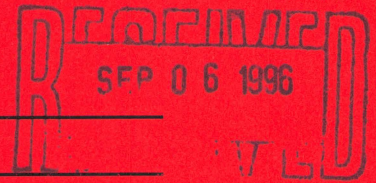


253Va104

CLERK  
SUPREME COURT OF VIRGINIA



RICHMOND, VIRGINIA

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IN THE

**Supreme Court of Virginia**

AT RICHMOND

---

RECORD NO. 960616

---

C. F. GARCIA ENTERPRISES, INC.,  
t/a C. F. GARCIA & ASSOCIATES,

*Appellant,*

v.

ENTERPRISE FORD TRACTOR, INC.,

*Appellee.*

---

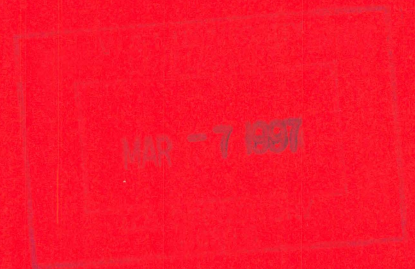
APPENDIX

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Kevin W. Grierson  
JONES, BLECHMAN, WOLTZ & KELLY, P.C.  
600 Thimble Shoals Blvd.  
P.O. Box 12888  
Newport News, Virginia 23612-2888  
(757) 873-8061  
*Counsel for Appellant*

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## **QUESTION PRESENTED AND ASSIGNMENT OF ERROR**

### **QUESTION PRESENTED:**

**DID THE TRIAL COURT ERR IN AWARDING SUMMARY JUDGMENT TO ENTERPRISE FORD ON THE GROUND THAT THE CONTRACT WAS A TRUE LEASE?**

### **ASSIGNMENT OF ERROR:**

**THE TRIAL COURT ERRED AS A MATTER OF LAW IN HOLDING THAT THE CONTRACT BETWEEN THE PARTIES WAS NOT A SECURITY AGREEMENT PURSUANT TO VIRGINIA CODE SECTION 8.1-201(37).**

1. The first part of the document is a letter from the President of the United States to the Congress, dated January 1, 1861.

2. The second part is a report from the Secretary of the Treasury, dated January 1, 1861.

3. The third part is a report from the Secretary of the Interior, dated January 1, 1861.

4. The fourth part is a report from the Secretary of the Navy, dated January 1, 1861.

5. The fifth part is a report from the Secretary of the War, dated January 1, 1861.

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VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF YORK

C.F. GARCIA ENTERPRISES, INC.,  
trading as C.F. Garcia & Associates,  
a Virginia Corporation,

Plaintiff,

v.

Law No. 5746

ENTERPRISE FORD TRACTOR, INC.,

Defendant.

Serve: Philip L. Hatchett, Esq.  
Registered Agent  
2236 Cunningham Drive  
Hampton, VA 23666

FILED  
12-21-92

MOTION FOR JUDGMENT

The plaintiff, C.F. Garcia Enterprises, Inc. ("Garcia") for its Motion for Judgment states as follows:

1. On or about April 7, 1989, Garcia and the defendant entered into a contract entitled "Equipment Lease Agreement" whereby Garcia was provided with a 1979 Ford Model 555 Tractor-Loader-Backhoe in exchange for payments which were to total SEVENTEEN THOUSAND TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$17,250.00) plus tax. A copy of the "Equipment Lease Agreement" is attached as Exhibit A.

2. Garcia paid EIGHTEEN THOUSAND ONE HUNDRED FIFTY AND 24/100 DOLLARS (\$18,150.24) to the defendant from May 15, 1989 through August 3, 1990 as shown by the checks attached as Exhibit B.

3. The Agreement contained an option whereby Garcia could purchase the equipment for ONE AND NO/100 DOLLAR (\$1.00) once the original price of

1. The first part of the document is a letter from the President of the United States to the Congress, dated January 1, 1861.

2. The second part is a report from the Secretary of the Treasury, dated January 1, 1861.

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7. The seventh part is a report from the Secretary of the Army, dated January 1, 1861.

8. The eighth part is a report from the Secretary of the Navy, dated January 1, 1861.

9. The ninth part is a report from the Secretary of the War, dated January 1, 1861.

10. The tenth part is a report from the Secretary of the State, dated January 1, 1861.

11. The eleventh part is a report from the Secretary of the Army, dated January 1, 1861.

12. The twelfth part is a report from the Secretary of the Navy, dated January 1, 1861.

13. The thirteenth part is a report from the Secretary of the War, dated January 1, 1861.

14. The fourteenth part is a report from the Secretary of the State, dated January 1, 1861.

15. The fifteenth part is a report from the Secretary of the Army, dated January 1, 1861.

16. The sixteenth part is a report from the Secretary of the Navy, dated January 1, 1861.

17. The seventeenth part is a report from the Secretary of the War, dated January 1, 1861.

18. The eighteenth part is a report from the Secretary of the State, dated January 1, 1861.

19. The nineteenth part is a report from the Secretary of the Army, dated January 1, 1861.

20. The twentieth part is a report from the Secretary of the Navy, dated January 1, 1861.

SEVENTEEN THOUSAND TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$17,250.00) was paid.

4. Garcia fully intended to exercise the option once it completed payments on the equipment.

5. Prior to being given the opportunity to exercise the option but after making the last payment, the defendant repossessed the equipment.

6. Under the provision entitled "Default" in the Agreement, the defendant was required to make demand prior to repossessing the equipment. Garcia never received any such demand.

Count One  
Breach of Contract

7. Garcia realleges paragraphs one through six as if more fully set forth herein.

8. Garcia paid the entire balance due to the defendant, including sales tax.

9. The defendant had an obligation to notify Garcia if defendant intended to repossess the equipment.

10. The defendant did not notify Garcia but repossessed the equipment, anyway.

11. The defendant's actions in repossessing the equipment without notice is a breach of the contract with Garcia.

Count Two  
Violation of Virginia Uniform Commercial Code

12. Garcia realleges paragraphs one through eleven as if more fully set forth herein.

LAW OFFICES

ONES  
BLECHMAN  
VOLTZ & KELLY, P.C.  
100 Thimble Shoals Blvd.  
Post Office Box 12888  
Newport News, VA  
23612-2888  
(804) 873-8000



13. As a secured party, the defendant was obligated to provide Garcia with notice of the repossession and notice of any subsequent sale.

14. Garcia was not provided with notice of the repossession or of any sale of the equipment.

15. Defendant's failure to notify Garcia violates the Virginia Uniform Commercial Code.

Count Three  
Conversion

16. Garcia realleges paragraphs one through fifteen as if more fully set forth herein.

17. The defendant took the equipment at a time when Garcia had paid the full purchase price for the equipment.

18. The defendant did not have a right to take the equipment at the time it took the equipment.

19. Garcia was the rightful owner of the equipment at the time the defendant took the equipment.

20. Garcia had a right to continue in possession of the equipment at the time the defendant took the equipment.

21. The defendant wantonly and in willful disregard of Garcia's rights in the equipment took the equipment without notice or approval by Garcia.

WHEREFORE, Garcia prays this Court grant it judgment in the amount of EIGHTEEN THOUSAND ONE HUNDRED FIFTY AND 24/100 DOLLARS (\$18,150.24) plus Garcia's attorney's fees and costs and also that the Court grant Garcia punitive damages in the amount of TWENTY THOUSAND AND NO/100 DOLLARS

LAW OFFICES

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BLECHMAN  
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23612-2888  
(804) 873-8000



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12/07/92 wbw

(\$20,000.00) based on the defendant's willful and unlawful conversion of the equipment.

Respectfully Submitted,  
C.F. Garcia Enterprises, Inc.

