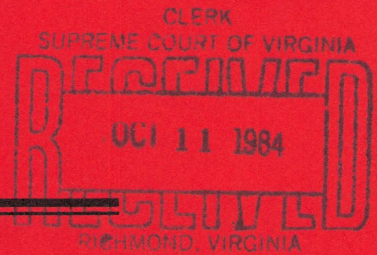


233 Va 73



IN THE

Supreme Court of Virginia

AT RICHMOND

WASHINGTON & LEE
LAW LIBRARY

RECORD NO. 840017

MAY 18 1987

JEREMY W. TAYLOR

.....Appellant

v.

JACK M. SANDERS and
BARBARA SANDERS

.....Appellee

APPENDIX

Richard R. Saunders, Jr.
HANES, SEVILLA, SAUNDERS &
McCAHILL, P.C.
30 North King Street
Post Office Box 678
Leesburg, Virginia 22075

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WARRANT IN DEBT

VA. CODE ANN. §16.1-79

LOUDOUN COUNTY

CITY OR COUNTY

General District Court

9 N. Church Street, Leesburg, Virginia

STREET ADDRESS OF COURT

TO ANY AUTHORIZED OFFICER:

You are hereby commanded to summon the Defendant(s) to appear on

Wednesday, December 29, 1982 at 9:30 a.m. before this Court to answer the complaint of
DATE AND TIME

the Plaintiff(s) upon a claim of nonpayment of a debt in the sum of

\$ 3,000.00 net of any credits with interest; 5% per month
INTEREST RATE AND DATE FROM WHICH INTEREST IS DUE
beginning November 5, 1982 until paid,

\$ COSTS costs, and \$ 15% of amount ATTY. FEE attorney's fees collected

☐ Open Account ☐ Contract ☒ Note ☐ Other [EXPLAIN]Homestead Exemption waived? ☒ yes ☐ no ☐ cannot be demanded

DATE ISSUED

☐ CLERK☐ MAGISTRATE

CASE DISPOSITION

JUDGMENT that Plaintiff(s) recover against ☐ named Defendant(s) ☐\$ net of any credits with interest; INTEREST RATE AND DATE FROM WHICH INTEREST IS DUE
until paid,

\$ COSTS costs, and \$ ATTY. FEE attorney's fees.

Homestead Exemption waived? ☐ yes ☐ no ☐ cannot be demanded☐ JUDGMENT FOR ☐ NAMED DEFENDANT ☐☐ NON-SUIT ☐ DISMISSEDDefendant(s) present? Yes ☐
No ☐

DATE ENTERED

JUDGE

RETURN DATE

FILE NO.

12/29/82

PLAINTIFF(S)

Jeremy W. Taylor

V.

DEFENDANT(S)

Jack M. Sanders and

Barbara C. Sanders

WARRANT IN DEBT

RECEIPT NO.

DATE FEE RECEIVED

TO DEFENDANT: You are not required to appear; however, if you fail to appear, judgment may be entered against you.

CONTESTED CASES:

- ☐
- will be heard on return date.
-
- ☐
- will be set for later date.

Bill of Particulars. ORDERED DUE

Grounds of Defense. ORDERED DUE

ATTORNEY FOR PLAINTIFF(S)

Larry Bleich
Redick & Norwitch; (703)620-6330

ATTORNEY FOR DEFENDANT(S)

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE COUNTY OF LOUDOUN

JEREMY W. TAYLOR

vs.

JACK M. SANDERS and
BARBARA C. SANDERS

)
)
)
)
)
)


CIVIL NO.

AFFIDAVIT

STATE OF VIRGINIA
COUNTY OF FAIRFAX: to-wit:

Jeremy W. Taylor, being duly sworn, deposes and says that he is the Plaintiff in this action; and that to the best of his belief, the principal amount of the Plaintiff's claim against the above captioned Defendants is the sum of THREE THOUSAND DOLLARS (\$3000) which amount represents a balance due under a promissory note made by Defendants November 27, 1981. Said amount became justly due October 25, 1982, and remains unpaid. Plaintiff claims said amount plus late penalty of 5% per month beginning November 5, 1982, as set out in the note. Plaintiff also claims attorney's fees of 15% of the amount collected as set out in the note.

The affiant further deposes and says that the above-captioned Defendants are not now, to the best of the affiant's belief, in the Armed Forces of the United States of America.


Jeremy W. Taylor

Subscribed to and sworn to before me, a Notary Public in and for the City, County, and State aforesaid, this 24th day of Nov, 1982.


Notary Public

My Commission expires: 12/13/82

Jeremy W. Taylor,	}	
Plaintiff	}	
	}	
vs.	}	CIVIL NO. C82-3273
	}	
Jack M. Sanders and	}	
Barbara C. Sanders,	}	
Defendants	}	

BILL OF PARTICULARS

Comes now the Plaintiff, JEREMY W. TAYLOR, by counsel, and in response to the Order of this Court dated December 29, 1982, files this Bill of Particulars and says that he relies on the allegations contained in the Warrant in Debt filed herein, and also in addition thereto says that the Defendants' obligation to the Plaintiff is fixed and owing by reason of the following:

1. The Defendants JACK M. SANDERS and BARBARA C. SANDERS on November 27, 1981, entered into a sales contract under which the Plaintiff, JEREMY W. TAYLOR, acting as agent for Jeremy W. Taylor, Inc., Trustee, agreed to sell to the Defendants, a parcel of real estate located in Loudoun County, Virginia known as Lot 66, Section 5-A, Sugarland Run. By an occupancy agreement of the same date, the Plaintiff further agreed to allow the Defendants to take possession of the premises prior to settlement date.

2. To assure their obligations under both the sales contract and the occupancy agreement the Defendants tendered to the Plaintiff a deposit in the form of a promissory note in the principal amount of \$3000.00, dated November 27, 1981, and due October 25, 1982. Plaintiff, in good faith, accepted the note as a deposit with the express understanding of both parties that if the Defendants should fail to settle on January 4, 1982, the deposit would be forfeited as full damages for the Defendants breach. A provision embodying this understanding was included in the sales contract which the Defendants signed.

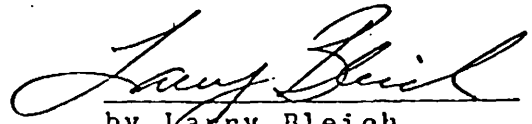
3. The Defendants did not settle on January 4, 1982, and did not or could not settle during the remainder of the month.

4. On February 1, 1982, by letter hand delivered, the Plaintiff declared the sales contract in default and informed the Defendants that their deposit in the form of the aforescribed promissory note was forfeited as provided in the sales contract. The Defendants were asked to vacate the premises in accordance with the occupancy agreement.

5. By letter dated October 29, 1982, the Plaintiff made formal demand upon the Defendants for immediate and full payment under the promissory note which became due October 25, 1982 as aforesaid.

6. The Defendants did not respond to the Plaintiff's demand and to date have not satisfied their obligations under the promissory note as no payment has been tendered.

Jeremy W. Taylor,


by Larry Bleich
Of Counsel

Larry Bleich, Counsel for Plaintiff
Pedick & Norwitch
11866-D Sunrise Valley Drive
Reston, Virginia 22091

Certificate of Service

I HEREBY CERTIFY that I mailed a true copy of the foregoing Bill of Particulars to George F. Griffith, Counsel for the Defendants, 4057 Chain Bridge Road, Fairfax, Virginia 22030.


Larry Bleich

V I R G I N I A:

IN THE GENERAL DISTRICT COURT FOR THE COUNTY OF LOUDOUN

JEREMY W. TAYLOR

Plaintiff

vs.

