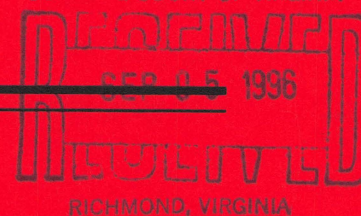


253 Va 148

CLERK
SUPREME COURT OF VIRGINIA



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 961005

STANLEY YESKOLSKI, SR.,

Appellant,

v.

KIMBLYN F. CROSBY, et al.,

Appellees.

JOINT APPENDIX



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5386 Kemps River Drive
Suite 114
Virginia Beach, VA 23464
(804) 420-1112

Counsel for Appellant

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7275 Glen Forest Drive
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Counsel for Appellees

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Attorney at Law
1432 Great Neck Road
Suite 101
Virginia Beach, VA 23454
(804) 481-6600

Counsel for Appellees

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Defendant's Exhibit No.:

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VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

KIMBLYN F. CROSBY,
and
KIMBLYN F. CROSBY,
Executrix of the Estate of
William A. Crosby, Deceased
and
VICTOR PECK,
Plaintiffs,

v.

IN CHANCERY NO. CH 87-2592

DONALD H. CLARK,
SERVE AT: 900 Sovran Bank Building
Norfolk, Virginia
and
ERIC A. HAUSER,
SERVE AT: 900 Sovran Bank Building
Norfolk, Virginia,
Trustees,

and
ARNOLD B. AMDURSKY and
D. DIANE AMDURSKY,
SERVE AT: 1113 Battle Royal Circle
Virginia Beach, Virginia,
and
RICHARD G. MAHER and
PATRICIA J. MAHER,
SERVE AT: 550 South Atlantic Avenue
Virginia Beach, Virginia,
and
STANLEY YESKOLSKI, SR.
SERVE AT: 613 Birchridge Court
Virginia Beach, Virginia,
Defendants.

ACTION TO QUIET TITLE, OR IN THE
ALTERNATIVE, MOTION FOR
DECLARATORY JUDGMENT

Your Plaintiffs, Kimblyn F. Crosby and Kimblyn F.
Crosby, Executrix of the Estate of William A. Crosby, and
Victor Peck, desiring to have title to certain property named
and described herein, quieted as against Defendants pursuant
to Section 55-153 of the Code of Virginia ~~File 1950~~ on the

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J. CURTIS FRUIT, CLERK
BY [Signature] D.C.

basis that said Defendants' claims are without basis in law or fact and constitute a cloud on your Plaintiffs' title to said property, and as such, render same unmarketable and create difficulties in conveying said property. Or, in the Alternative, Motion for Declaratory Judgment, your Plaintiffs state as follows:

1. William A. Crosby was a resident of the City of Virginia Beach, Virginia, who resided at 213 43rd Street, Virginia Beach, Virginia 23451, and departed this life on October 23, 1985.

2. Plaintiff, Kimblyn F. Crosby is the surviving spouse and sole heir of William A. Crosby, whereupon by devise, Kimblyn F. Crosby became the sole owner of property as described in paragraph 9 below.

3. Plaintiff, Kimblyn F. Crosby, Executrix of the Estate of William F. Crosby, is the surviving spouse and sole heir under Mr. Crosby's Last Will and Testament, qualified as Executrix of Mr. Crosby's estate in the Circuit Court of the City of Virginia Beach, Virginia, on November 15, 1985.

4. Plaintiff, Victor Peck, acquired title to the same certain property on August 17, 1987, by deed recorded in Deed Book 2664, Page 2011.

5. Defendant, Donald H. Clark, Trustee, is a resident of the City of Virginia Beach, with a current business address of 900 Sovran Bank Building, Norfolk, Virginia.

6. Defendant, Eric A. Hauser, Trustee, is a resident of the City of Virginia Beach, with a current business address of 900 Sovran Bank Building, Norfolk, Virginia.

7. Defendants, Arnold B. Amdursky and D. Diane Amdursky, are husband and wife residing at 1113 Battle Royal Circle, Virginia Beach, Virginia.

8. Defendants, Richard G. Maher and Patricia J. Maher are husband and wife with a last known address of 550 South Atlantic Avenue, Virginia Beach, Virginia. The current address and whereabouts of Richard G. Maher and Patricia J. Maher are unknown to your Plaintiffs.

9. Defendant, Stanley Yeskolski, Sr. is a resident of the City of Virginia Beach, Virginia with a current address of 613 Birchridge Court.

10. That by virtue of a second deed of trust dated January 1, 1984, and recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, in Deed Book 2308, Page 1501, the following real property was conveyed in trust to Defendants, Donald H. Clark and Eric A. Hauser, to service a note in the original amount of Sixty Eight Thousand and 00/100 Dollars (\$68,000.00), payable to Arnold B. Amdursky and D. Diane Amdursky;

ALL THOSE certain lots, pieces or parcels of land, with the buildings and improvements thereon, situate, lying and being in the City of Virginia Beach, VA, and known, numbered and designated as Lots 5 and 17, in Block 26, as shown on

that certain plat entitled,
"Resubdivision of Part of Croatan Beach,
Princess Anne, Va.," which plat is duly
recorded in the Clerk's Office of the
Circuit Court of the City of Virginia
Beach, Virginia, in Map Book 37, at Page
11.

Copies of said note and deed of trust are attached as
Exhibits A and B respectively.

11. That by agreement (hereinafter referred to as
"the agreement"), dated June 14, 1984, by and between William
A. Crosby and Kimblyn F. Crosby ("Crosbys"), Arnold B.
Amdursky and D. Diane Amdursky ("Amdurskys"), and Richard G.
Maher and Patricia J. Maher ("Mahers"), a copy of which is
attached hereto as Exhibit C, the Amdursky's agreed to assign
the above referenced note, subject to certain modifications,
to the Mahers upon payment of Fifty Thousand and 00/100
Dollars (\$50,000.00).

12. That pursuant to paragraph 4 of the above
referenced agreement, the Mahers purchased an option to buy
property referred to in paragraph 9 above from the Crosbys,
the proceeds of which were non-refundable in the event of
default by the Mahers as to any provision of said agreement.

13. That the Mahers defaulted under the following
paragraphs of the above referenced agreement:

a. Paragraph 2, for repeated failure to pay
rent which resulted in a default judgment in addition to
their eviction, after notice was given them pursuant to
paragraph 9 of agreement.

b. Paragraph 7, for modifications and damage caused to property referred to in paragraph 9 above, which modification and damage amounts to approximately Fifteen Thousand and 00/100 (\$15,000.00).

c. Paragraph 5, for failure to make payments as per the agreement, which agreement called for Mahers to make payment to the Amdurskys in the amount of Ten Thousand and 00/100 Dollars (\$10,000.00) commencing July 15, 1984, and the 15th of each month thereafter through November 15, 1984, whereupon the total value of said payments would equal Fifty Thousand and 00/100 Dollars (\$50,000.00). Said payments by Mahers to Amdurskys were to be made for the benefit of the Crosbys. Said payments were not timely made as per the agreement, but instead, a Fifty Thousand and 00/100 Dollars (\$50,000.00) payment was actually made to Amdurskys on or about September, 1985, eight months after the due date on the above referenced note and nine months after the last payment was due as per the agreement.

14. Paragraph 9 of the above referenced agreement states that "upon default in any provision of said agreement by the Mahers, which default remains uncured for ten (10) days following delivery of written notice of such default, all payments made to that date shall be retained by the Crosbys as liquidated damages and the Crosbys shall regain possession of the premises." Therefore, as per paragraph 9 of said agreement, upon default by the Mahers, the Crosbys by

order of General District Court, a copy of which is attached hereto as Exhibit D, (a) retaken possession of property referred to in paragraph 9 above, and (b) all payments made to that point were forfeited by the Mahers and retained by the Crosbys as liquidated damages as described above.

15. That said agreement in paragraph 10 above, modified the note terms between the Amdurskys and the Crosbys, and payment of the above referenced Fifty Thousand and 00/100 Dollars (\$50,000.00) to the Amdursky's future benefit of the Crosbys was accord and satisfaction with respect to the Crosbys pursuant to paragraph 5 of said agreement.

16. That Peter Babalas, on behalf of his client Stanley Yeskolski, Sr. informed the Crosbys by mail that Stanley Yeskolski, Sr. claims to be the bearer of above referenced note.

17. That counsel for Crosbys requested on their behalf that the original of said note be exhibited and produced and the note has not been exhibited and produced.

18. That in the event Yeskolski is the holder of said note, he is not a holder in due course as he so acquired the note with constructive and actual notice of said note's maturity date, that being at least nine months prior to any date upon which Yeskolski could have so acquired said note.

19. That the above referenced deed of trust held by the Amdurskys was assigned by them to Sovran Bank on

April 21, 1984, and Sovran Bank did not release said deed of trust until June 7, 1987, and consequently no assignment of the subject deed of trust was possible from April 21, 1984 until released by Sovran on June 7, 1987.

20. That the Crosbys have no personal liability as to any party hereto, as the aforementioned deed of trust was no longer surety for said note as a result of modifications thereto arising under provisions of said agreement.

21. That said note, payable to bearer, is a non-recourse note as per paragraph 5 of said agreement and the Crosbys have no personal liability therein.

22. That said note was paid and satisfied with respect to the Crosbys' property and to the Amdurskys, and no monies are owed under said note which would be deemed secured by the above referenced property, as the underlying debt was satisfied thereto on March 25, 1986 with payment in full by the Mahers to the Amdurskys.

23. That above referenced agreement provided that no interest would be due on the note during the Mahers occupancy of said property and that it was the intention of the parties hereto, in the event of no default by the Mahers, that the total value of said note as amended be Fifty Thousand and 00/100 Dollars (\$50,000.00), and in the event of default by the Mahers, any payments made on the note by the Mahers to the Amdurskys be retained by the Crosbys as liquidated damages.

24. That title to the above referenced property is clouded until the deed of trust is released.

WHEREFORE, your Plaintiffs pray that this court enter an order that:

1. The deed of trust note has been satisfied and that the second deed of trust securing same, Exhibit B, be released, and that a copy of said order be recorded in the Clerk's Office of this Court; or

2. In the event that this Court determines that said deed of trust note has not been fully satisfied, then this Court shall determine the dollar amount necessary to release said deed of trust and the rightful owner of those funds.


3. Such other relief as this Court deems equitable and just.

KIMBLYN F. CROSBY
and
KIMBLYN F. CROSBY,
Executrix of the Estate of
William A. Crosby, deceased
and
VICTOR PECK

By


Louis G. Paulson

Louis G. Paulson, Esquire
Paulson & Fancher, P.C.
1432 N. Great Neck Road, Suite 101
Virginia Beach, Virginia 23454
Phone: (804) 481-6600

Filed in the Clerk's office the 2 day of Oct 1987
Writ Tax \$ 48 Teste: 
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Tol 8 J. Curtis Fruit, Clerk D.C.

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

KIMBLYN F. CROSBY, ETC.,
ET AL.,

Plaintiffs

v.

DONALD H. CLARK, ET AL.,

Defendants

IN CHANCERY NO. CH87-2592

ANSWER

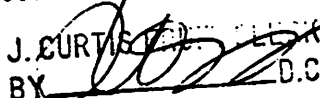
Trustees Donald H. Clark and Eric A. Hauser for their Answer to Plaintiffs' action to quiet title, or in the alternative, Motion for Declaratory Judgment, state as follows:

1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24. Trustees, Donald H. Clark and Eric A. Hauser are without sufficient knowledge or information to affirm or deny the allegations contained in ¶¶ 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 of Plaintiffs' action to quiet title, or in the alternative, Motion for Declaratory Judgment, and accordingly deny same, calling for strict proof thereof.

5, 6. Upon present information and belief, Trustees, Donald H. Clark and Eric A. Hauser admit the allegations contained in ¶¶ 5 and 6 of the action to quiet title, or in the alternative, Motion for Declaratory Judgment.

CLARK & STANT, P.C.
ATTORNEYS
VIRGINIA BEACH, VIRGINIA

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J. CURTIS
BY  D.C.

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- 1 -

WHEREFORE, Trustees, Donald H. Clark and Eric A. Hauser, request that the Court dismiss this action against them with prejudice, or such other relief as the Court deems proper to protect the equitable interests of the parties.

DONALD H. CLARK and ERIC A. HAUSER

By


Of Counsel

Robert L. Samuel, Jr., Esquire
CLARK & STANT, P.C.
900 Sovran Bank Building
One Columbus Center
Virginia Beach, Virginia 23462

CERTIFICATE

I hereby certify that a true copy of the foregoing was mailed to all counsel of record and to unrepresented parties this 26 day of October, 1987.


Robert L. Samuel, Jr.

b a.dceh.1

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

KIMBLYN F. CROSBY, etc.,
and VICTOR PECK,

Plaintiffs,

v.

CHANCERY NO. CH 87-2592

DONALD H. CLARK, ERIC A. HAUSER,
ARNOLD AMDURSKY, D. DIANE AMDURSKY,
RICHARD G. MAHER, PATRICIA MAHER
and STANLEY YESKOLSKI, SR.,

Defendants.

ANSWER TO ACTION TO QUIET TITLE, OR IN THE
ALTERNATIVE, MOTION FOR DECLARATORY JUDGMENT

For their Answer to the Action to Quiet Title or Motion
for Declaratory Judgment, the defendants, Richard Maher,
Patricia Maher and Stanley Yeskolski, Sr., state the follow-
ing:

1. Admitted.
2. Admitted.
3. Admitted.
4. Denied.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted, except the whereabouts of the defendants
are known.
9. Admitted.
10. Admitted.
11. Defendants state that the agreement of June 14,
1984, speaks for itself.

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J. CURTIS F. ...
BY ...

12. Defendants state that the agreement of June 14, 1984, speaks for itself.

13. Denied.

14. Defendants state that the agreement of June 14, 1984, speaks for itself. Defendants deny that there is any default under the agreement.

15. Denied.

16. Admitted.

17. Denied.

18. The plaintiff states a conclusion of law to which no response is required.

19. Denied.

20. Denied.

21. Denied.

22. Denied.

23. The agreement speaks for itself.

24. The deed of trust is valid and should not be released.

For these reasons, the defendants request that the deed of trust be declared to be a valid deed of trust and that the defendants be allowed to foreclose on the property because of plaintiff's failure to pay money as requested.

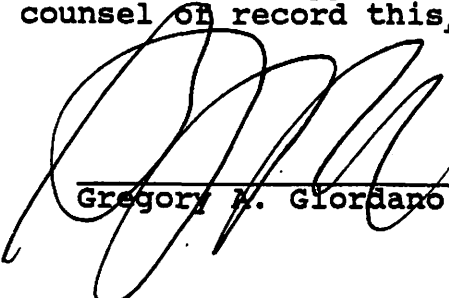
RICHARD MAHER, PATRICIA MAHER
AND STANLEY YESKOFSKI, SR.

By 

Of counsel

Gregory A. Giordano
SHUTTLEWORTH, RULOFF, GIORDANO & KAHLE
2809 South Lynnhaven Road
Virginia Beach, Virginia 23452

I hereby certify that a true copy of the foregoing
pleading was mailed to all counsel of record this 29 day of
October, 1987.



Gregory A. Giordano

Take notice that on MAY 4, 1992 at 09:30 a.m., in the Circuit Court, Municipal Center, Virginia Beach, Virginia, the below styled case, wherein for more than two years there has been no order or proceeding, except to continue it, will be struck from the Court's docket and be discontinued pursuant to Virginia Code Section 8.01-335.

CASE: KIMBLYN F. CROSBY ETC ET AL

v. DONALD H. CLARK, TRUSTEE, ETAL ETC, ARNOLD B. AMDURSKY,
D. DIANE AMDURSKY ET AL

CASE NO. CH87-2592

DATED: APRIL 6, 1992.

J. CURTIS FRUIT, CLERK

NO. CC 27B REV. 6/89

54
Take notice that on MAY 4, 1992 at 09:30 a.m., in the Circuit Court, Municipal Center, Virginia Beach, Virginia, the below styled case, wherein for more than two years there has been no order or proceeding, except to continue it, will be struck from the Court's docket and be discontinued pursuant to Virginia Code Section 8.01-335.

CASE: KIMBLYN F. CROSBY ET AL

V. DONALD H. CLARK, TRUSTEE, ETC ETAL, RICHARD C MAHER
AND PATRICIA J. MAHER ETAL

CASE NO. CH87-2592

DATED: APRIL 6, 1992.

J. CURTIS FRUIT, CLERK

FORM NO. CC 27B REV. 6/89

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

KIMBLYN F. CROSBY, et al.,

Plaintiffs,

v.

In Chancery No. CH87-2592

DONALD H. CLARK, et al.,

Defendants.

MOTION FOR JOINDER

NOW COMES the Defendant, STANLEY YESKOLSKI, SR., by counsel, and pursuant to Rule 2:14 of the Rules of the Supreme Court of Virginia, and moves to join as additional parties defendant Gregory G. Vernosky and Lori B. Vernosky, trustees of the Gregory G. Vernosky and Lori B. Vernosky Revocable Living Trust, whose address is 5112 Westridge Road, Bethesda, Maryland, 20816, Richard M. Grattan, and Roseleen P. Pick, trustees, and Dominion Bank, N.A., noteholder, and as grounds for said motion, Defendant Stanley Yeskowski, Sr. says as follows:

1. That at the time of the institution of this suit one of the Plaintiffs herein, Victor Peck, was alleged to be the owner of the property being the subject matter of this suit.

2. Since that time a default was alleged to have accrued under the terms of a Deed of Trust duly of record in the Clerk's Office of this Court in Deed Book 2782, at page 1053, and a foreclosure sale was held and by foreclosure deed, dated November 11, 1992 recorded in Deed Book 3156, at page 1259, said property was conveyed to Dominion Bank, N.A..

3. That by deed dated December 18, 1992, the aforesaid property was conveyed by Dominion Bank, N.A. to Gregory G. Vernosky and Lori B. Vernosky, said deed being duly of record in Deed Book 3166, at page 991.

4. That Gregory G. Vernosky and Lori B. Vernosky, granted a Deed of Trust dated December 18, 1992 to Richard M. Grattan and Roseleen P. Pick, trustees securing an indebtedness

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J. CURTIS FRUIT, CLERK

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BY  D.C.

payable to Dominion Bank, N.A. as noteholder.

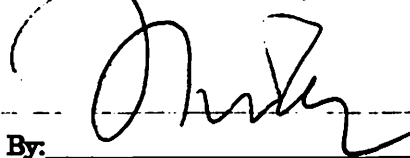
5. That by deed duly of record in the Clerk's Office of this Court in Deed Book 3190, at page 1465, the said Gregory G. Vernosky and Lori B. Vernosky, husband and wife, conveyed the aforementioned property to Gregory G. Vernosky and Lori B. Vernosky, trustees of a certain trust entitled "Gregory G. Vernosky and Lori B. Vernosky Revocable Living Trust".

6. The the aforesaid deed does not disclose the names of the beneficiaries of the revocable trust.

7. That Gregory G. Vernosky and Lori B. Vernosky, trustees, as owners of record of the property being the subject matter of this suit, and Richard M. Grattan and Roseleen P. Pick, trustees, and Dominion Bank, N.A., noteholder of an indebtedness secured by a lien on said property are necessary parties to the suit.

WHEREFORE, your Defendant, STANLEY YESKOLSKI, SR. prays that Gregory G. Vernosky and Lori B. Vernosky, trustees, Richard M. Grattan and Roseleen P. Pick, trustees, and Dominion Bank, N.A., noteholder, be joined as additional parties defendant in this cause.

STANLEY YESKOLSKI, SR.



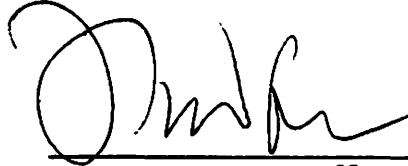
By: _____

Of Counsel

Norman Hecht, Attorney
VSB #04121
5386 Kemps River Drive
Suite 114
Virginia Beach, VA 23464
(804) 420-1112

CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of the foregoing Motion For Joinder was mailed this 20th day of September, 1993, to Louis G. Paulson, Esquire, PAULSON & ASSOCIATES, P.C., 1432 N. Great Neck Road, Suite 101, Virginia Beach, Virginia, 23454, and Robert L. Samuel, Jr., Esquire, CLARK & STANT, P.C., One Columbus Center, Virginia Beach, Virginia, 23462.



Norman Hecht

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

KIMBLYN F. CROSBY, et als.,

Plaintiffs,

v.

In Chancery No. CH87-2592

DONALD H. CLARK, et als.,

Defendants.

ORDER

THIS CAUSE came on this day to be heard upon motion of STANLEY YESKOLSKI, SR., one of the Defendants herein to join as additional parties defendant Gregory G. Vernosky and Lori B. Vernosky, Trustees under a trust entitled "Gregory G. Vernosky and Lori B. Vernosky Revocable Living Trust", Richard M. Grattan and Roseleen P. Pick, trustees under a certain deed of trust described in the Motion For Joinder, and Dominion Bank, N.A., the secured noteholder, and was argued by counsel.

Upon consideration whereof, the Court being of the opinion that complete relief cannot be granted to parties hereto in the absence of Gregory G. Vernosky and Lori B. Vernosky, trustees, Richard M. Grattan and Roseleen P. Pick, trustees, and Dominion Bank, N.A. being made a party hereto, it is therefore,

ADJUDGED, ORDERED and DECREED that leave be and is granted to the Defendant STANLEY YESKOLSKI, SR. to make Gregory G. Vernosky and Lori B. Vernosky, trustees, Richard M. Grattan and Roseleen P. Pick, trustees, and Dominion Bank, N.A. defendants in this cause in accordance with the Motion For Joinder, and it is further

ORDERED that the Clerk of this Court issue a Bill of Complaint under the seal of this Court and cause said Bill of Complaint together with a copy of said Motion For Joinder to be served by the Sheriff upon said Defendants Gregory G. Vernosky and Lori B. Vernosky, trustees, Richard M.

Grattan and Roseleen P. Pick, trustees, and Dominion Bank, N.A..

ENTER: 10/4/93

WDS Hockley
JUDGE

I ask for this:

Norman Hecht, p.d.

Seen and Agreed to:

Louis G. Paulson, p.q.
Louis G. Paulson

Robert L. Samuel, Jr., p.d.
Robert L. Samuel, Jr.
Counsel for Donald H. Clark and
Eric A. Hauser, Trustees

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

KIMBLYN F. CROSBY, et als.,

Plaintiffs,

v.

In Chancery No. CH87-2592

DONALD H. CLARK, et als.,

Defendants.

MOTION FOR JOINDER

NOW COMES the Defendant, STANLEY YESKOLSKI, SR., by counsel, and pursuant to Rule 2:14 of the Rules of the Supreme Court of Virginia, and moves to join as additional parties defendant Charles M. Guida and Geoffrey S. Hall, trustees, and Atlantic Residential Mortgage Corp., noteholder, and as grounds for said motion, Defendant Stanley Yeskowski, Sr. says as follows:

1. That at the time of the institution of this suit one of the Plaintiffs herein, Victor Peck, was alleged to be the owner of the property being the subject matter of this suit.

2. Since that time a default was alleged to have accrued under the terms of a Deed of Trust duly of record in the Clerk's Office of this Court in Deed Book 2782, at page 1053, and a foreclosure sale was held and by foreclosure deed, dated November 11, 1992 recorded in Deed Book 3156, at page 1259, said property was conveyed to Dominion Bank, N.A..

3. That by deed dated December 18, 1992, the aforesaid property was conveyed by Dominion Bank, N.A. to Gregory G. Vernosky and Lori B. Vernosky, said deed being duly of record in Deed Book 3166, at page 991.

4. That by deed duly of record in the Clerk's Office of this Court in Deed Book 3190, at page 1465, the said Gregory G. Vernosky and Lori B. Vernosky, husband and wife, conveyed the aforementioned property to Gregory G. Vernosky and Lori B. Vernosky, trustees of a certain trust entitled "Gregory G. Vernosky and Lori B. Vernosky Revocable Living Trust".

5. The the aforesaid deed does not disclose the names of the beneficiaries of the revocable trust.

6. That Gregory G. Vernosky and Lori B. Vernosky, trustees, in whom title to the property in question is currently vested, granted a Deed of Trust to Charles M. Guida and Geoffrey S. Hall, trustees, securing an indebtedness payable to Atlantic Residential Mortgage Corp. as noteholder, said Deed of Trust being duly of record in Deed Book 3390, at page 1974.

7. That Charles M. Guida and Geoffrey S. Hall, trustees, and Atlantic Residential Mortgage Corp., noteholder of an indebtedness secured by a lien on said property are proper or necessary parties to the suit.

WHEREFORE, your Defendant, STANLEY YESKOLSKI, SR. prays that Charles M. Guida and Geoffrey S. Hall, trustees, and Atlantic Residential Mortgage Corp., noteholder, be joined as additional parties defendant in this cause.

STANLEY YESKOLSKI, SR.

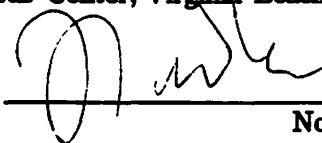
By: 

Of Counsel

Norman Hecht, Attorney
VSB #04121
5386 Kemps River Drive
Suite 114
Virginia Beach, VA 23464
(804) 420-1112

CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of the foregoing Motion For Joinder was mailed this 1st day of November, 1994, to Louis G. Paulson, Esquire, PAULSON & ASSOCIATES, P.C., 1432 N. Great Neck Road, Suite 101, Virginia Beach, Virginia, 23454, and Robert L. Samuel, Jr., Esquire, CLARK & STANT, P.C., One Columbus Center, Virginia Beach, Virginia, 23462.



Norman Hecht

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

KIMBLYN F. CROSBY, et als.,

Plaintiffs,

v.

In Chancery No. CH87-2592

DONALD H. CLARK, et als.,

Defendants.

ORDER

THIS CAUSE came on this day to be heard upon motion of STANLEY YESKOLSKE, SR., one of the Defendants herein to join as additional parties defendant Charles M. Guida and Geoffrey S. Hall, trustees and Atlantic Residential Mortgage Corp., and was argued by counsel.

Upon consideration whereof, the Court being of the opinion that Charles M. Guida and Geoffrey S. Hall, trustees, and Atlantic Residential Mortgage Corp., noteholder, should be made parties hereto, it is therefore,

ADJUDGED, ORDERED and DECREED that leave be and is granted to the Defendant STANLEY YESKOLSKE, SR. to make Charles M. Guida and Geoffrey S. Hall, trustees, and Atlantic Residential Mortgage Corp., noteholder, defendants in this cause in accordance with the Motion For Joinder, and it is further


ORDERED that the Clerk of this Court issue a Bill of Complaint under the seal of this Court and cause said Bill of Complaint together with a copy of said Motion For Joinder to be served by the Sheriff upon said Defendants Charles M. Guida and Geoffrey S. Hall, trustees, and Atlantic Residential Mortgage Corp., noteholder.

ENTER: 11/16/94
AB Shively

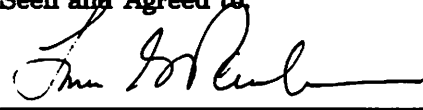
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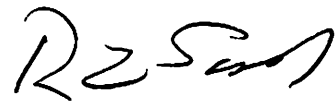
JUDGE: _____

I ask for this:


_____, p.d.
Norman Hecht

Seen and Agreed to:


_____, p.q.
Louis G. Paulson


_____, p.d.
Robert L. Samuel, Jr.
Counsel for Donald H. Clark and
Eric A. Hauser, Trustees

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

KIMBLYN F. CROSBY, et ala,

Plaintiffs,

v.

DONALD H. CLARK, et ala,

Defendants,

IN CHANCERY NO. CH87-2592

SERVE:

Geoffrey S. Hall, Trustee
c/o Atlantic Residential Mortgage
120 E. Baltimore Street
23rd Floor
Baltimore, MD 21202

Charles M. Guida, Trustee
c/o Atlantic Residential Mortgage
79011 Wisconsin Avenue
Bethesda, MD 20814

ATLANTIC RESIDENTIAL MORTGAGE CORP.
c/o Edward R. Parker, Registered Agent
5511 Staples Mill Road
Richmond, VA 23228

NOTICE

TAKE NOTICE, that on the 18th day of January, 1995 at 9:00 A.M., in the offices of Grover C. Wright, Jr., Esquire located at 802 Pavilion Center, 2101 Parks Avenue, Virginia Beach, Virginia, 23451, the said Commissioner in Chancery to whom this matter has been referred by the Court will conduct a hearing and take and receive evidence upon such inquiries as set forth and propounded in the Decree of Reference.

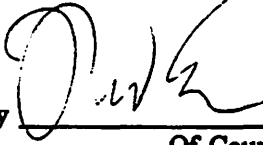
You will have no other opportunity to present evidence relating to said inquiries set forth in the Decree of Reference.

If for any reason said hearing be not commenced on the date and at the time above stated, or, if commenced, be not completed on said date, the said hearing may be continued by the Commissioner in Chancery from date to date and time to time without further notice to any party.

You are hereby notified to take such actions as may be required for the protection of your interest in this matter.

Filed
11-18-94
[Signature]

STANLEY YESKOLSKE, SR.

By 

Of Counsel

Norman Hecht, Esquire
Counsel for Defendant
Stanley Yeskolske, Sr.
5386 Kemps River Drive
Virginia Beach, Virginia 23464
(804) 420-1112

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH
KIMBLYN F. CROSBY, etc., et al,

Plaintiffs,

v.

In Chancery
No.: CH87-2592

DONALD H. CLARK, at al,

Defendants.

BRIEF IN OPPOSITION TO PLAINTIFFS'
BRIEF IN SUPPORT OF PLAINTIFFS' ACTION TO QUIET TITLE

This Brief in Opposition is filed on behalf of the Defendant, Stanley Yeskolske, in opposition to the Brief in Support of Plaintiffs' Action to Quiet Title.

STATEMENT OF FACTS

By deed dated December 7, 1981, the Defendants ARNOLD B. AMDURSKY and D. DIANE AMDURSKY did convey to WILLIAM A. CROSBY and KIMBLYN F. CROSBY certain property consisting of two vacant lots constituting an oceanfront building site in the Croatan section of Virginia Beach, Virginia. To secure a portion of the unpaid purchase price, the sellers received a purchase money deed of trust note in the sum of Eighty-eight Thousand Dollars (\$88,000.00) evidencing the debt and secured by the lien of a deed of trust on the property conveyed.

The Crosbys after the purchase did construct a dwelling on the premises known as 550 South Atlantic Avenue. Under the terms of the Eighty-eight Thousand Dollar (\$88,000.00) deed of trust note it became due and payable in December, 1983. Mr. Crosby instructed

his attorney, John B. Dinsmore, that an agreement had been reached with the Amdurskys, the holders of the Eighty-eight Thousand Dollar (\$88,000.00) note and that upon the payment of Twenty Thousand Dollars (\$20,000.00) the Amdurskys would extend the payment due on the indebtedness.

Under the refinance arrangement memorialized in the Sixty-eight Thousand Dollar (\$68,000.00) note being the subject matter of this suit, principal payments were to be made in the amount of One Thousand Dollars (\$1,000.00) per month, commencing February 1, 1984, and with interest payments at a fixed amount of Seven Hundred Ninety-three Dollars and thirty-three cents (\$793.33) per month. The whole unpaid principal balance with interest was due on January 1, 1985, but under the terms of the note and deed of trust given to secure payment of the indebtedness, the maturity date could be extended by the noteholder.

The interest rate which Mr. and Mrs. Crosby agreed to pay was initially Fourteen Percent (14%) per annum and increased gradually as the principal balance was reduced.

At approximately the same time that the Sixty-eight Thousand Dollar (\$68,000.00) note and deed of trust securing the indebtedness were executed, a Two Hundred Eleven Thousand Dollar (\$211,000.00) note and deed of trust were also executed, securing an indebtedness due Virginia Beach Federal with the lien of the deed of trust being prior to that of the Sixty-eight Thousand Dollar (\$68,000.00) deed of trust. The Virginia Beach Federal note called for an initial interest rate of Eleven and One-half Percent

(11.5%).

The house in question was constructed by Crosby Construction and was used part time by the Crosbys and was rented in the summer on a weekly basis.

After the payment of four (4) monthly payments of interest and principal under the note, the Crosbys by agreement prepared by their attorney, John B. Dinsmore, did agree to grant a fifteen (15) month option on the premises to Richard and Patricia Maher by contract dated June 14, 1984. The Amdurskys, the holders of the Sixty-eight Thousand Dollar (\$68,000.00) note joined in the agreement to evidence their consent to sell the note to the Mahers upon payment of Fifty Thousand Dollars (\$50,000.00) and to grant an extension of payments of principal and interest.

The Mahers occupied the premises, paid the Thirty Thousand Dollar (\$30,000) option fee, the rent and Fifty Thousand Dollars (\$50,000.00) to the Amdurskys. Upon payment of the Fifty Thousand Dollars (\$50,000.00), the note was endorsed on the back by the Amdurskys payable to the Order of Bearer and delivered to the Mahers, thus negotiating the note to the Mahers, making them the holders thereof.

Contrary to the expectations of all parties to the agreement, the Mahers did not exercise the option which lapsed on September 16, 1985.

Upon the end of the option agreement on September 16, 1985, the option lapsed; but with the consent of the Crosbys, the Mahers were allowed to remain in the premises and to pay rent equal to

the mortgage payment to Virginia Beach Federal.

On or about September 23, 1985, Peter K. Babalas, a Virginia state senator who served on many financial committees in the Virginia Senate and practiced law in the City of Norfolk for approximately thirty years, phoned an old client Stanley Yeskolske, a farmer in Oak Grove Virginia. Mr. Yeskolske testified that he was surprised to hear from the Senator as he had not spoken to him for a number of years. Mr. Babalas indicated that he had a note to sell and that the owner of the note needed the money immediately because of some IRS troubles. Mr. Yeskolske, who is now seventy-eight (78) years old, obviously could not remember every detail of a conversation that took place ten (10) years ago and could not remember the interest rate that was to be paid or the exact date that payments was to be made. He did remember however that Senator Babalas, with his vast experience in office in the State Senate and as an attorney, assured him that the note was well secured and that it was a good investment. On this advice and as a favor to Mr. Babalas, Mr. Yeskolske agreed to purchase the note.

Mr. Yeskolske drew a check dated September 24, 1985 payable to Peter K. Babalas a copy of which was offered in evidence by stipulation between the parties (Exhibit D-3). In addition, Mr. Yeskolske's monthly statement with Merrill Lynch was offered into evidence showing the deduction from his account for the check (Exhibit D-4). Mr. Yeskolske further testified that this was the first and only note he ever purchased.

In October, 1985, Mr. Crosby died and the Mahers were allowed

to remain in the property paying monthly rent equal to the monthly payment to Virginia Beach Federal.

By letter dated March 5, 1986, (Exhibit D-2) Mr. Paulson advised the Mahers of the following:

(A) "That 15 month period, as you well know, expired on the 15th day of October, 1985."

(B) "As a result of you not exercising the option within the 15 month period, the option agreement has long since expired."

(C) "Therefore, I am merely giving you notice *** that the previous agreement is , in fact, null and void."

After offering to give the Mahers the right to purchase the property until March 31, 1986, the letter further states:

"If so, I will prepare a contract for your signature."

