

MAR 31 2000

In The Supreme Court of Virginia

RECORD NO. 992887

PEGGY A. MUSSELMAN
and
BOBS, INC. (f/k/a Auto Glass and Mirror, Inc.),
Appellants,

v.

THE GLASS WORKS, L.L.C.,
A Virginia Limited Liability Company,
LURY W. GOODALL, JR., Guarantor,
CHARLES C. NIMMO, Guarantor, and
MICHAEL E. PUCKETT, Guarantor,
Appellees.

JOINT APPENDIX

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Counsel for Appellants

Counsel for Appellees

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MOTION FOR JUDGMENT

Come now, Peggy A. Musselman, Executrix of the Estate of Robert C. Young and Bobs Inc., by counsel, and move for judgment against the Defendants on the grounds and in the amounts set forth below:

1. That The Glass Works, L.L.C. is an active Virginia limited liability company, doing business in Roanoke City, Virginia.
2. That Bobs Inc. is a Virginia Corporation in good standing.
3. That on July 7, 1995 the Glass Works, L.L.C. entered into a Non-competition Agreement with Robert C. Young, (Exhibit A) and an Asset Purchase Agreement with, among others, Bobs Inc. and Robert C. Young. (Exhibit B).
4. That on the same date, Lury Goodall, Charles Nimmo and Michael Puckett entered into an Agreement to Guarantee the payment of the sums due under the Asset Purchase Agreement and the Non-Competition Agreement (Exhibit C).
5. That at the request of, and for the convenience of the purchasers, the total purchase price of \$515,000 for B & L Auto Glass and Mirror, Inc., to be paid by The Glass Works, L.L.C. to, among others, Bobs Inc. and Robert C. Young was divided as set out under Paragraph 2 of the Asset Purchase Agreement. The "Purchase Price" included the Non-Competition Agreements. In addition, the breakdown of the purchase price, including the Non-Competition Agreement, was delineated in the settlement statement prepared by the purchaser (Exhibit D).
6. That, as a professional courtesy, the seller, Bobs Inc. f/k/a B & L Auto Glass and Mirror, Inc. and Robert C. Young agreed to separate the value for the Non-Competition

Agreement out of the principal balance of the note due to Bobs Inc. f/k/a B & L Auto Glass and Mirror, Inc. to allow the purchaser, at its request, to report a lower "notes payable" for credit reporting purposes both then and in the future.

7. That Robert C. Young passed away on April 18, 1998.

8. That Peggy A. Musselman qualified as executrix of the Estate of Robert C. Young on May 28, 1998.

9. That the Defendant, The Glass Works, L.L.C. made payments to Robert C. Young from the initial payment on July 1, 1995 through and including the April 1998 payment.

10. That no payments have been made since April 1998.

11. That counsel for the Defendants was contacted by telephone and in written communication concerning the payments due from The Glass Works, L.L.C., and the personal Guaranties thereon, and, to the best of the Plaintiffs' knowledge and belief, Defendants' counsel has advised the Plaintiffs that no further payments to the Estate of Robert C. Young will be made nor will the Guarantee Agreement need to be honored.

12. That to the best of the Plaintiffs' knowledge and belief it is the Defendants' position that, despite the plain language of the Asset Purchase Agreement and the Settlement Statement both of which include the sums due under the Non-Competition Agreement as part of the purchase price, and despite the division of the purchase price for the convenience of the Defendants at their request, the Defendants aver that the sums due under the Asset Purchase Agreement and under the Non-Competition Agreement of Robert C. Young terminated with his death. The Defendants refuse to pay any further sums due, and have stated that they will

not pay any such sums in the future.

13. The Plaintiffs assert that the payments due under the Non-Competition Agreement of Robert C. Young and the Asset Purchase Agreement were part of the Purchase Price of B & L Auto Glass and Mirror, Inc.'s assets, did not terminate upon his death, and are due, owing, and outstanding from May 1998 onward. The Defendants have breached the agreements they entered into either currently or in anticipation of the sums owed in the future.

WHEREFORE, the Plaintiffs respectively demand judgment against the Defendants, jointly and severally, in the amount of FIFTEEN THOUSAND NINE HUNDRED NINETY AND 00/100-----DOLLARS (\$15,990.00), plus interest from the First day of May 1998, until paid, and their costs expended in this action; the principal amount of claim is to be paid to the Estate of Robert C. Young.

By Peggy A. Musselman
Peggy A. Musselman, Executor
of the Estate of Robert C. Young

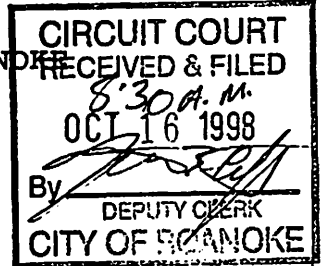
By Peggy A. Musselman
Bobs Inc.
Peggy A. Musselman, Agent

Richard L. Derrico
RICHARD L. DERRICO
VIRGINIA STATE BAR NO: 33442
COPENHAVER, ELLETT, CORNELISON &
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305 First Street, Suite 421
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Counsel for Plaintiffs

LAW OFFICES
COPENHAVER, ELLETT,
CORNELISON & DERRICO
ROANOKE, VA

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ROANOKE



PEGGY A. MUSSELMAN
Executrix of The Estate
of Robert C. Young

and

BOBS INC.
(f/k/a B & L Auto Glass and
Mirror, Inc.)

Plaintiffs

v.

THE GLASS WORKS, L.L.C.
A Virginia Limited Liability
Company

LURY W. GOODALL, JR.

CHARLES C. NIMMO

MICHAEL E. PUCKETT

Defendants

RESPONSE TO MOTION FOR
JUDGMENT

Law No. CL-98001000

COMES NOW, The Glass Works, L.L.C., a Virginia Limited Liability Company, Lury W. Goodall, Jr., Charles C. Nimmo and Michael E. Puckett, by counsel, and files this their Response to the Motion for Judgment heretofore filed against them by Peggy A. Musselman, Executrix of The Estate of Robert C. Young and Bobs, Inc. (f/k/a B & L Auto Glass and Mirror, Inc.) and would state as follows:

1. The allegations set forth in Paragraph 1 are admitted.
2. These Defendants are not advised as to the allegations set forth in Paragraph 2 and call for strict proof of the same.
3. As to the allegations set forth in Paragraph 3, these

Defendants would admit that The Glass Works, L.L.C. entered into the Non-competition Agreement dated July 7, 1995, with Robert C. Young and would further admit that it entered into an Asset Purchase Agreement with B & L Auto Glass and Mirror, Inc., a Virginia corporation, Robert C. Young, Peggy A. Musselman and Marian L. Gray. This Defendant did not enter into an Agreement with Bobs, Inc. and does not know the status of said entity; therefore, calling for strict proof of the same.

4. As to the allegations set forth in Paragraph 4, the individual Defendants would admit that they guaranteed the payment by and performance of The Glass Works, L.L.C. of all obligations of The Glass Works, L.L.C. as set forth in the Asset Purchase Agreement. Guarantors further guaranteed the payment of a promissory note from The Glass Works, L.L.C. to B & L Auto Glass and Mirror, Inc. and guaranteed the payment of \$60,000.00 by The Glass Works, L.L.C. which was due on a Non-competition Agreement as set forth in the Asset Purchase Agreement; which payment was divided among individuals as set forth in the guaranteed agreement.

