SUPREME COURT OF VIRGINIA
RECEIVED
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RICHMOND, VIRGINIA

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IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 79-1653

LUKE CONSTRUCTION COMPANY,
Appellant,

v.

ROBERT W. SIMPKINS,
JESSE HOWARD SIMPKINS,
and
JACK ALLEN BOOHER,
Appellees.

JOINT APPENDIX

Stephen C. St. John
Williams, Worrell, Kelly
& Greer
1700 Virginia National Bank Bldg.
Norfolk, Virginia 23510

Counsel for Appellant.

Augustus Anninos
Howell, Anninos,
Daugherty & Brown
808 Maritime Tower
Norfolk, Virginia 23510

Counsel for Appellees,
Robert W. Simpkins and
Jesse Howard Simpkins.

Jack Allen Booher,
Appellee, unrepresented

JOINT APPENDIX

INDEX

		Page
1.	Motion for Judgment of Luke Construction Company, filed October 20, 1971.	1
2.	Answer and Grounds of Defense of defendants, Robert W. Simpkins and Jesse H. Simpkins, filed January 5, 1972.	4
3.	Interrogatories and Request for Admissions of plaintiff, Luke Construction Company, to the defendant, Jesse Howard Simpkins, filed August 15, 1977.	7
4.	Answers to Interrogatories and Responses to Requests for Admissions of the plaintiff, Luke Construction Company, by the defendant, Jesse H. Simpkins, filed September 20, 1977.	30
5.	Supplemental Answers to Requests for Admissions of the plaintiff, Luke Construction Company, of the defendant, Jesse H. Simpkins, filed July 26, 1978.	34
6.	Motion for Summary Judgment of the plaintiff, Luke Construction Company, filed October 10, 1978.	36
7.	Order denying Motion for Summary Judgment of the plaintiff, Luke Construction Company, filed December 1, 1978.	41
8.	Judgment Order of the Circuit Court of the City of Norfolk appeal from, filed August 23, 1979.	42
9.	Letter from Augustus Anninos to Stephen C. St. John, dated October 2, 1979, filed October 3, 1979.	44

VIRGINIA:

IN THE COURT OF LAW AND CHANCERY OF THE CITY OF NORFOLK

LUKE CONSTRUCTION COMPANY,	:	
Plaintiff,		
	:	AT LAW
v.		
		NO.
ROBERT W. SIMPKINS, 221 Foley Lane Virginia Beach, Virginia	:	
	:	
and		
JESSE H. SIMPKINS 1169 Janaf Place Norfolk, Virginia	:	
	:	
and		
JACK A. BOOHER, Serve: Secretary of the Commonwealth of Virginia,	:	
	:	
Defendants.		

MOTION FOR JUDGMENT

The plaintiff, Luke Construction Company, now comes and moves the Court of Law and Chancery of the City of Norfolk for a judgment, jointly and severally, against Robert W. Simpkins, Jesse H. Simpkins and Jack A. Booher, defendants, in the sum of Thirty Thousand Dollars ($30,000.00) in compensatory damages, Twenty Thousand Dollars ($20,000.00) in punitive damages, interest and the costs incident to this proceeding, including a reasonable attorney's fee, for the following, to-wit:

1. That on or about September 14, 1970, in the City of Norfolk, Virginia, Surplus, Inc. sold to the plaintiff a used 1969 Dyna-Hoe, Model D-160, powered by GM 3-53 Diesel engine for

the sum of $9,200.00 less a trade-in allowance of $4,500.00, leaving a cash balance due of $4,700.00 plus Virginia State Sales Tax in the amount of $188.00, thereby making a total cash balance due of $4,888.00, which sum was remitted by the plaintiff to Surplus, Inc.

2. That on or about July 11, 1970, in the City of Norfolk, Virginia, Surplus, Inc. sold to the plaintiff a used 1969 Le Roi Compressor Model 600 RD 2C mounted on four pneumatic tires, powered by GM 6V Diesel engine, Serial No. 329X519, for the sum of $14,500.00, less a trade-in allowance of $5,000.00 for a certain Case 580 CK Loader - Backhoe, Serial No. 8324725, which piece of equipment traded in on said purchase was delivered by the plaintiff to Surplus, Inc. at the time of the sale, leaving a cash balance due of $9,500.00 plus Virginia State Sales Tax in the amount of $380.00, making a total cash balance due of $9,880.00, which sum was remitted by the plaintiff to Surplus, Inc.

3. That at the time of the sale of both pieces of equipment by Surplus, Inc. to Lake Construction Company, the defendant, Jack A. Booher, as an agent and/or officer of Surplus, Inc., knowingly and fraudulently represented to the plaintiff that Surplus, Inc. owned and had good title to said equipment when in fact said defendant knew that Surplus, Inc. did not have good and marketable title to said equipment.

4. That at the time said equipment was sold by Surplus, Inc. to the plaintiff, the defendants, Jesse H. Simpkins and Robert W. Simpkins, were officers and directors of Surplus, Inc.

5. That the defendants, Jesse H. Simpkins and Robert W. Simpkins, while serving as officers and directors of Surplus, Inc.

had knowledge of, participated in, sanctioned, acknowledged and ratified the fraudulent sale of said equipment to the plaintiff with knowledge that Surplus, Inc. did not have title to and was not the owner of said equipment.

6. That as a result of said fraudulent sale Luke Construction Company has been damaged in that the equipment purchased from Surplus, Inc. has been repossessed by law enforcement officials as stolen equipment and the plaintiff has thereby been deprived of the use of said equipment. The plaintiff has further been damaged in that it has been caused to expend large sums of money in court costs and attorney's fees in an effort to recover from Surplus, Inc. the equipment traded in and the money paid on the purchase price of said equipment from Surplus, Inc. In addition, the plaintiff has been damaged in that the equipment traded in on said purchase from Surplus, Inc. has not been returned and the plaintiff has been deprived of the use thereof and the funds paid for the equipment purchased from Surplus, Inc. have not been refunded to the plaintiff.

WHEREFORE, Luke Construction Company brings this action and moves for a judgment against the defendants, jointly and severally, for actual damages in the amount of $30,000.00, punitive damages in the amount of $20,000.00, interest and the costs incident to this proceeding, including a reasonable attorney's fee.

