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IN THE

Supreme Court of Virginia

AT RICHMOND

Record No. 730182

CHARLES B. FAIR, JR.
TRADING AS POWERLINE SHELL SERVICE

V.

HAMERSMITH DISTRIBUTING COMPANY
AND
WILLIAM FRENCH
AND
HOWARD ADJUSTMENT COMPANY, INC.

James B. Robeson, Lawyer for Appellant
C. Hobson Goddin, Lawyer for Appellee
John R. Sandin, Lawyer for Appellee
Thomas J. Scanlon, Lawyer for Appellee

APPENDIX

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IN THE

SUPREME COURT OF APPEALS OF VIRGINIA

AT RICHMOND

Record No. 730182

V I R G I N I A:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on July 20, 1973.

CHARLES B. FAIR, JR.
TRADING AS POWERLINE SHELL SERVICE

Plaintiff in error,

against

HAMERSMITH DISTRIBUTING COMPANY
AND
WILLIAM FRENCH
AND
HOWARD ADJUSTMENT COMPANY, INC.

Defendants in error.

From the Circuit Court of Prince William County
Judge Lewis D. Morris

Upon the petition of Charles B. Fair, Jr. Trading As Powerline Shell Service a writ of error is awarded him to a judgment rendered by the Circuit Court of Prince William County on the 3rd day of January, 1973, in a certain motion then therein depending, wherein Charles B. Fair, Jr. Trading As Powerline Shell Service was plaintiff and Hamersmith Distributing Company and William French and Howard Adjustment Company, Inc. 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 $300, with condition as the law directs.

* * * R E C O R D * * *

MOTION FOR JUDGMENT

COMES NOW, the plaintiff, by counsel, and moves this Honorable Court for judgment against the Defendants, jointly and severally, in the amount of Four Thousand Three Hundred and Ninety-Four Dollars ($4,394.00) together with interest from April 29, 1970, and the costs of this action and for his grounds state the following facts and circumstances:

1. That on the 23rd day of April, 1970, a tractor and trailer, operated by Hamersmith Distributing Company, was involved in an accident on U. S. Interstate Highway 95, Prince William County, Virginia.

2. That, as a result of this accident, debris was spread over said highway and the adjoining right of way, so as to create an immediate hazard to the traveling public.

3. That the defendant, Hamersmith Distributing Company, failed to immediately remove or cause to be removed the said debris in accordance with Section 33.1-350 Code of Virginia, as amended.

4. That, on this date, a Virginia State trooper requested your plaintiff to remove the aforesaid debris that was creating a hazard to the traveling public in accordance with Section 33.1-350, Code of Virginia, as amended.

5. That, during the evening of April 23 and April 24, 1970, your plaintiff cleared and cleaned the debris that created said hazard on the aforesaid highway.

6. That on April 24, 1970, the defendant, William French, an agent and employee of Howard Adjustment Company, Inc. personally visited the aforesaid accident scene and individually and or as agent and employee of the Howard Adjustment Company, Inc. authorized and contracted the plaintiff to remove the balance of the tractor and trailer and cargo located in the right-of-way of said highway.

7. That, as a result of said authorization and contract, your plaintiff cleared the remaining wreckage and cargo from right-of-way.

8. That the plaintiff has not been compensated for the aforesaid services performed.

WHEREFORE, the plaintiff requests judgment against the defendants, jointly and severally, in the amount of $4394.00 together with interest from April 29, 1970, and the costs of this action.

CHARLES B. FAIR, JR. Trading
As Powerline Shell Service

By: _____
Counsel

James B. Robeson
9304 Peabody Street
Manassas, Virginia 22110
Counsel for Plaintiff

Filed April 5, 1972

* * * * * * * *

ANSWER AND GROUNDS OF DEFENSE

Comes now the defendants, William French and Howard Adjustment Company, Inc., by counsel, and for answer to the Motion for Judgment filed against them herein state as follows:

1. These defendants admit the allegations in paragraph one (1).

2. These defendants are without knowledge or information sufficient to form a belief as to the allegations in paragraph two (2) and demand strict proof thereof.

3. These defendants are without knowledge or information sufficient to form a belief as to the allegations in paragraph three (3) and demand strict proof thereof.

4. These defendants are without knowledge or information sufficient to form a belief as to the allegations in paragraph four (4) and demand strict proof thereof.

5. These defendants are without knowledge or information sufficient to form a belief as to the allegations in paragraph five (5) and demand strict proof thereof.

6. These defendants deny the allegations in paragraph six (6).

7. These defendants are without knowledge or information sufficient to form a belief as to the allegations in paragraph seven (7) and demand strict proof thereof.

