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Clerk, Supreme Court of Appeals
Richmond, Va.

214 Va. 144

IN THE

SUPREME COURT OF VIRGINIA

RECORD NO. 8159

GLADYS R. McCORMICK and
T. RALPH McCORMICK

Appellants,

VERSUS

WILLIAM M. A. ROMANS, JR.,
and CHARLES W. GUNN, JR.

Appellees,

ON WRIT OF APPEAL TO THE CIRCUIT
COURT OF ROCKBRIDGE COUNTY, VIRGINIA

APPENDIX

Lawrence C. Musgrove
306 Shenandoah Building
Roanoke, Virginia 24011

Kenneth C. King, Jr.
306 Shenandoah Building
Roanoke, Virginia

Counsel for Appellants

APPENDIX

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GLADYS McCORMICK . . PLAINTIFF

VS.) AMENDED MOTION FOR JUDGMENT

WILLIAM M. A. ROMANS, JR. and
CHARLES W. GUNN, JR. . . DEFENDANTS

The undersigned hereby moves the Circuit Court of Rockbridge County, Virginia, for a judgment against you and each of you for the sum of FORTY-FOUR THOUSAND NINE HUNDRED FOUR DOLLARS AND EIGHTY-ONE CENTS ($44,904.81), which sum is justly due and owing by you and each of you to the undersigned by reason of the following particulars, to-wit:

1. That William M. A. Romans, Jr. and Charles W. Gunn, Jr. were partners in the Law Firm of Romans and Gunn and that throughout the times mentioned herein, worked as and held themselves out to the public to be partners in the practice of law.

2. That on or about April, 1963, the plaintiff, Gladys McCormick, entered into an agreement with the partnership of Romans and Gunn, Attorneys at Law, through one of the partners, to-wit, William M. A. Romans, Jr., to handle the sale of certain property belonging to the plaintiff located in Rockbridge County, Virginia.

3. That during the course of this agreement, certain monies came into the hands of the partnership and were placed in a partnership account by the defendant, William M. A. Romans, Jr. , and out of said partnership account certain payments were made which were incident to the agreement.

4. That requests for an accounting of this transaction known as Thornridge Estate Subdivision Account was made by the plaintiff, but none was ever furnished by either Charles W. Gunn, Jr. or by William M. A. Romans, Jr., who handled said account for the partnership.

5. That in August, 1967, the Accounting Firm of Persinger and

Leonard, Certified Public Accountants, was engaged to audit the account known as Thornridge Estate Subdivision and which audit shows that from April, 1963, to August of 1967 proceeds from the sale of part of that property and proceeds from bank loans on said property, and cash, and dividends received, amount to Two Hundred Nine Thousand One Hundred Sixty-Eight Dollars and Seventy Cents ($209,168.70) and that out of said proceeds, disbursements relative to said property were made in the total amount of One Hundred Sixty-Seven Thousand One Hundred Fifty-Eight Dollars and Ninety Cents ($167,158.90) leaving a balance due to the plaintiff, Gladys McCormick, of Forty-Two Thousand Nine Dollars and Eighty Cents ($42,009.80). That the cost of said audit was Two Thousand Eight Hundred Ninety-Five Dollars and One Cent ($2,895.01).

6. That throughout the handling of this account and transaction for the plaintiff, the said William M. A. Romans, Jr. was acting by and on behalf of the partnership referred to in Paragraph No. 1.

7. That during the month of October, 1967, your plaintiff, through her attorneys, made demand upon said William M. A. Romans, Jr. for the sum of Forty-Two Thousand Nine Dollars and Eighty Cents ($42,009.80) representing the amount of money belonging and due to the plaintiff that had come into the hands of the defendants, William M. A. Romans, Jr. and Charles W. Gunn, Jr., and for Two Thousand Eight Hundred Ninety-Five Dollars and One Cent ($2,895.01) representing the cost of auditing books of said partnership in order to determine the correct amount of money due and owing to the plaintiff, and that the defendants refused and have continued to refuse to account for said sum of Forty-Two Thousand Nine Dollars and Eighty Cents ($42,009.80) and have refused to pay the same or any portion thereof to the plaintiff, and that said monies remain due and unpaid at this time.

8. That the partnership is liable to the plaintiff for all monies

which have been retained by William M. A. Romans, Jr. or Charles W. Gunn, Jr. and that each of the defendants are jointly and severally liable to the plaintiff for the same under §50-13, 50-14, 50-15, Code of Virginia, 1950, as amended.

WHEREFORE, Plaintiff moves for a judgment against you and each of you in the sum of Forty-Four Thousand Nine Hundred Four Dollars and Eighty-One Cents ($44,904.81) plus the cost of these proceedings.

