

4075
199 VA. 196

Record No. 4677

In the
Supreme Court of Appeals of Virginia
at Richmond

WESLEY JAMES WEAVER

v.

**BENEFICIAL FINANCE COMPANY, INC.,
ET AL.**

FROM THE CIRCUIT COURT OF THE CITY OF NORFOLK

RULE 5:12—BRIEFS.

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

H. G. TURNER, Clerk.

Court opens at 9:30 a.m.; Adjourns at 1:00 p. m.

199VA196

RULE 5:12—BRIEFS

§1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned, and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

§2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

§3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

§4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of the record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of said fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

§7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 4677

VIRGINIA :

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 27th day of November, 1956.

WESLEY JAMES WEAVER, Plaintiff in Error,
against

BENEFICIAL FINANCE COMPANY, INC., ET AL.,
Defendants in Error.

From the Circuit Court of the City of Norfolk.

Upon the petition of Wesley James Weaver a writ of error is awarded him to a judgment rendered by the Circuit Court of the City of Norfolk on the 10th day of August, 1956, in a certain motion for judgment then therein depending wherein the said petitioner was plaintiff and Beneficial Finance Company, Incorporated, and R. S. Costigan were defendants; upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said Circuit Court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

* * * * *

Filed 8-24-56.

W. R. HANCKEL, Clerk.

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR.

To: W. R. Hanckel, Clerk of the aforesaid Court:

The plaintiff, Wesley James Weaver, by counsel, hereby gives Notice of Appeal in the above styled case and that he will apply for a writ of error and *supersedeas* and assigns the following error committed by the Trial Court in this case:

1. The Trial Court erred in overruling plaintiff's motion to dismiss the Special Plea in Bar and in sustaining the Special Plea in Bar and in dismissing the Motion for Judgment with prejudice.

PHILIP WHITE,
WILLIAM N. EASON,
Counsel for the Plaintiff,
1222 National Bank of Commerce Bldg.,
Norfolk 10, Virginia.

* * * * *

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* * * * *

MOTION FOR JUDGMENT UNDER THE STATUTE OF
INSULTING WORDS.

1. The undersigned hereby moves the Circuit Court of the City of Norfolk, Virginia, for a judgment against you and each of you, jointly and severally, in the sum of Fifty Thousand Dollars (\$50,000.00) as and for compensatory and punitive damages, occasioned by you and suffered by the undersigned plaintiff, due to the republication on or about March 21, 1956, at the Norfolk Naval Air Station, Norfolk, Virginia, of a certain false, insulting, slanderous, malicious, injurious,

damaging, defamatory and libelous letter concerning me, unlawfully and maliciously written and communicated by you to plaintiff's employer; that the republication of said insulting, malicious and libelous letter was the natural and probable consequence of your own act; that you actually and presumptively authorized and ratified the republication of said insulting, malicious and libelous letter; that the said insulting, malicious and libelous letter was written, authorized and ratified by you, Beneficial Finance Co., Incorporated, (formerly Personal Finance Company of Norfolk, Incorporated), by and through your manager and agent, R. S. Costigan, in the ordinary course of his employment and in connection therewith; that under the attending facts and page 3 } circumstances, the words in said insulting, malicious and libelous letter, are from their usual construction and common acceptance, construed as insults and tend to violence and breach of the peace, in violation of Section 8-630 of the Code of Virginia, 1950.

2. That the attending facts and circumstances are as follows, to-wit: That on September 23, 1953, William E. Webster and Mary T. Webster, his wife, borrowed \$300.00 from Personal Finance Co., of Norfolk, Inc., (now Beneficial Finance Co., Incorporated) and gave the lender a deed of trust note in the sum of \$300.00, secured by a deed of trust on certain furniture, and fixtures and appliances owned by the aforesaid borrowers; that as additional security for the aforesaid note, the plaintiff herein signed said note as an accommodation and gratuitous surety; that said note was to be repaid by the borrowers to the lender in fourteen successive monthly installments of \$24.29 each, which included charges at the rate of 2½% per month on the unpaid principal balances, the first of which installments was payable on the 23rd day of October, 1953, together with a final installment covering any unpaid balance, including charges, as aforesaid, which installment was to be due and owing on the 23rd day of December, 1954; that the trustees in said deed of trust were R. S. Costigan of Norfolk, Virginia, and Roy E. Tucker of Newark, N. J.; that on January 29, 1955, the lender, through its authorized agent, personally contacted the plaintiff herein and advised him that the borrowers had defaulted in the payments due on their note and that the plaintiff herein would have to pay the balance of approximately \$95.00 owed on said note; that on January 29, 1955, plaintiff gave the lender a check in the amount of \$5.20 in part payment of the balance owed by the borrowers on said note and agreed to pay the remaining balance on or about June 15th, 1955, which