8. These defendants are without knowledge or information sufficient to form a belief as to the allegations in paragraph eight (8) and demand strict proof thereof.

GROUNDS OF DEFENSE

9. These defendants are not indebted to the plaintiff in any amount for any reason.

WILLIAM FRENCH

HOWARD ADJUSTMENT COMPANY, INC.

_____
by Counsel

_____
John R. Sandin
Attorney for Defendants
William French and
Howard Adjustment Company, Inc.
107 Pennsylvania Avenue
Falls Church, Virginia

Filed April 27, 1972

* * * * * * * * * * *

GROUNDS OF DEFENSE

Comes now the defendant, Hamersmith Distributing Company, by counsel, and for its Grounds of Defense to the Motion for Judgment filed against it states as follows:

1. This defendant denies that it owned a tractor and trailer involved in said accident, but avers that said unit was being operated under lease agreement.

2. This defendant is without knowledge as to the amount of debris spread over the highway and whether said debris created an immediate hazard to the traveling public, and for that reason this defendant calls for strict proof of same. This defendant avers that the tractor and trailer came to rest off the traveling surface of the highway and at some distance therefrom.

3. This defendant avers that authorization was given by someone for whose acts this defendant is not responsible for the removal of the debris, and that this work was done in a reasonable time.

4. This defendant is without knowledge as to the allegations contained in paragraphs 4 and 5, and demands strict proof the same.

5. This defendant admits the allegations contained in paragraphs 6 and 7.

6. This defendant is not advised as to the allegations contained in paragraph 8 and calls for strict proof of same.

WHEREFORE, having fully answered, this defendant denies that it is indebted to the plaintiff in any amount, and requests that this action as to it be dismissed.

HAMERSMITH DISTRIBUTING
COMPANY

By: _____
Of Counsel

C. Hobson Goddin
WICKER, GODDIN & DULING
Attorneys at Law
706 Mutual Building
Richmond, Virginia 23219

Filed May 1, 1972

* * * * * * * * *

FINAL JUDGMENT ORDER

This case came before the Court, for non jury trial, on the merits on Monday, October 30, 1972, and the parties litigant were present in Court in person and/or represented by counsel;

WHEREUPON, the plaintiff produced his oral testimony, exhibits and proof and rested his case. The defendants thereafter, by and through their attorneys, moved the Court to strike the evidence and enter summary judgment in their favor, basing said motions on numerous legal grounds. After argument of counsel the Court granted the motion as to the defendant Hamersmith Distributing Company but denied the motion as to the defendants William French and Howard Adjustment Company, Inc.

Thereafter, co-defendant William French and Howard Adjustment Company, Inc., produced their testimony, evidence and proof and thereafter they rested and both renewed their motions to strike the evidence and for summary judgment. Those motions were denied.

Thereafter, the Court having taken the matter under advisement in due course of time returned to open Court and being of the opinion that the plaintiff had failed to sustain its burden of proof, announced its verdict in favor of the defendants; it is therefore

ADJUDGED AND ORDERED that the plaintiff recover nothing of and from the defendants or anyone of them and that the defendants ought to be, and they are hereby, awarded costs, in this behalf expended and the case is otherwise ordered stricken from the docket and dismissed.

Any of the parties in interest may have a certified copy of this order from the Clerk forthwith, upon its signature and entry.

AND THIS ORDER IS FINAL.

Signed and entered this 3rd day of January, 1973.

_____
JUDGE

SEEN AND EXCEPTED TO:

_____
James B. Robeson
Counsel for Plaintiff

SEEN:

_____
Thomas J. Scanlon
John R. Sandin
Counsel for Co-Defendants
William French and
Howard Adjustment Company

WICKER, GODDIN & DULING

By: _____
C. Hobson Goddin
Counsel for Co-Defendant
Hamersmith

Filed January 3, 1973.

* * * * * * * * * *

ASSIGNMENT OF ERROR

Comes now the Plaintiff, Charles B. Fair, Jr., Trading As Powerline Shell Service and respectfully submits the following assignment of error:

1. The trial Court erred in sustaining the motion to strike on behalf of the Defendant, Hamersmith Distributing Company.

2. The trial Court erred in returning a verdict in favor of the Defendants, William French and Howard Adjustment Company, Inc.

The statement of facts and other incidents of the case on October 30, 1972, will be hereinafter filed.

Respectfully submitted,

CHARLES B. FAIR, JR., t/a
Powerline Shell Service

By: _____
Counsel

James B. Robeson
9304 Peabody Street
Manassas, Virginia 22110

Filed February 1, 1973

* * * * * * * * * *

STATEMENT OF FACTS

TRIAL ON OCTOBER 30, 1972

1. C. E. Seymour testified as follows:

He stated that he was employed as a state trooper with the Virginia State Police.

