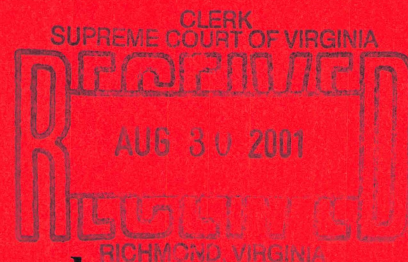


263Va407

In The
Supreme Court of Virginia

RECORD NO. 010965



KENNETH R. SHEETS and
ANN R. SHEETS,

Appellants,

v.

HARRIET A. CASTLE,

Appellee.

JOINT APPENDIX

Glenn M. Hodge
(VSB No. 12159)
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WEAVER, P.L.C.
100 South Mason Street
Post Office Box 20028
Harrisonburg, Virginia 22801
(540) 434-0316 – Telephone
(540) 434-5502 – Facsimile

Counsel for Appellants

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(540) 743-5119 – Telephone
(540) 743-4806 – Facsimile

Counsel for Appellee

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VIRGINIA: IN THE CIRCUIT COURT OF PAGE COUNTY

HARRIET A. CASTLE

Complainant

v

)(In Chancery No. CH 00-38

KENNETH R. SHEETS, and

ANN R. SHEETS

642 Burch Lane

Boyce, Virginia 22620

(Clark County)

AND

DEREK H. GOEBEL, and

JANINE S. SIEBENS

622 Woodside Drive

Rileyville, Virginia 22650

(Page County)

ADDITIONAL PARTY DEFENDANTS:

BENJAMIN M. BUTLER, TRUSTEE

112 S. Cameron ST.

Winchester, Virginia 22601,

(City Of Winchester), and

JOHN C. HILL, TRUSTEE

1 S. Royal Ave.

Front Royal, Virginia 22630

(Warren County)

AND

VALLEY BANK AND TRUST CO., Noteholder

425 10th Street

Gering, NE 69341

Defendants

**BILL OF COMPLAINT FOR SPECIFIC PERFORMANCE
OF REAL ESTATE CONTRACT**

Comes now the Complainant and for her Bill of Complaint for Specific Performance of a Real Estate Contract represents as follows:

1) That on November 10, 1999, the Complainant, Harriet A. Castle, hereinafter referred to as "Castle", and the Defendants, Kenneth R. Sheets, and Ann R. Sheets, hereinafter referred to as "Sheets", entered into a written contract for the sale of approximately 100 Acres of real estate, improved by two dwelling houses, and located in Springfield Magisterial District of Page County, Virginia, (TAX MAP No. 15-A-6); and

2) That the contract was prepared by Sheets' agent, Weichert Realtors, 824 John Marshall Hwy., Front Royal, Virginia 22630, and Weichert also acted as the buyer's agent for Castle; and

3) That settlement on the contract was scheduled for January 30, 2000. A copy of the November 10, 1999, contract and a Virginia Jurisdictional Addendum, are both attached hereto marked PLAINTIFF'S EXHIBIT 1, and incorporated herein by reference; and

4) That in December 30, 1999, Sheets indicated to Castle's attorney that they did not want to sell the subject real estate to Castle; and

5) That Castle was ready, willing, and able to settle on the contract on January 30, 2000; and

6) That Sheets refused to complete settlement; and

7) That Castle has continued to pursue settlement on the contract; is ready, willing and able to complete settlement; and Sheets has continued to refuse to complete settlement; and

8) A copy of a Plat of the subject real estate recorded in the Clerk's Office of the Circuit Court of Page County, Virginia, in Deed Book 470, Page 547, Is attached hereto Marked PLAINTIFF'S EXHIBIT 2, And made a part hereof; and

9) That on March 30, 2000, by Deed recorded in said Clerk's Office, in Deed Book 610, Page 645, Sheets conveyed 15.05 Acres of the subject real estate to the Defendants, Derek H. Goebel, and Janine S. Siebens, husband and wife, hereinafter referred to as "Goebel/Siebens" A copy of said Deed is Attached hereto marked PLAINTIFF'S EXHIBIT 3, and made a part hereof; and

10) That on March 31, 2000, Sheets and Goebel/Siebens executed an Option for Sale of Real Estate which is recorded in said Clerk's Office in Deed Book 610, Page 646. The said Option is for the remaining portion of the subject real estate. A copy of the recorded Option is Attached hereto marked PLAINTIFF'S EXHIBIT 4, and made a part hereof; and

11) That the Defendants Goebel/Siebens knew and were on notice that the subject real estate was under contract with Castle at the time they settled on the purchase of the 15.05 Acres and executed the said Option; and

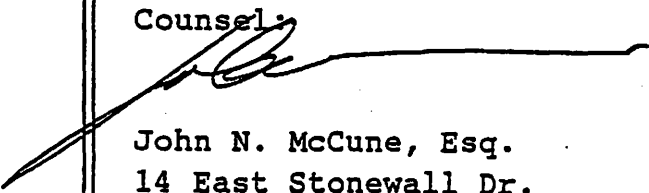
12) That the Additional Defendants, Benjamin M. Butler, and John C. Hill, Trustees; and Valley Bank and Trust Co., Noteholder, are parties in interest to this cause through a Deed of Trust recorded in said Clerk's Office in Deed Book 590, Page 525, and an Assignment recorded in said Clerk's Office in Deed Book 610, Page 502. The said Deed of Trust encumbers 3.00 Acres of the subject real estate and is shown and described on a plat recorded in said Clerk's Office in Deed Book 470, Page 547. Copies of the Deed of Trust, Assignment, and the said Plat are attached hereto marked PLAINTIFF'S EXHIBIT 5, and made a part hereof; and

13) That the Complainant has no other remedy at law except to demand Specific Performance on the said contract.

WHEREFORE the Complaint prays that this Court order the Defendants Sheets to complete settlement on the contract; that the sale to the Defendants Goebel/Siebens be set aside; and that the complaint Castle be awarded attorney's fees, and costs in this behalf expended, and for General Relief.


Harriet A. Castle
by Counsel

Counsel:



John N. McCune, Esq.
14 East Stonewall Dr.
Front Royal, VA 22630
(540) 635-4242
FAX: (540) 636-4819

VALIDATE CASE PAPERS
RCPT : 00000002171
DATE : 04/18/00 TIME: 11:36
CASE : 139CH00000038-00
ACCT : CASTLE, HARRIET A.
AMT. : \$122.00



8941-0;8941-BC

-4-

-4-

Weichert Realtors



REGIONAL SALES CONTRACT

This SALES CONTRACT ("Contract") is made on 10 Nov., 19 99 ("Contract Date") between HARRIET A. CASTLE ("Purchaser") and KENNETH R. & ANN R. SHEETS ("Seller") who hereby confirm and acknowledge by their initials and signatures below the prior disclosure that in this real estate transaction

Weichert Realtors ("Listing Company") represents the Seller, and Weichert Realtors ("Selling Company") represents the Purchaser OR ☐ the Seller. The Listing Company and Selling Company are collectively referred to as ("Broker"). (If the brokerage firm is acting as a dual representative for both the Seller and the Purchaser, then the appropriate disclosure form is attached to and made a part of this Contract.)

1. REAL PROPERTY. The Purchaser shall buy and the Seller shall sell for the sales price ("Sales Price"), the Seller's entire interest in the land with all improvements, rights and appurtenances) described as follows: TAX Map/ID # 15-A-6
Legal Description: Lot(s) _____, Block/Square _____, Section _____
Subdivision or Condominium _____, Unit # _____, Parking Space(s) # _____
County/City PAGE | RILEYVILLE, Deed Book/Liber 389, Page/Folio # 122-5
Street Address: 221 Good Mill Rd - Rileyville, State VA., Zip Code 22650 ("Property")

2. PERSONAL PROPERTY, FIXTURES AND UTILITIES. The Sales Price includes the following personal property and fixtures: A. Any existing built-in heating and central air conditioning equipment, plumbing and lighting fixtures, sump pump, attic fans, storm windows, storm doors, screens, installed wall-to-wall carpeting, window shades, blinds, smoke and heat detectors, tv antennas, exterior trees and shrubs and, B. The items marked YES below as currently installed or offered.

YES NO	YES NO	YES NO	YES NO
<input type="checkbox"/> Stove or Range	<input type="checkbox"/> Disposer	<input type="checkbox"/> Ceiling Fan(s) # _____	<input type="checkbox"/> Alarm System
<input type="checkbox"/> Cooktop	<input type="checkbox"/> Freezer	<input type="checkbox"/> Washer	<input type="checkbox"/> Intercom
<input type="checkbox"/> Wall Oven(s) # _____	<input type="checkbox"/> Window Fan(s) # _____	<input type="checkbox"/> Dryer	<input type="checkbox"/> Storage Shed(s) # _____
<input type="checkbox"/> Refrigerator(s) # _____	<input type="checkbox"/> Window A/C Unit(s) # _____	<input type="checkbox"/> Furnace Humidifier	<input type="checkbox"/> Garage Opener(s) # _____
<input type="checkbox"/> w/ Ice maker	<input type="checkbox"/> Pool, Equip. & Cover	<input type="checkbox"/> Electronic Air Filter	<input type="checkbox"/> w/ remote(s) # _____
<input type="checkbox"/> Dishwasher	<input type="checkbox"/> Hot Tub, Equip. & Cover	<input type="checkbox"/> Central Vacuum	<input type="checkbox"/> Playground Equipment
<input type="checkbox"/> Built-in Microwave	<input type="checkbox"/> Satellite Dish and Equip.	<input type="checkbox"/> Water Treatment System	<input type="checkbox"/> Wood Stove
<input type="checkbox"/> Trash Compactor	<input type="checkbox"/> Window Treatments	<input type="checkbox"/> Exhaust Fan(s)	<input type="checkbox"/> Fireplace Screen/ Doors

Other: ALL ITEMS to CONVEY PER MRS PRINTOUT (THIS TO INCLUDE BOTH HOMES)

WATER, SEWAGE, HEATING AND CENTRAL AIR CONDITIONING: (Check all that apply)

Water Supply: ☐ Public ☒ Well _____ Hot Water: ☐ Oil ☐ Gas ☒ Elec. ☐ Other _____
Sewage Disposal: ☐ Public ☒ Septic # BR 3 Air Conditioning: ☐ Oil ☐ Gas ☒ Elec. ☐ Heat Pump ☐ Other _____
(MAIN HOUSE) Heating: ☐ Oil ☒ Gas ☐ Elec. ☐ Heat Pump ☐ Other RR 111

3. EQUIPMENT, MAINTENANCE AND CONDITION. The Purchaser accepts the Property in "AS IS" condition as of the Contract Date except as otherwise provided herein. The Seller warrants that the existing appliances, heating, cooling, plumbing, electrical and mechanical systems and equipment and smoke and heat detectors (as required) shall be in normal working order as of the possession date. The Seller shall deliver the Property in substantially the same condition as on the Contract Date and in broom clean condition with all trash and debris removed. The Purchaser and the Seller shall not hold the Broker liable for any breach of this paragraph.

4. PRICE AND FINANCING

A. Down Payment

B. Financing 1. First Trust

2. Second Trust - addendum attached

3. Trust (Seller Financing) - addendum attached

TOTAL FINANCING

TOTAL SALES PRICE OF THE PROPERTY



225,000 275,000
180,000 175,000
450,000 475,000 500,000
487,500 495,000
MRS KRS
HAC
KRS
KRS

5. DEPOSIT. A. The Purchaser has made a deposit ("Deposit") with Weichert Realtors ("Escrow Agent") of \$ 5,000.00 by check and/or ☐ \$ _____ by note due and payable on _____, 19____, receipt of which is hereby acknowledged. B. The Deposit shall be placed in an escrow account of the Escrow Agent after the Contract Acceptance to conform with the laws and regulations of the appropriate jurisdiction and/or, if VA financing applies, as required by Title 38 of the U.S. Code. This account may be interest bearing and all parties waive any claim to interest resulting from the Deposit. The Deposit shall be held in escrow until: i. Credited toward the Sales Price at settlement; ii. All parties have agreed in writing as to its disposition; iii. A court of competent jurisdiction orders disbursement and all appeal periods have expired; or, iv. Disposed of in any other manner authorized by the laws and regulations of the appropriate jurisdiction.

6. DOWN PAYMENT. The balance of the down payment shall be paid at settlement by certified or cashier's check or by bank wired funds.

7. FIRST DEED OF TRUST. Purchaser shall ☒ OBTAIN OR ☐ ASSUME: a ☒ Conventional ☐ FHA ☐ VA ☐ Other _____ First Deed of Trust loan amortized over 20 years at a ☒ FIXED OR an ☐ ADJUSTABLE rate bearing (initial) interest of 8.00 % per year or market rate available. Special Terms (if any): Interest Rate to be adjusted after 60 payments as follows: CHASE Manhattan Prime Rate plus 1.0%, Rate Not to be lower than 6.25% & Rate 10 ASSUMPTION ONLY: Assumption fee, if any, and all charges related to the assumption shall be paid by the Purchaser. If the Purchaser assumes the Seller's loan, A. The Purchaser and the Seller ☐ shall, OR ☒ shall not obtain a release of the Seller's liability to the U.S. Government for the repayment of the loan by settlement. B. The Purchaser and Seller ☐ shall, OR ☐ shall not obtain substitution of the Seller's VA entitlement by settlement. C. Balances of any assumed loans, secondary financing and cash down payments are approximate.

8. ADDITIONAL FINANCING TERMS.

A. ☒ CONVENTIONAL FINANCING. If applicable, the Purchaser shall ☐ pay at settlement, OR ☒ finance any initial private mortgage insurance based on the financing terms specified in this Contract, the Seller shall pay 0 points toward the Purchaser's normal settlement charges, (including but not limited to loan origination fees, discount fees, buy down or subsidy fees, prepaids or other settlement charges as allowed by the lender). The Purchaser shall pay all remaining Purchaser's settlement charges. If the lender's appraisal is not equal to or greater than the Sales Price and the parties are unable to agree upon mutually acceptable terms, then it shall be the Seller's option to lower the Sales Price to the appraised value and this Contract shall remain in full force and effect at the lower Sales Price. If the Seller does not exercise that option, it is the Purchaser's option to proceed with the settlement at the Sales Price and Seller and Purchaser shall sign any appropriate amendment(s). Each election must be made by Notice within 3 Days after Notice from the other party. If the parties fail to agree, this Contract shall become void and the Deposit shall be refunded in full to the Purchaser according to the terms of the DEPOSIT paragraph.

B. ☐ VA OR ☐ FHA FINANCING

The Purchaser shall ☐ pay at settlement, OR ☐ finance any VA Funding Fee or FHA initial Mortgage Insurance Premium. Based on the financing specified in this Contract, the Seller shall pay _____ toward the Purchaser's normal settlement charges (including, but not limited to loan origination fees, discount fees, buydown or subsidy fees, prepaids or other settlement charges as allowed by the lender) except that the total amount of any lender charges which cannot by law or regulation be charged to the Purchaser shall first be deducted from this amount, and the remaining balance, if any, shall then be applied to the Purchaser's other settlement charges. The Purchaser shall pay all remaining Purchaser's settlement charges. If VA or FHA financing applies, it is expressly agreed that, notwithstanding any other provisions of this Contract, the Purchaser shall not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless the Purchaser has been given in accordance with HUD/FHA or VA requirements a written statement by the Federal Housing Commissioner or Direct Endorsement Lender/Department of Veterans Affairs or the Lender Approval Processing Program (LAPP) underwriter setting forth the appraised value of the Property (excluding closing costs) of not less than \$ _____. The Purchaser shall have the privilege and option of proceeding with consummation of the Contract without regard to the amount of the appraised valuation. THE APPRAISED VALUATION IS ARRIVED AT TO DETERMINE THE MAXIMUM MORTGAGE THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT /DEPARTMENT OF VETERANS AFFAIRS WILL INSURE/GUARANTEE. HUD/DEPARTMENT OF VETERANS AFFAIRS AND THE MORTGAGEE DOES NOT WARRANT THE VALUE NOR THE CONDITION OF THE PROPERTY. THE PURCHASER SHOULD SATISFY HIMSELF/HERSELF THAT THE PRICE AND CONDITION OF THE PROPERTY ARE ACCEPTABLE.

If VA Financing applies, the Purchaser agrees that should the Purchaser elect to complete the purchase at an amount in excess of the reasonable value established by the Department of Veterans Affairs, the Purchaser shall pay such excess amount in cash from a source which the Purchaser agrees to disclose to the Department of Veterans Affairs, and which the Purchaser represents will not be borrowed funds except as approved by the Department of Veterans Affairs. The Purchaser's exercise of the option shall be made in writing within 3 Days of the notification to the Purchaser of the appraised value, or this Contract shall become void and the Deposit shall be refunded in full to the Purchaser according to the terms of the DEPOSIT paragraph.

If FHA financing applies, the Purchaser's exercise of the option of proceeding with consummation of the Contract without regard to the amount of the appraised valuation shall be made in writing within 3 Days of the notification to the Purchaser of the appraised value, or this Contract shall become void and the Deposit shall be refunded in full to the Purchaser according to the terms of the DEPOSIT paragraph. The FHA loan amount is approximate because the financed acquisition costs cannot be determined until the time of settlement.