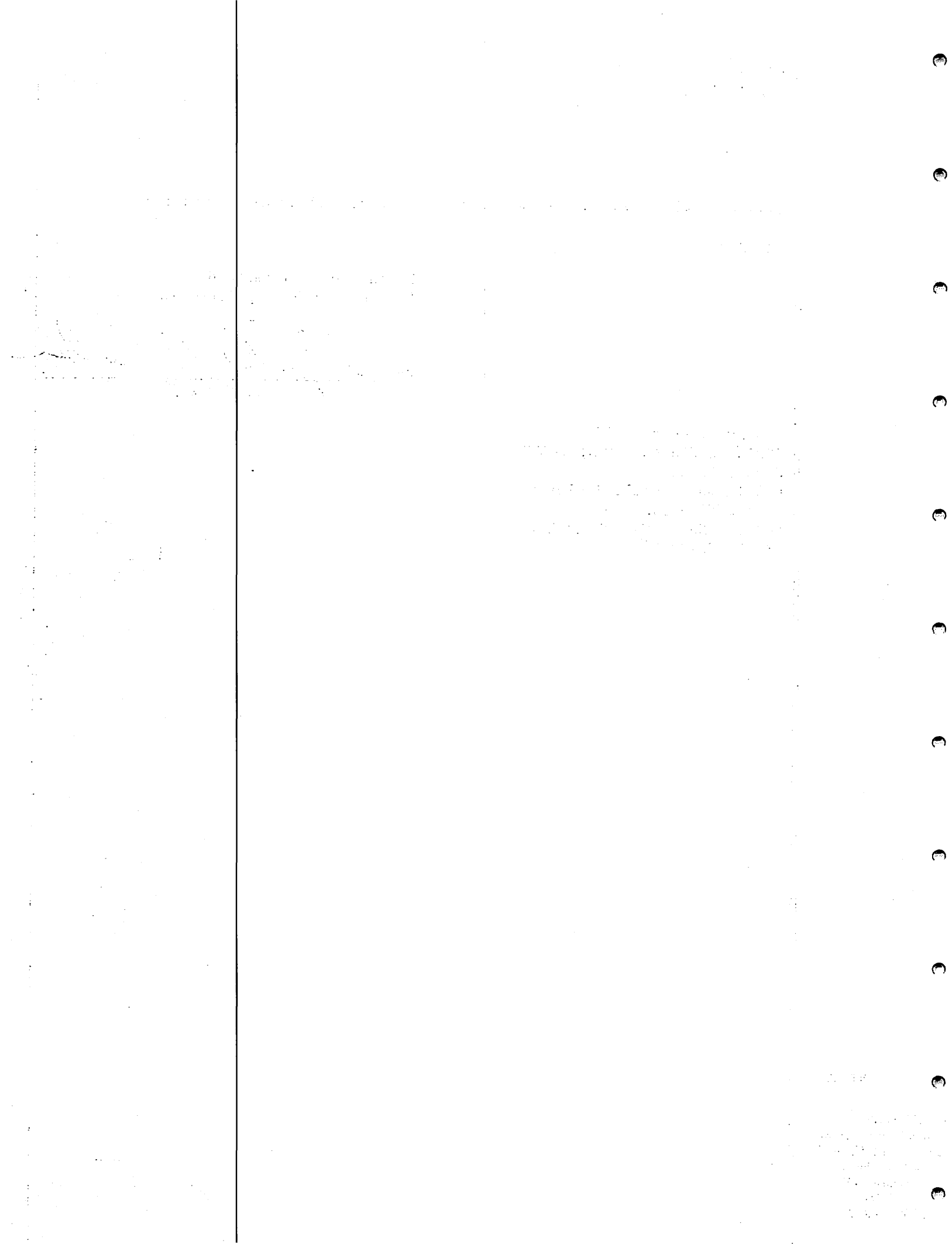
By: 

Of Counsel

Gustav L. Nelson, III  
JONES, BLECHMAN, WOLTZ & KELLY, P.C.  
Second Floor  
600 Thimble Shoals Boulevard  
Post Office Box 12888  
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23612-2888  
(804) 873-8000



# EQUIPMENT LEASE AGREEMENT

This AGREEMENT, made and entered into at Tabb, Virginia this 7th day of April, 1989,  
by and between Enterprise Ford Tractor, Inc.  
1939 Rt. 17 of Tabb, Virginia, hereinafter called LESSOR, and  
C. F. Garcia and Associates  
100 Plaza Shopping Center of Virginia Beach, Virginia, hereinafter called LESSEE;

WITNESSETH: That in consideration of the payments and rentals hereinafter provided for, and of the terms and conditions hereof, the Lessor hereby agrees to lease and does lease to the Lessee, and the Lessee hereby agrees to lease from the Lessor, the following described equipment belonging to the Lessor, to wit:

## EQUIPMENT LEASED

(Kind of Machine, Make, Model, Serial Number, Description)

1979 Ford model 555 Tractor-Loader-Backhoe s/n C-623381

Total Value \$ 17250.00

plus tax.

F.O.B. Lessor's place of business, or Tabb, Virginia

Above equipment to be used in construction operations on job sites  
at or near Tidewater area in the State of Virginia

TERM OF LEASE: The term of this lease shall be for a period of 15 months, beginning with the

1st day of May, 1989 and terminating the 31st day of July, 1990

RENTAL RATES AND PAYMENT: The rental rates set forth in this contract do not include sales, use, or occupational taxes. If and when such taxes are incurred by law, these amounts shall be added to the rental payments due under this contract.

A. If this equipment is leased on a monthly basis, the Lessee agrees to pay a total of \$ 17250.00 in rental as follows:  
\$ 1150.00 payable with order and including first month's rental; receipt of which is hereby acknowledged by Lessor; and the balance payable in advance on the 1st day of each month in 11 installments of \$ 1150.00 each commencing with the month of June, 1989

B. If this equipment is leased on a quarterly or seasonal basis, the Lessee agrees to pay a total of \$ n/a in rental as follows: \$ n/a payable with order, receipt of which is hereby acknowledged by Lessor; and the balance payable in n/a installments of \$ n/a each due and payable on n/a

Rental payments shall be made to Lessor at Lessor's address above set forth except that, if Lessee is notified to do so by Lessor or his assignee, payments shall be made to such assignee.

PRIVILEGE OF PURCHASE OPTION: Lessee is granted an option to purchase the equipment leased hereunder at the expiration of the lease period for the sum of \$ 1.00. Option to purchase shall not be deemed exercised until Lessee's (buyers) written notification to that effect is received by Lessor (seller) on or before the expiration of the lease period. The lease must be in good standing before the option can be exercised. The option is nontransferable. The costs of any and all repairs performed on the above described equipment by Lessor during this lease period will be added to the above stated purchase option sale price.

Any alteration or modification of this Lease shall be in writing and signed by the parties hereto. Lessee acknowledges receipt of a signed copy hereof.

All conditions stated on the reverse side hereof are considered to be a part of this contract.

IN WITNESS WHEREOF, the parties hereto have on the day and year first above written hereunto set their hands and seals.

LESSEE C. F. Garcia and Associates

Accepted and Approved April 7, 1989

By Carmen F. Garcia  
Carmen F. Garcia, President

LESSOR Enterprise Ford Tractor, Inc.

Witness

By Robert E. Owens  
Robert E. Owens, President

EXHIBIT "A"

6-0334

TT5 #1  
DEC 18 1990  
M. Rene  
Judge  
7  
V90-544



**RETURN OF EQUIPMENT:** Lessee agrees, at the expiration of the term hereof or sooner termination of this lease, to return, transportation costs prepaid, all of the Equipment to Lessor at the place of business of Lessor above stated in the same operating condition, order, repair and appearance as when received (ordinary wear and tear excepted) and free of all liens and encumbrances.

**LOSS OR DAMAGE:** The Lessee agrees to pay the Lessor for all loss and damages to the equipment arising from any cause whatsoever that may occur during the life of this lease, and until such equipment has been returned into the possession of the Lessor and accepted by it. It is agreed by the parties hereto that the value as hereinbefore stated is hereby accepted as the true value and shall be used in case of arbitration or adjustment. In making such adjustment it is understood that no rentals theretofore paid or due shall apply to the payment of such loss. It is further understood and agreed that in making any adjustment for loss or damages to equipment, Lessee shall be credited with the amount of insurance payment received by Lessor under insurance policies, if an insurance recovery is effected thereunder. Lessee, in addition to liability for loss or damage herein otherwise provided for, shall be liable for all loss and damage to said equipment caused by strikes, riot and civil commotion arising from any cause whatsoever.

