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SUPREME COURT OF VIRGINIA

FEB 8 1980

RICHMOND, VIRGINIA

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IN THE  
**Supreme Court of Virginia**  
AT RICHMOND

---

RECORD NO. 791231

---

ASSOCIATES FINANCIAL SERVICES CO., INC.,

.....Appellant

v.

DAVID P. McPEEK  
and SHIRLEY McPEEK,

.....Appellees

---

APPENDIX

---

Stephen J. Kalista  
SMITH, ROBINSON & VINYARD  
Post Office Box 1940  
122 South Nottingham Avenue  
Wise, Virginia 24293

Counsel for Appellant



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MOTION FOR JUDGMENT

COMES NOW your Plaintiff, Associates Financial Services Company, Inc., by counsel, and moves this Honorable Court for judgment against the Defendants, David P. McPeek and Shirley McPeek, jointly and severally, in the amount of SEVENTEEN THOUSAND FOUR HUNDRED THIRTY-FIVE and 97/100 DOLLARS (\$17,435.97) plus interest on \$15,161.71 from April 15, 1977 and costs, and as cause therefor, states as follows:

1. On the 15th day of April, 1977, in the Circuit Court for Prince Georges County, Maryland, your Plaintiff obtained a joint and several judgment against the Defendants, David P. McPeek and Shirley McPeek, and Ronnie J. Surratt and Judy C. Surratt in the amount of \$15,161.71 plus costs and interest thereon from April 15, 1977, plus attorney's fees of \$2,274.26.

2. A triple seal copy of the aforementioned judgment is attached hereto and asked to be read as a part hereof.

3. The aforesaid judgment has not been satisfied in whole or in part.

4. Ten (10) years have not elapsed since the aforesaid judgment was rendered and the commencement of this action.

WHEREFORE, pursuant to Article IV, Section 1, of the United States Constitution, your Plaintiff prays this Honorable Court grant the judgment of the Circuit Court of Prince Georges County, Maryland full faith and credit and award your Plaintiff a judgment against the Defendants, David P. McPeek and Shirley McPeek, jointly and severally, in the amount of \$17,435.97

with interest on \$15,161.71 from April 15, 1977 plus costs on its behalf expended.

ASSOCIATES FINANCIAL SERVICES  
COMPANY, INC.

\_\_\_\_\_  
By Counsel

HARRELL, MUTCHLER & HOULISTON

By

\_\_\_\_\_  
Michael L. Houliston  
Counsel for Plaintiff

.....

CLERK'S OFFICE      CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY,  
MARYLAND.

I, Norman L. Pritchett, Clerk of said Court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together, constitute the record of the proceedings of said Court in this cause.

WITNESS, My hand and seal of said Court this 20 day of December  
19 77.

  
CLERK  
Norman L. Pritchett

.....

I, ALBERT T. BLACKWELL JR. Associate Judge of said Court, do  
certify the foregoing statement by Norman L. Pritchett, Clerk of the said Court, to be in due  
form, and by the proper office.

WITNESS, My hand and seal of said Court this 20 day of December  
19 77.

 (SEAL)  
ALBERT T. BLACKWELL JR.

.....

I, Norman L. Pritchett, Clerk of said Court, hereby certify that ALBERT T.  
BLACKWELL JR. whose genuine signature is subscribed to the  
foregoing certificate was at the time of signing and attesting same, Associate Judge of said  
Court, duly commissioned and qualified.

WITNESS, My hand and seal of said Court this 20 day  
of December, 19 77.

 (CLERK)  
Norman L. Pritchett

Misc. No. 10



# CIRCUIT COURT

FOR

Prince George's County, Maryland

CLERK'S FEES \$ 40.00  
 SHERIFF'S FEES \$  
 MAGISTRATE'S FEES \$  
 WITNESS FEES \$  
 PLAINTIFF'S S. LITIG. \$  
 DEFENDANT'S S. LITIG. \$  
 COURT COSTS \$  
 REC. # 11285  
 DATE FILED 1-10-77 AMT. PAID 40.00  
 (51) V. Martin  
 (65,841)

ASSOCIATES FINANCIAL SERVICES COMPANY, INC., a corporation  
**PLAINTIFF**

Howard M. Rensin

**VERSUS**

DAVID P. McPEEK, and SHIRLEY McPEEK, and RONNIE J. SURRATT,  
**DEFENDANT**  
and JUDY C. SURRATT

INDEXED ON GENERAL INDEX

DATE	SUMMARY JUDGMENT (04)	CLERK'S MEMORANDUM
1-6-77	(1) Action, Debt, Declaration, Exhibits, Motion for Summary Judgment, Notice to Defendants, Points and Authorities in Support of Motion, Affidavit, filed.	
1-10-77	(2) Summons issued in triplicate and with copies of pleadings sent to Atty. for service on David P. McPeek and Shirley McPeek.	
1-10-77	(3) Summons issued in triplicate and with copies of pleadings sent to Atty. for service on Ronnie J. Surratt and Judy C. Surratt.	
2-4-77	Returned, Summoned -1-31-77, as to Ronnie J. Surratt and Judy C. Surratt.	
2-4-77	Returned, Summoned 1-23-77 as to David P. McPeek & Shirley McPeek.	
4-15-77	(4) Order of Court granting Motion for Summary Judgment (Judge Albert T. Blackwell, Jr.), filed.	
4-15-77	Summary Judgment entered in favor of the Plaintiff, Associates Financial Services Company, Inc., and against the Defendants, David P. McPeek and Shirley McPeek and Ronnie J. Surratt and Judy C. Surratt, jointly and severally, in the sum of Fifteen Thousand One Hundred Sixty-One and 71/100 Dollars (\$15,161.71), plus costs and Interest from this date and Attorneys' fees of Two Thousand Two Hundred Seventy-Four and 26/100 Dollars (\$2,274.26).	
4-18-77	(5) Notice of Judgment mailed to the Defendants with copy of same retained in file.	

**COT**

STATE OF MARYLAND—Prince George's County, Sct.:

I HEREBY CERTIFY, that the foregoing is a true copy of the docket entries and judgment in the above entitled cause, and I further certify that there is no entry to show that the judgment aforesaid has been satisfied either in whole or in part.

