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Clerk, Supreme Court of Appeals
Richmond, Va.

Record No. 6158

In the Supreme Court of Appeals of Virginia at Richmond

RICHARD LEVY, AN INFANT, ETC.,

v.

STANLEY PAUL, T/A. ETC.

FROM THE CIRCUIT COURT OF THE CITY OF NEWPORT NEWS

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 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. 6158

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 9th day of June, 1965.

RICHARD LEVY, AN INFANT, WHO SUES BY BETTY LEVY, HIS MOTHER AND NEXT FRIEND,
Plaintiff in Error,

against

STANLEY PAUL, TRADING AS NATIONAL RESTAURANT,
Defendant in Error.

From the Circuit Court of the City of Newport News
Henry D. Garnett, Judge

Upon the petition of Richard Levy, an infant, who sues by Betty Levy, his mother and next friend, a writ of error is awarded him to a judgment rendered by the Circuit Court of the City of Newport News on the 15th day of February, 1965, in a certain motion for judgment then therein depending wherein the said petitioner was plaintiff and Stanley Paul, trading as National Restaurant, was defendant; no bond being required.

RECORD

* * * * *

MOTION FOR JUDGMENT.

The undersigned hereby moves the Circuit Court for the City of Newport News, Virginia, for a judgment against you in the sum of TWENTY-FIVE THOUSAND DOLLARS ($25,000.00), for breach of warranty and negligence resulting in the damages, wrongs and injuries hereinafter set forth, to-wit:

1. That on or about August 11, 1963, and for a long time prior, thereto, defendant owned and operated a certain restaurant at 3112 Washington Avenue, Newport News, Virginia, wherein it solicited the entrance and patronage of customers, offered to furnish to the public various foods for immediate consumption on and off the premises.

2. That you the said, Stanley Paul, trading as National Restaurant, by and through your authorized agents and employees, acting in that behalf, then and there impliedly warranted to all that might consume or in any manner deal with the said food, that the various foods and food stuff so offered by you, in the said restaurant, were clean, wholesome and free from harmful and injurious foreign substances and were also reasonably fit for human consumption.

3. That the plaintiff in reliance on the said warranties and on the skill, experience and judgment of you in the selection, preparation and service of the food stuffs as aforesaid, entered the said restaurant on or about the date last mentioned, then and there ordered and consumed a meal consisting of the various food stuffs condiments, and beverages.

page 2 } 4. That the said food stuffs therein consumed by the plaintiff were not clean, wholesome, and free from harmful or injurious foreign substances, and were not reasonably fit for the purpose for which they were sold, purveyed or served, but on the contrary were unclean, unwholesome and filled with harmful and injurious foreign substances, bacteria and germs that were wholly unfit for consumption as food.

5. The defects hereinbefore mentioned could not be discovered by ordinary inspection, and the plaintiff did not know nor have any reasonable means of discovering or knowing at the time of the acceptance and the consumption of the said

food stuffs that the same were unclean, unwholesome, filled with harmful and injurious foreign substances, or unfit for consumption as food.

6. You, the said Stanley Paul, trading as National *Restaurant,* was negligent in the selection, processing, cooking, refrigerating and serving of the said food stuffs which were consumed by the plaintiff as aforesaid and which food stuffs were rendered spoiled, unwholesome, unfit for human consumption, poisonous and deleterious to human health by your negligence and the negligence of your *employees,* agents and servants acting within the scope of their employment.

7. That plaintiff was feeling perfectly well before the said consumption of food and foodstuffs at the time and place aforesaid, but soon thereafter, became violently ill and nausated and contracted food poisoning as the result of your negligence and your breach of warranty as aforesaid.

8. That as a direct and proximate result of your negligence and breach of warranty as aforesaid, and without fault on the part of the plaintiff, the undersigned suffered and will continue to suffer, both physical and mental pain and anguish; was confined to the hospital and under doctor's care for treatment of illness; and his ability to work, labor and earn a livelihood after reaching his majority has been seriously and permanently diminished, and he has been
page 3 } otherwise rendered lame, sore, sick and permanently disabled.

WHEREFORE, your plaintiff asserts that as a direct and proximate result thereof, damages have been sustained by him in the amount of TWENTY-FIVE THOUSAND DOLLARS ($25,000.00), and judgment will be asked of you for damages at the hands of the said Court at the time and place hereinabove set forth as aforesaid.

Given under my hand this 26 day of November, 1963.

RICHARD LEVY
By ALVIN B. FOX
Counsel.

Filed in the Clerk's Office the 26th day of November, 1963.

Teste:

GEO. S. De SHAZOR, JR., Clerk.
BARBARA BERGH, D. C.

* * * * *

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* * * * *

ORDER.

This cause came on to be heard upon the motion of the plaintiff, by counsel, to strike from the Motion for Judgment previously filed herein all allegations of negligence on the part of the defendant contained therein, the plaintiff desiring to proceed solely upon the theory of implied warranty in this cause.

UPON CONSIDERATION WHEREOF, the Court doth ADJUDGE, ORDER and DECREE that all allegations of negligence on the part of the defendant in the Motion for Judgment previously filed in this cause shall be, and the same hereby are, ordered stricken from the pleadings.

Enter this 15th day of Jan., 1965.

HENRY D. GARNETT, Judge.

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DEMURRER.

The defendant demurs to the motion for judgment herein as amended by the order entered herein on the 15th day of January, 1965, as not being sufficient in law.

STANLEY PAUL, TRADING AS
NATIONAL RESTAURANT
By GRANGER WEST
Counsel.

Filed 2/15/65.

HENRY D. GARNETT, Judge.

* * * * *

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ORDER.

This cause came on this day to be heard on the demurrer of the defendant to the motion for judgment as amended by order entered herein on the 15th day of January, 1965, and the same was argued by counsel.

The Court doth ADJUDGE and ORDER that the demurrer filed in this proceeding to the plaintiff's amended motion for judgment be, and the same hereby is, sustained and the plaintiff having indicated that he does not desire to further amend his amended motion for judgment, the same is hereby DISMISSED and this cause is stricken from the docket.

It is further ADJUDGED and ORDERED that the Court costs accrued be paid by the plaintiff and judgment is hereby awarded the defendant for said Court costs.

To all of which actions of the Court the plaintiff objects and excepts.

Date: 2/15/65.

Enter.

HENRY D. GARNETT, Judge.

We ask for this:

GRANGER WEST
Counsel for Defendant.

Seen and objected to:

ALVIN B. FOX
Counsel for Plaintiff.

* * * * *

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ERROR ASSIGNED.

The Trial Court erred as a matter of law in sustaining the defendant's Demurrer to the Amended Motion for Judgment and entering final judgment thereon for the defendant.

ELLENSON AND FOX
By ALVIN B. FOX
Counsel for Plaintiff.

Filed Feb. 19, 1965.

GEO. S. DeSHAZOR, JR., Clerk
By VIRGINIA WYNNE, D. C.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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