

260 Va 48

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IN THE  
**Supreme Court of Virginia**  
AT RICHMOND

SUPREME COURT OF VIRGINIA  
RECEIVED  
DEC 07 1999  
RICHMOND, VIRGINIA

RECORD NO. 991945

CYNTHIA LINDSAY,

*Appellant,*

v.

**McENEARNEY ASSOCIATES, INC.,**

*Appellee.*

---

**JOINT APPENDIX**

---

Robert L. Tomlinson, II  
Sonya A. Weaver  
**ROBERT TOMLINSON  
& ASSOCIATES**  
2004 14th Street North  
Suite 509  
Arlington, Virginia 22201  
(703) 841-9400

*Counsel for Appellant*

Raymond Benzinger  
Mary M. Benzinger  
**BENZINGER & BENZINGER, P.C.**  
2009 14th Street North  
Suite 612  
Arlington, Virginia 22201  
(703) 525 1362

*Counsel for Appellee*



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# WARRANT IN DEBT

45145-5

VA CODE ANN § 16.1-29

ARLINGTON COUNTY

CITY OR COUNTY

General District Court

1425 N. Courthouse Rd., Arlington, VA 22201

STREET ADDRESS OF COURT

TO ANY AUTHORIZED OFFICER: You are commanded to summon the Defendant(s).  
TO THE DEFENDANT(S): You are summoned to appear before this Court at the above

address on 1/23/98 9:30 A.M. to answer the Plaintiff(s)' civil claim (see below).

RETURN DATE AND TIME

DATE ISSUED

12/22/97

CLERK

DEPUTY CLERK

MAGISTRATE

Claim: Plaintiffs claim that Defendant(s) owe Plaintiff(s) a debt in the sum of

\$ 7,950 net of any credits, with interest at % from until paid.

INTEREST RATE

DATE FROM WHICH IS DUE

\$ costs, and \$ attorney's fees with the basis of this claim being

COSTS

ATTY FEE

☐ Open Account ☒ Contract ☐ Note ☐ Other (EXPLAIN)

Homestead Exemption waived? ☐ Yes ☐ No ☐ cannot be demanded

12/22/97

DATE

PLAINTIFF

PLAINTIFF'S ATTY

PLAINTIFF'S EMPLOYEE

Case Disposition

JUDGMENT that Plaintiff(s) recover against ☐ named Defendant(s) ☐

\$ 2,650.00 net of any credits, with interest at % from until paid.

INTEREST RATE

DATE FROM WHICH IS DUE

\$ 30.00 costs, and \$ attorney's fees

COSTS

ATTY FEE

Homestead Exemption waived? ☐ Yes ☐ No ☐ cannot be demanded

☐ JUDGMENT FOR ☐ NAMED DEFENDANT ☐

☐ NON-SUIT ☐ DISMISSED

Defendant(s) Present? ☐ Yes ☐ No

No

4-8-98

Thomas B. Bell

CASE NO.

98-424

McEneaney Associates, Inc.

PLAINTIFF(S)

c/o Beach & Associates.

416 Prince Street

Alexandria, VA 22314

V.

Cynthia Lindsay

DEFENDANT(S)

2343 Nash Street

Arlington, VA 22202

## WARRANT IN DEBT

RECEIPT NO.

69380

DATE FEE RECEIVED

12-22-97

TO DEFENDANT: You are not required to appear; however, if you fail to appear, judgment may be entered against you. See the additional notice on the back side about requesting a change of trial location.

FILED

MAY - 4 1998

☐ To dispute this claim, you must appear on the return date to try this case.

☐ To dispute this case, you must appear on the return date for the judge to set another date for trial.

DAVID A. BELL, Clerk  
Circuit Court, Arlington County VA  
Deputy Clerk

Bill of Particulars ORDERED DUE

Grounds of Defense ORDERED DUE

ATTORNEY FOR PLAINTIFF(S)

Barbara P. Beach/Beach & Assoc.

416 Prince St., Alexandria, VA

22314

ATTORNEY FOR DEFENDANT(S)

NAME Guthrie Lindsay

ADDRESS \_\_\_\_\_

☐ PERSONAL SERVICE Tel. No. \_\_\_\_\_

Being unable to make personal service, a copy was delivered in the following manner:

☒ Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport. List name, age of recipient, and relation of recipient to party named above.

Mother Charlotte Lindsay

☐ Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)

☐ Served on Secretary of the Commonwealth.

☐ Not found

1-5-98 DATE for TJZ SERVING OFFICER

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

☐ PERSONAL SERVICE Tel. No. \_\_\_\_\_

Being unable to make personal service, a copy was delivered in the following manner:

☐ Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport. List name, age of recipient, and relation of recipient to party named above.

☐ Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)

☐ Served on Secretary of the Commonwealth.

☐ Not found

DATE \_\_\_\_\_ for \_\_\_\_\_ SERVING OFFICER

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

☐ PERSONAL SERVICE Tel. No. \_\_\_\_\_

Being unable to make personal service, a copy was delivered in the following manner:

☐ Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport. List name, age of recipient, and relation of recipient to party named above.

☐ Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)

☐ Served on Secretary of the Commonwealth.

☐ Not found

DATE \_\_\_\_\_ for \_\_\_\_\_ SERVING OFFICER

**To the Defendant(s):** If you believe that Plaintiff(s) should have filed this suit in a different city or county, you may file a written request to have the case moved for trial to the general district court of that city or county. To do so, you must do the following:

1. Prepare a written request which contains (a) this court's name, (b) the case number and the "return date" as shown on the other side of this form in the top right corner, (c) Plaintiff(s)' name(s) and Defendant(s)' name(s), (d) "I move to object to venue of this case in this court because" and state the reasons for your objection and also state in which city or county the case should be tried, and (e) your signature and mailing address.
2. File the written request in the clerk's office before the trial date (use the mail at your own risk) or give it to the judge when your case is called on the return date. Also send or deliver a copy to plaintiff.
3. If mailed to the court, you will be notified of the judge's decision.

I certify that I mailed a copy of this document to the defendants named therein at the address shown therein on

12/22/97 DATE Susan M. Parnas

☐ Plaintiff

☒ Plaintiff's Atty.

☐ Plaintiff's Employee

Fi. Fa. issued on \_\_\_\_\_

Interrogatories issued on \_\_\_\_\_

Garnishment issued on \_\_\_\_\_

## EXCLUSIVE RIGHT TO REPRESENT BUYER AGREEMENT

This Agreement is made on 8-13, 1997 between Cynthia Lindsey  
("Buyer") and McEneaney ("Broker").  
(Name of Brokerage Firm)

In consideration of services and facilities, the Broker is hereby granted the right to represent the Buyer in the acquisition of real property. (As used in this Agreement, "acquisition of real property" shall include any purchase, option, exchange or lease of property or an agreement to do so.)

1. **BUYER'S REPRESENTATIONS.** The Buyer represents that as of the commencement date of this Agreement, the Buyer is not a party to a buyer representation agreement with any other brokerage firm. The Buyer further represents that the Buyer has disclosed to the Sales Associate information about any properties that the Buyer has previously visited at any new homes communities or resale "open houses", or that the Buyer has been shown by any other real estate sales associate(s) in any area where the Buyer seeks to acquire property under this Agreement.

The Buyer ☐ does OR ☒ does not hold an active or inactive Virginia real estate license.

2. **TERM.** This Agreement commences when signed and, subject to Paragraph 7, terminates at \_\_\_\_\_ a.m./p.m. on 11-30  
1997

3. **RETAINER FEE.** The Broker, WLA, acknowledges receipt  
(Name of Brokerage Firm)  
of a retainer fee in the amount of \_\_\_\_\_, which shall be subtracted from any compensation due the Broker under this Agreement. The retainer is non-refundable and is earned when paid.

4. **BROKER'S DUTIES.** The Broker and the Sales Associate shall promote the interests of the Buyer by: (a) performing the terms of this Agreement; (b) seeking property at a price and terms acceptable to the Buyer; (c) presenting in a timely manner all written offers or counteroffers to and from the Buyer; (d) disclosing to the Buyer all material facts related to the property or concerning the transaction of which they have actual knowledge; (e) accounting for in a timely manner all money and property received in which the Buyer has or may have an interest. Unless otherwise provided by law or the Buyer consents in writing to the release of the information, the Broker shall maintain the confidentiality of all personal and financial information and other matters identified as confidential by the Buyer, if that information is received from the Buyer during the brokerage relationship. In satisfying these duties, the Broker shall exercise ordinary care, comply with all applicable laws and regulations, treat all prospective sellers honestly and not knowingly give them false information, and disclose whether or not the Buyer's intent is to occupy the property as a principal residence. In addition, the Broker may show the same property to other buyers, represent other buyers, represent sellers relative to other properties, or provide assistance to a seller or prospective seller by performing ministerial acts that are not inconsistent with the Broker's duties under this Agreement.

5. **BUYER'S DUTIES.** The Buyer shall: (a) work exclusively with the Broker during the term of this Agreement; (b) pay the Broker, directly or indirectly, the compensation set forth below; (c) comply with the reasonable requests of the Broker to supply any pertinent financial or personal data needed to fulfill the terms of this Agreement; (d) be available during the Broker's regular working hours to view properties.

6. **PURPOSE.** The Buyer is retaining the Broker to acquire the following type of property: PERSONAL RESIDENCE

7. **COMPENSATION.** In consideration of the time and effort expended by the Broker on behalf of the Buyer, and in further consideration of the advice and counsel provided to the Buyer, the Buyer shall pay compensation ("Broker's Fee") to the Broker as described below. The Broker's Fee, less the retainer fee, if any, shall be earned, due and payable under any of these circumstances whether the transaction is consummated through the services of the Broker or otherwise:

(a) If the Buyer enters into a contract to acquire real property during the term of this Agreement and goes to settlement on that contract any time thereafter; OR

(b) If, within 60 days of expiration of this Agreement, the Buyer enters into a contract to acquire real property that has been described to or shown to the Buyer by the Broker during the term of this Agreement, unless the Buyer has entered into a subsequent "Exclusive Right to Represent Buyer" agreement with another real estate broker; OR

(c) If, having entered into a enforceable contract to acquire real property during the term of this Agreement, the Buyer defaults under the terms of that contract.

The Broker's Fee shall be 320.  
If the seller or the seller's representative offers compensation to the Buyer's Broker, then the Buyer authorizes the Broker to receive such compensation and the amount of such compensation shall be credited against the Buyer's obligation to pay the Broker's Fee.

Any obligation incurred under this Agreement on the part of the Buyer to pay the Broker's Fee shall survive the term of this Agreement.

