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IN THE
SUPREME COURT OF VIRGINIA
AT RICHMOND

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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

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Record No. 931034

HELEN VAUGHN
Complainant/Appellant

v.

Estate of Ruth Conner
Defendant/Appellee

On Appeal from
the Circuit Court of
Shenandoah County,

Honorable Perry W. Sarver

APPENDIX
HELEN VAUGHN

MARILYN ANN SOLOMON
VSB # 31501
120 Morning Glory Drive
Winchester, VA 22602
(703) 678-0569

Counsel for Appellant

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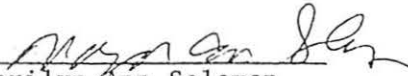
Counsel for Appellant

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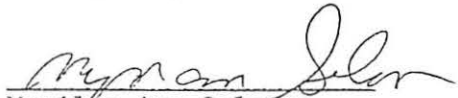
NOTICE OF CLAIM
Against the ESTATE OF RUTH M. CONNER

I herewith make claim on the estate of Ruth M. Conner for services rendered and pursuant to the attached affidavit of indebtedness for the house and lot located at 301 North Water Street in Woodstock, Virginia or its value based on the purchase price of \$31,000.

By: 
Marilyn Ann Solomon
Attorney at Law

Claim made on behalf of Helen Vaughn pursuant to the attached affidavit.

I hereby certify that a true and correct copy of this Notice of Claim was sent, postage prepaid, to the Executor of the Estate of Ruth M. Conner, Doc Shank, RFD 3, Edinburg, Virginia, 22824 and to the Assistant Commissioner of Accounts, William Allen, 126 West Court Street, Woodstock, Virginia, 22664.


Marilyn Ann Solomon
Attorney at Law

AFFIDAVIT

This day in the County of Shenandoah, Commonwealth of Virginia, Helen Vaughn personally appeared before me, Christy A. Peters, a Notary Public of and for the County aforesaid, in the Commonwealth of Virginia, and made oath before me in due form of law that the late Ruth M. Conner is indebted to her in the amount stated in the Notice of Claim with which this affidavit is filed; that to the best of her knowledge, information and belief the Estate of Ruth M. Conner of Shenandoah County, Virginia, is justly indebted to said claimant for the house located at 301 North Water Street, Woodstock, Virginia or for its purchase price of \$31,000; that this is a true and correct statement of said indebtedness, due by reason of an agreement between Helen VAughn, Claimant, and Ruth M. Conner, deceased, which provided that if Claimant, the foster daughter of decedent, remained in decedent's employ and helped to take care of decedent's property and decedent that, in exchange, decedent would provide to Claimant a house; that in furtherance of that agreement decedent did, in July, 1987, purchase the house at 301 North Water Street for the benefit of Claimant and with the intent to deed it to her according to their agreement and that Claimant fulfilled her end of the agreement and performed in full; that decedent did not keep her end of the agreement because she was murdered before she could do so; that no part of this indebtedness has been paid and there are no lawful offsets or counterclaims against it.

Helen V. Vaughn
Helen Vaughn
Claimant

By: Marilyn Ann Solomon
Marilyn Ann Solomon
Attorney at Law

Subscribed and sworn to before me this day March 14, 1991.

Christy A. Peters
Notary Public

My Commission expires:
My Commission Expires May 4, 1993.

TRANSCRIPT OF PROCEEDINGS

IN RE: Helen Vaughn,

Plaintiff,

v.

Estate of Ruth Connor,

Defendant.

The Commissioner's Hearing held in the above-styled matter before the Honorable William B. Allen, III, Commissioner, in the office of the Commissioner, 126 West Court Street, Woodstock, Virginia, on the 17th day of September, 1991, beginning at 2:00 p.m.

A P P E A R A N C E S

 On Behalf of the Plaintiff:

Marilyn A. Solomon, Attorney at Law

On Behalf of the Defendant:

Philip M. Grabill, Esquire

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September 17, 1991

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Exhibit #1

Foster Care Agreement 6

7

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COMMISSIONER'S HEARING

September 17, 1991

(WHEREUPON, the witnesses, were duly sworn by the Court Reporter.)

THE COMMISSIONER: You all have been asked to stay outside the hearing until we need to call you in to testify. Okay? Miss Solomon, do you have an affidavit that you filed? A copy of it?

MS. SOLOMON: I have an, I'm sorry?

THE COMMISSIONER: Do you have the affidavit? A copy of the affidavit that you filed?

MS. SOLOMON: Yes.

THE COMMISSIONER: Mr. Grabill, do you have a proposed settlement?

MR. GRABILL: Yes.

THE COMMISSIONER: I am ready. I am ready, any time that you are. Anybody want to make an opening statement, or anything?

MR. GRABILL: No. Your Honor, please, as far as I know, none else is here to make

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1 any claims, other than Ms. Solomon, or..., so we can just
2 proceed with theirs. If anybody else shows up with any
3 other claims, no.

4 THE COMMISSIONER: Fine.

5 MR. GRABILL: There was
6 nobody else out there, except your witnesses. So, you go
7 right ahead. Or if its the Commissioner.

8 THE COMMISSIONER: It is
9 fine with me. Ms. Solomon, you may proceed.

10 MS. SOLOMON: I am going
11 to call, let me make a brief opening statement. Just in
12 summary: This is a claim against the Estate of Ruth
13 Connor, based on an oral agreement, for services in
14 exchange for a house, or a piece of real estate. The
15 claim is being made by Helen Vaughn and I am going to
16 call first, Marty Funkhouse.

17 THE COMMISSIONER: Okay,
18 Marty Funkhouse.

19 MERDY S. FUNKHOUSER, having been previously sworn
20 by the reporter, was called as a witness, examined and
21 testified as follows:

22

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1 DIRECT EXAMINATION

2 BY MS. SOLOMON

3 Q. Would you please state your name, for the
4 court.

5 A. Merdy S. Funkhouser.

6 Q. And where are you employed?

7 A. I am the Director of Department of Social
8 Services, Shenandoah County.9 Q. As director, are you responsible for all agency
10 files?

11 A. Yes.

12 Q. As director, are all agency documents kept
13 under your care, custody and control?

14 A. Yes.

15 Q. Are foster care files kept by the agency in the
16 ordinary course of business?

17 A. Yes.

18 Q. Are you aware of the foster care agreement
19 between Mr. and Mrs. Connor and Helen Reddy Vaughn?

20 A. Yes.

21 Q. Do you have that agreement? Is this familiar to
22 you?

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1 A. Yes. This is a copy that I made from the
2 original, in case record, on the 9th of September.

3 Q. And you made that personally?

4 A. I made that personally.

5 Q. And it is an exact copy of the foster care
6 agreement?

7 A. It is a copy, yes.

8 Q. Does that contract provide a payment to the
9 Connors, in exchange for providing such foster care?

10 A. Yes.

11 Q. I am going to enter this copy of the foster care
12 agreement into evidence. So your agency requires the
13 original to be retained in the file.

14 (WHEREUPON, the document referred to as the Foster
15 Care Agreement was marked as Exhibit #1 for
16 Identification.)

17 THE COMMISSIONER: Now
18 the objections will be received. Do you have any
19 objection?

20 MR. GRABILL: No, Your
21 Honor,
22 I do not.

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1 THE COMMISSIONER: It will
2 be received into evidence.

3 (WHEREUPON, Exhibit #1 was received into Evidence.)

