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Clerk, Supreme Court of Appeals
Richmond, Va.

Record No. 6855

In the
Supreme Court of Appeals of Virginia
at Richmond

GENERAL ELECTRIC CREDIT CORPORATION

v.

ELMER LUNSFORD, ET AL.

FROM THE CIRCUIT COURT OF AUGUSTA 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. 6855

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 4th day of December, 1967.

GENERAL ELECTRIC CREDIT CORPORATION, Appellant,

against

ELMER LUNSFORD AND NELLIE LUNSFORD, Appellees.

From the Circuit Court of Augusta County
William S. Moffett, Jr., Judge

Upon the petition of General Electric Credit Corporation an appeal is awarded it from a decree entered by the Circuit Court of Augusta County on the 3rd day of June, 1967, in a certain proceeding then therein depending, wherein Elmer Lunsford and another were plaintiffs and the petitioner was defendant; 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 $500, with condition as the law directs.

RECORD

* * * * *

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* * * * *

PETITION

Your Petitioners, Elmer Lunsford and Nellie Lunsford, respectfully represent unto your Honor as follows:

(1) That they are the owners of a tract of land with improvements thereon situated in Augusta County, Virginia, designated and described as Tract Number One (1) on plat of W. A. Crawford, CLS, dated October 13, 1960, being the same real estate conveyed to Petitioners by deed of Hershey Franklin Lunsford dated October 24, 1960, of record in the Clerk's Office of your Honor's Court in D. B. 457, Page 539, and

(2) That by deed of trust dated October 16, 1963, your Petitioners conveyed the said real estate to Peter W. Runkle and Willia W. Wood, Trustees, to secure Lee-Wood Homes, Inc. a certain promissory note in the sum of $9200.00 payable in monthly installments, said deed of trust reserving unto your Petitioners the right to anticipate payment of the said promissory note; said deed of trust being of record in the Clerk's Office aforesaid in D. B. 487, Page 67, and

(3) That on the 2nd day of February, 1967, Petitioners tendered by certified check the holder of the said note, G. E. Credit Corporation, the full remaining principal balance and interest of date of February 2, 1967, which said payment said G. E. Credit Corporation declined to accept, and your Petitioners herewith tender unto the Court the sum of $7,121.00, that being the principal and interest due on the

page 2 } said promissory note to the 2nd day of February, 1967, and

(4) That Notice of the presentation of this Petition was duly served upon the said G. E. Credit Corporation on the 17th day of March, 1967, as will more fully appear from the Notice hereto attached.

WHEREFORE your Petitioners pray that the Clerk of this Court be directed to make marginal release of the afore-

said deed of Trust in accordance with the provisions of Code of Virginia §55-66, 5 (b).

Respectfully submitted

ELMER LUNSFORD
NELLIE LUNSFORD
By Counsel

* * * * *

Filed in the Clerk's Office of the Circuit Court of Augusta County May 8, 1967.

Teste:

C. M. WAYBIGHT, Dep. Clk.

* * * * *

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* * * * *

NOTICE

TO: RALPH H. FERRELL, JR., Registered Agent
18th Floor, 700 East Main St.
Richmond, Virginia 23212

TAKE NOTICE that at 9:00 a.m. on the 1st day of May, 1967, or as soon thereafter as Counsel may be heard, the undersigned will move the Circuit Court of Augusta County, Virginia for release of the deed of trust of record in the Clerk's Office of the said Court in D. B. 487 at page 67, securing a certain indebtedness of the undersigned held by you, in accordance with the provisions of the Code of Virginia §55-66.5(b).

ELMER R. LUNSFORD

By ELMER R. LUNSFORD
Counsel

A. L. LARKUM, p.q.
First & Merchants National Bank Bldg.
Waynesboro, Virginia

* * * * *

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* * * * *

PETITION FOR RE-HEARING

TO THE HONORABLE WILLIAM S. MOFFETT, JR.
JUDGE OF SAID COURT

Your petitioner, General Electric Credit Corporation, respectfully represents unto the Court that it feels that its position in the capioned case will be irreparably harmed if an Order is entered in the captioned case as proposed by the letter of the Court addressed to counsel and dated May 25, 1967, a copy of which is attached hereto marked Exhibit "A" and by the entry of said Order, drafted pursuant to the aforesaid letter by A. L. Larkum, counsel for plaintiffs, a copy of which is attached hereto marked Exhibit "B", for the following reasons:

(1) The proposed Order is not definite and certain as to exactly what stipulations of fact were made by counsel to the Court, nor does the Court indicate upon what facts it relied in reaching a conclusion; and

(2) The proposed Order is erroneous in that it recites Elmer Lunsford and Nellie Lunsford as owners of the property in question, when the Court and the undersigned counsel were advised by Mr. Larkum that the property had been sold; and

