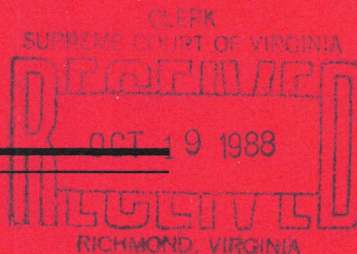


238 Va 224



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 871051

NORRIS J. WILLIAMS, et als.,

Appellants,

v.

JIMMIE W. BROOKS, et als.,

Appellees.

JOINT APPENDIX

John F. Rick
Nancy L. Lowndes
THOMPSON & McMULLEN
100 Shockoe Slip
Richmond, Virginia 23219
(804) 649-7545

Counsel for Appellants

R. Bruce Long
Attorney at Law
Abingdon Square
Suite 15
Post Office Box 1069
Hayes, Virginia 23072
(804) 642-6969

Counsel for Appellees

TABLE OF CONTENTS

	<u>Appendix Page</u>
Bill of Complaint filed 8/18/86	1
Proof of Service filed 8/27/86	5
Answer and Grounds of Defense filed 8/29/86	6
Attorney Long's Letter to Mr. King dated 9/5/86 filed 9/5/86	9
Motion for Production of Documents filed 9/5/86	10
Motion for Production of Documents filed 9/5/86	12
Motion for Production of Documents filed 9/5/86	14
Proof of Service filed 9/6/86	16
Praecipe filed 10/28/86	17
Stipulation filed 3/6/87	18
Attorney Long's Letter to Judge Holloway dated 3/9/87 filed 3/13/87	25
Trial Memorandum filed 3/13/87	26
Attorney Long's Letter to Judge Holloway dated 3/9/87 filed 3/23/87 with attachments	32
Attorney Hick's Letter to Judge Holloway dated 3/19/87 filed 3/23/87	39
Memorandum on Behalf of the Defendants filed 3/23/87	40
Bill of Complaint, Answer & Grounds of Defense filed 3/25/87	49
Building Permits filed 3/25/87	65
Stipulation filed 3/25/87	68
Transcript of Hearing before the Honorable C. Duane Holloway on 3/25/87	71
Testimony of Gene E. Cash	76
Testimony of Glenita S. Brooks	96
Testimony of William Legg	99

Testimony of Norris J. Williams	107
Testimony of Cathy J. Cauble	127
Testimony of Janice M. Barber	135
Attorney Long's Letter to Mr. King dated 3/31/87 filed 4/1/87 with attachment	157
Motion for New Trial filed 5/7/87	159
Memorandum in Support of Defendants' Motion for New Trial filed 5/7/87	163
Letter from Attorney Rick filed 5/8/87	168
Notice of Presentation of Decree and Decree filed 5/8/87	169
Cauble's Answers to Plaintiff's Interrogatories to Defendants filed 5/14/87	172
Barber's Answers to Plaintiffs' Interrogatories filed 5/14/87.....	181
Williams' Answers to Plaintiffs' Interrogatories filed 5/14/87	190
Affidavit of Vernon Green filed 5/14/87	199
Plaintiff's Memorandum in Opposition to Defendants' Motion (and Memorandum) for New Trial filed 5/14/87	208
Transcript of Proceedings heard before the Honorable G. Duane Holloway on 5/14/87	214
Letter from Attorney Rick dated 5/14/87	261
Letter from Judge Holloway dated 5/22/87	263
Letter from Attorney Hicks with attached Motion for New Trial and Memorandum in Support filed 6/16/87	264
Letter from Attorney Long with attached proposed Decree and portions of Transcript filed 6/16/87	274
Decree entered 6/16/87	282
Decree entered 6/16/87	283
Order entered 6/30/87	285

Memorandum of Law in Support of Sovran Mortgage Corporation's Petition to Intervene and Motion for New Trial filed 7/6/87	286
Letter from Attorney Smith filed 7/6/87	289
Letter from Attorney Smith with attached Notice, Petition to Intervene filed 7/6/87	290
Decree entered 7/6/87	296
Transcript of Proceedings heard before the Honorable G. Duane Holloway on 7/6/87	297
Letter from Attorney Rick with attached Notice of Appeal filed 7/13/87	310
Notice of Appeal filed 7/13/87	313
Letter from Attorney Rick with attached notice filed 7/20/87	314
Letter from Attorney Rick with attachments filed 7/20/87	317
Letter from Attorney Rick with attachments filed 7/29/87	345
Letter from Attorney Smith with attachment filed 8/7/87	348
Assignments of Error	351
<u>Exhibits and Other Evidence</u>	
Photographs filed 3/25/87	352
Defendants' Exhibit No. 5 - Deed of Trust filed 3/25/87	368

VIRGINIA: IN THE CIRCUIT COURT OF GLOUCESTER COUNTY

JIMMIE W. BROOKS
and
GLENITA SUE BROOKS

GENE E. CASH
and
DOROTHY M. CASH

WILLIAM W. LEGG, JR.
and
LOIS ANN LEGG

EDWARD M. RADWANSKI
and
BARBARA A. RADWANSKI

AND

PAUL J. SULLIVAN
and
SHARI A. SULLIVAN,
Plaintiffs

v.

JANICE MARIE BARBER
Lot 19
Belroi Farms Subdivision
Rt. 1, Box 358K
Gloucester, Virginia 23061

CATHY J. CAUBLE
Lot 13
Belroi Farms Subdivision
Rt. 1, Box 358B
Gloucester, Virginia 23061

AND

NORRIS J. WILLIAMS
and
CAROL J. WILLIAMS
Lot 24
Belroi Farms Subdivision
Rt. 1, Box 358C
Gloucester, Virginia 23061,
Defendants

CHANCERY NO. 4459
8/18/86

R. Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072

BILL OF COMPLAINT

Your Plaintiffs respectfully represent as follows:

(804) 642-6969
(804) 874-4477

1. Your Plaintiffs are the owners of certain lots located in Belroi Farms Subdivision, Gloucester County, Virginia, which lots are subject to certain covenants, conditions and restrictions pertaining to said lots.

2. That the Defendants are the owners of lots 19, 13, and 24 respectively in said Belroi Farms Subdivision.

3. That the aforesaid lots 19, 13 and 24 are subject to the same covenants, conditions and restrictions as the other lots in Belroi Farms and more particularly the same covenants, conditions and restrictions as contained in a certain deed from Belroi Farms, Inc. to Richard J. Margason and Jennifer P. Margason, dated August 12, 1980, of record in the Clerk's Office of this Court in Deed Book 232, Page 517. Said subdivision has been developed into a fine residential community pursuant to a general plan created in and established by said restrictions. An important element of the development of said tract has been compliance with the restriction thus imposed on said lots and continued compliance therewith is essential for the protection of the value of all the homes therein.

4. Paragraph 6 of the aforesaid restrictions provide that: "No structure of a temporary character, that is, a trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently if it can be seen from any adjoining lot or from the road(s) adjoining said lot except that a trailer may be occupied on a temporary basis by the owner of a lot during construction of a residence on said lot provided that said residence is constructed in a reasonable amount of time."

5. That the Defendant, Janice Marie Barber, obtained from the Gloucester County Building Inspector a permit for the installation of a double wide trailer on said lot 19 on March 14, 1985 and in pursuance thereof placed said double wide trailer on said lot and began to occupy the same and has occupied it continuously from said date until the present time.

6. That the Defendant, Cathy J. Cauble (along with her husband and her former

co-owner of the property, James T. Cauble, III), obtained from the Gloucester County Building Inspector a permit for the installation of a double wide mobile home on said lot 13 on August 15, 1983 and in pursuance thereof placed said double wide mobile home on said lot and began to occupy the same and has occupied it continuously from said date until the present time.

7. That the Defendants, Norris J. Williams and Carol J. Williams, obtained from the Gloucester County Building Inspector a permit for the installation of a double wide mobile home on said lot 24 on February 24, 1984 and in pursuance thereof placed said double wide mobile home on said lot and began to occupy the same and have occupied it continuously from said date until the present time.

8. That from the dates aforesaid until at least July 25, 1986, during which time each of the Defendants continued to occupy their said trailers, said Defendants jointly and severally failed and refused to obtain a building permits for the construction of a permanent dwelling or to commence construction thereof.

9. That all of the Defendants' trailers can easily be seen from both adjoining lots and from the roads adjoining their said lots.

10. That despite repeated requests from other lot owners in said Belroi Farms to remove said trailers, the Defendants, have jointly and severally failed and refused to do so.

11. Your Plaintiffs respectfully represent that they are entitled to institute this suit in equity to compel compliance with the applicable restrictive covenants; that the enforcement of said restrictive covenants is essential to insure and maintain the character and quality of said subdivision; and that to permit said mobile homes to remain within said subdivision in breach of said restrictions would lower the value and decrease the desirability of all the lots in said subdivision. Your Plaintiffs accordingly allege that they have been and will be subjected thereby to irreparable injury for which they have no adequate remedy at law.

P. Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072

(804) 642-6969
(804) 874-4477

WHEREFORE your Plaintiffs pray that this court enjoin the Defendants jointly and severally, to remove said mobile homes and further grant your Plaintiffs such other and further relief as to equity may seem meet or the nature of this case may require.

JIMMIE W. BROOKS
and
GLENITA SUE BROOKS

GENE E. CASH
and
DOROTHY M. CASH

WILLIAM W. LEGG, JR.
and
LOIS ANN LEGG


EDWARD M. RADWANSKI
and
BARBARA A. RADWANSKI

AND

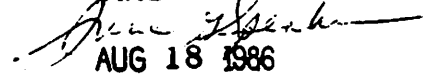
PAUL J. SULLIVAN
and
SHARI A. SULLIVAN

BY


Of Counsel

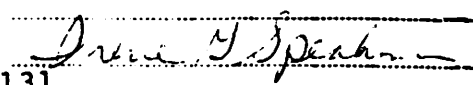

R. BRUCE LONG, ESQ.
Attorney At Law
P.O. Box 1069
Hayes, Virginia 23072

RECEIVED
AND FILED


AUG 18 1986

Clerk of Circuit Court
Gloucester County, Va.

R. Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072
(804) 642-6969
(804) 874-4477

Virginia: County of Gloucester
Filed in the Clerk's Office of the Circuit Court
the 18 day of August, 19 86
Writ Tax \$ 5.00 Teste: Charles E. King, Jr., Clerk
Fee 40.00
Sheriff 20.00
Total Paid \$ 65.00  Clerk
F6#10131 D. C.

PROOF OF SERVICE

Virginia:

IN THE CIRCUIT COURT OF THE COUNTY OF Gloucester

CHANCERY NO. 4459
8/18/86

Jimmie W. Brooks, et als

SERVICE AS TO: Norris J. Williams
and Carol J. Williams
Lot 24
Belroi Farms Subdivisor
Rt. 1 Box 358 C
Gloucester, Va. 23061

VS.

Janice Marie Barber, et als

Returns shall be made hereon, showing service of Subpoena in Chancery issued.....
August 19, 1986., with copy of Bill of Complaint.....
filed August 18, 1986, attached:

Executed on the 25th day of August, 1986., in the County of Gloucester,
Virginia, by delivering a true copy of the above mentioned papers attached to each other,
to Norris J. Williams
Rt 1 Box 358C Gloucester, Va 23061 in person.

Wm. C. Gattling
SHERIFF, COUNTY OF Gloucester, VA.

Sheriff's Fee pd Clerk

BY 46 G. Lawson 036, DEPUTY SHERIFF

NAME <u>Carol J. Williams</u>	Tel. No. _____	PERSONAL SERVICE If the person to be served is a family member (not temporary sojourner or lodger) or is found in the following manner: located in person found in charge of usual place of business or employment during business hours and giving name of recipient, and relation of recipient to party served. If the person is a family member (not temporary sojourner or lodger) or is found in the following manner: located in person found in charge of usual place of business or employment during business hours and giving name of recipient, and relation of recipient to party served. If the person is a family member (not temporary sojourner or lodger) or is found in the following manner: located in person found in charge of usual place of business or employment during business hours and giving name of recipient, and relation of recipient to party served.	(Use the space below if a different form of return is necessary)
ADDRESS <u>Rt 1 Box 358C</u>			
NAME <u>Norris J. Williams</u>		DATE <u>8-25-86</u>	
ADDRESS <u>Rt 1 Box 358C</u>		SIGNED <u>Wm. C. Gattling</u>	
NAME <u>Wm. C. Gattling</u>		SIGNED <u>46 G. Lawson 036</u>	
ADDRESS <u>Gloucester, Va</u>		SIGNED <u>Wm. C. Gattling</u>	

Returned and filed the _____ day of _____, 19____.

Sam A. Spenser, CLERK.
Sam A. Spenser, DEPUTY CLERK.

VIRGINIA: IN THE CIRCUIT COURT OF GLOUCESTER COUNTY

JIMMIE W. BROOKS, et al,

Plaintiffs,

v.

CHANCERY NO. _____

JANICE MARIE BARBER, et al,

Defendants.

ANSWER AND GROUNDS OF DEFENSE

Now come your defendants for their Answer to the Bill of Complaint filed against them, answers and says:

1. They admit the allegations contained in paragraph 1 of said Bill of Complaint.

2. They admit the allegations contained in paragraph 2 of said Bill of Complaint.

3. They admit the allegations contained in paragraph 3 of said Bill of Complaint.

4. They admit the allegations contained in paragraph 4 of said Bill of Complaint.

5. They deny the allegations contained in paragraph 5 of said Bill of Complaint and says that Janice Marie Barber has erected a permanent residential structure 28 feet by 60 feet on a permanent foundation on Lot 19 and has occupied the same, that this is not a structure of a temporary character.

6. Your defendants deny the allegations contained in paragraph 6 of said Bill of Complaint and say that Cathy Cauble, along with her former husband, erected a permanent residential structure 28 feet by 60 feet on a

permanent foundation on Lot 13 and has occupied same, that this is not a structure of a temporary character.

7. Defendants deny the allegation contained in paragraph 7 of said Bill of Complaint but say that Norris J. Williams and Carol J. Williams have erected a permanent residential structure 24 feet by 64 feet on a permanent foundation on Lot 24 and have occupied same, that this is not a structure of a temporary character.

8. Your defendants deny the allegations contained in paragraph 8 of said Bill of Complaint and say that they have never had structure of a temporary character on their properties, but have erected permanent homes on permanent foundations.

9. Your defendants deny the allegations contained in paragraph 9 of said Bill of Complaint.

10. Your defendants deny the allegations contained in paragraph 10 of said Bill of Complaint.

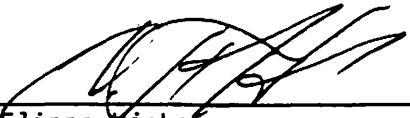
11. Your defendants deny the allegations contained in paragraph 11 of said Bill of Complaint. They deny that they are in violation of restrictive covenants in any way. They deny they have ever at any time used any structure of a temporary character for a residence.

WHEREFORE, your defendants respectfully move the court to dismiss said Bill of Complaint as to them with their cost in their behalf expended.

JANICE MARIE BARBER
CATHY J. CAUBLE
NORRIS J. WILLIAMS and
CAROL J. WILLIAMS

By


Of Counsel



C. Flippo Hicks
Martin, Hicks & Ingles, Ltd.
P. O. Box 708
Gloucester, Virginia 23061

I hereby certify a true copy of the foregoing Answer and Grounds of Defense was served on the plaintiffs by mailing a copy thereof by first class mail this 28th day of August, 1986, to R. Bruce Long, Esquire, P. O. Box 1069, Hayes, Virginia 23072.



Counsel

R. Bruce Long, P.C.
Attorney And Counselor At Law
Suite 15, Abingdon Square
P.O. Box 1069
Hayes, Virginia 23072

R. Bruce Long
Joy S. Long

(804) 642-6969
(804) 874-4477

September 5, 1986

Charles E. King, Jr., Clerk
Circuit Court of Gloucester County
Gloucester, Virginia 23061

RE: Jimmie W. Brooks, et als
v.
Janice Marie Barber
Chancery No. 4459

Dear Charlie:

In the above captioned matter I am enclosing herewith the originals of Motions For Production Of Documents which I would appreciate your filing. Copies have been sent to Mr. Hicks, counsel for the defendants.

I have also forwarded Plaintiffs' Interrogatories to each of the defendants to Mr. Hicks as well requesting that they be answered within 21 days.

Very truly yours,



R. Bruce Long

RBL/har

Enclosures

cc: C. F. Hicks, Esq.

Chancery

VIRGINIA: IN THE CIRCUIT COURT OF GLOUCESTER COUNTY

JIMMIE W. BROOKS, et als,

Plaintiffs

v.

JANICE MARIE BARBER, et als

Defendant

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Chancery No. 4459

MOTION FOR PRODUCTION OF DOCUMENTS

Come now, the plaintiffs, JIMMIE W. BROOKS, et als, by counsel, pursuant to Rule 4:8 of the Rules of the Supreme Court of Virginia, and moves that the defendant, JANICE MARIE BARBER, produce and make available for inspection and/or copying, in the office of R. Bruce Long, P.C., Attorney At Law, Suite 15, Abingdon Square, U.S. Route 17, Hayes, Virginia 23072, within twenty-one (21) days from the date hereof, the following:

1. Any and all architecural drawings or renderings pertaining to your residence.
2. Any and all contracts, whether executed or not, for the construction of your dwelling.
3. Any and all governmental permits, including, but not limited to Health Department permits, building permits and zoning permits for the construction and or placement of your dwelling.
4. Any and all contracts or agreements entered into for the purchase of your home which is the subject of this litigation, including but not limited to contracts, bills of sale, titles and security agreements.

R. Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072

(804) 642-6969
(804) 874-4477

JIMMIE W. BROOKS, et als

BY



Of Counsel

CERTIFICATION


I hereby certify that a true copy of the foregoing Motion was ^{delivered} ~~mailed~~
this 5th day of September, 1986 to C. F. Hicks, Esq., Martin, Hicks
& Ingles, Ltd., Attorneys At Law, P.O. Box 708, Gloucester, Virginia
23061, counsel of record for the defendant.



R. BRUCE LONG

2. Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072

(804) 642-6969
(804) 874-4477

11


VIRGINIA: IN THE CIRCUIT COURT OF GLOUCESTER COUNTY

JIMMIE W. BROOKS, et als,

Plaintiffs

v.

JANICE MARIE BARBER, et als

Defendant

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*

Chancery No. 4459

MOTION FOR PRODUCTION OF DOCUMENTS

Come now, the plaintiffs, JIMMIE W. BROOKS, et als, by counsel, pursuant to Rule 4:8 of the Rules of the Supreme Court of Virginia, and moves that the defendant, CATHY J. CAUBLE, produce and make available for inspection and/or copying, in the office of R. Bruce Long, P.C., Attorney At Law, Suite 15, Abingdon Square, U.S. Route 17, Hayes, Virginia 23072, within twenty-one (21) days from the date hereof, the following:

1. Any and all architecural drawings or renderings pertaining to your residence.
2. Any and all contracts, whether executed or not, for the construction of your dwelling.
3. Any and all governmental permits, including, but not limited to Health Department permits, building permits and zoning permits for the construction and or placement of your dwelling.
4. Any and all contracts or agreements entered into for the purchase of your home which is the subject of this litigation, including but not limited to contracts, bills of sale, titles and security agreements.

*R. Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072*

*(804) 642-6969
(804) 874-4477*

JIMMIE W. BROOKS, et als

BY



Of Counsel

CERTIFICATION

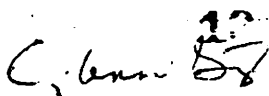
I hereby certify that a true copy of the foregoing Motion was ^{delivered} ~~mailed~~
this 5th day of September, 1986 to C. F. Hicks, Esq., Martin, Hicks
& Ingles, Ltd., Attorneys At Law, P.O. Box 708, Gloucester, Virginia
23061, counsel of record for the defendant.



R. BRUCE LONG

R. Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072

(804) 642-6969
(804) 874-4477



VIRGINIA: IN THE CIRCUIT COURT OF GLOUCESTER COUNTY

JIMMIE W. BROOKS, et als,

Plaintiffs

v.

JANICE MARIE BARBER, et als

Defendant

*
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*

Chancery No. 4459

MOTION FOR PRODUCTION OF DOCUMENTS

Come now, the plaintiffs, JIMMIE W. BROOKS, et als, by counsel, pursuant to Rule 4:8 of the Rules of the Supreme Court of Virginia, and moves that the defendant, NORRIS J. WILLIAMS and CAROL J. WILLIAMS, produce and make available for inspection and/or copying, in the office of R. Bruce Long, P.C., Attorney At Law, Suite 15, Abingdon Square, U.S. Route 17, Hayes, Virginia 23072, within twenty-one (21) days from the date hereof, the following:

1. Any and all architecural drawings or renderings pertaining to your residence.
2. Any and all contracts, whether executed or not, for the construction of your dwelling.
3. Any and all governmental permits, including, but not limited to Health Department permits, building permits and zoning permits for the construction and or placement of your dwelling.
4. Any and all contracts or agreements entered into for the purchase of your home which is the subject of this litigation, including but not limited to contracts, bills of sale, titles and security agreements.

R. Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072

(804) 642-6969
(804) 874-4477

JIMMIE W. BROOKS, et als

BY


Of Counsel

CERTIFICATION

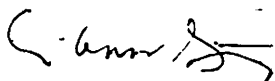
I hereby certify that a true copy of the foregoing Motion was ^{filed} ~~mailed~~
this 5th day of September, 1986 to C. F. Hicks, Esq., Martin, Hicks
& Ingles, Ltd., Attorneys At Law, P.O. Box 708, Gloucester, Virginia
23061, counsel of record for the defendant.



R. BRUCE LONG

? Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072

(804) 642-6969
(804) 874-4477



PROOF OF SERVICE

57
78

Virginia:

IN THE CIRCUIT COURT OF THE COUNTY OF Gloucester

CHANCERY NO. 4459

Jimmie W. Brooks, et als

8/18/86
SERVICE AS TO: Janice Marie Barber
Lot 19
Belroi Farms Subdivis
Rt. 1 Box 358K
Gloucester, Va. 23061
and
Cathy J. Cauble
Lot 13
Belroi Farms Subdivis
Rt. 1 Box 358B
Gloucester, Va. 23061

vs.

Janice Marie Barber, et als

Returns shall be made hereon, showing service of Subpoena in Chancery issued
August 19, 1986, with copy of Bill of Complaint
filed Aug. 18, 1986, attached:

Executed on the 30 day of August, 1986, in the County of Gloucester
Virginia, by delivering a true copy of the above mentioned papers attached to each other,
to Janice Marie Barber
Rt 1 Box 358K, Gloucester, Va. 23061 in person.

W. M. E. Gatling
SHERIFF, COUNTY OF Gloucester, VA.

Sheriff's Fee pd Clerk BY 46 G. Lawson 036, DEPUTY SHERIFF

(Use the space below if a different form of return is necessary)

Executed in Gloucester County, Va.

9-5-86 by

delivering a true copy of the within

writ-notice to Cathy J.

Cauble each in person.

WILLIAM E. GATLING

Sheriff of Gloucester County, Va.

By 46 G. Lawson 036
Deputy Sheriff

Returned and filed the day of 19

16

CLERK.

DEPUTY CLERK.

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF GLOUCESTER

JIMMIE W. BROOKS, et als

Plaintiffs,

v.

CHANCERY NO. 4459


JANICE MARIE BARBER, et als,

Defendants.

P R A E C I P E

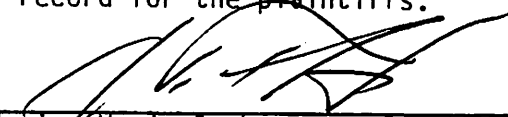
I certify that the above styled cause is matured for trial on its merits and request the Clerk to place it on the docket to be called on November 3, 1986 to be set for trial without a jury.

Dated this 28th day of October, 1986.

Counsel for: 
Janice Marie Barber, et als

CERTIFICATE OF SERVICE

I certify that on the 28th day of October, 1986, I mailed a true copy of the foregoing Praecipe to R. Bruce Long, Esquire, P. O. Box 1069, Hayes, Virginia 23072, counsel of record for the plaintiffs.

Counsel for: 
Janice Marie Barber, et als

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF GLOUCESTER

JIMMIE W. BROOKS, et als,
Plaintiffs

v.

JANICE MARIE BARBER, et als,
Defendants

*
*
*
*
*
*
*

Chancery No. 4459

STIPULATION

The parties hereto do hereby agree and stipulate as follows:

I. RE: BARBER

1. The defendant's home was purchased from Southern Mobile Homes, Inc. on February 13, 1985 for \$42,795.00. It consists of two (2) sections, resting on an undercarriage and was installed on permanent piers, and now has around the entire base of the home a constructed brick wall. (the parties have agreed that they do not stipulate as to whether or not the permanent brick wall constitutes a "foundation" but will rely on the Court for that determination based on the evidence presented at the hearing of this matter). The home also has an attached wooden deck.

2. The home was installed on lot 19, Belroi Farms Subdivision pursuant to a permit issued by the Gloucester County Building Inspector dated March 14, 1985 (copy attached) and signed by Janice M. Barber.

3. The two units can be severed, taken off of the piers, the wooden deck removed, and placed on some type of low-boy and moved to another location and be reconstructed or reinstalled.

4. The home is constructed to HUD Code requirements, not BOCA Code requirements.

R. Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072

(804) 642-6969
(804) 874-4477

RECEIVED
AND FILED

MAR 6 1987 at 12:04 PM
Clerk of Circuit Court
Gloucester County, Va.

5. The home is a manufactured home as defined in §36-85.3 of the Code of Virginia. At the time of the purchase of the home it was defined as a mobile home under §36-71 of the Code, which section has been repealed effective July 1, 1986.

II. RE: CAUBLE

1. The defendant's home was purchased from Forbes Homes, Elizabeth City, North Carolina in August, 1983. It consists of two (2) sections, resting on an undercarriage and was installed on permanent piers, and now has around the entire base of the home a constructed brick wall.(the parties have agreed that they do not stipulate as to whether or not the permanent brick wall constitutes a "foundation" but will rely on the Court for that determination based on the evidence presented at the hearing of this matter.) The structure also has two attached wooden decks.

2. The home was installed on lot 13, Belroi Farms Subdivision pursuant to a permit issued by the Gloucester County Building Inspector dated August 15, 1983 (copy attached) and signed by James T. Cauble, III, the former husband of Cathy J. Cauble.

3. The two units can be severed, taken off the piers, the wooden decks removed and placed on some type of low-boy and moved to another location and reconstructed or reinstalled.

4. The home is constructed to HUD Code requirements, not to BOCA Code requirements.

5. The home is a manufactured home as defined in §36-85.3 of the Code of Virginia. At the time of the purchase of the home it was defined

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Attorney At Law
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as a mobile home under §36-71 of the Code, which section has been repealed effective July 1, 1986.

III. RE: WILLIAMS

1. The defendants' home was purchased from Southern Mobile Home, Inc. in February, 1984 for \$36,264.95. It consists of two (2) sections, resting on an undercarriage and was installed on permanent piers. The home was delivered to the defendants' lot in two (2) sections by a truck, each of which sections had a temporary hitch at the time of delivery. When the home was delivered it was transported on an undercarriage to which there was attached three (3) axles on each section and each axle contained springs and wheels and the home was installed on permanent piers and now has around the entire base of the home a constructed brick wall. (the parties have agreed that they do not stipulate as to whether or not the permanent brick wall constitutes a "foundation" but will rely on the Court for that determination based on the evidence presented at the hearing of this matter). There is a deck attached to the back of the home and brick steps attached to the front of the home.

2. The home was installed on lot 24, Belroi Farms Subdivision pursuant to a permit issued by the Gloucester County Building Inspector dated February 24, 1984 (copy attached) and signed by Carol J. Williams.

3. The two units can be severed, taken off piers, disconnected from the deck and the brick steps, and placed on some type of low-boy, moved to another location and reconstructed or reinstalled.

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4. The home is constructed to HUD Code requirements, not to BOCA Code requirements.

5. The home is a manufactured home as defined in §36-85.3 of the Code of Virginia. At the time of the purchase of the home it was defined as a mobile home under §36-71 of the Code, which section has been repealed effective July 1, 1986.


IV. RE: VALUES

The parties stipulate that each lot (land only) owned by each of the plaintiffs and defendants respectively are valued at approximately the same figure, and all would be valued at approximately \$25,000.00 each. The Cauble's home is valued at \$55,000.00, the Barber's home is valued at approximately \$55,000.00 and the Williams' home is valued at approximately \$50,000.00. The Brooks' home is valued at \$125,000.00 and the Cash's home is valued at \$90,000.00. The Radwanski's home is not yet completed and the Legg's and Sullivan's lots are currently unimproved.

SO STIPULATED:



2/20/87 p.q.



p.d.

R. Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072

BUILDING
PERMITAMOUNT
PAID

DEPT. FILE COPY

VALIDATION

APPLICANT James T. Cauble, III DATE August 15 19 83 PERMIT NO. 83-775
 ADDRESS 5 Carmel Terrace, Hapton, Va. Forbes
(NO.) (STREET) (CONTR'S LICENSE)

PERMIT TO Install double wide mobile home NUMBER OF
(TYPE OF IMPROVEMENT) NO. (PROPOSED USE) DWELLING UNITS

AT (LOCATION) Lot 13, Belroi Farms, Off Rt. 614 ZONING PD
(NO.) (STREET) DISTRICT
 BETWEEN N AND 30-58
(CROSS STREET) (CROSS STREET)

SUBDIVISION _____ LOT _____ BLOCK _____ LOT
 SIZE _____

BUILDING IS TO BE 28 FT. WIDE BY 60 FT. LONG BY _____ FT. IN HEIGHT AND SHALL CONFORM IN CONSTRUCTION

TO TYPE 1983 USE GROUP Mansion BASEMENT WALLS OR FOUNDATION _____
(TYPE)

REMARKS: 3 bedrooms - Licensed electrician and plumber to obtain permits.

AREA OR VOLUME 1680 sq. ft. ESTIMATED COST \$ 44,000 PERMIT FEE \$ 84.00
(CUBIC/SQUARE FEET)

OWNER [Signature] BUILDING DEPT. BY G. Fleming Peltier
 ADDRESS _____

(Affidavit on reverse side of application to be completed by authorized agent of owner)

COST WHEN PURCHASED \$ 44,000.00

Are you a resident of Gloucester? NO In the military Yes

Signature of Permit Clerk

DEPT. FILE COPY

Signature of Contractor or his Authorized Representative Making Application

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Elas 84-328 plus 84-104

BUILDING PERMIT

DEPT. FILE COPY

AMOUNT PAID

VALIDATION

DATE Feb. 24, 1984

PERMIT NO. 84-165

APPLICANT Norris & Carol Williams

ADDRESS Rt. 1 Box 357B Gloucester

Southern

(NO.)

(STREET)

(CONTR'S LICENSE)

PERMIT TO install Modiglar mobile home

(TYPE OF IMPROVEMENT)

NO.

(PROPOSED USE)

NUMBER OF DWELLING UNITS

AT (LOCATION)

Lot 24 Belroi Farms

(NO.)

(STREET)

ZONING DISTRICT

Petsworth

BETWEEN

(CROSS STREET)

AND

30-15(4)24

(CROSS STREET)

SUBDIVISION

LOT

BLOCK

LOT SIZE

BUILDING IS TO BE 24 FT. WIDE BY 64 FT. LONG BY FT. IN HEIGHT AND SHALL CONFORM IN CONSTRUCTION

TO TYPE USE GROUP BASEMENT WALLS OR FOUNDATION (TYPE)

REMARKS: 1981 Southernaire 3 bedroom

AREA OR VOLUME

1536

(CUBIC/SQUARE FEET)

ESTIMATED COST \$ 36,000.00

PERMIT FEE \$ 76.80

OWNER

Carol J. Williams

ADDRESS

BUILDING DEPT. BY

C. J. Williams

(Affidavit on reverse side of application to be completed by authorized agent of owner)

Signature of Permit Clerk

FILE COPY

Signature of Contractor of his Authorized Representative Making Application

CONTRACT © 1973 BUILDING OFFICIALS & CODE ADMINISTRATORS

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Attorney And Counselor At Law
Suite 13, Abingdon Square
P.O. Box 1069
Hayes, Virginia 23072

R. Bruce Long
Joy S. Long

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(804) 874-4477

March 9, 1987

The Honorable G. Duane Holloway, Judge
Circuit Court for the County of York
Yorktown, VA

RE:

- 1. Brooks, et als v. Barber, et als-Chancery No. 4449
2. Brooks, et als v. Purves-Chancery No. 4511

Dear Judge Holloway:

In the above captioned matter since the files are in Gloucester I am enclosing the following so that the Court may have an opportunity to review them prior to trial:

1. Copy of the Bill of Complaint and Answer in each of the two cases.
2. Copy of the Stipulation filed in each of the cases.
3. Trial Memorandum in Brooks, et als v. Barber, et als.

Both cases arise from the same subdivision but involve different issues and Mr. Hicks and I have agreed to submit a Trial Memorandum on the Brooks, et als v. Barber, et als case only. We both feel that since the only issue in Brooks, et als v. Purves is whether or not the defendants home has been or is being constructed in a reasonable amount of time as required by the applicable subdivision restriction, we felt that it was not necessary to have a trial memorandum but simple stipulation of fact would be sufficient.

I am sure Mr. Hicks will shortly be forwarding you his Trial Memorandum in Brooks, et als v. Barber, et als and he and I have agreed that both cases can be heard at the same time and we trust this will be acceptable to the Court.

Respectfully yours,

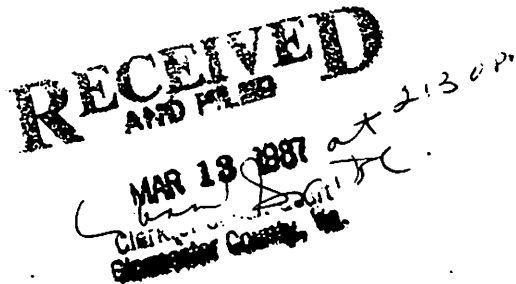

R. Bruce Long

RBL:vaw
Enclosures
cc: C. F. Hicks, Esq.

Charles E. King, Jr., Clerk (w/enc1)
P. S. By consent of counsel and the Court these matters have been set for trial on March 25th, 1987 at 8:30 a.m. By copy of this letter I am asking Mr. Hicks if he will pick up the original files from the Court and bring them to the hearing.

Respectfully yours,

25

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF GLOUCESTER

JIMMIE W. BROOKS, et als,

Plaintiffs

v.

JANICE MARIE BARBER, et als,

Defendants

*
*
*
*
*
*

Chancery No. 4459

TRIAL MEMORANDUM

I. ISSUE

Does the Defendant's use of their respective properties violate restrictive covenant number 6 of record in Deed Book 232, page 517, which reads as follows:

"6. No structure of a temporary character, that is, a trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently if it can be seen from any adjoining lot or from the road(s) adjoining said lot except that a trailer may be occupied on a temporary basis by the owner of a lot during construction of a residence on said lot provided that said residence is constructed in a reasonable amount of time."

The plaintiffs submit that the use of the term trailer, mobile home or manufactured home all mean the same thing, and, in fact, are often used by the Courts interchangeably. Black's Law Dictionary, Third Edition, defines a trailer as " a separate vehicle, not driven or propelled by its own power, but drawn by some independent power." Certainly the defendants' homes meet this definition to the letter.

By way of example these terms were used interchangeably by the Supreme Court of Montana in the case of Timmerman v. Gabriel, 470 P.2d 528 (1970).

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That case is factually nearly on all fours to the instant case. In Timmerman the defendants purchased "a dwelling referred to the industry as a 'double wide mobile home', from a mobile home dealer. It was comprised of two structures, each with a steel frame underneath with springs, axles, wheels and a drawbar and covered with siding. The two sections were hauled to the defendant's property, placed on a concrete block foundation and bolted together. The wheels, springs, axles and drawbar were removed and returned to the factory. The operative restrictive covenant (No. 3) stated that "No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out building shall be used on any lot at any time, as a residence, either temporarily or permanently, nor shall any residential structure be occupied for residential purposes until completely finished." This restriction is almost the same, verbatim, as restriction No. 6 in the instant case. In affirming the trial Court's grant of injunction, the Court found:

The word to be construed here is "trailer". The house the Gabriels placed on their property is very similar to the typical trailer house. It has metal siding, a metal frame to which is attached springs, axles, wheels and drawbars. The fact that some of these features may be removed, and were removed in the instant case, does not change the basic structure of the house itself. The structure was sold to the Gabriels by a trailer sales firm while it was on their sales lot, mounted on wheels. It was later pulled to the Gabriels' lots by a tractor truck. The term mobile home is an advertising euphemism for a large house trailer and although the larger models of mobile homes are considerably less mobile than the smaller models, they are essentially similar in structure and appearance. It cannot be demonstrated that they are so essentially unlike a trailer as to exclude them from the general definition of "trailer".

In the instant cases, the homes were purchased from mobile home dealers. The building permits show two of them to be referred to as "mobile homes" and the other as a "trailer". The parties have stipulated that the homes rest on an

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undercarriage, are installed on piers, can be severed and re-connected at another site and are built to HUD Code, not BOCA Code. Mobile home construction is now governed by HUD Code whereas "stick built" homes are built to the state wide (BOCA) building code.

In Brownfield Subdivision, Inc. v. McKee, 334 N.E. 2d 131 (1975), the Court was faced with facts which parallel the instant cases. There, the defendants' home was manufactured in two separate sections designed to be joined together. The sections were built upon detachable running gears, i.e., upon undercarriages, springs, axles, wheels and hitches designed to permit removal to the location where the structure was to be installed. In Brownfield the sections were actually installed on a foundation, not just on piers as is the case in this litigation. And a family room was added after installation, whereas in the instant cases, only decks and steps have been attached or added.

The restrictive covenant in Brownfield provided in part: "No structure of a temporary character, trailer, basement, tent, shack, mobile home or garage shall be used on a Lot, at any time, as a residence, either temporarily or permanently."

The defendant in Brownfield testified that he was aware of the restriction. In the instant case the defendants, in their Answer and Grounds of Defense, have admitted that their lots are subject to the operative covenant. Further, in Brownfield, the defendant admitted that his home could be moved to another location though "the structure would first have to be dismantled". All of the defendants here have stipulated that their units can be moved to another location, after removal from their piers. In Brownfield, the evidence showed that when

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sold the home was advertised as 'double wide mobile home". In the instant case, the evidence will show that the defendants homes were purchased from mobile home dealers, that one of them, the Norris home was, when purchased by Norris, a used mobile home which had previously been repossessed from another party. The evidence will also show that one of the defendants, Janice Barber, has listed her home for sale and the same has been advertised as a "1985 Parkway Doublewide".

The Court in Brownfield cited Timmerman v. Gabriel, supra, and went on to state: "The majority of Courts considering the question have held that removing the wheels or running gear of a mobile home and placing it on a permanent foundation does not convert the home into a permanent structure."

The parties have stipulated that these homes are now defined as "manufactured homes" in §36-85.3 of the Code of Virginia, but when purchased they were defined as "mobile homes" under §36-71 of the Code. Section 36-85.3 is in substance the same as §36-71 and clearly represents a paralleling in terminology of the Code of Virginia with the Federal Manufactured Home Construction and Safety Standards Act (42 U.S.C., Section 5402). The Federal statute was adopted in 1980 and replaced the term "mobile home" with the term "manufactured home". However, the substance of the definition remains unchanged.

Further, in the instant cases, all three homes have affixed to them the certification label required for double wide homes by §3280.8 of the Federal standards, 24 C.F.R. §3280.1 et seq. As required by the Federal standards, each label contains a three letter designation followed by a six digit number.

Your Plaintiffs also submit that the defendants' homes all fit perfectly the

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definition of a "mobile home" as set forth in Virginia Code Section 46.1-1 (38) which reads as follows: "A structure, transportable in 1 or more sections, which in the traveling mode is 8 body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein." The word chassis is defined in Section 3280.902 of the Federal Standards to mean "the entire transportation system comprising the following subsystems: drawbar and coupling mechanism, frame, running gear assembly and lights." There can be absolutely no question but that all three of the double wide trailers in the case at bar are built on a permanent chassis.

CONCLUSION

All three of the defendants' homes are double wide trailers and can easily be seen from both adjoining lots and roads to the defendants' lots. Your plaintiffs submit that if the defendants' homes were single wides they would'nt even be advancing their defense of "permanent residential structures". In fact this Court has heretofore ordered the removal of a single wide trailer from this very subdivision, Brooks, et als v. Harvey, Chancery No. 4236. (January 1986).

The defendants seek to convince this Court that they should be allowed to remain because they reside in double wide trailers rather than single wide trailers. However, this Court has also heretofore ruled that a home possessing the same exact characteristics as the defendants' homes was violative of almost the precise same restrictive covenants as in the case at bar, and thus was to be excluded

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from a subdivision. M.L.T. v. Winslow, Chancery No. 4193 (August 1986).

Further, the position advanced by the defendants is not supported by the great weight of authority both in the Commonwealth of Virginia and, in fact, throughout the United States.

The Court should also take note of the great disparity in values, as stipulated, of the defendants double wide trailers and the plaintiffs' stick built homes.

The restrictive covenants are clear on their face and are violated by the defendants' doublewide trailers. Accordingly, the injunction sought by your plaintiffs should be granted.

JIMMIE W. BROOKS, et als

BY: R. B. Long

OF COUNSEL

R. B. Long
R. BRUCE LONG, ESQ.
Attorney At Law
P. O. Box 1069
Hayes, VA 23072

CERTIFICATION

I hereby certify that a copy of the foregoing Trial Memorandum was mailed this 13th day of March, 1987 to C. F. HICKS, ESQ., Martin, Hicks & Ingles, Ltd., Attorneys At Law, Gloucester, Virginia 23061, counsel of record for the Defendants.

R. B. Long
R. BRUCE LONG

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RECEIVED
AND FILED

MAR 13 1987

Clarence County, Va.

-6-

R. Bruce Long, P.C.
Attorney And Counselor At Law
Suite 15, Abingdon Square
P.O. Box 1069
Hayes, Virginia 23072

R. Bruce Long

Joy S. Long

(804) 642-6969

(804) 874-4477

March 9, 1987

The Honorable G. Duane Holloway, Judge
Circuit Court for the County of York
Yorktown, VA

RE:

1. Brooks, et als v. Barber, et als-Chancery No. 4549
2. Brooks, et als v. Purves-Chancery No. 4511

Dear Judge Holloway:

In the above captioned matter since the files are in Gloucester I am enclosing the following so that the Court may have an opportunity to review them prior to trial:

1. Copy of the Bill of Complaint and Answer in each of the two cases.
2. Copy of the Stipulation filed in each of the cases.
3. Trial Memorandum in Brooks, et als v. Barber, et als.

Both cases arise from the same subdivision but involve different issues and Mr. Hicks and I have agreed to submit a Trial Memorandum on the Brooks, et als v. Barber, et als case only. We both feel that since the only issue in Brooks, et als v. Purves is whether or not the defendants home has been or is being constructed in a reasonable amount of time as required by the applicable subdivision restriction, we felt that it was not necessary to have a trial memorandum but simple stipulation of fact would be sufficient.

I am sure Mr. Hicks will shortly be forwarding you his Trial Memorandum in Brooks, et als v. Barber, et als and he and I have agreed that both cases can be heard at the same time and we trust this will be acceptable to the Court.

Respectfully yours,



R. Bruce Long

RBL:vaw

Enclosures

cc: C. F. Hicks, Esq.

Charles E. King, Jr., Clerk (w/encl)

P. S. By consent of counsel and the Court these matters have been set for trial on March 25th, 1987 at 8:30 a.m. By copy of this letter I am asking Mr. Hicks if he will pick up the original files from the Court and bring them to the hearing.

Respectfully yours,



VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF GLOUCESTER

JIMMIE W. BROOKS, et als,

Plaintiffs

v.

JANICE MARIE BARBER, et als,

Defendants

Chancery No. 4459

TRIAL MEMORANDUM

I. ISSUE

Does the Defendant's use of their respective properties violate restrictive covenant number 6 of record in Deed Book 232, page 517, which reads as follows:

"6. No structure of a temporary character, that is, a trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently if it can be seen from any adjoining lot or from the road(s) adjoining said lot except that a trailer may be occupied on a temporary basis by the owner of a lot during construction of a residence on said lot provided that said residence is constructed in a reasonable amount of time."

The plaintiffs submit that the use of the term trailer, mobile home or manufactured home all mean the same thing, and, in fact, are often used by the Courts interchangeably. Black's Law Dictionary, Third Edition, defines a trailer as " a separate vehicle, not driven or propelled by its own power, but drawn by some independent power." Certainly the defendants' homes meet this definition to the letter.

By way of example these terms were used interchangeably by the Supreme Court of Montana in the case of Timmerman v. Gabriel, 470 P.2d 528 (1970).

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That case is factually nearly on all fours to the instant case. In Timmerman the defendants purchased "a dwelling referred to the industry as a 'double wide mobile home', from a mobile home dealer. It was comprised of two structures, each with a steel frame underneath with springs, axles, wheels and a drawbar and covered with siding. The two sections were hauled to the defendant's property, placed on a concrete block foundation and bolted together. The wheels, springs, axles and drawbar were removed and returned to the factory. The operative restrictive covenant (No. 3) stated that "No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out building shall be used on any lot at any time, as a residence, either temporarily or permanently, nor shall any residential structure be occupied for residential purposes until completely finished." This restriction is almost the same, verbatim, as restriction No. 6 in the instant case. In affirming the trial Court's grant of injunction, the Court found:

The word to be construed here is "trailer". The house the Gabriels placed on their property is very similar to the typical trailer house. It has metal siding, a metal frame to which is attached springs, axles, wheels and drawbars. The fact that some of these features may be removed, and were removed in the instant case, does not change the basic structure of the house itself. The structure was sold to the Gabriels by a trailer sales firm while it was on their sales lot, mounted on wheels. It was later pulled to the Gabriels' lots by a tractor truck. The term mobile home is an advertising euphemism for a large house trailer and although the larger models of mobile homes are considerably less mobile than the smaller models, they are essentially similar in structure and appearance. It cannot be demonstrated that they are so essentially unlike a trailer as to exclude them from the general definition of "trailer".

In the instant cases, the homes were purchased from mobile home dealers. The building permits show two of them to be referred to as "mobile homes" and the other as a "trailer". The parties have stipulated that the homes rest on an

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The restrictive covenant in Brownfield provided in part: "No structure of a temporary character, trailer, basement, tent, shack, mobile home or garage shall be used on a Lot, at any time, as a residence, either temporarily or permanently."

The defendant in Brownfield testified that he was aware of the restriction. In the instant case the defendants, in their Answer and Grounds of Defense, have admitted that their lots are subject to the operative covenant. Further, in Brownfield, the defendant admitted that his home could be moved to another location though "the structure would first have to be dismantled". All of the defendants here have stipulated that their units can be moved to another location, after removal from their piers. In Brownfield, the evidence showed that when

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The parties have stipulated that these homes are now defined as "manufactured homes" in §36-85.3 of the Code of Virginia, but when purchased they were defined as "mobile homes" under §36-71 of the Code. Section 36-85.3 is in substance the same as §36-71 and clearly represents a paralleling in terminology of the Code of Virginia with the Federal Manufactured Home Construction and Safety Standards Act (42 U.S.C., Section 5402). The Federal statute was adopted in 1980 and replaced the term "mobile home" with the term "manufactured home". However, the substance of the definition remains unchanged.

Further, in the instant cases, all three homes have affixed to them the certification label required for double wide homes by §3280.8 of the Federal standards, 24 C.F.R. §3280.1 et seq. As required by the Federal standards, each label contains a three letter designation followed by a six digit number.

Your Plaintiffs also submit that the defendants' homes all fit perfectly the

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definition of a "mobile home" as set forth in Virginia Code Section 46.1-1 (38) which reads as follows: "A structure, transportable in 1 or more sections, which in the traveling mode is 8 body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein." The word chassis is defined in Section 3280.902 of the Federal Standards to mean "the entire transportation system comprising the following subsystems: drawbar and coupling mechanism, frame, running gear assembly and lights." There can be absolutely no question but that all three of the double wide trailers in the case at bar are built on a permanent chassis.

CONCLUSION

All three of the defendants' homes are double wide trailers and can easily be seen from both adjoining lots and roads to the defendants' lots. Your plaintiffs submit that if the defendants' homes were single wides they would'nt even be advancing their defense of "permanent residential structures". In fact this Court has heretofore ordered the removal of a single wide trailer from this very subdivision, Brooks, et als v. Harvey, Chancery No. 4236. (January 1986).

The defendants seek to convince this Court that they should be allowed to remain because they reside in double wide trailers rather than single wide trailers. However, this Court has also heretofore ruled that a home possessing the same exact characteristics as the defendants' homes was violative of almost the precise same restrictive covenants as in the case at bar, and thus was to be excluded

2. *Bruce Long,*
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from a subdivision. M.L.T. v. Winslow, Chancery No. 4193 (August 1986).

Further, the position advanced by the defendants is not supported by the great weight of authority both in the Commonwealth of Virginia and, in fact, throughout the United States.

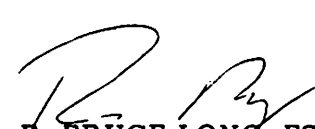
The Court should also take note of the great disparity in values, as stipulated, of the defendants double wide trailers and the plaintiffs' stick built homes.

The restrictive covenants are clear on their face and are violated by the defendants' doublewide trailers. Accordingly, the injunction sought by your plaintiffs should be granted.

JIMMIE W. BROOKS, et als

BY: 

OF COUNSEL


R. BRUCE LONG, ESQ.
Attorney At Law
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Hayes, VA 23072

CERTIFICATION

I hereby certify that a copy of the foregoing Trial Memorandum was mailed this 13th day of March, 1987 to C. F. HICKS, ESQ., Martin, Hicks & Ingles, Ltd., Attorneys At Law, Gloucester, Virginia 23061, counsel of record for the Defendants.


R. BRUCE LONG

*R. Bruce Long,
P.C.
Attorney At Law
P. O. Box 1069
Hayes, Virginia
23072*

*(804) 642-6969
(804) 874-4477*

C. FLIPPO HICKS
MCCLANAHAN INGLES
ROBERT D. HICKS

MARTIN, HICKS & INGLES, LTD.

ATTORNEYS AND COUNSELORS AT LAW
COURT CIRCLE, P.O. BOX 708
GLOUCESTER, VIRGINIA 23061

(804) 693-2500 (804) 877-7371

OF COUNSEL:
JAMES BLAND MARTIN

March 19, 1987

The Honorable G. Duane Holloway, Judge
Circuit Court of York County
P. O. Box 371
Yorktown, Virginia 23690

Re: Brooks, et als v. Barber, et als, Chancery No. 4459

Dear Judge Holloway:

Enclosed please find my Memorandum on behalf of the defendants in the above captioned matter which is currently scheduled to be heard on March 25, 1987.

Thank you.

Sincerely yours,

C. F. Hicks

C. F. Hicks

CFH:mlm

Enclosure

MAR 23 1987

RECEIVED

VIRGINIA: IN THE CIRCUIT COURT OF GLOUCESTER COUNTY

JIMMIE W. BROOKS, et al,

Plaintiffs,

v.

CHANCERY NO. 4459

JANICE MARIE BARBER, et al,

Defendants.

MEMORANDUM ON BEHALF OF THE DEFENDANTS

All of the parties to this suit are lot owners in a subdivision located in Gloucester County, Virginia, known as Belroi Farms. The sole issue in this suit is interpretation of paragraph number 6 of the restrictive covenants of Belroi Farms. Paragraph number 6 provides, "No structure of a temporary nature, that is, a trailer, a basement, tent, shack, garage, barn, or other out building shall be used on any lot at any time as a residence either temporarily or permanently if it can be seen from any adjoining lot or from the road(s) adjoining said lot. Except that a trailer may be occupied on a temporary basis by the owner of the lot during the construction of a residence on said lot provided that said residence is constructed in a reasonable amount of time."

All three defendants in this case had erected on their lots what were under the laws of Virginia at the time they were acquired defined as a double wide mobile home, but which under the laws of Virginia as of July 1, 1986 are now defined under §36-85.3 of the Code of Virginia as a manufactured home. Prior to July 1, 1986 they were defined as a mobile home under §36-71 of the Code. There is no question but that each home the defendants contains in excess of 1,300 square feet of finished floor area and therefore, are in compliance with paragraph 1 of the restrictions

of Belroi Farms which provide, "Only one (1) single family dwelling shall be placed on each lot, containing no less than one thousand three hundred (1,300) square feet of finished floor area exclusive of garages and porches*" Stipulations have been made between the parties that each one of the defendants homes were transported in two sections, were installed on permanent piers and that there is now around the entire base of the home, a constructed brick wall. That there is attached to all three of the homes, wooden decks.

The Supreme Court of Virginia has held in the question of whether an item is personal property or has itself become realty is determined by three general tests: "(1) annexation of the property to the realty, (2) adaptation to the use or purpose to which that part of the realty with which the property is connected is appropriated, and (3) the intention of the parties. The intention of the party making the annexation is the chief test to be considered in determining whether the chattel has been converted into a fixture." Transco corp v. Prince William County, 210 Va. 550, at 555, 172 S.E. 2d 757 at 761-762 (1970). The court also said in this case that, "when the owner of land annexes chattels, any doubt as to his intention to annex them permanently will usually be resolved in favor of such intent." Id., 210 Va. at 556, 172 S.E. 2d at 762.

New Jersey public law, 1983 Chapter 386, has defined, "'trailer" means a recreational vehicle, travel trailer, camper, other transportable temporary dwelling unit, with or without its own motor power, designed and constructed for travel and recreational purposes to be installed on a non-permanent foundation if installation is required." The same law also defines "'permanent foundation' means a system of support installed either

partial or entirely below grade, which is: (1) capable of transferring all design loads imposed by upon the structure into soil or bedrock without failure."

The Supreme Court of Pennsylvania has held, "this Court has held that it is arbitrary to apply the classification of 'mobile home' or 'trailer' to a structure which once improved will not in fact be a mobile home or a trailer either as defined by the local zoning ordinance or by common sense." Anstine v. Zoning Board of Adjustment, 411 Pa. 33, 190 a. 2d 712, 1963. In citing that case more recently the Pennsylvania court held, "The record lacks evidence of any reason or justification classifying an immobile, single section dwelling structure, permanently affixed to the realty, differently than a conventional on-site built home or a multi-section dwelling structure." Lane v. Zoning Board of Adjustment, 501 Pa. 224, 460 a. 2d 1088 (1983).