LUKE CONSTRUCTION COMPANY

By_____
of Counsel

VIRGINIA:

IN THE COURT OF LAW AND CHANCERY OF THE CITY OF NORFOLK

LUKE CONSTRUCTION COMPANY,	:	
Plaintiff,	:	
v.	:	AT LAW
ROBERT W. SIMPKINS, et al,	:	NO. 931
Defendants.	:	

ANSWER AND GROUNDS OF DEFENSE

Now come the defendants, Robert W. Simpkins and Jesse H. Simpkins, and for their answer and grounds of defense to the motion for judgment filed against them and another, answer and say as follows, to-wit:

1. That they deny that they are indebted to the plaintiff in the sum of $30,000.00 in compensatory damages and they deny that they are indebted to the plaintiff in the sum of $20,000.00 damages and further deny that they are indebted to the plaintiff in any sum whatsoever.

2. That these defendants deny that they had knowledge of, participated in, sanctioned, acknowledged or verified the alleged fraudulent sale of the equipment described in the motion for judgment filed against them by Surplus, Inc. to the plaintiff and further say that they had no knowledge whatosever of any defect in the title to the described equipment, if any.

3. That these defendants deny that they participated in the sales referred to in plaintiff's motion for judgment.

4. That these defendants are merely officers of Surplus,

Inc. and that if any liability exists, which liability is expressly denied, it is the liability of the corporation and not of the individual officers.

5. That the items in question were bought and sold in the ordinary course of business and these defendants aver that Surplus, Inc. obtained good title to the equipment in question and further aver that the plaintiff obtained good title to the equipment in question by virtue of its being a bona fide purchaser for value and that relinquishment of possession by the plaintiff to law enforcement officials, not otherwise described in the plaintiff's Motion for Judgment, was voluntary and not under the compulsion of any court order or official directive of a court of competent jurisdiction.

6. That these defendants deny that the plaintiff is entitled to recover court costs and attorneys fees incurred in any action against Surplus, Inc.

7. That these defendants will rely on any other further grounds of defense which may become available to them prior to or during the time of trial.

And now having fully answered, these defendants pray that the motion for judgment filed against them be dismissed.

ROBERT W. SIMPKINS and JESSE H. SIMPKINS

By_____
Of Counsel

Steingold, Steingold & Friedman, p.d.
819 Citizens Bank Building
Norfolk, Virginia 23514

I hereby certify that I mailed a copy of the foregoing

Answer and Grounds of Defense to Williams, Worrell, Kelly & Worthington, Attorneys for Plaintiff, 1700 Virginia National Bank Building, P. O. Box 3273, Norfolk, Virginia 23514 on this _____day of January, 1972.

_____

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

LUKE CONSTRUCTION COMPANY,

Plaintiff,

v.

LAW DOCKET
NO: L-931

ROBERT W. SIMPKINS,
JESSE HOWARD SIMPKINS,
and
JACK ALLEN BOOHER,

Defendants.

PLAINTIFF'S INTERROGATORIES
TO JESSE H. SIMPKINS

Luke Construction Company, plaintiff herein, now comes pursuant to the provisions of Rule 4:8 of the Rules of The Supreme Court Of Virginia and propounds the following interrogatories to Jesse H. Simpkins, each interrogatory to be answered separately and fully in writing under oath within twenty-one (21) days after the service hereof:

1. What is your current home address?

2. What is your current business address?

3. Who were the officers of Surplus, Inc. on July 11, 1970, stating with respect to each, the following:

a. Their full name,

b. their current home address and

c. their current business address?

4. Who were the directors of Surplus, Inc. on July 11, 1970, stating with respect to each, the following:

a. Their full name,

b. their current home address and

c. their current business address?

5. Who were the stockholders of Surplus, Inc. on July 11, 1970, stating with respect to each, the following:

a. Their full name,

b. their current home address and

c. their current business address?

6. Who were the officers of Surplus, Inc. on September 14, 1970, stating with respect to each, the following:

a. Their full name,

b. their current home address and

c. their current business address?

7. Who were the directors of Surplus, Inc. on September 14, 1970, stating with respect to each, the following:

a. Their full name,

b. their current home address and

c. their current business address?

8. Who were the stockholders of Surplus, Inc. on September 14, 1970, stating with respect to each, the following:

a. Their full name,

b. their current home address and

c. their current business address?

9. What other names or aliases have you used during the period beginning July 1, 1970 and ending July 1, 1973?

REQUEST TO JESSE H. SIMPKINS FOR ADMISSION OF FACTS AND GENUINENESS OF DOCUMENTS

Luke Construction Company, plaintiff herein, now comes pursuant to the provisions of Section 8-111.1 of the Code of Virginia of 1950, as amended, and requests admission by Jesse H. Simpkins within ten (10) days from the date hereof of the genuineness of the documents described in and exhibited with this request and of the truth of the matters of fact set forth hereinafter:

1. That on or about July 11, 1970 in the City of Norfolk, Surplus, Inc. sold to the plaintiff one (1) used 1969 LeRoi compressor model No. 600RD2C mounted on four (4) pneumatic tires, powered by a GM6V Diesel engine, Serial No. 329X519, for the sum of Fourteen Thousand Five Hundred Dollars ($14,500.00) less the trade-in allowance of Five Thousand Dollars ($5,000.00) for a backhoe owned by the plaintiff plus Virginia state sales tax in the amount of Three Hundred Eighty Dollars ($380.00), for a total cash balance due of Nine Thousand Eight Hundred Eighty Dollars ($9,880.00).

2. That on or about September 14, 1970 in the City of Norfolk, Surplus, Inc. sold to the plaintiff one (1) used 1969 Dyna-Hoe, model D-160 powered by a GM3-53 Diesel engine, for the sum of Nine Thousand Two Hundred Dollars ($9,200.00) less a trade-in allowance of Four Thousand Five Hundred Dollars ($4,500.00) plus Virginia state sales tax of One Hundred Eighty-Eight Dollars ($188.00) for a total cash balance due of Four Thousand Eight Hundred Eighty-Eight Dollars ($4,888.00).

3. That at the time both pieces of equipment were sold by Surplus, Inc. to the plaintiff, Robert W. Simpkins and Jesse H. Simpkins were officers and directors of Surplus, Inc.

4. That the defendants, Robert W. Simpkins and Jesse H. Simpkins, while serving as officers and directors of Surplus, Inc., had knowledge of, participated in, sanctioned, acknowledged and ratified the sale of said equipment to the plaintiff.

5. That at the time of the sale of said equipment to the plaintiff, Surplus, Inc. did not have title to and was not the owner of said equipment.

6. That at the time of the sale of said equipment, Robert W. Simpkins knew that Surplus, Inc. did not have title to and was not the owner of said equipment.

7. That at the time of the sale of said equipment Jesse H. Simpkins knew that Surplus, Inc. did not have title to and was not the owner of said equipment.

8. That the sale of said equipment to the plaintiff by Surplus, Inc. was fraudulent and was participated in, sanctioned, acknowledged and ratified by Jesse H. Simpkins.

