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Record No. 6690

In the
Supreme Court of Appeals of Virginia
at Richmond

ROCHELL W. WALKE

v.

DALLAS, INC.

FROM THE CIRCUIT COURT 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 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

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Record No. 6690

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 20th day of April, 1967.

ROCHELL W. WALKE, Plaintiff in error,

against

DALLAS, INC., Defendant in error.

From the Circuit Court of the City of Norfolk
Clyde H. Jacob, Judge

Upon the petition of Rochell W. Walke a writ of error is awarded him to a judgment rendered by the Circuit Court of the City of Norfolk on the 25th day of November, 1966, in a certain motion for judgment then therein depending, wherein the said petitioner was plaintiff and Dallas, Inc., and another 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 three hundred dollars, with condition as the law directs.

RECORD

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page 1 }

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NOTICE OF APPEAL

The plaintiff, Rochell W. Walke, hereby gives Notice, pursuant to Rule 5:1, Section 4 of the Rules of the Supreme Court of Appeals of Virginia that he appeals from the final judgment of the Circuit Court of the City of Norfolk rendered on November 25, 1966 and will appeal to the Supreme Court of Appeals of Virginia for a Writ of Error.

ROCHELL W. WALKE
By PALMER S. RUTHERFORD, JR.
Of Counsel

ASSIGNMENTS OF ERROR

Pursuant to the above-mentioned rule, the plaintiff, Rochell W. Walke assigns the following error:

1. The trial court erred in quashing the process served on the defendant pursuant to Section 8-81.1, et seq., of the Code of Virginia.

2. The trial court erred in its ruling that Section 8-81.1, et seq., of the Code of Virginia, commonly known as the "Long Arm Statute" did not apply to causes of action which arose prior to the effective date of said statute.

ROCHELL W. WALKE
By PALMER S. RUTHERFORD, JR.
Of Counsel

Filed Jan. 10, 1967. T. A. W. GRAY, D.C.

* * * * *

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* * * * *

MOTION FOR JUDGMENT

The undersigned hereby moves the Circuit Court of the City of Norfolk for judgment against you and each of you in the amount of Fifty Thousand ($50,000.00) Dollars and Court costs due by reason of the following:

1. On or about November 4, 1963 the plaintiff herein was engaged in unloading a certain boxcar in the Camp Allen area of the United States Naval Base, Norfolk, Virginia.

2. Said boxcar contained certain cartons of furniture which had been loaded thereon at the direction and under the supervision of the defendant, Dallas, Inc., through said defendant's agents or employees acting within the scope of their employment.

3. As a result of the negligence of the defendants in the packaging, loading, storing, handling and shipping of the aforementioned furniture, said cartons were caused
page 4 } to become so disordered that upon the opening of the doors of said boxcar, said cartons of furniture fell from the boxcar striking and causing serious injury to the plaintiff.

4. That as a direct and proximate result of the negligence of the defendants, the plaintiff was caused to sustain serious and permanent injury; has been prevented from transacting his business; has suffered and will continue to suffer great pain of body and mind; has sustained permanent disability, deformity, and loss of earning capacity; has incurred and will have to incur in the future expenses in an effort to be cured of said injuries.

WHEREFORE, the plaintiff moves this Court for judgment against you and each of you in the amount of Fifty Thousand ($50,000.00) Dollars and Court costs.

ROCHELL W. WALKE
By PALMER S. RUTHERFORD, JR.
Of Counsel

* * * * *

Filed in the Clerk's Office the 1st day of October, 1965.

Teste:

W. R. HANCKEL, Clerk
OLIVE C. GLORLE, D.C.

* * * * *

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AFFIDAVIT

STATE OF VIRGINIA
CITY OF NORFOLK, to-wit:

This day personally appeared before me a Notary Public in and for the City and State aforesaid, Palmer S. Rutherford, Jr., who being duly sworn states:

1. That he is of counsel for Rochell W. Walke, plaintiff in the above-captioned action.

2. That on information and belief the last known address of the defendant herein, Dallas, Inc., is Highpoint, North Carolina.

3. That on information and belief there is no agent of said corporation in this State upon which service or process may be made.