The Supreme Court of Michigan in the case of Robinson Township v. Knoll, 410 Michigan Reports 293, held that while 30 years ago municipality could limit the use of trailers to trailer parks, today's mobile homes compare favorably with site-built housing in size, safety and attractiveness. The court further said that in determining whether a unit is a trailer or not it must be directed to the dwelling as it exists on the land and not to its characteristics when it is delivered to the site.

The facts in this case are similar to those that were involved in the case of Hussey v. Ray. Texas 1970 case cited in 1970, 462 S.W. 2d 45, where the restriction alleged to be violated provided, "No trailer, tent, shack, stable or barn shall be placed, erected or be permitted to remain on any lot, nor shall any structure of a temporary character be used at

any time as a residence." The Court said, "The record shows that appellee and his wife purchased the lot in question in the Hussey Addition on July 14, 1964. Subsequently, on or about November 25, 1969, they purchased a new mobile home at a cost of \$4,250.00 and moved the same on the lot. The mobile home was 12 feet in width and 52 feet in length, and contained two bedrooms, a living room, kitchen and bath and was fully equipped with a cook stove, heater, refrigerator, and other facilities. After placing it on the lot, they removed the wheels therefrom and placed it upon a permanent concrete block foundation. Appellee obtained connections to the city water lines, electric power lines, and telephone lines, and installed a permanent type sewage system. At all time subsequent to the erection of the structure, appellee and his wife used the same as their permanent home and have not used it for any other purpose." The court held, "Appellees' claim that their mobile home has been fully converted into a permanent residence with all the conveniences and attributes of a modern one-family dwelling, appears to have been conclusively established. The structure erected on the lot was built for human habitation, has all the attributes of a permanent type dwelling, was used as such and was fixed to the realty by various connections. Undoubtedly it could be moved from its foundation to another location but so can any wooden frame house. It occurs to us that when viewed in a light most favorable to the free use of the lot, the restriction is not sufficient to prohibit the type of structure involved here."

In the case of Heath v. Parker, 93 N.M. 680, 604 P. 2d 818, 1980, the Supreme Court of New Mexico held that a double-wide mobile home was substantially the same as a conventional one-family dwelling. The Court

said that the restrictive covenant only spoke in general terms prohibiting trailers from being placed on the lots. The dedicating instrument did not distinguish the difference between a trailer, a house trailer, a mobile home or a horse trailer, a truck trailer or any other possible permutation of the word trailer could have been contemplated. The Court further said absence some clarity, it declined to enforce the blanket restrictive covenants against the defendants from putting a double-wide mobile home on their lot.

The case of Kinchen v. Layton, Supreme Court of Mississippi, in 1984, 457, So. 2d 353, involved a manufactured unit which was manufactured in Georgia was transported to Mississippi and placed on a lot after the removal of the wheels, running gears and tow bars, on previously prepared masonry piers and then two sections were connected and certain additions and refinements were made. Reaffirming that Courts do not look with favor on restrictive covenants, it held that a restriction which provided, "6. TEMPORARY STRUCTURES: No structure of a temporary character, basement, tent, shack, garage, or other outbuilding shall be placed upon or used on any lot at any time for purpose either temporarily or permanently," did not prevent the erection of a manufactured unit similar to the ones owned by the defendants.

At 457 So. 2d 347, the Court said, "The problem we confront is, how does one determine the 'temporary character' vel non of a structure? We can easily determine its height, its floor space, its type of construction or even within wide latitude its aesthetic appearance. 'Temporary character', however, is a quality which arguably either no structure has, or, in a wider sense, every structure has.

"These points lead inescapably to the conclusion that the covenant in issue is ambiguous. As such it must be construed most strongly against the parties seeking to enforce it and to restrict land use. Those parties here are Kinchen, Knotts, Alston and the Briarwood Homeowners Association.

"Under the circumstances, the structure as it has been described to us in the record seems clearly suitable as a home of some permanence. Stick-by-stick built structures of the same basic design and functional utility would not be prohibited under these covenants. The fact that this structure was in large part put together in another state and transported to Harrison County, Mississippi would not seem to deprive it of its trait as of 'permanent character'."

The Court of Appeals of Michigan in the case of North Cherokee Village Membership v. Murphy, 71 Mich. App. 592, 248 N.E. 2d 629, was asked to decide whether a restrictive covenant banning "house trailers and tents" can be interpreted to include within its prohibition the placement of a "double-wide" mobile home, and they went on to say that, "The mobile home, manufactured in two halves and carted separately to the premises, bore a certificate of title denominating it as a "trailer coach, double-wide"." The two sections were placed on a concrete block foundation and bolted together after removal of the two separate chassis then constituted a edifice with dimensions of 44 feet by 24 feet. The Court held that this was not a house trailer. Of course, in the present case we have just the use of the word trailer, not even the word house trailer in the Belroi Farms restrictions.

The Supreme Court of Virginia in the case of Hening, Jr., et al v. Maynard, Jr., 227 Va. 113 (1984), held at page 117, "It is well established that restrictive covenants are not favored and must be strictly construed, and the burden is on the person seeking to enforce the restrictions to prove that they apply to the acts of which he complains."

The only recent case that counsel for the defendants have been able to find from Virginia relating to restrictions that are similar to this case is one of Marks, et al v. Wingfield, et al, 331 S.E. 2d 463, (Virginia 1985). All lots in the subdivision in question were subject to the following restrictive covenants:

"1. No shacks, tents, house trailers, or temporary dwellings of any kind whatsoever shall be erected on the property.

"2. Lots hereby conveyed shall be used and occupied for residential purposes only, and only one single family residence shall be constructed on any lot."

The case arose because lot owners had placed mobile campers on the property that were either towed or driven upon the land. When in place, the campers were supported by jacks or bricks, however such supports, while they were desirable were not necessary. The campers were suitable for use as temporary dwellings and from time to time some of the defendants did sleep in them over night. Electric and gas utilities connected to the campers. The court held at page 331 S.E. 2d at 465, "We believe it is clear from the reading of both restrictions that developer and his immediate grantees intended to exclude all types of temporary residences in the subdivision. Indeed, one restriction expressly prohibits 'temporary dwellings of any kind whatsoever'. Because campers

are used for temporary residence, they fall within the prohibition. The mere fact they have been used sparingly as living quarters is of little significance. More significantly, the campers are susceptible to residential use and, at times, have been so used." In this case though where the restriction used the words "house trailers" and the one for Belroi Farms does not use "house trailers". The court held of the camper which was pulled on to the lot and used in that position, was not put on any foundation was not a temporary structure. Here we have a double-wide unit of over 1300 square feet on permanent peers, bricked up walls under the residences and attached decks or proches.


CONCLUSION


It is the law in virtually ever state in this nation that restrictive covenants are not favored and must be strictly construed and that the party who seeks to enforce the restriction has the burden to prove that it prescribes the action which he complains. The language in this case speaks of constructions of a temporary nature. It mentions trailers, does not say house trailer, does not say mobile home, are prohibited. The majority of the courts in the last decade in this country have held that a double-wide mobile home is not a temporary structure and is not a "trailer". In fact, on March 2, 1984, President Ronald Reagan signed a bill that makes Veterans Administration Guaranty Mortgage and Financing for manufactured homes available on a same basis as that prescribed for site build housing. A year previous to that the Department of Housing and Urban Development made manufactured housing eligible for Federal Housing Administration (FHA) 30 year mortgage financing the defendants homes are not prohibited by the restrictive covenants.

Respectfully submitted,


JANICE MARIE BARBER
CATHY J. CAUBLE
NORRIS J. WILLIAMS and
CAROL J. WILLIAMS

By


Of Counsel


C. Flippo Hicks
Martin, Hicks & Ingles, Ltd.
P. O. Box 708
Gloucester, Virginia 23061

I hereby certify a copy of the foregoing Memorandum was served on the plaintiff by mailing a copy thereof by first class mail this 19th day of March, 1987, to R. Bruce Long, Esquire, P. O. Box 1069, Hayes, Virginia 23072.


Counsel

FILED
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Long

VIRGINIA: IN THE CIRCUIT COURT OF GLOUCESTER COUNTY

JIMMIE W. BROOKS
and
GLENITA SUE BROOKS

GENE E. CASH
and
DOROTHY M. CASH

WILLIAM W. LEGG, JR.
and
LOIS ANN LEGG

EDWARD M. RADWANSKI
and
BARBARA A. RADWANSKI

AND

PAUL J. SULLIVAN
and
SHARI A. SULLIVAN,
Plaintiffs

v.

CHANCERY NO.

JANICE MARIE BARBER
Lot 19
Belroi Farms Subdivision
Rt. 1, Box 358K
Gloucester, Virginia 23061

CATHY J. CAUBLE
Lot 13
Belroi Farms Subdivision
Rt. 1, Box 358B
Gloucester, Virginia 23061

AND

NORRIS J. WILLIAMS
and
CAROL J. WILLIAMS
Lot 24
Belroi Farms Subdivision
Rt. 1, Box 358C
Gloucester, Virginia 23061,
Defendants

BILL OF COMPLAINT

Your Plaintiffs respectfully represent as follows:

1. Your Plaintiffs are the owners of certain lots located in Belroi Farms Subdivision, Gloucester County, Virginia, which lots are subject to certain covenants, conditions and restrictions pertaining to said lots.

2. That the Defendants are the owners of lots 19, 13, and 24 respectively in said Belroi Farms Subdivision.

3. That the aforesaid lots 19, 13 and 24 are subject to the same covenants, conditions and restrictions as the other lots in Belroi Farms and more particularly the same covenants, conditions and restrictions as contained in a certain deed from Belroi Farms, Inc. to Richard J. Margason and Jennifer P. Margason, dated August 12, 1980, of record in the Clerk's Office of this Court in Deed Book 232, Page 517. Said subdivision has been developed into a fine residential community pursuant to a general plan created in and established by said restrictions. An important element of the development of said tract has been compliance with the restriction thus imposed on said lots and continued compliance therewith is essential for the protection of the value of all the homes therein.

4. Paragraph 6 of the aforesaid restrictions provide that: "No structure of a temporary character, that is, a trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently if it can be seen from any adjoining lot or from the road(s) adjoining said lot except that a trailer may be occupied on a temporary basis by the owner of a lot during construction of a residence on said lot provided that said residence is constructed in a reasonable amount of time."

5. That the Defendant, Janice Marie Barber, obtained from the Gloucester County Building Inspector a permit for the installation of a double wide trailer on said lot 19 on March 14, 1985 and in pursuance thereof placed said double wide trailer on said lot and began to occupy the same and has occupied it continuously from said date until the present time.

6. That the Defendant, Cathy J. Cauble (along with her husband and her former

Bruce Long,
P.C.
Forney At Law
P.O. Box 1069
Waynes, Virginia
23072

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(04) 874-4477

co-owner of the property, James T. Cauble, III), obtained from the Gloucester County Building Inspector a permit for the installation of a double wide mobile home on said lot 13 on August 15, 1983 and in pursuance thereof placed said double wide mobile home on said lot and began to occupy the same and has occupied it continuously from said date until the present time.

7. That the Defendants, Norris J. Williams and Carol J. Williams, obtained from the Gloucester County Building Inspector a permit for the installation of a double wide mobile home on said lot 24 on February 24, 1984 and in pursuance thereof placed said double wide mobile home on said lot and began to occupy the same and have occupied it continuously from said date until the present time.

8. That from the dates aforesaid until at least July 25, 1986, during which time each of the Defendants continued to occupy their said trailers, said Defendants jointly and severally failed and refused to obtain a building permits for the construction of a permanent dwelling or to commence construction thereof.

9. That all of the Defendants' trailers can easily be seen from both adjoining lots and from the roads adjoining their said lots.

10. That despite repeated requests from other lot owners in said Belroi Farms to remove said trailers, the Defendants, have jointly and severally failed and refused to do so.

11. Your Plaintiffs respectfully represent that they are entitled to institute this suit in equity to compel compliance with the applicable restrictive covenants; that the enforcement of said restrictive covenants is essential to insure and maintain the character and quality of said subdivision; and that to permit said mobile homes to remain within said subdivision in breach of said restrictions would lower the value and decrease the desirability of all the lots in said subdivision. Your Plaintiffs accordingly allege that they have been and will be subjected thereby to irreparable injury for which they have no adequate remedy at law.

*Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Waynes, Virginia
23072*

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WHEREFORE your Plaintiffs pray that this court enjoin the Defendants jointly and severally, to remove said mobile homes and further grant your Plaintiffs such other and further relief as to equity may seem meet or the nature of this case may require.

JIMMIE W. BROOKS
and
GLENITA SUE BROOKS

GENE E. CASH
and
DOROTHY M. CASH

WILLIAM W. LEGG, JR.
and
LOIS ANN LEGG

EDWARD M. RADWANSKI
and
BARBARA A. RADWANSKI

AND

PAUL J. SULLIVAN
and
SHARI A. SULLIVAN

BY _____
Of Counsel

R. BRUCE LONG, ESQ.
Attorney At Law
P.O. Box 1069
Hayes, Virginia 23072

*Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072*

04) 642-6969
04) 874-4477

VIRGINIA: IN THE CIRCUIT COURT OF GLOUCESTER COUNTY

JIMMIE W. BROOKS, et al,
Plaintiffs,

v.

CHANCERY NO. _____

JANICE MARIE BARBER, et al,
Defendants.

ANSWER AND GROUNDS OF DEFENSE

Now come your defendants for their Answer to the Bill of Complaint filed against them, answers and says:

1. They admit the allegations contained in paragraph 1 of said Bill of Complaint.

2. They admit the allegations contained in paragraph 2 of said Bill of Complaint.

3. They admit the allegations contained in paragraph 3 of said Bill of Complaint.

4. They admit the allegations contained in paragraph 4 of said Bill of Complaint.

5. They deny the allegations contained in paragraph 5 of said Bill of Complaint and says that Janice Marie Barber has erected a permanent residential structure 28 feet by 60 feet on a permanent foundation on Lot 19 and has occupied the same, that this is not a structure of a temporary character.

6. Your defendants deny the allegations contained in paragraph 6 of said Bill of Complaint and say that Cathy Cauble, along with her former husband, erected a permanent residential structure 28 feet by 60 feet on a

permanent foundation on Lot 13 and has occupied same, that this is not a structure of a temporary character.

7. Defendants deny the allegation contained in paragraph 7 of said Bill of Complaint but say that Norris J. Williams and Carol J. Williams have erected a permanent residential structure 24 feet by 64 feet on a permanent foundation on Lot 24 and have occupied same, that this is not a structure of a temporary character.

8. Your defendants deny the allegations contained in paragraph 8 of said Bill of Complaint and say that they have never had structure of a temporary character on their properties, but have erected permanent homes on permanent foundations.

9. Your defendants deny the allegations contained in paragraph 9 of said Bill of Complaint.

10. Your defendants deny the allegations contained in paragraph 10 of said Bill of Complaint.

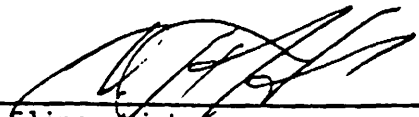
11. Your defendants deny the allegations contained in paragraph 11 of said Bill of Complaint. They deny that they are in violation of restrictive covenants in any way. They deny they have ever at any time used any structure of a temporary character for a residence.

WHEREFORE, your defendants respectfully move the court to dismiss said Bill of Complaint as to them with their cost in their behalf expended.

JANICE MARIE BARBER
CATHY J. CAUBLE
NORRIS J. WILLIAMS and
CAROL J. WILLIAMS

By


Of Counsel



C. Flippo Hicks
Martin, Hicks & Ingles, Ltd.
P. O. Box 708
Gloucester, Virginia 23061

I hereby certify a true copy of the foregoing Answer and Grounds of Defense was served on the plaintiffs by mailing a copy thereof by first class mail this 28th day of August, 1986, to R. Bruce Long, Esquire, P. O. Box 1069, Hayes, Virginia 23072.



Counsel

VIRGINIA: IN THE CIRCUIT COURT OF GLOUCESTER COUNTY

JIMMIE W. BROOKS
and
GLENITA SUE BROOKS

GENE E. CASH
and
DOROTHY M. CASH

WILLIAM W. LEGG, JR.
and
LOIS ANN LEGG

EDWARD M. RADWANSKI
and
BARBARA A. RADWANSKI

AND

PAUL J. SULLIVAN
and
SHARI A. SULLIVAN,
Plaintiffs

v.

DAVID F. PURVES
and
LAURA PURVES
Lot 10
Belroi Farms Subdivision
White Marsh, Virginia 23183,
Defendants

Chancery No. _____

BILL OF COMPLAINT

Your Plaintiffs respectfully represent as follows:

1. Your Plaintiffs are the owners of certain lots located in Belroi Farms Subdivision, Gloucester County, Virginia, which lots are subject to certain covenants, conditions and restrictions pertaining to said lots.

2. The Defendants are the owners of lot 10 of said Belroi Farms Subdivision.

3. The aforesaid lot 10 is subject to the same covenants, conditions and restrictions as the other lots in Belroi Farms and more particularly the same covenants, conditions and restriction as contained in a certain deed from Belroi Farms, Inc., to Richard J. Margason and Jennifer P. Margason, dated August 12,

Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Waynes, Virginia
23072

(04) 642-6969
(04) 874-4477

1980, of record in the Clerk's Office of this Court in Deed Book 232, Page 517, a copy of which is attached to and made a part hereof as Plaintiffs' Exhibit "A". Said subdivision has been developed into a fine residential community pursuant to a general plan created in and established by said restrictions. An important element of the development of said tract has been compliance with the restrictions thus imposed on said lots and continued compliance therewith is essential for the protection of the value of all the homes therein.

4. Paragraph 6 of the aforesaid restrictions provides that: "No structure of a temporary character, that is, a trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently if it can be seen from any adjoining lot or from the road(s) adjoining said lot except that a trailer may be occupied on a temporary basis by the owner of a lot during construction of a residence on said lot provided that said residence is constructed in a reasonable amount of time."

5. That the Defendants obtained from the Gloucester County Building Inspector a permit for the installation of a single wide trailer on said lot 10 on June 10, 1985 and in pursuance thereof placed said single wide trailer on said lot and began to occupy the same and have occupied it continuously from said date until the present time.

6. That despite repeated requests from other lot owners in said Belroi Farms to remove said trailer and construct a permanent dwelling the Defendants have failed and refused to do so.

7. Your Plaintiffs respectfully represent that they are entitled to institute this suit in equity to compel compliance with the applicable restrictive covenants; that the enforcement of said restrictive covenants is essential to insure and maintain the character and quality of said subdivision; and that to permit said trailer to remain within said subdivision in breach of said restrictions would lower the value and decrease the desirability of all the lots in said subdivision. Your

Plaintiffs accordingly allege that they have been and will be subjected thereby to irreparable injury for which they have no adequate remedy at law.

WHEREFORE your Plaintiffs pray that this Court enjoin the Defendants, jointly and severally, to remove said mobile home and further grant your Plaintiffs such other and further relief as to equity may seem meet or the nature of the this case may require.

JIMMIE W. BROOKS
and
GLENITA SUE BROOKS

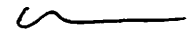
GENE E. CASH
and
DOROTHY M. CASH

WILLIAM W. LEGG, JR.
and
LOIS ANN LEGG


EDWARD M. RADWANSKI
and
BARBARA A. RADWANSKI

AND

PAUL J. SULLIVAN
and
SHARI A. SULLIVAN

BY 

Of Counsel



R. BRUCE LONG, ESQ.
Attorney At Law
P.O. Box 1069
Hayes, Virginia 23072

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VIRGINIA: IN THE CIRCUIT COURT OF GLOUCESTER COUNTY

JIMMIE W. BROOKS, et al,

Plaintiffs,

v.

CHANCERY NO. _____

DAVID F. PURVES,

and

LAURA PURVES,

Defendants.

ANSWER

Now comes your defendants for their Answer to the Bill of Complaint filed against them, answers and says:

1. They admit the allegations contained in paragraph 1 of said Bill of Complaint.

2. They admit the allegations contained in paragraph 2 of said Bill of Complaint.

3. They deny the allegations contained in paragraph 3 of said Bill of Complaint.

4. They deny the allegations contained in paragraph 4 of said Bill of Complaint.

5. They admit the allegations contained in paragraph 5 of said Bill of Complaint.

6. They deny the allegations contained in paragraph 6 of said Bill of Complaint.

7. They deny the allegations contained in paragraph 7 of said Bill of Complaint.

8. This defendant says that they are constructing a residence on Lot 10 of Belroi Farms Subdivision and that the foundation of said residence

has been installed and that they are continuously and without interruption continuing to construct said residence.

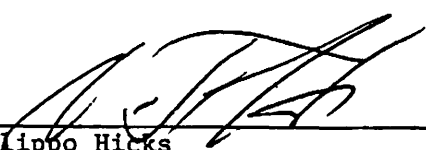
WHEREFORE, your defendants respectfully move the Court to dismiss this Bill of Complaint as to them with their cost in their behalf expended.

Respectfully submitted,

DAVID F. PURVES and LAURA PURVES

By


Of Counsel


C. Filippo Hicks
Martin, Hicks & Ingles, Ltd.
P. O. Box 708
Gloucester, Virginia 23061

I hereby certify a true copy of the foregoing Answer was served on the plaintiffs by mailing a copy thereof by first class mail this 6th day of November, 1986 to R. Bruce Long, Esquire, P. O. Box 1069, Hayes, Virginia 23072, counsel of record for the defendants.


Counsel

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF GLOUCESTER

JIMMIE W. BROOKS, et als,
Plaintiffs

v.

JANICE MARIE BARBER, et als,
Defendants

*
*
*
*
*
*
*

Chancery No. 4459

STIPULATION

The parties hereto do hereby agree and stipulate as follows:

L RE: BARBER

1. The defendant's home was purchased from Southern Mobile Homes, Inc. on February 13, 1985 for \$42,795.00. It consists of two (2) sections, resting on an undercarriage and was installed on permanent piers, and now has around the entire base of the home a constructed brick wall. (the parties have agreed that they do not stipulate as to whether or not the permanent brick wall constitutes a "foundation" but will rely on the Court for that determination based on the evidence presented at the hearing of this matter). The home also has an attached wooden deck.

2. The home was installed on lot 19, Belroi Farms Subdivision pursuant to a permit issued by the Gloucester County Building Inspector dated March 14, 1985 (copy attached) and signed by Janice M. Barber.

3. The two units can be severed, taken off of the piers, the wooden deck removed, and placed on some type of low-boy and moved to another location and be reconstructed or reinstalled.

4. The home is constructed to HUD Code requirements, not BOCA Code requirements.

*Bruce Long,
P.C.*

*Worrey Al Law
P.O. Box 1069
Hayes, Virginia
23072*

*(804) 642-6969
(804) 874-4477*

5. The home is a manufactured home as defined in §36-85.3 of the Code of Virginia. At the time of the purchase of the home it was defined as a mobile home under §36-71 of the Code, which section has been repealed effective July 1, 1986.

II. RE: CAUBLE

1. The defendant's home was purchased from Forbes Homes, Elizabeth City, North Carolina in August, 1983. It consists of two (2) sections, resting on an undercarriage and was installed on permanent piers, and now has around the entire base of the home a constructed brick wall.(the parties have agreed that they do not stipulate as to whether or not the permanent brick wall constitutes a "foundation" but will rely on the Court for that determination based on the evidence presented at the hearing of this matter.) The structure also has two attached wooden decks.

2. The home was installed on lot 13, Belroi Farms Subdivision pursuant to a permit issued by the Gloucester County Building Inspector dated August 15, 1983 (copy attached) and signed by James T. Cauble, III, the former husband of Cathy J. Cauble.

3. The two units can be severed, taken off the piers, the wooden decks removed and placed on some type of low-boy and moved to another location and reconstructed or reinstalled.

4. The home is constructed to HUD Code requirements, not to BOCA Code requirements.

5. The home is a manufactured home as defined in §36-85.3 of the Code of Virginia. At the time of the purchase of the home it was defined

Bruce Long,
P. C.
Attorney At Law
P. O. Box 1069
Waynes, Virginia
23072

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as a mobile home under §36-71 of the Code, which section has been repealed effective July 1, 1986.

III. RE: WILLIAMS

1. The defendants' home was purchased from Southern Mobile Home, Inc. in February, 1984 for \$36,264.95. It consists of two (2) sections, resting on an undercarriage and was installed on permanent piers. The home was delivered to the defendants' lot in two (2) sections by a truck, each of which sections had a temporary hitch at the time of delivery. When the home was delivered it was transported on an undercarriage to which there was attached three (3) axles on each section and each axle contained springs and wheels and the home was installed on permanent piers and now has around the entire base of the home a constructed brick wall. (the parties have agreed that they do not stipulate as to whether or not the permanent brick wall constitutes a "foundation" but will rely on the Court for that determination based on the evidence presented at the hearing of this matter). There is a deck attached to the back of the home and brick steps attached to the front of the home.

2. The home was installed on lot 24, Belroi Farms Subdivision pursuant to a permit issued by the Gloucester County Building Inspector dated February 24, 1984 (copy attached) and signed by Carol J. Williams.

3. The two units can be severed, taken off piers, disconnected from the deck and the brick steps, and placed on some type of low-boy, moved to another location and reconstructed or reinstalled.

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4. The home is constructed to HUD Code requirements, not to BOCA Code requirements.

5. The home is a manufactured home as defined in §36-85.3 of the Code of Virginia. At the time of the purchase of the home it was defined as a mobile home under §36-71 of the Code, which section has been repealed effective July 1, 1986.

IV. RE: VALUES

The parties stipulate that each lot (land only) owned by each of the plaintiffs and defendants respectively are valued at approximately the same figure, and all would be valued at approximately \$25,000.00 each. The Cauble's home is valued at \$55,000.00, the Barber's home is valued at approximately \$55,000.00 and the Williams' home is valued at approximately \$50,000.00. The Brooks' home is valued at \$125,000.00 and the Cash's home is valued at \$90,000.00. The Radwanski's home is not yet completed and the Legg's and Sullivan's lots are currently unimproved.

SO STIPULATED:

 2/20/87 p.q.

 p.d.

*Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Lynch, Virginia
23072*

104) 642-6969
104) 874-4477

Ele 84-328 plant 84-104

BUILDING PERMIT

DEPT. FILE COPY

AMOUNT PAID

VALIDATION

DATE Feb. 24, 1984

PERMIT NO. 84-165

APPLICANT Norris & Carol Williams

ADDRESS Rt. 1 Box 357B Gloucester

Southern

(NO.)

(STREET)

(CONTR'S LICENSE)

PERMIT TO install Modiglar mobile home

(TYPE OF IMPROVEMENT)

NO.

(PROPOSED USE)

NUMBER OF DWELLING UNITS

AT (LOCATION)

Lot 24 Belroi Farms

(NO.)

(STREET)

ZONING DISTRICT

Petsworth

BETWEEN

(CROSS STREET)

AND

30-15(4)24

(CROSS STREET)

SUBDIVISION

LOT

BLOCK

LOT SIZE

BUILDING IS TO BE 24 FT. WIDE BY 64 FT. LONG BY FT. IN HEIGHT AND SHALL CONFORM IN CONSTRUCTION

TO TYPE

USE GROUP

BASEMENT WALLS OR FOUNDATION

(TYPE)

REMARKS: 1981 Southernaire 3 bedroom

AREA OR VOLUME

1536

(CUBIC/SQUARE FEET)

ESTIMATED COST \$ 36,000.00

PERMIT FEE

\$ 76.80

OWNER

Carol Williams

ADDRESS

BUILDING DEPT

C. Williams

(Affidavit on reverse side of application to be completed by authorized agent of owner)

FORM NO. BOCA-SP 1986

Signature of Contractor of his Authorized Representative Making Application

Signature of Permit Clerk

FILE COPY

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DEPT. FILE COPY

BUILDING PERMIT

AMOUNT PAID

VALIDATION

APPLICANT Janice Marie Barber DATE March 13, 1985 PERMIT NO. 85-285 Southern

PERMIT TO Install double wide () STORY Trailer (PROPOSED USE) 30-156R (CROSS STREET)

AT (LOCATION) Lot 19, Belcol Farms (STREET) 30-156R (CROSS STREET) ZONING DISTRICT PD

SUBDIVISION Lot 19, Belcol Farms LOT 19 BLOCK 1 LOT SIZE 1.580 AC.

BUILDING IS TO BE 28 FT. WIDE BY 50 FT. LONG BY 10 FT. IN HEIGHT AND SHALL CONFORM IN CONSTRUCTION TO TYPE 1985 RAILWAY USE GROUP BASEMENT WALLS OF FOUNDATION 3 REMARKS: 3 Bedroom, LICENSED ELECTRICIAN AND PLUMBER TO MORTGAGE THEIR OWN PERMITS

OWNER Janice Marie Barber ADDRESS 115 E. Pendroke St., Hampton, Va. (Affidavit not necessary and if application to be completed by authorized agent of owner)

BUILDING PERMIT

DEPT. FILE COPY

AMOUNT PAID

VALIDATION

APPLICANT James T. Cauble, III DATE August 15 1983 PERMIT NO. 83-775
ADDRESS 5 Carmel Terrace, Ha pton, Va. Forbes
(NO.) (STREET) (CONTR'S LICENSE)

PERMIT TO Install double wide mobile home NUMBER OF DWELLING UNITS 1
(TYPE OF IMPROVEMENT) NO. (PROPOSED USE)

AT (LOCATION) Lot 13, Belroi Farms, Off Rt. 614 ZONING DISTRICT PD
(NO.) (STREET)
BETWEEN 30-58
(CROSS STREET) AND (CROSS STREET)

SUBDIVISION LOT BLOCK LOT SIZE

BUILDING IS TO BE 28 FT. WIDE BY 60 FT. LONG BY FT. IN HEIGHT AND SHALL CONFORM IN CONSTRUCTION

TO TYPE 1983 USE GROUP Mansion BASEMENT WALLS OR FOUNDATION (TYPE)

REMARKS: 3 bedrooms - Licensed electrician and plumber to obtain permits.

AREA OR VOLUME 1680 sq. ft. ESTIMATED COST \$ 44,000 PERMIT FEE \$ 84.00
(CUBIC/SQUARE FEET)

OWNER [Signature] BUILDING DEPT. BY C. Fleming Piller
ADDRESS

(Affidavit on reverse side of application to be completed by authorized agent of owner)

COST WHEN PURCHASED \$44,000.00

Are you a resident of Gloucester? NO In the military Yes

Signature of Permit Clerk

COPY

Signature of City Clerk of his Authorized Representative Making Application

COPY TO CITY CLERK'S OFFICE

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF GLOUCESTER

JIMMIE W. BROOKS, et als,

Plaintiffs

v.

DAVID F. PURVES
and
LAURA PURVES,

Defendants

Chancery No. 4511

STIPULATION



The parties do hereby agree and stipulate as follows:


1. That the Defendants purchased Lot 10, Belroi Farms by deed dated June 10, 1985 and recorded on June 11, 1985 in the Clerk's Office of the Circuit Court of Gloucester County, Virginia in Deed Book 288, Page 212.

2. That the Defendants obtained from the Gloucester County building inspector a permit for the installation of a single wide trailer which is now defined as a manufactured home in §36-85.3 of the Code of Virginia and was formerly defined as a mobile home under §36-71 of the Code, which section was repealed effective July 1, 1986, on said Lot 10 on June 10, 1985 and in pursuance thereof placed said home on said lot and began to occupy the same and have occupied it continuously from said date until the present time. (copy attached)

3. The Defendants obtained from the Gloucester County Building Inspector on August 15, 1986 a permit to construct a two story dwelling. (copy attached) They subsequently commenced construction of said dwelling and as of February 14, ¹⁹⁸⁷~~1986~~ had completed almost all of the foundation work. Nothing beyond the foundation had been completed at that time.

SO STIPULATED:

 R. Bruce Long 2/12/87 p.q.
 p.d.


Bruce Long,
P.C.
Attorney M. L. Sam
O. Box 1069
Lanesville, Virginia
23072

(41) 642-6969
(41) 874-4477

DEPT. FILE COPY

BUILDING PERMIT

VALIDATION

David F. Purves June 10 85 PERMIT NO. 85-802 Owens

ADDRESS P.O. Box 515, White Marsh, Va. (OWNER'S LICENSE)

NUMBER OF DWELLING UNITS

Install single wide trailer

(TYPE OF IMPROVEMENT)

Lot 10, Belroi Farms

STREET

30-158-10

LOT SIZE

ACROSS STREET

LOT

14

FT. LONG ST

1980

Oakwood Montebello

2 bedrooms - TRAILER MUST BE SKIRTED. LICENSED ELECTRICIAN AND PLUMBER TO OBTAIN PERMITS AND PERFORM WORK.

50

952 sq. ft.

ESTIMATED COST \$ 82,500

PERMIT 57.12

David F. Purves

(Affidavit on reverse side of application to be completed by authorized agent of owner)

BUILDING PERMIT

DEPT. FILE COPY

AMOUNT PAID

VALIDATION

APPLICANT David F. Purves DATE Aug. 15 19 86 PERMIT NO. 86-1068

ADDRESS P.O. Box 515, White Marsh, VA self
(NO.) (STREET) (CONTR'S LICENSE)

PERMIT TO construct (2) STORY dwelling NUMBER OF DWELLING UNITS _____
(TYPE OF IMPROVEMENT) NO. (PROPOSED USE)

AT (LOCATION) Lot 10 Belroi Farms ZONING DISTRICT Pets.
(NO.) (STREET)

BETWEEN _____ AND 30-156 U Lot 10
(CROSS STREET) (CROSS STREET)

SUBDIVISION _____ LOT _____ BLOCK _____ LOT SIZE _____

BUILDING IS TO BE 38 FT. WIDE BY 26 FT. LONG BY _____ FT. IN HEIGHT AND SHALL CONFORM IN CONSTRUCTION
38 X 26 2nd floor

TO TYPE 5 USE X GROUP 38 porch BASEMENT WALLS OR FOUNDATION _____ (TYPE)

REMARKS: Vinyl Exterior

AREA OR VOLUME 988/730/190 ESTIMATED COST \$ 64,995 PERMIT FEE \$ 114.48
(CUBIC / SQUARE FEET)

OWNER David F. Purves FAIR MARKET VALUE

ADDRESS _____ BUILDING DEPT. C. Fleming Rile
BY _____

(Affidavit on reverse side of application to be completed by authorized agent of owner)

02

FORM NO. BOCA-BP 1988

1 V I R G I N I A:
2 IN THE CIRCUIT COURT FOR THE COUNTY OF GLOUCESTER

3 JIMMIE W. BROOKS, et als,
4 Plaintiffs,

5 vs.

Chancery 4459

6 JANICE MARIE PABER, et als,
7 Defendants.

8 BEFORE: The Honorable G. Duane Holloway
9 DATE: March 25, 1987

10 APPEARANCES:

11 R. BRUCE LONG, ESQ.,
12 Suite 15, Abingdon Square,
13 P.O. Box 1069,
14 Hayes, Virginia,
15 Attorney for the Plaintiffs.

16 C. FLIPPO PICKS, ESQ.,
17 P.O. Box 708,
18 Gloucester, Virginia,
19 Attorney for the Defendants.

20 Reported by: Deborah Jean Kless
21
22
23
24
25

I N D E X

2	<u>WITNESS:</u>	PAGE
3		
4	<u>GENE R. CASE:</u>	
	Direct Examination by Mr. Long	5
	Cross-Examination by Mr. Hicks	20
5	Redirect Examination by Mr. Long	22
	Recross-Examination by Mr. Hicks	22
6	Further Redirect Examination by Mr. Long	23
	Further Recross-Examination by Mr. Hicks	24
7		
8	<u>CLENITA S. BUCKS:</u>	
	Direct Examination by Mr. Long	25
	Cross-Examination by Mr. Hicks	27
9		
10	<u>WILLIAM LEGG:</u>	
	Direct Examination by Mr. Long	28
	Cross-Examination by Mr. Hicks	31
11		
12	<u>NORRIS C. WILLIAMS:</u>	
	Direct Examination by Mr. Hicks	36
	Cross-Examination by Mr. Long	43
13	Redirect Examination by Mr. Hicks	52
	Recross-Examination by Mr. Long	55
14		
15	<u>COTTY J. CABLE:</u>	
	Direct Examination by Mr. Hicks	56
	Cross-Examination by Mr. Long	61
16		
17	<u>JENNIE MARIE BARBER:</u>	
	Direct Examination by Mr. Hicks	64
	Cross-Examination by Mr. Long	65
18		
19		
20	<u>EXHIBITS:</u>	PAGE
21	Plaintiffs' Exhibits Numbers 1 through 10	6
	Plaintiffs' Exhibit Number 12	11
	Plaintiffs' Exhibit Number 14	11
22	Plaintiffs' Exhibit Number 15	30
23	Respondents' Exhibit Number 1	38
	Respondents' Exhibit Number 2	38
24	Respondents' Exhibit Number 3	38
	Respondents' Exhibit Number 4	42
25	Respondents' Exhibit Number 5	59

1 THE COURT: All right. Call your first
2 witness, please. Do you wish to make an opening statement
3 in this case?

4 MR. LONG: Your Honor, very briefly, if I
5 may.

6 MR. PICKS: Just one moment. I may have
7 one witness, Your Honor, who's not a party.

8 THE COURT: Do you wish the witnesses to
9 be separated?

10 MR. LONG: If there is one that is not a
11 party.

12 (Whereupon, the witness left the
13 courtroom.)

14 THE COURT: All right. Go ahead.

15 MR. LONG: Do you want to reswear the
16 witnesses, Your Honor, for this case?

17 THE COURT: No, we called both cases.
18 They've been sworn for both cases.

19 MR. LONG: Your Honor, if the Court has in
20 front of it the Bill of Complaint in this matter, Paragraphs
21 1 through 4 of the Bill of Complaint are admitted and there
22 are stipulations as to the elements of 5, 6 and 7. So, our
23 evidence will be brief, and we will deal with the remaining
24 elements of the Bill of Complaint.

25 I would like to state to the Court in this

1 case that while Mr. Hicks and I were in total agreement, I
2 think, as to the sole issue in the Purves case, we perhaps
3 have a slightly different view of the issue in this case.
4 And I would ask the Court, if I may, to look at restriction
5 Number 6, which is mentioned in both of the trial
6 memorandum, because of the meticulous reading of that
7 restriction. I think it sets up the issue for the Court.

8 The restriction, as it did in the previous
9 case, reads: No structure of a temporary character, that
10 is, a trailer, basement, etc., etc., shall be on the lot. I
11 understand the defendants' position. They are advancing to
12 the Court the position that their homes are not of a
13 temporary character. That, as I see it, is not specifically
14 the issue in this case.

15 It is our position, Your Honor, and this
16 is what I will address my evidence to as well as my closing
17 argument, that the restriction read -- grammatically reads:
18 No structure of a temporary character, that is, a trailer.
19 And so, the restriction by its own language, by its very
20 wording, defines a structure of a temporary character as a
21 trailer.

22 So, we're not here to argue, as I see it,
23 or to present evidence, as I see it, as to whether or not
24 these structures are of a temporary character, but rather
25 whether or not they are a trailer. And that is the issue

1 that I intend to address, as I said, in my closing argument
2 as well as in my evidence to the Court. If, in fact, the
3 Court is convinced that these homes are trailers, then I
4 believe an injunction would lie.

5 THE COURT: Mr. Hicks?

6 MR. HICKS: Your Honor, I beg to differ
7 with my colleague. It doesn't say temporary character,
8 trailer, basic temporary character -- structure, that is,
9 and then trailer. So, Your Honor, there's no question that
10 these are what were formerly known as double-wide mobile
11 homes and now in Virginia law are known as manufactured
12 houses. And, of course, it's our position that under the
13 law and under these restrictions, that the burden is upon
14 the Plaintiffs to prove that the restriction prohibits the
15 type of structure that my clients are living in. And what
16 more and more courts are saying is that you don't look at it
17 as to how a unit is brought onto the lot, but you look at
18 how it is situated after it is there.

19 Your Honor, we also have here a
20 restriction which makes it clear that we don't get into the
21 issue, Well, why can't you have a -- if you can have a
22 double-wide mobile home there, why can't you have a
23 single-wide mobile home? Because there is a restriction
24 requiring 1,300 square feet of living space. And there is
25 no allegation that there is any violation by any of my three

1 clients on the 1,300 square feet of living space.

2 Your Honor, we also have the lateral
3 question here that that restriction also says, if it can be
4 easen from adjacent lot owners or from the road. So, there's
5 not even an absolute prohibition against the things
6 mentioned there, but we do have the 1,300 square feet of
7 living space, which there's no question that our clients --
8 there is no complaint about that.

9 THE COURT: All right. Mr. Long, call
10 your first witness.

11 MR. LONG: I call Mr. Cash, Your Honor.

12
13 GENE E. CASH,
14 called as a witness, having been first
15 duly sworn, was examined and testified
16 as follows:

17
18 DIRECT EXAMINATION

19
20 BY MR. LONG:

21 Q Mr. Cash, again for the record, would you
22 state your name, please, sir?

23 A Gene E. Cash.

24 Q And you are a resident of Belroi Farm
25 Subdivision in Gloucester County?

1 A Yes.

2 Q On what lot?

3 A Twenty-six.

4 Q Mr. Cash, did you accompany me on February
5 the 14th of 1987 for the purpose of taking pictures to be
6 used in Court today?

7 A Yes, I did.

8 THE COURT: Would you show it to counsel,
9 please.

10 MR. LONG: Yes, sir.

11 May I ask that they be marked?

12 THE COURT: Do you have any objection?

13 MR. DICKS: No, sir.

14 THE COURT: Mark them, please, as exhibits
15 in the Brooks versus Barber, et als case, please. They are
16 admitted.

17 (Whereupon, Plaintiffs' Exhibit Numbers 1
18 through 12 were marked.)

19
20 MR. LONG: Your Honor, while that's being
21 done, I'm going to ask the Court in this case for purposes
22 of closing argument to take judicial notice of Section 2-2
23 of the Gloucester County Zoning Ordinance which is the
24 definition of a mobile home under the Gloucester County
25 Code.

1 THE COURT: Mr. Hicks, do you question the
2 ordinance, which he has --

3 MR. HICKS: I don't question the
4 ordinance, sir, but I don't think it applies in this case.
5 We're talking about what these restrictive covenants
6 provide, and the burden is on him to prove what restrictive
7 covenants -- this is not an alleged violation of zoning
8 laws. I don't see the relevance.

9 THE COURT: It seems to be irrelevant. It
10 simply shows that the body of government, Mr. Long, has an
11 opinion as to the reasonable ends, I assume.

12 MR. LONG: Your Honor, the only reason
13 that I'm asking the Court to do this is because in the
14 Defendants' trial memorandum, four or five of the cases that
15 they cited had to do with interpretations of wording and
16 definitions of zoning ordinances.

17 THE COURT: They were zoning cases?

18 MR. LONG: Yes, sir. They are zoning
19 cases.

20 THE COURT: The fact that you cite some
21 case which is inapplicable wouldn't make it relevant in this
22 case, would it?

23 MR. LONG: No, sir. And I will argue to
24 the Court that those cases are not applicable to the case at
25 bar in final argument.

1 THE COURT: It would seem to me that the
2 zoning is not an issue. The opinion of the Board
3 establishes a reasonable time, you're referring to, six
4 months, which you read earlier?

5 MR. LONG: No, sir. This is on the
6 definition of what constitutes a mobile home.

7 THE COURT: All right. Let me reconsider,
8 then. I think it is relevant. I think the definition --

9 MR. HICKS: Let me say, Your Honor, there
10 is no question that these are double-wide mobile homes,
11 which are now defined as manufactured houses. The question
12 is whether the restriction --

13 THE COURT: The case is not going to turn
14 on any particular definition from any governmental agency or
15 even necessarily from any particular court, although this
16 Court will recognize a citation, if you show me a Virginia
17 case, or a Federal Circuit Court case, and I will give
18 respect to the courts of other states. I think it would be
19 relevant to show the definition in the ordinance.

20 MR. HICKS: Note our exception, Your
21 Honor.

22 THE COURT: All right.

23 MR. LONG: Somewhere in my file here, Your
24 Honor, I made a Xerox copy of it.

25 THE COURT: You're excepting it on the

1 grounds of relevance, not on the authenticity of it?

2 MR. HICKS: Yes, sir. Not on the
3 authenticity of it, no.

4 THE COURT: What is it, then? I will take
5 judicial notice of the ordinance.

6 MR. LONG: I have a copy somewhere in the
7 file here. Here is the actual ordinance itself.

8 THE COURT: It seems to be the County of
9 Gloucester, Virginia, Code of Laws, Section 2-2, definition
10 of a mobile home. All right, sir.

11 MR. LONG: Should we read it into the
12 record, Your Honor?

13 THE COURT: I think so. I will let you
14 read it after I read it.

15 MR. LONG: I'm simply asking that the
16 Court to take judicial notice of that, which I will argue
17 later in my closing argument.

18 THE COURT: I'll take judicial notice of
19 the ordinance. I've not ruled as to what affect it will
20 have, Mr. Hicks. It may have no affect whatsoever. It may
21 be irrelevant. Let me read it first.

22 All right. I think they both quote
23 several parts, about the same definition. I believe you're
24 quoting the statute somewhat, aren't you?

25 MR. LONG: Statutes, yes, sir. There are

1 some references in defense counsel's memorandum to the Court
2 dealing with definitions contained in zoning ordinances in
3 other states. May I read this into the record, Your Honor?

4 THE COURT: Yes.

5 MR. LONG: Mobile home: A mobile home
6 shall mean any structure, transportable in one or more
7 sections equipped to permit occupancy for dwelling, sleeping
8 or office space purposes, and which is built on a permanent
9 chassis, and designed to be used with or without permanent
10 foundation, when connected to the required utilities and
11 includes the plumbing, heating, air conditioning and
12 electrical systems contain therein. Both single-wide and
13 double-wide mobile homes are included in this definition.
14 End of sentence.

15 THE COURT: All right. Proceed, please.

16
17 BY MR. LONG:

18 Q Mr. Cash, I show you Plaintiffs' Exhibit
19 Number 1, and ask you if you can tell the Court what that
20 picture represents.

21 THE COURT: Excuse me, would you-all like
22 the plat that was introduced in the Purves case to be used
23 in this case and introduced as an exhibit, as well?

24 MR. LONG: Yes, sir.

25 THE COURT: All right. We will mark this

1 for both cases as an exhibit.

2 MR. LONG: Likewise with the restrictions,
3 too, Your Honor.

4 THE COURT: With the restrictions?

5 MR. LONG: Yes, sir.

6 THE COURT: Any objection, Mr. Hicks?

7 MR. HICKS: No, sir.

8 THE COURT: These will be exhibits in both
9 cases, the restriction and the plat. Would you mark them.
10 They are admitted for the Plaintiff.

11
12 (Whereupon, Plaintiffs' Exhibit Numbers 13
13 and 14 were marked.)

14
15 THE WITNESS: This picture --

16 MR. LONG: Wait a minute, Mr. Cash.

17 THE COURT: Go ahead.

18
19 BY MR. LONG:

20 Q Mr. Cash, would you explain to His Honor
21 what that picture represents?

22 THE COURT: What is the exhibit number?

23 MR. LONG: Exhibit Number 1, Your Honor.

24 THE WITNESS: This picture was taken on
25 February 14th by me, and it was taken out in the cul-de-sac

1 of the main road, and it shows a picture of Mr. Williams'
2 double-wide trailer.

3
4 BY MR. LONG:

5 Q Is that Norris Williams, one of the
6 parties to the suit?

7 A Yes.

8 Q Would you show his Honor on the plat or
9 the diagram which is labled, I guess, Exhibit --

10 THE COURT: In this case, it's Exhibit
11 Number 13.

12
13 BY MR. LONG:

14 Q Would you step up here and show His Honor
15 on Exhibit Number 13 where that picture was taken and where
16 the house approximately is located that you took the picture
17 of?

18 A It's located right here, and I was
19 standing approximately right there.

20 THE COURT: All right.

21
22 BY MR. LONG:

23 Q All right. And would you tell the Court
24 what Exhibit Number 2 is?

25 A This is also another picture of Norris

1 Williams' double-wide trailer taken from the road as
2 entering his driveway.

3 Q And Exhibit Number 3, would you tell the
4 Court what that is?

5 A This is a HUD tag that is affixed on the
6 front of the double-wide trailer?

7 Q Which double-wide trailer?

8 A Mr. Williams'.

9 Q Would you read what's on the tag, please?

10 A It says, "The manufacturer certifies to
11 the best of the manufacturer's knowledge and belief that
12 this mobile home has been inspected in accordance with the
13 requirements of the Department of Housing and Urban
14 Development and is constructed in conformance with the
15 Federal Mobile Home Construction and Safety Standards in
16 effect on the date of this -- of manufacture. See data
17 plate."

18 Q And that's affixed to which home?

19 A To Mr. Williams' home, on the front.

20 Q All right. And would you -- let me have
21 those back. And would you tell His Honor what Exhibit
22 Number 4 represents?

23 A This is a picture of the right and rear
24 view of the double-wide trailer and it shows that the --

25 Q Stand up here so His Honor could -- is

1 that all right, Your Honor, so we can point out to you the
2 things on the picture?

3 THE COURT: Yes, sir. What is the exhibit
4 number there?

5 MR. LONG: Exhibit Number 4, Your Honor,
6 Plaintiffs' Exhibit Number 4.

7 THE COURT: All right.

8 THE WITNESS: It's a picture of the
9 double-wide, and it shows the fact that it has brick setting
10 around underneath of it. The brick is extended out past the
11 trailer, which means it doesn't rest on the foundation.
12 Where, in fact, it's a mobile home, because it has a Vepco
13 meter base, and the tanks are detached from the house.

14 Q All right. And while you're there, I show
15 you Plaintiffs' Exhibit Number 5. Would you tell His Honor
16 what that represents and where it was taken?

17 A This was a picture taken underneath
18 Mr. Williams' mobile trailer, and it shows that this wall
19 here is the same as this wall. It does not rest on this
20 beam, here. The cinder blocks are stacked, and this is no
21 more than 24-inch steel beams which is used in mobile home
22 construction.

23 Q What is this?

24 A That's the steel beams.

25 Q And those pictures were taken by you on

1 what date?

2 A February 14th.

3 Q On February 14th?

4 A Yes, sir.

5 Q All right. I hand you Plaintiffs' Exhibit
6 Number 9 and ask you if you can identify that?

7 A Yes. This picture was taken from the road
8 of Janice Earber's trailer.

9 Q Would you show His Honor again on the
10 diagram, which is Exhibit Number 13, I believe, where the
11 house is located and where you took the picture from?

12 A Her house is located approximately right
13 in here, and I was standing right here.

14 THE COURT: In the cul-de-sac?

15 THE WITNESS: Yes, sir, in the cul-de-sac.

16

17 BY MR. LONG:

18 Q All right. While you're up there, I want
19 to ask you to identify Plaintiffs' Exhibit Number 10?

20 A While standing here --

21 THE COURT: When you say here, say where
22 you're pointing.

23 THE WITNESS: I was standing right here in
24 the cul-de-sac.

25

1 BY MR. LONG:

2 Q In the the cul-de-sac in front of what
3 lot?

4 A Janice Barber's lot.

5 Q All Right. What lot number is that shown
6 on Exhibit Number 13?

7 A Nineteen.

8 Q All right.

9 A I made a 90-degree turn and took a picture
10 of the front of the Brooks' home, which is Lot 20.

11 Q From the same location?

12 A Same location.

13 Q And is Mr. Brooks one of the plaintiffs in
14 this case?

15 A Yes.

16 Q All right. And I hand you Plaintiffs'
17 Exhibit Number 11 and ask you if you can tell the Court what
18 that represents?

19 A This is the rear of Janice Barber's
20 trailer, and it shows the exact same thing. The brick does
21 not rest under the track. It also has an exposed cinder
22 block foundation, and the Vepco meter base is detached from
23 the house which is what they do in mobile home construction.

24 THE COURT: Did you check to see if there
25 was any footing under the brick?

1 THE WITNESS: No, sir.

2 THE COURT: All right. Go ahead.

3

4 FY MP. LONG:

5 Q And I hand you Plaintiffs' Exhibit Number
6 12 and ask you if you can identify that?

7 A This is also a HUD tag that was located on
8 the front of Janice Barber's trailer.

9 Q Can you read the tag?

10 A "The manufacturer certifies to the best of
11 manufacturer's knowledge and belief that this manufactured
12 home has been inspected in accordance with the requirements
13 of the Department of Housing and Urban Development and is
14 constructed in conformance with the Federal Manufactured
15 Home Construction and Safety Standards in effect on the date
16 of the manufacture. See data plate."

17 Q And that plate is affixed to whose home?

18 A To the left front of Janice Barber's
19 trailer.

20 Q Janice Barber being one of the defendants
21 in this case?

22 A Yes.

23 Q And the picture was taken when?

24 A February the 14th, 1987.

25 Q All of these pictures were taken February

1 14th?

2 A Yes.

3 THE COURT: That's 1987, I assume?

4 MR. LONG: Yes, sir.

5 THE COURT: All right.

6

7 BY MR. LONG:

8 Q All right. I want you -- I have here
9 Plaintiffs' Exhibit Number 6, and again I would ask you to
10 step over to His Honor and show him what that picture
11 represents relative to Plaintiffs' Exhibit Number 13.

12 A This picture was taken standing
13 approximately right here in the road, and it's the front
14 view of Cathy Cauble's trailer.

15 Q Which lot is that located on on Exhibit
16 Number 13?

17 A It's Number 13.

18 Q And it was taken where?

19 A It was taken approximately right here on
20 the road.

21 Q Define "here" on the plat. In the center
22 of the road?

23 A Yes, in the center of the road.

24 Q As far as you know, have each of the three
25 defendants, Mr. Williams, Ms. Barber, and Ms. Cauble

1 occupied these double-wide trailers since they put them on
2 the premises?

3 A Yes.

4 Q Do they continue to occupy them, to the
5 best of your knowledge?

6 A Yes.

7 Q Are you aware of any other building
8 permits that they have obtained relative to building
9 structures on any of their three lots?

10 A No.

11 Q Mr. Williams' lot is the lot located very
12 close to yours, isn't it?

13 A Yes.

14 Q Would you show His Honor again which lot
15 we're talking about, where Mr. Williams is located relative
16 to yourself.

17 THE COURT: Lot 24 and he's lot 26, isn't
18 it? Williams is 24 and Mr. Cash, the witness, is 26. They
19 have a common corner in the center of the cul-de-sac.