4 MS. SOLOMON: I have no
5 further questions.

6 THE COMMISSIONER: Who
7 is your next witness?

8 MS. SOLOMON: Eilene
9 McClelland.

10 THE COMMISSIONER:
11 Would you ask Ms. McCullen to come in. Thank you.
12 EILENE MCCLELLAND, having been previously sworn by
13 the reporter, was called as a witness, examined and
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MS. SOLOMON:

17 Q. Would you please state your name, for the
18 Court.

19 A. Eilene McClelland.

20 Q. What is your address?

21 A. 301 North Water Street, Woodstock.

22 Q. How long have you lived at that address?

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1 A. A year and a half.

2 Q. Whom did you rent the house from?

3 A. Ruth Connor.

4 Q. Did you rent the house the first time that you
5 saw it advertised?

6 A. No.

7 Q. Did you have a conversation with Ruth Connor,
8 regarding the house, the first time that you saw it
9 advertised?

10 A. Yes.

11 Q. Did she tell you anything about the house,
12 during that conversation?

13 A. She, we went over the normal details, as far as
14 the floor and stuff, that she wanted to have redone, but
15 she brought up in the conversation, that the house was
16 purchased for her step daughter.

17 Q. Did that subject, did you later rent the house?

18 A. Approximately ten months later to a year later.

19 Q. You rented it?

20 A. We rented it.

21 Q. And did the subject come up again after you
22 rented the house?

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1 A. Yes it did. She again, when I called and
2 inquired about the house and stuff, just in normal
3 conversation, brought up that the house had been bought
4 for her step daughter.

5 Q. Did you ever have an occasion to meet this step
6 daughter that Ms. Connor..

7 A. Yes, it was approximately about a month or six
8 weeks after that we had rented the house, we went down
9 to Dutch Haven and talked to Ms. Connors and then is
10 when she verbally told me her name, Helen. She said
11 that the house was bought for Helen and her daughter
12 and they had lived there for a few months.

13 Q. In over approximately what period of time did
14 these different references to Helen Vaughn, step
15 daughter, take place. Over at least a year?

16 A. Oh, at least, because from the first time till we
17 rented, it was almost a year itself.

18 Q. And did you know Helen Vaughn before you
19 tried to rent the house from Water Street?

20 A. No.

21 MS. SOLOMON: I have no
22 further questions.

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CROSS EXAMINATION

BY MR. GRABILL:

Q. Let's see. Did they live there? You mean Helen and her daughter? Is that how you are speaking of?

A. From what I get from Lou Carr, she said that they lived there. For awhile.

Q. For awhile, before you?

A. Yes.

Q. But you know, when was this? When did you first?

A. It would have been about two and a half years ago when I first talked to her.

Q. That when you first rented the house?

A. No, we rented it a year and a half ago. But my first conversation with her was approximately two and a half years ago.

Q. And she said then that she bought the house?

A. For her step daughter.

Q. And you rented it a year and a half, you still rent it?

A. Yes.

Q. And, you lived there for awhile?

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1 A. Yes.

2 Q. Right?

3 A. Right.

4 Q. All right.

5 MS. SOLOMON: Thank you
6 very much for your time. Could you ask Mr. Sweeney?

7 WILLIAM GLENN SWEENEY, having been previously sworn
8 by the reporter, was called as a witness, examined and
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MS. SOLOMON:

12 Q. Would you please state your name, for the
13 court.

14 A. William Glenn Sweeney.

15 Q. And what is your address, Mr. Sweeney?

16 A. Dutch Haven.

17 Q. Dutch Haven, is an adult home?

18 A. Adult home.

19 Q. How long have you lived there?

20 A. Two and a half years, two and a half.

21 Q. While living at the nursing home, did you have
22 an occasion to meet Helen Vaughn?

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1 A. I did.

2 Q. Did you know Helen Vaughn before you moved
3 into the nursing home?

4 A. I did not.

5 Q. While living at the home, did you have an
6 occasion to observe the work done, that is the work done
7 by Helen Vaughn?

8 A. I did.

9 Q. To your knowledge, did Ms. Vaughn work more
10 or less than forty hours a week?

11 A. More.

12 Q. To your knowledge, was Ms. Vaughn ever on
13 call or available at anytime for emergencies.

14 A. She was, all of the time.

15 Q. She was available all of the time?

16 A. Yes. She lived there.

17 Q. To your knowledge, did any other employee
18 work as many hours, as Ms. Vaughn?

19 A. I do not know, not to my knowledge, no.

20 Q. No further questions.

21 MR. GRABILL: No
22 questions.

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1 THE COMMISSIONER: How
2 did you determine how many hours a week that she
3 worked?

4 A. Well, she was supposed to work forty hours.
5 That was the understanding that I had. And she was
6 there more than forty hours, worked more than forty
7 hours. It was the middle of the night and she had to get
8 up, she had to call in, she had to work registration.

9 THE COMMISSIONER: How
10 was she paid?

11 A. She was paid weekly.

12 THE COMMISSIONER: That
13 is all.

14 MS. SOLOMON: Thank you.
15 We appreciate you coming down. Call Helen Vaughn.

16 HELEN REEDY VAUGHN, having been previously sworn by
17 the reporter, was called as a witness, examined and
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MS. SOLOMON:

21 Q. Would you please state your name, for the
22 court.

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1 A. Helen Reedy Vaughn.

2 Q. What was your relationship with Ruth Connor?

3 A. She was my foster mother.

4 Q. How old were you approximately, when Ruth
5 Connor became your foster mother?

6 A. Twelve years old.

7 Q. Between the ages of twelve and eighteen, with
8 whom did you reside?

9 A. Ruth Connor.

10 Q. Did there come a time when you left that
11 house?

12 A. Yes.

13 Q. And why did you leave? To get married?

14 A. To get married. I had a daughter.

15 Q. A child born of the marriage?

16 A. Yes.

17 Q. What is the child's name?

18 A. Shannon Renee Vaughn.

19 Q. And how was the child named?

20 A. My grandma, her grandma named her. Ms.
21 Connor named her.

22 Q. And how long did the marriage last?

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1 A. Eight months.

2 Q. To your knowledge, did Ruth Connor ever
3 convert her home into an adult home?

4 A. Yes, she did.

5 Q. Was that adult home called Dutch Haven?

6 A. Yes it was.

7 Q. And when she converted it, how many
8 residential buildings were there?

9 A. One.

10 Q. All right. To your knowledge, was another
11 residential building built?

12 A. Yes.

13 Q. And do you know when that was built?

14 A. 1986.

15 Q. To your knowledge, what was the minimum
16 number of people to run each of the buildings?

17 A. One CPR in each house.

18 Q. And an entire building can not be run until at
19 least one CPR?

20 A. No.

21 Q. Are you a CPR?

22 A. Yes.

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1 Q. Did you ever become employed at the nursing
2 home?

3 A. Yes.

4 Q. When did you become employed?

5 A. Since she opened the first home.

6 Q. And have you worked there continuously?

7 A. Yes.

8 Q. Were there any breaks in that employment?

9 A. No.

10 Q. Did you ever live at the nursing home?

11 A. Yes.

12 Q. Did there come a time when you rented your
13 own home in New Market?

14 A. Yes.

15 Q. Why did you move from New Market, if you
16 moved?

17 A. To be closer to my foster mother. She came to
18 me and asked me, that she had purchased a house on
19 Water Street, and move closer to her, to be there, in case
20 she needed me to work more, or something.

