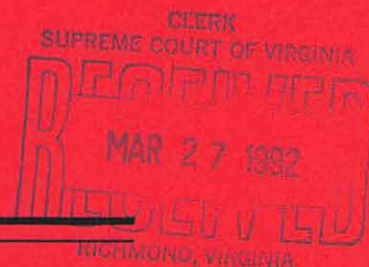


244V 394



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 911743

GALLOWAY CORPORATION,

Appellant,

v.

JAMES W. WISE, et al.,

Appellee.

JOINT APPENDIX

Judith M. Cofield
SHUTTLEWORTH, RULOFF,
GIORDANO & KAHLE
Suite 300
4425 Corporation Lane
Virginia Beach, VA 23462
(804) 671-6093

Robert G. Jones
Attorney at Law
Suite 100
128 S. Lynnhaven Rd.
Virginia Beach, VA 23452

Counsel for Appellant

Counsel for Appellee

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VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

GALLOWAY CORPORATION,

Complainant,

v.

CHANCERY NO. CH90-3610

JAMES W. WISE

SERVE: 3017 Lynnhaven Drive
Virginia Beach, Virginia

and

LAWYERS TITLE INSURANCE
CORPORATION, Trustee,

SERVE: Russell W. Jordan, III, RA
6630 W. Broad Street
Richmond, VA 23230

Defendants.

BILL OF COMPLAINT

COMES NOW the Complainant, GALLOWAY CORPORATION (hereinafter "Galloway"), by counsel, and for its Motion for Judgment, states as follows:

1. Galloway is a domestic corporation existing under and by virtue of the laws of the State of Virginia, with its place of business in the City of Virginia Beach, Virginia and is engaged in the construction business.

2. Defendant James W. Wise (hereinafter "Wise") is a resident of the City of Virginia Beach, Virginia and at all times material to this proceeding was employed by Galloway as a construction superintendent.

FILED

1990 OCT 23 P 4:16

J. CURTIS FRUIT, CLERK

1

BY _____ D.C.

3. During the tenure of Wise's employment with Galloway, Galloway owned a certain lot with a structure situated thereon.

4. During this same said time, Wise fraudulently induced Galloway to convey title to the subject lot and to advance certain monies to Wise in order to allow him to renovate the said structure upon the express, albeit then false representation that Wise would repair the structure, obtain a first deed of trust note and execute a second deed of trust in favor of Galloway.

5. In furtherance of that objective, Galloway, unjustifiably reliance on Wise's false promises, advanced the sum of One Hundred Twenty Seven Thousand dollars (\$127,000.00) to Wise for costs of renovation, as evidenced by copies of checks attached hereto and designated Exhibit A and conveyed the subject lot and now renovated structure to Wise, as evidenced by a Deed of Bargain and Sale, a true copy of which is attached hereto and designated Exhibit B.

6. In consideration of the conveyance of title and the advancement of monies, Wise agreed to execute a second deed of trust note, secured by a mortgage on the subject lot, in favor of Galloway, but this the Defendant has wholly failed and refuses to do and had no present intention of doing when fraudulently inducing Galloway to part with his property and his money.

MONEY HAD AND RECEIVED

7. All other allegations are incorporated herein as fully as if set forth in extenso.

8. By virtue of the foregoing, Wise is indebted to Galloway in the principal amount of \$127,000.00.

WHEREFORE, Galloway prays for judgment against Wise in the principal amount of \$127,000.00, plus pre-judgment interest; costs incurred in prosecuting this claim and for such other relief as the nature of the case may require.

COUNT II
CONSTRUCTIVE TRUST

9. All other allegations are incorporated herein as fully as if set forth in extenso.

10. Defendant Lawyers Title Insurance Corporation is named as a necessary party for the sole reason that it is Trustee under the first deed of trust note and is thereby an interested party.

11. By reason of Wise's fraudulent conduct and conscious misrepresentation of fact as aforesaid, record title to the subject property fails to reflect Galloway's interests therein and Wise and/or the named Trustee hold title in trust for Galloway.

WHEREFORE, Galloway prays this Court order Wise execute a second deed of trust and note in favor of Galloway, or appoint a Special Commissioner to execute said documents on his behalf and in his stead.

COUNT III
SPECIFIC PERFORMANCE

12. All other allegations are incorporated herein as fully as if set forth in extenso.

13. By virtue of the foregoing, Complainant is without an adequate remedy at law.

WHEREFORE, Galloway prays this Court order Wise to specifically perform the aforesaid agreement and execute a second deed of trust and note in favor of Galloway, or, in the alternative, appoint a Special Commissioner to execute said documents on his behalf and in his stead.

GALLOWAY CORPORATION

By _____

Of Counsel

Judith M. Cofield, Esquire
SHUTTLEWORTH, RULOFF, GIORDANO & KAHLE, P.C.
4425 Corporation Lane, Suite 300
Virginia Beach, Virginia 23462
(804) 671-6083

Filed in the Clerk's Office of the Court of Appeals for the District of Columbia on 23 October 1990
Writ Tax \$ 5
Fee 5
Libr 5
Sheriff 42
Total Paid \$ 42 Leile FRUIT, Clerk D.C.

[Handwritten initials]

GALLOWAY CORPORATION

P.O. BOX 620
VIRGINIA BEACH, VA 23462

[Handwritten signature]
4794
514 2

Jan. 3 19 89

PAY TO THE
ORDER OF

James W. Wise

\$ 32,000.00

GALLOWAY CORPORATION 32000 DOLLARS CTS

DOLLARS

**DOMINION
BANK**



Norfolk, Va. 23501

FOR Loan - house

[Handwritten signature: James I. Smith]

⑈00004794⑈ ⑆051401328⑆ 73 55003288⑈ ⑈0003200000⑈

014149
5610

JA 89 05

DOMINION BANK
2810 PAPHAM ROAD
RICHMOND, VA 23229
804-346-1384

[Handwritten signature: James W. Wise]

⑈0003200000⑈

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH
GALLOWAY CORPORATION,

Complainant,

v.

CHANCERY NO. CH90-3610

JAMES W. WISE
and
LAWYERS TITLE INSURANCE,

Defendants.

ANSWER

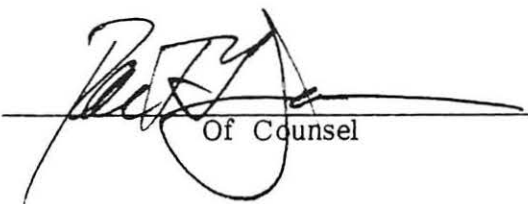
COMES NOW defendant James W. Wise, by counsel, and in response to the Bill of Complaint exhibited against him in this matter states as follows:

1. Paragraphs 4, 5, 6 and 8 of the Bill of Complaint are denied.
2. As regards paragraphs 1, 2 and 3, the pleadings are insufficient to form a conclusion as to truth or falsity and, therefore, they are denied.

WHEREFORE, your defendant, James W. Wise, prays that the Bill of Complaint be dismissed with prejudice.

JAMES W. WISE

By


Of Counsel

Robert G. Jones, Esquire
128 South Lynnhaven Road, Suite 100
Virginia Beach, VA 23452

CERTIFICATE

I hereby certify that a true copy of the foregoing was mailed to Judith M. Cofield, Esquire, 4425 Corporation Lane, Suite 300, Virginia Beach, Virginia, 23462, pursuant to Rule 1:12 of the Supreme Court of Virginia on this the 14th day of November, 1990.

1990 NOV 15 A 4 55

BY 

6

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH
GALLOWAY CORPORATION,

Complainant,

v.

CHANCERY NO. CH90-3610

JAMES W. WISE
and
LAWYERS TITLE INSURANCE,

Defendants.

DEMURRER

COMES NOW defendant James W. Wise, by counsel, and states that the allegations in the Bill of Complaint exhibited against him are insufficient in law.

As his grounds for this Demurrer, the defendant states that the Statute of Frauds provides a complete defense to the allegations regarding the oral understanding sued upon.

JAMES W. WISE

By


Of Counsel

Robert G. Jones, Esquire
128 South Lynnhaven Road, Suite 100
Virginia Beach, VA 23452

CERTIFICATE

I hereby certify that a true copy of the foregoing was mailed to Judith M. Cofield, Esquire, 4425 Corporation Lane, Suite 300, Virginia Beach, Virginia, 23462, pursuant to Rule 1:12 of the Supreme Court of Virginia on this the 14th day of November, 1990.