9. FINANCING CONTINGENCY. If the PRICE AND FINANCING paragraph above includes financing, the terms of this paragraph shall apply. The Purchaser shall make written loan application, if applicable, within 7 Days following the Contract Acceptance. The Purchaser grants permission for the Selling Company and the lender to disclose to the Listing Company and the Seller general information available about the progress of the loan application and loan approval process. The Purchaser may obtain alternative financing for which the Purchaser is qualified provided there is no additional expense to the Seller and the settlement date is not delayed.

A. This Contract is contingent on the Purchaser securing a firm, written commitment for the financing specified in this Contract, or lender's approval of assumption, if required ("Specified Financing"). The Purchaser shall furnish written evidence of the lender's commitment or approval to the Seller within 15 Days of Contract Acceptance, which commitment or approval the Purchaser agrees to pursue diligently.

- i. If the Purchaser is unable to obtain the Specified Financing during this contingency period, the Purchaser may unilaterally extend the contingency period for 15 Days by giving the Seller:
 - a. A Notice of Purchaser's intention to do so, together with;
 - b. Written evidence from the lender showing that all information in the lender's possession indicates that the Purchaser's loan should be approved.
- ii. After the expiration of the contingency period (including the 15 Day unilateral extension, if applicable), but prior to Delivery of lender's written commitment, the Seller may with Notice to the Purchaser:
 - a. Declare this Contract void, OR;
 - b. Elect to provide the Specified Financing to the Purchaser at any time prior to Delivery of lender's written commitment.
- iii. The Purchaser shall have the right to Deliver to the Seller a copy of a written letter of rejection for the Specified Financing from the lender along with a written request for release from the Contract.
- iv. If the Purchaser complies with the provisions of paragraph iii, then the Seller shall sign the release and declare this Contract void within 3 Days or elect to provide the Specified Financing to the Purchaser, provided the lender's rejection of the loan is not for appraisal reasons.

- v. If the Seller does not elect to provide the Specified Financing, but does not sign the release, the Seller shall declare this Contract void when required to do so, then the Purchaser may declare the Contract void and the Deposit shall be refunded in full to the Purchaser. In the event this Contract is voided by the Seller or Purchaser under the provisions of the FINANCING CONTINGENCY paragraph, the Deposit shall be refunded in full to the Purchaser according to the terms of the DEPOSIT paragraph.
- B. The Purchaser shall be in default if settlement does not occur because the Purchaser:
- Fails to lock-in the interest rate(s) as specified above and the rate(s) increase so that the Purchaser no longer qualifies for such financing; or
 - Applies for, and fails to obtain, alternative financing instead of the Specified Financing, unless the Seller consents in writing to the terms of the alternative financing, in which case the alternative financing becomes the Specified Financing; or
 - Fails to comply with the lender's requirements in a timely manner; or
 - Fails to immediately give Notice to the Seller or the Broker of any material adverse changes in the Purchaser's assets, liabilities or income; or
 - Does not have the down payment and closing fees to settle as provided in this Contract at the time of settlement; or
 - Does or fails to do any act following the Contract Acceptance that prevents the Purchaser from obtaining the financing; or
 - Makes any deliberate misrepresentations, material omissions or inaccuracies in financial information that results in the Purchaser's inability to secure the financing.
- C. The Purchaser shall obtain hazard and title insurance, as required by the lender(s).

10. **PURCHASER'S REPRESENTATIONS.** The Purchaser ☐ shall, OR ☒ shall not occupy the Property as the Purchaser's principal residence, unless specified in a written contingency, neither this Contract nor the financing is dependent or contingent on the sale and settlement or lease of other real property. The Selling Company ☐ is, OR ☒ is not authorized to disclose to the Listing Company and Seller the appropriate financial or credit information statement provided to the Selling Company by the Purchaser. The Purchaser acknowledges that the Seller is relying upon all of the Purchaser's representations including without limitation the accuracy of financial or credit information given to the Seller, Broker or the lender by the Purchaser.

11. **ACCESS TO PROPERTY.** The Seller shall provide the Broker, the Purchaser, inspectors representing the Purchaser and representatives of lending institutions for appraisal purposes, reasonable access to the Property to comply with this Contract. The Purchaser and/or the Purchaser's representative shall have the right to make a presettlement and/or a preoccupancy inspection at which time the Seller shall have all utilities in service.

12. **WELL AND SEPTIC.** If the Property is on well and/or septic systems, the ☐ Purchaser, at Purchaser's expense OR ☒ Seller, at Seller's expense, shall furnish the Purchaser on or before settlement with a certificate that meets the lender's requirements from the appropriate local government authority, or a private company chosen by written consent of the parties, indicating that: A. The well water contains no more than the acceptable level of contaminants and; B. The septic system appears to be functioning satisfactorily, and if known by public records, was installed pursuant to a valid health department permit. If either system is found defective or substandard, the Seller shall take appropriate remedial action at the Seller's expense.

13. **TERMITE INSPECTION.** The Seller warrants at the time of settlement that all dwellings and/or garage(s) within the Property (excluding fences, shrubs not abutting garage(s) or dwelling(s)) are free of visible termites and other wood-destroying insects, and free from visible insect damage. The Purchaser, at Purchaser's expense OR ☒ Seller, at Seller's expense, shall furnish a written report to this effect acceptable to the lender from a pest control firm. Required extermination and repairs shall be at the Seller's expense. (BOTH HOUSES)

14. **REPAIRS.** If, as a condition of providing financing under this Contract, the lender requires repairs to be made to the Property, then the Purchaser shall give Notice to the Seller of the lender's required repairs. Within 5 Days after Notice, the Seller shall give Notice to the Purchaser whether the Seller will make the repairs. If the Seller will not make the repairs, the Purchaser shall give Notice to the Seller within 5 Days after the Seller's Notice whether the Purchaser will make the repairs. If neither the Seller nor the Purchaser will make the repairs, then this Contract shall become void and the Deposit shall be refunded in full to the Purchaser. This clause will not release the Seller from any responsibilities set forth in the paragraphs entitled PERSONAL PROPERTY, FIXTURES AND UTILITIES; EQUIPMENT, MAINTENANCE AND CONDITION; WELL AND SEPTIC; TERMITE INSPECTION; OTHER TERMS, or any terms specifically set forth in this Contract and any addenda. (BOTH HOUSES)

15. **DAMAGE OR LOSS.** The risk of damage or loss to the Property by fire, act of God, or other casualty remains with the Seller until the execution and delivery of the deed of conveyance.

16. **TITLE.** The title report and survey, if required, shall be ordered promptly and, if not available at the scheduled date of settlement, then settlement may be delayed for up to 15 business days to obtain the title report and survey after which this Contract, at the option of the Seller, may be terminated and the Deposit shall be refunded in full to the Purchaser. Fee simple title to the Property, and everything that conveys with it, shall be sold free of liens except for any loans assumed by the Purchaser. The Seller shall comply with all orders, requirements, or notices of violations of any county or local authority, condominium unit owners' association, homeowners' or property owners' association or actions in any court on account thereof, against or affecting the Property on the date of settlement. Title is to be good and marketable, and insurable by a licensed title insurance company with no additional premium. Title may be subject to commonly acceptable easements, covenants, conditions and restrictions of record, if any; otherwise, the Purchaser may declare this Contract void and the Deposit shall be refunded in full, unless the defects are of such character that they may be remedied within 30 days beyond the date of settlement set forth in the SETTLEMENT DATE paragraph. In case action is required to perfect the title, such action must be taken promptly by the Seller at the Seller's expense. The Broker is hereby expressly released from all liability for damages by reason of any defect in title. The Seller shall convey the Property by general warranty deed with English covenants of title (Virginia); general warranty deed (West Virginia); special warranty deed (D.C. and Maryland). The Seller shall sign such affidavits, lien waivers, tax certifications, and other documents as may be required by the lender, title insurance company, Settlement Agent, or government authority, and authorizes the Settlement Agent to obtain pay-off or assumption information from any existing lenders.

17. **POSSESSION DATE.** Unless otherwise agreed to in writing between the Seller and the Purchaser, the Seller shall give possession of the Property at the time of settlement. If the Seller fails to do so and occupies the Property beyond the time of settlement, the Seller shall be a tenant by sufferance of the Purchaser and hereby expressly waives all notice to quit as provided by law. The Purchaser shall have the right to proceed by any legal means available to obtain possession of the Property. The Seller shall pay any damages and costs incurred by the Purchaser including reasonable attorney fees.

18. **SETTLEMENT DATE.** The Seller and the Purchaser shall make full settlement in accordance with the terms of this Contract on or, with mutual consent, before JAN. 15, 2000, except as otherwise provided in this Contract. JANUARY 30, 2000

19. **SETTLEMENT AGENT.** The Purchaser wishes to employ TO BE DETERMINED ("Settlement Agent") to represent the Contract. Either party may retain their own counsel. The Purchaser agrees to contact the Settlement Agent within 10 Days of Contract Acceptance to schedule settlement, which Settlement Agent shall order the title exam and survey if required.

20. FEES. Fees for the preparation of the [], that portion of the Settlement Agent's fee bill to the Seller, costs of releasing existing encumbrances, appropriate legal fees and any other proper charges assessed to the Seller shall be paid by the Seller. Fees for the title exam (except as otherwise provided) survey, recording (including those for any purchase money trusts) and that portion of the Settlement Agent's fee billed to the Purchaser, appropriate legal fees and any other proper charges assessed to the Purchaser shall be paid by the Purchaser. Fees to be charged shall be reasonable and customary for the jurisdiction in which the Property is located. (Recording, Transfer and Grantor's Taxes are covered in the appropriate jurisdictional addenda).

21. BROKER'S FEE. The Seller irrevocably instructs the Settlement Agent to pay the Broker compensation ("Broker's Fee") as set forth in the listing agreement and to disburse the compensation offered by the Listing Company to the Selling Company in writing as of the Contract Date, and the remaining amount of Broker's compensation to the Listing Company.

22. ADJUSTMENTS. Rents, taxes, water and sewer charges, front foot benefit and house connection charges, condominium unit owners' association, homeowners' and/or property owners' association regular periodic assessments (if any) and any other operating charges, are to be adjusted to the date of settlement. Any heating or cooking fuels remaining in supply tank(s) at time of settlement shall become the property of the Purchaser. Taxes, general and special, are to be adjusted according to the certificate of taxes issued by the collector of taxes, if any, except that recorded assessments for improvements completed prior to the Date of Acceptance, whether assessments have been levied or not, shall be paid by the Seller. Allowance made at the time of settlement. If a Deed of Trust is assumed, interest shall be adjusted to the date of settlement and the Purchaser shall reimburse the Seller for existing escrow accounts, if any.

23. ATTORNEY'S FEES. In any action or proceeding involving a dispute between the Purchaser and the Seller arising out of this Contract, the prevailing party shall be entitled to receive from the other party reasonable attorney's fees to be determined by the court or arbitrator(s). In the event a dispute arises resulting in the Broker being made a party to any litigation or if the Broker is required to bring litigation to collect the Broker's Fee, the Purchaser and Seller agree to indemnify the Broker, its employees, and/or licensees for all attorney fees and costs of litigation, unless the litigation results in a judgment against the Broker, its employees and/or licensees.

24. PERFORMANCE. Delivery of the required funds and executed documents to the Settlement Agent shall constitute sufficient tender of performance. Funds from this transaction at settlement may be used to pay off any existing liens and encumbrances, including interest, as required by lender(s) or lienholders.

25. DEFAULT. If the Purchaser fails to settle as required, at the option of the Seller, the Deposit may be forfeited as liquidated damages and not as a penalty, in which event the Purchaser shall be relieved from further liability to the Seller. If the Seller does not elect to accept the Deposit as liquidated damages, the Deposit may not be the limit of the Purchaser's liability in the event of a default. If the Deposit is forfeited, or if there is an award of damages by a court or a compromise agreement between the Seller and Purchaser, the Broker may accept and the Seller agrees to pay the Broker one-half of the Deposit in lieu of the Broker's Fee, (provided Broker's share of any forfeited Deposit shall not exceed the amount due under the listing agreement). If the Seller fails to make full settlement as required, the Purchaser shall have all legal or equitable remedies, including specific performance and/or damages. If either the Seller or Purchaser refuses to execute a release of Deposit when requested to do so in writing and a court finds that they should have executed the agreement, the party who so refused to execute a release of Deposit shall pay the expenses, including, without limitation, reasonable attorney's fees, incurred by the other party in the litigation. The Seller and Purchaser agree that no Escrow Agent shall have any liability to any party on account of disbursement of the Deposit or on account of failure to disburse the Deposit, except only in the event of the Escrow Agent's gross negligence or willful misconduct. The parties further agree that the Escrow Agent shall not be liable for the failure of any depository in which the Deposit is placed and that the Seller and Purchaser each will indemnify, defend and save harmless the Escrow Agent from any loss or expense arising out of the holding, disbursement or failure to disburse the Deposit, except in the case of the Escrow Agent's gross negligence or willful misconduct. If either the Purchaser or the Seller is in default, then in addition to all other damages, the defaulting party shall immediately pay the costs incurred for the title examination, appraisal, survey and the Broker's Fee in full.

26. OTHER DISCLOSURES. The Purchaser and Seller are advised to seek professional advice concerning the condition of the property or concerning legal and tax matters. The following subparagraphs disclose some matters which the parties may wish to investigate further. These disclosures are not intended to create a contingency. Any contingency must be specified by adding appropriate terms to this Contract. The parties acknowledge the following disclosures:

A. PROPERTY CONDITION. The Property is sold in "AS IS" condition except as further provided in the EQUIPMENT, MAINTENANCE AND CONDITION paragraph. Various inspection services and home warranty insurance programs are available. The Broker is not advising the parties as to certain other issues, including without limitation: water, sewer or septic; soil condition; flood hazard areas; possible restrictions of the use of the property due to restrictive covenants, zoning, subdivision, or environmental laws, easements or other documents; airport or aircraft noise; planned land use, roads or highways; and construction materials and/or hazardous materials, including without limitation flame retardant treated plywood (FRT), radon, urea formaldehyde foam insulation (UFFI), polybutylene pipes, asbestos and lead-based paint. Information relating to these issues may be available from appropriate government authorities.

B. LEGAL REQUIREMENTS. All contracts for the sale of real property must be in writing to be enforceable. Upon Contract Acceptance, this Contract becomes a legally binding agreement. Any changes must be made by written amendment.

C. FINANCING. Mortgage rates and associated charges vary with financial institutions and the marketplace. The Purchaser has the opportunity to select the lender and the right to negotiate terms and conditions of the financing subject to the terms of this Contract. The financing may require substantial lump sum (balloon) payments on the due dates. The Purchaser has not relied upon any representations regarding the future availability of mortgage money or interest rates for the refinancing of any such lump sum payments.

D. BROKER. The Broker may from time to time engage in the general insurance, title insurance, mortgage loan, real estate settlement, home warranty and other real estate-related businesses and services. Therefore, in addition to the Broker's Fee specified herein, the Broker may receive compensation related to other services provided in the course of this transaction. The Purchaser and Seller acknowledge that the Broker is being retained solely as a real estate agent and is not an attorney, tax advisor, lender, appraiser, surveyor, structural engineer, home inspector or other professional service provider.

27. ASSIGNABILITY. This Contract may not be assigned without the written consent of the Purchaser and the Seller. If the Purchaser and the Seller agree in writing to an assignment of this Contract, the original parties to this Contract remain obligated hereunder until settlement.

28. DEFINITIONS. "Days" means calendar days unless otherwise specified. For the purpose of computing time periods, the first Day shall be the Day following Delivery and the time period shall end at 9 p.m. on the Day specified. If a date for settlement falls on a Saturday, Sunday, or legal holiday then the settlement shall be on the prior business day. "Contract Acceptance" means the date of final acceptance in writing of all the terms of this Contract (not the date of expiration or removal of any contingencies). "Delivery" means hand-carried, sent by overnight delivery service, by facsimile transmission or when receipt is acknowledged in writing. In the event of overnight delivery service, Delivery shall be deemed to have been made on the Day following the sending. The masculine includes the feminine and the singular includes the plural.

29. NOTICES. All notices ("Notice") required to be given by this Contract shall be in writing and shall be effective as of the date on which such Notice is delivered:

A. Addressed to the Seller at _____ OR
transmitted by facsimile to () _____
B. Addressed to the Purchaser at 824 John Marshall Hwy - Front Royal, VA OR
transmitted by facsimile to (540) 635-631

30. MISCELLANEOUS. This Contract may be signed in one or more counterparts, each of which is deemed to be an original, and all of which shall together constitute one and the same instrument. Documents obtained via facsimile machines shall also be considered as originals. Typewritten or handwritten provisions included in this Contract shall control all pre-printed provisions that are in conflict. If the Contract is voided, the Deposit shall be used in accordance with the DEPOSIT paragraph.

