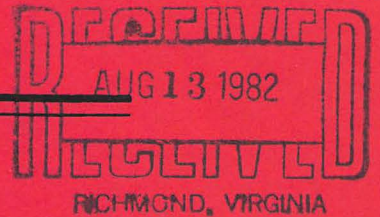


227VA600

CLERK
SUPREME COURT OF VIRGINIA



IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 811973

ROBERT L. ALLSBROOK, JR., individually
and t/a ALLSBROOK'S RADIATOR SERVICE

Appellant,

v.

AZALEA RADIATOR SERVICE, INC.
ALPHUS N. KNAPP, SR., t/a
AL'S RADIATOR SERVICE and DOROTHY WHITLOCK

Appellees.

JOINT APPENDIX

Winston G. Snider
Attorney at Law
2620 Southern Boulevard
Suite 102
Virginia Beach, VA 23452

Counsel for Appellant

H. Joel Weintraub
Decker, Christie & Hitchings
Suite 900
1 Main Plaza East
Norfolk, VA 23510

Counsel for Appellees

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PETITION FOR ATTACHMENT

Now comes the Plaintiff, by counsel, and for his Petition for Attachment against the Defendants herein, states as follows:

1. That on January 21, 1981, the Plaintiff herein obtained a Judgment against the Defendant, AZALEA RADIATOR SERVICE, INC. in the principal amount of \$4,767.35, Law Docket No: L-80-2389; L75-81.

2. That the Defendant, AZALEA RADIATOR SERVICE, INC. has assigned and disposed of part of its estate with intent to hinder, delay and defraud its creditors; some of the property having been assigned and disposed of to the Defendant, ALPHUS N. KNAPP, SR. and some of the property having been assigned and disposed of to the defendant, DOROTHY WHITLOCK.

3. That on October 31, 1980, the Defendant, AZALEA RADIATOR SERVICE, INC., purported to sell the following described property to the defendant, ALPHUS N. KNAPP, SR:

1	Trinity Glass Beading Machine
2	Test Tubs
1	Rotolift
1	Boilout Vat
1	Floor Jack
1	Hydraulic Jack
1	Paint Spray Gun & Container
	Air Hoses
1	Flush Gun & Hoses
1	Grinding Machine & Stand
2	Air Ratchets
1	3/4" Electric Drill
1	Impact Wrench
2	Torches & Hoses
	Small Hand Tools (American & Metric)
	Vice Grips
1	Roll Tool Chest
2	Adding Machines
5	File Cabinets
3	Desks
5	Chairs
1	Sofa & Chair
1	Refrigerator

4. That the aforesaid purported sale from AZALEA RADIATOR SERVICE, INC. to ALPHUS N. KNAPP, SR. was violative of the Bulk Sales Act of Virginia and as such is invalid as to the Plaintiff herein which was a creditor of AZALEA RADIATOR SERVICE, INC. at the time of the purported sale. 576-101

5. That DOROTHY WHITLOCK was the president and sole stockholder of AZALEA RADIATOR SERVICE, INC.; that AZALEA RADIATOR SERVICE, INC. purchased a 1978 Ford Pickup Truck and that said truck was titled in the name of the defendant, DOROTHY WHITLOCK: that all the payments on the aforesaid pickup truck were made by AZALEA RADIATOR SERVICE, INC. and not by DOROTHY WHITLOCK and that the rightful owner of the aforesaid pickup truck is AZALEA RADIATOR SERVICE, INC. and that DOROTHY WHITLOCK was the mere record title holder of said pickup truck for the purpose of hindering, delaying or defrauding the creditors of AZALEA RADIATOR SERVICE, INC.

