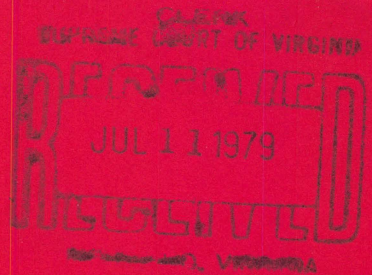


221 Va 691



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IN THE  
**Supreme Court of Virginia**

AT RICHMOND

RECORD NO. 781636

ELMER LEE WOOD,  
*Appellant.*

v.

DEBRA LEE HOLCOMB,  
*Appellee*

*Henry P. Boufford*  
*James C. Lewis*  
*P.O. Box 3291*  
*Norfolk, Va 23514*

JOINT APPENDIX

~~Israel Steingold, Esq.  
Steingold & Steingold  
913 First Colonial Road  
Virginia Beach, Virginia 23454~~

and

~~Steingold & Chowitz  
1116 United Virginia Bank Building  
Norfolk, Virginia 23510~~

George H. Gray  
Outland, Gray, O'Keefe & Hubbard  
Attorneys at Law  
112 Coastal Way  
Post Office Box 1545  
Chesapeake, Virginia 23320

*Counsel for Appellant*

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VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

ELMER LEE WOOD,

Plaintiff,

vs.

DEBRA LEE HOLCOMBE  
618 16th Street  
Virginia Beach, Virginia

AT LAW

NO. 5253-M

and

Charles D. Carl  
426 21st Street  
Virginia Beach, Virginia,

Defendants.

Serve on Jack B. Browder, as Registered Agent for  
Government Employees Insurance Co., Ross Bldg.  
Richmond, Virginia

MOTION FOR JUDGMENT

TO THE HONORABLE JUDGES OF SAID COURT:

Plaintiff, Elmer Lee Wood, respectfully moves the Circuit Court of the City of Chesapeake for judgment against the defendants, Debra Lee Holcombe and Charles D. Carl, for the sum of Seventy-Five Thousand Dollars (\$75,000.00) and costs, for this, to-wit:

1. On September 29, 1973, at about 6:00 o'clock P.M., plaintiff was the operator of a motor vehicle proceeding in a northerly direction on Indian River Road, in the City of Chesapeake, on or near the intersection of MacDonald Road, which was then being regulated by a work crew because of repairs then being made on said road.

2. At said time and place the defendant, Debra Lee Holcombe, operating a vehicle owned by Charles D. Carl, proceeding in the same direction, recklessly, carelessly and negligently operated said vehicle on and into the rear of the vehicle operated by plaintiff.

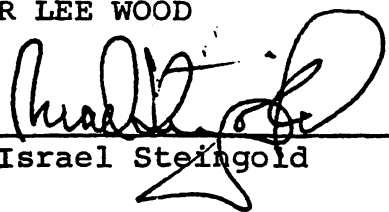
3. The said Debra Lee Holcombe was operating said vehicle as the agent and servant of the said Charles D. Carl and on the business of the said Charles D. Carl at said time and place.

4. As the direct and proximate result of the defendant's said negligence plaintiff was seriously, severely and permanently injured, his pre-existing condition was aggravated requiring medical attention and continues to deteriorate; and plaintiff's earning capacity has been impaired, all of which is permanent.

WHEREFORE, plaintiff brings this action for damages as aforesaid by Motion for Judgment.

ELMER LEE WOOD

By

  
Israel Steingold

Israel Steingold,  
Steingold, Steingold & Friedman  
1116 United Virginia Bank Bldg.  
Norfolk, Virginia 23514  
Attorneys for Plaintiff

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

ELMER LEE WOOD,

Plaintiff

v.

DEBRA LEE HOLCOMBE  
and CHARLES D. CARL,

Defendants

LAW DOCKET NO. 5253-M

GROUND OF DEFENSE

For grounds of defense to the plaintiff's motion for judgment or to so much thereof as it is deemed material response be made, the defendants and each of them state as follows:

1. The allegations of paragraphs 1, 2, 3 and 4 of plaintiff's motion for judgment are denied.

2. At the time and place alleged in plaintiff's motion for judgment, plaintiff was negligent and his negligence was the sole proximate cause of the accident, injuries and damages alleged by him.

3. At the time and place alleged in plaintiff's motion for judgment, plaintiff was negligent and his negligence was a proximate cause of the accident, injuries and damages alleged by him.

