

Record No. 5753

In the
Supreme Court of Appeals of Virginia
at Richmond

WRIGHT AND HUNT, INC.

v.

LLOYD E. WRIGHT, ET AL.

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY

RULE 5:12 BRIEFS.

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

NOTICE TO COUNSEL

This case probably will be called at the session of court
to be held APR 1964

You will be advised later more definitely as to the date.

Print names of counsel on front cover of briefs.

Howard G. Turner, Clerk

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 5753

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 14th day of October, 1963.

WRIGHT AND HUNT, INC.,

Appellant,

against

LLOYD E. WRIGHT AND E. LOUISA WRIGHT,

Appellees.

From the Circuit Court of Fairfax County
Arthur W. Sinclair, Judge

Upon the petition of Wright and Hunt, Inc., an appeal is awarded it from a decree entered by the Circuit Court of Fairfax County on the 26th day of February, 1963, in a certain chancery cause then therein depending wherein the said petitioner was plaintiff and Lloyd E. Wright and another were defendants; upon the petitioner, or some one for it, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

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page 1]

Filed in Circuit Court Clerk's Office Aug. 17, 1962.

THOMAS P. CHAPMAN, JR.

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BILL OF COMPLAINT

To: The Honorable Judges of said Court.

Your Complainant respectfully represents:

1. It is a Virginia corporation, duly organized under the statutes of the Commonwealth of Virginia.

2. By lease dated June 9, 1956, and recorded among the land records of Fairfax County, Virginia, in Deed Book 1450, at Page 320, the Defendants leased the basement floor and the main floor of a building owned by them at the intersection of Maple Avenue and Mill Street in the Town of Vienna, Virginia, to William H. Hunt for the purpose of sale, storage and display of goods, wares and merchandise or services, or any other legitimate business. A copy of said lease is filed with this Bill of Complaint, identified as Exhibit "A."

3. Said lease contained a provision that the Defendants approved of "the proposed transfer or assignment" of the "lease to Wright & Hunt, Inc." Upon execution of the lease William H. Hunt immediately transferred and assigned all his right, title and interest in the said lease to Wright & Hunt, Inc.

4. Following the execution and assignment of the said lease the Complainant began the operation of a retail business in the premises using all of the main floor and all of the basement floor for the sale, storage or display of goods, wares and merchandise. Customers of the Complainant moved between the two floors by means of an interior stairway which, at the time of the lease, was open, permitted customers on either floor to see that merchandise was offered for sale on the other floor, and provided easy movement from one floor to the other.

5. The Defendants in said lease agreement covenanted and

page 2]

represented that the premises with the improvements thereon and appurtenances thereto were all "in conformity with law and in a safe, dry, clean and tenantable condition and in good order and repair" on the first day of the term. The Defendants, in said lease agreement further covenanted that they would, at their own cost and expense, maintain and make all necessary repairs to the demised premises and the building in which the same are located and keep the same in good and tenantable condition and repair. The Defendants in said lease further covenanted and agreed that the Complainant "shall peaceably and quietly have, hold and enjoy the demised premises and all appurtenances during the full term of the lease or any extension or renewal thereof."

6. Thereafter, on or about August 1, 1958, the State Fire Marshal caused an inspection of the premises to be made. Following said inspection the State Fire Marshal notified the Defendants of certain violations of the Virginia Fire Hazards Law and of the Virginia Fire Safety Regulations in the premises and required that certain steps be taken to bring the premises into compliance with said law and regulations. Said action by the Fire Marshal was not the result of any fault, negligence, or action by the Complainant. The Defendants were given alternative methods of bringing the premises into compliance:

- (a) The construction of certain exits from the basement and various other changes, including the enclosure of the interior stairway leading from the basement to the first floor.
- (b) The installation of an approved automatic sprinkler system.

An information copy of this letter was sent to Mr. W. H. Hunt of Wright & Hunt, Inc. A copy of said notice is filed herewith, identified as Exhibit "B."

page 3] 7. By letter of August 11, 1958, sent to Mr. L.

E. Wright by registered mail and received by him, the Complainant advised the Defendants that the enclosure of the interior stairway would destroy the usefulness of the downstairs area for the purpose for which it was leased. A copy of said letter is filed herewith, identified as Exhibit "C."

8. No action had been taken by the Defendants to bring the premises into compliance with the Virginia Fire Hazards Law and the Virginia Fire Safety Regulations by February 6, 1961, on which date the Virginia State Fire Marshal again wrote to Mr. L. E. Wright advising him that unless the viola-

tions noted in Exhibit "B" were corrected by March 15, 1961, legal action would be instituted to enforce compliance. In said letter the State Fire Marshal again strongly recommended that the building be equipped with an approved automatic sprinkler system. A copy of said letter is attached to this Bill of Complaint, identified as Exhibit "D."

9. By March 20, 1961, no action had been taken by the Defendants to correct the violations noted by the State Fire Marshal. On that date Wright & Hunt, Inc., wrote a letter to the Defendants, by registered mail with return receipt requested, advising them of the position of Wright & Hunt, Inc., with reference to the violations, its belief that the Defendants were responsible for bringing the premises into compliance with the requirements of the Virginia Fire Hazards Law and the Virginia State Fire Regulations, its claim that enclosing the interior stairway would destroy the usefulness of the downstairs store for the purpose for which it was leased, and further advising the Defendants that the Complainant would hold them responsible for any damage and inconvenience suffered by it through a failure to perform the work required by the State Fire Marshal, and for any action which prevented the use of the premises in
page 4] the manner and to the extent contemplated by the lease. A copy of this letter is attached to this Bill of Complaint, identified as Exhibit "E."

10. By letter of April 29, 1961, Mrs. Lois H. Miller, acting as attorney for the Defendants, wrote to Mr. R. J. Lillard, acting as attorney for the Complainant, advising that the Defendants had a contractor ready to perform the work required by the State Fire Marshal, including the enclosure of the interior stairway, and invited suggestions as to the method by which the interior stairway could be enclosed which were satisfactory to the Complainant. A copy of said letter is attached hereto, identified as Exhibit "F."

11. By letter of May 1, 1961, Mrs. Miller was advised that the Complainant could not agree to the enclosure of the interior stairway by any method and that while the Complainant was willing to confer with the Defendants, and/or their representatives, relative to a plan which would meet the requirements of the State Fire Marshal, the Complainant believed that a conference to consider alternative methods of enclosing the interior stairway could serve no purpose because the Complainant could not agree to any method of enclosure. A copy of said letter is filed herewith, identified as Exhibit "G."

12. Defendants have never fully complied with either alter-

native required by the State Fire Marshal as set forth in paragraph 6 above. As a result the said Fire Marshal has ordered the Complainant to cease using the basement area for retail sales and has forbidden the Complainant to take customers into said area for any purpose.

13. The Defendants have enclosed the said interior stairway in a manner which greatly interferes with the use of the main floor as a retail selling area, interferes with customer traffic, prevents effective display of goods for sale, and decreases the general attractiveness of the premises for the purpose for which they were leased.

page 5] 14. The Defendants enclosed the said interior stairway over Complainant's strong protest and with full knowledge that they were destroying the use of the basement area for the purpose of retail sales and display and that they were greatly interfering with the use of the main floor for such purposes. The Defendants have subsequently refused to expend any additional sums to correct or alleviate the damage to Complainant's business caused by their arbitrary actions.

15. The Complainant believes, and therefore avers, that the wilful, wanton and reckless breach of the covenants of the lease with full knowledge of the harmful effects to the Complainant which would necessarily flow from such breach amounted in law to actual or constructive malice.

16. As a direct and proximate result of the aforesaid actions of the Defendants breaching the covenants of the aforesaid lease agreement, the Complainant has suffered the following damages:

(a) Expenses of moving goods and fixtures from the basement to the main floor for purposes of sale and display;

(b) Loss of the entire basement area as a sales and display area;

(c) Loss of a large portion of the value of the main floor as a sales and display area;

(d) Loss of gross sales and the consequential and severe loss of profits, loss of capital to use in Complainant's business, loss of credit, loss of discounts on purchases, and the necessity to mark down prices in order to move goods from inventory;

(e) Complainant has lost many customers and will have to expend sums to regain their trade;

(f) The fair rental value of the premises has been greatly reduced.

And the Complainant will continue to suffer the damages enumerated in paragraphs b - f above, which damages are irreparable.

page 6] 17. The Complainant has made demand upon the Defendants to correct the situation, to settle for the damage already caused, and to restore the premises to the degree of usefulness contemplated by the lease. A copy of said demand letter is filed with this Bill of Complaint, identified as Exhibit "H." No reply has been received to this demand letter and no effort has been made by the Defendants to compensate the Complainant for the loss sustained and to restore the premises to a condition which would permit use thereof to the extent and in the manner contemplated at the time the lease was executed.

WHEREFORE, the Complainant prays:

1. (A) That the Defendants be required to remove the enclosure installed by them around the interior stairway and to take such other steps as may be required to permit use of the premises by the tenant in the manner and to the extent provided by the lease; or, in the alternative,

(B) That the said lease agreement be reformed and the rent that the Complainant be required to pay be reduced by the sum of \$3,500.00 per year; or, in the alternative,

(C) That the Complainant be awarded judgment of and from the Defendants, jointly and severally, in the sum of \$10,000.00, which sum is required to remove the said enclosure and to restore the premises to such condition as will permit their use in the manner and to the extent contemplated by the lease.

2. That the Complainant be awarded judgment in the sum of \$50,000.00 of and from the Defendants, jointly and severally, for damages suffered by the Complainant for the items enumerated in paragraph 16 of this Bill of Complaint.

3. That the Complainant be awarded punitive damages of and from the Defendants, jointly and severally, in the sum of \$100,000.00.

page 7] 4. And for general relief.

Respectfully submitted,

WRIGHT & HUNT, INC.
By R. J. LILLARD
Counsel

* * * * *

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Filed Sep. 10, 1962.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

* * * * *

ANSWER

Comes now the Defendant, Lloyd E. Wright, and for answer to the Bill of Complaint filed herein against him states as follows:

1. Neither admits nor denies the allegations contained in Paragraph No. 1 of said Bill;

2. Admits the allegations contained in Paragraph No. 2;

3. Admits the allegation contained in the first sentence of Paragraph No. 3 of said Bill, but neither admits nor denies the allegations contained in the balance of said paragraph and calls for strict proof thereof;

4. Neither admits nor denies the allegations contained in Paragraph No. 4 of said Bill and calls for strict proof thereof;

5. Believes that no response to Paragraph No. 5 of said Bill is required since the subject lease sets forth the covenants and representations of the parties thereto;

6. Neither admits nor denies the allegations contained in the first sentence of Paragraph No. 6; admits the allegations contained in the second sentence of Paragraph No. 6 to the effect that he was notified of certain violations; denies emphatically the allegations contained in the third sentence of Paragraph No. 6; and admits that he was given alternative methods of protecting the building; neither admits nor denies that an information copy of a letter was sent as alleged in the fifth sentence of Paragraph No. 6.

7. Neither admits nor denies the allegations contained in Paragraph No. 7 of said Bill.

page 11] 8. Denies the allegations contained in Paragraph No. 8 of said Bill to the effect that no action had been taken to comply with safety regulations by February 6, 1961; neither admits nor denies the allegations

concerned with a letter dated February 6, 1961 and calls for strict proof thereof;

9. Denies the allegations contained in the first sentence of Paragraph No. 9 of said Bill; neither admits nor denies the other allegations of said paragraph and calls for strict proof thereof;

10. Admits the allegations contained in Paragraph No. 10 of said Bill;

11. Neither admits nor denies the allegations contained in Paragraph No. 11 and calls for strict proof thereof;

12. Denies the allegations contained in the first sentence of Paragraph No. 12; neither admits nor denies the allegations contained in the balance of the paragraph and calls for strict proof thereof;

13. Denies the allegations contained in Paragraph No. 13 of said Bill;

14. Denies the allegations contained in Paragraph No. 14 of said Bill;

15. Denies the allegations contained in Paragraph No. 15 of said Bill;

16. Denies the allegations contained in Paragraph No. 16 of said Bill;

17. Admits the allegations contained in Paragraph No. 17 of said Bill to the effect a letter was received by him from the Complainant and that he has not replied to said letter.

18. By way of further defense to the Bill filed herein, the Defendant avers that if the Complainant has in fact suffered losses such as are set forth in said Bill, such losses were occasioned by the actions of the Complainant and page 12] other factors over which the Defendant had no control, and were not the result of any act or failure to act on the part of the Defendant.

And now having fully answered, the Defendant prays that the Bill of Complaint be dismissed and that he may have his costs herein expended.

LLOYD E. WRIGHT
Defendant

STATE OF VIRGINIA
COUNTY OF FAIRFAX, to-wit:

On the 10th day of September, 1962, Lloyd E. Wright appeared before the undersigned Notary Public for the County of Fairfax, Virginia, in said County, and made oath that he is one of the Defendants herein, and that the facts stated

in the foregoing Answer are to the best of his knowledge and belief.

ELIZABETH F. SIMPSON
Notary Public

My commission expires Jan. 5, 1963.

Miller & Kerr
Wright Building
Vienna, Virginia
Counsel for Defendant

By Lois H. Miller

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Filed Sep. 10, 1962.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

* * * * *

ANSWER

Comes now the Defendant, E. Louisa Wright, and for answer to the Bill of Complaint filed herein against her states as follows:

1. Neither admits nor denies the allegations contained in Paragraph No. 1 of said Bill;
2. Admits the allegations contained in Paragraph No. 2;
3. Admits the allegation contained in the first sentence of Paragraph No. 3 of said Bill, but neither admits nor denies the allegations contained in the balance of said paragraph and calls for strict proof thereof;
4. Neither admits nor denies the allegations contained in Paragraph No. 4 of said Bill and calls for strict proof thereof;
5. Believes that no response to Paragraph No. 5 of said Bill is required since the subject lease sets forth the covenants and representations of the parties thereto;
6. Neither admits nor denies the allegations contained in the first sentence of Paragraph No. 6; admits the allegations

contained in the second sentence of Paragraph No. 6 to the effect that she was notified of certain violations; denies the allegations contained in the third sentence of Paragraph No. 6; and admits that she was given alternative methods of protecting the building; neither admits nor denies that an information copy of a letter was sent as alleged in the fifth sentence of Paragraph No. 6.

7. Neither admits nor denies the allegations contained in Paragraph No. 7 of said Bill.

page 14] 8. Denies the allegations contained in Paragraph No. 8 of said Bill to the effect that no action had been taken to comply with safety regulations by February 6, 1961; neither admits nor denies the allegations concerned with a letter dated February 6, 1961 and calls for strict proof thereof;

9. Denies the allegations contained in the first sentence of Paragraph No. 9 of said Bill; neither admits nor denies the other allegations of said paragraph and calls for strict proof thereof;

10. Admits the allegations contained in Paragraph No. 10 of said Bill;

11. Neither admits nor denies the allegations contained in Paragraph No. 11 and calls for strict proof thereof;

12. Denies the allegations contained in the first sentence of Paragraph No. 12; neither admits nor denies the allegations contained in the balance of the paragraph and calls for strict proof thereof;

13. Denies the allegations contained in Paragraph No. 13 of said Bill;

14. Denies the allegations contained in Paragraph No. 14 of said Bill;

15. Denies the allegations contained in Paragraph No. 15 of said Bill;

16. Denies the allegations contained in Paragraph No. 16 of said Bill;

17. Admits the allegations contained in Paragraph No. 17 of said Bill to the effect a letter was received by her from the Complainant and that she has not replied to said letter.

18. By way of further defense to the Bill filed herein, the Defendant avers that if the Complainant has in fact suffered losses such as are set forth in said Bill, such losses were occasioned by the actions of the Complainant and other factors over which the Defendant had no control, and were not the result of any act or failure to act on the part of the Defendant.

And now having fully answered, the Defendant prays that

the Bill of Complaint be dismissed and that she may have her costs herein expended.

E. LOUISA WRIGHT
Defendant

STATE OF VIRGINIA
COUNTY OF FAIRFAX, to-wit:

On the 10th day of September, 1962, E. Louisa Wright appeared before the undersigned Notary Public for the County of Fairfax, Virginia, in said County, and made oath that she is one of the Defendants herein, and that the facts stated in the foregoing Answer are to the best of her knowledge and belief.

ELIZABETH F. SIMPSON
Notary Public

My commission expires Jan. 5, 1963

Miller & Kerr
Wright Building
Vienna, Virginia
Counsel for Defendant

By Lois H. Miller

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FINAL DECREE

This cause came on to be heard on the 4th, 5th and 6th days of February, 1963, upon the Bill of Complaint of Wright & Hunt, Inc., a Virginia corporation, upon the Answers of the Defendants Lloyd E. Wright and E. Louisa Wright, upon the testimony of witnesses taken *ore tenus*, upon the evidence presented, including the exhibits introduced by the parties and stipulations of counsel; and was argued by counsel.

Upon consideration whereof, the Court was of opinion that the Complainant, Wright & Hunt, Inc., was not entitled to any part of the relief sought in the Bill of Complaint; the Bill

of Complaint should be dismissed; the sums of money paid to the Clerk of this Court pursuant to an injunction order entered herein on the 2d day of November, 1962, should be paid to the Defendants which shall constitute full compliance by the tenant with tenant's obligation to pay rent, as required by a lease filed herein, through the month of February, 1963; Law Action No. 11248, based on an alleged non-payment of rent at the time said action was filed, having now become moot the injunction against further proceedings therein should be made permanent; and Wright & Hunt, Inc., principal, and its sureties should be relieved and discharged of liability upon their bond in the penalty of \$2,500.00.

WHEREFORE, IT IS ADJUDGED, ORDERED AND DECREED:

(1) The Bill of Complaint filed herein by the page 53] Complainant is hereby dismissed, with prejudice, to which action of the Court the Complainant, by Counsel, duly excepted on the ground that the decision of the Court is contrary to law and unsupported by the evidence.

(2) The sum of money now held by the Clerk of this Court pursuant to the terms of an injunction order entered herein on the 2d day of November, 1962, should be paid to the Defendants, Lloyd E. Wright and E. Louisa Wright. The Clerk is hereby directed to pay over said sum of money to the said Lloyd E. Wright and E. Louisa Wright, the payment so made to constitute full compliance by Wright & Hunt, Inc., Tenant, with its obligation to pay rent, as required by the lease filed herein, to March 1, 1963.

(3) The Defendants, Lloyd E. Wright and E. Louisa Wright, their attorneys, agents and employees, are permanently enjoined from proceeding further with Law Action No. 11248, a Motion for Judgment filed in this Court by them as Plaintiffs against Wright & Hunt, Inc., and William H. Hunt, Defendants. The Clerk of this Court is hereby directed to file an attested copy of this order in the file for Law Action No. 11248.

(4) The principal, Wright & Hunt, Inc., and its sureties, are relieved and discharged from liability upon a bond entered herein in the penalty of \$2,500.00 and said bond is hereby cancelled.

AND THIS DECREE IS FINAL.

Entered this 26th day of February, 1963.

ARTHUR W. SINCLAIR
Judge

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Filed Apr. 24, 1963

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

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NOTICE OF APPEAL & ASSIGNMENTS OF ERROR

The Complainant in the above-entitled suit, aggrieved by the final order entered herein on February 26, 1963, files this Notice of Appeal and assigns error in the following particulars:

(1) The Court erred in ruling that the Complainant is not entitled to any relief.

(2) The Court erred in denying the prayer of the Bill of Complaint for reduction in rent during the remaining term of the lease.

(3) The Court erred in refusing to award Complainant, as damages, a sum equal to the reduction in rental value of the premises from the date said reduction occurred to the date of trial, and the proven expenses to Complainant in moving goods and fixtures from the basement to the main floor for purposes of sale and display.

The uncontradicted evidence proved that Defendants enclosed the main stairway from the basement sales area to the main floor sales area in order to bring the leased premises into compliance with law. The uncontradicted evidence proved that the basement thereby was rendered unusable as a sales area, the rental value of the premises thereby was decreased, and the tenant (Complainant) thereby was required to expend sums of money in rearranging the goods and fixtures. Insofar as the final order denies relief to Complainant for the reduced rental value of the premises and the said out-of-pocket expenses, the same is not supported by the law and is contrary to the uncontradicted evidence.

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WRIGHT & HUNT, INC.
By Counsel

McCANDLISH, LILLARD & MARSH
 102 South Payne Street
 Fairfax, Virginia

By Randolph W. Church, Jr.
 Counsel for Complainant

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ADDITIONAL STATEMENT OF FACTS AND INCIDENTS OF TRIAL

A portion of the direct testimony of William H. Hunt having been lost by the reporter in this cause, the Complainant tenders this additional statement of facts and incidents of trial.

(1) The following exhibits were introduced into evidence during the testimony of William H. Hunt which is not shown in the transcript:

Complainant's Exhibit #12 — Lease between Lloyd E. Wright and E. Louisa Wright and William H. Hunt dated June 9, 1956.

Complainant's Exhibit #13 — Letter of August 11, 1958 sent by Complainant to Mr. L. E. Wright.

Complainant's Exhibit #14 — Letter of March 20, 1961 sent by Complainant to the Defendants.

Complainant's Exhibit #15 (A-H) — eight photographs of the basement stairwell, the basement, and the home goods side prior to the enclosure of the stairwell in the Wright & Hunt store.

Complainant's Exhibit #16 (A-M) — 13 photographs of the same areas covered in Complainant's Exhibit #15 after the enclosure of the stairwell in the Wright & Hunt store.

Complainant's Exhibit #17 — 1 photograph of the present home goods side of the Wright & Hunt store.

page 60] Complainant's Exhibit #18 — 1 photograph of present department store side.

Complainant's Exhibit #19 (A-F) — financial statements of Wright & Hunt, Inc. covering the following fiscal years:

(a) 1956-57, (b) 1957-58, (c) 1958-59, (d) 1959-60, (e) 1960-61, (f) 1961-62.

(2) Mr. Hunt testified that the basement store was used as a sales and display area until the stairwell was enclosed. He testified that it was not used as a display area after the enclosure was installed but that from time to time people were taken down to make a sale until December 1961, after which no sales at all were made in the basement store as the result of Mr. Hunt's interpretation of a letter received from the fire *marshall*. He testified that displays were moved upstairs immediately after the stairwell was enclosed where rearrangements were made to accommodate them at a cost to Wright & Hunt, Inc. of "at least \$1,500.00."

WRIGHT & HUNT, INC.
By Counsel

McCANDLISH, LILLARD & MARSH
102 South Payne Street
Fairfax, Virginia

By Randolph W. Church, Jr.,
Counsel for Complainant.

Tendered to me April 29, 1963, and signed by me May 7, 1963.

ARTHUR W. SINCLAIR, Judge

Received and filed this 7th day of May 1963.

....., Deputy Clerk

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page 2]

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Mr. Lillard: In order to have the record complete, I tender an order reflecting the decision of last Friday. Now in the bill of complaint we alleged the sending of certain letters to the defendant, some of which were neither admitted nor denied, and the answer which Mrs. Miller has since advised me she would stipulate.

The first one is that one referred to in paragraph 8, which is a letter from the Virginia State Fire Marshal to Mr. L. E. Wright, dated February 6, 1961, and the one referred to in paragraph 10, which is a letter from Mrs. Miller to me,

James C. Shipley

dated April 29, 1961, the one in paragraph 11,
page 3] which is a letter to Mrs. Miller, dated May 1,
1961, and the letter referred to in paragraph 17
of the bill of complaint.

The Judge: Are those letters themselves to be stipulated in evidence?

Mr. Lillard: That is my understanding.

Mrs. Miller: That is correct, Your Honor.

* * * * *

JAMES C. SHIPLEY,

a witness of lawful age, being first duly sworn, testified as follows:

By Mr. Lillard:

Q. Would you state your name, please?

A. James C. Shipley.

Q. Where do you live?

A. I live in Alexandria.

Q. What is your occupation?

A. District engineer for the Fire Marshal's Office.

Q. Are you the representative in this area of the Virginia State Fire Marshal?

page 4] A. I am, sir.

Q. How long have you occupied that position?

A. Since May, 1955.

Q. In the course of your duties, have you had occasion to inspect the Wright Building in Vienna, Virginia?

A. I did, sir.

Q. When did you first inspect that building?

A. July 24, 1958.

Q. I have here two charts and I ask you if those charts —

Mrs. Miller (interrupting): Just a minute, Mr. Lillard. By whom were those made?

Mr. Lillard: I am not real sure. I am going to ask this witness if they correctly reflect the part of the building, not by dimension but the layout of the building.

Mrs. Miller: I would object to that unless they are drawn to scale. If there is a true representation of the area utilized for certain purposes, etc., I don't believe I could — I object to their use.

James C. Shipley

Mr. Lillard: I would like to ask this witness whether or not these diagrams reflect the layout of the basement floor and main store of that building. I am not asking you to identify any area as it is identified here, but I ask if that reflects the physical conditions there with respect to the two floors.

The Judge: When you say you are not asking
page 5] about any particular area, do you mean he is to
take out the part that shows the bottom, the Speed
Wash, etc.?

Mr. Lillard: I am not asking him to identify the chart but such area as is in the building.

The Judge: Do you mean that that is the floor plan of the building?

Mr. Lillard: Yes, sir.

The Judge: I think that is all right.

Mrs. Miller: Please note my objection on the ground that, if the true dimensions are not shown, we would object to entering it.