LAW NO. C82-3273

JACK M. SANDERS and
BARBARA C. SANDERS

Defendants

82-343

ANSWER AND GROUNDS OF DEFENSE


COMES NOW the Defendants, JACK M. SANDERS and BARBARA C. SANDERS, by counsel, and as and for their answer and response to the civil warrant filed against them, hereby state and allege as follows:

1. That they do not owe the Plaintiff, JEREMY W. TAYLOR, any monies.

2. That there was no consideration for the Promissory Note which is the alleged basis of the Plaintiff's claim against them.

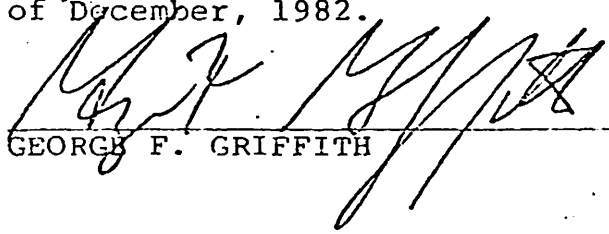
WHEREFORE, having fully answered and responded to the civil warrant filed against them, Defendants pray that said civil warrant be dismissed with prejudice and that they be awarded their costs and expenses expended in the defense of this suit.

JACK M. SANDERS
BARBARA C. SANDERS
By Counsel


GEORGE F. GRIFFITH
Counsel for Defendants
4057 Chain Bridge Road
Fairfax, Virginia 22030
273-7736

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I mailed a true copy of the foregoing Answer and Grounds of Defense to Larry Bleich, Counsel for Plaintiff, Redick & Norwitch, 11866-D Sunrise Valley Drive, Reston, Virginia 22090; this 21st day of December, 1982.



GEORGE F. GRIFFITH

\$766.40

3/10/82

2/4/82

JEREMY W. TAYLOR

Plaintiff

vs.

LAW NO. C82-3273

JACK M. SANDERS and
BARBARA C. SANDERS

Defendants

SUPPLEMENTARY GROUNDS OF DEFENSE

COMES NOW the Defendant, JACK M. SANDERS and BARBARA C. SANDERS, by counsel, and as and for their supplementary grounds of defense to the civil warrant filed against them, hereby state and allege as follows:

1. That there was no consideration for the promissory note which is the alleged basis of the Plaintiff's claim against them.

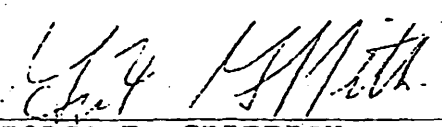
2. That subsequent to the Defendants' execution of the sales contract dated November 27, 1981, and the promissory note of even date, the Defendants and the Plaintiff modified and changed the terms of the sales contract and the supporting promissory note.

3. That the Plaintiff by the actions of his agents and/or employees cancelled the note and the sales contract for good and valuable consideration, the receipt of which was made by the Plaintiff.

WHEREFORE, having fully answered and responded to the Plaintiff's civil warrant as set forth in the Answer and Grounds of Defense previously filed herein and these Supplementary Grounds of Defense, Defendants pray that said civil warrant be dismissed with prejudice and that they be awarded their costs and

expenses expended in the defense of this suit.

JACK M. SANDERS
BARBARA C. SANDERS
By Counsel



GEORGE F. GRIFFITH
4057 Chain Bridge Road
Fairfax, Virginia 22030
Counsel for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I mailed a true copy of the foregoing
Supplementary Grounds of Defense to Larry Bleich, Counsel for
Plaintiff, Redick & Norwitch, 11866-D Sunrise Valley Drive,
Reston, Virginia 22090, this 28th day of January, 1983.



GEORGE F. GRIFFITH

V I R G I N I A :

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

JEREMY W. TAYLOR

Plaintiff

vs

JACK M. SANDERS and
BARBARA C. SANDERS

Defendants

O R D E R

THIS MATTER came before the Court prior to trial on the motion of the Plaintiff, by counsel, to amend the relief sought in the original Warrant in Debt, so as to include a claim for a five percent (5%) late fee; and upon the agreement of counsel.

IT APPEARING TO THE COURT that the Plaintiff's motion is proper and is not objected to by counsel to the Defendants, as evidenced by his endorsement to this Order, it is therefore

ORDERED that the Plaintiff be and he hereby is granted leave to amend his relief sought by including a five percent (5%) late fee.

ENTERED June 23, 1983, nunc pro tunc.

181
JUDGE

I ASK FOR THIS:

Richard R. Saunders, Jr.
Richard R. Saunders, Jr.
Counsel for Plaintiff

SEEN AND NOT OBJECTED TO:

181
George F. Griffith
Counsel for Defendants

LAW OFFICES

HANES, SEVILA, SAUNDERS & MCCAHERILL

A PROFESSIONAL CORPORATION

POST OFFICE BOX 678

LEESBURG, VIRGINIA 22075

WILLIAM B. HANES
ROBERT E. SEVILA
RICHARD R. SAUNDERS, JR.
BURKE F. MCCAHERILL
DOUGLAS L. FLEMING, JR.

30 NORTH KING STREET

(703) 777-5700

METRO 471-9800

July 28, 1983

The Honorable Thomas D. Horne
Circuit Court Judge
Post Office Box 727
Leesburg, Virginia 22075

Re: Taylor v. Sanders
At Law No. 7230
Memorandum of Authorities

Dear Judge Horne:

Rather than drafting a formal Memorandum of Authorities, I thought it might be appropriate to simply forward my authorities to you under a brief cover letter. The purpose of this letter will not be to reargue the case, but simply to outline my argument and present the additional authorities enclosed.

The Court will recall that the Plaintiff takes the position that paragraph 16 of the sales contract is applicable only in the event that financing contingencies are contained within the body of the contract. It would be wholly improper for the Court to go outside of the contract itself to identify other loans or assumptions and to thereafter apply paragraph 16 to those loans in order to make the sales contract contingent on the same. Like all contracts, the contract in question must be construed by reference to the four corners of the document and, if that is done, there can be no ambiguity in the sales contract. The Defendants' contention that the \$7,000 down payment was to be contingent on financing is in direct contradiction to paragraph 5 of the contract which requires that \$7,000 will be paid in cash or its equivalent at the conveyance, and no where else in the contract is any reference made to the possibility that financing might be required. The language in paragraph 16 which states

The Honorable Thomas D. Horne
July 28, 1983
Page Two

that "If new financing is to be arranged or if assumption of existing financing requires lender approval" must be construed to apply to financing which is contained within the body of the sales contract and, in this particular contract, there is no financing. Consequently, the Plaintiff contends that there is no ambiguity and that parol evidence to vary or contradict the sales contract is improper.

In the event the Court determines that paragraph 16 does create an ambiguity, the Court must then address the resolution of the same. It is well-settled law that the Court cannot create a contract for the parties; however, there are several rules of construction which may aid the Court in resolving this conflict. It is the Plaintiff's position that the Court should construe paragraph 16 against the Defendants for two reasons: (1) the contract was prepared by or at the insistence of the Defendants and must therefore be construed against them where ambiguities exist, and (2) paragraph 16 is included for the benefit of the purchasers in sales contracts of this sort and, where ambiguities exist, they should be construed against the person in whose favor the particular phrase or clause is inserted. In support of these two positions I am enclosing a photocopy of 17 Am Jur 2d, Contracts, §276, and an excerpt from VNB Mortgage Corp. v. Lone Star, 215 Va. 366.