31. ADDITIONS. The following are made a part of this Contract
(Farmhouse)
es ☒ No HOME INSPECTION ADDENDUM ☒ Yes ☐ No LEAD - BASED PAINT DISCLOSURE FORM
es ☒ No SALE OF HOME CONTINGENCY ADDENDUM ☐ Yes ☒ No LEAD - BASED PAINT INSPECTION CONTINGENCY
es ☒ No RADON ADDENDUM ☐ Yes ☒ No FHA HOME INSPECTION NOTICE
es ☒ No HOME WARRANTY POLICY to be provided (specify): _____
es ☐ No STATE JURISDICTIONAL ADDENDUM ☐ DC ☒ VA ☐ MD ☐ WVA ☐ Other _____
es ☐ No CONDO/COOP ADDENDUM (DC and MD)
es ☐ No OTHER (specify): 1-AGENCY DISCLOSURE 2-DISCLAIMER/DISCLOSURE

Purchaser reserves right option for survey and appraisal, at purchaser's expense. Property must appraise for contract price.

32. OTHER TERMS. Property shall be maintained in current condition or better, but purchaser shall not sell any portion or make changes to property which would decrease value of property. Seller's legal counsel must approve this contract within five days of ratification.

Purchaser's legal counsel must approve this contract within 5 days of ratification.

33. ENTIRE AGREEMENT. This Contract shall be binding upon the parties, and each of their respective heirs, executors, administrators, successors or assigns. The provisions hereof shall survive the delivery of the deed and shall not be merged therein. This Contract, unless amended in writing, contains the final and entire agreement of the parties and the parties shall not be bound by any terms, conditions, oral statements, warranties or representations not herein contained. The interpretation of this Contract shall be governed by the laws of the appropriate jurisdiction.

SELLER:
8/9/99 Ann R. Sheets (SEAL)
Signature
1/9/99 Kenneth R. Sheets (SEAL)
Signature

PURCHASER:
11/19/99 A.R. Coker (SEAL)
Date Signature
_____, _____ (SEAL)
Date Signature

Date and time of Contract Acceptance (see DEFINITIONS PARAGRAPH) _____, 19____ / ____ ☐ AM ☐ PM

Information purposes only:

Selling Company's Name and Address:

Selling Company's Name and Address:

Associate Name _____

Associate Name _____

Office # _____ FAX # _____

Office # _____ FAX # _____

Broker Code: _____

Broker Code: _____



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VIRGINIA JURISDICTIONAL ADDENDUM

This Addendum is made on 10 Nov. 1999 to a Sales Contract ("Contract") dated 10 Nov. 1999 between Harriet A. Castle ("Purchaser") and Kenneth + ANN Sheets ("Seller") for the purchase and sale of the Property: 221 Good Mill Rd - Rileysville, VA. 22650

1. FINANCING

A. SECOND DEED OF TRUST. The Purchaser shall ☐ OBTAIN, OR ☐ ASSUME a Second Deed of Trust loan for _____ secured by the Property amortized over _____ years at a ☐ FIXED OR an ☐ ADJUSTABLE rate bearing (initial) interest of _____ % per year, or market rate available. The loan shall be payable at approximately \$ _____ per month, including principal and interest. Charges relating to obtaining or assuming the Second Trust shall be paid by the Purchaser. The Purchaser shall sign all documents required by the lender for disbursement of the loan by settlement.

B. SELLER FINANCING. The Seller shall provide a ☐ First ☒ Second ☐ Third Deed of Trust loan for \$ 180,000.00 secured by the Property, payable at approximately \$ 1471.75 per month or more including 8.0 % interest per year, the payment to be applied first interest with the remainder applied to principal and with the balance due 20 years from the date of settlement. If the Property or any interest therein is transferred, sold or conveyed, the note shall be due and payable in full unless the transfer, sale or conveyance is consented to in writing by the then current noteholder. The note may be paid in full or in part at any time without penalty. Any default or failure to pay any other lien or encumbrance on the Property shall be a default of the trust unless cured within 10 Days after written notice from the noteholder. A late charge of 5% shall be due on monthly payments received more than 10 Days late. The trust will require that the Purchaser provide immediate written proof to the noteholder of payment for taxes and insurance when due. The trust will contain a provision assigning rents to the noteholder in the event of default. The Purchaser shall furnish the Seller within 5 business days after the date of Contract Acceptance with a financial statement and credit report from a credit reporting agency at the Purchaser's expense, and promptly comply with additional reasonable requests of the Seller. The Seller grants loan approval under the terms of this paragraph unless the Seller notifies the Purchaser otherwise in writing within 3 business days after receipt of all the Purchaser's financial data. Approval shall not be unreasonably withheld. This Contract is contingent, ☐ Yes ☒ No, for _____ business days after the date of Contract Acceptance on the Seller obtaining a written commitment for the sale of the note at settlement at a discount not to exceed _____ %. This Contract shall be voidable at the option of the Seller.

2. TARGET LEAD-BASED PAINT HOUSING. The Seller represents that any residential dwelling(s) at the Property ☒ were OR ☐ were not constructed before 1978. If the dwelling(s) were constructed before 1978, then, unless exempt under 42 U.S.C. 4852d, this Contract is not complete and not ratified unless it includes, and the Seller and the Purchaser both accept, the following two amendatory forms: A. "Sale: Disclosure and Acknowledgment of Information on Lead-Based Paint and/or Lead-Based Paint Hazards", AND B. "Sales Contract Addendum for Lead-Based Paint Testing".

(FARM HOUSE ONLY)

3. VIRGINIA PROPERTY OWNERS' ASSOCIATION ACT. The Seller represents that the Property ☐ is, OR ☒ is not located within a development which is subject to the Virginia Property Owners' Association Act ("POA Act"). If the Property is within such a development, the POA Act requires the Seller to obtain from the property owners' association an association disclosure packet and provide it to the Purchaser. The information contained in the association disclosure packet shall be current as of a specified date within 30 Days of the date of Contract Acceptance.

The Purchaser may cancel this Contract: (1) within 3 Days after the date of Contract Acceptance, if on or before the date of Contract Acceptance, the Purchaser receives the association disclosure packet or Notice that the association disclosure packet is not available; (2) within 3 Days after hand-delivered receipt of the association disclosure packet or Notice that the association disclosure packet is not available; or (3) within 6 Days after the postmark date if the association disclosure packet or Notice that the association disclosure packet is not available is mailed to the Purchaser. The Purchaser may also cancel this Contract at any time prior to settlement if the Purchaser has not been notified that the association disclosure packet is not available and the association disclosure packet is not delivered to the Purchaser. Written notice of cancellation shall be hand-delivered or mailed, return receipt requested, within the cancellation period to the Seller. Such cancellation shall be without penalty; this Contract shall become void and the Deposit shall be refunded in full to the Purchaser.

If more than 6 months have elapsed between the date of Contract Acceptance and the date of settlement, the Purchaser may make a written request for assurance from the association, at the Purchaser's expense, that the information submitted in the association disclosure packet remains unchanged, or if there have been material changes, a statement specifying such changes.

The right to receive the association disclosure packet and to cancel this Contract terminates at settlement.

4. VIRGINIA CONDOMINIUM ACT. The Seller represents that the Property ☐ is, OR ☒ is not a condominium unit. If the Property is a condominium unit, this Contract is subject to the Virginia Condominium Act which requires the Seller to furnish certain financial and other disclosures to the Purchaser prior to entering into a binding contract of sale. If the required disclosures are not available on the date of Contract Acceptance, the Seller shall promptly request them from the Unit Owners' Association and provide them to the Purchaser who shall acknowledge receipt in writing upon delivery. If the Purchaser does not receive the disclosures within 15 Days after the date of Contract Acceptance or the disclosures are found unacceptable to the Purchaser, the Purchaser may void this Contract by delivering Notice to the Seller within 3 Days after the disclosures were received due (if not received) and the Deposit shall be returned promptly. If more than 60 Days elapse between the date of Contract Acceptance and the date of settlement, the Purchaser may request disclosure of any material changes from the Unit Owners' Association. The Purchaser may void this Contract within 3 Days after either receipt of disclosure that there are material changes or failure of the Unit Owners' Association to provide assurances that there have been no material changes within 10 Days after receipt of the request.

PAC:
 Seller: *MS KRS*

-11-

BK0610PG642

THIS DEED, made and entered into this 30th day of March, 2000, by and between KENNETH R. SHEETS and ANN R. SHEETS, formerly known as Ann R. Roberts, husband and wife, GRANTORS/PARTIES OF THE FIRST PART, and DEREK H. GOEBEL and JANINE S. SIEBENS, husband and wife, as tenants by the entirety, 622 Woodside Drive, Rileyville, Virginia 22650, GRANTEES/PARTIES OF THE SECOND PART,

WITNESSETH:

That for and in consideration of the sum of TEN (\$10.00) DOLLARS, cash in hand paid and other good and valuable consideration, the receipt of which is hereby acknowledged, the GRANTORS do hereby bargain, grant, sell and convey with General Warranty and English Covenants of title, TOGETHER WITH the right-of-way hereinafter set forth, unto Derek H. Goebel and Janine S. Siebens, husband and wife, as tenants by the entirety with the right of survivorship as at common law and not as tenants in common, all that certain tract or parcel of land, together with all improvements thereon, and all rights, easements and appurtenances thereunto belonging, lying and being situate in Springfield Magisterial District of Page County, Virginia, lying on the east side of the Shenandoah River and west of Virginia State Route 684 described as containing 15.05 acres according to that certain metes and bounds description of a portion of property of "Kenneth R. Sheets and Ann R. Sheet;" dated March 27, 2000, and attached hereto as Exhibit A and being the southwest portion of the real estate acquired by Kenneth R. Sheets, single and Ann R. Roberts, single, who is now by marriage known as Ann R. Sheets from Kenneth F. McKeehan and Betty J. McKeehan, husband and wife, by deed dated December 20, 1985, and which is of record in the Clerk's Office of the

SWETHAM & HOUFF
ATTORNEYS & COUNSELLORS
AT LAW
LURAY, VIRGINIA

PLAINTIFF'S
EXHIBIT

BK 0610PG643

Circuit Court of Page County, Virginia, in Deed Book #389 at Page 122.

The property hereinabove described and conveyed is conveyed TOGETHER WITH a non-exclusive easement 50 feet in width for purposes of ingress, egress and utility purposes the center line of which right-of-way is the center line of that certain existing road extending from the property hereinabove conveyed to Virginia Route 684, provided however, that when the said existing road approaches or adjoins a side boundary line of the property which remains vested in the parties of the first part that the 50 foot right-of-way shall then adjoin the said boundary line of the property to constitute an easement 50 foot in total width and shall encompass the said existing road.

This conveyance is made subject to all easements, restrictions and conditions of record insofar as they may lawfully affect the real estate hereinabove described.

The said parties of the first part covenant that they have the right to convey the real estate hereinabove described to the grantees.

WITNESS the following signatures and seals.

Kenneth R. Sheets (SEAL)
Kenneth R. Sheets

Ann R. Sheets (SEAL)
Ann R. Sheets, formerly
known as Ann R. Roberts

SWETNAM & HOUFF
ATTORNEYS & COUNSELLORS
AT LAW
LINNAY, VIRGINIA

EX0610PG644

STATE OF VIRGINIA,

COUNTY OF PAGE, TO-WIT:

The foregoing writing was acknowledged before me this 31st
day of March, 2000, by Kenneth R. Sheets and Ann R. Sheets,
formerly known as Ann R. Roberts, husband and wife, in my County
and State aforesaid.

My commission expires January 31, 2004.

Russ G. Chisom
Notary Public

APPROVED FOR RECORDING TWO 31st DAY OF March, 2000
PAGE COUNTY PLANNING COMMISSION

BY: William D. Wilkins
CLERK

INSTRUMENT #000000873
RECORDED IN THE CLERK'S OFFICE OF
PAGE COUNTY ON
MARCH 31, 2000 AT 04:14PM
\$80.00 GRANTOR TAX WAS PAID AS
REQUIRED BY SEC 58.1-802 OF THE VA. CODE
STATE: \$40.00 LOCAL: \$40.00
C.R. WILSON, CLERK

BY: James J. Burks (DC)

SWETNAM & HOUFF
ATTORNEYS & COUNSELLORS
AT LAW
LEFRAY, VIRGINIA

8K0610PG645

Metes and Bounds Description
Portion of Property of
"Kenneth R. and Ann R. Sheets"
Springfield Magisterial District
Page County, Virginia
Deed Book 389 Page 122
Tax Map #15(A)6 (portion of)
15.05 Acres
3/27/00

Beginning at a corner post, corner to the lands of Harry E. and Janes Printz; said corner being Tax Map #15(A)19 and #15(A)20;

thence with the lands of said Printz, S 28° 11' 13" W for 261.53 feet to a corner post, said corner of the lands of Wallace Dale Wood;

thence with the lands of Wallace Dale Wood, N 53° 19' 54" W for 368.73 feet to a large Cedar Snag; said corner to James J. Wood;

thence with the lands of said James J. Wood; N 60° 31' 10" W for 575.53 feet to an Iron Pin found;

thence continuing with said James J. Wood lands; S 51° 43' 44" W for 534.93 feet to an Iron Pipe found;

thence N 7° 19' 29" E for 522.88 feet to a set stone found; being a corner to the lands of Mildred E. Wood Estate ;

thence with said Wood Estate lands, N 21° 19' 29" E for 108.90 feet to an Iron Pin found;

thence N 77° 10' 31" W for 24.75 feet to an Iron Pin found;

thence N 01° 43' 42" W for 174.12 feet to a corner post;

thence N 81° 06' 09" W for 495.70 feet to an Iron Pin found on the low mean water mark of the Shenandoah River;

thence with said river low water mark; N 31° 47' 59" E for 42.39 feet to an Iron Pin on said river bank;

thence leaving said river and running a new line through the lands of Kenneth R. and Ann R. Sheets, S 81° 06' 09" E for 1125.00 feet to an Iron Pin to be set;

thence continuing with new line through the land of sheets S 42° 18' 53" E for 919.88 feet to the place and point of beginning and containing 15.05 acres more or less.

OPTION FOR SALE OF REAL ESTATE

THIS AGREEMENT is made this 31st day of March, 2000, between Kenneth R. Sheets and Ann R. Sheets, husband and wife, the "Seller" and Derek H. Goebel and Janine S. Siebens, husband and wife, the "Purchaser".

1. **Description of Real Estate.** Seller grants to Purchaser the irrevocable and exclusive right and option to purchase the balance of Seller's farm in Page County, Virginia (after the conveyance of even date of a 15.05 acre portion thereof to Purchaser) which farm is currently identified on Page County tax maps as Parcel 15-A-6 and which was acquired by Seller by deed of record on the Clerk's Office of the Circuit Court of Page County in Deed Book 389, Page 122.

2. **Term of Option; Method of Exercising.** This option shall expire at midnight on June 30, 2000, and it may be exercised within the option period by providing written notice to Seller, which maybe hand delivered or mailed, and if mailed, the date of depositing such notice in the United States mail, postage prepaid, shall constitute the date of exercising the option.

3. **Purchase Price.** If Purchaser exercises this option, the purchase price is Three Hundred Eighty-Five Thousand Three Hundred Dollars (\$385,300.00). The sale is in gross and not by the acre. As a consideration for this option, Purchaser shall make a deposit at the time of execution of this option in the amount of Five Hundred Dollars (\$500.00) to be held in escrow by Seller until settlement and such deposit will be credited against the purchase price. In the event Purchaser elects not to exercise this option, the deposit shall be returned to Purchaser unless Purchaser has breached this option in which case the deposit shall be retained by Seller in lieu of any other remedies available to Seller.

4. **Payment of Purchase Price.** If this option is exercised, the balance of the purchase price shall be paid in cash (cashier's or certified check) or by initiating a wire transfer prior to 2:00 p.m. on the Settlement Date, as hereinafter defined, of immediately available federal funds to Seller's account at a bank or trust company specified by Seller in writing to Purchaser in an amount equal to the balance of the purchase price. Seller may assign the sale proceeds due Seller at settlement.

5. **Settlement Date.** If this option is exercised, settlement shall be made in the offices of Purchaser's attorney or at such other location as the parties may agree, within fifteen (15) days after this option is exercised but in no event later than July 30, 2000, provided that time may be extended by mutual agreement or if necessary to complete examination of title, prepare necessary documents, or correct title defects reported by the title examiner.

6. **Title.** At settlement, Seller shall convey to Purchaser good, marketable and insurable fee simple title to the property by deed of general warranty containing English Covenants of title, free of all liens, encumbrances, and leases except for normal utility easements. In the event the title examination or survey reveals facts which constitute valid title objections or affect the marketability or insurability of title, Purchaser shall have the option to terminate this contract with no penalty, unless Seller, at Seller's expense, cures the title objections within a reasonable time but not to exceed

ninety (90) days. Obtaining a commitment from a title insurance company operating in Virginia for title insurance at standard rates, without exception as to the defect claimed, shall constitute compliance with the requirements of title. If the title objection is substantial enough, in the written opinion of counsel for Purchaser, that counsel cannot certify the title but a title company will insure the same, then Seller shall have the option of paying the premium for insurance, or, if Seller does not desire to pay the premium, either Seller or Purchaser may terminate the contract if either so desires. In the event of termination, the deposit shall be returned. Nothing shall prevent Purchaser in such a situation from electing to pay the premium and continue with the contracts.

