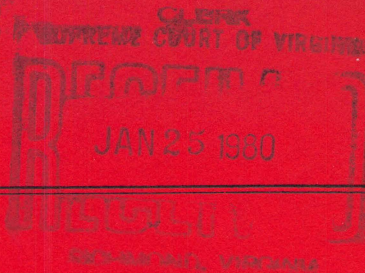


223VA112



IN THE  
**Supreme Court**  
of  
**Virginia**

AT RICHMOND



**RECORD No. 790777**

UNITED VIRGINIA BANK/NATIONAL, et al.,  
*Appellants,*

v.

STEPHEN L. BEST, et al.,  
*Appellees.*

**APPENDIX**

JOHN H. RUST, ~~REDACTED~~, and THOMAS J. CAVUTO

RUST, RUST & PRATT  
4009 Chain Bridge Road  
P. O. Box 537  
Fairfax, Virginia 22030

*Counsel for Appellants*  
UNITED VIRGINIA BANK/NATIONAL  
AND  
UNITED VIRGINIA MORTGAGE CORPORATION



IN THE  
SUPREME COURT OF VIRGINIA  
AT RICHMOND

---

RECORD No. 790777

---

UNITED VIRGINIA BANK/NATIONAL, et al.,  
Appellants,  
v.  
STEPHEN L. BEST, et al.,  
Appellees.

---

APPENDIX

---

JOHN H. RUST, JOSEPH V. BUONASSISSI, II, THOMAS J. CAVUTO  
4009 Chain Bridge Road  
P.O. Box 537  
Fairfax, Virginia 22030

COUNSEL FOR APPELLANTS

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IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

STEPHEN L. BEST and  
LETTY SHEILD BEST,

Plaintiffs,

vs.

UNITED VIRGINIA BANK/NATIONAL,  
SERVE: Any Officer  
515 Maple Avenue, East  
Vienna, Virginia 22180

AND

UNITED VIRGINIA MORTGAGE  
CORPORATION,  
SERVE: LEWIS B. FLINN, JR.,  
900 E. Main Street  
Richmond, Virginia 23219

Defendants.

IN CHANCERY NO. \_\_\_\_\_

BILL FOR DECLARATORY  
JUDGMENT

**FILED**  
IN CIRCUIT COURT.  
CLERK'S OFFICE

JUL 3 1978

JAMES E. ROOFNAGLE  
CLERK, FAIRFAX COUNTY, VA.  
WRIT TAX PAID \$ 5-  
DEPOSIT. .... 25-

The Plaintiffs represent unto the Court as follows:

1. By Deed recorded on September 25, 1972, in Deed Book 3700, Page 608 of the Land Records of Fairfax County, Virginia, Edward E. Firth and Anna Westwood Firth acquired fee simple title to certain property in Fairfax County, Virginia, known as Lot Number 36, in the Subdivision of BRECON RIDGE, Section Two, as the same is duly dedicated, platted and recorded in Deed Book 1594, Page 239 of said land records.
2. By deed of trust dated August 22, 1972, and recorded in Deed Book 3700, Page 609 of said land records, Edward E. Firth and Anna Westwood Firth conveyed the aforesaid property in trust to George D. Hicks, Jr. and John A. Rust, Trustees, to secure the payment of a promissory note in the principal amount of \$66,800.00 to the United Virginia Bank of Fairfax.
3. It is believed and therefore alleged that the present

holder of the aforesaid note is either United Virginia Bank/ National, or its wholly-owned subsidiary, United Virginia Mortgage Corporation.

4. There is no language in the aforesaid deed of trust or instruments subsequently recorded which specifically allows the holder of the note to accelerate payment of the note or to renegotiate the terms of the loan upon sale or conveyance of the security property.

5. The deed of trust does contain the following language: "The maker of the note covenants that he will not assign or transfer the property secured by this deed of trust without the prior approval of the noteholder."

6. By contract dated March 21, 1978, the Plaintiffs contracted to purchase the aforesaid property from the Firths, and in said contract agreed to assume the obligation of the Firths to make payments on the aforesaid note. By letter dated March 23, 1978, a copy of which is attached hereto and made a part hereof as "Exhibit No. 1", the Plaintiff, Stephen L. Best, notified United Virginia Mortgage Corporation of this fact.

7. John W. Howard, Jr., an agent of the Defendants, responded to the letter of March 23, 1978, by a letter dated March 29, 1978, a copy of which is attached hereto and made a part hereof as "Exhibit No. 2." Enclosed with said letter was a mortgage application.

8. The mortgage application was completed and was returned to Mr. Howard together with a letter dated March 31, 1978, a copy of which is attached hereto and made a part hereof as "Exhibit No. 3."

9. Mr. Howard responded to the aforesaid letter of March 31, 1978, by letter dated April 24, 1978, a copy of which is attached hereto and made a part hereof as "Exhibit No. 4."

10. By deed dated May 31, 1978, and recorded in Deed Book 4886, Page 177, of said land records, Edward E. Firth and Anna Westwood Firth conveyed said property to the Plaintiffs. A copy of said deed is attached hereto and made a part hereof as "Exhibit No. 5."

11. By letter dated June 1, 1978, the Plaintiff, Stephen L. Best, notified the Defendants of the conveyance, and enclosed with his letter an assignment from the Firths to the Bests of the Firths' escrow account, a copy of the deed, and a check for \$670.90, representing the June, 1978, payment. A copy of the letter of June 1, 1978, is attached hereto and made a part hereof as "Exhibit No. 6;" a copy of the assignment is attached hereto and made a part hereof as "Exhibit No. 7"; and a copy of the check is attached hereto and made a part hereof as "Exhibit No. 8."

12. By letter dated June 14, 1978, a copy of which is attached hereto and made a part hereof as "Exhibit No. 9", Mr. Howard responded to the letter of June 1, 1978, and returned all the documents. In his letter Mr. Howard stated that the Defendant had not approved of the transfer and that the Firths were still responsible for keeping the payments current.

13. In response to the letter of June 14, 1978, the Plaintiff, Stephen L. Best, wrote the Defendants a letter dated June 20, 1978, stating that the Plaintiffs would be making the payments on



behalf of the Firths, and returning the check for \$670.90. A copy of this letter dated June 20, 1978, is attached hereto and made a part hereof as "Exhibit No. 10."

14. Mr. Howard responded by letter of June 21, 1978, a copy of which is attached hereto and made a part hereof as "Exhibit No. 11."

15. The Plaintiffs are willing, able and ready to pay all future monthly payments specified in the promissory note as they become due, but the Defendants have made it explicit that they will not accept such payments.

16. The refusal of the Defendants to approve the transfer of ownership from the Firths to the Plaintiffs was based solely upon the refusal of the Plaintiffs to increase the interest rate of the note to 9-1/4% and to pay the assumption fee of one percent of the loan amount.

17. The Plaintiffs believe, and therefore allege, that the clause in the deed of trust requiring approval of the conveyance of the transfer of the aforesaid real property is null and void, as it is an unreasonable and arbitrary restraint on the alienation of title.

18. The Plaintiffs believe, and therefore allege, that the refusal of the Defendants to approve the conveyance of title to the Plaintiffs was unreasonable.

WHEREFORE, Plaintiffs pray:

1. That the provision in the deed of trust requiring approval by the noteholder of the transfer or assignment of the property be declared null and void.

2. Alternatively, if the aforesaid provision is valid, that the Court adjudge that consent may not be unreasonably withheld; and that it is unreasonable to require as a condition of approval, that the interest rate of the note be increased or that the Plaintiffs must pay an assumption fee of one percent of the amount of the note.

3. That the Defendants be required to accept note payments from the Plaintiffs.

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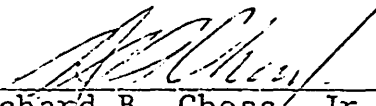
Stephen L. Best

---

Letty Sheild Best

CHESS, DURRETTE & ROEDER  
3900 University Drive  
Suite 300  
Fairfax, Virginia 22030

By



---

Richard B. Chess, Jr.

"EXHIBIT NO. 1"

LAW OFFICES

McCANDLISH, LILLARD, BAUKNIGHT, CHURCH & BEST

A PROFESSIONAL CORPORATION

THE BARBOUR HOUSE

4069 CHAIN BRIDGE ROAD

FAIRFAX, VIRGINIA 22030

TELEPHONE (703) 273-2440

F. D. RICHARDSON

1884-1954

HUGH B. MARSH

1900-1976

ANNANDALE OFFICE

7620 LITTLE RIVER TURNPIKE

ANNANDALE, VIRGINIA 22003

TELEPHONE

(703) 354-9800

ROBERT J. MCCANDLISH, JR.  
ROTHWELL J. LILLARD  
WILLIAM C. BAUKNIGHT  
RANDOLPH W. CHURCH, JR.  
STEPHEN L. BEST  
JESSE B. WILSON, III  
GERALD R. WALSH  
PETER A. ARNTSON  
THOMAS J. CAWLEY  
RANDOLPH A. SUTLIFF  
ROBERT H. J. LOFTUS  
WILLIAM E. DONNELLY, III  
STEVEN DAVID STONE  
BRUCE C. ARMISTEAD

March 23, 1978

United Virginia  
Mortgage Corporation  
515 King Street  
Alexandria, Virginia  
Attn: Mr. Howard

FILE NO.

RE: Loan No. UVM 603201  
Edward E. and Anna W. Firth  
4908 Prestwick Drive  
Fairfax, Virginia 22030

Dear Mr. Howard:

I am writing to inform you that my wife and I have contracted to purchase the above property, on which there is a first trust loan in the favor of United Virginia Bank.

My wife and I will want to take over the payments on the loan, and I note in the deed of trust that there is no restriction on assumption, although the deed of trust does provide that the owners cannot convey or transfer the property without the prior written consent of the noteholder. I would appreciate it if you would send me a letter stating there is no objection to the conveyance. If you would like, I can furnish you with a financial statement or any other documentation to satisfy the bank as to our ability to meet the regular monthly payments.

This firm will also be handling the settlement of the sale. I would further appreciate it if you would send me the assumption figures, including the principal balance after the May payment, and daily interest thereafter.

Yours very truly,

Stephen L. Best

SLB/cdc

"EXHIBIT NO. 2"



United Virginia  
Bank

March 29, 1978

Mr. Stephen L. Best  
McCandlish, Lillard, Bauknight, Church & Best  
The Barbour House  
4069 Chain Bridge Road  
Fairfax, Virginia 22030

Dear Mr. Best:

In reference to your letter of March 23 you will find enclosed a mortgage application for the assumption of the real estate loan we have with Edward E. and Anna W. Firth.

We will be happy to consider this assumption but it would not be assumable at the present interest rate of 7 1/2%.

Very truly yours,

John W. Howard, Jr.  
Vice President

JWH:dp  
Enclosure



"EXHIBIT NO. 3"

LAW OFFICES

McCANDLISH, LILLARD, BAUKNIGHT, CHURCH & BEST

A PROFESSIONAL CORPORATION

THE BARBOUR HOUSE

4069 CHAIN BRIDGE ROAD

FAIRFAX, VIRGINIA 22030

TELEPHONE (703) 273-2440

F. D. RICHARDSON

(1084-1054)

HUGH B. MARSH

(1000-1976)

ANNANDALE OFFICE

7620 LITTLE RIVER TURNPIKE

ANNANDALE, VIRGINIA 22003

TELEPHONE

(703) 354-9800

ROBERT J. McCANDLISH, JR.  
ROTHWELL J. LILLARD  
WILLIAM C. BAUKNIGHT  
RANDOLPH W. CHURCH, JR.  
STEPHEN L. BEST  
JESSE B. WILSON, III  
GERALD R. WALSH  
PETER A. ARNTSON  
THOMAS J. CAWLEY  
RANDOLPH A. SUTLIFF  
ROBERT H. J. LOFTUS  
WILLIAM E. DONNELLY, III  
STEVEN DAVID STONE  
BRUCE C. ARMISTEAD

March 31, 1978

John W. Howard, Jr.  
Vice President  
United Virginia Bank/National  
P.O. Box 179  
Alexandria, Virginia 22313

FILE NO.

RE: Firth-Best

Dear Mr. Howard:

Thank you for your letter of March 29, 1978.

I have completed the application as it is applicable and am enclosing the same.

You stated in your letter that you would consider the assumption but it would not be assumable at the present interest rate of 7 1/2%. The Deed of Trust does not contain any restriction with respect to assumption, nor does it provide for increase in the interest rate upon sale. Therefore, I believe there is a right to assume the loan at the current rate. However, we would be willing to pay a reasonable assumption fee.

Incidentally, I keep small personal accounts and this firm has one of its accounts at your Fairfax City branch. I have been dealing with Mr. Drummond and your previous branch manager for sometime and I would consider them as references.

As I mentioned in my previous letter, I would like to be informed of the principal balance which will exist after the May payment, as well as daily interest thereafter, and I will also need to know the escrow balance after the May payment.

Yours very truly,

Stephen L. Best

SLB/cdc  
Encl.

"EXHIBIT NO. 4"



United Virginia  
Bank

April 24, 1978

Mr. Stephen L. Best  
McCandlish, Lillard, Bauknight, Church & Best  
The Barbour House  
4069 Chain Bridge Road  
Fairfax, Virginia 22030

Dear Mr. Best:

In reference to your letter of March 31, 1978  
I am enclosing a copy of the Edward E. Firth  
deed of trust.

In my opinion item number 7 relates to the  
assumption of this loan. As previously stated we  
would be happy to consider an assumption of this  
loan but the rate would be 9 1/4%.

Very truly yours,

John W. Howard, Jr.  
Vice President

JWH:dp  
Enclosure

"EXHIBIT NO. 5"  
34105

THIS DEED, made and entered into this 31st day of <sup>May</sup> June, 1978, by and between EDWARD E. FIRTH and ANNA WESTWOOD FIRTH, his wife, parties of the first part; and STEPHEN L. BEST and LETTY SHEILD BEST, his wife, parties of the second part.

W-I-T-N-E-S-S-E-T-H:

That the parties of the first part, for and in consideration of the sum of Ten Dollars (\$10.00), the receipt of which is hereby acknowledged, do grant, bargain, sell, and convey, with GENERAL WARRANTY OF TITLE and with English Covenants of Title, unto the parties of the second part, as tenants by the entirety as hereinafter set forth, with all rights, ways, easements, and improvements thereunto belonging, that certain lot or parcel of land located in Fairfax County, Virginia, known and designated as

LOT No. THIRTY-SIX (36), in the subdivision of BRECON RIDGE, SECTION TWO, as the same is duly dedicated, platted and recorded in Deed Book 1594, Page 239 of the said land records.

And being the same property conveyed to the parties of the first part by deed recorded on September 25, 1972 in Deed Book 3700, Page 608 of said land records.

Reference is made to said deed, deed of dedication and plat for a more particular description of the said land hereby conveyed.

To have and to hold the said land unto the parties of the second part as tenants by the entirety with the common law right of survivorship, it being expressly understood and agreed that

the part of the one first dying shall pass and belong to the survivor in fee simple.