The Judge: All right.

A. From what I remember, the basement seems to be, as I remember, the building. However, the two interior stairways and stockroom on the upper right of the basement do not show on the floor.

Q. Do you mean where the stairways open into the floor plan?

A. Yes, otherwise it looks like it generally.

Q. When you inspected the building, did you find any condition to which you took exception as the representative of the Virginia Fire Marshal?

Mrs. Miller: I object on the ground that that is a leading question.

The Judge: What did you find on your inspection and what did you do as a result of your inspection?

page 6] A. As a result of my inspection, a report was
issued to the owner, listing some deficiencies of
the minimum requirements of State law. I have a copy of
the report.

Q. I have a copy. I would like him to identify the one that is here. I ask you to examine these four sheets here, marked Exhibit B, and state whether or not that is the report to which you referred.

A. This is a copy of the report, sir.

James C. Shipley

Q. We offer that in evidence, if the Court please, as Complainant's Exhibit 5. What actions did you require as a result of this inspection?

Mrs. Miller: Your Honor, the report speaks for itself. It is the best evidence there is.

Q. He can state the actions as set forth in the report.

A. It seems to comply with the minimum standards in conformity of the work that would have to be reported as violations in the report.

Q. The work listed in the report?

A. Yes, sir.

Q. When did you next see this building?

A. I would have to refer to my files.

Q. You may.

A. The next time I visited the building was February 2, 1961, according to the file.

Q. What did you find at that time?

page 7] A. Some work had been accomplished. However, there were three violations of the inspection report which remained to be corrected.

Q. Which were they?

A. 2, 3 and 5.

Q. What action did you take at that time?

A. I wrote Mr. Wright a letter advising him to bring these deficiencies into conformity or we would have to institute action to enforce compliance.

Q. I show you this copy of a letter dated February 6, 1961, identified as Exhibit C with the bill of complaint, and ask you if that is a copy of the letter to which you refer?

A. It is.

Q. We offer that in evidence, Your Honor, as Complainant's Exhibit 6.

The Judge: All right. That will be Complainant's Exhibit 6.

A. I might want to add at this point there had to be at least one or two other visits to the building when the fire escape was put on, but nothing was written about it because all the work was not done, so there was no use writing about one part when the whole was not accomplished.

James C. Shipley

Q. When was your next visit or did you visit the building subsequently?

A. There was a meeting in there with Mr. page 8] Wright and the contractor (I couldn't establish the exact date I was there, but I do recall meeting with his contractor in the building.)

Q. What was the purpose of that trip?

A. To go over ways to enclose the interior stairway.

Q. All right, and when did you next visit the building?

A. I can recall stopping by one time at the request of the contractor to check on the progress of his work, which was proceeding satisfactorily. Then on March 8, 1962, there was a letter written as a result of an inspection when sufficient work had been accomplished to bring the building into conformity with the standards required on the basis that the basement, which was not being used for sales purposes, was conditioned as of that time.

Q. In the condition of the building that you found at that time, could the basement be used for sales purposes?

A. Yes, it could have, provided the tenant straightened up a certain area, locked a certain door, and things like that, but it was so arranged so it could be used, but there was nothing that Mr. Wright could have done. He had completed what he could at that time.

Q. You have mentioned these exits remotely located from the interior stairway. Is that available?

A. There is one in the right rear of the basement in the stockroom, which is indicated on the plan.

page 9] Q. Do those doors open to the outside or the inside?

A. At this time I don't recall which way they opened.

Q. Would there be a requirement on that?

A. Depending on how many people would be in the basement.

Q. Assuming it was to be used for regular sale of merchandise and customers regularly were there.

A. When there is over 50 people there, then the door would have to swing out. Under 50 persons, it could swing either way.

Q. What specifically would have had to be done to make that useable?

A. A clear corridor in the back.

Mrs. Miller: Excuse me. Useable for what?

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Mr. Millard: As an exitway.

Mrs. Miller: He has just testified —

The Judge (interrupting): He has just testified if there were more than 50 people there the door would have to swing out, if less than 50 persons it could swing either way.

Q. But he also testified to certain changes in the building.

A. I believe there were obstructions in the stockroom area due to the way the tenant had it arranged, that is, if the corridor was not 44 inches wide in all aspects, he would have to rearrange some of his stock to make it acceptable.

page 10] Q. Are you saying part of an unimpeded corridor 44 inches wide would have to be provided?

A. Yes, sir.

Q. Now in your first report, which has been placed in evidence and identified as Complainant's Exhibit 5, you made a recommendation which I read to you, "Because of the height, construction and occupancy of this building, it is strongly recommended it be equipped with an approved automatic sprinkler system, in order that reasonable safety to life in case of fire may be assured." Had the sprinkler system been installed. Would any other of the changes you required have been necessary?

Mrs. Miller: I would object to any questioning about the sprinkler system since Mr. Shipley has not testified to the fact of what his requirements were, and we feel any recommendations are irrelevant to the issue here. Testimony to this point has been that inspection was made, that there were certain requirements, and we feel any recommendations are just not relevant to the issue as to whether there has been compliance with the requirements, and that is where the legal duty of Mr. and Mrs. Wright rests.

The Judge: I see no objection to Mr. Lillard asking about that.

Mrs. Miller: Please note my exception.

page 11] Q. Would you answer the question?

A. The question was, did I make such a recommendation?

Q. Had the sprinkler system been installed, as you strongly recommended, would any other changes in the building have been required?

A. I think, because of the sprinkler system, access there, or even a partial sprinkler system for the basement only, certain portions of the work would not have been required to

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have been accomplished, namely, the access stairs would not have to be enclosed. The exit stairs would still have to be enclosed.

Q. And by access stairs, you are referring to which stairs shown on this diagram?

A. The access stairs are those stairs which are not designated and marked for use as exit stairs. They are generally referred to as service stairs or a conveyance stair.

Q. Would this be one?

A. As the building is now arranged or if the owner decided to comply, that is one of the exit stairs.

Q. But had the sprinkler system been put in the basement, would that stair have had to be enclosed?

A. Yes, sir.

Q. If the basement was sprinklered, that would have to be enclosed?

page 12] A. As an exit stair, that would have to be enclosed.

Q. Would it have been possible to provide other exists and leave that stair open?

A. Yes, sir.

Mrs. Miller: I want to object again. This whole case has been based on enclosure of a certain stairway and whether in that compliance Mr. and Mrs. Wright have done anything that has caused these people damage.

The Judge: I don't think the landlord had to go beyond the conditions required by the State fire law. As I understand, it was either to be sprinklered or this area enclosed, and I understand, if the sprinkler was installed in the basement, that would still have to be enclosed.

Q. I am asking if, with the automatic sprinkler system in the basement, if the owner could have complied without enclosing that stair, and if so, how?

A. The only other way to accomplish it, I think the west side of the building is rather remote next to the Speed-Wash end, so on the east side of the building, the area usually would have had to be provided, in other words, an outside stair provided that went directly to the outside from the basement.

Q. Had that been installed, would it have been necessary to enclose the stairway to which we just referred?

page 13] A. If that had been accomplished with the basement sprinkler system, then that stair could have been designated as the outside stair and would not

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need to be enclosed. With the sprinkler system, that stairway would have had to be enclosed at the top or the bottom, or the head or the foot.

Q. But with an exitway and automatic sprinkler system, it would not have had to be enclosed?

A. There is a condition under which it could have remained open.

Q. When you referred to this exitway, I take it you are referring to the one in this area?

A. It would have been in the front.

Q. Up in here (indicating)?

A. Up in here.

Q. What would the requirements for that exitway have been?

Mrs. Miller: I object again. This is just speculative.

The Judge: He hasn't required that.

Mrs. Miller: He hasn't required that, so why is it necessary to do anything about it?

Mr. Lillard: He talks about the exitway in this report, so I am asking if there was any way the landlord could have complied with the requirements without enclosing that stairway.

The Judge: You tell me if there is any legal duty on the part of the landlord to do that. If there is any suggestion, I will hear it, but I think we are wasting time.

Mr. Lillard: The legal duty arises from the lease in evidence and which has been admitted, under which there premises were leased to this tenant for particular use throughout the term of the lease, which use included the use of the basement area here or at least a part of it, for retail sales and the display of goods. The landlord was advised time and again during the course of this investigation as the record will show, that the closing of this stair would render the downstairs area unuseable for the purpose for which it was leased, and every effort was made to allow the landlord full use of the premises for which it was leased. We maintain that the landlord did not take advantage of that, but instead, chose a procedure which would diminish the use to the tenant, which is valid in the lease.

The Judge: If that is what the case is based on, you can go ahead.

Q. What are the dimensions or other specifications of this

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exitway to which you refer, remotely located from this interior stairway?

A. The stairway would have had to be 44 inches in width with retainers and handrails, etc., to conform to the applicable section. Usually they are made of concrete, page 15] they build a retaining wall around it and the real touchy part would be the drainage of it, which sometimes can run into excessive expense.

Q. But from your point of view, the dimensions you have stated would have been satisfactory?

A. It was one of several options which could have been available to the landlord.

Q. Did you discuss the sprinklering of this building with the landlord?

A. I did.

Q. Did you advise him of the options to which you have testified here today?

Mrs. Miller: Your Honor, there is no evidence here that there was any option given as to closing of the stairway or the sprinkler system. The testimony, and the letters too, is the requirement that the landlord do certain things. Then there is a recommendation, but not a requirement, and I object to Mr. Lillard referring to this as an option.

The Judge: Didn't the landlord have the option as to what should be done, whether a sprinkler system should be installed or the stairway enclosed?

A. I think I can qualify it.

The Judge: Suppose you go ahead, because I don't understand it.

page 16] A. Mr. Wright did make an effort to put in a sprinkler system and when he investigated into the situation, he discovered that the water system or water supply, I think the nearest available main to him in the town of Vienna was substandard for sprinkler work and he would have to lay a water main which would run up into thousands of dollars. I think that put the stop on it right then. He was very concerned about it. He called the man and I think he acted in good faith, but I think this water main stopped it right then as far as he was concerned.

Q. But he did know the available main was substandard?

A. I believe he would have sprinklered the building, but the

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water main was such an expense that it would have prohibited it for him.

Q. The cost of the sprinkler system and the cost of the water main was prohibitive?

A. That, all added in together, I think was prohibitive.

Q. When you inspected this building just prior to making your first report which is in evidence here and you found certain conditions prevailing, I ask you if the conditions prevailing June 9, 1956, would they at that time have been in violation of the regulation you are charged to enforce?

A. The Virginia fire safety regulations were in effect in 1956 and had we inspected the building in 1956
page 17] under the same conditions as we found it in 1958,
the same report would have applied.

Q. I believe that is all.

By Mrs. Miller:

Q. Mr. Shipley, will you tell us again, if there was another access stairway, where it would have to be placed?

A. It would have to be placed in the parking lot on the east side of the building.

Q. Would there have been any particular area where it would have to be placed?

A. I would say in the vicinity of the area where it says "92 feet."

Q. Right in here (indicating)?

A. Yes, ma'am.

Q. How wide do you say the finished stairwell would have been?

A. 44 inches.

Q. Would that have included the gutter and —

A. (Interrupting): Retaining wall?

Q. Yes.

A. No. Clear, it would be 44 inches.

Q. That would have been extraneous to the 44 inches?

A. Yes, ma'am.

Q. Are you aware of whether or not Mr. and Mrs. Wright owned the land on that side of the parking area?

page 18] A. I am not.

Q. If I told you they did not own that width of land, where else could the access stairs be placed?

A. Without involving a vertical opening, I see no other place, because the west side of the building goes right along the sidewalk. Otherwise, you would have to come through the

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floor someplace, which involves a vertical opening.

Q. In other words, you are saying, for this stairway to have come out, you would have to put it outside here about in this area (indicating)?

A. I would say anyplace from there to the front of the building.

Q. Anyplace from there to the front of the building?

A. Yes, ma'am.

Q. And if it were proved that the Wrights do not own the real estate there, is there any other place?

A. Without coming through the floor, there is no other place in the building.

Q. How about in the back?

A. The exit in the front would have to be remote from the back.

Q. So you wouldn't put it there?

A. You wouldn't put it there.

Q. And over here is the side of the building?

page 19] A. Yes, ma'am.

Q. This is Mill Street?

A. Yes, ma'am.

Q. I believe you said, when you made the inspection on March 9, 1962, that everything was all right with the exception of certain places that the tenant had to straighten up?

A. The tenant would have had to rearrange the stock to provide an access to the rear exit.

Q. Where is the rear exit?

A. There is a door right there (indicating).

Q. This is the place, you say?

A. There would have had to be an exit corridor provided through there (indicating).

Q. Is that anything you can do in the building or any way you can arrange stock or what?

A. It has been a long time, but I think there was stock in there that would have had to be changed.

Q. That is something the tenant would have to change?

A. In my opinion, it would have been the tenant —

Q. (Interrupting) Responsibility?

A. Yes, ma'am.

Q. Did you have any independent discussion at any time with anyone in the town hall, the Vienna town authorities, about the water supply?

page 20] A. I believe I did go up there to check and was informed there was a 4 inch main, and the mini-

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mum main you need for a standard sprinkler system is a 6 inch main. A 4 inch main won't give you the supply or the pressure.

Q. Do you know where that main came from? Did they tell you where that main came from?

A. I seem to recall a Mr. Price informing me they had contracted to install a 6 inch main and the actual main that was installed was only 4 inches, so the town at some previous date had been shortchanged on what they had paid for.

Q. What was actually installed, is that right?

A. Yes, ma'am.

Q. That is all.

By Mr. Lillard:

Q. Is it possible the basement could have been sprinklered with a 4 inch main?

A. I would think probably you would have to run a survey.

Q. Is it possible?

A. You would have to run a survey. I don't know what the water system is. I don't know, with a basement of that size, as many heads as you would need, whether a 4 inch main would have supplied it. It is possible.

Q. It is possible?

A. It is possible that it could.

page 21] Q. Have you ever read the lease between these parties?

A. No, sir.

Q. Did you ever point out to Mr. Hunt where that exitway would go along the east wall of this building?

A. I believe I met with Mr. Hunt sometime previous to the 9th of March, 1962, as a result of an inquiry from him, and we went over what could have happened, what could have possibly have been accomplished.

Q. Did you tell him it could have gone in this area here (indicating)?

A. As I remember that portion of the basement, the stock-room is a sort of an unfinished partition. The Maple Avenue side is the main part. There is an open area, then there is sort of a divided off area. That would have to be in the open area.

Q. By open area you mean the area that runs across from here (indicating)?

A. It is further forward. I would say the partition would fall about where the "s" is in stock.

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Q. Is this where you think the exitway should have been put?

A. It is somewhere along there.

Q. From here forward? Is that your testimony?

A. I would have to go back to the building to be exact. I can't pinpoint the exact footage. I know there is a big room and some partitions in the stock area, but it would page 22] have had to be in the big room.

Q. That is all.

Mrs. Miller: Your Honor, in an effort to conserve time and properly clarify this, would it be possible for us to have a view of the premises, particularly in view of the Court permitting the questions asked as to what could have been done, and we have here a diagram that does not really portray dimensional-wise the store premises. I wonder if Mr. Shipley could not point out — it would be a help to all of us to know exactly what area he is talking about. It means a great deal to Mr. and Mrs. Wright, as there is a certain area there they don't own.

The Judge: I have no objection.

Mr. Lillard: I would like to join in this request. I think it would be an excellent thing to do.

The Judge: I would assume then that we will discharge the balance of the witnesses and collect at 11:15 and we will go down there. Mr. Shipley, don't you go away. We will want you to go to Vienna with us.

Mr. Shipley: You want me to stay?

The Judge: Yes.

Mr. Lillard: I would like to suggest that the defendants be there.

The Judge: How long do you think this view page 23] would take, half an hour or so?

Mrs. Miller: Half an hour or so.

The Judge: Suppose we say at least quarter of two. That gives leeway for the witnesses to have lunch. Will you notify the witnesses that Court and counsel are going to take a view and they are released until quarter of two. For Mr. Shipley's benefit, will he be needed as a witness after we hear whatever testimony may be enlisted from him down in Vienna?

Mrs. Miller: I don't think so.

Mr. Lillard: I would like to hold him.

The Judge: Mr. Shipley, Mr. Lillard says he may want you

back in Court. Suppose you ride along with Mr. Mason and me.

(The Court, counsel, parties and witness adjourned to the basement of the Wright Building in Vienna, Virginia.)

(Mr. Shipley stepped off 35 feet in the front of the building next to the parking lot.)

Mr. Shipley: That would have been the maximum. That option could only be used to make this an exitway and only if it is equipped with an approved automatic sprinkler system.

(The group moved back to the rear of the other side of the building.)

Mrs. Miller: Do I understand this cannot be used at this time for sales purposes?

page 24] Mr. Shipley: It could be used provided the other exit is in the rear.

Mr. Lillard: This door would have to swing to the outside? Is there any alternative available to Mr. Hunt?

Mr. Shipley: Not without going to considerable expense.

Mr. Lillard: Is there another way considered and discussed with Mr. Hunt?

Mr. Shipley: This would have been used for an areaway in the basement. Otherwise, if the enclosed stairway is used, the exit on the other side would be used and this would not be used. This would have been an alternative with the sprinkler system and the areaway.

Mrs. Miller: What has to be done, all we need now is a 44 inch aisle through here? The only thing to be done is rearrangement of the house and swinging of the door?

Mr. Shipley: As long as there is under 50 people in here, which I can't visualize there being 50 people in this basement. This is the other stair.

Mrs. Miller: And there is a fire door there?

Mr. Shipley: There is a fire door there.

Mr. Lillard: This is the route that you feel could be used now?

Mr. Shipley: Yes, sir.

Mr. Lillard: With no sprinkler?

Mr. Shipley: Yes, sir.

page 25] Mr. Lillard: If it were sprinklered, then this exit over here would have to be built and that one?

James C. Shipley

Mr. Shipley: And the other one.

Mrs. Miller: The route of the steps was changed, Mr. Shipley?

Mr. Lillard: This was the route of the stairway. Then the steps came out into this room.

(The Court reconvened at 1:45 o'clock p.m.)

WHEREUPON,

JAMES C. SHIPLEY,

returned to the stand and further testified as follows:

By Mrs. Miller:

Q. Is there any reason that the lower store, that is, the basement store, cannot be used for sales at this time?

A. No, ma'am.

Q. Did you at any time tell either the landlord or the tenant that store could not be used for a sales area?

A. I might have said it could not be used until the approved exits are provided, but that would have been all, but I at no time made a statement it could not be used (period).

Q. Did you tell either the landlord or the tenant during the time work was in progress on the stairway that the lower store could not be used for sales?

A. No, ma'am.

page 26 } Q. Now, was it your testimony that, even with a sprinkler system, that the interior stairway would have to be enclosed?

A. I think with a sprinkler system in the basement and another approved exit in lieu of that one, then that stairway would not have to be enclosed.

Q. Now let's say there is no other outside exit. Then would that stairway have to be enclosed even with a sprinkler system?

A. Yes, ma'am.

Q. All right. Now I believe that you pointed out there was about 35 feet along this wall. That would be the wall next to the large parking lot, is that correct?

A. Yes, ma'am.

Q. It would not be the entrance wall nor the wall on Mill Street nor the rear wall?

A. No, ma'am.

Q. It would have to be this wall next to the parking lot and would not be greater than 35 feet?

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A. That is right.

Q. That would be the maximum?

A. Yes, ma'am.

Q. That would be from the front of the building, down 35 feet?

A. I would measure from the inside of the page 27] building, not outside but inside.

Q. And that would not include the portion here (indicating)?

A. You could not put a stairway there because there is another floor that comes down, plus the exit.

Q. So it would have to be in this area (indicating) no greater than 35 feet from the corner?

A. Yes, inside.

Q. From the inside measurement, is that correct?

A. Yes, ma'am.

Q. And as the lower store is at the present time, it is your testimony it could be used for sales purposes?

A. Yes, provided the other exit was up to par, which it wouldn't be much trouble to do.

Q. What should be done to make the change?

A. No obstructions, 44 inches wide, and marked and lighted properly, and further, if there are more than 50 people down there, for the exit door to swing out.

Q. That is all.

By Mr. Lillard:

Q. Did you write Mr. Lloyd E. Wright a letter dated December 15, 1961, relative to the use of this building in its then condition?

A. Let's see.

Q. December 15, 1961.

A. Yes, I did.

page 28] Q. I show you this and ask if that is a copy of the letter?

A. It is.

Q. I would like to ask this letter be placed into evidence as Complainant's Exhibit 7.

The Judge: All right. It will be marked Complainant's Exhibit 7.

Q. I invite the Court's attention to the contents of this letter. Do you recall being in the store at any time and telling

James C. Shipley

an employee of Wright and Hunt, Incorporated that, if the basement was closed, you would close the entire store?

A. Not in those words.

Q. Do you recall discussing the subject with an employee of that store?

A. It seems to me, as I recall, there was an occasion, I believe Mr. Hunt was in the store when an inspection was made and the person in charge of the store accompanied me at the time of the inspection, but I do not recall any conversation pertaining to that part of the basement at that time.

Q. Did you say you did not tell an employee of Wright and Hunt, Incorporated that they were not to use that basement for sales purposes?

A. If the matter was discussed, it would have been concerning the rear exit. In other words, the rear exit
page 29] would have had to be brought up to par to use the basement.

Q. And regardless of whose responsibility it was to do it, there was work that had to be done to make those exits acceptable to you, is that true?

A. The rear exit that would have been used in conjunction with the enclosed stairway, to bring it up to par, the small amount of work that would have to be done would fall upon the tenant.

Q. Regardless of whose responsibility it was to do it?

A. A very minor amount of arranging of the stock to make sure the aisle was clear.

Q. And reversing the doors if more than 50 people were down there, is that true?

A. I was left under the impression they did not plan to have more than 50 people in there.

Q. But if they did have more than 50 people in there, then the doors would have to be reversed, is that correct?

A. If there were more than 50 people in there, yes.

Q. I have no further questions.

Mrs. Miller: That is all.

The Judge: All right. Mr. Lillard, did you say you would like to have Mr. Shipley remain?

Mr. Lillard: For a little while if he will. I would like to call Mr. Irvin.

• • • • •

Henry S. Irvin

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HENRY S. IRVIN,

a witness of lawful age, being first duly sworn,
testified as follows:

By Mr. Lillard:

Q. Would you state your name, please?

A. Henry S. Irvin.

Q. Where do you live?

A. I live just out of Vienna, at 714 Irving Street.

Q. What is your occupation?

A. Superintendent of Public Utilities for the town of Vienna.

Q. Were you in that position in October and November, 1961?

A. At that time I was Maintenance Superintendent for the town, including roads, sewer, water, everything.

Q. I show you this letter and ask if you recognize it, with a drawing attached to it?

A. Yes, sir.

Q. Did you write this letter, sign it, and dispatch it?

A. Yes, of course, I wrote the script and had it typed. I signed the letter, yes.

Q. At that time was there an 8 inch water main running along Maple Avenue across the street from Wright and Hunt's store?

A. Yes.

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Mrs. Miller: I am going to object to any questioning about the water system or water supply of the store. I don't think that is the issue here. It seems to me the testimony of Mr. Shipley that he has made inspections and there have been certain violations and that the violations have been corrected have been complied with, the regulations have been complied with. I can see no reason why there should be any further discussion about a water supply or a sprinkler system. It is certainly conceded that there is a recommendation.

The Judge: It bears on the issue of compulsion on the part of the landlord. I will admit it.

Mrs. Miller: Note my exception.

The Judge: I am not ruling.

Mrs. Miller: I will withdraw the exception.

Q. At that time I believe you said there was an 8 inch water

Henry S. Irvin

main running along — I believe it would be north side?

A. No, it would be the south side.

Q. By this letter you, I believe, indicated that a tap could be made and a 6 inch water main brought across Maple Avenue if the water line was Class 150 enamel-lined?

A. Yes, sir.

Q. And the fee for tapping the water main was \$250, is that correct?

A. That was the surcharge for a 6 inch tap. It page 32] didn't include any materials or any labor.

Q. And there was a permanent charge of \$6 for cutting and boring the street?

A. Approximately \$6.

Q. And you estimate there was approximately 167 feet of line to be installed?

A. Yes, sir.

Q. Would that connect it then with the water line in existence on Mill Street?

A. Yes, sir.

Q. I offer this in evidence as Complainant's Exhibit 8.

The Judge: All right.

Q. I have no further questions.

By Mrs. Miller:

Q. The figures that were quoted in the letter, were they based upon their being an existing water supply to the premises?

A. No, the figures I gave on the tapping charges would be anywhere you would tap.

Q. Anywhere?

A. Anywhere you brought it out, if you brought it out with the present line or another line.

Q. At the time the letter was written, was there water available for the sprinkler system to the store?

A. There was only this 4 inch line that comes page 33] up Church Street — I mean Mill Street — to the store.

Q. Would that have supported this sprinkler system?

A. That I don't know. I don't know what size sprinkler system they had designed for it.

Q. Would Mr. and Mrs. Wright have had to have extended that line then from Mill Street?

Henry S. Irvin

A. That is my understanding. If they couldn't use the 4 inch line there, they would have to have it extended from somewhere.