21 Q. So, did you move to the house on Water Street?

22 A. Yes.

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1 Q. That is 301 North Water Street?

2 A. Yes. We moved, she asked me to come and
3 look at the house, and the house was purchased for my,
4 me and my daughter and if we liked it, it would be ours.
5 We moved. I liked it and we moved in.

6 Q. And how long did you live in that house?

7 A. A month and a half. And we moved out because
8 Robert Knight had moved out of Dutch Haven and my mom
9 needed someone there with CPR and she made me a
10 promise, that if I moved in to Dutch Haven that she would
11 see that we got the Water Street house. Me and my
12 daughter.

13 Q. Did she say when?

14 A. When she retired.

15 Q. Did she say when she expected to retire?

16 A. Christmas, 1991. She was planning on retiring
17 then.

18 Q. So, you left the house on Water Street, and you
19 moved where?

20 A. To Dutch Haven.

21 Q. Back into the nursing home?

22 A. Yes, I did.

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1 Q. And when you were living in New Market and on
2 Water Street, approximately how many hours a week did
3 you work at the home?

4 A. Eighty, oh, forty hours.

5 Q. And when you moved back into the nursing
6 home, how many hours a week did you work on the
7 average?

8 A. Eighty to ninety hours.

9 Q. Did you have as much time with your daughter
10 after moving back into the nursing home as before?

11 A. No.

12 Q. Did you have as much time to yourself, or for
13 socializing after moving back into the nursing home?

14 A. No.

15 Q. Would you have moved back into the nursing
16 home if Ruth Connor had not promised you the house on
17 Water Street?

18 A. No.

19 Q. Could you describe your duties at the nursing
20 home when you moved back in there?

21 A. I did everything. I was housekeeper. I was up
22 at the residence at night. If they got sick, I transported

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1 them back and forth to the doctor. I was in charge of
2 medications, transporting them to the V.A. Center.

3 Q. Between 1987 and 1990, how much were you
4 paid?

5 A. About a hundred and fifty.

6 Q. How many hours per week was that salary
7 based on?

8 A. Forty.

9 Q. Were you paid the same amount of money, no
10 matter how many hours you worked?

11 A. Yes.

12 Q. Did you ever work less than forty hours in a
13 week?

14 A. No.

15 Q. Why did you continue to work that many hours
16 and they only paid you for forty hours?

17 A. I did it because my mom had promised a house
18 on Water Street. I did it for the future of me and my
19 daughter.

20 Q. When you say your mother, you mean Ruth
21 Connor?

22 A. Yes.

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1 Q. Did any other employee work the same hours as
2 you, to your knowledge?

3 A. No.

4 Q. What was your scheduled times off?

5 A. Friday, four to eight, Sunday, one to six.

6 Q. Was it your understanding that you were to
7 receive the house on Water Street, at your foster
8 mother's retirement, free and clear of any debts and
9 obligations?

10 A. Yes.

11 Q. Did Ms. Connor ever comment on your work?

12 A. Yes, she did. She said that she could not have
13 done it without me and that I was the only one there for
14 her, because she could not depend on her own kids to be
15 there.

16 Q. Did you ever cover for Mrs. Connor when she
17 had to leave, or go on errands?

18 A. Yes.

19 Q. Could she have left without you or someone
20 else to cover for her?

21 A. No, it had to be someone with CPR.

22 Q. I have no further questions.

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1 CROSS EXAMINATION

2 BY MR. GRABILL:

3 Q. All right. You say that there had to be a CPR in
4 each home?

5 A. Yes.

6 Q. What does CPR stand for?

7 A. You have to, it is a cer., respiratory.. ah., if
8 someone dies, you have to be able to give them, in order
9 to bring them back to life. It is State required.10 Q. Resuscitation. I just. Now, when you were
11 there then, do I understand that you were on call?
12 Practically twenty four hours a day?

13 A. Yes, I was.

14 Q. And that was for what period of time? When
15 did you go there? Move?

16 A. Move back into Dutch Haven?

17 Q. Yes.

18 A. Back in '87.

19 Q. And are you still there?

20 A. I was.

21 Q. Now, up until Ms. Connor's death, were you
22 there?

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1 A. Until October 23rd.

2 Q. Of what year?

3 A. 1991.

4 Q. And what..

5 A. And up to when she was killed.

6 Q. Oh, that was 1990.

7 A. Oh, 1990, I am sorry, yes.

8 Q. You were there. Now you were through all of
9 this period of time, you were on the payroll.

10 A. Yes.

11 Q. And did you ever receive any overtime pay?

12 A. No, sir.

13 Q. It is a weekly wage, is what you received.

14 THE COMMISSIONER: Did
15 you have any room and board expenses?

16 A. My daughter and I slept on a sofa in the living
17 room. We had no room to ourselves, we slept on a sofa.

18 THE COMMISSIONER: And
19 where did you take your meals?

20 A. In the living room to eat, or outside.

21 THE COMMISSIONER: And
22 you ate there?

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1 A. Sometimes we did.

2 Q. That is all.

3 SHANNON RENEE VAUGHN, having been previously sworn
4 by the reporter, was called as a witness, examined and
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MS. SOLOMON:

8 THE COMMISSIONER: How
9 old are you Shannon?

10 A. Twelve.

11 THE COMMISSIONER: And
12 what grade in school are you in?

13 A. Six.

14 THE COMMISSIONER: Sixth
15 grade?

16 A. Yes.

17 THE COMMISSIONER: Do
18 you know what it means to take an oath?

19 A. No.

20 THE COMMISSIONER: Do
21 you know what happens if you are talking about telling
22 the truth and not telling the truth? What happens when

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1 you do not?

2 A. You would be punished for it.

3 THE COMMISSIONER: And
4 how would you be punished? Would your mother punish
5 you?

6 A. Yes.

7 THE COMMISSIONER: Does
8 anyone have any other questions?

9 MS. SOLOMON: Do you
10 know the difference between telling the truth and telling
11 a lie?

12 A. Yes.

13 Q. Would you please state your name, for the
14 court.

15 A. Shannon Renee Vaughn.

16 Q. Could you talk a little louder, so they can hear
17 you?

18 A. Shannon Renee Vaughn.

19 Q. What is your relationship to Helen Vaughn?

20 A. She is my Mom.

21 Q. Do you know Ruth Connor?

22 A. Yes.

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1 Q. What did you call Ruth Connor?

2 A. Grandma.

3 Q. Did Ruth Connor ever say anything to
4 regarding the house?

5 A. She said that when she retires that we would
6 taken care of.

7 Q. Did she say anything specifically about
8 house?

9 A. She said that we, she would give us Woodstock
10 house.

11 Q. When you say Woodstock house, do you mean
12 the house on Water Street?

13 A. Yes.

14 Q. Did she have a conversation with you after she
15 had an operation, in any form?

16 A. Only that we would have a roof over our heads
17 when she died or when she retired.

18 Q. Okay. That is all of the questions.

19 CROSS EXAMINATION

20 BY MR. GRABILL:

21 Q. When were these conversations taken. When
22 did you have your conversation with Ms. Connor?

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1 A. When she was in bed. When she was in bed,
2 when she had her knee surgery.