5. These Defendants admit that the total purchase price including all items was to be \$515,000.00 and further admit that the same was to be divided as set out pursuant to Paragraph 2 of the Asset Purchase Agreement. These Defendants specifically deny that the division of the purchase proceeds was allocated at the request of, and "for the convenience of the purchasers." These Defendants admit that the total acquisition price included

the compensation for the Non-competition Agreement and further admit that the Settlement Statement attached as Exhibit D was executed at closing.

6. The allegations set forth in Paragraph 6 are denied.

7. These Defendants are not advised as to the allegations set forth in Paragraph 7 and call for strict proof of the same.

8. These Defendants are not advised as to the allegations set forth in Paragraph 8 and call for strict proof of the same.

9. The allegations set forth in Paragraph 9 are admitted.

10. The allegations set forth in Paragraph 10 are admitted to the extent that the same relate to payments to Robert Young pursuant to his Non-competition Agreement.

11. As to the allegations set forth in Paragraph 11, these Defendants would admit that their counsel was contacted by telephone and in writing concerning the payments due from The Glass Works, L.L.C. and the personal guarantees thereon. These Defendants decline to answer the remaining allegations set forth in Paragraph 11 inasmuch as the same relate to privileged attorney-client conversations.

12. As to the allegations set forth in Paragraph 12, these Defendants allege that no further sums are due under the Non-competition Agreement of Robert C. Young as any obligation to pay the same terminated at his death. All remaining allegations set forth in Paragraph 12 are denied.

13. The allegations set forth in Paragraph 13 are denied.

14. All allegations not specifically admitted are denied.

WHEREFORE, your Defendants pray that the Motion for Judgment heretofore filed against them by Peggy A. Musselman, Executrix of The Estate of Robert C. Young, and Bobs, Inc. be dismissed together with their costs herein expended.

THE GLASS WORKS, L.L.C.
LURY W. GOODALL, JR.
CHARLES C. NIMMO
MICHAEL E. PUCKETT

By Edward A. Natt
Of Counsel

Edward A. Natt, Esquire
OSTERHOUDT, FERGUSON, NATT,
AHERON & AGEE, P.C.
1919 Electric Road, S.W., Suite 1
Roanoke, Virginia 24018
(540) 774-1197
VSB #1104

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was mailed to Richard L. Derrico, COPENHAVER, ELLETT, CORNELISON & DERRICO, 305 First Street, Suite 421, Roanoke, Virginia 24011, this 15 day of October, 1998.

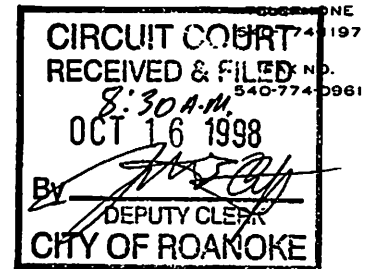
Edward A. Natt

Z:\WP50\CAROL\PLEADING\GLASS.RES:laf10/14/98

LAW OFFICES
OSTERHOUDT, FERGUSON, NATT, AHERON & AGEE

CHARLES H. OSTERHOUDT
MICHAEL S. FERGUSON
EDWARD A. NATT
MICHAEL J. AHERON
G. STEVEN AGEE
MARK D. KIDD
KRISTEN KONRAD JOHNSTONE

A PROFESSIONAL CORPORATION
1919 ELECTRIC ROAD, SUITE 1
P. O. BOX 20068
ROANOKE, VIRGINIA
24018-0007



October 15, 1998

Arthur B. Crush, III, Clerk
Circuit Court City of Roanoke
P. O. Box 2610
Roanoke, Virginia 24010

RE: Peggy A. Musselman and BOBS, Inc.
v. The Glass Works, L.L.C., et als.
Law No.: CL-98001000

Dear Mr. Crush:

Enclosed please find Response to Motion for Judgment in the above matter which I would appreciate your filing.

Thanking you in advance for your attention to this matter, I am

Very truly yours,

OSTERHOUDT, FERGUSON, NATT,
AHERON & AGEE, P.C.

A handwritten signature in cursive script, appearing to read "E. Natt".

Edward A. Natt

EAN/csb
Enclosure

pc (w/enc): Richard L. Derrico, Esq.
COPENHAVER ELLETT CORNELISON & DERRICO
305 First Street, Suite 421
Roanoke, VA 24011

Mr. Lury W. Goodall, Jr.
P. O. Box 21082
Roanoke, VA 24018

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ROANOKE

PEGGY A. MUSSELMAN
Executrix of The Estate of Robert
C. Young

and

BOBS, INC.
(f/k/a B & L Auto Glass and Mirror, Inc.)

Plaintiffs

v.

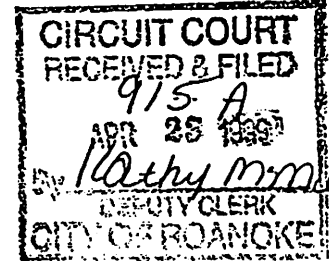
THE GLASS WORKS, L.L.C.
A Virginia Limited Liability Company

LURY W. GOODALL, JR.
Guarantor
2853 Fairway Forrest Circle
Salem, VA 24153

CHARLES C. NIMMO
Guarantor
103 Eagle Drive
Salem (city), VA 24153

MICHAEL E. PUCKETT
211 Eagle Drive
Salem (city), VA 24153

Defendants



CL 98-001000

STIPULATION OF FACTS

COMES NOW the Plaintiffs, Peggy A. Musselman, Executrix of the Estate of Robert C. Young and Bobs Inc., (f/k/a B & L Auto Glass and Mirror, Inc.), by counsel, and the Defendants, The Glass Works, L.L.C., Lury W. Goodall, Jr., Charles C. Nimmo and Michael E. Puckett, by counsel, and agree to the following stipulation of facts:

1. That the Non-Competition Agreement (Exhibit "A" to Pleadings), the Asset Purchase Agreement (Exhibit "B" to Pleadings), the Guarantee Agreement (Exhibit "C" to Pleadings), and the Settlement Statement (Exhibit "D" to Pleadings) are accurate, true and correct copies of the documents entered into by the Plaintiffs and the Defendants with valid signatures.

2. That the Plaintiffs' allegations and their proffered version of the facts are contained in their Motion for Judgment.

3. That the Defendants' denials and separate proffered version of the facts are contained in their Response to Motion for Judgment.

4. That B & L Auto Glass and Mirror, Inc. changed its name to Bobs, Inc. and is the same corporate entity. The name was changed by agreement and pursuant to the sale of the B & L Auto Glass & Mirror retail business to the Glass Works, L.L.C. The certificate for this change of name is attached as Exhibit "E".

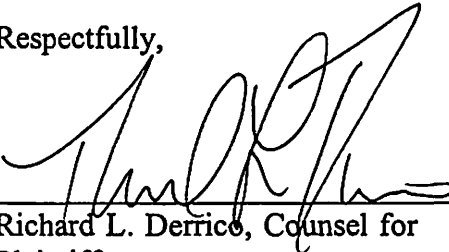
5. That Exhibit "F" is the valid, true, and correct copy of the death certificate of Robert C. Young.

6. That Exhibit "G" is the valid, true, and correct copy of a Certificate of Qualification for Peggy A. Musselman, Executrix of the Estate of Robert C. Young.