**INSPECTION:** Lessee shall, whenever requested, advise Lessor of the exact location of the equipment. Lessor or its representatives may, for the purpose of inspection, at all reasonable times, enter upon any job, building or place where the equipment is located and may remove the same without notice to Lessee, if the equipment is, in the opinion of the Lessor, being used beyond its capacity or in any manner improperly cared for or abused.

**WARRANTY:** Lessee agrees that each item of equipment is of a size, design and capacity selected by Lessee and that the same is suitable for its purpose. Lessor has made no representation or warranty, statutory or otherwise, and undertakes no obligation with respect to the equipment or its performance except such obligations as may be undertaken in a written statement designated "Warranty" executed by Lessor concurrently herewith and attached hereto. Such Warranty applies only to items specifically enumerated therein.

Lessor assumes no obligation whatsoever to Lessee for time lost or penalties suffered by Lessee while equipment is inoperable for any reason and no deductions are to be made from rental payments therefor. The Lessor shall use reasonable care to see that the equipment is in proper working condition before delivery to Lessee. The receipt and acceptance by the Lessee of said equipment shall constitute acknowledgment that said property has been accepted and found in good, safe and serviceable condition, and fit for use, unless the Lessee makes claim to the contrary to the Lessor within three days after receipt of said equipment.

**SUPPLIES, MAINTENANCE AND REPAIRS:** Lessee shall be responsible for and shall bear the expense of all fuel, lubrication, and maintenance for each item of equipment. Lessor undertakes no obligation with respect to repairs or replacement of parts, attachments, accessories or equipment, except pursuant to written warranty as provided in the section of this lease entitled "WARRANTY". Lessee shall, at its expense, at all times during the term hereof, maintain each item of equipment in good operating order, repair and appearance and shall lubricate and practice preventative maintenance at regular intervals as suggested in manufacturer's service manual, receipt of a copy of which is hereby acknowledged by Lessee. Lessee agrees to maintain said equipment in the same condition as when delivered to it by Lessor, usual and ordinary wear and tear excepted. Lessee agrees that in effecting maintenance and repairs, it will have such work performed only by qualified persons who are satisfactory to Lessor.

**OPERATION:** Lessee agrees that the equipment shall be used solely in the conduct of Lessee's business and within Lessee's possession and under its control, that said equipment is to be used solely by the Lessee or his employees and for the purposes for which it was intended, that said equipment will be operated only by competent employees of Lessee and shall not be used beyond its normal capacity. When equipment is not in use, it will be kept in a protected area.

**LIABILITY:** Lessee shall be liable for all expenses, damages and claims arising out of its possession, operation, or transportation of the equipment herein described, and shall hold the Lessor and its assigns harmless therefrom.

**INSURANCE:** The Lessee further agrees to protect the Lessor on this contract with full insurance coverage, said insurance to cover loss or damage occasioned by fire, theft, flood, explosion, accident, act of God, or any other cause that may occur during the life of this lease, and to protect the Lessor by insurance in an amount satisfactory to Lessor against public liability of any and every kind.

All insurance shall be in companies acceptable to Lessor and shall contain the agreement of the insuring company not to cancel the same until after at least ten days' notice to Lessor and its assigns. Lessee shall promptly deliver to Lessor evidence of said insurance.

**SUB-LEASING:** The Lessee shall have no right to sub-lease the said equipment nor remove it from the County and State specified in this contract without the written consent of the Lessor.

**TITLE:** Title to the equipment shall at all times be vested in the Lessor unless transferred to the Lessee through sale. The Lessee shall give Lessor immediate notice of any levy attempted upon said equipment, or if said equipment from any cause becomes liable to seizure, and to indemnify Lessor against all loss and damages caused by any such action.

**DEFAULT:** If the Lessee shall fail to make any rental payment when due, shall attempt to sell or encumber any interest in the equipment, shall cease doing business as a going concern, shall institute or have instituted against him any proceedings under any bankruptcy or insolvency law, shall make an assignment for the benefit of creditors or shall fail to comply with any other provision of this Lease, or if any attachment, execution, writ, etc. or other process is levied against the equipment or any of Lessee's property, or if for any reason Lessor deems itself unsafe, the Lessor may immediately and without notice declare the entire balance of the rental payments due and payable together with all expenses of collection by suit or otherwise, including reasonable attorneys fees. If any of the above events shall occur, Lessee agrees to surrender possession of the equipment on demand and Lessor may enter upon Lessee's premises to the full extent allowed by law and take possession thereof.

**TAXES:** Lessee shall pay all taxes whatsoever by whomsoever payable (other than Federal or State income taxes of Lessor) on or relating to the equipment leased hereunder and the purchase, sale, rental, use or operation thereof. Lessee shall reimburse to Lessor, upon demand, as additional rent, the amount or amounts of any such costs and taxes paid by Lessor. It is the intent of this Agreement that Lessor shall receive the rent hereunder as a net return on the equipment leased hereunder.

**COMPLIANCE WITH LAWS:** The Lessee agrees to comply with and conform to all Municipal, State and Federal laws relating to the operation of said equipment and to pay all costs and expenses of every character occasioned by or involving the use or operation of the equipment.

**ASSIGNMENT:**

- A. Lessee agrees that Lessor may assign this Lease, and all right, title and interest of Lessor in and to the equipment, and all rents due or to become due to Lessor hereunder (of which assignment Lessee hereby waives notice) and Lessee agrees to recognize such assignment. Lessee's obligation to pay rent under this Lease shall not as to any such assignee be subject to any diminution or right of set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Lessor hereunder or by reason of any other liability at any time owing by the Lessor to the Lessee.
- B. Lessee shall not assign this Lease or any rights hereunder or to the items of equipment.

**GENERAL:** Time is of the essence of this Lease. Lessor's failure at any time to require strict performance by Lessee of any of the provisions of this Lease shall not waive or diminish Lessor's right thereafter to demand strict compliance therewith or with any other provisions. Waiver of any default shall not waive any other default. The remedies in this Lease provided in favor of Lessor shall be available to its successors and assigns and shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its or their favor existing at law or in equity.



C.F. GARCIA & ASSOCIATES

100 PLAZA CENTER  
VIRGINIA BEACH, VA. 23452  
(804) 486-0334

CHECK DATE

05/15/89

CHECK NUMBER

000172

BANK OF  
TIDEWATER  
VIRGINIA BEACH, VIRGINIA

NET AMOUNT

\*\*\*\*\*1,201.75

PAY EXACTLY \*\*\*\*\*1,201 DOLLARS AND 75 CENTS

PAY TO THE ORDER OF:

ENTERPRISE FORD TRACTOR, INC.  
P. O. BOX 1322

GRAFTON VA 23692

403606351 03 05-18-89 7507469745

*C.F. Garcia*

⑈00000172⑈ ⑆051404969⑆ 10025731⑈

⑈0000120175⑈

C.F. GARCIA & ASSOCIATES

100 PLAZA CENTER  
VIRGINIA BEACH, VA. 23452  
(804) 486-0334

CHECK DATE

06/09/89

CHECK NUMBER

000194

BANK OF  
TIDEWATER  
VIRGINIA BEACH, VIRGINIA

NET AMOUNT

\*\*\*\*\*1,201.75

PAY EXACTLY \*\*\*\*\*1,201 DOLLARS AND 75 CENTS

PAY TO THE ORDER OF:

ENTERPRISE FORD TRACTOR, INC.  
P. O. BOX 1322  
GRAFTON VA 23692

403606351 03 06-18-89 7507469745

*C.F. Garcia*

⑈00000194⑈ ⑆051404969⑆ 10025731⑈

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C.F. GARCIA & ASSOCIATES

100 PLAZA CENTER  
VIRGINIA BEACH, VA. 23452  
(804) 486-0334

CHECK DATE

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BANK OF  
TIDEWATER  
VIRGINIA BEACH, VIRGINIA

NET AMOUNT

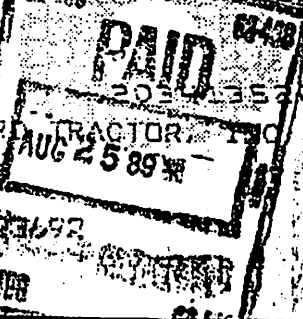
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PAY EXACTLY \*\*\*\*\*1,201 DOLLARS AND 75 CENTS