*Filed
11-15-90
[Signature]*

ROBERT G. JONES
ATTORNEY &
COUNSELOR AT LAW
SUITE 100
128 LYNNAHVEN RD
VIRGINIA BEACH, VA
23452

(804) 486-0333

1 VIRGINIA:

2 IN THE CIRCUIT COURT FOR THE CITY OF VIRGINIA BEACH

3 GALLOWAY CORPORATION,)

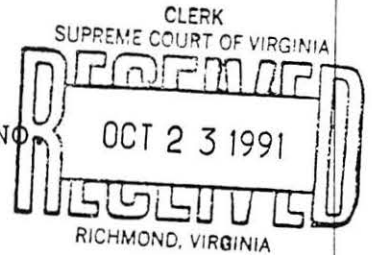
4 Plaintiff,)

5 v.)

6 JAMES W. WISE, et al.,)

7 Defendant.)

CHANCERY NO. 90-3610



8 EXCERPT OF TRANSCRIPT OF PROCEEDINGS

9 Virginia Beach, Virginia

10 May 2nd, 1991

Handwritten signatures and date stamp: 1991 OCT 21

11 Before: THE HONORABLE JOHN K. MOORE, Judge

1 Appearances:

2 SHUTTLEWORTH, RULOFF, GIORDANO & KAHLE
3 By: JUDITH M. COFIELD, ESQUIRE
4 Counsel for the Plaintiff

5 ROBERT G. JONES, ESQUIRE
6 Counsel for the Defendant
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I N D E X

ON BEHALF OF THE PLAINTIFF:

<u>WITNESSES</u>	DIRECT	CROSS	RED.	REC.
PAUL A. GALLOWAY	10	17	23 34	26
JANEY SMITH	35	43		
JAMES W. WISE	45			
PAUL GALLOWAY (Recalled)	72			

- - - - -

ON BEHALF OF THE DEFENDANT:

<u>WITNESSES</u>	DIRECT	CROSS	RED.	REC.
JAMES W. WISE	56	67		

- - - - -

E X H I B I T S

ON BEHALF OF THE PLAINTIFF:

NO.	DESCRIPTION	PAGE
1	Copies of five checks	12
2	Residential contract to purchase dated August 25, 1988	16
3	Deed of bargain and sale dated December 20, 1989	16
4	Three legal size sheets of paper	38.

1 PAUL A. GALLOWAY, called as a witness by and
2 on behalf of the Plaintiff, having been duly sworn, was
3 examined and testified as follows:
4

5 DIRECT EXAMINATION

6 BY MRS. COFIELD:

7 Q. Your full name.

8 A. Paul Austin Galloway.

9 Q. Your relationship to the plaintiff, Galloway
10 Corporation?

11 A. I'm president and sole owner of Galloway
12 Corporation.

13 Q. What was your relationship or affiliation at
14 one time with Mr. Wise, the defendant?

15 A. Mr. Wise was a superintendent for Galloway
16 Corporation.

17 Q. From what period of time to what period of
18 time?

19 A. From October 1983 until May of 1990.

20 Q. Prior to -- excuse me -- in May 1990, was he
21 terminated?

22 A. Yes.

23 Q. Prior to May 1990, and specifically I direct
24 your attention to the calendar year of '89, did you have
25 any occasion to lend him monies during that year?

11.

ADAMS HARRIS & MARTIN

P A GALLOWAY DIRECT

1 A. Yes, I did.

2 Q. When I say you, I mean, did you individually
3 or did Galloway Corporation?

4 A. Galloway Corporation.

5 Q. Did you individually at any time ever loan
6 him money?

7 A. No, I did not.

8 Q. I am showing you copies and originals of
9 checks and ask if you can take a moment to identify those
10 checks as the ones in question.

11 A. Yes.

12 MRS. COFIELD: Your Honor, I would like to
13 tender those into evidence as Exhibit No. 1.

14 And may I ask the Court that the copies be
15 substituted for the originals so he can keep his original
16 checks but we did bring them.

17 MR. JONES: No objection.

18 THE COURT: Have you had an opportunity to
19 see them?

20 MR. JONES: Yes.

21 MRS. COFIELD: Thank you.

22 THE COURT: The copies, front and back of
23 the five checks, that have been identified by the witness,
24 together with an adding machine tape, will be stapled
25 together and introduced as Plaintiff's Exhibit No. 1.

1 (Plaintiff's Exhibit No. 1 was
2 marked and introduced into evidence.)

3 BY MRS. COFIELD:

4 Q. I direct your attention -- do you have a
5 copy of them in front of you?

6 A. No, I don't.

7 Q. I'll give you the originals then.

8 I ask you to look at the back of what has
9 already been designated as Exhibit No. 1, the back, if you
10 will, of each and every one of the five checks and ask if
11 you can identify the signature which appears thereon.

12 MR. JONES: We'll stipulate they're endorsed
13 by Mr. Wise, Your Honor.

14 MRS. COFIELD: Thank you.

15 BY MRS. COFIELD:

16 Q. Has Mr. Wise repaid Galloway Corporation any
17 or all of the \$127,000 represented by Exhibit No. 1?

18 A. None.

19 Q. Just so the record is clear, does Exhibit 1
20 in fact total \$127,000?

21 A. Yes, it does.

22 Q. Has Galloway Corporation made due demand on
23 Mr. Wise for repayment of that debt?

24 A. Yes, we have.

25 Q. Was it a debt which you in full -- you being

1 Galloway Corporation -- in full or in part at any time
2 have excused or forgiven?

3 A. No, ma'am.

4 Q. Were there any conditions upon repayment of
5 this debt? I don't mean the terms. I mean conditions,
6 you don't have to repay it if... then fill in the blank?

7 A. No conditions.

8 Q. Now, what, then, as opposed to conditions,
9 were the terms of the original agreement between Galloway
10 Corporation and Mr. Wise in order to obtain these funds?

11 A. Galloway Corporation loaned Mr. Wise the
12 money to renovate an existing house. The terms of
13 repayment were oral, and it was based on the fact that he
14 could repay the money out of salary or bonuses during his
15 employment.

16 Q. Was the repayment conditioned then upon his
17 continued employment?

18 A. No, it was not.

19 Q. Did you ever discuss what would happen if he
20 were terminated?

21 A. No, we did not.

22 Q. And during the year, let's see, you advanced
23 the funds through November of 1989, and he was terminated
24 when, May?

25 A. May of 1990.

1 Q. From November of 1989 through May of '90 did
2 he have a salary?

3 A. Yes.

4 Q. Did he have any bonuses?

5 A. No.

6 Q. Did he repay Galloway Corporation from his
7 salary in full or in part during that time frame --

8 A. No.

9 Q. -- that he was still affiliated with the
10 corporation?

11 A. None.

12 Q. Okay. Now, you referenced the original
13 agreement, and I am also showing you -- just for
14 historical sake -- again, I hand you the original and ask
15 Your Honor that after identification a copy can be
16 substituted.

17 I am showing you a residential contract of
18 purchase. Does this document represent the land which was
19 actually given to Mr. Wise to do the renovations on?

20 A. Yes, it does. Can I back up to a previous
21 question?

22 Q. Yes.

23 A. One more condition, oral condition, was that
24 if he ever sold the house he had to pay off the loan in
25 full.

1 Q. Okay. Did he agree with that?

2 A. Yes, he did.

3 Q. Do you know if Mr. Wise presently has the
4 house for sale?

5 A. Yes, I do.

6 Q. Does he?

7 A. Yes.

8 Q. And did you, Paul Galloway, individually,
9 that is, give him the property which is reflected in that
10 residential contract to purchase by virtue of the deed of
11 bargain and sale dated December 20th, 1989?

12 A. I have a residential contract dated August
13 25th, 1988.

14 Q. Was that residential contract consummated by
15 virtue of the deed and bargain of sale dated December
16 20th, '89?

17 A. Yes.

18 MRS. COFIELD: I would like to have
19 designated in evidence, if I could take a copy again, as
20 opposed to an original, the residential contract to
21 purchase.

22 THE COURT: Have you seen this?

23 MR. JONES: Yes. I am not quite sure what
24 date she said. This reflects -- I can't quite read it.
25 Is it the 20th?

1 MRS. COFIELD: Yes.

2 MR. JONES: No objection to the copy, Your
3 Honor.

4 THE COURT: The residential contract to
5 purchase, dated August 25, 1988 from Paul Galloway and
6 James Wise will be a copy and will be admitted as
7 Plaintiff's Exhibit No. 2.

8 (Plaintiff's Exhibit No. 2 was
9 marked and received into evidence.)

