

# Record No. 6373

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In the  
Supreme Court of Appeals of Virginia  
at Richmond

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ARCANGELA GELARDI PAVLOCK,  
ET AL.

v.

HIRAM C. GALLOP, ET AL.

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FROM THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

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## 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

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**Record No. 6373**

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VIRGINIA :

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 3rd day of March, 1966.

ARCANGELA GELARDI PAVLOCK AND JOHN P.  
PAVLOCK, Appellants,

*against*

HIRAM C. GALLOP AND GLADYS H. GALLOP,  
Appellees.

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From the Circuit Court of the City of Virginia Beach  
Richard B. Kellam, Judge

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Upon the petition of Arcangela Gelardi Pavlock and John P. Pavlock an appeal is awarded them from a decree entered by the Circuit Court of the City of Virginia Beach on the 10th day of September, 1965, in a certain chancery cause then therein depending wherein Hiram C. Gallop and another were plaintiffs and the petitioners were defendants; upon the petitioners, or some one for them, 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 10 }

\* \* \* \*

Filed 7-7-65.

M. WHITE

### REPORT OF COMMISSIONER IN CHANCERY

To: The Honorable Judge of the Court aforesaid:

PURSUANT to the Decree of the Circuit Court of the City of Virginia Beach, Virginia, entered on July 16, 1964, in the above entitled cause, the undersigned, one of the Commissioners in Chancery for said Court, to whom this cause was referred for the settlement of certain matters and things set out in said Decree, respectfully reports unto the Court that pursuant to the terms of the above mentioned Decree, he proceeded, after Notice, on December 9, 1964, at 10:00 a.m., at his offices located at Princess Anne Courthouse, Virginia Beach, Virginia, to execute the inquiries called for by said Decree, and having completed same, the following report is hereby respectfully submitted.

A. Whether or not the facts and statements contained in the Bill of Complaint or the Answer herein filed are true;

Your Commissioner finds that:

(1) The Defendants are the fee simple owners of Lots 19, 20, 21, 22, and 23, in Block 3, shown upon the plat of "CHESAPEAKE PARK", recorded in Map Book 4 at page 47; that such property is subject to the terms of Deeds of Trust, made by the Defendant; one to Saul Salzberg, et al., Trustees, dated September 28, 1954, and recorded in Deed Book 374 at page 492, and the second to G. D. Holden, et al., Trustees, dated December 31, 1962, and recorded in Deed Book 763 at page 284.

(2) That all other allegations set forth in the Bill of Complaint and Answer are in controversy, with the exception that paragraph "3" of the Bill of Complaint is admitted to being

correct by paragraph "3" of the Answer, insofar as monetary terms of sale are concerned, if in fact there be a valid and binding contract.

page 11 } B. Whether or not all parties in interest are properly before the Court;

Your Commissioner finds that all parties in interest are before the Court.

C. Whether or not complainants are entitled to the relief prayed for, or whether there was a mistake in fact regarding the description and dimensions of the property to be conveyed;

Your Commissioner finds that the Complainants are entitled to specific performance of the contract; that the Defendants be required to convey the subject property, to-wit: Lots 19, 20, 21, 22, and 23, in Block 3, plat of "CHESAPEAKE PARK", Map Book 4 at page 47, with the buildings and improvements thereon, and the appurtenances thereunto appertaining; upon the terms of finance set forth in the contract (Defendants Exhibit "A"); that the Defendants be required to convey said property free and clear of the Deeds of Trust mentioned herein in "A (1)", or that monetary damages be awarded in lieu of the release of said liens; that the Complainants are not entitled to be awarded attorneys fees; that the cost be borne by the Defendants; that there was no mistake in fact regarding description and dimensions as would abrogate the contract.

D. Whether or not there was any contract for the sale of real estate between the parties;

Your Commissioner finds there *there* was a contract for the sale of real estate between the parties.

E. Whether or not defendants would be required to perform or partially perform under said contract, if existing;

Your Commissioner finds that the Defendants should be required to perform; reference being made to "C" of this report for further elaboration of their performance.

F. To determine any other matters germane to the issues involved.

Your Commissioner finds the following matters to be germane to this cause, and submits that they should be so stated.

(1) Lots 22 and 23, Block 3, of the subject property are subject to the lien of a Deed of Trust to Arcangela Gelardi (now Pavlock) to Saul Salzberg, et al., Trustees for Mutual Federal Savings and Loan Association, dated September 28, 1954, and recorded in Deed Book 374 at page 492, securing a loan originally in the amount of \$3,000.00.

page 12 } (2) Lots 22 and 23, Block 3, of the subject property are subject to the lien of a Deed of Trust to Arcangela G. Pavlock, *et vir.*, to G. D. Holden, *et al.*, Trustees, dated December 31, 1962, and recorded in Deed Book 763 at page 284, to secure a loan originally in the amount of \$3000.00.

(3) Testimony before your Commissioner indicates that Stanley G. Bryan, Attorney, has secured deeds releasing the before mentioned Deeds of Trust; that his services should be utilized in expediting the transfer of the subject property.

(4) That the subject property is subject to the lien of Lis Pendens, recorded May 18, 1964, in Deed Book 842 at page 490, arising out of this controversy.

(5) That Real Estate Taxes on Lots 21, 22, and 23, in Block 3, are delinquent for the first one-half of 1965; taxes delinquent amounting to \$11.22, plus penalty.

(6) Since briefs in support of the contending positions were filed in this cause, your Commissioner submits he should set forth his reasons for arriving at the conclusions reached in paragraph "C" hereof, they being as follows:

There is in reality, only one issue in controversy in the whole of this cause; that being whether the description contained in the contract (Defendants' Exhibit "A") is sufficient to require performance of the contract by the Defendants.

The Complainants seek performance and the testimony shows that no mistake or misunderstanding existed as to the description of land sought to be acquired by the Complainants. Therefore, no mutuality of mistake as to the description exists; so we must determine whether as to the Defendant, such a mistake of fact exists as will vitiate the contract and allow the Defendants nonperformance.

It is stated in 12 Am. Jur. 624, "*clearly, a unilateral mistake in the making of an agreement, of which the other party is entirely ignorant and to which he in no way contributes,*



*will not affect the agreement or afford ground for its avoidance or rescission, unless it is such a mistake as goes to the substance of the agreement itself. Not only must the mistake be material to the transaction, but the person who*  
 page 13 } *made the mistake must show, when he applies to an equity court for a rescission of the agreement, that his mistake is not due to want of care or diligence."*

The Defendants were quite clear and vocal, at the hearing of evidence, that they intended only to convey Lots 22 and 23, Block 3. However, if they had insufficient time to study the contract before signing (husband and wife signed at different times and places) than such want of care or diligence is their own, by which they must be bound. 12 Am. Jur. 754; *"the language and acts of a party to a contract are to receive such a construction as at the time he supposed the other party would give to them or such a construction as the other party was fairly justified in giving to them, and he will not at a later time be permitted to give them a different operation in consequence of some mental reservation."*

The courts universally hold that it is not the providence nor duty of the court to make a contract between the parties, but to construe the contract that has been made. 12 Am. Jur. 794; *"An agreement should, moreover, be construed in such a way as to make the obligations imposed by its terms mutually binding upon the parties, unless such interpretation is wholly negatived by the language used. This rule is based on the presumption that when parties make an instrument, the intention is that it shall be effectual, and not nugatory."*

Thence to the description—with evidence aliunde can the correct description be determined?

Our court in the case of *Grayson Lumber Co. v. Young*, 118 Va. 122, stated *"that the land mentioned in the agreement, being part of other lands of the Defendant, and not capable of identification as distinct and separate, the metes and bounds cannot be ascertained without supplying the defect by parol evidence of something not referred to in the contract."*

Do we have such a situation in this case? No. The only land owned by the Defendants in this block are the lots set forth in the Bill of Complaint. Defendants' Exhibit "A" clearly spells out the Northern, Southern and Eastern boundaries. Evidence aliunde supplies the Western line. The position of the Defendants; to-wit:; that Lots 22 and 23, Block 3, only, were intended, gives no credence to the written language of the contract which clearly includes the land lying to the

North and East of said Lots 22 and 23. Your Commissioner would have no hesitancy in finding for the Defendants, pursuant to the language of the Grayson Lumber Co. page 14 } case heretofore cited, if in fact, the Defendants owned additional lots adjoining and lying to the West of the subject property, but such is not the case or problem presented.

In *Asberry v. Mitchell*, 121 Va. 276, the court stated "*where the North, South and Western boundaries were known with certainty, 'evidence aliunde is admissible' to ascertain the Eastern boundary. It is not a case of construction, but location.*"

Our court held in *Midkiff v. Glass*, 139 Va. 218, that "*it may be laid down generally that great liberality is shown in the matter of description. In description that is certain which can be made certain. A deed will not be declared void for uncertainty if it is possible, by any reasonable rules of construction, to ascertain from the description, aided by extrinsic evidence, what property it is intended to convey. The office of description in a deed, or other writing, is not to identify the land, but to furnish means of identification.*"

There is only one further item, in view of that previously stated, as could lead your Commissioner to a different conclusion; that being the question of price. Is there such a disparity in value and contract price that it would lead to the obvious conclusion a material mistake of fact had been made? The question of value, as placed in evidence (H. K. Derring, pp. 78, lines 18 through 25) negates this question.

There are no other matters requested of your Commissioner to be specifically stated. Your *Commissiones* files this report, along with the Transcript of Testimony, Complainants' Exhibits 1 through 4; Defendants Exhibits A through D; and Briefs filed by Complainants' and Defendants' Counsel in this cause.

Respectfully submitted,

HENRY L. LAM

Commissioner in Chancery.

#### COSTS BEFORE COMMISSIONER:

To Elizabeth P. Berry, Court Reporter	\$118.17
To Commissioner's Fee	\$350.00

I certify that on the 6th day of July, 1965, I mailed a copy of the foregoing Report to Garland M. Layton and Robert F. Stackhouse, Counsel of Record.

HENRY L. LAM

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page 16 }

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# OPINION

Plaintiffs' filed their bill herein against defendants, seeking specific performance of a written contract of purchase of real estate located at or near Chesapeake Beach in the City of Virginia Beach. In due time the matter was referred to a Commissioner, who, after hearing the evidence *ore tenus* and arguments of counsel, filed his report, with the exhibits, holding that defendants should specifically perform their contract. Exceptions to the report were filed by defendants, and argued orally before the court. Defendants only contention is that the contract is not subject to specific performance because they say there was no meeting of the minds as to the property to be conveyed. Actually, it resolves itself to the question of whether the property contracted for is sufficiently described in the contract or can be made certain by the aid of extrinsic evidence.

A copy of the contract was filed with the commissioner's report as Defendant's "Exhibit A". It is dated March 12, 1964, and by this reference is made a part of this memorandum.

page 17 } Plaintiff, Hiram C. Gallop, is and for many years has been engaged in commercial fishing. He has fished at or near the location of the property in question for a number of years. He rented and occupied subject property (with the building thereon) for two years prior to the making of the contract in question. (Ev. pp. 26 & 28) While using the property, he put clay on the streets adjoining it, so that he could get his trucks in to the property to load fish. He also constructed a fish net rack on the corner lot for drying his nets (Ev. p. 27 & 54). After an out of town trip Mr. Gallop returned to find a "For Sale" sign on the subject



property. He said the sign gave reference to a real estate broker, with a telephone number, and he immediately contacted the broker.

