

262 Va5

---

IN THE  
**Supreme Court of Virginia**  
AT RICHMOND

---

Record No. 001622



RAPPAHANNOCK PISTOL AND RIFLE CLUB, INC.,

*Appellant,*

— v. —

ROBERT T. BENNETT,  
And  
CATHERINE A. BENENTT

*Appellees.*

---

**JOINT APPENDIX**

---

JOHN S. MARTIN  
DUNTON, SIMMONS &  
DUNTON, L.L.P.  
P.O. Box 5  
White Stone, Virginia 22578  
(804) 435-4000

A. DAVIS BUGG, JR.  
RUMSEY & BUGG  
4421 Irvington Road  
Irvington, Virginia 22480  
(804) 438-5588

JOHN A. GIBNEY, JR.  
SHUFORD, RUBIN, GIBNEY, P.C.  
Seven Hundred Building  
Suite 1250  
Richmond, Virginia 23219  
(804) 648-4442

WILLIAM A. NUNN, III  
P.O. Box 967  
White Stone, VA 22578  
(804) 435-2622

*Counsel for Appellant*

*Counsel for Appellees*



## TABLE OF CONTENTS

### Appendix Page

Motion for Judgment filed July 21, 1997 .....	1
Grounds of Defense filed August 12, 1997 .....	15
Trial Transcript Heard before the Honorable J. Peyton Farmer on January 13, 2000.....	17
Testimony of William Mabry	
Direct Examination .....	17
Cross Examination .....	29
Redirect Examination .....	32
Recross Examination.....	34
Testimony of Alfred W. O'Daire	
Direct Examination .....	35
Cross Examination .....	41
Redirect Examination .....	45
Testimony of Lawrence Taylor	
Direct Examination .....	47
Cross Examination .....	54
Redirect Examination .....	59
Testimony of Patrick G. Frere	
Direct Examination .....	62
Cross Examination .....	69
Testimony of Marvin Register	
Direct Examination .....	74
Cross Examination .....	96
Redirect Examination .....	114



<b>Testimony of Ethel Ann Register</b>	
Direct Examination .....	116
Cross Examination .....	122
Redirect Examination .....	127
<b>Testimony of Raymond W. Edwards</b>	
Direct Examination .....	128
Cross Examination .....	178
Redirect Examination .....	193
<b>Testimony of Lela D. Edwards</b>	
Direct Examination .....	195
Cross Examination .....	199
<b>Testimony of Carol S. Johnson</b>	
Direct Examination .....	200
Cross Examination .....	205
Redirect Examination .....	209
<b>Testimony of George E. Thomas, Junior</b>	
Direct Examination .....	210
Cross Examination .....	216
<b>Testimony of Franklin Pearce</b>	
Direct Examination .....	219
Cross Examination .....	223
Redirect Examination .....	224
<b>Trial Transcript Heard before the Honorable J. Peyton</b>	
Farmer on January 14, 2000.....	240
<b>Testimony of Joan Pittman</b>	
Direct Examination .....	240
Cross Examination .....	243
<b>Testimony of Virgil Pittman</b>	
Direct Examination .....	243
Cross Examination .....	246
Redirect Examination .....	248



<b>Testimony of Russell George</b>	
<b>Direct Examination .....</b>	<b>249</b>
<b>Cross Examination .....</b>	<b>251</b>
 <b>Testimony of Rebecca George</b>	
<b>Direct Examination .....</b>	<b>252</b>
<b>Cross Examination .....</b>	<b>256</b>
 <b>Testimony of Robert Bennett</b>	
<b>Direct Examination .....</b>	<b>261</b>
<b>Cross Examination .....</b>	<b>272</b>
<b>Redirect Examination .....</b>	<b>288</b>
 <b>Testimony of Vernon Grammer</b>	
<b>Direct Examination .....</b>	<b>290</b>
<b>Cross Examination .....</b>	<b>292</b>
 <b>Testimony of William Broaddus</b>	
<b>Direct Examination .....</b>	<b>295</b>
<b>Cross Examination .....</b>	<b>302</b>
 <b>Testimony of Lisa Butler</b>	
<b>Direct Examination .....</b>	<b>308</b>
<b>Cross Examination .....</b>	<b>310</b>
<b>Redirect Examination .....</b>	<b>311</b>
 <b>Testimony of Cory Davenport</b>	
<b>Direct Examination .....</b>	<b>311</b>
<b>Cross Examination .....</b>	<b>313</b>
 <b>Testimony of Jane Ludwig</b>	
<b>Direct Examination .....</b>	<b>314</b>
<b>Cross Examination .....</b>	<b>319</b>
 <b>Testimony of George Richardson</b>	
<b>Direct Examination .....</b>	<b>326</b>
<b>Cross Examination .....</b>	<b>327</b>



Testimony of C. F. Carter	
Direct Examination .....	329
Cross Examination .....	337
Testimony of Judy Pittman	
Direct Examination .....	350
Cross Examination .....	354
Testimony of Bruce Gravatt	
Direct Examination .....	357
Cross Examination .....	359
Testimony of John Hollowell	
Direct Examination .....	360
Cross Examination .....	363
Testimony of Paul C. Stamm, Jr.	
Direct Examination .....	364
Cross Examination .....	378
Redirect Examination .....	395
Recross Examination.....	396
Testimony of Charles Carneal	
Direct Examination .....	397
Cross Examination .....	404
Plaintiff's Exhibit 2 – Real Estate Contract of January 24, 1997.....	414
Plaintiff's Exhibit 3 – Check in the amount of \$100.00 .....	416
Plaintiff's Exhibit 4 – Check in the amount of 22,000.00 .....	417
Plaintiff's Exhibit 5 – Application for Permit .....	419
Plaintiff's Exhibit 6 – Owner Affidavit as to Mechanics Liens .....	420
Plaintiff's Exhibit 7 – Resolution of CF Lumber Co., Inc.....	422



Plaintiff's Exhibit 8 – Deed from CF Lumber Co., Inc. to the Rappahannock Pistol & Rifle Club, Inc.....	424
Plaintiff's Exhibit 9 – Title Insurance Policy.....	428
Plaintiff's Exhibit 10 – Telephone Message dated February 24, 1997 .....	435
Plaintiff's Exhibit 11 – Timberland Investment Group, Inc. certificate dated September 19, 1996.....	436
Plaintiff's Exhibit 12 – Telephone Message dated February 24, 1997 .....	437
Plaintiff's Exhibit 13 – Real Estate Contract between CF Lumber co., Inc. and the Bennetts dated February 24, 1997 .....	438
Plaintiff's Exhibit 13A – Enlargement of the first page of Real Estate Contract of February 24, 1997 .....	445
Plaintiff's Exhibit 14 – Bennett Check in the amount of \$6,000.00 payable to Edwards dated February 17, 1997.....	446
Plaintiff's Exhibit 15 – Deed from CF Lumber Co., Inc. to the Bennetts dated February 28, 1997 .....	447
Plaintiff's Exhibit 16 – Letter of the Bennetts to Edwards dated February 17, 1997.....	449
Plaintiff's Exhibit 17 – Lancaster County Real Estate Bill.....	450
Plaintiff's Exhibit 18 – Bennett Real Estate Card .....	451
Plaintiff's Exhibit 19 – Broaddus Letter of February 27, 1997 .....	453
Defendant's Exhibit 1 – Minutes of County Board Meeting of February 27, 1997.....	454



Defendant's Exhibit 2 – Letter of Martin, dated March 17, 1999 .....	464
Defendant's Exhibit 3 – Brochure for Property with Attachments .....	467
Defendant's Exhibit 4 – Judgement Order in Rappahannock Pistol and Rifle Club, Inc. v. CF Lumber Co., Inc. ....	469
Defendant's Exhibit 5 – Disbursing Statement .....	471
Defendant's Exhibit 7 – Broaddus Letter of February 26, 1997 .....	472
Defendant's Exhibit 8 – Broaddus Letter of February 27, 1997 and attached Proposed Ordinance.....	475
Jury Instructions .....	478
Defendant's Motion to Set Aside the Verdict or in the Alternative for a New Trial filed January 18, 2000 .....	482
Plaintiff's Response to Defendant's Motion to Set Aside Verdict for New Trial filed January 26, 2000 .....	488
Defendant's Supplement to Motion to Set Aside Verdict filed February 2, 2000 .....	496
Opinion Letter dated February 28, 2000 .....	499
Judgement Order dated April 10, 2000 .....	501
Assignment of Errors .....	503

V I R G I N I A :

IN THE CIRCUIT COURT OF LANCASTER COUNTY

RAPPAHANNOCK PISTOL &  
RIFLE CLUB, INC.,  
Plaintiff

v.

ROBERT T. BENNETT and  
CATHERINE A. BENNETT,  
Defendants.

AT LAW NO. \_\_\_\_\_

SERVE: Robert T. Bennett and  
Catherine A. Bennett  
854 Pinckardsville Road  
Lancaster, Virginia 22503

MOTION FOR JUDGMENT

TO THE HONORABLE JOSEPH E. SPRUILL, JR., JUDGE OF SAID COURT.

Plaintiff, Rappahannock Pistol & Rifle Club, Inc., by counsel, moves for judgment against defendants on grounds and in the amounts set forth below:

1. Plaintiff is a non-stock corporation, organized and existing under the laws of the Commonwealth of Virginia, having its principal office in Lancaster County, Virginia.

2. Defendant, Robert T. Bennett, is, and was at all times pertinent to this cause, a resident of the Commonwealth of Virginia.

3. Defendant, Catherine A. Bennett, is, and was at all times pertinent to this cause, a resident of the Commonwealth of Virginia.

4. On or about January 24, 1997, Plaintiff entered into a written contract with C. F. Lumber Co., Inc. (hereinafter "Lumber Company"), whereby Lumber Company agreed to sell to Plaintiff and



Plaintiff agreed to purchase from Lumber Company, a certain tract of land containing 53 acres, more or less, a portion of the "Poynter" tract, located in Mantua Magisterial District, Lancaster County, Virginia, for a consideration of \$22,000.00. A copy of said contract is attached to this motion for judgment as Exhibit A, and made a part hereof.

5. The said 53 acre tract of land Lumber Company agreed to sell to Plaintiff was uniquely suited to the purposes for which Plaintiff had intended to use it, namely as a rifle, pistol, shotgun and archery range, as well as for club, social and community functions.

6. Between on or about February 18, 1997 and February 28, 1997, Defendants, Robert T. Bennett and Catherine A. Bennett, with full knowledge of the said contract and contractual relationship between Plaintiff and Lumber Company, did attempt to induce and persuade Lumber Company to disregard its contractual obligations to Plaintiff and enter into an agreement whereby Defendants would purchase the said tract or parcel of land from Lumber Co. in exchange for a consideration of \$26,000.00.

7. Between on or about February 19, 1997 and February 21, 1997, Defendants, Robert T. Bennett and Catherine A. Bennett, did cause petitions to be circulated in Lancaster County and in adjacent Northumberland County with intent to obstruct and prevent the conveyance of the said property to Plaintiff.

8. On or about February 24, 1997, Plaintiff applied for and received approval from the Lancaster County Zoning Department for

use of the said 53 acre tract of land as a rifle, pistol, shotgun and archery range. A copy of said application and approval is attached to this motion for judgment as Exhibit B, and made a part hereof.

9. On or about February 24, 1997, Lumber Company did cause to be delivered to Plaintiff a general warranty deed conveying the said property to Plaintiff, to be held in escrow pending receipt of documents that would permit Lumber Company to convey marketable and insurable title. A copy of said deed is attached to this motion for judgment as Exhibit C, and made a part hereof.

10. On or about February 26, 1997, Defendants, Robert T. Bennett and Catherine A. Bennett, by counsel, did offer to purchase the said 53 acre tract of land from Plaintiff for \$31,800.00, subject to certain conditions. A copy of said purchase offer is attached to this motion for judgment as Exhibit D, and made a part hereof.

11. On or about February 28, 1997, Defendants, Robert T. Bennett and Catherine A. Bennett, with intent to interfere with the execution of the said contract, did cause and induce Lumber Company to execute a general warranty deed conveying the said property to Defendants, which deed was admitted to record in the Clerk's Office of the Circuit Court of Lancaster County, Virginia, on February 28, 1997, the said deed being duly recorded in Deed Book 389, at Page 494, among the land records of the said Clerk's Office. A copy of the said deed is attached to this motion for judgment as Exhibit E, and made a part hereof.

12. Defendants, Robert T. Bennett and Catherine A. Bennett, did intentionally, wantonly and maliciously interfere with Plaintiff's contractual relationship with Lumber Company.


13. At the time the said property was conveyed by Lumber Company to Defendants, the said tract of land, known and designated Parcel 9-86 on the Lancaster County Tax Map, had an assessed value of \$38,900.00.

14. As a direct and proximate result and consequence of Defendants' intentional, wanton and malicious interference with the contractual relationship between Plaintiff and Lumber Company, thereby causing and inducing the breach or termination of the relationship or expectancy, Plaintiff has suffered great and substantial damage.

WHEREFORE, Plaintiff, Rappahannock Pistol & Rifle Club, Inc., demands judgment against Defendants, Robert T. Bennett and Catherine A. Bennett, jointly and severally, in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) compensatory damages, Two Hundred Fifty Thousand Dollars (\$250,000.00) punitive damages, reasonable attorney's fees, and Plaintiff's costs expended in this action.

Trial by jury is demanded.

RAPPAHANNOCK PISTOL & RIFLE CLUB, INC.  
By Counsel

  
William A. Nunn, III p.q.  
P. O. Box 967  
White Stone, VA 22578  
(804)435-2622

VALIDATE CASE PAPERS  
RCPT : 97000003305  
DATE : 07/21/97 TIME: 15:05  
CASE : 103CL970000081-00  
ACCT : RAPP. PISTOL & RIFLE  
AMT. : \$208.00

-4-



OFFICIAL SALES CONTRACT

THIS AGREEMENT of Sale made this 24th day of January,  
1997 between \_\_\_\_\_ (hereinafter known as  
the Vendee) and C. F. Caster Jr. Co (hereinafter known  
as the Vendor) E. F. Lumbert Co. Inc.

WITNESSETH: That for and in consideration of the sum of Twenty  
two thousand Dollars; (\$22,000.00) by cash or  
check in hand paid, receipt of which is hereby acknowledged, the  
Vendee agrees to buy and the Vendor agrees to sell for the sum of  
Twenty two thousand Dollars, (\$22,000.00) all cer-  
tain piece, parcel or lot of land described as follows, to-wit:  
53 Ac on Rt 615 Lancaster Co, 4 mi from  
Kilmorack. Timber is reserved to be  
cut within 3 years.

THE PURCHASE PRICE TO BE PAID AS FOLLOWS: \$22,000 at  
Closing on February 24th. Time is  
of the Essence

The Vendor agrees to convey the above property with a General War-  
ranty Deed with the usual covenants of title, same to be prepared  
at the expense of the Vendor. The risk of loss or damage to said  
property by fire or casualty until the deed of conveyance is re-  
corded is assumed by the Vendor.

All taxes, insurance, rents and interest are to be pro-rated as of

\_\_\_\_\_ and settlement to be made at the  
above Vendor choice, on or before February 24th, 1997  
or as soon thereafter as title can be examined and papers prepared  
allowing a reasonable time to correct any defects reported by title  
examiner.

It is understood that the title is to be free and clear of all liens  
and indebtedness of any kind except the liens above mentioned.

It is understood that the property is to be conveyed subject to any  
restrictions now thereon.

The Vendor agrees to pay \_\_\_\_\_ for his professional ser-  
vices on the above property. \_\_\_\_\_

Witnesseth the following signatures and seal made this 24th day  
of January, 1997  
DEPOSIT \$100.00

C. F. Carter Jr. Pres. (SEAL)  
C. F. Lumbel Co. Secy (SEAL)  
J. R. Mahy, Pres (SEAL)  
\_\_\_\_\_  
(SEAL)

# CONSOLIDATED PERMIT APPLICATION

P.O. Box 699

Lancaster, Virginia 22503

Building: 804-462-3480 - Land Use: 804-462-3220

Fax: 804-462-0021 - E-mail: jcrook@comcast.net

Tax map 4

Dist Circle

Application no 297-6

Block 86

52.73 ACRES

Zoning District A-2

Voting District

EASE

VMRC

Price Acquisition

RAPPAHANNOCK RIFLE AND RIFLE CLUB, WHITE STONE, VA

Name of Applicant

Name of Landowner SAME AS ABOVE

Street, City, State, Zip

Phone No

Property Address 40 MARVIN O. REGISTER

P.O. BOX 262 ARLANDS, VA 22517

Street, City, State, Zip

Phone No

Name of Builder

Street, City, State, Zip

State Reg #

Phone No

Name of Plumber

Street, City, State, Zip

State Reg #

Job Cost

Name of Electrician

Street, City, State, Zip

State Reg #

Job Cost

Name of HVAC Mechanic

Street, City, State, Zip

State Reg #

Job Cost

Mechanic's License

Street, City, State, Zip

Phone No

Directions to site:

Construction Type

Industrialized/Manufactured Home Info

Single Family

Commercial

Other

Zoning

Elect

Single Wide

Double Wide

Modular

Mult. Family

Industrial

Erosion

Plumbing

Year

Make

Accessory Use

Home Occupation

Site Plan

HVAC

Serial No

I.D. No

Complete Description: TO RELOCATE AN EXISTING NON-PROFIT SERVICE CLUB THAT PROVIDES RECREATION TO ITS MEMBERS AND/OR THE PUBLIC INCLUDING RIFLE, PISTOL, SHOTGUN, AND ARCHERY

Deduction Code

Construction Cost

Use Group

Construction Type

BOCA

CA BO

Basement

Crawl

Type of foundation

# Stories

Wall type

Roof Type

Bedrooms

# Baths

# 1/2 Baths

Heat Type

Fuel Type

# Fireplaces

# Floors

A/C

Yes No

Electric Service (AMPS)

Orange

SF

Attached

Detached

Water Source

Septic Permit

Structure W

L

Deck/porch W

L

Sign W

L

II

Total Sq Ft

Flood Zone: Yes No; Cert. of elevation attached Yes No; Plan Attached Yes No; One & Two Family Waiver Attached Yes No

I hereby certify that I shall conform to the Lancaster County Zoning Ordinance, the Erosion and Sediment Control Ordinance, the Approved Site Plan and the Uniform State Wide Building Code. These permits are invalid if construction is not started within six months or if work stops for a period of six months.

SITE PLAN MUST BE ATTACHED

Marvin O. Register 24 FEB 1997  
Applicant's or Owner's Signature Date

## OFFICE USE ONLY

### ZONING DEPARTMENT

Zoning Approval Date: 2/24/97

Signature:

Patricia G. Fries

Remarks: Permitted Use as "Club" in the A-2 Zone

Site Plan Approval Date:

Signature:

Remarks:

Special Exception Approval Date:

Special Conditions Yes No

Remarks:

### EROSION AND SEDIMENT CONTROL

Erosion Approval Date:

Signature:

Remarks:

### BUILDING DEPARTMENT

Building Approval Date:

Signature:

Remarks:

### FEES

Zoning Permit

No Fee

(1303-35)

Building

(1303-08)

Site Plan Review

(1303-04)

Elect

(1303-10)

Erosion

(1303-24)

Plumb

(1303-11)

HVAC

(1303-12)

Industrialized/Manufactured Homes

(1303-13)

Sub Total: -0-

Sub Total

TOTAL: -0-

COPY

Treasurer's Stamp

WHITE - BUILDING OFFICE YELLOW - TREASURER PINK - COMMISSIONER OF REVENUE GOLDENROD - APPLICANT



U

THIS DEED, made this 12th day of February, 1997, by and between C. F. LUMBER CO., INC., a Virginia corporation, "Grantor and RAPPAHANNOCK PISTOL AND RIFLE CLUB, INC., of Box 391, White Stone, Va. 22578, "Grantee".

W I T N E S S E T H

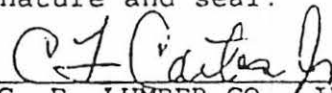
That for and in consideration of the sum of Ten Dollars (\$10.00) cash in hand paid and other good and valuable considerations, the receipt of which is hereby acknowledged, the said Grantor does hereby grant and convey with General Warranty and English Covenants of Title unto the said Grantee the property described in the attached Schedule A.

This conveyance is made subject to the conditions, restrictions, easements and reservations of record, if any, affecting the aforesaid property and constituting constructive notice.

Whenever applicable in this document, the use of the masculine shall include the feminine, the feminine shall include the masculine, and the use of the singular and plural shall be interchangeable.

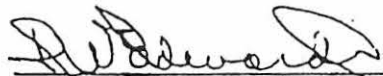
RAYMOND M. EDWARDS, ATTORNEY AND COUNSELLOR AT LAW, P.O. BOX 1913, KILMARNOCK, VIRGINIA 22418

WITNESS the following signature and seal.

 (SEAL)  
C. F. LUMBER CO., INC  
By C. F. Carter, Jr., President

STATE OF VIRGINIA  
COUNTY OF LANCASTER, to-wit:

The foregoing instrument was acknowledged before me this  
20<sup>th</sup> day of February 1997 by C. F. LUMBER CO., INC by C. F.  
CARTER, JR. its President.

  
Notary Public

My Commission expires 11/30/97

SCHEDULE A

ALL THAT CERTAIN TRACT OF LAND IN MANTUA DISTRICT, LANCASTER COUNTY, VIRGINIA, SOMETIMES CALLED "POYNTER" TRACT CONTAINING 98.86 ACRES AS PER PLAT OF SURVEY THEREOF MADE BY R. H. HIGHLAND, SURVEYOR, OCTOBER 15, 1948, A COPY OF SAID PLAT IS ATTACHED TO DEED RECORDED IN DEED BOOK 85 AT PAGE 265, ON WHICH THE METES AND BOUNDS OF SAID PROPERTY ARE MORE PARTICULARLY DESCRIBED. THE SAID TRACT IS SITUATED ON THE WEST SIDE OF HIGHWAY ROUTE 615, ADJOINING THE LAND OF LAWRENCE KENNER, LOTTIE BALL, B. H. B. HUBBARD ESTATE, WILLIE EDWARDS, H. H. PITTMAN, PAYTON PITTMAN ESTATE AND DUEARD HAYDEN; IT BEING THE REMAINDER OF THE TRACT WHICH WAS CONVEYED TO F. S. THRIFT BY HARRY H. HUTCHINSON AND WIFE BY DEED DATED JANUARY 8, 1918, RECORDED JUNE 21, 1918, D.B. 61, P 390; THE SAID F. S. THRIFT HAVING DIED UNMARRIED AND INTESTATE IN 1933, LEAVING AS HIS SOLE HEIRS AT LAW HIS TWO BROTHERS, C. T. THRIFT AND H. H. THRIFT.

LESS AND EXCEPT FROM THE ABOVE DESCRIBED TRACT OF LAND THAT PORTION CONVEYED TO THE COMMONWEALTH OF VIRGINIA BY DEED RECORDED IN DEED BOOK 85 AT PAGE 332 AND THAT PORTION CONVEYED TO REALTY INDUSTRIES, INCORPORATED BY DEED RECORDED IN DEED BOOK 173 AT PAGE 252.

BEING THE PORTION OF THE SAME PROPERTY CONVEYED UNTO C. F. LUMBER CO., INC. BY TIMBERLAND INVESTMENT GROUP, INC. BY DEED DATED SEPTEMBER 26, 1996 AND RECORDED IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF LANCASTER COUNTY, VIRGINIA IN DEED BOOK 387 AT PAGE 618.



McGUIRE WOODS  
BATTLE & BOOTHE LLP

One James Center  
901 East Cary Street  
Richmond, Virginia 23219-4030  
Telephone/TDD (804) 775-1000 • Fax (804) 775-1061

William G. Broadus

Direct Dial: (804) 775-1085

February 26, 1997

By Fax

William A. Nunn, III, Esquire  
Ice House Field  
P. O. Box 967  
White Stone, Virginia 22578

Re: Rappahannock Pistol and Rifle Club

Dear Bill:

We represent Mr. and Mrs. Robert Bennett of Lancaster, Virginia. Mr. and Mrs. Bennett offer to buy from the Rappahannock Pistol and Rifle Club land in Lancaster County which the Club presently has under contract containing 53 acres, more or less, for \$31,800 subject to the conditions specified herein. The amount of the offer is based upon the County's rate of assessment of \$600 per acre times 53 acres. We understand and accept that the Club's present grantor has a reservation for timber on the property.

The conditions of our purchase are that the Club convey clear and marketable fee simple title to the land by general warranty deed with the usual English covenants of title (with the exception of the reservation of timber rights).

In addition, the Bennetts have thirty days from the Club's acceptance of this offer to:

1. Obtain a satisfactory survey
2. Obtain a satisfactory title report
3. Obtain an assessment analysis that the land does not contain hazardous or toxic chemicals or waste
4. Obtain evidence of the Seller's authority to effect the transaction

February 26, 1997

Page 2

5. Obtain an affidavit, if requested, that there are no mechanic's liens and that taxes are paid for 1996 and all prior years.

Each party shall pay its own expenses and fees.

Sincerely,



William G. Broaddus

WGB/bsm

2/28/97

THIS DEED, made this 28th day of February, 1997, by and between C.F. LUMBER COMPANY, INC., A Virginia Corporation, party of the first part, grantor and ROBERT T. BENNETT and CATHERINE A. BENNETT husband and wife, of 854 Pinckardsville Road, Lancaster, Virginia, 22503, parties of the second part, grantees.

WITNESSETH:

THAT, for and in consideration of the sum of TEN DOLLARS, (\$10.00), cash in hand paid, receipt of which is hereby acknowledged, and other good and valuable considerations, the party of the first part does grant, bargain, sell and convey with GENERAL WARRANTY and the ENGLISH COVENANTS of title except as set forth hereinafter, unto the parties of the second part, as tenants by the entirety with the right of survivorship as at common law, the following described property, to-wit:

EXHIBIT A ATTCHED HERETO

WITNESS the following signature and seal:

C.F. LUMBER COMPANY, INC.

BY: [Signature] (SEAL)

STATE OF VIRGINIA  
CITY/COUNTY OF LANCASTER, to-wit:

The foregoing instrument was acknowledged before me this 28th day of February, 1997, by C. F. Carter, Jr. its President of C.F. Lumber Company, Inc.

My commission expires: 2/28/97

Nancy H. Hughes  
Notary Public

Prepared by:  
Paul Christian Stamm, Jr.

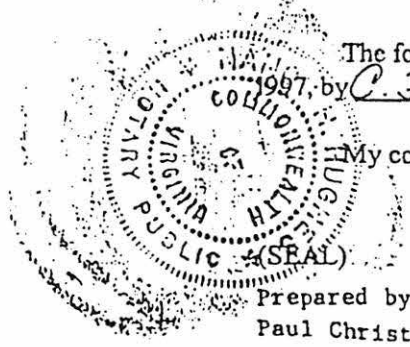


EXHIBIT F

## EXHIBIT A

ALL THAT CERTAIN TRACT OF LAND IN MANTUA DISTRICT, LANCASTER COUNTY, VIRGINIA, SOMETIMES CALLED "POYNTER" TRACT CONTAINING 98.86 ACRES AS PER PLAT OF SURVEY THEREOF MADE BY R. H. HIGHLAND, SURVEYOR, OCTOBER 15, 1948, A COPY OF SAID PLAT IS ATTACHED TO DEED RECORDED IN DEED BOOK 85 AT PAGE 265, ON WHICH THE METES AND BOUNDS OF SAID PROPERTY ARE MORE PARTICULARLY DESCRIBED. THE SAID TRACT IS SITUATED ON THE WEST SIDE OF HIGHWAY ROUTE 615, ADJOINING THE LANDS OF LAWRENCE KENNER, LOTTIE BALL, B. H. B. HUBBARD ESTATE, WILLIE EDWARDS, H.H. PITTMAN, PAYTON PITTMAN ESTATE AND DUEARD HAYDEN; IT BEING THE REMAINDER OF THE TRACT WHICH WAS CONVEYED TO F.S. THRIFT BY HARRY H. HUTCHINSON AND WIFE BY DEED DATED JANUARY 8, 1918, RECORDED JUNE 21, 1918, D.B.61, P 390; THE SAID F. S. THRIFT HAVING DIED UNMARRIED AND INTESTATE IN 1933, LEAVING AS HIS SOLE HEIRS AT LAW HIS TWO BROTHERS, C. T. THRIFT AND H. H. THRIFT.

LESS AND EXCEPT FROM THE ABOVE DESCRIBED TRACT OF LAND THAT PORTION CONVEYED TO THE COMMONWEALTH OF VIRGINIA BY DEED RECORDED IN DEED BOOK 85 AT PAGE 332 AND THAT PORTION CONVEYED TO REALTY INDUSTRIES, INCORPORATED BY DEED RECORDED IN DEED BOOK 173 AT PAGE 252.

Being a portion of the property conveyed unto C.F. Lumber Company, Inc., by deed dated September 26, 1996 from Timberland Investment Group, Inc. and recorded in the Clerk's Office of the Circuit Court of Lancaster County, Virginia in Deed Book 387 at Page 618.

INSTRUMENT #97-372  
RECORDED IN THE CLERK'S OFFICE OF  
COUNTY OF LANCASTER ON  
FEBRUARY 28, 1997 AT 04:31PM  
\$26.00 GRANTOR TAX WAS PAID A:  
REQUIRED BY SEC 58.1-802 OF THE VA. CI  
STATE: \$13.00 LOCAL: \$13  
ROBERTA H. LEWIS, CLERK

BY: Michelle A. Gordon DEPUTY CL

VIRGINIA:

IN THE CIRCUIT COURT OF LANCASTER COUNTY

RAPPAHANNOCK PISTOL & )  
RIFLE CLUB, INC., )

Plaintiff, )

v. )

LAW NO. \_\_\_\_\_

ROBERT T. BENNETT and )  
CATHERINE A. BENNETT, )

Defendants. )

GROUND OF DEFENSE

Defendants Robert T. Bennett and Catherine A. Bennett, by counsel, answer the respective numbered paragraphs of the Motion for Judgment:

1-4. Admitted.

5-6. Denied.

7. Defendants admit they and other land owners caused petitions to be circulated but deny that it was with intent to obstruct and prevent the conveyance of the property to Plaintiff. The intent of the petitions was to exercise Defendants' First Amendment rights to address a zoning issue which generated great publicity in the County.

8. Admitted.

9. Denied.

10. Admitted.

11. Defendants admit that the deed was recorded as alleged and deny the remaining allegations.

*Filed - Aug. 12, 1997 -  
Jste: Christine Kennedy  
Dep. Clerk*




12. Denied.

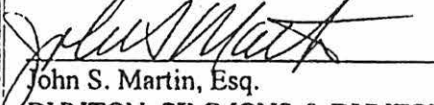
13. The assessed value is admitted. However, the actual value of the property is less due to a reservation of timber rights.

14. Denied.

WHEREFORE, Defendants request that judgment be entered in their favor and that the Motion for Judgment filed herein be dismissed, and Plaintiffs further request payment by Plaintiffs of their costs and attorney's fees expended in this action.

ROBERT T. BENNETT  
CATHERINE A. BENNETT  
By Counsel

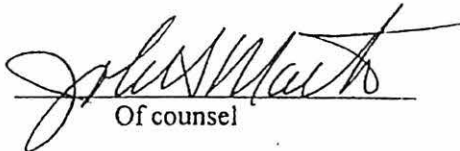
  
Paul Christian Stamm, Jr., Esq.  
P.O. Box 2015  
Kilmarnock, Virginia 22482

  
John S. Martin, Esq.  
DUNTON, SIMMONS & DUNTON  
P.O. Box 5  
White Stone, Virginia 22578  
Attorneys for Defendant

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing pleading was mailed, postage prepaid/hand-delivered to counsel of record as listed, this 11<sup>th</sup> day of August, 1997:

1. William A. Nunn, III, Esq.  
P.O. Box 967  
White Stone, Virginia 22578

  
Of counsel

1                               \*                               \*                               \*  
is a corporation in good standing, at the relevant times.

2               THE COURT:       Is that a correct statement of your  
3 stipulation?

4               MR. MARTIN:       Yes, sir.

5               THE COURT:       The jury will accept the stipulation.

6                               WILLIAM MABRY,  
7       having been previously sworn, testified as follows:

8                               DIRECT EXAMINATION

9       BY MR. NUNN:

10              Q.       Mr. Mabry, would you state your name and spell  
11 your name for the court reporter here?

12              A.       My name is William R. Mabry, M-a-b-r-y.

13              Q.       And what is your occupation, sir?

14              A.       Retired.

15              Q.       Retired from what?

16              A.       Retired from the Navy in 1970.

17              Q.       Okay. And you have lived here in the area  
18 since your retirement?

19              A.       No, not since. Only since '88.

20              Q.       Where do you live?

21              A.       5126 Balls Neck Road, a Kilmarnock address.

22              Q.       Are you a member of the Rappahannock Rifle and  
23 Pistol Club?

24              A.       I am.

25              Q.       How long have you been a member?

1 A. Oh, approximately ten years.

2 Q. Have you held any office in the club?

3 A. Yes, I have.

4 Q. What office have you held, sir?

5 A. Vice-president and president.

6 Q. Mr. Mabry, are you aware of whether the  
7 Rappahannock Pistol and Rifle Club, as the Plaintiff, has  
8 been granted tax exempt status by the Internal Revenue  
9 Service?

10 A. Yes, I am.

11 Q. Have they been?

12 A. Yes. In 1993, I think it was.

13 Q. All right, sir. They are a nonprofit  
14 corporation?

15 A. Correct.

16 Q. All right. Would you briefly describe the  
17 purpose of the corporation?

18 A. Our objective is outlined in Paragraph Two of  
19 the by-laws; but briefly, we want to encourage  
20 participation, organized, and emphasize shooting,  
21 organized shooting sports among the citizens of the area  
22 with a view towards safe handling of firearms, and, of  
23 course, to improve marksmanship. That is a brief  
24 description.

25 Q. All right, sir. And where is the current

1 range now located?

2 A. On Blueberry Point Road, outside White Stone.

3 Q. Do you know how long it has been at that  
4 location?

5 A. I think since 1982. The club was formed in  
6 '82, so.

7 Q. So, at least since 1982?

8 A. Yes.

9 Q. All right. What type of activities is the  
10 current range designed to accommodate?

11 A. Our activities are limited; but we do  
12 have a one hundred yard range for center fire rifle, fifty  
13 yard range for small bore, .22. We have a twenty-five  
14 yard pistol range and we have a trapman to shoot trap.  
15 The only problem is you can only do one thing at a time  
16 because of our limited space. In other words, if someone  
17 is down there shooting a center fire rifle, you can't  
18 shoot trap or you can't shoot pistols because it is  
19 dangerous for safety reasons.

20 And some of our members have now gotten into  
21 archery. So, that is another one.

22 Q. Are there any community activities that the  
23 club performs?

24 A. Well, we encourage the participation of anyone  
25 who wants to learn firearm safety. And, in fact, several

1 of us are firearms' instructors, N R A certified. We  
2 teach courses in handgun safety and one of our members is  
3 a scout leader. He brings his troop down there  
4 occasionally. And, of course, the Lancaster Sheriff's  
5 Office uses the range to qualify their officers.

6 Q. Are the range activities supervised?

7 A. Oh, yes. Yes.

8 Q. Always?

9 A. Well, any organized activity by the Gun Club  
10 is supervised. Our members occasionally go down there on  
11 their own. We encourage at least two people at a time,  
12 and that is the only supervision we have.

13 Q. All right. Did there come a time when the  
14 club sought a new range facility?

15 A. Yes, sir, certainly did.

16 Q. And why was that, sir?

17 A. Well, number one, the range we are on now is  
18 leased property and that could be terminated at any time.  
19 The leased property, of course, we cannot do any  
20 improvements on. We would like to build a clubhouse and  
21 expand our facilities. So, we needed larger facilities  
22 or larger property.

23 Q. How long has the club been looking for another  
24 range site?

25 A. Ever since I have been a member; at least ten



1 years.

2 Q. Now, drawing your attention to January of  
3 1997, Mr. Mabry, did the club find suitable property?

4 A. We did indeed.

5 Q. Where is that property located?

6 A. It is a little bit south of Regina on Route  
7 615, I think in -- I am sorry -- in Northumberland County  
8 -- in Lancaster County, in Lancaster County.

9 (Topographic map of proposed range, marked  
10 Plaintiff's Exhibit #1 for identification.)

11 Q. All right, sir. Mr. Mabry, I show you what's  
12 been marked for identification, Plaintiff's Exhibit Number  
13 1, and ask you what that is, sir?

14 A. That is a topographic map of the area.

15 Q. Of the area of what?

16 A. Where the property was located.

17 Q. All right. The proposed range site?

18 A. Proposed range site.

19 Q. And where on that map is that site?

20 A. That is shown by the green portion up at the  
21 top right.

22 Q. So, that would be up here?

23 A. Correct.

24 Q. And is this a map that is an accurate  
25 depiction of the area?

1           A.     It is a geographical survey map, and the area  
2 marked out is as close as we could come to the actual.

3           Q.     To pinpointing it?

4           A.     Yes, sir.

5           MR. NUNN:     Your Honor, I'd move the admission of  
6 Exhibit One in evidence.

7           MR. MARTIN:     No objection.

8           THE COURT:     Admitted, Plaintiff's Exhibit Number  
9 One.

10          MR. NUNN:     Thank you.

11                         (Plaintiff's Exhibit #1, Topographic map, was  
12 received into evidence.)

13                         CONTINUED EXAMINATION

14          BY MR. NUNN:

15           Q.     Is this the range site that you indicated was  
16 in green, is that in Lancaster County?

17           A.     Lancaster, yes.

18           Q.     Would you briefly describe the area?

19           A.     Well, as one can see on the map, it is almost  
20 triangular. It was all wooded at that time; but the wood  
21 was reserved to be cut by C F Lumber Company, I think it  
22 was, who owned the property at the time.

23                         It was isolated enough for our purposes as compared  
24 to the one in White Stone, the range, and we looked it  
25 over and decided that it could be made into a safe firing

1 range for all of our purposes.

2 Q. All right. And do you recall what the zoning  
3 was?

4 A. Agriculture, I believe.

5 Q. All right. Did the club then enter  
6 negotiations to purchase the site there, this fifty-three  
7 acre site?

8 A. Yes, we did.

9 Q. And did there come a time when the club -- who  
10 was the seller? Who was the owner?

11 A. C F Lumber Company.

12 Q. Did there come a time when the club entered,  
13 agreed on a price and entered a contract?

14 A. Yes, we did.

15 Q. And what was the agreed upon purchase price?

16 A. \$22,000.00.

17 Q. All right, sir. Now, drawing your attention  
18 to the 30th of January, 1997, were you president of the  
19 club at this time?

20 A. I was.

21 Q. On or about that date, did you have an  
22 occasion to sign a contract, any contract for the purchase  
23 of this fifty acre site?

24 A. I did.

25 Q. You signed it as president of the club?

1 A. President of the Gun Club, yes.

2 Q. All right, sir. I'd ask the Clerk to mark  
3 these or the Court, as Exhibit 2 and 3.

4 THE COURT: So marked.

5 (Contract of gun club was marked Plaintiff's  
6 Exhibit #2 for identification.)

7  
8 ( Binder check for \$100.00 for Rappahannock  
9 Pistol and Rifle Club was marked Plaintiff's  
10 Exhibit #3 for identification.)

11 CONTINUED EXAMINATION

12 BY MR. NUNN:

13 Q. Mr. Mabry, I show you what's been marked  
14 Exhibit 2 for identification; ask you if you can identify  
15 that document, sir?

16 A. Yes. This is the official sales contract  
17 signed on the 24th day of January by myself, between C F  
18 Carter, and it is a contract for the purchase of the  
19 property, fifty-three acres on Route 615, Lancaster County  
20 for the purchase price of \$22,000.00.

21 Q. Turn to the second page. Can you identify  
22 your handwriting on that page?

23 A. Yes, it is my handwriting, my signature signed  
24 on the 24th of February.

25 THE COURT: 24th of what?

1 THE WITNESS: February, 1997.  
2 THE COURT: Or January?  
3 THE WITNESS: I am sorry. It was January, yes.  
4 MR. NUNN: And in what capacity did you sign  
5 that?  
6 THE WITNESS: As president of the club.  
7 MR. NUNN: Okay, sir. I would like to admit it.  
8 MR. MARTIN: No objection.  
9 THE COURT: Admitted, Plaintiff's Exhibit Number  
10 2.  
11 (Contract, Plaintiff's Exhibit #2 admitted  
12 into evidence.)  
13 CONTINUED EXAMINATION  
14 BY MR. NUNN:  
15 Q. And I show you what's been marked for  
16 identification as Plaintiff's Exhibit 3, and ask you if  
17 you recognize that, sir?  
18 A. Yes. It is a binder check I wrote for \$100.00  
19 to C F Lumber Company, Incorporated.  
20 Q. And that was dated the 3rd of February?  
21 A. Yes.  
22 Q. And that is your signature on that check?  
23 A. Correct.  
24 Q. And that was to be consideration to accompany  
25 the contract?



1 A. Yes.

2 (Plaintiff's Exhibit #3, Binder check, was  
3 received into evidence.)

4 Q. Now, drawing your attention to Saturday, the  
5 15th of February, 1997, did you have occasion to take part  
6 in a demonstration for Mr. and Mrs. Bennett, the  
7 defendants?

8 A. Yes, I did.

9 Q. All right, sir. Would you briefly describe  
10 the circumstances?

11 A. Evidently, they wanted to see if there was any  
12 noise factor that could be heard at their place on Melrose  
13 Plantation, I think it is called, and any firing down on  
14 our proposed range. So, Mr. Taylor and I went to the  
15 range, proposed range property along the Woods Road, which  
16 is on the outside of the property. And we went -- if you  
17 look at the chart there or the map, you can see where the  
18 little jag is in the property. We were approximately at  
19 that position.

20 Q. Excuse me for interrupting. Do you suppose  
21 you could come on down here, and perhaps it would be  
22 easier if you explained it, using the pointer.

23 Can you see it, your Honor?

24 THE COURT: Yes. You can get it closer to the  
25 jury, if you want.

(Witness steps off the witness stand.)

CONTINUED EXAMINATION

BY MR. NUNN:

Q. Go ahead, Mr. Mabry.

A. This, of course, is the property up here and down here is Melrose Plantation, as shown on the chart.

Q. What is the distance between the property and the Bennett's?

A. Measured by chart, one and a half miles; but give or take 5,000 feet.

Q. That is as the crow flies?

A. That is as the crow flies, yes. And Woods Road runs on the south portion of the property. And we were in this area of the property.

Mr. Taylor and I cleared the demonstration which consisted of the firing of three firearms. I had taken my .357 Magnum Pistol; also .12 gauge shotgun and a .308 rifle. Rifle, caliber .308, that was furnished by Mr. Register. Mr. Taylor and I talked to, and we had cell phones, and we were in connection or contact with Mr. O'Daire who was down at Melrose Plantation on their cell phone, I believe.

Q. He is also a club member?

A. He is also a club member.

And when we got to our area, we told him that we

1 were in place and commence with the demonstration which  
2 consists of firing three rounds; two rounds from the .357;  
3 two rounds from the shotgun, and two rounds from the  
4 .308. And after that, we left and then met Mr. Register  
5 and Mr. O'Daire who had been at Melrose Plantation at the  
6 little florist shop right down here. The demonstration  
7 was over.

8 Q. All right, sir. Go ahead and resume the  
9 stand, sir.

10 (Witness resumes the witness stand.)

11 At whose request was the demonstration put on, if  
12 you know?

13 A. It is my understanding, I don't know for  
14 certain, that it was requested by --

15 MR. MARTIN: Object, your Honor, unless he knows  
16 for certain. He should stick to what he knows and what he  
17 saw.

18 THE COURT: . Sustained.

19 CONTINUED EXAMINATION

20 BY MR. NUNN:

21 Q. I take it that Mr. Taylor was with you?

22 A. Correct.

23 Q. And Mr. Resister and Mr. O'Daire were at the  
24 Bennett's?

25 A. Yes.

1 Q. Did you go to the Bennett's house at all that  
2 day?

3 A. No, I did not.

4 Q. Or Mr. Taylor?

5 A. No.

6 Q. Did you have any further contact with Mr. or  
7 Mrs. Bennett?

8 A. No

9 MR. NUNN: All right. I have no further  
10 questions of Mr. Mabry.

11 THE COURT: Cross-examination.

12 CROSS EXAMINATION

13 BY MR. MARTIN:

14 Q. Good morning, Mr. Mabry.

15 A. Good morning.

16 Q. Mr. Mabry, you never witnessed either Mr. or  
17 Mrs. Bennett talk to Mr. C F Carter, Junior, did you?

18 A. No, sir.

19 Q. You never witnessed either of my clients  
20 meeting with Mr. Carter, did you?

21 A. No, sir.

22 Q. You don't have any personal knowledge that  
23 they interfered with Mr. Carter's performance of the  
24 contract, did you?

25 A. Personal knowledge, no.

- 1 Q. Okay. Other than they bought the property  
2 that your club wanted?
- 3 A. Yes.
- 4 Q. Sir, you said you live on Balls Neck Road?
- 5 A. Correct.
- 6 Q. Live on the water?
- 7 A. Yes.
- 8 Q. What body of water?
- 9 A. Dividing Creek.
- 10 Q. You live in a residential area?
- 11 A. Well, we have three houses.
- 12 Q. Okay. You have three houses?
- 13 A. Yes.
- 14 Q. Now, from where you were going to put the  
15 firing range, you couldn't hear the firing from your  
16 house, could you?
- 17 A. Of course not.
- 18 Q. Didn't you want to look around Balls Neck Road  
19 and see if you could find some property closer to home, to  
20 put it?
- 21 A. Why my home?
- 22 Q. Exactly. Now, it wasn't just the Bennett's  
23 that were opposed to the range, was it?
- 24 A. According to the newspaper, no.
- 25 Q. Did you go to the Wicomico Hunt Club meeting?



1 A. No, I did not.

2 Q. May I refer to the contract, your Honor? I  
3 believe that is Exhibit 2.

4 THE COURT: Exhibit 2.

5 MR. MARTIN: May I approach the witness?

6 THE COURT: Yes.

7 CONTINUED EXAMINATION

8 BY MR. MARTIN:

9 Q. Mr. Mabry, you identified Exhibit 2 as the  
10 contract that you signed?

11 A. Yes.

12 Q. Sir, look through that contract and tell me if  
13 anywhere in it appears the name Rappahannock Pistol and  
14 Rifle Club, Incorporated?

15 A. No, it does not.

16 Q. Tell me if that contract has the closing date  
17 in it?

18 A. Settlement to be made on or about February  
19 24th.

20 Q. Sir, directing your attention to Page 1 of  
21 that contract, do you see the words "closing February  
22 24th; time is of the essence" written in in handwriting?

23 A. Oh, yes.

24 Q. Okay. Mr. Mabry, the Gun Club did not close  
25 by February 24th, 1997, as required in that contract, did

1 they?

2 A. No, we did not.

3 MR. MARTIN: Thank you. That is all the  
4 questions I have.

5 MR. NUNN: Just a couple, your.

6 THE COURT: Redirect?

7 MR. NUNN: Yes, sir.

8 REDIRECT EXAMINATION

9 BY MR. NUNN:

10 Q. Mr. Mabry, refresh my memory: Who did you  
11 sign that contract on behalf of?

12 A. Rappahannock Pistol and Rifle Club,  
13 Incorporated.

14 Q. And the check, can I see the check, please?

15 THE COURT: Number 3.

16 Q. Whose name and address appear at the top of  
17 that check?

18 A. Rappahannock Pistol and Rifle Club,  
19 Incorporated.

20 Q. And did that check accompany the contract?

21 A. Yes, it did.

22 Q. That was as a consideration or the binder for  
23 the contract?

24 A. Correct.

25 Q. Now, put the check down and why don't you put

1 it right there. That is fine. Could I have the Deputy  
2 show the check to the jury?

3 THE COURT: Yes.

4 MR. NUNN: Hand it to the jury.

5 (Plaintiff's Exhibit #3 is handed to the jury.)

6 THE COURT: Members of the jury, you may take a  
7 look at the exhibit. You can pass it around. You don't  
8 have to spend a lot of time with it because all of the  
9 exhibits that are introduced, you can take with you to the  
10 jury room when you deliberate.

11 CONTINUED EXAMINATION

12 BY MR. NUNN:

13 Q. I'd like for you to turn to Page 2 of the  
14 contract. You already testified that the closing was to  
15 occur on or about February 24th. I'd like for you to read  
16 the top of the page, lines three and four.

17 A. "Settlement to be made at the above lender's  
18 choice, on or about February 24th, 1997 or as soon as  
19 thereafter as title can be examined and papers prepared,  
20 allowing a reasonable time to correct any defects reported  
21 by the title examiner."

22 Q. All right, sir. Would you just highlight  
23 those last two lines there?

24 Hand the exhibit to the jury so that they can  
25 very quickly take a look at it.

1           That is all I have of Mr. Mabry.

2           MR. MARTIN:       Follow-up, your Honor.

3                               RECROSS EXAMINATION

4           BY MR. MARTIN:

5           Q.       Mr. Mabry, you were asked about the title, the  
6           defect language to the contract. You are not a title  
7           insurance agent, are you, sir?

8           A.       Of course not.

9           Q.       You are not a title examiner?

10          A.       No, sir.

11          Q.       And you didn't examine the title yourself?

12          A.       I did not.

13          Q.       And no title examiner reported to you that  
14          there were any defects?

15          A.       No. No. We have lawyers for that.

16          Q.       Mr. Nunn, did he report that to you?

17          A.       After the fact, yes.

18          Q.       After February 24th had come and gone?

19          A.       Yes.

20          Q.       So, the person with knowledge as to whether  
21          there were any title defects named, that would be Mr.  
22          Nunn, not yourself?

23          A.       Correct.

24          Q.       So, he might be a witness in this case as to  
25          that issue, might he be?

1 A. I guess it is possible.

2 MR. MARTIN: Thank you.

3 THE COURT: Thank you for your testimony. You  
4 are not excused. You may be recalled. Don't discuss your  
5 testimony with the other witnesses.

6 THE WITNESS: Yes, sir.

7 THE COURT: Next witness.

8 MR. NUNN: Mr. O'Daire.

9 ALFRED W. O'DAIRE,  
10 having been previously sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. NUNN:

13 Q. Mr. O'Daire, could you state your full name  
14 and please spell your last name for the court reporter?

15 A. Alfred W. O'Daire, capital "O", capital  
16 D-a-i-r-e.

17 Q. And where do you live?

18 A. 8964 Mary Ball Road, Lancaster County.

19 Q. And what is your occupation, sir?

20 A. Retired.

21 Q. Are you a member of the Rappahannock Pistol  
22 and Rifle Club?

23 A. Yes, I am.

24 Q. How long have you been a member?

25 A. About eight years, approximately.

1 Q. Have you held any offices in the club?

2 A. I am treasurer.

3 Q. Were you a club treasurer in January and  
4 February of 1997?

5 A. Yes, I was.

6 Q. On or about February 3rd, 1997, did you have  
7 occasion to present a check to Mr. Mabry, the president of  
8 the club, for signature?

9 A. Yes, I did.

10 Q. Can I have Exhibit 3, please?

11 Mr. O'Daire, I show you a photocopy of a check  
12 marked Exhibit 3 and ask you if you recognize that, sir?

13 A. Yes, I do.

14 Q. What is that?

15 A. It's a check to C F Lumber Company for a  
16 binder on the contract.

17 Q. Contract?

18 A. To buy the land in Regina.

19 Q. To buy the land where?

20 A. In Regina, the fifty-three acre site.

21 Q. All right, sir. You can go ahead and put it  
22 up on the Judge's railing, if you could.

23 And who did you say the check was payable to?

24 A. C F Lumber Company.

25 Q. And that is the owner of the property?

1 A. Yes, it was.

2 Q. And what is the purpose of that check?

3 A. It was a binder on the purchase of the land at  
4 Regina.

5 Q. And did this exhibit clear the bank?

6 A. Yes, it did.

7 Q. All right. That date is on the back when it  
8 cleared. It is on the back of the check.

9 A. February 14.

10 Q. February 14?

11 A. Yes, sir.

12 Q. Did the club pay the purchase price on that  
13 date?

14 A. No, they did not.

15 Q. Did it pay the purchase price -- was it fully  
16 prepared to pay the full purchase price on February 24th?

17 A. Yes, we were.

18 Q. And was it paid on that date?

19 A. No, it was not.

20 Q. Why not, sir?

21 A. Because the land was sold to another party.

22 At the time of the 24th, we were told that there was  
23 a delay in the paperwork.

24 MR. MARTIN: Objection, your Honor, hearsay.

25 MR. NUNN: There will be evidence of this, your



1 Honor.

2 MR. MARTIN: There may well be, but --

3 THE COURT: I sustain the objection.

4 MR. NUNN: All right. And also, I just point out  
5 that there is a reason that they did not pay the price and  
6 I think their reason for doing it is not hearsay. It  
7 shows why they did or did not do what they did or did not  
8 do.

9 CONTINUED EXAMINATION

10 BY MR. NUNN:

11 Q. Has the club paid the purchase price at any  
12 time?

13 A. No, we haven't.

14 Q. Why not, sir?

15 A. Because the land was sold to another party.

16 Q. Do you know who that party was?

17 A. Mr. and Mrs. Bennett.

18 Q. Now, drawing your attention to -- let's switch  
19 gears here. Mr. O'Daire, drawing your attention to  
20 February 15, 1997, did you have any contact with Mr. and  
21 Mrs. Bennett?

22 A. Yes, I did.

23 Q. Would you describe that contact, sir?

24 A. Mr. Mabry and I went to her house to go do a  
25 firing test and Larry Taylor -- I am sorry -- Marvin

1 Register and myself went to her house. Larry Taylor and  
2 Bill Mabry went to the range. They were going to do test  
3 firing for noise check, to see if the noise was excessive.

4 Q. All right, sir. Drawing your attention to  
5 this map which has been introduced as Exhibit Number 1,  
6 and ask you, if that looks familiar to you, sir?

7 A. Pardon.

8 Q. Do you recognize this map?

9 A. Yes, I do.

10 Q. All right. Would you come down and point out  
11 the salient features, where you were and where the others  
12 were and what occurred?

13 (Witness steps off the witness stand.)

14 A. This is approximately the location of the  
15 Bennett residence where Mr. Register and myself went, and  
16 that the range up here is where Mr. Mabry and Larry Taylor  
17 went. And they were going to test fire three firearms, to  
18 see what the noise level was at the house point.

19 Q. Now, before you go any further, I see that  
20 there is another, off to the left?

21 A. Yes, sir.

22 Q. What is that?

23 A. I believe that is the retirement home  
24 location.

25 Q. All right. And that would be Farnham Manor?

1 A. No, not Farnham Manor.

2 Q. Not Farnham Manor?

3 A. Morningstar. Morningstar, that is the  
4 retirement home location.

5 Q. How far away?

6 A. Indicates about one point nine miles, and the  
7 Bennett's residence is one and a half miles.

8 Q. Okay. Go ahead. What occurred?

9 A. We had a cell phone at the range and a phone  
10 at the location. And after some conversation at the  
11 house, when they got to the range, we called them and they  
12 said that they were ready. We went outside. We told them  
13 that we were ready to fire. They fired two rounds from  
14 the .357 Magnum Pistol, which was very faint and the  
15 remark was made about that shot. I am not sure exactly  
16 because I was up on the porch at the time and I didn't  
17 hear the exact words.

18 Q. Okay. You can go ahead and resume the stand,  
19 Mr. O'Daire.

20 (Witness resumes witness stand.)

21 All right. Sir, you said that you were outside the  
22 house on the porch?

23 A. Yes, I was.

24 Q. And you heard a faint sound when the shots  
25 were fired. All right. What happened then, sir?

1           A.     Well, they then fired a .308 rifle, two shots,  
2     and then two shots from a twelve gauge shotgun. And at  
3     this point, Mrs. Bennett started crying and hollering that  
4     you are going to ruin my property and cause my sheep to  
5     miscarriage and she ran into the house.

6           She came back a little while later and we got into a  
7     discussion outside. It was an offer to purchase property  
8     for us or get a place that we could purchase -- find a  
9     place for us. Then, my recollection, we were getting  
10    ready to leave and she did ask Mr. Register, if we still  
11    intended to go through with the range property, and he  
12    said yes. And again, I can't say exact words, something  
13    to the effect that she would do anything possible to stop  
14    putting the range in Regina.

15          Q.     All right, sir. At this point you left?

16          A.     At that point we left.

17          Q.     Do you have any further contact with Mr.  
18    Bennett?

19          A.     No, I have not.

20          MR. NUNN:     All right. That is all I have, your  
21    Honor.

22                               CROSS EXAMINATION

23    BY MR. MARTIN:

24          Q.     Good morning, Mr. O'Daire.

25          A.     Good morning.

1 Q. In 1997, you were the treasurer of the club?

2 A. Yes, I was.

3 Q. And as of February 24th, the last date to  
4 close under the contract, you didn't have \$22,000.00 in  
5 the --

6 A. Yes, I did. We had a check from Marvin  
7 Register that is dated February 18th, in my hands. We  
8 were informed prior to that day that the C F Lumber  
9 Company was not prepared to close. So, I did not deposit  
10 the check at that time.

11 Q. The question was: On February 24th, 1997, did  
12 you have \$22,000.00 in the club account to buy the land?

13 A. Not in the club account, no.

14 Q. You had a check from Mr. Register?

15 A. Pardon.

16 Q. A check from Mr. Register?

17 A. Yes, made out to Rappahannock Pistol and Rifle  
18 Club. It is a cashier's check.

19 Q. So, Mr. Register was putting up the money for  
20 the firing range?

21 A. He was loaning us the money.

22 Q. You all never put this to a vote of your  
23 membership?

24 A. Pardon.

25 Q. You never put this to a vote of your

1 membership before you did --

2 A. We did.

3 MR. NUNN: It is irrelevant, your Honor.

4 CONTINUED EXAMINATION

5 BY MR. MARTIN:

6 Q. Now, you indicated that you were part of this  
7 test near the Bennett's house?

8 A. Yes.

9 Q. Okay. You never witnessed either Mr. or Mrs.  
10 Bennett talk to Mr. C F Carter, Junior, did you?

11 A. No.

12 Q. You never witnessed any meeting between them?

13 A. No.

14 Q. And you have no personal knowledge that they  
15 interfered with Mr. Carter in any way, in the performance  
16 of the contract to you?

17 A. Not directly personal.

18 Q. I am asking you: Do you have any personal  
19 knowledge?

20 A. No.

21 Q. Is it fair to say Mrs. Bennett was upset  
22 by the shooting near her house?

23 A. Her attitude, she cried, screamed, yelled and  
24 went in the house.

25 Q. Okay. She had sheep there?

1 A. Not at that time.

2 Q. Okay. She told you she was worried about the  
3 effect on the sheep?

4 A. Miscarriage of the sheep.

5 Q. Okay. Now, in your map, you know that the  
6 Bennett's house is one point five miles, is that right,  
7 from the proposed firing range?

8 A. That is basically what it is. We measured out  
9 this on the map.

10 Q. But there are other houses much closer, and  
11 aren't they next to the property?

12 A. Yes.

13 Q. And there were people in Regina close to the  
14 range that also opposed the range, didn't they?

15 A. Previously, before we met with Mrs. Bennett,  
16 Mr. Register had gone to the neighbors in the area and  
17 told them what our plans were and a number of the  
18 neighbors wanted to go along with them and some of them  
19 said that they would actually like to join the club.

20 Q. Did you go to the Wicomico Hunt Club meeting?

21 A. I did not.

22 Q. Did you see the letters in the Rappahannock  
23 Record opposing it?

24 A. Yes, I did.

25 Q. You did see those?



1 A. Yes.

2 Q. So, you knew that not all of Regina wanted a  
3 firing range down there?

4 A. I do, as far as the letters go.

5 Q. And, sir, where do you live?

6 A. I live near Lancaster Courthouse.

7 Q. Okay. On the water?

8 A. No.

9 Q. Okay. How far from the proposed range  
10 property do you live?

11 A. Oh, I really am not sure, to tell you the  
12 truth. It is a diagonal line on Route 3 and Lancaster  
13 Courthouse from there.

14 Q. From your house you wouldn't have heard any  
15 shooting, if the range had been in Regina?

16 A. I doubt it very much.

17 Q. Thank you.

18 REDIRECT EXAMINATION

19 BY MR. NUNN:

20 Q. Is it good procedure to put a firing range or  
21 to fire a weapon over water, Mr. O'Daire?

22 A. Pardon.

23 Q. Is it safe, a safe procedure to fire any  
24 weapon over water, open water?

25 A. According to how far across it would be or

1 anything. It wouldn't be, if there was open land on the  
2 other side and was far enough away, to not be dangerous.  
3 That is the only thing I can tell you on that.

4 Q. All right. Thank you.

5 This would be Number Four.

6 (Check for \$22,000.00 dated 2-18-97 from  
7 Marvin Register, was marked Plaintiff's  
8 Exhibit #4 for identification.)

9  
10 (Enlargement of Plaintiff's Exhibit #4 was  
11 marked Plaintiff's Exhibit #4A for  
12 identification.)

13 Mr. O'Daire, I show you Plaintiff's Exhibit Number  
14 Four for identification and ask if you recognize that?

15 A. This is a check from Marvin Register from the  
16 Navy Federal Credit Union that was presented to me to pay  
17 for the land when we purchased it.

18 Q. And what is the date of that check, sir?

19 A. Date on this is February the 18th, 1997.

20 Q. Those are guaranteed funds?

21 A. Guaranteed funds.

22 MR. NUNN: We will admit, your Honor. Your  
23 Honor, Number Four.

24 THE COURT: You have seen it, Mr. Martin?

25 MR. MARTIN: No objection.

1 THE COURT: All right. Number Four.

2 (Plaintiff's Exhibit #4, check, was received  
3 into evidence.)

4 MR. NUNN: That is all I have, your Honor.

5 THE COURT: Thank you for your testimony. You  
6 are not released. You may be recalled. Don't discuss  
7 your testimony with the other witnesses.

8 THE WITNESS: Yes, sir.

9 THE COURT: Call your next witness.

10 MR. NUNN: Mr. Taylor.

11 LAWRENCE TAYLOR,  
12 having been previously sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. NUNN:

15 Q. Mr. Taylor, would you please state your name  
16 and occupation, sir?

17 A. Lawrence Taylor, and I am retired.

18 Q. And spell your last name for the court  
19 reporter.

20 A. T-a-y-l-o-r.

21 Q. And where do you live, sir?

22 A. I live in Ditchley, which is in Northumberland  
23 County.

24 Q. Are you a member of the Rappahannock Pistol  
25 and Rifle Club?

1 A. Yes, I am.

2 Q. How long have you been a member of the club?

3 A. Since the club was founded in 1982.

4 Q. And have you held any position in the club?

5 A. I have been the Chief Range Officer for  
6 perhaps the last fifteen years; ten, fifteen years.

7 Q. Would you describe the duties that you had as  
8 Chief Range Officer?

9 A. Yes. The Chief Range Officer is responsible  
10 for range maintenance, responsible for range safety, and  
11 the planning of shooting events at the range. That is  
12 pretty much it; primarily range safety.

13 Q. Prior to becoming a member of the club here in  
14 Lancaster County, did you belong to any similar  
15 organization elsewhere?

16 A. Yes. I have been involved in competitive  
17 shooting sports, oh, since I got out of the Navy in 1946;  
18 many clubs in Northern Virginia, Maryland, Fairfax Rock  
19 and Gun Club, Arlington Gun Club, Greenbelt Associated Gun  
20 Club of Baltimore and on and on and many, many, many  
21 clubs. All competitive rifle and pistol clubs.

22 Q. Have you held any position in any of those  
23 clubs?

24 A. Not officially, no.

25 Q. Unofficially?

1           A.     Well, kind of official. I was Chief  
2     Statistical Officer for Maryland Rifle Club one year which  
3     meant, kept, of course, records; but that is an elected  
4     official.

5           Q.     Have you ever served as Range Officer?

6           A.     I have served as Range Officer on many  
7     occasions at the Fairfax Rock and Gun Club. I think they  
8     have -- oh, that was the time we had a bad hurricane came  
9     through Virginia and almost wiped us out; but I served as  
10    Chief Range Officer for the Virginia State Pistol  
11    Championships and the match program at the Fairfax Rock  
12    and Gun Club. I was Chief Range Officer for that.

13          Q.     What is the primary consideration that you, as  
14    Chief Range Officer, would have anytime anybody would fire  
15    on the range?

16          A.     Anytime anybody is firing on the range,  
17    safety, absolutely safety. That is the number one thing  
18    in rifle and pistol competition is safety. And I would be  
19    responsible for that and see that the range rules are  
20    carried out; that the rules of safe firearms handling are  
21    carried out; and that is pretty much it.

22          Q.     Have you --

23          MR. MARTIN:     Your Honor, excuse me. I hate to  
24    interrupt, but I don't see any relevance. The issue is  
25    whether my client interfered with the contract here.

1 THE COURT: Let's move on.

2 MR. NUNN: Bear with me, your Honor.

3 CONTINUED EXAMINATION

4 BY MR. NUNN:

5 Q. Have you been involved in any instructional  
6 activities connected with the club?

7 A. Yes. I am the chief instructor for the club.  
8 I teach a course open to the general public in the  
9 Northern Neck on safe home firearm safety and safe  
10 firearms handling.

11 Q. Mr. Taylor, if C F Lumber Company honored its  
12 contract to sell the fifty-three acre site --

13 A. Uh-huh.

14 Q. -- to the club, what would your function  
15 have been?

16 A. My function would have been the design of a  
17 new range facility with the course for safety, is foremost  
18 in mind. I would have done that basic design on the new  
19 range and oversaw the construction of the new range.

20 Q. Now, would you just briefly describe the  
21 facilities that were planned for the fifty-three acre  
22 site?

23 A. Fifty-three acres, we planned to have a --  
24 well, let me back up a little bit. The present  
25 range, we can shoot rifle; we can shoot pistol, and

1 we can shoot shotgun; but we cannot do them all at the  
2 same time. And because of the constraints and safety at  
3 the new range site, we planned to have a range separated  
4 so that if somebody came down there and wanted to shoot a  
5 pistol one day, he would not be precluded from doing it  
6 because somebody was shooting rifle.

7 We hadn't planned to build a large range. We don't  
8 have that much room on fifty-three acres. We planned to  
9 build a safety range which means that no projectiles could  
10 escape. That they be baffled and whatnot and safe. The  
11 basic plans were to make five or six points for shooting  
12 rifle and about the same for pistol and trap range. That  
13 is about what we planned to build there.

14 Q. All right. Would you describe very briefly  
15 any considerations for firing over or near water, open  
16 water?

17 A. That is a no no. You don't fire over open  
18 water because bullets can ricochet, hit the water and you  
19 don't know where they are going to go.

20 Q. How long has the club had its range in White  
21 Stone, sir?

22 A. The club sits -- the Rappahannock Pistol and  
23 Rifle Club, Incorporated, was founded in 1982. I  
24 understand that the area down there had been used as a  
25 range for ten years prior to that, about '72.

1 Q. All right. Now, since you have been a member  
2 -- how long have you been a member?

3 A. Since 1982. I was a charter member of the  
4 club.

5 Q. All right. Since you became a member eighteen  
6 years ago, have you had any complaints from the neighbors?

7 A. I have never had a complaint from a neighbor  
8 down there.

9 Q. Would you, as chief range officer, have known  
10 about those complaints?

11 A. I would have known about it, yes.

12 Q. Let's switch gears. Mr. Taylor, drawing your  
13 attention to Saturday, February 15th, 1997, did you and  
14 any other club members conduct a demonstration for Mr. and  
15 Mrs. Bennett?

16 A. Yes. Bill Mabry and I did, conducted the test  
17 there, at their request, at Mrs. Bennett's request.

18 Q. All right. Could you describe what occurred?

19 A. We went into the range area.

20 Q. Instead of "we," if you could use names.

21 A. Bill Mabry and I went into the range area. We  
22 had three firearms with us. We had a .12 gauge shotgun.  
23 We had a .308 caliber rifle, and we had a .357 caliber  
24 handgun.

25 We had cell phone communication with people at the



1 Bennett's property, what, Melrose Place. And when we  
2 received the call or when we called them and said we were  
3 ready to conduct a test firing, we fired two shots with  
4 each firearm, on their request. And we fired into the  
5 ground, in the interest of safety. You don't fire off  
6 into the sky or into the woods somewhere. We fired into  
7 the ground two shots with the 357, two shots with the  
8 shotgun and two shots with the .308 rifle. This was a  
9 cloudy, rainy day, as I recall.

10 Q. And what effect would that have?

11 A. That would have a good deal of effect on the  
12 sound transmission. Dense air would transmit sound better  
13 than dry air. !

14 Q. So, the sounds would have -- would the sounds  
15 be better that day or worse?

16 A. The sounds would have been more audible than  
17 on ordinary days.

18 Q. All right, sir. I direct your attention to  
19 Exhibit 1, this map. And I am pointing now to the place  
20 where this is the site, is that correct?

21 A. That is correct.

22 Q. Where were you on the site?

23 You can come down here if you want to.

24 A. Just about where you were pointing, Bill,  
25 yeah, about in there.

1 Q. About there?

2 A. Yes. About in the middle, about a mile and a  
3 half from Melrose Place.

4 Q.. Do you recall whether the area in between  
5 where you conducted the demonstration and the Bennett's  
6 home was cut over or timbered?

7 A. There is a little bit of mix of both. There  
8 is open crop land in there also, between there.

9 Q. All right, sir. Now, did you have any contact  
10 with Mr. or Mrs. Bennett after the demonstration?

11 A. No, I have not.

12 MR. NUNN: That is all I have, your Honor. Thank  
13 you, Mr. Taylor.

14 THE COURT: Wait a minute. Mr. Martin will ask  
15 you questions.

16 THE WITNESS: Oh, sure. Mr. Martin.

17 CROSS EXAMINATION

18 BY MR. MARTIN:

19 Q. How are you?

20 A. Good, sir.

21 Q. You said you live in Ditchley?

22 A. Yes. That is actually Northumberland County;  
23 but it is a Kilmarnock address.

24 Q. You live on the water?

25 A. Yes.

1 Q. What body of water?  
2 A. It is Lawrence Cove Branch of Dividing Creek.  
3 Q. Nice neighborhood?  
4 A. Yes, sir.  
5 Q. Okay. You want a firing range in your  
6 neighborhood?  
7 A. I wouldn't mind.  
8 Q. You wouldn't mind?  
9 A. No, sir.  
10 Q. Have you looked for property in the Ditchley  
11 area?  
12 A. We have looked for pieces of property in the  
13 general Ditchley area, yes.  
14 Q. Have you tried to buy that property?  
15 A. It is not suitable for us.  
16 Q. I see.  
17 A. The reason it is not suitable: For one, it  
18 tends to be marshy; it is not a suitable shape; it is not  
19 deep enough to provide a safe range.  
20 Q. Okay.  
21 A. Even a safety range.  
22 Q. Now, just so I am clear: you never witnessed  
23 either Mr. and Mrs. Bennett ever speak with Mr. C F  
24 Carter, Junior, did you?  
25 A. No, I did not.

1 Q. You never witnessed either of them meet with  
2 Mr. Carter, did you?

3 A. No, sir.

4 Q. And you don't have any personal knowledge they  
5 interfered with Mr. Carter in any way performing the  
6 contract to sell the property to Mr. Mabry?

7 A. I have no personal knowledge of that; no, sir.

8 Q. Now, the club wanted a larger firing range,  
9 didn't it?

10 A. They want a safer firing range, primarily.

11 Q. Okay. How many firing lanes do you have in  
12 White Stone?

13 A. How many firing points?

14 Q. Yes.

15 A. In rifle, we have two bench rests per rifle,  
16 about 200 yards, and we have eight firing points to  
17 pistol, to twenty-five yards, and we have shotgun game we  
18 call scrap. It is not really skeet or trap. It is kind of  
19 a combination.

20 Q. Okay. And you say that on the existing  
21 range, you couldn't do all those things simultaneously?

22 A. Not safely, no.

23 Q. But on this property, you would be able to  
24 shoot?

25 A. Yes, we could orientate the ranges on this

1 piece of property so that we could simultaneously shoot  
2 these three decimals.

3 Q. Okay. And I think you also spoke or people in  
4 your club said that you were going to sponsor tournaments  
5 to come on the range?

6 A. That is a long way away, Mr. Martin.

7 Q. Well, do you recall Mr. Register saying that  
8 the club wanted to have tournaments come to the Regina  
9 area?

10 A. I don't recall that.

11 Q. Did other people in the club talk about  
12 wanting tournaments at the new range?

13 A. Let me backtrack a little bit. My background  
14 has been competitive shooting, which means tournaments.  
15 Rappahannock Pistol and Rifle Club has not been a  
16 competitive club in that respect. They have been more or  
17 less, an individual likes to go down and shoot while  
18 sighting their rifles and that sort of thing. We have  
19 never really seriously, as a club, considered hosting  
20 tournaments for other clubs. That is not to say that we  
21 would not want to do that in the future. However, any  
22 tournament that we could conduct on a limited range  
23 facility which we could bill to our range, would rather be  
24 limited in number. I don't think we could host these  
25 tournaments where vast numbers of people -- perhaps a

1 maximum of fifteen people at the most, at any one time.

2 Q. Were you present at the February 20, 1997  
3 meeting at the Wicomico Hunt Club?

4 A. Yes, I was.

5 Q. And at that meeting, Mr. Register told the  
6 club that you all planned to sponsor statewide shooting  
7 tournaments, didn't he?

8 A. I do not recall him saying that.

9 Q. You don't recall?

10 A. No, sir.

11 Q. You are aware that there are houses all around  
12 this site?

13 A. I am aware of that, yes.

14 Q. And can you understand why residents of Regina  
15 wouldn't want a larger firing range in that neighborhood?

16 A. People who are not familiar with shooting,  
17 perhaps may feel apprehensive about a firing range; but  
18 people who are familiar with, particularly with  
19 competitive shooting, an organized gun club, would realize  
20 that always safety is foremost on your minds.

