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VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

MICHAEL S. PIGOTT

and

PATRICIA R. PIGOTT,

Plaintiffs

v.

EDNA MORAN
4330 Old Cave Spring Road, S.W.
Roanoke, Virginia

LEMON and LAMBTON, Inc.
4330 Old Cave Spring Road
Roanoke, Virginia

FLORA REALTY, Inc.
3807 Brandon Avenue, S.W.
Roanoke, Virginia

NORRIS & JONES Construction Co., Inc.
Serve: L. ELWOOD NORRIS
3818 Parklane S.W.
Roanoke, Virginia,

Defendants

MOTION FOR JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs, Michael S. Pigott and Patricia R. Pigott, hereby move this Court for judgment and award of execution against Edna Moran, Lemon and Lambdon, Inc., Flora Realty, Inc., and Norris & Jones Construction Co., Inc., in the sum of \$50,000 for the following:

- (1) That the plaintiffs herein are residents of and homeowners within the County of Roanoke, Virginia.
- (2) That the defendant, Edna Moran, is an employee and agent of the defendant Lemon and Lambdon Realty, Inc., a corporation located in the County of Roanoke.

Attest: *Virginia m...* Clerk

June Buehler D.C.

Writ Tax 2.00
 Fee 25.00
 Total Paid 30.00

(3) That Lemon and Lambdon is a realty corporation doing business in the County of Roanoke with offices located in Roanoke County.

(4) That Flora Realty is a realty corporation located in the City of Roanoke and doing business in the County of Roanoke, Virginia. Further that officers, owners and employees of Flora Realty are simulanteously officers, employees and agents of the defendant, Norris & Jones Construction Co., Inc.

(5) Norris & Jones Construction Co., Inc., is a construction company located at 3818 Parklane, S.W., Roanoke, Virginia, and doing business within the County of Roanoke, Virginia. Further, Norris & Jones Construction Co., Inc., are simulanteously officers, employees and agents of the defendant, Flora Realty, Inc.

(6) That in February, 1980, the plaintiffs herein contracted to purchase property known as 8240 Waterfall Drive, an incomplete building under construction in the County of Roanoke, Virginia, and thereafter in May, 1980, closed title on said premises.

(7) That the defendant Norris & Jones Construction Co., Inc., was the owner of said property and the construction company building said home and the sellers to the plaintiffs herein.

(8) That the defendant Norris & Jones Construction Co., Inc., contracted with the defendant Flora Realty, Inc., to place on multiple listing the brokerage for the sale of the aforementioned property located at 8240 Waterfall Drive.

(9) That Lemon and Lambdon, through its agent and employee, the defendant Edna Moran, showed to the plaintiffs the property 8240 Waterfall Drive and represented to said plaintiffs that the neighboring and abutting property was residentially zoned and that residential construction would commence in the foreseeable future.

(10) That in truth and in fact, the abutting property was commercially zoned and scheduled for commercial development and said commercial development commenced three days after the plaintiffs herein moved into the 8240 Waterfall Drive residence.

(11) That the defendant, Edna Moran, was negligent in failing to ascertain that the abutting property was, in fact, commercially and industrially zoned.

(12) That the defendant Lemon and Lambdon was negligent in that they failed to ascertain and to inform their agents that the property abutting 8240 Waterfall Drive was commercially and industrially zoned.

(13) That Flora Realty was negligent in failing to ascertain the true character of the abutting abutting property being industrially and commercially zoned.

(14) That Norris & Jones Construction Co., Inc., was negligent in representing to the defendant Flora Realty that the property abutting 8240 Waterfall Drive was industrially and commercially zoned.

(15) That as a result of the negligence, here and above described, committed by the defendants herein or by reason of any act of omission by any of the defendants

herein, the plaintiffs have suffered the loss of quiet enjoyment of the property by them believing the same to be a residential community and the plaintiffs have incurred damages financially in that the property 8240 Waterfall Drive was not as valuable insofar as it was abutting commercial property, therefore, the plaintiffs have sustained not only the loss of their quiet enjoyment of property but also the difference between the value of the land were it abutting residential property and its actual value being abutting to commercially zoned property.

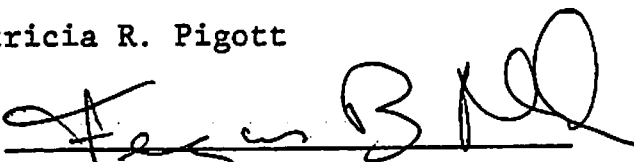
WHEREFORE, the plaintiffs herein seek damages against the defendants jointly and severly in the amount of \$50,000.