This conveyance is made subject to a note secured by a deed of trust recorded in Deed Book 3700, Page 609 of the land records of Fairfax County, Virginia, securing unto United Virginia Bank of Fairfax the payment of the original principal amount of \$66,800.00. By acceptance of this deed the parties of the second part agree to make payments on said note as they become due.

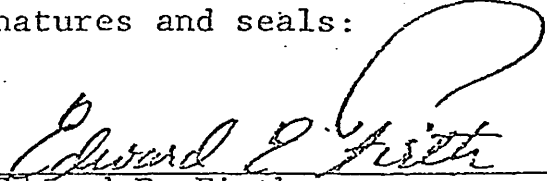
Tax Paid  
 Sec 53-54 228.75  
 Sec 53-65.1 2625  
 Sec 53-54.1 5600  
 Consideration 52,520

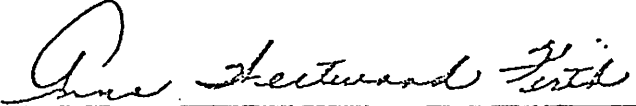
BOOK 4886 PAGE 118

-2-

The parties of the first part covenant that they have the right to convey the said land; that they have done no act to encumber the same; that the parties of the second part shall have quiet and peaceable possession thereof, free from defect or encumbrance except easements and restrictions of record; and that they will execute such other and further assurances thereof as may be requisite.

WITNESS the following signatures and seals:

  
 Edward E. Firth (SEAL)

  
 Anna Westwood Firth (SEAL)



Stephen L. Best (SEAL)  
Stephen L. Best

Letty Sheild Best (SEAL)  
Letty Sheild Best

STATE OF VIRGINIA

COUNTY OF FAIRFAX, to-wit:

I, George J. Fuller, a Notary Public in  
and for the County of Fairfax, State of Virginia, whose commission  
as such expires on the 24<sup>th</sup> day of June, 1979, do  
herēby certify that this day personally appeared before me, in my  
County and State aforesaid, EDWARD E. FIRTH and ANNA WESTWOOD FIRTH,  
his wife, whose names are signed to the foregoing and hereunto  
annexed deed bearing date of the 31<sup>st</sup> day of <sup>May</sup> June, 1978, and  
acknowledged the same before me.

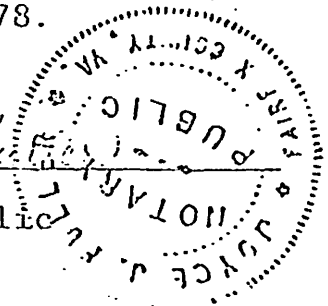
GIVEN under my hand this 31<sup>st</sup> day of <sup>May</sup> June, 1978.

This instrument with certificate annexed,  
admitted to record-Office of Circuit Court  
Fairfax County, Va. JUN 2 '1978 at 11:24 a.m.

Testo:

James E. Hoffmeyer Clerk

George J. Fuller  
Notary Public



"EXHIBIT NO. 6"

June 1, 1978

United Virginia Bank  
P. O. Box 179  
Alexandria, Virginia 22313

Re: Loan No. S9551-272  
4908 Prestwick Drive  
Fairfax, Virginia

Gentlemen:

Effective this date the above property has been conveyed from Edward E. Firth and Anna W. Firth to Stephen L. Best and Letty Sheild Best. Enclosed is a copy of the deed.

Also enclosed is a letter from the Firths to you assigning their escrow account to my wife and me. The property is insured through United Services Automobile Association in the amount of \$120,000.00, with a loss payable clause to your bank, and as soon as the policy and paid receipt for the policy are sent to me, I will forward them to you.

Finally, I am enclosing my check for \$670.90 representing the June payment. As I mentioned in a previous letter, we are unwilling to increase the interest rate on the loan, and as there are no restrictions upon assumption, we will continue making payments on the existing note.

Yours very truly,

Stephen L. Best

SLB:jf

Encl.

"EXHIBIT NO. 7"

May 31, 1978

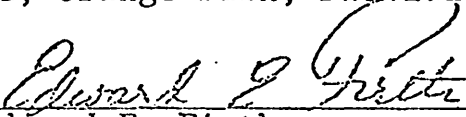
United Virginia Bank/National  
P. O. Box 179  
Alexandria, Virginia 22313

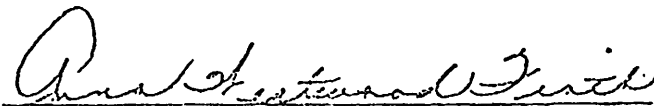
Re: Loan Number 603201, Edward E. Firth &  
Anna W. Firth, Lot 36 Brecon Ridge  
Subdivision, Section Two, 4908 Prestwick  
Drive, Fairfax, Virginia

Gentlemen:

We hereby assign irrevocably our escrow account for the  
above loan to Stephen L. Best and Letty Sheild Best.

Please cancel our existing insurance policy effective  
this date and have any refund mailed to us c/o Mrs. Katherine  
Holifield, 805 Plainfield Avenue, Orange Park, Florida 32073.

  
Edward E. Firth

  
Anna Westwood Firth

STEPHEN L. BEST LETTY SHEILD BEST 8317 CHIVALRY COURT ANNANDALE, VA. 22003		5191
PAY TO THE ORDER OF <u>United Virginia Bank</u>		<u>July 31</u> 19 <u>78</u> 68-3561 560
<u>Six hundred Seventy &amp; 90/100</u>		<u>\$670.90</u>
NBF The National Bank of Fairfax FAIRFAX, VIRGINIA 22030		DOLLARS
MEMO <u>Fifth Loan - Jan 2</u>	<u>Stephen L. Best</u>	
⑆0560⑆0356⑆1⑆010462 0⑆⑆		



"EXHIBIT NO. 9"



REGISTERED MAIL  
RETURN RECEIPT REQUESTED

United Virginia  
Bank

June 14, 1978

Mr. Stephen L. Best  
McCandlish, Lillard, Bauknight,  
Church & Best  
The Barbour House  
4069 Chain Bridge Road  
Fairfax, VA 22030

Dear Mr. Best:

In reference to our phone conversation of June 13, 1978  
I am returning the following items to you:

- 1) Your check payable to United Virginia Bank in  
the amount of \$670.90.
- 2) Deed between Edward E. Firth and Anna Westwood  
Firth, his wife, parties of the first part and  
Stephen L. Best and Letty Shield Best, his wife,  
parties of the second part
- 3) Assignment by Edward E. Firth and Anna  
Westwood Firth to Stephen L. Best and Letty  
Shield Best of their escrow account.

As previously stated paragraph 7 in the deed of trust  
states the property may not be assigned or transferred  
without prior approval of the noteholder.

To my knowledge this has not been done and as a result  
our records will show this property is still in the name of  
Edward E. Firth and Anna Westwood Firth and that they  
will be responsible for keeping the payments current.

Very truly yours,

John W. Howard, Jr.  
Vice President

JWH:dp

CC: Mr. & Mrs. Edward Firth

"EXHIBIT NO. 10"

June 20, 1978

John W. Howard, Jr., Vice President  
United Virginia Bank/National  
P. O. Box 1793  
Alexandria, Virginia 22313

Dear Mr. Howard:

I have your letter of June 14, 1978.

If I understand your letter correctly, you are not requiring that the loan be paid, only that the Firths remain primarily responsible for the payment of the loan. If you had agreed to the assumption of the loan, my wife and I would have become primarily liable and the Firths would be secondarily liable.

We have an obligation to the Firths to make the payments on the loan as they become due, and henceforth we will be making payments on their behalf. Therefore, I am returning the check for \$670.90, representing the June payment.

I am somewhat surprised that the bank continues to take this position with respect to the loan. The return and security on the loan have not been diminished in any way, and it certainly puts a strain on what had been very friendly and cooperative relations.

Yours very truly,

Stephen L. Best

SLB:jf

Encl.

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

"EXHIBIT NO. 11"



United Virginia  
Bank

REGISTERED MAIL  
RETURN RECEIPT REQUESTED

June 21, 1978

Mr. Stephen L. Best  
McCandlish, Lillard, Bauknight,  
Church & Best  
The Barbour House  
4069 Chain Bridge Road  
Fairfax, VA 22030

Dear Mr. Best:

I am again returning your check for \$670.90.

From a technical standpoint we have not asked that the Firths' loan be paid in full if you wished to assume the loan at 9 1/4% as previously stated.

The bank's position is you and your wife may assume the loan at 9 1/4% with a one point assumption fee or we will request payment in full from the Firths.

This commitment will be good until July 10, 1978.

Very truly yours,

*John W. Howard, Jr. (dp)*  
John W. Howard, Jr.  
Vice President

JWH:dp  
Enclosure

IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

STEPHEN L. BEST and  
LETTY SHEILD BEST,

Plaintiffs,

v.

UNITED VIRGINIA BANK/NATIONAL

AND

UNITED VIRGINIA MORTGAGE  
CORPORATION,

Defendants.

IN CHANCERY NO. 58379

ANSWER OF DEFENDANT, UNITED  
VIRGINIA BANK/NATIONAL

To the Honorable Judges of the Circuit Court of Fairfax County,  
Virginia:

The United Virginia Bank/National, by counsel, for answer to  
a Bill for Declaratory Judgment filed against it and United  
Virginia Mortgage Corporation, by Stephen L. Best and Letty  
Sheild Best, answers and says:

1. This Respondent admits the allegations of Paragraph 1 of  
the Bill for Declaratory Judgment with the exception that said  
deed therein referred to is recorded at page 606, rather than 608,  
as stated in said paragraph,

2. This Respondent admits the allegations of Paragraph 2 of  
the Bill for Declaratory Judgment with the exceptions that said  
deed of trust therein referred to is dated September 25, 1972,  
rather than August 22, 1972, as stated in said paragraph, and that  
the Trustees are George D. Hicks, Jr. and John H. Rust, rather  
than John A. Rust, as stated in said paragraph.



3. In response to Paragraph 3 of the Bill for Declaratory Judgment, this Respondent states that the present holder of the aforesaid note is United Virginia Bank/National, successor in interest to the United Virginia Bank of Fairfax; and, that United Virginia Mortgage Corporation is not a wholly-owned subsidiary of United Virginia Bank/National. United Virginia Mortgage Corporation services the mortgage loans of United Virginia Bank/National.

4. This Respondent denies the allegations of Paragraph 4 of the Bill for Declaratory Judgment, and, in support thereof states that the said deed of trust under Paragraph 7 thereof, and, the third unnumbered paragraph thereafter embody terms to provide for renegotiation of the terms of the loan as well as the right of acceleration. Such provisions were recognized by the Plaintiffs as being in effect when Stephen L. Best's letter of March 23, 1978, marked Exhibit No. 1, was transmitted to United Virginia Mortgage Corporation.

5. This Respondent admits the allegations of Paragraph 5 of the Bill for Declaratory Judgment with the exception that the quotation used is incorrect in that it omits, after the word "covenants" the words "and agrees".

6. This Respondent admits, in part, the allegations of Paragraph 6 of the Bill for Declaratory Judgment, in that a letter dated March 23, 1978, identified as Exhibit No. 1, was received by Mr. John W. Howard Jr., a Vice President of United Virginia Bank/National, to whose attention said letter was addressed. Said letter did not give notice of assumption of the Firth deed of trust but rather indicated that the Plaintiffs wanted to "take

over the payments on the loan" and requested a consent by the noteholder to a transfer. This Respondent neither admits nor denies the allegations contained in said paragraph regarding the contract of purchase or its terms, but if material, demands strict proof thereof.

7. This Respondent admits the allegations of Paragraph 7 of the Bill for Declaratory Judgment, with the exception that John W. Howard, Jr. is not an agent of United Virginia Mortgage Corporation, but is an officer and consequently an agent of United Virginia Bank/National.

8. This Respondent admits the allegations of Paragraph 8 of the Bill for Declaratory Judgment.

9. This Respondent admits the allegations of Paragraph 9 of the Bill for Declaratory Judgment.

10. This Respondent neither admits nor denies the allegations of Paragraph 10 of the Bill for Declaratory Judgment but if material, demands strict proof thereof. Attention is invited to the fact that the deed affixed as Exhibit No. 5 is not a certified copy of a recorded document but if, in fact, this is the recorded instrument conveying the property which is the security for the Defendant Bank's deed of trust note, attention is invited to the fact that this deed violates the terms of the deed of trust referred to in Paragraph 2 of the Bill for Declaratory Judgment and caused the principal and interest outstanding under the terms of the deed of trust note to immediately become due and payable. Said deed does not provide for the assumption of the Bank deed of trust note but the Plaintiffs "agree to make payments on said

PRATT, 4009 CHAIN BRIDGE ROAD, P.O. BOX 537, FAIRFAX, VIRGINIA 22030

RUST, RUST &  
ROAD, P.O. BOX 537, FAIRFAX, VIRGINIA 22030

note as they become due."

11. This Respondent admits that the letter marked Exhibit No. 6 was received by it but invites attention to the fact that said letter is not addressed to either Defendant in this case but to the Richmond, Virginia affiliate of United Virginia Bankshares, Inc. to which bank the check referred to was made payable.

12. This Respondent admits the allegations of Paragraph 12 of the Bill for Declaratory Judgment.

13. This Respondent admits the allegations of Paragraph 13 of the Bill for Declaratory Judgment.

14. This Respondent admits the allegations of Paragraph 14 of the Bill for Declaratory Judgment. It should be noted that the letter of June 21, 1978, marked Exhibit No. 11, indicated that from a technical standpoint the Defendant Bank had not asked that the Firths' loan be paid in full, as it had a right to do, if the Plaintiffs wished to assume the deed of trust loan at the interest rate stated and pay the required assumption fee. The Plaintiffs were given until July 10, 1978 to accept this commitment. However, on July 3, 1978 the instant suit was filed, and the Defendant Bank notified its borrowers, Edward R. Firth and Anna Westwood Firth that the balance of the loan is now due in full. Said notice was sent July 12, 1978.

15. This Respondent neither admits nor denies the allegations of Paragraph 15 of the Bill for Declaratory Judgment but, if material, demands strict proof thereof. It is admitted that the checks sent by Stephen L. Best to the Defendant Bank and the United Virginia Bank have not been accepted since the Defendant

Bank has no banking relation with Stephen L. Best and Letty Sheild Best in connection with the aforesaid real estate which is the subject matter of this suit.

16. This Respondent neither admits nor denies the allegations of Paragraph 16 of the Bill for Declaratory Judgment, but, if material, demands strict proof thereof.

17. This Respondent denies each and every allegation contained in Paragraph 17 of the Bill for Declaratory Judgment. This Respondent does not believe the opinion expressed by Plaintiffs in this paragraph is a valid allegation of fact but has been inserted in the Bill for argumentative purposes and therefore requires no answer.