If the property is under any land use assessment, Seller agrees to take all action necessary to ensure that the property continues to be taxed under land use assessment. If this sale results in disqualification from land use eligibility, Seller shall not be responsible for payment of any rollback taxes assessed.

7. **Risk of Loss.** Risk of loss or damage by fire or other casualty to the property or taking by eminent domain before settlement is assumed by Seller. In the event of such loss or damage Purchaser shall have the option of either (a) terminating this agreement and recovering the deposit, or (b) continuing with the agreement in which event the Seller shall assign to Purchaser all of Seller's rights under any applicable insurance policy and any condemnation awards and pay over to Purchaser any sums received as a result of such loss or damage.

8. **Warranties.** Purchaser has inspected the property including any improvements and, except as otherwise provided in this contract, agrees to accept it in its condition on the date of this option. The property shall be in substantially the same condition at settlement as at the time of the execution of this contract.

9. **Zoning.** Purchaser agrees to accept the property as presently zoned.

10. **Possession.** Possession shall be given to Purchaser at the time of settlement.

11. **Closing Costs.** Real estate taxes for the current year shall be prorated as of the date of settlement. Seller shall pay for preparing the deed and the grantor's recording tax and provide certificates for non-foreign status and Form 1099-S. Purchaser shall pay for survey costs, rollback taxes, if any, title examination, title insurance and other deed recordation costs. All other closing costs shall be paid by Purchaser. Rents, if any, shall be prorated as of date of closing and any deposit transferred to Purchaser.

12. **Leases.** Seller represents that any leases, can be unilaterally canceled by Purchaser upon providing no more than ninety (90) days written notice to tenant. Seller shall provide copies of any leases to Purchaser prior to the expiration of the option period. Leases shall be assigned to Purchaser as of the date of settlement. Seller represents that as of date of settlement there will be no prepaid rent and no Seller default on any outstanding leases.

13. **Adverse Claim.** Purchaser acknowledges that there may be a claim to the real estate by Harriet Castle arising from a prior contract between the Seller and Castle and that this option is null and void and the deposit will be refunded in the event a memorandum of lis pendens is filed by

Castle prior to recordation of this option agreement or prior to closing if this option agreement is not recorded or there is a determination by a court of competent jurisdiction that Castle has a right to specific performance prior to closing.

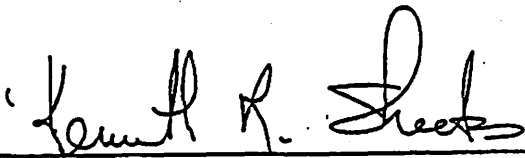
14. **Realtors Commissions.** Any commissions due shall be paid by the party who retained the services of a real estate broker or agent.

15. **General Provisions.** This option represents the entire agreement between the parties hereto relating to the property and supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral between the parties. This option shall not be amended or modified, and no waiver of any provision hereof shall be effective, unless set forth in a written instrument authorized and executed with the same formality as this option. This option shall be construed according to the laws of the Commonwealth of Virginia and shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties; and is not assignable by either party without the written permission of the other party.

16. **Attorneys' Fees and Costs on Default.** If either party defaults under this option, the defaulting party shall be liable for expenses incurred by the non-defaulting party, including attorneys' fees incurred in attempting enforcement of the agreement.

WITNESS the following signatures:


Dated 3/31, 2000

 (SEAL)
Kenneth R. Sheets, Seller

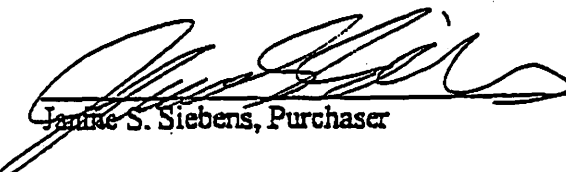
Dated 3/31, 2000

 (SEAL)
Ann R. Sheets, Seller

Dated 3/31, 2000

 (SEAL)
Derek H. Goebel, Purchaser

Dated 3/31, 2000

 (SEAL)
Janice S. Siebens, Purchaser

8K0610PG649

COMMONWEALTH OF VIRGINIA, AT LARGE,
CITY/COUNTY OF Tag, to-wit:

The foregoing instrument was acknowledged before me this the 31st day of March, 2000, by Kenneth R. Sheets.

Betty B. Wilson
Notary Public

My commission expires: 9-30-2001

I was commissioned Betty B. Snyder.

COMMONWEALTH OF VIRGINIA, AT LARGE,
CITY/COUNTY OF Tag, to-wit:

The foregoing instrument was acknowledged before me this the 31st day of March, 2000, by Ann R. Sheets.

Betty B. Wilson
Notary Public

My commission expires: 9-30-2001

I was commissioned Betty B. Snyder

COMMONWEALTH OF VIRGINIA, AT LARGE,
CITY/COUNTY OF Tag, to-wit:

The foregoing instrument was acknowledged before me this the 31st day of March, 2000, by Derek H. Goebel.

Betty B. Wilson
Notary Public

My commission expires: 9/30/2001

I was commissioned Betty B. Snyder.

BK 0610PG650

COMMONWEALTH OF VIRGINIA, AT LARGE,
CITY/COUNTY OF Page, to-wit:

The foregoing instrument was acknowledged before me this the 31st day of March,
2000, by Janine S. Siebens.

Betty L. Wilson
Notary Public

My commission expires: 9/30/2001

I was commissioned Betty L. Snyder.

INSTRUMENT #000000874
RECORDED IN THE CLERK'S OFFICE OF
PAGE COUNTY ON
MARCH 31, 2000 AT 04:15PM
C.R. WILSON, CLERK

BY: Shirley W. Strawderman (DC)

BK 0590PG525

[Space Above This Line For Recording Data]

DEED OF TRUST

THIS DEED OF TRUST ("Security Instrument") is made on **FEBRUARY 17, 1999**
The grantor is **KENNETH R SHEETS AND ANN R SHEETS (FORMERLY KNOWN AS ANN R ROBERTS),**
HUSBAND AND WIFE

JOHN C HILL
Virginia, and **BENJAMIN M BUTLER**

("Borrower"). The trustee is
of **1 S ROYAL AVE FRONT ROYAL**
of **112 S CAMERON WINCHESTER**

Virginia, trustees (any one of whom may act and are referred to as "Trustee"). The beneficiary is
DOMINION SAVINGS BANK FSB

which is organized and existing under the laws of **THE UNITED STATES OF AMERICA**, and whose address is
1 SOUTH ROYAL AVENUE, FRONT ROYAL, VA 22630

("Lender"). Borrower owes Lender the principal sum of
ONE HUNDRED SIXTY-ONE THOUSAND FIVE HUNDRED FIFTY AND NO CENTS
Dollars (U.S. \$ **161,550.00**). This debt is evidenced by Borrower's note dated the same date as this Security
Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on
MARCH 1, 2029. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by
the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with
interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of
Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably
grants and conveys to Trustee, in trust, with power of sale, the following described property located in

PAGE COUNTY

, Virginia.

SEE ATTACHED

which has the address of **221 GOOD MILL ROAD**
[Street]
Virginia **22630-9801** ("Property Address");
[Zip Code]

RILEYVILLE
[City]

VIRGINIA - Single Family - Fannie Mae/Freddie Mac Uniform Instrument

Form 3047 9/90

ITEM 1990L1 (06/11)

(Page 1 of 7 pages)

GREATLAND
To Order Call: 1-800-430-4333 ☐ Fax 616-781-1131

**PLAINTIFF'S
EXHIBIT**

BK0590PG526

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest; Prepayment and Late Charges.** Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

2. **Funds for Taxes and Insurance.** Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by Borrower to Lender, in accordance with the provisions of paragraph 8, in lieu of the payment of mortgage insurance premiums. These items are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. § 2601 *et seq.* ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Borrower to pay a one-time charge for an independent real estate tax reporting service used by Lender in connection with this loan, unless applicable law provides otherwise. Unless an agreement is made or applicable law requires interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender may agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds, showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for all sums secured by this Security Instrument.

If the Funds held by Lender exceed the amounts permitted to be held by applicable law, Lender shall account to Borrower for the excess Funds in accordance with the requirements of applicable law. If the amount of the Funds held by Lender at any time is not sufficient to pay the Escrow Items when due, Lender may so notify Borrower in writing, and, in such case Borrower shall pay to Lender the amount necessary to make up the deficiency. Borrower shall make up the deficiency in no more than twelve monthly payments, at Lender's sole discretion.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender. If, under paragraph 21, Lender shall acquire or sell the Property, Lender, prior to the acquisition or sale of the Property, shall apply any Funds held by Lender at the time of acquisition or sale as a credit against the sums secured by this Security Instrument.

3. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under paragraphs 1 and 2 shall be applied: first, to any prepayment charges due under the Note; second, to amounts payable under paragraph 2; third, to interest due; fourth, to principal due; and last, to any late charges due under the Note.

4. **Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Borrower shall pay these obligations in the manner provided in paragraph 2, or if not paid in that manner, Borrower shall pay them on time directly to the person owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. If Borrower makes these payments directly, Borrower shall promptly furnish to Lender receipts evidencing the payments.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the

Form 3047 9/90

BK 0590PG527

lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

5. **Hazard or Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance with paragraph 7.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of the payments. If under paragraph 21 the Property is acquired by Lender, Borrower's right in any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

6. **Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Security Instrument or Lender's security interest. Borrower may cure such a default and reinstate, as provided in paragraph 18, by causing the action or proceeding to be dismissed with a ruling that, in Lender's good faith determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Security Instrument or Lender's security interest. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

7. **Protection of Lender's Rights in the Property.** If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this paragraph 7, Lender does not have to do so.

Any amounts disbursed by Lender under this paragraph 7 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BK 0590PG528

8. **Mortgage Insurance.** If Lender required mortgage insurance as a condition of making the loan secured by this Security Instrument, Borrower shall pay the premiums required to maintain the mortgage insurance in effect. If, for any reason, the mortgage insurance coverage required by Lender lapses or ceases to be in effect, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the mortgage insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the mortgage insurance previously in effect, from an alternate mortgage insurer approved by Lender. If substantially equivalent mortgage insurance coverage is not available, Borrower shall pay to Lender each month a sum equal to one-twelfth of the yearly mortgage insurance premium being paid by Borrower when the insurance coverage lapsed or ceased to be in effect. Lender will accept, use and retain these payments as a loss reserve in lieu of mortgage insurance. Loss reserve payments may no longer be required, at the option of Lender, if mortgage insurance coverage (in the amount and for the period that Lender requires) provided by an insurer approved by Lender again becomes available and is obtained. Borrower shall pay the premiums required to maintain mortgage insurance in effect, or to provide a loss reserve, until the requirement for mortgage insurance ends in accordance with any written agreement between Borrower and Lender or applicable law.

9. **Inspection.** Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

10. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the taking, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Borrower and Lender otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of such payments.

11. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. **Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 17. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

13. **Loan Charges.** If the loan secured by this Security Instrument is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note.

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BK 0590PG530

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

21. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under paragraph 17 unless applicable law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 21, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender or Trustee shall give to Borrower (and the owner of the Property, if a different person) notice of sale in the manner prescribed by applicable law. Trustee shall give public notice of sale by advertising, in accordance with applicable law, once a week for two successive weeks in a newspaper having general circulation in the county or city in which any part of the Property is located, and by such additional or any different form of advertisement the Trustee deems advisable. Trustee may sell the Property on the eighth day after the first advertisement or any day thereafter, but not later than 30 days following the last advertisement. Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by advertising in accordance with applicable law. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property with special warranty of title. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to,

Trustee's fees of 5.000 % of the gross sale price and reasonable attorneys' fees; (b) to the discharge of all taxes, levies and assessments on the Property, if any, as provided by applicable law; (c) to all sums secured by this Security Instrument; and (d) any excess to the person or persons legally entitled to it. Trustee shall not be required to take possession of the Property prior to sale thereof or to deliver possession of the Property to the purchaser at the sale.

22. Release. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to release this Security Instrument and shall surrender all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall release this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

23. Substitute Trustee. Lender, at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by applicable law.

24. Identification of Note. The Note is identified by a certificate on the Note executed by any Notary Public who certifies an acknowledgment hereto.

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6K0590PG531

25. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)]

<input type="checkbox"/> Adjustable Rate Rider	<input type="checkbox"/> Condominium Rider	<input type="checkbox"/> 1-4 Family Rider
<input type="checkbox"/> Graduated Payment Rider	<input type="checkbox"/> Planned Unit Development Rider	<input type="checkbox"/> Biweekly Payment Rider
<input type="checkbox"/> Balloon Rider	<input type="checkbox"/> Rate-Improvement Rider	<input type="checkbox"/> Second Home Rider
<input checked="" type="checkbox"/> Other(s) [specify] LEGAL DESCRIPTION		

NOTICE: THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT OF SALE OR CONVEYANCE OF THE PROPERTY CONVEYED.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in pages 1 through 7 of this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Kenneth R. Sheets (Seal) Ann R. Sheets (Seal)
KENNETH R. SHEETS -Borrower ANN R. SHEETS -Borrower

____ (Seal) ____ (Seal)
____ -Borrower ____ -Borrower

____ (Seal) ____ (Seal)
____ -Borrower ____ -Borrower

Witness:

Witness:

STATE OF VIRGINIA,

Warren

County is:

The foregoing instrument was acknowledged before me this

17th day of February, 1999
(date)

by Kenneth R. Sheets and Ann R. Sheets

(person acknowledging)

My Commission expires: 2/28/2001

Caryl D. Keller

Notary Public

BK0590PG532

ALL THAT CERTAIN TRACT OR PARCEL OF LAND, WITH ALL THE IMPROVEMENTS THEREON, TOGETHER WITH ALL APPURTENANCES AND HEREDITAMENTS THEREUNTO BELONGING OR IN ANYWISE APPERTAINING, LYING AND BEING SITUATE IN THE SPRINGFIELD MAGISTERIAL DISTRICT OF PAGE COUNTY, VIRGINIA, CONTAINING 3.000 ACRES, MORE OR LESS, AS SHOWN ON THAT CERTAIN "PLAT SHOWING PORTION OF KENNETH R. SHEETS PROPERTY SPRINGFIELD DISTRICT PAGE COUNTY, VIRGINIA" DATED AUGUST 21, 1991, AND OF RECORD IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF PAGE COUNTY, VIRGINIA, IN DEED BOOK 470 AT PAGE 547; AND BEING A PORTION OF THE SAME PROPERTY CONVEYED TO KENNETH R. SHEETS, SINGLE, AND ANN R. ROBERTS, SINGLE, BY DEED DATED DECEMBER 20, 1985, FROM KENNETH F. MCKEEHAN AND BETTY J. MCKEEHAN, HIS WIFE, SAID DEED BEING OF RECORD IN THE AFORESAID CLERK'S OFFICE IN DEED BOOK 389 AT PAGE 122.

ORIGINAL DEED OF TRUST RE-FINANCED HEREBY IS
RECORDED IN DEED BOOK 470 PAGE 540 AND
#IN THE ORIGINAL AMOUNT OF \$146,300.00 ..

INSTRUMENT #990000615
RECORDED IN THE CLERK'S OFFICE OF
PAGE COUNTY ON
FEBRUARY 22, 1999 AT 11:05AM
LUTHER E. MILLER, CLERK

BY: Glenne C. Dineen (DC)

BK 0610PG502

SELLER LOAN #1930039807
INVESTOR LOAN #179623249
PURCHASER LOAN #45084

ASSIGNMENT OF DEED OF TRUST

KNOW ALL MEN by these presents, that Dominion Savings Bank FSB, 1 South Royal Avenue, Front Royal, Virginia 22630, a banking Corporation, existing under the laws of the United States, for valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and assign to:

VALLEY BANK AND TRUST CO.
425 10th Street
Gering NE 69341

that certain promissory note and Deed of Trust made by Kenneth R. S. heets and Ann R. Sheets dated the 17th day of February 1999 in the original sum of \$161,550.00 and evidenced by Deed of Trust of record in the Clerk's Office of the Circuit Court of Page County, Virginia as in Deed Book 0590 at Page 525.

DOMINION SAVINGS BANK FSB

By:


Wade Hotsenpiller

President/

Chief Operating Officer

WITNESSED BY:


Tammy S. Bolt

BK 0610PG503

STATE OF VIRGINIA
COUNTY OF WARREN, TO-WIT:

I, James D. Woodard, a Notary Public in and for the
State and jurisdiction aforesaid, do hereby certify that Wade Hotsenpiller
of Dominion Savings Bank, FSB, whose name is signed to the foregoing
Assignment of Deed of Trust dated the 27th day of March
2000, has personally appeared before me and acknowledged the same in my
State and jurisdiction on behalf of Dominion Savings Bank, FSB pursuant to
its By-Laws or Resolution of its Board of Directors.

Given under my hand this 27th day of March, 2000.

