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VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

ELAINE W. KERR, as TRUSTEE	)	
for William F. Stone and Angelo	)	
Verdicanno (Deceased) and	)	
ELAINE W. KERR, Individually	)	
310 Hillwood Avenue	)	
Falls Church, Virginia	)	
	)	
Plaintiffs	)	
	)	
v.	)	AT LAW NO. <u>24196</u>
	)	
GEORGE L. OLEYAR, JR., ESQ.	)	
2331 Dale Drive	)	
Falls Church, Virginia	)	
	)	
Defendant	)	

MOTION FOR JUDGMENT

COMES NOW, the Plaintiff as Trustee and the Plaintiff, Elaine W. Kerr, as an Individual, and moves this Honorable Court for Judgment against the Defendant in the amounts of \$16,000.00 with interest from November 9, 1970 and \$10,000.00 attorneys fees and costs and for \$200,000.00 in damages relating to negligence in examining title and encumbrances overlooked, and as grounds therefor respectfully state the following:

1. On November 20, 1968, Plaintiff as Trustee entered into a Sales Contract with Paul G. Ziluca and Louise L. Ziluca, his wife, herein referred to as "the Zilucas" wherein the "Zilucas" agreed to purchase from

said Plaintiff certain improved real property described as follows: Lot 78, Section 2, Potomac Hills, known as 6207 Loch Raven Drive, Potomac Hills, McLean, Virginia for the total purchase price of \$62,500.00 which property the Plaintiff as Trustee (Vendor) assumed to own in fee clear and free of all money encumbrances excepting a First Deed of Trust in the remaining principal balance of \$43,000.00 and a Second Deed of Trust in the amount \$10,000.00 which the Plaintiff paid. Copy of Warranty Deeds with Plaintiff Trustee as Grantee and Grantor are attached hereto as Exhibits "A" and "B".

2. At all times hereinafter mentioned, Defendant was an attorney duly licensed under the laws of the Commonwealth of Virginia to practice the profession of law.

3. That on or about November 1, 1968, Defendant undertook for a consideration paid to him to examine the title of Plaintiff as Trustee, to said real property and to ascertain if said title was good and marketable, and whether any encumbrances existed thereon (over and above the First and Second Deed of Trust), and to cause an estate therein in fee simple, free and clear of all money encumbrances, excepting the said First and Second Deed of Trust to be conveyed to "the Zilucas", which defendant, for

compensation agreed to do. Defendant's Title Certificate, signed by Defendant is attached hereto as Exhibit "C".

4. The Defendant negligently, carelessly, and unskillfully conducted such examination of title, and did not use proper diligence or endeavors to cause a good and sufficient title in fee, clear of all money encumbrances, excepting as aforesaid, to be conveyed to "the Zilucas" by the Plaintiff as Trustee; but the said title was subject to an additional lien in the form of a Default Judgment entered in favor of Security National Bank of Bailey's Crossroads in the principal sum of \$50,937.50 plus interest and attorneys' fees in the amount of \$7,640.54 against Reynolds Construction Company, Grantor, of the real property involved, to Elaine W. Kerr, Trustee, as Grantee, which Default Judgment lien was docketed in the Circuit Court of Fairfax County, Virginia, on August 25, 1967 and October 4, 1967, copy of said Default Judgment is attached hereto as Exhibit "D".

5. As the proximate cause of the Defendant's negligence in examining the Title of the subject real property involved here, and overlooking the encumbrances recorded against the said property, the Plaintiff, individually, has suffered not only economic injury but injury to her health

as well. Defendant by the exercise of due care and skill could have discovered the said encumbrances in the form of the said recorded Default Judgment Lien against the subject property.

6. The Plaintiff, in addition to great mental anguish and humiliation suffered, has suffered professionally and to her reputation and credit standing affecting her ability to obtain credit causing great damage and loss economically and is hereby moving this Court for a Judgment against the defendant as follows:

(a) \$16,000.00 plus interest from November 9, 1970 plus \$10,000.00 attorneys fees, and Court costs and

(b) \$200,000.00 for damages for injury suffered by the Plaintiff to her reputation and professional standing, the loss of credit standing and the mental anguish suffered because of the humiliation:

WHEREFORE, the Plaintiff prays this Honorable Court for a Judgment against the Defendant in the amount of \$16,000.00 plus interest from November 9, 1970, plus \$10,000.00 in attorneys fees, Court costs, and \$200,000.00 for damages suffered as set forth above.

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ELAINE W. KERR, as Trustee  
for William F. Stone, and  
Angelo Verdicanno (Deceased)  
and ELAINE W. KERR, Indivi-  
dually

V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

ELAINE W. KERR, as TRUSTEE for :  
William F. Stone and Angelo :  
Verdicianno (deceased) and :  
ELAINE W. KERR, individually, :  
Plaintiff :

v. :

LAW NO. 24196

GEORGE L. OLEYAR, JR., ESQ., :

Defendant :

PLEA OF THE STATUTE OF LIMITATIONS

COMES NOW George L. Oleyar, Jr., Esq., by counsel, and files this his plea of the statute of limitations to the plaintiff's motion for judgment previously exhibited against him herein and specifically as to all paragraphs therein.

The defendant states that the applicable statute of limitations has expired and that the plaintiff cannot maintain this action as a matter of law.

WHEREFORE the premises considered, the defendant moves the Court for the entry of a dismissal order, with prejudice, and for costs in his behalf expended.

George L. Oleyar, Jr.

George L. Oleyar, Jr., by counsel

DUFF, SLENKER, BRANDT & JENNINGS

By /s/ Norman F. Slenker  
Norman F. Slenker,  
Attorney for Defendant

I hereby certify that a true copy of the foregoing has been mailed, postage prepaid, to Elaine W. Kerr, plaintiff, 310 Hillwood Avenue, Falls Church, Virginia 22046, this 29th day of January 1971.

/s/ Norman F. Slenker





ARTHUR W. SINCLAIR  
BARNARD F. JENNINGS  
JAMES KEITH  
WILLIAM G. PLUMMER  
LEWIS D. MORRIS  
PERCY THORNTON, JR.  
BURCH MILLSAP  
JAMES C. CACHERIS  
JUDGES

**NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA**

FAIRFAX COUNTY  
FAIRFAX CITY

PRINCE WILLIAM COUNTY  
FALLS CHURCH CITY

**Fairfax County Courthouse  
Fairfax, Virginia 22030**

**November 13, 1973**

**James M. Thomson, Esq.  
201 N. Washington Street  
Alexandria, VA 22314**

**John H. Johnston, Esq.  
1012 N. Utah Street  
Arlington, VA 22201**

**Re: Elaine Kerr vs. George L. Oleyar  
At Law No. 24196**

**Gentlemen:**

I have reviewed the pleadings, authorities, and arguments of counsel in connection with the hearing on the Plea of the Statute of Limitations filed by the defendant.