WHEREFORE, the Plaintiff prays that an Attachment be issued against the Defendant, ALPHUS N. KNAPP, SR. against the following property:

- 1 Trinity Glass Beading Machine
- 2 Test Tubs
- 1 Rotolift
- 1 Boilout Vat
- 1 Floor Jack
- 1 Hydraulic Jack
- 1 Paint Spray Gun & Container
- Air Hoses
- 1 Flush Gun & Hoses
- 1 Grinding Machine & Stand
- 2 Air Ratchets
- 1 3/4" Electric Drill
- 1 Impact Wrench
- 2 Torches & Hoses
- Small Hand Tools (American & Metric)
- Vice Grips
- 1 Roll Tool Chest
- 2 Adding Machines
- 5 File Cabinets
- 3 Desks
- 5 Chairs

1 Sofa & Chair
1 Refrigerator

and that an Attachment be issued against the Defendant, DOROTHY WHITLOCK against the following property:

1 1978 Ford Pickup truck

and that the Plaintiff be awarded Judgment against the aforesaid properties in the amount of FOUR THOUSAND SEVEN HUNDRED SIXTY-SEVEN AND 35/100 (\$4,767.35) DOLLARS, plus interest from January 21, 1981, plus the cost of these proceedings.

ROBERT L. ALLSBROOK, JR. individually
and t/a ALLSBROOKS RADIATOR SERVICE

By: *Robert L. Allsbrook, Jr.*

Of Counsel

Winston G. Snider, p.q.
4490 Holland Road, Suite 109
Virginia Beach, Virginia 23452
(804) 499-6833

STATE OF VIRGINIA

CITY OF VIRGINIA BEACH, to-wit:

This day, personally appeared before me the undersigned, a Notary Public in and for the City aforesaid, WINSTON G. SNIDER, counsel for Robert L. Allsbrook, individually and t/a ALLSBROOKS RADIATOR SERVICE, and made oath that the allegations contained herein are true, accurate and correct to the best of his knowledge and belief.

Edith M. Heitman
NOTARY PUBLIC

My Commission Expires: 8-15-82 6th day of April 1981

Stovall STOVALL, CLERK

O R D E R

13118
This attachment having been properly sued out, and the case heard upon its merits, and the Court being of the opinion that the claim of the plaintiff to the attached effects has not been established, it is ADJUDGED and ORDERED that the petition for attachment be, and the same hereby is, dismissed.

ENTER:

Sept 18/81

Wm Moultrie Guerry

Judge

Wm. Moultrie Guerry, Judge

Seen:

H. Joel Montrose p.d.

Seen and objected to *of execution noted*

Wm Moultrie Guerry p.q.

ASSIGNMENTS OF ERROR

1. The Court erred in dismissing the Petition for Attachment as to the equipment purchased by the Defendant KNAPP from the Defendant AZALEA RADIATOR SERVICE, INC. since said transfer was violative of the provisions of Title 8.6 of the Code of Virginia, 1950, as amended, being a bulk transfer and void as to the Plaintiff.

2. The Court erred in dismissing the Petition for Attachment as to the 1978 Ford pickup truck as the evidence conclusively proved that the pickup truck was owned by the Defendant, AZALEA RADIATOR SERVICE, INC. and that the Defendant, DOROTHY WHITLOCK, was the mere record title holder.

**STATEMENT OF FACTS, TESTIMONY AND
OTHER INCIDENTS OF THE CASE**

The Plaintiff, by counsel, submits the following as the Statement of Facts, Testimony and other incidents of the case pursuant to Rule 5:9 of the Rules of the Supreme Court of Virginia:

I. The trial of the above cause was held on August 31, 1981 before the Honorable W. Moultrie Guerry, Judge of the Circuit Court of the City of Norfolk, Virginia.