21 We don't -- let's face it: Firearms are potentially  
22 dangerous. You can kill yourself with a firearm. So,  
23 therefore, people who shoot firearms competitively or in  
24 an organized discipline, have the attitude that  
25 hey, this thing can kill me; so therefore, I am staying as

1 far away from danger as possible. This is a tenet of all  
2 shooters in this respect. We will always be this  
3 way. The organized shooting sports have an enviable  
4 record on safety and it applies to people who are outside  
5 the range. Also, we don't --

6 Q. So, perhaps if the people in Regina had a  
7 better knowledge about firing ranges, they wouldn't object  
8 to it being down there? Is that what you are telling us?

9 A. I think some of them do. It is my  
10 understanding, I was not in that particularly meeting, but  
11 it was my understanding that some of those residents were  
12 against it and some of those were in sympathy with us.

13 Q. Again, though, you don't know, you don't  
14 have any personal knowledge that my clients interfered  
15 with your club's contract?

16 A. I do not; no, sir.

17 Q. Thank you.

18 REDIRECT EXAMINATION

19 BY MR. NUNN:

20 Q. Mr. Martin has said that there are various  
21 houses to the -- I take it that would be to the  
22 east of the range facility?

23 A. Well, the Wicomico Hunt Club, I think, is  
24 directly across from the entrance to the property.

25 Q. On the right hand side?

1           A.     There is a house barely south of the property  
2 there.

3           Q.     Okay?

4           A.     And then I guess there is, I think it is --  
5 yeah, the Gurley's, I think, live up just on the other  
6 side of the range, up in there somewhere.

7           Q.     Were the Gurley's approached on this?

8           A.     I really don't know.

9           Q.     Okay?

10          A.     I understood that most of the people in the  
11 area had been approached.

12          Q.     And in what direction was firing to take  
13 place?

14          A.     Firing would take place generally to the  
15 north, which would be kind of up the map.

16          Q.     In this general area?

17          A.     Yeah.

18          Q.     I take it there would be berms?

19          A.     There would be berms and safety berms,  
20 whatever was necessary to make sure it is a safe range.

21          Q.     You indicated in response to one of Mr.  
22 Martin's questions that that organized shooting has an  
23 enviable, I think that is your word, enviable safety  
24 record?

25          A.     Yes, sir.



1 Q. How would you compare that with hunters?

2 A. Much better.

3 Q. Why is that, sir?

4 A. Because of discipline and because of range  
5 rules and regulations, as that is formulated by the  
6 National Rifle Association to prevent accidents.

7 Q. All right. As opposed to hunting?

8 A. No rules, regulations. Hunters are strictly  
9 on his own.

10 Q. Okay. Thank you, sir.

11 MR. NUNN: Nothing further, your Honor.

12 THE COURT: Thank you, Mr. Taylor.

13 THE WITNESS: Certainly, your Honor.

14 MR. NUNN: I would like to hold on to Mr. Taylor.

15 THE COURT: You are not released. You may be  
16 recalled as a witness.

17 THE WITNESS: Can I go get lunch?

18 THE COURT: Yes. You may do that. You wouldn't  
19 be called within the next hour.

20 THE WITNESS: All right.

21 THE COURT: Don't discuss your testimony with the  
22 other witnesses.

23 THE WITNESS: I wouldn't.

24 THE COURT: Call your next witness.

25 MR. NUNN: Marvin Register.

1 Judge, I do have a briefer witness. I don't know  
2 what the Court's schedule is about going to lunch.

3 THE COURT: Well, any time we get a break between  
4 now and one o'clock.

5 MR. NUNN: Mr. Register will take at least an  
6 hour, your Honor.

7 THE COURT: Well, do you want to take your recess  
8 now?

9 MR. NUNN: Well, I have a witness that will not  
10 take very long, your Honor.

11 THE COURT: Okay. That will be fine. Call that  
12 witness.

13 MR. NUNN: That will be Mr. Frere.

14 THE COURT: Wait a minute. We are going to  
15 change witnesses. Who do you want?

16 MR. NUNN: Mr. Frere.

17 PATRICK G. FRERE,  
18 having been previously sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. NUNN:

21 Q. Mr. Frere, would you state your name and spell  
22 your last name for the court reporter?

23 A. Sure. Patrick G. Frere, F-r-e-r-e.

24 Q. And middle initial is?

25 A. G.

1 Q. What is your occupation, sir?

2 A. I am County Planner and Computer Mapping  
3 Specialist with Matthews County, Virginia.

4 Q. And what is your previous occupation?

5 A. Previously as employed with Lancaster County,  
6 Planning and Land Use Officer for five years. The first  
7 two and a half, I was County Planner, and last two and a  
8 half I was Planning Director and Zoning Administrator.

9 Q. All right. Planning and Zoning Administrator?

10 A. Correct.

11 Q. Did your duties include the determination of  
12 whether applications for a particular use of property in  
13 this county, in Lancaster County, would meet or satisfy  
14 the zoning ordinance?

15 A. Yes.

16 (Zoning Permit, was marked Plaintiff's Exhibit  
17 #5 for identification.)

18 Q. Mr. Frere, I show you Exhibit 5 for  
19 identification, and ask if you can identify that document;  
20 and if so, how?

21 A. Yes. I can identify. It is a zoning permit  
22 which was issued to the Rappahannock Pistol and Rifle Club  
23 for a parcel of land that is shown as Tax Map 9 Lot 86  
24 and it is to establish use, to make sure a use was --  
25 there was a permitted use on that parcel.

1 Q. All right. How do you identify that as the  
2 same?

3 A. I don't understand your question. I am sorry.

4 Q. Does your signature appear on that document?

5 A. Yes, it is.

6 Q. And that is your signature?

7 A. That is my signature, yes.

8 Q. Okay. From whom did you receive that, sir?

9 A. From Mr. Marvin Register.

10 Q. And on what date?

11 A. February 24th, 1997.

12 Q. And what, if any, action did you take on this  
13 application?

14 A. I signed it and approved it, the proposed use  
15 of that property, and I permitted that use as a club.

16 Q. And the use was what, sir?

17 A. Proposed use is, it says, to relocate an  
18 existing non-profit service organization, that provides  
19 recreation to its members and/or the public, including  
20 rifle, pistol, shotgun, and archery.

21 Q. Was that a permitted use under the zoning  
22 ordinance as it existed at that time?

23 A. The way I interpreted the ordinance, yes, it  
24 was. I permitted it as a club which was allowed by right  
25 in that zone district.

1 Q. All right. So, special requirements?

2 A. No. It satisfied the land use ordinances at  
3 that time.

4 Q. All right, sir. Was there any subsequent  
5 change in the zoning ordinance under which this permit was  
6 approved?

7 A. There were not changes to the club's  
8 definition; but there were changes to the ordinance that  
9 would affect shooting ranges.

10 Q. All right, sir. What range changes were  
11 those?

12 A. I have written them out. If I could read  
13 them: Amendment to the zoning ordinance was adopted in  
14 October of '97. It says, "Outdoor shooting range" and  
15 this is the definition in our zoning ordinance: "An  
16 outdoor recreational, educational, and/or training  
17 facility which provides rifle, pistol, shotgun, or archery  
18 ranges for the public and/or private users on parcels of  
19 land 25 acres or greater in size." It says, "A shooting  
20 range is designed to incorporate proper safety and noise  
21 abatement features; is constructed to assure that all  
22 discharged rounds are safely contained on the site; and  
23 provides vegetative, topographical, manmade earthen works,  
24 and/or fenced buffering from neighboring properties. All  
25 safety, noise abatement, and buffer requirements shall

1 adhere to guidelines established in the most current  
2 version of the National Rifle Associations' 'The Range  
3 Manual'; specifically Section 1, Chapter 3, "Planning and  
4 Design" and Section II, 'Outdoor Ranges.'"

5 Q. Was there any requirement over and above the  
6 ones that you have just read that would affect this  
7 particular club, the plaintiff, Rappahannock Pistol and  
8 Rifle Club?

9 A. That definition was adopted to our zoning  
10 ordinance; also outdoor shooting ranges were listed as, or  
11 allowed as permitted uses with a special exception in A-1  
12 and A-2 zone district which means that if somebody came  
13 in to establish that use on a piece of land: One, it  
14 would have to abide by the definition; it would have to be  
15 twenty-five acres or greater in size; meet all the  
16 requirements of the definition and special exception  
17 requirements, which would mean that there would have been  
18 a public hearing.

19 Q. Were those requirements necessary when you  
20 approved this zoning permit on February 24, 1997?

21 A. No. Clubs are allowed by right in the A-1 and  
22 A-2 zone district. They do not require public hearings.

23 Q. So, I don't know, I think I have asked you  
24 this, stop me if I have: Was Rappahannock Pistol and  
25 Rifle Club affected by the change in the ordinance?

1           A.     They would be affected if they were to move to  
2 a piece of land other than the land they were issued a  
3 zoning permit for. So, if they received this particular  
4 piece of land back, that permit would still be good. This  
5 permit was initially issued to a contract purchase and was  
6 good for five years.

7           Q.     But, if they sought an alternative site?

8           A.     They would have to abide by the current  
9 ordinance which is outdoor shooting ranges, of parcel,  
10 twenty-five acres or greater in size, the definition of  
11 parcel, twenty-five acres or greater in size, all the  
12 changes in A1 and A2 district and with the public hearing.

13          Q.     Okay. And what was it zoned for, this  
14 particular district?

15          A.     I believe it was agricultural, Zone A2.

16          Q.     All right, sir. Do you know of any other  
17 organization in Lancaster County that would have been  
18 affected by that change, other than Rappahannock Pistol  
19 and Rifle Club?

20          A.     I don't know of any other shooting clubs or  
21 organizations out there that would have been affected.  
22 There might be one, but not that I am aware of.

23          Q.     Not that you are aware of. And you were in  
24 the business for five years, you say?

25          A.     Five years; two and a half as Zoning

1 A. Yes.

2 Q. Would you describe those contacts, sir?

3 A. I'd say I talked to the Bennett's a few --  
4 several times on the phone and I have talked to both of  
5 them in my office before.

6 Q. And at whose initiation did these  
7 conversations take place?

8 A. It would be the Bennett's.

9 Q. All right. And could you give me a timeframe  
10 as to when these conversations took place?

11 A. I would just say off and on through mid --  
12 excuse me -- early to mid 1997. I can't give you exact  
13 dates.

14 Q. What was the nature of these contacts from the  
15 Bennett's?

16 A. I would say at first it was more, you know,  
17 how this use is allowed, you know, and their concerns with  
18 the proposed use being located near them. And then later  
19 it would probably be more interest in how changes were  
20 being done in our zoning ordinance and, you know, wanting  
21 updated on how changes were doing on our ordinance.

22 Q. Would it be fair to say that there were  
23 numerous contacts with the Bennett's by you?

24 A. Yes. It would be hard to put a number to it.  
25 I would say several, at least.



1 Q. And were any other officials in the County  
2 government contacted by the Bennett's?

3 A. Probably not as much as I was. I say possibly  
4 at least administratively, maybe our zoning officer one or  
5 two situations; but I am not sure of that; possibly County  
6 Administrator, and then I am sure -- it might be a  
7 question for the Bennett's, but maybe the Board of  
8 Supervisors' members and Planning Commission members.

9 Q. Is it fair to say that Mr. and Mrs. Bennett  
10 were instrumental in changing the ordinance?

11 A. I would say possibly influential. I don't  
12 know if "instrumental" would be the word that I'd use.

13 Q. All right. Thank you, sir.

14 CROSS EXAMINATION

15 BY MR. MARTIN:

16 Q. Good morning, Mr. Frere. It may be afternoon  
17 by now.

18 You served five years as Zoning and Planning Officer  
19 in Lancaster County?

20 A. Five years; two and a half of which I was  
21 County Planner, and then the last part was Zoning  
22 Administrator and Director of Planning and Land Use.

23 Q. And now you are currently serving as a member  
24 of the Lancaster Board of Supervisors?

25 A. Correct.

1 Q. Now, you are not saying there is anything  
2 wrong with the Bennett's contacting you, is there?

3 A. I received contact from interested citizens on  
4 numerous zoning issues while I was Planning and Land Use  
5 Director.

6 Q. So, the Bennett's weren't the only ones that  
7 called you up on the zoning issue?

8 A. No, not at all.

9 Q. And you referred to a meeting of the Board of  
10 Supervisors on February 27th, 1997, where the fire range  
11 was discussed?

12 A. Yes.

13 Q. Were you present at this meeting?

14 A. Yes, I was.

15 Q. The Board of Supervisors take minutes, do they  
16 not, of their meetings?

17 A. Yes, they do.

18 Q. I'd ask the Clerk at this time to mark the  
19 minutes of February 27th, 1997 as Defendant's Exhibit.

20 ( Board of Supervisors' minutes, 2-27-97,  
21 marked Defendant's Exhibit #1 for  
22 identification.)

23 Was there a lot of controversy associated with  
24 putting the firing range in Regina?

25 A. I would say this was local.

1 Q. Okay.

2 A. Neighboring controversy.

3 Q. Lot of people in Regina were opposed to it?

4 A. I would say, yes.

5 Q. Now, prior to the change in the ordinance,  
6 there weren't really any regulations on firing ranges,  
7 were there, Mr. Frere?

8 A. No. I allowed it as a club.

9 Q. Okay. So, a firing range, as long as they  
10 met, say, the side setback and front setback requirements,  
11 could go really much anywhere in the County, at this time?

12 A. Only where clubs would be allowed, which were,  
13 you know, it was allowed as a club. So, clubs were  
14 allowed by right, I believe, in agricultural, general and  
15 agricultural limited Districts A1 and A2.

16 Q. If you identify land, say next to Lancaster  
17 Primary School, which is zoned agricultural, in theory,  
18 you could put a firing range twenty-five feet off the  
19 school boundary, couldn't you, if it was zoned  
20 agriculture?

21 A. Yes.

22 Q. And was that what prompted changes in the  
23 ordinance to put some more control on firing ranges?

24 MR. NUNN: Calls for a conclusion, your Honor.  
25 Conclusions are for the jury.

CONTINUED EXAMINATION

BY MR. MARTIN:

Q. Well, tell me what prompted the changes in the County ordinance, if you know?

A. I believe it wouldn't have been initiated unless it had been at the Board's direction.

Q. And was it the County Board of Supervisors that directed that it be addressed at its February 27th, 1997 meeting?

A. I believe so, yes.

Q. And thus it was the supervisors themselves that prompted the change in this situation?

A. Yes.

Q. Okay. And it was the supervisors that voted to change the ordinance, didn't they?

A. Planning Commission members and Board of Supervisors.

Q. Both the Planning Commission and Board tried to change the ordinance?

A. Correct.

Q. Okay. It wasn't the Bennett's changing the County ordinances?

A. No.

MR. MARTIN: Your Honor, I offer the other side, a copy of the Board of Supervisors' minutes, as

1 Defendant's Exhibit 1.

2 MR. NUNN: Your Honor, it is hearsay, and I would  
3 object to it on those grounds. There is just a ton of  
4 stuff in there that is completely irrelevant to our case  
5 today.

6 MR. MARTIN: Well --

7 MR. NUNN: It is hearsay. That is the basic  
8 objection.

9 THE COURT: Your response.

10 MR. MARTIN: Mr. Nunn called Mr. Frere as a  
11 witness; asked him about the February 27th, 1997 meeting.  
12 Mr. Frere said he couldn't recollect everything, he'd have  
13 to look at the minutes as to what happened. I think they  
14 are relevant as to the discussion of understanding the  
15 ordinance. It was Mr. Nunn who brought up the fact that  
16 the ordinance was changed and this tells what community  
17 input there was that resulted in that change.

18 MR. NUNN: Your Honor, as a matter of evidentiary  
19 procedure, it is perfectly permissible for Mr. Frere to  
20 look at anything he wants, to refresh his recollection.  
21 And Mr. Martin has the right to look at anything Mr. Frere  
22 referred to. But that doesn't mean he can drive a truck  
23 with a lot of hearsay evidence through that door.

24 MR. MARTIN: Your Honor. I am not offering it  
25 for the purpose of showing that the comments contained



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. NUNN:

Mr. Marvin Register.

THE COURT:

Mr. Register.

MARVIN REGISTER,

having been previously sworn, testified as follows,

DIRECT EXAMINATION

BY MR. NUNN:

Q. Sir, would you state your name, please?

A. Marvin Register.

Q. Middle initial?

A. "O".

Q. And Register is spelled the usual way?

A. That is correct.

Q. All right. What is your occupation, sir?

A. I am retired.

Q. From what?

A. Retired. Retired Naval Arms Officer, retired  
from UNICEF (phonetic).

Q. From what?

A. UNICEF Corp.

Q. Are you a member of the Rappahannock Pistol  
and Rifle Club?

A. Yes, I am.

Q. How long have you been a member?

A. Since 1995.

Q. Have you held any positions as an officer in

1 the club?

2 A. Yes.

3 Q. What positions have you held?

4 A. I was president from March of '97 for about  
5 another eighteen months.

6 Q. All right, sir. And were you involved prior  
7 to that, your becoming president, were you involved in any  
8 way in a search for suitable property to build a new  
9 range facility?

10 A. Yes. I was chairman of an ad hoc committee  
11 called "Ranch Search Committee".

12 Q. And how long were you on that committee, sir?

13 A. Early January, '97 until the end of February.

14 Q. Okay? Now, what were the characteristic  
15 features of the land that you were looking for, for a new  
16 range site?

17 A. I first had to meet the -- we had to be in the  
18 right zoning, I think in this case A1, which permitted  
19 such use.

20 Q. Okay. Anything else you were looking for?

21 A. Yes. We were looking for an area where this  
22 had a fairly low population density; it would have the  
23 least impact to the local community. We needed a size  
24 about fifty acres and we needed a particular shape so we  
25 could plan the range and make sure that all shots stayed

1 within the boundaries of the range. In essence, elongated  
2 rectangle.

3 Q. All right, sir. Did there come a time when  
4 you found suitable property?

5 A. Yes.

6 Q. Where was that property located?

7 A. It was on State Route 615, southeast of Regina  
8 Post Office.

9 Q. Okay. Would you describe the property,  
10 general description.

11 A. The property bordered on Route 615. It  
12 extends for about three thousand feet in the south,  
13 southwest direction.

14 And while the front third of it was irregular, you  
15 could say that the piece was roughly three thousand feet  
16 deep and one thousand feet wide.

17 Q. All right, sir. Was that adequate for  
18 your needs?

19 A. Yes.

20 Q. This range site, how many acres was it?

21 A. Roughly fifty-seven acres.

22 Q. And was it located in Lancaster County?

23 A. It was in Lancaster County.

24 Q. How did you find this particular piece of  
25 real estate?



1           A.     One of our members saw a sign along the road,  
2 on the edge of the property, had a telephone number.

3           Q.     And one thing led to another?

4           A.     Yes. I called the number. The man identified  
5 himself as Linwood Turner, answered it, said he was a  
6 representative of the owner; confirmed that the land was  
7 for sale; confirmed that the price was as stated on the  
8 sign, and he said if you want to go further, here is the  
9 number of the owner; talk directly to him.

10          Q.     And what is the gentleman's name that he gave  
11 you?

12          A.     Mr. Carter.

13          Q.     And what was the price that was on the sign?

14          A.     Twenty-two thousand.

15          Q.     And did you contact Mr. Carter?

16          A.     Yes, I did, by telephone.

17          Q.     And were there further negotiations with Mr.  
18 Carter?

19          A.     Well, I was gathering information, so then I  
20 could pass to the executive committee. I asked him if  
21 that was the price and he said yes. I said what are your  
22 conditions and he said \$100.00 down, the balance in thirty  
23 days. If you want to go further, contact my attorney Mr.  
24 Raymond W. Edwards in Kilmarnock.

25          Q.     And did you contact Mr. Edwards?

1           A.     Yes. I called him, told him what we had in  
2 mind, told him that the club officer would be in contact  
3 with him and he said fine, he would set it up.

4           Q.     All right, sir. Was there -- did there come a  
5 time when a contract was entered to purchase the property?

6           A.     Yes.

7           Q.     And who signed that, do you recall?

8           A.     For the club, it was Mr. Bill Mabry, who was  
9 the president.

10          Q.     Was the signed contract forwarded to the  
11 attorney for the seller?

12          A.     Forwarded to the attorney, yes.

13          Q.     Along with the check for the --

14          A.     Along with the deposit.

15          Q.     Okay. Now, the seller was actually C F Lumber  
16 Company, isn't that true?

17          A.     That is true.

18          Q.     Owned by Mr. Carter?

19          A.     Yes.

20          Q.     Now, were there any provisions in the contract  
21 concerning -- or did you see the contract?

22          A.     I saw the contract.

23          Q.     All right, sir.

24          A.     As a courtesy, the provision was closure on or  
25 by the 24th of February, with also the provision that if

1 the necessary documents were not available from the  
2 seller, that there would be an extension of the closing  
3 date.

4 Q. Okay. Now, drawing your attention to -- I  
5 want to switch gears. Now, drawing your attention to  
6 Saturday, February 15, 1997, did you have occasion to go  
7 to the home of Mr. and Mrs. Bennett?

8 A. Yes.

9 Q. Would you describe the purpose that you had in  
10 going there?

11 A. The club was invited to go to the Bennett's.  
12 Mrs. Bennett was the one who extended the invitation to  
13 perform a shooting demo regarding noise level.

14 Q. And this was at whose request?

15 A. Mrs. Bennett.

16 Q. Is the lady in the courtroom today?

17 A. Yes.

18 Q. Would you point her out, please?

19 A. She is right over there.

20 Q. All right. Let the record reflect he has  
21 pointed to the Defendant, Mrs. Bennett.

22 THE COURT: Let the record so state.

23 CONTINUED EXAMINATION

24 BY MR. NUNN:

25 Q. All right. How many of you went to the --

1     how many of you were involved in putting on this  
2     demonstration for Mr. and Mrs. Bennett?

3             A.     Four people.

4             Q.     All right. Would you briefly describe what  
5     occurred when you got to the home, where the people were  
6     to go, what they were to do, and what happened?

7             A.     Yes. As I said, there were four of us, two  
8     shooters and two people to do coordination at the  
9     Bennett's home. We had cell phones. We had agreed that,  
10    at Mrs. Bennett's request, that we would provide the  
11    biggest guns we normally use. So, we selected 357 Magnum  
12    Pistol, .12 gauge shotgun and .30 caliber rifle,  
13    basically, 308 Winchester. We had two shooters, and their  
14    job was to go to the proposed range site, which was a mile  
15    and a half away and it would take them a while because  
16    they had to walk deep in the woods. We wanted to be at  
17    the closest point of approach to the Bennett property.

18            Mr. O'Daire and I went to the Bennett's home, also  
19    with a telephone and we had to wait a bit. We had an  
20    agreed time when the shooters thought that they could be  
21    in place. So, we were -- we had to wait a bit. Then we  
22    were invited --

23            Q.     Who? The two of you were invited --

24            A.     In the house. And while we were in the house,  
25    I took the opportunity to show a sketch of the range that

1 we had prepared, a rough sketch.

2 Q. To whom did you show it to?

3 A. Mr. Bennett?

4 Q. Is Mr. Bennett in the courtroom today?

5 A. Yes.

6 Q. Would you point him out, please?

7 A. He is right there.

8 MR. NUNN: Your Honor, may the record reflect  
9 that the Defendant Robert Bennett has been identified by  
10 the witness?

11 THE COURT: Let the record so show.

12 CONTINUED EXAMINATION

13 BY MR. NUNN:

14 Q. All right, sir. Go ahead.

15 A. Mr. Bennett looked at it. We talked about it,  
16 and then he said, "It looks good to me. I don't see any  
17 problem. Catherine, come look at this. I think  
18 it is good".

19 Q. Who was he referring to when he said  
20 "Catherine"?

21 A. Mrs. Bennett.

22 Q. All right.

23 A. And we were on opposite sides of the room, two  
24 of us on one side and two on the other. She said, "No, I  
25 won't look at it. If the noise is not objectionable,

1 I will withdraw all my opposition to the range." And then  
2 we left it at that.

3 Q. All right. So what happened then.

4 A. Then the time approached where we expected  
5 shooters to be in place. So, Mr. O'Daire called on the  
6 phone and they were ready. So, they said we are ready to  
7 shoot and we all went outside. And Mr. O'Daire --

8 Q. "All", meaning who?

9 A. Me, Mr. O'Daire and Mr. and Mrs. Bennett. Fred  
10 O'Daire stayed on the porch for better use of the phone.

11 Q. He was on the phone?

12 A. He was on the phone.

13 Q. He was on the phone. Okay. All right.

14 A. So, I walked with Mr. and Mrs. Bennett to the  
15 north end of their house, in the open, and it was a cool,  
16 day, kind of overcast, I think, with the wind blowing from  
17 the direction of the range, which would have been to the  
18 west, northwest.

19 Q. Okay. I'd like for you to take a look at  
20 this, this blowup of a map. The green color area that I  
21 am pointing to now; what is that, sir?

22 A. That was the range site.

23 Q. Okay. And directly south of it, about,  
24 according to this, a mile and a half, what is that, sir?

25 A. Bennett's residence.

1 Q. And you say you were on the -- you, Mr. and  
2 Mrs. Bennett, and Mr. O'Daire were on the north side of  
3 the house?

4 A. We are -- well it would have been to the  
5 right. I am not sure of the orientation there.

6 Q. Okay?

7 A. We were facing their house. It would have  
8 been on the right end of their house.

9 Q. Okay. All right. Go ahead, sir.

10 A. And we were out there a few minutes and Mrs.  
11 Bennett said "When are they going to start shooting." And  
12 I said, "I think they have already started."

13 They checked with Mr. O'Daire: "They have already  
14 fired twice. They are getting ready to shoot again." So,  
15 there was a short pause and I heard a very faint sound and  
16 Mrs. Bennett said, "That's objectionable." She said,  
17 "Robert, that's objectionable." And he said, "Yes,  
18 Catherine, that is objectionable."

19 And then there were two more very faint sounds. I am  
20 not sure in what order they are fired. I think the  
21 pistol, and shotgun and rifle.

22 Q. But you weren't down there?

23 A. I wasn't down there. So, and I said, "That's  
24 it." And he said, "I guess she doesn't like guns." So  
25 Fred and I started toward the house in preparation of

1 leaving.

2 Q. Who said, "She doesn't like guns"?

3 A. Mr. Bennett. We started toward the house in  
4 preparation for leaving and as we were approaching the  
5 front steps which come out quite a ways from the  
6 house, Mrs. Bennett, who had been crying, came out.

7 Q. I want to ask you what her demeanor was during  
8 this time, after she said it was objectionable.

9 A. After she said it was objectionable, she  
10 started crying, and she started running towards the  
11 house.

12 So, I left Mr. and Mrs. Bennett out there and Fred  
13 O'Daire joined us about that time, and he said, "Is there  
14 a problem?" And I said, "Apparently." So, we went back  
15 to the steps and Mrs. Bennett came out in the front, came  
16 down those steps with a phone book in her hands. So, she  
17 said, "I am a realtor. I will find you a perfect spot."  
18 And we said, "We think we have got a good spot." And she  
19 said, "I will find you a good spot. I want it out of the  
20 County, anywhere out of this County." And I said, "Does  
21 that mean you don't care who else is next to you, as long  
22 as it is out of your County?" And she said, "That is  
23 right." And she said, "I hate shooting. I hate hunting.  
24 I hate guns. And my husband and I are working on an  
25 ordinance, a noise ordinance which will do away with all



1 shooting in the County and we will be getting that and try  
2 to get it across the State. We also hate using dogs. We  
3 think that is cruel practice, and we are working on that  
4 with the State legislature."

5 Q. Dogs for what purpose?

6 A. For hunting. "Virginia is the last state in  
7 the Union using dogs for hunting and we don't agree with  
8 it and we are going to do away with it and we know what  
9 people want and need, and we are going to give it to  
10 them."

11 Q. She said what?

12 A. "We know what people need and want and we are  
13 going to give it to them, people in this County."

14 Q. All right. And what occurred then?

15 A. And she said -- let's see. May I refer to my  
16 notes?

17 Q. Certainly. Did you take contemporaneous  
18 notes?

19 A. Yes. Early on from the first day when I was  
20 working on the range search. I began to run into  
21 situations where I kept notes on everything I did, so I  
22 could make a proper report to the executive committee and  
23 so I would have it all straight.

24 Q. All right.

25 A. The reason I remember this so well is that on

1 the way home, and when I got home, I wrote comprehensive  
2 notes on everything that occurred.

3 Oh, she said "We plan to have three thousand sheep  
4 here."

5 Q. Three thousand sheep?

6 A. Sheep.

7 Q. Did you see any sheep?

8 A. No, but "We are going to have three thousand  
9 sheep and any time they have a miscarriage, I am going to  
10 sue Lancaster County. I am going to sue the Gun Club and  
11 I am going to sue you personally." And I said "Why would  
12 you sue me?" And she said "Invasion of my privacy."

13 So then at this time we said, "Well, okay, good-bye"  
14 and we started toward the car. And once more she said  
15 "Are you going to go ahead with this after all I have said  
16 to you?" And we said, "Yes." She said -- and so she  
17 said, "Then I will do whatever is necessary to make sure  
18 that you never use that site at Regina for a range. This  
19 game isn't over. I will do whatever is necessary,  
20 whatever it takes, and I always win."

21 Q. Were those her exact words?

22 A. They were her exact words.

23 Q. And those you wrote down?

24 A. Yes.

25 Q. Immediately after they were uttered?

1 A. Yes.

2 Q. What were the words again, please?

3 A. She said --

4 Q. You can refer to your notes, if you wish?

5 A. Okay. "Are you going ahead with the range  
6 after all I have said?" And we said, "Yes." And I think  
7 both of us spoke at the same time, both me and Mr.  
8 O'Daire. She said, "Then I will do whatever is necessary  
9 to make sure you never use that Regina site. This game is  
10 not over. I am prepared to go all the way, whatever it  
11 takes, and I always win."

12 Q. Mr. Register, several days later, did you have  
13 an occasion to learn that the closing would be delayed  
14 beyond the February 24th contract date?

15 A. Yes.

16 Q. Did you inform Mrs. Bennett of that fact?

17 A. Not directly. I was part of a neighborhood  
18 meeting in the Regina community and Mrs. Bennett made the  
19 statement that -- no, she asked a question first. She  
20 said, "Have you closed on the contract yet?"

21 Q. And of whom was she asking that question?

22 A. Of me.

23 Q. Of you. Okay.

24 A. She was asking me, I was the guest speaker.  
25 We were briefing on the proposed range at a neighborhood

1 meeting. She said, "Have you closed on it yet?" And I  
2 said, "No." She said, "Well, the 24th is the last day."  
3 And I said, "No, it isn't". And she said, "That is what  
4 the contract says." I said, "No, it's been extended."

5 Q. Were those her words: "That is what the  
6 contract says"?

7 A. She said it, "24th".

8 Q. Okay?

9 A. Okay. And I said, "No, it's been extended."  
10 So, she said, "What is the new date?" And I said,  
11 "I don't know. It's been extended."

12 Q. And what was her reaction?

13 A. There was no more conversation on that  
14 particular subject at the moment.

15 Q. Okay. And you were talking to her when you  
16 said it had been extended?

17 A. Directly to her.

18 Q. Any doubt in your mind that she understood  
19 what you said?

20 A. Just a few feet in front of me.

21 MR. NUNN: May I have Exhibits Five and Six,  
22 please.

23 THE COURT: Exhibits 5 and 6. You mean four and  
24 five.

25 MR. NUNN: Four and five, yes, sir.

CONTINUED EXAMINATION

BY MR. NUNN:

Q. Mr. Register, I show you what's been marked as Exhibit Number Five for identification and ask if you can identify that?

A. Yeah. That is the permit application that we filed here at the courthouse in Lancaster County.

Q. Does your signature appear on that document?

A. Yes, it does.

Q. And were you the person who filed that document with the County zoning authority?

A. Yes.

Q. All right. Thank you.

A. I worked with Mr. Frere.

THE COURT: Mr. Frere, you said?

THE WITNESS: Yes.

CONTINUED EXAMINATION

BY MR. NUNN:

Q. Mr. Register, was the club prepared to pay the full purchase price for this property in Regina, for the fifty-three acres, on February 24th, 1997?

A. Absolutely.

Q. You said?

A. Yes.

Q. I show you what's been marked as Exhibit,

1 Plaintiff's Exhibit Four, and ask if you recognize that,  
2 sir?

3 A. Yes. It is a guaranteed bank draft made out  
4 to the Rappahannock Pistol and Rifle Club, and dated 18th  
5 of February.

6 Q. And I show you Exhibit Four A and ask if this  
7 is an accurate enlargement of that document?

8 A. Yes.

9 Q. Okay. Take a look at the back side?

10 A. Okay.

11 Q. Is it accurate, an accurate copy?

12 A. Yes.

13 Q. And whose signature appears on the face of  
14 this check, this guaranteed check?

15 A. I signed it.

16 MR. NUNN: All right. Your Honor, I'd move to  
17 admit the enlargement.

18 MR. MARTIN: No objection.

19 THE COURT: Admitted, Four A.

20 (Plaintiff's Exhibit #4A, Enlargement of check  
21 dated 2-18-97 was admitted into evidence.)

22 MR. NUNN: Your Honor, I do have copies for the  
23 jurors, if the court or counsel has no objection to copies  
24 of the blowup.

25 MR. MARTIN: No objection.

1 THE COURT: You may circulate them to the Jury.

2 MR. NUNN: There may be a couple short, but  
3 certainly sufficient.

4 CONTINUED EXAMINATION

5 BY MR. NUNN:

6 Q. So, you indicated that the club was fully  
7 prepared to pay the purchase price on 2-24-97?

8 A. Yes.

9 Q. So, the club was actually prepared to  
10 go through with the purchase as provided in the contract?

11 A. Yes.

12 Q. Did the purchase take place on February 24th?

13 A. No.

14 Q. Why not?

15 A. Mr. Edwards, the attorney for the seller  
16 advised --

17 MR. MARTIN: Objection, your Honor, unless he was  
18 personally advised and even though it is hearsay, Mr.  
19 Edwards is here to testify.

20 THE COURT: On advise of the attorney, you  
21 didn't.

22 THE WITNESS: I was informed.

23 THE COURT: Don't say what he said. Don't tell  
24 us what he said. Just based on that information.

25 He is here to testify for himself?

1 MR. NUNN: He will testify, your Honor.

2 THE COURT: Yes. So, I think it is admissible in  
3 those circumstances.

4 MR. MARTIN: Well, your Honor, it is still  
5 hearsay.

6 MR. NUNN: I will still abide by the ruling of  
7 the court.

8 THE WITNESS: Do you want me to try to answer it  
9 in another way?

10 THE COURT: No. Just wait for the next question.

11 MR. NUNN: If you know, why the closing did not  
12 take place on February 24th, you certainly may inform the  
13 Court and the jury, of your personal knowledge?

14 THE WITNESS: I have knowledge that came from the  
15 club's attorney.

16 MR. NUNN: Which was?

17 MR. MARTIN: It is hearsay, your Honor. He just  
18 said he doesn't know personally. He was told by somebody  
19 else. That somebody else can testify because he is here  
20 as a witness.

21 MR. NUNN: I am not going to do that, your  
22 Honor. That is a dead horse, your Honor.

23 THE COURT: All right.

24 CONTINUED EXAMINATION

25 BY MR. NUNN:



1 Q. Now, drawing your attention to February 28th  
2 -- February 24th was the closing date set forth in the  
3 contract, that would have been a Monday -- on Friday the  
4 28th, was the property sold to another purchaser?

5 A. According to our information, yes.

6 Q. And who was that other purchaser?

7 A. The purchaser was Mr. and Mrs. Bennett.

8 Q. Was this done without the knowledge of the  
9 club?

10 A. Absolutely.

11 Q. Now, since that date, have you had any contact  
12 with C F Lumber Company?

13 A. The only contact with C F Lumber Company was  
14 during the lawsuit where the club sued him for breach of  
15 contract here, and I haven't seen him since.

16 Q. Okay. What about C F Carter, the owner, is  
17 that who you were talking about?

18 A. I am talking about the owner.

19 Q. Have you had any contact with Mrs. Bennett or  
20 Mr. Bennett?

21 A. Other than the previous trial which resulted  
22 in a mistrial.

23 Mrs. Bennett called my home recently regarding a  
24 garden club matter and she was asking for my wife. That  
25 is the only contact.

1 Q. Since February 28, 1997, when the Bennett's  
2 purchased your property, have you looked for alternative  
3 sites for a range?

4 A. Yes.

5 Q. What were the results of that search?

6 A. Generally the results were that a suitable  
7 property was either too big and too expensive or finding  
8 suitable property was very difficult because of  
9 demographics, because of topography, other reasons.

10 Q. Did you have occasion to look at a site of  
11 approximately 266 acres in Lancaster County?

12 A. Yes.

13 Q. Would that have been in the area of Beanes  
14 Corner?

15 A. That was near Beanes Corner.

16 Q. Could you describe the property and the  
17 results of your examination of that property?

18 A. I would say that if it was affordable, it  
19 would have been absolutely ideal. It was large. It was  
20 pretty well isolated. It had a thin growth. It was kind  
21 of much flat; had been a gravel pit with a farm out  
22 front. Dimensionally great. It would have been an ideal  
23 site; but the owners just wanted a lot of money.

24 Q. How much did they want?

25 A. Two hundred forty-five thousand.

1 Q. The club was unable to come up with that?

2 A. Yes. That was out of the question.

3 Q. Did there come a time when you examined a  
4 forty-three acre site on Field Trial Road?

5 A. I examined that on the afternoon of February  
6 20th.

7 Q. At whose request, if you recall?

8 A. Yes. I remember the events. A couple of days  
9 after the shooting demonstration, I received a call from a  
10 realtor name Henry Bashore. He said a couple of ladies  
11 had asked him to help us find a piece of ground. So, he  
12 told me about this. We discussed it, and he said, "Well,  
13 I am out of it. I want nothing more to do with it."

14 When I heard about this neighborhood meeting which  
15 initially was suppose to be one on one between me and Mrs.  
16 Rebecca George, I decided I had better take a look at that  
17 property. And so, I went to see the representatives of  
18 the owner. I eventually went to the property and  
19 determined that it was just totally unsuitable.

20 Q. Why was it unsuitable, briefly?

21 A. The shape of it. There was no electricity.  
22 Dimensionally, it didn't lend itself to a range. There was  
23 nothing you could have used it for except bow and arrow  
24 and small pistol range.

25 Q. I see. Indulge me just a moment, your Honor.

1 THE COURT: Yes. I don't have anything further.

2 THE COURT: Cross-examination, Mr. Martin.

3 CROSS EXAMINATION

4 BY MR. MARTIN:

5 Q. Mr. Register, you live in the Hunton  
6 Subdivision?

7 A. Yes.

8 Q. And the house is on the water?

9 A. Yes.

10 Q. Nice residential area?

11 A. I think so.

12 Q. Okay. Wayne Reynolds owns a lot of the farm  
13 land next to the Huntons, doesn't he?

14 A. Warner Reynolds does.

15 Q. Warner Reynolds, excuse me.

16 Did you talk to him about buying a big piece of  
17 land, so you would have a firing range next to your house?

18 A. No. I would have enjoyed having a firing  
19 range that close; but it was well known, at least from  
20 what I heard, that Warner Reynolds loved farmland and he  
21 did not part with any farmland. So, besides, farmland was  
22 much more expensive than cut over timberland.

23 Q. So, you have not made any effort to buy land  
24 near your house, to locate the range near your house, have  
25 you?

1           A.     I did not see -- I looked. I did not see any  
2 that appeared to be reasonably available.

3           Q.     And if the range was located in Regina, you  
4 couldn't hear any shooting at the range with the distance  
5 between Regina to your house, could you?

6           A.     I hope not.

7           Q.     You hope not?

8           A.     I don't think so; not that far.

9           Q.     You are aware that at least four pieces of  
10 property were brought to the attention of the club as  
11 alternate sites?

12          A.     No. I only know of the two, and one  
13 \$45,000.00 property, because I wasn't active in the  
14 range search after that.

15          Q.     Okay. Were you aware that Bill Hayden had  
16 property on Goodluck Road that he offered to the club?

17          A.     Bill Hayden offered to lease us shooting  
18 rights at that property; but me and Mr. O'Daire and Mr.  
19 Israel looked at it. Location wise, it was fine; but cost  
20 was just prohibitive.

21          Q.     But Bill made an offer to build the range for  
22 it?

23          A.     Yes, but he wanted a lot of money.

24          Q.     Okay. So, that wasn't satisfactory to you?  
25 Were you aware of that forty acre parcel on Route

1 350 here in Lancaster County that was proposed?

2 A. No.

3 Q. May I approach the witness, your Honor.

4  
5 (Letter with a copy of a plat was marked  
6 Defendant's Exhibit #2 for identification.)  
7

8 I show you what's been marked as Defendant's Exhibit  
9 No. 2, which is a letter from me to your attorney, along  
10 with information on that property and a copy of the  
11 survey. Have you ever seen that before?

12 A. This is the one on Field Trial Road?

13 Q. The one I was talking about.

14 A. Yes. I walked it on the afternoon of 24,  
15 February.

16 Q. And that's got --

17 A. I am sorry, 20, February.

18 Q. And that's got forty plus acres?

19 A. Yes, forty plus acres.

20 Q. And you are saying that was unsatisfactory?

21 A. It was absolutely unsatisfactory.

22 Q. And may I approach the witness, your Honor?

23  
24 ( Plat of 53 acres was marked Defendant's  
25 Exhibit #3 for identification.)

1  
2 I am going to hand you now, Defendant's  
3 Exhibit 3, which is a plat of a fifty-three acre piece in  
4 Northumberland County, near Kilmarnock. Did you walk that  
5 one also?

6 A. No. I know nothing about it.

7 Q. Okay. Your attorney hasn't shown you that?

8 A. No.

9 Q. Now, take a look at the plat there, if you  
10 would. I think you told us that you wanted a piece of  
11 property that was rectangular in shape?

12 A. Yes. That is what I said.

13 Q. And does that piece of property appear to  
14 be rectangular in shape?

15 A. Yes.

16 Q. And you wanted a piece of property that was  
17 about fifty acres?

18 MR. NUNN: Your Honor, the witness said he did  
19 not look at this piece of property.

20 THE COURT: He is testifying from the plat.

21 MR. MARTIN: I am talking about the plat and  
22 whether it meets his criteria.

23 MR. NUNN: I think counsel should wait, your  
24 Honor, until he finds the person who did look at this  
25 property.

1 MR. MARTIN: May I respond, your Honor?

2 THE COURT: Yes.

3 MR. MARTIN: Mr. Nunn brought it up through this  
4 witness in his direct testimony, what would be considered  
5 appropriate in a parcel of land for a firing range. And I  
6 remember distinctly he said rectangular in shape, fifty  
7 acres. And I am showing him a plat of the piece of  
8 property that is rectangular in shape and fifty-three  
9 acres.

10 THE COURT: Objection overruled. It goes to the  
11 weight of the evidence. He didn't look at the property,  
12 but he's got the plat in front of him and he can testify  
13 from that.

14 MR. NUNN: Very well, sir.

15 CONTINUED EXAMINATION

16 BY MR. MARTIN:

17 Q. Mr. Register, based on that plat, does that  
18 piece of property look like it might fit your needs?

19 A. As far as the dimensions of it, yes.

20 Q. Okay.

21 A. But you see, I am not -- I don't have the  
22 information, other information which was vital to us,  
23 demographic.

24 Q. Well, turn to the first page then, if you  
25 would, there you have information, as the purchase price



1 and it is about \$40,000.00. You think that would  
2 fit in the budget?

3 A. I am not prepared to say.

4 Q. But you are prepared to say that the only  
5 piece of property that would work is one that is 266 acres  
6 and costs \$245,000.00?

7 A. Well, again, I don't have the information on  
8 the demographics here. I don't know about residences  
9 around it. I don't know what direction, what is beyond  
10 this. I'd have to see a lot more information.

11 Q. Well, Mr. Register, there are residences all  
12 along the proposed range in Regina, weren't there?

13 A. There are residences not too far away; but the  
14 demographics again is fairly thin populated. The  
15 direction we would be shooting is in this direction.

16 Q. Which direction?

17 A. To the southwest.

18 Q. All right. In fact, the way you were shooting  
19 was right towards Mr. Grammer's retirement home, wasn't  
20 it?

21 A. No. It would have been south of that.

22 Q. Do you recall him objecting to it because he  
23 said firing ranges were directly pointed toward his  
24 retirement home?

25 A. I don't recall that statement. No.

1 Q. You also brought up in your direct testimony  
2 that the Gun Club brought a suit against C F Lumber  
3 Company, Incorporated. Do you recall that?

4 A. Yes.

5 Q. And that you saw Mr. Carter on that occasion,  
6 in court?

7 A. Yes.

8 Q. Okay. And you got a judgement against his  
9 company, didn't you?

10 A. I think so, yes.

11 Q. And may I approach the witness, your Honor?

12 THE COURT: Yes.

13 (Judgement Order, marked Defendant's Exhibit

14 #4 was marked for identification.)

15 Q. I am going to hand you a certified copy of  
16 the judgement in the court case of Rappahannock Pistol and  
17 Rifle Club versus C F Lumber Company, Incorporated. Have  
18 you seen that before?

19 A. No, I haven't seen it.

20 Q. Were you present at the trial?

21 A. What was the date of this? I was president  
22 until mid 1998.

23 Q. If you look on Page 2, you will see the date  
24 the judge signed it?

25 A. Okay, 31.

1 Q. You were present then?

2 A. Yes.

3 Q. Okay?

4 A. I think so.

5 Q. You agree that your club got a \$4,000.00

6 judgement against Mr. Carter's Company?

7 A. That is my understanding, yes.

8 Q. Okay. And you were compensated by the court  
9 for the loss of this property?

10 MR. NUNN: Your Honor, that is a legal  
11 conclusion.

12 THE WITNESS: I don't think so.

13 MR. NUNN: That is a legal conclusion. That is  
14 not proper for him to answer that question.

15 THE COURT: Sustained.

16 CONTINUED EXAMINATION

17 BY MR. MARTIN:

18 Q. Now, Mr. Register, you were asked by Mr. Nunn  
19 about the closing date, if the first contract -- may I  
20 retrieve that, your Honor, which I believe is Plaintiff's  
21 Exhibit Two.

22 Sir, I direct your attention to Page 1 of  
23 Plaintiff's Exhibit 2, and ask you if there is any  
24 language you see written in hand as to the closing date?

25 A. February 24th, 1997.

1 Q. Sir, I directed your attention to Page 1 of  
2 the contract and ask you to look at Page 1. If I might  
3 help?

4 A. Sorry about that.

5 Q. Look down here, closing date. Did you see  
6 language to the effect of February 24th?

7 A. Purchase price to be paid, twenty-two thousand  
8 and closing, February 24th.

9 Q. Do you see the words after that, "time is of  
10 the essence"?

11 A. "Time is of the essence".

12 Q. You never spoke with Mr. Carter about  
13 extending the closing date, did you?

14 A. I was not involved at this point. I turned it  
15 over to the executive committee who was working with the  
16 attorney.

17 Q. Okay. You were relying on Mr. Nunn to close  
18 the purchase of the property?

19 A. I was relying on the club officers and Mr.  
20 Nunn. I was just a bystander.

21 Q. Mr. Nunn was the club's attorney, was he not?

22 A. Yes.

23 Q. And he is also a member of the club, isn't he?

24 A. Yes.

25 Q. Now, it wasn't closed by February 24th, 1997,

1 as required in the contract, was it?

2 A. Not according to that requirement, no.

3 Q. Now, you talked about going out to the  
4 Bennett's for the shooting demonstration. I will ask  
5 you: You never saw Mr. and Mrs. Bennett meet with Mr.  
6 Carter, did you?

7 A. No.

8 Q. You never heard them talk with Mr. Carter, did  
9 you?

10 A. No.

11 Q. And you don't have any personal knowledge that  
12 they ever interfered with Mr. Carter and his company's  
13 performance of the contract, do you?

14 A. I have no personal knowledge, no.

15 Q. Okay. When you went out for the  
16 demonstration, would you say that Mr. Bennett was  
17 courteous to you?

18 A. Yes.

19 Q. Okay. And I think you said that he told you  
20 that the plan looked okay to him?

21 A. The plan for the range.

22 Q. Okay. You never heard Mr. Bennett object in  
23 any way to the range, did you?

24 A. Only toward the end, when Mrs. Bennett was  
25 saying, "It is objectionable." And he said, "Yes,

1 Catherine, it is objectionable."

2 Q. Okay. Was that in the kind of yes, dear,  
3 manner of response to her?

4 A. I am not qualified to say that. I only know  
5 what the man said.

6 Q. You are married, aren't you?

7 THE COURT: I sustain the objection.

8 MR. NUNN: Thank you, your Honor.

9 Q. I will move on, your Honor.

10 In your opinion, was Mrs. Bennett hysterical about  
11 the range?

12 A. She was crying.

13 Q. Okay. And in your opinion, was she  
14 unreasonable?

15 A. I think that is obvious.

16 Q. Okay. But again, you don't --

17 A. If I may make a statement: She also said --  
18 before she went in the house, I said, "You can barely hear  
19 any noise." She said, "It sounds as if it is, the barrel  
20 of the gun is right at my ear." So, to me, that is  
21 unreasonable to come half a mile, shooting in deep woods;  
22 that is unreasonable.

23 Q. Then you said that you went to the Wicomico  
24 Hunt Club as spokesman for the Gun Club. Do you recall  
25 that?

1 A. Yes, I said that.

2 Q. And I believe that was on February the 20th of  
3 1997?

4 A. February the 20th.

5 Q. Okay. And you said you thought that was to be  
6 a one on one meeting with Rebecca George?

7 A. I had been invited by Ms. Rebecca George to  
8 go there and meet with her and possibly the mother of a  
9 young child. That was all. And I was suppose to go to  
10 the front door.

11 Q. And you were aware that Rebecca George was  
12 likewise opposed to the firing range, aren't you?

13 A. I had several telephone conversations with  
14 Mrs. George on the subject.

15 Q. Was she opposed to the firing range, based on  
16 your conversations?

17 A. Based on the conversations, yes.

18 Q. Now, at that meeting, did you speak about the  
19 proposed range?

20 A. Yes.

21 Q. Okay. And you told the people at the Wicomico  
22 Hunt Club that all you wanted was a larger firing range  
23 than the one in White Stone, didn't you?

24 A. Yes.

25 Q. Okay. And you told them that you wanted the

1 ability to fire simultaneously, pistols, rifles and  
2 shotguns, didn't you?

3 A. If the range could be designed in that manner.

4 Q. Okay. And now, you are telling the people  
5 that the range wouldn't be louder than about forty lawn  
6 mowers?

7 A. No, absolutely not.

8 Q. Did you mention the word "lawn mowers" in your  
9 presentation?

10 A. Never.

11 Q. Never?

12 A. Never.

13 Q. You are sure about that?

14 A. Absolutely sure.

15 Q. Did you ever tell the people at the meeting  
16 that they could use earplugs if the noise was too loud in  
17 their yard?

18 A. If I can address that: Mrs. George said that  
19 every time she went outside, she'd have to wear earplugs.  
20 And I said, "I don't think that is going to be a problem  
21 because the nearest shooting point is going to be across  
22 the road and at least one thousand feet down the range,  
23 because the first part was limited to bow and arrow only.  
24 And so the shooting didn't start until one thousand feet  
25 further down." That is all I said about it.



1 Q. Okay. And do you recall her husband Wayne  
2 George asking you if the club would sell the property, the  
3 property in Regina?

4 A. Absolutely not.

5 Q. You don't recall it or he didn't ask you?

6 A. I have no knowledge of him asking. Mrs.  
7 Bennett asked if we would sell the property.

8 Q. Okay. Do you recall making the statement that  
9 you all would consider selling it for its assessed value  
10 of \$38,900.00?

11 A. I don't recall it because I never said it.

12 Q. Okay. May I approach the witness, your Honor?

13 THE COURT: Yes.

14 Q. I show you a copy of the Rappahannock Record  
15 from February 27th, 1997, and ask you to look at the  
16 highlighted information and ask you if that refreshes your  
17 recollection about your statement at that meeting?

18 A. My recollection of the meeting is very clear,  
19 and I never said that. That is a misrepresentation of  
20 what happened.

21 Q. So, the report in the Record that you offered  
22 to sell the property for \$38,000.00 is not true?

23 A. That is not true.

24 Q. I see. Now, did you take any notes from that  
25 meeting?

1 A. Yes.

2 Q. Did you bring those notes with you?

3 A. I didn't bring those notes. They were rough  
4 notes.

5 Q. They were rough notes?

6 A. Yes.

7 Q. Well, the notes that you took at the  
8 Bennett's, were those rough notes?

9 A. They were rough notes and I transcribed them.

10 Q. But you didn't transcribe the notes from the  
11 hunt club meeting?

12 A. I kept them in the book and eventually I did.

13 Q. And you did not make any statement that the  
14 club would sell Regina to the people in Regina?

15 Do you want to see what you said, sir?

16 A. Mr. Bennett asked if the property, if the club  
17 would sell the property and I said I am not authorized to  
18 talk to you about this because I am not an officer of the  
19 club and I said, I can only act as messenger and take  
20 information back to the executive committee. They have to  
21 make the decisions after consideration. Then I said, are  
22 you offering to buy it? Do you want me to take that back  
23 to them? And he said, yes, I will pay \$22,000.00. And I  
24 said, well I don't see how that would be of interest to  
25 the executive committee because we have got a nice --

1 at the hunt club meeting, is that fair to say, that there  
2 were a number of people at the Wicomico Hunt Club that  
3 were opposed to the firing range in Regina?

4 A. That is an understatement. It appeared that  
5 the majority of the people who were there were opposed to  
6 it.

7 Q. Okay. Do you recall making the statement,  
8 "Regina was a poor area and that is the reason you all  
9 were going to put the firing range in"?

10 A. No. I never said that and I don't believe  
11 anyone else -- and there were eight of us from the club.  
12 So, no one said that, nothing about a poor area.

13 Q. Do you recall making the statement to the  
14 residents of Regina that you all were going to build a  
15 clubhouse that was nicer than any of their homes down  
16 there?

17 A. I don't recall it because I never said it.

18 I can tell you what happened: Someone I don't know  
19 said "Your clubhouse is going to be nothing but a shack  
20 with beer cans littered all along the place and all up and  
21 down the road"; and I said, "Wait a minute. First of  
22 all, there is no drinking on our range, no alcohol  
23 permitted at all. So, there aren't going to be any beer  
24 cans. Secondly, whatever we build, will be neat and we  
25 will keep it in good repair. In fact, we are looking at

1 already got this here. We are paying \$22,000.00. There  
2 is no advantage to us selling it.

3 Q. So, you did discuss selling the property at  
4 the hunt club meeting?

5 A. To that extent, I discussed it.

6 Q. All right.

7 A. And he said -- I said, no. Also, let's go  
8 back a moment because we had a very lively discussion in  
9 this meeting from people that live in the community who  
10 claim over and over that land in this area is worth at  
11 least the tax value, the tax value or more; that  
12 therefore, you are ruining our property values because you  
13 are paying under the market. And he said, "Do you know  
14 what the tax value is", and I said, "Yes. By coincidence I  
15 looked it up this afternoon at the courthouse on my way  
16 back home from talking to Bill George and Betty George  
17 about the forty-three acres on Field Trial Road, and the  
18 tax value as of this date was \$38,900.00." And that  
19 ended the conversation.

20 Q. Okay. And that was before Mr. Carter  
21 cut the timber up, wasn't it?

22 A. All I am saying, that I am not qualified to  
23 judge the value after the timber was gone. I just said  
24 that is what it said in the courthouse.

25 Q. Okay. You said there was a lively discussion

1 landscaping the front to try to help replace some of the  
2 trees that would be gone and make it look neat. I think  
3 you all would like it." And those are my words. That was  
4 the end of it.

5 MR. MARTIN: That is all the questions I have.  
6 We'd offer Exhibits 2, 3, 4 at this time, your  
7 Honor.

8 MR. NUNN: If I may be heard on that, your Honor.

9 THE COURT: Yes.

10 MR. NUNN: Your Honor, it looks to me like we  
11 have a letter and lots of other stuff. I don't have any  
12 problem with the plats; but the other stuff is hearsay.  
13 I mean, if Mr. Martin wants to get on the stand and  
14 testify, he may be able to identify, if it is relevant.

15 MR. MARTIN: Your Honor, I will be happy to get  
16 on the stand and testify and deliver it to Mr. Nunn and  
17 then I will call him as a witness that he got it,  
18 redeliver it to his office.

19 MR. NUNN: I have no problem with the plats; but  
20 I will, of course, abide by the Court's ruling.

21 THE COURT: I am going to admit it. The jury can  
22 give it such weight as it sees fit.

23 MR. NUNN: All right, your Honor.

24 (Defendant's Exhibit #2, letter with copy of  
25 plat, was received into evidence.)

1 (Defendant's Exhibit #3, plat of 53 acres, was  
2 received into evidence.)

3 (Defendant's Exhibit #4, Judgement Order, was  
4 received into evidence.)

5 REDIRECT EXAMINATION

6 BY MR. NUNN:

7 Q. Mr. Register, I believe you said that you, or  
8 it has been said, whether it was by you or another  
9 witness, that you conducted a survey of the area around  
10 the new range site, survey of the people who lived  
11 there and so forth?

12 A. Yes. I visited people on both sides of it.

13 Q. And you met with people on various occasions?

14 A. Right.

15 Q. What was your purpose in that, sir?

16 A. To get to know them and explain what we were  
17 trying to do and get their feeling for it, their attitude.

18 Q. And what was the feeling that you obtained  
19 from that? I take it you talked to a number of people?

20 A. I talked to a number of people.

21 Q. Were you the only one involved in that?

22 A. My wife went with me on several occasions.

23 Q. All right?

24 A. We talked to a number of people. We had  
25 people that lived right beside the field who welcomed it.

1 There were two married couple families who said we wanted  
2 to be a part of it. If you are facing the range site on  
3 the right side, I think it is Meadowlark Lane, we visited  
4 everybody except the young fellow who lived at the end in  
5 a trailer who wasn't there. They were very positive about  
6 it. They wanted to be members. We visited the lady who  
7 lived on the left side. She wanted to be a member. We  
8 visited Mrs. Pam Gurley and her husband and young son who  
9 had been -- it was claimed that he played in the woods and  
10 therefore, we would kill him if we shot in the woods.  
11 They said he doesn't play in the woods; we want to be  
12 members; we want our son to learn safe shooting.

13 Q. And, of course, your range would not be in the  
14 woods, would it?

15 A. No. There would be no woods there.

16 Q. All right. And your general purpose in going  
17 around and meeting with these people, what was that, sir?

18 A. To get a feeling -- well, their attitude of  
19 the range being that close, would they be hostile; would  
20 they welcome it; would they be neutral, and just to pass  
21 the information before it got disturbed by others who were  
22 automatically against it.

23 Q. Okay. And what was the response that you --  
24 the general response that you obtained?

25 A. Except for one visit, it was very positive.

1 Q. Thank you, sir.

2 MR. NUNN: Nothing further, your Honor.

3 THE COURT: Thank you for your testimony. You  
4 are not to leave. You may be recalled and you have to  
5 wait outside. And don't discuss your testimony with the  
6 other witnesses.

7 THE WITNESS: Thank you, Judge.

8 ETHEL ANN REGISTER

9 having been previously sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. NUNN:

12 Q. Mrs. Register, would you please state your  
13 name?

14 A. My name is Ethel Ann Register.

15 Q. And where do you live, ma'am?

16 A. I live in Lancaster County.

17 Q. With whom?

18 A. With my husband.

19 Q. That gentleman who just testified?

20 A. Yes, it is.

21 Q. And what is your occupation?

22 A. I am retired.

23 Q. Your former occupation?

24 A. I was the Clerk on the Board of Supervisors  
25 for Fairfax County, for nearly twenty years.



1 Q. Are you a member of the Rappahannock Pistol  
2 and Rifle Club?

3 A. No, I am not.

4 Q. All right. You are, of course -- I think I  
5 have already asked you, whether you are related to Marvin  
6 O. Register.

7 Do you know Catherine Bennett?

8 A. We are both members of the Rappahannock Garden  
9 Club.

10 Q. How long have you known Mrs. Bennett?

11 A. Four years, plus or minus a little.

12 Q. Okay. And that is as a member, a fellow  
13 member of the club? '

14 A. That's correct.

15 Q. That relationship's been cordial?

16 A. It was until sometime in '97. I don't  
17 remember the date exactly.

18 Q. What happened?

19 A. Well, the gentlemen in the Pistol and Rifle  
20 Club were very excited about finding this land and knowing  
21 I was a member of the Garden Club, asked me if I would  
22 consider helping them, doing this landscaping. And I  
23 said, sure, I'll look into some things. And Mrs. Bennett  
24 had told us at the Garden Club about her husband's buying,  
25 as I recall, one thousand Leeland Cypress trees to plant

1 all around Melrose Plantation. So, this was the kind of  
2 thing that would make a very nice screen for the Pistol  
3 and Rifle Club. So, I called her to find out where they  
4 had gotten them from and what the price might be. And I  
5 told her that I was looking into them for another  
6 organization and there was silence on the phone. And then  
7 she said, "Is your husband Marvin Register?" And I said,  
8 "Yes". And according to her, Rebecca George of the  
9 Wicomico Hunt Club had called her and asked her to go to  
10 the courthouse and see who it was who was trying to buy  
11 this land, this tract of land that is still in question  
12 here; and she's gone there and the only name that anybody  
13 could come up with or anybody that was looking at it was  
14 Marvin Register. So, they had given her his name.

15 Q. And what was her reaction when you told her  
16 that you were related to the gentleman, to  
17 Marvin Register?

18 A. Well, she started talking about how she hated  
19 guns. She felt that anybody who owned a gun automatically  
20 had to be a bad person and therefore, my husband had to be  
21 a bad person because he owned a gun. And she told me many  
22 stories on the telephone that day, and that I don't hardly  
23 know where to begin or where to start. Maybe you can lead  
24 me a little.

25 Q. Let's say, leave it. There were a number of

1 telephone calls?

2 A. Well, she called three days in a row and  
3 getting more and more excited all the time. And during  
4 that time, she told me that she and her husband had  
5 gone to look at this piece of land when it first came on  
6 the market; but they had declined to purchase it because  
7 it was not of interest to them since it was not contiguous  
8 to their property.

9 She also said that she was adamantly opposed to  
10 hunting with dogs and that her husband was working with  
11 members of the Virginia Legislature to get that outlawed  
12 in the State of Virginia, and that her husband was writing  
13 a noise ordinance that would have an effect in Lancaster  
14 County of eliminating hunting because of the noise.

15 Q. All right. Mrs. Register, did you have an  
16 occasion to be present on February 20th, 1997, during a  
17 conversation between your husband and Mrs. Bennett  
18 concerning the sale of the property to the club, and that  
19 would have been at the Wicomico Club Barn?

20 A. Yes. I was present there.

21 Q. Okay. Do you recall the conversation between  
22 Mrs. Bennett and your husband?

23 A. Yes, I do.

24 Q. What was that conversation?

25 A. Well, she asked my husband if the deadline for

1 purchasing the property was not the 24th, as I recall.  
 2 And he said, "Wrong. It's been extended." So, then she  
 3 asked if he would be interested or the club would  
 4 be interested in selling the piece of land, and he told  
 5 her that he was not an officer; all he could do was take  
 6 her request back to the club and see what they said. He  
 7 asked her how much she would be willing to pay and she  
 8 said, "twenty-two thousand", and he said, "well, I will  
 9 take that back to them because I don't think it is of any  
 10 interest because that is exactly what we are paying for  
 11 the land."

12 So then a conversation continued about the actual  
 13 value of the land and because this had come up with  
 14 someone else in the neighborhood when we were going  
 15 around, trying to make the neighborhood aware of what was  
 16 going on, he said that the land in the Regina area was  
 17 worth at least the tax value and the tax value on the land  
 18 was thirty-eight thousand something, as I recall. And the  
 19 conversation ended there pretty much, as I recall.

20 Q. No further conversation along those lines, I  
 21 take it?

22 A. Not along those lines.

23 Q. You said you accompanied your husband in the  
 24 survey of the area?

25 A. Yes, I did.

1 Q. That was before this meeting that you just  
2 spoke of?

3 A. Yes.

4 Q. How much before the meeting? Was it over a  
5 period of days or week or what?

6 A. I would say it was over a period of a  
7 week or so; quite a number of houses we went to and on our  
8 own initiative and on the request of some of the local  
9 officials.

10 Q. And your purpose in going to a meeting with  
11 these people was?

12 A. It was only to show them what we propose to do  
13 and to try to allay any fears that they may have, because  
14 of it.

15 Q. And what is the general response?

16 A. Actually, the meeting was billed as being  
17 between about three people, and when we got there, the  
18 barn was jam-packed full of people.

19 Q. We were speaking of the survey that you and  
20 your husband took?

21 A. Oh, you mean from the individual people?

22 Q. Yes, ma'am.

23 A. We were in most cases very well received, and  
24 I can only recall one family that we ran into who were  
25 adamantly opposed to it.

1 Q. Okay?

2 A. Lived further away than anyone else did,  
3 by the way.

4 Q. The one that was opposed to it?

5 A. Yes.

6 Q. Thank you, Ms. Register. I have no further  
7 questions.

8 THE COURT: Wait a minute. Mr. Martin may have  
9 to ask you some questions.

10 CROSS EXAMINATION

11 BY MR. MARTIN:

12 Q. Yes, ma'am. I get to ask you a few  
13 questions.

14 Ma'am, you said that the Wicomico Hunt Club barn was  
15 packed for the meeting?

16 A. Yes.

17 Q. And there were a lot of people there that were  
18 opposed to a firing range, weren't there?

19 A. People as they came in the door had a petition  
20 shoved in their face and told they had to sign it before  
21 they could come in.

22 Q. Okay. Was that Rebecca George and Joan  
23 Pittman that were shoving the petition?

24 A. Rebecca George was the one that I saw with the  
25 petition and trying to get everyone to sign it. The fact

1 that one of the local officials had requested that we  
2 go and meet with Rebecca George and see if we could calm  
3 her down because she had been on the phone constantly to  
4 the politician. And we tried to rearrange this meeting  
5 which was suppose to be between Rebecca George, Mrs.  
6 Gurley who had the young child that was in question. And  
7 by the way, they expressed a greet deal of displeasure  
8 that Rebecca George was using their son as a pawn.

9 Q. Okay?

10 A. And --

11 Q. So, Rebecca George was acting unreasonably  
12 also?

13 A. I believè that she was here. We were suppose  
14 to have a meeting between three people at her place and  
15 she kept postponing it and postponing it, during which  
16 time she had drawn all of these people together and had  
17 ample opportunity to work people up to a feverish pitch,  
18 which they seemed to be very angry, very hostile.

19 Q. Now, Mrs. Bennett wasn't working people up to  
20 a feverish pitch at this meeting, was she? It was other  
21 people?

22 A. Mrs. Bennett was at that meeting. I don't  
23 know what she had done prior to the meeting. I have no  
24 way of knowing that.

25 Q. You said that Rebecca George was unreasonable

1 and she was working people up to a feverish pitch?

2 A. I am talking about the people who filled the  
3 barn and who were very hostile and sarcastic in their  
4 remarks; and in some cases, very ugly.

5 Q. A lot of people from the hunt club  
6 itself were opposed to the range, weren't they?

7 A. I was not at that time in a position to  
8 differentiate who was, who came from where. I don't know  
9 the members of the hunt club. I know a name or two now  
10 and I know that they all live in Poquoson, and they have  
11 another hunt club down there as well.

12 Q. Rebecca George lives in Poquoson?

13 A. No. Rebbecca George doesn't live there. She  
14 lives out in the Regina area.

15 Q. Okay. Pittman's don't live in Poquoson, do  
16 they, Virgil and Joan Pittman, Judy Pittman?

17 A. I don't really know where they live.

18 Q. Okay. Now, you never saw Mr. Bennett do  
19 anything in this whole process, did you?

20 You never talked to him, did you?

21 A. I have seen Mr. Bennett and I can recognize  
22 him; but I don't know him. I have never really been  
23 introduced to him, and I know very little about him. He  
24 was there in the barn that night. He and Catherine both  
25 were relatively quiet except when she -- of course, by now



1 we know that the effort to purchase the land was already  
2 underway when this meeting was taking place there. So,  
3 there was no particular reason not to be quiet.

4 Q. But getting back to my question: You and Mr.  
5 Bennett have never spoken about the firing range, have  
6 you?

7 A. No.

8 Q. Only you and Mrs. Bennett?

9 A. Right.

10 Q. And you have never seen either Mr. and Mrs.  
11 Bennett ever speak to Mr. C F Carter, Junior, have you,  
12 the seller, the president of the company that was selling  
13 this land?

14 A. How would I?

15 Q. Well, my question is: Did you ever see them  
16 talk?

17 A. No.

18 Q. Okay. Did you ever see them meet?

19 A. No.

20 Q. Ma'am, you don't have any personal knowledge  
21 that either Mr. Bennett or Mrs. Bennett interfered with  
22 Mr. Carter and his company's sale of the land, do you?

23 A. I have seen papers that indicate that they  
24 did.

25 Q. Ma'am, you don't have any personal knowledge

1 that they interfered, do you?

2 A. No, I don't.

3 Q. Okay. And you live in -- excuse me -- the  
4 Hunton Subdivision, I believe?

5 A. Yes.

6 Q. That is over on the far side of the Corrotoman  
7 River, western branch?

8 A. It is on the western branch of the Corrotoman.

9 Q. Now, you told Mrs. Bennett in the phone call,  
10 didn't you, that you wouldn't want a firing range near  
11 your house?

12 A. I have not said that. Rumors were spread  
13 through our community that we deliberately went over to  
14 Regina to buy that property because we wouldn't want one  
15 in our neighborhood. And it is all a false statement. It  
16 is a lie.

17 Q. Well, ma'am, my question was: Did you tell  
18 Mrs. Bennett in a phone call that you wouldn't want a  
19 firing range near your house?

20 A. I did not.

21 Q. You didn't say that?

22 A. I did not.

23 Q. That is all I have. Thank you.

24 MR. NUNN: Just one follow-up question, your  
25 Honor.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

REDIRECT EXAMINATION

BY MR. NUNN:

Q. At the meeting on the 20th of February with this rather hostile group, you say it was Mrs. Bennett who initiated the conversation about the contract and the closing date of February 24th?

A. Yes. It was Mrs. Bennett.

Q. And she knew the date? She is the one that said the date, the closing date?

A. Right.

Q. No question in your mind about that?

A. None at all.

Q. So, she had knowledge of that contract?

A. Yes.

Q. At least as of the 24th?

A. That is correct.

Q. Thank you, ma'am.

THE COURT: Thank you for your testimony. You will have to wait outside. You may be recalled. Don't discuss your testimony with the other witnesses.

MR. NUNN: Mr. Edwards. Judge, could we take maybe a five minute break?

THE COURT: Sure. Let's take a ten minute recess.

(Jury leaves the courtroom.)

1 (Brief recess.)

2 THE COURT: All right. Ready for the jury?

3 MR. NUNN: Yes, sir.

4 THE COURT: Bring the jury.

5 (Jury present in the courtroom.)

6 All right. The jury is back.

7 MR. NUNN: Mr. Edwards.

8 THE COURT: Call Mr. Edwards

9 RAYMOND W. EDWARDS,

10 having been previously sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. NUNN:

13 Q. Mr. Edwards, would you state your name,  
14 please?

15 A. Raymond Wes Edwards.

16 Q. And your occupation?

17 A. Attorney.

18 Q. How long have you been an attorney?

19 A. Since 1966.

20 Q. And are you licensed by the Commonwealth of  
21 Virginia to practice law?

22 A. Yes, I am.

23 Q. Mr. Edwards, where was your law practice  
24 located in 1996 and 1997?

25 A. In Kilmarnock, Virginia.

1 Q. You were a sole practitioner?

2 A. Yes, I was.

3 Q. And do you have any employees?

4 A. One.

5 Q. And who?

6 A. A secretary.

7 Q. A secretary. Mr. Edwards, do you know  
8 Catherine Bennett and her husband, the Defendants in this  
9 case?

10 A. Yes, I do.

11 Q. Would you point them out, please?

12 A. Seated over there next to John Martin.

13 Q. All right'. Let the record reflect that the  
14 witness has identified the Defendants.

15 Do you know C F Carter, Junior?

16 A. Yes, I do.

17 Q. Are you familiar with C F Carter Lumber  
18 Company, Incorporated -- I am sorry -- C F Lumber Company,  
19 Incorporated?

20 A. Yes, I am.

21 Q. Did Mr. Carter have any connection with  
22 C F Lumber Company, Incorporated?

23 A. Yes, he did. It was a corporation and he was  
24 president of the corporation.

25 Q. And did you have any relationship with either

1 the corporation or Mr. Carter?

2 A. Yes, I did.

3 Q. What was that, sir?

4 A. He had purchased some properties or several  
5 properties in the Northern Neck of Virginia, and I was  
6 representing him in the purchase of those properties.

7 Q. And did you also -- were you also representing  
8 the corporation?

9 A. Yes, I was.

10 Q. So, both Mr. Carter and his corporation?

11 A. Yes.

12 Q. Did Mr. Carter hold any office in that  
13 corporation, C F Lumber?

14 A. He was the president, secretary and treasurer.

15 Q. He was everything?

16 A. Everything.

17 Q. Now, you say you have represented Mr. Carter  
18 and C F Lumber Company on real estate transactions?

19 A. Yes, sir.

20 Q. Approximately how many and over what period of  
21 time?

22 A. There were about fifteen pieces of property  
23 and they were purchased and I believe, five or six  
24 separate purchases. One sale might encompass three, four  
25 pieces of property.

1 Q. What kind of business was Mr. Carter and his  
2 company in?

3 A. The lumber company.

4 Q. Is it safe to say that Mr. Carter and his  
5 company were experienced in real estate purchases and  
6 sales?

7 A. Very experienced in the purchase of timberland  
8 type property.

9 Q. Now, did you represent Mr. Carter and his  
10 company, C F Lumber in connection with a contract to  
11 sell certain real estate to Rappahannock Pistol and  
12 Rifle Club?