Q. Where would it have to be extended from?

A. My best guess would be the Maple Avenue line.

Q. The Maple Avenue line?

A. That is on the other side of the store.

Q. At the time the letter was written that has the sketch attached, was the Maple Avenue maintenance under the jurisdiction of the town of Vienna?

A. I believe it was. I believe we'd taken the records in July 1960

Q. Of 1960?

A. Yes, ma'am. This letter I wrote was in 1961.

Q. Were you present at any of the meetings between Mr. Wright and Captain Price in 1961?

A. No, I was not.

Q. And if Mr. Wright had been told in 1961 that the Maple Avenue line was under the jurisdiction of the
page 34] State, would that have been incorrect in your opinion?

A. That would have been incorrect in my opinion, if I am correct on the July that we'd taken over the records, which I am sure it was July of 1960.

Q. So if Mr. Wright had been told that, then the town official that told him that was incorrect?

A. I would say so.

Q. How did you happen to write that letter?

A. Mr. Hunt had me to just give him the location of where the water mains were and what was there surrounding the store and I wrote the letter for him with a sketch showing where the 8 inch main was on Maple Avenue, which in my opinion would be the cheapest way to get to it.

Q. Going across Maple Avenue?

A. Yes, ma'am.

Q. In your work, do you know or have some idea of what laying the pipe would cost?

A. I am not familiar with that. I don't make any estimates.

Q. So you don't know what the cost of laying 167 feet would amount to?

A. No, ma'am.

Q. How would that have been accomplished, the laying of the pipe under Maple Avenue?

A. There are several ways it could be accomplished. I

Clarence Nance

page 35] talked to different ones over the years. Some choose boring under the road, some choose boring part of it and keeping track of it.

Q. Do you know what the cost of that would be by either method?

A. I have no idea what the cost would be.

Q. So although you worked in that, you still don't know what the cost of boring pipe or laying pipe under the street would be? Is that your testimony?

A. Yes, ma'am.

Q. Who would know that?

A. I don't think anyone in the town of Vienna would know that. They wouldn't know because there is no profit. It isn't like a contractor.

Q. Did the town of Vienna offer to lay that line so there would be water available to the property?

A. Not to my knowledge.

Q. Would they be willing, as far as you know, to lay the pipe and pay for it?

A. Would you repeat that?

Q. Would the town at this time be willing to lay the pipe and pay for it?

A. That I don't know.

Q. Is water available to the property right now that was not available in 1960, or is it just the same?

A. The same thing.

page 36] Q. The same thing?

A. Yes, ma'am.

Q. That is all.

Mr. Lillard: That is all I have.

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CLARENCE NANCE,

a witness of lawful age, being first duly sworn, testified as follows:

By Mr. Lillard:

Q. Would you state your name, please?

A. Clarence Nance.

Q. What is your occupation?

Clarence Nance

A. Sewer and water.

Q. Are you connected with a company or corporation?

A. A corporation.

Q. What is the name of the company?

A. Nance Construction Company, Incorporated.

Q. The Clarence L. Nance Construction Company, Incorporated?

A. It is Nance Construction Company, Incorporated.

Q. Have you had occasion to make a proposal
page 37] concerning the construction of a water line across
Maple Avenue to the Wright and Hunt Department Store in Vienna, Virginia?

A. Yes, sir.

Q. I show you this paper and ask you if you can identify it?

A. I made it up. It is my signature.

Q. All right, sir. (The paper was shown to Mrs. Miller.)

Mrs. Miller: I would object to this on the grounds it does not show if it was made during the time or in the vicinity of the time the work was being proposed. The date is February 4, 1963.

The Judge: I think that is subject to cross-examination.

Mrs. Miller: All right.

Q. What did you propose to do there and what did you propose to charge for it?

A. \$1,400 for it.

Q. What did you propose to do?

A. That is 170 linear feet of 6 inch cast iron pipe. You have to put it under pressure on the main line. You have to cross Maple Avenue. You have to tie it in with Mill Road and tie those two lines in by a T and come across to the property line of the building.

Q. Would you be able to state whether that job would have cost more or less money in 1961?

A. That road has been in about 5 years, so I don't believe it would be more. Maybe in the summer it would
page 38] be higher than it is now. I know my price would be higher. In the wintertime, you need your work more than in the summer.

Q. I offer this into evidence as Complainant's Exhibit 9.

Edgar R. Payne

The Judge: Received as Complainant's Exhibit 9.

Q. That is all.

By Mrs. Miller:

Q. Did you have occasion actually to make this estimate in 1961?

A. No, I didn't have occasion to.

Q. Or in 1962?

A. No, ma'am.

Q. That is all.

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EDGAR R. PAYNE,

a witness of lawful age, being first duly sworn, testified as follows:

By Mr. Lillard:

Q. Would you state your name, please?

A. Edgar R. Payne.

Q. Where do you reside?

A. Richmond, Virginia

Q. What is your occupation?

page 39] A. Sales manager of the Virginia Sprinkler Company.

Q. In that capacity, have you had occasion to make a proposal regarding installation of a sprinkler system in the basement of the Wright Building in Vienna, Virginia?

A. Yes.

Q. I hand you this letter and ask you if you can identify that.

A. Yes, sir, that is my proposal.

Q. What do you propose to do and what do you propose to charge for it?

A. Our price is \$4,108, and we are to install a sprinkler system throughout the basement only of the building at 148 Maple Avenue. We are to connect, add a 6 inch connection at the property line and extend it into the building, this system to be completed and upon completion, to meet the requirements and approval of the State Fire Marshal.

Q. Would you know whether or not this job would have been more or less expensive in October 1961?

A. Yes, it would have been less.

Q. Less expensive at that time?

Louis R. Fletcher

A. Approximately \$200 less.

Q. I wish to offer this into evidence as Complainant's Exhibit 10.

The Judge: Complainant's Exhibit 10.

page 40] Q. I have no further questions.

By Mrs. Miller:

Q. Mr. Payne, the date of that is what, of your report, January 31, 1963?

A. I believe so.

Q. When did you make this inspection?

A. I made it Tuesday of last week.

Q. And you based your estimate on this inspection?

A. This new estimate, yes. The other estimate was made back in October, 1961. I refer to it there in that letter.

Q. At whose request did you make the inspection?

A. I don't know. At the request of the president of my company. I am Sales Manager. He told me I was to come to Vienna and check over a file we already had in our possession. When I reached there, I met Mr. Hunt at the store.

Q. Were you under the impression he was the owner when you referred to it as his store building?

A. Yes, ma'am.

Q. That is all.

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LOUIS R. FLETCHER,

a witness of lawful age, being first duly sworn, testified as follows:

By Mr. Lillard:

Q. Will you state your name, please?

A. Louis R. Fletcher.

Q. And your occupation?

A. Remodeling contractor.

Q. Have you had occasion to make a proposal regarding

Louis R. Fletcher

building an exit door and areaway and stairway at the Wright Building in Vienna?

A. I did.

Q. Is this the proposal that you made?

A. Yes, sir.

(The proposal was shown to Mrs. Miller.)

Q. Would you state what you proposed to do there and what you proposed to charge for it?

A. The estimate is for time and material to build an outside entrance to the basement at the above address according to the specifications of the State Fire Marshal. The door would be 44 inches wide, opening 7 feet high, a stairway 44 inches wide, that is, in the finished width, that is the width, guardrail on both sides, that is, going down the steps.

page 42] This is what was to be done, excavate for stair, lay steel reinforcements for steps, dig footings, build cinderblock wall, and build forms for 14 steps and one landing, cut opening in wall for door to be installed, install two ailments over door, set up frame, hang door, install an iron gate inside the door for the purpose of locking on the inside, install door at top of stairway, estimate \$991.98.

Q. I offer this in evidence as Complainant's Exhibit 11.

The Judge: Received as Complainant's Exhibit 11.

Q. I have no further questions.

By Mrs. Miller:

Q. With respect to the drawing here of the building, where were you to place this (indicating)?

A. It is about centerway of the building.

Q. Where would it be?

A. It is about centerway.

Q. On which side?

A. On the side towards the railroad track.

Q. That would be this side (indicating)?

A. That is right.

Q. So you say it was going to be about centerways?

A. About centerways of the building.

Q. Do you see dimensions here of 92 feet, is that correct?

A. I didn't measure the building.

page 43] Q. You were going to put it about halfway?

William H. Hunt

A. About halfway, yes.

Q. Did you make any sort of arrangements, any estimate, as far as drainage goes?

A. It would be to go down in the ground about 2 feet deeper than the original depth of the landing, fill it with gravel, replace drain and tile already there, so the water would go back into those and go out.

Q. Was that included in your estimate?

A. No, I didn't get that in there. It was supposed to be in there.

Q. That would all be for the same price?

A. Yes, ma'am.

Q. And you provided for hauling away debris, that is, on the excavation? That is what you are referring to?

A. That is right.

Q. Did you check with either the building inspector or the fire inspector before you made this estimate?

A. No, I didn't check with them. All I had was specifications the Fire Marshal had given Mr. Hunt.

Q. When did you make that estimate?

A. I don't know.

Q. The same day that is on here?

A. Yes, ma'am.

Q. Did you make the inspection the same day?

page 44] A. The day before.

Q. The night before you gave this estimate?

A. Yes, ma'am.

Q. Have you ever made a stairway similar to this one?

A. I have, in several places.

Q. Where were they?

A. There is one in the Falls Church area, off Arlington Boulevard. I cut a door in there, but it is a smaller door, the same, anyway.

Q. No further questions.

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WILLIAM H. HUNT,

a witness of lawful age, being first duly sworn, testified as follows:

By Mr. Lillard:

Q. Would you state your name, please?

William H. Hunt

A. William H. Hunt.

Q. Where do you live?

page 45] A. 709 Park Street, Vienna, Virginia.

Q. What is your occupation?

A. Merchant, manager of Wright and Hunt store.

Q. Are you connected with Wright and Hunt, Incorporated?

A. Yes, sir.

Q. Is that a Virginia corporation?

A. Yes, sir.

Q. Have you paid the registration fee and franchise tax for that corporation each year since it was formed?

A. Yes, sir.

Q. What is your experience as a merchant?

A. I have been in the mercantile business at least 30 years. I was connected for another —

Q. (Interrupting) During those 30 years, what have you done in the mercantile field?

A. I have been connected with, working with stores as to location, as to remodeling, and as to merchandising of the stores.

Q. Were you in business for yourself throughout that period?

A. No, I worked for a large corporation.

Q. In your work with this corporation, did you work with other merchants?

A. Yes, sir.

Q. In what way did you work with them?

page 46] A. Three ways, I would say. At times, going in there, remodeling the store regarding merchandising, at other times finding a proper location for a store.

Q. Did you have occasion to evaluate buildings for mercantile uses?

A. Yes, I did that the greater part of the time I was in this field.

Q. Did you have occasion to suggest changes in buildings that would improve their use for mercantile purposes?

A. Yes, sir.

Q. Did you have occasion to reject buildings as being unsuited for mercantile purposes?

A. Yes, sir.

Q. Did you work with buildings with which basement sales areas were involved?

A. Very frequently.

William H. Hunt

Q. Would you state what you consider the prime requisites of basement sales area are?

A. We would never open a basement store, and I have opened quite a number in my experience, we would never in my experience permit one to be opened unless it had a wide open stairway to the basement.

Q. What was the reason for that?

A. Experience proved that customers would not go down to the basement to shop unless it was that way. We would never permit customers to go to the basement unless it was that way.

page 47] Q. When did you come to this area?

A. About 17 years ago.

Q. Did you go into business by yourself?

A. No, I became a partner with Mr. Wright.

Q. Is that the Mr. Wright that is defendant in this case?

A. Yes, sir.

Q. Where did you do business as a partner of Mr. Wright?

A. At 148 Maple Avenue, the same location, in the smaller store when I first started there.

Q. Will you look at the chart on the easel to your left and state whether or not that accurately reflects the layout of the main or street level floor of the present building at the location?

A. Yes, sir.

Q. Can you say whether or not these dimensions are correct?

A. Yes, sir.

Q. Can you state whether or not this chart accurately reflects the basement level of that building?

A. Yes, it does. There is one thing omitted on the first floor, the stairway showing to the rear.

Q. Do you mean the stairway shown here as going up from the basement level is not shown on the main floor where it opens into the main floor?

A. That is correct. It is omitted on the sketch.

Q. But that would be directly below where it is shown here on the stairway?

page 48]

A. Yes, sir.

Q. How much of the building is available for use?

A. The lower section of the building, the 42 foot building, was available when I came there.

Q. Do you mean the building from here (indicating)?

A. That is correct.

William H. Hunt

Q. Would that be the area shown here as Home Goods and Speed Wash?

A. That is correct.

Q. Was this partition in at that time?

A. No, sir.

Q. What part of that building did you use when you first got a business there?

A. Just the first floor.

Q. The basement was not in use?

A. No, sir.

Q. Did you subsequently or anyone subsequently prepare the basement for use as a sales area?

A. Yes, Mr. Wright did.

Q. Was it done for use by the partnership?

A. Yes, sir.

Q. Who prepared the plans?

A. I prepared the general plans.

Q. Did Mr. Wright approve them?

page 49] A. Mr. Wright worked with me on them, of course.

Q. Did he participate in preparation of the plans?

A. Yes, sir.

Q. Who did the work?

A. Mr. Rickert.

Q. In the course of this preparation, did you discuss the stairway shown there leading from the street level to the basement level?

A. That was a very definite discussion because of the importance of it.

Q. Did Mr. Wright participate in that discussion?

A. Yes, sir.

Q. Do you recall what rent the partnership was paying to Mr. Wright prior to the time the basement area was equipped for merchandising?

A. My recollection is \$225 a month.

Q. Was that rent raised at the time the basement was made available as a sales room?

A. Yes, the rent was raised to \$375 a month.

Q. When was the rest of the building put there?

A. Do you mean the new building?

Q. Yes, the rest that is shown on the chart.

A. I would say about 8 years ago. I just don't recall the date.

Q. When did Wright and Hunt, Incorporated,

William H. Hunt

page 50] come into existence as a corporation?

A. We came into existence in December 1955.

Q. When did it go into the mercantile business?

A. The corporation took over the mercantile business on May 1, 1956.

page 51] Q. Let the record show the witness is looking at Complainant's Exhibit 7.

A. It refers to it very plainly here. This is December. "As the basement area is not currently being used as a sales area, enclosure of the interior stairs therefrom is satisfactory."

Q. Did I understand it was prior to receipt of copy of that letter you were told you could not take people down there?

A. Just prior to that, just a few days before he was making the inspection.

Q. In the meantime, did you take many people down there?

A. If I had something we were not able to have on display upstairs, we took them down. Are you talking about after the enclosure?

Q. Yes.

A. Yes.

Q. Could you estimate how often that happened?

A. It is difficult to say, because the girls would take them down if a rug or something wasn't convenient to be upstairs. It would be as frequently as it was necessary to do it.

Q. Did customers go down except when they were taken down by the clerks?

page 52] A. We were advised by the Fire Marshal those doors had to be kept closed. Actually, that was when the Fire Marshal made this inspection. I misunderstood your question. Prior to that, we did open the doors and take the customers down.

Q. I believe that is all right now.

Mrs. Miller: Your Honor, I have not had an opportunity to go over those statements, and before I cross-examine Mr. Hunt, I should like an opportunity to do so.

The Judge: All right. We will take a recess. You can step down.

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page 55]

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William H. Hunt

WILLIAM H. HUNT,

returned to the stand and further testified as follows:

By Mrs. Miller:

Q. Mr. Hunt, I believe you testified yesterday you had been a partner in the business of the department store known as Wright and Hunt, is that correct?

A. Yes, ma'am.

page 56] Q. How long have you been a partner?

A. To my memory, as a partnership, it was about 12 to 14 years. I am not absolutely sure of that. I was a partner from the time I came in and I believe that was 1946.

Q. In 1946?

A. I am not absolutely sure.

Q. But it had been for some period of time you had been with the store before the incorporation, is that correct?

A. That is correct.

Q. During that time, did you occupy the same premises as the corporation did when it leased the property?

A. For the first period we occupied the small building.

Q. Is that known as the old building then?

A. The old building.

Q. What would that be, the old building, with regard to the chart?

A. The part where the Speed Wash is.

Q. Just the main floor or the basement and the main floor?

A. First we occupied just the main floor.

Q. Was there any basement at that time?

A. There was a stockroom in the rear of that building.

Q. Was there any basement?

A. There was a basement.

Q. But nothing under here (indicating)?

A. No, ma'am.

page 57] Q. Subsequently what happened, the next addition?

A. The next addition was the digging out and the building of that addition.

Q. Where is that represented on this diagram? What was dug out?

A. The area shown in that diagram there with the lines.

Q. Is this what was referred to as the downstairs store?

A. Yes, ma'am.

Q. And that was used for what?

A. For sales purposes.

William H. Hunt

Q. Then came the addition of the new building, is that correct?

A. Yes, ma'am.

Q. Was that the area shown here as the Department Store, this area?

A. Yes, ma'am.

Q. Then at the same time was this basement dug when the new building was built?

A. Yes, ma'am.

Q. Was this at any time used as a sales area?

A. We used it as a sales area after the corporation took over.

Q. But before, during the partnership term?

A. No, ma'am.

Q. So when you leased the premises, what was
page 58] the use to which this Department Store stock-
room area, as shown on the diagram, how is it
utilized?

A. I don't quite understand the question.

Q. At the time the lease was entered into in 1956 between Mr. and Mrs. Wright and you, what purpose was this area, which is shown as Department Store, Stock Room, what purpose was it being put to at that time?

A. A stockroom.

Q. And it had never been used for sales at that time?

A. No, ma'am.

Q. Since you leased the premises and then subsequently assigned that lease to Wright and Hunt, Incorporated, have you used the area shown as Department Store, Stock Room, for sales?

A. We did one Christmas season, the end of 1959, for an overflow. We used it for a stockroom sale at that time.

Q. Did you maintain this arrangement continuously, this area shown as Downstairs Store, was that used continuously as a sales area?

A. Yes, ma'am.

Q. Did there come a time you closed that area?

A. We never closed that area, no.

Q. You have always maintained it as a sales store?

A. We have always maintained it for selling, yes.

Q. Is it so, open for selling, at the present time?
page 59] A. No, ma'am.

Q. When did you discontinue the use as a sales area?

William H. Hunt

A. We discontinued that at the notice of the Fire Marshal.

Q. Will you tell us again when that time was?

A. I recall it was in December, at the time he wrote that letter. I believe it was December 15 if my memory is correct.

Q. What year?

A. It was 1961, when it was closed.

Q. Did the Fire Marshal tell you it should be closed?

A. Yes, he did.

Q. He told you that personally?

A. Yes, ma'am.

Q. Who told it to you?

A. Mr. Shipley.

Q. What did he say to you?

A. He said the basement could not be used.

Q. Did he give you any reason?

A. Not that I recall. He said the basement could not be used.

Q. You don't recall he said you would have to police the area, clean up the stockroom?

A. I don't recall him saying that, no.

Q. Your testimony is he just came in and said to you, "You are going to have to close up the basement store,"
page 60] is that right?

A. He said, "You are going to have to close up the basement store, that —" I am trying to get it correct, because there was two times he came in.

Q. When did he first come in?

A. My memory is that he first came in prior to that letter, on the date he told us that. He said it wasn't completed to use as a retail store.

Q. What did he tell you was lacking?

A. At that time I don't recall he said what was lacking, that he gave any particular reason for it. When he visited later, he went into it.

Q. What did he say when he visited later?

A. When he visited later was along in the next day. He stated there was not a proper exit from the downstairs store and at that time he told me that the exit on the far side, he made it very plain, that the rear doors would have to be made to open to the outside. Then at that time he pointed out to me the location which was practically the same where an outside exit could be put in, but that was a later date.

Q. So did you take any steps yourself to make the access? Did you do anything about the access at this point?

William H. Hunt

A. No, ma'am.

Q. Did he discuss with you at that time about page 61] rearranging your stockroom?

A. My recollection is that the amount of space we had I believe was correct, but if we had merchandise or stock piled in the center of the aisle floor, it wasn't quite direct but it was open.

Q. What do you mean, it wasn't quite direct?

A. I drew a direct line, how it should be, and at that time, we had counters and merchandise piled up, probably a little bit out of that direct line.

Q. Did you then take steps to clear that corridor?

A. I'd say it has been practically clear after that time.

Q. Then did you go back to the Fire Marshal and tell him you had complied and done what had to be done?

A. I didn't raise the question.

Q. You didn't ask him?

A. No, ma'am.

Q. Did you get in contact with Mr. Wright and tell him anything about the doors having to swing out?

A. No, ma'am.

Q. You were an active partner in the partnership of Wright and Hunt, Incorporated, is that correct?

A. Yes, ma'am.

Q. That is, you knew something of the operations, is that correct?

A. Yes, ma'am.

page 62] Q. Do you know what the gross sales were for the end of November just prior to 1956?

A. I don't recall.

Q. Do you know the approximate amount?

A. I couldn't state it. I don't recall.

Q. Would the figure \$300 be correct or in the neighborhood of \$300?

A. I don't recall.

Q. You wouldn't know?

A. I don't recall at this time the exact amount.

Q. Now, you have given to us, furnished for our use, certain profit and loss statements and certain gross sales figures from the time that the corporation took over. You have furnished this as a profit and loss statement for the final months of the fiscal year 1956-1957. Would you tell us what the gross sales reflect?

William H. Hunt

A. The gross sales there would be, I believe, for a 10 month period.

Q. That would be from what date?

A. May to February 28th.

Q. That is May 1956 to February of 1957?

A. That is right.

Q. And what is that figure?

A. \$201,040.89.

Q. All right, and does that final statement show page 63] a profit or a loss for that year?

A. It was a loss. No, it shows a profit.

Q. And what is that profit?

A. \$4,471.39, I believe.

Q. \$4,471.39?

A. Yes, ma'am.

Q. I show you a profit and loss statement for the final month of the fiscal year 1957 and 1958 that you have furnished. Will you tell us what the gross sales were for that year?

A. \$200,121.94.

Q. And did you have a profit or loss for that year?

A. We had a loss.

Q. What was that loss?

A. \$5,693.55.

Q. Now in both the fiscal year 1956 to 1957 and from 1957 to 1958, what area in the store, in the premises leased, were you using for sales?

A. Would you repeat that?

Q. Yes. During the fiscal year 1956 to 1957, what areas of the store were you using for sales?

A. The entire area, including the basement.

Q. When you say that, do you mean you were also using what is shown on the diagram as the Department Store Stock Room? Were you using that for sales?

page 64] A. Yes, ma'am.

Q. So in 1956 to 1957 you were using what is shown on the diagram as the Department Store, Home Goods, Speed Wash, and downstairs store, is that correct?

A. Yes, ma'am.

Q. In the fiscal year 1957 to 1958, what premises were you using for sales?

A. The same.

Q. The same. Department Store, Home Goods, Speed Wash and downstairs store, is that correct?

A. Yes, ma'am.

William H. Hunt

Q. I show you the final statement for the fiscal year ending in 1959. That would be your fiscal year from 1958 to 1959, which you have furnished to us. Will you tell us what the gross sales of the Wright and Hunt, Incorporated were at that time?

A. \$188,955.72.

Q. And then was there a profit or loss for that period?

A. There was a loss.

Q. What was that loss?

A. \$5,645.78.

Q. \$5,645.78, is that correct?

A. Yes, ma'am.

Q. What area in the store were you using for sales at that time? I will re-phrase that. What area of the page 65] leased premises were you using for sales at that time?

A. The same area.

Q. That is the area shown as Department Store, Home Goods, Speed Wash, and downstairs store, is that correct?

A. That is right.

Q. I show you a profit and loss statement which you have furnished for us for the fiscal year 1959 to 1960 and ask you to indicate what the gross sales were for that year?

A. \$184,248.26.

Q. Did you have a profit or loss for that year?

A. We had a loss.

Q. And what was the loss?

A. \$13,554.67.

Q. All right. What area of the leased premises were you using for sales during that year, 1959 to 1960?

A. With the Judge's permission, I would have to go into a little detail to explain that.

Q. Can you not just tell us?

The Judge: What area? Was that the question?

A. Yes, sir.

Q. Just tell us what area you were using at that time in the diagram.

A. Yes, but I would have to qualify it, with the Judge's permission.

The Judge: Do you know what area you were using?

William H. Hunt

page 66] A. Yes, until August of that year, we were using the same area. In August of that year, we rented the Speed Wash place to Peoples.

Q. Was that August 1, 1960?

A. No, ma'am.

Q. 1959?

A. Yes. I beg your pardon. It was September 1 that the Speed Wash took over. It was the date of the lease. That is my memory.

Q. So that for the first six months of the fiscal year, from 1959 to 1960, you were using what is shown on the diagram as Department Store, Home Goods, Speed Wash, and Downstairs Store for sales?

A. That is right.

Q. And for the last six months of the fiscal year 1959 to 1960, you were using what is shown on the diagram as Department Store, Home Goods, and Downstairs Store, is that correct?

A. That is right.

Q. I show you the profit and loss statement for the fiscal year 1960 to 1961 which you have furnished us and ask you to indicate what the gross sales were for that period, that is, the gross sales of Wright and Hunt?

A. \$156,185.76.

Q. Does that indicate a profit or loss?

page 67] A. That indicates a loss.