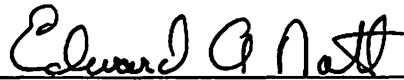
7. That the letter dated April 18, 1995 from Daniel L. Murry to Robert C. Young, Peggy A. Musselman and Ms. Marion L. Gray is a true and correct copy of the letter sent between those individuals. See Exhibit "H".

8. That Daniel L. Murry was the broker that helped negotiate the sale of B & L Auto Glass and Mirror, Inc., and as such, served as conduit for negotiations.

Respectfully,

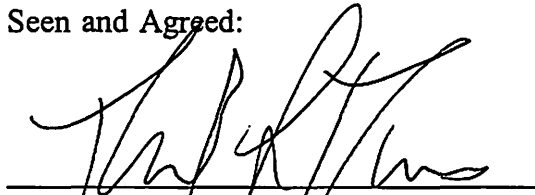


Richard L. Derrico, Counsel for
Plaintiffs

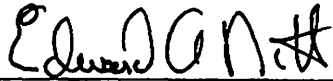


Edward A. Natt, Counsel for
Defendants

Seen and Agreed:



RICHARD L. DERRICO
VIRGINIA STATE BAR NO: 33442
COPENHAVER, ELLETT, CORNELISON & DERRICO
305 First Street, Suite 421
Roanoke, VA 24011
Counsel for Plaintiffs



EDWARD A. NATT
OSTERHOUDT, FERGUSON, NATT, AHERON & AGEE
1919 Electric Road, Suite 1
Roanoke, VA 24018-0007
Counsel for Defendants

EXHIBIT "A"

NON-COMPETITION AGREEMENT

AGREEMENT dated as of July 7, 1995 by and among The Glass Works, L.L.C., a Virginia Limited Liability Company, ("Buyer") and ROBERT C. YOUNG ("Employee").

WHEREAS, Employee is an employee of B & L Auto Glass & Mirror, Inc., a Virginia corporation ("B & L"), with significant and unique expertise in the business and affairs of B & L and owns certain shares of capital stock of B & L.

WHEREAS, B & L, Employee and all of the other Stockholders of B & L intend to enter into an Asset Purchase Agreement (the "Asset Purchase Agreement"), pursuant to which Buyer will acquire substantially all of the assets of B & L, including all of its goodwill; and

WHEREAS, the execution of this Non-Competition Agreement by Employee is a condition precedent to the consummation of the transactions contemplated by the Asset Purchase Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Non-Competition. For a period of five years from the date hereof Employee will not within a radius of 100 miles of the City of Roanoke, Virginia, where the activities specified below were conducted or products specified below were sold at any time that the Employee shall have maintained a relationship with B & L as a stockholder, employee, director or otherwise, without the express written consent of Buyer directly or

indirectly engage, participate or invest in or assist, as owner, part-owner, shareholder, partner, director, officer, trustee, employee, agent, independent contractor or consultant, or in any other capacity, any business or enterprise engaged in:

(A) The business of sale and installation of glass for automobiles, residential and commercial enterprises of any nature.

(B) the activities or products of Buyer, in which activities Employee has participated or as to which products Employee has had responsibility in their development, marketing or otherwise; or

(C) any other activities or products of Buyer related to the glass business..

For the purpose of the geographic limitation contained in this Agreement, the parties agree that B & L conducts business in such area.

Without implied limitation, the foregoing covenant shall prohibit (a) hiring, attempting to hire or otherwise soliciting, for or on behalf of any entity or person, any officer or other employee of Buyer, or authorizing, encouraging or approving any such action by any other person, (b) encouraging, for or on behalf of any entity or persons, any officer or other employee of Buyer to terminate his or her relationship or employment with Buyer; (c) soliciting, for or on behalf of any entity or person, any vendor, subcontractor or supplier of Buyer; (d) diverting to any entity or person any customer of Buyer and (e) committing

STERHOUDT, FERGUSON,
NATT, AHERON & AGEE
ATTORNEYS-AT-LAW
ROANOKE, VIRGINIA
24018-1699

any other act or assisting others to commit any other act which might injure the business of Buyer.

2. Compensation. In consideration of Employee's agreements set forth herein, Buyer shall pay Employee over a period of sixty (60) months in equal monthly installments, the sum of \$615.00 per month for a total sum of \$36,900.00, less any amount required to be withheld pursuant to federal, state, local or foreign law.

3. Severability. In case of any of the provisions contained in this Non-Competition Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, any invalidity, illegality or unenforceability shall not effect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had been limited or modified (consistent with its general intent) to the extent necessary so that it shall be valid, legal and enforceable, or if it shall not be possible to so limit or modify such invalid or illegal or unenforceable provision or part of a provision, this Agreement shall be construed as if such invalid or illegal or unenforceable provision or part of a provision had never been contained herein and the parties will use their best efforts to substitute a valid, legal and unenforceable provision which, insofar as practicable, implements the purpose and intents thereof.

4. Amendment: Successors. This Agreement shall not be modified or discharged in whole or in part except by an

agreement in writing signed by the parties hereto. It shall inure to the benefit of the successors of Buyer by way of merger, consolidation or transfer of substantially all of the assets of Buyer.

5. Remedies. Employee hereby acknowledges and agrees that Buyer will be irreparably injured and that monetary damages would not provide an adequate remedy to Buyer in the event of a breach of Section 1. Accordingly, Employee hereby agrees that, in addition to any other remedy available to Buyer, Buyer shall be entitled to injunctive, specific performance and other equitable relief to prevent or restrain the breach of Section 1. In the event of any proceeding by Buyer to enforce its rights hereunder, Buyer shall be entitled to receive from Employee reasonable attorney's fees and expenses incurred by Buyer in enforcing the provisions of Section 1.

THE GLASS WORKS, L.L.C.

By Michael E. Pickett
Member

Robert C. Young
ROBERT C. YOUNG

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FERGUSON, FERGUSON,
ATT. AHERON & AGEE
ATTORNEYS-AT-LAW
ROANOKE, VIRGINIA
24018-1699

EXHIBIT "B"

THIS ASSET PURCHASE AGREEMENT, made this 7th day of July, 1995, by and between B & L AUTO GLASS & MIRROR, INC., a Virginia corporation, (hereinafter referred to as "Seller"); THE GLASS WORKS, L.L.C., a Virginia limited liability company, (hereinafter referred to as the "Purchaser"); ROBERT C. YOUNG, (hereinafter referred to as "Young"); PEGGY A. MUSSELMAN, (hereinafter referred to as "Musselman") and MARIAN L. GRAY (hereinafter referred to as "Gray").

WHEREAS, Seller operates a business known as B & L Auto Glass & Mirror; and

WHEREAS, Purchaser desires to purchase certain of the assets of said corporation upon the terms and conditions hereinafter set out.

1. SALE OF BUSINESS. The Seller shall sell and the Purchaser shall purchase, free from all liabilities and encumbrances, the following described property:

(A) All inventory, equipment, supplies, appliances, vehicles and office furniture owned by the Seller and used in the business of B & L Auto Glass & Mirror. All such items shall be specifically accounted for on the date of closing as defined hereafter and a copy of such items is attached to this Agreement as Exhibit "A". The purchase of the inventory, equipment, supplies, appliances, and office furniture shall include all such items on the premises at the time of closing and shall not be limited to the items on Exhibit "A".