3 Q. And you were in her room then?

4 A. Yes.

5 Q. And she told you what?

6 A. That when she retires that we would be taken
7 care of, that we would be in the Woodstock house.

8 Q. Anything else?

9 A. No.

10 THE COMMISSIONER: Have
11 you discussed your testimony today with anybody?

12 A. I talked..

13 THE COMMISSIONER: Did
14 you talk it over with anybody about what you were going
15 to say today?

16 A. Yes.

17 THE COMMISSIONER: Who?

18 A. I talked to her.

19 THE COMMISSIONER:
20 Would her be Ms. Solomon?

21 A. Yes.

22 THE COMMISSIONER: And

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1 Q. What did you call Ruth Connor?

2 A. Grandma.

3 Q. Did Ruth Connor ever say anything to you
4 regarding the house?

5 A. She said that when she retires that we would be
6 taken care of.

7 Q. Did she say anything specifically about a
8 house?

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10 house.

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12 the house on Water Street?

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14 Q. Did she have a conversation with you after she
15 had an operation, in any form?

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17 when she died or when she retired.

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21 Q. When were these conversations taken. When
22 did you have your conversation with Ms. Connor?

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1 MS. SOLOMON: What I am
2 attempting to show here today is that Helen Vaughn lived
3 on her own and that she was promised that if she moved
4 out to the nursing home and worked there until Ruth
5 Connor retired, that she would have the house on Water
6 Street, free and clear, in exchange for that. That Helen
7 finding a way, therefore, to provide for herself and her
8 daughter, and did that, increasing her work hours, giving
9 up her free time, services, if you will, in exchange for the
10 property.

11 MR. GRABILL: We might
12 have a problem as to whether the contract was, alleged
13 contract, was sufficiently definite and also whether there
14 might be sufficient corroboration, really are problems I
15 might foresee.

16 THE COMMISSIONER: I am
17 assuming that you are going to move to strike, you are
18 moving to strike your evidence, as to the formation of the
19 contract and whether or not it meets the requirements of
20 801-397, right?

21 MR. GRABILL: Yes.

22 THE COMMISSIONER: Any

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1 further evidence, Ms. Solomon?

2 MS. SOLOMON: No, no
3 further evidence.

4 THE COMMISSIONER: Well,
5 I will render a report then before too long. Do you intend
6 to have the transcript typed?

7 MS. SOLOMON: It depends
8 upon the results of this hearing, to tell you the truth. I
9 did have a copy of this for your consideration. It deals
10 with the oral contracts for the remains of real estate as
11 claimed in Virginia.

12 THE COMMISSIONER: Do
13 you have any other evidence, Mr. Grabill? Do you have
14 an accounting of some sort, sometime time soon I would
15 like to have an accounting.

16 MR. GRABILL: We have not
17 any accounting to submit at this time, no. But, we went
18 ahead and I went ahead with her request to go ahead with
19 the hearing as a courtesy to Ms. Solomon. But, we have
20 not prepared an accounting to submit at this time.

21 You see, the, with the accounting, at this I may
22 say, of which at this particular house was encumbered by

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1 purchase money deed of trust. I can not tell you the
2 exact amount of the state of debt now. But it was so
3 encumbered.

4 M S . S O L O M O N :
5 Approximately \$13,000.00

6 MR. GRABILL: Ma'am?

7 M S . S O L O M O N :
8 Approximately \$13,000.00.

9 MR. GRABILL: Something in
10 the neighborhood, I think.

11 THE COMMISSIONER: How
12 about supplementing the evidence, Ms. Solomon, with
13 copies of the deed of trust and some letter of detail with
14 that, okay?

15 MS. SOLOMON: Okay.

16 THE COMMISSIONER: You
17 do not have any problem with that, do you Mr. Grabill?
18 Copies of the deed of trust submitted those into
19 evidence.

20 MR. GRABILL: Oh sure, no
21 problem at all. Do you want Ms. Solomon to get them, or
22 do you want me to get them?

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1 THE COMMISSIONER: Either
2 one.

3 MS. SOLOMON: I have the
4 deed of trust here. You just need to get...

5 MR. GRABILL: Fine, fine.

6 THE COMMISSIONER: I am
7 not going to render a decision today. I will render a
8 report, I have a real problem with 8.01-97

9 MS. SOLOMON: Is that the
10 section?

11 THE COMMISSIONER: Yes
12 ma'am.

13 MS. SOLOMON: Will I have
14 an opportunity to do a memo on that?

15 THE COMMISSIONER: Yes
16 ma'am. That would be fine, if you want to.

17 (WHEREUPON, the Hearing was concluded at 2:30 p.m.)
18
19
20
21
22

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CAPTION

The Commissioner's Hearing in the matter, on the date, and at the time and place set out on the title page hereof.

It was requested that the Commissioner's Hearing be taken by the reporter and that same be reduced to typewritten form.

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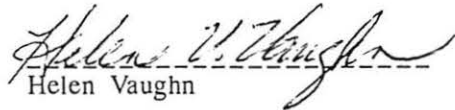
PETITION FOR WRIT OF MANDAMUS

In Re: Helen Vaughn v Estate of Ruth Conner

COMES NOW the Claimant by and through her undersigned attorney and files this Petition or Writ of Mandamus directed to William Allen, Commissioner of Accounts, and states:

1. Decedent Ruth Conner died on September 23, 1990.
2. On March 14, 1991, Helen Vaughn filed a Notice of Claim against the Estate of Ruth M. Conner for property located at 301 N. Water Street in Woodstock, Virginia.
3. Pursuant to that claim, William Allen, Assistant Commissioner of Accounts of the Circuit Court of Shenandoah County, Virginia, was appointed to receive proof of said debt.
4. Pursuant to the requirements of the Code of Virginia Sections 64.1-171 through 64.1-180, on March 14, 1991, a demand for a Debts and Demands Hearing was made.
5. On September 22, 1991, the Debts and Demands hearing took place at the offices of William Allen in Woodstock, Virginia.
6. Since that hearing, numerous oral and written demands were made upon William Allen for a decision on the demand of Helen Vaughn. William Allen promised to render a decision by December 31, 1991 but failed to so render a decision. William Allen then promised a decision by February 10, 1992, but failed to so render a decision. Despite numerous demands, William Allen failed and continues to fail to render a decision on the demands of Helen Vaughn on the Estate of Ruth Conner. Attached is a copy of the demand made on February 27, 1992.
7. As of this date, no response has been received from William Allen, contrary to the Code of Virginia Section 64.1-172 which provides sixty days after a Debts and Demands Hearing for a rendering of accounts.

WHEREFORE, petitioner demands the Circuit Court of Shenandoah County to enter a write of mandamus compelling respondent to enter a ruling on said claim.


Helen Vaughn

Subscribed and sworn to before me this 14th day of May, 1992 by Helen Vaughn in the County of Shenandoah, State of Virginia.


Notary Public

My Commission Expires April 30, 1993.

CERTIFICATE OF SERVICE

I hereby certify that on this 10 day of May, 1992, a true and correct copy of the foregoing Petition for Mandamus was mailed postage prepaid to William Allen, 126 W. Court Street, Woodstock, Virginia, 22664.


Marilyn A. Solomon

VIRGINIA: IN THE CIRCUIT COURT OF SHENANDOAH COUNTY
IN RE: THE ESTATE OF RUTH CONNER, DECEASED

REPORT

TO THE HONORABLE JUDGE OF SAID COURT.

COMES NOW, William B. Allen, III, Assistant Commissioner of Accounts for the Circuit Court of Shenandoah County, Virginia, and reports his findings of the hearing for Debts and Demands held on the 17th day of September, 1991, at 2:00 o'clock p.m., at the offices of ALLEN & ALLEN, at 126 West Court Street, Woodstock, Virginia.