The intentions of the Crosbys could hardly have been more clear. Mr. Paulson was very explicate as to the relationship between the parties and the Mahers must have understood that the old agreement had terminated. No evidence was offered by Mr. Paulson whether a new contract was entered into, but in any event the Crosbys and Mahers acted as if that was the case.

The Crosbys attempted to assist the Mahers in being approved for their loan as they gave a letter to Virginia Beach Federal stating that all rents had been paid (Exhibit P-7).

A statement allegedly from Mr. Amdursky was also offered in to evidence indicating that the Sixty-eight Thousand Dollar (\$68,000.00) note had been turned over to the Mahers. (Exhibit P)⁻¹⁷.

Obviously by their conduct, a new arrangement of some nature

was entered into by the Crosbys and Mahers. Mr. Maher apparently was not being completely truthful, as his financial condition had continued to worsen.

Mrs. Crosby allowed the Mahers to remain in the property throughout the summer and into November of 1986. By letter dated November 7, 1986, Mr. Paulson again operating upon the assumption that the June 14, 1984 agreement with the parties was null and void, gave the Mahers 5 days notice to cure the default created by the non-payment of rent. (The June 14, 1984 agreement required a 10 day notice)

In any event, even if the Mahers they paid the rent, they were directed to vacate the property within 30 days which would be contrary to the law as it would apply to month to month tenants.

On December 2, 1986, a judgment was granted against the Mahers for (Nine Hundred Eleven Dollars ands Seventy-six cents) \$911.76 for non-payment of rent under an unlawful detainer summons.

After obtaining possession of the property on or above January 13, 1987, Mrs. Crosby directed her loyal employee, Michael Butler, to view the property and make a list of damages which he allegedly did on January 21, 1987. Mrs. Crosby already had a purchaser for the house and signed an involved contract on January 23, 1987 agreeing to sell the property in its' "as is" condition, for Three Hundred Thirty-seven Thousand Five Hundred Dollars (\$337,500.00), far more than the sales price to the Mahers.

Mrs. Crosby readily admits that none of the repairs were made and that she had no idea when the alleged damage occurred, be it

before the option period, during the option period or thereafter.

She also admits that no 10 day notice of default was sent to the Mahers as required under the June 14, 1984 agreement. Obviously they were given no opportunity to make repairs as the property was sold two days after the inspection list was made up.

Mr. Yeskolske testified that after he purchased the note he waited for what he estimated was 6 months or a year for payment and then he attempted to contact Mr. Babalas. Unfortunately Mr. Babalas had become ill with cancer and was out of the office. In addition he was having difficulties in the Senate and was, according to Mr. Yeskolske, always out of town. Mr. Yeskolske would ever so often drive the 65 miles to Norfolk and visit Mr. Babalas' office and discuss the matter with Mr. Babalas' secretary.

Mr. Babalas did finally make an effort to collect the Sixty-eight Thousand Dollars (\$68,000.00) by writing to the Crosbys stating that he represented Mr. Yeskolske, who claims to be holder of the note all as set out in paragraph 16 of the Plaintiff's action to quiet title.

This suit was instituted on October 9, 1987. At this time, because of Mr. Babalas' condition, it had been referred to Mr. Gregory A. Giordano, who filed answers on behalf of the Mahers and Stanley Yeskolske on October 29, 1987. Mr. Yeskolske testified that he picked up his file from Mr. Babalas' office shortly after Babalas' death. This was in conflict with his discovery when he said it was either just before or just after. Apparently he must have gotten his file to his new attorney prior to October 29, 1987.

Mr. Babalas died on December 29, 1987 according to the records of this Court, his will being recorded in Will Book 73 at page 671.

Based on these facts, the Crosbys were paid Thirty Thousand Dollars (\$30,000.00) for the option and received substantially more from the sale to Peck (\$337,500 minus a real estate commission) than they would have received from the Mahers. The Crosbys are now attempting, in this cause, to effect a forfeiture or penalty and to cause a valid note with a principal balance of Sixty -four Thousand Dollars (\$64,000.000 and accrued interest to be cancelled under the guise of "Liquidated damages".

ISSUES RAISED BY COMMISSIONER

Before responding to the arguments raised in the Plaintiff's Brief, counsel would like to specifically address two issues raised by the Commissioner in his examination of my client Stanley Yeskolske.

The first issue raised by the Commissioner, which I feel must be responded to, was his concern that even if Mr. Yeskolske did give Mr. Babalas a check in the sum of Sixty-five Thousand Dollars (\$65,000), how does that relate to the note in question.

Obviously being Mr Yeskolske's fourth attorney does place counsel at a disadvantage. I have no personal knowledge of the transactions that occurred some ten years ago and files have become disorganized and documents, attorney records and memos have been misplaced. In preparation for trial, reliance must be made on pleadings and discovery as that is the only paper trail available.

In paragraph 16 of the initial pleading filed by Mr. Paulson,

he alleged that Mr. Babalas, on behalf of his client, Stanley Yeskolski, Sr. (Stanley Yeskolske) had made demand upon the Crosbys by mail and that Stanley Yeskolske claimed to be the bearer of the note. This direct and specific admission of fact in the pleading is generally binding on the Plaintiff, (14B M.J. Pleading § 69). At no time, until the issue was raised by the Commissioner, did Mr. Paulson in any way indicate that he felt Mr. Babalas was not acting on behalf of Mr. Yeskolske. It should be noted that by the Plaintiff's own exhibit, the statement from Mr. Amdursky indicated that the note was turned over to the Mahers (Exhibit P-17). This certainly traces ownership of the note to the Mahers. Mr. Amdursky did not state when he turned the note over to the Mahers, but presumably it was after payment which would have been in 1984. By September of 1985, the note was available for Mr. Babalas to take possession of the instrument. When the suit was brought in October of 1987, Greg Giordano, Esquire filed an answer for the Mahers and Mr. Yeskolske admitting the allegations set forth in paragraph 16. It should be noted that Mr. Yeskolske is in actual physical possession of the negotiable instrument which was properly endorsed under §8.3-202 of the Code of Virginia so as to negotiate ownership to bearer (see footnote 4 in official comment) Certainly if there has been no other claim under this instrument for 10 years, we may properly assume that Mr. Babalas was acting on behalf of Mr. Yeskolske in relationship to the note in question.

In any event, in the Plaintiff's Request for Admissions, Mr. Paulson asked the following question which was admitted in answers

filed on behalf of Mr. Yeskolske by his then attorney Mr. Stallard.

"1. Yeskowski is a holder of the note to which Yeskowski claims ownership and is the source of Yeskowski's claim against Plaintiff (the "Note")."

Under Rule 4:11 of the Rules of Court, any matter admitted under this rule is conclusively established thus establishing that Mr. Yeskolske is the holder of said document.

The second issue raised by the Commissioner relates to the check and the fact that the photo copy does not show the endorsement on the back.

Mr. Yeskolske testified that the check was made available for Mr. Paulson to examine at the time his discovery was taken in 1990. At that time Mr. Stallard represented Mr. Yeskolske and a copy of the check apparently was viewed by all parties.

The copy of the check was made a part of the transcript of the discovery deposition taken May 24, 1990 and marked "Exhibit I". Mr. Paulson had no objection to the document at that time and had no objection to it coming into evidence at trial.

Prior to trial I reviewed the files and could not find a photostat of both sides of the check although Mr. Yeskolske claims to have give it to Mr. Stallard. At this point, as Mr. Paulson did not object to the exhibit, I have difficulty understanding the Commissioners' concern. If Mr. Paulson has a photostat of the complete check and desires to offer it into evidence, I feel it would be proper.

ARGUMENT
I. THE DEFENDANT IS A HOLDER IN DUE COURSE AND NOT
BOUND BY ANY DEFENSES RAISED BY THE PLAINTIFFS

At the outset, at any time that a court must determine the meaning of a written instrument, certain rules of construction are followed. In this instance all the instruments in question, the promissory negotiable note, the Deed of Trust and the June 14, 1984 agreement were all prepared by John B. Dinsmore, attorney for the Crosbys. No evidence was offered that the other parties at that time were even represented by counsel. It was Mr. Dinsmore who chose the words to be used and in that case the law of Virginia is clear. Contract law in Virginia is well settled that the court will construe a contract more strictly against the party who prepared it. 4B M. J. Contracts §44, Winn v. Aleda Construction Co., 227Va.304, 315 S.E. 2d (1984)

Prior to determining Mr. Yeskolske rights as a holder of the \$68,000.00 note in question we must determine his exact relationship to the note.

The instrument as drafted met all qualification to be negotiable instrument under the Uniform Commercial Code.

There is no question that Mr. and Mrs. Amdursky were holders in due course when the note was turned over to them in January of 1984.

Mr and Mrs. Maher became holders of the note under the endorsement on the reverse side of the instrument. It was the intention of the Uniform Code and particularly §8.3-202 to liberalize the language which could be used to negotiate

instruments so they could pass freely in commerce.

Under the law prior to Uniform Commercial Code if the term "assign" or "assignment" were used a party became an assignee but not a holder. This was all changed by the Uniform Commercial Code as described in the official comment 5 following §8.3.202. The note in question, upon the Amdursky endorsement became a bearer note which could be and was negotiated by mere delivery (§8.3-202(1) "**** if payable to bearer it is negotiated by delivery".)

Mr. Yeskolske testified that he paid Mr. Babalas Sixty-five Thousand Dollars (\$65,000.00) to purchase the note for him and when it was delivered by the Mahers to Mr. Babalas who held it as custodian for Mr. Yeskolske, it was negotiated to Mr. Yeskolske. A holder may negotiate an instrument pursuant to §8.3-301.

**(A) STANLEY YESKOLSKE IS A HOLDER IN DUE COURSE AS HE
CLAIMS TITLE THROUGH A HOLDER IN DUE COURSE**

The law is clear that a party may become a holder in due course if he acquired title to negotiable instrument and a prior owner in the chain of title was a holder in due course.

In this instance there is no question that the Amdurskys were holders in due course although they had joined in the agreement of June 14, 1984. This did not change their status. Under the agreement the only obligations that they assumed were to (a) grant an extension of time for payment and (b) sell the note to the Mahers for Fifty Tousand (\$50,000.00). Neither of these acts varied the character of the note nor their status as holders in due course. Even if the Mahers may not be holders in due course, they

were holders and transferred all their rights to the instrument to the Mr. Yeskolske including the rights of the Amdurskys.

Under the Uniform Commercial Code a party who holds a negotiable instrument is either a holder in due course with the rights granted under §8.3-305 or not a holder and whose rights are defined under §8.3-306. However, §8.3-306 specifically provides for one who claims to take through a holder in due course; §8.3-306 states in part as follows:

"§8.3-306 Rights of one not a holder in due course. - Unless he has the rights of a holder in due course any person takes the instrument subject to ***." Official Comment No. 1. clearly describes the relationship of one who takes through a holder in due course as Mr. Yeskolske did through the Mahers to the Amdurskys..

(B) MR. YESKOLSKE IS ALSO A HOLDER IN DUE COURSE IN HIS OWN RIGHT HAVING ACQUIRED THE NOTE MEETING ALL THE REQUIREMENTS OF A HOLDER AS SET OUT IN §8.3-202.

The Plaintiffs have maintained that the defendant Yeskolske acquired the note after it became overdue. They assume that the maturity date on the note was January 1, 1985 and if he acquired his interest after that time he could not be a holder in due course, but that is not the case. §8.3-302 sets forth the requirements to be a holder in due course. §8.3-302(c) specifically requires that to be a holder in due course, one must be "without notice that it is overdue."

Mr Yeskolske's uncontradicted testimony was that he was contacted by Mr. Babalas to purchase a note. He himself did not see the note at the time he paid his money. Mr. Babalas was not his

agent but the agent and attorney of the Mahers. He did not pay Mr. Babalas a fee to represent him nor was he billed for one when the note was acquired. Notice to Mr. Babalas could not be imputed to him. Official Comment No. 1. indicates quite clearly the purchaser of an instrument which is in fact overdue maybe a holder in due course if he takes it without notice that it is overdue. As a holder in due course, Mr. Yeskolske is entitled to all protection as such under the Code including from any defenses the Plaintiffs may raise to the note.

It should be noted that even if the deed of Trust referred to the maturity date of the note in question that is not notice to the purchaser of a note. (See §8.3-304 (5))

(C) MR. YESKOLSKE IS A HOLDER IN DUE COURSE AS HE HAS COMPLIED WITH ALL REQUIREMENTS OF THE APPLICABLE CODE SECTIONS INCLUDING ACQUIRING THE NOTE PRIOR TO IT MATURITY DATE

Assuming for the purposes of argument only that the agreement dated June 14, 1984 is valid, the question then becomes what was to be the new maturity date on the note?

The note itself and the deed of trust allowed for an extension of time for payment of the obligation. As the option agreement did not expire until September 16, 1985, it is reasonable to assume that the due date would be sometime after September 16, 1985. The Plaintiffs take the position that if the option is not exercised and Mahers are not in default, the loan would be due upon the sale of the property and that would be the due date. Page 23 of the Plaintiff's Brief states as follows:

"If they declined to exercise the purchase option within the 15-

month period, and assuming they had not defaulted under the terms of the agreement, they could vacate the property and have their \$50,000.00 returned to them once the property was sold in accordance with the agreement." If that were true then certainly Mr. Yeskolske acquired the note prior to its due date as closing on the house was not until August of 1987, some two years after Yeskolske acquired the note. In any event, the note holders and the Crosbys agreed to an extension of the maturity date pass the term of the option which would be September 15, 1985, some 9 days prior to the time that Yeskolske acquired ownership of the note. As the note called for 11 monthly payments it is just as logical to assume that the extension granted would be that the remaining monthly installments would start to commence on October 15, 1985, continue for 7 months and then principal would be due. As the date the payments are due is ambiguous under the agreement, it should be such date as is most advantageous to the defendant Yeskolske as he did not prepare the documents, the Plaintiff's counsel did. As the maturity is later than September 24, 1985, Yeskolske did not buy an overdue note and is a holder in due course.

II. DEFAULTS ALLEGED UNDER JUNE 14, 1984 AGREEMENT

As defenses to the Defendant Yeskolske's demands for payment under the note in question, the Plaintiffs allege three defaults which they claim would cause a cancellation of indebtedness.

Under paragraph 13 (a), (b) and (c), the Plaintiffs allege three defaults on the part of the Mahers which, according to their position, would void the note held by Mr. Yeskolske.

(A) DEFAULT IN NON-PAYMENT OF RENT

The plaintiff's alleges that the defendant Mahers defaulted in the payment of rent and that this constitutes such a default under the June 14, 1984 agreement that the Sixty -four Thousand Dollar (\$64,000.00) balance on the note with interest should be forfeited as liquidated damages. The agreement in question granted an option for 15 months commencing June 15, 1984 and continuing until September 14, 1985. The Crosbys allowed the Mahers to remain in possession as tenants after the date without any way defining the terms of their tenancy.

In March of 1986, Mr. Paulson, on behalf of the Crosbys, advised the Mahers that the option was null and void. The Mahers remained in the premises paying rent through November of 1986. The Mahers allegedly did not pay the rent increases for October and November in the total amount of Nine Hundred Eleven Dollars and Seventy-six cents (\$911.76) and a judgment was granted December 2, 1986 under an Unlawful Detainer Summons. The Plaintiff's attorney in his November 7, 1986 letter states that, (a) the Mahers are given 5 days notice to pay the rent or vacate the premises, and (b) that even if they do pay the rent they must vacate in 30 days.

By what reasoning Mr. Paulson felt that this was the law is unknown to this writer. If the option lease agreement was in effect, under its terms the Mahers were entitled to a 10 day default notice.

If the Mahers were holdover tenants under the option agreement it would be for a term of 15 additional months or until December

15, 1986. In that event they did not have to get out until December 15, 1986 not 30 days as alleged in Mr. Paulson's letter.

If the Mahers were month to month tenants then to terminate the tenancy notice would have to be given in the month of November, to vacate on December 31, 1986.

The Plaintiffs are attempting to pick and choose as to what provisions of the lease option agreement apply disregarding the intent of the agreement, the general law and claim a "windfall."

I am certain that is was not the intention of Mr. Paulson, a respected member of the bar, in any way to deceive anyone or in any manner mislead the Mahers as to their rights, but taking his two letters together, the Mahers would have to conclude that the forfeiture provisions of the option agreement in no way applied to their holding over as tenants. If it was the intent of the Crosbys that they demand a security deposit of Sixty-four Thousand Dollars (\$64,000.00) plus interest, to protect them under a month to month Twenty-five Thousand Dollar (\$2,500.00) lease they should have said so. Mr. Paulson's letters could have included but a few words to made that clear to the Mahers.

Any reasonable reading of the agreement, no matter how flawed it is, would conclude that the forfeiture provision would apply to the option part only and not to a holdover tenant who was allowed to remain in the property after the option period was over.

The law in Virginia is clear as to the validity and term of an option to purchase included in a lease for a term of years. In Rubin v. Gochpach, 186Va. 786 (1947) a lease contained an option

to purchase as well as a right of renewal. The tenant held over after the renewal and claimed his rights to purchase under the option during the holdover period. The Court at page 795 stated as follows:

"But where the option to purchase in the original lease is limited to a specific time, it cannot be exercised after the expiration of the option period."

Obviously the Mahers, having paid the \$30,000.00 for the option, and the \$50,000.00 to buy the note, could not after the initial 15 month period demand a deed to the property. If the option terminated as to any rights that the Mahers may have had under the option it logically follows that the forfeiture provision would not survive the end of the option.

The option agreement required a specific type of notice that must be given in order to convert a delinquency into a default. Paragraph 9 of the agreement requires delivery of a written notice of a default to the Mahers at the property address.

No evidence was offered by the Plaintiffs of the sending of said notice or that it was delivered to the Mahers. The failure to send the notice of default as required under the agreement is fatal to any claim of default.

In the case at hand the Defendant Yeskolske claims an interest in the encumbered property under the terms of a note and deed of trust. The question of notice of default under a note and deed of trust was considered in Sharpe v. Talley 215 Va. 615 (1975). (this case was decided prior to the change in the code sections relating

to foreclosure notices)

Under the facts of the case the noteholder accelerated the maturity of a note upon non-payment and foreclosed. The two issues raised are similar to the issues of default and notice of default which are important to the case at hand.

As to the defaults alleged in paragraphs 13 (a), (b) and (c) the Plaintiffs offered no evidence to indicate that the default provisions of the agreement were complied with.

In addition, the limited notices that were given by the Plaintiffs failed to advise the Mahers of the alleged consequences of a default.

In the case aforesaid the Virginia Supreme Court, quoting from 5A.L.R. 2d 968, 970 (1049) stated:

"It appears to be well settled that a provision in a bill or note accelerating the maturity thereof on nonpayment of interest or installments, or other default, at the option of the holder, requires some affirmative action on the part of the holder, evidencing his election to take advantage of the accelerating provision, and that until such action has been taken the provision has no operation. In other words, some positive action on the part of the holder is an essential condition for the exercise of his option and mere mental intention to declare the full amount due is not sufficient."

The same principle of law applies to a default under a contract or a note and deed of trust.

If the Commissioner finds that the alleged agreement dated June 14, 1984 is valid and enforceable, and that the default and forfeiture provisions bind the Mahers as holdover tenants; then to effect a default, the Crosbys were required to take some affirmative action. They never sent a default notice as required

under the agreement, and the notice if given must explain the default and its alleged ramifications. This was not done.

**(B) ALLEGED DEFAULT FOR FAILURE OF MAHERS
TO MAKE TIMELY PAYMENTS TO AMDURSKYS**

In paragraph 13(b) of the Plaintiff's pleading it is alleged that a "*** Fifty Thousand and 00/100 Dollars (\$50,000.00) payment was actually made to Amdurskys on or about September, 1985, ***"

In response to Defendant's Interrogatories the Plaintiff, Kimblyn Crosby, by answers executed August 5, 1993 again alleged that the payment made from Mahers to the Amdurskys, were made in on lump sum in September of 1985. On oral examination of Kimblyn F. Cameron (nee Crosby) on November 18, 1993 she again alleged that the payments were made in a lump sum in September 1985.

Without amending their pleadings at the hearing before the Commissioner, the Plaintiffs over objection of the Defendant Yeskolske, offered in evidence several alleged writings to indicate that the payments were different than as plead. The documents offered in evidence allegedly indicated that the July 15, 1984 payment was made August 20, 1984, the August 15 payment was made September 8, 1984 and the alleged default notice indicated that the September 15 payment had been made by November 20, 1984. No evidence was offered to indicate when the October and November payments were made.

The Plaintiff's Brief in support of their action to quiet title on page 5 offered a third payment schedule.

"The Mahers paid the first \$10,000.00 one month late, they then paid the second payment in September, 1984, also one month late. They did not, however, make their final three (3)

payments until September of 1985, a full ten (10) months late."

If the "liquidated damages" provision of the agreement is in reality a forfeiture provision as is the position of the Defendant Yeskolske, than the acceptance of the payment after the default would certainly constitute a waiver. This rule of law is stated clearly in 14B M.J. Penalties and Forfeitures, §6,

"§6, Generally. -A forfeiture will be deemed waived by any agreement, declaration or course of action on the part of the person who is benefited by such forfeiture which leads the other party to believe that by conforming thereto the forfeiture will not be incurred. By permitting the accomplishment of the general result of the prevention of which a power of forfeiture has been inserted in a contract, and standing by in silence while large expenditures are made in the prosecution of the work after the accrual of the right of forfeiture, under the belief that it will not be exercised, the party having such right of forfeiture waives it. However, this waiver does not apply to a continuing breach."

The Plaintiffs, under their theory of the case, in order to prove a default and prevail, have the burden of proving, (a) when the 5 installments were made and that they were not made timely (b) that if payments were not made, notice of default was delivered in writing to Mr. & Mrs. Maher at the property, (c) that the default was not cured by payment or that the default was not waived.

Obviously, with the many discrepancies in the Plaintiffs allegations, arguments and offers of alleged evidence, the Plaintiffs have no idea when the payments were in fact made and can offer no credible evidence on this vital issue.

There is no question that the Fifty Thousand Dollars (\$50,000.00) was paid. The Amdurskys would not have delivered the note to the Mahers if the Amdurskys had not receive the agreed

purchase price. Mrs. Amdursky testified that she claims no interest in the note and was not advised as to when the payments were made. If the Mahers were delinquent in making the payments, this delinquency or even default was waived by accepting later payment.

The variance in the Plaintiffs pleading an alleged proof is of paramount significance when the terms of the default provision are considered under the agreement. All payments made prior to the default shall be retained by the Amdurskys and the Crosbys shall be entitled to credit. If that is the case, then any payments made after the default would not be to the benefit of the Crosbys. Had it been intended that payments after the default would benefit the Crosbys the agreement would have said so. As the Plaintiffs plead that there was a lump sum payment made in September of 1985 and than it was made after default, no credit should flow to the Crosbys on the note. It is therefore utmost in importance, if the Plaintiffs are to benefit by the default, to prove when the default occurred. As the Plaintiffs failed to prove that a default occurred or when the payments were made, the Commissioner should find that no forfeiture occurred which would cause the note to be cancelled by the Court.

(C) DEFAULT ALLEGED FOR DAMAGES AND MODIFICATIONS TO PROPERTY

The Plaintiff alleges in paragraph 13(b) of their initial pleading that the Mahers made modifications and caused damages to the premises.

The house in question was constructed some time in 1982 and

later occupied as a beach residence on a part time basis by Crosbys. Mrs. Cameron, formerly Crosby, testified that the house had also been rented in the summer to weekly tenants until June of 1984, at which time it was occupied by the Mahers. The Mahers occupied the premises from that date until November of 1986 paying an average monthly rental of approximately Twenty-four Thousand Dollars (\$2,400.00) or the total sum of Sixty-nine Thousand Six Hundred Dollars (\$69,600) in rent for the use of the premises. The house was not new at the time. There apparently was no "walk through" of the property by landlord and tenant with a checklist as to the condition of the property. The Plaintiffs want the Court to believe that the house was in a new condition and that anything that happened there from the time of its construction was the fault of the Mahers and that is constituted a default under the terms of the agreement. It should be noted that the Plaintiffs' expert witness, Michael Butler, was an employee of Crosby for many years. It was he who gave the estimate for the cost of making repairs two (2) days before a contract was signed to sell the property to Victor Peck. As Michael Butler's wife ran the office for Crosby Construction, he had to know that the house was sold and that none of the repairs would be made.

A significant part of the repairs were no more than ordinary maintenance required on a beachfront home. The tenant was not obligated to return the property to new condition and ordinary wear and tear would have to be expected after a 2 1/2 year tenancy. Even Mr. Butler conceded that other than the wall the other items on his

1/21/87 list were regular maintenance. The question of the missing refrigerator being \$950.00 is significant in showing an attempt to inflate the so called damages.

Mrs. Crosby could not testify with the certainty that the refrigerator was even in the property when the Mahers took possession. She did not know what kind of refrigerator it was or what it cost. If it was there, it would have been over three (3) yrs old and she did not know the value of a used refrigerator, which would be the proper measure of damages. The same would also apply to the One Thousand Fifty Dollar (\$1050.00) charge for carpeting. The charge for the painting of the walls was in a good part based on the Plaintiffs' color preference rather than the quality work performed. As the Plaintiff did not have the alleged repairs performed, then the true measure of damages allegedly suffered by the Plaintiff would be the reduction in the value of the property because of the damage. No evidence was offered by the Plaintiff on that account. The sale price of the property was actually Three Hundred Thirty-seven Thousand Five Hundred Dollars (\$337,500.00). It was listed for Three Hundred Fifty Thousand Dollars (\$ 350,000.00) and in the usual and ordinary negotiation between buyer and seller was reduced to Three Hundred Thirty-seven Thousand Five Hundred Dollars (\$337,500). Mr. Peck, the purchaser and Co-Plaintiff was not called as a witness to testify that he would have paid more had the condition to the house been different. The real estate agents, who were agents for the Plaintiff Crosby, were not called. We may only assume that their testimony would be

adverse to the Plaintiffs' case. "Under Virginia law, where one party has within his control material evidence and does not offer it, there is a presumption that the evidence, if it had been offered, would have been unfavorable to that party. In Virginia Heart Institute v. Northside Electric Co., 221 Va. 1119, 1124, 277 S.E.2d 216 (1981), the Court stated that:

[i]f a party to an action has available competent proof to establish a fact necessary and material to his success and fails to produce it, the legal presumption is that if produced the proof would not sustain his claim for relief."

Mrs. Crosby testified that no notice of default was sent to the Mahers relating to the condition of the property. As the property was sold in its "as is" condition two days after the list of damages was prepared, the Mahers were not given a reasonable opportunity to cure the alleged default even if they had been given notice. As the Mahers were available to be served in this cause in October of 1987, the Plaintiffs certainly could have provided them with notice of default.

The Commissioner, in this instance, should find that no default was proved which would entitle the Plaintiffs to the relief which they seek.

**III. THE CONTRACT PROVISION FOR LIQUIDATED DAMAGES
IS IN REALITY A PENALTY AND AS SUCH UNENFORCEABLE**

The liquidated damage provision the Plaintiffs are attempting to invoke in equity must be considered a penalty and unenforceable. In the Plaintiffs' Brief much reliance is placed upon the fact that

the agreement, a lease - option agreement for the purchase of real property, bound the Crosbys' property for an extended period of time and liquidated damages would be proper.

The Plaintiffs rely in their Brief on two cases Taylor v. Sanders, 233Va. 75, (1987) and Dahlgren Ltd. Partnership v. Board of Sup. 240Va. 200 as recent statements of the law concerning liquidated damages.

The Virginia Supreme Court in Taylor stated the law as to penalty and liquidated damages as follows:

"[1-3] The law is settled that parties to a contract properly may agree in advance upon the amount to be paid for loss which may result from a breach of the contract. When the actual damages contemplated at the time of the agreement are uncertain and difficult to determine with exactness and when the amount fixed is not out of all proportion to the probable loss, the amount is deemed to have been intended as enforceable liquidated damages. But where the damage resulting from a breach of contract is susceptible of definite measurement (as when the breach consists of failure to pay a sum of money) or where the stipulated amount would be grossly in excess of actual damages, courts of law usually construe such stipulation as an unenforceable penalty."

In Dahlgren Ltd. Partnership v. Board of Sup. the Court, after quoting from Taylor examined the facts of the case (a county ordinance allowed for a forfeiture of one half of a security deposit) and found that the record is devoid of any evidence that the Board sustained damages as a result of the Partnership's default in payment of the remainder of the fees. The Court also found "***" that the amount fixed is grossly in excess of, and out of all proportion to actual damages."

Applying these rules of law and interpretation we must look at the supposed loss that the Plaintiffs allege that they suffered.

With reference to the alleged late payment of the Fifty Thousand Dollars (\$50,000.00), no loss was sustained. Certainly no evidence was offered to show that the Plaintiffs suffered a loss in the sale of the house to Peck because of alleged damages to the premises, even if we are to consider that as a default.

The last default alleged is the loss of Nine Hundred Eleven Dollars and Seventy-six cents (\$911.76) in rent for which a judgment has already been obtained in a separate action. This loss of rent is the basis on which the Plaintiffs want to invoke a forfeiture of Sixty-four Thousand Dollars (\$64,000.00) in principal and interest for ten (10) years at Fourteen Percent (14%). Surely the amount to be forfeited is out of proportion to any loss sustained.

The Plaintiffs in their Brief further contend that the amount of the loss would be difficult to ascertain. They obviously had no trouble in determining what the rent should be and the amount that the Mahers owed and obtaining a judgment in that amount.

Courts of equity in doubtful cases construe agreements as creating a penalty rather than liquidated damages. See Colonna Dry Dock Co v. Colonna 108Va. 230, 51 S.E. 770 (1908). A further rule set forth in Colona is that where a contract contains several stipulations, some for the payment of money, and others for the doing or not doing of specific acts, and additional provision binding a party to pay a fixed sum in case of his default in any of those matters is necessarily a penalty. In the case at hand, the non-payment of rent or damages to the property is an amount

readily ascertainable and the liquidated damages provision must be found a penalty and unenforceable.

IV. THE PLAINTIFFS HAVING OBTAINED A PRIOR JUDGMENT FOR DELIQUENT RENT ARE BARRED FROM SPLITTING THEIR CAUSE OF ACTION AND IN THE PRESENT SUIT ASKING FOR LIQUIDATED DAMAGES.

The Plaintiffs Corsbys sued the Mahers in the General District Court of the City of Virginia Beach in November, 1986 under an Unlawful Detainer Summons alleging non-payment of rent in the sum of Nine Hundred Eleven Dollars and Seventy-six cents (\$911.76), obtained judgment in December, 1986 for the alleged back rent and possession of the premises.

It is the contention of the Defendant Yeskolske that the Crosbys, once having elected their forum and cause of action are now barred from proceeding in this cause.

The Virginia Supreme Court in Flora, Flora & Montague, Inc v. Suanders 235 Va. 306 (1988) on page 310, quoting from Bates v. Devers 214 Va. 667, (1974) stated as follows:

"[1-2]"A valid, personal judgment on the merits *** bars relitigation of the same cause of action, or any part thereof which could have been litigated between the same parties and their privies." (emphasis in original)

The Supreme Court on page 311 further quoting from Jones v. Morris Plan Bank, 168 Va. 290 (1937) stated:

"The Law does not permit the owner of a single or entire cause of action or an entire or indivisible demand...to divide or split that cause or demand so as to make it the subject of several actions. The whole cause must be determined in one action. If suit is brought for a part of a claim, a judgment obtained in that action precludes the plaintiff from bringing a second action for the residue of the claim, notwithstanding the second form of action is not identical with the first, or different grounds for relief

are set forth in the second suit. The principle not only embraces what was actually determined, but also extends to every other matter which the parties might have litigated in the case. (emphasis in the original).

The Crosbys, for their convenience, chose to proceed to attempt to collect the alledged back rent and possession of the premises in their General District Court action. Having made this election, they are now barred under the law from bringing a further action on the same contract. Their proceeding in the previous action presents a further paradox. Having made an election to proceed in an action and obatining a judgment for actual damages, how can the Crosbys now expect to recover "liquidated damages" for tthe same loss? It seems clear that had the Crosbys been paid on their original judgment, the cancellation of the Sixty-eight Thousand Dollar (\$68,000.00) note would constitute a double payment which the law will not allow.

V THE ALLEGED JUNE 14, 1984 AGREEMENT IS SO INCOMPLETE IN MATERIAL TERMS THAT IT FAILS TO BE A LEGALLY ENFORCEABLE CONTRACT.

The alleged contract in question was based on the assumption that the Mahers would exercise their option and take title to the property. After paying the Thirty Thousand Dollars (\$30,000.00) for the option and buying the note for Fifty Thousand Dollars (\$50,000.00) they had complied with all the requirements under the agreement to request and receive a deed for the property. No doubt, Mr. Dinsmore or the other parties involved at the time the agreement was executed could have never envisioned that the unthinkable would happen, but it did. The Mahers did not ask for

a deed which was their right under the contract. The agreement was virtually devoid of any language with reference to this eventuality. The Plaintiffs desire at this time to write in provisions to their satisfaction or have the Court assume that task.

The agreement is silent as to whether or not interest should accrue on the debt evidenced by the Sixty-eight Thousand Dollar (\$68,000.00) note. The agreement is so devoid of direction the Plaintiffs in their Brief state that if there was no default under the contract the balance due on the note is Fifty Thousand Dollars (\$50,000.00). The Commissioner at one point indicated he thought it may be Fourteen Thousand Dollars (\$14,000.00). The note holder indicates the balance is Sixty-four Thousand Dollars (\$64,000.00). Whatever the balance on the indebtedness is, there is no agreement when it should be paid. The Plaintiffs argue that it would be when the house was sold. It could be due in a lump sum on September 14, 1985 or in monthly payments thereafter. What we are left with is no more than a guessing game as to the terms of the agreement in the event the option is not exercised.

In this instance had Mr. Maher contracted with Mr. Crosby to purchase an automobile under a written agreement in which the price was omitted, as was the interest rate, if the purchase price be deferred, the Court would certainly say the contract was incomplete and not enforceable. (See 17 Am Jur 2d Contracts §192). A review of the review of the agreement fails to show a meeting of the minds on this material part of the agreement and it is the position of the Defendant Yeskolske that the contract fails, and that the deed

of trust and note survive so that it is a legally enforceable lien against the property.

The suit brought by the Plaintiffs is in part a suit for specific performance, that is requiring the release of a lien under the terms of an alleged agreement.

In Colonna Dry Dock Co. v. Colonna, previously cited, the Court stated as follows on page 239

"Where the court is unable from all the circumstances of the case to say whether the minds of the parties met upon all the essential particulars, or is they did, then cannot say upon what substantial terms they agreed, or trace out any practical line where their minds met, specific performance will be refused."

There is no doubt that there was no meeting of the minds in this cause and the relief requested should be denied.

VI THE ALLEGED AGREEMENT OF JUNE 14, 1984 WAS NOT INTENDED AS AN ACCORD AND SATISFACTION PLEAD BY THE PLAINTIFFS

The Plaintiffs in their pleading and Brief allege an accord and satisfaction was created by the agreement. Under the law of Virginia the burden of proof is upon the debtor to show that the sum of money which the debtor was to pay in part performance of his obligation was expressly accepted by his creditor in satisfaction and rendered for that purpose. (See 1A M.J. Accord and Satisfaction \$6, \$11-12 Code of Virginia)

A review of the agreement shows that the opposite was the intent of the parties. One must only compare the provisions of Paragraphs 4 and 5 to see that it was not the intent to merge the Sixty-eight Thousand Dollar (\$68,000.00) note into the agreement.

