

IN THE SUPERIOR COURT OF COFFEE COUNTY
STATE OF GEORGIA

KALEB SMITH,

Plaintiff,

v.

RHETT FUSSELL, Individually and as
d/b/a FUSSELL FARMS, and
FUSSELL FERTILIZER LLC,

Defendants.

)
)
) Civil Action File No. 2018507-359
)
)
)

Jury Trial Demanded
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)

COMPLAINT

Comes now Plaintiff Kaleb Smith and submits his Complaint, showing to the Court as follows:

Parties, Jurisdiction, and Venue

1. Plaintiff Kaleb Smith is a citizen and resident of Georgia.
2. Defendant Rhett Fussell, Individually and as doing business as Fussell Farms, is a citizen and resident of Coffee County, Georgia. He can be personally served with a copy of the Summons and Complaint at 1740 Conway Vickers Road, Ambrose, Georgia 31512.
3. Defendant Fussell Fertilizer, LLC is a Georgia limited liability corporation. Fussell Fertilizer LLC can be personally served with a copy of the Summons and Complaint by service upon its registered agent, Rhett Fussell, 1740 Conway Vickers Road, Ambrose, Georgia 31512.
4. Jurisdiction is proper in this Court.

5 day of July 2018
Angela L. Spill-Hutto
Clerk, Superior Court & State Court
Coffee, County, Georgia

5. Venue is proper in this Court.

General Allegations

6. On January 31, 2017, Plaintiff Kaleb Smith was working with, for, and/or at the direction of Rhett Fussell when Mr. Fussell negligently operated a machine and negligently dropped a tree on to Mr. Smith's foot, causing the amputation of a toe and other grievous injury to Mr. Smith. At all times relevant hereto, Defendant Fussell was acting in his individual capacity, and/or as an agent, principal and/or employee of or for Fussell Farms, and/or as an agent and member and/or employee of or for Fussell Fertilizer, LLC.

7. On June 4, 2018 the State Board of Workers' Compensation held that Defendants are not subject to the Workers' Compensation Act.

8. On May 2, 2018 Defendants entered into an agreement with Plaintiff to pay Plaintiff Ten Thousand Dollars (\$10,000.00), separate and apart from any separate agreement to pay within the purview of the Georgia State Board of Workers' Compensation, within thirty days of execution of the May 2, 2018 agreement by Plaintiff. Payment was due by June 2, 2018. Defendants in bad faith have stubbornly failed and refused to pay Plaintiff any and all sums according to that May 2, 2018 agreement.

COUNT I – NEGLIGENCE

9. The allegations of Paragraphs 1 through 8 are realleged and incorporated herein as if repeated verbatim.

10. Defendants owed a duty to Plaintiff and were negligent, grossly negligent, willful, wanton, reckless and careless and breached their duty of care to Plaintiff by failing to use reasonable care and precautions to ensure the safe operation of the machine which injured

Plaintiff.

11. The breaches of duty by these Defendants proximately caused the injury sustained.

12. As a direct and proximate cause of the breaches complained of herein, Plaintiff suffered injuries, including excruciating pain and suffering.

13. By reason of the foregoing, Plaintiff Smith is entitled to recover all general and special damages proximately caused by these Defendants' negligence.

COUNT II – BREACH OF CONTRACT

14. The allegations of Paragraphs 1 through 13 are realleged and incorporated herein as if repeated verbatim.

15. Defendants breached a contract drafted by their counsel dated May 2, 2018 to pay Plaintiff ten thousand dollars within thirty days.

16. Demand has been made for payment under the contract, and rejected.

17. The failure and refusal to pay by Defendants has been in bad faith, vexatious, and stubbornly litigious, and/or has caused Plaintiff unnecessary trouble and expense. Plaintiff is entitled to recover attorney's fees, costs and other expenses of litigation to recover sums due from Defendants per O.C.G.A. § 13-6-11.