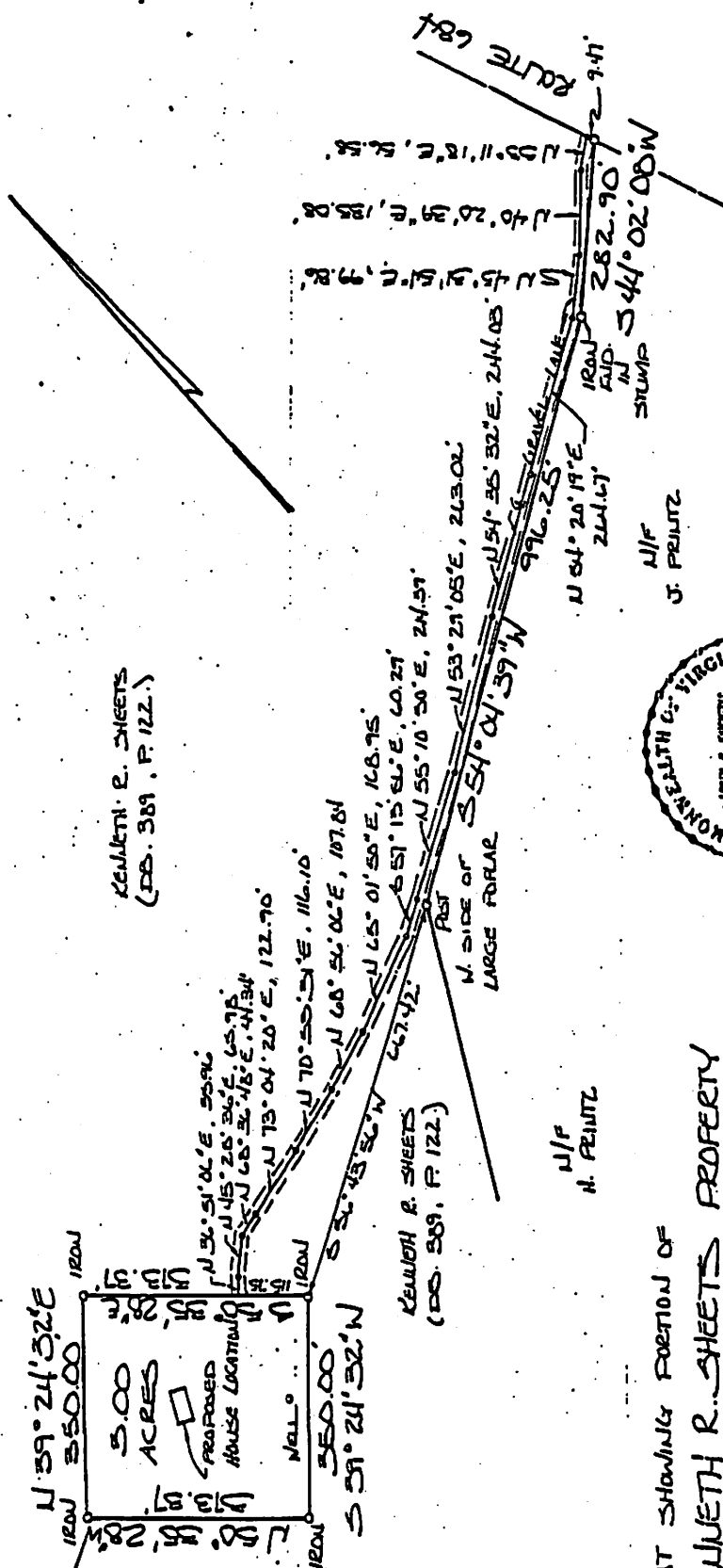
My Commission expires: October 31, 2002

James D. Woodard

NOTARY PUBLIC

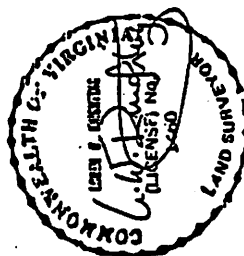
INSTRUMENT #0000000341
RECORDED IN THE CLERK'S OFFICE OF
PAGE COUNTY ON
MARCH 30, 2000 AT 01:36PM
C.B. WILSON, CLERK

BY: James D. Woodard (DC)



PLAT SHOWING PORTION OF
KENNETH R. SHEETS PROPERTY
SPRINGFIELD DISTRICT
PAGE COUNTY, VIRGINIA

SCALE 1" = 200' AUGUST 21, 1991
R.W. SMITH & ASSOCIATES, P.C. VERONA, VIRGINIA



000000

VIRGINIA: IN THE CIRCUIT COURT OF PAGE COUNTY

MARRIET A CASTLE,

Plaintiff

Case No. CH00-38

KENNETH R. SHEETS,

and

ANN R. SHEETS

vs

Defendants.

MOTION CRAVING OYER AND DEMURRER

Come now the defendants, Kenneth R. Sheets and Ann R. Sheets (herein Sheets) by counsel,
move for an order requiring the plaintiff to fill all addenda to the contract referenced in the bill
of complaint so that the Court will have before it the entire agreement between the plaintiff and
setting forth all requirements of each party, for the Court to consider in ruling on the
matter by Sheets

DEMURRER

The defendants Sheets demur to the bill of complaint on the grounds that it fails to state a
the relief sought for the following reasons:

- (1) The contract in question is null and void because the plaintiff had failed to comply
with conditions within the time requirements of the contract and time is of the essence in the

contract. The plaintiff has failed to allege that she has complied with all the terms of the contract and fulfilled all requirements of the contract.

(2) Sheets had advised plaintiff's attorney on or about December 30, 1999 that the contract was null and void. This had been reiterated by Sheets' attorney by letter to plaintiff's attorney on or about February 1, 2000. The plaintiff was subsequently advised that Sheets intended to sell and convey the property and that if plaintiff considered she had an enforceable contract she should institute suit for specific performance. The plaintiff took no action to file any memorandum of lis pendens to give notice to the seller and any purchaser that she claimed any interest in the property in question. A portion of the property was conveyed on or about March 31, 2000. Therefore specific performance of the contract sued on can not be granted without rescinding this conveyance.

(3) Plaintiff has a remedy at law.

For the foregoing reasons the bill of complaint should be dismissed and the defendants Sheets awarded costs and attorneys fees.

Kenneth R. Sheets and Ann R. Sheets
By Counsel



Glenn M. Hodge, Esquire
WHARTON, ALDHIZER & WEAVER, PLC
100 South Mason Street
P.O. Box 20028
Harrisonburg, VA 22801-7528
Counsel for Defendants

CERTIFICATE

I hereby certify that a true copy of the foregoing Motion Craving Oyer and Demurrer was mailed this 5th day of May, 2000, to:

John N. McCune, Esquire
14 East Stonewall Dr.
Front Royal, VA 22630
Counsel for plaintiff

Robert S. Janey, Esquire
12 South Court Street
P.O. Box 467
Luray, VA 22835
Counsel for defendants, Goebel and Siebens

Benjamin M. Butler, Trustee and Defendant
112 S. Cameron Street
Winchester, VA 226014

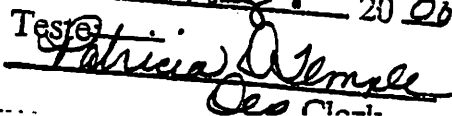
John C. Hill, Trustee and Defendant
1 South Royal Avenue
Front Royal, VA 22630

Valley Bank and Trust Co., Noteholder and Defendant
425 10th Street
Gering, NE 69341


Of Counsel for Defendant

GH0112.yWPD

Filed in the Clerk's Office
of the Circuit Court of Page
County, Virginia, 2:30pm

May 8 20 00
Tested by 
Clerk

VIRGINIA: IN THE CIRCUIT COURT OF PAGE COUNTY

HARRIET A CASTLE,

Plaintiff

v.

Case No. CH00-38

KENNETH R. SHEETS,

and

ANN R. SHEETS

et als

Defendants.

ANSWER TO BILL OF COMPLAINT

The defendants, Kenneth R. Sheets and Ann R. Sheets (herein Sheets) by counsel,
answers the bill of complaint as follows:

1. In response to paragraph 1 of the bill of complaint, Sheets admit that they entered into a contract with the plaintiff, but state that the plaintiff failed to comply with the terms of the contract and that such contract became null and void as result of the plaintiff's failure to perform.

2. Paragraph 2 of the bill of complaint is admitted.

3. In response to paragraph 3 of the bill of complaint, Sheets admit that the contract called for a closing date of January 30, 2000, but the plaintiff had failed to comply with terms of the contract and the contract is null and void as a result of plaintiff's failure to perform.

4. Paragraph Four of the bill of complaint is denied. Sheets advise plaintiff's attorney that the contract was null and void.

5. Paragraph Five of the bill of complaint is denied.

6. In response to paragraph 6 of the bill of complaint, Sheets state that the contract is null and void because the plaintiff had failed to perform under the terms of the contract. The plaintiff was given notice that the contract was terminated by communications to her attorney on or about December 30, 1999 and again on or about February 1, 2000.

7. Paragraph 7 of the bill of complaint is denied.

8. Paragraph 8 of the bill of complaint requires no response. To the extent that it alleges any wrong doing on the part of Sheets, it is denied.

9. Paragraph 9 of the bill of complaint is admitted.

10. Paragraph 10 of the bill of complaint is admitted.

11. Paragraph 11 of the bill of complaint is denied because the contract was null and void.

12. Paragraph 12 of the bill of complaint requires no response by the defendants, Sheets. To the extent it alleges any wrong doing on the part of Sheets, it is denied.

13. Paragraph 13 of the bill of complaint is denied.

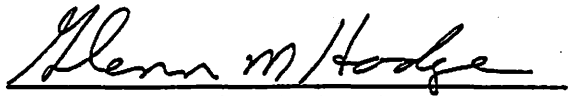
14. All allegations in the bill of complaint do specifically admitted are denied.

AFFIRMATIVE DEFENSES

1. The plaintiff is guilty of misrepresentation, concealment and failure to communicate pertinent information as to her financial condition and Sheets relied on the plaintiff's representation to their detriment.
2. The plaintiff has unclean hands and therefor should be denied equitable relief.
3. Plaintiff's claim is barred by laches.
4. Sheets reserve the right to add affirmative defenses as a result of discovery.

Where for the defendants, Sheets move that the bill of complaint be dismissed and that they be awarded cost and attorney's fees.

Kenneth R. Sheets and Ann R. Sheets
By Counsel


Glenn M. Hodge (VSB #12159)
Wharton, Aldhizer & Weaver, P.L.C.
100 South Mason Street
Harrisonburg, Virginia 22801
Telephone: (703) 434-0316
Fax: (703) 434-5502
Counsel for Defendants

CERTIFICATE

I hereby certify that a true copy of the foregoing Answer to Bill of Complaint was mailed
this 5th day of May, 2000, to:

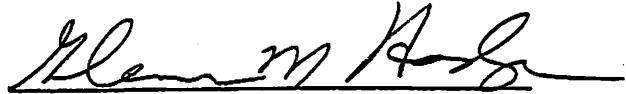
John N. McCune, Esquire
14 East Stonewall Dr.
Front Royal, VA 22630
Counsel for plaintiff

Robert S. Janey, Esquire
12 South Court Street
P.O. Box 467
Luray, VA 22835
Counsel for defendants, Goebel and Siebens

Benjamin M. Butler, Trustee and Defendant
112 S. Cameron Street
Winchester, VA 226014

John C. Hill, Trustee and Defendant
1 South Royal Avenue
Front Royal, VA 22630

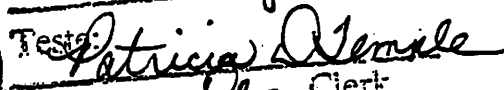
Valley Bank and Trust Co., Noteholder and Defendant
425 10th Street
Gering, NE 69341


Of Counsel for Defendant

mb0067

Filed in the Clerk's Office
of the Circuit Court of Page
County, Virginia, 2:30pm
May 8 2000

Tested:


Clerk

VIRGINIA: IN THE CIRCUIT COURT OF PAGE COUNTY

HARRIET A. CASTLE,

Complainant

vs.

In Chancery No. CH00-38

KENNETH R. SHEETS

ANN R. SHEETS, et. als.,

Defendants

MOTION CRAVING OYER AND DEMURRER

Come now these defendants, Derek H. Goebel and Janine S. Siebens, by counsel and move for an order requiring the plaintiff to fill all addenda and any other written amendments or supplements to the contract referenced in the Bill of Complaint so that the Court will have before it the entire agreement between the plaintiff and all parties to this cause, setting forth all requirements of each party, for the Court to consider in ruling on the demurrer by these defendants.

DEMURRER

Comes now these defendants, Derek H. Goebel and Janine S. Siebens, by counsel and file this Demur to the Bill of Complaint exhibited against them herein and state as follows:

1. That the Bill of Complaint states no cause of action against them for which the remedy of specific performance is available.
2. These defendants are not alleged to have been parties to the contract of November 10th, 1999 (plaintiff's Exhibit 1) and there is no allegation that these defendants breached the terms of the contract nor that they had any duty of any performance under the terms of said contract.
3. That the sole allegation against these defendants is contained in paragraph 11 of

the Bill of Complaint where it is alleged that these defendants "were on notice that the subject real estate was under contract at the time they settled on the purchase of the 15.05 acres and executed the said option."

4. That the Bill of Complaint alleges no breach of any duty that these defendants might have toward the Plaintiff, and alleges no basis in law or in fact for her request that "the sale to the defendants, Goebel/Siebens, be set aside."

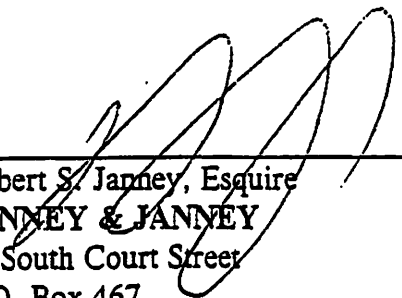
5. That the allegations in the Bill of Complaint as to these defendants are conclusionary in nature and do not support a cause of action of any kind, nor specifically do they support a claim for specific performance as to these defendants.

6. That as a matter of law Specific Performance cannot be ordered in this cause because the defendants, Kenneth R. Sheets and Ann R. Sheets, who are the only defendants who were a party to the contract (plaintiff's exhibit 1) have previously conveyed a portion of the real estate which is the subject of the alleged contract between the parties and the contract sued upon can not be enforced by specific performance.

7. Plaintiff has an adequate remedy at law.

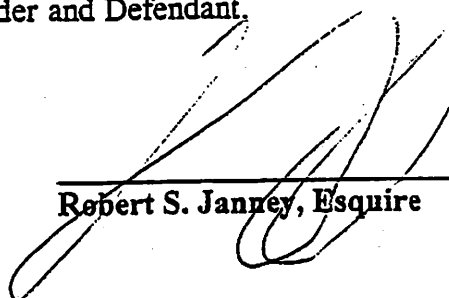
WHEREFORE, these defendants pray that they be dismissed as parties defendant, that no relief be entered or awarded against them, and that they may be dismissed with their costs herein expended, and for such other general and specific relief as to equity shall seem meet, and which may be appropriate to their cause.

DEREK H. GOEBEL
JANINE S. SIEBENS
By Counsel

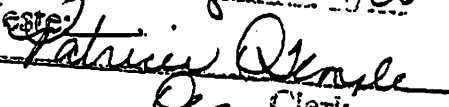

Robert S. Janney, Esquire
JANNEY & JANNEY
12 South Court Street
P.O. Box 467
Luray, Virginia 22835
(540) 743-6593
FAX: (540) 743-4042

CERTIFICATE

I hereby certify that a true copy of the foregoing Demurrer was mailed this 8th day of May, 2000, to John N. McCune, Esquire, 14 East Stonewall Drive, Front Royal, Virginia 22630, counsel for the plaintiff; to Glenn M. Hodge, Esquire at Wharton, Aldhizer & Weaver, PLC, 100 South Mason Street, PO Box 20028, Harrisonburg, Virginia 22801-7528, counsel for Kenneth R. and Ann R. Sheets; Benjamin M. Butler, 112 S. Cameron Street, Winchester, Virginia 226014, Trustee and Defendant; John C. Hill, 1 South Royal Avenue, Front Royal, Virginia 22630, Trustee and Defendant; and Valley Bank and Trust Co., 425 10th Street, Gering, NE 69341, Noteholder and Defendant.


Robert S. Janney, Esquire

Filed in the Clerk's Office
of the Circuit Court of Page
County, Virginia. 2:40pm
May 8 2000

Teste

Clerk

VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF PAGE COUNTY

HARRIET A. CASTLE,

Plaintiff,

v.

In Chancery No. CH00-38

KENNETH R. SHEETS
ANN R. SHEETS, et. als.,

Defendant.

ORDER

This matter came on the 13th day of June 2000, upon the Plaintiff's Bill of Complaint and the Motions Craving Oyer and the Demurrers, by the Defendants, Kenneth R. Sheets and Ann R. Sheets (Sheets) and the Defendants, Derek H. Goebel and Janine S. Siebens (Goebel and Siebens).

And it appearing to the Court that the Plaintiff's Attorney, John N. McCune, Esquire, has died since the filing the Bill of Complaint and the Plaintiff has not yet obtained substitute counsel, it is ordered:

- (1) That the Plaintiff obtain counsel by July 11, 2000 and notify all counsel of record when she obtains counsel. In the event Plaintiff is unable to obtain counsel by July 11, 2000, she should be prepared to proceed *pro se*.
- (2) That the Motions Craving Oyer will be taken up on the next Motions Day on July 11, 2000; the Clerk is directed to place this matter on the Motions Day docket for hearing on the Motions Craving Oyer.
- (3) That argument on the Demurrer is set for July 18, 2000, at 8:45 a.m.