The Court will recall that counsel for the Defendants argued that the real estate agent was also the agent of the Plaintiff and we do not dispute that this is so once the contract was entered into by the Plaintiff. However, the critical time which the Court must focus on when applying the rules of construction is the period of time when the contract was being prepared and actually presented. The testimony in the case reveals that the Defendants contacted Mrs. Perez, an agent for Long & Foster, which included the Plaintiff's property on its multiple listing service. The Defendants instructed Mrs. Perez to prepare a contract for them and consented to the preparation of this contract on the Long & Foster real estate form. Presumably they reviewed this contract and executed the same and thereafter instructed Mrs. Perez to present the contract to the Plaintiff in the hopes that he might accept their terms. Up to this point in time the Plaintiff had had no dealings with Mrs. Perez or her

The Honorable Thomas D. Horne
July 28, 1983
Page Three

agency and she could not be considered to be his agent for any purposes. Thereafter the Plaintiff endorsed the contract and, by doing so, ratified the terms suggested by the Defendants and accepted Mrs. Perez as his agent in that he thereafter agreed to pay her a commission pursuant to the terms of the contract. Whether Mrs. Perez could serve as real estate agent for the Defendants under real estate rules and regulations is really not at issue in this case. The real issue is whether she served as the Defendants' agent (not necessarily real estate agent) in preparing and presenting the contract of sale, and the answer is obviously that she did. Consequently, the language of the sales contract must be deemed to be the language of the Defendants in applying the Scrivener's Rule.

The other issue presented in the trial of this case, for which the Court indicated additional authorities might be presented, was the issue of usury. Although the Defendants freely and voluntarily executed the promissory note, which is the subject of this suit, and actually suggested the terms contained therein, they now wish to rely on the defense of usury in defeating the Plaintiff's claim to a 5% per month late penalty charge, as contained in the note. In asserting its defense, the Defendants rely on §6.1-330.11 of the Code of Virginia which provides that no contract shall provide for more than 8% interest per year on any loan or forbearance of money and the note is therefore usurious on its face. The Plaintiff disagrees and would cite the Court to the case of Ward v. Cornett, 91 Va. 676 as conclusive authority for dismissing the defense of usury.

In reviewing the note in question, the Court will see that no interest is charged on the \$3,000 and the Defendants have the option of paying the note when due and thereby avoiding any additional charge or penalty. It is obvious that the parties contemplated that this note would be paid on or before the 25th of October, 1982, and that the Defendants would suffer a penalty if they failed to pay by that date. A similar set of facts was presented in the Ward case and the Supreme Court concluded that usury was not an appropriate defense. In Ward, the plaintiff had sued the defendant on a note which provided for interest to be charged after the note matured,

The Honorable Thomas D. Horne
July 28, 1983
Page Four

if the same were not paid as agreed. The 8% then charged in the Ward note was more than the legal rate permitted at that time. The defendants defaulted on the note and thereafter the plaintiff sued for both the principal sum plus the interest which had accumulated since the maturity date of the note, which is identical to the facts of our case. Quoting from the Ward case, the Supreme Court stated as follows:

It is evident that prompt payment of the debt at maturity was contemplated by the parties. This fact, taken in connection with the unusual and peculiar character of the bond in not stipulating for any interest until it fell due at a fixed period in the future of considerable duration, and in providing for a greater than legal rate of interest after its maturity, shows that this illegal rate of interest was affixed as a penalty to secure the prompt payment of the debt, and is not usury... A debt, to be usurious, must be so in the beginning. It cannot be made so by subsequent events. An usurious agreement is one to pay originally a greater rate of interest than the law allows. If the obligor had paid the debt when the bond became due, he would not have incurred, even under the literal terms of the bond, any liability to pay the illegal interest stipulated for after its maturity. Where the debtor, by a punctual payment of the debt, may thus relieve himself and avoid the payment of the illegal interest stipulated for, it is not usury.

Based on the above arguments and authorities and the arguments and authorities previously submitted to the Court, the Plaintiff would respectfully request that judgment be entered in his favor against the Defendants, jointly and severally, in the amount of \$3,000, plus 5% per month penalty from October 25, 1982 until paid, 15% attorney's fees, and costs. Lastly, the Plaintiff would respectfully request that he be given an opportunity to offer rebuttal argument and authorities presented by the Defendants.

Respectfully yours,


Richard R. Saunders, Jr.

RRS/jm

The Honorable Thomas D. Horne
July 28, 1983
Page Five

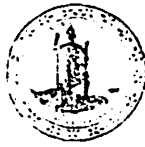
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 28th day of
July, 1983, I mailed a true copy of the foregoing to
George F. Griffith, Esquire, 4057 Chain Bridge Road,
Fairfax, Virginia 22030, counsel for Defendants.



Richard R. Saunders Jr.

TWENTIETH JUDICIAL CIRCUIT
OF VIRGINIA



RAYNER V. SNEAD, JUDGE RETIRED
POST OFFICE BOX 8
WASHINGTON, VIRGINIA 22747

THOMAS D. HORNE, JUDGE
POST OFFICE BOX 727
LEESBURG, VIRGINIA 22075

FAUQUIER, LOUDOUN AND
RAPPAHANNOCK COUNTIES

CARLETON PENN, JUDGE
DRAWER 471
LEESBURG, VIRGINIA 22075

WILLIAM SHORE ROBERTSON, JUDGE
POST OFFICE BOX 985
WARRENTON, VIRGINIA 22186

September 13, 1983

Richard R. Saunders, Jr., Esq.
Hanes, Sevila, Saunders & McCahill, P.C.
30 North King Street--P.O.Box 678
Leesburg, Virginia 22075

George F. Griffith, Esq.
4057 Chain Bridge Road
Fairfax, Virginia 22030

Re: Taylor v. Sanders Law No. 7230

Gentlemen:

The Court finds that the provisions for forfeiture of the deposit under the contract of sale dated November 27, 1981, constitute a "penalty" and are therefore unenforceable. Under the terms of the contract of sale, the note shall be "full damages" in the event the purchase shall fail to settle on January 4, 1982. The occupancy agreement and note indicate that the note shall also serve as a "deposit" to be held by the seller in escrow. The occupancy agreement specifies that,

"(s)hould damage be determined, (after inspection by the seller or his agent), we (the purchasers) authorize Agent to deduct from funds placed in escrow, as described above, an amount sufficient to repair or restore premises to the same condition as of our occupancy date." (emphasis added).

Under the terms of the sale contract and occupancy agreement the seller may elect to treat the deposit as liquidated damages or apply the deposit towards his actual damages sustained, as determined by him, as a result of occupancy by the Defendant. Under such circumstances, the law treats the forfeiture as a penalty. 25C.J.S. Damages § 109, p.1060 Plaintiff must therefore be left to recover such actual damages as he can prove in this case. Accordingly, the Court will enter judgment for the Defendant in this action.

Counsel for the Defendant is requested to draw an approximate judgment order consistent with the decision of the Court to which counsel for the Plaintiff may note his exception.

Very truly yours,

Thomas D. Horne

Thomas D. Horne

TDH/bg

V I R G I N I A:

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

JEREMY W. TAYLOR

Plaintiff

vs.

AT LAW NO. 7230

JACK M. SANDERS and

BARBARA C. SANDERS

Defendants

FINAL JUDGMENT ORDER

THIS CASE CAME ON AGAIN this day to be heard upon the papers formerly read and filed herein; upon the proceedings had herein on the trial held in open court on July 21, 1983, and upon argument of counsel, and it appearing that judgment should be entered for the Defendants,

NOW, THEREFORE, IT IS ADJUDGED, ORDERED and DECREED that judgment shall be and hereby is entered in favor of the Defendants JACK M. SANDERS and BARBARA C. SANDERS, and the motion for judgment filed against them shall be and hereby is dismissed with prejudice. IT IS FURTHER ORDERED that the Court's letter opinion attached hereto, shall be and hereby is made a part of this Final Order.

ENTERED this 7th day of October, 1983.