9. That the sale of said equipment to the plaintiff by Surplus, Inc. was fraudulent and was participated in, sanctioned, acknowledged and ratified by Robert W. Simpkins.

10. That Robert W. Simpkins is also known as Jerry Howard Simpkins and Robert W. Simpkins and Jerry Howard Simpkins are, in fact, one and the same person.

11. That on or about March 12, 1973 in United States District Court for the Eastern District of Virginia in Alexandria, Virginia, Robert W. Simpkins and Jesse H. Simpkins were indicted by a grand jury on eight counts of interstate transportation of stolen property and interstate transportation of stolen motor vehicles, it being Criminal No. 69-73-N.

12 That the copy of the grand jury indictment marked "Exhibit A" and hereto attached is genuine.

13. That on or about November 6, 1973 Robert W. Simpkins and Jesse H. Simpkins were found guilty of Counts 2-8 of the indictment in the verdict returned in United States District Court for the Eastern District of Virginia in Norfolk, Virginia.

14. That the attached copies of the judgment and commitment returned in the above said Court on the date referred to in request numbered 13 above and marked as "Exhibit B" for Robert W. Simpkins and "Exhibit C" for Jesse H. Simpkins are genuine.

15. That on or about April 9, 1973 in the United States District Court for the Eastern District of Virginia in Norfolk, Virginia Robert W. Simpkins and Jesse H. Simpkins were indicted by a grand jury on one count of interstate transportation of a stolen motor vehicle, namely one Dynahoe Model 160, VIN21260, Engine No. 58157, it being Criminal No. 91-73-N.

16. That the attached copy of the indictment marked "Exhibit D" is genuine.

17. That on or about November 6, 1973 Robert W. Simpkins and Jesse H. Simpkins were found guilty under the indictment referred to in request numbered 15 above.

18. That the attached copy of the judgment and commitment in connection with the indictment of Robert W. Simpkins and returned in the above said Court on the date referred to in request numbered 16 above and hereto marked "Exhibit E" is genuine.

19. That the attached copy of the judgment and commitment in connection with the indictment of Jesse H. Simpkins and returned in the above said Court on the date referred to in request numbered 16 above and hereto marked "Exhibit F" is genuine.

20. That on or about October 18, 1974 Robert W. Simpkins and Jesse H. Simpkins filed an appeal with the United States Court of Appeals for the Fourth Circuit in connection with their convictions in the United States District Court for the Eastern District of Virginia, the United States Court of Appeals for the Fourth Circuit Docket number being 73-2509.

21. That the judgment of the United States District for the Eastern District of Virginia from which the appeal was taken was affirmed by the Fourth Circuit Court of Appeals on or about October 18, 1974 and that the copy of the opinion of the United States Court of Appeals for the Fourth Circuit which is marked "Exhibit G" and hereto attached is genuine.

22. That on or about February 24, 1975 Robert W. Simpkins and Jesse H. Simpkins petitioned the Supreme Court of the United States for a Writ of Certiorari.

23. That the copy of the denial of the Supreme Court of the United States on that petition referred to in request numbered 21 above and marked "Exhibit H" and hereto attached is genuine.

24. That the property described in request numbered 1 above is the same property covered by Count 2 in the indictment described in requested numbered 11 above.

25. That the property described in request numbered 2 above is the same property covered by the indictment described in requested numbered 15 above.

LUKE CONSTRUCTION COMPANY

By Robert H. Powell, Jr.
Of Counsel

12

Robert H. Powell, III
Williams, Worrell, Kelly & Greer
1700 Virginia National Bank Building
Norfolk, Virginia 23514

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Interrogatories and Request for Admission, together with attached exhibits, was mailed this 12th day of August, 1977, to Steingold, Steingold and Nachman, counsel for Robert W. Simpkins and Jesse Howard Simpkins, Suite 1116, United Virginia Bank Building, Post Office Box 3182, Norfolk, Virginia 23514 and to Winston G. Snider, Clarke, Snider & Carter, attorney for Jack Allen Booher, 5209 Virginia Beach Boulevard, Virginia Beach, Virginia 23462.

Robert H. Powell, III

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

FILED IN OPEN COURT
MAR 12 1973
CLERK, U. S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

UNITED STATES OF AMERICA

v.

JERRY HOWARD SIMPKINS and
JESSE HOWARD SIMPKINS

CR. NO. 69-73-N

MARCH 1973 TERM - At Alexandria, Va.

THE GRAND JURY CHARGES:

That on or about the 10th day of August 1970, at Norfolk, Virginia, in the Eastern District of Virginia and within the jurisdiction of this Court, JERRY HOWARD SIMPKINS and JESSE HOWARD SIMPKINS, did with unlawful and fraudulent intent, transport and cause to be transported in interstate commerce from Astoria, New York to Norfolk, Virginia, certain goods; to-wit, Dynahoe Model 160, VIN 21260, Engine No. 58157, which had theretofore been stolen, of a value in excess of $5,000.00 in violation of 18 U.S.C. §2314, as they the said defendants then and there well knew.

COUNT TWO

THE GRAND JURY FURTHER CHARGES:

That on or about the 7th day of July 1970, at Norfolk, Virginia in the District and jurisdiction aforesaid, JERRY HOWARD SIMPKINS and JESSE HOWARD SIMPKINS, did with unlawful and fraudulent intent, transport and cause to be transported in interstate commerce from Huntington, New York to Norfolk, Virginia, certain goods; to-wit, Leroi Air Compressor, Model #600RD; Serial #329x519, which had theretofore been stolen, of a value in excess of $5,000.00 in violation of 18 U.S.C. §2314, as they the said defendants then and there well knew.

page 1

COUNT THREE

THE GRAND JURY FURTHER CHARGES:

That on or about the 8th day of September 1970, at Norfolk, Virginia, in the District and jurisdiction aforesaid, JERRY HOWARD SIMPKINS and JESSE HOWARD SIMPKINS, did with unlawful and fraudulen intent, transport and cause to be transported in interstate commerc from Astoria, New York to Norfolk, Virginia, certain goods; to-wit, Gardner Denver Air Compressor, Model RS1200, VIN 506,486, which had theretofore been stolen, of a value in excess of $5,000.00 in violation of 18 U.S.C. §2314, as they the said defendants then and there well knew.

COUNT FOUR

THE GRAND JURY FURTHER CHARGES:

That on or about the 22nd day of June 1970, at Norfolk, Virginia, in the District and jurisdiction aforesaid, JERRY HOWARD SIMPKINS and JESSE HOWARD SIMPKINS, did with unlawful and fraudulen intent, transport and cause to be transported in interstate commerc from Newark, New Jersey to Norfolk, Virginia, certain goods; to-wit Ingersoll-Rand Air Compressor, Model 600, Serial #AR 149, which had theretofore been stolen, of a value in excess of $5,000.00 in violation of 18 U.S.C. §2314, as they the said defendants then and there well knew.

