

MRS. ETHEL H. RAY and
E. M. KING, JR., d/b/a
ATMORE EQUIPMENT COMPANY,

Plaintiffs,

vs.

B. T. TURNER,

Defendant.

X
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X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 3510

Comes the Defendant in the above styled cause and for plea to count "2" of the complaint as amended, says separately and severally, as follows:

1. That the allegations of the complaint are untrue.

2. That he has paid the debt, the recovery of which this suit was brought, before the action was commenced.

3. For special plea the Defendant says that the International H Tractor and Cotton Picker which was sold to the Defendant by the Plaintiffs about the first of August, 1956, were used equipment but were represented by the Plaintiff to be in first class condition. The Harrow, Corn Snapper and Cultivator which was sold by the Plaintiffs to the Defendant at the same time were new equipment. The total price to be paid by the Defendant to the Plaintiffs was Five Thousand Seven Hundred Eighty Dollars (\$5,780.00). At the time such property was purchased the Defendant traded to the Plaintiffs a Ford Tractor and equipment on which he was allowed One Thousand Five Hundred Fifty Dollars (\$1,550.00) leaving a balance due the Plaintiffs by the Defendant of Four Thousand Two Hundred Thirty Dollars (\$4,230.00). The Defendant executed a note to the Plaintiffs in the sum of Seven Hundred Eighty-six Dollars and Ninety-three Cents (\$786.93) which was supposed to be the balance of the down payment. He also executed a note to the Plaintiffs in the sum of Five Hundred Fifteen Dollars and Thirty-nine Cents (\$515.39). The Defendant paid the first of such notes before he knew that the cotton picker would not work and was not in the condition it was represented to him to be. After the Plaintiffs had attempted to repair the cotton picker on several occasions the note for Five Hundred Fifteen Dollars and Thirty-nine Cents (\$515.39) came due and the Plaintiffs represented to the Defendant that if he would pay such note that they would repossess all of the property and credit the Defendant on his account

with the balance due by such Defendant to the Plaintiffs. The Defendant paid such note, which together with his payment of the note in the sum of Seven Hundred Eighty-six Dollars and Ninety-three Cents (\$786.93) made a total payment by the Defendant to the Plaintiffs of One Thousand Three Hundred Two Dollars and Thirty-two Cents (\$1,302.32) in cash. This amount having been paid by the Defendant, the Defendant was then indebted to the Plaintiffs in the sum of Two Thousand Nine Hundred Twenty-seven Dollars and Sixty-eight Cents (\$2,927.68), which amount was to be credited to his account by the repossession of the property. The Plaintiffs repossessed the tractor and cotton picker in July of 1957, and the corn snapper, harrow and cultivator in September of 1957. All of such property was negligently retained by the Plaintiffs until February 1958, before it was sold by the Plaintiffs at a public sale. At the time such property was repossessed by the Plaintiffs its reasonable market value was in excess of the amount due by the Defendant to the Plaintiffs. The Defendant having been released as set out above from his further obligation and such property having a reasonable market value in excess of the amount due the Plaintiffs by the Defendant, the Defendant is not now indebted to the Plaintiffs in any amount.

Filed
1-9-59


Attorneys for Defendant

MRS. ETHEL H. RAY AND E. M.
KING, JR., d/b/a ATMORE EQUIP-
MENT COMPANY,

Plaintiffs,

vs.

B. T. TURNER,

Defendant

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW NO. 3510

PLEA

FILED

JAN 19 1959

ALICE J. DUCK, CLERK
REGISTER

LAW OFFICES
CHASON & STONE
BAY MINETTE, ALABAMA

DEFENDANT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,

AT LAW

NO. 3510

Comes now the Plaintiffs in the above styled cause and amend their complaint to read as follows:

1.

The Plaintiffs claims of the Defendant the sum of FIFTEEN HUNDRED NINETY TWO and 53/100 (\$1592.53) DOLLARS balance due on a promissory note made by him on the 1st day of August, 1956, and payable in installments, one installment being due and payable the 1st day of December, 1957. The Plaintiffs aver that the Defendant defaulted in the payment of this installment and that under the provisions of the promissory note sued on, the whole balance to become due and payable. The Plaintiffs claim interest at the rate of 8% per annum from the 1st day of December, 1957; this being provided for in the terms of said promissory note. The Plaintiffs further aver that the Defendant agreed in said promissory note to pay all expenses including reasonable attorneys fees incurred in collecting the same and the Plaintiffs claim a reasonable attorneys fee in the amount of TWO HUNDRED FIFTY (\$250.00) DOLLARS.