10 MR. JONES: I'm sorry. Which is Exhibit 2?

11 THE COURT: The residential contract of
12 purchase.

13 MR. JONES: Is the deed of bargain and sale
14 Exhibit 3?

15 THE COURT: It is going to be.

16 The deed of bargain and sale dated December
17 20th, '89 will be Plaintiff's Exhibit 3.

18 (Plaintiff's Exhibit No. 3 was
19 marked and received into evidence.)

20 MRS. COFIELD: Should I proceed, Your
21 Honor?

22 THE COURT: Give me a second.

23 MRS. COFIELD: I'm sorry. I forgot my train
24 of thought.

25 Can I have a moment, Your Honor?

1 THE COURT: Yes.

2 BY MRS. COFIELD:

3 Q. Are any of the funds necessary to purchase
4 the lot and the dilapidated residence at issue in the
5 case?

6 A. No.

7 Q. How were you paid for the lot and the
8 dilapidated residence reflected by what has been
9 designated Exhibits 2 and 3?

10 A. By the sale on December 20th, '89.

11 Q. So is the only thing that is at issue
12 Exhibit 1 -- excuse me -- the checks totaling \$127,000?

13 A. Yes.

14 MRS. COFIELD: I have no further questions
15 of this witness.

16
17 CROSS-EXAMINATION

18 BY MR. JONES:

19 Q. Mr. Galloway, have you been in the
20 construction business for 27 years?

21 A. How long?

22 Q. 27 years.

23 A. 28.

24 Q. And you founded Galloway Corporation in
25 1972?

1 Q. Now, didn't you have some -- didn't you make
2 some representation to Mr. Wise when he was hired that his
3 job was a permanent job?

4 A. No. No, I did not.

5 Q. And did you not terminate Mr. Wise from the
6 employment of Galloway Corporation in the spring of 1990?

7 A. We terminated Mr. Wise's employment in May
8 of 1990.

9 MR. JONES: I have no other questions.

10

11

REDIRECT EXAMINATION

12

BY MRS. COFIELD:

13

Q. Exhibit 2 shows -- I think it's Exhibits 2
14 and 3 -- well, no, only 2, excuse me -- shows a purchase
15 price of \$149,000, correct?

16

A. That's correct.

17

Q. That \$149,000 was for what, representing
18 consideration for what, literally?

19

MR. JONES: Your Honor, I don't believe I
20 went into Exhibit No. 2.

21

MRS. COFIELD: I think he did.

22

THE COURT: That's what this case is all
23 about. I'll allow it. The exhibit speaks for itself.

24

A. Exhibit 2, which was the contract dated
25 August 25, 1988, was a contract between myself and Mr.

19.

ADAMS HARRIS & MARTIN

F A GALLOWAY REDIRECT

1 Wise. Mr. Wise purchased the existing home and property.

2 BY MS. COFIELD:

3 Q. So 149 is not at issue here, correct?

4 A. That's right.

5 Q. Did you recommend -- what did you recommend
6 to Mr. Wise that he do with that property?

7 A. Knock down the house and build a new home.

8 Q. Why?

9 MR. JONES: Your Honor, if I may, Your
10 Honor, I object. That was discussed under direct. It was
11 not gone into on cross-examination.

12 THE COURT: You'll have an opportunity to go
13 into re-cross if you want. I will not stop from taking
14 testimony.

15 BY MRS. COFIELD:

16 Q. Why did you make that recommendation that it
17 be destroyed and a new one erected?

18 A. Because it would have been less expensive in
19 the long run to build a new home.

20 Q. Did Mr. Wise take your recommendation?

21 A. No, he did not.

22 Q. How much -- who determined the amount of the
23 loan, you or Mr. Wise?

24 A. Which loan?

25 Q. The \$127,000 at issue.

1 A. Mr. Wise did.

2 Q. Did you put any ceiling on the payment to be
3 advanced to him?

4 A. No, I did not.

5 Q. Did you, as opposed to him, put any
6 conditions on to when he could make those draws?

7 A. No, I did not.

8 Q. Tell this Court how it is that these checks,
9 these five checks which are already into evidence as
10 Exhibit No. 1, came to be issued on a certain date and in
11 a certain amount.

12 A. Well, I believe Mr. Wise started renovations
13 in late 1988, and he accumulated bills and he would bring
14 a tabulation in for my secretary and he would ask for
15 funds.

16 Q. Is that a true statement for each and every
17 one of those five checks?

18 A. Yes, it is.

19 Q. Other than salary, while at Galloway
20 Corporation, was repayment -- I mean repayment through
21 salary and repayment through sale -- was there any other
22 agreement about repaying of these loans or this money,
23 this 127?

24 A. No, there was not.

25 Q. Was it conditioned upon this, the continued

1 employment?

2 A. No. Oh, no. The way I think you're asking
3 the question is did I intend to employ him forever, no.

4 Q. I'm simply asking -- I'm asking you very
5 simply, did you and he have any agreement that the only
6 way and the only time he had to repay you was from his
7 salary or from the sale of the house or did he have to
8 repay you anyway?

9 A. He had to repay me.

10 Q. Then was it conditioned upon his employment
11 or upon the selling of the house?

12 A. No, it was not.

13 Q. Thank you.

14 MRS. COFIELD: I have no further questions.

15

16 RECROSS-EXAMINATION

17 BY MR. JONES:

18 Q. Well, Mr. Wise, you say you didn't agree
19 with the renovation but yet you authorized the funds to go
20 for renovation -- for the renovation?

21 A. We had some heated discussions on that. But
22 I made my commitment to Mr. Wise, and I went ahead with my
23 commitment.

24 Q. In effect, didn't he demolish the entire
25 structure and the building is a new structure?

22

ADAMS HARRIS & MARTIN

P A GALLOWAY RECROSS

1 MR. JONES: I have no other questions, Your
2 Honor.

3 MRS. COFIELD: No further questions.
4

5 BY THE COURT:

6 Q. Well, Mr. Galloway, is this a single family
7 residential home?

8 A. Yes.

9 Q. Where is it located?

10 A. It's in Lynnhaven Colony on the water,
11 bulkheaded, 3017 Lynnhaven Drive.

12 Lynnhaven Colony is off of Shore Drive
13 behind -- across from Westminster Canterbury. It's on
14 the water.

15 Q. It's still titled in the name of James W.
16 Wise?

17 A. I think so, yes.

18 Q. Who lives in the house?

19 A. Mr. Wise does.

20 Q. He lives there at the present time?

21 A. Yes, he does.

22 Q. Is the property being marketed or listed for
23 sale?

24 A. There's a sign out front, yes.

25 Q. Why did you make this \$127,000 loan of the

1 property to Mr. Wise?

2 A. Mr. Wise, when he came to work for me in
3 1986, '83, excuse me, worked in Richmond, and I sent him
4 to -- he did a project in Richmond and then we had an
5 opportunity to do a project in Nashville, Tennessee, and
6 Mr. Wise went to Nashville, Tennessee.

7 During that course of time, he was
8 divorced. And I believe he had a hard time selling his
9 home in Richmond. And in the meantime I had an
10 opportunity for him to work for me here in Virginia Beach,
11 and gave him the choice of either staying in Richmond or
12 moving to Virginia Beach, and he chose to move to Virginia
13 Beach.

14 And I told him I would pay his apartment
15 rent until he got established again, got his feet on the
16 ground. That apartment rent went on for about two and a
17 half years, and I told Mr. Wise it was time for him to get
18 his feet on the ground and to make some decisions about
19 where he was going to live and get off of the rent role.
20 I mentioned to him that I had a piece of property that I
21 bought that I intended to knock the house down and build a
22 new house on and he ought to take a look at it as an
23 investment opportunity and that I would be willing to help
24 him in any way I could so that he could purchase the
25 property.

1 Q. Well, what was the salary when he was
2 working for you in '89 and 1990?

3 A. I would guess that he averaged somewhere
4 between 65 and 95,000 from '86 to '88 and probably in '90
5 he only worked part of the year. But from '86 through '89
6 he probably averaged 75 to \$80,000 per year in salary.

7 Q. Why didn't he ever sign this note that Mr.
8 Jones identified?

9 A. I don't know why. I really don't know why.
10 It was our agreement and understanding that he would after
11 he got settled in and one day he just popped up and said
12 he wasn't signing it. I don't know why.

13 Q. Well, was he ever asked to sign it?

14 A. Yes.

15 Q. By whom?

16 A. Myself and my secretary.

17 Q. When was that, approximately?

18 A. From February -- and I know that the notary
19 date on this is dated March -- but I think it may have
20 been the second time we prepared it. But from February
21 '89 until probably September of '89, excuse me, I have got
22 my years mixed up, February of '90 to September of '90, we
23 asked him to sign the note and when he kept refusing is
24 when we filed a bill of complaint in objection --

25 Q. What did he tell you when he refused to sign

1 it?

