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IN THE CIRCUIT COURT OF JEFFERSON COUNTY
TENTH JUDICIAL CIRCUIT OF ALABAMA

SAM WATKINS KEENON, JR.,

Plaintiff,

VS.

ANTIQUE AND CLASSIC AUTOS, INC.,
et. al.

Defendants.

CIVIL ACTION NO.

CV 93 6710 KOS

Filed In Open Court

AUG 4 1995

This..... day of 19....

POLLY CONRADI
CLERK CIRCUIT COURT

By.....
DEPUTY CLERK

17.00

FINAL ORDER OF JUDGMENT GRANTING SUMMARY JUDGMENT

This matter was set for a Settlement Conference and for a hearing on the Plaintiff's Motion for Summary Judgment on July 28, 1995. The Plaintiff's attorneys were present and the Pro Se Defendants were not present at the time of the call of the case. Notice of the settlement conference was duly given to said Defendants by the Clerk and notice of the hearing on the Motion for Summary Judgment was given by the Plaintiff's attorneys pursuant to the requirement of Rule 5 of the Alabama Rules of Civil Procedure.

The Court having considered the Motion for Summary Judgment as filed by the Plaintiff finds that relief is due to be granted to the Plaintiff. Further, the Plaintiff's Motion for Summary Judgment is well taken and a Final Order entered in this matter. Specifically, the Court finds as follows:

1. That there have been no contested fact affidavits filed in this cause by the Defendants to the Plaintiff's Motion for Summary Judgment.

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2. The Court finds that there are no disputed issues of contested facts and the Plaintiff is entitled to the relief sought in the Motion.

3. The Court finds that the Plaintiff, Sam Watkins Keenon, Jr., was an employee for wages of the Defendants and the relationship of employer and employee existed between the parties. That the Plaintiff was required by the terms and condition of his employment to do automotive work on various cars located at the premises of the Defendants. Originally, the Plaintiff was to be employed as an independent contractor without regular and normal payroll deductions. Shortly thereafter, the Plaintiff was engaged as a regular and customary employee, and received a regular salary with normal payroll deductions. At the end of a period of one month of regular employment, the Plaintiff was to receive an increase in pay and would be entitled to paid medical insurance benefits at the end of a three-month period.

4. At the time of the fire accident (June 16, 1993), the Defendants possessed and maintained a gas hot water heater with an open and/or unguarded flame on the premises located at 715 Fifth Avenue North, Birmingham, Alabama. While the Plaintiff was working on the gas tank of a vehicle, the fumes from the gasoline were ignited by the open flame located in the gas water heater. As a direct result, the Plaintiff was severely burned.

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5. The Defendants breached a standard of care for the protection of their employees by operation and maintenance of a condition on the premises in violation of the Standard Fire Prevention Code (see affidavit and amended affidavit of Plaintiff's expert, Captain Jimmy Jerrell). The express failure to maintain a safe workplace establishes a legal duty and liability owed by the Defendants to the Plaintiff under two separate theories that are based on the relationship between an employer and an employee. The Court finds as follows:

a. The Defendants breached that legal duty owed to the Plaintiff by virtue of the Common Law duty of an employer to provide a safe place to work for its employees. Namely, the Defendants allowed an open flame to exist in a commercial workplace where there existed flammable liquids or vapors.

b. Second, since the Defendants elected not to provide Workman's Compensation insurance, the Defendants are subject to the requirement of the Employees Liability Act (Code of Alabama, Title 25-6-1 et seq). That act imposes on an employer a legal duty not to maintain any defect in the condition of the ways, works, machinery, or plant at the place of employment. The defect in this case is the dangerous gas hot water heater that was allowed to exist in the shop.

c. That the Defendants are liable to the Plaintiff under both legal theories relating to employment. The

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maintenance of a gas appliance with an open flame in a commercial establishment with flammable vapors and liquids is a violation of the Common Law and Statutory standard of care. As a result, the Plaintiff was caused to be injured and damaged.

6. As to the employment contract, the Court finds that the Plaintiff did partially preform the employment contract according to its terms and conditions. Also, the contract was an oral contract that could be performed within a year. As a result, the Statute of Frauds is not applicable in this case. Further, the Court finds that when the Plaintiff was able to return to work after the fire accident, the Defendants without just cause breached the employment agreement by firing the Plaintiff.

7. Further, the Court finds that at the time of the employment agreement, the individual Defendant, Richard W. Wyers, did not maintain adequate separation between his personal acts and the acts of the Defendant corporation with reference to the Plaintiff and the operation of the business. For example, the Defendant, Richard W. Wyers, paid a portion of the Plaintiff's medical bill by paying said bill with his personal credit card. In addition, there are insufficient books and records of the corporation. In fact, there is only one set of unsigned minutes. Further, there were no meetings of any kind or even regular corporate officers except for the individual Defendant. The individual, Richard W. Wyers, did use this corporation as his

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personal and individual corporation. As a result, the Court finds that there is no legal distinction between the acts of Richard W. Wyers, individually, and the Defendant corporation. Therefore, the said Richard Wyers is personally liable to the Plaintiff in connection with this employment matter.