Thomas D. Horne
THOMAS D. HORNE, JUDGE

SEEN:

George F. Griffith
GEORGE F. GRIFFITH
10521 Judicial Drive, Suite 307
Fairfax, Virginia 22030
Counsel for Defendants

SEEN AND ACCEPTED TO:

Richard R. Saunders, Jr.
RICHARD R. SAUNDERS, JR.
30 North King Street
Leesburg, Virginia 22075
Counsel for Plaintiff

A COPY-TESTE
BY FR. HOWARD CLERK
Blum DEPUTY CLERK

TWENTIETH JUDICIAL CIRCUIT
OF VIRGINIA



RAYNER V. SNEAD, JUDGE RETIRED
POST OFFICE BOX 8
WASHINGTON, VIRGINIA 22747

THOMAS D. HORNE, JUDGE
POST OFFICE BOX 727
LEESBURG, VIRGINIA 22075

FAUQUIER, LOUDOUN AND
RAPPAHANNOCK COUNTIES

CARLETON PENN, JUDGE
DRAWER 471
LEESBURG, VIRGINIA 22075

WILLIAM SHORE ROBERTSON, JUDGE
POST OFFICE BOX 985
WARRENTON, VIRGINIA 22186

November 29, 1983

Richard R. Saunders, Esq.
Hanes, Sevilla, Saunders & McCahill, P.C.
30 North King Street
P.O. Box 678
Leesburg, Virginia 22075

George F. Griffith, Esq.
4057 Chain Bridge Road
Fairfax, Virginia 22030

Re: Taylor v. Sanders
Law No. 7230

Gentlemen:

The Court, having carefully considered Plaintiff's Motion to Reconsider filed herein, denies his motion for the reasons previously stated. Accordingly, the Court sees no reason to vacate or modify its previous Order rendering Judgment for the Defendant entered October 7, 1983.

Counsel for the Plaintiff has drawn the Court's attention to the firmly established principle of law that a court cannot base its judgments or decree upon facts not alleged or upon a right not otherwise pleaded or claimed. Ted Lansing Supply v. Royal Alum., 221 Va. 1139(1981); Potts v. Mathieson Alkali Works, 165 Va. 196(1935); Switzer v. Switzer, 167 Va. 193(1936); Sanitary Grocery Co. v. Wright, 158 Va. 312(1932). However, as the Court stated in Camp v. Bruce, 96 Va. 521(1898) at page 524,

"Whenever the illegality
of the contract appears, whether

alleged in the pleadings or made known for the first time in the evidence, it is fatal to the case. That defect cannot be gotten rid of either by failure to plead it, or by agreeing to waive it in the most solemn manner. The law will not enforce contracts in its violation." See also, Massie v. Dudley, 173 Va. 42(1939).

In the instant case, Plaintiff, in his Bill of Particulars and evidence introduced, has placed the issue of the liquidated damage clause, being that of a penalty, before the Court. Norris v. McMechen, 236 N.Y. Supl. 486(1929). As the Supreme Court found in Colonna Dock Co. v. Colonna, 108 Va. 230(1908) at page 241,

"(4) When the covenant is for the performance of a single act or several acts, or for the abstaining from doing some particular act or acts which are not measurable by any exact pecuniary standard, and it is agreed that the party covenanting shall pay a stipulated sum as damages for a violation of any of such covenants, that sum is to be deemed liquidated damages and not a penalty."

"(5) Where the agreement secures the performance or the omission of various acts of this kind mentioned in the last proposition, together with one or more acts in respect of which the damages on a breach of the covenant are certain or readily ascertainable by a jury, and there is a sum stipulated as damages to be paid by each party to the other for a breach of any one of the covenants, such sum is held to be a penalty merely."

The Court requests that Mr. Griffith draft an Order denying Plaintiff's Motion to Reconsider and entering Final Judgment for the Defendant.

Very truly yours,

Thomas D. Horne

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

JEREMY W. TAYLOR)

Plaintiff)

vs)

AT LAW NO. 7230

JACK M. SANDERS and)
BARBARA C. SANDERS)

Defendant)

NOTICE OF APPEAL

TO: JACK M. SANDERS and
BARBARA C. SANDERS
c/o George F. Griffith, Esquire
10521 Judicial Drive, Suite 307
Fairfax, Virginia 22030

COMES NOW the Plaintiff, by counsel, pursuant to Rule 5:6 of the Rules of the Supreme Court of Virginia and files this his Notice of Appeal. A written statement of facts of the proceedings herein will be filed.

JEREMY W. TAYLOR

BY: Richard R. Saunders, Jr.

Counsel

Richard R. Saunders, Jr.
Richard R. Saunders, Jr.
Hanes, Sevila, Saunders & McCahill
Post Office Box 678
Leesburg, Virginia 22075
Counsel for Plaintiff

C E R T I F I C A T E

I hereby CERTIFY that I have caused a true copy of the foregoing Notice of Appeal to be mailed, postage paid, to George F. Griffith, Counsel for Defendant, 10521 Judicial Drive, Suite 307, Fairfax, Virginia 22030, on this 1st day of November, 1983.

Richard R. Saunders, Jr.

ASSIGNMENTS OF ERROR

1. The court erred in basing its ruling on an issue not raised by the pleadings nor by the proof in the case; i.e. the issue of a penalty.

2. Assuming arguendo that the trial court was correct in basing its decision in this case upon an issue not raised in the pleadings or proof, i.e. that the note sued upon constituted a penalty, the trial court erred in its determination that the note constituted a penalty.

3. The trial court erred as a matter of law in permitting Mr. Sanders to introduce evidence of alleged conversations which he had with Mr. Taylor prior to and at the time of the parties' execution of the November 27, 1981 sales contract, where the statements altered, varied, contradicted, added to and/or explained the terms of the sales contract.

V I R G I N I A:

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

JEREMY W. TAYLOR

Plaintiff

vs.

JACK M. SANDERS and
BARBARA C. SANDERS

Defendants

AT LAW NO. 7230

STATEMENT OF FACTS

COMES NOW the Plaintiff, JEREMY W. TAYLOR, by counsel,
and respectfully submits the following Statement of Facts
pursuant to Rule 5:9 of the Supreme Court Rules, as amended:

TESTIMONY OF JEREMY W. TAYLOR

1. In the Fall of 1981, Mr. Taylor owned a house and lot
located at 10 Carolina Court, Sterling, Virginia, in Loudoun
County, Virginia, which property he held in the name of Jeremy
W. Taylor, Inc., Trustee.

2. Beginning in the summer of 1981, Mr. Taylor began
marketing his property for sale and the same was advertised
through the multiple listing service.

3. That on or about November 12, 1981, Mr. Taylor was
presented with a contract prepared and signed by Jack M.
Sanders, Barbara C. Sanders, purchasers, and Eleanor M. Perez,
agent for Long & Foster Real Estate, Inc.

4. That on November 13, 1981, after making various
amendments to the contract, Mr. Taylor executed the Sales
Contract and presented the same to the purchasers and their agent,

who thereupon initialed the changes, thereby finalizing their contractual arrangement.

5. That Mr. Taylor advised Mr. and Mrs. Sanders and Ms. Perez at their meeting on November 12th that he had already received and entered into a contract for the sale of his property, but he felt that he could secure a release from that contract. It was for that reason that the November 12th contract was amended by Mr. Taylor to provide for a contingency for his release from the first contract. Between November 13th and November 27, 1981, Mr. Taylor was successful in securing his release from the original contract that he had entered into and he therefore requested the purchasers to redraft the contract dispensing with the contingencies which were contained in the November 12th contract. On November 27, 1981, a revised contract on the same Long and Foster form used for the November 12, 1983, contract was prepared by the purchasers and their agent and executed by all parties. The November 27th contract was introduced into evidence through Mr. Taylor as Plaintiff's Exhibit 1. Upon execution of the original contract on November 12, 1981, Mr. Taylor removed his property from the market, no longer seeing the need to list the same for sale.

6. At the time Mr. and Mrs. Sanders presented the original contract, on November 12, 1981, they requested Mr. Taylor to accept a \$3,000 note as and for their earnest money deposit in lieu of cash or a check. They also requested that the note not be made payable until October, 1982, when they expected to receive funds from inheritance. Mr. Taylor confirmed that he understood the cash poor position that the purchasers were in and therefore agreed to accept the note as an earnest money

deposit.