PAY TO THE ORDER OF:

ENTERPRISE FORD TRACTOR, INC.  
P. O. BOX 1322

GRAFTON VA 23692



*C.F. Garcia*

EXHIBIT "B"

⑈00000231⑈ ⑆051404969⑆ 10 9 31⑈

⑈0000120175⑈

C.F. GARCIA & ASSOCIATES

100 PLAZA CENTER  
VIRGINIA BEACH, VA. 23452  
(804) 486-0334

CHECK DATE

09/06/89

CHECK NUMBER

000244

BANK OF  
TIDEWATER  
VIRGINIA BEACH, VIRGINIA

NET AMOUNT

\*\*\*\*\*1,325.74

PAY EXACTLY \*\*\*\*\*1,325 DOLLARS AND 74 CENTS

PAY TO THE ORDER OF:

ENTERPRISE FORD TRACTOR, INC.  
P. O. BOX 132  
GRAFTON VA 23692

*C.F. Garcia*

⑈00000244⑈ ⑆051404969⑆ 10025731⑈

⑈0000132574⑈

C.F. GARCIA & ASSOCIATES

100 PLAZA CENTER  
VIRGINIA BEACH, VA. 23452  
(804) 486-0334

CHECK DATE

09/15/89

CHECK NUMBER

000258

BANK OF  
TIDEWATER  
VIRGINIA BEACH, VIRGINIA

NET AMOUNT

\*\*\*\*\*1,201.75

PAY EXACTLY \*\*\*\*\*1,201 DOLLARS AND 75 CENTS

PAY TO THE ORDER OF:

ENTERPRISE FORD TRACTOR, INC.  
P. O. BOX 132  
GRAFTON VA 23692

*C.F. Garcia*

⑈00000258⑈ ⑆051404969⑆ 10025731⑈

⑈0000120175⑈

C.F. GARCIA & ASSOCIATES

100 PLAZA CENTER  
VIRGINIA BEACH, VA. 23452  
(804) 486-0334

CHECK DATE

10/24/89

CHECK NUMBER

000283

BANK OF  
TIDEWATER  
VIRGINIA BEACH, VIRGINIA

NET AMOUNT

\*\*\*\*\*1,201.75

PAY EXACTLY \*\*\*\*\*1,201 DOLLARS AND 75 CENTS

PAY TO THE ORDER OF:

ENTERPRISE FORD TRACTOR, INC.  
P. O. BOX 132  
GRAFTON VA 23692

*C.F. Garcia*

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100 PLAZA CENTER  
VIRGINIA BEACH, VA. 23452  
(804) 486-0334

CHECK DATE

11/30/89

CHECK NUMBER

000301

**BANK OF  
TIDEWATER**  
VIRGINIA BEACH, VIRGINIA

NET AMOUNT

\*\*\*\*\*1,201.75

PAY EXACTLY \*\*\*\*\*1,201 DOLLARS AND 75 CENTS

PAY TO THE ORDER OF:

ENTERPRISE FORD TRACTOR, INC.  
P. O. BOX 1322

GRAFTON VA 23692

⑈00000301⑈ ⑆051404969⑆ 10025731⑈

⑈0000120175⑈

C.F. GARCIA & ASSOCIATES

100 PLAZA CENTER  
VIRGINIA BEACH, VA. 23452  
(804) 486-0334

CHECK DATE

12/20/89

CHECK NUMBER

000320

68-486/514

**BANK OF  
TIDEWATER**  
VIRGINIA BEACH, VIRGINIA

NET AMOUNT

\*\*\*\*\*1,201.75

PAY EXACTLY \*\*\*\*\*1,201 DOLLARS AND 75 CENTS

PAY TO THE ORDER OF:

ENTERPRISE FORD TRACTOR, INC.  
P. O. BOX 1322

GRAFTON VA 23692

⑈00000320⑈ ⑆051404969⑆ 10025731⑈

⑈0000120175⑈

C.F. GARCIA & ASSOCIATES

100 PLAZA CENTER  
VIRGINIA BEACH, VA. 23452  
(804) 486-0334

CHECK DATE

01/19/90

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68-486/514

**BANK OF  
TIDEWATER**  
VIRGINIA BEACH, VIRGINIA

NET AMOUNT

\*\*\*\*\*1,201.75

PAY EXACTLY \*\*\*\*\*1,201 DOLLARS AND 75 CENTS

PAY TO THE ORDER OF:

ENTERPRISE FORD TRACTOR, INC.  
P. O. BOX 1322

GRAFTON VA 23692

⑈00000338⑈ ⑆051404969⑆ 10025731⑈

⑈0000120175⑈



100 PLAZA CENTER  
VIRGINIA BEACH, VA. 234  
(804) 486-0334

CHECK DATE

02/20/90

CHECK NUMBER

000354

**BANK OF  
TIDEWATER**  
VIRGINIA BEACH, VIRGINIA

NET AMOUNT

\*\*\*\*\*1,201.75

PAY TO THE ORDER OF:

ENTERPRISE FORD TRACTOR, INC.  
P. O. BOX 1322

GRAFTON VA 23692

02-20-90 024 14 0651

*C. Garcia*

105000130

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⑈0000120175⑈

C.F. GARCIA & ASSOCIATES

100 PLAZA CENTER  
VIRGINIA BEACH, VA. 23452  
(804) 486-0334

CHECK DATE

03/20/90

CHECK NUMBER

000374

**BANK OF  
TIDEWATER**  
VIRGINIA BEACH, VIRGINIA

NET AMOUNT

\*\*\*\*\*1,201.75

PAY TO THE ORDER OF:

ENTERPRISE FORD TRACTOR, INC.  
P. O. BOX 1322

GRAFTON VA 23692

03-20-90 004 14 0570

*C. Garcia*

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C.F. GARCIA & ASSOCIATES

100 PLAZA CENTER  
VIRGINIA BEACH, VA. 23452  
(804) 486-0334

CHECK DATE

05/11/90

CHECK NUMBER

000403

**BANK OF  
TIDEWATER**  
VIRGINIA BEACH, VIRGINIA

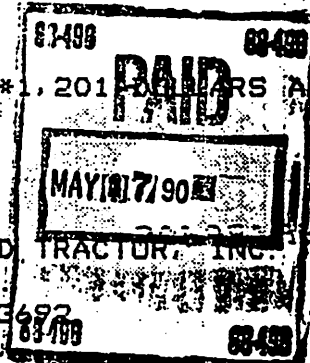
NET AMOUNT

\*\*\*\*\*1,201.75

PAY TO THE ORDER OF:

ENTERPRISE FORD TRACTOR, INC.  
P. O. BOX 1322  
GRAFTON VA 23692

05-11-90 024 14 0583



*C. Garcia*

⑈00000403⑈ ⑆051404969⑆ 10025731⑈

⑈0000120175⑈



C.F. GARCIA & ASSOCIATES

100 PLAZA CENTER  
VIRGINIA BEACH, VA. 23452  
(804) 486-0334

CHECK DATE

06/28/90

CHECK NUMBER

000422

PAY EXACTLY \*\*\*\*\*1,201 DOLLARS AND 75 CENTS

PAY TO THE ORDER OF:

ENTERPRISE FORD TRACTOR, INC.  
P. O. BOX 1322  
GRAFTON VA 23452

BANK OF  
TIDEWATER  
VIRGINIA BEACH, VIRGINIA

NET AMOUNT

\*\*\*\*\*1,201.75

*C. Garcia*

⑈00000422⑈ ⑆051404969⑆ 10025731⑈

⑈0000120175⑈

C.F. GARCIA & ASSOCIATES

100 PLAZA CENTER  
VIRGINIA BEACH, VA. 23452  
(804) 486-0334

CHECK DATE

07/17/90

CHECK NUMBER

000437

PAY EXACTLY \*\*\*\*\*1,201 DOLLARS AND 75 CENTS

PAY TO THE ORDER OF:

ENTERPRISE FORD TRACTOR, INC.  
P. O. BOX 1322  
GRAFTON VA 23452

BANK OF  
TIDEWATER  
VIRGINIA BEACH, VIRGINIA

NET AMOUNT

\*\*\*\*\*1,201.75

*C. Garcia*

⑈00000437⑈ ⑆051404969⑆ 10025731⑈

⑈0000120175⑈

C.F. GARCIA & ASSOCIATES

100 PLAZA CENTER  
VIRGINIA BEACH, VA. 23452  
(804) 486-0334

CHECK DATE

08/03/90

CHECK NUMBER

000452

PAY EXACTLY \*\*\*\*\*1,201 DOLLARS AND 75 CENTS

PAY TO THE ORDER OF:

ENTERPRISE FORD TRACTOR, INC.  
P. O. BOX 1322  
GRAFTON VA 23452

BANK OF  
TIDEWATER  
VIRGINIA BEACH, VIRGINIA

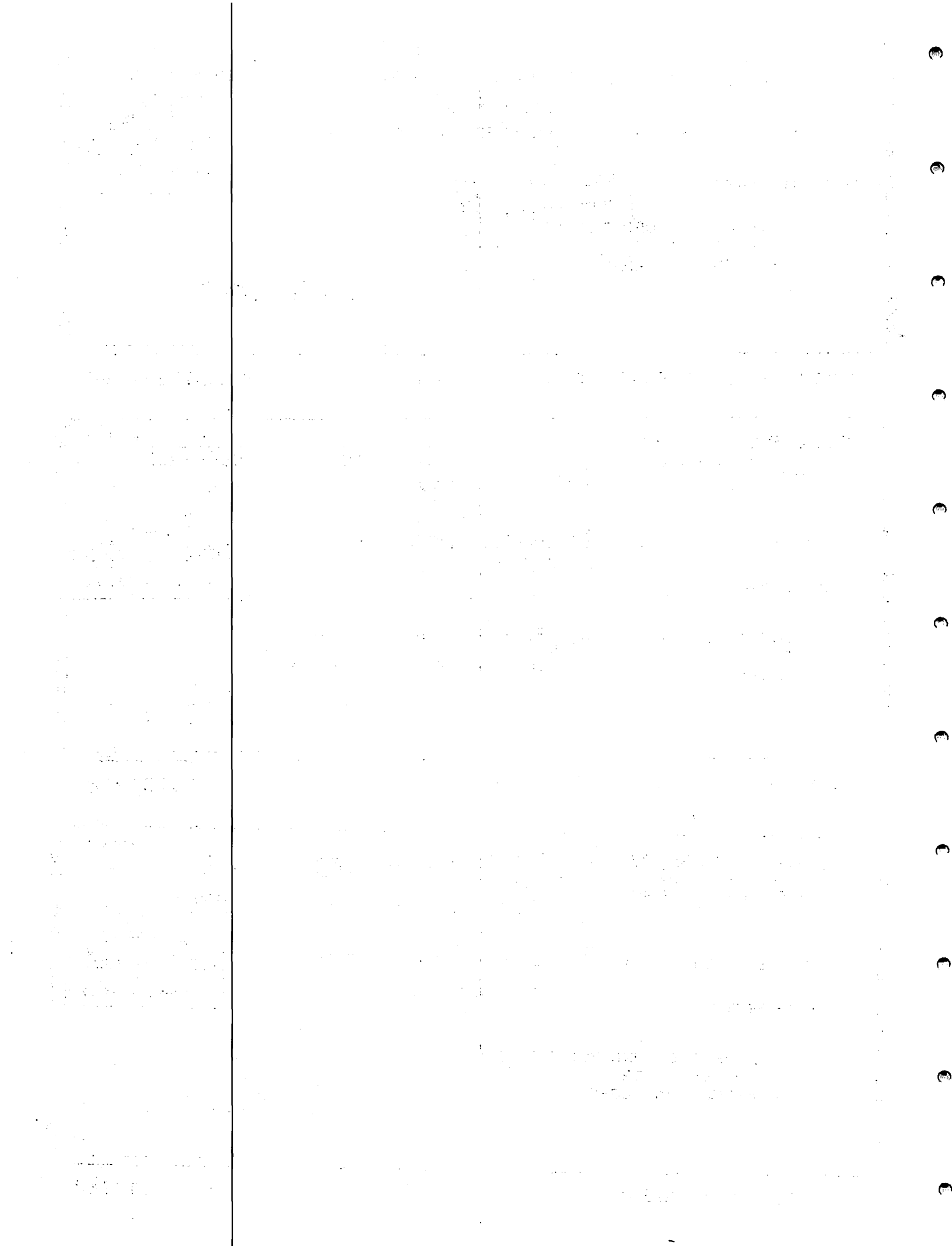
NET AMOUNT

\*\*\*\*\*1,201.75

*C. Garcia*

⑈00000452⑈ ⑆051404969⑆ 10025731⑈

⑈0000120175⑈



VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF YORK

C. F. GARCIA ENTERPRISES, INC.,

Plaintiff,

v.

LAW NO. 5746

ENTERPRISE FORD TRACTOR, INC.,

Defendant.

### GROUND OF DEFENSE

COMES NOW the Defendant, ENTERPRISE FORD TRACTOR, INC., by counsel, and for its grounds of defense to the motion filed on its Registered Agent December 28, 1992, states as follows:

1. The Defendant neither admits nor denies the allegations of paragraph numbered 1, of Plaintiff's Motion for Judgment, requires strict proof of same and states that the contract, "Equipment Lease Agreement," speaks for itself.

2. The Defendant neither admits nor denies the allegations of paragraph numbered 2, of Plaintiff's Motion for Judgment, and states that any payments received from the Plaintiff were properly applied by the Defendant.

3. The Defendant denies the allegations in paragraph numbered 3, of Plaintiff's Motion for Judgment, and states that the referenced contract speaks for itself.

4. The Defendant denies the allegations in paragraph numbered 4, of Plaintiff's Motion for Judgment, and requires strict proof of same.

5. The Defendant denies the allegations in paragraph numbered 5, of Plaintiff's Motion for Judgment, and requires strict



proof of same.

6. The Defendant denies the allegations in paragraph numbered 6, of Plaintiff's Motion for Judgment, and states that any agreement entered into by the parties speaks for itself.

7. The Defendant denies the allegations in paragraph numbered 7, of Plaintiff's Motion for Judgment.

8. The Defendant denies the allegations in paragraph numbered 8, of Plaintiff's Motion for Judgment, and states that the Plaintiff had not paid for other services rendered by the Defendant to the Plaintiff.

9. The Defendant denies the allegations in paragraph numbered 9, of Plaintiff's Motion for Judgment, and states that after the subject property was repossessed, this matter was adjudicated in the General District Court of the County of York, Virginia, and that no jurisdiction lies in this matter before this Honorable Court.

10. The Defendant denies the allegations in paragraph numbered 10, of Plaintiff's Motion for Judgment, to the extent that the Defendant had a right to take the actions for the monies owed to the Defendant.

11. The Defendant denies the allegations in paragraph numbered 11, of Plaintiff's Motion for Judgment.

12. The Defendant denies the allegations in paragraph numbered 12, of Plaintiff's Motion for Judgment.

13. The Defendant denies the allegations in paragraph

numbered 13, of Plaintiff's Motion for Judgment.

14. The Defendant denies the allegations in paragraph numbered 14, of Plaintiff's Motion for Judgment, and affirmatively states that the Plaintiff knew such assets as are a part of this case were in the possession of the Defendant, and has known that said assets have been in the possession of the Defendant for more than two (2) years.

15. The Defendant denies the allegations of paragraph numbered 15, of Plaintiff's Motion for Judgment.

16. The Defendant denies the allegations of paragraph numbered 16, of Plaintiff's Motion for Judgment.

17. The Defendant denies the allegations of paragraph numbered 17, of Plaintiff's Motion for Judgment.

18. The Defendant denies the allegations of paragraph numbered 18, of Plaintiff's Motion for Judgment.

19. The Defendant denies the allegations of paragraph numbered 19, of Plaintiff's Motion for Judgment, and states that the title did not vest in the Defendant.

20. The Defendant denies the allegations of paragraph numbered 20, of Plaintiff's Motion for Judgment, and states that the Plaintiff owed the Defendant monies and that this matter has been previously adjudicated in the General District Court of the County of York, Virginia.