Respectfully submitted,

Michael S. Pigott

Patricia R. Pigott

By:



Of Counsel

FERGUS B. NORTON, Esquire
4334 Brambleton Avenue, S.W.
Roanoke, Virginia 24018

employees and agents of the defendant, Norris & Jones Construction Co., Inc.

(5) Norris & Jones Construction Co., Inc., is a construction company located at 3818 Parklane, S.W., Roanoke, Virginia, and doing business within the County of Roanoke, Virginia. Further, Norris & Jones Construction Company, Inc., are simulanteously officers, employees and agents of the defendant, Flora Realty, Inc.

(6) That in February, 1980, the plaintiffs herein contracted to purchase property known as 3240 Waterfall Drive, an incomplete building under construction in the County of Roanoke, Virginia, and thereafter in May, 1980, closed title on said premises.

(7) That the defendant, Norris & Jones Construction Co., Inc., was the owner of said property and the construction company building said home and the sellers to the plaintiff herein.

(8) That the defendant Norris & Jones Construction Co., Inc., contracted with the defendant, Flora Realty, Inc., to place on multiple listing the brokerage for the sale of the aforementioned property located at 8240 Waterfall Drive.

(9) That Lemon and Lambdon, through its agent and employee, the defendant Edna Moran, showed to the plaintiffs the property 8240 Waterfall Drive and represented to said plaintiffs that the neighboring and abutting property was residentially zoned and that residential construction would commence in the foreseeable future. Further, that

the plaintiffs relied upon the representations made to them by the defendant, Edna Moran, and were in truth of the facts made known to the plaintiffs regarding the true nature of the zoning of the abutting property, the plaintiffs herein would not have contracted for nor closed upon the premises known as 8240 Waterfall Drive.

(10) That the plaintiffs herein specifically requested of the defendant, Edna Moran, to be shown perspective home purchases that would be in a completely residential community where they could have quiet enjoyment of a home environment for themselves and their child and said representations of quiet enjoyment were made negligently by the defendant, Edna Moran, when in fact, shortly after the plaintiffs moved into the said residence, commercial development commenced pursuant to the commercial zoning for said property abutting to the plaintiff's residence at 8240 Waterfall Drive.

(11) That the defendant Edna Moran was negligent in failing to ascertain that the abutting property was, in fact, commercially and industrially zoned; and that the defendant Edna Moran was also negligent in representing unto the plaintiffs that they would have quiet enjoyment of their residential property.

(12) That the defendant Lemon and Lambdon was negligent in that they failed to ascertain and to inform their agents that the property abutting 8240 Waterfall Drive was commercially and industrially zoned and that said commercially and industrially zoning would interfere with the quiet enjoyment of perspective customers.

(13) That Flora Realty was negligent in failing to ascertain the true character of the abutting property being industrially and commercially zoned and that said commercially and industrially zoning would interfere with the quiet enjoyment of perspective customers.

(14) That Norris & Jones Construction Co., Inc., was negligent in representing to the defendant Flora Realty that the property abutting 8240 Waterfall Drive was industrially and commercially zoned and that said commercially and industrially zoning would interfere with the quiet enjoyment of perspective customers.

(15) That as a result of the negligence here and above described, committed by the defendants herein or by reason of any act of negligent omission to reveal the true identity of the zoning to the abutting properties by any of the defendants herein, the plaintiffs have suffered the loss of quiet enjoyment of the property by them believing the same to be a residential community and the plaintiffs have incurred damages financially in that the property 8240 Waterfall Drive was not as valuable insofar as it was abutting property, commercially and industrially zoned, therefore, the plaintiffs have sustained not only the loss of their quiet enjoyment of property but also the difference between the value of the land were it abutting residential property and its actual value being abutting to commercially and industrially zoned property.

WHEREFORE, the plaintiffs herein seek damages against the defendants jointly and severally in the amount of FIFTY THOUSAND DOLLARS (\$50,000.00).