2 A. He had to review it. He had to take it to
3 his attorney. It was all wishy-washy. He didn't make any
4 sense.

5 Q. Did he tell you any -- did he give any
6 reason why?

7 A. He would make promises that he would bring
8 it back the next day signed or he would come in the next
9 day and sign it, and months and weeks would go, weeks and
10 months would go by, and he wouldn't do it.

11 Q. Did he give you a reason?

12 A. No. He never gave me a reason. He never
13 gave me a reason.

14 THE COURT: Well, I guess that's all the
15 questions I have.

16 Any other questions?

17 MRS. COFIELD: No, Your Honor.

18 MR. JONES: No, Your Honor.

19 THE COURT: You may step down.

20 MR. JONES: One more question, Your Honor.

21

22

23

24

25

1 I would like to call Janey Smith to the
2 stand.

3 (Whereupon, the witness was sworn by the
4 clerk.)

5
6 JANEY SMITH, called as a witness by and on
7 behalf of the Plaintiff, having been first duly sworn, was
8 examined and testified as follows:

9
10 DIRECT EXAMINATION

11 BY MRS. COFIELD:

12 Q. Your name, please.

13 A. Janey Smith.

14 Q. Could you speak up a little bit and lean
15 towards the microphone.

16 A. Janey Smith.

17 Q. By whom are you employed?

18 A. Galloway Corporation.

19 Q. In what capacity?

20 A. Office manager.

21 Q. Since what date?

22 A. Since October 1980.

23 Q. Since October of 1980, and specifically with
24 reference to the year 1989, did you have occasion to deal
25 with and do you know Mr. James Wise?

27

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1 A. Yes, I do.

2 Q. How is it that you made his acquaintance?

3 A. He was a construction superintendent for our
4 company.

5 Q. Would you please describe generally, if you
6 will, the nature of your duties and responsibilities as
7 general manager of Galloway Corporation.

8 A. I assist in the day-to-day operations of the
9 company for Mr. Galloway in an administrative capacity.
10 Plus I take care of all of the accounting functions for
11 the company.

12 Q. In the year 1989, did he ever issue -- he
13 being Mr. Galloway -- as president of Galloway
14 Corporation, any instructions to you, vis-a-vis, drawing
15 checks or doing any other accounting work for Mr. Wise
16 that had nothing to do with the corporation but of a
17 personal nature?

18 A. Yes, he did.

19 Q. What were those instructions?

20 A. Mr. Wise was renovating a house and Mr.
21 Galloway instructed me when he had requested for loan
22 advances to prepare the checks for his signature.

23 Q. Did you do so?

24 A. Yes, I did.

25 Q. I am now showing you a document which is --

1 which consists of three pages and ask if you can identify
2 the document I've placed before you.

3 A. Yes, I can.

4 Q. Have you ever seen that document before?

5 A. Yes.

6 Q. Please tell me when you saw it as close in
7 time as possible and why it is it came to be reviewed by
8 you.

9 A. At the end of the renovations, Mr. Wise
10 still needed additional funds and so he brought in an
11 accounting of the total amount he had spent to date.

12 Q. Whose handwriting is on the first two pages
13 in its entirety?

14 A. Mr. Wise's.

15 Q. On the third -- is there only Mr. Wise's or
16 another individuals?

17 A. I had made some notes on the third page
18 also.

19 Q. Would you please, since we only have one
20 copy of that, read it into the record and identify for us
21 what's on that third page done in your handwriting.

22 A. My handwriting was the total of all of the
23 amounts that Mr. Wise had listed on the three pages, and,
24 in addition, Mr. Wise had said he had \$18,000 of his own
25 funds in there, so I did a calculation, subtracted that

1 from the total amount, subtracted what I had already
2 advanced, loan funds to Mr. Wise, and came up with a
3 balance which was \$16,362. Mr. Wise also needed some
4 additional funds because there was some amounts that he
5 had question marks by because he didn't know what the
6 total was going to be.

7 Q. That's a little bit confusing to me. How
8 about -- is it accurate to say that on page 3 the only
9 thing in your handwriting is the smaller finer new numbers
10 that appear in the right-hand side, then on the left, the
11 two line items that appear also -- is also in your
12 handwriting and at the very bottom from all of the
13 figures, that is also in your handwriting?

14 A. That's correct.

15 MRS. COFIELD: If we could designate this
16 also as an exhibit, this three-page document.

17 THE COURT: The three legal size sheets of
18 paper will be stapled together and admitted as Plaintiff's
19 Exhibit No. 4.

20 (Plaintiff's Exhibit No. 4 was
21 marked and received into evidence.)

22 BY MRS. COFIELD:

23 Q. Now, you talked about in Plaintiff's Exhibit
24 4, Mr. Galloway needing some additional monies.

25 A. No, Mr. Wise.

30

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J. SMITH DIRECT

REGIONAL REPORTER

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1 Q. I'm sorry. Mr. Wise needing some additional
2 monies. I see a figure to the right-hand side. Is that
3 in your handwriting?

4 A. Yes, it is.

5 Q. \$16,362.33?

6 A. Right.

7 Q. Approximately when was this accounting
8 brought to you by Mr. Wise?

9 A. A day or two prior to the check that I wrote
10 for \$20,000.

11 Q. I am showing you in Exhibit 1, Check No.
12 5092, for \$20,000, dated November 16, 1989. Does that
13 refresh your recollection as to when this accounting was
14 presented?

15 A. That's right.

16 Q. Was it on this same day or a day or two
17 earlier?

18 A. It was a day or two earlier.

19 Q. And explain to me then why if in your
20 determination he needed approximately \$16,000, a day or
21 two later you wrote a check for or asked one to be drafted
22 for \$20,000?

23 A. Well, if you look on this document out by
24 Advance, he had a question mark, and he didn't know what
25 the total amount was that was due there at that time, so

1 which consists of three pages and ask if you can identify
2 the document I've placed before you.

3 A. Yes, I can.

4 Q. Have you ever seen that document before?

5 A. Yes.

6 Q. Please tell me when you saw it as close in
7 time as possible and why it is it came to be reviewed by
8 you.

9 A. At the end of the renovations, Mr. Wise
10 still needed additional funds and so he brought in an
11 accounting of the total amount he had spent to date.

12 Q. Whose handwriting is on the first two pages
13 in its entirety?

14 A. Mr. Wise's.

15 Q. On the third -- is there only Mr. Wise's or
16 another individuals?

17 A. I had made some notes on the third page
18 also.

19 Q. Would you please, since we only have one
20 copy of that, read it into the record and identify for us
21 what's on that third page done in your handwriting.

22 A. My handwriting was the total of all of the
23 amounts that Mr. Wise had listed on the three pages, and,
24 in addition, Mr. Wise had said he had \$18,000 of his own
25 funds in there, so I did a calculation, subtracted that

1 we just rounded it off to \$20,000.

2 Q. Now, I see over to the left in highlighting,
3 need \$20,000. Is that how you arrived at it because of
4 a --

5 A. Yes, right. We agreed we would round it off
6 to \$20,000.

7 Q. What was the Advance line item referencing,
8 advance for what?

9 A. For loan for the renovations.

10 Q. I'm sorry. I'm still not clear.

11 A. Maybe I don't understand your question.

12 Q. Every single one of those loan items relates
13 to a specific bill, be it for Cox, the utility, or the
14 building permit?

15 A. Right.

16 Q. Then this is what, a blank for advance
17 because he didn't know how much he would need for --

18 A. To pay Advance for electrical.

19 Q. Okay. For electrical?

20 A. Right.

21 Q. For all of the pre-work?

22 A. Right.

23 Q. Why would that be so in November, any
24 pre-work in November?

25 A. I don't know.

1 Q. But that is what you were told by Mr. Wise?

2 A. Right.

3 MR. JONES: Did you say this was Exhibit 4,
4 Your Honor?

5 THE COURT: Yes.

6 (Discussion between Mrs. Cofield and Mr.
7 Galloway off the record.)

8 BY MRS. COFIELD:

9 Q. Was it your job -- Advance is the name of an
10 electrical subcontractor, right?

11 A. Right.

12 Q. Okay. I was thinking of advance as in
13 needing it in advance.

14 So you didn't know how much that bill would
15 be?

16 A. Right.

17 Q. Thank you. Was it your duty or function at
18 all to review and approve or disapprove some of those line
19 items?

20 A. No, it was not.

21 Q. Do you know whether Galloway Corporation
22 approved or disapproved of any line item there or just
23 gave Mr. Wise what he asked for?