In addition to the subject property, the defendants owned other property across Ocean View Avenue, which they had listed for sale with the same real estate agent. (Ev. p. 29) Subject property fronts on Chesapeake Bay and extends back to Ocean View Avenue, the Eastern line being along Beaumont Avenue (formerly Bradford Avenue). When Gallop contacted Mr. Derring, one of the representatives of the real estate firm, relative to the sign, Derring was familiar with the other property of defendants (a duplex across Ocean View Avenue), which his firm had listed for sale, but not this parcel. At Gallups request, Derring met Gallop and drafted a contract for subject property, using a plat which Gallop had. (Ev. p. 31) Subject property is shown on that plat, which is Complainant's "Exhibit 2", as a  
page 18 } parcel at the Northwest corner of Bayside Avenue  
and Bradford Avenue (which is now named and  
known as Beaumont Avenue), extending back from Bayside  
Avenue to Ocean View Avenue. This plat is a section map  
used by the tax authorities of the city.

The property in question was purchased by Mrs. Pavlock, formerly Gelardi, in 1953, by deed in Deed Book 342 at page 606, consisting of Lots 19-20-21-22 and 23, Block 3, Chesapeake Park, recorded in Map Book 4 at page 47. At that time Lots 19 and 20 and parts of 21-22 and 23 had been washed away by the waters of Chesapeake Bay, and were under the waters of said bay. At the time of this contract, more of the lots had eroded away and were under water. (See Complainant's Exhibit 4 and Defendant's Exhibit "C") The structure on the property is on piles, located to the rear (southern end) of lots 22 and 23. (See also photographs, Complainant's Exhibit 3). Normal high water covers all of lots 19 and 20 and more than one-half of lots 21, 22 and 23. In fact most of lots 19 and 20 are under water at low tide. Hence, we are dealing with a parcel of land (parts of lots 21, 22 and 23, Block 3), which now front about 95.5 feet on the North side of Ocean View Avenue and extends back to the waters of Chesapeake Bay for a distance of about 50 feet, according to Complainant's Exhibit 4, and for a distance of about 75 feet, according to Defendant's Exhibit "C", which was a plat made in 1954.

Gallop testified he had been using all of this parcel, (which is all of Mrs. Pavlock's property at the location in question),

between Bayside Avenue and Ocean View Avenue, West of Bradford Avenue (now Beaumont Avenue); that he spoke to Mr. Pavlock about buying this property for \$4500.00 and that Pavlock said it included the "net racks on the corner and all"

(Ev. p. 31); that he purchased and expected to get page 19 } the corner lot (Ev. p. 62). When the real estate agent drew the contract; he said Gallop showed him what he wanted from a plat which Gallop had (Complainant's Exhibit 2), which was the West corner of Beaumont Avenue and Bayside Avenue, between Bayside Avenue and Ocean View Avenues, "and all the appurtenances thereon, including the little shack" (Ev. p. 67). He further said that at the time he drew the contract, he did not know the property had been divided into lots, and the plat which Gallop had did not show it as divided into lots (Ev. p. 70). When Mrs. Pavlock signed the contract she did not mention that the property had been divided into lots, nor did she mention that she wanted the conveyance limited to two lots or any portion of the parcel. In fact she did not know the description of the property by lot and block (Ev. p. 72 and 77). Nothing was ever said to Gallop or to the real estate agent about limiting the conveyance to two lots. This question arose at the time set for closing the transaction (Ev. p. 77). Mrs. Pavlock said she did not read the contract well (Ev. p. 87); that in fact she did not and could not read the contract (Ev. p. 96); that what she had in mind was selling a parcel 50 x 100 feet. (Ev. p. 100) (As it appears, that is about all that she owns at the location in question—about 95 feet on Ocean View Avenue, extending to the waters of the bay about 50 feet). Mr. Pavlock said he was confused about the description (Ev. p. 105) and he couldn't read it.

page 20 } When the attorney was trying to draw the deed and arrange for title examination he called Mrs. Pavlock to ask her what property she had sold. She told him she "couldn't tell me the lots", "she could not give lot numbers, or even the block." (Ev. p. 13). She didn't know exactly what she owned at the location in question (Ev. p. 13).

From the contract, and the above related evidence (no objection was raised or argued before the court as to the admission of any of the evidence, so that all the evidence has been considered by the court), the commissioner held that the contract was capable of specific performance. Since the correctness of the commissioner's finding is now challenged, the court must decide if the contract is reasonably certain as to the land contracted for. That is, does the contract sufficiently

describe the land with reasonable certainty to identify it, with the aid of extrinsic evidence, so as to prevent mistake. Reasonable certainty is all that is required. Hence, does the contract refer to corners or boundaries that will enable it to be identified with certainty by extrinsic evidence. If so, specific performance should be granted.

The commissioner has found in favor of specific performance, and while his findings are subject to review by the court, the court cannot arbitrarily disturb the report, if it is supported by sufficient proof. The evidence in this case was taken in the presence of the commissioner, and his conclusions should be sustained unless it plainly appears upon a full and fair review that his finding is contrary to the weight of the evidence. See *McGrue, Executrix v. Brownfield*, 202 Va.

418; *Hudson v. Clark*, 200 Va. 325. It is well to page 21 } keep in mind what the court said in *Lucy v. Zehmer*, 196 Va. 493, at page 504, relative to specific performance:

“Specific performance, it is true, is not a matter of absolute or arbitrary right, but is addressed to the reasonable and sound discretion of the court. *First Nat. Bank v. Roanoke Oil Co.*, *supra*, 169 Va. at p. 116, 192 S. E. at p. 771. But it is likewise true that the discretion which may be exercised is not an arbitrary or capricious one, but one which is controlled by the established doctrines and settled principles of equity; and, generally, where a contract is in its nature and circumstances unobjectionable, it is as much a matter of course for courts of equity to decree a specific performance of it as it is for a court of law to give damages for a breach of it. *Bond v. Crawford*, 193 Va. 437, 444, 69 S. E. (2d) 470, 475.”

In this case the seller knew that Gallop was the person making the offer; that he had occupied the property before; that he was engaged in commercial fishing; and that he wanted the property to use in connection with his commercial fishing. They also knew that much of the property was under water. Since he was hauling his nets in front of the property in question, drying his net on the net racks on the East side of the shack (on lot 21), it would be apparent to them he would want the frontage on the bay. To contend they intended to hold title to lots 19 and 20, which are under water, is to hold something that does not exist. They say it was their purpose to hold lot 21 to have access for tenants from the duplex across Ocean View Avenue to the water. The fallacy in this

argument is that the duplex was also for sale and no mention is made in the for sale sign that such access will be available, nor was the agent so told when the property was  
 page 22 } listed, nor is such access necessary. Access from  
 the duplex to the bay can be had over Beaumont  
 Avenue (Bradford Avenue).

The bed of Chesapeake Bay is the property of the Commonwealth (Sec. 62-1, Code of Virginia), and the right of the riparian owners extends to low water mark. (Sec. 62-2 of the Code of Virginia). Ownership to high water mark extends title to low water mark. It would appear that much of what were lots 19 and 20 are property of the state, because they are covered by water. But, if not covered at low tide they are at high tide, as the tide extends back to cover more than one-half of lots 21, 22 and 23, and plainly are the property of the owners of lots 21, 22 and 23, to the South. The property line on tidal waters may and does change, as it has here, by recession. See *Steelman v. Field*, 142 Va. 383. High tide now comes considerable distance back on lots 21, 22 and 23, as shown by the Exhibits.

The contract in this case describes the property as being on Beaumont Avenue (Bradford Avenue), Ocean View Avenue and Bayside Avenue. The property in question is located at this point. The house, with the surrounding land, is all that defendants own at that location, namely, parts of lots 21, 22 and 23. There can be no doubt from the description in the contract what property was intended. But even if not, when extrinsic evidence is presented, it is easily capable of identification. That is all that is required. The contract describes the property as a parcel or lot "West corner of Beaumont Road and Bayside Road". This point is identified on the plat of the property. The contract then continues to describe it as the property "between Ocean Avenue and Bayside Avenue, and all appurtenances thereon". It is clear it  
 covers the property bounded by Bayside Road  
 page 23 } (Bayside Avenue), Beaumont Avenue (formerly  
 Bradford Avenue) and Ocean View Avenue. Only  
 the West boundary is not set forth. However, this parcel has a building on it, and is the only parcel owned by the defendants bounded by these three streets. It is admitted by the defendants that the lot was to extend to the West line of lot 23, which is the Western line in question. The contract carries it to the three streets in question. As I have pointed out above, much of the land is under water, and plaintiffs are not getting all of the land covered by the description in the contract. Yet,

they knew the land was not there, and are willing to take what is left of the lots.

What has been said by the following authors and by the following authorities is of assistance in describing the conclusions reached in this case.

In Michie's Jurisprudence Vol. 17, par. 21, page 35, the author says:

"It is not essential that the descriptions have such particulars and tokens of identification as to render a resort to extrinsic aid entirely needless when the writing comes to be applied to the subject matter. . . . If the contract refers to corners, lines or other earmarks or indexes that will enable it to be identified with certainty by extrinsic evidence, it is capable of specific enforcement in equity."

The same author in par. 20, at page 34, in speaking of vagueness of the description, says:

"But vagueness where the description is ample to prevent mistake is no reason why a contract should not be specifically enforced."

page 24 } There are numerous instances of specific enforcement of contracts which did not set forth detailed descriptions of the property to be conveyed, where the description was sufficient, with the aid of extrinsic evidence, to sufficiently identify the property to be conveyed. For instance, contract to convey "Duggan's Inn, in Hanover County, Virginia," *Duggan v. Krevonick*, 169 Va. 57; Here the property consisted of a gas station, a restaurant, swimming pool, etc. located on a fifteen acre parcel, commonly known as "Duggan's Inn."; contract to convey property situated in the City of Richmond, No. 504 East Marshall Street and all improvements thereon, "*Harper v. Wallerstein*, 122 Va. 274", contract to sell "all merchantable timber," *Adams v. Hagen*, 123 Va. 304. See also *Moore v. C. & O. R. Co.*, 159 Va. 703; *Parker v. Murphy*, 152 Va. 173; *C. & O. R. Co. v. Williams Slate Co.*, 143 Va. 722. In the opinion of the last cited case, the following language appears:

"The description need not be given with such particularity as to make a resort to extrinsic evidence unnecessary. Reasonable certainty is all that is required. Extrinsic proof is allowed in order to apply, not to alter or vary, the written

instrument." 36 cyc. 591; *Prebe v. Abrahams*, 88 Cal. 245, 26 p. 99, 22 Am. St. Rep. 301.

"That the description of the property in a lease is indefinite will not defeat specific performance of a covenant to renew the lease, where both parties have without question acted under the lease." 36 Cyc. 592.

In *Asberry v. Mitchell*, 121 Va. 276, the contract to convey 100 acres bounded by R on the North, M on the South, off the west end of the farm of H. C. Asberry, was specifically enforced. The court held the East line should be run due North and South, from Ratliff land on the North to Mitchell land on the South so as to include 100 acres. See also the cases there cited. See also 49 Am. Jur., par. 115, page 134, page 25 } titled Specific Performance, Sufficiency of Description of Land.

I am of the opinion that the findings of the commissioner are supported by the evidence, that the exceptions filed by defendants should be overruled, and plaintiffs granted specific performance.

RICHARD B. KELLAM, Judge.

Aug. 25, 1965.

page 26 }

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## DECREE

THIS CAUSE came on this day to be heard upon the Report of the Commissioner in Chancery and of the Exceptions to the defendants thereto, the papers and exhibits formerly read, and was argued by counsel.

UPON CONSIDERATION WHEREOF, after reviewing the Report of the Commissioner in Chancery and the Evidence taken before the Commissioner in Chancery and the Exhibits filed herein, the Court is of the opinion that the Report of the Commissioner in Chancery is supported by the evidence and further stated in the written opinion of the Court, it is ADJUDGED, ORDERED and DECREED that the Exceptions filed by the defendants to said Report be and are hereby overruled, and that plaintiffs be and hereby are

awarded specific performance prayed for in the Bill of Complaint.