20 MR. LONG: Yes, sir.

21

22 BY MR. LONG:

23 Q Can you tell the Court whether or not you
24 and Mr. Williams have had any conversations regarding what
25 type of home he intended to build on his lot and how long

1 ago that conversation occurred?

2 A In casual conversation, maybe a year, year
3 and a half ago, he stated one time that he would eventually
4 like to put up a log cabin over at the edge of the woods.

5 MR. LONG: I have no further questions of
6 this witness.

7 THE COURT: Mr. Hicks?

8

9 CROSS-EXAMINATION

10

11 BY MR. HICKS:

12 Q Mr. Cash, was Mr. Williams living on his
13 lot when you started constructing your home?

14 A Yes.

15 Q And did you ever do anything to help
16 Mr. Williams concerning his present residence?

17 A Yes.

18 Q You helped dig a foundation, didn't you?

19 A Dig the footing.

20 Q Dig the footing?

21 A Yes.

22 Q For the brick foundation around it?

23 A Yes.

24 Q So, it does go down -- the footing does go
25 down in the ground, doesn't it?

1 A Yes.

2 Q And is there a concrete floor underneath
3 those bricks?

4 A Yes.

5 Q And you actually helped him dig it?

6 A Yes.

7 Q You never said anything to him at that
8 time concerning why you were going to all this trouble,
9 anything of that kind?

10 A I'm sorry?

11 Q You never had a discussion with him, Well,
12 why are you putting footing down, because you can't keep
13 this on here, did you?

14 A No.

15 Q And Mr. Cash, you have read into evidence
16 the labels on both Mr. Williams' home and Ms. Barber's home?

17 A Yes.

18 Q One says mobile home and the other says
19 manufactured home?

20 A Yes.

21 Q Neither one of them mentions trailer, does
22 it?

23 A No.

24 Q And these lots are large lots. They
25 average at least five acres, because they are not

1 state-maintained roads and don't intend to be
2 state-maintained roads, correct?

3 A Yes.

4 MR. HICKS: No further questions.

5 THE COURT: Mr. Long?

6

7 REDIRECT EXAMINATION

8

9 BY MR. LONG:

10 Q Why did you help Mr. Williams dig his
11 footing?

12 A Because my wife and I were tired of
13 looking at the trailer tires underneath of it and the cinder
14 blocks.

15 MR. LONG: No further questions.

16 THE COURT: Mr. Hicks?

17

18 RECROSS-EXAMINATION

19

20 BY MR. HICKS:

21 Q So, you helped him dig the footing and you
22 saw a concrete foundation poured and saw the brick
23 foundation put in?

24 A I dug footings. I didn't pour any
25 concrete.

1 Q But you saw -- you know it was concrete
2 poured in it?

3 A Yes.

4 Q And you also saw that there's a wooden
5 porch on the back of this residence, isn't there?

6 A When I was taking the pictures that day, I
7 saw a deck behind his house at that time.

8 Q And there is also on this property a
9 garage or a storage shed that is built there, too?

10 A It's a shed.

11 MR. HICKS: No further questions.

12 THE COURT: Mr. Long?

13

14 FURTHER REDIRECT EXAMINATION

15

16 BY MR. LONG:

17 Q When you helped Mr. Williams put his
18 footing in, did you know at that time whether or not he
19 intended to build another permanent structure?

20 A Not definitely, no.

21 Q But he had made a comment to you that he
22 was going to build a log cabin?

23 A Something to that effect, just in idle
24 conversation, that one day he'd like to build a home.

25 MR. LONG: No further questions.

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THE COURT: Mr. Hicks?

FURTHER RECROSS EXAMINATION

BY MR. HICKS:

Q But this lot was large enough to build another home or so on it, isn't it?

A Yes.

MR. LONG: That's calling for an opinion, Your Honor.

MR. HICKS: He's been giving opinions the whole time, Your Honor.

THE COURT: Well, I think it's something that goes beyond opinion evidence. Even a layman would know that you could build another home on five acres. It's not really an expert opinion. It's something that anyone would know.

Do you have any questions?

MR. HICKS: No, sir, Your Honor.

THE COURT: Thank you, Mr. Cash.

Mr. Long?

MR. LONG: I call Ms. Sue Brooks, Your Honor.

1 GLENITA S. BROOKS,
2 called as a witness, having been first
3 duly sworn, was examined and testified
4 as follows:

5
6 DIRECT EXAMINATION

7
8 BY MR. LONG:

9 Q Ms. Brooks, would you state your name,
10 please?

11 A My name is Glenita S. Brooks. My first
12 name is G-l-e-n-i-t-a.

13 C And do you go by the nickname of Sue?

14 A Yes, I do.

15 C Are you a resident in Belroi Farms
16 Subdivision?

17 A Yes.

18 Q Are you one of the plaintiffs in this
19 suit?

20 A Yes, I am.

21 Q Have you had occasion to visit or be in
22 the backyard of the Cauble residence?

23 A Yes, I have.

24 Q I hand you these two pictures and ask you
25 if you can identify them.

1 THE COURT: Has Mr. Hicks seen the
2 pictures?

3 MR. LONG: Yes, sir. They're marked as
4 exhibits.

5 THE COURT: All right.

6

7 BY MR. LONG:

8 Q I hand you Plaintiffs' Exhibit Number 7
9 and ask you if you can tell the Court what that shows?

10 A Yes. It shows a detached meter box.

11 THE COURT: Didn't we hear some
12 evidence --

13 MR. LONG: It's a different -- I didn't
14 put on this specific evidence on this specific home, Your
15 Honor.

16 THE COURT: All right, sir.

17 THE WITNESS: And it's got a small label
18 on the back which shows it is a manufactured house, and it
19 also shows the exposed cinder block.

20

21 BY MR. LONG:

22 Q And would you -- can you identify
23 Plaintiffs' Exhibit Number 8?

24 A It is a metal plaque on the back
25 showing -- on the house showing that it is a manufactured

1 house.

2 Q On the back of whose house?

3 A On Cathy Cauble's.

4 MR. LONG: No further questions.

5 THE COURT: Mr. Hicks?

6

7 CROSS-EXAMINATION

8

9 BY MR. HICKS:

10 Q There's also on the back of Cathy Cauble's
11 house a two-level porch, isn't there?

12 A Yes, there is.

13 Q And was that home there before you started
14 construction on your home?

15 A Before --

16 MR. LONG: That's outside the scope of
17 direct, I believe, Your Honor.

18 THE COURT: Well, I don't think so. It
19 would go to proper cross-examination.

20

21 BY MR. HICKS:

22 Q Was that on there before you started
23 construction of your home?

24 A Yes, it was.

25 MR. HICKS: No further questions.

1 THE COURT: Mr. Long?
2 MR. HICKS: I have no further questions.
3 THE COURT: Thank you.
4 Call your next witness.
5 MR. LONG: I call Mr. William Legg.

6
7 WILLIAM LEGG,
8 called as a witness, having been first
9 duly sworn, was examined and testified
10 as follows:

11
12 DIRECT EXAMINATION

13
14 BY MR. LONG:

15 Q Would you state your name, please, sir?
16 A William Legg.
17 Q Mr. Legg, are you one of the plaintiffs in
18 this case?
19 A Yes, I am.
20 Q And are you a lot owner in Belroi Farms?
21 A Yes, I am.
22 Q What lot do you own?
23 A I believe it's 23. I don't remember the
24 number.
25 Q All right. What occupation are you

1 employed in, sir?

2 A I'm a real estate agent.

3 Q And do you hold a license to practice real
4 estate for the Commonwealth of Virginia?

5 A Yes, I do.

6 C Are you a member of what's known as the
7 Multiple Listing Service?

8 A Yes, I am.

9 Q Do you have with you a book from the
10 Multiple Listing Service?

11 A Yes, I do.

12 Q What's the date on that book?

13 A May 12th, 1986.

14 Q All right. I want to direct your
15 attention to page 367 of that book, and I want to ask you to
16 examine this copy and tell me if this is an accurate copy of
17 page 367 of that book.

18 MR. HICKS: I'd like to take a look at it.

19

20 BY MR. LONG:

21 Q Is that an accurate copy?

22 A Yes.

23 MR. LONG: I'd like to ask that that be
24 marked as Plaintiffs' Exhibit Number --

25 THE COURT: Do you have any objection to

1 the listing, Mr. Hicks?

2 MR. HICKS: No, sir. That looks like one
3 of my client's listings.

4 THE COURT: All right. Mark it for the
5 Plaintiff. It is admitted.

6
7 (Whereupon, Plaintiffs' Exhibit Number 15
8 was marked.)

9
10 MR. LONG: I wanted to question him about
11 it, Your Honor.

12 THE COURT: All right.

13
14 BY MR. LONG:

15 Q Mr. Legg, I direct your attention to the
16 four lines of language under the general description portion
17 of that listing, and ask if you will, beginning with the
18 word "beautiful," if you would read that into the record,
19 please.

20 A Beautiful, secluded, wooded acreage, with
21 a 1985 Parkway double-wide on brick and stucco combination,
22 lovely home deco -- no period.

23 THE COURT: Well, whose listing was it?

24 THE WITNESS: Client looking for that
25 special home with land at a reasonable price, see double

1 brochure. And it continues on for several --

2

3 BY MR. LONG:

4 Q All right. Just below that, does it
5 indicate the name of the owner?

6 A The name of the owner is Jan Barber.

7 Q Do you know Jan Barber?

8 A I do not personally know her.

9 Q But you do know that Janice Barber is one
10 of the defendants in this suit?

11 A Yes, sir.

12 MR. LONG: I have no further questions of
13 this witness.

14 THE COURT: Mr. Hicks?

15

16 CROSS-EXAMINATION

17

18 BY MR. HICKS:

19 Q Mr. Legg, in that that you put in
20 evidence, it goes on to say, Quality kitchen cabinets, and
21 great room has been cathedral ceiling, ceiling fan, built-in
22 wet bar, wood cabinets and bookcases both sides of
23 fireplace, sunroom, great indoor/outdoor carpets, ceiling
24 fan. It says all of that?

25 A Yes, it does.

1 Q And do you know the square footage
2 restriction in Belroi Farms?

3 MR. LONG: I'm going to object, Your
4 Honor. It's not relevant, and it's before this Court.
5 There is no allegation of --

6 THE COURT: It's not at issue.

7 MR. HICKS: I understand it's not at
8 issue.

9 No further questions.

10 THE COURT: Mr. Long, redirect?

11 MR. LONG: No, sir.

12 THE COURT: Thank you, sir.

13 Call your next witness.

14 MR. LONG: We rest, Your Honor.

15 THE COURT: Mr. Hicks?

16 MR. HICKS: Your Honor, I make a motion to
17 strike the Plaintiffs' evidence. The Plaintiffs' evidence
18 include in the stipulations to show that these are labeled
19 as mobile homes, manufactured homes, that they -- the one
20 that he put into evidence is that it's a dug foundation,
21 poured concrete and there are bricks on it, and a porch was
22 attached.

23 Your Honor, all of the restrictions speak
24 of temporary structure, trailer. His own evidence is, by
25 the evidence he's put in, that these are mobile homes or

1 manufactured homes. And the restriction does not prevent
2 that, Your Honor. And the law of Virginia is clear. It's
3 interesting, the last case on restrictions didn't do with
4 mobile homes or manufactured homes, but hinting -- and the
5 Court has just reaffirmed the case where a retired Circuit
6 Judge was the complainant, that the burden is on the person
7 trying to say that there's been a violation of the
8 restrictions to show clear and convincing that there is a
9 violation, that the restrictions are not looked on with
10 favor in law because of the fact that the person with this
11 property is supposed to be able to use his only property.
12 Your Honor, he has not carried the burden to show that these
13 housing units violate this restrictive covenant.

14 THE COURT: Mr. Long?

15 MR. LONG: Your Honor, whether or not
16 mobile homes, manufactured homes, and trailers are one in
17 the same is a question of law that this Court will have to
18 decide. That is not properly the subject of a motion to
19 strike. The motion to strike would have to go to what I have
20 alleged in my pleadings, Your Honor, and Paragraphs 1, 2, 3
21 and 4, as I mentioned earlier, in the pleadings have been
22 admitted. So, there's no contest about those in this case.

23 Paragraph Number 5 of the Bill of
24 Complaint says that Janice Barber obtained a Gloucester
25 County inspection for a double-wide trailer. Well, that was

1 denied. But, Your Honor, in the stipulation itself, there
2 is attached to the stipulation -- this is a stipulation, so
3 this is evidence before the Court -- a building permit
4 issued to Janice Marie Barber for installing a double-wide
5 trailer.

6 So, there certainly is evidence before the
7 Court that it is a trailer. The evidence is before the
8 Court by stipulation. Even if it weren't, I don't think
9 this would be a proper matter for a motion to dismiss,
10 because it's a question of law.

11 Again, with respect to the next paragraph
12 of the Bill of Complaint having to do with the same
13 allegations with respect to the Williams' home. In that
14 case, the restriction says installed -- I think the
15 secretary was attempting to type the word modular, but it
16 comes out modiclar, mobile home. Well again, I'm going to
17 submit to the Court, Your Honor, that a mobile home and a
18 trailer are one in the same. I've got case after case after
19 case after case to show that to this Court, but it's a
20 question of law, and it should be argued at the end of the
21 case and not on the motion to strike.

22 And thirdly, with respect to the Cauble
23 home, that likewise says -- the building permit which is in
24 evidence before this Court by way of a double-wide mobile
25 home says, To install a double-wide mobile home. Again,

1 that's a question of law. In addition, the witnesses here
2 that have testified have all referred to these structures or
3 dwellings as trailers. And there was no objection raised at
4 that time by counsel when they used the word trailer. Even
5 if there had been, we would have gotten on the
6 merry-go-round of semantics, I'd suggest, Your Honor. And
7 again, this goes back to the question of law that's proper
8 to be argued to the Court at the conclusion of the case.

9 You have photos showing that all three of
10 these trailers can be seen from the road. And that's the
11 crucial element to the restriction. You have before you
12 evidence that one of them has been advertised for sale as a
13 double-wide mobile home. You have more, way, way, way more
14 than enough evidence to carry the burden and shift it in
15 this case and let the defendant go forward with his defense,
16 Your Honor. We should be permitted to argue whether or not
17 a trailer and a mobile home are one in the same as a matter
18 of law at the conclusion of the case based on our
19 memorandums previously forwarded and any other case we will
20 cite to the Court.

21 THE COURT: I think the motion is proper.
22 I could decide now as a matter of law and strike the
23 evidence, now, and he wouldn't have to put on any evidence
24 for me to make that decision. But I'm going to overrule
25 your motion, Mr. Hicks.

1 MR. HICKS: Note my exception, Your Honor.

2 THE COURT: Yes, sir.

3 MR. HICKS: Mr. Williams.

4

5 NORRIS J. WILLIAMS,

6 called as a witness, having been first

7 duly sworn, was examined and testified

8 as follows:

9

10 DIRECT EXAMINATION

11

12 BY MR. HICKS:

13 Q Please tell the Court your name.

14 A My name is Norris J. Williams.

15 Q Where do you live, Mr. Williams?

16 A Lot 24, Belroi Farms.

17 Q Mr. Williams, is that the one that is back
18 a considerable distance behind Mr. Cash's home?

19 A Yes, sir. That would be behind Mr. Cash's
20 home.

21 Q Could you tell us what type of foundation
22 there is supporting your home?

23 A I've got cinder block, concrete columns
24 that support a 12-inch I-beam frame.

25 Q How are those columns attached to the real

1 estate, if at all?

2 A Well, they just -- all the load is
3 transferred to the ground.

4 Q What's underneath those cinder block,
5 concrete columns?

6 A It's a 16-by-16 concrete pad.

7 Q Dug in --

8 A Yeah, 12 inches below the surface of the
9 ground.

10 Q What else is there supported it?

11 A Let's see. I've got a brick foundation
12 around the outside of the home which has got a 12-inch
13 footer that Mr. Cash helped me dig.

14 Q Do you have pictures of that?

15 A Yes, sir. I sure do.

16 Q Is this the pier?

17 A Yeah. That's the concrete column right
18 there. That's, you know, part of the foundation.

19 MR. LONG: We stipulate that there's
20 concrete foundation under the piers. The Code of Virginia
21 requires that, Your Honor.

22 THE COURT: Do you object to the exhibits?

23 MR. LONG: No, sir. Assuming that that's
24 what they represent. I didn't see the third one.

25 MR. HICKS: Your Honor, we will put these

1 in for identification for now, until he testifies to them.

2 THE COURT: Do you wish them to be used as
3 exhibits?

4 MR. HICKS: Yes, sir.

5 THE COURT: Do you object?

6 MR. HICKS: I'm going to reserve the right
7 to object on the third one, Your Honor, until he testifies.

8 MR. HICKS: Until he testifies to what it
9 actually shows.

10 MR. LONG: The third one being the one
11 showing the bricks.

12 THE COURT: All right. These two you
13 don't object to. That doesn't show the bricks.

14 MR. LONG: No, sir.

15 THE COURT: All right. Mark these two as
16 Respondents' exhibits. They are admitted. Mark this third
17 one for identification only.

18

19 (Whereupon, Respondents' Exhibit Numbers 1
20 and 2 were marked.)

21

22 (Whereupon, Respondents' Exhibit Number 3
23 was marked for identification.)

24

25 THE COURT: Go ahead.

1 BY MR. HICKS:

2 Q What do these 1 and 2 show, Mr. Williams?

3 A Okay. This is a double-block pier or
4 column that's supporting the 12-inch I-beam.

5 Q And --

6 A This picture shows below the surface of
7 the ground.

8 Q There is a discoloration mark on the
9 blocks. Is that the normal --

10 A Yeah, 12 inches.

11 Q -- 12 inches down below the ground?

12 A Uh-huh.

13 Q How many of those piers are there?

14 A I've got 40 piers underneath the home.

15 Q How many?

16 A Forty.

17 Q Forty piers underneath that?

18 A Yes.

19 Q I ask you now -- this has been marked for
20 identification only, Exhibit Number 3. What does that show?

21 A Okay. This is my brickwork, which the
22 home is enclosed in. This shows a 2-by-6 floor joist which
23 runs around the outside perimeter of the home. It shows
24 that this brick is supporting the south-side wall, this
25 2-by-6 floor joist.

1 Q This is taken from the interior?

2 A That's taken from the interior of the
3 home.

4 Q And this is brick. What is underneath
5 that brick?

6 A It's a footing underneath the brick. The
7 brick foundation sits on the footing.

8 Q What kind of footing is that?

9 A It's a concrete footing.

10 Q What are you saying sits on this brick
11 that you're showing here?

12 A I dug the footing all the way around the
13 house, which is a concrete footing. This brick is sitting
14 on the footing, and then the floor joists of the home is
15 resting on the brick.

16 Q Is this the floor joist?

17 A Yes. You can see a 2-by-6 -- another
18 floor joist running into it.

19 Q And this is actually resting on the brick?

20 A Yes, sir, uh-huh.

21 Q Mr. Williams, I ask you, did you at my
22 request make inspections of Ms. Cauble's and Ms. Barber's
23 home?

24 A Yes, sir, I did.

25 Q And what did you find as far as the brick

1 in there?

2 A About the same thing I have. Both houses
3 are comparable.

4 Q Is there concrete under the brick
5 foundation?

6 A Yes, sir.

7 Q And then is any part of residence actually
8 being supported by the brick foundation?

9 A Yes, sir.

10 Q In both of their homes, also?

11 A Yes, sir.

12 Q How long have you been living in your
13 home, Mr. Williams?

14 A I think it's been pretty close to three
15 years.

16 Q At the time that you began residing in
17 your home, was the Cash's home there?

18 A No. They was getting ready to start
19 construction on their home.

20 Q What is attached to your home in addition
21 to this foundation?

22 A I've got a set of steps on the front side
23 of the home. I've got a 16 --

24 Q What are the steps made of?

25 A It's brick.

1 Q All right, sir. What else?

2 A I've got a 16-by-27 deck on the back of
3 the house.

4 MR. HICKS: Your Honor, you already have a
5 picture introduced by another, but I would like to put this
6 in as our exhibit.

7 MR. LONG: No objection, Your Honor.

8 THE COURT: Mark it for the Respondent.
9 It is admitted.

10

11 (Whereupon, Respondents' Exhibit Number 4
12 was marked.)

13

14 BY MR. HICKS:

15 Q I show you Respondents' Exhibit Number 4
16 and ask you if you can identify what that is.

17 A This is my place of residence.

18 Q And the brick that we've been talking
19 about that's just been put in through Number 3, is that
20 shown in that picture somewhere?

21 A Yes, sir, uh-huh.

22 Q What is that?

23 A Well, the brick is on, the maybe, the
24 eighth bottom portion of the home.

25 Q The foundation that's --

1 A Yes, uh-huh.

2 Q And that does partially support the home?

3 A Yes, sir.

4 Q Along with the piers?

5 A It sure does.

6 Q What is the overall dimension of your

7 home?

8 A It's 24 by 64.

9 Q Not including the porch or anything.

10 A Sir?

11 Q That's not including the porch or

12 anything?

13 A No. That's just the home itself, the

14 floor space, the interior floor space.

15 MR. HICKS: No further questions.

16 THE COURT: What is the floor space again,

17 Mr. Williams?

18 THE WITNESS: It's a 24 by 64.

19 THE COURT: All right.

20 Cross-examine?

21

22 CROSS-EXAMINATION

23

24 BY MR. LONG:

25 Q Mr. Williams, other than the permit that

1 you've got -- that you put this home on property, have you
2 obtained any other building permits to build another
3 permanent structure of any kind?

4 A No, sir.

5 Q All right.

6 MR. LONG: Your Honor, may I see the
7 pictures, Your Honor?

8 THE COURT: Which ones?

9 MR. LONG: Plaintiffs', first.

10

11 BY MR. LONG:

12 Q I'm going to show you Plaintiffs' Exhibit
13 Number 5 and ask you, is that not representative of the
14 underside under your house?

15 A Yes, sir. That's it.

16 Q Okay. And do you see the metal strip
17 coming off the I-beam?

18 A Uh-huh.

19 Q That's a mobile home tie-down strip?

20 A That's a frame strap, a hurricane strap.

21 Q And that doesn't come with a stick-built
22 home, does it?

23 A I've never seen none on them, no.

24 Q The pier that is shown here doesn't have
25 mortar between joints, does it?

1 A No, sir, it doesn't.

2 Q It does show, however, wood strips used to
3 level the home?

4 A That's right, a two-inch cap lock on top
5 with wedges.

6 Q Used to level the home?

7 A Yes, sir, uh-huh.

8 Q Now, this brick wall that you have built
9 around your house, was that built at the same time the house
10 was delivered to the premises?

11 A No, sir.

12 Q How long did the house sit at the premises
13 before the brick wall was built?

14 A I'm not really for sure, six to eight
15 months, maybe.

16 Q Six to eight months. And during that
17 time, did the house rest on beams similar to those shown --
18 excuse me, on piers similar to those shown in Exhibit
19 Number 5?

20 A Yes, sir.

21 Q And that was the sole method of support of
22 that home; is that correct?

23 A Yes, sir.

24 Q And, in fact, if the brick wall were
25 removed today, the home would still rest, it wouldn't fall,

1 would it?

2 A Ch, the blocks would support the home,
3 yes, sir.

4 Q It would still rest on the home?

5 A Uh-huh.

6 MR. HICKS: Your Honor, I would object to
7 this exhibit. I think it's self-serving. It's a letter
8 from Mr. Long.

9 MR. LONG: I'm not offering it for that
10 purpose, Your Honor. I am going to offer it for the purpose
11 of showing notice of violation of the restriction, since
12 that's denied in the answer to my --

13 THE COURT: Let me see what you have.
14 It's a letter from who? Mr. Long?

15 MR. HICKS: Mr. Long.

16 THE COURT: I don't think it's -- it is a
17 self-serving document, Mr. Long. It also has counsel
18 testifying --

19 MR. HICKS: Yes, sir.

20 MR. LONG: No, sir. I'm not going to
21 testify about it. I'm going to ask Mr. Williams if he
22 received that letter.

23 THE COURT: But by reading --

24 MR. HICKS: I have to object to it. I
25 mean, we --

1 THE COURT: What difference does it make
2 whether he had notice or not?

3 MR. LONG: Your Honor, if I would direct
4 the Court's attention to Paragraph 6 of the Bill of
5 Complaint that says, "Despite repeated requests from other
6 lot owners in Belroi Farms to remove said trailer and
7 construct a permanent dwelling, the Defendants have failed
8 and refused to do so." I'm offering this -- that was denied
9 in my --

10 THE COURT: Can you do this, can you
11 stipulate that by a letter of July 16th that he was given
12 notice?

13 MR. HICKS: He was given notice, yes, sir,
14 on July 16th, 1986.

15 MR. LONG: And asked to remove his home
16 and build a permanent structure.

17 THE COURT: Can you stipulate that, and I
18 won't have to look at the rest of the letter?

19 MR. LONG: Can we stipulate to that?

20 MR. HICKS: And asked to remove his home.

21 THE COURT: Just ask him if he received
22 the letter.

23 MR. LONG: I'd have to show it to him,
24 Your Honor.

25 THE COURT: Well, do that.

1 BY MR. LONG:

2 Q Mr. Williams, do you recall receiving that
3 letter?

4 A Yes, I remember receiving it.

5 Q All right.

6 MR. LONG: Your Honor, if counsel will
7 agree, I'd be willing to stipulate that the letter was sent
8 to him, and his testimony in the case is that it was
9 received which is dated July 16th, 1986, requesting him to
10 remove his mobile home from the premises and to build a
11 permanent structure.

12 THE COURT: Is that going to be agreed
13 upon, that he received a letter which made those requests?

14 MR. HICKS: Yes, sir.

15 THE COURT: When was it received? It's
16 dated the 16th.

17 Do you recall when you received it,
18 Mr. Williams?

19 THE WITNESS: No, sir, I don't.

20 THE COURT: Do you remember the month?

21 THE WITNESS: It was probably in August
22 sometime, if that was dated August 16th.

23 MR. LONG: It's dated July 16th.

24 MR. HICKS: We stipulate that it was
25 received sometime that month.

1 THE COURT: All right. The letter was
2 received sometime in July and it advised him of the alleged
3 violations and asked him to remove his home.

4 MR. LONG: Can we make the same
5 stipulations with respect to all three of the defendants?

6 THE COURT: Can we do that, Mr. Hicks?

7 In July, the same --

8 MR. LONG: Yes, sir. It's the same
9 letter, just the names are changed.

10 MR. HICKS: Yes, sir.

11 THE COURT: All right. You stipulate then
12 that Ms. Barber and Ms. Cauble received a similar letter
13 advising them of the alleged violation and asking them to
14 remove their -- I don't know whether you said trailer or
15 mobile home, but --

16 MR. LONG: The word trailer was used in
17 the letter.

18 THE COURT: All right. Each of the
19 defendants in this case received a notice requesting them to
20 remove them in July of 1986. Is that the stipulation?

21 MR. HICKS: Yes, sir.

22 THE COURT: Let the record show the
23 stipulation.

24 MR. LONG: Thank you, Your Honor.

25 THE COURT: They were sent from Mr. Long,

1 Counsel for the Plaintiffs; is that correct?

2 MR. LONG: Yes, sir.

3 THE COURT: All right.

4

5 BY MR. LONG:

6 Q Mr. Williams, where did you purchase your
7 home from?

8 A From Southern Mobile Homes.

9 Q Okay. And was that a new home when you
10 purchased it?

11 A No, sir.

12 Q It had been previously repossessed from
13 another owner; is that correct?

14 A Yes, sir.

15 Q So, at some point in time, it had been set
16 on another piece of property somewhere prior to your buying
17 it; isn't that right?

18 A Yes, sir, in a mobile home park.

19 Q And it was delivered to your lot in two
20 sections by truck; isn't that correct?

21 A Yes, sir.

22 Q And at the time, didn't the sections have
23 a hitch attached for the purpose of towing?

24 A Yes, sir.

25 Q And the home, at that time and now, rest

1 upon one or more steel I-beams; isn't that correct?

2 A Yeah. It rests upon a 12-inch I-beam
3 frame.

4 Q Now, attached to the I-beam at the time of
5 the delivery, there were axles, also, weren't there?

6 A Yes, sir.

7 Q And each of those axles contain springs
8 and wheels?

9 A Yes, sir.

10 Q Your home can be seen not only from
11 adjoining lots -- adjoining roads, but from adjoining lots,
12 also; isn't that correct?

13 A Yes, sir.

14 Q You said that the brick wall surrounding
15 your home, that you had examined the Barber and Caudle homes
16 and found them to be the same?

17 A Yes, sir.

18 Q That means that they also sit on piers
19 like your home; is that correct?

20 A Yes, sir.

21 Q And it also means that the brick wall, if
22 removed, that the homes would continue to sit on those
23 piers; would they?

24 A Yes, sir.

25 Q The homes would not collapse, would they?

1 A No, sir.

2 MR. LONG: No further questions.

3 THE COURT: Mr. Hicks, redirect?

4

5 REDIRECT EXAMINATION

6

7 BY MR. HICKS:

8 Q Mr. Williams, are there any tongue hitch
9 or wheels or springs attached to any part of your home at
10 this time?

11 A No, sir. Everything's been removed.

12 Q Are there modular-built homes in Belroi
13 Farms?

14 A There's some prefab homes in there.

15 Q How are they delivered to the site?

16 A They are delivered to the site by truck.

17 Q With what, wheels and springs attached?

18 A Well, there is some prefab houses in
19 there, you know, which was delivered to the site by truck,
20 which everything is prefab, your windows are already
21 installed in the walls and so forth, you know.

22 Q And it's a matter of connecting --

23 A It's like putting a jigsaw puzzle
24 together.

25 Q What kind of foundations do they set on?

1 Do they have piers under them?

2 A Yes. Most most prefab homes do have piers
3 under them.

4 Q And you received this letter sometime
5 after July the 16th, 1986. Had you received any other
6 request prior to that time?

7 A No, sir.

8 Q How long had your home been there?

9 A Eighteen months, nineteen months. I don't
10 know exactly for sure. It had been there quite some time.

11 MR. LONG: I object to that line of
12 questioning, Your Honor, because the defense counsel is
13 intending to show acquiescence. The law in the Commonwealth
14 of Virginia is A, there is a Virginia case, which I have
15 with me if the Court wants to see it, that the mere
16 acquiescence alone is not sufficient to stop the issuance of
17 such an injunction. And number two, that there's got to be
18 change showing such a significant character in the change of
19 the neighborhood to render the restrictions useless. So, I
20 don't see --

21 THE COURT: I think that states the law
22 correctly, but I think it is admissible to go to mitigation
23 under either -- if I rule against Mr. Williams in
24 determining what should be done, to show the length of time
25 he's lived there. In fact, I won't object to it.

1 MR. LONG: I would suggest --

2 THE COURT: The law is right, but I think
3 it's relevant when we get to what's going to happen.

4 MR. LONG: I would respectfully suggest to
5 the Court that mitigation would be appropriate if we were
6 suing for damages, but I would suggest that it would not be
7 appropriate in a suit for injunction.

8 THE COURT: Well, you know, it makes a
9 difference. If I order him to remove his home, it may make
10 a difference between thirty days and six months, is my
11 point.

12 MR. LONG: I understand, Your Honor.

13 THE COURT: I might say, let's move it
14 next week. I'd have to think about it.

15

16 BY MR. HICKS:

17 Q Was the brick foundation on your home at
18 the time you received this letter?

19 A Yes, sir.

20 MR. HICKS: No further questions.

21 THE COURT: Mr. Long?

22

23

24

25

RECROSS-EXAMINATION

1
2
3 BY MR. LONG:

4 Q These modular homes, they don't come in on
5 wheels, do they?

6 A Yes, sir, they do.

7 Q They come in --

8 THE COURT: I understand that the house
9 comes in on wheels, whether it's a stick house or what. I
10 mean, you deliver the lumber in a truck, correct? Let's not
11 go into that. That isn't going affect my decision.

12 MR. LONG: Well, Your Honor, the only
13 reason I was attempting to go into it is because counsel has
14 raised the spectrum of attempting to show --

15 THE COURT: The Court has rejected that.
16 I know that the trucks deliver materials to homesites,
17 whether it be modular or a stick house.

18 MR. LONG: Yes, sir. But the modulars
19 don't have the springs, wheels, and axles attached to them?

20 THE COURT: I understand that. Do you
21 think that I think a modular home has springs, axles, and
22 wheels on it?

23 MR. LONG: No, sir. I do not think that.

24 THE COURT: I have rejected that argument,
25 so let's not spend any more time on it. They're all

1 delivered by truck except for this type home. I guess this
2 is, too, isn't it?

3 MR. LONG: I withdraw that question and I
4 have no further questions.

5 THE COURT: Mr. Hicks?

6 MR. HICKS: No further questions of this
7 witness.

8 THE COURT: All right. Thank you. You
9 may step down.

10 Call your next witness.

11 MR. HICKS: Ms. Cauble.

12
13 CATHY J. CAUBLE,
14 called as a witness, having been first
15 duly sworn, was examined and testified
16 as follows:

17
18 DIRECT EXAMINATION

19
20 BY MR. HICKS:

21 Q Please tell us your name and where you
22 live.

23 A My name is Cathy J. Cauble. I live on lot
24 13 in Belroi Farms.

25 Q And how long have you lived there?

1 A I've lived there since August of 1983.
2 Q Since August of 1983?
3 A Yes, sir.
4 Q How many homes were there in Belroi Farms
5 when you erected your home?
6 A There was one home and one single-wide
7 trailer.
8 Q Whose was the home?
9 A It was the log cabin on Lot 1, Lot 2,
10 whatever.
11 Q And there's been testimony from
12 Mr. Williams concerning the structure of your home that it
13 does have -- on piers and a brick foundation?
14 A Yes, sir.
15 Q How are your piers constructed?
16 A They're cemented together.
17 Q What do you have behind your home?
18 A Behind my home, I have a 10-by-46 foot
19 deck with a lower deck of 10 by 20 foot.
20 Q And Ms. Cauble, it's been testified that
21 you-all received letters sometime in July of '86. Had you
22 received any request prior to that time concerning your
23 home?
24 A No, sir.
25 Q And let me ask you, have you recently

1 refinanced your home?

2 A Yes, sir.

3 Q Do you have the Deed of Trust there?

4 MR. LONG: Objection. What's the
5 relevance?

6 MR. HICKS: It shows that it's a 30-year
7 permanent mortgage.

8 MR. LONG: So what?

9 THE COURT: State your grounds, Mr. Long.

10 MR. LONG: I object on the grounds of
11 relevance, Your Honor. You can get a 30-year home loan on
12 mobile homes just as much as you can on stick built --

13 THE WITNESS: Yes, sir, but you can't on a
14 trailer.

15 THE COURT: Don't interrupt him.

16 MR. LONG: As long as it's affixed to the
17 realty.

18 THE COURT: All right. That's the
19 argument. Now, what's your argument? One, that it's
20 inadmissible. What rule of the law makes it inadmissible?

21 MR. LONG: I guess I would answer the
22 question with a question, and I would suggest to the Court
23 why would it be -- what probative value does it have to show
24 that she has a permanent mortgage on her home? What
25 probative value? And I would suggest to the Court that it

1 has no probative value.

2 MR. HICKS: Well, the restrictions talk
3 about a temporary structure, trailer. This is a Deed of
4 Trust on a standard VA form showing it's a 30-year permanent
5 loan on this --

6 THE COURT: On the land?

7 MR. HICKS: No, sir. It's on everything.
8 It's on everything, Your Honor. This is complete. That's
9 all complete. That's a complete loan. There is no separate
10 loan.

11 THE COURT: Does it list the home
12 separate?

13 MR. HICKS: No, sir.

14 THE COURT: Is the home listed separate?

15 MR. HICKS: No, sir. That is it. That's
16 what we're trying to show, Your Honor.

17 THE COURT: What he wants to show is part
18 of the real estate. I think it's relevant.

19 MR. LONG: I would ask the Court to note
20 my exception.

21 THE COURT: Yes, sir. Mark it for the
22 Respondent. It is admitted.

23
24 (Whereupon, Respondents' Exhibit Number 5
25 was marked.)

1 THE COURT: That's his case, Mr. Long.

2 MR. LONG: Yes, sir.

3 THE COURT: I won't ask you to agree with
4 it, but that's his case. And I think its admissible.

5 MR. LONG: Yes, sir.

6

7 BY MR. HICKS:

8 Q I show you Respondents' Exhibit Number 5.
9 Are you familiar with that document?

10 A Yes, sir.

11 Q What is that?

12 A That's the Deed of Trust on my house, on
13 my property.

14 Q What type of loan is that?

15 A That's a 30-year Veterans Administration
16 Mortgage.

17 Q Is there any separate financing on your
18 home itself other than this?

19 A No, sir. There hasn't been since '85.

20 Q Since 1985?

21 A Yes, sir.

22 Q It's all been financing -- this is a
23 refinancing of what was originally done in '85?

24 A Yes, sir.

25 Q Ms. Cauble, have the Brooks visited your

1 home?

2 A Yes, sir, they have.

3 Q And just tell me what either Mr. Brooks or
4 Mrs. Brooks, the parties to this suit, said to you
5 concerning your home.

6 A They were at the house at a New Year's
7 party. It's been a few years. And it was rather casual,
8 but they walked through the house, and they felt it was very
9 nice and liked it and said that they didn't realize that
10 these modular-type homes were made so well. They were under
11 the impression, I think, that it was a modular home.

12 MR. HICKS: No further questions.

13 THE COURT: Mr. Long?

14

15 CROSS-EXAMINATION

16

17 BY MR. LONG:

18 Q In fact, you represented to them that it
19 was a modular, didn't you?

20 A No, sir, I didn't.

21 Q Never did?

22 A My exhusband may have, but I did not.

23 Q Now, you said there has been no separate
24 financing on the home since 1985. The home was purchased in
25 1983, wasn't it?

1 A Yes, sir.

2 Q Was there separate financing on it at that
3 time?

4 A Yes, there was.

5 Q What kind of financing was it, with who?
6 Who was the lien holder?

7 A Belroi Farms was the lien on the land, and
8 Shelter America Mortgage Corporation in Denver, Colorado,
9 had the lien on the house.

10 Q Had a lien on the home itself?

11 A Yes, they did.

12 Q That wasn't a Deed of Trust, was it?

13 A Not at that time.

14 Q That was a security agreement, wasn't it,
15 whereby you pledge that home as collateral for the loan;
16 isn't that correct?

17 A If that's what they call it.

18 Q In other words, you're not suggesting to
19 this Court -- the lien holder's name again was --

20 A Shelter America.

21 Q You're not suggesting to the Court that
22 Shelter America would have had a right to take your land if
23 you had gone into default on your house payments, would you?

24 A No, sir, they wouldn't have, because the
25 individual that sold us the property signed a release that

1 he realized that it was a double-wide mobile home, and he
2 would make no claims to it.

3 Q You don't deny that it's a double-wide
4 mobile home, do you?

5 A No, sir, I don't.

6 Q In fact, you really don't deny that it's a
7 trailer; do you?

8 A Yes, I do.

9 Q You think there's a distinction between a
10 trailer and a mobile home?

11 A Yes, I do. Trailers are identified as
12 recreational vehicles.

13 Q Your house is setting on piers; isn't that
14 correct?

15 A Yes, sir, it is.

16 Q And if the wall that surrounds the bottom
17 of the house, so to speak, were pulled away, the house would
18 continue to sit on the piers, wouldn't it?

19 A Yeah, but I think most any frame-built
20 house, if you took away the brick walls around the side,
21 that they would continue to stand.

22 Q Is that what you think?

23 A I sure do.

24 Q Do you have any experience in
25 construction?

1 A No experience in construction, but I've
2 lived in brick homes with the same type of foundation.

3 Q You don't deny that your home could be
4 removed from its present premises and moved to another
5 location?

6 A No. I've seen homes go down the highway
7 before, and they weren't necessarily mobile homes.

8 MR. LONG: I don't have any further
9 questions.

10 THE COURT: Mr. Hicks?

11 MR. HICKS: I don't have any further
12 questions.

13 THE COURT: Thank you.

14 Call your next witness.

15 MR. HICKS: Ms. Barber.

16
17 JANICE MARIE BARBER,
18 called as a witness, having been first
19 duly sworn, was examined and testified
20 as follows:

21
22 DIRECT EXAMINATION

23
24 BY MR. HICKS:

25 Q Please tell us your name and which lot you

1 live on?

2 A Janice M. Barber, Lot 19, Belroi Farms.

3 Q And Ms. Barber, what are the dimensions of
4 your home?

5 A 28 by 60.

6 Q And what type of foundation does it rest
7 on?

8 A A pier foundation, and the brick and --

9 Q And does that listing that was shown
10 accurately describe the interior of your home, cathedral
11 ceiling and a sunroom and all that?

12 A Yes, sir.

13 Q Fireplace?

14 A Yes, sir.

15 Q And had you received any notice or request
16 prior to the request of July of 1986?

17 A No, sir.

18 MR. HICKS: No further questions.

19 THE COURT: Mr. Long?

20

21 CROSS-EXAMINATION

22

23 BY MR. LONG:

24 Q Ms. Barber, you purchased your home from
25 Southern Mobile Homes, Incorporated; isn't that correct?

1 A Yes.

2 Q In February of 1985?

3 A Yes.

4 Q And it is installed on piers?

5 A Yes.

6 Q And it does have the HUD certification
7 label attached to it, does it not?

8 A Yes.

9 Q And it's built to HUD code and not BOCA
10 code; is that right?

11 A Yes.

12 Q You don't deny that it's a mobile home, do
13 you?

14 A No.

15 Q Do you deny that it's a trailer?

16 A Yes.

17 MR. LONG: No further questions.

18 THE COURT: Mr. Hicks?

19 MR. HICKS: No further questions.

20 THE COURT: Thank you call.

21 Call your next witness.

22 MR. HICKS: We rest, Your Honor.

23 THE COURT: Do you have any rebuttal
24 evidence?

25 MR. LONG: May I have just a minute, Your

1 Honor?

2 THE COURT: Yes, sir.

3 MR. LONG: No, sir. I have no rebuttal.

4 THE COURT: Let's take about three to five
5 minutes so you can get yourselves together, and then I will
6 hear your arguments.

7 MR. LONG: Thank you.

8

9 (Whereupon, a brief recess was taken.)

10

11 THE COURT: Do you wish to argue the case,
12 Mr. Long?

13 MR. LONG: Your Honor, if it please the
14 Court, two of my clients have gone to the ladies room.
15 Would you wish me to wait a moment until they return?

16 THE COURT: All right. You may wish to
17 wait.

18 MR. LONG: They know what I'm going to
19 say, I think. I'm prepared to argue the case.

20 Your Honor, we're here on an injunction,
21 and I have set out certain allegations of fact in my Bill of
22 Complaint, which, of course, I have to prove. I bear the
23 burden of proving those allegations of fact. And as I said
24 earlier, Paragraphs 1, 2, and 3 of the Bill of Complaint are
25 admitted conclusively. Paragraph 4 is admitted, which

1 admits the existence and applicability, so to speak, of the
2 restrictions themselves and specifically Restriction Number
3 6, which I will address in just a moment. Paragraphs 5, 6,
4 and 7, which set up allegations that each of the defendants
5 obtained from the Gloucester County Building inspector a
6 permit for the installation of the double-wide trailer or
7 mobile home, as the case may be, on certain dates was
8 denied, but the stipulation shows that to be the case and
9 the exhibits attached to the stipulation.

10 Again, I would direct the Court's
11 attention to the fact that that stipulation of fact which
12 conclusively establishes those facts for this Court contain
13 attached to them copies of each of those three building
14 permits issued by the Gloucester County Building Authority
15 and refer to the homes here as -- two of them as mobile
16 homes and one of them as a trailer.

17 I have alleged in Paragraph 8 of the Bill
18 of Complaint that from the dates -- from about the dates
19 that these parties obtained their buildings permits, that
20 they have occupied the premises since that time, and despite
21 a request from the defendant to remove -- from the plaintiff
22 to remove themselves, have failed and refused to do so.
23 That probably is not even a necessary allegation, purely a
24 case of injunction and specifically when no allegation of
25 acquiescence is made. None has been made in this case.

1 The issue of this case comes down to, Your
2 Honor, of whether or not a mobile home is a trailer. That's
3 the only issue that our case comes down to. When you cut
4 through all the other stuff, that's the bottom line.
5 Because each of the defendants is willing to admit that
6 their home is a mobile home. They purchased them all from
7 mobile home dealers. There's evidence that at least one of
8 them in the past had been financed as a mobile home. They
9 are, in fact, mobile homes.

10 Now, I would again go back to the wording
11 of Paragraph Number 6, Your Honor. And I think the rule is
12 with regard to restrictive covenants that the normal and
13 customary application of the English language is to be
14 applied to it, Your Honor. And Paragraph Number 6 reads,
15 the first part of it, the applicable part, No structure of a
16 temporary character, that is, a trailer, basement, tent,
17 etc. I submit to the Court, that the restriction itself
18 defines what is a structure of a temporary character.

19 So, the issue before this Court, I
20 suggest, is not whether or not these are structures of a
21 temporary character, but whether or not they are trailers.
22 Because by the very definition contained in the restriction
23 itself, notice that the words "that is" are set off by
24 commas, so that the following language, grammatically, if I
25 remember my English rules correctly, would be to modify the

1 first part of the sentence, "No structure of a temporary
2 character." The issue before this Court is whether or not
3 these three homes owned by these three defendants are
4 trailers.

5 There is no question that they're mobile
6 homes. It's been stipulated. You have taken judicial
7 notice of the definition of a mobile home in the Gloucester
8 County Zoning Ordinance. And I do want to mention one thing
9 about that, Your Honor. Even though we're not talking about
10 the zoning case, the definition of a mobile home contained
11 in the Gloucester County Zoning ordinance says in part, "And
12 designed to be used with or without permanent foundation."

13 So, whether or not the homes, I would
14 submit to the Court, here have permanent foundations under
15 them, is not important. First of all, in the stipulation of
16 fact that we tendered to the Court, Your Honor, you will
17 notice that Mr. Hicks and I both stipulated -- or the
18 parties stipulated, that there was a brick wall surrounding
19 the bottom of each of these units, and we did not stipulate
20 as to what it was to be called. Of course, we left that
21 determination to the Court.

22 Well, consider the evidence that you have
23 before you, undisputed evidence, that these homes, as with
24 all trailers, rest on I-beams, are hauled in on
25 undercarriage with wheels, axles, springs, and hitches, all

1 of which are removed. They're set on low-bearing piers and
2 adjusted for height with pieces of wood. You have a
3 photograph in front of you showing that that is exactly the
4 case here. And that's how one sets a trailer to be used for
5 occupancy. The walls were not added until later and, in
6 fact, are nothing more than glorified skirting. You can
7 have the same house sitting there with aluminum skirting
8 around it, and it would be just as secure, because as you
9 will see from the picture there, these houses are tied down,
10 just as all trailers are tied down and permanently affixed
11 to these piers, which are, in fact, the supporting
12 mechanisms. They don't use those walls for support, only
13 for show, the same as you use aluminum skirting for show.

14 Now, in the trial memorandum that I
15 submitted to this Court, I addressed the issue of whether or
16 not these homes were trailers and cited several authorities,
17 the most important of which I would suggest to the Court, is
18 the case of Timmerman versus Gabriel, it's factually on all
19 fours with this case. If I may beg leave of the Court,
20 referring to my memorandum in the Timmerman case, the record
21 shows that the Defendant purchased a dwelling referred to in
22 the industry as a double-wide home from a mobile home
23 dealer, which is exactly what we have here, comprised of two
24 structures, what we have here, each with a steel frame
25 underneath with springs, axles, wheels, and a draw bar, and

1 covered with siding, which is exactly what you have here.
2 The two sections were hauled to the Defendant's property,
3 placed on a concrete-block foundation and bolted together.
4 The wheels, springs, axles, and draw bar were removed and
5 returned and to the factory, exactly the same things you've
6 got in this case, Your Honor.

7 The restriction in that case, which is
8 almost verbatim with the restriction we have here, said, no
9 structure of a temporary character, trailer, basement, tent,
10 shack -- the only thing that's left out are the words, that
11 is -- temporary character, trailer, basement, tent, shack,
12 garage, barn, or other outbuilding shall be used on any lot
13 at any time as a residence, either temporarily or
14 permanently, etc., etc.

15 The Court said the word to be construed
16 here is trailer. The house the Gabriels placed on their
17 property is very similar to the typical trailer house. It
18 has metal siding, a metal frame to which is attached
19 springs, axles, wheels and draw bars. The fact that some of
20 these features may be removed and were removed in the
21 instant case, does not change the basic structure of the
22 house itself. The structure was sold to the Gabriels by a
23 trailer sales firm, while it was on their sales lot and
24 mounted on wheels. It was later pulled to the Gabriel's lot
25 by a tractor truck. The term mobile home is an advertising

1 euphemism for a large house trailer. Although, the larger
2 models of mobile homes are considered less mobile than the
3 smaller models, they are essential similar in structure and
4 appearance. It cannot be demonstrated that they are so
5 essentially unlike a trailer as to exclude them from the
6 general definition of trailer.

7 Now, in addition to that -- and there is
8 just case after case after case that stand for the same
9 proposition, Your Honor. And I would like to cite only a
10 couple of them to the Court, if I may. In North Carolina,
11 our sister state decided July 25th, 1973, the style of it is
12 Van Polle versus Messer, cited at 128 Southeast 2nd 106, and
13 on page 107, the Court in that case refers to the
14 restrictive covenant, which read as follows: No structure
15 of a temporary character, trailer, basement, tent, shack,
16 garage, barn, or other outbuilding shall be used on any lot
17 at any time as a residence either temporarily or
18 permanently.

19 The Court went on to say that the trial
20 judge concluded as a matter of law that a mobile home is a
21 trailer within the intendment of the restrictive covenant.
22 With this conclusion, we take no issue. The term trailer
23 includes a mobile home within its meaning -- scratch that.
24 Excuse me. That the term trailer includes a mobile home
25 within its meaning is the accepted rule in every authority

1 we have found dealing with that issue. And I suggest to the
2 Court that that's an accurate statement of the law by the
3 Court of Appeals of North Carolina.

4 The case of Lassiter versus Bliss, decided
5 in the Supreme Court of Texas in November of 1977, rehearing
6 denied January of '78, cited at 559 Southwest 2nd 353. Page
7 355 of the appending -- I do want to bring to the Court's
8 attention that even though this case favors my position,
9 there is a descending opinion.

10 THE COURT: Would counsel approach the
11 bench for just a minute?

12 MR. LONG: Yes, sir.

13
14 (Whereupon, a side-bar conference was
15 held.)

16
17 MR. LONG: Your Honor, the restrictive
18 covenant in that case provided no trailer, basement, tent,
19 shack, garage, or temporary quarters shall at any time be
20 used as a residence. And the Court said, We hold the
21 intention of the restrictive covenant in the present case
22 was to prohibit trailers from being used as residences at
23 any time.

24 Under the Phillips and Zmotony cases, we
25 hold that the mobile home in this case was a trailer and was

1 prohibited by the restrictive covenant. The term trailer is
2 to be understood in its usual meaning regardless of whether
3 it was referred or described as a house trailer or mobile
4 home.

5 The next case is the Zmotony case, which
6 is cited at 525 Southwest 2nd, Page 736, again, holds that a
7 mobile home and a trailer are one in the same. I'd cite
8 those for the record. The Phillips case, decided in 1973 by
9 the Court of Civil Appeals in Texas and cited in 502
10 Southwestern Reporter Second Series, has the same holding.

11 And there are cases even beyond that.
12 There's Kirk versus Westlake, 421 Southern Second, 473, that
13 held that a mobile home fell within the definition of
14 trailer in a zoning ordinance.

15 Again, I realize this is not a zoning
16 case. I only bring that up, because in the Defendants'
17 memorandum to this Court, there are numerous references to
18 cases which are all zoning cases in nature. In fact, the
19 Defendants suggest that the zoning cases, I guess, by
20 including them here are applicable. However, the zoning
21 cases all have to do with the definitions contained therein,
22 the applicability of those zoning ordinances, and whether or
23 not classifications of mobile homes are arbitrary and
24 comprecious. Those standards, while relevant in a zoning
25 case, are not relevant in a case involving restrictive

1 covenants, because restrictive covenants are not held in the
2 same standard. They're restrictive covenants constituting a
3 private agreement.

4 Finally, Your Honor, I would simply recite
5 to the Court, as I did in my brief, that a mobile home is
6 defined in Section 46.1-1 Sub 38 in the Virginia Code.
7 That's the definition that's been in there for years, and
8 again, it's intended to be used with or without a permanent
9 foundation, probably irrelevant since there is no dispute
10 about the fact that these homes are mobile homes.

11 I would suggest to the Court that the
12 great weight of authority and the proper weight of authority
13 is that mobile homes and trailers are one in the same, that
14 a proper interpretation of this restrictive covenant is that
15 the words "that is" go to define the temporary structure as
16 being a trailer, and, therefore, an injunction is proper in
17 this case.

18 THE COURT: Mr. Hicks?

19 MR. HICKS: Your Honor, there is no
20 question that the burden is on the plaintiff to show that my
21 client's have violated a restrictive covenant. And Your
22 Honor, the Title 46 definition concerning permits for moving
23 things along the highway is not, in my opinion, the thing
24 that's applicable here. The thing that's applicable here is
25 in Title 36 dealing with how these were formerly defined as

1 mobile homes and now they're defined as manufactured homes.
2 Your Honor, I say to you in all honesty
3 that if these restrictions had said mobile homes, I don't
4 know whether my clients would be here, but I would not be
5 here, because these restrictions do not say mobile homes, it
6 says trailer. It doesn't even say house trailer. I would
7 have more problem if the restriction said house trailer. It
8 doesn't say house trailer. The restriction just says
9 trailer. And the burden is on him to show that that word
10 trailer means mobile homes of the types that we have here,
11 which have been, in effect, permanently placed on the
12 property with the bricking, with the porches. In one
13 instance, Ms. Cauble, hers was in 1983, there was only one
14 other permanent structure on the property at that time. She
15 had permanent financing for thirty years on the entire
16 property as one unit, not separate financing for the home,
17 separate from the real estate. And although it's not at
18 issue, there's no question that all of them come up with the
19 1,500 square feet.

20 Your Honor, we don't have any Virginia
21 cases either -- to help us either, in my opinion, as far as
22 mobile homes are concerned, but we do have the Supreme Court
23 of Virginia defining what is considered to be a chattel and
24 whether it's been converted into the fixture or not. In
25 Transco Corporation versus Prince William County, 210

1 Virginia 550 said, annexation of the property to the realty;
2 adaptation to the use or purpose to which that part of the
3 realty with which the property connected is appropriated;
4 and intention of the parties. The intention of the party
5 making annexation is the chief test to be considered in
6 determining whether the chattel has been converted into a
7 fixture.