(B) The name "B & L Auto Glass & Mirror". Seller shall execute any and all documents necessary to transfer the right to use said names to Purchaser and thereafter shall either dissolve corporation or change corporate name.

(C) All work in progress as of the date of closing.

(D) It is expressly agreed that cash and accounts receivable are not included and remain the property of the Seller.

(E) Purchaser shall have the option of acquiring prepaid expenses. Should Purchaser assume any of the prepaid expenses, including but not limited to prepaid workers' compensation insurance and prepaid commercial liability package insurance, the cost of the same shall be prorated on an annual basis for the remainder of the term and added to the purchase price hereinafter set out.

2. PURCHASE PRICE. The purchase price for all of the property referred to in Paragraph 1 above shall be FIVE HUNDRED FIFTEEN THOUSAND DOLLARS (\$515,000.00) payable to the Seller as hereinafter set out.

(A) ONE THOUSAND DOLLARS (\$1,000.00) upon the execution of this Agreement to be held in escrow by Osterhoudt, Ferguson, Natt, Aheron & Agee, P.C. pending closing. Said funds shall be applied to the purchase price.

(B) ONE HUNDRED FOURTEEN THOUSAND DOLLARS (\$114,000.00) cash at closing.

(C) Owner finance by B & L Auto Glass & Mirror, Inc. of THREE HUNDRED FORTY THOUSAND DOLLARS (\$340,000.00) plus interest at the rate of eight and one-half percent (8 1/2%) per annum. Said owner financing shall be amortized over a fifteen (15) year period with an eight (8) year call. Payments shall begin on August 1, 1995. Purchaser shall execute financing statements and such other documents as may be necessary to place the assets acquired as security for the repayment

of said debt. In addition, the \$340,000.00 shall be payable to Seller by The Glass Works, L.L.C., a Virginia limited liability company, by execution of a Promissory Note in the amount of \$340,000.00 payable to Seller with interest at the rate of 8 1/2% annually payable over a 15-year period with an eight-year call. Payments shall commence on August 1, 1995, and shall be due on the first day of each succeeding month thereafter, the makers of the Note shall reserve the "Right of Anticipation" and the Note shall in all respects be negotiable. Lury Goodall, Charlie Nimmo, and Mike Puckett, each individually, shall execute personal guarantees and shall be the personal guarantors of the above described note and shall be responsible for payment immediately upon default of the party primarily liable on the note.

(D) SIXTY THOUSAND DOLLARS (\$60,000.00) by covenants not to compete executed by the shareholders of Seller as hereinafter set out.

(E) The parties agree that, at the time of closing, there shall be a minimum of \$10,000.00 in inventory and supplies. Should the value of the inventory and supplies be less than \$10,000.00 at closing, the purchase price shall be reduced on a dollar to dollar basis. Should the value of the inventory and supplies be more than \$10,000.00, the purchase price shall not be adjusted. An inventory shall be taken on the date of closing to determine the value of said items.

3. PLACE OF PROPERTY. The Seller represents that all the items of property listed in Exhibit "A" are located only at the Seller's premises. The Seller shall not remove any of such property from such location without the written consent of the Purchaser, except as may be required in the ordinary course of trade or business up to

the date of closing.

4. CLOSING. The closing shall take place at the law firm of OSTERHOUDT, FERGUSON, NATT, AHERON & AGEE, P.C., on June 30, 1995, to be effective as of the close of business on June 30, 1995. If a longer time is required to satisfy any of the contingencies contained in this contract, then the date of settlement will be extended for a sufficient time in order to allow the parties to satisfy these contingencies. At the time of the closing, the Seller shall execute and deliver to the Purchaser such bills of sale and other instruments as may be necessary to transfer to the Purchaser the business and property referred to in Paragraph 1, and shall deliver possession thereof to the Purchaser, together with the keys to the premises. All such bills of sale and other instruments will contain the usual warranties and affidavits of title to the business and property referred to in Paragraph 1, free and clear of all liens, security interests, and encumbrances. The Seller shall also deliver any releases, subordinations, or waivers of security interests, liens, encumbrances, or other claims against the business or assets as Purchaser may reasonably require.

5. NON-COMPETE AGREEMENT. The Purchaser shall enter into Non-Compete Agreements with Robert C. Young, Peggy A. Musselman and Marian L. Gray; said Non-Compete Agreements shall each be for a period of five (5) years with the consideration for the Non-Compete of Robert C. Young being \$36,900.00, the consideration for the Non-Compete of Peggy A. Musselman being \$9,300.00 and the consideration for the Non-Compete of Marian L. Gray being \$13,800.00, the total for such Non-Compete Agreements being the consideration set forth in paragraph 2(d)

hereof. Said Agreements shall provide for payment in sixty (60) equal monthly payments of the sums required.

Payments shall commence on August 1, 1995 and shall be due on the 1st day of each succeeding month thereafter. Lury Goodall, Charlie Nimmo, and Mike Puckett, each individually, shall execute personal guarantees and shall be the personal guarantors of the herein described payments and shall be responsible for payment immediately upon default of the party primarily liable.

Said Non-Compete Agreements shall provide that during said period, the individuals shall not engage in a business similar to that of B & L Auto Glass & Mirror as an owner, shareholder, stockholder, employee or consultant or in any other manner within a radius of 100 miles of Roanoke, Virginia, unless said individual shall be employed by the Purchaser.

6. CONSULTING. Peggy A. Musselman agrees that for the months of July and August, 1995, as part of the consideration of the sale of the assets hereunder, she shall work twenty (20) hours per week in a consultant capacity for the Purchaser. She shall receive no additional compensation for said work other than compensation as otherwise set out in this Agreement.

7. TAX CLAIMS. The Seller shall take care of all obligations of the Seller relating to sales tax, state and federal employee income tax, withholding, federal social security tax withholding, employment tax, and business or license fees. In the event Purchaser is obligated to make any payments therefor, the Seller shall compensate Purchaser for such payments, along with attorney's fees, so long as a certified letter of

demand has been delivered to the Seller, giving such notice of the amount demanded, and the payment is delayed by ten (10) days after the receipt of the demand by Purchaser. This representation shall survive the closing. Seller retains the right to compromise or defend against any such claims at their own expense, but will hold Purchaser harmless and indemnify them from any loss resulting therefrom.

8. REAL ESTATE. The obligation of Purchaser under this Agreement is contingent upon Purchaser securing a lease for the property at 1715 Williamson Road in which the Seller's business operation is presently located for a two (2) year period at a monthly rental of \$1,200.00 per month, said lease to contain a three-year renewal option at the rate of \$1,300.00 per month. Said lease shall be upon such other terms as are reasonable and standard for commercial leases in the Roanoke area. Said lease shall also include an option to purchase the building by Purchaser or its assigns for the sum of ONE HUNDRED THIRTY-THREE THOUSAND DOLLARS (\$133,000.00), cash in full, during the first two years of the lease with 60% of the lease payments applying toward the purchase price of the building. The option to purchase shall be assignable by Purchaser. There shall be no right to exercise this option if any amounts due under this contract are in arrears, and the lease shall terminate, at the sole option of the Seller, if any payments under this contract are in arrears for over ninety (90) days.