18. This Respondent denies the allegations contained in Paragraph 18 of the Bill for Declaratory Judgment.

19. By way of affirmative defense, this Respondent affirmatively alleges that the Bill for Declaratory Judgment fails to state a cause of action upon which relief can be granted upon the following grounds:

- a) That the Defendant Bank has breached  
no duty which it owes to the plaintiffs.
- b) That the Defendant Bank has at all times  
acted in good faith and within its contractual rights.
- c) That this Court lacks jurisdiction to  
hear the Bill for Declaratory Judgment,  
as there is no actual controversy between  
the parties.

d) That this suit cannot be maintained by the Plaintiffs since they are not parties in whom the legal interest in the deed of trust contract is vested and therefore have no privity of contract with the Defendant Bank.

e) That the allegations contained in the Bill for Declaratory Judgment are not sufficient to permit relief which the Plaintiffs seek to be granted.

WHEREFORE, this Respondent prays that, having fully answered the Bill for Declaratory Judgment heretofore filed against it, it may be dismissed with its costs in this behalf expended.

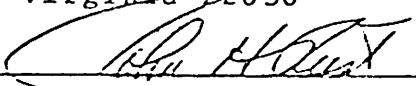
UNITED VIRGINIA BANK/NATIONAL

By

  
Of Counsel

RUST, RUST & PRATT  
4009 Chain Bridge Road  
P. O. Box 537  
Fairfax, Virginia 22030

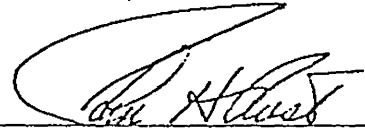
By

  
Of Counsel for United Virginia Bank/National

I hereby certify that on the 19th day of July, 1978, I mailed, postage prepaid, a true copy of the foregoing Answer and Affirmative Defense to Richard B. Chess, Jr., Esquire, Chess, Durette & Roeder, 3900 University Drive, Suite 300,

Fairfax, Virginia 22030.

RUBT, RUBT & PRATT, 4009 CHAIN BRIDGE ROAD, P.O. BOX 537, FAIRFAX, VIRGINIA 22030



Of Counsel

IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

STEPHEN L. BEST and  
LETTY SHEILD BEST,

Plaintiffs,

v.

UNITED VIRGINIA BANK/NATIONAL

and

UNITED VIRGINIA MORTGAGE  
CORPORATION,

Defendants.

IN CHANCERY No. 58379

ANSWER OF DEFENDANT,  
UNITED VIRGINIA MORTGAGE  
CORPORATION

To the Honorable Judges of the Circuit Court of Fairfax County,  
Virginia:

The United Virginia Mortgage Corporation, by counsel, for  
answer to a Bill for Declaratory Judgment filed against it and  
United Virginia Bank/National, by Stephen L. Best and Letty  
Sheild Best, answers and says:

1. This Respondent admits the allegations of Paragraph 1 of  
the Bill for Declaratory Judgment with the exception that said  
deed therein referred to is recorded at page 606, rather than 608,  
as stated in said paragraph.

2. This Respondent admits the allegations of Paragraph 2 of  
the Bill of Declaratory Judgment with the exceptions that said  
deed of trust therein referred to is dated September 25, 1972,  
rather than August 22, 1972, as stated in said paragraph, and that  
the Trustees are George D. Hicks, Jr. and John H. Rust, rather  
than John A. Rust, as stated in said paragraph.

3. In response to Paragraph 3 of the Bill for Declaratory

Judgment, this Respondent states that the present holder of the aforesaid note is United Virginia Bank/National, successor in interest to the United Virginia Bank of Fairfax; and, that United Virginia Mortgage Corporation is not a wholly-owned subsidiary of United Virginia Bank/National. United Virginia Mortgage Corporation services the mortgage loans of United Virginia Bank/National.

4. This Respondent denies the allegations of Paragraph 4 of the Bill for Declaratory Judgment, and, in support thereof states that the said deed of trust under Paragraph 7 thereof, and, the third unnumbered paragraph thereafter embody terms to provide for renegotiation of the terms of the loan as well as the right of acceleration. Such provisions were recognized by the Plaintiffs as being in effect when Stephen L. Best's letter of March 23, 1978, marked Exhibit No. 1, was transmitted to United Virginia Mortgage Corporation.

5. This Respondent admits the allegations of Paragraph 5 of the Bill for Declaratory Judgment with the exception that the quotation used is incorrect in that it omits, after the word "covenants" the words "and agrees".

6. This Respondent admits, in part, the allegations of Paragraph 6 of the Bill for Declaratory Judgment, in that a letter dated March 23, 1978, identified as Exhibit No. 1, was received by Mr. John W. Howard, Jr., a Vice President of United Virginia Bank/National, to whose attention said letter was addressed. Said letter did not give notice of assumption of the Fifth deed of trust but rather indicated that the Plaintiffs wanted to "take



over the payments on the loan" and requested a consent by the noteholder to a transfer. This Respondent neither admits nor denies the allegations contained in said paragraph regarding the contract of purchase or its terms, but, if material, demands strict proof thereof.

7. This Respondent neither admits nor denies the allegations of Paragraph 7 of the Bill for Declaratory Judgment, but, if material, demands strict proof thereof, with the exception that John W. Howard, Jr. is not an agent of United Virginia Mortgage Corporation, but is an officer and consequently an agent of United Virginia Bank/National.

8. This Respondent neither admits nor denies the allegations of Paragraph 8 of the Bill for Declaratory Judgment, but, if material, demands strict proof thereof.

9. This Respondent neither admits nor denies the allegations of Paragraph 9 of the Bill for Declaratory Judgment, but, if material, demands strict proof thereof.

10. The Respondent neither admits nor denies the allegations of Paragraph 10 of the Bill for Declaratory Judgment, but, if material, demands strict proof thereof. Attention is invited to the fact that the deed affixed as Exhibit No. 5 is not a certified copy of a recorded document but if, in fact, this is the recorded instrument conveying the property which is the security for the Defendant Bank's deed of trust note, attention is invited to the fact that this deed violates the terms of the deed of trust referred to in Paragraph 2 of the Bill for Declaratory Judgment and caused the principal and interest outstanding under the terms

of the deed of trust note to immediately become due and payable. Said deed does not provide for the assumption of the Bank deed of trust note but the Plaintiffs "agree to make payments on said note as they become due."

11. This Respondent neither admits nor denies the allegations of Paragraph 11 of the Bill for Declaratory Judgment, but, if material, demands strict proof thereof, but invites attention to the fact that the letter marked Exhibit No. 6 is not addressed to either Defendant in this case but to the Richmond, Virginia affiliate of United Virginia Bankshares, Inc. to which bank the check referred to was made payable.

12. This Respondent neither admits nor denies the allegations of Paragraph 12 of the Bill for Declaratory Judgment, but, if material, demands strict proof thereof.

13. This Respondent neither admits nor denies the allegations of Paragraph 13 of the Bill for Declaratory Judgment, but, if material, demands strict proof thereof.

14. This Respondent neither admits nor denies the allegations of Paragraph 14 of the Bill for Declaratory Judgment, but, if material, demands strict proof thereof.

15. This Respondent neither admits nor denies the allegations of Paragraph 15 of the Bill for Declaratory Judgment, but, if material, demands strict proof thereof.

16. This Respondent neither admits nor denies the allegations of Paragraph 16 of the Bill for Declaratory Judgment, but, if material, demands strict proof thereof.

17. This Respondent denies each and every allegation contained

in Paragraph 17 of the Bill for Declaratory Judgment. This Respondent believes and therefore alleges that a "due on sale" acceleration clause does not constitute an unreasonable and arbitrary restraint upon alienation and is enforceable.

18. This Respondent neither admits nor denies the allegations contained in Paragraph 18 of the Bill for Declaratory Judgment, but, if material, demands strict proof thereof.

19. By way of affirmative defense, this Respondent affirmatively alleges that the Bill for Declaratory Judgment fails to state a cause of action upon which relief can be granted upon the following grounds:

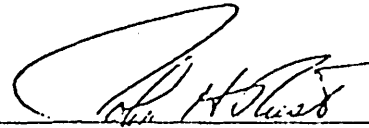
- a) That the Defendant Mortgage Corporation has breached no duty which it owes to the Plaintiffs.
- b) That a "due on sale" acceleration clause does not constitute an unreasonable and arbitrary restraint upon alienation and is enforceable.
- c) That this Court lacks jurisdiction to hear the Bill for Declaratory Judgment, as there is no actual controversy between the parties.
- d) That this suit cannot be maintained by the Plaintiffs since they are not parties in whom the legal interest in the deed of trust contract is vested and therefore have no privity of contract with the Defendant Bank or Mortgage Corporation.
- e) That the allegations contained in the Bill

for Declaratory Judgment are not sufficient  
to permit relief which the Plaintiffs seek  
to be granted.

WHEREFORE, this Respondent prays that, having fully answered  
the Bill for Declaratory Judgment heretofore filed against it, it  
may be dismissed with its costs in this behalf expended.

UNITED VIRGINIA MORTGAGE CORPORATION

By



Of Counsel.

RUST, RUST & PRATT  
4009 Chain Bridge Road  
P. O. Box 537  
Fairfax, Virginia 22030

By



Of Counsel for United Virginia  
Mortgage Corporation

I hereby certify that on the 26th day of July, 1978, I  
mailed, postage prepaid, a true copy of the foregoing Answer and  
Affirmative Defense to Richard B. Chess, Jr., Esquire, Chess,  
Durette & Roeder, Counsel for the Plaintiffs, 3900 University  
Drive, Suite 300, Fairfax, Virginia 22030.



Of Counsel

IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

STEPHEN L. BEST and  
LETTY SHEILD BEST,

Plaintiffs,

v.

UNITED VIRGINIA BANK/NATIONAL

and

UNITED VIRGINIA MORTGAGE  
CORPORATION,

Defendants.

IN CHANCERY No. 58379

DECREE

This cause came on to be heard this 12th day of December, 1978, upon the motion of Edward E. Firth and Anna Westwood Firth to be added as parties plaintiff for the sole purpose of determining whether they had the right to assign or transfer the property in question to Stephen L. Best and Letty Sheild Best without the prior approval of the noteholder.

And it appearing to the Court that the parties hereto do not object to the addition of Edward E. Firth and Anna Westwood Firth as parties plaintiff.

And it further appearing to the Court that Edward E. Firth and Anna Westwood Firth take the position that they had the right to assign or transfer the property in question without the prior approval of the noteholder and that the defendants take the position that the Firths covenanted and agreed not to transfer the property secured by the deed of trust without the prior approval of the noteholder, and by making such transfer to the Bests, with-

out such prior approval, caused the indebtedness to become immediately due and payable.

And it further appearing to the Court that in light of the foregoing it shall not be necessary for the Firths or the defendants to file further pleadings with respect to this cause.

UPON CONSIDERATION WHEREOF, it is, therefore, ADJUDGED, ORDERED and DECREED that Edward E. Firth and Anna Westwood Firth be, and they hereby are, added as parties plaintiff to this cause.

AND THIS CAUSE IS CONTINUED.

ENTER: December 12, 1978

Date: December 12, 1978 /s/ Richard J. Jamborsky  
Judge

WE ASK FOR THIS:

CHESS, DURRETTE & ROEDER  
3900 University Drive  
Suite 300  
Fairfax, Virginia 22030

By: /s/ \_\_\_\_\_  
Of Counsel for the Plaintiffs  
and Edward E. Firth and Anna  
Westwood Firth

SEEN AND AGREED:

RUST, RUST & PRATT  
4009 Chain Bridge Road  
P.O. Box 537  
Fairfax, Virginia 22030

By:  \_\_\_\_\_  
Of Counsel for the Defendants



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

COUNTY OF FAIRFAX

CITY OF FAIRFAX

CITY OF FALLS CHURCH

BARNARD F. JENNINGS  
JAMES KEITH  
WILLIAM G. PLUMMER  
LEWIS D. MORRIS  
BURCH MILLSAP  
JAMES C. CACHERIS  
THOMAS J. MIDDLETON  
RICHARD J. JAMBORSKY  
JUDGES

FAIRFAX COUNTY COURTHOUSE  
4000 CHAIN BRIDGE ROAD  
FAIRFAX, VIRGINIA 22030

February 6, 1979

Richard B. Chess, Jr., Esq.  
CHESS, DURRETTE & ROEDER  
3900 University Drive  
Suite 300  
Fairfax, Virginia 22030

Joseph V. Buonassissi, II, Esq.  
RUST, RUST & PRATT  
4009 Chain Bridge Road  
P. O. Box 537  
Fairfax, VA 22030

Re: Stephen L. Best, et al. vs.  
United Virginia Bank/National, et al.  
In Chancery No. 58379

Gentlemen:

Enclosed is a draft of an order which I intend to enter Friday morning. Please drop by chambers and endorse with exceptions prior to Friday.

Mr. Buonassissi's draft order substantially reflects my ruling, but his draft requires some modifications and clarification.

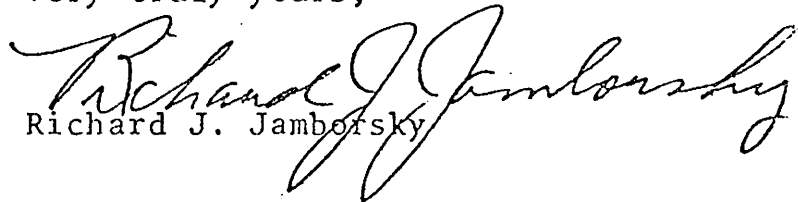
My ruling on the merits did not and was not intended to apply retroactively Sec. 6.1-330.34, 1950 Code of Virginia, as amended, to the Deed of Trust in question. Rather, my reference to that Code section was my attempt at indicating my acceptance of plaintiffs' oral argument on the point and which is succinctly stated in plaintiffs' memorandum, page 8:

Although a statute is not automatically retroactive, it is submitted that where it deals

with a subject which has not been previously codified or previously decided judicially, it should carry great weight, as the State Legislature is supposed to reflect the wishes and best interests of its citizens. Those interests were no different in 1972, when this deed of trust was made.

The language in the deed of trust was completely contrary to the requirements which the Legislature considers to be fair to both the borrower and the lender.

Very truly yours,

  
Richard J. Jamborsky

RJJ:jah



V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

STEPHEN L. BEST, et al.,

Plaintiffs,

vs.

UNITED VIRGINIA BANK/NATIONAL,  
et al.,

Defendants.

IN CHANCERY NO. 58379

FINAL DECREE

This cause came on to be heard on the 12th day of December, 1978, upon the papers formerly filed herein, evidence taken ore tenus, memoranda of law submitted by counsel for the parties and argument of counsel.

And it appearing to the Court that on September 25, 1972, the plaintiffs Edward E. Firth and Anna Westwood Firth conveyed certain property to George D. Hicks, Jr. and John H. Rust, Trustees, by deed of trust recorded in Deed Book No. 3700, page 609 of the land records of Fairfax County, Virginia, to secure unto United Virginia Bank of Fairfax, predecessor-in-interest to the defendant United Virginia Bank/National, the payment of a promissory note, dated September 25, 1972, in the sum of \$66,800.00, with interest thereon from date at the rate of 7.5 per cent per annum.