24 A. I'm not familiar with that. I am not
25 familiar with that. I wasn't privy to information as far

1 as what was approved or what was not approved. I had
2 instructions to issue the checks.

3 Q. Did you have any involvement in asking Mr.
4 Wise to come in and sign the note?

5 A. Yes, I gave him some telephone calls.

6 Q. Did you speak to him?

7 A. Yes, I did.

8 Q. What did he say to you about his willingness
9 to come in and sign the note?

10 A. He said that he would be in in a few days.

11 Q. On how many occasions did he make that
12 representation to you?

13 A. I'm not exactly sure, but I think at least
14 two times, maybe three.

15 Q. Did he ever in fact appear on the premises?

16 A. Yes.

17 Q. Allegedly to sign?

18 A. Yes, he did.

19 Q. What happened on those times?

20 A. He wanted to take the documents with him to
21 review.

22 Q. Did he ever return after having them
23 reviewed?

24 A. No, he did not.

25 Q. Did he ever give you a reason that he did

1 not return after having them reviewed?

2 A. No, he did not.

3 Q. Did he ever give you a reason why he didn't
4 come in on the occasions he said he would and didn't
5 appear?

6 A. No.

7 MRS. COFIELD: I have no further questions.

8

9 CROSS-EXAMINATION

10 BY MR. JONES:

11 Q. Ms. Smith, were you ever requested to obtain
12 a note from Mr. Wise when you gave him a check?

13 A. Not at the time that I gave him the check.
14 After we did the final accounting then we wanted to get
15 the note.

16 Q. When would that have been, approximately?

17 A. Well, at the end of 1989 after his loan
18 closing.

19 Q. So after he bought the house, you did these
20 calculations, is that right, and asked him to --

21 A. Well, the calculations were at the end of
22 his renovations, when he finished the renovations to the
23 house.

24 Q. Did he bring these in voluntarily or was
25 this in response to a request to show how he had spent the

1 to the stand.

2 THE COURT: Before we do that, let's take a
3 10 minute recess.

4 (Recess)

5 THE COURT: You wanted to call Mr. Wise?

6 MRS. COFIELD: I do, Your Honor.

7 (Whereupon, the witness was sworn by the
8 clerk.)

9
10 JAMES W. WISE, called as a witness by and
11 on behalf of the Plaintiff, having been first duly sworn,
12 was examined and testified as follows:

13

14 DIRECT EXAMINATION

15 BY MRS. COFIELD:

16 Q. I have very few limited questions for you,
17 Mr. Wise.

18 You are, of course, the Mr. Wise who was
19 once a superintendent with Galloway Corporation, correct?

20 A. That's right.

21 Q. You accepted \$127,000 from Galloway
22 Corporation in order to renovate a certain structure,
23 correct?

24 A. That's right.

25 Q. The structure is referenced in the deed of

1 bargain and sale and the contract which are designated as
2 Exhibits 3 and 4, correct?

3 A. It seems so, yes.

4 Q. You are presently living at that residence,
5 correct?

6 A. That's right.

7 Q. You have been living there for how long?

8 A. Close to a year and a half or two, something
9 like that.

10 Q. It's presently for sale, is it not?

11 A. That's right.

12 Q. It is listed for 200 what?

13 A. It's listed for 305.

14 Q. \$305,000?

15 A. Right.

16 Q. And you've put approximately \$30,000 of your
17 own in it?

18 A. Yes, ma'am.

19 Q. Of your own money?

20 A. Yes, ma'am.

21 Q. The remaining 120 or \$127,000 that was used
22 to renovate it came from Galloway Corporation, correct?

23 A. That's right.

24 Q. Have you ever signed a note to reflect the
25 fact that you owed Galloway Corporation these monies?

37

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J W WISE DIRECT

1 A. No.

2 Q. Were you asked to?

3 A. Yes, I was asked to.

4 Q. Did you say things to Galloway Corporation
5 by and through Janey Smith and Mr. Paul Galloway, such as,
6 I'll come in Wednesday to look over the documents?

7 A. I recall telling them that I would. When I
8 first saw the deed of trust, I acknowledged to Mr.
9 Galloway that it wasn't what we agreed upon. I didn't
10 like the wording of it.

11 Q. I'm talking about the note, Mr. Wise, the
12 IOU, the note, not the deed of trust on the house.

13 A. I told him I would sign it if it was
14 originally worded the way we had agreed on a way's back
15 and that wasn't the case, the wording was incorrect.

16 Q. You mean, you wanted it only if you were
17 still employed?

18 A. No, ma'am. I'm not saying that.

19 Q. Do you think you owe the money even though
20 you're not employed?

21 A. I owe Mr. Galloway some money, yes, I do.

22 Q. Is the some money that you owe him \$127,000?

23 A. I don't agree with that now, no.

24 MRS. COFIELD: Could I see Exhibit 1,
25 please.

1 BY MRS. COFIELD:

2 Q. I'll ask if you can take your time and look
3 at that document, and if you have any doubt, look at the
4 originals.

5 Is that your signature?

6 A. Yes, it is.

7 Q. Counsel has stipulated that is your
8 signature?

9 A. That's right.

10 Q. You accepted those monies for renovations in
11 the house in which you reside, correct?

12 A. Yes, that's right.

13 Q. Are those not the same monies that you have
14 not repaid to Mr. Galloway?

15 A. That's right.

16 Q. Is it not a fact that you owe Mr. Galloway
17 those monies?

18 A. I owe Mr. Galloway some money, yes.

19 Q. Galloway Corporation -- not some monies --
20 but \$127,000, Mr. Wise?

21 A. I borrowed -- I was loaned that \$127,000.

22 Q. Have you repaid any part of that \$127,000
23 loan back?

24 A. No, because I have not received any bonuses
25 according to our initial agreement to pay it back.

1 Q. Is it your testimony here today that the
2 only reason -- excuse me -- that the only method, if you
3 will, of repayment is your bonus?

4 A. No. If the house would sell for the amount
5 that I asked for it, Mr. Galloway would get that total
6 back.

7 Q. What if it doesn't sell for that amount, Mr.
8 Wise?

9 A. That was the reason on me hesitating in
10 saying the \$127,000 because I have \$30,000 in it, and I
11 wanted to re-coop my own money.

12 Q. That's not the question I have before you,
13 Mr. Wise. If you do not sell it for \$305,000, do you or
14 do you not still owe Galloway Corporation \$127,000?

15 A. That's what I borrowed from him.

16 Q. I asked you a different question. I
17 understand that's what you borrowed from him. If you do
18 not sell the house for \$305,000, do you or do you not
19 still owe Mr. Galloway Corporation \$127,000?

20 MR. JONES: I think that goes to the facts.
21 I mean, she's asking for a conclusion.

22 THE COURT: I think he can answer the
23 question. I'm not sure he understands the question.

24 MRS. COFIELD: I think he does, which is why
25 he's hesitated.

1 A. Let me explain this.

2 BY MRS. COFIELD:

3 Q. Well, first, answer the question, please,
4 Mr. Wise. If you don't sell the house for your asking
5 price, do you still owe him, Galloway Corporation,
6 \$127,000?

7 A. No. Just let me -- no -- let me answer it
8 this way. The only reason -- the only reason is my
9 \$30,000. If I sold it for less, I would be losing part of
10 my \$30,000.

11 Q. I understand that.

12 A. That's why I'm saying I don't owe him the
13 127. If the house sold for the 305, or whatever, that way
14 I would get my money and Mr. Galloway would get his money
15 back.

16 Q. So my question is, if you do not and are not
17 successful in getting your asking price, but, in fact, you
18 get less, then do you owe him, that is, Galloway
19 Corporation?

20 A. I don't feel like I do if it sells for less
21 where I would be losing part of my money.

22 Q. You mean, because you use some of your own
23 money to renovate your own house in which you reside, and
24 you don't get your asking price, you don't owe somebody
25 the money?

41.

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J W WISE DIRECT

1 MR. JONES: Your Honor, I --

2 THE COURT: Sustained. You're arguing with
3 him. He can answer the question, but you are arguing with
4 him.

5 BY MRS. COFIELD:

6 Q. At this time, is it your testimony that
7 there is any agreement between yourself and Galloway
8 Corporation that you got these monies and you had to repay
9 these monies, if, and only if, you re-coop your own
10 investment, any agreement of that nature?

11 A. No. The agreement --

12 Q. Thank you.

13 A. The agreement Mr. Galloway and I had
14 initially was that I would pay the money back on bonuses.
15 It was no mention of the salary structure of it. It was
16 just in the bonus, of that, I would pay this back. And I
17 never would have gotten into this situation had I known
18 the circumstances as they are now would have happened. I
19 know what I've done now. This is why me hesitation. You
20 asked me if the house sold whether I would get my money
21 back, I would give it to Mr. Galloway, no problem.