On January 6, 1971, the plaintiff filed a motion for judgment against defendant for damages suffered by her through the defendant negligently searching a title on November 1, 1968. On November 9, 1970, a judgment was rendered against the plaintiff in favor of the buyers of real property.

The defendant filed a plea to the statute of limitations. At the oral hearing on said plea defendant contended that the one year statute of limitations applies and that the cause of action asserted by plaintiff does not survive and that this is a personal action. Also, the defendant contends that if the two year statute of limitations applies the cause of action accrued on November 1, 1968, and that the plaintiff had notice of the buyers' claim in 1969. In response to the defendant's contentions at the oral hearing, the plaintiff abandoned her claim for damages to her reputation and professional standing. Plaintiff contends that the five-year statute of limitations applies and that she is relying on the certificate of title rather than negligence. She also contends that her cause of action didn't accrue until judgment was entered against her on November 9, 1970.

I am of the opinion that this is a suit for negligence and that the two-year statute of limitations applies and that the plaintiff's action accrued on November 9, 1970. In addition to authorities cited by counsel, see Caudill v. Wise Rambler, 210 VA 11 (1960). Also, see McCormack vs. Romans and Gunn, 214 VA 144 (1973).

Counsel for plaintiff should prepare an appropriate order overruling the Plea to the Statute of Limitations and submit it to counsel for defendant for approval as to form.

Very truly yours,



James C. Cacheris

JCc:jla

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

ELAINE W. KERR

Plaintiff

vs.

GEORGE OLEYAR

Defendant

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AT LAW NO. 24196

ORDER OVERRULING THE PLEA  
TO THE STATUTE OF LIMITATIONS

THIS DAY came the Plaintiff by counsel and also came the Defendant by counsel upon the Defendant's Plea to the Statute of Limitations, and was argued by counsel.

AND IT APPEARING TO THE COURT that the Plea to the Statute of Limitations is not well founded.

IT IS, THEREFORE, ADJUDGED and ORDERED that the Plea to the Statute of Limitations be and the same hereby is overruled.

AND THIS CAUSE IS CONTINUED.

ENTERED: 3/29/74

James C. Cacheris  
Judge

I ASKED FOR THIS:

James M. Thomson  
201 N. Washington St.  
Alexandria, Va. 22313  
Counsel for Plaintiff

SEEN:

John H. Johnston  
Slenker, Brandt & Jennings  
1012 N. Utah St.  
Arlington, Va. 22201  
Counsel for Defendant

V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

ELAINE W. KERR,

:

Plaintiff

:

v.

LAW No. 24196

GEORGE OLEYAR,

:

Defendant

MOTION FOR REHEARING

COMES NOW the defendant, by counsel, and moves this Honorable Court for a rehearing on its previously filed plea of the statute of limitations.

George Oleyar

George Oleyar, by counsel

SLEEKER, BRANDT & JENNINGS

By /s/ John E. Johnston

John E. Johnston

Attorney for defendant

I hereby certify that a true copy of the foregoing has been mailed, postage prepaid, to James M. Thomson, Esq., counsel for plaintiff, 201 North Washington Street, Alexandria, Virginia, this 30th day of November 1973.

/s/ John E. Johnston



**NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA**

FAIRFAX COUNTY  
FAIRFAX CITY

PRINCE WILLIAM COUNTY  
FALLS CHURCH CITY

**Fairfax County Courthouse  
Fairfax, Virginia 22030**

ARTHUR W. SINCLAIR  
BARNARD F. JENNINGS  
JAMES KEITH  
WILLIAM G. PLUMMER  
LEWIS D. MORRIS  
PERCY THORNTON, JR.  
BURCH MILLSAP  
JAMES C. CACHERIS  
JUDGES

**December 31, 1973**

**James M. Thomson, Esq.  
201 N. Washington Street  
Alexandria, Virginia 22314**

**John M. Johnston, Esq.  
1012 N. Utah Street  
Arlington, Virginia 22201**

**Re: Kerr vs. Oleyar; Law No. 24196**

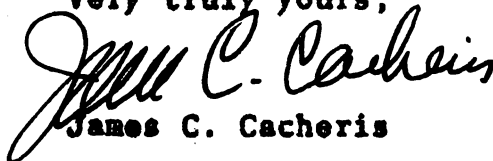
**Gentlemen:**

I have reviewed the pleadings, authorities, Law No. 16826, and arguments of counsel in connection with the defendant's motion for rehearing.

I am of the opinion that the one year statute of limitations applies and that the cause of action accrued on November 9, 1970.

Counsel for plaintiff should prepare an appropriate order and submit to counsel for defendant for his approval as to form.

Very truly yours,

  
James C. Cacheris

JCC:jla

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

ELAINE W. KERR,

Plaintiff

vs.

GEORGE OLEYAR

Defendant

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LAW NO. 24196

FINAL JUDGMENT

THIS DAY came the Plaintiff, Elaine W. Kerr, in person and by counsel, and also came the Defendant, George Oleyar, in person and by counsel, upon the papers heretofore filed in this cause;

AND IT APPEARING TO THE COURT that both the Plaintiff and Defendant having waived trial of the issue herein by jury and electing that all matters of law and fact be submitted to the Court for hearing and determination without the intervention of a jury;

AND IT FURTHER APPEARING from the evidence of both parties and all other witnesses and arguments of counsel that the Plaintiff should recover the sum of \$17,622.20 from the Defendant; and it further appearing that the Defendant should recover nothing from the Plaintiff upon the counterclaim of said Defendant.

IT IS, THEREFORE, ADJUDGED and ORDERED that the Plaintiff recover and have judgment against the Defendant, George Oleyar, in the sum of \$17,622.20, with interest thereon at the legal rate from the date of judgment.

IT IS FURTHER ADJUDGED and ORDERED that said Defendant recover nothing from said Plaintiff on his counter claim herein.



To all of which the Defendant by counsel objects and  
excepts.

AND THIS CAUSE IS ENDED.

---

Judge

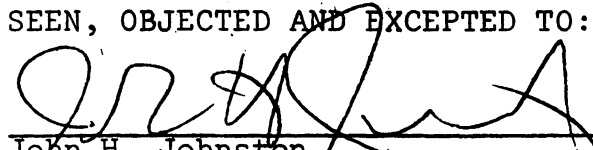
ENTERED: \_\_\_\_\_

I ASK FOR THIS:

---

James M. Thomson  
201 N. Washington St.  
Alexandria, Va. 22313  
Counsel for Plaintiff

SEEN, OBJECTED AND EXCEPTED TO:



---

John H. Johnston  
Slenker, Brandt, Jennings & O'Neal  
1012 N. Utah St.  
Arlington, Va. 22201  
Counsel for Defendant



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

FAIRFAX COUNTY

PRINCE WILLIAM COUNTY

FAIRFAX CITY

FALLS CHURCH CITY

Fairfax County Courthouse  
Fairfax, Virginia 22030

ARTHUR W. SINCLAIR  
BARNARD F. JENNINGS  
JAMES KEITH  
WILLIAM G. PLUMMER  
LEWIS D. MORRIS  
PERCY THORNTON, JR.  
BURCH MILLSAP  
JAMES C. CACHERIS  
THOMAS J. MIDDLETON  
JUDGES

April 7, 1975

James M. Thomson, Esq.  
201 N. Washington Street  
Alexandria, Virginia 22313

John H. Johnston, Esq.  
1012 N. Utah Street  
Arlington, Virginia 22201


Re: Elaine W. Kerr vs. George Oleyar  
At Law No. 24196

Gentlemen:

The court entered the final judgment in this case  
on April 4, 1975.

