215 Va. 413
CLERK
SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 740189

GRENCO REAL ESTATE INVESTMENT TRUST,
Appellant,

v.

RICHARD H. BROOKER (SR.) AND PATRICIA G. BROOKER,
Appellees.

APPENDIX

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MOTION FOR JUDGMENT
Filed March 6, 1973

VIRGINIA: In The Court Of Law And Chancery For The City Of Norfolk

Grenco Real Estate Investment Trust
Stanardsville, Virginia
v.
Richard H. Brooker (Sr.)
7400 Spartan Avenue
Norfolk, Virginia 23518
(City of Norfolk)
and
Patricia G. Brooker
7400 Spartan Avenue
Norfolk, Virginia 23518
(City of Norfolk)

To the Honorable Judges of said Court:

1. On or about 23 July 1972 the defendants Richard H. Brooker (Sr.) and Patricia G. Brooker, husband and wife, executed and delivered to the plaintiff GRENCO Real Estate Investment Trust their negotiable note annexed hereto as Exhibit A.

2. The defendants have not made any payment upon such note.

3. On 15 February 1973 plaintiff placed such note in the hands of its undersigned attorney, for collection.

Wherefore plaintiff moves for judgment against both defendants, jointly and severally, for the sum due upon such note as computed in Exhibit B: $5425.27 plus 18% thereof for attorney's fees and plus interest thereon at 8% per annum from 15 February 1973 until paid; and for plaintiff's costs herein.

Grenco Real Estate Investment Trust

By: C. Waverly Parker
Counsel

EXHIBIT A

1. Bank Original Stanardsville, Va., July 3, 1972 $4969.44. For value received, we jointly and severally promise to pay to the order of Grenco Real Estate Investment Trust, P.O. Box 321, Stanardsville, Virginia 22973, forty-nine hundred sixty-nine and 44/100 dollars in 84 consecutive monthly installments, of which 83 installments shall be for $59.16 each and a final installment of $59.16 (the final installment in any event being the difference between the face amount hereof and the sum of the preceding installments), the first installment being due and payable on the 15 day of August, 1972, and the subsequent installments on the like day of each successive month with interest after maturity at the maximum interest rate. Negotiable and payable without offset at the National Bank and Trust Co., Charlottesville, or any of its offices in the State of Virginia.

All of the parties to this note hereby waive presentment, demand, protest and notice of dishonor and protest, and hereby agree that extension or extensions of the time of payment of this note or any installment or part thereof may be made before, at, or after maturity by agreement with any one or more of the parties hereto without notice to and without releasing the liability of any other party to this note, and they do likewise waive the benefit of all homestead exemptions as to this debt and any right which they may have to require the holder to proceed against any one person, and agree to pay all expenses incurred in collecting the same, including an 18% attorney's fee in case this note shall not be paid at maturity or when declared due and payable as provided herein. At the option of the holder, this note becomes immediately due and payable in the event of non-payment at maturity of any installment scheduled hereon.

This note may be prepaid at any time without penalty and any unearned finance charge in excess of $3 will be refunded based on the "Rule of 78's." In the event of default or late payment, holder may assess a late payment charge of 5% of the past due payments with a minimum of $1.00 per payment.

The purchase of insurance coverage is voluntary and not required for credit. ..... insurance coverage is available at a cost of $..... for the term of credit.

I desire insurance coverage.

Signed ..... Date .....

Address Richard H. & Patricia G. Brooker
P.O. Box 14395
Norfolk, Va. 23518

1.	Loan Proceeds	$3500.00
2.	.....	$ .....
3.	Amount financed	$3500.00
4.	Finance Charge	$1469.44
5.	Total of payments	$4969.44
6.	Annual Percentage Rate	10.58%

/s/ Richard H. Brooker, Sr. (Seal)
/s/ Patricia G. Brooker (Seal)

DEMURRER
Filed March 27, 1973

Now Come the Defendants, Richard H. Brooker (Sr.) and Patricia G. Brooker and say that the Motion for Judgment exhibited against them is not sufficient in law.

Richard H. Brooker
Patricia G. Brooker
By: /s/ Barry Kantor
Of Counsel

ORDER
Entered April 6, 1973

Came this day the plaintiff Grenco Real Estate Investment Trust and moved the Court that pursuant to section 8-99 of the Code of Virginia the defendants Richard H. Brooker, Sr. and Patricia G. Brooker be required to state specifically the grounds of their demurrer hereinbefore filed—

Upon consideration whereof be is hereby Ordered that both said defendants do so specifically state the grounds of such demurrer within ten days of the date of this order. If the grounds of such demurrer include the failure to state a cause of action, such grounds shall be of sufficient particularity so as to set forth why a cause of action is not stated.

This order was entered after due notice to counsel for both defendants, in accordance with Rule 1:13 of the Rules of Court.

John P. Harper, Judge

MORE PARTICULAR GROUNDS OF DEMURRER
Filed April 13, 1973

For their more particular grounds of demurrer, the Defendants, Richard H. Brooker, et al, state that the Plaintiff, Grenco Real Estate Investment Trust is not a proper party to this action in that it is a Real Estate Investment Trust pursuant to statutes provided for, and as such, only the trustees can bring suit on behalf of the Trust.

