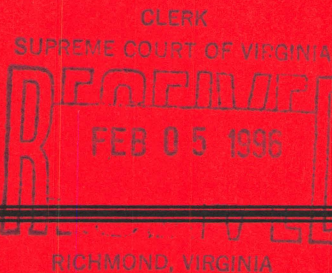


252VA57



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IN THE

# Supreme Court of Virginia

RECORD NO. 951836

ANNIE CONNER,

*Appellant,*

v.

JAMES ROSE,

*Appellee.*

JOINT APPENDIX

Donald J. Gee  
Sharon N. Horner  
McEACHIN & GEE, P.C.  
700 East Main Street, Suite 1201  
Richmond, Virginia 23219  
(804) 775-2374

*Counsel for Appellant*

John Marshall  
MARSHALL & MARSHALL  
505 East Main Street  
Richmond, Virginia 23219  
(804) 795-1423

*Counsel for Appellee*



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V I R G I N I A:

IN THE CIRCUIT COURT OF HENRICO COUNTY

ANNIE CONNER,  
Plaintiff

v.

Civil Action No.: \_\_\_\_\_

JAMES M. ROSE  
4000 Williamsburg Rd.  
Richmond, VA 23231  
Defendant

MOTION FOR JUDGMENT

COMES NOW the plaintiff, ANNIE CONNER (hereinafter CONNER) and moves the Court for judgment against the defendant, JAMES M. ROSE, (hereinafter ROSE) in the amount of Six Thousand Dollars (\$6,000.00) in compensatory damages and Five Thousand Dollars (\$5,000.00) in punitive damages with interest from June 1, 1994, all for the reasons stated below:

1. On May 24, 1993, ROSE sold CONNER a house and lot in Fair Oaks Terrace designated as Lot 7 in Block D, Henrico County, Virginia.

2. In connection with the sale of the house and lot, ROSE executed an agreement to repair certain items on a punch list on or before July 1, 1993, and also warranted all other major items in the house for a period of one year from June 1, 1993. Major items were defined as those that would cost more than Two Thousand Dollars (\$2,000.00) to repair. See Exhibit "A".

3. CONNER alleges ROSE fraudulently concealed water damage to the bathroom floor by deliberately covering the floor with new flooring and refusing to allow plaintiff to view his work until it

was completed.

4. Covering the water damaged floor to make it look whole constituted a false representation by ROSE to CONNER of a material fact and the representation was made intentionally and knowingly with an intent to mislead CONNER. CONNER relied on the misrepresentation and was damaged as a result of that reliance.

5. Pursuant to the terms of the one year warranty, CONNER telephoned ROSE several times about items that needed repair or replacement. After receiving no response, CONNER wrote to ROSE on May 31, 1994, and listed a series of items. See Exhibit "B".

5. The air conditioning/heating unit blows only cold air in the winter. Replacing it will cost more than Two Thousand Dollars (\$2000.00).

6. Repairing the leaking roof and leaking windows and the damage to the bathroom floor will cost more than Two Thousand Dollars (\$2,000.00).

7. ROSE has failed to perform any of the work agreed to in the contract, Exhibit "A".

WHEREFORE the plaintiff, CONNER, demands judgment against ROSE in the amount of Six Thousand Dollars (\$6,000.00) in compensatory damages and Five Thousand Dollars (\$5,000.00) in punitive damages with interest from June 1, 1993.

A TRIAL BY JURY IS DEMANDED.

ANNIE CONNER

By

Shaun N. Harno  
OF COUNSEL

Sharon N. Horner  
Donald J. Gee  
McEachin and Gee, P.C.  
700 E. Main Street  
Richmond, VA 23219  
(804) 775-2374

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document was mailed, postage pre-paid, to James M. Rose, 4000 Williamsburg Road, Richmond, VA 23231 this 22<sup>nd</sup> day of March, 1995.

Sharon N. Horner

## Repair list

① Vent on outside of house!

② 2 light switches in kitchen no power!