GLADYS McCORMICK

By _____
Of Counsel

McClintock and Mullins
Attorneys at Law
504 Virginia Avenue
P.O. Box 607
Bluefield, Virginia 24605

I hereby certify that a copy of the above pleading was mailed to Hunter, Fox & Fox, Suite 310, Seven-O-Seven Building, Roanoke, Virginia 24011; and William O. Roberts, Jr., Esquire, 18 W. Washington Street, Lexington, Virginia, Attorneys of record for the defendants, and Sidney F. Parham, Jr., Committee for William M. A. Romans, Jr., Buena Vista, Virginia, this 28th day of July, 1969.

_____
Of Counsel

Filed in the Clerk's Office of the Circuit Court
of Rockbridge County, Virginia
on the 29 day of July 1969
Harry B. Smith Clerk
_____ D. C.

GLADYS McCORMICK

Plaintiff

VS.

WILLIAM M. A. ROMANS, JR., and
CHARLES W. GUNN, JR.

Defendants

PLEA IN BAR

Comes now the defendant, Charles W. Gunn, Jr., by his attorneys, and alleges that the Motion for Judgment filed against him by the plaintiff is barred by the statute of limitations.

WHEREFORE, this defendant respectfully moves the Court to dismiss this action as to him and to enter final judgment in this defendant's favor.

CHARLES W. GUNN, JR.
BY COUNSEL

HUNTER, FOX and FOX
Suite 310, Seven-O-Seven Building
Roanoke, Virginia 24011

WILLIAM O. ROBERTS, JR.
Attorney at Law
18 W. Washington Street
Lexington, Virginia

Counsel of record for Defendant, Charles W. Gunn, Jr.

By: William O. Roberts
William O. Roberts, Jr.

I, William O. Roberts, Jr., do hereby certify that a true copy of the foregoing was mailed to McClintock and Mullins, Attorneys at Law, 504 Virginia Avenue, P. O. Box 607, Bluefield, Virginia 24605, on the 13th day of August, 1969, Counsel of record for the plaintiff.

William O. Roberts

WILLIAM O. ROBERTS, JR.
ATTORNEY AT LAW
LEXINGTON, VIRGINIA

Filed in the Clerk's Office of the Circuit Court of Rockbridge County, Virginia
on the 13 day of Aug 1969
Clerk
Ellen R. Emerson D. C.

GLADYS McCORMICK

Plaintiff

VS.

WILLIAM M. A. ROMANS, JR., and
CHARLES W. GUNN, JR.

Defendants

DEMURRER OF DEFENDANT,

CHARLES W. GUNN, JR.

Comes now the defendant, Charles W. Gunn, Jr., by Counsel, and demurs to the Motion for Judgment filed against him on the ground that the same is insufficient in law.

WHEREFORE, this defendant respectfully moves the Court to dismiss this action as to him and to enter final judgment in this defendant's favor.

CHARLES W. GUNN, JR.
BY COUNSEL

HUNTER, FOX and FOX
Suite 310, Seven-O-Seven Building
Roanoke, Virginia 24011

WILLIAM O. ROBERTS, JR.
Attorney at Law
18 W. Washington Street
Lexington, Virginia

Counsel of record for Defendant, Charles W. Gunn, Jr.

By: William O. Roberts
William O. Roberts, Jr.

I, William O. Roberts, Jr., do hereby certify that a true copy of the foregoing was mailed to McClintock and Mullins, Attorneys at Law, 504 Virginia Avenue, P. O. Box 607, Bluefield, Virginia 24605, on the 13th day of August, 1969, Counsel of record for the plaintiff.

William O. Roberts

Filed in the Clerk's Office of the Circuit Court of Rockbridge County, Virginia on the 13 day of Aug 1969

Clerk

D. C.

WILLIAM O. ROBERTS, JR.
ATTORNEY AT LAW
LEXINGTON, VIRGINIA

TWENTY-SEVENTH JUDICIAL CIRCUIT OF VIRGINIA

COUNTIES OF BUCHANAN, DICKENSON AND RUSSELL

JUDGES:

RAYMOND J. BOYD
Lebanon, Virginia 24266

GLYN R. PHILLIPS
Clintwood, Virginia 24228

May 10, 1972

Lawrence C. Musgrove, Esquire
Attorney at Law
306 Shenandoah Building
Roanoke, Virginia

William O. Roberts, Jr., Esquire
Attorney at Law
Lexington, Virginia

Re: McCormick vs. Romans and Gunn

Gentlemen:

The Court is sustaining the Demurrer and Plea in Bar of the defendant Charles W. Gunn, Jr. to the motion for judgment and amended motion for judgment.

The Court is sustaining the Plea in Bar and holding that the statute of limitations is one year against the defendant Gunn and is controlled by Sections 8-24 and 64-135, Code of Virginia 1950, as amended.

The Court will grant judgment against the defendant Romans upon the appointment of a Special Commissioner to ascertain the amount due the plaintiff and after that amount is determined by said commissioner.

An appropriate order may be prepared pursuant to this decision and forwarded to the Court for signature and entry.