9. VEHICLES. At closing, Seller shall sign all necessary documents to transfer to the Purchaser the title to the two vans and the car owned by the business. The 1993 Ford Truck is specifically exempted from this sale. Seller represents that said vehicles to be transferred are owned free and clear of any liens.

10. EXISTING CUSTOMERS. The Seller shall take all reasonable necessary steps, as such may be requested by the Purchaser, to advise present customers of the sale of the assets.

11. ASSUMPTION OF LIABILITY. Except as contained in this Agreement, Purchaser shall not assume any liabilities of Seller. However, Purchaser shall perform all warranty work and any other necessary service or replacement related to all product sales or services and their proper quality, performance, and installation which were made within 90 days of the date of sale of B & L Auto Glass & Mirror, Inc.

12. BROKERAGE. The parties agree that Seller shall be responsible for the payment of any brokerage fee incurred as a result of this Contract; specifically, Seller agrees to pay any and all brokerage fee due to Murray and Associates, Inc. \$43,850 (\$46,350.00 less the \$2,500.00 valuation fee paid in 12/95), and \$5,150.00 due to Business Brokers Network Management Company, L.C. The commissions are due at the end of the Sale Closing meeting on June 30, 1995.

13. REPRESENTATIONS BY SELLER. The Seller makes the following representations and warranties to the Purchaser, all of which shall survive the closing;

(A) The Seller is the owner of and has good marketable title to the business and property referred to in Paragraph 1, free of all debts, liens, security interests and encumbrances.

(B) The Seller has entered into no contract relating to the business and property referred to in Paragraph 1.

(C) No judgments, liens, actions or proceedings are pending or

threatened against Seller anywhere.

(D) No violations of any kind are pending or threatened against the business and property referred to in Paragraph 1.

(E) Seller has, to its knowledge, complied with all the laws, rules and regulations related to the business and property referred to in Paragraph 1.

(F) Seller has paid in full or will arrange for the payment, in full, at the date of closing, all state and federal employee income tax withholding, federal social security tax (FICA) withholding, unemployment taxes, unemployment insurance, sales and use taxes, business or license fees and any other business related taxes or governmental charges.

(G) Seller represents that all equipment, furniture, vehicles and supplies sold pursuant to this agreement are in normal working and operating condition on the date of closing. All equipment, vehicles, furniture and supplies sold pursuant to this agreement are otherwise sold on an "AS IS" condition.

14. REPRESENTATIONS BY PURCHASER. The Purchaser represents that it has examined the premises on which the business is now being conducted by the Seller and has inspected a visual condition of all the furniture, fixtures and equipment thereon. The Purchaser covenants that it will accept the conveyance of such furniture, fixtures and equipment in the present state and condition, subject to reasonable wear and tear to date of closing.

15. BUSINESS CONDUCT. The Seller shall conduct the business referred to in Paragraph 1 up to the day of closing, in the normal and regular manner, and will

not enter into any contract except as may be required in the regular course of business, and all utilities, fees and charges, if any, will be prorated to the day of closing or as soon after as such a determination can be made.

16. RISK OF LOSS. The Seller assumes all risk of loss due to fire or other casualty up to the time of closing. In the event any such loss occurs prior to the date of closing or in the event the business of the Seller is closed or interrupted by any reason not in the ordinary course of business, the Purchaser shall have the right to terminate this agreement on written notice to the Seller, and upon such termination, there shall be no further liability on the part of the Seller or the Purchaser.

17. BULK SALES REQUIREMENTS. The parties hereto agree to waive the requirements of the Uniform Commercial Code as enacted and enforced in the State of Virginia. In lieu thereof, the Seller shall indemnify and hold harmless the Purchaser from and against any claims made by existing creditors as of the date of closing. Should any such claim be made, the parties agree that the Purchaser may deduct any payment made on such claim from the next payment due Seller under the owner financing provided written notice is given to Seller ten (10) days prior to making any such payment. If Seller contests the obligation within said period, Purchaser shall not pay said creditor provided Seller takes such steps as may be necessary in order to resolve issues involving the alleged debt.

18. NOTICES. Any notice required or permitted to be given under this Agreement shall be sufficient if in writing, and if sent by registered mail to

Seller at: Rt 1 Box 655 B

*To: Alex*Blue Ridge, VA24064

Purchaser at:

*me*1715 Williamson RdRoanoke Va 24012

19. WAIVER OF BREACH. The waiver by the Seller of a breach of any provision of this Agreement by the Purchaser shall not operate or be construed as a waiver of any subsequent breach by the Purchaser.

20. ENTIRE AGREEMENT. This Agreement sets forth the understanding of the parties and may not be changed except by written documents signed by both parties.

21. BINDING EFFECT. The terms of this Agreement shall survive closing, shall not be merged, and shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns. The exclusive jurisdiction for any dispute arising under this Agreement shall be the Circuit Court for the City of Roanoke, Virginia.

22. ASSIGNMENT. The Purchaser reserves the right to assign any and all of its obligations as set forth in this Contract, with approval of the Seller.

23. FURTHER SECURITY. To secure the Deferred Purchase Money payments, the Purchaser shall execute and deliver to Seller a recordable U.C.C. Financing Statement for all equipment, furniture, fixtures, inventory, accessories, machinery and all other personalty located on the premises, all accounts receivable, contract rights, choses in action, and any replacement thereof. This lien shall have first priority in all respects

and in particularly in any bankruptcy proceedings. Liens shall also be placed on the titles to all mobile motor vehicles. Said liens shall be released by Seller and transferred and reimposed on replacement motor vehicles by the Buyer as vehicles require replacement. The Seller's lien on any replacement vehicle shall be a second lien if a vehicle purchased is financed by a bank or credit company.

24. TAKE BACK OPTION. For all periods \$100,000.00 or more deferred purchase money is due to Seller, quarterly financial reports complying with generally accepted principles of accounting shall be provided to Seller. If any payments due under this contract are in arrears for more than ninety (90) days, and the Sellers wish to apply this take back option, all remaining amounts due may be called, after ten (10) day written notice, and shall be due in full. If said amounts are not paid at the end of the ten (10) day period, Seller, at its sole discretion, may immediately demand all rights and property assigned to Purchaser in this contract and all related contracts be returned to Seller. Further, Seller shall have the immediate right without the need for any court approval or intervention, upon expiration of the ten (10) day notice period, to re-enter the business premises and resume operation of the business. In the event of such default, Purchaser shall indemnify and hold Seller harmless for any and all liabilities incurred before the date of reacquisition with the exception of any debt owed to Seller for the original purchase of the business.

25. It is the intention of the Purchaser to retain all current employees.

WITNESS the following signatures and seals:

B & L AUTO GLASS & MIRROR, INC.

By: Albert C. Young
Its President and agent
SELLER

THE GLASS WORKS, L.L.C.

