214 Va. 131

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Clerk, Supreme Court of Appeals
Richmond, Va.

IN THE

Supreme Court of Virginia

AT RICHMOND

Record No. 8139

ERNEST H. MOLLENAUER
Appellant

v.

NATIONWIDE MUTUAL INSURANCE COMPANY
Appellee

APPEAL FROM THE CIRCUIT COURT OF
THE CITY OF NORFOLK

JOINT APPENDIX

Thomas W. Moss, Jr.
Moss & Moss
830 Maritime Tower
Norfolk, Virginia 23510
Counsel for Appellant

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Counsel for Appellee

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VIRGINIA:

IN THE CIVIL JUSTICE COURT OF THE CITY OF NORFOLK

ERNEST H. MOLLENAUER, Plaintiff,	:	
vs.	:	NOTICE OF MOTION FOR JUDGMENT
NATIONWIDE MUTUAL INSURANCE CO., Defendant.	:	

TO: Mr. David Smythe, Registered Agent
Nationwide Mutual Insurance Co.
5401 Fort Avenue
Lynchburg, Virginia

TAKE NOTICE, that on Thursday, April 1, 1971, at 10:00 a.m., plaintiff will move the said Court at Norfolk, Virginia, for judgment against the defendant upon a claim for money, to-wit: for the sum of $800.00 due by reason of contract of insurance dated January 16, 1969, and numbered 53-BC-057-149 issued to the undersigned by the defendant, a claim upon which policy has been made and denied by the defendant.

ERNEST H. MOLLENAUER, Plaintiff

By Thomas W. Moss, Jr. /s/
Of Counsel

IN THE CIVIL COURT ON THE 6th DAY OF AUGUST, 1971.

JUDGMENT: for the Defendant.

Fred E. Martin, Jr. /s/ Judge

VIRGINIA:

IN THE CIVIL JUSTICE COURT OF THE CITY OF NORFOLK

ENDORSEMENT OF APPEAL

ERNEST H. MOLLENAUER, Plaintiff,	:	NOTICE OF MOTION
vs.	:	
NATIONWIDE MUTUAL INSURANCE CO., Defendant.	:	

The said Ernest H. Mollenauer, Plaintiff, having prayed an appeal from judgment in this case, and tendered Twenty-five and no/100 Dollars in lieu of bond, for the payment of said judgment and all cost and damages or all costs and damages, in case the same shall be affirmed, an appeal from judgment is granted the said Ernest H. Mollenauer, Plaintiff, to the Circuit Court of the City of Norfolk, Va.

Given under my hand this 6th day of August, 1971.

Mary V. Hamilton /s/
Clerk

Thomas W. Moss, p.q.
Plaintiff's Costs $4.50

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK
ON THE 2ND DAY OF JUNE, IN THE YEAR 1972.

ERNEST H. MOLLENAUER, Plaintiff,	:	
vs.	:	L71-734-N File #L623-72
NATIONWIDE MUTUAL INSURANCE CO., Defendant.	:	

This day came the plaintiff, in person and by counsel, and the defendant by Griffon C. Wakefield, its Claim Representative, and by counsel, and neither of the parties demanding a trial by jury, the whole matter of law and fact was heard and determined by the Court.

Whereupon it is considered and ordered by the Court that the plaintiff take nothing for his motion for judgment herein and that the defendant go hence without day and recover against the plaintiff its costs about its defense herein expended.

Judge Johnston.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

ERNEST H. MOLLENAUER,	:	
Plaintiff,	:	AT LAW
	:	NO. L-71-734-N
vs.	:	L-623-72
	:	
NATIONWIDE MUTUAL INSURANCE CO.,	:	
	:	
Defendant.	:	

O R D E R

THIS CAUSE came on this day to be heard on motion of the plaintiff, Ernest H. Mollenauer to set aside the verdict for the defendant entered in this cause on June 2, 1972, on the grounds that said verdict was contrary to the law and evidence presented in this cause, and was argued by counsel, whereupon, it is,

ORDERED that the motion to set aside the verdict be and is hereby denied.