was agreeable with the lender; that upon default in payment by the borrowers, the lender made no attempt to proceed against the trust property conveyed by the borrowers, as per the terms of the deed of trust; that in spite of the aforesaid agreement made on January 29, 1955, the lender, Beneficial Finance Co., Incorporated, on February 23, 1955, unlawfully and maliciously wrote and communicated page 4 } to plaintiff's employer, the aforesaid insulting, malicious and libelous letter, with malicious intent to coerce payment which was not due, from the plaintiff herein; that how many times said libelous letter has been published is unknown to the plaintiff; that plaintiff knows that said libelous letter was republished on or about March 21, 1956, when a promotion board was convened to consider plaintiff's record, as the contents of the said letter were first communicated to the plaintiff at that time.

3. That the aforesaid insulting, malicious and libelous letter, in *haec verba*, reads as follows, to-wit:

BENEFICIAL FINANCE CO.
of Norfolk, Incorporated

Telephone 5-4505

2nd Floor
105 Brooke Ave., Cor
Granby St.
(P. O. Box 747)

February 23, 1955

Industrial Relations Officer
Naval Air Station
Norfolk, Virginia

Subject: Indebtedness of WEAVER, Wesley James, Mech.,
NAS

Dear Sir:

On September 23, 1953, Mr. Weaver, who gave his employment as above secured a loan of \$300.00. This money was lent on a fifteen months contract with payments of \$24.29 per month. At no time has Mr. Weaver honored his contract promptly and now his account is four months past due. He refuses to answer any correspondence and personal calls have no effect.

We realize that Government agencies can take no cognizance of a debt complaint against an employee beyond acknowledging receipt of the communication and that there is no legal jurisdiction over Federal pay excepting those matters relating to Government claims. However, it is understood that the Department of the Navy expects all Naval personnel to discharge acknowledged and just obligations and desires to co-operate with persons and firms when difficulty in obtaining settlements is encountered.

Instigation of the removal of Mr. Weaver from his employment is not the intent of this company. However, we feel that if someone in a supervisory position will explain his liabilities and the possible effects of same upon himself, he will then be induced to bring his account to date and pay promptly thereafter.

Any consideration given us in regard to this matter will be greatly appreciated.

Very truly yours,

R. S. COSTIGAN, Manager

RSC:mem

page 5 } 4. That said insulting, malicious and libelous letter suggests, indicates and imputes that the plaintiff was and is dishonest or insolvent; that the language used in said letter tends to impeach plaintiff's reputation for integrity and fair dealing; that said letter imputes an unwillingness to pay his just debts and that he is a delinquent debtor and is unworthy of financial credit; that said letter was unlawfully written and communicated to plaintiff's employer with malicious intent for the purpose of coercing payment which was not due from the plaintiff.

5. The said libelous matter was communicated, conveyed and made known by the said defendants to said plaintiff and divers other persons; that when communicated by said defendants to plaintiff's employer, the defendants knew the aforesaid insulting, malicious and libelous letter would become a permanent part of plaintiff's record and as such would be republished from time to time.

6. That under the attending facts and circumstances, the plaintiff avers said false, libelous, malicious, defamatory and insulting words in said letter, to be from their usual construction and common acceptance construed as insults and tend to violence and breach of the peace; by reasons of which said

words and language as published of and concerning me, said plaintiff, by you, said defendants, as aforesaid, I have sustained and am entitled to recover, and therefore demand, in accordance with the statute for such cases made and provided, compensatory and punitive damages in the sum of Fifty Thousand Dollars (\$50,000.00).

Given under my hand this 8th day of June, 1956.

WESLEY JAMES WEAVER
By WILLIAM N. EASON,
Of Counsel.

Filed in the Clerk's Office the 8th day of June, 1956.

Teste:

W. R. HANCKEL, Clerk.

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PROOF OF SERVICE.

* * * * *

Returns shall be made hereon, showing service of Notice issued June 8th, 1956 with copy of Motion for Judgment filed June 8th, 1956, attached.

Executed on the 8 day of June, 1956, in the City of Norfolk, Virginia, by delivering a true copy of the above mentioned papers, attached to each other, to R. S. Costigan in person.

HUGH L. BUTLER, JR.,
Sergeant, City of Norfolk, Va.
By J. M. STERLING, Deputy Sergeant.

(Use the space below if a different form of return is necessary)

Executed June 8, 1956 by delivering a copy of the above mentioned papers attached to each other to R. S. Costigan, Mgr., Beneficial Finance Co., Inc, a Corporation in the City of Norfolk, Virginia, wherein the said Corporation is doing business.

HUGH L. BUTLER, JR.,
City Sergeant,
Norfolk, Va.
By J. M. STERLING, Deputy.

Returned and filed the 11th day of June, 1956.