(3) The proposed Order is erroneous in that it recites that the full principal and interest as of February 2, 1967 were tendered to your petitioners who declined to accept

page 6 } same, both as to the amount tendered and the calculation of the principal and interest then due and owing to your petitioner; and

(4) That the matters involved are of a complex nature and of great concern to your petitioner who handles a large volume of similar transactions within the state and is vitally concerned with any and all legal decisions pertaining thereto; that the legal questions are definite and certain and can only be decided upon the facts and law pertaining thereto, all of which is not possible since a record of the hearing in the case was not made at the time of the conference with the Court and such a record is not available to the Court; and

(5) That your petitioner has never received a formal stipu-

lation of facts by counsel, Court record, or opinion of the Court to rely upon in the present matter insofar as a record for appellate proceedings may be concerned.

WHEREFORE your petitioner, General Electric Credit Corporation respectfully requests a rehearing of this matter by the Court at a time properly designated when formal testimony can be offered by your petitioner and the proceedings reported to vouch-safe the record, which request is as provided by Rules of Court 3:21 and the statutes of the State of Virginia pertaining thereto.

Respectfully,

GENERAL ELECTRIC
CREDIT CORPORATION

By: HAMPTON W. THOMAS
Of Counsel

* * * * *

page 7 } Exhibit "A"

EIGHTEENTH JUDICIAL CIRCUIT
Wm. S. Moffett, Jr., Judge
Staunton, Virginia
(886-3221)

May 25, 1967

A. L. Larkum, Esq.
Attorney at Law
Waynesboro, Virginia

Apostolou, Place and Thomas
Attorneys at Law
Mountain Trust Building
Roanoke, Virginia

Re: Elmer Lunsford and Nellie Lunsford
vs General Electric Credit Corp.

Gentlemen:

After carefully considering the views of counsel and the stipulated facts in the above-captioned matter, it is concluded

that the Deed of Trust lien on the real estate described in the Petition should be released upon payment of the sum of $7,321.96 by the property owner to General Electric Credit Corporation.

It is requested that Mr. Larkum prepare an appropriate Order containing exception to the ruling of the Court for the benefit of General Electric Credit Corporation and forward the same to Mr. Thomas for his initials and subsequent transmittal to the undersigned for entry.

I am returning to Mr. Thomas herewith copies of the Deed Trust and other allied papers and correspondence which he left with me at the conclusion of the hearing in Staunton.

Yours very truly,

WM. S. MOFFETT, JR.

WSM,Jr:DF
Encl. to Mr. Thomas

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* * * * *

ORDER

This cause came on this day to be heard upon the Petition of Elmer Lunsford and Nellie Lunsford, and was argued by Counsel.

Upon consideration whereof and it appearing to the Court that Elmer Lunsford and Nellie Lunsford are owners of a tract of land with improvements thereon situated in Augusta County, Virginia, designated as Tract One on plat of W. A. Crawford, CLS, being the same real estate conveyed to Petitioners by deed of Hershey Franklin Lunsford by deed dated October 24, 1960, of record in the Clerk's Office of this Court in D. B. 457, P. 539; that by deed of trust dated October 16, 1963 said real estate was conveyed to Peter W. Runkle and William W. Wood, Trustees, to secure Lee-Wood Homes, Inc., a certain promissory note in the sum of $9200.00 payable in monthly installments, *daid* deed of trust reserving unto Elmer Lunsford and Nellie Lunsford the right of anticipation of payment of said promissory note; that on the 2nd day of February, 1967 the full remaining principal and interest to date of February 2, 1967 was tendered the holder of said note by certified check, said holder, G. E. Credit Corporation de-

clining to accept said payment, and that the sum of $7321.96, that being the amount of principal and interest to the 2nd day of February, 1967, has been paid by *siad* Petitioners into this Court, it is therefore ADJUDGED, ORDERED AND DECREED that the Clerk of this Court shall make marginal release of the deed of trust aforesaid, in accordance

page 9 } with the provisions of Code of Virginia §55-66.5(b), and it is further ADJUDGED, ORDERED AND DECREED that the Clerk shall pay over to said G. E. Credit Corporation the sum of $7,321.96. It is further ordered that the directive given the Clerk to make the aforementioned marginal release shall be stayed for a period of sixty days in order that G. E. Credit Corporation may appeal the decision of this Court if it be so advised, provided G. E. Credit Corporation executes an appropriate bond in the amount of $1,000.00 within 15 days from this date. It is further ordered that the Petition for Re-Hearing filed by G. E. Credit Corporation be and the same is hereby denied. The G. E. Credit Corporation excepts to the ruling of the Court.

6/3/67. WM. S. MOFFETT, JR.