IN TESTIMONY WHEREOF, I hereto set my  
hand and affix the seal of the Circuit Court  
for the County and State aforesaid,  
this 20 day of December,  
19 77

  
\_\_\_\_\_  
NORMAN L. PRITCHETT, CLERK

# TWENTY - NINTH JUDICIAL CIRCUIT OF VIRGINIA

COUNTIES OF BLAND BUCHANAN DICKENSON GILES RUSSELL AND TAZEWELL

## CIRCUIT COURT JUDGES:

GLYN R. PHILLIPS  
CLINTWOOD, VIRGINIA 24228

NICHOLAS E. PERSIN  
GRUNDY, VIRGINIA 24614

ROBERT L. POWELL  
PEARLBURG, VIRGINIA 24134

March 27, 1979

Steven J. Kalista, Esq.  
Attorney at Law  
Box 219  
Clintwood, Virginia 24228

John M. Farmer, Esq.  
Attorney at Law  
Earls, Wolfe & Farmer  
Norton, Virginia 24273

RE: Associates Financial Services Company, Inc.  
vs.  
David P. and Shirley McPeck

Gentlemen:

After considering the memorandum submitted on behalf of each party and reviewing cases cited therein, the Court is of the opinion that full faith and credit should not be given the Maryland judgment for the following reasons:

- 1) The service of process on the defendants, McPeck, by the Sheriff in Dickenson County, Virginia did not give the Maryland Courts jurisdiction and is therefore in violation of the due process clause of the Fourteenth Amendment, which limits the power of the State Courts to enter judgments against persons not served with process while within the respective boundaries.
- 2) The Long Arm Statute of the State of Maryland fails to meet the test of whether it can exercise jurisdiction over nonresidents without violating due process in that the nonresidents have such minimal contacts with that state that maintenance of the suit does not offend traditional notions of fair play and substantial justice. In other words, the single transaction of purchasing the truck in the State of Maryland is not sufficient for the purpose of the Court stretching the term "doing business" to include a single business transaction entered into by an individual.
- 3) The Maryland Court did not have jurisdiction of the defendant in this case and therefore, the Court is of the opinion that it is not required to give full faith and credit to the Maryland judgment.



It has always been a fundamental principle that a judgment affecting personal rights must be founded on service of process within the territorial jurisdiction of the court on the party to be affected. Accordingly, a valid personal judgment cannot be rendered against a nonresident based on process served on him beyond the limits of the state from whose Courts the process issued, and such a judgment cannot be authorized constitutionally even by express statute. 49 C. J. S. Section 24, Judgments.

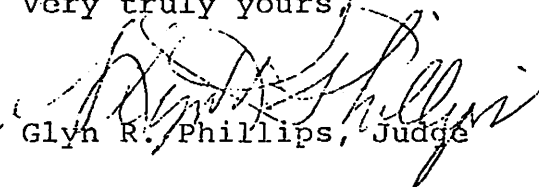
In the opinion of the Court, the defendants, McPeck, did not have the minimal contacts in Maryland and the judgment entered offends "traditional notions of fair play and substantial justice." International Shoe Company v. State of Washington, 326 U.S. 310, 66 S. Ct. 154 (1945). The Court is aware of the broad and encompassing language in the various cases on this point and that each case usually turns on the factual situation. Justice Frankfurter commenting on this point, said due process is decency of fair play in America. Justice Cardozo on the same point has said that due process is implicit in the process of ordered liberty. Practically all of the cases have mentioned the phrase that "it must not offend traditional notions of fair play and substantial justice."

The Court is also of the opinion that the case of Velandra v. Regie Nationale Des Usines Renault, 336 F. 2d 292 (6th Circuit 1964) is on all fours and if anything goes farther than the holding in the present case. In Velandra, an importer of foreign cars (Renault) distributed the cars to regional distributors who in turn sold them to local dealers. The plaintiff purchased a car from a dealer in Michigan who had purchased it from a distributor in Illinois. The plaintiff suffered personal injuries as a result of an accident in it and sued the importer and manufacturer. The importer was the sole owner of the Illinois distributorship which did carry on substantial economic activities within Michigan, although the importer had neither a place of business nor agent within the state. The trial court sustained the motion to dismiss the defendant for lack of personal jurisdiction and the decision was upheld on appeal.

"This record of dealerships and sales within the state, even when considered together with the existence of a subsidiary corporation doing business within the state and the distribution of warranties with automobiles sold, does not in our opinion establish a sufficient showing of contacts between the defendants and the State of Michigan so as to constitute the minimum contacts essential to permit the exercise of personal jurisdiction in that state over the foreign corporation under the International Shoe Company case. 336 F. 2d at 298

The Court directs Mr. Farmer to prepare an appropriate Order pursuant to this opinion to be endorsed by Mr. Kalista and forwarded to the Court for entry.

Very truly yours,

  
Glyn R. Phillips, Judge

GRP/drb

## FINAL ORDER

This cause came on this day to be heard upon plaintiff's Motion for Judgment, defendant's Motion to Dismiss thereto, the evidence of witnesses presented by deposition on behalf of the parties, upon oral argument by the parties, and upon the submission of written memorandum by the parties.

UPON CONSIDERATION WHEREOF, the Court being of the opinion that the evidence adduced by plaintiff in this case is not sufficient to entitle him to any of the relief prayed for doth sustain defendant's Motion, and for the following reasons:

1. Plaintiff brought a Motion for Judgment on a foreign judgment. However, the service of process on the defendants by the Sheriff of Dickenson County in Dickenson County did not give the foreign Court jurisdiction and is therefore in violation of the due process clause of the Fourteenth Amendment, which limits the power of the State Court to enter judgments against persons not served with process while within the respective boundaries.

2. The Long Arm Statute of the State of Maryland fails to meet the test of whether it can exercise jurisdiction over nonresidents without violating due process in that the nonresidents have such minimal contacts with that state that maintenance of the suit does not offend traditional notions of fair play and substantial justice. In other words, the single transaction of purchasing the truck in the State of Maryland is not sufficient for the purpose of the Court stretching the

term "doing business" to include a single business transaction entered into by an individual.

3. Therefore, for the foregoing reasons, the Maryland Court did not have jurisdiction of the defendant in this case, and, therefore, the Court is of the opinion that it is not required to give full faith and credit to the Maryland judgment.

It is therefore ADJUDGED, ORDERED and DECREED that the plaintiff's Motion for Judgment be and the same is hereby dismissed.

Nothing further to be done in this cause, the Court directs that this cause be stricken from the docket. The Clerk of Court is directed to mail an attested copy of this Order to counsel of record in this case.

ENTER this Order the 22nd day of May, 1979.

W. Glenn K. Phillips  
JUDGE

REQUESTED:

John M. Farmer

JOHN M. FARMER  
EARLS, WOLFE & FARMER  
ATTORNEYS AT LAW  
470 PARK AVENUE  
NORTON, VIRGINIA 24273

A COPY TESTE:

Clayton H. Miller CLERK

SEEN: and objected to:

Stephen J. Kalista

STEPHEN J. KALISTA  
ATTORNEY AT LAW  
BOX 219  
CLINTWOOD, VIRGINIA 24228

Counsel for Plaintiff



1       Thence came David McPeek, a witness of lawful age, who  
2 after being duly affirmed, stated as follows:

3 QUESTIONS BY MR. KALISTA:

4       Q. Uh, how was it that you happened to go to the State  
5 of Maryland back in 1975?

6       A. Well, we talked to a...a person that had purchased one  
7 up there.

8       Q. Who was that? It wasn't Mr. Surratt was it or.....

9       A. Mr. Surratt was the one that told me about it, right,  
10 but now he talked to somebody else who had a truck.