And it further appearing to the Court from the Deed of Trust that "in order more fully to protect the security of the Deed of Trust" paragraph 7 of the Deed of Trust provides in part that "The maker of the note covenants and agrees that he will not

assign or transfer the property secured by this deed of trust without prior approval of the noteholder," and that the deed of trust further provides that "Should there be a failure to keep and perform the aforesaid covenants, or any of them, ...then the indebtedness hereby secured, both principal and interest, shall immediately become due and payable...."

And it further appearing to the Court that on March 23, 1978, the plaintiff Stephen L. Best requested the consent of the defendant to the conveyance of the property by the plaintiffs Edward E. Firth and Anna Westwood Firth to the plaintiffs Stephen L. Best and Letty Sheild Best, who desired to take over the payment of the note secured by the deed of trust.

And it further appearing to the Court that on March 29, 1978, the defendant United Virginia Bank/National advised the plaintiff Stephen L. Best that it would consider the assumption of the "real estate loan" secured by the deed of trust but that it would not be assumable at an interest rate of 7.5 per cent.

And it further appearing to the Court that on May 31, 1978, the plaintiffs Edward E. Firth and Anna Westwood Firth, without the prior approval of the noteholder, conveyed the property to the plaintiffs Stephen L. Best and Letty Sheild Best by deed recorded in Deed Book No. 4886, page 177 of the land records of Fairfax County, Virginia, the conveyance being made subject to the promissory note.

And it further appearing to the Court that the aforesaid clauses of the deed of trust constitute a restraint on alienation, to which finding the defendants United Virginia Bank/National

and United Virginia Mortgage Corporation, by counsel, note their exceptions on the grounds that the same is contrary to the law and the evidence presented in the above-styled matter.

And it further appearing to the Court that the restraint on alienation is unreasonable because the defendant United Virginia Bank/National has failed to show that the enforcement of the aforesaid clauses of the said deed of trust was necessary to protect its security, to which finding the defendants United Virginia Bank/National and United Virginia Mortgage Corporation, by counsel, note their exceptions on the grounds that the same is contrary to the law and the evidence presented in the above-styled matter.

And it further appearing to the Court that the plaintiffs Stephen L. Best and Letty Sheild Best were willing and wanted to assume the obligation to pay the note secured by the deed of trust, to which finding the defendants United Virginia Bank/National and United Virginia Mortgage Corporation, by counsel, note their exceptions on the grounds that the same is contrary to the law and the evidence presented in the above-styled matter.

And it further appearing to the Court that the sole reason for the defendant United Virginia Bank/National's refusal to approve transfer of ownership and assumption of the note was to obtain an increase in the rate of interest and a one per cent transfer fee, to which finding the defendants United Virginia Bank/National and United Virginia Mortgage Corporation, by counsel, note their exceptions on the grounds that the same is contrary to the law and the evidence presented in the above-

styled matter.

And it further appearing to the Court that Virginia is a deed of trust State, and that if defendant United Virginia Bank/National wanted to reserve the right to increase the interest rate, the provision could have been specifically stated in the deed of trust, and that the parties thereto could have contracted for such a provision and that their failure to do so leads the Court to conclude that the plaintiffs are entitled to the relief prayed for, to which finding the defendants United Virginia Bank/National and United Virginia Mortgage Corporation, by counsel, note their exceptions on the grounds that the same is contrary to the law and the evidence presented in the above-styled matter.

And it further appearing to the Court that the aforesaid findings are limited to the narrow facts of this case and the deed of trust in this case.

UPON CONSIDERATION WHEREOF, it is, therefore, ADJUDGED, ORDERED and DECREED that the aforesaid provisions of the deed of trust recorded in Deed Book No. 3700, page 609 of the land records of Fairfax County, Virginia, constitute a restraint on alienation.

And it is further ADJUDGED, ORDERED and DECREED that the restraint on alienation is unreasonable because the defendant United Virginia Bank/National has failed to show that enforcement of the aforesaid clauses of the said deed of trust was necessary to protect its security.

And it is further ADJUDGED, ORDERED and DECREED that Edward E. Firth and Anna Westwood Firth had the right to convey ownership of their property to Stephen L. Best and Letty Sheild Best upon

the conditions as set forth in the deed from the Firths to the Bests, and that United Virginia Bank/National is obligated to accept payments on the note from the Bests in accordance with its terms, without any increase in the interest rate and without the payment of a one percent fee.

And it is further ADJUDGED, ORDERED and DECREED that the transcript of the hearing before this Court is directed to be made a part of the record in the above-styled matter, provided the transcript is filed in the office of the Clerk of this Court within 60 days of the entry of this Final Decree.

AND THIS DECREE IS FINAL.

ENTER: February 22, 1979

Date: February 22, 1979      /s/ Richard J. Jamborsky  
Judge

SEEN AND EXCEPTIONS NOTED:

CHESS, DURRETTE & ROEDER  
3900 University Drive  
Suite 300  
Fairfax, Virginia 22030

By: /s/  
Of Counsel for the Plaintiffs

SEEN AND EXCEPTIONS NOTED:

RUST, RUST & PRATT  
4009 Chain Bridge Road  
P. O. Box 537  
Fairfax, Virginia 22030

By: /s/ Joseph V. Buonassissi II  
Of Counsel for the Defendants

[PROPOSED FINAL DECREE REFUSED BY TRIAL COURT]

IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

STEPHEN L. BEST, et al.,	)	
	)	
Plaintiffs,	)	
	)	IN CHANCERY No. 58379
v.	)	
	)	FINAL DECREE
UNITED VIRGINIA BANK/NATIONAL,	)	
et al.,	)	
	)	
Defendants.	)	

This cause came on to be heard on the 12th day of December, 1978, upon the papers formerly filed herein, evidence taken ore tenus, memoranda of law submitted by counsel for the parties hereto, and argument of counsel.

And it appearing to the Court that on September 25, 1972, the plaintiffs Edward E. Firth and Anna Westwood Firth conveyed certain property to George D. Hicks, Jr. and John H. Rust, Trustees, by deed of trust recorded in Deed Book No. 3700, page 609 of the land records of Fairfax County, Virginia, to secure unto United Virginia Bank of Fairfax, predecessor-in-interest to the defendant United Virginia Bank/National, the payment of a promissory note, dated September 25, 1972, in the sum of \$66,800.00, with interest thereon from date at the rate of 7.5 per cent per annum.

And it further appearing to the Court that paragraph 7 of the said deed of trust provides in part that "The maker of the note covenants and agrees that he will not assign or transfer the property secured by this deed of trust without prior approval

of the noteholder," and that said deed of trust further provides that "Should there be a failure to keep and perform the aforesaid covenants, or any of them, ... then the indebtedness hereby secured, both principal and interest, shall immediately become due and payable...."

And it further appearing to the Court that on March 23, 1978, the plaintiff Stephen L. Best requested the consent of the defendant to the conveyance of said property by the plaintiffs Edward E. Firth and Anna Westwood Firth to the plaintiffs Stephen L. Best and Letty Sheild Best, who desired to take over the payment of said deed of trust.

And it further appearing to the Court that on March 29, 1978, the defendant United Virginia Bank/National advised the plaintiff Stephen L. Best that it would consider the assumption of the aforesaid deed of trust but that it would not be assumable at an interest rate of 7.5 per cent.

And it further appearing to the Court that on May 31, 1978, the plaintiffs Edward E. Firth and Anna Westwood Firth, without the prior approval of the noteholder, conveyed the aforesaid property to the plaintiffs Stephen L. Best and Letty Sheild Best by deed recorded in Deed Book No. 4886, page 177 of the land records of Fairfax County, Virginia, said conveyance being made subject to the aforesaid promissory note.

And it further appearing to the Court that the aforesaid clauses of the said deed of trust constitute a restraint on alienation, to which finding the defendants United Virginia Bank/National and United Virginia Mortgage Corporation, by counsel, note their exceptions on the grounds that the same is contrary

to the law and the evidence presented in the above-styled matter.

And it further appearing to the Court that the said restraint on alienation is unreasonable because the defendant United Virginia Bank/National has failed to show that the enforcement of the aforesaid clauses of the said deed of trust was necessary to protect its security, to which finding the defendants United Virginia Bank/National and United Virginia Mortgage Corporation, by counsel, note their exceptions on the grounds that the same is contrary to the law and the evidence presented in the above-styled matter.

And it further appearing to the Court that the plaintiffs Stephen L. Best and Letty Sheild Best were willing and wanted to assume the deed of trust in question, to which finding the defendants United Virginia Bank/National and United Virginia Mortgage Corporation, by counsel, note their exceptions on the grounds that the same is contrary to the law and the evidence presented in the above-styled matter.

And it further appearing to the Court that the sole reason for the defendant United Virginia Bank/National exercising the aforesaid clauses in the said deed of trust was to obtain an increase in the rate of interest, to which finding the defendants United Virginia Bank/National and United Virginia Mortgage Corporation, by counsel, note their exceptions on the grounds that the same is contrary to the law and the evidence presented in the above-styled matter.

And it further appearing to the Court that because of the provisions of section 6.1-330.34 of the 1950 Code of Virginia,



as amended, and because Virginia is a deed of trust State, this matter could have been specifically stated in the said deed of trust, and that the parties could have contracted, and that their failure to do so leads the Court to conclude that the plaintiffs are entitled to the relief prayed for in paragraphs two and three in the Bill for Declaratory Judgment, to which finding the defendants United Virginia Bank/National and United Virginia Mortgage Corporation, by counsel, note their exceptions on the grounds that the same is contrary to the law and the evidence presented in the above-styled matter.

And it further appearing to the Court that the aforesaid findings are limited to the narrow facts of this case and the deed of trust in this case.

UPON CONSIDERATION WHEREOF, it is, therefore, ADJUDGED, ORDERED and DECREED that the aforesaid provisions of the deed of trust recorded in Deed Book No. 3700, page 609 of the land records of Fairfax County, Virginia, constitute a restraint on alienation.

And it is further ADJUDGED, ORDERED and DECREED that the said restraint on alienation is unreasonable because the defendant United Virginia Bank/National has failed to show that enforcement of the aforesaid clauses of the said deed of trust was necessary to protect its security.

And because of the provisions of section 6.1-330.34 of the 1950 Code of Virginia, as amended, and because Virginia is a deed of trust State, this matter could have been specifically stated in the said deed of trust, and the parties could have contracted, and they failed to do so, it is further ADJUDGED, ORDERED and

DECREED that the plaintiffs be, and they hereby are, granted the relief prayed for in paragraphs two and three of the Bill for Declaratory Judgment.

And it is further ADJUDGED, ORDERED and DECREED that the transcript of the hearing before this Court is directed to be made a part of the record in the above-styled matter, provided the same is filed in the office of the Clerk of this Court within 60 days of the entry of this Final Decree.

AND THIS DECREE IS FINAL.

ENTER:

Date: \_\_\_\_\_  
Judge

WE ASK FOR THIS:

CHESS, DURRETTE & ROEDER  
3900 University Drive  
Suite 300  
Fairfax, Virginia 22030

By: \_\_\_\_\_  
Of Counsel for the Plaintiffs

SEEN AND EXCEPTIONS NOTED:

RUST, RUST & PRATT  
4009 Chain Bridge Road  
P.O. Box 537  
Fairfax, Virginia 22030

By: \_\_\_\_\_  
Of Counsel for the Defendants

1 THE CLERK: Your Honor, I believe Mr. Best  
2 has to be sworn.

3 (Witness sworn.)

4 Thereupon,

5 STEPHEN L. BEST,

6 a witness, was called for examination by counsel for the  
7 Plaintiffs, and, having been duly sworn, was examined and  
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. CHESS:

11 Q Would you state your full name please?

12 A Stephen L. Best.

13 Q Mr. Best, directing your attention to March of  
14 1978, did there come a time when you and Mrs. Best entered  
15 into a contract to purchase a home in Breckenridge Sub-  
16 division?

17 A Yes, there was.

18 Q And was it agreed between you and the seller  
19 that you and your firm would handle the settlement on this  
20 particular property?

21 A Yes.

22 Q Pursuant to preparing this case for settlement,  
23 did you have occasion to contact United Virginia Bank?

1           A     Yes, I did.

2           Q     Would you describe that contact to the Court?

3           A     Well, I called -- I believe I wrote initially  
4 to Mr. Howard at the Bank stating that we would want to  
5 take over the payments and assumed there was no -- and that  
6 there was no restriction on assumption, and requested that  
7 he send me the assumption figures.

8                     He had replied, prior to settlement, that they'd  
9 be happy to consider an assumption; that is, the Bank would,  
10 but not at the present interest rate.

11                    I wrote him back later saying that I believed  
12 there was a right to assume the loan at the current rate  
13 and offered to furnish him any financial data that would  
14 establish our ability to make the payments.

15                    In the previous letter I had also -- excuse me --  
16 had requested approval of the transfer since the Deed of  
17 Trust did contain a clause which stated that the property  
18 could not be transferred without the approval of the note  
19 holder.

20                    In response -- to my second letter, Mr. Howard  
21 had again stated he'd be happy to consider an assumption,  
22 but the rate would be nine and a quarter percent. In  
23 addition to those two letters, I had at least one conversation

1 by phone with Mr. Howard in which we discussed the  
2 provisions of the Deed of Trust, and I stated that I  
3 felt we had the right to assume and he said he felt those  
4 provisions would not allow us to assume unless they agreed  
5 upon their terms -- unless we agreed upon their terms.

6 Q Did the Bank, through its agent Mr. Howard,  
7 ever send you an application to take over or to assume  
8 this particular mortgage?

9 A Yes, Mr. Howard sent me an application and I  
10 filled it out and returned it to him.

11 Q Did you ever hear any complaint from the Bank  
12 concerning the form of your application?

13 A No.

14 Q Or the information contained therein?

15 A No, I did not.

16 Q Was it ever brought to your attention by Mr.  
17 Howard, or any other representative at the Bank, that  
18 the security of their loan was being threatened or impaired  
19 in any fashion by your request to assume the loan?

20 A No, it was not.

21 Q Did you prepare the Deed of Conveyance in this  
22 transaction?

23 A Yes, I did.

## [DIRECT EXAMINATION OF STEPHEN L. BEST, CONTINUED]

Q Did the lender, through its agent Mr. Howard, or any other agent of the lender, ever state to you that they would not issue their consent to the sale or transfer of this property?

A Before the transfer?

Q Before the settlement.

A No.

Q Subsequent to the settlement, did you advise the lender that settlement had occurred?

A Yes, I did.

Q Did you forward to him a copy of the Deed?

A Yes, I did.

Q Are the papers transmitted at this time?

A Yes, I'm just looking at what I did transfer.