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ORDER

This day came the Defendant, General Electric Credit Corporation, by its Attorney, and indicated it intention to apply to the Supreme Court of Appeals of Virginia for a Writ of Error to the action of this Court, and upon motion of the Defendant for the suspension of execution of an Order entered in this case until such time as the Supreme Court of Appeals of Virginia has acted on Defendant's Petition for a Writ of Error, or, if a Writ of Error be granted by the Supreme Court of Appeals of Virginia, until an opinion is rendered by that Court, it is hereby ORDERED that, if Defendant duly files his Petition for Writ of Error in accordance with the Rules of the Supreme Court of Appeals of Virginia within four months from June 3, 1967, the date the subject Order was entered, execution of the Order is suspended until the Supreme Court of Appeals has acted upon said Petition; and if a Writ of Error be granted in this case, it is OR-

DERED that execution of the Order be suspended until an opinion has been rendered by the Supreme Court of Appeals of Virginia. The suspending of the execption of the Order is conditional upon the Defendant, or someone on its behalf, giving or filing a bond, with corporate surety, within fifteen (15) days from June 3, 1967, as aforesaid, in the amount of ONE THOUSAND DOLLARS ($1,000.00), conditional according to law.

ENTER: 6/12/67.

WM. S. MOFFETT, JR., Judge

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

TO: RUDOLPH L. SHAVER, CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF AUGUSTA, VIRGINIA

Pursuant to the provisions of Rule 5:1, Paragraph 4, the Defendant, General Electric Credit Corporation, files this its Notice of Appeal and Assignments of Error to the judgment of the Court entered in the above styled Court on the 3rd day of June, 1967.

The said Defendant sets forth the following in support thereof:

(1) The Trial Court erred in determining facts other than payment or discharge of the lien in question because it was without jurisdiction in a proceeding under Section 55-66.5, Code of Virginia (1950), as amended, to determine collateral issues extending beyond the four corners of the instruments in evidence before the Court.

(2) The Trial Court erred in directing that the Petitioners would be entitled to a judicial release of the lien in question upon payment of the sum of $7,321.96 into the Court which sum would constitute payment within the intent and meaning of Section 55-66.5, Code of Virginia (1950), as amended, because the subject note was a non-interest bearing installment note in the original amount of $16,383.88 payable in 144 monthly installments, of which counsel stipulated $3,338.00

had been paid, leaving an unpaid balance of $13,-
page 19 } 045.88, which sum the Court should have ruled was
then due and owing to the Defendant note holder based upon the evidence before the Court and was the only sum which properly could have constituted payment under the statute in question.

(3) The Trial Court erred in rejecting the contention of the Defendant that the facts as stipulated by counsel entitled the Defendant to a verdict because said facts concede that the Defendant is a Holder of the negotiable instrument in question which *prima facie* entitles it to a legal presumption that it is a Holder in Due Course of the said instrument and as such is not subject to personal defenses against prior note holders unless the Petitioners successfully carry the burden of proof in rebutting the presumption which they failed to do since they offered no evidence on the subject point other than their bare allegation that the Defendant was not a Holder in Due Course of the instrument in question.

(4) The Trial Court erred by its failure to vacate the judgment in favor of the Petitioners on the grounds that the same was contrary to the law and evidence.

GENERAL ELECTRIC
CREDIT CORPORATION

By: HAMPTON W. THOMAS
Of Counsel

* * * * *

Filed in the Clerk's Office of the Circuit Court of Augusta County July 7, 1967.

Teste:

C. M. WAYHRIGHT, Dep. Clk.

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* * * * *

NOTICE

TO: A. L. LARKUM, COUNSEL OF RECORD FOR THE PLAINTIFFS AFORESAID

You are notified that on the 31st day of July, 1967, at 11:00 A.M. in the Circuit Court of the County of Augusta, Virginia

at Staunton, Virginia the undersigned will tender to the Honorable William S. Moffett, Jr., Judge of said Court, or his designee in his absence, the original transcript of the record in the above styled cause together with an Order stipulating the facts of the case as agreed by counsel for the petitioners and the defendants, and respectfully ask him to certify the same as a true copy of the evidence presented in the above styled cause and to certify all exhibits admitted into evidence in the above styled cause.

GENERAL ELECTRIC
CREDIT CORPORATION

By: HAMPTON W. THOMAS
Of Counsel

* * * * *

Received and filed in the Clerk's Office of the Circuit Court of Augusta County July 31, 1967.

Teste: RUDOLPH L. SHAVER, Clerk

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* * * * *

ORDER

This day came A. L. Larkum, counsel for the plaintiffs and Hampton W. Thomas, counsel for the defendant, and tendered a certain agreed stipulation of facts in the captioned matter, dated the 31st day of July, 1967, and moved that they be permitted to file the same, and that the said stipulation be accepted as the agreed statements of fact and as evidence in the present case; which motion the Court doth hereby grant and the Court doth ORDER that said stipulation be filed with the Clerk of this Court and that it be made a part of the record herein.