II. Opening statements were waived by both counsel for the Plaintiff and counsel for the Defendant.

III. Counsel for the Plaintiff called the Defendant, Alphus N. Knapp, Sr., as an adverse witness. Mr. Knapp testified that he was the owner of Al's Radiator Service, located at 2328 Azalea Garden Road, Norfolk, Virginia, which was the same business location as that maintained by Azalea Radiator Service, Inc. He stated that on October 31, 1980, he purchased the items which were attached and which were the same items identified in the "Bill of Sale" dated October 31, 1980 and introduced in evidence as Defendant's Exhibit No. 1. As consideration for the aforesaid items he stated that he paid Azalea Radiator Service, Inc., the sum of Two Thousand Four Hundred Dollars. Mr. Knapp further testified that he did not take possession of the business nor begin operating the business (pursuant to his agreement with Azalea Radiator Service, Inc.) until January 2, 1981. Mr. Knapp stated that in addition to the items listed in the Bill of Sale, that he received all of the other assets of the business, and all accounts receivable, which included cleaning compounds, soldering sauce, acid, tinting compound, solder, thermostats, pressure caps and hoses and gaskets for heaters and radiators which were of negligible value. He stated further, that in addition to the Two Thousand Four Hundred Dollars (\$2,400.00) he agreed to assume all of the liability of Azalea Radiator Service, Inc. to the Internal Revenue Service, which totalled approximately Ten Thousand Dollars (\$10,000.00).

Mr. Knapp testified that his company and Azalea Radiator Service, Inc. did not inventory any new radiators or cores. That he purchased them on an as needed basis. He explained that if a customer came in who needed a new radiator or core, that he would purchase same from a local distributor at distributor's cost and install

same for the customer charging the customer a markup for the radiator or core and a labor charge for the installation. Mr. Knapp reiterated that when he purchased the business from Azalea Radiator Service, Inc. that in addition to assuming their business location that he took over everything that they owned. He stated that since he had taken over the business and subsequent to January 2, 1981 he had collected and deposited to his own account between twelve and fourteen hundred dollars of accounts receivable which were due Azalea Radiator Service, Inc.

When questioned about the 1978 Ford pickup truck which was also the subject matter of the attachment, he stated that the truck was titled in the defendant, Whitlock's name, and that this had been done because the automobile dealer would not accept financing in the corporation's name. He stated further that the corporation (Azalea Radiator Service, Inc.) had made all of the payments on the truck, paid for repairs, and stated further that he in fact, after assuming control of the business on January 1, 1981, had paid the final two installments on the truck in January and February of 1981.

Mr. Knapp described his relationship with Mrs. Whitlock as that of a friend. He stated that he had begun "hanging around" the business approximately one year on-and-off prior to his purchase of the equipment in question, when he and Mrs. Whitlock agreed upon the sale. He testified further that he was now married to Mrs. Whitlock and that she worked in the business approximately three days per week doing the books but she did not receive any pay for her services and was not listed on the payroll.

IV. Mrs. Dorothy Whitlock was called as an adverse witness by counsel for the Plaintiff and testified that she was and had been the sole stockholder of Azalea Radiator Service, Inc. She stated that her husband had actually conducted the operations of the business until 1972, and that subsequent to his death she became the sole operator of the business.

She explained that in October of 1980 her company was in financial trouble as a result of delinquent taxes owed the IRS totalling approximately Six Thousand Dollars (\$6,000.00) due for employee's withholding taxes and social security. She stated that Mr. Knapp had agreed to purchase the business for the sum of Two Thousand Four Hundred Dollars (\$2,400.00) plus assuming all of the

tax liability. She stated she executed the Bill of Sale (Defendant's exhibit No. 1) on October 31, 1980, but that Mr. Knapp actually took possession of the business on January 2, 1981, pursuant to their previous agreement concerning possession. Mrs. Whitlock also testified that in addition to the items listed in the Bill of Sale there were included in the sale items such as cleaning compounds, soldering sauce, acid, tinting compound, solder, hoses, hose clamps, pressure caps, thermostats, and things of that nature. Mrs. Whitlock testified that she did not maintain an inventory of radiators or radiator cores since she chose not to obtain an inventory of such items but would rather purchase them on an "as needed" basis from the local distributor, who happened to be the Plaintiff in this case. She stated that the balance due the Plaintiff was for unpaid accounts due for the month of October, November and December of 1979, and January and February of 1980. She described her method of operation as purchasing the items from the Plaintiff or some other distributor at distributor's cost when needed, adding a markup, installing same for the customer and adding a labor charge for the installation.

