

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on* Friday *the* 9th *day of* December, 2011.

Hall & Wilson Construction, Inc.,
d/b/a Hall Construction, Appellant,

against Record No. 101566
Circuit Court No. CL08-2166

Charlie Bowers, et al., Appellees.

Upon an appeal from a
judgment rendered by the Circuit
Court of Chesterfield County.

Upon consideration of the record, briefs, and argument of
counsel, the Court is of opinion that there is no reversible error
in the judgment of the Circuit Court of Chesterfield County.

Charlie Bowers (Bowers) owned and resided on property in
Chesterfield County that was damaged by falling trees as a result
of a tropical storm on September 18, 2003. He employed Hall
Construction (Hall) to remove trees and secure the house. Hall
presented, and Bowers signed, a printed form captioned "Access &
Authorization Card" that reads as follows:¹

ACCESS & AUTHORIZATION CARD

Name: Charlie Bower Phone: 739-3616
Address: 12931 Spring Run Rd
City/State: Midlothian Va Zip Code: _____
Adjustor: Jon Anderson
Insurance Company: Nationwide
Mortgage Company & Loan No.: _____
I hereby give access and authorization to Hall Construction,

¹ Handwritten entries on the form are shown in italics.

Inc. for the purpose of making necessary repairs to the above address as a result of:

Tree Damage

This authorization will also authorize, request and direct the Nationwide Insurance Company to include the name of Hall Construction, Inc., General Contractors, on the draft. Repairs will commence upon receipt of this card. Homeowner will be responsible for payment should they receive payment direct from insurance company.

Date: _____ Husband: Charles W. Bowers
Date: _____ Wife: _____
Date: 9-20-2003 Owner: Charles W. Bowers
Date: _____ Tenant: _____

On September 18, 2008, Hall filed this action in the circuit court against Bowers, attaching the card as "Exhibit A," claiming \$74,375.00 as the amount due and unpaid for work performed pursuant to Hall's contract with Bowers. Bowers filed a plea of the statute of limitations, asserting that the limitation period for actions based upon oral contracts was three years, which had expired in September 2006, two years before Hall filed its complaint. Hall contended that "Exhibit A" constituted a written contract between the parties and that the complaint was filed within the five-year limitation period applicable to written contracts.²

The circuit court considered the arguments and briefs of counsel and ruled that the access card was not a written contract, that any agreement between the parties was necessarily oral, and

² The limitation periods prescribed for actions founded upon contracts are three years for unwritten contracts, Code § 8.01-246(4), and five years for contracts in writing, Code § 8.01-246(2).

that the action was therefore time-barred. We awarded Hall an appeal from the court's order sustaining the plea and dismissing the action.

The sole question presented on appeal is whether the access card is a written contract sufficient to bring Hall's claim within the five-year statute of limitations.

To come within the five-year limitation period, a writing must be signed by the party to be charged or his agent, pursuant to Code § 8.01-246(2). It must also be sufficiently clear, explicit and complete in its terms that a court can determine from its language the agreement between the parties and enforce that agreement by damages for its breach or, in a proper case, by equitable relief. A contract is invalid and is unenforceable if its terms are not established with reasonable certainty. Dodge v. Randolph-Macon Woman's College, 276 Va. 1, 5-6, 661 S.E.2d 801, 803 (2008); Smith v. Farrell, 199 Va. 121, 127-28, 98 S.E.2d 3, 7 (1957).

The writing here introduced in evidence as "Exhibit A" falls short of the foregoing requirements in many respects. A court called upon to enforce it would, for example, be unable to ascertain whether the parties agreed that Hall should repair the house or simply remove the downed trees from it, whether Hall was to remove all downed trees from the property or from the house alone, whether Hall was to repair all damage done by fallen trees on the property in addition to damage done to the house, when the work would be completed, and finally, the amount Bowers was to pay for Hall's work and the time and manner of payment. We agree with the circuit court's holding that no valid and enforceable written

contract was offered by Hall that would bring Hall's claim within the five-year statute of limitations. The circuit court therefore correctly ruled that Hall's cause of action was time-barred by the three-year statute of limitations applicable to oral contracts and did not err in sustaining Bowers' plea.

Accordingly, the judgment appealed from is affirmed. The appellant shall pay to the appellees two hundred and fifty dollars damages.

This order shall be certified to the said circuit court.

A Copy,

Teste:

Oate L Hamington

Clerk