I caused a Notice to be published in The Northern Virginia Daily on the 3rd day of September, 1991, as appears from the Certificate of an Officer of said Newspaper attached hereto, and on the 3rd day of September, 1991, I posted Notice of such time and place at the front door of the Courthouse of the Circuit Court of Shenandoah County, Virginia, both said publication and posting being at least ten (10) days before the fixed date for hearing.

At the hearing evidence was produced on the question of whether or not Helen Vaughn had entered into a contract with Ruth Conner for the transfer of real estate to Helen Vaughn.

It appears from the testimony that the Claimant, Helen Vaughn, that an agreement was entered into between Ms. Vaughn and Ruth Conner, such that if the Claimant were to work for Ruth Conner at her nursing home at Dutch Haven that Ms. Vaughn would be provided a place to live in the house that is claimed by Ms. Vaughn.

There were other witnesses who testified that Mrs. Conner stated that she had purchased the house for "Helen and her

daughter" .

The Commissioner does not find that there was any evidence presented as to the transfer of the house to Ms. Vaughn from Mrs. Conner. There was no evidence as to when any transfer was to take place, there was no evidence as to how the Deed of Trust that was on the property was to be paid, and, further there was no evidence to show that there was any intention other than such to provide a living space for the Claimant, Helen Vaughn. While it is evident from the evidence that Ms. Vaughn believed that the house was to be provided for her or to her in exchange for services rendered, there is no evidence that Mrs. Conner intended to convey her interest in the house or to deed or will her interest in the house to the Claimant.

Accordingly, it was the Commissioner's findings that based on the evidence that the claim of Helen Vaughn be denied.

Respectfully submitted,

WILLIAM B. ALLEN, III
ASSISTANT COMMISSIONER OF ACCOUNTS

CERTIFICATE

I hereby certify that a true copy of the foregoing REPORT was hand-delivered to Marilyn Solomon, Attorney at Law, at Woodstock, Virginia, Counsel for Claimant, this 22nd day of July, 1992.

William B. Allen, III
Assistant Commissioner of Accounts

AMENDED EXCEPTION TO COMMISSIONER'S REPORT

Pursuant to the Code of Virginia, as amended, Section 26-33 this is an Amended Exception to the Commissioner's Report filed on July 23, 1992 regarding the claim of Helen Vaughn on the Estate of Ruth Conner.

The Commissioner's report denies Helen Vaughn's claim. The Commissioner's findings are not supported by the record or by law.

FACTS

Ruth Conner owned and operated the Dutch Haven Home for Adults. Prior to the agreement at issue, Helen Vaughn, her foster daughter, worked a forty hour week at Dutch Haven as an employee. Mrs. Conner and Helen Vaughn entered into an oral agreement that if Helen and her daughter, Shannon, moved into the nursing home and helped her to run it until Mrs. Conner's retirement, that, in exchange for these services, Mrs. Conner would deed to Helen Vaughn a house located at 301 North Water Street. In reliance on the agreement, Helen Vaughn and her daughter moved into the Dutch Haven Home for Adults. Helen Vaughn's job changed from that of a regular 40 hour a week employee to that of a live-in manager required to be available and on-call continuously throughout the week. Her salary did not change. She moved from a house to a couch in the Dutch Haven living room. Helen helped Mrs. Conner until her death in September, 1990, working grueling hours at the nursing home and rendering personal services to Mrs. Conner. Mrs. Conner was murdered by an ex-boy friend before her expected retirement in December, 1990, and thus failed to deed the house at 301 North Water Street to Helen Vaughn.

ISSUE

The issue is whether Helen Vaughn and Ruth Conner entered into a contract for the transfer of real estate.

ARGUMENT

Five people testified at the hearing:

1. Helen Vaughn, Claimant.
2. Shannon Vaughn, Helen Vaughn's daughter.
3. Eilene McClelland, the tenant who rented the house at 301 N. Water Street from Ruth Conner during the time in question.

4. William Sweeney, a tenant in the Dutch Haven Home for Adults.

5. Merty Funkhouser, Director of the Department of Social Services for Shenandoah County.

The Commissioner's report ignores and misconstrues the testimony of all five witnesses.

Every finding in the Commissioner's Report is erroneous. The report contains the following errors:

1. The report states that it was Helen Vaughn's testimony that the agreement between herself and Mrs. Conner was that if she worked for Mrs. Conner at her Dutch Haven Nursing Home that Mrs. Conner would allow her to live in the house at 301 N. Water Street. This finding is contrary to fact. While the Commissioner's Report finds that an agreement did exist between Helen Vaughn and Ruth Conner, (See Commissioner's report, Paragraph 4, which begins "It appears from the testimony that...an agreement was entered into between Ms. Vaughn and Ruth Conner) the Commissioner misconstrues the terms of the agreement because he mistakenly believes that Helen Vaughn lived in the house on Water Street while she worked at Dutch Haven. The evidence shows that Helen Vaughn lived at Dutch Haven during the term of the agreement. She lived in the house at 301 North Water Street for a month and a half before the agreement at issue and she was induced to move into the Dutch Haven Home by the agreement itself. The facts show that Helen Vaughn lived at the Dutch Haven Home for Adults from the time of the agreement until Mrs. Conner's death. (See Transcript p16.) Furthermore, Eilene McClelland testified that she rented the house at 301 North Water Street from Ruth Conner and lived in it herself during the time in question. (See Transcript pp.9 and 10) The Commissioner's finding that the agreement between Helen Vaughn and Mrs. Conner was that Helen could live in the house while she worked at Dutch Haven is contrary to the facts and contrary to the evidence.

2. The Commissioner states that he does not find any evidence as to the transfer of the house to Mrs. Vaughn from Mrs. Conner. In fact, the reason that Mrs. Vaughn made a claim on the estate of Mrs. Conner is that the property was not transferred to her. The failure to transfer the property is the basis of this claim. Furthermore, there is no requirement that there be any evidence of a transfer to uphold Helen Vaughn's claim. Mrs. Vaughn is requesting specific

performance of a contract to convey real estate based on the fact that she performed her part of the bargain. Evidence is required regarding Helen Vaughn's performance, not Ruth Conner's. Such evidence was provided in the Hearing and will be summarized throughout this Exception. The law does not require that Helen Vaughn prove the property was transferred. On the contrary, she must show, as she has, that it was not transferred.

3. The Commissioner's report states that there was no evidence as to when the transfer was to take place. In fact, such evidence was presented. Helen Vaughn testified that the transfer was to take place at Mrs. Conner's retirement which was anticipated to be near the end of 1991. (See Transcript p.17). Shannon Vaughn testified that the transfer would take place when Mrs. Conner retired. (See Transcript pp 25 and 26). A transfer may turn on an event as well as on a date. Such an event was provided. Furthermore, the issue is whether or not there was an agreement between Mrs. Conner and Helen Vaughn. Such a contract need not contain every detail and an agreement could be found even if there was no evidence of the date of transfer, thus this finding is also irrelevant.