When questioned about the 1978 Ford pickup truck, Mrs. Whitlock stated that the title to said truck had been titled in her name since Kimnach Ford would not sell the vehicle or finance the same for the corporation. She stated that it was her intention when buying the motor vehicle to buy same in the corporate name and for corporate use. She testified that the corporation had exclusive use and possession of the truck, that the corporation had made all payments on the truck to the bank, that they had performed all repairs and maintenance on the truck at the corporation's expense and that the corporation had depreciated the truck on its federal and state income tax returns and had listed the truck on its financial statements and balance sheets as being an asset owned by the corporation. Mrs. Whitlock stated that she did not in fact know how to operate the truck, had never operated same, and the truck had been used exclusively in the business of the corporation. She further stated that she never received any payments from the corporation for the use of the truck. She also stated that she could not rent a comparable truck for less than \$108.95 a month that being the monthly payment to VNB.

When questioned about the accounts receivable of the corporation, Mrs. Whitlock stated that subsequent to Mr. Knapp's taking over on January 1,

1981, that Mr. Knapp had received approximately Two Thousand Sixty-six Dollars and seventy-one cents (\$2,066.71) worth of accounts receivable which were deposited in his account, although she testified that said sums were used to pay the taxes which were due and owing by Azalea Radiator Service, Inc.

V. The documentary evidence that the defendants introduced affirmatively established the following:

(a) That the Two Thousand Four Hundred (\$2,400.00) Dollars that Al Knapp paid Azalea Radiator Service, Inc. was actually deposited in the Azalea Radiator Service, Inc. account with Virginia National Bank; that Azalea Radiator Service, Inc. on October 31, 1980 used those funds to pay the Internal Revenue Service Two Thousand One Hundred Forty-nine and 18/100 (\$2,149.18) Dollars, the Department of Taxation Two Hundred Thirty-eight and 29/100 (\$238.29) Dollars, and the Virginia Employment Commission Two and 58/100 (\$2.58) Dollars, Azalea Radiator Service, Inc. further paid into its IRS Trust Account with VNB the sum of Five Hundred (\$500.00) Dollars on November 14, 1980; that Al's Radiator Service actually paid the Internal Revenue Service on January 16, 1981 the sum of Six Thousand (\$6,000.00) Dollars in payment of the tax obligation of Azalea Radiator Service, Inc.

(b) With respect to the 1978 Ford pickup truck, the installment sales contract which was introduced into evidence affirmatively showed that title was taken in the name of Dorothy M. Whitlock, and that value was given in the form of a trade-in by Dorothy M. Whitlock in the amount of One Thousand Two Hundred Twenty-four and 90/100 (\$1,224.90) Dollars, that this was done on March 11, 1978, before Azalea Radiator Service, Inc. became indebted to Robert L. Allsbrook, Jr.

Both Dorothy Whitlock and Alphas N. Knapp Sr., testified that the business in question basically provided a service.

VI. At the conclusion of this evidence, both the Plaintiff and the Defendant rested. The Plaintiff argued that the attachment should issue against the equipment listed in the Bill of Sale and the 1978 Ford pickup truck for the following reasons:

1. That the sale of equipment was in violation of the bulk transfer provisions of Title 8.6 of the Code of Virginia, 1950, as amended, in that the same

was a transfer of all of the equipment of the corporation, made in conjunction with a bulk transfer of the inventory of the corporation as provided in Section 8.6-102 of the Code.

2. That the 1978 Ford pickup truck was in fact an asset of the corporation, and equitably owned by the corporation and that Mrs. Whitlock was the mere record title holder of said vehicle in view of the facts enumerated above.

VII. At the conclusion of the closing arguments the Court dismissed the attachment for the following reasons:

1. The Court held that the transfer in question was not a bulk transfer as contemplated by Title 8.6 of the Code of Virginia, 1950, as amended. The Court did not rule on whether or not this transfer involved the bulk transfer of inventory in addition to a transfer of the equipment, but held in this particular case that "Service" was the principal business of the enterprise involved and hence, was not within the contemplation of the Code.