PALMER S. RUTHERFORD, JR.

Subscribed and sworn to before me this 18th day of October, 1965.

PAUL P. ROULET
Notary Public

My commission expires 3/12/68.

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MOTION TO QUASH SERVICE

Now comes the Defendant, Dallas, Inc., appearing especially by counsel for the purpose of this Motion only and for no other purpose and moves that the service of process of it through the Clerk of the State Corporation Commission be quashed on the following grounds:

1. This Defendant, Dallas, Inc., is not present in the State of Virginia, transacts no business in the State of Virginia,

owns no property in the State of Virginia, has no office in the State of Virginia, holds no license to do business in the State of Virginia and, in fact, this corporation does no business in the State of Virginia, so as to subject it to service of process through the Clerk of the State Corporation Commission as provided by Section 8-60 of the Code of Virginia of 1950.

2. Service of process upon this Defendant has not been properly executed in accordance with the provisions of Section 8-81.3 of the Code of Virginia of 1950.

DALLAS, INC.
By EDW. L. BREEDEN, III
Of Counsel

Filed 11-10-65. DAVE WARD, D.C.

* * * * *

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COMMONWEALTH OF VIRGINIA

Office of
Secretary of the Commonwealth
Richmond 12

AFFIDAVIT OF COMPLIANCE

I, Martha Bell Conway, do hereby certify that motion for judgment in the case pending in the Circuit Court of the City of Norfolk, Virginia under the style of Rochell W. Walke vs. Dallas, Inc. was mailed to me as statutory agent for the defendant by Rixey and Rixey, Norfolk Virginia in accordance with Section 8-81.3 of the Code of Virginia and that copy of motion for judgment was forwarded by certified mail return receipt requested to the defendant at:
1119 North Rotary Drive
High Point, North Carolina

Martha Bell Conway
Secretary of the Commonwealth

City of Richmond
State of Virginia

Subscribed and sworn to before me this 25th day of February, 1966

LOUISE JONES
Notary Public

Filed Feb. 28, 1966. T. A. W. GRAY, D.C.

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* * * * *

ORDER

On February 11, 1966, the motion to quash service of process filed herein by counsel for Dallas, Inc., appearing specially for the purposes of such motion, was argued by counsel, and it appearing to the Court that neither the record in this case nor the evidence before the Court show any facts which would validate service of process through the Clerk of the Corporation Commission as provided by Sec. 8-60 of the Code of Virginia, it is:

ORDERED that the motion to quash service of process on Dallas, Inc. is hereby sustained with leave granted the plaintiff to issue alias process, to which action of the Court the plaintiff duly objects and excepts.

3-3-66. C. H. J.

Seen and objected to:
PALMER S. RUTHFORD, JR., p.q.
EDW. L. BREEDEN, III, p.d.

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* * * * *

MOTION TO QUASH SERVICE OF PROCESS

The undersigned, counsel for Dallas, Inc., appearing specially for the purpose of this Motion and for no other purpose and without consenting to the jurisdiction of this Court, hereby moves the Court for the entry of an Order quashing the service of process herein had upon Dallas, Inc. upon the following grounds:

1) This defendant has not been properly served in accordance with the requirements of Chapter 4.1 of Title 8 of the Code of Virginia of 1950.

2) Even if this defendant had been properly served as required by statute, the injury which the plaintiff allegedly sustained occurred prior to July 1, 1964, the effective date of the statute in question, and such statute cannot be applied retroactively.

DALLAS, INC.
By EDW. L. BREEDEN, III
Of Counsel

Filed 3-4-66. DAVE WARD, D.C.

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ORDER

This day came the parties, by counsel, and argued the defendant's Motion to Quash Service of Process and, after due consideration, the Court being of the opinion that where, as in this case, personal jurisdiction over a foreign corporation is sought to be exercised pursuant to the provisions of Sections 8-81.2 and 8-81.3 of the Code of Virginia of 1950, as amended, the Clerk of the State Corporation Commission is made the statutory agent of such defendant foreign corporation by Sect. 8-81.3 (a), and service of process upon the Secretary of The Commonwealth as attempted in this case does not comply with the statute, it is:

ORDERED that the service of process upon the defendant, Dallas, Inc., be, and it is hereby, quashed, and it is further ORDERED that the plaintiff is hereby granted leave to file his amended complaint and/or to attain valid service of process as provided by statute.

page 16 } To which action of the Court, in quashing the service of process, the plaintiff duly objects and excepts.