Respectfully submitted,

Michael S. Pigott

Patricia R. Pigott

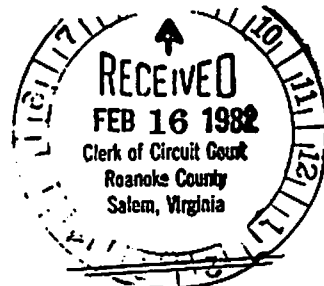
By: Fergus B. Norton
Of Counsel

FERGUS B. NORTON
2149 Electric Rd., SW
Roanoke, Virginia 24018

C E R T I F I C A T E


I, Fergus B. Norton, hereby certify that a true and correct copy of the foregoing Amended Motion for Judgment was mailed to William B. Hopkins, Jr., Esq., counsel for Edna Moran and Lemon and Lambdon, Inc., Sixth Floor Boxley Building, 416 South Jefferson Street, P.O. Box 13366, Roanoke, Va. 24033; Robert B. Goodall, counsel for Norris & Jones Construction Co., Inc., P.O. Box 177, Stafford, Virginia 22554-0177; and Gary E. Tegenkamp, counsel for Flora Realty, Inc., Seven-O-Seven Building, P.O. Box 12247, Roanoke, VA 24024, this 12th day of February, 1982.

Fergus B. Norton



PLEA OF THE STATUTE OF LIMITATIONS

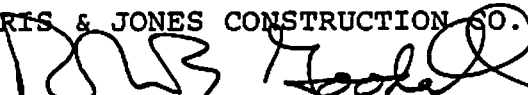
The defendant, Norris & Jones Construction Co., Inc., by counsel, pleads that any claim against it in the plaintiffs' Amended Motion For Judgment is barred by the applicable statute of limitations and the plaintiffs' Amended Motion For Judgment should be dismissed.

NORRIS & JONES CONSTRUCTION CO.,
INC.
BY: 
Robert B. Goodall, Of Counsel

PLEA OF ESTOPPEL

The defendant, Norris & Jones Construction Co., Inc., by counsel asserts that with full knowledge of the true nature of the zoning of all abutting property, the plaintiffs closed upon the contract described in the Amended Motion For Judgment and the plaintiffs are estopped to assert any claim upon such contract.

This defendant further asserts that the plaintiff, Patricia Pigott, has testified under oath in depositions that both plaintiffs were fully aware of the true nature of the zoning of all abutting property prior to closing; and, therefore, the plaintiffs are estopped from asserting, as they do in Paragraph 9 of the Amended Motion For Judgment that they would not have closed had they known the true zoning of adjoining property.

NORRIS & JONES CONSTRUCTION CO., INC.
BY: 
Robert B. Goodall, Of Counsel

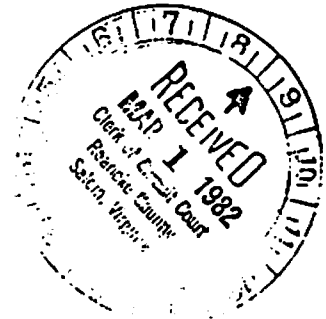
DEMURRER

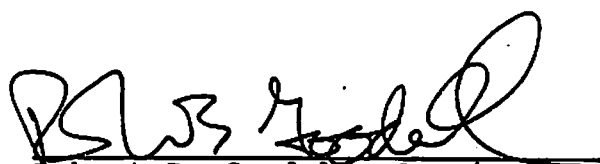
The defendant, Norris & Jones Construction Co., Inc., demurs to the plaintiffs' Amended Motion For Judgment inasmuch as the same fails to state a cause of action against this defendant and specifically states as follows:

- A. The Amended Motion For Judgment fails to allege that this defendant or any agent of this defendant made any misrepresentation to the plaintiffs.
- B. The Amended Motion For Judgment fails to state that this defendant covenanted quiet enjoyment or that the plaintiffs have been evicted from their property.
- C. The Amended Motion For Judgment conclusively shows that this defendant fully performed its contract with the plaintiffs.
- D. The Amended Motion For Judgment does not state any claim upon which money damages are awardable in an action of law.

NORRIS & JONES CONSTRUCTION CO., INC.

BY: 
Robert B. Goodall, Of Counsel

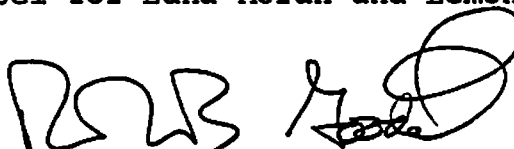




Robert B. Goodall, Esquire
P. O. Box 177
Stafford, Virginia 22554
Counsel for Norris & Jones
Construction Co., Inc.

