

64-579
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Record No. 1559

In the
Supreme Court of Appeals of Virginia
at Richmond

**MARYLAND CREDIT FINANCE CORPORA-
TION, Petitioner,**

v.

**FRANKLIN CREDIT FINANCE CORPORA-
TION, ET ALS., Defendants.**

FROM THE CIRCUIT COURT OF THE COUNTY OF ACCOMACK.

“The briefs shall be printed in type not less in size than small pica, and shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed records along with which they are to be bound, in accordance with Act of Assembly, approved March 1, 1903; and the clerks of this court are directed not to receive or file a brief not conforming in all respects to the aforementioned requirements.”

The foregoing is printed in small pica type for the information of counsel.

M. B. WATTS, Clerk.

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IN THE
Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 1559

MARYLAND CREDIT FINANCE CORPORATION,
Petitioner,

vs.

FRANKLIN CREDIT FINANCE CORPORATION, I. J.
WEBB, AND E. P. PARKS, SHERIFF, Defendants.

IN CHANCERY.

*To the Honorable Judges of the Supreme Court of Appeals of
Virginia:*

Your petitioner, the Maryland Credit Finance Corporation,
respectfully represents:

That it is aggrieved by a decree of the Circuit Court for the
County of Accomack, in the State of Virginia, entered on the
19th day of December, 1933, in a certain chancery suit then
pending in said court, wherein your petitioner was the com-
plainant and Franklin Credit Finance Corporation, I. J. Webb,
and E. P. Parks, Sheriff, were respondents; a copy of the de-
cree of December 19, 1933, may be seen on page 5 of the
record.

A transcript of the proceedings of the said Court wherein
the said decree was entered, is herewith presented, where the
error complained of may be seen and from an inspection of
which it will appear.

STATEMENT OF FACTS.

Suit was presented on the aforesaid 19th day of December, 1933, the Honorable John E. Nottingham, Judge of the Circuit Court for the County of Accomack, Virginia, upon the bill and answer, the facts not being controverted and being set forth therein, which briefly stated were as follows:

1st. A certain Ira J. Webb, on the 18th day of October, 1933, purchased a certain Chevrolet truck, motor #T3917923, and made application to your petitioner to finance same through your petitioner on the same date your said petitioner agreed to finance said truck in the sum of One Thousand Twenty Dollars (\$1,020.00), and an application likewise bearing the same date was made by the said Ira J. Webb to the Division of Motor Vehicles of the State of Virginia for a certificate of title covering said truck, which said certificate of title showed upon its face that there was a lien on said truck due your said petitioner in the sum aforesaid that likewise on the same date the said title showing the lien aforesaid was delivered to R. G. Finney, an employee of the Division of Motor Vehicles, and license tags were delivered to I. J. Webb on that date; the Division of Motor Vehicles issued to Ira J. Webb on November 1, 1933, a certificate of title for the said Chevrolet truck showing no lien thereon, although the application showed same, and the certificate of title should have shown same, that subsequently the Division of Motor Vehicles, finding the error, recalled the title issued to I. J. Webb as aforesaid, and on November 9, 1933, the said Division of Motor Vehicles issued a title to the said I. J. Webb showing the lien in favor of your said petitioner in the sum of One Thousand Dollars (\$1,020.00).

2nd. That on the 25th day of October, 1933, the Franklin Credit Finance Corporation recovered a judgment in the Circuit Court for the County of Accomack, for the sum of Five Hundred Seventy-one Dollars and Eighty-six Cents (\$571.86), with interest as aforesaid, and an execution was issued thereon and delivered into the hands of E. P. Parks, Sheriff, for execution, and the said Sheriff, in obedience to the mandate contained in said execution, levied on the said Chevrolet truck in the possession of Ira J. Webb; that said petitioner executed a suspending bond and filed in the Circuit Court this suit to establish its claim as a lien superior to the lien of the judgment creditor of the said Ira J. Webb and as shown by said decree of December 19, 1933, the Court

held that the lien of the judgment creditor was superior to the lien of your petitioner.

Wherefore, your said petitioner excepted to said decree and herewith presents its petition for an appeal and *superse-deas*. It is agreed that the petitioner was guilty of no negligence and had done everything required by law to be done in order to preserve its lien on the automobile aforesaid, and the question to be decided is whether or not said petitioner lost its lien because of the fact that the Division of Motor Vehicles issued the title showing no lien on November 1, 1933.

ASSIGNMENTS OF ERROR.

1st. The holding of the Circuit Court and the entering of the decree of December 19, 1933, denying to your petitioner the relief prayed for.