ENTER 8-5-66. C. H. J., Judge

EDW. L. BREEDEN, III, p.d.
Seen and objected to:
PALMER S. RUTHERFORD, JR., p.q.

* * * * *

page 17A } COMMONWEALTH OF VIRGINIA
CITY OF RICHMOND, to wit:
Law Docket No. 336-M

W. Humey Dovell, being first duly sworn, deposes and says *the* he is the First Assistant Clerk of the State Corporation Commission, and that on August 11, 1966, he sent by registered mail, return receipt requested, to Dallas, Inc., c/o J. Sanders Dallas, 1119 North Rotary Drive, High Point, North Carolina the process, notice, order or demand, a copy of which is enclosed herewith, together with notice that said process, notice, order or demand was served on him or on a member of his staff at his office.

W. Humey Dovell
First Assistant Clerk of the Commission

Subscribed and sworn to before me this 11th day of August, 1966

JULIAN D. SANGER
Notary Public

My commission expires April 16, 1968.

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MOTION TO QUASH SERVICE OF PROCESS

The undersigned, Counsel for Dallas, Inc., appearing specially for the purpose of this Motion and for no other purpose, and without consenting to the jurisdiction of this Court, hereby moves the Court for the entry of the Order Quashing the Service of Process had herein upon Dallas, Inc. through the Clerk of the State Corporation Commission, upon the following grounds:

1. The Defendant, Dallas, Inc., is not present in the State of Virginia and was not present in the State of Virginia at the time that the Plaintiff's injuries, if any, occurred, and the Defendant transacts no business in this State, owns no prop-

erty in this State, has no office in this State, holds no license to do business in this State, and, in fact, the Defendant does no business in the State of Virginia, so as to subject it to Service of Process through the Clerk of the State Corporation Commission as provided by Section 8-60 of the Code of Virginia of 1950 as amended. This Court has pre-
page 19 } viously ruled in this case by Order entered on or about February 23, 1966, that the record and evidence herein failed to show any facts which would validate Service of Process through the Clerk of the State Corporation Commission as provided in Section 8-60 of the Code of Virginia, and the Service of Process previously attempted in this manner was quashed.

2. The attempted Service of Process through the Clerk of the Corporation Commission cannot be predicated herein upon the provisions of Sections 8-81.2 and 8-81.3 of the Code of Virginia of 1950 as amended, as the injury which the Plaintiff allegedly sustained occurred prior to July 1, 1964, the effective date of the statute in question, and such statute cannot be applied retroactively.

DALLAS, INC.
By EDW. L. BREEDEN, III
Of Counsel

Filed 9-1-66. DAVE WARD, D.C.

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ORDER

This day came the defendant, Dallas, Inc., and the plaintiff, both by counsel, upon said defendant's Motion to Quash Service of Process herein, which Motion was made upon the ground that Sections 8-81.1, et. seq., commonly called the "Long Arm" statute, was not intended by the Legislature to be retroactively applied in cases such as this which arose prior to the effective date of said statute.

WHEREUPON, after due consideration of the arguments of counsel and authorities cited to the Court, the Court being of the opinion that the statute in question is a remedial statute and that such statutes are not applied retroactively in Vir-

ginia absent a Legislative intent that they be so applied and the Court being further of the opinion that the statute in question indicates no intent on the part of the Legislature to apply its provisions retroactively and for such reasons it appearing to the Court that this is not a proper case for Service of Process pursuant to the provisions of Sections 8-81.1, et. seq., it is:

ORDERED that the Service of Process attempted herein upon the defendant, Dallas, Inc., be, and it is hereby, quashed.

page 21 } Plaintiff duly notes his exception to the entry of this Order.

EDW. L. BREEDEN, III, p.d.
Seen and objected to:
PALMER S. RUTHERFORD, JR., p.q.

Enter Nov. 25, 66. C. L. J.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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