

Record No. 5463

In the
Supreme Court of Appeals of Virginia
at Richmond

SAFEGUARD INSURANCE COMPANY

v.

H. U. JUSTICE, JR.

FROM THE HUSTINGS COURT OF THE CITY OF PETERSBURG

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. 5463

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 16th day of January, 1962.

SAFEGUARD INSURANCE COMPANY, Plaintiff in Error,

against

H. U. JUSTICE, JR.,

Defendant in Error.

From the Hustings Court of the City of Petersburg

Upon the petition of Safeguard Insurance Company, a Connecticut corporation, a writ of error and *supersedeas* is awarded it to a judgment rendered by the Hustings Court of the City of Petersburg on the 1st day of August, 1961, in a certain motion for judgment then therein depending wherein H. U. Justice, Jr., was plaintiff and the petitioner was defendant.

And it appearing from the certificate of the clerk of the said court that a *supersedeas* bond in the penalty of seven thousand dollars, conditioned according to law, has heretofore been given in accordance with the provisions of sections 8-465 and 8-477 of the Code, no additional bond is required.

RECORD

* * * * *

Filed in the Clerk's Office the 25th day of February, 1960.

Teste:

RUTH M. BAILEY, Clerk
LOUISE W. COX, D. C.

MOTION FOR JUDGMENT.

The undersigned moves the Hustings Court of the City of Petersburg at its Court Room in said City for a judgment against the defendant in the sum of Four Thousand Dollars (\$4,000.00) with interest at the rate of six (6) percentum per annum from December 4, 1959 until paid plus costs, this amount being due and owing to the undersigned by reasons of the following facts, to-wit:

1. That H. U. Justice, Jr., plaintiff, obtained a judgment against Leamond E. Lane in the Hustings Court of the City of Petersburg, Virginia, on the 4th day of December, 1959 in the suit of H. U. Justice, Jr. *v.* Leamond E. Lane et als. for the sum of Four Thousand Dollars (\$4,000.00) with interest thereon at the rate of six (6) percentum per annum from the date of said judgment until paid and court costs of \$17.25, as damages for property damage sustained through the negligent operation by the said Leamond E. Lane on the 28th day of March, 1959 of a certain 1950 Ford automobile, Motor No. BONR-100459, which said automobile was owned by Eugene Adams who was riding therein at the time of the said accident and was operated and controlled at the time and place aforesaid by Leamond E. Lane with the permission of the said Eugene Adams.

2. That an execution issued on said judgment on the 4th day of January, 1960, which was marked "no effects" by the Deputy Sergeant of the City of Petersburg, Virginia.

3. That there was in existence at the time and date of the said accident causing said property damage result-
page 2 } ing in the judgment above mentioned, an automo-
bile liability insurance policy issued by the defend-
ant herein covering the motor vehicle involved in this acci-
dent and any and all persons using said automobile under the
terms whereof and by virtue of the statutes in such cases

made and provided, the said defendant undertook to pay to anyone sustaining property damage from the negligent operation of said automobile, or by others using or operating it with the permission of the named assured, express or implied, the amount of such damages up to a sum which exceeds the amount of the above mentioned judgment.

4. That by reason of said judgment, the defendant became obligated to pay the said plaintiff, H. U. Justice, Jr., the amount herein sued for, which however, the defendant has refused to do.

WHEREFORE, the undersigned demands judgment against the defendant in the sum of Four Thousand Dollars (\$4,000.00) with interest at the rate of six (6) percentum per annum from the 4th day of December, 1959 until paid and court costs of \$17.25, plus the costs of this proceeding.

H. U. JUSTICE, JR.
By L. A. BELCHER
Counsel.

* * * * *

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* * * * *

ORDER.

Upon stipulation of counsel for both parties, it is ordered that the time for filing responsive pleadings on behalf of the defendant be extended to April 1, 1960.

Enter 3/18/60.

OLIVER A. POLLARD, Judge.

* * * * *

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* * * * *

Filed April 1st 1960.

L. W. C., Deputy Clerk.

GROUNDS OF DEFENSE.

1. Defendant admits the allegations of paragraph 1 of the Motion for Judgment.

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of paragraph 2 of the Motion for Judgment.