7. At the time the parties executed the November 27th contract, the purchasers advised Mr. Taylor that they would like to take possession of the property prior to settlement, which was scheduled for January 4, 1982. Mr. Taylor agreed to permit them to take possession pursuant to an occupancy agreement, but requested one month's rent in advance and a security deposit. Again, the purchasers advised him that they were not in a cash position sufficient to pay a security deposit and they requested Mr. Taylor to allow the \$3,000 note, which had been submitted with the sales contract, to also serve as a security deposit for any damages that they might cause to the residence. Mr. Taylor agreed to these terms and ~~these terms~~ ^{EXCLUDED.} the occupancy agreement and original note were Plaintiff's Exhibit 2 and 4 respectively.)

7A. Over objection of counsel for the Plaintiff (which objection was based on the Parol Evidence Rule), Mr. Taylor testified on cross-examination that Mrs. Sanders expected to get the \$7,000 from the inheritance; that Mr. Sanders would make application for a loan; that he looked at the will to see if they had any money; that Mr. Sanders wanted an extension to get the \$7,000 payment; and that while he knew Mr. Sanders hoped to get a loan, he was not told this was his only source with United Commercial Credit.

8. Shortly after November 27, 1981, Mr. and Mrs. Sanders took possession of the real estate in question.

9. Prior to January 4, 1982, the scheduled settlement date, Mr. Taylor spoke to Mr. Sanders about the settlement and

the Defendant indicated that he was having financial problems. Nevertheless, the settlement date was not changed.

10. On January 4, 1982, Mr. Taylor testified that he was ready, willing and able to convey title to the property to Mr. and Mrs. Sanders. He had already contacted his attorney who had prepared the necessary deed and settlement payments; however, neither the Sanders nor any agent on their behalf appeared at settlement. Mr. Taylor testified that on January 12th he received in the mail an unsigned letter which purported to be from Mr. and Mrs. Sanders and in which Mr. Sanders requested a delay in settlement until February 15, 1982. This letter was introduced through Mr. Taylor (Plaintiff's Exhibit 5).

11. By the time Mr. Taylor received the above letter from Mr. Sanders, the January rent check which the Sanders had submitted had bounced and Mr. Taylor had learned that Mr. Sanders had lost his job. For these and other reasons, Mr. Taylor did not agree to any extension of the settlement date.

12. By letter dated February 1, 1982, which was hand delivered to Mr. and Mrs. Sanders, Mr. Taylor advised the Sanders of their breach of the November 27th contract and of their breach of the occupancy agreement. A copy of that letter was introduced into evidence through Mr. Taylor (Plaintiff's Exhibit 2).

13. Sometime after February 1, 1982, Mr. Taylor initiated suit against Mr. and Mrs. Sanders for possession and for past due rents. Judgment was eventually awarded in Mr. Taylor's favor and thereafter the parties attempted to negotiate a settlement of the judgment. A settlement was ultimately

reached; however, Mr. Taylor testified that that settlement had nothing to do with the breach of the Sales Contract.

14. Mr. Taylor then testified that because the promissory note, which had been issued to serve as an earnest money deposit for the real estate contract was not due until October 25, 1982, he did not take any action until after that date. After October 25, 1982, Mr. Taylor issued a demand upon Mr. and Mrs. Sanders for payment of the note, together with interest, and 5% late charge. Mr. and Mrs. Sanders refused to pay the sum demanded and thereafter Mr. Taylor initiated suit for the principal and interest, plus attorney's fees and costs.

15. As of the date of trial, no sums had ever been paid by the Sanders to Mr. Taylor on the promissory note and he contended that the full amount, plus interest, late charge, attorney's fees and Court costs were still due and owing.

TESTIMONY OF JACK M. SANDERS

1. Mr. Sanders testified that he and his wife began looking for a house sometime in 1981 and contacted Long & Foster and were thereafter assisted by their agent, Eleanor Perez. After viewing the house owned by Mr. Taylor in Loudoun County, Virginia, Mr. and Mrs. Sanders had a contract prepared which they signed and submitted to Mr. Taylor on November 12, 1981. Because they did not have sufficient cash to provide for an earnest money deposit, they requested that Mr. Taylor accept a note for \$3,000 payable October 25, 1982.

2. Mr. Sanders thereafter began to testify as ^{to} a conversation which he had with Mr. Taylor prior to or at the time of the presentation of the contract to Mr. Taylor; however, the admission of this evidence was objected to by counsel for Mr.

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Taylor on the grounds that it violated the Parol Evidence Rule. That objection was overruled, but was noted as a continuing objection to all matters relating to conversations had prior to or contemporaneous with the execution of the November 12, 1981, contract. Mr. Sanders then testified that he explained to Mr. Taylor at their first meeting on November 12, 1981, that he and his wife were expecting a large inheritance from a deceased relative, which they would receive by October 25, 1982. He stated that they did not have sufficient funds for their earnest money deposit or for the \$7,000 down payment which was contained in the contract. They explained to Mr. Taylor that it would be their intention to borrow the \$7,000 from a lending institution, ^{using} ~~suing~~ their inheritance as collateral. It was fully understood that the remaining purchase price would be financed by Mr. Taylor, which he agreed to.

3. Mr. Sanders stated that on November 27, 1981, they executed a new contract and at that time he and his wife requested they be permitted to take possession of the property before the January 4th settlement date. The terms of the occupancy were discussed and the parties thereafter executed an occupancy agreement, which provided that the promissory note, would also serve as a security deposit pursuant to the terms of the occupancy agreement.

4. Mr. and Mrs. Sanders assumed possession of the property sometime after November 27th and it was their intention to stay in the premises until they settled on the property or until October 25, 1982, at which time they would renegotiate the sales contract with Mr. Taylor.

5. Mr. Sanders testified that he made an application for

a loan for the \$7,000 down payment sometime during the end of December, 1981, but was turned down. He stated that he advised Mr. Taylor of this rejection and further advised Mr. Taylor that he would reapply, but would need 30 days. He stated that Mr. Taylor asked him to put that to him in writing, which is what prompted his unsigned letter to Mr. Taylor, dated January 8, 1982.

6. Mr. Sanders confirmed that his January and February rent checks bounced and he acknowledged receipt of Mr. Taylor's default on February 1, 1982.

6A. Mr. Sanders testified that after receiving the letter of February 1, 1982, he spoke with Mr. Taylor by telephone, during which conversation Mr. Taylor told him that if he was out by February 15, ¹⁹⁸²~~1983~~, then they could leave as friends and forget the whole deal. He further testified that he vacated the premises on February 15, 1982.

7. Mr. Sanders confirmed that thereafter he and his wife were sued by Mr. Taylor for possession and rent and a judgment was entered against them. At some point thereafter, through negotiations with Mr. Taylor, a settlement was reached and he stated that he and his wife understood that the settlement covered not only all obligations under the occupancy agreement and judgment, but also all obligations under the Sales Contract.

8. Mr. Sanders confirmed that Mr. Taylor had made demands from he and his wife for payment of the \$3,000 note and further confirmed that he had made no payments to Mr. Taylor. It was his opinion that they owed Mr. Taylor nothing.

TESTIMONY OF ELEANOR M. PEREZ

1. Ms. Perez testified that she was a real estate agent at the time of this transaction and had been a real estate agent for Long & Foster for approximately 3 years.

2. Mr. and Mrs. Sanders came to Ms. Perez looking for a house and while looking they viewed the home owned by Mr. Taylor. Mr. and Mrs. Sanders liked the home and upon their request a contract was prepared, signed by them and presented to Mr. Taylor. In addition, a \$3,000 promissory note was prepared to serve as an earnest money deposit, which was Mr. and Mrs. Sanders' idea.

3. Ms. Perez confirmed that she was aware that Mr. and Mrs. Sanders intended to borrow against their inheritance in order to secure the \$7,000 needed for their down payment and she also confirmed that he made application for that loan and was turned down. According to Ms. Perez, Mr. Taylor was aware that the Sanders had made an application for a loan in connection with the real estate transaction. All of this testimony was objected to by the Plaintiff on the basis that it violated the Parol Evidence Rule.