③ Spray for termites

④ Element inside oven

⑤ A full YEAR WARRANTY ON major things in house or on house

Please put in contact and a date or deadline repairs will be made

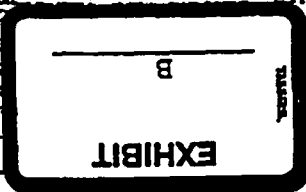
~~On the 1st of July 1993 I agree to warrant the major items in the house~~

I agree repair items I think it on or before JULY 1 1993. I agree to warrant the major items in the house, be item that cost more than \$2000 to repair for a period of 1 year from June 1, 1993. This provision will survive closing

Martin Rose

Except

Curtain & Carner



239 N. Main St.

Highland Spring W. 2007  
May 31, 1994

John Mc. Martin Rose

I am visiting you about the house  
the roof is leaking and the window also  
look like it like I am worried about the  
water getting in the kitchen the bathroom  
kitchen and living room

The kitchen floor not water all day  
I have call you but you refuse  
to answer my call

I want to the housing roof and  
tell me to write your before  
I go to court

The house some of the floor come  
out. there is a copy of your  
agreement

Thank you

Mark Martin Rose

The new house are the not appear to  
be a house in poor condition

**VIRGINIA: IN THE CIRCUIT COURT OF HENRICO COUNTY**

<b>ANNIE CONNER,</b>	)	
<b>Plaintiff</b>	)	
	)	
<b>v.</b>	)	<b>Case No. CL95-588</b>
	)	
<b>JAMES M. ROSE,</b>	)	
<b>Defendant</b>	)	

**MOTION TO TRANSFER**

Defendant, James M. Rose, by counsel, pursuant to Section 8.01-380(A) of the Code of Virginia, 1950, as amended, moves that this case be transferred to the General District Court of Henrico County, and in support of its motion respectfully states:

1. On December 5, 1994, the plaintiff, by counsel, voluntarily nonsuited a case in the General District Court of Henrico County involving the same parties and cause of action that is the basis of the Motion for Judgment in this case.

2. Section 8.01-380(A) of the Code of Virginia, 1950, as amended, states that "After a nonsuit no new proceeding on the same cause of action or against the same party shall be had in any court other than that in which the nonsuit was taken, unless the court is without jurisdiction...".

3. The General District Court of Henrico County had proper jurisdiction over the parties and the cause of action in this case in the prior proceeding and is the proper jurisdiction for the current case.



4. The Plaintiff, by counsel, has increased the amount sued for in this case from the prior case to an amount that exceeds the monetary limits of the jurisdiction of the General District Court of Henrico County.

5. The Plaintiff, by counsel, has by its own actions attempted to remove this case from the jurisdiction of the General District Court of Henrico County despite having previously filed a proceeding on the same cause of action involving the same parties in that court.

6. The purpose of Section 8.01-380(A) of the Code of Virginia, 1950, as amended, is to prevent forum shopping by plaintiffs and the exception for lack of jurisdiction was not meant to allow plaintiffs to remove a case from the first court's jurisdiction by its own actions but to allow cases that were originally filed in a court that lacked jurisdiction to be filed in the proper jurisdiction.

7. To allow the Plaintiff, by counsel, to voluntarily make the jurisdiction of the General District Court of Henrico County improper in this case, after having previously filed the case there and found it to be the proper jurisdiction, would be promoting forum shopping that Section 8.01(A) of the Code of Virginia, 1950, as amended, seeks to prevent.

WHEREFORE, defendant respectfully moves that this action be transferred to the General District Court of Henrico County and

that the plaintiff be ordered to amend the motion for judgment to conform with the jurisdictional requirements of that court.

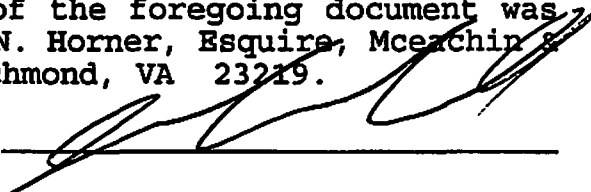
JAMES M. ROSE

By:   
Of Counsel

John Marshall  
Marshall & Marshall  
505 East Main Street  
Richmond, VA 23219

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document was mailed, postage pre-paid, to Sharon N. Horner, Esquire, McEachin & Gee, P.C., 700 East Main Street, Richmond, VA 23219.

  
\_\_\_\_\_

V I R G I N I A:

IN THE CIRCUIT COURT OF HENRICO COUNTY

ANNIE CONNER,  
Plaintiff

v.

JAMES M. ROSE  
Defendant

Civil Action No.: CL95-588

NOTICE OF HEARING

TO: JAMES M. ROSE

PLEASE TAKE NOTICE that on May 19, 1995, at 9:00 AM, or as soon thereafter as I may be heard, I shall move the Circuit Court of the County of Henrico to hear your Motion to Transfer the above pending cause, in which I am the plaintiff and you are the defendant, to the General District Court of Henrico County.

ANNIE CONNER

By

Sharon N. Horner  
OF COUNSEL

Sharon N. Horner  
Donald J. Gee  
McEachin and Gee, P.C.  
700 E. Main Street  
Richmond, VA 23219  
(804) 775-2374

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document was mailed, postage pre-paid, to John Marshall, Esquire, Marshall & Marshall, 505 E. Main Street, Richmond, VA 23219, counsel for the defendant, this 25<sup>th</sup> day of April, 1995.