13 A. Yes, I did.

14 Q. And that is during February and January,  
15 February of 1997?

16 A. Yes, right after we had purchased these  
17 properties.

18 Q. Would you briefly describe the property that  
19 was involved in the sale to Rappahannock Pistol and Rifle  
20 Club?

21 A. It was fifty-three acres, I believe, out on  
22 Route 615, near the Regina area.

23 Q. And that property, that same property had  
24 been sold to C F Lumber Company in December of '96?

25 A. Yes, sir, December of '96.

1 Q. Did you have any contact with anybody in the  
2 club concerning the property?

3 A. Yes, I did.

4 Q. And what was that, sir?

5 A. Marvin Register came to me and asked me if I  
6 knew anything about the property, and I relayed to him  
7 that I thought it was for sale, and I gave him Mr.  
8 Carter's address and number.

9 Q. And telephone number?

10 A. Yes.

11 Q. Now, drawing your attention to January 24th,  
12 on or about January 24th of 1997, did Mr. Carter sign a  
13 contract on behalf of the company to sell that property to  
14 Rappahannock Pistol and Rifle Club, the Plaintiff in this  
15 case?

16 A. Yes.

17 Q. Did you forward that contract to Rappahannock  
18 Pistol and Rifle Club for signature?

19 A. Yes, I did.

20 Q. Now, drawing your attention to on or about the  
21 3rd of February, 1997, about a week later, did you receive  
22 the contract back signed by Mr. Mabry, president of the  
23 club?

24 A. I received it back at a later day, yes.

25 Q. And was there a deposit that you received



1 along with the signed contract?

2 A. At the same time, I received a deposit for  
3 \$100.00.

4 Q. If I may see Exhibits 2 and 3, please.

5 Mr. Edwards, I show you Plaintiff's Exhibit 2 and  
6 ask if you recognize that, sir?

7 A. Yes, I do. This is the sales contract that  
8 was made up on this piece of property.

9 Q. And it is signed by whom?

10 A. It is signed by C F Carter as the president of  
11 C F Lumber Company and W. R. Mabry, president.

12 Q. Okay. And what was this contract for, just  
13 very simple?

14 A. Fifty-three acres on Route 615 in Lancaster  
15 County.

16 Q. And who were the parties?

17 A. The parties were -- which is one of the  
18 interesting things with it -- C F Carter Company -- I am  
19 sorry -- C F Lumber Company, Incorporated; but in the top  
20 of the agreement it does not have Rappahannock Pistol and  
21 Rifle Club, Incorporated on it.

22 Q. Now, I show you Exhibit, Plaintiff's Exhibit 4  
23 -- 3, and ask if you recognize that?

24 A. Yes, I do.

25 Q. What is that, sir?

1           A.     This is a check for \$100.00 made out on to the  
2 account of the Rappahannock Pistol and Rifle Club,  
3 Incorporated, and it is signed by William R. Mabry.

4           Q.     And did that accompany the contract when it  
5 was returned to you?

6           A.     Yes. I received both of these, or the  
7 originals.

8           Q.     All right. You can put those down. And was  
9 there any question in your mind who the parties of the  
10 contract were?

11          A.     I knew that Mr. Mabry was the president of it  
12 and it was handed to me by a representative of the Pistol  
13 and Rifle Club. When it came back, for the life of me, I  
14 can't remember exactly who that was.

15          Q.     No question who the parties were?

16          A.     No.

17          Q.     And had you discussed the contract with Mr.  
18 Carter?

19          A.     Yes, I have.

20          Q.     And was there any doubt in his mind who the  
21 parties were?

22          A.     No. He knew it was between the Pistol and  
23 Rifle Club and his lumber company.

24          Q.     And you had spoken to him as his attorney, is  
25 that correct?

1 A. That's correct.

2 Q. Did you draft this contract, Exhibit No. 2?

3 A. No, I didn't. As a matter of fact, that is  
4 one of the reasons that I talked to him about it and got  
5 into a conversation with him because I felt that it was a  
6 poorly drawn contract. There were some problems with it;  
7 same problems that we had with other contracts that he had  
8 that had been executed by him and another man. And I just  
9 wanted to try to get some problems straightened out.

10 Q. Of others, you were his attorney; that was  
11 your job?

12 A. Yes.

13 Q. Who did draft this contract?

14 A. I am not really sure. I am sure that is C F  
15 Carter's signature on it.

16 Q. Okay. Now, take a look at Plaintiff's Exhibit  
17 2 and tell the court and the jury whether there is  
18 anything unusual about that, other than the sloppy  
19 draftsmanship?

20 A. There is one paragraph in here which was  
21 different from any of the other contracts that he had  
22 done, and that was that it is written in, that the closing  
23 is going to be on February 24th and "time is of the  
24 essence". And this is a standard type of thing that can  
25 be placed in a contract, but rarely is.

1 Q. And what does "time is of the essence" mean?

2 A. That means that if the contract is not  
3 completed by the 24th of February, the parties have the  
4 option of declaring the contract null and void.

5 Q. Now, drawing your attention to the top of Page  
6 2 of that contract, do you see any further provisions  
7 concerning closing?

8 A. It has in the top of the Page 2 of this  
9 exhibit, it talks about settlement is to be made at the  
10 above vendors choice, on or before -- I am sorry --  
11 February 24th, 1997. And then it says "or as soon as  
12 title can be examined and papers prepared allowing  
13 reasonable time to correct any defects reported by title  
14 examiner."

15 Q. And what effect would that have on the "time  
16 is of the essence" clause?

17 A. Well, at the minimum, it would cause some  
18 confusion and I have taken the position that this would  
19 permit, if there was a problem with the title, that that  
20 should be a reason why "time is of the essence" probably  
21 wouldn't occur.

22 Q. All right, sir.

23 Drawing your attention to February 18th, 1997, this  
24 would have been after you received the contract, did you  
25 have any -- do you recall having a conference with Mr.

1 Carter concerning this contract, Exhibit Number 2?

2 A. Yes, I did.

3 Q. What was the substance of that conference with  
4 Mr. Carter?

5 A. The substance of the contract with Mr.  
6 Carter.

7 Q. Of the conference you had?

8 A. Of the conference that I had with Mr. Carter,  
9 was to talk to him about the papers that had to be signed  
10 to accompany -- for the closing of the contact. That  
11 would have been the deed, a Certificate of Incumbency, a  
12 Corporate Resolution, that C F Lumber Company wanted to  
13 sell this piece of property, and a one hundred  
14 twenty-three day letter which is a type of letter that we  
15 -- that the attorneys have filled out which says that  
16 there are no mechanic's liens pending against the  
17 property.

18 Q. These are standard closing documents.

19 A. Standard closing documents.

20 Q. Did C F Lumber Company have insurable title to  
21 the property at this time?

22 A. C F Lumber Company had a title to the property  
23 at that time.

24 Q. They had already purchased the property; was  
25 title insurance issued?

1           A.     But the title insurance had not been issued  
2 yet. There was a requirement for some documents that  
3 needed to be given to Mr. Carter from the Timberland  
4 Investment Group, Incorporated; the group that held this  
5 property that was sold to Mr. Carter.

6           Q.     So Timberland sold it to Carter in December  
7 and now Carter had contracted to sell it in February?

8           A.     In January or February to the Pistol and Rifle  
9 Club.

10          Q.     Okay. Could you tell the jury what you needed  
11 in order to prove that C F Lumber Company actually had an  
12 insurable title and could get title insurance?

13          A.     I needed a Certificate of Incumbency, a  
14 Corporate Resolution saying that Timberland Group,  
15 Incorporated, wanted to sell this piece of property. This  
16 is the officers' Certificate of Incumbency.

17          Q.     Well, let's say there were several documents.

18          A.     Right.

19          Q.     What is a Certificate of Incumbency?

20          A.     It says that these are the officers of the  
21 corporation at the present time.

22          Q.     And what is its effect on the validity of a  
23 deed?

24          A.     That is a difficult legal question because  
25 theoretically, it is thought that it is needed; but in

1 Virginia, just the signature of an officer is sufficient  
2 to do it.

3 Q. Where was Timberland from? What state were  
4 they incorporated in?

5 A. Timberland was a group of gentlemen down in  
6 Georgia who owned a lot of property up here. Well,  
7 actually from all over the Southeast. They weren't just  
8 in Georgia; but its headquarters are in Georgia.

9 Q. Is that where the documents were coming from?

10 A. Documents were coming out of Georgia.

11 Q. As of this date that you had a conference with  
12 Mr. Carter on the 18th, you had not yet received them?

13 A. We had not received these four documents.

14 Q. During that conference, did you have any  
15 discussion with Mr. Carter concerning the validity of the  
16 contract, Exhibit 2?

17 A. Yes, I did.

18 Q. Would you describe that discussion?

19 A. I discussed it with him as to the validity, or  
20 I discussed the contract with him, particularly the  
21 portion about "time is of the essence", and the fact that  
22 we did not have these documents yet and we are at 18 of  
23 February, and 24 February is the closing date.

24 And he asked me, well, something to the effect, does  
25 this mean that if I don't have those documents by the 24th

1 of February, that the contract is over. And I told him it  
2 was my opinion, no; particularly in that it was our  
3 responsibility to have, in a sense, our responsibility to  
4 have these documents, and if the other side didn't object  
5 to it, then the contract would still go on. But it was  
6 our responsibility to have had these documents.

7 Q. I see.

8 A. And we had been having a very difficult time  
9 getting it out of these people.

10 Q. I see. Was there any discussion -- you say  
11 that there was some discussion with Mr. Carter concerning  
12 the "time is of the essence" provision. Did you give him  
13 any advice in that regard?

14 A. Yes, I did. Just as I mentioned a second ago,  
15 that I felt that it was still a valid contract. And that  
16 he would be held to that if he took it to court; that was  
17 my opinion.

18 Q. Did you indicate to him that -- I take it then  
19 you did -- that he could not rely on the "time is of the  
20 essence" provision to get out of the contract?

21 A. That is my opinion.

22 Q. That is your legal opinion?

23 A. Yes. I felt that that call would have to come  
24 from the other side.

25 Q. So, it would be the option of the other side,



1 if closing did not occur because you couldn't get these  
2 documents?

3 A. I am not sure what you said.

4 It is difficult. In other words, I felt that if  
5 someone was going to exercise the "time is of the essence"  
6 doctrine on this particular contract, it would have to be  
7 the other side. He couldn't do it because we had stumbled  
8 in getting these papers.

9 Q. Because you didn't have the papers?

10 A. Because we didn't have the papers.

11 Q. It is your fault?

12 A. Our responsibility.

13 Q. Your responsibility, that is a better  
14 way of putting it. Okay.

15 All right. Were you satisfied at this point the  
16 Rappahannock Pistol and Rifle Club would honor  
17 its obligation under contract?

18 A. Yes, I was.

19 Q. Did you have any contact with Mr. Carter the  
20 following day, the 19th of February?

21 A. Yes, I did.

22 Q. And what was the nature of that contact with  
23 Mr. Carter?

24 A. He came in that day and signed a couple of  
25 documents and there was still a couple more that he was

1 going to have to sign later on.

2 (Owner's Affidavit was marked Plaintiff's  
3 Exhibit #6 for identification.)

4 Q. All right. I will show you Exhibit 6 for  
5 identification, and ask you if you can identify that  
6 document?

7 A. Yes. This is what we call one hundred  
8 twenty-three day letter. It is "Owner's Affidavit as to  
9 Mechanic's Lien and Possession of the Property", meaning  
10 yes, I own the property, and I am in possession of it.  
11 And that was signed on the 19th of February by Mr. Carter.

12 Q. All right. Admit, your Honor.

13 MR. MARTIN: No objection.

14 THE COURT: Admit as -- what is that number --  
15 Number 6 for the Plaintiff.

16 (Plaintiff's Exhibit #6, Owner's affidavit,  
17 received into evidence.)

18 MR. NUNN: May I show this to the jury, your  
19 Honor?

20 (Plaintiff's Exhibit #6 given to jury.)

21 CONTINUED EXAMINATION

22 BY MR. NUNN:

23 Q. And that is Mr. Carter's signature on there?

24 A. Yes, it is.

25 Q. Is this a routine closing document provided

1 by the seller in a real estate transaction?

2 A. Yes, it is.

3 Q. The word "closing" has been brought up several  
4 times. What is a "closing"?

5 A. Sometimes it is called the settlement on the  
6 contract or to close the contract; either way  
7 it is same thing. What you have to do is get the  
8 necessary documents together; most of all, the deed and  
9 the necessary consideration on the other side, the money.  
10 And the attorney who is closing it, brings all these  
11 things together and makes sure all the terms of the  
12 contract have been carried out and in effect, closes the  
13 contract by recording the deed at the courthouse.

14 Q. Okay. And documents, this document that the  
15 jury is looking at now, that is one of the steps in going  
16 towards closing?

17 A. Yes, it is.

18 Q. Now, drawing your attention to the next day,  
19 February the 20th, 1997, did you have any further contact  
20 with Mr. Carter?

21 A. Yes, I did. On the next day he came in and  
22 signed some more documents.

23 (Corporate Resolution and Certificate of  
24 Incumbency were marked Plaintiff's Exhibit #7  
25 for identification.)

1 Q. All right. I show you Exhibit Number 7 for  
2 identification and ask if you recognize that?

3 A. Yes. This is the -- it is actually two things  
4 in one document. The first thing is the Corporate  
5 Resolution saying that the said officer is a corporate  
6 officer authorized and directed to take all action  
7 necessary to effect the conveyance and sale of the said  
8 assets.

9 And the other part of it is a Certificate of  
10 Incumbency which is a thing that says the president,  
11 secretary and treasurer are C F Carter, Junior. And then  
12 it is signed by the secretary, C F Carter, Junior which is  
13 typically how it is done, and it is certified by him also.

14 Q. And these are sworn documents?

15 A. From the standard that he is swearing that  
16 these are done, yes.

17 Q. All right. And these are also -- that is also  
18 a routine document?

19 A. Yes, it is.

20 Q. It is necessary for closing?

21 A. Well, necessary creates another legal  
22 question. These documents were required by a title  
23 company to the company that insures the title, and they  
24 had to be turned into them. And they're turned into them  
25 so that they can see that these nitty-gritty things were

1 done, as far as the corporation was concerned.

2 Q. If you had a client who was purchasing  
3 property from a corporation, would you want one of those  
4 to show the authority of the corporation, to sign the  
5 deed?

6 A. It's a real safe thing to do.

7 Q. Conservative?

8 A. Conservative.

9 Q. All right. Admit that, your Honor.

10 MR. MARTIN: No objection.

11 THE COURT: Number 7.

12 ( Plaintiff's Exhibit #7, Corporate Resolution  
13 and Certificate of Incumbency were received  
14 into evidence.)

15 CONTINUED EXAMINATION

16 BY MR. NUNN:

17 Q. And you said that is Mr. Carter's signature at  
18 the bottom of the document?

19 A. Yes, it is.

20 Q. That is the Corporate Resolution. The  
21 Corporate Resolution essentially says what?

22 A. Go ahead and sell the property.

23 Q. This is the corporation telling the corporate  
24 officers, go ahead and do it?

25 A. Right.

1 (Deed, 2-20-97, was marked Plaintiff's Exhibit  
2 #8 for identification.)

3 Q. Mr. Edwards, I show you what has been  
4 marked Exhibit 8 for identification, and ask if you  
5 recognize that?

6 A. Yes, I do.

7 Q. What is it, sir?

8 A. This is a deed for the property, fifty-three  
9 acres, between C F Lumber Company, Incorporated and  
10 Rappahannock Pistol and Rifle Club, Incorporated.

11 Q. See that?

12 A. Yes.

13 Q. The effect of that document would be what,  
14 sir?

15 A. The effect of this document is for the  
16 corporation to turn -- excuse me -- to turn the property  
17 over to the Pistol and Rifle Club, and it was signed by  
18 Mr. Carter on the 20th of February, 1997.

19 Q. In your office?

20 A. In my office.

21 Q. And that's been acknowledged by a Notary  
22 Public?

23 A. Yes, it was.

24 Q. Submit that. Admit that, your Honor.

25 THE COURT: Plaintiff's Number 8.

1 (Plaintiff's Exhibit #8, Deed dated 2-20-97,  
2 was received into evidence.)

3 MR. NUNN: While he is handing the document to  
4 the jury, I notice and I don't want to forget it, this has  
5 not been admitted.

6 THE COURT: Plaintiff's Number 1 has not been  
7 marked.

8 MR. NUNN: No, sir.

9 CONTINUED EXAMINATION

10 BY MR. NUNN:

11 Q. Now, just to recap it, you said the purpose of  
12 the Corporate Resolution is the authority of the  
13 corporation to sell the property, the real estate?

14 A. Yes, sir.

15 Q. And did there come a time when you forwarded  
16 any of the closing documents to the attorney for the  
17 Rappahannock Pistol and Rifle Club?

18 A. Yes, I did. I believe it was the next day. I  
19 forwarded them to you, Mr. Nunn.

20 Q. To me?

21 A. And with the understanding that they would be  
22 held in escrow.

23 Q. And first of all, which documents did you  
24 send?

25 A. The deed.

1 Q. The deed?

2 A. And I sent the deed, the one hundred twenty-  
3 three day letter, the Certificate of Incumbency, and --

4 Q. Corporate Resolution?

5 A. Corporate Resolution, which was three  
6 documents.

7 Q. Yes, sir. The Corporate Resolution and the  
8 Certificate of Incumbency is all in one?

9 A. All in one.

10 Q. That was Exhibit Number 7.

11 Now, you said that that was forwarded with  
12 instructions to be held in escrow, the documents were to  
13 be held in escrow. What does that mean, sir?

14 A. To be held in escrow means to the other  
15 attorney that you hold onto these documents and when all  
16 the necessary papers and things have been done, that you  
17 can go ahead, you can release it and go ahead and close  
18 the transaction.

19 Q. And record the deed?

20 A. And record the deed.

21 Q. All right. Why did you include those  
22 instructions, "to be held in escrow pending closing"?

23 A. Because at this point, we did not have a title  
24 certificate from Chicago Title Company because we were  
25 still lacking, I think, three or four documents on that



1 particular day, and we didn't receive those documents. I  
2 saw it on a fax on the 3rd of March and got a hard copy of  
3 it on the 6th of March by UPS.

4 Q. Now, these were documents that you, that your  
5 clients were responsible for obtaining?

6 A. Right. In order for us to get the title  
7 insurance to show that we had an insurable title.

8 Q. When the property, the same property was  
9 conveyed from Timberland to C F Lumber in December of '96,  
10 you represented C F Lumber, is that correct?

11 A. That is correct.

12 Q. And did you obtain a title insurance binder?

13 A. Before we closed or had settlement on the  
14 property from the Timberland Investment Group, I had  
15 received a title binder which is a preliminary document  
16 that the title company puts out which says we will insure  
17 this title, and sometimes they put in there, if you do A,  
18 B, C, D, or something of that nature. They reviewed the  
19 package search that I had previously done and they had  
20 reviewed that and they said, well, we still want certain  
21 documents and in this case, they did say that they wanted  
22 certain documents.

23 Q. Okay. So, a commitment to insure the title to  
24 the property on certain conditions, satisfy certain  
25 conditions?

1 particular day, and we didn't receive those documents. I  
2 saw it on a fax on the 3rd of March and got a hard copy of  
3 it on the 6th of March by UPS.

4 Q. Now, these were documents that you, that your  
5 clients were responsible for obtaining?

6 A. Right. In order for us to get the title  
7 insurance to show that we had an insurable title.

8 Q. When the property, the same property was  
9 conveyed from Timberland to C F Lumber in December of '96,  
10 you represented C F Lumber, is that correct?

11 A. That is correct.

12 Q. And did you obtain a title insurance binder?

13 A. Before we closed or had settlement on the  
14 property from the Timberland Investment Group, I had  
15 received a title binder which is a preliminary document  
16 that the title company puts out which says we will insure  
17 this title, and sometimes they put in there, if you do A,  
18 B, C, D, or something of that nature. They reviewed the  
19 package search that I had previously done and they had  
20 reviewed that and they said, well, we still want certain  
21 documents and in this case, they did say that they wanted  
22 certain documents.

23 Q. Okay. So, a commitment to insure the title to  
24 the property on certain conditions, satisfy certain  
25 conditions?

1 A. Yes.

2 (Title Commitment, 11-22-96, was marked  
3 Plaintiff's Exhibit #9 for identification.)

4 Q. All right. I show you Exhibit Number 9 for  
5 identification and ask if you recognize that.

6 A. Yes. This is the title commitment that was  
7 given to me by the Chicago Title Company.

8 Q. Okay?

9 A. Dated as of November 22nd, 1996.

10 MR. NUNN: Move to admit, your Honor.

11 MR. MARTIN: No objection.

12 THE COURT: All right. Admitted Plaintiff's  
13 Number 9.

14 (Plaintiff's Exhibit #9, Title Commitment  
15 dated 11-22-96, was received into evidence.)

16 CONTINUED EXAMINATION

17 BY MR. NUNN:

18 Q. Turning your attention to Exhibit 9, what  
19 conditions did Chicago Title Insurance Company require to  
20 be met before issuing a title insurance policy?

21 A. In Schedule B, Section 1, Paragraph (g)(1), it  
22 says, the Company, meaning Chicago Title must be furnished  
23 the following with regard to Timberland Investment Group,  
24 Incorporated: A -- excuse me -- (a) Certificate of Good  
25 Standing in its State of Incorporation, which was Georgia,

1 and the Commonwealth of Virginia; (b) Corporate  
2 Resolution authorizing the transaction contemplated in  
3 this commitment; and (c) Certificate of Incumbency.

4 Q. Okay. Would you go ahead and highlight those  
5 three conditions.

6 Okay. Judge, I think we might be able to pass it to  
7 the jury now, just for a quick look.

8 (Plaintiff's Exhibit #9 handed to the jury.)

9 Did you obtain a title insurance policy for C F  
10 Lumber Company insuring their title to the property?

11 A. Yes, I did.

12 Q. Was that before or after February 24th?

13 A. After February the 24th.

14 Q. Why didn't you receive it beforehand, if you  
15 know?

16 A. The reason I didn't receive it before February  
17 24th was because I still had not received a Certificate of  
18 Incumbency from them and I was really beating the bushes  
19 trying to get it out of Georgia and finally was able to  
20 contact an attorney for the organization down there who  
21 was able to get it out for me.

22 Q. Did C F Lumber close on this contract on  
23 February 24th, 1997?

24 A. No, they did not.

25 Q. And again, why not?

1           A.     Did not have the Certificate of Incumbency at  
2     this time.

3           Q.     Now, drawing your attention to February 26th,  
4     1997, two days after the closing was originally scheduled,  
5     did you receive any telephone messages from Mr. Carter?

6           A.     On February the 26th, yes, I did.  
7                   (Message from C F Carter to Mr. Edwards was  
8                   marked Plaintiff's Exhibit #10 for  
9                   identification.)

10          Q.     Mr. Edwards, I show you Plaintiff's Exhibit 10  
11     for identification and ask if you can identify that, if  
12     that is the message you received?

13          A.     Yes, it is. It is a message on the 26th of  
14     February, '97, 8:30 in the morning. And it was taken from  
15     a telephone call with Mr. Carter informing me that he  
16     wants to talk to me; call me up later on that day.

17          MR. MARTIN:     No objection.

18          THE COURT:     Admitted. It will be Number Ten.

19          Q.     I am going to ask you to read this to the  
20     jury; but I note you have got a cold, Mr. Edwards. I  
21     should sort of keep my distance from you today. But I  
22     want to make sure everybody, the jury, can hear you okay.  
23     Fine?

24          A.     It is a message dated 2-26-97, 8:30 in the  
25     morning. It is for R W E, who is me, from C F Carter and

1 the message says: "Doesn't want to sell the property to  
2 Pistol and Rifle Club if at all possible. Knows how  
3 aggravating it could be. I'll talk to you later. Will  
4 get back to you." And that was the message I got that  
5 morning.

6 Q. All right. Would you hand it to the Deputy so  
7 the jury can get it.

8 Do you know what he meant when he said --

9 MR. MARTIN: Objection.

10 MR. NUNN: -- "Knows how aggravating"--

11 MR. MARTIN: Objection, your Honor, calls for  
12 speculation.

13 MR. NUNN: Not necessarily.

14 MR. MARTIN: Phone message.

15 THE COURT: Let's wait and see. Sustain the  
16 objection.

17 MR. NUNN: Do you know what Mr. Carter meant when  
18 he said it could be aggravating?

19 MR. MARTIN: Objection, your Honor. I just made  
20 that objection,

21 THE COURT: Sustained.

22 CONTINUED EXAMINATION

23 BY MR. NUNN:

24 Q. Did you return Mr. Carter's call?

25 A. Yes, I did.

1 Q. And would you describe the conversation?

2 A. The conversation was by Mr. Carter stating  
3 that he did not want to sell the property to the Pistol  
4 and Rifle Club; that it was a very aggravating situation;  
5 that he had received several phone calls and he didn't  
6 like these kinds of phone calls. He mentioned to me, you  
7 know, this sale has been all over the newspaper and he was  
8 concerned as a business -- as most businessmen, that they  
9 don't want a large -- I believe and from what he told me  
10 -- a big public disclosure of all his big activities.

11 Q. And when he said he received a number of  
12 telephone calls, did he say from whom?

13 A. He said from "a bunch of women", is how he  
14 phrased it to me.

15 Q. Okay. Did you advise him, in accordance with  
16 your professional opinion concerning the validity of that  
17 contract?

18 A. Yes, I did. I went over the -- he mentioned  
19 "time is of the essence" problem again and I went over  
20 that with him and told him that, in my opinion, it was  
21 still a legal valid contract and that, you know, he would  
22 be held accountable for it to some point.

23 Q. And that was the end of the conversation?

24 A. Basically. Well, and I gave him some advice.  
25 My advice was to go through with the contract with the

1 Rifle and Pistol Club.

2 Q. Okay. Now, drawing your attention to Friday,  
3 February 28th, 1997, did you have any further contact with  
4 Mr. Carter?

5 A. Yes, I did.

6 Q. Would you describe it, please?

7 A. He came into my office on Friday the 28th and  
8 he was upset, is the best way I can say it, he was kind of  
9 excited; I mean, not, you know, not losing control or  
10 anything like that; but he was excited and he wanted to  
11 talk to me about not going through with this contract.

12 And I told him, I said: "Mr. Carter, in my opinion,  
13 it is a legal and valid contract, and if you don't go  
14 through with it, then you are subject to someone taking an  
15 action like the Rifle and Pistol Club to sue you over this  
16 thing. You are subject to having some legal action  
17 taken." And we talked a little while and he left  
18 there, and at this point I was under the opinion that he  
19 was still going to go through with the contract with the  
20 Pistol and Rifle Club.

21 Q. All right. Did you have any further contact  
22 with him that day?

23 A. Yes, I did.

24 Q. Describe that, please?

25 A. I had to be up here to the courthouse. I had



1 some cases here in the morning, and when I got back from  
2 the courthouse, Chris Stamm, another attorney who owned  
3 the building where I had an office at that time, when I  
4 walked in, he followed me up the stairs, up to my office.  
5 And I said, "What can I do for you, Chris?" And so he  
6 started talking to me and he said that C F Carter is going  
7 to want to close on this piece of property today. And I  
8 said, I says, "Well, that that surprises me because when I  
9 was talking to him earlier this morning, I thought we were  
10 going to hold off and close on the one with the Pistol and  
11 Rifle Club. And he said, "Well, he told me to close it  
12 this afternoon."

13 Q. Close it to whom?

14 A. Uh?

15 Q. To whom?

16 A. To the Bennett's. And I said, "Well, I am  
17 going to go call him up and talk to him. So, I called up  
18 Mr. Carter and talked to him, went through basically the  
19 same thing I had said to him earlier before. And at that  
20 point he said, "I don't care. I am going to have it  
21 closed on this afternoon, and, you know, do what you got  
22 to do." And at that time, I said "Yes, sir." I had  
23 already told him that he could have troubles and he  
24 evaluated all that and said to me, "Go ahead and close  
25 it." And I said, "Yes, sir. I will do that." And at

1 that time, I went down to Mr. Stamm and told him, "Yes, he  
2 has said that he wants to close this afternoon, and  
3 I will do what I can to help you." I said, "but Chris, I  
4 have got to go back up to the courthouse here in a few  
5 minutes and I don't have a deed prepared for the " --

6 Q. Let me just hold you up and ask you these  
7 questions and then we can get into what happened down in  
8 Mr. Stamm's office.

9 The bottom line is: The property was sold to the  
10 Bennett's on that day?

11 A. Later that day, yes.

12 Q. Later that afternoon.

13 Mr. Martin, is there a stipulation that they paid  
14 \$26,000.00 for it?

15 MR. MARTIN: Yes.

16 THE COURT: So stipulated.

17 Q. \$26,000.00 was the purchase price. Did you  
18 conduct that closing?

19 A. I did not.

20 Q. Did you prepare the deed?

21 A. I did not.

22 Q. All right. Tell us if -- you were starting to  
23 give us a scenario?

24 A. And so, I was talking to Mr. Stamm and I said,  
25 "Chris," I said, "I will tell you the truth: I got to get

1 back up to the courthouse. I got another case coming here  
2 in fifteen, twenty minutes. I don't have time to prepare  
3 a deed for you." And he says, " That is okay. I will  
4 prepare the deed and take care of that part of it." And  
5 we discussed what had to be done. He was going to do the  
6 closing, which typically the defendant or the purchaser's  
7 attorney does the closing.

8 Q. Who was Mr. Stamm representing?

9 A. He was representing the Bennett's.

10 Q. Okay?

11 A. At that time.

12 Q. And?

13 A. And there were some things that had to  
14 be paid off by Mr. Carter. I said, "If you will give me a  
15 net check, I will pay those things off and take care of  
16 that." And that was the agreement we had.

17 Q. And had he told you that he had prepared most  
18 everything for the closing?

19 A. He said, he had it all ready, which also kind  
20 of surprised me.

21 Q. You had just found out?

22 A. That is when I found out, yeah.

23 Q. Why did that surprise you?

24 A. Well, searching a title and getting all the  
25 papers together is not something that is normally done in

1 two or three hours. And, well, but that was his bag, how  
2 he did it.

3 Q. All right. Did there come a time when you  
4 received final documents required, by Chicago Title  
5 Insurance Company?

6 A. Yes, I did. I saw it on the 3rd on the fax  
7 and I got the hard copy of it on the 6th of March, when I  
8 received it by U P S.

9 Q. This would be Eleven, your Honor.

10 (Certificate of Incumbency from Chicago  
11 Title was marked Plaintiff's Exhibit  
12 #11, for identification.)

13 I show you Plaintiff's Exhibit 11 for identification  
14 and ask you if you recognize that. And if so, how?

15 A. I recognize it and I recognize it because it's  
16 been made into a Certified True Copy and it is signed  
17 by my wife who was my secretary, stating that she did this  
18 on the 10th of March, '97. And also, I recognize the  
19 contents of it as a Certificate of Incumbency.

20 MR. NUNN : Move to admit, your Honor.

21 MR. MARTIN: No objection.

22 THE COURT: Admitted.

23 (Plaintiff's Exhibit #11, Certificate of Title  
24 from Chicago Title, was received into  
25 evidence.)

CONTINUED EXAMINATION

BY MR. NUNN:

Q. You say you received a fax of that on the 3rd of March?

A. Yes, sir.

Q. The property had already been sold to the Bennett's at that point?

A. Yes, it had.

Q. And then you got the hard copy on the, you say, the 6th?

A. 6th.

Q. And then you sent it on down to the Chicago Title Agent in Kilmarnock?

A. Yes, I did.

Q. Who was that?

A. Ms. Carol Johnson.

Q. When you received that Certificate of Incumbency, the last document that was needed, could you have closed the sale between C F Lumber Company and the Pistol and Rifle Club?

A. Yes, I could have.

Q. But it had already been sold?

A. It had already been sold.

Q. Mr. Edwards, did you have any contact with Mr. or Mrs. Bennett during February of 1997?

1 A. Yes, I did.

2 Q. Would you, drawing your attention to February  
3 the 18th, I believe you have already testified that that  
4 is one of the days that you talked to Mr. Carter. Did you  
5 have any contact with Mrs. Bennett on that day?

6 A. Yes, I did.

7 Q. Would you describe that contact?

8 A. We had received a -- or my secretary received  
9 a phone call stating that Mrs. Bennett wanted to have an  
10 appointment with me, and so she asked me what it was --  
11 did I want to give her an appointment, and I said sure.  
12 I had known Mrs. Bennett socially before that, never  
13 professionally, as such. And so, yeah, and I said "What  
14 is it for." And she said, "I don't know." And I said, "I  
15 don't know either, but give her an appointment", and she  
16 gave her one for the morning of the 18th of February, '97.

17 Q. And did you see her on that morning?

18 A. Yes, I did.

19 Q. And what was the substance of the conversation  
20 between the two of you?

21 This was in your office, correct?

22 A. It was in my office. She came up. I was on  
23 the second floor. She came upstairs in my office and  
24 Chris Stamm was with her. And Chris opened it up by  
25 saying something, we want to discuss with you the

1 sale of the piece of property to the Pistol and Rifle Club  
2 or words to that effect. And I said, "Okay. We'll  
3 talk." And he said, "Well, Mrs. Bennett is interested in  
4 buying that piece of property." And I said, "Well, well".  
5 I said, "There is one problem and that is that there is a  
6 valid contract on this piece of property with another  
7 organization." And he said something to the effect,  
8 "well, we know." He said something to the effect that we  
9 know that.

10 And then Mrs. Bennett started talking to us and she  
11 was telling -- she told how she needed to have that piece  
12 of property. And Mrs. Bennett is a very vivacious and  
13 nice person and she was talking and she was telling me how  
14 she had to have this piece of property because the  
15 shooting on that piece of property would bother her yews  
16 when they were having lambs and how the rifle fire would  
17 knock the plaster off of the walls. And I was listening  
18 to her and I kept letting her talk and, you know, I had no  
19 reason to cut her off or anything. And she just said that  
20 she really had to have that piece of property.

21 And when the conversation was all over, I said,  
22 "Well, Mrs. Bennett, I certainly understand your position;  
23 but my position is that there is a valid contract out on  
24 that piece of property and that is where, as far as I can  
25 see now under law, that is where it is gone." And that

1 was basically all that she said. She may have said, well,  
2 I have got a back-up contract or something to that  
3 nature.

4 But Chris Stamm took over then and said, "You know  
5 we have a back-up contract on this and we'd like you to  
6 consider that." And I said, "Well, if you have a back-up  
7 contract on it, that's okay by me. If the time comes that  
8 a back-up contract would be appropriate," I said, "I  
9 would submit it to Mr. Carter for his consideration." And  
10 that was basically the conversation at this time.

11 Q. What is a back-up offer or a back-up contract?

12 A. It is a -- actually, it is an offer, an offer  
13 made by a party who wants to buy the same piece of  
14 property that's already been placed under contract with  
15 another party. And it is considered as a back-up. So,  
16 that if the other deal falls through, then this contract  
17 can take the place of that contract. And it is done in  
18 the real estate circles. I won't say all the time. It  
19 depends on the market. If there is not very much property  
20 on the market, you will see a lot more back-up contracts.  
21 If the market has got a lot of property, you never see a  
22 back-up contract, hardly ever. And so, I knew what it  
23 was. I knew what they were talking about. And Chris  
24 says, "It is right downstairs any time you want to look  
25 at it." And I said, "Okay, if I need to look at it, I



1 will look at it."

2 Q. He did not bring any contract up to you or any  
3 offer?

4 A. That day, he kind of waived a piece of paper  
5 in front of my hands and I happened to assume that was the  
6 back-up contract.

7 Q. But you don't know?

8 A. I don't know.

9 Q. Okay. And you say Mrs. Bennett described her  
10 fears if the range were constructed on this fifty-three  
11 acre parcel. Were her fears reasonable?

12 A. Well, I was in the Marine Corp for thirty-one  
13 years and I have seen a lot of rifles fired and I have run  
14 ranges, both rifle fire and artillery fire, all these  
15 things. I investigated what they call range incidences  
16 such as this was involved in. I was a lawyer at this time  
17 in some litigation in North Carolina concerning damage  
18 done by ranges. And when she told me this, I just kind of  
19 put in my computer with a "ha, ha" next to it because the  
20 rifles were going to be fired about a mile and a half away  
21 from there and I didn't think, in my own personal  
22 experience, I didn't think that the rifle fire would  
23 bother the yews, yews who were having lambs.

24 And as far as rifle fire knocking down the plaster  
25 off the walls and I had seen plaster that had been knocked

1 off the wall by an eight inch howitzer, I couldn't  
2 comprehend that the rifle fire was going to knock the  
3 plaster off those walls. So, I just put it in my computer  
4 with a "ha, ha," next to it.

5 Q. I take it that you did not find these to be  
6 reasonable fears?

7 A. To me, they weren't.

8 Q. Drawing your attention to almost a week later,  
9 the 24th of February, 1997, did you have any further  
10 contact with either Mr. or Mrs. Bennett?

11 A. Once again, Mrs. Bennett and I -- she called  
12 again -- I am sorry -- she did not call. She called, but  
13 she left a message, and the message was requesting  
14 basically, what was the status of that contract, that type  
15 of thing, you know, we have a back-up contract on this.  
16 And it was the kind of message when you get from somebody,  
17 you don't grab ahold of the phone and call them back. It  
18 just wasn't -- it was not a reliable message. It was more  
19 of an information message than anything.

20 Q. And had you seen the so called "contract" that  
21 she had referred to?

22 A. I had not seen the back-up contract at that  
23 point.

24 Q. Okay. Drawing your attention to two days  
25 later, February 26th, 1997, did you receive a telephone

1 message from Mr. Carter? I think you have already  
2 testified that you had?

3 A. Yes, I had.

4 Q. That was Exhibit Number Ten.

5 MR. MARTIN: Ten.

6 MR. NUNN: Thank you.

7 And you advised Mr. Carter that he still had a  
8 contract?

9 MR. MARTIN: Objection. He is leading the  
10 witness.

11 MR. NUNN: I am sorry. He testified.

12 THE COURT: You already asked the question.

13 MR. NUNN: What, if anything, did you advise Mr.  
14 Carter?

15 MR. MARTIN: It's been asked and answered.

16 THE COURT: Move on to the next question.

17 CONTINUED EXAMINATION

18 BY MR. NUNN:

19 Q. All right. Drawing your attention to February  
20 28th, 1997, or let me show you some documents first.

21 Indulge me just a moment, your Honor.

22 (Telephone message from Mrs. Bennett, was  
23 marked Plaintiff's Exhibit #12 for  
24 identification.)

25 Mr. Edwards, you said that there was a telephone

1 message on the 24th -- before we leave topics -- is this a  
2 copy of that? Is this a true copy of that message from  
3 Mrs. Bennett?

4 A. Yes, it is. It is one given to me by my wife.  
5 She took the message.

6 MR. MARTIN: Is that Exhibit 12?

7 MR. NUNN: That would be twelve.

8 (Plaintiff's Exhibit #12, Telephone message  
9 from Mrs. Bennett was received into evidence.)

10

11 (Contract 2-24-97 by R. Bennett and CF Carter,  
12 was marked Plaintiff's Exhibit #13 for  
13 identification.)

14 Q. I show you Exhibit Number 13 for  
15 identification and ask you if you recognize that?

16 A. Yes, I do. It's a contract for the purchase  
17 of unimproved property. It is dated as being made on the  
18 24th of February, 1997, and was signed by Robert  
19 T. Bennett on the 24th of February, '97; and the seller,  
20 Mr. Carter, accepted the offer on the 28th of February,  
21 1997.

22 (Enlargement of Plaintiff's Exhibit #13 was  
23 marked Plaintiff's Exhibit #13A for  
24 identification.)

25 Q. Okay. Well, "A", is this an accurate

1 enlargement of a portion of the first page of that  
2 contract?

3 A. Yes, it is a portion of it.

4 MR. NUNN: Twelve and 12A.

5 THE COURT: Thirteen and 13A.

6 MR. NUNN: Thirteen and 13A. Thank you.

7 (Plaintiff's Exhibits #13 & #13A, Contract and  
8 enlargement were received into evidence.)  
9

10 (Check in the amount of \$6,000.00 from Robert  
11 Bennett, was marked Plaintiff's Exhibit #14  
12 for identification.)

13 Q. And I show you what's been marked Plaintiff's  
14 Exhibit 14 for identification, and ask if you recognize  
15 that, sir?

16 A. Yes, I do. It was a check made out to me for  
17 \$6,000.00, dated February the 17th, '97 and signed  
18 by Robert Bennett.

19 ( Deed, Carter to Bennett, 2-28-97 was marked  
20 Plaintiff's Exhibit # 15 for identification.)

21 Q. I show you what's been marked 15 for  
22 identification and ask if you recognize that?

23 A. Yes, I do. This was the deed signed by Mr.  
24 Carter conveying the property from C F Lumber Company,  
25 Incorporated to Robert T. Bennett and Catherine

1 A. Bennett, and that was signed on the 28th of November,  
2 1997.

3 Q. Twenty-eighth of?

4 A. I am sorry, 28th of February, 1997.

5 THE COURT: Okay. Plaintiff's Number 15.

6 (Plaintiff's Exhibit #15, Deed, was received  
7 into evidence.)

8  
9 (Letter to Edwards from Bennett was marked  
10 Plaintiff's Exhibit #16 for identification.)

11 Q. And finally, I show you what's been marked  
12 Plaintiff's Exhibit 16 for identification and ask you what  
13 that is, sir; if you recognize it?

14 A. I recognize it as a letter sent to me, as an  
15 attorney, by Robert T. Bennett and Catherine A. Bennett.  
16 It is dated February 17, 1997, and it conveys the check  
17 for \$6,000.00 that we just mentioned for the purchase of  
18 the fifty-three acres, and a copy of the Contract for  
19 Purchase, dated February 25th, 1997, for an agreed total  
20 purchase price of \$26,000.00, and it says that it was  
21 negotiated by Linwood E. Turner with settlement on  
22 February 27th, 1997 -- February 25th, 1997, in your  
23 office.

24 THE COURT: Number 16 is admitted.

25 (Plaintiff's Exhibit # 16, letter, was

1 received into evidence.)

2 Q. Now, drawing your attention to Plaintiff's  
3 Exhibit 13, the contract between the Bennett's and C F  
4 Lumber, when did you first see that, sir?

5 A. On the 28th of February, 1997, when it was  
6 shown to me by Mr. Stamm.

7 Q. Did you have anything to do with drafting that  
8 contract?

9 A. Nothing.

10 Q. And Exhibit Number 14, the deed conveying the  
11 property from C F Lumber to Mr. and Mrs. Bennett, when did  
12 you first see that exhibit?

13 A. I did not see it the morning of the 28th, and  
14 I don't think I saw it until the following Monday which  
15 was the 3rd of March. And then Mr. Stamm relayed to me  
16 that he had completed the sale of the fifty-three acres to  
17 the Bennett's.

18 Q. So, you did not see it on that day, the deed?

19 A. No. I did not see the deed on the 28th.

20 Q. Okay. Would you pass the two documents to the  
21 deputy, please.

22 Now, just the deed. I have got another one that will  
23 go along with the contract, if we could get the contract  
24 back. Okay.

25 Now, Plaintiff's Exhibit 14, the \$6,000.00 check,

1 when did you first see that, sir?

2 A. On the morning of the 28th when Mr. Stamm and  
3 I were working out the final details on how he was going  
4 to close this. This check came up and it was to me and  
5 that was the first time I had ever seen it at that point.  
6 But I knew what it was for because it says "deposit CF  
7 Carter property, Route 615." That was the \$6,000.00 that  
8 was to go in towards coming up with the purchase price of  
9 the property.

10 So, at this time, I endorsed it to P.C. Stamm,  
11 Junior as the attorney for C F Lumber Company,  
12 Incorporated and gave it to him.

13 Q. And that was on the 28th of February, that  
14 Friday?

15 A. Yes.

16 Q. And why did you endorse that check and give it  
17 to Mr. Stamm?

18 A. . Because by this time, I had talked to Mr.  
19 Carter who told me he was going to sell the property to  
20 the Bennett's, and that Mr. Stamm, of course was handling  
21 the closing for them. So, I didn't -- it was the only  
22 thing I could do, endorse the check and give it to him.

23 Q. Just put that up on the ledge there.

24 And you said that you did not see the deed, which  
25 the jury is looking at right now, that day?



1 A. No. I did not.

2 Q. Did you have anything to do with the drafting  
3 or preparation of that deed?

4 A. No. I did not. Mr. Stamm had told me he was  
5 going to do that.

6 Q. I want to direct your attention to the letter,  
7 I believe that is Exhibit 15 -- Exhibit 16, that you are  
8 looking at right now. Have you ever seen that before,  
9 outside of this courtroom?

10 A. No, not outside of this courtroom.

11 Q. Now, I notice that at the bottom, a copy was  
12 to be forwarded to you. Did you get a copy or no, the  
13 letter itself was to you?

14 A. The letter was to me.

15 Q. Yes, you never saw that letter?

16 A. No. Certainly not prior to the transaction  
17 and not until much later.

18 Q. The check that we referred to, you did see  
19 that, though?

20 A. Yes.

21 Q. And that is the one -- that apparently is the  
22 one referred to in the letter?

23 A. It has the same date on it and I think it says  
24 -- I think the date of it is February the 17, 1997, the  
25 same date as the letter from him.

1 Q. You did not see the check until the 28th?

2 A. I saw the check on the 28th.

3 Q. Now, in that letter that you are holding in  
4 your hand right now, Exhibit 16, they referred to a -- you  
5 say you did not receive that letter, correct?

6 A. It was never -- I never got the letter.

7 Q. Okay. It refers to a contract dated February  
8 25th, 1997. Did you ever see such a contract?

9 A. No, I did not.

10 Q. Well, wait a minute. Now, hold up. One of  
11 the dates on the contract is February the 25th.

12 A. I believe that was the day that Mr. Bennett  
13 signed it.

14 Q. Do you know that? Would you like to take a  
15 look at it?

16 A. Well, yes, I could look at it and tell; but I  
17 am pretty certain I am right on that; but only fools are  
18 positive.

19 Q. All right. We will let you take a look at  
20 it.

21 A. And that just proves it, just because it is  
22 signed by Mr. Bennett on the 24th, not the 25th.

23 Q. Not the 25th. Well, let me repeat my  
24 question: Did you ever see a contract between the  
25 Bennett's and C F Lumber, dated 2-25-97?

1 A. No.

2 Q. And that is what is referred to in the  
3 letter?

4 A. Yes.

5 Q. Then you say that, outside of this courtroom,  
6 you have not seen -- you never did see the contract  
7 between the Bennett's and C F Lumber?

8 A. No. I am not saying that is the contract I  
9 saw in Chris Stamm's office on the 28th of February. This  
10 letter dated February the 17th, was never delivered to me  
11 and I have never seen it in any other place, than in this  
12 courtroom.

13 Q. Thank you, sir. No other questions, your  
14 Honor.

15 THE COURT: Let's take maybe five or ten minutes  
16 before you begin your cross-examination.

17 MR. MARTIN: Yes, sir.

18 THE COURT: Sheriff, take the jury out of the  
19 courtroom for a brief recess.

20 (Jury leaves the courtroom.)

21 Mr. Edwards, if you would like to take a five or ten  
22 minute break, you may do so.

23 Gentlemen, I just want to get an indication of how  
24 long we are going to go tonight. It is now 4:25. You  
25 have got cross-examination of this witness and who's

1       been on the stand for over an hour.

2               MR. MARTIN:       Well, that will take ten to fifteen

3       minutes, your Honor.

4               THE COURT:       And then, how many other witnesses do

5       you have, Mr. Nunn?

6               MR. NUNN:       I have got several other witnesses,

7       your Honor. They will not be as long as Mr. Edwards; but

8       I do have several other witnesses. I could give you --

9               THE COURT:       Well, you can finish your case, you

10       think in how long?

11              MR. NUNN:       I think by 5:30, six o'clock it could

12       be finished.

13              THE COURT:       That is as far as we are going to get

14       today.

15              MR. MARTIN:       Yes, sir. I have had witnesses,

16       though.

17              THE COURT:       I know.

18              MR. MARTIN:       Just a question of how long you are

19       going to hold this jury.

20              MR. NUNN:       Really depends, your Honor, on how

21       long Mr. Martin's cross-examination of Mr. Edwards will

22       be.

23              MR. MARTIN:       Well, I don't intend to emulate Mr.

24       Nunn. In ten, fifteen minutes, I will be through with Mr.

25       Edwards.

1 THE COURT: I will say we will try to wrap it up  
2 around six o' clock.

3 MR. MARTIN: Only problem, we have one witness, I  
4 believe, who will not be back tomorrow.

5 THE COURT: Well, if he finishes his case, we  
6 will let you go with one witness, if he can't be back  
7 tomorrow.

8 MR. MARTIN: Joan Pittman, but she will only take  
9 five or ten minutes.

10 THE COURT: Well, I don't have any problem  
11 staying later, except I think it is terribly unfair to the  
12 jury.

13 MR. MARTIN: I agree, Judge.

14 THE COURT: All right. We will take about a five  
15 minute recess.

16 MR. MARTIN: May I excuse the rest of my witnesses  
17 until tomorrow, other than that one witness?

18 THE COURT: That is fine. No objection to that,  
19 is there?

20 MR. NUNN: What was that, sir?

21 THE COURT: That he excuses all his witnesses  
22 except for the one that he has to call today, so that they  
23 don't have to wait and will be back tomorrow.

24 Will we start at 10:00 in the morning or earlier?

25 MR. MARTIN: Available earlier, if the court

1 likes.

2 MR. NUNN: I will leave that up to the court.

3 THE COURT: I would like to start at nine  
4 o'clock, if that is not a problem. The way things are  
5 going, I don't want this to run too late tomorrow evening.

6 MR. NUNN: Judge, one housekeeping matter: I  
7 take it that we are still looking for Mr. Carter.

8 THE COURT: Well, I was going to take that up  
9 also. I will take that up before we leave today. If he is  
10 not here -- I take it he is not here and not going to be  
11 here today.

12 (Recess.)

13 THE COURT: All right. Bring the jury in.

14 (Jury present.)

15 Members of the jury: It is getting late in the  
16 afternoon. We are going to try and finish today's  
17 testimony by about six o'clock. We are going to ask you  
18 to come back tomorrow morning by nine o'clock. So, try to  
19 give the case your best attention. I know it is late in  
20 the day. We are all getting a little bit tired; but all  
21 of the case is important.

22 You may proceed with cross-examination.

23 MR. MARTIN: Thank you, your Honor.

24 CROSS EXAMINATION

25 BY MR. MARTIN:

1 Q. Mr. Edwards, I'd like to hand you what's  
2 been admitted as Plaintiff's Exhibit 2, the contract with  
3 C F Carter Lumber. You have testified before that you  
4 have seen that contract?

5 A. Yes, I have.

6 Q. There is nothing in that contract that  
7 mentioned Rappahannock Pistol and Rifle Club,  
8 Incorporated, is there?

9 A. Nothing.

10 Q. In fact, the name of the purchaser is blank?

11 A. That's true.

12 Q. On Page 1, the contract states, doesn't it,  
13 that it is to close by February 24th, "time is of the  
14 essence"?

15 A. Yes, it does.

16 Q. And I think you said that "time is of the  
17 essence" means that you have to close by the specified  
18 date?

19 A. That's right.

20 Q. Or the contract is void unless both parties  
21 agree to extend the time?

22 A. Yeah.

23 Q. Okay. So, you were aware that this was a  
24 "time is of the essence" contract, weren't you?

25 A. That is true.

1 Q. And Mr. Nunn, who represented the Gun Club,  
2 was aware that it was "time is of the essence," wasn't he?  
3 A. That is true.  
4 Q. Are you familiar with the Virginia Statute of  
5 Fraud in the Virginia Code?  
6 A. To a certain degree, yes.  
7 Q. Section 11-12 says: "A contract to buy real  
8 estate must be in writing and signed by the party to be  
9 charged".  
10 A. Yes.  
11 Q. Mr. Edwards, Mr. Carter, who is the president  
12 of the company, C F Lumber Company, and your client, he  
13 never signed a written addendum or authorization extending  
14 that closing date, did he?  
15 A. No, he did not.  
16 Q. He never authorized a delay in the closing,  
17 did he?  
18 A. Yes, he did.  
19 Q. When was that he authorized the delay?  
20 A. The first time I talked to him about it, which  
21 I think, was the 18th of February.  
22 Q. Okay. But that was before the 21st -- the  
23 24th had come?  
24 A. Yes.  
25 Q. Okay. And I think you said, you later were



1 talking to him around the 26th and you were under the  
2 impression that the contract was still going?

3 A. Uh-huh.

4 Q. Mr. Carter obviously was not under the same  
5 impression as you, was he?

6 A. Would you repeat the part of your question  
7 which said that the contract was still what?

8 Q. You said, I believe, in your direct testimony,  
9 that on February 26th, you spoke with Mr. Carter?

10 A. Uh-huh.

11 Q. And you left that meeting under the impression  
12 that the contract would proceed with closing with the Gur  
13 Club?

14 A. Yes.

15 Q. And I said, it is obvious, is it not, that Mr.  
16 Carter was not of the same opinion, at least by the 28th?

17 A. Obviously by the 28th, he was not of that  
18 opinion.

19 Q. Because he directed you to close the  
20 sale to the Bennett's, didn't he?

21 A. On the 28th at noontime was the first time I  
22 knew he didn't want to continue on with the contract.

23 Q. You never delivered anything in writing to Mr.  
24 Nunn, did you, authorizing a delay in the closing?

25 A. No.

1 Q. And Mr. Carter, to your knowledge, never  
2 signed anything authorizing a delay in the closing?

3 A. That is right.

4 Q. Now, in the contract on Page 2, if you could  
5 look at Page 2, please.

6 A. Okay.

7 Q. There is language that states that the closing  
8 date would be delayed if there are title defects. Do you  
9 see that?

10 A. Right.

11 Q. Could you read that to the jury, please?

12 A. "Settlement to be made at the above Vendor  
13 choice, on or before February 24th, 1997, or as soon  
14 thereafter as title can be examined and paper prepared  
15 allowing a reasonable time to correct any defects reported  
16 by title examiner."

17 Q. Okay. Bill Nunn never reported any title  
18 defects to you, did he?

19 A. We discussed the fact that we did not  
20 have these documents.

21 Q. I know. And you have discussed the fact that  
22 you never had any documents; but he never reported to  
23 you: I, Bill Nunn, searched the title and I found a  
24 defect?

25 A. "Searched the title and found a defect." He

1 knew what the title commitment said.

2 Q. All right. Let's go on to the title  
3 commitment then. I will hand you what's been marked as  
4 Plaintiff's Exhibit Number 9, and you said that you  
5 recognized that document?

6 A. Yes.

7 Q. And Mr. Nunn asked you to highlight various  
8 portions of that document?

9 A. One portion.

10 Q. Well, I am going to ask you to highlight some  
11 more for the jury's benefit.

12 A. Okay.

13 Q. Mr. Edwards, directing your attention to the  
14 part that says "proposed insured", do you see that?

15 A. Yes.

16 Q. And is the proposed insured, C F Lumber  
17 Company, Incorporated?

18 A. Uh-huh.

19 Q. Would you please highlight "proposed insured"  
20 and "C F Lumber Company, Incorporated."

21 (Witness complies.)

22 Okay. Would you also highlight the portion that  
23 says "approved attorney R. Wesley Edwards" on that page  
24 and the dollar amount of \$300,000.00?

25 Now, Mr. Edwards, this title insurance commitment

1 Bill Nunn spent so long asking you about it, doesn't  
2 have anything to do with Rappahannock Pistol and Rifle  
3 Club, does it?

4 A. No.

5 Q. This was something you obtained from Mr.  
6 Carter's Company?

7 A. That's right.

8 Q. When he purchased a bunch of properties?

9 A. Right.

10 Q. One of which was later sold to the Bennett's.  
11 And the title insurance was for C F Lumber Company, wasn't  
12 it?

13 A. That is correct.

14 Q. Mr. Nunn was never mentioned in this title  
15 commitment, is he?

16 A. No. Mr. Nunn is not, no.

17 Q. Okay. Mr. Nunn never gave you a copy of any  
18 title insurance that he was getting, did he?

19 A. No.

20 Q. Now, if you would turn to the requirements  
21 page of that title policy. Do you see that?

22 A. You mean "The following additional  
23 requirements"?

24 Q. The page that at the top says, "The following  
25 requirements must be met." And then it says, "The

1 following additional requirements must be met."

2 A. Okay. I got you.

3 Q. Okay. Now, Mr. Edwards, the requirements are  
4 things that you have to do as closing attorney to obtain  
5 the final policy, aren't they?

6 A. Yes.

7 Q. Okay. And where it says, "The following  
8 additional requirements must be met", and it lists the  
9 documents. Those were documents you were required to get  
10 for Mr. Carter's company to close the purchase, weren't  
11 they?

12 A. That is right.

13 Q. They weren't documents that were required for  
14 Mr. Nunn's clients?

15 A. That is correct.

16 Q. Okay. And you let Mr. Carter's company close  
17 the purchase of all these properties without having all  
18 those documents?

19 A. I did, as other attorneys do.

20 Q. Okay. So, they weren't serious enough for you  
21 to hold up the purchase of the property by Mr. Carter?

22 A. I had been assured and had seen some of these  
23 documents, and I just did not have a copy of them.

24 Q. Okay.

25 A. Or didn't have the original, I will put it

1 that way. And that is what I wanted, was the original, to  
2 give them to the title company.

3 Q. But you were confident that you would have  
4 those original documents?

5 A. I grew less confident every day as I waited  
6 for them, I can tell you that now.

7 Q. All right. Well, nonetheless, you let Mr.  
8 Carter close the purchase without those documents?

9 A. Oh, yes.

10 Q. And now, you're telling the jury that they  
11 were so important that even though your client could  
12 buy the land without those documents, he could not  
13 sell it to the Gun Club without that document?

14 A. My reading of that is that in order for him to  
15 sell this property, he should, in my opinion, have an  
16 insured title. And until I got that insured title, I was  
17 not willing to, in effect, permit him to sell the  
18 property.

19 Q. Well, it sounds now like you are representing  
20 the Gun Club also?

21 A. No. I was representing him.

22 Q. And he had already bought the property by that  
23 time?

24 A. He had already bought the property.

25 Q. And you understood that he wanted to now sell

1 that property?

2 A. That is correct.

3 Q. And your duty was to assist him in the closing  
4 of that sale of the property?

5 A. That is correct.

6 Q. Now, getting to the interference question:  
7 You never talked to Mr. Bennett at any time, did you?

8 A. I have never had any discussions at all with  
9 Mr. Bennett about this case.

10 Q. You don't have any personal knowledge of Mr.  
11 Bennett ever talking to Mr. Carter?

12 A. I have absolutely no personal knowledge.

13 Q. No personal knowledge he ever spoke by phone  
14 or any way else to Mr. Carter?

15 A. I have no personal knowledge of that,  
16 whatsoever.

17 Q. In fact, Mr. Carter never mentioned his name  
18 to you, did he?

19 A. I can't remember him mentioning his name to  
20 me.

21 Q. Okay. Now, with regard to Mrs. Bennett, you  
22 never witnessed Mrs. Bennett talking to Mr. Carter?

23 A. No.

24 Q. Never witnessed them meeting?

25 A. No.

1 Q. And you don't have any personal knowledge that  
2 Mrs. Bennett, in any way, interfered with Mr. Carter  
3 selling the property to the Gun Club?

4 A. I know that she talked to him. I don't know  
5 what they talked about.

6 Q. You know that she talked to him?

7 A. Yes.

8 Q. Well, Mr. Carter never told you that Mrs.  
9 Bennett interfered, did he?

10 A. No.

11 Q. Okay. Mr. Carter never told you that Mrs.  
12 Bennett threatened him?

13 A. No.

14 Q. Okay. When Mr. Bennett -- Mrs. Bennett came  
15 to see you, she came with her attorney Chris Stamm?

16 A. Yes.

17 Q. And you understood that Chris Stamm  
18 represented Mrs. Bennett?

19 A. Yes.

20 Q. And in fact, Chris Stamm in the first meeting  
21 with Mrs. Bennett, told you that there was a back-up offer  
22 on the property?

23 A. That is correct.

24 Q. And you said he waived this paper around and  
25 offered to give it to you?



1           A.     Yeah. "See, I got them here."  
 2           Q.     So, you would have taken the back-up contract  
 3     at that earlier date, couldn't you?  
 4           A.     I could have.  
 5           Q.     Instead you left it down in Mr. Stamm's  
 6     office?  
 7           A.     Right.  
 8           Q.     Because at that time, your office was upstairs  
 9     in his professional building?  
 10          A.     Uh-huh.  
 11          Q.     And his office was downstairs?  
 12          A.     Uh-huh.  
 13          Q.     So, you wouldn't have had to go very far if  
 14     you wanted to get the contract?  
 15          A.     Some steep steps; but not many.  
 16          Q.     But with a sturdy handrail?  
 17          A.     Yes.  
 18          Q.     Old Sears House?  
 19          A.     Old Sears House.  
 20          Q.     And isn't it fair to say that you found Mrs.  
 21     Bennett's concerns about the firing range a little silly?  
 22          A.     I don't know whether I would use that word, "a  
 23     little silly". You have to understand, Mrs. Bennett was  
 24     very worked up about this, and I think she was very  
 25     sincere in everything she told me. It is just that I did

1 not have the same take on it as she did, on the rifle and  
2 the yews and lambs and plaster.

3 (Disbursing Statement, was marked Defendant's  
4 Exhibit #5 for identification.)

5 Q. All right. May I approach the witness, your  
6 Honor?

7 THE COURT: Yes.

8 Q. I hand you next what's been marked as  
9 Defendant's Exhibit Number 5 for identification, and ask  
10 if you recognize that exhibit. If so, tell the jury what  
11 it is.

12 A. Yes. It is the Disbursing Statement of how  
13 the money was released or how the money was spent on this  
14 particular transaction.

15 Q. And is that money that was spent by you as  
16 disbursement agent?

17 A. Some of it, yes.

18 Q. Okay.

19 A. The majority of it.

20 Q. Does that exhibit -- does it have your name  
21 and address at top?

22 A. Yes.

23 Q. It is on your letterhead?

24 A. Yes.

25 Q. And it is titled "Disbursing Statement,

1 CF Lumber Company, Inc. to Robert T. Bennett and Catherine  
2 A. Bennett"?

3 A. That is right.

4 Q. And it includes your fee of \$300.00 for  
5 closing the same from Carter's company to Bennett's?

6 A. No. That is my fee in my work that I did on  
7 this particular -- on the sale of that property.

8 Q. Right. Well, at the top -- Well, you prepared  
9 this document, didn't you, Mr. Edwards?

10 A. That is right.

11 Q. And at the top it says, "C F Lumber Company,  
12 Inc. to the Bennett's"?

13 A. Right.

14 Q. So, your fee for the closing from C F Lumber  
15 to the Bennett's, \$300.00?

16 A. No. No.

17 Q. Well, you received \$300.00, didn't you?

18 A. I received \$300.00 for the work that I did on  
19 the sale of that piece of property.

20 Q. But it came from when the Bennett's purchased  
21 the property?

22 A. Came from when the Bennett's purchased the  
23 property.

24 MR. MARTIN: Offer that exhibit as our next  
25 exhibit, your Honor.

1 MR. NUNN: No objection, your Honor.

2 THE COURT: All right. Admitted, Defendant's  
3 Number 5.

4 (Defendant's Exhibit #5, Disbursing Statement  
5 dated 3-3-97 was received into evidence.)

6 CONTINUED EXAMINATION

7 BY MR. MARTIN:

8 Q. The messages that you testified that you  
9 received: You got one from Mr. Carter, that didn't  
10 mention the Bennett's, did it, when he said that he did  
11 not want to sell to the Gun Club.

12 A. No. No. He didn't say, I want to sell to the  
13 Bennett's.

14 Q. And I think on another occasion you said that  
15 he had received phone calls from several women?

16 A. Uh-huh.

17 Q. And he didn't mention the Bennett's?

18 A. He mentioned Mrs. Bennett's name.

19 Q. He did mention?

20 A. Yeah.

21 Q. What did he tell you about Mrs. Bennett?

22 A. That she had called him up and he didn't need  
23 any more.

24 Q. That he didn't need any more of those  
25 telephone calls?

1 Who else did he name as calling?

2 A. Didn't name anybody else, just "those women".

3 Q. "Those women"?

4 A. Yes.

5 Q. Okay.

6 Now, Mr. Stamm, once Mr. Carter said that he wanted  
7 to close the sale, was able to do the closing in less than  
8 twenty-four hours, wasn't he?

9 A. Yes.

10 Q. Mr. Nunn, on the other hand, had had thirty  
11 days by that point for closing?

12 A. From whenever the contract was signed.

13 Q. Okay. Thank you. That is all I have.

14 THE COURT: Any redirect?

15 MR. NUNN: Yes, sir.

16 MR. MARTIN: Your Honor, at this time, I am  
17 returning to the Court, Plaintiff's Exhibits 2 and 9,  
18 which I used for the witness.

19 REDIRECT EXAMINATION

20 BY MR. NUNN:

21 Q. Referring to the settlement sheet, Defendant's  
22 Exhibit Five, you said that was for the work that you had  
23 done. Is that for all of the work that you had done on  
24 this --

25 A. Yeah.

1 Q. -- for your client?

2 A. The phone calls, people coming to my office,  
3 conversations I had with you.

4 Q. With Mr. Carter?

5 A. With Mr. Carter.

6 Q. Now, on the 26th, the message that you got  
7 from him, from Mr. Carter, that he would like to get out  
8 of the contract, if possible; in your opinion, was it  
9 legally possible at this point?

10 A. I didn't really feel --

11 MR. MARTIN: Objection.

12 A. I didn't really feel it was.

13 Q. And you so advised him?

14 A. That is what I advised him

15 THE COURT: On redirect, you can't cover the  
16 same ground. You already covered that on direct  
17 examination.

18 Q. When Mrs. Bennett called or when -- I am sorry  
19 -- you referred to, in response to Mr. Martin's questions,  
20 you said that Mr. Carter had indicated that he did not  
21 like or did not appreciate Mrs. Bennett's calls. Was that  
22 -- I think you said he did not need any more of those  
23 calls?

24 A. He just said, "I don't need any more of those  
25 phone calls". And Mr. Carter was a -- is a very closed

1 type person, and he made it clear to me and my secretary  
2 that he didn't want his number given out and he didn't  
3 want any phone calls. And we tried to respect it.

4 Q. Did he feel pressured?

5 A. The day he called me he was feeling --  
6 something was bothering him.

7 Q. Thank you, sir. No further questions, your  
8 Honor.

9 THE COURT: You are excused, Mr. Edwards or  
10 released.

11 MR. MARTIN: Yes. Fine with me.

12 THE COURT: Thank you very much for your  
13 testimony, sir. You are released.

14 Call your next witness.

15 MR. NUNN: Indulge me, your Honor. I may be able  
16 to -- well, no, I will call Mrs. Edwards. She shouldn't  
17 take very long.

18 LELA D. EDWARDS,  
19 having been previously sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. NUNN:

22 Q. Mrs. Edwards, would you please state your  
23 name?

24 A. Lela D. Edwards.

25 Q. And spell your first name.

1 A. L-e-l-a.

2 Q. And where were you employed in '96 and '97?

3 A. I was legal secretary to Mr. Edwards.

4 Q. Your husband?

5 A. My husband.

6 Q. And do you know Mr. -- briefly, what were  
7 your duties?

8 A. Whatever was required of me in the office.

9 Q. Okay. Don't need to spend any time on that, I  
10 don't think.

11 Do you know Mr. C F Carter, Junior, president of the  
12 C F Lumber Company, Inc.?

13 A. Yes, I do. He was a client of Mr. Edwards.

14 Q. Drawing your attention to February, 1997, did  
15 you have any contact with Mr. Edwards -- Mr. Carter?

16 A. Is this the telephone call?

17 Q. Did he come in to sign any documents? We will  
18 get to the telephone calls.

19 A. If I could see the documents. They have my  
20 writing on them. Yes.

21 Q. I will show you Exhibit 7, and ask if you  
22 recognize this?

23 A. Yes. This is a -- I don't know what  
24 it is; but anyway, I have notarized this as a certified  
25 true copy.



1 Q. And Exhibit 8?

2 A. Here again, let's look. I probably originated  
3 this document; but I did not sign it.

4 Q. Okay.

5 MR. MARTIN: Your Honor, I hate to interrupt Mrs.  
6 Edwards, but all these documents are already admitted  
7 without objection into evidence and Wes Edwards, her  
8 husband, has testified as to the phone messages, the  
9 contract and every document. So, it is cumulative.

10 THE COURT: Well, it is somewhat repetitive.

11 MR. NUNN: Yes, sir, it is. Let me see if we can  
12 avoid some of this.

13 Mrs. Edwards, do you know Catherine Bennett, one of  
14 the defendants in the case?

15 A. Yes, I do. Yes.

16 Q. Drawing your attention to the 18th of  
17 February, 1997, did you have any contact with Mrs. Bennett  
18 in the office?

19 A. If it is the right date, she had an  
20 appointment.

21 Q. Yes.

22 A. That's yes.

23 Q. Okay. Could you very briefly describe that  
24 contact that you had with her?

25 A. She had called and asked for an appointment

1 and she came in and she wanted basically to know what the  
2 status was with the contract that we had with C F Carter  
3 and the Rifle -- pardon me -- Pistol and Rifle Club. And  
4 she was told that we had a contract and that we had a very  
5 general conversation after that.

6 Q. Okay. And did she indicate any of her fears  
7 concerning the --

8 A. Yes, she did. She told us that she was very  
9 concerned about having the Gun Club there. She had, at  
10 that time, sheep, and they were pregnant or one of them  
11 was pregnant. She was very much afraid that it would  
12 cause the sheep to abort, and she was really very upset  
13 about the fact that they were coming in there.

14 Q. All right. Drawing your attention to the 26th  
15 of February, did you have occasion to receive a telephone  
16 call from Mr. Carter?

17 A. Yes. Unfortunately, I remember this phone  
18 call very well because Mr. Carter was very upset with me.  
19 He spent a great deal of time telling me that he did not  
20 want me to ever give his telephone number to anybody, and  
21 I had given it to Mrs. Bennett.

22 He went on to say that he did not want to sell the  
23 property to them, if at all possible, and he was very --  
24 "He couldn't stand the aggravation", is what he said.

25 And he said he would talk to Wes later; which was

1 unusual, he did not leave a telephone number. In the  
2 past, he always left one of three numbers. He had two car  
3 numbers and a home number. This time he was very anxious  
4 to talk to my husband, and he didn't want to leave a  
5 message for him to call back. He kept calling all day  
6 long until he got ahold of him; but he was very angry with  
7 me for giving out the telephone number.

8 MR. NUNN: I don't have any further questions.

9 CROSS EXAMINATION

10 BY MR. MARTIN:

11 Q. Ma'am, the message was that he didn't want to  
12 sell the property to the Gun Club, right?

13 A. He did not, yes. He couldn't stand the  
14 aggravation, is what he said.

15 Q. Okay. Not that he didn't want to sell it to  
16 the Bennett's?

17 A. No. He just did not like the aggravation.

18 Q. But the message you took, it said he didn't  
19 want to sell it to the Gun Club?

20 A. That is right.

21 MR. MARTIN: Okay. Thank you.

22 THE COURT: Release this witness?

23 MR. NUNN: Yes, sir.

24 MR. MARTIN: Yes.

25 THE COURT: Thank you very much for your

1 testimony. You are released.

2 THE WITNESS: You are quite welcome.

3 MR. NUNN: Carol Johnson.

4 MR. MARTIN: To save time, we will stipulate that  
5 Carol Johnson is a licensed title insurance agent in the  
6 Commonwealth of Virginia and also an expert witness in the  
7 area of title examination and the issuance of title  
8 insurance policies.

9 THE COURT: Accept that stipulation, Mr. Nunn?

10 MR. NUNN: Yes, sir. That is fine.

11 THE COURT: All right.

12 CAROL JOHNSON,

13 having been previously sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. NUNN:

16 Q. Mrs. Johnson, spell your last name for the  
17 court reporter, please.

18 A. Johnson, Jo-h-n-s-o-n; first name, middle  
19 initial: Carol S., C-a-r-o-l S.

20 Q. What is your occupation?

21 A. I am a title insurance agent for Chicago  
22 Title.

23 Q. And how long have you been a title insurance  
24 agent for Chicago Title Insurance Company?

25 A. For eight years.

1 Q. And what was your prior occupation?

2 A. I was a title insurance agent for Southern  
3 Title for five years.

4 Q. Would you briefly describe your duties as an  
5 agent for Chicago Title Insurance, Incorporated?

6 A. Underwrite insurance binders and insurance  
7 when people are purchasing real estate.

8 Q. And what is a title insurance binder?

9 A. That is a commitment or promise that  
10 we will insure the property, providing certain  
11 requirements are met.

12 Q. As a general statement, what is the purpose of  
13 a title insurance policy?

14 A. It is to protect the owner or the lender from  
15 liens and make sure the property is in good standing and  
16 there are no liens and past taxes and such.

17 Q. Does it insure the fact that the property is  
18 sold to you -- you are covered, you were an insured party  
19 -- by a seller who is authorized to sell it?

20 A. Yes, it does.

21 Q. Drawing your attention to November 22, 1996,  
22 did you issue a title insurance binder to C F Lumber  
23 Company, Inc.?

24 A. I am not sure of the date; but, yes.

25 Q. Okay. Well, I will show you Exhibit Number

1 9, and so you can satisfy yourself on that?

2 A. Yes.

3 Q. Okay. C F Lumber Company was the purchaser in  
4 this case?

5 A. That's correct.

6 Q. The proposed insured?

7 A. Yes.

8 Q. And the seller was whom?

9 A. Timberland Investment Group.

10 Q. I'd like for you to turn to Schedule B,  
11 Section 1, Subparagraph (g).

12 A. All right.

13 Q. Would you inform the Court and the jury as to  
14 whether there were any documents that need to be produced  
15 before a title insurance policy for C F Lumber Company  
16 could be issued?