Q. What is the amount of that loss?

A. \$1,456.68.

Q. What area of the premises leased from Mr. and Mrs. Wright were used for sales during the fiscal year 1960 to 1961?

A. The Department Store, the Home Goods section, and the Downstairs Store.

Q. All right. Now in the material that you have furnished to us as your profit and loss statement for February 1962, you did not furnish a summary for the year, but can you tell us what the gross sales were from looking at the monthly statements? It is a cumulative report, is it not?

A. Yes, the gross sales are \$163,670.69.

Q. And does it show a cumulative profit or loss for the fiscal year 1961 to 1962?

A. It shows a loss of \$2,127.03.

Q. \$2,127.03?

A. Yes, ma'am.

Q. And I believe there is a notation there that says, "Before

William H. Hunt

final adjustments." Do you have any idea what those final adjustments amounted to?

A. That is in there. Mr. Lillard, You may have that in your file, the final statement here.

Mr. Lillard: They are at the office. We will page 68] have to send for them.

A. There was an error and I wrote that in before it was ordered.

Q. Do you believe there was a profit or loss during that year?

A. There was a loss, considering the amount set aside for depreciation.

Q. Now you furnished us the monthly statement as of December 1962, is that correct?

A. Yes, ma'am.

Q. You, of course, have not had a complete statement for the fiscal year 1962 to 1963, is that correct?

A. Yes, ma'am.

Q. Your fiscal year ends when?

A. February 28.

Q. So will you indicate to us what the cumulative gross sales have been for the period through December 31, 1962?

A. The gross sales is \$103,707.50.

Q. And do you show a profit or a loss?

A. We show a loss of \$15,826.27.

Q. In the fiscal year 1961 and 1962, what area of the store were you using for sales purposes?

A. We were using the same area, the Department Store, the Home Goods, and the Downstairs Store, for sales.

Q. Was that for the entire fiscal year of 1961 page 69] to 1962?

A. That is until the enclosure. He notified us that the basement was unusable.

Q. I am not asking that. I am asking what areas you used during the years 1961 to 1962 for sales?

A. The area we used for sales was the Department Store, the Home Goods section, and the Downstairs Store, and the enclosure was put in and finished in October 1961.

Q. Were any different areas then used after October 1961?

A. We used the Downstairs Store for sales until — in a small way, very little, we took the customers down after the enclosure a little bit if somebody came in, but we didn't have

William H. Hunt

it for display. After the enclosure, we were permitted to use it.

Q. After the enclosure was put on, what area was used for sales?

A. We used it as I explained a moment ago, if a customer came in we took them down a little bit, but we didn't use it for display.

Q. How long did you use it?

A. We used it until he came in along in December, when he notified us we couldn't use it, whatever time that was.

Q. What area then was being used in 1962 and 1963?

A. We used the Department Store and the Home Goods section.

Mr. Lillard: Your file will tell you what you were asking for, so would you pull it out?

page 70] A. What years did you say you were short on?

Q. March 1960.

A. This is the year end statement. Which year did you say?

Q. February 1961.

A. February 1961, the final statement, is that correct?

Q. Yes. What are the gross sales?

A. Let me get straight here now. This is the one that ends February 28, 1961.

Q. That is right.

A. The gross sales were \$156,185.76.

Q. Was that a profit or a loss?

A. It was a loss, \$1,456.68.

Q. \$1,456.68?

A. Yes, \$1,456.68.

Q. That was a loss?

A. That was a loss, yes.

Q. Now I believe you stated that you had a very great loss in 1962 because of certain depreciation, is that correct?

Mr. Lillard: I do not recall that statement, Your Honor.

(The testimony was read back by the stenographer.)

Q. Was the amount set aside for depreciation during 1962, the 10 months of 1962, was that different than you had been setting aside in the past?

A. It was the same.

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Q. What sort of depreciation have you used, page 71] what method?

A. We have set up a standard procedure of depreciation each year for fixtures and equipment.

Q. Do you take the same amount each year?

A. Yes, ma'am.

Q. So that, is that the only reason you would have suffered that loss as to depreciation?

A. I don't understand your question.

Q. I will withdraw that question. Now, Mr. Hunt, I believe that you stated that, when you went into business, that is when you leased the premises for yourself and then assigned the lease to the corporation, that there was a Ben Franklin store in operation, is that correct?

A. On one side, we had the variety store operation.

Q. That is shown on the diagram as Home Goods and Speed Wash?

A. Yes, ma'am.

Q. Is that a franchise?

A. Yes, ma'am.

Q. How long was that franchise kept?

A. My memory was the franchise was kept until April 1959.

Q. Until April 1959. Then did it cease because of your wishes or was it cancelled?

A. It was cancelled. We did not make any money on the variety side. We did make money on the department store side and lost it on the variety store. So with the page 72] mutual consent of the corporation, we cancelled it I believe in April 1959. The variety store showed a loss. The department store showed a profit.

Q. So it was your decision to cancel the franchise?

A. Yes, ma'am.

Q. Was that at the end of the regular franchise period?

A. No, ma'am.

Q. You have stated you were in business for some years checking sites and locations for various businesses, is that correct?

A. Yes, ma'am.

Q. Were those businesses department stores and variety stores?

A. Yes, ma'am.

Q. When you would be negotiating on a certain site or location, would you at that time when you were so employed, would you check into the local fire regulations? Was that a part or

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one of the things you would consider in choosing a site?

A. In choosing a site, you choose a site on the basis of the condition of the building at the time you see it.

Q. Did you check then to see if it was in compliance with the fire regulations?

A. I can't say I ever had the question come up when I was checking sites, if the building was in condition
page 73] for us to accept it.

Q. Did you make any inquiry when you leased this building from Mr. and Mrs. Wright as to the existing fire regulations?

A. I would have to answer it this way.

Q. Well, did you, Mr. Hunt?

A. Mr. Wright knew.

Q. I am not asking what Mr. Wright knew. I am asking you, did you make any investigation?

A. He at that time knew that there would have to be a time when the sprinkler system would have —

Q. (Interrupting) I am asking you this question and I want you to answer it. Did you make any investigation as to existing fire regulations when you entered into the lease?

A. I was conscious about it, and he —

Q. (Interrupting) I am not asking about him. I am asking about you.

A. I knew there were fire regulations there.

Q. Did you know of any violations, that the building was in violation of any fire regulation?

A. I knew the fire regulations would have to be met. They were not enforced at that time.

Q. What were those regulations you knew the building was in violation of at the time you entered into the lease?

A. That the building should be sprinklered.

page 74] Q. And you had learned or believed that was a requirement?

A. Yes, ma'am.

Q. Did you believe that was a requirement at the time you entered into the lease?

A. We both did.

Q. I am not asking about Mr. Wright. I am asking what you believed.

A. We both did.

Q. You believed that was a requirement at the time you entered into the lease?

A. Yes, ma'am.

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Q. And yet you entered into the lease, did you not?

A. Yes, ma'am.

Q. Is there anything in that lease that says anything about a fire regulation or a sprinkler system at the time you entered into the lease?

A. We both —

Q. (Interrupting) I am not asking about him. I am asking you a question. Do you know whether there is anything in that lease that says anything about a fire regulation or a sprinkler system?

Mr. Lillard: I believe the question shows a conclusion of law that this witness is not qualified to give.

The Judge: I think the lease speaks for itself.

Q. Did you ask that such a provision be included in the lease?

page 75] A. No, sir.

Q. I show you a recap of the figures you have furnished to us as of the gross sales and the profits and losses of Wright and Hunt, Incorporated, since you took it over, that is, since you leased the premises, and I ask you to observe the month of May for each of the fiscal years, 1956 to 1957, 1957 to 1958, 1958 to 1959, 1959 to 1960, 1960 to 1961, 1961 to 1962, and the ten months in 1962, that is, ending December 1962. What was the gross sales as shown in May 1956 when you took over the operation of this department store?

A. \$23,289.03.

Q. And is there any other May since you have taken over this operation that you ever got back to \$23,289.03?

A. No, there has not, but there is qualifications for it.

Q. Then will you observe the month of June for each of these fiscal years? The month of June 1956, what were the gross sales?

A. The same figure, \$23,976.02.

Q. Has there been any other month of June since you took over that you have achieved these gross sales, \$23,976.02?

A. No, ma'am.

Q. Will you observe the month of July since you took over. What was the gross sales as shown in July 1956 when you took over?

page 76] A. \$17,399.89.

Q. Have you ever achieved, since you took over, \$17,399.89?

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A. No. Of course, that was with the variety operation.

Q. I am not asking that. That was your decision, Mr. Hunt. Will you observe the month of August and tell us what the gross sales were in August 1956?

A. \$18,227.76.

Q. Have you at any time during your occupancy of those premises reached the \$18,227.76 figure?

A. No, ma'am.

Q. Will you then observe the month of September during your occupancy. What were the gross sales for September 1956?

A. \$20,263.76.

Q. Did you at any other time during the month of September of the fiscal years you have occupied the premises, have you ever reached the figure of \$20,263.76?

A. No, ma'am.

Q. Observing the month of October 1956, what were the gross sales?

A. \$19,347.01

Q. \$19,347.01?

A. Yes, ma'am.

Q. Did you ever thereafter achieve the figure of \$19,347.01 in any October of any of the fiscal years?

A. We did in October of 1962 to 63 when we put page 77] on the fund-raising sale to pay our bills.

Q. What was the figure when you put on the promotional sale?

A. \$23,166.69.

Q. What is the usual margin of mark-up?

A. The usual margin of mark-up is 32 to 33%. That is my memory.

Q. That is normal, in other words?

A. In 1960 to 1961, the mark-up was 33.4%.

Q. And what was your margin during this promotional sale of October 1962?

A. Of course it was greatly affected by markdowns. We had to incur debts to be —

Q. (Interrupting) Just tell us what your mark-up was.

A. It dropped to 25.8%.

Q. Tell me what that was for the month of October.

A. That was 7.8% mark-up for the month of October, which is naturally affected by the markdowns for that month. Each month is affected separately.

Q. Is it your testimony that, while your regular mark-up

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was between 31% to 33%, that this particular month it was 7.8%? Are you using this on a cumulative basis?

A. I am using that on the basis it presents. It is 7.8%. The markdown reflects this particular month.

Q. Directing your attention to the month of November during the time of your occupancy —

page 78] Mr. Lillard: (Interrupting) May I see what the witness is being examined about?

Mrs. Miller: Yes, he can fill out each one of these. I have prepared these for easy presentation. If you wish to go through them, I don't mind it.

Mr. Lillard: I think the witness should at least be able to spot check these.

The Judge: I think he can look at them.

Q. Tell us what the gross sales were for the month of November 1956.

A. The gross sales for the month was \$20,658.69.

Q. Will you check through the other fiscal years, the succeeding fiscal years, and tell me whether you ever attained that figure for any other November?

A. It is going to take a minute. I will spot check a few of these.

Q. I don't want you to spot check them. I want you to know.

A. That is 1957 to 1958 now you are asking about?

Q. That is right.

A. That is 1957. Am I correct, Mrs. Miller?

Q. I don't care about your naming the figures. I want you to look through the other November statements and tell me if you ever got to the volume of \$20,658.

A. To save the time of the Court, I would say that we had not.

page 79] Q. You have not. Directing your attention to the December sales, is that normally the Christmas season?

A. Yes, ma'am.

Q. In other words, the purchases are made in December rather than November?

A. I beg your pardon?

Q. Your Christmas purchases are made in December rather than in the latter part of November?

A. December is the largest month in the year.

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Q. Tell us what the gross sales were for December 1956.

A. \$35,222.10.

Q. Did you thereafter have gross sales that exceeded \$35,222.10?

A. I will have to check that one through.

Q. All right.

A. In December 1957, we had \$35,293.37.

Q. So that that was approximately \$70 a month, the previous — an increase of about \$70?

A. If my first figure agrees with yours, that is correct. In December 1958 gross sales were \$38,971.08.

Q. So that was an increase of —

A. (Interrupting) That is 1958 to 1959.

Q. So that was an increase of about \$3,000, is that correct?

A. If our both figures agree, that would be correct.

Q. What were your gross sales then for December 1959 to 1960?

page 80] A. \$34,399.44.

Q. So that was a decrease of about \$4,000, is that correct?

A. From what they are now?

Q. From the figures here.

A. From the year you first asked about, it is an increase, I believe.

Q. I believe the record will show the gross sales for December 1956 were \$35,222.10.

A. You are correct. It is about the same, anyway.

Q. That was the year, 1959-1960, that you had leased a portion of your sales space to Speed Wash, is that correct?

A. Yes, ma'am.

Q. What were your gross sales in December 1960 to 1961?

A. For December 1960, \$29,194.32.

Q. What were the gross sales now for the month of December 1961 to 1962?

A. \$23,024.71.

Q. And what were the December gross sales for December 1962?

A. Excuse me. They got mixed up here a little bit when you were working on them. \$14,395.64.

Q. To your knowledge, did your gross sales ever achieve those that you had during your first year of operation?

Mr. Lillard: If the Court please, this is in evidence, it has been over once, and I see no reason for the witness to be

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page 81] called upon to repeat this from time to time. Mrs. Miller just finished getting this information item by item. Now she is asking him to restate it *in toto*.

The Judge: I would sustain the objection, Mrs. Miller.

Q. All right. Now when you took over this business, that is when you entered into this lease, were you the only department store in the town?

A. Yes, ma'am.

Q. Are you still the only department store in town?

A. Why, as a department store classification, I assume yes. We have variety stores there.

Q. At the time you entered into the lease, were there variety stores other than the Ben Franklin store in Vienna?

A. Peter Pan, I believe.

Q. Was Peter Pan in operation at the time?

A. I think it was.

Q. Since you entered into the lease, have there been other stores opening in the town that sell the same merchandise as you sold in 1956, that is, clothing, shoes, varieties?

A. There has been new competition opening in the town in various fields.

Q. Can you tell us who they are, generally?

A. Well, we had a shoes store open, we had a Grant's open.

Q. You did have a Grant's open?

A. Yes, ma'am.

page 82] Q. When was that, do you remember?
A. In November 1961.

Q. November 1961?

A. I am not sure of the date.

Q. Who else sells clothing and varieties?

A. The Super Giant.

Q. What about Curly's Work Clothes?

A. I forgot that, yes. That was opened.

Q. Is that the sort of clothing you sold in the store in 1956?

A. Some lines were. There is a shoe store open but I think I mentioned that.

Q. One shoe store or more than one has opened since you entered into the lease?

A. One shoe store opened last year. I believe that is a little children's shoe store.

Q. Did you sell ladies, mens and childrens shoes?

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A. We did, casual shoes.

Q. Have you sold any dress shoes?

A. In the merchandise term, they are casual shoes for women, men and boys.

Q. Have there been any clothing stores, that is, that sold dresses and children's items?

A. We have a children's shop open, two ready to wear stores now and men's store.

Q. Does Grant's sell such clothing?

page 83] A. Yes, ma'am.

Q. And does Super Giant also sell such clothing?

A. To a limited degree.

Q. What are the drug stores in town? Have any been opened since the lease that would carry items such as yours?

A. We have a Drug Fair and a Peoples Drug Store. That is in a lot of peoples' lines.

Q. At the time you entered into the lease, were there any gift stores in the town of Vienna?

A. We have a gift store on a back street. I don't recall when they were opened.

Q. Were any opened at the time of the lease?

A. Yes, Ketterman's.

Q. And Worthington's on Church Street?

A. Yes, ma'am.

Q. Was that opened since the lease?

A. Yes, ma'am.

Q. Are you aware there is a gift shop?

A. I believe there is a gift shop and a card shop. I forgot about that.

Q. Do you carry cards?

A. We carry cards, yes.

Q. You do now?

A. Yes.

page 84] Q. And I believe you testified you made certain changes that cost you \$1,500. Do you have a breakdown of those costs?

A. I made a note of the costs on the sheet and estimated it as close as I could.

Q. Can you tell me where they are? Are they in those sheets you have given us?

A. I assume they are in those sheets. They were there yesterday.

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Q. When you say they were costs, do you mean costs of operation or were they paid to someone?

A. I set up a schedule of the amount of time we had to take of our employees' time, including also some extra help, to make this extra layout that we had to do because of the enclosure.

Q. Did you have to pay your employees anyway, whether you were moving stock or not?

A. A certain number of the employees were on the regular payroll, but their time had to be spent on this particular project.

Q. And who did you have to pay for extra help, extra employees?

A. Do you mean the employees?

Mr. Lillard: This is a memorandum of the witness.

Mrs. Miller: Was that prepared by you?

Mr. Lillard: By him.

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Mrs. Miller: At your request?

Mr. Lillard: No, ma'am, not at my request.

Q. Can you tell us whether or not those figures are reflected in your profit and loss statement?

A. These are figures that I kept a record of at that time, to the damage. They are reflected in our profit and loss and our gross sales.

Q. All right. Can you show us where they are reflected, please?

A. Including my statement, Mrs. Miller, these figures that we had prepared and put in here in the 1961 period are figures that we felt were definitely caused by the additional work and help that had to be involved in making that change, that we could have saved that amount.

Q. We understand, but were they reflected?

A. They are reflected in our employees' salaries.

Q. Can you tell us — Mrs. Rowe on October 13 — is she a regular employee?

A. Yes, ma'am.

Q. What is the \$30 for?

A. That is the amount of time we estimated she spent on this particular work. We had to neglect other departments to straighten this work out.

Q. What did you ordinarily pay Mrs. Rowe?

A. \$75 a week.

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page 86] Q. Is this \$30 part of her regular salary or is this \$30 for overtime?

A. This is part of her regular salary.

Q. Is Carter a regular employee?

A. Yes, ma'am.

Q. In the interests of saving time, will you tell me whether any of those expenses listed for salaries, are they a part of the regular salaries for those people?

A. These amounts listed here for these people are part of their regular salary. Also, this included the overtime they would have spent working overtime, plus extra employees, and I don't have that figure available, but we did have to employ extra help to do other things while these girls were working on the layout.

Q. So you took the regular employees, although they were on regular salary, to do these things, and you say you employed other people to wait on customers? Which notations show the other employees you hired to wait on customers?

A. This estimate was set up without making that breakdown. I have here an extra girl came in and did that work, \$35. That was an extra girl we used for it.

Q. How much was the extra help you put on and what is the date and the amount, please?

A. My daughter, Shirley, was extra help put
page 87] on at this time to help out.

Q. Is that Mrs. Jackson?

A. Yes, ma'am.

Q. What dates did she work?

A. 10/20.

Q. How much was she paid on 10/20/61?

A. This is 10/20/61. Her whole salary was higher than this, but I charged \$20 to this extra work. She did a lot of this extra work for us.

Q. Was she on the regular payroll at that time?

A. She was on part time.

Q. How much did she earn on part time?

A. Different amounts each week. I cannot supply the information right now. I did not charge her full salary. I charged the time I felt she didn't wait on the trade and part time she trimmed windows.

Q. Part time she trimmed windows?

A. Not all the time. She worked certain periods. We had to call her in through the upset to help us. She had worked

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part time through the year, but she worked for the telephone company.

Q. What other extra help did you put on?

A. We had a girl here named Joannie, \$25, my brother was on part time during this period.

Q. What is his name?

page 88] A. P. J. Hunt.

Q. When did P. J. Hunt work extra?

A. He worked quite steadily during this period for us. He did physical changes.

Q. Isn't it a fact he has worked there regularly?

A. He has worked full time on and off. We would not have had to keep him on full time during this period had it not been for the work as carpenter and the physical changes he made for us.

Q. What did he do?

A. We had to change some of the counters on both sides of the store. We had to build racks around the enclosure. We had to reset the back of the store with the layout the best we could with the enclosure there and also he did some of the physical work on the layout there.

Q. Who else was on extra work that is not a regular employee?

A. We had a boy by the name of Powell, who came in and did a lot of marking, etc.

Q. What was that date?

A. 10/27, \$10; 11/3, \$10; 11/10, \$10. Of his salary, we charged off to that, besides scraping the floor, and then 11/17, \$10 and 12/8, \$9 that week.

Q. Isn't it your custom anyway to put on extra help at Christmastime?

page 89] A. No, it is not. This year we had to put on extra help. Last year we were able to get along without extra help because we were ready to get our merchandise ready in time. We have had to put on very little extra help.

Q. Were there any other people you put on as extra help?

A. Shirley Jackson, the first \$50.

Q. What date did you give her the \$50?

A. The \$50 date was 10/13 and the next time on 10/27. He spent his whole week on that, his \$80 salary, and 11/3 he spent most of his week so I charged \$70, which I think is fair, and 11/10 I charged \$70 and on 11/17, \$70, and on 11/24, \$70, and 12/1, \$70, and 12/8 was \$80 and there were some physical

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changes he made for the department store to help me out. This help became necessary after the first of the year.

Q. Is January usually a slow month?

A. We keep all our regular help in January as we do throughout the year. Shirley Jackson on 10/20, \$25.

Q. That is your daughter?

A. Yes, she came in to help us. 10/27, \$25; 11/3, \$32; 11/10, \$25; 11/17, \$33; 11/24, \$18, 12/1, \$25; 12/8, \$35.

Q. Do you have any others there?

A. Then Joannie, who was extra help, on 10/27 is \$35, and the date I gave you the information for this boy Carl, did you mark those down?

Q. That is taken down.

page 90] A. And on 11/8 we had a girl by the name of Carey we gave \$3, and also that week a girl by the name of Joan we gave \$18 and on 11/24 we gave the one Carey \$24, and 12/1 Joan was \$12 and 12/8, \$29.25.

Mr. Lillard: If the Court please, I find it difficult to see what purpose is being served here. His testimony is the same, that these expenses were incidental to the movement. That is his testimony. It is not changed by itemization.

Mrs. Miller: I am just asking how he arrived at it. I think we have that right. A person could come in and say, "I have lost \$1,000." I think we have the right to find out how. We are just getting to it.

The Judge: I think that is proper cross-examination.

Mr. Lillard: May we have a recess at this time? This witness has been on the stand quite a while.

The Judge: I don't think he has been on very long.

Mr. Lillard: About an hour and a half.

The Judge: Let's see if we can't finish the cross-examination. How long do you anticipate cross-examining him, Mrs. Miller?

Mrs. Miller: About half an hour.

The Judge: We can go about 15 minutes more.

Q. I show you Plaintiff's Exhibit 16 and call attention to the first one of the pictures that is clipped.

Mr. Lillard: May I ask if they have been
page 91] marked a, b, c, d and so on?

Mrs. Miller: They have not, Mr. Lillard.

Mr. Lillard: May I suggest that be done so the reference in the record will be to a specific picture?

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Mrs. Miller: That is a good idea.

(The Judge so marked the pictures.)

Q. I show you a picture marked Complainant's Exhibit 16a. Will you tell us if this reflects the manner in which the merchandise would be displayed, with the enclosure in the basement store?

A. On this picture and when this was taken, it was after the —

Q. (Interrupting) I am aware of that.

A. It is used now only for a stockroom.

Q. This does not properly portray how it would look with the merchandise displayed for sales purposes, is that correct?

A. We certainly would have merchandise displayed if we were going to use it for sales purposes. This is a stockroom.

Q. You would not have displayed it that way, would you?

A. No, this is a stockroom.

Q. I am asking you, though, this does not properly show the merchandise as you would display it?

A. No, ma'am.

Q. What does Plaintiff's Exhibit 16b show?

A. It shows — I can make it plainer this way — page 92] when we took the picture prior to the enclosure and after the enclosure we had the photographer set his camera in the same spot to give the complete picture of what the customer saw if she would come down, the attractiveness without the enclosure and if it wasn't there.

Q. Yes, but what does the picture show?

A. The picture shows what a poor view a customer would have.

Q. Did you have all of your store lights on when that picture was taken, all the basement lights?

A. We had these lights on and the big lights on.

Q. Did you have the same lights on you had here?

A. Yes, ma'am.

Q. It is your testimony the glass would cut down that much of the brightness, is that correct?

A. That is correct in a measure. It could be the center lights were not on.

Q. In other words, they don't look to be on, do they? Don't they show the lights?

A. This is the lights that were not on (indicating). The same lights were on that were on in this picture (indicating).

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Q. I am asking you if all the lights were on in the basement store when Exhibit 16b was taken?

A. The same lights were on.

Q. Mr. Hunt, I don't want to be argumentative. page 93] I am asking if all the store lights were on in the basement when the picture marked Plaintiff's Exhibit 16b was taken. Yes or no, that is all you have to say.

A. The evidence is that some were on. They are on here (indicating).

Q. I am asking about this 16b.

A. As nearly as I can remember, the same lights were on in here, but this light was out.

Q. Do you believe this light was on (indicating)?

A. This light was on, yes. It shows in here.

Q. Are you saying this is the same as Exhibit 16c where the light was not on?

A. Mrs. Miller, as near as I can identify the picture, the same light you are seeing here is the same light that is right here (indicating). It was taken on the same date.

Q. You don't know then whether the lights were on in the basement store?

A. Yes, the lights were on.

Q. All right, the lights were on in Exhibit 16a. Is that what you are testifying?

A. I am testifying this light was out.

Q. That is the light directly opposite of the viewing window in Exhibit 16b, is that correct?

A. That is correct.

Q. And that light was out when Exhibit 16b page 94] was taken?

A. I don't think it was out. I think it was on, as far as I can interpret.

Q. You are testifying the light in Exhibit 16a was off?

A. This light, there was no bulb in it, and its picture shows the bulb in it.

Q. Then all the lights were on?

A. The lights were on in Exhibit 16a.

Mr. Lillard: I don't want to interrupt, but I think the Court can tell whether the lights were on or not. If Mr. Hunt does not remember at that time whether the lights were on or not, I think he would say he wouldn't know whether they were on or not.