4. The Commissioner's report states that there was no evidence as to how the Deed of Trust on the property was to be paid. The finding is not relevant as to the issue in this case which is whether the contract between Mrs. Conner and Helen Vaughn may be enforced and which depends on whether Helen Vaughn performed her part of the bargain. The property may be transferred with or without the Deed of Trust. The Commissioner, however, overlooked the evidence presented as to the Deed of Trust. There is evidence via testimony by Helen Vaughn that the house was to be transferred to her free and clear. (See Transcript p.20)

5. The Commissioner's report states that there was no evidence to show that there was any intention other than to provide a living space for Helen Vaughn. In fact, there was no evidence showing an intention to provide a living space for Helen Vaughn. The evidence shows that Helen Vaughn did not live in the house at 301 N. Water Street, that it was rented to Eilene McClelland. The evidence shows that Helen Vaughn and her daughter, Shannon, lived at Dutch Haven for a year and a half, sharing a couch in the living room. Contrary to the Commissioner's findings, there was evidence from three witnesses that Mrs. Conner's intention was to transfer the house to Helen Vaughn. Helen testified that the house was to be conveyed to her at Mrs. Conner's retirement. (See transcript pp 17,

18, 19) Her testimony was supported and corroborated by the testimony of Eilene McClelland who testified that Ruth Conner told her repeatedly that she purchased the house for her "step daughter" Helen Vaughn. (See transcript pp 9 and 10). Shannon Vaughn testified that Ruth Conner told her the house on Water Street would be theirs when she retired or died. (See transcript pp 25 and 26).

6. The Commissioner's report states that Mrs. Vaughn believed the house was to be provided to her in exchange for services rendered but there was no evidence that Mrs. Conner intended to convey her interest in the house or to deed it to Mrs Vaughn. Based on the evidence just summarized, this finding is clearly wrong. The report ignores the evidence. In addition to the testimony on this point discussed in Paragraph 5 above, there is no other explanation provided for Helen Vaughn's change in duties and responsibilities. There is no other explanation provided for Helen Vaughn to give up her own home with her daughter and move into Dutch Haven to sleep on a couch. There is no other explanation as to why Helen Vaughn would increase her hours from 40 a week to 80-90 a week with no change in pay, a fact attested to by William Sweeney. (See transcript p.11). There is no other explanation as to why Helen Vaughn would give up her social life, her free time and her time with her daughter to work grueling hours for Ruth Conner. Helen Vaughn testified that she worked and was on-call continuously for over a year and a half. She had four hours off on Friday and five hours off on Sunday. (See transcript pp 18 and 19). She testified that she made these sacrifices for the future of herself and her daughter, so that they could have their own home. She received no overtime pay. She did not have a room at Dutch Haven. She did not eat regularly at Dutch Haven. (See transcript pp 22 and 23). The evidence shows that Helen Vaughn made these sacrifices in reliance on a promise of the transfer of real estate. She performed her end of the bargain. She cannot have back her time, effort or energy. Equity demands that she receive the benefit of her bargain.

7. The Commissioner's Report is also erroneous as to what Helen Vaughn is required to prove under Virginia law to succeed on her claim. The Report says that Petitioner must prove a transfer of the house, a date of transfer of the house and whether it was to be transferred free and clear. These matters were discussed above but are not the elements that Helen Vaughn must prove to succeed on this claim. To prove an oral contract for the transfer of real estate in Virginia, Petitioner must show that an agreement existed and that she has performed her part of the bargain. See 1822. Wilde v Fox, 1

Rand (22 Va.) 165. If the promisor is deceased, Petitioner's testimony must be corroborated.

The Commissioner's Report finds that Petitioner proved the existence of an agreement. Further, there is testimonial evidence of the agreement. This testimony is discussed in Paragraph 5 above. There is also compelling circumstantial evidence of the agreement as discussed in Paragraph 6 above. Oral contracts for the conveyance of real estate have been acceptably evidenced by far less. For example, the Court in Clark v Atkins, 188 Va 668, 51 S.E.2d 222 upheld an oral agreement between a father and son where the father promised to leave the son his "business and all he had if the son would come down here and learn the business." No other details of the agreement were provided or required by the Court to uphold the contract. There was only testimonial evidence from the son and circumstantial evidence of the fact that the son had returned home. The Court upheld the agreement.

In Timberlake v Pugh, 158 Va 397, 163 S.E.402 the Court upheld an oral contract to will property to the plaintiff. In that case, the Plaintiff worked for the deceased, left his employ, then returned. She testified that she returned to work for decedent because of the promise to will property to her. Again, the Court upheld the agreement based on the testimonial evidence of the claimant and the circumstantial evidence of the facts. She did stop working for the decedent and then return to work for him. The court upheld the contract stating "she lived with him for four years then left and then shortly returned. It is not unreasonable to assume that this was due to some added inducement" and that inducement was the agreement at issue. Timberlake v Pugh, 158 Va 404.

These facts are similar to the ones in the case at bar. Helen Vaughn worked at the nursing home. She was living in a house with her daughter. She then moved into the nursing home, giving up her home for a sofa in the living room. It is not unreasonable to assume that this was due to some added inducement. She doubled her working hours with no increase in pay. (See Transcript p.19) It is also not unreasonable to assume that this was due to some added inducement. Ms. Vaughn's own statement of that inducement is itself reasonable: "I did it for the future of me and my daughter. I did it because my mother promised me the house on Water Street" in exchange for my services until her retirement. (See Transcript p 19) Ms. Vaughn's explanation is reasonable and decedent's conduct corroborates her testimony. Mrs. Conner stated to Eilene McClelland

on several occasions that she purchased the house on Water Street for Helen Vaughn. There is more evidence in the case at bar than the plaintiffs had in Timberlake and Clark and the court there held, as this court should, that it was sufficient.

To specifically enforce an oral contract to convey real estate, Petitioner must also prove that she has performed her part of the bargain. The Commissioner's Report does not question Helen's performance of the bargain. Since Ruth Conner is deceased, Ms. Vaughn's testimony must be corroborated under the requirements of 8.01-397. The question of adequate corroboration is not raised in the Commissioner's Report and will not be discussed for that reason. I will only state for the record that Mrs. Vaughn's testimony was sufficiently corroborated under the requirements of 8.01-397 by testimonial and circumstantial evidence.

Furthermore, there is not one shred of evidence in the record that is inconsistent with Ms. Vaughn's testimony. Witnesses corroborated all material points. Helen Vaughn gave up a year and a half of her life to fulfill an agreement with her foster mother, Ruth Conner. Her time, energy and sacrifices cannot be given back to her. Mrs. Conner was murdered before she could fulfill her part of the bargain. Only this court can do so now.

For these reasons, I except to the Commissioner's Report and ask this Court to honor the claim of Helen Vaughn upon the estate of Ruth Conner.

Respectfully Submitted,

Marilyn Ann Solomon
Attorney for Claimant
614 Chinkapin Drive
Stephens City, VA 22655
(703) 869-0181

Certificate of Service

I certify that a copy of the foregoing exception was sent, postage prepaid, on August 31, 1992, to Phillip Grabill, Lawyers Row, P.O. Box 312, Woodstock, Va 22664 and Orrin French, Woodstock, Va 22664.

COMMONWEALTH OF VIRGINIA

PERRY W. SARVER, JUDGE
CIRCUIT COURTHOUSE
112 SOUTH MAIN STREET
WOODSTOCK, VIRGINIA 22664-1423
(703) 459-6158



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

TWENTY-SIXTH JUDICIAL CIRCUIT

June 18, 1993

Marilyn Ann Solomon, Esquire
Attorney at Law
120 Morning Glory Drive
Winchester, Virginia 22601

Orrin L. French, Esquire
Attorney at Law
Lawyers Row
Woodstock, Virginia 22664

P. M. Grabill, Esquire
Grabill and Grabill
Woodstock, Virginia 22664

Re: Estate of Ruth M. Connor, Deceased - Exceptions filed to
Commissioner's Report

Dear Counsel:

This matter comes before the Court for review, pursuant to Code § 26-33, of certain exceptions to the report of William B. Allen, III, Assistant Commissioner of Accounts of this Court, (Commissioner) filed by Helen Vaughan (Vaughan) with the Court on July 22, 1992, after a hearing on debts and demands conducted under the provisions of Code § 64.1-171, et seq., on September 17, 1991. The proceedings were recorded and a transcript of the proceedings filed with the papers in this cause.