Under paragraph 4 the Thirty Thousand Dollar (\$30,000.00) note was cancelled and delivered to the Mahers with a Certificate of Satisfaction. Under paragraph 5, the Sixty-eight Thousand Dollar (\$68,000.00) note was to be assigned to the Mahers upon payment and they are granted the power to exercise their rights under the deed of trust and note.

If the June 14, 1984 agreement was intended to be an accord and satisfaction the same language as used as to the Thirty Thousand Dollar (\$30,000.00) indebtedness would be applied to the Sixty-eight Thousand Dollar (\$68,000.00) note.

CONCLUSION

During the presentation of the evidence which must now be considered by the Commissioner, counsel for the Defendant was made well aware by the Commissioner as to his feeling concerning the actions taken by the Defendant Yeskolske to acquire the note as well as his delay in taking action to collect on the indebtedness evidenced by the note. As counsel for Mr. Yeskolske, I personally had no knowledge of the transaction in question nor was I acquainted with the Mahers, the Crosbys or the Amdurskys. I do not recall dealing with Mr. Babalas in any matter, but his reputation was known to me. The Commissioner may or may not have known any of these parties or their reputations which is unimportant in the resolution of the case in hand. What is important is that the transaction must be viewed through Mr. Yeskolske's eyes. His uncontradicted testimony was that he had never purchased a note before, that he was contacted by Peter K.

Babalas, a member of the Virginia Bar and a state senator, who had served for many years in the state Senate and was a member of several financial or banking committees.

Presumably, in 1985, attorneys were held in higher regard than today and Mr. Yeskolske had every reason to believe what Mr. Babalas told him about the note. If Mr. Babalas had the note in hand, he would have observed no language added that would indicate it was subject to any agreement. It was well secured by a second deed of trust and called for payment of substantial interest.

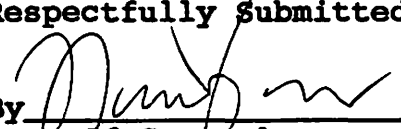
We do not know whether or not Mr. Maher told Mr. Babalas about the agreement, but without evidence that he did, Mr. Babalas is entitled to the benefit of the doubt. The most that can be said is that he did not observe the maturity date and forewarn Mr. Yeskolske.

Mr. Yeskolske's explanation that he waited a reasonable period of time and then retained Mr. Babalas to assist in collecting the note is also credible. We must only look over to Newport News where Mr. Murray, a well respected attorney deceived investors who lost Forty-two Million Dollars (\$42,000,000). Many of these investors waited years before doing anything because they wanted to believe that their investment was safe. In our case, because Mr. Yeskolske live some sixty-five (65) miles from Mr. Babalas' office, he could not exert but so much pressure on Mr. Babalas to move forward. Considering Mr. Babalas' health and other problems it was a wonder that Mr. Yeskolske was able to persuade him to take any action.

From Mr. Yeskolske's viewpoint at the time he acted reasonably. He is not the first elderly unsophiscated investor I have represented who failed to obtain all pertinent information and relied on the facts as stated by the party selling the note or security, and I am sure he won't be the last.

Considering Mr. Yeskolske's uncontradicted testimony in its best light, and the arguments set forth in this Brief in the alternative, the Defendant Yeskolske requests that the Commissioner find that the note in question is good and valid, has a principal balance of Sixty-eight Thousand Dollars (\$68,000.00) with interest from June 1, 1984 at the rate of Fourteen Percent (14%) per annum and that the claims of the Plaintiffs be rejected and dismissed with prejudice and for an award of the Defendant's costs and attorney's fees in this cause.

STANLEY YESKOLSKE
Respectfully Submitted

By  _____
Of Counsel

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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

KIMBLYN F. CROSBY, et al.,

Plaintiffs,

v.

IN CHANCERY NO. CH87-2592

DONALD H. CLARK, TRUSTEE, et al.,

Defendants.

REPORT OF GROVER C. WRIGHT, JR.
COMMISSIONER IN CHANCERY

TO THE HONORABLE JUDGES OF SAID COURT:

The undersigned Commissioner in Chancery, to whom this cause was heretofore referred for inquiry and report by decree of reference duly entered herein, on October 14, 1988, and before whom the documentary and testimonial evidence was taken and heard at an *ore tenus* hearing held in his office on the 3rd day of April, 1995, having considered the pleadings and the evidence, makes the following findings and recommendations to the Court, and returns herewith the exhibits and the transcript of the testimony and other incidents of the case on which his report is based:

Upon what notice, acceptance or waiver of notice or agreement of "counsel of record," as that term is defined in Rule 1:5 of the Rules of the Virginia Supreme Court, was the hearing before the Commissioner held?

By agreement of counsel of record, Louis G. Paulson, E. Thomas Rilee, III, and Norman Hecht.

Louis G. Paulson is counsel of record for the plaintiffs. The suit was filed October 2, 1987. Kimblyn F. Crosby, individually and as Executrix of the Estate of William A. Crosby, deceased, and Victor Peck are the plaintiffs. Peck is not a party in interest now.

Donald H. Clark and Eric A. Hauser are sued as defendants only in their capacity as trustee. Arnold B. Amdursky and D. Diane Amdursky and Richard G. Maher and Patricia J. Maher and Stanley Yeskowski, Sr., are the defendants. Only Yeskowski, as purported assignee of the disputed note, is a defendant in interest now, together with the two said trustees.

This is a chancery suit to quiet or remove a cloud on title or, in the alternative, a motion for a declaratory judgment, brought pursuant to Section 55-153 of the Virginia Code.

The bill of complaint alleges that William A. Crosby died in Virginia Beach, Virginia, October 23, 1985, and that the plaintiff, Kimblyn Crosby (now Kimblyn F. Cameron), is his surviving spouse and sole heir, and that she became the owner of the subject real estate by will, and that she also qualified as executrix of the will and estate in this Court on November 15, 1985. The bill of complaint alleges that the plaintiff, Victor Peck, was deeded the subject property on August 17, 1987, by deed recorded in the Clerk's Office of this Court in Deed Book 2664, at page 2011.

The bill of complaint alleges that the whereabouts of the Mahers is unknown.

The bill of complaint alleges that the Amdurskys are noteholders of a note secured by a second deed of trust on the subject property dated January 1, 1984, recorded in this Court in Deed Book 2308, at page 1501, in the original amount of \$68,000, and that Clark and Hauser are the trustees under that deed of trust. Yeskolski now is the purported assignee of the note.

The subject property is described as Lots 5 and 17, in Block 26, Resubdivision of Part of Croatan Beach, Virginia Beach, Virginia, recorded in the Clerk's Office of this Court in Map Book 37, at page 11.

The bill of complaint alleges that by agreement dated June 14, 1984, between the decedent and the plaintiff, Kimblyn F. Crosby, on the one hand, and the Amdurskys and the Mahers, on the other hand, the Amdurskys agreed to assign the note, subject to certain modifications, to the Mahers upon payment of \$50,000. The decedent and Kimblyn Crosby were the makers of the note and the grantors under the deed of trust.

The bill of complaint alleges that under that agreement the Mahers had an option to buy the property from the Crosbys and that their option expired due to default.

It appears that the Mahers paid at least \$50,000 to the Amdurskys. The Amdurskys say the note was paid in full to them as payees. That would mean that the Amdurskys transferred the note to the Mahers but the Mahers had no right to get the property. Crosby claims the money paid to Amdursky was for the benefit of the Crosbys and should have been applied on the note. Yeskolski claims to be the owner of the note. If he is, the plaintiffs say he had notice because he acquired the note after maturity and after default and that he is not a holder in due course. He is only an assignee. He acquired possession of the note about when this suit was filed and under suspicious circumstances

The note is a non-recourse note.

The plaintiffs ask that title be quieted and initially in their pleadings that Peck be declared the owner. They now ask that Vernosky be declared owner.

The note was due in full January 1, 1985. It is agreed that there was no personal liability on the note. The note does not have an interest rate in it, but it says in the monthly payments \$793.33 is interest and \$1,000 is principal so the interest could be computed. It called for late charges and 25% attorney's fees. It was assigned by the Amdurskys to bearer without recourse to them.

The agreement of June 14, 1984, however, says that when the note was assigned to Maher by Amdursky, Crosby also would have no personal liability. It appears that at the time of the agreement of June 14, 1984, the amount due on the \$68,000 note was then \$64,000. It does appear that any money paid on the note by Maher to Amdursky was for Crosby's benefit. Crosby got option money of \$30,000, plus rent. It appears that Maher would be the owner of the deed of trust note, but the principal would be the same, but it was non-recourse. The Crosbys were to pay off a third deed of trust out of the \$30,000 option money, which they did.

Paragraph 10 of the agreement of June 14, 1984, provides that whatever Amdursky got from Maher would be credited on the note. Amdursky says the note was paid in full.

The defendant Yeskolski has answered. Robert Samuels represents Clark and Hauser. They want the deed of trust to be declared valid and that they be allowed to foreclose.

By order entered July 21, 1989, Gregory Giordano withdrew as counsel for the Mahers and Yeskolski and then it appears that Russell Stallard appeared on behalf of Yeskolski. Now Norman Hecht has been substituted as counsel in the place of Stallard for Yeskolski but not for the Mahers.

Since the pendency of the suit, a deed of trust (which looks like a third deed of trust recorded in Deed Book 2782, at page 1053) was foreclosed on by deed dated November 11, 1992, recorded in Deed Book 3156, at page 1259, and the property was conveyed to Dominion Bank, N.A. Then Dominion Bank conveyed to Gregory G. Vernosky and Lori B. Vernosky by deed dated December 18, 1992, recorded in Deed Book 3166 at page 991. Now the Vernoskys are the owners of record, and they gave a deed of trust dated December 18, 1992, to Richard M. Grattan and Roseleen P. Pick as Trustees, securing a note to Dominion Bank, N.A.

By order entered October 4, 1993, with Hecht, Paulson and Samuels, being counsel who signed it, the Vernoskys were made defendants in their capacity as trustees under a trust entitled "Gregory G. Vernosky and Lori B. Vernosky Revocable Living Trust"

and Grattan and Peck were made parties as trustees under the deed of trust, and Dominion Bank, N.A. was made a party. The Vernoskys in that capacity now own the property.

It seems that Kimblyn Crosby is now Kimblyn F. Cameron.

By order entered November 16, 1994, more parties were added. They were Charles Guida and Geoffrey S. Hall, Trustees, and Atlantic Residential Mortgage Corp. as noteholder.

There is an agreement in the file between Crosby and Peck dated January 23, 1987, in which the responsibility to get rid of the deed of trust is on Crosby. It seems that the statute of limitations has run on the \$68,000 note and it cannot be enforced, so therefore the security for it is security for that obligation, and the obligation is time barred. Also, Peck should not be a party now since he sold the property. The note has no recourse against anyone personally.

The present record owner is Vernosky.

The original note is dated January 1, 1984, and it was for \$68,000. It was made by William A. Crosby and Kimblyn F. Crosby, trading as Crosby Construction Company. It is signed by them and it does not say in what capacity, whether they are partners or what. It is payable to the order of the Amdurskys - both of them. The interest rate is left blank, due in full January 1, 1985, so it was due more than ten years ago. At some time, it does not say when, it was assigned, not endorsed, to the order of bearer, without recourse against the Amdurskys. The note was countersigned by Eric Hauser as Trustee, yet he claims he did not accept the job as trustee.

The agreement of June 14, 1984, between the Crosbys and the Amdurskys and the Mahers recites that the Crosbys own the property and the Mahers are tenants and want an option to buy it, and that the Amdurskys hold a second deed of trust note with a balance of \$64,000 and recites that Virginia Beach Federal has a first mortgage, and that there is a third deed of trust held by members of the Crosby family. The Mahers agreed to rent the property from the Crosbys and to pay rent equal to the first mortgage payment. The option money was \$30,000 payable from the Mahers to the Crosbys.

The Crosbys agreed to pay the third deed of trust and to release it. The Mahers agreed to pay the Amdurskys \$10,000 a month until they paid \$50,000 whereupon the second mortgage note would be assigned to the Mahers, whereupon the Crosbys had no personal liability on the note, and if it was not paid the Mahers would only look to the property and not to the makers. The Mahers could ask for a conveyance after they had paid the \$30,000 to the Crosbys and the \$50,000 to the Amdurskys, and it would be only subject to the

Virginia Beach Federal first mortgage and the \$20,000 third mortgage held by the Crosbys. Each would have been paid off but not released, and the \$64,000 deed of trust on which they had no recourse except against the property. If the Mahers defaulted, then the Crosbys would get possession, which they did.

If the Mahers defaulted to the Amdurskys, whatever the Mahers paid to Amdursky would be credited on the note to the Amdurskys so that would be a \$50,000 credit, so the most that still would be owed would be \$14,000, plus interest.

Novation is the substitution of one debtor by mutual agreement for another, whereby the old debt is extinguished. Martin v. Breckenridge, 14 F.2d 260 (4th Cir. 1926). See 14 Am.J. Novation, § 2.

A novation is a mutual agreement among all parties concerned for the discharge of a valid existing obligation by the substitution of a new valid obligation on the part of a debtor or another or a like agreement for the discharge of a debtor to his creditor by the substitution of a new creditor. Arlington Towers Land Corp. v. McFarland, 203 Va. 387, 124 S.E.2d 212 (1962).

A novation is a substitution by mutual agreement of one debtor for another or one creditor for another, whereby the old debt is extinguished or the substitution of a new valid obligation for an existing one, which is thereby extinguished. Dillenberg v. Thott, 217 Va. 433, 229 S.E.2d 866 (1976).

Accordingly, Your Commissioner is of opinion that the agreement did not extinguish the note or the old debt evidenced by the note.

Now the sales agreement between Mrs. Crosby and Mr. Peck dated January 23, 1987, says that Peck assumes the Virginia Beach Federal first mortgage, and it recognizes that there is a dispute about the second mortgage, the \$64,000 deed of trust, and says money will be held in escrow by Crosby's attorney to pay that off and release it. It requires that it be released by September 1, 1987, and that Crosby pay into court \$50,000.

In this case, the Amdurskys have assigned the note away, so they have no interest in the case. The Mahers have no interest in the case. Yeskolski has no interest in the case, except as purported assignee of the note. Clark and Hauser are just trustees. Yeskolski claims he is the owner of the note. That is his interest, but the note is not enforceable personally against anyone. The note was paid before Yeskolski acquired it if he did, in fact, acquire it.

With regard to the claim of the current "holder" of the note on which no one is personally liable, his evidence is that after

not hearing from an attorney named Peter Babalas, whose office is in Norfolk, Virginia, for over 10 years, he got a phone call at his farm in another part of the State of Virginia out of the blue and based on that phone call, the next day he handed a check for \$65,000 payable to Mr. Babalas to one of Mr. Babalas' agents or employees, which bore the notation that the check was being given for a "secured loan". The current "holder" never obtained possession of the note until after Mr. Babalas' death two years later when he went to Mr. Babalas' office, when it was then given to him, together with a copy of the agreement of June 14, 1984. No payments were made to him in the meantime. The evidence is that Babalas was Maher's attorney, although he had previously done work for the current "holder". The current "holder" testified that he expected payments to be made but did not know when, although none were made and he never had possession of the note, nor knew its terms during Mr. Babalas' lifetime. He further testified that he never had the title to the property examined to see what the prior liens were and he never had the property appraised and he never knew who was supposed to make the payments to him. There is a serious question of to whom the "holder" made the loan and there is a serious question as to whether the note was ever delivered to the current "holder". There is no evidence that any of the money paid to Babalas was ever paid to Maher in consideration for the note. There is no evidence as to what Babalas did with the \$65,000 paid to him by the "holder". There is evidence that the current "holder" knew Maher in the past. There is evidence that Babalas represented the "holder" and Maher in the past. In short, the claim of the current "holder" is fishy and the whole circumstances are quite peculiar and his *bona fides* are peculiar.

Your Commissioner does not believe that the current holder is a holder of the note and Your Commissioner believes that the note was paid before the \$65,000 was advanced. It is clear that no human being is personally liable on the note. If the note was only paid to the extent of \$50,000 when it had a balance due of \$64,000, then the most that could be owed on it now is \$14,000.

Your Commissioner believes that the note has been paid and that the current holder is not the holder of the note and Your Commissioner is not satisfied that the current holder bought the note or advanced the \$65,000 to Babalas to buy the note from Maher. Your Commissioner believes that the lien is a cloud and should be removed and is not enforceable. Your Commissioner further recommends that if the Court finds that the lien is enforceable, that it is enforceable only to the extent of \$14,000.

Your Commissioner recommends that the costs of this proceeding be assessed against the "noteholder" and that all parties pay their own attorney's fees.

Your Commissioner suggests that this result would not frustrate the reasonable expectations of any reasonable person or

of any of the parties to this suit, all of whom got exactly what they bargained for and could reasonably expect. The current "noteholder" apparently relied totally upon Mr. Babalas and no one else involved in this litigation and his foolish reliance should not be rewarded by this Court to the detriment of any of the parties to this litigation. He had no appraisal made to determine the adequacy of the security, he made no inquiry of anyone as to the balance due on the note, he made no inquiry as to whether or not anybody was personally responsible on the note, he had no title examination made of the property which stood as security, he gave a check to an attorney marked "secured loan". He did not obtain possession of the note as any reasonable person would have done, although he testified he expected payments, no payments were forthcoming for over two years before he made any inquiries to the whereabouts of the note. He made no inspection of the property. He made no inquiry as to where his \$65,000 went. There is no evidence into which account of Mr. Babalas it went, that is, his personal account, his trust account or his regular attorney account, or whether he cashed the check and obtained the cash. There has been no effort to determine if the money went into an account of Mr. Babalas or to whom it was disbursed thereafter. There is no evidence as to in what capacity the note was held by Mr. Babalas when he died two years after the advancement of the money to him by the current "noteholder". Did he hold the note personally as its holder or did he hold it as agent for Maher, whom he represented, or did he hold it as agent for Yeskolski, the "current noteholder"? There is a complete failure of proof on behalf of the current "noteholder" and this case should be mercifully put at an end and the cloud on the title to this home on the oceanfront in Croatan lifted.

The odd thing is that when the June 14, 1984 agreement was signed among all parties who had any interest, other than the other mortgagee, that is, Virginia Beach Federal, no one was personally obligated on the note in question. Crosby was no longer obligated and obviously Amdursky was never obligated since Amdursky was the payee and Maher was never obligated. If Maher made the payments, then they were credited towards Crosby's obligation on the note. Amdursky got satisfied and considered the note paid. Thus, when Maher obtained the note, no one was responsible to make any payments to Maher. He held the note which was worthless because no one was obligated to make any payments to him. He was previously the one making the payments that were being credited to the note at the time he acquired the note. If he, in fact, transferred the note to Yeskolski, with whom Maher never dealt, Maher was not responsible and Amdursky was not responsible and Crosby was not responsible and no one was responsible on the note. There was, in fact, no obligation on anyone's part secured by the note. There was no debt owed by Crosby, Maher or Amdursky to anyone. The note became a sham and the deed of trust secured a sham. This Court should not allow a foreclosure on this property to enforce a sham. There is no substance to this case. The theory of the noteholder

is that the Court has no common sense. Reason should prevail in this case and common sense should prevail. There is, in fact, no underlying debt owed by any human being, firm or entity to any other human being, firm or entity. Without a debt, there can be no valid lien. No one owes anyone else anything in this case. This case, which has been pending for 8 years, should be put to a merciful rest. The noteholder should chalk this one up to naivete or blind trust or foolishness or worse.

Again, there is no underlying debt. No one owes anyone anything. Again, the Crosbys owe nothing; the Mahers owe nothing; and the Amdurskys never did owe anybody anything and do not now. There is no money owed to anyone. The Amdurskys admit they have been paid in full and are owed nothing; obviously, the Crosbys are owed nothing; the Mahers are owed nothing and do not claim they are owed anything. Obviously, nothing is owed to the current "noteholder" Yeskolski, as he lent no money to the Crosbys or the Mahers or the Amdurskys. He claims that he purchased someone's obligation, but no one had an obligation and there was no underlying debt at the time he purchased the note if he ever purchased the note. There is no debt secured by the deed of trust that was purchased, if purchased at all, by Yeskolski. The question is, whose underlying debt was purchased by Yeskolski? The answer is "No one's". There was no underlying debt of any person secured by this deed of trust. No one was obligated to pay anything to anyone at the time Yeskolski wrote a check to Peter Babalas.

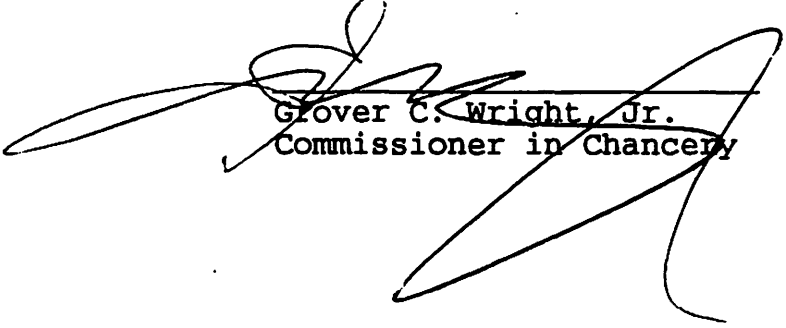
If, at the time Yeskolski paid \$65,000 to Peter Babalas, he had inquired of Maher whether Crosby or Amdursky owed any money to Maher, Maher would have replied "No". If an inquiry had been made of Crosby, Crosby's reply would have been "no". If an inquiry had been made of Amdursky, Amdursky would have replied "no". Thus, no party to the note or the deed of trust or the June 1984 agreement owed any other party anything. There was no underlying debt to be secured. This is a case of smoke and mirrors and the Court should not further perpetuate the enforcement of an ethereal debt.

Your Commissioner is of the opinion that the disputed deed of trust is not a valid and enforceable lien and that the cloud should be removed from title. The note was paid and the assignee, Yeskolski, if he is the assignee, took the note after maturity, knowing there was not a human being personally obligated on it and subject to all defenses - a "pig in a bag". The result in this case in equity should not frustrate the reasonable expectations of anyone. The costs should be borne by Yeskolski.

I hereby certify that a copy of the foregoing report was this 18th day of April, 1995, mailed to each counsel of record and to each party not represented by counsel at his record address together with notice that (a) the original hereof would be filed

with the Clerk of the Court on the 18th day of April, 1995, and (b) if either party disagrees with any recommendation hereof, written exceptions must be filed with the Clerk within 10 days after this report is filed with the Clerk unless, for good cause shown, the Court allows later filing of exceptions.

Respectfully,



Glover C. Wright, Jr.
Commissioner in Chancery

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH
KIMBELYN F. CROSBY, et al.,

Plaintiffs,

v.

In Chancery
No.: CH87-2592

DONALD H. CLARK, TRUSTEE, et al.,

Defendants.

EXCEPTIONS TO THE REPORT OF THE COMMISSIONER IN CHANCERY

COMES NOW, STANLEY YELSKOLSKE, SR., Defendant in the above-styled matter, by counsel, and excepts to the report of the Commissioner in Chancery, filed herein on April 18, 1995, as follows:

1. That the Commissioner erred in his findings as set out in the second (2nd) sentence of the fifth (5th) paragraph on page two (2) of his report that the makers of the note and deed of trust were the Crosbys.

2. That the Commissioner erred in his findings as set out in the first (1st) sentence of the sixth (6th) paragraph on page two (2) of his report that the option expired due to default.

3. That the Commissioner erred in his findings as set out in the second (2nd) sentence of the seventh (7th) paragraph on page two (2) that the Amdurskys said that the note was paid in full to them as payees.

4. That the Commissioner erred in his finding of the fact and conclusion at law as set out in the third (3rd) sentence of the seventh (7th) paragraph on page two (2), that upon transfer of the note to the Mahers that the Mahers had no right to get the

property.

5. That the Commissioner erred in finding and conclusion at law as set out in the seventh (7th) sentence in the seventh (7th) paragraph on page two (2) that the Defendant was only an assignee and not a holder nor holder in due course.

6. That the Commissioner erred in his findings as set out in the eight (8th) sentence in the seventh (7th) paragraph on page two (2) that the Defendant Yeskolske acquired possession of the note under suspicious circumstances.

7. That the Commissioner erred in his findings as set out in the first (1st) sentence of the second (2nd) paragraph on page three (3) that the note was due in full on January 1, 1985 as the maturity date was extended by the parties to the June 14, 1984 agreement if the agreement is valid as law.

8. That the Commissioner erred in his findings as set out in the last sentence of the second (2nd) paragraph on page three (3) that the note was assigned rather than negotiated under the provisions of applicable law.

9. That the Commissioner erred in his findings as set out in the third (3rd) sentence of the third (3rd) paragraph on page three (3) that any payment made on the note by the Mahers to Amdursky was for the Crosbys' benefit.

10. That the Commissioner erred in his findings as set out in the first (1st) sentence of the fourth (4th) paragraph on page three (3) that the agreement provides in paragraph ten (10) that whatever Amdursky got from the Mahers would be credited on the

note.

11. That the Commissioner erred in his findings as set out in the second (2nd) sentence of paragraph four (4) on page four (4) that the statute of limitations has run on the Sixty-eight Thousand Dollar (\$68,000.00) note and it cannot be enforced so therefore the security for it is security for that obligation and the obligation is time barred as the statute of limitations has not run on either the note or the deed of trust securing it.

12. That the Commissioner erred in his findings as set out in the third (3rd) sentence of paragraph four (4) on page four (4) that Peck should not be a party because if the deed of trust and note are valid, under his contract with Mrs. Crosby, Peck would be indebted to her in the sum of Twelve Thousand Five Hundred Dollars (\$12,500.00).

13. That the Commissioner erred in his findings as set out in the fourth (4th) sentence of paragraph four(4) on page four (4) because if the agreement is invalid it is not a no recourse note.

14. That the Commissioner erred in his findings as set out in the fifth (5th) sentence of paragraph six (6) on page four (4) that the note was assigned and not endorsed as provided under the provisions of applicable law.

15. That the Commissioner erred in his findings as set out in the first (1st) sentence at the top of page five (5) as the same is a misstatement of the terms of the agreement.

16. That the Commissioner erred in his findings as set out in the second (2nd) sentence at the top of page five (5) that the

Mahers defaulted.

17. That the Commissioner erred in his findings set out in the first (1st) sentence of the second (2nd) paragraph on page five (5) as his conclusion of fact misstates the terms of the agreement and finding that Fourteen Thousand Dollars (\$14,000.00) would be due is contrary to the agreement or statements of interpretation of the contract by the Plaintiffs' counsel in both argument and brief.

18. That the Commissioner erred in his findings set out in the last sentence of the eighth (8th) paragraph on page five (5) holding that the note was paid before Yeskolske acquired the note as said conclusion is contrary to the law and unsupported by the evidence.

19. That the Commissioner erred in his findings as set out in the last sentence of the first (1st) paragraph and the first (1st) sentence of the second (2nd) paragraph on page six (6) as said conclusion is contrary to the law and unsupported by the evidence.

20. That the Commissioner erred in his findings as set out in the last sentence of the second (2nd) paragraph on page six (6) as said conclusion that the balance on the note would be Fourteen Thousand Dollars (\$14,000) is contrary to law and unsupported by the evidence.

21. That the Commissioner erred in his findings as set out in the first (1st) sentence of the third (3rd) paragraph on page six (6) that the Defendant, Yeskolske, is not the holder of the note nor that he advanced Sixty-five Thousand Dollars (\$65,000.00) to

Mr. Babalas to purchase said note as said findings are unsupported by the facts and the law.

22. That the Commissioner erred in his findings as set out in the second (2nd) sentence of the third (3rd) paragraph on page six (6) that the Commissioner believes that the lien is a cloud and should be removed and is not enforceable as said conclusion is contrary to law and unsupported by the evidence.

23. That the Commissioner erred in his findings as set out in the last sentence of the third (3rd) paragraph on page six (6) that if the lien is enforceable it is only enforceable to the extent of Fourteen Thousand Dollars (\$14,000.00) as said conclusion is contrary to law and unsupported by the evidence.

24. That the Commissioner erred in his findings as set out in the first (1st) sentence of the fourth (4th) paragraph on page six (6) as the deed of trust is valid, the costs should be borne by the Plaintiffs and the Defendant is entitled to his attorney's fees as provided by the note.

25. That the Commissioner erred in his findings set forth in the last sentence on page six (6) as the same is contrary to the law and the evidence.

26. That the Commissioner erred in his findings set forth in the first (1st) sentence at the top of page seven (7) that the noteholder should not be rewarded are based on facts and assumptions which are immaterial under the law as to the status of the Defendant as a holder in due course or a holder.

27. That the Commissioner erred in his findings set forth in

the third (3rd) sentence in the first (1st) paragraph on page seven (7) that the Defendant Yeskolske waited two (2) years before making any demand or inquiry as to payment as said conclusion is contrary to the evidence.

28. That the Commissioner erred in his findings set forth in the last sentence in the first (1st) paragraph on page seven (7) that there was a failure of proof as the Commissioner was mistaken as to the elements of proof necessary to be a holder of the instrument.

29. That the Commissioner erred in his statements of fact and conclusions of law as set forth in the final paragraph of his report on page seven (7) as they were contrary to applicable law, the evidence presented, any reasonable inferences that could be drawn therefrom, the statements of the position of the Plaintiffs by their counsel both at the hearing and by their brief in support of their position, and contrary to the reasonable actions of the parties as set out in their testimony.

30. That the Commissioner erred in his findings that there was no debt as set forth in the second (2nd) and third (3rd) sentences of paragraph one (1), and paragraphs two (2) and three (3) on page eight (8) as said findings are contrary to law and unsubstantiated by the evidence.

31. That the Commissioner erred in failing to find that the Defendant Yeskolske was a holder in due course of the note.

32. That the Commisssioner erred in his finding that the Defendant yeskolske was not a holder of the note in question.

33. That the Commissioner erred in failing to find that the writing dated June 14, 1984 (P-8) was not a valid agreement.

34. That the Commissioner erred in finding that there was an agreement and further erred in finding that the "liquidated damages" provision of the agreement was enforceable and was not in fact a forfeiture or penalty and that as such was unenforceable under the law.

35. That the Commissioner erred in failing to find that once the Plaintiff Crosby proceeded for possession and actual damages in their suit for unlawful detainer, they were barred from proceeding for "liquidated damages" under the agreement.

36. That the Commissioner erred in finding that any default existed on the part of the Mahers as it was not supported by the evidence.

37. That the Commissioner erred in finding any default existed on the part of the Mahers as the Crosbys had failed to send proper notice of any alleged default as required by the agreement.

38. That the Commissioner erred in finding that if a default occurred, even after the end of the option period, it should cause a forfeiture under the "liquidated damages" provision of the agreement.

39. That the Commissioner erred in finding that any alleged default after the end of the option agreement, September 15, 1985, would cause a forfeiture to be invoked, as he failed to find that the actions of the Plaintiffs by their attorney's letter of March 5, 1986 (D-1) and November 7, 1986 (P-13), constituted a deception,

even though unintentional, so that the Defendants Mahers would be unaware that a default after September 15, 1985, would constitute a forfeiture under the agreement.

40. That the Commissioner erred in denying the Defendant Yeskolske's request to call Plaintiff's counsel Louis Paulson to testify that he received the two (2) letters proffered and identified as exhibits A & B, after counsel for the Plaintiff (Popp) had been forewarned by counsel for the Defendant (Stallard) that a member of the Paulson firm could be called as a witness.

41. That the Commissioner erred in allowing into evidence Plaintiff's exhibits 15, 16 and 18 as the same were offered into evidence to establish a fact in contradiction and variance to the Plaintiff's pleading.

42. That the Commissioner erred in not finding that the note was a good and valid instrument secured by the lien of that certain deed of trust duly recorded in the Clerk's Office of this Court in Deed Book 2308 at page 1501 and further fix the principal balance in the sum of Sixty-four Thousand Dollars (\$64,000.00) with interest at the rate of fourteen percent (14%) per annum from June 1, 1984 to date.

43. That the Commissioner erred in failing to find that the terms of the promissory note are superior to any contradictory terms that may exist in the agreement.

WHEREFORE, Defendant Stanley Yeskolske, Sr., prays that the report of the Commissioner in Chancery be amended or overruled as filed or referred to another Commissioner in Chancery for further

hearing pursuant to the Order of this Court or heard ore tenus by
this Court.

STANLEY YESKOLSKE, SR.

By: 

Of Counsel

Norman Hecht, Attorney
VSB #04121
5386 Kemps River Drive
Suite 114
Virginia Beach, VA 23464
(804) 420-1112

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing
instrument was mailed this 25 day of April, 1995, to all
counsel of record.


Norman Hecht

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

KIMBLYN F. CROSBY, *et al.*,

Plaintiffs,

IN CHANCERY NO. CH87-2592

v.

DONALD H. CLARK, TRUSTEE, *et al.*,

Defendants.

ORDER

This cause was before the Court on July 14 and September 15, 1995 on exceptions filed by counsel for Mr. Stanley Yeskolske, Sr., to the findings set forth in the report and recommendation of Commissioner Grover C. Wright, Jr., dated and filed herein on April 18, 1995, and the various pleadings and exhibits filed therewith; and was argued by counsel.

UPON CONSIDERATION WHEREOF, the Court is of the opinion that the balance due on the \$68,000.00 deed of trust note at issue in this proceeding secured by a second deed of trust on property identified by the Commissioner as Lots 5 and 17, Block 26 in the Resubdivision of Croatan Beach, Virginia Beach, Virginia, recorded in the Clerk's Office of this Court in Map Book 37, at page 11, is the total sum of Fourteen Thousand and NO/00 Dollars (\$14,000.00) without interest; and therefore the exception filed herein by counsel for Mr. Yeskolske to the Commissioner's finding that no sum is owed on the note in question is SUSTAINED. The remaining exceptions taken to the Commissioner's findings filed herein by Mr. Yeskolske, to the extent not inconsistent with this Order, are OVERRULED. It is therefore

ADJUDGED, ORDERED, AND DECREED, that the sum of Fourteen Thousand and NO/00 Dollars (\$14,000.00) be paid to Stanley Yeskolske, Sr. in full satisfaction of the deed of

trust note in question and that immediately upon such payment, the lien of the second deed of trust on the property described herein securing said note be released as a matter of record in the Virginia Beach Circuit Clerk's Office.

And it is further ORDERED that the parties in this matter each pay one-half the costs associated with this proceeding.

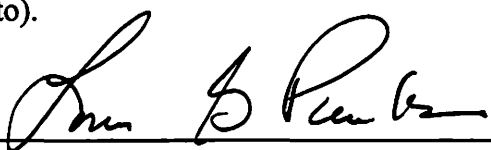
ENTER: _____


JUDGE ROBERT B. CROMWELL, JR.

DATE: _____


2/27/96

SEEN AND OBJECTED TO: (Only as to the Court's ruling sustaining Mr. Yeskolske's exceptions to the Commissioner's report, which recommended that no sum be held due under the note. To the extent the Court overruled Mr. Yeskolske's exceptions the Court's order is agreed to).