The Judge: I didn't understand that.

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Q. I want to ask you concerning each one of them. It will only take a minute. If you don't know, that is all you have to say.

A. Excuse me. I want to look through them. As near as I can tell, most of the lights were on from this picture at that time, Mrs. Miller, except these two. This one here, they were on, the lights at that time.

Q. Let the record show he is referring to Exhibit 16a. What is your testimony as to whether all the basement lights were on when this was taken?

A. I would say most of them were on.

Q. Were there lights on the stairway when this page 95] picture was taken?

A. Yes, ma'am.

Q. And it is your testimony there were lights in the stairway?

A. Yes, there were lights in the stairway. It shows it here.

Q. Referring to Complainant's Exhibit 16b, were all the lights on in the basement store when that picture was taken?

A. The same lights were on.

Q. The same lights were on as in Exhibit 16a and it is your testimony that a couple of them were out?

A. Yes, from my memory.

Q. When Exhibit 16c was taken, were the lights on or off in the basement store?

A. The same conditions.

Q. When the basement is fully lighted, are the shadows shown on the various shelves, are they normal?

A. I assume they are.

Q. In Exhibit 16d, were the basement lights fully on at that time?

A. The same lights were on.

Q. So there were a couple out and the rest were on?

A. Yes, the same lights were on.

Q. And were the same lights on in the stairway page 96] in Exhibit 16c as in Exhibit 16d?

A. Yes, ma'am.

Q. Calling your attention to Complainant's Exhibit 16e, were the lights on in the basement store at that time?

A. The same lights were on.

Q. And your testimony is that all were on except a couple?

A. That is correct.

Q. Were any of these near the viewing window?

A. To make it shorter for the Court, the same lights were

William H. Hunt

on all the time we were taking pictures. We never changed the lights.

Q. But it is your testimony a couple were out?

A. A couple were burned out.

Q. Were any burned out near the viewing windows on the stairs?

A. Yes, right here (indicating).

Q. So they were opposite the viewing windows?

A. Yes, ma'am.

Q. And it is your testimony no lights were off when any of these pictures were taken?

A. That is correct.

Q. The lease shows your arrangement is for an annual rental of \$10,500, is that correct?

A. Yes, ma'am.

Q. Payable monthly, is that correct?

A. That is right.

page 97] Q. And you have stated you had as a matter of fact assigned or leased certain of the premises to Speed Wash, is that correct?

A. Yes, ma'am.

Q. What is the area you have leased to them? Is this diagram drawn to scale?

A. No, not exactly to scale. The measurements are accurate. There is 75 feet there.

Q. 75 feet from the front of the building, including the Speed Wash?

A. Yes, down below, it gives it.

Q. This is 108?

A. Yes, ma'am.

Q. But this Speed Wash is 75 feet long, is that correct?

A. I am pretty sure.

Q. What is the width of the Speed Wash area you have leased?

A. According to my memory, the width, including the partition — well, it is divided in half and it is exactly 40 feet, the entire width of the building, so that partition is in the middle.

Q. This is the old building?

A. Yes, ma'am, and 42 feet exactly.

Q. So this is the outside wall of the building?

A. That is the outside measurement.

Q. So this is 40 feet in here, is that correct?

page 98] A. That is right.

William H. Hunt

Q. So the space leased to Speed Wash is 20 by 75 feet?

A. 20 by 75 feet, with allowance for partition right in the middle.

Q. And that was taken out of what was the variety store when you leased it?

A. That is correct.

Q. Have you at any time leased any other of the premises?

A. For a short time, to help the Twin Auto Parts people in the back stockroom of the basement, we let them use, and I believe the period was approximately three months, this back stockroom for storage purposes. If it had worked out, we would have negotiated a lease, but it was just a temporary period they needed it.

Q. So that did not take away from your sales area?

A. No, ma'am.

Q. Shortly after the conclusion of your first year's operations, directing your attention to that period, did you at that time approach Mr. and Mrs. Wright about reduction in your rent?

A. After the first year. The time that any approach was made was during the time, if my memory recalls, was during the time we discussed the variety end and our sales were affected by it.

Q. About when was that, about what period?

page 99] A. My recollection is that it would have been early 1959. That is my recollection of it, but they were not interested.

Q. That would have been at about the time you leased to Vienna Speed Wash?

A. That was prior to that time, from my memory.

Q. Just prior to the time you leased to Vienna Speed Wash?

A. That is my memory.

Q. Let me ask this at this point. What is the relation of Wright and Hunt, Incorporated to Vienna Speed Wash?

A. Nothing.

Q. You are their lessor?

A. Yes, ma'am.

Q. And they are your lessee?

A. Yes, ma'am.

Q. Is that for a straight rental?

A. That is a straight rental with a percentage basis on a certain volume.

Q. And that certain volume then is considered in connection

William H. Hunt

with the rent to Wright and Hunt, Incorporated, is that right?

A. That is right.

Q. Do your profit and loss statements you furnished us, do they indicate how that comes into the corporation, as other income?

A. Yes, they have been accumulating this way.
page 100] You asked that question before, and I looked into it.

The method that our bookkeeper set up, that was credited to our rent account. It was the difference in rental we charged off to other expenses.

Q. So it is not reflected in other income but shown in other expenses?

A. Yes, a reduction in expenses, which is reflected in our profit.

Q. What is that rental from them?

A. The best rental was \$250 a month.

Q. Has there been any time it went over that?

A. Yes, ma'am.

Q. It has?

A. Yes, ma'am.

Q. And is that reflected on your statements?

A. Yes, ma'am.

Q. So that in doing that it increases your rental expenses, is that correct?

A. That is correct.

Q. That is the rental expense Wright and Hunt owes Mr. and Mrs. Wright?

A. It increases it on our statement. It doesn't increase their rent.

Q. And you said you leased one time to Twin Auto Parts?

A. We didn't lease to them. We did let them
page 101] use it in an emergency. For the time they were there, I think it was three months, they paid us \$150.

Q. Do you remember about when that was?

A. I have so many dates here. It will take me a minute to figure it out.

Q. That is all right.

A. From my memory, I think it would be in 1962. I may be wrong.

Q. In 1962?

A. I could be wrong.

Q. Did there come a time —

William H. Hunt

A. (Interrupting) I beg your pardon. 1961 would be correct. I was mixing up the enclosure with that.

Q. Do you remember what time that would have been during the year?

A. I think it was in the mid-year.

Q. Do you recall that you, or anyone to your knowledge, did anyone go to Mr. and Mrs. Wright and ask them to lease the basement, the downstairs store, to Twin Auto Parts as a salesroom?

A. Yes, ma'am.

Q. Do you recall when that was done?

A. It would be prior to the date we let them have the back stockroom.

Q. So if you say it was mid-year, then it would page 102] have been in the Spring of 1961?

A. I assume it was Spring, to the best of my knowledge.

Q. May I have a recess for just a minute?

The Judge: The Court will take a recess at this time.

(The Court recessed from 11:55 o'clock a.m. until 12:00 o'clock noon.)

Q. Those are all the questions I have on cross-examination.

By Mr. Lillard:

Q. Mr. Hunt, you have testified to the subletting of a portion of the premises covered by your basic lease to the Vienna Speed Wash and I believe you testified that lease was made in September 1959?

A. That is correct.

Q. What is the term of the lease with Vienna Speed Wash?

A. The same terms as the lease with Wright and Hunt.

Q. Does it have an option to renew?

A. Yes, that is right.

Q. So the right of occupancy is concurrent as to the time of your right of occupancy with Wright and Hunt under the basic lease?

A. Yes, sir.

Q. At the time this lease was negotiated, were you making changes in the business operations?

A. Yes, we were, due to the closing out of the variety field, and in making the decision to rent this space to

William H. Hunt

page 103] Speed Wash, we decided on the basis that we have the downstairs store for any future expansion of the lines of merchandise we were going to develop.

Q. Since you had that what?

A. We had that space to use for development of our lines of merchandise, the downstairs store.

Q. Did you need less space as a result of closing out the variety line?

Mrs. Miller: I object to these questions. These are leading questions. They can be rephrased.

Q. I agree that is a leading question and I will rephrase it. Did you anticipate any change as a result of closing out the variety line?

A. Yes, we anticipated a change.

Q. What change?

A. The change of the lines of merchandise we were handling. We were going to handle higher priced lines.

Q. Did you anticipate any change caused by that?

Mrs. Miller: I am going to object to this line of questioning about what Mr. Hunt or Wright and Hunt's business judgment was. I think it is irrelevant here, strictly because whether they have used poor judgment in the management of their business is not an issue in this case. There was a lease. It provided for certain businesses. If Wright and Hunt
page 104] decided they would do something else with it, it is certainly not of concern to Mr. and Mrs. Wright.

Certainly because of the decrease in sales all down the line, we certainly think it does not have any relevancy as to the issues here.

Mr. Lillard: I think the uses covered by this lease for this tenant are certainly material. The question here is a deprivation of a part of that use. I think it is a basic question.

The Judge: I think it is all right.

Q. All right. Would you state whether or not this change in your lines caused other changes in your plans? And if so, what?

A. The changes in our plans, as we coordinated our lines, we discontinued certain variety lines and replaced them with higher-priced individual selling items, such as we developed

George H. Jones

our line of rugs, congoleum rugs, curtains, our lines of pictures, our lines of lamps, our lines of shades, etc.

page 105]

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GEORGE H. JONES,

a witness of lawful age, being first duly sworn, testified as follows:

By Mr. Lillard:

Q. State your name, occupation, and business address, please.

A. My name is George H. Jones. I am a Certified Public Accountant, with my office in the Wright Building, Vienna, Virginia.

Q. Did you prepare certain statements concerning the financial condition of Wright and Hunt, Inc.?

A. I did.

page 106] A. What I am trying to say, you receive a utility bill for lights every two months, so there is a possibility one month would have a greater charge for lights than the next month, but, taken as a whole, they are accurate.

Q. Following generally accepted accounting standards, would you say they are accurate?

A. They are accurate.

Q. Are you familiar with the year 1961, October 1961?

A. Yes, I examined them at Mr. Hunt's request.

Q. Are you familiar with the records since October 1961?

A. Yes, I have also examined them.

Q. Have you prepared a statement which reflects a comparison of the business since October 1961 with the period between or including the months of May, June, July, August and September 1961?

A. I have prepared such a statement, if I am interpreting your question correctly.

Q. In the months of May through September —

Mrs. Miller (interrupting): Just a moment. Let me understand that question myself. Are you asking that all of the various months since October 1961 be compared with the months of May through September 1961?

George H. Jones

Mr. Lillard: If you will indulge me just a minute, I will show you the chart he has prepared. I asked if page 107] he had prepared a statement which would show a comparison of the business since October 1961 with the business during that period of May through September 1961.

Mrs. Miller: I would object to any exhibit based on those periods for the reason that I do not believe that it would truly reflect the various trends of month by month. In other words, such as the January, February, March—the individual months of the year.

The Judge: Mr. Lillard hasn't offered any yet.

Mrs. Miller: All right, Your Honor.

Q. I hand you this piece of paper and ask you if you can identify that, or that collection of papers.

A. Yes, I have prepared these.

Mrs. Miller: Do I understand you are offering that now into evidence?

Mr. Lillard: I am not, no. Now directing your attention to the third page of this paper, which you have in your hand, I ask you to state what you have shown there, the fourth page.

A. I have shown the sales for the periods May through September 1960 by months, compared with the sales of May through September 1961. The totals for the five 1960 months are \$59,545. The totals for the same five months in 1961 are \$71,934, an increase of \$12,389 over the year 1960, page 108] and based on the 1960 sales, this represents an increase of 20.8%. I would like to state, for the purposes of this, I dropped the pennies and used round dollars.

Q. Now I would like to ask you to state what you show on the first page on this sheath of pages.

A. Using the same 20.8% as an increase, in other words, this was a level that had been established, in other words, if business increased 20.8% over the previous year, using that same percentage of increase, I increased the sales for the remaining five months of the year to reflect that 20.8% increase over what the sales actually were, which amounted to \$19,823. This can be found on the last page of this schedule by months.

In other words, the base period month which was used, the increase of 20.8% was compared with the actual sales and what I call lost sales, which totals the \$19,823.

George H. Jones

Q. The first sheet of this sheath of papers shows what, in addition to that?

A. It shows that, had those sales been maintained, of course you would have had a cost of making those sales in terms of merchandise in the amount of \$13,420.

page 109] Q. How did you arrive at that?

A. I assumed the additional sales would have cost no more or no less than the sales already made.

Q. What did the sales already made cost?

A. 67.7%.

Q. How did you arrive at that figure?

A. Gross profits on the additional \$6,403.

Q. Did you undertake to calculate a net figure under which those figures had been made?

A. I did calculate a net profit after consultation with Mr. Hunt. We felt the cost of doing business would have remained the same, even with the increased sales, that the sales force was there, the advertising, the Wright Building, virtually all expenses would have remained constant, regardless of whether \$1.00 worth was sold or whether they would have the increased sales; instead of a loss of \$1,932, there would have been a profit of the difference between the \$6,403 figure.

Q. That loss you figured was loss after depreciation?

A. That is correct.

Q. What would the loss be without taking depreciation?

A. There would have been a loss of \$6,953, and
page 110] that is before depreciation, according to the records, and with adjusted sales, the profit would have been \$5,793.

Q. Did you do a similar calculation for the period March 1, 1962 to December 31, 1962?

A. I did. This shows that the downward trend of sales continued, that the lost sales would have amounted to \$63,000. The cost of this merchandise for the ten months that have ended, that we used, is 65.95% of cost, which would have been \$41,610, and shows a sale made in October which had approximately \$5,720 worth of markdowns and cost, which we felt would not have repaid themselves had the merchandise moved.

Had the merchandise sold in its normal fashion, it would not have been necessary to have this drastic markdown, so we eliminated \$5,795 in markdowns.

I also estimated shoplifting at — and spoilage and things of this type — at \$1,261.

George H. Jones

That is approximately 2% of sales. This 2% was added for the additional sales we felt would have been made.

I also added \$7,666 to salaries for the year 1962 because we felt that the adjustment of salaries had been made, and with additional sales, it would have been necessary to page 111] have additional sales force. I also averaged the salaries for 1958 through 1962. That came out to 11% of sales. We assumed it would cost neither more nor less to make 1962 sales than it had for the previous five and a fraction years. Actually there are six items used.

I also assumed there would be additional payroll taxes on unemployment, social security, unemployment on the additional employees because of the additional sales. Central Charges Service would charge more. Also, the advertising to promote this sale would not have been necessary. The overall was a change in the profit of \$21,310.

Q. In adjusting the salaries, social security taxes, unemployment taxes and Central Charge costs, what basis did you use for making the adjustment?

A. The salaries were adjusted to the average for the previous period that the Corporation had been in existence. We assumed it would cost neither more nor less in the salaries' cost.

Q. How did you arrive at the social security and unemployment taxes?

A. I calculated the percentage the salaries, taxes, etc. were to the salaries in Mr. Hunt's statements, and allowed that percentage to apply to the increase. The Central Charge, I computed the percentage of increase page 112] to the percentage actually made and used that percentage to mark up his actual cost to the adjusted figure.

Q. From an accountant's point of view, does this show a comparison between the actual performance records in this store and the performance had it continued at the business level prevailing in May through September 1961?

A. It did, as best I could determine it.

Q. Is it in your opinion as an accountant a reasonable determination of that figure?

A. It is a reasonable determination of that figure.

Q. Did you prepare a chart which reflects graphically the results of your determinations?

A. I did.

Q. Is this that chart?

George H. Jones

A. That is it.

Q. Would you explain to the Court what that chart shows?

A. May I stand up?

Mrs. Miller: I want to object if they are offering that into evidence. I think we should have the right at this time to object to this on the grounds of irrelevancy.

The Judge: I think it is admissible if Mr. Lillard wants it in. It goes to the _____, if you want to offer it.
page 113] Mr. Lillard: I do want to offer it.

The Judge: That will be Exhibit 19.

Mr. Lillard: I would like to offer the recapitulation and the chart. I would like to offer both.

The Judge: Are you offering the original?

Mr. Lillard: Yes, we will.

The Judge: All right.

Q. Will the witness stand and discuss this chart?

A. What I have —

Mrs. Miller: I am sorry to be dense, but is this being offered at this time?

The Judge: Yes.

Mrs. Miller: Then I wish to state my objection on the grounds of irrelevancy.

A. What I have here, the black represents sales for the period May, June, July, August and September of 1960. The red represents the year 1961. In other words, in each case the sales were greater. They were greater by 20.8% as I said herein.

The graph on the right of the paper, the black represents the actual sales for October, November, December, etc. through December 1962. The red amounts represent what the sales would have been had this 20.8% continued over the month in the prior year.

page 114] The large month is in each case December. The one month we have here, where the sales for the — there would have been a decrease in sales — was the month Mr. Hunt had his large sale in October.

Q. When you refer to prior year, which year do you mean?

A. The October 1961 as compared with October 1960. We assume that the level of increase established here should have been maintained.

Q. Is 1960 the base year throughout that?

A. Except I believe for January and February 1961, which

George H. Jones

was the end of the fiscal year. In other words, we did not build increase on top of increase. We did not use the 1961 as the increase in going into 1962, because 1961 already had the increase in it.

In comparing 1962, we still went back to 1960 because we would have been building increase on top of increase, which we did not do.

Q. Do I understand you are representing graphically there the results in this business which would have come about had the business level prevailing in May through September 1961 continued through the end of the year?

A. That is correct.

Q. You are not assuming any increase above that level?

A. No, we are assuming 20.8% increase in page 115] September 1961 over September 1960 would have continued.

Q. All right. I believe that has been admitted into evidence and I would like to have it marked.

From the standpoint of the accountant, what does the item depreciation represent?

A. The definition for accountants of depreciation is gradual wear out due to obsolescence and passing of time of a fixed tangible asset.

Q. Is it an out-of-pocket expense?

A. No, the item presumably has been paid for. It does not require cash as it depreciates.

Q. If the item is not in fact depreciated, is there an actual loss which should be reflected in the books as depreciation?

A. This is a hard question to answer and it is one you can probably find some disagreement on. The depreciation regardless, you have no monetary outlay. If you intend of course it should be charged into the expense of operation over a period of time, depending on what the economic and useful life of it is.

If I interpret your question correctly, you are saying there is no lessening in value or no specific economic life to a particular asset. Of course the books should correctly page 116] reflect what that lessening in value is. If there is no lessening in value, then you would not have it.

Q. Well, if there has been no lessening in useful value of the item which is being depreciated and depreciation has been included in the records as an expense, does that distort the true profit figure?

Charles H. Tedford

A. To the extent that the depreciation in the statement would be excessive.

Q. I believe that is all.

Mrs. Miller: Your Honor, I would move at this time to strike the testimony of Mr. Jones on the ground that what he has given is of no *provative* value, is *irrevelant* to the issues, and is of a speculative nature.

The Judge: Motion denied.

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page 117 }

CHARLES H. TEDFORD,

a witness of lawful age, being first duly sworn, testified as follows:

By Mr. Lillard:

Q. Would you state your name, please?

A. Charles H. Tedford.

Q. Where do you live?

A. Baltimore, Maryland.

Q. What is your occupation?

A. Counselor.

Q. In what field?

A. Counseling in business and professional fields.

Q. With particular relation to any kind of business?

A. Yes, in particular relation to junior department stores and variety fields.

Q. What is your training and experience in that field?

A. I was 11 years with the National Syndicate in various managerial capacities, including supervising a 32 store firm.

Q. What is the business of the National Syndicate?

A. Junior department stores.

Q. You were 11 years *that that* Syndicate?

A. Yes, sir.

Q. What other experience have you had in the field of retail merchandise?

page 118 } A. I have been 22 years with an independent merchants association sponsored by a national distributor.

Q. And what did they distribute?

A. They distributed soft lines and hard lines of all kinds,

Charles H. Tedford

junior department store merchandise, dry goods merchandise, and variety store merchandise.

Q. During that experience, have you found it necessary to evaluate buildings as sites for retail mercantile businesses?

A. Yes, sir, I have.

Q. Was that part of your duties throughout the period?

A. No, sir.

Q. How much experience in that line have you had?

A. In connection with my other experience of merchandising and operations, which was my strong point all during those careers, I had to do quite a bit of evaluation at times of locations.

Q. Have you found it necessary in doing this work to evaluate mercantile operations?

A. Yes, sir.

Q. Have you been called upon to advise merchants regarding their operations?

A. Yes, sir, I have.

Q. Have those responsibilities been involved throughout the period which you have mentioned?

page 119] A. Through a good deal of it, yes.

Q. I would ask the Court to consider that this witness is qualified as an expert in the field of retail merchandising.

The Judge: Do you want to ask him any questions, Mrs. Miller, before he goes ahead?

Mrs. Miller: No, I concede his qualifications.

Q. Are you familiar with the retail operation of Wright and Hunt, Incorporated?

A. Yes, sir.

Q. Do you know Mr. Hunt?

A. I know Mr. Hunt well in a business manner.

Q. How long have you known Mr. Hunt?

A. Since around 1940 approximately.

Q. Did you know the operation of Wright and Hunt, Incorporated from 1956 to 1961?

A. I was acquainted with it but not intimately until 1959, the end of 1959. That was the last time previously I had been in the store until recently.

Q. Have you become familiar with the situation since October 1961?

A. Yes, sir.

Charles H. Tedford

Q. To what extent did you become familiar with it? Have you been in the store?

A. Yes, I have, twice.

page 120] Q. On two occasions?

A. On two occasions, yes.

Q. Are you aware of the enclosure which surrounds the basement of that building? I mean the stairway leading from what is labeled Downstairs Store on this chart to the area labeled Home Goods on this chart?

A. Yes, I am.

Q. Were you familiar with that layout prior to the enclosure?

A. Yes, sir.

Q. Would you state your evaluation of the Downstairs Store as a retail mercantile site prior to the enclosure?

A. Prior to the enclosure I felt the Downstairs Store was a very attractive room. It was easily accessible, the merchandise was properly displayed, and it was inviting to come downstairs.

Q. Could you see from the Home Goods area that merchandise was for sale in the Downstairs Store?

A. Yes, sir.

Q. Would you state your evaluation of the Downstairs Store as a retail merchandising site after the enclosure?

A. I don't believe it has any value as a retail merchandising site now.

Q. Why do you say that?

page 121] A. It is not easily accessible. If the enclosure was still there and you filled it with merchandise, you still would not get enough people downstairs in my opinion to make it a profitable operation.

Q. Do I understand you to say, though you could get customers down there occasionally, you could not get enough to justify operations down there?

A. I haven't any hesitation in saying that.

Q. Are you familiar with the Downstairs Store?

A. Yes, I am.

Q. Do you think there is adequate storage in this building without using the Downstairs Store for storage?

A. Yes, sir.

Q. Would there be adequate space if the Downstairs Store could be fully merchandised?

A. Yes, I am sure there would.

Charles H. Tedford

Q. Do you feel the Downstairs Store has any value to the present store for storage?

A. It is not needed.

Q. What effect, if any, did this enclosure have on the area identified in this chart as Home Goods?

A. In my opinion, the very least effect of that is that it has killed 50 per cent of its value.

Q. Why do you say that is true?

A. I say that from the standpoint of the blocking of the view for people that are attracted by seeing what
page 122] is for sale, and also from the standpoint of observation.

Q. What observation do you refer to?

A. That time I spent in the store last May and last September.

Q. What were your observations which helped to bring you to the conclusion you have just expressed?

A. My own personal observation of course was that I could not see into the store well and that it did not present a picture I would have accepted for store layout, but more pertinent was the observations of the customers in the store.

Q. What did you observe with respect to them?

A. I was there on a Saturday this past May. I spent all afternoon in the store, and on two occasions, I took customer count and I watched the traffic most of the day because I was curious about that.

On the first count, there were 14 people in the big room, the Department Store, and on second count, 15 people. Of those two groups of people, there was only 1 that went into the other side of this enclosure, the Home Goods.

Q. Do you believe the installation of that enclosure had any effect on the value of the area marked Department Store?

A. I believe so, sir.

Q. Why do you think that is true?

A. In order for a merchant to hold his sales
page 123] volume in a store, you have to have a place to display it and sell it. There is no place downstairs. It is bound to cramp the lines upstairs if he is going to carry the lines he needs for his volume.

Q. Suppose he is going to eliminate some lines. What effect would it have?

A. I think the same effect as cramping. He would lose business.

Q. Would you state your opinion, if you have one, of the

Charles H. Tedford

overall effects of the enclosure of the stairway on the value of those two floors as a mercantile site?

A. The Downstairs Store, if I were to evaluate it for a business under this situation with the enclosure, would have no value or you might say one or two people might come in occasionally. It certainly would have no value for sales purposes because the operating value would not cover what you would get out of it. In my opinion, I think a minimum deterrent effect of that enclosure there would be 50 per cent.