CERTIFICATE OF MAILING

Pursuant to Rule 1:12, I certify that a true copy of the foregoing Plea of the Statute of Limitations, Plea of Estoppel and Demurrer was mailed, postage prepaid, this 25th day of February, 1982, to Gary E. Tegenkamp, Esquire, WOODWARD, FOX & WOOTEN, Seven-O-Seven Building, P. O. Box 12247, Roanoke, Virginia, 24024-2247, counsel for Flora Realty, Inc.; Fergus B. Norton, Esquire, 4334 Brambleton Avenue, S.W., Roanoke, Virginia, 24018, counsel for plaintiffs; and William B. Hopkins, Jr., Esquire, MARTIN, HOPKINS, LEMON AND CARTER, P. O. Box 13366, Roanoke, Virginia, 24033, counsel for Edna Moran and Lemon and Lambdon, Inc.



ROBERT B. GOODALL

PLEA OF THE STATUTE OF LIMITATIONS

Defendants Lemon and Lambdon, Inc. and Edna Moran, by counsel, file this as their plea of the statute of limitations and say that all or a part of the causes of action set forth in the plaintiffs' amended motion for judgment are barred by the applicable statute of limitations and the plaintiffs' amended motion for judgment should be dismissed.

DEMURRER

COME NOW defendants Lemon and Lambdon, Inc. and Edna Moran, by counsel, and demur to the amended motion for judgment previously filed herein on the following grounds:

1. Plaintiffs are suing for loss of their quiet enjoyment of property but fail to allege that plaintiffs have either been actually or constructively evicted from their property.
2. The amended motion for judgment does not state a cause of action for negligence against defendants because under the facts alleged, defendants do not owe plaintiffs a duty to ascertain the zoning of the property plaintiffs sought to buy.
3. The amended motion for judgment does not state a cause of action because the facts alleged demonstrate that plaintiffs and defendants had equal access to information as to zoning so that plaintiffs were not entitled to rely on any representations made by defendants.
4. The amended motion for judgment does not state a cause of action because the facts alleged demonstrate that any

representations made by defendants as to plaintiffs' quiet enjoyment of the residential property were mere matters of opinion.

WHEREFORE, Lemon and Lambdon, Inc. and Edna Moran, by counsel, respectfully request this Court to dismiss this action and to award to defendants any costs and attorney's fees incurred herein.

GROUNDS OF DEFENSE

COME NOW defendants Lemon and Lambdon, Inc. and Edna Moran, by counsel, and in reply to the amended motion for judgment previously filed herein states as follows:

1. To the best of defendants' knowledge and the information readily available to defendants, the allegations of paragraphs 1, 3, 6, 7 and 8 of the amended motion for judgment are admitted.

2. The allegations of paragraphs 2, 10, 13, 14 and 15 are denied.

3. Defendants admit Flora Realty is a realty corporation located in the City of Roanoke and doing business in the County of Roanoke, Virginia, as alleged in paragraph 4 of the amended motion for judgment. However, defendants have insufficient knowledge to reply to the allegation that the officers, owners and employees of Flora Realty are simultaneously officers, employees and agents of the defendant, Norris & Jones Construction Co., Inc. and therefore, deny same and call for strict proof thereof.

4. Defendants admit Norris & Jones Construction Co., Inc. is a construction company located at 3818 Parklane, S.W., Roanoke, Virginia, and doing business within the County of Roanoke, Virginia, as alleged in paragraph 5 of the amended motion for judgment. However, defendants have insufficient knowledge to reply to the allegation that Norris & Jones Construction Co., Inc. are simultaneously officers, employees and agents of defendant Flora Realty, Inc., and therefore, deny same and call for strict proof thereof.

5. Defendants admit that defendant Edna Moran showed to the plaintiffs the property 8240 Waterfall Drive, as alleged in paragraph 9 of the amended motion for judgment. However, defendants deny that defendant Edna Moran did so as the employee and agent of defendant Lemon and Lambdon, Inc. In addition, defendants deny the rest of the allegations of paragraph 9 of the amended motion for judgment.

6. Defendants deny the allegations in paragraph 11 of the amended motion for judgment. In addition, defendants affirmatively allege that defendant Edna Moran did not owe plaintiffs a duty to ascertain the zoning of the abutting property to 8240 Waterfall Drive.

