

STATE OF ALABAMA)
)
BALDWIN COUNTY)
)
)

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon U. S. LAND DEVELOPMENT CORPORATION to appear and answer, plead or demur, within thirty days from the service of this writ, to a Bill of Complaint filed against it in Circuit Court, at Law, for said County and State by HARLEY M. FRYE, and at the same time and place you are to make return of your actions hereunder.

Given under my hand and seal this the 26 day of June, 1961.

Alice J. Duck
Clerk of Court

Defendant, U. S. Land Development Corporation can be served by service on Donald Dryer, Pineda Island, Alabama

HARLEY M. FRYE,
Plaintiff

vs.

U. S. LAND DEVELOPMENT CORPORATION,
Defendant

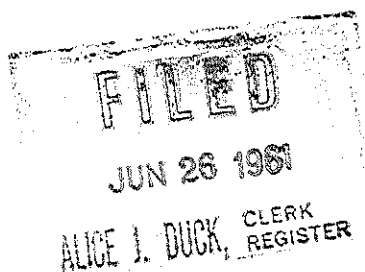
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

4738

COUNT ONE:

The Plaintiff claims of the Defendant U. S. Land Development Corporation, a Florida Corporation authorized to do business in the State of Alabama, the sum of Seven Hundred Eighty and No/100 (\$780.00) Dollars, due from it for work and labor done for the Defendant by the Plaintiff from the 16th day of March, 1961 through the 15th day of June, 1961, at its request, which sum of money, which sum of money, with interest thereon, is still unpaid.

Samuel J. Miller
Attorney for Plaintiff



4738

BILL OF COMPLAINT

HARLEY M. FRYE,

Plaintiff

vs.

U.S. LAND DEVELOPMENT
CORPORATION,

Defendant

*Service may be had
on Harold Frye,
Florida Island*

TAYLOR WILKINS, Sheriff
By *W. C. Garner* D.S.
Thompson

By service on *Corp*

on *Manager U.S. Land Development*

I served a copy of the within

and on *27* day of *June* 19 *61*

Received *day of* 19

Sheriff claims *70* miles at
Ten Cents per mile Total \$ *7.00*
BY *Taylor*
TAYLOR WILKINS, Sheriff
DEPUTY SHERIFF

HARLEY M. FRYE,

PLAINTIFF

VS

U. S. LAND DEVELOPMENT
CORPORATION

DEFENDANT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

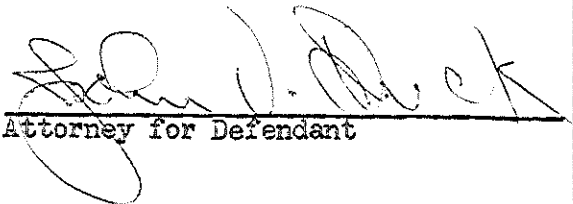
AT LAW

NO. 4738

ANSWER

Comes now the defendant in the above styled cause, and for answer therein
says:

NOT GUILTY.


Attorney for Defendant

FILED
AUG 3 1961
ALICE J. DUCK, CLERK
REGISTER

= MORETRENCH CORPORATION,
A Corporation,

Plaintiff,

VS.

U. S. LAND DEVELOPMENT CORP.,
A Corporation,

Defendant.

IN THE

CIRCUIT COURT OF BALDWIN COUNTY,

ALABAMA. AT LAW.

NO. 4739

AUGUST 21, 1962

A. Niel Hudgens, of Holdberg, Tully, Hodnette & Mobley, appearing for the Plaintiff.

G. R. CALLENDER, A WITNESS FOR THE PLAINTIFF, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

Examination by Mr. Hudgens.

Q. Is this Mr. G. R. Callender?

A. I am.

Q. Mr. Callender, what is your occupation -- What is your position with Moretrench Corporation?

A. I am Vice President and in charge of their operations in the Southeast.

Q. Are you in charge of the operations in Baldwin County, Alabama?

A. Yes sir

Q. How long have you been in such capacity with Moretrench Corporation?

A. Since 1946.

Q. Are you familiar with the operations of Moretrench Corporation in Baldwin County, Alabama, and its association and contracting with U. S. Land Corporation?