COUNT FIVE

page 2

THE GRAND JURY FURTHER CHARGES:

That JERRY HOWARD SIMPKINS and JESSE HOWARD SIMPKINS, heretofore, to-wit, on or about the 20th day of July 1970, at Norfolk, Virginia, in the District and jurisdiction aforesaid, did unlawfully and feloniously transport and cause to be transported in interstate commerce from Nassau County, New York to Norfolk, Virginia, a certain motor vehicle, to-wit, a 1970 Cadillac

Coupe de Ville, VIN J0129437, a further description of which automobile is unknown, which said automobile had theretofore been stolen as they, the said JERRY HOWARD SIMPKINS and JESSE HOWARD SIMPKINS then and there well knew. (18 U.S.C. §2312)

COUNT SIX

THE GRAND JURY FURTHER CHARGES:

That JERRY HOWARD SIMPKINS and JESSE HOWARD SIMPKINS, heretofore, to-wit, on or about the 20th day of July 1970, at Norfolk, Virginia, in the District and jurisdiction aforesaid, did unlawfully and feloniously transport and cause to be transported in interstate commerce from Queens, New York to Norfolk, Virginia, a certain motor vehicle, to-wit, a 1970 Coupe de Ville, VIN J0323375, a further description of which automobile is unknown, which said automobile had theretofore been stolen as they, the said JERRY HOWARD SIMPKINS and JESSE HOWARD SIMPKINS then and there well knew. (18 U.S.C. §2312)

COUNT SEVEN

THE GRAND JURY FURTHER CHARGES:

That JERRY HOWARD SIMPKINS and JESSE HOWARD SIMPKINS, heretofore, to-wit, on or about the 16th day of July, 1970, at Norfolk, Virginia, in the District and jurisdiction aforesaid, did unlawfully and feloniously transport and cause to be transported in interstate commerce from Garden City, New York to Norfolk, Virginia, a certain motor vehicle, to-wit, a 1970 Cadillac Coupe de Ville, VIN J0187329, a further description of which automobile is unknown, which said automobile had theretofore been stolen as they, the said JERRY HOWARD SIMPKINS and JESSE HOWARD SIMPKINS then and there well knew. (18 U.S.C. §2312)

COUNT EIGHT

THE GRAND JURY FURTHER CHARGES:

That JERRY HOWARD SIMPKINS and JESSE HOWARD SIMPKINS, heretofore, to-wit, on or about the 1st day of September 1970, at Norfolk, Virginia, in the District and jurisdiction aforesaid, did unlawfully and feloniously transport and cause to be transported in interstate commerce from Nassau County, New York, to Norfolk, Virginia, a certain motor vehicle, to-wit, a 1970 Cadillac Brougham VIN P0127849, a further description of which automobile is unknown, which said automobile had theretofore been stolen as they, the said JERRY HOWARD SIMPKINS and JESSE HOWARD SIMPKINS then and there well knew. (18 U.S.C. §2312)

A TRUE BILL:

FOREMAN

BRIAN P. GETTINGS
United States Attorney

By: Hunter W. Sims
Assistant United States Attorney

DGMENT AND COMMITMENT (Rev. 2-68) Cr. Form No. 25

United States District Court
FOR THE

EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

FILED
NOV 7 1973
W. FARLEY POWERS, JR., Clerk
BY [signature]
Deputy Clerk

United States of America

v.

JERRY HOWARD SIMPKINS

No. CR. 69-73-N

On this 6th day of November, 1973 came the attorney for the government and the defendant appeared in person and by counsel.

It Is Adjudged that the defendant upon his plea of NOT GUILTY and a verdict of GUILTY as to Counts 2 thru 8 has been convicted of the offense of violation of Title 18 U.S.C. Sections 2314 and 2312 (Interstate Transportation of Stolen Property and Interstate Transportation of Stolen Motor Vehicle)

On motion of Govt., ct. 1 is dismissed)

as charged in Counts 2 thru 8 of the Indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that as to Count 2, the defendant is sentenced to a term of THREE (3) YEARS, and the defendant is hereby committed to the custody of the Attorney General or his authorized representative for ~~imprisonment for a period of~~ confinement in a jail-type institution for a period of SIX (6) MONTHS, unless sooner released by operation of law, and execution of the remainder of the sentence is hereby suspended and the defendant is placed on probation for a period of THREE (3) YEARS, commencing upon his release from confinement, upon the condition that the defendant will be of uniform good behavior, not violating any of the laws of the United States or of any State; defendant to report to the Probation Officer in the manner and at such times as directed by that officer.

As to Counts 3 thru 8 - it is adjudged that the imposition of any sentence is suspended and defendant be placed on probation for a period of THREE (3) YEARS, upon the condition that the defendant will be of uniform good behavior, not violating any of the laws of the United States or of any State; defendant to report to the Probation Officer in the manner and at such times as directed by that officer.

It Is Adjudged that

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

United States District Judge.

The Court recommends commitment to [6]

W. FARLEY POWERS, JR.

Clerk.

[1] Insert "by [name of counsel], counsel" or without counsel; the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." [2] Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. [3] Insert "in count(s) number " if required [4] Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. [5] Enter any order with respect to suspension and probation. [6] For use of Court to recommend a particular institution.

Exhibit B

JDGMENT AND COMMITMENT (Rev. 2-68) Cr. Form No. 25

United States District Court

FOR THE
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

FILED
NOV 8 1973
W. FARLEY POWERS, JR., Clerk
BY _____ Deputy Clerk

United States of America		
v.		*No.* CR. 69-73-N
JESSE HOWARD SIMPKINS		

On this 6th day of November, 1973 came the attorney for the overnment and the defendant appeared in person and by counsel.

IT IS ADJUDGED that the defendant upon his plea of NOT GUILTY and a verdict of GUILTY as to Counts 2 thru 8 as been convicted of the offense of violation of Title 18 U.S.C. Sections 2314 and 2312 (Interstate Transportation of Stolen Property and Interstate Transportation of Stolen Motor Vehicle)

On motion of Govt., ct. 1 is dismissed)

as charged in Counts 2 thru 8 of the Indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that as to Count 2, defendant pay a fine of FIVE THOUSAND ($5,000.00) DOLLARS and the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of THREE (3) YEARS, unless sooner released by operation of law. Execution of period of imprisonment is ~~hereby~~ suspended, upon condition defendant pay said fine, and defendant placed on probation for a period of THREE (3) YEARS, upon the condition that the defendant will be of uniform good behavior, not violating any of the laws of the United States or of any State; defendant to report to the Probation Officer in the manner and at such times as directed by that officer.