2. The Court held that the 1978 Ford pickup truck was not a corporate asset by stating that there had been no fraud to the creditors and that Mrs. Whitlock had personally signed and assumed all responsibility for the truck.

SEEN AND AGREED TO:



Winston G. Snider, p.q.



H. Joel Weintraub, p.d.

Nov 2, 1981
W. M. McArthur
Judge

BILL OF SALE

On October 31, 1980, Azalea Radiator Services, Inc.,
sold to Alphas N. Knapp, Sr., the following equipment
and furniture for the sum of \$2400.00:

- 1 - Trinity Glass Beading Machine
- 2 - Test Tubs
- 1 - Rotolift
- 1 - Boilout Vat
- 1 - Floor Jack
- 1 - Hydraulic Jack
- 1 - Paint Spray Gun & Container
Air Hoses
- 1 - Flush Gun & Hoses
- 1 - Grinding Machine & Stand
- 2 - Air Ratchets
- 1 - 3/4" Electric Drill
- 1 - Impact Wrench
- 2 - Torches & Hoses
Small Hand Tools (American & Metric)
Vice Grips
- 1 - Roll Tool Chest
- 2 - Adding Machines
- 5 - File Cabinets
- 3 - Desks
- 5 - Chairs
- 1 - Sofa & Chair
- 1 - Refrigerator

Azalea Radiator Services, Inc.
By: *[Signature]*
[Signature]
Alphas N. Knapp Sr

AL'S RADIATOR SERVICE, INC. 0235401148093

PHONE 853-4339

2328 AZALEA GARDEN RD.

NORFOLK, VA 23513

1003

0235401148094

0235401148095

Jan. 16 1981

88-38
514

Y TO THE
ORDER OF

Internal Revenue Service
Def. Treasurer

\$ 4,000.00
100

DOLLARS



VIRGINIA NATIONAL BANK
Norfolk, Virginia

A.D.#
4-0847071

[Signature]

• 0514003611 217 2464 911

JAN 16 1981 00000000

DEF'S EXH. 2



INSTALLMENT SALE CONTRACT AND SECURITY AGREEMENT

(Automobile)

153-26-179625

The undersigned Seller hereby sells, and the undersigned Purchaser hereby purchases, jointly and severally, subject to the terms and conditions set forth on both sides hereof, the following described motor vehicle (hereinafter sometimes called "goods"), acknowledging receipt and acceptance thereof, and granting to Seller a security interest therein pursuant to the Uniform Commercial Code:

New Demo Used	Year Model	No. Cyl.	Power	Make Trade Name	Body Type If Truck, Give Tonnage	Model Number or Series	Manufacturer's Serial No.
New	1978	8	N/A	Ford	F-100 133 Cus.Style Pickup	FIOGNBC-7386	

Radio ☐ Auto. Trans. ☐ 4 Spd. Trans. ☐ Pwr. Steering ☐ Pwr. Brakes ☐ Pwr. Windows ☐ Air Conditioning ☐ Key Number _____

a. Cash price \$ 4551.00
 Titling tax \$ 9.06 Title & tags \$ 9.00 S 4551.06

b. Down payment:
 Cash down payment S n.a.
 Trade-in (Net) S 1224.90
 Total down payment S 1224.90

c. Unpaid balance of cash price (a less b) S 3326.16

d. Required insurance: *
 (Sym Age Grp. Coll. Cla Term mos.)

☐ Comp. ☐ Fire & theft S n.a.
☐ S deductible collision S n.a.

e. Other Insurance financed S n.a.
 (describe opposite)

Note: Customer may choose the person through whom any of the above insurance in d. and e. is to be obtained. The cost if written through Seller S n.a. d. e.

f. Official fees S 15.00

g. Principal balance (add c, d, e and f) S 3341.16

h. Credit insurance Note: No insurance is required for this extension of credit. To obtain insurance for the term of credit, purchaser(s) must sign below for each such coverage:

X Credit Life at cost of \$ 91.78

Signed _____ 3-11-78 (date)

Signed _____

Accident and health at cost of S n.a. (date)

Signature _____ S 91.78

i. Unpaid balance—Amount Financed (add g & h) S 3432.94

j. FINANCE CHARGE S 489.26

k. Total of payments (add i and j) S 3922.20

l. Deferred payment price (add b and k) S 5147.10

* ANNUAL PERCENTAGE RATE 8.86 %

No Liability Insurance Included

Executed in quadruplicate, one copy of which was delivered to and retained by the Purchaser, this 11th

day of March, 1978, receipt of which is hereby acknowledged.