4. Defendants will avail themselves of any defense disclosed by the evidence or any incident of trial.

5. Defendants reserve the right to amend their grounds of defense at such time as may be advisable.

DEBRA LEE HOLCOMBE and  
CHARLES D. CARL, Defendants

By George H. Gray  
Of Counsel

Outland and Gray  
Attorneys at Law  
444 Merchants and Farmers  
Bank Building  
Portsmouth, Virginia 23704

I certify that a copy of the foregoing  
pleading was mailed to each counsel of  
record on 10/31/74

*E. N. Gray*

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

ELMER LEE WOOD,

Plaintiff,

DOCKET NO.

v.

DEBRA LEE HOLCOMBE  
(Edgewater Condominium  
Apartment 601  
3615 Atlantic Avenue  
Virginia Beach, Virginia),

or

(613 16th Street  
Virginia Beach, Virginia),

Defendant.

and

(Serve: Jack B. Brower, Registered Agent  
Government Employees Insurance Company  
Ross Building  
Richmond, Virginia).

MOTION FOR JUDGMENT

TO THE HONORABLE JUDGES OF SAID COURT:

Plaintiff, Elmer Lee Wood, respectfully moves the  
Circuit Court of the City of Chesapeake for judgment against the  
defendant, Debra Lee Holcombe, for the sum of \$125,000.00, with  
interest thereon from September 28, 1973, and costs, for this,  
to-wit:

1. On September 28, 1973, at about 6:00 o'clock p.m.,  
plaintiff was the operator of a motor vehicle proceeding in an  
easterly direction on Indian River Road, in the City of  
Chesapeake, approaching the intersection of MacDonald Road,  
which was then being regulated by a work crew because of repairs  
then being made on said road.

2. At said time and place the defendant, Debra Lee Holcombe, operating a vehicle proceeding in the same direction, recklessly, carelessly and negligently ran said vehicle on and into the rear of the vehicle operated by plaintiff.

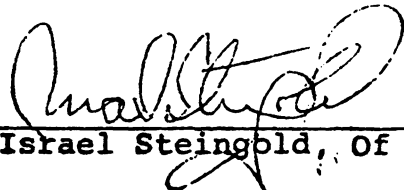
3. As the direct and proximate result of the defendant's said negligence plaintiff was seriously, severely and permanently injured, his pre-existing back condition was aggravated requiring medical, surgical and hospital treatment, and continues to deteriorate; lost substantial earnings and his earning capacity has been impaired, all of which is permanent.

4. A voluntary nonsuit was taken as to this cause of action on March 9, 1978. No previous nonsuit had been taken prior thereto.

WHEREFORE, plaintiff brings this action for damages as aforesaid by Motion for Judgment.

ELMER LEE WOOD

BY

  
Israel Steingold, Of Counsel

Steingold, Steingold & Nachman  
1116 United Virginia Bank Building  
Norfolk, Virginia 23514

Attorneys for Plaintiff



VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

ELMER LEE WOOD,

:

Plaintiff :

v.

:

LAW DOCKET NO. 6174-M

DEBRA LEE HOLCOMBE,

:

Defendant :

DEFENDANT'S AFFIRMATIVE DEFENSE OF  
STATUTE OF LIMITATION PURSUANT TO  
SECTION 8.01-235 OF THE  
CODE OF VIRGINIA

1. The cause of action alleged in the plaintiff's motion for judgment is alleged to have arisen on September 28, 1973, and thus was barred two years thereafter by the Statute of Limitation stated in Section 8-24 of the Code of Virginia.

2. After the expiration of two years following September 28, 1973, defendant's substantive right not to be sued for the alleged cause of action in the plaintiff's motion for judgment became vested.

3. Plaintiff's alleged cause of action was barred two years after September 28, 1973, and the repeal of Title 8 of the Code of Virginia, effective October 1, 1977, cannot under the provisions of Section 8-36 of the Code of Virginia remove the bar of the Statute of Limitation.

4. Notwithstanding Section 8.01-229 of the Code of Virginia which became effective October 1, 1977, the alleged cause of action in plaintiff's motion for judgment had been barred for two years and there was no statute of limitation subject to tolling or suspension on which Section 8.01-229 could act.

5. The application of Section 8.01-229 of the Code of Virginia to the alleged cause of action in plaintiff's motion for judgment not only "may" but would "materially change the substantive rights of" the defendant and thus by its own terms Section 8.01-1 of the Code of Virginia is not applicable.

DEBRA LEE HOLCOMBE, Defendant

By George H. Gray  
Of Counsel

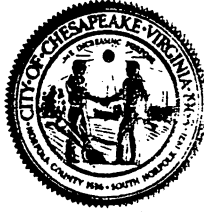
George H. Gray, p.d.  
Outland, Gray, O'Keefe and Hubbard  
Attorneys at Law  
112 Coastal Way  
Post Office Box 1545  
Chesapeake, Virginia 23320

I certify that a copy of the foregoing pleading was mailed to each counsel of record on April 4, 1978.