7. Defendants deny the allegations of paragraph 12 of the amended motion for judgment. In addition, defendants affirmatively allege that defendant Lemon and Lambdon, Inc. did not have an affirmative duty for the benefit of plaintiffs to ascertain and inform defendant Edna Moran that the property abutting 8240 Waterfall Drive was commercially and industrially zoned, and that said commercial and industrial zoning would

interfere with the quiet enjoyment of perspective customers.

8. Defendants deny that either or both were negligent or that plaintiffs were caused any damages by any negligent conduct of either or both of defendants.

9. Defendants deny that defendant Edna Moran made any material misrepresentations to plaintiffs which plaintiffs relied on to their detriment.

10. Defendants affirmatively allege that plaintiffs and defendants had equal access to information as to the zoning of the abutting property to 8240 Waterfall Drive and therefore plaintiffs were not entitled to rely on any alleged representations by defendants.

11. Defendants affirmatively allege that any alleged representations as to plaintiffs' quiet enjoyment of the residential property by defendants were mere matters of opinion, therefore, plaintiffs were not entitled to rely on them.

12. Defendants deny that defendants had a duty to ascertain whether plaintiffs would have quiet enjoyment of residential property.

13. Defendants deny that defendants made any representations to plaintiffs that they would have quiet enjoyment of the residential property.

14. All other allegations not expressly admitted herein are denied.

AFFIRMATIVE DEFENSE

COME NOW defendants Lemon and Lambdon, Inc. and Edna Moran, by counsel, and file this their affirmative defense to the amended motion for judgment previously filed herein:

1. While it is denied that defendants are liable to plaintiffs for any amount and denied that defendants were negligent in any respect and denied that defendants made any false statements upon which plaintiffs relied to their detriment, nevertheless should defendants be found to have been negligent and/or should defendants be found to have made any false statements which plaintiffs relied upon to their detriment, defendants should not be held liable to plaintiffs upon the following grounds:

(a) That after plaintiffs contracted to purchase property known as 8240 Waterfall Drive in February, 1980 and before plaintiffs closed title on said premises in May, 1980, plaintiffs had actual knowledge that the neighboring and abutting property to 8240 Waterfall Drive was commercially and industrially zoned and that commercial development would commence in the near future.

(b) That notwithstanding the aforesaid knowledge of plaintiffs, and plaintiffs' knowledge of their legal rights, plaintiffs chose to close title on 8240 Waterfall Drive with the intent to ratify plaintiffs' contract with defendant Norris & Jones Construction Co., Inc. and with the intent to waive any right to sue defendants for damages caused by any alleged negligence or alleged misrepresentations made to induce plaintiffs to enter into a contract to purchase said property.

(c) In addition, plaintiffs' contract with defendant Norris & Jones Construction Co., Inc. and all claims arising therefrom were merged into the deed of conveyance by defendant Norris & Jones Construction Co., Inc. to plaintiffs,

and accordingly, plaintiffs' action is barred by the doctrine of merger.

WHEREFORE, defendants Lemon and Lambdon, Inc. and Edna Moran, request this Court to dismiss this action and to award to defendants any costs and attorney's fees incurred herein.

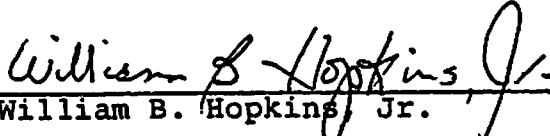
LEMON AND LAMBTON, INC. and
EDNA MORAN

By William S. Hopkins, Jr.
Of Counsel

Claude D. Carter
William B. Hopkins, Jr.
MARTIN, HOPKINS, LEMON & CARTER, P.C.
6th Floor, Boxley Building
P. O. Box 13366
Roanoke, Virginia 24033

CERTIFICATE OF SERVICE

I, William B. Hopkins, Jr., hereby certify that a true and correct copy of the foregoing Responsive Pleadings was mailed to Gary L. Tegenkamp, counsel for Flora Realty, Inc., 707 S. Jefferson Street, P. O. Box 12247, Roanoke, Virginia 24024; Robert B. Goodall, counsel for Norris & Jones Construction Co., Inc., P. O. Box 177, Stafford, Virginia 22554-0177; and Fergus B. Norton, counsel for Michael S. Pigott and Patricia R. Pigott, 2149 Electric Road, S.W., Roanoke, Virginia 24018, this 2nd day of March, 1982.



William B. Hopkins, Jr.