Yes, I sent -- well, twice before I had asked for assumption figures and received no response to my request. And I was not -- the only response that I had

1 received was that they would consider an assumption, not  
2 that they would agree to an assumption. So I finally  
3 settled on June 1, and I sent a copy of the Deed to him,  
4 and letter assigning the Firth Escrow Account to my wife  
5 and myself, and a check for the June payment.

6 Q Were these items subsequently returned?

7 A Yes, they were.

8 Q Did the Bank, through its agent Mr. Howard, or  
9 any other agent, ever advise you that they objected to  
10 the form of your Deed?

11 A No. The objection was only to the fact that  
12 they would agree to let me assume at the present interest  
13 rate, and without a payment of one point.

14 Q At the time of settlement, and subsequent thereto,  
15 have you been ready, willing and able to pay all monthly  
16 payments in connection with this Deed of Trust?

17 A Yes, I have. In fact, I did submit several  
18 checks which were never cashed; that is, for the monthly  
19 payments.

20 MR. CHESS: I have no further questions.

21 CROSS EXAMINATION

22 BY MR. BUONASSISSI:

23 Q Mr. Best, when did you first become aware that the

1 property you were taking from the Firths was secured by a  
2 Deed of Trust in favor of the Bank?

3 A Before I signed the contract.

4 Q So before you had entered into your Agreement  
5 with the Firths, you had examined the land records and had  
6 come upon the Deed of Trust in favor of the Bank?

7 A Yes.

8 Q Did you examine the Deed of Trust?

9 A Yes, I did.

10 Q And you were aware of all the provisions contained  
11 in the Deed of Trust?

12 A Yes, I was.

13 Q Did the Bank ever grant its consent, either to  
14 the Firths or yourself, that the property secured by the  
15 Deed of Trust could be conveyed?

16 A No; you mean a conditional consent or any --

17 Q No, sir, that they did consent -- that the note  
18 holder consented to the transfer of the property secured  
19 by the Deed of Trust.

20 A I believe that following settlement -- about  
21 three or four weeks, the Bank -- Mr. Howard informed me  
22 that they would consent if we would agree to -- to pay --  
23 to increase the interest rate to nine and a quarter percent,



1 and to pay one point.

2 Q And was that done?

3 A That was the first response I ever had; that  
4 was not done.

5 Q So the property secured by the Deed of Trust  
6 was conveyed to you, and you accepted it in advance  
7 without the consent of the note holder?

8 A That's correct.

9 As I say, he neither consented -- he neither  
10 approved or disapproved.

11 Q Now, you stated in response to a question from  
12 Mr. Chess that you had no correspondence or contact with  
13 the Bank concerning the interest rate being requested be  
14 increased until after settlement; is that correct?

15 A I had correspondence. The correspondence was  
16 that they would -- the Bank would consider an assumption  
17 at higher interest rate.

18 Q Mr. Best, I call your attention to Exhibit No. 4  
19 which has been attached to the Bill for Declaratory Judgment,  
20 and is it not a fact that Mr. Howard is advising you that  
21 the Bank would consider an assumption, but that the rate of  
22 interest would be nine and a quarter percent?

23 A I believe that's what I said -- the Bank would

1 consider it.

2 Q And you were advised that it would be an increased  
3 interest rate of nine and a quarter?

4 A That's right.

5 Q What was the purchase price of the property?

6 A It was \$152,500.

7 Q And, in what manner was payment made of this  
8 purchase price?

9 A The Firths took back a second trust for \$30,000,  
10 and the difference between the outstanding balance of the  
11 first Deed of Trust was paid in cash.

12 Q Do you recall how much that was?

13 A The approximate balance was \$60,000, but I don't  
14 know the exact amount.

15 Q And you provided approximately \$60,000 in cash?

16 A Yes.

17 Q Has the Bank taken any action whatsoever to have  
18 the conveyance from the Firths to you set aside, or other-  
19 wise declared invalid?

20 A The Bank said that it would take action on it  
21 if I did not agree to the increased rate within a certain  
22 period of time.

23 Q No, the question, Mr. Best, was: Have they taken

any action to have the conveyance set aside?

A No, I took the action before they did.

Q Thank you, sir.

You indicated that just recently the Bank indicated they would take action. Who were you referring to in particular?

A Mr. Howard, I believe.

Q And this is in the correspondence that --

A I believe it is, let me check.

Apparently there's another letter which gave me until July.

Q Is that the June 21st, 1978, letter?

A June --

Q June 21st, 1978 -- Exhibit No. 11.

A Well, there's also -- I think there's a letter to the Firths.

Yes, there was a letter July 12 which Mr. Howard informed him they were calling the loan and Mr. Firth informed me.

Q That was after the suit had been filed, was it not?

A It may have been.

Q And it was also after the commitment that

1 Mr. Howard made on June 21st expired, was it not?

2 A I don't think -- I don't think it had quite  
3 expired. I'm not sure.

4 When was the suit filed -- July 3rd.

5 Q The commitment given by Mr. Howard on the assump-  
6 tion was good until July 10th, 1978, was it not?

7 A Yes, it was, and my understanding was that if  
8 we didn't agree to that they were going to call the loan.

9 MR. BUONASSISSI: I have no further questions,  
10 Your Honor.

11 THE COURT: Is there any redirect?

12 MR. CHESSE: Yes, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. CHESSE:

15 Q Mr. Best, referring to Exhibit No. 4, which is  
16 United Virginia Bank's letter of April 24th, they made  
17 reference to an interest rate. Prior to settlement, did  
18 Mr. Howard or any representative of the Bank ever indicate  
19 to you that in addition to an increase of an interest rate  
20 there would be a loan point or one percent to be paid as  
21 a condition of assumption?

22 A No, I don't believe so.

23 Q When did you first learn of the one percent?

1           A     Well, the first I learned from the Bank, I believe  
2 was in the letter after settlement. I think that somebody  
3 had mentioned to me, maybe the Firths or a real estate agent.

4           MR. BUONASSISSI: Your Honor, I object to anything  
5 that is being said by a party not --

6           THE COURT: The question was "when," Mr. Best.

7           THE WITNESS: From the Bank, as I recall, the  
8 first time it was mentioned was in a letter.

9           BY MR. CHESS:

10          Q     And the letter you're referring to is which  
11 letter, Mr. Best?

12          A     The letter of --

13          Q     Would it be the letter of June 21st?

14          A     Yes.

15          Q     And the one point assumption fee referred to in  
16 that letter, was it to be one percent of the original amount  
17 of the loan, or one percent of the outstanding balance of  
18 the loan?

19          MR. BUONASSISSI: Your Honor, I'd object. I  
20 think the letter speaks for itself.

21          THE COURT: May I see the Exhibit?

22          I'll overrule the objection. You may answer the  
23 question.

1 THE WITNESS: The letter does not say.

2 BY MR. CHESS:

3 Q I'd show you this Settlement Statement dated  
4 June 1st, 1978, and ask you if you can identify this?

5 A Yes, that is the Settlement Statement for the  
6 purchase of this property.

7 MR. CHESS: Your Honor, I would like to have this  
8 marked as Plaintiffs' Exhibit for identification.

9 THE COURT: All right, for purposes of identifica-  
10 tion, it will be marked as Plaintiffs' Exhibit 14.

11 (The document heretofore referred to  
12 was marked Plaintiffs' Exhibit No. 14  
13 for identification.)

14 MR. CHESS: We would further move, Your Honor,  
15 that this be introduced into evidence on behalf of the  
16 Plaintiffs.

17 THE COURT: Is there any objection, Mr.  
18 Buonassissi?

19 MR. BUONASSISSI: No objection, Your Honor.

20 THE COURT: Very well, we receive it as  
21 Plaintiffs' 14 without objection.

22

23

1 (The document heretofore marked for  
2 identification as Plaintiffs'  
3 Exhibit No. 14 was received in  
4 evidence.)

5 BY MR. CHESS:

6 Q You testified, Mr. Best, that the purchase price  
7 of the property was \$155,000; is that correct?

8 A No, \$152,500, plus \$2,500 for personal property.

9 Q And the total amount that you paid in cash in  
10 order to complete this purchase was what amount?

11 A It looks like \$59,872.83, including settlement  
12 expenses.

13 Q Can you compute for me the percentage of cash  
14 as applies to the purchase price of that property?

15 A It would be roughly two-fifths, I would think.

16 Q Would that be approximately 40 percent?

17 A Approximately 40 percent.

18 Q I believe you testified on cross examination  
19 that the Bank had never given its written consent to the  
20 transfer of this property prior to settlement; is that  
21 correct?

22 A Yes.

23 Q Had the Bank ever stated to you that they would

1 refuse to grant the Firths the right to convey the  
2 property?

3 A No.

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2                   JOHN W. HOWARD, JR.,

3   a witness, was called for examination by counsel for the  
4   Defendants, and having been duly sworn, was examined and  
5   testified as follows:

6                   DIRECT EXAMINATION

7                   BY MR. BUONASSISSI:

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12 [EXCERPT OF DIRECT EXAMINATION OF JOHN  
13 W. HOWARD, JR., BY MR. BUONASSISSI]  
14

15 \* \* \* \*

16 Q Mr. Howard, have you made an investigation of  
17 the Bank records and Bank offices to determine the average  
18 dollar amount of residential loans made by the Bank which  
19 are secured by a Deed of Trust?

20 A We have.

21 Q And what is that?

22 A I have, I mean.

23 Q And what is that outstanding amount of loans?

1           A     The outstanding amount on conventional  
2     residential loans is approximately sixty million dollars.

3           Q     And have you made a determination concerning  
4     the average payoff time for a residential loan?

5           A     That would run in Northern Virginia between  
6     seven to eight years.

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[DIRECT EXAMINATION OF JOHN W. HOWARD, JR., CONTINUED]

\* \* \* \*

Q Mr. Howard, would you explain to the Court the

1 course of interest rates since 1972 to the present?

2 A I will do that to the best of my knowledge.  
3 I can go back to '74 when they were just about the same,  
4 the way they are now and then they started back down. In  
5 the beginning of '78 we were making loans at eight and  
6 three-quarters and they have increased throughout the  
7 year to where they're ten and a half to eleven at the  
8 present time.

9 Q In 1972, when this particular loan was made,  
10 the interest rate was 7.5 percent. Would that have been  
11 at or about current interest rates at that time?

12 A Yes, to my knowledge it would be.

13 Q Do you know the reason for this increase in  
14 interest rates?

15 A One of the reasons is the cost of money that  
16 banks have to pay for it now if we have to borrow. It's  
17 been increased, the rate that we have to pay.

18 Q All right, sir.

19 Has there been any similar jump in interest rates  
20 prior to 1972 that would be parallel or similar to this  
21 increase in interest rates?

22 A Not to my knowledge.

23 Q Mr. Howard, what is the effect of higher interest

1 rates on the Bank's lending practices?

2 A The effect is if we are put in a position where  
3 we cannot charge market rates, then we would either cut  
4 back drastically on the mortgage loans that we make, or  
5 we would shorten the period of time maybe down to ten years  
6 instead of thirty years.

7 Q What effect would higher interest rates have on  
8 the interest rate banks charge on current loans?

9 A Give me that again -- I'm sorry.

10 Q What effect does higher interest rates or  
11 escalated interest rates have on what amount the Bank  
12 charges its customers during this period of escalation?

13 A I'm not fully sure that I understand the question.  
14 We, on the loans that we make, the customers are going to  
15 be affected because they're going to have to pay the  
16 higher interest rate.

17 Q So the Bank charges higher interest rates?

18 A We will be charging higher rates to conform with  
19 what the present market conditions allow.

20 Q All right, sir, with higher interest rates how  
21 does the Bank maintain the market value of its loan  
22 portfolio?

23 A You can, if you've got the prevailing rates that

1 are in the market place, you're in a position whereby if  
2 you have to sell your loan to increase your liquidity, you  
3 can. If you don't increase your interest rates and have  
4 to sell them, you in all likelihood are going to sell them  
5 at quite a loss.

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8 [DIRECT EXAMINATION OF JOHN W. HOWARD, JR., CONTINUED]  
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11 \* \* \* \*

12 Q Keeping in mind the paragraph seven that's in the  
13 Deed of Trust before the Court, what function does that  
14 clause serve to the Bank?

15 THE COURT: So far as the Bank is concerned.

16 BY MR. BUONASSISSI:

17 Q -- on the transfer of property.

18 A One of the functions that it will serve, it will  
19 provide us with an ability to determine who is going to  
20 assume this loan in order that we can determine the  
21 credit-worthiness of the applicant. It will also serve,  
22 if it happens to be a low rate in the market, it's a couple  
23 of percent points above that, to put that loan in a position



1 where it's a marketable instrument.

2 Q If the Bank didn't have this ability to readjust  
3 interest rates, what effect would it have on the Bank's  
4 ability to lend for residential purposes?

5 A As I said earlier, if we didn't have that, we would  
6 cut back considerably, or if we made them, the length of  
7 time of the loans would be shortened considerably. We  
8 wouldn't make a thirty year -- would not be able to make a  
9 thirty year loan without that.

10 Q You would not be able to make a thirty year loan?

11 A (Shaking head.)

12 Q Does the Bank have a policy on transfers of  
13 property that are secured by Deeds of Trust as to whether  
14 the new borrower is required to take -- assume the loan or  
15 whether he's permitted to take subject to the loan?

16 A Well, we're requiring them to take assumptions  
17 on the loans that we have.

18 Q And what is that, sir?

19 A We do it because if we've got the property in  
20 most all cases the property may be adequate, but we want  
21 to maintain the position of it, if the property has to be  
22 foreclosed on that we still have the legal right to go back  
23 to the borrower.

1           Q    What conditions, Mr. Howard, were placed on the  
2 assumption by the Bests on this particular loan that was  
3 originally made to Mr. and Mrs. Firth?

4           A    The original conditions that we -- all right, I'll  
5 stay with this case.

6                   The original condition was that we would consider  
7 this assumption, but that the rate would be increased from  
8 seven and a half percent to nine and a quarter percent,  
9 which at that time was either at the market or possibly  
10 a quarter of a percent under, but certainly not over.

11          Q    Was a firm commitment given to the Bests that the  
12 Bank would consent to the transfer of the property if they  
13 assumed the loan and that the assumption was at this higher  
14 interest rate?

15          A    It was not in my first letter. In my first  
16 letter I've got here, I said that I would consider it.  
17 And the reason that I said that was because obviously there  
18 was going to be a discrepancy about the rate, so there was  
19 no -- if we don't have a meeting of the minds then there was  
20 no point in my going any further. I think I further wrote  
21 a letter stating, yes, we would allow the assumption. And if  
22 my memory serves me correctly, it was nine and a quarter  
23 percent with one point, and it expired on the 10th of July,

[JOHN W. HOWARD, JR.]

\* \* \* \*

## CROSS EXAMINATION

BY MR. CHESS:

Q The letter on the 10th of July was subsequent to settlement, was it not?

A You mean the expiration date or the date of the letter? Not a letter dated the 10th of July, I don't believe I did -- I just --

Q I'm sorry, I thought you just referred to the 10th of July,

A That was the expiration date that I put on the commitment for Mr. Best.