8 Your Honor, a couple cases that I cited
9 were zoning cases, but I've also cited the cases on
10 restrictive covenants where the courts have held that mobile
11 homes affixed such as these are not trailers as prohibited
12 by restrictive covenants. There is even one case that they
13 use the word house trailer, and the Court -- I believe it
14 was appended, that it did not violate that -- it's cited in
15 my memorandum. A case from Michigan, North Cherokee Village
16 Membership versus Murphy, decided by the restrictive
17 covenant banning house trailers and tents can be interpreted
18 to include within the prohibition the placement of a
19 double-wide mobile home.

20 It went on to say, the mobile home,
21 manufactured in two-halves and carted separately to the
22 premises, bore a certificate of title designating it as a
23 "trailer coach double-wide." The two sections were placed
24 on a concrete block foundation and bolted together after
25 removal of the separate chassis, then constituted stages

1 with dimensions 44 by 24 feet. The Court held that this was
2 not a house trailer. In here, we don't even have the word
3 house, we just have use of the word trailer, Your Honor.

4 And I can tell you in all honesty that I
5 think you can search the citations and you will find that
6 15 years ago before double-wide mobile homes came into use,
7 there were more that said a house trailer wasn't meant by
8 the term trailer. The authorities in more recent years have
9 said that a double-wide mobile home installed such as these
10 installed, hooked up, that they did not violate the
11 restriction against temporary structure or trailer.

12 My clients have made substantial
13 investments in these properties. In the case of Ms. Cauble,
14 she was there before any of these other people moved there.
15 In the case of Mr. Williams, one of the complainants came
16 over and helped him dig the foundation. And Your Honor, I
17 know that -- I'm not arguing to stop it, but I'm saying in
18 all honesty, I don't think that anyone considered at that
19 time that the word trailer applied to a double-mobile home,
20 because one was there when everybody else came in, and the
21 other one was there shortly after, the one that the
22 complainant helped him dig the foundation.

23 THE COURT: Go ahead, Mr. Long.

24 MR. LONG: Your Honor, I'm going to be
25 very, very brief. As far as helping dig the foundation, you

1 recall the testimony was that Mr. Cash was tired of looking
2 at the wheels and axles. He was happy to help get something
3 up there that would cover them up.

4 There's no doubt that Mr. Hicks' clients
5 have invested funds, but so have mine, great sums of money,
6 and look at the great despairity in value contained in the
7 stipulations submitted to the Court. The stick-built homes
8 owned by my clients, one of them was worth almost double
9 what all of the Defendants homes are, and one of them is
10 worth two and a half times what the Defendants homes are.
11 The other lots aren't improved at the present time.

12 The three cases cited by Mr. Hicks, Hussey
13 versus Ray, Heath versus Parker, and North Cherokee have
14 previously been cited to this Court, and not found to be
15 authoritative in another case. The square footage, I would
16 suggest, is not at issue. And as far as the bricking,
17 porch, steps, the home can be removed from them just as
18 easily as it can be removed from that little brick wall
19 around them.

20 THE COURT: Thank you, gentlemen. These
21 are very difficult cases because no matter what the Court
22 does, somebody gets hurt. The Plaintiffs would be hurt, as
23 Mr. Long has just pointed out. Because it's arguable that
24 this might affect their property value. I have no evidence
25 on this, and I can't consider it. That's not part of my

1 finding. There is no evidence to this effect, but I can
2 understand as a layman how it might be. On the other hand,
3 if I rule against the Defendants, they are truly hurt
4 because those are their are homes, they have to leave their
5 homes, move their homes. They have invested some money in
6 those homes. It's always a difficult case.

7 The word trailer in these restrictive
8 covenants, in this Court's opinion, has to be synonymous
9 with mobile homes. You'll notice in the last part of
10 Paragraph 6, the part that applied to Mr. Purves' case, it's
11 trailer that is referred to. I realize in Mr. Purves' case,
12 we had a situation where there wasn't 1,300 square feet.
13 It's under their provision. When they talk about putting a
14 trailer on a lot during construction, they're talking about
15 a mobile home. It's something to live in. Trailer is used
16 there just as we have always used it. Trailer and mobile
17 home is synonymous. We're not talking about a trailer to
18 pull a boat or a camper trailer, they're talking about a
19 trailer mobile home to be put on a lot during the
20 construction of another house. That's what people live in
21 when they construct a dwelling house. What we call trailers
22 are mobile homes. Trailer has to mean mobile home.

23 These trailers are attached to
24 foundations, but they can be moved. Any house can be moved,
25 I realize this. These structures can be moved without any

1 damage, without having to replace anything. It's can simply
2 be lifted up and driven away. I realize that the house with
3 the deck on it or the porch on it, it might be attached, I
4 don't know whether it's attached, it probably is, there
5 would have to be some work there. But these homes are
6 basically designed to be mobile, to move. And that is what
7 was meant to be kept out of this subdivision, whether it be
8 on a foundation or pillars or even on a brick foundation.
9 The evidence is that the brick foundation is basically
10 cosmetic. It isn't used for support.

11 So, I will order that these homes be
12 removed, and I'm thinking in terms of six month.

13 MR. HICKS: Your Honor, I do think this is
14 a case that really ought to go to the Supreme Court.

15 THE COURT: I agree with you. The State
16 of Virginia should decide this.

17 MR. HICKS: They should be decide this
18 one, and I intend to take this up there once and for all.
19 And I would ask, Your Honor, that this one, if we appeal it,
20 if you'll stay your execution. One case has been there for
21 four years. It was there before anybody else's.

22 THE COURT: You're going to have to note
23 your appeal -- what is it? Fifteen days, correct?

24 MR. HICKS: No, sir. Thirty days.

25 THE COURT: Well, it's 15 days on the

1 injunction, the statute. You have to file your review. We
2 were just looking at it earlier.

3 MR. HICKS: Yes. That is if you refuse to
4 stay it.

5 THE COURT: I think you have seek --
6 that's your appeal. You better look at that section. That
7 is your appeal, whether I stay it or don't stay it. As I
8 read it, you have 15 days for a Bill of Review to the
9 Supreme Court, no matter what time -- I'd say it's -- I'm
10 going to make it six months now, and then you have 15 days
11 from the date I enter the order to get this to the State
12 Supreme Court, as I read that code section. I suggest you
13 look at it.

14 MR. HICKS: I will look at it.

15 THE COURT: Then I can always here a
16 motion later in the State Supreme Court to stay its
17 execution. I think the Court will hear this case within six
18 months.

19 MR. HICKS: Well, as I said, it needs to,
20 because it needs to hear this case once and for all.

21 THE COURT: If there is some problem that
22 you don't get a stay -- I don't know whether or not I'd have
23 jurisdiction for me to stay it myself. So, I suspect you
24 better file your Bill of Review and ask for the stay, then.
25 I don't see how -- if they saw the case was going beyond six

1 months, I can't imagine they wouldn't stay the execution.

2 MR. LONG: They probably would, Your
3 Honor, but I don't know, Your Honor.

4 THE COURT: Would you prepare the order,
5 Mr. Long?

6 MR. LONG: Yes, sir.

7 THE COURT: All right. We stand in
8 recess.

9
10 (Whereupon, the proceedings were
11 concluded.)

12 * * *

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1 COMMONWEALTH OF VIRGINIA:

2 COUNTY OF YORK, to wit:

3
4 I, Deborah Jean Kless, a Notary Public in
5 and for the Commonwealth of Virginia at Large, do hereby
6 certify that the foregoing deposition was July taken and
7 sworn to before me at the time and place in the caption
8 mentioned, and that the deposition is a true record of the
9 testimony given by the witness.

10 I further certify that I am neither
11 attorney or counsel for, nor related to or employed by, any
12 of the parties to the action in which this deposition is
13 taken, nor am I a relative or employee of any attorney or
14 counsel employed by the parties hereto, nor am I financially
15 interested in the action.

16 IN WITNESS WHEREOF, I have hereunto set my
17 hand and affixed my notarial seal this 23rd day of April,
18 1987.

19
20
21 _____
22 Notary Public
23
24

25 My commission expires June 23, 1990.

R. Bruce Long, P.C.
Attorney And Counselor At Law
Suite 15, Abingdon Square
P.O. Box 1069
Hayes, Virginia 23072

R. Bruce Long
Joy S. Long

(804) 642-6969
(804) 874-4477

March 31, 1987

Charles E. King, Jr., Clerk
Circuit Court of Gloucester County
Gloucester, VA 23061

RE: Brooks, et als v. Barber, et als-Chancery No. 4459

Dear Charlie:

I am enclosing herewith a copy of §2-2 of the Gloucester County Zoning Ordinance which should be filed with the papers in the above styled cause. The Court took judicial notice of this Code Section at the hearing of this matter in Yorktown on March 25, 1987 but I did not have a photocopy at that time that I could put in the record. Accordingly, please file the photocopy.

Very truly yours,



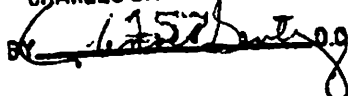
R. Bruce Long

RBL:vaw
Enclosure

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CIRCUIT COURT CLERK'S OFFICE
GLOUCESTER, VIRGINIA
CHARLES E. KING, JR., CLERK

BY  157

Manufacture and/or manufacturing: The processing and/or converting of raw unfinished materials or products, or either of them, into articles of different character or use.

Manufacturing, extractive: Any mining, quarrying, excavating, processing, storing, separating, cleaning, or marketing of any mineral natural resource including but not limited to coal, oil, gasoline, bottled gas, wood and stone.

Manufacturing, light: Manufacturing or other industrial uses which are usually controlled operations; relatively clean, quiet, and free of objectionable or hazardous elements such as smoke, noise, odor, or dust; operating and storing within enclosed structures; and generating little industrial traffic and no nuisances.

Marina/boatyard: A boating establishment located on a navigable waterway, which may provide covered or uncovered boat slips or dock space, dry boat storage, boat repairs and/or construction, marine fuel and lubricants, marine supplies, restaurants or refreshment facilities, boat and boat motor sales or rental.

Mobile home: A mobile home shall mean any structure, transportable in one or more sections equipped to permit occupancy for dwelling, sleeping or office space purposes, and which is built on a permanent chassis, and designed to be used with or without permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. Both single-wide and double-wide mobile homes are included in this definition.

Mobile home park: A mobile home park shall mean any parcel of land upon which two (2) or more occupied mobile homes are located, or which is held out for the location of any such mobile home.

Nonconforming lot: A lot of record that does not conform to the minimum area or width requirements of this ordinance for the district in which it is located either at the effective date of this ordinance or as a result of subsequent amendments to the ordinance.

Nonconforming structure: An otherwise legal building or structure that does not conform with the lot area, yard, height, lot coverage, or other area regulations of this ordinance, or is de-

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Supp. No. 4

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CIRCUIT COURT CLERK'S OFFICE
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CHARLES E. KING, JR., CLERK

158

BY Charles E. King, Jr. D.C.

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF GLOUCESTER

JIMMIE W. BROOKS, et als,)	
)	
Plaintiffs,)	
)	
v.)	Chancery No. 4459
)	
JANICE MARIE BARBER, et als,)	
)	
Defendants.)	

MOTION FOR NEW TRIAL

Defendants, Janice Marie Barber, Cathy J. Cauble, and Norris J. and Carol J. Williams respectfully move this Court to grant a new trial of the matters originally heard by the Court without a jury on March 25, 1987, for the following reasons:

1. Absence of necessary and indispensable parties. Testimony at trial documented that defendant Cauble is the grantor of a deed of trust on her property pursuant to a refinancing which took place in approximately November, 1986. The amount of the note involved in the refinancing was seventy-nine thousand and no/100 dollars (\$79,000.00). The trustees on the deed of trust and the noteholder are both necessary and indispensable parties to this action, but they were not participants in the trial. Any order by this Court which interferes with the use or continued presence of Ms. Cauble's home on the property will directly impair the security of the noteholder and will effect a default under the deed of trust. The trustees are the holders of legal title to the property and they have not had their opportunity to present a defense to any Court order

in this matter. Further, the noteholder has been deprived of its opportunity to invoke the assistance of the title insurance company which issued it a lender's policy on the refinance.

2. Absence of critical testimony. Vernon Green, the developer of Belroi Farms Subdivision where defendants' property is located, told all three defendants personally, before witnesses, that the double wide mobile homes they intended to place on the property were perfectly acceptable under the restrictive covenants he had placed on the land. He told the same thing to other subdivision lot owners who did not move double wide mobile homes onto their properties, and to one mobile home dealer in the Gloucester area. Defendants acted in reliance upon this information before purchasing and locating double wide mobile homes on their lots in his subdivision. It may also happen that Mr. Green told one or more of the plaintiffs that no mobile homes, including double wides, would be allowed on any lot in the subdivision.

This testimony of Mr. Green was not brought to trial because counsel became involved in the definitional problem of whether a trailer is a mobile home, and overlooked the bearing of Mr. Green's testimony on the matters at issue. Mr. Green's testimony at a minimum indicates that his restrictive covenants are ambiguous, and therefore not enforceable. It also establishes at a minimum that neither side has any superior equity in this matter, or that perhaps defendants have superior equities.

3. Absence of critical defenses. Counsel in the case locked into the definitional issue of whether a mobile home is a trailer for


purposes of the restrictive covenants at issue here. This pre-occupation with the definitional problem led to a misconception or oversight of the broader issues in the case and the defenses related to those issues were therefore not raised. The first defense is that the covenants are ambiguous and unclear. This is a critical preliminary finding for the trial court before it proceeds to enforce the covenants. A second set of defenses relate to the care taken by the defendants in this matter to ascertain in advance of locating their double wide mobile homes on the property whether the restrictive covenants permitted them there. Their testimony is that Mr. Green unequivocally stated that double wide mobile homes were to be permitted in the subdivision. The defense that this testimony raises is one of acquiescence on his part, or laches or estoppel.


For the reasons cited above, defendants respectfully request the Court to grant a new trial of the matter, and issue such Orders as will assure that necessary and indispensable parties are brought before the Court so that the interests of all parties in this matter may be fully resolved and the equities properly balanced.

Respectfully submitted,

JANICE MARIE BARBER
CATHY J. CAUBLE
NORRIS J. AND CAROL J. WILLIAMS

OF COUNSEL


John F. Rick


C. Flippo Hicks

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Martin, Hicks & Ingles, Ltd.
Court Circle, P.O. Box 708
Gloucester, VA 23061

Co-counsel for Defendants.

CERTIFICATE OF SERVICE

I certify that the foregoing Memorandum in Support of Defendants' Motion for New Trial was mailed this 6 day of May, 1987, postage prepaid, first class, to Bruce Long, Esquire, P.O. Box 1069, Hayes, Virginia 23072, counsel for plaintiffs.

John Rick
John F. Rick

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1987 MAY -7 PM 4:01

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GLoucester, VIRGINIA

CHARLES E. KING, JR., CLERK

Charles E. King, Jr.
C.C.

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF GLOUCESTER

JIMMIE W. BROOKS, et als,)	
)	
Plaintiffs,)	
)	
v.)	Chancery No. 4459
)	
JANICE MARIE BARBER, et als,)	
)	
Defendants.)	

MEMORANDUM IN SUPPORT OF DEFENDANTS'
MOTION FOR NEW TRIAL

Absence of Indispensable Parties

It is clear policy of the Virginia Supreme Court to have all necessary and indispensable parties before the trial court in any given proceeding. Otherwise, the trial court will be in a position of issuing ineffective or partially effective orders, and of generating additional litigation rather than resolving all of the issues. This rule is so important that the trial court is authorized by statute to add parties at any time to achieve the ends of justice. Section 8.01-5 Code of Virginia (1950), as amended. The Supreme Court will notice the absence of a necessary party on appeal, even though that absence was not raised in the trial court below, and will send the matter back to join that party in a new trial which resolves all of the issues at the same time. Wasserman v. Metzger, 102 Va. 837, 47 S.E. 820 (1904); McDougle v. McDougle, 214 Va. 636, 203 S.E. 2d 131 (1974); and Thrasher v. Lustig, 204 Va. 399, 131 S.E.2d 286 (1963); Michie's Jurisprudence, "Parties", §§3, 4, 9, 20, 21, 23.

An indispensable party is one who has such an interest in the matters before the court that no decree can be entered which will not effect that interest. In this case both the noteholder and the trustees on the deed of trust securing the note which were generated by Ms. Cauble's refinancing of her property in November, 1986 are indispensable parties. Any court order affecting use or continued presence of Ms. Cauble's double wide mobile home on the property will effect the major portion of the security for the noteholder. Any order to her will not include, under the present state of the case, an order to the legal title owners, the trustees. And for both noteholder and trustees, loss of the chance to appear in court on this matter may spell loss of any rights they have to recover from their title insurance company in the event matters ultimately go against them.

That the trustees are indispensable is recognized by both statute, common practice in this circuit, and the Supreme Court. Section 15.1-482 Code of Virginia (1950), as amended requires that the trustees of recorded deeds of trust be made parties to actions vacating a subdivision after lots have been sold. Long established practice in Gloucester County requires joining such trustees in any amendment of restrictive covenants. And the Supreme Court has recently ruled that restrictive covenants cannot be amended or terminated unless all parties affected by the covenants, and their successors, agree to the amendment or termination. Duvall v. Ford Leasing, 220 Va. 36, 44, 255 S.E.2d 470, 474-5 (1979). Trustees are not specifically mentioned, but appear clearly to be covered by the logic of this ruling.

Under such circumstances, it is necessary that both the note-holder and the trustees on the deed of trust securing the note on Ms. Cauble's refinancing be joined as parties to this action. They will then have their opportunity to file appropriate defenses and litigate the issue as they see fit.

Absence of Critical Testimony and Defenses

When evidence plainly affecting the equities of the parties is omitted from trial through misconception of the law governing the case, the Virginia Supreme Court has held that a new trial should be granted in order to permit such important evidence and to do substantial justice to the parties. Fairfax's Administrator v. Lewis, 48 Va. (11 Leigh) 233, 242 (1840).

It appears that the evidence concerning Vernon Green's statements and inducements to the defendants will have a dramatic impact upon the equities of all parties if heard by the trial court. Depending on its final form, it will either establish superior equities in defendants, or establish that the equities of all parties are in balance and that the covenants should not be enforced due to their ambiguity, or to a course of dealing which has waived them. The defenses necessary to develop this evidence are ambiguity of the covenants and laches, estoppel, or acquiescence. All of these matters were overlooked because counsel for both parties very quickly settled on the definitional problems inherent in the word trailer as the sole legal issue in the case, to the exclusion of the other issues discussed herein. Such misconception of the law in the case is not sufficient grounds

for a new trial, it is conceded, except in those situations where the overlooked evidence and issues clearly reverse the equities in favor of the losing party. In this case they do, and the equity court has the power to reopen the hearing to achieve justice.

Restrictive covenants must be construed in the circumstances in which they were written, Bauer v. Harn, 223 Va. 31 _____ S.E.2d _____ (1982). If the covenants display ambiguity, the Court should use extraneous evidence to arrive at the intent of the covenantor. Dart Drug v. Nicholachos, 221 Va. 989, _____ S.E.2d _____ (1981). But restrictive are not favored, and if they are essentially ambiguous and unreasonable, equity will not enforce them. Hening v. Maynard, 227 Va. 113, _____ S.E.2d _____ (1984); Stevenson v. Spivey, 132 Va. 115, 110 S.E. 367 (1922); Schwarzschild v. Welborne, 186 Va. 1052, 45 S.E.2d 152 (1947).


Green's testimony will either establish that his intention was to exclude double wide mobile homes from the term "trailer" in his restrictive covenants, by original intent or by a course of dealing, or that he used the word "trailer" so ambiguously that he could tell defendants in this case that it permitted double wides while telling one or more plaintiffs that it prohibited double wides. If the latter, the term is so ambiguous that the parties should be left where the court found them, and the covenants left unenforced.


For the reasons cited above, defendants urge this Court to grant their Motion for New Trial and reopen the matter for the taking of the additionally indicated testimony.

Respectfully submitted,

JANICE MARIE BARBER
CATHY J. CAUBLE
NORRIS J. AND CAROL J. WILLIAMS

OF COUNSEL


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C. Flippo Hicks


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Co-counsel for Defendants

CERTIFICATE OF SERVICE

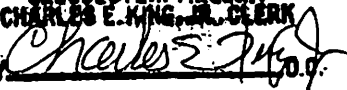
I certify that the foregoing Memorandum in Support of Defendants' Motion for New Trial was mailed this 6 day of May, 1987, postage prepaid, first class, to Bruce Long, Esquire, P.O. Box 1069, Hayes, Virginia 23072, counsel for plaintiffs.


John F. Rick

FILED

1987 MAY -7 PM 4:03

CIRCUIT COURT CLERK'S OFFICE
GLOUCESTER, VIRGINIA
CHARLES E. KING, JR., CLERK

BY 

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167

THOMPSON & McMULLAN

100 SHOCKOE SLIP

RICHMOND, VIRGINIA 23219

TELEPHONE (804) 649-7545

1101 KING STREET, SUITE 501
ALEXANDRIA, VIRGINIA 22314
TELEPHONE (703) 638-5525
TELECOPIER (703) 548-4585
TELEX 268016 OTESUR

May 6, 1987

Charles E. King, Jr., Clerk
Circuit Court of the County
of Gloucester
P.O. Box N
Gloucester, VA 23061

Re: Brooks, et als, v. Barber, et als
Chancery Number: 4459

Dear Mr. King:

Please note my appearance as co-counsel for record for all three defendants in the above-referenced case as of the date of this letter. I have been retained by all three defendants to co-counsel the matter with Mr. Hicks from this point forward.

With personal regards, I remain

Very truly yours,



John F. Rick

JFR/kbd

cc: C. Flippo Hicks, Esquire
Bruce Long, Esquire
The Honorable G. Duane Holloway

FILED

1987 MAY -8 AM 11: 15

CIRCUIT COURT CLERK'S OFFICE
GLOUCESTER, VIRGINIA
CHARLES E. KING, JR., CLERK

Charles E. King, Jr. 168
D.C.

VIRGINIA: IN THE CIRCUIT COURT OF GLOUCESTER COUNTY

JIMMIE W. BROOKS, et als,

Plaintiffs

v.

JANICE MARIE BARBER, et als,

Defendants


Chancery No. 4459

NOTICE OF PRESENTATION OF DECREE

TAKE NOTICE that on the 14th day of May, 1987 at 8:00 a.m. the undersigned will present to the Circuit Court of Gloucester County sitting at the Courthouse in Yorktown, Virginia for entry the attached Decree without your assent. Should you be opposed to the terms of the aforesaid Decree you should come forward then and make your objections known to the Court, and otherwise protect your interests in this cause.

JIMMIE W. BROOKS, et als

BY 
OF COUNSEL


R. BRUCE LONG, ESQ.
Attorney At Law
P. O. Box 1069
Hayes, VA 23072

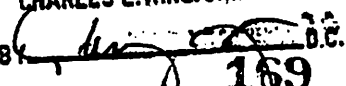
CERTIFICATION

I hereby certify that a true copy of the foregoing Notice of Presentation of Decree with Decree attached was mailed this 8th day of May, 1987 to C. F. Hicks, Esq., Martin, Hicks & Ingles, Ltd., Attorneys At Law, Gloucester, Virginia 23061, counsel of record for the Defendants.


FILED

1987 MAY -8 PM 2:38

CIRCUIT COURT CLERK'S OFFICE
GLOUCESTER, VIRGINIA
CHARLES E. KING, JR., CLERK


169

Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072

(804) 642-6969
(804) 874-4477

VIRGINIA: IN THE CIRCUIT COURT OF GLOUCESTER COUNTY

JIMMIE W. BROOKS, et als,

Plaintiffs

v.

JANICE MARIE BARBER, et als,

Defendants

Chancery No. 4459

DECREE

This cause came to be heard on the 25th day of March, 1987, upon the plaintiffs' Bill of Complaint; upon the defendants' Answer; upon the written Stipulation of Fact filed with the Court; upon the testimony of witnesses and exhibits introduced on behalf of plaintiffs and defendants, and stipulations made in open Court; and upon the argument of counsel and memoranda of authorities submitted on behalf of plaintiffs and defendants.

UPON CONSIDERATION WHEREOF, the Court finds that the defendants' homes are all trailers as defined in the restrictive covenants sought to be enforced in the Bill of Complaint, and that the plaintiffs are entitled to the relief prayed for in their Bill of Complaint.

Accordingly, it is ADJUDGED, ORDERED and DECREED that the defendants, and each of them, from and after September 25, 1987 are perpetually enjoined and restrained from occupying or using at any time as a residence said trailers. To the action of the Court in enjoining the defendants as herein DECREED, the defendants object and except.

And the defendants having advised the Court that they intend to apply to the Supreme Court of Virginia for an appeal from this final decree of the Court

Bruce Long,
P.C.
Attorney At Law
O. Box 1069
Waynes, Virginia
23072

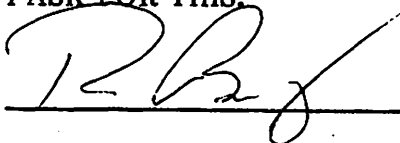
(4) 642-6969
(4) 874-4477

and upon motion of the defendants the Court declines to suspend execution of this decree, from which order the defendants note their exception.

Appeal bond is set at \$500.00, said bond to be conditioned according to law and surety on said bond shall be approved by the Clerk of this Court.

And nothing further remaining to be done in this cause it is ORDERED stricken from the docket and placed among the ended causes.

I ASK FOR THIS:

 p.q.

SEEN AND OBJECTED TO:

_____ p.d.

ENTER THIS _____ DAY OF _____, 1987.

JUDGE

*Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Lynch, Virginia
23072*

804) 642-6969
804) 874-4477

VIRGINIA: IN THE CIRCUIT COURT OF GLOUCESTER COUNTY

JIMMIE W. BROOKS, et als,	*	
Plaintiffs	*	
	*	
v.	*	Chancery No. 4459
	*	
JANICE MARIE BARBER, et als,	*	
Defendants	*	

PLAINTIFFS' INTERROGATORIES TO DEFENDANTS

TO: CATHY J. CAUBLE
c/o C. F. Hicks, Esquire
Martin, Hicks & Ingles, Ltd.
Attorneys At Law
P.O. Box 708
Gloucester, Virginia 23061

Plaintiffs, JIMMIE W. BROOKS, et als, by counsel, pursuant to Part Four of the Rules of the Supreme Court of Virginia, propound the following interrogatories to you to be answered in writing and under oath within twenty-one (21) days after service hereof.

DEFINITIONS AND INSTRUCTIONS

A. "Document" means any written, recorded, or graphic matter however produced or reproduced including without limitation letters, telegrams, memoranda, agreements, records, notes, correspondence, diaries, photocopies, photographs, tape recordings, checks, checkbook registers, savings account passbooks, account books, charts, and all other papers, writings and other data compilations, including drafts, originals and copies, in your possession, custody or control or of which you have knowledge, wherever located. If a document has been prepared in separate copies, or additional copies have been made, and the copies are not identical (or which by reason of subsequent modification of a copy by the addition of notations, are no longer identical), each nonidentical copy is a separate document.

R. Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072

(804) 642-6969
(804) 874-4477

5/14/87 172
Full [signature]

B. "Identify" means when used in reference to any individual person to state his or her full name, address, and present or last known positions and business affiliation, and when used in reference to any other person (as that term is defined in paragraph C below) means to set forth the person's full name and address, to describe the type of person (e.g. corporation, limited partnership, or joint venture), and to give the state of the person's incorporation, if any. With respect to a document, "identify" means to indicate the type or character of the document (e.g. letter, memoranda, signed statement, notes, tapes, invoices, etc.) the title, if any, the date, the name and address of the author and addressee, the names and addresses of recipients of copies, and the person or persons who have custody or control of the document, and the present location of the document. If any such document was but no longer is in your possession or subject to your control, state what disposition was made of it and when. With respect to an account or other similar asset, "identify" means to identify the financial institution or other person (as that term is defined in paragraph C below) in which the account or other asset is kept, to set forth the address of said financial institution's particular branch in which the account or other asset is kept, to set forth the account or other identifying number of the account or other asset, to identify all documents which relate to the account or other asset and to identify all other persons having any legal or beneficial interest in the account or other asset.

C. The term "person" means any natural person, corporation, partnership, joint venture, association, group, financial institution, governmental agency or agent and any other entity.

D. The terms "you" and "your" and words of like import mean

R. Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072

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defendant, CATHY J. CAUBLE, her agents, employees, assigns, attorneys, accountants, partners and all other persons (as that term is defined in paragraph C above) acting on her behalf, or acting on behalf of such agents, employees, assigns, attorneys, accountants, partners or other persons.

E. These interrogatories are continuing in character so as to require you to provide supplemental answers if you obtain additional or different information prior to the trial of this suit.

INTERROGATORIES

1. Identify each person having personal knowledge of any fact relevant to the issues in this suit and separately with respect to each person set forth in detail the facts of which that person has personal knowledge.

James T. Cauble, II and Ella Cauble, James T. Cauble, III, James Wilson and Heather Wilson, all who were present during conversation with Vernon Green when he advised that a double wide mobile home installed on a permanent foundation was permitted by the restrictions and did not constitute a temporary structure prohibited by the restrictions.

2. Identify all documents, the existence of which the defendant has knowledge and which are relevant to the issues in this suit.

Documents showing having conventional loan with the home and land being financed together and also documents showing that I have a homeowners insurance company.

3. Identify any expert witnesses defendant intends to call at the trial of this matter.

None.

*R. Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072*

*(804) 642-6969
(804) 874-4477*

4. For every such expert, state the substance of any opinion to which he and/or she is expected to testify and the grounds for such opinion.

Not applicable.

5. Identify the company from whom you purchased your home, including the purchase price, date of purchase, date of delivery, and date of set up.

Forbes Homes, Elizabeth City, North Carolina. Home was purchased in August 1983. My former husband was involved in the purchase. I am not sure of the exact purchase price. I am not sure of the date of delivery as I was not present at the time.

6. State whether or not your home was delivered to your lot and if so, what method it was transported to said lot.

I have no knowledge.

7. State whether or not your home was delivered to your lot in two (2) or more sections.

I have no knowledge.

8. State whether or not at the time of delivery your home had a hitch attached for purposes of towing the said section or sections to your lot.

I have no knowledge.

*R. Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
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23072*

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9. State whether or not each section of your home rested upon an under carriage at the time of its delivery to your lot.

I have no knowledge.

10. State whether or not said undercarriage upon which each section rested consisted of metal pieces, wheels, springs, and axles.

I have no knowledge

11. State whether or not the said undercarriage is also from time to time referred to as a chassis.

I have no knowledge.

12. State whether or not your home was installed by being set on piers set on a solid surface.

My home is installed on piers set on a solid foundation and on a brick foundation.

13. State whether or not, if your home consists of two (2) units, whether they can be connected as a single dwelling unit.

My home is a single dwelling unit with a 10 x 20 deck attached in the front of it. A 10 x 46 in the back with a lower section of the back deck of 10 x 26. I also have on my property a 24 x 24 garage.

14. If your answer to the preceeding Interrogatory is in the affirmative, then state whether or not the two (2) halves of the unit once connected can be disconnected or unconnected.

My home is a single residence dwelling unit on a permanent foundation.

*R. Bruce Long,
P.C.*

*Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072*

(804) 642-6969

(804) 874-4477

15. If your answer to the preceeding Interrogatory is in the affirmative state whether or not each half could be separately transported to another site on an undercarriage consisting of metal pieces, wheels, springs and axles.

I have no knowledge of any way it can be transported without inflicting substantial damage upon it.

16. State whether or not your home has somewhere on it a certification label consisting of a three-letter designation followed by a six-digit designation.

Yes.

17. State whether or not your home is built to BOCA code requirements.

No.

18. State whether or not your home is built to HUD code requirements.

Yes.

19. Identify the general contractor who constructed your home as well as all subcontractors who performed work thereon.

Mansion Homes, Forbes Homes, Brown's Well Drilling, R. T. Ewell & Sons, Frank DeAlba.

? Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072

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20. State the date on which construction began on your home.

August 1983.

21. State the date on which you occupied your home.

September 1983.

22. State whether or not your home is a double wide mobile home.

My home is a manufactured home on a permanent foundation.

23. State whether or not your home is a trailer.

My home is not a trailer.

24. State whether or not your home can be seen from adjoining lots and from the roads adjoining those lots.

My home cannot be seen from adjoining lots. My home can only be seen from the road in front of my lot. This is a private road. None of the plaintiffs in this suit live on the road on which I live on.

25. If your answer to the previous Interrogatory is in the negative, state what obstructions exist that preclude sight of your home from both adjoining lots and the roads adjoining those lots.

Trees and shrubbery.



*R. Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072*

*(804) 642-6969
(804) 874-4477*

26. State your estimate of the value of your home, excluding land.


The appraised value of my home and appurtenances excluding land, based on a recent appraisal, is \$55,000.00

JIMMIE W. BROOKS, et als


BY 
Of Counsel
R. BRUCE LONG, ESQ.
Attorney At Law
P.O. Box 1069
Hayes, Virginia 23072

CERTIFICATION

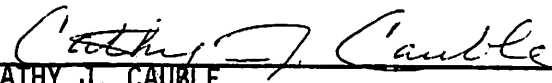
I hereby certify that a true copy of the foregoing Plaintiff's Interrogatories to Defendant was ~~mailed~~^{delivered} this 5th day of September, 1986 to C. F. Hicks, Esq., Martin, Hicks & Ingles, Ltd., Attorneys At Law, P.O. Box 708, Gloucester, Virginia 23072, counsel of record for the defendant.


R. BRUCE LONG

*R. Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072*

*(804) 642-6969
(804) 874-4477*

Respectfully submitted,

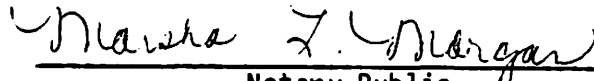

CATHY J. CAUBLE

STATE OF VIRGINIA

COUNTY OF GLOUCESTER, To-Wit:


This 16th day of October, 1986, personally appeared before me, MARSHA L. MORGAN, a Notary Public in and for the State of Virginia, Cathy J. Cauble, who after being duly sworn, did affirm that the answers to the above interrogatories are true and correct to the best of her knowledge and belief.

COMMISSIONED AS
MARSHA D. LEWIS


Notary Public

My commission expires: March 27, 1987.

I certify that a copy of the foregoing Answers to Interrogatories was served on the plaintiff by mailing a copy thereof by first class mail this 20th day of October, 1986, to R. Bruce Long, Esquire, P. O. Box 1069, Hayes, Virginia 23072, counsel of record for the plaintiff.


C. Elippo Hicks
Martin, Hicks & Ingles, Ltd.
P. O. Box 708
Gloucester, Virginia 23061


Of Counsel

VIRGINIA: IN THE CIRCUIT COURT OF GLOUCESTER COUNTY

JIMMIE W. BROOKS, et als,

Plaintiffs

v.

JANICE MARIE BARBER, et als,

Defendants

Chancery No. 4459

PLAINTIFFS' INTERROGATORIES TO DEFENDANTS

TO: JANICE MARIE BARBER
c/o C. F. Hicks, Esquire
Martin, Hicks & Ingles, Ltd.
Attorneys At Law
P.O. Box 708
Gloucester, Virginia 23061

Plaintiffs, JIMMIE W. BROOKS, et als, by counsel, pursuant to Part Four of the Rules of the Supreme Court of Virginia, propound the following interrogatories to you to be answered in writing and under oath within twenty-one (21) days after service hereof.

DEFINITIONS AND INSTRUCTIONS

A. "Document" means any written, recorded, or graphic matter however produced or reproduced including without limitation letters, telegrams, memoranda, agreements, records, notes, correspondence, diaries, photocopies, photographs, tape recordings, checks, checkbook registers, savings account passbooks, account books, charts, and all other papers, writings and other data compilations, including drafts, originals and copies, in your possession, custody or control or of which you have knowledge, wherever located. If a document has been prepared in separate copies, or additional copies have been made, and the copies are not identical (or which by reason of subsequent modification of a copy by the addition of notations, are no longer identical), each nonidentical copy is a separate document.

R. Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072

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(804) 874-4477

B. "Identify" means when used in reference to any individual person to state his or her full name, address, and present or last known positions and business affiliation, and when used in reference to any other person (as that term is defined in paragraph C below) means to set forth the person's full name and address, to describe the type of person (e.g. corporation, limited partnership, or joint venture), and to give the state of the person's incorporation, if any. With respect to a document, "identify" means to indicate the type or character of the document (e.g. letter, memoranda, signed statement, notes, tapes, invoices, etc.) the title, if any, the date, the name and address of the author and addressee, the names and addresses of recipients of copies, and the person or persons who have custody or control of the document, and the present location of the document. If any such document was but no longer is in your possession or subject to your control, state what disposition was made of it and when. With respect to an account or other similar asset, "identify" means to identify the financial institution or other person (as that term is defined in paragraph C below) in which the account or other asset is kept, to set forth the address of said financial institution's particular branch in which the account or other asset is kept, to set forth the account or other identifying number of the account or other asset, to identify all documents which relate to the account or other asset and to identify all other persons having any legal or beneficial interest in the account or other asset.

C. The term "person" means any natural person, corporation, partnership, joint venture, association, group, financial institution, governmental agency or agent and any other entity.

D. The terms "you" and "your" and words of like import mean

R. Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072

(804) 642-6969
(804) 874-4477

defendant, JANICE MARIE BARBER, her agents, employees, assigns, attorneys, accountants, partners and all other persons (as that term is defined in paragraph C above) acting on her behalf, or acting on behalf of such agents, employees, assigns, attorneys, accountants, partners or other persons.

E. These interrogatories are continuing in character so as to require you to provide supplemental answers if you obtain additional or different information prior to the trial of this suit.

INTERROGATORIES

1. Identify each person having personal knowledge of any fact relevant to the issues in this suit and separately with respect to each person set forth in detail the facts of which that person has personal knowledge.

Vernon Green has knowledge concerning the sale of the property to Janice Barber. Frank DeAlba, brick mason, has knowledge as to putting in foundation for Janice Barber's home. Persons with Southern Mobile Homes, Inc. who sold and delivered Janice Barber's home. Persons with Turlington Septic Systems who installed the septic system. Persons from Brown's Well Drilling Co. who installed wells for Janice Barber's home.

2. Identify all documents, the existence of which the defendant has knowledge and which are relevant to the issues in this suit.

The only document in existence which defendant has knowledge and is relevant to this suit, is the insurance policy on the home issued by Selected Risk Insurance Company, which is the homeowner's policy showing this as a regular dwelling. Policy No. H0699612, issued through Morgan Marrow Insurance Company. Coverage from November 16, 1985 to November 16, 1986.

3. Identify any expert witnesses defendant intends to call at the trial of this matter.

None.

*R. Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072*

*(804) 642-6969
(804) 874-4477*

4. For every such expert, state the substance of any opinion to which he and/or she is expected to testify and the grounds for such opinion.

Not applicable.

5. Identify the company from whom you purchased your home, including the purchase price, date of purchase, date of delivery, and date of set up.

Southern Mobile Homes, Inc. The purchase price was \$42,795.00, purchased on February 13, 1985.

6. State whether or not your home was delivered to your lot and if so, what method it was transported to said lot.

My home was delivered to my lot. I was not present when delivered. When I first saw my home, it was on my lot with no wheels or anything in evidence, but was permanently installed on my lot.

7. State whether or not your home was delivered to your lot in two (2) or more sections.

I assumed that it was, but I was not present.

8. State whether or not at the time of delivery your home had a hitch attached for purposes of towing the said section or sections to your lot.

I have no knowledge of any hitch. When I saw my home on my lot, it was complete and permanently installed.

R. Bruce Long,
P.C.

Attorney At Law
P.O. Box 1069
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23072

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9. State whether or not each section of your home rested upon an under carriage at the time of its delivery to your lot.

I have no knowledge of this.

10. State whether or not said undercarriage upon which each section rested consisted of metal pieces, wheels, springs, and axles.

I have no knowledge of this, but say that there is no undercarriage wheels, springs or axle under my home now or at any time that I have ever seen it on my lot.

11. State whether or not the said undercarriage is also from time to time referred to as a chassis.

I have no knowledge of this.

12. State whether or not your home was installed by being set on piers set on a solid surface.

My home was put on permanent piers and then a permanent brick foundation was also installed under my home.

13. State whether or not, if your home consists of two (2) units, whether they can be connected as a single dwelling unit.

My home is one single dwelling unit.

14. If your answer to the preceeding Interrogatory is in the affirmative, then state whether or not the two (2) halves of the unit once connected can be disconnected or unconnected.

To my knowledge, my home is now a single dwelling unit and cannot be unconnected or disconnected without permanent damage to my home.

*R. Bruce Long,
P.C.
Attorney At Law
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23072*

*(804) 642-6969
(804) 874-4477*

15. If your answer to the preceeding Interrogatory is in the affirmative state whether or not each half could be separately transported to another site on an undercarriage consisting of metal pieces, wheels, springs and axles.

To my knowledge, my home is one unit on a permanent foundation and cannot now be transported. In addition, there is a permanent wood deck, approximately 8 x 10 feet installed at the rear of my home.

16. State whether or not your home has somewhere on it a certification label consisting of a three-letter designation followed by a six-digit designation.

Yes.

17. State whether or not your home is built to BOCA code requirements.

No.

18. State whether or not your home is built to HUD code requirements.

Yes.

19. Identify the general contractor who constructed your home as well as all subcontractors who performed work thereon.

Parkway House Inc., Turlington Septic Tank, Brown's Well Drilling, Frank DeAlba, Southern Mobile Homes, Inc.

*R. Bruce Long,
P.C.*

*Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072*

*(804) 642-6969
(804) 874-4477*

20. State the date on which construction began on your home.

April 1, 1985.

21. State the date on which you occupied your home.

June 20, 1985.

22. State whether or not your home is a double wide mobile home.

My home is a manufactured single dwelling unit on a permanent foundation.

23. State whether or not your home is a trailer.

My home is not a trailer.

24. State whether or not your home can be seen from adjoining lots and from the roads adjoining those lots.

My home cannot be seen from adjoining lots. If you look in the private drive coming into my home, you can see my home.

25. If your answer to the previous Interrogatory is in the negative, state what obstructions exist that preclude sight of your home from both adjoining lots and the roads adjoining those lots.

Trees and shrubbery.

*P. Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072*

*(804) 642-6969
(804) 874-4477*

26. State your estimate of the value of your home, excluding land.

My home and the appurtenances, excluding the land, is valued
at \$55,000.00

JIMMIE W. BROOKS, et als

BY


Of Counsel



R. BRUCE LONG, ESQ.
Attorney At Law
P.O. Box 1069
Hayes, Virginia 23072

CERTIFICATION

I hereby certify that a true copy of the foregoing Plaintiff's
Interrogatories to Defendant was ^{delivered} mailed this 5th day of September,
1986 to C. F. Hicks, Esq., Martin, Hicks & Ingles, Ltd., Attorneys At
Law, P.O. Box 708, Gloucester, Virginia 23072, counsel of record for
the defendant.


R. BRUCE LONG

*R. Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072*

*(804) 642-6969
(804) 874-4477*

Respectfully submitted,

Janice Marie Barber
Janice Marie Barber

STATE OF VIRGINIA

COUNTY OF GLOUCESTER, To-Wit:

This 17th day of October, 1986, personally appeared before me, MARSHA L. MORGAN, a Notary Public in and for the State of Virginia, Janice Marie Barber, who after being duly sworn, did affirm that the answers to the above interrogatories are true and correct to the best of her knowledge and belief.

COMMISSIONED AS
MARSHA D. LEWIS

Marsha L. Morgan
Notary Public

My commission expires: March 27, 1987.

I certify that a copy of the foregoing Answers to Interrogatories was served on the plaintiff by mailing a copy thereof by first class mail this 20th day of October, 1986, to R. Bruce Long, Esquire, P. O. Box 1069, Hayea, Virginia 23072, counsel of record for the plaintiff.

C. Filippo Hicks
Martin, Hicks & Ingles, Ltd.
P. O. Box 708
Gloucester, Virginia 23061

[Signature]
Of Counsel

VIRGINIA: IN THE CIRCUIT COURT OF GLOUCESTER COUNTY

JIMMIE W. BROOKS, et als,

Plaintiffs

v.

JANICE MARIE BARBER, et als,

Defendants

*
*
*
*
*
*
*

Chancery No. 4459

PLAINTIFFS' INTERROGATORIES TO DEFENDANTS

TO: NORRIS J. WILLIAMS and CAROL J. WILLIAMS

c/o C. F. Hicks, Esquire
Martin, Hicks & Ingles, Ltd.
Attorneys At Law
P.O. Box 708
Gloucester, Virginia 23061

Plaintiffs, JIMMIE W. BROOKS, et als, by counsel, pursuant to Part Four of the Rules of the Supreme Court of Virginia, propound the following interrogatories to you to be answered in writing and under oath within twenty-one (21) days after service hereof.

DEFINITIONS AND INSTRUCTIONS

A. "Document" means any written, recorded, or graphic matter however produced or reproduced including without limitation letters, telegrams, memoranda, agreements, records, notes, correspondence, diaries, photocopies, photographs, tape recordings, checks, checkbook registers, savings account passbooks, account books, charts, and all other papers, writings and other data compilations, including drafts, originals and copies, in your possession, custody or control or of which you have knowledge, wherever located. If a document has been prepared in separate copies, or additional copies have been made, and the copies are not identical (or which by reason of subsequent modification of a copy by the addition of notations, are no longer identical), each nonidentical copy is a separate document.

R. Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072

(804) 642-6969
(804) 874-4477

B. "Identify" means when used in reference to any individual person to state his or her full name, address, and present or last known positions and business affiliation, and when used in reference to any other person (as that term is defined in paragraph C below) means to set forth the person's full name and address, to describe the type of person (e.g. corporation, limited partnership, or joint venture), and to give the state of the person's incorporation, if any. With respect to a document, "identify" means to indicate the type or character of the document (e.g. letter, memoranda, signed statement, notes, tapes, invoices, etc.) the title, if any, the date, the name and address of the author and addressee, the names and addresses of recipients of copies, and the person or persons who have custody or control of the document, and the present location of the document. If any such document was but no longer is in your possession or subject to your control, state what disposition was made of it and when. With respect to an account or other similar asset, "identify" means to identify the financial institution or other person (as that term is defined in paragraph C below) in which the account or other asset is kept, to set forth the address of said financial institution's particular branch in which the account or other asset is kept, to set forth the account or other identifying number of the account or other asset, to identify all documents which relate to the account or other asset and to identify all other persons having any legal or beneficial interest in the account or other asset.

C. The term "person" means any natural person, corporation, partnership, joint venture, association, group, financial institution, governmental agency or agent and any other entity.

D. The terms "you" and "your" and words of like import mean

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defendant, NORRIS J. WILLIAMS and CAROL J. WILLIAMS, their agents, employees, assigns, attorneys, accountants, partners and all other persons (as that term is defined in paragraph C above) acting on her behalf, or acting on behalf of such agents, employees, assigns, attorneys, accountants, partners or other persons.

E. These interrogatories are continuing in character so as to require you to provide supplemental answers if you obtain additional or different information prior to the trial of this suit.

INTERROGATORIES

1. Identify each person having personal knowledge of any fact relevant to the issues in this suit and separately with respect to each person set forth in detail the facts of which that person has personal knowledge.

Mr. and Mrs. Johann Pfeffer were present when the lot was purchased and present when Vernon Green advised that a temporary structure did not include a double wide mobile home on a permanent foundation.

2. Identify all documents, the existence of which the defendant has knowledge and which are relevant to the issues in this suit.

None.

3. Identify any expert witnesses defendant intends to call at the trial of this matter.

None.

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4. For every such expert, state the substance of any opinion to which he and/or she is expected to testify and the grounds for such opinion.

Not applicable.

5. Identify the company from whom you purchased your home, including the purchase price, date of purchase, date of delivery, and date of set up.

Southern Mobile Homes, Inc. Purchase price was \$36,264.95. Purchased in February 1984, delivered March 1984, moved in May 1984.

6. State whether or not your home was delivered to your lot and if so, what method it was transported to said lot.

My home was delivered in two sections by truck.

7. State whether or not your home was delivered to your lot in two (2) or more sections.

Yes.

8. State whether or not at the time of delivery your home had a hitch attached for purposes of towing the said section or sections to your lot.

The two sections had temporary hitch at the time of delivery.

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9. State whether or not each section of your home rested upon an under carriage at the time of its delivery to your lot.

The home rested upon a steel I-beam frame.

10. State whether or not said undercarriage upon which each section rested consisted of metal pieces, wheels, springs, and axles.

Temporarily attached to the steel I-beam frame at the time of delivery were three axles on each section. Each axle had contained springs and wheels.

11. State whether or not the said undercarriage is also from time to time referred to as a chassis.

No.

12. State whether or not your home was installed by being set on piers set on a solid surface.

My home was installed by being set on piers installed on a solid surface and then a permanent foundation was put under the home.

13. State whether or not, if your home consists of two (2) units, whether they can be connected as a single dwelling unit.

My home is a single residential dwelling unit.

14. If your answer to the preceeding Interrogatory is in the affirmative, then state whether or not the two (2) halves of the unit once connected can be disconnected or unconnected.

My home cannot be severed without material damage to our residence.

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15. If your answer to the preceeding Interrogatory is in the affirmative state whether or not each half could be separately transported to another site on an undercarriage consisting of metal pieces, wheels, springs and axles.

If our home were cut in two, after great damage to it, it could theoretically be transported.

16. State whether or not your home has somewhere on it a certification label consisting of a three-letter designation followed by a six-digit designation.

Yes.

17. State whether or not your home is built to BOCA code requirements.

No.

18. State whether or not your home is built to HUD code requirements.

Yes.

19. Identify the general contractor who constructed your home as well as all subcontractors who performed work thereon.

Virginia Home Manufacturing Corp., Southern Electric Company,
R. T. Ewell & Son, Brown's Well Drilling, Boyd Newhouse.

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20. State the date on which construction began on your home.

March 1984.

21. State the date on which you occupied your home.

May 1984.

22. State whether or not your home is a double wide mobile home.

Our home is a single family residence installed on a permanent foundation and is considered to be a manufactured home.

23. State whether or not your home is a trailer.

Our home is not a trailer, but a manufactured home installed on a permanent foundation.

24. State whether or not your home can be seen from adjoining lots and from the roads adjoining those lots.

Yes.

25. If your answer to the previous Interrogatory is in the negative, state what obstructions exist that preclude sight of your home from both adjoining lots and the roads adjoining those lots.

Not applicable.

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P.C.*

*Attorney At Law
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23072*

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26. State your estimate of the value of your home, excluding land.

The estimated value of our home, including the purchases, excluding the land, is \$50,000.00. Our home is attached to a 12 x 20 foot deck on the back, brick steps on the front. In addition, on our property there is a garage and barn.

JIMMIE W. BROOKS, et als

BY



Of Counsel



R. BRUCE LONG, ESQ.

Attorney At Law

P.O. Box 1069

Hayes, Virginia 23072

CERTIFICATION

I hereby certify that a true copy of the foregoing Plaintiff's Interrogatories to Defendant was ~~mailed~~^{delivered} this 5th day of September, 1986 to C. F. Hicks, Esq., Martin, Hicks & Ingles, Ltd., Attorneys At Law, P.O. Box 708, Gloucester, Virginia 23072, counsel of record for the defendant.



R. BRUCE LONG

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Respectfully submitted,

Carol J. Williams
CAROL J. WILLIAMS

STATE OF VIRGINIA

COUNTY OF GLOUCESTER, To-Wit:

This 17th day of October, 1986, personally appeared before me, Marsha L. Morgan, a Notary Public in and for the State of Virginia, Carol J. Williams, who after being duly sworn, did affirm that the answers to the above interrogatories are true and correct to the best of her knowledge and belief.

COMMISSIONED AS
MARSHA D. LEWIS

Marsha L. Morgan
Notary Public

My commission expires: March 27, 1987.

I certify that a copy of the foregoing Answers to Interrogatories was served on the plaintiff by mailing a copy thereof by first class mail this 20th day of October, 1986, to R. Bruce Long, Esquire, P. O. Box 1069, Hayea, Virginia 23072, counsel of record for the plaintiff.

C. Flippo Hicks
Martin, Hicks & Ingles, Ltd.
P. O. Box 708
Gloucester, Virginia 23061

Of Counsel

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF GLOUCESTER

JIMMIE W. BROOKS, et als,)	
)	
Plaintiffs,)	
)	
v.)	Chancery No. 4459
)	
JANICE MARIE BARBER, et als,)	
)	
Defendants.)	

AFFIDAVIT OF VERNON GREEN

1. My name is Vernon Green and I am the developer of the Belroi Farms Subdivision in Gloucester County.

2. I had the restrictive covenants on the lots in Belroi Farms Subdivision drafted to my specifications.

3. I personally told Ms. Cauble and her former husband that a double wide mobile home would be acceptable on the lot in Belroi Farms Subdivision that they purchased, and that it would not violate the restrictive covenants, and particularly the covenant in paragraph six (6) which prohibits temporary structures on the property.

4. Norris and Carol Williams asked me if the word "trailer" in paragraph six (6) of the restrictive covenants would prohibit them from placing a double wide mobile home on their lot in the subdivision, and I informed them that it would not. Further, I told them that there was already another double wide mobile home in the subdivision, speaking of Ms. Cauble's, and I invited them over to take a look at it and see how it looked on the property.

5/14/87
Fili
W

5. I told Janice Barber that a double wide mobile home was not prohibited by the restrictive covenants in our subdivision.

6. ~~I visited Atlantic Mobile Homes at Gloucester Point and informed Gene Gillespie, who runs that dealership, that he was welcome to send any double wide mobile home purchasers up to my subdivision to see if they wanted to buy lots there.~~ *do not agree with* *7/6*

Vernon L. Green
VERNON GREEN

STATE OF VIRGINIA
AT LARGE, to-wit:

Subscribed and sworn to me the foregoing Affidavit of Vernon Green was acknowledged before me this 12th day of May, 1987, by Vernon Green.

Julia J. Harris
NOTARY PUBLIC
October 21, 1990

My Commission Expires:

of the misrepresenta-
interests of both Gibbs
ce with termination of

VNB was prejudiced
been exposed to poten-
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ncellation of the insur-
l informed Gibbs that
es, who had contracted
at the evidence is suffi-
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Virginia State Bar, 226
'84) (findings of Board
le view of evidence or

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s, however, is a matter
nth District Committee,
(1980); see *Maddy v.*
58, 139 S.E.2d 56, 60
that the Board abused
he limit prescribed by
Blue, 220 Va. at 1062,

nding Gibbs's license to
period of one year, and
commence November 1,
all give notice, by certi-
or whom he is currently
ttorneys and presiding
er make immediate ap-
n of those matters pres-
wishes of his clients.