It is further ADJUDGED, ORDERED and DECREED that Arcangela Gelardi Pavlock and John P. Pavlock convey Lots 19, 20, 21, 22 and 23, Block 3, as shown on the plat entitled Chesapeake Park, pursuant to the terms set forth in the sales contract, to Hiram C. Gallop and Gladys H. Gallop, by a general warranty deed with the usual covenants of title, free and clear of all encumbrances, and further that this conveyance be made within ten (10) days from the entry of this order, and that in the event conveyance is not so made, the

Court appoints Garland M. Layton, Special Com-  
page 27 } missioner, to convey said property as above set  
forth and to do whatever is necessary to comply  
with the terms as set forth in the sales contract and this decree, having first posted bond in the sum of \$4,500.00 with the Clerk of this Court, and the cost thereof to be assessed against the Defendants herein and approved by the Court.

It is further ADJUDGED, ORDERED and DECREED that the Court costs be assessed against the Defendants and that the Commissioner's fee and Court Reporter's fee be and are hereby made a part of the Court costs.

To all of which action of the Court, defendants duly excepted.

Enter 9/10/65.

R. B. K.

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page 28 }

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#### ASSIGNMENTS OF ERROR

1. The Court erred in finding that there was a contract between the parties.

2. The Court erred in finding that complainants were entitled to specific performance of the alleged contract and ordering defendants to convey the real property involved to complainants.



*Stanley G. Bryan.*

3. The Court erred in entering the final Decree of September 10, 1965.

ARCANGELA GELARDI PAVLOCK  
AND JOHN P. PAVLOCK  
By JERROLD G. WEINBERG  
Of Counsel.

Filed 10-22-65.

M. WHITE, D. C.

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Dep.  
page 3 }

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Mr. Stackhouse: Mr. Commissioner, I am going to ask leave to call out of order two witnesses who are professional people, and as a result of which I would like to call them so that they can get back to their work.

\* \* \* \* \*

Dep.  
page 4 }

STANLEY G. BRYAN,  
witness, first having been duly sworn, was called to the witness stand and upon being examined, testified as follows:

#### DIRECT EXAMINATION

Examined by Mr. Stackhouse:

Q. State your full name, age, address, and profession.

A. Stanley G. Bryan, 34 years old. I am an attorney, with my office at 816 Maritime Tower Building.

Q. Mr. Bryan, how long have you been practicing law?

A. Eleven years.

Q. And what is the name of your firm?

A. Moss and Bryan.

Q. Do you recall being retained to search the title to a piece

*Stanley G. Bryan.*

of property that was contracted to be sold by the Hembree Real Estate Agency?

A. I have this, I think is the one you are talking about, contract between Gallop and Mr. and Mrs. Pavlock, for a piece of property down near North Pleasure House Dep. Road?

page 5 } Q. Right. How did that happen to come to you, Mr. Bryan?

A. I knew some of the agents at Hembree Realty, and if they don't have a choice of attorney, once in a while I get one of the closings.

Mr. Hugh Derring from Hembree Realty brought me this contract, and asked me if I would search the title and prepare necessary papers for closing.

Q. This is the contract you received from Mr. Derring, is that correct, sir?

A. Right.

Mr. Stackhouse: We would like to put that in evidence.

Mr. Layton: Is that the same one?

The Commissioner: It looks to be, anyway.

A. I think they were all made at the same time.

The Commissioner: Introduced as "Defendant's Exhibit A."

Mr. Layton: Will you substitute the original for that?

Mr. Stackhouse: We can do that. Let him go ahead and mark this.

Dep. The Commissioner: Introduced as "Defendant's Exhibit A" is a written sales agreement, dated page 6 } March 12, 1964, between Hiram C. Gallop and Gladys H. Gallop and John P. and A. G. Pavlock.

A. I took this contract, came down to Princess Anne to look for some property belonging to Pavlock.

I could not find it, so I called on the telephone, talked to Mr. Derring, and Mr. Derring told me the property should be in the name of Gelardi, and Mrs. Gelardi had remarried and her new name was Pavlock; and if I would look, I would find a Small Business Administration loan.

Both names came up with a Small Business Administration loan, and I made this copy of the legal description.

When I made the copy of the legal description, it had sev-

*Stanley G. Bryan.*

eral lots on it, and I believe the grantee index also indicated that Mrs. Pavlock owned several more lots down there.

Then looking at this description on this contract, I could not determine what lots the parties were selling, so I drew this rough diagram of the area as best I could determine the area that they were negotiating for, carried it back,

Dep. and I met with Mr. Derring.  
page 7 } I told Mr. Derring he was going to have to get together with the parties and tell me which of the lots they intended to sell, because I couldn't determine from that contract.

He then told me it was lots #22 and #23.

I prepared all the papers, I got a release from the Small Business Administration for the loan that was on there on lots #22 and #23.

I prepared deeds, mortgage on behalf of Mrs. Pavlock, notes, and all the papers. Settlement was arranged.

I could not be present at the settlement, so I made arrangements with my partner, Mr. Charles Moss, who was to attend settlement and actually conduct the closing.

From that point, I don't know any more except he came back and said he didn't close because the parties were not in agreement.

Mr. Stackhouse:

Q. All right, Mr. Bryan.

Did you have any contact at all with Mrs. Pavlock or with Mr. Gallop?

A. No, sir.

Dep. Q. You did not?

page 8 } A. None whatsoever. I will take that back. It's been a while. I may have talked to Mrs. Pavlock on the telephone, called her when I couldn't get this description.

I called her for some information, and she told me about the Small Business Administration loan she had on it, approximate date she had put on it, but it's been a long time, and I can't remember exactly the nature of that conversation.

I believe you also told me which two lots?

Mrs. Pavlock: That is right.

A. I believe she told me the two lots. I am a little vague on that conversation, but I did talk to her, come to think of it.

*Stanley G. Bryan.*

Mr. Stackhouse:

Q. Mr. Bryan, how long have you been handling real estate closings?

A. For 11 years.

Q. And what companies do you close for?

Mr. Layton: Object to this line of question.

The Commissioner: I think we can omit that.

Dep. Mr. Stackhouse: I want to qualify him as an  
page 9 } expert.

Mr. Layton: I will stipulate he is an expert.

Mr. Stackhouse: I want to ask a question predicated on the fact he is an expert in the field of title searching and so forth.

Q. Referring to "Defendant's Exhibit A," and particularly the description contained therein, and based on your knowledge as an expert in the field of real estate law, state whether or not that is the type of description that you could close or draw a deed from accurately.

A. From this contract alone, you could not draw a deed.

Mr. Stackhouse: All right, sir.

Answer Mr. Layton.

### CROSS EXAMINATION.

Examined by Mr. Layton:

Q. Let me see the note you had there with the property on it.

Will you examine that plat? Is that the same plat (shows to witness)?

A. Yes, I believe it is the same plat.

Dep. Mr. Layton: Certified by the Clerk of Court.  
page 10 } I would like to introduce this plat in evidence.

A. Map Book 6, page 122. It looks like the plat. I can't say it is, but the one I examined was Map Book 6, 123.

It doesn't have—Map Book 4, page 47. No, the one I examined was Map Book 6, page 123.

*Stanley G. Bryan.*

The Commissioner: It probably has been re-recorded, Stanley.

A. The deed refers to the same one I examined, and I made it on my notes.

Mr. Stackhouse: You go ahead and admit that.

We don't have any objections to your admitting that in evidence.

The Commissioner: Copy of plat of Chesapeake Park, recorded in Map Book 4, page 47, introduced as "Complainant's Exhibit #1."

Mr. Layton:

Q. Mr. Bryan, you stated you did talk with Mrs. Pavlock?

A. Yes, I talked to her.

Dep. Q. And she is the one advised you what lots page 11 } were to be conveyed out, is she not?

A. She couldn't tell me the exact numbers of them.

As best I remember that conversation is very vague, as best I remember, she said she would meet with Mr. Derring and they would get it straight as to which lots.

Q. How did you determine which lots were to be conveyed

A. Mr. Derring. I met with him later, and Mr. Derring said he had determined it was lots #22 and #23.

Q. Looking at notes you have previously prepared, or this plat, whichever you care to, in relation to this contract, the contract reads, "West corner of Beaumont Road and Bayside Road, between Ocean Avenue and Bayside Avenue, and all appurtenances thereto."

A. When I examined title, I could find no Beaumont. One reason I could even start to—

Q. You did find Bradford, later changed to Beaumont?

Dep. A. I understand now it was changed to Beaumont.

page 12 } Q. The property you were told to draw up a deed for was what lots?

A. #22 and #23.

May I have those notes again? Lots #22 and #23—

Q. If you want to.

Neither of those, #22 nor #23, were on the corners of Beaumont or Bradford Road or Bayside or Ocean Avenue, were they?

*Stanley G. Bryan.*

A. No, they are not a corner lot.

Q. Well, now, you could determine in your legal capacity that that contract did state that part of this conveyance would be the corners of those two lots?

A. Well, I was very skeptical in this, and when I found this, I know that section down there, some of these streets are paper streets, some of these lots are actually under water. I don't know whether they are all high lots or what.

Things have changed down there. The contract said corner of Beaumont, *et cetera*, but didn't give any depths, didn't give any distances, widths, footage, or anything.

It was impossible for me to determine from the contract what the parties had in mind.

Dep. Q. Mrs. Pavlock knew what property she owned page 13 } down there, didn't she, when you talked to her?

A. Not exactly. She couldn't tell me the lots. I had to photostat the copies.

Q. She gave you enough information so you could find the deed with all of her property on it?

A. She told me if I would look up the last loan she got with Small Business Administration, I could get the lot numbers.

She could not give lot numbers, or even the block. I had to look up that Small Business Administration loan.

Mr. Layton: No further questions.

#### RE-DIRECT EXAMINATION.

Examined by Mr. Stackhouse:

Q. I was just going to ask him this.

Of course, west corner of Beaumont Road and Bayside Road could mean one lot; it could mean five lots, could it not?

A. Oh, yes. I don't know what it means.

Mr. Stackhouse: I don't either.

That is all.

By the Commissioner:

Dep. Q. I would like to ask you some questions re- page 14 } garding title, Mr. Bryan.

To begin with, you have searched title to this property?

A. Yes.

*Charles B. Moss.*

Q. You said that you found certain lots standing in the name of Mrs. Pavlock. What lots were they?

A. Let's see. I found several, but I think I cut it off and only concerned myself with these two since I was under the impression they were the two I was doing; but I found lots #17, #18, #19, #20, #22, and #23. I believe that is all of them. I am not sure.

They split, don't come all in the same source.

Q. Did you find whether or not lot #21 was included in there?

A. According to the tax records, I did find, I believe, #21 was in her name.

\* \* \* \* \*

Dep.  
page 18 }

\* \* \* \* \*

CHARLES B. MOSS,  
witness, first having been duly sworn, was called to the witness stand and upon being examined, testified as follows:

DIRECT EXAMINATION.

Examined by Mr. Stackhouse:

Q. State your full name, age, profession, and who is your partner?

A. Charles B. Moss, age 42, practicing attorney, City of Norfolk, 14 years, partner Stanley G. Bryan, under the name of Moss and Bryan.

Dep. Q. Where is your office located, Mr. Moss?  
page 18(a) } A. 816 Maritime Tower Building.

Q. And were you asked by your partner to close on a certain piece of real estate on a contract between Mrs. Pavlock and husband and Mr. Gallop?