17 A. One of the requirements we made in order to  
18 insure the land was a Certificate of Good Standing in its  
19 State of Incorporation and the Commonwealth of Virginia,  
20 and a Corporate Resolution and A Certificate of  
21 Incumbency.

22 Q. Okay. And what is a Certificate of  
23 Incumbency?

24 A. That's a listing of the officers of a  
25 corporation, their names and their president,

1 vice-president, so forth, of the officers.

2 Q. Is it verification that they did have the  
3 authority to speak for the corporation?

4 A. Yes, it is.

5 Q. And the Corporate Resolution is?

6 A. That is giving the corporation the authority  
7 to sell the property or place Deeds of Trust, giving the  
8 corporation authorization.

9 Q. From whom were those documents required?

10 A. We were requiring them from Timberland  
11 Investment Group.

12 Q. That is the seller to C F Lumber, is that  
13 correct?

14 A. Right.

15 Q. That was in connection with the fifty-three  
16 acre parcel?

17 A. Right.

18 Q. Among others.

19 In what state is Timberland Investment Group  
20 incorporated?

21 A. In Georgia.

22 Q. And had you received the required document by  
23 the 24th of February, 1997?

24 A. I don't believe so. I think it was a few days  
25 after that, early March, I believe.

1 Q. Could you have issued a title insurance policy  
2 to Rappahannock Pistol and Rifle Club if it had purchased  
3 the property on February 24th, 1997?

4 A. No.

5 Q. Why not, ma'am?

6 A. Because these requirements had not been met.

7 Q. Now, did there come a time when you did  
8 receive all of those documents?

9 A. Yes, I did. That was -- I am not sure of the  
10 exact date; but it was probably the first week in March,  
11 something like that, maybe 8th or 9th.

12 Q. Show you Plaintiff's Exhibit Number 11, a  
13 Certificate of Incumbency, and ask you if this refreshes  
14 your recollection?

15 A. Yes. I would have had to have received it  
16 after March 10th, anyway.

17 Q. March 10th of 1997?

18 A. Right..

19 Q. Why was that, ma'am?

20 A. Because it is -- that's when it was notarized  
21 and I would not accept anything that wasn't notarized,  
22 either.

23 Q. Now, you said that you could not have issued a  
24 title insurance -- could not have issued title insurance  
25 on Rappahannock Pistol and Rifle Club or C F Lumber until



1 you received these documents?

2 A. Correct.

3 Q. Put it in another way -- putting that question  
4 in another way: If C F Lumber Company did not have an  
5 insurable title then Rappahannock Pistol and Rifle Club,  
6 purchasers from the lumber company, could not get title  
7 insurance, is that correct?

8 A. Correct.

9 Q. And the bottom line is: Chicago Title  
10 Insurance Corporation could not issue a title insurance  
11 policy on February 24th on this particular piece of  
12 property?

13 A. Correct.

14 Q. Thank you, ma'am. Nothing further.

15 CROSS EXAMINATION

16 BY MR. MARTIN:

17 Q. I need Exhibit 9, if I may, please.

18 Ma'am. Hello, Mrs. Johnson.

19 A. Yes. Hello, Mr. Martin.

20 Q. I will try to get you out of here in a minute.

21 A. Okay. Thank you.

22 Q. Directing your attention back to that title  
23 insurance binder -- is that the right term, title binder,  
24 is what it is called in the trade?

25 A. Yes.

1 Q. That title binder doesn't have anything to do  
2 in the world with Rappahannock Pistol and Rifle Club,  
3 Inc., does it?

4 A. Not at this time. No.

5 Q. Never has, has it?

6 A. No.

7 Q. Okay. The proposed insured is a C F Lumber  
8 Company, isn't it?

9 A. Correct.

10 Q. And you were requested to provide the title  
11 insurance, by Mr. Wes Edwards, weren't you?

12 A. Correct.

13 Q. And so you did a title examination or you had  
14 one of your employees do the title examination for all the  
15 properties concerned?

16 A. Correct.

17 Q. And you issued a binder to Wes Edwards?

18 A. To C F Lumber Company.

19 Q. Not to Bill Nunn or the Rappahannock Pistol  
20 and Rifle Club, Inc.?

21 A. No.

22 Q. Okay. Bill Nunn never requested your agency  
23 to do a title search, did he?

24 A. No.

25 Q. And he never inquired that your agency provide

1 title insurance for the Gun Club, did he?

2 A. I believe he did call and asked, had one been  
3 completed because the rifle club was interested in getting  
4 a title insurance policy.

5 Q. Okay. But he didn't ask you to issue a binder  
6 for his client, did he?

7 A. Not that I remember.

8 Q. Okay. And you didn't issue a binder, did you?

9 A. No.

10 Q. Okay. Now, the requirements' page, and Mr.  
11 Nunn asked you about the various documents that had  
12 been obtained, the requirements' page lists the things  
13 that closing vendor, settlement agent, has to do to get  
14 the final policy, correct?

15 A. Correct.

16 Q. Okay. So, these were items that Wes Edwards  
17 was required to get to you for his title insurance?

18 A. Right. The attorney should get that.

19 Q. Okay. And ordinarily the attorney should get  
20 that before the closing, shouldn't he?

21 A. I don't know what attorneys do on that.

22 Q. Okay. Well to be safe, from a title insurance  
23 perspective, wouldn't you want those before the closing or  
24 before Mr. Edwards' client got it?

25 A. Not necessarily. Most of the time, I will get

1       them with the final Certificate.

2               Q.     After the fact?

3               A.     Probably.

4               Q.     Okay. Now, you didn't find any title defect  
5       for the fifty-three acre parcel in Regina, did you, in  
6       your title search?

7               A.     No.

8               Q.     And you did not report any title defect to Mr.  
9       Edwards, did you?

10              A.     No.

11              Q.     And you did not report any title defect to Mr.  
12       Nunn, did you?

13              A.     No.

14              Q.     Did not report any title defect to the Gun  
15       Club, did you?

16              A.     No.

17              Q.     As far you knew, the title was good?

18              A.     Right.

19              Q.     Okay. And you insured title to that property?

20              A.     I did a commitment to it, yes, and I did  
21       eventually.

22              Q.     And if Mr. Nunn had asked you for a  
23       commitment, you would have likewise issued a commitment to  
24       him for his client, based on your title examination?

25              A.     Possibly issued a commitment.

1 Q. Just like that was a commitment?

2 A. Possibly.

3 Q. Possibly?

4 A. Uh-huh.

5 Q. Would you not want to issue a commitment?

6 A. Well, I would; but these requirements would  
7 still have to be met.

8 Q. I understand; but if he asked you for a  
9 commitment -- what I am getting at: you had done the title  
10 examination; you knew the title was good to the property  
11 and you did not report as title examiner any title defects  
12 involved with the property?

13 A. Right.

14 Q. Okay. Thank you.

15 REDIRECT EXAMINATION

16 BY MR.NUNN;

17 Q. A commitment is not a policy, is it?

18 A. Correct.

19 Q. A commitment is a conditional promise to  
20 insure if certain conditions are fulfilled, is that  
21 correct?

22 A. Right.

23 Q. Now, Mr. Martin said, well, it didn't  
24 have anything do with Rappahannock Pistol and Rifle Club.  
25 Well, it is the same property, isn't it?

1 A. Correct.

2 Q. C F Lumber Company is the owner/ seller, is  
3 that correct, --

4 A. Right.

5 Q. -- to the Pistol and Rifle Club. C F Lumber  
6 Company could not get a title policy, could they, unless  
7 those --

8 A. Right.

9 Q. -- those conditions were fulfilled, and  
10 Rappahannock Pistol and Rifle Club could not get --  
11 therefore, could not get a title policy, could it?

12 A. Correct.

13 Q. Thank you, ma'am.

14 THE COURT: Thank you for your testimony.

15 MR. NUNN: She may be released, your Honor.

16 THE COURT: You are released.

17 THE WITNESS: Thank you.

18 GEORGE E. THOMAS, JUNIOR,

19 was sworn and testified as follows:

20 MR. MARTIN: Your Honor, to save time, we will  
21 stipulate: That Mr. Sonny Thomas is the Commissioner of  
22 Revenue for Lancaster County; that he is an expert witness  
23 in the areas of the assessment of property for tax values  
24 and everything that goes along with being a good  
25 Commissioner.

1 THE COURT: Accept the stipulation?

2 MR. NUNN: Yes, sir.

3 THE COURT: So stipulated.

4 DIRECT EXAMINATION

5 BY MR. NUNN:

6 Q. Mr. Thomas, would you state your name, please?

7 A. My name is George E. Thomas, Junior.

8 Q. And you are the Commissioner of Revenue for  
9 Lancaster County?

10 A. I am; yes, sir.

11 Q. Mr. Thomas, could you tell the court and the  
12 jury how the assessed value, real estate value in  
13 Lancaster County is determined?

14 A. It is done typically, in general reassessment,  
15 where an independent contractor hired by the supervisors  
16 comes in and values all of the property at a given time.

17 Q. All right, sir. What is the relationship  
18 between the assessed value, that is, the value on which  
19 the taxes are computed and fair market value of real  
20 estate in Lancaster County?

21 A. The fair market value of the property, or let  
22 me rephrase that, the assessed value at the time of the  
23 general reassessment by law is required to be the  
24 fair market value, as nearly as is possible to determine  
25 that.

1 Q. All right. And does it always follow the --  
2 does the fair market always coincide with the assessed  
3 value?

4 A. Well, it is suppose to, on the first part of  
5 the assessment circle; yes, sir.

6 Q. But I take it, that values fluctuate,  
7 obviously?

8 A. As time passes from the reassessment date,  
9 yes, changes occur in the market place.

10 ( 1996 Tax Bill Assessment, was marked  
11 Plaintiff's Exhibit #17 for identification.)

12 Q. Mr. Thomas, I will show you Exhibit 17 for  
13 identification, and ask if you know what this is, if you  
14 recognize that?

15 A. Yes, sir. That is a tax bill for parcel of  
16 land. That would have been sent by a treasurer; but it  
17 would have come from records that were generated in my  
18 office.

19 Q. Okay, sir. What is the property?

20 A. The Property Tax Map 9, Parcel 86, at this  
21 time was owned by Timberland Investment Group,  
22 Incorporated.

23 Q. Okay. And the acreage?

24 A. Sixty-six point thirty-two acres.

25 Q. Is the acreage always precise in these tax



1 documents, tax bills?

2 A. No, it is not. If the property has never  
3 been surveyed, then it would be carried on the tax record  
4 as being the residual, as what it had come from and the  
5 original deeds often said "X" number of acres, more or  
6 less, and until a survey is done, we don't know whether it  
7 is more or less.

8 Q. And that is for what year's tax, Exhibit  
9 Number 17?

10 A. For tax year 1996.

11 Q. And would that have been the value set forth  
12 on that tax bill, would that carry over to February 24th,  
13 let's say, the month of February, 1997?

14 A. If there were no changes, no physical changes  
15 to the property by the end of the year, as of December the  
16 31st, it would have been the same, yes.

17 Q. And carries over to the following year, is  
18 that correct?

19 A. Right.

20 Q. All right, sir.

21 MR. NUNN: Move to admit, your Honor.

22 THE COURT: All right. Plaintiff's Number 17.

23 MR. MARTIN: May I see that, Mr. Nunn?

24 MR. NUNN: Yes, sir.

25 MR. MARTIN: Okay. Thank you.

1 (Plaintiff's Exhibit #17, Assessment, was  
2 received into evidence.)

3 CONTINUED EXAMINATION

4 BY MR. NUNN:

5 Q. I hand you Exhibit 17, what was the assessed  
6 value for that property, for the calendar year of 1996?

7 A. \$38,900.00.

8 Q. And that would have been the same on February  
9 the 28th, 1997, assuming that no improvements had been  
10 made?

11 A. If no improvements had been made or nothing  
12 had changed, yes.

13 Q. Could we pass that to the jury, please.

14 (Plaintiff's Exhibit #17 handed to the jury.)

15 Mr. Thomas, is there any way of determining whether  
16 the assessed value matches the fair market value?

17 A. Yes. Each year after general reassessment,  
18 the State, the State through the Tax Department, does a  
19 thing they call "ratio tallies." They are a guide to show  
20 how close the assessment and fair market value remain as  
21 you proceed through a reassessment circle.

22 Q. And do you use this publication?

23 A. Well, we have it; but we don't use it very  
24 much, maybe very little, as a matter of fact. But we have  
25 that document. It is produced each year.

1 Q. And that is an official publication of the  
2 Virginia Department of Taxation?

3 A. Yes, it is.

4 Q. And its purpose is to determine the fair  
5 market value of any given piece of property?

6 A. Well, it shows the ratio, not of a single  
7 property, I guess; but it shows the ratio of sales in a  
8 given year to the assessed value in the cycle of the  
9 reassessment.

10 MR. NUNN: Your Honor, before I go to the next  
11 question, which is my last question, I will ask the court  
12 to take -- move the court to take judicial notice of  
13 official publication of the Virginia Department of  
14 Taxation under Section 6A.1-388 of the Code of Virginia.

15 MR. MARTIN: No objection.

16 THE COURT: All right.

17 CONTINUED EXAMINATION

18 BY MR. NUNN:

19 Q. Thank you, sir.

20 Mr. Thomas, at my request, have you calculated the  
21 fair market value of this particular piece of property on  
22 February 28th, 1997?

23 A. Using the ratio, Mr. Nunn, I calculated the  
24 ratio percentage by that class of property, because they  
25 don't track an individual property, but rather by the

1 class. And that class of property which the State calls  
2 Class 5, was at that period of time that we are talking  
3 about, was showing the ratio of 78% assessed value to  
4 selling price. And using those figures, I calculated that  
5 38,900 on February -- I mean, on January the first, 1994,  
6 using this 78.6% ratio, it would have then been valued,  
7 \$49,240.00, when you applied the class rate to that  
8 property.

9 Q. On February 28th, 1997?

10 A. Yes, sir.

11 Q. What was that figure again, sir?

12 A. \$49,240.51.

13 Q. Thank you, sir. No further questions.

14 CROSS EXAMINATION

15 BY MR. MARTIN:

16 Q. Good afternoon, Mr. Thomas.

17 A. Mr. Martin.

18 Q. To save time, I will just tell you that  
19 previous evidence has shown that CF Lumber Company owned  
20 this property, cut the timber, sold it to the Bennett's.

21 MR. NUNN: Judge, I don't think it is proper to  
22 comment on the evidence.

23 MR. MARTIN: May I retrieve --

24 THE COURT: Well, I think he can ask him as to  
25 whether or not the timber is included in the value of the

1 land.

2 MR. MARTIN: That is what I am getting at.

3 MR. NUNN: Sure. That is fine.

4 CONTINUED EXAMINATION

5 BY MR. MARTIN:

6 Q. Mr. Thomas, have you reduced the assessment of  
7 the value of the property since 1997?

8 A. Yes, we have.

9 Q. And why was that?

10 A. Because timber was taken off the property.

11 Q. Okay. And I guess it is obvious, if you  
12 cut the timber, the land is not worth as much?

13 A. That is true. Yes, sir.

14 Q. After C F Lumber cut the timber, what did you  
15 find the new assessed value to be for the Bennett's as the  
16 new owners?

17 MR. NUNN: Your Honor, the only relevant  
18 testimony, the only relevant evidence is what it was worth  
19 the 28th of February, 1997.

20 THE COURT: They were buying it without timber,  
21 though.

22 MR. NUNN: Yes, sir. He can take the timber  
23 before.

24 MR. MARTIN: They got it, less timber.

25 THE COURT: Right.

CONTINUED EXAMINATION

BY MR. MARTIN:

Q. Okay. Go ahead.

A. Question again.

Q. All right. What, after the timber was cut, what is the assessed value of the property now?

A. We reduced the property from 38,900 to 28,300.

Q. Okay. And in your expert opinion, is that the value of the property?

A. Mr. Martin, that was the value that we applied using the yard stick that would have dated that as being the value January 1st, 1994. So, we do go back to the reassessment, for the sake of equity. And we don't really track individual's property. So, using those yard sticks, that is the value we came for that.

Q. The value of \$28,300.00?

A. Yes, sir.

Q. Okay. Without the timber?

A. Without the timber.

MR. MARTIN: Okay. Thank you, Mr. Thomas.

THE COURT: You will release this witness?

MR. NUNN: Yes, sir.

MR. MARTIN: Yes, sir.

THE COURT: Thank you very much, Mr. Thomas. You

1 can be released.

2 THE WITNESS: Thank you, sir.

3 THE COURT: Were you sworn earlier?

4 MR. PEARCE: Yes, sir.

5 FRANKLIN PEARCE,

6 having been previously sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. NUNN:

9 Q. Mr. Pearce, would you state your name and  
10 spell your last name for the reporter?

11 A. Franklin Pearce, P-e-a-r-c-e.

12 Q. What is your occupation, sir?

13 A. Retired.

14 Q. And where do you live?

15 A. In Mollusk.

16 Q. Who do you live there with, sir?

17 A. My wife.

18 Q. Do you belong to the Rappahannock Pistol and  
19 Rifle Club?

20 A. Yes.

21 Q. Do you have any office in this organization?

22 A. I am president.

23 Q. And how long have you been president?

24 A. Since about October of '98.

25 Q. Mr. Pearce, since the Defendants, since Mr.

1 and Mrs. Bennett purchased the fifty-three acre parcel  
2 that the Club had contracted to purchase, have you  
3 examined any alternative sites for possible use by the  
4 Club?

5 A. Yes, I have.

6 Q. Now, drawing your attention to March of 1999,  
7 did you have occasion to examine such a site in Lancaster  
8 County?

9 A. That is correct, yes.

10 Q. Where was that located, that site?

11 A. That site was -- well, it is Lancaster  
12 County.

13 MR. MARTIN: Your Honor, may the record reflect  
14 that the witness is referring to notes to assist his  
15 testimony?

16 A. Excuse me. That was located off Route 354,  
17 basically.

18 Q. Okay. Can I have the defense exhibit -- I  
19 don't know whether it is four or five, the one with the  
20 survey.

21 MR. MARTIN: It is two and three.

22 Q. This is Defense Exhibit Number 2. Mr. Pearce,  
23 I ask you to take a look at the plat of the survey. Would  
24 that be the property that you examined, near Bertrand  
25 in Lancaster County?



1 A. Yes, sir.

2 Q. All right. Would you tell the ladies and  
3 gentlemen of the jury and court what you found when you  
4 got there?

5 A. Well, we found looking at it, that it was a  
6 long, narrow piece of property. One side is quite heavily  
7 developed and in order to put a rifle range in  
8 there, we would have to shoot in the direction of the  
9 homes or in the direction of the highway which would not  
10 be a safe practice.

11 Q. Okay. And so your conclusion was?

12 A. Our conclusion was that it would not suit our  
13 purpose.

14 Q. All right, sir. And did you look at any other  
15 property?

16 A. Yes, sir. I looked at one over in  
17 Northumberland County, seventy-nine acres. That was the  
18 way it was laid out, it would have been difficult to put  
19 a range in there without putting up a lot of noise  
20 abutment and stuff. There is a brand new clubhouse type  
21 building that had just been completed over there and we  
22 felt that this would not be a good place to be a good  
23 neighbor, basically.

24 Q. Was this the one that was near the Civic  
25 Center, the new civic center over there?

1 A. Yes.

2 Q. So, your conclusion was?

3 A. It wouldn't be a good place to put a range in.

4 Q. Did you examine any other sites that you  
5 recall?

6 A. Well, there was -- yes. There was one in  
7 Lancaster County that was -- I have to think for a minute  
8 there.

9 Q. Take your time.

10 A. It was located in, well, the northern part of  
11 the northwestern part of the County and it was roughly  
12 seventy-nine acres. And here again, wouldn't lend itself  
13 to a range.

14 Q. Okay. So, it's safe to say that you have  
15 examined a number of sites. Have other club members  
16 looked at other sites, as well --

17 A. Yes.

18 Q. -- in order to find a suitable site?

19 All right. Thank you, sir. Indulge me just a  
20 moment, your Honor.

21 THE COURT: All right, sir.

22 Q. Now, drawing your attention to October -- the  
23 time frame of October and November of 1998, did you have  
24 occasion to examine a site in Lancaster County containing  
25 fifty-seven acres, fifty-seven and a quarter acres, more

1 or less, or is that the site that you were just talking  
2 about?

3 A. That is the one that I was talking about.

4 MR. NUNN: Okay. Thank you, Mr. Pearce.

5 CROSS EXAMINATION

6 BY MR. MARTIN:

7 Q. Mr. Pearce, you are currently president of the  
8 Gun Club?

9 A. That is correct.

10 Q. Well, you all have sued my clients for half a  
11 million dollars; is that the amount of money you are  
12 asking the jury to give you?

13 A. I think that was set before I became  
14 president. So, I'd have to say I am not involved in that  
15 part of it.

16 Q. Okay. Well, how much are you saying that my  
17 clients owe you, now that you are president of the Club?

18 A. I can't answer that question unless I get  
19 together with the executive board of our club.

20 Q. Well, sir, you have had some period of time to  
21 prepare for this trial, haven't you?

22 A. That is correct.

23 Q. Haven't you met with your executive board to  
24 decide what you think that you are entitled to?

25 A. Not to this matter, no, sir.

1 Q. So, you don't have any idea of what damages  
2 are due the Gun Club, do you?

3 MR. NUNN: Your Honor, I think that is calling  
4 for a comment on the evidence, and it is up to the jury to  
5 make that determination.

6 MR. MARTIN: Your Honor, I think I am allowed to  
7 clarify, you know, are they basing it on replacement  
8 value, prior assessed value?

9 THE COURT: I will let the evidence speak for  
10 itself. I will sustain the objection.

11 MR. MARTIN: I have no further questions.

12 THE COURT: Thank you for your testimony.

13 MR. NUNN: One final question, your Honor.

14 THE COURT: Re-direct.

15 REDIRECT EXAMINATION

16 BY MR. NUNN:

17 Q. On any of these properties that you and other  
18 members of the club examined as possible range sites, did  
19 you have zoning applications, zone permits in hand for any  
20 of them?

21 A. No, sir.

22 Q. Thank you.

23 THE WITNESS: May I be excused, sir?

24 THE COURT: Yes, sir. You are released.

25 MR. NUNN: That is our case, your Honor.



\* \* \*

1 we can finish that much earlier tomorrow. Remember all of  
2 my prior admonitions: Don't discuss this case with  
3 anyone, not your spouse or our best friend or anyone; and  
4 don't read anything about it; don't listen to any radio  
5 messages about it, and be back tomorrow at nine o'clock.

6 Thank you for your service today.

7 (Jury is excused.)

8 All right. Mr. Martin.

9 MR. MARTIN: I move to strike, your Honor. I  
10 have a number of grounds and if the court please, I will  
11 just go over them one at a time.

12 I am going to start by first moving to strike the  
13 evidence as to Mr. Robert Bennett. The court looked at  
14 the proposed instructions submitted by both myself and  
15 by Mr. Nunn. It is clear that one of the elements of the  
16 tort is the interference with the performance of the  
17 contract by C F Lumber Company or in the person of Mr. C  
18 F Carter, Junior who is president of the company. Unless  
19 being a tortfeasor by virtue of marriage, there is no  
20 evidence in the record which any jury could conclude that  
21 Mr. Bennett has done anything improper. Every witness  
22 said that they had no contact with him. They had no  
23 knowledge that he contacted Mr. Carter. They had no  
24 knowledge that he interfered. The closest they came was  
25 from Mr. Register, who said -- he was the fourth witness

1 -- that he went to their house for a shooting  
2 demonstration. He said, "Well, Mr. Bennett, I had showed  
3 him the plat. 'It looked all right to me.' And his wife  
4 said, 'No. It is objectionable'. And he said, 'Well, it  
5 is objectionable'", which is about the same as saying,  
6 "yes, dear." So, we would move first as to Mr. Bennett on  
7 the grounds that there is no interference by him.

8 THE COURT: Do you want to respond one at a time?

9 MR. MARTIN: You want them all?

10 THE COURT: I would suggest you make all of your  
11 motions.

12 MR. MARTIN: All right. Next, I will move to  
13 strike as to Mrs. Bennett on the grounds that there is no  
14 evidence in the record that she did anything which  
15 interfered with the execution of the contract. She was  
16 described by various witnesses. Mr. Edwards said "Ha,  
17 ha," thought she was a little silly. Mr. Register said  
18 she was unreasonable because she worried about sheep and  
19 so forth. But again, every witness I asked said, we don't  
20 have any knowledge that she talked to Carter, met with  
21 Carter or did anything to influence him, other than Wes  
22 Edwards who said, on one occasion, Mr. Carter told me that  
23 she had called. Again, there is no evidence as to both of  
24 my clients.

25 Your Honor, I move to strike on the ground there was

1 lack of a valid contract. And I am going to rely there on  
2 the law and the facts that I set forth in Section 1 of my  
3 Motion for Summary Judgement in the trial brief, which is  
4 on file with the court. And we have proved everything in  
5 that section.

6 "Time is of the essence" applies in this case. They  
7 went passed the due date. Mr. Carter, who did not  
8 testify, obviously is not going to help the Plaintiff's  
9 case because they didn't call him as a witness.

10 MR. NUNN: That is what you think.

11 MR. MARTIN: Well, he is not here and Mr. Nunn  
12 said, "that is what I think". But he wasn't called as a  
13 witness, nor was his testimony used. There was no  
14 contract between C F Lumber and the Gun Club after  
15 February 24th, 1997.

16 Next, going to the issue of the damages. The Gun  
17 Club has submitted no evidence upon which the court could  
18 establish damages. They are completely speculative. The  
19 only evidence on damages was submitted as a Defendant's  
20 Exhibit which showed that the Gun Club sued C F Lumber and  
21 received a \$4,000.00 judgement from Judge Spruill which  
22 was the difference between the Bennett contract and the  
23 price of the Gun Club contract. That made them  
24 whole, economically. Again, I would cite the court to  
25 Section 4 of my brief and my Motion for Judgement, Motion

1 for Summary Judgement. The Gun Club has been compensated  
2 for any economic damages of which it suffered.

3 And I further cited Ameri Juris on that: "The  
4 objective is to put the Plaintiff in the same economic  
5 position the Plaintiff would have been, had the contract  
6 not been interfered with." They have been put in that  
7 position. They offered no evidence as to replacement  
8 property, what replacement property would be worth. They  
9 have had three years to buy a piece of property. They  
10 might have argued then that that would set the value,  
11 between the value of this contract and the replacement  
12 value. But we had the president of the Gun Club sit right  
13 next to the bench, as a closing witness, and say, "I don't  
14 know how we come up with damages in this case." We move  
15 to strike on that ground, your Honor.

16 THE COURT: Do you want to address punitive  
17 damages?

18 MR. MARTIN: I will just rely on my brief, your  
19 Honor. The punitive damages requires malice or reckless  
20 disregard for the rights of another. Malice is hatred,  
21 ill will, spite. It is a malignant state of mind. There  
22 is nothing in the record which supports that, about either  
23 of my clients. The only evidence is well, first of all,  
24 there is no evidence with regard to Mr. Bennett's state of  
25 mind. Everybody said we never talked to Mr. Bennett.



1 Mrs. Bennett was upset at several times and said she  
2 didn't want that firing range near her house, and she was  
3 worried about her sheep and so forth. That is not ill  
4 will or hatred or spite. She wanted peace and quiet in  
5 her neighborhood. There is no evidence to support  
6 punitive damages.

7 THE COURT: Your response, Mr. Nunn.

8 MR. NUNN: Sir.

9 THE COURT: Your response.

10 MR. NUNN: Yes, sir. Let me say at the outset,  
11 that the defendant has introduced evidence in this case,  
12 and that precludes any reliance on a motion to strike  
13 by the defendant. I mean, now it is a matter of all of  
14 the evidence. That is my understanding in a case of the  
15 Black Letter Law in Virginia.

16 I think the real issue here, with that aside, is  
17 whether a jury question has been raised, first of all, and  
18 whether there is some evidence to support the elements and  
19 the damages claims.

20 Is there a valid contract between C F Lumber and  
21 Rappahannock Pistol and Rifle Club? Well, Mr. Mabry  
22 indicated that he had executed Exhibit Number 2 on behalf  
23 of the club. Consideration went with the contract and  
24 clearly states that it is the Rappahannock Pistol and  
25 Rifle Club. That is Exhibit 3. The contract was to close

1 on -- an Mr. Edwards testified that he discussed this  
2 contract with his client, Mr. C F Carter, president of C F  
3 Lumber Company on several occasions. There was never any  
4 question who the parties were. The contract was to close  
5 on the 24th of February, 1997 or as soon thereafter as  
6 title problems could be cleared up. As it happened, there  
7 were some title problems that arose.

8 Mr. Edwards, who was Mr. Carter's and the lumber  
9 company's attorney, advised Mr. Carter from day one up  
10 until and including on the 28th of February, when the  
11 Bennett's took the deed and recorded it and took the  
12 property, that this is a valid contract. And I don't  
13 think there is any question about that. There certainly  
14 is some evidence that it is. And this is sufficient for  
15 any motion to strike purchase. He told Carter on a number  
16 of occasions, this was a valid contract. He was going to  
17 get in trouble if he didn't honor it.

18 And keep in mind that Mr. Carter called up Mr.  
19 Edwards' office on the 26th of February, two days before  
20 it went to the Bennett's, and he said, "I'd like to get  
21 out of this contract, if possible". Now, if that doesn't  
22 show that he knew there was a valid contract in existence,  
23 that there was in fact a valid contract in existence, I  
24 don't know what does.

25 Next question is whether Mr. and Mrs. Bennett knew

1 there was a valid contract. Mr. Register testified and it  
2 is uncontradicted at this point, that he told Mrs. Bennett  
3 that the closing date 2-25-97 had been extended. No  
4 question she understood that. That was on the 20th of  
5 February when he told her that. And she was the one who  
6 brought it up. She initiated it: "Still going to close on  
7 the 24th of February?" She knew about the contract. She  
8 knew what the closing date was. Mr. Edwards told Mrs.  
9 Bennett on the 18th of February that it was a valid  
10 contract. Her attorney was there. And Mr. Edwards told  
11 Mr. and Mrs. Bennett's attorney, Mr. Stamm, on the 18th of  
12 February, the 24th of February and the 28th of February,  
13 that it was a valid contract. So, there cannot be any  
14 question that there is, to put it minimally, there was  
15 some evidence that the Bennett's knew that there is a  
16 valid contract in existence. I think that there is a lot  
17 of evidence that they knew that.

18 Did they interfere with the contract? Yes, sir.  
19 They offered more money, for one thing. That is evidence  
20 of the interference with a contract. They tried to get it  
21 for \$22,000.00. I don't know whether that was a serious  
22 offer, but that shows knowledge on the part of the  
23 defendants that they knew that the contract was in  
24 existence, how much the purchase price was. They already  
25 knew what the date was. So, they offer Carter, who you

1 will recall, called up Mr. Edwards and got very upset with  
2 his secretary: "Don't you ever give my number out again.  
3 Mrs. Bennett had gone calling me and I don't want to hear  
4 from that woman again."

5 They offered more money and the statement Mrs.  
6 Bennett made to Mr. Register is significant. The 20th of  
7 February, the 15th of February, after the demonstration:  
8 "I will do whatever is necessary to make sure you don't  
9 ever use that Regina site." I think I have the quote  
10 here: "I am prepared to go all the way, whatever it  
11 takes, and I always win."

12 Damages. The evidence, your Honor, is that the  
13 contract price for the sale of the property to the Pistol  
14 and Rifle Club was far below the fair market value,  
15 \$49,000.00 and change, according to Mr. Thomas, and even  
16 if you take \$10,000.00 off of that for the timber, it is  
17 still far below the fair market value. Contract price was  
18 even far below the assessed value. That is one of the  
19 elements mentioned in damages.

20 They investigated numerous sites. We have heard  
21 evidence of some of them that were looked into. The only  
22 one that we have evidence that was suitable was one that  
23 was way out of reach for the club because the seller  
24 wanted \$245,000.00 for it. And that just was not in the  
25 ballpark. So, as to compensatory damages, your Honor,

1 certainly a jury question has been raised about whether  
2 the jury will accept fair market value as we have had  
3 evidence of or whether they accept as a benchmark, the  
4 \$245,000.00. I don't know. That is up to the jury. But  
5 there is evidence to get it to the jury.

6 Also, there is another element. Another element, I  
7 shouldn't have used that word, there is another factor to  
8 consider. The jury may very well consider all of the  
9 activities that the defendants did do and we have had a  
10 lot of evidence of that. Much of it brought out on  
11 cross-examination by the defendants, to prevent the club  
12 from obtaining a suitable site.

13 The media blitz Mr. Martin brought out, the new  
14 ordinance, the tightening up of the ordinance which was  
15 aimed at only one organization, and that's the club, the  
16 plaintiff. Mr. Frere, a former zoning officer for this  
17 county testified to that. So, that is a consideration  
18 that the jury may well entertain. I don't know what the  
19 jury is going to find in this case. If they find  
20 liability; but there's certainly been a jury question  
21 raised as to liability and compensatory damages.

22 You asked about punitive damages: malice, personal  
23 spite, there has been evidence of that; ill will,  
24 certainly; or was it willful and wanton; was it in  
25 disregard of the rights of the party to this contract,

1       namely the Pistol and Rifle Club. Absolutely.  
2       Absolutely. "I will do whatever it takes." There is a  
3       valid contract. They knew it was valid. They did not  
4       care. "I will do whatever is necessary." And they kept  
5       that promise, even though warned by Mr. Edwards who was  
6       the seller's attorney, that the contract was valid.  
7       Mr. Register told them on the 20th of February, closing  
8       date had been extended. Valid contract.

9               Judge, instead of going on in this vain, there is,  
10      of course, Mr. Bennett. He signed the contract which is  
11      in evidence, to do all of this. The contract to purchase  
12      the property, he and Mrs. Bennett both did that, they both  
13      signed a letter to Mr. Edwards back on the 17th of  
14      February, that is when it was dated, which for some  
15      mysterious reason, Mr. Edwards never received. Now,  
16      there was a reason for that letter and that is because we  
17      are here today, in case we come here today. But Mr.  
18      Edwards testified that he did not receive that letter. It  
19      bore both these parties signatures and they are both in  
20      this up to their hips. So, now, proof beyond a reasonable  
21      doubt, I don't know. But at least a jury question has  
22      been raised.

23             THE COURT:       Well, specifically, Mr. Nunn.

24             MR. NUNN:       Yes, sir.

25             THE COURT:       Specifically what acts of

1 interference does the evidence show that Mr. Bennett did?

2 MR. NUNN: It is circumstantial, your Honor, the  
3 signing of the deed, the signing of the letter, and  
4 several others which I do not have in my mind at this  
5 point. But the question is whether a jury -- whether  
6 there is some evidence, and at this point, there is.

7 THE COURT: Well, is it your contention or the  
8 plaintiff's contention that besides buying this property,  
9 that that is the act that constituted the tortious  
10 interference.

11 MR. NUNN: Yes, sir, and the events leading up to  
12 it.

13 THE COURT: Is it illegal to offer a back-up  
14 contract for more money than the original contract? Is  
15 there anything illegal about that?

16 MR. NUNN: No.

17 THE COURT: Okay. So, the act itself of buying  
18 it, knowing that there was another contract on it --

19 MR. NUNN: Is that a question, your Honor?

20 THE COURT: Yes.

21 MR. NUNN: If I buy a piece of property from  
22 somebody knowing that somebody else has it under valid  
23 contract and I offer more money and all of these other  
24 things have been done -- petitions -- I won't go  
25 into those; yes, I think there is some evidence

1 there.

2 THE COURT: Well, of course, I guess one of the  
3 questions is that though Mr. Edwards has said that this  
4 contract was binding, even after the 24th, that is open to  
5 interpretation. Also, some attorneys might not agree with  
6 that. I understand your motion.

7 MR. NUNN: Yes, sir.

8 THE COURT: I understand your opposition to the  
9 motion. Thank you very much.

10 MR. MARTIN: May I respond, briefly?

11 THE COURT: It is your motion. You have the  
12 final opportunity to argue it.

13 MR. MARTIN: ! Judge, my clients have to be shown  
14 as having taken some act which interfered in the  
15 performance of the contract by Mr. Carter's company.  
16 Now, Mrs. Bennett's statement, which you  
17 characterize them as silly or hysterical, however they  
18 were characterized, to Mr. Register at her house, did not  
19 affect the contract in any way. Because there is no  
20 evidence that those comments were ever communicated to Mr.  
21 Carter or that they had any effect on Mr. Carter. The  
22 only evidence is that on that day in February of 1997, she  
23 was very upset that they were locating the firing range  
24 next to her farm.

25 Now, the only actions -- the only evidence before



1 the Court as to anything the Bennett's did, is first they  
2 signed the back-up contract, dated February 24th, which  
3 Mr. Carter later signed, according to the contract on  
4 February 28th. We would submit that this is not an  
5 unlawful act. The plaintiff's own witness, Mr. Edwards,  
6 explained what a back-up contract is, and the purpose is  
7 to put a back-up in place while the first is still  
8 pending. So, if it does not close, you can close it in a  
9 second.

10 Under the Section, it can't be unlawful, illegal or  
11 improper if the plaintiff's witness' attorney testifies  
12 that it is common practice and he has seen it done. The  
13 only other act was the testimony that Mrs. Bennett called  
14 Mr. Carter sometime around February 26th. But your Honor,  
15 if you look at the law, the contract was "time is of the  
16 essence". The Gun Club could have closed it. They did  
17 not close it. The only grounds they had for not closing  
18 it under the admittedly somewhat primitive contract, was  
19 if the title examiner reported defects. Carol Johnson  
20 said not only did she not report any defects, she did not  
21 find any defects and she insured the property. So,  
22 certainly, the contract was terminable at will of the  
23 parties as of the 24th, when there was no closing.

24 And if the court would look at the case of Duggan  
25 versus Adams which both Mr. Nunn and I cited, the

1 interference has to be improper and I quote from Page 227  
2 of the case, 234 Va. 227: "Methods of interference  
3 considered improper are those means that are illegal or  
4 independently tortious." And then it gives examples such  
5 as violent threats, intimidation, bribery, unfounded  
6 litigation, fraud, misrepresentation, deceit, defamation,  
7 duress and so forth. There is none of that present here.

8 And so I would submit that my clients are entitled  
9 to Motion to Strike and Summary Judgement. And I thank  
10 you.

11 THE COURT: Well, the Court overrules your  
12 motions, except on the motion to dismiss the punitive  
13 damage claim.

14 I am still uncertain, as I indicated to you earlier  
15 this morning, as to the proper instructions on damages.  
16 But we will deal with that when we do the jury  
17 instructions. It is a better practice and we have got a  
18 case that is somewhat close. Some judges would strike the  
19 evidence in this case, I am pretty sure; but I am not  
20 going to strike it. I want to get a jury verdict, and  
21 they will get that opportunity.

22 Now, the issue of the witness who did not show up.  
23 All I can do is try to again serve that on him to  
24 be here tomorrow morning at nine o'clock.

25 Mr. Nunn, if you want to try to get him, you can get

1 a process server to try to get him in. I don't know of  
2 anything else I can do. If he is not here at nine  
3 o'clock, then I will entertain your motion regarding use  
4 of the evidence because of unavailability.

5 MR. MARTIN: Thank you.

6 THE COURT: If there are no more matters,  
7 we will be in recess until tomorrow morning at nine.

8 \*\*\*

9 (Proceedings were concluded at 5:55 p.m.)

10 (Proceedings continued to the following day,  
11 January 14, 2000.)  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 THE CLERK: Paul Edward Hawkinson.  
2 MR. HAWKINSON: Here.  
3 THE CLERK: Gloria Lee Jones.  
4 MS. JONES: Here.  
5 THE CLERK: Geraldine Roark Sammons.  
6 MS. SAMMONS: Here.  
7 THE CLERK: Sandra Smith.  
8 MS. SMITH: Here.  
9 THE COURT: All right. Call your first witness.  
10 MR. MARTIN: Call Joan Pittman. She was sworn  
11 yesterday.  
12 JOAN PITTMAN,  
13 having been previously sworn, testified as follows:  
14 DIRECT EXAMINATION  
15 BY MR. MARTIN:  
16 Q. Ma'am, would you tell the jury your name,  
17 please?  
18 A. I am Joan J. Pittman.  
19 Q. And where do you live?  
20 A. In Regina.  
21 Q. And how long have you lived in Regina?  
22 A. Forty-six years.  
23 Q. And, ma'am, in 1997, did it come to your  
24 attention that there might be a firing range located in  
25 your neighborhood?

1 A. Yes.

2 Q. Were you opposed to the firing range?

3 A. Very much.

4 Q. And tell the jury why.

5 A. Well, the firing range would be --

6 there is a large field in front of my house, and it would  
7 be in the -- beyond that field. That's where the property  
8 would begin.

9 MR. NUNN: Your Honor, I'd just like to note my  
10 objection on the ground of relevance. And instead of  
11 doing this every time a witness testifies in this matter,  
12 I simply make my objection ongoing, if that is okay.

13 THE COURT: Your objection is noted. It is  
14 overruled and it is an ongoing objection. It is already  
15 on the record.

16 CONTINUED EXAMINATION

17 BY MR. MARTIN:

18 Q. Ma'am, directing your attention to February  
19 20th, 1997, did you attend a meeting of the Wicomico Hunt  
20 Club?

21 A. Yes, sir.

22 Q. Is your husband, Virgil, a member of the Hunt  
23 Club?

24 A. Yes, he is.

25 Q. Did you hear Mr. Marvin Register speak at that

1 meeting on behalf of the Gun Club?

2 A. Yes, sir.

3 Q. Do you recall if he made any statements  
4 related to the Gun Club's sale of the property in Regina?

5 A. If he made --

6 THE COURT: You have to speak a little louder so  
7 the jury can hear you.

8 A. Say that again.

9 Q. I will withdraw that question.

10 Do you recall if he made any statements about the  
11 clubhouse that the Club would build in Regina?

12 A. Yes. Someone did ask him if there would be a  
13 clubhouse, and he said, yes; it would be as good or better  
14 than any home in Regina.

15 Q. Did you help circulate petitions opposing the  
16 firing range?

17 A. Yes, I did.

18 Q. Did you speak against the firing range?

19 A. Not against the firing range; against having  
20 it in my community.

21 Q. Okay. And did you also attend the Board of  
22 Supervisors meeting on February 27th, 1997?

23 A. Yes, I did.

24 Q. Okay. Please answer any questions that Mr.  
25 Nunn may have for you.

1 A. Okay.

2 THE COURT: Is he a witness?

3 MR. NUNN: I am sorry, Judge. I didn't see him  
4 back there.

5 THE COURT: All right. You may proceed, Mr. Nunn.

6 CROSS EXAMINATION

7 BY MR. NUNN:

8 Q. Thank you. Mrs. Pittman, that area is zoned  
9 A-2, is it not, agricultural?

10 A. That is right.

11 Q. And, of course, it's been zoned agricultural  
12 as long as you have been there, and still is?

13 A. Yes. !

14 Q. Thank, you ma'am.

15 MR. MARTIN: Call Virgil Pittman.

16 May he be released?

17 THE COURT: You are released. That means you are  
18 free to leave or remain in the courtroom; but don't  
19 discuss your testimony with the other witnesses.

20 VIRGIL PITTMAN,

21 having been previously sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. MARTIN:

24 Q. Good morning, Mr. Pittman. Would you tell the  
25 jury your name, please?

1 A. Virgil Pittman.

2 Q. And where do you live, Mr. Pittman?

3 A. Regina.

4 Q. How long have you lived in Regina?

5 A. All my life, been sixty- six years.

6 Q. And is Joan Pittman, the lady that just  
7 testified, your wife?

8 A. Yes, sir.

9 Q. Okay. Directing your attention to 1997, did  
10 you learn that a firing range might be located in the  
11 Regina neighborhood?

12 A. Not from the shooting range; they did not come  
13 to my house; but I found out later from other people.

14 Q. Okay. Sir, are you member of the Wicomico  
15 Hunt Club?

16 A. Yes, sir.

17 Q. Okay. Is this Wicomico Hunt Club located in  
18 the Regina neighborhood?

19 A. Yes, sir.

20 Q. Does it allow shooting on the grounds?

21 A. No, sir.

22 Q. Okay. Do you recall the meeting on February  
23 20th, 1997 at the Wicomico Hunt Club?

24 A. Yes, sir.

25 Q. And did you attend that meeting?



1 A. Yes, sir.

2 Q. Okay. Were you opposed to locating the firing  
3 range in Regina?

4 A. Yes, sir.

5 Q. Why was that?

6 A. Well, we have a lot of young people, our  
7 grandchildren; the fact that land just about joins our --  
8 well, the shooting range joins our homeplace now. And we  
9 just did not want it.

10 Q. Were you concerned about the safety of your  
11 grandchildren?

12 A. Yes.

13 MR. NUNN: Leading the witness.

14 THE COURT: Don't lead your witness.

15 MR. MARTIN: Yes, sir.

16 Q. Mr. Pittman, did you speak out in opposition  
17 to the firing range in Regina?

18 A. Yes, sir.

19 Q. And did you attend the Board of Supervisors  
20 meeting?

21 A. Yes, sir.

22 Q. In February of 1997?

23 A. Yes, sir.

24 MR. MARTIN: Answer any questions that Mr. Nunn  
25 may have for you.

CROSS EXAMINATION

BY MR. NUNN:

Q. Mr. Pittman, what do you do for a living, sir?

A. I am retired.

Q. Farmer?

A. No, General Motors.

Q. All right, sir. That area is zoned agricultural, is it not, sir?

A. Yes, sir.

Q. And has been ever since you have lived there?

A. Yes, sir.

Q. And still is today?

A. Yes, sir.

Q. Did you know that the range facilities that the Club was planning to put in there, in a fifty-three acre parcel, was at that time, a permitted use under that zoning classification?

A. No, I really didn't.

Q. You did not.

Sir, Wicomico Hunt Club now rents the fifty-three acre parcel owned by Mr. and Mrs. Pittman -- Mr. and Mrs. Bennett?

A. Yes, sir.

Q. And they hunt on that property?

1           A.     Sometimes they do.

2           Q.     That is the reason that they rented the  
3 property, is it not, sir?

4           A.     Well, yeah.

5           Q.     Sure. Now hunting is carried on in an  
6 unsupervised manner, is it not, sir?

7           A.     No. We control our hunting by -- we have  
8 stands. People draw a number, stay on the stand, and come  
9 off when we tell them to come off.

10          Q.     Is there somebody out there in the fifty-three  
11 acre parcel that is supervising all of this?

12          A.     Sometimes; yes, sir.

13          Q.     "Sometimes", you say?

14          A.     No. No. I meant, yes, sir, we have somebody  
15 supervising it. Each person goes on the stand and makes  
16 sure they are right, in the number of the stand where they  
17 are at, and we know where they are at, all the time. We  
18 call them out and they come out. If they don't come out,  
19 we go look for them.

20          Q.     By radio, is that right?

21          A.     Yes, sir.

22          Q.     All right, sir. Most of the members of the  
23 Wicomico Hunt Club are not from this area, are they, sir?

24          A.     A lot of them are and some are not.

25          Q.     Some are not. And as Mr. Martin mentioned, at

1 the Board of Supervisors meeting on February the 27th,  
2 1997, you say you spoke?

3 A. Yeah, a little bit; yeah.

4 Q. Other people spoke?

5 A. Yes, sir.

6 Q. Some are opposed to the range?

7 A. All of them; just about all of the people in  
8 Regina that were opposed.

9 Q. There were people who spoke who were very much  
10 in favor of it, weren't there?

11 A. No, sir; not to my knowledge.

12 MR. NUNN: Thank you.

13 MR. MARTIN: Redirect, your Honor.

14 REDIRECT EXAMINATION

15 BY MR. MARTIN:

16 Q. Mr. Pittman, Mr. Nunn brought up that  
17 your club hunted on this property after the Bennett's  
18 bought the fifty-three acres in Regina in 1997. Did they  
19 lease it to your Hunt Club?

20 A. Yes, sir. We always leased that piece.

21 Q. Okay.

22 A. Before Mrs. Bennett bought it.

23 Q. And then after they bought it, did they  
24 continue that lease?

25 A. Yes. We tried to get it from them and we got

1 it from them.

2 Q. And have you all hunted that property ever  
3 since the Bennett's bought it?

4 A. Yes, sir.

5 Q. Okay. As a hunter, do you see a difference  
6 between a firing range in your neighborhood and hunting  
7 in your neighborhood?

8 A. Yeah. I see; yeah.

9 Q. And what do you see is the difference between  
10 the two?

11 A. Well, right good ways apart, about one hundred  
12 fifty yards back. That is one of our safeties, you do not  
13 leave the stand until we tell you to leave the stand. And  
14 the shooting range, we just didn't want it, not in Regina.

15 MR. MARTIN: Thank you, Mr. Pittman.

16 THE COURT: All right. You are released. Thank  
17 you for your testimony. You are free to leave or free to  
18 remain in the courtroom; but don't discuss your testimony  
19 with the other witnesses.

20 THE WITNESS: I will stay in here awhile.

21 MR. MARTIN: This witness needs to be sworn.

22 RUSSELL WAYNE GEORGE,  
23 was sworn and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. MARTIN:

1 Q. Good morning, Mr. George.

2 A. Good morning.

3 Q. Would you tell the jury your name, please?

4 A. Russell Wayne George.

5 Q. And where do you live, Mr. George?

6 A. Regina.

7 Q. How long have you lived in Regina?

8 A. All my life.

9 Q. Okay. Are you a member of the Wicomico Hunt  
10 Club?

11 A. Yes, sir.

12 Q. And directing your attention to February the  
13 20th of 1997, did you attend a meeting at the Club where  
14 the firing range was discussed?

15 A. Yes, I did.

16 Q. Okay. Recall about how many people were at  
17 that meeting?

18 A. I'd say around seventy.

19 Q. Okay. Did Mr. Marvin Register speak on behalf  
20 of the Gun Club?

21 A. He spoke.

22 Q. All right. Do you recall if there was any  
23 discussion about the Gun Club's sale of the property in  
24 Regina?

25 A. Yes, there was.

1 Q. And what was that discussion?

2 A. I offered to buy it from him for what they  
3 paid for it, and he told me that they'd take thirty-six or  
4 thirty-eight thousand, I don't know which, for it.

5 Q. Did Mr. Register state that the Gun Club would  
6 sell that property?

7 A. He just said that they would take, thirty-six,  
8 thirty-eight thousand.

9 Q. Okay. Were you opposed to locating a firing  
10 range in Regina?

11 A. Yes, sir.

12 Q. Okay.

13 MR. MARTIN: Answer any questions that Mr. Nunn  
14 may have.

15 CROSS EXAMINATION

16 BY MR. NUNN:

17 Q. Mr. George, that is zoned agricultural, is it  
18 not, sir?

19 A. That is right, I believe.

20 Q. And how long have you lived there?

21 A. I said all my life.

22 Q. And it's been agricultural all your life, is  
23 that correct, as far as you know? And you know at that  
24 time, what the Club wanted to put on that fifty-three acre  
25 parcel, was permitted use under the zone ordinance; you

1 knew that, didn't you?

2 A. Yeah.

3 Q. All right, sir.

4 MR. NUNN: That is all, your Honor.

5 EXAMINATION

6 BY THE COURT:

7 Q. Mr. George, how long has the Hunt Club  
8 been renting that particular piece of property?

9 A. The one --

10 Q. If you know.

11 A. The one the Club, the Gun Club one, since the  
12 Bennett's bought it. And we did hunt before on one  
13 occasion; but it was sold to somebody else and we didn't.

14 Q. You didn't have any prior lease before the  
15 Bennett's bought it?

16 A. No, sir.

17 THE COURT: Thank you for your testimony.

18 You are excused and released; meaning you may leave  
19 or you are free to remain in the courtroom.

20 THE WITNESS: Okay.

21 MR. MARTIN: Call Rebecca George, please.

22 REBECCA GEORGE,

23 was sworn and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. MARTIN:



1 Q. Good morning, Mrs. George.

2 A. Hi.

3 Q. Would you tell the jury your name, please?

4 A. Rebecca George.

5 Q. Where do you live?

6 A. In Regina.

7 Q. Are you married to Wayne George?

8 A. Uh-huh.

9 Q. And how long have you lived in Regina?

10 A. Thirty-one years and a couple odd months.

11 Q. Okay. Directing your attention to 1997, did  
12 it come to your attention that a firing range was proposed  
13 to be located in Regina?

14 A. Uh-huh.

15 Q. Now, were you opposed to that firing range?

16 A. Not really, no. My concern was the safety and  
17 our peace of living, would it, you know, disrupt that.

18 Q. Okay. Did you speak out against the firing  
19 range?

20 A. No. I can't say I did. I was -- I kinda like  
21 formed a meeting, but not against the firing range. Like  
22 I said, the first concern was to have a meeting requested  
23 for the safety and peace and quiet and this and that.  
24 Like I said, I was under the impression it was only four  
25 or five people at the time.

1 Q. All right. Were you the one that organized  
2 the meeting on February 20, 1997?

3 A. Yes, I was. I guess you can say I was  
4 responsible for that.

5 Q. Okay. And did a lot of people show up for  
6 that meeting?

7 A. Uh-huh. Somewhere like, like sixty,  
8 sixty-one, sixty-three, odd number.

9 Q. Okay. At that meeting, did you circulate  
10 petitions against the firing range?

11 A. Yes and no. I stood at the door and as people  
12 came in, you know, I'd say, "we have got a little petition  
13 saying we don't want a firing range in our neighborhood,  
14 you know, do you want to sign." And several of them would  
15 say, "I want to hear what they have to say first and then  
16 I might."

17 The only time I walked over to someone, was Mr. and  
18 Mrs. Taylor. I knew them very well and I did not know  
19 that they were involved in this. So, I walked over to  
20 them and I said, "Here, this is what we have got, on this  
21 pegboard." And I said "I want you to see that we are not  
22 against you. We just don't want it in our neighborhood."  
23 And I let them read it.

24 Q. Okay. When Mr. Register spoke, do you recall  
25 if he made any statements about the type of range they

1 wanted to put there and the use?

2 A. Oh, yeah.

3 Q. All right. Well, tell us what he said.

4 A. That, you know, it was going to be fine and  
5 grand, and it was going to help this and that, and that  
6 they'd educate this and educate that and --

7 Q. All right. Did he make any statements about  
8 noise at the range?

9 A. Yes.

10 Q. And what did he say, if anything?

11 A. We said -- we asked that, you know, about the  
12 days that they would be using it and the hours, and he  
13 said it would be somewhat like sunup to sundown, seven  
14 days a week, and that it would be no more noise than forty  
15 lawn mowers starting up at one time. And I -- that is  
16 when I said, "We don't have forty lawn mowers."

17 Q. In all?

18 A. In Regina. And I was told, "put an earplug  
19 in".

20 Q. Mr. Register told you to put an earplug in?

21 A. And told me could always put earplugs in.

22 Q. Did you attend the Board of Supervisors  
23 meeting in February of 1997?

24 A. Yes. Uh-huh.

25 MR. MARTIN: That is all the questions I have.

1 Answer any that Mr. Nunn may have.

2 CROSS EXAMINATION

3 BY MR. NUNN:

4 Q. Mrs. George, you know that this land is and  
5 always has been zoned agricultural, don't you?

6 A. I knew nothing about zoning or anything. I  
7 was not familiar with that.

8 Q. You did not know that?

9 A. I didn't know how anything was zoned. My  
10 concern was, it was in our backyard.

11 Q. Mrs. George, you know that the Wicomico Hunt  
12 Club now rents that parcel from the Bennett's, is that  
13 correct?

14 A. Yes, I did.

15 Q. They use it for hunting, is that correct?

16 A. Uh-huh.

17 Q. And are you aware that they use high-powered  
18 rifles for hunting?

19 A. No. They don't use rifles.

20 Q. I see. And are you aware that most members of  
21 that hunt club are not from this area?

22 A. I can't say that it's, you know, like  
23 fifty/fifty.

24 Q. When did you first learn about the plans of  
25 the Club?

1           A.     I was visiting my sick great uncle who is now  
2     deceased, and he told me that his neighbor was purchasing  
3     some land and that they were going to use it for target  
4     practice.

5           Q.     Okay? About when was that?

6           A.     That was on Friday night of like February 7th,  
7     8th, or whatever.

8           Q.     Early February?

9           A.     Early February.

10          Q.     Did you have any contact with Mrs. Bennett,  
11     either Mr. or Mrs. Bennett?

12          A.     Not before, I did not. I had never met the  
13     Bennett's. And after I was told about this on a Friday  
14     night, I went home and never thought no more about it, if  
15     you want to know the truth. Then I happened to mention it  
16     to my husband like on a Saturday or Sunday, you know, we  
17     were discussing. I said something about, "did you know  
18     that they sold that piece, that piece of land for a firing  
19     range?" At the time, I did not know that it was that  
20     piece of land. I just heard it was a piece of land in  
21     Regina. And so then we inquired, and we found out where  
22     the piece of land was.

23          Q.     Excuse me, Mrs. George. My question was: Did  
24     you have any contact with Mr. or Mrs. Bennett?

25          A.     Not before any of this.

1 Q. At any time?

2 A. No.

3 Q. My question was not limited to before. Have  
4 you had any contact after you learned --

5 A. Yes.

6 Q. Yes?

7 A. After I learned about it, I was responsible  
8 for calling them and telling them. What I did, I called  
9 all the surrounding neighbors and said, "did you know that  
10 a firing range -- " because like I said, then again, I  
11 thought it was only four or five people that was inquiring  
12 about it, and that they were going to use it for target  
13 practice.

14 Q. About how many times or -- did you have any  
15 conversations or contact with Mr. or Mrs. Bennett?

16 A. Before what? Are you saying in lifetime or --

17 Q. No. Before they purchased the property?

18 A. I called them once to tell them about it and  
19 ask them did they know that a firing range was going in  
20 there and in our neighborhood. And then I called and said  
21 that we were -- that Mr. Register was coming to speak to  
22 us on the safety and answer any questions of any concerns  
23 anyone had, and would they like to come. And that was the  
24 only two contacts I had before then.

25 Q. And Mr. Register wanted to meet -- he wanted

1 to meet with you in your home, I take it?

2 A. After, yes; after. I mean, he had been to  
3 other neighbors or talked to them, and then he called me  
4 and said like, my wife and I are going out to dinner; can  
5 we stop by. And I said, "Nope, not tonight." And then we  
6 set up a date, that was Thursday night.

7 Q. That was the 20th of February?

8 A. Uh-huh.

9 Q. And you said that you asked four or five  
10 people? You thought it was going to be four or five  
11 people?

12 A. That was buying the property. I thought four  
13 or five was buying the property.

14 Q. How many people did you invite to that  
15 meeting?

16 A. Well, what started -- when I talked to Mr.  
17 Register, he was coming to my home and just talk to my  
18 husband and I.

19 Q. That is how it all started out?

20 A. Right.

21 And then when I called the neighbors and said, did  
22 you know this, did you know that and --

23 Q. Including the Bennett's?

24 A. Including the Bennett's. And I said, "did you  
25 know a firing range was coming." And I said Mr. Register

1 was coming. Well, then it started growing and growing and  
2 growing.

3 Q. All right. Thank you ma'am.

4 One final question: Would you agree that, that  
5 causing somebody else to induce somebody to breach or  
6 break a contract, is unlawful?

7 A. I don't think we -- that they did break the  
8 contract.

9 Q. I didn't say anything about anybody.

10 A. I don't think anybody --

11 Q. The question was: Is that unlawful?

12 A. Do you think I caused that by asking about  
13 concerns in our neighborhood?

14 Q. Do you think causing someone else to cause a  
15 breach to a contract is unlawful? That is the question.

16 A. You know, I think that is entirely what the  
17 contract was.

18 MR. NUNN: Thank you.

19 THE COURT: Thank you for your testimony. You  
20 are released; meaning, you are free to remain in the  
21 courtroom and free to leave; but don't discuss your  
22 testimony with the other witnesses.

23 MR. MARTIN: Call Mr. Robert Bennett.

24 ROBERT BENNETT,  
25 having been previously sworn, testified as follows:



DIRECT EXAMINATION

BY MR. MARTIN:

Q. Mr. Bennett, tell the jury your name, please.

A. My name is Robert Bennett.

Q. And where do you live, Mr. Bennett?

A. I live on Pinkardsville Road in Lancaster, Virginia.

Q. Are you married to Catherine Bennett?

A. Yes, I am.

Q. Okay. Mr. Bennett, how did you find out that the Gun Club was planning to put a firing range in your neighborhood?

A. The early part of February, one of our neighbors, Rebecca George, called and told us that there was a firing range to be located in our neighborhood.

Q. All right. Did she ask for your assistance or involvement in this?

A. Yes.

Q. And what did she ask you to do?

A. Well, she first asked us to investigate with the County to see really where it was going to go, and who was involved in the firing range.

Q. And did you do that?

A. Yes.

1 Q. And who did you find out that was involved  
2 with the firing range?

3 A. Well, Marvin Register of the Rappahannock  
4 Pistol and Rifle Club was the person who was leading the  
5 effort.

6 Q. And did he obtain -- did you learn that Mr.  
7 Register had obtained a zoning permit from the County?

8 A. Yes.

9 Q. Okay. Mr. Bennett, do you own any firearms?

10 A. Yes.

11 Q. And how many?

12 A. We have two, a pistol and a rifle.

13 Q. Okay. Are you opposed to guns?

14 A. No.

15 Q. Are you opposed to hunting?

16 A. No.

17 Q. Okay. After you and your wife bought this  
18 property in February, 1997, what did you do with it?

19 A. We leased it to the Wicomico Hunt Club for  
20 hunting.

21 Q. And has the Hunt Club hunted on that property  
22 ever since?

23 A. Yes.

24 Q. Okay. Do you and Mrs. Bennett, do you  
25 go to the Hunt Club's annual dinner every year?

1 A. Yes, we do.

2 Q. Okay. Were you opposed to having a firing  
3 range located in your neighborhood?

4 A. Yes.

5 Q. And tell the jury why that was.

6 A. Well, first, the noise. We felt it would  
7 be intolerable. The safety concerns, the environmental  
8 concerns, I felt that there were just too many houses just  
9 too close to the firing range.

10 Q. In your mind, did you see a difference between  
11 having a Hunt Club in your neighborhood and having a  
12 firing range in your neighborhood?

13 A. Yes. !

14 Q. And what was that difference?

15 A. Well, hunting is a very limited season, about  
16 six weeks in our area. The firing range would go year  
17 round. Hunting is very scattered. The hunters are in  
18 various locations and you only hear maybe one or two shots  
19 a day.

20 Whereas, a firing range, it could be thousands of  
21 shots a day, from a very concentrated location.

22 Q. And were the other neighbors in Regina  
23 likewise opposed to the firing range, to your knowledge?

24 A. Yes, many were.

25 Q. Did you and your wife speak out against the

1 range?

2 A. Yes.

3 Q. And where did you do that?

4 A. At the Wicomico Hunt Club meeting on February  
5 20th.

6 Q. All right. To your recollection, were any  
7 petitions circulated at that meeting against the range?

8 A. Yes.

9 Q. And who were the people circulating those  
10 petitions?

11 A. Well, Rebecca George, Bill Beane, Joan  
12 Pittman, and others.

13 Q. Did you and Mrs. Bennett sign the petition?

14 A. Yes.

15 Q. Did you also attend the February, 1997 meeting  
16 of the Board of Supervisors?

17 A. Yes.

18 Q. Okay. And were many of your neighbors at that  
19 same meeting?

20 A. Yes.

21 Q. And were you all opposing the firing  
22 range location in Regina?

23 A. Yes.

24 Q. Mr. Bennett, did you have any concerns about  
25 your property value as a result of the firing range being

1 nearby?

2 A. Yes, we did.

3 Q. And why is that?

4 A. We felt that the firing range would lower the  
5 property value. And I had spoken with our real estate  
6 broker who shared that opinion.

7 Q. At any time, did you ever threaten any member  
8 of the Gun Club?

9 A. No.

10 Q. Did you ever use violence against them?

11 A. No.

12 Q. Ever try to bribe them?

13 A. No.

14 Q. Have you ever sued them?

15 A. No.

16 Q. Now, the same for Mr. C F Carter. Did you  
17 threaten or try to influence him in any way?

18 A. No.

19 Q. Okay. Did you attempt to interfere with his  
20 performance of the contract with the Gun Club?

21 A. No.

22 Q. Did any of your neighbors in Regina ask you to  
23 speak on their behalf?

24 A. Yes.

25 Q. And who were those neighbors?

1 A. John Hollowell, Vernon Grammer, Judy Pittman.

2 Q. Okay. And did you agree to speak on  
3 their behalf?

4 A. No. We decided it would be best to hire an  
5 attorney.

6 Q. Okay. And what attorney did you hire?

7 A. Bill Broaddus.

8 Q. Is he located in Richmond?

9 A. Yes.

10 Q. And did he come down to speak on behalf of the  
11 Regina neighborhood?

12 A. Yes.

13 Q. Was that before the Board of Supervisors in  
14 February of 1997?

15 A. Yes.

16 Q. Sir, directing your attention to February 20,  
17 1997, the Wicomico Hunt Club meeting, was a Mr. Marvin  
18 Register there?

19 A. Yes.

20 Q. And did he speak on behalf of the Gun Club?

21 A. Yes.

22 Q. Did you hear Mr. Register make any statements  
23 about the Gun Club's willingness to sell the Regina  
24 property?

25 A. Yes.

1 Q. And tell the jury what Mr. Register said.

2 A. Well, Wayne George asked -- Wayne George, one  
3 of our neighbors, asked Mr. Register if he would sell the  
4 property and he said he would at the assessed value, which  
5 was 38,600, I believe.

6 Q. After that meeting, did you and your wife make  
7 an offer to buy the property?

8 A. Yes.

9 Q. Okay. Did you consult with your attorney Bill  
10 Broadus about that offer?

11 A. Yes.

12 Q. Okay. And how was that offer made?

13 A. He drafted the offer which he submitted to  
14 Bill Nunn, the attorney.

15 Q. This Bill Nunn sitting here?

16 A. Yes. The attorney for the Rappahannock Pistol  
17 and Rifle Club.

18 Q. And did you make that offer based on legal  
19 advice you received from Mr. Broadus?

20 A. Yes.

21 Q. Did Mr. Broadus tell you that there was  
22 anything wrong with doing that?

23 A. No.

24 Q. Did you think you were doing anything wrong?

25 A. No.

1 Q. Did you and your wife likewise make a backup  
2 offer to Mr. Carter's company, C F Lumber Company, Inc.?

3 A. Yes.

4 Q. And explain to the jury how that came about,  
5 if you would?

6 A. Mr. Linwood Turner telephoned me around  
7 February 17th, to say that --

8 MR. NUNN: Object, your Honor. It is hearsay.

9 Q. You can't tell us what somebody else told  
10 you. But, did you receive a phone call concerning the  
11 property?

12 A. Yes, I did.

13 Q. And after you received that phone call, did  
14 you take any action with respect to the property?

15 A. Yes.

16 Q. And what action did you take?

17 A. We prepared a backup offer, which we submitted  
18 to our attorney Chris Stamm, in Kilmarnock.

19 Q. Is he your local attorney?

20 A. Yes.

21 Q. Approach the witness, your Honor?

22 THE COURT: Yes.

23 (Two-sided sign, 53 acres for sale, was marked  
24 Defendant's Exhibit #6 for identification.)

25 Q. Mr. Bennett, I am going to hand you what's



1       been marked Defendant's Exhibit Six for identification.

2           A.     Yes.

3           Q.     Two sided. And ask if you recognize that?

4           A.     Yes. This was a sign that was put on the  
5       property in Regina.

6           Q.     Okay. Does that sign have a phone number on  
7       it?

8           A.     Yes, it does.

9           Q.     Is that the phone number you called?

10          A.     Yes.

11          Q.     And was it Mr. Linwood Turner that you spoke  
12       with, after calling that phone number?

13          A.     We called this phone number and then he called  
14       me back.

15          Q.     Okay. How much was the fifty-three acres  
16       advertised for?

17          A.     Thirty thousand.

18          Q.     I see. For the record, does the sign say  
19       "Fifty-three acres for sale. Priced to sell, 30,000" and  
20       then has a phone number?

21          A.     Yes.

22          MR. MARTIN:     Your Honor, at this time, we'd offer  
23       this as Defendant's Exhibit Six.

24                       (Defendant's Exhibit #6, For Sale sign, was  
25                       received into evidence.)

1 THE COURT: Do you recall the date that you saw  
2 this sign?

3 THE WITNESS: Originally, we saw it back in  
4 December when we were driving around; but we did not call  
5 at this time.

6 CONTINUED EXAMINATION

7 BY MR. MARTIN:

8 Q. Well, that would be December of 1996?

9 A. That is correct

10 Q. Did you meet with Mr. Stamm concerning the  
11 backup offer to Mr. Carter's Company?

12 A. No.

13 Q. Who prepared that offer?

14 A. I did.

15 Q. Okay. How was it presented, if you know?

16 A. My wife took it to Chris Stamm's office.

17 Q. Okay. Did you discuss with Mr. Stamm the  
18 backup offer at any time?

19 A. Yes.

20 Q. Okay. When was that?

21 A. On February 27th, Chris Stamm called me and  
22 said that Mr. Carter --

23 MR. NUNN: Your Honor, if Mr. Stamm is going to  
24 be a witness, I would have no objection to this testimony;  
25 otherwise --

1 MR. MARTIN: He will be a witness. I believe he  
2 is standing by right now.

3 THE WITNESS: Chris Stamm --

4 THE COURT: Go ahead.

5 THE WITNESS: Chris Stamm called me and said that  
6 Mr. Carter had decided to sell the property to us, if we  
7 were interested in purchasing it. And I said, yes. And  
8 he told me to stand by, to come in to sign papers on  
9 Friday, February 28th, which we did.

10 CONTINUED EXAMINATION

11 BY MR. MARTIN:

12 Q. Was the first time that you learned that Mr.  
13 Carter would sell you the property was February 27th of  
14 1997?

15 A. I am sorry. What was your question?

16 Q. Did you learn that Mr. Carter's company could  
17 sell you the property, on February 27th, 1997?

18 A. Yes.

19 Q. And did you buy the property the following  
20 day?

21 A. Yes.

22 Q. And since you bought it, you have leased the  
23 property to the Wicomico Hunt Club?

24 A. Yes.

25 Q. Other than purchasing the property, which you

1 say you did on the advice of both Mr. Broaddus and Mr.  
2 Stamm, did you do anything to interfere with Mr. Carter or  
3 his company's performance of the Gun Club contract?

4 A. No.

5 MR. MARTIN: Okay. Answer any questions that Mr.  
6 Nunn may have for you.

7 CROSS EXAMINATION

8 BY MR. NUNN:

9 Q. Mr. Bennett, how many weapons do you and  
10 your wife own?

11 A. Two.

12 Q. And what are they, sir?

13 A. We have a 357 Magnum, a pistol and a 22 rifle.

14 Q. You also own a shotgun, don't you?

15 A. No. There was one lent to me by the Animal  
16 Control Warden, Keith Hogge. It is the twelve gauge.

17 Q. The shotgun?

18 A. The twelve gauge shotgun. That is for my  
19 wife.

20 Q. That is the one your wife used on December  
21 11th?

22 A. No. It was not December 11th. No. I don't  
23 believe so.

24 Q. The day that she shot the hunting dog?

25 A. That was not December 11th.

1 Q. Was it close to that time?

2 A. I believe it was December 15th.

3 And she did not shoot it; I did.

4 Q. All right, sir. When did you buy your home?

5 A. About five years ago.

6 Q. And you knew it was zoned agricultural at that  
7 time, didn't you, sir?

8 A. Yes.

9 Q. A-2?

10 A. Yes.

11 Q. Okay. And you also knew that the fifty-three  
12 acre parcel that we have been talking about, also is zoned  
13 A-2?

14 A. Yes.

15 Q. The whole area is zoned A-2, agricultural?

16 A. I haven't seen the zoning map; but I think  
17 most of it is.

18 Q. Mr. Bennett, you and your wife are both  
19 licensed real estate salespersons, are you not?

20 A. Yes.

21 Q. You're familiar with the rules and regulations  
22 of Real Estate, the Virginia Real Estate Board?

23 A. Yes.

24 Q. You are familiar with real estate contracts?

25 A. Yes.

1 Q. You are familiar with the real estate  
2 closings?

3 A. Yes.

4 Q. In fact, you have set up a number of those,  
5 been involved in a number of those, haven't you, sir?

6 A. Yes.

7 Q. That is your business, isn't it?

8 A. Yes.

9 Q. And in addition, you will buy homes, fix them  
10 up and sell them?

11 A. Yes, or rent them.

12 Q. Yes, sir.

13 Are you or your wife affiliated with any real estate  
14 broker?

15 A. Well, we have licenses with Bay Meadows Real  
16 Estate in White Stone.

17 Q. And you have, during the time pertinent to  
18 this trial?

19 A. Yes.

20 (Business card, Catherine and Robert Bennett,  
21 was marked Plaintiff's Exhibit #18, for  
22 identification.)

23 Q. I show you Exhibit 18 and ask you if that is  
24 your business card and your wife's?

25 A. Yes.

1 Q. All right, sir.

2 MR. NUNN: Submit this, your Honor.

3 MR. MARTIN: Is this the license?

4 THE COURT: Business card.

5 MR. NUNN: That is fine.

6 THE COURT: Admitted, Plaintiff's 18.

7 (Plaintiff's Exhibit #18, business card, was  
8 admitted into evidence.)

9 CONTINUED EXAMINATION

10 BY MR. NUNN:

11 Q. Now, on that business card -- well, let me ask  
12 you this first: There is a difference between a realtor  
13 and a real estate agent or salesperson; is there not, sir?

14 A. Well, I think they're kind of interchangeable.

15 Q. They have to belong -- to be a realtor, you  
16 have to be a member of the Virginia Association of  
17 Realtors, don't you?

18 A. I believe so, yes.

19 Q. And at this time, at the time of this  
20 incident, neither you nor your wife were members of that  
21 Association?

22 A. Well, at the time they were changing  
23 associations here in the Northern Neck. There use to  
24 be one association, and then now they split it up into  
25 two associations. So, I don't recall.