22 Q. Let's say you only get \$250,000, okay.

23 A. Then we'll both lose money.

24 Q. So you are saying -- strike that.

25 I will reiterate, you do agree, do you not,

1 and have you not just admitted there was no agreement
2 between yourself and Galloway Corporation that the sale
3 price of this house in any way determined whether or not
4 you had to repay these monies? You never discussed that,
5 did you?

6 A. Yes, I think that's -- I think that was
7 brought up with Paul in conversation. Now, not initially,
8 in the beginning, no.

9 Q. Thank you. When we say not initially, we
10 mean not in the year '89 it wasn't brought up?

11 A. No.

12 Q. Okay. Have you -- have there ever been --
13 has there ever been a situation where there was any
14 physical injury to you as a result of this transaction in
15 any negotiations between the two of you?

16 MR. JONES: Objection, Your Honor.

17 THE COURT: Sustained. What's the
18 relevancy?

19 MRS. COFIELD: Your Honor, the allegation
20 which appears in his motion for judgment is on this same
21 exact grounds.

22 THE COURT: I'll sustain the objection.
23 It's not an issue in this case.

24 BY MRS. COFIELD:

25 Q. Can you give this Court -- excuse me -- are

1 THE COURT: What's the answer first?

2 THE WITNESS: What was the question again?

3 BY MR. JONES:

4 Q. The question was whether Mr. Galloway gave
5 you an explanation for why you were terminated by Galloway
6 Corporation.

7 A. He looked at me and told me, I think you
8 know why. That was his exact words.

9 Q. Did he say anything more than that by way of
10 an explanation?

11 A. I don't know if it was at this time -- maybe
12 it was later -- but he mentioned to me that he had
13 complaints from a few contractors about my dealings with
14 them.

15 MR. JONES: I have no other questions at
16 this time.

17

18 CROSS-EXAMINATION

19 BY MRS. COFIELD:

20 Q. At no time has Galloway Corporation forgiven
21 this loan in full or in part, has it?

22 A. I'm sorry.

23 Q. Galloway Corporation has made demand on you
24 for payment, correct?

25 A. Yes.

1 Q. You haven't paid them, correct?

2 A. Correct.

3 Q. At no time did they say, forget about it,
4 Jim, don't worry about it? They didn't forgive it at any
5 time?

6 A. No, ma'am.

7 Q. Simply because you got fired doesn't mean
8 you don't owe it, right, you've admitted you still owe it?

9 A. Mr. Galloway, I owe him money, yes.

10 Q. And would you sign any note at this time if
11 that were redrafted, the note that you objected to because
12 it contained a provision for interest, would you then sign
13 it?

14 MR. JONES: Objection, Your Honor. I think
15 that --

16 MRS. COFIELD: It was opened, and over my
17 objection it was opened.

18 THE COURT: Overruled. I sustain the
19 objection. I sustain the objection.

20 BY MRS. COFIELD:

21 Q. You have had an offer on this house, and I
22 submit this over the objection, a continuing objection,
23 but it was brought up on direct, you have entertained an
24 offer or received an offer for purchase of this house for
25 \$277,000, have you not?

1 MR. JONES: Objection, Your Honor.

2 A. Yes.

3 THE COURT: Overruled.

4 MR. JONES: I think this goes to -- one of
5 the great problems in this case has been the inability for
6 us to negotiate what we consider a fair settlement with
7 the other side. And she's going into an offer made by the
8 other side in settlement.

9 MRS. COFIELD: I am not --

10 THE COURT: I don't know who the offer was
11 made by.

12 MRS. COFIELD: It was not, Your Honor.

13 This --

14 THE COURT: I will overrule your objection
15 to that particular question.

16 BY MRS. COFIELD:

17 Q. You have received an offer for purchase of
18 the house which was on the market which is the subject of
19 this suit for \$277,000, correct?

20 A. Yes, ma'am.

21 Q. You have received that offer from Mr. Paul
22 Galloway?

23 A. That's right.

24 MR. JONES: Objection, Your Honor. I think
25 that goes to the question of the settlement discussion.

46:

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1 THE COURT: I overrule your objection.

2 BY MRS. COFIELD:

3 Q. And if you add to \$149,000, which is the
4 contract price that you closed on on December 20th, 1989,
5 that's what you first paid for it, right?

6 Do you want to look and review Exhibit 1,
7 excuse me, Exhibit 2, what you paid for that?

8 A. 130.

9 Q. You signed for \$149,000?

10 A. I realized that when I got these papers a
11 couple of days ago that I was signing something without
12 really paying attention to what I was doing.

13 Q. But that's for \$149,000 in 1989, correct,
14 for the house and then the lot?

15 A. I was signing it under the impression that I
16 was paying initially 119. That is what I was quoted for
17 the house.

18 Q. Is that your signature?

19 A. Yes, ma'am. I signed it.

20 Q. Is that for \$149,000?

21 A. That's what that says, yes, ma'am.

22 Q. If you add \$149,000 and you add \$127,000 to
23 it, you will get \$176,000, correct, I mean, \$276,000,
24 correct?

25 A. If those calculations are right, yes, ma'am.

1 Q. You have rejected that proposal to purchase
2 this house and get you out from under and repay the loan?

3 MR. JONES: Your Honor, I think --

4 THE COURT: I will have to sustain that
5 objection at this point.

6 BY MRS. COFIELD:

7 Q. You have rejected that offer of purchase
8 which stands today, correct?

9 THE COURT: I'll sustain the objection.
10 I'll sustain the objection.

11 MRS. COFIELD: He said I offered to purchase
12 the house over no objection from counsel.

13 THE COURT: Sustained. At this point your
14 going into --

15 BY MRS. COFIELD:

16 Q. Will you sell the house for \$277,000?

17 MR. JONES: Objection.

18 THE COURT: Overruled.

19 BY MRS. COFIELD:

20 Q. Will you sell the house for \$277,000?

21 A. Currently not, because I would lose my
22 \$30,000 in it. If I get that totally, you know, I will
23 lose every penny that I put into this house, not counting
24 all of my time in building it and the aggravation through
25 all of this.

1 What Galloway has offered is what he --
2 127,000 plus paying the loan off, that would clear
3 everything except for my \$30,000 that I want out of it.

4 MRS. COFIELD: I have no further questions.

5 MR. JONES: No questions, Your Honor.

6 THE COURT: You may step down.

7 Any other witnesses?

8 MR. JONES: No, Your Honor. We rest.

9 THE COURT: Any rebuttal?

10 MRS. COFIELD: There are one or two
11 questions, you know, for Mr. Galloway, please.

12
13 PAUL A. GALLOWAY, recalled as a witness by
14 and on behalf of the Plaintiff, having been first duly
15 sworn, was examined and testified as follows:

16
17 DIRECT EXAMINATION

18 BY MRS. COFIELD:

19 Q. Mr. Galloway, did you ever have a
20 conversation with Mr. Wise about the terms in the note?

21 A. Yes.

22 Q. What was the nature of the conversation,
23 please.

24 A. The note was for 110 -- for 127,000 plus
25 interest.

1 Q. I know what it said but what's the nature of
2 your conversation, if any, with Mr. Wise concerning its
3 terms and conditions?

4 A. None.

5 Q. So you never had a conversation with Mr.
6 Wise about it then?

7 A. When I handed him the note, we had a
8 conversation.

9 Q. I mean, about the terms, I don't mean, hi,
10 how are you?

11 A. No, nothing about the terms.

12 Q. Did he ever ask you to revise, modify or
13 otherwise adjust any term or provision in that note?

14 A. No.

15 Q. Would you and are you -- strike that.
16 Was the agreement for no interest?

17 A. Yes.

18 Q. At what point or why then does the note
19 include interest?

20 A. At the time, I thought it was a prudent
21 thing to do because I didn't know what Mr. Wise's status
22 would be.

23 Q. Would you remove the interest provision?

24 A. Yes.

25 Q. As you sit here today would you be agreeable

1 to obtaining a judgment for the money absent prejudgment
2 interest?