Sharon N. Horner

V I R G I N I A:

IN THE CIRCUIT COURT OF HENRICO COUNTY

ANNIE CONNER,

Plaintiff

v.

JAMES M. ROSE,

Defendant

}  
}  
}  
}  
}  
}  
}  
}  
}

Case No. CL95-588

MEMORANDUM OF LAW

Question Presented:

Does § 8.01-380(A) of the Code of Virginia, 1950, as amended, bar a plaintiff from refiling her case in Circuit Court with an increased ad damnum after previously nonsuiting the case in General District Court?

Facts:

On May 24, 1993, plaintiff Annie Conner purchased a home from defendant James M. Rose. Defendant warranted and agreed to repair certain specified items in the house and at the same time fraudulently mislead plaintiff as to the condition of the floor. The repairs were to be made within one year. Defendant failed to make the requested repairs. Plaintiff subsequently filed suit in the Henrico General District Court on September 30, 1994. Prior to the December 5, 1994 trial date, plaintiff Conner took a nonsuit. The case was refiled on March 22, 1995 in the Henrico Circuit Court. Plaintiff's motion for judgment included her current and future repair expenses as well as punitive damages for defendant's

fraud. Defendant filed a motion to transfer the case back to the Henrico General District Court. After a hearing on May 19, plaintiff's case was transferred to Henrico General District Court.

**Discussion:**

§ 8.01-380(A) of the Code of Virginia states

After a nonsuit no new proceeding on the same cause of action ... shall be had in any court other than that in which the nonsuit was taken, unless that court is without jurisdiction, or not a proper venue, or other good cause is shown for proceeding in another court ..."

Va. Code Ann. § 8.01-380(A) (Michie 1992) (emphasis added). The statute was adopted by the Virginia legislature as a restriction on venue, or on the plaintiff's ability to bring a case in a particular city or county. Clark v. Clark, 11 Va. App. 286, 294, 398 S.E.2d 82, 86 (1990). Although Clark pertains to extrajurisdictional forum shopping, the court allowed the plaintiff to refile in the Virginia court while holding that any inconvenience of multiple litigation to the defendant could be overcome by a plaintiff properly presenting himself to the court. Id. at 294, 398 S.E.2d at 86.

In Moore v. Gillis, the Supreme Court of Virginia agreed that the purpose of § 8.01-380(A) is to prevent a plaintiff from "forum-shopping" for a more favorable geographical forum in which to initiate a new suit. Moore v. Gillis, 239 Va. 239, 241, 389 S.E.2d 453, 454 (1990). The plaintiff in Moore, after agreeing to a transfer of venue to the Circuit Court of Brunswick County,



attempted to institute a suit in the Circuit Court of the City of Richmond. Id. at 240, 389 S.E.2d at 453. In this case, however, both suits were pending when plaintiff filed a nonsuit for the first case. Id. at 240, 389 S.E.2d at 453. The court agreed that the exception to the venue restriction applied to new proceedings brought after a nonsuit was taken in a previously filed action. Id. at 242, 389 S.E.2d at 454.

Although a nonsuited case must be brought in the same court in which the nonsuit was taken, only courts with the proper jurisdiction may hear that case. § 8.01-380(A) Va. Code Ann. (1950). Several Virginia Circuit Courts have attempted to clarify the statute. In John T. White, III v. Southland Corp., the court allowed the plaintiff to take a nonsuit in the General District Court and then refile the same case in the Circuit Court because the damages were in excess of the jurisdictional amounts of the General District Courts. John T. White, III v. Southland Corp., 3 Va. Cir. 97, 97-98 (1983). Williams v. Roots held that because the plaintiff's damages in the subsequent case exceeded the jurisdictional limits of the General District Court, he must refile the case in the Circuit Court. The Richmond Circuit Court applied the exception to the restriction even further by holding that the "plaintiff's desire to claim damages beyond those within the jurisdiction of the General District Court constitutes good cause for permitting the case to be filed in this court." Williams v. Roots, 21 Va. Cir. 301 (1990) (emphasis added).

Plaintiff in the case at bar initiated her suit in the Henrico

General District Court. Before trial, she opted for a nonsuit. She then refiled her claim in the Circuit Court with an increased ad damnum. Because of the increased amount, the Circuit Court has the proper jurisdiction to hear this case. If plaintiff were forced to refile the case in the General District Court, a final judgment in that court would bar plaintiff from bringing another suit in the Circuit Court to recover her additional expenses. In effect, plaintiff would be left without a remedy to recover for her losses. For this reason, plaintiff's case should be allowed to proceed in the Circuit Court.

