

2743  
191-731

*Read*

# Record No. 3728

---

---

In the  
Supreme Court of Appeals of Virginia  
at Richmond

---

**HENRY J. VICK**

v.

**SIDNEY SIEGEL**

---

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.

M. B. WATTS, Clerk.

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

191 VA 731

## 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) The opening brief of the appellant shall be filed in the clerk's office within twenty-one 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. The brief of the appellee shall be filed in the clerk's office not less than twenty-one days, and the reply brief of the appellant not less than two days, before the first day of the session at which the case is to be heard.

(b) Unless the appellant's brief is filed at least forty-two days before the beginning of the next session of the Court, the case, in the absence of stipulation of counsel, will not be called at that session of the Court; 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) 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.

CLERK  
SUPREME COURT OF APPEALS

RECEIVED  
JUN 16 1950  
RECEIVED

RICHMOND, VIRGINIA

IN THE  
**Supreme Court of Appeals of Virginia**

AT RICHMOND.

---

**Record No. 3728**

---

VIRGINIA:

In the Supreme Court of Appeals held at the Court-Library Building in the City of Richmond on Wednesday the 26th day of April, 1950.

HENRY J. VICK, Plaintiff in error,  
*against*

SIDNEY SIEGEL, Defendant in error.

---

From Circuit Court of City of Norfolk

---

Upon the petition of Henry J. Vick a writ of error is awarded him to a judgment rendered by the Circuit Court of the city of Norfolk on the 12th day of December, 1949, in a certain notice of motion for judgment then therein depending wherein the said petitioner was plaintiff and Sidney Siegel was defendant, 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**

page 4 } Virginia:

In the Circuit Court of the City of Norfolk.

Henry J. Vick, Plaintiff,

*v.*

Sidney Siegel, Defendant.

**NOTICE OF MOTION.**

To Sidney Siegel,  
517 New Jersey Avenue,  
Norfolk, Virginia.

You are hereby notified that on the 27 day of July, 1949, at the hour of 10:00 o'clock A. M., or as soon thereafter as I may be heard, I will move the Circuit Court of the City of Norfolk, Virginia, for a judgment against you for the sum of \$900.00 with interest at the rate of six per centum per annum from June 22, 1949, which sum is due and owing by you to me by reason of the following:

1. That heretofore, to-wit: on or about April 30, 1948, the undersigned plaintiff conveyed certain properties located at Norview, in Norfolk County, Virginia, to you, the said defendant, as trustee, to secure the holder thereof the payment of a certain negotiable promissory note in the principal amount of \$18,000.00 said deed of trust being of record in the Clerk's Office of the Circuit Court of Norfolk County, Virginia, in Deed Book number 908, at page 33.

2. That heretofore, to-wit: on or about June, 1949, the undersigned plaintiff entered into a contract with one Walter M. Bott, of Norfolk, Virginia, for the sale of said properties conveyed to you, defendant, as trustee, as set forth in item number one of this notice of motion, the said Walter M. Bott agreeing in said contract to assume the payment of the above mentioned note in the principal amount of \$18,00.00 with interest at the rate of six per centum per annum, secured by the said deed of trust in which you, defendant, were trustee, and to deduct the amount of such payment from the  
page 5 } purchase price of said property due unto the under-  
signed plaintiff.

3. I sold the property on which there was a deed of trust and in which you, defendant, were trustee. You wrongfully gave notice to the purchaser that you claimed a commission or fee as trustee. Whereupon the said purchaser refused to close the purchase until your claim was satisfied, and in order to carry out my contract with the said purchaser, I agreed, but under protest and duress, that you, defendant, be allowed the \$900.00 fee or commission as trustee which you wrongfully demanded, which \$900.00 was deducted from the purchase price due unto the undersigned plaintiff.

4. The said deed of trust in which you were trustee provided that in event of sale under its terms the trustee should retain five per centum of the proceeds of such sale as his commission. The said property was not sold under the terms of the said deed of trust and therefore you were not entitled to any commission or fee whatsoever.

By reason of the said commission or fee paid to you, defendant, by A. H. Foreman, attorney for said Walter M. Bott, purchaser of the said property, the undersigned plaintiff has suffered damages in the amount of \$900.00.

Wherefore judgment for the sum of \$900.00 with interest thereon at the rate of six per centum per annum from June 22, 1949, will be asked at the hands of said Court at the time and place hereinabove set out.

Given under my hand this 1st day of July, 1949.

HENRY J. VICK,  
By WM. L. WARD,  
Of Counsel.

CLEATON E. RABEY,  
WILLIAM L. WARD,  
RUSSELL T. BRADFORD, p. q.

page 6 } (On back.)

Returned to clerk's office and notice 7-6-49.

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

\* \* \* \* \*

page 8 }

## DEMURRER.

The defendant says that the notice of motion and each part thereof is not sufficient in law.