COUNT III – PUNITIVE DAMAGES

18. The allegations of Paragraphs 1 through 17 are realleged and incorporated herein as if repeated verbatim.

19. On January 31, 2017, Defendant Fussell's actions proximately caused grievous injury to Plaintiff.

20. Defendants have exhibited willful misconduct, wantonness, oppression, or that

entire want of care which would raise the presumption of conscious indifference to consequences thereby entitling Plaintiff to the recovery of punitive damages.

WHEREFORE, Plaintiff Kaleb Smith prays for the following relief:

- (A) That summons and process issue be served upon the Defendants;
- (B) That trial by jury be had;
- (C) That judgment be rendered against the Defendants for the full amount of compensatory, general and special damages to which the Plaintiff is entitled;
- (D) That Plaintiff recover punitive damages as proven by the evidence; and
- (E) That Plaintiff be awarded such other and further relief as may be just and proper.

This 3rd day of July, 2018.

OLIVER MANER LLP



PATRICIA T. PAUL
Georgia State Bar No. 697845

Attorney for Plaintiff Kaleb Smith

218 W. State Street
P. O. Box 10186
Savannah, Georgia 31412
(912) 236-3311
ppaul@olivermaner.com

SUPERIOR COURT OF CHATHAM COUNTY
STATE OF GEORGIA

SHERIFF'S ENTRY OF SERVICE

KALEB SMITH

Plaintiff(s)
vs.
RHETT FUSSELL, INDIVIDUALLY, AND AS D/B/A)
FUSSELL FARMS, AND FUSSELL FERTILIZER LLC)

Defendant(s)

Case Number 2018507 - 359
Cause of Action General Tort

Patricia T. Paul, Esq.
P.O. Box 10186
Savannah, GA 31412
(Plaintiff or Plaintiff's Attorney)

DATE RECEIVED	DATE
SERVICE ATTEMPTED	OFFICER
1	7-12-18
2	
3	
4	

12:55 PM

Garnishee
Rhett Fussell d/b/a Fussell Farms
1187 Moore Cemetery Road
Douglas, GA 31535

PERSONAL I have this day served the Defendant Rhett Fussell d/b/a russell farms personally with a true copy of the within petition and summons.
This 16 day of July 2018, Dyo Smith c29, Deputy Sheriff

RESIDENTIAL I have this day served the Defendant _____ with a true copy of the within petition and summons by serving same upon _____ a person Sui Juris residing on the premises.
This _____ day of _____ 19_____, _____, Deputy Sheriff

CORPORATE I have this day served the Defendant _____, a corporation, with a true copy of the within petition and summons by handing the same in person to _____, an officer of said corporation.
This _____ day of _____ 19_____, _____, Deputy Sheriff

TACKED AND MAILED I have this day executed the within Affidavit and Summons by tacking a copy of the within process on the door of the premises designated in said action and also by depositing a true copy thereof in the United States mail in an envelope properly addressed to Defendant at his last known address with sufficient postage affixed.
This _____ day of _____ 19_____, _____, Deputy Sheriff

GARNISHEE I have this day at the hour of _____ served the Summons of Garnishment upon _____ by handing the original of same to _____ in person, he/she being _____ and agent in charge of _____ at the time of service in Chatham County.
This _____ day of _____ 19_____, 18 day of July, Deputy Sheriff

MAILED This is to certify that I have this day served the Defendant _____ with a copy of the within Affidavit and Summons by depositing a copy thereof in the United States Mail, in an envelope properly addressed to Defendant at his last known address in said Affidavit, with adequate postage affixed thereon.
This _____ day of _____ 19_____, _____, Deputy Sheriff

DILIGENT SEARCH Diligent search made and Defendant is not to be found in the jurisdiction of this court.
This _____ day of _____ 19_____, _____, Deputy Sheriff

Filed in Office this 18 day of July
Angela Paul-Hutto
Clerk, Superior Court & State Court
Chatham County, Georgia