ANNIE CONNER

By: Sharon N. Horner  
Of Counsel

Sharon N. Horner, Esquire  
Donald J. Gee, Esquire  
McEachin & Gee, P.C.  
700 E. Main Street, Suite 1201  
Richmond, VA 23219  
(804) 775-2374

Certificate of Service

I hereby certify that a true copy of the foregoing document was mailed, postage pre-paid, to John Marshall, Esquire, Marshall & Marshall, 505 E. Main Street, Richmond, VA 23219, counsel for the defendant, this 24th day of May, 1995.

Sharon N. Horner

COMMONWEALTH OF VIRGINIA  
FOURTEENTH JUDICIAL CIRCUIT

BUFORD M. PARSONS, JR.  
JUDGE

JAMES E. KULP  
JUDGE

GEORGE F. TIDEY  
JUDGE

L.A. HARRIS, JR.  
JUDGE



LOCATION:  
PARHAM AND  
HUNGARY SPRING ROADS

MAILING ADDRESS:  
P. O. BOX 27032  
RICHMOND, VA 23273

CIRCUIT COURT OF THE COUNTY OF HENRICO

June 21, 1995

Sharon N. Horner, Esquire  
McEachin & Gee, P.C.  
700 East Main Street, Suite 1201  
Richmond, Virginia 23219

John Marshall, Esquire  
Marshall & Marshall  
505 East Main Street  
Richmond, Virginia 23219


Re: Annie Conner v. James M. Rose.  
Case No. CL95-588.

Dear Counsel:

The Court has received and reviewed the plaintiff's Motion To Reconsider its ruling of transferring this case to the General District Court. After careful review of these matters, the Court denies the Motion To Reconsider for the reasons stated at the hearing on May 19, 1995.

Mr. Marshall is requested to prepare the appropriate Order and have it submitted promptly for entry.

Sincerely,

  
James E. Kulp  
Judge

JEK/sm

**V I R G I N I A:**

**IN THE CIRCUIT COURT OF HENRICO COUNTY**

**ANNIE CONNER,**

**Plaintiff**

**v.**

**JAMES M. ROSE,**

**Defendant**

**Case No. CL95-588**

**ORDER**

On the 19th day of May, 1995, came the parties, by counsel; and the Defendant having moved that the Court transfer this case from this Court to the General District Court of the County of Henrico, pursuant to § 8.01-380(A) of the Code of Virginia, 1950, as amended, this motion was argued by counsel.

To the foregoing action of the Court, Plaintiff, Annie Conner, by counsel, objected and excepted upon the ground that the herein action was not brought in the wrong Court and that the case is properly within the jurisdiction of this Court. Plaintiff Annie Conner objected to Defendant's interpretation of § 8.01-380(A) as a jurisdictional statute. The Plaintiff asserted that the statute was adopted by the Virginia legislature as a restriction on venue; a plaintiff cannot initiate a suit in a new geographical forum. Plaintiff also argued that the statute was not meant to prevent a court from asserting the proper jurisdiction.

Further, the Plaintiff asserted that because of her increased ad damnum, the Circuit Court is the only court with the jurisdictional authority to hear the case. Plaintiff claimed that her damages exceeded the jurisdictional amount of the General


District Court and this constituted "good cause" for her case to be refiled in the Circuit Court.

ON CONSIDERATION WHEREOF, the Court doth grant said motion, and doth ORDER that the Clerk of this Court transfer this case, together with all papers thereof, to the General District Court of the County of Henrico; and it is also ORDERED that the Plaintiff make such change in or amendment to or alteration of the pleadings on her part as may be necessary to conform to the jurisdiction of the General District Court of the County of Henrico.

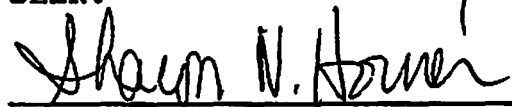
ENTER: 7/12/95

DATE: James E. Rudy  
Judge

I ASK FOR THIS:

  
John Marshall, Esquire  
Attorney for Defendant  
Marshall & Marshall  
505 East Main Street  
Richmond, VA 23219  
(804) 795-1423

SEEN:

  
Sharon N. Horner, Esquire  
Attorney for Plaintiff  
McEachin & Gee, P.C.  
700 East Main Street, Suite 1201  
Richmond, VA 23219  
(804) 775-2374

  
BY TESTE:  
JUDITH A. SMITH, CLERK



V I R G I N I A:

IN THE CIRCUIT COURT FOR THE COUNTY OF HENRICO

ANNIE CONNER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CL95-588
	)	
JAMES M. ROSE,	)	
	)	
Defendant.	)	

AGREED STATEMENT OF FACTS

On May 24, 1993, plaintiff Annie Conner purchased a home from defendant James M. Rose. At the closing, defendant warranted and agreed to repair certain items on a repair list before July 1, 1993. Defendant further extended a warranty from June 1, 1993 until June 1, 1994 for the major items in the house. On May 31, 1994, Plaintiff wrote to Defendant before the expiration of the warranty with a summary of needed repairs. After an unsatisfactory response, Plaintiff subsequently filed a warrant, pro se, in the City of Richmond General District Court on July 18, 1994. Plaintiff's warrant in debt was in the amount of \$4,000.00 for repairs to the window, kitchen drawers, bathroom floors and heating systems.

Defendant moved to have the case transferred to the County of Henrico General District Court, and the Henrico Court scheduled a hearing for September 2, 1994. Plaintiff then retained McEachin & Gee, P.C. as representation for her case. At the hearing, Plaintiff's case was set for trial on December 5, 1994. Plaintiff's counsel then filed a Bill of Particulars alleging that

the Defendant failed to repair the warranted items. Subsequently, Defendant filed his Grounds of Defense, denying Plaintiff's allegations.

On December 2, 1994, Plaintiff opted to exercise her right to voluntarily non-suit the case, and the trial of December 5, 1994 was dismissed non-suit. After the filing of the warrant in debt and subsequent Bill of Particulars, Plaintiff discovered allegations of fraud in connection with her purchase of the house. Plaintiff refiled her case in the County of Henrico Circuit Court on March 22, 1995. Her Motion for Judgment increased her ad damnum to include compensatory damages in the amount of \$6,000.00 and punitive damages in the amount of \$5,000.00.

Defendant moved to have the case transferred to the County of Henrico General District Court, citing Va Code Ann. § 8.01-380(A), as authority for prohibiting Plaintiff from refiling her suit in Circuit Court even though her ad damnum exceeded the jurisdiction of the General District Court. A hearing on the Motion to Transfer was held on May 19, 1995 and Defendant's motion was granted, which transferred the case to the General District Court. Afterwards, Plaintiff submitted a Memorandum of Law in which her counsel argued that § 8.01-380(A) should not be interpreted to prevent a party, who has non-suited a case in General District Court, from refiling the case in Circuit Court when the ad damnum has been increased above the jurisdictional limits of the General District Court. She argued that the original court no longer had proper jurisdiction and that the "good cause" provision of the statute

should be applied to allow the Circuit Court to hear her case. Additionally Plaintiff argued that there was no change of venue or forum shopping, the case remained filed in Henrico County. Plaintiff's increased ad damnum due to allegations of fraud places her claim outside the jurisdictional limits of General District Court and plaintiff argued that this makes the Circuit Court of Henrico County the only court with the appropriate jurisdictional power to hear her claim.

Defendant's response Memorandum stated that § 8.01-380(A) should be interpreted as a restriction on Plaintiff's ability to refile her case in the County of Henrico Circuit Court after taking a non-suit and increasing her ad damnum. The Defendant argued that Section 8.01-380-(A) states that the case must be refiled in the court the non-suit was taken in unless that court is without jurisdiction and the plaintiff should not be allowed by her own actions to make the jurisdiction of the original court inapplicable. The Defendant also stated that the intent of the statute was to prevent forum shopping and that the plaintiffs actions resulted in forum shopping between the General District court and the Circuit Court. Defendant cited the case of Moore v. Gillis, 239 Va 239, 389 S.E.2d 453 (1990) as providing the appropriate procedure or remedy for a plaintiff that needs to have a case on file in General District Court heard in the Circuit Court. Based on the ruling in Moore v. Gillis Id., the plaintiff could have filed the case with the increased ad damnum in the Circuit Court and then non-suited the case pending in General

District Court and Section 8.01-380(A) would not have become an issue in the case. Defendant argued that this procedure is the appropriate one and is the plaintiff's remedy. The Honorable Judge James E. Kulp refused to reverse his previous decision on Defendant's motion. Plaintiff noted her appeal on July 20, 1995.

Dated: August 28, 1995



Donald J. Gee, Esquire  
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John Marshall, Esquire  
Marshall & Marshall  
505 East Main Street  
Richmond, Virginia 23219  
(804) 649-0371.

Assignment of Error

- I. The trial court erred in transferring Conner's Circuit Court Case to the Henrico General District Court, erroneously holding that a case filed and nonsuited in General District Court could not be subsequently filed in Circuit Court.