3 A. Yes.

4 Q. Was the agreement then between yourself and
5 Mr. Wise an agreement that was in any way --

6 MR. JONES: Objection. I believe she's
7 leading the witness.

8 THE COURT: Sustained.

9 BY MRS. COFIELD:

10 Q. What, if any, relationship or impact, that
11 is, rather, on your agreement did his continued employment
12 have?

13 A. None.

14 MRS. COFIELD: I have no further questions.

15 MR. JONES: No questions.

16 THE COURT: No questions.

17 You may step down.

18 THE COURT: Plaintiff rests?

19 MRS. COFIELD: Plaintiff rests, Your Honor.

20 THE COURT: Defendant rests?

21 MR. JONES: Defendant rests, Your Honor.

22 THE COURT: Any argument?

23 MRS. COFIELD: I'm always tempted but the
24 logic tells me to waive it. I think it's obvious as to
25 what has happened here.

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

GALLOWAY CORPORATION,

Plaintiff,

v.

CHANCERY NO. CH90-3610

JAMES W. WISE, et al.,

Defendants.

FINAL DECREE

CAME THIS DAY, July 19, 1991, the parties, in person and by counsel, pursuant to notice, upon the leave granted by the Court at the trial of the matter on May 2, 1991, for the filing of briefs by counsel before the final judgment of the Court, upon the filing of such briefs by the parties, and was argued by counsel.

UPON CONSIDERATION WHEREOF, the Court having considered the briefs, the law cited by counsel and the evidence adduced at trial, and the Court being of the opinion that there is no fraud on the part of the defendant, and the Court being of the opinion that no breach of the agreement has occurred since the agreed time of payment has not arisen; and

In accordance with the foregoing, it is hereby ADJUDGED, ORDERED and DECREED that the plaintiff's Bill of Complaint be and hereby is dismissed without prejudice.

ENTERED this 16th day of August, 1991.



Judge

SEEN AND OBJECTED TO:

Judith M. Cofield, Esquire

p.q.

SEEN:

Robert G. Jones, Esquire

p.d.

II. ASSIGNMENTS OF ERRORS

1. The Court erred in ruling that Wise was not in default at the time of trial.

2. The Court erred in failing to impose a constructive trust on the title and/or on any sale proceeds.

H-10
GALLOWAY CORPORATION

P.O. BOX 62055
VIRGINIA BEACH, VA 23462

4794
514 2

Jan. 3 19 89

PAY TO THE
ORDER OF

James W. Wise

\$ 32,000.00

GALLOWAY
CORPORATION

32000 DOLS 00 CTS

DOLLARS

**DOMINION
BANK**



Norfolk, Va. 23501

FOR Loan - house

James J. Smith

⑈00004794⑈ ⑆051401328⑆ 73 55003288⑈

⑈0003200000⑈

GALLOWAY CORPORATION

P.O. BOX 62055
VIRGINIA BEACH, VA 23462

4837

514 2

Feb. 9 19 89

PAY TO THE
ORDER OF

James W. Wise

\$ 25,000.00

GALLOWAY
CORPORATION

25000 DOLS 00 CTS

DOLLARS

**DOMINION
BANK**



Norfolk, Va. 23501

FOR Loan - house

Chf C Long

⑈00004837⑈ ⑆051401328⑆ 73 55003288⑈

⑈0002500000⑈

H-10
GALLOWAY CORPORATION

P.O. BOX 62055
VIRGINIA BEACH, VA 23462

SP 4892

514 2

April 5 19 89

PAY TO THE
ORDER OF

James W. Wise

\$ 17,000.00

GALLOWAY
CORPORATION

17000 DOLS 00 CTS

DOLLARS

**DOMINION
BANK**



Norfolk, Va. 23501

FOR Loan - house

Chf C Long

⑈00004892⑈ ⑆051401328⑆ 73 55003288⑈

⑈0001700000⑈

GALLOWAY CORPORATION

P.O. BOX 62055
VIRGINIA BEACH, VA 23462

4945

68-132
514 2

May 25 19 89

PAY TO THE
ORDER OF

James W. Wise

\$ 33,000.00

GALLOWAY CORPORATION 33000 DOLS00 CTS

DOLLARS

DOMINION
BANK



Norfolk, Va. 23501

Loan-house

FOR

Chp L Long

⑈00004945⑈ ⑆051401328⑆ 73 55003288⑈

⑈0003300000⑈

GALLOWAY CORPORATION

P.O. BOX 62055
VIRGINIA BEACH, VA 23462

5092

68-132
514 2

Nov. 16 19 89

PAY TO THE
ORDER OF

James W. Wise

\$ 20,000.00

GALLOWAY CORPORATION 20000 DOLS00 CTS

DOLLARS

DOMINION
BANK



Norfolk, Va. 23501

Loan-house

FOR

Chp L Long

⑈00005092⑈ ⑆051401328⑆ 73 55003288⑈

⑈0002000000⑈

RESIDENTIAL CONTRACT OF PURCHASE

THIS CONTRACT OF PURCHASE made this day of August 25, 19 88 between Paul A. Galloway, whose address is 2996 Island Ln., Va. Beach, VA 23454, owner of record of the Property sold herein, (the "Seller", whether one or more), and James W. Wise, whose address is 4141 Shore Line Cir., Va. Beach, VA 23452 (the "Purchaser", whether one or more) and n/a, Listing Broker for the Property, as defined below, and n/a, Selling Broker for the Property.

1. **REAL PROPERTY.** Purchaser agrees to buy and Seller agrees to sell the real estate, all improvements thereon, and if not fronting on a public road, a recorded right of way providing adequate access thereto, described, located in the County or City of _____, Virginia, and described as:

Street Address 3017 Lynnhaven Dr., Virginia Beach, VA 23451

Legal Description Lot 44, as shown on a certain plat entitled "Section 2, Lynnhaven Colony".

2. **PERSONAL PROPERTY INCLUDED:** all improvements thereon

3. **PURCHASE PRICE:** The purchase price is One Hundred Forty Nine Thousand ----- Dollars (\$ 149,000.00) which shall be paid as follows:

(a) \$ 2,000.00 earnest money by (i) X check or cash to be held in escrow by Selling Agent, as agent, until settlement and then credited to Purchaser, or until this contract is otherwise terminated and it is disbursed in accordance with the Standard Provisions on the REVERSE SIDE HEREOF, OR (ii) _____ promissory note of Purchaser payable on _____, 19 _____, and held by Selling Agent in accordance with (i) above.

(b) \$ _____ (approximately) by assumption of the unpaid principal balance and all obligations of Seller on the existing loan secured by a deed of trust on the property, at an interest rate not exceeding _____ and an assumption fee not exceeding \$ _____

(c) \$ 134,100.00 by the proceeds of a (X) Conventional, () VA, () FHA, () Other (Select One) first deed of trust on the Property, with a term of 15 years, bearing interest (X) at a fixed rate not exceeding 10 % per year, or () at an adjustable rate with an initial rate not exceeding _____ % per year, and requiring not more than a total of _____ loan discount points, excluding a loan origination fee, of which points Seller agrees to pay all % loan discount points. (approximately if loan being assumed in (b) by deferred purchase money financing of Seller secured by a (_____ first) (_____ second) deed of trust on the Property, bearing interest at the rate of _____ % per year, amortized over _____ years, payable in monthly installments of \$ _____, with a final payment _____ years after settlement. A late payment fee of 5% will be charged on any payment not received by the end of 15 calendar days after its due date. The note, or any portion may be prepaid without penalty at any time. The deed of trust shall be subject to call in event of sale or transfer of the property. The note and deed of trust shall be in form acceptable to Seller's attorney.

(d) \$ _____ the balance of the purchase price payable in cash or by cashier's or certified check at settlement.

(e) \$ 12,900.00

(f) \$ _____ additional financing terms. (Describe in paragraph 7 below.)

\$ 149,000.00 TOTAL PURCHASE PRICE (The total of a, b, c, d, e, f above, as applicable).

4. **SETTLEMENT AND POSSESSION:** Settlement shall be made at Virginia Beach, Virginia on October 15, 19 88. Possession shall be given at settlement, unless otherwise agreed in writing by the parties.

5. **REAL ESTATE COMMISSION:** Seller represents that he is party to a listing agreement with the Listing Broker pursuant to which the Listing Broker will be paid a fee for services. From that fee, the Selling Broker is to receive a fee of \$ n/a. Seller hereby authorizes and directs the settlement agent to disburse from the Seller's proceeds at settlement the Selling Broker's fee and the Listing Broker's fee provided the settlement agent is delivered prior to settlement the listing agreement between Seller and Listing Agent or a statement signed by Seller stating the fee to be paid the Listing Broker.