1 Q. You don't recall?

2 A. Yes.

3 Q. But on your business card, it is set forth as

4 realtors, is that correct?

5 A. That's correct.

6 Q. And not simply real estate salespersons?

7 A. That is correct.

8 Q. Now, you indicated that you had considered

9 purchasing the property in December?

10 A. That is correct.

11 Q. And that is when you picked up the sign

12 there, \$30,000?

13 A. That's correct.

14 Q. And you got the sign, notified the individual,

15 and looked it over; is that correct?

16 A. No. No. We didn't pick up the sign. We just

17 got the information off of it. And at that time, we did

18 not contact anyone.

19 Q. You elected not to purchase it --

20 A. That's correct.

21 Q. -- at this time?

22 And why was that, sir?

23 A. It was not contiguous to our property, and so

24 we decided not to purchase it.

25 Q. And that was in January of 1997, when you



1 made that decision not to purchase that property?

2 A. December, January, around then.

3 Q. And in February of 1997, you decided to buy  
4 the property?

5 A. Yes.

6 Q. And that was because the Rappahannock Pistol  
7 and Rifle Club had a contract on it; you found that out?

8 A. Because they wanted to locate a firing  
9 range there; yes.

10 Q. And when did you learn that the Rappahannock  
11 Pistol and Rifle Club had a contract to buy the property?

12 A. February 17th. Linwood Turner from Mr.  
13 Carter's company, C F Lumber --

14 Q. February -- I am sorry -- I didn't mean to  
15 interrupt. February 17?

16 A. That is correct.

17 Q. That was the answer to the question.

18 You wanted to control the property, is that correct?

19 A. We wanted to purchase the property.

20 Q. Well, I mean, your wife indicated that she  
21 wanted to control the property, did she not?

22 A. Yes.

23 Q. And this occurred, this decision occurred as  
24 soon as the two of you found out that the Club was  
25 purchasing the property?

1 A. What decision was that?

2 Q. That you had to control the property; that you  
3 had to have that property?

4 A. We wanted to purchase the property, if we  
5 could.

6 Q. And just to put a fine point on it, you were  
7 not interested in, at all, in the property until that  
8 point?

9 A. That is correct.

10 Q. All right, sir. Mr. Bennett, you and  
11 your wife wrote a letter to Mr. Edwards who was the  
12 attorney for the lumber company and for Mr. Carter?

13 A. That is correct.

14 Q. And it is dated February 17th. Did you  
15 deliver that letter or your wife deliver that letter to  
16 Mr. Edwards?

17 A. No.

18 Q. Did anyone, as far as you know?

19 A. We delivered it to Chris Stamm, our attorney.

20 Q. And was a copy sent to Mr. Carter?

21 A. It may have been faxed.

22 Q. Do you know whether a copy was sent to Mr.  
23 Carter?

24 A. I don't know. I don't recall definitely; but  
25 it was probably faxed to him.

1 Q. Was a copy sent to Mr. Turner?

2 A. It was probably faxed.

3 Q. Do you know that, sir?

4 A. I don't know that. I don't recall definitely.

5 Q. All right. But you did not give it to Mr.

6 Edwards?

7 A. No.

8 Q. And you offered \$26,000?

9 A. That is correct.

10 Q. You gave the original to Mr. Stamm, you and  
11 your wife did?

12 A. Yes.

13 Q. No question about it?

14 A. No.

15 Q. Now, it refers to a contract, the letter, if  
16 you'd like to see, I'll be happy to give it to you?

17 A. Okay.

18 Q. It refers to a contract dated February 25th,  
19 1997. You see that?

20 A. Yes.

21 Q. I am going to show you Plaintiff's Exhibit 13.  
22 How is that contract dated, sir?

23 A. February 24th, 1997.

24 Q. Is this the contract that was referred to in  
25 that letter?

1 A. Yes.

2 Q. But this one is not dated February 25th, is  
3 that correct, sir?

4 A. No. When we filled it out, we left it blank,  
5 the dates.

6 Q. There is an addendum to this contract.  
7 February 24th, you are certain that is the date of that  
8 contract?

9 A. It looks that way, yes.

10 Q. Did you write that in there, sir?

11 A. No. No. I did not.

12 Q. What part of this contract did you write?

13 A. I filled in most of the blanks except the  
14 dates and the signatures, with the exception of my  
15 signature.

16 Q. You signed it yourself, and you put in  
17 everything, except the date up at the top?

18 A. Yes.

19 Q. Do you know who did that, sir?

20 A. I assume our attorney put it in; but I don't  
21 know for sure.

22 Q. And what date did you sign it, sir?

23 A. Well, when we prepared it, it was February  
24 17th, and we took it over to Mr. Stamm on February 18th.

25 Q. And what date did you sign it?

1           A.     Well, it looks like the 24th; but the dates  
2     were left blank.  
3           Q.     Did you put the 24th in there?  
4           A.     I don't believe so.  
5           Q.     You don't believe so?  
6           A.     No. That is not my handwriting.  
7           Q.     Whose handwriting is it?  
8           A.     It could be our attorney's.  
9           Q.     But you don't know that?  
10          A.     I don't know who put that in there.  
11          Q.     This is an addendum disclosing the fact that  
12     you are a professional real estate salespersons?  
13          A.     Yes.  
14          Q.     How is that dated, sir?  
15          A.     February 17.  
16          Q.     I see. And that was signed on that day  
17     by you and your wife?  
18          A.     That is correct.  
19          Q.     And it is an addendum to what?  
20          A.     The contract, the offer.  
21          Q.     At this time, the undated contract?  
22          A.     That is correct.  
23          Q.     Had you signed this contract when you gave it  
24     to Mr. Stamm?  
25          A.     Yes, we did.

1 Q. And there is another addendum concerning  
2 your status as professional real estate person and a  
3 brokerage relationship?

4 A. Well, I think that is the same thing.

5 Q. Just one other question: Where did you sign  
6 this contract, sir, you and your wife?

7 A. At our home.

8 Q. And when was that, again?

9 A. We prepared it February 17.

10 Q. And you say somebody else put the dates in?

11 A. We left a lot of dates blank. And when we  
12 took it to our attorney, there were many of the dates were  
13 blank on it.

14 Q. Particularly the date for your -- the date of  
15 when you signed it, that was blank?

16 A. Could I look at that again?

17 Q. You certainly may, sir.

18 A. Which signature are you talking about.

19 Q. At the end of the contract, sir, where you and  
20 your wife signed it.

21 A. No. Those dates were left blank.

22 Q. Is there any notation on there, any place in  
23 that contract, Mr. Bennett, that states this is a backup  
24 contract?

25 A. No.

1 Q. There is not. I notice also that one of the  
2 provisions in this contract is that there is a "time is of  
3 the essence" provision. Do you see that, sir?

4 A. Yes.

5 Q. And that was to be closed on or before the  
6 25th of February, 1997, "time is of the essence"?

7 A. Yes.

8 Q. And you did not rely on that "time is of the  
9 essence" provision, did you?

10 A. No.

11 Q. Obviously. Did you file a copy of this  
12 contract with your broker?

13 A. No. I don't believe we did.

14 Q. Did your wife?

15 A. I don't recall.

16 Q. Do you know that it is required under the  
17 Rules and Regulations of the Virginia Association of  
18 Realtors; is that correct, sir?

19 A. I am not aware of that requirement.

20 Q. Specifically Rule 6.12.

21 How long have you been a realtor, sir? How long  
22 have you been a real estate agent?

23 A. I got my license about, I think, about three  
24 or four years ago.

25 Q. All right, sir. And your professional -- take

1 a look at Paragraph 1 up there and see if that refreshes  
2 your recollection. You are required to file it, aren't  
3 you, sir, with your broker?

4 A. Well, this was on our own. So, I am not sure  
5 that this applies to -- this was not -- we were not acting  
6 as realtors in this transaction.

7 Q. I see. This is a personal acquisition?

8 A. That is correct.

9 Q. Okay, sir. I want to invite your attention to  
10 Section 6.4, and ask if that refreshes your recollection.

11 A. Yes.

12 Q. Did you file such a copy of that contract?

13 A. I didn't.

14 Q. All right, sir. And your wife didn't either?

15 A. I don't know if she did or not.

16 Q. It is true, isn't it, Mr. Bennett, that you  
17 and your wife offered the Club \$20,000 on February 20th,  
18 1997, at this meeting?

19 A. No.

20 Q. It is not true?

21 A. No.

22 Q. It is true -- indulge me a moment, your  
23 Honor.

24 Mr. Broaddus was your attorney on the 26th of  
25 February, was he not, sir?



1 A. Chris Stamm and Bill Broaddus.

2 Q. Yes, sir. And at the request of you and your  
3 wife, he made an offer of \$31,800 to purchase the  
4 property?

5 A. That's correct.

6 Q. All right, sir. And you obviously, you and  
7 your wife knew that the contract existed at that time with  
8 the Rappahannock Pistol and Rifle Club?

9 A. I learned of the -- which contract are you  
10 referring to.

11 Q. Between C F Lumber Company and the Club?

12 A. I learned of that on February 17.

13 Q. Yes, sir. And on the 26th, when Mr. Broaddus  
14 made the offer on your behalf to purchase the property  
15 from the Club, obviously you knew at that time that  
16 there was a valid contract in existence between the Lumber  
17 Company and Rappahannock Pistol and Rifle Club?

18 A. Well, I don't -- I don't know that I know  
19 that.

20 Q. Did you ever testify that you did know that to  
21 be the case?

22 A. No.

23 Q. You don't think so. All right, sir. How  
24 about on February 27th, the next day, and this was the day  
25 of the hearing before the Board of Supervisors, you knew

1 the contract was in existence that day, did you not?

2 A. I didn't know.

3 Q. Did you attend the Board of Supervisors  
4 meeting that night?

5 A. Yes.

6 Q. And at that meeting, the Supervisors' meeting,  
7 your wife attended, too?

8 A. Yes.

9 Q. And Mr. Broaddus, your attorney informed the  
10 Board of Supervisors, among other things, that you all had  
11 found a purchaser for the property from the Club, at a  
12 very handsome premium, I believe those were the words?

13 A. Yes.

14 Q. And the "Club", of course, was Rappahannock  
15 Pistol and Rifle Club?

16 A. That is correct.

17 Q. And his representation was, with you sitting  
18 there with him, was that you all -- that a purchaser had  
19 been found who would buy it from the Club?

20 A. That is correct.

21 Q. And you and your wife were that purchaser, is  
22 that correct?

23 A. That is correct.

24 Q. You knew at this time that there was a  
25 contract in existence, did you not, sir? The offer was

1 on the table to purchase the property from the Club at  
2 this time, is that correct, sir?

3 A. We made an offer to the Rappahannock Pistol  
4 and Rifle Club, yes.

5 Q. On the evening of February 27th?

6 A. That is correct.

7 Q. You knew that they had a contract at that  
8 point, didn't you, sir?

9 A. I thought maybe they had bought it. I didn't  
10 know.

11 Q. Okay. This was a genuine offer, was it not,  
12 sir?

13 A. Yes, it was.

14 Q. And the following day, you bought the  
15 property?

16 A. That's correct.

17 Q. In Mr. Stamm's office?

18 A. Yes.

19 Q. Mr. Stamm warned you that you were risking a  
20 lawsuit by purchasing the property, didn't he?

21 A. He said we might be sued.

22 Q. He warned you twice, didn't he?

23 A. Yes, sir.

24 Q. Once before the closing; is that correct?

25 A. Yes.

1 Q. Once after the closing?

2 A. Yes.

3 Q. But before he recorded it, is that correct?

4 A. That's correct.

5 Q. And you bought the property?

6 A. Yes.

7 Q. The following week, Mr. Bennett, you were  
8 quoted in the Rappahannock Record, March the 6th, 1997, as  
9 saying that purchasing the land was, and I am quoting  
10 here, "the only way to prevent the Rappahannock Pistol and  
11 Rifle Club from ruining our lives". Do you deny that,  
12 sir?

13 A. No.

14 Q. Thank you.

15 REDIRECT EXAMINATION

16 BY MR. MARTIN:

17 Q. Mr. Bennett, it looks like you have a little  
18 better memory than Mr. Register of your quotes.

19 Mr. Nunn started his questioning of you by asking  
20 you about you shooting a dog on your property?

21 A. Yes.

22 Q. Why did you shoot the dog?

23 A. The dog was endangering our sheep, chasing our  
24 sheep.

25 Q. Had one of your sheep been attacked?

1 A. Yes.

2 Q. And had you been required to get a  
3 veterinarian to your property to repair or patch the sheep  
4 up?

5 A. Yes.

6 Q. Okay. Where did you get the shotgun that you  
7 used to shoot the dog?

8 A. The Animal Control Warden for Lancaster  
9 County, Keith Hogge, lent us the shotgun.

10 Q. Was it his personal shotgun?

11 A. Yes, it was.

12 Q. Okay. And he lent it to you?

13 A. Yes.

14 Q. Did he give you advice, as far as what to do  
15 about the dog, if it attacked your sheep?

16 A. Yes.

17 Q. And did you act on his advice when you shot  
18 the dog?

19 A. Yes, I did.

20 Q. Now, you were also asked about conversations  
21 with Mr. Stamm and the possibility of a lawsuit from the  
22 Gun Club. Did Mr. Stamm say anything to you, as to  
23 whether he thought the Gun Club had any grounds to sue  
24 you?

25 A. He said they had no grounds.

1 Q. Did you ever see the contract between C F  
2 Lumber and the Gun Club?  
3 A. No.  
4 Q. At the time that you made the offer to  
5 buy the property from the Gun Club via Mr. Broaddus, did  
6 you know whether the Gun Club had already closed on the  
7 property or not?  
8 A. I did not know.  
9 Q. Did you make the offer in case they had  
10 already bought the property?  
11 A. Yes.  
12 Q. Thank you very much.  
13 THE COURT: 'Thank you for your testimony.  
14 MR. MARTIN: Call Mr. Vernon Grammer.  
15 VERNON GRAMMER,  
16 was sworn and testified as follows:  
17 DIRECT EXAMINATION  
18 BY MR. MARTIN:  
19 Q. Good morning, Mr. Grammer.  
20 A. Good morning, sir.  
21 Q. Would you tell the jury your name, please?  
22 A. My name is Vernon Grammer.  
23 Q. Mr. Grammer, do you own the Morning Star  
24 Retirement Home in Regina?  
25 A. Yes, I do.

1 Q. Okay. And how long have you owned that  
2 business?

3 A. Fourteen and a half years.

4 Q. What is the nature of that business?

5 A. It is an adult care home for the elderly.

6 Q. It would be like an assisted living home?

7 A. Assisted living is the correct term, yes.

8 Q. Mr. Grammer, are you a military veteran?

9 A. Yes. Twenty-five years in the National Guard.

10 Q. Okay. Have you spent any time on firing  
11 ranges?

12 A. Quite a bit.

13 Q. Okay. Were you opposed to the firing  
14 range being located in Regina?

15 A. Yes, I was.

16 Q. Tell the jury why?

17 A. I have three reasons why I did not want the  
18 firing range in that area. One, is that I am selling  
19 peace and tranquility as part of the retirement home. And  
20 with the noise from the rifle club and the gun club, I  
21 would not have that.

22 Secondly, there is an absolute danger in my opinion  
23 of stray bullets coming directly towards my house. The  
24 way the gun club demonstrated or illustrated the layout of  
25 the actual facility, that the rifles would be fired in

1 direct -- in a direct line to where I live, to where the  
2 retirement home is.

3 And thirdly, I feel like it is an attractive  
4 nuisance if people can wander on to it; kids can wander on  
5 it and find out what it is, they will, and if they do,  
6 there is always a chance being hurt. And what I backed  
7 that up with is the articles that have been on 60 Minutes  
8 and 20/20, where people have gone on to the rifle range  
9 and fired a weapon and killed people.

10 Q. Mr. Grammer, did you act in opposition to the  
11 firing range being located in your neighborhood?

12 A. I did indeed.

13 Q. Did you write a letter to the Rappahannock  
14 Record?

15 A. I did indeed.

16 Q. Did you speak at the February 27th, 1997 Board  
17 of Supervisors meeting in Lancaster County?

18 A. I did indeed.

19 Q. And did you attend the Wicomico Hunt Club  
20 meeting?

21 A. Yes. I did.

22 MR. MARTIN: That is all the questions I have.  
23 Answer any that Mr. Nunn may have, please.

24 THE WITNESS: Surely.

25 CROSS EXAMINATION



1 BY MR. NUNN:

2 Q. Mr. Grammer, have you discussed this with

3 either Mr. or Mrs. Bennett?

4 A. Discussed what, sir?

5 Q. The issue of the lawsuit, with them?

6 A. Yes.

7 Q. On several occasions, is it safe to say?

8 A. Well, if you tell me what "discuss" means,

9 maybe I could be more specific.

10 Q. Well, let me ask you, and I am afraid it is

11 going to be a fairly general question.

12 A. Okay.

13 Q. Whether you had any contact with the Bennett's

14 on this issue?

15 A. Yes.

16 Q. Would it be safe to say that you had a number

17 of contacts with them?

18 A. Yes.

19 Q. All right. You know that area is zoned A-2

20 agricultural?

21 A. Yes, sir.

22 Q. And at this time that a range was a permitted

23 use; is that correct, sir? Did you know that?

24 A. I did not know that.

25 Q. Is your establishment in zone A- 2?

1 A. Yes.

2 Q. It is too?

3 A. I know that I had to have exceptions to get

4 the retirement home there.

5 Q. But at that time, the hunt club did not -- I

6 am sorry -- not the hunt club, put the Pistol and Rifle

7 Club, did not have to have exceptions, did they, sir?

8 A. I don't know that, sir.

9 Q. But now they do?

10 A. I don't even know that for sure.

11 Q. All right, sir. Now hunting does take place

12 around your establishment, does it?

13 A. Yes, it did.

14 Q. Around Davis Mill Pond?

15 A. That is correct.

16 Q. Right there in your backyard?

17 A. Not quite in my backyard. I have 187 acres

18 that I do not allow hunting on.

19 Q. It is safe to say that is a good deal closer

20 than this fifty-three acre parcel that the Bennett's

21 purchased, is that correct?

22 A. Yes. Yes.

23 Q. As a matter of fact, that parcel is almost two

24 miles back?

25 A. That is correct.

1 Q. About two miles?

2 A. About two miles; that is what I understand.

3 MR. NUNN: Thank you, sir.

4 THE WITNESS: Thank you.

5 THE COURT: Thank you for your testimony.

6 MR. MARTIN: May the witness be excused?

7 THE COURT: You are released. That means, you  
8 are free to leave or free to remain in the courtroom.

9 MR. MARTIN: Your Honor, our next witness will be  
10 Mr. Broaddus. He may be a lengthy witness.

11 THE COURT: All right. We will take a ten minute  
12 recess.

13 (Jury leaves the courtroom.)

14 (Recess.)

15 THE COURT: Bring in the jury.

16 (Jury is in the courtroom.)

17 All right. The jury is back in the box.

18 MR. MARTIN: Call Mr. Broaddus, please.

19 WILLIAM G. BROADDUS, Esquire

20 was sworn and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. MARTIN:

23 Q. Good morning, Mr. Broaddus.

24 A. Good morning, sir.

25 Q. If you would please tell the jury your name.

1 A. William G. Broaddus.

2 Q. What is your current occupation?

3 A. I am a lawyer.

4 Q. Are you licensed to practice law in the  
5 Commonwealth of Virginia?

6 A. I am.

7 Q. And how long have you been so licensed?

8 A. Since 1968.

9 Q. All right. And do you practice with a firm?

10 A. I do, in Richmond; McGuire, Woods, Battle &  
11 Boothe.

12 Q. Are you a partner in the law firm?

13 A. Yes.

14 Q. Were you also the former Attorney General of  
15 the Commonwealth of Virginia?

16 A. Yes, sir.

17 Q. Do you know Mr. and Mrs. Robert Bennett?

18 A. I do.

19 Q. Tell the jury how you came to meet them?

20 A. I met them in February of 1997, I believe,  
21 when they called and requested that I represent them in  
22 the matter pertaining to the Gun Club.

23 Q. Okay. And what was the nature of your  
24 representation?

25 A. The request was that I assist them. And I

1 advised that they consider going to the County Board of  
2 Supervisors in Lancaster County and request that the Board  
3 enact a zone ordinance which would regulate certain uses,  
4 including those pertaining to target practice.

5 Q. Is one of the areas in which you practice, the  
6 area of zoning law?

7 A. Yes, sir.

8 Q. Okay. And did you, in fact, prepare a  
9 proposed ordinance to submit to the Lancaster County Board  
10 of Supervisors?

11 A. I did. I prepared a draft of the emergency  
12 ordinance which I sent to the County Administrator. And I  
13 then also appeared before the Board, a day or two later,  
14 or perhaps the same day that I sent it.

15 Q. And did you appear before the Board, would  
16 that have been February 27th, 1997?

17 A. Mr. Martin, to the best of my recollection,  
18 that's the date. I can't tell you exactly the date; but  
19 that is the date, to the best of my recollection.

20 Q. Okay. Were there a number of people from the  
21 Regina area that opposed locating a firing range there?

22 A. There certainly were a strong turnout of  
23 residents.

24 Q. And was there a strong turnout at the Board of  
25 Supervisors meeting?

1 A. Yes, sir.

2 Q. Okay. Did you also advise Mr. and Mrs.  
3 Bennett about the possibility of purchasing the property  
4 from the Gun Club?

5 A. I did.

6 Q. And tell the jury what your advice was on that  
7 area?

8 A. It was our understanding, my understanding,  
9 that the Gun Club had entered into a contract to acquire  
10 the property, and we made an offer to the Gun Club to  
11 acquire the property from them. As I recall, the offer  
12 that was submitted was somewhat higher than the contract  
13 price that they had agreed to pay to the owner, the lumber  
14 company. And we advised the Board of Supervisors of that  
15 fact.

16 Q. Was there anything improper, in your opinion,  
17 as far as making an offer to Mr. Nunn and the Gun Club for  
18 the Bennett's to purchase the property?

19 A. Absolutely not. I thought that that was  
20 very much an appropriate way to proceed. The concept, if  
21 you will, being that they were not simply looking to the  
22 Board to help them; they were willing to invest,  
23 themselves, to make the Gun Club whole. They weren't  
24 trying to take anything from the Gun Club. They were  
25 offering premium for the property.

1 Q. Okay. May I approach the witness, your  
2 Honor?

3 THE COURT: Yes.

4 (Copy of letter from Mr. Broaddus to Mr. Nunn,  
5 dated 2-26-97, was marked Defendant's Exhibit  
6 #7 for identification.)

7 Q. Sir, I am going to hand you what's been marked  
8 Defendant's Exhibit 7 for identification, and ask you if  
9 you recognize that document?

10 A. Yes, sir. This is -- excuse me -- this is a  
11 copy of the letter that I wrote to Mr. Nunn on behalf of  
12 the Bennett's, offering to purchase the property that I  
13 just described.

14 Q. And Mr. Nunn, is this Mr. Bill Nunn sitting  
15 here?

16 A. Yes, sir.

17 MR. MARTIN: Offer this as Defendant's 7, your  
18 Honor.

19 MR. NUNN: No objection, your Honor.

20 THE COURT: Admitted.

21 (Defendant's Exhibit #7, letter dated 2-26-97,  
22 was received into evidence.)

23  
24 (Letter from Mr. Broaddus to Lancaster County  
25 Administrator, dated 2-27-97, was marked

1 Defendant's #8 for identification.)

2 Q. Next, I will offer you what's been marked  
3 Defendant's Exhibit 8 for identification, and ask, Mr.  
4 Broaddus, if you recognize that document?

5 A. Yes, sir. This is the letter that I, or a  
6 copy of the letter that I sent to the County Administrator  
7 with the draft of a proposed ordinance that I just  
8 described also.

9 MR. MARTIN: Offer this as Defendant's 8.

10 MR. NUNN: Your Honor, that is irrelevant, and I  
11 would object to it on those grounds.

12 THE COURT: You wish to respond to that objection,  
13 Mr. Martin; objection on the ground of relevance.

14 MR. MARTIN: Well, your Honor, it came up in  
15 connection with the Plaintiff's case, when Mr. Nunn called  
16 Mr. Frere to testify about the events at the Board of  
17 Supervisors on February 27th, 1997. One of the things  
18 that was discussed, was the proposed ordinance, and the  
19 Plaintiff brought up evidence about that ordinance.

20 I would just submit; we have Mr. Broaddus who  
21 drafted the proposed ordinance and his letter. And the  
22 ordinance sets forth what he did in that regard.

23 THE COURT: Objection overruled. It is admitted,  
24 Defendant's Exhibit 8.

25 (Defendant's Exhibit #8, letter dated 2-27-97,



1 was received into evidence.)

2 CONTINUED EXAMINATION

3 BY MR. MARTIN:

4 Q. Mr. Broaddus, do you know Chris Stamm, a local  
5 attorney in Kilmarnock?

6 A. I do know him. I couldn't say that we are  
7 close friends; but I have had the opportunity to talk with  
8 him on several occasions, and meet with him; yes, sir.

9 Q. Okay. And did you have occasion to speak with  
10 him about the Bennett's purchase of the property?

11 A. I did.

12 Q. Okay. Tell us about that.

13 A. The understanding that I had was that the  
14 contract that the Gun Club had, to purchase the property,  
15 provided that "time was of the essence". And that's a  
16 clause that may or may not be in a contract, depending on  
17 what the parties negotiate. It means that you have to  
18 close on the date or the time prescribed or the seller is  
19 free to negotiate elsewhere. And so we suggested to them,  
20 the Bennett's, that they may well wish to consider  
21 submitting what is commonly called a "backup offer" to the  
22 seller. Such that if he did not close with the Gun Club,  
23 he would know that there would be an offer to buy the  
24 property, which would be available to him, and he could  
25 accept it or reject it, as he deemed it appropriate.

1 Q. In your opinion, is there anything wrong with  
2 purchasing property under a backup contract?

3 A. No, sir. I believe, although I am not 100%  
4 certain, that a backup contract was submitted for what we  
5 purchased here in Lancaster/ Northumberland County.

6 Q. You mean for yourself?

7 A. Yes, sir.

8 Q. Is that common practice in the real estate  
9 area?

10 A. I am not sure, certain about what you mean  
11 by "common"; but it is certainly not unusual. It is  
12 often, when two people have interest in a particular piece  
13 of property.

14 MR. MARTIN: Would you answer any questions that  
15 Mr. Nunn or the Court may have for you?

16 THE WITNESS: Yes, sir.

17 CROSS EXAMINATION

18 BY MR. NUNN:

19 Q. Mr. Broaddus, it is safe to say that as a  
20 legal opinion, it is not proper to purchase property that  
21 is under a valid contract to somebody else, without the  
22 parties' consent?

23 A. Are you asking me to comment on that.

24 Q. I am asking you if that is not correct.

25 A. If there is an enforceable contract between

1 two parties then, and the conditions have been satisfied,  
2 then I would assume that the seller would go forward and  
3 close with the buyer.

4 Q. And it would be improper for somebody else to  
5 induce the seller to sell it to them, is that correct,  
6 sir?

7 A. I think I need to know a lot more facts, Mr.  
8 Nunn, before I were able to comment on that.

9 (Letter from Mr. Broaddus to Mr. Nunn, dated  
10 2-27-97, was marked Plaintiff's Exhibit # 19,  
11 for identification.)

12 Q. I am going to show you Plaintiff's Exhibit 19,  
13 and ask if you recognize this letter, sir?

14 A. Is this a copy of the letter that I sent to  
15 you, dated February 27th?

16 Q. Setting forth that the Bennett's are, in fact,  
17 licensed real estate professionals, or words to that  
18 effect?

19 A. Yes.

20 Q. All right.

21 THE COURT: Nineteen, Plaintiff's Nineteen is  
22 admitted.

23 (Plaintiff's Exhibit #19, letter from Mr.  
24 Broaddus to Mr. Nunn, was received into  
25 evidence.)

1 Q. You attended the Board of Supervisors meeting  
2 on February 27th, 1997?

3 A. Yes, sir.

4 Q. You represented Mr. and Mrs. Bennett?

5 A. Yes, sir.

6 Q. And they were there?

7 A. Yes, sir.

8 Q. You spoke for them?

9 A. Yes, sir.

10 Q. Did you tell the Board of Supervisors that the  
11 -- I have a quote here: " The defendant's have offered to  
12 buy the property from the Club". Now, that would be the  
13 Rappahannock Pistol and Rifle Club, is that correct?

14 A. Mr. Nunn, I can't verify that I used that  
15 exact language; but I certainly told the Board of  
16 Supervisors, as I have set forth in the letter for Mr.  
17 Pennell, that they had made an offer through me, to you,  
18 to the Club, to acquire the property from the Club; yes,  
19 sir.

20 Q. Okay. From the minutes of the Board of  
21 Supervisors meeting, that evening, this is what, according  
22 to the minutes, this is what you told the Club, and I just  
23 want to make sure there is no misunderstanding; among  
24 other things, you said: "The Bennett's are willing to be  
25 part of the solution. They have offered to buy the

1 property from the Club and to pay a handsome premium over  
2 their contract price."

3 A. I believe that is what I testified earlier to  
4 in response to questions from Mr. Martin. That is  
5 correct.

6 Q. And the Club was Rappahannock Pistol and Rifle  
7 Club?

8 A. Yes, sir.

9 Q. And is the "handsome premium over their  
10 contract price" referring to the contract between C F  
11 Lumber and Rappahannock Pistol and Rifle Club?

12 A. That is correct.

13 Q. And that offer was still a genuine offer to  
14 purchase from the Club at the time you spoke?

15 A. At the time I spoke, to the best of my  
16 knowledge, that is correct.

17 Q. Yes, sir. And you worked with Mr. and Mrs.  
18 Bennett to change the zoning ordinance? I think that is  
19 obvious from what you have previously testified, is that  
20 correct?

21 A. To request a change to the zoning ordinance,  
22 we were unsuccessful; but that was certainly the  
23 objective.

24 Q. Oh, you were unsuccessful; is that correct,  
25 sir?

1 A. In our request to the Board; yes, sir.

2 Q. Were you not able to get a special exception  
3 concerning the Rifle and Pistol Club, through?

4 A. My recollection is that the Board did not  
5 grant the request that we had made for an emergency  
6 ordinance.

7 Q. All right, sir. Did you ever see the contract  
8 between C F Lumber and Rappahannock Pistol and Rifle Club?

9 A. Mr. Nunn, if I did, I have no recollection of  
10 seeing it. I don't recall seeing it.

11 Q. Would it assist you if I showed you a copy of  
12 it?

13 A. I don't know.

14 Q. All right. Let's try. Mr. Broaddus, I show  
15 you what's been marked as Plaintiff's Exhibit Two, and ask  
16 if you have ever seen that document before?

17 A. Mr. Nunn, I don't have any recollection of  
18 seeing it.

19 Q. All right. Thank you, sir.

20 Did you ever talk to the attorney for C F Lumber  
21 Company, Mr. Raymond W. Edwards?

22 A. I don't believe so.

23 Q. Okay. And so obviously, you never talked to  
24 him about that contract, Plaintiff's Exhibit 2?

25 A. I don't have any recollection of doing so.

1 Q. All right, sir. Just one final question: You  
2 indicate in the letter of February 26th, making the offer  
3 to purchase this property, the fifty-three acre parcel  
4 from the Rappahannock Pistol and Rifle Club, there are a  
5 number of conditions you set forth in a letter. One of  
6 them I invite your attention to: Item 4, the seller's  
7 authority to effect the sale?

8 A. Yes, sir.

9 Q. And that was because it was a corporation, the  
10 Rappahannock Pistol and Rifle Club was a corporation?

11 A. It was a -- I don't know whether it was a  
12 corporation or association; but we wanted to make certain  
13 that it had complied with whatever requirements were  
14 applicable to an entity of its nature, whatever it might  
15 be, to sell the property.

16 Q. That the corporation or the association, in  
17 this case I will tell you it was a corporation, that the  
18 corporation had the authority to sell the property?

19 A. Yes, sir. It is required, a general warranty  
20 deed with the usual English covenants of title.

21 Q. Corporate Resolution, Certificate of  
22 Incumbency?

23 A. Those would be typical things that would  
24 be contemplated, yes.

25 MR. NUNN: All right, sir. Thank you.

1           Thank you, Mr. Broaddus, I have no further  
2 questions.

3           THE WITNESS:       Thank you, sir.

4           MR. MARTIN:       May he be excused?

5           THE COURT:       Yes. Thank you, Mr. Broaddus. You  
6 are released.

7           THE WITNESS:       Thank you, Judge.

8           MR. MARTIN:       Call Lisa Butler.

9                               LISA BUTLER,  
10           was sworn, and testified as follows:

11                              DIRECT EXAMINATION

12          BY MR. MARTIN:

13           Q.       Good morning, ma'am.

14           A.       Good morning.

15           Q.       Would you tell the jury your name, please?

16           A.       I am Lisa Butler.

17           Q.       And where do you live?

18           A.       I am at 1735 Regina Road.

19           Q.       And you own a home in Regina?

20           A.       Yes, sir. I do.

21           Q.       Ma'am, directing your attention to the 9th of  
22 February of 1997, did you become aware that a firing  
23 range might be located in your neighborhood?

24           A.       Yes.

25           Q.       And were you for or against that firing



1 range?

2 A. Against it.

3 Q. Okay. Do you recall the meeting that was held  
4 at the Wicomico Hunt Club that month?

5 A. Yes, I do.

6 Q. Did you attend that meeting?

7 A. Yes, I did.

8 Q. Did a Mr. Marvin Register speak to the  
9 residents of Regina at that meeting?

10 A. Yes, he did.

11 Q. And what do you recall about what he said,  
12 please?

13 A. Well, I recall him stating that the area that  
14 we lived in, if they built a hunt club, that would be the  
15 best building in that area because the houses that we  
16 lived in, were so poor.

17 Q. All right. What were your concerns about the  
18 rifle range?

19 A. Well, I was concerned about the noise, the  
20 safety factor, and the possibility of the lead from the  
21 gunshots contaminating underground springs that are in the  
22 area, from which our drinking water comes.

23 Q. Okay. Were you vocal in your opposition to  
24 the firing range?

25 A. Yes.

1 Q. Okay.

2 MR. MARTIN: Thank you. Answer any questions that  
3 Mr. Nunn may have for you.

4 CROSS EXAMINATION

5 BY MR. NUNN:

6 Q. Just a couple. Ms. Butler, you are not a  
7 resident of Lancaster County, are you?

8 A. Yes, I am.

9 Q. You are. The property that you live on is  
10 zoned agricultural, is it not?

11 A. I'm not certain of the zoning in that area;  
12 no, sir, I am not.

13 Q. How long have you lived there?

14 A. I have lived there a year.

15 Q. Okay. At the time this came up three years  
16 ago, where did you live?

17 A. I lived five miles around the corner in the  
18 Northumberland side of that area. So, I was still in the  
19 Regina area; but I am just five miles from where I am  
20 presently located.

21 Q. Would that be about five miles away?

22 A. About five miles.

23 Q. From the fifty-three acre parcel?

24 A. About five miles. I am not real positive.

25 Q. Okay. But you say you do not know how

1 it is zoned?

2 A. I am not. The parcel that I am -- I am not  
3 positive of how it is zoned. No.

4 Q. Did you take any notes of the meeting of  
5 February 20th, 1997?

6 A. No. I didn't.

7 Q. Okay.

8 THE COURT: Thank you for your testimony.

9 MR. MARTIN: I have one follow-up, your Honor.

10 REDIRECT EXAMINATION

11 BY MR. MARTIN:

12 Q. Ma'am, when did you buy the lot where you  
13 built your house?

14 A. Two years ago I purchased the lot.

15 Q. Okay. Thank you.

16 MR. MARTIN: Call Cory Davenport, please.

17 THE COURT: You are released. Thank you for  
18 your testimony.

19 CORY DAVENPORT,

20 was sworn and testified as follows:

21 Q. Good morning, Mr. Davenport.

22 A. Good morning.

23 Q. Would you tell the jury your name, please?

24 A. Cory Davenport.

25 Q. And where do you live?

1 A. Regina.

2 Q. Sir, directing your attention to February,  
3 1997, did you become aware that a proposed firing  
4 range was going to be located in Regina?

5 A. I don't remember.

6 Q. You don't remember the date or you don't  
7 remember the firing range?

8 A. I don't remember the date.

9 Q. Okay. Do you recall the firing range?

10 A. Yes.

11 Q. Okay. Do you recall going to a meeting at the  
12 Wicomico Hunt Club, that was where the firing range was  
13 discussed?

14 A. Yes.

15 Q. And do you recall Mr. Marvin Register speaking  
16 on behalf of the Gun Club?

17 A. I am not sure who is Marvin. I remember a guy  
18 speaking; but I don't know his name.

19 Q. Are you opposed to the firing range?

20 A. Yes. I was.

21 Q. And why was that?

22 A. It just -- 'cause it was being located behind  
23 my house, and safety.

24 MR. MARTIN: All right. Thank you. Answer any  
25 questions that Mr. Nunn may have.

## CROSS EXAMINATION

BY MR. NUNN:

Q. That area is zoned agricultural, is it not, sir?

A. I am not for sure. I couldn't tell you that.

Q. At the time this matter came up three years ago, you were living in Northumberland County, weren't you?

A. Lancaster County.

Q. In Lancaster, is that where you live now, the same place you live now?

A. No.

Q. Who do you live with, sir?

A. Well, I live in my house now.

Q. Yes, sir. Who lives with you?

A. My wife.

Q. Who is that?

A. Lisa Butler.

Q. That is the lady that just spoke?

A. Yes.

Q. And how long have you all been married?

A. Three years.

Q. Okay. The meeting on February 20th, you say you are not too sure about the date; but you do remember a meeting?

1 A. Yes.

2 Q. Did you take any notes?

3 A. Did I take any notes?

4 Q. Yes.

5 A. No, I didn't.

6 Q. Of what people said?

7 MR. NUNN: Okay. Thank you, sir.

8 MR. MARTIN: May the witness be excused, your

9 Honor?

10 THE COURT: Thank you for your testimony. You  
11 are released.

12 MR. MARTIN: Call Jane Ludwig.

13 Have you been sworn, ma'am?

14 MS. LUDWIG: Yes, yesterday morning.

15 JANE BROTHERS LUDWIG,

16 having been previously sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. MARTIN:

19 Q. Ma'am, would you state your name for the jury,  
20 please?

21 A. My name is Jane Brothers Ludwig.

22 Q. And where do you live?

23 A. 76 Third Avenue in Kilmarnock, Virginia.

24 Q. And what is your occupation?

25 A. Real Estate Broker, Principal Broker for Bay

1 Meadows Real Estate.

2 Q. Is Bay Meadows Real Estate your business?

3 A. Yes.

4 Q. And where is the office located?

5 A. In White Stone, Virginia.

6 Q. And how many real estate agents do you have  
7 working out of your office?

8 A. Total, part-time and full-time, seventeen.

9 Q. How long have you worked in the area of  
10 real estate?

11 A. All total, more than twenty years.

12 Q. And what licenses, if any, do you hold from  
13 the Commonwealth of Virginia?

14 A. I hold a Sales Agent and Broker's License from  
15 the Commonwealth of Virginia.

16 Q. Okay. And what does it mean to have a  
17 Broker's License?

18 A. Well, it means that you have a great deal of  
19 responsibility and everyone's license who is hanging  
20 underneath yours, you are responsible for their doing what  
21 they are suppose to do. You have to keep up with the laws  
22 as they change; handle escrow accounts with monies. I  
23 guess that is about it.

24 Q. Okay. To own a real estate firm, did you have  
25 to have a broker's license?

1 A. Yes, you did.

2 Q. Okay. Are you a member of any professional  
3 organizations?

4 A. Yes. Chesapeake Bay and River Association  
5 which is our local Board; the Virginia Association of  
6 Realtors, and the National Association of Realtors.

7 Q. Okay. Have you testified in any Virginia  
8 Courts as an expert witness in the area of real estate?

9 A. Yes, I have.

10 MR. MARTIN: Your Honor, at this time, we'd offer  
11 Mrs. Ludwig as an expert witness in the area of  
12 real estate broker.

13 MR. NUNN: No objection, your Honor.

14 THE COURT: She is so admitted.

15 CONTINUED EXAMINATION

16 BY MR. MARTIN:

17 Q. Ma'am, how many real estate contracts would  
18 you estimate that you closed as an agent and broker, in  
19 your career?

20 A. Several thousand.

21 Q. Okay. Are you familiar with the term "backup  
22 contract"?

23 A. Yes, very.

24 Q. Tell the jury what that means.

25 A. Well, a backup contract is one that is placed



1 on a property when there is already a contract in place.

2 Let's say, you go out and you look at a home and you  
3 think about it for three days or so, and then you decide  
4 you want to buy it. So, you call up your real estate  
5 agent and you tell them, "Oh, I have decided I want to buy  
6 this house," and the real estate agent tells you, "I am  
7 sorry, it already has a contract on it. But if you would  
8 like to put a backup contract on, then we will draw one up  
9 and submit it, try to get the price agreed upon between  
10 you and the seller, and it will be in a backup position.  
11 Should the number one contract not go through, then your  
12 contract would take first place, and proceed to closing".

13 Q. Is there anything improper or unlawful about  
14 placing a backup contract on a piece of property?

15 A. No. It is done all the time.

16 Q. Okay. Have you been involved with closing on  
17 properties that involved a backup contract?

18 A. Yes. In fact, one closed this morning.

19 Q. Are you familiar with the term "time is of the  
20 essence" in a real estate contract?

21 A. Yes. And the reason I -- it's one that is a  
22 double-edged sword. And by that I mean, that when you  
23 have "time is of the essence," it is a paragraph where it  
24 says that, when it is suppose to close. And if you say it  
25 is to close on June 1st, the year 2000 as "time is of the

1 essence', it means that if it does not close on or before  
2 that day, either party may void the contract.

3 The seller or purchaser may void the contract. And  
4 that is why I say it is a double-edge sword, because if  
5 something happens and you can't get everything together  
6 for a closing, an attorney gets sick who is suppose to be  
7 handling it or whatever; unless all parties agree then to  
8 an extension, "time is of the essence" takes over and  
9 either party, purchaser or seller, can void the contract.

10 Q. Are you familiar with the Rappahannock Pistol  
11 and Rifle Club's existing range on Blueberry Point Road in  
12 White Stone?

13 A. Yes, I am.

14 Q. Has that had any effect on the sales of real  
15 estate in that area?

16 A. Yes, it has.

17 Q. What effect has it?

18 A. A negative effect.

19 Q. Why?

20 A. Well, when people come here, that road, the  
21 majority of that road is waterfront, and when people come  
22 into our area to buy a home, they're buying a quality of  
23 life, for peace and quiet and so forth. And as a  
24 real estate agent or a broker, you have to disclose to the  
25 people that you are showing property, that there is a

1           A.     I can't answer that. I don't have the license  
2 in front of me. But would you like one of the officials  
3 to call the office? It is hanging on the wall, and they  
4 can tell you.

5           MR. NUNN:     Your Honor, I request a break so that  
6 Mrs. Ludwig can clear this issue up.

7           THE COURT:     Denied.

8           MR. NUNN:     All right, sir.

9           Q.     It is true, is it not, that under the  
10 Real Estate Board for the State of Virginia, the Rules and  
11 Regulations, that agents are required to file with  
12 their broker; and you are the broker in this case?

13          A.     I am the broker.

14          Q.     Any --

15          A.     One of the brokers; but the principal broker.

16          Q.     Any contract that they write?

17          A.     They have to file it with me.

18          Q.     File a copy with the broker?

19          A.     Not if I am not taking commission, no.

20          Q.     You are familiar with the Real Estate Board  
21 Rules and Regulations?

22          A.     Yes. I have to have knowledge of the  
23 contracts being written; but they did not have to file it  
24 with us unless the firm is receiving compensation for said  
25 contract.

1 Q. I'd like for you to read from the Rules and  
2 Regulations of Real Estate Board Section 6.12, Subsection  
3 1. Would you take a look at that and see if that  
4 refreshes your recollection.

5 A. Let's see: "Actions constituting improper  
6 delivery of instruments include: Failing to make prompt  
7 delivery to each principal to a transaction, complete and  
8 legible copies of any written listings, lease, offers to  
9 purchase, counteroffers, addenda, ratified agreements, and  
10 other documentation required by the agreement."

11 I am not a principal to the transaction.

12 Q. Let me have that, ma'am.

13 A. Sure. 'But it doesn't have any bearing on me.

14 Q. How about taking a look at Section 6.13 on the  
15 other page, up at the top, Subsection 1.

16 A. I am sorry. I have an eye condition, Fukes  
17 Dysatrophy. I have to concentrate. "Failing, as a  
18 principal or supervising broker, to retain for a period of  
19 three years from the date of the closing or ratification,  
20 if the transaction fails to close, a complete and legible  
21 copy of each contract, agreement, and closing statement  
22 related to a real estate transaction, and all other  
23 documents material to that transaction."

24 It still has nothing to do with me.

25 Q. Turn to page 16.

1 A. Okay.

2 Q. And I invite your attention to "Licensees",  
3 that is real estate agents, "dealing on own account."

4 Look at that and tell me whether it refreshes your  
5 recollection that such a person is to file a copy of the  
6 contract with his broker. "Any license failing to comply"  
7 -- I am reading "Licensees dealing on own account".

8 A. Right.

9 Q. Right.

10 A. "Any licensee failing to comply with the  
11 provisions of Title 54.1, Chapter 21 of the Code of  
12 Virginia or the regulations of the Real Estate Board in  
13 performing any acts covered by 54.1-2100 and 54.1-2101 of  
14 the Code of Virginia may be charged with improper  
15 dealings, regardless of whether those acts are in the  
16 licensee's personal capacity or in his capacity as a real  
17 estate licensee."

18 Q. Did Mr. or Mrs. Bennett file a copy of this  
19 contract for the purpose of this property with you?

20 A. There is a copy at the office; but I still  
21 don't understand. It doesn't say anything about that in  
22 any of the three things you have had me read.

23 Q. So, it is your opinion as a licensed  
24 professional, that there is no requirement that a  
25 real estate agent file a copy of any contract with the

1 broker?

2 A. On their own?

3 Q. Yes?

4 A. Not unless we are receiving compensation,  
5 which we did not receive any compensation.

6 The real estate agents in the County buy and  
7 sell on their own on a day to day basis. And you don't  
8 have to do that. They are independent licensed agents.  
9 And as it reflects my company, in a compensation to my  
10 company, I do have to keep those records for the number of  
11 years that I just read, it stated.

12 MR. NUNN: Thank you, ma'am. No further  
13 questions.

14 MR. MARTIN: May the witness be excused, your  
15 Honor?

16 THE COURT: Yes. You are excused. You are  
17 released.

18 MR. MARTIN: Call George Richardson, please.

19 MR. NUNN: Your Honor, could I ask Mrs. Ludwig one  
20 more question? I apologize.

21 MR. MARTIN: No objection.

22 THE COURT: Return to the witness stand.

23 MRS. LUDWIG: Yes, sir.

24 (Mrs. Ludwig resumes the witness stand.)

25 THE COURT: Are you sure it is going to be just

1 one more question?

2 MR. NUNN: Yes, sir. Indulge me just a moment,  
3 your Honor.

4 THE COURT: Yes.

5 CONTINUED CROSS EXAMINATION

6 BY MR. NUNN:

7 Q. Mrs. Ludwig, look at Page 3 of Plaintiff's  
8 Exhibit Number 13, the contract between C F Lumber and  
9 Mr. and Mrs. Bennett. Look at Page 3 up at the top, and  
10 if you can tell the court and the jury who the broker is  
11 on that particular contract?

12 A. It says that the broker is Bay Meadows Real  
13 Estate; the buyers are agents.

14 Q. Is this a copy filed with your brokerage?

15 A. I viewed the contract before she put it in,  
16 before Catherine Bennett put it in; but they were  
17 representing themselves, and there was no compensation  
18 going to Bay Meadows Real Estate. Therefore, we did not  
19 have to keep copies of them for the State Corporation.

20 Q. The answer is no, then, they did not file a  
21 copy?

22 A. Correct.

23 MR. NUNN: Thank you ma'am. No further  
24 questions.

25 THE COURT: Thank you. You are released.

1 THE WITNESS: Thank you.  
2 GEORGE RICHARDSON  
3 was sworn, and testified as follows:  
4 DIRECT EXAMINATION  
5 BY MR. MARTIN:  
6 Q. Sir, would you tell the jury your name,  
7 please?  
8 A. George S. Richardson.  
9 Q. And, sir, directing your attention to 1997,  
10 did you own property in Regina -- in Lancaster County?  
11 A. Yes.  
12 Q. And where was that property located?  
13 A. It is on Route 615, not too far from Regina.  
14 Q. All right. Were you familiar with the  
15 property in Regina where a proposed firing range was going  
16 to be located?  
17 A. Yes.  
18 Q. Was that near your property?  
19 A. It borders the property in the back.  
20 Q. Were you opposed to having the firing range in  
21 Regina?  
22 A. Absolutely.  
23 Q. And why was that?  
24 A. Because I felt it would damage my chances of  
25 selling my property.



1 Q. Okay. Did you place advertisements in the  
2 Rappahannock Record regarding the firing range?

3 A. Yes.

4 Q. And what did those ads say?

5 A. They were basically set up to try to make  
6 people go to the meeting to protest the starting of the  
7 firing range. They said -- some of them said, stop the  
8 firing range before it gets started, go to the meeting.

9 Q. Did you attend the meeting at the Wicomico  
10 Hunt Club in February of 1997?

11 A. No.

12 MR. MARTIN: That is all the questions I have.  
13 Thank you.

14 CROSS EXAMINATION

15 BY MR. NUNN:

16 Q. Mr. Richardson, you also are aware that that  
17 property is zoned agricultural, are you not, sir?

18 A. Yes.

19 Q. And that at that time, the Club, Rappahannock  
20 Pistol and Rifle Club's firing range would have been a  
21 permitted use under that zoning?

22 A. Yes.

23 Q. Okay. Now, you know, since then, the zoning  
24 has been changed?

25 A. Yes.

1 Q. And the Club would no longer be able to do  
2 that, as a matter of course?

3 A. Right.

4 Q. All right, sir. You know Mr. and Mrs.  
5 Bennett?

6 A. Yes.

7 Q. Did you have any contact with them concerning  
8 this issue?

9 A. Yes. I called them several times.

10 Q. Did they call you?

11 A. Yes.

12 Q. On a number of occasions?

13 A. Several times.

14 MR. NUNN: All right. Thank you, sir.

15 MR. MARTIN: May the witness be excused, your  
16 Honor?

17 THE COURT: You are released. Thank you for  
18 your testimony.

19 MR. MARTIN: Your Honor, our next witness is the  
20 witness that we discussed previously. We would ask for a  
21 ruling of unavailability for Mr. Carter. He does not  
22 appear --

23 THE COURT: Is he here today?

24 MR. MARTIN: No.

25 THE COURT: You move that he be declared



1 THE COURT: I think that is fair. He can do it  
2 that way. It doesn't put another person on the stand.  
3 You can read the questions on direct.

4 MR. MARTIN: And then I will the answer.

5 THE COURT: Yes. Read the answer and that will  
6 be Mr. Carter's. And Mr. Nunn can do it the same  
7 way.

8 MR. MARTIN: May I proceed, your Honor?

9 THE COURT: Yes.

10 MR. MARTIN: Ladies and gentlemen of the jury: I  
11 am going to read to you the prior sworn testimony of Mr.  
12 C F Carter, Junior who was declared unavailable for this  
13 trial, as it was taken on April 15, 1999.

14

15 (The following Direct Testimony of Mr. C F  
16 Carter was read to the jury by Mr. Martin:)

17

18 "C F CARTER, JUNIOR

19 was sworn and testified as follows:

20 THE COURT: All right

21 DIRECT EXAMINATION

22 BY MR. MARTIN:

23 Q. Sir, would you state your name for the court,  
24 please?

25 A. C F Carter, Junior.

1 Q. Where do you live, Mr. Carter?

2 A. I live in King and Queen County.

3 Q. And I have already told the Judge, but you  
4 have a daughter that had a child this morning?

5 A. Yes.

6 Q. And you were at the hospital and that  
7 accounted for you being late getting here?

8 A. Yes, it was.

9 THE COURT: I think that is a pretty good excuse.

10 THE WITNESS: Yes.

11 CONTINUED EXAMINATION

12 BY MR. MARTIN:

13 Q. What business are you in, Mr. Carter?

14 A. Real Estate.

15 Q. Buy and sell land?

16 A. Yes.

17 Q. Do you develop property?

18 A. Right.

19 Q. And you also sell timbered property?

20 A. Yes.

21 Q. How long have you been in this type of  
22 business?

23 A. Since '89.

24 Q. Okay. Do you own C F Lumber Company,  
25 Incorporated?

1 A. Yes.

2 Q. Is that a Virginia corporation?

3 A. Uh - huh. Yes.

4 Q. In 1997 were you president of the corporation?

5 A. Yes.

6 Q. And are you also the sole stockholder?

7 A. Yes.

8 Q. Okay. Sir, in December of 1996, did

9 your company, C F Lumber Company, Inc. buy land on Route

10 615, Regina Road in Lancaster County?

11 A. Yes.

12 Q. Okay. And did you have an attorney represent

13 you?

14 A. Yes.

15 Q. Who is that attorney?

16 A. Wes Edwards.

17 Q. When you closed, were you advised by Mr.

18 Edwards that he did not have all the documents he needed

19 to close?

20 A. Yes.

21 Q. And did you close anyway?

22 A. Yes.

23 Q. You went ahead and bought the property?

24 A. Yeah.

25 MR. MARTIN: May I approach the witness, your

1 Honor?

2 THE COURT: Yes.

3 CONTINUED EXAMINATION

4 BY MR. MARTIN:

5 Q. Mr. Carter, I am going to show you what's  
6 been admitted as Plaintiff's Exhibit Number 3 and ask you  
7 if you recognize that?

8 A. Yes, sales contract.

9 Q. Okay. And does that contract have your  
10 signature on it?

11 A. Yes.

12 Q. Does it also have the signature of Mr. Mabry  
13 on it?

14 A. Yes.

15 Q. Okay. What was the price in that contract?

16 A. Twenty-two thousand.

17 Q. Okay. Who was the purchaser in that contract?

18 A. It is supposed to be Hunt Club, I believe.

19 Q. The Hunt Club?

20 A. Yes.

21 Q. Is the purchaser's name blank on Page 1?

22 A. Yes.

23 Q. Okay. Does the name Rappahannock Pistol and  
24 Rifle Club, Inc. appear anywhere on that contract?

25 A. No.

1 Q. And what was the closing date set forth in  
2 that contract?

3 A. February the 24th.

4 Q. All right. Was there language that says time  
5 was of the essence?

6 A. Yes.

7 MR. NUNN: I think the Court has already ruled  
8 that is a mute issue.

9 THE COURT: Yes.

10 CONTINUED EXAMINATION

11 BY MR. MARTIN:

12 Q. I am asking him if you did put that language  
13 in there?

14 A. Yes.

15 Q. Okay. And what did you mean by " time was of  
16 the essence "?

17 A. That means that it has to close by the closing  
18 date or the contract is void.

19 Q. Okay. And in that contract, did you reserve  
20 timber rights?

21 A. Yes.

22 Q. And did you later sell the timber from that  
23 piece of property?

24 A. Right.

25 Q. Now, did Mr. Mabry close his contract by

1 February 24th, 1997, which was the closing date?

2 A. No. No, he did not.

3 Q. Okay. Did you authorize Mr. Edwards to extend  
4 the closing date?

5 A. No.

6 Q. All right. Did you authorize him to deliver  
7 the signed deed to Mr. Nunn before you received money for  
8 the closing?

9 A. No, we did not.

10 Q. Did you authorize anyone to extend the closing  
11 date?

12 A. No.

13 Q. Did you sign any written amendments to the  
14 contract extending the closing date?

15 A. No.

16 Q. After February 24th, 1997, did you consider  
17 that the prior contract was void?

18 A. Yes.

19 Q. Okay. Did you receive --

20 THE COURT: You are leading the witness here.

21 MR. MARTIN: I will try to do better, Judge.

22 THE COURT: All right.

23 CONTINUED EXAMINATION

24 BY MR. MARTIN:

25 Q. Mr. Carter, I am going to show you what's



1 been marked Plaintiff's Exhibit 12 and ask you if you  
2 recognize that exhibit?

3 A. Yes. This is a contract with Bennett.

4 Q. That was a back up contract?

5 A. Yes.

6 MR. NUNN: Judge, he is leading the witness.

7 CONTINUED EXAMINATION

8 BY MR. MARTIN:

9 Q. When did that contract close, if you recall?

10 A. The 28th.

11 Q. The 28th of February?

12 A. Yes.

13 Q. After the Mabry contract didn't close by the  
14 24th, did you direct Mr. Edwards to close the back up  
15 contract with the Bennett's?

16 A. Yes.

17 Q. And on February 28th, did you sell the  
18 property to the Bennett's?

19 A. Right.

20 Q. Did they have the money to close?

21 A. Oh, yes.

22 Q. Did the Bennett's ever try to interfere with  
23 your closing the first contract?

24 A. No.

25 Q. They didn't threaten you?

1 A. No.

2 Q. Didn't sue you?

3 A. Huh - uh.

4 Q. Call you names or anything?

5 A. No.

6 Q. Okay. Did they ever tell you not to sell to  
7 Mr. Mabry or the gun club?

8 A. No. They never said that.

9 Q. Now, do you recall talking to Mrs. Bennett by  
10 telephone?

11 A. Yes. I did talk to her on the phone.

12 Q. And tell us what was said, if you recall, in  
13 that conversation?

14 A. She said that she'd like to pay --

15 THE COURT: When was this conversation.

16 CONTINUED EXAMINATION

17 BY MR. MARTIN:

18 Q. All right. When was this conversation?

19 A. The middle of January, I guess.

20 Q. Okay?

21 A. And she wanted to know if she could buy the  
22 property and I told her that it was under contract; but if  
23 the contract didn't go through, that I would get back in  
24 touch with her.

25 Q. Okay. Was that the only time you recall

1 talking to her?

2 A. Uh-huh, yes.

3 Q. Did you ever talk to Mr. Bennett?

4 A. No.

5 Q. Did the Rappahannock Pistol and Rifle Club sue  
6 you after the sale to the Bennett's?

7 A. Yes.

8 Q. And did they get a \$4,000 judgment?

9 A. Right. Yes.

10 Q. Did the Bennett's, in any way, cause you not  
11 to sell the property to Mr. Mabry or the gun club?

12 A. No.

13 MR. MARTIN: Okay. Answer any questions that Mr.  
14 Nunn may have, please."

15 ( Mr. Martin concluded his reading of the  
16 testimony.)

17 MR. MARTIN: And that was the end of the direct  
18 examination.

19

20 (The following Cross Examination of C F Carter  
21 was read to the jury by Mr. Nunn:)

22

23 "CROSS EXAMINATION

24 BY MR. NUNN:

25 Q. Mr. Carter, the contract that Mr. Martin

1 showed you, that is the contract that you had with the  
2 Rappahannock Pistol and Rifle Club, is that right?

3 A. Yes.

4 Q. Did you draft that contract?

5 A. Yes. I wrote it.

6 Q. You wrote it?

7 A. Uh - huh.

8 Q. That is your wording? That is the standard --  
9 You are nodding your head yes?

10 A. Yes. This is a standard --

11 Q. That is your standard contract that you use,  
12 is that correct?

13 A. On occasion, yes.

14 Q. How many occasions have you used that  
15 contract?

16 A. Two.

17 Q. You have a number of these back in your  
18 office?

19 A. Yeah. I have four or five of them.

20 Q. Copies? And you pulled this one down and  
21 filled in the blanks?

22 A. Yeah.

23 Q. Signed it and sent it on.

24 Is that your handwriting on the contract?

25 A. Right.

1 Q. Your Honor, could I see exhibits 7 and 8,  
2 please?

3 Mr. Carter, I am going to show you Plaintiff's  
4 Exhibit 7 and tell us what that is, sir.

5 A. That is the authorization for the --

6 Q. For your company to sell to the Rifle and  
7 Pistol Club, isn't it?

8 A. Uh-huh.

9 Q. It is a corporate resolution?

10 A. Yes.

11 Q. And you signed that?

12 A. I signed the back page, yes.

13 Q. Did you see the front page?

14 A. No.

15 Q. You didn't read what you were signing?

16 A. No. Wes Edwards said sign it. So, I signed  
17 it.

18 Q. But there were two pages on it when you signed  
19 it?

20 A. No. I think I signed about eight of these at  
21 the same time.

22 Q. There was a number of documents that you  
23 signed?

24 A. Yes.

25 Q. And this was all for the closing to the Club,

1 to the Rappahannock Pistol Club?

2 A. Different properties, eight different  
3 properties.

4 Q. All right. Well, let me show you Exhibit  
5 Number 8. Is that one of the documents that you signed,  
6 sir?

7 A. Yes.

8 Q. And what is that?

9 A. This is a deed.

10 Q. And a deed from whom to whom?

11 A. From the rifle -- from me to the rifle club.

12 Q. And that is for the 53 acre parcel?

13 A. Yes.

14 Q. And do you know when you signed it, sir?

15 A. No. I think we signed it -- he had a bunch  
16 of deeds and I just signed the schedule, the back schedule  
17 and then he filled in the rest of it, Mr. Edwards.

18 Q. Well, would it be fair to say that it was  
19 notarized, that your signature was notarized on the 20th  
20 of February?

21 A. Yes. That is, Mr. Edwards, the attorney.

22 Q. You have had a lot of experience in selling  
23 property, haven't you, buying and selling property?

24 A. Right much, yes.

25 Q. And you are in the business of buying

1 property, timbering it and then selling it?

2 A. Yeah.

3 Q. You do a lot of that?

4 A. No -- yeah, I guess so. Yeah.

5 Q. Okay. How many parcels would you say that you  
6 have sold in the past ten years?

7 A. I don't know, two hundred.

8 Q. So, you have had some experience in that, is  
9 that correct, sir?

10 A. Yes.

11 Q. Okay. Now, on the sale of this particular  
12 property to the Rifle and Pistol Club, there were certain  
13 documents that you couldn't get from the people who sold  
14 it to you, is that correct?

15 A. That's what I understand.

16 Q. Is that what -- and that is what Mr. Edwards  
17 told you?

18 A. Uh-huh.

19 Q. And you needed these to get title insurance  
20 that you could pass on to another?

21 A. That is what they said.

22 Q. Okay. Just want to make sure that we are on  
23 the same wavelength.

24 Why didn't you have -- to the best of your  
25 knowledge, was the Rappahannock Pistol and Rifle Club able

1 to buy on the 24th of February?

2 A. I don't know. Evidently not. They didn't --  
3 hadn't closed.

4 Q. Well, that is because you couldn't get certain  
5 documents, wasn't it?

6 A. I don't know if I was supposed to get them or  
7 if they were supposed to get documents. I think it was  
8 documents for them.

9 Q. You didn't talk to Mr. Edwards about this?

10 A. Yeah. I am sure I did. Something about some  
11 documents -- I don't know -- title insurance programs.

12 Q. Mr. Edwards didn't tell you on a couple of  
13 times that you had to get the documents -- that you and me  
14 had to get the documents? Didn't he tell you that?

15 A. I don't recall that. He may have.

16 Q. Take a look at the contract that you wrote  
17 with the Club. On the second page, up at the top, didn't  
18 you write in a date up there, Mr. Carter?

19 A. February 24th.

20 Q. And what does it say after that?

21 A. " As soon as title can be examined. "

22 Q. Okay. And that is your form, right?

23 A. Yep.

24 Q. And you know what is in that form?

25 A. Yes.



1 Q. Did you read it all?

2 As I said, that is your contract?

3 A. Yes.

4 Q. Right?

5 A. Yes.

6 Q. That is the one that you used and you wrote  
7 all the figures, all the writing in there, except for Mr.  
8 Mabry's signature?

9 A. Yes.

10 Q. You talked a little bit about the contact with  
11 Mrs. Bennett. Isn't it true, sir, that she called you five  
12 times on the 17th of February?

13 A. No.

14 Q. She didn't talk to you at all in mid-January?

15 A. I can't recall.

16 Q. Well, that is what you told Mr. Martin?

17 A. I can't recall.

18 Q. So, you did not talk to her in mid-January or  
19 you don't know?

20 A. I am not sure.

21 Q. Okay. Mr. Edwards -- Mr. Carter, I am showing  
22 you Exhibit 18, a letter dated February 17. Have you ever  
23 seen that letter or a copy of it?

24 A. I don't recall seeing this letter, no.

25 Q. Well, it indicates that you are one of the

1 people to get a copy of it?

2 A. Okay.

3 Q. But you don't --

4 MR. MARTIN: It is asked and answered, your  
5 Honor. He said he doesn't recall seeing it.

6 MR. NUNN: I think the witness ought to be able  
7 to handle that.

8 MR. MARTIN: Well, I am making an objection.

9 THE WITNESS: I can't recall this. It has my  
10 name on it.

11 MR. NUNN: Sir?

12 THE WITNESS: It has my name on the bottom; but  
13 I can't recall whether I saw it.

14 CONTINUED EXAMINATION

15 BY MR. NUNN:

16 Q. Take a look at the contract there, the  
17 so-called back up contract. When is the first time you  
18 saw that?

19 A. On the day that they bought the property.

20 Q. What day was that, sir?

21 A. It was the 28th of February.

22 Q. Well, the letter that I just showed you refers  
23 to a deed -- a contract and a check coming down to you on  
24 the 17th of February. Are you sure you didn't see that  
25 before the 28th?

1 A. I don't remember that at all.

2 Q. Okay. Do you recall being at depositions on  
3 September the 20 -- I believe it was September 23rd, 1997?

4 A. Right.

5 Q. In Mr. Stamm's office?

6 A. Yes.

7 Q. And do you remember being shown that document  
8 there, that contract?

9 A. Yes.

10 Q. And do you remember saying that you didn't --  
11 that this was strange or something to that effect? That  
12 you did not -- you didn't know that there was a contract?

13 A. I forgot about it. I mean, this was just an  
14 ordinary, every day thing. I couldn't remember details of  
15 this.

16 Q. Okay. Just to make sure, let me see if I can  
17 refresh your recollection.

18 A. Yeah. I couldn't remember the contract. No,  
19 I couldn't remember signing the contract. Simple.

20 Q. You said " I didn't know I had a contract with  
21 them, " meaning, the Bennett's?

22 A. Yes.

23 Q. And this is why you were looking at that?

24 A. Yeah.

25 Q. And you said " This is interesting. "

1           A.     Well, I forgot we signed it the same day we  
2 closed. And it slipped my mind at the time.

3           Q.     But in summary, you did promise to sell the  
4 land to the Rappahannock Pistol and Rifle Club for  
5 \$22,000?

6           A.     Right, by the 24th of February.

7           Q.     Yes, sir, or as soon as thereafter as the  
8 title defects could be cleared up. Is that right? I mean,  
9 that is what your contract says, isn't it?

10          A.     It was for their title policy, not mine. it  
11 was their job to get it cleared up, not mine.

12          Q.     I understand; but isn't that what your  
13 contract says?

14          A.     Yeah.

15          Q.     But Mr. and Mrs. Bennett offered you  
16 \$26,000; is that right?

17          A.     Yeah. Yes, they did.

18          Q.     And they had the money?

19          A.     Yes.

20          Q.     That was your words, I believe, at the  
21 depositions, wasn't it?

22          A.     Right.

23          Q.     So, you took it and sold the property to them?

24          A.     Uh-huh.

25          Q.     Mr. Edwards told you that. He was your

1 attorney at the time, wasn't he?

2 A. Yes.

3 Q. But he didn't have anything to do with the  
4 closing, did he?

5 A. No.

6 Q. Mr. Stamm did everything, didn't he? Is that  
7 right?

8 A. Yes.

9 Q. Mr. Edwards didn't have time that day.  
10 He told you on that day that you had a valid  
11 contract with the Rappahannock Pistol and Rifle Club,  
12 didn't he?

13 A. He thought it was.

14 Q. That is what he told you, didn't he?

15 A. Uh - huh.

16 Q. As your lawyer?

17 A. Yeah.

18 Q. But you decided that you were going to sell  
19 it?

20 A. Did I? I didn't agree.

21 Q. Sir?

22 A. I didn't agree with him. There is no  
23 signature on this contract. I don't know. There is no  
24 name at the tippy top. I could have put the Bennett's  
25 name at the top of it.

1 Q. Sure. You could have.

2 Let's see Exhibit 8, please. So, you just  
3 didn't think that there was a contract, right?

4 A. After the 24th, no, I did not.

5 Q. Well, even when Mr. Edwards told you that  
6 there was one?

7 A. That was his opinion.

8 Q. Yes, sir. Well, again, maybe I am missing  
9 something here; but on your contract form, it does say on  
10 the second page --

11 MR. MARTIN: Your Honor, asked and answered.  
12 It's been asked and answered. We are about the fourth  
13 time here on this.

14 MR. NUNN: I am not sure we are on the same  
15 wavelength here.

16 CONTINUED EXAMINATION

17 BY MR. NUNN:

18 Q. Mr. Carter and you did sign the deed conveying  
19 the property?

20 A. That is what they say.

21 Q. Okay. Mr. Edwards told you on the 26th, about  
22 two days before you sold it to the Bennett's, didn't he,  
23 Wednesday the 26th of February, 1997, didn't he tell you  
24 -- you called him and left a message for him. And you  
25 said, I want to get out of the contract, if possible. Is

1       that right, sir?

2             A.     Uh-huh.

3             Q.     You knew that you were under a valid contract  
4       at that time, sir?

5             A.     No, I did not. It was time was of the  
6       essence. It was over. The 24th was over.

7             Q.     Well, I don't want to argue with you about  
8       that point.

9             A.     No.

10            Q.     But, you wanted to get out of the contract on  
11       the 26th of February, if possible?

12            A.     I am not on trial. This is the way I wrote  
13       it. The 24th -- at the end of the 24th, I thought the  
14       contract was invalid. So, I called the Bennett's up and  
15       told them that they could have the property, plain and  
16       simple.

17            Q.     You called them up?

18            A.     I believe I did.

19            Q.     I thought you didn't have any other contact  
20       with Mr. Bennett?

21            A.     Maybe not. I don't know. We got in touch  
22       with each other. I went down to Mr. Stamm's office and  
23       signed the deed.

24            Q.     How did you get in touch with each other?

25            A.     I can't recall that.

1 MR. NUNN: I don't have any further questions."  
2  
3 (Mr. Nunn concluded his reading of the  
4 testimony.)  
5  
6 MR. MARTIN: Your Honor, for lunch purposes, we  
7 have three brief witnesses, followed by Mr. Stamm who will  
8 be our last witness. I anticipate he will take thirty  
9 minutes.  
10 THE COURT: Well, why don't we take a ten minute  
11 recess now, and we will finish all the witnesses before  
12 lunch.  
13 MR. MARTIN: Yes, sir.  
14 (Jury leaves the courtroom.)  
15 (Recess.)  
16 THE COURT: All right. Bring in the jury.  
17 (Jury present in the courtroom.)  
18 JUDY PITTMAN,  
19 was sworn and testified as follows:  
20 DIRECT EXAMINATION  
21 BY MR. MARTIN:  
22 Q. Good morning.  
23 A. Good morning.  
24 Q. Would you tell the jury your name?  
25 A. Judy Pittman.



1 Q. Where do you live?  
 2 A. 504 Regina Road, Lancaster.  
 3 Q. In the Regina community?  
 4 A. Yes.  
 5 Q. Are you married?  
 6 A. Yes, I am.  
 7 Q. Who is your husband?  
 8 A. Elmer H. Pittman, Junior.  
 9 Q. Is your husband in the Wicomico Hunt Club?  
 10 A. He is a member by -- they gave him a  
 11 membership because they hunt our land.  
 12 Q. You all lease land to the Gun Club?  
 13 A. Yes.  
 14 Q. Okay. Directing your attention to February,  
 15 1997, did you become aware that a firing range was  
 16 proposed to be located in your neighborhood?  
 17 A. Yes.  
 18 Q. Are you familiar with the property on which  
 19 that range would have been located?  
 20 A. Yes.  
 21 Q. Is it near your house?  
 22 A. Yes, sir.  
 23 Q. How close?  
 24 A. About seventeen hundred and forty feet from  
 25 the end of that property to this, the front of our land

1 by Regina Road.

2 Q. Okay. Are you opposed to having a firing  
3 range in your neighborhood?

4 A. Yes, sir.

5 Q. Why is that?

6 A. For many reasons. One is: I have a young  
7 stepdaughter who we have some trouble with concentration  
8 and homework, and a lot of things distract her. And we  
9 thought the noise would be a major problem with her  
10 studies.

11 One of the other reasons is the increase of people  
12 that would be coming through the community. We were told  
13 at a meeting that they wanted to increase their membership  
14 from one hundred fifty people to five hundred people.

15 Q. Let me stop you there. Did you attend the  
16 February 20, 1997 meeting at the Wicomico Hunt Club?

17 A. Yes, sir.

18 Q. And did you hear Mr. Marvin Register speak on  
19 behalf of the Gun Club?

20 A. Yes, sir.

21 Q. And what did he say at that meeting, about the  
22 proposed range in your neighborhood?

23 A. He and Mr. Taylor gave a report. They had a  
24 white picture drawing -- excuse me -- of what they propose  
25 the site would look like. There would be, on the picture

1 they described, there would be archery in one area; an  
2 area for shooting pistols, that they would have ten acres  
3 for shooting pistols; five acres or five places for  
4 shooting rifles, and an area for skeet shooting; that two  
5 sides would have berms; and that they would put vegetative  
6 growth to help with noise abatement; and a small  
7 clubhouse.

8 Q. Mr. Register make any statements as to the  
9 membership in the community and what might happen if they  
10 put the range there?

11 A. Yes. He had mentioned that we would all  
12 be given memberships. And that if we didn't like the  
13 noise, they would provide earmuffs for us, and we could  
14 close our windows.

15 Q. Did he make my mention that tournaments would  
16 be held there?

17 A. Yes. He wanted to have national tournaments  
18 monthly. And we raised -- not just me, but other people,  
19 raised the question about times that they would shoot, and  
20 they said they wouldn't shoot on Sunday until afternoon so  
21 people could go to church. I guess when the games were  
22 over.