FOR THE STATE COURT OF CHATHAM COUNTY
STATE OF GEORGIA

RIFF'S ENTRY OF SERVICE

KALEB SMITH

Plaintiff(s)
vs.
RHETT FUSSELL INDIVIDUALLY, AND AS D/R/A
FUSSELL FARMS, AND FUSSELL FERTILIZER LLC

Defendant(s)

Garnishee

Case Number 2018S07-359
Cause of Action General Tort
Patricia T. Paul, Esq.
P.O. Box 10186
Savannah, GA 31412
(Plaintiff or Plaintiff's Attorney)

DATE RECEIVED	FILED
SERVICE ATTEMPTED	DATE
COFFEE CO. SHERIFFS DEPT	OFFICER
1. 7-12-18	CA22646 12:45 pm
2.	
3.	
4.	

Fussell Fertilizer LLC
1187 Moore Cemetary Road
Douglas, GA 31535

PERSONAL I have this day served the Defendant _____ personally with a true copy of the within petition and summons.
This _____ day of _____, 19____, _____, Deputy Sheriff

RESIDENTIAL I have this day served the Defendant _____ with a true copy of the within petition and summons by serving same upon _____ a person Sul Juris residing on the premises.
This _____ day of _____, 19____, _____, Deputy Sheriff

CORPORATE I have this day served the Defendant Fussell Fertilizer LLC, a corporation, with a true copy of the within petition and summons by handing the same in person to Enda Fussell, an officer of said corporation.
This 16 day of July, 2018, Jay Smith c29, Deputy Sheriff

TACKED AND MAILED I have this day executed the within Affidavit and Summons by tacking a copy of the within process on the door of the premises designated in said action and also by depositing a true copy thereof in the United States mail in an envelope properly addressed to Defendant at his last known address with sufficient postage affixed.
This _____ day of _____, 19____, _____, Deputy Sheriff

GARNISHEE I have this day at the hour of _____ served the Summons of Garnishment upon _____ by handing the original of same to _____ in person, he/she being _____ and agent in charge of _____ at the time of service in Chatham County.
This _____ day of _____, 19____, 18 day of July 18, Deputy Sheriff

MAILED This is to certify that I have this day served the Defendant Clerk Superior Court & State Court with a copy of the within Affidavit and Summons by depositing a copy thereof in the United States mail, in an envelope properly addressed to Defendant at his last known address as shown in said Affidavit, with adequate postage affixed thereon.
This _____ day of _____, 19____, _____, Deputy Sheriff

DILIGENT SEARCH Diligent search made and Defendant is not to be found in the jurisdiction of this court _____
This _____ day of _____, 19____, _____, Deputy Sheriff



IN THE SUPERIOR COURT OF COFFEE COUNTY
STATE OF GEORGIA

KALEB SMITH,)	
)	
Plaintiff,)	Civil Action File No. 2018S07-359
)	
v.)	
)	
RHETT FUSSELL, Individually and as)	
d/b/a FUSSELL FARMS, and)	
FUSSELL FERTILIZER LLC,)	
)	
Defendants.)	

PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT JUDGMENT

Comes now Plaintiff Kaleb Smith and submits this his Motion for Entry of Default Judgment, and shows to the Court as follows:

1. On July 5, 2018 Plaintiff filed his Summons and Complaint against Defendants in this Court.
2. On July 16, 2018, Defendants were each served with the Summons and Complaint, per Sheriff's Entries of Service timely filed with this Court.
3. On September 4, 2018, fifty days after service of the Summons and Complaint, counsel for Plaintiff, Patricia T. Paul, contacted the Clerk's Office of the Superior Court of Coffee County, and confirmed with the Clerk's Office that no Answer or other defensive pleading or motion has been filed by any of the Defendants as shown by Court records.
4. The case is in default, and more than forty-five days after proper service of the Summons and Complaint upon the Defendants has elapsed. Plaintiff is entitled to a default

1 Filed in Office this
 6 day of September 2018

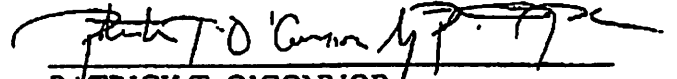
 Kaleb L. Spill-Morris
 Clerk, Superior Court & State Court
 Coffee County, Georgia

judgment, and seeks a hearing to prove Plaintiff's unliquidated damages.