A. Yes, sir.

Q. And will you tell the Commissioner exactly what occurred in your office on the morning of the closing?

(Off the record.)

Wherever it was?



*Charles B. Moss.*

A. Mr. Bryan asked me to close transaction for him, Mr. Bryan having previously done all the work in preparation of the closing was busy that day.

He asked me to go to Mr. Hembree's office, Raymond Hembree on Bayview Boulevard, to close this.

Q. They are real estate agents in the City of Norfolk?

A. Yes, real estate agents.

I understand Mr. Hugh Derring who is with them also was in on the transaction.

I arrived at Hembree's that afternoon and went in, not having seen or heard previously from any of the Dep. parties to the transaction—did not even *known* page 19 } them, all papers having been prepared in advance.

I sat down to close the transaction. All settlement statements, deed, and everything was exhibited.

It was determined at the settlement, by whom I cannot say but it appeared that I was interested in lots #22 and #23 in block No. 3 of Chesapeake Park.

It came to my attention that the purchasers of that property did not intend to purchase those 2 lots.

Conversation ensued back and forwards, between the parties and the agents, to the conclusion of which that the *prospective* purchaser appeared to want more than the 2 lots that was contained in the deed.

Q. All right, sir.

As a result of that, were you able to consummate the closing?

A. No.

Q. All right, sir. I think that is all.

### CROSS EXAMINATION.

Examined by Mr. Layton:

\* \* \* \* \*

Dep.  
page 20 }

\* \* \* \* \*

Q. At what time did Mr. and Mrs. Gallop find out only 2 lots were being conveyed to them?

*Charles B. Moss.*

Mr. Stackhouse: Just a minute.

I object to that question on the ground that Mr. Moss couldn't possibly say what time they found out.

Mr. Layton: At the closing?

A. Yes, at the closing, and I would say during the course of the closing certain proceedings followed explaining deed of bargain and sale, and going into deed of trust.

Dep. I doubt if they would have had an opportunity page 21 } to see anything up until that point when they got to the deed of trust.

At that time, I would offer to them for their signature the deed of trust and note.

Mr. Layton:

Q. And when they found out only 2 lots were being conveyed, they objected?

A. Yes, sir.

Q. And they refused to sign anything else?

A. Yes, sir.

Q. And they also stated, or told you at that time what property they had contracted for, did they not?

Mr. Stackhouse: Object to the use of the word, "contract."

It is the ultimate point in issue here.

The Commissioner: He is on cross examination.

Mr. Stackhouse: Note my exception.

A. We determined these 2 lots were not what they had wanted to buy.

Dep. Mr. Layton:

page 22 } Q. Prior to this, to the closing, had you ever seen the contract before?

A. No, sir, I had nothing to do with it.

Q. Nothing about the signing and agreement of the parties?

A. No, sir.

Q. Nothing about the dealings between the agent and Mr. and Mrs. Pavlock, Mr. and Mrs. Gallop?

A. No, sir. All I did was close it for Mr. Bryan.

Mr. Layton: That is all I have.

*Hiram Clyde Gallop.*

I would like to confer with my client.

The Commissioner: Do you have any objection to this going in?

Mr. Layton: Yes, I do, but you are going to put it in anyway.

The Commissioner: This is an unexecuted deed of trust, dated April 27, 1964, between Hiram C. Gallop and Gladys H. Gallop, husband and wife, and Stanley G. Bryan or Charles B. Moss, Trustees, introduced as "Defendants Exhibit B."

(Off the record.)

Dep.

page 23 }

HIRAM CLYDE GALLOP,

Complainant, first having been duly sworn, was called to the witness stand and upon being examined, testified as follows:

DIRECT EXAMINATION.

Examined by Mr. Layton:

Q. Will you state your full name, address, and occupation to the Court, please?

A. Hiram Clyde Gallop, 2224 Great Neck Road, Virginia Beach, Virginia.

Q. Mr. Gallop, you are the Complainant in this matter?

A. I am.

Q. You are the person who brought the action?

I show you this contract. Can you identify that contract?

A. (Looks at contract.) Yes, sir.

Q. That is the contract between yourself and your wife and Mr. and Mrs. Pavlock?

A. And Hembree Realty.

The Commissioner: May I ask if he will identify this one since it is already in the file, and then if it is the

Dep. same contract, we won't have to introduce another one.  
page 24 }

You have one in the pleadings, too. See if it is the same contract.

A. (Looks at papers.) Yes, sir.

The Commissioner: For the purposes of the record, Mr.

*Hiram Clyde Gallop.*

Gallop, the witness, has identified "Defendant's Exhibit A" as a copy of the contract in question.

\* \* \* \* \*

Dep.  
page 26 }

\* \* \* \* \*

Q. And I show you a plat. Are you familiar with this plat?

A. Yes, sir. I think this was mine.

Q. Was that in your possession at the time this contract was entered into?

A. Yes, sir.

I believe this is the one—yes, this is the one I had.

Q. Mr. Gallop, did you use all of this property in your fishing business for the 2 years that you rented

Dep. it?

page 27 } A. Yes, sir.

Q. And that?

A. The house covered it all. Two lots were under water.

Q. What did you use the property for other than the property the house was on?

A. I had a large net rack built on the corner for to spread my nets on, and then I had some 33 loads of clay hauled down there by Harrells so I could get my truck back on the street and load the fish onto the street without keeping noise on the street, disturbing other people.

\* \* \* \* \*

Q. Did you know who owned the property at the corner of formerly Bradford Road, or Beaumont Road, is that correct?

Dep. A. Bradford Avenue, call it the old name, and  
page 28 } Ocean View Avenue.

Q. Do you know who owned that property?

A. Yes, sir.

Q. Who owned it?

A. Mrs. Gelardi owned, just how many lots there was, I didn't know that, but I knew that she owned between Bayside Avenue and Ocean View Avenue, west of Bradford Road, and I had been using all of that property, hauling fish.

*Hiram Clyde Gallop.*

Q. Had she had it up for sale prior to that time?

A. Yes, sir.

Q. Coming on down to your negotiations in this contract, what happened in regard to your signing this contract?

A. Well, last winter I sailed all the winter, and I came back home, I got off the ship the 24th of February.

I rode up to the beach, which the beach always had a certain attraction, and spent a lot of time up there, appreciable time with work, and I see a sign onto the porch.

Q. What kind of sign?

A. Sale sign.

Dep. Q. Whose sale sign?

page 29 } A. The Hembree Realty Company. They had the other place and that place both for sale. They had both places for sale, the place over the hill, on the hill, and of course, this place is all below the high water mark, house, lots, and all.

Q. Was the sign in the yard or on the house?

A. It was on the porch on the bridge side, the east side of the house.

Q. The house you were trying to buy?

A. The porch to it.

Q. Go ahead. What happened after that?

A. Well, I wrote the phone number down on a pad in the car. I needed the place. My camps had all gone, and I had spent all this money fixing up the place, and one thing and another, so I taken the phone number off the sign, and I go home and tell my wife I am going to call up this Hugh Derring's name was on the sign, the only way I knew.

\* \* \* \* \*

Dep.

page 30 }

\* \* \* \* \*

Q. We are concerned now with your conversations, or what between you and Mr. Derring.

A. All right, sir. I got the phone number and name, and called Hembree Realty Company and asked if the salesman would come out to my house.

Q. How did come out?

*Hiram Clyde Gallop.*

A. Yes, sir.

Q. Who came out?

A. Mr. Derring.

Q. Did you have any negotiations with him in regard to that contract?

A. Yes, sir. I taken a plot down and showed him the house and showed him what I wanted, and he said the price instead of \$4500, which I heard it was for sale for, not  
Dep. exactly, I think it was, it seemed one conversation  
page 31 } with Mr. Pavlock, he said he would sell the place for \$4500, and I said, "Well, that is the place?" and net racks on the corner and all, and he said, "Yes."

Q. What did Mr. Derring tell you the property would be sold at?

A. \$5,000.

Q. Had you had any previous conversation with Mr. and Mrs. Pavlock with regards to sale price of that property, before you talked to Mr. Derring?

A. I had. I don't know whether it was the fall before, well, I know it was fall before last.

Q. Was it for sale then?

A. They told me they would sell me the property.

Q. For how much?

A. \$4500.

Q. The plat you have in your hand, is that the plat you showed Mr. Derring?

A. Yes, sir.

Q. That was owned by you?

A. Yes, sir.

Dep. Q. That is the plat that was used to draw up  
page 32 } that description?

A. Yes, sir.

Mr. Layton: I would like to introduce this into evidence. It is an older plat, but the property in the section involved is Gelardi.

The Commissioner: This is a photostat plat designated Section Map No. 76-37-657-16, introduced as "Complainant's Exhibit #2."

Mr. Layton:

Q. Mr. Gallop, were you able to describe to Mr. Derring the property you wanted on that?

*Hiram Clyde Gallop.*

A. Yes, sir.

Q. On that plat?

A. Yes, sir.

\* \* \* \* \*

Dep.

page 33 }

\* \* \* \* \*

Q. Did you tell Mr. Derring the house was part of the property you were going to purchase?

A. Yes, sir. He knew that. Why would they go to all the trouble of clearing it?

Those 2 lawyers that was here were supposed to be representing me, too.

\* \* \* \* \*

Dep.

page 34 }

\* \* \* \* \*

Q. And what did Mr. Derring do with that contract after you signed it?

A. Well, the \$5,000, I told him I would not pay. I would pay \$4,500.

I showed him what I wanted, and he wrote the contract.

He said, "Well, I will let you know in a couple of days. We will have to take it up with the owners of the property."

In a couple of days, he called me back and he said that they had signed the contract, and that they had agreed to come down to the \$4,500.

Q. And did he give you a copy of that contract at that time?

Dep. A. He mailed me a copy of that contract after page 35 } that conversation, and that is the last time I heard until I called him once, I think to push the settlement, because I wanted to get the house fixed up for the summer.

Q. When did you first find out that only 2 lots, inside lots, were to be conveyed to you?



*Hiram Clyde Gallop.*

A. Well, the wife and I were over a friendly matter, good faith proposition, and of course, we signed a note.

The Commissioner: Mr. Gallop, he asked you when did you find out that the 2 inside lots were the only 2 lots to be conveyed to you?

A. When I signed the papers.

Mr. Layton:

Q. To get the loan?

A. To close the deal and the loan is in the contract. I had the cash in my pocket.

Q. Mr. Gallop, did Mr. Charles Moss or Mr. Stanley Bryan ever contact you in any way, shape, or form prior to that closing?

A. No, sir.

Q. They didn't talk to you by phone?

Dep.

A. No, sir.

page 36 }

Q. Didn't ask you anything about this contract?

A. Mr. Moss handed me the deed of trust to sign, turned over where the signature went.

I went back and read, and I said, "This is not my contract," and that ended it.

Q. Did Mr. Derring, after the signing of this contract, contact you in regards to any legal description on this property?

A. Never.

Q. Mr. Gallop, these pictures I show you, did you take these pictures?

A. Yes, sir.

Q. Are they of the house and premises?

A. Yes, sir.

The Commissioner: Are you planning to introduce them?

Mr. Layton: Yes, I am, as we are also suing for damages in this case.

(The Commissioner passes pictures over to Mr. Stackhouse.)

The Commissioner: There are 8 pictures, taken by Mr. Gallop, and introduced as "Complainants Exhibit #3."

*Hiram Clyde Gallop.*

Dep. Mr. Layton:  
page 37 } Q. Mr. Gallop, where is the high water mark in  
relation to that house?

(Off the record.)

A. Normal high water?

Q. Yes, normal high water.

A. Normal high water is just back of the grass. You can see right back of the house.

I show you a sketch here—

The Commissioner: You are saying back of the house?