11       Q. I see. But why did you go up there to buy a truck?

12       A. That's hard to say. I'd say that he.....

13       Q. Well, you bought the truck on about February 19, 1975  
14 is that correct?

15       A. I'd say that's correct.

16       Q. And you bought it from a dealership by the name of  
17 Prince George's Truck Center, INC., uh, is that correct, in....  
18 in Brentwood, Maryland?

19       A. I'd say that's correct, yeah.

20       Q. And why...why did you go up there at that time, what  
21 was your purpose of going into Maryland at that time?

22       A. That purpose, to buy the truck and.....

23       Q. It was to buy a truck, is that correct?

24       A. That's when we went up there.

25       Q. O.K., and you...in the beginning, was it you and

1 your wife and the Surratt's that went and brought this coal  
2 truck together or was it just you and your wife or who?

3 A. Me and the Surratt's and my wife.

4 Q. And I believe that you purchased a 1975 Diamond Rio  
5 14 foot Heil Dump Truck from this Prince George's Truck Center  
6 at that time?

7 A. Right.

8 Q. And, uh, what was the purchase price approximately  
9 on that, can you recall?

10 A. Exactly, no.

11 Q. Was it about, uh, \$36,000.00, \$36,000.00 or \$37,000.00?

12 A. I'd say that sounds about right.

13 Q. And was part of that money financed through any lending  
14 institution or any credit agency?

15 A. Yes.

16 Q. O.K., and I believe that it was financed through  
17 Associates Financial Services Company, Inc., is that right?

18 A. Right.

19 Q. And how much did you borrow from them approximately?

20 A. Well, I would say that, uh, when they financed it,  
21 they financed all but about \$3000.00.

22 Q. So you had a pay...a payment of about \$3000.00 is  
23 that right?

24 A. Right.

25 Q. And, uh, where, how did you contact Associates

1 Financial Services Company, uh, who arranged that?

2 A. To fin....to contact the.....

3 Q. The financing...who arranged the financing?

4 A. Ah, we just went up that day and, uh, they were there  
5 at the..at the garage or ever where, you know, the lot.

6 Q. You mean they...,uh, who do you mean?

7 A. Well, the one, you know, I guess he represented them.

8 Q. The fina....the financing company?

9 A. Yeah.

10 Q. And, uh, they did lend the money to pay, uh, Prince  
11 Georges Truck Center is that right, they lent you thirty....  
12 roughly \$33,000.00 to pay Prince Georges Truck Center?

13 A. Now, when we did...when we got this, I guess that's  
14 the way that you would say it because when we got this they  
15 were there and they just, we paid them, uh, three thousand  
16 dollars and they take...they took three off.

17 Q. Well, let me show you a document here and I'll, it  
18 appears to be an agreement signed between yourself, your wife  
19 Shirley McPeek, Ronnie J. Surratt and Judy Carolyn Surratt, uh,  
20 and uh, Prince George's Truct Center and I'll just ask you to  
21 look at that and tell me if that appears to be the agreement  
22 that you signed that day along with the other people that I  
23 mentioned.

24 MR. FARMER: Wonder if we could have a copy of that, Steve?

25 MR. KALISTA: Right, I'll give you a copy.

1 A. Yes, I'd say that's it.

2 Q. O.K., and where was that agreement signed, or where  
3 was that document signed?

4 A. Uh, in the, this was a garage like and it was right in  
5 the....

6 Q. But that was in the State of Maryland, is that right?

7 A. Was in the State of Maryland.

8 Q. And, uh, the financing was arranged in the State of  
9 Maryland, well, let me start out, first of all. You went to  
10 the State of Maryland to buy the truck, is that correct?

11 A. Mmmhumm.

12 Q. And you bought the truck in Maryland, it was financed  
13 in Maryland, where did you make your payments to? Did you send  
14 them off somewhere or did you make them locally?

15 A. No, I sent them up to Maryland.

16 Q. O.K., your..your payments were made to Maryland, is that  
17 correct? And you took this truck out of the State of Maryland  
18 and brought it back down here or what did you do with it?

19 A. (Inaudible).

20 Q. You brought it back down here, o.k. Can you remember  
21 the person that you dealt with with, uh, the financing company  
22 or the truck dealership that, uh, made arrangements for this  
23 purchase and financing?

24 A. That's pretty hard, it's been a long time.

25 Q. Well, after you brought the truck down here, uh, what



1 did you begin to use the truck for?

2 A. Haul coal.

3 Q. And I presume, of course, you had a Virginia license  
4 and you transferred the truck with... to a Virginia registration  
5 and so forth, is that correct?

6 A. Yes.

7 Q. Uh, how long did you approximately use this for hauling  
8 coal?

9 A. Four months, I'd say.

10 Q. O.K., four months, and who was using it, yourself and  
11 Mr. Surratt or just yourself or who specifically?

12 A. Both of us.

13 Q. Were you going under a name... a business name or... or  
14 were you just driving it, uh, for someone else or did you in-  
15 corporate and make a business of your own or what was the situation?

16 A. No, we just called R & D Trucking, we didn't incorporate  
17 it or anything.

18 Q. O.K., but the drivers for the business was yourself and  
19 Mr. Surratt?

20 A. Mmmhumm.

21 Q. And why at the end.... why did you only use the truck  
22 for hauling coal for a four month period?

23 A. Well, you know this is something that I don't like to  
24 say, but we couldn't, we couldn't get along now, as partners and  
25 uh, we called and made an agreement.

Q. O.K., when you say you called, you called who?

1 A. Associate Finance.

2 Q. O.K., who did you talk to up there?

3 A. Again, see that's very hard to say. (Inaudible)

4 Q. You say you called on the phone?

5 A. I most certainly did.

6 Q. And, well what was the substance of the conversation  
7 that you had?

8 A. Well, we told them exactly where I...that...just  
9 couldn't make together and, uh, they wanted him to sell out  
10 to (inaudible).

11 Q. And, uh, what was the response that you received?

12 A. Well, when we received the response uh, on the phone  
13 we had to, of course had to get a hold of somebody else and then  
14 he told us that, uh, he would send us some papers and, uh, this  
15 didn't happen right a way.

16 Q. What do you mean, you didn't get the papars right a  
17 way?

18 A. Right.

19 Q. And, uh, we made several phone calls and, uh, Joe, he  
20 wanted the truck, Mr. Surratt, and, uh, (inaudible) they sent  
21 the papers then and, uh, they were, when we...when they did send  
22 them, they were, well, I called them two days I guess before then,  
23 he was sort of irrational, I guess you might say.