Thomas W. Moss, Jr. /s/, p.q.

Joseph A. Leafe /s/, p.d.

Enter: 6-13-72
TMJ /s/

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

ERNEST H. MOLLENAUER, Plaintiff,	:	
vs.	:	AT LAW NO. L-71-734
NATIONWIDE MUTUAL INSURANCE COMPANY, Defendant.	:	

WRITTEN STATEMENT OF TESTIMONY

1. The plaintiff, Ernest H. Mollenauer, doing business as Azalea Garden Texaco, 2700 Azalea Garden Road, Norfolk, Virginia, is the named insured on a valid insurance policy issued by Nationwide Mutual Insurance Company, No. 53-BC-057-149, which said policy was in force at the time of the loss, and introduced into evidence as plaintiff's Exhibit 1. It was stipulated by the parties that a burglary occurred at the plaintiff's residence, 3522 Wellington Avenue, Norfolk, Virginia, sometime between December 25 and December 28, 1969. The Norfolk Police Division Offense Report was introduced by agreement of counsel and marked plaintiff's Exhibit 2.

2. As a result of the loss of certain monies in the burglary, plaintiff filed a claim against Nationwide Mutual Insurance Company for Eight Hundred Dollars ($800.00) and the claim was denied.

3. The only testimony was presented by the plaintiff himself. He testified that the $800.00 loss consisted of $700.00 in $50.00 and $100.00 bills which he had accumulated over a period of several weeks or more. The remaining $100.00 consisted of $1.00 and $2.00 bills, silver certificates which he had accumulated over a long period of time. All of the funds stolen were originally earned in the business. Plaintiff further testified that he maintained a business bank account and that when he would go to the bank to make deposits, he would periodically obtain a $50.00 or $100.00 bill in exchange for smaller bills. These $50.00 and $100.00 bills he would take home and put aside as a "slush fund" to be used for business of which he is the sole proprietor or personal use as he saw fit. Plaintiff testified further that part of this "slush fund" had in fact been used for the personal trip he and his wife were on at the time of the burglary.

4. The plaintiff testified further that he had taken the cash receipts from the business for December 24, 1969 to his home and they were in a separate bag under his bed. These receipts were not taken in the burglary and were still there when he returned from his trip.

Thomas M. Johnston /s/
Judge

Seen and agreed to:

Thomas W. Moss, Jr. /s/, p.q.

Joseph A. Leafe /s/, p.d.

CIRCUIT COURT
Filed July 11, 1972
By: Dave Ward /s/ D.C.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

ERNEST H. MOLLENAUER,	:	
Plaintiff,	:	
vs.	:	AT LAW NO. L-71-734 L-623-72
NATIONWIDE MUTUAL INSURANCE COMPANY,	:	
Defendant.	:	

TO: Mr. Hugh L. Stovall
Clerk of the Circuit Court of
the City of Norfolk
Courts Building
St. Paul's Boulevard
Norfolk, Virginia

NOTICE OF APPEAL AND
ASSIGNMENT OF ERROR

Notice is hereby given that Ernest H. Mollenauer appeals from a final judgment for the defendant rendered by this Court on the 2nd day of June, 1972, and announces his intention of applying for a Writ of Error to the Supreme Court of Appeals of Virginia.

ASSIGNMENT OF ERROR

1. The Trial Court erred in finding that the loss suffered by the plaintiff, Ernest H. Mollenauer, was not within the coverage afforded by the policy issued to the plaintiff by Nationwide Mutual Insurance Company.

2. The Trial Court erred in rendering judgment for the defendant.

3. The Trial Court erred in denying the plaintiff's motion to set aside the verdict entered on June 2, 1972, as being contrary to the law and the evidence presented in this case.

Given under my hand this 16th day of June, 1972.

ERNEST H. MOLLENAUER

By Thomas W. Moss, Jr. /s/
Of Counsel

Moss and Moss
Thomas W. Moss, Jr., p.q.
830 Maritime Tower
Norfolk, Virginia 23510

CIRCUIT COURT
Filed June 19, 1972
By Dave Ward /s/ D.C.