In addition to the authorities previously cited in  
the court's two letter opinions of November 13, 1973 and  
December 31, 1973, I would also like to cite 37 VA L. Rev.  
429, 441 (April, 1951). I would like to have this letter  
also designated as a part of the record.

Very truly yours,

  
James C. Cacheris

JCC:jla

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

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

APR 17 1969

PAUL G. ZILUCA  
and  
LOUISE L. ZILUCA, his wife  
6207 Loch Raven Drive  
McLean, Virginia

Plaintiffs

v.  
ELAINE W. KERR  
310 Hillwood Avenue  
Falls Church, Virginia

Defendant

At Law 20967

CLERK FAIRFAX COUNTY, VA  
FIRST TAX PAID 1566  
DEPOSIT: 27.11

MOTION FOR JUDGMENT

COME NOW the plaintiffs, by counsel, and move this Honorable Court for judgment against the defendant in the amount of \$65,964.00, plus interest, costs and attorneys' fees, and as grounds state:

1. That on November 20, 1968 plaintiffs entered into a sales contract with defendant wherein they agreed to purchase from defendant a parcel of real estate in Fairfax County, Virginia, known as Lot 78, Section 2, Potomac Hills, with improvements thereon known as 6207 Loch Raven Drive, Potomac Hills, McLean, Virginia, for a total purchase price of \$62,500.00. A copy of the sales contract is attached hereto as Exhibit A.

2. That under the terms of the aforesaid contract, plaintiffs were required to pay all cash at settlement above the existing trust of about \$43,000.00 held by National Permanent Savings and Loan Association, Washington, D.C., and to assume the existing trust. Plaintiffs paid \$6,000 as a deposit to defendant on November 21, 1968 in accordance with the terms of the sales contract, which required

that settlement was to be held within 30 days in the office of George L. Oleyar, Jr., 301 Park Avenue, Falls Church, Virginia.

3. That defendant and plaintiffs made settlement on the aforesaid contract on December 11, 1968, in the Virginia office of Shannon and Luchs Company, at which time plaintiffs paid to defendant the sum of \$14,847.32 in accordance with the settlement sheet, copy of which is attached hereto as Exhibit B. Defendant, seller, acted as settlement attorney during the settlement and plaintiffs' settlement sheet was captioned "Law Offices, Elaine W. Kerr and G.L. Oleyar, Jr.".

4. That plaintiff Louise L. Ziluca executed both the sales contract and settlement sheet for herself and for her husband by power of attorney, and plaintiff Paul G. Ziluca was in Viet Nam during the period when the purchase contract and settlement were effected.

5. That at the settlement on December 11, 1968, defendant executed a deed of General Warranty conveying the aforesaid property to plaintiffs as tenants by the entireties, and subsequently on December 17, 1968, the said deed was recorded in the Land Records of Fairfax County in Deed Book No. 3120, page 4. Defendant designated herself as "Trustee" on both plaintiffs' settlement sheet and on the deed. A copy of the deed is attached hereto as Exhibit C.

6. That the plaintiffs paid to defendant seller and settlement attorney, at settlement, as evidenced by Exhibit "B" the sum of \$212.50 for an owner's title insurance policy. To date, said owner's title insurance policy has not been delivered to the plaintiffs. That to the best belief and knowledge of the plaintiffs said owner's title insurance policy is in the possession of the defendant.

7. That shortly after the settlement plaintiffs were informed and had reason to believe that the property which they had purchased from defendant was encumbered by a judgment of record in Arlington and Fairfax Counties. Thereupon, on or about January 23, 1969, plaintiff Paul G. Ziluca discussed with Real Title Corporation, which represents Lawyers Title Insurance Company, a possible claim against the policy of title insurance which they had paid for and purchased at settlement.

8. That in response to the aforesaid inquiry plaintiff Paul G. Ziluca received a letter from Real Title Corporation to the effect that Owner's Title Insurance, Policy No. V664273, issued by its office, was obtained by defendant as a result of misrepresentation and was therefore void, and that the premium it had received from defendant was being returned to her. A copy of said letter is attached hereto as Exhibit D.

9. That in addition to the title insurance premium and recording charges, plaintiffs paid at settlement the following sums to defendant for her professional legal services and the legal services of George L. Oleyar, Esq., who, according to the advice given to plaintiffs by defendant, had actually performed the title examination:

Title Examination and Preliminary	
Certification . . . . .	\$468.25
Assumption Fee . . . . .	.\$ 50.00

10. That subsequent to settlement plaintiffs were informed, believe, and therefore allege that defendant had obtained the aforesaid

property on September 6, 1967 from Reynolds Construction Company, and that said property was deeded to her as "Trustee", which deed was recorded in the Land Records of Fairfax County on September 20, 1967 in Deed Book 2946 at page 43; that on or about August 16, 1967 a judgment was recorded in the Circuit Court of Arlington County, Virginia by Security National Bank of Bailey's Crossroads against Reynolds Construction Company in the principal sum of \$50,937.50 with interest starting November 7, 1966 at 6%, plus attorneys' fees in the amount of \$7,640.64, and that the said judgment was docketed in the Circuit Court of Fairfax County on October 4, 1967.

11. That plaintiffs are informed, believe and therefore allege that the said George L. Oleyar had in fact examined the title for the benefit of defendant brought down to December 17, 1968, and that he had provided a certificate of title which was attached to the aforesaid Title Insurance Policy, insuring plaintiffs against defects in title, issued by Real Title Corporation (representing Lawyers Title Corporation of Richmond).

12. That defendant actually knew or had constructive knowledge that the said property was encumbered by the said judgment, as she took a trustee title without valuable consideration from a builder who she knew or reasonably should have known was in great financial difficulties.

13. That the said certificate of title made no mention of the aforesaid judgment, and defendant made no mention of the judgment at settlement.

14. That defendant's failure to advise plaintiffs as to the aforesaid judgment constituted a material misrepresentation which they relied upon to their detriment.



15. That plaintiffs have been informed, believe and therefore allege that the aforesaid judgment constitutes a valid lien against the property which they purchased, and that the approximate amount of said judgment lien is presently \$65,964.00 including attorneys' fees, interest and costs.