3. Defendant admits that it, on February 4, 1959, issued to Eugene Adams its "Combination Automobile Policy (Number SAA 22 00 86) describing a 1949-50 Ford 2-door sedan having motor number BONR-100459 only (herein called "policy"), subject to the limits of liability, exclusions, conditions, and other terms of the policy. Defendant also admits that the policy was in full force and effect on March 28, 1959, the date of an accident to which reference is made in paragraphs 1 and 3 of the Motion for Judgment, but Defendant denies all other allegations of paragraph 3 of the Motion for Judgment.

4. Defendant denies that it was or is obligated to pay Plaintiff any amount whatsoever, and Defendant admits that it has refused to pay any amount whatsoever to Plaintiff.

5. In further defense to the allegations of the Motion for Judgment, Defendant avers the following and hereby expressly requests that Plaintiff reply thereto:

(a.) On or about March 28, 1959, a truck owned by Plaintiff and operated by an employee of Plaintiff was proceeding northwardly on U. S. Highway #301 in the vicinity of Stony Creek, Virginia.

page 6 } (b.) At such time and place, an automobile, owned by Eugene Adams and operated by Leamond E. Lane with the permission of Eugene Adams, who was a passenger in such automobile, was proceeding southwardly on such highway.

(c.) At such time and place, such automobile operated by Leamond E. Lane was towing a racing automobile owned by Leamond E. Lane for which neither certificate of title nor registration had been obtained under the provisions of Chapter 3 of Title 46.1 of the Code of Virginia and which had not been inspected under the provisions of Article 10, Chapter 4 of such Title and Code.

(d.) Such racing automobile was a motor vehicle which was designed or altered and used exclusively for racing or other exhibition purposes at places other than the highways of the State of Virginia and which did not operate under its

own power on such highways in going to or from such places.

(e.) At such time and place, such racing automobile became disconnected from such automobile operated by Leamond E. Lane by which it was being towed and collided with the truck of Plaintiff, causing damage to such truck.

(f.) The policy issued by Defendant to Eugene Adams in part provided:

Definition of insured: (a) With respect to the insurance for bodily injury liability and for property damage liability the unqualified word "insured" includes the named insured * * * and also includes any person while using the automobile * * * provided the actual use of the automobile is * * * with the permission of * * * [the named insured] * * *

* * * * *

This policy does not apply:

* * * * *

(c) under coverages A and B [bodily injury and property damage liability], while the automobile is used for the towing of any trailer owned or hired by the insured and not covered by like insurance in the company; or while any
 page 7 } trailer covered by this policy is used with any automobile owned or hired by the insured and not covered by like insurance in the company * * *

6. Defendant denies all allegations of the Motion for Judgment which are not specifically admitted in its Grounds of Defense, and Defendant also denies that it is legally liable to Plaintiff in any amount whatsoever.

SAFEGUARD INSURANCE
 COMPANY
 By ANGUS H. MACAULAY, JR.
 Of Counsel for Defendant.

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ORDER.

This day came the plaintiff, by counsel, likewise came the defendant, by counsel, and on motion of the plaintiff, consented to by the defendant, it is ordered that the answer of H. U. Justice, Jr. to request for reply to allegations contained in defendant's grounds of defense be, and the same is hereby filed.

Enter this 3/10/61

O. A. P., Judge.

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ANSWER OF H. U. JUSTICE, JR. TO REQUEST FOR
REPLY TO ALLEGATIONS CONTAINED IN DE-
FENDANT'S GROUNDS OF DEFENSE.

Comes now the plaintiff, H. U. Justice, Jr., and for answer to the request for reply to allegations contained in defendant's grounds of defense under paragraph numbered 5 and subsections thereunder states as follows:

(1) That plaintiff admits the allegations contained in paragraphs numbered (5a), (5b) and (5c) of defendant's grounds of defense.

(2) That he admits the allegations contained in paragraph numbered (5d) of defendant's grounds of defense but avers that the said motor vehicle was also capable of being operated under its own power on such highways or elsewhere; and that it was not designed for being drawn by a motor vehicle.

(3) That he admits the allegations contained in paragraph numbered (5e) and (5f) of defendant's grounds of defense.

H. U. JUSTICE, JR.
By L. A. BELCHER
519 Mutual Building
Richmond, Virginia
Counsel for Plaintiff.

Filed 3/10/61.