WITNESS the following signatures and seals:

By _____ (SEAL) _____ (SEAL)

KENNACH FORT (Secured Party)

By _____ (SEAL) _____ (SEAL)

6401 Va. Beach Blvd.

Norfolk, Va.

Payment and performance of all obligations set forth or referred to herein is absolutely, unconditionally, and continuously guaranteed and consent is given to any extension, reduction or renewal without requiring notice thereof:

By _____ (SEAL) _____ (SEAL)

By _____ (SEAL) _____ (SEAL)

By _____ (SEAL) _____ (SEAL)

By _____ (SEAL) _____ (SEAL)

By _____ (SEAL) _____ (SEAL)

Notice to Buyer: You are entitled to a copy of this Agreement. You have the right to pay off in advance the full amount due and obtain a partial refund, based on the Rule of 78's of any unearned precomputed finance charge, except that \$50.00 of such finance charge shall be retained and no rebate shall be made thereon, provided that the total of that \$50.00 or any portion thereof plus the earned finance charge for each month may amount to but shall not exceed 2% per month of the unpaid balance of the total of payments. WARRANTIES. Purchaser warrants:

1. That the motor vehicle is purchased primarily for ☐ Personal or family purposes. ☐ Farming operations. ☐ Business purposes.
2. That the vehicle will be kept or garaged at Purchaser's address specified below.

THERE IS NO AGREEMENT, GUARANTEE, OR WARRANTY, OF MERCHANTABILITY OR OTHERWISE, VERBAL OR WRITTEN, EXPRESSED OR IMPLIED, EXTENDING BEYOND THE DESCRIPTION OF THE GOODS ON THE FACE OF THIS AGREEMENT.

Description of Other Insurance Financed (Item e.)

Optional Mechanical Breakdown Insurance

Name Company _____

Term _____ Deductible _____

PAYMENT. Purchaser agrees to pay the total of payments at Seller's office designated below or in the event of assignment, at any place designated by such assignee in 36 successive monthly installments of \$ 103.95 each (except the last which shall be \$ 103.95) commencing 4/25, 1978, and/or as indicated below:

together with a late charge of 5% of any installment which is paid more than 10 days after due and all reasonable costs of collection including a 20% attorney fee if referred to an attorney for collection.

By _____ (SEAL) _____ (SEAL)
 Purchaser (Debtor)

By _____ (SEAL) _____ (SEAL)
 Purchaser (Debtor)

529 Brian Ave.

Address

Virginia Beach, Virginia 23462

CARE AND MAINTENANCE OF GOODS—Purchaser shall use the goods only for the purpose stated on the face of this agreement unless seller consents in writing to another use, and will not permit them to be misused or abused, wasted or allowed to deteriorate except for ordinary wear and tear in connection with such use. Purchaser will not sell, exchange, lease or otherwise dispose of the goods, permit any adverse lien, encumbrance or security interest to attach thereto, nor permit their use in violation of any statute, ordinance or policy of insurance, and shall promptly pay all taxes and assessments upon them or with respect to their use. Purchaser shall not permit the goods to be removed from the location specified on the face hereof except for normal and customary use for temporary periods. No injury to or loss or destruction of the goods shall relieve Purchaser of his obligations hereunder.