2nd. The whole case seems to be decided by a construction placed on sub-section B of section 64 of the Motor Vehicle Code of Virginia as found in the Acts of the General Assembly of 1932 at page 622. The part of said section applicable to this particular case being as follows:

“Said certificate of title when issued by the Division showing a lien or encumbrance shall be deemed adequate notice to the Commonwealth, creditors and purchasers that a lien against the motor vehicle exists, and the recording of such reservation of title, lien, or encumbrance in the county and city wherein the purchaser or debtor resides or elsewhere is not necessary and shall not be required, and motor vehicle trailers or semi-trailers registered under this act shall not be subjected to but shall be exempted from the provisions of section 5189 and 5224 of the Code of Virginia, as amended, nor shall recordation of such lien in any other place for any other purpose be required and shall have no effect.”

From the foregoing section it would appear that the Division of Motor Vehicles having issued a certificate of title showing the lien on November 9, 1933, in accordance with the certificate of title duly filed as aforesaid, the lien of your petitioner was adequately protected, unless the prohibition as hereinafter set forth and contained likewise in the same section of the Motor Vehicle Code, was applicable to this particular case, and the limits placed thereon had expired. Quoting further from said Act:

“Provided that if such registration of a lien or encumbrance upon a new motor vehicle, new trailer, or semi-trailer be done within ten days from the time application for certificate of title for same has been received by the Division, it shall be as valid as to all persons whomsoever including the Commonwealth as if such registration had been done on the day such lien or encumbrance was acquired.”

It is to be noted that the application was not received in Richmond until October 30, 1933 (second paragraph of answer of Franklin Credit Finance Corporation shown on page 4 of the record.) It is the contention of your petitioner:

1st. That the above provision of the Motor Vehicle Code applies only to the registration of liens after the original application has been received by the Division of Motor Vehicles showing no lien.

2nd. That if said provision does apply, that a certificate of title in this particular case was issued by the Motor Vehicle Division of Virginia within ten days after said Division receives the application.

That your petitioner has been unable to find any decision of your Honorable Court construing the aforesaid statute, and so far as it knows or can ascertain no construction by the Supreme Court of this state has been placed thereon.

Your petitioner respectfully represents that the Circuit Court for the County of Accomack erred in its construction placed upon the aforesaid statute.

It is, therefore, respectfully asked that an appeal be granted said petitioner to the final judgment entered by the Circuit Court for the County of Accomack in this case; that said judgment be reversed and that final judgment be entered by this Honorable Court in behalf of your petitioner, or that the same be remanded to the Circuit Court for the County of Accomack for a new trial.

Your petitioner further states that in accordance with the rules of this court a carbon copy of this petition has this 18th day of June, 1934, been delivered to Ames & Ames, opposing counsel in the trial court.

MARYLAND CREDIT FINANCE CORPORATION,
By H. AMES DRUMMOND, Its Counsel.

We, the undersigned attorneys, practicing in the Supreme Court of Appeals of Virginia, do hereby certify that in our opinion it is proper that the decision and judgment referred

to in the foregoing petition be reviewed by the Supreme Court of Appeals of Virginia.

Dated this 18th day of June, 1934.

B. DRUMMOND AYRES,
ELMER W. SOMERS.

Received June 19, 1934.

M. B. W.

July 11, 1934.

Appeal allowed and *supersedeas* granted. Bond \$1,000.00.

LOUIS S. EPES.

Received July 11, 1934.

M. B. WATTS, Clerk.

RECORD

VIRGINIA:—

Pleas before the Circuit Court for the County of Accomack, on Tuesday, the 19th day of December, A. D., 1933.

Be It Remembered, that heretofore, to wit:

In the Clerk's Office of the Circuit Court for the County of Accomack, on the third Monday in November, A. D., 1933, came Maryland Credit Finance Corporation, Plaintiff, and filed its Bill in Chancery against Franklin Credit Finance Corporation, I. J. Webb and E. P. Parks, Sheriff, which Bill is in the following words and figures, to wit:

Maryland Credit Finance Corporation

vs.

Franklin Credit Finance Corporation, I. J. Webb, and E. P. Parks, Sheriff.

To the Honorable John E. Nottingham, Judge of the Circuit Court for the County of Accomack, Virginia:

Your petitioner, the Maryland Credit Finance Corporation, respectfully represents unto your Honor the following case:

That on the 25th day of October, 1933, the Franklin Credit Finance Corporation recovered a judgment in the Circuit

Court for the County of Accomack, Virginia, for the sum of Five Hundred Seventy-one Dollars and Eighty-six Cents (\$571.86), with interest from October 18, 1933, and Sixty-one Dollars and Forty-three Cents (\$61.43) costs, and an execution was issued thereon and delivered into the hands of E. P. Parks, Sheriff, for execution.