24 Q. Who was?

25 A. Uh, Associate Finance, and I...when I.....

1 Q. Well, who did you talk to?

2 A. Now, this is...this is something that I can't remember.  
3 I couldn't say a name because I can't remember the name.

4 Q. Well, who did you receive the papers from, surely they  
5 must have sent a cover letter?

6 A. Associate Finance.

7 Q. But who, who signed it? They must have sent a cover  
8 letter explaining what the papers were and what you were to  
9 do with them.

10 A. They...they sent a cover letter explaining exactly  
11 what to do and all,.....

12 Q. Mmmhumm.

13 A. ....but I can't remember whose names was on it.

14 Q. You didn't make copies of that?

15 A. No, I didn't because, I'll tell you why I didn't because  
16 when we was supposed to get it back. Joe said, uh, he would  
17 give us a copy, too. But when he went to up and tagged the  
18 truck, he said they had to send it to the Division of Motor  
19 Vehicles.

20 Q. O.K., now about when or how long was it after you got  
21 the truck that you finally got the papers then and...and from  
22 you say Associates Financial Services?

23 A. I would say, uh, four and a half months, if four months  
24 was what it was, I'm not sure if that's exact months now, its  
25 close in there.....

1 Q. Mmmhumm.

2 A. that we had the truck before we, uh, dissolved and, uh  
3 Joe took the truck away.

4 Q. And, did you say that you made calls to Maryland on  
5 several occasions?

6 A. Mmmhumm.

7 Q. Would that have been approximately sometime, let's say  
8 during the months of May, June, July, of 1975 something like that?

9 A. I guess you might say so.

10 Q. What was your...what...did you and Mr. Surratt have  
11 a business phone or an office anything of that nature?

12 A. Some of them was made at the house and some of them  
13 was made at the garage. His daddy runned a service station  
14 up here.

15 Q. What was your phone number?

16 A. Our phone number at that time?

17 Q. Mmmhumm.

18 A. Same thing as it is.

19 Q. And what is that?

20 A. Uh, 8409.

21 Q. 926-8409?

22 A. MmmHummm.

23 Q. And you said that some were also made from a garage?

24 A. Unnnhunn. It would be the Shell, no, the Gulf Service  
25 Station right up here.



1 Q. Do you know what their phone number is?

2 A. No, I don't. Because Joe made them and I, but I was  
3 standing right there.

4 Q. Mmmhumm. Well, did...do you know if he charged them  
5 to that phone? Why would he make the calls from that phone there?

6 A. Well, we were out there, you see, and that his daddy  
7 run the service station as I said.

8 Q. O.K., that's the Gulf Service Station and it's owned  
9 by Mr. Surratt's daddy?

10 A. It was owned by Tom...supposed to have been owned by  
11 Tom Surratt.

12 Q. Now, you say you filled out some papers? That...

13 A. We signed some papers.

14 Q. You signed...well do you know what those papers said?

15 A. Yes, that we was turning the truck over to, uh, Ronnie  
16 Joe and Judy Surratt.

17 Q. Mmmhumm.

18 A. All four of us had to sign it.

19 Q. And you say that you didn't keep a copy of that?

20 A. No, sir.

21 Q. Uh, you don't have any papers at all from Associates  
22 Financial Services with regard to that transaction?

23 A. No.

24 Q. Uh, did you say that Mr. Surratt had a copy?

25 A. He had all the papers, because we was to sign the papers

1 and he would of course (inaudible)

2 Q. I think my question was, you said that Mr. Surratt  
3 had the papers and....

4 A. He was supposed to give them back and when he went up  
5 to get his tags he come back and he said that he had to send  
6 them on to the Division of Motor Vehicles.

7 Q. After you signed the papers then, you're saying...what...  
8 what did you do then....after you signed those papers, what did  
9 you do with them.

10 A. Well, me and Joe went over to the Clinic and had my  
11 wife to sign them and his wife was working at the Piggly and she...  
12 and took them over and her to sign them, and then Joe came on  
13 up to get the tags.

14 Q. Now, who, did Mr. Surratt then take physical possession  
15 of the truck after that?

16 A. Yes, sir.

17 Q. And that would have been sometime, approximately when?  
18 July or August of '75?

19 A. Yes, sir.

20 Q. Do you know the circumstances under which you returned  
21 the truck to the Plaintiff here, Associates Financial Services  
22 Company?

23 A. You know, we didn't hear from them till..for I'd say  
24 for about five to six months later that we heard from Associates  
25 Finance and they called me and it was late at night around nine

1 I would say and they wanted to know where the truck was at and  
2 that's when they informed me that there'd been no payments wasn't  
3 been made on the truck and I told them exactly where the truck  
4 was at and they didn't inform me about anything, of course, at  
5 that time I couldn't have picked the truck back up five months  
6 later because the payments on the truck, there was no way I....  
7 and I told them exactly where the truck was at. It was setting  
8 right up there at the service station at that time.

9 Q. You know what Mr. Surratt used the truck for after this?

10 A. Yes, sir. He hauled coal.

11 Q. No, uh, do you know who contacted you that time?

12 A. Again, they just said...I'm sure that they said it  
13 was Associate Finance. Now, uh, if they said a name, I'm just  
14 not positive, they could have.

15 Q. Now, uh, later on didn't you become aware that Associates  
16 had filed a suit against you in the Circuit Court in Prince  
17 Georges County, Maryland?

18 A. Yes, sir, later on I did.

19 Q. You were served with papers, I believe by....

20 A. Yes, sir.

21 Q. And you admit that you were served by Dickenson County  
22 Sheriff's Department Deputies...those papers?

23 A. Most definitely.

24 Q. Why didn't you take any action at that time?

25 A. I went and seen Victor McFalls at that time, and he told

1 seeing as to...that this transaction had been made. that there  
2 was no use for me to, uh, do anything about it and said that  
3 Joe was in money, uh, he would probably pay the truck off and  
4 for me not to worry about it.

5 Q. And when was that approximately, just after you had  
6 received those papers?

7 A. Right.

8 Q. Now, uh, how many payments did you make personally on  
9 that truck?

10 A. When we uh, when we turned the truck over it was not  
11 one payment behind, I'll have to say that, not one was behind  
12 on it.

13 Q. You mean you had made all the monthly payments as you  
14 were required to?

15 A. Yes, sir, but I wouldn't say exactly how many. Now  
16 they could have been a couple past due, you know, but they  
17 was caught up and they were none behind.

18 Q. Now, where was the agreement specifically then you had  
19 with Mr. Ronnie Surratt and his wife Judy Surratt in regard to  
20 the payment of any amounts that you owned on the truck.