A. This is the bay. You see the water on the bay side, high water comes up, I would say, within approximately 10 foot of the back of the house.

Of course, get a north wind or northeast wind, 18-mile wind, and it will come on underneath the house, under the steps in the front.

I am talking about normal tide.

\* \* \* \* \*

Dep.  
page 39 }

\* \* \* \* \*

Q. In other words, these 3 lower lots toward the bay are mostly under water at high water?

A. They are under the water even at low water.

\* \* \* \* \*

Dep.  
page 46 }

\* \* \* \* \*

#### CROSS EXAMINATION.

Examined by Mr. Stackhouse:

Q. Now, Mr. Gallop, you testified that you rented this

*Hiram Clyde Gallop.*

property from Mrs. Gelardi, later Mrs. Pavlock, in 1962, is that correct, for the first time?

A. As a fishing—

Q. To use the house in your fishing business?

Dep. A. I said along about that, going back to the page 47 } March storm.

Q. Was that in 1962

A. Well, before I can say, we will have to find out.

Q. Was it 2 years ago that you first rented it?

A. This fall I rented from Mr. Thiebault, 1964.

Q. 1963 and 1962?

A. Yes.

Q. How long did you rent the property?

A. For the duration, if it was 2 or 3 months. I may have paid her 3 months rent.

Q. At the maximum, let's say you rented the house there for 3 months, is that correct?

A. Yes, I would say.

Q. Did you have a written lease?

A. No.

Q. You did not have a written lease?

A. No.

\* \* \* \* \*

Dep.  
page 49 }

\* \* \* \* \*

Q. Quite candidly you said you didn't know how many lots were involved in this property?

A. I didn't care.

Q. I say, you didn't know how many lots?

A. I didn't care. The property as I had rented it, as it was, was all I was interested in.

Q. Would you answer yes or no?

The Commissioner: Mr. Gallop, again, in response to the questions under the procedures, you answer the questions that are asked, and if you don't know the answers, say you don't know the answer.

*Hiram Clyde Gallop.*

Your own attorney has the opportunity to reexamine you again.

Dep.

page 50 } A. At that time, as far as lots, I did not know the numbers.

Mr. Stackhouse:

Q. And you saw a sign that was posted on the house, which is later determined to be on lots #22 and #23, "For sale," is that correct?

A. That is where I got my information.

Q. A sign placed there by Mr. Derring of Hembree Realty Company, is that correct?

A. If I remember right, it was a Hembree Realty sign on it, and if I remember right again, as soon as the contract was made, a "Sold" sign was put on it, and I am sure there is another sale sign on it now, put on it all the fall.

Why, I don't know, all these strange things; beyond me.

Q. Just answer my question, Mr. Gallop. I think we would get along a whole lot better.

So you saw the sign on the house, and then contacted Mr. Derring, is that correct?

A. Yes, sir, from my home.

Q. You did not contact Mrs. Pavlock?

A. Not to my knowledge.

Q. Nor you did not contact Mr.

Dep. A. Not to my knowledge.

page 51 } Q. You made your negotiations with Mr. Derring?

A. Hembree Realty Company, Mr. Derring.

Q. Did you ever discuss with Mr. and Mrs. Pavlock the exact lots and the exact pieces of property that were to be conveyed to you?

A. No, sir.

Q. You never did? All of that you took up with Mr. Derring, is that correct?

A. That is correct.

Q. Then you signed an agreement which Mr. Derring brought you with this description that is contained on "Exhibit A," is that correct? You signed this contract?

A. I and my wife signed the contract for the property we bargained to buy, in our home.

*Hiram Clyde Gallop.*

Q. Now Mr. and Mrs. Pavlock had not signed the contract at that time, had they?

A. No, sir.

Q. And Derring had not signed it, had he?

A. Yes, sir.

Q. He signed it?

Dep. A. Yes, sir, he signed it the same time we did.

page 52 } Q. Then you attended the closing that Mr. Moss and Mr. Bryan have described here this morning, is that correct?

A. Yes, sir.

\* \* \* \* \*

Q. Mrs. Pavlock informed you at the hearing that it was her intention and Mr. Pavlock's intention to transfer for \$4,500 lots #22 and #23, with the house, did she

Dep. not

page 53 } A. That was at the time of settlement

Q. Yes, settlement.

A. That is what it wound up to; not according to the contract.

Q. Right. They explained to you that there must have been some mistake about the description of the property to be sold there at the closing, did they not?

A. They read the contract and signed it.

Q. Now, I am asking you what happened at the closing. What happened at the closing?

A. This is all that I can say that happened, if you want to hear it.

Q. Here is the specific question I am asking you.

Did not Mr. and Mrs. Pavlock explain to you that there must have been a mistake as to the number of lots to be transferred to you?

Mr. Layton: Object to that.

The Commissioner: The objection is overruled because he is on cross examination.

A. There wasn't a word.

\* \* \* \* \*

*Hugh K. Derring.*

Dep.  
page 57 }

\* \* \* \* \*

Q. I think you have covered that, but I want a little bit more information in regards to the adjoining property to your left.

Is there any developoment on that?

A. No, sir.

Q. No improvements on that?

A. No improvements to the west of this house.

Q. Did you make any use of the property to the west of the house whenever you have been using it, from the time that you originally rented it in 1962?

A. From the Jacobs property on to the fence at Little Creek, with their permission I have been fishing for years.

Q. In other words, you made use of the property lying west of it, which is undeveloped, for fishing also?

A. Yes, sir.

\* \* \* \* \*

Dep.  
page 60 }

\* \* \* \* \*

Q. And you used the property, as I understand it, to the west of the Gelardi and Pavlock property, is that right, for fishing?

A. Yes.

\* \* \* \* \*

Dep.  
page 63 }

\* \* \* \* \*

HUGH K. DERRING,

witness, first having been duly sworn, was called to the witness stand and upon being examined, testified as follows:

*Hugh K. Derring.*

DIRECT EXAMINATION.

Examined by Mr. Layton:

Q. Mr. Derring, would you state your name, address, and occupation to the Court?

A. My name is Hugh K. Derring, 1651 Bayview Boulevard, Norfolk, Virginia.

I am a salesman for Hembree Realty located at 313 Bayview Boulevard.

Q. Mr. Derring, I am going to show you this contract. Are you familiar with that contract?

A. Yes, sir.

Q. Would you explain in your own words to the Court your knowledge of the contract, how it was drawn, who signed it, what not?

A. Be delighted.

Dep. Mr. Gallop called me, of course I assume the page 64 } date, I don't know, but March 12 probably is the date since it was signed March 12, and asked me if I represented some property on the waterfront down at Ocean Park or Lynnhaven, such as that.

I told him—he described it, I told him not that property, but some in back of it that belonged to Mr. and Mrs. Pavlock, a duplex and house.

He asked me if I could sell the other property. I said, "If Mrs. Pavlock wants to sell it."

He asked me to come down to see him. I went, and when I got down there, I remembered there was a little shack in front of Mrs. Pavlock property I was representing at the time.

He told me what he wanted. I told him there was nothing legal on the thing, and said I didn't know how to write it up.

He pulled out a plat of his property, and he said, "This is what I want." I wrote it according to his request and according to what the map showed as the "west corner of Beaumont Road" *et cetera*.

He and his wife signed the contract, he gave me \$100.00 down, \$2,500 cash for it, \$2,000 probably would pay in cash.

Dep. page 65 } He wanted to know if it was possible if he didn't have it for them to take a note, payable in 2 years' time. I told him it would be 6% interest if he did so.

He accepted, so I wrote it accordingly. I called up Mrs. Pavlock, and I told her I had a contract on her property



*Hugh K. Derring.*

down there, and I took it over to her and she and her husband signed it.

I turned it over to Moss and Bryan, our attorneys at the time for property, and I told them at the time I gave them a copy of the contract, "This is the first time I have ever written a contract like this."

I wouldn't write a contract with legal description, telling exactly where the property was, when it was mostly sand, wasn't in a position to tell what the streets were, what the property was they were buying, or nothing.

In the meantime, I was informed they had had a loan on the property, and my lawyers would have to get it cleared in order for them to sell it.

The loan was with Mutual Federal Savings and Loan. I contacted them and asked if they had a plat of the property.

They informed me the attorney handling the property had since deceased, and never returned  
 Dep. page 66 } the plat. I was unable to obtain one from them.

In the meantime, Mrs. Pavlock informed me I would be able to from Butler Blue Print Company.

I called Butler Blue Print Company and asked whether they had a plat of the property, and they said if they did, they wouldn't know where it was.

I told Mr. Bryan of Moss and Bryan, handling the case, "What you will have to do is get the legal information yourself when you go to Court at Princess Anne County. I don't know what the legal is."

I only had to write this according to Captain Gallop's statement of what he wanted, and from the map which he had at the time, and that was that.

Q. You speak of "legal." What do you mean?

A. In most cases, they have legal description, which would be lot so and so, block so and so, plat of such and such, located in such and such, construed as legal on the  
 Dep. property.

page 67 } Q. You are construing that as being platted lots referring to a section?

A. Correct, sir.

Q. Mr. Derring, I show you a plat here, entered as "Complainant's Exhibit 2."

Is that the plat you refer to that Mr. Gallop showed you at the time of drawing up this contract?

A. It looks like it.

Q. And did he point out to you on that map what property

*Hugh K. Derring.*

he wanted?

A. That is how we wrote it. He pointed out what he wanted. I wrote it the way it showed on the plat.

Q. Did he make it clear to you he wanted the corner of those lots of that section?

A. Well, we will go back to this. I wrote it the way he said. He wanted the west corner of Beaumont Road and Bayside Road between Ocean Avenue and Bayside Avenue, and all the appurtenances thereon, including the little shack that was there.

Q. He specifically mentioned the shack that was there?

A. Yes. That was to be part of it.

Dep.

page 68 } The Commissioner: Let me interrupt for one moment so I will know.

On "Complainant's Exhibit #3" is shown this house. Is that what you have reference to as the "shack"?

A. Yes, sir, I assume so. I would have to locate it with the other houses back of it, but it looks like it. Let's put it that way.

The Commissioner: Look through these pictures and see. I just want to identify it so I know what you are talking about when you make reference to the "shack."

A. The shack was placed in front of her duplex, I believe, a little to the left of it, towards the water.

I would say from this, this would be the shack, sir.

The Commissioner: That is all I wanted.

Mr. Layton:

Q. Mr. Derring, when you presented this contract to Mrs. Pavelock, did she make any comment on it?

A. Not that I recall.

Dep.

Q. Did Mr. Pavelock make any comment?

page 69 } A. After they had both signed it, the question was asked me who was the buyer, and I told them.

They hadn't asked me previously who the buyer was. They had the contract, and I assumed they read it.

After they signed it, I was asked who the buyer was, and I told them, and then Mr. Pavlock objected, saying he didn't want to sell Mr. Gallop the property because he had other

*Hugh K. Derring.*

property down there, and didn't want to foul up with any fishing interests, *et cetera*, but Mrs. Pavlock told him to go ahead and sign it, so he did.

I said, "They are not going to bother your other property. You can keep them off that property. They will not give you any trouble." So they gave it to me.

Mr. Layton: Answer Mr. Stackhouse.

### CROSS EXAMINATION.

Examined by Mr. Stackhouse:

Q. Mr. Derring, you were, in fact, representing the sellers of this property, were you not?

A. In that case, I would be representing both, buyer and seller.

Dep. page 70 } Q. Where do you get your fee from?