23 Q. Did Mr. Register make any statements as to why  
24 they proposed to locate the range in the Regina area as  
25 opposed to other areas in the County?

1 A. Yes. He mentioned that it was the lowest, the  
2 lowest area in the County.

3 Q. The lowest in elevation or lower in income?

4 A. In income, the poorest.

5 Q. The poor area?

6 A. Poorest.

7 Q. Did you contact the Bennett's to tell them  
8 about the range?

9 A. No. I met Catherine and Robert Bennett at  
10 this meeting.

11 Q. Okay. Did you write a letter to the  
12 Rappahannock Record opposing?

13 A. Yes, sir. I wrote a few letters.

14 Q. And did you speak in opposition to the range?

15 A. Yes, sir. I did.

16 Q. How do your neighbors feel about the Bennett's  
17 buying that property?

18 MR. NUNN: Objection, your Honor.

19 MR. MARTIN: I withdraw that.

20 That is all the questions I have. Answer any  
21 questions Mr. Nunn has, please.

22 CROSS EXAMINATION

23 BY MR. NUNN:

24 Q. How long have you lived there, Mrs. Pittman?

25 A. Since April of 1992.

1 Q. And do you know it's not zoned for residential  
2 purposes?

3 A. I believe it is zoned A-2.

4 Q. That is agricultural?

5 A. Yes.

6 Q. Okay. Did you have any contact with Mrs.  
7 Bennett during this period of time?

8 A. Which period of time, since the meeting?

9 Q. Before or after the meeting?

10 A. I met them the night of that meeting; and,  
11 yes, we have had many meetings.

12 Q. And you discussed this with them on a number  
13 of occasions?

14 A. Yes, sir.

15 Q. Okay. And you first discussed it at a meeting  
16 on February 20th?

17 A. I did not speak with them during that  
18 meeting. I met them at the end of the meeting. I went  
19 and introduced myself to them.

20 Q. Okay. And it was decided something had to  
21 be done?

22 A. We decided to get together and talk about it.

23 Q. And you did?

24 A. Yes, we did.

25 Q. Several times?

1 A. Yes, sir.

2 Q. Okay. And it was decided that the  
3 Rappahannock Pistol and Rifle Club had to be kept out; is  
4 that correct?

5 A. No. That's not correct. We decided that our  
6 whole thought was that we did not want a pistol and rifle  
7 range so close to many homes.

8 Q. Right?

9 A. We were not opposed to the Club.

10 Q. They had to be kept out?

11 A. We did not want a pistol and rifle range  
12 located near our homes, sir.

13 Q. At any cost?

14 A. I don't understand your question, sir.

15 Q. And do you know that Mr. and Mrs. Bennett  
16 offered more money to the seller than the Rappahannock  
17 Pistol and Rifle Club?

18 A. I was not aware of that, at first; no, sir.

19 Q. Not aware that they offered \$4,000.00 more?

20 A. Not in the beginning; no, sir.

21 Q. But you knew it?

22 A. Later on, yes.

23 Q. When did you know it?

24 A. I really don't know that. I think way --

25 Q. This was --

1 A. I don't -- not in the very beginning. I think  
2 maybe a couple weeks after.

3 Q. Okay. Before the sale?

4 A. No. This would have been after the sale, sir.

5 Q. So, you found out that they offered \$4,000.00  
6 more?

7 A. Yes.

8 Q. And this was so the owner would sell to the  
9 Bennett's; is that correct?

10 A. I understood that they had purchased the  
11 property. I didn't know who approached them about buying  
12 or selling it.

13 MR. NUNN: Thank you.

14 MR. MARTIN: May the witness be excused, your  
15 Honor?

16 THE COURT: You are released. Thank you very  
17 much.

18 THE WITNESS: Thank you.

19 MR. MARTIN: Call Mr. Gravatt, please.

20 BRUCE LEE GRAVATT,

21 was sworn and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. MARTIN:

24 Q. Good morning, Mr. Gravatt.

25 A. Good morning.

1 Q. Would you state your name for the jury,  
2 please.

3 A. Bruce Lee Gravatt.

4 Q. Where do you live, Mr. Gravatt?

5 A. In Regina, Virginia.

6 Q. How long have you lived in Regina?

7 A. For two years.

8 Q. Okay. Directing your attention to 1997, did  
9 you become aware that a rifle range was proposed to be  
10 located in your neighborhood?

11 A. I did.

12 Q. And did you oppose that range?

13 A. Yes. I did.

14 Q. And why was that?

15 A. Well, I don't want the noise, all the lights  
16 in that area. I moved there and bought property because  
17 it was a quiet, peaceful community.

18 Q. Okay. You mentioned the light. What concerns  
19 did you have about the light?

20 A. Well, I am an amateur astronomer, and I set my  
21 telescopes out in my front yard. And at the present time,  
22 there are no lights visible from my property. And  
23 although there is glare from Kilmarnock, and with the  
24 rifle range, I don't know what kind of lighting they are  
25 going to do; but I suppose that they will have these



1 lights set up around the perimeter. And that they leave  
2 them on all the time. And all that does is put up more  
3 light glare to obscure my vision.

4 Q. And did you speak out against the firing  
5 range?

6 A. Yes. I did.

7 MR. MARTIN: Thank you. Answer any questions that  
8 Mr. Nunn may have for you.

9 CROSS EXAMINATION

10 BY MR. NUNN:

11 Q. You were building a home there at the time,  
12 sir?

13 A. Yes.

14 Q. And you had just bought the property?

15 A. Well, I had bought the property, actually a  
16 year and a half sooner.

17 Q. And you knew that it was zoned agricultural?

18 A. Yes.

19 Q. You knew that it was not zoned residential?

20 A. Repeat, please.

21 Q. It was zoned for agricultural purposes, wasn't  
22 it, sir?

23 A. Yes.

24 Q. A-2?

25 A. Yes, sir.

1 Q. Sir?

2 A. Yes, sir.

3 Q. Not for residential purposes?

4 A. Well, the zoning I am talking about --

5 Q. well, I will withdraw that question.

6 You are aware that it was zoned specifically for  
7 uses such as the proposed range?

8 A. I am sorry. I am hard of hearing.

9 Q. I will try and speak up. You are aware, and  
10 were aware that it was zoned for specific purposes,  
11 specifically for things such as the range?

12 A. No.

13 Q. You did not know that?

14 A. No.

15 Q. Well, have you learned that it is not zoned  
16 for that specific purpose anymore, without a special  
17 exception; or do you know anything about that?

18 A. No.

19 MR. NUNN: All right, sir. Thank you.

20 MR. MARTIN: Call Mr. Hollowell, please.

21 JOHN HOLLOWELL,

22 was sworn and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. MARTIN:

25 Q. Good morning.

1 A. Good morning.

2 Q. Sir, would you state your name for the jury,  
3 please?

4 A. John Hollowell.

5 Q. Where do you live?

6 A. 1813 Davis Mill Road.

7 Q. Is that in the Regina area?

8 A. Yes, it is.

9 Q. And do you own a home there?

10 A. Yes. I do.

11 Q. Married and have children?

12 A. Two children.

13 Q. Sir, directing your attention to February of  
14 1997, did you become aware that a firing range was  
15 proposed to be located in your neighborhood?

16 A. Yes.

17 Q. And were you opposed to that range?

18 A. Yes, I was.

19 Q. Please tell the jury why that was.

20 A. Primarily for the noise. And I also had some  
21 safety concerns when I learned of plans of the rifle  
22 range, what they were proposing. My house and my  
23 neighbor's house was in the line of fire.

24 Q. You are aware that the Wicomico Hunt Club  
25 hunts in the Regina area?

1 A. Correct. Yes.

2 Q. Is there any difference that you see between  
3 hunting and what would happen with a firing range?

4 A. Absolutely.

5 Q. What is that?

6 A. The amount of shooting that would go on. I am  
7 a hunter. I have a gun case full of guns at my house. I  
8 have no problem with my neighbors going out to target  
9 practice in the day. But my objection was to having a  
10 large group of people there that were there strictly for  
11 the purpose of ripping off fifty or one hundred rounds  
12 apiece.

13 Q. Did you sign a petition against the firing  
14 range?

15 A. Yes. I did.

16 Q. Did you attend the meeting at the Wicomico  
17 Hunt Club?

18 A. Yes. I did.

19 Q. Did you attend the meeting at the Board of  
20 Supervisors in February of 1997?

21 A. Yes.

22 Q. And did you ask Mr. Bennett to speak on  
23 your behalf, against the firing range?

24 A. Yes. I did.

25 MR. MARTIN: Answer any questions, please, that

1 Mr. Nunn may have for you.

2 CROSS EXAMINATION

3 BY MR. NUNN:

4 Q. Mr. Hollowell, how long have you lived there,  
5 sir?

6 A. Five years.

7 Q. And when you purchased the property, you knew  
8 that it was zoned agricultural?

9 A. My house?

10 Q. That property, all of that area out there?

11 A. Well, my house is a residential lot in a five  
12 lot subdivision.

13 Q. It is zoned agricultural?

14 A. Agricultural?

15 Q. Isn't it?

16 A. No. I did not.

17 Q. Do you know that, sir?

18 A. Well, I do now.

19 Q. All right. You had some, several contacts  
20 with Mr. and Mrs. Bennett, in this regard?

21 A. Yes, sir.

22 Q. Would you say numerous contacts?

23 A. A number of -- probably half a dozen or so.

24 Q. And at the meeting -- you don't recall at the  
25 meeting on the 20th of February, you do not recall being

1 told by the club members that there is no firing after  
2 dusk?

3 A. I assume that. I don't recall that  
4 specifically.

5 MR. NUNN: All right, sir.

6 MR. MARTIN: May he be excused, your Honor?

7 THE COURT: You are released. Thank you very  
8 much.

9 THE WITNESS: Thank you.

10 MR. MARTIN: Call as our last witness, Chris  
11 Stamm.

12 Sir, if I may have just a minute.

13 THE COURT: Yes, sir.

14 MR. MARTIN: Be right with you, Mr. Stamm.

15 MR. STAMM: That is fine.

16 PAUL CHRISTIAN STAMM, JUNIOR, Esquire  
17 having been previously sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. MARTIN:

20 Q. Sir, would you state your name for the jury,  
21 please?

22 A. Paul Christian Stamm, Junior.

23 Q. And what is your occupation, Mr. Stamm?

24 A. I am an attorney.

25 Q. Where do you practice?

1 A. Kilmarnock.

2 Q. How long have you practiced law?

3 A. Twenty-one years.

4 Q. Are you also a licensed title insurance  
5 agent?

6 A. Yes. I am.

7 Q. And do you have a title insurance agency that  
8 you own?

9 A. Yes. I do.

10 Q. What is the name of that agency?

11 A. The agency is American Title of Lancaster,  
12 Incorporated.

13 Q. Is that located also in Kilmarnock, Virginia?

14 A. Yes.

15 Q. Okay. You hold a license as a title insurance  
16 agent?

17 A. Yes.

18 Q. You also hold a license to practice law in the  
19 Commonwealth of Virginia?

20 A. Yes. I do.

21 Q. Tell the jury what type of law practice you  
22 have.

23 A. Estate planning, general practice, traffic,  
24 criminal, and real estate.

25 Q. Okay. As far as the title insurance company,

1 what type of business does that do?

2 A. You search the titles to land. You make sure  
3 the title is clear so the new owner has no problems with  
4 the back title to the land in case there is an error or  
5 forgery or something wrong with the title. The title  
6 insurance company insures the value of the property to the  
7 purchase price, in case something goes wrong.

8 Q. In your practice of law, can you tell us how  
9 many closings that you have done for real estate buyers  
10 and sellers?

11 A. Thousands and thousands and thousands.

12 MR. MARTIN: Your Honor, at this time, I'd offer  
13 Mr. Stamm as an expert witness, both as an attorney  
14 practicing in the area of real estate law and as a title  
15 insurance agent.

16 MR. NUNN: No objection, your Honor.

17 THE COURT: All right. He is accepted.

18 CONTINUED EXAMINATION

19 BY MR. MARTIN:

20 Q. Mr. Stamm, have you heard the term "time is of  
21 the essence" in real estate law?

22 A. Yes. I have.

23 Q. Tell the jury what that means.

24 A. "Time is of the essence", is a term inserted  
25 in a contract at where they insert the closing date. The



1 meaning of "time is of the essence," is that it must close  
2 on that date. Most contracts are pre-printed and they say  
3 "on or before" a certain date for closing. If you have  
4 "time is of the essence," it makes it at least a meeting  
5 of minds between the parties, that it is going to close  
6 that day.

7 The purpose for that is, if someone is selling a  
8 property and has to get the money to buy their other house  
9 or their other piece of property, they know that they can  
10 then go on to the next transaction because that's the day  
11 the money will come.

12 Q. And what is the result if it doesn't close  
13 by the date; or where "time is of the essence"?

14 A. If it doesn't close by the date without  
15 agreement of the parties, both parties, not just  
16 unilaterally, or one party, the result is that it doesn't  
17 close.

18 Q. Okay. Do you know Mr. and Mrs. Bennett, my  
19 clients?

20 A. I do.

21 Q. And how long have you known the Bennett's?

22 A. Oh --

23 Q. Roughly?

24 A. Oh, five or six years, give or take.

25 Q. You are their attorney here in Kilmarnock?

1 A. I do their real estate work.

2 Q. Have you represented them in real estate  
3 transactions?

4 A. Yes.

5 Q. Did you represent them in the transaction that  
6 led to this lawsuit?

7 A. Yes. I did.

8 Q. Okay. Are you familiar with the term "backup  
9 contract"?

10 A. I am.

11 Q. And tell us, tell the jury what that means, to  
12 your understanding.

13 A. A "backup contract" is a contract offered by a  
14 specific purchaser, somebody that wants to buy the land or  
15 the property. That is presented to the seller as a second  
16 position or a backup position; that means that there may  
17 already be another contract. And what you are saying with  
18 the backup contract, if that doesn't close, we want to buy  
19 it.

20 Q. Is there anything wrong or improper about  
21 using a backup contract?

22 A. Nothing that I know of.

23 Q. Have you closed backup contracts, in your  
24 experience?

25 A. Many, many of them.

1 MR. MARTIN: May I approach the witness, your  
2 Honor?

3 THE COURT: Yes.

4 Q. Mr. Stamm, I am going to show you what's  
5 been admitted as Plaintiff's Exhibit 2, which is the real  
6 estate contract between unnamed purchaser and C F Lumber  
7 Company, and do you see that?

8 A. Yes.

9 Q. Prior to the time that the Bennett's bought  
10 this property -- by the way, this is for the Regina  
11 property. Had you seen this before?

12 A. No.

13 Q. No. When was the first time that you saw this  
14 contract?

15 A. When the Bennett's were served with Mr. Nunn's  
16 Bill of Complaint.

17 Q. The lawsuit?

18 A. It was attached as an exhibit.

19 Q. Hand this back to the Judge.

20 Did you advise the Bennett's in any way, with regard  
21 to the purchase of the Regina property?

22 A. Yes. I did.

23 Q. And tell the jury, what you told them when you  
24 met them, and so forth.

25 A. On February 17 or 18, I believe it was, '97,

1 the Bennett's called and asked could they come in the  
2 office. They did come in and said "we'd like to present a  
3 backup contract on the Regina property", which is behind  
4 their farm that they own. And I looked at the contract  
5 that was prepared, and advised them that I would approach  
6 the seller's attorney with the backup contract.

7 Q. And did you know who the seller's attorney  
8 was?

9 A. Yes. It was Mr. Edwards who rented an office  
10 space from me in my building.

11 Q. And to your knowledge, had Mr. Edwards  
12 represented C F Lumber Company in the past?

13 A. Yes.

14 Q. And likewise, Mr. C F Carter, Junior, the  
15 president of that company?

16 A. I assume so.

17 Q. Okay. May I approach again, your Honor?

18 THE COURT: Yes.

19 Q. Mr. Stamm, I am going to show you now what's  
20 been admitted as Plaintiff's Exhibit 16, which is the  
21 letter dated February 17, 1997. I am also going to show  
22 you Exhibit 14, which is a \$6,000.00 check from the  
23 Bennett's, to attorney Wes Edwards.

24 A. Yes.

25 Q. And then Exhibit 13, which is the contract,

1 and ask you if you recognize those documents?

2 A. All of them. I recognize all of them.

3 Q. Tell the jury how you came to be familiar with  
4 them?

5 A. This is the contract that I called the "backup  
6 contract" that the Bennett's brought in to my office with  
7 the \$6,000.00 deposit check for Mr. Edwards who  
8 represented C F Lumber, and this is a cover letter that  
9 went with it.

10 Q. Okay. Who brought those to you; if you  
11 recall?

12 A. Well, it was either Mr. or Mrs. Bennett, one  
13 or the other. I can't remember.

14 Q. Okay. Now, directing your attention to the  
15 contract, there's been some talk about the handwriting and  
16 the date. Hold it up. Show the jury, Page 1 of this  
17 contract, Exhibit 13.

18 A. 2-24-97 is my handwriting.

19 Q. You are referring to the top of Page 1?

20 A. Top of Page 1.

21 Q. You put that?

22 A. I put that.

23 Q. Next, I am going to go to Page 3, the line 17,  
24 that starts "acceptance".

25 A. 2-28-97, I put that.

1 Q. And 6:00 p.m.; do you recall?

2 A. Well, I assume I put it there. It looks like  
3 the same handwriting. It is not enough to really tell  
4 whether it is my handwriting or not. I think it probably  
5 is.

6 And "seller accepts this offer"; I put 2-27 there.

7 Q. And there are also dates by names: Mr. Carter  
8 and Mr. Bennett?

9 A. Yes.

10 Q. Mr. Bennett, 24th of February; and Carter the  
11 28th of February. Does that look like your handwriting?

12 A. That looks like it.

13 Q. Now, after you received the backup contract,  
14 the deposit check payable to Wes Edwards and the letter to  
15 Wes Edwards, what, if anything, did you do with those?

16 Did you meet with Mr. Edwards?

17 A. It was in my conference room, which is, if you  
18 walk in his office, that is to the right. I left my  
19 conference room; went in the hallway; went upstairs to Mr.  
20 Edwards, and advised him that I had what I perceived to be  
21 a backup contract for Mr. Carter with C F Lumber.

22 Q. Okay?

23 A. He was busy. He said, "I'll be down in a  
24 minute." And then Mr. Edwards came down to the office.

25 Q. Down to your office?

1           A.     Down to the conference room, in my office  
2 space which is downstairs. His was upstairs.

3           Q.     Was he using that conference room also?

4           A.     From time to time when he had clients to come  
5 in. So, he is familiar with where it was. He came in.  
6 Showed him the contract. Said "here is a backup contract  
7 and a check."

8           There is a sofa in there, took it, and my filing  
9 system is: If things are pending, I don't put them away;  
10 I put it on my pending file there and said, "Here it is, a  
11 contract to purchase", and he said "okay", and went back  
12 upstairs.

13          Q.     Did the backup contract, check and letter  
14 remain on your sofa?

15          A.     It did.

16          Q.     Using your filing system, until the closing?

17          A.     It did.

18          Q.     Did you have an occasion to speak with Mr. C F  
19 Carter, Junior?

20          A.     On the -- again, I don't know whether  
21 it is the 27th or 28th of February, I was in my conference  
22 room which again, you walk in my front door, you have my  
23 secretary to the left and my conference room which has  
24 glass doors with curtains; but I often leave it open  
25 because it is pretty secure unless sometimes coming in the

1 door, and I was there, there with other clients, totally  
2 unrelated to this, and this gentleman, who I didn't know,  
3 pops his head in and said "close it".

4 Q. And you responded?

5 A. And I responded "close what" or "who are you".  
6 I don't remember exactly what I said. I did not know who  
7 it was.

8 Q. And did he, the man, identify himself?

9 A. He said, "I am Mr. Carter. Close that  
10 property". And then I, of course, said your attorney is  
11 -- go upstairs and see Mr. Edwards.

12 Q. Did you send him on up to see Mr. Edwards?

13 A. I went, "Go upstairs and see Mr. Edwards."

14 Q. Did you discuss it with Mr. Carter after that  
15 occasion? Did you meet with him or talk to him?

16 A. No.

17 Q. What about for signing of the deed, did he  
18 come?

19 A. My secretary -- the deed is somewhere around  
20 here.

21 Q. It is an exhibit.

22 A. One of my secretaries notarized it; but I was  
23 not there when it was signed or notarized.

24 Q. Was that your only contact with Mr. Carter in  
25 this transaction?



1 A. That was it.

2 Q. After you sent Mr. Carter up to see Wes  
3 Edwards, did you have occasion to meet with Mr. Edwards  
4 about the transaction?

5 A. Yes. After I finished with my client, I went  
6 upstairs and I said, "Mr. Edwards, what is going on, you  
7 know, what do you want to do?" And he said, "well, close  
8 it". So, I said "All right. I am going to the courthouse  
9 to finish up my title." I had done some like getting a  
10 change of title together; but I didn't do a whole lot of  
11 work. If you have a backup contract and it doesn't close,  
12 you don't get paid. So, I get my secretary to please do a  
13 deed. But because Mr. Edwards has the deed and he would  
14 have Mrs. Edwards to do it, the deed, and she was busy --  
15 I don't believe she was there. And I came up to my  
16 secretary, and my secretary Nancy prepared the deed. And  
17 I came back and I called the Bennett's and said, "Well,  
18 Mr. Carter wants to close".

19 Q. And what was the response, do you recall, of  
20 the Bennett's?

21 A. No. I don't have a clue.

22 Q. What is the response you received?

23 A. Close it.

24 Q. Okay. And did you close it?

25 A. I did.

1 Q. Did you complete a title exam for the  
2 property?

3 A. I did.

4 Q. Did you find any title defects for the  
5 property?

6 A. I didn't.

7 Q. Did you report any title defects to Mr.  
8 Edwards or anybody else?

9 A. No. I didn't.

10 Q. Okay. Did your company issue title insurance  
11 to the Bennett's for the purchase of the property?

12 A. It did.

13 Q. Were you able to obtain all the corporate  
14 documents that were required by your title insurance  
15 company for the closing?

16 A. Yes, I was -- I needed a corporate resolution  
17 that showed who would be authorized for C F Lumber to  
18 sign, and I also needed a certificate from the State  
19 Corporation Commission for that. So, I called Charles  
20 Adkins, who Mr. Edwards had told me that was his corporate  
21 lawyer over there, and in about half an hour or maybe  
22 less, I had a fax back of the information that I needed.

23 Q. Okay. From the time that you were told to  
24 close the transaction, how long did it take you to search  
25 the title, find no title defects, obtain documents for

1 title insurance and close the purchase?

2 A. Less than twenty-four hours.

3 Q. This wasn't a process that would take days or  
4 weeks to do?

5 A. No, not unless you found defects or a problem,  
6 and it could take more than that.

7 Q. Did you record the deed to the Bennett's?

8 A. I did.

9 Q. Okay. Who handled the disbursement from the  
10 closing?

11 A. I did.

12 Q. Did Mr. Edwards receive a fee for the closing?

13 A. He did.

14 Q. And how much was his fee?

15 A. Three hundred dollars.

16 When I told him we were going to go close, I told  
17 him I would do the HUD 1, as well, which is a form,  
18 closing form where all of your money, where it is coming  
19 from and where it is going, is shown on there. So, you  
20 know that you get your money's worth, besides the deed.  
21 And I asked him, what is your fee for this transaction,  
22 and put it on the closing statement.

23 Q. Did you ever discuss with the Bennett's on  
24 February 26th, 27th, or 28th, that they might be sued  
25 by the Gun Club if they bought the property?

1           A.     After I recorded the deed, I delivered the  
2 deed to them and it came up, what is our liability now.  
3 And I said, "well, they may sue you". That is all of the  
4 conversation.

5           Q.     Did you believe that they had any grounds to  
6 sue?

7           A.     No. I didn't.

8           MR. MARTIN:     Thank you. Answer any questions  
9 that Mr. Nunn might have.

10                               CROSS EXAMINATION

11       BY MR. NUNN:

12           Q.     Had you seen the contract between the Pistol  
13 and Rifle Club and C F Lumber?

14           A.     Had I seen it prior to closing?

15           Q.     Yes.

16           A.     No.

17           Q.     You had not?

18           A.     No.

19           Q.     You didn't know what it said?

20           A.     No.

21           Q.     Mr. Stamm, you said that you went to see Mr.  
22 Edwards on February the 18th?

23           A.     Seventeenth or eighteenth. I don't have a  
24 clue.

25           Q.     You went upstairs to his office?

1 A. Walked upstairs.

2 Q. Mr. Bennett was with you?

3 A. No. He was in a conference room downstairs.

4 Mr. Edwards was busy. He said I will be down in a minute.

5 Mr. Edwards came downstairs, and one of the Bennett's was

6 with me, and I should be able to remember who, but I just

7 don't remember. And he came into my conference room where

8 the Bennett was.

9 Q. So, if Mr. Edwards testified that you came up  
10 to his office with Mrs. Bennett, that would be incorrect?

11 A. He may have a mistake in recollection; but I  
12 told her there is no sense -- if it was her -- that it was  
13 no sense in walking upstairs. He would come down.

14 Q. And if Mr. Edwards said that you told him, "I  
15 have a backup contract downstairs"; that would also be  
16 wrong?

17 A. No. I told him I have a backup contract  
18 downstairs.

19 Q. So, you were up in his office, then?

20 A. I didn't take the contract.

21 Q. Okay. But you did go up to his office?

22 A. Up to his office, and said, "Mr. Edwards, I  
23 have a backup contract. Would you come down to review  
24 it".

25 Q. And you say one of the Bennett's was with

1 you?

2 A. I don't recall. I don't recall who. I am  
3 sorry.

4 Q. And at that time, Mr. Edwards told you that he  
5 already had a valid contract, didn't he?

6 A. He said there was a contract working on the  
7 property.

8 Q. He told you that?

9 A. He told me that.

10 Q. He told you there was already a valid  
11 contract?

12 A. I don't remember him saying "valid." He said  
13 there was a contract that I am working on for Mr. Carter  
14 on the property. And then I said, "Well, that is fine.  
15 This is a backup contract, if that doesn't close. Come  
16 downstairs and meet my client."

17 Q. But you did not take what you refer to as the  
18 "backup" upstairs?

19 A. Not upstairs. No.

20 Q. And this was on the fifty-three acres in  
21 Regina?

22 A. Yes.

23 Q. And Mr. Edwards informed you that there was a  
24 problem with paperwork or words to that effect?

25 A. No at that moment. No.

1 Q. Well, at sometime, advised you of that?

2 A. Sometime in the middle or toward the end, I  
3 think, after Mr. Carter. He said, "well, what about the  
4 Certificate of Incumbency." And I said, "I have called  
5 Fidelity National in Tennessee. The general counsel  
6 received what I needed and I am proceeding to close under  
7 that title insurance company's request."

8 Q. Okay. Is the contract -- I believe you have  
9 it over there?

10 A. Yes, I do.

11 Q. Exhibit 13?

12 A. Yes, sir.

13 Q. This is the one that you told Mr. Edwards  
14 about?

15 A. Yes, sir.

16 Q. And that was on or about February the 18th?

17 A. Seventeenth or eighteenth. I couldn't tell  
18 you.

19 Q. When did you receive that, sir?

20 A. This contract?

21 Q. Yes.

22 A. On the 17th or 18th of February, 1997.

23 Q. And you don't recall which it was, Mr. or Mrs.  
24 Bennett, who brought it to you?

25 A. Do not.

1 Q. Was it signed?

2 A. Yes, by the Bennett's.

3 Q. Okay. On the 17th or 18th, you are quite sure  
4 of that?

5 A. I think it was signed when I got it.

6 Q. Okay. Take a look at Page 4. I believe that  
7 is the one that the signature is on, three or four.

8 A. Page 3.

9 Q. Okay. What date does that indicate that the  
10 Bennett's signed?

11 A. 2-24-97.

12 Q. So, it was not on the 17th or 18th.

13 Was it post-dated?

14 A. Post-dated?

15 Q. Yes, sir?

16 A. I don't --

17 Q. They brought a signed contract to you? Did it  
18 already have 2-24-97 on it?

19 A. I don't remember, Mr. -- this is what it has.

20 Q. Had you dated that contract on the first page?

21 A. Yes. I did.

22 Q. When they brought it to you?

23 A. No. I am sure that they didn't do it when  
24 they brought it to me.

25 Q. When did you?



1 A. I would imagine on the 24th.

2 Q. You are not sure?

3 A. No. Huh-uh.

4 Q. And if it was accurate, that would have been  
5 the date that you signed it or the date that you dated it?

6 A. I didn't sign it.

7 Q. Would have been the 24th?

8 A. I would imagine so.

9 Q. But you are not sure?

10 A. No.

11 Q. Did you ever show this contract, this  
12 particular contract, to Mr. Edwards?

13 A. I did. That first day, on the 17th or 18th,  
14 when they came in, Mr. Edwards came downstairs, looked at  
15 the contract, looked at the check. And I just said, "for  
16 your information, this is a backup contract for  
17 your client," and put it on the sofa.

18 Q. So, if Mr. Edwards said that he did not  
19 go downstairs --

20 A. He is mistaken.

21 Q. -- he is mistaken?

22 A. He is mistaken.

23 Q. All right, sir. Did you show the contract to  
24 Mr. Edwards, or did you discuss the contract with him on  
25 the 27th or 28th of February?

1 A. I did.

2 Q. And you indicated this was a backup. What did  
3 you --

4 A. On the 27th or 28th of February, the only  
5 discussions were: "What are you doing". And he said,  
6 "Well, Mr. Carter wants to close." So, I proceeded to  
7 closing on the 27th.

8 Q. Did you refer to that as a backup contract?  
9 Did you consider it a backup contract?

10 A. Until accepted by the seller, and then it  
11 would be the primary contract. And there was nothing of  
12 record that would indicate to me, from a legal standpoint,  
13 that there were any liens or problems with the title, that  
14 would prevent them from buying it.

15 Q. Yes, sir. So, it was a backup to what, sir?

16 A. It is a backup to whatever Mr. Edwards said  
17 that he had previously pending.

18 Q. It was for the fifty-three acres, wasn't it,  
19 sir?

20 A. Yes. Yes.

21 Q. The fifty-three acres, the same parcel of  
22 property that Mr. Edwards told you he was trying to close;  
23 is that correct?

24 A. Yes.

25 Q. No question in your mind about that?

1 A. No. Absolutely not.

2 Q. All right. You say you filled in the date at  
3 the top of the first page?

4 A. Yes. I did.

5 Q. Did you make any changes in it?

6 A. No, sir.

7 Q. You are sure about that?

8 A. Absolutely positive.

9 Q. Okay. Your Honor, I'd like to pass 13A, and  
10 copies of it around to the jury, if it is all right with  
11 the court.

12 MR. MARTIN: I would ask that the witness be  
13 allowed to see the exhibit, if he is going to be  
14 questioned about it.

15 MR. NUNN: He has already seen it. He certainly  
16 may.

17 MR. MARTIN: Not 13A.

18 THE WITNESS: I don't have it here.

19 THE COURT: Give a copy to Mr. Stamm.

20 CONTINUED EXAMINATION

21 BY MR. NUNN:

22 Q. Is that an accurate photocopy enhancement of  
23 the first page, the top of the first page?

24 A. I would say so. Yes, sir.

25 Q. All right. Thank you. And pass that over to

1 the jury.

2 Now, drawing your attention to the top of the page

3 --

4 A. Yeah.

5 Q. -- at the top of the page is April -- I am  
6 sorry -- February the 24th?

7 A. Yes, sir.

8 Q. And that was not changed at all; is that  
9 correct, sir?

10 A. No, sir, not to my knowledge.

11 Q. It was blank, that date was blank, not filled  
12 in any way when you received it on the 17th or 18th?

13 A. Correct!

14 Q. And you had it in your possession the whole  
15 time?

16 A. On the couch in my conference room; yes, sir.

17 Q. And you say the Bennett's had already signed  
18 it, effective February 24th, when you got it; is that  
19 correct?

20 A. I thought their signatures were on there when  
21 they brought it in.

22 Q. Well, you just stated that the dates were on  
23 there, too?

24 A. I did not say that the dates were on  
25 there. I said I thought their signatures were on there.

1 Q. Take a look at Exhibit 13, Mr. Stamm. Look  
2 carefully. Does "time is of the essence" appear anywhere  
3 on that, what you refer to as a "backup contract"?

4 A. Yes, sir.

5 Q. What is the date of "time is of the essence"  
6 on that contract?

7 A. Tuesday, February 25th, 1997.

8 Q. Did this contract close on or before February  
9 25th?

10 A. No, sir.

11 Q. All right. Thank you, sir.

12 Turning back to the addendum. There is an addendum  
13 dated February the 18th, 1997. It may be February the  
14 17th. Do you see that, sir?

15 A. Yes, sir. It is disclosure of brokerage  
16 relationship, where they disclose that they are brokers.

17 Q. They are professional real estate  
18 salespersons?

19 A. Yes.

20 Q. What date is that?

21 A. 2-17-97.

22 Q. And that date was filled in when you received  
23 it?

24 A. Yes. That is not my handwriting.

25 Q. Right next to the signature?

1 A. Yes.

2 Q. You know that for certain?

3 A. I guess so. I wouldn't pay attention to this  
4 piece of paper, just to see that it was there. And I  
5 would imagine -- I can't imagine it being anything other  
6 than being presented to me like this.

7 Q. And you, of course, would pay close attention  
8 to the main body of the contract and the signature and the  
9 dates?

10 A. Yes.

11 Q. And that satisfied you when you got it?

12 A. Yes.

13 Q. Okay. Sir, if you would pick up Exhibit #16,  
14 Mr. Stamm. I have a couple of questions to ask you about  
15 that.

16 A. All right, sir.

17 Q. That appears to be a letter dated February 17,  
18 1997; is that correct?

19 A. Yes, sir.

20 Q. And you have seen that letter before?

21 A. Yes.

22 Q. When did you first see it?

23 A. I don't know. I don't remember. It was in my  
24 file, so, I imagine it came in with the contract or  
25 shortly thereafter.

1 Q. But you are not sure?

2 A. I am not sure.

3 These three items, it is my belief, came in with the  
4 contract. This was addressed to Mr. Edwards, with a copy  
5 to me. I probably would not have read it or dealt with  
6 it. I was more interested to make sure the check was  
7 properly made out, and that there was a contract  
8 available.

9 Q. Setting your beliefs aside, can you tell this  
10 jury that you received it, what day you received those  
11 items?

12 A. On the 17th or 18th of February, 1997.

13 Q. And they were altogether?

14 A. Yes.

15 Q. Did you receive the original of the cover  
16 letter, dated February 17?

17 A. Can I refer to my files?

18 Q. Absolutely.

19 A. Like I did last time.

20 Q. Yes. You received the original?

21 A. That's the original in my file.

22 Q. Sir?

23 A. This is the original of the letter that you  
24 have as Exhibit 16.

25 Q. Okay. Did you send a copy to Mr. Edwards?

1           A.     It stayed on with the check, with the contract  
2 on the couch. He came down. Looked at it. And all this  
3 just stayed right there, in that file, on the sofa in the  
4 conference room.

5           Q.     Did you send a copy to Mr. Carter?

6           A.     No, sir. Mr. Carter was not my client.

7           Q.     Did you send a copy to Linwood Turner?

8           A.     No. I did not. I didn't write the letter, so,  
9 I don't mail out copies of letters that I don't write.

10          Q.     Who wrote the letter?

11          A.     I assume the Bennett's.

12          Q.     Okay. And there is no question in your mind  
13 that you gave a copy of that letter to Mr. Edwards?

14          A.     No, sir. That is not what I said. I said the  
15 letter, the check -- the letter, the check, the contract  
16 was shown to Mr. Edwards. He came to my office conference  
17 room downstairs from his office upstairs. Reviewed it at  
18 the conference room table with one of the Bennett's. It  
19 was placed on the sofa, waiting further action.

20          Q.     So, if Mr. Edwards did not go downstairs; if  
21 perhaps, for example, you are mistaken, and Mr. Edwards  
22 did not come downstairs, he would not have seen that?

23          A.     Mr. Nunn, Mr. Edwards did come downstairs, and  
24 he did see it.

25          Q.     Exhibit 15. I show you Exhibit 15. What is



1 that document?

2 A. Deed from C F Lumber Company, Inc. to Robert  
3 and Catherine Bennett, dated 28th day of February, 1997  
4 for 98.86 acres, less and except portions conveyed to  
5 other people.

6 Q. Did you draft that deed, sir?

7 A. My secretary, Rosie, drafted that.

8 Q. Under your supervision, of course?

9 A. Of course.

10 Q. And when was it drafted?

11 A. On the 27th or 28th; probably the morning of  
12 the 28th.

13 Q. And when did Mr. Carter sign it?

14 A. On the 28th.

15 Q. But you were not present?

16 A. No, sir.

17 Q. This is the same day that the property closed,  
18 is that correct?

19 A. Yes, sir.

20 Q. And that you recorded the deed?

21 A. Yes. Yes, sir.

22 Q. It was you that recorded the deed?

23 A. Yes, sir; personally.

24 Q. Mr. Stamm, you indicated in response to Mr.  
25 Martin's questions that you advised Mr. and Mrs. Bennett

1 that they were risking a lawsuit if they closed, didn't  
2 you, sir?

3 A. No, sir. That didn't come up to afterwards.

4 Q. Sir?

5 A. After, when I delivered their deed, that came  
6 up about a lawsuit. And I said "maybe".

7 Q. Was this before or after the closing?

8 A. After.

9 Q. You are quite sure about that?

10 A. Yeah. I am pretty certain that it was after.

11 Q. How many times did you warn them?

12 A. Actually, didn't warn them at all. It just  
13 came up in a conversation.

14 Q. Let me put it another way: How many times did  
15 you tell them that they were risking a lawsuit if they  
16 proceeded with the closing?

17 A. None, prior to the closing.

18 Q. Prior to the closing?

19 A. None. It was a backup contract.

20 Q. I am aware of that.

21 A. I don't recall.

22 Q. You don't recall talking to them about a  
23 lawsuit prior to that at all?

24 So, if Mr. Bennett had testified from the  
25 witness stand that you warned them or advised them of the

1 risk of a lawsuit twice; once before and once after  
2 closing, that would not be true?

3 A. I don't remember it being true.

4 Q. You don't remember?

5 A. I don't remember advising them about lawsuits  
6 prior to the closing.

7 Q. This is a fairly significant matter, wasn't  
8 it?

9 MR. MARTIN: Objection, your Honor. It's been  
10 asked and answered.

11 THE COURT: Sustained.

12 Q. And do you recall telling your clients that  
13 the other contract holder might sue you? Do you recall  
14 using those words, sir?

15 A. I don't know exactly what words I used three  
16 years ago. I know the topic of a lawsuit came up after  
17 the closing.

18 Q. Let me ask you what you said on the 15th of  
19 April in this courtroom, 15th of April of this year. Do  
20 you recall making that statement?

21 A. I don't --

22 Q. The statement that the other purchasers might  
23 sue you. Let me read this to you. See if this refreshes  
24 your recollection.

25 MR. MARTIN: Can you give us a page number?

1 MR. NUNN: Page 31, starting at line number 7.

2 MR. MARTIN: What page?

3 MR. NUNN: Page number 31.

4 "Question: Did you give them any advice  
5 concerning the possibility of a lawsuit, if they went  
6 through with the closing?

7 Answer: Yes. I told them that there could be  
8 a possibility that there would be a lawsuit.

9 Question: And when did you go give them that  
10 advice?

11 Answer: The night of the 28th or when I told  
12 them, called both -- when I told them that Mr. Carter had  
13 come in and said "close it". Do you still want to  
14 buy it? And I said, there may be a problem; there  
15 may not, because I haven't seen the contract.

16 Question: Did you tell them that before and  
17 after closing?

18 Answer: Sure."

19 CONTINUED EXAMINATION

20 BY MR. NUNN:

21 Q. Do you recall making that statement, sir?

22 A. No; but that is what I said; that is what my  
23 recollection at that time was and that is a heck of a lot  
24 fresher than now.

25 Q. "Question: And before you recorded the

1 deed?

2 Answer: Yes?

3 Question by Mr. Martin on page 32:

4 "One question. Mr. Stamm, did you tell the  
5 Bennett's whether you thought the Gun Club had grounds to  
6 sue?

7 Answer: No.

8 Question: You just said that they might sue.

9 Answer: They might, the other contract  
10 holder."

11 A. Correct.

12 Q. There was another party that held a contract  
13 at this time?

14 A. No, just the Gun Club.

15 MR. NUNN: All right, sir. I have nothing  
16 further, your Honor.

17 REDIRECT EXAMINATION

18 BY MR. MARTIN:

19 Q. Mr. Stamm, did you, at any time, either before  
20 or after the closing, advise Mr. or Mrs. Bennett that you  
21 thought the Gun Club had grounds to sue them?

22 A. No. I did not.

23 Q. Did you think the Gun Club had grounds to sue  
24 them?

25 A. No. I did not.

1 MR. MARTIN: Thank you.

2 RECROSS EXAMINATION

3 BY MR. NUNN:

4 Q. And you had never seen the contract, is that  
5 right, sir?

6 A. That is correct; until your paperwork came in  
7 to my office.

8 THE COURT: Thank you for your testimony.

9 THE WITNESS: Thank you, sir.

10 THE COURT: You are released.

11 MR. MARTIN: Defendants rest.

12 THE COURT: Do you offer any rebuttal witnesses?

13 MR. NUNN: There are three witnesses, your Honor.  
14 If you will indulge me just a moment, your Honor.

15 THE COURT: Just keep in mind, it has to be  
16 rebuttal evidence only, not repetition of what somebody  
17 has already testified to.

18 MR. NUNN: I am having a little difficulty  
19 locating my notes. I hope you will indulge me on this.

20 THE COURT: Yes, sir.

21 MR. NUNN: I apologize for the delay, your  
22 Honor.

23 THE COURT: All right.

24 MR. NUNN: Mr. Carneal.

25 Charles Willard Carneal,

1 was sworn and testified as follows:

2 REBUTTAL

3 DIRECT EXAMINATION

4 BY MR. NUNN:

5 Q. Mr. Carneal, would you state your full name  
6 and/or occupation?

7 A. Charles Willard Carneal, Realtor.

8 Q. And how do you spell your last name?

9 A. C-a-r-n-e-a-l.

10 Q. And how long have you been a realtor?

11 A. About fifteen years.

12 Q. That is all in this area?

13 A. Yes, sir.

14 Q. You are a licensed real estate salesperson  
15 by the Commonwealth of Virginia?

16 A. Yes, sir.

17 Q. And did you have any training or education in  
18 the area of real estate law?

19 A. Yes, sir.

20 Q. Could you describe that, please?

21 A. Well, TC Williams Law School, Strayer College  
22 of Accounting and Law, and various real estate schools.

23 Q. All right. Sir, and are you familiar with the  
24 values of property in Lancaster County?

25 A. I believe so.

1 Q. All right, sir.

2 MR. NUNN: Your Honor, I would tender Mr. Carneal  
3 as an expert in real estate sales.

4 MR. MARTIN: I'd ask for a chance to ask the  
5 witness some questions about his qualifications.

6 THE COURT: You may do so.

7 EXAMINATION

8 BY MR. MARTIN:

9 Q. Mr. Carneal, you are not a licensed real  
10 estate broker, are you?

11 A. No.

12 Q. So, you can't own your own real estate agency,  
13 can you?

14 A. No, sir.

15 Q. You are not a licensed appraiser, are you?

16 A. No, sir.

17 Q. You said you went to TC Williams Law School.  
18 Did you to go law school there?

19 A. Yes, sir.

20 Q. Okay. Did you graduate?

21 A. No, sir.

22 Q. Okay. You are not a licensed attorney, are  
23 you?

24 A. No, sir.

25 Q. Okay. And where are you employed?



1 A. Virginia Landmark Real Estate, Irvington,  
2 Virginia.

3 Q. How long have you been with Virginia Landmark?

4 A. About four months.

5 Q. Four months?

6 A. Uh-huh.

7 MR. MARTIN: Thank you.

8 MR. NUNN: Are you familiar with the values of the  
9 real estate in the --

10 MR. MARTIN: I have an objection, your Honor. He  
11 is not a licensed appraiser. He can't give an opinion as  
12 to value. He is a real estate agent. He can certainly  
13 talk about contracts and buying and selling land; but  
14 unlike Sonny Thomas, who is Commissioner of Revenue, this  
15 individual, they have shown, he has no training as an  
16 appraiser, nor is he licensed as an appraiser

17 THE COURT: Sheriff, take the jury out.

18 (The jury leaves the courtroom.)

19 What is the purpose of his testimony?

20 MR. NUNN: Your Honor, I am not calling Mr.  
21 Carneal as an appraiser. He is familiar with the sale  
22 prices of various properties in the vicinity of the range  
23 in White Stone, which is certainly very relevant to this  
24 case. He has personal knowledge of the sale prices, what  
25 they sold for.

1 THE COURT: What is this in rebuttal to?

2 MR. NUNN: To Mrs. Ludwig.

3 THE COURT: He is going to testify that it has not  
4 depreciated the value of other property?

5 MR. NUNN: Yes, sir; basically.

6 THE COURT: I think he is qualified to do that.

7 MR. MARTIN: Yes, your Honor.

8 THE COURT: Bring the jury in.

9 You confine it to that area, now.

10 MR. NUNN: Yes, sir.

11 (Jury present in the courtroom.)

12 THE COURT: Ladies and gentlemen of the jury: I  
13 apologize for sending you out; but as I told you earlier,  
14 the Court has to make some decisions that are legal  
15 decisions, and you are not permitted to hear that. It is  
16 not an effort to keep anything from you. It is just  
17 simply that we have to comply with certain rules.

18 And I am trying to get the evidence in before lunch;  
19 but we are going to see. You may proceed, Mr. Nunn.

20 CONTINUED EXAMINATION

21 BY MR. NUNN:

22 Q. Mr. Carneal, are you familiar with the current  
23 site of the Rappahannock Pistol and Rifle Club Range in  
24 White Stone?

25 A. Yes, sir.

1 Q. And where is that located?

2 A. Blueberry Point Road.

3 Q. And how long has the range been there, as far  
4 as you know?

5 A. In excess of twenty years.

6 Q. Would you describe the general area where the  
7 range is located?

8 A. It ranges from very expensive homes to  
9 moderate homes, in price range, if that is your question,  
10 sir.

11 Q. All right.

12 A. In fact, in that area, there are some of the  
13 most expensive homes in the Lancaster County.

14 Q. You are familiar with the property values in  
15 that area, as part of your job, part of your business?

16 A. Yes, sir.

17 Q. How long have you been monitoring the value of  
18 real estate in the vicinity of the White Stone range?

19 A. I would say, fifteen years.

20 Q. Based upon your education, your training,  
21 your experience in monitoring the property values in the  
22 area of the White Stone range operated by the Rappahannock  
23 Pistol and Rifle Club, do you have an opinion, as an  
24 expert in sales, real estate sales, as to whether the real  
25 estate values have decreased in the past fifteen years?

1           A.     To the best of my knowledge, sir, they have  
2     not decreased. They have increased. I brought a map  
3     showing seven, eight properties that have sold in the last  
4     eight years, from \$175,000.00 to \$855,000.000.

5           Q.     The chart on the easel in front of me is a  
6     blow-up of that map.

7           A.     It was for the last time you all met. This is  
8     done as of January 12th.

9           Q.     Updated?

10          A.     Yes, sir.

11          Q.     All right. Would you please step down from  
12     the witness stand, and explain to the -- describe to the  
13     ladies and gentlemen of the jury how you arrived at  
14     your conclusion that the real estate values have not  
15     decreased?

16                     (Witness steps off witness stand.)

17          A.     Well, what we have done on this map, we have  
18     designated the location of the Rappahannock Pistol and  
19     Rifle Range, and then have taken and made a circle of half  
20     a mile, one mile and two miles from the range. We then  
21     have listed properties that have been sold within the  
22     last, probably fourteen months. And as I said, they range  
23     from one hundred seventy-five to eight fifty-five.

24          Q.     There is a pointer there that you can use if  
25     you want to, Mr. Carneal.

1           A.     Is that what it is. Thank you. It is so much  
2 easier to do it one on one. I don't use these.

3           Again, the rifle range, and there is a circle here  
4 that is the radius and it is one mile, one half a mile  
5 from the range, and then one mile, and then two miles.  
6 And you will see these little squares and rectangles.  
7 They are houses, properties that have been sold within the  
8 last fourteen months. This just has been printed out as  
9 of January the 12th.

10           And it shows, for example, -- well, let's take the  
11 Tides Inn. The Tides Inn is about one and a half miles,  
12 as the crow flies, from the rifle range or as a bullet  
13 may travel, if you will have that. So, as you -- I don't  
14 have to tell you the history of the Tides Inn. I don't  
15 have to tell you, you all know about the Bell Tower, I  
16 guess on Route 200, that sold for \$855,000.00. Pop  
17 Castle: A very dominant figure in journalism  
18 communication, could have purchased a house, I would  
19 assume most anywhere he wanted to, and he elected to buy  
20 Pop Castle for \$745,000.00.

21           So, no where can I find any decrease in property,  
22 property value. They have only escalated tremendously, as  
23 they have everywhere in Lancaster and Northumberland. So,  
24 I don't know of anyone that lists property -- you stop me  
25 when I am suppose to, sir. I know the Judge said he

1 wanted to get out before lunch. So, no one that I know of  
2 has listed their property at less than the current rate  
3 because the Rifle and Pistol Club exists. I have never  
4 heard of complaints about the Rifle and Pistol Club -- my  
5 mouth is getting so dry -- about the Rifle and Pistol  
6 Club, there's never been a complaint that I know of, and  
7 it doesn't come up.

8 People who want to sell, they sell, and they get the  
9 going rate, as they would anywhere in the County. And it  
10 depends upon whether it is waterfront or inland property.

11 MR. NUNN: Okay. All right. Thank you, Mr.  
12 Carneal. You may put the pointer down and resume the  
13 stand.

14 (Witness resumes the stand.)

15 Answer any questions that Mr. Martin may have for  
16 you.

17 CROSS EXAMINATION

18 BY MR. MARTIN:

19 Q. Mr. Carneal, you are not telling us that  
20 having a firing range nearby increases property value, are  
21 you?

22 A. No, sir. I don't believe I said that.

23 Q. Well, is that your opinion, that it increases  
24 property value?

25 A. No, sir.

1 Q. No?

2 A. But I don't think it decreases it, either.

3 Q. You don't think it has an effect either  
4 way?

5 A. No, not according to the statistics.

6 Q. But you are not an appraiser?

7 A. I think you have asked me that. No, sir. I am  
8 not.

9 Q. So, you can't say whether or not these houses  
10 would have brought more money if they were located  
11 somewhere else and sold, and were not close to the rifle  
12 range?

13 A. I don't understand what the question is. But,  
14 I know -- no, I don't know that. No. I don't know that.

15 MR. MARTIN: Thank you. That is all I have.

16 THE COURT: Thank you for your testimony.

17 THE WITNESS: Yes, sir.

18 MR. NUNN: Your Honor I have one other  
19 witness, and it is ten minutes to 1:00. I was informed  
20 that he's coming back from lunch. He's been called.

21 THE COURT: Is that your last witness?

22 MR. NUNN: Yes, sir.

23 MR. MARTIN: May we ask who that witness is, your  
24 Honor?

25 MR. NUNN: Mr. Pennell.



1 discuss any of this case, until it has been submitted to  
2 you.

3 Sheriff, permit the jury to leave.

4 (The jury leaves the courtroom for lunch.)

5 MR. MARTIN: Your Honor, at this time, we would  
6 renew our motion to strike the Plaintiff's case and move  
7 for a Summary Judgement. The grounds are set forth in our  
8 trial brief. In our motion, we rely on the same grounds,  
9 and would merely point out that we have heard  
10 uncontradicted testimony of Mr. Carter, president of C F  
11 Lumber Company, that the Bennett's did not interfere with  
12 the contract. And he, in fact, had only one conversation  
13 with Mrs. Bennett, and he told her words to the effect, I  
14 have a contract; if it doesn't close on schedule, I will  
15 get back in touch with you. Also, we have the testimony  
16 of two attorneys.

17 One, a former Attorney General of Virginia and a  
18 real estate broker that say "time is of the essence" means  
19 exactly what it says: unless both parties want to  
20 proceed, the contract is void. There is nothing wrong  
21 with putting in a backup contract. Also, that they all  
22 said they were familiar with that, and it is common  
23 practice. And I believe Mr. Broaddus said he bought his  
24 house using a backup contract.

25 We submit, that there are no grounds; there is no



1 evidence, taken in the light most favorable to the  
2 Plaintiff, on which they can obtain a verdict in the case,  
3 your Honor.

4 THE COURT: Your response, Mr. Nunn.

5 MR. NUNN: Your Honor, the only issue at this  
6 point is whether questions have been raised for the jury,  
7 and not whether the case has been proved beyond a  
8 reasonable doubt -- not beyond a reasonable doubt, but by  
9 a preponderance of the evidence. And it is certainly  
10 arguable, and I think there certainly has been a jury  
11 question raised on each of the elements of the suit.

12 THE COURT: Well, the court is of the view that  
13 it is a factual issue as to whether the act of purchasing  
14 the property by the Bennett's constituted tortious  
15 interference with an existing contract. And I will submit  
16 it to the jury.

17 MR. MARTIN: If the court please, I would  
18 respectfully object to the Court's ruling on that, your  
19 Honor.

20 THE COURT: So noted. And the court reporter  
21 needs a break also, and I am going to suggest that Mr.  
22 Nunn, you and Mr. Martin exchange your instructions. I  
23 know you have had to change some of them or not submit  
24 some of them. See what you are requesting to be  
25 submitted, and we will come back at two o'clock, and



1 for the defendants.

2 I am going to read these in that order. What they  
3 are numbered, that shouldn't matter to you. I will put  
4 all the damages' instructions together.

5 All right. Are you gentlemen ready to argue?

6 MR. MARTIN: Ready for defense, your Honor.

7 THE COURT: Sheriff, will you bring the jury in.

8 (Jury is present in the courtroom.)

9 THE COURT: Ladies and gentlemen of the Jury: You  
10 have heard and seen all of the evidence. Now, the court  
11 is going to read you the instructions which constitute the  
12 law in this case. You are not going to be able to retain  
13 everything that I read to you; but you are permitted to  
14 take the instructions with you to the jury room and use  
15 them as you need them in arriving at your verdict. Up at  
16 the top of each page, there is a number. I am not reading  
17 them to you in the order that they are numbered, and you  
18 might find that there are some numbers missing. That  
19 doesn't mean that we have forgotten anything or didn't  
20 remember how to count; but they are just numbers for our  
21 bookkeeping purposes. They have no bearing on what you  
22 are doing.

23 You are the judges of the facts, the credibility of  
24 the witnesses, and the weight of the evidence. You may  
25 consider the appearance and manner of the witnesses on the

1 stand, their intelligence, their opportunity for knowing  
2 the truth, and for having observed the things about which  
3 they testified, their interest in the outcome of the case,  
4 their bias, and, if any have been shown, their prior  
5 inconsistent statements, or whether they have knowingly  
6 testified untruthfully as to any material fact in the  
7 case.

8           You may not arbitrarily disregard believable  
9 testimony of a witness. However, after you have  
10 considered all the evidence in the case, then you  
11 may accept or discard all or part of the testimony of a  
12 witness as you think proper.

13           You are entitled to use your common sense in judging  
14 any testimony. From these things and all the other  
15 circumstances of the case, you may determine which  
16 witnesses are more believable and weigh their testimony  
17 accordingly.

18           You must not consider my matter that was rejected or  
19 stricken by the Court. It is not evidence and should  
20 be disregarded.

21           You must not base your verdict in any way upon  
22 sympathy, bias, guesswork or speculation. Your verdict  
23 must be based solely upon the evidence and instructions of  
24 the court.

25           The amount sued for is not evidence in this case.

1 You should not consider it as evidence in arriving at your  
2 verdict.

3 If you believe from the evidence that a party  
4 previously made a statement inconsistent with his  
5 testimony at this trial, that previous statement may be  
6 considered by you as evidence that what the party  
7 previously said was true.

8 The greater weight of all the evidence is sometimes  
9 called the preponderance of the evidence. It is that  
10 evidence which you find more persuasive. The testimony of  
11 one witness whom you believe can be the greater weight of  
12 the evidence.

13 Any fact that may be proved by direct evidence may  
14 be proved by circumstantial evidence; that is, you  
15 may draw all reasonable and legitimate inferences and  
16 deductions from the evidence.

17 You shall find your verdict for the plaintiff if it  
18 is proved by the greater weight of the evidence: That  
19 there was a valid contract between the plaintiff and C F  
20 Lumber Company, Inc.; and that the defendants knew of this  
21 contract; and that the defendants intentionally caused C F  
22 Lumber Company, Inc. to breach its contract with  
23 plaintiff; and that the plaintiff was damaged by the  
24 breach of contract. You shall find your verdict for the  
25 defendants if the plaintiff failed to prove any one or

1 more of these elements.

2 The word "injury" as used in another instruction of  
3 the court, means any wrong or damage done to another,  
4 either in his person, rights, reputation, or property.

5 The word "person" includes any individual,  
6 corporation, partnership, association company, business,  
7 trust, joint venture or other legal entity.

8 An attorney has the express authority to do  
9 everything which the client expressly authorized him to do  
10 and the implied authority to do everything necessary or  
11 incidental to the purpose for which he was retained.

12 The burden is on the plaintiff to prove by the  
13 greater weight of the evidence that it sustained damages.  
14 The plaintiff is not require to prove the exact amount of  
15 its damages, but it must show sufficient facts and  
16 circumstances to permit you to make a reasonable estimate  
17 of them. If the plaintiff fails to do so, then it cannot  
18 recover.

19 If you find your verdict for the plaintiff, then it  
20 is entitled to recover as damages all of the losses it  
21 sustained which are a direct and natural result of the  
22 breach and which it has proved by the greater weight of  
23 the evidence. The losses must have been reasonably  
24 foreseeable by the parties.

25 Where only a breach of contract and no actual damage

1 has been proved, nominal damages may be recovered.

2 The plaintiff had a duty to minimize its damages.  
3 If you find that the plaintiff did not act reasonably to  
4 minimize its damages and, as a result, they were greater  
5 than if it had acted to minimize them, then it cannot  
6 recover the amount by which they were increased. The duty  
7 to minimize damages begins when the plaintiff knew or  
8 should have known of the breach.

9 The burden is on the defendant to prove by the  
10 greater weight of the evidence that the plaintiff failed  
11 to minimize its damages and to prove by the greater weight  
12 of the evidence the amount by which they were increased as  
13 a result.

14 An affirmative defense, for which the burden rests  
15 on the defendants, is justification or privilege.  
16 Specific grounds for the defense are: financial interest  
17 and responsibility for the welfare of another.

18 Those are the instructions. In addition to the  
19 instructions, at the back of the instructions, the last  
20 page is a verdict form. The verdict form reads as  
21 follows: We, the jury, find for the plaintiff and assess  
22 its damages at blank dollars. If that is your verdict,  
23 you have to fill in the amount and your foreperson signs  
24 that verdict form. Or, in the alternative: We, the jury,  
25 find for the defendants. If that is your verdict, your

1 foreperson signs that verdict form. You make one finding  
2 or the other. And the order that I have read them, has no  
3 significance.

4 The attorneys now have the opportunity to address  
5 you. Mr. Nunn, on behalf of the plaintiff, has the  
6 opportunity, because he has to prove his case by a  
7 preponderance of the evidence, to open and close the  
8 argument. Mr. Martin will have one opportunity to address  
9 you.

10 Mr. Nunn.

11 MR. NUNN: Thank you, your Honor.

12 Ladies and gentlemen of the jury: The evidence is  
13 in, and the issue before you is whether or not Mr. and  
14 Mrs. Bennett interfered, intentionally interfered with the  
15 contract. And we have been over that contract so many  
16 times. I am sure I don't need to tell you, the one  
17 between C F Lumber and Rappahannock Pistol and Rifle Club,  
18 the plaintiff.

19 Let me talk just a moment about the burden of  
20 proof. What weight, how much proof must there be in order  
21 to secure a verdict for the plaintiff. His Honor has told  
22 you that the burden of proof is a preponderance of the  
23 evidence. Visualize a scale. If it is a fifty/fifty  
24 situation, you put the plaintiff's evidence here and you  
25 put the defendants' evidence here, fifty/fifty situation.



OFFICIAL SALES CONTRACT

THIS AGREEMENT of Sale made this 24th day of January,  
1997 between \_\_\_\_\_ (hereinafter known as  
the Vendee) and C F Carter Jr. Son (hereinafter known  
as the Vendor) C F Lumber Co Inc.

WITNESSETH: That for and in consideration of the sum of Twenty  
two thousand Dollars; (\$ 22,000.00) by cash or  
check in hand paid, receipt of which is hereby acknowledged, the  
Vendee agrees to buy and the Vendor agrees to sell for the sum of  
Twenty two thousand Dollars; (\$ 22,000.00) all cer-  
tain piece, parcel or lot of land described as follows, to-wit:  
53 Ac on Rt 615 Lancaster Co. 4 mi's from  
Kilmorack. Timber is reserved to be  
cut within 3 years.

THE PURCHASE PRICE TO BE PAID AS FOLLOWS: \$22,000 at  
Closing on February 24th. Time is  
of the essence

The Vendor agrees to convey the above property with a General War-  
ranty Deed with the usual covenants of title, same to be prepared  
at the expense of the Vendor. The risk of loss or damage to said  
property by fire or casualty until the deed of conveyance is re-  
corded is assumed by the Vendor.

TRUE COPY

TESTE: ROBERTA H. LEWIS, CLERK

BY Roberta H. Lewis

CLERK

LANCASTER COUNTY CIRCUIT COURT

All taxes, insurance, rents and interest are to be pro-rated as of  
Plaintiff #





\_\_\_\_\_ and settlement to be made at the  
above Vendor choice, on or before February 24th, 1997  
or as soon thereafter as title can be examined and papers prepared  
allowing a reasonable time to correct any defects reported by title  
examiner.

It is understood that the title is to be free and clear of all liens  
and indebtedness of any kind except the liens above mentioned.

It is understood that the property is to be conveyed subject to any  
restrictions now thereon.

The Vendor agrees to pay \_\_\_\_\_ for his professional ser-  
vices on the above property. \_\_\_\_\_

Witnesseth the following signatures and seal made this 24th day  
of January, 1997  
DEPOSIT \$100.00

C. F. Carter Jr. Pres. (SEAL)  
C. F. Lumbel Co. Inc. (SEAL)  
J. R. Mahy, Sec. (SEAL)  
\_\_\_\_\_  
(SEAL)

# RAPPAHANNOCK PISTOL & RIFLE CLUB, INC.

P. O. BOX 391  
WHITE STONE, VA. 22578

632

PAY  
TO THE  
ORDER OF

*C.F. Lumber Co Inc*

3706. 1997

68-385-01  
514

\$ 100.00

*one hundred*

DOLLARS



BANK OF LANCASTER  
KILMARNOCK • WHITE STONE  
VIRGINIA

010130432 024 6607 6607 15 01

FOR

*order*

*John R. Moly*

⑈00000632⑈ ⑆051403850⑆ 01 607894 01⑈

⑈0000010000⑈

A TRUE COPY

TESTE: ROBERTA H. LEWIS, CLERK

BY *Roberta H. Lewis*

REPORT CLERK

LANCASTER COUNTY CIRCUIT COURT

\*FEDERAL RESERVE BOARD OF GOVERNMENT REG. CC

002804150  
02410000 RCPC  
010130432 02-11-97  
010130432 024 6607 6607 15 01

051000017

1883787 021097  
051405533 PEN TB  
GLoucester, VA 23061

*Plaintiff*  
PLAINTIFF'S  
EXHIBIT ④  
*John R. Moly*  
4-15-97

PLAINTIFF'S  
EXHIBIT ③  
*John R. Moly*  
1/13/00

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE  
RESERVED FOR FEDERAL INSTITUTION USE

CREDITED TO THE ACCOUNT OF THE  
WITHIN NAMED PAYEE IN  
ACCORDANCE WITH PAYEE'S  
INSTRUCTIONS. ASSENSE OF  
ENDORSEMENT GUARANTEED  
PENNSYLVANIA TRUST BANK  
GLoucester, VA 23061

ENDORSE HERE

416

Navy Federal Credit Union  
Virginia, Virginia

R 8980067

0411738733	0020425-005	02/18/97	\$99922,000.00
------------	-------------	----------	----------------

RAIPAHANNOCK PISTOL & RIFLE CLUB

GUARANTEED

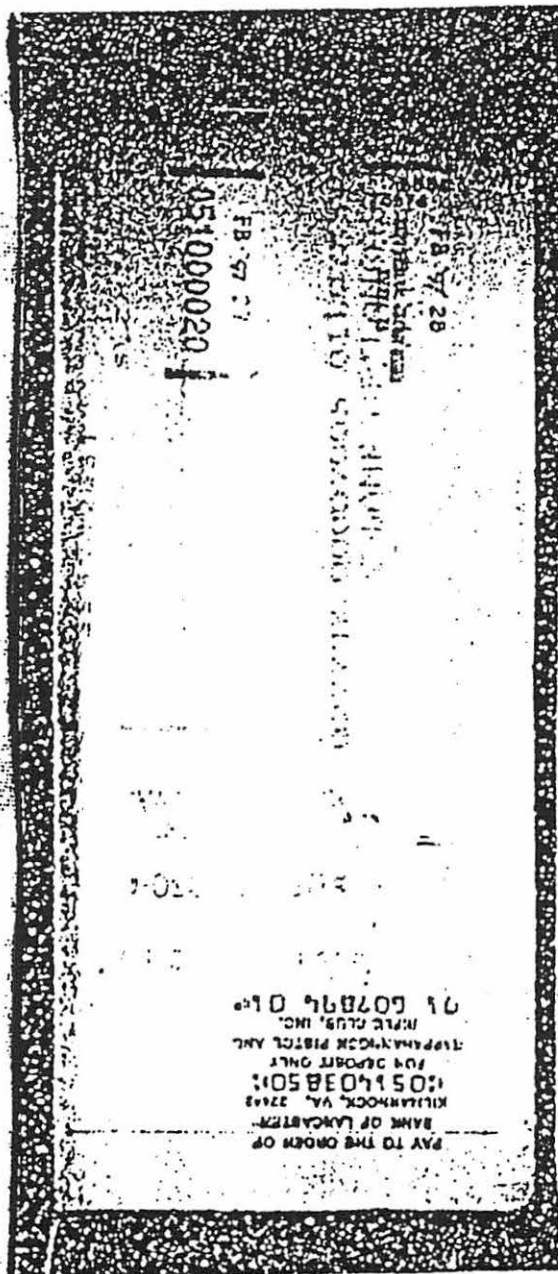
0411738733 1:2550749746

RE/MARVIN O REGISTER

Provide for 100 days and  
on property status and  
NAVY FEDERAL 8  
Date 2/8/97  
Signature

POD 10002200000

PLAINTIFF'S  
EXHIBIT #4  
1-13-00



COUNTY OF LANCASTER  
CONSOLIDATED PERMIT APPLICATION

P.O. Box 699

Lancaster, Virginia 22503

Building: 804-462-5480 ~ Land Use: 804-462-5220

Fax: 804-462-0031 ~ E-mail: lcgovadi@crosslink.net

COPY

Application no: 297-6

Tax map 9 Dbl. Circle - Block - Lot/Parcel 8-6  
52.73 ACRES Zoning District: A-2 Voting District: 2

E&S #: VMRC#:

Prior Application no:

APPALACHIAN ARSL AND RIFLE CLUB, WHITE STONE, VA

Name of Applicant

Name of Landowner SAME AS ABOVE

Street, City, State, Zip

Phone No.

Property Address 40 MARVIN D. REGISTER

RD BOX 262, MILLERSK, VA 22517

Street, City, State, Zip

Phone No.

Name of Builder

Street, City, State, Zip

State Reg. #

Phone No.

Name of Plumber

Street, City, State, Zip

State Reg. #

Job Cost

Name of Electrician

Street, City, State, Zip

State Reg. #

Job Cost

Name of HVAC Mechanic

Street, City, State, Zip

State Reg. #

Job Cost

Mechanic's Lien Agent

Street, City, State, Zip

Phone No.

Directions to site:

Construction Type: Single Family Commercial Other Zoning Elect. Single Wide Industrialized / Manufactured Home Info:  
Multi-Family Industrial Erosion Plumbing Year Make Double Wide Modular  
Accessory Use Home Occupation Site Plan HVAC Serial No. / I.D. No.

Complete Description: TO RELocate AN EXISTING NON-PROFIT SERVICE CLUB THAT PROVIDES RECREATION TO ITS MEMBERS AND/OR THE PUBLIC INCLUDING RIFLE, PISTOL, SHOTGUN SHOOTING AND ARCHERY.

Dodge Code

Construction Cost Use Group Construction Type BOCA CA BO  
Basement Crawl Type of foundation # Stories Wall type Roof Type Bedrooms  
# Baths # 1/2 Baths Heat Type Fuel Type # Fireplaces # Flues A/C Yes No  
Electric Service (AMPS) Garage SF Attached Detached Water Source Septic Permit #  
Structure W L Deck/porch W L Sign W L H Total Sq. Ft.  
Flood Zone: Yes No Cert. of elevation attached Yes No Plan Attached Yes No One & Two Family Waiver Attached Yes No

I hereby certify that I shall conform to the Lancaster County Zoning Ordinance, the Erosion and Sediment Control Ordinance, the Approved Site Plan and the Uniform State Wide Building Code. These permits are invalid if construction is not started within six months or if work stops for a period of six months.

SITE PLAN MUST BE ATTACHED

Marvin D. Register 24 FEB 1997  
Applicant's or Owner's Signature Date

OFFICE USE ONLY

ZONING DEPARTMENT

Zoning Approval Date: 2/24/97 Signature: Patricia G. Freese  
Remarks: Permitted Use as "Club" in the A-2 Zone.  
Site Plan Approval Date: \_\_\_\_\_ Signature: \_\_\_\_\_  
Remarks: \_\_\_\_\_  
Special Exception Approval Date: \_\_\_\_\_ Special Conditions Yes No  
Remarks: \_\_\_\_\_

EROSION AND SEDIMENT CONTROL

Erosion Approval Date: \_\_\_\_\_ Signature: \_\_\_\_\_  
Remarks: \_\_\_\_\_

BUILDING DEPARTMENT

Building Approval Date: \_\_\_\_\_ Signature: \_\_\_\_\_  
Remarks: \_\_\_\_\_

FEES

Zoning Permit No Fee [1303-35] Building \_\_\_\_\_ [1303-08]  
Site Plan Review \_\_\_\_\_ [1303-04] Elect. \_\_\_\_\_ [1303-10]  
Erosion \_\_\_\_\_ [1303-24] Plumb. \_\_\_\_\_ [1303-11]  
HVAC \_\_\_\_\_ [1303-12]  
Industrialized/ Manufactured Homes \_\_\_\_\_ [1303-13]  
Sub Total: -0- Sub Total \_\_\_\_\_  
TOTAL -0-

WHITE - BUILDING OFFICE YELLOW - TREASURER PINK - COMMISSIONER OF REVENUE GOLDENROD - APPLICANT

Treasurers Stamp

PLAINTIFF'S  
EXHIBIT #5

4-13-00

PLAINTIFF'S  
EXHIBIT #5

2-15-97

OWNERS' AFFIDAVIT AS TO  
MECHANICS' LIENS AND POSSESSION

TO:

RE: Reference No: \_\_\_\_\_

STATE OF VIRGINIA  
CITY/COUNTY OF

LANCASTER

, to-wit:

THIS DAY personally appeared before me, the undersigned owner(s) who, after being first duly sworn, depose and said that he is the owner, and has been the owner of the property referenced to below for at least One Hundred Twenty-three (123) days prior to the date hereof or the date of settlement, whichever date shall last occur; that there has been no work done, services rendered or materials furnished in connection with repairs, improvements, development, construction, removal, alterations, demolition or such similar activity on or incident to the referred to property within One Hundred Twenty-three (123) days prior to the date of this affidavit; and that there are no outstanding claims or persons entitled to any claim or right to a claim for mechanics' or materialmen's liens against said property and that there are no outstanding leases or agreements, written or oral, unrecorded or otherwise, or other parties than the undersigned owner(s) in or entitled to possession thereof and that the purchaser is entitled to sole and exclusive possession of said property upon settlement.

This affidavit is made for the purpose of inducing any title insurance company to insure the title to said property without exception to claims of mechanics, materialmen or laborers and others entitled to claim a lien for work, services or materials furnished and rights of parties in possession. Whichever the context so requires, the singular number includes the plural; and the masculine includes the feminine.

PROPERTY DESCRIPTION: (BRIEF PROPERTY DESCRIPTION OR ATTACH VERBATIM LEGAL DESCRIPTION)

See Attached Schedule A

C. J. Carter Jr. (SEAL)  
Owner

\_\_\_\_\_  
Owner (SEAL)

TRUE COPY

BY: ROBERTA H. LEWIS, CLERK

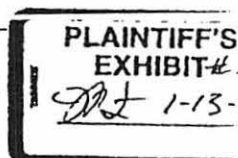
Robert H. Lewis Plaintiff

DEPUTY CLERK  
LANCASTER COUNTY CIRCUIT

SWORN TO AND SUBSCRIBED before me this 19th day of February 19 97

My commission expires 11/30/97

[Signature]  
Notary Public



SCHEDULE A

ALL THAT CERTAIN TRACT OF LAND IN MANTUA DISTRICT, LANCASTER COUNTY, VIRGINIA, SOMETIMES CALLED "POYNTER" TRACT CONTAINING 98.86 ACRES AS PER PLAT OF SURVEY THEREOF MADE BY R. H. HIGHLAND, SURVEYOR, OCTOBER 15, 1948, A COPY OF SAID PLAT IS ATTACHED TO DEED RECORDED IN DEED BOOK 85 AT PAGE 265, ON WHICH THE METES AND BOUNDS OF SAID PROPERTY ARE MORE PARTICULARLY DESCRIBED. THE SAID TRACT IS SITUATED ON THE WEST SIDE OF HIGHWAY ROUTE 615, ADJOINING THE LANDS OF LAWRENCE KENNER, LOTTIE BALL, B. H. B. HUBBARD ESTATE, WILLIE EDWARDS, H. H. PITTMAN, PAYTON PITTMAN ESTATE AND DUEARD HAYDEN; IT BEING THE REMAINDER OF THE TRACT WHICH WAS CONVEYED TO F. S. THRIFT BY HARRY H. HUTCHINSON AND WIFE BY DEED DATED JANUARY 8, 1918, RECORDED JUNE 21, 1918, D.B. 61, P 390; THE SAID F. S. THRIFT HAVING DIED UNMARRIED AND INTESTATE IN 1933, LEAVING AS HIS SOLE HEIRS AT LAW HIS TWO BROTHERS, C. T. THRIFT AND H. H. THRIFT.