2.

The Plaintiffs claim of the Defendant the sum of FIFTEEN HUNDRED NINETY TWO and 53/100 (\$1592.53) DOLLARS balance due on a promissory note made by the Defendant on the 1st day of August, 1956. The face amount of this note being \$4799.35 and payable in installments as follows: \$786.93 payable 10th day of September, 1956; \$515.39 payable 1st day of December, 1956; \$1733.52 payable 10th day of September, 1957; \$563.53 payable 1st day of December, 1957; and \$1199.98 payable 10th day of September, 1958. The Plaintiffs aver that the note sued on provides in part, that if default is made in payment of any one installment - - - or at any time the payee

should deem itself insecure it may declare this note and all installments thereon immediately due and payable; the Plaintiffs aver the defendant defaulted in the payment due the 1st day of December, 1957, and the Plaintiffs declare this note due and payable. The Plaintiffs further allege this said note provided that after maturity each installment shall draw interest at 8% per annum and provides for payment of all expenses including reasonable attorneys fees incurred in collecting same. The Plaintiffs claim interest on this note from maturity and for a reasonable attorneys fee. The Plaintiffs allege that TWO HUNDRED FIFTY (\$250.00) DOLLARS is a reasonable attorneys fee.

Filed
11-18-58

Wiltors & Brantley

BY

William M Brantley
Attorneys for the Plaintiffs

MRS. ETHEL H. RAY and E. M.
KING, JR., d/b/a ATMORE EQUIP-
MENT COMPANY,

Plaintiffs,

vs.

B. T. TURNER,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 3510

Comes the Defendant in the above styled cause and demurs to the complaint as amended and to each and every count thereof, separately and severally, and assigns the following separate and several grounds, viz:

1. That count "1" of the complaint does not allege the dates that the installments were due.

2. That count "1" of the complaint does not allege the amounts due by the Defendant on each installment.

3. That the date of payment of said note as set out in count "1" of the complaint is vague and indefinite.

4. Count "1" of the complaint fails to allege the amount due on such note when it was originally made.

5. That count "1" of said complaint fails to allege the amounts paid by the Defendant to the Plaintiffs to be applied upon the principal due and evidenced by the note sued upon.

6. The allegation in count "1" of the complaint that under the provisions of the Promissory Note sued on, the whole balance to become due and payable, is but a conclusion of the pleader and fails to set out the provisions of such note in regard thereto.

7. That count "1" of said complaint fails to allege the amount of interest claimed by the Plaintiffs.

8. That the allegation in count "1" that the Plaintiffs claim interest at the rate of 8% per annum from the first day of December, 1957, is vague and indefinite and does not state upon what sum of money this interest is claimed.

9. That the allegation in count "1" of the complaint that the payment of interest was provided for in the terms of said Promissory Note is but a conclusion of the pleader and fails to allege the provisions of such note in regard thereto.

10. That the allegation in count "1" of the complaint that the Defendant agreed in said Promissory Note to pay attorneys fees is but a conclusion of the pleader and fails to set out the provisions of the note in regard thereto.

11. That count "2" of said complaint fails to allege what payments were made by the Defendant to the Plaintiffs to be applied upon the note sued upon and the dates of such payments.

12. That count "2" of said complaint does not allege whether the Defendant defaulted partially or entirely in the payment of the installment due December 1, 1957.

13. That the allegation in count "2" of the complaint that "the Plaintiffs declare this note due and payable" fails to allege that the note was declared due and payable according to the provisions of said note or that the Defendant was notified that the Plaintiffs had done so.

14. That the amount of interest claimed by the Plaintiffs under count "2" is vague and indefinite and fails to allege the period of time covered by such claim.

15. That count "2" of the complaint fails to set out the provisions of the note under which the Plaintiffs claim an attorneys fee.