8. **DISCLOSED DUAL REPRESENTATION.** The Buyer acknowledges that in the normal course of business the Broker may represent sellers of properties in which the Buyer is interested. If the Buyer wishes to acquire any property listed with the Broker, then the Buyer will be represented in one of the two ways that are permitted under Virginia law in this situation. The written consent required from the parties in each case will be accomplished via execution of the appropriate disclosure form at the time of the contract offer.

**Dual representation** occurs when a buyer and seller in one transaction are represented by the same Broker and the same Sales Associate. When the parties agree to dual representation, the ability of the Broker and the Sales Associate to represent either party fully and exclusively is limited. The confidentiality of all clients shall be maintained as in paragraph 4 above.

**Designated representation** occurs when a buyer and seller in one transaction are represented by different Sales Associates affiliated with the same Broker. Each of these Sales Associates, known as a Designated Representative, represents fully the interests of a different client in the same transaction. Designated Representatives are not dual representatives if each represents only the buyer or only the seller in a specific real estate transaction. Except for disclosure of confidential information to the Broker, each Designated Representative is bound by the confidentiality requirements in paragraph 4 above. The Broker remains a dual representative.

**CHECK ONE CHOICE IN EACH SECTION:**

**Dual representation:** The Buyer ☒ does OR ☐ does not consent to be shown and to consider acquiring properties listed with the Broker through the Sales Associate.

**Designated representation:** The Buyer ☐ does OR ☐ does not consent to be shown and to consider acquiring properties listed with the Broker through another Designated Representative associated with the firm.

9. **DISCLAIMER.** The Buyer acknowledges 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. The Buyer is advised to seek professional advice concerning the condition of the property or concerning legal and tax matters.

10. **EQUAL OPPORTUNITY.** Properties shall be shown and made available to the Buyer without regard to race, color, religion, sex, handicap, familial status or national origin as well as all classes protected by the laws of the United States, the Commonwealth of Virginia and applicable local jurisdictions.

11. **OTHER PROVISIONS.**

12. **MISCELLANEOUS.** This Agreement, any exhibits and any addenda signed by the parties constitute the entire agreement between the parties and supersede any other written or oral agreements between the parties. This Agreement can only be modified in writing when signed by both parties. In any action or proceeding involving a dispute between the Buyer, the seller and/or the Broker, arising out of this Agreement, 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).

(NOTE: The Buyer should consult with the Sales Associate before visiting any resale or new homes or contacting any other REALTORS® representing sellers, to avoid the possibility of confusion over the brokerage relationship and misunderstandings about liability for compensation.)

X Cythra Lindsay (SEAL)  
Buyer's Signature

\_\_\_\_\_  
Buyer's Signature  
23413 S Nash

\_\_\_\_\_  
Address  
Arlington VA 22202  
City, State/Zip Code

Telephone: \_\_\_\_\_  
Work

703-521-6010  
Home  
800-913-41139  
Highly prefer  
contract price



NVAR - 1121 - 10/95

McEneaney Assoc.  
Brokerage Firm (Broker)

Lee Highway  
Address  
Arlington, Va 22207  
City, State, Zip Code

Loretta D. Connor (SEAL)  
Broker/Sales Manager's Signature  
Loretta D. Connor  
Sales Associate's/Designated Representative's Printed Name

Telephone: 525-1900 836-6844  
Work Home



## TYPES OF REAL ESTATE REPRESENTATION --

In an individual real estate transaction, if a brokerage firm ("Broker") has a contractual obligation to represent a buyer or a seller ("Client"), then the Broker shall promote the interest of the Client by:

- (a) performing the terms of their contractual agreement;
- (b) obtaining a transaction at a price and terms acceptable to the Client;
- (c) presenting in a timely manner all written offers or counteroffers to and from the Client;
- (d) disclosing to the Client all material facts related to the property or concerning the transaction of which they have actual knowledge;
- (e) accounting for in a timely manner all money and property received in which the Client has or may have an interest.

Unless otherwise provided by law or the Client consents in writing to the release of information, the Broker shall maintain the confidentiality of all personal and financial information and other matters identified as confidential by the Client, if that information is received from the Client during the brokerage relationship.

In satisfying these duties, the Broker shall exercise ordinary care, comply with all applicable laws and regulations, treat all prospective buyers and sellers honestly and not knowingly give false information, and the Broker representing a buyer shall disclose whether or not the buyer's intent is to occupy the property as a principal residence. In addition, the Broker may show the same property to different buyer clients, represent sellers as well as buyers, or provide assistance to a seller or a buyer who is not a client by performing ministerial acts that are not inconsistent with the Broker's duties to the Client.

If the Broker has a contractual agreement to represent:

**The Seller** -- then the listing firm and all its sales associates act as the representative of the seller in that transaction under the terms of their listing agreement with the seller. If the selling firm also represents the seller, then the selling firm and all its sales associates also have the same duties to the seller as sub-representatives of the listing firm.

**The Buyer** -- then the selling firm and all its sales associates act as the representative of the buyer in that transaction under the terms of their written agreement to represent the buyer. The selling firm and all its sales associates have duties to the buyer and are not sub-representatives of the listing firm. The listing firm and all its sales associates continue to act as representatives for the seller.

**The Buyer and Seller** -- then this is called dual representation. Dual representation is permitted only when disclosed and with the knowledge and written consent of both parties.

## USEFUL INFORMATION ABOUT REAL ESTATE TRANSACTIONS

REALTORS® are real estate licensees who, as members of the National Association of REALTORS® as well as the state and local Associations of REALTORS®, have pledged to the public and to each other that they will adhere to a strict code of ethics and high standards of professionalism, integrity and competence. REALTORS® are providing you with this information in order to assist you in making informed decisions when purchasing, selling or optioning real estate.

**1. SERVICES.** Regardless of whom they represent, REALTORS® can provide a variety of information and assistance to all parties in a real estate transaction. For example, REALTORS® can assist customers by performing ministerial acts such as supplying information about available properties and sources of financing, describing and showing properties, assisting in preparing and submitting purchase offers or counteroffers, or providing information about settlement procedures. REALTORS® acting as standard agents are required by Virginia law and by their Code of Ethics to treat all parties honestly and not knowingly give them false information, promptly present all written offers and counteroffers, disclose any adverse material facts actually known to them concerning the physical condition of a property, and offer properties without regard to race, color, religion, sex, handicap, familial status, elderliness or national origin, as well as any other classes protected by the Commonwealth of Virginia and applicable local jurisdictions.

**2. LEGAL REQUIREMENTS.** Virginia law requires that in order to be enforceable, all contracts for real property must be in writing. There is a recommended contract form that can be shown to you and that may be modified in any way to accommodate the needs of the parties. You have the opportunity to consult legal counsel concerning the contract as well as any other questions you may have about the various laws concerning real estate transfers that are referenced in the suggested contract form.

**3. FINANCING AND INSURANCE.** Mortgage rates and associated charges vary with financial institutions and the marketplace. Purchasers have the opportunity to select the lender and to negotiate terms and conditions of the loan. Such terms may be subject to seller's approval and lender's requirements. The lender will require purchasers to buy a hazard insurance policy from the insurance company of their choice, subject to the lender's approval. Borrowers also will be required to obtain a lender's title insurance policy. Purchasers may wish to obtain owner's title insurance coverage and may consult an attorney concerning this choice.

**4. MASTER PLANS.** Prior to execution of a contract, purchasers may review the applicable Master Plan for the appropriate jurisdiction, including maps showing planned land use and proposed or actual parks, roads, or other facilities. These can be found at the planning offices of various jurisdictions and at some local libraries.

**5. PROPERTY CONDITION AND ENVIRONMENTAL MATTERS.** Various inspection services and home warranty insurance programs are available, and purchasers have the option to include in their offer to purchase a contingency that allows them to employ one or more experts of their choice at their expense to inspect the property and provide them with an analysis of its condition. Purchasers normally may also conduct a pre-settlement or pre-occupancy "walk-through" inspection of the property, but this inspection may be limited by the terms of the contract. REALTORS® do not have the expertise to advise concerning various conditions such as but not limited to: major systems or structures; soil conditions; flood hazard areas; possible restrictions on the use of the property due to restrictive covenants, zoning, subdivision or environmental laws, easements or other documents; airport or aircraft noise; planned land uses, roads or highways; and construction materials and/or hazardous materials such as flame retardant treated plywood (FRT), radon, urea formaldehyde insulation (UFFI), polybutylene pipes, asbestos, or lead-based paint. Information about these issues may be obtained from appropriate governmental agencies such as the United States Environmental Protection Agency (EPA), the Virginia Department of Health, or local planning offices or health departments.

**6. RESPONSIBILITY.** Each party to a real estate transaction should carefully read all documents to be sure that the terms accurately express the understanding of the parties as to their intentions and the agreements they have reached. REALTORS® can counsel on real estate matters, but if legal or tax advice is desired, you should consult an attorney or a financial professional. If you have any questions about the roles and responsibilities of REALTORS® or about any other material presented here, please do not hesitate to ask for more information.

Initials: CL



NVAR - 1205 - 10/85

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## A. Settlement Statement

U.S. Department of Housing  
and Urban Development

OMB No. 2512-0185

## B. Type of Loan

1. ☐ FHA 2. ☐ FmHA 3. ☐ Conv. Unins.  
4. ☐ VA 5. ☐ Conv. Ins.File Number  
97-261Loan Number  
2260768

Mortgage Insurance Case Number

C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "p.o.c." were paid outside of closing; they are shown here for informational purposes and are not included in the totals.

## D. NAME AND ADDRESS OF BORROWER:

ROBERT L. LINDSAY, III and SYLVIA A. LINDSAY  
2543 S. EIGHT STREET, ARLINGTON, VIRGINIA 22202

## E. NAME AND ADDRESS OF SELLER:

THE PATRICIA DILMORTH BOATNER ESTATE  
1336 L STREET, S.E., WASHINGTON, D.C. 20003

## F. NAME AND ADDRESS OF LENDER:

FIRST SAVINGS BANK  
1034 OLD GALLIES ROAD, 6TH FLOOR, VIENNA, VIRGINIA 22182

## G. PROPERTY

2343 S. NASH STREET  
ARLINGTON, VA 22202

## H. SETTLEMENT AGENT:

EARL E. CHAFFER

PLACE OF SETTLEMENT:  
(TIN - 235-38-4402)

2007 NORTH 15TH STREET, ARLINGTON, VIRGINIA 22201

## I. SETTLEMENT DATE:

November 7, 1997

## J. SUMMARY OF BORROWER'S TRANSACTION

100. GROSS AMOUNT DUE FROM BORROWER:	
101. Contract sales price	265,000.00
102. Personal property	
103. Seller's charges to borrower (p.o.c. line 1400)	9,574.06
104.	
105.	

