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Supreme Court of Appeals
Richmond, Va.

209 VA 451

Record No. 6771

In the Supreme Court of Appeals of Virginia at Richmond

JOHN H. CARMICHAEL, ET AL.

v.

JOSEPH C. SNYDER

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

Record No. 6771

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 5th day of October, 1967.

JOHN H. CARMICHAEL AND GORDON E. CARMICHAEL, Plaintiffs in error,

against

JOSEPH C. SNYDER, Defendant in error.

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

Upon the petition of John H. Carmichael and Gordon E. Carmichael a writ of error is awarded them to a final order entered by the Circuit Court of the City of Norfolk on the 15th day of May, 1967, in a certain motion for judgment then therein depending, wherein the said petitioners were plaintiffs and Joseph C. Snyder was defendant; upon the petitioners, or some one for them, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of $300, with condition as the law directs.

RECORD

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page 1 }

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NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

To the Clerk of the Circuit Court for the City of Norfolk

John H. Carmichael and Gordon E. Carmichael, petitioners herein, by counsel, give notice pursuant to the provisions of Rule 5:1 Section 4 of the Rules of the Supreme Court of Appeals of their appeal from that certain final judgment of this Court entered 15 May, 1967 in the above styled action in which defendant's motion to quash process was sustained and the jurisdiction of the Court under the provisions of Section 8-81.2 of the Code of Virginia thereby denied; there being no other defendant and the sole claim to jurisdiction being pursuant to the aforesaid "Long Arm statute", the action of the Court in sustaining the motion to quash amounted to dismissal of the action.

Further, pursuant to the Rule aforesaid, your petitioners assign the following error:

1. The Court erred as a matter of law in sustaining the defendant's motion to quash for the reason that the cause of action set forth in the motion for judgment clearly arose under the cited statute in that the said defendant had acquired an interest in real property in controversy in this state, transacted personal business of a substantial nature in this state and the service of process or notice upon the defendant met all the requirements of statute applicable in the circumstances here obtaining.

JOHN H. CARMICHAEL
By JOHN M. COURT
Counsel

GORDON E. CARMICHAEL
By JOHN M. COURT
Counsel

Filed 5-16-67. T. A. W. GRAY, D.C.

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page 2 }

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MOTION FOR JUDGMENT

To the Honorable Judge of the Circuit Court for the City of Norfolk:

Your plaintiffs John H. Carmichael and Gordon E. Carmichael come and move the Court for judgment against defendant Joseph C. Snyder for damages, incurred as result of business transacted in this state, by reason of non-performance of contract, upon the grounds and in the amount as set forth below, to-wit:

1. On the 6th day of May, 1966 in the City of Norfolk, Virginia, defendant Joseph C. Snyder contracted in writing with the plaintiffs, a copy of which said contract is attached hereto and made a part hereof marked exhibit "A", to purchase a certain improved parcel of real estate known as 4201 Gosnold Avenue in the City of Norfolk for the sum of $26,-500.00, date of settlement to be July 1, 1966.

2. Your plaintiffs performed all required of them under the contract and were ready, willing and able to convey fee simple title to the said parcel to the said Snyder pursuant to the terms of the contract, whereupon, on or about June 24, 1966 the said Snyder notified plaintiffs of his refusal to perform the said contract and made demand for return of his down payment of $500.00 which said demand was refused.

page 3 } 3. Shortly after July 1, 1966 the said Snyder departed from the State of Virginia and your plaintiffs are advised and so believe that he now resides in the State of Connecticut at 89 Vauxhall Road in the City of New London, and accordingly by this action is brought pursuant to Title 8, Chapter 4.1 of the Code of Virginia, by service of process upon the Secretary of the Commonwealth who is the statutory agent of said defendant.

4. Your plaintiffs in order to mitigate their damages in the circumstances made immediate efforts to resell the said property and ultimately succeeded in selling same, on the best offer received, during the month of December, 1966 to Daniel L. and Rebecca N. Curtiss for the sum of $26,000.00 under Veteran's Administration financing requiring sellers to pay brokerage points on the approved loan in the amount of $2160.00.