A. Well, because the seller would pay the fee, sir—

Q. So you were representing the seller, were you not?

A. I was under the impression I would be representing both in this case.

Q. Was Mr. Gallop paying you anything?

A. No, sir.

Q. He was not?

A. No, sir.

Q. So your fee came from the sellers?

A. If I got a fee, yes, sir, if the deal was consummated.

Q. Now, you had no idea as to what the lots were down there that were under discussion for sale, did you?

A. I did not, sir.

Q. All you knew was it was a piece of sand down there, and a house on it, isn't that correct?

A. Correct.

Q. And you talked to Captain Gallop and he gave you a description of what he wanted?

Dep. page 71 } A. He brought down a plat and showed me what he wanted. "This is what I want."

We wrote it accordingly.

Q. This is the plat? It shows no lots on it?

A. No.

Q. Did you look on the plat and determine there were no lots there on this particular spot?

*Hugh K. Derring.*

A. I wrote according to what Mr. Gallop said he wanted, because as far as I was concerned, it was sand.

I did say to Mr. Bryan I was unable to write a legal on this property by virtue of the fact there was no legal to write from.

I told him when he went to Princess Anne County he would have to determine the legal on the deal, and if he wanted me to put it in different form, I would be glad to do so.

He said it was unnecessary.

Q. He determined through conversations with you or Mrs. Pavlock, did he not, that they wanted to sell lots #22 and #23 with the house on it?

A. That never came up until the closing, sir. Then it came up.

Q. But I mean Mr. Bryan had conversations  
Dep. with you concerning the mortgage and the house  
page 72 } and these 2 lots, did he not?

A. Yes. He talked to me, but he didn't mention the number of the lots.

As far as I was concerned, I didn't hear what lots until it came up for closing.

Q. You just didn't know what lots there were?

A. I was saying there was nothing but sand here.

Q. Did you ever ask Mrs. Gelardi what lots she had in mind?

A. We were trying to get a plat on it at the time. We went to Mutual Federal and Butler Blue Print Company at the time.

Mrs. Gelardi didn't know what the description of the lots were.

Mr. Layton: Object to that.

The Commissioner: Objection overruled.

CROSS EXAMINATION.

Mr. Stackhouse:

Q. All right. So at the time that Mr. Gallop signed this contract, Mr. and Mrs. Pavlock had not signed it, had they?

A. Oh, no.

Dep. Q. You brought them a contract to their place  
page 73 } of business, which is a small confectionery store  
across from Maury High School in the City of

*Hugh K. Derring.*

Norfolk? In fact, they were right busy at the time, serving students or somebody, isn't that correct?

A. Well, I don't recall that. I know where the place is, and I have been over there, yes, sir.

Q. They signed the contract. Who signed the contract first?

A. Mrs. Pavelock, I believe. Mr. Pavlock signed it at his home, if I remember correctly.

Q. Signed it at his home?

A. Yes, sir.

Q. Are you quite sure of that?

A. I am not sure. Discussion came up when he asked who the buyer was. We were over at the house.

Q. Why did you go over to the house after the contract had been signed at the store?

A. Because, look, I can't answer this. You are going to ask me a question I can't recall, whether Mr. Pavlock signed it first and then we had to get his signature, but I went over for the purpose of having him sign it. I know.

Dep. Q. Did they not raise a question with you concerning the description of this property, saying they did not know the lot numbers and it would have to be straightened out later?

A. I don't recall that, no, sir.

Q. You don't recall that?

A. No, sir. I did know that on my own. I tried to get Mr. Bryan to do that. He is our lawyer, supposed to do that, since I was unable.

Q. Did you not have a conversation with either Mr. Pavlock or Mrs. Pavlock concerning a more definite legal description of what property was going to be sold?

A. Yes, sir, that is why when she said there was a loan on it and we would have to get it cleared, and Bryan would have to do it, that is when she told me Mutual Federal would have a plat and it would serve the purpose, and we would know what we were doing.

In the meantime, as they did not, as I told you before, Mrs. Pavlock—

Q. Excuse me. You did not know what you were doing up to the time you actually had the plat?

A. I explained to you, I wrote it according to this because I did not know the legal.

Dep. Q. I understand what you wrote down there; but Mrs. Pavlock didn't know what lots she was

page 75 }

*Hugh K. Derring.*

selling, and you didn't know what lots she was selling, did you?

A. As far as legal was concerned, no, sir.

Q. And you were going to get a more specific and definite description of the property, is that correct?

A. I was trying to.

Q. And you told Mr. Bryan you would amend the contract so as to include the correct legal description?

A. I said if he required it I would.

Q. If he required it?

A. The reason I didn't is because I have never written contract like that before in my life.

Normally, when we write a contract, we know the legal on it, or get the legal.

Q. This was a rather unusual thing, wasn't it, Mr. Derring?

A. Yes, sir. Just sand hills, don't show streets, or anything.

Q. You didn't even know what you were selling, Dep. did you?

page 76 } A. I knew what the man wanted, and I wrote it the way he said.

The Commissioner: Mr. Derring, let me ask you something.

You said that Captain Gallop was definite as to what he wanted written in the contract?

A. Sir, I wrote what he said he wanted, and that was it.

Q. In other words, when you used the word, "Beaumont Road," and "Bayside Road," and "Ocean Avenue," he knew what he was referring to?

A. That is what he told me to write, and he had the map in front of him, and he said that was what he wanted.

Q. When you talked with Mr. and Mrs. Pavlock concerning the signing of this contract, were the terms of Ocean Avenue, Bayside Road, and Beaumont Road used in their presence?

A. No, sir. I never discussed the writing on the contract at all except the financial arrangements.

Q. Did they?

Dep.

page 77 } The Commissioner:

A. There was no discussion with them as to

*Hugh K. Derring.*

any, never asked me any questions about anything except as to how Mr. Gallop proposed to pay, and I think something was said, I don't want to put this under oath, but I think something was said that they wanted cash.

Q. I am not so interested in that.

A. Then I will go back and say nothing was brought up about the description of the property to be bought, then, sir.

Q. It was just handed to them, and they read it?

A. Correct, sir.

Q. And you said some discussion was brought up about Mr. Gallop being in the fishing business?

A. Well, that was after. Both of them had signed it at the time.

Mr. Pavlock did say he didn't want to sell to Mr. Gallop if he was using it for his fishing business because they had other property there.

Dep. If you have other property there, you can  
page 78 } keep him off your private property. It is legally  
simple. I am not a lawyer, but merely mention  
that fact.

Mrs. Pavlock told him to go ahead and sign it.

The Commissioner: Any further questions?

### RE-DIRECT EXAMINATION.

Examined by Mr. Layton:

Q. I would like to get one more point with you.

You didn't know whether there were 10 lots there or 1 lot, did you?

The Commissioner: He has already stated that it was a bunch of sand hills. I understand exactly what he had in mind. No question in my mind about that.

\* \* \* \* \*

Dep.

page 79 }

\* \* \* \* \*

Mr. Layton: We are going to rest our case at this time.

(Brief recess.)

MRS. ARCANGELA GELARDI PAVLOCK,  
Defendant, first having been duly sworn, was called to the  
witness stand and upon being examined, testified as follows:

DIRECT EXAMINATION.

Examined by Mr. Stackhouse:

Q. State your full name, your age, and your present address.

A. My name is Arcangela Gelardi Pavlock, and my address is 1138 Pickett Road, 57 years old.

Q. Is that in the City of Norfolk?

A. City of Norfolk.

Q. Are you the same Mrs. Pavlock that is referred to in "Exhibit A"?

Dep.                      A. Yes, I am.  
page 80 }

Q. And did you own property in the area of Ocean View Avenue?

A. Yes, I do.

Q. And I hand you a survey of lots #22 and #23, with a house thereon.

Did you cause that survey to be made?

A. We had this survey made when we first built the house to secure a loan. That was the intention for that particular piece of property being together, and for loan purposes.

Q. And the house was built on lots #22 and #23?

A. That is right.

Mr. Stackhouse: I'd like to put that in evidence, please.

\* \* \* \* \*

The Commissioner: Physical Survey made by C. A. Banforth, dated September 22, 1954, introduced as "Defendant's Exhibit C."

Dep.

page 81 } Mr. Stackhouse:

Q. Now, do you recall, Mrs. Pavlock, when you purchased these 2 lots and several other pieces of property down in that general area?

A. Yes, sir, yes, I purchased them for the reason, having access to the water for the duplex that I have on block #18, which is directly across.

Q. I hand you a deed, marked 2nd day of October, 1953, in which you purchased from Mr. Richard B. Kellam, Special Commissioner, a number of lots, including these lots here.



*Mrs. Arcangela Gelardi Pavlock.*

A. That is right.

Q. (Shows deed to Mr. Layton.)

I will ask you to identify this as the deed that transferred the property to you from Mr. Kellam.

A. That is the one. Yes, that is the one, because we had to pay all the taxes. We had about \$400.00 worth of taxes, paid back taxes on that property.

The Commissioner: Deed dated October 2, 1953, from Richard B. Kellam, Special Commissioner, to Arcangela Gelardi, and recorded in Deed Book 324, Dep. page 82 } page #606, introduced as "Defendant's Exhibit D."

Mr. Stackhouse:

Q. Now, Mrs. Pavlock, referring to "Complainant's Exhibit 1," which is a plat, recorded in Map Book 4, page 47, Clerk's Office of the City of Virginia Beach, would you point out to the Commissioner where you built the house?

A. Right here, #22 and #23, just like that little plat.

Q. Did you build on any other property?

A. Yes, I have property over here across the street, on block #18, which I had.

Q. Will you point out to the Commissioner where you built the duplex?

A. The duplex is #18, #19, #20, #16, and part of #17 is a small house which was built when my first husband was living, and it sets back in here, and later on, after my husband died and I cleared the land and property, I have the duplex on the rest of this front.

Q. Is the duplex rented out?

A. Yes.

Q. You have tenants there the year round?

A. Tenants the year around, yes, sir.

Dep. Q. "Complainant's Exhibit #3" is a series of page 83 } photographs of the house on lots #22 and #23.

Referring to the 6th photograph in the series of 8, is this the duplex that you have reference to on the lots?

A. Yes, that is the duplex, and the little house that is referred to as lot #17 is right there right alongside here, and when you are up on the beach, it is directly in front.

Q. Between this house and the duplex, are there any streets that are actually cut in there?

*Mrs. Arcangela Gelardi Pavlock.*

A. For use, no. They are only put in by me. Anything there is put in by me.

Q. What was put in?

A. Just clay and a lot of these cinder block wall that you see in part of those pictures.

Q. That is not a street?

A. No, just to retain the sand, keep it from washing away. A lot of wash away on that.

Q. Are there any side streets there, actually?

A. In back of my duplex is. The State keeps up to the mail box, but not there.

Q. You knew Mr. Gallop, did you not?

Dep. A. I did. I did know him the year before and page 84 } the year before that.

Q. How did you happen to know Mr. Gallop?

A. I knew he had been fishing on the beach, you know, further down, which the people around there always complaining of fishing and smelling and so on, and along about the latter part of September, October, November, some way or other, he talked me into letting him have that place for a couple of months.

He said after the summer people had left, and he would take care of it and do so and so, so I took his word and let him have it, but after I did—

Q. Was that 1962?

A. Some along in there.

Q. How long did he rent it for?

A. 2 months or 2½ months.

Q. What did he rent? The house, or what?

A. Just the one little house there, that is all.

Q. What did he use it for?

A. He came there, he and his wife stayed there, and some of his men, or his family. I don't know who they were. And then they used the other side of the page 85 } beach, everybody's beach you might as well say, for fishing purposes.

\* \* \* \* \*

Q. We won't belabor that. We will get on.

At any rate, you did rent it to him in 1963 for a short period of time?