By: Lary Goodall
Lary Goodall, Member

By: Charlie Nimmo
Charlie Nimmo, Member

By: Michael Puckett
Mike Puckett, Member

Lary Goodall
Lary Goodall, Guarantor

Charlie Nimmo
Charlie Nimmo, Guarantor

Michael Puckett
Mike Puckett, Guarantor

Robert C. Young
Robert C. Young

Peggy A. Musselman
Peggy A. Musselman

Marian L. Gray
Marian L. Gray

EXHIBIT A
LIST OF INVENTORY, EQUIPMENT, SUPPLIES,
APPLIANCES, OFFICE FURNITURE AND VEHICLES

DESCRIPTION OF PROPERTY

1988 Ford Escort
1989 GMC Safari Van
1990 Ford Van
Plex Saw
Table Saw
Band Saw
Belt Sander (1)
Sanders (2)
Heaters (2)
Refrigerator
Water Fountain
Coffee Machine
Tow Motor
Air Compressor
Fax Machine
Copy Machine
Various Inventory and Supplies
Time Clock
Office Furniture and Equipment
Display Cabinets
Security System

EXHIBIT "C"

GUARANTEE AGREEMENT


Lury Goodall, Charlie Nimmo and Mike Puckett, hereby agree, jointly and severally, to guarantee B & L Auto Glass and Mirror, Inc., Robert C. Young, Peggy A. Musselman and Marian L. Gray, the payment by and performance of The Glass Works, L.L.C., of all obligations of The Glass Works, L.L.C., as delineated in the Asset Purchase Agreement and Exhibits, by and between B & L Auto Glass and Mirror, Inc., and The Glass Works, L.L.C., as executed at closing on July 6, 1995. This agreement and the Asset Purchase Agreement shall survive closing and not merge with any other Agreement or Contract in any way.

The Guarantors, jointly and severally, also specifically guarantee the payment of a Promissory Note, dated July 7, 1995, from The Glass Works, L.L.C., securing B & L Auto Glass and Mirror, Inc. in the amount of \$340,000.00.


Guarantors, jointly and severally, also specifically guarantee the payment of \$60,000.00, by The Glass Works, L.L.C. which is due on a non-compete agreement, described in Paragraph 5 of the Asset Purchase Agreement, as follows:

The Purchaser shall enter into Non-Compete Agreements with Robert C. Young, Peggy A. Musselman and Marian L. Gray; said Non-Compete Agreements shall each be for a period of five (5) years with the consideration for the Non-Compete of Robert C. Young being \$36,900.00 and the consideration for the Non-Compete of Peggy A. Musselman being \$9,300.00, and the consideration for the Non-Compete of Marian L. Gray being \$13,800.00, for a total consideration of \$60,000.00, payable in sixty (60) equal monthly payments commencing August 1, 1995, and a like payment on the first day of each succeeding month thereafter.

The Guarantors are responsible for payment or performance immediately upon default of the party primarily liable on any of the aforementioned agreements or note. No action to collect from the party primarily liable, upon its default, shall need to be taken by the party secured before payments by the guarantors are due.



Lury Goodall



Charlie Nimmo



Mike Puckett

BILL OF SALE

B & L AUTO GLASS AND MIRROR, INC., does hereby sell and deliver to THE GLASS WORKS, L.L.C., the following goods:

1988 Ford Escort
1989 GMC Safari Van
1990 Ford Van
Plex Saw
Table Saw
Band Saw
Belt Sander (1)
Sanders (2)
Heaters (2)
Refrigerator
Water Fountain
Coffee Machine
Tow Motor
Air Compressor
Fax Machine
Copy Machine
Various Inventory and Supplies
Time Clock
Office Furniture & Equipment
Display Cabinets

Security System

This sale is made in consideration of \$340,000.00, the receipt of all of which is hereby acknowledged.

B & L Auto Glass and Mirror, Inc., hereby warrants that it has good title to the goods conveyed, which are sold to The Glass Works, L.L.C. free of all claims, liens and encumbrances of any kind whatsoever.

B & L AUTO GLASS AND MIRROR, INC.

By: Robert C. Young 7-7-95
Robert C. Young, President

DATED: 7-7-95

EXHIBIT "D"

SELLER'S SETTLEMENT STATEMENT
B & L AUTO GLASS & MIRROR, INC.
TO
THE GLASS WORKS, L.L.C.
ASSET PURCHASE

Contract Sales Price		\$515,000
Less Deposit	\$ 1,000	
Owner Finance	\$340,000	
Covenant Not to Compete	\$ 60,000	
Brokerage - Murray & Associates, Inc.	\$ 46,350	
Business Brokers	\$ 5,150	
Network Management Company, L.C.		
Inventory Adjustment	\$ 0	
Balance Deductions		\$452,500
Plus: Rent July 6 - July 31	\$ 1,050	
Total Balance Due Seller:		<u>\$ 63,550</u>

Adjusted to reflect deposit not paid \$1,000.00
rent adjustment to \$960.00 (reduction of \$90.00
and \$902.35 in prorated cost), hospitalization insurance
and telephone back-entry

B & L Auto Glass & Mirror

Robert C. Young PRES

EXHIBIT "E"

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

August 16, 1995

The State Corporation Commission has found the accompanying articles submitted on behalf of

BOBS, INC.
(FORMERLY B & L AUTO GLASS AND MIRROR, INC.)

to comply with the requirements of law, and confirms payment of all related fees.

Therefore, it is ORDERED that this

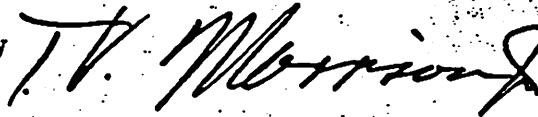
CERTIFICATE OF AMENDMENT

be issued and admitted to record with the articles of amendment in the Office of the Clerk of the Commission, effective August 16, 1995 at 12:06 PM.

The corporation is granted the authority conferred on it by law in accordance with the articles, subject to the conditions and restrictions imposed by law.