5. The Certificate of Patricia T. Paul, and a proposed Order, are attached.

This 4th day of September, 2018.

OLIVER MANER LLP



PATRICK T. O'CONNOR/
Georgia State Bar No. 548425



PATRICIA T. PAUL
Georgia State Bar No. 697845

218 W. State Street
P. O. Box 10186
Savannah, Georgia 31412
(912) 236-3311
ppaul@olivermaner.com

Attorneys for Plaintiff Kaleb Smith

IN THE SUPERIOR COURT OF COFFEE COUNTY
STATE OF GEORGIA

KALEB SMITH,)
)
 Plaintiff,) Civil Action File No. 2018S07-359
)
 v.)
)
 RHETT FUSSELL, Individually and as)
 d/b/a FUSSELL FARMS, and)
 FUSSELL FERTILIZER LLC,)
)
 Defendants.)

CERTIFICATE OF PATRICIA T. PAUL

Comes now Patricia T. Paul, an attorney for Plaintiff Kaleb Smith, and per Rule 15 of the Uniform Rules of the Superior Court, submits this Certificate in support of Plaintiff's Motion for Entry of Default Judgment.

1. My name is Patricia T. Paul, I am over the age of 18, and I suffer no disabilities which might affect my competency to render this Certificate.

2. I am a member of the State Bar of Georgia in good standing. I graduated from the University of Georgia School of Law in 1985. I became an associate with Oliver Maner & Gray LLP in 1988, and I have been a partner with the firm, now Oliver Maner LLP, since 1993. I am an attorney for Plaintiff Kaleb Smith.

3. On July 5, 2018 Plaintiff filed his Summons and Complaint against Defendants in this Court.

4. On July 16, 2018, Defendants were each served with the Summons and

1

Filed in Office this
6 day of September 2018
Angela L. Spill-Hutto
Clerk, Superior Court & State Court
Coffee, County, Georgia

Complaint, per Sheriff's Entries of Service timely filed with this Court.

5. On September 4, 2018, fifty days after service of the Summons and Complaint, I called the Clerk's Office of the Superior Court of Coffee County, and confirmed with the Clerk's Office that no Answer or other defensive pleading or motion has been filed by any of the Defendants as shown by Court records.

6. The case is in default, and more than forty-five days after proper service of the Summons and Complaint upon the Defendants has elapsed. Plaintiff seeks a default judgment, and a hearing to prove Plaintiff's unliquidated damages.

7. The above is based upon my personal knowledge.

This 4 day of September, 2018.

OLIVER MANER LLP



PATRICIA T. PAUL
Georgia State Bar No. 697845

Attorneys for Plaintiff Kaleb Smith

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P. O. Box 10186
Savannah, Georgia 31412
(912) 236-3311
ppaul@olivermaner.com

IN THE SUPERIOR COURT OF COFFEE COUNTY
STATE OF GEORGIA

KALEB SMITH,)
)
 Plaintiff,)
) Civil Action No.: 2018S07-359
 v.)
)
 RHETT FUSSELL, individually and)
 d/b/a FUSSELL FARMS, and)
 FUSSELL FERTILIZER LLC,)
)
 Defendants.)

ORDER

This action having become in default on August 16, 2018 by the failure of Defendants to file an answer or other defensive pleading, and fifteen (15) days having elapsed from the date of default and the default not have been opened as a matter of right or by order of the court, upon review of Plaintiff's Complaint, and after having deemed all factual allegations contained therein as having been admitted by the Defendants, it is

ORDERED AND ADJUDGED, that Plaintiff's Motion for Default Judgment as to the liability of Defendants is GRANTED.