A. Yes, just for a couple of months.

Q. When did you decide to sell?

*Mrs. Arcangela Gelardi Pavlock.*

A. Just when Hembree had my sign on block #18, which is the duplex, and I had my own sign on my little house, which is block #3, for this property here.  
Dep. page 86 } Q. On what house?

A. On the little house.

Q. Is this the house you refer to, referring to "Complainant's Exhibit #3" picture #1?

A. I had my own sign and my own telephone number that anybody could get in touch with me.

Q. Where is that located?

A. On the beach of block #3.

Q. Where was the sign located?

A. Let's see. Which side would that be?

Facing the house on your right, on the left, I mean, on the side of it, directly on the porch.

Q. When were you first contacted with regard to a possible sale for the property?

A. Mr. Hembree came there to the store one day when I was busy, and handed me—

Q. Let's get the name straight. Was it Hembree or Mr. Derring?

A. Mr. Derring, Hembree Realty, he came to the confectionery where I was putting it up for the lunch period, and I told him I was very busy, and he says, "I have a sale if you will sign the paper."

Dep. page 87 } And of course, I couldn't read his writing very well, and at the same time, I told him I couldn't very well give him the numbers because I didn't know at the time.

Q. What property were you speaking of?

A. It was the house and 2 lots.

Q. You had the "For sale" sign on the house?

A. For the house and 2 lots, that is right.

Q. Was your husband there at the time?

A. I don't think he was. I don't know whether he was or not. I can't remember that far.

Q. Was he in the confectionery when Derring came in with the contract?

A. He might have been, and signed it. I think he must have come in from the outside, and must have signed it in the telephone booth, he said.

Q. Did you read the contract that was presented to you by Mr. Derring?

A. I couldn't read it too well, no.

*Mrs. Arcangela Gelardi Pavlock.*

We talked about money matters, and he explained it to me, and I thought that was all right.

Dep. Even to now, I can't understand it too well.  
page 88 } Q. Did you have any conversation with regard to clearing up what lot numbers and what was to be transferred?

A. Oh, yes. He said the lawyer would get it, and I had to find my deed.

After I found my deed, I didn't know which lots they were anyway. We had to get in touch with the Small Business Administration and Mutual Federal said one of the lawyers that had those papers and my blue prints had lost them or died and somebody else had got them, and didn't know how to find them.

I had to go deeper into that, and get it through the Business Administration, numbers only.

Q. Let me establish this point.

Did you ever talk with Captain Gallop?

A. No. Not that term, no.

Q. You talked with Hembree, or Derring?

A. Mr. Derring only.

Q. And did your husband say anything to him about the description at the time he delivered the contract to you of the property?

Dep. A. We both talked about the house and 2 lots.  
page 89 } That is all we knew.

We knew that is the only thing we ever wanted to sell anyway, because we had to have access for the duplex.

That is what they were purchased for, because Mary Bryant was the main one that sold me the property. She said if I didn't buy them, somebody else would.

Q. Don't go into that part about it; but you desired to reserve lot #21—

A. And #19 and #20 for swimming purposes and for my other tenants.

Q. And you had no objection and wanted to sell lots #22 and #23 with the house on it, is that right?

A. With the house, yes.

Q. All right. What happened next with regard to the contract?

A. After we went to the closing, I noticed that you know what I mean, the lawyer had it a little bit confused there, and I straightened him out on it, and when I did, Mr. Gallop here, when he found out he was just getting the house and 2 lots,

*Mrs. Arcangela Gelardi Pavlock.*

he said he wasn't going to close; so we couldn't  
 Dep. do anything but walk out. That is all.  
 page 90 } I thought it was the end of it then. I had thought  
 for sure it was forgotten. That is all.

Q. Did Mr. Gallop make any other suggestions to you?

A. He offered me \$500.00 more than what was offered in order to get the rest of it, and I said I would not even consider it.

I said, "Not even for another \$4,000 I wouldn't consider because it would ruin the \$25,000 property I have across the street, and I couldn't do it."

That would be foolish for me to jeopardize my property.

Mr. Stackhouse: All right. That is all.

#### CROSS EXAMINATION.

Examined by Mr. Layton:

Q. Mrs. Pavlock, you just handed this, I believe, to your attorney. Where did you get that?

A. We got that from the company that makes them, and he had to make a blue print of it, but I have had those and I have had plenty of them, and I am sure some of these loan offices have gotten the one that was the original.

Dep. They have the blue print. They can always make  
 page 91 } a new one. They have the copies of it.

Q. You knew where your property was?

A. Oh, yes, to talk to anybody, sure.

Q. When you read that contract, you just got through stating you read it, when you read it, you read that the property in question was on the corner, did you not?

A. That was just for location to find it, not for anything else. Mr. Hembree put that down.

Q. Where did you come up with the idea it was just for location, to find it?

A. Mr. Hembree put that all down.

Q. He talked to you, he said, right in here.

A. Nobody talked to me, only financial, and he talked to me in the store where I was very busy and could not give direct numbers.

Q. You didn't give—

Mr. Stackhouse: Let her finish. I think she ought to be able to finish a question before he starts a second question.

*Mrs. Arcangela Gelardi Pavlock.*

Mr. Layton: I would like you to quit interrupting me.

Mr. Stackhouse: I have every right to object.

Dep.

page 92 } Mr. Layton:

Q. Continue with the answer.

A. We knew we had to get correct description, and we had to get it through those loan people because they had all my papers and we had to write to them, which we did, and it taken a little while to do that, but we got it, and it was lot #22 and #23, like described from the very beginning, even when I had to apply for a septic tank when I came here to the zoning commissioner, to get that lot.

Q. All of your lots were mortgaged, weren't they?

A. No, they weren't mortgaged because they were paid up. Only the house that we built on there was mortgaged.

Q. You heard your attorney testify as to what lots were mortgaged, here, didn't you?

A. I didn't have no mortgage on those other lots.

Q. You knew you owned lots #21 and #20 in block #3, didn't you?

A. Naturally, I bought and paid cash.

Dep. Q. You knew they were on the corner of Brad-  
page 93 } ford Road and Ocean Avenue, did you not?

A. That doesn't have nothing to do with it. I am selling a lot with, 2 lots with the numbers on it, whatever lots they were.

I can have 50 lots along the beach. It doesn't mean I am going to sell all of them.

Q. Mrs. Povlock, you stated to your attorney that Mr. Gallop only rented the house and the 2 lots?

Mr. Stackhouse: She didn't say that. She said the house, I believe.

Mr. Layton: On 2 lots.

A. That is right, because he uses the whole beach when he uses that place.

Mr. Layton:

Q. Isn't it true he used lot #20, which is adjacent to that lot #21 which is adjacent to the house?

A. As far as that goes, when he does use anything, he uses the whole beach.

*Mrs. Arcangela Gelardi Pavlock.*

He rented the house in back of me this summer, and still used my lot coming through my land, my private land and going over to these lots, and used the whole, entire beach from one end to the other, up to the bridge.

Dep. Q. Isn't it a fact, Mrs. Pavlock that what he page 94 } was using this summer, and previous summers, was Bradford Avenue?

A. No.

\* \* \* \* \*

Dep. page 95 }

\* \* \* \* \*

Q. You stated in answer to your attorney that you had a sign on your house to call you?

A. That is right. I had a sign of my own. It is still up there now, which is my own number, and my own private sign on this little property; but the Hembree Realty sign was on the duplex across the street.

Q. It wasn't on this?

A. No, but see, Mr. Gallop knew it was my house, and he called the real estate instead of calling me.

He didn't talk to me because I didn't get no answer from him. I didn't talk to him until the day of closing.

Q. I have 3 witnesses out here, brought down for the sole purpose of testifying that the Hembree Realty sign was on this house last spring.

A. Well, Hembree told you himself it wasn't. He sat down here a few minutes ago, if that is reread. It wasn't on that house, but on the house across the street, and he got in touch with him.

Q. Did you read that contract when you signed it?

Dep. it? A. I couldn't have read it, no, because Ham-  
page 96 } bree didn't have it written up too well.

Q. Hembree represented you, did he not?

A. He did, but he had this thing all written up when he came to me. He came to my place of business.

\* \* \* \* \*

*Mrs. Arcangela Gelardi Pavlock.*

Q. Mrs. Pavlock, you stated that you wanted to reserve lot #21, I believe, and #20, especially so that you would have access to your duplex, right?

A. That is right.

Q. Your duplexes are on what lots over there?

A. Across the street, block #18.

Q. Across the street? Now on that same plat, doesn't it show a 50-foot right of way to the beach page 97 } on Bradford Avenue?

A. Yes.

Q. In other words, you don't need lot #21 and #20 for any right of way? You already have a 50-foot right of way?

A. Yes, but I wasn't selling it for that price. I never would do it.

Q. Had you previously offered this property to Mr. Gallop for sale?

A. He knew it was for sale because I had a "For sale" sign on there. He said he wanted to buy it, but he—

Q. Mr. Derring brought you the contract and you were happy to sign it, were you not?

A. I didn't know it was Mr. Gallop or anybody else. I didn't know who was buying it.

I wanted to sell it, yes.

Q. But, you were happy to sell it, weren't you?

When did you decide it was just 2 lots? At the closing?

A. Always, from the very beginning.

Q. Everybody else seems to be confused, then. Your attorneys who were preparing these things for Hem-

Dep. bree Realty—

page 98 } A. Because Hembree couldn't give them the description of it.

Q. When did you advise them that it was only 2 lots?

A. I didn't talk to him, only the day of the closing.

Q. You didn't talk to the attorneys at all?

A. He called me to get some papers together. He wanted the deed, I believe, and a couple of papers from the Business Administration, was the only thing he talked to me about, one time, which we did.

We got them released from the Business Administration and I forwarded his name, which is Bryan and Moss. It was mailed to Moss; and that is all I know anything about until the day of the closing.

Q. And you didn't discuss it with him at all?



*Mrs. Arcangela Gelardi Pavlock.*

A. No.

Q. You didn't make any attempt to find out what they were selling?

Dep. A. They weren't my lawyers. They were the lawyers of the real estate people.

page 99 } Q. The real estate people were your people, weren't they?

A. Supposed to be.

Mr. Layton: I have no further questions.

### RE-DIRECT EXAMINATION

Examined by Mr. Stackhouse:

Q. When Mr. Layton indicated to you that you had discussed with Mr. Gallop something concerning a previous sales negotiation for the property, which property did you have in mind as selling at that time?

A. Well, he just more or less talked when he was renting the place—

Mr. Layton: I object to that. It is completely self-serving.

A. —whether I would consider selling, and I said I would, gave a price, and I think he looked into it.

Mr. Stackhouse:

Q. Which lots did you have in mind at that time.

A. The house and 2 lots.

Q. When you previously spoke to Mr. Gallop?

Dep. A. Yes. The house and 2 lots. I told him 50 by 100. I stick by that. That is what I talked to everybody from the very beginning since I wanted to sell it. 50 by 100, 2 lots.

Q. Did you tell him that the house was about 12 feet from the side of the lot?

A. Each side, yes. It might have been a few inches more or less.

The Commissioner: Mrs. Pavlock, let me see something.

If I understand it correctly, is Bayside Avenue under

*John Paul Pavlock.*

water, or is the other beach, or what is the status of Bayside?

A. I can talk to you better on this map.

Bayside avenue is here, partly in the water.

Mr. Stackhouse: Let the record show that she is referring to "Complainant's Exhibit #1," which is the plat in Map Book 4, page 47.

The Commissioner: Go ahead with reference to that exhibit, Mrs. Pavlock. Will you explain?

Dep. A. Bradford Avenue at one time was Brad-  
page 101 } ford Avenue, but it was changed to Beaufort.  
They have Beaumont over there, but I don't  
know where they got it from. It is Beaufort.