16. That by virtue of her General Warranty Deed defendant warranted to plaintiffs that the property was free and clear of all liens other than restrictions and conditions of record and the deed of trust held by National Permanent Savings and Loan Association.

17. That the aforesaid judgment lien constitutes a breach of said General Warranty.

18. That by acting both as settlement attorney and seller of the property, defendant placed herself in a position of conflict of interest and therefore was unable to properly perform her duties as settlement attorney.

19. That if defendant had no actual or constructive knowledge of the aforesaid judgment, she was nevertheless negligent in her professional duties as settlement attorney in that she negligently failed to properly search the title, and as a result she negligently failed to discover the judgment lien.

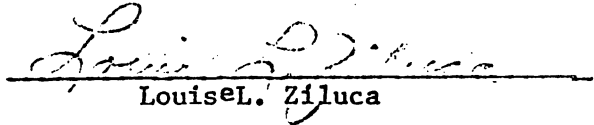
20. That as a direct and proximate result of defendant's breach of General Warranty, conflict of interest, misrepresentation, negligence and malpractice, as aforesaid, plaintiffs have suffered damages in the present sum of \$65,964.00 plus the costs of prosecuting this motion for judgment.

WHEREFORE, plaintiffs move for judgment against defendant in the sum of \$65,964.00, plus interest from April 17, 1969 at six percent

(6%), attorneys' fees, and costs of this action.



Paul G. Ziluca



Louise L. Ziluca

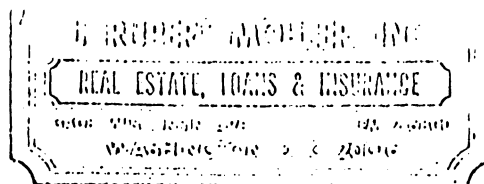
Plaintiffs



David Machanic  
1000 Ring Building  
Washington, D. C. 20036  
Counsel for Plaintiffs



Robert C. Watson  
1515 N. Courthouse Road  
Arlington, Virginia  
Counsel for Plaintiffs



WASHINGTON, D. C. November 20, 1973

RECEIVED FROM PAUL AND LOU ZILFCA (Paul G. and Louise L.)

a deposit of Six Thousand Dollars (\$6,000.00)

{Check} to be applied as part payment to the purchase of House Lot 78

{Cash} in Square Section 2 with improvements thereon known as 6207 Loch Haven Drive,

Potomac Hills, McLean, Virginia.

In the District of Columbia upon the following terms of sale:

(1) Price SIXTY THOUSAND DOLLARS (60,000.00) Dollars (\$60,000.00)

(2) Purchaser agrees to pay all cash above existing first trust or mortgage.

(3) The purchaser is to Assume cash at the date of conveyance, of which sum this deposit shall be a part.

a first deed of trust secured on the premises of approximately Forty-Three Thousand

Dollars (\$43,000.00) due March 13, 1987, bearing interest at the

rate of 5 3/4 per cent per annum, payable Three Hundred Eighty-Eight Dollars

(\$388.00) monthly including principal, interest, taxes and insurance.

(4) For the balance of deferred purchase money amounting to

Dollars (\$ )

purchaser is to execute and deliver and the seller agrees to accept a second deed of trust secured on said premises,

to be paid in monthly instalments of Dollars (\$ ),

or more, including interest at the rate of per cent per annum, each installment when so paid to be applied,

first to the payment of interest on the amount of principal remaining unpaid and the balance thereof credited to

principal.

DATE 3/11/73

DATE 3/11/73

DATE 3/11/73

(5) Property to be conveyed in its present physical condition and to include the following equipment: with the owners guarantee that damage causing water stain in ceiling of first floor shower, and water stain in ceiling of recreation room left of the door to garden, did NO structural damage or pipe damage. Property is to include the following equipment venetian blinds, stove and refrigerator, light fixtures.

(6) Trustees in all deeds of trust are to be named by the parties secured thereby.

(7) The property is sold free of encumbrance, except as aforesaid; title is to be good of record, subject, however, to covenants, conditions and restrictions of record, if any; otherwise, the deposit is to be returned and sale declared off at the option of the purchaser, unless the defects are of such character that they may readily be remedied by legal action, 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 and at the seller's expense, whereupon the time herein specified for full settlement by the purchaser will thereby be extended for the period necessary for such action.

(8) Seller agrees to execute and deliver a good and sufficient special warranty deed, and to pay for Federal revenue stamps on the deed.

(9) Property is sold and shall be conveyed subject to <sup>an</sup> existing tenancy as follows: None

(10) Seller agrees to give possession at the time of settlement. If the seller shall fail so to do and occupies said property, seller shall become and be thereafter a tenant by sufferance of the purchaser, and hereby expressly waives all notice to quit provided by law.

(11) Seller assumes the risk of loss or damage to said property by fire or other casualty until the executed deed of conveyance is delivered to the purchaser or is recorded for him by the Title Company making the settlement.

(12) All notices of violations of Municipal orders or requirements noted or issued by any official or Department of the District of Columbia, 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, with the exception of the means of egress regulations.

(13) Settlement is to be made at the office of J. Rupert Mohler, Inc., Realtors, at the Title Company searching the title, and deposit with J. Rupert Mohler, Inc., Realtors or at the Title Company of the cash payment as aforesaid. The deed of conveyance and such other papers as are required by the terms of this contract shall be deemed and construed as a good and sufficient tender of performance of the terms hereof.

(14) Rents, taxes, water rent, insurance and interest on existing encumbrances, if any, and operating charges are to be adjusted to the date of transfer. Taxes, general and special, are to be adjusted according to the certificate of taxes as issued by the Collector of Taxes of the District of Columbia, except that assessments for improvements completed or in the process of completion prior to the date hereof, whether assessment therefor has been levied or not, shall be paid by the seller or allowance made therefor at the time of transfer.

(15) Examination of title, tax certificate, conveyancing, notary fees, State revenue stamps, if any, D. C. deed recordation tax, and all recording charges, including those for purchase money trust, if any, are to be at the cost of the purchaser, who hereby authorizes the undersigned Agent to order the examination of title; provided, however, that if upon examination the title should be found defective, and is not remedied as aforesaid, the seller hereby agrees to pay the cost of the examination of the title and also to pay the Agent herein the commission hereinafter provided for just as though the sale had actually been consummated and all the terms of this contract complied with.

(16) Within 20 days from the date of acceptance hereof by the seller, or as soon thereafter as a report on the title can be secured if promptly ordered, and/or survey, if required, the seller and purchaser are required and agree to make full settlement in accordance with the terms hereof.

If the purchaser shall fail to make full settlement, the deposit herein provided for may be forfeited at the option of the seller, in which event the purchaser shall be relieved from further liability hereunder, or, without forfeiting the deposit, the seller may avail himself of any legal or equitable rights and remedies which he may have under this contract.