## ADJUSTMENTS FOR ITEMS PAID BY SELLER IN ADVANCE:

106. City/county taxes to	
107. County taxes 11/ 7/97-12/31/97	395.37
108. Assessments to	
109.	
110.	
111.	
112.	

120. GROSS AMOUNT DUE FROM BORROWER: 274,969.43

## 200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:

201. Deposit or earnest money	10,000.00
202. Principal interest of new loan(s)	185,000.00
203. Escrow fees taken subject to	
204.	
205.	
206.	
207.	
208.	
209.	

## ADJUSTMENTS FOR ITEMS UNPAID BY SELLER:

210. City/county taxes to	
211. County taxes to	
212. Assessments to	
213.	
214.	
215.	
216.	
217.	
218.	
219.	

220. TOTAL PAID BY/FOR BORROWER: 195,000.00

## 300. CASH AT SETTLEMENT FROM/TO BORROWER:

301. Gross amount due from borrower (line 120)	274,969.43
302. Less amount paid by/for borrower (line 220)	195,000.00
303. CASH ( <input checked="" type="checkbox"/> FROM ) ( <input type="checkbox"/> TO ) BORROWER	79,969.43

## K. SUMMARY OF SELLER'S TRANSACTION

400. GROSS AMOUNT DUE TO SELLER:	
401. Contract sales price	265,000.00
402. Personal property	
403. (Gross Proceeds \$265,000.00)	
404.	
405.	

## ADJUSTMENTS FOR ITEMS PAID BY SELLER IN ADVANCE:

406. City/county taxes to	
407. County taxes 11/ 7/97-12/31/97	395.37
408. Assessments to	
409.	
410.	
411.	
412.	

420. GROSS AMOUNT DUE TO SELLER: 265,395.37

## 600. REDUCTIONS IN AMOUNT DUE TO SELLER:

601. Escrow deposit (see instructions)	5,000.00
602. Seller's charges to seller (line 1400)	1,143.00
603. Escrow fees taken subject to	
604. Payoff of first mortgage loan	
605. Payoff of second mortgage loan	
606.	
607.	
608.	
609.	

## ADJUSTMENTS FOR ITEMS UNPAID BY SELLER:

510. City/county taxes to	
511. County taxes to	
512. Assessments to	
513.	
514.	
515.	
516.	
517.	
518.	
519.	

520. TOTAL REDUCTIONS IN AMOUNT DUE SELLER: 6,143.00

## 800. CASH AT SETTLEMENT TO/FROM SELLER:

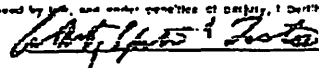
801. Gross amount due to seller (line 420)	265,395.37
802. Less reductions in amt. due seller (line 520)	6,143.00
803. CASH ( <input checked="" type="checkbox"/> TO ) ( <input type="checkbox"/> FROM ) SELLER	259,252.37

HUD-1 (3-85) - RESPA, HB 4305.2

PROPERTY/TITLE FORM 1000 SELLER STATEMENT: The information contained in Blocks C, D, H, and I and on line 401 (or if line 401 is asterisked, lines 400 and 404) is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction will be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.

SELLER INSTRUCTIONS: If this real estate was your principal residence, the Form 2119, Sale or Exchange of Principal Residence, for any sale, with your income tax return; for other transactions, complete the applicable parts of Form 4797, Form 8325 and/or Schedule D (Form 1040).

You are required by law to provide false tax data with your correct taxpayer identification number. If you do not provide false data with your correct taxpayer identification number, you may be subject to civil or criminal penalties imposed by law, and under penalties of perjury, I certify that the number shown on this statement is my correct taxpayer identification number.



Date's Signature PAGE 1



SETTLEMENT CHARGES		PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
TOTAL SALES/BROKER'S COMMISSION			
BASED ON PRICE \$265,000.00 @ 1.000% = 2,650.00			
DIVISION OF COMMISSION (LINE 700) AS FOLLOWS:			
2,650.00 to MCKEARNY ASSOCIATES, INC.			
2,650.00			
ITEMS PAYABLE IN CONNECTION WITH LOAN:			
Loan initiation fee 3.500		3.75	
Loan interest			
Appraisal fee for (300.00 P.O.C.)			
Credit report fee (116.00 P.O.C.)			
Lender's insurance fee			
Mortgage insurance premium fee to			
Administration fee			
DOCUMENT REVIEW FEE		350.00	
TAX SERVICE FEE		59.00	
FLOOD CERTIFICATION		21.50	
ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE:			
Interest from 11/7/97 to 12/1/97 @ 39.63%		955.92	
Mortgage insurance premium fee			
Mortgage insurance premium fee			
Mortgage insurance premium fee			
0. RESERVES DEPOSITED WITH LENDER:			
1. Home Reserve 3 months @ 25.25 per month		75.75	
2. Mortgage Insurance 3 months @ 25.25 per month		75.75	
3. City/County Taxes 3 months @ 25.25 per month		75.75	
4. County Property Taxes 4 months @ 218.65 per month		874.60	
5. Annual Homeowner's 3 months @ 25.25 per month		75.75	
6. Flood Insurance 3 months @ 25.25 per month		75.75	
7. AGGREGATE ADJUSTMENT 3 months @ 25.25 per month		-218.71	
0. TITLE CHARGES:			
1. Settlement of existing fee to EARL E. SHAFFER		250.00	250.00
2. Cost of title search to ASHTON TITLE & ESCROW COMPANY		100.00	
3. Title examination fee			
4. Title insurance binder fee			
5. Document preparation fee			
6. Minority fees fee			
7. Attorney's fees to			
8. Title Insurance to ASHTON TITLE & ESCROW COMPANY		494.00	
9. Lender's coverage \$ 494.00 (\$ 185,000.00)			
10. Title's coverage \$ 951.00 (\$ 265,000.00)			
11. Government Recording and Transfer Charges:			
1. Recording local. Deed \$ 17.00 Mortgage \$ 20.00		37.00	
2. Conveyance to/for: Deed \$ 132.50 Mortgage \$ 92.50		225.00	
3. State Notary: Deed \$ 397.50 Mortgage \$ 277.50		675.00	
4. GRANTOR'S FEES			265.00
10. ADDITIONAL SETTLEMENT CHARGES:			
1. Entry fee JAMES H. GUYE		220.00	
2. Pest inspection to CONDON'S PEST CONTROL			628.00
3. COURTIER FEES/AAA-COURIER/LOAN PACK		30.00	
4.			
5.			
6.			
7.			
10. TOTAL SETTLEMENT CHARGES		9,574.06	1,143.00

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

FOR: Robert L. Lindsay III Date: 11/7/97 Patricia Dillworth Boatner Estate Date: 11/7/97  
 BY: Cynthia A. Lindsay Date: 11/7/97 Carter H. Boatner Executor and Trustee Date: 11/7/97

I, Earl E. Shaffer, Settlement Agent, Date: 11/7/97

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction may include a fine and imprisonment.

## SALES CONTRACT

This SALES CONTRACT ("Contract") is made on 8-24, 1997 ("Contract Date")  
 between Cynthia A. Lindsay ("Purchaser")  
 and Estate of Patricia A. Barker ("Seller")  
 who hereby acknowledge by their initials and signatures below the disclosure that in this real estate transaction,

N/A ("Listing Company") represents the Seller, and  
McEneaney Associates ("Selling Company") represents ☐ the Purchaser OR  
☐ the Seller, the Listing Company and Selling Company, both being together "Broker". (If the brokerage firm is acting as a dual representative for both Seller and Purchaser, with or without designated representatives, 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 the land with all improvements thereon, described as follows: Legal Description: Lot \_\_\_\_\_, Block \_\_\_\_\_, Section \_\_\_\_\_, Subdivision or Condominium \_\_\_\_\_, Condominium Unit # \_\_\_\_\_, Parking Space # \_\_\_\_\_, County/City \_\_\_\_\_  
 Street Address: 2343 S. Nash St., Arlington Virginia, Zip Code 22202 ("Property")

2. PERSONAL PROPERTY, FIXTURES AND UTILITIES. All items of personal property or fixtures which convey are included in the Sales Price and shall be transferred free of liens. All 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, smoke and heat detectors, exterior trees and shrubs and, if so indicated below the following checked items as currently installed or offered convey:

### CONVEYS YES NO ITEM

☒ ☐ Stove or Range  
☐ ☒ Cooktop  
☐ ☒ Wall Oven(s) # \_\_\_\_\_  
☒ ☐ Refrigerator(s) # \_\_\_\_\_  
☐ ☐ w/ ice maker(s) # \_\_\_\_\_  
☐ ☐ Dishwasher  
☐ ☒ Built-In Microwave  
☐ ☒ Trash Compactor

### CONVEYS YES NO ITEM

☐ ☒ Disposer  
☐ ☒ Freezer  
☐ ☒ Window Fan(s) # \_\_\_\_\_  
☐ ☒ Window A/C Unit(s) # \_\_\_\_\_  
☐ ☒ Pool, Equip. & Cover  
☐ ☒ Hot Tub, Equip. & Cover  
☐ ☐ Shades and/or Blinds  
☐ ☐ Window Treatments

### CONVEYS YES NO ITEM

☐ ☒ Ceiling Fan(s) # \_\_\_\_\_  
☒ ☐ Washer  
☒ ☐ Dryer  
☐ ☐ Furnace Humidifier  
☐ ☒ Electronic Air Filter  
☐ ☒ Central Vacuum  
☐ ☒ Water Softener  
☐ ☒ Exhaust Fan(s)

### CONVEYS YES NO ITEM

☐ ☒ Alarm System  
☐ ☒ Intercom  
☐ ☒ Storage Shed(s) # \_\_\_\_\_  
☐ ☒ Garage Opener(s) # \_\_\_\_\_  
☐ ☒ w/ remote(s) # \_\_\_\_\_  
☐ ☒ Playground Equipment  
☐ ☒ Wood Stove  
☐ ☒ Fireplace Screen /Doors

Other: \_\_\_\_\_

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

Water Supply: ☒ Public ☐ Well Hot Water: ☐ Gas ☒ Elec.  
 Sewage Disposal: ☒ Public ☐ Septic # BR Air Conditioning: ☐ Oil ☐ Gas ☐ Elec. ☐ Heat Pump  
 Heating: ☐ Oil ☒ Gas ☐ Elec. ☐ Heat Pump ☐ Other \_\_\_\_\_

3. DEPOSIT. (a) The Purchaser has made a deposit with the Selling Company of Five thousand Dollars (\$ 5,000.00) ("Deposit"): ☒ \$ 5,000 by check; ☐ \$ \_\_\_\_\_ by money order; ☐ \$ \_\_\_\_\_ by note due and payable on \_\_\_\_\_, 19\_\_\_\_, receipt of which is hereby acknowledged. (b) The Deposit shall be placed in a special escrow account of the Selling Company to conform with the Regulations of the Virginia Real Estate Board and/or, if VA financing applies, as required by Section 1806, Title 38 of the U.S. Code. The Purchaser and the Seller direct the Selling Company to place the Deposit in an escrow account, which may be an interest bearing account, and waive any claim to interest resulting from such 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 Virginia Real Estate Board

Please Initial: Purchaser [Signature]

Seller [Signature]

4. PRICE AND FINANCING

2,500,000

~~2,500,000~~ TOTAL SALES PRICE ("Sales Price"), of which:

\$100,000 DOWN PAYMENT: shall be paid at settlement by certified or cashier's check or by bank wired funds.