7/31/67. WM. S. MOFFETT, JR.

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AGREED STIPULATION OF FACTS

A. L. Larkum, counsel for the Plaintiffs, and Hampton W. Thomas, counsel for the Defendant, do hereby stipulate and agree that the following statements of fact are as agreed upon by them in the captioned matter, and that said statements of fact as agreed upon are to be considered as evidence herein:

"Elmer R. Lunsford and Nellie Lee Lunsford, husband and wife, were the owners of a one acre tract of unimproved land, lying and being in South River District, Augusta County, Virginia, as evidenced by that certain deed dated October 24, 1960 and recorded in the Clerk's Office of the Circuit Court of Augusta County, Virginia in Deed Book 457, at page 539 on November 7, 1960.

The said Elmer R. Lunsford and Nellie Lee Lunsford, husband and wife, conveyed the aforesaid property by deed of trust dated October 16, 1963, to Peter W. Runkle and/or William W. Woodward, Jr., both of Richmond, Virginia in trust to secure payment of one negotiable promissory note payable unto Le-Wood Homes, Inc., a Virginia Corporation the sum of $16,383.88, payable in 144 monthly installments; 12 for $92.00, 12 for $97.00, 24 for $107.00, 95 for $120.29, and 1 for $120.33, beginning January 3, 1964, copy of deed of trust and note are hereto attached and made a part
page 23 } hereof. This was a first lien purchase money deed of trust for a shell home purchased from Le-Wood Homes Inc. and was recorded in the aforesaid Clerk's Office in Deed Book 487, page 67 on November 6, 1963. The note was subsequently negotiated by endorsement to General Electric Credit Corporation, who presently holds said note, having purchased same by discount on December 12, 1963.

The purchase amount of *of* $16,383.88 for the shell home was computed as follows: $9,200.00 principal; $7,137.88 being 6% add on rate for term of land and $46.00 for insurance coverage, a total of $16,383.88 representing total purchase price.

By letter dated August 25, 1966, Lunsford was advised that payoff of his account was $13,366.88 and that the offer of this figure was good until September 3, 1966. By letter dated January 10, 1967 Mr. A. L. Larkum, attorney for Lunsford was advised that General Electric Credit Corporation

had computed this payoff based upon the Rule of 78's or sum of the digits methods which is commonly used by companies in the field of discounting paper.

By letter dated January 4, 1967 from General Electric Credit Corporation Complainant was quoted a pay-off of $9,487.07, based upon $13,045.88 principal, $3563.41 refunds and $4.60 late charges.

By letter dated February 2, 1967, Larkum tendered a certified check to General Electric Credit Corporation for $7,121.00 as payment in full. By letter dated March 8, 1967 he volunteered to forward an additional $200.96 to cover earned insurance premium conditional upon General Electric Credit Corporation's willingness to accept his offer of payment. By letter dated March 7, 1967, General Electric Credit Corporation refused this counteroffer and returned the check in the amount of $7,121.00 to Larkum. Demand was made for the balance due on the note.

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Larkum in this proceeding, moves this Honorable Court for judicial release of the said deed of trust in accordance with the provisions of the Code of Virignia §55-66.5(b) as amended.

General Electric Credit Corporation demands the balance due upon its note in the amount of $13,045.88, being $16,383,88 less $3,338.00 paid by Lunsford, and requests this Honorable Court to rule as to the amount General Electric Credit Corporation is entitled to be paid as a condition precedent to the granting of the aforesaid judicial release as requested."

GIVEN this 31st day of July, 1967.

A. L. LARKUM
Counsel for Plaintiffs

HAMPTON W. THOMAS
Counsel for Defendant

Received 7/31/67. WM. S. M.
Certified 7/31/67. WM. S. M.

Filed in the Clerk's Office of the Circuit Court of Augusta County July 31, 1967.

Teste: RUDOLPH L. SHAVER, Clk.

* * * * *

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ORDER

This day, upon Notice duly given, came A. L. Larkum, counsel for the Plaintiffs and Hampton W. Thomas, counsel for the Defendant, and tendered the original transcript of the record in the above styled case which they agreed was true and correct and said counsel jointly moved the Court to certify the same in the manner and accord prescribed in the Rules of the Supreme Court of Appeals of Virginia.

Whereupon the Court, upon the joint motion of counsel for the plaintiffs and the defendant, does received the transcript of the record as tendered by them, which said record the Court doth certify as a true and correct transcript of the evidence in the above captioned case, said certificate to be in the form and manner prescribed in the Rules of the Supreme Court of Appeals of Virginia.

7/31/67. WM. S. MOFFETT, JR.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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