Very truly yours,

Glyn R. Phillips, Judge

GLADYS McCORMICK and T. RALPH McCORMICK, Complainants	)	
VS.	)	O R D E R
WILLIAM M. A. ROMANS, JR. and CHARLES W. GUNN, JR., Defendants	)	

THIS CAUSE came on this day to be heard upon the papers formerly read; upon the Demurrer and Plea in Bar filed herein by the defendant, Charles W. Gunn, Jr., to the Motion for Judgment (now considered as a Bill of Complaint since the transfer of this proceeding to the equity side of the Court) filed herein against him by the complainants, and upon written memoranda of law filed herein by counsel for defendant, Gunn, and counsel for complainants, and upon oral argument of counsel.

UPON CONSIDERATION of all of which the Court is of the opinion that the Demurrer should be sustained inasmuch as the cause of action alleged in the Bill of Complaint, as amended, is one properly maintainable only against the partnership and not the partners as individuals. Since the complainants have brought their action against the defendants as individuals and have failed to make the partnership a party defendant, the Court doth sustain the Demurrer of the defendant, Charles W. Gunn, Jr.

The Court is further of the opinion that the statute of limitations is one year as to the defendant, Gunn, and is controlled by Sections 8-24 and 64-135 (now 64.1-145) of the Code of Virginia, as amended, and it appearing to the Court from the pleadings filed herein that this action was not filed within one year from the date the cause of action accrued, the Court doth sustain the Plea in Bar filed by the defendant, Charles W. Gunn, Jr.

For the reasons hereinabove stated, it is ORDERED that the defendant, Charles W. Gunn, Jr., be, and he hereby is, dismissed as party defendant to this suit, and this order is final as to said defendant, to all of which actions of the Court, the complainants, Glayds McCormick and T. Ralph McCormick, by counsel, duly excepted.

The Court being of the opinion that judgment should be granted the complainants as to defendant, William M. A. Romans, Jr., doth continue this cause for the appointment of a Special Commissioner to ascertain the amount of said judgment.

It is further ORDERED that a copy of the Court's letter opinion of May 10, 1972, directed to Lawrence C. Musgrove, Esquire, and William O. Roberts, Jr., Esquire, be filed with the papers in this cause.

The Clerk of this Court shall forthwith mail a certified copy of this order to each of the following: William O. Roberts, Jr., Esquire, Attorney at Law, 18 West Washington Street, Lexington, Virginia; Roy B. Zimmerman,

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Esquire, 130 South Royal Street, Alexandria, Virginia 22314; and Lawrence C. Musgrove, Esquire, 306 Shenandoah Building, Roanoke, Virginia 24011.

ENTER: MAY 23, 1972

Judge Designate

SEEN:

William O. Roberts, Jr.
Counsel for Defendant
Charles W. Gunn, Jr.

Roy B. Zimmerman
Counsel for Defendant,
William M. A. Romans, Jr.

SEEN AND OBJECTED TO:

Lawrence C. Musgrove
Counsel for Complainants

ENTERED 5/23/72
LAW ORDER BOOK
NUMBER 10
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GLADYS MCCORMICK and T. RALPH MCCORMICK, COMPLAINANTS VS. WILLIAM M. A. ROMANS, JR. and CHARLES W. GUNN, JR., DEFENDANTS	)	NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

NOTICE OF APPEAL

The Complainants, Gladys McCormick and T. Ralph McCormick, hereby give Notice that they will appeal to the Supreme Court of Virginia from the final order entered by the Circuit Court of Rockbridge County, Virginia, on May 23, 1972, insofar as the same relates to defendant, Charles W. Gunn, Jr.

No transcript, statement of facts, testimony or other incidents of trial will hereafter be filed.

ASSIGNMENTS OF ERROR

The Complainants, Gladys McCormick and T. Ralph McCormick, assign as error the following:

1. The Court erred in sustaining the Demurrer filed by defendant Charles W. Gunn, Jr. to the motion for Judgment as amended.

2. The Court erred in sustaining the Plea in Bar filed by the defendant, Charles W. Gunn, Jr., to the Motion for Judgment as amended.

3. The Court erred in dismissing Charles W. Gunn, Jr., as a party defendant to this cause.

GLADYS MCCORMICK and
T. RALPH MCCORMICK, COMPLAINANTS

BY Lawrence C. Musgrove
Counsel

Lawrence C. Musgrove
306 Shenandoah Building
Roanoke, Virginia, 24011
Counsel for Petitioners

CERTIFICATE

I hereby certify that a copy of the foregoing notice of Appeal and Assignments of Error was mailed this _____ day of June, 1972, to William O. Roberts, Jr., Esquire, 18 West Washington Street, Lexington, Virginia, attorney for defendant, Charles W. Gunn, Jr., and to Ray B. Zimmerman, Esquire, 130 South Royal Street, Alexandria, Virginia, 22314, attorney for defendant, William M. A. Romans, Jr.

Lawrence C. Musgrove