Ruth Connor (Connor) died testate on September 23, 1990. She was survived by the following persons as her sole heirs at law, to-wit: Linda Himelright, a daughter; Nancy L. Plaughter, a daughter; and William Connor, a son. In her last will, dated October 18, 1992 and probated in this Court on September 26, 1990, she made a specific bequest of \$1,000 to her daughter Linda, and devised and bequeathed the residue of her estate to The Brethren Home of Indiana, Incorporated.

At the hearing before the Commissioner, Helen Vaughan testified, inter alia, that:

She had entered into an agreement with Connor providing that if she moved to Dutch Haven Home, owned and operated by Connor, then she (Connor) would see that we got the Water Street house. Me and my daughter. (Tr. 17).

Marilyn Ann Solomon, Esquire
Philip M. Grabill, Esquire
Orrin L. French, Esquire
June 18, 1993

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Vaughan further stated that:

She joined the household of Connor in 1970, see Vaughan Ex. 1, a Placement Agreement between Connor and her husband and the Shenandoah County Board of Public Welfare dated October 8, 1970. She was 12 years of age at the time. At age 18 she left the Connor household to get married. (Tr. 14). She had a child, Shannon Renee, who was named by Connor. (Tr. 14).

She went to work for Connor at Dutch Haven immediately after the nursing home opened and worked there continuously until Connor's death in 1990. (Tr. 16). She was living in New Market, renting a home, and Connor requested that she move to Woodstock to be closer to her in case she needed her to work or something. Connor stated that she had purchased a house on Water Street in Woodstock for Vaughan and her daughter and if they liked it, it would be theirs. They liked it and moved into the house, living there for a month and one-half. (Tr. 16).

Due to the loss of an employee in 1987, Connor needed a person qualified for CPR, Vaughan was so qualified, so Connor promised her that if Vaughan moved to Dutch Haven, Connor would see that Vaughan and her daughter would get the Water Street house when Connor retired. Connor expected to retire Christmas, 1991. (Tr. 17).

Vaughan and her daughter moved to Dutch Haven. Prior to her move, she was averaging 40 hours per week which increased to 80-90 hours with no increase in salary. She, and her daughter were furnished room and board, sleeping on a sofa in the living room. (Tr. 18-22).

She was on call at all times, except for time off from 4 p.m. to 8 p.m. on Friday, and 1 p.m. to 6 p.m. on Sunday. It was her understanding that for these services Connor would give her the Water Street house at her retirement, free and clear of any debts and obligations. (Tr. 20). She would not have worked under those circumstances without the promise of the Water Street house and she was doing it for the future of herself and her daughter. (Tr. 18).

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Philip M. Grabill, Esquire
Orrin L. French, Esquire
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Connor died without conveying the house to Vaughan, and has now made demand on the estate for conveyance of the house to her on the basis that she has performed the contract. She does not claim compensation for the value of her services, but seeks to recover the house free and clear of any liens, on the grounds that she has fully performed the contract between the parties (Tr. 27, 28). It is noted that the house was subject to the lien of a deed of trust at the time of the hearing, (Tr. 30).

Vaughan called William Glenn Sweeney, a resident of Dutch Haven, Eillen McCullen, a tenant of the Water Street house, and Vaughan's 12 year old daughter, Shannon, as her corroborating witnesses.

Mr. Sweeney stated that:

As of the hearing date, September 17, 1991, he had lived at Dutch Haven for 2 1/2 years, that he knew Vaughan and that she worked more than 40 hours per week, more than any other employee, that she lived there and was available at all times. Tr. 11-12).

Shannon testified that:

She referred to Connor as Grandma, that with respect to the Water Street house, Connor said that when she retired they would be taken care of, that she would give them the Water Street house and that they would have a roof over their heads when she (Connor) retired. (Tr. 26).

Eillen McCullen testified that:

When she first rented the house Connor stated that the house was purchased for her daughter. (Tr. 8). Approximately ten months later she made this same statement and that Connor's daughter only lived there a few months. (Tr. 9).

The Supreme Court has stated on numerous occasions that, "while the report of a commissioner in chancery does not carry the weight of a jury's verdict, Code § 8.01-610, it should be sustained unless the trial court concludes that the commissioner's findings are not supported by the evidence." Hill v. Hill, 227 Va. 569, 576-77 (1984); Morris v. United Virginia Bank, Exec., etc., et al., 237 Va. 331, 337 (1989). The commissioner's report came to this Court armed with a presumption of correctness. Id. 338.

Marilyn Ann Solomon, Esquire
 Philip M. Grabill, Esquire
 Orrin L. French, Esquire
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The agreement alleged by Vaughan is subject to the statute of frauds, Code § 11-2(6), since it is an agreement for the sale of real estate. Code § 11-2(8) also comes into play since the alleged agreement is one that could not be performed within a year. In fact according to Vaughan's testimony, she had worked for Connor for over a year at the time of Connor's death in 1990, with the expectancy of receiving the Water Street real estate as compensation for her services.

The statute of frauds may be avoided if all of the terms of the oral agreement are definite, certain and unequivocal, part performance is shown by acts which are consistent only with the theory of an oral contract, and the agreement has been performed to the point that failure to effect it fully would operate as a fraud upon Vaughan. See Beach v. Virginia National Bank, Executor, etc., 235 Va. 376, 378 (1988).

Vaughan's testimony is subject to the corroboration requirements contained in Code § 8.01-397, which states in part that:

In an action by or against a person who, from any cause, is incapable of testifying, or by or against the committee, trustee, executor, administrator, heir, or other representative of the person so incapable of testifying, no judgment or decree shall be rendered in favor of an adverse or interested party founded on his uncorroborated testimony.

As stated by the Supreme Court in Timberlake's Adm'r. v. Pugh, 158 Va. 397 (1932) when considering the sufficiency of the corroborating evidence:

(i)t is not possible to formulate any hard and fast rule, but must 'leave each case to be decided on its own peculiar facts and circumstances.' Burton's Ex'r v. Manson, 142 Va. 500; Davies v. Silvey, 148 Va. 132, 138 S.E. 513; Ratliff v. Jewell, 153 Va. 315. Confirmation is not necessary for that removes all doubt, while corroboration only gives more strength than was had before. Crabb's English Synonyms. Circumstances alone are sometimes sufficient. Rogers v. Rogers, 89 N.J.Eq. 1, 104 Atl. 32. Id. 402.

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The Court went on to say in Pugh that:

Clearly, it is not necessary that the corroborative evidence should of itself be sufficient to support a verdict, for then there would be no need for the testimony sought to be corroborated. Burton's Ex'r v. Manson, supra., Davies v. Silvey, supra. Id. 403.