Q. On the entire operation or on the Home Goods sale?

A. No, 50 per cent of the Home Goods sale.

Q. When you refer to the Home Goods store, do you refer to the section here?

A. Yes, sir.

Q. And when you refer to the Downstairs Store, page 124] do you refer to the section right here (indicating)?

A. Yes, sir.

Q. And when you refer to the big room, do you mean this section right here?

A. Yes, it is marked Department Store.

Q. You said you had known Mr. Hunt a long time. Do you have an opinion of his ability as a merchant?

A. I have a specific opinion of his ability as a merchant.

Q. What is your opinion of his ability as a merchant?

A. Mr. Hunt is a most excellent merchant.

Q. On what do you base that?

A. On working with him and on observing what he has done by himself. I was associated with Mr. Hunt for some time back in 1940 until 1944, those years in there. I found him to be not only a sound organizer and planner, but a very capable merchant to go with it.

Q. You have stated your estimate of the effect of the enclosure on the Downstairs Store which I understand is that, for the uses and purposes of Wright and Hunt, Incorporated, the value of that area is lost completely?

A. Yes, sir.

Q. You have stated for their uses and purposes, the value of the Home Goods area has been reduced 50 per cent?

A. Yes, sir.

Q. Would you state a value which would be page 125] operatable to the entire operation, the effect this enclosure would have on the entire operation?

A. Yes, sir.

Charles H. Tedford

Q. What is that opinion?

A. In my opinion, it could be no less than 25 per cent adverse effect on it.

Q. What would be the nature of the effect on the business? Would its effect be immediate and then be over, or would it have a continuing effect?

A. If I understand that right, it would have a continuing effect which might become permanent.

Q. Why do you say that?

A. Because in the first place it does not take word of mouth very long to get around that there is no place to shop, wherever it might be, whether it is in a section of a store or otherwise, and it would seem to me that, if a merchant does not have room to sell his goods, he is not going to get any money back to replace them, and that could become permanent pretty rapidly, I think.

Q. May we have just a minute, Your Honor?

The Judge: Yes.

Q. We have no further questions. I am sorry. May I ask one more question?

The Judge: Yes.

Q. Do you know Mr. Kenneth Diehl?

page 126] A. I met the gentleman on the bench out here a couple of hours ago and said hello to him. That is the extent.

Q. Had you had conversations with him prior to that?

A. No, sir.

Q. Have you ever conferred with him regarding the situation of Wright and Hunt, Incorporated?

A. No, sir.

Q. That is all.

By Mrs. Miller:

Q. Is it Mr. Tedford?

A. Yes, ma'am.

Q. I believe you stated in your employment of having to do with counseling in regard to junior department stores and so forth, that you did evaluations for site purposes?

A. I have. It was not my specific job, but I have.

Q. But you have?

Charles H. Tedford

A. Yes, ma'am.

Q. In connection with that, in making evaluations of a locational building, what were some of the things you took into consideration, the major ones?

A. Population, industries, spendable dollars in the area, competition, traffic habits, etc.

Q. Did you as a matter of fact, if the building were already in existence, what would be the things that you would consider?

page 127] A. I believe all of those would be considered.

It has been a good many years since I have personally done surveys, but all those would be considered.

Q. Do you take into consideration the number of doors in a building and how it would face? Were those things you would have considered in your evaluation?

A. At times.

Q. In connection with the evaluations, you said you made of the Wright and Hunt, Incorporated operation, when was it that you actually observed the traffic?

A. It was early in May.

Q. Of what year?

A. Of 1962.

Q. Of 1962?

A. Yes, ma'am.

Q. That would have been after the enclosure, is that correct?

A. Yes, ma'am.

Q. Did you have any opportunity to make any study or traffic count before the enclosure?

A. No, I did not.

Q. At the time you were in the store in May 1962, did you observe that there was a door at this location in the Home Goods section (indicating)?

A. Yes, ma'am.

page 128] Q. And that is a door that faces out on Maple Street?

A. The same way.

Q. Did you observe at that time whether or not that door was being used for an entrance by the public?

A. As I recall it, it was.

Q. You believe it was?

A. I believe it was.

Q. If in fact that door had been closed to the public in order that they could only enter it by way of the other doors

Charles H. Tedford

in the Department Store, do you think that would have made any difference in the public coming in?

A. I couldn't answer that without checking it because I have seen doors in stores locked and it didn't make any difference.

Q. You don't know?

A. I don't know.

Q. Would it have made any difference if the only entrance was this one coming in the Department Store or the only entrance was from the street?

A. I think it would have made an impression because the only entrance on the street — is that what you mean? — The two doors leading to the Department Store.

Q. You don't believe entering by this door gives you a view of the entire store?

A. I don't think that improves it much. I might page 129] add, in part of my investigation that day, I was curious, after all these years, part of my investigation that day was watching the people come into the store. I stood out front. I frankly didn't see anybody try the door.

Q. You didn't see any sticker on this, "No Entrance" or "Use Other Door?"

A. I don't recall.

Q. At the time you made your evaluation in May 1962, tell us what condition this stairway was with regard to the doors. Were they opened or were they closed?

A. The doors were closed.

Q. Was there any merchandise sitting in front of the doors?

A. No, the doors could be opened because I went through them two or three times.

Q. Both doors could have been opened?

A. Yes, ma'am.

Q. Do you feel, by placing a candy rack or anything of that sort in front of the one door, would that deter people from going downstairs?

A. It would depend on the door, but I would have to watch the traffic to find out.

Q. You wouldn't be able to give us an opinion, when merchandise is placed in front of the door, whether it would influence people from going downstairs?

A. If something was specifically placed in front page 130] of the door, it would be a deterrent.

Q. If these doors had been kept open, do you think you could see the merchandise downstairs?

Charles H. Tedford

A. There wasn't any to see.

Q. Were any lights on downstairs?

A. I don't know.

Q. Was the stairway lighted?

A. The stairway was lighted.

Q. There was no merchandise to see?

A. There was no merchandise down there. Just pictures, props, and stairs.

Q. And the doors were closed?

A. The doors were closed but they weren't locked or barred.

Q. Do you know whether the door was open at this end (indicating)?

A. I don't understand your question.

Q. Were the doors being kept closed at the time you made evaluation of the premises?

A. It was my impression it was, because it was my impression I had to push two sets of doors.

Q. You have made a statement a person engaged in retail sales has to have an area in which to display his merchandise.

A. They must have a place to display it, yes.

Q. Would you say a department store that at page 131] one time utilized the entire area here would have lost any other display area if it leased this portion (indicating) to someone else?

A. I could not answer that unless I knew the figures and the reason it was given up.

Q. So by giving up this area which is shown as the Department Store and this area which is shown as the Home Goods, you have made an evaluation that by losing this area (indicating) you believe the entire portion of this, that there would have been a 25 per cent overall loss in the usefulness of the premises, is that correct?

A. Yes, ma'am.

Q. But you have no way of showing they have lost anything in this area, have you?

A. I didn't evaluate that area.

Q. Could you, upon the basis of just the area alone, tell whether there had been any loss in the evaluation overall effective of the sales in the Downstairs Store?

A. I could not because I am not familiar with that except with the enclosure, after the enclosure was in. So far as checking, I can't, the total store.

Q. But you don't feel the store lost anything by leasing out a portion of the area to someone else?

Charles H. Tedford

A. I couldn't answer that because I don't know whether it was profitable or not.

page 132] Q. You have stated you have known Mr. Hunt to be a good merchant, a good organizer, and a good planner, is that correct?

A. Yes, ma'am.

Q. And you are aware he has been manager of Wright and Hunt, Incorporated since its organization?

A. I know it has been a good long time.

Q. Do you know when Wright and Hunt, Incorporated did start to manage this business?

A. I have a rough idea, but it is not from personal knowledge of corporate changes. I believe it was around 1956, but that is strictly a recollection.

Q. When you say a person is a good merchant, what do you mean?

A. I mean he is able to do two things basically. One, invest his money in the goods he will get the most sales and profit from, and two, he uses space for the same thing.

Q. If I told you that, since the time that the corporation of Wright and Hunt, Incorporated had been in existence, that it had shown a loss for each year of its operation, would you consider that a good management?

A. I would have to know more about the conditions.

Q. So that losing money does not necessarily mean you don't know how to manage? Is that your testimony?

A. That is correct.

page 133] Q. That is all.

By Mr. Lillard:

Q. Mr. Tedford, in the course of your experience, as you outlined, could you estimate the number of stores you have seen personally, the different store buildings?

A. It probably might run into thousands, but I had under my heading up for seven years over 400 stores in the territory I was responsible for.

Q. Did you ever see a structure comparable to this in a store?

A. I never have, sir.

Mrs. Miller: What structure are you referring to, Mr. Lillard?

Mr. Lillard: The enclosure around the stairway. I have no further questions.

Kenneth E. Diehl

By Mrs. Miller:

Q. How many stores have you checked in Virginia?

A. In what way do you mean, ma'am?

Q. You have said you have never seen enclosures like this anyplace?

A. How many have I checked?

Q. Yes.

A. Probably around 60, maybe more.

Q. You have never seen an enclosure like this?

A. I have never seen an enclosure like this.

Q. What kind of stores have you checked?

page 134] A. Department stores, dry goods stores, chain stores.

Q. That is all.

Mr. Lillard: That is all.

The Judge: Mr. Tedford, you are excused. You are free to go.

KENNETH E. DIEHL,

a witness of lawful age, being first duly sworn, testified as follows:

By Mr. Lillard:

Q. Will you state your name, please?

A. Kenneth E. Diehl.

Q. How do you spell your last name?

A. D-I-E-H-L.

Q. What is your occupation?

A. Commercial leasing specialist and a licensed salesman.

Q. And in working as a commercial leasing specialist, do you work principally with commercial structures?

A. Principally, yes.

Q. What is your experience in the field of real estate rentals or leasing?

A. Seven years with Webb and Knapp in New York City.

Q. While you were with them, what did you do?

A. I handled commercial leasing for shopping centers owned by the company, second leaseings in hotels
page 135] and store property leasing.

Q. What experience have you had in addition to those seven years with Webb and Knapp?

A. Two years I have been with Shannon and Luchs in a leasing capacity.

Kenneth E. Diehl

Q. I would like to ask this witness be qualified as an expert in the field of real estate values.

By Mrs. Miller:

Q. Are you licensed in Virginia?

A. No, ma'am.

Q. Do you do any evaluation of commercial properties in Virginia?

A. Yes, ma'am.

Q. Where have you done those?

A. Let's see. The Seven Corners area, Shirley Highway.

Q. What specific section of Shirley Highway, a shopping center?

A. This was in industrial ground there. Tower Marts off of Shirley Highway.

Q. What have you had in the way of experience in leasing a small operation such as this?

A. Over the past nine years?

Q. No, in this area.

A. I have made a lease in this area.

Q. And those you have had connection with page 136] have been shopping centers or industrial, is that right?

A. That is right, over the years, yes.

Q. That is all.

By Mr. Lillard:

Q. Are you familiar with the building occupied by Wright and Hunt, Incorporated in Vienna, Virginia?

A. I am.

Q. I call your attention to the two charts just to your left and ask if you recognize them as diagrams of the main floor and basement level of that building?

A. Yes, sir.

Q. Are you familiar with those areas?

A. Yes, sir.

Q. Have you made any inspection and evaluation of those areas?

A. Yes, I have.

Q. Are you aware of the rent being paid to the landlord under the basic lease for those two floors?

A. I am.

Q. What is that figure?

A. \$10,500 per year.

Kenneth E. Diehl

Q. Did you allocate that among the various areas shown on these charts, and if so, how did you allocate it?

A. In arriving at a rental, a distribution of that rental, I took a per square rate for the ground floor. In page 137] commercial leasing, it is customary to assign a certain value to basement space, which I did. I divided the \$10,500 into the ground floor and basement area.

Q. Did you include the entire ground floor?

A. I did.

Q. That is, the Speed Wash, Home Goods, and Department Store?

A. Yes, sir.

Q. And on the basement level, did you include all of the area shown on that chart there?

A. I did not use the entire stockroom area.

Q. How did you allocate the rental among the various areas?

A. On the ground floor space, do you mean the amount?

Q. Yes.

A. On the ground floor space, \$1.00 per 1.8 square *feet*. Then in the area of the Downstairs Store, I assigned a rental of 60 cents a square foot. For storage area, I assigned a rental value of 25 cents a square foot, but I used only approximately 30 per cent of the storage area because in this type of business that is all that is required, actually.

Q. What figures resulted as a rental allocated to the Department Store, the Home Goods, Speed Wash, etc.?

A. On the Speed Wash store, the rental was \$1,796.62.

Q. What on the Home Goods store?

A. On the Home Goods store, the rental was page 138] \$1,899.94.

Q. And on the Department Store?

A. The rental was \$4,988.36.

Q. What was allocated on the Downstairs Store?

A. \$1,240.20.

Q. And how much for the storage area?

A. \$573.20.

Q. How do you account for the fact that doesn't add to \$10,500?

A. I only carried it three decimal places on a square foot basis. I think it was 1.88. If I could have carried it another decimal place, I would have come out with 1.88.

Q. Your figure is per square foot evaluation of the various areas?

Kenneth E. Diehl

A. That is the division of the rental called for under the lease.

Q. In your opinion, is \$10,500 equal to, less than, or greater than the fair market value of that property at the present time, rental value?

A. As it presently is?

Q. Yes.

A. No, I would say that is not a fair rental value.

Q. Why? Is there any feature that you feel is damaging to its rental value?

Mrs. Miller: Just a minute. Why don't you ask the question another way and ask what he bases it on, page 139] rather than directing it to any specific feature?

Mr. Lillard: I had elected to ask it this way. Is it objectionable?

Mrs. Miller: It is objectionable.

The Judge: On what do you base that?

A. First there has been definite retail space taken away, or it is *inpracticable* as retail space. Second, I feel the location of a certain structure has reduced the effectiveness of the retail space, namely, in the Home Goods store, and thirdly, the overall effect of this, I have arrived at a decrease in effectiveness of the store in its entirety. On those three things I have arrived at a different figure.

Q. Will you talk about those specifically? The structure you refer to is an enclosure?

A. Yes, the stairway to the Downstairs Store.

Q. What effect has the stairway had on the Downstairs Store, which is the area you see on that chart?

A. First, it is closing off the entrance to a Downstairs Store. In other words, there is nothing conducive for traffic to encourage anyone to enter that stairway. Actually, the Home Goods store itself, the very location of this structure, it is located toward the front of the store, which is naturally the prime area of any retail establishment. The page 140] frontage area is reduced. It breaks the line of vision, which is very important to any retail establishment. It has created a secondary store on space. Because the tenant is unable to use the Downstairs Store, he has had to eliminate certain lines of merchandise. In my opinion, I think his overall volume and draw has been reduced.

Kenneth E. Diehl

Q. Have you evaluated the overall effect of this enclosure on the rental value of those premises?

A. I have.

Q. Is that a reduction?

A. Yes.

Q. If so, how much, percentage-wise?

A. Overall, it is 23.67% reduction in rental value.

Q. Now did you evaluate the effect of the enclosure on the rental value of the Home Goods area?

A. Yes.

Q. What was that effect?

A. In my opinion, that Home Goods area, the effectiveness of that for retail sales has been reduced by 55%.

Q. Are you acquainted with Mr. Charles H. Tedford?

A. No, I met him out in the hall.

Q. Have you conferred with him prior to this in regard to the disadvantages of this store?

A. No, I have not.

Q. I believe that is all.

page 141] By Mrs. Miller:

Q. Mr. Diehl, if you had made the evaluation — when did you make this evaluation?

A. I think I began it in the latter part of April and May.

Q. In 1962?

A. 1962.

Q. At that time was the Downstairs Store, was that being used for sales purposes?

A. It was not.

Q. Were the doors coming into the upstairs, were they kept wide open or were they closed?

A. No, they were closed at the time I saw it.

Q. Were the doors at the bottom of the stairs open or closed?

A. I can't remember.

Q. Was there any merchandise sitting anyplace before or in front of one or the other of the doors?

A. No, ma'am.

Q. Do you recall whether or not this door was being used in the Home Goods store for the entrance of customers or if they had to come through this way (indicating)?

A. I do not recall whether it was being used or whether it was open.

Q. When you made your evaluation of the various areas,

Kenneth E. Diehl

was it taken on the premises, all of those areas
page 142] except the stockroom were used for sales purposes?

A. Which areas?

Q. All of those areas, or did you make your evaluation on the Speed Wash, on the use to which it was being put?

A. No, I made my evaluation on the basis for which the store was leased.

Q. And the basis for which the store was leased was what?

A. I believe it describes it as a junior department store or variety store. I am not positive.

Q. Let's ask it another way. Did you make your evaluation on the basis of the use it was being used for when you went in to make your study or did you make it on the purpose of the lease?

A. I made my evaluation on the purpose of the lease.

Q. Which would have been if everything had been used for sales?

A. That is right.

Q. The rental value as affected by what you saw the premises being used for would have caused them a reduction by 23.67%?

A. That is right.

Q. If you had been told or if you had been advised that the Downstairs Store in fact could still be used as a sales area, would your evaluation have been any different?

A. Would you repeat that, please?

page 143] Q. If you had been advised that the Downstairs Store could be used for sales, it could still be used for sales instead of the use to which you observed it being put to, namely, stock —

Mr. Lillard: (Interrupting) I assume you are referring to use as a legal right?

Mrs. Miller: No, I am not referring to use as a legal right. Mr. Diehl has testified that he made the evaluation on the entire premises for the purposes as called for in the lease. Then I asked him if the rental value was affected by the use to which he saw the premises being put, and he then stated yes, that it affected them by devaluing them 23.67%. I want you to clarify now whether the evaluation was done on the basis of an improper square foot area and so much per square foot, because you knew of the physical layout, so much being basement floor, or whether your evaluation was affected by

Kenneth E. Diehl

the purposes for which you saw it being put, that is, this being used for purposes of laundry and the Downstairs Store being used for storage instead of sales.

Mr. Lillard: I am sorry, I don't understand your question.

Q. The various divisions that the proration of \$10,500, did you make that proration on the basis of space being used for sales?

page 144] A. Yes, 60% for the retail basement.

Q. That is how the proration was made?

A. Yes, ma'am.

Q. To get to the other lessening of which you believe has come about because of certain changes and certain structures, etc., I am asking you, did that lessening of value come about because of what you observed on your visit there, observed as to the uses to which the various sections were being put? Let's take it one at a time. With the Department Store, you made your allocation on the Department Store at so much per square foot, which comes to \$4,988.36, is that correct?

A. Yes, ma'am.

Q. On making your evaluation of the premises, you saw it being used in what manner?

A. That particular part?

Q. Yes.

A. As a department store.

Q. What is your evaluation you would allocate to that portion?

A. I used \$1.48.

Q. Was the rental value then decreased in any way by your examination of the premises on that particular section?

A. The Department Store?

Q. Yes.

page 145] A. Yes, it was.

Q. What would be your reason for that decrease?

A. As stated before, I think the effect of the elimination of the Downstairs Store, the 55%, division of the Home Goods store with the enclosure located where it is, has an overall effect on the customer, on the whole establishment. I would say it has an overall elimination of 12%, decrease in value.

Q. Would you say you could use this particular portion of the building for a coin operated laundry, do you feel that in any way could have detracted from the overall value of the building as retail premises?

Kenneth E. Diehl

A. I don't quite understand your question.

Q. Do you think the rental to a coin operated laundry would have been a factor in decreasing the rental value of the premises?

Mr. Lillard: I don't understand the question. I don't know how the witness could answer that question.

Mrs. Miller: It is on this basis. These witnesses have been very specific. They can tell you how the Downstairs Store has affected the Department Store operation, they can tell you how this enclosure is affecting the Home Goods section. They can tell you if you can't display merchandise you can't sell it and therefore it would be detrimental to the business.

page 146] I have asked this question before and I want to ask this witness if he felt, when Wright and Hunt, Incorporated did away with this area for sales purposes, did that affect the evaluation for rental purposes of the Department Store. After rental to the Speed Wash, would the Department Store still have been for sales purposes worth \$10,500?

A. The only way I can answer that is that that Speed Wash was created by someone and was in the terms and conditions and covenants of the lease, so it has no bearing. I am making my allocation on the basis of the \$10,500 since that was created and it has no bearing on the \$10,500.

Q. So whether there was a Speed Wash in there or whether it was used as retail sales space, this would make no difference?

A. In my allocation?

Q. Would it make any difference in your figure when you say the decrease in the rental value has taken place because of this enclosure, that would not change it in any way, to what use the Speed Wash was being put?

A. The entire thing existed as a whole at one time.

Q. The enclosure has nothing to do whatever with the laundry, is that correct?

A. That is right.

Q. That is all.

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Richard Turner Basemore

page 155]

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RICHARD TURNER BASEMORE,
a witness of lawful age, being first duly sworn, testified as follows:

By Mrs. Miller:

Q. Will you state your full name and your address, please?

A. Richard Turner Basemore.

Q. What business are you in?

A. Sprinkler, automatic fire protection.

Q. Are you in business for yourself or with a firm?

A. I operate a branch office for a New York firm.

page 156] Q. Where is your business located?

A. At 3104 West Leigh Street, Richmond, Virginia.

Q. In Richmond?

A. Yes, ma'am.

Q. What is the name of your firm?

A. Nicholson Sprinkler Corporation.

Q. How long have you been with them?

A. Since 1945.

Q. Since 1945?

A. Yes, ma'am.

Q. In what capacity have you acted?

A. I have been manager of the branch since that time and I have been Vice President since 1947.

Q. Vice President of the company since 1947?

A. Yes, ma'am.

Q. In connection with your employment as the manager of the sprinkler corporation, do you have occasion to make various surveys with regards to buildings that require sprinkler systems?

A. Yes, ma'am.

Q. How many of those surveys have you made, that is, an estimate of how many you have made, during the years you have been with the corporation?

A. I have no idea.

Q. Do you make several a month or a week?

page 157] A. Yes, ma'am. I have made — I don't know — hundreds I am sure.

Richard Turner Basemore

Q. Have you had occasion to make surveys of department stores that require sprinkler systems?

A. Yes, ma'am.

Q. For what period of time would you say you have made this type of survey?

A. For the last 20 years.

Q. In the course of your employment, did you have occasion to make a survey of the property in Vienna, Virginia, known as the Wright Building?

A. The Wright and Hunt Building?

Q. The Wright and Hunt Building.

A. Yes, ma'am.

Q. Do you recall when you were first contacted about making your survey? Do you have your records with you?

A. I believe it was in 1958. I brought the whole file.

Q. Can you identify this? Tell us what this is.

A. That was in reply to a request to stop and see him about sprinklers, to see Mr. Wright.

Q. This is a letter to Mr. Wright?

A. Yes, ma'am.

Q. Is that Mr. L. E. Wright in Vienna?

A. Yes, ma'am.

Q. And the date of the letter is what?

page 158] Mr. Lillard: Excuse me. May I see it before you question the witness about it?

Mrs. Miller: Yes.

Q. Would you tell us the date of this letter to Mr. Wright?

A. February 29, 1958.

Q. I would like to offer this, please, as a defendant's exhibit.

The Judge: That will be Defendants' Exhibit Number 1.

Q. Did you have occasion thereafter to go to Vienna to make the survey?

A. Yes, ma'am.

Q. Do your records reflect when you went to Vienna to make this survey?

A. Pretty close, I guess I could tell. It was, I believe, in 1959 that I made a working survey and drawing.

Q. Do your records reflect that?

A. Yes, ma'am.

Richard Turner Basemore

Q. With regard to the month in 1959?

A. This plan is dated January 1, 1960.

Q. January 1, 1960?

A. January 20, I am sorry. I went to make the survey previous to that. It takes some little time to write it out. I don't know the exact date.

Q. I show you a paper writing and ask if you can identify this?
page 159] A. That is a quotation for sprinklers.

Q. I am going to ask you to mark this, Your Honor, as Defendants' Exhibit 2.

The Judge: All right. It is Defendants' Exhibit 2.

Q. So by March 31, 1959, you had made the estimate of the costs, is that correct?

A. Yes, ma'am.

Q. For what was this made, for what area of the store?

A. For the basement area.

Q. With reference to this diagram, do you know whether your offer was for the entire basement area or for the Downstairs Store only?

A. It was for the entire basement.

Q. All right. Did you then submit plans to Mr. Wright?

A. No, ma'am.

Q. Did you draw up plans?

A. Yes, ma'am.

Q. Are these the plans you drew in connection with that survey?

A. Yes, ma'am.

(The plans were handed to Mr. Lillard.)

Q. Did your offer to Mr. Wright include the water supply to the premises, that is, the installation of — bringing the water into the premises?

A. No, it included all outside piping and work
page 160] except painting. We were to bring the water supply from the property line if it were extended down a suitable side. We don't normally work on city property and the city does not usually work on private property, so we would bring it from the city line, which would be a few feet.

Q. Did the figure you gave to Mr. Wright for this installa-

Richard Turner Basemore

tion include the tap-on charge which would be due to the city?

A. No.

Q. Did it include the permit?

A. No.

Q. Did you and Mr. Wright enter into a formal contract for this work at that time?

A. I presented him a contract form and he never signed it. He did tell me he was going ahead with it, but he didn't, or we didn't go beyond the point of the preliminary drawings you just saw.

Q. In other words, there was no acceptance of the offer in the letter you sent to him?

A. No. It seemed at one time he was planning to go through with it.

Q. The offer then dated March 31, 1959 was never accepted by Mr. Wright?

A. No, it was not.

Q. Do you know why it was not accepted, that page 161] is, of your own knowledge?

Mr. Lillard: Objection.

