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Record No. 5345

In the
Supreme Court of Appeals of Virginia
at Richmond

VIOLA MORRIS

v.

**ELIZABETH RIVER TUNNEL
DISTRICT, ET AL.**

FROM THE COURT OF HUSTINGS FOR THE CITY OF PORTSMOUTH

RULE 5:12—BRIEFS.

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 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.

HOWARD G. TURNER, Clerk

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

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 5345

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 25th day of April, 1961.

VIOLA MORRIS,

Plaintiff in Error,

against

ELIZABETH RIVER TUNNEL DISTRICT, ET AL.,

Defendants in Error.

From the Court of Hustings for the City of Portsmouth

Upon the petition of Viola Morris a writ of error is awarded her to a judgment rendered by the Court of Hustings for the City of Portsmouth on the 8th day of February, 1961, in a certain motion for judgment then therein depending wherein the said petitioner was plaintiff and Elizabeth River Tunnel District and another were defendants; upon the petitioner, or some one for her, entering into bond with sufficient security before the clerk of the said hustings court in the penalty of three hundred dollars, with condition as the law directs.

RECORD**MOTION FOR JUDGMENT.**

Plaintiff, Viola Morris, moves the Court of Hustings for the City of Portsmouth, Virginia, for a judgment and award of execution against the defendants for the sum of SIXTY FIVE HUNDRED (\$6,500.00) DOLLARS, for damages for this, to-wit:

1. Plaintiff owned and occupied as a dwelling the waterfront land and building, known, numbered and designated, according to the present system of street numbering as 228 Seaboard Avenue, Portsmouth, Virginia.

2. The defendants, Elizabeth River Tunnel District, a political subdivision of the State of Virginia, and Elizabeth River Tunnel Commission, the governing body of the Elizabeth River Tunnel District, were created by the Acts of the General Assembly of Virginia, to which reference is made.

3. The defendants, in excavating, pumping and working on the tunnel in the City of Portsmouth, Virginia, under the authority of said Acts of the General Assembly, and for the public use and purposes, by their agents and contractors working for the defendants for public use and purposes, affected and disturbed the said building so as to greatly injure said building and cause it to crack, and to be damaged in other parts; caused the market value to be greatly decreased; caused smoke, dust, foul odors, and dirt to cover the outside of the building and the inside of the dwelling and the furniture and other personal belongings of the plaintiff; caused noises which greatly disturbed the plaintiff, and made the home almost nonhabitable; caused the plaintiff great inconvenience and damage in the use of the said building and deprived of the proper use thereof, and was put to extra expense in trying to keep the house clean. Plaintiff is entitled to compensation for said damages by the law of the land in pursuant to Section 58 and Section 6 of the Constitution of Virginia.

VIOLA MORRIS

By **A. A. BENDEL**
Of Counsel.

Filed in the Clerk's Office the 27 day of Oct., 1960.

Teste:

JOHN R. PORTER, JR., Clerk
LILLIE MAE HEAFNER, D. C.

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ORDER.

This day came the defendants by counsel and moved this Honorable Court for an extension of time in filing an Answer to the Motion for Judgment exhibited against them, and for good cause shown, it is hereby

ORDERED that an extension of time be granted for thirty (30) days from the entry of this Order, to be not later than December 12, 1960.

Enter 11/21/60.

R. F. M.

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DEMURRER.

Now come the defendants and say that the actions filed in the above captioned cases are insufficient in law and are not such upon which relief can be granted, and the defendants say further that the defendants are not the proper party in interest and, as such, are not amenable to this suit.

ELIZABETH RIVER TUNNEL
DISTRICT ETC.
By EDWIN JAY RAFAL
Of Counsel.

(on back)

Filed Dec. 15, 1960, 11:34 A. M., The Court of Hustings.

JOHN R. PORTER, JR., Clerk.

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ANSWER AND GROUNDS OF DEFENSE.

Now come the defendants and in answer to motion for judgment exhibited against them say as follows:

1. The allegations of paragraph one are admitted.
2. The allegations of paragraph two are admitted.
3. The allegations of paragraph three are denied.

And now, having fully answered, defendants pray that this action be dismissed with their costs expended in this cause.

ELIZABETH RIVER TUNNEL
DISTRICT ETC.

By E. J. RAFAL
Of Counsel.

(on back)

Filed Dec. 15, 1960, 11:35 A. M., The Court of Hustings.

JOHN R. PORTER, JR., Clerk.

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MOTION FOR BILL OF PARTICULARS.

The defendants move this Honorable Court to enter an Order requiring the plaintiff to furnish a Bill of Particulars, setting forth with particularity the following:

1. Give the date that the building was damaged.
2. State the kind and location of the damage in each building, setting forth specifically, the rooms that were damaged. State the amount of the market value that each building was decreased. State the portion or portions of the outside of the building that was covered with dust, smoke and dirt.
3. State the piece or pieces of furniture in said dwelling that were covered with dust and dirt.
4. State the date and types of noises which disturbed the plaintiff.
5. State the amount of extra expense and the date said expenses were expended in an effort to keep the home clean.

ELIZABETH RIVER TUNNEL
DISTRICT AND ELIZABETH
RIVER TUNNEL COMMISSION
By THOMAS W. MOSS, JR.
Of Counsel.

(on back)

Filed Jan. 16, 1961 10:15 A. M., The Court of Hustings.

JOHN R. PORTER, JR., Clerk.

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This day the defendants filed a Demurrer to the plaintiff's Motion for Judgment, which Demurrer is set down for argument; and the matter of law arising thereon being argued by counsel and considered by the Court, said Demurrer is hereby sustained, and said Motion for judgment is adjudged not to be sufficient at law.

And the plaintiff not having made any motion for leave to amend, this cause is dismissed and removed from the docket. To which action of the court the plaintiff duly objected and excepted.

Enter 2/8/61.

R.S.W.

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ASSIGNMENT OF ERROR.

1. The Court erred in sustaining the demurrer to the motion for judgment, and dismissing the action, and ordering it removed from the docket.

VIOLA MORRIS
By A. A. BANGEL
Of Counsel.

(on back)

Filed Feb. 10, 1961, 4:29P. M., The Court of Hustings.

JOHN R. PORTER, JR., Clerk.

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A Copy—Teste:

H. G. TURNER, Clerk.

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