George H. Gray

FIRST JUDICIAL CIRCUIT  
OF VIRGINIA

JERRY G. BRAY, JR., JUDGE



CIRCUIT COURT, CITY OF CHESAPEAKE  
707 LIBERTY STREET  
CHESAPEAKE, VIRGINIA 23324

July 10, 1978

Gentlemen:

Re: Elmer Lee Wood vs Debra Lee Holcombe

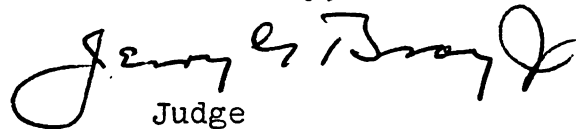
The Court has considered the memoranda of law submitted on the question of whether the above entitled matter is barred by the Statute of Limitations, § 8-24 of the Code of Virginia, 1950, as amended. I am of the opinion that it is.

The voluntary non-suit was taken by the plaintiff on March 9, 1978. At that time more than two years had elapsed since the cause of action arose. Furthermore, the original cause of action was pending on October 1, 1977. Thus the language of § 8.01-256 is applicable:

"No action. . . which is pending before October one, nineteen hundred seventy-seven shall be barred by this Chapter, and any action. . . so pending shall be subject to the same limitations, which would have been applied if this chapter had not been enacted"

Counsel for defendant will draft an appropriate order and forward it to the Court via opposing counsel.

Sincerely,

  
Judge

/tw

Steingold, Steingold and Nachman  
Outland, Gray, O'Keefe & Hubbard  
Taylor, Gustin, Harris, Fears & Davis

08

JUL 11 1978

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

ELMER LEE WOOD,

:

Plaintiff

:

v.

:

LAW DOCKET NO. 6174-M

DEBRA LEE HOLCOMBE,

:

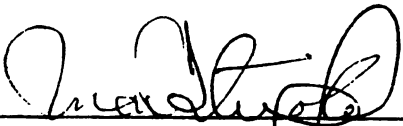
Defendant


:


O R D E R

The parties by their respective counsel and the attorney for Government Employees Insurance Company came on June 23, 1978, to be heard on defendant's affirmative defense of statute of limitation and after hearing argument of counsel and upon mature consideration thereof, the defendant's affirmative defense of statute of limitation is sustained and it is ordered that plaintiff's motion for judgment be, and the same hereby is, dismissed.

Seen, objection made and exception taken:

  
\_\_\_\_\_, p.q.  
SEEN:

  
\_\_\_\_\_, p.d.

  
\_\_\_\_\_  
Attorney for Government Employees  
Insurance Company

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

ELMER LEE WOOD,

:

Plaintiff

:

v.

:

LAW DOCKET NO. 6174-M

DEBRA LEE HOLCOMBE,

:

Defendant

:

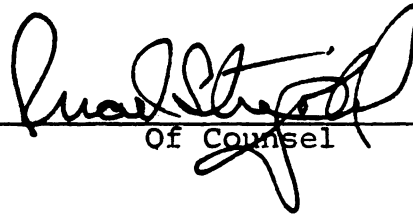
NOTICE OF APPEAL

PLEASE TAKE NOTICE that the plaintiff, Elmer Lee Wood, will seek an appeal to the Supreme Court of Virginia from the adverse judgment order entered by this Court on the 22nd day of August 1978.

Pursuant to Supreme Court Rule of Court 5:6 the plaintiff states that no transcript of testimony will be filed, but appropriate parts of the record of preceding case No. 5253-M between the same parties will be made a part of the record on appeal.

ELMER LEE WOOD

By

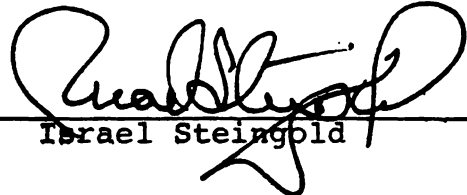


Of Counsel

Israel Steingold  
913 First Colonial Road  
Virginia Beach, Virginia 23454

Maurice Steingold  
1116 United Virginia Bank Building  
Norfolk, Virginia  
Counsel for Plaintiff

I certify a copy of the foregoing Notice of Appeal was served on Counsel for defendants by mailing a copy thereof to the offices of George H. Gray, Esq., P.O. Box 1545, Chesapeake, Virginia 23320 and to William M. Harris, Esq., P. O. Box 12756, Norfolk, Virginia 23502 on this 6th day of September 1978.



Israel Steingold