Louis G. Paulson, Esquire
Counsel for Plaintiffs
Kimblyn F. Crosby and
Kimblyn F. Crosby, Executrix of the
estate of William A. Crosby,
and Victor Peck

SEEN AND OBJECTED TO: (Only as to the Court's ruling sustaining Mr. Yeskolske's exceptions to the Commissioner's report which recommended that no sum be held due under the note. To the extent the Court overruled Mr. Yeskolske's exceptions the Court's order is agreed to).



E. Thomas Rilee, III, Esquire
Counsel for Defendants,
Gregory G. Vernosky, Trustees for the "Gregory G.
Vernosky and Lori B. Vernosky Revocable Living Trust"
Atlantic Residential Mortgage Corporation,
Charles M. Guida, Trustee, and Geoffrey S. Hall, Trustee

SEEN AND OBJECTED TO: (Objected to as to the Court's ruling overruling Mr. Yeskolske's exceptions to the Commissioner's report. To the extent that the Court sustained Mr. Yeskolske's exceptions, the Court order is agreed to.)

A handwritten signature in black ink, appearing to read 'Norman Hecht', written over a horizontal line.

Norman Hecht, Esquire
Counsel for Defendant, Stanley Yeskolske, Sr.

COMMONWEALTH OF VIRGINIA

KENNETH N. WHITEHURST, JR.
EDWARD W. HANSON, JR.
JOHN K. MOORE
ALAN E. ROSENBLATT
THOMAS S. SHADRICK
ROBERT B. CROMWELL, JR.
JEROME B. FRIEDMAN
FREDERICK B. LOWE
A. BONWILL SHOCKLEY



CIRCUIT COURT
CITY OF VIRGINIA BEACH
VIRGINIA BEACH, VA 23456
(804) 427-4501

SECOND JUDICIAL CIRCUIT

July 20, 1995

Louis G. Paulson, Esquire
1432 North Great Neck Road, Suite 101
Virginia Beach, VA 23454

Norman Hecht, Esquire
5386 Kemps River Drive
Suite 114
Virginia Beach, VA 23464

E. Thomas Rilee, III, Esquire
7275 Glen Forest Drive, Suite 309
Richmond, VA 23226

Re: Crosby, et al v. Clark, et al
CH87-2592

Dear Counsel:

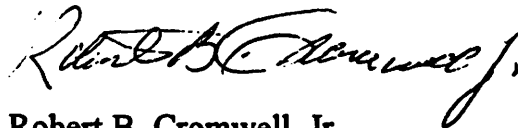
The captioned chancery cause was before the court on July 14, 1995 on exceptions filed by Mr. Hecht to the recommendations contained in the Commissioner's Report submitted by Commissioner Wright. The case in issue was instituted by a chancery bill titled "Action to Quiet Title, or in the Alternative, Motion for Declaratory Judgment" filed by Mr. Paulson. The issue is what, if any, balance remains due under an indebtedness initially evidenced by a \$68,000 deed of trust note secured by a second deed of trust on a building site consisting of two lots in the Croatan section of the City of Virginia Beach. The relief prayed for by Mr. Paulson in his bill is that the court declare the indebtedness satisfied and order that the second deed of trust be released or, in the alternative, that the court determine what balance remains due under the obligation so the involved parties can make arrangements for payment and obtain a release from the lien of the second deed of trust now of record in the Virginia Beach Circuit Court Clerk's Office.

I have again reviewed the file, the transcript of the hearing before Commissioner Wright, the Commissioner's Report, the arguments presented by counsel at the hearing before the court on July 14, 1995, and the extensive brief filed by Mr. Hecht on behalf of his client, Mr. Yeskolski. Because of the complicated and convoluted nature of the relationships between the various parties involved in this chancery cause, I spent a considerable amount of time reviewing the file and the depositions prior to the July 14 hearing in order to hopefully be able to discuss this matter in some intelligent manner with counsel at that time. Because of the amount of time spent, I also recall that I gave counsel my preliminary reaction to the issues presented but reserved any judgment pending a further review of both the file and the brief submitted by Mr. Hecht.

I write to advise at this time that my preliminary indications remain unchanged and the court is of the opinion that the sum of \$14,000 remains due under this obligation. This sum should be paid to Mr. Yeskolski and the second deed of trust securing the indebtedness should be released as a matter of record in the Virginia Beach Circuit Court Clerk's Office. Mr. Paulson will please prepare and circulate an order consistent with the court's ruling in this matter.

Thank you for your cooperation.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Robert B. Cromwell, Jr.", written in dark ink.

Robert B. Cromwell, Jr.

RBC/ed

ASSIGNMENTS OF ERROR

1. It was error for the Court to overrule Appellant's Exception No. 16 and 36 (all Exceptions hereinafter indicated refer to the numbered exceptions as listed in the Appellant's Exceptions to the Commissioner's Report) which found that the Mahers defaulted under the terms of the Agreement.

2. The Court erred in overruling the Appellant's Exception No. 38 to The Report by finding that if a default occurred even after the end of the option period, it should cause a forfeiture under the "liquidated damages" provision of the Agreement.

3. The Court erred in overruling the Appellant's Exception No. 37 to The Report by finding a default existed on the part of the Mahers, as the Crosbys and/or Amdurskys had failed to send proper notice of any alleged default as required by the Agreement.

4. The Court erred in overruling the Appellant's Exception No. 41 to The Report by approving the ruling of the Commissioner allowing into evidence Appellee's Exhibits 15, 16 and 18 as the same were offered to establish a fact in contradiction and variance to their pleading.

5. It was error for the Court to overrule Appellant's Exceptions No. 9 and 10 to The Report which found that the Agreement provides that whatever Amdursky got from Maher would be credited on the note.

6. The Trial Court erred in overruling the Appellant's Exception No. 23 to the Report by finding that the lien is enforceable only to the extent of \$14,000.00 as said conclusion is contrary to the law and unsupported by the evidence.

7. The Court erred by failing to grant prejudgment interest on the note being the subject matter of this suit having found that any principal balance on said indebtedness exists.

8. The Court erred by overruling the Appellant's Exception Nos. 5, 6, 8, 14 and 31 to The Report in failing to find that the Appellant was the holder or holder in due course of the note.

9. The Court erred by overruling the Appellant's Exception No. 32 to The Report by failing to find that the Appellant was a holder of the note in question.

10. The Court erred in overruling the Appellant's Exception No. 43 to The Report by failing to find that the terms of the promissory note are superior to any contradictory terms that may exist in the Agreement.

11. The Court erred by overruling the Appellant's Exception No. 34 to The Report by finding that there was an Agreement and further finding that the "liquidated damages" provision was enforceable and was not, in fact, a forfeiture or penalty unenforceable at law.

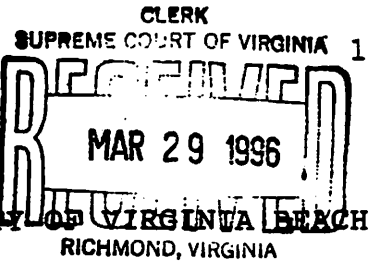
12. The Court erred by overruling the Appellant's Exception No. 35 to The Report in failing to find that once the Appellee, Crosby, proceeded for possession and actual damages in their suit for unlawful detainer, they were barred from proceeding for "liquidated damages" under the Agreement.

13. The Court erred in overruling the Appellant's Exception No. 42 to The Report by failing to find that the note was a secured and valid instrument with a balance of \$64,000.00 with interest as provided in the note.

ASSIGNMENT OF CROSS-ERROR

- 1. The Trial Court erred in finding the subject Deed of Trust to be enforceable and any indebtedness remaining due on the obligation.**

961005



1 VIRGINIA:

2 IN THE CIRCUIT COURT FOR THE CITY OF VIRGINIA BEACH
3 RICHMOND, VIRGINIA

4 KIMBLYN F. CROSBY, et al., :

5 Plaintiffs, :

6 vs. :

CHANCERY NO. CH87-2592

7 DONALD H. CLARKE, et al., :

8 Defendants. :

9
10 TRANSCRIPT OF PROCEEDINGS

11 TAKEN BEFORE: Grover C. Wright, Jr., Commissioner

12 April 3, 1995 - 9:15 a.m.

13 Virginia Beach, Virginia

14
15
16 APPEARANCES:

Paulson & Associates

By: Louis G. Paulson, Esquire

William L. Nuckols, Esquire

Counsel for the Plaintiffs

18 Rilee & Rice

19 By: E. Thomas Rilee, III, Esquire

Counsel for Atlantic Residential Mortgage
20 Corp. and its trustees, and the Vernoskys

21 By: Norman Hecht, Esquire

Counsel for the Defendant Yeskolski

22
23 ALSO PRESENT:

Kimbllyn Cameron

Stanley Yeskolski

24
25 REPORTED BY: Selina M. Strickland, RPR

ORIGINAL

I N D E X

WITNESSES

On Behalf of the Plaintiffs:

	DIRECT	CROSS	REDIRECT	RECROSS
ANN M. BUTLER	53	58	--	--
L. MICHAEL BUTLER	63, 67	65, 72	80	82
D. DIANE HORNE	83	98	--	--
KIMBLYN F. CAMERON	103	115	--	--

On Behalf of the Defendants:

JOHN B. DINSMORE	128	--	--	--
STANLEY YESKOLSKI	138	156	--	--

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MR. HECHT: The other side is as to
Amdursky, who instead of getting money at \$1,000 a month,
is going to get all of his money in five months.

1 MR. PAULSON: How long did it take him
2 to get his money? The facts were it took him 17 months
3 to get the money or 13, 14.

4 MR. HECHT: It was for all these
5 people's benefits. You can't say the Crosbys or the
6 Amdurskys didn't benefit by it.

7 MR. RILEE: So did the Mahers.

8 MR. PAULSON: They tied down a price
9 for the property.

10 THE COMMISSIONER: She can't listen to
11 all of you at once.

12 MR. HECHT: I'm sorry.

13 MR. PAULSON: They tied the property
14 down for fifteen months. And now, the other thing that
15 has not been brought out, one other piece of information,
16 when Mr. Yeskolski got the note, Mr. Wright, it was
17 already overdue eight months.

18 THE COMMISSIONER: I know that.

19 MR. PAULSON: Now, he didn't get the
20 note at that point, by the way. By his own testimony, he
21 did not receive the note for another year, year and a
22 half.

23 THE COMMISSIONER: Where was it?

24 MR. PAULSON: Well, I believe
25 originally it was still with Sovran Bank, because that

1 thing that you were asking about earlier, the Amdurskys
2 had previously assigned this note and deed of trust to
3 Sovran Bank on some other -- whether they remember that
4 or don't remember that or whatever. So when he assigned
5 this note to bearer was way after -- he must have. I
6 kept asking for it from Mr. Giordano, and nobody knew
7 where it was. This was after Mr. Babblas had past away,
8 and then eventually it was discovered that it was being
9 held by Sovran Bank as collateral on some other loan.
10 And so by Mr. Yeskolski's own testimony, he received it
11 sometime after Mr. Babblas died, and probably the fall of
12 1987.

13 THE COMMISSIONER: The problem I'm
14 having with it is that here we've got a note that no
15 human being is personally liable on, nobody. We've got
16 the Amdurskys, who were the original payees, and they get
17 paid first apparently \$4,000 from some source because
18 they acknowledge that it had been paid down to 64-. Then
19 they get paid \$50,000. I'm having trouble seeing that
20 the note could have any more of a principal balance than
21 \$14,000. That's a big problem I have.





1 THE COMMISSIONER: Now, it appears
2 further -- does everybody agree that the statute of
3 limitations on the deed of trust to enforce it is 20
4 years?

5 MR. HECHT: Obviously, that's our
6 position.

7 MR. RILEE: I would agree with that, at
8 least 20 years.

9 THE COMMISSIONER: Okay. Maybe I just
10 am not smart enough to see the issues, but the issues to
11 me are, A, was there a novation, and I don't see it. B,
12 what's the balance due on the note. And I'm having
13 problems finding that there can be any more owed than
14 \$14,000, which is not collectable personally, but by
15 foreclosure it could presumably. I don't mean to prevent
16 you all from putting on evidence.

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4 THE COMMISSIONER: I've received into
5 evidence as Defendant's Number 1 a letter from
6 Mr. Paulson to the Mahers, M-a-h-e-r-s, dated March 5th,
7 1986. It consists of two pages over the objection of --

8 MR. RILEE: Tom Rilee.

9 THE COMMISSIONER: Tom Rilee.

10 MR. RILEE: The reason for my objection
11 is that it being a letter from the attorney for one of
12 the parties, I feel like it's subject to bearing
13 interpretation, which may subject the attorney being
14 called as a witness in this case, which would be
15 improper.

16 THE COMMISSIONER: Well, I've indicated
17 that the attorney is not going to be called as a witness
18 in this case and the letter speaks for itself, and it
19 will be given its ordinary meaning, and I'm not going to
20 permit him to testify as to his undisclosed intention in
21 writing it as to what he meant by the words he used.
22 Words are not esoteric, as far as I'm concerned. All
23 right. Now, you've stipulated to some exhibits and you
24 all can number them and I will initial them.

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BY MR. PAULSON:

Q State your name and address for the record, please.

A Ann Mayhall Butler, 208 Matt Lane, Virginia Beach, 23454.

Q In June of 1984 did you have occasion to work for -- well, who did you work for?

A In?

Q 1984.

A For Crosby Construction Company, William Crosby and Kim Crosby.

Q Would you describe what you did for the company?

A I was the office manager. I did many duties.

Q Did you do accounting duties?

A Yes.

Q Would you just briefly describe what

1 accounting duties you had?

2 A I did the payables, the receivables,
3 things of that nature.

4 Q Do you recall a residential property
5 that the Crosbys were renting in June of 1984 to the
6 Mahers?

7 A Yes.

8 Q Did you have any responsibilities
9 relative to that property?

10 A Yes.

11 Q And what were those responsibilities?

12 A I kept files on them and every now and
13 then and I would receive some of the rent from
14 Mr. Maher. A lot of times he would take the rent
15 directly to Mr. Crosby. Sometimes he would bring it into
16 the office and I would try to keep track of the payments
17 made.

18 Q When you say you would try to keep
19 track of the payments, how would you do that? Did you
20 have a journal or did you have some sort of bookkeeping
21 process?

22 A I'm sure there was probably a file
23 that -- to tell you the truth, it was so long ago, I
24 can't remember exactly, but I'm sure there was a file to
25 where we would write down as payments came in.

1 Q Do you have any firsthand knowledge of
2 whether those payments, as a rule, were being made on
3 time, being late and how were the payments made? In what
4 form?

5 A A lot of times they were made in cash,
6 and like I said, directly to Mr. Crosby. And Mr. Crosby
7 would come in and say, Mr. Maher made the payment.
8 Sometimes it would be cashier's checks, and they seemed
9 to be a little sporadic. Sometimes they would be late
10 and we would have to call Mr. Maher and remind him that
11 it was late. Sometimes he would make double payments.

12 Q Why would he make double payments?

13 A Because he was a month late. So he
14 would have to do that, you know, pay on the second month,
15 make a double payment.

16 Q And in October of 1986 did you have
17 occasion to prepare a document and send to it Mr. Louis
18 G. Paulson?

19 A Yes.

20 Q That was relative to this property?

21 A Yes.

22 Q And would you describe the contents of
23 that letter?

24 A It appears that we worked up a history
25 of payments made by Mr. Maher, I guess for the -- must

1 have been to see how much he owed to the Crosbys at that
2 time.

3 Q Does that refresh your memory at all on
4 10/6/86 as to whether he was behind in payments?

5 A Let's see. It appears since he made
6 two payments on the 6th, that maybe that was for -- well,
7 let me look through here. Let me see.

8 Q Take your time.

9 A It seems like sometime around May is
10 when he started missing payments.

11 Q Well, can you look at and see is there
12 any payment made for May of 1986?

13 A No, there wasn't. So he was
14 obviously --

15 Q And then in July of 1986.

16 A He made two payments, which may have
17 come up from May.

18 Q Is there any payment made there for
19 August and September?

20 A No. So that must have been the two
21 payments he made in October, which would make October's
22 rent due. According to the letter, it looks like some of
23 his payments may have been a little short as to what he
24 was supposed to have been paying.

25 Q Look at page two.

1 A Yes.

2 Q Is that your signature at the end of
3 the letter?

4 A Yes.

5 THE COMMISSIONER: We're referring to
6 Plaintiffs' 9 now, the letter of October 8th, '86?

7 MR. PAULSON: Yes, sir.

8

9 BY MR. PAULSON:

10 Q Finally, did you ever have an
11 opportunity, after Mr. Maher had left the premises, to
12 enter the premises?

13 A I don't believe I did.

14 Q Were you aware of any problems with the
15 premises?

16 A Yes, yes, I was aware there was some
17 damage done, and I know that --

18 MR. HECHT: I'm going to object, Your
19 Honor. She testified she didn't go into the premises.
20 How would she be aware of it other than hearsay?

21 MR. RILEE: Business records.

22 MR. PAULSON: That's all right. We can
23 deal with it with another witness. That's fine. I'll
24 withdraw the question. Thank you very much. I have no
25 further questions. Mr. Hecht may have some questions for

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BY MR. HECHT:

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Q Well, did you go to court and testify
when the -- did you go to court and testify when the suit
for unlawful detainer was brought?

17

18

A Yes, yes, and I believe at that time it
was 900 and something.

19

20

Q And he paid 900? Your suit was for
\$911.76; is that correct?

21

A That's correct.

22

23

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Q So that if we look -- and I'd like for
you to see the letter. I guess it's the November 7th,
1986 letter from Mr. Paulson showing a balance of around
\$3,100, something of that nature?

1 A Uh-huh.

2 Q And so that was the -- that letter was
3 prepared based upon your information to Mr. Paulson?

4 A Yes.

5 Q And after that time was there a payment
6 made?

7 A I really -- I truly don't remember.

8 Q Well, if in fact, you went to court and
9 testified that the balance was \$911, then obviously there
10 was a payment made?

11 MR. PAULSON: I think she just answered
12 it. I would like to object to the question. Again, she
13 answered it. She didn't remember.

14 THE COMMISSIONER: He's still
15 cross-examining her.

16 THE WITNESS: What was the court date?

17

18 BY MR. HECHT:

19 Q All right. You went to court in
20 December.

21 A Okay.

22 Q You went to court December 2nd, it
23 looks like to me.

24 A Uh-huh.

25 Q So sometime between that letter of --

1 A November 7, uh-huh.

2 Q -- November 7 and December 2nd, there
3 was a payment, was there not?

4 A It appears there must have been or it
5 wouldn't be 900 --

6 Q So there was a payment made after the
7 letter to reduce the balance?

8 A There may have been, and then again,
9 there may have been a payment made directly to Virginia
10 Beach Federal. I believe was he doing that at that
11 time. I believe he was doing that at some --

12 THE COMMISSIONER: What's the point?

13 MR. HECHT: That they received the
14 payment and accepted part payment after they sent the
15 default letter.

16 THE COMMISSIONER: Your point is that
17 he paid something but not enough.

18 MR. HECHT: That's what I'm driving
19 at. This was only a \$911 balance at that time. That's
20 what they sued on.

21 THE COMMISSIONER: Okay.

22

23 BY MR. HECHT:

24 Q And the payment itself -- I'm talking
25 about his monthly payment -- varied, did it not?

1 A Yes.

2 Q And it was tied to the mortgage
3 payment?

4 A That's correct.

5 Q So the 400 and odd dollars, the
6 difference we're talking about was increases in the
7 mortgage payment, looking at your letter here?

8 A Uh-huh.

9 Q Those were increases in the mortgage
10 payments he didn't pay?

11 A Yes, more than likely, that's what it
12 was.

13 Q And you were "the office," as they
14 described it, in 1984 and 1985? You ran the office?

15 A Right.

16 Q And your husband also was employed by
17 Crosby?

18 A That's correct.

19 Q And you went to work when, ma'am?

20 A I believe it was 1981.

21 MR. HECHT: I have no further
22 questions.

23

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2 * * *

3 Q At the time of the trial date Mr. Maher
4 did not show up and did not defend the alleged default;
5 is that correct?

6 A That's correct, he was not there.

7 THE COMMISSIONER: Can she be excused?

8 MR. PAULSON: Yes, sir.

9
10 [The witness was excused.]
11

12 DIRECT EXAMINATION

13 BY MR. PAULSON:

14 Q Mr. Butler, would you state your name
15 and address for the record, please, sir.

16 A Leroy Michael Butler, 208 Matt Lane,
17 Virginia Beach.

18 Q And in the year 1984 and 1985 who were
19 you working for?

20 A Crosby Construction Company.

21 Q And would you describe what your job
22 description was during that period of time?

23 A At that time I was field supervisor,
24 estimator for the construction crews, jobs.

25 THE COMMISSIONER: Let me swear you

1 in. Raise your right hand.

2

3 LEROY M. BUTLER, called as a witness by and
4 on behalf of the Plaintiffs, having been first duly
5 sworn, was examined and testified further as follows:

6

7 BY MR. PAULSON:

8 Q When did you first start in the
9 building industry, construction industry?

10 A 1971.

11 Q And what's your present occupation?

12 A General contractor.

13 Q So in 1984, 1985 you had approximately
14 14 to 15 years of experience in the construction
15 business?

16 A Yes.

17 MR. PAULSON: Okay. I would ask that
18 Mr. Butler be introduced as an expert.

19 THE COMMISSIONER: What is he going to
20 give an opinion on?

21 MR. PAULSON: He's going to testify as
22 to the damage and give an opinion on the cost of
23 repairs. Not that he has to be an expert. I guess he
24 can just testify as to his own knowledge.

25 MR. HECHT: I would like to ask him

1 some questions.

2 THE COMMISSIONER: You can.

3

4 BY MR. HECHT:

5 Q How old are you, sir?

6 A 43.

7 Q How old were you when you went to work
8 for Mr. Crosby?

9 A Let's see. That would have been 21,
10 22.

11 Q And in 1984, '85 were you a licensed
12 contractor?

13 A No, sir.

14 Q Were you licensed in any trade in any
15 manner?

16 A No, sir.

17 Q And what type of work did you do for
18 Mr. Crosby?

19 A I did the estimating, field supervision
20 and carpentry.

21 Q And as I understand, Crosby
22 Construction built multi-family units, apartment
23 projects, single-family houses?

24 A Yes, sir.

25 Q That was their job as builder, they

1 built new construction?

2 A Yes, sir.

3 MR. HECHT: And as I understand it,
4 what you want to offer him for is an expert witness on
5 making estimates and making repairs?

6 MR. PAULSON: Correct.

7 MR. HECHT: I object to this witness
8 giving opinions.

9 THE COMMISSIONER: When you say you
10 estimated, what does that mean?

11 THE WITNESS: We would go into a job
12 and estimate the cost of new construction and --

13 THE COMMISSIONER: In order to give a
14 price to an owner?

15 THE WITNESS: Yes, sir, in order to
16 give a price to an owner.

17 THE COMMISSIONER: To get a contract
18 between an owner and your company to build something, you
19 would go in and look at it, and based on your estimate
20 what it would cost, and then based upon your estimate,
21 your supervisor or the principals of the company would
22 make an offer to the owner to build it for him?

23 THE WITNESS: Yes, sir.

24 THE COMMISSIONER: Well, I'm going to
25 let him testify as an expert in that.

1 MR. HECHT: Okay. I note my objection.

2 THE COMMISSIONER: Okay.

3

4 BY MR. PAULSON:

5 Q In 1985, early 1985, did you have
6 occasion to go into a home in Croatan, 550 Atlantic
7 Avenue, and inspect it?

8 A Yes.

9 Q And who requested that you go in there?

10 A That would have been Kim Crosby.

11 Q And basically, what did she ask you or
12 what were your -- what was your objective on that visit?

13 A I would say to repaint, refurbish a
14 dwelling back to its original state.

15 Q Okay.

16 MR. HECHT: I have a couple questions.
17 I believe you asked in 1985. Wasn't that your question,
18 1985? I think it's 1987. I have seen that.

19 THE COMMISSIONER: Is that correct,
20 Mr. Paulson, '87?

21 MR. PAULSON: Should be '87. I'm
22 sorry. I made a mistake. It's 1/21/87.

23

24

25



1 was vacant.

2 THE COMMISSIONER: Are you looking at
3 normal wear and tear or something extraordinary in this
4 case?

5 THE WITNESS: We were looking at
6 repainting and --

7 THE COMMISSIONER: I heard that. Are
8 we talking about normal wear and tear for a rented house
9 or are we talking about something that was not normal
10 wear and tear?

11 THE WITNESS: There were a couple of
12 items which were not normal wear and tear.

13 THE COMMISSIONER: Go ahead,
14 Mr. Paulson.

15

16 BY MR. PAULSON:

17 Q I'm going to show you a document and
18 ask you to identify that document, if you would.

19 A This is a list of the repairs that I
20 put together for that house.

21 Q What is the date on that?

22 A 1/21/87.

23 MR. HECHT: My objection to it -- and I
24 do have an objection to him testifying on it. When I
25 took his discovery he had no recollection whatsoever of

1 going into the house, it's my understanding. No
2 recollection of any of the damages to the property is
3 what you testified to on discovery, and as well as that
4 you had made other notes that you had since destroyed.
5 And if that's so, then all he's going to be doing, Your
6 Honor, is reading down here a list of numbers, and I
7 don't think -- it's like half a document. I object to
8 him being able to testify off of it.

9 MR. RILEE: It's for cross-examination
10 I think.

11 THE COMMISSIONER: Is this a document
12 that you prepared?

13 THE WITNESS: This is, yes.

14 THE COMMISSIONER: And you prepared it
15 in 1987?

16 THE WITNESS: Yes.

17 THE COMMISSIONER: And you recognize
18 it?

19 THE WITNESS: It is my handwriting.

20 THE COMMISSIONER: What's wrong with
21 it?

22 MR. HECHT: It's a series of
23 conclusions that he has nothing that he can back it up
24 with. He destroyed everything else. He has told me he
25 has no recollection of going into the building.

1 Now, we're going to let him testify off
2 of something that in a sense he has no recollection of
3 whatsoever. And that's my objection. I concede it is in
4 his handwriting and he did prepare it.

5 THE COMMISSIONER: Are you offering the
6 document itself or are you just offering his testimony?

7 MR. PAULSON: Yes, sir.

8 MR. HECHT: He is offering it into
9 evidence.

10 THE COMMISSIONER: All right. And it
11 was prepared by you at the time.

12 THE WITNESS: Yes.

13 THE COMMISSIONER: And this represented
14 what you saw the condition of the property to be and what
15 it would take to repair it. That was your opinion.

16 THE WITNESS: Yes, sir.

17 THE COMMISSIONER: Now, as I recall,
18 under the possession agreement of June 14th, '84, the
19 Mahers were responsible to maintain and repair the
20 property; is that correct?

21 MR. PAULSON: Correct, and make no
22 alterations without the permission of the Crosbys.

23 THE COMMISSIONER: But they had the
24 duty for even for --

25 MR. PAULSON: Ordinary wear and tear,

1 correct. This was not a normal lease.

2 THE COMMISSIONER: All right. We will
3 mark that then as Plaintiffs' Number 14.

4
5 [Plaintiffs' Exhibit No. 14 was
6 received in evidence.]

7
8 BY MR. PAULSON:

9 Q In arriving at these numbers, did you
10 use normal and customary methods acceptable in the
11 industry at the time for estimating repairs and
12 alterations?

13 A Yes.

14 Q And what is the total that you arrived
15 at?

16 A The total was \$6,985 plus a minimum
17 markup to cover overhead for Crosby Development
18 Corporation. . Grand total was \$7,353.50.

19 THE COMMISSIONER: Was the work done?

20 MR. PAULSON: No, the work was never
21 done.

22 MR. HECHT: The work was not done.

23 THE COMMISSIONER: All right.

24 MR. PAULSON: I have no further
25 questions for Mr. Butler.

1 CROSS-EXAMINATION

2 BY MR. HECHT:

3 Q Do you have any specific recollection
4 of going into the property, sir?5 A Specific recollection of that day, I
6 would have to honestly say no, because it was sort of
7 surrounded by, you know, other work we were doing, of
8 course, too.9 Q So when you testified -- if you recall,
10 we took your discovery a few months ago and you testified
11 then that you had no recollection of walking through the
12 property or anything specifically on this list. Is that
13 what you are saying?14 A In regards to the specific list, as far
15 as the minute detail of the items that I wrote here, I
16 don't have a recollection of specifically looking at
17 bathrooms, you know, to see specific detail. I couldn't
18 tell you what the wallpaper was that was in there that we
19 were removing and so forth. But as far as the overall
20 impression that I have, as far as remembrance of this
21 job, you know, we did go in and I did go in and make this
22 list.23 Q And you say Mrs. Crosby sent you in to
24 make the list?

25 A Yes, I was asked to go.

1 Q And did you know why you were asked to
2 go?

3 A Precisely not exactly, other than to
4 look at just repairing or putting things back in order.

5 Q This was after Mr. Crosby had passed
6 away, was it not?

7 A Yes, sir.

8 Q And your wife worked in the office?

9 A Yes, sir.

10 Q And she was the office, and you worked
11 in the field, I guess. Were you the manager in the field
12 in some nature?

13 A I was supervising.

14 Q Supervising?

15 A Yes, supervising.

16 Q And you said you went there on January
17 21st to make this list. Did you know that Mrs. Crosby
18 had a potential purchaser, that she was going to sign a
19 contract two days later to sell the house and none of
20 this would have to be done?

21 A I didn't know that specifically.

22 Q Did you know she had a potential
23 purchaser and that this work was not to be done?

24 A I don't recall.

25 Q You don't recall that. And if I asked

1 you why certain work was done, why three coats of paint
2 to return to original, you have no idea why, no
3 recollection?

4 A On that specifically? Three coats of
5 paint would more than likely have meant that there was an
6 odd color of paint on the wall.

7 Q That was just to paint over another
8 color?

9 A Yes.

10 THE COMMISSIONER: He said an odd
11 color.

12 MR. HECHT: Well, it's another color.

13

14 BY MR. HECHT:

15 Q One of the items you have listed is
16 reset of bar cabinet. You have to move it from somewhere
17 to somewhere?

18 A It had been removed from its original
19 position. As I recall, it was a separator between a
20 kitchen and lower living room area.

21 Q Where did you move it from?

22 A I didn't move it. It was just to be
23 reset. It had been moved.

24 Q From point A to point B, where were you
25 going to move it from? Where was it located?

1 A To tell you the truth, I don't recall
2 seeing it up there on that floor.

3 Q You say you were going to replace the
4 refrigerator. What was wrong with the other
5 refrigerator?

6 A I believe it was missing.

7 Q Do you know what type of refrigerator
8 you were going to replace it with, the one you have
9 listed here for \$950?

10 A I do not remember.

11 Q What kind of price or who you got a
12 price from you have no idea?

13 A At the time we were dealing with
14 Goldberg, so it may have been a Whirlpool, may have been
15 a General Electric.

16 Q In the solarium you have strip paint
17 from white jambs, reset patio door, \$1,800. What was
18 that about; do you recall? Also remove and replace the
19 paneling, do you have any idea what that was about?

20 A Not specifically.

21 Q Well, it was there, wasn't it? I mean,
22 if you were going to remove it, the old paneling must
23 have still been there?

24 A I just don't recall.

25 Q And as far as the corporation, you had

1 worked for Mr. Crosby for a long time and you considered
2 yourself a loyal employee of Mr. Crosby?

3 A Yes.

4 Q When you finished with this document
5 here who did you give it to?

6 A That would have gone into the office.

7 Q Shows \$1,050 to replace carpet. Was
8 the other carpet the original carpet?

9 A I do not recall.

10 Q How old was the house itself; do you
11 recall?

12 A At the time possibly five or six years.

13 Q And how did you price the carpet?

14 A That would have been a price from an
15 existing subcontractor or existing figures that I would
16 have had.

17 Q Were you going to put the carpet in for
18 \$1,050?

19 A That would have been a job that would
20 have been given to a subcontractor.

21 Q So you were just estimating what a
22 subcontractor was going to charge you for something?

23 A Yes, sir.

24 Q And do you know what was wrong with the
25 carpet that you were taking out?

1 A I don't really recall right now, as far
2 as worn or torn.

3 Q Do you know if it was damaged, stained,
4 anything like that?

5 A I couldn't put my finger on that at
6 all.

7 Q Let me ask you this: Were they
8 anything more than just regular maintenance?

9 A Yes.

10 Q All right. What was different than
11 regular maintenance?

12 A The bar having been removed was more
13 than regular maintenance, anything involving paneling,
14 any kind of movement of paneling, walls, et cetera, is
15 more than regular maintenance.

16 Q Let's see. And when I took your
17 discovery November 17th, 1994 and I asked you a similar
18 question, I believe your response -- you said, let's
19 see. I don't think anything major from the first time,
20 you know, from when we were originally worked, other than
21 I think the bedroom, two bedrooms that were made
22 downstairs or set of walls was put in to separate the
23 space was all, and you say, was all that happened other
24 than just regular maintenance.

25 At the time you were saying the only

1 thing other than regular maintenance was this wall. So
2 was everything else just regular maintenance for this
3 house that was five or six years old?

4 A I don't think you are putting that
5 question properly, as far as regular maintenance.

6 THE COMMISSIONER: Let me ask a
7 question. What difference does it make if it was the
8 tenant's responsibilities to do the regular maintenance?

9 MR. HECHT: The question is what is
10 regular maintenance.

11 THE COMMISSIONER: You are not
12 quarreling that its regular maintenance, so what
13 difference does it make?

14 MR. HECHT: Painting a wall -- what I'm
15 saying is painting a wall -- they painted the wall and he
16 comes back and says we're going to paint it a different
17 color.

18 THE COMMISSIONER: Suppose it was
19 purple? He just said an odd color. That's the only
20 evidence I have.

21 THE WITNESS: May I say something about
22 regular maintenance? In normal, regular maintenance
23 usually it's a one-coat paint process because you are
24 painting over a wall that's a similar color to the one
25 you are painting.

1 BY MR. HECHT:

2 Q You were doing this for your boss? The
3 price you were doing it was for your boss, so you are
4 going to do a first-class job?

5 A Yes, sir.

6 Q But if this was another unit for
7 somebody else, would you have put three coats of paint on
8 it?

9 A It would probably have required one
10 coat of paint.

11 Q You have a charge in there for \$300 for
12 cleaning up at the end, and if you recall, I asked you
13 was there anything unusual in the cleaning up of this
14 house. Was there anything unusual for the cleaning up of
15 this house that had been rented by somebody two, two and
16 a half years?

17 A I don't recall anything in the way of
18 splatters on any of the windows or anything like that.

19 Q So the house was generally in a
20 condition that a house would be in if a tenant had been
21 there two and a half, three years, except for the wall
22 we're talking about and the refrigerator?

23 A Yes.

24 MR. HECHT: I have no further
25 questions.

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BY MR. PAULSON:

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Q If there had been an unusual color,

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would it have made more sense to put on more than one

21

coat? An unusual color being purple or a dark color, and

22

you wanted to bring it back to a white, would it require

23

more than one coat?

24

A Yes.

25

Q Was it an unusual or dark color that

1 some of this painting required?