TWENTY-THIRD JUDICIAL CIRCUIT OF VIRGINIA

LAWRENCE L. KOONTZ, JR., JUDGE
P. O. BOX 687
SALEM, VIRGINIA 24153-0687

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

September 14, 1982

Mr. William B. Hopkins, Jr., Esq.
P. O. Box 13366
Roanoke, Virginia 24033

Mr. Robert B. Goodall, Esq.
P. O. Box 177
Stafford, Virginia 22554

Mr. Fergus B. Norton, Esq.
2149 Electric Road, S. W.
Roanoke, Virginia 24018

Re: Michael S. Pigott, et al
vs.
Edna Moran, et al

Gentlemen:

By letter dated September 7, 1982, from Mr. Hopkins, the Court was advised that the parties in this case were requesting that the Court rule on the previously filed pleas of the statute of limitations without the requirement of further memoranda. Pursuant to that request the Court has reviewed the file including the pleadings of the plaintiffs.

The motion for judgment in this case alleges fraud and accordingly the one year provisions of Section 8.01-248 of the Code of Virginia govern. Depositions of the plaintiff clearly establish that the alleged fraud was discovered during the month of March 1980 and this law suit was filed on April 17, 1981. Accordingly, the plaintiff's claim is barred by the operation of the above statute.

I shall appreciate an appropriate order being drafted and endorsed by counsel consistent with this opinion. Your cooperation in this respect is appreciated.

Very truly yours,

Lawrence L. Koontz, Jr.

LLK/sb

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

MICHAEL S. PIGOTT, et al.,)
 Plaintiffs,)
 v.)
 EDNA MORAN, et al.,)
 Defendants.)

FINAL ORDER
 Law No. 96-1981

This cause came to be heard on plaintiffs' amended motion for judgment, defendants' plea of the statute of limitations thereto, a stipulation of facts between counsel for defendants and counsel for plaintiffs, and was argued by counsel.

UPON CONSIDERATION WHEREOF, and it appearing to the Court that defendants' plea of the statute of limitations is a valid defense to the whole of plaintiffs' cause of action as set forth in their amended motion for judgment filed herein, it is accordingly

ORDERED that defendants' plea of the statute of limitations be, and it is hereby, sustained; and it is further

ORDERED that this action be, and it is hereby, dismissed, to which action of the Court the plaintiffs, by counsel, duly excepted.

ENTER: This 20 day of October, 1982.

Lawrence D. Frank

 JUDGE

Handwritten notes:
 P. 82
 B.
 20-82

We ask for this:

William B. Hopkins, Jr.

William B. Hopkins, Jr.
Counsel for defendants Edna Moran
and Lemon & Lambdon, Inc

Robert B. Goodall

Robert B. Goodall
Counsel for defendant Norris & Jones
Construction Co.

Seen and objected to:

Notice given pursuant to this order Oct 4, 1982

Fergus B. Norton
Counsel for plaintiffs Michael S.
Pigott and Patricia R. Pigott

F. B. Norton

(84)

NOTICE OF APPEAL

NOTICE TO THE CLERK OF THE CIRCUIT COURT OF ROANOKE COUNTY:

Notice is hereby given that the plaintiffs, Michael S. Pigott and Patricia R. Pigott, will ask for an appeal to the Supreme Court of Virginia from the Final Order of the Circuit Court of Roanoke County which sustained the defendants' plea of statute of limitations and dismissed the above-captioned action, and which was entered on October 20, 1982.

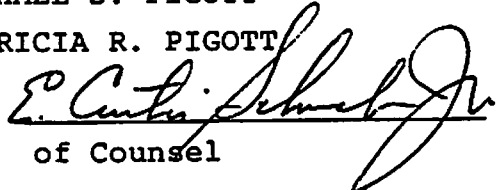
A written statement of facts will be filed hereafter by the plaintiffs to be made part of the record in this case.

Notice is also hereby given that E. Curtis Schwab, Jr., whose address appears below, will be counsel for the plaintiffs in their appeal of this case.