(17) The entire deposit shall be held by J. Rupert Mohler, Inc., Realtors, until settlement hereunder is made or until the deposit is forfeited. In the event of the forfeiture of the deposit, the Agent shall retain one-half thereof as a compensation for its services and shall pay to the seller the remaining one-half of the forfeited deposit.

(18) If the property involved in this contract is located in a jurisdiction other than the District of Columbia, wherever any reference is made to the District of Columbia or any official thereof, the name of the jurisdiction in which property is located and the proper official thereof is substituted automatically. If the property is serviced by the Washington Suburban Sanitary Commission, annual benefit charges of said Commission are to be adjusted to date of transfer and assumed thereafter by purchaser.

(19) The seller agrees to pay to J. Rupert Mohler, Inc., Realtors, a commission of 6% to be divided 50/50 with Shannon and Juchis Company, the amount of which said commission being hereby assigned to the agent by the seller out of the proceeds of sale. The party through whom settlement hereunder is made is hereby authorized and directed to make deduction of the aforesaid commission from the proceeds of the sale and to make payment hereof to said Agent.

(20) Seller is to furnish a certificate from a reputable termite control company at the time of settlement, stating that there is no evidence of any active termite infestation. Any termite damage to be repaired at the cost of the seller.

(21) 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 the provisions hereof shall survive the execution and delivery of the deed aforesaid and shall not be merged therein; that this contract contains the final and entire agreement between the parties hereto, and that they shall not be bound by any terms, conditions, statements, warranties or representations, oral or written, not herein contained. Executed in 4 C97108

J. RUPERT MOHLER, INC.

Agent

We, the undersigned, hereby ratify, accept and agree to the above memorandum of sale and acknowledge it to be our contract.

1960

Purchaser

1968

Purchaser

Seller

Wife of Seller

Settlement to be at the office of George H. Oleyon, Jr., 301 Park Avenue, Falls Church, Va.

Property is to be conveyed in the name of Paul and Lou Ziluca (Paul G. and Louise L.) Tenants by the entirety.

**G. LOUIS OLEYAR, JR.**

ATTORNEY AT LAW

301 PARK AVENUE  
FALLS CHURCH, VIRGINIA 22046

Case No. 1108

**Certificate of Title**

THIS IS TO CERTIFY that **G. LOUIS OLEYAR, JR.** has made a careful examination of the land records of **Fairfax County**, Virginia, as indexed, as the same relate to all that parcel of land situate, lying and being in said **Fairfax County** and more particularly described as:

**Lot 78, Section 2, Potomac Hills**, as the same appears duly dedicated, platted and recorded among the land records of said County in Deed Book 1737 at page 240.

and in his opinion good fee simple title of record to the same is vested in the name of **Elaine W. Kerr, Trustee**, by virtue of a deed recorded in Deed Book 2946 at page 43.

**TAXES:** Shown by the office of the Treasurer to be paid to December 31, 1967 in the amount of \$994.48. 1968 taxes will be \$1,055.87 not paid.

**RESTRICTIONS:**

None.

PLAT DEF. EXP. 41  
DATE 3/11/75  
JUDGE JCC

**RIGHTS-OF-WAY:**

Recorded in Deed Book Q-15 at page 276.  
Recorded in Deed Book 1804 at page 296.

**EASEMENTS:**

Plat in Deed Book 1737 at page 240 shows 5' Easement for public street purposes.

**DEEDS OF TRUST:**

Recorded in Deed Book 2587 at page 139 from Reynolds Construction Corporation, a Virginia Corporation, to Arlington Trust Company, Trustee, securing an advance of \$45,000.00 and indebted in the amount of \$56,250.00, payable to National Permanent Savings and Loan Association.

Recorded in Deed Book 2708 at page 219 from Reynolds Construction Corporation, a Virginia Corporation, to Paul G. Herrell and William B. Lawson, Trustees, securing \$13,900.00 @ 6%, payable to Bearer. Secured by Note 2 of 2 in the amount of \$6,950.00, payable in monthly installments of \$69.50 beginning November 10, 1965 to October 10, 1966.

I do not certify against any parties in possession, boundary line disputes, unpaid water bills, or any facts which might be disclosed by an accurate survey of the premises or as to any unrecorded easements. I make no certification concerning sewer or water frontage charges not of record.

THIS CERTIFICATE is issued to and for the benefit only of **Elaine W. Kerr** and brought down to November 8, 1968 at 9:00 o'clock A.M.

From:

Deed Book: Q-15

Page: 276

Dated: 27/11/42

Recorded: 4/7/42

E. May Walter  
Virginia P. Scott  
R. Vernon Palmer  
Bessie Creamer Palmer

TO: Virginia Public Service Company, "COMPANY"

GRANTS:

... In consideration of which the undersigned, hereinafter referred to as OWNER, do hereby grant unto the said COMPANY, a right-of-way upon which to construct, maintain and operate an electric distribution line, including poles, wires, crossarms, brackets, anchors, guys, braces and other apparatus, and to attach thereto its telephone wires and fixtures and the wires of any other company or person, over and across the following property: to wit:

A tract of approximately 87 acres of land situated in

Magisterial District, Fairfax County

County, State of Virginia, adjoining the lands of Newman Kirby, State Secondary Routes 688 and 9.

The approximate route of said right-of-way is as follows:

*Beginning at a point on line between Owner and State Secondary Route 9, being 5 feet west of boundary between Owner and State Secondary Route 688; thence approximately S.20°4' W. 2267 feet; thence turning and running approximately S.50°58' W. 2150 feet to a point on line between Owner and Newman.*

Also the right is hereby granted to said COMPANY, at all times, when necessary to trim, cut or remove any or all trees or other obstructions that might endanger the lines, so as to clear the wires, crossarms and other fixtures erected thereon, by at least ten (10) feet, with the right to cut dead or dangerous trees off the right-of-way which in falling may strike the line, together with the right of ingress and egress to and from the said right-of-way.

*Company agrees to make extensions not to exceed 100 feet from the electric line after its erection. This right of way without cost to the customer and in accordance with filed rate schedule.*



From:

*Reynolds Construction Corp.*

Deed Book: 1804

Page: ~~305~~ 296Dated: ~~8/5/59~~ 8/13/59

Recorded: 8/27/59

Grants to VIRGINIA ELECTRIC AND POWER COMPANY the right, privilege and easement of right-of-way to construct, operate and maintain a pole for transmitting and distributing electric power including all wires, poles, attachments, ground connections, equipment, accessories and appurtenances desirable in connection therewith (hereinafter referred to as "facilities"), and including all telephone wires and attachments of any other company, over, upon and across the lands of Owner, situated in Fairfax County, Virginia, as shown on

Plat No. *Potal 10306*, hereto attached and made a part of this agreement; the location of said right-of-way being shown in broken lines on said plat.