FIRST DEED OF TRUST: The Purchaser shall ☐ obtain OR ☐ assume: a ☐ Conventional ☐ FHA ☐ VA ☐ VHDA ☐ Other \_\_\_\_\_ First Deed of Trust loan amortized over \_\_\_\_\_ years at a ☐ FIXED RATE bearing an interest rate of \_\_\_\_\_ % per year, or market rate available; OR an ☐ ADJUSTABLE RATE bearing an initial interest rate of \_\_\_\_\_ % per year, or market rate available. The loan to be payable at approximately \$ \_\_\_\_\_ per month, including principal and interest (taxes and hazard insurance, private mortgage insurance or monthly FHA insurance, if any, to be additional). Special Terms (if any): \_\_\_\_\_

ASSUMPTION: Assumption fee, if any, and all charges relating to the assumption shall be paid by the Purchaser. If the Purchaser assumes the Seller's loan; (a) the Purchaser and the Seller shall obtain a release of the Seller's liability to the U. S. Government for the repayment of the loan by settlement. ☐ Yes ☐ No; (b) the Purchaser and Seller shall obtain substitution of the Seller's VA entitlement by settlement. ☐ Yes ☐ No; (c) Balances of any assumed loans, secondary financing and cash down payments are approximate.

SECOND DEED OF TRUST: The Purchaser shall ☐ obtain, OR ☐ assume a Second Deed of Trust loan secured by the Property amortized over \_\_\_\_\_ years at a ☐ FIXED RATE, bearing an interest rate of \_\_\_\_\_ % per year, or market rate available; OR an ☐ ADJUSTABLE RATE, bearing an initial interest rate of \_\_\_\_\_ % per year, or market rate available. The loan shall be payable at approximately \$ \_\_\_\_\_ per month, including principal and interest. All 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.

SELLER FINANCING: The Seller shall provide a ☐ First ☐ Second ☐ Third Deed of Trust Loan secured by the Property, payable at approximately \$ \_\_\_\_\_ per month or more including \_\_\_\_\_ % interest per year, the payment to be applied first to interest with the remainder applied to principal and with the balance due \_\_\_\_\_ 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 Ratification 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 Ratification on the Seller obtaining a written commitment for the sale of the note at settlement at a discount not to exceed \_\_\_\_\_ %, or this Contract shall be voidable at the option of the Seller.

ADDITIONAL FINANCING TERMS.

A. INSURANCE. The Purchaser shall obtain hazard and title insurance as required by the noteholder(s).

B. ☒ 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 \_\_\_\_\_ toward the Purchaser's normal settlement charges, (including but not limited to loan origination fees, discount fees, buydown or subsidy fees; or other settlement charges 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 first to lower the Sales Price to the appraised value. If the Seller does not exercise that option, it is the Purchaser's option to proceed with the settlement and sign the appropriate amendment(s). Each election must be made within 3 days after written notice. If the parties fail to agree, this Contract shall become void and the Deposit shall be refunded in full to the Purchaser.

C. ☐ FHA FINANCING. If applicable, the Purchaser shall ☐ pay at settlement, OR ☐ finance any initial Mortgage Insurance Premium. Based on the financing terms specified in this Contract, the Seller shall pay \_\_\_\_\_ loan discount fees and other lender charges which cannot by law or regulation be charged to the Purchaser. The Purchaser shall pay all remaining Purchaser's settlement charges.

If 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 the 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, Veterans Administration, or a Direct Endorsement Lender setting forth the appraised value of the Property of not less than \$ \_\_\_\_\_. The Purchaser shall, however, 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 WILL INSURE. HUD DOES NOT WARRANT THE VALUE OR THE CONDITION OF THE PROPERTY. THE PURCHASER SHOULD SATISFY HIM/HERSELF THAT THE PRICE AND CONDITION OF THE PROPERTY ARE ACCEPTABLE. 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. The FHA loan amount is approximate because the financed acquisition costs cannot be finally determined until the time of settlement.

D. ☐ VA FINANCING. If applicable, the Purchaser shall ☐ pay at settlement, OR ☐ finance any VA Funding Fee. Based on the financing terms 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;

Please Initial Purchaser

Seller

or other settlement charges allowed by the lender, The Purchaser shall pay all remaining Purchaser Settlement charges.

If VA financing applies, it is expressly agreed that, notwithstanding any other provision of this Contract, the Purchaser shall not incur penalty by forfeiture of earnest money or otherwise be obligated to complete the purchase of the Property described herein, if the Contract purchase price or cost exceeds the reasonable value of the Property established by the Department of Veterans Affairs. The Purchaser shall, however, have the privilege and option of proceeding with the consummation of this Contract without regard to the amount of the reasonable value established by the Department of Veterans Affairs. The Purchaser agrees that should the Purchaser elect to complete the purchase at an amount in excess of the reasonable value established by the VA, the Purchaser shall pay such excess amount in cash from a source which the Purchaser agrees to disclose to the VA, and which the Purchaser represents will not be borrowed funds except as approved by the VA. 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.

**5. 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 Purchaser acknowledges that the Seller is relying upon all of the Purchaser's representations including without limitation the accuracy of the financial information given to the Seller, Broker or the lender by the Purchaser. If the Purchaser is guilty of any deliberate misrepresentations, material omissions or inaccuracies in such financial information that result in the Purchaser's inability to secure the financing, the Purchaser shall be in default.

**6. LOAN APPLICATION.** The Purchaser shall make written loan application within 5 business days following ratification of this Contract. The Purchaser grants permission for the Selling Company and the lender to disclose to the Lending Company 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. The Seller may elect to provide the specified financing to the Purchaser. If the Purchaser's loan application is rejected for reasons other than the appraised value, then with the Seller's written permission, the Purchaser shall make application to one additional lender as approved by the Seller in writing.

The Purchaser shall be in default if settlement does not occur because the Purchaser:

- A. 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;
- B. Applies for, and fails to obtain, alternative financing instead of that specified, unless the Seller consents in writing to the terms of the alternative financing;
- C. Fails to comply with the lender's requirements in a timely manner;
- D. Fails to immediately notify the Seller or the Broker, in writing, of any material adverse changes in the Purchaser's assets, liabilities or income; or
- E. Does not have the funds to settle as provided in this Contract at the time of settlement; or
- F. Does any act following the Date of Ratification that prevents the Purchaser from obtaining the financing.

If new financing, including Seller financing, is to be arranged, or if assumption of existing financing requires lender approval, then this Contract is contingent upon such new financing or approval. If the Purchaser's loan application is finally rejected or if such financing or approval cannot be obtained within 60 days after the scheduled date of settlement, this Contract shall then become voidable at the option of the Seller and, if voided, the Deposit shall be refunded in full to the Purchaser, provided the Purchaser is not in default.

**7. SETTLEMENT DATE.** The Seller and the Purchaser shall make full settlement in accordance with the terms hereof on or, with mutual consent, before 9-24, 1997 except as otherwise provided in this Contract.

**8. SETTLEMENT AGENT.** The Purchaser wishes to employ Earl Shaffer  
("Settlement Agent") to act for both parties unless either party specifically requests otherwise.

**9. FEES.** Fees for the preparation of the Deed, Grantor's Tax, that portion of the Settlement Agent's fee billed 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 examination of title (except as otherwise provided), recording charges (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.

**10. 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 Seller grants to the Purchaser and/or the Purchaser's representative the right to make a presettlement and/or a preoccupancy inspection.

**11. EQUIPMENT, MAINTENANCE AND CONDITION.** The Purchaser and the Seller shall not hold the Broker liable for any breach of this paragraph. The Purchaser accepts the Property in its present "AS IS" condition except as otherwise provided herein. The Seller warrants that the existing appliances, heating and cooling equipment, plumbing and electrical systems, sump pump, attic fan, and smoke and heat detectors shall be in normal working order on the date possession is delivered. The Property shall be delivered in substantially the same condition as on the Date of Ratification. The Seller shall deliver the Property in broom clean condition with all trash and debris removed.

**12. 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 means available to recover possession of the Property.

**13. WELL AND SEPTIC.** If the Property is on well and/or septic systems, the Seller shall furnish the Purchaser on or before settlement with a certificate from the appropriate local government authority or government-approved or government-certified private company, indicating that (a) the well water contains no more than the acceptable level of coliform bacteria or other 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 showing capacity consistent with written or advertised representations of the Seller, if any. If either system is found defective or substandard, the Seller shall take appropriate remedial action at the Seller's expense.

Please Initial: Purchaser ES

Seller ES



14. **TERMITE INSPECTION.** The Seller warrants at the time of settlement that all dwellings and/or garage(s) within the Property (excluding fences or shrubs not abutting garage(s) or dwelling(s)) are free of visible termite and other wood-destroying insects, and/or free from visible insect damage. The Seller shall furnish a written report to this effect at or before settlement from a licensed pest control firm. Required extermination and repairs shall be at the Seller's expense. This inspection shall be performed no earlier than 30 days prior to settlement.

15. **REPAIRS.** If, as a condition of providing financing under this Contract, the lender requires repairs to be made to the Property, then within 5 days after Seller's receipt of written notification of the lender's requirements, the Seller shall notify the Purchaser in writing if the Seller will make the repairs. If the Seller will not make the repairs, the Purchaser shall notify the Seller or Broker in writing within 5 days after receipt of such notification from the Seller whether the Purchaser will make the repairs and proceed to settlement. If neither the Seller nor the Purchaser agrees to 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 paragraphs 2, 11, 13, 14 or 29 or any items specifically set forth in any addendum to this Contract.

16. **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.

17. **TITLE.** The Property, including the chattels and/or equipment, shall be sold free of encumbrances except for any loans assumed by the Purchaser. The Seller shall comply with all notices of violations of orders or requirements 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. 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.

The title report and survey 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. Title is to be good and marketable, and insurable by a licensed title company with no additional risk 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 a reasonable time. The reasonable time shall not extend more than 60 days beyond the date for settlement set forth in paragraph 7 or the Seller shall be in default. The Broker is hereby expressly released from all liability for damages by reason of any defect in the title. In case action is required to perfect the title, such action must be taken promptly by the Seller at the Seller's expense. The Seller shall convey the Property by General Warranty Deed.