In defining corroborative evidence the Court stated that it was:

(s)uch evidence as tends in some degree, of its own strength and independently, to support some essential allegation or issue raised by the pleadings testified to by the witness whose evidence is sought to be corroborated, which allegation or issue, if unsupported, would be fatal to the case; and such corroborating evidence must, of itself, without the aid of any other evidence, exhibit its corroborative character by pointing with reasonable certainty to the allegation or issue which it supports, and such evidence will not be material unless the evidence sought to be corroborated itself supports the allegation or the point in issue. Gildersleeve v. Atkinson, 6 N.M. 250, 27 Pac. 477, 480, cited with approval in Burton's Ex'r v. Manson, supra. Id. 403.

Finally, the Court stated that:

In quantity this corroborative evidence must be more than a scintilla, *** The statute *** is a wise one, and is designed to prevent fraud, and for that reason should not be whittled away. After all, as we have seen, each case must turn upon its own peculiar facts and circumstances. Id. 403.

The facts in this case are quite similar to the facts in Pugh. Vaughan was already working for Connor and had been for some time. The only change was that she moved on the premises and was on call

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essentially at all times, except for a short time on Friday and Sunday. Vaughan testified that she did not receive any increase in her weekly wages but was to be compensated by way of the transfer of the Water Street real estate when Connor retired in 1991.

The only corroboration offered by way of the witness Sweeney was that Vaughan worked more than forty hours per week and that she was on call or available at anytime for emergencies, and to his knowledge she worked more than the other employees. He knew absolutely nothing about her salary or wages or any agreement with Connor.

Shannon, Vaughan's daughter, age 12, was only able to say that Connor told her that when she (Connor) retired they (Vaughan and Shannon) would be taken care of and would be given the Woodstock house. Shannon made no mention that the conveyance of the house was part of an employment agreement between Connor and Shannon.

The evidence of McCullen is equally consistent with a purchase of the house for a gift never made, or simply a purchase to provide a temporary home in which Vaughan lived for "a few months." (Tr. 9).

The fact that Vaughan left her home in New Market, moved first to the Water Street house in Woodstock and then to the Dutch Haven premises and worked long hours, along with the testimony of witnesses Sweeney, McCullen and Vaughan's 12 year old daughter, simply does not support the existence of the oral agreement alleged by Vaughan. There is no properly corroborated evidence for the Court to consider with respect to the provisions of any such agreement, i.e., the terms and duration of the employment. There was no corroboration with respect to rate of pay which should have been available through the Dutch Haven records. As to duration, only Vaughan offered evidence as to duration, saying that she was to work until Connor retired in December, 1991. Connor was killed in September, 1990.

Finally, Vaughan states that the Executor under the will is barred from pleading the statute of frauds for failure to plead the statute as an affirmative defense when her exceptions were filed. This is a probate proceeding and not a suit in equity. As to the method of hearing exceptions, great latitude and flexibility are indicated. 3 Harrison on Wills, §531(2). No pleadings have been filed by any of the parties which seems to be consistent with this type of probate proceeding.

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Vaughan has failed to produce sufficiently corroborated evidence that meets the requirements of Code § 8.01-397 to support her allegations of part performance in order to avoid the operative effect of the statute of frauds.

For the reasons stated herein, the exceptions to the Commissioner's report are denied, the report is confirmed and Messrs. French and Grabill are requested to prepare an appropriate order containing the ruling of the Court, incorporating this letter therein by reference, obtain appropriate endorsements of counsel and tender the same for entry.

Sincerely,



Perry W. Sarver

cc: Court file

V I R G I N I A:

IN THE CIRCUIT COURT OF SHENANDOAH COUNTY

HELEN VAUGHN

Complainant

v

IN CHANCERY NO. _____

ESTATE OF RUTH CONNER

Defendant

HELEN VAUGHN'S EXCEPTIONS TO DECREE

Helen Vaughn, by and through its undersigned counsel, hereby states her exceptions to the Decree in the above referenced matter:

1. The trial judge committed reversible error by refusing to overturn the Commissioner's report. The findings in the Commissioner's report, as noted in Vaughn's Exceptions to Commissioner's Report, are erroneous.

2. The trial judge committed reversible error by finding that Helen Vaughn has failed to produce sufficiently corroborated evidence to meet the requirements of Code Section 8.01-397. Vaughn's evidence was sufficiently corroborated pursuant to Code Section 8.01-397.

3. The trial judge committed reversible error by finding that Vaughn's part performance was insufficient to avoid the operative effects of the statute of frauds. Helen Vaughn almost completely performed her end of the bargain and her performance was sufficient to avoid the statute of frauds.

4. The trial judge committed reversible error by finding that the defendants did not waive the statute of frauds defense when they failed to raise it at or prior to the Commissioner's hearing. The statute of frauds is an affirmative defense. Failure to raise it waives it.

5. The trial judge committed reversible error by refusing to correct the factual and legal errors made in the Commissioner's Report.

Respectfully submitted,



Helen Vaughn
By Counsel



Marilyn Ann Solomon
120 Morning Glory Drive
Winchester, VA 22602
(703) 678-0569

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Vaughn's Exceptions to Decree was mailed by first-class mail, postage prepaid this 25 day of June, 1993, upon:

1. Orrin L. French, Esquire
P.O. Box 232
Woodstock, VA 22664
2. Phillip M. Grabill, Sr., Esquire
Lawyers Row
P.O. Box 312
Woodstock, VA 22664

IN THE CIRCUIT COURT OF SHENANDOAH COUNTY, VIRGINIA:

HELEN VAUGHN

COMPLAINANT

vs.

IN CHANCERY NO. _____

ESTATE OF RUTH CONNER

DEFENDANT

DECREE

THIS MATTER came on for hearing this 21st day of October 1992, upon Complainant's Exception to Commissioner's Report previously filed, and upon argument of Counsel.

IN CONSIDERATION WHEREOF, the Court, for reasons stated in its written opinion dated June 18, 1993, which is incorporated herein by reference, is of the opinion that the exceptions to the Commissioner's Report should be overruled.

ACCORDINGLY, the Court does hereby ADJUDGE, ORDER, and DECREE that the Exceptions to the Commissioner's Report heretofore filed by Complainant are overruled, and this Court does affirm the ruling of the Commissioner previously filed herein.

And this matter is ended.

ENTER this 30th day of June 1993.

[Signature]
JUDGE

SEEN:

[Signature]
Marilyn Solomon, Counsel for Complainant

[Signature]
P. M. Grabill, Co-Counsel for Defendant

[Signature]
Orrin L. French, Co-Counsel for Defendant

See Attached exceptions please

[Signature], Clerk.

[Signature], D.C.

A True Copy teste:

By: [Signature]

ASSIGNMENTS OF ERROR

1. The trial judge committed reversible error by refusing to overturn or correct the Commissioner's report. The Commissioner, as noted in Vaughn's Exceptions to Commissioner's Report, misinterpreted the applicable legal requirements and misconstrued the facts of the case.

2. The trial judge committed reversible error by finding that Helen Vaughn failed to produce sufficiently corroborated evidence to meet the requirements of Code Section 8.01-397. Vaughn's evidence was sufficiently corroborated pursuant to Code Section 8.01-397.

3. The trial judge committed reversible error by finding that Vaughn's performance was insufficient to avoid the operative effects of the statute of frauds. Helen Vaughn performed her end of the bargain and her performance was sufficient to avoid the statute of frauds.

4. The trial judge committed reversible error by finding that the defendants did not waive the statute of frauds defense when they failed to raise it at or prior to the Commissioner's hearing. The statute of frauds is an affirmative defense. Failure to raise it waives it.