21 MR. FARMER: Let me interject, I do have the chance to  
22 bring the file over because I thought I was going to be able to  
23 get back down to the office, I had to be in Court this morning.  
24 I do have a written agreement in my file which I'll send you  
25 a copy of, you can go ahead and tell him the nature of, but I



1 do have a written documentation.

2 A. Well, we went and had a paper written up, you know  
3 an agreement written up, notarized and all at that Joe would  
4 take over the bill and all that was against like the fuel bills,  
5 like you know what have you like that. And anything that was  
6 against the truck, (inaudible).

7 Q. And, uh, was that also, where was that signed in  
8 relationship to this transfer agreement that you mentioned?

9 A. (Inaudible).

10 Q. At the same time?

11 A. That's right.

12 Q. O.K., how was it that you kept a copy of that but didn't  
13 get a copy of the other papers?

14 A. Just like I told you, they just sent this and we  
15 signed it and Joe took it up and was supposed to have brought  
16 it back to me and it went on to the Division of Motor Vehicles.

17 Q. Did you ever make any appearance or write any letters  
18 to the Court in Maryland, un, with regard to the suit that you  
19 had filed against you by Associates in Maryland?

20 A. No, sir.

21 Q. So your only action was limited to talking with Mr. McFall?

22 A. And then when I got the other one, I contacted Johnny.

23 Q. Can you remember the names of any people that you ever  
24 dealt with in connection with Associates Financial Services  
25 Company?

1 A. I can remember a first one but it probably wouldn't  
2 help, George.

3 Q. That's the only one you can remember?

4 A. That's the only one, right. His is the only one that  
5 I come in contact with.

6 Q. What contact did you have with Associates after the  
7 time that you said that you received the call about six months  
8 that you had signed that transfer agreement wanting to know  
9 where the truck was, did you have any contact them after that?

10 A. I'm sure I didn't. I'm not positive, but, uh, until  
11 I got this and brought it over to Johnny.

12 Q. Had you ever purchased any other vehicle of this kind  
13 before? Have you ever purchased any other vehicle of this  
14 kind before, say as a coal truck....

15 A. A coal truck?

16 Q. Yes.

17 A. Oh, yes, I did. I purchased an Internat

18 Q. Was that before or after this one?

19 A. Before. Now I had a Sand truck that I used to haul  
20 schfold and stuff on and I just traded trucks and I used it.

21 Q. Was Associates involved in any way with that..financing  
22 of that truck, transaction?

23 A. No.

24 Q. You claim.....you claim that this...these papers were  
25 sent down by Associates and were signed and given to Mr. Surratt,

1 is that correct?

2 A. Yes, sir.

3 Q. But you...you don't know where they are now or where..  
4 what Mr. Surratt did with them?

5 A. Only what he said.

6 Q. And he, what did he say?

7 A. He said he had to send them to the Division of Motor  
8 Vehicles.

9 Q. He had to sent the papers, the equity transfer to the  
10 Division of Motor Vehicles?

11 A. Yes.

12 Q. Did you keep any insurance on the truck yourself after  
13 you transfered your interest to Mr. Surratt?

14 A. No, sir.

15 Q. Do you know whether in fact the tags, the registration  
16 and so forth were transfered to Mr. Surratt's name alone? IN  
17 other words, did you ever see a new registration for the truck  
18 after it was transfered?

19 A. No, sir.

20 Q. O.K., I don't think I have any further questions. I  
21 don't know if you want to ask them anything or not.

22 QUESTIONS BY MR. FARMERS

23 Q. O.K., I would like to ask them just two or three questions.  
24 Now, these calls that were made to Maryland during the summer  
25 months of 1975, were they made for the express purpose of getting

1 a release from Associates Financial?

2 A. Yes, sir.

3 Q. And, uh, just go into the nature of the conversation  
4 a little bit if you will.

5 A. We just told them, of course now, uh, there was no  
6 real hard feelings between me and Joe, we just..we just couldn't  
7 now, with the payments and the things like this and, uh, working  
8 and, uh, the way money was going. And, so either he was going to  
9 buy me out or I was going to buy him out and we called and, uh,  
10 we told Associate Finance this and, uh, just like I said again,  
11 it was, uh, they didn't send the papers right, you know as soon  
12 as we called them, so I had to call back. And, uh, then we made  
13 uh, of course, when a truck setting em...still and you're making  
14 payments on it. Well, Joe, we had already, he had already  
15 decided that he would take the truck and I wasn't going to  
16 tag it anymore, like between us, either one would buy the other one  
17 out, take the truck over, and, uh, Joe got on the phone, then up  
18 there and he talked and, uh, they said they would have the papers  
19 down for...he told me he could not pay for the truck and it setting  
20 still that he had to have a release from me on the truck. And  
21 they sent this and then I called them and they told me that they  
22 had already mailed the papers out and like I say he was so  
23 irrational on the phone and he said they was instructions with  
24 it, just follow the instructions.

25 Q. And did these papers have the word release written on

1 them?

2 A. They had a place for me to sign and a place for her  
3 to sign. And they we...uh, that we were released when the  
4 truck went over to Ronnie and Judy and they also had to sign  
5 the papers.

6 Q. And did you think that was the end of the matter?

7 A. Yes, sir, it was the end of it until they picked the  
8 truck up.

9 Q. And were you surprised when you heard further from  
10 Associates Fianancial?

11 A. I was because the truck worked all...you could see  
12 it on the road aworking all the time.

13 Q. And now when they called you by telephone, wanted to  
14 know where the truck was at, uh, understand they also wanted  
15 to know where Mr. Surratt was, is that correct?

16 A. Right.

17 Q. Did they give any indication to you at that time that  
18 they were looking to you for payment or anything?

19 A. No, sir, they only wanted to know, they called me and  
20 wanted to know because his phone, they said it would ring and  
21 could not get no answer and they called me and wanted to know  
22 where he was at and where the truck was at, I told them.

23 Q. You feel like they have misrepresented the, uh, situation  
24 to you?

25 A. Definitely.

McPEEK - INTERROGATORIES

1 Q. And, uh, so, uh, since you felt like you were released  
2 was that another reason that you did not make an appearance  
3 in Maryland?

4 A. Right, I had done gotten the release papers and signed  
5 them.

6 Q. Now, how many time have you been in Maryland, uh, for  
7 this purpose?

8 A. Just one.

9 Q. One time.

10 A. But, now I was in Maryland one other time but it was  
11 in,...just help move a boy out of there.

12 Q. Right, in otherwords, you just been there twice in  
13 your whole life?

14 A. As far as I can remember, yes.

15 Q. And just one time on this transaction?

16 A. Right.

17 Q. And there this whole transaction just took place in  
18 one, one time?

19 A. One day.

20 Q. And the other times that you telephoned Maryland, they  
21 were just in trying to get the matter released, is that correct?