W. R. HANCKEL, Clerk.
By VIRGINIA MANNING, D. C.

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* * * * *

ORDER.

This day came the defendants, Beneficial Finance Co. of Norfolk, Incorporated, and R. S. Costigan, by counsel, and moved the Court for an extension of time for the filing of responsive pleadings.

In consideration whereof, it is hereby ORDERED that the defendants in this action may file their responsive pleadings to the motion for judgment at any time through the 6th day of July, 1956.

Enter 6-29-'56.

C. H. J.

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* * * * *

Filed July 6, 1956.

T. A. W. GRAY, D. C.

SPECIAL PLEA IN BAR.

1. The defendants, Beneficial Finance Co. of Norfolk, Incorporated, and R. S. Costigan, now come and say that this action is barred by the statute of limitations.

BENEFICIAL FINANCE CO. OF
NORFOLK, INCORPORATED.

R. S. COSTIGAN.

By R. B. SPINDLE, III,
Of Counsel.

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ORDER.

This day came the plaintiff, by counsel, and moved to dismiss the Special Plea in Bar, and came also the defendants, by counsel, and was argued by counsel.

Whereupon it is hereby ORDERED that the motion to dismiss is hereby overruled, the Special Plea in Bar is hereby sustained, and the Motion for Judgment is hereby dismissed with prejudice; to which action of the court the plaintiff excepts.

Enter Aug. 10. '56.

C. H. J.

page 10 } VIRGINIA:

In the Clerk's Office of the Circuit Court of the City of Norfolk, on the 15th day of October, in the year, 1956.

I, W. R. Hanckel, Clerk of the Circuit Court of the City of Norfolk, do hereby certify that the foregoing original papers comprise the complete record in the case of Wesley James Weaver, plaintiff, *against* Beneficial Finance Co., Inc., et al, Defendants, lately pending in said Court.

I further certify that the same was not made up and completed and delivered until the attorneys for the defendants had received due notice thereof in writing and of the inten-

tion of the plaintiff to apply to the Supreme Court of Appeals of Virginia for a writ of error and *supersedeas* to the judgment herein.

Teste:

W. R. HANCKEL, Clerk of the
Circuit Court of the City of
Norfolk.

By T. A. W. GRAY, Deputy Clerk.

* * * * *

NOTICE.

To: Willcox, Cooke & Willcox,
419 National Bank of Commerce Building,
Norfolk 10, Virginia.

YOU ARE HEREBY NOTIFIED that on the 30th day of August, 1956, at 9:30 o'clock A. M., we will present the herewith enclosed Statement of Incidents of Hearing to the Judge of the aforesaid Court for the purpose of having him certify the same.

WILLIAM N. EASON,
Of Counsel for the Plaintiff.

Dated: August 23, 1956.

PHILIP WHITE
and

WILLIAM N. EASON, p. q.,
1222 National Bank of Commerce Building,
Norfolk 10, Virginia.

I hereby accept service of the above and consent to the time and place mentioned therein for the purpose set out.

WILLCOX, COOKE & WILLCOX.
By R. B. SPINDLE, III,
Of Counsel for Defendants.

Dated: August 23, 1956.

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STATEMENT OF INCIDENTS OF HEARING.

BE IT REMEMBERED that at the hearing in the above styled case on the 10th day of August, 1956, on the question of whether or not the action was barred by the statute of limitations, the plaintiff, by counsel, moved the Court to dismiss the Special Plea in Bar, which said motion the Court overruled and sustained the Special Plea in Bar and dismissed the Motion for Judgment with prejudice, to which action of the Court the plaintiff, by counsel, duly excepted on the ground that the action was not barred by the Statute of Limitations; that the action was founded upon the republication of a libel on March 21, 1956, and that the action was commenced on June 8, 1956, within one year of the date of the republication declared upon in the Motion for Judgment; that republication of defamatory matter is a distinct offense for which an action will lie and that the Statute of Limitations began to run from the date of the republication declared
 page 3 } upon in the Motion for Judgment.

PHILIP WHITE,
 WILLIAM N. EASON,
 Attorneys for Plaintiff.

WILLCOX, COOKE & WILLCOX,
 By R. B. SPINDLE, III,
 Of Counsel for Defendants.

JUDGE'S CERTIFICATE.

I, Clyde H. Jacob, Judge of the Court aforesaid, do hereby certify that the foregoing is a true and correct statement of all motions and rulings of the Court thereon and all exceptions of the parties thereto and all other incidents of the hearing set forth.

I further certify that this statement has been tendered to and signed by me within the time prescribed by the Rules of the Supreme Court of Appeals of Virginia, and that counsel for all parties agree that this statement is correct as indicated by their endorsement herein.

CLYDE H. JACOB, Judge.

Dated: Sept. 10, 1956.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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