Q All right, what was the date of your letter to Mr. Best, Mr. Howard?

A The one that refers to that July 10th expiration?

Q No, I'm not concerned with the July 10th expiration. I'm concerned whether that firm commitment which you testified to that you made on behalf of the Bank, Mr. Best could assume the obligation?

A June 21st.

Q And what was the date of settlement in this particular case?

1           A     I think it was May the 31st or June the 1st;  
2 I'm not real sure.

3           Q     So your firm commitment came after the settlement  
4 had been effected?

5           A     My firm commitment did; my other commitment -- my  
6 tentative commitment was previous to that.

7           Q     All right. Did your tentative commitment say  
8 anything about a loan point being paid?

9           A     No, sir.

10          Q     Was it your intention that this loan point be  
11 a percent of the original amount of the loan, or one  
12 percent of the outstanding balance of the loan?

13          A     It's always one percent of the outstanding balance.

14          Q     Did you ever convey that information to Mr. Best?

15          A     No, sir, he never asked me.

16          Q     Directing your attention to the period when this  
17 loan was made, which would be approximately September of  
18 1972, was this a fair loan which you made to Mr. and Mrs.  
19 Firth on behalf of the Bank?

20          A     To my knowledge it was, Mr. Chess. I did not  
21 make the loan.

22          Q     All right, would it be safe to assume that the  
23 Bank was paying less for the money which they were lending

1 to the Firths than they were getting from the Firths?

2 A I would make that safe assumption,

3 Q Would you say that was probably at least a point  
4 or two points below the market at that time?

5 A I do not know, sir.

6 Q Well, what is it today? What's the relationship  
7 between the money that's put out by the Bank, that the Bank  
8 pays for money?

9 A One percent.

10 Q One percent. Well, would you say then that it  
11 must have been at least one percent at that time?

12 A I can't say definitely on something that I wasn't  
13 involved in.

14 Q But you were working for the Bank at that time?

15 A I was working for the Bank.

16 Q And you were aware of the condition of the money  
17 market at that time?

18 A Yes, sir. I was not -- I was not working for  
19 that particular Bank at that time because we were not  
20 merged then.

21 Q You were not working for United Virginia at the  
22 time of this loan?

23 A I was not working for United Virginia Bank of

1     Fairfax.

2           Q     How could you testify then as to what the  
3     policy was of the United Virginia at the time this loan  
4     was made, and the significance of paragraph seven under  
5     this Deed of Trust?

6           A     I'm -- well, I'm testifying on what the United  
7     Virginia Bank First and Citizens was doing.

8           Q     All right, so you don't know what the policy was  
9     of United Virginia Bank at that time?

10          A     I do not know for certain; no, sir.

11          Q     Thank you.

12                 You're familiar with this Deed of Trust, are  
13     you not?

14          A     Yes, sir.

15          Q     And I believe the Bank has a right to charge a  
16     prepayment penalty; is that correct, if the loan were  
17     anticipated by the borrower?

18          A     It has that right in some of our Deeds of Trust,  
19     or not in others.

20                 MR. BUONASSISSI: If Your Honor please, I think  
21     the particular instrument here will speak for itself. If it  
22     provides for a prepayment penalty, I'm sure it's stated in  
23     the instrument.

1 THE COURT: All right.

2 BY MR. CHESS:

3 Q Perhaps we ought to look at the instrument,

4 Would you tell me, Mr. Howard, whether or not  
5 that instrument provides for the payment of prepayment  
6 penalty?

7 (Pause.)

8 I direct your attention to the paragraph immediately  
9 after paragraph seven.

10 A Right after number seven, yes, sir, that's what  
11 I'm reading right now.

12 All right; yes, sir.

13 Q So if the borrowers were to anticipate this note,  
14 pay it off prior to maturity, the Bank would have the right  
15 to charge a prepayment penalty; is that correct?

16 A That's correct.

17 MR. BUONASSISSI: Your Honor, I object to the  
18 question. That's not what the paragraph says.

19 THE WITNESS: If it's paid within three years;  
20 if it's after three years they would not have a right for  
21 prepayment penalty.

22 BY MR. CHESS:

23 Q What is the policy today on prepayment penalty?

1           A     The policy today is there's no prepayment  
2 penalty unless the loan is refinanced with another lender.

3           Q     You stated earlier that the purpose of a due-on-  
4 sale clause is to allow the Bank, 'one', to check the credit-  
5 worthiness of the new purchaser; is that correct?

6           A     Yes, sir.

7           Q     Did you find anything that would impair the  
8 Bank's security in Mr. Best's credit-worthiness?

9           A     No, sir.

10          Q     You further stated that it also gave the Bank --

11          A     I will say this is not -- I'm only arriving at  
12 an opinion on this. I have not gone into any great detail  
13 into Mr. Best's credit-worthiness at this point.

14          Q     Mr. Howard, didn't you earlier testify that you  
15 made a firm commitment to allow Mr. Best to assume this  
16 loan?

17          A     That's correct.

18          Q     Were you not satisfied with his credit-  
19 worthiness?

20          A     I was satisfied with it; still am.

21          Q     Are you trying to tell the Court that you should have  
22 done something more than you did?

23          A     No, I will say that my opinion of Mr. Best's



1 credit-worthiness was based on reputation of the lawfirm  
2 that he works for, and the people that he is associated  
3 with as opposed to running up one of these pink credit  
4 reports out of Washington.

5 Q Did you review his credit application which he  
6 submitted to you?

7 A Yes, sir.

8 Q Did you have any reason to question it?

9 A No, sir.

10 Q You could have questioned it though, if you had  
11 wanted to?

12 A I could have.

13 Q But it really was not necessary under the cir-  
14 cumstances?

15 A I didn't see it was any necessity.

16 Q So the only reason then that Mr. Best was not  
17 allowed to assume this particular loan is because the Bank  
18 wanted to increase the interest; is that correct?

19 A That's principally the reason; yes, sir.

20 Q Is there any other reason?

21 A No, sir.

22 Q Did not Mr. Best indicate to you that he desired  
23 to assume that particular loan?

1           A     He did.

2           Q     Did you ever advise Mr. Best that you took  
3 exception to the form or content of this Deed that  
4 conveyed the property to him?

5           A     No, sir.

6           Q     You testified earlier that you preferred to  
7 have language contained in that Deed which states that  
8 the borrower assumes the obligation; is that correct?

9           A     That's correct.

10          Q     And I think you further stated that the reason  
11 you want that language in there, so that in the event there  
12 is a default you can go back against the original maker of  
13 the note; is that correct?

14          A     When I say the original maker, I'm talking about  
15 the person that assumed the loan; in this case, Mr. Best,  
16 not Mr. Firth, was what I had in mind.

17          Q     And have you come to a conclusion in your own  
18 mind whether or not under the terms of this particular  
19 Deed, assuming there was a default in the payment of the  
20 note, the Bank accelerated the payment, the Bank went  
21 to foreclosure and wound up with a deficiency, that you  
22 would not be able to sue Mr. Best personally?

23               MR. RUONASSISSI: Your Honor, I object. It calls

1 for a legal conclusion on behalf of Mr. Howard.

2 THE COURT: If you're able to answer it, you may;  
3 if you are not, you can say so.

4 THE WITNESS: I do not know the answer.

5 THE COURT: Okay.

6 BY MR. CHESS:

7 Q But you could interpret certain legal consequences  
8 for the benefit of Mr. Buonassissi.

9 Are you familiar with the language contained in  
10 this Deed that conveyed the property to Mr. Best?

11 A No, sir.

12 Q I direct your attention to the last sentence on  
13 the first page and ask you to read that out loud.

14 A "By acceptance of this Deed, the parties of the  
15 second part agree to make payments on said note as they  
16 become due."

17 Q That's pretty clear in your opinion, isn't it?

18 A Yes, sir.

19 Q Did you ever advise Mr. Best in his capacity as  
20 either the purchaser, or I should say prospective purchaser,  
21 or in his capacity as a settlement attorney, that the Bank  
22 would not consent to the sale of this property by Mr. Firth?

23 A That we would not consent to the sale of it?

1 Q Yes, sir.

2 A No, sir.

3 \* \* \* \*

4

5

6

7

8

9 [JOHN W. HOWARD, JR.]

10 REDIRECT EXAMINATION

11 BY MR. BUONASSISSI:

12 Q Mr. Howard, Mr. Chess asked you about the  
13 prepayment penalty provision that's provided for in the  
14 Deed of Trust. Would that particular penalty clause be  
15 applicable today?

16 A It would not.

17 \* \* \* \*

18

19

20

21

22

23

[JOHN W. HOWARD, JR.]

RECROSS EXAMINATION

BY MR. CHESS:

Q Mr. Howard, did you ever present or request that Mr. and Mrs. Best execute an Assumption Agreement on this Deed of Trust?

A No, sir.

MR. BUONASSISSI: Just one final question.

FURTHER REDIRECT EXAMINATION

BY MR. BUONASSISSI:

Q Mr. Howard, did the Bests ever accept the commitment that you made to them concerning the assumption of the loan?

A No, sir.

\* \* \* \*

## [RULING BY THE TRIAL COURT]

1 THE COURT: I appreciate your argument, and I  
2 appreciate the clarity with which you presented it, and  
3 in deciding this case, I do it on simply the narrow facts  
4 of this case and the Deed of Trust in this case.

5 And my conclusion is that Plaintiffs have shown  
6 in this case, by a preponderance of the evidence based on  
7 the testimony, the exhibits, and the reasonable inferences  
8 that can be drawn from the testimony and the exhibits,  
9 that the clauses in question constitute a restraint on  
10 alienation.

11 And they further have shown, and the Court  
12 concludes and agrees, that the restraint is unreasonable.  
13 And, the Court reaches that conclusion because the lender  
14 has failed to show that enforcement of the clauses in  
15 question is necessary to protect the Bank's security.

16 I further conclude that the evidence, and the  
17 inferences -- reasonable inferences -- to be drawn from it,  
18 clearly establish that the Bests were willing and wanted  
19 to assume the loan in question.

20 The testimony of Mr. Howard is clear that the  
21 Bank's sole reason for exercising the clause in question  
22 was to obtain more interest.

23 The Court concludes that because of the Virginia

1 Code provision -- which the precise title escapes me at  
2 the moment, but it's six something -- and because this  
3 is a deed of trust state, and taking those considerations  
4 into account that this matter could have been specifically  
5 stated in the Deed of Trust; that the parties could have  
6 contracted; and that their failure to do so leads the  
7 Court to conclude that with respect to this Deed of Trust,  
8 at any rate, the Plaintiffs are entitled to the relief  
9 that they seek in paragraphs two and three in their Bill  
10 for Declaratory Judgment.

11 Thank you.

12 MR. BONASSISSI: If Your Honor would note our  
13 exception to that ruling.

14 THE COURT: Yes.

15 (Thereupon, the hearing in the above-entitled  
16 matter was concluded at 3:20 p.m.)  
17  
18  
19  
20  
21  
22  
23

"EXHIBIT NO. 1"

LAW OFFICES:

McCANDLISH, LILLARD, BAUKNIGHT, CHURCH & BEST

A PROFESSIONAL CORPORATION

THE BARBOUR HOUSE

4069 CHAIN BRIDGE ROAD

FAIRFAX, VIRGINIA 22030

TELEPHONE (703) 273-2440

ROBERT J. McCANDLISH, JR.  
ROTHWELL J. LILLARD  
WILLIAM C. BAUKNIGHT  
RANDOLPH W. CHURCH, JR.  
STEPHEN L. BEST  
JESSE B. WILSON, III  
GERALD R. WALSH  
PETER A. ARNTSON  
THOMAS J. CAWLEY  
  
RANDOLPH A. SUTLIFF  
ROBERT H. J. LOFTUS  
WILLIAM E. DONNELLY, III  
STEVEN DAVID STONE  
BRUCE C. ARMISTEAD

F. D. RICHARDSON  
11884-1954  
HUGH B. MARSH  
11900-19791

ANNANDALE OFFICE  
7620 LITTLE RIVER TURNPIKE  
ANNANDALE, VIRGINIA 22003  
TELEPHONE  
(703) 354-9800

March 23, 1978

United Virginia  
Mortgage Corporation  
515 King Street  
Alexandria, Virginia  
Attn: Mr. Howard

FILE NO.

RE: Loan No. UVM 603201  
Edward E. and Anna W. Firth  
4908 Prestwick Drive  
Fairfax, Virginia 22030

Dear Mr. Howard:

I am writing to inform you that my wife and I have contracted to purchase the above property, on which there is a first trust loan in the favor of United Virginia Bank.

My wife and I will want to take over the payments on the loan, and I note in the deed of trust that there is no restriction on assumption, although the deed of trust does provide that the owners cannot convey or transfer the property without the prior written consent of the noteholder. I would appreciate it if you would send me a letter stating there is no objection to the conveyance. If you would like, I can furnish you with a financial statement or any other documentation to satisfy the bank as to our ability to meet the regular monthly payments.

This firm will also be handling the settlement of the sale. I would further appreciate it if you would send me the assumption figures, including the principal balance after the May payment, and daily interest thereafter.

Yours very truly,

Stephen L. Best

SLB/cdc



"EXHIBIT NO. 2"



United Virginia  
Bank

March 29, 1978


Mr. Stephen L. Best  
McCandlish, Lillard, Bauknight, Church & Best  
The Barbour House  
4069 Chain Bridge Road  
Fairfax, Virginia 22030

Dear Mr. Best:

In reference to your letter of March 23 you will find enclosed a mortgage application for the assumption of the real estate loan we have with Edward E. and Anna W. Firth.

We will be happy to consider this assumption but it would not be assumable at the present interest rate of 7 1/2%.

Very truly yours,

  
John W. Howard, Jr.  
Vice President

JWH:dp  
Enclosure

"EXHIBIT NO. 3"

LAW OFFICES

McCANDLISH, LILLARD, BAUKNIGHT, CHURCH & BEST

A PROFESSIONAL CORPORATION

THE BARNOUR HOUSE

4069 CHAIN BRIDGE ROAD

FAIRFAX, VIRGINIA 22030

TELEPHONE (703) 273-2440

ROBERT J. McCANDLISH, JR.  
ROTHWELL J. LILLARD  
WILLIAM C. BAUKNIGHT  
RANDOLPH W. CHURCH, JR.  
STEPHEN L. BEST  
JESSE B. WILSON, III  
GERALD R. WALSH  
PETER A. ARNTSON  
THOMAS J. CAWLEY  
  
RANDOLPH A. SUTLIFF  
ROBERT H. J. LOFTUS  
WILLIAM E. DONNELLY, III  
STEVEN DAVID STONE  
BRUCE C. ARMISTEAD

F. D. RICHARDSON  
(1084-1054)  
HUGH B. MARSH  
(1000-1076)

ANNANDALE OFFICE  
7620 LITTLE RIVER TURNPIKE  
ANNANDALE, VIRGINIA 22003  
TELEPHONE  
(703) 354-9800

March 31, 1978

John W. Howard, Jr.  
Vice President  
United Virginia Bank/National  
P.O. Box 179  
Alexandria, Virginia 22313

FILE NO.