2 A I really specifically can't say. I
3 don't recall that.

4 Q Approximately how large was the house,
5 how many square feet?

6 A Seems like it was about 3,000 square
7 feet, 2,500, 3,000 square feet.

8 Q Where was it located?

9 A On the east side of Atlantic Avenue,
10 Croatan.

11 Q Was it oceanfront property?

12 A Yes, it was.

13 Q Was it important -- from your
14 perspective would you have handled your repairs in a
15 different manner because of the expense of the house
16 versus the expense of an apartment? Would the way you
17 handled your repairs be different?

18 A Yes, the quality of the house was much
19 more than just -- you know, the Croatan house was a much
20 better quality house than a standard house.

21 Q You've got here \$1,050 for carpet and
22 you've got 70 square yards; is that correct? 70 square
23 yards is approximately how many square feet?

24 MR. YESKOLSKI: 70 square yards?

25 THE WITNESS: Let's see. That would be

1 6,300, 70 square yards.

2 THE COMMISSIONER: How about 630.

3 THE WITNESS: 630 square feet, okay.

4

5 BY MR. PAULSON:

6 Q Is that a fractional portion of the
7 entire house, as far as carpet is concerned?

8 A Yes.

9 Q So you didn't put carpet throughout the
10 whole house?

11 A No.

12 Q This estimate does not reflect carpet
13 for the entire house?

14 A No.

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DIRECT EXAMINATION

BY MR. PAULSON:

Q Mrs. Horne, would you state your name
and address for the record, please.

- 1 A Delores Diane Horne, 1033 Colonial
2 Meadows Way, Virginia Beach, Virginia, 23454.
- 3 Q And your present occupation, please?
- 4 A I'm a branch officer for Commerce Bank.
- 5 Q And are you presently married?
- 6 A Yes, I am.
- 7 Q Was your name Diane Amdursky in 1983?
- 8 A Yes.
- 9 Q Who were you married to?
- 10 A I was married to Arnold B. Amdursky.
- 11 Q How long were you married to Arnold
12 Amdursky?
- 13 A Almost fifteen years.
- 14 Q Has Mr. Amdursky passed away?
- 15 A Yes, he has.
- 16 Q When did he pass away?
- 17 A June 1st, 1990.
- 18 Q I'm going to show you some documents
19 Mrs. Horne, and ask you if you recognize the signatures
20 on some of these documents. Did you have a lot on
21 Atlantic Avenue, you and Mr. Amdursky, that was sold to
22 the Crosbys?
- 23 A Yes.
- 24 Q Do you recall taking a note from --
25 back from the Crosbys?

1 A Yes.

2 Q When you sold the lot?

3 A Yes.

4 Q Now, do you recall anything of the
5 transaction at all, do you?

6 A Not really. Arnold handled all of
7 that, and he discussed and did everything with Bill
8 Crosby on that.

9 Q I'm going to show you quickly some
10 documents. First of all, I'm going to show you an
11 \$88,000 note and ask you if you recognize the signatures
12 on the bottom?

13 A Yes, I do.

14 Q What are the two signatures on the
15 bottom of the \$88,000 note?

16 A Arnold Amdursky and Diane Amdursky.

17 Q Right above it there is two other
18 signatures. What are those signatures?

19 A It says William Crosby and Kimblyn
20 Crosby.

21 Q I'm going to show you another document,
22 Mrs. Amdursky, and ask you if you recognize the signature
23 at the bottom?

24 A Yes, I do.

25 Q Whose signature is that?

1 A Arnold Amdursky.

2 MR. HECHT: May I see the document
3 offered?

4 MR. PAULSON: Sure. I'll give you a
5 copy of it if you like.

6 MR. HECHT: Please.

7

8 BY MR. PAULSON:

9 Q Would you tell me what that document
10 says, please, Mrs. Horne?

11 A You want me to just read it?

12 Q Yes.

13 A Receipt is hereby acknowledged of the
14 sum of \$20,000 in consideration whereof I hereby agree to
15 extend the maturity of my note for an additional one-year
16 period, conditioned on the other terms set forth in the
17 attached notations dated 12/15. Same to be memorialized
18 in a more formal fashion as soon as practicable. I
19 didn't bring my glasses.

20 Q And the signature you see on the bottom
21 is?

22 A Arnold's.

23 Q I'm going to show you another document
24 that has been entered as an exhibit, and do you recognize
25 that document at all? What does it look like at any

1 rate?

2 A It looks like a deed of trust note.

3 Q For how much?

4 A 68,000.

5 Q I'm going to show you on the back and
6 ask you if you can identify the signatures?

7 A Mine and Arnold's signature.

8 Q Let me show you another document. This
9 is the agreement. I'll ask you if you recognize the
10 signatures at the end of this document that's dated the
11 14th of June, 1984?

12 MR. PAULSON: I'm missing a page on
13 that one. Do you have the --

14 THE COMMISSIONER: We've got it in
15 evidence. Here is Plaintiffs' Number 8.

16 MR. PAULSON: May I borrow that for a
17 second, please? Thank you.

18

19 BY MR. PAULSON:

20 Q On the fourth page of this document
21 there is two signatures. I would ask if you can identify
22 those signatures?

23 A That's mine and Arnold's.

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Q On that note, that \$68,000 note, and
that agreement, do you remember receiving any funds from
the Mahers, Mr. and Mrs. Maher?

17

A Yes.

18

19

Q Do you recall how much you received
from the Mahers?

20

A No, I don't.

21

22

23

24

25

MR. HECHT: I'm going to object to
offering this receipt into evidence at this time. It's
my understanding of your pleading you pled that there was
a default, and the default was that there was a \$50,000
lump sum payment paid in September of 1985 that was nine

1 months late and it was made all in one lump sum. Okay.

2 Now, what you are trying to do is vary
3 your proof from your pleading. You have responded in
4 each and every interrogatory that it was a \$50,000 lump
5 sum payment. Now you are trying to offer evidence that
6 there are \$10,000 monthly increment payments. And I'm
7 saying you can't go both ways, if the Court understands
8 my objection.

9 THE COMMISSIONER: I understand.

10 MR. PAULSON: When we filed the
11 pleading we had no idea how the payments had been made.
12 You provided us in discovery with receipts, which were
13 provided by Mr. Giordano and provided by either your
14 office or your predecessor's.

15 MR. RILEE: I can introduce them. I'm
16 not bound by his pleadings. I'll just introduce them.

17 MR. PAULSON: If that's a problem, I
18 would move to amend the pleadings to conform with the
19 evidence.

20 THE COMMISSIONER: I don't recall the
21 pleadings saying there was a lump sum.

22 MR. HECHT: It's paragraph 13-C, I
23 believe. It alleges three defaults is what I'm saying.

24 THE COMMISSIONER: All right. He did
25 say that there was a payment in September of 1985 late.

1 MR. HECHT: Of \$50,000.

2 THE COMMISSIONER: Yes. All right.

3 MR. HECHT: And it's a lump sum payment
4 of \$50,000. He's now trying to offer evidence that it
5 wasn't paid in September.

6 THE COMMISSIONER: Does this take you
7 by surprise?

8 MR. HECHT: It does in the sense that I
9 asked him on discovery and his discovery matched this
10 after he already had the other. Also when I took her
11 interrogatories -- excuse me --

12 THE COMMISSIONER: Let me ask you
13 this: Is this the first time you have heard today that
14 there was not a lump sum payment?

15 MR. HECHT: No.

16 THE COMMISSIONER: I'm going to
17 overrule your objection.

18 MR. HECHT: He's bound by his
19 pleading. He's alleged a specific default and he's bound
20 by it and I object to his documentation.

21 THE COMMISSIONER: I note your
22 exception for the record.

23

24 BY MR. PAULSON:

25 Q Look at this document, Mrs. Horne, and

1 do you recognize the handwriting on that document?

2 A Yes.

3 Q What does it says?

4 A Arnold Amdursky.

5 Q What does the document say?

6 A September 8th, 1984 received from R. G.
7 Maher \$10,000 cash payment for August 15th.

8 MR. PAULSON: I'd ask that that be
9 entered as Plaintiffs' Exhibit --

10 MR. NUCKOLS: 15.

11 THE COMMISSIONER: Let's see what it
12 is. Just a minute. Plaintiffs' 15, isn't it?

13 MR. RILEE: That's correct.

14 MR. PAULSON: You have in your
15 possession, don't you, Mr. Hecht, the original of that?

16 MR. HECHT: I have the original of
17 those documents.

18 THE COMMISSIONER: Plaintiffs' 15.

19
20 [Plaintiffs' Exhibit No. 15 was
21 received in evidence.]

22

23 BY MR. PAULSON:

24 Q I'm going to show you another piece of
25 paper, Mrs. Horne, and ask you do you recognize that

1 signature?

2 A Yes, that's Arnold's signature.

3 Q And would you read what this particular
4 piece of paper says, please.

5 A August the 20th, 1984 received from
6 Richard G. Maher \$10,000 cash for July 15th, 1984
7 payment.

8 THE COMMISSIONER: Are there a series
9 of these?

10 MR. PAULSON: Just two of them. That's
11 all.

12 THE COMMISSIONER: Plaintiffs' 16
13 then.

14
15 [Plaintiffs' Exhibit No. 16 was
16 received in evidence.]

17
18 BY MR. PAULSON:

19 Q To your knowledge, did you know how
20 much was owed by Mr. Maher, the total amount?

21 A No.

22 Q To your knowledge, was the total amount
23 ever paid to you?

24 A I can't definitely say yes, because I
25 really don't recall the circumstances.

1 Q I showed you a document earlier where
2 you identified the signatures on the back of a \$68,000
3 note. Let me just show you.

4 Now I'm showing you the \$68,000 note
5 that was offered into evidence earlier. And do you
6 understand what this statement, the undersigned do hereby
7 assign the foregoing note for \$68,000 to the order of
8 bearer without recourse on the undersigned?

9 A (The witness nods head.)

10 Q And those are your signatures?

11 A Yes.

12 Q Now, based on that, would you believe
13 that you had received everything that you were owed?

14 A You would assume. You would assume. I
15 actually did not know dollar for dollar.

16 Q Would you have signed this without that
17 knowledge?

18 A Yes, I would sign -- at that time I
19 would sign anything that Arnold gave me to sign, and I
20 would imagine that it had been paid.

21

22 BY MR. PAULSON:

23 Q I'm going to show you this document,
24 and is that Mr. Amdursky's signature?

25 A Yes. .

1 MR. HECHT: What's the document?

2 MR. PAULSON: It has not been entered
3 yet. You used it as G in the defendant's deposition.

4
5 BY MR. PAULSON:

6 Q I would ask you to go ahead and read
7 that document, if you would, please.

8 A March 25th, 1986 to Virginia Beach
9 Federal. Deed of trust note dated January 1, 1984 in the
10 amount of \$68,000 from William and Kimblyn Crosby to
11 Arnold and Diane Amdursky has been paid in full. This
12 note has been turned over to Richard and Patricia Maher,
13 signed by Arnold Amdursky.

14 Q What is the date on that?

15 A March 25th, 1986.

16 Q Thank you.

17 THE COMMISSIONER: Are you offering
18 that in evidence?

19 MR. PAULSON: Yes, sir, I am.

20 THE COMMISSIONER: Plaintiffs' 17.

21
22 [Plaintiffs' Exhibit No. 17 was
23 received in evidence.]

24
25 MR. HECHT: That's Plaintiffs' 17?

1 THE COMMISSIONER: Yes. On March 25th
2 of '86 when your then husband certified to Virginia Beach
3 Federal that the note had been paid in full and turned
4 over to the Mahers, was that after you and your then
5 husband, Mr. Amdursky, assigned the note to bearer?

6 THE WITNESS: I have no idea. I mean,
7 are they dated? I mean --

8 THE COMMISSIONER: The date of the
9 assignment -- this is the original note we're talking
10 about, is \$68,000. When you assigned it, apparently you
11 didn't assign it to the Mahers or anybody else. You
12 assigned it to bearer. All right. Is that when you gave
13 the note to the Mahers, when you assigned it to bearer?

14 THE WITNESS: I guess.

15 THE COMMISSIONER: I'm trying to find
16 out where the note went when you assigned it to bearer.

17 THE WITNESS: I really don't know. I
18 have absolutely no recollection of that.

19 THE COMMISSIONER: Well, when you
20 assigned it to bearer, was it paid in full or not?

21 THE WITNESS: I would assume so.

22 THE COMMISSIONER: Well, what was the
23 occasion for assigning it to bearer then? Did it mean
24 you expected no further payments?

25 THE WITNESS: Apparently. Arnold

1 handled all of the transactions with that. And during
2 our marriage whenever he would give me anything to sign,
3 I always signed it. And the exact circumstances, I
4 really honestly do not know.

5 THE COMMISSIONER: You are a banker?

6 THE WITNESS: (The witness nods head.)

7 THE COMMISSIONER: Branch manager of
8 Commerce Bank?

9 THE WITNESS: That's correct.

10 THE COMMISSIONER: Go ahead,
11 Mr. Paulson.

12 MR. PAULSON: I have one final
13 document.

14
15 BY MR. PAULSON:

16 Q You've seen this. I would ask you if
17 you can identify this handwriting, Mrs. Horne?

18 A Yes, that's Arnold's.

19 MR. PAULSON: I would ask that this
20 document be entered as Plaintiffs' Exhibit 18.

21 THE COMMISSIONER: All right. 18 is a
22 letter dated November 20th, '84 from Mr. Amdursky to the
23 Mahers.

1 [Plaintiffs' Exhibit No. 18 was
2 received in evidence.]
3

4 BY MR. PAULSON:

5 Q Would you just look at it quickly, and
6 your testimony is that this entire letter is handwritten
7 by Mr. Amdursky?

8 A Uh-huh.

9 Q Uh-huh means yes?

10 A Yes.

11 Q To your knowledge, did you all ever use
12 Mr. Dinsmore as an attorney for you all in the collection
13 of this note?

14 A I think Arnold did. I believe Arnold
15 did. I think he drew up some papers or documents.

16 Q Do you recall having any loans with
17 Sovran Bank during this same period of time?

18 A I think so.

19 Q Do you recall -- let's show you another
20 document, which is a deed of assignment dated the 21st
21 day of April, 1984, and ask you if you can identify
22 those?

23 A Yes, that's Arnold and my signature.
24

25 * * *

1 Thank you.

2

3

CROSS-EXAMINATION

4

BY MR. HECHT:

5

Q The September 8th, 1984 receipt, and I

6

didn't mark down which exhibit that was, whose

7

handwriting was that one in? Could you tell? Do you

8

have one up there?

9

MR. PAULSON: I gave mine away. They

10

are right up there.

11

12

BY MR. HECHT:

13

Q Whose handwriting was the September 8,

14

if you can tell?

15

A That's Arnold's.

16

Q That's Arnold's handwriting?

17

A (The witness nods head.)

18

Q And the October 20th, was that in his

19

handwriting or can you identify that handwriting?

20

A No, the signature is Arnold's and the

21

date, but that's not -- the body of that was not his

22

handwriting.

23

Q And as far as the default note, is the

24

letter of November 20th -- you don't know yourself where

25

it indicates -- you don't know anything about this

1 particular letter of your own knowledge, when it was
2 prepared?

3 A (The witness shook head.)

4 Q Had you ever seen this letter before,
5 the one of November 20th?

6 A It's very possible that I saw it at the
7 time.

8 Q But you don't remember it now. Okay.
9 And now, as far as this other -- the March 25th of 1986
10 letter indicates at the second sentence that the note had
11 been turned over to Mr. and Mrs. Maher. Is that what it
12 says, the typed part?

13 A That's correct.

14 Q All right. So it's reasonable to
15 assume that at the time -- at least by March 25th or
16 sometime prior to March 25th, 1986, the note had been
17 given to Mr. Maher? It could have been in '85 or '84, as
18 far as you know?

19 A Right. I really honestly --

20 Q You have no idea when the note went
21 from you and your husband at that time to Mr. Maher? It
22 could be any time?

23 A Doesn't it say the date there?

24 Q That is just the date he signed it. It
25 doesn't give a date as to when it was actually

1 transferred, possession was transferred. And you
2 yourself didn't see the note from the bank or from
3 whatever? I'm talking about the \$68,000 note. You admit
4 you endorsed it on the back, but you don't know what date
5 it was you actually endorsed it?

6 A (The witness shakes head.)

7 Q It's reasonable to assume it's
8 obviously sometime before this letter saying it was
9 transferred over to him, delivered to him?

10 THE COMMISSIONER: That letter doesn't
11 say delivered.

12 MR. HECHT: It says turned over.

13

14 BY MR. HECHT:

15 Q As far as today, do you claim any
16 interest in this note?

17 A No, sir.

18 Q You claim no money as to you?

19 A No.

20 Q In 1984, the latter part of 1984, where
21 were you employed during this time?

22 A In 1984 -- let's see. I had a booth --
23 I don't know whether I had it at that time or not -- in
24 the food court at Loehmann's Plaza.

25 Q Some sort of food concession at that

1 place?

2 A Right.

3 Q Did you know Mr. Maher?

4 A I had seen him, yes.

5 Q And Mr. Maher had come by there on
6 occasion?

7 A Right, I can remember one occasion.

8 Q And but as far as actually seeing him
9 make a payment, you saw him make no payment?

10 A You mean --

11 Q Any of these payments or anything of
12 that nature? You have no recollection yourself as to
13 when any of these payments were made?

14 A No, not as far as date or amounts.
15 Arnold would give me money. I would deposit it.

16 Q You feel today that the money was paid
17 in full, \$50,000 paid in full?

18 A Yes.

19 Q If it was not paid and there was a suit
20 over it, you would know that?

21 A Certainly.

22 Q And you have no knowledge of any
23 schedule of when the payments were made, whether they
24 were made partially or in a lump sum of your own
25 knowledge?

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A No, I don't.

MR. HECHT: I have no further questions

now.

* * *

1 KIMBLYN F. CAMERON, called as a witness by
2 and on her own behalf, having been first duly sworn, was
3 examined and testified as follows:

4
5 DIRECT EXAMINATION

6 BY MR. PAULSON:

7 Q Would you state your name for the
8 record, please.

9 A Yes, Kimblyn F. Cameron.

10 Q And are you the same person as Kimblyn
11 F. Crosby?

12 A Yes.

13 Q And would you state your address for
14 the record?

15 A 1316 Iron Bridge Road, Lawrenceville,
16 Virginia.

17 Q In June of 1984 who were you married
18 to?

19 A William Crosby.

20 Q And how long had you been married to
21 Mr. Crosby?

22 A Approximately 19 years.

23 Q And when did Mr. Crosby pass away?

24 A October 23rd, 1985.

25 Q And what business was Mr. Crosby in?

1 A He was the owner and president of
2 Crosby Construction Company.

3 Q And what did Crosby Construction
4 Company do?

5 A He was a general contractor in most
6 cases. He was a builder.

7 Q Now, in June of 1984 did you enter into
8 an agreement with a Mr. Maher, whereby you would lease
9 your property, among other things, to him?

10 A Yes.

11 Q Do you recall how long that lease was
12 for?

13 A I believe it was fifteen months. It
14 was a lease option agreement.

15 Q Now, prior to Mr. Crosby's death, did
16 you have much involvement in Crosby Construction?

17 A I had some in the effect that when Bill
18 built things for speculation and what have you, I would
19 help with the decorating, and you know, picking out
20 fixtures and assisting, things like that.

21 Q Did you have much involvement in the
22 actual day-to-day financial portion of the operation?

23 A No, not really.

24 Q When did you first begin getting
25 involved in the financial aspect?

1 A Well, we started discussing things
2 about a month before he died and I really didn't start
3 taking over obviously until right after he passed away.

4 THE COMMISSIONER: Can we move along?
5 Let's get to, you know, what's in issue in this case. I
6 don't want the history, please.

7
8 BY MR. PAULSON:

9 Q Well, what I'm trying to lay a little
10 bit of foundation for is what knowledge did you have of
11 Mr. Maher's lease payments in terms of being on time, not
12 being on time? What first-hand knowledge would you have
13 had of that?

14 A Well, just in general discussions. I
15 know that some of the payments came directly to me after
16 Bill passed away. I would find them under my door
17 sometimes, my place of business. They were late
18 periodically. Sometimes payments were not made. He
19 would double up occasionally to bring things current.

20 Q The option supposedly expired in
21 September of 1985. Did you get any notification from the
22 Mahers that they wanted to exercise their option at the
23 completion of the option agreement?

24 A No.

25 Q Did you permit them to remain in the

1 property after that on a month-to-month basis?

2 A Yes, we did.

3 Q And did you continue to collect rent
4 from September of 1985 until March of 1986?

5 A Yes.

6 Q Now, in March of 1986 did you have your
7 representative or your attorney write a letter to them?

8 A Yes.

9 Q And basically what did you ask them to
10 do at that point?

11 A Well, either to make the decision to
12 follow through with the purchase of the property or they
13 were going to have to leave, because we wanted to sell
14 it, preferably as soon as possible.

15 Q Did they give you any indication that
16 they wanted to purchase the property at that point?

17 A There had been discussion periodically
18 over all of that time, as I recall, that there was still
19 some interest there, yes.

20 Q Did they make an attempt, to your
21 knowledge, of trying to assume the Virginia Beach Federal
22 loan?

23 A Yes, they had agreed to do this. They
24 had requested some information to be sent to Virginia
25 Beach Federal, as I recall.

1 MR. PAULSON: We already introduced it
2 as an exhibit and these were in nice order when I
3 started. I'm sorry, Mr. Wright. I had them right at my
4 fingertips. I try to come up with new ways of doing this
5 and I always run into the same problem.

6 MR. HECHT: F. Lee Bailey has the same
7 problem.

8 MR. PAULSON: Does anybody have this at
9 their fingertips? Anybody want to help me?

10 MR. NUCKOLS: Letter of March 17th.

11 MR. PAULSON: It says that the Mahers
12 have paid the payments from June of 1984 until March of
13 '84 -- or March of '86, yes.

14
15 BY MR. PAULSON:

16 Q I'm going to show you a letter and ask
17 you if you can identify the signature on the bottom of
18 that?

19 A Yes, I can.

20 Q Whose signature is that?

21 A It's my signature, but it was written
22 by my secretary, Ann Butler, the office manager at the
23 time.

24 Q You gave her authority to sign your
25 name on this document?

1 A Yes, I did.

2 Q And basically does it say that the
3 Mahers have made the mortgage payments from June of '84
4 until March of '86?

5 A Yes.

6 Q And your understanding of why this was
7 requested?

8 A Once again, we had talked about selling
9 the property. They still expressed an interest in buying
10 it. So this was to see if they would qualify through
11 Virginia Beach Federal.

12 Q Did they ever get in touch with you
13 after this letter was sent, they being the Mahers,
14 whether they could assume the loan or not, to your
15 knowledge?

16 A Not to my knowledge. I don't honestly
17 recall anything.

18 Q Now, did you continue to permit them to
19 remain in the property for a period of time after March
20 of 1986?

21 A Yes.

22 Q And did there come a time that you told
23 them they had to either buy the property or pay the
24 property or get out?

25 A Yes, there was a time that we had

1 requested they make up their mind I believe by the end of
2 that month whether they were going to be able to do this
3 or not.

4 Q I'm going to show you another document,
5 Mrs. Cameron, that has already been entered as a
6 plaintiffs' exhibit, and ask you if you can identify that
7 document?

8 A This is a payment history that we made
9 up for the Mahers.

10 Q Did you ask Mrs. Butler to prepare
11 this?

12 A Yes, I did.

13 Q Who was this letter sent to?

14 A This was sent to -- well, it was sent
15 to you technically, and it was the history. I assume
16 this is what they wanted in regard to their application.

17 Q Take a look again.

18 A Just the payment history?

19 Q In looking at it, can you tell if they
20 missed any payments and when they made those payments up?

21 A Yes, it looks like starting with May
22 they had missed a payment, then in July it looks like
23 they doubled up to make up the difference. Looks like
24 approximately August or September there was another
25 payment that was late. They doubled up again in October.

1 Q Was there a time that you finally asked
2 your attorney to have them evicted from the property?

3 A Yes, there was.

4 Q Were the Mahers eventually evicted from
5 the property?

6 A Yes, they were.

7 Q At the time of eviction do you recall
8 from your personal knowledge or from any records that you
9 have, had they made the December payment?

10 A No, I don't believe they had.

11 Q Had they made the January 1987 payment?

12 A No, I don't believe they made those two
13 payments.

14 Q How much were those two payments each?

15 A About 2,500 I assume, somewhere around
16 there, that vicinity.

17 Q You can look right here.

18 A 2,500. 2,592.57 is the only thing
19 that --

20 Q I believe it may have been reduced
21 after that.

22 A It would have been 2,272.06 then.

23 Q After the eviction of the Mahers did
24 you have an opportunity to examine the property?

25 A Oh, yes.

1 Q Did you also have an opportunity to ask
2 Mr. Michael Butler to review the property?

3 A Yes, I did.

4 Q And to prepare an estimate of repairs
5 that were necessary on the property?

6 A Yes.

7 Q Do you recall your visit to the
8 property?

9 A Oh, yes.

10 Q And approximately when was that?

11 A Actually, I believe it was the day that
12 we had -- the day of the eviction.

13 Q Which would have been January?

14 A It was in January. I think the 12th,
15 13th, somewhere around there, 1987.

16 Q Now, do you recall -- and I'm going to
17 let you -- this has already been entered as an exhibit.
18 Did Mr. Butler give you that document as an estimate of
19 the repairs?

20 A Yes, he did.

21 Q Now, from your own recollection, do you
22 recall what some of the damage was? And I'd like you to
23 start off at the very beginning as to what you recall as
24 the damage.

25 A Well, I recall the damage --

1 MR. HECHT: I object to her being able
2 to read off the list.

3 THE WITNESS: I won't read off of it.
4 I know it personally.

5 MR. HECHT: She didn't prepare it.

6 MR. PAULSON: It was prepared for her.
7 That's all right. I'll put it aside.

8

9 BY MR. PAULSON:

10 Q Go ahead.

11 A On the first floor level there were two
12 bedrooms that were separated by special feature walls.
13 It was a special siding, a rough wood siding, which gave
14 the two bedrooms the common area in the center. One of
15 those walls had been completely removed. The other
16 natural wood had been painted a bright purple.

17 As we went up to the second floor where
18 you had the living area, kitchen area, the wet bar and
19 kitchen cabinets had been completely removed from the
20 property. The refrigerator was gone. The walls on the
21 second floor there were two particular areas where the
22 walls had rather large holes in them. I'm not sure what
23 the purpose of these holes were, but they were there.

24 The carpet on that floor was totally
25 destroyed. There was no way that it really could have

1 been cleaned. We had looked into that. It had to be
2 replaced. The solarium, which was a passive solar
3 situation, it was placed strategically on one side of the
4 house, which was the southeast side of the house. The
5 way it was set up with the glass enclosure, it would help
6 heat the living area and it had a natural wood siding.
7 It had a brick floor. Everything had been painted white
8 and the doors had been removed, which totally eliminated
9 the whole purpose of what that room was designed for.

10 As you went up to the third floor level
11 where they had additional bedrooms -- throughout the
12 whole house most of the house had a natural wood trim.
13 On the second floor the wood trims had been painted some
14 unusual colors. The bathrooms had been wallpapered in,
15 you know, specific patterns. So there was quite a bit
16 that had been altered there and all of this had been done
17 without any request from the Mahers to see that if it was
18 okay with Bill and I.

19 Q So none of these changes --

20 A They were not authorized.

21 Q -- were done with any -- you or Bill
22 had not given them any authority to do those?

23 A None.

24 Q Now, had you been trying to sell this
25 house at this point in time?

1 A Well, we thought the Mahers were going
2 to buy it. So essentially we felt when we entered into
3 that agreement that was what the result was going to be.
4 As time went on, we were becoming more and more concerned
5 and the reason for the eviction was obviously that we
6 were having problems with rental payments and that it
7 didn't look like the sale was ever going to go through,
8 and we needed to sell it.

9 Q Okay. Now, did you enter into a
10 contract with somebody to purchase this property?

11 A Yes.

12 Q Who was that?

13 A Victor Peck.

14 Q What was the asking price when you
15 listed this property?

16 A We originally listed it for 350-,
17 somewhere in that price range.

18 Q What did you finally sell the property
19 for?

20 A 325-.

21 Q What was the reason for your reduction
22 from 350- to 325-?

23 A We were able to get out of having to do
24 the repairs. Victor Peck agreed that he would handle the
25 repairs and the renovation work that needed to be done

1 himself if we reduced the price. So we agreed to do
2 that.

3 Q And did the property close?

4 A Yes, it did.

5 MR. PAULSON: I don't have any further
6 questions for you. If you'd answer Mr. Hecht's
7 questions, please.

8
9 CROSS-EXAMINATION

10 BY MR. HECHT:

11 Q About when was the house constructed,
12 ma'am?

13 A I think we actually started preparing
14 to work on it in '81, '82, in that time frame.

15 Q And when you rented it under this
16 agreement to Mr. Maher, you had leased it before this
17 time, summer rentals?

18 A We had actually resided in the house in
19 1983 for a brief period of time and we had done one
20 summer of summer rentals.

21 Q And so some of '83 you are telling me
22 the house was rented on a weekly or monthly basis?

23 A Yes.

24 Q Was it weekly or monthly?

25 A Well, it varied. Most of the time it

1 was really more than weekly. I think we did -- like one
2 month there was the same family that wanted to stay
3 there. The rest of it was a couple weeks at a time.

4 Q And do you know when Mr. Maher took
5 possession of the property?

6 A I believe he took possession in January
7 of '84.

8 Q The agreement is dated June 14th.

9 A Excuse me. I meant June. Excuse me.

10 Q Were you present when Mr. Maher took
11 possession?

12 A What do you mean, was I present?

13 Q Were you there with him in the house?

14 A No.

15 Q This whole arrangement was basically
16 taken care of by your husband, was it not?

17 A Yes, it was.

18 Q What was your occupation at the time?

19 A I had my own fitness and dance
20 business.

21 Q And he took care of this?

22 A Yes.

23 Q So you weren't there when Mr. Maher
24 went in, so you don't know if a refrigerator was on the
25 site?

1 A Yes, I do.

2 Q How would you know that?

3 A Because we did the summer rentals
4 through the summer and when we had finished doing that,
5 before the Mahers had taken over then we went in. We had
6 to go in and clean up after the last family.

7 Q When did the last family move out?

8 A Gosh, I don't even remember now. I
9 know that we did the summer rentals and then we left and
10 I can't remember actually if it was after we left that
11 the Mahers took over or not.

12 Q Well --

13 A I can't recall the exact.

14 Q It's possible Mr. Maher could not have
15 wanted a refrigerator and turned that over to your
16 husband?

17 A No, I would have known that.

18 Q But it's possible? It could have
19 happened?

20 MR. PAULSON: She answered the
21 question.

22 THE COMMISSIONER: Anything is
23 possible.

24 MR. HECHT: Okay. Anything is
25 possible.

1 BY MR. HECHT:

2 Q And as I understand, from the time
3 Mr. Maher went into the property to the time that he was
4 evicted you had no access to the property?

5 A No.

6 Q You did not go into the property
7 yourself?

8 A No.

9 Q Now, when you went into the property
10 after he was evicted that's when you observed the
11 conditions, et cetera?

12 A Yes.

13 Q So you don't know when any of these
14 modifications or damages occurred, other than --

15 A The exact date, no.

16 Q Sometime between --

17 A The time that he was in there renting.

18 Q -- June of '84 until January when you
19 went in, in '87?

20 A Sure.

21 Q And you directed Mr. Butler to go into
22 the property; is that true?

23 A Yes.

24 Q Did you tell Mr. Butler why he was
25 going in there?

1 A Oh, yes.

2 Q Did you tell him that you had a
3 purchaser for the property, that you had a potential
4 purchaser?

5 A I don't know if I actually made that
6 statement. We knew that even if -- well, I was
7 distressed when I went in anyway and saw the condition or
8 whatever. I wanted it taken care of, but I don't know if
9 I told him that we had an interested party.

10 Q But you signed a contract, extensive
11 contract, two days later, did you not?

12 A Yes.

13 Q Now, as far as a contract, was it not a
14 provision of the contract that -- if you give me a
15 minute.

16 Was it not a provision of the contract
17 that in the event that Mr. Yeskowski was successful on
18 this suit that Mr. Peck would pay an additional up to
19 \$12,500 as to interest?

20 MR. PAULSON: I think the contract
21 stands for itself.

22 THE WITNESS: I would have to read and
23 see what it says. If that's what it says --

24 MR. PAULSON: Is it ambiguous?
25

1 BY MR. HECHT:

2 Q When you testified that the sales price
3 was \$325,000, it's possible the sales price could be
4 more, could it not?

5 A If that clause is in there. I don't
6 know.

7 MR. PAULSON: I've already got an
8 objection on the floor. I thought you were pointing that
9 question to me.

10 MR. HECHT: Right there, there is a
11 provision in the contract, (indicating).

12 THE COMMISSIONER: What page are we
13 looking at?

14 MR. HECHT: Page four of the contract.
15 There is a provision down at the bottom that he would pay
16 \$12,500 of the interest --

17

18 BY MR. HECHT:

19 Q So it's possible that the sales price
20 of the house would be 337,500? Well, from Mr. Peck's
21 standpoint --

22 A Yes.

23 Q -- he could be paying up to \$337,500;
24 isn't that right?

25 A Yes.

1 Q It's also a provision in the sales
2 contract that in the event that Mr. Peck can't assume the
3 loan with Virginia Beach Federal, that you'd make a loan
4 to him for five years; isn't that true?

5 A I assume that it is, if it's in there.

6 Q It is in there, yes, ma'am.

7 A Okay.

8 Q And did you ever make the same offer to
9 Mr. Maher?

10 A To loan him the money?

11 Q To loan Mr. Maher the money.

12 A Not that I recall.

13 Q And you say that Mr. Peck got the unit
14 at a lesser price because of these damages as you allege?

15 A Yes.

16 Q And he's not here to testify to that
17 today, is he?

18 A No.

19 Q And nor is the listing agent, had she
20 been aware of it?

21 A Had she been aware of it?

22 Q Was she aware of the fact that you say
23 he would have paid more money?

24 A Well, I assume that she was. I can't
25 speak for her.

1 Q But you didn't have her here today?

2 A No.

3 Q Who was the listing agent?

4 A I believe it was Marie Fancher.

5 Q And was her husband Mr. Paulson's law
6 associate?

7 A Yes.

8 Q And she's not here. Larry Bloom was
9 the selling agent. Was he aware of this?

10 A I assume that they were.

11 Q But they are not here today?

12 A Right, I can't speak for them.

13 Q Now, as to this refrigerator, the
14 refrigerator was about three or four years old, was it
15 not?

16 A Yes, approximately it was.

17 Q And you don't know the value of a
18 three- or four-year-old refrigerator?

19 A Actually, I don't know that you could
20 say it was three or four. It was probably closer to two
21 to three. From the time the house was completed, which
22 was like '82.

23 Q It was a used refrigerator. Wasn't a
24 new refrigerator?

25 A Right.

1 Q And are you familiar with this letter
2 of March 5th, 1986 from Mr. Paulson?

3 A Yes.

4 Q And it recites in there, as I
5 understand it, that the option has expired, does it not?
6 Isn't that what it says in the letter?