Respectfully submitted,

MICHAEL S. PIGOTT

PATRICIA R. PIGOTT

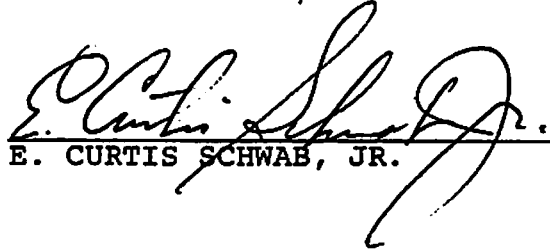
By: 
of Counsel

E. Curtis Schwab, Jr.
Attorney at Law
Courthouse Square
P. O. Box 728
Christiansburg, Virginia 24073
(703) 382-3041

NOV 1 1982

CERTIFICATE OF MAILING

I, E. Curtis Schwab, Jr., counsel for the plaintiffs, Michael S. Pigott and Patricia R. Pigott, hereby certify that a true and correct copy of the foregoing Notice of Appeal was mailed to William B. Hopkins, Jr., Esq., Martin, Hopkins, Lemon & Carter, P.C. P. O. Box 13366, Roanoke, Virginia 24033, counsel for defendants Edna Moran and Lemon & Lambdon, Inc., and to Robert B. Goodall, Esq., P. O. Box 177, Stafford, Virginia 22554, counsel for defendant Norris & Jones Construction Co., Inc., on the 19th day of November 1982.


E. CURTIS SCHWAB, JR.

VIRGINIA: IN THE CIRCUIT COURT OF ROANOKE COUNTY

MICHAEL S. PIGOTT)
 and)
 PATRICIA R. PIGOTT,)
)
 Plaintiffs)
)
 v.)
)
 EDNA MORAN,)
)
 LEMON AND LAMBTON, INC.,)
 and)
 NORRIS & JONES CONSTRUCTION)
 CO., INC.,)
)
 Defendants.)

STATEMENT OF STIPULATED
FACTS

Law No. 96-1981

This Statement of Stipulated Facts is prepared and submitted by counsel for plaintiffs for the purpose of including in the record of this case on appeal the stipulated factual basis upon which the Court sustained defendants' plea of the statute of limitations and dismissed this action by Final Order entered October 20, 1982. At the hearing held July 6, 1982 on defendants' plea, counsel for plaintiffs and counsel for defendants stipulated that the depositions of the parties taken for discovery purposes on July 24, 1981 could be used to establish the facts for the purpose of arguing defendants' plea of the statute of limitations. Counsel for plaintiffs and defendants further stipulated at the hearing that April 22, 1980 would be accepted as the date plaintiffs were informed by the Clerk of the Circuit Court of Botetourt County that certain land abutting the property plaintiffs had contracted to purchase was zoned commercial.

Therefore, the Statement of Stipulated Facts incorpor-

ates by reference the Deposition of plaintiff Patricia Ruth Pigott taken on July 24, 1981 at 1:00 P.M., the Deposition of defendant Edna Earle Harris Moran taken on July 24, 1981 at 3:30 P.M., and the exhibits entered into said depositions. The stipulated facts are summarized as follows.

On February 28, 1980, plaintiffs signed a contract to purchase a house and lot located at 8240 Waterfall Drive in Roanoke County, Virginia. Said property was owned by, and the house was being constructed by, defendant Norris & Jones Construction Co., Inc.

Plaintiffs allege that prior to the execution of the contract, defendant Edna Moran, a real estate agent employed by defendant Lemon and Lambdon, Inc., and with whom plaintiffs had been dealing, misrepresented to plaintiffs that the land abutting 8240 Waterfall Drive was zoned residential. Plaintiffs further allege that the land abutting 8240 Waterfall Drive was industrially and commercially zoned, that commercial development has occurred since their purchase of 8240 Waterfall Drive, that the misrepresentation by defendant Edna Moran was the result of negligence on her part and on the part of the other defendants, and that the plaintiffs relied on the misrepresentation in contracting to purchase 8240 Waterfall Drive.

About a week or so after signing the contract of sale on February 28, 1980, plaintiffs were informed by prospective neighbors on Waterfall Drive that the property abutting 8240 Waterfall Drive was zoned industrial.

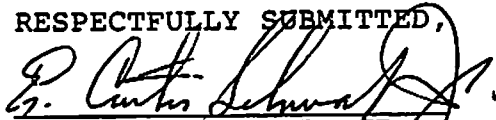
de Key

In addition, plaintiff Patricia R. Pigott called defendant Edna Moran a couple of weeks before plaintiffs' letter of April 23, 1980, and informed Mrs. Moran that the plaintiffs had learned that the abutting property was zoned industrial and that they wished to rescind the contract of sale. Plaintiffs' letter dated April 23, 1980 confirmed the above-mentioned telephone conversation and again informed defendant Edna Moran that the plaintiffs desired to rescind the contract of sale.

