

JAMES O. PITTS, JR., Individually)
and d/b/a KIRBY HOME SERVICE
COMPANY,

Plaintiff,

Vs.

OSCAR WILLIAMSON and MARY
WILLIAMSON, Separately and
severally,

DEFENDANTS.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW

No. 4673

DEMURRERS

Come now Oscar Williamson and Mary Williamson, Defendants,
and separately and severally, and file these, their demurrers to
Plaintiff's Complaint, and to each and every count thereof,
separately and severally, and say:

1.

The Complaint nor either of the counts thereto do not state
a cause of action.

2.

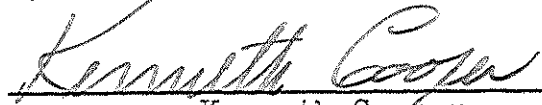
The allegations of the Complaint and the counts thereto are
vague, uncertain and indefinite.

3.


Neither the Complaint nor either of the counts thereto allege
that the alleged promissory note is due and payable.

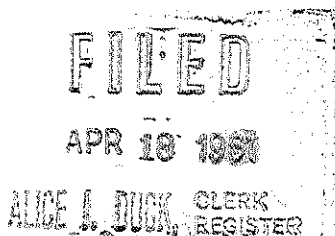
4.

Neither the Complaint nor either of the counts thereto allege
on what date the alleged promissory note was due and payable.


Kenneth Cooper
Attorney for Defendants.

The defendants, Oscar Williamson
and Mary Williamson, demand a
trial by jury.


Kenneth Cooper
Attorney for Defendants.



JAMES O. PITTS, JR., individually
and d/b/a KIRBY HOME SERVICE
COMPANY,

Plaintiff,

vs.

OSCAR WILLIAMSON and MARY WILLIAMSON,
separately and severally,

Defendants.

§ IN THE CIRCUIT COURT

§ OF BALDWIN COUNTY,

§ ALABAMA.

§

§

NO. _____

§

Comes now the Plaintiff in the above styled cause and amends the bill of complaint heretofore filed in this cause by striking Count One thereof and amending Count Two thereof to read as follows:

COUNT TWO

Plaintiff claims of the Defendants the sum of TWO HUNDRED SIXTY-FIVE AND 86/100 (\$265.86) DOLLARS due by promissory note made by the Defendants on, to-wit: June 15, 1959, under the terms of which the Defendants agreed to pay to the Plaintiff the sum of TWO HUNDRED SIXTY-FIVE AND 86/100 (\$265.86) DOLLARS with interest thereon, in 18 monthly installments of FOURTEEN AND 77/100 (\$14.77) DOLLARS each, commencing on the 1st day of August, 1959 and continuing on the 1st day of each month thereafter; that the Defendants defaulted in the payment of said note on, to-wit: August 1, 1959 and under the terms of said note the entire principal balance in the amount of TWO HUNDRED SIXTY-FIVE AND 86/100 (\$265.86) DOLLARS became immediately due and payable; that under the terms of said note the Defendants agreed to pay interest on the unpaid principal balance at the rate of 8% per annum from the date of default and Plaintiff further claims of the Defendants interest at said rate on said unpaid principal balance, to-wit: the sum of TWO HUNDRED SIXTY-FIVE AND 86/100 (\$265.86) DOLLARS; that

under the terms of said note the Defendants agreed to pay a reasonable attorney's fee for the collection of this note and the Plaintiff further claims of the Defendants the sum of THIRTY-NINE AND 88/100 (\$39.88) DOLLARS and avers that said sum is a reasonable attorney's fee; that under the terms of said note the Defendants waived all right of exemption under the Constitution and laws of Alabama or any other state and Plaintiff claims benefit of said waiver.

HOGAN & HELT

By

Alexander F. Helt
Attorneys for Plaintiff

DEFENDANTS' ADDRESS:

Route 1
Bay Minette, Alabama

*Filed 9-14-61
Deice J. Helt
Clerk*

JAMES O. PITTS, JR., Individually)
and d/b/a KIRBY HOME SERVICE
COMPANY,

Plaintiff,

Vs

OSCAR WILLIAMSON and MARY
WILLIAMSON, separately and
severally,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW

No. 4673

PLEAS

Come now the Defendants in the above styled cause and for
answer to Plaintiff's Complaint and County One thereof says:

One:

Plaintiffs alleged that the written contract described in
Count One of the Bill of Complaint was obtained from them by
misrepresentation, fraud and deceit on the part of the Plaintiff,
or Plaintiff's agents or representatives, in that the Defendants
advised the Plaintiff, or Plaintiff's agents or representatives,
that they, the Defendants, did not desire to sign the said written
contract for the merchandise, to-wit, a Kirby Complete vaccum
cleaner, for which the said written contract was signed, and that
upon being so advised the Plaintiff, or Plaintiff's agents or
representatives, assured the Defendants that they would hold the
original thereof and give the Defendants an opportunity to try out
the Kirby Complete vaccum cleaner, and if they, the Defendants, were
not entirely satisfied with the said Kirby Complete vaccum cleaner,
or that they would not be able to pay for the same, then they
would return the said written contract to the Defendants and pick
up the said Kirby Complete vaccum cleaner; and whereas, after the
said agreed trial terms the Defendants notified the Plaintiff, or
Plaintiff's agents or representatives, that they were not satisfied
with the said Kirby Complete vaccum cleaner, and that they could
not pay for the same, the Plaintiff, or Plaintiff's agents or re-
presentatives, failed to return aforementioned written contract,
and failed to pick up the said Kirby Complete vaccum cleaner.

Two:

Defendants alleged that they were induced to sign the written contract, upon which this suit is based, by fraud, deceit and misrepresentation by the Plaintiff, of Plaintiff's agents or representatives, because the Plaintiff, or Plaintiff's agents or representatives assured the Defendants, before they signed the aforementioned said written contract, that if, after a trial period, they, the Defendants, were not entirely satisfied with the Kirby Complete vaccum cleaner, or that they would be unable to pay for it, then the said written contract would be returned to the Defendants, and the Kirby Complete vaccum cleaner picked up; and, after the said agreed trial period the Plaintiff, or Plaintiff's agents or representatives failed and refused to return the above said written contract and to pick up the said Kirby Complete vaccum cleaner, although the Defendants advised the Plaintiff, or plaintiff's agent or representatives, that the Kirby Complete vaccum cleaner was unsatisfactory and that they could not make the payments thereon as provided in said written contract.

Three :

There was no consideration for the written contract sued upon.

Further come the Defendants in the above styled cause and for answer to Plaintiff's Complaint and Count Two thereof, says:

FOUR:

Defendants allege that the promissory note described in Count two of the Bill of Complaint was obtained from them by fraud, misrepresentative and deceit on the part of the Plaintiff, or the Plaintiff's agents or representatives, in that the Defendants advised the Plaintiff, or Plaintiff's agents or representatives, that they, the Defendants, did not desire to sign the said promissory note for the merchandise, to-wit, a Kirby Complete vaccum cleaner, for which the said promissory note was given as security, and that upon being so advised the Plaintiff, or Plaintiff's agents or representatives, assured the Defendants that they would hold the note and give the Defendants an opportunity to try out the Kirby Complete vaccum cleaner, and if they, the Defendants,

were not entirely satisfied with the said Kirby Complete vaccum cleaner, or that they would not be able to pay for the same, then they would return the said note to Defendants and pick up the said Kirby Complete vaccum cleaner; and whereas, after the said agreed trial terms the Defendants notified the Plaintiff, or Plaintiff's agents or representatives, that they were not satisfied with the said Kirby Complete vaccum cleaner, and that they could not pay for the same, the Plaintiff, or Plaintiff's agents or representatives, failed to return to the Defendants the aforementioned promissory note, and failed to pick up the said Kirby Complete vaccum cleaner.

FIVE:

Defendants allege that they were induced to sign the promissory note, upon which Count Two of this suit is based, by fraud, misrepresentative and deceit by the Plaintiff, or Plaintiff's agents or representatives, because the Plaintiff, or Plaintiff's agents or representatives assured the Defendants, before they signed the aforementioned promissory note, that if, after a trial period, they, the Defendants, were not entirely satisfied with the Kirby Complete vaccum cleaner, or that they would be unable to pay for it, then the said promissory note would be cancelled and returned forthwith to the Defendants, and the Kirby Complete vaccum cleaner picked up; and, after the said agreed trial period the Plaintiff, or Plaintiff's agents or representatives, failed, and refused, to return the above said promissory note and to pick up the said Kirby Complete vaccum cleaner, although the Defendants had advised the Plaintiff, or Plaintiff's agents or representatives, that the Kirby Complete vaccum cleaner was unsatisfactory, and that they, the Defendants, could not make the payments thereon.