18. **PRORATIONS.** Rents, taxes, water and sewer charges, fuel oil, 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. 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 Ratification, whether assessments have been levied or not, shall be paid by the Seller or 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.

19. **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. *As per B-B Agreement*

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).

21. **DEFAULT.** If the Purchaser is in default, the Seller shall have all legal and equitable remedies, and the Broker shall hold the Deposit until such time as those damages are ascertained, or the Seller may elect to terminate this Contract and declare the Deposit forfeited as liquidated damages and not as a penalty. If the Seller elects to accept the Deposit as liquidated damages, then the Broker may elect to accept, and the Seller agrees to pay, 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 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 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.

## 22. STATUTORY DISCLOSURES

**A. 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 Ratification, 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 Ratification or the disclosures are found unacceptable to the Purchaser, the Purchaser may void this Contract by delivering notice to the Broker within 3 days after the disclosures were received or due (if not received) and the Deposit shall be returned promptly. If more than 60 days elapse between the Date of Ratification 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.

**B. 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 Ratification.

Please Initial: Purchaser *[Signature]*

Seller *[Signature]*

The Purchaser may cancel this Contract: (1) within 3 days after the Date of Ratification, if on or before the Date of Ratification, the Purchaser receives the association disclosure packet or is notified that the association disclosure packet is not available; (2) within 3 days after hand-delivered receipt of the association disclosure packet or notice; or (3) within 6 days after the postmark date if the association disclosure packet or notice 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 will not be available or 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 Ratification 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 Purchaser may waive the right to receive the association disclosure packet by this paragraph in a separate written document.~~ The right to receive the association disclosure packet and to cancel this Contract terminates at settlement.

#### C. POSSIBLE FILING OF MECHANICS' LIEN.

#### NOTICE

Virginia law (Section 43-1 et seq.) permits persons who have performed labor or furnished materials for the construction, removal, repair or improvement of any building or structure to file a lien against the property. This lien may be filed at any time after the work is commenced or the material is furnished, but not later than the earlier of (i) 90 days from the last day of the month in which the lienor last performed work or furnished materials or (ii) 90 days from the time the construction, removal, repair or improvement is terminated. AN EFFECTIVE LIEN FOR WORK PERFORMED PRIOR TO THE DATE OF SETTLEMENT MAY BE FILED AFTER SETTLEMENT. LEGAL COUNSEL SHOULD BE CONSULTED.

D. VIRGINIA PROPERTY DISCLOSURE ACT. The Virginia Residential Property Disclosure Act requires the Seller to deliver a disclaimer or disclosure statement prior to the acceptance of this Contract unless the transfer of the Property is exempt. The law allows the Seller, on a disclaimer or disclosure statement provided by the Real Estate Board, either to: (1) make no representations or warranties to the condition of the Property and sell the Property "as is", except as otherwise provided in this Contract; OR (2) make a written disclosure concerning the Property, based on the Seller's knowledge of its condition. If the Seller furnishes a disclosure statement, then the Seller is required at settlement to disclose any material change in the physical condition of the Property or to certify to the Purchaser that the condition of the Property is substantially the same. If the disclaimer or disclosure required by law is delivered to the Purchaser after the acceptance of this Contract, the Purchaser may terminate this Contract by giving written notice to the Seller either by hand delivery or by United States mail, postage prepaid, at or prior to the earliest of (1) 3 days after delivery of the disclosure or disclaimer in person, (2) 5 days after the postmark if the disclosure or disclaimer is properly mailed, (3) settlement on the Property, (4) occupancy of the Property by the Purchaser, (5) written waiver by the Purchaser in a separate document, or (6) the Purchaser's application for a mortgage loan where such application contains a disclosure that the right to terminate ends upon applying for the mortgage loan.

23. OTHER DISCLOSURES. 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 as further provided in paragraph 11. 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: soil conditions; 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. Virginia law requires all contracts for the sale of real property to be in writing to be enforceable. Both parties have the opportunity to seek legal advice before entering into this Contract.

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. 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.

24. 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.

25. 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. "Date of Ratification" 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, 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.

26. 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 disbursed in accordance with paragraph 3.

27. NOTICES. Notices 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 the Listing Company's office; (b) Addressed to the Purchaser at:

*Lee Higley*  
*Washington, VA*

Please Initial: Purchaser *LO*

Seller *LO*

28. TARGET LEAD-BASED PAINT (L) USING. The Seller represents that any residence 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".

29. ADDITIONS. The following are made a part of this Contract:

☒ Yes ☐ No HOME INSPECTION ADDENDUM ☐ Yes ☒ No RADON ADDENDUM  
☐ Yes ☒ NO SALE OF HOME CONTINGENCY ADDENDUM ☐ Yes ☒ NO LEAD-BASED PAINT AMENDATORY FORMS  
☐ Yes ☒ NO HOME WARRANTY POLICY to be provided (specify): \_\_\_\_\_  
☐ Yes ☒ NO OTHER (specify): \_\_\_\_\_

30. OTHER TERMS. \_\_\_\_\_

31. COVENANTS. This Contract shall be binding upon the parties, and each of their respective heirs, executors, administrators, successors and permitted 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 Commonwealth of Virginia. TIME IS OF THE ESSENCE AS TO ALL TERMS OF THIS CONTRACT.

32. ACCEPTANCE. Upon ratification, this Contract becomes a legally binding and enforceable agreement. Any changes must be made by written amendment.

SELLER: 9/24/97 [Signature] (SEAL)  
Date Signature

PURCHASER: 8/24 [Signature] (SEAL)  
Date Signature

\_\_\_\_\_  
Date Signature (SEAL)

\_\_\_\_\_  
Date Signature (SEAL)

Listing Company's Address: \_\_\_\_\_

Selling Company's Address: \_\_\_\_\_

Broker Code: \_\_\_\_\_

Broker Code: MC-6-

9-7 1997 11:20 ☒ AM ☐ PM  
Date and time of Ratification (see paragraph 25)



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EQUAL HOUSING OPPORTUNITY

## CONSUMER REAL ESTATE SETTLEMENT PROTECTION ACT DISCLOSURE

Required for contracts involving the purchase of real estate containing  
not more than four residential dwelling units

This Addendum is made on 8-24, 19 97, to a Sales Contract ("Contract")  
dated 8-24, 19 97 between Cynthia A. Lindsey ("Purchaser")  
and Estate of Patricia Boatner ("Seller")  
for the purchaser and sale of the Property: \_\_\_\_\_

The Parties agree that the Contract is modified as follows:

**Choice of Settlement Agent:** You have the right to select a settlement agent to handle the closing of this transaction. The settlement agent's role in closing your transaction involves the coordination of numerous administrative and clerical functions relating to the collection of documents and the collection and disbursement of funds required to carry out the terms of the contract between the parties. If part of the purchase price is financed, your lender will instruct the settlement agent as to the signing and recording of loan documents and the disbursement of loan proceeds. No settlement agent can provide legal advice to any party to the transaction except a settlement agent who is engaged in the private practice of law in Virginia and who has been retained or engaged by a party to the transaction for the purpose of providing legal services to that party.

**Escrow, closing and settlement service guidelines:** The Virginia State Bar issues guidelines to help settlement agents avoid and prevent the unauthorized practice of law in connection with furnishing escrow, settlement or closing services. As a party to a real estate transaction, you are entitled to receive a copy of these guidelines from your settlement agent, upon request, in accordance with the provisions of the Consumer Real Estate Settlement Protection Act.

This Addendum shall not alter, modify or change in any other respect the contract, and except as modified herein, all of the terms and provisions of the Contract are expressly ratified and confirmed and shall remain in full force and effect.

**PURCHASER**  
**SELLER:**  
8/24/97 Cynthia Lindsey (SEAL)  
Date Signature  
\_\_\_\_\_  
Date Signature (SEAL)

**SELLER**  
**PURCHASER:**  
9/9/97 [Signature] (SEAL)  
Date Signature  
\_\_\_\_\_  
Date Signature (SEAL)



FOR CLEAR COPY, PLEASE PRINT WITH BALL POINT PEN.

VIRGINIA COMMERCE BANK  
Arlington • Alexandria • McLean

DATE 9-12 1997

CURRENCY DOLLARS COIN CENTS

COIN 168-111 5,000 —  
15-725 2,000 —  
15-7458 5,000 —

McENEARNEY ASSOCIATES INC.  
ESCROW NWA

6408 - Divine St  
4045 - 21st St  
~~4034 - 7th St~~ 2343 Nash St

07002 39131002

12,000
TOTAL ITEMS <u>3</u>
PLEASE BE SURE ALL ITEMS ARE PROPERLY ENDORSED.
TOTAL DEPOSIT <u>12,000</u>
DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL.

CYNTHIA A. LINDSAY 198  
P.O. 703-004-5333  
2343 S. NASH STREET  
ARLINGTON, VA. 22202

88-11118  
500  
\$1281170

259

Aug 14 1997

PAY TO THE ORDER OF McEneaney Assoc \$ 5000.00

Five Thousand and 00/100 DOLLARS

FIRST VIRGINIA BANK  
Subsidiary of First National Bank of Virginia  
FALLS LANE, VIRGINIA 22042

4045 21st St Deposited 2343 Nash St Cynthia Lindsay

056001118 5157 1170 0259

DOUGLAS A. MANOR  
GALE O. MANOR  
2016 N. GREENBRIER ST  
ARLINGTON, VA 22205  
(703)261-2152

150

9/9/97 167021/2340

PAY TO THE ORDER OF McEneaney Associates \$ 2,000.00

Two Thousand and 00/100 DOLLARS

United States Senate  
Federal Credit Union

4045 21st St Earrest Douglas A. Manor

254075250 000000000 176 1170 150

PAUL R. WOOD  
ANGELA KOLONAY WOOD  
1415 MAYFLOWER DR. P.O. 703-506-1037  
MC LEAN, VA 22101

15-7458  
3541  
00178

2693

DATE: 9/8/97

PAY TO THE ORDER OF McEneaney Associates \$ 5,000.00

Five Thousand and 00/100 DOLLARS

FEDERAL CREDIT UNION  
Federal Reserve Bank, Washington, D.C. 20331

MEMO Earrest Money 6408 Divine St Paul R Wood

25407458 1170 08170 2673

2/27/98

V I R G I N I A:

IN THE GENERAL DISTRICT COURT FOR ARLINGTON COUNTY

McENEARNEY ASSOCIATES, INC.  
Plaintiff,

vs.

