

**In the United States District Court
For the Northern District of Alabama**

SOUTHERN DIVISION

CLARK EQUIPMENT CREDIT CORPORATION,
a corporation

VS.

CIVIL ACTION NO. 86-G-0481-S

SIMMONS MACHINERY CO., INC., a corpo-
ration, GEORGE M. SIMMONS, an indivi-
dual, ALAN'S COAL SALES, a partnership
and BERRY MOUNTAIN MINING CO., INC. a
corporation

Certificate of Judgment

I, CHARLES T. CLIVER, Clerk of the United States District Court for the Northern District of Alabama, do hereby certify that on the fifteenth day of August, 1986, a FINAL ORDER GRANTING PARTIAL SUMMARY JUDGMENT was rendered by said Court in the above-styled cause wherein it was ORDERED, ADJUDGED and DECREED as follows:

(1) Plaintiff's motion for partial summary judgment be and hereby is GRANTED, there being no genuine issue as to any material fact, plaintiff being entitled to judgment as a matter of law against all defendants on all counts, except not against defendant ALAN SIMMONS, and there being no just cause for delay in entering final judgment, a final judgment is hereby entered.

(2) The amounts of the judgment against the various defendant is as follows:

(a) against SIMMONS MACHINERY CO, INC.: THIRTY THOUSAND SIX HUNDRED NINETY FOUR AND 17/100 (\$30,694.17) DOLLARS;

(b) against GEORGE M. SIMMONS, SIX HUNDRED FORTY SIX THOUSAND SIX HUNDRED EIGHTY ONE AND 72/100 (\$646,681.72) DOLLARS plus attorneys fees in the amount of TWENTY FOUR THOUSAND SEVEN HUNDRED NINETEEN AND 27/100 (\$24,719.27) DOLLARS for a total judgment of SIX HUNDRED SEVENTY ONE FOUR HUNDRED AND 99/100 (\$671,400.99) DOLLARS;

(c) against ALAN'S COAL SALES, FIVE HUNDRED FORTY THOUSAND NINE HUNDRED EIGHTY SEVEN AND 55/100 (\$540,987.55) DOLLARS plus attorneys' fees of TWENTY FOUR THOUSAND SEVEN HUNDRED NINETEEN AND 27/100 (\$24,719.27) DOLLARS, for a total judgment of FIVE HUNDRED

SIXTY FIVE THOUSAND SEVEN HUNDRED SIX AND 82/100 (\$565,706.82) DOLLARS;

(d) against BERRY MOUNTAIN MINING, CO., INC., ONE HUNDRED EIGHTY SEVEN THOUSAND SIX HUNDRED NINETY AND 11/100 (\$187,690.11) DOLLARS plus an attorney's fee of NINE THOUSAND THREE HUNDRED EIGHTY FOUR AND 50/100 (\$9,384.50) DOLLARS for a total judgment of ONE HUNDRED NINETY SEVEN THOUSAND SEVENTY FOUR AND 61/100 (\$197,074.61) DOLLARS.

(3) The judgment against the various defendants are separate and independent and collections from one defendant shall not inure to the benefit of other defendants except that (1) any collection from ALAN 'S COAL SALES shall also be credited toward the judgment against GEORGE M. SIMMONS; (2) any collection from SIMMONS MACHINERY CO., INC. shall also be credited toward the judgment against GEORGE M. SIMMONS; (3) any collections from BERRY MOUNTAIN MINING CO., INC. in excess of both ONE HUNDRED TWENTY TWO THOUSAND SEVENTY FOUR AND 61/100 (\$122,074.61) DOLLARS (and post-judgment interest) shall also be credited toward the judgment against GEORGE M. SIMMONS; and (4) any collections from GEORGE M. SIMMONS shall be credited dollar for dollar towards the judgments against any one of the other defendants, as plaintiff elects, and plaintiff may from time to time change the credit from one defendant to another as plaintiff elects, except that no more than SEVENTY FIVE THOUSAND (\$75,000.00) DOLLARS (plus post-judgment interest) collected from GEORGE M. SIMMONS can be credited toward the judgment against BERRY MOUNTAIN MINING CO., INC.

(4) Service never having been perfected on defendant ALAN SIMMONS, said defendant ALAN SIMMONS, said defendant is hereby DISMISSED WITHOUT PREJUDICE.

It was FURTHER ORDERED that final judgment be and it hereby is entered in favor of the plaintiff, CLARK EQUIPMENT CREDIT CORPORATION, and against the

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defendants for the amount set forth above, and the plaintiff shall recover such sums from the defendants as set forth above. Costs are taxed against the defendants in the amount of SIXTY AND 00/100 (\$60.00) DOLLARS; and that Michael L. Hall, JOHNSTON, BARTON, PROCTOR, SWEDLAW & NAFF, 1100 Park Place Tower, Birmingham, Alabama 35203, is the Attorney of Record for the CLARK EQUIPMENT CREDIT CORPORATION in said cause.

DEFENDANTS' ADDRESSES:

SIMMONS MACHINERY CO, INC.
Post Office Box 220
Graysville, Alabama 35073

ALAN'S COAL SALES
Post Office Box 220
Graysville, Alabama 35073

MR. ALAN SIMMONS
4900 Old Leeds Road
Birmingham, Alabama 35213

MR. GEORGE M. SIMMONS
Post Office Box 220
Graysville, Alabama 35073

BERRY MOUNTAIN MINING CO., INC.
Post Office Box 220
Graysville, Alabama 35073

WITNESS, My Hand and the Seal of
said Court, this the twenty-second day of
August, 1986.
CHARLES T. CLIVER, CLERK

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED

1986 AUG 26 PM 12:42

James A. Shelby, Jr.
JUDGE OF PROBATE

By:

Gene E. Bell
GENE E. BELL, CHIEF DEPUTY CLERK
United States District Court

RECORDING FEES

Recording Fee \$ 7.50

Index Fee 3.00

TOTAL \$ 10.50

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