That by virtue thereof the said E. P. Parks, Sheriff, levied upon certain property in the possession of said I. J. Webb, including among other things, one Chevrolet truck, motor #T3917923, model 1933.

That the said Maryland Credit Finance Corporation executed a suspending bond under the statute claiming the said property so levied upon to be subject to a lien in the sum of One Thousand Twenty Dollars (\$1,020.00), which page 2 } was and is shown on a certificate of title covering said motor vehicle issued by the Division of Motor Vehicles.

That your petitioner is advised and here states that a lien shown upon a certificate of title of a motor vehicle and of record in the office of the Division of Motor Vehicles is a sufficient recordation and the same is notice thereof to creditors and subsequent purchasers and no recordation thereof is necessary in the Clerk's Office of this county.

That your petitioner is further advised that it is necessary that a suit be filed within thirty days from the execution of said suspending bond to determine the rights of the parties under said judgment and execution and under the lien of your petitioner.

In consideration whereof your petitioner prays that the Franklin Credit Finance Corporation, I. J. Webb, and E. P. Parks, Sheriff, may be made parties defendant to this bill, and required to answer the same, but answer under oath is hereby waived; that proper process may issue; that the lien of your petitioner be established as a prior lien on the property; and that no sale be had of said property to the prejudice of your petitioner's rights therein; and that your petitioner may have all such further, other, and general relief in the premises as the nature of his case may require or to equity shall seem meet.

MARYLAND CREDIT FINANCE CORPORATION,
By H. AMES DRUMMOND, Its Attorney.

And on this same day to-wit:

Virginia:—

Circuit Court of the County of Accomack, on Tuesday, the

19th day of December, in the year of our Lord, nineteen hundred and thirty-three.

Maryland Credit Finance Corporation, Pltff.,
against
Franklin Credit-Finance Corporation, I. J. Webb, and E.
P. Parks, Sheriff, Defts.

In Chancery.

page 3 } On motion of the Franklin Credit-Finance Cor-
poration by Ames and Ames, its attorneys, leave is
granted them to file their answer in this cause, and the same
is accordingly filed.

ANSWER OF FRANKLIN CREDIT-FINANCE CORPO-
RATION, FILED DECEMBER 19TH, 1933.

In the Circuit Court of Accomack County, Virginia:

Maryland Credit Finance Corporation
vs.
Franklin Credit-Finance Corporation, I. J. Webb, and E.
P. Parks, Sheriff.

This respondent, Franklin Credit-Finance Corporation, re-
serving unto itself the benefit of all just exception to a bill of
complaint filed against it and others in the Circuit Court of
Accomack County, Virginia, by Maryland Credit Finance Cor-
poration, for answers thereto, or to so much thereof as it is
advised it is material it should answer, answers and says:

That on the 25th day of October, 1933, it recovered a judg-
ment in the Circuit Court for Accomack County, Virginia, for
the sum of five hundred, seventy-one and 86/100 (\$571.86)
dollars, with interest from October 18th, 1933, until paid, and
sixty one and 43/100 (\$61.43) dollars costs; and an execution
was issued on said judgment on said 25th day of October,
1933 and was delivered into the hands of Everett P. Parks,
Sheriff of said County, on said 25th day of October, 1933,
to be executed; and

That by virtue of said execution the said Everett P. Parks,
Sheriff, levied on October 26th, 1933 upon certain property
in the possession of Ira J. Webb including among other
things one Chevrolet truck, motor #T3917923, 1933 model,
license #TH4152; and

That H. Ames Drummond executed a suspending bond un-

der the statute to suspend the sale of the property levied on, to-wit: said Chevrolet truck; and that on October 18th, 1933, Ira J. Webb purchased from Duncan Brothers of Pocomoke City, Maryland, said truck; and

That on said 18th day of October, 1933 said Ira
page 4 } J. Webb made application to the Division of Motor Vehicles of the State of Virginia for a title to said truck, said application having been made to R. G. Finney, an employee of the said Division of Motor Vehicles and on said 18th day of October, 1933 the license tags #TH4152 which had formerly been used by the said Ira J. Webb on another truck were transferred to said Chevrolet truck, motor #T3917923; and

That on October 28th, 1933 said application for title together with the transfer of the said license tags was mailed by said R. G. Finney to the Richmond office of the Division of Motor Vehicles and was received by said Richmond office on October 30, 1933; and

