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Clerk, Supreme Court of Appeals
Richmond, Va.

Record No. 6230

In the

Supreme Court of Appeals of Virginia

at Richmond

TEXACO, INCORPORATED

v.

GEORGE RUNYON, et al.

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY

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. 6230

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 7th day of October, 1965.

TEXACO, INCORPORATED, Plaintiff in error,

against

GEORGE RUNYON, ET AL., Defendant in error.

From the Circuit Court of Fairfax County
Bernard F. Jennings, Judge

Upon the petition of Texaco, Incorporated, a writ of error is awarded it to a judgment rendered by the Circuit Court of Fairfax County on the 14th day of May, 1965, in a certain proceeding then therein depending wherein the said petitioner was plaintiff and George Runyon and another were defendants; upon the petitioner, or some one for it, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

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THE COMMONWEALTH OF VIRGINIA
TO THE SHERIFF or any CONSTABLE of FAIRFAX COUNTY—Greeting:

You are hereby commanded to summon George Runyon and Doris Runyon, 201 South West Street, Falls Church, Virginia to appear before the Fairfax County Court of Fairfax County, on the 12th day of December, 1963, at 10 o'clock A.M., to answer the complaint of Texaco, Inc., a corporation, Norfolk, Virginia for non-payment of $1,765.24, with interest from August 23, 1963, together with ——— attorney's fee, due by debt on open account as shown in annexed affidavit and statement of account.

Given under my hand this 3rd day of December, 1963.

Attorney for Plaintiff:

S. B. BROWN, 127 N. Fairfax
Street, Alexandria, Va.
(Attorney's address)

THOMAS P. CHAPMAN, Jr., Clerk
By: CHRISTINE M. CASH
Deputy Clerk

(Use of Officer showing nature of Service)
Executed in Fairfax County, Virginia, this 5th day of December, 1963, by posting a true copy of the within Summons statement of account and/or attached affidavit, on the front door of the usual place of abode of Geo. & Doris Runyon. They or no member of their family over sixteen years of age being found there.

JOHN E. TAYLOR, Sheriff
By P. W. BIRCH
Deputy

JUDGMENT is granted in favor of Defendant's on "motion to dismiss" (jurisdiction) against ———————— the defendant(s), for the sum of $————, with interest thereon, from the ——— day of ————, 19—, until paid, and ———————— attorney's fee, with the sum of $——— costs, said judgment not waiving the benefit of the homestead exemption(s).

Given under my hand this 23rd day of July, 1964.

B. F. JENNINGS
Judge, Fairfax County Court of Fairfax County

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ANSWER

Now come George Runyon *andDoris* Runyon, your Defendant's herein, and in support of their Answer to the Motion for Judgment by Civil Warrant filed by Texaco Inc., A Corporation, the Plaintiff herein, states as follows:

1. That your Defendants admit being parties to the Guaranty of Account executed by the parties hereto on July 11, 1962; and
2. That your Defendants admit doing business on an open account with the Plaintiff from July 11, 1962 to on or about January 1, 1963; and
3. That at the time your Defendants ceased doing business with the Plaintiff, your Defendants requested William J. McCoy, the Plaintiff's Sales representative, for a descriptive accounting of all transactions between the parties hereto for the purpose of determining your Defendant's liability to the Plaintiff, if any, pursuant to the Guaranty of Account; and
4. That when the Plaintiff furnished your Defendants with a statement your Defendants informed the Plaintiff that it did not properly set forth or identify the credits, debits and balances to enable your Defendants to understand same and were assured by Mr. McCoy, at that time, that your Defendants would receive a complete statement from the area office in Norfolk Virginia setting forth the Debits,

page 8] Credits, and Balances in an understandable manner; and

5. That your Defendants have not, to date, received any such statement setting forth, in particular, or otherwise, the Credits, Debits, and Balances that would be attributed to their liability pursuant to the Guaranty of Account entered into between the parties hereto on July 11, 1962.

WHEREFORE your Defendants deny that they are indebted to the Plaintiff in the amount as sued for or in any amount whatsoever; and

Your Defendants move the Court to furnish your Defendants with a Bill of Particulars setting forth, *theCredits,* Debits, and Balances between the Parties hereto, in sufficient detail as to enable them to defend the Motion for Judgment in the amount of One Thousand Seven Hundred Sixty Four and 24/100 Dollars ($1,764.24.)

Respectfully submitted this December 31, 1963.

GEORGE RUNYON, Defendant
DORIS RUNYON, Defendant

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ANSWER TO DEFENDANT'S MOTION FOR BILL OF PARTICULARS

Comes now the Plaintiff by counsel and in answer to Defendant's Motion for Bill of Particulars, files the attached statements of account.