As to Counts 3 thru 8 - it is adjudged that the imposition of any sentence is suspended and defendant be placed on probation for a period of THREE (3) YEARS, upon ~~the same condition~~ condition that the defendant will be of uniformgood behavior, not violating any of the laws of the United States or of any State; defendant to report to the Probation Officer in the manner and at such times as directed by that officer.

20

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

United States District Judge.

The Court recommends commitment to [6]

W. FARLEY POWERS, JR.

Clerk.

[1] Insert "by [name of counsel], counsel" or without counsel; the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." [2] Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. [3] Insert "In count(s) number " if required. [4] Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. [5] Enter any order with respect to suspension and probation. [6] For use of Court to recommend a particular institution.

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

IN OPEN COURT
APR 9 1973
Clerk
Deputy Clerk

UNITED STATES OF AMERICA

v. CR. NO. 91-73-11

JERRY HOWARD SIMPKINS
JESSE HOWARD SIMPKINS

APRIL 1973 TERM - At Norfolk, Va.

SUPERSEDING INDICTMENT

THE GRAND JURY CHARGES:

On or about the 7th day of August 1970, JERRY HOWARD SIMPKINS and JESSE HOWARD SIMPKINS did unlawfully and feloniously transport and cause to be transported in interstate commerce from Astoria, New York to Norfolk, Virginia, in the Eastern District of Virginia and within the jurisdiction of this Court, a certain motor vehicle, to-wit, a Dynahoe Model 160, VIN 21260, Engine No. 58157, a further description of which motor vehicle is unknown, which said motor vehicle had theretofore been stolen as they, the said JERRY HOWARD SIMPKINS and JESSE HOWARD SIMPKINS then and there well knew.
(18 U.S.C. §2312)

A TRUE BILL:

FOREMAN

BRIAN P. GETTINGS
United States Attorney

By
Hunter W. Sims
Assistant United States Attorney

EXHIBIT D

JUDGMENT AND COMMITMENT (Rev. 2-68) Cr. Form No. 25

United States District Court

FOR THE

EASTERN DISTRICT OF VIRGINIA

NORFOLK DIVISION

FILED

NOV 7 1973

W. FARLEY POWERS, JR., Clerk

By _____ Deputy Clerk

United States of America v. JERRY HOWARD SIMPKINS	}	*No.* CR. 91-73-N

On this 6th day of November, 1973 came the attorney for the government and the defendant appeared in person and by counsel.

IT IS ADJUDGED that the defendant upon his plea of NOT GUILTY and a verdict of GUILTY has been convicted of the offense of violation of Title 18 U.S.C. Section 2312

(Interstate Transportation of Stolen Motor Vehicle)

as charged[2] in the Indictment

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for ~~imprisonment~~ CONFINEMENT for a period of[4] THREE (3) YEARS, unless sooner released by operation of law. Execution of said sentence is hereby suspended and defendant is placed on probation for a period of THREE (3) YEARS, upon the condition that the defendant will be of uniform good behavior, not violating any of the laws of the United States or of any State; defendant to report to the Probation Officer in the manner and at such times as directed by that officer.

IT IS ADJUDGED that[5]

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

United States District Judge.

The Court recommends commitment to [6]

W. FARLEY POWERS, JR.

Clerk.

[1] Insert "by [name of counsel], counsel" or without counsel; the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." [2] Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. [3] Insert "in count(s) number [4] If required Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. [5] Enter any order with respect to suspension and probation. [6] For use of Court to recommend a particular institution.

EXHIBIT E

United States District Court

FOR THE

EASTERN DISTRICT OF VIRGINIA

NORFOLK DIVISION

FILED
NOV 7 1973
W. FARLEY POWERS, JR., Clerk
BY Deputy Clerk

UNITED STATES OF AMERICA v. JESSE HOWARD SIMPKINS	}	No. CR. 91-73-N

On this 6th day of November, 1973, came the attorney for the government and the defendant appeared in person, and by counsel.

IT IS ADJUDGED that the defendant upon his plea of NOT GUILTY and a verdict of GUILTY has been convicted of the offense of violation of Title 18 U.S.C. Section 2312 (Interstate Transportation of Stolen Motor Vehicle) as charged in the Indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the imposition of any sentence be suspended and defendant be placed on probation for a period of THREE (3) YEARS, upon the condition that the defendant will be of uniform good behavior, not violating any of the laws of the United States or of any State; defendant to report to the Probation Officer in the manner and at such times as directed by that officer.

IT IS FURTHER ORDERED that during the period of probation the defendant shall conduct himself as a law-abiding, industrious citizen and observe such conditions of probation as the Court may prescribe. Otherwise the defendant may be brought before the court for a violation of the court's orders.

IT IS FURTHER ORDERED that the clerk deliver three certified copies of this judgment and order to the probation officer of this court, one of which shall be delivered to the defendant by the probation officer.

United States District Judge.

W. FARLEY POWERS, JR.

Clerk.

[1] Insert "by [name of counsel], counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel."

[2] Insert (1) "guilty, and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be

[3] Insert "in count(s) number " if required.

[4] If sentence is imposed but execution suspended, and probation ordered, enter here (1) sentence or sentences, specifying counts if [illegible] (2) whether sentences are to run concurrently or consecutively, and if consecutively, when each term is to begin with reference to [illegible] of preceding term or to any outstanding or unserved sentence, (3) whether defendant is to be further imprisoned until [illegible] of fine or fines and costs, or until he is otherwise discharged provided by law, (4) the facts regarding the suspension of the [illegible] or sentences and (5) the period of probation.

[5] If sentence is suspended and probation ordered, enter here the following: "The imposition of sentence is hereby suspended and the defendant is placed on probation for a period of years from this date."

EXHIBIT F

FPI—S2—10-31-75—300—4155

United States Court of Appeals

for the

Fourth Circuit

No. 73-2509

CR. 69-73-N
71-73-N

FILED

NOV - 8 1974

W. FARLEY POWERS, JR., Clerk,
BY [signature]
Deputy Clerk

United States of America,

Appellee,

v.

Jerry Howard Simpkins, and
Jesse Howard Simpkins,

Appellants.

Appeal from the United States District Court for the Eastern District of Virginia.

This cause came on to be heard on the record from the United States District Court for the Eastern District of Virginia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby, affirmed.