LESS AND EXCEPT FROM THE ABOVE DESCRIBED TRACT OF LAND THAT PORTION CONVEYED TO THE COMMONWEALTH OF VIRGINIA BY DEED RECORDED IN DEED BOOK 85 AT PAGE 332 AND THAT PORTION CONVEYED TO REALTY INDUSTRIES, INCORPORATED BY DEED RECORDED IN DEED BOOK 173 AT PAGE 252.

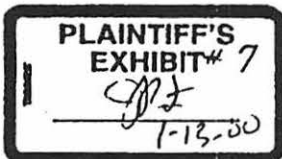
BEING THE PORTION OF THE SAME PROPERTY CONVEYED UNTO C. F. LUMBER CO., INC. BY TIMBERLAND INVESTMENT GROUP, INC. BY DEED DATED SEPTEMBER 26, 1996 AND RECORDED IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF LANCASTER COUNTY, VIRGINIA IN DEED BOOK 387 AT PAGE 618.



WHEREAS, C. F. LUMBER CO., INC. was organized for the purpose of purchasing and selling timber and timberlands and,

WHEREAS, the Corporation has received an offer from Rappahannock Pistol & Rifle Club, Inc. to purchase for the sum of Twenty Two Thousand Dollars (\$22,000.00) cash, the following described assets of the corporation: See Schedule A

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of The Corporation finds it to be in the best interest of the Corporation and its stockholders to sell the above-described assets of the Corporation to Rappahannock Pistol & Rifle Club, Inc. for the sum of Twenty Two Thousand Dollars (\$22,000.00) and said offer is accepted and the appropriate corporate officers are authorized and directed to take all action necessary to effect the conveyance and sale of said assets.



#### CERTIFICATE OF INCUMBENCY

This is to certify that the officers of the C. F. Lumber Co., Inc. at this time are:

President - C. F. Carter, Jr.

Secretary- C. F. Carter, Jr.

Treasurer- C. F.. Carter, Jr.

TESTE: ROBERTA H. LEWIS, CLERK  
BY Robert H. Lewis  
CLERK  
LANCASTER COUNTY CIRCUIT COURT




COUNTY OF LANCASTER  
COMMONWEALTH OF VIRGINIA  
I CERTIFY THIS TO BE A COMPLETE, FULL, TRUE AND  
EXACT REPRODUCTION OF THE ORIGINAL DOCUMENT.  
CERTIFIED THIS 21st DAY OF February, 1999  
Heather H. Edwards  
NOTARY PUBLIC  
MY COMMISSION EXPIRES 21 December 1999





IN WITNESS WHEREOF, I have certified the above to be correct  
and hereunto affixed my name as Secretary and signature and seal.  
affixed this 20th day of February, 1997.

 (seal)  
Secretary

I, C. F. CARTER, JR., a Director of C. F. LUMBER CO., INC., do  
hereby certify that the foregoing is a correct copy of a resolution  
adopted as set forth above.

  
Director

DEED

C. F. LUMBER CO., INC.  
GRANTOR

RAPPAHANNOCK PISTOL AND  
RIFELE CLUB, INC.  
GRANTEE



PURRINGTON & EDWARDS  
ATTORNEYS AND COUNSELLORS AT LAW  
P.O. BOX 1911  
KILMARNOCK, VIRGINIA 22482

THIS DEED, made this 12th day of February, 1997, by and between C. F. LUMBER CO., INC., a Virginia corporation, "Grantor and RAPPAHANNOCK PISTOL AND RIFLE CLUB, INC., of Box 391, White Stone, Va. 22578, "Grantee".

W I T N E S S E T H

That for and in consideration of the sum of Ten Dollars (\$10.00) cash in hand paid and other good and valuable considerations, the receipt of which is hereby acknowledged, the said Grantor does hereby grant and convey with General Warranty and English Covenants of Title unto the said Grantee the property described in the attached Schedule A.

This conveyance is made subject to the conditions, restrictions, easements and reservations of record, if any, affecting the aforesaid property and constituting constructive notice.

Whenever applicable in this document, the use of the masculine shall include the feminine, the feminine shall include the masculine, and the use of the singular and plural shall be interchangeable.

RAYMOND W. EDWARDS, ATTORNEY AND COUNSELLOR AT LAW, P.O. BOX 1911, KILMARNOCK, VIRGINIA 2248

A TRUE COPY

TESTE: ROBERTA H. LEWIS, CLERK

BY Roberta H. Lewis

DEPUTY CLERK

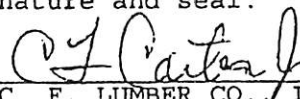
LANCASTER COUNTY CIRCUIT COURT

1

425



WITNESS the following signature and seal.

 (SEAL)  
C. F. LUMBER CO., INC  
By C. F. Carter, Jr., President

STATE OF VIRGINIA  
COUNTY OF LANCASTER, to-wit:

The foregoing instrument was acknowledged before me this  
20<sup>th</sup> day of February 1997 by C. F. LUMBER CO., INC by C. F.  
CARTER, JR. its President.

  
Notary Public

My Commission expires 11/30/97.

SCHEDULE A

ALL THAT CERTAIN TRACT OF LAND IN MANTUA DISTRICT, LANCASTER COUNTY, VIRGINIA, SOMETIMES CALLED "POYNTER" TRACT CONTAINING 98.86 ACRES AS PER PLAT OF SURVEY THEREOF MADE BY R. H. HIGHLAND, SURVEYOR, OCTOBER 15, 1948, A COPY OF SAID PLAT IS ATTACHED TO DEED RECORDED IN DEED BOOK 85 AT PAGE 265, ON WHICH THE METES AND BOUNDS OF SAID PROPERTY ARE MORE PARTICULARLY DESCRIBED. THE SAID TRACT IS SITUATED ON THE WEST SIDE OF HIGHWAY ROUTE 615, ADJOINING THE LAND OF LAWRENCE KENNER, LOTTIE BALL, B. H. B. HUBBARD ESTATE, WILLIE EDWARDS, H. H. PITTMAN, PAYTON PITTMAN ESTATE AND DUEARD HAYDEN; IT BEING THE REMAINDER OF THE TRACT WHICH WAS CONVEYED TO F. S. THRIFT BY HARRY H. HUTCHINSON AND WIFE BY DEED DATED JANUARY 8, 1918, RECORDED JUNE 21, 1918, D.B. 61, P 390; THE SAID F. S. THRIFT HAVING DIED UNMARRIED AND INTESTATE IN 1933, LEAVING AS HIS SOLE HEIRS AT LAW HIS TWO BROTHERS, C. T. THRIFT AND H. H. THRIFT.

LESS AND EXCEPT FROM THE ABOVE DESCRIBED TRACT OF LAND THAT PORTION CONVEYED TO THE COMMONWEALTH OF VIRGINIA BY DEED RECORDED IN DEED BOOK 85 AT PAGE 332 AND THAT PORTION CONVEYED TO REALTY INDUSTRIES, INCORPORATED BY DEED RECORDED IN DEED BOOK 173 AT PAGE 252.

BEING THE PORTION OF THE SAME PROPERTY CONVEYED UNTO C. F. LUMBER CO., INC. BY TIMBERLAND INVESTMENT GROUP, INC. BY DEED DATED SEPTEMBER 26, 1996 AND RECORDED IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF LANCASTER COUNTY, VIRGINIA IN DEED BOOK 387 AT PAGE 618.

Owner's  
Information  
Sheet

The Title Insurance Commitment is a legal contract between you and the Company. It is issued to show the basis on which we will issue a Title Insurance Policy to you. The Policy will insure you against certain risks to the land title, subject to the limitations shown in the Policy.

The Company will give you a sample of the Policy form, if you ask.

The Commitment is based on the land title as of the Commitment Date. Any changes in the land title or the transaction may affect the Commitment and the Policy.

The Commitment is subject to its Requirements, Exceptions and Conditions.

THIS INFORMATION IS NOT PART OF THE TITLE INSURANCE COMMITMENT.

YOU SHOULD READ THE COMMITMENT VERY CAREFULLY.

If you have any questions about the Commitment, contact the Issuing Office.



## Chicago Title Insurance Company

171 North Clark Street  
Chicago, Illinois 60601-3294

### ALTA COMMITMENT 1982 (Rev. 10-19-88)

Issued by:  
JOHNSON ABSTRACT & TITLE COMPANY  
650 S. MAIN STREET  
LANCASTER OFFICE PARK  
BUILDING B, SUITE 2  
KILMARNOCK, VA 22482  
(804) 433-1387

Contract signed

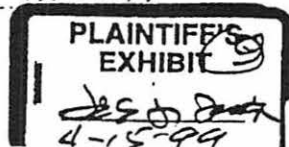
Carol S. Johnson  
A TRUE COPY  
Authorized Signatory

TESTE: ROBERTA H. LEWIS, CLERK

by: Roberta H. Lewis



Plaintiff



### Agreement to Issue Policy

We agree to issue a policy to you according to the terms of this Commitment. When we show the policy amount and your name as the proposed insured in Schedule A, this Commitment becomes effective as of the Commitment Date shown in Schedule A.

If the Requirements shown in this Commitment have not been met within 6 months after the Commitment Date, our obligation under this Commitment will end. Also, our obligation under this Commitment will end when the Policy is issued and then our obligation to you will be under the policy.

Our obligation under this Commitment is limited by the following:

- The provisions in Schedule A.
- The Requirements in Schedule B-I.
- The Exceptions in Schedule B-II
- The Conditions on Page 2.

This Commitment is not valid without  
SCHEDULE A and Sections I and II of  
SCHEDULE B.

CHICAGO TITLE INSURANCE COMPANY

By:

Richard L. Pollan  
President

by:

Thomas A. Adams  
Sec. Clk.



ALTA PLA. ENGLISH TITLE INSURANCE COMMITMENT  
CHICAGO TITLE INSURANCE COMPANY  
SCHEDULE A

NUMBER: 96-12-3036

1. Commitment Date: November 22, 1996 at 8:00 a.m.

2. Policy or Policies to be issued:

ALTA OWNER'S POLICY: (1992) \$300,000.00  
Proposed Insured:

C. F. Lumber Company, Inc.

LOAN: (ALTA Std. Form, 1992) \$57,000.00  
Proposed Insured:

Peninsula Trust Bank its successors and/or assigns, as their  
respective interests may appear.

3. Fee Simple interest in the land described in this commitment  
is owned, at the Commitment date, by:

Timberland Investment Group, Inc.

4. The land referred to in this Commitment is described as  
follows:

All of that certain lot or parcel of land situated, lying and  
being in Lancaster County, Virginia, and being more  
particularly described as follows:

See Schedule A attached hereto

Approved Attorney

R. Wesley Edwards

SCHEDULE A (continued)

TRACT 37-2313 P' NTERS

ALL THAT CERTAIN TRACT OF LAND IN MANTUA DISTRICT, LANCASTER COUNTY, VIRGINIA, SOMETIMES CALLED "POYNTER" TRACT CONTAINING 98.86 ACRES AS PER PLAT OF SURVEY THEREOF MADE BY R. M. HIGHLAND, SURVEYOR, OCTOBER 15, 1948, A COPY OF SAID PLAT IS ATTACHED TO DEED RECORDED IN DEED BOOK 85 AT PAGE 255, ON WHICH THE METES AND BOUNDS OF SAID PROPERTY ARE MORE PARTICULARLY DESCRIBED. THE SAID TRACT IS SITUATED ON THE WEST SIDE OF HIGHWAY ROUTE 615, ADJOINING THE LANDS OF LAWRENCE KENNER, LOTTIE BALL, B. M. B. HUBBARD ESTATE, WILLIE EDWARDS, H.H. PITTMAN, PAYTON PITTMAN ESTATE AND DUEARD HAYDEN; IT BEING THE REMAINDER OF THE TRACT WHICH WAS CONVEYED TO F.S. THRIFT BY HARRY H. HUTCHINSON AND WIFE BY DEED DATED JANUARY 8, 1918, RECORDED JUNE 21, 1918, D.B. 61, P 390; THE SAID F. S. THRIFT HAVING DIED UNMARRIED AND INTESTATE IN 1933, LEAVING AS HIS SOLE HEIRS AT LAW HIS TWO BROTHERS, C. T. THRIFT AND H. H. THRIFT.

LESS AND EXCEPT FROM THE ABOVE DESCRIBED TRACT OF LAND THAT PORTION CONVEYED TO THE COMMONWEALTH OF VIRGINIA BY DEED RECORDED IN DEED BOOK 85 AT PAGE 332 AND THAT PORTION CONVEYED TO REALTY INDUSTRIES, INCORPORATED BY DEED RECORDED IN DEED BOOK 173 AT PAGE 252.

All the above-referenced tracts being a portion of the real estate conveyed unto Timberland Investment Group, Inc., a Georgia corporation, by deed dated October 25, 1993 from Chesapeake Forest Products Company, a Virginia corporation, and being described as five of the tracts in said deed of record in the Circuit Court Clerk's Office of Lancaster County, Virginia, in Deed Book 351 at Page 90.

Being the same land conveyed unto C. F. Lumber Co., Inc. by Deed of Timberland Investment Group, Inc. dated September 26, 1996 and recorded prior hereto.



ALTA PLAIN ENGLISH TITLE INSURANCE COMMITMENT  
CHICAGO TITLE INSURANCE COMPANY  
SCHEDULE B - SECTION 1  
REQUIREMENTS

NUMBER: 96-12-3036

The following requirements must be met:

- (a) Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.
- (b) Pay us the premiums, fees, and charges for the Policy.
- (c) Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded. They are:
  - (1) Deed from Timberland Investment Group, Inc., to C. F. Lumber Company, Inc., vesting fee simple title to the subject property.
  - (2) Deed of Trust from C. F. Lumber Company, Inc., securing Peninsula Trust Bank in the amount of \$57,000.00.
- (c) Tax information:  
There must be payment of all taxes, charges, and assessments, which are due and payable.

Taxes are posted as being paid through the second half of 1996.

DANN TRACT

Tax Map #35-180

Land: \$11,100.00  
Tax: \$ 56.61  
Amount Paid: \$56.61

PARRISH TRACT

Tax Map #34-45

Land: \$19,700.00  
Tax: \$ 100.47  
Amount Paid: \$100.47

ADAMS TRACT

Tax Map #28-201

Land: \$51,000.00  
Tax: \$ 260.10  
Amount Paid: \$260.10

MODULE B - SECTION 1 CONTINUED

NUMBER: 96-12-3036

(c) Continued

POINTERS TRACT

Tax Map #9-86

Land: \$38,900.00  
Tax: \$ 198.39  
Amount Paid: \$198.39

WHITESTONE TRACTS

(51 Acres)

Tax Map #35-181A

Land: \$30,600.00  
Tax: \$ 156.06  
Amount Paid: \$156.06

(81.83 Acres)

Tax Map #35-157A

Land: \$64,900.00  
Tax: \$330.99  
Amount Paid: \$330.99

(14.70 Acres)

Tax Map #35-149

Land: \$8,800.00  
Tax: \$ 44.88  
Amount Paid: \$44.88

- (d) You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. WE MAY THEN MAKE ADDITIONAL REQUIREMENTS OR EXCEPTIONS.
- (e) The Owner/Seller Affidavit enclosed must be executed prior to the recordation of the instruments creating the estate or interest insured and must be returned with the final application for the policy(ies) and must show no exceptions.
- (f) You must pay and release of record the following items:

None

- (g) The following additional requirement(s) must be met:

(1) The Company must be furnished the following with regard to Timberland Investment Group, Inc.: (a) Certificate of Good Standing in its State of Incorporation and the Commonwealth of Virginia; (b) Corporate Resolution authorizing the transaction contemplated in this commitment; (c) Certificate of Incumbency.

ALTA PLA. ENGLISH TITLE INSURANCE COMMITMENT  
CHICAGO TITLE INSURANCE COMPANY  
SCHEDULE B - SECTION 2

NUMBER: 96-12-3036

EXCEPTIONS

Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction.

General Exceptions:

1. Rights or claims of parties in possession not shown by the public records.
2. Encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey and inspection of the premises.
3. Easements or claims of easements not shown by the public records.
4. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law, and not shown by the public records.
5. Taxes or special assessments which are not shown as existing liens by the public records.
6. Taxes for the year 1997 and subsequent years, a lien not yet due and payable.
7. Subject to terms and conditions of any Timber Deeds, Leases, and Contracts.

Tract 37-2346 DANN

8. Terms, conditions and provisions as disclosed by a Boundary Line Agreement recorded in Deed Book 234 at Page 530.

Tract 37-2348 PARRISH

9. Easement granted to Virginia East Coast Utilities, Inc., recorded in Deed Book 80 at Page 125.
10. Easement granted to the Commonwealth of Virginia recorded in Deed Book 100 at Page 270.

SCHEDULE B - SECTION 2 CONTINUED

NUMBER: 96-12-3036

Tract  
37-2336 ADAMS


11. Easement granted to East Coast Electric Company, recorded in Deed Book 87 at Page 81.
12. Easement granted to East Coast Electric company, recorded in Deed Book 87 at Page 144.
13. Easement granted to the Commonwealth of Virginia, recorded in Deed Book 100 at Page 279.
14. Easement granted to the Commonwealth of Virginia, recorded in Deed Book 100 at Page 283.
15. Easement granted VEPCO by instrument in Deed Book 133 at Page 624.

Tract 37-2313 POINTERS

16. Easement granted to the Commonwealth of Virginia, recorded in Deed Book 84 at Page 365.
17. Easement granted to the Commonwealth of Virginia, recorded in Deed Book 85 at Page 332.

Tract 37-2339 WHITE STONE

18. Easement granted to Tidewater Telephone Company, recorded in Deed Book 102 at Page 165.
19. Easement granted to Virginia Electric and Power Company, recorded in Deed Book 108 at Page 477.
20. Easement granted to Tidewater Telephone Company, recorded in Deed Book 120 at Page 194.
21. Easements reserved in document recorded in Deed Book 140 at Page 296.
22. Rights of others in and to any public roads and private roads running through the subject parcels of land shown on plats recorded in Deed Book 141, at Pages 137, 138 and 139.
23. Easement granted to Tidewater Telephone Company, recorded in Deed Book 179 at Page 237.

<b>PHONE MESSAGE</b>		DATE <u>2/26/97</u>	TIME <u>8:30</u>	A.M. P.M.
FOR	<u>KW</u>			
M	<u>C. F. Carter</u>			
OF				
PHONE ( )			EXT.	
<input type="checkbox"/> FAX	<input type="checkbox"/> MOBILE	<input type="checkbox"/> PAGER ( )		
MESSAGE	<u>doesn't want to sell</u> <u>property to Parkway Bible Ch</u> <u>up at all possible. Knows</u> <u>how negotiating it could</u> <u>be - talks to you later.</u>			
 <b>AVERY</b>			SIGNED <u>[Signature]</u>	

<input type="checkbox"/>	URGENT
<input checked="" type="checkbox"/>	PHONED
<input type="checkbox"/>	RETURNED YOUR CALL
<input type="checkbox"/>	PLEASE CALL BACK
<input type="checkbox"/>	WILL CALL AGAIN
<input type="checkbox"/>	WAS IN
<input type="checkbox"/>	WANTS TO SEE YOU

TRUE COPY

ESTE: ROBERTA H. LEWIS, CLERK

Roberta H. Lewis

CLERK

ANCASTER COUNTY CIRCUIT COURT



✓

CERTIFICATE OF SECRETARY

TIMBERLAND INVESTMENT GROUP, INC

I, the undersigned, the duly appointed and currently acting Secretary of Timberland Investment Group, Inc., a Georgia corporation (the "Corporation") DO HEREBY CERTIFY THAT:

1. I am the Secretary of the Corporation, and as such, am authorized to execute this Certificate on behalf of the Corporation.

2. Attached hereto, marked Exhibit "A" is a copy of the Resolution duly adopted at the meeting of the Board of Directors of the Corporation on September 19 1996.

3. Said Resolution is in full force and effect as of date hereof, and constitutes a legally binding authorization of the Corporation in accordance with the terms thereof, and is not in violation of the Certificate of Incorporation or By-Laws of the Corporation.

4. On the date hereof, the office of President is held by Mark T. Seaman and the office of Secretary is held by Joe Wackerill and the following are genuine signatures of said officers:

President

MARK T. Seaman

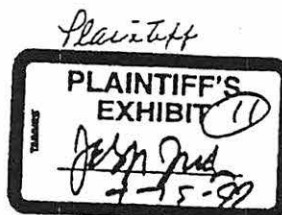
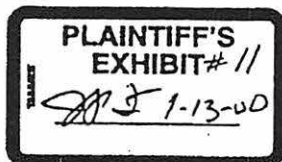
Secretary

Joe Wackerill

WITNESS the seal of the Corporation and the signature of the undersigned, this 19th day of September 1996.

Joe Wackerill  
(Secretary)  
Timberland Investment Group, Inc.

[CORPORATE SEAL]



A TRUE COPY

TESTE: ROBERTA H. LEWIS, CLERK

BY Roberta H. Lewis  
CLERK

LANCASTER COUNTY CIRCUIT COURT

COUNTY OF LANCASTER  
COMMONWEALTH OF VIRGINIA  
I CERTIFY THIS TO BE A COMPLETE, FULL, TRUE AND  
EXACT REPRODUCTION OF THE ORIGINAL DOCUMENT.  
CERTIFIED THIS 10th DAY OF March, 1997  
Lella Lee P. Edwards  
NOTARY PUBLIC  
MY COMMISSION EXPIRES 31 December 1999

PHONE MESSAGE		DATE 2/24/97	TIME 9:35 A.M.
FOR	RWE		
M	Kathleen Bennett		
OF			
PHONE (	1 435-0321	EXT.	
<input type="checkbox"/> FAX	<input type="checkbox"/> MOBILE	<input type="checkbox"/> PAGER (	)
MESSAGE	Called re: Classroom 2 Property - C.F. Carter - sd. 8 hrs sent check Agreement to Len Word turned 9:77 Chris has a check it after Avery down stairs.		
		SIGNED	<i>[Signature]</i>

☐ URGENT  
☒ PHONED  
☐ RETURNED YOUR CALL  
☐ PLEASE CALL BACK  
☐ WILL CALL AGAIN  
☐ WAS IN  
☐ WANTS TO SEE YOU

PLAINTIFF'S  
 EXHIBIT #12  
 JET 1-13-00

PLAINTIFF'S  
 EXHIBIT #15  
 JESD JUDGE



VIRGINIA ASSOCIATION OF REALTORS®  
CONTRACT FOR PURCHASE OF UNIMPROVED PROPERTY



is a suggested form for use in the sale of Land only. This is a legally binding contract; if not understood, seek competent advice before signing.

CONTRACT OF PURCHASE made as of 2-24, 19 97, between  
C.F. Lumber Company, Inc., (the "Seller", whether one or more)  
Robert T. and Catherine A. Bennett (the "Purchaser", whether one or more)  
addresses are shown below, provides the Listing Broker for the Property, as defined below is NONE

The Selling Broker is NONE  
REAL PROPERTY: Purchaser agrees to buy and Seller agrees to sell the land, and all improvements thereon located in the County or City  
Lancaster, Virginia, and described as (legal description): 53.5 acres, Route 615,  
near Raging, near Raging, Virginia, with timber rights  
reserved, to be cut 24 months or sooner.

more commonly known as:

Other with the items of personal property described in paragraph 2 (the "Property").

PERSONAL PROPERTY INCLUDED: The following items of personal property are included in this sale: (X) None ( ) See Addendum

PURCHASE PRICE: The Purchase Price (the "Purchase Price") of the Property is \$26,000 (twenty six thousand dollar)

This price shall be the exact sales price.

This price shall be adjusted at settlement to an exact Purchase price of \$ \_\_\_\_\_ per (sq. ft.) (acre). The exact area to be  
determined by a survey to be made by a registered surveyor and paid for by \_\_\_\_\_. At this  
time, Purchaser may waive said survey. The Purchaser shall pay to the seller at settlement the Purchase Price in cash or by cashier's or certified  
check, subject to the provisions herein and further subject to one or more of the following financings, (check as applicable):

\$ \_\_\_\_\_ (a) THIRD PARTY FIRST TRUST: As set forth in paragraph 5, this sale is subject to Purchaser ( ) obtaining or  
( ) assuming: ( ) a conventional, ( ) or other (describe) \_\_\_\_\_  
loan secured by a first deed of trust lien on the Property in the principal amount of \$ \_\_\_\_\_  
bearing interest ( ) at a fixed rate not exceeding \_\_\_\_\_ % per year, or ( ) at an adjustable rate with an initial rate not  
exceeding \_\_\_\_\_ % per year and a maximum rate during the term of the loan not exceeding \_\_\_\_\_ % per year, or  
( ) at the prevailing rate of interest at the time of settlement, amortized over a term of \_\_\_\_\_ years, and requiring  
not more than a total of \_\_\_\_\_ loan discount points, excluding a loan origination fee or an assumption fee not exceeding  
\$ \_\_\_\_\_. (If this Contract provides for the assumption of a loan: (i) the Parties acknowledge that the  
balance set forth above is approximate and that the principal amount to be assumed will be the outstanding principal balance  
on the date of settlement, and (ii) Purchaser shall assume all obligations of Seller under such loan.)

\$ \_\_\_\_\_ (b) THIRD PARTY SECOND TRUST: As set forth in paragraph 5, this sale is also subject to Purchaser obtaining a loan  
secured by a second deed of trust lien on the Property in the principal amount of \$ \_\_\_\_\_, bearing interest at a rate  
not exceeding \_\_\_\_\_ % per year, repaid as follows: \_\_\_\_\_ and

requiring not more than a total of \_\_\_\_\_ loan discount points, excluding a loan origination fee.  
\$ \_\_\_\_\_ (c) SELLER FINANCING: Seller agrees that \$ \_\_\_\_\_ of the Purchase Price shall be evidenced by a note made  
by Purchaser in the principal amount of \$ \_\_\_\_\_, bearing interest at the rate of \_\_\_\_\_ % per year, repaid as follows:

The note shall be secured by a deferred purchase money ( ) first, ( ) second or (specify priority) \_\_\_\_\_  
deed of trust lien on the Property. The deed of trust and note shall provide, among other things, that: (i) the note shall be due  
and payable in full if the Property, or any interest therein, is transferred, sold or conveyed except as provided in a first release  
agreement; (ii) Purchaser shall have the right to prepay the note at any time and from time to time in whole or in part ( )  
with a premium or penalty of \_\_\_\_\_ % of the amount prepaid or ( ) without premium or penalty; (iii) a late payment charge  
not exceeding five per cent of the payment may be assessed by Seller for any payment more than seven (7) calendar days late;  
(iv) the note and deed of trust shall otherwise be in form satisfactory to seller, and (v) other terms: \_\_\_\_\_

If this Contract provides for SELLER FINANCING, then (i) such financing shall be contingent upon review and approval  
by Seller of a current credit report on each Purchaser and a current personal financial statement of each Purchaser, which  
documents must be provided to Seller within \_\_\_\_\_ business days following execution of this Contract by all parties.  
Seller shall within \_\_\_\_\_ business days after receipt of Purchaser's financial data give Purchaser a written loan  
commitment or this Contract shall terminate and Purchaser's deposit shall be refunded; (ii) Purchaser shall properly record  
the applicable deed of trust, at Purchaser's expense, at settlement; and (iii) Purchaser may not assign this Contract, in whole  
or in part, without the prior written consent of Seller, which Seller shall be under no obligation to give. Any deed of trust  
securing SELLER FINANCING: (i) shall contain a provision requiring the trustees under said deed of trust, without the  
necessity of obtaining the prior consent or joinder of the noteholder, to release land for easements and rights of ways, and/or  
land to be dedicated for public use from the above mentioned trust without curtailment and at no cost to Purchaser, provided  
such releases in their aggregate total less than \_\_\_\_\_ % of the total land area originally encumbered by the deed of trust;  
(ii) shall provide that Purchaser shall have the right, at any time after settlement, to raise existing improvements, cut, fill, grade,  
erect improvements and do all other things Purchaser believes necessary in the development of the Property, ( ) with or  
( ) without obligation to make any prepayment on account of the debt secured by the deferred purchase money deed of trust

\$ \_\_\_\_\_ (d) OTHER FINANCING TERMS: \_\_\_\_\_

DEPOSIT: See paragraph four (4)  
BALANCE OF THE PURCHASE PRICE: To be paid by Purchaser at settlement (approximate in the case of a loan  
assumption).  
TOTAL PURCHASE PRICE

PLAINTIFF'S  
EXHIBIT #12  
8-21-97  
4-15-97

PLAINTIFF'S  
EXHIBIT #13  
8-21-97  
4-15-97

Please initial  
Purchaser R.T.B. C.A.B. Seller C.F.L.



**POSIT:**

Purchaser has made a deposit with Raymond Wesley Edwards, Attorney  
 Escrow Agent of Six Thousand Dollars (\$ 6,000.00)  
 deposit ( ) in cash, (X) by check, ( ) bank letter of credit, or ( ) by a note due and payable on \_\_\_\_\_, 19\_\_\_\_  
 of which is hereby acknowledged. The Deposit shall be held in escrow by the Escrow Agent until settlement and then applied to the Purchase

the Escrow Agent is a licensed real estate broker, the Deposit shall be held and applied in conformity to the Regulations of the Virginia State Board. Pursuant to such Regulations, the Deposit will be placed in an escrow account of the Escrow Agent until this transaction has consummated or terminated. The Regulations provide that if this transaction is not consummated, the Escrow Agent shall hold the Deposit until (i) all Parties to the transaction have agreed in writing to the disposition thereof, or (ii) a court of competent jurisdiction orders settlement, or (iii) the Escrow Agent can pay the funds to the Party who is entitled to receive them in accordance with the clear and explicit terms of this Contract. In the latter event, prior to disbursement, the Escrow Agent shall give written notice to the Party not to be paid, by either delivery receipted by the addressee, or (II) by regular and certified mail, that his payment will be made unless a written protest from that Party is received by the Escrow Agent within thirty days of the delivery or mailing, as appropriate, of the notice.

**FINANCING:**

This Contract is contingent upon Purchaser obtaining a written commitment or commitments, as the case may be, for the third Party financing assumption required in paragraph 3. Purchaser agrees to make written application for such financing or assumption within \_\_\_\_\_ business days of the date of acceptance of this Contract and to diligently pursue obtaining a commitment therefore.

Purchaser does not obtain such a written commitment and so notifies Seller or Selling Broker or the Listing Broker in writing before 5:00 p.m. on \_\_\_\_\_, 19\_\_\_\_, then this Contract shall terminate upon the giving of such notice and the Deposit shall be refunded to Purchaser. If such a notice is not received by the deadline, or such later deadline as the Parties may agree upon in writing, then Seller shall have the right to (i) deem the financing contingency provided herein satisfied, or (ii) terminate this Contract by giving Purchaser written notice of such termination within five (5) days after the deadline. Failure of Purchaser to make such application or to diligently pursue obtaining such financing shall be a default hereunder.

**LOAN FEES:** If a lender making a loan described in paragraph 3 requires a discount fee, commonly known as "points" (a point being 1% principal amount of the loan) as a condition of making the loan, Seller agrees to pay the first trust lender up to \_\_\_\_\_ points and to the second trust lender up to \_\_\_\_\_ points. Except as otherwise agreed in this paragraph 6 and paragraph A of the Standard Provisions, Seller shall pay all loan origination fees, charges and other costs imposed by a lender or otherwise incurred in connection with obtaining the loan.

**TITLEMENT; POSSESSION:** Settlement shall be made at office of Raymond Wesley Edwards, Attorney, 39 N. Main St., Kilmarnock, Virginia on or about Tuesday, February 25, 1997. Possession of the Property shall be given at settlement, unless otherwise agreed in writing by the Parties. Time is of the essence.

**COMMISSIONS:** Seller and other parties hereto authorize and direct the settlement agent to disburse to Listing Broker and/or Selling Broker from the settlement proceeds their respective portions of the brokerage fee payable as a result of this sale and closing under the Contract. Listing Broker and/or Selling Broker shall deliver to the settlement agent, prior to settlement, a written statement signed by each broker entitled to a portion of the brokerage fee stating how such fee and any additional sales incentives are to be disbursed.

**JOINT PERIOD:** Purchaser shall have \_\_\_\_\_ days from the date this Contract is executed by both Purchaser and Seller, to determine, through engineering and feasibility studies, whether Purchaser's plan of development of the Property is practical. Purchaser shall contract for such studies within ten days from the date of execution, and deliver to Seller and agent copies of the letter(s) ordering the studies, said letter(s) stipulating the copies of all studies are to be sent to Seller or an agent of Seller, simultaneously with delivery to Purchaser. If within said \_\_\_\_\_ days Purchaser notifies both Seller or an agent of Seller, in writing, that his plan, in his sole judgment, is not practical, Purchaser may declare this Contract null and void. In this event, Purchaser shall receive a refund of his deposit and all parties shall be relieved of further liability hereunder. Absence of such timely notice (time shall be of the essence) from the Purchaser that he elects to declare this Contract null and void, this Contract shall be in full force and effect.

**SOIL STUDY:** This Contract is contingent for \_\_\_\_\_ days from date of execution of this Contract by both Purchaser and Seller to \_\_\_\_\_ at its expense to obtain a soil study and/or percolation test, which shall lawfully allow for the erection of \_\_\_\_\_ on the Property. Said report shall be pursued diligently and in good faith and if such study or test reveals that Purchaser's intended use of the Property is not permissible, Purchaser shall have the right, upon written notice to Seller, to declare this Contract null and void, in which event the deposit shall be returned to Purchaser and all parties relieved of further liability hereunder.

**OTHER ITEMS:** (Use this space for additional terms not covered in this Contract.)

Seller agrees to assume all liabilities involved with cutting  
of timber.

Number of pages attached No \_\_\_\_\_ Yes X Consisting of 2 pages.

**PROPERTY OWNERS' ASSOCIATION DISCLOSURE:** Seller represents that the Property (check as applicable) is \_\_\_\_\_ is located within a development which is subject to the Virginia Property Owners' Association Act (Sections 55-508 through 55-510 of the Code of Virginia). If the Property is within such a development, the Act requires Seller to obtain from the Property Owners' Association an association disclosure packet and provide it to Purchaser. Purchaser may cancel this Contract within three (3) days after receiving the association disclosure packet or being notified that the association disclosure packet will not be available. The right to receive the association disclosure packet and the right to cancel this Contract are waived conclusively if not exercised before settlement. The rights of Purchaser pursuant to this paragraph and the Act may be waived in writing by Purchaser in a separate document.

**ACKNOWLEDGEMENT OF DISCLOSURE OF BROKERAGE RELATIONSHIP:** (Check as applicable.)

The Parties confirm that in connection with the transaction contemplated by this Contract, \_\_\_\_\_ (the Listing Broker), and \_\_\_\_\_ (the cooperating or Selling Broker), and

salespersons, have acted on behalf of Seller as Seller's representatives.

The Parties confirm that in connection with the transaction contemplated by this Contract, \_\_\_\_\_ (the Listing Broker), and its salespersons have acted

of Seller as Seller's representative, and/or Bay Meadows Real Estate (Buyers are agents) the Purchaser's  
(s), and its salespersons, by agreement, have acted on behalf of Purchaser as Purchaser's representative.

The Parties also confirm, with respect to their own representation, that disclosure of the brokerage relationships described in paragraph  
(B) above was made in writing at the time specific real estate assistance was provided by the Brokers named above, or their respective  
persons.

The Listing Broker and its salespersons are acting on behalf of both the Seller and the Purchaser as disclosed dual representatives. An  
Disclosure of Dual Representation is attached.

The principal or supervising broker has designated \_\_\_\_\_ to represent  
in the transaction and \_\_\_\_\_ to represent the Purchaser in the  
transaction. \_\_\_\_\_, the principal or supervising broker, is acting on behalf of both

the Seller and the Purchaser as a disclosed dual representative. An executed Disclosure of the Use of Designated Representatives is attached.  
The parties also confirm that the disclosure of and consent to the brokerage relationships described in paragraph 13(D) or (E) above was  
prior to the time the offer was made by Purchaser and delivered to Seller.

The duties of real estate licensees in Virginia are set forth in Section 54.1-2130 of the Code of Virginia and in the regulations of the  
Real Estate Board. In addition to the information contained in this disclosure pertaining to brokerage relationships, there may be other  
information relevant to the transaction which may be obtained from other sources.

STANDARD PROVISIONS ON REVERSE SIDE HEREOF: All the Standard Provisions on the REVERSE SIDE HEREOF are  
incorporated by reference and shall apply to this Contract, unless expressly modified in paragraph 11 and except the following letter Standard  
Provisions, which are hereby deleted: None (If none deleted, state "None".)

**Mechanic's Lien Notice:**

Virginia law (§ 43-1 et seq.) permits persons who have performed labor or furnished materials for the construction, removal, repair or  
improvement of any building or structure to file a lien against the property. This lien may be filed at any time after the work is commenced or  
material is furnished, but not later than the earlier of (i) 90 days from the last day of the month in which the lienor last performed work or  
furnished material or (ii) 90 days from the time the construction, removal, repair or improvement is terminated. AN EFFECTIVE LIEN FOR  
WORK PERFORMED PRIOR TO THE DATE OF SETTLEMENT MAY BE FILED AFTER SETTLEMENT. LEGAL COUNSEL  
SHOULD BE CONSULTED.

Seller shall deliver to Purchaser at settlement an affidavit, on a form acceptable to Purchaser's lender, if applicable, signed by Seller that no  
materials have been furnished to the Property within the statutory period for the filing of mechanics' or materialmen's liens against the  
Property. If labor or materials have been furnished during the statutory period, Seller shall deliver to Purchaser an affidavit signed by Seller and  
person(s) furnishing the labor or materials that the costs thereof have been paid.

DISPUTE RESOLUTION SYSTEM CLAUSE: The Parties who have initialed this paragraph below hereby agree that if mediation services  
are available, any dispute or claim arising out of or relating to this Contract, the breach of this Contract or the services provided in relation to  
this Contract, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System. Disputes shall include  
contentions made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing,  
completion or other aspect of the Property to which this Contract pertains, including without limitation allegations of concealment, misrepresenta-  
tion, negligence and/or fraud. Any agreement signed by the Parties pursuant to the mediation conference shall be binding. If the Parties cannot  
reach a mutually agreeable settlement, they are free to arbitrate or litigate their dispute as if the mediation never took place.

The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce  
a trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which  
is in the jurisdiction of a probate court; or (e) violation of a state's real estate license laws. The filing of a judicial action to enable the recording  
of a pending action, for order of attachment, receivership injunction, or other provisional remedies, shall not constitute a waiver of the  
mediation under this provision, nor shall it constitute a breach of the duty to mediate.

This provision shall be binding on those parties who have initialed this paragraph even if not all of the parties have so initialed it, and  
shall survive settlement and conveyance of title to the Property. The failure of any party to initial this paragraph shall not affect the validity  
of enforcement of any other provision of this contract as to any party executing this contract.

By initialing in the place below, you hereby acknowledge that you have received, read and understand the standard announcement brochure  
for the Dispute Resolution System and agree to submit disputes as described above to mediation in accordance with the Dispute Resolution System.

B. Initials: \_\_\_\_\_  
Sellers' Initials: \_\_\_\_\_ Listing Brokers' Initials: \_\_\_\_\_ Selling Brokers' Initials: \_\_\_\_\_

ACCEPTANCE: This Contract, when signed by Purchaser, shall be deemed an offer and shall remain in effect until 6 pm (time).  
2-28, 1997. If not accepted by Seller within that time by delivery of a signed copy of this Contract  
to Purchaser, or an agent for Purchaser, it shall become null and void.

WITNESS the following duly authorized signatures and seals:

(SEPARATE ALL COPIES BEFORE SIGNING BELOW)

I accept this offer 2-28 day of Feb, 1997.

6-28 C. J. Carter (SEAL) 2-24-97 Robert B. Bennett (SEAL)  
DATE SELLER PURCHASER

854 Piccardville Road, Loudon, VA 22523  
ADDRESS PURCHASER

224 77 Catherine A. Bennett (SEAL)  
DATE SELLER PURCHASER

1 (SEAL)  
SELLER ADDRESS

1 (SEAL)  
ADDRESS

1 (SEAL)  
SOCIAL SECURITY NUMBER

1 (SEAL)  
SOCIAL SECURITY NUMBER

Receipt of deposit per Paragraph 4 above is hereby  
acknowledged.

2-28-97 R. B. Bennett (SEAL)  
DATE



**VIRGINIA ASSOCIATION OF REALTORS®  
REQUIRED DISCLOSURE OF BROKERAGE RELATIONSHIP**



Real estate licensees in Virginia who have entered into brokerage relationships are required by law to make prompt written disclosure of those brokerage relationships to those they work with but do not represent in the real estate transaction. Licensees must also make written disclosures and obtain timely written consents from their clients in order to enter into certain brokerage relationships. This disclosure form is provided to you to satisfy these requirements and to assure that you understand the nature of the brokerage relationships in which the licensee entering this disclosure is involved. Regardless of whose interests a licensee represents, all licensees who are REALTORS® are required by the REALTORS® Code of Ethics to treat all parties with whom they deal honestly.

The duties of real estate licensees in Virginia are set forth in Section 54.1-2130 et seq. of the Code of Virginia and in the regulations of the Virginia Real Estate Board. You should be aware that in addition to the information contained in this disclosure pertaining to brokerage relationships, there may be other information relevant to the transaction which may be obtained from other sources.

On the back of this form is information about brokerage relationships and the responsibilities of both licensees and the parties they represent. If you have any questions about any of this information, please ask the licensee presenting this form for clarification.

**DISCLOSURE OF BROKERAGE RELATIONSHIP**

The undersigned do hereby acknowledge disclosure that:  
The licensee Robert T. and Catherine A. Bennett - Bay Meadows Real Estate (Name of Firm and Licensee)  
represents the following party in a real estate transaction: ☐ Seller(s) or ☒ Buyer(s) ☐ Landlord(s) or ☐ Tenant(s)  
2/17/97 Robert T. Bennett 2/17/97 Catherine A. Bennett  
Date Name Date Name

**DISCLOSURE OF DUAL REPRESENTATION**

The undersigned do hereby acknowledge disclosure that:  
The licensee \_\_\_\_\_ (Name of Firm, and  
Name of Broker or Salesperson, as applicable) represents more than one party in this real estate transaction as indicated:  
☐ Seller(s) and Buyer(s) ☐ Landlord(s) and Tenant(s)

The undersigned understands that the foregoing dual representative may not disclose to either client or such client's designated representative any information that has been given to the dual representative by the other client within the confidence and trust of the brokerage relationship except for that information which is otherwise required or permitted by Article 3 (§54.1-2130 et seq.) of Chapter 21 of Title 54.1 of the Code of Virginia to be disclosed. The undersigned by signing this notice do hereby acknowledge their informed consent to the disclosed dual representation by the licensees.

_____ Date	_____ Name (One Party)	_____ Date	_____ Name (One Party)
_____ Date	_____ Name (Other Party)	_____ Date	_____ Name (Other Party)

**DISCLOSURE OF THE USE OF DESIGNATED REPRESENTATIVES**

The undersigned do hereby acknowledge disclosure that:  
The licensee \_\_\_\_\_ (Name of Broker and Firm)  
represents more than one party in this real estate transaction as indicated:  
☐ Seller(s) and Buyer(s) ☐ Landlord(s) and Tenant(s)

The undersigned understands that the foregoing dual representative may not disclose to either client or such client's designated representative any information that has been given to the dual representative by the other client within the confidence and trust of the brokerage relationship except for that information which is otherwise required or permitted by Article 3 (§54.1-2130 et seq.) of Chapter 21 of Title 54.1 of the Code of Virginia to be disclosed. The undersigned by signing this notice do hereby acknowledge their informed consent to the disclosed dual representation by the licensees.

The principal or supervising broker has assigned \_\_\_\_\_ to act  
as Designated Representative for the one party as indicated:  
☐ Seller(s) or ☐ Buyer(s) ☐ Landlord(s) or ☐ Tenant(s)  
and \_\_\_\_\_ to act  
as Designated Representative for the other party as indicated:  
☐ Seller(s) or ☐ Buyer(s) ☐ Landlord(s) or ☐ Tenant(s)

_____ Date	_____ Name (One Party)	_____ Date	_____ Name (One Party)
_____ Date	_____ Name (Other Party)	_____ Date	_____ Name (Other Party)

## THE LICENSEE'S DUTIES

A licensee may have a contractual agreement to represent a client, who is commonly referred to as the "principal". A licensee owes certain duties to his principal, among which are the duties of loyalty, obedience, confidentiality, ordinary care, diligence, and full accounting. A licensee not representing you in a transaction can nonetheless provide you other valuable information and assistance. However, you should always keep in mind whom the licensee represents in your transaction, and thus to whom that licensee owes the duties listed above.

### WHOM DOES THE LICENSEE REPRESENT?

In any real estate transaction, a licensee may represent the seller, the buyer, or, under certain circumstances, both seller and buyer.

- The Seller --** A licensee may represent a seller under a listing agreement, in which case the licensee owes his primary responsibilities to the seller. The listing agreement may authorize the listing firm to list the property with a multiple listing service and to cooperate with other licensees. These cooperating licensees, who frequently work for other firms, may operate under an agreement of subagency with the listing firm, in which case they also owe their primary responsibilities to the seller. Buyers working with a licensee should be aware that the licensee may be a subagent of the listing firm and thus the representative of the seller.
- The Buyer --** A licensee and a buyer may enter into an agreement by which the licensee agrees to represent the interests of the buyer. A buyer's representative must repudiate any subagency offered by a listing firm and must disclose his relationship with the buyer whenever dealing with the seller or seller's representative.
- The Buyer and the Seller --** A licensee, either acting directly or through one or more of the real estate company's other licensees, may be the representative of both the Buyer and the Seller in a particular transaction, but only with the informed written consent of both the buyer and the seller. A licensee representing both the buyer and the seller will necessarily be limited in his ability to represent either buyer or seller fully and exclusively. The licensee must safeguard the confidentiality of any information obtained with the confidentiality and trust of the brokerage relationship, unless disclosure of such information is required by law. Specifically, the licensee must not tell the buyer that the seller will accept a price lower than the listing price, nor tell the seller that the buyer will pay a price higher than the price offered.
- Designated Representatives --** Virginia law also permits a principal or supervising broker to assign different licensees affiliated with the broker as designated representatives to represent different clients in the same transaction. Unlike the dual representative discussed in the previous paragraph, these designated representatives represent only the interests of their respective clients, and may therefore represent those interests more fully. The principal or supervising broker who is supervising the transaction will be considered a dual representative of both seller and buyer. Designated representatives may not disclose, except to their broker, personal or financial information received from the clients during the brokerage relationship and any other information a client requests be kept confidential, unless required by law to be disclosed or the client consents to its disclosure in writing.

### THE PRINCIPALS' RESPONSIBILITIES

Representation by a licensee in a real estate transaction does not relieve sellers and buyers from the fundamental responsibility to protect their own interests. A buyer should take all reasonable steps to determine the condition of the property the buyer is purchasing, and all parties should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate licensee is qualified to advise about real estate, but if you need legal or tax advice, you should consult a competent professional.

A principal should ensure that any existing brokerage relationship is disclosed to other principals and their representatives. A buyer should consult the buyer's representative before visiting any resale or new homes or contacting any other licensees to avoid the possibility of confusion or brokerage relationships.

You may receive more than one disclosure form, depending upon the number of licensees assisting in the transaction. The law requires that a licensee with whom you have substantive discussions about specific property, and with whom you do not have a brokerage relationship, to present you with a written disclosure. You should read its contents each time it is presented to you and you should consider the relationship between you and the licensee in your specific transaction.

COPYRIGHT © 1993 by the Virginia Association of REALTORS®. All rights reserved. This form may be used only by members in good standing with the Virginia Association of REALTORS®. The reproduction of this form, in whole or part, or the use of the name "Virginia Association of REALTORS®", in connection with any other form, is prohibited without prior written consent from the Virginia Association of REALTORS®.



# VIRGINIA ASSOCIATION OF REALTORS® REQUIRED DISCLOSURE OF BROKERAGE RELATIONSHIP



Real estate licensees in Virginia who have entered into brokerage relationships are required by law to make prompt written disclosures of those brokerage relationships to those they work with but do not represent in the real estate transaction. Licensees must also make written disclosures and obtain timely written consents from their clients in order to enter into certain brokerage relationships. This disclosure form is intended to you to satisfy these requirements and to assure that you understand the nature of the brokerage relationships in which the licensee entering this disclosure is involved. Regardless of whose interests a licensee represents, all licensees who are REALTORS® are required by the REALTORS® Code of Ethics to treat all parties with whom they deal honestly.

The duties of real estate licensees in Virginia are set forth in Section 54.1-2130 et seq. of the Code of Virginia and in the regulations of the Virginia Real Estate Board. You should be aware that in addition to the information contained in this disclosure pertaining to brokerage relationships, there may be other information relevant to the transaction which may be obtained from other sources.

On the back of this form is information about brokerage relationships and the responsibilities of both licensees and the parties thereto. If you have any questions about any of this information, please ask the licensee presenting this form for clarification.

## DISCLOSURE OF BROKERAGE RELATIONSHIP

The undersigned do hereby acknowledge disclosure that:

The licensee Robert T. and Catherine A. Bennett - Bay Meadows Real Estate (Name of Firm and Licensee)  
represents the following party in a real estate transaction: ☐ Seller(s) or ☒ Buyer(s) ☐ Landlord(s) or ☐ Tenant(s)

2/17/97 Robert T. Bennett 2/17/97 Catherine A. Bennett  
Date Name Date Name

## DISCLOSURE OF DUAL REPRESENTATION

The undersigned do hereby acknowledge disclosure that:

The licensee \_\_\_\_\_ (Name of Firm, and

Name of Broker or Salesperson, as applicable) represents more than one party in this real estate transaction as indicated:

☐ Seller(s) and Buyer(s) ☐ Landlord(s) and Tenant(s)

The undersigned understands that the foregoing dual representative may not disclose to either client or such client's designated representative any information that has been given to the dual representative by the other client within the confidence and trust of the brokerage relationship except for that information which is otherwise required or permitted by Article 3 (§54.1-2130 et seq.) of Chapter 21 of Title 54.1 of the Code of Virginia to be disclosed. The undersigned by signing this notice do hereby acknowledge their informed consent to the disclosed dual representation by the licensees.

Date /	Name (One Party)	Date /	Name (One Party)
Date /	Name (Other Party)	Date /	Name (Other Party)

## DISCLOSURE OF THE USE OF DESIGNATED REPRESENTATIVES

The undersigned do hereby acknowledge disclosure that:

The licensee \_\_\_\_\_ (Name of Broker and Firm)

represents more than one party in this real estate transaction as indicated:

☐ Seller(s) and Buyer(s) ☐ Landlord(s) and Tenant(s)

The undersigned understands that the foregoing dual representative may not disclose to either client or such client's designated representative any information that has been given to the dual representative by the other client within the confidence and trust of the brokerage relationship except for that information which is otherwise required or permitted by Article 3 (§54.1-2130 et seq.) of Chapter 21 of Title 54.1 of the Code of Virginia to be disclosed. The undersigned by signing this notice do hereby acknowledge their informed consent to the disclosed dual representation by the licensees.

The principal or supervising broker has assigned \_\_\_\_\_ to act

as Designated Representative for the one party as indicated:

☐ Seller(s) or ☐ Buyer(s) ☐ Landlord(s) or ☐ Tenant(s)

and \_\_\_\_\_ to act

as Designated Representative for the other party as indicated:

☐ Seller(s) or ☐ Buyer(s) ☐ Landlord(s) or ☐ Tenant(s)

Date /	Name (One Party)	Date /	Name (One Party)
Date /	Name (Other Party)	Date /	Name (Other Party)



## THE LICENSEE'S DUTIES

A licensee may have a contractual agreement to represent a client, who is commonly referred to as the "principal". A licensee owes certain duties to his principal, among which are the duties of loyalty, obedience, confidentiality, ordinary care, diligence, and full accounting. A licensee not representing you in a transaction can nonetheless provide you other valuable information and assistance. However, you should always mind whom the licensee represents in your transaction, and thus to whom that licensee owes the duties listed above.

### WHOM DOES THE LICENSEE REPRESENT?

In any real estate transaction, a licensee may represent the seller, the buyer, or, under certain circumstances, both seller and buyer.

- The Seller --** A licensee may represent a seller under a listing agreement, in which case the licensee owes his primary responsibilities to the seller. The listing agreement may authorize the listing firm to list the property with a multiple listing service and to cooperate with other licensees. These cooperating licensees, who frequently work for other firms, may operate under an agreement of subagency with the listing firm, in which case they also owe their primary responsibilities to the seller. Buyers working with a licensee should be aware that the licensee may be a subagent of the listing firm and thus the representative of the seller.
- The Buyer --** A licensee and a buyer may enter into an agreement by which the licensee agrees to represent the interests of the buyer. A buyer's representative must repudiate any subagency offered by a listing firm and must disclose his relationship with the buyer whenever dealing with the seller or seller's representative.
- The Buyer and the Seller --** A licensee, either acting directly or through one or more of the real estate company's other licensees, may be the representative of both the Buyer and the Seller in a particular transaction, but only with the informed written consent of both the buyer and the seller. A licensee representing both the buyer and the seller will necessarily be limited in his ability to represent either buyer or seller fully and exclusively. The licensee must safeguard the confidentiality of any information obtained with the confidentiality and trust of the brokerage relationship, unless disclosure of such information is required by law. Specifically, the licensee must not tell the buyer that the seller will accept a price lower than the listing price, nor tell the seller that the buyer will pay a price higher than the price offered.
- Designated Representatives --** Virginia law also permits a principal or supervising broker to assign different licensees affiliated with the broker as designated representatives to represent different clients in the same transaction. Unlike the dual representative discussed in the previous paragraph, these designated representatives represent only the interests of their respective clients, and may therefore represent those interests more fully. The principal or supervising broker who is supervising the transaction will be considered a dual representative of both seller and buyer. Designated representatives may not disclose, except to their broker, personal or financial information received from the clients during the brokerage relationship and any other information a client requests be kept confidential, unless required by law to be disclosed or the client consents to its disclosure in writing.

### THE PRINCIPALS' RESPONSIBILITIES

Representation by a licensee in a real estate transaction does not relieve sellers and buyers from the fundamental responsibility to protect their own interests. A buyer should take all reasonable steps to determine the condition of the property the buyer is purchasing, and all parties should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate licensee is qualified to advise about real estate, but if you need legal or tax advice, you should consult a competent professional.

A principal should ensure that any existing brokerage relationship is disclosed to other principals and their representatives. A buyer should consult the buyer's representative before visiting any resale or new homes or contacting any other licensees to avoid the possibility of confusion in brokerage relationships.

You may receive more than one disclosure form, depending upon the number of licensees assisting in the transaction. The law requires a licensee with whom you have substantive discussions about specific property, and with whom you do not have a brokerage relationship, to send you with a written disclosure. You should read its contents each time it is presented to you and you should consider the relationship between the licensee and the licensee in your specific transaction.

COPYRIGHT © 1993 by the Virginia Association of REALTORS®. All rights reserved. This form may be used only by members in good standing in the Virginia Association of REALTORS®. The reproduction of this form, in whole or part, or the use of the name "Virginia Association of REALTORS®", in connection with any other form, is prohibited without prior written consent from the Virginia Association of REALTORS®.



# VIRGINIA ASSOCIATION OF REALTORS® CONTRACT FOR PURCHASE OF UNIMPROVED PROPERTY



(This is a suggested form for use in the sale of Land only. This is a legally binding contract; if not understood, seek competent advice before signing.)

This CONTRACT OF PURCHASE made as of 2-24, 19 97, between  
C.F. Lumber Company, Inc., (the "Seller", whether one or more),  
and Robert T. and Catherine A. Bennett (the "Purchaser", whether one or more),  
whose addresses are shown below, provides the Listing Broker for the Property, as defined below is NONE  
and the Selling Broker is NONE.

1. REAL PROPERTY: Purchaser agrees to buy and Seller agrees to sell the land, and all improvements thereon located in the County or City  
of Lancaster, Virginia, and described as (legal description): 53± acres, Route 615,  
Lancaster, Virginia, near Regina, Virginia, with timber rights  
reserved, to be cut 24 months or sooner.

and more commonly known as: \_\_\_\_\_  
together with the items of personal property described in paragraph 2 (the "Property").

2. PERSONAL PROPERTY INCLUDED: The following items of personal property are included in this sale: (X) None ( ) See Addendum.

3. PURCHASE PRICE: The Purchase Price (the "Purchase Price") of the Property is \$26,000 (twenty six thousand dollars).  
(X) This price shall be the exact sales price.

( ) This price shall be adjusted at settlement to an exact Purchase price of \$ \_\_\_\_\_ per (sq. ft.) (acre). The exact area to be  
determined by a survey to be made by a registered surveyor and paid for by \_\_\_\_\_. At his  
option, Purchaser may waive said survey. The Purchaser shall pay to the seller at settlement the Purchase Price in cash or by cashier's or certified  
check or by one or more of the following financings (check as applicable):

ROB BENNETT  
CATHERINE BENNETT  
MELROSE PLANTATION  
854 PINCKARDSVILLE ROAD PH. 804-435-0321  
LANCASTER, VA 22503-9744

68-3851  
514  
0154465506

1633

DATE Feb 17, 1997

PAY TO THE ORDER OF Raymond Wesley Edwards, Attorney \$6,000.00  
Six thousand /100 DOLLARS



BANK OF LANCASTER  
KILMARNOCK & WHITE STONE  
VIRGINIA



MEMO Deposit: C.F. Carter Property, Rt. 615

Robert Bennett

⑆05⑆403850⑆1633 0⑆154465506⑆

⑆0000600000⑆

051403850  
BANK OF LANCASTER  
02287700011720 016065801

Fiduciary Account  
Raymond Wesley Edwards, Jr.  
Attorney at Law  
P.O. Box 1000  
Lancaster, VA 22503-1000

Paula Edwards  
Raymond Wesley Edwards, Jr.  
Attorney at Law  
P.O. Box 1000  
Lancaster, VA 22503-1000

PLAINTIFF'S  
EXHIBIT #14

4-13-00

PLAINTIFF'S  
EXHIBIT #3

4-15-99



delivered P.C. Stamm, Jr., Wky.  
2/28/97

BOOK 389 PAGE 494

THIS DEED, made this 28th day of February, 1997, by and between C.F. LUMBER COMPANY, INC., A Virginia Corporation, party of the first part, grantor and ROBERT T. BENNETT and CATHERINE A. BENNETT husband and wife, of 854 Pinckardsville Road, Lancaster, Virginia, 22503, parties of the second part, grantees.

WITNESSETH:

THAT, for and in consideration of the sum of TEN DOLLARS, (\$10.00), cash in hand paid, receipt of which is hereby acknowledged, and other good and valuable considerations, the party of the first part does grant, bargain, sell and convey with GENERAL WARRANTY and the ENGLISH COVENANTS of title except as set forth hereinafter, unto the parties of the second part, as tenants by the entirety with the right of survivorship as at common law, the following described property, to-wit:

EXHIBIT A ATTCHED HERETO

WITNESS the following signature and seal:

C.F. LUMBER COMPANY, INC.

BY: [Signature] (SEAL)

STATE OF VIRGINIA  
CITY/COUNTY OF LANCASTER, to-wit:

The foregoing instrument was acknowledged before me this 28th day of February, 1997, by C.F. Stamm, Jr., its President of C.F. Lumber Company, Inc.

My commission expires: 2/28/97

Nancy H. Hughes  
Notary Public

Prepared by:  
Paul Christian Stamm, Jr.



## EXHIBIT A

ALL THAT CERTAIN TRACT OF LAND IN MANTUA DISTRICT, LANCASTER COUNTY, VIRGINIA, SOMETIMES CALLED "POYNTER" TRACT CONTAINING 98.86 ACRES AS PER PLAT OF SURVEY THEREOF MADE BY R. H. HIGHLAND, SURVEYOR, OCTOBER 15, 1948, A COPY OF SAID PLAT IS ATTACHED TO DEED RECORDED IN DEED BOOK 85 AT PAGE 265, ON WHICH THE METES AND BOUNDS OF SAID PROPERTY ARE MORE PARTICULARLY DESCRIBED. THE SAID TRACT IS SITUATED ON THE WEST SIDE OF HIGHWAY ROUTE 615, ADJOINING THE LANDS OF LAWRENCE KENNER, LOTTIE BALL, B. H. B. HUBBARD ESTATE, WILLIE EDWARDS, H.H. PITTMAN, PAYTON PITTMAN ESTATE AND DUEARD HAYDEN; IT BEING THE REMAINDER OF THE TRACT WHICH WAS CONVEYED TO F.S. THRIFT BY HARRY H. HUTCHINSON AND WIFE BY DEED DATED JANUARY 8, 1918, RECORDED JUNE 21, 1918, D.B.61, P 390; THE SAID F. S. THRIFT HAVING DIED UNMARRIED AND INTESTATE IN 1933, LEAVING AS HIS SOLE HEIRS AT LAW HIS TWO BROTHERS, C. T. THRIFT AND H. H. THRIFT.

LESS AND EXCEPT FROM THE ABOVE DESCRIBED TRACT OF LAND THAT PORTION CONVEYED TO THE COMMONWEALTH OF VIRGINIA BY DEED RECORDED IN DEED BOOK 85 AT PAGE 332 AND THAT PORTION CONVEYED TO REALTY INDUSTRIES, INCORPORATED BY DEED RECORDED IN DEED BOOK 173 AT PAGE 252.

Being a portion of the property conveyed unto C.F. Lumber Company, Inc., by deed dated September 26, 1996 from Timberland Investment Group, Inc. and recorded in the Clerk's Office of the Circuit Court of Lancaster County, Virginia in Deed Book 387 at Page 618.

INSTRUMENT #97-372  
RECORDED IN THE CLERK'S OFFICE OF  
COUNTY OF LANCASTER ON  
FEBRUARY 28, 1997 AT 04:31PM  
\$26.00 GRANTOR TAX WAS PAID AS  
REQUIRED BY SEC 58.1-802 OF THE VA. CODE  
STATE: \$13.00 LOCAL: \$13.00  
ROBERTA H. LEWIS, CLERK  
BY: Michelle A. Gordon DEPUTY CLERK

A TRUE COPY

TESTE: ROBERTA H. LEWIS, CLERK

BY: Robert H. Lewis  
CLERK  
LANCASTER COUNTY CIRCUIT COURT

Melrose Plantation  
854 Pinckardsville Road  
Lancaster, Virginia 22503

\*  
804-435-0321

February 17, 1997

Raymond Wesley Edwards  
Attorney  
89 N. Main Street  
Kilmarnock, Virginia 22484

Dear Mr. Edwards:

Enclosed is our check for \$6,000.00 as a deposit for the purchase of the property owned by C.F. Lumber Company, Inc. and described as 53 acres more or less located on Route 615, Lancaster County, Regina, Virginia.

Attached is a copy of the Contract for Purchase dated February 25, 1997, for an agreed total purchase price of \$26,000.00, negotiated by Linwood E. Turner with settlement on Tuesday, February 25, 1997, in your office.

Sincerely,

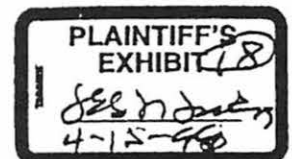
*Robert T. Bennett*

Robert T. Bennett

*Catherine A. Bennett*

Catherine A. Bennett

cc:C.F. Carter  
Linwood Turner  
Paul Christian Stamm, Jr.



TAX RATE: 51 COUNTY - HANTUA  
 PER \$100.00 VALUE  
 COUNTY OF LANCASTER, VA. REAL ESTATE TAX FOR YEAR 1996

NO. 4871  
 OFFICE COPY

ASSESSMENT VALUE IN DOLLARS			TAX DUE DEC. 5th	10% PENALTY AFTER DEC 5th	TOTAL AFTER PENALTY			
LAND	BUILDINGS ETC.	TOTAL VALUE			DATE	TAX	PEN	TOTAL
38,900		38,900	198.39	19.84				218.23
			<div style="text-align: center;"> <b>P A I D</b>  <b>DEC 05-1996</b> </div>					

TIMBERLAND INVESTMENT GROUP INC. 191 PEACHTREE ST NE  
 24TH FLOOR MC 201  
 ATLANTA GA 30303  
 ANNA LEE C. HAYNIE, TREAS. 66.32 AC  
 LANCASTER, VIRGINIA

DB351790

PAY TO: ANNA LEE C. HAYNIE, TREASURER  
 P.O. BOX 6, LANCASTER, VA 22503  
 TEL. (804) 462-5630 FAX (804) 462-0010

AFTER DEC. 5, 1996, 10% PENALTY IS ADDED  
 AFTER JUNE 30, 1997, 10% INTEREST PER YEAR IS ADDED

PLAINTIFF'S  
 EXHIBIT #17  
 1-13-60  
 GAT

PENGAD-Seymour, M. J.  
PLAINTIFF'S  
EXHIBIT-18  
8/14-00

# Bay Meadows

REAL ESTATE

Catherine & Robert Bennett  
REALTORS®

Residence: (804) 435-0321

Residence: (800) 711-4620

Mobile: (804) 761-3234

Fax: (804) 435-0348

Office: (804) 435-1287

P.O. Box 1010, White Stone, Virginia 22578



McGUIRE WOODS  
BATTLE & BOOTHE LLP

One James Center  
901 East Cary Street  
Richmond, Virginia 23219-4030  
Telephone/TDD (804) 775-1000 • Fax (804) 775-1061

William G. Broaddus

Direct Dial: (804) 775-1085

February 27, 1997

By Fax

William A. Nunn, III, Esquire  
Ice House Field  
P. O. Box 967  
White Stone, Virginia 22578

Re: Rappahannock Pistol and Rifle Club

Dear Bill:

This supplements my letter to you of yesterday with respect to Mr. and Mrs. Robert Bennett.

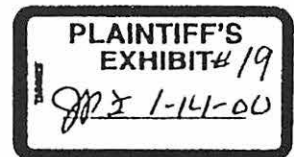
Mr. Bennett believes that there may be a Real Estate Board regulation requiring real estate agents to disclose that they are real estate agents when they engage in negotiations for the purchase of property. Assuming that to be the case, and simply to assure that the Bennetts are not in violation of any arcane provisions of the Real Estate Board regulations, you should know that both Mr. and Mrs. Bennett are licensed real estate agents.

Sincerely,



William G. Broaddus

WGB/bsm



ADJOURNMENT

Motion was made by Mr. Whay to adjourn the meeting. VOTE: 5 - 0 Aye.

Attest:

*[Signature]*  
County Administrator

VIRGINIA:

A meeting of the Lancaster County Board of Supervisors was held at the Courthouse of said County on Thursday, February 27, 1997.

Present: F. W. Jenkins, Jr., Chair  
H. Howard Whay, Vice Chair  
Donald O. Conway, Board Member  
Lewis F. Conway, Board Member  
Lloyd B. Hubbard, Jr., Board Member  
William H. Pennell, Jr., County Administrator  
James E. Cornwell, Jr., County Attorney

Others

Present: Patrick Frere, Acting Planning and Land Use Administrator,  
and Press.

PRESENTATIONS

Extension Office - Mr. Bob Pitman, Extension Agent, updated the Board on the functions and programs of the Extension Office.

No action taken.

PUBLIC HEARINGS

Pursuant to proper notification, the following public hearings were held for comment:

1. Milton H. Fawntleroy, request for a special exception in order to allow the placement of an individual manufactured home on property located off Route 646 north of White Stone, VA. Property described as tax map parcel 34C-1-12 and zoned R-1 Residential General.

Mr. Frere said this application meets all requirements and he has received no negative comments.

There was no public comment.

Motion was made by Mr. Whay to approve a special exception for Milton H. Fawntleroy. VOTE: 5 - 0 Aye.

2. Jennifer A. Mitchell, request for a special exception in order to allow the placement of an individual manufactured home on property located off Route 614, one mile south of Route 3. Property described as tax map parcel 16-51G and zoned R-1 Residential General.

Mr. Frere said this application meets all requirements. He has received one letter of support and no negative comments.

There was no public comment.

Motion was made by Mr. Conway to approve a special exception for Jennifer A. Mitchell. VOTE: 5 - 0 Aye.

CONSENSUS DOCKET

Mr. Whay asked that items A and E be moved to the Consideration Docket.

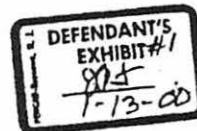
Mr. Conway asked that item D be moved to the Consideration Docket.

Motion was made by Mr. Conway, to approve items B and C on the Consensus Docket, and staff recommendations, as follows:

ATTEST:

A TRUE COPY

*[Signature]*  
Tolary 12-31-2001



*File 12/31/01  
S. G. Dean, Jr. Dep. Clerk*



B. Leash Law - Town of White Stone

Recommendation: Adopt the following resolution:

WHEREAS, the enforcement of animal control ordinances provides for the public health and safety of Lancaster County citizens; and

WHEREAS, residents of the Town of White Stone, Virginia are citizens of the County of Lancaster; and

WHEREAS, the Town Council of the Town of White Stone has requested, through the Town Attorney, that the Animal Warden of the County of Lancaster be permitted to enforce the town ordinances relating to animal control including White Stone's ordinance prohibiting unleashed dogs to run at large; and

WHEREAS, the town ordinance has designated the county's Animal Control Warden as a proper enforcement officer for the town's animal control ordinances; and

WHEREAS, the town ordinance requires that town residents purchase dog licenses from the County of Lancaster and pay other fees as appropriate to the County of Lancaster.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of Lancaster County, Virginia hereby authorizes and directs the county's Animal Warden to enforce the animal control ordinances of the Town of White Stone, Virginia including White Stone's ordinance prohibiting unleashed dogs to run at large; and

BE IT FURTHER RESOLVED, that this authorization will remain in effect until it is revoked by the Board of Supervisors, until the ordinances of the Town of White Stone no longer comply with the Commonwealth's enabling legislation or until the revenues obtained by the town's animal control ordinance are no longer received by the County of Lancaster.

C. Supervisor Notification of Pending Enforcement Action  
Recommendation: Adopt the following policy.

It is very important that any enforcement action being undertaken by county administration personnel is made known to the member of the board of supervisors in whose district the violation is occurring. Occasionally, it is equally important that every member of the board of supervisors be notified of major enforcement actions undertaken in the county.

It is, therefore, the policy of the board of supervisors that county employees preparing enforcement actions against a Lancaster citizen or property owner inform the respective member of the board of supervisors, by phone or personal contact, at the earliest possible opportunity. This notification will certainly take place prior to notices being sent to the offender or other public awareness of the anticipated enforcement action.

When an enforcement matter is of a nature to affect more than one member of the board of supervisors, the employee initiating the enforcement action shall notify each member of the board of the details of the matter. It is always preferable to inform too many members of the board versus not enough members of the board.

The purpose of this policy is to provide a courtesy to board members who cannot be expected to be familiar with the details of everyday activity at the county offices. This policy is adopted solely as a means of providing the board member with information so that intelligent responses can be made to requests for details regarding the matter. The board of supervisors does not intend this policy to suggest its interference in proper enforcement actions undertaken by county employees charged with ensuring compliance with laws and ordinances.

VOTE: 5 - 0 Aye.

CONSIDERATION DOCKET

The Board considered the following items on its Consideration Docket:

1. Salaries and Invoice Warnings - February 1997

The Board agreed by consensus to defer this matter until later in the meeting.

2. School Board Issues

Mr. Pennell said that the School Superintendent was unable to

attend this meeting, but had forwarded a packet of information requested by the Board.

The Board agreed by consensus to defer this matter until its next meeting on March 6, 1997, when Mr. Latimore could be present to answer questions.

Items from the Consensus Docket:

A. Approval of Minutes - January 23 and February 6, 1997

Motion was made by Mr. Whay to approve the minutes of January 23 and February 6, 1997, as amended. VOTE: 5 - 0 Aye.

D. 1997 Lancaster County Community Development Block Grant Regional Priorities

Mr. Conway said he felt that the Marketed Shell Building Program should be moved from the number five, group four priority to the number five, group one priority, and Tourism moved from the number five, group one priority to the number five, group four priority. Right now, we have basically nothing to offer for any kind of industrial development in this county. A shell building built to commercial standards would be useful in that someone coming into the county could design the interior to their specific standards.

Mr. Frere said that while that is true, there are a number of commercial and industrial development items that would build infrastructure in the county and provide more opportunity with a lot less risk. He thought it more important to rank those higher than the Marketed Shell Building Program. There are also other conditions on the shell buildings upon which funding would be contingent.

Motion was made by Mr. Conway to move Marketed Shell Building Program to the number five, group one priority and move Tourism to the number five, group four priority.

Mr. Whay said we could certainly move the Marketed Shell Building Program up in priority, but he does not think we should move Tourism out of group one.

Mr. Conway said he agrees that Tourism is a very important asset for revenue, and he is not in favor of moving it to the lowest priority.

Motion was made by Mr. Conway to amend the motion on priorities by moving the Marketed Shell Building Program to the number two, group two priority and move all other priorities down one place, thus leaving Tourism as number five, group one priority.

VOTE: (on amendment) 3 Aye (Conway, Conway, Hubbard), 2 Nay (Whay, Jenkins).

