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Clerk, Supreme Court of Appeals
Richmond, Va.

202 VA 260

Record No. 5146

In the Supreme Court of Appeals of Virginia at Richmond

HENRY G. LUHRING, JR.

v.

SAM FINLEY, INCORPORATED

FROM THE COURT OF LAW AND CHANCERY OF THE CITY OF NORFOLK

RULE 5:12—BRIEFS.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 5146

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 25th day of November, 1959.

HENRY G. LUHRING, JR., Plaintiff in Error,

against

SAM FINLEY, INCORPORATED, Defendant in Error.

From the Court of Law and Chancery of the City of Norfolk

Upon the petition of Henry G. Luhring, Jr., a writ of error and *supersedeas* is awarded him to a judgment rendered by the Court of Law and Chancery of the City of Norfolk on the 2nd day of June, 1959, in a certain motion for judgment then therein depending wherein Sam Finley, Incorporated, was plaintiff and W. B. Meredith, trading, etc., and the petitioner were defendants; upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of twelve thousand dollars, with condition as the law directs.

RECORD

* * * * *

page 5 } Virginia:

In the Court of Law and Chancery of the City of Norfolk, on the 2nd day of June, 1959.

* * * * *

This day came the parties, the plaintiff, by its attorney and came as well the defendants, in person and by counsel and neither party demanding a jury the whole matter of law and fact was heard and determined by the Court.

Whereupon it is considered by the Court that the plaintiff recover of the said defendants the sum of Nine Thousand Nine Hundred and Sixty-Three ($9,963.00) Dollars, with interest to be computed after the rate of six per centum per annum from the 2nd day of June, 1959, until paid together with its costs about its suit herein expended.

Thereupon the defendants, by counsel moved the Court to set aside the verdict of the Court and grant them a new trial, upon the grounds that the said verdict is contrary to the law and the evidence, which motion after having been fully heard and maturely considered by the Court, is overruled, to which action of the Court the defendants, by counsel, duly excepts.

And thereupon one of the said defendants, Henry G. Luhring, Jr., having signified his intention of presenting to the Supreme Court of Appeals of Virginia, a petition for a writ of error and *supersedeas* to the judgment herein, it is ordered that execution upon said judgment be sus-
page 6 } pended for a period of sixty days from the date hereof, upon the said defendant, Henry G. Luhring, Jr., or someone for him entering into and acknowledging a proper suspending bond, conditioned according to law, before the Clerk of this Court, in the penalty of Twelve Thousand ($12,000.00) Dollars, with security to be approved by said Clerk.

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ORDER.

This day came the parties, by counsel, and on consideration of the motion by Henry G. Luhring, Jr. that the Court vacate and/or modify the judgment rendered against him in the case on June 2nd, 1959, the same having been argued by counsel, said motion is hereby denied.

H. LAWRENCE BULLOCK, Judge.

Entered June 16th, 1959.

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NOTICE OF MOTION.

To: Sam Finley, Incorporated
c/o Messrs. Kellam & Kellam, Counsel
Board of Trade Building
Norfolk, Virginia.

Please take notice that on Tuesday, June 16th, 1959, at 9:30 o'clock A. M., at the Courtroom of the above Court, Henry G. Luhring, Jr., a defendant in the above styled action, will move the Court to vacate and/or modify the judgment rendered against him therein on the 2nd day of June, 1959, on the following grounds, to-wit:

1. That since plaintiff's evidence unequivocably established that the work and labor done and materials furnished, for which it sued this defendant, was eighty per cent complete at the time plaintiff first had any contact with this defendant in regard to the matter, being the occasion when this defendant is alleged to have personally agreed to become responsible for the consequences of completing the work under the adverse physical conditions then prevailing, the rendition of judgment against this defendant for the entire amount of plaintiff's claim for all of such work is violative of
page 9 } the Statute of Frauds, there being no written agreement between plaintiff and this defendant, and plaintiff's original agreement with respect to said work

admittedly having been made with W. B. Meredith, as general contractor; and

2. That since plaintiff also admittedly did not comply with the provisions of Section 43-11 of the Code of Virginia, it, as a sub-contractor, could not lawfully hold this respondent liable for the amount of its sub-contract on the grounds that either this respondent was the owner of the property, or the agent for the undisclosed owner thereof; and

3. That, as shown by the exhibits in the case, and by the admissions of plaintiff, the amount of the plaintiff's claim was computed on the basis of completion of 4,860 square yards of paving, grading, etc., at the rate of $2.05 per square yard, whereas the correct rate per square yard for such work, as admitted in the testimony, and as shown in the exhibits, should have been the sum of $2.00 per square yard, wherefore plaintiff, by its own evidence, would be entitled to a maximum recovery against this defendant in the amount of only $9,720.00, instead of the amount of $9,963.00, for which said judgment was rendered.

HENRY G. LUHRING, JR.
By JORDAN A. PUGH, III
Counsel.

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This motion is denied this 16th day of June 1959.

H. LAWRENCE BULLOCK.

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

W. L. Prieur, Jr., Clerk
Court of Law and Chancery
City of Norfolk
Norfolk, Virginia.

Henry G. Luhring, Jr., a defendant in the above styled case, hereby gives his notice of appeal from the order entered in the above styled case June 2nd, 1959, and sets forth the following assignments of error.

FIRST: That the Court erred in overruling this defendant's motions to strike the evidence as to him, both at the conclusion of the plaintiff's evidence, and at the conclusion of all of the evidence of the case.

SECOND: That the Court erred in refusing to sustain this defendant's motion to vacate and/or modify the said judgment rendered against him in the case on June 2nd, 1959, on the grounds:

A. That this respondent is thereby held to answer for the debt or default of others, in violation of the Statute of Frauds; and

page 12 } B. That this respondent is neither the owner of the property involved, nor the agent for the undisclosed owner thereof; and

C. That as shown by the plaintiff's own evidence, the amount of the judgment is patently wrong, being based upon the erroneous rate of $2.05 per square yard for the pavement, instead of $2.00 per square yard, as is set forth in the plaintiff's bid to the general contractor.

THIRD: That the Court erred in entering judgment against this defendant on June 2nd, 1959, there being no evidence to sustain the same.

HENRY G. LUHRING, JR.
By JORDAN A. PUGH, III
Counsel.

Filed 7-31-59.

L. M. CALVERT, D. C.

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A Copy—Teste:

H. G. TURNER, Clerk.

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