He testified that on April 23, 1970, he investigated an accident and fatality involving a tractor and trailer truck leased and operated by the defendant, Hamersmith Distributing Company on Interstate Highway 95, Prince William County, Virginia. As a result of this accident, he related that he called the Plaintiff, Charles B. Fair, Jr., and requested that he remove the debris spread over the highway. He testified that the plaintiff and his employees removed the debris soley from the highway. Trooper Seymour further stated that

on April 24, 1970, he took photographs of the accident; and these photos were introduced into evidence as plaintiff's exhibits and were numbered 1-22.

Trooper Seymour stated on April 24, 1970, after he had determined the company which was operating this vehicle, he called the head office of Hamersmith Distributing Company in Florida and spoke with a man who identified himself as Joe Hamersmith, the president and owner of Hamersmith Distributing Company. He stated that he described to Mr. Hamersmith the fatality and destruction caused by his company's truck. He further related to Mr. Hamersmith that the debris from this accident had spilled over the side of the highway into the ravine, and that the Virginia State Highway Department wanted the debris removed from its right-of-way which included the ravine. Trooper Seymour stated that Mr. Hamersmith told him to go ahead and have someone remove the wreckage from the right-of-way.

Trooper Seymour further stated that he was present on April 24, 1970, when William French inspected the wreckage of the tractor and trailer in said right-of-way. He stated that Mr. French identified himself as an employee and adjustor of the Howard Adjustment Company, Inc. Trooper Seymour further advised that the plaintiff, Charles B. Fair, Jr., was also present at the time of Mr. French's inspection of the wreckage. He added that he heard Mr. French orally authorize Mr. Fair to go ahead and clear the remaining wreckage from the right-of-way and that he would go along with it. However, he didn't recall the exact words. Trooper Seymour stated that, after this conversation, Mr. Fair and his employees cleared and cleaned the remaining wreckage and cargo from said right-of-way.

2. Charles B. Fair, Jr., testified as follows:

He stated that he was the owner and operator of a Shell station and that he was trading as Powerline Shell Service. He testified that he received a call on April 23, 1970, from Trooper Seymour to help him with an accident on Interstate Highway 95. He related that he responded with a crew of wreckers, and they cleared the debris that was covering the highway during the evening of April 23 and the morning of April 24, 1970. He added that on April 24, 1970, he came back to the scene and saw Trooper Seymour and met William French, who were inspecting the remaining wreckage and cargo left in the right-of-way. He stated that Mr. French identified himself as an adjustor and employee of the Howard Adjustment Company, Inc., was sent to investigate this accident. He related that, after Mr. French had reviewed the wreckage, Mr. French told him in the presence of Trooper Seymour to go ahead and clear the remainder of the wreckage from the right-of-way and that he would discuss price with him later.

Mr. Fair stated that he immediately made the necessary arrangements and went ahead with the clearing of the remaining wreckage and cargo from the right-of-way.

Mr. Fair testified that, after he completed this work, he submitted a bill to Mr. French for his services. He testified he has not been paid to date for these services. Mr. Fair then explained his bill in detail, and this bill was introduced into evidence as plaintiff's exhibit number 23. The bill was for $3,557.00. Mr. Fair testified as to his lengthy experience in the wrecking removal business and as to the reasonableness of the charges set forth in this bill.

3. Matt Blewitt testified as follows:

He stated that he was in the wreck removal business in eastern Prince William County. He then testified as to his experience in this business. He was then shown plaintiff's exhibit number 23 and testified that the rates charged in this bill were the going or reasonable rates charged for similar services during the time of this accident.

4. William French testified as follows:

He stated that he was sent to the scene of this accident as a result of his employment with Howard Adjustment Company, Inc. He stated that he saw the plaintiff, Charles B. Fair, Jr., and Trooper Seymour at the scene of the accident. He related that he had a discussion with Mr. Fair and Trooper Seymour and that he did not give any type of authorization for the removal of any wreckage from this right-of-way. He stated that he was representing Home Indemnity Company, whom he believed had coverage on the entire wreckage involved in this accident. He stated that he determined, after this visit of the wreckage, that Home Indemnity Company had insurance coverage on the cargo only.

Mr. French introduced a letter that he received from the plaintiff which was marked as defendant's exhibit number one.

_____
JUDGE

SEEN:

_____
James B. Robeson
Counsel for Plaintiff

Thomas J. Scanlon
Counsel for Co-Defendants
William French and
Howard Adjustment Company

WICKER, GODDIN & DULING

By: _____
C. Hobson Goddin
Counsel for Co-Defendant
Hamersmith

Filed March 1, 1973.