6. **CONDITIONS:**

(a) **Financing:** This contract is contingent upon Purchaser obtaining written commitment for the loan assumption in paragraph 3(b) or the third party financing in paragraph 3(c) above. Purchaser agrees to apply for such financing within five (5) business days of the date of acceptance of this Contract by Seller and to diligently pursue obtaining a commitment for such financing. Purchaser shall notify Seller in writing at the above address that he has received the financing commitment before 5:00 p.m. local time on n/a, 19 88. In the event notice is not received by Seller by said deadline then this Contract shall be terminated as of said date, unless the parties prior thereto have agreed in writing to an extension of time, and the earnest money deposit shall be returned to Purchaser. Failure of Purchaser to make such application or to diligently pursue obtaining such financing shall be a default hereunder.

(b) **Other Conditions:** _____

7. **OTHER TERMS:** _____



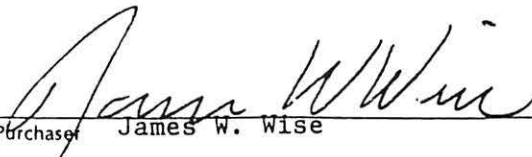
8. STANDARD PROVISIONS ON REVERSE SIDE HEREOF: All of the Standard Provisions on the Reverse Side Hereof are understood and shall apply to this Contract except the following numbered Standard Provisions are hereby deleted: none
(If none are deleted, state "None" in this blank.)

9. ACCEPTANCE: This offer shall remain in effect until 5:00 P.M. (time), October 15, 19 88 and if not accepted within that time by delivery of a signed copy of this Contract to Purchaser or Purchaser's designated representative, it shall become null and void.

Seller accepts this offer at 10:00 A.M. (time),
August 25, 19 88

 (SEAL)
Seller Paul A. Galloway

Seller (SEAL)

 (SEAL)
Purchaser James W. Wise

Purchaser (SEAL)

I hereby acknowledge receipt of the earnest money deposit herein.
() check () cash () note

Date: _____

n/a

it/Firm n/a

Selling Agent

n/a

Agent/Firm

n/a
By: _____
Listing Agent

JAMES W. WISE 241-62-8509 10-86

PHONE 431-0031

4141 SHORE LINE CIRCLE

VIRGINIA BEACH, VA 23452

8/25 19 88 486

58-132
514 14

PAY TO THE
ORDER OF

Paul Galloway

\$ 2,000

two thousand

no
100

DOLLARS

DOMINION
BANK



Norfolk, Va. 23501

DEPOSIT ON HOUSE

MEMO

AT 3017 LYNHURST DR

James W. Wise

⑆05⑆40⑆328⑆ 73 234⑆6003⑆ 0486

U33333

BK 2879 PG 0956

195⁰²

DEED OF BARGAIN AND SALE

THIS DEED, made this 20th day of December, 1989, by and between PAUL A. GALLOWAY, homme sole, first party, and JAMES W. WISE, homme sole, second party, whose address is 3017 Lynnhaven Drive, Virginia Beach, Virginia 23451

WITNESSES:

That for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the said first party does hereby grant and convey with GENERAL WARRANTY and English covenants of title to JAMES W. WISE, the following described property, as his sole and separate equitable estate, free from the control and marital rights of any present or future wife and free from any dower rights or inchoate dower rights of any present or future wife of the second party, all of which are hereby expressly excluded, and with the sole and complete authority in the said second party to a lien, convey, encumber and otherwise deal with and dispose of the same without necessity of joinder by or with any present or future wife of the second party to-wit:

ALL THAT certain lot, piece or parcel of land, with the buildings and improvements thereon, lying, situate and being in the Lynnhaven Magisterial District of Princess Anne County, Virginia, and known, numbered and designated as Lot 44, as shown on a certain plat entitled "Section 2, Lynnhaven Colony," made by Alonza L. Cherry, Srveyor, dated April 27, 1954, and duly of record in the Clerk's Office of the Circuit Court of Princess Anne County,

CLARK & STANT, P.C.
ATTORNEYS
VIRGINIA BEACH, VIRGINIA

GPIW: 14991844650000

60



Virginia Map Book 37 at page 8, reference to which said plat is hereby made for a more particular description thereof.

IT BEING the same property conveyed to the first party herein by deed of Francis E. Evans and Mary E. Evans, husband and wife, dated March 20 1987 and recorded in the aforesaid Clerk's Office in Deed Book 2609, at page 1807.

The above property is conveyed subject to the conditions, restrictions, reservations and easements if any duly of record affecting the aforesaid property and constituting constructive notice.

WITNESS the following signatures and seals:

Paul A. Galloway (SEAL)
PAUL A. GALLOWAY

COMMONWEALTH OF VIRGINIA
AT LARGE

The foregoing instrument was acknowledged before me in the City of Virginia Beach, this 30th day of December, 1989, by PAUL A. GALLOWAY, homme sole.

James J. Smith
Notary Public

My Commission Expires: 12-31-92
3/31/91

A Copy Teste: J. Curtis Fruit, Clerk
By J. Curtis Fruit D.C.

CLARK & STANT, P.C.

VIRGINIA: See In the Clerk's Office of the Circuit Court of Virginia Beach 21 of 89 at 3:42 this instrument was received and upon certificate of acknowledgment thereto annexed, admitted to record. The tax imposed by §58.1-802 of the Code has been paid, in the amount of \$ 130.00.

TESTE: J. CURTIS FRUIT Clerk

61

By: J. Curtis Fruit D.

20
67

10,000 JW

THURS 1 MAY

1030
A
2

VA POWER		175.02
STEVE POTEET		1311.00
✓ TEMPSVILLE	—	1710.63
✓ LOWES	—	10,466.17
✓ LUMBER CITY	—	1452.08
✓ SEABOARD	—	8,288.11
GEBEL MCGEE'S		1,925.00
BOB JOHNSON'S		4,076.38
LARRY OWENS		1,005.00
✓ FRANK VILLA BUILDING	—	26,467.86
HALL HODGES		180.64
✓ BATCHELDER COLLINS		899.20
DAN MURPHY		1460.00
ROBERT BRISTOW		875.00
✓ THE DESIGN COLLABORATIVE	—	3,394.00
✓ SHED	—	7,148.01
LONGSTAR		1,582.28
! CAPITAL CONCRETE		2228.91
✓ SPIVY	—	477.30
✓ CAMPOSTELLA	—	2366.28
NORFOLK SASA		577.29
PRINCESS ANU PLUMBING		10,284.50
JAMES WISE JR		2628.00
BY BLIND SPOT		2,140.00
HARRY HILL		1,300.00
DANNY HILL		515.00
KAREN MITCHEM		100.00
GIBSON EQUIP		261.25
ALBERT GILL		325.00
COMMERCIAL GRADEWAG		1,375.00
ET CHAPMAN		2749.75
QUALITY INSULATION		182.00
STANLEY SMITH		195.00

(100,121.66)



MELVIN JOHNSON	100.00
GALLUP SURVEY	205.00
MR FORBES	324.00
JOANNE HOUSE	112.50
VIA L JAR	352.50
C S HINGS	92.50
OLSTEN	128.65
ADVANCE	20.00
SANDRA TALLEY	150.00
GENERAL TILE	8,192.00
HELEN MARY TAYLOR	500.00
MARIC SUMBORSKI	1,000.00
SKI'S TOPS	3,064.00
DONALD HUMES	75.00
AYERS INSULATION	2,056.00
THOMAS JONES ROOFING	3,250.00
ADDINGTON BEHMON	888.00
MILLER OVERHEAD DOOR	810.00
ABC EXTERMINATING CO.	120.00
WACC EQUIPMENT CO	54.97
TAMES HOWERY	400.00
SEWCO	28.03
GRIFFIN CONST	600.00
BAY DISPOSAL	363.00
DONALD LEMON	644.75
DAVID DELOSH	52.00
DAVID GUNN	242.00
HARGRELL GLENN	50.00
CLIFFORD HAMILTON	75.00
JOE BYRON	328.00
CANDACE SUMMERS	
WHITLOCK BROS	547.29
WALKER HARRIS	165.00
DAVID SPARKS DAY MGMT	4,270.55
DAVID SPARKS DAY MGMT	789.98

COX	36,95-
22.95 HY UTILITY PERMIT DRIVING	10 00
UTILITY PERMIT	594 00
<u>BUILDING PERMIT</u>	<u>82 00</u>
PAINTE CONTRACTOR ?	7,736.79
ADVANCE	-
GREENBRIAR	2,581.82
LOWES	28 39
	<u> </u>

Costs
pl. by JNair

141,362.33	
<u>144,750.38</u>	
- 18,000.00	
126,750.38	127,362.33
<u>107,000.00</u>	
19,750.38	16,362.33

107,000 Loan to JW
20,000 - "

141,362	1st
18,000	W. Nair
<u>123,362</u>	Loan
203,362	
<u> </u>	+ Interest