A. I am.

Q. Are you familiar with the books and records of Moretrench Corporation?

A. I am.

Q. Did Moretrench Corporation enter into a lease agreement with U. S. Land Corporation regarding the leasing of equipment?

A. Yes sir.

Q. What was the date of the lease?

A. The lease was made on October 4, 1960; it was signed by U. S. Land Development Corporation on October 7, 1960, and was finally validated by our home office on October 14, 1960.

Q. Who executed the lease for U. S. Land Corporation?

A. James Wirth.

Q. Who executed the lease on behalf of Moretrench Corporation?

A. Myself, G. R. Callender.

Q. What were the terms or rental agreement under this lease?

A. We agreed to furnish U. S. Land Corporation certain well points and pumping equipment to be used on their property for the construction of certain improvements for which they agreed to pay the sum of \$100.00 for In-bound freight and pay monthly rentals as set out in this agreement.

Q. Mr. Callender, let me show you this photostatic copy of a lease or agreement which has your signature and Mr. Wirth's signature on it. Is this the agreement that you are now referring to?

A. Yes.

MR. HUDGENS; I would like to have this marked as Plaintiff's exhibit 1.

REPORTER'S NOTE: Agreement above referred to is duly marked Plaintiff's exhibit 1.

MR. HUDGENS: I would now like to introduce Plaintiff's exhibit 1 into evidence.

Q. I now hand to you, Mr. Callender, Plaintiff's Exhibit 1 -

What were the payment terms under the lease, Mr. Callender?

A. U. S. Land Development Corporation agreed under the terms of this lease to pay the following rentals, monthly for the property: First month, \$695.00, for the second month, \$563.50, and for each and every month thereafter the sum of \$481.00.

Q. For what period of time was this lease or agreement in effect?

A. The agreement actually ran from October 4th. to about the middle of March, when the equipment was recovered by ourselves.

Q. Was the equipment returned to Moretrench Corporation, or abandoned?

A. The equipment was abandoned by U. S. Land Corporation, and acting under the provisions of Paragraph 22 of our lease agreement we proceeded to repossess or recover the equipment and return it to our warehouse.

Q. Did U. S. Land Development Corporation make any payments under this lease?

A. None whatsoever.

Q. What is the amount due Moretrench Corporation by the terms of this lease agreement?

A. \$4,082.13.

Q. Mr. Callender, would you please itemize for the Court, or break down the figures?

A. We have the sum of \$100.00 for in-bound freight, which we were forced to pay, and for which we never were reimbursed by U. S. Land Corporation; there is an item of \$695.00 for the first months rent, an item of \$563.50 for two months rent, and item of \$481.00 for the third months rent, and item of \$481.00 for the fourth months rent, an item of \$481.00

for the fifth months rent, and an item of \$304.63 for a part of the sixth month rental, and an item of \$486.95 for the shortage of material for which we were unable to find, or unable to recover from U. S. Land Corporation, and an item of \$239.03 for our cost of repossession and recovery and removal of the equipment from the ground, and an item of \$250.00 return freight on the equipment to our warehouse in Tampa, Florida.

Q. Now Mr. Callender, the amount due/U. S. Land Corporation, by the terms of the lease is now in the amount of \$4,082.13?

A. Yes sir.

Q. Mr. Callender, I now show you statement titled "Accounts receivable Ledger and ask you if you can identify that?

A. Yes, that is a photostatic copy of the Account of U. S. Land Development Corporation, such account being in connection and under the terms of the lease agreement which we have previously mentioned.

Q. You are familiar with that instrument?

A. Yes sir.

Q. That is a part, or was a part of your file?

A. Yes sir.

MR. HUDGENS: I ask that this be marked Plaintiff's Exhibit 2, and introduce it as such.