The Judge: Would your answer be based on what Mr. Wright told you?

A. I suppose it would, except I have no recollection of him telling me anything.

The Judge: I think that answers the question.

Q. Did you determine during your negotiations with Mr. Wright for the installation of the system what the available water supply to the premises was?

A. I made a float test from the fire hydrant on Maple Street and also one from the fire hydrant on Church Street, if I have the streets right, Maple is in front of the store and Church is to the rear of the store. We normally have to float a hydrant and get the results to the underwriters before they will submit plans. So I made those tests from those two points. Of course you have to go to the city water department to float a fire hydrant, so we had to get a check from Mill Street, so I did float the hydrants and put these indications on these drawings here.

Q. What does that indicate the result of the float was?

Richard Turner Basemore

A. There is no hydrant on Mill Street. It is on the corner of Church Street. It is 50 feet.

Q. Would that have supported the sprinkler page 162] system you recommended?

A. Yes.

Q. It would have to be brought from Church Street, though?

A. Either Church Street or Maple Avenue.

Q. What size main was there on Church Street?

A. (No reply heard.)

Q. And what size on Maple Avenue?

A. 8 inch.

Q. And there was no hydrant on Mill Street?

A. That is right.

Q. Did you determine what size the water main was on Mill Street?

A. I probably did. I show 4 inches up Mill Street to about opposite of the store. I don't know where I got it, probably from the city. I submitted that to the underwriters, but my memory now, I don't remember where I got it. There is probably a 4 inch main in the street.

Q. Could a 4 inch main have been utilized for the system recommended?

A. No, ma'am.

Q. Why not? Why wouldn't it have?

A. It wouldn't give a sufficient volume of water.

Q. Were there any specific objections to this, even though the town authorities agreed it could have been done?

A. Yes, in that the Southeast Underwriters page 163] Association, so far as I know, have never taken a 4 inch connection to a structure of this kind. This is getting involved now. Do you want me to tell you the reason or go into it?

Q. I would appreciate what you could tell us as to what has been your experience in your work with fitting department stores of this type structure?

A. All are the same insofar as supplies are concerned, and even a 6 inch main just coming up there and stopping would not be acceptable. This is what I have found over a period of years. I have never found it over the years I have worked.

Q. What would be acceptable?

A. They would want it feeding two ways. Apparently I proposed to come off Maple Street to the center of the store and cut in a 6 inch.

Q. So you would have used both?

Lloyd Elmer Wright

A. That is what I proposed, and I sent it to the underwriters that way. Now whether the lease would have been taken, I can't say.

Q. That is all.

By Mr. Lillard:

Q. Who drew those plans?

A. Mr. Johnson in my office.

Q. You didn't draw them?

A. No, sir.

page 164] Q. Mr. Johnson gained this information?

A. He was with me.

Q. Was any of your information given to you by Mr. Johnson?

A. No, we both made the survey and took the measurements together.

Q. The Southeast Underwriters, that is an insurance representative, is that correct?

A. It is a Rating Bureau for the purpose of rating sprinkler property in Virginia. I don't want to misrepresent this. I am maybe not qualified to say all the features of Southeast Underwriters Association, but the State Fire Marshal will not approve a sprinkler if it has not been submitted to Southeast Underwriters before the Fire Marshal approves. If Southeast Underwriters approves, the State Fire Marshal approves. That is why you have to send it to Southeast Underwriters. I believe Southeast Underwriters is a clearing house for all sprinkler systems in Virginia under approval of the State of Virginia.

* * * * *

page 167]

LLOYD ELMER WRIGHT,

a witness of lawful age, being first duly sworn, testified as follows:

By Mrs. Miller:

Q. Would you state your name, please?

A. Lloyd Elmer Wright.

Q. You are one of the defendants in this case, is that correct?

A. That is true.

Lloyd Elmer Wright

Q. Where do you live?

A. 236 Church Street, Vienna.

Q. What is your employment?

A. Merchant.

Q. How long have you been in that business?

A. Thirty-nine years.

Q. During that time, were you a merchant in the town of Vienna?

A. That is right.

Q. From what period of time?

A. From 1925 until 1963. I was one year at Oakton before I came to Vienna.

Q. What sort of an operation did you have when you first started in Vienna, what type business?

A. It was a general merchandise.

page 168] Q. Did you operate that business alone or with someone?

A. Alone.

Q. Did there come a time you formed a partnership with Mr. William Hunt?

A. That is correct.

Q. And do you recall about when that partnership was formed?

A. As of July 1945.

Q. July 1945?

A. That is correct.

Q. How long did you operate as a partnership?

A. From that time until 1956.

Q. Then was the partnership terminated?

A. That is correct.

Q. Where did you engage in your operations with Mr. Hunt as his partner?

A. At 148 Maple Avenue.

Q. That is the premises of the present Wright and Hunt, Inc.?

A. That is correct.

Q. In the partnership, what arrangements did the two of you have as to duties with respect to sales?

A. Do you mean as manager?

Q. Yes.

A. He managed part and I managed part.

Q. You were co-managers?

A. That is right.

page 169] Q. What did you do with regards to the order-

Lloyd Elmer Wright

ing?

A. We both did the ordering. He ordered part and I ordered part.

Q. Would you say your duties were equally divided?

A. I would say so, yes.

Q. At the time that you started your operation as a partnership, what areas of the floor as shown on these diagrams was in existence?

A. The main floor and the part that is marked "Speed Wash"

Q. The part that is marked "Speed Wash?"

A. Speed Wash and Home Goods.

Q. And Home Goods?

A. That is correct.

Q. What type building was that?

A. The type of construction?

Q. Yes.

A. It was masonry type.

Q. Did it have a basement?

A. There was a basement only in the back, used as a stock room.

Q. What is shown on the diagram as Stock Room?

A. Yes, ma'am.

Q. Did there come a time you expanded your operations?

A. Yes, ma'am.

Q. What was the next addition?

page 170] A. The basement was dug under the part marked Home Goods and Speed Wash, back to the line of the Stock Room there (Indicating).

Q. For what purpose was the basement floor utilized?

A. For variety goods and hardware at that particular time.

Q. Did there come a time you expanded the building further?

A. Yes, then the other part was built on which is marked "Department Store."

Q. Was that a store with a basement?

A. That had a full basement, yes.

Q. Is that what is shown on the diagram as the Department Store Stock Room?

A. That is correct.

Q. Was that portion shown on the diagram as Department Store Stock Room ever utilized by the partnership as a sales room?

A. No, it was not.

Lloyd Elmer Wright

Q. For what purpose was it used?

A. As a stock room.

Q. Did there come a time during the partnership that you were ever notified of any fire violations?

A. Never.

Q. I believe your testimony is that the partnership ended then in 1956, is that correct?

A. That is correct.

Q. Do you recall when in 1956?

page 171] A. I believe it was May, if I remember correctly.

Q. Was the business then carried on by someone else?

A. Yes, ma'am.

Q. *Who* took over the business?

A. Mr. Hunt.

Q. Did he purchase the business?

A. Yes, he did.

Q. Who owned the building at the time you sold the business to Mr. Hunt?

A. Mrs. Wright and myself.

Q. Did you then lease the building to Mr. Hunt?

A. That is correct.

Q. Did you lease all of the building?

A. No, not all of it. The main floor and the basement.

Q. That is the main floor of both the old building and the new building and the basement?

A. That is correct.

Q. Thereafter, did you agree to an assignment of the lease that you had given to Mr. Hunt? Did you agree to an assignment of that lease?

A. Yes, ma'am.

Q. To whom did Mr. Hunt assign that lease?

A. To the corporation.

Q. Is that corporation the one known as —

A. (Interrupting) as Wright and Hunt, Inc.

page 172] Q. Do you know when the corporation started to operate, that is, to your own knowledge, do you know?

A. I couldn't answer that. I don't know.

Q. Do you know generally?

A. I was under the impression it started immediately after he bought it.

Q. After he bought the business?

A. After he bought the business.

Lloyd Elmer Wright

Q. Did there come a time after you had sold the business and leased the premises to Mr. Hunt that you were advised of certain violations of the fire regulations?

A. That is correct.

Q. How did you learn of these violations?

A. I had a letter from the State Fire Marshal.

Q. I ask you if this is the letter you received from the State Fire Marshal?

A. That is correct.

Q. What was the date of this letter?

A. August 1st, 1958.

Q. Did you learn of the violations of the fire regulations from any other source?

A. No, I did not.

Q. What steps did you take, if any, to correct these violations?

A. Yes, we did. I had a talk with Mr. Shipley page 173] and we went over what we had to do. The first thing was the fire escapes, which we did immediately. I contacted a number of sprinkler people and several of them gave me bids, then I negotiated with the Nicholson Sprinkler Company in Richmond. That was probably a month after I received this letter, sometime within a month.

Q. Did you subsequently enter into a contract with the Nicholson Sprinkler Company?

A. No, I did not.

Q. Can you tell us the reason that you did not enter into a contract?

A. Yes ma'am. We went to the town and we found that there was only a four-inch main with dead end coming up in back of the store. It was the only water available at the store and it was not enough water to operate a sprinkler system.

Q. You were so advised of this by whom?

A. By the sprinkler people.

Q. Thereafter, what did you do to comply with the letter?

A. We again contacted Mr. Shipley, the State Fire Marshal, and he gave me the alternate which we used by enclosing this stairway.

Q. What did he tell you had to be done?

A. He told us that had to be closed. He gave us several alternatives you could use there. You could either use fireproof glass or wallboard which is fireproof for page 174] a certain length of time, and the doors would have to be of a type that would close automatically in

Lloyd Elmer Wright

case of fire, that is a fuse on the closure.

Q. That is, the doors could remain open?

A. The doors could remain open or closed. It wouldn't make any difference.

Q. Did he discuss with you any additional outside exits?

A. That was discussed earlier.

Mr. Lillard: I think these leading questions are going a little far here. I object to this as a leading question.

The Judge: Objection sustained.

Q. Were there any other alternatives given to you other than the sprinkler system and the enclosure?

A. That is the only two.

Q. The enclosure of the stairs?

A. That is right.

Q. Was there discussion of any other construction?

A. No other construction, no.

Q. Was the stairway enclosed?

A. It was.

Q. The work was completed, is that correct?

A. That is correct.

Q. Who did you employ to do that work?

A. Mr. Rickert.

Q. What is his full name?

A. Howard C. Rickert.

page 175] Q. What type of an enclosure was used?

A. Instead of using the wallboard, we used the glass.

Q. For what purpose?

A. So that, as you go down the stairway, that you could see over the room and see the merchandise displayed.

Q. Was the direction of the stairs the same at the time the work was begun or the same as now?

A. The stairs at the bottom had a landing that went off to the right. That was changed and followed the wall down, to conserve space.

Q. At whose request was this done?

A. That was Mr. Shipley.

Q. Have you been notified of any further violations since that construction has been done.

A. No, I have not.

Q. Will you identify this paper writing, please.

A. Yes, I can.

Lloyd Elmer Wright

Q. What is that?

A. It is a letter from Mr. Shipley.

Q. And the date of that letter?

A. The date of that letter is December 15th, 1961.

Q. I believe, Your Honor, this is also either an Exhibit or has been previously discussed.

Mr. Lillard: What Exhibit is that, if it is in evidence?

The Judge: That is Complainant's Exhibit 7.
page 176] I will give this back to you, Mrs. Miller.

Q. I show you a paper writing and ask you if you can identify this, please.

A. Yes, I can.

Q. What is that?

A. It is a letter from Mr. Shipley, saying that we have complied with his requirements.

Q. His requirements of what specific time?

A. I forget the date of that one. March 9th, I believe.

Q. I would ask that this be marked as Defendant's Exhibit #4.

Mr. Lillard: What is the date of that letter?

The Judge: March 9th, 1962. This is Defendant's Exhibit 4.

Q. The letter of March 9th, 1962 states that the requirements of what period have been met, of what date?

A. The letter of December 15, 1961.

Q. Will you read the first paragraph please.

A. "On March 8th, 1962 a reinspection was made of the captioned store, and it was found that the requirements of our inspection report of July 24th, 1958 had been complied with subject to comment #1 of our letter of December 15, 1961 involving use of the basement for sales purposes."

Q. And the comment #1 of the letter of December 15, 1961, read that, please.

A. "On November 27, 1961, a reinspection was made of the captioned store, and it was found that the requirements of our inspection report of July 24, 1958 had been complied with the following exceptions:"
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Mr. Lillard: I think, if any part of the letter is read into the record, it should all be.

The Judge: I think that is probably true, but it is already in evidence.

Mr. Lillard: I don't see any reason for any part to be read, but if any part is read, it should all be read.

The Judge: All right.

Mrs. Miller: Read on.

A. "On November 27, 1961, a reinspection was made of the captioned store, and it was found that the requirements of our inspection report of July 24, 1958 had been complied with with the following exceptions:

"1. That the basement area is not currently being used as a sales area, enclosure of the interior stairs therefrom is satisfactory. Use of any part of the basement area for sales purposes would result in the requirement of an additional approved exit therefrom which is well separated and readily accessible in relation to the enclosed interior stair located in the northwest section of the building.

"2. The fire door located at the head of the interior stair from the basement in the southeast corner of the building drags on the floor when opened and is not presently self-closing. It is expected that you will give your page 178] immediate attention to having this door operating in a satisfactory manner.

"Should the fire doors required by state law in this building not be equipped with approved automatic type door closers, it is strongly recommended that appropriate permanent type signs be placed on the doors to indicate to the tenants that the fire doors are required by State Law to be kept in a closed position at all times.

"Your cooperation in accomplishing the work required to bring this building into conformity with the minimum standards of the Virginia Fire Safety Regulations is appreciated.

"We would still very strongly recommend that the building be equipped with an approved automatic sprinkler system should the water supply system improve in the town of Vienna."

page 179] Q. And it is signed by whom?

A. State Fire Marshal J. C. Shipley.

Q. To your own knowledge, do you know whether or not

Lloyd Elmer Wright

the basement area, the downstairs store, was being used for sales on December 15, 1961?

A. I do not know.

Q. Did Mr Hunt contact you any time after the receipt of this letter, after you received this letter, did he contact you directly?

A. No, he did not.

Mr. Lillard: Which letter are you referring to there?

Mrs. Miller: December 15, 1961.

Q. In making the stairway enclosure, did you have any discussion with Mr. Hunt or any one of the officials from Wright and Hunt concerning the design?

A. No, we did not.

Q. Did you take any steps to meet with them?

A. Yes, we did.

Q. And the meeting that you referred to as having been with the Fire Marshal's representatives and your builder, was any one from Wright and Hunt, Inc. at that meeting?

A. They were not at the meeting, no.

Q. Where was that meeting held?

A. The meeting was held in the Wright and Hunt store.

Q. In the store?

page 180] A. In the store.

Q. Had they been invited to that meeting?

A. Yes, they had.

Q. Do you know the approximate date of that meeting?

A. Somewheres in the spring of 1961. I don't remember the date.

Q. And do you recall when the work was begun?

A. He went to work on that immediately after that, as far as getting their materials lined up.

Q. Who are you referring to?

A. Mr. Rickert.

Q. Do you recall when the work was finished?

A. I believe it was October 1961.

Q. You have said that the steps you took to correct the violation included this enclosure and also the fire escape. Was that all the work you had done?

A. No, we enclosed a rear stairway into one of the stock rooms in the back and put in fire doors. On the other stairway leading from the department store, there was a fire door, but not at the top of the stairs.

Lloyd Elmer Wright

Q. Who did this work for you?

A. John Stinnett.

Q. Do you know when he began to do his part of the work?

A. He started that in early spring. I imagine in March 1961 or in the spring of 1961 anyway.

page 181] Q. Do you know about when he finished that work?

A. That work was finished in probably May or June.

Q. In the letter of December 15, 1961, there is mentioned the automatic type door closures. Are they on the doors of the enclosed stairway?

A. They are.

Q. Are they at the top and the bottom?

A. Of the enclosed stairway, yes sir.

Q. They are both at the top and the bottom?

A. They are both at the top and the bottom.

Mr. Lillard: Does this mean the top and the bottom of the door or the top and the bottom of the stairway?

A. Of the stairway.

Q. What is the purpose of this particular type of closure?

A. It is an automatic closure. It is a fusable closure.

Q. What does that mean?

A. That means, in case of fire, they automatically close if left open.

Q. They can be left open?

A. Yes ma'am.

Q. And they automatically close in case of fire?

A. That is correct.

Q. Were those put on by Mr. Rickert?

A. That is correct.

Q. In the letter of December 15, 1961, the number one comment "of an additional approved exit," have you taken any steps to put in such an exit?

A. No, we have not.

Q. Why have you not?

A. The Fire Marshal has never required me to do it. I have done everything he has asked me to do.

Q. Has he ever had any discussion with you about such an exit?

A. At one time there was.

Q. What was the gist of the discussion?

Lloyd Elmer Wright

A. That was right after we were first notified, when we were going through alternatives, what could be done or couldn't be done to bring it in conformity with their regulations.

Q. What was the outcome of that discussion?

A. The outcome of that was enclosing the stairway. We had to enclose the stairway anyway regardless of what we did, so that met the specifications as far as the Fire Marshal was concerned.

Q. In other words, you were told the stairway had to be enclosed at any rate?

A. That is correct.

Q. The number two comment here is that a certain fire door located at the head of the interior stairway from the basement in the southeast corner drags on the floor and is not presently self-closing. Had you any notice of that before you received this letter?

page 183] A. Not before I received this.

Q. Had you taken any steps to correct that?

A. Yes, we not only changed the doors but we put new closures on those doors.

Q. Who did that work.

A. Mr. Rickert.

Q. Have you at any time had any discussions with officials of Wright and Hunt, Inc. concerning the rental on the premises?

A. Personally, I have not. My wife had a discussion with Mr. Nicholson.

Mr. Lillard: I object.

Mrs. Miller: Were you present?

A. I was not present.

Q. Did there come a time you were asked to agree to subletting of a part of the premises?

A. Yes ma'am.

Q. Were you approached personally?

A. Yes, I was.

Q. Who represented Wright and Hunt, Inc.?

A. Mr. Whitmore.

Q. What is his full name?

A. Harold Whitmore. I don't know his other initial.

Q. What area did he ask you to agree to sublet?

A. The basement.

Lloyd Elmer Wright

Q. Do you recall the approximate time of this page 184] request?

A. I am foggy on the time. It was in the summer of 1959, I think. I am not sure on that date.

Q. Did he tell you for what purpose they wished to lease it?

A. For wholesale auto parts.

Q. To your knowledge, was the basement area, that is the area shown on the diagram as the downstairs store, was that occupied by Wright and Hunt, Inc. at that time?

A. I don't know if I understand that question.

Q. When you were approached regarding a subletting of the downstairs store, do you know if Wright and Hunt, Inc. were using that area for either storage or sales?

A. They were using it for one or the other, I don't know which.

Q. You were approached regarding subletting it to a wholesale firm, is that correct?

A. That is right.

Q. Was there a subletting to such an operation?

A. No, there was not, not to my knowledge.

Q. Were you aware that any portion of the property was occupied for storage by Twin Auto Parts?

A. No, I was not.

Q. Was there any other subletting of the premises?

A. Yes, the Speed Wash.

Q. And did you agree to that subletting?

A. Yes, we did.

page 185] Q. Who approached you regarding that subletting?

A. Mr. Whitmore.

Q. Do you know what Mr. Whitmore's capacity is with the corporation?

A. No, I do not.

Q. May I have the Court's indulgence just a moment?

The Judge: Yes.

Q. I ask you to identify this writing, please.

A. Yes, I can identify it.

Q. Tell us what it is for the record.

A. You want me to read it?

Q. No, just tell what it is.

A. This is a letter in answer to the letter you wrote Mr.

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Hudson in regard to permission for the Speed Wash.

Q. And will you read the letter, please.

A. "This is to express my thanks for your letter of July 9, 1959 advising of the consent of Mr. and Mrs. Wright to the proposed sublease outlined in my letter to them on June 2nd, 1959 in accordance with the terms of the lease.

"With regard to the contingency numbered 2, 3, and 4, which have reference to having the building in substantial condition and good repair upon vacating the premises, and also the inclusion of the gross receipts and the laundry operation included in the rental termination appear to be covered

in the lease and therefore are acceptable to the page 186] lessee. The first contingency, however, is a variance from the lease, which contains no provision requiring or providing for the tenant to bear all or any part of any change in insurance rates which might result from subletting or from any other factor. On the contrary, the lease unqualifiedly requires consent to any reasonable sublease to carrying on a legitimate business. Therefore, this is not a valid condition to the consent, and we consider this letter as constituting a final consent under the terms of the lease and we are proceeding on that basis.

"May I also add that we believe immediate steps should be taken to put the building in first class condition in order to promote the overall business and to solve our parking problems for the mutual benefit of all concerned.

"I remain, cordially yours, D. Hurd Hudson."

page 187] Q. I would ask this be admitted, please, as Defendant's Exhibit 5.

Mr. Lillard: I do not believe this is material to the controversy. I know of no allegation that raises the question.

The Judge: What is the purpose?

Mrs. Miller: The allegations are that Wright and Hunt, Inc. have been deprived of certain areas in the store that deprived them of adequate sales space and therefore that they have suffered losses in gross sales and also as a result losses in profit.

The Judge: This is just cumulative of the evidence that a part of the store has been leased out?

Mrs. Miller: That is correct.

The Judge: It is admissible for that purpose.

Mr. Lillard: I would like to note an exception to the ruling.

The Judge: It will be Defendant's Exhibit 5.

Lloyd Elmer Wright

Q. Can you identify this paper writing, please.

A. This is a letter that we instructed you to write Mr. Hudson, giving permission for the subletting to the Speed Wash.

Q. I am going to move this be placed into evidence inasmuch as this is the letter which caused the response as to the subletting.

Mr. Lillard: I would like the record to show my objection and exception stay as it was.

The Judge: The same reason. It will be ad-
page 188] mitted as Defendant's Exhibit 6 subject to that objection.

Q. What had been your approximate gross sales for the year just prior to the leasing to Wright and Hunt, Inc.?

Mr. Lillard: I object to this as being immaterial and irrelevant to the controversy.

The Judge: Objection sustained.

Mrs. Miller: Your Honor, we would note an exception to that on the grounds that we believe it is material insofar as showing that this was a going business, one making a substantial —

Mr. Lillard: (Interrupting) I hate to interrupt, but I don't think Mrs. Miller should put the evidence in the record by way of exceptions.

Mrs. Miller: I have found, Mr. Lillard, if I don't the Court of Appeals has no way of knowing.

Mr. Lillard: I don't think you have the right to put this into evidence in the form of exceptions in view of the Court's ruling.

Mrs. Miller: I think I have the right.

The Judge: You can take your objection and state your reason for it, but as Mr. Lillard said, you are putting in evidence.

Mrs. Miller: All right, Your Honor, then we will note our exception on the grounds that operation of the business for
previous year to that which the property was
page 189] leased to Wright and Hunt, Inc. is material to
whether or not there is coercion between any
act or omission on the part of Mr. and Mrs. Wright on a sub-
sequent date to the loss in sales in profit.

Lloyd Elmer Wright

The Judge: All right.

Q. That is all.

By Mr. Lillard:

Q. Mr. Wright, Mrs. Miller is representing you in Court in this controversy. Did she represent you at the time you leased this property to Mr. Hunt?

A. That is correct.

Q. She prepared that lease for you, did she not?

A. Yes, sir.

Q. You and Mrs. Wright, I believe, are the owners of this property?

A. That is correct.

Q. You have been throughout the period you have described, in which a mercantile business has been carried on there, either by you as a partner or by your lessees?

A. Yes, sir.

Q. You have owned the business throughout that period?

A. Yes, sir.

Q. Any construction undertaken on that site is your construction?

A. That is correct.

page 190] Q. And the plans and specifications, the ultimate responsibility for the construction, were all yours, is that correct?

Mrs. Miller: I would ask that be stricken as a conclusion of law.

Q. I am asking him if he didn't feel it was his ultimate responsibility.

The Judge: He can testify as to his understanding. It may not be a correct legal conclusion.

A. I don't understand the question.

Q. No one has the right to make any decision with regard to construction on these premises except you and Mrs. Wright?

A. That is correct.

Q. No construction could have been undertaken there except

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upon plans approved by you, is that correct?

A. That is correct.

Q. When the basement was excavated under the Home Goods and Speed Wash areas, as shown on this chart, and that area was completed as a basement area, those plans were approved by you, weren't they?

A. That is right.

Q. In the course of preparing those plans, is it not true you gave considerable attention to the design of the stairway leading from the downstairs store to the upstairs store?

A. That is true.

Q. Didn't you try to make it open and easy as page 191] access to facilitate moving of people from the upstairs store to the downstairs store?

A. I sure did.

Q. That is important?

A. Yes sir.

Q. In fact, it is quite important to a mercantile property within the upstairs store, is it not?

A. That is correct.

Q. When the arrangement shown as the downstairs stock room, which is the basement under the store, or to state it another way, it is the basement under the new building, when that was planned, you and Mrs. Wright approved the plans, is that right?