SIX:

There was no consideration for the note sued upon in Count Two of the Bill of Complaint.

And further come the Defendants and for answer to Plaintiff's Bill of Complaint, and to Count One and Two thereof, separately and severally alleges:

SEVEN:

The allegations of the Complaint and each Count thereof are untrue.

STATE OF ALABAMA

BALDWIN COUNTY

Before me, Kenneth Cooper, Notary Public, State at Large, State of Alabama, personally appeared Oscar Williamson and Mary Williamson, who, being known to me, and by me first duly and legally sworn, depose and say on oath, that they are the Defendants in the above styled cause, that they have personal knowledge of the facts stated in the foregoing pleas, and that the said facts therein are true and correct.

Mary Williamson

Oscar Williamson

Sworn to and subscribed to before me this 11th day of September, 1961.

Kenneth Cooper

Notary Public, State at Large
State of Alabama

FILED

SEP 11 1961

ALICE I. DUCK, CLERK
REGISTER

JAMES O. PITTS, JR., individually and
d/b/a KIRBY HOME SERVICE COMPANY,

Plaintiff,

vs.

OSCAR WILLIAMSON and MARY WILLIAMSON,
separately and severally,

Defendants.

IN THE CIRCUIT COURT
OF BALDWIN COUNTY,
ALABAMA.

NO. _____

COUNT ONE

Plaintiff claims of the Defendants the sum of TWO HUNDRED SIXTY-FIVE AND 86/100 (\$265.86) DOLLARS, due under a written contract executed by the Defendants on, to-wit: June 15, 1959, under the terms of which the Defendants agreed to purchase from the Plaintiff a vaccum cleaner in monthly installments. Plaintiff avers that said vaccum cleaner was delivered to the Defendants, and that under the terms of the contract the Defendants agreed to pay a reasonable attorney's fee in the event of default, which the Plaintiff claims in the amount of EIGHTY-EIGHT AND 62/100 (\$88.62) DOLLARS. Plaintiff further avers that the said Defendants breached said contract by failing to pay as agreed and Plaintiff claims judgment for THREE HUNDRED FIFTY-FOUR AND 48/100 (\$354.48) DOLLARS, together with the interest thereon.

COUNT TWO

Plaintiff claims of the Defendants the sum of TWO HUNDRED SIXTY-FIVE AND 86/100 (\$265.86) DOLLARS due by a promissory note executed by the Defendants on, to-wit: June 15, 1959, which sum of money with interest thereon is still due and unpaid. Plaintiff claims benefit of waivers of exemptions made in said note by the Defendants. Plaintiff claims of the Defendants the further sum of EIGHTY-EIGHT AND 62/100 (\$88.62) DOLLARS as a reasonable attorney's fee, which the Defendants agree in said note to pay.

HOGAN & HELT

By

Elwood L. Hogan
Attorneys for Plaintiff

DEFENDANTS' ADDRESS:

Route 1
Bay Minette, Alabama

FILED

APR 7 1961

ALICE L. DUCK, CLERK
REGISTER

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 Comanded to Summon Oscar Williamson and Mary Williamson

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-----

Oscar Williamson and Mary Williamson

-----, Defendant.---

by James O. Pitts, Jr., ind and d/b/a Kirby Home Service Company-----

-----, Plaintiff.---

Witness my hand this 7th day of April 19 61

Amie J. Duck, Clerk

No. 4673

Page _____

The State of Alabama
Baldwin County

CIRCUIT COURT

JAMES O. PITTS, Jr., ind. and

d/b/a KIRBY HOME SERVICE COMPANY
Plaintiffs

vs.

OSCAR WILLIAMSON and

MARY WILLIAMSON

Defendants

Summons and Complaint

Filed April 7 19 61

Alice J. Duck

Clerk

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at _____

Received In Office

4/7 19 61

_____, Sheriff

I have executed this summons

this 4-10 19 61

by leaving a copy with

Oscar Williamson
Mary Williamson

Sheriff claims 8

miles at

Ten Cents per mile Total \$ 8.00

TAYLOR WILKINS, Sheriff

BY Taylor Wilkins
DEPUTY SHERIFF

Sheriff

Deputy Sheriff

2 miles north of B.M.