CYNTHIA LINDSAY  
Defendant,

Case No. V97-11659

Trial Date: April 6, 1998

ANSWER, GROUNDS OF DEFENSE,  
and  
COUNTERCLAIM

'98 FEB 27 13:44

COMES NOW the Defendant, CYNTHIA LINDSAY, by Counsel, and in support of her cause represents as follows:

1. At all times pertinent hereto, Loretta D. Connor was acting as agent for Plaintiff McEneaney Associates, Inc. and was acting within the scope of her agency.

2. During the course of the listing agreement at issue in this case, your Defendant made an offer on a house, through Plaintiff.

3. During the tender of the offer set forth, your Defendant deposited with the Plaintiff the sum of \$5,000.00 as earnest money for the offer to purchase.

4. The offer to purchase as set forth in paragraph 2 above, was never accepted.

5. Notwithstanding the foregoing, the Plaintiff has unlawfully withheld from your Defendant the said \$5,000.00.

6. During the pendency of the listing Agreement at issue herein, the Defendant, on her own and without the help of Loretta Connor, or any other agent or employee of Plaintiff, located a house to purchase.

7. At the time that the other house was located, without the assistance of Plaintiff, the terms of the listing Agreement at issue here were in dispute.

8. Loretta Connor and Defendant negotiated a separate fee for the property that ultimately went to closing, specifically, 1%.

9. Prior to the closing set forth above, Loretta Connor sought an advance on the commission and was paid by the Defendant the sum of \$1,000.00 to be repaid upon closing.

10. At the closing set forth above, the commission due Plaintiff was the subject of inquiry by the closing attorney.

11. At the direction of Loretta Connor, the closing attorney concluded the closing and placed a 1% commission due to Plaintiff in the settlement documents.

12. But for the representations and directives of Loretta Connor at the closing, the closing would not have occurred.

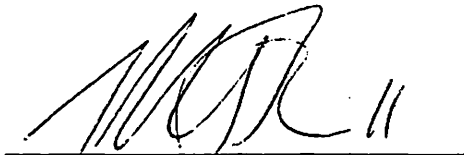
13. Plaintiff continues to unlawfully withhold from the Defendant the sum of \$1,000.00 as set forth in paragraph nine above.

14. Your Defendant denies that she is indebted unto the Plaintiff in any amount.

WHEREFORE, your Defendant prays that she be granted the following relief:

(A) That the Plaintiff's claim be barred by this Plea of Accord and Satisfaction;

(B) That judgment be entered in her favor in the amount of \$6,000.00 on her counter-claim for money had and received or conversion.



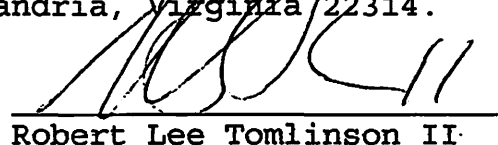
Robert L. Tomlinson II  
Attorney for the Defendant

CYNTHIA LINDSAY  
By counsel

Certificate of Service

27th

I hereby certify that a true and correct copy of the foregoing Answer, Grounds of Defense, and Counterclaim has, this ~~26th~~ day of February 1998, been delivered by First Class, Postage prepaid mail to Barbara Beach at 416 Prince Street, Alexandria, Virginia 22314.



Robert Lee Tomlinson II

4-6-98  
Judgment for Counter Plaintiff \$2,350  
JK

CIVIL APPEAL NOTICE  
Commonwealth of Virginia

VA CODE ANN § 16.1-106-107

ARLINGTON COUNTY

CITY OR COUNTY



General District Court



Juvenile and Domestic Relations District Court

I, the undersigned, note my appeal of the judgment of this Court to the Circuit Court of this city or county, which is located at

1425 N. COURTHOUSE RD, ARLINGTON, VA 22201 703 228 7100

STREET ADDRESS OF CIRCUIT COURT

TELEPHONE



My case is scheduled to be called for



trial



setting of trial date on

DATE AND TIME OF APPEARANCE



I understand that I must contact the circuit court clerk's office for instructions for setting the trial date. I understand that within thirty (30) days (ten (10) days in unlawful detainer cases) of the entry of judgment, I must deliver to the Clerk of the Court:

a. \$ 76.00 for writ tax and costs (General District Court).

b. \$ 50.00 appeal bond with sufficient surety approved by the Judge or Clerk of this Court or cash deposit. The appeal bond should be written to indemnify the party in whose favor a judgment was rendered in this Court in the event that such party is awarded a judgment on appeal in Circuit Court.

CIVIL CONTEMPT FINDING IN CHILD SUPPORT CASES:



Bond amount must secure the payment of prospective support accruing during the pendency of the appeal.

I further understand that I must pay the writ tax and costs if applicable and post the appeal bond within thirty (30) days (ten (10) days in unlawful detainer cases) of the entry of judgment for the appeal in my case to be complete ("perfected"), and that my failure to do so within the thirty (30) day period (ten (10) day period in unlawful detainer cases) will result in the loss of my appeal rights.

4/15/98

DATE APPEAL NOTED

McEneaney Associates, Inc.

APPELLANT

☒ PLAINTIFF

☐ DEFENDANT

by

ATTORNEY FOR APPELLANT

MARY M. BENZINGER  
VSB #27199

NOTICE: Promptly communicate with the Clerk of the Circuit Court of this jurisdiction if you wish to subpoena witnesses and request a jury trial.

CASE NO.

97-11659

CIVIL APPEAL NOTICE

McEneaney Associates, Inc.

4720 LEE HWY

ARLINGTON, VA 22207

V.  
CYNTHIA LINDSAY

2343 NASH STREET

ARLINGTON, VA 22202

JUDGMENT DATE:

4/6/98

PLAINTIFF'S ATTORNEY [ ] Same as on Attached Warrant

MARY M. BENZINGER, ESQ.

2009 N. 14<sup>th</sup> ST. S. 612

ARLINGTON, VA 22201

DEFENDANT'S ATTORNEY [ ] Same as on Attached Warrant

ROBERT TOMLINSON II

2045 15<sup>th</sup> ST. N. #45

ARLINGTON, VA 22201



BOND IN CIVIL CONTEMPT CASES

\$ .....



VIRGINIA:

IN THE CIRCUIT COURT FOR ARLINGTON COUNTY

McENEARNEY ASSOCIATES, INC., )

Plaintiff )

v. )

) At Law No. 98-424

CYNTHIA LINDSAY, )

Defendant )

MOTION FOR SUMMARY JUDGMENT

COMES NOW Plaintiff McEneaney Associates, Inc., by counsel, and for and as its Motion for Summary Judgment submits the following:

I. STATEMENT OF THE CASE:

Plaintiff McEneaney Associates, Inc. entered into an "Exclusive Right to Represent Buyer Agreement" with Defendant Cynthia Lindsay on August 13, 1997 to represent Ms. Lindsay in the purchase of a house. This Agreement bound Ms. Lindsay to pay a three percent sales commission. At closing on the property purchased by Ms. Lindsay, Ms. Lindsay paid only one percent commission. Ms. Lindsay failed and refused to pay the balance and McEneaney brought suit in breach of contract.<sup>1</sup> Ms. Lindsay asserts that McEneaney's Sales Associate Loretta D. Connor orally agreed to modify the sales commission to one percent. This case is set for trial by jury for April 8, 1999.

<sup>1</sup> This suit was brought in the General District Court. Defendant's counter-claim there was denied and she did not appeal that decision to this Court.

## **II. SUMMARY JUDGMENT STANDARD:**

Rule 3:18 of the Rules of the Supreme Court of Virginia states in relevant part:

If it appears from the pleadings, the orders, if any, made at a pretrial conference, the admissions, if any, in the proceedings, or, upon sustaining a motion to strike the evidence, that the moving party is entitled to judgment, the court shall enter judgment in his favor. Summary judgment, interlocutory in nature, may be entered as to the undisputed portion of a contested claim or on the issue of liability alone although there is a genuine issue as to the amount of damages. Summary judgment shall not be entered if any material fact is genuinely in dispute.

In this case, there are no material facts in dispute which prevent judgment from being rendered for Plaintiff as a matter of law under any theory advanced by Defendant.

## **III. MATERIAL FACTS NOT IN DISPUTE:**

On August 13, 1997, Ms. Lindsay entered into an Exclusive Right to Represent Buyer Agreement with McEneaney.<sup>2</sup> A true copy of the August 13, 1997 Exclusive Right to Represent Buyer Agreement is attached hereto as Exhibit A to the Request for Admissions.<sup>3</sup> The August 13, 1997 Exclusive Right to Represent Buyer Agreement with McEneaney provides for Broker to receive three per cent (3%) of the sales price of any property Ms. Lindsay purchased between August 13, 1997 and November 30, 1997.<sup>4</sup> Ms. Lindsay admits that when she signed the August 13, 1997 Exclusive Right to Represent Buyer Agreement there were no exhibits or addenda attached to the Agreement.<sup>5</sup>

There are no documents authorizing Loretta D. Connor to adjust or negotiate the broker-client relationship.<sup>6</sup> Ms. Lindsay never signed a written modification of the August

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<sup>2</sup> Defendant's response to Request for Admission 1, attached hereto. (Hereinafter "RFA")

<sup>3</sup> RFA 2.

<sup>4</sup> RFA 3.

<sup>5</sup> RFA 4.

<sup>6</sup> RFA 5.