7 A Yes, I assume that's what it says. I
8 don't see the exact words.

9 Q Do you know when the option by its
10 terms --

11 MR. PAULSON: Give her a chance to read
12 it, because you are asking her --

13

14 BY MR. HECHT:

15 Q I'm sorry.

16 A Well, the expiration statement is in
17 here that the fifteen-month period had gone by that
18 the -- it expired on the 15th of October, 1985.

19 Q So that's the date you say the option
20 expired in your letter?

21 A Sometime around there. I think it was
22 September, October of '85.

23 Q And you allowed Mr. Maher to stay in
24 after those dates?

25 A Yes.

1 Q October, November, so forth, as you
2 testified?

3 A Yes.

4 Q But as far as you were concerned, the
5 agreement was over? The option was dead? Is that your
6 understanding?

7 A Well, he failed to exercise the option.

8 Q The option period had expired?

9 A The option period had expired.

10 Q And there came a time, I guess, that
11 you felt that you had no further duty to him? You were
12 going to try to sell it to somebody else; is that right?

13 A Yes.

14 Q Put it on the market?

15 A Yes.

16 Q And you felt you had no further duty to
17 him, as far as the option was concerned? You could do
18 whatever you wanted with the house?

19 A Well, we had talked -- there had been
20 some correspondence.

21 Q You put it on the market? You were not
22 bound to him anymore on this agreement?

23 A No, no.

24 Q And then you put it on the market?

25 A Right.

1 Q That's what I'm driving at. And you
2 felt you had no further obligation to Mr. Maher at that
3 point? You could sell it to whoever you wanted; is that
4 correct?

5 A Uh-huh.

6 Q And you did that. And as far as the
7 payments of any of these payment -- the \$50,000 payment,
8 you have no personal knowledge of that; is that correct?

9 A Other than what Bill had discussed with
10 me.

11 Q Nothing that you had seen --

12 A I didn't see the payment, no.

13 Q You didn't see any checks or --

14 A No.

15 Q I asked you in interrogatories -- let
16 me find it. You do recall me sending you
17 interrogatories, do you not, that you signed August 5th,
18 1993? It's been so long, I don't know if you recall.

19 THE COMMISSIONER: What's the
20 question?

21

22 BY MR. HECHT:

23 Q I'm going to refer you to interrogatory
24 number three and ask you were you aware of or had you
25 sent any notices of any default in the interrogatory and

1 you listed this 11/7 letter from Paulson, the summons and
2 the unlawful detainer, the writ of possession and the
3 24-hour notice to vacate is listed in your answers. You
4 sent no other notice of defaults, other than those listed
5 here in your interrogatories; is that truthful?

6 A I assume that's true. It's difficult.
7 This has been a long time.

8 Q I'm saying though that's your answer?

9 A Yes.

10 MR. HECHT: Can we go off the record
11 one minute?

12

13 [A discussion was held off the record.]

14

15 MR. HECHT: I have no further questions
16 of this witness.

17 MR. RILEE: Couple brief questions.

18

19 BY MR. RILEE:

20 Q Mrs. Cameron, back in September of 1985
21 when the option agreement, according to your testimony,
22 had expired, are you talking about the option portion of
23 your agreement?

24 A What do you mean just the option?

25 Q Well, the Mahers option to purchase the

1 property expired?

2 A Yes.

3 Q Thereafter they stayed in the premises
4 on a holdover tenant basis; is that correct?

5 A Yes.

6 Q They paid the same rent they were
7 paying under the original agreement?

8 A Yes.

9 Q And according to your way of thinking,
10 the same terms and conditions attached to the holdover
11 tenancy as to the original tenancy?

12 A Yes, yes.

13 Q That's all the questions I have.

14 A As I said, we had been talking about
15 still possibly trying to sell it.

16 Q The rent they were paying was simply
17 the equivalency of the payment to Virginia Beach Federal;
18 is that right?

19 A Correct.

20

21

22

23

24

25



1 MR. HECHT: I'd like to call him as a
2 witness.

3 MR. PAULSON: Did you subpoena him?

4 MR. HECHT: Yes.

5 MR. PAULSON: You did, too?

6 THE COMMISSIONER: Do the plaintiffs
7 rest?

8 MR. PAULSON: Yes.

9 THE COMMISSIONER: Plaintiffs rested.
10 You may start your case.

11
12 JOHN B. DINSMORE, called as a witness by and
13 on behalf of the Defendants, having been first duly
14 sworn, was examined and testified as follows:

15

16 DIRECT EXAMINATION

17 BY MR. HECHT:

18 Q State your name for the court, please..

19 A John B. Dinsmore.

20 Q And what's your occupation?

21 A I'm an attorney.

22 Q And where do you practice?

23 A Next door.

24 Q In the City of Virginia Beach?

25 A Yes.

1 Q And how long have you been an attorney?

2 A Since June of 1969.

3 Q And would it be fair to say that a
4 substantial portion of your practice is devoted to real
5 estate, both residential and commercial?

6 A That's correct.

7 Q Are you acquainted with William A.
8 Crosby?

9 A I am.

10 Q And in 1983, in December of 1983, did
11 you represent Mr. Crosby?

12 A Yes.

13 Q Did you have occasion to prepare a note
14 and deed of trust? I offer you this note.

15 THE COMMISSIONER: Again, you don't
16 need to authenticate any of these documents.

17 MR. HECHT: I understand.

18 THE WITNESS: I don't think I prepared
19 this.

20

21 BY MR. HECHT:

22 Q Was it prepared in your office under
23 your direction?

24 A Yes, it may have been. It looks like
25 one of our forms, now that I think about it. We've

1 changed our forms a number of times.

2 Q And that was as a result of
3 instructions from Mr. Crosby?

4 A I'm sure it was. This is the one with
5 the \$1,000 a month amortization?

6 Q Yes. I offer you a statement.

7 MR. PAULSON: I've seen it.

8 THE WITNESS: Uh-huh.

9

10 BY MR. HECHT:

11 Q That was an instruction statement from
12 Mr. Crosby, was it not?

13 A I believe so. It looks like his
14 handwriting.

15 Q And on the basis of that, you prepared
16 this note in question?

17 A That's correct.

18 Q And this note was given as a refinance
19 of a prior loan, was it not?

20 A I believe so.

21 Q And who determined the monthly payments
22 of the \$1,000 per month and the \$793.33?

23 A Mr. Crosby.

24 Q And do you know what that interest rate
25 would have been?

1 A It would have to change every time a
2 payment was made, if you are going to keep those things
3 constant, because it's interest on the unpaid balance.
4 And if you keep the interest constant, then the interest
5 rate has to fluctuate.

6 Q It's computable?

7 A I can compute it each month. I'd have
8 to see what the unpaid balance is as reduced by the
9 \$1,000 and see what kind of factor 793.33, what yield it
10 is.

11 Q And you prepared it this way, but it
12 could be -- within the document you could compute what
13 the balance and the interest would be?

14 A It would have to be each month, but
15 yes, you could do it.

16 THE COMMISSIONER: It was due in a
17 year.

18

19 BY MR. HECHT:

20 Q As the note called for, it was to be
21 payable in a year?

22 A Whatever it says, that's what it says.

23 THE COMMISSIONER: Right.

24

25

1 BY MR. HECHT:

2 Q And with the note does it contain a
3 provision that the payment may be extended and waived?

4 A Note says what it says, but it
5 typically does, uh-huh. It says, time of payment may be
6 extended or waived from time to time without notice.

7 Q Give me a copy of the deed of trust.

8 THE COMMISSIONER: What's the point?

9

10 BY MR. HECHT:

11 Q The deed of trust also contains a
12 provision that it can be extended -- I'm saying with the
13 agreement. Now we go to the agreement, that the
14 agreement that the parties entered into on June of 1984
15 were allowed under the terms --

16 A It has the phrase renewal or extension
17 permitted, which is defined by -- I think it's 5959 of
18 the code.

19 Q And we go to this agreement that is the
20 subject matter of this suit, this 19 -- I'm going to
21 offer you the agreement.

22 A Okay. I presume this is already in
23 evidence.

24 Q That is in evidence and it's my
25 understanding that you were the author of this agreement?

1 A Well, I was the one who had it typed.
2 I think Mr. Crosby was the author of the substantive
3 provisions. He pretty much told me what he wanted, and
4 all I recall about it is that I was not real crazy about
5 the way he structured it because of some aspects of it,
6 but yes, it was typed in my office at my direction and I
7 had some input into some of the details or phrasing.

8 Q And at the time the agreement was
9 prepared you represented Mr. Crosby?

10 A That's correct.

11 Q And you prepared the agreement?

12 A Yes.

13 Q And with reference to paragraph five of
14 the agreement?

15 A Is this in recitals or the agreement?

16 Q I'm sorry. In the agreement itself.
17 See paragraph five?

18 A Yes.

19 Q The agreement itself. And the very
20 last sentence there is a provision -- the very last I
21 guess -- next to the last line, Mahers shall look only to
22 the property, not to the makers and endorsers of this
23 note?

24 A Yes.

25 Q And that is a provision that's not

1 uncommon in commercial loans, is it not?

2 MR. PAULSON: Objection.

3 MR. RILEE: I object to that, too. The
4 man has already testified he didn't prepare it. He just
5 had it prepared. I think a better foundation has to be
6 laid whether he has substantive knowledge what the
7 agreement is supposed to mean.

8 THE COMMISSIONER: What difference does
9 it make whether it's a usual or unusual provision? The
10 question is it was in this agreement.

11 MR. RILEE: It speaks for itself.

12 MR. HECHT: It's not uncommon to have
13 such a provision in a commercial transaction, and he put
14 it in to protect his client. It doesn't make the note
15 invalid. It's one of the things that concerned the
16 Commissioner was that no one was responsible on the note.

17 THE COMMISSIONER: My concern was why
18 your client would buy a note that not a human being was
19 obligated on. That's my concern. Something fishy about
20 it to me and your client can probably explain it, I'm
21 sure. Whether this is a usual provision or not doesn't
22 make a hill of beans or not in this case. It's what the
23 agreement says here. Whether it was usual or unusual
24 makes no difference to me.

25

1 BY MR. HECHT:

2 Q The provision about the note and deed
3 of trust, okay, that sentence that after the assignment,
4 if you are reading it, it says, should for any reason the
5 Mahers deem it necessary to exercise their rights under
6 the deed of trust or note, then he or she look only to
7 property. The previous phrase there about them being
8 entitled to exercise their rights under the note and deed
9 of trust, how did that come to be in the agreement?

10 MR. PAULSON: For the record, I would
11 go ahead and object to anything about interpretation and
12 how it came to be, simply because the document stands for
13 itself.

14 THE COMMISSIONER: Sustained.

15
16 BY MR. HECHT:

17 Q Did the agreement itself make any
18 reference to the interest payments due on the note?

19 A I don't think it does. It's been a
20 while since I've looked at it.

21 Q Does the agreement make any reference
22 to what the balance on the note would be, whether it
23 would be affected?

24 A I don't believe it does.

25 THE COMMISSIONER: The agreement

1 recites that there is a balance of approximately
2 \$64,000. That indicates to me that the payments for
3 February, March, April and May had been made.

4 MR. HECHT: But that in the event of
5 the assignment to the Mahers, the agreement makes no
6 reference to what the balance would be, whether it would
7 be \$64,000 or \$50,000. That's not part of this
8 agreement. It doesn't recite it.

9 THE COMMISSIONER: Yes, it does. It
10 says when 50,000 has been received, Amdursky will assign
11 it to Maher, and there will be no personal liability on
12 Crosby when that occurs.

13 MR. HECHT: What I'm saying is there is
14 no affirmative statement in the agreement reciting what
15 the balance would be at that point.

16 THE COMMISSIONER: Yes, there is. It
17 says Amdurskys don't assign the note until 50,000 has
18 been paid. It's what it says very clearly.

19 MR. HECHT: I understand. That's the
20 fee to transfer. That's what they would pay to transfer
21 it. It doesn't say that's what the balance would be on
22 the note.

23
24 BY MR. HECHT:

25 Q Is there any indication in the

1 agreement whether or not the maturity date on the note
2 would be changed?

3 A I don't recall. I don't think so.

4 Q Is there any indication in the
5 agreement that the monthly payments of interest of
6 \$793.33 would continue or that they would not continue?

7 A I don't believe it speaks to that one
8 way or the other.

9 MR. HECHT: I have no further
10 questions.

11 MR. PAULSON: I have no questions.

12 MR. RILEE: No questions.

13 THE COMMISSIONER: You may be excused.
14
15

16 *

17 *

18 *

19 THE COMMISSIONER: Before you question
20 your client, Mr. Hecht, what do you interpret the
21 provision in the agreement that says if the Mahers
22 default such sums as they've paid, the Crosbys will be
23 entitled to a credit. You say that doesn't mean a credit
24 on the note? What does it mean a credit for? What other
25 obligation did Crosby have?

1 MR. HECHT: Obligation to pay rent.

2 THE COMMISSIONER: Crosby's
3 obligation. What obligation did Crosby have to Amdursky,
4 except on the note, paragraph ten?

5 MR. HECHT: Paid prior to default shall
6 be retained by the Amdurskys and the Crosbys shall be
7 entitled to a credit.

8 THE COMMISSIONER: What credit would be
9 given the Crosbys, except on the note? Is there any
10 obligation --

11 MR. HECHT: No, there is not.

12 * * *

13
14 STANLEY YESKOLSKI, called as a witness by and
15 on his own behalf, having been first duly sworn, was
16 examined and testified as follows:

17
18 DIRECT EXAMINATION

19 BY MR. HECHT:

20 Q Would you state your name for the
21 court, please.

22 A Stanley Yeskolski.

23 Q And Mr. Yeskolski, where do you reside?

24 A Spring Grove, Virginia.

25 Q How far is that from here?

1 A Oh, depends on how you go. 65 or 70
2 miles.

3 Q And what's your occupation up there,
4 sir?

5 A I'm a farmer.

6 Q And in September of 1985 what was your
7 occupation and residence then, the same?

8 A Spring Grove, Virginia and I was a
9 farmer.

10 Q How old are you, sir?

11 A 78 going on 79.

12 Q All right, sir. Was there a time that
13 you lived in the Tidewater, Virginia area?

14 A Yes, 25 years ago I lived in Tidewater.

15 Q And during that time did you have
16 occasion to retain an attorney?

17 A Yes.

18 Q And who represented you?

19 A Peter K. Babblas.

20 Q And what type of work did he do for
21 you?

22 A Well, he did a few -- some title work
23 on some property I bought, and I sold a restaurant. He
24 represented the people I sold the restaurant to. And
25 there was one other little legal matter where somebody

1 signed my name to a document, forged my name to it.

2 Q And he represented you?

3 A Represented me on that.

4 Q And when did he do this work?

5 A In the '70s.

6 Q In the '70s?

7 A Yes, some of it might have been before.

8 Q And prior to September of 1985 when was
9 the last time you had occasion to talk to Mr. Babblas?

10 A Oh, I probably bumped into him on the
11 street or something about ten years ago.

12 Q So you hadn't heard from him in about
13 ten years?

14 A That's right.

15 Q And in September of 1985 did you
16 receive a phone call from Mr. Babblas?

17 A I did.

18 Q And could you tell me what was it that
19 Mr. Babblas wanted?

20 A He wanted to know if I'd be interested
21 in buying a deed of trust. It was a second deed of trust
22 on a piece of property in Ocean View -- I mean, in
23 Virginia Beach on the ocean.

24 Q And at the time he called did you
25 expect this call from him?

1 A No, no.

2 Q What were you doing when he called? Do
3 you remember?

4 A Making hay. It was September.

5 Q Were you cutting down the hay, bringing
6 it in?

7 A You either make or break your farm
8 operation in that month.

9 Q Then you got this phone call from
10 Mr. Babblas about the note. Okay. Did he tell you who
11 owned the note?

12 A He said it was a bearer note secured by
13 a deed of trust. That was his exact words.

14 Q Did he tell you who actually owned the
15 note itself?

16 A Yes.

17 Q Who was that?

18 A Mahers.

19 Q What's his first name?

20 A Richard, I think.

21 Q Prior to this time had you ever
22 purchased a note from anybody?

23 A No.

24 Q After this time did you ever purchase a
25 note from anybody?

1 A No.

2 THE COMMISSIONER: I hope not.

3

4 BY MR. HECHT:

5 Q Were you acquainted with Mr. Maher?

6 Did you know prior to this time who he was?

7 A He was an acquaintance. He had a
8 restaurant at one time and at one time I had a restaurant
9 and it was here, but he was no friend of mine or anything
10 like that.

11 Q You knew who he was?

12 A That's all.

13 Q And what, if anything else, did
14 Mr. Babblas tell you about?

15 A Tell me about what?

16 Q What else could he have told you about
17 the note? Do you recall?

18 A I asked one thing when he told me about
19 the note. I says what kind of a note is it? He says,
20 it's a bearer note secured by a deed of trust. That's
21 all he told me, and he said it was a good investment, you
22 know.

23 Q Did he tell you what the balance was on
24 the note?

25 A Yes, 65,000.

1 Q And do you recall whether any comment
2 was made as to interest rate on the note?

3 A No. He said it was a good investment.

4 Q In this conversation do you recall if
5 he told you when you would be paid on the note, when the
6 note would be due?

7 A Well, he never did say when it would be
8 due. I took it for granted that it would be from six
9 months to a year.

10 Q But you don't recall if he told you
11 exactly?

12 A No, it was a very short call.

13 Q Do you recall how you were supposed to
14 get your payments? Were they supposed to be at one time
15 or monthly payments?

16 A No, I don't. I took it for granted,
17 being it was a deed of trust like that, it would be one
18 payment.

19 Q And how did you pay him for the note?
20 How did you pay for the note itself?

21 A I drew a check on my Merrill Lynch
22 account for \$65,000 and he sent somebody up to pick it
23 up.

24 Q And is that the check that -- there is
25 a check in evidence. I think it's D-2, I believe.

1 THE COMMISSIONER: It's in evidence.
2 There is a copy of it.

3
4 BY MR. HECHT:

5 Q There is a copy of a \$65,000 check. Is
6 this the check that you gave to Mr. Babblas?

7 A I didn't give it to Babblas. I gave it
8 to the man that came up to pick it up.

9 THE COMMISSIONER: Did he give you the
10 note when he came to get the check?

11 THE WITNESS: No.

12
13 BY MR. HECHT:

14 Q This is a copy of that Merrill Lynch
15 check?

16 A Uh-huh.

17 Q What's the date on the check?

18 A September the 24th.

19 Q When was this phone call that you
20 received from Mr. Babblas?

21 A September the 23rd.

22 Q I think we also offered in evidence a
23 statement, a Merrill Lynch bank statement, showing a
24 deduction from your account for \$65,000.

25 MR. RILEE: We'll stipulate he paid

1 \$65,000 to Mr. Babblas.

2 MR. HECHT: Okay.

3 THE COMMISSIONER: Did you get any of
4 the 65,000 back?

5 THE WITNESS: No, didn't get anything.

6
7 BY MR. HECHT:

8 Q Did there come a time that you felt you
9 should have been paid on the note, that you felt you
10 should have been getting some money?

11 A Sure was.

12 Q And what did you do then?

13 A Well, it was hard to get in touch with
14 Pete because he was either in the hospital or getting
15 treated for cancer or he was up in Richmond. That's when
16 I -- having problems up there. He lived in Richmond and
17 he was in the hospital and it was hard to get a hold of
18 him. When I would come in town I would go by his office,
19 which wasn't very often, to see his secretary.

20 Q Were you able to speak with Mr. Babblas
21 when you went up there to his office?

22 A No, he wasn't there. I just saw his
23 secretary, asked how things were coming.

24 THE COMMISSIONER: Can we establish
25 when he first got hold of the note?

1 MR. HECHT: I'm getting to that.

2

3 BY MR. HECHT:

4 Q And did there come a time that it was
5 obvious Mr. Babblas was not going to be able to continue
6 as an attorney?

7 A Yes.

8 Q And you went to his office to get your
9 file?

10 A I went to his office to get my files
11 after he died. Jeffrey Breit had my files and his
12 secretary went up to Jeffrey Breit's office and brought
13 them down, and that's the first time I went over them.

14 Q Is that the first time you got
15 possession of this note?

16 A That's when I got possession of the
17 original note.

18 MR. RILEE: What date is that?

19

20 BY MR. HECHT:

21 Q Do you know about when that was? You
22 say it was shortly after he died. Do you remember what
23 year it was?

24 A Well, he died in -- I don't know. I
25 think he died -- I'm not sure. I don't know what year.

1 Q Could it be in 1987 that you went up to
2 his office, something like that?

3 A If you knew when he died, then I'd be
4 able to tell you. I went to the hospital to see him, you
5 know.

6 THE COMMISSIONER: Are you telling us,
7 Mr. Hecht, that this man paid \$65,000 to Mr. Babblas in
8 September of '85 supposedly for a note he never saw? He
9 never got possession of the note until two years later?

10 MR. HECHT: Yes, sir.

11 THE WITNESS: It wasn't two years.

12 MR. HECHT: It was '85 until the fall
13 of '87.

14 THE COMMISSIONER: Two years later?

15 MR. HECHT: From September to
16 September, two years, yes, it was.

17 THE COMMISSIONER: How do we even know
18 that it was this note that he sent the \$65,000 for?

19 MR. HECHT: It's the only note he
20 bought from him.

21 THE COMMISSIONER: How do we know what
22 the \$65,000 was for? I mean, it's a preposterous story,
23 you know that, that somebody would send a check for
24 \$65,000 to Peter Babblas, not get a note, never look at
25 the note, not know who the maker was, not know what the

1 interest rate was, not know when it was payable or who
2 was supposed to pay it, not look at the property, not get
3 an appraisal of the property, not know what a prior
4 mortgage balance was. And two years later he goes to the
5 man's office after he's died and he's handed a file and
6 there is a note in it, and now that's what he paid the
7 65,000 for. That's the story?

8 MR. HECHT: I think he indicated that
9 he had gone to see Mr. Babblas and that there were
10 letters from Mr. Babblas making demand on this note from
11 him.

12 THE COMMISSIONER: He hadn't said
13 that.

14 THE WITNESS: When I saw the file --

15 MR. HECHT: I was going to ask were
16 there other documents in the file, and some of them were
17 letters in the file making demand. I agree with you, it
18 is a difficult situation, but I have to live with it, and
19 that's the way it was. And he was dealing with a man who
20 was ill. He was dealing with a man who was in the
21 legislature, and you know, maybe he should have done
22 more.

23 THE COMMISSIONER: All right. Go
24 ahead.

25 THE WITNESS: He said the property was

1 worth -- the second mortgage --

2 THE COMMISSIONER: That's a tremendous
3 amount of hearsay already. What Mr. Babblas said to you
4 is rank hearsay. Nobody has objected, so hearsay's as
5 good as any other evidence, if it's not objected to.

6
7 BY MR. HECHT:

8 Q When you went up to get this file --
9 I'll offer you this letter and ask was this in the file,
10 copy of this letter? It's a letter. It was actually a
11 letter to you, Mr. Paulson.

12 MR. PAULSON: I would like to look at
13 it briefly, please, after you look at it.

14 MR. HECHT: Sure, it's a letter to
15 you.

16 MR. RILEE: I would object to its entry
17 until you build some foundation that it's somehow related
18 to Mr. Yeskolski.

19 THE COMMISSIONER: Let me see it before
20 I can rule on an objection.

21 MR. HECHT: Without asking Mr. Paulson
22 to testify whether or not he received the letter, it's
23 very difficult.

24 MR. RILEE: It's not signed, is it?

25 THE COMMISSIONER: It's a letter to

1 Mr. Paulson, not to your client.

2 MR. HECHT: It's from Mr. Babblas to
3 Mr. Paulson demanding payment of the money.

4 THE COMMISSIONER: Doesn't show any
5 copy going to your client. Doesn't connect your client
6 with the letter in any way, shape or form.

7 MR. HECHT: I have a letter of June 15
8 to Mr. Babblas. I'm going to offer these two letters.
9 If you all are going to object to it, all I can do is ask
10 Mr. Paulson to testify. That's not where I want to be.

11 MR. RILEE: I object.

12 THE COMMISSIONER: I'm not going to let
13 Mr. Paulson testify and I'm going to sustain the
14 objection.

15 MR. RILEE: I was prepared to let in a
16 certain amount of hearsay. I wanted the Commissioner to
17 know the background facts. That goes too far I think.

18 THE COMMISSIONER: Without knowing, I'm
19 going to guess that Mr. Babblas also represented
20 Mr. Maher.

21 MR. HECHT: Well, I'm going to make a
22 formal offer.

23 THE COMMISSIONER: I'm going to mark
24 them refused and put them in the file.

25 MR. HECHT: I'm going to offer a letter

1 dated February 23rd, 1987 from Mr. Peter K. Babblas. It
2 is unsigned. There is a letter directed to Louis G.
3 Paulson making a demand on the note, and that you
4 indicate you got this letter from Mr. Babblas' file; is
5 that correct?

6 THE WITNESS: Yes.

7 THE COMMISSIONER: I'll mark them A and
8 B Plaintiffs' refused.

9 MR. HECHT: I also have another letter
10 dated June 15th, 1987 directed to Louis G. Paulson, and
11 I'm going to ask Mr. Yeskowski did you also get this
12 letter, and I will offer this letter and you are refusing
13 the letter of June 15th, 1987. And I'm also going to ask
14 to be able to call Mr. Paulson to testify to verify he
15 received the originals of these letters, and it's my
16 understanding the Commissioner is going to refuse to
17 allow me to call him as a witness at this time.

18 THE COMMISSIONER: I'm marking them
19 Defendants' A and B refused respectively.

20
21 [Defendants' Exhibits A and B were
22 marked refused.]

23
24 THE COMMISSIONER: I'm not going to
25 allow Mr. Paulson to testify. You may proffer his

1 testimony that he received both of them, if that is what
2 his testimony would be. Would it be, Mr. Paulson?

3 MR. PAULSON: Yes, sir.

4 MR. HECHT: And the letters were signed
5 by Mr. Babblas that you received?

6 MR. PAULSON: I don't recall.

7 MR. HECHT: But you did receive the
8 letters on or about the dates?

9 MR. PAULSON: I had communication.

10 MR. HECHT: The difficulty I have in
11 his pleading he's alleged that he's a note holder.
12 You've asked me to prove something that he's admitted in
13 the case in his pleadings that's not an issue.

14 THE COMMISSIONER: Your client's
15 testified he's the holder.

16 MR. HECHT: And my client has testified
17 that he's the holder of the note.

18 THE COMMISSIONER: And you've produced
19 it.

20 MR. HECHT: I have produced the note.

21 THE COMMISSIONER: It's the question of
22 the circumstances under which he got it.

23

24 BY MR. HECHT:

25 Q Are you aware of anyone else ever

1 making claim against this note, that they are the owner
2 of the note?

3 A No. Mr. Maher was in his office when
4 he --

5 Q I don't want you to testify. You only
6 answer questions. Okay. You are now aware of an
7 agreement dated June 14th, 1984 between Crosbys,
8 Amdurskys and the Mahers, that's the subject matter of
9 this suit? You know the agreement I'm talking about?

10 A Yes.

11 Q On September 24th, 1985, when you
12 issued that check, were you aware of this agreement?

13 A No.

14 Q When did you first become aware of this
15 agreement that's the subject matter of this suit?

16 A When I went to Pete's office to pick up
17 my file.

18 THE COMMISSIONER: So you are saying
19 that agreement was in the file?

20 THE WITNESS: Yes.

21 THE COMMISSIONER: Mr. Babblas had that
22 agreement when he talked you into buying this note?

23 MR. HECHT: I don't think he could say
24 that.

25 THE COMMISSIONER: It was in the same

1 file you got the note out of?

2 THE WITNESS: Everything that he had
3 done was in that file I picked up from Jeffrey Breit.

4 MR. HECHT: I think in fairness, there
5 had already been negotiations between he and
6 Mr. Paulson. And Mr. Paulson called Mr. Babblas'
7 attention to this agreement.

8 MR. PAULSON: Where do you get --

9 MR. HECHT: When you said you didn't
10 owe him any money, you relied on this agreement? You
11 wrote a letter, said we don't owe you any money and
12 relied on the agreement. And it could well be that
13 Mr. Babblas then got a copy of the agreement.

14 THE COMMISSIONER: At any rate, from
15 his viewpoint he got the note and the agreement at the
16 same time out of the file.

17 MR. HECHT: This was after the suit was
18 brought.

19

20 BY MR. HECHT:

21 Q In September of 1985 when you spoke to
22 Mr. Babblas --

23 A What was that?

24 Q In September of 1985 when you spoke to
25 Mr. Babblas, was there any conversation or did you tell

1 him you were retaining him as your lawyer?

2 A No.

3 Q Did he charge you an attorney's fee?

4 A No.

5 Q Did you get billed by his firm for any
6 legal services in relation to acquiring this note?

7 A No.

8 Q Did you sign any employment contract
9 with him or his firm?

10 A No.

11 Q At a later time you indicated you
12 contacted him about collecting this account on this note?

13 A Yes.

14 Q At that time did you discuss with him,
15 being your attorney, to collect it?

16 A I figured that, you know, that
17 attorney's fees for a delinquent note, they'd pay them.

18 Q Did you feel you were retaining him
19 then to represent you?

20 A I don't know how to answer that.

21 Q When you gave the \$65,000 check to
22 Mr. Babblas was that intended to be a loan to
23 Mr. Babblas?

24 A No.

25 MR. HECHT: I have no further

1 questions.

2 MR. PAULSON: May I see the copy of the
3 check, please, that we've already entered into evidence?

4

5 CROSS-EXAMINATION

6 BY MR. PAULSON:

7 Q Mr. Yeskolski, I'm pointing out on this
8 check. What does that say on notation on your check on
9 the bottom left-hand corner?

10 A Secured loan.

11 Q And the check is made out to Peter
12 Babblas?

13 A Peter K. Babblas.

14 Q Does it say whether you are loaning the
15 money to Mr. Babblas on it?

16 A I didn't loan the money to Mr.
17 Babblas. That was \$65,000 that a man picked up and took
18 to him. It was secured by this deed of trust.

19 Q What day did Mr. Babblas call you?

20 A The day before he sent the man up there
21 to pick the check up.

22 Q 24th day of September?

23 A 23rd he called me. The 24th he sent a
24 man up.

25 Q You had not spoken to Mr. Babblas for

1 ten years is your testimony?

2 A Every bit of ten years.

3 Q And was anybody in the office with
4 Mr. Babblas at the time he called you?

5 A How do I know? I was in Spring Grove,
6 Virginia.

7 Q So you don't know? There is no way of
8 knowing?

9 A I think Mahers was in the office with
10 him, because Mahers was up there to get the money.

11 Q Did Mr. Babblas tell you that this note
12 is a note that Mr. Maher owns?

13 A Yes.

14 Q On the 24th of September you just put
15 secured loan and made it out to Peter K. Babblas?

16 A Right.

17 Q Why wouldn't you put anything with
18 regard to Mr. Maher's name on this loan, on this check,
19 saying purchase of Mr. Maher's loan?

20 A Why should I?

21 Q I don't know. If you knew what it was
22 for.

23 A I knew what it was for. It was a
24 secured second deed of trust.

25 Q Have you ever testified or suggested

1 that you weren't buying the loan from Mr. Maher, but you
2 were buying it from Mr. Babblas?

3 A No, I bought it from Maher.

4 Q I'd like you to go back to your
5 testimony in your deposition dated --

6 THE COMMISSIONER: Let me ask a
7 question. Mr. Hecht, was there any attempt to see
8 if Mr. Babblas disbursed any of this \$65,000 that he got
9 to Mr. Maher?

10 MR. HECHT: I came in it so late. You
11 know, I came in after Mr. Stallard died. I wasn't
12 counsel of record until last year. I haven't found
13 anything.

14 THE COMMISSIONER: Is there any
15 evidence that any money went to Maher?

16 MR. HECHT: I have no record that any
17 money went to Maher. I have no record that any money
18 went to Mr. Babblas, other than this check.

19 THE COMMISSIONER: You put on evidence
20 the \$65,000 went to Babblas. My question is was there a
21 check to see if any of the money, the 65-, went from
22 Babblas to Maher?

23 MR. HECHT: I have not done it.

24 THE COMMISSIONER: Was this check put
25 in his trust account? Was this check put into his

1 personal account, meaning Mr. Babblas? Was it put in his
2 trust account, his personal account with his wife or was
3 it put into his regular business account or what happened
4 to this check? What is does the back of this check show
5 happened to it?

6 MR. HECHT: I do not have it.

7 THE COMMISSIONER: Your own client's
8 check, does it show where Mr. Babblas deposited it or did
9 he cash it? What happened to it?

10 THE WITNESS: You saw the check. I
11 brought it to the office when you took these depositions,
12 the original one. You saw the original check. He saw
13 the original check. He could see who endorsed it.

14 THE COMMISSIONER: I'm asking Mr. Hecht
15 if anybody knows where the 65,000 went, whether it went
16 in Mr. Babblas' personal account, his trust account or
17 his regular law account, and further, did any of it go to
18 Mr. Maher? Does anybody know that?

19 MR. HECHT: I do not know.

20 THE COMMISSIONER: Anybody make an
21 effort to find that out?

22 MR. HECHT: No, I have not.

23 THE COMMISSIONER: All right.
24
25

1 BY MR. PAULSON:

2 Q Did you ever express any
3 dissatisfaction to Mr. Babblas about this arrangement?

4 A Yes.

5 Q When was that?

6 A I don't know. It was ten years ago,
7 you know, that this thing happened.

8 Q Did you ever bring any suit against
9 Mr. Babblas in order to collect your money?

10 MR. HECHT: I object. I don't think
11 that's relevant.

12 THE WITNESS: He was trying to collect
13 it for me. That's what he was trying to do.

14 THE COMMISSIONER: That doesn't answer
15 the question.

16

17 BY MR. PAULSON:

18 Q Did you ever bring any lawsuit against
19 Mr. Babblas or his estate in an attempt to collect this
20 money?

21 A No. How did I know --

22 MR. HECHT: You've answered the
23 question. You don't have to explain it. The answer is
24 no.

25

1 BY MR. PAULSON:

2 Q Did you ever bring any lawsuit against
3 Mr. Maher?

4 A No.

5 Q Now, you stated earlier in your
6 testimony that you had no knowledge of this agreement?

7 A That's right.

8 Q The agreement, the June 14th, 1984
9 agreement, correct?

10 A The agreement --

11 Q The June 14th, yes, sir.

12 A No.

13 Q So I take it you have no document --

14 MR. HECHT: I'm trying to figure out.
15 You said he doesn't know about the agreement, but at what
16 time is the question relating to?

17 THE COMMISSIONER: He said he found it
18 in the file.

19 MR. PAULSON: Found it in the file.
20

21 BY MR. PAULSON:

22 Q Do you have any documentation that that
23 agreement was also assigned to you?

24 A No.

25 Q So you are not making any claim of any

1 rights that that agreement possesses or might confer upon
2 you because it was never assigned?

3 MR. HECHT: That's asking for a legal
4 conclusion. I object to the question.

5 THE COMMISSIONER: Sustained.

6

7 BY MR. PAULSON:

8 Q Did you ever make the statement that if
9 Mr. Babbias was not a sick man, I would have expressed a
10 lot of dissatisfaction?

