

8989

E. GENE HOLLO,

Plaintiff,

VS.

BALDWIN MORTGAGE CORPORATION,
a corporation,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

MOTION TO TRANSFER CAUSE TO EQUITY DOCKET

Now comes the defendant and shows unto the Court that its defense in this suit depends upon the assertion upon 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 defendant is as follows:

1. The note on which this suit is brought was one of a series of notes aggregating the sum of, to-wit, \$116,049.50, which were issued by the defendant, Baldwin Mortgage Corporation, for the purpose of raising funds to assist in financing the construction of the motel which was erected by Bayside Motel Corporation on the Bay Bridge Causeway in Baldwin County, Alabama. The said sum of, to-wit, \$116,049.50, was all paid to Bayside Motel Corporation to be used for the aforesaid purpose.

2. All of the said notes were issued and delivered with the clear and distinct understanding that the parties to whom they were issued would be paid in stock of Bayside Motel Corporation and that the said notes would not be paid in cash. All of the said notes aggregating the sum of, to-wit, \$116,049.50, are outstanding and none of them have been paid or partially paid in any way or manner.

3. On, to-wit, July 9, 1959, Bayside Motel Corporation issued its Stock Certificate No. 283 to Baldwin Mortgage Corporation for 125,403 shares of its capital stock, which stock certificate was issued to Baldwin Mortgage Corporation so that the stock evidenced by the said stock certificate could be distributed among the parties who had advanced funds to Baldwin Mortgage Corporation, as

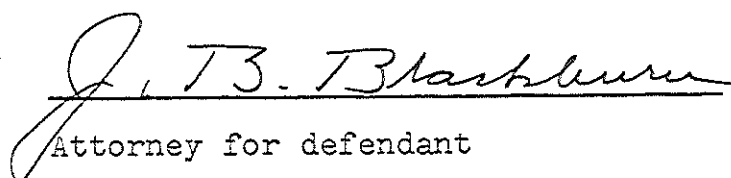
provided in the said agreement, to pay the said notes that had been issued to them.

4. After the above described stock certificate was issued and before the stock could be distributed, as provided above, a suit was filed in the Circuit Court of Mobile County, Alabama, in Equity, on, to-wit, the 24th day of July, 1959, in which George C. Wilkinson et al., were complainants, and Bayside Motel Corporation, Baldwin Mortgage Company, Inc., and others, were respondents. In the said case a writ of injunction was issued against Baldwin Mortgage Company enjoining it from distributing the shares of stock which are evidenced by the said certificate. A receiver was appointed for Bayside Motel Corporation in the said cause, demurrers of certain respondents to the bill of complaint that had been filed in the said cause were overruled, and the motion to dissolve the injunction was denied. The cause was appealed to the Supreme Court of the State of Alabama, where it is now pending.

5. The injunction which was issued in the said suit in Mobile County, Alabama, and the subsequent appeal of the said case have prevented the defendant from carrying out its agreement with the plaintiff and with the other parties who are similarly situated.

6. The plaintiff should be compelled to carry out the said agreement which was made at the time the said note on which this suit was brought was delivered to him.

WHEREFORE, the defendant moves the 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 defendant and in order that the plaintiff can be compelled to carry out the agreement with the defendant which was made at the time the said note was delivered.


Attorney for defendant

STATE OF ALABAMA)
*
BALDWIN COUNTY)

Before me, the undersigned authority, within and for said County in said State, personally appeared Gordon Earls, who, after being by me first duly and legally sworn, deposes and says: That he is President of Baldwin Mortgage Corporation; that as such officer he is duly authorized to make this affidavit for and on behalf of the said corporation; that he has read over the foregoing motion and that the facts stated therein are true.

Gordon Earls

Sworn to and subscribed before me on
this the 15th day of March, 1960.

John R. Q.

Notary Public, Baldwin County, Alabama

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Plaintiff,

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Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

*Filed 3-16-60
J. B. Blackburn
Clerk*

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

STATE OF ALABAMA
BALDWIN COUNTY

IN THE CIRCUIT COURT - LAW SIDE

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon Baldwin Mortgage Corporation, a corporation, 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 same, then and there to answer the complaint of E. Gene Hollo.

Witness my hand this 25 day of September, 1959.

Alice J. Duck
Clerk

E. GENE HOLLO,	I	
Plaintiff,	I	
vs.	I	IN THE CIRCUIT COURT OF
BALDWIN MORTGAGE CORPORATION,	I	BALDWIN COUNTY, ALABAMA
a corporation,	I	
Defendant.	I	AT LAW

COUNT ONE


The Plaintiff claims of the Defendant Nine Thousand Dollars (\$9,000.00) due by Promissory Note made by it on the 13th day of December, 1958, and payable on the 13th day of June, 1959, with interest thereon at the rate of 6% per annum from date, which sum of money is due and unpaid.

The Plaintiff avers that in, by and as a part of said note the Defendant agreed to pay all costs of collecting or securing or attempting to collect or secure said note, including a reasonable attorneys fee, whether the same be collected or secured by suit or otherwise and the Plaintiff further claims of the Defendant the further and additional sum of Two Thousand Five Hundred Dollars (\$2,500.00) as such reasonable attorneys fee.

The Plaintiff further avers that in, by and as a part of said note the Defendant waived as to this debt, all right of exemption

under the Constitution and the laws of the State of Alabama or any other state and of this waiver the Plaintiff now claims the benefit.

FILED
SEP 25 1959
ALICE J. DUCK, Clerk


Attorneys for Plaintiff

3989

Received 25 day of Sept 1959
and on 26 day of Sept 1959
I served a copy of the within
on Baldwin Mortgage
Corp.
By service on Gordon Earle

TAYLOR WILKINS, Sheriff
By W. A. Talbot D. S.
Omn

E. GENE HOLLO,

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Defendant.

IN THE CIRCUIT COURT OF

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AT LAW

SUMMONS AND COMPLAINT

FILED

SEP 25 1959

ALICE J. DUCK, Clerk

LAW OFFICES

CHASON & STONE

BAY MINETTE, ALABAMA

E. GENE HOLLO,

Plaintiff,

VS.

BALDWIN MORTGAGE CORPORATION,
a corporation,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

PLEAS

Now comes the defendant and for answer to the complaint
saith:

1. Not guilty.
2. The allegations of the complaint are untrue.

J. B. Blackburn
Attorney for defendant

The defendant demands a trial of
said cause by jury.

J. B. Blackburn
Attorney for defendant

FILED

OCT 23 1959

ALICE J. DUCK, Clerk

3989
PLEAS

July

E. GENE HOLLO,

Plaintiff,

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Defendant.

IN THE CIRCUIT COURT OF
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FILED

OCT 23 1959

ALICE J. DUCK, Clerk