O. A. P., Judge.

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Filed by agreement of counsel April 28, 1961.

OLIVER A. POLLARD, Judge.

STIPULATION OF FACTS.

On December 4, 1959, plaintiff, H. U. Justice, Jr., obtained a judgment against Leamond E. Lane in the Hustings Court of the City of Petersburg, Virginia, for the sum of Four Thousand Dollars (\$4,000.00) and interest from that date at the rate of six percentum (6%) per annum and court costs of Seventeen Dollars and Twenty-Five Cents (\$17.25); that execution issued on said judgment on January 4, 1960, and the return thereon was marked 'no effects' by the Deputy Sergeant of the City of Petersburg. Subsequently, H. U. Justice, Jr. instituted the present suit against Safeguard Insurance Company.

At the time of the accident which caused the damages for which Justice secured judgment, the then defendant, Leamond E. Lane, was operating a 1949-50 Ford 2 door sedan, motor number BONR-100459 with the permission of the owner, Eugene Adams, who was also riding in the car. Lane and Adams were en route to North Carolina where Lane intended to engage in a stock car race. The racing car which he would use in the race was being towed behind the vehicle which Lane was driving, but it became disconnected and crossed the median strip of the highway and struck the plaintiff's vehicle. The racing car was a 1939 Ford 2 door coupe, equipped with a Mercury engine with racing pistons. Neither certificate of title nor registration had been obtained for the said racing car under the provisions of Chapter 3 of Title 46.1 of the Code of Virginia, and said racing car had not been inspected under the provisions of Article 10, Chapter 4 of said Title and Code.

The racing car was designed or altered and used
page 11 } exclusively for racing or other exhibition purposes at places other than the highways of the State of Virginia, and said racing car did not operate under its own power on said highways in going to or from said places; however, it was a vehicle which was equipped with motive power and which was capable of being operated under

its own power on such highways or elsewhere, and the said racing car was not designed for being drawn by a motor vehicle although it had that capability.

That the defendant herein, Safeguard Insurance Company, issued to Eugene Adams its assigned risk "combination automobile policy," No. SAA220086, insuring subject to the limits of liability, exclusions, conditions, and other terms of said policy, a 1949-50 Ford 2 door sedan, motor number BONR-100459, the vehicle which was being driven by Leamond E. Lane with the permission of Eugene Adams; and the said policy was in full force and effect on March 28, 1959, the date of the accident.

That said policy provided among other things as follows:

Definition of Insured: (a) With respect to the insurance for bodily injury liability and for property damage liability the unqualified word "insured" includes the named insured * * * and also includes any person while using the automobile * * * provided the actual use of the automobile is * * * with the permission of * * * (the named insured) * * *

* * * * *

Trailer (Defined)—under coverages A, B. * * * a trailer not described in this policy, if designed for use with a private passenger automobile, if not being used for business purposes with another type automobile * * *

* * * * *

This policy does not apply:

(c) Under coverages A and B (bodily injury and property damage liability), while the automobile is used for the towing of any trailer owned or hired by the insured and not covered by like insurance in the company; or while any trailer covered by this policy is used with any automobile owned or hired by the insured and not covered by like insurance in the company * * *

L. A. BELCHER

Attorney for H. U. Justice, Jr.

ANGUS H. MACAULEY, JR.

Attorney for Safeguard
Insurance Company.

* * * * *

page 14-A }

July 27, 1961.

Mr. L. A. Belcher
Attorney at Law
519 Mutual Building
Richmond 19, Virginia

Mr. Angus H. Macaulay, Jr.
Attorney at Law
Travellers Building
Richmond, 19, Virginia.

*Re: H. U. Justice, Jr. v. Safeguard Insurance Com-
pany*

Gentlemen:

I have read the briefs submitted by you gentlemen very carefully and have come to the conclusion that the plaintiff, H. U. Justice, Jr., is entitled to a judgment in the sum of \$4,000.00 with interest thereon at the rate of 6% per annum from the 4th day of December, 1959, the date of the judgment obtained by him against Leamond E. Lane et als., together with court costs in the sum of \$17.25, plus the costs expended by him in this proceeding to enforce the collection of the said judgment against Safeguard Insurance Company, the defendant. You, Mr. Belcher, may prepare the order accordingly and submit same to Mr. Macaulay for his endorsement, and when it is returned to me I will enter it.