Richard H. Brooker (Sr.)
Patricia G. Brooker
By: /s/ Barry Kantor
Of Counsel

LETTER OF AUGUST 14, 1973
Filed August 20, 1973

14 August 1973

Mr. Hugh L. Stovall, Clerk
Circuit Court of the City of Norfolk
100 St. Paul Boulevard
Norfolk, Virginia 23510

Re: Grenco Real Estate Investment Trust v. Brooker, *et als.*, Law and Chancery Court No. 2457 at Law

Dear Mr. Stovall:

I enclose herewith the original of a notice that at the time thereinstated there will be presented to the Court for entry as its order the sketch copy of which is attached to such notice. I also enclose herewith the original of the proposed order.

Kindly file the notice with sketch attached.

The provisions of section 8-66 of the Code of Virginia make it perfectly apparent that the defendants' demurrer, as elucidated by their grounds of demurrer hereinbefore filed, is wholly without merit. Therefore, I would wish not to have to travel to Norfolk to argue the demurrer, and consequently I respectfully request that at the time ap-

pointed in the notice you bring this matter to the attention of the Court with the understanding that the question upon the demurrer is submitted by the plaintiff without argument except as contained in this letter. The original of my proposed order I would appreciate your submitting to the Court in my behalf when the demurrer is called up for argument.

Most respectfully,

/s/ C. Waverly Parker

CWP/bsp
Enclosures
cc: Barry Kantor, Esquire

ORDER
Entered August 30, 1973

VIRGINIA: In The Circuit Court Of The City Of Norfolk

Law No. 2457

(Law and Chancery Court, Norfolk)

Grenco Real Estate Investment Trust,

Plaintiff,

v.

Richard H. Brooker, Sr., et al.,

Defendants.

This Cause came this day to be heard on the Demurrer filed by the defendants, counsel for the defendants being present in person and counsel for the plaintiff authorizing the Court to hear this matter in his absence, and was argued by counsel, and for good cause having been shown, it is

Adjudged, Ordered and Decreed that the Demurrer be, and hereby is sustained, and that the plaintiff be granted leave to amend his Motion for Judgment within twenty-one (21) days from the entry of this order to properly state the proper party to this action.

/s/ John P. Harper
Judge

I ask for this:
Barry Kantor

ORDER
Entered September 19, 1973

Came this day the plaintiff, Grenco Real Estate Investment Trust, by its counsel, C. Waverly Parker, and the defendants, by their counsel.

Upon motion of the plaintiff hereinbefore filed, and for the reasons therein stated, the Court doth hereby Order and Adjudge that its order of 30 August 1973, wherein it sustained defendants' demurrer, be, and the same hereby is, Set Aside; but

Be it further hereby Ordered and Adjudged that such order be, and the same hereby is, re-entered as of this date with the addition of the following sentence: "Plaintiff objects and excepts to the entry hereof, upon grounds as stated in its counsel's letter of 14 August 1973."

This order was entered after due notice to counsel for defendants, as provided in Rule 1:13 of the Rules of Court.

/s/ John P. Harper
Judge

FINAL ORDER
Entered November 2, 1973

The Court having heretofore sustained the demurrer filed by the defendants, and the plaintiff not having amended its motion for judgment, and the time within which such amendment might have been made having expired—

Now, Therefore, in consequence of the Court's having sustained such demurrer, be it hereby finally Ordered and Adjudged that the above-styled action be dismissed and that the defendants shall have their taxable costs, if any, about this matter expended.

And the plaintiff objected and excepted to this order, upon its grounds set forth of record when such demurrer was sustained.

/s/ John P. Harper
Judge

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

Filed November 7, 1973

Notice Of Appeal

Pursuant to Rule 5:6 of the Rules of the Supreme Court of Virginia comes now the plaintiff Grenco Real Estate Investment Trust, by its counsel C. Waverly Parker, and hereby gives notice of an appeal from that final order entered by the Circuit Court of the City of Norfolk in the above-styled case on 2 November 1973. No transcript or narrative statement is hereafter to be filed.

Assignments Of Error

Also pursuant to Rule 5:6 of the Rules of the Supreme Court of Virginia further comes the plaintiff Grenco Real Estate Investment Trust, by its counsel C. Waverly Parker, and assigns the following errors of the trial court in such case:

I. The trial court erred, in the final order appealed from, in dismissing the case based upon its previous order sustaining defendants' demurrer, because:

A. Such demurrer was itself erroneously sustained, in that—

1. Contrary to the only ground of such demurrer and the ruling of the trial court with respect thereto, the plaintiff, as a real estate investment trust created by the laws of Virginia and thus an unincorporated business association, was under the provisions of section 8-66 of the Code of Virginia entitled to bring the instant action in the name by which it was commonly called and under which it had done business with the defendants as shown in Exhibit A to its Motion for Judgment.

Whence the foregoing Notice of Appeal and Assignments of Error:

Grenco Real Estate Investment Trust

By: /s/ C. Waverly Parker