

Vendee agrees to keep the buildings insured against loss by fire or other cause in an amount of Six Thousand (6000) Dollars and has the right to reduce said insurance as and when the unpaid balance hereunder shall have been reduced below \$6000.00 and that the policies shall be payable to Vendors as their interest may appear.

When Vendee shall have completed, satisfactorily, his undertaking hereunder, Vendors will deliver to him a proper bill of sale of said buildings and improvements and an assignment of the leasehold interest (wherein said The Fairhope Single Tax Corporation is Lessor) all free of encumbrance attributable to Vendors or their predecessors in title.

Vendee will keep said buildings and improvements in a state of good repair.

It is understood and agreed that time is of the essence hereof and should Vendee default for a period exceeding thirty (30) days in any undertaking agreed to by him herein, Vendors shall have the right to declare this agreement as null, void and at an end and, in such event, Vendee agrees to place Vendors in possession as of their former estate of the within described premises upon demand made by Vendors and, in such event, all amounts paid theretofore under this agreement shall be treated as rent for the use of the above described premises and, as such, shall be retained by Vendors.

The within agreement shall apply to and bind the heirs, executors, administrators and assigns of the respective parties hereto.

Witness our hands and seals and to a duplicate of like tenor and date.

/s/ William H. Evans (Seal)

/s/ Launa Evans (Seal)

/s/ Chester F. Hawkins (Seal)

MOTION TO TRANSFER CAUSE FROM
LAW SIDE TO EQUITY SIDE OF
COURT

WILLIAM H. EVANS,

Plaintiff,

vs,

CHESTER F. HAWKINS,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW.

NO. 3464.

FILED
APR 24 1958
ALICE L. BUCK, Clerk

JAMES R. OWEN
ATTORNEY AT LAW
BAY MINETTE, ALABAMA