William K. Slate II
CLERK

FILED
OCT 18 1974
WILLIAM K. SLATE, II
CLERK

A True Copy, Teste:
William K. Slate, II, Clerk
By [signature]
Deputy Clerk

27

EXHIBIT 6
page 1

OVER

11/14/74: Order allowing appellants to file out of time, recalling mandate, and further staying mandete to November 18, 1974 file
3/10/75 : Order deying certiorati February 24, 1975 filed.

EXHIBIT G
page 2

No. 74-595

Jerry Howard Simpkins and Jesse Howard Simpkins,

Petitioners,

v.

United States

RECEIVED
U.S. ATTORNEY'S OFFICE
NORFOLK, VIRGINIA

ON PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Fourth ---------- Circuit.

ON CONSIDERATION of the petition for a writ of certiorari herein to the United States Court of Appeals for the Fourth ---------- Circuit, it is ordered by this Court that the said petition be, and the same is hereby, denied.

FILED
MAR 11 1975
WILLIAM K. SLATE, II
CLERK

February 24, 1975

Mr. Justice Douglas took no part in the consideration or decision of this petition.

29

A true copy MICHAEL RODAK, JR.
Test:
Clerk of the Supreme Court of the United States
By
Deputy

EXHIBIT H

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK
(formerly in the Court of Law and Chancery)

LUKE CONSTRUCTION COMPANY,	:	
Plaintiff,	:	
v.	:	LAW DOCKET NO. L-931
ROBERT W. SIMPKINS, JESSE HOWARD SIMPKINS, and JACK ALLEN BOOHER,	:	
Defendants.	:	

DEFENDANT'S, JESSE HOWARD SIMPKINS,
ANSWERS TO INTERROGATORIES

Now comes the defendant, Jesse Howard Simpkins, and for his answers to the interrogatories propounded by the plaintiff, states as follows:

1. 800 East Indian River Road, Norfolk, Virginia 23523.

2. Same as above.

3. Robert W. Simpkins and Jesse Howard Simpkins, same addresses as above.

4. Same as Interrogatory 3.

5. My attorney has all those records and I cannot state at this time how the stock was issued and to whom.

6. Same as Interrogatory 3.

7. Same as Interrogatory 3.

8. See answer to Interrogatory 5.

9. None.

DEFENDANT'S, JESSE HOWARD SIMPKINS,
RESPONSE TO REQUEST FOR ADMISSION OF
FACTS AND GENUINENESS OF DOCUMENTS

Now comes the defendant, Jesse Howard Simpkins, and for his response to the Request for Admission of Facts and Genuineness of Documents, states as follows:

1. I am not in a position to admit the allegations in Paragraph 1 because I do not have those records. Those records were taken by the FBI agents on or about 1971.

2. I cannot admit the allegations in Paragraph 2 because I do not have my records, said records having been taken by the FBI.

3. See answers to interrogatories.

4. I will admit that the only knowledge I had in any capacity with Surplus, Inc. was legal and legitimate sales of any products or equipment sold by Surplus, Inc.

5. I deny that I had any knowledge that Surplus, Inc. did not have title to any equipment that it may have sold to any person, firm, or corporation.

6. To my knowledge, Robert W. Simpkins knew that whatever equipment Surplus, Inc. sold to any person, firm or corporation was rightfully sold by Surplus, Inc. to said person, firm or corporation.

7. I deny.

8. I deny.

9. I deny.

10. I deny.

11. I cannot admit the allegations because all the court records are not available to me at this time. I will admit that an indictment was returned against me, Jesse H. Simpkins, with numerous counts.

12. I cannot admit this 12th Paragraph.

13. I admit that Jesse H. Simpkins was found guilty of certain counts in an indictment, but at this time I do not have the original documents so I can be more specific.

14. See answer to 13 above.

15. I cannot admit this because I do not have the original of the indictment in my possession.

16. See above.

17. I, Jesse H. Simpkins, was found guilty of certain counts in an indictment but I cannot be specific at this time because of the time lapse and because I do not have the original court records in my possession.

18. I deny.

19. I cannot admit because I do not have possession of the original court records.

20. I will admit that I, Jesse H. Simpkins, filed an appeal to the 4th Circuit Court of Appeals.

21. I will admit only that the judgment of the United States District Court was affirmed by the 4th Circuit Court of Appeals.

22. I will admit that I, Jesse H. Simpkins, petitioned for a writ of certiorari.

23. I cannot admit this because I do not have the original of the U. S. Supreme Court records.

24. I cannot admit because I am not in possession of the original court records pertaining to the criminal charges against me.

25. See answer to 24.

Jesse Howard Simpkins (SEAL)
Jesse Howard Simpkins

Subscribed and sworn to before me this 30th day of September, 1977.

Notary Public

My Commission expires: 3/28/81

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was hand-delivered or mailed this 30th day of September, 1977, to all counsel of record.

OFFICES OF
L, ANNINOS,
GHERTY &
BROWN
RITIME TOWER
VIRGINIA 23510

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK
(Formerly in the Court of Law and Chancery)

LUKE CONSTRUCTION COMPANY,	:	
Plaintiff,	:	
v.	:	LAW DOCKET NO. L-931
ROBERT W. SIMPKINS, JESSE HOWARD SIMPKINS, and JACK ALLEN BOOHER,	:	
Defendants.	:	

SUPPLEMENTAL ANSWERS TO REQUEST FOR ADMISSIONS PROPOUNDED TO DEFENDANTS

Now comes the defendant, Jesse Howard Simpkins, and files these additional answers to the Request for Admissions, and states as follows:

1. As to paragraph numbered 1 of the plaintiff's Request for Admissions, the defendant, Jesse Howard Simpkins, states that he does not have those records available but to the best of his knowledge and belief, and reserving the right to correct this answer, the allegations in Paragraph numbered 1 are admitted.

2. As to paragraph numbered 2 of the plaintiff's Request for Admissions, the defendant, Jesse Howard Simpkins, states that he does not have those records available but to the best of his knowledge and belief, and reserving the right to correct this answer, the allegations contained therein are admitted.

3. The allegations contained in Paragraph numbered 11 are admitted by Jesse Howard Simpkins.

4. As to Paragraph numbered 13, it is admitted only that Jesse Howard Simpkins was found guilty of Counts 2 through

5. As to Paragraph numbered 14, it is admitted only that the allegations pertaining to Jesse Howard Simpkins are correct.

6. As to Paragraph numbered 15, the allegations are admitted only as to Jesse Howard Simpkins.

7. As to Paragraph numbered 16, the allegations are admitted by Jesse Howard Simpkins.

8. As to the allegations in Paragraph numbered 17, it is admitted only that Jesse Howard Simpkins was found guilty.

9. As to the allegations in Paragraph numbered 19 referring to Jesse Howard Simpkins, it is admitted.

10. The allegations contained in Paragraph numbered 21 are admitted.

11. The allegations contained in Paragraph numbered 23 are admitted.

12. As to Paragraph numbered 24, because of the discrepancy in dates and because of the lack of records, Jesse Howard Simpkins cannot admit that it was the same property.