Pursuant to Rule 1:13 of the Rules of the Virginia Supreme Court, endorsement of this order by counsel of record is dispensed with, provided however, that parties objecting to the order may note their objections within ten (10) days after entry thereof.

The Clerk is directed to certify a copy of this order to all counsel of record and to the Plaintiff at 724 Lacey River East Road, Luray, VA 22835

Date: June 20, 2000


JUDGE

I ASK FOR THIS:



Glenn M. Hodge, VSB #12159
WHARTON, ALDHIZER & WEAVER, P.L.C.
100 South Mason Street
Post Office Box 20028
Harrisonburg, Virginia 22801-7528
Telephone: (540) 434-0316
Fax: (540) 434-5502
Counsel for Kenneth R. Sheets and Ann R. Sheets

6-20-00 Copy to Counsel of Record, Plaintiff and Defendants

VIRGINIA: IN THE CIRCUIT COURT OF PAGE COUNTY

HARRIET A. CASTLE,

Complainant

vs.

In Chancery No. CH00-38
ORDER

KENNETH R. SHEETS

ANN R. SHEETS, et. als.,

Defendants

This cause came on to be heard this 11th day of July, 2000 at which time Harriet A. Castle appeared in proper person, *pro se*, and the defendants, Kenneth R. Sheets and Ann R. Sheets, appeared by their counsel, Glenn M. Hodge, Esquire and defendants, Derek H. Goebel and Janine S. Siebens, appeared by their counsel, Robert S. Janney, Esquire.

This matter was on the Court's docket to consider prior motions filed by the defendants. The plaintiff, Harriet A. Castle, thereupon moved the Court for the entry of an "Order of Voluntary Non-Suit" pursuant to the provisions of Section 8.01-380 of the Code of Virginia. The defendants appearing by counsel all objected to the entry of a Voluntary Order of Non-Suit, advising the Court that they considered their claims for cost and attorneys fees to be in the nature of a counter-claim arising out of the contract which pending counter-claim would prevent the voluntary non-suit by the plaintiff. After consideration of argument of counsel and the plaintiff the Court was of the opinion that the claim for attorney's fees and costs was a counter-claim alleging arising out of the same transaction which the plaintiff desired to non-suit and was of such a nature that it would be subject to independent adjudication by the Court pursuant to the provisions of Section 8.01-380(C) of the Code of Virginia.

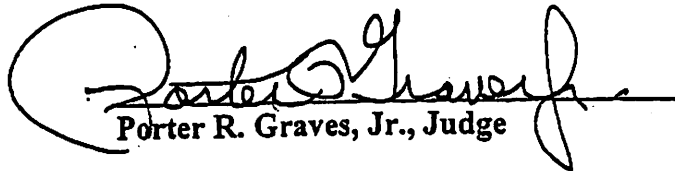
Therefore, upon consideration of the motion of the plaintiff, the Court hereby sustains plaintiff's motion for the entry of an Order of Voluntary Non-Suit. The hearing date set for July

18th, 2000 for Argument on defendants' Demurrer is hereby released. This matter is further continued until September 12, 2000 at 9:00 a.m. or as such time as it is placed on the docket by the Clerk for consideration of any petition filed by the defendants for the award of attorney's fees or costs. The defendants shall file their claim for attorney's fees and costs within ten (10) days of the entry of this Order. The defendants each objected to the entry of this "Order of Voluntary Non-Suit" for the reason stated herein and during argument.

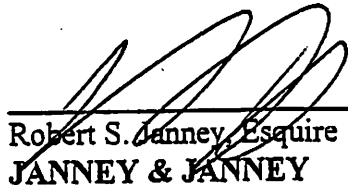
This matter is continued for further hearing until September 12, 2000 at 9:00 a.m. or as such other time as the Clerk may place it on the docket on that date.

The Court notes that the plaintiff, Harriet A. Castle, has appeared *pro se* and all notices shall be forwarded to her at her address filed with the Clerk of the Court.

ENTER this 11th day of July, 2000.


Porter R. Graves, Jr., Judge

SEEN AND OBJECTION NOTED FOR THE
REASONS STATED ON THE RECORD:


Robert S. Janney, Esquire
JANNEY & JANNEY

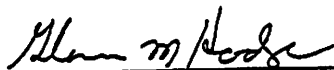
12 South Court Street
P.O. Box 467
Luray, Virginia 22835
(540) 743-6593

FAX: (540) 743-4042

Counsel for Derek H. Goebel and Janine S. Siebens

JANNEY & JANNEY
ATTORNEYS AT LAW
LURAY, VIRGINIA

also



Glenn M. Hodge, Esquire

WHARTON, ALDHIZER & WEAVER, PLC

100 South Mason Street

PO Box 20028

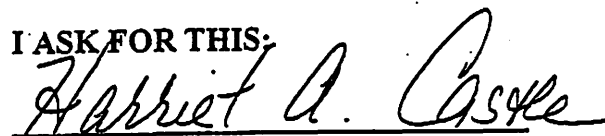
Harrisonburg, Virginia 22801-7528

(540) 434-0316

Fax: (540) 434-5502

Counsel for Kenneth R. Sheets and Ann R. Sheets

I ASK FOR THIS:



Harriet A. Castle

VIRGINIA: IN THE CIRCUIT COURT OF PAGE COUNTY

HARRIET A. CASTLE,

Plaintiff,

v.

In Chancery No. CH00-38

KENNETH R. SHEETS
ANN R. SHEETS, et. als.,

Defendants.

PETITION FOR ATTORNEY'S FEES

Pursuant to the Court's Order entered on July 11, 2000, the defendants, Kenneth R. Sheets and Ann R. Sheets, by Counsel move the Court for an award of attorney's fees against the plaintiff, Harriet A. Castle in the amount of \$6,313.50 plus such additional attorney's fees and costs as may be incurred in pursuing this claim.

In support of their petition, the defendants, Kenneth R. Sheets and Ann R. Sheets state that the Real Estate Sales Contract, which is the subject of this litigation, provided in part in paragraph twenty-three as follows:

ATTORNEY'S FEES. In any action or proceeding involving a dispute between the Purchaser and the Seller arising out of this Contract, the prevailing party shall be entitled to receive from the other party reasonable attorney's fees to be determined by the court or arbitrator(s).

Defendants, Kenneth R. Sheets and Ann R. Sheets state that by having the suit dismissed, by voluntary nonsuit, they are the prevailing party in this proceeding, and therefore they are entitled to the attorney's fees incurred to date in the amount of \$6,313.50 plus such additional attorney's fees and costs as may be incurred in pursuing this claim.

WHEREFORE, defendants, Kenneth R. Sheets and Ann R. Sheets move for judgement against the plaintiff in the amount of \$6,313.50 plus such additional attorney's fees and costs as may be incurred in pursuing this claim.

Kenneth R. Sheets and Ann R. Sheets,

By Counsel



GLENN M. HODGE (VSB No. 12159)

Of Wharton, Aldhizer, & Weaver, P.L.C.

Post Office Box 20028

100 South Mason Street

Harrisonburg, Virginia 22803-7528

(540) 434-5352

Counsel for Kenneth R. and Ann R. Sheets

CERTIFICATE

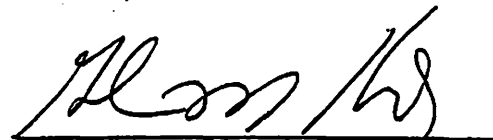
I hereby certify that a copy of the foregoing Petition for Payment of Attorney's Fees was mailed this 18th day of July 2000, to:

Harriet A. Castle
724 Lazy River East Road
Luray, Virginia 22835
Plaintiff

Filed in the Clerk's Office
of the Circuit Court of Page
County, Virginia, 11:40am

Tested:

Patricia D. Womack
Clerk



Of Counsel for Defendant

VIRGINIA: IN THE CIRCUIT COURT OF PAGE COUNTY

HARRIET A. CASTLE,

Plaintiff,

v.

In Chancery No. CH00-38

KENNETH R. SHEETS
ANN R. SHEETS, et. als.,

Defendants.

MEMORANDUM IN SUPPORT OF DEFENDANTS'
PETITION FOR ATTORNEY'S FEES

FACTS

The plaintiff, Harriet A. Castle ("Castle") filed suit against the defendants, Kenneth R. Sheets and Ann R. Sheets ("Sheets") and others seeking specific performance under a real estate sales contract entered into by Castle and Sheets. Sheets filed a demurrer to the bill of complaint but prior to the Court hearing argument on the demurrer, Castle moved for and was granted, over Sheets' objection, an order of voluntary nonsuit pursuant to § 8.01-380 of the Code of Virginia. Thereafter, Sheets petitioned for an award of attorney's fees against Castle based upon the contract provision that permitted the prevailing party to receive reasonable attorney's fees to be determined by the Court. This memorandum is submitted in support of the Sheets' petition for attorney's fees.

SUMMARY

There is no controlling Virginia authority. Although one court confronted the issue, it declined to answer the question, ruling on other grounds. The trend in other jurisdictions, however, is to declare the defendant the "prevailing party" when the plaintiff non-suits the case.

DISCUSSION

A. Virginia Authority:

No Virginia common law nor statute controls the question of who is the prevailing party in a non-suit. Only one Virginia court has specifically confronted the issue. See Attiliis v. Fancy Flivers, Inc., 1990 WL 751043 (Va. Cir. Ct.); See also Tipco Homes v. Prof'l Serv. Indus., Inc., 1990 WL 751424 (Va. Cir. Ct.) (stating that issue of whether claimant is "prevailing party" is issue of law for court to decide). In Attiliis, the plaintiff took a voluntary non-suit during the trial of the case. Defendants moved for attorney fees under the broker contract at issue. The court first noted a split of authority in other jurisdictions before declaring that it "need not decide that issue in this case." Id. To decide the case, the court looked to specific language in the contract stating that attorney's fees would be included in any "final judgment in the action." The court interpreted this language to reflect the parties' intent that attorney's fees be awarded "only in such instances where a final judgment is rendered fully adjudicating the rights of the parties." Id. Concluding that a non-suit did not "fully adjudicate" the rights of the parties, the court found that there was no prevailing party. Id.

In the present case, there is no contract language regarding a "final judgment." The contract provides in part in paragraph twenty-three as follows:

ATTORNEY'S FEES. In any action or proceeding involving a dispute between the Purchaser and the Seller arising out of this Contract, the prevailing party shall be entitled to receive from the other party reasonable attorney's fees to be determined by the court or arbitrator(s).

Therefore, this case is readily distinguishable from the fact situation in Attiliis. Thus, the Sheets are not barred by any Virginia authority from being declared the "prevailing party."

B. Other Jurisdictions

Several other jurisdictions have held that defendants are “prevailing parties” for purposes of awarding attorney’s fees following a non-suit. See Fraser v. ETA Assoc., Inc., 580 A.2d 94 (Conn. Supp. 1990); Hatch v. Dance, 464 So. 2d 713 (Fla. Dist. Ct. App. 1985); Dean Vincent, Inc. v. Krishell Lab., Inc., 532 P.2d 237 (Or. 1975) (en banc). These courts generally recognize the equitable benefits of discouraging plaintiffs from filing frivolous or non-meritorious lawsuits. California does not award attorney’s fees upon the issuance of a non-suit. This rule was first found in common law but has since been codified. See Int’l Indus., Inc. v. Olen, 577 P.2d 1031 (Cal. 1978); Cal. Civ. Code § 1717b(2) (West 2000). Note, however, that the decision in Olen was influenced heavily by “final judgment” language in the contract and Code in place at the time of the decision. The Court determined that a non-suit was not a final judgment. 577 P.2d at 1033. It is also crucial to note that California is generally less willing to allow parties to recover attorney’s fees under contractual provisions due to concerns about unequal bargaining power. Id. at 1033-35.

In Fraser, the Connecticut court began by looking to the definition of “prevailing party” in *Black’s Law Dictionary*. 580 A.2d at 95. The court quoted *Black’s* as stating that whether one is a prevailing party or not does not depend upon the degree of success at different stages of a suit, but whether, “at the end of the suit ... the party who has made a claim against the other, has successfully maintained it.” Id. The court then went on to note that, in general, other jurisdictions have seen fit to award defendant’s fees as “prevailing parties” in suits terminated by voluntary dismissal by the plaintiff, unless there exists a statutory provision preventing such action. Id. After reviewing the decisions in Hatch and Dean Vincent, *supra*, the Fraser court stated that other courts are “rewarding successful litigants while discouraging frivolous suits” and “plac[ing] the burden where it belongs – on the party with the poorly thought out complaint or the hastily conceived writ.” Id. at 96.

Likewise, in Dean Vincent, the Supreme Court of Oregon, sitting en banc, ruled that the key issue was whether the action filed involving the disputed contract terminated in the defendant's favor -- *not* whether the defendant prevailed in the ultimate determination of the cause of action. 532 P.2d at 238. The Court found that a non-suit terminates the case in a defendant's favor, thus entitling him to attorney's fees as the "prevailing party."

Finally, Hatch was almost perfectly analogous to our case. It involved a contract for the transfer of land. The plaintiff brought suit over the contract but voluntarily dismissed it. 464 So. 2d 713. The trial court refused to grant attorney's fees under the contract, ruling that there could be no prevailing party to a non-suit. Id. The Florida District Court of Appeal reversed, citing "well-established" Florida law providing for attorney's fees to defendants as "prevailing parties" in suits that are voluntarily dismissed. Id. at 714.

In conclusion then, other jurisdictions find defendants to be "prevailing parties" in non-suited cases. These courts believe that such a rule discourages frivolous lawsuits and encourages plaintiffs to file their claims with care. California is one significant exception. However, its courts tend to look with disfavor on attorney's fees in many different situations. It is also worth noting that the California decision inspired two separate dissents.

CONCLUSION

While there is no Virginia authority controlling the question of whether a defendant is the "prevailing party" in a non-suit, other jurisdictions have concluded that a defendant is the "prevailing party." At least one common thread appears to be the presence or absence of "final judgment" language in either a contract or statute. In both Virginia and other jurisdictions, where "final judgment" language is present, the courts tend to find that a non-suit does not create a "prevailing

party.”¹ The case at bar does not involve any language regarding “final judgment.” Thus, this Court should follow the decisions of other jurisdictions such as Florida and Connecticut and find the Sheets to be the “prevailing party” as the defendants in a non-suited case.

Kenneth R. Sheets and Ann R. Sheets
By Counsel



Glenn M. Hodge, Esquire (VSB No. 12159)
Of Wharton, Aldhizer & Weaver, P.L.C.
100 South Mason Street
P.O. Box 20028
Harrisonburg, Virginia 22801-7528
(540) 434-0316
Counsel for Kenneth R. Sheets and Ann R. Sheets

CERTIFICATE

I hereby certify that a copy of the forgoing Memorandum in Support of Defendants' Petition for Attorney's Fees was delivered this 12th day of September, 2000 to Harriet A. Castle, Plaintiff.


Glenn M. Hodge

KW0706.WPD

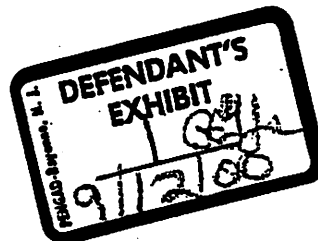
¹Although note that “final judgment” language was involved in Dean Vincent, and the Court still found the defendants to be the prevailing party.