11 A That's right.

12 Q So one of the factors that came into
13 play and why you didn't pursue Mr. Babbias was because of
14 his illness?

15 A How did I know the note was no good?
16 So how could I express any dissatisfaction?

17 MR. HECHT: Answer the question.
18 Rephrase the question and answer the question, please.

19

20 BY MR. PAULSON:

21 Q The question was very simply is one of
22 the reasons you did not pursue Mr. Babbias is because of
23 his health?

24 A Yes.

25 THE COMMISSIONER: Let me ask this to

1 you, Mr. Hecht. There is a real question of delivery of
2 this note. Now, your client says Mr. Babblas was not his
3 lawyer, that he was Maher's lawyer.

4 MR. HECHT: Correct.

5 THE COMMISSIONER: So then the note is
6 still in the possession of Maher if it's in the
7 possession of Maher's lawyer. He got it out of the file
8 after Mr. Babblas died. Was it ever delivered by Maher?

9 MR. HECHT: I'm inclined to believe
10 that Mr. Babblas was acting as a go-between, as a
11 conduit, as a settlement agent.

12 THE WITNESS: That's what it was.

13 THE COMMISSIONER: For both?

14 MR. HECHT: For both.

15 THE COMMISSIONER: You made it very
16 clear that he wasn't acting --

17 MR. HECHT: On that basis he was
18 handling a transaction and the note was turned over to
19 him on that basis.

20 THE COMMISSIONER: The note was turned
21 over after Mr. Babblas died, never delivered to your
22 client while Mr. Babblas was alive.

23 MR. HECHT: That's his testimony, yes,
24 sir.

25 THE COMMISSIONER: It was found in

1 Mr. Babblas' office.

2 MR. HECHT: At that time, if
3 Mr. Babblas was retained by him to go ahead and try to
4 collect it, he would, in fact, have kept the note if he
5 was negotiating with Mr. Paulson. It wouldn't be unusual
6 to keep the note, to turn it over to Mr. Paulson upon
7 payment or institute suit on it.

8 THE COMMISSIONER: It wasn't turned
9 over when he bought it. So two years later the so-called
10 efforts at collection begin. In the meantime, it's still
11 in Mr. Babblas' possession or Maher's possession.

12 THE WITNESS: It wasn't in Maher's
13 possession.

14 THE COMMISSIONER: We don't know. Go
15 ahead, Mr. Paulson.

16

17 BY MR. PAULSON:

18 Q When Mr. Babblas told you it was a
19 bearer note did you know what that meant?

20 A Yes, I took it for granted whoever
21 holds the note, owns the note. It's a bearer note.

22 Q Have you been involved in notes before?

23 A No.

24 Q So you think that's just a general --
25 you are saying that's general knowledge if anybody who

1 holds a note made out to bearer --

2 A That's what I thought.

3 Q Where would you obtain that
4 information?

5 A Just took it for granted. Mr. Babblas
6 was my attorney for years. He did a good job
7 representing me on whatever he did.

8 THE COMMISSIONER: When you bought the
9 note who did you think was going to make payments to
10 you?

11 THE WITNESS: Who did I think was going
12 to make payments to me? Dick Mahers, Richard Mahers.

13 THE COMMISSIONER: You thought Maher
14 was going to make payments to you?

15 THE WITNESS: Yes.

16 THE COMMISSIONER: Not Mr. Babblas?

17 THE WITNESS: No, it was Maher's note.

18

19 BY MR. PAULSON:

20 Q So you thought Mr. Maher was the debtor
21 on the note?

22 A What do you mean?

23 Q He had to make the payments, so
24 therefore, he was going to make the payments to you?

25 A Either him or if he didn't make it,

1 then I'd look at the note to get it, the second deed of
2 trust. Pete says I've got a secured deed of trust here
3 for \$65,000. It's a bearer note. And I says, is it
4 secured? He says, it's more than secured. It's a good
5 investment. He was my attorney for years and years and
6 years and he was a businessman, too, and there was no
7 reason for me to doubt what he said. That's the reason I
8 sent him the \$65,000.

9 THE COMMISSIONER: But you thought
10 Maher was going to make payments to you?

11 THE WITNESS: Yes, if he didn't make
12 it, then I'd look for the note.

13 THE COMMISSIONER: You thought Maher
14 was going to be writing you a check for the payments or
15 paying you in cash?

16 THE WITNESS: I wasn't concerned that
17 much because it was a secured deed of trust.

18 THE COMMISSIONER: You didn't care who
19 was supposed to make the payments?

20 THE WITNESS: As long as I got my
21 money.

22 THE COMMISSIONER: You had no idea who
23 was obligated?

24 THE WITNESS: Yes, the second deed of
25 trust, the property was obligated.

1 THE COMMISSIONER: You didn't have it
2 appraised?

3 THE WITNESS: I didn't need to. I knew
4 what it was worth. I never looked at the house. I'd
5 never seen the home. I didn't need to.

6 THE COMMISSIONER: How did you know
7 what it was worth?

8 THE WITNESS: How did I know? Pete
9 Babblas told me. He lived in Virginia Beach.

10 THE COMMISSIONER: Babblas told you
11 what the property was worth?

12 THE WITNESS: He said it was worth
13 more.

14 THE COMMISSIONER: Is he the one that
15 told you Maher was going to make the payments?

16 THE WITNESS: I don't remember. I knew
17 he was going to get --

18 THE COMMISSIONER: Who else would have
19 told you?

20 THE WITNESS: He might have told me.

21 MR. HECHT: Mr. Commissioner, you are
22 asking him something from ten years ago and the gentleman
23 is doing the best he can.

24 MR. PAULSON: Couple of final
25 questions.

1 BY MR. PAULSON:

2 Q Did Mr. Babblas ever prepare a note
3 from Mr. Maher to you for the \$65,000?

4 A I don't know. I don't remember.

5 Q Did you ever get a copy of a note from
6 Mr. Maher to you?

7 A I don't know. I don't have anything in
8 my possession anymore. Took it all to Mr. Stallard when
9 Pete died.

10 Q When did you expect to start getting
11 payments from Mr. Maher?

12 A I don't know.

13 Q Did you ever receive any payments from
14 Mr. Maher?

15 A No.

16 Q Did you ever make demand of Mr. Maher?

17 A No.

18 MR. PAULSON: I have no further
19 questions.

20 MR. RILEE: No questions.

21 MR. HECHT: I have no further
22 questions. We rest.

23

24

25



Original

DEED OF TRUST NOTE

\$ 68,000.00

Virginia Beach, V

January 1, 1984

FOR VALUE RECEIVED, the undersigned promises to pay to the Order of ARNOLD B. AMDURSKY and D. DIANE AMDURSKY negotiable and payable without offset, the principal sum of Sixty Eight Thousand and 00/100 (\$68,000.00), payable at 1113 Battle Royal Circle, Virginia Beach, Virginia 23455 or at such other place as holder may designate in writing, with interest from date at the rate of _____ percent () per annum on the unpaid balance until paid, payable as follows:

Payable in monthly installments of One Thousand Seven Hundred Ninety Three and 33/100 Dollars (\$1,793.33) of which One Thousand and 00/100 Dollars (\$1,000.00) is to be applied to the principal balance and Seven Hundred Ninety Three and 33/100 Dollars (\$793.33) is to be applied to interest.

Payments are to begin February 1, 1984.

This Note is due and payable in full on January 1, 1985.

Right of anticipation in whole or in part is hereby reserved without penalty.

Makers shall pay to the Noteholders a late charge of five (5) percent of any installment not received by the Noteholders within seven (7) days after the installment is due.

In the event of default in the payment of any installment or breach of any covenant contained in the Deed of Trust securing this note, or in the event of the bankruptcy of any of the makers or their endorers, the entire unpaid indebtedness evidenced hereby shall forthwith become due and payable at the election of the holder. Failure to exercise such election at any time or times, shall not be deemed a waiver to exercise the same at any subsequent time.

The makers and endorers hereof waive the benefit of their respective homestead exemptions as to this debt and also waive presentment, demand, protest and notice of dishonor; and agree that time of payment may be extended or waived from time to time without notice.

The makers and endorers hereof agree to pay all costs of collection, including a 25% attorney's fee, if incurred in the event of default in payment of principal or interest when due, or in the event of the bankruptcy or receivership of any maker or endorser hereof.

WILLIAM A. CROSBY and KIMBLYN F. CROSBY, Trading As Crosby Construction Company

By: William A. Crosby (SEAL)

202

By: Kimbllyn F. Crosby

This note is secured by a deed of trust of even date herewith to Donald H. Clark and Eric A. Hauser, Trustee(s) on property designated as Lots 5 & 17, Block 26, Resubdivision of Part of Croatan Beach

Countersigned for identification only:

Eric A. Hauser, Trustee

TS# 1 ~~2~~ 4-3-01

DH

The undersigned do hereby assign the foregoing note for \$68,000.00 to the order of bearer without recourse on the undersigned.

Arnold B. Amdursky
Arnold B. Amdursky

D. Diane Amdursky
D. Diane Amdursky

PURCHASE MONEY DEED OF TRUST NOTE

\$88,000.00

Virginia Beach, Virginia
December 9, 1981

FOR VALUE RECEIVED, WILLIAM A. CROSBY and KIMBLYN F. CROSBY TRADING AS CROSBY CONSTRUCTION COMPANY ("Makers") promise to pay to ARNOLD B. AMDURSKY and D. DIANE AMDURSKY ("Noteholders"), or order, without offset, the principal amount of EIGHTY-EIGHT THOUSAND DOLLARS (\$88,000.00), with interest from the date of this Deed of Trust Note ("Note") at ten percent (10%) per annum on the unpaid balance beginning on April 1, 1982. This principal and interest shall be payable at 109 77th Street, Virginia Beach, Virginia 23457, or such other place as the Noteholders may otherwise specify in writing from time to time, as follows:

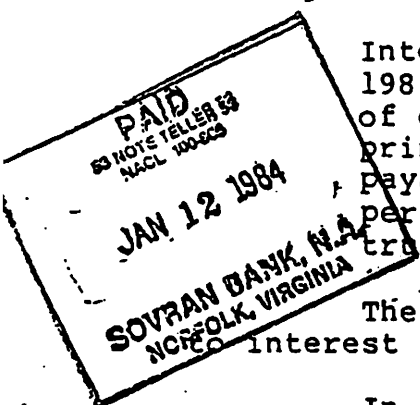
Interest only shall be payable beginning on May 1, 1982, and shall continue to be paid on the 1st day of each calendar month thereafter with the entire principal and all then accrued interest due and payable on December 1, 1983, or upon sale of property, which secures this note by a first deed of trust, whichever occurs first.

The payments described above shall be applied first interest and then to principal.

In the event of a breach of any covenant contained in the hereinafter-described deed of trust or if any deficiency in the payment of any installment under this Note is not made within ten (10) days of the due date of said installment, the entire principal sum and accrued interest shall at once become due and payable without notice at the option of the holder of this Note. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

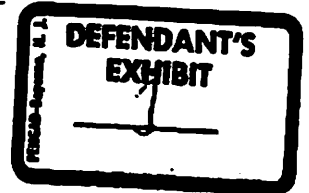
Makers shall pay to the Noteholders a late charge of five percent (5%) of any installment not received by the Noteholders within seven (7) days after the installment is due. It is also agreed that, in the event of default under this Note, or the deed of trust securing it, the Makers and the endorsers of this Note shall pay all costs and expenses of collection, including reasonable attorneys' fees, if incurred.

It is further agreed that this Note, or any part of the principal or interest on it, may be renewed from time to time by the Noteholders, at the request of the then owners of the mortgaged property, or at the request of any party bound by this Note, or who has assumed or may hereafter



4-3-95
13#2 200

204



assume payment of it, without the consent of or notice to other parties bound by this Note, and without releasing them from liability in connection with it.


The Makers and endorsers waive demand, presentment, protest and notice of dishonor, and the benefit of their homestead exemptions as to this obligation.

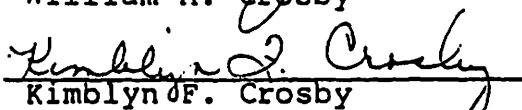
The Makers reserve the right of anticipation, in whole or in part, at any time, without penalty.

This Note and the interest are secured by deed of trust of even date herewith, the provisions of which are made a part of this Note, on property located in Virginia Beach, Virginia and this Note is to be construed according to the laws of Virginia.

Witness the following signatures and seals:

WILLIAM A. CROSBY AND
KIMBLYN F. CROSBY, TRADING AS
CROSBY CONSTRUCTION COMPANY,

By: 
William A. Crosby

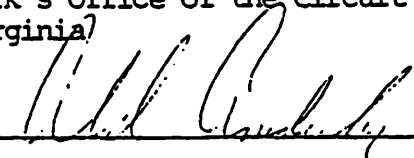
By: 
Kimblyn F. Crosby

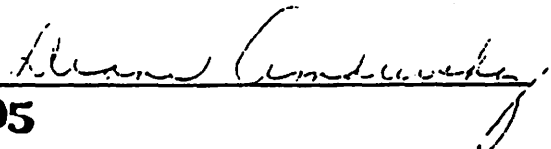
COUNTERSIGNED BY TRUSTEE FOR IDENTIFICATION
PURPOSES ONLY:


Trustee

EAH:A
DTN-CC1

Pay to the order of VIRGINIA NATIONAL BANK as per Deed of Assignment dated May 19, 1982, recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia?





THIS DEED OF TRUST, Made this 1st day of January, 1984, between WILLIAM A. CROSBY and KIMBLYN F. CROSBY, Trading As Crosby Construction Company, Grantor, and DONALD H. CLARK of Virginia Beach, Virginia and ERIC A. HAUSER of Virginia Beach, Virginia, Trustees,

WITNESSETH: That the said party of the first part does hereby grant and convey with General Warranty unto the said party of the second part, the following described property, to-wit:

ALL THOSE certain lots, pieces or parcel of land, with the buildings and improvements thereon, situate, lying and being in the City of Virginia Beach, Virginia, and known, numbered and designated as Lots 5 and 17, in Block 26, as shown on that certain plat entitled "Resubdivision of Part of Croatan Beach, Princess Anne Co., Va.," which plat is duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Map Book 37, at Page 11.

IT BEING the same property conveyed to the Grantors herein by deed of Arnold B. Andursky and D. Diane Andursky, dated December 7, 1981, and duly recorded in the Clerk's Office aforesaid in Deed Book 2183, at Page 491.

NOTICE: THE DEBT SECURED BY THIS DEED OF TRUST IS SUBJECT TO CALL IN FULL OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT OF SALE OR CONVEYANCE OF THE PROPERTY SECURED BY THIS DEED OF TRUST.

If all or any part of the property or an interest therein is sold or transferred without the prior written consent of the Noteholders, the Noteholders may at their option declare all the sums secured by this Deed of Trust to be immediately due and payable.

The lien secured by this Deed of Trust represents a refinancing of an existing lien made by the Grantors herein to the Trustees herein dated December 9, 1981, and duly recorded in the Clerk's Office aforesaid in Deed Book 2183, at Page 493, securing the sum of \$8,000.00 to Arnold B. Andursky and D. Diane Andursky.

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

IN TRUST, to secure to the holder or holders thereof, the payment of a principal

indebtedness of Sixty Eight Thousand and 00/100 Dollars (\$68,000.00)

evidenced by one certain negotiable promissory notes of even date herewith, made by the maker hereof, payable to the order of Arnold B. Andursky and D. Diane Andursky with interest from date at the rate of ----- per cent

(--- 2) per annum, said notes being payable at 1113 Battle Royal Circle,

Virginia Beach, Virginia 23455

or at such other place as the

holder may designate in writing and are numbered and mature as follows:

NOTE NUMBER	AMOUNT	MATURITY OF NOTE	INTEREST PAYABLE
	\$68,000.00	January 1, 1985	Monthly

Payable in monthly installments of One Thousand Seven Hundred Ninety Three and 33/100 Dollars (\$1,793.33) of which One Thousand and 00/100 Dollars (\$1,000.00) is to be applied to the principal balance and Seven Hundred Ninety Three and 33/100 Dollars (\$793.33) is to be applied to interest. Payments are to begin February 1, 1984.

The lien of this Dood of Trust shall be inferior and subordinate to the lien of that certain Dood of Trust dated December 30, 1983, made by the Grantors herein to Princess Anne Service Corporation, trustee, securing the amount of \$211,000.00 to Virginia Beach Federal Savings and Loan Association, to be recorded simultaneously herewith and immediately prior hereto. Any default in the terms and covenants of said superior dood of trust shall constitute a default in this instrument and the Note it secures.

And upon the further trust that the said parties of the first part may remain in quiet possession of said property and take the profits thereof to their own use until default be made in the payment of the principal or interest of the debt hereby secured or in the observance of any covenant or condition herein contained, and upon such default being made the said Trustee or Trustees shall, so soon thereafter as requested so to do by any beneficiary hereunder, sell the above described property at public auction at such time and place and upon such terms and conditions as he may deem advisable after first advertising the time, place and terms of sale for five different times in a newspaper published in the City of Virginia Beach, Virginia, without other notice to the party of the first part, or his successor in title, or to the owner of said property at the time of sale; and out of the proceeds of said sale Trustee or Trustees shall first pay the expenses attending the execution of this trust, including commission

to the said Trustee or Trustees at the rate of five per cent (5%) of the gross proceeds of said sale and, second, shall pay to the holder or holders of the unpaid notes hereby secured the amount due thereon, and third, the balance to the owner of said property at the time this deed of trust is executed, or his heirs, devisees or assigns.

This deed of trust is executed pursuant to Sections 55-59 and 55-60 of the Code of Virginia, and acts amendatory thereto, except otherwise indicated herein.

Identified by Trustees' signature.

Any Trustee may act.

Exemptions waived.

Subject to all upon default.

Renewal or extension permitted.

Priority in direct order of maturity.

Such hazard insurance as the noteholder requires shall be carried in an amount equal to at least the balance due on the debt hereby secured.

In the event of fire or other casualty, the proceeds from the insurance shall be disbursed by the Trustee in the same manner as in a foreclosure sale.

The word "party" as used herein shall be construed to mean one or more persons as the context may require.

IN WITNESS WHEREOF, each Grantor has hereunto set his or her hand and seal or caused this Deed of Trust to be executed by its officers pursuant to due authority.

William A. Crosby and Kimblyn F. Crosby,
Trading As Crosby Construction Company

By: (Signature) (SEAL)
William A. Crosby

By: (Signature) (SEAL)
Kimblyn F. Crosby

STATE OF VIRGINIA

CITY OF VIRGINIA BEACH

, to-wit:

The foregoing instrument was acknowledged before me this 14th day of January, 1984, by William A. Crosby and Kimblyn F. Crosby.

208

(Signature)
Notary Public

My Commission Expires: 11/11/87

BK 2308 PG 1504

Virginia
In the Clerk's Office of the Circuit Court of Virginia Beach
This instrument was received on 1 June 1964
certificate of acknowledgment thereon submitted, submitted to record. The fee imposed by §§ 58-54.1 of the Code
has been paid in the amount of \$.....
TESTE J. CURTIS FRUIT, Clerk

William B. C.

Certified to be a TRUE COPY
of record in my custody.
J. Curtis Fruit, Clerk
Circuit Court, Virginia Beach, Va.
BY: *[Signature]*
Deputy Clerk

04210300091

33620

ARNOLD B. AMDURSKY, and
D. DIANE AMDURSKY,
husband and wife

#12150

DEED OF BARGAIN AND SALE

WILLIAM A. CROSBY and
KIMBLYN F. CROSBY,
husband and wife,
trading as
CROSBY CONSTRUCTION COMPANY

THIS DEED, Made this 7th day of December, 1991, by and
between ARNOLD B. AMDURSKY and D. DIANE AMDURSKY, husband and
wife, first parties, and WILLIAM A. CROSBY and KIMBLYN F. CROSBY,
husband and wife, trading as CROSBY CONSTRUCTION COMPANY, second
parties, whose mailing address is Post Office Box 1011, Virginia
Beach, Virginia, 23451.

W I T N E S S E S :

That for and in consideration of the sum of TEN DOLLARS
(\$10.00), and other good and valuable consideration, the receipt
of which is hereby acknowledged, the said first parties do hereby
grant and convey with GENERAL WARRANTY and English covenants of
title, unto WILLIAM A. CROSBY and KIMBLYN F. CROSBY, husband and
wife, trading as CROSBY CONSTRUCTION COMPANY, second parties, the
following described property, to-wit:

ALL THOSE certain lots, pieces or parcels of
land, with the appurtenances thereunto belonging,
and the improvements thereon, lying, situate and
being in the Lynnhaven Borough of the city of
Virginia Beach, Virginia, and being known, numbered
and designated as LOTS 5 and 17, in BLOCK 26, as
shown on that certain plat entitled "RESUBDIVISION

CLARK & STANT, P.C.
ATTORNEYS
VIRGINIA BEACH, VIRGINIA

4-3-95
#6
210
RW

842102500492

OF PART OF CROATAN BEACH, PRINCESS ANNE CO., VA., dated June 1954, made by C. A. Bamforth, duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Map Book 37, & Page 11, to which plat is hereby made for a more particular description of said lots.

IT BEING the same property conveyed to the first parties herein by deed of Bangel- Kramer Enterprises, Inc., a Virginia corporation, dated July 15, 1978, which deed is duly of record in the Clerk's Office aforesaid, in Deed Book 1840, at Page 277.

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

WITNESS the following signatures and seals:

Arnold B. Amursky (SEAL)
Arnold B. Amursky

D. Diane Amursky (SEAL)
D. Diane Amursky

COMMONWEALTH OF VIRGINIA,
CITY OF VIRGINIA BEACH, to-wit:

9th The foregoing instrument was acknowledged before me this day of December, 1981, by ARNOLD B. AMDURSKY and D. DIANA AMDURSKY, husband and wife.

[Signature]
Notary Public
My Commission expires: 1/16/82.

December 81 10
125.00
Sig: W. Stewart

Certified to be a TRUE COPY
of record in my custody.
J. Curtis Fruit, Clerk
Circuit Court, Virginia Beach, Va.
BY: [Signature]
Deputy Clerk

CROSBY CONSTRUCTION COMPANY
BUILDER—DEVELOPER
P.O. BOX 1009
VIRGINIA BEACH, VA. 23451
(804)425-8914

March 17, 1986

Virginia Beach Federal
Savings and Loan
P. O. Box 848
Virginia Beach, Virginia 23451


Re: 550 South Atlantic Avenue, Virginia Beach, Virginia
23451
Account # 5-01-04-004-0013-2

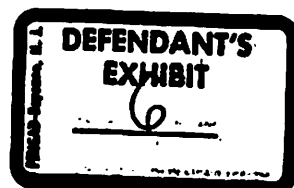
This is to acknowledge that Richard G. Maher and Patricia J. Maher have been under contract on the above mentioned residence since June 15, 1984. They have paid the mortgage payment averaging approximately \$2500.00 from June 15, 1984 and every month thereafter through March 1986.

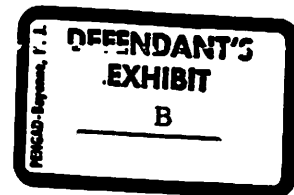
Kimbllyn F. Crosby, A.H.B.

Kimbllyn F. Crosby, President

Crosby Development and Construction Company, Inc.

4-3-95
IT'S #7  





This Agreement made and entered into this 14th day of June, 1984, by and between William A. Crosby and Kimblyn F. Crosby ("Crosbys"); Arnold B. Amdursky and D. Diane Amdursky ("Amdurskys"), and Richard G. Maher and Patricia J. Maher ("Mahers").

RECITALS:

1. The Crosbys are owners of certain real property briefly described as Lots 5 and 17, in Block 26, on a plat of Croatan Beach, which property is more familiarly known as 550 South Atlantic Avenue, Virginia Beach, Virginia.
2. The Mahers are desirous of renting said property with an option to purchase it.
3. The Amdurskys are the holders of a note secured by second deed of trust on said property which note has a current balance due of approximately \$64,000.00.
4. There is a first deed of trust on the property held by Virginia Beach Federal Savings and Loan Association with a principal balance of approximately \$211,000.00 which loan may or may not be assumable.
5. There is a third deed of trust on said property held by members of the Crosby family with a principal balance due of approximately \$20,000.00.

THE AGREEMENT

1. The Mahers agree to rent the property from the Crosbys for a term of up to fifteen (15) months commencing June 15, 1984. The term of the rental period shall be at the option of the Mahers providing there is no default in the other provisions of this agreement.
2. The rent shall be due and payable upon the first of each month commencing July 1, 1984 and shall be equal to the amount of the payments due to Virginia Beach Federal Savings and Loan Association, inclusive of principal, interest, taxes and insurance and shall be adjustable in accordance with any

115#8 for 4.3.95

payment changes pursuant to the provisions of the loan documents. Mahers understand that said loan is an adjustable rate loan and its interest rate may change and that their rent will be adjusted accordingly.

3. Possession shall be on June 15, 1984 at which time pro-rated rent for the month of June and the option payment shall be due and payable as a condition precedent to said possession.

4. The option payment from the Mahers to the Crosbys shall be in the amount of Thirty Thousand and 00/100 dollars (\$30,000.00) payable in cash or the equivalent prior to the Mahers being granted possession. Said payment is not refundable. In additional consideration for said payment, the Crosbys shall pay the amount due on the third deed of trust and deliver to the Mahers a cancelled note and certificate of satisfaction, same to be in recordable form and to be recorded when specified by the Mahers.

5. Commencing on July 15, 1984 and upon the 15th of each month thereafter, the Mahers shall pay to the Amdurskys the sum of Ten Thousand and 00/100 dollars (\$10,000.00) until the Amdurskys receive the sum of Fifty Thousand and 00/100 dollars (\$50,000.00). Upon the receipt of said sum the Amdurskys shall assign the second deed of trust note to the Mahers. It is agreed, however, that upon said assignment, that the Crosbys shall have no personal liability upon said note and that, should for any reason the Mahers deem it necessary to exercise their rights under the deed of trust or note, the Mahers shall look only to the secured property and not to any makers or endorsers on said note.

6. At any time during said fifteen (15) month period after all other conditions of this agreement have been performed, the Mahers shall have the right to request and receive a general warranty deed from the Crosbys conveying marketable title to the property. Said conveyance shall be expressly subject ^{only/} to the deed of trust held by Virginia Beach Federal Savings and Loan Association and either or both of the two other deeds of trust that the Mahers may have elected not to

release of record, (Crosbys to save Mahers harmless from any liens which may attach prior to conveyance by virtue of their ownership).

7. Until all terms of this agreement have been performed, the Mahers agree not to make modifications or alterations to the property without the express consent of the Crosbys.

8. Upon possession, the responsibility for maintenance and repairs shall be the responsibility of the Mahers (with the exception of those items heretofore agreed to be corrected by the Crosbys).

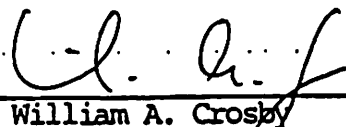
9. Should Mahers default in any provision of this agreement and said default remain uncured for ten (10) days following delivery of a written notice of such default to the Mahers at the property address above, all payments made to that date shall be retained by the Crosbys as liquidated damages and the Crosbys shall be entitled to regain possession of the premises.

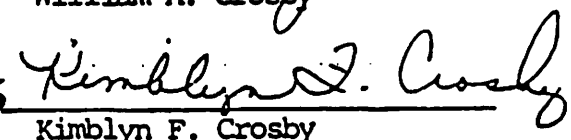
10. Should the Mahers default in the payments to the Amdurskys as set forth in paragraph five (5) above, such sums as may have been paid prior to default shall be retained by the Amdurskys and the Crosbys shall be entitled to a credit therefor.

11. Upon conveyance by deed as specified in paragraph six (6), it is agreed that the Crosbys shall pay the cost of preparation of the deed and the State Grantors' Tax. All other expenses of conveyance shall be borne by the Mahers including, but not limited to, attorneys' fees, recording costs, assumption fees and any other required or optional costs.

12. This agreement is assignable by all parties and shall inure to the benefit of the successors in interest of all parties.

Witness the following signatures:


William A. Crosby

215 
Kimblyn F. Crosby

Richard G. Maher
Richard G. Maher

Patricia J. Maher
Patricia J. Maher

Arnold B. Amdursky
Arnold B. Amdursky

D. Diane Amdursky
D. Diane Amdursky

*Crosey Development and
Construction Co., Inc.*

P.O. Box 1009
Virginia Beach, VA 23451
(804) 425-8941

Response 1

October 8, 1986

Mr. Louis G. Paulson
Paulson and Fancher, P. C.
1432 North Greatneck Road
Virginia Beach, Virginia 23454

Re: Maher rental history @ 550 South Atlantic Avenue/Croatan

Dear Lou:

As per your request I have worked up a history of rental payments made by Mr. R. G. Maher for 550 South Atlantic Avenue at Croatan Beach.

<u>Date</u>	<u>Amount Paid</u>
11-14-85	\$2592.57
12-11-85	\$2592.57
1-15-86	\$2592.57
2-4-86	\$2592.57
3-13-86	\$1951.55
4-17-86	\$2272.06 (Made to VBFS&L)
6-5-86	\$2272.06
7-23-86	\$4544.12 (2 Payments)
10-6-86	\$4544.12 (2 Payments)

Since the rental amount changed to \$2500.00 as of August 1, 1986 the last payment made on October 6, 1986 is \$455.88 short. In accordance with my calculations \$2500.00 for the month of October is also due, bringing the balance due to \$2955.88.

HC#9 4-3-95

October 8, 1986

Cont'd. Pg. 2

Please do not hesitate to call if you have any further questions
or if I may assist in anyway.

Sincerely,

Ann M Butler

Ann M. Butler

AMB;dam

cc: Mr. Richard G. Maher (Certified Mail)
File

CROSBY CONSTRUCTION COMPANY
BUILDER—DEVELOPER
P.O. BOX 1009
VIRGINIA BEACH, VA. 23451
(804)425-8914

March 17, 1986

Virginia Beach Federal
Savings and Loan
P. O. Box 848
Virginia Beach, Virginia 23451

Re: 550 South Atlantic Avenue, Virginia Beach, Virginia
23451
Account # 5-01-04-004-0013-2

This is to acknowledge that Richard G. Maher and Patricia J. Maher have been under contract on the above mentioned residence since June 15, 1984. They have paid the mortgage payment averaging approximately \$2500.00 from June 15, 1984 and every month thereafter through March 1986.

Kimbllyn F. Crosby, A.H.B.
Kimbllyn F. Crosby, President

Crosby Development and Construction Company, Inc.



4-3-95
ITS #7 *[initials]* *[signature]*

AGREEMENT TO SELL

THIS AGREEMENT made this 23rd day of January, 1987, by and between KIMBLYN F. CROSBY, unmarried, hereinafter "Seller"; VICTOR B. PECK, unmarried, hereinafter "Buyer"; ATKINSON REALTY and MARSHALL-EWALD REALTY, hereinafter "Agents".

WITNESSETH:

For and in consideration of the sum of Five Thousand Dollars (\$5,000.00) by check in hand paid, the receipt whereof is hereby acknowledged, the Buyer agrees to buy and the Seller agrees to sell for the sum of Three Hundred Twenty Five Thousand Dollars (\$325,000.00) the following described property, to-wit:

All those certain lots, pieces and parcels of land, with the buildings and improvements thereon, situate, lying and being in the City of Virginia Beach, Virginia, and being known, numbered and designated as Lots 5 and 17 in Block 26, as shown on that certain plat entitled "Resubdivision of Part of Croatan Beach, Princess Anne Co., Va.", which plat is duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Map Book 37, at page 11.

It being the same property conveyed to William A. Crosby and Kimblyn F. Crosby by deed of Arnold B. Amdursky, et ux, dated December 7, 1981 and duly recorded in the aforesaid Clerk's Office in Deed Book 2183 at page 491; the said William A. Crosby having departed this life and the property having passed to the Seller by operation of law.

together with improvements thereon including: Jenn-Aire range, refrigerator, dishwasher, compactor, washer and dryer.

4-3-95
475#10 [Signature]

[Signature] 220

The purchase price shall be paid as follows:

\$ 5,000.00	earnest money deposit shall be applied to the purchase price
45,000.00	additional cash at settlement
209,000.00	(approximate) by assumption by Seller of first deed of trust note held by Virginia Beach Federal Savings & Loan with the Seller remaining on the note; or, if not assumable, Buyer to obtain new financing.
66,000.00	(Approximately) Buyer's note secured by a deed of trust on the subject property payable to Seller at 9 1/2% interest per annum, principal and accrued interest payable one year from the date of settlement.
\$325,000.00	Total Purchase Price

It is understood and agreed by the Buyer and Seller that all earnest money deposit with this Agreement shall remain in escrow with the Seller's Attorney until the date of settlement.

Settlement shall be on or before May 1, 1987, or as soon thereafter as possible, allowing reasonable time to process the specified loans and for Seller to correct any defects reported by a title examiner.

Possession is to be on April 1, 1987. Buyer shall pay as rent to Seller an amount equal to the April, 1987, payment on the note held by Virginia Beach Federal Savings and Loan which amount Seller shall apply towards such payment. The note held by Virginia Beach Federal Savings and Loan Association shall be current at settlement.

Buyer agrees to apply for the assumption of the Virginia Beach Federal deed of trust and the specified financing promptly and to do everything in good faith necessary to obtain the said loan or lender approval for assumption of existing loan. Buyer and Seller realize

that the above described \$209,000.00 Note with Virginia Beach Federal is not assumable without approval of the Lender. In the event Lender refuses to permit the assumption of the loan by the Buyer, Seller hereby agrees to loan Buyer the balance owed on the Virginia Beach Federal Savings and Loan note, evidenced by Buyer's promissory note secured by a deed of trust on the property at 10% per annum interest and to pay off the Virginia Beach Federal Savings and Loan note. Monthly payments on such loan shall be based upon a thirty year amortization, with monthly payments of principal and interest, and the entire note shall be due and payable no later than April 1, 1992. The note and deed of trust will be prepared by Seller's Attorney, shall contain standard FNMA language and the cost of preparation of the note and deed of trust shall be paid by Buyer and shall not exceed \$100.00.

The Seller agrees, at settlement, to deliver to Buyer a fee simple deed with general warranty and English Covenants of Title, subject to any easements and restrictions of record thereon not adversely affecting marketability of the title. Title to the property shall be free and clear of all liens, tenancies, and encumbrances of every kind except for the Disputed Deed of Trust (hereinafter defined).