22 A. Right.

23 Q. Now, who handled the payments that were made, I mean,  
24 who was your bookkeeper?

25 A. Right here. (Indicating Shirley McPeek)

1 Q. Right, so you were the one that sent the payments  
2 in, is that correct?

3 SHIRLEY MCPEEK: Right, well, may I say something

4 MR. KALISTA: Well, just let the record show that he's  
5 indicating the bookkeeper was his wife.

6 Q. O.K. Now, uh, so the, you thought there was a release  
7 and now that they went into Maryland and obtained a judgement  
8 and they have come down here, uh, against you on it, do you  
9 feel like you own Associates Financial anything?

10 A. No.

11 Q. And, uh, I'll ask you this now, the, they have asked  
12 for Judgement against you, uh, let me just go briefly if we can  
13 into your financial status, uh, as I understand it, uh, you have  
14 a home in your name, is that correct?

15 A. Yes, sir.

16 Q. And, uh, what is this valued at?

17 A. I'd say it's six thousand dollars.

18 Q. Six thousand dollars, now, is there anything outstanding  
19 against this, uh, home?

20 A. Well, I owe, uh, the bank about \$4000.00 on it.

21 Q. So, it...is there a Deed of Trust, uh, for \$4000.00  
22 on this home place?

23 A. Yes, sir.

24 Q. Now, uh, do you have a checking account?

25 A. Yes, I do.

1 Q. And, uh, you have a savings account, I believe you  
2 told me?

3 A. Yes, sir.

4 Q. But, do you own any stocks and bonds?

5 A. No, sir.

6 Q. And do you have any debts?

7 A. Yes, sir.

8 Q. Right, have you figured what your debts amount to?

9 A. All together?

10 Q. Mmmhumm.

11 A. I'll say, uh, six, seven thousand dollars.

12 Q. Six or seven thousand? Now the car that you drive, uh,  
13 you have a car I believe, uh, do you owe anything on it?

14 A. Yes, sir.

15 Q. And how much do you say that you owe on it?

16 A. Well, we've had it one year, it's a Monte Carlo so I  
17 owe, make payments on it so I'd say about four-five thousand  
18 dollars.

19 Q. Ummhuh, now is this part of the seven thousand dollar  
20 debts or separate from what you were talking about a while ago?

21 A. Naw, this would all be counted in with it.

22 Q. Mmmm, O.K. Alright.

23 A. I might have under exaggerated, maybe more, a little  
24 bit more than that.

25 Q. O.K.



1 QUESTIONS BY MR. KALISTA:

2 Q. Let me ask you a couple more questions. You do admit  
3 though that you went to Maryland for the express purpose of  
4 buying that truck?

5 A. Oh, yes, sir.

6 Q. And you did buy the truck in Maryland, you brought  
7 it from a Maryland dealer, is that correct?

8 A. Yes, sir.

9 Q. And you used a Maryland institution to finance that  
10 truck, is that correct?

11 A. Yes, sir.

12 Q. And they did provide the financing and did pay the  
13 financing as far as you know the dealership for the truck on  
14 your behalf?

15 A. Well, as far as I know.

16 Q. And you did make payments, and those payments were  
17 made to Maryland, is that right?

18 A. Yes, sir.

19 Q. Now, uh, after you had signed these papers with Mr.  
20 Surratt, on any other occasion that you talked on the phone with  
21 anyone from Associates, did they mention that they had received  
22 the release papers?

23 A. After I had signed this with Mr. Surratt, it was, the..  
24 the only time that I had contact with them was when they called  
25 me and wanted to know (inaudible).

1 Q. Did they mention at that....

2 A. They didn't mention anything except where he was at.

3 Q. They didn't mention anything about receiving release  
4 papers then, is that right?

5 A. No.

6 Q. And they...and they didn't say that you're not liable  
7 on the note, did they?

8 A. At that time?

9 Q. Right.

10 A. There was nothing of that, uh, nature talked of, the  
11 only questions that was asked, was he asked me where Joe was  
12 at and where the truck was at.

13 Q. Your..your home, is that in Dickenson County?

14 A. Yes, sir.

15 Q. How..how big is the area that you have...you own several  
16 acres or how big is it?

17 A. I'd say four acres down..up there.

18 Q. It's four acres worth six thousand dollars with a  
19 house on it?

20 A. The house is not very much, I hope..I hope to do a  
21 little something to it, but it's no plumbing in it or.....

22 Q. O.K., I believe that's all the questions I have.

23 MR. FARMER: O.K.

24 MR. KALISTA: Do you have anymore John?

25 MR. FARMER: No, I think that's all

1 MR. KALISTA: O.K., I don't think I have any questions  
2 for Mrs. Surratt, well, let me...let me ask her a few questions.

3 Thence came Shirley McPeek, a witness of lawful age, who  
4 after being duly affirmed, deposed as follows:

5 QUESTIONS BY MR. KALISTA:

6 Q. Now you went to Maryland with your husband on that day  
7 to purchase a truck, is that right?

8 A. Yes.

9 Q. And you did sign this agreement that I showed your  
10 husband, is that right, along with him and the Surratts?

11 A. Yes.

12 Q. And you said that you were the bookkeeper for the  
13 business.

14 A. Mainly.

15 Q. O.K., and you handled the payment of funds or payments  
16 to people that....

17 A. I paid the truck payments, I mailed those out.

18 Q. O.K.

19 A. And they collected the money.

20 Q. Right, and who were the truck payments mailed to?

21 A. They were mailed to the Associates Financial.

22 Q. Associates in Maryland?

23 A. Yes.

24 Q. Did you ever contact Associates and talk to anyone  
25 there? I never had no reason to call them, I hadn't talked with

1 them, but not until they called.

2 Q. O.K., so they called you?

3 A. Uh, they called the time we's trying to get these  
4 papers through, I guess about the same time they talked with  
5 my husband about it.

6 Q. Well, they called you though, I mean, or they called  
7 the home and you got the answer?

8 A. They called the home, I happened to answer.

9 Q. And...and do you happen to remember who you talked with?

10 A. No, I don't.

11 Q. O.K, what was the substance of the conversation you  
12 had with them?

13 A. We were wanting the release papers, is what we were  
14 wanting.

15 Q. Well, who mentioned release papers?

16 A. We did.

17 Q. You did?

18 A. Uh, he, no, I don't recall now, 'cause I'm not good at...  
19 him and Ronnie Joe was the one that was working up the release,  
20 evidently they had called for some other purpose, I don't recall,  
21 I mean, for, about that.

22 Q. Well, what I mean though, when you said that someone  
23 from Associates called the home and you answered and talked to  
24 them, uh, was your husband home at that time so he talked to  
25 them, or.....

1 A. No.

2 Q. You talked to them?

3 A. No, now this would have been too after that they, 'bout  
4 the time they picked the truck up, trying to locate the truck  
5 and they called my husband about it.