TEXACO, INC.
By TEXACO, INC.
Counsel

SAMUEL B. BROWN
HERBERT L. KARP
127 North Fairfax Street
Alexandria, Virginia
Attorneys for Plaintiff

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MOTION FOR FURTHER PARTICULARS

Now comes George Runyon and Doris Runyon, your De-

fendants herein, by Counsel, and in support of their Motion for Further Particulars of the Claim against them by Texaco, Inc., the Plaintiff herein, state as follows:

1. That on December 31, 1963 your Defendants, by Counsel, moved the Court to require the Plaintiff to furnish them a Bill of Particulars setting forth the credits, debits, and balances between the Parties hereto in sufficient detail as to enable them to defend the Motion for Judgment, by Civil Warrant, in the amount of One Thousand Seven Hundred Sixty Four and 24/100 Dollars ($1,764.24); and

2. That on April 24, 1964 the Plaintiff filed statements of Account in Answer to the Defendants' Motion for a Bill of Particulars consisting of a Memoranda of Eight (8) Charge Items, and no more, but did not use the Plaintiff's usual and customary Statement of Account (Form S-43-11-61-150M Sets of Statement) which set forth the Folio, Date, Debits, Credits, and Balance of the transactions between the Parties hereto; and

3. That your Defendants are not able to defend the Motion For Judgment by Civil Warrant unless and until the Plaintiff files an itemized statement of Account setting forth the Credits, Debits, and Balances that would be attributed to their liability pursuant to the Guarantee of Account entered into between the parties hereto on July 11, 1962 — all of which is the basis of this action.

page 19] WHEREFORE, your Defendants Move this Honorable Court to require the Plaintiff to furnish your Defendants with a Further Bill of Particulars that what was filed on April 24, 1964, herein.

Respectfully Submitted this May 1, 1964.

GEORGE E. RUNYON and DORIS RUNYON
By: GEORGE E. and DORIS RUNYON
Counsel

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page 21] NOTICE OF APPEAL TO THE CIRCUIT COURT FROM A DECISION OF THE COUNTY COURT OF FAIRFAX COUNTY, VIRGINIA

To Daniel A. Cerio, Attorney for George Runyon, & Doris Runyon,

You are hereby notified that TEXACO, INCORPORATED, has noted and perfected an appeal to the Circuit Court of Fairfax County, Virginia, from the decision of the County Court of said County, rendered on the 23rd day of July, 1964, in the case of *TEXACO, INCORPORATED, versus GEORGE RUNYON, & DORIS RUNYON,* wherein judgment was entered in favor of the Defendants, which appeal has been duly docketed and may be presented to the said Circuit Court on the first day of the next regular term thereof.

GIVEN under my hand this 18th day of August, 1964.

THOMAS P. CHAPMAN, JR., CLERK
By: JUNE Y. ATTMANPACKER
Deputy Clerk

Seen:

DANIEL A. CERIO,
Attorney for
GEORGE and DORIS RUNYON

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ORDER

This matter came to be heard on the 7th day of January, 1965 upon an appeal from the County Court of Fairfax, Virginia which had rendered Judgment for the Defendants herein on the grounds of Jurisdiction, upon Motion of the Attorney for the Defendants, in open Court, to dismiss this matter on the grounds that the Municipal Court of Falls Church, Virginia has exclusive original jurisdiction of this matter; upon consideration of Chapter 19, Section 19.05 (b) of the Charter of the City of Falls Church, Virginia; and upon argument of Counsel.

Upon consideration of which the said Motion to Dismiss is well taken by the Court and it is, therefore

ORDERED that this matter be and it is, hereby, dismissed.
ENTERED this 28th day of January, 1965.

BERNARD F. JENNINGS
Judge

I ASK FOR THIS:

DANIEL A. CERIO,
Attorney for Defendants

TO ALL OF WHICH THE PLAINTIFF
TAKES EXCEPTION:

HERBERT L. KARP,
Attorney for Plaintiff

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ORDER

This cause came on to be heard on the Notice and Motion to set aside the order dismissing this case for lack of jurisdiction and the Court not being able to hear the matter, which was set down this 12th day of February 1965, this matter will be continued to Friday, March 5, 1965, and it is therefore by the Court this 23rd day of February 1965.

ADJUDGED AND ORDERED, that this matter be and it is hereby continued to March 5, 1965, and it is further,

ADJUDGED AND ORDERED, that the judgment be and it is hereby suspended until such motion shall be heard.

BERNARD F. JENNINGS
Judge

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ORDER

This matter came to be heard on the 19th day of March, 1965 upon the Motion of the Plaintiff, by Counsel, to set aside

the order entered herein on January 28, 1965 dismissing this cause for lack of jurisdiction and was argued by Counsel for both the Plaintiff and the Defendants; and

Upon consideration of which the Court does, hereby, Order that the said Motion to set aside be, and the same hereby is, Denied; and it is further

ORDERED that this cause be, and the same hereby is Dismissed.

AND THIS ORDER IS FINAL.

ENTERED this 14th day of May, 1965.

BERNARD F. JENNINGS
Judge

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Filed Jun 23 1965

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

To: THOMAS P. CHAPMAN
Clerk
Circuit Court of Fairfax County
Fairfax, Virginia

The Plaintiff, Texaco, Inc., a corporation, by its attorney, hereby gives notice pursuant to the provisions of Section 4, Rule 5-1, of the Rules of the Supreme Court of Appeals of Virginia of his appeal from that certain final decree entered in the above styled cause on the 14th day of May, 1965, in which the Motion for Judgment of Texaco, Inc., a corporation, was dismissed.

Further, pursuant to the said rule, the Plaintiff assigns the following errors:

1. The Court erred as a matter of law in dismissing the

Motion for Judgment on the grounds that it did not have jurisdiction to hear this cause and that the Municipal Court of the City of Falls Church had exclusive original jurisdiction.

HERBERT L. KARP
Attorney for Plaintiff

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A Copy—Teste:

H. G. TURNER, Clerk.

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