Q. You have checked the figures for accuracy?

A. Yes sir.

Q. You have checked the figures on this itemized statement for accuracy?

A. I have.

Q. In your position with Moretrench Corporation, you would have knowledge of the correctness of this statement?

A. Yes sir.

Q. According to this statement of account, Mr. Callender, what

is due Moretrench Corporation from U. S. Land Development Corporation?

A. \$4,082.13.

Q. Mr. Callender, has Moretrench Corporation complied with all of the terms and conditions of the contract on its behalf?

A. Yes sir.

Q. Mr. Callender, I show you a lien that was filed on behalf of Moretrench Corporation against U. S. Land Development Corporation. Would you look at that instrument, please?

A. This instrument indicates that it was filed in Baldwin County, Alabama, on April 27, 1961.

Q. The amount of the lien is how much?

A. \$4,082.13.

Q. That is the same instrument that is attached to the bill of complaint and made a part thereof?

A. Yes sir.

Q. Mr. Callender, what is the interest that has accrued on this amount due as of today?

A. As of August 5th, the sum of \$449.03 interest accrued.

Q. So the amount due Moretrench Corporation, or the total amount due, including interest is \$4,531.16?

A. Yes sir, that is correct.

C E R T I F I C A T E:

I hereby certify that the foregoing, consisting of pages 1 to 5, both inclusive, is a true and correct transcript of the testimony as taken by me, in open Court in the above styled cause, on the 21st day of August, 1962, in Bay Minette, Alabama.

This 21st day of August, 1962.

Louise Dusenbury
Court Reporter.

Agreement

OUR JOB NO. T 1676

Form A60-8

MADE ON THE 4th day of October 19 60, by and between MORETRENCH CORPORATION of Rockaway, New Jersey, hereinafter called Lessor, and U. S. LAND DEVELOPMENT CORPORATION of Star Route #3, Daphne, Alabama, hereinafter called Lessee, and based on surface and sub-surface conditions being substantially as represented by Lessee.

1. WITNESSETH—Lessor, for the consideration hereinafter named, and upon and subject to the terms and conditions mentioned herein, leases to Lessee for the time specified herein, for the use or possession of, the following equipment (including minor fittings to be more particularly described in copy of shipping list accompanying shipment, pertaining thereto but which are not specifically mentioned herein) for use on Sewer construction, located at near Daphne in Baldwin County, State of Alabama for (owner) U.S. LAND DEVELOPMENT CORPORATION, Star Route #3, Daphne, Alabama

240' 6" Header Pipe

60' 6" Discharge Pipe

50 2" Wellpoints

1 MD Jet Well W/Oliver 177

200' Jet Hose

Necessary Fittings

RECEIVED

OCT 11 1960

MORETRENCH CORP.
TAMPA, FLORIDA

3. Lessor will load equipment and fittings f.o.b. cars or trucks at Tampa, Florida or other points of shipment, and Lessee will transport equipment to the work and will install same according to the direction given by Lessor.
4. If Lessor furnishes a man to superintend this installation, he shall work under the direction of Lessee and Lessee will pay Lessor for his services the sum of Thirty Dollars for each 8 hour day, and Lessee will also pay for overtime over 8 hours per day, 40 hours per week, Saturdays, Sundays and holiday time service of this man at the rate of \$6.75 per hour. Time of man required for his transportation to and from the work shall be paid by Lessee to Lessor at the above day rate for each calendar day required for the trip. Lessee shall also pay to Lessor the man's living and transportation expenses.
5. The starting of the rental period shall begin within 1 day(s) after the equipment is shipped from Tampa, Florida The rental period shall end 1 day(s) before the equipment is received at Tampa, Florida freight prepaid, to this point or prepaid in equal amount to any other point of delivery selected by Lessor.
6. Dating from the start of the rental period, Lessee shall pay to Lessor for the Rental of the above equipment for One Calendar month(s) or less the sum of Six Hundred Ninety-Five and no/100 (\$ 695.00) Dollars payable as follows: Six Hundred Ninety-Five and no/100 (\$ 695.00) Dollars on the signing of this agreement.