RE: Firth-Best

Dear Mr. Howard:

Thank you for your letter of March 29, 1978.

I have completed the application as it is applicable and am enclosing the same.

You stated in your letter that you would consider the assumption but it would not be assumable at the present interest rate of 7 1/2%. The Deed of Trust does not contain any restriction with respect to assumption, nor does it provide for increase in the interest rate upon sale. Therefore, I believe there is a right to assume the loan at the current rate. However, we would be willing to pay a reasonable assumption fee.

Incidentally, I keep small personal accounts and this firm has one of its accounts at your Fairfax City branch. I have been dealing with Mr. Drummond and your previous branch manager for sometime and I would consider them as references.

As I mentioned in my previous letter, I would like to be informed of the principal balance which will exist after the May payment, as well as daily interest thereafter, and I will also need to know the escrow balance after the May payment.

Yours very truly,

Stephen L. Best

SLB/cdc  
Encl.

UNITED VIRGINIA BANK/NATIONAL, VIENNA, VIRGINIA 22100 TEL (703) 543-0000  
"EXHIBIT NO. 4"



United Virginia  
Bank

April 24, 1978

Mr. Stephen L. Best  
McCandlish, Lillard, Bauknight, Church & Best  
The Barbour House  
4069 Chain Bridge Road  
Fairfax, Virginia 22030

Dear Mr. Best:

In reference to your letter of March 31, 1978,  
I am enclosing a copy of the Edward E. Firth  
deed of trust.

In my opinion item number 7 relates to the  
assumption of this loan. As previously stated we  
would be happy to consider an assumption of this  
loan but the rate would be 9 1/4%.

Very truly yours,

John W. Howard, Jr.  
Vice President

JWH:dp  
Enclosure

THIS DEED, made and entered into this 3/27 day of <sup>May</sup> June, 1978 by and between EDWARD E. FIRTH and ANNA WESTWOOD FIRTH, his wife, parties of the first part; and STEPHEN L. BEST and LETTY SHEILD BEST, his wife, parties of the second part.

W-I-T-N-E-S-S-E-T-H:

That the parties of the first part, for and in consideration of the sum of Ten Dollars (\$10.00), the receipt of which is hereby acknowledged, do grant, bargain, sell, and convey, with GENERAL WARRANTY OF TITLE and with English Covenants of Title, unto the parties of the second part, as tenants by the entirety as herein-after set forth, with all rights, ways, easements, and improvements thereunto belonging, that certain lot or parcel of land located in Fairfax County, Virginia, known and designated as

LOT No. THIRTY-SIX (36), in the subdivision of BRECON RIDGE, SECTION TWO, as the same is duly dedicated, platted and recorded in Deed Book 1594, Page 239 of the said land records.

And being the same property conveyed to the parties of the first part by deed recorded on September 25, 1972 in Deed Book 3700, Page 608 of said land records.

Reference is made to said deed, deed of dedication and plat for a more particular description of the said land hereby conveyed.

To have and to hold the said land unto the parties of the second part as tenants by the entirety with the common law right of survivorship, it being expressly understood and agreed that

McCandlish, Lillard, Bauknight, Church & Best

the part of the one first dying shall pass and belong to the survivor in fee simple.

This conveyance is made subject to a note secured by a deed of trust recorded in Deed Book 3700, Page 609 of the land records of Fairfax County, Virginia, securing unto United Virginia Bank of Fairfax the payment of the original principal amount of \$66,800.00. By acceptance of this deed the parties of the second part agree to make payments on said note as they become due.

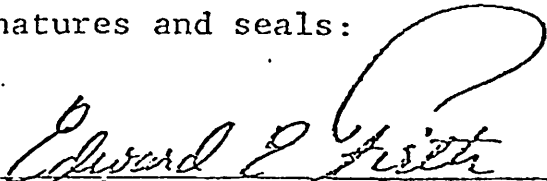
Tax Paid  
 Sec 53-54 228.75  
 Sec 53-65.1 2625  
 Sec 53-54.1 5600  
 Consideration 52,500

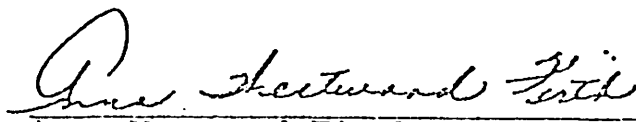
BOOK 4886 PAGE 178

-2-

The parties of the first part covenant that they have the right to convey the said land; that they have done no act to encumber the same; that the parties of the second part shall have quiet and peaceable possession thereof, free from defect or encumbrance except easements and restrictions of record; and that they will execute such other and further assurances thereof as may be requisite.

WITNESS the following signatures and seals:

  
 Edward E. Firth (SEAL)

  
 Anna Westwood Firth (SEAL)

Stephen L. Best (SEAL)

Letty Sheild Best (SEAL)

STATE OF VIRGINIA

COUNTY OF FAIRFAX, to-wit:

I, George J. Fuller, a Notary Public in and for the County of Fairfax, State of Virginia, whose commission as such expires on the 24<sup>th</sup> day of June, 1979, do hereby certify that this day personally appeared before me, in my County and State aforesaid, EDWARD E. FIRTH and ANNA WESTWOOD FIRTH, his wife, whose names are signed to the foregoing and hereunto annexed deed bearing date of the 31<sup>st</sup> day of <sup>May</sup> June, 1978, and acknowledged the same before me.

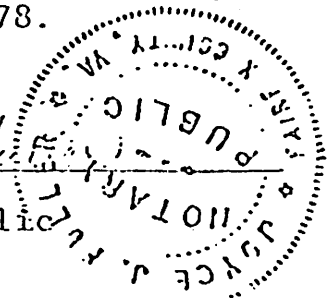
GIVEN under my hand this 31<sup>st</sup> day of <sup>May</sup> June, 1978.

This instrument with certificate annexed,  
admitted to record-Office of Circuit Court  
Fairfax County, Va. JUN 2 '1978 at 11:24 a.m.

To:sto:

James E. Hoffner Clerk

George J. Fuller  
Notary Public



"EXHIBIT NO. 6"

June 1, 1978

United Virginia Bank  
P. O. Box 179  
Alexandria, Virginia 22313

Re: Loan No. S9551-272  
4908 Prestwick Drive  
Fairfax, Virginia

Gentlemen:

Effective this date the above property has been conveyed from Edward E. Firth and Anna W. Firth to Stephen L. Best and Letty Sheild Best. Enclosed is a copy of the deed.

Also enclosed is a letter from the Firths to you assigning their escrow account to my wife and me. The property is insured through United Services Automobile Association in the amount of \$120,000.00, with a loss payable clause to your bank, and as soon as the policy and paid receipt for the policy are sent to me, I will forward them to you.

Finally, I am enclosing my check for \$670.90 representing the June payment. As I mentioned in a previous letter, we are unwilling to increase the interest rate on the loan, and as there are no restrictions upon assumption, we will continue making payments on the existing note.

Yours very truly,

Stephen L. Best

SLB:jf

Encl.

"EXHIBIT NO. 9"



REGISTERED MAIL  
RETURN RECEIPT REQUESTED

United Virginia  
Bank

June 14, 1978

Mr. Stephen L. Best  
McCandlish, Lillard, Bauknight,  
Church & Best  
The Barbour House  
4069 Chain Bridge Road  
Fairfax, VA 22030

Dear Mr. Best:

In reference to our phone coversation of June 13, 1978  
I am returning the following items to you:

- 1) Your check payable to United Virginia Bank in  
the amount of \$670.90.
- 2) Deed between Edward E. Firth and Anna Westwood  
Firth, his wife, parties of the first part and  
Stephen L. Best and Letty Shield Best, his wife,  
parties of the second part
- 3) Assignment by Edward E. Firth and Anna  
Westwood Firth to Stephen L. Best and Letty  
Shield Best of their escrow account.

As previously stated paragraph 7 in the deed of trust  
states the property may not be assigned or transferred  
without prior approval of the noteholder.

To my knowledge this has not been done and as a result  
our records will show this property is still in the name of  
Edward E. Firth and Anna Westwood Firth and that they  
will be responsible for keeping the payments current.

Very truly yours,

John W. Howard, Jr.  
Vice President

JWH:dp

CC: Mr. & Mrs. Edward Firth



"EXHIBIT NO. 10"

June 20, 1978

John W. Howard, Jr., Vice President  
United Virginia Bank/National  
P. O. Box 1793  
Alexandria, Virginia 22313

Dear Mr. Howard:

I have your letter of June 14, 1978.

If I understand your letter correctly, you are not requiring that the loan be paid, only that the Firths remain primarily responsible for the payment of the loan. If you had agreed to the assumption of the loan, my wife and I would have become primarily liable and the Firths would be secondarily liable.

We have an obligation to the Firths to make the payments on the loan as they become due, and henceforth we will be making payments on their behalf. Therefore, I am returning the check for \$670.90, representing the June payment.

I am somewhat surprised that the bank continues to take this position with respect to the loan. The return and security on the loan have not been diminished in any way, and it certainly puts a strain on what had been very friendly and cooperative relations.

Yours very truly,

Stephen L. Dest

SLB:jf

Encl.

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

"EXHIBIT NO. 11"



REGISTERED MAIL  
RETURN RECEIPT REQUESTED

United Virginia  
Bank

June 21, 1978

Mr. Stephen L. Best  
McCandlish, Lillard, Bauknight,  
Church & Best  
The Barbour House  
4069 Chain Bridge Road  
Fairfax, VA 22030

Dear Mr. Best:

I am again returning your check for \$670.90.

From a technical standpoint we have not asked that the Firths' loan be paid in full if you wished to assume the loan at 9 1/4% as previously stated.

The bank's position is you and your wife may assume the loan at 9 1/4% with a one point assumption fee or we will request payment in full from the Firths.

This commitment will be good until July 10, 1978.

Very truly yours,

*John W. Howard, Jr. (dp)*  
John W. Howard, Jr.  
Vice President

JWH:dp  
Enclosure

"EXHIBIT NO. 12"

UNITED VIRGINIA BANK/NATIONAL, ALEXANDRIA, VIRGINIA 22313

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

July 12, 1978

Mr. & Mrs. Edward R. Firth  
c/o Mrs. Catherine Holifield  
805 Plainfield Avenue  
Orange Park, Florida 32073


Dear Mr. & Mrs. Firth:

According to my records your property at 4908 Prestwick Drive, Fairfax, Virginia was conveyed to Stephen L. Best and Letty Shield Best on May 31, 1978.

Paragraph 7 of the Deed of Trust you signed on September 25, 1972 states this property may not be transferred without prior approval of the noteholder.

To my knowledge this approval was not granted. Therefore, at this time under the terms of the Deed of Trust the balance is due in full.

Very truly yours,



John W. Howard, Jr.  
Vice President

JWH:dp

CC: Stephen L. Best  
Letty Shield Best

39541

THIS DEED OF TRUST

REC-3760 REG-569

Witness John H. Rust, Atty.

made this 25th day of September 1972, by and between

EDWARD E. FIRTH and ANNA WESTWOOD FIRTH, his wife,

parties of the first part: GEORGE D. HICKS, JR. and JOHN H. RUST, both of  
Fairfax County, Virginia,

Trustees, either of whom may act, parties of the second part; and UNITED VIRGINIA BANK OF FAIRFAX, a corporation,  
party of the third part:

WITNESSETH

that for and in consideration of the sum of \$5,000, cash in hand paid, the receipt of which is hereby acknowledged, the  
parties of the first part do hereby grant, bargain, sell and convey with GENERAL WARRANTY OF TITLE, unto the  
parties of the second part, all that certain tract or parcel of land, located in Springfield District  
Fairfax County, Virginia, with all rights, ways, easements, improvements and appurtenances  
thereunto belonging, which was conveyed to the parties of the first part by P. Henry Poehler and  
Elizabeth H. Poehler, his wife, by deed dated August 22, 1972, and duly  
recorded among the land records of said County, being Lot No. THIRTY-SIX  
(36), in the Subdivision of BRECON RIDGE, SECTION TWO, as the same is  
dedicated, platted and recorded in Deed Book No. 1594, page 239 of the  
said land records.

REFERENCE is hereby made to said deed, deed of dedication and plat,  
for a further and more particular description of the land hereby conveyed.

Subject to all restrictions, rights-of-way, easements and other  
conditions contained in the deeds forming the chain of title to the property.

3700 610

And it is mutually understood and agreed by and between the parties hereto that all the buildings, walks, fences, shrubbery, driveways, improvements and fixtures of every kind, including stoves, refrigerators, ranges, cabinets, venetian blinds, heaters, boilers, radiators, engines, machines, motors, screens, blinds, doors, hardware, wires, switches, electric fixtures, bells, insulations, and all other water, plumbing, ventilating, and heating equipment, including stokers, oil burners, tanks, air conditioning equipment now upon or which may hereafter be placed upon said property, shall be deemed to be fixtures and part of the realty herein conveyed, and shall be deemed part of the security for the indebtedness herein mentioned, and shall be covered by this deed of trust.

IN TRUST, nevertheless, to secure unto the party of the third part the payment of the principal sum of Sixty-six Thousand Eight Hundred and No/100----- Dollars (\$66,800.00), loaned to the parties of the first part, as is evidenced by one certain, interest bearing, negotiable, promissory note made by the parties of the first part, in said principal sum, payable to the order of United Virginia Bank of Fairfax, a corporation, at United Virginia Bank of Fairfax, Vienna, Virginia

in monthly installments of the sum of \$ 493.66 , the first monthly installment of \$ 493.66 to be payable on the 1st day of November 1972 , and a like payment of \$ 493.66 to be payable on the 1st day of each and every month thereafter until the note is fully paid, except that the entire indebtedness evidenced by said note, if not sooner paid, shall be due and payable on the 1st day of October, 1977 , said note bearing interest from date at the rate provided for in the note secured, and waiving the benefit of the homestead exemption, and upon failure to make any of the said monthly payments the entire amount remaining unpaid upon said note shall immediately become due and payable and enforceable at law.

Together with, and in addition to, the monthly payment of principal and interest payable under the terms of the note secured hereby, the parties of the first part will pay to the holder of the note, over and above principal and interest, on the 1st day of each month until it is fully paid, a sum equal to premiums that will next become due and payable on policies of fire and other hazard insurance covering the property hereby conveyed, plus taxes and assessments next due on the property hereby conveyed, (all as estimated by the holder of the note), less all sums already paid therefor, divided by the number of months to elapse before one month prior to the date when such premiums and taxes will become delinquent, such sums to be held by the holder of the note, in trust, to pay said premiums and taxes.

All payments mentioned in the two preceding paragraphs shall be added together and the aggregate amount thereof shall be paid by the parties of the first part each month in a single payment to be applied by the holder of the note to the following items in the order set forth:

1. Taxes, special assessments, fire, and other hazard premiums;
2. Interest on the note secured hereby; and,
3. Amortization of the principal of said note.