Affirmed.

WALT ROBBINS, INCORPORATED, ET AL.
V.
DAMON CORPORATION, ET AL.

Record No. 830658
September 5, 1986
Present: All the Justices

A decree holding certain mechanics' liens enforceable and denying a personal judgment against a party is reversed in part, due to a failure to name all necessary parties in the suit, and affirmed in part, where an aspect of the decree was entered into by agreement and not challenged on appeal.

Creditors' Rights — Mechanics' Liens — Perfection of Rights — Necessary Parties — Trustees and Beneficiaries of Antecedent Deed of Trust — Practice and Procedure — Personal Judgments — Sustainer of Demurrer

Developers conveyed a deed of trust for an unimproved tract of land to two trustees and hired a general contractor to construct a warehouse on the land. The general contractor subcontracted for certain work and the subcontractor, in turn, engaged a second subcontractor. Construction was interrupted for various reasons beyond the control of the subcontractors and the primary contractor abandoned the project. The two subcontractors filed mechanics' liens against the property and bills of complaint to enforce the liens. After a commissioner's report to which all parties filed exceptions, the chancellor entered a decree from which all parties appeal.

1. Although Code § 43-22 does not expressly require that the trustee and beneficiary under an antecedent deed of trust be made parties to a suit to enforce a mechanics' lien, the issue is controlled by principles of due process of law.
2. No person may be deprived of his property without due process of law, an essential element of which is notice.
3. The lien on a deed of trust recorded before land is improved is a first lien on the land and a lien on subsequent improvements is subordinate to a mechanic's lien.
4. A mechanics' lien is a first lien on the improvements and a subordinate lien on so much of the land as is necessary for the use and enjoyment of the improvements.
5. Because the proceeds of a judicial sale to enforce a mechanics' lien may be insufficient to satisfy all lien creditors, the beneficiary of an antecedent deed of trust has a property right which entitles him to notice and he is therefore a necessary party to the suit.

6. A trustee in an antecedent deed of trust recorded on unimproved land is a necessary party in a suit to enforce a mechanic's lien on improvements to that land.
7. Where an order sustaining a demurrer is entered into by agreement and is not challenged on appeal, it constitutes an express adjudication of the parties' rights and remains the law of the case.

Appeal from a judgment of the Circuit Court of Fairfax County. Hon. Burch Millsap, judge presiding.

*Affirmed in part,
reversed in part,
and final judgment.*

H. Bradley Evans, Jr.; David G. Riske (John P. Corrado; Thomas & Fiske, P.C., on briefs), for appellants.

Craig B. Dunbar; John R. Prosser (Gregory J. Miner; Nikolas E. Parthemos; Rhodes, Dunbar & Lomax, Chartered, P.C.; Hall, Monahan, Engle, Mahan & Mitchell; on briefs), for appellees.

POFF, J., delivered the opinion of the Court.

Springbelt Associates Limited Partnership (Springbelt), the owner of a tract of unimproved land in Springfield, planned to construct a Government Printing Office Warehouse. Springbelt executed a deed of trust conveying the land to Jeffrey Wagner and Frank Thompson, trustees, securing payment of a loan from Madison National Bank in the sum of \$4,500,000. Walt Robbins, Incorporated (Robbins), employed as general contractor, entered into a subcontract with Damon Corporation (Damon) for the erection of structural steel and certain other work. Damon engaged Lynn Fabricators, Inc. (Lynn), to supply the steel.

The progress of construction was delayed by inclement weather, poor site access, change orders, and other factors, and a dispute over payments arose. Charging that Robbins was in default under the terms of the subcontract, Damon abandoned the project on February 8, 1980. At that point, Damon had furnished approximately 97% of the labor and materials required by the subcontract.

Damon and Lynn (which had received no payment for the steel furnished Damon) filed memoranda of mechanics' liens against Springbelt's property and, later, bills of complaint to enforce the liens. Lynn's bill named Springbelt, Robbins, and Damon as de-

recorded on unimproved land is a
mechanic's lien on improvements to

entered into by agreement and is
express adjudication of the par-

Circuit Court of Fairfax
siding.

*Affirmed in part,
reversed in part,
and final judgment.*

*Iske (John P. Corrado;
appellants.*

*egory J. Miner; Nikolas
r, Chartered, P.C.; Hall,
briefs), for appellees.*

Court.

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fendants, sought a personal judgment for materials supplied, and asked the court to enforce its lien by a sale of the property. Damon's bill named Springbelt and Robbins as defendants, alleged that it was entitled to \$99,526.02 for labor and materials furnished, prayed for enforcement of its lien, and demanded a personal judgment against the defendants. Springbelt and Robbins filed a cross-bill against Damon, seeking \$100,000 in damages on account of additional expenses allegedly incurred by reason of Damon's failure to complete the project.

In February 1981, the chancellor referred Damon's suit to a commissioner in chancery. The decree directed the commissioner to determine whether Damon's lien was valid; whether Damon had perfected its lien in accordance with statutory provisions, and if so, the amount of the lien as perfected; whether Damon was entitled to a personal judgment against Robbins if the lien was not properly perfected; whether Springbelt and Robbins had a valid claim against Damon; and whether the property subject to the lien should be sold to satisfy the lien. In a later order, the chancellor consolidated the two suits for consideration by the commissioner.

In his report, the commissioner concluded that, although Damon's and Lynn's claims were valid, neither had perfected its lien in accordance with the mechanic's liens statutes, Code § 43-1, *et seq.*, and, thus, that the liens were unenforceable. The commissioner premised his conclusion on the fact that neither Damon nor Lynn had named the trustees or the beneficiary of the antecedent deed of trust as parties to their suits. Additionally, the commissioner found that Damon's bill was unenforceable because it did not include a verified, itemized statement of account as required by Code § 43-22.

Next, the commissioner concluded that Damon should recover no damages from Springbelt, but should recover the full amount of its claim from Robbins. Damon's claim included \$56,306.56 alleged to be due under the terms of its contract and \$43,220.46 for delay damages and the cost of "extras". The commissioner found that Lynn was entitled to a personal judgment against Damon in the amount of \$34,545.92. Finally, the commissioner recommended that the cross-bill filed by Springbelt and Robbins be dismissed.

All parties filed exceptions to the commissioner's report. The chancellor adopted some of the commissioner's findings and rejected others. In a final decree entered January 28, 1983, the

chancellor ruled that the two mechanics' liens were enforceable; that Damon was not entitled to recover a personal judgment against Springbelt or Robbins; that Lynn was entitled to a personal judgment against Damon but not against Springbelt or Robbins; that Springbelt's and Robbins' cross-bill against Damon be dismissed; and that Springbelt's property be sold to satisfy the mechanics' liens.

Appellants Springbelt and Robbins have assigned several errors and Damon has assigned cross-error.¹ However, the parties have joined issue on two of the chancellor's rulings which we consider dispositive of this appeal. The questions presented are: (1) whether the mechanics' liens are unenforceable because Damon and Lynn failed to make the trustees and the beneficiary of the antecedent deed of trust parties to their suits to enforce; and (2) whether Damon is entitled to a personal judgment against Robbins.

Springbelt and Robbins contend that the chancellor erred in rejecting the commissioner's conclusion that the trustees and the beneficiary of the antecedent deed of trust on the land were necessary parties to the suits to enforce the mechanics' liens. Damon and Lynn argue that, although both are proper parties, neither is a necessary party.²

[1] It is true, as Damon and Lynn say, that Code § 43-22, which authorizes enforcement of a mechanic's lien by a suit in equity, does not expressly require that the trustee and beneficiary

¹ Not challenged on appeal are the chancellor's rulings awarding Lynn a personal judgment against Damon, denying Lynn's claim for a personal judgment against Springbelt or Robbins, denying Damon's claim for a personal judgment against Springbelt, and dismissing Springbelt's and Robbins' cross-bill.

² An ancillary issue, never preserved by the appellees in the court below, questions the appellants' standing to assert the rights of the trustees and the beneficiary. We need not decide whether a named defendant has standing to object to a plaintiff's non-joinder of a necessary party-defendant, for a standing question cannot be raised for the first time on appeal. *Baker v. Baker*, 91 Wash.2d 482, 588 P.2d 1164 (1979) (a plaintiff cannot question a defendant's standing to assert a non-party's defense for the first time on appeal). The rule governing appellate challenges to *standing* is related to the rule applied to appellate challenges to a plaintiff's *capacity* to sue. See *Andrews, Executrix v. Cahoon*, 196 Va. 790, 805, 86 S.E.2d 173, 181 (1955) (executrix's capacity to maintain suit would not be considered for the first time on appeal); *Crawley v. Glaze*, 117 Va. 274, 277-78, 84 S.E. 671, 672-73 (1915) (plaintiff's capacity to maintain suit "in her own proper person" cannot be considered for the first time on appeal).

liens were enforceable; er a personal judgment n was entitled to a per- against Springbelt or Rob- s-bill against Damon be y be sold to satisfy the

e assigned several errors owever, the parties have lings which we consider ns presented are: (1) rceable because Damon d the beneficiary of the uits to enforce; and (2) onal judgment against

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the court below, questions the l the beneficiary. We need not to a plaintiff's non-joinder of a be raised for the first time on 1979) (a plaintiff cannot ques- r the first time on appeal). The o the rule applied to appellate utrix v. Cahoon, 196 Va. 790, ntain suit would not be consid- Va. 274, 277-78, 84 S.E. 671, r own proper person" cannot

under an antecedent deed of trust be made parties to that suit.³ But, in our view, the issue is controlled by principles of due process of law.

[2-5] "It is fundamental, of course, that no person may be deprived of his property without due process of law. 'One of the essentials of due process is notice. This is especially true in proceedings of a judicial nature affecting the property rights of citizens.' " *Finkel Products v. Bell*, 205 Va. 927, 931, 140 S.E.2d 695, 698 (1965) (citation omitted). The lien of a deed of trust recorded before land is improved is a first lien on the land and a lien on the improvements subordinate to a mechanic's lien; the mechanic's lien is a first lien on the improvements and a subordinate lien on so much of the land as is necessary for the use and enjoyment of the improvements. *Federal Land Bank v. Clinchfield Co.*, 171 Va. 118, 123, 198 S.E. 437, 439 (1938) (construing statutory ancestors of Code §§ 43-3, -21). Because the proceeds of a judicial sale under a decree enforcing a mechanic's lien may prove to be insufficient to pay both lien creditors in full, the beneficiary of an antecedent deed of trust has a property right which entitles him to notice and an opportunity to challenge the perfection of the mechanic's lien or to invoke the forfeiture provisions of Code § 43-23.1.

Here, sale has been ordered and the beneficiary has been denied such an opportunity. Guided by principles of due process, we hold that the beneficiary of the antecedent deed of trust was a necessary party to the suits to enforce the mechanics' liens.⁴

We now consider whether the trustees, who hold bare legal title to the land to be sold, were necessary parties. Damon and Lynn insist that our decision in *Loyola Fed. Savings v. Herndon*, 218 Va. 803, 241 S.E.2d 752 (1978) controls that question. There, we construed Code § 43-4 which provides that, in order to perfect a mechanic's lien, the claimant must file a memorandum "showing the names of the owner of the property sought to be charged". We

³ It is also true that we have held that the beneficiary of a subsequent deed of trust is not a necessary party to a suit to enforce a mechanic's lien. *Monk v. Exposition Corp.*, 111 Va. 121, 122, 68 S.E. 280 (1910).

⁴ Other courts have held that a beneficiary of an antecedent trust is not a necessary party to a suit to enforce a mechanic's lien but, if not joined in that suit, the beneficiary is not bound by the judgment. See e.g., *Vesuvius Lumber Co. v. Alabama Fidelity Mortgage & B. Co.*, 203 Ala. 93, 94-95, 82 So. 107, 108-09 (1919); *Deming-Colborn, etc., Co. et al. v. Union Nat'l, etc., Ass'n.*, 151 Ind. 463, 467, 51 N.E. 936, 938 (1898).

held that a trustee under a deed of trust is not an "owner" within the meaning of that statute, and, hence, that the failure of the claimant in that case to name the trustee in the *memorandum* he filed did not render the lien fatally defective. *Id.* at 805-06, 241 S.E.2d at 753-54.

But the object of the memorandum is to register the claimant's lien and to put potential purchasers of the property on notice of the existence of the lien. The filing of the memorandum is not a proceeding at which parties with adverse interests may challenge the validity of the lien. Indeed, it is not a "proceeding" at all. A suit to enforce that lien is, however, such a proceeding, and our decision in *Loyola* is inapposite here.

We have held that chancery suits to enforce a mechanic's lien "are to be conducted as other suits in equity to subject property to payment of liens", *Monk v. Exposition Corp.*, 111 Va. 121, 123, 68 S.E. 280, 281 (1910), and that a trustee under an antecedent deed of trust is a necessary party to a lien creditor's suit. *Jennings v. City of Norfolk*, 198 Va. 277, 287, 93 S.E.2d 302, 309 (1956).

[6] We are of opinion that a trustee in an antecedent deed of trust recorded on unimproved land is a necessary party in a suit to enforce a mechanic's lien on the improvements. Where, as here, a mechanic's lien is to be enforced by judicial sale, title is conveyed to the successful bidder by a special commissioner appointed for that purpose. If legal title is vested in the trustee of an antecedent deed of trust, and the property is to be sold free of the trust lien, the chancellor must have jurisdiction over the person of the trustee before he can enter a decree divesting him of title. *Lunsford and Withrow & Co. v. Wren*, 64 W.Va. 458, 465, 63 S.E. 308, 311 (1908) (non-joinder of trustee renders bill to enforce mechanic's lien "fatally defective").

We hold, therefore, that Damon's and Lynn's mechanics' liens were not enforceable because the trustees and the beneficiary of the deed of trust were not made parties to the suits to enforce.

Finally, we consider the question, raised by assignment of cross-error, whether the chancellor erred in ruling that Damon was not entitled to recover a personal judgment against Robbins.

Damon's bill of complaint sought a personal judgment against both Springbelt and Robbins. The defendants demurred to the bill, asserting that it "fails to state sufficient facts upon which the relief demanded can be granted". The chancellor entered an order finding that Damon "has failed to state facts upon which an *in*

is not an "owner" within
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ative. *Id.* at 805-06, 241

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cts upon which an in

personam judgment can be granted" and holding that the demur-
rer "is sustained with respect to the prayer for in personam judg-
ment against the Defendants, and that the Plaintiff's [sic] is
hereby granted twenty-one days from the date hereof in which to
amend its Bill of Complaint, if it be so advised." Counsel for
Damon signed this order "SEEN AND AGREED TO".

It is clear from the record, and the parties agree, that the chan-
cellor rejected Damon's claim for a personal judgment against
Robbins because the demurrer had been sustained and Damon
had failed to amend its bill of complaint. Damon argues that this
was error because the decree of reference, entered after the de-
murrer was sustained, instructed the commissioner to consider
whether Damon was entitled to a personal judgment. Damon rea-
sons that, although the chancellor had given it leave to amend its
bill of complaint, "the Decree of Reference *superceded* this neces-
sity". We disagree.

In *Gimbert v. N.S.R.R. Co.*, 152 Va. 684, 148 S.E. 680 (1929),
the trial court sustained a defendant's demurrer to the plaintiff's
declaration, but granted the plaintiff 30 days in which to file an
amended declaration. The plaintiff failed to do so and, instead,
filed a new suit on the same cause of action. The trial court ruled
that the judgment sustaining the demurrer was a final adjudica-
tion on the merits and sustained the defendant's plea of *res*
judicata.

[7] Here, the order sustaining the demurrer, unlike the final
order in *Gimbert*, was an interlocutory decree, but it was an ex-
press adjudication against Damon's prayer for a personal judg-
ment. That decree was entered by agreement, and Damon offered
no motion to vacate it, elected to waive its benefits, and, on ap-
peal, has failed to challenge its verity by assignment of cross-er-
ror. Under such circumstances, the decree became and remains
the law of the case.

We will reverse the chancellor's rulings that the mechanics'
liens were enforceable and that Springbelt's property be sold in
satisfaction thereof, affirm the ruling denying Damon a personal
judgment against Robbins, and enter final judgment here.

*Affirmed in part,
reversed in part,
and final judgment.*

VIRGINIA: IN THE CIRCUIT COURT OF GLOUCESTER COUNTY

JIMMIE W. BROOKS, et als,

Plaintiffs

v.

JANICE MARIE BARBER, et als,

Defendants*

Chancery No.

4459

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS'
MOTION (AND MEMORANDUM) FOR NEW TRIAL

I. Absence of Necessary and Indispensible Parties

It is generally recognized that parties to suits in equity consist of three classes:

1. Proper parties - their relation to the matter in controversy is merely formal and the Court "will take no account of the omission to make them parties."

2. Necessary or conditionally necessary parties - if their interest and absence are formally brought to the attention of the Court before the case is decided, it will require their inclusion as parties, but if this can't be done the Court will "proceed to administer such relief as may be in its power between the parties before it."

3. Indispensible parties - their presence as parties "is an absolute necessity without which the Court cannot proceed."

In the instant case suit was filed on August 18, 1986 and the defendants' answer was filed on August 29, 1986. The deed of trust referred to by the defendants is dated October 31, 1986 and was recorded on November 7, 1986, some 2½ months after the litigation was commenced. The time lapse makes one wonder, did the Defendant, CATHY J. CAUBLE, disclose the existence of this pending litigation to her mortgagee during the processing of her loan, or is she playing fast and

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loose with both her mortgagee and this Court?

Whether or not a person should be a party depends on his interest, not in the subject matter, but the object of the suit. Penn v. Bahnson, 89 VA 253 (1892). The trustees of the Cauble deed of trust may have an interest in the subject matter, Mrs. Cauble's land, but certainly have no interest in the object of the suit; to enforce restrictive covenants.

An Order enforcing the restrictive covenants in this cause will neither impair the security of the noteholder nor effect a default under the deed of trust, because the defendant's trailer is severable from the land. Even if the trailer is a fixture it is still severable and the law has always provided that a lien follows its collateral. Black's Law Dictionary recognizes that while a fixture is affixed to the land, it may thereafter be removed from the land by the affixing party.

The defendants suggest that §15.1-482 has application to the case at bar. But the vacation of a subdivision, which has clear and obvious ramifications to holders of deeds of trust on the vacated lots is in no way analogous to a simple suit to enforce restrictive covenants. Further, when the trustees took bare legal title in the Cauble deed of trust they took title subject to the recorded restrictions.

Defendants' reliance on Duvall v. Ford Leasing, 220 VA 36, is misplaced. That case is factually completely dissimilar to the instant case and to suggest that trustees are covered by the logic of that ruling is to stretch that case far beyond its facts.

The Supreme Court of West Virginia has ruled that in order to make a person a party to a suit or cause, so as to require answer and defense, a cause of action must be alleged against him in the body of the suit. Ohio Valley Builders Supply

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Co. v. First Nat. Bank, 110 W. VA 320, 158 S.E. 181 (1931). Merely naming the party a defendant in the caption of the bill and causing service of process upon him is not sufficient. Roberts v. Huntington Development & Gas Company, 85 W.VA 484, 102 S.E. 93 (1920). In this case the plaintiffs had no cause of action against the trustees either when the suit was filed or later when the deed of trust was recorded. And the United States Supreme Court has held that a defendant against whom no relief is sought does not have sufficient interest to require him to be made a party French v. Shoemaker, 81 U.S. 314 (1871). More recently, and of direct application to the issue raised by the defendants in their motion and memorandum, the United States Bankruptcy Court for the Eastern District of Virginia has ruled that the holders of a lien or security interest are not indispensable parties to actions regarding the subject property. Bartl v. Twardy (In re Claxton) 32 Bankr 224 (Bankr. E.D. VA 1983).

If the defendants' argument that the trustees and noteholder must be made parties, even though the deed of trust was recorded well after suit was commenced, is followed to its logical conclusion, then the plaintiffs would have to join a creditor who docketed a judgment against the defendant/landowner the day before or even the day of trial; and would have to join the County Treasurer if any real estate taxes were delinquent. This is an unnecessary and unconscionable burden to place on the plaintiff(s). The trustees (and noteholder) are probably at best proper parties. It might even be argued that they are necessary parties, but this was not raised before the case was decided. They most certainly are not indispensable parties.

II. Absence of Critical Testimony and Defense

In the Defendants Motion for a New Trial and Memorandum the defendants

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suggest that testimony of Vernon Green was not brought to the trial because its bearing was "overlooked", and, because of "oversight" on the part of both counsel. This is factually less than accurate. On September 5, 1986, more than six months before the trial, the plaintiffs propounded Interrogatories on each of the three defendants. Each of the defendants was asked (Question Number 1) to identify each person having personal knowledge of any fact relevant to the issues (emphasis added) in this suit, and each of the defendants identified Vernon Green in their response. How Vernon Green's knowledge could have been important enough to list his name then, but not at trial is a question which can only be answered by counsel for the defendants.

Further, during the seven months of trial preparation counsel for both sides discussed, on several occasions, Vernon Green's knowledge and involvement. Counsel for the plaintiffs made a conscious decision that he did not need to call Vernon Green as a witness to prove the allegations in the Bill of complaint. Counsel for the defendants obviously also made a conscious decision not to call Mr. Green as a witness. Mr. Hicks is an experienced trial lawyer who has been at the bar for many years. Trial strategy for presentation of his case is for him to decide. It is not incumbent upon opposing counsel to suggest to his opponent what witnesses to call or evidence to present. Mr. Green lives in Gloucester County and could have easily been subpoenaed as a witness for the defendants. If the defendants erred in not calling him they cannot now plead ignorance and have the case reopened.

There was no misconception about the law governing this case. Any experienced trial lawyer knows that a case such as this is not one dimensional.

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For the ^{defendants}~~plaintiffs~~ to suggest that they should be allowed to re-open this case because of oversight of their counsel is not only errant nonsense, it asks this Court to make a mockery of the judicial system.

Fairfax's Administrator v. Lewis, 38 VA (11 Leigh) 241, cited by the defendants has no application whatsoever to the instant case. That case has to do with inadequate pleadings, demurrers and interlocutory orders, and bears no resemblance, even remote to this case. The case certainly does not stand for the proposition suggested in the defendants' memorandum. There was no demurrer in this case; no pleadings raising the sufficiency of the plaintiffs' pleadings, and no interlocutory order or decree; only a final order after a full and proper trial on the merits.

The defendants further assert that they overlooked certain defenses, to wit: ambiguity of the covenants and laches, estoppel or acquiescence. This representation is, again, factually inaccurate. The issue of ambiguity of covenants was raised by the defendants on pages 5 and 6 of their trial memorandum. The defendants cited the case of Kinchen v. Layton, 457 So. 2d 353 to support their contentions that "Courts do not look with favor on restrictive covenants..." and that ambiguous covenants are not enforceable. And the issues of estoppel or acquiescence were raised during the trial itself (See transcript, pps. 53-54) by counsel for the defendants and argued by him in final argument (See transcript, p. 79).

The grounds of absence of critical testimony and defenses asserted by the defendants are so frivolous that they would be humorous except for the additional fees the plaintiffs have incurred with their counsel for the time spent in having to respond to such nonsense.

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The elapsed time from the filing to trial of this case was several months. Counsel had ample time to prepare the case for trial. Any necessary witnesses were readily available and could have been subpoenaed. At trial the Court had the benefit of a stipulation, which resulted from several months of pre-trial discovery and negotiation. The Court also had memoranda of law and the testimony of a number of witnesses. The proper parties were before the Court and a proper decision was rendered. The defendants' motion for a new trial should be denied.

Respectfully submitted,
JIMMIE W. BROOKS, et als

BY


OF COUNSEL


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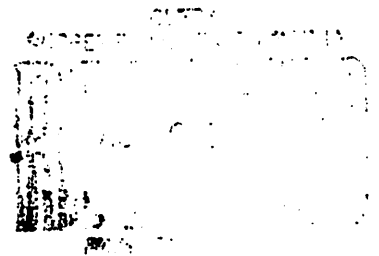
CERTIFICATION

I certify that a copy of the foregoing Memorandum was hand delivered this 14th day of May, 1987 to John F. Rick, Esq., Thompson & McMullan, Attorneys At Law, 100 Shockoe Slip, Richmond, VA 23219 and C. F. Hicks, Esq., Martin, Hicks & Ingles, Ltd., Attorneys At Law, P. O. Box 708, Gloucester, VA 23061, Co-counsel for the Defendants.


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VIRGINIA: IN THE CIRCUIT COURT FOR THE
COUNTY OF GLOUCESTER

JIMMIE W. BROOKS, et als.

vs

JANICE MARIE BARBER, et als.

Stenographic report of all the
argument on the motions, the objections and
exceptions on the part of the respective parties,
the action of the Court in respect thereto, and
all other incidents during the motion in the
above-styled cause, heard in the Circuit Court
for the County of York, at Yorktown, Virginia,
on May 14, 1987, before the Honorable G. Duane
Holloway, Judge of said Court.

- - -

Sylvia H. Clifton, Reporter
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A-P-P-E-A-R-A-N-C-E-S

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On Behalf of
Sovran Bank:

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1 (Proceedings in the Chambers of
2 the Court.)

3 (The Court reporter was duly
4 sworn.)

5 THE COURT: All right. We're
6 here on a motion for a new trial filed by Mr. Rick,
7 who is now associated with Mr. Hicks. Let me hear
8 argument on the motion, please.

9 MR. LONG: Your Honor, before
10 you proceed, may I file my responsive memorandum
11 with you? I don't know if you have had an
12 opportunity to read the defendants --

13 THE COURT: No, I haven't,
14 really. You can just file it now.

15 MR. RICK: Judge, I have one
16 more filing which I -- it's a paper filing that I
17 have, an affidavit I would like to note that --

18 THE COURT: All right. Has
19 counsel seen the affidavit?

20 MR. LONG: Yes, sir.

21 MR. RICK: Yes, he has a copy.
22 It's an affidavit of a man named Vernon Green, who
23 was not a witness in the case.

24 MR. LONG: I'm going to object
25 to the filing of that, your Honor.

1 MR. RICK: It's filed for
2 purposes of the motion. I understand.

3 MR. LONG: And I've got three
4 sets of interrogatories, your Honor, I'm going to
5 ask the Court to make them a part of the record in
6 this case.

7 THE COURT: All right. Is
8 there any objection?

9 MR. RICK: No. These are the
10 interrogatories, I take it, that were done prior to
11 trial?

12 MR. LONG: Yes, sir.

13 THE COURT: All right. We'll
14 make them part of the record.

15 All right. What is your
16 argument on the motion?

17 MR. RICK: All right. The
18 motion stands on two legs. The first leg is that
19 due to what I expect was an oversight of everybody
20 involved in the case, certain necessary and
21 indispensable parties were never notified of the
22 action, were not made parties to the action, and I
23 think if an order is entered it will be
24 substantially impairing their rights and, in some
25 ways, perhaps, permanently impaired. The parties

1 are -- they grow out of the fact that one of the
2 defendants, Mrs. Coble, had refinanced her land and
3 home together in a single 30-year deed of trust,
4 with a note to Johnson Mortgage Corporation. That
5 has been transferred to Sovran Mortgage, which is
6 why Sovran is here today with Mr. Smith.

7 The trustees on the deed of
8 trust were -- the names escape me at the moment but
9 I believe Emma Guy was one of them and Mr. Johnson
10 was the other. I don't know if they still are the
11 trustees or not, due to the transfer. None of those
12 persons were present and, frankly, it struck me,
13 when I was beginning to read the proposed order,
14 that when the Court enters this order, several
15 things are going to happen. Number one, the
16 trustees are going to be surprised to find that
17 they, the legal title holders, never knew about the
18 lawsuit and all of a sudden are looking at what I
19 expect is a default situation under that deed of
20 trust.

21 Number two, the noteholders are
22 going to have, I think, severe impairment to their
23 security because the note is for seventy-nine
24 thousand dollars. All of this is in the transcript
25 record, Judge -- no, this is new evidence. The note

1 for seventy-nine thousand, the land is only worth
2 about twenty-five, by stipulation, which leaves the
3 rest of it in the double wide mobile structure. So
4 the noteholder is facing a severe impairment of
5 security, and I might add, by way of anticipation,
6 that the plaintiffs' answer to that in his
7 memorandum is that that's not a problem because the
8 lien follows the house. But he has given us no
9 Virginia authority, none that I know of, and then he
10 cites Black's Law Dictionary for the proposition
11 that I can take fixtures off my land. Well, of
12 course I can. And that's why deeds of trust, and
13 why this deed of trust specifically mentions the
14 chattels on that land.

15 There is a further comment that
16 needs to be covered. That deed of trust replaced --
17 and this is in the trial testimony on page six in
18 the transcript, which I have made a copy of that
19 transcript if the Court wants it, or I can give you
20 my copy, or whatever. The testimony is that the
21 deed of trust that she put on her land, which was
22 after the trial started -- I'm sorry, after suit was
23 filed, in fact replaced one, an identical land-home
24 one, a single deed of trust on both pieces of
25 property that had been on since probably a year or

1 two years before the lawsuit was ever filed back in
2 '85. So that was no surprise to anybody that this
3 defendant's land was financed singly, I guess, is
4 the word I'm looking for.

5 To stay with the point, I
6 believe that we're looking at two parties, calling
7 the trustees one party and the noteholder another
8 party, who have been severely impaired. If an order
9 goes out a further thing happens. There may be
10 problems they have with their deed of trust, with
11 their title insurance, all sorts of things, and it
12 may well be that they lose all right to invoke their
13 rights under the title insurance policy if they're
14 not in there, if they're not named, if they're not
15 warned. I don't know what bringing them in here
16 today does, but they want to be here. They were
17 notified pursuant to this motion.

18 THE COURT: The title company?

19 MR. RICK: The title company
20 was notified and they say they should have been
21 there, and that's why Sovran Bank is here today.
22 And now that is -- it seems to me the next question
23 is are they indispensable parties? Mr. Long is
24 going to argue to you that they are not. I'm
25 arguing that they are. I have read through

1 Michie's, I've read through the cases, and there's
2 three different kinds of parties: proper ones,
3 necessary ones, and indispensable ones, and you can
4 do without all but the indispensable ones. The
5 indispensables are people whose interests can't not
6 be affected by the Court. And it's that simple.
7 And I think both the noteholder and the trustees are
8 that way. Clearly the noteholder, maybe there's
9 some doubt about the trustees, but they do hold
10 legal title. That's something that's easy to
11 forget, but they do hold it and they are not joined
12 in the order.

13 Finally, the question of what
14 do we do about it? I went looking and to my
15 delight, to my side this time, I found there was
16 some law on my side. The law in Virginia has been
17 pretty well developed in this area and I have cited
18 several cases. And basically what the Supreme Court
19 is saying is if we see a case where even we see on
20 appeal that there is a necessary or indispensable --
21 they use the words kind of loosely, necessary or
22 indispensable party missing, even though the parties
23 don't mention it on appeal, we see it and we send it
24 back for a new trial. We won't look at the appeal
25 matters because it's not ripe yet. The second kind

1 of case that comes up up there, and I have cited you
2 one of each of those, is a case where the parties
3 mention it upstairs for the first time. They say,
4 "My God, we've got a necessary party missing." It
5 was never brought up at trial below. Not even like
6 here in a new trial motion, just cold and on appeal.
7 The Supreme Court said, "You're right, there's a
8 necessary party, back here with everybody's interest
9 in there and then we'll answer the thing." And I
10 think that's -- some of that's judicial economy as
11 well as anything else.

12 It just seems to me then we
13 have some other things talking -- and I mention
14 these in my memo, questions about, well, what about
15 trustees? I couldn't find you a case right off the
16 bat citing that in this kind of case the trustees
17 ought to be there, but I have found a case -- I have
18 found general case law in Virginia and I cite you
19 DuVall -- and in fact I didn't cite but I would turn
20 your attention to another case which is cited for a
21 different proposition, the old Henning case which is
22 on page four of my memo, Henning versus Maynard, 227
23 Virginia. That's where Judge Henning got into a
24 restrictive covenant trial up in Richmond. And the
25 Supreme Court says there that you don't amend or

1 terminate restrictive covenants unless all -- and I
2 believe in the text of the Supreme Court opinion
3 it's even done in italics -- unless all parties with
4 interest are included. It says all parties with
5 interest and their successors. And in that case
6 they were talking about lotholders. They were not
7 talking about trustees, so I can't tell you that
8 that's really a trustee case. And the DuVall case I
9 cite is not a trustee case. But I think when you
10 put that language, all parties with interest,
11 together with what we know trustees and a
12 noteholder's interest is, it seems to me, and with
13 what the Court says about necessary and
14 indispensable parties, it seems to me that that's
15 what we have here, necessary indispensable parties
16 who weren't joined. And I'm going to raise it on
17 appeal, if it goes up and if the Supreme Court in
18 Richmond it's going to be right back here anyway and
19 we'll have to do it all over again.

20 And I guess what I'm suggesting
21 in that kind of situation maybe it's the better part
22 of valor just to go ahead and do it and get it done,
23 and let those people have their day. Particularly --
24 I'm concerned about the title insurance situation.
25 I think that really that may be an interest for

1 cutting off that's even more significant than some
2 of the others we mentioned. That takes care of that
3 problem. The pieces can fall where they will.

4 THE COURT: I don't have the --
5 did you file copies of the deed of trust?

6 MR. RICK: It's in the file. I
7 have a copy of it if you'd like to see it.

8 MR. HICKS: It's in the
9 exhibits, introduced into evidence.

10 THE COURT: You introduced it.
11 All right.

12 MR. HICKS: Introduced by Ms.
13 Cauble.

14 THE COURT: All right. This is
15 the deed of trust on a stick house is all he has on
16 it.

17 MR. RICK: Yes, sir.

18 MR. HICKS: yes, sir.

19 THE COURT: It's not a chattel
20 mortgage?

21 MR. HICKS: No, sir. They
22 mention in there that chattels included in there
23 were like range and dishwasher and things of that
24 kind.

25 THE COURT: Is this the deed of

1 trust which was recorded after the suit was filed?

2 MR. RICK: Yes, sir. That one
3 is the one that was recorded afterwards. The one
4 that was in existence before the suit was filed, I
5 don't have a copy of.

6 MR. HICKS: That was also a
7 standard VA mortgage.

8 THE COURT: It involves the
9 same lot?

10 MR. HICKS: The same lot.

11 MR. RICK: Yes, sir.

12 THE COURT: Just a standard --

13 MR. HICKS: Standard VA
14 mortgage. This young lady, Ms. Cauble -- well, she
15 and her husband were in the service, she is no
16 longer in the service, I'm not sure whether he still
17 is, they divorced. But it's a standard VA 30-year
18 mortgage refinanced because of interest rates.

19 MR. RICK: That's the first leg
20 of the motion.

21 THE COURT: Okay.

22 MR. RICK: And I think it's the
23 critical leg. The second leg is that there is
24 absent through what I think probably amounts to an
25 oversight or a misconception of the law governing

1 the case, there is the absence of what I can only
2 characterize as critical testimony, and that's Mr.
3 Green's affidavit. Mr. Green is the man who
4 developed this subdivision and sold the lot -- it's
5 a private subdivision, not a county approved
6 subdivision. He has said in his affidavits what the
7 defendants told me when I was brought into this
8 case, that he told each of the three of them
9 separately, at different times, in front of
10 witnesses, that he did not mean the word trailer in
11 that restrictive covenant to exclude double wide
12 mobile homes. As a matter of fact, one of the three
13 defendants can testify if asked that he said to Mr.
14 Green, "The restrictive covenant says trailers. I
15 want to put a double wide in here, can I?" And Mr.
16 Green said, "Yes, you can. That's not what I'm
17 talking about. And I've got a nice double wide in
18 here already, Mrs. Cauble" -- they had been in there
19 about three years, and took him, the new tenant down
20 to meet the existing double wide.

21 Now, that testimony wasn't
22 introduced at trial. I know what new trial law is
23 in Virginia and I know that just because it wasn't
24 introduced and just because some people knew about
25 it doesn't mean that you can just come right back in

1 and have it introduced and have a new trial, and I'm
2 not asking you to do that. And I didn't really
3 think I had any law to support my request, but I
4 kept looking and, frankly, I found it in Michie's --
5 under Michie's new trials, paragraph 46, which talks
6 about the need to have -- the fact that a new trial
7 can be granted if the merits of the case are not
8 fully developed for appeal. There's been a lot of
9 talk by counsel on both sides, I think this is going
10 to go up and may need to go up, and it cites a bunch
11 of West Virginia cases, and at the tail end of the
12 cites is this old Virginia case, 1840 which is all
13 wrapped up in code pleading things and all the rest
14 of it, but what that case says, though, is that if
15 there was a clear -- if there is clear evidence
16 which dramatically alters the outcome of the
17 proceeding, and I believe it does, and that it was
18 not introduced due to a misconception of law on the
19 part of counsel, that ought to be allowed in as new
20 trial material to do justice between the parties.
21 In other words, it's not -- it's new, it's going to
22 dramatically change the outcome, we think, and there
23 is a misconception of what he would have said. He
24 never testified and I think it dramatically changes
25 the picture.

1 And what about the
2 misconception? As I look -- you know, I have the
3 great luxury of hindsight here, I wasn't involved in
4 the fight, it's easy for me to sit here now and say
5 these things. But as I look at the papers filed in
6 this case, as I look at the memos of law given to
7 you by both lawyers, it looks to me like both
8 lawyers, not just the defendants lawyer, but even
9 the plaintiffs lawyer concede that this case had one
10 sole issue in it. Is a mobile home a trailer? I
11 mean, that's almost all that got talked about.
12 There were some offhand references to other
13 problems, but that -- it just seemed that everybody
14 locked right on that. That's what all the testimony
15 was about. And that's what the exhibits largely were
16 about. And that's what the memos were about. There
17 was some other general language, I can't say there
18 wasn't, but that's what everybody was fussing about.
19 And I don't think that is the law in the case. I
20 think there is a misconception. Because I think the
21 first law in the case, when you're dealing with
22 restrictive covenants is is that what the parties
23 intended? And I've got an affidavit there from a
24 man who says that wasn't my intention.

25 THE COURT: If there is an

1 ambiguity your position is that evidence must be
2 heard to --

3 MR. RICK: That's right. And
4 if the ambiguity can't be resolved you leave the
5 parties where they are.

6 THE COURT: Well, I -- your
7 first argument concerns me more than your second.

8 MR. RICK: Well, I thought it
9 should, Judge.

10 MR. SMITH: It concerns Sovran
11 as well, Judge.

12 THE COURT: Mr. Long, it seems
13 to me that the lienholder and the noteholder and
14 trustees have an interest in this case because
15 removal of these mobile homes or trailers or
16 whatever you wish to call them would certainly
17 affect the security of the loan. And they would
18 have the right to retain counsel and present the
19 case, present evidence in opposition to your
20 position.

21 MR. LONG: Your Honor, I have
22 addressed that issue extensively in my motion -- my
23 memorandum that I filed with you. Contrary to -- or
24 unlike counsel for the defendants, I have found a
25 case on point, right directly on point, and it's a

1 case decided by the bankruptcy court in the Eastern
2 District of Virginia, a 1983 case. And in that case
3 the trustee in bankruptcy court, a complaint seeking
4 a determination that a deed of trust conveyed to
5 defendants, and defendants were the noteholders, an
6 interest in real property formerly held by the
7 bankrupt is null and void and falling less to
8 creditors. So this is a suit brought in the
9 bankruptcy court by the trustee, in bankruptcy,
10 where neither the noteholders nor trustees to the
11 deed of trust were made parties, trying to set it
12 aside on the grounds of a fraudulent conveyance.

13 THE COURT: Are they applying
14 Virginia law in that case?

15 MR. LONG: Yes, sir.

16 THE COURT: What Virginia law
17 do they cite?

18 MR. RICK: Did they cite some
19 Virginia law in there, because I cited you a case in
20 my memo which is directly on point.

21 MR. LONG: They didn't cite any
22 Virginia case, your Honor, but I'm telling you what,
23 if I may --

24 THE COURT: Yeah, I respect the
25 bankruptcy court, but it's just another court of

1 equal jurisdiction, basically, with the circuit
2 court. And we respect the decisions of other
3 judges, but it is of equal jurisdiction with this
4 court.

5 MR. SMITH: It's also skewed,
6 Judge, bankruptcy court is looking really to the
7 debtor.

8 MR. LONG: May I have the
9 opportunity to be heard further on this, your Honor?

10 THE COURT: Yeah, I was
11 commenting and I want to hear all you have to say.
12 And I'll ask other counsel to refrain from
13 interrupting. It's my fault; I interrupted you. Go
14 ahead.

15 MR. RICK: I apologize, your
16 Honor.

17 MR. LONG: Your Honor, they
18 cite a tenth circuit case, Air Exec., Inc., versus
19 Two Jacks, Inc., the general proposition is as
20 follows: holders of a lien or security interest are
21 not indispensable parties, right on point, tenth
22 circuit case cite. Now, besides that, your Honor --

23 THE COURT: What kind of case
24 was it that they were not indispensable parties on?

25 MR. LONG: In that tenth

1 circuit case, I don't know. I know in this case, it
2 was a suit to set aside a deed of trust as being a
3 fraudulent conveyance and it was in a bankruptcy
4 arena, I certainly will concede that to the Court,
5 but that citing is a proposition of law.

6 Let me, if I may, go back. Let
7 me kind of address this issue as I did in my
8 memorandum to the Court. As counsel pointed out,
9 there are three kinds of parties, there are proper,
10 necessary or conditionally necessary, both of whom
11 are not -- the appellate court is not going to
12 reverse because those parties are not included.
13 Indispensable parties are the ones that are
14 important. The question is whether or not the
15 trustees in this case are indispensable parties.

16 Now, your Honor, this suit was
17 filed on August 13, 1986, and the defendants
18 answered on August 29, 1986. The deed of trust that
19 you have in front of you there, that was admitted
20 over my objection at the trial, is dated October 31
21 and recorded November 1 of '86, two-and-a-half
22 months after litigation was commenced.

23 Now, counsel has represented to
24 you here this morning that there is a refinancing
25 with the same kind of deed of trust. But

1 that's not consistent with what their own witness
2 said when she testified at trial. And if I may,
3 your Honor, I'd like to defer the Court to the
4 transcript, which I realize is not yet a part of the
5 record.

6 MR. RICK: What page are you
7 on?

8 MR. LONG: This is page 61 of
9 the transcript, and this is my cross-examination of
10 Mrs. Cauble, and starting on 61: "Question: Now, you
11 said there has been no separate financing on the
12 home since 1985. The home was purchased in 1983,
13 wasn't it?

14 "Answer: Yes, sir.

15 "Question: Was there separate
16 financing on it at that time.

17 "Answer: Yes, there was.

18 "Question: What kind of
19 financing was it? With who? Who was the
20 lienholder?

21 "Answer: Belroy Farms was the
22 lien on the land and Shelter of America Mortgage
23 Corporation in Denver, Colorado had a lien on the
24 house.

25 "Question: Had a lien on the

1 home itself?

2 "Answer: Yes, they did.

3 "That wasn't a deed of trust,
4 was it?

5 "No, not at that time."

6 So that's her testimony at
7 trial, which is somewhat different than what counsel

8 MR. RICK: Judge, --

9 THE COURT: Don't interrupt
10 him.

11 MR. RICK: I'm sorry.

12 MR. LONG: Your Honor, this
13 suit, as I said, was filed in August. And the deed
14 of trust was recorded two-and-a-half months later.
15 Now, during that two-and-a-half month period, if the
16 trustees are indispensable parties, which I will and
17 do suggest they are not, wasn't it incumbent upon
18 Mrs. Cauble to say something to her mortgage company
19 about it?

20 MR. RICK: Judge, this is --

21 THE COURT: Please don't
22 interrupt. Go ahead.

23 MR. LONG: I suspect that the
24 evidence would show that she sat silently, hoping to
25 go ahead and get this thing refinanced. She never

1 mentioned it, I suspect, to the mortgage company.

2 I found a Virginia case, Penn
3 versus Bahnson, B-A-H-N-S-O-N, cited for the general
4 proposition that whether a person should be a party
5 depends on his interest, not in the subject matter
6 but in the object of the suit. Now, while the home
7 and land in this case, your Honor, may be the
8 subject matter, that's not the object of the suit.

9 This is not a suit to vacate a
10 subdivision line or a suit to remove a cloud from
11 title, this is a simple suit to enforce restrictive
12 covenants.

13 Now, the home is a fixture and
14 is covered under the deed of trust. But it is
15 several, fixtures can be removed. How has the
16 mortgage company been injured, your Honor? And
17 there is case law for the proposition that Virginia
18 is a lien theory state.

19 THE COURT: Let me ask you:
20 wouldn't the bank have constructive knowledge of the
21 suit? What's your position on that? There wasn't
22 any lis pendens filed. I'm not even sure it's a
23 proper suit for lis pendens.

24 MR. LONG: Yes, sir, I wouldn't
25 have filed a lis pendens in this case because I feel

1 that I would have been subjecting my clients to
2 liability.

3 THE COURT: Yeah, I say, I
4 don't even think -- but that gives notice to
5 interested parties or creditors. Would the bank be
6 on constructive notice that the suit was filed? Did
7 you look into that?

8 MR. LONG: I suppose if one
9 wants to argue that the suit being a matter of
10 public record, it's constructive notice to all of
11 the world. I don't know, maybe Mrs. Cauble did tell
12 the mortgage company. If she did then they had
13 actual notice. I don't know whether she did or she
14 didn't tell them. I don't think it makes any
15 difference anyway.

16 THE COURT: Yeah, but it might
17 make a difference.

18 MR. LONG: All the trustees
19 take, your Honor, is bare legal title. They don't
20 take full title to the property. If I may, from
21 Michie's, mortgages and deeds of trust, page 243,
22 section 37, Michie's says, "It is well at this point
23 to dispose of the question as to whether a mortgage
24 or deed of trust operates to pass title out of the
25 mortgagor or merely creates a lien. The lien theory

1 is the prevailing view and is firmly established in
2 Virginia where it is said that the essence of a
3 mortgage or a deed of trust is that it creates a
4 lien on the property to secure the debt."

5 At best, all the trustees have
6 is what we refer to as bare legal title.

7 THE COURT: I'm a little
8 concerned about the time frame here. This deed of
9 trust follows the suit. I see the distinction
10 between a deed of trust on record and a suit filed,
11 and a deed of trust which follows. How are they to
12 know that these people exist even? I know I am
13 interrupting you again, Mr. Long, but that's a
14 question I have. Go ahead. I will let you answer
15 that in a minute.

16 MR. LONG: Your Honor, I've
17 also got case law to say that just because somebody
18 may have some interest doesn't mean you have to make
19 them a party. There has to be a cause of action
20 against somebody in order to make them a party. And
21 I cite in my brief, which I will ask you to read
22 before ruling in this case, two cases, two West
23 Virginia cases that stand for that proposition. And
24 in fact there is an old 1871 United States Supreme
25 Court case that says that a person against whom no

1 relief is sought does not have sufficient interest
2 to require him to be made a party. What cause of
3 action, I submit to the Court, did the plaintiffs
4 have against the trustees or noteholder in this
5 case? They didn't violate the restrictive
6 covenants. I have no grounds upon which to make
7 them parties defendant.

8 Also, your Honor, if you were
9 to rule that the trustees were indispensable parties
10 in this case, the burden, I suggest to you, that
11 that places on the plaintiffs is unconscionable.
12 Does that mean I have to do a title examination
13 every day while the suit is pending, have to run the
14 title down every day to make sure that no new deeds
15 of trust have been recorded, that no judgments have
16 been docketed? What about if there is delinquent
17 taxes on the property? Do I have to make the
18 treasurer of the county a party defendant? Where do
19 you stop all this? What if somebody comes in and
20 files judgment, say, at nine a.m. on the morning
21 when the trial is set for ten. Do we then stop the
22 proceedings and I have to run and examine the title
23 that morning and make them parties to the suit as
24 well? That's ridiculous, your Honor. That's --
25 this is not a suit about this land. It's not a suit

1 to vacate any subdivision lines, it's not a suit to
2 remove a cloud on title, as I said, it's a suit to
3 enforce restrictive covenants. When those trustees
4 took bare legal title, they took subject to those
5 covenants.

6 THE COURT: Why didn't they
7 take subject to the suit if the suit was filed
8 first?

9 MR. LONG: I think they
10 probably did, your Honor.

11 THE COURT: I realize that your
12 position earlier, Mr. Rick was -- excuse me, I want
13 you to go ahead and finish. Go ahead.

14 MR. LONG: I recognize that
15 it's not custom to trade in doing title examinations
16 to run a check with the law docket and the chancery
17 docket to see if there is any new addition that may
18 affect the piece of property that you are examining
19 title to. But, you know, in a legal sense I think
20 it probably is constructive notice.

21 Now, if I may, your Honor, move
22 on to the issue of whether or not Mr. Green should
23 have been called as a party. The defendants claim
24 that this was an oversight on their part, that his
25 testimony was overlooked. In fact, Mr. Rick

1 suggested to you in his comments that he felt that
2 both counsel narrowed down on one issue in this
3 case. Well, I have yet to see a lawsuit, your
4 Honor, that is one dimensional. I never have seen
5 one, I don't know if I ever will see one. That was,
6 whether or not there were trailer -- definitionally
7 speaking include mobile home was certainly the
8 crucial issue of law in this case, but --

9 THE COURT: Well, wasn't there
10 testimony by some of your people there that they
11 have been told that mobile homes were permitted on
12 the lot?

13 MR. LONG: I think one of them
14 started to testify to that effect and I objected and
15 you sustained the objection, as I recall, your
16 Honor. I haven't read the transcript for that
17 portion of it. But if you look at the
18 interrogatories which I filed this morning, those
19 interrogatories were propounded in September. Keep
20 in mind that the suit was filed in August and
21 counsel answered them. And I asked him the standard
22 question: "State the name or identify any parties
23 or any persons who may have knowledge of the facts
24 relevant to the issues in this suit." And each one
25 of the three defendants came back and said, "Vernon

1 Green." All three of them. So it's not like
2 counsel didn't know that Vernon Green may have some
3 relevance on the preparation of the case. I didn't
4 need Vernon Green, your Honor. I didn't need him to
5 prove the allegations that I had set up in my Bill
6 of Complaint, so I didn't call him as a witness.

7 Now, if the defense wanted to
8 call him, it's not like they didn't know, A, that he
9 existed or, B, what his supposed representations
10 were to the defendants themselves. He lives in
11 Gloucester and is reasonably accessible to subpoena,
12 and the case -- from the time the case was filed
13 until it was tried there was a period of seven
14 months. And during that period of time, in all
15 candor, your Honor, Mr. Hicks and I spoke a couple
16 of times about the case, and even discussed Vernon
17 Green's potential testimony. And how Mr. Hicks
18 chose to present the case to this Court as a trial
19 strategy, so to speak, that's up to him. I don't
20 have any right to tell him how to present his case,
21 your Honor. But he's aware that Vernon Green was
22 out there, it was mentioned in their
23 interrogatories, and it was up to him to decide
24 whether or not he felt Vernon Green's testimony was
25 important to their case, your Honor. This is

1 ridiculous to come back now and say that we should
2 reopen this case and let them call a witness that
3 they feel like they should have called the first go
4 round.

5 The case, the 1840, I believe
6 it is, case that Mr. Rick cites to you, Fairfax
7 Administrator versus Lewis, is a pleading case. It
8 discusses -- and I have mentioned and discussed it
9 in my memorandum -- it talks about the inadequacies
10 of the pleadings in that case. It talks about
11 demurrers and interrogatory orders. It doesn't have
12 any application to this case. If there was an
13 insufficiency in my pleadings, the defense did not
14 raise that issue by any pleadings to raise the issue
15 of insufficiency. There haven't been any
16 interlocutory orders and there is no demurrer before
17 the Court. That case doesn't have anything to do
18 with what we're about here today.

19 This Court -- and they suggest
20 that the issues of ambiguity or restrictive
21 covenants in this case wasn't raised, but it was
22 raised. If you look at the original trial
23 memorandum that the defendants filed they cited a
24 case, Kinchen versus Layton, and used that to argue
25 that ambiguous covenants are not enforceable. Of

1 course my position in this case is that Vernon
2 Green's testimony is irrelevant any way because the
3 restrictions are not ambiguous. They're just as
4 clear as they can be. But nevertheless, they argued
5 that point in their memorandum. And now they say
6 they didn't have the chance to raise the issues of
7 estoppel or acquiescence. And I suggest to the
8 Court -- again, I realize that the transcript is not
9 a part of the record, but in the transcript at pages
10 53 and 54 that issue was raised.

11 On page 53, beginning down in
12 the middle of the page, I was addressing the Court
13 and I stated to the Court that, "I object to that
14 line of questioning, your Honor, because the defense
15 counsel is intending to show acquiescence. The law
16 in the Commonwealth of Virginia is a -- that there
17 is a Virginia case which I have with me, if the
18 Court wants to see it, that mere acquiescence alone
19 is not sufficient to stop the issuance of an
20 injunction. And, number two, there has got to be a
21 change showing such a significant character in the
22 neighborhood or change in the neighborhood to render
23 the restrictions useless. So I don't see" -- at
24 that point the Court indicated: "I think that
25 states the law correctly but I think it is

1 admissible to go to mitigation under either. If I
2 rule against Mr. Williams in determining what should
3 be done to show the length of time that he's lived
4 there -- in fact I won't object to it.

5 "MR. LONG: I would suggest --

6 "THE COURT: The law is right,
7 but I think it's relevant when we get to what's
8 going to happen."

9 THE COURT: This was in the one
10 case, the Williams --

11 MR. HICKS: No, sir, they were
12 tried together.

13 MR. LONG: They were all three
14 tried together.

15 THE COURT: But this is
16 Williams that we're talking about.

17 MR. RICK: One of the
18 defendants.

19 MR. LONG: Yes, sir. The
20 general issue of acquiescence and estoppel was
21 raised. And further, on page 79 of the transcript,
22 which is where the final argument was made to the
23 Court, Mr. Hicks indicated, and I'm reading from the
24 middle of the page, I'm not reading the entire
25 statement, "My clients have made substantial

1 investments in these properties. In the case of
2 Mrs. Cauble, she was there before any of these other
3 people moved there. In the case of Mr. Williams,
4 one of the complainants came over and helped him dig
5 the foundation. And your Honor, I know that -- I'm
6 not arguing estoppel, but I'm saying in all honesty
7 I don't think anyone considered at that time that
8 the word trailer applied to a double mobile home."