5. Ms. Perez also offered testimony as to when the Sanders vacated the premises and stated that the Plaintiff was aware of when they moved out because she called Mr. Taylor to report the same to him.

6. Finally, Ms. Perez testified that Mr. Taylor never told her that he would waive everything if the Defendants vacated the premises voluntarily.

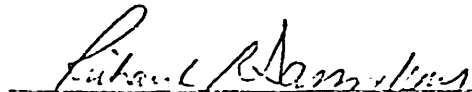
Respectfully submitted,

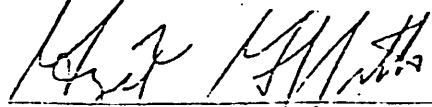
JEREMY W. TAYLOR

By:

Paul P. Sanders
Counsel

SEEN AND AGREED:


Richard R. Saunders, Jr.
Counsel for Plaintiff


George F. Griffith
Counsel for Defendant

Approved the 29th day of November, 1983.

JUDGE

LONG & FOSTER REAL ESTATE, INC.

EXECUTIVE OFFICES

2218 PROSPERITY AVENUE / FAIRFAX, VIRGINIA 22031
(703) 573-2232

COMMERCIAL SALES & LEASING
INSURANCE DEPARTMENT
MORTGAGE PROCESSING
PUBLIC RELATIONS & ADVERTISING
RELOCATION DEPARTMENT
RESIDENTIAL PROPERTY MANAGEMENT
TRADE-IN DEPARTMENT

NEW HOME CONSTRUCTION UNIT
621-10-2

BRANCH OFFICES

DISTRICT OF COLUMBIA

CAPITOL HILL (202) 547-5200
UPTOWN (202) 555-2700

VIRGINIA

ALEXANDRIA/LANHAM (703) 823-3800
ALEXANDRIA/MT VERNON (703) 705-3160
ARLINGTON (703) 577-0500
BURKE (703) 425-5042
FAIRFAX (703) 573-2500
FAIRFAX WEST (703) 515-7211
FREDERICKSBURG (703) 371-5220
GREAT FALLS (703) 759-9190
MANASSAS (703) 361-6171
MANASSAS (703) 362-1148
MARSHALL (703) 354-1595
MCLEAN (703) 795-1990

NEW HOME CONSTRUCTION UNIT
621-10-2
FARM FIELD (703) 451-5400
TERMINUS (703) 451-5500
VIENNA (703) 555-4200
WOODBRIDGE (703) 451-6151

MARYLAND

ANDERSON AIR FORCE BASE (301) 725-9500
ANNAPOLIS (301) 274-5505
BETHESDA (301) 656-1010
BOWIE (301) 262-4900
COLLEGE PARK (301) 441-9511
CROFTON (301) 721-1500
FORT WASHINGTON/OXON HILL (301) 251-4700
FREDERICK (301) 594-5200
GAITHERSBURG (301) 915-0250
GAITHERSBURG (301) 845-1545
OLNEY (301) 524-1880
POTOMAC (301) 583-0550
WALDORF (301) 645-6300
WHEATON/SILVER SPRING (301) 542-7120
WHITE FLINT/ROCKVILLE (301) 455-5506

SALES CONTRACT

THIS AGREEMENT of Sale made this 27 day of November, 1981 between
Jack M. Sanders and Barbara C. Sanders (PURCHASER)
and Jersey W. Taylor, Inc., Trustee (SELLER)
and Long and Foster Real Estate, Inc (AGENT).

WITNESSETH:

1. DEPOSIT. That for and in consideration of the sum of Three Thousand Dollars
(\$ 3,000) in the form of (CASH none) (CHECK none) (NOTE \$ 3,000.00)

which is due and payable on the 25th day of October, 1982 (month), (year), receipt of
which is hereby acknowledged by AGENT, the PURCHASER agrees to buy and the SELLER agrees to sell all that certain piece, parcel or lot of land with all improvements
thereon, described as follows:

2. PROPERTY DESCRIPTION. Lot 66, Block 5-A, Subdivision Sugarland Run
County of Loudoun, Virginia
Known as: 10 Carolina Court, Sterling, Virginia

3. CHATTELS AND/OR EQUIPMENT. Sales price to include: Stove, Refrigerator, dishwasher, disposal,
washer, dryer, exhaust fan, w/w carpet (existing), storm windows and doors
(existing), drapes and curtains (existing)

4. PRICE. Total price of property: SIXTY-THREE THOUSAND NINE HUNDRED Dollars
\$ 63,900.00

5. DOWN PAYMENT. The PURCHASER agrees to pay SEVEN THOUSAND Dollars
\$ 7,000.00

(cash or its equivalent (cashier's check) at conveyance, of which sum the above deposit shall be a part.
Should there be in excess of cash payment required, excess shall be applied to cash or cost of closing and remaining funds if any returned to PURCHASER.

6. FIRST TRUST. PURCHASER agrees to PLACE () ASSUME () CONVENTIONAL () FHA () VA ()
First Deed of Trust secured on the premises in the amount of _____ Dollars
(\$ 56,900.00), approximately, bearing interest at the rate of _____ % per annum or the prevailing rate of time of

settlement, payable \$ _____ per month, approximately, including principal and interest plus taxes,
insurance and mortgage insurance premiums if applicable. (If the deed of trust is assumed, interest shall be adjusted to the date of settlement and PURCHASER shall reimburse
SELLER for existing escrow accounts if any.)

7. TRUST. (SELLER to Take Back) The deferred purchase money amounting to \$ 56,900.00 ("wrap around")
is to be secured by a ALL INCLUSIVE deed of trust on said premises to be paid in monthly installments of approximately
\$ 624.00

or more, at maturity, without penalty, including interest at the rate of 12 7/8 percent
per annum, each installment when so paid to be applied, first to the payment of interest on the amount of principal remaining and the balance thereof credited to principal, which
Deed of trust the SELLER agrees to accept as a part of the purchase price. Said trust and note may not be assumed or title taken subject to said trust and note without prior written
consent of the note holder. The entire unpaid balance shall be due and payable in full within 4 1/2 years from date of settlement.

8. TRUSTEES. Where trustees are to be named in a deed of trust or deeds of trust, said trustees are to be named by the lender(s).

9. PROVISIONS. pre-payment prohibited for 4 1/2 years. Seller retains obligations
to continue to pay underlying existing (1st & 2nd) liens. Seller is licensed
Real estate broker. Wrap around may be extended beyond the 4 1/2 year balloon
by paying a curtailment of \$8,000.00. All other terms to remain the same.
Purchaser to pay 1/12th of P.E. taxes and insurance to seller with above payment

** It is understood that if purchaser shall fail to settle on 1/4/82, then note is/ full con

10. ADDITIONAL PROVISIONS. The attached addendum bearing the signatures of all parties concerned is hereby made a part of this contract. Addendum attached
Yes () No (X)

11. SETTLEMENT DATE. Time is of the essence of this contract and PURCHASER and SELLER are to make full settlement of this contract on or before Jan. 4, 1982
It is expressly understood and agreed that if a longer time is necessary to obtain a report on the title, or if additional time is necessary to secure a survey on the property, if re-
quired, or to finance or process the loan, then the date of settlement shall be extended for sufficient time to effect these conditions.

12. AGENT'S FEEL: SELLER agrees to pay to AGENT a commission on the sales price of the property of Three (3) % and
of Pollock and Harrison, D.C. 100 % to
the extent of the settlement to be paid from the proceeds of the sale and of 100 % and 100 %
to Long and Foster Real Estate, Inc. and 100 %
to 100 %

ADDITIONAL PARAGRAPHS NUMBERED 14 THROUGH 30 SET FORTH ON THE REVERSE SIDE HEREOF ARE INCORPORATED HEREIN AND MADE A PART HEREOF AND ALL PARTIES ACKNOWLEDGE THAT THEY HAVE READ AND AGREE TO SAID PARAGRAPHS.