8. Further, the Court finds that the Plaintiff's claims for retaliatory discharge under the Code of Alabama, Workman's Compensation benefits, and for double compensation are due to be dismissed because the Defendants have elected not to be subject to the Workman's Compensation act due to the number of employees.

9. Further, the Court has considered the uncontested facts contained in the Plaintiff's affidavit with reference to his personal injury and property damage and finds that said claim of One Hundred Thousand Dollars (\$100,000) is a fair and reasonable amount based on the damaged proximately caused by the Defendants.

Upon consideration of the above finding of facts, the Summary Judgment and attachments of the Plaintiff, and the various pleadings of record including the amended Affidavit of Captain Jimmy Jerrell, the Court finds that the Plaintiff is entitled to recover a monetary Judgment against the Defendants.

It is, therefore, **ORDERED** as follows:

1. The Summary Judgment of the Plaintiff is granted both as to liability and damage.

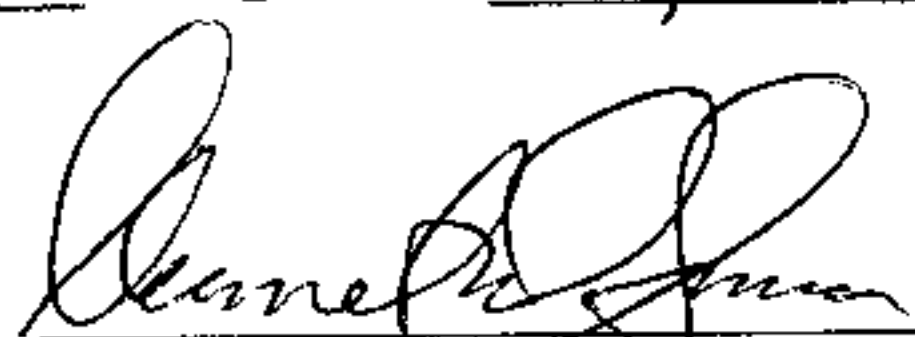
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2. The claims of the Plaintiff for retaliatory discharge, double compensation and Workman's Compensation benefits are hereby dismissed.

3. The Plaintiff shall recover of the Defendants, namely Richard W. Wyers and Antique and Classic Autos, Inc., the sum of One Hundred Thousand Dollars (\$100,000) as damages.

4. Costs taxed to the Defendants.

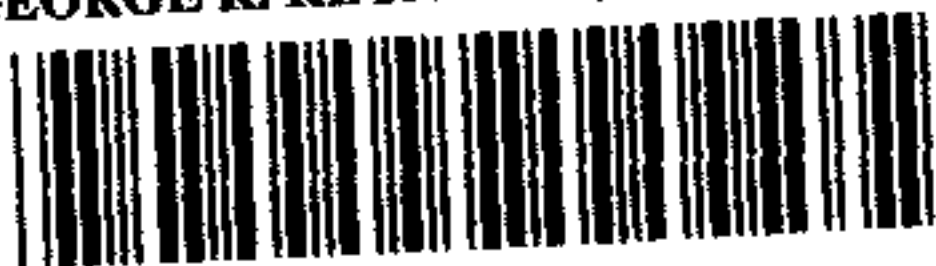
DONE and ORDERED this the 4th day of August, 1995.



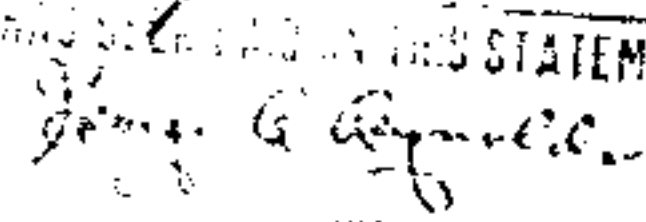
KENNETH O. SIMON,
 CIRCUIT JUDGE

xc: M. Wayne Wheeler
 Leslie Barineau
 Richard W. Wyers

State of Alabama - Jefferson County
 I certify this instrument filed on:
 1995 AUG 21 P.M. 15:39
 Recorded and \$ Mtg. Tax
 and \$ Deed Tax and Fee Amt.
 \$ 17.00 Total \$ 17.00
 GEORGE R. REYNOLDS, Judge of Probate



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STATE OF ALA. JEFFERSON CO.
 REC'D DIV. I CERTIFY
 THIS INSTRUMENT FILED ON
 1995 AUG 24 AM 11:04
 RECEIVED
 DEED TAX AND FEE STATEMENT

 JUDGE OF PROBATE

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