Mr. Jenkins said that the Marketed Shell Building Program requires a great deal; it is a three-year payback commitment, whether we have it or not. Clearly there are forces within our community which are pushing very hard for the marketed shell building. However, they have that targeted for one specific location, which is in the proposed industrial park for the Town of Kilmarnock. He believes that there are sufficient private ownership incentives that the county should not have to go along to build a shell building to attract industry. What this county should be doing is providing incentives to make that a more feasible investment. Therefore, he would oppose the amended priorities.

Motion was made by Mr. Jenkins, seconded by Mr. Hubbard, to amend the original motion to allow for the original working document to be approved as prepared by staff.

Mr. Conway asked that if the Chamber of Commerce is looking only at developing Kilmarnock, are we going to leave the rest of the county the way it is? Everyone that comes into this county is not going to want to be in Kilmarnock. We have other areas that would be good places to develop, other than Kilmarnock.

VOTE: (on amended motion) 4 Aye (Conway, Whay, Hubbard, Jenkins), 1 Nay (Conway).

Motion was made by Mr. Conway to submit the original priority list to the Northern Neck Planning District Commission. VOTE: 4 Aye (Conway, Whay, Hubbard, Jenkins), 1 Nay (Conway).

#### E. Chamber of Commerce - Use of County Seal

Mr. Whay said that the Chamber of Commerce is not a County building, even though the County is supporting most of its budget. He wondered if the Chamber of Commerce gets the County Seal, who would next ask to use the Seal? Where will it stop; will we just give it to anyone who asks to use it?

Mr. Pennell said there are some counties that have in their ordinances control over the use of the County Seal. Lancaster County does not have such an ordinance. The Board has, in the past, allowed people to do this, as a matter of courtesy. He is not sure that if this Board denies the request, they could use the seal anyway.

Mr. Cornwell, County Attorney, said that it is your seal and you can control it. However, as a practical matter, it is not a fixation to a legal document or anything of that nature. Used in this manner, it is more of an advertising document than it is anything else. He does feel that if this Board determines that no agencies could use the seal other than county agencies, it could be restricted.

Mr. Jenkins suggested, and the Board agreed by consensus, that the Chamber of Commerce bring this request to the Joint Partnership Steering Committee, which would be an appropriate use of it, rather than through the Chamber.

#### EXECUTIVE SESSION

Motion was made by Mr. Whay to enter Executive Session in accordance with Code Section 2.1-344 for consultation with legal counsel for potential pending litigation or other matters involving consultation with legal staff and perhaps matters concerning acquisition of real estate. VOTE: 5 - 0 Aye.

#### RECONVENE

Motion was made by Mr. Whay, to reconvene open session. VOTE: 5 - 0 Aye.

Action taken following Executive Session: None

Motion was made by Mr. Whay, to certify the Executive Meeting. VOTE: 5 - 0 Aye.

Certification of Executive Meeting follows:

WHEREAS, the Lancaster County Board of Supervisors has convened an executive meeting on this date pursuant to an affirmative recorded vote in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, Section 2.1-344 of the Code of Virginia requires a certification by this Board that such executive meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law applies, and (ii) only such public business matters as were identified in the motion convening the executive meeting were heard, discussed or considered by the Board of Supervisors.

#### PUBLIC INPUT SESSION

Proposed Pistol and Rifle Range - William Broadus, attorney representing Robert and Catherine Bennett, spoke to the Board regarding their interest and that of others in the proposed location of a pistol and rifle range in the neighborhood of Regina, where they have worked for some two years to restore their home. There are approximately forty homes within one mile of the proposed rifle range, approximately an additional one hundred fifteen homes within two miles and within that area there is also a Bed and Breakfast. There is a retirement home with six residents that is licensed to have eight more and there are two daycare providers in the immediate vicinity of the proposed location. Lancaster High School is approximately two and one quarter miles from the proposed location. The assessed value of the property within a two mile area is approximately \$14,000,000. As an indication of the area and the concern of the citizens and the potential danger associated with rifles and pistols, the Wicomico Hunt Club, located across the road from this proposed location, does not permit the discharge of rifles or pistols on its property. We commend the leadership of Sheriff Crockett, who initially contemplated using the proposed location for training purposes, but after listening to the concerns of people has suggested that he will continue to

use the existing range in Essex County. We ask for the Board's help. The Bennetts are willing to be part of the solution. They have offered to buy the property from the club and to pay a handsome premium over their contract price. Regardless of whether that offer is accepted, we still need the Board's help. The State Code permits the adoption of an ordinance to prohibit the discharge of firearms in any area of the county which, in the Board's opinion, is so heavily populated that it would be dangerous to discharge weapons. We ask that this Board prohibit, by emergency ordinance, the discharge of certain types of firearms in certain areas. We are asking to prohibit the discharge of rifles and pistols.

Mr. Broadbush provided copies of a proposed emergency ordinance. This proposed ordinance is not intended to affect hunting or a person in the protection of property. It would also not prohibit an individual from engaging in target practice on his own property. It is designed to address the congregation, over a period of time, and the repeat firing of firearms in an area that is sufficiently inhabited as to be dangerous. The proposal suggests it be prohibited in any area where the boundary lines of the parcel would have more than thirty residents within two miles, which could be increased to one hundred residents and we still think it would be appropriate and very helpful. Charitable events, such as turkey shoots, could be an exception with restrictions and conditions. We urge this Board to agree that the people in this community are more important than hobbies. Sure, hobbies are important, and his hobbies are very meaningful to him. But, he has to recognize that people and their homes are more important. They ask for the Board's support to protect these people, their lives, and their children.

Vernon Grammar, with the Morning Star Retirement Home, said he has heard considerable talk about economic development and he is here to tell this Board that if a rifle range is allowed to go in his backyard it will have an impact on economic development. His business will be affected and he does not think his is the only business that will be affected. As far as he is concerned, noise from a rifle range is pollution. He believes his retirement home will be in jeopardy, especially on weekends, when he has his residents and their sponsors sitting around listening to that noise. He is also concerned with the projectiles. His retirement home is in direct line with the rifle range. He knows they plan to build berms and have tubes, but he does not know that every person will use a tube every time. His major concern is the noise. He has a business to operate, and he sells serenity. He searched this county and found a place where it would be quiet and peaceful, and he advertises that. He believes that his business is in jeopardy if this range is allowed to be put in his backyard.

Lawrence Taylor said noise is relative. The Rifle and Pistol Club has a plan in place for noise abatement. On the rifle range they plan to shoot through twenty-four or thirty-six inch diameter culverts, which will greatly muffle the noise. There will be berms all around the range and there will be tree and shrubbery buffers. They question whether noise at one and one-half or two miles away is objectionable. He cannot believe that the noise from a shotgun, at a mile and one-half, can sound like mini sonic booms and knock plaster off walls. He cannot believe that and thinks anyone who has done any shooting will agree with him on that. As far as safety is concerned, the range is fully supervised at all times and they are perfectly willing to make a full safety range out of it, which means that from the firing line you can see no blue sky. By that, the trajectory of a bullet cannot escape the confines of the range. They can fully satisfy any requirements on safety. Ranges have been built in downtown areas. We cannot fully satisfy everybody on noise, but they do have methods to abate that noise and make it more reasonable. Their range in White Stone has been used by the Lancaster County Sheriff's Department twice a year for qualification shooting only, never any tactical training. The Sheriff's Department will not use their range, under any conditions, for tactical training. He also questions the petitions he has seen with names from Gloucester, White Stone and Reedville, who are entirely out of the area in question. He does not know why they would complain about the noise. Yes, shotguns are used for hunting in Northumberland and Lancaster Counties, but rifles can be used for shooting groundhogs and small game. The effective range of a .22 caliber rifle is a mile and one-half. The effective range of a .30 caliber rifle is up to three miles. However, with a full-safety range, all those bullets are contained within that range. They have had very few complaints about noise at the White Stone range. They test fired six shots on the proposed property this past Saturday to satisfy one person. She heard the shots and said it was intolerable at a mile and one-half away.

Bruce Anderson said he lives in Ocran, which is 1.3 miles from the range in White Stone. He has heard shooting maybe fifty times in the past ten years. At 1.3 miles people might be able to live with this. If they are in their house, they probably would not hear it. If they are outside, they will

be able to hear the discharge.

Julie Constanson said she is approximately one-third to one-half mile from this proposed range and is building a house. If this range had been in existence, she would not have purchased the property in Regina. She did hear the test shots being fired. They had not been notified as to the purpose of these shots or when it would occur. Her immediate reaction was that there was some type of violent act that had happened. She had an immediate, instant reaction to the gun fire. She thinks that Mr. Broadbuss and Mr. Graham have put forth some very valid points, which she agrees with. She asks that the Board of Supervisors consider that as residents of Regina, they work in their homes. She is a gardener and is outside a lot. She knows she will hear the weapons. Furthermore, the rifle club has not designated any time frame or number of people for the range. The range could be open for any of its one hundred and twenty members from sunup to sundown, six and one-half days a week. They did agree that they would not fire weapons on Sunday morning until about noon. But, she does know that probably a lot of the Regina residents will be in church at that time and will not even hear the noise for that half of a day. The important thing to consider is that this issue does need to be resolved through this Board and through an ordinance, because their club will just get pushed somewhere else. She asked if the Board members would be willing to tolerate a rifle and pistol club in their backyard. What about the possibility of vandals coming in unsupervised in the middle of the night. Apparently the range is not required to be fenced. There was a public hearing here tonight to put a piece of manufactured housing on property, but someone can put in a rifle range with high powered, semi-automatic pistols and rifles and not ask anybody. She asked that the Board look at this, and not only for the residents of Regina. They want to maintain their quality of life; they are here for the quiet. We need to look at the options to find a more appropriate place for this particular use of property.

Judy Pitman said she lives about one-third mile from this site, and her husband's family farm is within seventeen hundred feet. She has a stepdaughter in school and trying to help her acquire a good learning practice to do homework is tough enough. She really feels that the times when her child will be doing homework will be interrupted by this added troubling noise and will affect her learning and study habits. Weapons scare her and they will have maybe ten people firing pistols at the same time, plus a rifle range where four people will be shooting semi-automatics. The amount of noise from one-third mile away will be very annoying. She is not at war with anybody, but feels she is being attacked because of the noise issue. She would like the Board to consider the children.

Warren Sadler from the Inn at Levelfields said that when he bought his property fifteen years ago and converted it from a private residence to an inn, he had to get a use permit from the Board of Supervisors. He questions the fact that it is not necessary for this rifle club to get a permit through the Board which could set rules and regulations on its operations and facility. What is the difference between his quiet inn operation and the rifle range? He asked that the Board say no to granting a permit to the Rappahannock Rifle and Pistol Club for a target range to be located on property they have under contract. Once such a permit is granted it would be difficult, if not impossible, to rescind the permit. He does not have any objection to the club, he has objections to where they propose to locate it. It is in a residential/commercial area and he does not think it belongs in that premise. He understands that there are some alternate sites that are more isolated within the county that are under consideration. He feels that a shooting range for the gunman's pleasure should not interfere with the existing residential and commercial property, nor be a detriment to the surrounding property owners. He checked the noise ordinance of Lancaster County and found it to be very weak. He thinks the noise ordinance should be more positive and there should be more rules and regulations on the operation of such an organization.

Ed King said he lives in Village, on the Northumberland and Richmond County line. He has the distinct privilege of living one-third of a mile from a regulation skeet range. There is no noise abatement and when it is perfectly calm, he can hear the gunfire, but it is not disruptive. His children are honor roll students and the property values have not decreased. He has never heard anyone complain about the noise. The proposed range will be baffled and the noise will be contained. What everybody is scared to death of he has lived next to for twenty-years and has had no problems.

Rebecca George said she is five hundred feet from the proposed site on the Northumberland County side. They have a petition which says that they do not want it in their residential area, or any residential area. They got four hundred names from the five districts and then got names from

Northumberland, Richmond and Gloucester; law officers, pistol and rifle club members and supervisors. She presented that petition to the Board.

Jim Glaspie of White House Creek Estates, said he is not really for or against this proposal. He is a former senior weapons mechanic in the U. S. Army Air Force and ran a firing range where every man had to qualify with the weapon he carried. That was the safest piece of property on the whole air base because of the rules and regulations. He knows that some noise can be objectionable, but every year he sees "road" hunters firing shotguns. A firing range, properly built and managed can be the safest property in the area. The noise is not that great.

Glacey Rice said she has spoken with some residents on James Wharf Road in White Stone, which is near the current firing range, and they also have a problem with the noise. So, all the residents near it are not happy. We, the people of Regina, ask the Board to deny the Rappahannock Rifle and Pistol Club's request to relocate in this community. We did not invite or welcome them to our neighborhood. The organization does not uphold the standards which our community has worked so hard to establish and maintain; they do not contribute to our neighborhood atmosphere which consists of respect for the individual safety, property and enjoyment. The residents of Regina are hard working taxpayers and they would like to have the right to protect their comfort, safety and they do not want this public nuisance. As a resident she does not want to have to worry about whether or not they are taking the precautions to make it safe. She would like the Board to investigate and scrutinize the matter before a decision is made.

Michael Thompson said he built his home in Regina about eight years ago and it is a real quiet neighborhood. He thinks it is a question of who was here first. If the firing range had been there he would not have built his home there. He feels it is too much to ask to have the residents quiet taken away. Also, what will happen to the property in the area. What will this install in your mind when you are outside working in your yard and you hear constant gunfire? You need to consider state of mind.

Wayne George said he lives across the road from the property. He is a hunter himself and is not against the rifle club or its members. But, being that Lancaster County does not have any rules and regulations, how do we know that they will follow through with what they say they are going to do.

James Waltenberger, a member of the Rappahannock Rifle and Pistol Club, said you could not find a better group of individuals. They are all responsible people. The issues of noise and safety have been addressed by the club. It is of primary concern, and their safety record at the White Stone facility is fantastic. They have not had any incidents that he is aware of. The club is willing to work with the area residents. We can work this out if we keep open minds and are willing to sit down and talk about it.

James Revere said he lives about three hundred yards from the site. He was at home on Saturday when they did the test firing. They shot six times and he never heard it. He is not for or against the club, but wants to see some regulations. Safety is an issue and he feels that the rifle club has answered those concerns. He does not see anything wrong with them coming in, as long as it is done properly. We need to stay out of government regulations as far as noise is concerned.

Joan Pitman said she has lived in Regina for forty-three years. She does a lot of traveling in her work and it means a lot to come home to peaceful, quiet Regina. She does not want this in her front yard.

Kim Pitman said she lives on Route 615 and she would like to ask that the speed limit be posted at forty-five miles per hour.

Raymond Johnson said he lives on Regina Road and they are the taxpayers. He feels this is not safe, and can not be safe.

John Hollowell said he lives approximately 1.3 miles from this proposed range. He is an avid hunter and has a gun collection. He is opposed to this and feels the county needs to adopt some sort of proposal to limit noise in this instance. The thought of concentrating people on a piece of property just for the purpose of discharging weapons is offensive to him. It is a peaceful area and this would disrupt that peace. He urged the Board to adopt some sort of regulation to prevent this from happening or at least keep it from happening in the future.

Betty Pitman said she lives one-third mile away and is subject to migraine headaches. Can the Board tell her that noise will not bother her?



Carlton Wheeler said he lives on Regina Road and does not think this is a very good idea. Who says they are going to keep up the premises. You never know what is going to happen five years down the road.

Virgil Pitman said he lives one-quarter mile from this site. These people never came to talk to anybody in the neighborhood. No one was told what they were doing.

Bruce Gravatt said he is currently building a home in Regina and he likes the peace and quiet there. He is opposed to this.

Betty Dawson said there would have to be some regulation on the number of members. They would prefer that it not be located there, but if it is, who is to say there wouldn't be one thousand people there shooting. She is opposed to this.

No action taken.

#### BOARD REPORTS

**Rifle Range** - Mr. Conway said we have a rifle club that is proposing a use that is permitted according to our ordinances as written, with no restrictions. He has met with those gentlemen and, when he first heard their presentation, he was very impressed. He felt they would bring in a shooting range and teach young people how to take care of and discharge weapons and thought this is something that is needed. They said they had talked with a few residents. Since then, this has escalated into a major concern about the property, property values, safety and welfare. He feels that there comes a time when safety, the concern for property values, and peace and tranquility sometimes override the sporting side of this issue. He does believe this will be one of the safest areas to discharge a firearm, but he is of the opinion that it is not the proper location. He does support the residents of Regina and their concerns. We have a proposed ordinance before us, but he has some concern about the wording. He feels it is too strong. If anyone is found violating this ordinance it is a criminal act. He thinks it is too stiff for someone who lives on a fifty acre parcel who wants to go target shooting. He feels this needs to be reworked. He has a problem passing the ordinance as written. He questions if this is really an emergency.

Motion was made by Mr. Conway that the Board of Supervisors send to the Planning Commission a request to review our ordinance concerning clubs, i.e. sporting clubs, pistol/rifle clubs in all zones. Also, that they study the noise ordinance we now have.

Mr. Conway said he thinks the key word is "club". There is no concise definition of "club". We have no regulations as to the discharge of weapons on that property. We need to have a concise definition.

Mr. Conway said it is embodied in his motion that the ordinance be reviewed, revamped, revised, with recommendations to this Board. He would request that this be done as soon as can possibly be done to get something more concrete on the books.

VOTE: 5 - 0 Aye.

Motion was made by Mr. Conway that we put the emergency ordinance into effect for sixty days to allow time for the Planning Commission to do their work and get back to us.

Mr. Cornwell said he will bring some concerns to the Board's attention so they can be addressed. Section 15.1-518 of the Code of Virginia, under which you are asked to adopt this ordinance, says "Any county may prohibit the shooting of firearms or air operated or gas operated weapons in any areas of the county which are, in the opinion of the board of supervisors, so heavily populated as to make such conduct dangerous to the inhabitants thereof". The ordinance that is before this board talks about that section. It also, however, carves out a great number of exceptions that allow shooting and discusses only making it unlawful for two or more persons to discharge rifles and pistols for the purpose of target shooting, skill or sporting event relating to target shooting, or similar activity if such persons participate in such activity anytime during a three hour period in one day and in one location or on one parcel of property and if the boundary lines of such parcel are within two miles of thirty (and it has been a suggestion that perhaps that be changed to one hundred) or more residential units. Then it goes on to talk about it is not going to prohibit the hunting or protection. He can accept the argument that since you have the power to prohibit any shooting that perhaps you then could allow some shooting and not allow other shooting. However, this is a criminal ordinance that you are being asked to adopt and it will cover the entire portion of Lancaster County, or any parcel

within two miles of thirty or more units. In his opinion that covers Lancaster County. You are going to have to make a decision as to whether that area is, in your opinion, so heavily populated as to make such conduct dangerous and whether it is the conduct of shooting or the type of shooting that this ordinance attempts to prohibit that is dangerous. The statute does not, in his opinion, address those issues. It simply says you may prohibit the shooting of firearms. He also has the same concern that a board member has addressing whether an emergency exists. You have the power to adopt ordinances after proper advertisement and public hearing. The purpose of that is very simple; so that everyone can see the ad and those interested can come before you and comment on those ordinances. You are being asked in this case to adopt this ordinance to declare, in effect, that an emergency exists for which you must do something now. Yet, he has heard the comments tonight that the gun club has a contract on the property, that they have shot six times on the property. He thinks the Board needs to consider whether or not such conduct constitutes an emergency. He brings those two matters to the Board's attention for its consideration.

Mr. Conway said that what he was proposing was not necessarily what was written on this paper. The only thing he was saying was that we can enforce a sixty day ordinance to give time for the Planning Commission to investigate and get back to this Board in order to do something about it one way or the other. He was only asking for the sixty days.

Mr. Jenkins asked if he was suggesting a moratorium.

Mr. Cornwell asked what the moratorium was on. He would assume on shooting, since the board has no right to pass an emergency ordinance for planning, zoning or subdivision.

Mr. Jenkins asked if the motion before us was for an emergency ordinance to prohibit shooting in the county for a sixty day period.

Mr. Cornwell said his understanding of the motion is that the Board of Supervisors of Lancaster County determines that the entire county is so heavily populated as to make the shooting of firearms, air operated weapons or gas operated weapons dangerous to the inhabitants thereof, and therefore prohibits all shooting of those items within Lancaster County.

Mr. Why said that would mean no shooting whatsoever in Lancaster County.

Mr. Cornwell said that is his understanding of the motion.

Mr. Conway said he does not believe sixty days will give anything because he understands this property has not been purchased yet. If it is purchased, the trees have to be cut and cleared and it would be a year or more before any operation at all would start there. So, he thinks the sixty day moratorium is not really going to give either side what they want.

Mr. Conway said this proposed ordinance talks of heavily populated areas where there are residents. It has no effect on other areas. It has an effect on these people. It would lapse in sixty days, so what is the difference.

Mr. Why said he does not believe there is an emergency; he does not see one.

Mr. Conway withdrew his motion.

VSH 615 and Regina Road - Mr. Conway said a request for an established speed limit on VSH 615 and Regina Road came to him some months ago. He would like to ask that this Board direct VDOT to do whatever it takes to establish a speed limit of forty-five miles per hour on VSH 615 and Regina Road.

The Board agreed by consensus to ask the Department of Transportation to establish a forty-five mile per hour speed limit on VSH 615 and Regina Road.

#### SALARIES AND INVOICE LISTINGS - FEBRUARY 1997

Motion was made by Mr. Why, to adopt the Salaries and Invoice Listings for February 1997, in the amount of \$348,930.34 (\$97,676.83 in salaries, \$251,253.51 in invoices). VOTE: 5 - 0 Aye.

#### VSH 695

Mr. Cornwell said a deed had been prepared for conveyance of the terminus of VSH 695 from the Virginia Department of Transportation to the County of Lancaster. A proposed resolution of acceptance of that conveyance was also prepared for the Board's consideration.



Motion was made by Mr. Whay, to adopt the following motion:

WHEREAS, the Commonwealth of Virginia, acting by and through the Commonwealth Transportation Commission has presented to the Lancaster County Board of Supervisors a deed for a portion of State Secondary Route 695 containing 0.3835 acres as shown upon a plat attached to such deed; and

WHEREAS, the Board of Supervisors of Lancaster County wishes to accept such conveyance to the County.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of Lancaster County hereby accepts the aforesaid conveyance of real estate and the County Administrator is hereby authorized to record such deed among the land records kept in the office of the Circuit Court Clerk of Lancaster County.

VOTE: 5 - 0 Aye.

#### EXECUTIVE SESSION

Motion was made by Mr. Whay to enter Executive Session in accordance with Code Section 2.1-344 for consultation with legal counsel and discussion of legal or personnel matters. VOTE: 5 - 0 Aye.

#### RECONVENE

Motion was made by Mr. Whay, to reconvene open session. VOTE: 5 - 0 Aye.

Action taken following Executive Session: None

Motion was made by Mr. Whay, to certify the Executive Meeting. VOTE: 5 - 0 Aye.

Certification of Executive Meeting follows:

WHEREAS, the Lancaster County Board of Supervisors has convened an executive meeting on this date pursuant to an affirmative recorded vote in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, Section 2.1-344 of the Code of Virginia requires a certification by this Board that such executive meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law applies, and (ii) only such public business matters as were identified in the motion convening the executive meeting were heard, discussed or considered by the Board of Supervisors.

#### ADJOURNMENT

Motion was made by Mr. Whay, to adjourn the meeting. VOTE: 5 - 0 Aye.

Attest:

  
County Administrator

#### VIRGINIA:

A meeting of the Lancaster County Board of Supervisors was held at the Courthouse of said County on Thursday, March 6, 1997.

Present: F. W. Jenkins, Jr., Chair  
H. Howard Whay, Vice Chair  
Donald O. Conway, Board Member  
Lewis F. Conway, Board Member  
Lloyd B. Hubbard, Jr., Board Member  
William H. Pennell, Jr., County Administrator

Others Present: Joe Staton, Carter White and C. C. Burgess, VDOT representatives, and Press.

LAW OFFICES  
DUNTON, SIMMONS & DUNTON, L.L.P.  
878 RAFFAHANNOCK DRIVE  
POST OFFICE BOX 5  
WHITE STONE, VIRGINIA 22578-0005

AMMON G. DUNTON (RETIRED)  
C. JACKSON SIMMONS  
AMMON G. DUNTON, JR.†  
CRATO H. SMITH  
WILLIAM R. CURDTS  
JOHN S. MARTIN†  
J. RAWLEIGH SIMMONS  
MORGAN W. ALLEY

March 17, 1999

TELEPHONE:  
(804) 435-4000  
(800) 435-1611  
FACSIMILE:  
(804) 435-1614  
FAXED IN VA & BY  
FAXED IN VA & BY

By hand delivery:  
William A. Nunn, III, Esq.  
P.O. Box 967  
White Stone, Virginia 22578

RE: Rappahannock Pistol and Rifle Club, Inc. v. Bennett

Dear Bill:

After the Bennetts purchased the C. F. Lumber Company, your client was informed of other substitute properties for a firing range. In particular, Marvin Register was told of the Anna Barrack property near Chinns Mill which was for sale. I understand the club declined to buy the property. The Club was also told of Bill Hayden's property on Good Luck Road and again the property was declined.

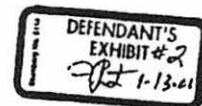
Enclosed with this letter is information regarding yet another piece of property for sale which would be suitable for the firing range. The parcel is 40.147 acres along VSH Route 354 in Lancaster County. It is zoned A-2 and the asking price is \$37,500.00. The property is large enough to meet the 25 acre minimum for a range under the county zoning ordinance.

I trust you will convey this information to your client so that they will be aware of the availability of the property.

Yours sincerely,

  
John S. Martin

JSM/shb  
cc: Mr. and Mrs. Robert Bennett



18043336263

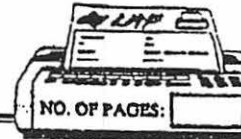
L A FLETCHER

P01



L.A. FLETCHER REAL ESTATE, LTD.  
Rt 3 & 360 PO Box 128  
Warsaw, VA 22873

## FAX TRANSMISSION



TODAY'S DATE: DECEMBER 19, 1993

TIME:

TO: CATHERINE BENNETT

FROM: L.A. "BILL" FLETCHER

LOCATION:

LOCATION: WARSAW, VA

FAX NUMBER: (804)435-0321

FAX NUMBER: (804)333-3288

TELEPHONE NUMBER: (804)333-LAND

TELEPHONE NUMBER:

COMMENTS: PER YOUR TELEPHONE REQUEST, I AM FAXING PIAT OF THE  
40 ACRE PARCEL, LOCATED IN LANCASTER COUNTY, THAT YOU  
EXPRESSED INTEREST.

DIRECTIONS: FROM WARSAW TAKE RT. #3 TOWARDS KIIMARNOCK.  
RIGHT ON #354 SOUTH, PAST BELFRAND, PROPERTY  
ON THE LEFT, SIGN ON PROPERTY.

IF YOU HAVE ANY QUESTIONS OR IF I MAY BE OF FURTHER ASSISTANCE,  
PLEASE GIVE ME A CALL....

\$ 37,500

All wooded

cut over years ago replanted in pine  
parks

**NOTES**

1. THE PROPERTY SHOWN HEREON IS NOW IN THE NAME OF FLEETWOOD B. HOWELL et al. AS RECORDED IN DEED BOOK 285 AT PAGE 7 AMONG THE LAND RECORDS OF LANCASTER COUNTY, VIRGINIA.
2. THE PROPERTY DELINEATED HEREON IS LOCATED ON ASSESSMENT MAP 34, PARCELS 28.
3. THIS SURVEY HAS BEEN PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT AND DOES NOT NECESSARILY INDICATE ALL ENCUMBRANCES ON THE PROPERTY.

APPROVED:  
*Patricia G. Evers*  
LAND USE OFFICER  
LANCASTER COUNTY,  
VIRGINIA  
DATE: 9/9/98

**CURVE DATA:**

A=3683.35'  
Δ=00°23'32"  
Δ=18.60'  
T=41.80'  
L=18.60'  
CA=18.60°20' W

BOOK 408 PAGE 568

STATE ROUTE # 762  
(100' WIDE)

PARCEL "A-1"  
46.063 ACRES

STATE ROUTE # 354  
(100' WIDE)

TOTAL AREA = 86.507 ACRES

PARCEL "A-2"  
40.147 ACRES

BOUNDARY & DIVISION  
OF A PORTION OF THE LAND OF  
**FLEETWOOD B. HOWELL et al.**  
PARCEL "A-1" TO BE CONVEYED TO  
**WADE THORPE et al.**

WHITE CHAPEL MAGISTERIAL DISTRICT  
LANCASTER COUNTY, VIRGINIA  
SCALE 1"=300' AUGUST 28, 1998

CHARLES R. PILETT  
CERTIFIED LAND SURVEYOR  
LANCASTER COURTHOUSE, VIRGINIA  
BOOK 408-773

GRAPHIC SCALE Sheet 1 of 3

88-03-P

MAGNETIC NORTH (AUGUST 1998)

**LEGEND**

- PF DENOTES IRON PIPE FOUND
- CMF DENOTES CONCRETE MONUMENT FOUND
- PS DENOTES IRON PIPE SET

DETAIL  
SEE SCALE

INSTRUMENT #98092994  
RECORDED IN THE CLERK'S OFFICE OF  
COUNTY OF LANCASTER ON  
FEBRUARY 11, 1998 BY BALTIMORE  
63-159-CRATER-TAX-WAS PAID AS  
REQUIRED BY SEC 58.1-882 OF THE VA. CODE  
STATE: \$18.75 LOCAL: \$18.75  
ROBERTA H. LEWIS, CLERK

BY: *Robert H. Lewis* (DC)

# **53 ACRES**

## **FOR SALE BY OWNER**

Located on the corner of Bluff Point Rd. & Kent Point Rd.

Over 2000 feet of road frontage

Approx. 1.5 miles from Kilmarnock Town Limits

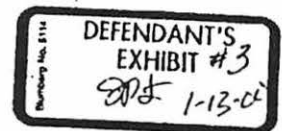
Tract timbered in "97" and re-planted w/Loblolly Pine

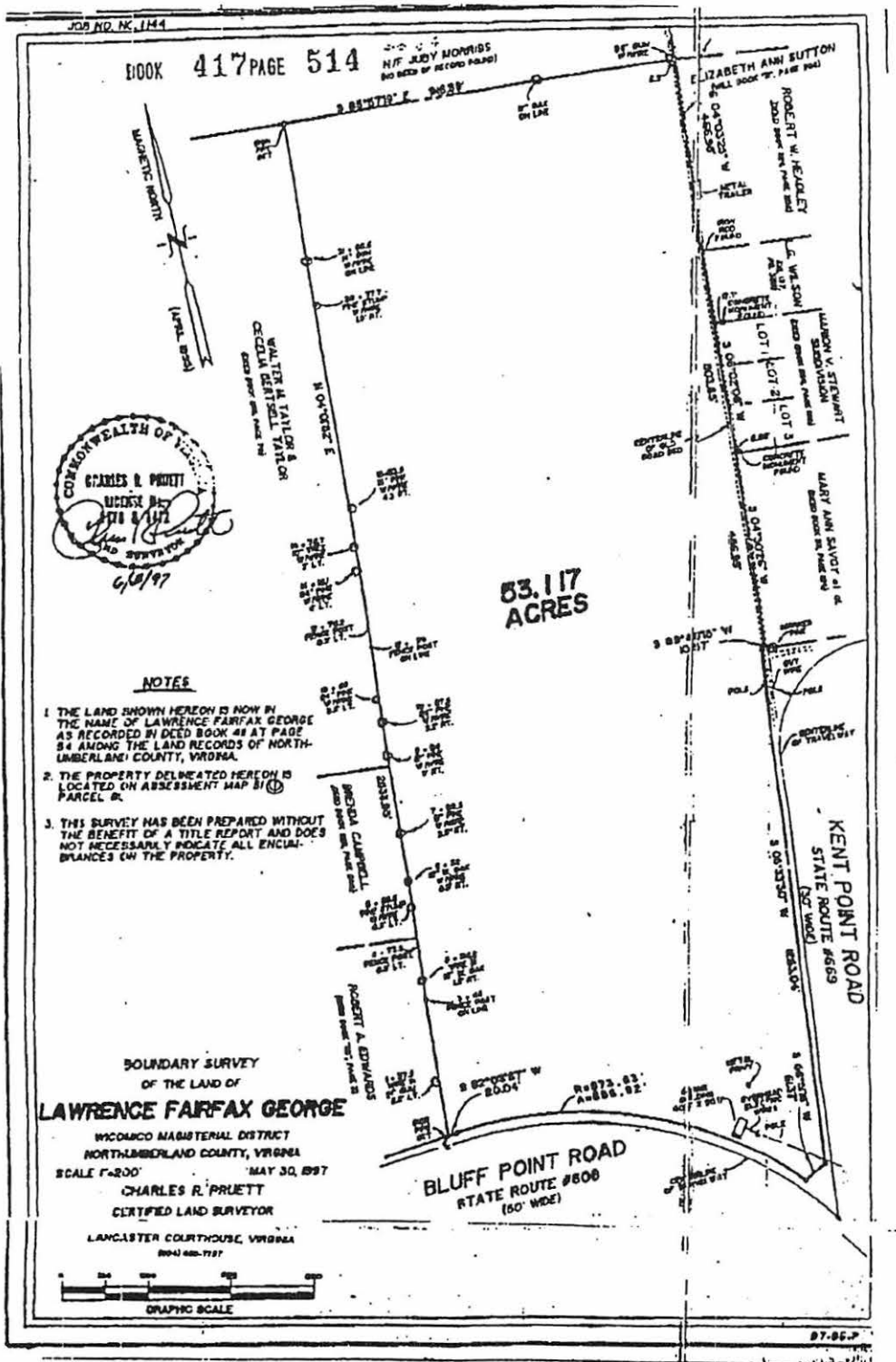
**\*Excellent Development Potential\***

*(no restrictions)*

**Only \$795.00 per acre!!**

Call (803) 748-9300 ext.102





V I R G I N I A :

## IN THE CIRCUIT COURT OF LANCASTER COUNTY

RAPPAHANNOCK PISTOL & RIFLE CLUB, INC.,	)	
Plaintiff	)	
v.	)	AT LAW NO. CL970000062
C.F. LUMBER CO., INC.,	)	
Defendant.	)	

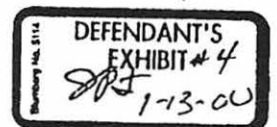
ORDER

On the 6th day of May, 1998, came the parties, in person and by counsel, and thereupon both Plaintiff and Defendant waived trial of the issues herein by jury and elected and requested that all matters of law and fact be submitted to the Court for hearing and determination without the intervention of a jury; and all matters of law and fact were submitted to the Court; and the cause was argued by counsel.

UPON CONSIDERATION WHEREOF, the Court finds for the Plaintiff in the amount of FOUR THOUSAND and 00/100 DOLLARS (\$4,000.00), with interest on the unpaid balance at Nine Percent (9%) per annum from May 6, 1998, and its taxable costs of court in this action; and it is, therefore

ADJUDGED, ORDERED and DECREED that the Plaintiff, Rappahannock Pistol & Rifle Club, Inc., recover of the Defendant, C.F. Lumber Co., Inc., the sum of \$4,000.00, with interest on the unpaid balance at Nine Percent (9%) per annum from May 6, 1998, and its taxable costs of court in this action; and it is, further

ORDERED that the Clerk of this Court docket the said judgment herein rendered on the Judgment Lien Docket of this Court; and it



is, further


ORDERED that the Clerk of this Court deliver or mail a duly attested copy of this Order to each counsel of record.

And there being nothing further to be done in this cause, the Clerk shall strike this action from the docket of this Court.


ENTERED this 30<sup>th</sup> day of June, 1998.

  
JUDGE

I ASK FOR THIS:

  
William A. Nunn, III  
P. O. Box 967  
White Stone, VA 22578  
(804)435-2622

SEEN AND OBJECTED TO FOR REASONS  
STATED IN THE RECORD:

  
Joseph R. Caprio  
Joseph R. Caprio, P.C.  
P. O. Box C  
West Point, VA 23181

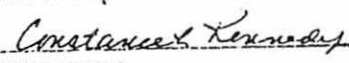
p.d.

VIRGINIA  
IN THE CLERK'S OFFICE OF  
COUNTY OF LANCASTER  
JULY 1, 1998 AT 03:43PM  
JUDGMENT/RELEASE #980000279 WAS DOCKETED  
UPON CERTIFICATION OF ACKNOWLEDGEMENT  
THERE TO ANNEXED; ADMITTED TO RECORD.  
THE FEE IMPOSED BY SEC. 14.112 (22)  
OF THE VIRGINIA CODE, HAS BEEN PAID.  
TESTE: ROBERTA H. LEWIS, CLERK

BY:  D.C.  
FILED #01 Page 18

Certified copies mailed/delivered: William A. Nunn, III, Atty.  
Joseph R. Caprio, Atty. 07/01/98

-2-

A TRUE COPY  
TESTE: ROBERTA H. LEWIS, CLERK  
BY:   
DEPUTY CLERK  
LANCASTER COUNTY CIRCUIT COURT



RAYMOND W. EDWARDS  
ATTORNEY AND COUNSELLOR AT LAW  
89 North Main Street  
P. O. Box 1911  
Kilmarnock, Virginia 22482

FAX (804) 435-1156

PHONE (804) 435-1155

March 3, 1997

DISBURSING STATEMENT

C. F. LUMBER CO., INC. TO ROBERT T. BENNETT  
AND CATHERINE A. BENNETT

Income

Sale of Pointer's Tract \$26,000.00

Disbursements

Partial Release of DOT recording	16.00
Grantor's Tax	26.00
R.W. Edwards Fee	300.00
Net Check	2000.00
Peninsula Trust Bank	23,658.00
	<hr/>
	\$26,000.00
	\$26,000.00

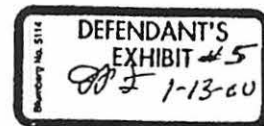
Also attached is the closing attorney's HUD-1

|| Sincerely yours,

Raymond W. Edwards

Attachments(1)

LTR-DISB.M97



McGUIRE WOODS  
BATTLE & BOOTHE LLP

One James Center  
901 East Cary Street  
Richmond, Virginia 23219-4030  
Telephone/TDD (804) 775-1000 • Fax (804) 775-1061

William G. Broadus

Direct Dial: (804) 775-1085

February 26, 1997

By Fax

William A. Nunn, III, Esquire  
Ice House Field  
P. O. Box 967  
White Stone, Virginia 22578

Re: Rappahannock Pistol and Rifle Club

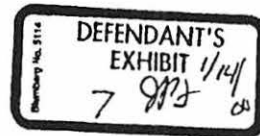
Dear Bill:

We represent Mr. and Mrs. Robert Bennett of Lancaster, Virginia. Mr. and Mrs. Bennett offer to buy from the Rappahannock Pistol and Rifle Club land in Lancaster County which the Club presently has under contract containing 53 acres, more or less, for \$31,800 subject to the conditions specified herein. The amount of the offer is based upon the County's rate of assessment of \$600 per acre times 53 acres. We understand and accept that the Club's present grantor has a reservation for timber on the property.

The conditions of our purchase are that the Club convey clear and marketable fee simple title to the land by general warranty deed with the usual English covenants of title (with the exception of the reservation of timber rights).

In addition, the Bennetts have thirty days from the Club's acceptance of this offer to:

1. Obtain a satisfactory survey
2. Obtain a satisfactory title report
3. Obtain an assessment analysis that the land does not contain hazardous or toxic chemicals or waste
4. Obtain evidence of the Seller's authority to effect the transaction



February 26, 1997  
Page 2

5. Obtain an affidavit, if requested, that there are no mechanic's liens and that taxes are paid for 1996 and all prior years.

Each party shall pay its own expenses and fees.

Sincerely,

A handwritten signature in cursive script that reads "Bill".

William G. Broaddus

WGB/bsm

February 26, 1997  
Page 3

bcc: Mr. and Mrs. Robert Bennett

McGUIRE WOODS  
BATTLE & BOOTHE LLP

One James Center  
901 East Cary Street  
Richmond, Virginia 23219-4030  
Telephone/TDD (804) 775-1000 • Fax (804) 775-1061

William G. Broaddus

Direct Dial: (804) 775-1085

February 27, 1997

BY FAX

William H. Pennell  
County Administrator  
Lancaster County  
Lancaster, Virginia

Dear Bill:

We have been retained by Mr. and Mrs. Robert Bennett to represent them in conjunction with their concerns pertaining to the proposed location of a rifle and pistol club near their property.

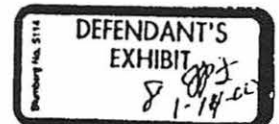
I discussed briefly our concerns with Jim Cornwell earlier this week. I understand Jim is traveling today.

I am enclosing a draft of a proposed ordinance which we request the Board to consider this evening on an emergency basis. Mr. and Mrs. Bennett have a copy and, I believe, will be meeting with at least one member of the Board this morning.

We have no pride of authorship and certainly anticipate that there may be changes. We have drafted this in a way which, we hope, avoids any impact on hunting and any impact on the use of firearms by property owners to protect their property, crops, cattle, horses, etc. Shooting groundhogs, crows, etc. would not be prohibited.

It is our hope that adoption of this emergency ordinance will provide a sixty day window of protection during which the Board would have an adequate opportunity to refine and readopt this particular ordinance and also adopt amendments to the zoning ordinance directly addressing these types of activities.

As I advised during our conversation, the Bennetts have offered to purchase the property from the Club at what we believe is a handsome premium so they are willing to invest in resolving the problem.



February 27, 1997  
Page 2

We certainly appreciate your consideration and I look forward to seeing you this evening.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Bill".

William G. Broaddus

WGB/bsm  
Enclosure

## Proposed Ordinance

WHEREAS, Virginia Code section 15.1-518 permits the Board of Supervisors to prohibit the shooting of firearms in areas of the County which are in the opinion of the Board of Supervisors so heavily populated as to make such conduct dangerous to the inhabitants thereof; and

WHEREAS, the Board of Supervisors is aware that certain areas of Lancaster County are so heavily populated that certain outdoor firearm use may be dangerous to the inhabitants thereof; and

WHEREAS, the Board of Supervisors believes that repetitive nature of outdoor rifle or pistol use increases the potential risk to the inhabitants of heavily populated areas; and

WHEREAS, Virginia Code section 15.1-504 permits the Board of Supervisors to enact emergency ordinances without public notice, and such ordinance shall be enforced only for sixty days unless readopted in conformity with the notice requirements of section 15.1-504; and

WHEREAS, the Board of Supervisors finds that an emergency exists that necessitates the enactment of an emergency ordinance to protect the health, safety and welfare of the inhabitants thereof.

NOW, THEREFORE, be it ordained by the Board of Supervisors of Lancaster County:

1. It shall be unlawful for two or more persons to discharge outdoors any rifles and/or pistols for the purpose of target shooting, or any skill or sporting event related to target shooting or similar activity, if such persons participate in such activity anytime during a three hour period in one day and in one location or on one parcel of property, and if the boundary lines of said parcel are within two miles of thirty or more residential units.

2. Nothing in this ordinance shall diminish or prohibit the use of firearms, air-operated or gas-operated weapons for the lawful purpose of hunting game or protection of property as permitted under the Lancaster County Ordinance, the Virginia Code and the Virginia Administrative Code.

3. Violation of this ordinance shall be punishable by a fine in an amount not to exceed \$1,000.00 per incident and/or incarceration in jail for a period not to exceed six months.

4. An emergency exists and this ordinance shall be in effect from the date of its passage.

INSTRUCTION NO. 6

The burden is on the plaintiff to prove by the greater weight of the evidence that it sustained damages. The plaintiff is not required to prove the exact amount of its damages, but it must show sufficient facts and circumstances to permit you to make a reasonable estimate of them. If the plaintiff fails to do so, then it cannot recover.

Given  
JF  
1-14-00



INSTRUCTION NO. 12

You shall find your verdict for the plaintiff if he proved by the greater weight of the evidence:

- ✓ (1) that there was a <sup>✓ ruled</sup> contract between the plaintiff and C.F. Lumber Co., Inc.; and
- ✓ (2) that the defendants knew of this contract; and
- ✓ (3) that the defendants intentionally caused C.F. Lumber Co., Inc. to breach its contract with plaintiff; and
- ✓ (4) that the plaintiff was damaged by the breach of contract.

You shall find your verdict for the defendants if the plaintiff failed to prove any one or more of these elements.

*given*  
*9/12*  
*1-14-00*

INSTRUCTION 15

An affirmative defense, for which the burden rests on the defendants, is justification or privilege. Specific grounds for the defense are: ~~legitimate business competition~~, financial interest, responsibility for the welfare of another, ~~directing business policy and the giving of~~ ~~reasonable advice~~.

gwr  
gff  
1-14-00

INSTRUCTION 16

If you find your verdict for the plaintiff, then it is entitled to recover as damages all of the losses it sustained, which are a direct and natural result of the breach and which it has proved by the greater weight of the evidence. The losses must have been reasonably foreseeable by the parties, ~~when the breach occurred.~~

given  
JPT  
1-14-00

VIRGINIA:

IN THE CIRCUIT COURT OF LANCASTER COUNTY

RAPPAHANNOCK PISTOL  
& RIFLE CLUB, INC.,

Plaintiff,

V.

LAW NO. 97-81

ROBERT T. BENNETT and  
CATHERINE A. BENNETT,

Defendants.

DEFENDANTS' MOTION TO SET ASIDE THE VERDICT OR, IN THE  
ALTERNATIVE, FOR A NEW TRIAL

Defendants Robert T. Bennett and Catherine A. Bennett, by counsel, move this Court pursuant to Virginia Code Section 8.01-430 to set aside the jury's verdict and enter judgment in favor of Defendants. In the alternative, Defendants move this Court pursuant to Virginia Code Section 8.01-383 for a new trial. In support of this motion, Defendants reassert the grounds set forth in the Defendants' Trial Brief And Motion For Summary Judgement, which pleading is incorporated herein by reference. In addition, Defendants set forth the following facts and law.

The Court has broad powers where it decides that an improper verdict has been returned by a jury. "Where the issue of liability is not clearly decided by the verdict, or is not separable from the issue of damages, the verdict should be set aside and a new trial granted as to all issues. Where the finding of liability is clearly decided by the verdict and is supported by the evidence, the trial court may set aside the verdict and grant a new trial limited to the issue of damages. Moreover, if the trial court concludes that a verdict is excessive, it has the authority

OH SIMMONS & DUNTON LLP  
ATTORNEYS AT LAW  
P O BOX 5  
HITE STONE VIRGINIA  
22578

1

JAN 19 2000

*Leti R. Leach, Clerk*

under Code section 8.01- 383.1 (now 8.01-383) to require the plaintiff to remit a portion of the award or submit to a new trial. In awarding a new trial, it is within the trial judge's discretion to decide whether a new trial should be on all issues or solely on the issue of damages." Sampson v. Sampson, 221 Va. 896, 902, 275 S.E.2d 597 (1981).

#### I. LACK OF VALID CONTRACT

Mr. C. F. Carter, Jr., President of C. F. Lumber Company, Inc., testified that after February 24, 1997 he believed the Gun Club contract to be invalid. This was because the contract stated that the closing date was February 24, 1997, with "time is of the essence." As such, he had the right to sell the property to the Bennetts under the terms of their backup contract on February 28, 1997.

The case law is clear that "time of the essence" will be enforced if it is in the contract and intended by the parties. Two attorneys, Mr. Broadus (a former Virginia Attorney-General) and Mr. Stamm, along with Mrs. Ludwig, real estate broker, testified for the defense that the failure to close a time of the essence real estate contract by the closing date made the contract voidable by either party. Only when both parties agreed to extend the closing date would the contract continue in existence.

Mr. Edwards, the Gun Club's witness and Mr. Carter's former attorney, agreed with the Bennetts' witnesses that this was a correct statement of the law. He stated, however, that he thought the contract was still in effect because he advised Mr. Carter that it was in effect. Mr. Carter testified that he never authorized attorney Edwards to extend the contract closing date, nor did he sign an authorization for an extension of the closing date. Instead he chose to close on the back up contract with the Bennetts. The fact that Mr. Edwards wanted to close the first

contract with the Gun Club neither makes that contract valid nor does it override the express desires of his client. There is no evidence in the record from which the jury could conclude that Mr. Edwards had either express or implied authority to extend the contract closing date on behalf of Mr. Carter. Mr. Edwards admitted such, stating that he had his "marching orders" from Mr. Carter on February 28, 1997 to close the sale to the Bennetts.

There was no contract in existence on February 28, 1997 which could have been interfered with by the Bennetts' purchase of the property.

## II. NO INTERFERENCE WITH CARTER'S PERFORMANCE OF CONTRACT

The Gun Club's case, taken in its best light, proved only two instances which the Plaintiff offered as interference with Mr. Carter. First, Mr. Edwards testified that Mr. Carter said Mrs. Bennett had called him about February 26, 1997 and that Mr. Carter "was tired of these womens' phone calls." Any claim that this was interference in Mr. Carter's performance of the contract was negated by Mr. Carter's testimony that the Bennetts never interfered with his performance of the contract. To the contrary, he testified that he spoke with Mrs. Bennett only one time. He told her that he had a contract on the property but that if it did not close on schedule he would contact her. Second, Mr. Register testified to the meeting at the Bennetts' home. He said Mrs. Bennett made statements to the effect that, "The Gun Club would never get the Regina property," and that, "I always win." While these statements might reflect her attitude toward a firing range in her neighborhood, they do not constitute interference with Mr. Carter. Mr. Carter was not present at that meeting, nor was there any evidence that he knew of the meeting or of Mrs. Bennett's statements.

The weakness in the Plaintiff's case is reflected in Mr. Nunn's statement to the Court

that it was the Bennetts' purchase of the property that itself constituted the interference. Yet that assertion is not supported by the law or evidence. The three attorneys and the real estate broker all agreed in their testimony that there was nothing improper either in placing a backup contract on a piece of property or closing the purchase if the first contract did not close. A lawful and proper act can not be "interference" to support a tort action against the Bennetts.

This Court is empowered under Virginia Code section 8.01-430 to set aside the verdict where "it is contrary to the evidence, or without evidence to support it." The power may be exercised when the "verdict is plainly wrong or without credible evidence to support it." Lane v. Scott, 220 Va. 578, 581, 260 S.E.2d 238 (1979). See also: Fedele v. Nat. Liberty Ins. Co., 184 Va. 528, 35 S.E.2d 766 (1945). The jury verdict in this case is clearly wrong, and contrary to the law and the facts presented. Counsel would remind the Court of its own words at the time it struck the Gun Club's punitive damages claim, that, "Some judges would strike the whole case at this point in trial," or words to that effect.

### III. PLAINTIFFS' DAMAGES ARE SPECULATIVE AND EXCESSIVE.

To recover damages, Plaintiff must have presented evidence which would allow the jury to measure damages with certainty, and not through speculation or bias. The jury award of \$125,000 damages was unsupported by any evidence in the record.

The Gun Club did not itself know what its damages were. Mr. Pearce, president of the Gun Club, was asked specifically how the club was damaged. His response was, "I don't know. I'll have to speak to the executive committee about it," or words to that effect. This came after having almost three years to prepare its case.

Taking the evidence in the light most favorable to Plaintiff, there was evidence that the

Club had a \$22,000 contract to purchase a piece of land with a value of \$28,300 (per the Commissioner of Revenue). The land sold for \$26,000. The Club might argue for damages of \$4,000 (difference between contract values) or \$6,300 (difference between its contract and the actual value). Either would be offset by \$4,000 the Club received from its contract lawsuit against Mr. Carter's company. This does not support a \$125,000 verdict.

The Club claimed it needed a 50-acre, rectangular piece of land for an expanded firing range. The Bennetts offered evidence of a 53-acre rectangular piece of land for \$42,135 (\$795 per acre). If the jury used this amount, less the \$22,000 original contract price, a verdict for \$20,135 could be argued, but not one for \$125,000.

Finally, the Club claimed it found a 265-acre parcel it "liked" for \$245,000. The parcel is not similar in size or price and can not be the basis of an award of damages. Nor does it support a verdict of \$125,000.

The jury verdict can not be supported by loss of a benefit. The Club still has its existing firing range which it uses.

There was no instruction on any measure of damages but the contract, and there can be no recovery but one based on the contract. There were no instructions on intangibles such as pain and suffering that could support the jury verdict.

This Court may set aside the verdict if "it is so excessive as to shock the conscience of the court and to create the impression that the jury has been influenced by passion, corruption or prejudice, or has misconceived or misunderstood the facts or the law, or if the award is so out of proportion to the injuries suffered to suggest that it is not the product of a fair and impartial decision." Rutherford v. Zearfoss, 221 Va. 685, 689, 272 S.E.2d 225 (1980). The




Bennetts submit that this is the present case. There is absolutely no evidence in the record to support a \$125,000 verdict for damages and it must be set aside.

In conclusion, Defendants request that this Court enter one of the following alternate grounds of relief:

1. Set aside the jury's verdict and enter judgment for Defendants non obstante veredicto; or
2. Grant Defendants a new trial as to all issues.

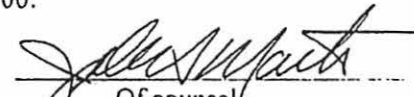
Respectfully submitted,

ROBERT T. BENNETT  
CATHERINE A. BENNETT  
By counsel

  
John S. Martin  
DUNTON, SIMMONS & DUNTON, LLP  
P. O. Box 5  
White Stone, Virginia 22578  
(804) 435-4000  
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing motion was mailed, postage prepaid, to William A. Nunn, III, Esquire, P. O. Box 967, White Stone, Virginia 22578, counsel of record as listed, this 15<sup>th</sup> day of January, 2000.

  
Of counsel

DUNTON SIMMONS & DUNTON, LLP  
ATTORNEYS AT LAW  
P. O. BOX 5  
WHITE STONE VIRGINIA  
22578

V I R G I N I A :

IN THE CIRCUIT COURT OF LANCASTER COUNTY

RAPPAHANNOCK PISTOL & RIFLE	)	
CLUB, INC.,	)	
Plaintiff	)	
v.	)	AT LAW NO. CL97000081-00
ROBERT T. BENNETT and	)	
CATHERINE A. BENNETT,	)	
Defendants.	)	

PLAINTIFF'S RESPONSE TO DEFENDANTS'  
MOTION TO SET ASIDE VERDICT FOR NEW TRIAL

COMES NOW the plaintiff, Rappahannock Pistol & Rifle Club, Inc., by counsel, and for its response to defendants' motion to set aside the jury's verdict or, in the alternative, for a new trial, represents as follows:

I. VALID CONTRACT

All the provisions of the contract shall be taken into consideration and reconciled, if possible, so that the true intent of the parties to the contract may be ascertained. Wilson v. Holyfield, 227 Va. 184, 313 S.E.2d 396 (1984) A contract should be construed as a whole, thereby gathering meaning from its entirety and not from particular words, phrases or clauses. Northern Va. Sav. & Loan Ass'n v. J. B. Kendall Co., 205 Va. 136, 135 S.E.2d 178 (1964) The Court must give effect to all the language of a contract if its parts can be read together without conflict. Jennings v. Jennings, 12 Va.App. 1187, 409 S.E.2d 8 (1991) In case of doubt in the terms of the contract, a court will follow the interpretation placed thereon by the parties themselves. Such

JAN 27 2000

*Justin L. Smith, Clerk*

construction is entitled to great weight, and is often conclusive, particularly where confirmed by the acts, conduct and declarations of the parties. Clark v. Nunn, 66 (25 Gratt.) 287 (1874)

The contract at issue (introduced as Plaintiff's Exhibit #2), which was drafted by the seller, stated that "the purchase price is to be paid as follows: \$22,000 at Closing on February 24th Time is of the Essence." While no year was stated in the "time of the essence" provision, the document further provided that "settlement to be made at the above Vender choice, on or before February 24th, 1997, or as soon thereafter as title can be examined and papers prepared . . . ." The uncontradicted evidence before the jury was that plaintiff was fully prepared to close on February 24, 1997.

While certain of the "papers" referred to in the contract were "prepared" by February 24, 1997, other such "papers" had not yet been produced. Indeed, several of the "papers" for closing were drafted by the seller's attorney, executed by the seller and conditionally delivered to the attorney for plaintiff. These papers comprised the mechanics' lien affidavit (Plaintiff's Exhibit #6), the corporate resolution authorizing the sale of the subject property to plaintiff (Plaintiff's Exhibit #7) and, removing all doubt as to whether a valid contract existed between C.F. Lumber Co. (the seller) and plaintiff, the deed conveying the subject property (Plaintiff's Exhibit #8).

The seller's attorney, Raymond W. Edwards, testified that other "papers" necessary for closing had not yet arrived by February 24, 1997. Subsequent to that date, the seller's conduct

and his attorney's advice left no doubt that Mr. Carter knew there was a valid contract in existence. On February 26, two days after the closing date provided in Plaintiff's Exhibit #2, Carter called Mr. Edwards and left a message expressing his desire to "get out of the contract, if possible." (Plaintiff's Exhibit #10) Mr. Edwards responded to the telephone message by informing his client that he was still bound by a valid contract. Furthermore, Edwards stated that any delay in executing the contract was the responsibility of the seller. That is, certain documents required for closing had not yet been produced, and they were the seller's responsibility. Edwards further testified that on February 28, the date Carter conveyed the property to defendants, he again admonished Carter that he was bound by a valid contract to convey the property to plaintiffs. Carter disregarded his attorney's advice and conveyed the property to defendants. The circumstances, acts and conduct of the parties lead unerringly to the conclusion that Carter knew that he was bound by the contract after February 24, 1997.

The witnesses relied upon by defendants, attorneys Broadus and Stamm, as well as a real estate broker, Mrs. Ludwig, had not seen the contract at issue in this case (Plaintiff's Exhibit #2). Moreover, the terms of the contract itself provided for an extension for title examination and preparation of "papers." Inasmuch as the contract itself provided for an extension of the contract closing date, Carter's attorney was simply carrying out the clear provision of the contract by "extending" the closing date

pending receipt of the necessary "papers." All of the credible evidence supports the validity of the "Official Sales Contract" (Plaintiff's Exhibit #2) on February 28, 1997.

Moreover, the evidence is clear that defendants knew on February 28, 1997, that there was a valid contract in existence to convey the subject real estate to plaintiffs. It is uncontradicted that defendant Catherine Bennett warned members of plaintiff Club as early as February 15, 1997 that she would ". . . do whatever is necessary to make sure you don't ever use that Regina site (for a range). I am prepared to go all the way, whatever it takes . . ." Three days later, on February 18, 1997, she had an appointment with Mr. Edwards, attorney for the seller, during which she said, "I have to have that property." On February 28, 1997, both defendants were warned twice by their then-attorney, Mr. Stamm, that they were risking a lawsuit if they closed on the property. Defendant Robert Bennett testified under cross-examination that Stamm gave the warning to him and his wife once before closing and once after closing. Stamm's second warning to defendants was before the deed was recorded. Indeed, Stamm testified under cross-examination that he warned defendants specifically that they risked a lawsuit "by the other contract holder." Clearly the jury had sufficient credible evidence for the jury to find that both defendants knew that a valid contract existed between plaintiff and seller, C.F. Lumber Co., Inc.

## II. INTERFERENCE WITH CONTRACT

In order to carry out her threat that she would "do whatever it takes" to keep plaintiff from ever using the subject property for a range, Mr. and Mrs. Bennett offered substantially more money to Carter. Additionally, there is evidence that defendants pressured Carter to sell the property to them. Mrs. Edwards testified, and it is uncontradicted, that when Carter contacted Edwards' office on February 26, 1997, he was angry and admonished Mrs. Edwards for giving his telephone number to defendants. He stated in no uncertain terms that he did not "want her calling" anymore. Mr. Edwards further testified that Carter was vulnerable to pressure.

The week following their purchase of the property from Carter, Mr. Bennett was quoted in the Rappahannock Record as saying, "We had to buy that land. It was the only way to keep them (plaintiff) from ruining our lives." Under cross-examination, defendant Robert Bennett admitted making that statement.

The purchase of the subject property by the Bennetts at a price substantially greater than that offered by plaintiffs in their contract, together with all of the attendant circumstances, was clearly sufficient to support the jury's verdict that the defendants intended to interfere with the contract, and in fact did do so. The evidence and the inferences reasonably deducible therefrom fairly support the conclusion reached by the jury, when viewed in the light most favorable to plaintiff. Conflicting inferences have been resolved by the verdict of the jury, and its

verdict should not be set aside by the Court.

III. DAMAGES ASSESSED BY THE JURY ARE NEITHER SPECULATIVE NOR EXCESSIVE.

In order to set aside damages fixed by the jury, the verdict must be "so excessive that it shocked the conscience of the Court." Rutherford v. Zearfoss, 221 Va. 685, 272 S.E.2d 225 (1980) The setting aside of damages awarded by a jury is not warranted if it "merely appears to be large and more than the trial judge would have awarded had he been a member of the jury." Murphy v. Virginia Carolina Freightlines, Inc., 215 Va. 770, 774, 213 S.E.2d 769, 772 (1975) Moreover, under Section 8.01-430, Code of Virginia, a jury's award of damages may be set aside only where it is "contrary to the evidence or without evidence to support it . . . . It is reversible error to set aside a verdict when the inferences necessarily underlying the verdict are reasonably deducible from the evidence." Sampson v. Sampson, 221 Va. 896, 275 S.E.2d 597 (1981) Great respect is to be accorded a jury verdict, and where reasonably fair minded persons may differ as to the conclusions of fact be drawn from the evidence, or if the conclusion is dependent upon the weight to be given the testimony, then such evidence is controverted and the jury's verdict cannot be disturbed by the trial court or the appellate court. Hundley v. Osborne, 256 Va. 173, 500 S.E.2d 810 (1998) A jury verdict assessing damages is vested with a strong presumption of correctness and will not be set aside unless it is so great as to shock the court's conscience or

there is evidence that it is not the product of a fair and impartial decision. Reel v. Remeriz, 243 Va. 463, 416 S.E.2d 226 (1992)

The evidence before the jury was that the fair market value of the property, less the timber (which was reserved by the seller), was \$38,600.51 (not \$28,300 as set forth in defendant's motion). Furthermore, of the many sites examined by plaintiff as an alternative to the 53 acre parcel, which is the subject of this suit, only one site was suitable for the purposes of a firing range. All of the others, including those helpfully suggested by defendants, failed to satisfy the necessary criteria of suitability and safety. Only one parcel met these criteria. But its owner demanded \$245,000 for the property, which was completely out of reach for plaintiff. It is also uncontradicted that defendants were influential in bringing about an amendment of the zoning ordinance to preclude, or at any rate make more difficult, the purchase of land in Lancaster County for the purpose of a firing range. In consideration of all the evidence, the jury's verdict in assessing damages was fair and reasonable. There is no evidence whatever that the damages fixed by the jury was the product of sympathy for the plaintiff or bias against the defendant.

#### IV. CONCLUSION

The jury's verdict as to both liability and damages was fairly based upon the evidence adduced and ought not be set aside by the trial court. Defendants' motion ought to be denied and judgment



entered on the jury's verdict.

Respectfully submitted,

RAPPAHANNOCK PISTOL & RIFLE CLUB, INC.  
By Counsel

  
p.q.

William A. Nunn, III  
P. O. Box 967  
White Stone, VA 22578  
TEL: 804-435-2622  
FAX: 804-435-0269  
Email: nunnlaw@rivnet.net

Certificate of Service

I hereby certify that on this 26<sup>th</sup> day of January, 2000, I mailed by first-class mail, postage prepaid, a true copy of the foregoing Plaintiff's Response to Defendant's Motion to Set Aside Verdict for New Trial to John S. Martin, Esquire, counsel for defendants, Dunton, Simmons & Dunton, P. O. Box 5, White Stone, VA 22578, and Honorable J. Peyton Farmer, Judge, P. O. Box 463, Bowling Green, VA 22427.



VIRGINIA:

IN THE CIRCUIT COURT OF LANCASTER COUNTY

RAPPAHANNOCK PISTOL & RIFLE  
CLUB, INC.,

Plaintiff,

V.

LAW NO. 97-81

ROBERT T. BENNETT and  
CATHERINE A. BENNETT,

Defendants.

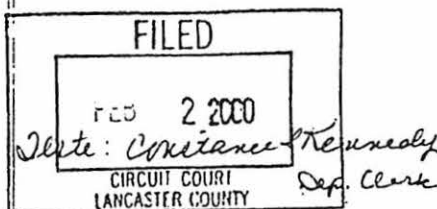
DEFENDANTS' SUPPLEMENT TO MOTION TO SET ASIDE VERDICT

Defendants Robert T. Bennett and Catherine A. Bennett, by counsel, supplement their Motion To Set Aside The Verdict.

Plaintiff in its Response places great reliance on the testimony of attorney Chris Stamm that he warned the Bennetts that they might be sued by Plaintiff if they bought the Regina property. This evidence is used to support Plaintiff's argument that the Bennetts interfered with the Plaintiff's contract.

Plaintiff, however, did not include all of the relevant testimony. Mr. Stamm, testifying as an expert witness in the fields of both real estate law and title insurance, stated that while he told the Bennetts that the Plaintiff might sue, he also told them that in his opinion there were absolutely no legal grounds for the suit. The reason is that the Plaintiff failed to close as required under its time of the essence contract. Mr. Stamm testified that the Bennetts bought the property on his advice. His testimony was uncontradicted and does not support an interference claim.

TON, SIMMONS & DUNTON, LLP  
ATTORNEYS AT LAW  
P O BOX 5  
WHITE STONE VIRGINIA  
22576



-1-

The "papers" referred to by Plaintiff are a red herring designed to distract attention from the actual history of the transaction. Mr. Edwards allowed his client to close the purchase of the property without these "papers." There was no necessity for the "papers" for the sale. The Plaintiff had no title insurance requiring these or any other "papers" and the title examiner reported no title defects. There was no reason not to close. Mr. Stamm obtained in twenty-four hours all "papers" necessary for title insurance. This makes Mr. Edward's and Mr. Nunn's performance look somewhat tardy in light of the time of the essence requirement.

Mrs. Bennett's statements, as related by Mr. and Mrs. Edwards, were offered as evidence from which the jury could infer that Mr. Carter was affected by her actions. However, Mr. Carter testified that the Bennetts never interfered with his performance of the contract. "(A)n inference which the plaintiff says would impose liability upon the defendants must give way to the positive, uncontradicted evidence which exonerates the defendants from liability." Ragland v. Rutledge, 234 Va. 216, at 219 (1987).

Finally, even Plaintiff in its Response can offer no rational explanation for the amount of the damages verdict in light of the evidence.

The decision by a trial court to set aside a jury verdict is accorded deference by the appellate courts, particularly where the case was heard by a "learned and experienced trial judge who ... was of the opinion that the verdict recorded a finding in plain deviation from right and justice." Fedele v. National Liberty Ins. Co., 184 Va. 528, at 535 (1945).

For the reasons set forth in the Motion and this Supplement, Defendants request that the

verdict be set aside or, in the alternative, that they be granted a new trial.

Respectfully submitted,

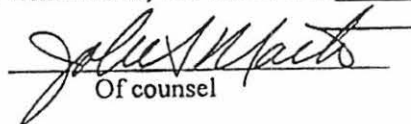
ROBERT T. BENNETT  
CATHERINE A. BENNETT  
By counsel



John S. Martin  
DUNTON, SIMMONS & DUNTON, LLP  
P.O.Box 5  
White Stone, VA 22578  
(804) 435-4000  
Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing pleading was mailed, postage prepaid, to William A. Nunn, III, P.O. Box 967, White Stone, VA 22578 this 2nd day of February, 2000.



Of counsel

TON SIMMONS & DUNTON, LLP  
ATTORNEYS AT LAW  
P.O. BOX 5  
WHITE STONE, VIRGINIA  
22578

# Commonwealth of Virginia

## FIFTEENTH JUDICIAL CIRCUIT

### JUDGES

William H. Ledbetter, Jr.  
Joseph E. Spruill, Jr.  
James W. Haley, Jr.  
John W. Scott, Jr.  
Horace A. Revercomb, III  
Ann Hunter Simpson

Dixon L. Foster, Retired  
Richard H.C. Taylor, Retired  
J. Peyton Farmer, Retired

J. Peyton Farmer  
Post Office Box 463  
Bowling Green, Virginia 22427

### COURTS

Northumberland County  
Westmoreland County  
Spotsylvania County  
King George County  
Lancaster County  
Caroline County  
Richmond County  
Stafford County  
Hanover County  
Essex County  
City of Fredericksburg

February 28, 2000

William A. Nunn, III, Esquire  
Post Office Box 967  
White Stone, Virginia 22578

John S. Martin, Esquire  
DUNTON, SIMMONS & DUNTON, LLP  
Post Office Box 5  
White Stone, Virginia 22578

Re: Rappahannock Pistol & Rifle Club, Inc.  
v. Robert T. Bennett and Catherine A. Bennett  
Lancaster Circuit Court

Dear Counsel:

This matter is before the Court on defendants' motion to set aside the verdict. The memorandums submitted by counsel have been reviewed and considered.

The Court is of the opinion that the jury verdict is without sufficient evidence to support it and the verdict is hereby set aside. The defendants purchased the property under a back up contract. All agree that a back up contract is fairly common in the real estate business. The defendants were advised by their counsel that they had the right to purchase this property even though they might be sued by the plaintiff. They were further advised that if sued, they would prevail. The act of purchasing the property for a price greater than that provided for in the plaintiff's contract with Carter does not, in and of itself, constitute tortious interference.

The circumstantial evidence and the evidence from which the jury could draw reasonable inferences are insufficient to raise the conduct of the defendants to tortious interference with the contract between Carter and the plaintiff.

February 28, 2000

Rappahannock Pistol & Rifle Club, Inc. v. Bennett

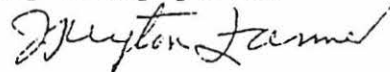
Page 2

The Court allowed this case to go to the jury on the theory that if the Court erred in its decision on liability, the appellate court would have the jury verdict on damages. Upon reflection the Court should have struck the evidence and taken the case away from the jury.

Accordingly, the jury verdict is set aside as contrary to the law and the evidence and judgment is entered for the defendants.

Mr. Martin is requested to prepare, circulate and present a sketch order.

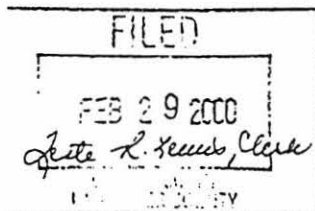
Very truly yours,



J. Peyton Farmer  
Judge

JPF/mmm

cc: ✓ Roberta H. Lewis, Clerk



VIRGINIA:

IN THE CIRCUIT COURT OF LANCASTER COUNTY

RAPPAHANNOCK PISTOL & RIFLE )  
CLUB, INC., )  
 )  
Plaintiff, )  
 )  
V )  
 )  
ROBERT T. BENNETT and )  
CATHERINE A. BENNETT, )  
 )  
Defendants. )

LAW NO. 97-81

JUDGMENT ORDER

This case came to be heard on January 13-14, 2000, upon the pleadings, proceedings and orders formerly had; upon the evidence, including testimony and exhibits. adduced upon trial by jury; upon motions and other incidents of trial as shown in the transcript of proceedings therein; upon Defendants' Motion to Strike Plaintiffs' case made at the conclusion of the Plaintiff's case in chief, which motion the Court granted as to punitive damages but denied as to the remainder of the motion; upon Defendants' renewal of their Motion to Strike and Defendants' Motion For Summary Judgement made at the conclusion of the evidence. which motions the Court denied; upon the verdict of the jury rendered in favor of the Plaintiff in the amount of \$125,000.00; upon Defendants' Motion To Set Aside The Verdict Or, In The Alternative, For A New Trial, the Plaintiff's response, and the Defendants' supplemental response; and upon the Court's consideration of all of the above.

UPON CONSIDERATION THEREOF, and for the reasons set forth in Defendant's Motion, the Court's February 28, 2000 letter opinion and in the record, the Court is of the

DR. SIMMONS & DUNTON, LLP  
ATTORNEYS AT LAW  
P. O. BOX 3  
HITE STONE, VIRGINIA  
22078

opinion that Plaintiff failed to prove, as a matter of law, that Defendants tortiously interfered with Plaintiff's contract with C.F. Lumber Company, Inc., and Defendants' Motion To Set Aside The Verdict is granted. In light of this ruling, no decision is made as to Defendants' claim in Section III of their Motion that the damages were speculative. It is, accordingly,

ORDERED, that the verdict of the jury entered in this case in favor of Plaintiff be, and the same is, hereby set aside as being contrary to the law and the evidence in this case and without evidence to support it and final judgement is hereby entered for Defendants.

This is a final order.

ENTERED this 10<sup>th</sup> day of April, 2000.

*The clerk shall certify a copy of this order to counsel of record.*

*Wilton Farmer*  
JUDGE *Designate*

We ask for this:

DUNTON, SIMMONS & DUNTON, LLP  
Attorneys for Defendants

By: *Julius Nunn*  
Of Counsel

Seen and objected to for the reasons stated in the record,  
including those set forth in Plaintiff's Response to  
Defendant's Motions:

*William A. Nunn, III*  
William A. Nunn, III, Esquire  
Attorney for Plaintiff

A TRUE COPY

TESTE: ROBERTA H. LEWIS, CLERK

BY *Christanne Kennedy*  
DEPUTY CLERK  
LANCASTER COUNTY CIRCUIT COURT

TON, SIMMONS & DUNTON, LLP  
ATTORNEYS AT LAW  
P. O. BOX 9  
WHITE STONE, VIRGINIA  
22078

S:\Wpdocs\jnm.benett file.order.wpd 3/1/00 9:40 AM



ASSIGNMENTS OF ERROR

1. THE TRIAL COURT ERRED IN FINDING THAT THE EVIDENCE WAS INSUFFICIENT TO SUPPORT THE JURY'S VERDICT IN FAVOR OF RPRC FOR TORTIOUS INTERFERENCE WITH CONTRACT AND IN GRANTING THE BENNETTS' MOTION TO SET ASIDE THE VERDICT ON THAT BASIS.
2. THE TRIAL COURT ERRED IN GRANTING THE BENNETTS' MOTION TO STRIKE AND STRIKING OUT RPRC'S EVIDENCE REGARDING ITS ENTITLEMENT TO SEEK PUNITIVE DAMAGES FROM THE BENNETTS.