The facilities erected hereunder shall remain the property of Company. Company shall have the right to inspect, rebuild, remove, repair, improve, relocate on the right-of-way above described, and make such changes, alterations, substitutions, additions to or extensions of its facilities as Company may from time to time deem advisable, including the right to increase or decrease the number of wires.

Company shall at all times have the right to trim, cut and keep clear all trees, limbs, undergrowth and other obstructions along said pole line or adjacent thereto that may endanger the safe and proper operation of its facilities. All trees and limbs cut by Company at any time shall remain the property of Owner. Trees cut by Company with merchantable trunks six inches or more in diameter will be cut into lengths of not less than four feet when requested by Owner and will be placed in piles separate from other trees, limbs and undergrowth cut by Company.

For the purpose of constructing, inspecting, maintaining or operating its facilities, Company shall have the right of ingress and egress from the right-of-way over lands of Owner adjacent to the right-of-way and lying between public or private roads and the right-of-way in such manner as shall occasion the least practicable damage and inconvenience to Owner.

Company shall repair damage to roads, fences or other improvements and shall pay Owner for other damage done in the process of the construction, inspection, or maintenance of Company's facilities, or in the exercise of its right of ingress and egress; provided Owner gives written notice thereof to Company within thirty days after such damage occurs.

The Owner covenants that he is seized of and has the right to convey the said easement of right-of-way, rights and privileges; that Company shall have quiet and peaceable possession, use and enjoyment of the aforesaid easement of right-of-way, rights and privileges, and that Owner shall execute such further assurances thereof as may be required.

VIRGINIA:

In the Clerk's Office of the Circuit Court of Fairfax County,

March 11

, 19 75

ABSTRACT OF JUDGMENT

Docketed among the records of said County

Law No. 11982

Name of Plaintiff

Security National Bank of Bailey's Crossroads

Name of Defendant

Walter R. Reynolds, and Sherry P. Reynolds  
Reynolds Construction Corp.

Plaintiff's Attorney

Kelly, Keatin, Leahy & Johnson

Defendant's Attorney

- - - - -

Date of Judgment

August 16, 1967

Where rendered, and in what  
Court, or name of Justice

Circuit Court of Arlington County, Virginia

When Docketed (Day and Hour)

August 25, 1967 at 11:30 A.M.

Amount of Judgment and date from which  
it bears interest, or the alternative value  
of any specific property recovered

\$50,937.50 with interest from November 7, 1966  
at 6% per annum plus 15% attorney's fee of  
\$7,640.62 and costs of this proceeding.

Amount of Cost Recovered

\$38.75

Can Homestead be claimed

Not Shown

Amounts and date of any Credits

- - - - -

Date of each Execution

- - - - -

Nature of each Execution

- - - - -

To Whom Directed

- - - - -

Additional cost incident to issuing  
execution and docketing Judgment

- - - - -

Return Day of Execution

- - - - -

Nature of Return

- - - - -

Date of payment or discharge in whole  
or in part (other than by officer's return)  
and by whom made

- - - - -

Teste:

W. FRANKLIN GOODING, CLERK

By:.....  
Deputy Clerk.

VIRGINIA:

In the Clerk's Office of the Circuit Court of Fairfax County,

March 11

, 1975

ABSTRACT OF JUDGMENT

Docketed among the records of said County

Law 11982

Name of Plaintiff

Security National Bank of Bailey's Crossroads

Name of Defendant

Walter R. Reynolds and Serry P. Reynolds  
Reynolds Construction Corporation  
Kelly, Keating, Leahy & Johnson

Plaintiff's Attorney

Defendant's Attorney

- - - - -

Date of Judgment

August 16, 1967

Where rendered, and in what  
Court, or name of Justice

Circuit Court of Arlington County, Virginia

When Docketed (Day and Hour)

October 4, 1967 at 12:15 P.M.

Amount of Judgment and date from which  
it bears interest, or the alternative value  
of any specific property recovered

\$50,937.50 with interest from November 7, 1966  
at 6% per annum plus 15% attorney's fee of  
\$7,640.62 and cost of this proceeding.

Amount of Cost Recovered

\$38.75

Can Homestead be claimed

Not Shown

Amounts and date of any Credits

- - - - -

Date of each Execution

1. September 19, 1967  
2. September 19, 1967

Nature of each Execution

1. Feri Facias  
2. Interrogatory Summons

To Whom Directed

Sheriff of Arlington County for both

Additional cost incident to issuing  
execution and docketing Judgment

\$10.50

Return Day of Execution

Sixty Days

Nature of Return

- - - - -

Date of payment or discharge in whole  
or in part (other than by officer's return)  
and by whom made

- - - - -

Teste:

W. FRANKLIN GOODING, CLERK

By: \_\_\_\_\_  
Deputy Clerk.

Commerce Building  
Falls Church, Virginia

ELAINE W. KERR

G. L. OLEYAR, Jr.

3713 Tollgate Terrace  
Bailey's Crossroads, Virginia

SETTLEMENT STATEMENT

Re Sale of ELAINE W. KERR, 1963 Ford Mustang

Property Lot 71, Section 2, Potomac Hills, Nelson, Virginia

BUYERS

Purchase Price

\$42,500.00

Less: Deposit with Contract

\$4,000.00

First Trust (Cashier's)

42,527.03

Balance \$

Interest

Second Trust

Balance \$

Interest

Tax Adj. on Basis of

\$ for year

FILE-DEF EXH. # 7  
DATE 3/11/75  
JUDGE JCC

\$15,727.77

Plus: Title Examination and Preliminary Certification

\$200.75

Title Insurance Premium

727.50

Preparation of Title Insurance Papers, Continuance of

Title and Final Certification

Preparation of Trust(s) and Note(s)

Recording Charges - Deed

Clerks Fee \$5.00 Trans. Fee \$1.00 Rec. Tax \$107.10

103.10

Recording Charges - 1st Trust

Clerks Fee \$ Trans. Fee \$ Rec. Tax \$

Recording Charges - 2nd Trust

Clerks Fee \$ Trans. Fee \$ Rec. Tax \$

Survey

Hazard Insurance Premium ( - Yr(s))

Hazard Insurance Premium ( - Yr(s))

Mos. Insurance Escrow

Mos. Escrow Tax @ \$ Per Mo.

Credit Report

Appraisal Fee

Inspection Fee(s)

FHA 1st Annual Mortgage Ins. Prem.

Mo. 2nd Annual Mortgage Ins. Prem.

Interest Adjustment

Loan Commission: Payment Dec. 11-31, 1963 (20 days)

250.00

Notary Fee(s)

Prepaid Insurance Adjustment on basis of

\$ for yrs. expiring

Escrow Credits

Owners Certificate of Title

Assessment Fee

50.00

Closing Fee

1,171.35

Amount Due from Buyers

\$1,171.35

Approved: Date: Dec. 11, 1963

Exhibit B

THIS DEED, made this 11th day of December, 1968, before ELAINE W. KERR, TRUSTEE

, parties of the first part, and  
PAUL G. ZILUCA and LOUISE L. ZILUCA, his wife,  
as tenants by the entirety, parties of the second part.