Sheets' Fees

March 31, 2000 - September 11, 2000

Fees		\$6,933.50
Other Charges		27.04
Deductions	04/11/00	100.00
	06/29/00	100.00
	07/18/00	60.00
Total Deductions		(260.00)
		<hr/>
Total Amount of Fees		\$6,700.54

KW0708.WPD



Transactions Listing

Fees - disbs.

matter id=56334-1 and date is between 3/31/00 and 9/11/00 and component=b'

Attached

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
03/31/2000	GMH	56334-1 / SHEETS, ANN & KENNETH Contract Dispute with Harriet Castle <i>McCune</i> Review letter from Atty J. McGuire; telephone client; telephone atty D. Houff; revise options	B	1.40	200.00	280.00
04/03/2000	MMM	56334-1 / SHEETS, ANN & KENNETH Contract Dispute with Harriet Castle Prepare and fax documents to client; telephone conferences with client	B	0.30	75.00	22.50
04/08/2000	GMH	56334-1 / SHEETS, ANN & KENNETH Contract Dispute with Harriet Castle Read email; send email reply re: Castle matter	B	0.20	200.00	40.00
04/11/2000	GMH	56334-1 / SHEETS, ANN & KENNETH Contract Dispute with Harriet Castle Letter to client re: real estate listing and requirement to pay a commission on sale/option to Goebel	B	0.50	200.00	100.00
04/19/2000	GMH	56334-1 / SHEETS, ANN & KENNETH Contract Dispute with Harriet Castle Telephone call with client; review Bill of Complaint	B	0.40	200.00	80.00
04/20/2000	GMH	56334-1 / SHEETS, ANN & KENNETH Contract Dispute with Harriet Castle Research re: specific performance litigation	B	0.60	200.00	120.00
04/24/2000	GMH	56334-1 / SHEETS, ANN & KENNETH Contract Dispute with Harriet Castle Telephone call with client; telephone attorney D. Houff	B	0.30	200.00	60.00
04/25/2000	GMH	56334-1 / SHEETS, ANN & KENNETH Contract Dispute with Harriet Castle Review Bill of Complaint	B	0.50	200.00	100.00
05/01/2000	GMH	56334-1 / SHEETS, ANN & KENNETH Contract Dispute with Harriet Castle Prepare demurrer and grounds of defense to Castle bill of complaint.	B	1.50	200.00	300.00
05/02/2000	GMH	56334-1 / SHEETS, ANN & KENNETH Contract Dispute with Harriet Castle Telephoned client work on response pleadings	B	0.60	200.00	120.00
05/04/2000	GMH	56334-1 / SHEETS, ANN & KENNETH Contract Dispute with Harriet Castle Research re grounds for demurrer to specific performance; work on demurrer and answer to bill of complaint	B	4.50	200.00	900.00

Transactions Listing

matter id='56334-1' and date is between 3/31/00 and 9/11/00 and component='b'

		MatterID/Client Sort				
		Matter Description	Component			
Date	Prof	Narrative	Task Code	Units	Price	Value
05/05/2000	GMH	56334-1 / SHEETS, ANN & KENNETH Contract Dispute with Harriet Castle Revise motion craving oyer, demurrer and answer to bill of complaint; email to R. Janney; telephone R. Janney; letter to clerk of court	B	3.50	200.00	700.00
05/08/2000	GMH	56334-1 / SHEETS, ANN & KENNETH Contract Dispute with Harriet Castle Review client e-mail, telephone bank defendant re: status of litigation	B	0.30	200.00	60.00
05/18/2000	GMH	56334-1 / SHEETS, ANN & KENNETH Contract Dispute with Harriet Castle Telephone Atty R. Janney, e-mail client, file praecipe	B	0.30	200.00	60.00
06/13/2000	GMH	56334-1 / SHEETS, ANN & KENNETH Contract Dispute with Harriet Castle Review file material in preparation of court appearance to argue Demurrer; court appearance re demurrer; prepare order; telephone Ms. Castle; send copies of pleadings	B	3.00	200.00	600.00
06/23/2000	GMH	56334-1 / SHEETS, ANN & KENNETH Contract Dispute with Harriet Castle Prepare Subpoena Duces Tecum for Weichert Realtors records	B	0.30	200.00	60.00
06/29/2000	GMH	56334-1 / SHEETS, ANN & KENNETH Contract Dispute with Harriet Castle Review amendment to option agreement, e-mail to R. Janney, e-mail to client	B	0.50	200.00	100.00
07/05/2000	RJC	56334-1 / SHEETS, ANN & KENNETH Contract Dispute with Harriet Castle Research time of the essence and conditions precedent in support of demurrer	B	3.20	90.00	288.00
07/06/2000	RJC	56334-1 / SHEETS, ANN & KENNETH Contract Dispute with Harriet Castle Research on conditions precedent and appraisal contingencies for demurrer brief	B	0.40	90.00	36.00
07/06/2000	RJC	56334-1 / SHEETS, ANN & KENNETH Contract Dispute with Harriet Castle Review contract records; draft memo in support of demurrer	B	1.70	90.00	153.00
07/07/2000	RJC	56334-1 / SHEETS, ANN & KENNETH Contract Dispute with Harriet Castle Draft brief in support of demurrer, edit, format and bluebook brief	B	5.40	90.00	486.00

Transactions Listing

matter id='56334-1' and date is between 3/31/00 and 9/11/00 and component='b'

		MatterID/Client Sort				
		Matter Description	Component			
Date	Prof	Narrative	Task Code	Units	Price	Value
07/07/2000	GMH	56334-1 / SHEETS, ANN & KENNETH Contract Dispute with Harriet Castle E-mail to R. Janney and client, return call to Atty B. Keefer	B	0.20	200.00	40.00
07/10/2000	RJC	56334-1 / SHEETS, ANN & KENNETH Contract Dispute with Harriet Castle Final edit to demurrer memo; Deliver to G. Hodge with research	B	0.50	90.00	45.00
07/10/2000	GMH	56334-1 / SHEETS, ANN & KENNETH Contract Dispute with Harriet Castle Telephone Atty B. Keefer, telephone client, leave voice mail message, telephone Atty.. R. Janney, e-mail client, review file from Realtor in preparation of court appearance, telephone K. Sheets.	B	1.40	200.00	280.00
07/11/2000	GMH	56334-1 / SHEETS, ANN & KENNETH Contract Dispute with Harriet Castle Prepare for and attend Court (Page Co.) re: Motion, telephone client, e-mail client re: result of hearing (non-suit by Plaintiff)	B	4.30	200.00	860.00
07/13/2000	RJC	56334-1 / SHEETS, ANN & KENNETH Contract Dispute with Harriet Castle Research and write memo concerning which party is prevailing party in a nonsuited case for purposes of attorney's fees under a contract	B	4.30	90.00	387.00
07/14/2000	RJC	56334-1 / SHEETS, ANN & KENNETH Contract Dispute with Harriet Castle Final edit of prevailing party in nonsuit memo; file research materials	B	0.40	90.00	36.00
07/17/2000	GMH	56334-1 / SHEETS, ANN & KENNETH Contract Dispute with Harriet Castle Review billing re: petition for attorney fees; voice mail from client	B	0.40	200.00	80.00
07/18/2000	GMH	56334-1 / SHEETS, ANN & KENNETH Contract Dispute with Harriet Castle Review risks of closing of remainder of property; telephone client; prepare petition for attorneys fees	B	1.30	200.00	260.00
07/19/2000	GMH	56334-1 / SHEETS, ANN & KENNETH Contract Dispute with Harriet Castle Review fax from Atty R. Janney; telephone R. Janney; telephone client, leave voice mail	B	0.30	200.00	60.00
09/08/2000	GMH	56334-1 / SHEETS, ANN & KENNETH Contract Dispute with Harriet Castle Telephone Robert Janney; e-mail client; prepare memo to court in support of petition for attorney's fees	B	1.10	200.00	220.00

Transactions Listing

matter id='56334-1' and date is between 3/31/00 and 9/11/00 and component='b'

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
			Grand Total	43.60		6,933.50

Transactions Listing

matter id='56334-1' and date is between 3/31/00 and 9/11/00 and component='11' and '2'

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
05/25/2000		56334-1 / SHEETS, ANN & KENNETH Contract Dispute with Harriet Castle Postage 5/5; Federal Express Corp.	11	1.00	10.04	10.04
06/23/2000		56334-1 / SHEETS, ANN & KENNETH Contract Dispute with Harriet Castle Court Costs; Page County Circuit Court	2	1.00	17.00	17.00
Grand Total				2.00		27.04

Harriet A. Castle,

Plaintiff,

V.

Kenneth R. Sheets
Ann R. Sheets, et.als.,

Defendants.

Harriet A. Castle
724 Lazy River East Road
Luray, Va. 22835
540-743-3436
540-743-1888 Fax
Chancery No. CH00-38

Sept. 15, 2000

Judge Porter Graves, Jr.
116 South Court Street
Suite A
Luray, Virginia 22835

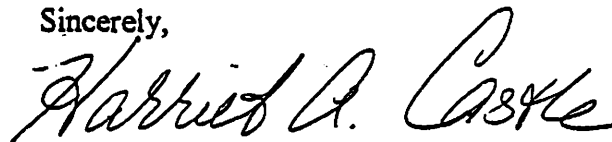
To the Honorable Judge Porter Graves, Jr.:

I am writing in reference to request an extension on your decision until October 10, 2000 so I can submit to you cases and authority for my position.

I apologize for not having that information on Motions Day, however I had not seen Mr. Hodges authority until Motions Day.

I appreciate your consideration for my request.

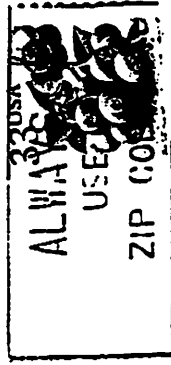
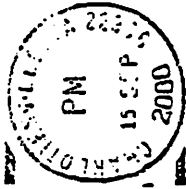
Sincerely,

A handwritten signature in cursive script that reads "Harriet A. Castle". The signature is written in dark ink and is positioned above the printed name.

Harriet A Castle

Handwritten notes: N.C. d 0-00 n

Harriet A. Castle
724 Lazy River East Rd
Luray, VA 22835



Honorable Porter Graves JR. a118/10
116 South Court Street
Suite A
Luray, Virginia 22835

22835+1200

COMMONWEALTH OF VIRGINIA

PORTER R. GRAVES, JR., JUDGE
JOHN J. McGRATH, JR., JUDGE
ROCKINGHAM COUNTY CIRCUIT COURT
COURTHOUSE 2ND FLOOR
HARRISONBURG, VA 22801
(540) 564-3122



CIRCUIT COURTS OF
CLARKE, FREDERICK, PAGE,
ROCKINGHAM, SHENANDOAH
AND WARREN COUNTIES
AND CITY OF WINCHESTER

TWENTY-SIXTH JUDICIAL CIRCUIT

September 20, 2000

Ms. Harriet A. Castle
724 Lazy River East Road
Luray, VA 22835

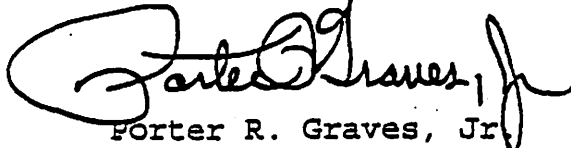
Dear Ms. Castle:

I have received your letter dated September 15, 2000.

Your letter is an ex parte communication and would be improper for me to consider. Such communication should cease. I will accordingly take no action whatsoever in response to the letter.

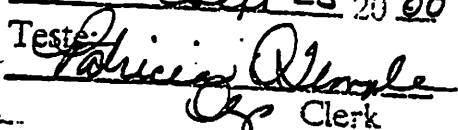
I am sending copies of the letter to all counsel of record.

Very truly yours,


Porter R. Graves, Jr.
Judge

PRG,jr/wcs

cc: Glenn M. Hodge, Esquire
Ron Wilson, Clerk of Court

Filed in the Clerk's Office
of the Circuit Court of Page
County, Virginia, 2:00pm
Sept 25 20 00
Teste: 
Clerk

Harriet A. Castle,

Plaintiff,

V.

Kenneth R. Sheets
Ann R. Sheets, et.als.,

Defendants.

Harriet A. Castle
724 Lazy River East Road
Luray, Va. 22835
540-743-3436
540-743-1888 Fax
Chancery No. CH00-38

Sept. 15, 2000

Judge Porter Graves, Jr.
116 South Court Street
Suite A
Luray, Virginia 22835

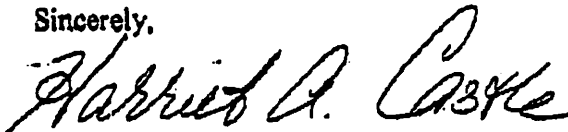
To the Honorable Judge Porter Graves, Jr.:

I am writing in reference to request an extension on your decision until October 10, 2000 so I can submit to you cases and authority for my position.

I apologize for not having that information on Motions Day, however I had not seen Mr. Hodges authority until Motions Day.

I appreciate your consideration for my request.

Sincerely,



Harriet A Castle

Harriet A. Castle

Plaintiff,

V.

Kenneth R. Sheets
Ann R. Sheets, et.als,

Defendants.

Harriet A. Castle
724 Lazy River East Road
Luray, Va. 22835
540-743-3436
540-743-1888 Fax
Chancery No. CH00-38

September 26, 2000

Judge Porter Graves, Jr.
116 South Court Street
Suite A
Luray, Virginia 22835

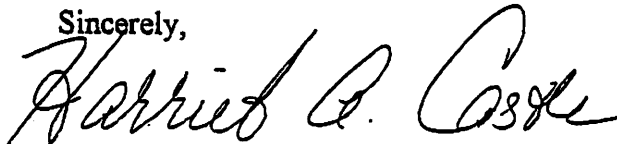
To the Honorable Judge Porter Graves, Jr.:

I apologize for failing to copy opposing counsel. I have corrected that mistake in this letter.

I'm writing to renew my request for additional time in submitting authority supporting my position. I would request 30 days from the date of this letter.

I appreciate your consideration for my request.

Sincerely,

A handwritten signature in cursive script that reads "Harriet A. Castle". The signature is fluid and stylized, with the first and last names being more prominent.

Harriet A. Castle

CC.. Glenn M. Hodge, Esquire
Ron Wilson, Clerk of Court

Harriet A. Castle

Plaintiff

V.

Kenneth R. Sheets
Ann R. Sheets, et al.s.

Defendants.

Harriet A. Castle
724 Lazy River East Road
Luray, Va. 22835
540-743-3436
540-743-1888 Fax
Chancery No. CH001-38

September 26, 2000

Judge Porter Graves, Jr.
116 South Court Street
Suite A
Luray, Virginia 22835

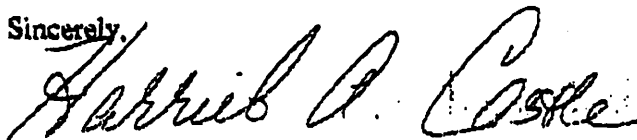
To the Honorable Judge Porter Graves, Jr.:

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I'm writing to renew my request for additional time in submitting authority supporting my position. I would request 30 days from the date of this letter.

I appreciate your consideration for my request.

Sincerely,



Harriet A. Castle

CC.. Glenn M. Hodge, Esquire
Ron Wilson, Clerk of Court

Harriet A. Castle

Plaintiff,

V.

Kenneth R. Sheets
Ann R. Sheets, et.als,

Defendants.

Harriet A. Castle
724 Lazy River East Road
Luray, Va. 22835
540-743-3436
540-743-1888 Fax
Chancery No. CH00-38

September 26, 2000

Judge Porter Graves, Jr.
116 South Court Street
Suite A
Luray, Virginia 22835

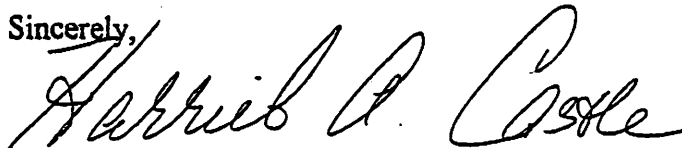
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I'm writing to renew my request for additional time in submitting authority supporting my position. I would request 30 days from the date of this letter.

I appreciate your consideration for my request.

Sincerely,

A handwritten signature in cursive script that reads "Harriet A. Castle". The signature is written in dark ink and is positioned above the printed name.

Harriet A. Castle

CC.. Glenn M. Hodge, Esquire
Ron Wilson, Clerk of Court

VIRGINIA: IN THE CIRCUIT COURT OF PAGE COUNTY

HARRIET A. CASTLE,

Plaintiff,

v.

In Chancery No. CH00-38

KENNETH R. SHEETS
ANN R. SHEETS, et. als.,

Defendants.

ORDER

On Wednesday, October 25, 2000, came the Plaintiff, appearing *pro se*, and Defendants, Kenneth and Anne Sheets, by counsel, Walter P. Sowers, II, for review of this matter.

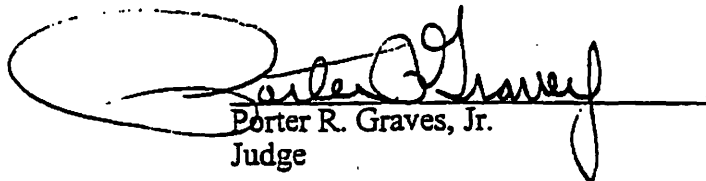
Upon review by the Court, IT IS HEREBY ORDERED AS FOLLOWS:

1. The Plaintiff has until November 27, 2000, to file her written response to the Defendants' Petition for Attorney's Fees.
2. The Defendants have until December 4, 2000, to file a reply memorandum to the Plaintiff's response in opposition.

3. The Plaintiff has ten (10) days from the date of entry to object to this Order as prepared by Defendants' counsel. *the plaintiff's endorsement is dispensed with pursuant to Rule 1:13 of Rules of Virginia Supreme Court.*
4. This matter is set for hearing on December 12, 2000.

The Clerk of the Court is directed to mail a copy of this Order to Harriet A. Castle and Glenn M. Hodge, counsel for Defendants, Kenneth and Anne Sheets.

ENTERED, this 31st day of October, 2000.


Porter R. Graves, Jr.
Judge

PREPARED BY:

Walter P. Sowers, II

Walter P. Sowers, II (VSB# 39546)
Wharton, Aldhizer & Weaver, P.L.C.
100 South Mason Street
Harrisonburg, Virginia 22801
Phone: (540) 434-0316
Fax: (540) 434-5502

KW0821.WPD

10/31/00 - Copy to Counsel of Record & Ms. Castle

VIRGINIA: IN THE CIRCUIT COURT OF PAGE COUNTY

HARRIET A. CASTLE,
Plaintiff,

v.