On April 22, 1980, plaintiffs went to the Clerk's Office of the Circuit Court of Botetourt County and ascertained from the Clerk of said Court that the land abutting 8240 Waterfall Drive was zoned commercial M1, M2 and M3 in 1976. Plaintiffs closed on 8240 Waterfall Drive on May 23, 1980 and shortly thereafter took possession of the property.

On April 17, 1981, plaintiffs filed a motion for judgment requesting damages resulting from the alleged misrepresentation for the loss of quiet enjoyment of their property by them believing the same to be a residential community, and for the loss in value of 8240 Waterfall Drive as a result of abutting commercially and industrially zoned property rather than residentially zoned property.

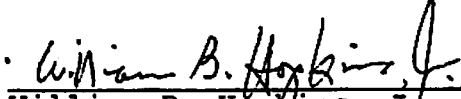
RESPECTFULLY SUBMITTED,



E. CURTIS SCHWAB, JR.
P. O. Box 728
Christiansburg, Virginia 24073
Counsel for Plaintiffs

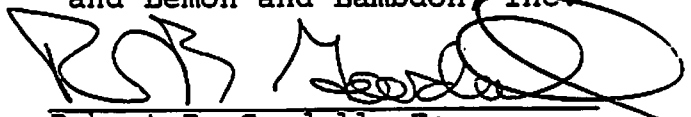
SIGNATURE OF COUNSEL TO STATEMENT OF STIPULATED FACTS

DATE: December 16, 1982



William B. Hopkins, Jr.
Counsel for defendants Edna Moran
and Lemon and Lambdon, Inc.

DATE: 21 December 1982

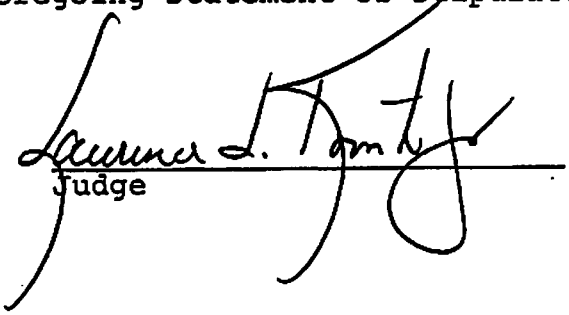


Robert B. Goodall, Esq.
Counsel for defendant Norris &
Jones Construction Co., Inc.

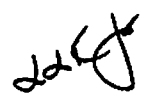
SIGNATURE OF JUDGE TO STATEMENT OF STIPULATED FACTS

I hereby verify that that the foregoing Statement of Stipulated Facts
is accurate and complete.

DATE: 12/30/82

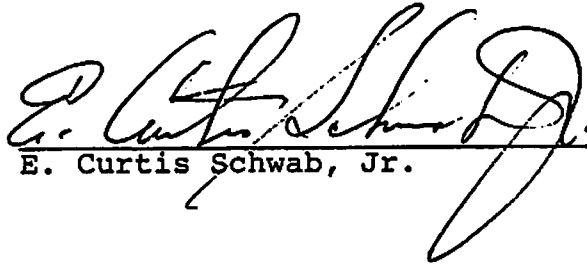


Lawrence L. Tompkins
Judge



CERTIFICATE

I, E. Curtis Schwab, Jr., counsel for plaintiffs Michael S. Pigott and Patricia R. Pigott, do hereby certify that a true and correct copy of the foregoing Statement of Stipulated Facts was delivered to the Clerk's Office of the Circuit Court of Roanoke County, and was mailed to William B. Hopkins, Jr., MARTIN, HOPKINS, LEMON and CARTER, P.C., P.O. Box 13366, Roanoke, Virginia 24033, counsel for defendants Edna Moran and Lemon and Lambdon, Inc., and to Robert B. Goodall, Esquire, P.O. Box 177, Stafford, Virginia 22554, counsel for defendant Norris & Jones Construction Co., Inc., on the 14th day of December, 1982.


E. Curtis Schwab, Jr.

ASSIGNMENTS OF ERROR

The trial court erred in sustaining the defendants' plea of the statute of limitations to plaintiffs' cause of action and dismissing the action because:

1. The plaintiffs did not discover the fraud until ascertaining the true nature of the zoning of the abutting property from the Clerk of the Circuit Court of Botetourt County, which was within one year of the filing of their motion for judgment.

2. The plaintiffs' cause of action is for injury to property and subject to the five year statute of limitations of Section 8.01-243 B of the Code of Virginia.