13. As to Paragraph numbered 25, because of the discrepancy in dates and because of the lack of records, Jesse Howard Simpkins cannot admit that it was the same property.

Augustus Anninos

Jesse Howard Simpkins

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed this 25 day of July, 1978, to Stephen C. St. John, Esquire, Williams, Worrell, Kelly & Greer, 1700 Virginia National Bank Building, Norfolk, Virginia 23510.

Augustus Anninos

Augustus Anninos, Esquire
HOWELL, ANNINOS, DAUGHERTY & BROWN
808 Maritime Tower
Norfolk, Virginia 23510

VIRGINIA

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK
(formerly in the Court of Law and Chancery)

LUKE CONSTRUCTION COMPANY,

Plaintiff,

v. LAW DOCKET NO. L-931

ROBERT W. SIMPKINS,
JESSE HOWARD SIMPKINS,
and JACK ALLEN BOOHER,

Defendants.

MOTION FOR SUMMARY JUDGMENT

NOW COMES the plaintiff herein, LUKE CONSTRUCTION COMPANY, by counsel, and, pursuant to Rule 3:18 of the Rules of the Supreme Court of Virginia, moves this Honorable Court for entry of a summary judgment on the issue of liability of the defendant, Jesse Howard Simpkins, in favor of the plaintiff herein. The plaintiff represents to the Court that there is no genuine dispute as to the following facts, which are dispositive of the issue of liability in this cause as to the defendant, Jesse Howard Simpkins, to-wit:

1. That the defendant, Jesse Howard Simpkins, has in his supplemental answers to request for admissions propounded to the defendants, admitted that on or about July 11, 1970 in the City of Norfolk, Surplus, Inc. sold to the plaintiff one used 1969 LeRoi compressor model number 600 RD 2C mounted on four pneumatic tires, powered by a GM 6V diesel engine, serial number 329X519, for the sum of Fourteen Thousand Five Hundred dollars ($14,500.00), less trade-in allowance of Five Thousand Dollars ($5,000.00) for a backhoe owned by the plaintiff, plus Virginia State sales tax in the amount of Three Hundred Eighty Dollars ($380.00) for a total cash balance due of Nine Thousand Eight Hundred Eighty Dollars ($9,880.00).

2. That the defendant, Jesse Howard Simpkins, has admitted in his supplemental answers to request for admissions propounded to defendants, that on or about September 14, 1970 in the City of Norfolk, Surplus Inc. sold to plaintiff, one used 1969 Dyna-hoe, model D160 powered by a GM 3-53 diesel engine, for the sum of Nine Thousand Two Hundred Dollars ($9,200.00) less a trade-in allowance of Four Thousand Five Hundred Dollars ($4,500.00), plus Virginia state sales tax of One Hundred Eighty-eight dollars ($188.00) for a total cash balance due of Four Thousand Eight Hundred Eighty-eight dollars ($4,888.00).

3. That the defendant, Jesse Howard Simpkins has admitted in his supplemental answers to request for admissions propounded to defendants, that on or about March 12, 1973 in the United States District Court for the Eastern District of Virginia, in Alexandria, Virginia, Robert W. Simpkins and Jesse H. Simpkins were indicted by a grand jury on eight (8) counts of interstate transportation of stolen property in interstate transportation of stolen motor vehicles, it being Criminal number 69-73-N.

4. That the defendant, Jesse Howard Simpkins has admitted that on or about November 6, 1973, Jesse Howard Simpkins was found guilty of counts 2 through 8 of the indictment and the verdict returned in the United States District Court for the Eastern District of Virginia, Norfolk, Virginia.

5. That the defendant, Jesse Howard Simpkins has admitted in his supplemental answers to request for admissions propounded to defendants, that the copies attached to the plaintiff's request for admissions of the judgment and commitment returned in the above said Court on the date referred to in request numbered 13 above and marked as "Exhibit C" for Jesse H. Simpkins

6. That the defendant, Jesse Howard Simpkins, has admitted in his supplemental answers to request for admissions propounded to defendant, that on or about April 9, 1973, in the United States District Court for the Eastern District of Virginia, in Norfolk, Jesse H. Simpkins was indicted by grand jury on one count of interstate transportation of a stolen motor vehicle, namely one Dyna-hoe model 160,VIN 21260, engine number 58157, it being criminal number 91-73-N.

7. That the defendant, Jesse Howard Simpkins, has admitted in his supplemental answers to request for admissions propounded to defendants that the copy of the indictment marked as "Exhibit D" and attached to the plaintiff's request for admissions is genuine.

8. That the defendant, Jesse Howard Simpkins has admitted in his supplemental answers to request for admissions propounded to defendant that on or about November 6, 1973 Jesse H. Simpkins was found guilty under the indictment referred to in the paragraph immediately above.

9. That the defendant, Jesse Howard Simpkins has admitted in his supplemental answers to request for admissions propounded to defendants that the copy of the judgment and commitment in connection with the indictment of Jesse H. Simpkins and returned in the United States District Court on the date referred to in request for admissions numbered 16 and attached as "Exhibit F" to the aforesaid request for admissions is genuine.

10. That the defendant, Jesse Howard Simpkins has admitted in his supplemental answers to request for admissions propounded to defendants that on or about October 18, 1974 Jesse Howard Simpkins filed an appeal with the United States Court of Appeals for the Fourth Circuit in connection with his conviction in the

United States District Court for the Eastern District of Virginia, United States Court of Appeals for the Fourth Circuit Docket number being 73-2509.

11. That the defendant, Jesse Howard Simpkins, has admitted in his supplemental answers to request for admissions propounded to defendants that the judgment of the United States District Court for the Eastern District of Virginia from which the appeal was taken was affirmed by the Fourth Circuit Court of Appeals on or about October 18, 1974 and that the copy of the opinion of the United States Court of Appeals for the Fourth Circuit which is marked "Exhibit G" and is attached to the plaintiff's request for admissions is genuine.

12. That the defendant, Jesse Howard Simpkins, has admitted in his answers to request for admissions propounded to defendants that on or about February 24, 1975, Jesse H. Simpkins petitioned the Supreme Court of the United States for a Writ of Certiorari.

13. That the defendant, Jesse Howard Simpkins, in his supplemental answers to request for admissions propounded to defendants has admitted that the copy of the denial of the Supreme Court of the United States on that petition referred to in request for admissions numbered 21 and marked as "Exhibit H" and attached to the plaintiff's request for admissions, is genuine.