STATE CORPORATION COMMISSION

By



Commissioner

AMENACPT
CIS20436
95-08-10-0099

COPY 2

FIFTY DIVISION OF
VITAL RECORDSREGISTRATION
AREA NUMBER

2231

IFICATE
JEN

518

STATE FILE
NUMBER

DECEDENT	1. FULL NAME OF DECEDENT (first) (middle) (last) ROBERT CLEON YOUNG						2. SEX male <input checked="" type="checkbox"/> female <input type="checkbox"/>	
	3. DATE OF DEATH (mo) (day) (year) April 18, 1998		4. AGE 58 years		IF UNDER 1 YEAR months days		IF UNDER 1 DAY hours minutes	
PLACE OF DEATH	7. NAME OF HOSPITAL OR INSTITUTION OF DEATH (if none, so state) CARILION ROANOKE MEM HOSPITAL						8. COUNTY OF DEATH (if independent city, leave blank) ROANOKE	
	9. CITY OR TOWN OF DEATH ROANOKE						10. STREET ADDRESS OR RT. NO. OF PLACE OF DEATH BELLEVUE AT JEFFERSON STREET	
USUAL RESIDENCE OF DECEDENT	11. STATE (OR FOREIGN COUNTRY) OF DECEDENT'S RESIDENCE Virginia						12. COUNTY OF DECEDENT'S RESIDENCE (if independent city, leave blank) BEDFORD	
	13. CITY OR TOWN OF RESIDENCE BLUE RIDGE						14. STREET ADDRESS OR RT. NO. OF RESIDENCE 2502 BORE AUGER ROAD	
PERSONAL DATA OF DECEDENT	15. NAME OF DECEDENT'S FATHER ALBERT YOUNG						16. MAIDEN NAME OF DECEDENT'S MOTHER CLARA YOUNG	
	17. RACE OF DECEDENT White		18. OF HISPANIC ORIGIN? If yes, specify Cuban, Mexican, Puerto Rican, etc. <input checked="" type="checkbox"/> no <input type="checkbox"/> yes		19. EDUCATION (Specify only highest grade completed) Elementary/Secondary (0-12) 12 College (1-4 or 5 +)			
	20. CITIZEN OF WHAT COUNTRY U.S.A.		21. BIRTHPLACE (state or country) VIRGINIA		22. NEVER MARRIED <input type="checkbox"/> DIVORCED <input type="checkbox"/> MARRIED <input checked="" type="checkbox"/> WIDOWED <input type="checkbox"/>		23. IF MARRIED OR WIDOWED, NAME OF SPOUSE (if divorced leave blank) PEGGY ANNE YOUNG	
	24. SOCIAL SECURITY NUMBER 225-48-7563		25. USUAL OR LAST OCCUPATION RET.-OWNER		26. KIND OF BUSINESS OR INDUSTRY GLASS SHOP		27. INFORMANT - OR SOURCE OF INFORMATION PEGGY A. YOUNG, WIFE	
	28. PART I. Enter the diseases, injuries, or complications that caused the death. Do not enter the mode of dying, such as cardiac or respiratory arrest, shock, or heart failure. List only one cause on each line. IMMEDIATE CAUSE (Final disease or condition resulting in death) → (A) Renal Failure Sequentially list conditions, if any, leading to immediate cause. Enter UNDERLYING CAUSE (Disease or injury that initiated events resulting in death) LAST (B) Liver Failure (C) Respiratory Failure						INTERVAL BETWEEN ONSET AND DEATH	
	PART II. Other significant conditions contributing to death but not resulting in the underlying cause given in Part I. Compensated Cirrhosis						28a. AUTOPSY? AUTHORIZED BY: <input checked="" type="checkbox"/> yes <input type="checkbox"/> no wife	
CAUSE OF DEATH TO PHYSICIAN: Complete and sign medical certification (item 28) and return both copies to funeral director as soon as possible after determination of cause. NOTE: If "Pending" must be indicated, so state in part I and notify registrar of final decision as soon as possible.	28b. IF FEMALE, WAS THERE A PREGNANCY IN LAST 3 MONTHS? yes <input type="checkbox"/> no <input type="checkbox"/> unknown <input type="checkbox"/>		28c. IF EXTERNAL CAUSE, IT WAS PRIMARY <input type="checkbox"/> OR CONTRIBUTING <input type="checkbox"/> TO CAUSE OF DEATH		28d. DESCRIBE HOW INJURY RELATING TO DEATH OCCURRED			
	28e. TIME OF INJURY (mo) (day) (year) A.M. P.M.		28f. INJURY OCCURRED while at work <input type="checkbox"/> not while at work <input type="checkbox"/>		28g. PLACE OF INJURY (home, farm, factory, street, office bldg., etc.)		28h. (city or town) (county) (state)	
	28i. To the best of my knowledge, death occurred at _____ (a.m.) (p.m.) on the date and place and from the cause(s) stated: ACTUAL SIGNATURE [Signature] DATE SIGNED: 4-24-98 NAME OF ATTENDING PHYSICIAN (Type or Print) SYDNEY J. VAIL, MD ADDRESS OF ATTENDING PHYSICIAN Carilion Roanoke Memorial Hospital							
	29. BURIAL REMOVAL CREMATION <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>		30. PLACE OF BURIAL REMOVAL, ETC. OAKEY'S CREMATORY, ROANOKE, VA 24019					
FUNERAL DIRECTOR	31. (Signature of funeral director or person legally acting in this capacity) [Signature]						NAME OF FUNERAL HOME AND ADDRESS: John H. Oakley, Inc. P.O. BOX 1579, Roanoke, VA 24007	
	32. (Signature of registrar) [Signature]						DATE RECORD FILED: 4-28-98	
REGISTRAR	RESERVED FOR REGISTRAR'S USE							

This is to certify that this is a true and correct reproduction of the original record filed with the Roanoke City Health Department, Roanoke, Virginia.

4-28-98

Date Issued
(seal)

[Signature]
Deputy Registrar

ANY REPRODUCTION OF THIS DOCUMENT IS PROHIBITED BY STATUTE

VOID IF ALTERED OR DOES NOT BEAR IMPRESSED SEAL OF THE ROANOKE CITY HEALTH DEPARTMENT. Section 32.1-272, Code of Virginia.

CERTIFICATE/LETTER OF QUALIFICATION

VA. CODE §§ 6.1-70, 6.1-195.28,
6.1-208.3, 6.1-208.5, 13.1-428,
64.1-122, 64.1-128

Bedford County

, Virginia Circuit Court

I, the duly qualified clerk/deputy clerk of this Court, CERTIFY that on

May 28, 1998

DATE

Peggy Anne Musselman

NAME(S) OF PERSON(S) QUALIFYING

, duly qualified in this court, under applicable provision of law, as

- ☒ executor of the estate of
- ☐ administrator of the estate of
- ☐ curator of the estate of
- ☐ guardian of
- ☐ committee of

Robert E. Young, deceased

NAME OF DECEDENT, WARD, OR INCAPACITATED PERSON

The powers of the fiduciary(ies)

named above continue in full force and effect.

\$ 900,000.00 bond has been posted.

Given under my hand and the seal of this Court on

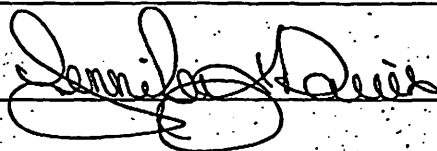
May 28, 1998

DATE

Carol W. Black

, Clerk

by



, Deputy Clerk

MURRY AND ASSOCIATES

P.O. Box 21224 • Roanoke, VA 24018 • Phone & Fax (703) 774-9493

April 18, 1995

Mr. Robert C. Young & Ms. Peggy A. Mussleman
 Ms. Marian L. Gray
 B & L Auto Glass & Mirror, Inc.
 1715 Williamson Road
 Roanoke, VA 24012

A tentative agreement has been reached with Mr. Lury Goodall, Jr. concerning the sale of your company. If the following information is what everyone has agreed to, Lury will have his attorney draw up the Sales Agreement. Lury would like to have his partners meet you (Peggy, Bob and Marian) in the next week or so at your convenience. He will also provide you with the Financial Statements of the three prospective new owners of the business. He would like to close as soon as June 1, 1995.

Purchase of the Business:

\$115,000 Cash down at Closing
 \$340,000 Owner Financed note at 8 1/2% with a 15 year Amortization
 (Call to be negotiated between 7 to 8 years)
 \$ 60,000 Covenant Not to Compete for 5 Years (paid in 60 monthly payments)
\$515,000 Total Purchase Price Offered

Purchase of the Building:

Lease the Building for \$1,200/month for 2 years with a negotiated automatic 3 year renewal option at closing.
 An offer to purchase the Building for \$133,000 in the first 2 years with 60% of the lease payments applied toward the purchase price of the building.

Consulting Agreement: An acceptable agreement must be reached for Marian and Peggy to work through the transition period. Marian would be encouraged to stay on for as long as she wanted at the \$8.00 to \$10.00/hour rate or as agreed upon. Peggy would be expected to work her normal 20 hours per week schedule for a 2 month period.