6 Q. So what was the conversation you personally had with  
7 someone from Associates ?

8 A. Alright, they wanted to know, uh, about the truck and  
9 if Ronnie Joe was working the truck and I said yes he was and  
10 they wanted to know where the truck was at and I told them it  
11 was in Clintwood and they called my husband back.

12 Q. And that was pretty much the end of the conversation?

13 A. Best I can remember.

14 Q. They didn't mention anything about a release?

15 A. No, nothing about a release. And I thought that was  
16 all done took care of, all of that, I understood it was.

17 Q. Did they, did you personally have any conversations  
18 other than the one you just described with anyone from Associates?

19 A. Yeah, one...at my sisters one day, that's before we  
20 got the telephone and was in the process of trying to get the  
21 release papers, they were supposed to, you know, send the release  
22 papers down.

23 Q. And who called who? They call you?

24 A. Well, they called up there and left a phone number  
25 for me to call them back.

1 Q. So you did call them back?

2 A. Yes.

3 Q. O.K., and who...do you remember who you talked to?

4 A. No, I don't remember the names.

5 Q. Well, what was the substance of the conversation?

6 A. Wanting to know about the papers on the truck. Uh, I  
7 don't recall now exactly how that was but something about the  
8 release papers on the truck. They was supposed to mail them  
9 down to Ronnie Joe.

10 Q. But you...you called, you made the call, right?

11 A. I called them back after they had called us.

12 Q. Right, but you called them back?

13 A. Mmmhumm.

14 Q. And, uh, this...there was some mention of a release  
15 papers.

16 A. No, let's see now. I was up...I was supposed to be  
17 there at a certain time, is the way it was and for them to  
18 call back at a certain time of day, is the way it was and they  
19 called back at a certain time of day.

20 Q. O.K. what was the conversation then?

21 A. Just about the papers.

22 Q. Well, I mean what about the papers?

23 A. See, at one time they had a buyer for the truck.

24 Q. Who did?

25 A. Some...uh, the man up here wanted to buy the truck and

1 they wouldn't sell to the man, Associates would not sell the  
2 truck to this man and now I guess that was what it was about then.  
3 The man wanted to pay cash for the truck and they wouldn't  
4 even talk about it.

5 Q. Well, you mean, your husband and your...and Mr. Surratt  
6 wanted to sell the truck?

7 A. At...at one time they would have had, but then they  
8 didn't since Associates would not talk with them about selling  
9 this man the truck then that's when they.....

10 Q. So you agree with your husband that you all went up  
11 to Maryland together to buy a truck, is that correct?

12 A. Yes...yes.

13 Q. And you bought a truck up in Maryland...

14 A. Right.

15 Q. And it was financed up in Maryland....

16 A. Yes.

17 Q. And you made payments to Maryland.

18 A. Yes.

19 Q. I don't any other questions.

20 QUESTIONS BY MR. FARMER:

21 Q. Let me mention this now. This...when you had a buyer  
22 for the truck, this was before any release was, uh, agreement  
23 was entered into, is that correct?

24 A. Yes.

25 Q. In otherwords, there was someone that approached R & D

1 Trucking Company and said that they would like to buy it?

2 A. Yes.

3 Q. They was trouble with the company, so Surratt and David  
4 thought maybe that was o.k., is that correct?

5 A. Yes.

6 Q. And so, Associates Financial was called about that  
7 and they said "No", is that correct?

8 A. Yes.

9 Q. And then that's when the company split and the release  
10 was sought, is that correct?

11 A. Yes, that's correct.

12 Q. Now, as I understand it you all specifically sought  
13 from Associates to get released from this agreement?

14 A. That's right.

15 Q. Did you other than being informed say in five or six  
16 months later, after...you turned the coupon book over to the  
17 Surratt's, is that correct?

18 A. That's right.

19 Q. You delivered it personally. Did you receive any other  
20 correspondance or communication until after the Surratt's had  
21 defaulted?

22 A. No.

23 Q. Did not receive any whatsoever?

24 A. No.

25 Q. Alright, that's all I have too, I believe.



1 QUESTIONS BY MR. KALISTA TO DAVID McPEEK

2 Q. Uh, let me ask Mr. McPeek, these papers you recieved  
3 from the Associates, did that have signature by any official  
4 from Associates on it?

5 A. Yes, sir, it did, but like I said it's been so long  
6 that I can't and then the names new to me you know and I can't  
7 recall (inaudible).

8 Q. Well.....and did you tell me that you had read these  
9 papers over or not?

10 A. Yes, sir.

11 Q. Are you sure that this wasn't merely a transfer of your  
12 interest in the truck to Mr. Surratt but that you would still  
13 liable on the note that you had to Associates?

14 A. I am sure that it didn't make it plain on the paper,  
15 it made it plain that I...you know, to me of course, like I  
16 say that I was released from the whole thing, that...you see  
17 this was what we was after, you know, from the whole deal I  
18 was to be taken off of it.

19 Q. Did you...did you, was there any agreement with the  
20 Associates to pay them any amount, uh, in order for them to  
21 release you, I mean after all they were given up...you're saying  
22 they were giving up their right to sue you on the note weren't  
23 they?

24 A. I would think that was what they were doing, yes.

25 Q. But, did you pay them anything for that?

1 A. No, sir. I'd been paying them all along, I mean.....

2 MR. FARMER: Let me interject though, before that took  
3 place didn't you, uh, uh, offer to sell this to another person?

4 A. Yes sir. We had...we had a buyer for the truck or I  
5 though we did and the man was wanting it and I called Fi...  
6 Associates Financial personally and they were supposed to have  
7 called him back and have talked to him and then, uh, Joe he  
8 talked to them and they just wouldn't talk about it to me. The  
9 man was going to buy the truck and the (inaudible).

10 Q. Some six months after you had bought the truck?

11 A. Uh, no it's about four, I'd say four.

12 Q. Four months after you had bought the truck? And this  
13 was..is a brand new truck when you bought it?

14 A. Yes, sir.

15 Q. Well, Ass...you..you were the owners of the truck and  
16 Associates had a lien on it, is that right?

17 A. Yes.

18 Q. And you could have sold it to anybody subject to that  
19 lien, isn't that correct? And but..but you would have still  
20 been liable to pay them what you on the note.

21 MR. FARMER: Well, I'll register my first objection hearing  
22 this because this calls for a legal conclusion.

23 Q. Well, no, you were the owners of the truck, weren't  
24 you? You didn't think you owned this truck?

25 MR. FARMER: Well, I think his testimony has been that  
they felt like they had to clear everything through Associates

1 Financial.

2 Q. Well, but what I understood you to say that you felt  
3 the consideration that you had given Associate's was their  
4 refusal to agree to make some arrangement in helping you sell  
5 the truck to somebody else and that you..you are trying to some-  
6 how say that their refusal to help you in selling the truck  
7 to someone was consideration to allow them to release you from  
8 the note.