That on November 1st, 1933 there was issued by the Division of Motor Vehicles of the State of Virginia a title to the said Ira J. Webb for the said Chevrolet truck motor #T3917923, which title showed that there was no lien against the said truck; and

That on November 9, 1933 there was issued by the Division of Motor Vehicles of the State of Virginia a new title on the said Chevrolet truck, motor #T3917923 showing a lien in favor of the Maryland Credit Finance Corporation for the sum of One Thousand and Twenty (\$1,020.00) dollars; and

That there is no recorded lien against the said Chevrolet truck motor #T3917923 in the Clerk's Office of the Circuit Court of Accomack County, Virginia; and

That this respondent alleges and here states that the lien of its execution and levy is superior to the lien shown on the title issued on November 9th, 1933 showing a lien in favor of the Maryland Credit Finance Corporation for one thousand and twenty (\$1,020.00) dollars.

Wherefore, this respondent asks that this court may enter a decree in this cause *adjudging* that it has a lien by virtue of its execution for levy, is superior to the lien claimed by the said Maryland Credit Finance Corporation; that the
page 5 } Sheriff of Accomack County, Virginia, may be permitted to sell the said truck to satisfy the said execution; that this respondent, if said truck should fail to bring enough to satisfy the said judgment, may have judgment on the bond filed in this proceeding by the said H. Ames Drummond for the said Maryland Credit Finance Corporation for the difference in value of said truck at the time

said suspending bond was given and at the time it is turned back to said Sheriff for sale; that this respondent may recover its cost and necessary expenses by it in this behalf expended and that it may have all such other and further and general relief in the premises as the nature of its case may require or to your honor shall seem meet.

FRANKLIN CREDIT-FINANCE CORPORATION

By AMES & AMES, Its Attorneys.

And on this same day to wit:

Virginia:—

Circuit Court of the County of Accomack, on Tuesday, the 19th day of December, in the pear of our Lord, nineteen hundred and thirty three.

Maryland Credit Finance Corporation, Pltff.,
against

Franklin Credit Finance Corporation, I. J. Webb and E. P. Parks, Sheriff, Defts.

In Chancery.

It is agreed between the attorney for the Maryland Credit Finance Corporation and the attorney for the Franklin Credit Finance Corporation that the original application for title filed by Ira J. Webb on October 18, 1933, set forth the lien of \$1,020.00 due the Maryland Credit Finance Corporation.

Then this cause which has been regularly matured at rules came on this day to be heard upon the plaintiff's bill and the answer of the Franklin Credit Finance Corporation heretofore filed by leave of Court, and was argued by counsel.

On consideration whereof, the Court doth adjudge, order and decree that the lien of the execution and levy in page 6 } favor of Franklin Credit Finance Corporation against Ira J. Webb is superior to and takes precedence over the lien claimed by the Maryland Credit Finance Corporation against a Chevrolet truck, motor number T3917923; that the Sheriff of Accomack County, Virginia, is permitted to sell said Chevrolet truck under said execution; and that the Franklin Credit Finance Corporation recover its costs by it in this behalf expended.

To the entry of this decree the plaintiff by its attorney excepted. Whereupon, the plaintiff represented to the Court that it is aggrieved by the entering of the decree aforesaid and is desirous of applying to the Supreme Court of Appeals for an appeal and *supersedeas* to the said decree, it is ordered that the execution of the said decree be suspended for a pe-

riod of sixty days from this date provided the plaintiff or someone for it shall before this Court or the Clerk in his office execute a bond in the penalty of Seven Hundred and Fifty Dollars conditioned according to law.

The bond required by the foregoing decree was duly executed in the Clerk's office of the Circuit Court for the County of Accomack, on the 29th day of January, 1934, with C. Lester Drummond, Principal, and H. Ames Drummond, Security.

JOHN D. GRANT, JR., Clerk.

State of Virginia,
County of Accomack, to-wit:

I, John D. Grant, Jr., Clerk of the Circuit Court for the County of Accomack, in the State of Virginia, do hereby certify that the foregoing is a true transcript of the record and proceedings in the Chancery suit of Maryland Credit Finance Corporation, Plaintiff, against Franklin Credit Finance Corporation I. J. Webb, and E. P. Parks, Sheriff, Defendants, pending in said Court. And I further hereby certify that the Attorneys for the Defendants have been duly notified of the intention of the Plaintiff to have the foregoing transcript of the record made out.

The cost of the foregoing transcript is \$4.50 and is charged to the Plaintiff.

JOHN D. GRANT, JR., Clerk.

June 18, 1934.

A Copy—Teste:

M. B. WATTS, C. C.

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