PROTECTION OF SECURITY INTEREST, PROCEEDS—Until all installments and other amounts due hereunder have been paid, seller shall retain title to and a security interest in the goods. Seller may, at its option, file or record this agreement, or financing, continuation, or termination statements regarding this agreement, and purchaser shall pay all costs thereby incurred, on demand. If the goods are business or farm equipment normally used in more than one jurisdiction, purchaser will advise seller promptly in writing of any change in its chief place of business regardless of whether such change involves relocation of the goods. If certificates of title are outstanding, purchaser will cause the interest of seller to be noted thereon. Seller is hereby appointed purchaser's attorney in fact to do all acts and things which seller may deem necessary to perfect or continue perfected the security interest created by this agreement and to protect the goods.

INSURANCE—Purchaser will keep the goods at all times insured against risk of loss or damage by fire, theft and such other casualties as seller may reasonably require, including collision, with loss payable to seller as its interest may appear, and providing at least ten days written notice of cancellation to seller. If purchaser fails to obtain such insurance, or furnish satisfactory certificates thereof on demand, seller shall have the right (but no obligation) to obtain such insurance, or insurance sufficient to protect seller's interest only, and any sums so expended by seller shall be repaid by purchaser on demand or at the highest lawful contract rate of interest and shall be secured by and under this agreement. Seller may act as attorney for purchaser in making, adjusting and settling claims, cancelling insurance and endorsing purchaser's name on any drafts drawn by insurers of the goods and the proceeds of such drafts may be applied toward replacement or repair of the property or payment of this obligation, at seller's option. Seller's inability to secure insurance sufficient to protect its interest in the goods shall constitute an event of default under this agreement.

DEFAULT—The occurrence of any of the following shall constitute an event of default hereunder: (a) failure of purchaser to keep, observe or perform any provision of this agreement; (b) any warranty or statement of purchaser made in connection with this transaction proving to be incorrect in any material respect; (c) death, dissolution, insolvency, business failure, or the institution of any proceeding in bankruptcy or receivership, insolvency by reorganization, by or against purchaser or any guarantor of any property of either.

RIGHTS AND REMEDIES—If any of the installments are not paid when due, all unpaid installments shall immediately become due and payable at the option of the seller without notice or demand. In the event of default, seller shall have the further right at its sole option, to exercise any or all of the rights on default of a secured party under the Uniform Commercial Code (regardless of whether the Code has been enacted in the jurisdiction where rights and remedies are asserted), including, without limitation thereto, the right to enter any premises and remove the goods or render them unusable. Purchaser will indemnify seller for any liability incurred by reason of its removal of the goods in a commercially reasonable manner. Seller may require purchaser to make the goods available to seller at a place designated by it reasonably convenient to both parties. Any notice of sale, disposition or other intended action by seller, sent to purchaser at the address specified hereon (or such other address as may appear on seller's records) at least five days prior to such action, shall constitute reasonable notice to purchaser. Purchaser will pay any deficiency that may remain after exercise of such rights, and any funds of purchaser in hands of seller, from insurance premium refunds or otherwise, may be applied thereon. All of seller's rights hereunder are cumulative and no waiver of any default shall affect any subsequent default.

EXTENSIONS—In the event that seller, at purchaser's request, extends the time for payment of any installment, the charge for any such extension shall be at the highest lawful contract rate of interest.

LAW GOVERNING—The terms of this agreement, and the rights, duties and remedies of the parties shall be governed by the law of Virginia. Any part of this agreement contrary to the law of any state having jurisdiction shall not invalidate other parts of this agreement in that state.

HEIRS AND ASSIGNS—All covenants, representations, warranties and agreements of purchaser shall bind purchaser's personal representatives, heirs, successors and assigns.

ASSIGNMENT—Seller may assign this agreement and in such event all rights of seller shall pass to and be exercisable by its assignees, and the word "seller" wherever appearing herein shall be deemed to mean such assignee. Any payments received by seller after such assignment shall be received as agent of the purchaser and not as agent of its assignee.