9 A. Now, see, you're getting me all mixed up.

10 Q. Well, .....

11 A. On that talking about.....

12 MR. FARMER: Right, and arguing about the consideration  
13 anyway, just let him state the facts and whether a consideration  
14 was even required in this instance is, I think, debatable and  
15 you know even if it is he state what the transaction was.

16 Q. O.K., did you pay anything to Mr.,...or to the Associates  
17 for the release?

18 A. No.

19 Q. O.K., I don't think I have anymore questions of him.

20 MR. FARMER: Right, I don't have anymore either.

21 AND FURTHER MORE THESE DEPENDANTS SAITH NOT:  
22

23 \_\_\_\_\_  
David McPeek

24 \_\_\_\_\_  
25 Shirley McPeek

VIRGINIA:

IN THE CIRCUIT COURT FOR DICKENSON COUNTY

ASSOCIATES FINANCIAL SERVICES COMPANY, INC.

PLAINTIFF

VS.

MOTION TO DISMISS

DAVID P. McPEEK and  
SHIRLEY McPEEK

DEFENDANTS

TO: THE HONORABLE GLYN R. PHILLIPS, JUDGE OF THE CIRCUIT COURT

I.

Now come your Defendants and move this Honorable Court to  
dismiss this action filed against them in that the Maryland Court did  
not have jurisdiction over the Defendants to render the alleged judgment.

DAVID P. McPEEK  
SHIRLEY McPEEK

-By Counsel-

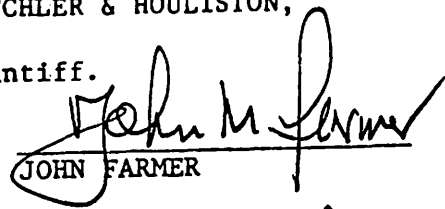
EARLS, WOLFE & FARMER

BY:

  
COUNSEL FOR DEFENDANTS

C E R T I F I C A T E

I, John M. Farmer, do hereby certify that I have on this  
20th day of February, 1978, mailed a true copy of the foregoing Motion  
to Dismiss to Michael L. Houliston, HARRELL, MITCHLER & HOULISTON,  
Bailey's Crossroads, Virginia, Attorney for Plaintiff.

  
JOHN FARMER

SMITH, ROBINSON & VINYARD

ATTORNEYS AT LAW, INC.

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PLEASE REPLY TO:

WISE OFFICE

January 11, 1980

Mr. Allen L. Lucy, Clerk  
Supreme Court of Virginia  
Supreme Court Building  
1101 East Broad Street  
Richmond, VA 23219

RE: Associates Financial Services Company, Inc. v.  
David P. McPeek, et al.  
Record No. 791231

Dear Mr. Lucy:

Pursuant to Rule 5:36 of the Supreme Court Rules, I on behalf of the Appellant am hereby designating the following parts of the record that I intend to include in the Appendix as germane to the assignments of error in the above cause:

- 1) The Motion for Judgment and triple seal copy of the Maryland judgment attached thereto;
- 2) Letter of March 27, 1979, from Judge Glyn R. Phillips to Mr. John M. Farmer and myself containing the Judge's opinion and decision;
- 3) Final Order of May 22, 1979, signed by Judge Phillips and endorsed by counsel of record;
- 4) The two assignments of error as ordered in the petition for appeal;
- 5) Relevant parts of the testimony of David McPeek contained in his deposition of June 16, 1978, located on pages 2, 3, 4, 5, 11, and 21;
- 6) Relevant parts of the testimony of Shirley McPeek contained in her deposition of June 16, 1978, at pages 23 and 27.

I certify that I am on this 11th day of January, 1980, mailing a true copy of this letter to John M. Farmer, 470


SMITH, ROBINSON & VINYARD

Mr. Allen L. Lucy, Clerk  
January 11, 1980  
Page 2

Park Avenue, Norton, Virginia 24273, Counsel for Appellees.

Sincerely,

SMITH, ROBINSON & VINYARD



Stephen J. Kalista  
Attorney at Law

SJK/vy

cc: John M. Farmer, Esq.

EARLS, WOLFE & FARMER

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DONALD E. EARLS  
JOSEPH E. WOLFE  
JOHN M. FARMER

January 21, 1980

File No. \_\_\_\_\_

Allen R. Lucy, Clerk  
Supreme Court of Virginia  
Supreme Court Building  
1101 East Broad Street  
Richmond, Virginia 23219

RE: ASSOCIATES FINANCIAL SERVICES COMPANY, INC., v  
DAVID P. McPEEK, et al, RECORD NO. 791231

Dear Mr. Lucy:

Pursuant to Rule 5:36 of the Supreme Court Rules, I on behalf of the Appellee designate the following additional parts of the record that I wish included in the Appendix in the above cause:

1. Pages 1, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 24, 25 and 26 of the testimony of David McPeek and Shirley McPeek contained in their depositions, styled interrogatories, of June 16, 1978. (This means the entire deposition has now been designated.
2. Motion to Dismiss filed in Dickenson County Circuit Court on or after February 20, 1978, on behalf of David and Shirley McPeek.

I certify that I am on this 21st day of January, 1980, mailing a true copy of this letter to Stephen J. Kalista, Smith, Robinson & Vineyard, P. O. Box 1940, Wise, Virginia, Counsel for Appellants.

Sincerely yours,

EARLS, WOLFE & FARMER

JOSEPH E. WOLFE

JEW:vh

cc: Stephen J. Kalista, Esquire

**SMITH, ROBINSON & VINYARD**

ATTORNEYS AT LAW, INC.

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PLEASE REPLY TO:

WISE OFFICE

January 23, 1980

John M. Farmer, Esquire  
EARLS, WOLFE & FARMER  
P. O. Box 196  
Norton, VA 24273

RE: Associates Financial Services Company, Inc.  
v. David P. McPeck, et al.  
Record No. 791231

Dear Mr. Farmer:

I have reviewed the parts of the record you have designated for inclusion in the Appendix in the above action. I feel that the pages of the transcript designated in your letter are unnecessary for the determination of the issues before the Court. I do agree that the Motion to Dismiss should be included in the Appendix.

Pursuant to Supreme Court Rule 5:36 (b), I am demanding that you advance the cost of including the pages of the transcript designated in your letter for the Appendix. The printer indicates that the average cost will be approximately \$3 per page. Therefore, I feel you should advance approximately \$57 at this time.

Very truly yours,

SMITH, ROBINSON & VINYARD

  
Stephen J. Kalista  
Attorney at Law

SJK:vy

cc: Mr. Allen L. Lucy, Clerk