5. As direct result of the refusal of performance by the said Snyder which necessitated resale of the said property, your plaintiffs incurred damages as follows:

A. Interest at 6% on contract price of $26,500.00 for period from 1 July, 1966 until resale effected December 22, 1966	$ 795.00
B. Decrease in sale price	500.00
C. Insurance and taxes for six months period	400.00
D. Brokerage fee required to place loan for new buyer, 9 points on $24,000.00	2160.00
Total damages	$3855.00
Less down payment retained	—500.00
Net damages	$3355.00

WHEREFORE your plaintiffs demand judgment against defendant in the amount of $3355.00 plus costs in
page 4 } their behalf expended, and interest at 6% from December 22, 1966 until paid.

JOHN H. CARMICHAEL
GORDON E. CARMICHAEL

JOHN M. COURT
PHELPS & ATKINSON
555 Denbigh Boulevard
Newport News, Virginia

Filed in the Clerk's Office the 8 day of March, 1967.

Teste:

W. R. HANCKEL, Clerk
DAVE WARD, D.C.

* * * * *

page 4-A } EXHIBIT "A"

OFFICIAL SALES CONTRACT

NORFOLK REAL ESTATE BOARD
INCORPORATED

[SEAL]

This is a legally binding contract.
If not understood, seek competent advice.

TRANS. #.....

THIS AGREEMENT made in quadruplicate this 6th day of May 1966 between Joseph C. Snyder and Annette M. Snyder hereinafter known as the Buyer(s) and John H. Carmichael, Gordon E. Carmichael hereinafter known as the Seller(s) and Albergotti & Co., Inc., member(s) of the Norfolk Real Estate Board, Inc., and Connie Gadrow Realty hereinafter known as the Agent(s)

WITNESSETH: That for and in consideration of the sum of Five Hundred and no/100 Dollars ($500.00) by check in hand paid, receipt of which is hereby acknowledged, the Buyer agrees to buy and the Seller agrees to sell for the sum of Twenty-six Thousand Five Hundred and no/100 Dollars ($26,500.00) all that certain piece, parcel or lot of land described as follows, to-wit:

Lots 5, 6, 7, and 8, Block 38, Site 2, Plat of Colonial Place; said property being known as and numbered 4201 Gosnold Avenue, City of Norfolk, Virginia.

This contract is drawn subject to a favorable termite inspection. Any necessary treatment and/or repairs of termite damage to be taken care of at Sellers expense.

Seller agrees to have all trim, window frames, wooden porch columns and gutters and other unsightly areas on the exterior of above mentioned property painted at his expense.

The purchase price to be paid as follows:

$ 500.00	—cash to apply on purchase price
4,000.00	—cash at settlement
20,000.00	—Conventional loan to be obtained by Buyer
2,000.00	—Second deed of trust to be held by Robert D. Ruffin, Jr. for a period of five years bearing interest at 6% and payable at approximately $38.67 per month with the right of anticipation
$26,500.00	

Possession is to be given on date of settlement.

It is understood and agreed by the Buyer and Seller that all money deposited with this contract to apply on the purchase price of the property, shall remain in escrow with the Agent until day of settlement.

The Buyer and Seller each agree to do promptly everything necessary to consummate this sale.

The Seller agrees to convey the above property with a General Warranty Deed with the usual covenants of title, same to be prepared at the expense of Seller. Seller shall

pay the cost of revenue stamps on deed and any expense in connection with the removal of title defects. Buyer shall pay all costs of recording all deeds. The risk of loss or damage to said property by fire or other casualty until day of settlement is assumed by the Seller.

All taxes, insurance, rents and interest are to be pro-rated as of date of settlement and settlement to be made at, Norfolk, Virginia on, or before July 1st 1966 or as soon thereafter as title can be examined and papers prepared, allowing a reasonable time to correct any defects reported by the title examiner.

It is understood that the title is to be free and clear of all liens and indebtedness of every kind except the liens above mentioned and that the property is to be conveyed subject to any restrictions of record now thereon.

The Seller agrees to pay to the Agent cash for his services, a commission on the sale price of the property at the rate of six (6) (%).