13, 1997 Exclusive Right to Represent Buyer Agreement.<sup>7</sup> The August 13, 1997 Exclusive Right to Represent Buyer Agreement was never modified in writing.<sup>8</sup> According to Paragraph 12 of the Exclusive Right to Represent Buyer Agreement, the Agreement can "only be modified in writing when signed by both parties."<sup>9</sup>

Ms. Lindsay signed a Sales Contract for the purchase of the property located at 2343 S. Nash St., Arlington, Virginia.<sup>10</sup> Exhibit C, attached to the Request for Admissions, is a true copy of the Sales Contract Ms. Lindsay signed on August 24, 1997 for the purchase of the property located at 2343 S. Nash St., Arlington, Virginia.<sup>11</sup> Paragraph 19 of the Sales Contract Ms. Lindsay signed on August 24, 1997 provides for payment of the broker's fee according to the terms of the Exclusive Right to Represent Buyer Agreement, which was dated August 13, 1997.<sup>12</sup>

Ms. Lindsay purchased the property located at 2343 S. Nash Street, Arlington, Virginia after she visited the property with Loretta D. Connor.<sup>13</sup> Ms. Lindsay closed on the property located at 2343 S. Nash Street, Arlington, Virginia.<sup>14</sup>

On November 7, 1997, Ms. Lindsay signed a HUD-1 Settlement Statement for the purchase of the property located at 2343 S. Nash Street, Arlington, Virginia.<sup>15</sup> Exhibit B, attached to the Request for Admission, is a true copy of the HUD-1 Settlement Statement that

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<sup>7</sup> RFA 6.  
<sup>8</sup> RFA 7.  
<sup>9</sup> See Exhibit A, ¶12.  
<sup>10</sup> RFA 24.  
<sup>11</sup> RFA 25.  
<sup>12</sup> RFA 26.  
<sup>13</sup> RFA 14.  
<sup>14</sup> RFA 23.  
<sup>15</sup> RFA 15.

she signed on November 7, 1997.<sup>16</sup> Loretta D. Connor did not sign the HUD-1 Settlement Statement that Ms. Lindsay signed on November 7, 1997.<sup>17</sup>

No broker of McEneaney signed the HUD-1 Settlement Statement that Ms. Lindsay signed on November 7, 1997.<sup>18</sup> No broker of McEneaney Associates, Inc. attended the November 7, 1997 closing on the property located at 2343 S. Nash Street, Arlington, Virginia.<sup>19</sup>

At the November 7, 1997 closing for the property located at 2343 S. Nash Street, Arlington, Virginia, Ms. Lindsay paid to McEneaney Associates, Inc. the sum of \$2,650.00.<sup>20</sup> The \$2,650.00 Ms. Lindsay paid to McEneaney represented only one percent (1%) of the sales price.<sup>21</sup> No payments were made to McEneaney Associates, Inc. since the \$2,650.00 payment at the November 7, 1997 closing.<sup>22</sup> The closing attorney had no authority to bind McEneaney Associates, Inc.<sup>23</sup> The closing attorney had no authority to alter or amend Ms. Lindsay's commission agreement with McEneaney Associates, Inc.<sup>24</sup>

McEneaney Associates, Inc. never ratified or affirmed any modification of its commission arrangement with Ms. Lindsay.<sup>25</sup>

#### **IV. ARGUMENT:**

Paragraph 7.c. of the Exclusive Right to Represent Buyer Agreement<sup>26</sup> is clear, and Ms. Lindsay admits, that the commission to be paid to McEneaney by Ms. Lindsay was three

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<sup>16</sup> RFA 16.

<sup>17</sup> RFA 17

<sup>18</sup> RFA 18.

<sup>19</sup> RFA 19.

<sup>20</sup> RFA 20.

<sup>21</sup> RFA 21.

<sup>22</sup> RFA 22.

<sup>23</sup> RFA 33.

<sup>24</sup> RFA 34.

<sup>25</sup> RFA 37.

<sup>26</sup> Exhibit A to the Request for Admissions.



percent of the sales price. Paragraph 12 of that Agreement contains an integration clause, which states in relevant part:

This Agreement, any exhibits and any addenda signed by the parties constitute the entire agreement between the parties and supersede any other written or oral agreements between the parties.

Paragraph 7.c. goes on to state:

This Agreement can only be modified in writing when signed by both parties...

There is no written document signed by both parties which modifies this Agreement.

Notwithstanding Defendant's reliance on an alleged oral contract modifying the written Agreement, summary judgment should still be granted to Plaintiff. Generally, written contracts, even those containing prohibitions against unwritten modifications, can be modified by verbal agreement.<sup>27</sup> However, when a contract is within the Statute of Frauds, the law is well settled in the Commonwealth of Virginia that any modification must be in writing.<sup>28</sup>

The Statute of Frauds, Section 11-2 of the Code of Virginia (1950), as amended, states in relevant part:

Unless a promise, contract, agreement, representation, assurance, or ratification, or some memorandum or note thereof, is in writing and signed by the party to be charged or his agent, no action shall be brought in any of the following cases:

\*\*\*\*

7. Upon any agreement or contract for services to be performed in the sale of real estate by a party defined in §54.1-2100<sup>29</sup> or §54.1-2101;<sup>30</sup> ...

Clearly the Exclusive Right to Represent Buyer Agreement falls within this section of the Virginia Statute of Frauds. The only other relevant writings that arose out of the real estate

<sup>27</sup> Zurich Accident Ins. Co. v. Baum, 159 Va. 404, 165 S.E. 518 (1932).

<sup>28</sup> See Heth v. Wooldridge, 27 Va. (6 Rand.) 605 (1828).

<sup>29</sup> Dealing with "Real Estate Brokers"

<sup>30</sup> Dealing with "Real Estate Salesperson."

transaction at issue after the execution of the Exclusive Right to Represent Buyer Agreement were the Sales Contract of August 24, 1997 and the HUD-1 form. Ms. Lindsay admits that the Sales Contract provides for the payment of the brokerage fees in accordance with the Exclusive Right to Represent Buyer Agreement. The Sales Contract confirms, not modifies, the terms of the Exclusive Right to Represent Buyer Agreement. Ms. Lindsay also admits that neither the sales associate (Loretta D. Connor) nor any McEneaney broker signed the HUD-1 form and further admits that the closing attorney had no authority to alter or amend the commission agreement between the parties. Ms. Lindsay also admits that McEneaney has never ratified or affirmed any modification of the commission agreement. Absent a writing signed by the party to be charged (McEneaney) modifying the term to pay a three percent commission, Ms. Lindsay's obligation to pay the commission in full continues to this day. Ms. Lindsay concedes in her answer to the Admissions that there are no documents authorizing Loretta D. Connor to adjust or negotiate the broker-client relationship. The undisputed facts and applicable law preclude Ms. Lindsay from relying on any alleged oral representation or her own assumption about the relationship between Ms. Connor and McEneaney to avoid her obligation as set forth in the Exclusive Right to Represent Buyer Agreement.

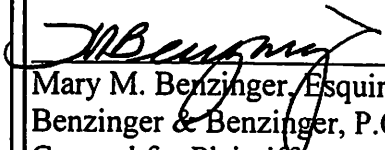
The damages incurred by McEneaney as a result of Ms. Lindsay's breach of the Agreement is \$5,300.00 (\$265,000 sale price x 2%) plus judgment interest from November 7, 1997 until paid. Paragraph 12 of the "Exclusive Right to Represent Buyer Agreement" provides for an award of reasonable attorney's fees in an action to collect the broker's fees.

WHEREFORE, there being no material facts in dispute, Plaintiff McEneaney Associates, Inc. respectfully moves this Honorable Court to enter judgment in favor of

Plaintiff in the amount of \$5,300.00 plus judgment interest from November 7, 1997 plus reasonable attorney's fees and costs incurred herein and for such further relief as this Honorable Court deems just and meet.

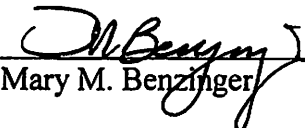
Respectfully requested,

McENEARNEY ASSOCIATES, INC.  
By Counsel

  
Mary M. Benzinger, Esquire-VSB #27199  
Benzinger & Benzinger, P.C.  
Counsel for Plaintiff

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 19th day of March, 1999, she caused the foregoing to be transmitted via facsimile to (703) 524-8533 and mailed, postage prepaid, to Robert Tomlinson, II, Esquire, 2045 N. 15<sup>th</sup> Street, #5, Arlington, Virginia 22201.

  
Mary M. Benzinger

3/25/99

V I R G I N I A:

IN THE CIRCUIT COURT FOR ARLINGTON COUNTY

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McENEARNEY ASSOCIATES, INC., :  
Plaintiff :  
 : At Law No. 98-424  
v. :  
 :  
CYNTHIA LINDSAY, :  
Defendant :

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MEMORANDUM IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

COMES NOW the Defendant, CYNTHIA LINDSAY, by Counsel, and responds in opposition to Plaintiff's Motion for Summary Judgment.

ISSUE PRESENTED<sup>1</sup>

The sole issue presented by plaintiff's motion for summary judgment is whether the statute of frauds<sup>2</sup> voids a fully executed oral agreement. For the reasons that follow, the statute of frauds is inapplicable to the facts presented and the motion for summary judgment must be denied.

SUMMARY OF FACTS

Defendant Cynthia Lindsay entered into an "Exclusive Right to Represent Buyer Agreement" with Plaintiff McEneaney Associates, Inc. on August 13, 1997. This agreement contained a three percent 3% commission fee to be paid to Plaintiff if Ms. Lindsay purchased real estate which Plaintiff located for her. During the pendency of this agreement, Ms.

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Plaintiff's memorandum in support of its motion for summary judgment is disjointed and contains discussion not pertinent to the matter raised. Accordingly some points not believed relevant to decision on the motion will be addressed herein by way of footnote.

<sup>2</sup> §11-2, Code of Virginia, 1950, as amended.

Lindsay made an offer on a house through the Plaintiff. During the tender of the offer set forth, Ms. Lindsay deposited with Plaintiff the sum of \$5,000.00 as earnest money for the offer to purchase. This offer to purchase was never accepted; however, Plaintiff has refused to return the \$5,000.00.

After the offer was rejected, the house Ms. Lindsay was living in, and which was owned by her friend's mother, became available for sale. Ms. Lindsay decided to purchase that property.

At this time, the terms of the listing Agreement at issue here were in dispute. Plaintiff was not involved with locating this property or negotiating the terms of the sale.

Ms. Lindsay and Plaintiff, through its agent Loretta Connor,<sup>3</sup> ultimately negotiated a separate oral agreement providing for a commission of 1% for the property that went to closing.

Prior to the closing, Ms. Lindsay advanced \$1,000.00 of the commission fee at the request of Loretta Connor with the agreement that the advancement would be repaid at the closing of the property.

During the closing, the issue of the commission came up. The closing attorney, Earl Shaffer, questioned the Plaintiff about the commission and Ms. Connor told him she had received the \$1,000.00 advance on the commission fee and advised him that the real estate commission was 1%. She further directed him to show this 1% commission due Plaintiff in

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Again, Plaintiff's memorandum raises the issue of Ms. Connor's agency without addressing its significance in the context of the pending motion. While the scope of Ms. Connor's agency is an issue in the case, it has no bearing on the motion for summary judgment. Further, her agency or apparent agency or authority is clearly an issue of fact for the jury to resolve.

the settlement documents.

### ARGUMENT

While Plaintiff's memorandum appears to accurately state the law, its contention that the law cited applies to the facts of this case is specious at best.

Plaintiff is suing on a contract. Defendant asserts accord and satisfaction as a defense.

#### I. A Contract is an Element of an Accord and Satisfaction

An accord and satisfaction is founded on contract, and the essentials of a valid contract must be present. *Kasco Mills, Inc. v. Ferebee*, 197 Va. 589, 90 S.E.2d 866 (1956).