And the said parties of the first part, in order more fully to protect the security of this Deed of Trust, do hereby agree as follows:

1. Any deficiency in the amount of such aggregate monthly payment shall, unless made good by the parties of the first part prior to the due date of the next such payment, constitute an event of default under this Deed of Trust. The holder of the note may collect a "late charge" not to exceed four cents (\$.04) for each dollar (\$1.00) of each payment more than fifteen (15) days in arrears to cover the extra expense involved in handling delinquent payments.

2. That during the continuance of this trust, the parties of the first part will pay all taxes, levies, assessments, water rates, and other governmental or municipal charges, fines and impositions, for which provision has not been heretofore made, so that the same shall never be returned delinquent on account of the non-payment thereof, and promptly deliver receipts therefor to the holder of the note; and that the parties of the first part will keep and perform the terms and conditions of any prior encumbrance or encumbrances, if any, and further to keep the improvements on the property hereby conveyed insured against fire and other hazards, with an insurance company acceptable to the holder of the note in an amount of at least \$ 66,800.00 for the benefit of the note holder.

3. The parties of the first part further covenant that in the event of failure to meet any obligations imposed upon them then the Trustees or the holder of the note may, at their option, satisfy the same; and the money so advanced with interest thereon at the rate of 6% per annum shall be a part of the debt secured by this Deed of Trust, and in the event of sale be paid next after the expenses of executing the trust, and shall be otherwise recoverable from the

parties of the first part as a debt.

for 3700 p. 611

4. The part 2 of the first part further assign unto the holder of the note, as additional security, any rents or other income which may now or hereafter be due upon the real property hereinbefore, described, it being understood that if, by reason of default under any of the terms hereof, the holder of the note collects said rents or other income, such note holder shall have the right of employing agents for that purpose and paying a percentage of the rents or other income collected for such collection.

5. Privilege is reserved to pay the debt in whole, or in any amount equal to one or more monthly payments on the principal that are next due on the note, on the first day of any month prior to maturity; provided, however, that written notice of any intention to exercise such privilege is given at least (30) days prior to prepayment.

6. Should the proceeds of the note secured be for construction purposes, the unexpended balance thereof is hereby assigned to the holder of the note as additional security; and further, should the construction of the building, or other structures, for which the loan was obtained, cease for a period of sixty days, the holder of the note may, at its option, declare the note to be due and payable, and any unexpended balance may be credited to the note, first to accrued interest and then to principal.

7. The maker of the note covenants and agrees that he will not assign or transfer the property secured by this deed of trust without prior approval of the noteholder.

The holder of the note reserves the right to impose a prepayment penalty of 1% of the original principal amount hereby secured if the indebtedness is paid in full within three years of the date hereof.

All authority and power conferred upon the Trustees herein may be exercised either jointly or severally. The holder of the note may remove, substitute, or add a trustee or trustees, at its option, with or without cause, and without notice, by instrument recorded where this Deed of Trust is recorded.

Should there be a failure to keep and perform the aforesaid covenants, or any of them, or failure to pay the indebtedness hereby secured, principal or interest, in accordance with the terms and provisions of this trust or in accordance with the terms and provisions of the Code of Virginia relating to trusts, then the indebtedness hereby secured, both principal and interest, shall immediately become due and payable, and upon the request of the beneficiary hereunder, the parties of the second part shall proceed to sell the land hereby conveyed, at public auction, at such place as they may deem most advantageous, after having advertised the time, place and terms of sale by weekly publications, for two successive weeks, in some newspaper published in said County, the terms of sale to be cash, and out of the proceeds of sale they shall pay all costs and expenses of sale and conveyancing, including a trustee's commission of 5% of the sales price in case of sale and 25% of the unpaid balance in case of advertisement without sale, any taxes, levies, assessments or insurance premiums or dues, which the parties of the first part may have failed to pay, and the amount of the indebtedness, principal and interest, which may remain unpaid on the day of the sale, interest to be calculated to the day of sale, and the remainder, if any, to be paid to the parties of the first part, their heirs and assigns.

But should the said indebtedness be fully paid without sale, then upon the request of the parties of the first part, this trust shall be released to the parties of the first part at their proper cost and expense, and the minimum of such expense shall be \$5.50.

This deed of trust is made under and pursuant to the provisions of Titles 55-59 and 55-60 of the 1950 Code of Virginia, and the acts amendatory thereof, and shall be construed to impose and confer on the parties hereto all of the duties, rights and obligations prescribed by said Titles, and the acts amendatory thereof, except only insofar as the provisions of the said Titles and the acts amendatory thereof are herein modified.

WITNESS the following signatures and seals

Edward E. Firth (SEAL)  
Edward E. Firth

Anna Westwood Firth (SEAL)  
Anna Westwood Firth

\_\_\_\_ (SEAL)

\_\_\_\_ (SEAL)

State of Virginia,

County

Fairfax

to-wit:

I, Doreen H. LaFalce, a Notary Public in and for the said State and County, do hereby certify that this day personally appeared before me in my said

EDWARD E. FIRTH and ANNA WESTWOOD FIRTH, his wife,

whose names are signed to the foregoing deed of trust, dated Sept. 25, 1972, and acknowledged the same before me in my said County.

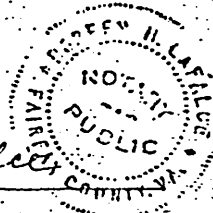
My commission expires: June 3, 1975.

and notarial seal  
GIVEN under my hand this the 25th

day of September, 1972.

*Doreen H. LaFalce*

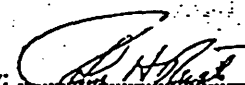
Notary Public



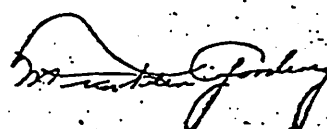
DECLARATION AND CERTIFICATION REQUIRED BY CHAPTER 15D OF THE  
1961 CODE OF THE COUNTY OF FAIRFAX, VIRGINIA, AS AMENDED

The undersigned, being the person who prepared, supervised the preparation of and/or presented the foregoing instrument to the Clerk of the Circuit Court of Fairfax County, Virginia, for recordation, hereby declares that if the land which is referred to in such instrument is subject to any provision of any other instrument which purports to restrict or affect, on the basis of race, color, religion, ancestry or national origin, the holding, occupancy or transfer thereof, such provision is wholly invalid for any purpose, in the opinion of the County Board of Supervisors of Fairfax County, Virginia; and, the undersigned certifies that the foregoing instrument contains no provision which purports to restrict or affect, on the basis of race, color, religion, ancestry or national origin, the holding, occupancy or transfer of any interest in said land.

JOHN H. RUST

By:   
P. O. Box 537,  
4009 Chain Bridge Road,  
Fairfax, Virginia 22030

In the Clerk's Office of the Circuit Court of  
Fairfax County, Virginia SEP 25 1972 at 3:52 PM  
This instrument was received and, with the  
certificate annexed, admitted to record  
Teste:

  
Clerk

4 COPY TESTE:

JAMES E. HOOFNAGLE, CLERK

By:   
Deputy Clerk



**"EXHIBIT NO. 14"**

<b>A. U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT SETTLEMENT STATEMENT</b>  McCandlish, Lillard, Bauknight, Church & Best a Professional Corporation 4069 Chain Bridge Road Fairfax, Virginia 22030  (703) 273-2440		<b>B. TYPE OF LOAN</b>  1. <input type="checkbox"/> FHA      2. <input type="checkbox"/> FMHA      3. <input type="checkbox"/> CONV. UHHS. 4. <input type="checkbox"/> VA      5. <input type="checkbox"/> CONV. INS.  6. FILE NUMBER:      7. LOAN NUMBER: 04-03587-001 8. MORT. INS. CASE NO.:	
<b>C. NOTE:</b> This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.			
<b>D. NAME OF BORROWER:</b>  Stephen L. Best and Letty Sheild Best, his wife		<b>E. NAME OF SELLER:</b>  Edward E. Firth and Anna W. Firth, his wife	
<b>G. PROPERTY LOCATION:</b> Lot 36, Section 2, Brecon Ridge 4908 Prestwick Drive Fairfax, Virginia 22030		<b>H. SETTLEMENT AGENT:</b> McCandlish, Lillard, Bauknight, Church & Best  <b>PLACE OF SETTLEMENT:</b> 4069 Chain Bridge Road Fairfax, Virginia 22030	
<b>I. SETTLEMENT DATE:</b>  June 1, 1978			
<b>J. SUMMARY OF BORROWER'S TRANSACTION:</b>		<b>K. SUMMARY OF SELLER'S TRANSACTION:</b>	
100. GROSS AMOUNT DUE FROM BORROWER		400. GROSS AMOUNT DUE TO SELLER	
101. Contract sales price	152,500.00	401. Contract sales price	152,500.00
102. Personal property	2,500.00	402. Personal property	2,500.00
103. Settlement charges to borrower (line 1400)	386.00	403.	1,111.25
104.	1,111.25	404.	
105.		405.	
Adjustments for items paid by seller in advance		Adjustments for items paid by seller in advance	
106. City/town taxes to		406. City/town taxes to	
107. County taxes to		407. County taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. GROSS AMOUNT DUE FROM BORROWER	156,497.25	420. GROSS AMOUNT DUE TO SELLER	156,111.25
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER		500. REDUCTIONS IN AMOUNT DUE TO SELLER	
201. Deposit or earnest money	5,000.00	501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)	30,000.00	502. Settlement charges to seller (line 1400)	9,387.50
203. Existing loan(s) taken subject to	60,486.85	503. Existing loan(s) taken subject to as of 5/1	60,486.85
204.		504. Payoff of first mortgage loan	
205.		505. Payoff of second mortgage loan	
206.		506. Deposit held by seller	
207.		507. Wire charge	
208.		508. Second trust held by seller	30,000.00
209.		509. Interest 5/1/78 to 5/31/78	378.04
Adjustments for items unpaid by seller		Adjustments for items unpaid by seller	
210. City/town taxes to		510. City/town taxes to	
211. County taxes 1/1/78 to 5/31/78	759.53	511. County taxes 1/1/78 to 5/31/78	759.53
212. Assessments to		512. Assessments to	
213. Interest 5/1/78 to 5/31/78	378.04	513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. TOTAL PAID BY/FOR BORROWER	96,624.42	520. TOTAL REDUCTION AMOUNT DUE SELLER	101,011.92
300. CASH AT SETTLEMENT FROM OR TO BORROWER		600. CASH AT SETTLEMENT TO OR FROM SELLER	
301. Gross amount due from borrower (line 120)	156,497.25	601. Gross amount due to seller (line 420)	156,111.25
302. Less amounts paid by/for borrower (line 220)	( 96,624.42)	602. Less reduction amount due seller (line 520)	(101,011.92)
303. CASH (X FROM) ( ) TO BORROWER	59,872.83	603. CASH (X TO) ( ) FROM SELLER	55,099.33

TAXES HAVE BEEN ADJUSTED ON THE LATEST AVAILABLE INFORMATION. ANY  
READJUSTMENT IS THE SOLE RESPONSIBILITY OF PURCHASER AND SELLER.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
SETTLEMENT STATEMENT  
PAGE 2

L. SETTLEMENT CHARGES				PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
700.	TOTAL SALES/BROKER'S COMMISSION based on price \$ 152,500 @ 6% = 9,150				
	Division of commission (line 700) as follows:				
701.	\$4,575.00	to	Long & Foster, Realtors, Alexandria		
702.	\$4,575.00	to	Carriage House Associates, Inc.		
703.	Commission paid at Settlement				9,150.00
704.					
800.	ITEMS PAYABLE IN CONNECTION WITH LOAN				
801.	Loan Origination Fee	%			
802.	Loan Discount	%			
803.	Appraisal Fee	to			
804.	Credit Report	to			
805.	Lender's Inspection Fee				
806.	Mortgage Insurance Application Fee	to			
807.	Assumption Fee				
808.					
809.					
810.					
811.					
900.	ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE				
901.	Interest from	to	@ \$ /day		
902.	Mortgage Insurance Premium for	mo. to			
903.	Hazard Insurance Premium for	yrs. to			
904.		yrs. to			
905.					
1000.	RESERVES DEPOSITED WITH LENDER FOR				
1001.	Hazard Insurance	mo. @ \$	/mo.		
1002.	Mortgage Insurance	mo. @ \$	/mo.		
1003.	City property taxes	mo. @ \$	/mo.		
1004.	County property taxes	mo. @ \$	/mo.		
1005.	Annual assessments	mo. @ \$	/mo.		
1006.		mo. @ \$	/mo.		
1007.		mo. @ \$	/mo.		
1008.		mo. @ \$	/mo.		
1100.	TITLE CHARGES				
1101.	Settlement or closing fee	to			
1102.	Abstract or title search	to			
1103.	Title examination	to			
1104.	Title insurance binder	to			
1105.	Document preparation	to			
1106.	Notary fees	to			
1107.	Attorney's fees	to	McCandlish, Lillard, Bauknight, Church & Best		
	(includes above items No.: 1101- )				
1108.	Title insurance	to			
	(includes above items No.: )				
1109.	Lender's coverage \$				
1110.	Owner's coverage \$				
1111.	Attorney's fee to David M. Curtin				125.00
1112.					
1113.					
1200.	GOVERNMENT RECORDING AND TRANSFER CHARGES				
1201.	Recording fees: Deed \$ 11.00 ; Mortgage \$ 10.00 ; Releases \$			21.00	
1202.	City/county tax/stamps: Deed \$ 228.75 ; Mortgage \$ 45.00			273.75	
1203.	State tax/stamps: Deed \$ 76.25 ; Mortgage \$ 15.00			91.25	
1204.	Transfer Tax				92.50
1205.	Financing Statement				
1300.	ADDITIONAL SETTLEMENT CHARGES				
1301.	Survey	to			
1302.	Pest inspection	to	Connors Termite		20.00
1303.					
1304.					
1305.					
1400.	TOTAL SETTLEMENT CHARGES (enter on lines 103 and 502, Sections J and K)			386.00	9,387.50

Date:

*[Signature]*  
Buyer  
*[Signature]*  
Buyer

Date:

*[Signature]*  
Seller  
*[Signature]*  
Seller

#### ASSIGNMENTS OF ERROR

Appellants' assignments of error upon which they rely on appeal may be summarized as follows:

1. That the Trial Court's finding that the clauses in question in the Deed of Trust constitute a restraint on alienation is plainly wrong, and contrary to the law and evidence presented in the case.

2. That the Trial Court's finding that the clauses in question in the Deed of Trust constitute an unreasonable restraint on alienation because the Bank failed to show that the enforcement of said clauses was necessary to protect its security is plainly wrong, and contrary to the law and evidence presented in the case.

3. That the Trial Court erred as a matter of law in giving retroactive application to the provisions of Section 6.1-330.34 of the 1950 Code of Virginia, as amended, in its construction and interpretation of the clauses in question in the Deed of Trust.