Witness the following signatures and seals:

ALBERGOTTI & CO., INC. (AGENT)
BY ROBERT D. RUFFIN, JR.
RECEIVED DEPOSIT OF ($500.00) DATE 5/6/66
CONNIE GADROW REALTY (AGENT)
JOSEPH C. SNYDER (SEAL)
JOHN H. CARMICHAEL (SEAL)
GORDON E. CARMICHAEL (SEAL)

page 5 }

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COMMONWEALTH OF VIRGINIA

Office of
Secretary of the Commonwealth

Richmond 12

March 9, 1967

AFFIDAVIT OF COMPLIANCE

I, Martha Bell Conway, do hereby certify that Motion for Judgment in the case pending in the Circuit Court, Norfolk, Virginia under the style of John H. Carmichael and Gordon

E. Carmichael vs. Joseph C. Snyder was mailed to me as statutory agent for the defendant by the Clerk, Circuit Court, 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: Mr. Joseph C. Snyder, 89 Vauxhall Road, New London, Connecticut.

MARTHA BELL CONWAY
Secretary of the Commonwealth

City of Richmond
State of Virginia

Subscribed and sworn to before me this 9th day of March, 1967.

LOUISE JONES
Notary Public

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

page 6 }

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MOTION TO QUASH

Defendant, appearing specially, move to quash service of process for the following reasons:

1. That the defendant does not reside in the City of Norfolk, Virginia and is a non-resident of the State of Virginia.
2. That the plaintiffs are seeking a personal judgment against the defendant, based upon an alleged contract.
3. That Section 8-47, Code of Virginia, prohibits execution of process outside the City of Norfolk, Virginia, and process was attempted to be executed on the defendant in the City of Richmond, Virginia.
4. That there is no allegation in the Motion for Judgment showing that this Court has either jurisdiction or venue.
5. That this Court has no personal jurisdiction on the person of this defendant.

JOSEPH C. SNYDER
By SIDNEY SACKS
Of Counsel

Filed 3-24-67. DAVE WARD, D.C.

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page 7 }

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MOTION TO STRIKE OUT AND NOTICE

Plaintiffs by counsel come and move this Honorable Court to strike out that certain pleading entered in the captioned case entitled Motion to Quash for the reason that the same is frivolous in that it ignores the specific provisions of Section 8-81.1, et seq, of the Code of Virginia, referred to in the motion as Chapter 4.1 of Title 8, and further move the Court to set the said case for trial on the merits without a jury at docket call on April 10, 1967 at which time counsel will appear to be heard on this motion, notice whereof is given by copy of this pleading mailed this date to Lewis, Sacks & DeLaura who have appeared specially in behalf of defendant Joseph C. Snyder, a non-resident.

JOHN H. CARMICHAEL
By JOHN M. COURT
Counsel

GORDON E. CARMICHAEL
By JOHN M. COURT
Counsel

Filed Mar. 29, 1967. T. A. W. GRAY, D.C.

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page 9 }

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ORDER

THIS DAY Came the parties to be heard on the Defendant's Motion to Quash the Service of Process and on the Plaintiffs' Motion to Strike the Motion to Quash, and was argued by counsel.

UPON CONSIDERATION WHEREOF, It is hereby ORDERED that the Motion to Strike the Defendant's Motion to Quash Service of Process be and the same is hereby overruled;

And it is further ORDERED that the Motion to Quash Service of Process heretofore filed by the Defendant, be and the same is hereby sustained;

To which action of the Court the Plaintiffs, by counsel, duly except.

ENTERED: This 15 day of May, 1967.

C. H. J., Judge

SEEN:
JOHN M. COURT, p.q.
Objection noted upon ground that ruling is contrary to law

SIDNEY SACKS, p.d.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

INDEX TO RECORD

	Page
Writ of Error Awarded	1
Record	2
Notice of Appeal and Assignment of Error	2
Motion for Judgment with exhibit	3
Exhibit "A" Official Sales Contract	4
Proof of Service	6
Motion to Quash	7
Motion to Strike Out and Notice	8
Final Order—May 15, 1967	8