WHEREFORE, the defendant, Luke Construction Company, moves for entry of summary judgment as to the issue of liability of the defendant, Jesse Howard Simpkins herein, in favor of the plaintiff, on the grounds that the defendant, Jesse Howard Simpkins,

liability to the plaintiff, Luke Construction Company, for wrongfully and fraudulently converting the property of the plaintiff, has been established by the judgment of conviction in the criminal prosecution of the defendant in the United States District Court for the Eastern District of Virginia and consequently the defendant, Jesse Howard Simpkins, is estopped to deny the truth of the facts established as true in the criminal trial in the United States District Court for the Eastern District of Virginia. Accordingly, the plaintiff, Luke Construction Company, prays that summary judgment may be entered on the issue of liability as to the defendant, Jesse Howard Simpkins.

LUKE CONSTRUCTION COMPANY.

By_____
Of Counsel

WILLIAMS, WORRELL KELLY & GREER
1700 Virginia National Bank Building
Norfolk, Virginia 23510

NOTICE OF MOTION

TAKE NOTICE that on October 17, 1978 at 9.30 a.m., counsel for the plaintiff will move the Circuit Court of the City of Norfolk, 100 St. Paul's Boulevard, for entry of summary judgment in accord with the foregoing motion.

LUKE CONSTRUCTION COMPANY

By_____
Of Counsel

WILLIAMS,WORRELL,KELLY & GREER
1700 Virginia National Bank Building
Norfolk, Virginia 23510

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing motion for summary judgment was delivered to Mr. Augustus Anninos, Howell, Anninos, Daugherty, and Brown, 808 Maritime Tower, Norfolk, Virginia, 23510, counsel for the defendants, Jesse Howard Simpkins and Robert W. Simpkins, this day of October, 1978.

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK
(Formerly in the Court of Law and Chancery)

LUKE CONSTRUCTION COMPANY,	:	
Plaintiff,	:	
	:	LAW DOCKET NO. L-931
v.	:	
ROBERT W. SIMPKINS, et als,	:	
Defendants.	:	

O R D E R

THIS CASE came on this day to be heard upon the plaintiff's Motion for Summary Judgment. The Court, having considered the briefs filed by the parties to this case, and having heard argument of counsel, does ADJUDGE, ORDER and DECREE that the Motion for Summary Judgment be and it is hereby DENIED, to which action of the Court the plaintiff excepts.

ENTER:

_____
Judge

WE ASK FOR THIS:

_____
Counsel for Robert W. Simpkins
and Jesse Howard Simpkins

SEEN AND EXCEPTED TO:

_____
Counsel for Luke Construction Company.

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK
(formerly in the Court of Law and Chancery)

LUKE CONSTRUCTION COMPANY, Plaintiff vs. ROBERT W. SIMPKINS, JESSE HOWARD SIMPKINS and JACK ALLEN BOOHER, Defendants	LAW DOCKET NO. L-931

ORDER

THIS MATTER came this day to be heard upon plaintiff's renewal of its motion for entry of a summary judgment against the defendant, Jesse Howard Simpkins;

And it appearing to the Court that the plaintiff, Luke Construction Company, has no further evidence or argument to place before this Court in support of its motion for entry of a summary judgment against the defendant, Jesse Howard Simpkins;

And it further appearing to the Court that the plaintiff, Luke Construction Company, has no further evidence or argument to place before this Court on the merits of its claim for recovery against the defendants, Jesse Howard Simpkins and Robert W. Simpkins;

And it further appearing before the Court that the plaintiff, Luke Construction Company, has rested its case against the defendants, Jesse Howard Simpkins and Robert W. Simpkins;

And it further appearing to the Court that the motion of the plaintiff, Luke Construction Company, for entry of a summary judgment on the issue of the liabilities of the defendant, Jesse Howard Simpkins, was properly denied;

NOW, THEREFORE, upon the basis of the denial of the plaintiff's motion for summary judgment and the failure of the plaintiff to offer any further evidence on the merits of its claim for recovery against the defendants, Jesse Howard Simpkins and Robert W. Simpkins, does hereby strike the evidence of the plaintiff, and does hereby ADJUDGE, ORDER and DECREE that the motion for judgment of the plaintiff, Luke Construction Company, be and hereby is, dismissed with prejudice, to which action of the Court in the denial of its motion for summary judgment previously filed herein and in the dismissal of its motion for judgment against the defendants, Robert W. Simpkins and Jesse Howard Simpkins, the plaintiff excepts and objects.

Enter this Order:

_____
Judge

Seen and all objections saved:

Stephen C. Stone p.q.

Virginius Thomas p.d
for the defendants Simpkins

LAW OFFICES OF

HOWELL, ANNINOS, DAUGHERTY & BROWN

HENRY E. HOWELL, JR.
AUGUSTUS ANNINOS
GUY E. DAUGHERTY
ROBERT E. BROWN
J. GRAY LAWRENCE, JR.

LOWELL A. STANLEY

SUITE 808 MARITIME TOWER, NORFOLK, VIRGINIA 23510

TELEPHONE (804) 623-7334

October 2, 1979

Stephen C. St.John, Esquire,
Messrs. Williams, Worrell, Kelly & Greer,
Post Office Box 3416,
Norfolk, Virginia 23514.

Re: Luke Construction Company vs. Robert W. Simpkins, Jesse H. Simpkins, and Jack Allen Booher, Law Docket No. L-931; L-1490-79.

Dear Mr. St. John:

This will confirm that I called you on this morning at the request of The Honorable Judge Gutterman so that we could both appear at his office to resolve the question of certification of a "Statement of Facts". I told you that I had not received a copy of the letter to Judge Gutterman received on today. You stated that you rely on the case of the City of Richmond vs. Randall, 215 Va. 506, specifically headnote 1 of said case. After reading the case, you and I agree that this case supports my position that a Statement of Facts need not be certified in this case. I also stated to you that I will not raise any objection to your compliance or non-compliance to Rule 5:9. You then stated that I can represent the above to the Court and you agreed that it was not necessary for Judge Gutterman to certify the Statement of Facts that you had presented.

I met with the Judge on today at about 12:50 P.M. and made the above representations to him and at his request, this letter will become part of the record on appeal.

Very truly yours,

HOWELL, ANNINOS, DAUGHERTY & BROWN,

By: Augustus Anninos
Augustus Anninos

AA:r

CC: - The Honorable Morris B. Gutterman,
Judge, Circuit Court, City of Norfolk,
St. Paul's Boulevard,
Norfolk, Virginia 23510.