With kindest personal regards to each of you gentlemen, I am,

Sincerely,

OLIVER A. POLLARD.

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FINAL ORDER.

On the 28th day of April, 1961 came the plaintiff, H. U. Justice, Jr., and the defendant, Safeguard Insurance Com-

pany, by their respective counsel, and by agreement of counsel a jury was waived and all matters of law and fact were submitted to the Court upon an agreed written stipulation of facts filed April 28, 1961, and upon an additional stipulation of facts filed May 10, 1961, both stipulations being made a part of the record in this case; and the case was argued by counsel and briefs filed on behalf of the respective parties.

Whereupon, it is considered by the Court that the plaintiff, H. U. Justice, Jr., do have judgment against and recover from the defendant, Safeguard Insurance Company, the sum of Four Thousand Dollars (\$4,000.00) with interest thereon at the rate of six per centum (6%) per annum from the 4th day of December, 1959, the date of the judgment obtained by H. U. Justice, Jr., against Leamond E. Lane, together with Court costs in the sum of \$17.25, and the costs expended by him in this proceeding to enforce the collection of said judgment against Safeguard Insurance Company, to which action of the Court, the defendant, Safeguard Insurance Company, by counsel, excepts.

And Counsel for the defendant, Safeguard Insurance Company, having indicated its intention to make application for an appeal, or apply for a writ of error to the Supreme Court of Appeals of Virginia, it is ADJUDGED and ORDERED that the execution of this order be and the same is hereby suspended for a period of one hundred twenty (120) days, and thereafter, until its petition is acted upon by the Supreme Court of Appeals of Virginia, if notice of appeal

page 16 } and assignments of error are filed as required by rules of Court; and such petition is filed within the time specified by law, and thereafter, during the pendency of this action in the Supreme Court of Appeals of Virginia, provided that within twenty-one (21) days from the entry of this order, the defendant, Safeguard Insurance Company, shall execute a suspending bond with surety approved by the Clerk of this Court in the penalty of Seven Thousand Dollars (\$7,000.00), conditioned as the law directs, or at the election of the defendant, Safeguard Insurance Company, said bond may be executed in the form of a *supersedeas* should it so desire, and in accordance with the statute.

I ask for this:

L. A. BELCHER

Counsel for H. U. Justice, Jr.

Seen and excepted to:

DENNY, VALENTINE & DAVENPORT
By CLAUDE D. MINOR
Counsel for Safeguard Insurance Company.

Enter this 8/1/61

OLIVER A. POLLARD, Judge.

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Filed September 12th 1961.

L. W. G., Deputy Clerk.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

To: The Clerk of the Hustings Court of the City of Petersburg:

Notice is hereby given that the defendant, Safeguard Insurance Company, will appeal to the Supreme Court of Appeals of Virginia from the final judgment order entered herein on August 1, 1961.

ASSIGNMENTS OF ERROR.

Defendant assigns the following errors:

1. The court erred in holding that the plaintiff, H. U. Justice, Jr., is entitled to a judgment against defendant, Safeguard Insurance Company, in the amount of \$4,000.00, with interest thereon from December 4, 1959, thereby holding by implication that the racer automobile which was being towed by the insured automobile, which racer automobile became disengaged and caused the damage of which plaintiff complains, was not a trailer and, therefore, did not come within defendant's policy exclusion, to-wit:

“This policy does not apply:

* * * *

“(c) Under coverages A and B [bodily injury and property damage liability], while the automobile is used for the towing of any trailer owned or hired by the insured and not covered by like insurance in the company; * * *”

2. The court erred in holding by implication and in effect that a racer automobile, which is being towed by an insured private passenger automobile, is not a trailer within the meaning of said exclusion “(c)” of the assigned page 21 } risk automobile liability insurance policy issued by defendant and alleged to provide coverage in this case.

SAFEGUARD INSURANCE
COMPANY
By CLAUDE D. MINOR
ANGUS H. MACAULAY, JR.
Of Counsel.

* * * *

A. Copy—Teste:

H. G. TURNER, Clerk.

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