21. The Defendant denies the allegations of paragraph numbered 21, of Plaintiff's Motion for Judgment, and requires



strict proof of same, and affirmatively states that no action has been taken by the Defendant for more than two (2) years to claim an interest in the subject property.

22. The Defendant affirmatively states that the Defendant never received and still has not received written notification that the Lessee, or Plaintiff, intended to buy the 1979 Ford Model 555 Tractor-Loader-Backhoe equipment from the Defendant.

23. The Plaintiff's own Exhibit 1 shows that the Equipment Lease Agreement was an exhibit in the General District Court of York County, Virginia, Case No. V-90-2544, and all actions regarding this lease were merged in said case, thereby making all actions regarding said lease terminated by res adjudicata.

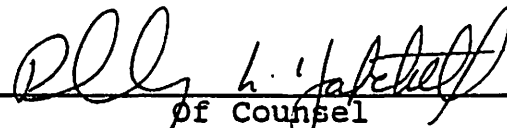
24. The Plaintiff's own documents show that the Plaintiff was in default in the contract by making payments late, the last payment dated August 3, 1990.

25. That pursuant to the contract, any option to purchase by the Plaintiff had to be exercised in writing on or before the expiration of the lease period. The lease had to be in good standing before the option could be exercised. It was, therefore, impossible for the Plaintiff to have the option to purchase the subject equipment under the terms of the lease identified as Plaintiff's Exhibit A, and, therefore, any option to purchase the equipment had expired and the Plaintiff was not entitled to purchase the property pursuant to the agreement.

WHEREFORE, the Defendant, ENTERPRISE FORD TRACTOR, INC., prays that it be granted judgment and that this court enter judgment for the Defendant, and that the Defendant be granted its costs expended herein, including attorney's fees.

ENTERPRISE FORD TRACTOR, INC.

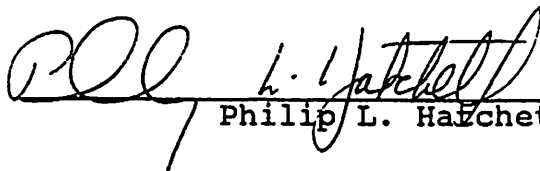
By

  
of Counsel

Philip L. Hatchett  
Counsel for Enterprise Ford Tractor, Inc.  
CUMMING, HATCHETT, MOSCHEL, PATRICK & CLANCY  
2236 Cunningham Drive  
Hampton, Virginia 23666  
(804) 827-9207

CERTIFICATE OF MAILING

I, Philip L. Hatchett, hereby certify that on this 14<sup>th</sup> day of January, 1993, I mailed or had delivered a true and correct copy of the foregoing to Gustav L. Nelson, III, Esq., JONES, BLECHMAN, WOLTZ & KELLY, P. O. Box 12888, Newport News, Virginia 23612-2888.

  
Philip L. Hatchett

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF YORK

C. F. GARCIA ENTERPRISES, INC.,  
t/a C. F. GARCIA & ASSOCIATES,  
a Virginia corporation,

Plaintiff,

v.

AT LAW NO. 5746

ENTERPRISE FORD TRACTOR, INC.,

Defendant.

ORDER

THIS DAY CAME the parties, C. F. GARCIA ENTERPRISES, INC., t/a C. F. GARCIA & ASSOCIATES, the Plaintiff; and ENTERPRISE FORD TRACTOR, INC., the Defendant, by counsel.

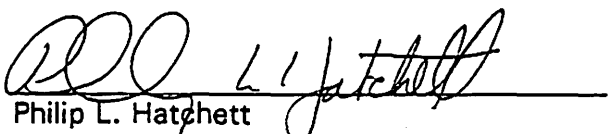
WHEREUPON the Court considering the Defendant's Motion for Summary Judgment, and the pleadings filed in this case, the admissions of the parties, the contract between the Plaintiff and the Defendant, and as argued by counsel for parties; now, therefore, it is

ADJUDGED, ORDERED and DECREED that the Defendant's Motion for Summary Judgment is granted and judgment is rendered for the Defendant, ENTERPRISE FORD TRACTOR, INC., and no monies are due the Plaintiff, C. F. GARCIA ENTERPRISES, INC., and this matter is stricken from the docket of this Court and filed with the completed matters of this Court.

ENTERED this 21<sup>st</sup> day of December, 1995.

  
Judge

I ASK FOR THIS:



Philip L. Hatchett  
Counsel for Defendant, ENTERPRISE  
CUMMING & HATCHETT, P.C.  
2236 Cunningham Dr., Hampton, VA 23666  
(804) 827-9207

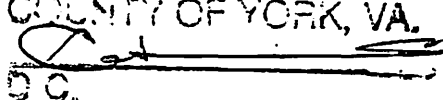
SEEN AND OBJECTED TO \*



Kevin W. Grierson, Esq.  
Counsel for Plaintiff, GARCIA  
JONES, BLECHMAN, WOLTZ & KELLY  
600 Thimble Shoals Boulevard  
Newport News, VA 23612  
(804) 873-3861

\*Plaintiff objects on the following grounds:

1. Because the agreement between the parties called for the plaintiff to be able to purchase the backhoe for one dollar, the lease is intended as a matter of law to be a security agreement and not a true lease, and the defendant's security interest in the backhoe was extinguished once it received all of the funds to which it was entitled under the agreement. Therefore, summary judgment was appropriate, if at all, only for the plaintiff, not the defendant.
2. Even if the lease is not one intended for security as a matter of law, the UCC provides that the intent of the parties governs whether the agreement is a true lease or a security agreement disguised as a lease, and summary judgment was therefore inappropriate.

A COPY TESTE  
NANCY B. KANE  
CLERK CIRCUIT COURT  
COUNTY OF YORK, VA.  
  
D.C.

**VIRGINIA:** IN THE CIRCUIT COURT FOR THE COUNTY OF YORK

C. F. GARCIA ENTERPRISES, INC.,  
t/a C. F. GARCIA & ASSOCIATES,  
A Virginia Corporation,

*Plaintiff,*

v.

Law No. 5746

ENTERPRISE FORD TRACTOR, INC.,

*Defendant.*

**STATEMENT OF FACTS**

In conformance with Rule 5:11© of the Supreme Court of Virginia, the following statement of facts is hereby made a part of the record in lieu of a transcript:

1. The parties entered into the contract dated April 7, 1989, attached hereto as Exhibit "A". By its terms, the contract was to be in effect until July 31, 1990. The terms of the contract are not disputed by the parties.
2. Each of the payments due from Plaintiff, C.F. Garcia & Associates, was made late.
3. The final payment due July 1, 1990 was mailed Friday, August 3, 1990, and cashed on Thursday, August 9, 1990.
4. On Sunday, August 5, 1990, the Defendant Enterprise Ford Tractor took possession of the 1979 Ford Model 555 Tractor-Loader-Backhoe S/N C-623381 ("The Equipment") from a work site at which the Plaintiff had placed it.
5. Defendant had possession of the Equipment in August, 1990 through September, 1990, and performed \$1,532.31 of repairs to the Equipment.

6. The Equipment was sold by Defendant for \$13,000 on September 12, 1990 less selling expenses of \$250.

7. Defendant did not give notice to Plaintiff prior to taking possession of the Equipment or prior to the sale of the Equipment. Defendant did sell the Equipment at its place of business.

8. The Plaintiff did not give the Defendant written notification of its intent to purchase the Equipment for \$1, nor did the Plaintiff pay the Defendant \$1 to exercise the option, as provided for in the contract.

9. Enterprise Ford Tractor filed suit against C.F. Garcia & Associates for amounts it claimed was "due upon that certain Equipment Lease Agreement dated April 7, 1989." The Court entered a judgment for Garcia. A copy of the motion for judgment and order is attached as Exhibit "B".

10. C.F. Garcia & Associates then instituted the present action against Enterprise Ford Tractor on December 21, 1992, alleging breach of contract, violation of the Virginia Uniform Commercial Code, and conversion.