In Chancery No.: CH00-38

KENNETH R. SHEETS, and
ANN R. SHEETS

and

DEREK H. GOEBEL, and
JANINE S. SIEBENS

and

BENJAMIN M. BUTLER, TRUSTEE

and

JOHN C. HILL, TRUSTEE

and

VALLEY BANK AND TRUST CO.,
NOTEHOLDER

Defendants.

OPINION AND ORDER

This case is currently before the Court on Defendants' Petition for Attorney's Fees. Plaintiff, Castle, filed a Bill of Complaint against the Defendants, on April 18, 2000, seeking specific performance of a real estate contract entered into by the Plaintiff and the Defendants, Sheets. Defendants Sheets filed a Demurrer to the Bill of Complaint, but prior to the Court hearing argument on the Demurrer, the Plaintiff, Castle, moved for and was granted a voluntary non-suit pursuant to Va. Code § 8.01-380 by this Court on July 11, 2000, over Defendants Sheets' objection.

The Sheets, thereafter petitioned this Court for an award of attorney's fees against Castle based upon a contract provision of the real estate sales contract. The issue before the Court is whether the Court should award attorney's fees to the Defendants Sheets' counsel after a voluntary non-suit by the Plaintiff based upon the provisions of a contract signed by the Plaintiff and Defendants that provides, in part, for payment of attorney fees to a "prevailing party".

Defense Counsel contends that the Defendants Sheets are the "prevailing party" in the non-suited case and therefore should be awarded attorney's fees according to the real estate sales contract that the Plaintiff, Castle and the Defendants Sheets entered into which is entitled "Attorney Fees" and reads as follows:

In any action or proceeding involving a dispute between the Purchaser and the Seller arising out of this Contract, the prevailing party shall be entitled to receive from the other party reasonable attorney's fees to be determined by the court or arbitrator(s).

The issue, therefore, is whether the defendant in an action in which the claimant takes an initial non-suit is a "prevailing party" under the contract. There is no controlling Virginia case law on the specific issue of who is the "prevailing party" within the meaning of a contract which provides relief to a "prevailing party" after one party has taken a non-suit.

The Defendants point to decisions in other jurisdictions as persuasive authority where the courts have ruled that defendants are "prevailing parties" for purposes of awarding attorney's fees and costs following a non-suit. *See e.g. 's Fraser v ETA Assoc. Inc.*, 41 Conn. Supp. 417 (1990), *Dean Vincent Inc. v. Krishell Laboratories, Inc.*, 271 Or. 356, (1975), *Hatch v. Dance*, 464 So.2d 713, (1985). In each of these cases the Courts held that the defendants were the "prevailing party" following a non-suit.

However, it is clear that an opposing party cannot be granted attorney's fees and costs against a first-time non-suiting claimant, under Va. Code § 8.01-380 (in the absence of a contract awarding attorney's fees and costs), simply because a party exercised their statutory right of non-suit. Under Va. Code § 8.01-380:

Only one nonsuit may be taken to a cause of action or against the same party to the proceeding, as a *matter of right*, although the court may allow additional nonsuits or counsel may stipulate to additional nonsuits. The court, in the event *additional* nonsuits are allowed, *may* assess costs and reasonable attorney's fees against the nonsuiting party. Va. Code § 8.01-380 (B) (emphasis added).

The law of Virginia provides for only one non-suit as a matter of right and requires the consent of the Court or opposing counsel to be granted an additional non-suit. And the Court is given the discretion to assess costs and reasonable attorney's fees against the non-suiting party who seeks and is granted an additional non-suit. Just as it is clear that from the face of the statute (Va. Code § 8.01-380 (B)) that the Court is given absolute discretion to grant costs and attorney's fees in the event of a second non-suit, there is an equally clear absence of any provision giving the Court discretion to grant costs and attorney's fees when a plaintiff takes a first non-suit as a matter of right. This position is supported in Gerald J. Breckner, et al. v. Ralph R. Hallen, et al., 36 VA. Cir. 791 (1995), in which the Circuit Court held that plaintiff's can suffer a non-suit in equity after a commissioner in chancery has filed his report and before the case is submitted to the court for decision." *Ibid.* Judge Ledbetter, in Breckner, considered sanctions against the non-suiting party and stated: "... the statute [Va. Code Section 8.01-380 (B)] bestows upon a plaintiff an absolute right to one non-suit. Therefore, the defendants cannot recover their costs and attorney's fees under § 8.01-380 in this instance." *See Gerald J. Breckner, et al. v. Ralph R. Hallen, et al.*, 36 VA. Cir. 79, 81 (1995).

The Court now turns to the language of the real estate sales contract, specifically the language contained in paragraph twenty-three set out above. When contract terms are clear and unambiguous, the Court must construe those terms according to their plain meaning. See Lansdowne Dev. Co. v. Xerox Realty Corp., 257 Va. 392, 400, 514 S.E.2d 157 (1999) (citing Bridgestone/Firestone v. Prince William Square, 250 Va. 402, 407, 463 S.E.2d 661, 664 (1995)). Furthermore, when considering the meaning of any part of a contract, the Court will construe the contract as a whole. See Id. at 400 (citing Vega v. Chattan Associates, 246 Va. 196, 199, 435 S.E.2d 142, 143 (1993)). In the current edition of *Black's Law Dictionary*, "prevailing party" is defined as follows:

Prevailing Party- A party in whose favor a judgment is rendered, regardless of the amount of damages awarded <in certain cases, the court will award attorney's fees to the prevailing party>. *Black's Law Dictionary*, p. 1145 (7th ed.).

In the current case, no judgment, final or otherwise, in favor of either party was rendered by this Court. It is clear from the plain meaning of the real estate sales contract, that the parties intended that attorney's fees be awarded to the party that won a favorable final judgment covering all or a substantial portion of its contract based claim. Because there has been no final judgment, there is no "prevailing party" or "substantially prevailing party"; therefore, the Court does not have the statutory authority to award attorney's fees after a party has taken a first voluntary non-suit. The awarding of attorney's fees to a defendant in such a case by this Court would serve as a substantial and unnecessary burden on and an abridgement of plaintiffs' closely guarded statutory right to take a first voluntary non-suit free from sanctions. This case *does not* present the issue of whether a party can clearly and explicitly contract to pay an opposing party's

attorneys' fees if it takes a voluntary non-suit. The contractual language in this case clearly cannot be interpreted as a contractual promise to do so.

In light of the plain meaning of the real estate contract and Va. Code §8.01-380, the Defendants' Petition for Attorney Fees is DENIED.

The Clerk of the Court is directed to send certified copies of this Opinion and Order to Mark N. Reed, Esquire, 16 S. Court Street, P.O. Box 766, Luray, Virginia 22835, Counsel for Plaintiff; to Glen M. Hodge, Esquire, 100 South Mason Street, P.O. Box 20028, Harrisonburg, Virginia 22801-7528, Counsel for Defendants Kenneth R. Sheets and Ann R. Sheets; to Robert S. Janney, Esquire, 12 South Court Street, P.O. Box 467, Luray, Virginia 22835, Counsel for Defendants Derek H. Goebel and Janine S. Siebens; to Benjamin M. Butler, Trustee and Defendant, 112 S. Cameron Street, Winchester, Virginia 22601; to John C. Hill, Trustee and Defendant, 1 South Royal Avenue, Front Royal, Virginia 22630; and to Valley Bank and Trust Co., Noteholder and Defendant, 425 10th Street, Gering, Nebraska, 69341.

DATED: February 2, 2001

ENTER: _____


John F. McGrath
Judge

2/13/01 - Copy to all of the above

VIRGINIA: IN THE CIRCUIT COURT OF PAGE COUNTY

HARRIET A. CASTLE,

Plaintiff,

v.

In Chancery No. CH00-38

KENNETH R. SHEETS

ANN R. SHEETS, et. als.,

Defendants.

MOTION TO STAY ORDER AND PETITION FOR REHEARING

The defendants, Kenneth R. Sheets and Ann R. Sheets, by counsel, respectfully move that this Court stay its Order entered on February 2, 2001, denying defendants' Petition for Attorney's Fees and that this Court consider defendants' Petition for Rehearing on that issue. In support of this motion and petition, defendants state as follows:

1. The defendants, in their Memorandum in Support Defendants' Petition for Attorney's Fees, and the Court in its opinion, found no controlling legal authority in Virginia on the attorney's fee issue before the Court. Defendants believe that they (and this Court) are in error in this regard because of the case of Ayoub v. Trautner, (Circuit Court of Fairfax County, 1999). In Ayoub, the trial court awarded attorneys' fees to a defendant as a prevailing party when the plaintiff non-suited his action in a contract action in which the contract at issue provided that the prevailing party in any litigation was entitled to attorneys' fees. A copy of the trial court order in Ayoub is attached as Exhibit A. The plaintiff in the Ayoub case subsequently filed a petition for appeal with the Virginia Supreme Court, which petition for appeal was denied by the Virginia Supreme Court.

2. A decision to grant or refuse a petition for appeal is based upon the merits of the case. See, Saunders v. Reynolds, 214 Va. 697 (1974); Providence Village Townhome Condominium Association Board of Directors v. Allied Plywood Corp., Chesapeake Corp., and Applied Research Group, Inc., 37 Va. Cir. 192 (1995, Circuit Court of Loudoun County). The denial of a writ is a decision on the merits of a case and the issue that is decided is binding in other cases. See, Bowman v. Commonwealth, 30 Va. App. 298 (1999).

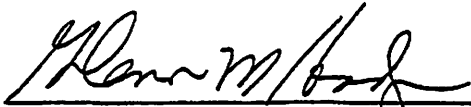
3. In light of the Virginia Supreme Court's denying a petition of appeal in Ayoub v. Trautner, such denial constitutes a decision on the merits by the Virginia Supreme Court and has precedential effect as to the issue decided. The issue in Ayoub was whether a defendant in a contract action over a contract that calls for the prevailing party to recover attorneys' fees is the prevailing party when the plaintiff takes a voluntary nonsuit. The trial court held that the defendant in Ayoub was the prevailing party and entitled to attorneys' fees. While counsel for the defendants in this case has not yet obtained a copy of the petition for appeal in the Ayoub case, counsel has been advised that the contract language in Ayoub is as follows:

20. ATTORNEY'S FEES: In any action or proceeding involving a dispute between the Purchaser, the Seller and/or the Broker, arising out of this contract, or to collect the Broker's Fee, the prevailing party shall be entitled to receive from the other party reasonable attorney's fees to be determined by the court or arbitrator(s).

This is nearly identical language to the contract language at issue in the case at bar. Therefore, based on the precedential effect of Ayoub, the Sheets are the prevailing parties and should be entitled to attorney's fees.

4. For the foregoing reasons, the defendants request that the Order previously entered be stayed, that a rehearing be held on this matter, and that the Court grant the defendants' Petition for Attorney's Fees is an amount to be determined by the Court.

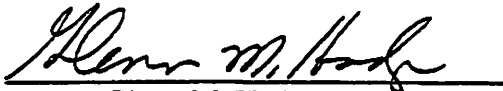
KENNETH R. SHEETS AND ANN R. SHEETS
By Counsel



Glenn M. Hodge, Esquire (VSB No. 12159)
Of Wharton, Aldhizer & Weaver, P.L.C.
P.O. Box 20028
100 South Mason Street
Harrisonburg, Virginia 22801-7528
Phone: (540) 434-0316
Fax: (540) 434-5502
Counsel for Kenneth R. Sheets and Ann R. Sheets

CERTIFICATE

I hereby certify that a copy of the forgoing Motion to Stay Order and Petition for Rehearing was mailed this 21st day of February, 2001 to Mark N. Reed, Esquire, counsel for Harriet A. Castle, at Reed & Reed, P.C., 16 South Court Street, Post Office Box 766, Luray, Virginia 22835.



Glenn M. Hodge

KW1171.WPD

Filed in the Clerk's Office
of the Circuit Court of Page
County, Virginia, 2:00pm

Feb 22 20 01

Teste

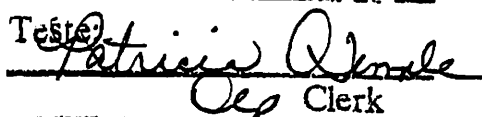

Clerk

EXHIBIT A



099-8-08,
2pgs.

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

Timothy AYOUB,

Plaintiff,

v.

Law No. 164778

Donald L. TRAUTNER, et al.,

Defendants.

ORDER OF COSTS AND ATTORNEYS' FEES

THIS CAUSE CAME ON TO BE HEARD on Defendant Trautner's Motion for an Award of Costs and Attorneys' Fees and Plaintiff's Opposition thereto, and was argued by counsel. Whereupon, based upon the filings and upon ^{the Court having denied Plaintiff's} testimony taken in open court on Friday, Motion for Reconsideration, December 4, 1998,

IT APPEARING TO THE COURT that the contract applicable to the parties (attached to the Motion as Exhibit 2) provided that "the prevailing party shall be entitled to receive from the other party reasonable attorney's fees to be determined by the court . . .," and

IT FURTHER APPEARING TO THE COURT that the Plaintiff nonsuited at trial, and

IT FURTHER APPEARING TO THE COURT that, because of the nonsuit, Defendant Trautner prevailed within the meaning of the contract at issue, and

IT FURTHER APPEARING TO THE COURT, based on the filings ^{and argument,} ~~and on the testimony~~ of the witnesses, that Defendant Trautner incurred reasonable attorneys' fees and expenses of \$15,000.00, now, therefore, it is hereby

BRINCEFIELD, HARTNETT & ASSOCIATES, P. C.
SUITE 423
620 KING STREET
ALEXANDRIA, VIRGINIA 22314
(703) 836-2880

it is agreed

ADJ
KAW

ADJUDGED, ORDERED, and DECREED that the Plaintiff shall pay to Defendant Trautner \$ 15,000.00 within 120 days of the date of this Order, and it is further

ADJUDGED, ORDERED, and DECREED that Plaintiff's Motion for Reconsideration is DENIED.

AND THIS CAUSE IS FINAL.

ENTERED this 4th day of December, 1998.

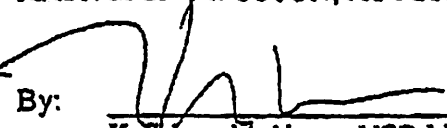

Circuit Court Judge

WE ASK FOR THIS:

BRINCEFIELD, HARTNETT & ASSOCIATES, P.C.

By: Michael W. Tompkins
Michael W. Tompkins, VSB No. 31838
526 King Street, Suite 423
Alexandria, Virginia 22314-3144
(703) 836-2880
Counsel for Defendant Donald L. Trautner

SEEN AND OPPOSED: and objected to as the grounds that defendant Trautner is not the prevailing party, and ~~for~~ the grounds set forth in plaintiff's motion, response, KATHLEEN M. USTON, ATTORNEY AT LAW and oral argument.

By: 
Kathleen M. Uston, VSB No. 33255
118 South Royal Street, Second Floor
Alexandria, Virginia 22314
(703) 683-0440
Counsel for Plaintiff

A COPY TESTE:
JOHN T. FREY, CLERK
BY: Deema M. Sheikh
Deputy Clerk
Date: 12-10-98
Original retained in the office of
the Clerk of the Circuit Court of
Fairfax County, Virginia

VIRGINIA: IN THE CIRCUIT COURT OF PAGE COUNTY

HARRIET A. CASTLE,
Complainant,

v.

In Chancery No. CH00-38

KENNETH R. SHEETS,
ANNE R. SHEETS, et als.,
Defendants.

ORDER

THIS CAUSE came on to be heard on the Defendants', Kenneth R. Sheets and Ann R. Sheets', Motion for a Stay of this Court's Order of February 2, 2001, and their Petition for Rehearing.

IT APPEARING to the Court that the authority cited by the Defendants for the basis of their Motion and Petition are not persuasive or applicable to the case at bar, and that therefore the Motion and Petition should be denied;

ACCORDINGLY, it is ADJUDGED, ORDERED, and DECREED that the Defendants' Motion for a Stay of this Court's Order of February 2, 2001, and their Petition for Rehearing are DENIED.

There being nothing further to be done in this matter, the Clerk is directed to remove this case from the active docket of this Court and place it among the ended causes. The Clerk shall also certify copies of this Order to Mark N. Reed, Esquire, and Glenn M. Hodge, Esquire, counsel for the Complainant and Defendants respectively.

DATE: FEB 27 2001

ENTER:


John J. McGrath, Jr.
Judge

I ASK FOR THIS:



Mark N. Reed, Counsel for the
Complainant, Harriet A. Castle

SEEN AND OBJECTED TO:

*FOR THE REASONS SET FORTH IN DEFENDANTS'
PETITION FOR REHEARING*



Glenn M. Hodge, Counsel for the Defendants,
Kenneth R. Sheets and Ann R. Sheets

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN HOLDING THAT THE APPELLANTS WERE NOT THE "PREVAILING PARTY" WITHIN THE MEANING OF THE CONTRACT CLAUSE GRANTING ATTORNEY'S FEES AND COSTS TO THE PREVAILING PARTY WHEN APPELLEE REQUESTED AND WAS GRANTED A VOLUNTARY NON-SUIT.