Grounds of demurrer are: that said notice shows no liability of defendant to plaintiff, and does not show any right in plaintiff to recover of defendant, and also shows no duress, and shows no facts justifying recovery.

JAS. G. MARTIN &amp; SONS, p. d.

(On back.)

Filed July 27 1949

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

\* \* \* \* \*

page 10 }

## ORDER.

THIS CAUSE came on this day to be heard upon the Notice of Motion and the Demurrer filed by the defendant and was argued by counsel.

UPON CONSIDERATION WHEREOF the Court doth sustain the Demurrer with leave to the plaintiff to file an Amended Notice of Motion, which is this day filed.

(On back.)

Entered Oct, 22-'49.

C. H. J.

\* \* \* \* \*

page 12 AMENDED NOTICE OF MOTION.

To Sidney Siegel,  
517 New Jersey Avenue,  
Norfolk, Virginia.

You are hereby notified that on the 22nd day of October, 1949, at the hour of 10:00 A. M., or as soon thereafter as I may be heard, I will move the Circuit Court of the City of Norfolk, Virginia, for a judgment against you for the sum of

Nine Hundred (\$900.00) Dollars with interest at the rate of six per centum per annum from June 22, 1949, which sum is due and owing by you to me by reason of the following:

1. That heretofore, to-wit: on or about April 30, 1948, the undersigned plaintiff conveyed certain properties located at Norview, in Norfolk County, Virginia, to you, the said defendant, as trustee, to secure the holder thereof the payment of a certain negotiable promissory note in the principal amount of Eighteen Thousand (\$18,000.00) Dollars, said deed of trust being of record in the Clerk's Office of the Circuit Court of Norfolk County, Virginia, in Deed Book number 908, at page 33.

2. That heretofore, to-wit: on or about June, 1949, the undersigned plaintiff entered into a contract with one Walter M. Bott, of Norfolk, Virginia, for the sale of said properties conveyed to you, defendant, as trustee, as is set forth in item number one of this amended notice of motion, the said Walter M. Bott agreeing in said contract to assume the payment of the above mentioned note in the principal amount of Eighteen Thousand (\$18,000.00) Dollars with interest at the rate of six per centum per annum, secured by the said deed of page 13 } trust and to deduct the amount of such payment from the purchase price of said property due unto the undersigned plaintiff.

3. I sold the property on which there was a deed of trust and in which you, defendant, were trustee. You wrongfully gave notice to the purchaser that you claimed a commission or fee as trustee, and you refused to release my property from the lien of said deed of trust until the fee or commission was paid you. Whereupon the said purchaser refused to close the purchase unless the lien of said deed of trust could be released; and in order to save my property and to carry out my contract with said purchaser, the consummation of this sale being the only way I could save my property, I agreed, but under protest and duress, that you, defendant, be paid the Nine Hundred (\$900.00) Dollar fee or commission as trustee which you wrongfully demanded, and which Nine Hundred (\$900.00) Dollars you were paid and the same was deducted from the purchase price due unto me.

4. The said deed of trust in which you were trustee provided that in event of sale under its terms the trustee should retain five per centum of the proceeds of such sale as his commission. The said property was not sold under the terms of the said deed of trust and you were not entitled to any commission or fee whatsoever.



## Supreme Court of Appeals of Virginia

By reason of the said commission or fee paid to you, defendant, I have suffered damages in the amount of Nine Hundred (\$900.00) Dollars.

Wherefore judgment for the sum of Nine Hundred (\$900.00) Dollars with interest thereon at the rate of six per centum per annum from June 22, 1949, will be asked at the hands of said Court at the time and place hereinabove set out.

Given under my hand this 22nd day of October, 1949.

HENRY J. VICK,  
By WILLIAM L. WARD  
Of Counsel.

CLEATON E. RABEY,  
WILLIAM L. WARD,  
RUSSELL T. BRADFORD, p. q.

page 14 } (On back.)

Filed Oct. 22, 1949.

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

\* \* \* \* \*

page 16 } DEMURRER.

The defendant says that the amended notice of motion and each part thereof is not sufficient in law.

Grounds of demurrer are: that said amended notice shows no liability of defendant to plaintiff, and does not show any right in plaintiff to recover of defendant, and also shows no duress, and shows no facts justifying recovery.

JAS. G. MARTIN & SONS, p. d.

(On back.)

Filed Oct. 25, 1949.

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

\* \* \* \* \*

page 17 }

JUDGMENT.

This day came again the parties by their attorneys, and the demurrer to the amended notice of motion in which plaintiff joined was argued; and the Court doth sustain the demurrer and render judgment for the defendant, and order that the plaintiff pay the costs.

On motion of plaintiff the execution of this judgment shall be suspended for 90 days if plaintiff gives a suspending bond with surety in penalty of \$25.

(On back.)

Enter, Dec. 12, 1949.

C. H. J.

\* \* \* \* \*

A Copy—Teste:

M. B. WATTS, Clerk.