Consistent with Plaintiff's jury demand, the amount and allocation of damages between Defendants shall be determined by a jury.

SO ORDERED, this 27th day of September 2018.



J. Kelly Brooks, Judge
Coffee County Superior Court

IN THE SUPERIOR COURT OF COFFEE COUNTY
STATE OF GEORGIA

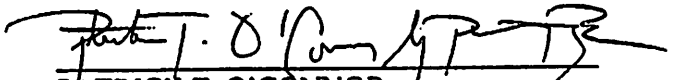
KALEB SMITH,)
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Plaintiff,) Civil Action File No. 2018S07-359
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v.)
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RHETT FUSSELL, Individually and as)
d/b/a FUSSELL FARMS, and)
FUSSELL FERTILIZER LLC,)
)
Defendants.)

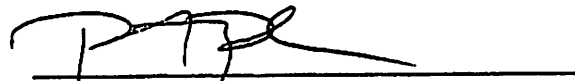
WITHDRAWAL OF JURY DEMAND

Comes Now Plaintiff Kaleb Smith and withdraws his jury demand. Plaintiff requests that the case be set for a bench trial on the issue of damages, per the Court's Order of September 27, 2018 granting Plaintiff's Motion for Default Judgment, as soon as possible.

This 27th day of September, 2018.

OLIVER MANER LLP


PATRICK T. O'CONNOR
Georgia State Bar No. 548425


PATRICIA T. PAUL
Georgia State Bar No. 697845
Attorney for Plaintiff Kaleb Smith

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(912) 236-3311
(912) 236-8725 (facsimile)
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IN THE SUPERIOR COURT OF COFFEE COUNTY
STATE OF GEORGIA

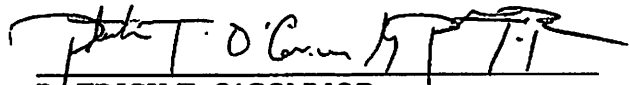
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Plaintiff,)	Civil Action File No. 2018S07-359
)	
v.)	
)	
RHETT FUSSELL, Individually and as)	
d/b/a FUSSELL FARMS, and)	
FUSSELL FERTILIZER LLC,)	
)	
Defendants.)	

NOTICE OF HEARING


Please be advised that a hearing on the issue of damages and attorney's fees and costs with regard to the default judgment will be held on Tuesday, December 18, 2018, at 9:00 a.m. at the Coffee County Courthouse, 101 South Peterson Avenue, Douglas, Georgia 31533, in front of The Honorable J. Kelly Brooks.

This 18 day of October, 2018.

OLIVER MANER LLP



PATRICK T. O'CONNOR
Georgia State Bar No. 548425



PATRICIA T. PAUL
Georgia State Bar No. 697845
Attorneys for Plaintiff Kaleb Smith

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P. O. Box 10186
Savannah, GA 31412
(912) 236-3311
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GEORGIA
CORPORATIONS
DIVISION

GEORGIA SECRETARY OF STATE

ROBYN A.
CRITTENDEN

[HOME \(/\)](#)

BUSINESS SEARCH

BUSINESS INFORMATION

Business Name: **FUSSELL FERTILIZER
LLC** Control Number: **13384974**

Business Type: **Domestic Limited
Liability Company** Business Status: **Active/Compliance**

Business Purpose: **NONE**

Principal Office Address: **1187 Moore
Cemetery Road,
Douglas, GA, 31535,
USA** Date of Formation /
Registration Date: **2/22/2013**

State of Formation: **Georgia** Last Annual
Registration Year: **2018**

REGISTERED AGENT INFORMATION

Registered Agent
Name: **Rhett Daniel Fussell**

Physical Address: **1187 Moore Cemetery Road, Douglas, GA, 31535, USA**

County: **Coffee**

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