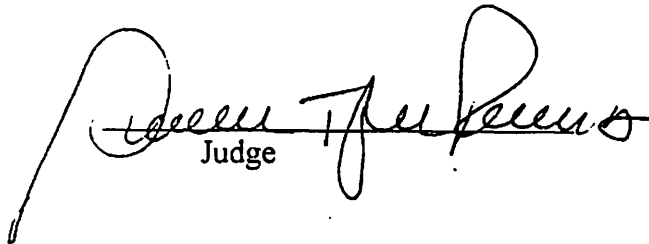
11. Plaintiff filed a motion in limine with supporting brief concerning whether the agreement was a security agreement as a matter of law, in which case the defendant would have retained only a security interest in the equipment. After a hearing on August 10, 1994, the Court denied the motion by an order dated October 6, 1994, but instructed the parties to attempt to stipulate to the facts and bring the matter forward for an argument on the merits.

12. Plaintiff subsequently filed a motion for summary judgment on the same grounds which was heard and denied by the Court on August 15, 1995, after briefing and oral argument by the parties.

13. Defendant then moved for summary judgment on the grounds that the plaintiff was not entitled to relief because it had not complied with the terms of the contract by making timely payments, giving timely notice of an intent to purchase, or tendering the required \$1. After briefing and argument on December 5, 1995, the Court sustained the defendant's motion for summary judgment by Order dated December 21, 1995.

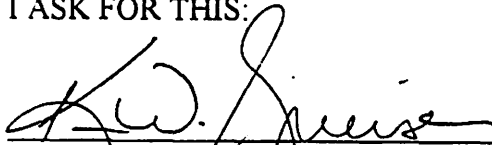
14. Plaintiff timely filed a notice of appeal in this matter on January 18, 1996.

IT IS SO ORDERED.

  
Judge


3/14/96  
Date

I ASK FOR THIS:



Kevin W. Grierson, p.q.  
JONES, BLECHMAN, WOLTZ & KELLY, P.C.  
Second Floor  
600 Thimble Shoals Boulevard  
Post Office Box 12888  
Newport News, VA 23612-2888  
(804) 873-8061

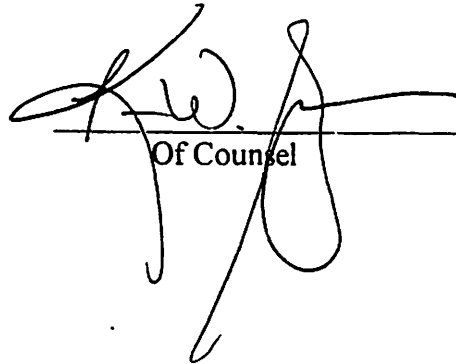
SEEN AND AGREED:



Philip L. Hatchett, p.d.  
Cumming & Hatchett, P.C.  
2236 Cunningham Drive  
Hampton, Virginia 23666

**CERTIFICATE**

I hereby certify that on the 5<sup>th</sup> day of March, 1996, I mailed a true and correct copy of the foregoing Statement of Facts to counsel for Defendant, Philip L. Hatchett, at Cumming & Hatchett, 2236 Cunningham Drive, Hampton, Virginia 23666.

  
\_\_\_\_\_  
Of Counsel

A COPY TESTE  
NANCY E. KANE  
CLERK CIRCUIT COURT  
COUNTY OF YORK, VA.  
*Carol D. Dosselmann*  
D.C.

# EQUIPMENT LEASE AGREEMENT

This AGREEMENT made and entered into at Tabb, Virginia this 7th day of April, 1989  
by and between Enterprise Ford Tractor, Inc.  
1939 Rt. 17 of Tabb, Virginia, hereinafter called LESSOR, and  
C. F. Garcia and Associates  
100 Plaza Shopping Center of Virginia Beach, Virginia, hereinafter called LESSEE.

WITNESSETH: That in consideration of the payments and rentals hereinafter provided for, and of the terms and conditions hereof, the Lessor hereby agrees to lease and does lease to the Lessee, and the Lessee hereby agrees to lease from the Lessor, the following described equipment belonging to the Lessor, to wit:

## EQUIPMENT LEASED.

(Kind of Machine, Make, Model, Serial Number, Description)

1979 Ford model 555 Tractor-Loader-Backhoe s/n C-623381

Total Value \$17250.00

plus tax.

F.O.B. Lessor's place of business, or Tabb, Virginia

Above equipment to be used in construction operations on job sites

at or near Tidewater area in the State of Virginia

TERM OF LEASE: The term of this lease shall be for a period of 15 months, beginning with the

1st day of May, 1989 and terminating the 31st day of July, 1990

RENTAL RATES AND PAYMENT: The rental rates set forth in this contract do not include sales use or occupational taxes. If and when such taxes are incurred by law, these amounts shall be added to the rental payments due under this contract.

A. If this equipment is leased on a monthly basis, the Lessee agrees to pay a total of \$17250.00 in rental as follows:  
\$1150.00 payable with order and including first month's rental receipt of which is hereby acknowledged by Lessor, and the balance payable in advance on the 1st day of each month in 12 installments of \$1150.00 each commencing with the month of June, 1989.

B. If this equipment is leased on a quarterly or seasonal basis, the Lessee agrees to pay a total of \$ n/a in rental as follows: \$ n/a payable with order, receipt of which is hereby acknowledged by Lessor, and the balance payable in n/a installments of \$ n/a each due and payable on n/a.

Rental payments shall be made to Lessor at Lessor's address above set forth except that, if Lessee is notified to do so by Lessor or his assignee, payments shall be made to such assignee.

PRIVILEGE OF PURCHASE OPTION: Lessee is granted an option to purchase the equipment leased hereunder at the expiration of the lease period for the sum of \$1.00. Option to purchase shall not be deemed exercised until Lessee's (buyers) written notification to that effect is received by Lessor (seller) on or before the expiration of the lease period. The lease must be in good standing before the option can be exercised. The option is nontransferable. The costs of any and all repairs performed on the above described equipment by Lessor during this lease period will be added to the above stated purchase option sale price.

Any alteration or modification of this Lease shall be in writing and signed by the parties hereto. Lessee acknowledges receipt of a signed copy hereof.

All conditions stated on the reverse side hereof are considered to be a part of this contract.

IN WITNESS WHEREOF, the parties hereto have on the day and year first above written hereunto set their hands and seals.

LESSEE C. F. Garcia and Associates

Accepted and Approved April 7, 1989

By Carmen F. Garcia  
Carmen F. Garcia, President

By \_\_\_\_\_

LESSOR Enterprise Ford Tractor, Inc.

EXHIBIT

A



**RETURN OF EQUIPMENT:** Lessee agrees, at the expiration of the term hereof or sooner termination of this lease, to return, transportation costs prepaid, all of the Equipment to Lessor at the place of business of Lessor above stated in the same operating condition, order, repair and appearance as when received (ordinary wear and tear excepted) and free of all liens and encumbrances.

**LOSS OR DAMAGE:** The Lessee agrees to pay the Lessor for all loss and damages to the equipment arising from any cause whatsoever that may occur during the life of this lease, and until such equipment has been returned into the possession of the Lessor and accepted by it. It is agreed by the parties hereto that the value as hereinbefore stated is hereby accepted as the true value and shall be used in case of arbitration or adjustment. In making such adjustment it is understood that no rentals theretofore paid or due shall apply to the payment of such loss. It is further understood and agreed that in making any adjustment for loss or damages to equipment, Lessee shall be credited with the amount of insurance payment received by Lessor under insurance policies, if an insurance recovery is effected thereunder. Lessee, in addition to liability for loss or damage herein otherwise provided for, shall be liable for all loss and damage to said equipment caused by strikes, riot and civil commotion arising from any cause whatsoever.

**INSPECTION:** Lessee shall, whenever requested, advise Lessor of the exact location of the equipment. Lessor or its representatives may, for the purpose of inspection, at all reasonable times, enter upon any job, building or place where the equipment is located and may remove the same without notice to Lessee, if the equipment is, in the opinion of the Lessor, being used beyond its capacity or in any manner improperly cared for or abused.

**WARRANTY:** Lessee agrees that each item of equipment is of a size, design and capacity selected by Lessee and that the same is suitable for its purpose. Lessor has made no representation or warranty, statutory or otherwise, and undertakes no obligation with respect to the equipment or its performance except such obligations as may be undertaken in a written statement designated "Warranty" executed by Lessor concurrently herewith and attached hereto. Such Warranty applies only to items specifically enumerated therein.