Witness our signatures and seals:

<u>NOVEMBER 27</u>	19 <u>81</u>	<u>John M. Smith</u> (SEAL) PURCHASER
<u>Nov. 27</u>	19 <u>81</u>	<u>1st Britannia C. Sanders</u> (SEAL) JERRY L. SANCHEZ, INC., T.S.
<u>Nov 27</u>	19 <u>81</u>	<u>by [Signature]</u> (SEAL)
<u>November 27</u>	19 <u>81</u>	<u>[Signature]</u> (SEAL) SELLER
	19 <u>81</u>	<u>[Signature]</u> (SEAL) SALES ASSOCIATE

COOP REALTOR'S COPY

14. POSSESSION DATE: Unless otherwise agreed to in writing between the parties hereto, the SELLER agrees to give possession of said premises at the time of settlement. If the SELLER fails to do so, the PURCHASER shall become and be thereafter a tenant by sufferance of the PURCHASER and hereby expressly waives all notice to quit as provided by law. PURCHASER shall have the right to proceed forthwith by any means available to recover possession of said premises.

15. VA/HA, HVA or FHA financing applies, notwithstanding any other provisions of this contract, PURCHASER shall not incur any penalty by forfeiture or otherwise, or be obligated to complete the purchase of the property described herein if the contract purchase price or cost exceeds the reasonable value of the property as established by the Veterans Administration or the appraised value excluding closing costs, as established by the Federal Housing Administration and unless there has been delivered to the PURCHASER a written statement from the Veterans Administration or the Federal Housing Administration showing the property's value to be not less than \$_____.

The PURCHASER shall however, have the privilege and option of proceeding with the consummation of this contract without regard to the property's value as established by the Veterans Administration or Federal Housing Administration providing that he agrees to do so within five (5) days of notification of said value. No appeal of said appraised value may be made without the mutual consent of PURCHASER AND SELLER.

16. LOAN APPLICATION: PURCHASER agrees, within five (5) working days following date of contract ratification to make loan application, or applications as may be necessary, and to file all necessary papers that are required for complete processing and to diligently pursue loan procurement, and PURCHASER further agrees that failure to do so shall give the SELLER the right of forfeiture of the deposit and to avail himself of other legal remedies. If new financing is to be arranged or if assumption of existing financing requires lender approval, then this contract is contingent upon said new financing or lender approval upon the terms herein described, or such other terms acceptable to PURCHASER provided SELLER is not obligated for any expenses not stipulated herein. If said financing or approval cannot be obtained, this agreement shall become null and void, the deposit refunded in full to the PURCHASER and all parties released from any further liability hereunder. SELLER and PURCHASER agree to pay loan placement and/or discount fee as required by lender.

17. EQUIPMENT CONDITION AND INSPECTION: PURCHASER accepts property in its present physical condition except as otherwise provided herein. Appliances, heating and cooling equipment, plumbing and electric systems will be in working order at time of settlement or PURCHASER's occupancy, whichever occurs first. SELLER agrees to deliver the property free of trash and in broom-clean condition and grants to PURCHASER or his representative the right to make a pre-occupancy or pre-settlement inspection.

18. WELL AND SEPTIC: If property is on well and/or septic systems, SELLER agrees to furnish PURCHASER with a certificate from the appropriate governmental authority indicating that the well water is potable and the septic system is in satisfactory order and sufficient for the number of bedrooms and other factors influencing approval by the governing authority. If either system is found defective, SELLER is to take immediate steps to repair all defects at his expense. If said repairs are not made, this contract may be voided at option of the PURCHASER or SELLER.

19. TERMITE INSPECTION: SELLER authorizes AGENT to order a termite inspection of the house and other buildings, at SELLER's expense, and if termite or other wood destroying insects are found, SELLER agrees to have same exterminated and to repair any damages resulting from said infestation. PURCHASER shall be provided at settlement with certification from a licensed pest control firm that the buildings are free of infestation.

20. DAMAGE OR LOSS: The risk of loss or damages to said property by fire, act of GOD or other casualty remains with SELLER until the executed Deed of Conveyance is recorded.

21. INSURANCE COVERAGES: Effective at time of settlement PURCHASER shall have in force and keep in effect at all times hazard insurance equal to at least the aggregate of the principal balance of all deed of trust notes on the subject property, naming the lender(s) thereof as additional insureds.

22. PRORATIONS: Rents, taxes, water, sewer charges, fuel, oil, and insurance, if any, and homeowner association dues and/or condominium fees, if any, and other operating charges are to be adjusted to date of settlement. Taxes, general and special, are to be adjusted according to the certificate of taxes issued by the collector of taxes, if any, except that recorded assessments for improvements completed prior to the date of acceptance hereof, whether assessment therefore has been levied or not, shall be paid by the SELLER or allowance made effective at time of settlement.

23. NOTICES: All notices of violations of covenants or requirements noted or issued by any county or local authority, or actions in any court on account thereof, against or affecting the property at the date of settlement of this contract shall be complied with by the SELLER and the property conveyed free thereof.

24. TITLE: The property, including the aforesaid chattels and/or equipment, shall be sold free of encumbrances except as aforesaid. Title is to be good and marketable, subject to easements, covenants, conditions and restrictions of record, if any, otherwise the deposit is to be returned and said declared off at the option of the PURCHASER, unless the defect is of such character that they may be remedied by legal action within a reasonable time, but the SELLER and AGENT are hereby expressly released from all liability for damages by reason of any defect in the title. In case legal steps are necessary to perfect the title, such action must be taken promptly by the SELLER at his own expense, whereupon the time herein specified for full settlement by the PURCHASER will hereby be extended for the period necessary for such action. If SELLER refuses to settle according to the terms herein, for any reason, the costs incurred for the title examination, appraisal, survey and the real estate commission as set forth shall become due and payable immediately by SELLER.

25. FEES: Fees for preparation of the deed of conveyance, Grantor's tax, appropriate legal fees and any other proper charges assessed to him shall be borne by SELLER. Fees for examination of the Title (except as heretofore provided), recording charges (including those for any purchase money trusts), appropriate legal fees and any other proper charges assessed to him shall be borne by PURCHASER.

26. DEPOSIT: The entire deposit shall be held by AGENT in a special escrow account until settlement, to conform with the recommendations of the Virginia Real Estate Commission and/or as required by the Veterans Administration Section 1806, Title 38 U.S. Code. If the PURCHASER shall fail to make full settlement the deposit herein provided for may be forfeited at the option of the SELLER, or the SELLER may avail himself of other legal remedies. In the event of forfeiture the deposit will be divided equally between SELLER and AGENT; however, the escrow agent shall not disburse all or any part of the escrow deposit unless directed to do so by an appropriate release or agreement signed by all parties or upon order by a court of competent jurisdiction. Settlement is to be made at the office of the Attorney or the Title Company searching the title. Deposit with the settlement attorney of the cash payment as aforesaid, the executed deed of conveyance and such other papers as are required of either party by the terms of this contract shall be considered good and sufficient tender of performance of the terms hereof.

27. TYPEWRITTEN OR HANDWRITTEN PROVISIONS: Typewritten or handwritten provisions included in this contract shall control all printed provisions in conflict therewith.

28. COVENANT: The principals to this contract mutually agree that it shall be binding upon them, their and each of their respective heirs, executors, administrators, successors and assigns; that this contract contains the final and entire agreement between the parties hereto, and neither they nor their agents shall be bound by any terms, conditions, statements, warranties or representations, oral or written nor herein contained.