Over here is Ocean Avenue, right there is Ocean Avenue,  
in between the property across the street, what I have, and  
of course the block #3.

So that is all I can tell you.

The Commissioner: I am asking you primarily with regard to Bayside Avenue.

A. That is in the water. The real estate man put that down. I don't know anything about that.

That was more or less to pinpoint to find it because they didn't have numbers on those houses.

Q. Also, it was not testified earlier, did you also own lot #21?

A. Do I have #21 on there? Yes. Lots #19, #20, and #21. Here it is.

\* \* \* \* \*

Dep.  
page 102 }

\* \* \* \* \*

JOHN PAUL PAVLOCK,  
witness, first having been duly sworn, was called to the witness stand and upon being examined, testified as follows:

*John Paul Pavlock.*

DIRECT EXAMINATION.

Examined by Mr. Stackhouse:

Q. State your full name and present address.

A. John Paul Pavlock, age 53, address 1138 Pickett Road, Norfolk.

Q. Are you the husband of Mrs. Arcangela Gelardi Pavlock?

A. Yes, sir.

Q. You were married to her at the time that this property in question was contracted for, is that correct?

A. Yes, sir.

Q. All right, now. Had you had any previous relations with regard to rent with Mr. Gallop?

Dep. A. One time.

page 103 } Q. When was that?

A. Well, let's see, it was 1962, March 1962, the time I talked to him. Either 1962 or 1963, in that period.

Q. What was the result of your conversation?

A. Well, he asked me about renting the place, and I told him I thought so. I thought it would be all right to rent it to him.

At that time, he told me he would pay the electric bill, which he gave me \$25.00 for the electric bill, and the rent, and that is it.

Q. You and your wife decided to sell this house and the lots it was on, is that correct?

A. That is right.

Q. What did you do by way of trying to sell it?

A. Nothing. Just put a sign up on the front porch. It is still hanging out to this day.

Q. You and Mrs. Pavlock also owned the duplex in back?

A. Yes, sir.

Q. So when were you contacted, and by whom, with regard to the sale of the property here in dispute?

Dep. A. Well, now, I can't give you dates or any-  
page 104 } thing like that.

Q. Do you recall there was an agreement dated 12 March 1964?

A. I know in the month of March, somewhere along in there, he came on up to the store.

Q. When you say, "he," who do you refer to?

A. Mr. Derring, he came.

Mr. Derring came and talked to us about that he had that

*John Paul Pavlock.*

piece of property down there for sale, that he had a buyer for it; and I said, "Well, if you have a buyer for it," I said, "did Mrs. Pavlock tell you the price of it, what she wanted?"

A. Had you had any previous contact with Mr. Derring prior to the time he came to your place of business?

A. No, sir.

Q. Had you ever talked with him on the telephone?

A. No, sir.

Q. Had you ever talked to Mr. Gallop about selling the property?

Dep. A. No, sir.

page 105 } Q. You had no actual contact with Mr. Gallop?

A. No, sir.

Q. When he brought the contract to you, is this the contract that he gave you, "Exhibit A"?

The original is here somewhere, but that is supposed to be an exact copy of it.

A. This is a contract, and I couldn't read it, and I was real busy at the time, and I told him I couldn't read it.

Q. You told who that?

A. Mr. Derring; to clear it up where I could understand it.

Q. What part about it?

A. No part, but I was confused about it. As a matter of fact, I am confused at all of it in here.

Q. You mean as to the description?

A. That is right.

Q. All right.

A. Because, like I say, I am not too familiar with the beach, you know. I go there and everything, but I do know where the lots are and everything from these

Dep. maps, from studying these maps and everything.

page 106 } Now, he was supposed to have changed this, because the yellow copy off of this comes like this. He took it back.

Q. Did you get a copy of the contract at that time for yourself?

A. Yes, but he took it back.

Q. He took it back?

A. Absolutely. I gave it back to him because I couldn't understand it.

Q. For what reason did you give it back to him? Why did you give it back to Mr. Derring?

*John Paul Pavlock.*

A. So that he would put it on there so her and I both could understand this contract.

Q. When you signed the contract, did you understand specifically what lot or lots with improvement thereon were going to be sold at the time that you signed the contract?

A. Yes.

\* \* \* \* \*

Q. State whether or not at the time that you signed the contract that you understood what lot or lots

Dep. with improvement thereon were going to be sold?  
page 107 } A. With the house?

Q. Right.

A. Yes, sir.

Q. What lots were they?

A. #22 and #23.

\* \* \* \* \*

Q. Did either Mr. Derring or you or Mrs. Pavlock have any conversation about a more definite description?

A. Yes. We asked him is that what we wanted.

Q. And what was he to do?

A. He was supposed to change that around  
Dep. and fix that thing up and bring us one back.  
page 108 } Q. How was he going to get a more correct

description?

A. I don't know. He said he was going to check into it. I don't know which way he was going to do it.

Q. Subsequent to that, did you supply either him or Mr. Bryan with some deeds and other information?

A. Yes, sir; because we dug all into it, and even from Small Business and from Building and Loan and everything, gathered everything together, and he knew that was it.

Q. Then you went to the closing, at which time Mr. Moss was substituting for Mr. Bryan, is that correct?

A. Yes.

\* \* \* \* \*

Q. What happened at the closing?

A. Mr. Moss was there. We all came in. Mr. Derring was

*John Paul Pavlock.*

there, and Mr. Gallop, Mrs. Gallop, Mr. Moss;  
 Dep. and we were coming down to the legal proce-  
 page 109 } dure of transferring property over from one to  
 another, and Mr. Moss had on his, when he was  
 there, he had it where he checked into it was that Mr. Bryan,  
 the other lawyer, Bryan checked it for him, he had #22 and  
 #23 right on it, right on his paper where it was searched  
 right down here.

Q. I understand that. What happened Were you able to  
 complete settlement or not?

A. No, because I told her, I said—

Q. Don't tell what you told her. Just say whether or not you  
 could complete it or not.

A. No, we couldn't complete it.

Q. You stand ready to sell #22 and #23 with the house for  
 the price indicated in the contract?

A. Yes, sir, anytime they want it. Yes, sir, we have never  
 held it back on them.

Mr. Stackhouse: All right, sir. That is all. Answer Mr.  
 Layton.

CROSS EXAMINATION.

Examined by Mr. Layton:

Q. Mr. Pavlock, you made the statement that is rather con-  
 fusing to me.

You said that you knew at the time of signing that con-  
 tract that only lots #22 and #23 were to with it,  
 Dep. in that contract?

page 110 } A. That is right.

Q. Why didn't you tell the agent that?

A. We did tell him.

Q. And you went ahead and signed this contract anyhow?

A. We signed it in such a big rush that—

Q. You have heard the testimony of your agent and your  
 wife. You signed it at separate times. What was the big  
 rush?

A. He took one back to write it over. He took one back.  
 Every copy that is made, they have a yellow copy that goes  
 with it. Where is my yellow copy? He took it.

We have the original here. When you make a contract, you  
 have 2 or 3 copies, whatever it is, original at the top, copies  
 on the bottom.

*John Paul Pavlock.*

Where is it? I haven't got it. He took it back to exchange it.

Q. Mr. Pavlock, you say that there was a yellow sheet that you were supposed to get?

A. There is when they make up the contract on it.

Q. This sheet was introduced by your attorney, was it not?

Dep.                   A. Yes.  
page 111 }

Q. Did you give him that contract?

A. If my attorney had it, I gave it to him.

Q. Then you had a copy of that contract?

A. There should be a yellow copy that we had.

Q. You say at the time you signed this contract, you knew that only lots #23 and #24 of block #3—

A. No, sir, no #24.

Q. #22 and #23?

A. Yes.

Q. And you knew exactly what was in that contract then? You understood it?

A. No, I did not. If I did, it would never have went through. I would never have signed it.

Q. Why did you sign it?

A. Because he was my agent, and I thought he was doing the right thing for me. I was busy. I signed that thing in a telephone booth, ordering stuff for my store.

                                  He is my agent. He was supposed to look out  
Dep.                   for me on that stuff.

page 112 }   Q. At the time you signed that contract you  
                  knew exactly what lots, the number of lots, that  
were going to be sold?

A. To be sold, yes.

Q. Did Mr. Stanley Bryan call you?

A. He didn't call me. I didn't talk to no one.

Q. You didn't talk to him at all? You didn't talk to Mr. Moss, either?

A. No, sir.

Q. Not to Mr. Derring, either?

A. No, sir, not to Mr. Derring.

Q. Why is it you knew that this lot #22 and #23, block 3, was the property to be sold when your wife didn't?

A. Because I knew it was on the corner. I knew after that when she showed me the maps.

Q. When did she show you the maps?

*John Paul Pavlock.*

A. When did she show me the map? Oh, yes, I can't tell you exact dates or anything.

Q. Approximately?

A. I don't know. Maybe a week, 2 weeks, because we dug some out of a safe there, a little sketch.

Dep.

Q. After you signed the contract?  
page 113 } In other words, you signed the contract and found out later what lots you had?

A. I had seen the plans, the numbers on these lots down there. I had seen them before, but like I say, I can't tell you the exact time when I seen them, but I do know I seen all them numbers on there.

Q. Mr. Pavlock, you ask this Court to believe that you signed a contract describing property on the west corner of Beaufort Road and Bayside Road between Ocean Avenue and Bayside Avenue, and all the appurtenances thereto, that you signed that contract knowing full well that you meant lots #22 and #23?

A. Lot #22 and #23. I still hold to it that is the way it was going to be, lot #22 and #23, that is the way we were selling.

We would be foolish people to go ahead and tie ourselves in by cutting us off completely.

Q. Was Mr. Derring acting as agent in this sale?

\* \* \* \* \*

Dep.

page 114 }

\* \* \* \* \*

Q. Mr. Pavlock, this contract was first presented to your wife, and she signed it, right?

A. Yes.

Q. And then later presented to you?

A. To me.

Q. At a different time?

A. Like I say, I was busy on this, and I asked him, "Did my wife sign it?"

Q. And then you signed it?

A. And then I signed it. She signed it and I signed it.

Mr. Layton: I think that is all I have.



*John Paul Pavlock.*

RE-DIRECT EXAMINATION

Examined by Mr. Stackhouse:

Q. Mr. Pavlock, in order to clear this up concerning the exact lot numbers, at the time the contract was executed, did you know that the house was on 2 page 115 } lots?

\* \* \* \* \*

Dep.

page 116 } The Commissioner: It is my recollection that neither of you made an objection to the fact of the parol evidence rule, but based on the pleadings in the thing, had to go back with evidence prior to the time of the signing of the contract because that was the whole basis of the actions.

Mr. Stackhouse: I think it was Mr. Layton's position, and mine too, that the contract had to be explained.

The Commissioner: That is right.

Mr. Stackhouse: It is not so much a question of varying operative terms as of trying to find out what they contracted to sell.

He didn't object, and I don't object either, so I felt it was competent to come in.

\* \* \* \* \*

A Copy—Teste:

H. G. TURNER, Clerk.

## INDEX TO RECORD

	Page
Appeal Awarded .....	1
Record .....	2
Report of Commissioner in Chancery .....	2
Opinion—August 25, 1965 .....	7
Decree—September 10, 1965 .....	13
Assignments of Error .....	14
Proceedings .....	15, 24, 60
Witnesses: (Depositions)	
Stanley G. Bryan .....	15
Charles B. Moss .....	21
Hiram Clyde Gallop .....	24
Hugh K. Derring .....	34
Mrs. Arcangela Gelardi Pavlock .....	43
John Paul Pavlock .....	53