9 Counsel argued to the Court,
10 your Honor, quite eloquently, I might add, that
11 acquiescence and estoppel applied in this case. And
12 even if he hadn't done that, it's a little late to
13 raise that now. We have already been to trial on
14 this case. We spent seven months in preparation of
15 the trial, in the preparation of this case for
16 trial. I suggest to the Court that --

17 THE COURT: I'm not too
18 concerned with the second point, Mr. Long. I would
19 not be inclined to grant a new trial because of
20 Green's testimony. I am concerned with the rest of
21 it.

22 MR. LONG: Your Honor, I would
23 only ask that you read my memorandum very carefully.
24 And we have the cases here.

25 THE COURT: If you have copies,

1 leave the cases. Are they Virginia cases?

2 MR. LONG: Two of them that I
3 have cited are West Virginia cases. And one is a
4 United States Supreme Court.

5 THE COURT: Well, anything that
6 isn't Virginia, you better leave me. You better
7 leave me all of it, because this library isn't
8 complete either.

9 MR. HICKS: Your Honor, may I
10 say something about the lis pendens? I was involved
11 in a suit in this circuit before Judge Carneal but I
12 think it's pretty clear that the law in Virginia is
13 that a case filed in court is not notice of record.
14 And this is where we got into a matter of some land
15 that was --

16 THE COURT: That's exactly
17 correct. I think in common law it was, but I think
18 that may have been reversed. I can't recall

19 MR. HICKS: Well, this was a
20 case in this circuit with Judge Carneal where there
21 was an old partition suit and it had been lying on
22 the records and escheat procedure had been started --

23 THE COURT: Let me ask you
24 this: how can the plaintiff possibly know some
25 subsequent act is taken which creates an interested

1 party?

2 MR. RICK: There is a real easy
3 way.

4 THE COURT: How?

5 MR. RICK: He asks in an
6 interrogatory and makes a continuance. He
7 propounded real good interrogatories, and I would
8 suggest to you if he said, you know, "Tell me
9 anybody that has financing on your land," that sort
10 of thing, and make it a continuing supplemental
11 response requirement. If the defendant didn't
12 answer that then I think that would be too bad for
13 them. But that's a real easy way to cover that.
14 And he propounded lots of interrogatories. There
15 was, and I recognize --

16 THE COURT: There's nothing
17 that requires him to even take interrogatories.
18 That's discretionary.

19 MR. RICK: Well, but that's --

20 THE COURT: Why should the onus
21 be on the plaintiff to discover something which the
22 defendant knows which, in effect, whether an
23 interested party should be present?

24 MR. RICK: Well, Judge --

25 THE COURT: Suppose it was done

1 after the interrogatories were taken?

2 MR. RICK: Well --

3 THE COURT: I guess they would
4 be continued anyway.

5 MR. RICK: I don't know how to
6 put -- I don't know if the law is worried about
7 onus. The party law that I read really doesn't get
8 into it. And I would like to ask the Court -- the
9 Supreme Court cases that I have cited are very
10 recent. They are worried about the fact -- they
11 have cases where neither side caught it down below,
12 and they don't worry about it. They say, "We need a
13 party."

14 MR. SMITH: Judge, I -- excuse
15 me, I'm sorry, your Honor.

16 MR. RICK: And one particular
17 case that may be helpful is the Wasserman case that
18 I cite you, Judge, which is actually a noteholder
19 case, Virginia noteholder case. It says the
20 noteholder better be in there.

21 THE COURT: What kind of case
22 was it?

23 MR. RICK: Noteholders and
24 trustees situation, it's a complex set of facts.
25 I'll do my best to summarize it.

1 THE COURT: Was the judgment on
2 foreclosure?

3 MR. RICK: No, it was an action
4 by creditors to try and set aside a sale pursuant to
5 a deed of trust ordered by a noteholder. And the
6 grounds for setting it aside were that the note
7 under which the noteholder had ordered the sale had
8 already been paid off years earlier. In effect it
9 was a faulty note and never should have been grounds
10 for that action. They considered the subsequent
11 creditors were trying to set it aside so they could
12 get back at that security, and they failed to join
13 that noteholder. Nobody picked it up down below and
14 the Supreme Court picked it up and said you've got
15 to have the noteholder in there and put them in.

16 THE COURT: What -- what bars
17 in this deed of trust, by what statute would make
18 this the Court's decision in this case a default?
19 Why are these people in default if those trailers
20 are removed from the property?

21 MR. LONG: Your Honor, may I
22 interject? You can't order that they been removed,
23 you can only order that they not be occupied.

24 THE COURT: That's true. I
25 keep forgetting that. The order had to be changed

1 because of that reason.

2 MR. LONG: That makes your
3 question even more poignant, I think.

4 MR. RICK: Judge, can I make a
5 point about that?

6 THE COURT: Yes, sir.

7 MR. RICK: That distinction I
8 think, is a distinction without a difference whether
9 you can order that they not be used or you order
10 that they be removed, the people can't live in it
11 anymore. And they are going to move it whether you
12 order it to be moved or not, they have no choice.
13 It's an order that gets the result without saying a
14 word. And that's what I think in effect this is
15 saying.

16 THE COURT: Well, the result,
17 obviously, is that the value of the property is
18 reduced. It would affect the --

19 MR. RICK: It's got to.

20 THE COURT: But other acts,
21 either legislative acts or judicial acts can have
22 the result of reducing the value of property.

23 MR. RICK: Well, yeah, and I
24 have never done a condemnation case but I can't
25 believe that a trustee on a deed of trust on a piece

1 of land that is about to be severely devalued
2 wouldn't have the right to be in there and watch
3 over that. See, that's my point. Otherwise, you've
4 got insurance to cover you. And that gets us right
5 into this spot with the bank. They've got title
6 insurance. And I think Mr. Long hit the nail right
7 on the head when he said they took it subject to the
8 restrictive covenants. That means they've got a
9 right to come in there and defend against the
10 restrictive covenants.

11 THE COURT: Do you wish to
12 argue? You started to say something.

13 MR. SMITH: The only thing I --
14 Judge, we got into this case late yesterday
15 afternoon, so I'm not as familiar with the facts,
16 I'm afraid. But the bank's position obviously is
17 that we are a necessary party to this case. Our
18 equity for lending the money -- or we actually
19 purchased the note from Johnson Mortgage Corporation
20 -- was based on not only the value of the land but
21 the value of the land and the improvements thereon,
22 which would include in this case the double wide.
23 Our position in the property would be substantially
24 impaired if the double wide were removed from the
25 property. And in fact, when we evaluate, when any

1 corporation evaluates and purchases a note, we
2 evaluate that on the basis of the value of the land
3 and the improvements.

4 THE COURT: Theoretically, you
5 wouldn't lose anything, would you, because you could
6 still sell the trailer. You would have a lien on
7 the trailer, you have secure -- you secure part of
8 your loan and then you would have the land, it's
9 just two separate parts.

10 MR. HICKS: Judge, under
11 Virginia law, if this is a lien on the trailer, the
12 only way you can protect that is on the title.

13 THE COURT: I think there was a
14 lien on the title, wasn't there?

15 MR. HICKS: At one time there
16 was. But that's what I'm saying, there no longer
17 is. It's firmly attached and it's taxed as real
18 estate.

19 THE COURT: If you have a
20 foreclosure, though, and the bank or, let's say,
21 whoever buys it, the bank or some interested buyer,
22 theoretically you've got all of your value because
23 you can take the trailer and sell it separately and
24 still have the land.

25 MR. SMITH: I would also say,

1 Judge, that although it's not the same sort of suit,
2 and the Court knows that in mechanic's lien suits
3 the trustees have got to be joined in those suits
4 for exactly the same reason.

5 THE COURT: Well, I would have
6 done it if I had known. If I represented the
7 plaintiff and I had known and I had seen a deed of
8 trust on record I probably would have joined the
9 trustees. I don't know how the plaintiff could have
10 in this case when it wasn't even recorded. I think
11 you would have, wouldn't you, if you'd known?

12 MR. LONG: Yes, sir, if I had
13 known. But, again, I think that falls into the
14 category of being necessary or conditionally
15 necessary.

16 THE COURT: Well, you would
17 have done it to be safe.

18 MR. LONG: Yes, sir, but then I

19 MR. RICK: I think the point of
20 the new party law, Judge, is that we all missed it
21 and the statutes make it clear that the Court's got
22 the power, you know, 8.01-5 says that the Court at
23 any time on affidavit or otherwise can join parties
24 that need to be in there to achieve justice. You
25 know, we can miss them. We don't have a perfect

1 system here, I don't think. Maybe never will. If
2 we do we might be out of business, we lawyers and
3 Judges, too.

4 THE COURT: Suppose that this
5 had been recorded after the interrogatories -- okay,
6 you're continuing interrogatories.

7 MR. LONG: But, your Honor, it
8 falls along that same logic, suppose there was a
9 suit of some kind pending against Mrs. Cauble,
10 service by posting, she never was aware of the suit,
11 it went to judgment and the judgment was docketed
12 the morning of the trial. There's no difference
13 between a consensual lienholder and a judgment
14 lienholder in that respect.

15 THE COURT: Let me read these
16 memos and I'll write you each an opinion.

17 MR. RICK: Your Honor, can I
18 submit the cases to you? I don't think I've got
19 them all here.

20 THE COURT: Yours are Virginia
21 cases, aren't they?

22 MR. RICK: Most of them.

23 THE COURT: We have most of the
24 reports here. And I believe -- I think we have them
25 in the library.

1 MR. RICK: Sir, I cited you all
2 Virginia stuff.

3 THE COURT: All right.

4 MR. LONG: Your Honor, I have
5 copies of them. I have marked on them. Will that
6 pose any problem? I have underlined stuff.

7 THE COURT: Well, I don't mind
8 if you don't mind. Do you mind, Mr. Rick?

9 MR. RICK: No, I do not, your
10 Honor. Let me see, I've got some of them here,
11 Judge, that may save you a problem.

12 MR. HICKS: The Judge ought to
13 have a copy of the transcript.

14 MR. RICK: He's welcome to
15 mine.

16 MR. LONG: Your Honor,
17 incidentally, I did give notice to counsel that I
18 was going to present this decree for entry, so I'd
19 like to tender to the Court and leave with the
20 Court, if the Court decides to rule in my favor then
21 it could enter the order.

22 THE COURT: All right.

23 MR. RICK: Judge, I'd like to
24 tender to you on that point a differently worded
25 decree.

1 THE COURT: All right. I'll
2 have both of them.

3 MR. HICKS: Judge, do you want
4 the transcript? He and I both have a copy.

5 THE COURT: Is that the total
6 transcript?

7 MR. HICKS: Yes, sir, including
8 argument and all.

9 THE COURT: Do you want to file
10 it, make it part of the record?

11 MR. RICK: I haven't had time
12 to read through it to see if there are any
13 complaints, but --

14 MR. LONG: There are a couple
15 of misspellings but they are insignificant.

16 THE COURT: I'm interested in
17 my ruling which was just quoted to me, sustaining
18 your objection. What was the question?

19 MR. RICK: Sustaining the
20 objection to keep out Mr. Green's testimony.

21 MR. LONG: I think that came up
22 during the trial, your Honor.

23 MR. HICKS: I'm not sure
24 whether it did.

25 MR. LONG: I believe it's in

1 there.

2 THE COURT: Well, you know, Mr.
3 Hicks may have argued that this is ambiguous and I
4 realize you say, Mr. Long, it is not ambiguous, the
5 restrictive covenant is not ambiguous, but it is
6 ambiguous based on at least one of Mr. Rick's cases.
7 If Green told the woman this thing it probably
8 should have been admitted.

9 MR. LONG: Well, I would have
10 objected on the grounds that it was hearsay. Green
11 was susceptible to --

12 THE COURT: That's true. I
13 guess that was the reason we sustained it.

14 MR. RICK: At that point,
15 though, if that had become clear, then I think you
16 could have recessed the trial and brought Green in,
17 Mr. Hicks could have had that option. Here are the
18 cases from my side.

19 MR. HICKS: let me say in all
20 honesty that it was my theory all the way through
21 that the burden is on the Plaintiffs to prove the
22 restrictive covenants, and I was not willing to be
23 bound by Green's testimony unless it was going to be
24 unequivocal --

25 THE COURT: You know, I seem to

1 remember something about this, whether or not Green
2 should be testifying for either side.

3 MR. HICKS: Right.

4 THE COURT: I don't know where
5 I remember hearing that, you know, it may have been
6 a conversation in the office.

7 MR. HICKS: It was a
8 conversation here in the office. I took the
9 position that he was -- the burden was on him to
10 prove, and the only thing used was the word trailer.
11 Mobile home wasn't used and --

12 MR. RICK: Just recalling, your
13 Honor, thinking about this, I agree, Green is a
14 secondary consideration. Mr. Long, himself, sat here
15 and said today, after he described what happened at
16 trial, he said there is no question that the primary
17 legal issue is whether a trailer is a mobile home.
18 And I think that's what happened. I think everybody
19 decided that and went whipping right on through it.
20 And I think that's why Mr. Green didn't end up
21 coming into it. That falls right in with my Fairfax
22 case. And I would respectfully remind the Court
23 that in those days pleadings was the case. It was
24 in the old pleading system, I'm told. I wasn't
25 there then.

1 THE COURT: I'm glad I wasn't.
2 I just missed it.

3 MR. HICKS: Yes, sir, I did,
4 too.

5 MR. RICK: Mr. Smith doesn't
6 even know how scary that was.

7 THE COURT: If you didn't use
8 the right Latin word in the pleadings, you were in
9 trouble.

10 All right. Nice seeing you,
11 gentlemen.

12 (The proceedings were at this
13 time concluded.)

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1 CERTIFICATE OF COURT REPORTER

2
3
4 I, Sylvia H. Clifton,
5 hereby certify that I was the duly sworn Court
6 Reporter in the Circuit Court for the County
7 of York, at Yorktown, Virginia, on May 14, 1987,
8 at the time of the motion herein.

9 I further certify that the
10 foregoing transcript is a true and accurate record
11 of the testimony and other incidents of the
12 proceedings.

13 Given under my hand this
14 18th day of July, 1987.
15
16
17

18 *Sylvia H. Clifton*
19 _____
20 Court Reporter

21 ---oOo---

22 **RECEIVED**
23 AND FILED
24 *Charles E. Smith*
25 JUL 23 1987
Clerk of Circuit Court
Stafford County, Va.

THOMPSON & McMULLAN

100 SHOCKOE SLIP

RICHMOND, VIRGINIA 23219

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TELEX 265016 OTESUR

May 14, 1987

The Honorable G. Duane Holloway
Circuit Court of York County
P.O. Box 371
Yorktown, VA 23690

Re: Brooks, et als v. Barber, et als
Chancery No.: 4459

RECEIVED
MAY 18 1987

MAY 18 1987

RECEIVED

Dear Judge Holloway:

I am writing to you, with copies to all counsel, to correct a serious misimpression which I fear was created during argument this morning in chambers. The impression was left on the record that Ms. Cauble had testified when cross-examined at trial that her home was not financed under a single deed of trust on both land and home. This is a mistake in reading the transcript. Ms. Cauble's initial testimony occurs on page 60 of the transcript, where she testifies that her refinancing occurred in November, 1986, but that it was a continuation of what was originally done in 1985. As Mr. Hicks mentioned, that also was a deed of trust on land and home. Mr. Long appeared to be maintaining that Ms. Cauble, on cross-examination beginning on page 61 and extending to page 62 of the transcript, contradicted herself. That in fact is not correct if the language is read carefully. On page 61 she indicates that the home was purchased in 1983. Mr. Long then asked what was the financing on the home "at that time." "At that time" obviously refers to 1983. Ms. Cauble's answer indicates correctly that in 1983 when the home was purchased she did in fact have separate financing documents on the land and on the mobile home. She is clearly speaking, however, to the financing in 1983. The transcript is deficient about what sort of financing happened in 1985, but she did indicate in the record that the 1983 financing was redone in 1985. I believe this is important because it discounts any suggestion that Ms. Cauble was misleading the Court or misrepresenting anything to do with the financing on her home.

LAW OFFICES
THOMPSON & McMULLAN

Judge Holloway
May 14, 1987
Page 2

I am further informed by Ms. Cauble that she will testify if asked that the application for her November, 1986 refinancing was in fact submitted in March, 1986, prior to the filing of this lawsuit. At that time, she answered all questions concerning the application for refinancing, which I am sure would have included any questions about pending litigation. At the time she answered those questions, there was none. This application for refinancing was in fact transferred from the original expected lender to another lender, but she was never again asked to answer any questions concerning her application. To her best knowledge, the application and entire application package was simply transferred to the ultimate lender, Johnson Mortgage Company. I believe this information is important to dispel the impression created by the comments of Mr. Long in our argument this morning that Ms. Cauble had an opportunity to misinform Johnson Mortgage Company on the refinancing, or that she in fact hid from the lender the fact that she was in litigation.

With continuing best personal regards, I remain

Very truly yours,



John F. Rick

JFR/kbd

cc: C. Flipppo Hicks, Esquire
Bruce Long, Esquire
Herbert G. Smith, II, Esquire

May 22, 1987

R. Bruce Long, Esquire
Attorney at Law
P. O. Box 1069
Hayes, VA 23072

C. F. Hicks, Esquire
Martin, Hicks & Ingles, Ltd.
P. O. Box 708
Gloucester, VA 23061


Re: Jimmie W. Brooks, et al
v.
Janice Marie Barber, et al
Circuit Court of Gloucester County
Chancery No. 4459

Gentlemen:

I thank you for your memoranda and argument in this case and the motion for a new trial filed by the defendants. For the reasons stated in the plaintiffs' memorandum, the motion is denied.

I am forwarding a copy of Mr. Long's order to Mr. Hicks for his endorsement which I would request be returned to the Court so I may enter the decree.

Very truly yours,


C. Duane Holloway
Judge

GDH/ct

cc: John F. Rick, Esquire

C. FLIPPO HICKS
MCCLANAHAN INGLES
ROBERT D. HICKS

MARTIN, HICKS & INGLES, LTD.

ATTORNEYS AND COUNSELORS AT LAW
COURT CIRCLE, P.O. BOX 708
GLOUCESTER, VIRGINIA 23061

(804) 693-2500 (804) 877-7371

OF COUNSEL:
JAMES BLAND MARTIN

May 7, 1987

The Honorable G. Duane Holloway
Judge, Circuit Court of York
P. O. Box 371
Yorktown, Virginia 23690

Re: Jimmie W. Brooks, et als v. Janice Marie Barber, et als
Gloucester County Chancery No. 4459

Dear Judge Holloway:

Enclosed please find copy of Motion for New Trial and Memorandum in Support of Defendants' Motion for New Trial for the hearing on May 14, 1987 at 8:00 a.m. The original of these pleadings have been filed in Gloucester County.

Thank you.

Sincerely yours,



C. F. Hicks

CFH:mlm

Enclosure

cc: R. Bruce Long, Esquire
P. O. Box 1069
Hayes, Virginia 23072

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF GLOUCESTER

JIMMIE W. BROOKS, et als,)	
)	
Plaintiffs,)	
)	
v.)	Chancery No. 4459
)	
JANICE MARIE BARBER, et als,)	
)	
Defendants.)	

MOTION FOR NEW TRIAL

Defendants, Janice Marie Barber, Cathy J. Cauble, and Norris J. and Carol J. Williams respectfully move this Court to grant a new trial of the matters originally heard by the Court without a jury on March 25, 1987, for the following reasons:

1. Absence of necessary and indispensable parties. Testimony at trial documented that defendant Cauble is the grantor of a deed of trust on her property pursuant to a refinancing which took place in approximately November, 1986. The amount of the note involved in the refinancing was seventy-nine thousand and no/100 dollars (\$79,000.00). The trustees on the deed of trust and the noteholder are both necessary and indispensable parties to this action, but they were not participants in the trial. Any order by this Court which interferes with the use or continued presence of Ms. Cauble's home on the property will directly impair the security of the noteholder and will effect a default under the deed of trust. The trustees are the holders of legal title to the property and they have not had their opportunity to present a defense to any Court order

in this matter. Further, the noteholder has been deprived of its opportunity to invoke the assistance of the title insurance company which issued it a lender's policy on the refinance.

2. Absence of critical testimony. Vernon Green, the developer of Belroi Farms Subdivision where defendants' property is located, told all three defendants personally, before witnesses, that the double wide mobile homes they intended to place on the property were perfectly acceptable under the restrictive covenants he had placed on the land. He told the same thing to other subdivision lot owners who did not move double wide mobile homes onto their properties, and to one mobile home dealer in the Gloucester area. Defendants acted in reliance upon this information before purchasing and locating double wide mobile homes on their lots in his subdivision. It may also happen that Mr. Green told one or more of the plaintiffs that no mobile homes, including double wides, would be allowed on any lot in the subdivision.

This testimony of Mr. Green was not brought to trial because counsel became involved in the definitional problem of whether a trailer is a mobile home, and overlooked the bearing of Mr. Green's testimony on the matters at issue. Mr. Green's testimony at a minimum indicates that his restrictive covenants are ambiguous, and therefore not enforceable. It also establishes at a minimum that neither side has any superior equity in this matter, or that perhaps defendants have superior equities.

3. Absence of critical defenses. Counsel in the case locked into the definitional issue of whether a mobile home is a trailer for


purposes of the restrictive covenants at issue here. This pre-occupation with the definitional problem led to a misconception or oversight of the broader issues in the case and the defenses related to those issues were therefore not raised. The first defense is that the covenants are ambiguous and unclear. This is a critical preliminary finding for the trial court before it proceeds to enforce the covenants. A second set of defenses relate to the care taken by the defendants in this matter to ascertain in advance of locating their double wide mobile homes on the property whether the restrictive covenants permitted them there. Their testimony is that Mr. Green unequivocally stated that double wide mobile homes were to be permitted in the subdivision. The defense that this testimony raises is one of acquiescence on his part, or laches or estoppel.

For the reasons cited above, defendants respectfully request the Court to grant a new trial of the matter, and issue such Orders as will assure that necessary and indispensable parties are brought before the Court so that the interests of all parties in this matter may be fully resolved and the equities properly balanced.

Respectfully submitted,

JANICE MARIE BARBER
CATHY J. CAUBLE
NORRIS J. AND CAROL J. WILLIAMS

OF COUNSEL


John F. Rick


C. Flippo Hicks


John F. Rick, Esquire
Thompson & McMullan
100 Shockoe Slip
Richmond, VA 23219

C. Flippo Hicks, Esquire
Martin, Hicks & Ingles, Ltd.
Court Circle, P.O. Box 708
Gloucester, VA 23061

Co-counsel for Defendants.

CERTIFICATE OF SERVICE

I certify that the foregoing Memorandum in Support of Defendants' Motion for New Trial was mailed this 6 day of May, 1987, postage prepaid, first class, to Bruce Long, Esquire, P.O. Box 1069, Hayes, Virginia 23072, counsel for plaintiffs.



John F. Rick

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF GLOUCESTER

JIMMIE W. BROOKS, et als,)	
)	
Plaintiffs,)	
)	
v.)	Chancery No. 4459
)	
JANICE MARIE BARBER, et als,)	
)	
Defendants.)	

MEMORANDUM IN SUPPORT OF DEFENDANTS'
MOTION FOR NEW TRIAL

Absence of Indispensable Parties

It is clear policy of the Virginia Supreme Court to have all necessary and indispensable parties before the trial court in any given proceeding. Otherwise, the trial court will be in a position of issuing ineffective or partially effective orders, and of generating additional litigation rather than resolving all of the issues. This rule is so important that the trial court is authorized by statute to add parties at any time to achieve the ends of justice. Section 8.01-5 Code of Virginia (1950), as amended. The Supreme Court will notice the absence of a necessary party on appeal, even though that absence was not raised in the trial court below, and will send the matter back to join that party in a new trial which resolves all of the issues at the same time. Wasserman v. Metzger, 102 Va. 837, 47 S.E. 820 (1904); McDougle v. McDougle, 214 Va. 636, 203 S.E. 2d 131 (1974); and Thrasher v. Lustig, 204 Va. 399, 131 S.E.2d 286 (1963); Michie's Jurisprudence, "Parties", §§3, 4, 9, 20, 21, 23.

An indispensable party is one who has such an interest in the matters before the court that no decree can be entered which will not effect that interest. In this case both the noteholder and the trustees on the deed of trust securing the note which were generated by Ms. Cauble's refinancing of her property in November, 1986 are indispensable parties. Any court order affecting use or continued presence of Ms. Cauble's double wide mobile home on the property will effect the major portion of the security for the noteholder. Any order to her will not include, under the present state of the case, an order to the legal title owners, the trustees. And for both noteholder and trustees, loss of the chance to appear in court on this matter may spell loss of any rights they have to recover from their title insurance company in the event matters ultimately go against them.

That the trustees are indispensable is recognized by both statute, common practice in this circuit, and the Supreme Court. Section 15.1-482 Code of Virginia (1950), as amended requires that the trustees of recorded deeds of trust be made parties to actions vacating a subdivision after lots have been sold. Long established practice in Gloucester County requires joining such trustees in any amendment of restrictive covenants. And the Supreme Court has recently ruled that restrictive covenants cannot be amended or terminated unless all parties affected by the covenants, and their successors, agree to the amendment or termination. Duvall v. Ford Leasing, 220 Va. 36, 44, 255 S.E.2d 470, 474-5 (1979). Trustees are not specifically mentioned, but appear clearly to be covered by the logic of this ruling.

Under such circumstances, it is necessary that both the note-holder and the trustees on the deed of trust securing the note on Ms. Cauble's refinancing be joined as parties to this action. They will then have their opportunity to file appropriate defenses and litigate the issue as they see fit.

Absence of Critical Testimony and Defenses

When evidence plainly affecting the equities of the parties is omitted from trial through misconception of the law governing the case, the Virginia Supreme Court has held that a new trial should be granted in order to permit such important evidence and to do substantial justice to the parties. Fairfax's Administrator v. Lewis, 48 Va. (11 Leigh) 233, 242 (1840).

It appears that the evidence concerning Vernon Green's statements and inducements to the defendants will have a dramatic impact upon the equities of all parties if heard by the trial court. Depending on its final form, it will either establish superior equities in defendants, or establish that the equities of all parties are in balance and that the covenants should not be enforced due to their ambiguity, or to a course of dealing which has waived them. The defenses necessary to develop this evidence are ambiguity of the covenants and laches, estoppel, or acquiescence. All of these matters were overlooked because counsel for both parties very quickly settled on the definitional problems inherent in the word trailer as the sole legal issue in the case, to the exclusion of the other issues discussed herein. Such misconception of the law in the case is not sufficient grounds

for a new trial, it is conceded, except in those situations where the overlooked evidence and issues clearly reverse the equities in favor of the losing party. In this case they do, and the equity court has the power to reopen the hearing to achieve justice.

Restrictive covenants must be construed in the circumstances in which they were written, Bauer v. Harn, 223 Va. 31 _____ S.E.2d _____ (1982). If the covenants display ambiguity, the Court should use extraneous evidence to arrive at the intent of the covenantor. Dart Drug v. Nicholachos, 221 Va. 989, _____ S.E.2d _____ (1981). But restrictive are not favored, and if they are essentially ambiguous and unreasonable, equity will not enforce them. Hening v. Maynard, 227 Va. 113, _____ S.E.2d _____ (1984); Stevenson v. Spivey, 132 Va. 115, 110 S.E. 367 (1922); Schwarzschild v. Welborne, 186 Va. 1052, 45 S.E.2d 152 (1947).


Green's testimony will either establish that his intention was to exclude double wide mobile homes from the term "trailer" in his restrictive covenants, by original intent or by a course of dealing, or that he used the word "trailer" so ambiguously that he could tell defendants in this case that it permitted double wides while telling one or more plaintiffs that it prohibited double wides. If the latter, the term is so ambiguous that the parties should be left where the court found them, and the covenants left unenforced.

For the reasons cited above, defendants urge this Court to grant their Motion for New Trial and reopen the matter for the taking of the additionally indicated testimony.

Respectfully submitted,

JANICE MARIE BARBER
CATHY J. CAUBLE
NORRIS J. AND CAROL J. WILLIAMS

OF COUNSEL



John F. Rick



C. Flippo Hicks


John F. Rick, Esquire
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C. Flippo Hicks, Esquire
Martin, Hicks & Ingles, Ltd.
Court Circle, P.O. Box 708
Gloucester, VA 23061

Co-counsel for Defendants

CERTIFICATE OF SERVICE

I certify that the foregoing Memorandum in Support of Defendants' Motion for New Trial was mailed this 6 day of May, 1987, postage prepaid, first class, to Bruce Long, Esquire, P.O. Box 1069, Hayes, Virginia 23072, counsel for plaintiffs.



John F. Rick

R. Bruce Long, P.C.
Attorney And Counselor At Law
Suite 13, Abingdon Square
P.O. Box 1069
Hayes, Virginia 23072

R. Bruce Long

Joy S. Long

(804) 642-6969

(804) 874-4477

May 19, 1987

The Honorable G. Duane Holloway, Judge
Circuit Court for the County of York
P. O. Box 371
Yorktown, VA 23690

RE: Brooks, et als v. Barber, et als

Dear Judge Holloway:

My purpose in writing you is twofold. First of all with respect to the proposed Decree that Mr. Rick left with the Court on May 14th. I did not see a copy of this Decree prior to it having been left with the Court for if I had I would have raised these objections on May 14th. With respect to the second paragraph on the first page, Mr. Rick's Decree suggests that the Court made a finding that the Defendants' double wide mobile homes are all trailers "and temporary structures...". I do not recall anywhere in the Court's comments where you referred to them as temporary structures. The Court made a finding that they were trailers and the prohibition of trailers in the body of the restrictive covenants is clear. I suggest to the Court that including the language temporary structures in the Court's Decree would tend to suggest that there was some ambiguity in the restrictions and I do not believe that is what the Court found. Further, in the third paragraph Mr. Rick's proposed Decree differs considerably from mine in that it indicates that the Defendants are enjoined and restrained from occupying or using these homes as residences "unless they cannot be seen from an adjoining lot or from the road adjoining the lot where said homes are located." I believe that counsel is taking some liberty with the ruling delivered by the Court as reflected in the transcript. The Court made absolutely no mention whatsoever of whether or not the homes could be seen from adjoining lots or roads but simply decreed a perpetual injunction. Certainly the Defendants, if they feel grounds exist, could, at some future date, pursuant to Code §8.01-625 petition the Court to dissolve the injunction. I do object most strenuously to the wording of this Decree as indicated and respectfully suggest to the Court that the Decree which I tendered to you accurately reflects the ruling of the Court, and would ask the Court, in the event you rule in favor of the Plaintiffs with respect to the Motion to Rehear, to enter the Decree which I tendered to the Court after having given notice to counsel of record.

My second purpose in writing is to address the content of Mr. Rick's letter to you of May 14, 1987, specifically the second page. I object most strenuously to Mrs. Cauble's

The Honorable G. Duane Holloway, Judge
May 19, 1987
Page 2

statements to her counsel which have not been the subject of cross-examination, creeping into the record.

As my memorandum in opposition indicates I take the position that the trustees and noteholder do not need to be made parties and so it would be academic as to whether or not a deed of trust existed prior to or subsequent to the filing of the suit. However, if the Court feels strongly that this element is important I would request an opportunity to call Mrs. Cauble as an adverse witness and to have an opportunity to subpoena the records from the mortgage company. It is certainly not proper for her representations to her counsel to end up as a part of the record by virtue of correspondence with the Court from counsel.

Respectfully yours,



R. Bruce Long

RBL:vaw

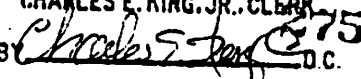
cc:

C. F. Hicks, Esq.
John F. Rick, Esq.
Herbert G. Smith, II, Esq.

FILED

1987 JUN 16 AM 10:21

CIRCUIT COURT CLERK'S OFFICE
GLOUCESTER, VIRGINIA
CHARLES E. KING, JR., CLERK

By  C.E.K. 75
D.C.

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF GLOUCESTER

JIMMIE W. BROOKS, et als,
Plaintiffs,

v.

JANICE MARIE BARBER, et als,
Defendants.

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) Chancery No. 4459
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DECREE

This cause came to be heard on the 25th day of March, 1987, upon the plaintiffs' Bill of Complaint; upon the defendants' Answer; upon the written Stipulation of Fact filed with the Court; upon the testimony of witnesses and exhibits introduced on behalf of plaintiffs and defendants, and stipulations made in open Court; and upon the argument of counsel and memoranda of authorities submitted on behalf of plaintiffs and defendants.

UPON CONSIDERATION WHEREOF, and for the reasons stated by the Court at the conclusion of trial, a copy of which is attached, the Court finds that the defendants' double wide mobile homes are all trailers and temporary structures as defined in the restrictive covenants sought to be enforced in the Bill of Complaint, and that the plaintiffs are entitled to the relief prayed for in their Bill of Complaint.

Accordingly, it is ADJUDGED, ORDERED and DECREED that the defendants, and each of them, from and after September 25, 1987, are perpetually enjoined and restrained from occupying or using at any time as a residence said double wide mobile home, unless they cannot be seen from any adjoining lot or from the road adjoining the lot where said homes are located. To the action of the Court in enjoining the defendants as herein DECREED, the defendants object and except.

And the defendants having advised the Court that they intend to apply to the Supreme Court of Virginia for an appeal from this final decree of the Court and upon motion of the defendants the Court declines to suspend execution of this decree, from which order the defendants note their exception.

Appeal bond is set at \$500.00, said bond to be conditioned according to law and surety on said bond shall be approved by the Clerk of this Court.

And nothing further remaining to be done in this cause it is ORDERED stricken from the docket and placed among the ended causes.

ENTERED:

Judge

I ask for this:

Co-Counsel for Defendants

Seen and Objected To:

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20 THE COURT: Thank you, gentlemen. These
21 are very difficult cases because no matter what the Court
22 does, somebody gets hurt. The Plaintiffs would be hurt, as
23 Mr. Long has just pointed out. Because it's arguable that
24 this might affect their property value. I have no evidence
25 on this, and I can't consider it. That's not part of my

1 finding. There is no evidence to this effect, but I can
2 understand as a layman how it might be. On the other hand,
3 if I rule against the Defendants, they are truly hurt
4 because those are their are homes, they have to leave their
5 homes, move their homes. They have invested some money in
6 those homes. It's always a difficult case.

7 The word trailer in these restrictive
8 covenants, in this Court's opinion, has to be synonymous
9 with mobile homes. You'll notice in the last part of
10 Paragraph 6, the part that applied to Mr. Purves' case, it's
11 trailer that is refered to. I realize in Mr. Purves' case,
12 we had a situation where there wasn't 1,300 square feet.
13 It's under their provision. When they talk about putting a
14 trailer on a lot during construction, they're talking about
15 a mobile home. It's something to live in. Trailer is used
16 there just as we have always used it. Trailer and mobile
17 home is synonymous. We're not talking about a trailer to
18 pull a boat or a camper trailer, they're talking about a
19 trailer mobile home to be put on a lot during the
20 construction of another house. That's what people live in
21 when they construct a dwelling house. What we call trailers
22 are mobile homes. Trailer has to mean mobile home.

23 These trailers are attached to
24 foundations, but they can be moved. Any house can be moved,
25 I realize this. These structures can be moved without any

1 damage, without having to replace anything. It's can simply
2 be lifted up and driven away. I realize that the house with
3 the deck on it or the porch on it, it might be attached, I
4 don't know whether it's attached, it probably is, there
5 would have to be some work there. But these homes are
6 basically designed to be mobile, to move. And that is what
7 was meant to be kept out of this subdivision, whether it be
8 on a foundation or pillars or even on a brick foundation.
9 The evidence is that the brick foundation is basically
10 cosmetic. It isn't used for support.

11 So, I will order that these homes be
12 removed, and I'm thinking in terms of six month.

13 MR. HICKS: Your Honor, I do think this is
14 a case that really ought to go to the Supreme Court.

VIRGINIA: IN THE CIRCUIT COURT OF GLOUCESTER COUNTY

JIMMIE W. BROOKS, et als,
Plaintiffs

v.

JANICE MARIE BARBER, et als,
Defendants

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*
*

Chancery No. 4459

DECREE

The Court, having duly considered Defendants' Motion for New Trial and Memorandum in support thereof and the plaintiffs' Memorandum In Opposition thereto, and the Court being of the opinion that the defendant's Motion should be denied.

Accordingly, it is ADJUDGED, ORDERED and DECREED that for the reasons stated in the plaintiffs' Memorandum In Opposition To Defendant's Motion And Memorandum For New Trial that Defendants Motion to Set Asside the Decree of this Court rendered on March 25, 1987 and to be entered prior to the entry of this Decree, is denied and this cause is dismissed from the docket of this Court.

I ASK FOR THIS:

R. Bruce Long p.g.
SEEN *and objected to:*

C.F. Hicks p.d.
C.F. HICKS, Counsel of Record
For the Defendants

John F. Rick p.d.
JOHN F. RICK, Counsel of Record
For the Defendants

ENTER THIS 16 DAY OF Jan, 1987.

[Signature]
JUDGE

R. Bruce Long,
P.G.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072
(804) 642-6969
(804) 874-4477

VIRGINIA: IN THE CIRCUIT COURT OF GLOUCESTER COUNTY

JIMMIE W. BROOKS, et als,

Plaintiffs

v.

JANICE MARIE BARBER, et als,

Defendants

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Chancery No. 4459

8/18/86

DECREE

This cause came to be heard on the 25th day of March, 1987, upon the plaintiffs' Bill of Complaint; upon the defendants' Answer; upon the written Stipulation of Fact filed with the Court; upon the testimony of witnesses and exhibits introduced on behalf of plaintiffs and defendants, and stipulations made in open Court; and upon the argument of counsel and memoranda of authorities submitted on behalf of plaintiffs and defendants.

UPON CONSIDERATION WHEREOF, the Court finds that the defendants' homes are all trailers as defined in the restrictive covenants sought to be enforced in the Bill of Complaint, and that the plaintiffs are entitled to the relief prayed for in their Bill of Complaint.

Accordingly, it is ADJUDGED, ORDERED and DECREED that the defendants, and each of them, from and after September 25, 1987 are perpetually enjoined and restrained from occupying or using at any time as a residence said trailers. To the action of the Court in enjoining the defendants as herein DECREED, the defendants object and except.

And the defendants having advised the Court that they intend to apply to the Supreme Court of Virginia for an appeal from this final decree of the Court

Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072

(804) 642-6969
(804) 874-4477

and upon motion of the defendants the Court ~~declines to~~ suspend^D execution
PENDING APPEAL
of this decree, from which order the defendants note their exception.

ⁿ
Appeal bond is set at \$500.00, said bond to be conditioned according to law
and surety on said bond shall be approved by the Clerk of this Court.

And nothing further remaining to be done in this cause it is ORDERED stricken
from the docket and placed among the ended causes.

I ASK FOR THIS: *seen and objected to as to suspension pending appeal. All*

R. Bruce Long

p.q.

SEEN AND OBJECTED TO:

[Signature] / *John Rick*

p.d.

ENTER THIS 16 DAY OF JUNE, 1987.

[Signature]

JUDGE

R. Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072

(804) 642-6969
(804) 874-4477

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF GLOUCESTER

JIMMIE W. BROOKS, et als,

Plaintiffs,

v.

CHANCERY NO. 4459

JANICE MARIE BARBER, et als,

Defendants.

ORDER


This day came C. F. Hicks, counsel of record for the defendants, and advised the Court that he has been discharged by the defendants and they have hired John F. Rick in his place and stead and request that he be removed as counsel.

I ask for this:

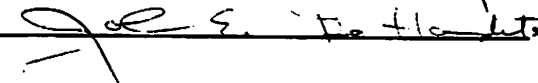

C. F. Hicks

Seen:


R. Bruce Long


John F. Rick

Enter this 30th day of June, 1987

 JUDGE

VIRGINIA: IN THE CIRCUIT COURT FOR GLOUCESTER COUNTY

JIMMIE W. BROOKS, et al,

Plaintiffs,

v.

JANICE MARIE BARBER, et al,

Defendants.

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CHANCERY NO. 4459

MEMORANDUM OF LAW IN SUPPORT OF
SOVRAN MORTGAGE CORPORATION'S
PETITION TO INTERVENE AND MOTION FOR NEW TRIAL

In support of Sovran Mortgage Corporation's ("Sovran") Petition to Intervene and Motion for New Trial, Sovran prays that this Court read herewith and incorporate herein by reference, as if more fully set forth, Memorandum in Support of Defendant's Motion for New Trial, Jimmie W. Brooks, et als v. Janice Marie Barber, et als, Circuit Court for Gloucester County, Chancery No. 4459. Additionally, Sovran would ask that this Court consider the case of Walt Robbins, Inc. v. Damon Corporation, 232 Va. 43 348 S.E.2d 223 (1986).

Walt Robbins arises from a Bill of Complaint filed to enforce a mechanic's lien. The issue decided in Walt Robbins relevant to the instant action was whether the subject mechanic's lien was unenforceable because the plaintiffs failed to make the beneficiary of an antecedent deed of trust a party to the suit to enforce the mechanic's lien. Id. at 46.

The Supreme Court acknowledge that the Walt Robbins case was one

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WOLTZ & KELLY, P.C
2600 Washington Avenue
Newport News, Va.

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of first impression. The Court reviewed the relevant case law on the issue and held:

'It is fundamental, of course, that no person may be deprived of his property without due process of law. One of the essentials of due process is notice. This is especially true in proceedings of a judicial nature affecting the property rights of citizens.' (Citation omitted). Because the proceeds of a judicial sale under a decree enforcing a mechanic's lien may prove to be insufficient to pay . . . [the] lien creditors in full, the beneficiary of an antecedent deed of trust has a property right which entitles him to notice and an opportunity to challenge the perfection of the mechanic's lien.

Here, sale has been ordered and the beneficiary has been denied such an opportunity. Guided by principles of due process, we hold that the beneficiary of the antecedent deed of trust was a necessary party to the suit to enforce the mechanic's liens.

Id. at 47.

Although in the Walt Robbins case focuses on mechanic's liens, we believe that the facts and the ultimate outcome of the instant action are analogous. In the case at bar, the Court enjoined the defendant Cauble from residing in her trailer. The practical result of that decree is that Cauble will have to remove her home from the property and relocate. Sovran loaned money to Ms. Cauble and secured that loan with a deed of trust. The deed of trust perfected Sovran's lien against the land and the improvements thereon. By effectively requiring Ms. Cauble to remove her home from the property and locate elsewhere, the injunction deprived Sovran of its property without due process of law. Thus, as in Walt Robbins, the beneficiary of the deed of trust was harmed and was precluded from challenging the Complaint in the trial court. Sovran was clearly an indispensable party. Sovran was not given its day in Court and must be permitted to intervene at this juncture and joined as a defendant.

Any order by this Court which would permit Sovran to intervene as a

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LTZ & KELLY, P.C.
Washington Avenue
Port News, Va.

defendant must also grant a new trial. Otherwise, adding Sovran would be academic for the matter has already been litigated and a decree entered, which decree deprives Sovran of its property.

WHEREFORE, your petitioner, Sovran Mortgage Corporation, by counsel, prays that this Court grant it the relief as requested in its Petition to Intervene and Motion for New Trial filed concurrently herewith.

SOVRAN MORTGAGE CORPORATION

By: [Signature]
Of Counsel

Conway H. Sheild, III
Herbert G. Smith, II
JONES, BLECHMAN, WOLTZ & KELLY, P.C.
2600 Washington Avenue, Suite 700
P.O. Box 78
Newport News, Virginia 23607-0078

CERTIFICATE

I hereby certify that a true and correct copy of the foregoing Memorandum in Support of Sovran Mortgage Corporation's Petition to Intervene and Motion for New Trial was hand delivered to R. Bruce Long, Esq., P.O. Box 1069, Suite 15, Abingdon Square Hayes, Virginia 23072; Federal Expressed to John F. Rick, Esq., Thompson & McMillan, 100 Shockoe Slip, Richmond, Virginia 23219; and mailed regular mail to C. F. Hicks, Esq., Martin, Hicks & Ingles, Ltd., P.O. Box 708, Gloucester, Virginia 23061, R. Bruce Long, Esq., P.O. Box 1069, Suite 15, Abingdon Square Hayes, Virginia 23072 and John F. Rick, Esq., Thompson & McMillan, 100 Shockoe Slip, Richmond, Virginia 23219 this 2nd day of July, 1987.

[Signature]
Of Counsel

LAW OFFICES

JONES
BLECHMAN
WOLTZ & KELLY, P.C.
2600 Washington Avenue
Newport News, Va.

Jones, Blechman, Woltz & Kelly, P.C.

Attorneys and Counselors at Law

ALLAN D. JONES, 1875-1954
DANIEL SCHLOSSER, 1915-1977
F.O. BLECHMAN, 1905-1986

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DIRECT DIAL NO. 928

OF COUNSEL
ARTHUR W. WOLTZ

ROBYN C. HYLTON
HERBERT G. SMITH, II
JAMES R. RICHARDS
MICHAEL B. WARE
JEANNE BYRUM SELPH
JAMES C. SMITH, JR.

804-245-2861
NORFOLK NO. 625-7332
OUR FILE NO.

HERBERT V. KELLY
RAYMOND H. SUTTLE
HARRY J. KOSTEL
JOHN T. TOMPKINS, III
EDWARD DWIGHT DAVID
CONWAY H. SHEILD, III
HERBERT V. KELLY, JR.
RICHARD B. DONALDSON, JR.
MERYL D. MOORE
ROBERT L. FREEMAN, JR.

July 2, 1987

Edith M. Elliot
York County Circuit Court
York County VA

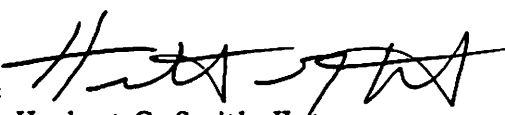
Re: Jimmie Brooks, et al v. Janice Marie Barber et al

Dear Edith:

The hearing scheduled for July 6, 1987 in York County. I would appreciate your placing the enclosures on Judge Holloway's desk for his review.

Very truly yours,

JONES, BLECHMAN, WOLTZ & KELLY, P.C.

By: 
Herbert G. Smith, II

HGS,II/pam

Set for 7/6 @ 1:30

EDITH M. ELLIOTT, Clerk
CIRCUIT COURT, YORK CO., VA

JUL 2 1987

RECEIVED

Hand Delivered

for Judge

7/6/87

7/6/87
[Signature]

Jones, Blechman, Woltz & Kelly, P.C.
Attorneys and Counselors at Law

ALLAN D. JONES, 1875-1954
DANIEL SCHLOSSER, 1915-1977
F.O. BLECHMAN, 1905-1986

2600 WASHINGTON AVENUE
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CONWAY H. SHEILD, III
HERBERT V. KELLY, JR.
RICHARD B. DONALDSON, JR.
MERYL D. MOORE
ROBERT L. FREEMAN, JR.

July 2, 1987

BY HAND

Charles E. King, Jr., Clerk
Circuit Court for the County of Gloucester
Gloucester, VA 23061

Re: Jimmie W. Brooks, et al v. Janice Marie Barber, et al
Chancery No. 4459

Dear Sir:

Enclosed under cover herewith please find for filing the following documents referencing the abovestyled cause:


Notice
Petition to Intervene and Motion for New Trial
Memorandum of Law in Support of Sovran Mortgage Corporation's Petition to Intervene and Motion for New Trial

I would ask that you place this matter on the docket for July 6, 1987 for the scheduled time.

Thank you for your assistance in this matter.

Very truly yours,

JONES, BLECHMAN, WOLTZ & KELLY, P.C.

By: 
Herbert G. Smith, II

HGS,II/pam
Enclosures

cc: R. Bruce Long, Esquire
John F. Rick, Esquire
Flippo C. Hicks

Handwritten notes:
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VIRGINIA: IN THE CIRCUIT COURT FOR GLOUCESTER COUNTY

JIMMIE W. BROOKS, et al,

Plaintiffs,

V.

JANICE MARIE BARBER, et al,

Defendants.

CHANCERY NO. 4459

NOTICE

TO: Jimmie W. Brooks
Glenita Sue Brooks
Gene E. Cash
Dorothy M. Cash
William W. Legg, Jr.
Lois Ann Legg
Edward M. Radwanski
Barbara A. Radwanski
Paul J. Sullivan
Shari A. Sullivan
c/o R. Bruce Long, Esq.
P.O. Box 1069
Suite 15, Abingdon Square
Hayes, Virginia 23072

Janice Marie Barber
Cathy J. Cauble
Norris J. Williams
Carol J. Williams
c/o John F. Rick, Esq.
Thompson & McMillan
100 Shockoe Slip
Richmond, Virginia 23219

PLEASE TAKE NOTICE that on the 6th day of July, 1987, at 1:30 p.m., or as soon thereafter as I may be heard, I will move this Honorable Court, sitting in the Courthouse for the Circuit Court for York County, Virginia, to enter a Decree permitting Sovran Mortgage Corporation to intervene in the

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VOLTZ & KELLY, P. C.
10 Washington Avenue
Newport News, Va.

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captioned matter as a party defendant on and for the grounds set forth in the attached Petition to Intervene and Motion for New Trial. Additionally, should this Court grant Sovran's Petition to Intervene, I shall move this Court for a new trial.

Please take notice and govern yourselves accordingly.

SOVRAN MORTGAGE CORPORATION

By: 
Of Counsel

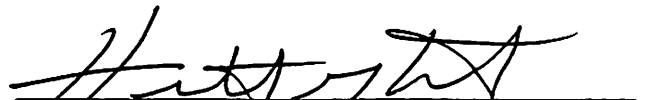
Conway H. Sheild, III
Herbert G. Smith, II
JONES, BLECHMAN, WOLTZ & KELLY, P.C.
2600 Washington Avenue, Suite 700
P.O. Box 78
Newport News, Virginia 23607-0078

CERTIFICATE

I hereby certify that a true and correct copy of the foregoing Notice was hand delivered to R. Bruce Long, Esq., P.O. Box 1069, Suite 15, Abingdon Square Hayes, Virginia 23072; Federal Expressed to John F. Rick, Esq., Thompson & McMillan, 100 Shockoe Slip, Richmond, Virginia 23219; and mailed regular mail to C. F. Hicks, Esq., Martin, Hicks & Ingles, Ltd., P.O. Box 708, Gloucester, Virginia 23061, R. Bruce Long, Esq., P.O. Box 1069, Suite 15, Abingdon Square Hayes, Virginia 23072 and John F. Rick, Esq., Thompson & McMillan, 100 Shockoe Slip, Richmond, Virginia 23219 this 2nd day of JULY, 1987.

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JONES
BLECHMAN
WOLTZ & KELLY, P.C.
2600 Washington Avenue
Newport News, Va.


Of Counsel

VIRGINIA: IN THE CIRCUIT COURT FOR GLOUCESTER COUNTY

JIMMIE W. BROOKS, et al,

Plaintiffs,

v.

JANICE MARIE BARBER, et al,

Defendants.

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CHANCERY NO. 4459

PETITION TO INTERVENE AND
MOTION FOR NEW TRIAL

COMES NOW your petitioner, Sovran Mortgage Corporation ("Sovran"), by counsel, and respectfully moves this Court for leave to intervene as a party defendant pursuant to Virginia Code Section 8.01-5, 1950, as amended, and further moves for a new trial on and for the following grounds, to wit:

1. That the subject matter of this controversy is before this Court by way of a Bill of Complaint filed by the plaintiffs in which it is alleged that the defendants have erected double wide trailers in violation of restrictive covenants effecting the Belroi Farms Subdivision. The restrictive covenants were recorded in Deed Book 232, page 517 in the Circuit Court for Gloucester County. The plaintiffs brought this action against the defendants to enforce those restrictive covenants.

2. That Sovran was not made a party defendant to this action by the Court, the plaintiffs, or by the defendants.

3. That Sovran is the Noteholder for Cathy J. Cauble, one of the defendants, which note is in the amount of \$79,000.00 and is secured by a deed of trust on the defendant Cauble's property. The deed of trust on

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293

Cauble's property is secured both by the land and the improvements thereon, same being one of the double wide trailers which was the subject of this lawsuit.

4. That this cause was tried before this Court on the merits without a jury on March 25, 1987.

5. That on May 14, 1987, this Court heard a motion filed by the defendants seeking a new trial and considered the arguments and memoranda of law submitted by counsel relative to said motion. This Court denied the defendants' motion by Decree entered June 16, 1987.

6. That on June 16, 1987, this Court entered a Decree which enjoined Cauble and the other defendants from occupying or using their trailers as their residence.

7. That the Decree of June 16, 1987, enjoining Cauble effectively destroyed Sovran's equity position by depriving Sovran of the property which was used as collateral to secure the deed of trust and thereby interfered with Sovran's property rights.

8. That as a lienholder on the Cauble property, and because Sovran's property rights were directly affected by this cause and the Decree of June 16, 1987, Sovran was a necessary and indispensable party to this action and must therefore be joined as a party defendant.

9. That the ends of justice require that Sovran be joined as a party defendant.

10. That should this Court grant Sovran's petition to intervene, Sovran must be granted a new trial so that it might litigate this cause and

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JONES
BLECHMAN
WOLTZ & KELLY, P. C
2600 Washington Avenue
Newport News, Va.

thereby protect its property interest.

WHEREFORE, your petitioner, Sovran Mortgage Corporation, by counsel, prays that this Court join Sovran as a party defendant in this cause and accord it its opportunity to fully protect and litigate this cause in a new trial and that this Court grant Sovran such other and further relief as justice may demand in the premises.

SOVRAN MORTGAGE CORPORTION

By: 

Of Counsel

Conway H. Sheild, III
Herbert G. Smith, II
JONES, BLECHMAN, WOLTZ & KELLY, P.C.
2600 Washington Avenue, Suite 700
P.O. Box 78
Newport News, Virginia 23607-0078

CERTIFICATE

I hereby certify that a true and correct copy of the foregoing Petition to Intervene and Motion for New Trial was hand delivered to R. Bruce Long, Esq., P.O. Box 1069, Suite 15, Abingdon Square Hayes, Virginia 23072; Federal Expressed to John F. Rick, Esq., Thompson & McMillan, 100 Shockoe Slip, Richmond, Virginia 23219; and mailed regular mail to C. F. Hicks, Esq., Martin, Hicks & Ingles, Ltd., P.O. Box 708, Gloucester, Virginia 23061, R. Bruce Long, Esq., P.O. Box 1069, Suite 15, Abingdon Square Hayes, Virginia 23072 and John F. Rick, Esq., Thompson & McMillan, 100 Shockoe Slip, Richmond, Virginia 23219 this 2nd day of JULY, 1987.