29. ASSIGNABILITY: This contract may not be assigned without the written consent of the PURCHASER and SELLER.

30. CONVEYANCE: SELLER agrees to furnish and convey the above property by General Warranty Deed with usual covenants of title, the same to be prepared at the expense of the SELLER.

due date 10/25/82

PROMISSORY NOTE
(for balance due on cash deposit for purchase of real estate)
(AND DEPOSIT ON LEASE)

\$ 3,000.00 November 27, 1981

Within 332 days after date above, JACK M. SANDERS and

BARBARA C. SANDERS, (S/We) promise to pay to _____

Jeremy W. TAYLOR ~~through the undersigned~~
AT 1820 ELM ST. McLean, VA. 22101

the sum of _____

Three thousand (\$ 3,000.00)
without offset, ~~the sum of the cash deposit on the purchase of the property~~

10 CAROLINA COURT, STERLING, VA.

And, we, the makers and endorsers jointly and severally hereby waive the benefit of our homestead exemption as to this debt; and we also jointly and severally waive demand, protest, notice of presentment, notice of protest, and notice of non-payment and dishonor hereof.

- LATE PENALTY OF 5% PER MONTH IS NOT PAID 10 DAYS AFTER DUE DATE

~~as evidenced by their signatures below, the Sellers,~~

- MAKERS ARE JOINTLY AND SEVERALLY OBLIGATED

~~to the satisfaction of the title, but hold the title (the undersigned) jointly and severally liable for any~~

- MAKERS AGREE TO PAY 15% OF AMOUNT COLLECTED AS ATTORNEY'S FEE IF NECESSARY

(Sellers)

Barbara C. Sanders
(Purchasers)

(Witness to Sellers Signatures)

Elmer M. Perez
(Witness to Purchasers Signatures)

(Address of Property Being Purchased)

(Purchasers Present Address)

Received Jan 13, 1982

January 8, 1982

Dear Mr. Taylor:

With regards to the settlement on the house located at
10 Carolina Street, Sterling, Virginia, I request respect-
fully a delay in settlement until February 15, 1982.

Sincerely

Jack M. Sanders

JEREMY W. TAYLOR, INC.
6820 ELM STREET
MCLEAN, VIRGINIA 22101
703-821-1740

Jeremy W. Taylor, President

February 1, 1982

Jack M. Sanders
Barbara C. Sanders
10 Carolina Court
Sterling, VA

HAND DELIVERED

Re: 10 Carolina Court
Sterling, VA

Seller: Jeremy W. Taylor, Inc., Trustee
Purchaser: Jack M. & Barbara C.
Sanders

Dear Mr. and Mrs. Sanders,

With regard to the Sales Contract dated November 27, 1981, for the purchase of the above referenced property, the agreed upon settlement date was to be January 4, 1982. Since the contract clearly stated that "time was of the essence" and since no extension of the settlement time was agreed to, I herewith declare the contract in default. You, as the defaulting party, are hereby notified that your entire deposit (in the form of a personally signed Promissory Note due October 25, 1982) is herewith forfeited as the full extent of the liquidated damages for your breach of this contract.

Also, as agreed to by the occupancy agreement dated November 27, 1982, I am herewith giving you fifteen (15) days written notice to vacate the premises. You should be vacated; the property should be cleaned of all trash and debris; and the property and keys should be turned over to this office by midnight on the 16th day of February, 1982.

It is imperative that you recall our lengthy discussions in this office prior to signing any agreements at which time my standards and interpretations of the phrase "ordinary wear and tear" were fully discussed and agreed to by you both. Any additional damage or wear and tear beyond my strict definition will be your responsibility and the full repair of which must be paid for by you upon vacating the premises.

Also, herewith I make demand for full payment of all sums owed and due for the occupancy of the premises. As of this day the total amount due is:

66 days (Nov 28 thru Feb 1) at \$14.33/day	=	\$ 945.78
Less credit received on November 27, 1981		- 380.00
TOTAL DUE TODAY		<u>\$ 565.78</u>



Jack M. Sanders
Barbara C. Sanders

-2-

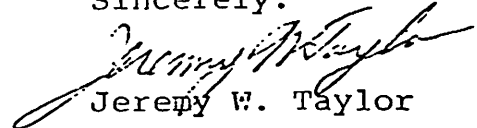
February 1, 1982

This amount is due upon receipt of this letter as well as \$14.33 per day paid in advance for each day that you will stay in possession after midnight tonight. Please note that you have up to fifteen (15) days if you pay the agreed fee in advance. If this is not paid in advance, you will also be in default under this occupancy agreement. Furthermore, you are hereby notified that neither personal checks nor cash will be accepted by this office.

All of your utility accounts , including but not limited to the water and electric companies, must be settled and paid for before you have fulfilled your obligations under your agreement. This office must receive written notice of the date and time of your vacating the premises two (2) business days before your vacating the premises. This is needed to transfer the utilities to our name.

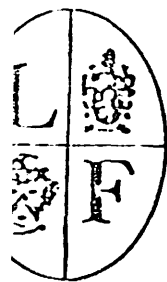
I trust that we will have a smooth termination of our relationship.

Sincerely.



Jeremy W. Taylor

JWT/ja



LONG & FOSTER, INC.,

REALTORS



OCCUPANCY AGREEMENT

TO: Jeremy W. Taylor, Inc., Trustee November 27, 19 81
(Owner's Name)

In connection with our purchase through LONG & FOSTER, INC., REALTORS of your property located at 10 Carolina Court, Sterling, Virginia 22170 we hereby accept the house in its present condition, except that all equipment is to be in working condition at the time of taking occupancy.

For and in consideration of being allowed to take possession of this property before settlement, we hand to Jeremy W. Taylor, Inc., Trustee, the sum of \$ 3,000.00 (note) (including the deposit mentioned in the Sales Contract), which amount is to be held in escrow by the Seller

In further consideration of being allowed to take possession of the property before settlement, we agree to pay you from the date of occupancy below at the rate of \$ 14.33 * per day payable in advance, on a pro-rata basis to date of settlement. It is further agreed that we will have transferred to our name and pay all bills for utilities as of date of occupancy. We also agree to accept the property in its present condition inclusive of all equipment, appliances and landscaping. We agree to be responsible for all maintenance on the property, equipment, appliances and landscaping from the date of this agreement until settlement.

It is further agreed and understood that, in the event this sale is not consummated in accordance with the sales contract dated November 27, 1981, we hereby agree to vacate the premises within 15 days of receipt of written notice. In the event the property is not vacated within that length of time, the occupancy thereafter shall be at the rate of \$ 14.33 * per day, until the property is vacated. It is further agreed that should the sales contract not be consummated, we will permit a lock box to be placed on the property and the property to be shown during reasonable hours (9:00 a. m. - 9:00 p. m.).

In the event that vacating becomes necessary, we authorize you and/or the Agent to inspect the premises to determine if damage beyond normal wear and tear has occurred during our occupancy. Should damage be determined, we authorize Agent to deduct from funds placed in escrow, as described above, an amount sufficient to repair or restore premises to the same condition as of our occupancy date.

We agree to make full settlement on the property just as soon as the necessary papers can be processed to completion, and to execute the note and trust papers for the above mentioned trust when notified by the lending institution that such papers are ready for our signatures.

Having read the foregoing, I hereby ratify, approve and confirm the same as my agreement, and further certify that I have personally examined the above property to my satisfaction.

November 28, 1981
Occupancy Date

\$ 380 to Owner on 11/27/81

Deposit with Contract: \$

Additional Deposit: \$

Rent Collected: \$

TOTAL \$

Sales Representative

1/77

cae

[Signature] (SEAL)
Purchaser

Barbara C. Sanders (SEAL)
Purchaser

ACCEPTED BY:
Jerome W. Taylor, Inc., trustee (SEAL)
[Signature]
Owner

Owner (SEAL)

By: LONG & FOSTER, INC., REALTORS

* The daily fee of \$14.33 will be reduced to \$12.66 per day if \$380.00 is received in negotiable form with the signing of this document and \$418.00 is received by 11/30/81 or close of business on December 31, 1981.