Accord and satisfaction is a method of discharging a contract or cause of action, whereby the parties agree to give and accept something in settlement of the claim or demand of the one against the other, and perform such agreement; the accord being the substituted agreement and the satisfaction its execution or performance. *Virginia-Carolina Electrical Works v. Cooper*, 192 Va. 78, 63 S.E.2d 717 (1951); *Atkins v. Boatwright*, 204 Va. 450, 132 S.E.2d 450 (1963), citing *Michie's Jurisprudence*, *Owen v. Wade*, 185 Va. 118, 37 S.E.2d 759 (1946).

"Accord" is a satisfaction agreed upon between the party injuring and the party injured, which, when performed, is a bar to all actions upon the same account. *Rorer Iron Co. v. Trout*, 83 Va. 397, 2 S.E. 713 (1887); *Owen v. Wade*, 185 Va. 118, 37 S.E.2d 759 (1946).

At common law, payment of a consideration for a settlement is equivalent of an accord and satisfaction, and the making of an accord and



the acceptance of satisfaction will effect a release. A plea of accord and satisfaction, properly sustained, is an absolute defense. *McGuire v. Martin*, 152 Va. 453, 147 S.E. 265 (1929).

For the foregoing reasons, the oral accord reached by the parties constitutes a contract.

**II. The Statute of Frauds Has No Bearing  
on a Fully Executed Contract and Has No Effect  
Upon the Rights Duties and Obligations of the Parties.**

Plaintiff contends that, as a matter of law the statute of frauds precludes proof of the contract that supports the Defendant's defense of accord and satisfaction. This contention is misplaced for several reasons.

**A. The Statute of Frauds Gives Only a Right of Defense.**

The statute of frauds is designed to prevent fraud and not to countenance it. It is for that reason that it will bar enforcement (specific performance) of an oral contract. It does not, make contracts contemplated by the statute void, but simply provides that no action will be brought on them *Burruss v. Hines*. 94 Va. 413, 26 S.E. 875 (1897). The statute does not affect the validity of contracts, but only the remedy for their enforcement. *Dupuy v. Delaware Ins. Co.* 63 F. 680 (W.D. Va. 1894).

Accordingly, and contrary to the position apparently taken by the plaintiff, while a contract in violation of the statute cannot be specifically enforced, it is not void *ab initio*,. *T... v. T...* 216 Va 867, 224 S.E. 148 (1976).

Here, plaintiff seeks to use as a sword what evolved as a shield.

**B. The Statute of Frauds Does Not Apply to Fully Executed Contracts.<sup>4</sup>**

Where, as here, a contract has been fully performed, the statute of frauds has no bearing upon it. It is now well settled that when a contract has been fully performed, the statute has no power over them and has no effect upon the rights, duties and obligations of the parties. *McMullin v. Sanders*, 79 Va. 356 (1854).

Further where a contract has been less fully executed than the contract at issue in this case (in a contract for the sale of real estate where the deed has been executed to the purchaser and all that remains to be done is the purchase price), the statute does not apply. *Spanger v. Ashwell*, 116 Va. 992, 83 S.E. 930 (1914).<sup>5</sup>

**CONCLUSION**

Since the statute of frauds conveys no right other than to defend upon, and since the "accord" and "satisfaction are properly alleged, the plaintiff's motion for summary judgment must be denied.

CYNTHIA LINDSAY  
By Counsel

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Plaintiff raises the issue of part performance in its memorandum, again without any context. While it is true that in actions at law the doctrine of part performance is not available, here the contract is fully executed. Even had it not been, notwithstanding the statute of frauds, equity will avoid the statute of frauds upon the ground of part performance.

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For a case assuming, *arguendo*, that the statute of frauds is applicable but that the contract was so far performed that it should be enforced, see *Brooks v. Roanoke County San Auth.* 201, Va. 934, 114 S.E.2d 758 (1960).

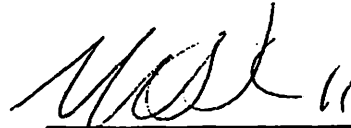


Robert Tomlinson  
Attorney for Defendant  
2045 15<sup>th</sup> Street, North #5  
Arlington, Virginia 22201  
(703) 841-9400  
VSB #23037

Certificate of Service

I hereby certify that a true and exact copy of the foregoing was mailed, ~~postage prepaid~~, to Raymond Benzinger, Esq., 2009 North 14<sup>th</sup> Street, Suite #612, Arlington, Virginia 22201, this 25<sup>th</sup> day of March 1999.

*hand-delivered*



Robert Tomlinson II



## Circuit Court of Arlington County

1425 North Court House Road

Arlington, Virginia 22201

BENJAMIN N. A. KENDRICK  
JUDGE

PAUL F. SHERIDAN  
JUDGE

WILLIAM T. NEWMAN, JR.  
JUDGE

JOANNE F. ALPER  
JUDGE

April 20, 1999

WILLIAM L. WINSTON  
JUDGE RETIRED

PAUL D. BROWN  
JUDGE RETIRED

CHARLES S. RUSSELL  
JUSTICE RETIRED

CHARLES H. DUFF  
JUDGE RETIRED

THOMAS R. MONROE  
JUDGE RETIRED

Ms. Mary Benzinger  
2045 15<sup>th</sup> Street North  
Suite #5  
Arlington, VA 22201-2614

Mr. Robert Tomlinson  
2009 North 14<sup>th</sup> Street  
Suite 612  
Arlington, VA 22201

Re: McEneaney Associates, Inc., v. Cynthia Lindsay, Law 98-424

Dear Counsel:

This matter comes before the court on plaintiff McEneaney Associates, Inc.'s (henceforth "McEneaney") motion for summary judgment. After hearing oral arguments on March 26, 1999 and carefully reviewing the pleadings, case law and facts of this case the Court has set forth its ruling below.

### FACTUAL BACKGROUND

Plaintiff McEneaney Associates ("McEneaney") entered into an "Exclusive Right to Represent Buyer Agreement" with Defendant Cynthia Lindsay. Ms. Lindsay was purchasing a home and agreed that McEneaney would represent her. The agreement provided that at closing, Ms. Lindsay would pay a 3% commission to McEneaney for the property.

During her search for a home, Ms. Lindsay, without the help of McEneaney, learned that the property she was currently renting was going to be sold. She negotiated the price and agreed with the McEneaney sales associate, Loretta D. Connor, that the commission would be 1% rather than 3% because Ms. Lindsay had found the property.

## ARGUMENTS

Plaintiff argues that there are no material facts in dispute and that summary judgment is appropriate. Supporting plaintiff's argument is the fact that the sales agreement, between the parties, has an integration clause which provides that the written agreement supersedes any other written or oral agreements, and that the contract can only be modified by the *written consent* of both parties. Essentially, the language of the agreement is clear that any modifications without the written consent of McEneaney are prohibited. The basis for the defendant's modification was an oral agreement.

Plaintiff argues that the modification violates the Statute of Frauds. According to the plain language of the Virginia Statute of Frauds, these types of agreements must be in writing:

Unless a promise, contract, agreement, representation, assurance, or ratification, or some memorandum or note thereof, is in writing and signed by the party to be charged or his agent, no action shall be brought in any of the following cases:

7. Upon any agreement or contract for services to be performed in the sale of real estate by a party defined in §54.1-2100 or §54.1-2101.

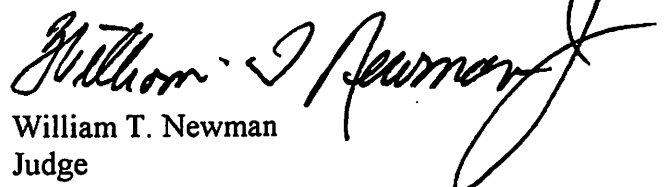
Virginia Code §11-2 (1950). Section 54.2-2100 deals with Real Estate Brokers and 2101 deals with Real Estate Salespersons. Clearly, the oral modification by defendant goes directly against the language and spirit of the Statute of Frauds.

The defense is based upon the premise that the money received by the sales associated was an accord and satisfaction. The court is not convinced that this theory due to the existence and content of the prior written agreement.

## CONCLUSION

Based on the foregoing, the Court grants summary judgment in favor of plaintiff. The amount that plaintiff asks for should be set off by the \$5,000.00 earnest money that Ms. Lindsay previously gave to McEneaney. Counsel for plaintiff should prepare an order embodying the ruling of this opinion letter, have it endorsed by all counsel and submit it to the court for entry.

Sincerely,

  
William T. Newman  
Judge

5/24/99

VIRGINIA:

IN THE CIRCUIT COURT FOR ARLINGTON COUNTY

McENEARNEY ASSOCIATES, INC., )

Plaintiff )

v. )

At Law No. 98-424 )

CYNTHIA LINDSAY, )

Defendant )

ORDER

THIS CAUSE came on to be heard upon the Plaintiff's Motion for Summary Judgment and Defendant's Opposition thereto and upon argument of counsel; and

IT APPEARING that, for the reasons stated in this Court's letter opinion of April 20, 1999, summary judgment should be granted; it is therefore

ADJUDGED, ORDERED and DECREED that Plaintiff's Motion for Summary Judgment shall be and is hereby GRANTED; and it is further

ADJUDGED, ORDERED and DECREED that judgment shall be entered against Defendant in the amount of \$7,950.00, less \$5,000.00 credit for Defendant's earnest money held in escrow by Plaintiff with judgment interest on the unpaid balance until paid, plus costs in the amount of \$106.00 and reasonable attorney's fees pursuant to the terms of the contract in the amount of \$2,520.00; and it is further

ADJUDGED, ORDERED and DECREED that the Clerk of the Court shall cause Plaintiff's appeal bond in the amount of \$50.00 to be paid to Benzinger & Benzinger, P.C. AND THIS CAUSE IS FINAL.

*William J. Furman*  
May 24, 1999

175/1088  
5/27/99  
12:32 PM  
QD

BENZINGER & BENZINGER, P.C.  
2009 N. 14<sup>th</sup> Street, Suite 612  
Arlington, VA 22201  
(703) 525-1362  
(703) 522-2930 - fax



I ASK FOR THIS:

✓ M. Benzinger  
Mary M. Benzinger, Esquire-VSB #27199  
Benzinger & Benzinger, P.C.  
Counsel for Plaintiff

SEEN AND \_\_\_\_\_:

✓ Robert Tomlinson, II, Esquire- VSB #  
Counsel for Defendant  
2045 N. 15<sup>th</sup> Street, #5  
Arlington, Virginia 22201  
(703) 841-9400

*Noticed But  
Did Not Appear  
Wing*

### **ASSIGNMENTS OF ERROR**

1. The trial court erred in concluding that the contract at issue could not be modified by oral agreement.
2. The trial court erred in concluding that the Statute of Frauds barred the presentation of evidence in support of an accord and satisfaction in defense of the contract claim.
3. The trial court erred in granting summary judgement when material facts were in dispute.