Lessor assumes no obligation whatsoever to Lessee for time lost or penalties suffered by Lessee while equipment is inoperable for any reason and no deductions are to be made from rental payments therefor. The Lessor shall use reasonable care to see that the equipment is in proper working condition before delivery to Lessee. The receipt and acceptance by the Lessee of said equipment shall constitute acknowledgment that said property has been accepted and found in good, safe and serviceable condition, and fit for use, unless the Lessee makes claim to the contrary to the Lessor within three days after receipt of said equipment.

**SUPPLIES, MAINTENANCE AND REPAIRS:** Lessee shall be responsible for and shall bear the expense of all fuel, lubrication, and maintenance for each item of equipment. Lessor undertakes no obligation with respect to repairs or replacement of parts, attachments, accessories or equipment, except pursuant to written warranty as provided in the section of this lease entitled "WARRANTY". Lessee shall, at its expense, at all times during the term hereof, maintain each item of equipment in good operating order, repair and appearance and shall lubricate and practice preventative maintenance at regular intervals as suggested in manufacturer's service manual, receipt of a copy of which is hereby acknowledged by Lessee. Lessee agrees to maintain said equipment in the same condition as when delivered to it by Lessor, usual and ordinary wear and tear excepted. Lessee agrees that in effecting maintenance and repairs, it will have such work performed only by qualified persons who are satisfactory to Lessor.

**OPERATION:** Lessee agrees that the equipment shall be used solely in the conduct of Lessee's business and within Lessee's possession and under its control, that said equipment is to be used solely by the Lessee or his employees and for the purposes for which it was intended, that said equipment will be operated only by competent employees of Lessee and shall not be used beyond its normal capacity.

When equipment is not in use, it will be kept in a protected area.

**LIABILITY:** Lessee shall be liable for all expenses, damages and claims arising out of its possession, operation, or transportation of the equipment herein described, and shall hold the Lessor and its assigns harmless therefrom.

**INSURANCE:** The Lessee further agrees to protect the Lessor on this contract with full insurance coverage, said insurance to cover loss or damage occasioned by fire, theft, flood, explosion, accident, act of God, or any other cause that may occur during the life of this lease, and to protect the Lessor by insurance in an amount satisfactory to Lessor against public liability of any and every kind.

All insurance shall be in companies acceptable to Lessor and shall contain the agreement of the insuring company not to cancel the same until after at least ten days' notice to Lessor and its assigns. Lessee shall promptly deliver to Lessor evidence of said insurance.

**SUB-LEASING:** The Lessee shall have no right to sub-lease the said equipment nor remove it from the County and State specified in this contract without the written consent of the Lessor.

**TITLE:** Title to the equipment shall at all times be vested in the Lessor unless transferred to the Lessee through sale. The Lessee shall give Lessor immediate notice of any levy attempted upon said equipment, or if said equipment from any cause becomes liable to seizure, and to indemnify Lessor against all loss and damages caused by any such action.

**DEFAULT:** If the Lessee shall fail to make any rental payment when due, shall attempt to sell or encumber any interest in the equipment, shall cease doing business as a going concern, shall institute or have instituted against him any proceedings under any bankruptcy or insolvency law, shall make an assignment for the benefit of creditors or shall fail to comply with any other provision of this Lease, or if any attachment, execution, writ, etc. or other process is levied against the equipment or any of Lessee's property, or if for any reason Lessor deems itself unsafe, the Lessor may immediately and without notice declare the entire balance of the rental payments due and payable together with all expenses of collection by suit or otherwise, including reasonable attorneys fees. If any of the above events shall occur, Lessee agrees to surrender possession of the equipment on demand and Lessor may enter upon Lessee's premises to the full extent allowed by law and take possession thereof.

**TAXES:** Lessee shall pay all taxes whatsoever by whomsoever payable (other than Federal or State income taxes of Lessor) on or relating to the equipment leased hereunder and the purchase, sale, rental, use or operation thereof. Lessee shall reimburse to Lessor, upon demand, as additional rent, the amount or amounts of any such costs and taxes paid by Lessor. It is the intent of this Agreement that Lessor shall receive the rent hereunder as a net return on the equipment leased hereunder.

**COMPLIANCE WITH LAWS:** The Lessee agrees to comply with and conform to all Municipal, State and Federal laws relating to the operation of said equipment and to pay all costs and expenses of every character occasioned by or involving the use or operation of the equipment.

#### **ASSIGNMENT:**

A. Lessee agrees that Lessor may assign this Lease, and all right, title and interest of Lessor in and to the equipment, and all rents due or to become due to Lessor hereunder (of which assignment Lessee hereby waives notice) and Lessee agrees to recognize such assignment. Lessee's obligation to pay rent under this Lease shall not as to any such assignee be subject to any diminution or right of set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Lessor hereunder or by reason of any other liability at any time owing by the Lessor to the Lessee.

B. Lessee shall not assign this Lease or any rights hereunder or to the items of equipment.

**GENERAL:** Time is of the essence of this Lease. Lessor's failure at any time to require strict performance by Lessee of any of the provisions of this Lease shall not waive or diminish Lessor's right thereafter to demand strict compliance therewith or with any other provisions. Waiver of any default shall not waive any other default. The remedies in this Lease provided in favor of Lessor shall be available to its successors and assigns and shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its or their favor existing at law or in equity.

*Amended  
to show*

VIRGINIA: IN THE GENERAL DISTRICT COURT FOR THE COUNTY  
OF YORK, CIVIL DIVISION

ENTERPRISE FORD TRACTOR, INC. 9900 CI-3 PH 4 51  
Virginia corporation, V90-2544

Plaintiff,

vs.

C. F. GARCIA ENTERPRISES, INC.,  
d/b/a C. F. Garcia & Assocs. Building Corp.,  
a Virginia corporation

Defendant.

SERVE: James C. Lewis, Registered Agent  
One Columbus Center, 10th Floor, Suite 1000 Box 1000  
Virginia Beach, VA 23462

NOTICE AND MOTION FOR JUDGMENT

TAKE NOTICE that on the 16th day of October, 1990, at 1:30  
o'clock p.m., or as soon thereafter as counsel may be heard, the  
undersigned will move this Court for judgment against the  
Defendant in the amount of 1,115.51, plus reasonable attorney's  
fees and costs expended in this behalf, due upon that certain  
Equipment Lease Agreement dated April 7, 1989, a copy of which is  
attached herewith.

You, the defendant, are not required to appear pursuant to  
this document, provided, however, if you do not appear, judgment  
may be granted in favor of the Plaintiff. To dispute this case,  
you must appear on the return date for the judge to set another  
date for trial.

ENTERPRISE FORD TRACTOR, INC.

By [Signature]  
Of Counsel

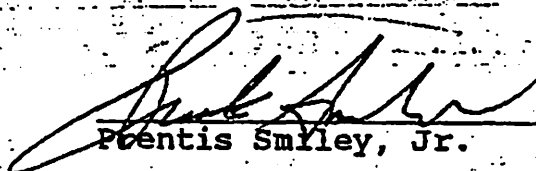


*Amended  
to remove  
Judge  
DEC 18 1990  
on day  
of trial  
Acknowledged  
last  
payment  
for repairs  
etc*

Prentis Smiley, Jr.,  
SMILEY AND CHAMBERS  
P. O. Box 1307  
Grafton, Virginia 23692  
(804) 88-5485

CERTIFICATE OF MAILING

I hereby certify that on the 20<sup>th</sup> day of September, 1990, I mailed a true copy of the foregoing Notice and Motion for Judgment to defendant, C. F. Garcia and Associates, 100 Plaza Shopping Center, Virginia Beach, Virginia 23452, and to James C. Lewis, Registered Agent, Columbus Center, 10th Floor, P. O. Box 61888, Virginia Beach, Virginia 23462, by depositing same in the U. S. Mail, postage prepaid.

  
Prentis Smiley, Jr.

Judgment for the Defendant.

DEC 18 1990

Merlin M. Renee  
Judge