Rental for the <u>2nd</u> month	\$ <u>563.50</u>	Payable on receipt of invoice.
Rental for the _____ month	\$ _____	Payable on receipt of invoice.
Rental for the _____ month	\$ _____	Payable on receipt of invoice.
Rental for the _____ month	\$ _____	Payable on receipt of invoice.

For any additional rental Lessee shall pay Lessor at the rate of Four Hundred Eighty-One and no/100 (\$ 481.00) Dollars per calendar Month payable on receipt of invoice.

7. Lessee will furnish Lessor with a written order for any work, materials or use of equipment not covered in this agreement and shall pay Lessor for same on receipt of invoice.
8. This agreement (together with the supplemental conditions, etc., as printed on the back of this sheet) contains all of the agreement between Lessor and Lessee and is to be binding upon the heirs, executors, administrators, successors, and assigns of both parties hereto, when approved by Lessor at its Main Office at Rockaway, New Jersey.

IN WITNESS WHEREOF THE PARTIES HAVE SET THEIR HANDS AND SEALS, IN DUPLICATE

U. S. LAND DEVELOPMENT CORPORATION Lessee

Per James Wirth (Title)

Witness _____

Dated Oct 7, 1960

MORETRENCH CORPORATION
By G. Hallander
Countersigned and approved at Rockaway, N. J., by
Moretrench Corporation (Lessor)

Per James Wirth (Title)

Witness James Wirth

Dated October 14, 1960

(SEE BACK OF THIS SHEET)

AGREEMENT (Continued)

9. Lessee agrees to pay direct to the proper authorities any and all local or state taxes levied against this equipment by any local or state tax authority.
10. The acceptance by Lessor or its agents of checks, notes or other evidence of indebtedness shall not be considered as payment under the terms of this agreement unless and until such sum or sums have actually been paid to Lessor in cash of the equivalent value of United States Dollars together with legal interest added from the due date of said payments to the dates paid.
11. Lessee agrees to assume any and all liability for damage to persons or property arising out of or consequent upon the use or handling of this equipment for the duration of this agreement or any extension thereof.
12. Lessee agrees to supply all operating energy and take good care of the equipment, protecting same against fire or other destructive elements.
13. Lessee agrees to use only the best grades of fuel and lubricating oils and greases, and to abide by the recommendations set forth in the engine manufacturer's instruction book for operation and the Lessor's instruction book pertaining to the proper care and operation of the equipment.
14. Lessee agrees not to sublet this equipment, nor to remove the same or any part thereof, to any other place or places than that named herein as the place of installation, nor to permit use or removal by others without the written consent of Lessor.
15. If after the first month rental period the equipment leased under this contract is to remain idle on the job, for 15 consecutive calendar days or more, because the job is shut down due to extreme weather conditions or inability on the part of the Contractor to obtain the necessary materials to carry on the construction, the Lessor will adjust the rental time in the following manner: The number of idle days, which must be 15 or more consecutive calendar days, shall be enumerated and mutually agreed upon. The rental credit for the idle time shall be applied by moving the termination date of the contract back by one-half (½) of the number of days of idle time. The number of idle days for which credit will be given are not to exceed 50% of the number of days to be paid for. No allowance will be given for idle time less than 15 consecutive calendar days. The foregoing will be allowed only if the Lessee notifies the Lessor, in writing, at the time the idle period begins and again at the end of the idle period.
16. Lessee shall return to Lessor, (freight prepaid), all equipment covered by this agreement (or as covered more specifically in the shipping tickets accompanying shipment together with any extra equipment that may be subsequently shipped) to Lessor in as good a condition as received, (reasonable wear and tear excepted) at ROCKAWAY, N. J., CHICAGO, ILL., TAMPA, FLA., HOUSTON, TEX.
17. Lessee shall notify Lessor 10 days prior to date return shipment is to be made, so that Lessor can furnish Lessee with proper shipping address.
18. Lessee upon shipment will send Lessor a list of all equipment returned with shipping bill. Lessor will check this list with the amount of equipment so returned and in case of any differences Lessor will notify Lessee and send Lessee an account of the equipment as received. Any equipment not returned shall be charged to Lessee at existing prices less a credit of ½ of the proportionate rental heretofore paid by Lessee for the use of said equipment. If any of said equipment is returned in a damaged or corroded condition, (other than that caused by reasonable wear and tear and non-corrosive ground water), Lessor will repair or replace said equipment and Lessee shall pay for the cost of such repairs or replacements.
19. Lessee will pay, upon receipt of invoice, for labor, parts, transportation and living expenses, in connection with any on-job repairs required, unless such repairs are required as the result of defects in the equipment when originally furnished. Lessee will also pay for any on-job services by others, when such services are not authorized by the Lessor in writing.
20. In the event that additional equipment, over and above the equipment listed in this agreement, is subsequently furnished to the Lessee by the Lessor for use or possession of, it is agreed by both parties that payment for any additional equipment shall be made at current prices in effect at the time of shipment; and in the event that subsequent rental agreements to cover the additional equipment are not made and executed by both parties, it shall be considered that all of the terms of this contract shall apply to the additional equipment in the same force and effect as if the additional equipment and the prices for same were set forth in this agreement.
21. It is understood and agreed that should Lessee default under any of the provisions of this agreement Lessor may take possession wherever found of this or any other equipment (or any part of same heretofore leased by Lessor to Lessee previous to or subsequent to the signing of this agreement) upon giving ten (10) days notice of its intention to do so by written notice mailed to Lessee at the address herein contained, or at such other address as Lessee may designate and that in the event of such default all rental due or to become due under this agreement shall immediately become due and payable.
22. Lessee hereby specifically waives any right of action for trespass and any and all claims for damages against Lessor, or its agents, that may arise out of or be incurred by the act of, or consequent upon the seizure or repossession by Lessor or its agents of any of the equipment herein referred to in consequence of the failure by Lessee to conform to the terms of this agreement, and Lessee hereby empowers and authorizes Lessor to act for Lessee in order to facilitate such repossession and hereby agrees to pay to Lessor the reasonable expense of such repossession as may be incurred by Lessor in effecting said repossession or seizure.
23. The liability of Lessor to Lessee is expressly limited to the free replacement (f. o. b. point of shipment) of any defective part or parts of the equipment furnished under or subsequent to this agreement on receipt by Lessor of said defective part or parts f. o. b. Rockaway, New Jersey, provided such defect is not caused by misuse or neglect on the part of Lessee.