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

ASSIGNMENT

The within Agreement and all right and title of the undersigned in the motor vehicle therein described are hereby sold and assigned to

and undersigned agrees to indemnify and hold assignee harmless against all liability incurred pursuant to any Federal or State statute, rule or regulation, including, but not limited to, those related to truth-in-lending disclosures, unfair or deceptive acts or practices, and equal credit opportunities, and in accordance with and subject to the terms and conditions initialed below:

Initials ☒ WITHOUT RECOURSE

Initials ☐ (WITH RECOURSE) Undersigned guarantees prompt and full performance of all the undertakings and obligations hereunder of the Purchaser therein named.

Initials ☐ (FULL REPURCHASE) Without recourse except that undersigned agrees to repurchase the motor vehicle, the unpaid portion of the purchase price of which is represented by this agreement, subject to the terms of your dealer agreement with the undersigned.

Initials ☐ (PARTIAL REPURCHASE) Without recourse, except that if the motor vehicle is repossessed, with an unpaid portion of purchase price as represented by the within agreement, undersigned will pay such unpaid balance of the purchase price and receive the vehicle, or in lieu thereof, will pay on demand \$_____ and relinquish all rights to the vehicle without further obligation. If motor vehicle is not repossessed and purchaser is in default, his whereabouts either known or unknown, undersigned will pay to the holder on demand any amount due on the purchase price up to the dollar sum mentioned in this paragraph, and will relinquish all rights to the vehicle without further obligation. Undersigned hereby waives protection under dealer agreement No. _____ on this transaction.

Initials ☐ (LIMITED REPURCHASE) Without recourse except that if the purchaser named therein fails to pay installments, undersigned will purchase the motor vehicle, the unpaid portion of the purchase price of which is represented by the within agreement, subject to the terms of your dealer agreement with the undersigned.

KIMNACH FORD, INC.

Signed _____ (Dealer)

By  (Title) _____ (Seal)

014

DEPOSIT WITH
 VIRGINIA NATIONAL BANK

D-4211

DEPOSITS RECEIVED AFTER 2 P. M. ARE DATED AND WILL BE CREDITED THE NEXT BUSINESS DAY.

THE DEPOSIT FOR WHICH THIS RECEIPT IS ISSUED IS ACCEPTED SUBJECT TO VERIFICATION,
COLLECTION AND CONDITIONS OF THE RULES AND REGULATIONS OF THIS BANK.
THIS IS YOUR RECEIPT. THANK YOU FOR BANKING WITH US.

Always obtain an official receipt when making a deposit. Non-negotiable

07-275

25046,019,001 110380 1787140

2,400.00 KDD



DEF'S EXH. 4

AZALEA RADIATOR SERVICE, INC.
2328 AZALEA GARDEN ROAD
NORFOLK, VA 23513

3978

AY TO THE
ORDER OF

Internal Revenue Service
Internal Revenue Service
\$ *2149.18*
Two thousand one hundred and forty nine and 18/100 DOLLARS



VIRGINIA NATIONAL BANK
Norfolk, Virginia

AZALEA RADIATOR SERVICE, INC.

James M. Whitcomb

⑆05⑆40036⑆⑆ 17 8714 0⑆⑆

⑈0000214918⑈

DEF'S EXH.5

AZALEA RADIATOR SERVICE, INC.
2328 AZALEA GARDEN ROAD
NORFOLK, VA 23513

3980

PAY TO THE ORDER OF Virginia Employment Commission 10/31/1980 68-36
100 DOLLARS 514



AZALEA RADIATOR SERVICE, INC.

OR Denise M. Whitted
⑆051400361⑆ 17 8714 0⑆ ⑈0000000258⑈

DEF'S EXH. 6

AZALEA RADIATOR SERVICE, INC.
2328 AZALEA GARDEN ROAD
NORFOLK, VA 23513

3405998

3979

PAY TO THE ORDER OF Department of Education 10/31/1980 68-36
Lead Unrecovered Thirty-eight 28 DOLLARS 514



AZALEA RADIATOR SERVICE, INC.

OR Denise M. Whitted
⑆051400361⑆ 17 8714 0⑆ ⑈0000023829⑈

DEF'S EXH. 7