WITNESSETH

That for and in consideration of the sum of Ten Dollars (\$10.00) in hand paid, the receipt of which is hereby acknowledged, the parties of the first part do grant and convey, with General Warranty of Title, unto the parties of the second part, as tenants by the entirety, with the full common law right of survivorship to the survivor of either of the parties of the second part, the following described property situate and being in the COUNTY of FAIRFAX, Virginia:

Lot SEVENTY EIGHT (78), Section TWO (2), POTOMAC HILLS,  
as the same appears duly dedicated, platted and recorded  
among the land records of said County in Deed Book 1737 at  
page 240;

being part of the same land conveyed to the party of the first  
part IN TRUST by deed recorded among the said County land  
records in Deed Book 2946 at page 43.

SUBJECT to restrictions and conditions of record.

SUBJECT ALSO to the lien of a first Deed of Trust in the approxi-  
mate sum of \$43,000.00 recorded in Deed Book 2587 at page 139, which the  
parties of the second part assume and agree to pay as is evidenced by  
their acceptance hereof.

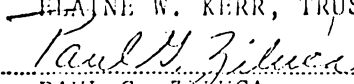
EXEMPTED 8'  
DATE 3/11/75  
JULIE JEC

This conveyance is made subject to the restrictions and conditions contained in the deeds forming  
the chain of title to this property.

The grantors covenant that they have the right to convey the aforesaid property unto the grantees;  
that the grantees shall have quiet possession thereof; that the said grantors have done no act to encumber  
said land and that they will execute such further assurances of the land as may be requisite.

WITNESS the following signatures and seals:

  
ELAINE W. KERR, TRUSTEE (SEAL)

  
PAUL G. ZILUCA (SEAL)

  
LOUISE L. ZILUCA (SEAL)

STATE OF VIRGINIA,  
COUNTY OF FAIRFAX

, to-wit: I, Mary L. Hattley, a Notary Public in and for the County aforesaid, in the State  
of Virginia, do hereby certify that Louise L. Ziluca who signed the aforesaid deed  
in a representative capacity, whose name is signed to the above writing, bearing date of  
the 11th day of December, 1968, and Paul G. Ziluca, acting for herself, and Elaine W. Kerr, Trustee  
me in my County aforesaid and acknowledged the same.

GIVEN under my hand this 11th day of December, 1968.

My commission expires on the 26th day of January, 1977.

C.N. State Tax \$ 73.75  
County Tax \$ 31.25  
Add'l. Tax \$ 17.50

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

PAUL G. ZILUCA, et al

Plaintiffs

v.

ELAINE W. KERR

Defendant

At Law No. 20967

(PLF) DEF EXH. # 9  
DATE 3/11/75  
JUDGE Lee

JUDGMENT ORDER

This day came the plaintiffs by counsel, and it appearing that the defendant, Elaine W. Kerr, has failed to pay to plaintiffs the sum of \$16,000 in accordance with the terms of the Court's Order entered on the 9th day of November, 1970, it is therefore

ORDERED, that the plaintiffs, Paul G. Ziluca and Louise L. Ziluca, recover of the defendant, Elaine W. Kerr, the sum of SIXTEEN THOUSAND and NO/100 DOLLARS, (\$16,000.00), with interest from the date hereof.

ENTER: Lee  
JUDGE

Entered: Robert C. Watson

We ask for this:

David Machanic  
David Machanic

Robert C. Watson  
Robert C. Watson

Counsel for Plaintiffs



EXCERPTS FROM REPORTER'S TRANSCRIPT

Testimony of Elaine W. Kerr

- [TR 28] Q. Subsequent to the receipt of the contract which the Court has just refused to admit into evidence, did you receive a contract from Mr. Paul G and Louise L. Ziluca?
- A. Yes, I did.
- Q. I show you what purports to be a copy of that contract and ask you if you can identify that.
- (Handing to witness.)
- A. Yes. This is a contract from Paul and Louise Ziluca on the property known as 6207 Loch Raven Boulevard. It's dated -- Loch Raven Drive; I'm sorry. It's dated November 20, 1968. And it's signed by me, Elaine W. Kerr, trustee, on the 26th of November, 1968.

\*\*\*\*\*

- [TR 32] Q. Now, did, in fact, Mr. Oleyar prepare a title certificate for you?
- A. Yes, he did.
- Q. I show you a paper headed by G. Louis Oleyar, Jr.'s. name, attorney at law, and ask if you can identify this document and the two attachments.
- (Handing to witness.)
- A. Yes. This is a certificate of title with the two easement sheets on it.
- Q. What is the date of that paper?
- A. November 8, 1968.

\*\*\*\*\*

- [TR 36] Q. Is this the document which is represented by that deed?
- (Handing to Witness.)
- A. Yes, it is.

Q. Would you give us the date of that deed?

A. The 11th of December, 1968.

Q. Who is the grantor and who are the grantees?

A. The grantor is Elaine W. Kerr, trustee, The grantees are Paul G. Ziluca and Louise L. Ziluca.

\*\*\*\*\*

[TR 38] Q. Now, did you have any contact with him from the time he gave you the title certificate until the time settlement was held on December 11?

A. Not any personal contact. He brought the settlement sheets by, but no personal contact.

Q. I see.

Did there come a time subsequent to the settlement when you learned that there was some dissatisfaction with what had taken place in the sale?

A. Yes.

Q. Now, how did you learn that?

A. About the 25th of January, I received a call from an attorney who identified himself as an attorney for Real Title Corporation. And he told -- and that was the next that I heard anything about it.

Q. As a result of that controversy, were you ultimately sued by the Zilucas?

A. Yes, I was.

Q. Did that result in a judgment being given against you?

A. That's correct.

\*\*\*\*\*

[TR 43] Q. Mrs. Kerr, did you at any time prior to January of 1969 when the Zilucas or their attorney contacted you have any knowledge of any outstanding lien or claim against the property on Loch Raven Drive?

A. I did not.

THE COURT: When were you contacted by the Zilucas' attorney?

THE WITNESS: It was about the 24th or 25th of January. It would have been 1969.

\*\*\*\*\*

[TR 90] Q. When did you first retain Mr. Boothe?

A. When I was sued by Mr. Ziluca.

\*\*\*\*\*

[TR 91] Q. Would that have been in April of 1969?

A. If that's what the court papers reflect, I'll agree to that.

\*\*\*\*\*

[TR 94] Q. Let me ask you this. When did you first become aware that you might be in some trouble over this, that there might be a problem over it?

A. It was about the 24th or 25th of January to the best of my recollection.

\*\*\*\*\*

[TR 95] Q. Then you were sued in April of 1969; is that correct?