No. T-1676

Agreement

BETWEEN

Moretrench Corporation
Rockaway, N. J.

AND

U. S. LAND DEVELOPMENT CORP.

Star Route #3

OF

Daphne, Alabama

DATED

October 4, 1960

Representative G. R. Callender, V. P.

RECEIVED

OCT 13 1960

MORETRENCH CORP.
Rockaway, N. J.

ACCOUNTS RECEIVABLE LEDGER

NAME U.S. Land Development Corporation
 Star Route #3
 Address Daphne, Alabama

Plt Ex 2

Aug 21, 1964

COMMISSION	DESCRIPTION	DATE	REF	CHARGES	CREDITS	BALANCE	2ND OLD BALANCE PICK UP
<i>Chas. H. Harker</i>						695.00	
	RTL 21560	OCT 10 60	47.205	695.00		1,258.50	695.00
	RTL 21560	NOV 4 60	47.663	563.50		1,739.50	1,258.50
	RTL 21560	DEC 5 60	48.101	481.00		2,220.50	1,739.50
	RTL 21560	JAN 5 61	48.585	481.00		2,701.50	
	RTL 21560	FEB 3 61	48.959	481.00		3,182.50	2,701.50
	RTL 21560	MAR 3 61	49.337	481.00		3,006.15	
	CMR 49337	Apr 5 61	37501	176.37 cr.		3493.10	
	SHORTAGE	Apr 5 61	23433	486.95			
	Freight - to Job (Hornbrook & Sons)			100.00		3593.10	
	Pull + Load Equipment (W.R. Mitchell)			239.03		3832.13	
	Return Freight (Hornbrook & Sons)			250.00		4082.13	

MORETRENCH CORPORATION