Filed

11-21-57

James Stone
Attorneys for Defendant

MRS. ETHEL H. RAY AND E.
M. KING, JR., d/b/a ATMORE
EQUIPMENT COMPANY,

Plaintiff,

vs.

B. T. TURNER,

Defendant.

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IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

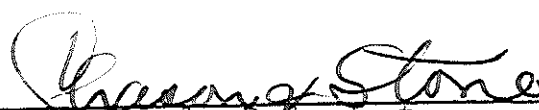
NUMBER 3510

Comes the Defendant in the above styled cause and demurs to the complaint filed in said cause and to each and every count thereof, separately and severally, and assigns the following separate and several grounds, viz:

1. That said complaint does not state a cause of action.
2. That the allegation in count "1" of said complaint that the Plaintiff claims a reasonable attorneys fee as is provided for in said note is but a conclusion of the pleader and fails to set out that such note properly provides for payment of attorneys fees.
3. That count "1" of said complaint does not claim a reasonable attorneys fee from the Defendant.
4. That count "2" of said complaint affirmatively shows that the note executed by the Defendant to the Plaintiff was not in the sum of \$1,592.53 as claimed by the Plaintiff.
5. That count "2" of said complaint fails to allege when the Defendant defaulted in the payment of any installment, the amount of such installment and when such installment was due.
6. Count "2" of said complaint fails to allege the rate of interest provided for in said note and the amount of interest claimed by the Plaintiff.
7. Count "2" of the complaint fails to properly set out the allegations of the note under which the Plaintiff claims his attorneys fees.


Attorneys for Defendant

Defendant respectfully demands a
trial of this cause by jury.


Attorneys for Defendant

Filed
5-5-58

MRS. ETHEL H. RAY ET AL.,
Plaintiff,

VS.

B. T. TURNER,
Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

DEMURRER

FILED
MAY 5 1958
ALICE L. DUCK, Clerk

LAW OFFICES
CHASON & STONE
BAY MINETTE, ALABAMA

STATE OF ALABAMA
BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA

You are hereby commanded to summon B. T. TURNER 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 the same, then and there to answer the complaint of MRS. EDITH H. RAY and E. M. KING, JR., doing business as Atmore Equipment Company.

WITNESS my hand, this 11 day of April, 1958.

Reid J. Smith
Clerk

MRS. ETHEL H. RAY AND E.
M. KING, JR., d/b/a ATMORE
EQUIPMENT COMPANY,

PLAINTIFF

VS

B. T. TURNER

DEFENDANT

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1.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW

The Plaintiff claims of the Defendant the sum of FIFTEEN HUNDRED NINETY TWO and 53/100 (\$1592.53) DOLLARS balance due by promissory note made by him on the 1st day of August, 1956, and payable on the 10th day of September, 1957, with interest thereon. The Plaintiff claims a reasonable attorneys fee as is provided for in said note and the Plaintiff alleges that TWO HUNDRED FIFTY (\$250.00) DOLLARS is a reasonable attorneys fee.

2.

The Plaintiff claims of the Defendant the sum of FIFTEEN HUNDRED NINETY TWO and 53/100 (\$1592.53) DOLLARS balance due by promissory note made by him on the 1st day of August, 1956, and payable in installments as follows: \$1733.52 due September 10, 1957; \$563.53 due December 1, 1957; and \$1199.98 due September 10, 1958. A part of the said note provides that if default is made in the payment of any installment, all installments are due and payable. The Plaintiff avers that the Defendant defaulted in a payment, hence the total unpaid balance of the note is due. The Plaintiff claims interest on the note from date of maturity and a reasonable attorneys fee as is provided in the said note. The Plaintiff alleges that \$250.00 is a reasonable attorneys fee.

Willetts & Brantley

BY:

Robert M Brantley
Attorney for the Plaintiffs

MRS. ETHEL H. RAY AND
E. N. KING, JR., d/b/a
ATMORE EQUIPMENT COMPANY,
PLAINTIFFS

VS

B. T. TURNER

DEFENDANT

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

Comes now the Plaintiff and for replication to each plea of
the Defendant says:

1.

That they join issue thereon.

Willetts & Brantley

BY:

Robert M Brantley
Attorneys for the Plaintiffs

Filed
1-20-59