Buyer recognizes that a dispute exists with respect to the amount owed on a certain note (the "Disputed Note") secured by a second deed of trust on the subject property (the "Disputed Deed of Trust") (See attachment A). Seller warrants that the \$50,000.00 cash payment will be held in escrow by Seller's Attorney to pay off the Disputed Note and release the Disputed Deed of Trust. Seller believes that payoff

of the Disputed Note will not exceed \$64,000.00, and Seller will be responsible for payment of the Disputed Note and any interest accruing thereon subject to the hereinafter stated conditions since January 16, 1987. Buyer hereby understands that the holder of the Disputed Note is claiming interest on the note from July 1, 1984 until January 15, 1987, which Seller denies owing. If such dispute is not resolved by September 1, 1987, (time being of the essence), and the Disputed Deed of Trust is not removed of record as a lien on the property which is the subject of this Agreement, Seller shall cause the Disputed Deed of Trust to be removed of record. In any event, Seller shall, promptly following settlement, institute suit in the appropriate jurisdiction to determine the holder of the Disputed Note and the amount owing thereon. Upon institution of such suit, Seller shall pay into the Court in which such suit is instituted the \$50,000.00 cash payment made by Buyer. Buyer hereby agrees to increase the above stated purchase price by an amount equal to 50% of any interest that a court of competent jurisdiction determines is owed on the Disputed Note through January 16, 1987, and which Seller must pay. The adjustment to the purchase price payable by Buyer shall not exceed \$12,500.00. Buyer hereby agrees to pay the additional sum to Seller within seven (7) days after demand for same upon delivery of the Disputed Note marked "paid" along with a Certificate of Satisfaction authorizing release of the Disputed Deed of Trust. In the event Buyer fails to pay the amount demanded by Seller, Buyer shall be in default of this Agreement and said default shall constitute a default of the above described

deed of trust note in the approximate amount of \$66,000.00. All provisions of this paragraph shall survive settlement of the subject property.

Seller warrants that all mortgage payments and escrow accounts will be current at the date of settlement and all taxes, insurance, rents and interest shall be prorated as of the date of settlement and all fuel oil shall pass gratis.

Seller agrees to deliver the property at settlement or at possession, whichever occurs first, in substantially the same condition as of the date of this Agreement, free of personal property, insect infestation, debris and trash. Seller expressly disclaims all representations and warranties concerning the condition of the premises.

Buyer covenants that his execution of this Agreement is made after full inspection of the property and that no representations as to said property or any improvements thereon have been made to him by the Agent(s), and that the said offer of purchase was made by the Buyer relying solely upon his own judgment.

Buyer reserves the right to make a "walk through" inspection to determine the condition of the property. The Buyer acknowledges that he has not relied upon any statements or representations by the undersigned Seller or agents which are not herein expressed. All utilities necessary for the "walk through" inspection shall be provided by the Seller.

Seller shall provide a statement from a licensed exterminating company prior to settlement showing the Property to be free of termite and other wood destroying insect infestations and/or structural damage therefrom, and without any moisture damage reported by the examiner to the main structure and garage. Cost of inspection and any necessary treatment and repairs shall be paid by Seller.

Buyer and Seller agree that Agent(s) was the sole procuring cause of this Agreement, and provided settlement occurs, Seller agrees to pay Agent(s) a brokerage fee for services in the amount of Five Percent (5%) of the sales price of the Property, said commission to be paid Fifty Percent (50%) to Marshall-Ewald Realty (Listing Firm), and Fifty Percent (50%) to Atkinson Realty (Selling Firm). Payment of said brokerage fee is to be one year from the date of settlement and will be secured by assignment of the promissory note and second deed of trust to be taken back by Seller which shall name the Listing and Selling Firms as additional secured parties. If either Buyer or Seller defaults under this Agreement, such defaulting party shall be liable for the brokerage fee due Agent(s) and for any expenses, including reasonable attorney fees incurred by the Agent(s) or nondefaulting party in connection with this transaction or with the enforcement of this Agreement. Metro MLS service fee, if shared, to be: 50% Listing Firm/50% Selling Firm.

The parties agree and fully understand that this Agreement shall be binding on the parties, their heirs, assigns, executors, and administrators.

This Agreement represents the full understanding between the Buyer and the Seller; there are no written or oral agreements between the parties, other than those contained herein.

Witness the following signatures and seals:

SELLER: Kimbllyn F. Crosby (SEAL)
Kimbllyn F. Crosby

BUYER: Victor B. Peck (SEAL)
Victor B. Peck

AGENTS: ATKINSON REALTY

By William L. Smith
Title Agent

MARSHALL-EWALD REALTY

By Marie N. Jandow
Title Agent

Settlement Statement

U.S. Department of Housing
and Urban Development



OMB No. 2502-0265 (Exp. 12-31-86)

B. Type of Loan

1. <input type="checkbox"/> FHA	2. <input type="checkbox"/> FmHA	3. <input type="checkbox"/> Conv. Unins.	6. File Number	7. Loan Number	8. Mortgage Insurance Case Number
4. <input type="checkbox"/> VA	5. <input type="checkbox"/> Conv. Ins.	OTHER	74-112-001	04-0040013-2	

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name and Address of Borrower VICTOR B. PECK 740 S. Atlantic Avenue Virginia Beach VA 23451	E. Name and Address of Seller KIMBLYN F. CROSBY Construction Co. 550 S. Atlantic Avenue Virginia Beach VA 23451	F. Name and Address of Lender Virginia Beach Federal Savings and Loan Assoc. 210 25th Street Virginia Beach VA 23451
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G. Property Location 550 S. Atlantic Avenue Virginia Beach VA 23451 Lots 5 and 17, Block 26 Part of Croatan Beach	H. Settlement Agent CLARK & STANT, P.C. Place of Settlement 900 One Columbus Center Virginia Beach VA 23462	I. Settlement Date Aug. 17, 1987
---	--	--

J. Summary of Borrower's Transaction				K. Summary of Seller's Transaction			
100. Gross Amount Due From Borrower				400. Gross Amount Due To Seller			
101. Contract sales price	325,000.00			401. Contract sales price	325,000.00		
102. Personal property				402. Personal property			
103. Settlement charges to borrower (line 1400)	4,780.47			403. Escrow Balance	1,099.35		
104. Escrow Balance	1,099.35			404.			
105.				405.			
Adjustments for items paid by seller in advance				Adjustments for items paid by seller in advance			
106. City/town taxes	to			406. City/town taxes	to		
107. County taxes	to			407. County taxes	to		
108. Assessments	to			408. Assessments	to		
109.				409.			
110. Insurance	08/17	12/27/87	221.69	410. Insurance	08/17	12/27/87	221.69
111.				411.			
112.				412.			
120. Gross Amount Due From Borrower	331,101.51			420. Gross Amount Due To Seller	326,321.04		
200. Amounts Paid By Or In Behalf Of Borrower				500. Reductions in Amount Due To Seller			
201. Deposit or earnest money	5,000.00			501. Excess deposit (see instructions)			
202. Principal amount of new loan(s)				502. Settlement charges to seller (line 1400)	952.77		
203. Existing loan(s) taken subject to	207,427.16			503. Existing loan(s) taken subject to	207,427.16		
204.				504. Payoff of first mortgage loan			
205. Loan from Seller	67,572.84			505. Payoff of second mortgage loan			
206. Rent 8/18/ to 8/31	931.37			506. Deposit on Contract	5,000.00		
207.				507.			
208.				508. Loan to Buyer	67,572.84		
209.				509. rent 8/18 to 8/31	931.37		
Adjustments for items unpaid by seller				Adjustments for items unpaid by seller			
210. City/town taxes	06/30	to 08/17/87	312.43	510. City/town taxes	06/30	to 08/17/87	312.43
211. County taxes	to			511. County taxes	to		
212. Assessments	to			512. Assessments	to		
213. Interest	07/31	08/17/87	900.52	513. Interest	07/31	08/17/87	900.52
214.				514.			
215.				515.			
216.				516.			
217.				517.			
218.				518.			
219.				519.			
220. Total Paid By/For Borrower	282,144.32			520. Total Reduction Amount Due Seller	283,097.09		
300. Cash At Settlement From/To Borrower				600. Cash At Settlement To/From Seller			
301. Gross amount due from borrower (line 120)	331,101.51			601. Amount due to seller (line 420)	326,321.04		
302. Less amounts paid by/for borrower (line 220)	282,144.32			602. Reductions in amt. due seller (line 520)	283,097.09		

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550 S. Atlantic Avenue
Virginia Beach VA 23451

Lots 5 and 17, Block 26
Part of Croatan Beach

1. Settlement Agent

CLARK & STANT, P.C.

Place of Settlement

900 One Columbus Center
Virginia Beach VA 23462

1. Settlement Date

Aug. 17,
1987

J. Summary of Borrower's Transaction

100. Gross Amount Due From Borrower

101. Contract sales price	325,000.00
102. Personal property	
103. Settlement charges to borrower (line 1400)	4,780.47
104. Escrow Balance	1,099.35
105.	

Adjustments for items paid by seller in advance

106. City/town taxes to	
107. County taxes to	
108. Assessments to	
109.	
110. Insurance 08/17 12/27/87	221.69
111.	
112.	

120. Gross Amount Due From Borrower

331,101.51

200. Amounts Paid By Or In Behalf Of Borrower

201. Deposit or earnest money	5,000.00
202. Principal amount of new loan(s)	
203. Existing loan(s) taken subject to	207,427.16
204.	
205. Loan from Seller	67,572.84
206. Rent 8/18/ to 8/31	931.37
207.	
208.	
209.	

Adjustments for items unpaid by seller

210. City/town taxes 06/30 to 08/17/87	312.43
211. County taxes to	
212. Assessments to	
213. Interest 07/31 08/17/87	900.52
214.	
215.	
216.	
217.	
218.	
219.	

220. Total Paid By/For Borrower

282,144.32

300. Cash At Settlement From/To Borrower

301. Gross amount due from borrower (line 120)	331,101.51
302. Less amounts paid by/for borrower (line 220)	282,144.32

303. Cash ☒ From ☐ To Borrower

48,957.19

K. Summary of Seller's Transaction

400. Gross Amount Due To Seller

401. Contract sales price	325,000.00
402. Personal property	
403. Escrow Balance	1,099.35
404.	
405.	

Adjustments for items paid by seller in advance

406. City/town taxes to	
407. County taxes to	
408. Assessments to	
409.	
410. Insurance 08/17 12/27/87	221.69
411.	
412.	

420. Gross Amount Due To Seller

326,321.04

500. Reductions in Amount Due To Seller

501. Excess deposit (see instructions)	
502. Settlement charges to seller (line 1400)	952.77
503. Existing loan(s) taken subject to	207,427.16
504. Payoff of first mortgage loan	
505. Payoff of second mortgage loan	
506. Deposit on Contract	5,000.00
507.	
508. Loan to Buyer	67,572.84
509. rent 8/18 to 8/31	931.37

Adjustments for items unpaid by seller

510. City/town taxes 06/30 to 08/17/87	312.43
511. County taxes to	
512. Assessments to	
513. Interest 07/31 08/17/87	900.52
514.	
515.	
516.	
517.	
518.	
519.	

520. Total Reduction Amount Due Seller

283,097.09

600. Cash At Settlement To/From Seller

601. Gross amount due to seller (line 420)	326,321.04
602. Less reductions in amt. due seller (line 520)	283,097.09

603. Cash ☒ To ☐ From Seller

43,223.95

L. Settlement Charges

700. Total Sales/Broker's Commission based on price \$ 325,000 @ 5.00 % = 16,250.00			Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
Division of Commission (line 700) as follows:				
701. \$ 8,190.00	to	Marshall Ewald p.o.c.		
702. \$ 8,060.00	to	Atkinson Realty p.o.c.		
703. Commission paid at Settlement		p.o.c.		16,250.00
704.		p.o.c.		
800. Items Payable In Connection With Loan				
801. Loan Origination Fee	1.00 %		2,074.27	
802. Loan Discount	%			
803. Appraisal Fee	to			
804. Credit Report	to	Virginia Beach Federal	32.00	
805. Lender's Inspection Fee				
806. Mortgage Insurance Application Fee	to			
807. Assumption Fee		Virginia Beach Federal	250.00	
808. Escrow Shortage		Virginia Beach Federal		90.32
809. Late Charges		Virginia Beach Federal		89.45
810.				
811.				
900. Items Required By Lender To Be Paid In Advance				
901. Interest from	to	@ \$ /day		
902. Mortgage Insurance Premium for	months to			
903. Hazard Insurance Premium for	years to			
904.	years to			
905.				
1000. Reserves Deposited With Lender				
1001. Hazard insurance	months @ \$	51.09 per month		
1002. Mortgage insurance	months @ \$	per month		
1003. City property taxes	months @ \$	230.23 per month		
1004. County property taxes	months @ \$	per month		
1005. Annual assessments	months @ \$	per month		
1006.	months @ \$	per month		
1007.	months @ \$	per month		
1008.	months @ \$	per month		
1100. Title Charges				
1101. Settlement or closing fee	to			
1102. Abstract or title search	to			
1103. Title examination	to	Clark & Stant, P.C.	1,100.00	
1104. Title insurance binder	to			
1105. Document preparation	to	Paulson & Fancher, P.C.	100.00	150.00
1106. Notary fees	to			
1107. Attorney's fees	to			
(includes above items numbers:)				
1108. Title insurance	to	Southern Title Insurance	415.00	415.00
(includes above items numbers:)				
1109. Lender's coverage	\$			
1110. Owner's coverage	\$	325,000.00		
1111. 1099 B Preparation		Clark & Stant, P.C.		35.00
1112.				
1113.				
1200. Government Recording and Transfer Charges				
1201. Recording fees: Deed \$	12.00	Mortgage \$ 12.00	Releases \$	24.00
1202. City/county/stamps: Deed \$	162.50	Mortgage \$ 33.80		196.30
1203. State tax/stamps: Deed \$	487.50	Mortgage \$ 101.40		588.90
1204. Grantor's tax on Deed				118.00
1205.				
1300. Additional Settlement Charges				
1301. Survey	to			
1302. Pest inspection	to	A-Active Exterminating		55.00
1303.				
1304.				
1305.				

807. Assumption	Virginia Beach Federal	250.00	
808. Escrow Shortage	Virginia Beach Federal		90.32
809. Late Charges	Virginia Beach Federal		89.45
810.			
811.			
900. Items Required By Lender To Be Paid In Advance			
901. Interest from	to @ \$ /day		
902. Mortgage Insurance Premium for	months to		
903. Hazard Insurance Premium for	years to		
904.	years to		
905.			
1000. Reserves Deposited With Lender			
1001. Hazard insurance	months @ \$ 51.09 per month		
1002. Mortgage insurance	months @ \$ per month		
1003. City property taxes	months @ \$ 230.23 per month		
1004. County property taxes	months @ \$ per month		
1005. Annual assessments	months @ \$ per month		
1006.	months @ \$ per month		
1007.	months @ \$ per month		
1008.	months @ \$ per month		
1100. Title Charges			
1101. Settlement or closing fee	to		
1102. Abstract or title search	to		
1103. Title examination	to Clark & Stant, P.C.	1,100.00	
1104. Title insurance binder	to		
1105. Document preparation	to Paulson & Fancher, P.C.	100.00	150.00
1106. Notary fees	to		
1107. Attorney's fees	to		
(includes above items numbers:)			
1108. Title insurance	to Southern Title Insurance	415.00	415.00
(includes above items numbers:)			
1109. Lender's coverage	\$		
1110. Owner's coverage	\$ 325,000.00		
1111. 1099 B Preparation	Clark & Stant, P.C.		35.00
1112.			
1113.			
1200. Government Recording and Transfer Charges			
1201. Recording fees: Deed \$ 12.00 ; Mortgage \$ 12.00 ; Releases \$		24.00	
1202. City/county/stamps: Deed \$ 162.50 ; Mortgage \$ 33.80		196.30	
1203. State tax/stamps: Deed \$ 487.50 ; Mortgage \$ 101.40		588.90	
1204. Grantor's tax on Deed			118.00
1205.			
1300. Additional Settlement Charges			
1301. Survey	to		
1302. Pest inspection	to A-Active Exterminating		55.00
1303.			
1304.			
1305.			
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)		4,780.47	952.77

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

Victor B. Peck
VICTOR B. PECK

Kimbllyn F. Crosby
KIMBLYN F. CROSBY
t/a Crosby
Kimbllyn F. Crosby
Sellers Construction Co.

Borrowers KIMBLYN F. CROSBY t/a CROSBY
CONSTRUCTION CO.

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.

Eric [Signature]
Settlement Agent

230

Date

August 17, 1987

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U. S. Code Section 1001 and Section 1010.

WRIT OF POSSESSION IN UNLAWFUL DETAINER

VA. CODE ANN. § 8.01 - 470, 472

VA. Beach

CITY OR COUNTY

General District Court

TO ANY AUTHORIZED OFFICER:

You are hereby commanded in the name of the Commonwealth to cause the Plaintiff(s) to have possession of the following premises:

550 SOUTH ATLANTIC AVE

231

You are further commanded to make a return before me within 30 days of this date as to the day and manner of executing this writ.

1-9-87

DATE ISSUED

Linda Sawyer
Deputy ☒ CLERK ☐ JUDGE

I certify that the document to which this authentication is affixed is a true copy of a record in the Virginia Beach General District Court, that I have custody of the record and that I am the custodian of that record.

3-1-98

Date

() Clerk

(-) Deputy Clerk

RETURN DATE

FILE NO.

J. date

12-29-86

V86-28068
H. J. 196
4 CC

WRIT OF POSSESSION IN UNLAWFUL DETAINER

KIMELYN F. CROSBY

PLAINTIFF(S)

Po Box 1009

Virginia Beach, VA

V.

RICHARD G. MAHER

DEFENDANT(S)

PATRICIA J. MAHER

550 South Atlantic Ave

Virginia Beach, VA

23451

CAME TO HAND

DATE AND TIME

SHERIFF

EXECUTED by taking into possession of the within-named property.

1-14-87 @ 12:38

DATE

James Changel and Deft in court

Det. R. H. Ziegler
SHERIFF

by *B. K. Quinn*
DEPUTY SHERIFF



B. R. Overman

Sheriff of Virginia Beach, Va.
VIRGINIA BEACH, VA. 23456
Telephone 427-8689

RE Kimbley F. Cooley vs. Maher
Date 1-12, 1987
Name Richard J. Paterino J. Maher
559 So. Atlantic Ave -
Va Beach Va 23451

24 HOUR NOTICE TO VACATE

**YOU ARE HEREBY NOTIFIED THAT YOU MUST VACATE THESE PREMISES
WITHIN 24 HOURS AS ORDERED BY THE JUDGE OF THE GENERAL
DISTRICT COURT.**

B. R. OVERMAN, Sheriff

L. C. McClary Deputy Sheriff

Time: 11:30 a.m. Door Service

Original - Defendant

Yellow - Sheriff

Pink - Plaintiff

I certify that the document to which this authentication is affixed is a true copy of a record in the Virginia Beach General District Court, that I have custody of the record and that I am the custodian of that record.
Date 3-1-95
[Signature]
() Clerk () Deputy Clerk

Ex 4

LAW OFFICES

PAULSON & FANCHER, P. C.

LOUIS G. PAULSON
ALLEN P. FANCHER
JOHN M. JEFFORDS
STEPHEN R. MEEHAN
DIANE E. McNAMARA

1402 NORTH GREAT NECK ROAD, SUITE 101

VIRGINIA BEACH, VIRGINIA 23454

November 7, 1986

TELEPHONE
(804) 481-6600

Our File No.
86-153

Richard G. and Patricia J. Maher
550 South Atlantic Avenue
Virginia Beach, VA 23451

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Re: FIVE DAY NOTICE TO PAY OR QUIT POSSESSION

Dear Mr. and Mrs. Maher:

Please accept this letter as five days notice to pay or quit possession of the premises located at 550 South Atlantic Avenue.

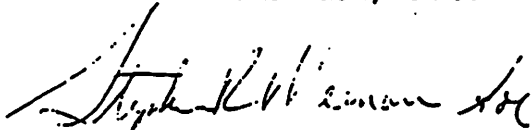
You are presently \$3,183.82 in arrears on rental payments due under your lease of the subject property. You have continued to make untimely partial rental payments which this landlord is unwilling to tolerate. November's rent has not yet been received (\$2,500), and there continues to be a shortfall in each of the three prior months' payments because of your failure to recognize the rent increase which has been in effect since August 1, 1986. In order to avoid immediate eviction you must remit payment in the above mentioned amount within five days of receipt of this letter.

Notwithstanding the above made demand, this letter also serves to give you thirty days notice to vacate the premises. This action has been taken in order to facilitate the sale of this property. Countless attempts to make arrangements with you to show the house to prospective buyers of this property have been frustrated by your evasive conduct.

Should full payment be received within the above specified time, you will be allowed to remain in possession for the next thirty days. Thereafter, should it become necessary, the landlord will seek your removal from the property and will seek all other remedies available at law.

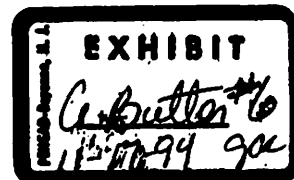
Sincerely,

PAULSON & FANCHER, P.C.


Louis G. Paulson, Esquire

LGP/slc

233



11-13-95
#13
LGP

AH

1/21/87

550 S ATLANTIC AVENUE

I FIRST FLOOR

- 1) REFRAME WALL @ RH BEDROOM & COVER
WALL w/ UNSTAINED ROUGH STAIN SIDING
AS PER ORIGINAL LABOR 300⁰⁰
 ↗ REPLACE LH WALL SIDING, TRIM & DOOR MATES 900⁰⁰
- 2) REPAINT BOTH BEDROOMS & HALL WALLS
 & CEILING TO ORIG. (3 COATS) L/M 550⁰⁰

II SECOND FLOOR

- 1) REPLACE CARPET @ LIVING ROOM (70 SY @ 15⁰⁰) 1050⁰⁰
- 2) RESET BAR CABINET & ISLAND CAB. ABV. LABOR 75⁰⁰
- 3) REPLACE REFRIG 1950⁰⁰
- 4) REMOVE & REPLACE ALL PAINTED OVER PANELING IN
SOLARIUM; STRIP PAINT FROM WINDOW JAMBS;
RESET PATIO DOORS 1800⁰⁰
- 5) RESTAIN & SEAL ABV PANELINGS (4) 120

III THIRD FLOOR

- 1) BEDROOM # 2: REPAINT ENTIRE ROOM & CLOSET
TO SHELL WHITE (3 COATS) 275⁰⁰
- 2) HALL BATH: STRIP WALLPAPER & REPAINT
TO SHELL WHITE (SEMI-GLOSS) 150⁰⁰
- 3) MASTER BATH/CLOSET: REMOVE WALL-
PAPER & REPAINT 150⁰⁰
- 4) MASTER BEDROOM/CLOSET 220⁰⁰

IV MISCELLANEOUS

- 1) CUT & RESTRETCH CARPET TO NEW WALL @ 1st
FLOOR BEDROOM. 45⁰⁰
- 2) REMOVE ALL DEBRIS 100⁰⁰
- 3) ~~RECLEAN ALL CARPETS~~ 300⁰⁰

1/21/87

234

CDC

6985⁰⁰

368⁵⁰

7353⁰⁰

4-3-95

114

Sept 8, 1984

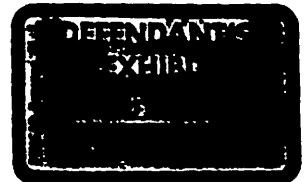
Received from

R. G. MAHER

\$10,000.00
cash

PAYMENT FOR AUG 15th

Arnold Brucher



RH

43-95
11-08

TINA ~~7580.00~~
 Kilous ~~3129.00~~
~~10,709.00~~

Barbara Che 2325.00

W.A. Crow

213

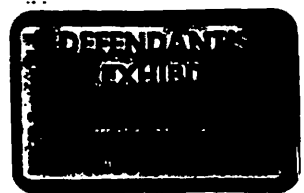
4320

87.

428.2882

~~50.00~~
~~2400.00~~
~~3050.00~~
~~350~~
~~3400.00~~

~~1420~~
~~280~~
~~25~~
~~00~~
~~25~~
~~350~~



Aug 20, 1984

Reid from Richard S. Welch
10,000⁰⁰ cash for July 15, 1984
Payment

Alid [unclear] Aug 20, 1984

1-722-5901
-1-~~625-1768~~ 0A [unclear]
Josh Shiver
~~Eric [unclear]~~

43.95
TS# 16 [unclear]

[Signature]

548-0877

~~Kleiner 441-3259
 H 420-1312
 041 425-0803
 6900~~

~~Hof R-27. 4
 L-72-3
 R-42-2
 L-0
 625-2116~~

005478

153822

1386.72
 1866.72

295.84

55
 25
 110

~~-5-59248
 6886.72
 -3705.76~~

1500
 1156
 -28
 7

~~7827.00
 -3287.08
 1897.00
 -1390.08~~

14 289
 39
 194
 20
 498
 144
 70
 496
 1000
 289

44.00
 Fri B - 3705.76
 " 80 - 1390.08
 K K -

MARCH 25, 1986

TO VIRGINIA BEACH FEDERAL:

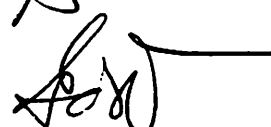
DEED OF TRUST NOTE DATED JANUARY 1, 1984 IN THE AMOUNT OF \$68,000.00 FROM WILLIAM AND KIMBERLY CROSBY TO ARNOLD AND DIANE AMDURSKY HAS BEEN PAID IN FULL.

THE NOTE HAS BEEN TURNED OVER TO RICHARD AND PATRICIA MAYER.



ARNOLD AMDURSKY

3-25-86
DATE

4-3-95
113#17 



Nov. 20, 1984

Richard H. Maker
Patricia J. Maker
550 S. Atlantic Ave.
Vc. Beach, Va. 23451

Dear Mr & Mrs. Maker:

Please consider this as the ten
(10) day notice of default under your
agreement dated June 14, 1984 with Mr.
and Mrs. Crosby and Mr and Mrs. Amdurby

240 The default consists of:
1. Failure to pay the Amdurby
the monies due on Oct. 15, 1984 and
Nov. 15, 1984.

Under the terms of said
agreement, you have ten (10) days

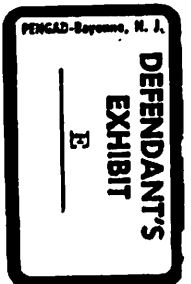
from receipt of this letter to
cure said default.

Very truly yours
Ard Amdurby

Mr. & Mrs. R. Maker
(Hand delivered)

MA

4.3.95
11/3/15/84



LAW OFFICES
PAULSON & FANCHER, P. C.

LOUIS G. PAULSON
ALLEN P. FANCHER
JOHN M. JEFFORDS
STEPHEN R. MEENAN
DIANE E. McNAMARA

1432 NORTH GREAT NECK ROAD, SUITE 101
VIRGINIA BEACH, VIRGINIA 23454

TELEPHONE
(804) 481-6600

March 5, 1986

Richard G. and Patricia J. Maher
550 South Atlantic Avenue
Virginia Beach, VA

Re: Sale of 550 South Atlantic Avenue
Virginia Beach, Virginia
Our File No. 85-146

Dear Mr. and Mrs. Maher:

I represent the Estate of William A. Crosby and Kimblyn F. Crosby, individually. As you are aware, you entered into an option agreement dated 14 June 84 with Mr. and Mrs. William A. Crosby whereby you were granted an option to purchase 550 South Atlantic Avenue in Virginia Beach, Virginia. (See attached option agreement).

Paragraph six of the option agreement states that at any time during said 15 month period after all the other conditions of this agreement have been performed, the Mahers shall have the right to request and receive a general warranty deed from the Crosbys conveying marketable title to the property. ~~That 15 month period, as you well know, expired on the 15th day of October, 1985. As a result of you not exercising the option within that 15 month period, the option agreement has long since expired.~~

As I stated above, I represent the Estate of William A. Crosby and it has become necessary to sell the above described property as soon as practical. ~~Therefore, I am hereby giving you notice on behalf of Mrs. Crosby and the Estate of William A. Crosby that the previous agreement is, in fact, null and void.~~ Mrs. Crosby is, however, willing to permit you to purchase the property under the conditions of that option agreement if said closing takes place no later than 31 March 86. In the event that you are unable to close on this property by the 31st of March, the property will immediately be placed on the market for sale. Please contact me immediately and inform me whether you intend to purchase the property. If so, I will prepare a contract for you signature.


Richard G. and Patricia J. Maher
March 5, 1986
Page 2

Please understand that it is not Mrs. Crosby's intention to place you in an untenable position at this time, however, she feels that you have had ample time to attain financing and complete the transaction and, to date, you have failed to do so. Consequently, she feels that she must act in order to take advantage of the coming selling season.

Thank you for your immediate attention to this matter.

Sincerely,

PAULSON & FANCHER, P.C.



Louis G. Paulson, Esquire

LGP/mat

Attachment

cc: File

13756

OK 2664 PG 2011

4 487 SC

THIS DEED OF BARGAIN, SALE AND ASSUMPTION, made 17th day of August, 1987, by and between Kimblyn F. CROSBY, a widow, unremarried, and Kimblyn F. CROSBY, Executrix of the Estate of William A. Crosby, Grantor, and Victor B. PECK, unmarried, home sole, Grantee.

W I T N E S S E T H :

THAT, IN CONSIDERATION of the sum of Ten Dollars (\$10.00) cash in hand paid by Grantee to Grantor and other good and valuable consideration, including the agreement of Grantee, as evidenced by his execution hereof, to assume and discharge the balance of that certain indebtedness evidenced by one interest bearing note dated December 30, 1983, made by William A. Crosby and Kimblyn F. Crosby, trading as Crosby Construction Company, payable to the order of Virginia Beach Federal Savings and Loan Association, in the original principal amount of Two Hundred Eleven Thousand Dollars (\$211,000) and secured by deed of trust of even date therewith, of record in Deed Book 2306, page 2108, the receipt and sufficiency of which consideration are hereby acknowledged, Grantor does hereby grant, with Covenants of General Warranty of Title and English Covenants of Title, unto Victor B. Peck, a home sole, as his sole, separate, equitable estate, free from the control, debts, liabilities, marital rights or claims, including dower, of his present wife or any future wife that he may have; that he will be

4-3-95
A's #2 [Signature]

entitled to encumber or convey the said property by his sole act, without the consent or act of his wife or any future wife he may have and without her joining in executing any deed or agreement that he may make with respect to the said property; and that he shall in all respects hold and be entitled to dispose of said property as though he was unmarried, all of the following lot or parcel of land lying and being in the City of Virginia Beach, State of Virginia, and being more particularly described as follows:

ALL THOSE certain lots, pieces or parcels of land, with the appurtenances thereunto belonging, and the improvements thereon, lying, situate and being in the Lynnhaven borough of the city of Virginia Beach, Virginia, and being known, numbered and designated as LOTS 5 and 17, in BLOCK 26, as shown on that certain plat entitled "RESUBDIVISION OF PART OF CROATAN BEACH, PRINCESS ANNE CO., VA.," dated June 1954, made by C. A. Samforth, duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Map Book 37, at Page 11, reference to which plat is hereby made for a more particular description of said lots.

IT BEING the same property conveyed to William A. Crosby and Kimblyn F. Crosby, husband and wife, trading as Crosby Construction Company, by deed of Arnold B. Andursky and D. Diane Andursky, husband and wife, dated December 7, 1981, and recorded December 10, 1981, in the Clerk's Office aforesaid in Deed Book 2183 at Page 491; the said William A. Crosby having died testate on October 23, 1985, and by the terms of his Will recorded in the Clerk's Office aforesaid in Will Book 69, at Page 1763, appointed Kimblyn F. Crosby Executrix with authority to sell the land conveyed herein; the said Kimblyn F. Crosby having duly qualified as Executrix under the terms of the Will evidenced by a certificate issued by the Clerk's Office on

November 15, 1985.

8K2664P82013

This conveyance is made subject, however, to all easements, restrictions and covenants of record that affect that property just hereinabove described.

WITNESS the following signatures and seals:

Kimbllyn F. Crosby
Kimbllyn F. Crosby, widow

Kimbllyn F. Crosby
Kimbllyn F. Crosby, Executrix of the
Estate of William A. Crosby

Victor B. Peck
Victor B. Peck

STATE OF VIRGINIA

CITY OF Virginia Beach, to-wit:

The foregoing instrument was duly acknowledged before me
this 17 day of Aug, 1987, by Kimbllyn F.
Crosby, widow, not remarried.

My commission expires:

June 10, 1988
Notary Public

STATE OF VIRGINIA

CITY OF Virginia Beach, to-wit:

The foregoing instrument was duly acknowledged before me

BM 2664P02014
this 17th day of Aug, 1987, by Kimblyn F. Crosby, Executrix of the Estate of William A. Crosby.

My commission expires: June 14/88

[Signature]
Notary Public

STATE OF VIRGINIA

CITY OF _____, to-wit:

The foregoing instrument was duly acknowledged before me this 17th day of August, 1987, by Victor B. Peck, unmarried, a home sole, in the city of Virginia Beach.

My commission expires: 8/12/88

Carol H. Kuhn
Notary Public

C.C. 21 REV. 3/78

VIRGINIA: In the Clerk's Office of the Circuit Court of Virginia Beach
of August 19 87 at 1:16 this instrument was received as
certificate of acknowledgment thereto annexed, admitted to record. The tax imposed by §54.1-402
has been paid, in the amount of \$ 118.00.

TESTE: J. CURTIS FRUIT, Clerk

By: [Signature]

Certified to be a TRUE C
of record in my custody.
J. Curtis Fruit, Clerk
Circuit Court, Virginia Be
BY: [Signature]
Deputy Clerk



Merrill Lynch Cash Management Account

STANLEY YESKOLSKE
CECELIA A. YESKOLSKE

144-22-9945

RT 1, BOX 304

SPRING GROVE, VA 23881

112

Sept 24 1985

25 80
440

Pay to the
order of

Patricia K. Babbalas ATT

\$65,000.00

65 000 00 00

Dollars

BANK ONE

BANK ONE, COLUMBUS, OH
Columbus, Ohio 43271



For General Loan

[Signature]

⑈000112⑈ ⑈044000804⑈ 3023182684⑈

4-3-95
15#3
[Signature]

247
[Signature]

1-2-7

#1

ACCOUNT NO.	TAXPAYER NO.	STATEMENT PERIOD	PAGE	A/E
708-18648	144-22-9945	09/28/85 TO 10/25/85	3	0461

MR STANLEY YESKOLSKE AND
MRS CECILIA A YESKOLSKE JTWROS

YOUR DAILY ACCOUNT ACTIVITY

DATE	TRANSACTION	QUANTITY	DESCRIPTION	PRICE	DEBIT	CREDIT	CASH BALANCE	CMA FUNDS ISA BALANCE
09 01		OPENING BALANCE.....			\$.93	\$.93CR	141,038
09 30	CHECK #0112		PETER K BABBLASATT		\$65000.00			
09 30	SOLD	65000	CMA GOVERNMENT SECS FUND			\$65000.00	\$.93CR	76,038
10 18	SHARE DIVIDEND	542	CMA GOVERNMENT SECS FUND					
10 18	CASH DIVIDEND		CMA GOVERNMENT FUND			\$.89		
			FROM 9-20 THRU 10-17				\$1.82CR	76,580
10 21	BOUGHT	1	CMA GOVERNMENT SECS FUND		\$1.00		\$.82CR	76,581
10 25		CLOSING BALANCE.....				\$.82CR	76,581

248

4-3-95
[Signature]

OCTOBER 1985

We urge you to keep this statement with your investment records.

Please advise your Account Executive immediately of any discrepancies in securities transactions or investment activity on your statement of account or if you contemplate changing your address. Send all correspondence relating to these matters to the office serving your account. For all other questions about your statement, direct inquiries by telephone to 1-800-CMA-INFO (1-800-262-4636) or in writing to P.O. Box 1024, Wall Street Station, New York, New York 10269. When making inquiries, please give your account number. See back of page for definitions of key terms and for balancing instructions.
Code 7097 Rev 8/84 Printed in U.S.A.

 **Merrill Lynch**