A. Um-hum.

Q. What did you do when you received that suit?

A. I took the suit papers, I suppose, to Mr. Boothe. I know I contacted him and had a meeting with him.

\*\*\*\*\*

[TR 96] Q. All right. You hired him at that time?

A. Yes.

\*\*\*\*\*

EXCERPTS FROM REPORTER'S TRANSCRIPT

Testimony of George L. Oleyar, Jr.

- [TR 103-104]
- Q. Did you do the settlement on the Ziluca case?
- A. Now I am getting to the third place which was the Ziluca case. I did not do the settlement or any preliminary papers, matters at all, except give her a certificate of title.
- Q. All right. Now, if I might, could I show you the particular document and ask if this is the document that you prepared and submitted to Mrs. Kerr?
- (Handing to witness.)
- A. This is a copy of the document that I prepared.
- Q. Yes, sir.
- A. Right. It's my letterhead and my certificate of title, my signature, and made for the benefit of Elaine W. Kerr only. I wrote it then November 8, 1968.
- Q. And dated November 8, '68.
- A. November 8, '68. That is the one that was brought then, sir.
- Q. Now, at the time you gave this title certificate, there was, in fact, an outstanding lien against this particular piece of property, was there not?
- A. I think.

\*\*\*\*\*

- [TR 108] THE WITNESS: I received the title, Mr. Thomson, the order for the title on November 4, '68. And I delivered it on November 19, '68. And I was paid \$50 on December 3, '68.

\*\*\*\*\*

[TR 109] A. Yeah.

Q. Did you go through the file?

A. Yeah. I have the whole file here if you would like to go through it page by page.

Q. You at no time received a copy of this agreement?

A. No. never.

Q. Did you receive a copy of the contract with the Zilucas?

A. You showed it to me at one of the hearings and also during deposition. Not up before December 8, no -- November 8 rather. Not before that time at all.

Q. Did you see a copy of it before December 11, 1968?

A. No, not at all.

Q. Your testimony is you didn't see this at all?

A. I didn't see it at all until I saw it here at one of the court proceedings, one of the many court proceedings on this.

Q. How did you know who the parties were to do the title search for?

A. I don't have to know the parties. All I have to know is the owner and make out the certificate of title to the attorney who ordered it from me. They are the ones that conducted the business. I never know the purchaser.

\*\*\*\*\*

[TR 113] Q. When did you indicate that you were paid?

A. December 3, 1969 -- '8.

Q. Did Mrs. Kerr ever indicate to you at any time that you would be paid anything more than \$50.?

A. Of course not. She only ordered the certificate of title. That's all I get from any of them is \$50.

- Q. Who did she tell you was the owner of that property when she ordered the certificate of title?
- A. I knew she was the owner. She told me she was the owner.

\*\*\*\*\*

Testimony of J. Howe Brown

- [TR 177] Q. Does that file reflect when Mrs. Kerr first came into your firm about this Ziluca problem:
- A. It was in the early part of April. The first thing in this file is dated the 4th of April, 1969. I can't be certain that that's the first day, but it was in early April, 1969.
- Q. All right. Who met with her at that time?
- A. Mr. Armistead Boothe met with her. And I believe that I was present at least during part of that meeting.
- Q. All right. When did you come to have the file or to represent her?
- A. The first note in the file is a note from me to Mr. Boothe dated April 4, 1969. And I came into the file at that time at his request to do some background investigation and determine whether or not the firm could take the case.
- Q. All right. Does the file reflect whether or not at that first meeting any money changed hands between Mrs. Kerr and your firm?
- A. No money changed hands at that time according to the records of the law firm.

\*\*\*\*\*

- [TR 178-180] Q. All right. What do the records of the law firm reflect as far as how much Mrs. Kerr was billed for that suit, that representation, and how much she paid?

A. And what, sir?

Q. And how much she paid.

A. All right. The first indication of money passing hands is a letter from Mrs. Kerr to me dated May 7, 1969, in which she enclosed a thousand dollars pursuant to a telephone conversation that I have with her in which I recall I told her that we would handle the case but on an hourly basis, but would want a retainer of a thousand dollars.

We then went her a series of bills. And the first one was dated June 18, 1969, and does not reflect the retainer, but was simply a bill for \$350 which she endorsed a copy of and returned. And we took that money out of the retainer. I have the firm copy of the bill indicating that we took \$350 from the retainer.

Q. Go ahead.

A. We next sent Mrs. Kerr a bill dated on -- date October 29, 1969, showing the retainer of a thousand dollars, the bill of June, 1969, in the amount of \$350, the balance of retainer \$650, then the bill for the current interim period in the amount of \$210, balance of retainer after this bill was \$440. And that was also returned by Mrs. Kerr endorsed by her. We took that money out of the retainer as well.

And I believe that we next then sent her a bill on March 10, 1970, in the amount of \$400. And that also shows the retainer of a thousand dollars and after all the billing shows a balance in the retainer of one dollar. She signed that bill as well.

And we then last sent her a bill on November 20, 1970. And the amount of that bill was -- let's see, total fee and cost, \$623.20. That shows then the retainer and the previous billings, the total of that bill, the one dollar that we have left in

the retainer account and a total balance due of %622.20 which was not paid. That was rebilled on May 26, 1971, and was not paid and not further pursued.

Q. All right, sir. If I understand it then, you got a thousand dollar retainer from her and credited bills until that was done [sic] to a dollar; is that correct?

A. Well, we actually credited that dollar as well.

Q. All right. Then you sent her a final bill for \$623 and some cents?

A. Yes. The final bill with the dollar credit that we had left in the retainer on the retainer was \$622.20.

Q. All right.

A. So, in brief answer to the question, we billed her sixteen hundred and some odd dollars and she has paid a thousand dollars.

Q. Do you [sic] records reflect or does your recollection of that meeting reflect that she ever paid a retainer of \$4,000.00?

A. No. My recollection is that she did not pay a retainer of \$4,000.00. And that further is -- there's no \$4,000.00 in the firm. That is the law firm did not receive \$4,000.00 as far as the records of the firm are concerned.

\*\*\*\*\*

#### Excerpt from Judge Cacheris' Ruling

[TR 231]

But, nevertheless, to consider the issue in the case, whether or not Mr. Oleyar was negligent at the time he examined title to the property, the Court has to enter that on the basis of the affirmative.

The Court finds the proximate cause of the negligence was the \$16,000 damage



compromise judgment that was granted against Mrs. Kerr, and will enter judgment for the 16,000 plus the 1622.22. So, it will be 16,622.22 [sic]. The defendant's exceptions are noted to the Court's ruling.

Present an order noting and preserving the defendant's exceptions to all rulings of the Court.

MR. THOMSON: Thank you, Your Honor.

MR. JOHNSTON: Thank you.

(Whereupon, at 6:25 p.m., the hearing in the above-entitled matter was concluded.)