## SUPREME COURT OF VIRGINIA

# Sweeney v. First Virginia Bank of Tidewater, 224 Va. 579

299 S.E.2d 858 (1983) · No. Record No. 800966 · Decided January 21, 1983

### SUMMARY

The Supreme Court of Virginia affirmed a judgment enforcing the Sweeneys' indemnity bond in favor of First Virginia Bank of Tidewater. The court held that delivery of the nonnegotiable bond to the Sweeneys' attorney did not discharge the obligation absent an intent to release it, and that the bond covered the bank's losses from transactions with Batts & Hockaday without requiring a prior judgment establishing Batts & Hockaday's liability.

### CASE DETAILS

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| COURT | Supreme Court of Virginia |
| WRITING FOR THE COURT | Cochran, Justice; Carrico, C.J.; Cochran, J.; Poff, J.; Compton, J.; Thompson, J.; Harrison, Retired Justice |
| JURISDICTION | Virginia |
| DECIDED | January 21, 1983 |
| DOCKET | Record No. 800966 |
| DISPOSITION | affirmed |
| PROCEDURAL POSTURE | The Sweeneys appealed a final trial-court judgment awarding First Virginia Bank of Tidewater $137,796.98, plus interest, on a $142,000 indemnity bond. The Supreme Court of Virginia granted an appeal limited to whether delivery of the bond discharged the Sweeneys' obligation and whether enforcement required Batts & Hockaday Motors, Inc. to have been held legally liable to the Bank. |
| STANDARD OF REVIEW | The trial court's factual finding that delivery of the bond was not intended as a discharge had to stand if supported by credible evidence. The Supreme Court also declined to disturb the finding that the Bank sustained $137,796.98 in losses because ample evidence supported it. |
| PRECEDENTIAL VALUE | Published opinion; precedential authority of the Supreme Court of Virginia |
| PARTIES | Donald L. Sweeney, Shirley L. Sweeney v. First Virginia Bank of Tidewater |

## TOPICS

uniform commercial code · contract interpretation · contracts · evidence · appellate procedure

## PRACTICE AREAS

commercial law · contracts · banking law · appellate law · evidence

## QUESTIONS PRESENTED

1. Whether delivery of the nonnegotiable indemnity bond to the Sweeneys' attorney discharged the Sweeneys' obligation under the bond.
2. Whether the bond required Batts & Hockaday Motors, Inc. to have been held legally liable to the Bank, or whether proof of the Bank's losses in transactions with Batts & Hockaday was sufficient to establish liability.

## HOLDINGS

1. Redelivery of a nonnegotiable bond to its obligors does not discharge the bond when the evidence establishes that the obligee did not intend to discharge the obligation. The trial court's finding that the Bank did not intend a discharge was supported by credible evidence.
2. The bond did not require Batts & Hockaday Motors, Inc. to have been held legally liable to the Bank or to have its underlying obligations reduced to judgment. The bond's broad operative language covered losses occurring in transactions between Batts & Hockaday and the Bank, and the Bank's supported finding of $137,796.98 in losses established liability under the bond.
3. The Bank, as the party suing on the bond, bore the burden of explaining its failure to produce the original instrument, but the fact that the original was destroyed did not compel a finding that the bond had been cancelled or discharged when the evidence showed that the destruction was not by Bank officials or anyone acting at the Bank's direction.

## KEY QUOTATIONS

> *"However, we hold that redelivery of a nonnegotiable bond to the obligors does not discharge the bond if the evidence establishes that there was no intention by the obligee[2] to discharge."* (299 S.E.2d at 861)

> *"The language of the bond was broad enough to cover all the obligations then existing or thereafter incurred by Batts & Hockaday without requiring that the underlying obligations be reduced to judgment."* (299 S.E.2d at 862)

## FACTUAL BACKGROUND

The Sweeneys executed a $142,000 indemnity bond to protect Citizens Bank of Poquoson, later First Virginia Bank of Tidewater, from losses arising from transactions with Batts & Hockaday Motors, Inc. The Bank later returned the bond and related replacement notes to the Sweeneys' attorney after a dispute over an intended novation and the Bank's collateral. The attorney delivered the instruments to Donald Sweeney, who destroyed them. The trial court found that the Bank had suffered $137,796.98 in losses in transactions with Batts & Hockaday and that returning the bond was not intended to discharge the Sweeneys' obligation.

## PROCEDURAL HISTORY

The trial court entered judgment for the Bank on the indemnity bond after finding that the Bank had sustained losses of $137,796.98 in transactions with Batts & Hockaday. Earlier, a different trial court proceeding had denied the Bank's requested relief concerning vehicle titles, and the Bank later returned the replacement notes and bond to the Sweeneys' attorney. The trial court struck the Bank's claim on the $75,000 note based on surrender under Code § 8.3-605 but refused to strike the bond claim and entered judgment for the Bank. The Supreme Court affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Jones' Adm'rs v. Coleman, 121 Va. 86, 92 S.E. 910 (1917)
- Martinsville Bank v. Cobler, 215 Va. 852, 213 S.E.2d 800 (1975)
- Miller v. Gayman, 482 S.W.2d 414 (Mo. 1972)
- Brown v. Taylor, 73 Va. (32 Gratt.) 135 (1879)
- Stoer v. Holtz, 104 Pa. Super. 579, 158 A. 611 (1932)
- Parkes v. Gunter & Byrd, 168 Va. 94, 190 S.E. 159 (1937)

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