Of Counsel

LAW OFFICES
ES
BLECHMAN
WOLTZ & KELLY, P.C.
2600 Washington Avenue
Newport News, Va.

VIRGINIA: IN THE CIRCUIT COURT FOR GLOUCESTER COUNTY

JIMMIE W. BROOKS, et al,

Plaintiffs,

v.

JANICE MARIE BARBER, et al,

Defendants.

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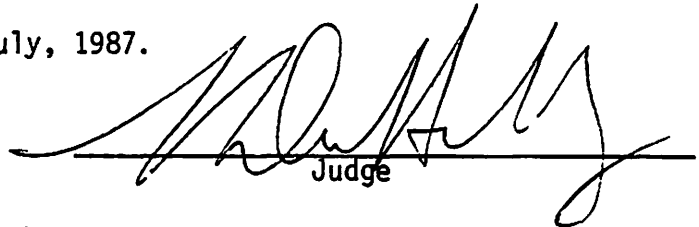
CHANCERY NO. 4459

DECREE


This day came Sovran Mortgage Corporation, by counsel, on its Petition to Intervene and Motion for New Trial, and also came the plaintiffs, by counsel, and after due consideration of the argument of counsel and the authorities presented in support of the their respective positions the Court is of the opinion that Sovran Mortgage Corporation's Petition to Intervene and Motion for New Trial should be denied, it is therefore

ADJUDGED, ORDERED and DECREED that Sovran Mortgage Corporation's Petition to Intervene and Motion for New Trial be and hereby is denied.


ENTERED this 6th day of July, 1987.


Judge

I Ask For This:


R. Bruce Long P9.

Seen and Objected To:


Herbert G. Smith, II Counsel for
Sovran Mortgage Corporation

John F. Rick P2.

LAW OFFICES

JONES
BLECHMAN
WOLTZ & KELLY, P.C
2600 Washington Avenue
Newport News, Va.

V I R G I N I A:
IN THE CIRCUIT COURT FOR THE COUNTY OF GLOUCESTER

JIMMIE W. BROOKS, et al.,
Plaintiffs,

vs.

Chancery No: 4459

JANICE MARIE BARBER, et al.,
Defendants.

BEFORE: The Honorable G. Duane Holloway
DATE: July 6, 1987

APPEARANCES:

R. BRUCE LONG, ESQ.,
Suite 15, Abingdon Square,
P.O. Box 1069,
Hayes, Virginia,
Counsel for the Plaintiffs.

HERBERT G. SMITH, II, ESQ.,
2600 Washington Avenue,
Suite 700,
Newport News, Virginia,
Counsel for SOVRAN MORTGAGE CORPORATION.

Reported by: Deborah Jean Kless

1 (Whereupon, the court reporter was sworn.)

2 MR. SMITH: Judge, I have -- very briefly,
3 I have filed a notice -- a petition to intervene with the
4 Court, as well as a memorandum. And the memorandum simply
5 restates those issues that Mr. Rick presented to the Court
6 previously and cites as additional authority a mechanic's
7 lien case which I think the Court was aware of when it
8 entered its order previously.

9 Sovran Mortgage Corporation, as you know,
10 is a lien holder on the Defendant, Cauble's property. That
11 lien affects and encompasses both the land and the realty
12 and the improvement on it.

13 It's Sovran's position that our equity
14 position is substantially impaired by the Court's decision
15 because although the Court does not order Ms. Cauble, and
16 I'm sure Counsel will correct me if I'm wrong, it does not
17 order her off the property. It forbids her to dwell in the
18 premises. That effectively is, practically speaking, going
19 to require her to leave the property.

20 And since Sovran is securing its loan with
21 both the real estate and the mobile home, we believe that
22 that puts her in a default position because it substantially
23 decreases the value of the secured. And in that vein, we
24 believe that it affects our property rights that we were not
25 given notice of the hearing. We weren't given an

1 opportunity to come in and intervene, although this is the
2 first chance we've had to intervene. We were not given
3 notice of a hearing, nor were we given an opportunity to
4 litigate the matter when it was tried.

5 8015 of the Virginia Code provides that
6 new parties may be joined at any time to meet the ends of
7 justice. We believe that because this substantially
8 deprived Sovran of its property rights, that the ends of
9 justice requires that we be permitted to intervene in this
10 case, that being the situation. If Sovran is permitted to
11 intervene, we think that we need to be granted a new trial
12 because, otherwise, an order permitting us to intervene at
13 this juncture would have no teeth because the matter has
14 already been litigated and a decree entered.

15 To shed some light on this, I think,
16 Judge, Sovran Mortgage Corporation purchased this mortgage
17 from Johnson Mortgage Company, and that's not in our brief,
18 but I don't think it will be controverted by Counsel for the
19 Plaintiffs.

20 The Johnson Mortgage financing was
21 completed after litigation began. But there is some
22 correspondence between Mr. Rick and Mr. Long which was
23 copied to the Court which basically indicates that although
24 the loan was finalized with Johnson Mortgage Corporation
25 after this litigation began, that an application for that

1 loan had been sought and entered into prior to the
2 litigation, I believe, in March. And the lawsuit was
3 commenced in August. And furthermore, that was a refinance
4 of a preexisting loan which also encompassed the real estate
5 and the improvement.

6 So, on that basis, Judge, we think that
7 the case cited in our brief is on all fours with the
8 situation here, and we would ask the Court for a leave to
9 intervene. We think that this, in effect, deprived Sovran
10 Mortgage Corporation of it's property rights without due
11 process and without a hearing. We think we are entitled to
12 be before the Court.

13 THE COURT: Was the preexisting loan --
14 you said this was refinanced?

15 MR. SMITH: Yes, sir.

16 THE COURT: Was that lien recorded?

17 MR. SMITH: Yes, sir.

18 THE COURT: The preexisting lien?

19 MR. SMITH: Yes, sir.

20 THE COURT: When was it released?

21 MR. SMITH: Judge, I'm afraid I'm at a
22 loss on that. The only thing I can say is the record would
23 speak for itself, which doesn't do this Court any good.

24 THE COURT: I'm interested in whether it
25 was released before the case was tried or after the case was

1 tried.

2 MR. SMITH: The lien would have been
3 released after the suit was commenced but prior to a final
4 decree being entered.

5 THE COURT: It was released after?

6 MR. SMITH: Yes, sir.

7 THE COURT: It was on record prior to the
8 suit being filed?

9 MR. SMITH: Yes, sir. That's correct.
10 The preexisting lien.

11 THE COURT: Would you like to respond?

12 MR. LONG: Your Honor, you have already
13 addressed the issue that's before the Court today. The
14 issue is whether or not Sovran Mortgage Company is an
15 indispensable and necessary party. That's the same issue
16 that was raised by Mr. Rick in the Defendants' motion for a
17 new trial. And you may recall that Mr. Rick submitted a
18 lengthy and well-done memorandum on that point. And I
19 responded with what I hoped was a less lengthy but equally
20 competent memorandum.

21 Anyway, after reviewing the memoranda, you
22 decided that a new trial was not in order. And in your
23 letter to Counsel setting forth your ruling, your letter
24 said that for the reasons stated in the Plaintiffs'
25 memorandum. And, of course, that's the exact wording that I

1 used in the order which followed. And all I'm saying -- all
2 I would say to you today is that it's exactly the same
3 issue. The only difference is that it was raised -- before
4 it was raised by one of the primary Defendants. Now, it's
5 raised by a party seeking to become an intervening defendant
6 or an intervened defendant.

7 The Walt Robbins case, which I know the
8 Court is familiar with, is a mechanic's lien suit. It's an
9 entirely different type of litigation from a civil suit to
10 enforce restrictive covenant.

11 And I guess the only thing I would say,
12 finally, Your Honor, is that when I submitted my memorandum
13 to the Court when it considered this issue earlier, I relied
14 heavily on French versus Shoemaker, the 1871 Supreme Court
15 case that says that you don't have -- just because there is
16 a defendant against whom no relief is sought, it doesn't
17 have to be a party. And I'm pointing again to the Court
18 that at the time this suit was filed to enforce these
19 restrictive covenants, the Plaintiffs had no cause of action
20 against Johnson Mortgage or Sovran Mortgage. In fact, they
21 still don't.

22 I would respectfully disagree with counsel
23 that the practical effect of this is to impair Sovran's
24 collateral. Ms. Cauble is certainly free to substitute in
25 its place collateral of equal value which would comply with

1 the restrictive covenant. The Court has already ruled on
2 this issue, and I would suggest to the Court that it would
3 be inappropriate at this point to change its ruling.

4 THE COURT: All right. Do you wish to
5 respond?

6 MR. SMITH: In response, Judge, this Walt
7 Robbins case is brand-new and substantially changes the
8 mechanic's lien law that was in effect at the time the
9 Supreme Court ruled. Up to the time of the Walt Robbins
10 decision, I don't believe that the law was that if trustees
11 and note holders on an antecedent deed of trust were not
12 made parties defendant in a mechanic's lien suit that the
13 mechanic's lien suit was defective.

14 This case substantially changes that. And
15 although it involves a mechanic's lien, what we are dealing
16 with are property rights. That's the entire issue. Has
17 Sovran's property rights been impaired by the entry of the
18 decree by this Court. We believe that it has, whether it's
19 a mechanic's lien suit which is brought against property
20 owners for the sale thereof to satisfy a lien, or whether it
21 is a suit in which a note holder is, we believe again,
22 practically required to remove the improvement from the
23 property.

24 We think that the same basic thing is
25 happening, and that's that the note holders are being

1 deprived of its equity. That's what the entire loan is
2 based on. Sovran Mortgage Corporation purchased this loan
3 from Johnson Mortgage and looked at it not as a piece of
4 property and a mobile home thereon, but looked at it as a
5 piece of property with improvements which are attached to
6 the real estate.

7 That's the basis for lending the money.
8 That's the strength on which the loan was purchased by my
9 client from Johnson Mortgage. And that has been impaired by
10 the ruling of this Court. And we think, although it's a
11 mechanic's lien suit, that Walt Robbins walks all over the
12 facts of this case. And we think that we are entitled to
13 intervene as a party defendant and are entitled to try the
14 case on its merits.

15 MR. LONG: Your Honor, may I respond very
16 briefly?

17 THE COURT: Sure.

18 MR. LONG: I would just say that, as I
19 pointed out in my memorandum that I submitted to the Court
20 earlier, if the Court were to hold that these parties could
21 in fact intervene as defendants or, in effect, were
22 indispensable parties, the burden that that would place on
23 the Plaintiffs would be unconscionable.

24 THE COURT: In the Walt Robbins case, the
25 deed of trust was recorded prior to the suit.

1 MR. SMITH: Yes, sir. And I know that
2 antecedent ought to be underlined in that case with respect
3 to what the Court is looking at here. But my only response
4 to that, and I think the Court's inquiry to me addresses
5 that question, was there a lien of record at the time that
6 the suit was filed. And the answer to that is yes.

7 THE COURT: But if they had made the first
8 lien holder a party, there would be no notice to the second
9 lien holder. Just filing a suit doesn't give notice.

10 MR. SMITH: Well, I would take issue with
11 that, respectfully, Judge. I think anybody -- I think that
12 Sovran would be noticed not only by the person who was
13 seeking to refinance the loan, that Johnson certainly would
14 have had notice of it.

15 THE COURT: Well, yeah, but, you know,
16 filing of an action is not notice in Virginia. The filing
17 of a lis pendens creates some notice, but the filing of the
18 action is not notice.

19 MR. LONG: If I had felt, Your Honor, that
20 I was bringing a suit to do something to the real estate, I
21 would have filed a lis pendens. That's not the kind of suit
22 that we are involved in here. The Walt Robbins case --

23 THE COURT: I'm not sure lis pendens would
24 be proper in this case. I'm not suggesting you should have
25 in this case. I'm not saying you should not have. But I'm

1 saying that just simply the filing of the suit would not
2 have been notice to the refinance company, Sovran.

3 MR. SMITH: Well, the --

4 THE COURT: You could have had the same
5 result even if he had made the first mortgage holder a
6 party.

7 MR. LONG: And, of course, Ms. Cauble
8 could have told the mortgage company that there was a suit
9 pending, too. Whether she did or not, I don't know. We've
10 never gotten to that issue. But she certainly was being
11 sued at the time that this loan was being processed. I
12 don't think Counsel would disagree with that.

13 MR. SMITH: I don't think so, but I would
14 simply say in her behalf at this point that the application
15 was made prior to the institution of the suit.

16 THE COURT: I think in the first case it
17 was financed separately, wasn't it? Wasn't the trailer
18 financed as a trailer, and the land as a lot?

19 MR. LONG: I don't remember, Your Honor.

20 MR. SMITH: In reading, I think that
21 initially it was financed separately.

22 THE COURT: Yeah. You have a financing on
23 a trailer or a mobile home or whatever you wish.

24 MR. SMITH: That's right.

25 MR. LONG: She testified during the trial

1 that she had paid off --

2 MR. SMITH: That was in 1983.

3 THE COURT: Well, this is a very
4 interesting question, and I look forward to the appeal, but
5 I'm going to deny your motion.

6 MR. SMITH: All right, sir. I have an
7 order that I would ask the Court to enter because the 21-day
8 period runs -- let me make sure I have the right one.

9 THE COURT: All right.

10 MR. LONG: We are going to file all kinds
11 of new grounds with this case, Judge.

12 THE COURT: I hope it's heard on its
13 merits and not some separate thing that the Court might have
14 done incorrectly. I think we need a case on its merits.

15 MR. SMITH: Judge, let me just add, also,
16 to the order --

17 THE COURT: May I see the order? Have you
18 endorsed it?

19 MR. LONG: Yes, sir.

20 MR. SMITH: I need to endorse it.

21 THE COURT: Will one of you take this back
22 to the clerk in Gloucester for me?

23 MR. LONG: I'm going up there this
24 afternoon, Judge. I'd be happy to take it up there.

25 THE COURT: Has Mr. Rick had notice of

1 this hearing?

2 MR. SMITH: Yes, sir. I wanted to show
3 the Court --

4 THE COURT: Did you file that notice with
5 the clerk?

6 MR. SMITH: Yes, sir.

7 THE COURT: Do you have it?

8 MR. SMITH: The notice was filed -- it
9 should be --

10 THE COURT: Maybe I have. Here it is.
11 This is the copy to Rick.

12 MR. SMITH: Have you seen that?

13 MR. LONG: Yes.

14 THE COURT: I think that's sufficient.
15 I'll waive his endorsement because he received notice.

16 MR. SMITH: I would say, Judge, that he
17 sent me a letter which I just showed to Mr. Long. That's
18 his notice.

19 THE COURT: Thank you, gentlemen.

20 MR. LONG: Thank you, Judge.

21 MR. SMITH: I appreciate you hearing us
22 today.

23 (Whereupon, the proceedings were
24 concluded.)

25 * * *

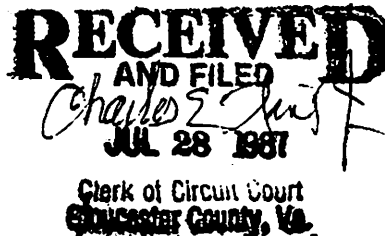
1 COMMONWEALTH OF VIRGINIA:

2 COUNTY OF YORK, to wit:

3
4 I, Deborah Jean Kless, a Notary Public in
5 and for the Commonwealth of Virginia at Large, do hereby
6 certify that the foregoing deposition was duly taken and
7 sworn to before me at the time and place in the caption
8 mentioned, and that the deposition is a true record of the
9 testimony given by the witness.

10 I further certify that I am neither
11 attorney or counsel for, nor related to or employed by, any
12 of the parties to the action in which this deposition is
13 taken, nor am I a relative or employee of any attorney or
14 counsel employed by the parties hereto, nor am I financially
15 interested in the action.

16 IN WITNESS WHEREOF, I have hereunto set my
17 hand and affixed my notarial seal this 27th day of July,
18 1987.



Deborah Jean Kless
Notary Public

My commission expires June 23, 1990.

309

THOMPSON & McMULLAN

100 SHOCKOE SLIP

RICHMOND, VIRGINIA 23219

JOHN B. THOMPSON
C. GRICE McMULLAN, JR.
CHARLES W. LAUGHLIN
HUGH T. ANTRIM
ELIOT NORMAN
CHRISTOPHER M. MALONE
CHARLES L. WILLIAMS
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JERRY WILLIAM BOYKIN
PERKINS WILSON
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ALEXANDRIA, VIRGINIA 22314
TELEPHONE (703) 838-5525
TELECOPIER (703) 848-4585
TELEX 265016 OTESUR

July 13, 1987

BY HAND

Charles E. King, Jr., Clerk
Circuit Court of Gloucester
County
Courthouse: U.S. Route 17
Gloucester, VA 23061

I HEREBY ACKNOWLEDGE RECEIPT OF
THIS LETTER AND ENCLOSURE THIS
____ DAY OF JULY, 1987.

Re: Brooks, et al. v. Barber, et al.
Chancery No. 4459

Dear Mr. King:

Enclosed please find a Notice of Appeal which I would ask that you file in the captioned matter.

By copy of this letter, I am forwarding a true copy of the enclosed Notice of Appeal to all counsel of record.

Kindly acknowledge receipt of this letter on the duplicate which I have enclosed herein for your convenience and return same to me in the self-addressed stamped envelope enclosed herein.

Thank you for your cooperation.

Very truly yours,

John F. Rick
John F. Rick

/all

Enclosure

cc: R. Bruce Long, Esquire
Herbert G. Smith, II, Esquire
Conway H. Shield, III, Esquire

FILED

1987 JUL 14 3:25 PM

CIRCUIT COURT CLERK'S OFFICE
GLOUCESTER, VIRGINIA
CHARLES E. KING, JR., CLERK

310

SX *and* D.C.

V I R G I N I A:

IN THE CIRCUIT COURT FOR GLOUCESTER COUNTY

JIMMIE W. BROOKS, et al.,

Plaintiffs,

v.

CHANCERY NO. 4459

JANICE MARIE BARBER, et al.,

Defendants.

NOTICE OF APPEAL

Norris J. Williams and Cathy J. Cauble, by counsel, hereby gives notice of appeal from the final judgments of this Court rendered on June 16, 1987, awarding relief to Plaintiffs and denying Defendants' Motion for New Trial, and from this Court's Decree of July 6, 1987 wherein it denied Sovran Mortgage Corporation's Petition to Intervene and Motion for New Trial in the captioned matter. Norris J. Williams and Cathy J. Cauble further give notice that a trial transcript covering the testimony and other incidents of the trial is to be prepared and filed in this matter, all in accordance with the Rules of the Supreme Court of Virginia.

NORRIS J. WILLIAMS ✓
CATHY J. CAUBLE ✓

By: _____

John Rick
Of Counsel

John F. Rick
Thompson & McMullan
100 Shockoe Slip
Richmond, VA 23219
(804) 649-7545

CERTIFICATE

I hereby certify that a true and exact copy of the foregoing Notice of Appeal was mailed, postage prepaid, this the 13th day of July, 1987, to R. Bruce Long, Esquire, Counsel for the Plaintiffs, P. O. Box 1069, Hayes, Virginia 23072, and to Conway H. Shield, III, Esquire and Herbert G. Smith, II, Esquire, Jones, Blechman, Woltz & Kelly, P.C., Counsel for Sovran Mortgage Corporation, 2600 Washington Avenue, Suite 700, Newport News, Virginia.

John F. Rick
John F. Rick

FILED
1987 JUL 13 3:25 PM
14 AM 1:10
CIRCUIT COURT CLERK'S OFFICE
GLOUCESTER, VIRGINIA
CHARLES E. KING, JR., CLERK
31 Charles E. King, Jr. D.C.

VIRGINIA: IN THE CIRCUIT COURT FOR GLOUCESTER COUNTY

JIMMIE W. BROOKS, et al,

Plaintiffs,

V.

JANICE MARIE BARBER, et al,

Defendants.

CHANCERY NO. 4459

NOTICE OF APPEAL

Sovran Mortgage Corporation, by counsel, hereby gives notice of appeal from the final judgment of this Court rendered on June 16, 1987. More specifically, Sovran Mortgage Corporation appeals from this Court's Decree of July 6, 1987 wherein it denied Sovran Mortgage Corporation's Petition to Intervene and Motion for New Trial in the captioned matter. Sovran Mortgage Corporation further gives notice that a trial transcript covering the testimony and other incidents of the trial is to be prepared and filed in this matter, all in accordance with the Rules of the Supreme Court of Virginia.

SOVRAN MORTGAGE CORPORATION ✓

By: 

Of Counsel

Conway H. Sheild, III
Herbert G. Smith, II
JONES, BLECHMAN, WOLTZ & KELLY, P.C.
2600 Washington Ave., Suite 700
Newport News, Virginia

CERTIFICATE

I hereby certify that a true and correct copy of the foregoing Notice of Appeal was mailed to R. Bruce Long, counsel for the plaintiffs, P.O. Box 1069, Hayes, Virginia

23072 and John F. Rick, counsel for the defendants, 100 Shocks Slip, Richmond, Virginia

23219 this 8th day of July, 1987.

CLERK'S OFFICE
GLOUCESTER, VIRGINIA
CHARLES E. KING, JR., CLERK


Herbert G. Smith, II

313

LAW OFFICES

JES
BLECHMAN
WOLTZ & KELLY, P.C.
10 Washington Avenue
Newport News, Va.

THOMPSON & McMULLAN

100 SHOCKOE SLIP

RICHMOND, VIRGINIA 23219

JOHN B. THOMPSON
C. GRICE McMULLAN, JR.
CHARLES W. LAUGHLIN
HUGH T. ANTRIM
ELIOT NORMAN
CHRISTOPHER M. MALONE
CHARLES L. WILLIAMS
WILLIAM A. DIAMOND
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PERKINS WILSON
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1101 KING STREET, SUITE 501
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TELEPHONE (703) 838-5525
TELECOPIER (703) 548-4585
TELEX 265016 OTESUR

July 15, 1987

Charles E. King, Jr., Clerk
Circuit Court of Gloucester
County
P. O. Box N
Gloucester, VA 23061

Re: Brooks, et al. v. Barber, et al.
Chancery No. 4459

Dear Mr. King:

Enclosed is a Notice of Filing of Transcript of Trial Proceedings which I would appreciate your filing with the other papers in this proceeding.

Thank you for your attention to this matter.

Sincerely,



John F. Rick

/all

Enclosure

cc: R. Bruce Long, Esquire
Herbert G. Smith, II, Esquire
Conway H. Shield, III, Esquire

RECEIVED
AND FILED

JUL 20 1987
Clerk of Circuit Court
Gloucester County, Va.

V I R G I N I A:

IN THE CIRCUIT COURT FOR GLOUCESTER COUNTY

JIMMIE W. BROOKS, et al.,

Plaintiffs,

v.

CHANCERY NO. 4459

JANICE MARIE BARBER, et al.,

Defendants.

NOTICE OF FILING OF TRANSCRIPT
OF TRIAL PROCEEDINGS

This will serve as notice to all counsel that a transcript of the trial proceedings in the above-styled matter, which proceedings occurred on March 25, 1987, is currently on file with the Clerk of the Circuit Court of Gloucester County. The transcript has been filed since approximately May of 1987.

NORRIS J. WILLIAMS
CATHY J. CAUBLE

By

John Rick
Of Counsel

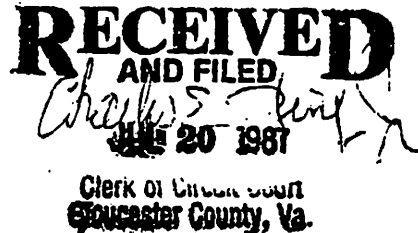
John F. Rick
Thompson & McMullan
100 Shockoe Slip
Richmond, VA 23219
(804) 649-7545

CERTIFICATE

I hereby certify that a true and exact copy of the foregoing Notice of Filing of Transcript of Trial Proceedings was mailed, postage prepaid, this the 15th day of July, 1987 to R. Bruce Long, Esquire, Counsel for the Plaintiffs, P. O. Box 1069, Hayes, Virginia 23072, and to Conway H. Shield, III, Esquire and Herbert G. Smith, II, Esquire, Jones, Blechman, Woltz & Kelly, P.C., Counsel for Sovran Mortgage Corporation, 2600 Washington Avenue, Suite 700, Newport News, Virginia.

John Rick

John F. Rick



THOMPSON & McMULLAN

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RICHMOND, VIRGINIA 23219

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July 15, 1987

JERRY WILLIAM BOYKIN
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Charles E. King, Jr., Clerk
Circuit Court of Gloucester
County
P. O. Box N
Gloucester, VA 23061

Attention: Ann Gentry, Deputy Clerk

JUL 20 1987

Re: Brooks, et al. v. Barber, et al.
Chancery No. 4459

Dear Ms. Gentry:

Following up on my telephone call to you this morning, this letter will notify you that at our hearing before Judge Holloway on May 14, 1987, on Defendants' Motion for a New Trial, Mr. Long introduced as evidence in the proceeding the interrogatories propounded by his clients to the Defendants and answered by them. He then argued on the basis of these interrogatories at said hearing. These interrogatories should, therefore, be made a part of the appeal record. I have enclosed copies of them from my file for you, in case Mr. Long did not introduce them to the record, although I have a recollection that he did.

By copy of this letter, I am notifying Mr. Long that I consider these interrogatories to be a part of the appeal record.

I have filed a request for completion of the transcript of the May 14 motion arguments. When that is available, I will have it forwarded to you at once.

With continuing personal regards, I remain

Very truly yours,

John F. Rick
John F. Rick

RECEIVED
AND FILED
JUL 20 1987
Clerk of Circuit Court
Gloucester County, Va.

/all

Enclosures

cc: R. Bruce Long, Esquire
Herbert G. Smith, II, Esquire

317

VIRGINIA: IN THE CIRCUIT COURT OF GLOUCESTER COUNTY

JIMMIE W. BROOKS, et als,

Plaintiffs

v.

JANICE MARIE BARBER, et als,

Defendants

*
*
*
*
*
*
*

Chancery No. 4459

PLAINTIFFS' INTERROGATORIES TO DEFENDANTS

TO: CATHY J. CAUBLE
c/o C. F. Hicks, Esquire
Martin, Hicks & Ingles, Ltd.
Attorneys At Law
P.O. Box 708
Gloucester, Virginia 23061

Plaintiffs, JIMMIE W. BROOKS, et als, by counsel, pursuant to Part Four of the Rules of the Supreme Court of Virginia, propound the following interrogatories to you to be answered in writing and under oath within twenty-one (21) days after service hereof.

DEFINITIONS AND INSTRUCTIONS

A. "Document" means any written, recorded, or graphic matter however produced or reproduced including without limitation letters, telegrams, memoranda, agreements, records, notes, correspondence, diaries, photocopies, photographs, tape recordings, checks, checkbook registers, savings account passbooks, account books, charts, and all other papers, writings and other data compilations, including drafts, originals and copies, in your possession, custody or control or of which you have knowledge, wherever located. If a document has been prepared in separate copies, or additional copies have been made, and the copies are not identical (or which by reason of subsequent modification of a copy by the addition of notations, are no longer identical), each nonidentical copy is a separate document.

R. Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072

(804) 642-6969
(804) 874-4477

B. "Identify" means when used in reference to any individual person to state his or her full name, address, and present or last known positions and business affiliation, and when used in reference to any other person (as that term is defined in paragraph C below) means to set forth the person's full name and address, to describe the type of person (e.g. corporation, limited partnership, or joint venture), and to give the state of the person's incorporation, if any. With respect to a document, "identify" means to indicate the type or character of the document (e.g. letter, memoranda, signed statement, notes, tapes, invoices, etc.) the title, if any, the date, the name and address of the author and addressee, the names and addresses of recipients of copies, and the person or persons who have custody or control of the document, and the present location of the document. If any such document was but no longer is in your possession or subject to your control, state what disposition was made of it and when. With respect to an account or other similar asset, "identify" means to identify the financial institution or other person (as that term is defined in paragraph C below) in which the account or other asset is kept, to set forth the address of said financial institution's particular branch in which the account or other asset is kept, to set forth the account or other identifying number of the account or other asset, to identify all documents which relate to the account or other asset and to identify all other persons having any legal or beneficial interest in the account or other asset.

C. The term "person" means any natural person, corporation, partnership, joint venture, association, group, financial institution, governmental agency or agent and any other entity.

D. The terms "you" and "your" and words of like import mean

*R. Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072*

*(804) 642-6969
(804) 874-4477*

defendant, CATHY J. CAUBLE, her agents, employees, assigns, attorneys, accountants, partners and all other persons (as that term is defined in paragraph C above) acting on her behalf, or acting on behalf of such agents, employees, assigns, attorneys, accountants, partners or other persons.

E. These interrogatories are continuing in character so as to require you to provide supplemental answers if you obtain additional or different information prior to the trial of this suit.

INTERROGATORIES

1. Identify each person having personal knowledge of any fact relevant to the issues in this suit and separately with respect to each person set forth in detail the facts of which that person has personal knowledge.

James T. Cauble, II and Ella Cauble, James T. Cauble, III, James Wilson and Heather Wilson, all who were present during conversation with Vernon Green when he advised that a double wide mobile home installed on a permanent foundation was permitted by the restrictions and did not constitute a temporary structure prohibited by the restrictions.

2. Identify all documents, the existence of which the defendant has knowledge and which are relevant to the issues in this suit.

Documents showing having conventional loan with the home and land being financed together and also documents showing that I have a homeowners insurance company.

3. Identify any expert witnesses defendant intends to call at the trial of this matter.

None.

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Attorney At Law
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23072*

*(804) 642-6969
(804) 874-4477*

4. For every such expert, state the substance of any opinion to which he and/or she is expected to testify and the grounds for such opinion.

Not applicable.

5. Identify the company from whom you purchased your home, including the purchase price, date of purchase, date of delivery, and date of set up.

Forbes Homes, Elizabeth City, North Carolina. Home was purchased in August 1983. My former husband was involved in the purchase. I am not sure of the exact purchase price. I am not sure of the date of delivery as I was not present at the time.

6. State whether or not your home was delivered to your lot and if so, what method it was transported to said lot.

I have no knowledge.

7. State whether or not your home was delivered to your lot in two (2) or more sections.

I have no knowledge.

8. State whether or not at the time of delivery your home had a hitch attached for purposes of towing the said section or sections to your lot.

I have no knowledge.

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9. State whether or not each section of your home rested upon an under carriage at the time of its delivery to your lot.

I have no knowledge.

10. State whether or not said undercarriage upon which each section rested consisted of metal pieces, wheels, springs, and axles.

I have no knowledge

11. State whether or not the said undercarriage is also from time to time referred to as a chassis.

I have no knowledge.

12. State whether or not your home was installed by being set on piers set on a solid surface.

My home is installed on piers set on a solid foundation and on a brick foundation.

13. State whether or not, if your home consists of two (2) units, whether they can be connected as a single dwelling unit.

My home is a single dwelling unit with a 10 x 20 deck attached in the front of it. A 10 x 46 in the back with a lower section of the back deck of 10 x 26. I also have on my property a 24 x 24 garage.

R. Bruce Long,
P.C.

Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072

(804) 642-6969

(804) 874-4477

14. If your answer to the preceeding Interrogatory is in the affirmative, then state whether or not the two (2) halves of the unit once connected can be disconnected or unconnected.

My home is a single residence dwelling unit on a permanent foundation.

15. If your answer to the preceeding Interrogatory is in the affirmative state whether or not each half could be separately transported to another site on an undercarriage consisting of metal pieces, wheels, springs and axles.

I have no knowledge of any way it can be transported without inflicting substantial damage upon it.

16. State whether or not your home has somewhere on it a certification label consisting of a three-letter designation followed by a six-digit designation.

Yes.

17. State whether or not your home is built to BOCA code requirements.

No.

18. State whether or not your home is built to HUD code requirements.

Yes.

19. Identify the general contractor who constructed your home as well as all subcontractors who performed work thereon.

Mansion Homes, Forbes Homes, Brown's Well Drilling, R. T. Ewell & Sons, Frank DeAlba.

*R. Bruce Long,
P.C.*

*Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072*

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20. State the date on which construction began on your home.

August 1983.

21. State the date on which you occupied your home.

September 1983.

22. State whether or not your home is a double wide mobile home.

My home is a manufactured home on a permanent foundation.

23. State whether or not your home is a trailer.

My home is not a trailer.

24. State whether or not your home can be seen from adjoining lots and from the roads adjoining those lots.

My home cannot be seen from adjoining lots. My home can only be seen from the road in front of my lot. This is a private road. None of the plaintiffs in this suit live on the road on which I live on.

25. If your answer to the previous Interrogatory is in the negative, state what obstructions exist that preclude sight of your home from both adjoining lots and the roads adjoining those lots.

Trees and shrubbery.

R. Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
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(804) 642-6969
(804) 874-4477

26. State your estimate of the value of your home, excluding land.

The appraised value of my home and appurtenances excluding land, based on a recent appraisal, is \$55,000.00

JIMMIE W. BROOKS, et als

BY R. Bruce Long
Of Counsel

R. Bruce Long
R. BRUCE LONG, ESQ.
Attorney At Law
P.O. Box 1069
Hayes, Virginia 23072

CERTIFICATION

I hereby certify that a true copy of the foregoing Plaintiff's Interrogatories to Defendant was ^{delivered} ~~mailed~~ this 5th day of September, 1986 to C. F. Hicks, Esq., Martin, Hicks & Ingles, Ltd., Attorneys At Law, P.O. Box 708, Gloucester, Virginia 23072, counsel of record for the defendant.

R. Bruce Long
R. BRUCE LONG

R. Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072

(804) 642-6969
(804) 874-4477

Respectfully submitted,

Cathy J. Cauble
CATHY J. CAUBLE

STATE OF VIRGINIA

COUNTY OF GLOUCESTER, To-Wit:

This 16th day of October, 1986, personally appeared before me, MARSHA L. MORGAN, a Notary Public in and for the State of Virginia, Cathy J. Cauble, who after being duly sworn, did affirm that the answers to the above interrogatories are true and correct to the best of her knowledge and belief.

COMMISSIONED AS
MARSHA D. LEWIS

Marsha L. Morgan
Notary Public

My commission expires: March 27, 1987.

I certify that a copy of the foregoing Answers to Interrogatories was served on the plaintiff by mailing a copy thereof by first class mail this 20th day of October, 1986, to R. Bruce Long, Esquire, P. O. Box 1069, Hayes, Virginia 23072, counsel of record for the plaintiff.

Of Counsel

C. Flippo Hicks
Martin, Hicks & Ingles, Ltd.
P. O. Box 708
Gloucester, Virginia 23061

MARTIN, HICKS & INGLES, Ltd.
ATTORNEYS AT LAW
GLOUCESTER, VIRGINIA 23061

VIRGINIA: IN THE CIRCUIT COURT OF GLOUCESTER COUNTY

JIMMIE W. BROOKS, et als,

Plaintiffs

v.

JANICE MARIE BARBER, et als,

Defendants

*
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*
*
*
*

Chancery No. 4459

PLAINTIFFS' INTERROGATORIES TO DEFENDANTS

TO: NORRIS J. WILLIAMS and CAROL J. WILLIAMS
c/o C. F. Hicks, Esquire
Martin, Hicks & Ingles, Ltd.
Attorneys At Law
P.O. Box 708
Gloucester, Virginia 23061

Plaintiffs, JIMMIE W. BROOKS, et als, by counsel, pursuant to Part Four of the Rules of the Supreme Court of Virginia, propound the following interrogatories to you to be answered in writing and under oath within twenty-one (21) days after service hereof.

DEFINITIONS AND INSTRUCTIONS

A. "Document" means any written, recorded, or graphic matter however produced or reproduced including without limitation letters, telegrams, memoranda, agreements, records, notes, correspondence, diaries, photocopies, photographs, tape recordings, checks, checkbook registers, savings account passbooks, account books, charts, and all other papers, writings and other data compilations, including drafts, originals and copies, in your possession, custody or control or of which you have knowledge, wherever located. If a document has been prepared in separate copies, or additional copies have been made, and the copies are not identical (or which by reason of subsequent modification of a copy by the addition of notations, are no longer identical), each nonidentical copy is a separate document.

R. Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072

(804) 642-6969
(804) 874-4477

B. "Identify" means when used in reference to any individual person to state his or her full name, address, and present or last known positions and business affiliation, and when used in reference to any other person (as that term is defined in paragraph C below) means to set forth the person's full name and address, to describe the type of person (e.g. corporation, limited partnership, or joint venture), and to give the state of the person's incorporation, if any. With respect to a document, "identify" means to indicate the type or character of the document (e.g. letter, memoranda, signed statement, notes, tapes, invoices, etc.) the title, if any, the date, the name and address of the author and addressee, the names and addresses of recipients of copies, and the person or persons who have custody or control of the document, and the present location of the document. If any such document was but no longer is in your possession or subject to your control, state what disposition was made of it and when. With respect to an account or other similar asset, "identify" means to identify the financial institution or other person (as that term is defined in paragraph C below) in which the account or other asset is kept, to set forth the address of said financial institution's particular branch in which the account or other asset is kept, to set forth the account or other identifying number of the account or other asset, to identify all documents which relate to the account or other asset and to identify all other persons having any legal or beneficial interest in the account or other asset.

C. The term "person" means any natural person, corporation, partnership, joint venture, association, group, financial institution, governmental agency or agent and any other entity.

D. The terms "you" and "your" and words of like import mean

R. Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072

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defendant, NORRIS J. WILLIAMS and CAROL J. WILLIAMS, their agents, employees, assigns, attorneys, accountants, partners and all other persons (as that term is defined in paragraph C above) acting on her behalf, or acting on behalf of such agents, employees, assigns, attorneys, accountants, partners or other persons.

E. These interrogatories are continuing in character so as to require you to provide supplemental answers if you obtain additional or different information prior to the trial of this suit.

INTERROGATORIES

1. Identify each person having personal knowledge of any fact relevant to the issues in this suit and separately with respect to each person set forth in detail the facts of which that person has personal knowledge.

Mr. and Mrs. Johann Pfeffer were present when the lot was purchased and present when Vernon Green advised that a temporary structure did not include a double wide mobile home on a permanent foundation.

2. Identify all documents, the existence of which the defendant has knowledge and which are relevant to the issues in this suit.

None.

3. Identify any expert witnesses defendant intends to call at the trial of this matter.

None.

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Attorney At Law
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23072

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4. For every such expert, state the substance of any opinion to which he and/or she is expected to testify and the grounds for such opinion.

Not applicable.

5. Identify the company from whom you purchased your home, including the purchase price, date of purchase, date of delivery, and date of set up.

Southern Mobile Homes, Inc. Purchase price was \$36,264.95.
Purchased in February 1984, delivered March 1984, moved in May 1984.

6. State whether or not your home was delivered to your lot and if so, what method it was transported to said lot.

My home was delivered in two sections by truck.

7. State whether or not your home was delivered to your lot in two (2) or more sections.

Yes.

8. State whether or not at the time of delivery your home had a hitch attached for purposes of towing the said section or sections to your lot.

The two sections had temporary hitch at the time of delivery.

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P.C.*

*Attorney At Law
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9. State whether or not each section of your home rested upon an under carriage at the time of its delivery to your lot.

The home rested upon a steel I-beam frame.

10. State whether or not said undercarriage upon which each section rested consisted of metal pieces, wheels, springs, and axles.

Temporarily attached to the steel I-beam frame at the time of delivery were three axles on each section. Each axle had contained springs and wheels.

11. State whether or not the said undercarriage is also from time to time referred to as a chassis.

No.

12. State whether or not your home was installed by being set on piers set on a solid surface.

My home was installed by being set on piers installed on a solid surface and then a permanent foundation was put under the home.

13. State whether or not, if your home consists of two (2) units, whether they can be connected as a single dwelling unit.

My home is a single residential dwelling unit.

14. If your answer to the preceeding Interrogatory is in the affirmative, then state whether or not the two (2) halves of the unit once connected can be disconnected or unconnected.

My home cannot be severed without material damage to our residence.

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P.C.*

*Attorney At Law
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23072*

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15. If your answer to the preceeding Interrogatory is in the affirmative state whether or not each half could be separately transported to another site on an undercarriage consisting of metal pieces, wheels, springs and axles.

If our home were cut in two, after great damage to it, it could theoretically be transported.

16. State whether or not your home has somewhere on it a certification label consisting of a three-letter designation followed by a six-digit designation.

Yes.

17. State whether or not your home is built to BOCA code requirements.

No.

18. State whether or not your home is built to HUD code requirements.

Yes.

19. Identify the general contractor who constructed your home as well as all subcontractors who performed work thereon.

Virginia Home Manufacturing Corp., Southern Electric Company,
R. T. Ewell & Son, Brown's Well Drilling, Boyd Newhouse.

*R. Bruce Long,
P.C.*

*Attorney At Law
P.O. Box 1069
Hayes, Virginia
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20. State the date on which construction began on your home.

March 1984.

21. State the date on which you occupied your home.

May 1984.

22. State whether or not your home is a double wide mobile home.

Our home is a single family residence installed on a permanent foundation and is considered to be a manufactured home.

23. State whether or not your home is a trailer.

Our home is not a trailer, but a manufactured home installed on a permanent foundation.

24. State whether or not your home can be seen from adjoining lots and from the roads adjoining those lots.

Yes.

25. If your answer to the previous Interrogatory is in the negative, state what obstructions exist that preclude sight of your home from both adjoining lots and the roads adjoining those lots.

Not applicable.

*R. Bruce Long,
P.C.*

*Attorney At Law
P.O. Box 1069
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26. State your estimate of the value of your home, excluding land.

The estimated value of our home, including the purchases, excluding the land, is \$50,000.00. Our home is attached to a 12 x 20 foot deck on the back, brick steps on the front. In addition, on our property there is a garage and barn.

JIMMIE W. BROOKS, et als

BY



Of Counsel



R. BRUCE LONG, ESQ.

Attorney At Law

P.O. Box 1069

Hayes, Virginia 23072

CERTIFICATION

I hereby certify that a true copy of the foregoing Plaintiff's Interrogatories to Defendant was ~~mailed~~^{delivered} this 5th day of September, 1986 to C. F. Hicks, Esq., Martin, Hicks & Ingles, Ltd., Attorneys At Law, P.O. Box 708, Gloucester, Virginia 23072, counsel of record for the defendant.



R. BRUCE LONG

R. Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072

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Respectfully submitted,

Carol J. Williams
CAROL J. WILLIAMS

STATE OF VIRGINIA

COUNTY OF GLOUCESTER, To-Wit:

This 17th day of October, 1986, personally appeared before me, Marsha L. Morgan, a Notary Public in and for the State of Virginia, Carol J. Williams, who after being duly sworn, did affirm that the answers to the above interrogatories are true and correct to the best of her knowledge and belief.

COMMISSIONED AS
MARSHA D. LEWIS

Marsha L. Morgan
Notary Public

My commission expires: March 27, 1987.

I certify that a copy of the foregoing Answers to Interrogatories was served on the plaintiff by mailing a copy thereof by first class mail this 20th day of October, 1986, to R. Bruce Long, Esquire, P. O. Box 1069, Hayea, Virginia 23072, counsel of record for the plaintiff.

Of Counsel

C. Flippo Hicks
Martin, Hicks & Ingles, Ltd.
P. O. Box 708
Gloucester, Virginia 23061

RECEIVED
AND FILED

Chas. Long
JUL 20 1987

Clerk of Circuit Court
Gloucester County, Va.

MARTIN, HICKS & INGLES, Ltd.
ATTORNEYS AT LAW
GLOUCESTER, VIRGINIA 23061

VIRGINIA: IN THE CIRCUIT COURT OF GLOUCESTER COUNTY

JIMMIE W. BROOKS, et als,

Plaintiffs

v.

JANICE MARIE BARBER, et als,

Defendants

*
*
*
*
*
*
*

Chancery No. 4459

PLAINTIFFS' INTERROGATORIES TO DEFENDANTS

TO: JANICE MARIE BARBER
c/o C. F. Hicks, Esquire
Martin, Hicks & Ingles, Ltd.
Attorneys At Law
P.O. Box 708
Gloucester, Virginia 23061

Plaintiffs, JIMMIE W. BROOKS, et als, by counsel, pursuant to Part Four of the Rules of the Supreme Court of Virginia, propound the following interrogatories to you to be answered in writing and under oath within twenty-one (21) days after service hereof.

DEFINITIONS AND INSTRUCTIONS

A. "Document" means any written, recorded, or graphic matter however produced or reproduced including without limitation letters, telegrams, memoranda, agreements, records, notes, correspondence, diaries, photocopies, photographs, tape recordings, checks, checkbook registers, savings account passbooks, account books, charts, and all other papers, writings and other data compilations, including drafts, originals and copies, in your possession, custody or control or of which you have knowledge, wherever located. If a document has been prepared in separate copies, or additional copies have been made, and the copies are not identical (or which by reason of subsequent modification of a copy by the addition of notations, are no longer identical), each nonidentical copy is a separate document.

R. Bruce Long,
P.C.
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B. "Identify" means when used in reference to any individual person to state his or her full name, address, and present or last known positions and business affiliation, and when used in reference to any other person (as that term is defined in paragraph C below) means to set forth the person's full name and address, to describe the type of person (e.g. corporation, limited partnership, or joint venture), and to give the state of the person's incorporation, if any. With respect to a document, "identify" means to indicate the type or character of the document (e.g. letter, memoranda, signed statement, notes, tapes, invoices, etc.) the title, if any, the date, the name and address of the author and addressee, the names and addresses of recipients of copies, and the person or persons who have custody or control of the document, and the present location of the document. If any such document was but no longer is in your possession or subject to your control, state what disposition was made of it and when. With respect to an account or other similar asset, "identify" means to identify the financial institution or other person (as that term is defined in paragraph C below) in which the account or other asset is kept, to set forth the address of said financial institution's particular branch in which the account or other asset is kept, to set forth the account or other identifying number of the account or other asset, to identify all documents which relate to the account or other asset and to identify all other persons having any legal or beneficial interest in the account or other asset.

C. The term "person" means any natural person, corporation, partnership, joint venture, association, group, financial institution, governmental agency or agent and any other entity.

D. The terms "you" and "your" and words of like import mean

*R. Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072*

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defendant, JANICE MARIE BARBER, her agents, employees, assigns, attorneys, accountants, partners and all other persons (as that term is defined in paragraph C above) acting on her behalf, or acting on behalf of such agents, employees, assigns, attorneys, accountants, partners or other persons.

E. These interrogatories are continuing in character so as to require you to provide supplemental answers if you obtain additional or different information prior to the trial of this suit.

INTERROGATORIES

1. Identify each person having personal knowledge of any fact relevant to the issues in this suit and separately with respect to each person set forth in detail the facts of which that person has personal knowledge.

Vernon Green has knowledge concerning the sale of the property to Janice Barber. Frank DeAlba, brick mason, has knowledge as to putting in foundation for Janice Barber's home. Persons with Southern Mobile Homes, Inc. who sold and delivered Janice Barber's home. Persons with Turlington Septic Systems who installed the septic system. Persons from Brown's Well Drilling Co. who installed wells for Janice Barber's home.

2. Identify all documents, the existence of which the defendant has knowledge and which are relevant to the issues in this suit.

The only document in existence which defendant has knowledge and is relevant to this suit, is the insurance policy on the home issued by Selected Risk Insurance Company, which is the homeowner's policy showing this as a regular dwelling. Policy No. H0699612, issued through Morgan Marrow Insurance Company. Coverage from November 16, 1985 to November 16, 1986.

3. Identify any expert witnesses defendant intends to call at the trial of this matter.

None.

*R. Bruce Long,
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23072*

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4. For every such expert, state the substance of any opinion to which he and/or she is expected to testify and the grounds for such opinion.

Not applicable.

5. Identify the company from whom you purchased your home, including the purchase price, date of purchase, date of delivery, and date of set up.

Southern Mobile Homes, Inc. The purchase price was \$42,795.00, purchased on February 13, 1985.

6. State whether or not your home was delivered to your lot and if so, what method it was transported to said lot.

My home was delivered to my lot. I was not present when delivered. When I first saw my home, it was on my lot with no wheels or anything in evidence, but was permanently installed on my lot.

7. State whether or not your home was delivered to your lot in two (2) or more sections.

I assumed that it was, but I was not present.

8. State whether or not at the time of delivery your home had a hitch attached for purposes of towing the said section or sections to your lot.

I have no knowledge of any hitch. When I saw my home on my lot, it was complete and permanently installed.

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P.C.*

*Attorney At Law
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9. State whether or not each section of your home rested upon an under carriage at the time of its delivery to your lot.

I have no knowledge of this.

10. State whether or not said undercarriage upon which each section rested consisted of metal pieces, wheels, springs, and axles.

I have no knowledge of this, but say that there is no undercarriage wheels, springs or axle under my home now or at any time that I have ever seen it on my lot.

11. State whether or not the said undercarriage is also from time to time referred to as a chassis.

I have no knowledge of this.

12. State whether or not your home was installed by being set on piers set on a solid surface.

My home was put on permanent piers and then a permanent brick foundation was also installed under my home.

13. State whether or not, if your home consists of two (2) units, whether they can be connected as a single dwelling unit.

My home is one single dwelling unit.

14. If your answer to the preceeding Interrogatory is in the affirmative, then state whether or not the two (2) halves of the unit once connected can be disconnected or unconnected.

To my knowledge, my home is now a single dwelling unit and cannot be unconnected or disconnected without permanent damage to my home.

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P.C.
Attorney At Law
P.O. Box 1069
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23072*

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15. If your answer to the preceeding Interrogatory is in the affirmative state whether or not each half could be separately transported to another site on an undercarriage consisting of metal pieces, wheels, springs and axles.

To my knowledge, my home is one unit on a permanent foundation and cannot now be transported. In addition, there is a permanent wood deck, approximately 8 x 10 feet installed at the rear of my home.

16. State whether or not your home has somewhere on it a certification label consisting of a three-letter designation followed by a six-digit designation.

Yes.

17. State whether or not your home is built to BOCA code requirements.

No.

18. State whether or not your home is built to HUD code requirements.

Yes.

19. Identify the general contractor who constructed your home as well as all subcontractors who performed work thereon.

Parkway House Inc., Turlington Septic Tank, Brown's Well Drilling, Frank DeAlba, Southern Mobile Homes, Inc.

*R. Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
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23072*

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20. State the date on which construction began on your home.

April 1, 1985.

21. State the date on which you occupied your home.

June 20, 1985.

22. State whether or not your home is a double wide mobile home.

My home is a manufactured single dwelling unit on a permanent foundation.

23. State whether or not your home is a trailer.

My home is not a trailer.

24. State whether or not your home can be seen from adjoining lots and from the roads adjoining those lots.

My home cannot be seen from adjoining lots. If you look in the private drive coming into my home, you can see my home.

25. If your answer to the previous Interrogatory is in the negative, state what obstructions exist that preclude sight of your home from both adjoining lots and the roads adjoining those lots.

Trees and shrubbery.

R. Bruce Long,
P.C.

Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072

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(804) 874-4477

26. State your estimate of the value of your home, excluding land.

My home and the appurtenances, excluding the land, is valued
at \$55,000.00

JIMMIE W. BROOKS, et als

BY


Of Counsel



R. BRUCE LONG, ESQ.
Attorney At Law
P.O. Box 1069
Hayes, Virginia 23072

CERTIFICATION

I hereby certify that a true copy of the foregoing Plaintiff's
Interrogatories to Defendant was ^{delivered} mailed this 5th day of September,
1986 to C. F. Hicks, Esq., Martin, Hicks & Ingles, Ltd., Attorneys At
Law, P.O. Box 708, Gloucester, Virginia 23072, counsel of record for
the defendant.


R. BRUCE LONG

R. Bruce Long,
P.C.
Attorney At Law
P.O. Box 1069
Hayes, Virginia
23072

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(804) 874-4477

Respectfully submitted,

Janice Marie Barber
Janice Marie Barber

STATE OF VIRGINIA

COUNTY OF GLOUCESTER, To-Wit:

This 17th day of October, 1986, personally appeared before me, MARSHA L. MORRAN, a Notary Public in and for the State of Virginia, Janice Marie Barber, who after being duly sworn, did affirm that the answers to the above interrogatories are true and correct to the best of her knowledge and belief.

COMMISSIONED AS
MARSHA D. LEWIS

Marsha L. Moran
Notary Public

My commission expires: March 27, 1987.

I certify that a copy of the foregoing Answers to Interrogatories was served on the plaintiff by mailing a copy thereof by first class mail this 20th day of October, 1986, to R. Bruce Long, Esquire, P. O. Box 1069, Hayea, Virginia 23072, counsel of record for the plaintiff.

Of Counsel

C. Flippo Hicks
Martin, Hicks & Ingles, Ltd.
P. O. Box 708
Gloucester, Virginia 23061

MARTIN, HICKS & INGLES, Ltd.
ATTORNEYS AT LAW
GLOUCESTER, VIRGINIA 23061

RECEIVED
AND FILED
Charles J. [Signature]
JUL 20 1987
Clerk of Circuit Court
Gloucester County, Va.

THOMPSON & McMULLAN

100 SHOCKOE SLIP

RICHMOND, VIRGINIA 23219

TELEPHONE (804) 649-7545

TELECOPIER (804) 780-1813

1101 KING STREET, SUITE 501

ALEXANDRIA, VIRGINIA 22314

TELEPHONE (703) 638-5525

TELECOPIER (703) 548-4585

TELEX 265016 OTESUR

July 27, 1987

Charles E. King, Jr., Clerk
Circuit Court of Gloucester
County
PO Box N
Gloucester, Virginia 23061

RE: Brooks, et al. v. Barber, et al.
Chancery No. 4459

Dear Mr. King:

Enclosed is a Notice of Filing of Transcript of Motion Proceedings which I would appreciate your filing with the other papers in this case.

Thank you for your cooperation in this matter.

Sincerely,



John F. Rick

JFR/bhw

Enclosure

CC: R. Bruce Long, Esquire
Herbert G. Smith, II, Esquire
Conway H. Shield, III, Esquire

RECEIVED
- AND FILED

JUL 29 1987

**Clerk of Circuit Court
Gloucester County, Va.**

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE COUNTY OF GLOUCESTER

JIMMIE W. BROOKS, et al.,

Plaintiffs,

v.

CHANCERY NO. 4459

JANICE MARIE BARBER, et al.,

Defendants.

