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Clerk, Supreme Court of Appeals
Richmond, Va.

Record No. 6951

In the Supreme Court of Appeals of Virginia at Richmond

MYRTLE S. CAUDILL

v.

WISE RAMBLER, INC., ET AL.

FROM THE CIRCUIT COURT OF WISE 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. 6951

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 18th day of April, 1968.

MYRTLE S. CAUDILL, Plaintiff in error,

against

WISE RAMBLER, INC., AND AMERICAN MOTORS CORPORATION, Defendants in error.

From the Circuit Court of Wise County
M. M. Long, Jr., Judge

Upon the petition of Myrtle S. Caudill a writ of error is awarded her to a final order entered by the Circuit Court of Wise County on the 16th day of October, 1967, in a certain motion for judgment then therein depending, wherein the said petitioner was plaintiff and Wise Rambler, Inc., and another were defendants; upon the petitioner, or some one for her, 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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MOTION FOR JUDGMENT

* * * * *

Plaintiff hereby moves the Circuit Court of Wise County, Virginia for a judgment against each of the above named defendants both severally and jointly for the sum of Twenty-five ($25,000) Thousand Dollars for the wrongs and injuries hereinafter set forth:

1. That the Defendant, American Motors Corporation, is a manufacturer and as such manufactures automobiles which it sells through various agents including the Defendant, Wise Rambler, Inc.; that both of said defendants hold out to the general public that each and every one of its automobiles so manufactured and sold are constructed of sound material and in a good workmanship manner and free from defects and that they are safe for the purpose for which they were designed, that is to drive upon the public highways.

2. That the Plaintiff on the *2nd* day of *June,* 1964 relying upon the implied warranty that said car so manufactured and sold was reasonably safe for the purpose for which it was designed, bought from the said Wise Rambler Inc. one Rambler American Automobile Model No. 6405-2, Serial No. B-76480, and Engine No. 604A02.

3. That the said Plaintiff used said automobile up until the 22*nd* day of *January,* 1967 and that she regularly had said automobile serviced by the Wise Rambler Inc. as directed at the time of sale. That the said automobile on the said 22nd day of January, 1967 at the time of the mishap hereinafter described had been driven Sixteen Thousand (16,000) Miles and had been in no accident or otherwise abused.

4. That on the 22nd day of January, 1967 that the said car was being driven by Claude Caudill, the adult son page 2 } of the plaintiff herein, in the Corporate Limits of the City of Norton, Virginia and in the Eastern part of said City and at approximately 15 to 20 miles per hour and that all of a sudden the steering would have no effect or no control over the wheels when said steering wheel was

turning and for that reason the car became uncontrollable and suddenly verred to the right into a barricade with great violence and force and demolished said car including the steering mechanism and at which time the plaintiff who was a passenger in said car received lacerations on her face, head, knees and other parts of her body and received serious and permanent injuries and by reason thereof has suffered great pain, and will continue to suffer great pain and has been out divers sums of money in an attempt to be healed of said injuries without success, and that she will continue to suffer the rest of her life by reason of said injuries and she has been out large sums for medical bills.

5. Moreover, at the same time and place the Rambler American automobile belonging to the Plaintiff was damaged to the extent of $462.00.

6. That the said injuries and property damage was the proximate result of the said automobile not being reasonably fit for the purpose for which it was designed and for which said automobile was impliedly warranted all of which Plaintiff was unaware of and due to breach of said warranty the accident and said injuries and damage aforesaid occurred.

Wherefore, Plaintiff claims judgment against each of the defendants for the said sum of Twenty-five Thousand ($25,000) Dollars plus the cost incident to this suit.

MYRTLE S. CAUDILL
By Counsel

Received and filed April 5, 1967.

LEE STANLEY, Deputy Clerk.

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The defendant, Wise Rambler, Inc., for its plea to the plaintiff's Motion for Judgment will rely upon the following:

PLEA OF THE STATUTE OF LIMITATIONS

This defendant says that the plaintiff's cause of action is barred by the Statute of Limitations for such cases made and provided.

DEMURRER

The defendant, Wise Rambler, Inc., says that the plaintiff's Motion for Judgment does not set out a cause of action against it if it is not barred bythe Statute of Limitations.

WISE RAMBLER, INC.
By Counsel

LESLIE M. MULLINS
Norton, Virginia
Counsel

Received and filed June 2, 1967.

LEE STANLEY, Deputy Clerk.

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PLEA OF LIMITATION

Defendant American Motors Corporation makes the following plea to plaintiff's Motion for Judgment herein:

The action, insofar as it seeks damages for alleged personal injuries, is barred by the Statute of Limitations.

AMERICAN MOTORS CORPORATION
By Counsel

PENN, STUART & MILLER
208 East Main Street
Abingdon, Virginia

By JACKSON S. WHITE, JR.

Received and filed June 26, 1967.

LEE STANLEY, Deputy Clerk.

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FINAL ORDER

Upon consideration of the Pleas of Limitation of the respective defendants herein, reserving opinion on these defendants' Demurrers which have neither been argued nor considered, the Court being of the opinion that the said Pleas of Limitation are good as to plaintiff's claims herein for personal injury damages, but not good as to her claim for property damage to her automobile, and plaintiff having moved the Court to dismiss without prejudice the property damage portion of her claim, to which motion defendants did not object, it is

ORDERED

that plaintiff's claim for property damage to her Rambler automobile as contained in paragraph five (5) of her Motion for Judgment herein be dismissed without prejudice and the Motion for Judgment is so amended; and it is further

ORDERED

that plaintiff's Motion for Judgment so amended be dismissed with prejudice as barred by the Statute of Limita-
page 32 } tions of Section 8-24 of the Code of Virginia. Plaintiff, by counsel, excepted to the Court's action in sustaining the Pleas of Limitation to her personal injury claims, and having expressed an intention to apply to the Supreme Court of Appeals of Virginia for a Writ of Error on this judgment, the same is suspended for a period of sixty (60) days provided plaintiff or someone on her behalf shall execute a suspending bond with a penalty of $300.00, conditioned as the law directs, within twenty (20) days from this date.

Requested:
LESLIE M. MULLINS
Of Counsel for Defendant
Wise Rambler, Inc.

JACKSON S. WHITE, JR.
Of Counsel for Defendant
American Motors Corporation

Seen and objection noted:
CARL W. NEWMAN
Of Counsel for Plaintiff

ENTER, this 16th day of Oct., 1967.

M. M. LONG, JR., Judge

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NOTICE OF APPEAL AND
ASSIGNMENTS OF ERROR

* * * * *

TO: E. E. BROOKS, CLERK, CIRCUIT COURT OF WISE COUNTY, VIRGINIA:

Plaintiff, Myrtle S. Caudill, by counsel, hereby gives notice pursuant to Rule 5:1, Section 4, of the Rules of the Supreme Court of Appeals of Virginia, of her appeal from that certain judgment rendered in this action by Order entered herein on the 16*th* day of *October,* 1967 wherein Myrtle S. Caudill, is Plaintiff and Wise Rambler Inc. and American Motors Corporation are defendants.

Pursuant to said Rule, Plaintiff, Myrtle S. Caudill, by counsel, assigns the following error:

1. The court erred in sustaining the pleas of the statute of limitations filed by each of the defendants, Wise Rambler Inc. and American Motors Corporation in the above styled case.

MYRTLE S. CAUDILL
By Counsel

SHANNON AND NEWMAN
Attys. at Law
Appalachia, Va.

By R. C. SHANNON
Counsel for Plaintiff

Received and filed Oct. 28, 1967.

LEE STANLEY, Deputy Clerk.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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