I will try to arrange a convenient time for the meeting and get back to all parties as quickly as possible. If you have any other questions, please don't hesitate to give me a call.

Regards,



Daniel L. Murry-President
 Murry & Associates

CC Mr. Lury Goodall, Jr.

\$\$\$\$\$\$\$\$ If you know of anyone else wanting to buy or sell a business, we pay a 10% referral fee on any lead you send us which results in a sale! \$\$\$\$\$\$\$\$

Member of:

39

BUSINESS BROKERS NETWORK, INC.

TWENTY-THIRD JUDICIAL CIRCUIT
OF VIRGINIA

ROBERT P. DOHERTY, JR., JUDGE
ROANOKE CITY COURTHOUSE
315 CHURCH AVENUE, S.W.
P. O. BOX 211
ROANOKE, VIRGINIA 24002-0211
(540) 853-2437
FAX (540) 853-1040



COMMONWEALTH OF VIRGINIA

CIRCUIT COURT FOR THE COUNTY OF ROANOKE
CIRCUIT COURT FOR THE CITY OF ROANOKE
CIRCUIT COURT FOR THE CITY OF SALEM

August 23, 1999

Richard L. Derrico, Esq.
Copenhaver, Ellett & Cornelison
305 First Street, S.W.
Suite 421
Roanoke, Virginia 24011

Edward A. Natt, Esq.
Osterhoudt, Ferguson, Natt
Aheron & Agee
1919 Electric Road, S.W., Suite 1
Roanoke, Virginia 24018

Re: Peggy A. Musselman and BOBS, Inc.
v.
The Glass Works, L.L.C., et als
Roanoke City Circuit Court
CL98-1000

Dear Rick and Ed:

The parties entered into a contract that contained an apparent ambiguity. The first page of the agreement indicated that the purchasers were to pay \$515,000.00 to purchase the majority of the assets of a going business. The later pages of the contract further explained the purchase price, and assigned certain amounts of it to the down payment, to the moneys to be paid at closing, to a note and to a five year non-competition agreement to be entered into by three key employees. The contract also explained the terms of the contemplated non-competition agreement in some detail. Thereafter, each key employee signed a separate non-competition agreement. All funds agreed upon were paid at closing, the note signed and delivered, and the assets transferred. The three key employees did not compete, and, as per their agreement, began receiving specific monthly payments. Before the expiration of the

August 23, 1999

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five year non-compete term, one of the key employees died. The purchaser immediately ceased paying the contractual monthly payment called for in the decedent's non-competition agreement, claiming that it was a personal services contract which ceased and became unenforceable at the key employees death. The key employee's estate argues that the original contract was for a sale of assets only, as set forth at the beginning of the agreement, and that a portion of the purchase money was assigned to a non-competition agreement as a subterfuge merely to allow the purchaser to claim a lower book value for the assets he purchased. The Court finds in favor of the purchaser.

If a contract contains an ambiguity, the Court will look to the four corners of the document to for its true meaning. It is subject to the standard rules of construction. Generally, "the provisions of a contract should be construed together and those which appear to conflict should be harmonized whenever it is reasonably possible." Chantilly Constr. Corp. v. Department of Highways & Transp., 6 Va. App. 282, 293 (1988). "Any apparent inconsistency between a clause that is general and broadly inclusive in character, and a clause that is more specific in character, should be resolved in favor of the latter." Chantilly at 294. Here the parties used general language to describe the agreement as an asset purchase in order to evidence in writing that they were not buying a going concern with all of its potential liabilities. The contract then precisely set forth, and explained in some detail, that contrary to the initial declaration, the purchase price was to be divided in such a way that part of it was to be used as consideration for three non-competition agreements. Using only the rules of construction, the specific language of the agreement makes it abundantly clear that the parties intended a portion of the funds paid to be used as consideration the for the non-competition agreements, and not solely for the purchase price of the assets.

Although not necessary for this determination, the parol evidence stipulated by the parties indicated that three separate non-competition agreements were prepared, signed and complied with until the key employee's death. The addition of these facts buttresses the Court's finding, and supports the unmistakable conclusion that the parties intended separate contracts and separate consideration for the non-competition agreements.

The only issue left unresolved is whether a non-competition agreement is a personal services contract that ceases and becomes unenforceable upon the death of the person agreeing not to compete. This question is one of first impression in Virginia. The agreement made is a negative promise on a reasonable restraint of trade. It is designed to prevent the promisor from engaging in unfair competition and taking away the promisee's trade, as

August 23, 1999

Page Three

certainly contemplated under the terms of an agreement whereby the purchaser buys the majority of the incidents of the sellers business. According to 5A Corbin On Contracts §1393 (1964), when dealing with a non-competition agreement, "[s]ince the promised performance is a personal forbearance, the obligation can never extend beyond the promisor's own life." In Virginia, ". . . the facts and circumstances of each particular case will be taken into consideration in determining whether the contract is purely personal in its nature, and therefore terminated by the death of the party." Moore v. Crutchfield, Admx., 136 Va. 20, 25 (1923). Upon the facts and circumstances of this case, the non-competition agreement is a personal services contract, and terminated upon the death of the person promising personal forbearance. Defendant does not owe compensation on the personal services contract after the date of the decedent's death.

Counsel for Defendant should prepare an appropriate order incorporating this letter opinion by reference, and present it to the Court for entry after first obtaining endorsement of counsel.

Very truly yours,

Robert P. Doherty, Jr.

RPDjr/bh

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ROANOKE

PEGGY A. MUSSELMAN
Executrix of The Estate
of Robert C. Young

and

BOBS INC.
(f/k/a B & L Auto Glass and
Mirror, Inc.)

Plaintiffs

v.

THE GLASS WORKS, L.L.C.
A Virginia Limited Liability
Company

LURY W. GOODALL, JR.

CHARLES C. NIMMO

MICHAEL E. PUCKETT

Defendants

FINAL ORDER

Law No. CL-98001000

On June 10, 1999, the parties appeared before the Court pursuant to the pleadings heretofore filed, pursuant to the Memorandum of Law submitted by the parties hereto, pursuant to the Stipulation of Facts submitted by the parties, and was argued by counsel. Thereafter, by opinion letter dated August 23, 1999, which opinion letter is hereby incorporated herein by reference, the Court rendered its decision in this matter.

Accordingly, it is hereby ADJUDGED and ORDERED that the Non-Competition Agreement entered into by and between Robert C. Young and The Glass Works, L.L.C. was a personal services contract and terminated upon the death of Robert C. Young and

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that the Defendants owe no further payments under the Non-Competition Agreement after the date of death of Robert C. Young.

And there remaining nothing further to be done in this matter, it is hereby ADJUDGED and ORDERED that this matter be, and the same is hereby, dismissed from the docket with the Clerk providing certified copies of this Order to counsel of record.

ENTER this 13th day of September, 1999.

Robert P. Roberts, Jr.
JUDGE

I request entry of this Order:

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APPELLANTS' ASSIGNMENTS OF ERROR

The Trial Court committed clear error when it failed to find that the Non-Competition Agreement of Robert C. Young was an integral part of the purchase price of the integrated transactions for the Asset Purchase/Business Sale of B & L Auto Glass and Mirror, Inc, and further erred when it found that payments on the Non-Compete Agreement terminated at his death as would a mere separate, stand-alone, personal service contract.