NOTICE OF FILING OF TRANSCRIPT
OF MOTION PROCEEDINGS

This will serve as notice to all counsel that a transcript of the proceedings which occurred on May 14, 1987, before Judge G. Duane Holloway in the Circuit Court of York County, was mailed to the Clerk of the Court on July 21, 1987, by the Court Reporter.

NORRIS J. WILLIAMS
CATHY J. CAUBLE

By

John Rick
Of Counsel

John F. Rick
Thompson & McMullan
100 Shockhoe Slip
Richmond, Virginia 23219
(804) 649-7545

CERTIFICATE

I hereby certify that a true and exact copy of the foregoing Notice of Filing of Transcript of Motion Proceedings was mailed, postage prepaid, this the 27th day of July, 1987, to R. Bruce Long, Esquire, Counsel for the Plaintiffs, P. O. Box 1069, Hayes, Virginia 23072, and to Conway H. Shield, III, Esquire and Herbert G. Smith, II, Esquire, Jones, Blechman, Woltz & Kelly, P. C., Counsel for Sovran Mortgage Corporation, 2600 Washington Avenue, Suite 700, Newport News, Virginia.

John F. Rick
JOHN F. RICK

RECEIVED
AND FILED
Charles E. Terry, Jr.
JUL 29 1987
Clerk of Circuit Court
Charlottesville, Va.

Jones, Blechman, Woltz & Kelly, P.C.

Attorneys and Counselors at Law

2600 WASHINGTON AVENUE
P.O. BOX 78
NEWPORT NEWS, VIRGINIA 23607-0078
DIRECT DIAL NO. 928

ALLAN D. JONES, 1875-1954
DANIEL SCHLOSSER, 1915-1977
F.O. BLECHMAN, 1905-1986

HERBERT V. KELLY
RAYMOND H. SUTTLE
HARRY J. KOSTEL
JOHN T. TOMPKINS, III
EDWARD DWIGHT DAVID
CONWAY H. SHEILD, III
HERBERT V. KELLY, JR.
RICHARD B. DONALDSON, JR.
MERYL D. MOORE
ROBERT L. FREEMAN, JR.

OF COUNSEL
ARTHUR W. WOLTZ

ROBYN C. HYLTON
HERBERT G. SMITH, II
JAMES R. RICHARDS
MICHAEL B. WARE
JEANNE BYRUM SELPH
JAMES C. SMITH, JR.

804-245-2861
NORFOLK NO. 625-7332
OUR FILE NO.

August 5, 1987

Charles E. King, Jr., Clerk
Circuit Court of Gloucester
County
P.O. Box N
Gloucester, VA 23061

Re: **Brooks, et al. v. Barber, et al**
Chancery No. 4459


Dear Mr. King:

Enclosed is a Notice of Filing of Transcript of Motion Proceedings which I would appreciate your filing with the other papers in this case.

Thank you for your cooperation in this matter.

Very truly yours,

JONES, BLECHMAN, WOLTZ & KELLY, P.C.

By: 
Herbert G. Smith, II

HGS,II/pam
Enclosure
cc: R. Bruce Long, Esquire
John F. Rick, Esquire

RECEIVED
AND FILED

AUG 7 1987

Clerk of Circuit Court
Gloucester County, Va.

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF GLOUCESTER

JIMMIE W. BROOKS, et al.,

Plaintiffs,

v.

JANICE MARIE BARBER, et al.,

Defendants.

NOTICE OF FILING OF TRANSCRIPT
OF MOTION PROCEEDINGS

This will serve as notice to all counsel that a transcript of the proceedings which occurred on July 6, 1987, before Judge G. Duane Holloway in the Circuit Court of York County, was filed with the Clerk of the Court on July 28, 1987, by the Court Reporter.

This together with the transcripts of the other proceedings presently on file in this cause and the accompanying exhibits constitute the record in this case.

SOVRAN MORTGAGE CORPORATION

By: 
Of Counsel

Herbert G. Smith, II
Jones, Blechman, Woltz & Kelly, P.C.
2600 Washington Ave., Suite 700
Newport News, VA 23607

LAW OFFICES

JONES
BLECHMAN
WOLTZ & KELLY, P.C.
2600 Washington Avenue
Newport News, Va.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Filing Transcript of Motion Proceedings was mailed this 5th day of August, 1987, to R. Bruce Long, Esquire, P.O. Box 1069, Hayes, Virginia 23072 and John F. Rick, Esquire, 100 Shockoe Slip, Richmond, VA 23219.

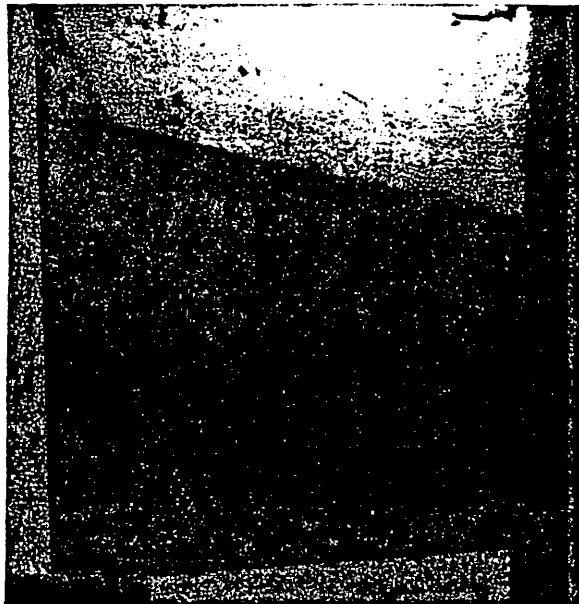

HERBERT G. SMITH, II

RECEIVED
AND FILED

AUG 7 1987 at 11:10 am
Clerk of Circuit Court
Gloucester County, Va.

ASSIGNMENTS OF ERROR

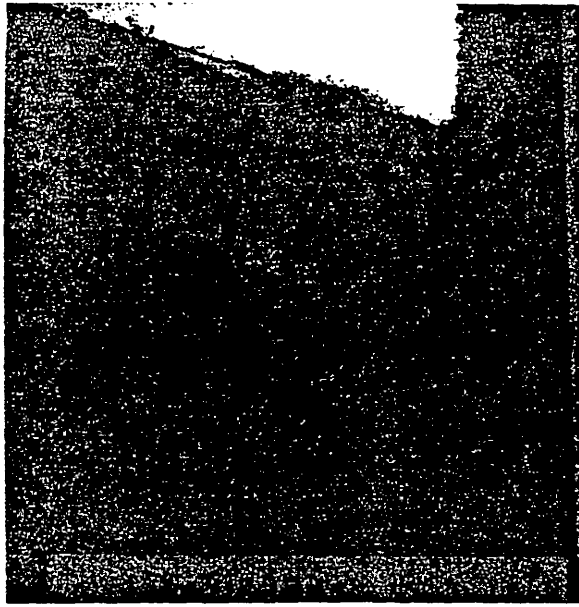
1. The trial court erred in refusing to join necessary and indispensable parties to the suit.
2. The trial court erred in enforcing restrictive covenants which are essentially ambiguous and unreasonable.
3. The trial court erred by not considering extrinsic evidence which clarified the meaning of the covenants.
4. The trial court erred in not finding that the Brooks plaintiffs had waived their right to relief.



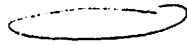
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Carolyn E. Sparger
March 25 87
-Sik/

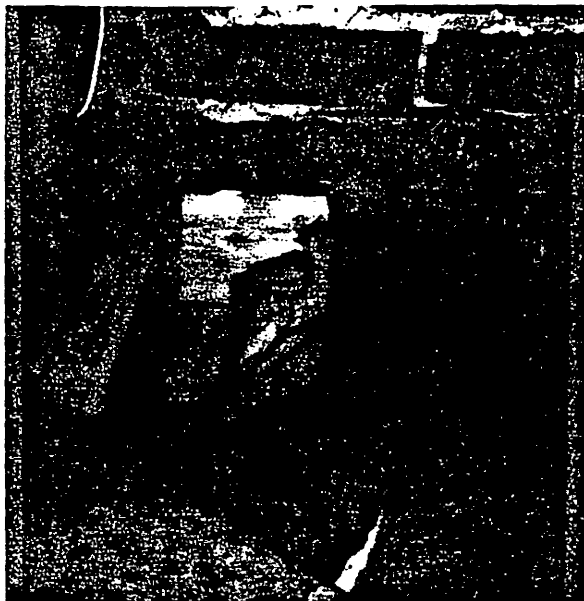


2



Carolyn L. Shaffer
March 25 87

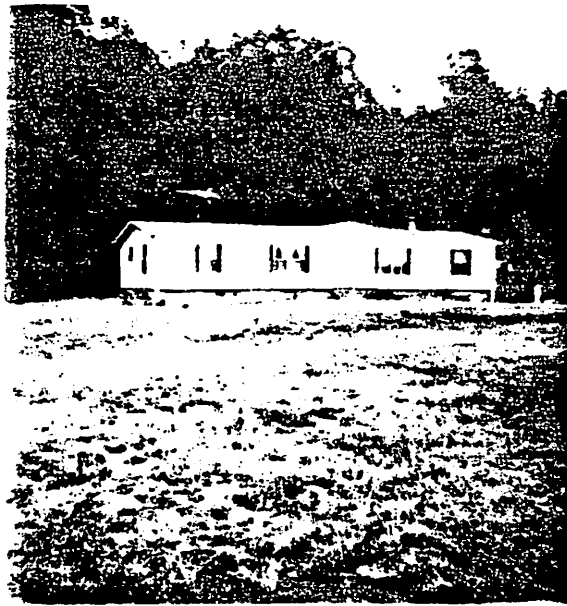
4/12/87



3

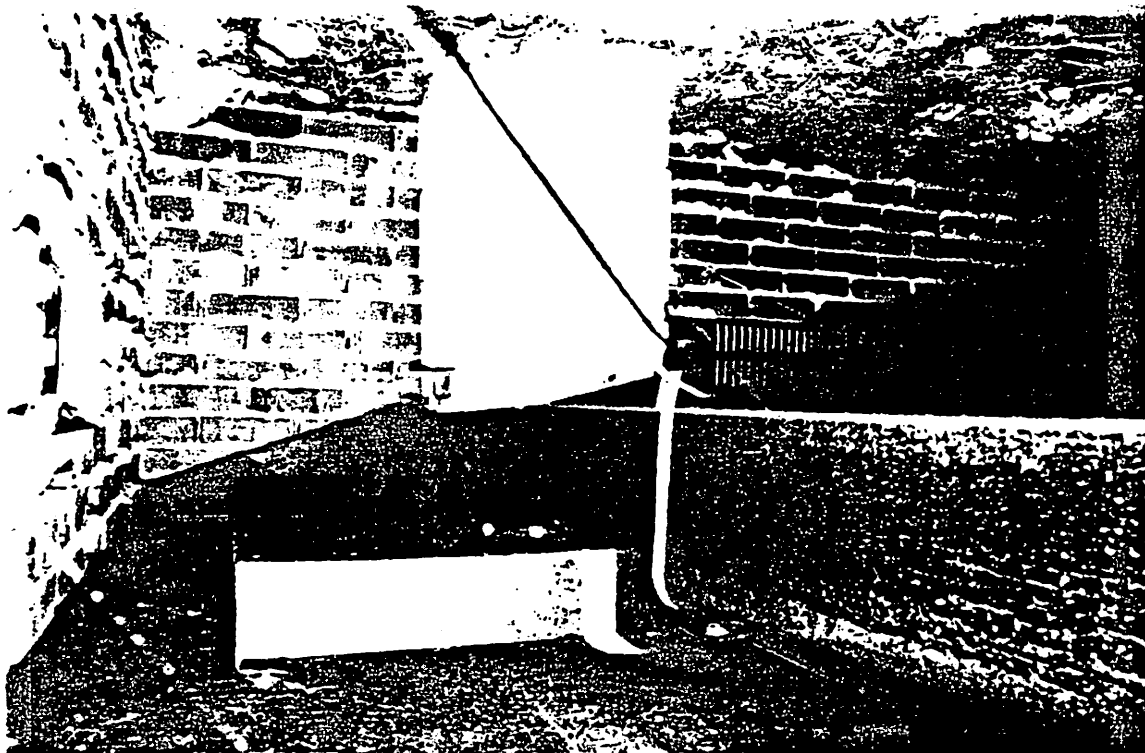
For ID ONLY

Cecily L. Thayer
March 25 87
9211



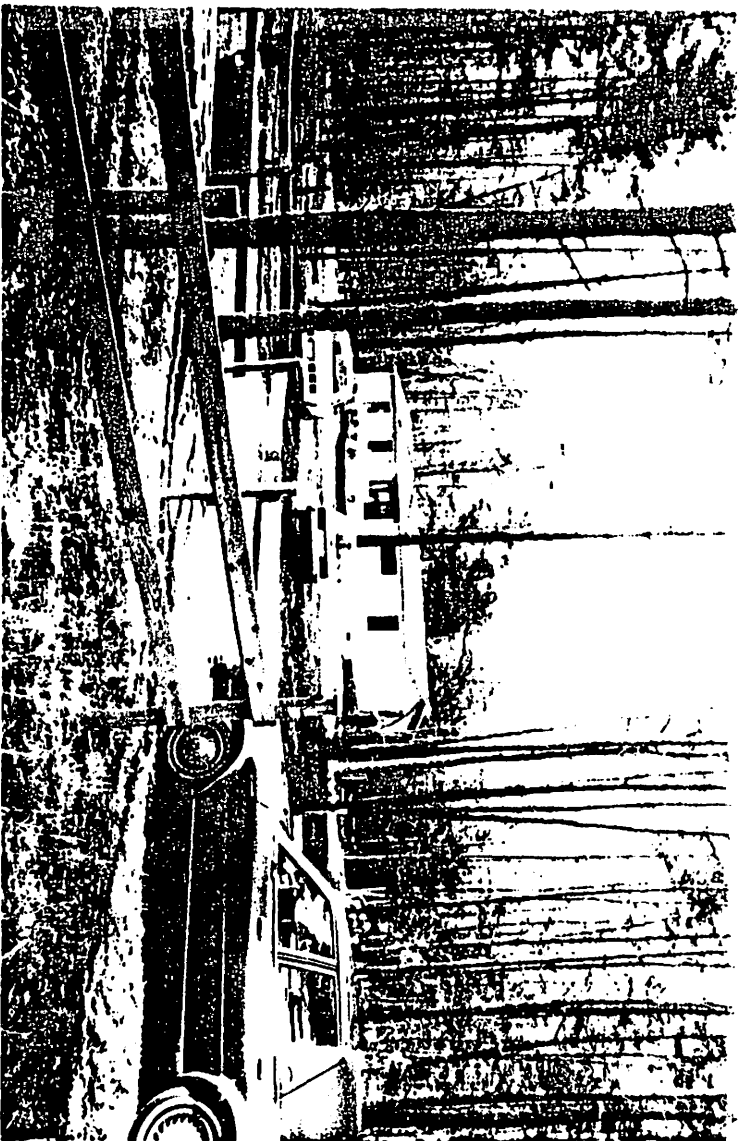
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Carolyn L. Shupe
March 25 87
2004



5

Call for the
man at the

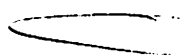
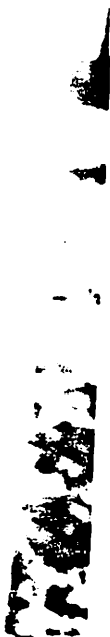
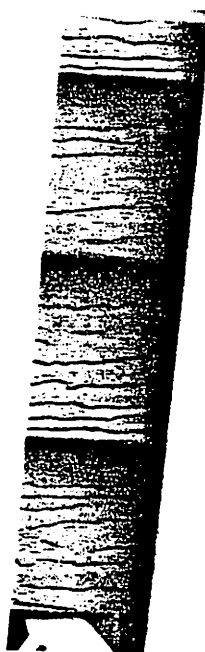
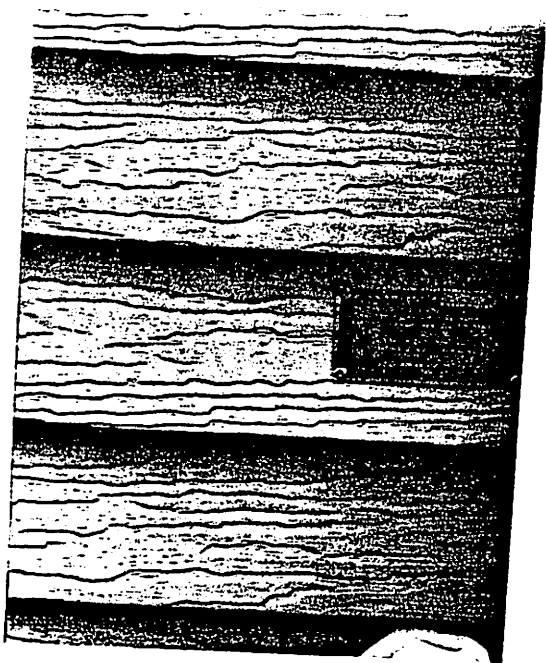


C

Quincy, Illinois
March 21
81

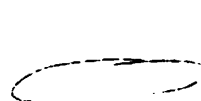


By the way
Thank you



8

Carlyle H. Hargrave
March 25, 1951



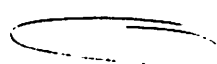
George L. King
Mar 25 87



C

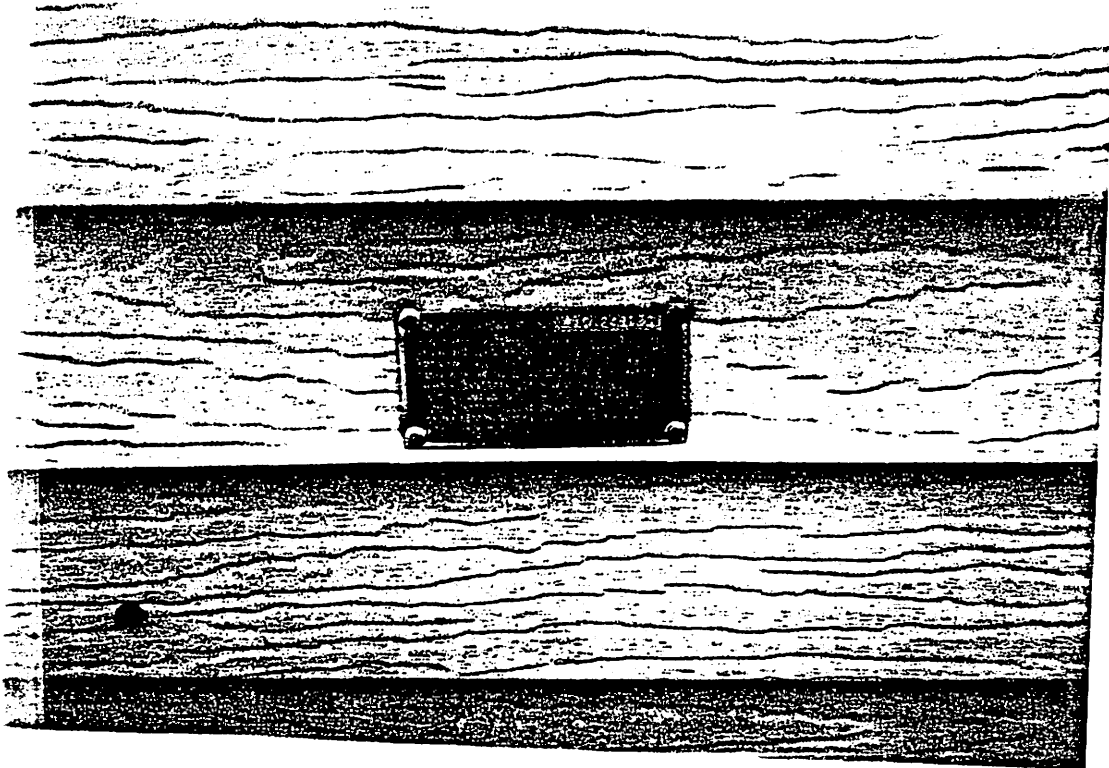
12

Barry L. Oberg
March 25 57



11

Carlyle L. Shupe
March 25 87



12

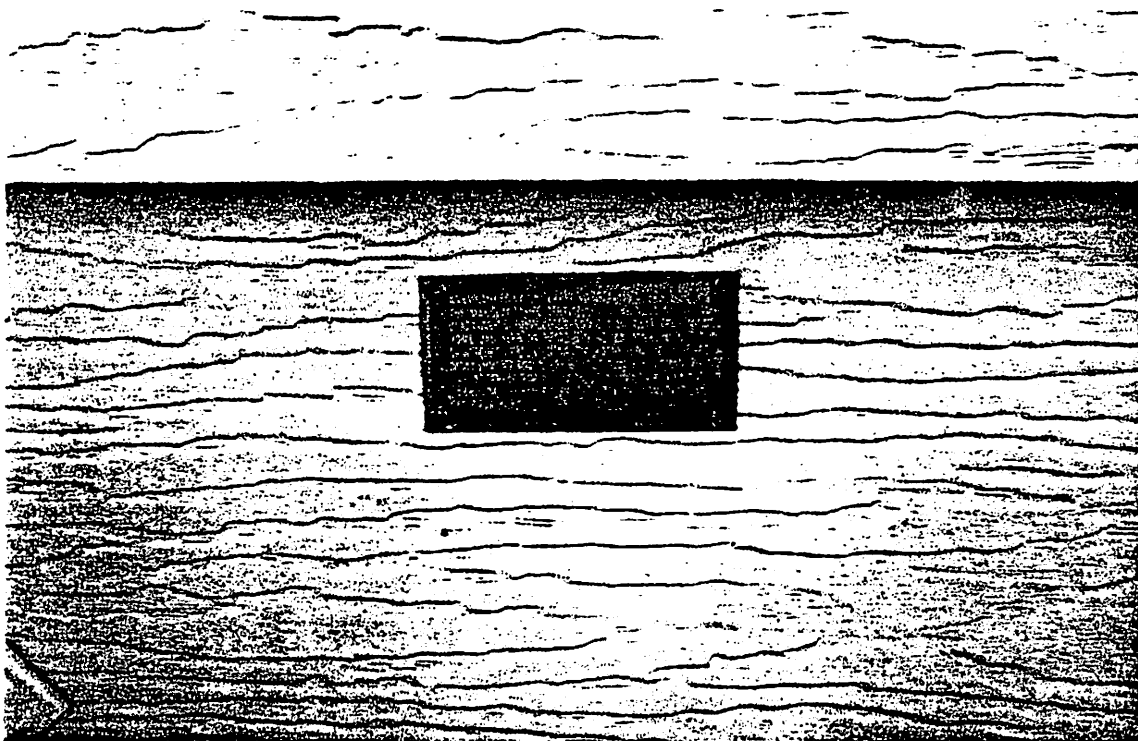
W. L. O'Keefe
March 25 87



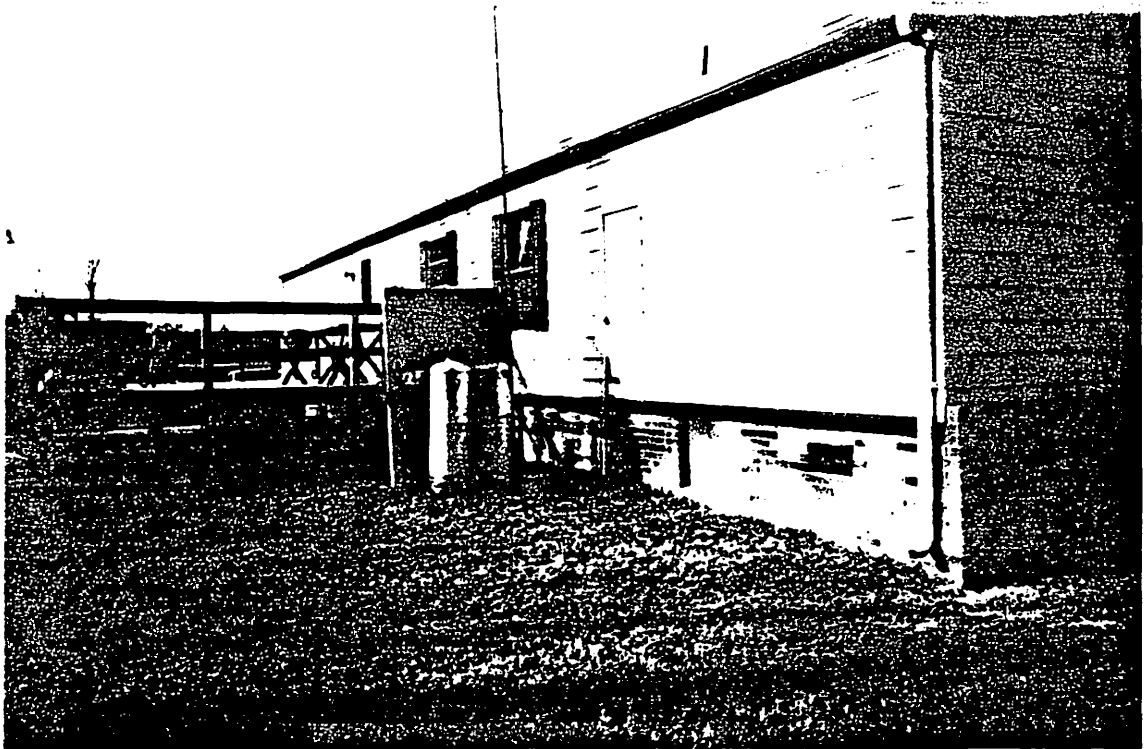
William L. Shaffer
March 25 1881



Geoffrey L. Shippey
March 25 1987



Indistinct handwritten text, possibly a signature or date.



*Early to bed
Early to rise*

DEED OF TRUST

THIS DEED, made this 31st day of October, in the year 1986, between

CATHY J. CAUBLE, divorced, unmarried

Grantors, and

J. MORRIS JOHNSON, a resident of the City of Newport News, Virginia, and

EMMA L. GUY, a resident of the County of Gloucester, Virginia,

Trustees:

WITNESSETH, that the said grantors do grant and assign with General Warranty to the said Trustees the following property, in the County of Gloucester

, county or city of

in the State of Virginia, to wit:

All that certain tract or parcel of land lying and being in Petaworth Magisterial District, Gloucester County, Virginia, containing 5.0000 acres, according to Plat of Survey hereinafter referred to and shown and designated as Lot 13 on Plat of Survey by C. F. Dawson, C.L.S., dated May 31, 1983, a copy of which is recorded in the Clerk's Office of the Circuit Court for Gloucester County, Virginia, in Plat book 258, page 375, and to which reference is here made for a more particular and accurate description of the land hereby conveyed. Together with a non-exclusive easement of right of way fifty (50) feet in width for the purposes of ingress and egress at all times to and from State Route No. 614.

Should the Veterans Administration fail or refuse to issue the guarantee of the loan secured by this mortgage under the provisions of the Servicemen's Readjustment Act of 1944, as amended, within sixty days of the date hereof, the mortgage herein may, at its option, declare all sums secured by this mortgage immediately due and payable.

CHATELS: range/oven; vent fan; wall to wall carpet. The express enumeration of the foregoing items shall not be deemed to limit or restrict the applicability of other language describing in general terms other property intended to be covered hereby.

COMMISSIONER OF REVENUE EXHIBIT 5
PLAT OF SURVEY
P.C.
B.C.
F.I.
E.C.
Cavalry Co. Change
March 25 1987

and also all fixtures now or hereafter attached to or used in connection with the property herein described.

IN TRUST to secure to the holder thereof the payment of a certain promissory note bearing even date herewith in the principal sum of SEVENTY-NINE THOUSAND AND NO/100-----

Dollars (\$79,000.00), with interest from date at the rate of NINE & ONE-HALF per centum (9.50 %) per annum on the unpaid balance until paid, and made by grantors, payable to the order of JOHNSON MORTGAGE COMPANY, a Virginia corporation at P. O. Box 1695, Newport News, Virginia 23601 or at such other place as the holder may designate in writing delivered or mailed to the grantors, said principal and interest being payable in monthly installments of SIX HUNDRED SIXTY-FOUR AND 27/100 Dollars (\$ 664.27) commencing on the first day of December

19 86, and continuing on the first day of each month thereafter until the note is fully paid, except that, if not sooner paid, the entire indebtedness shall be due and payable on the first day of November 2016. Privilege is reserved to prepay at any time, without premium or fee, the entire indebtedness or any

part thereof not less than the amount of one installment, or one hundred dollars (\$100.00), whichever is less. Prepayment in full shall be credited on the date received. Partial prepayment, other than on an installment due date, need not be credited until the next following installment due date or thirty days after such prepayment, whichever is earlier.

This deed of trust is also given to secure the reimbursement to the holder of said note and to Trustees, and any purchaser or purchasers under any sale or sales as provided by this Trust, for any and all costs and expenses incurred in respect thereto, including reasonable counsel fees incurred or paid on account of any litigation at law or in equity which may arise in respect to this Trust, or to indebtedness on the property heretofore mentioned, or in obtaining possession of the premises after any sale which may be made as hereinafter provided for.

This deed is made under the provisions of § § 55-58 and 55-59 of the Code of Virginia and shall be construed to impose and confer upon the parties hereto and the beneficiary hereunder all of the duties, rights and obligations prescribed in said § 55-59, and, in short form provided in § 55-60, the following provisions:

Deferred purchase money.
Exemptions waived.
Renewal or extension permitted.

Subject to all upon default.
Right of anticipation reserved.
Substitution of trustee permitted and such substitution may be made at the discretion of the beneficiary or beneficiaries for any reason whatsoever.
Any trustee may act.

1. In addition to the monthly payment of principal and interest, the grantors and their assigns will also pay to the holder of the note, as trustee, on the due date of each month until it is fully paid, a sum equal to the premiums that will next become due and payable on policies of fire and other hazard insurance plus taxes and assessments next due, on the mortgaged property (all as estimated by the holder of the note, and of which the grantors are notified), less all sums already paid therefor, divided by the number of months to elapse before one month prior to the date when such premiums, taxes, and assessments will become payable, such sums to be held by the holder of the note in trust to pay said premiums, taxes, and assessments, or, if necessary, apply the same toward payment of the principal and interest.

2. The aggregate of the amounts payable pursuant to the above paragraph and those payable on the note secured hereby, shall be paid in a single payment each month, to be applied to the following items in the order stated: (1) Taxes, assessments, fire and other hazard insurance premiums; (2) interest on the indebtedness secured hereby; and (3) amortization of the principal of said indebtedness. Any deficiency in the amount of such aggregate monthly payment shall, unless made good prior to the due date of the next such payment, constitute default under this Deed of Trust. At the option of the holder of the note, grantors will pay a "late charge" not exceeding four per centum of any installment when paid more than fifteen days after the due date thereof to cover the extra expense involved in handling delinquent payments, but such "late charge" shall not be payable out of the proceeds of any sale made to satisfy the indebtedness secured hereby unless such proceeds are sufficient to discharge the entire indebtedness and all proper costs and expenses secured thereby.

3. Grantors will continuously maintain hazard insurance, of such type or types and amounts as the holder of the note may from time to time require, on the improvements now or hereafter on said premises, and except when payment for all such premiums has theretofore been made under Paragraph Numbered 1 hereof, will pay promptly when due any premiums therefor. All insurance shall be carried in companies approved by the holder of the note and the policies and renewals thereof shall be held by the holder of the note and have attached thereto loss payable clauses in favor of and in form acceptable to the holder of the note. In event of loss the grantors will give immediate notice by mail to the holder of the note, who may make proof of loss if not made promptly by the grantors, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to the holder of the note instead of to the grantors and the holder of the note jointly, and the insurance proceeds, or any part thereof, may be applied by the holder of the note at its option either to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged. In event of foreclosure of this Deed of Trust, or other transfer of title to the said premises in extinguishment of the indebtedness secured hereby, all right, title, and interest of the grantors in and to any insurance policies then in force shall pass to the purchaser or grantees.

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

WITNESS the following signatures and seals.

Cathy J. Cauble (SEAL)
CATHY J. CAUBLE

_____ (SEAL)

_____ (SEAL)

_____ (SEAL)

STATE OF VIRGINIA,
CITY OF
COUNTY OF YORK

TO WIT:

I, Judith M. Klutz, a Notary Public for the city or county aforesaid in the State of Virginia, do certify that Cathy J. Cauble, whose name is signed to writing above, bearing date on the 31st day of October 19 86 has acknowledged the same before me in my County and State aforesaid.

Given under my hand and official seal this 31st day of October, 19 86.

My commission expires on the 23rd day of February, 1990.

Judith M. Klutz
Notary Public.



THIS Deed of Trust, with the certificate annexed thereto, was delivered to the Clerk of the Circuit Court of Gloucester County, Virginia, on the 7 day of November, 19 86, admitted to record at 9:20 o'clock A. M., and is recorded,

Teste: Charles E. King, Jr., Clerk
By: Charles E. King, Jr. Dep. Clerk

A Copy-teste:
Charles E. King, Jr., Clerk

By: Gene Speake Deputy Clerk

THIS DEED, made this 12th day of August, 1980, between BELROI FARMS, INCORPORATED, party of the first part; and RICHARD J. MARGASON and JENNIFER P. MARGASON, husband and wife, parties of the second part;

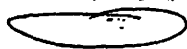
WITNESSETH: That the said party of the first part, for and in consideration of the sum of \$10.00 and other valuable consideration to it in hand paid at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey with General Warranty of Title and with English Covenants of Title unto the said RICHARD J. MARGASON and JENNIFER P. MARGASON, husband and wife, as tenants by the entireties with the right of survivorship as at common law, the following described property, together with all buildings and improvements thereon and all rights of way and appurtenances thereunto belonging, to-wit:

All that certain tract or parcel of land lying and being in Petsworth Magisterial District, Gloucester County, Virginia, containing 5.07 acres, more or less, according to Plat of Survey hereinafter referred to and shown and designated as Lot 3 on Plat of Survey by Charles F. Dawson, Certified Surveyor, dated August 4, 1980, a copy of which plat is attached hereto and made a part hereof, and to which reference is hereby made for a more accurate and particular description of said land.


For source of title see Deed from Vernon L. Green and Virginia R. Green to Belroi Farms, Incorporated, dated August 12, 1980, and recorded in the Clerk's Office of the Circuit Court of Gloucester County, Virginia, prior hereto.

THIS CONVEYANCE IS MADE subject to the following covenants, conditions and restrictions which shall run with the land and be binding upon the parties of the second part, their heirs and assigns, until June 1, 2000, at which time all or part of same may be extended for an additional 20 years with the written consent of a majority of the owners of the lots sold by the party of the first part:

1. Only one (1) single-family dwelling shall be placed on each lot, containing no less than One Thousand Three Hundred (1,300) square feet of finished floor area, exclusive of garages and porches. If the dwelling house be two (2) or more stories in height, it shall contain no less than One Thousand Seven Hundred (1,700) square feet of finished floor area, exclusive



Parris



14

Barker

Cassidy L. Shager
March 25 87

W. H. V.
36

Cassidy L. Shager
March 25 87

of garages and porches. A private garage and the usual outbuildings appurtenant to a dwelling shall also be permitted, provided that they are constructed of such material and style of architecture as shall be in keeping with the residence and shall be so located as to preserve, as far as reasonably can be done, the beauty and symmetry of each lot.

2. No lot, except Lot 1, shall be sold, conveyed, demised, leased or devised, except as a whole, undiminished entity of one (1) lot as shown on plat of survey to be referred to with each deed of conveyance from Vernon L. Green and Virginia R. Green, husband and wife.

3. No exterior walls, steps or foundations of any buildings shall be of exposed cinder block construction. If cinder block is used in the construction of steps or foundations, it shall be completely hidden from view by brick veneer. All exterior walls, steps and foundations shall in any event be constructed in a neat, workmanlike and tasteful manner and in no case shall exterior walls be of stucco construction.

4. No buildings or other structures shall be placed or erected closer than One Hundred Twenty-five (125) feet from the center of the fifty (50) foot road(s) adjoining any lot, nor closer than fifty (50) feet from the sidelines of said lot.

5. No lot or any part thereof shall be used for a shop, store, factory, place of business, or for any commercial purpose, including but not limited to, yard sales and other sales of any kind.

6. No structure of a temporary character, that is, a trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently if it can be seen from any adjoining lot or from the road(s) adjoining said lot except that a trailer may be occupied on a temporary basis by the owner of a lot during construction of a residence on said lot provided that said residence is constructed in a reasonable amount of time.

7. No motor vehicle shall be kept where it can be seen from an adjoining lot or from the road(s) adjoining said lot unless currently licensed with a current State of Virginia inspection sticker.

8. No animals, livestock or poultry of any kind shall kept, bred or maintained for any commercial purpose.

9. No part of any lot or any buildings heretofore or hereafter erected or moved thereon shall be used for any purpose or in any manner which will create a nuisance or make such use of said premises injurious or offensive to a residential neighborhood.

10. This conveyance is made together with and subject to rights of others in and to the unencumbered use of the easement of right(s) of way fifty (50) feet in width adjoining and encroaching upon said lot for ingress and egress to and from State Route No. 614, as shown on the aforesaid plat of survey, which right shall also include the right to improve said right of way.

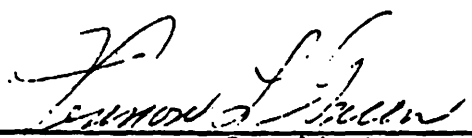
11. THIS CONVEYANCE IS FURTHER MADE subject to the condition and agreement that the party(ies) of the second part shall pay the party of the first part on or before January 30th of each year Sixty Dollars (\$60.00) for the repair and maintenance for the roads leading to and from State Route No. 614, and in consideration of said payment, the party of the first part agrees to maintain said roads through December 31, 1985, after which each owner of a lot contained in the land developed by the party of the first part shall be responsible for his prorata share of maintaining and repairing the roads serving said lot and the party of the first part shall be relieved of all further obligation regarding said repair and maintenance.

THIS CONVEYANCE IS FURTHER MADE subject to all covenants, conditions, restrictions and easements applicable to the title to the land herein conveyed.

WITNESS the following signature and seal:

BELROI FARMS, INCORPORATED

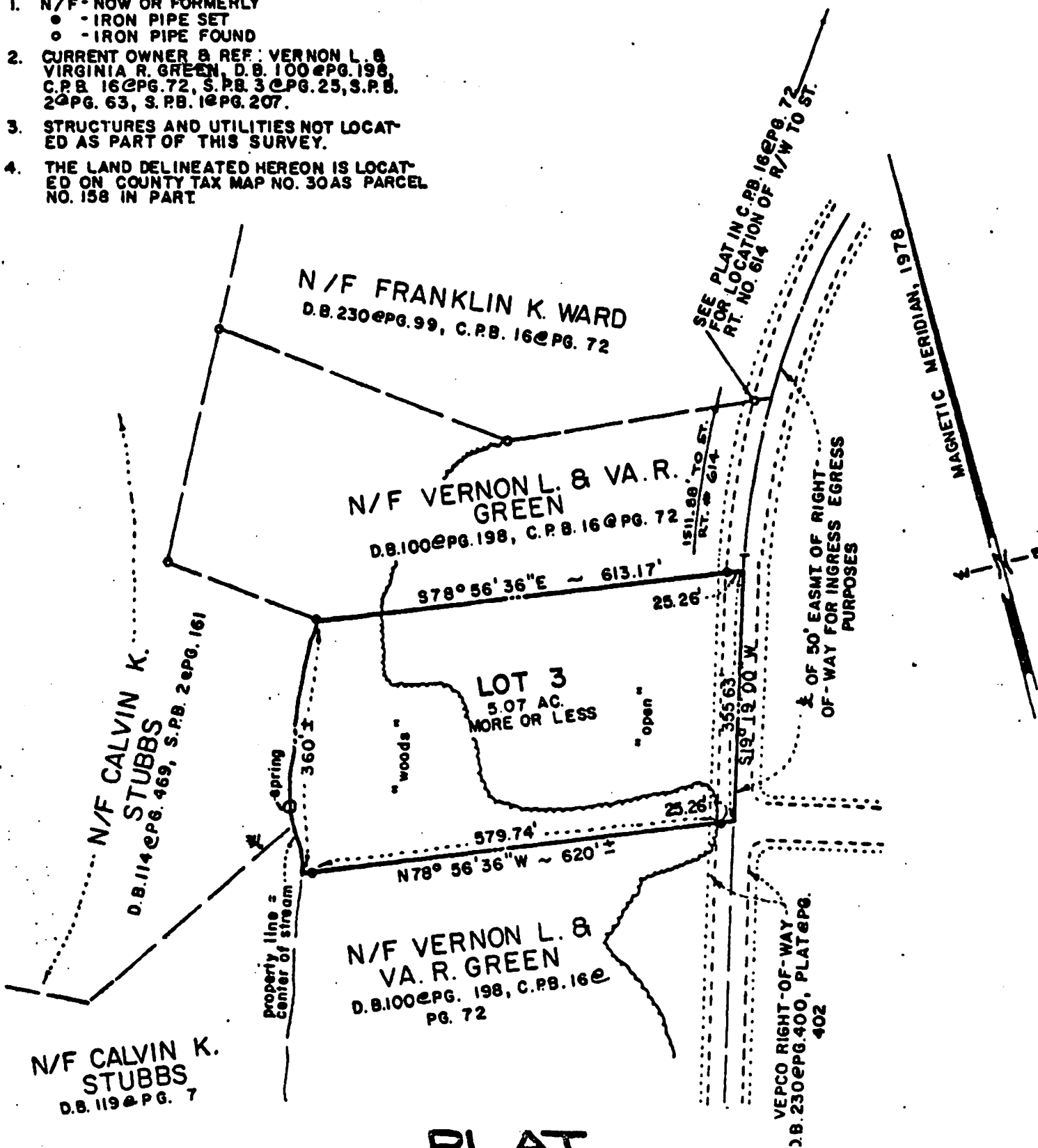
By


President

(SEAL)

NOTE:

1. N/F - NOW OR FORMERLY
 - - IRON PIPE SET
 - - IRON PIPE FOUND
2. CURRENT OWNER & REF: VERNON L. & VIRGINIA R. GREEN, D.B. 100@PG. 198, C.P.B. 16@PG. 72, S.P.B. 3@PG. 25, S.P.B. 2@PG. 63, S.P.B. 1@PG. 207.
3. STRUCTURES AND UTILITIES NOT LOCATED AS PART OF THIS SURVEY.
4. THE LAND DELINEATED HEREON IS LOCATED ON COUNTY TAX MAP NO. 30AS PARCEL NO. 158 IN PART.



PLAT

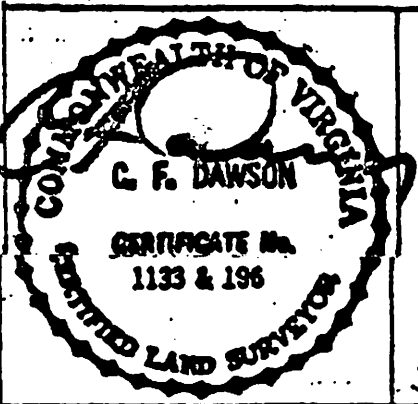
SHOWING SURVEY OF THE LAND TO BE CONVEYED TO
 RICHARD J. & JENNIFER P. MARGASON
 AND LOCATED AT BELROI IN THE PETSWORTH DISTRICT OF
 GLOUCESTER COUNTY, VIRGINIA

SCALE: 1" = 200'

AUGUST 4, 1980

376

C. F. DAWSON CERTIFIED SURVEYOR



NOTE:

I hereby certify that this plat represents a transit-tape survey and that, unless otherwise shown, there are no visible encroachments.

The property delineated on this plat is subject to all easements, right-of-ways, and restrictions of record.



CHARLES F. DAWSON, INC.

CERTIFIED LAND SURVEYOR

A PROFESSIONAL CORPORATION

P.O. BOX 895

GLOUCESTER, VIRGINIA 23061

TEL. (804) 693-2993

JOB NO. GM - 610-20-08L

puty Clerk

JOB NO. GM - 610-20-08L

THIS DEED AND PLAT with the certificates annexed thereto, ^{were} ~~was~~ delivered to the Clerk of the Circuit Court of Gloucester County, Virginia, on the 14 day of August, 1980, admitted to record at 2:36 o'clock P.M, and ^{are} ~~is~~ recorded, \$ 17.50 Tax imposed by Section 58-54.1 paid.

Teste: Charles E. King, Jr. Clerk

Examined 9/18/80

By Charles E. King, Jr. Deputy Clerk
B. Charles E. King, Jr. Deputy Clerk

36406 \$76,900 18 - GLOUCESTER MA CI 2.55F YSR1985
Address RT 23061 Lot 1/2 ACRE
Legal LOT 18 KERNS SUBD Map

O/T	Pt	Type	By	Assn	Pl	Rate
LR 1	11X20	AN	Yr	O/T		
DR 1	11X10	Pos	NEGO	Tax \$419	DisAuth NEGO	Maint
FR		Siding	VT	Roof AS	Floor CP VT	Wtrfrt ELC -60
KT 1		HP	PP CA	EL	Fire	LVR
DR 1		Gar	1C AT	FINISH	W/S CW	CSAH SC
DR 1		Wash Hs	X Refrig	Inst Wind	X Patio	Rugs
DR 1		Dry Hs	X Disposal	Strm Wind	Deck	X Pet
DR 1		Washer	Exhst Fan	X Strm Door	A Scr Porch	SubElig
DR 1		Dryer	SmokeAlarm	X Screens	X St Shed	RelLib
DR 1		Dishwasher	X Wind A/C	Batters	X Drapes	FIZone
DR 1		Stove	X Wet Bar	220 Volt	X Rods	Warranty
DR 1		Style 12 - RANC	CONTRM	3 BR 2 0	Access	VA
Level 1	1213	PROPOSED CONSTRUCTION NEAR COURTHOUSE. NEAT CONTEMPORARY RANCHER W/LOTS OF STYLE & NO WASTED SPACE. TIME TO PICK COLORS, CARPETS, CABINETS				
Baths	2	BUILDER WILL PAY CC OVER \$1000				
Double Bro		FISHHAVENPROPERTIES				
ApproxSoft	1400	Owner	TOM KAROW HOMES, INC			
Firm	VA COUNTRY R.E. 874-2707	Agent	DAVE ASKEWATY 766-0601			

40992 \$76,900 18 - GLOUCESTER MA CI 2.5 YSR1980
Address OFF RT. 616 Lot .5 ACRE
Legal LOT SEC IV OR V Subd HOLLY SPRINGS Map

O/T	Pt	Type	By	Assn	Pl	Rate
LR 1	11X20	AN	Yr	O/T		
DR 1	11X10	Pos	NEGO	Tax \$419	DisAuth NEGO	Maint
FR		Siding	VT	Roof AS	Floor CP VT	Wtrfrt ELC -60
KT 1		HP	PP CA	EL	Fire	LVR
DR 1		Gar	1C AT	FINISH	W/S WL	STAH SC
DR 1		Wash Hs	X Refrig	Inst Wind	X Patio	Rugs
DR 1		Dry Hs	X Disposal	Strm Wind	Deck	X Pet
DR 1		Washer	Exhst Fan	X Strm Door	A Scr Porch	SubElig
DR 1		Dryer	SmokeAlarm	X Screens	X St Shed	RelLib
DR 1		Dishwasher	X Wind A/C	Batters	X Drapes	FIZone
DR 1		Stove	X Wet Bar	220 Volt	X Rods	Warranty
DR 1		Style 17 - RANC	VICTORW	3 BR 2 0	Access	HP
Level 1	1213	A JOY TO SELL! SOME OF NUMEROUS FEATURES INCLUDE:				
Baths	2	RAY WINDOW, LEADED BEVELED GLASS FRONT DOOR, VAULTED CEILING & HEATILATOR FIREPLACE IN LR. DRESSING AREA				
Double Bro		IN MR. BUILDER TO PAY \$2500 CC TO INCLUDE POINTS				
ApproxSoft	1356	Owner	TOM KAROW HOMES, INC			
Firm	SHERWOOD REALTY 874-1544	Agent	MARTIN, JUDY 642-6816			



COMMONWEALTH Exhibit # 15

FILED OFF) File #

PLANNING)

DEFENDANT)

FILED Open Court

EDITH M. ELLIOTT, CLERK

Carole E. Dungey, D.C.

March 25, 1987

39571 \$77,500 18 - GLOUCESTER MA CI 3 YSR1985
Address - RT. 614 Lot 5.07 AC.
Legal LOT 19 Subd BELROI FARMS Map

O/T	Pt	Type	By	Assn	Pl	Rate
LR 1	16X22	AN	Yr	O/T		
DR 1	9X9	Pos	NEGO	Tax \$158	DisAuth NEGO	Maint 0
FR		Siding	AL	Roof AS	Floor CP VT	Wtrfrt ELC
KT 1	11X13	HP	FA PP CA	EL	Fire	LVR
DR 1	10X13	Gar		W/S ST	Att	Fin GI FH CV
DR 1	10X13	Wash Hs	X Refrig	Inst Wind	X Patio	Rugs
DR 1	13X15	Dry Hs	X Disposal	Strm Wind	Deck	X Pet
DR 1		Washer	Exhst Fan	X Strm Door	A Scr Porch	SubElig
DR 1		Dryer	SmokeAlarm	X Screens	X St Shed	RelLib
DR 1		Dishwasher	X Wind A/C	Batters	X Drapes	FIZone
DR 1		Stove	X Wet Bar	220 Volt	X Rods	Warranty
DR 1		Style 10 - RANC	UNKNOWN	3 BR 2 0	Access	LA
Level 1	1213	BEAUTIFUL SECLUDED WOODED ACREAGE WITH 1985 PARKWAY				
Baths	2	DOUBLEWIDE ON BRICK & STUCCO FOUNDATION. LOVELY HOME				
Double Bro		TO SHOW CLIENT LOOKING FOR SPECIAL HOME WITH LAND AT				
ApproxSoft	1470	Owner	JAN BARBER 693-5813			
Firm	CALE REALTY 642-3592	Agent	SIMS, SHARON 642-3126			

39571 RT. 614

- *QUALITY KNOTTY PINE KITCHEN CABINETS WITH COOKTOP CENTER ISLAND, PANTRY. SEPARATE UTILITY ROOM WITH CABINETS.
- *GREAT ROOM HAS BEAMED CATHEDRAL CEILING, CEILING FAN, BUILT IN WET BAR & WOOD CABINETS. RAISED HEARTH FP. WITH BLOWER FAN, WOOD MANTEL. WOOD CABINETS & BOOKCASES ON BOTH SIDES OF FIREPLACE, ALSO BUILT-IN STEREO & TAPE PLAYER WITH SPEAKERS.
- *SUNROOM (13X15) OFF GREAT ROOM WITH INDOOR/OUTDOOR CARPET AND CEILING FAN.
- *MASTER BEDROOM HAS CATHEDRAL CEILING WITH CEILING FAN, LARGE WALK-IN CLOSETS (M.BR DRAPES DO NOT CONVEY). FULL BATH WITH DOUBLE VANITY SINKS AND GARDEN STEP-DOWN TUB.
- *DIRECTIONS: RT. 17 N. TO RT. 614 L.A.T WALTER REEDS BIRTHPLACE TAKE DIRT RD. DIRECTLY TO LEFT, GO TO FORK AND BEAR TO LEFT, GO TO END TO SIGN. KEY WITH LA.

40648 \$77,500 18 - GLOUCESTER MA CI 3 YSR1983
Address RT 1030 Lot .48 ACRE
Legal LOT 10 Subd FOX MILL RUN Map

O/T	Pt	Type	By	Assn	Pl	Rate
LR 1		AN	Yr	O/T		
DR 1		Pos	CLOSING	Tax \$400	DisAuth NEG	Maint
FR		Siding	AL	Roof AS	Floor CP VT	Wtrfrt ELC -60
KT 1		HP	PP CA	EL	Fire	LVR
DR 1		Gar		W/S WL	STAH SC	Fin GI FH CV
DR 1		Wash Hs	X Refrig	Inst Wind	X Patio	Rugs
DR 1		Dry Hs	X Disposal	Strm Wind	Deck	X Pet
DR 1		Washer	Exhst Fan	X Strm Door	A Scr Porch	SubElig
DR 1		Dryer	SmokeAlarm	X Screens	X St Shed	RelLib
DR 1		Dishwasher	X Wind A/C	Batters	X Drapes	FIZone
DR 1		Stove	X Wet Bar	220 Volt	X Rods	Warranty
DR 1		Style 21 - 2STY	COL.	3 BR 2 1	Access	LA SP
Level 1	1213	FINE COLONIAL LOCATED ON BEAUTIFULLY WOODED				
Baths	0	CORNER LOT. GREAT FLOOR PLAN EXCELLENT COND.				
Double Bro		CLOSE TO SHOPPING & SCHOOLS ONLY 12 MILES FROM				
ApproxSoft	1444	Owner	DAVID FOLEY			
Firm	REMP 874-2030/642-9236	Agent	KAREN FOLEY 642-6147			

40600 \$78,400 18 - GLOUCESTER MA CI 3 YSR1986
Address RT. 1986736 Lot 3/4 AC+
Legal LOT 8 Subd QUEENS ESTS. Map C10

O/T	Pt	Type	By	Assn	Pl	Rate
LR 1	12500	Pt	207,961	Type C	By CSHPK NTL	63399435
DR 1		AN	Yr	O/T		
DR 1		Pos	CLOSING	Tax \$453	DisAuth NEG.	Maint
FR		Siding	BR WO BL	Roof AS	Floor CP VT	Wtrfrt GAS -30
KT 1		HP	PP CA	EL	Fire	LVR
DR 1		Gar		W/S WL	STAH SC	Fin GI FH CV
DR 1		Wash Hs	X Refrig	Inst Wind	X Patio	Rugs
DR 1		Dry Hs	X Disposal	Strm Wind	Deck	X Pet
DR 1		Washer	Exhst Fan	X Strm Door	A Scr Porch	SubElig
DR 1		Dryer	SmokeAlarm	X Screens	X St Shed	RelLib
DR 1		Dishwasher	X Wind A/C	Batters	X Drapes	FIZone
DR 1		Stove	X Wet Bar	220 Volt	X Rods	Warranty
DR 1		Style 11 - RANC	COL.	3 BR 1 0	Access	LA CO
Level 1	1213	HOME & BUSINESS IN GOOD LOCATION 2 UNFIN RMS.				
Baths	1	OPENED BACK YARD NEW STR G. BLDG. HOME & STORE				
Double Bro		IN EXCLT. COND. PERFECT FOR DAY CARE OR MANY				
ApproxSoft	2880	Owner	IRVING & ANNIE FIELDS			
Firm	REMP 874-2030/642-9236	Agent	NANCY PANCOAST 725-5444			