A. That is right.

Q. No one else has the right to do so, did they?

A. That is right.

Q. Isn't it true that basement area was given a high ceiling so it ultimately might be used for sales?

A. Yes sir.

Q. And you thought it was an area or place where sales could be carried on?

A. Yes sir.

Q. You anticipated and hoped it could be used as a sales area?

A. We did it that way for that purpose.

Q. Were you then a partner in this business?

page 192] A. Yes sir.

Q. And it was your hope it could be later used for retail sales?

A. I don't know whether it was my hope, but I always look a few years ahead. It was prepared for it if it was ever needed.

Lloyd Elmer Wright

Q. You considered then this entire building, both floors, as having been designed for use for retail sales insofar as it might be needed for that purpose?

A. That is correct.

Q. You testified Mr. Hunt purchased this business from you?

A. That is correct.

Q. Isn't it a fact the corporation purchased it from you?

A. No sir.

Q. At the time you signed this lease, was the corporation not in existence?

A. It was in the works, but not in existence. We sold directly to Mr. Hunt.

Q. I am asking you now about the time you signed the lease. Do you mean the sale to Mr. Hunt did not occur at the time the property was leased to Mr. Hunt?

A. It occurred at the same time we sold. He immediately then turned it into the corporation.

Q. So it was a concurrent transaction?

A. Yes, one followed right after the other.

Q. Then the corporation was in existence at page 193] that time?

A. I don't know whether it was or not. Our sale was directly to Mr. Hunt. It was not to the corporation.

Q. Aren't you an incorporator of that corporation?

A. No, sir.

Q. Didn't you subscribe to the initial stock?

A. Yes, I subscribed to the initial stock but then I was through.

Q. You were initially a partner?

A. Yes, sir.

Q. And you were going to leave some of your money in the corporation?

A. Yes, sir.

Q. And did there come a time you withdrew your money?

A. That was in the beginning of it.

Q. Was it before the corporation was formed or before the stock was sold?

A. Before the stock was sold, just the beginning of the stock being sold.

Q. In the main body of this lease, you agreed that the leasehold interest Mr. Hunt was requiring under that lease could be assigned to Wright and Hunt, Inc., is that right?

A. Yes, sir.

Lloyd Elmer Wright

Q. And you were aware it was immediately assigned to Wright and Hunt, Inc., were you not?

A. Yes, we knew it was going to be.

page 194] Q. When you were discussing the plans for the construction we have described, for either the downstairs store or the new building or both, did you ever confer with anyone relative to the State Fire Regulations?

A. No, I did not.

Q. Did you take any steps to ascertain whether or not the building was going to be in conformity with the State Fire Regulations?

A. I didn't personally. I left that up to the contractor.

Q. Do you know whether or not the contractor took steps?

A. I do not.

Q. You didn't check on it?

A. I did not.

Q. You are testifying you made no investigation of that whatsoever?

A. No, sir.

Q. Did you ever discuss it with anyone?

A. No, sir.

Q. You never did?

A. No, sir.

Q. Did you ever discuss it with Mr. Hunt?

A. No, sir.

Q. Did you ever talk to Mr. Hunt about the fact that this building might have to be sprinklered because of the Virginia Fire Regulations?

page 195] A. No sir.

Q. Do you deny that?

A. I sure do.

Q. Are you testifying to this Court that when you received this letter from the State Fire Marshal dated August 1st, 1958 that is the first time you ever knew there might be a violation of the State Fire Regulations in connection with this building?

A. That is correct.

Q. Did you ever ask your general contractor if he had checked to see if the plans complied?

A. No, I did not.

Q. You knew there were State Fire Regulations, did you not?

A. I didn't know we had State Fire Regulations, no sir.

Q. You testified Mr. Hunt purchased the business and

Lloyd Elmer Wright

leased this store from you and thereafter you agreed to an assignment of that to the corporation. That is not correct, is it? Your agreement of that did not come thereafter, did it?

A. It came at the time we signed the lease.

Q. It was agreed upon at the time the whole transfer was drawn?

A. Yes, sir.

Q. So your agreement to the assignment of this lease at a later time was incorrect?

A. That would be.

page 196] Q. When you received this letter of August 1st, 1958 from the Fire Marshal, did you not a few days later receive a letter from Wright and Hunt, Inc.?

A. That is correct.

Q. Do you recall the contents of that letter?

A. Yes, sir, I do.

Q. What were they?

A. They said they wouldn't accept anything but a sprinkler system, they couldn't have the stairway closed up.

Q. Do you recognize that, Mr. Wright?

A. Yes, I do.

Q. Did you answer our letter?

A. I don't believe we did.

Q. You knew that any work you undertook here as a result of the letter from the State Fire Marshal would be of interest to your tenant, did you not?

A. Certainly.

Q. You felt no obligation to answer this letter and communicate with them with regard to what you proposed to do?

A. That was right in the beginning of it. Naturally we would have to discuss it before anything was done, but I did not write him in answer to that letter.

Q. You knew from the date of receipt of this letter that from the tenant's view the enclosing of the stairway would destroy the usefulness of the downstairs store for the purpose for which it was leased?

page 197] A. That is what he said.

Q. You knew it was his position in the matter?

A. That is right.

Q. What is the date of that letter?

Mrs. Miller: August 11th, 1958 and I would like the record to show it was Exhibit C with the Bill of Complaint.

The Judge: To Lloyd E. Wright from Mr. Hunt?

Lloyd Elmer Wright

Mr. Lillard: From Wright and Hunt, Inc.

The Judge: That is Complainant's Exhibit No. 13, already in here.

Mr. Lillard: It is Complainant's Exhibit No. 13, the same letter as is with the Bill of Complaint as Exhibit C.

Q. I show you this letter and ask if you can identify it and I would like to show that the witness is now looking at Exhibit E filed with the Bill of Complaint. The witness is looking at Complainant's Exhibit No. 14.

A. Yes, I recognize that.

Q. Did you receive that letter?

A. Yes sir.

Q. Did you answer it?

A. No, I did not.

Q. Why didn't you answer this letter?

A. I didn't see any reason why I should answer that letter.

Q. Didn't the letter in the last paragraph advise you your tenant stood ready to cooperate to any reasonable
page 198] way to making the premises comply with the Fire Regulations and attempting negotiation was satisfactory to all parties after having previously stated in the same letter their position that the enclosure of this interior stairway would be a very damaging thing to them? That is true, isn't it?

A. That is true.

Q. And you didn't answer it?

A. I didn't answer it.

Q. Did you answer any of the correspondence sent to you from Wright and Hunt, Inc. or their representatives relative to this controversy?

A. I can't remember whether I did or not.

Q. Do you recall one you did answer?

A. I can't recall it, sir.

Q. You were aware, I believe, from the beginning that if the sprinkler system could be installed in this basement it would not be necessary to enclose the interior stairway?

A. No, they told me we would have to enclose the stairway whether we had the sprinkler system or didn't.

Q. Didn't they tell you if the sprinkler system was installed, and an approved exitway was installed, the stairway would not be required?

A. At that time they could not find any practical place to put an exitway.

Lloyd Elmer Wright

Q. But if a practical place could have been found, then it would not be necessary to enclose the stairway?

page 199] A. That is correct.

Q. In view of the stated position of your tenant, that the enclosure of this stairway would be very damaging to them, and your knowledge that there might be a way to avoid it, you felt no obligation to confer with them and see if anything could be worked out?

Mrs. Miller: I object to that on these grounds. There has been testimony that he did invite these people in to go over a design for the enclosure and that they failed to do so.

Mr. Lillard: The record shows, Your Honor, the position of the tenant through the controversy was that the enclosure of the interior stairway would destroy the usefulness of the downstairs store for the purposes for which it was leased, and the record shows the invitation to come and meet with them was to discuss methods of enclosing the interior stairway, and I am trying to show and I think the witness's testimony does show it, that despite attempts to meet with them, the stairway was enclosed and they were unable to continue use of the building. He was inviting them only to discuss the method of doing the thing which would ruin a portion of the premises for their use. Would you answer the question, please.

A. Would you repeat the question?

(The stenographer read back the question)

page 200] A. I was working directly with the Fire Marshal and trying to meet every obligation that he required of me and that I think I did. I did it to the best of my ability anyway.

Q. But you certainly knew that at least one method of meeting his requirements which was under consideration was entirely unacceptable to your tenant, you knew that, didn't you?

A. I knew it, yes.

Q. Didn't you feel any obligation to go to see if they would join in the course or help you work out plans or do something to work out, to help them?

A. We did invite them.

Q. But you only invited them to the enclosure of the stairway.

A. We wanted to discuss the whole thing, have the Fire

Lloyd Elmer Wright

Marshal there and a contractor and a representative of Wright and Hunt.

Q. Did you communicate that desire to him?

A. Yes, we did that.

Q. How do you know that?

A. My attorney called Mr. Hunt.

Q. You don't know she called Mr. Hunt, do you? I ask that be stricken. He doesn't know that Mrs. Miller called Mr. Hunt.

The Judge: All right. Objection sustained.

Q. Now you admitted you received this letter of December 15, 1961, identified as Complainant's Exhibit 7, is that true?

A. Yes, sir.

page 201] Q. And you noted paragraph one, which stated that, "use of any part of the basement area for sales purposes would result in the requirement of an additional approved exit therefrom which is well separated and readily accessible in relation to the enclosed interior stair located in the northwest section of the building." You noted that statement, did you not?

A. Yes sir.

Q. You knew then that the use of any part of the basement area for sales purposes was not permitted at this stage of the game, did you not?

Mrs. Miller: I object. He has read the comment and at this point there is no showing from this letter that it was not in fact permitted. It says only that "since you are not using it as a sales area." It does not say it could not have been, and testimony of the Fire Marshal is at no time he would have prohibited use of the downstairs store of the premises.

Mr. Lillard: I ask Your Honor to read sentence two of the paragraph.

The Judge: The evidence so far has certainly shown in this case that more than the stairway would have to be installed. There should be an outside entrance.

Q. And I am asking Mr. Wright if he did not know that was true. Now what did you do about that?

A. I haven't done anything about that.

page 202] Q. So you knew you were prohibiting your tenant from using any part of the downstairs store as a sales area and you did nothing about it, is that true?

Lloyd Elmer Wright

The Judge: I think that is a question the Court must decide, whether he should do anything or whether Mr. Hunt should do anything.

Mr. Lillard: I am asking if he did anything to find out.

A. I did ask the Fire Marshal.

The Judge: You can ask that.

A. I did ask the Fire Marshal if there was anything I could do and he said I had done everything and he still says I have done everything.

Q. Where does he state you had done everything or anybody had done everything to make the basement area available for sales purposes? Where does he state that in this correspondence?

A. I don't know whether he says that in this one or not. As I understand this paragraph one in this letter of March 9, 1962, "A reinspection was made of the captioned store —"

Mrs. Miller: (Interrupting) Please speak up. I can't hear you.

A. I would like to read the first paragraph.

Q. Please identify the letter.

A. This is a letter of March 9th, 1962 from the State Fire Marshal.

page 203] Q. Which is Defendant's Exhibit #4.

A. "On March 8, 1962 a reinspection was made of the captioned store, and it was found that the requirements of our inspection report of July 24th, 1958 had been complied with subject to comment #1 of our letter of December 15th, 1961, involving use of the basement for sales purposes." That had been complied with.

Q. But again you were put on notice that the basement could not be used for sales purposes, were you not? Isn't that the fair intent of this paragraph?

A. I don't understand it that way.

Q. Did you understand throughout that although the State Fire Marshal did accept the enclosure of the interior stair and certain other work as meeting the minimum requirements of his law, he felt that the proper solution to your problem was a sprinkler system?

Lloyd Elmer Wright

Mrs. Miller: I would object to that.

The Judge: Objection sustained.

Mr. Lillard: I submit to Your Honor that clearly appears from his correspondence.

The Judge: The correspondence speaks for itself, Mr. Lillard. I don't think Mrs. Miller would deny the State Fire Marshal would like to see a sprinkler system in the building.

A. I don't deny that. Nobody would deny that.

Mr. Lillard: I think in view of that, I have a page 204] right to ask this witness if he wasn't aware of that fact.

The Judge: He has already testified.

Mr. Lillard: May I have a minute, Your Honor, for a conference here?

The Judge: Yes.

Mr. Lillard: We have no further questions.

The Judge: All right, let's take a recess before the redirect examination. Please step down.

By Mrs. Miller:

Q. Mr. Wright, you have been asked about the letter dated December 15, 1961, the paragraph numbered 1. Can you tell us if the exit that is referred to as that being in the northwest corner of the building, if that exit is in existence.

A. That is, yes.

Q. Will you tell us with regard to the view of the premises, was this the first or the last exit that we saw?

A. I think it was the last one. Now I got down there late yesterday. The exit in the northwest corner —

Q. (Interrupting) Is that in existence?

A. That is in existence, yes.

Q. Now I believe you were asked about the construction of an additional exit. I believe your answer was that there had been some discussion in your earlier negotiations, but it had been discarded because you could not find a practical place to put an exitway. What basis do you have for that statement?

A. That was back in the early discussions. There was many different plans gone over and any other exits that would be put there would come into a parking lot, which we have very little now, so they were discarded for those reasons.

Q. With whom were you having discussions at that time?

Lloyd Elmer Wright

A. With the Fire Marshal.

Q. You say in your early discussions, do you recall about what year that would have been?

A. Year 1958 or 1959.

Q. I believe you were asked if you had called anyone in regard to inviting — that is, anyone of the officials of Wright and Hunt, Inc., with respect to meeting with them and going over the plans for the enclosure, and I believe you answered you had caused or had asked your attorney to call someone or to write someone, is that correct?

A. That is correct.

Q. To your personal knowledge, did your attorney telephone anyone, that is to your personal knowledge?

A. Yes ma'am.

Q. Were you present?

A. I was not present.

Q. Then to your personal knowledge you do not know?

A. No, ma'am.

(Off the record)

page 206] Mr. Lillard: Wasn't that one stipulated?

The Judge: It is marked Exhibit F with the Bill of Complaint.

Mr. Lillard: It is dated April 20th.

The Judge: You say that was stipulated, Mrs. Miller?

Mrs. Miller: Yes, Your Honor. Of course those stipulations were made and I don't believe I gave them numbers. What were they?

(There was a pause)

Mrs. Miller: I have them. These are the ones we stipulated to with a brief description and these are the way you marked them.

The Judge: Then December 9th, 1961 is Exhibit 2.

Mr. Lillard: The stipulations, Your Honor, were Exhibit D with the Bill of Complaint.

The Judge: All right.

Mr. Lillard: Exhibit F referred to in paragraph 10 of the Bill of Complaint. Exhibit D referred to in paragraph 11, and Exhibit H referred to in paragraph 17.

Howard C. Rickert

Q. So is it your testimony then you did ask your attorney to contact Wright and Hunt, Inc. with respect to a meeting?

A. That is right.

Mr. Lillard: I ask this be stricken. This is about as leading a question as it could be.

The Judge: Objection sustained.

Mrs. Miller: I would agree to that.

page 207] Q. Mr. Wright, do you know definitely when Wright and Hunt, Inc., when they became incorporated?

A. No ma'am, I do not.

Q. You were a subscriber, is that correct?

A. No, I actually was not. I actually put no money up.

Q. Then you had nothing to do with the corporation itself, the formation of it?

A. I had nothing to do with it.

Mr. Lillard: Here again, this is in conflict with his testimony.

The Judge: He stated originally he had intended to be a subscriber and that he had changed his mind.

A. That is right, sir.

Q. That is all. Those are the only questions I have unless Mr. Lillard has some.

The Judge: Any *re-crossexamination*?

By Mr. Lillard:

Q. When you decided to discard this exit leading to the parking lot, you did so without making any effort to find out the wishes of the tenant in that respect?

A. I said nothing to the tenant about it, no.

Q. That is all.

The Judge: All right. You may step down.

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page 208] HOWARD C. RICKERT,
 a witness of lawful age, being first duly sworn,
testified as follows:

By Mrs. Miller:

Q. Will you state your name and address, please.

Howard C. Rickert

A. My name is Howard C. Rickert and I live at Route 2, Box 143, Vienna, Virginia.

Q. What is your business, Mr. Rickert?

A. I am a contractor and builder.

Q. How long have you been so engaged, how many years?

A. I can't rightfully remember. It has been over a period of somewhere between 25 and 30 years.

Q. And during the course of your employment, have you built store buildings as well as homes or other structure?

A. Yes, I have built commercial buildings.

Q. And in the course of your employment, did you have occasion to do any construction work on the premises at 148 Maple Avenue, Vienna? Can you answer that yes or no?

A. Just a minute. Yes, I did.

Q. And did you have occasion to build or to do construction work in and about that property on more than one occasion?

A. Yes ma'am.

Q. Can you tell us what you have done insofar as the construction of the building on those premises.

A. May I ask a question? How far back shall page 209] I go?

Q. Any period of time. Have you had occasion to do construction work in and about the store building on those premises?

A. Yes, ma'am.

Q. Did you build any part of the building?

A. Yes, I did.

Q. Which part of the building, with regard to the diagrams here, have you built? This shows the basement and this is the main floor.

A. The part I have had connection with recently would be the enclosure of the stairway.

Q. Before that time, did you have anything to do with the actual building?

A. In prior years, several years back, I had occasion to excavate underneath the old part of the store building.

Q. Was the excavation the only thing you did?

A. I had no portion of the new part, no.

Q. My question is: With regard to the excavation under the old store building, do you mean just that digging or did you do something else?

A. The old part was excavated, retaining walls, fittings, the building was supported, and another basement put under the old part of the store. I had occasion to do all of that.

Howard C. Rickert

Q. You were the general contractor?

A. Yes, ma'am.

page 210] Q. And do you recall about when this was done?
When this work was done?

A. No, I can't recall it as of now.

Q. Do you recall whether or not Wright and Hunt, Inc. was occupying the premises or whether this was done during the time of the partnership of Wright and Hunt?

A. My dealings were with Mr. Wright.

Q. With Mr. Wright only?

A. Yes, ma'am.

Q. What do you do insofar as compliance with the building permits and final inspection when you build or do construction work? Do you obtain those permits yourself?

A. Yes, I do.

Q. Does the owner have anything to do with securing those permits?

A. In my case, I obtain the permits, or in this case, rather.

Q. In this case you did?

A. Yes, ma'am.

Q. Do you recall whether it was Mr. Wright or yourself who had occasion to ask for the final inspection?

A. I asked for the final inspection.

Q. Is that your usual method of dealing with construction work?

A. My usual method is to start the job and
page 211] finish it, complete it, ready to be cleared.

Q. With regard to the recent work you spoke of having done on the premises at 148 Maple Avenue, what did you do, what sort of work did you do?

A. The recent work that was accomplished was the enclosure of the front stairway in the old part of the building.

Q. Where is that stairway shown on this diagram.

A. On the 42-foot store building, on this side (indicating).

Q. Is it marked "Downstairs Store?"

A. Yes, ma'am.

Q. Can you tell if this is the same stairway on the other diagram, marked "Home Goods Store."

A. I don't know anything about that stairway.

Q. Let me ask you this. Is there more than one interior stairway leading from the old store down to the downstairs store?

A. There is an old stairway that went down, back of the

Howard C. Rickert

furnace, or near the furnace, from the back, from the storage space.

Q. Did you do any work on that stairway?

A. Only one thing. When I finally left the whole entire job, I went back and adjusted those doors.

Q. So the enclosure of the stairway you speak of is that then shown on the downstairs store, that portion of it?

A. On the plan marked "Downstairs Store," page 212] the drawing you have is the stairway I constructed.

Q. Who requested this construction be done?

A. Mr. Wright employed me.

Q. Do you recall when he first contacted you about this?

A. I don't know as I can give exact dates on that. I can't give you exact dates on that.

Q. Can you give us the year?

A. It was in 1961. Excuse me. It was early in 1961.

Q. What do you mean by that, in the winter or the spring or when?

A. It was somewhere in the latter part of March or the first of April. I don't have the exact date he called me.

Q. When did you begin the work that he requested you to do?

A. The permit was issued September 15th, 1961, the town of Vienna, receipt number — do you want that?

Q. No. When was that work completed? Do you recall about when you did finish it? Did it take a month or six months or what?

A. The last work accomplished there, which involved closing in the window at the bottom of the old stairway, was March 2nd 1962. That was the last request of the Fire Marshal that he called me on.

Q. Before you started to do any work on the premises, did you have any discussion with anyone as to how the work was to be done?

page 213] A. Yes, I did.

Q. With whom did you discuss work to be done?

A. I discussed with the Fire Marshal and Mr. Wright.

Q. What work did you actually do then to accomplish the enclosure of the stairway?

A. To answer that, I enclosed the stairway.

Mr. Lillard: Is it really helpful to go into this? Your Honor has seen the work done there.

Howard C. Rickert

The Judge: I don't see that it is necessary, Mrs. Miller.

Q. All right, Your Honor. How much did it cost to do the work you were employed to do?

A. The total amount of cost involved in my work there amounted to \$1,730.62.

Q. \$1,752?

A. \$1,730.62.

Q. All right. What was this for? What did this figure represent?

A. I am sorry. I misquoted. I didn't add it correctly. It is \$2,730.62. This work involved material, upper fire doors, walls, the complete enclosure of the stairway, the door downstairs, patching in the landing, changing the store at the foot of the landing so the stairs would run straight.

Q. Why was that change made?

A. That was a suggestion by the Fire Marshal to change that to run it straight. Also before I left I read-
page 214] justed the two doors and changed one adjuster on the back stairway, put a heavier adjuster in there that was also a request or suggestion by the Fire Marshal.

Q. What type closures were used on the doors?

A. I don't recall the name. They were the type and size that was recommended by the Fire Marshal, and he ordered them directly from this company.

Q. All right. What was the purpose of using this particular type?

A. This type of closure which was used involved a physical link arm which has to be ordered. I couldn't find anyone in Washington that stocked them. The fusable link arm is put on and used where the doors might remain open at all times. If a fire starts in the basement, when it comes to the fusable link, it melts it and the door automatically closes of its own accord. Therefore, it allows the doors to remain open.

Q. Is this type of closure more or less expensive than the ordinary type?

A. It is considerably more expensive.

Q. Do you recall how much more?

A. Approximately \$29 more. That is, each one.

Q. How many are required for a door?

A. There were three involved at the enclosure of the stairway.

Q. You stated, I believe, you began work in
page 215] September, and that you finished work in March.

Howard C. Rickert

Did you work each and every day of that time?

A. No, ma'am.

Q. How many days were actually utilized full-time for this operation?

Mr. Lillard: Is this helpful, Your Honor?

The Judge: What is the purpose of this?

Mrs. Miller: I believe it is, because I believe it is necessary to show Mr. and Mrs. Wright have not only gone to considerable expense and that the operation was one of those things which was to some extent and not just something that could be done overnight.

The Judge: If you want it in, all right.

Q. I would like to have it in, yes, Your Honor.

A. There were ten working days.

Q. Was that ten full working days?

A. No, not entirely ten full working days.

Q. How many men were employed on the job?

A. There were from two to four.

Q. Were the premises accessible at all times when you arrived there at work?

A. No, I have two days that we had to wait.

Q. You had to wait for what?

A. For the door to open

Q. For the door to open?

page 216] A. For the door to open.

Q. For the store to open?

A. Yes, ma'am.

By Mr. Lillard:

Q. When was the stairway actually closed in, Mr. Rickert, sometime in October?

A. The building permit was issued on the 15th. The material was ordered the 18th.

Mrs. Miller: What month is this?

A. September, 1961. I am sorry. I am pretty sure construction was started between the 18th and 20th of September.

Q. Sometime in the early part of October, this work was substantially complete, isn't that true?

A. Not all together. There was considerable detail.

John Stinnett

Q. You had the walls up and the doors that soon, did you not?

A. There was considerable loss of time in ordering the jams of the doors. They were especially handled. They were especially secured. They are Group B doors, fire-coated.

Q. When did you have the wall up and the doors hung, can you state that?

A. I don't have that breakdown to the exact, specific —

Q. Give us your best estimate. Would you say October? You say the job was finished in March. You had the doors up before March, didn't you? I just want a rough estimate, the 1st or 15th of October or whenever it was.

page 217] Mrs. Miller: I object to counsel suggesting dates.

Q. I will suggest any other fifteen days then. I didn't intend to suggest the date.

A. The stairway was not complete but the walls were up and the doors were in, according to my ledger sheet, by October 2nd.

Q. I have no further questions.

A. That was not finished detail, though.

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JOHN STINNETT

a witness of lawful age, being first duly sworn, testified as follows:

By Mrs. Miller:

page 218] Q. Please state your name.

A. John Stinnett.

Q. Where do you live?

A. Vienna, Virginia.

Q. What is your occupation?

A. I operate Stinnett's Welding Service near Vienna.

Q. How long have you been in this welding business?

A. This is my fifteenth year.

Q. Did you have occasion to do certain work on the premises of 148 Maple Avenue known as Wright and Hunt Department Store?

A. Yes, ma'am.

Q. When did you do this work?

John Stinnett

A. There was some done in 1958, which was the extension of the steps on the back of the office building down to the ground, with a fire escape, and also the spark reter for the incinerator, and in 1961 we were slow and Mr. Wright asked me to help him put in two fire doors, so I put in the two fire doors and a dry wall rated by the Fire Department, which was approved by them, and this is what I did.

Q. What stairs is that?

A. Two stairs going down, one to the stock room and one to the basement.

Q. Is that from the main floor down to the basement, both of them?

A. Yes, ma'am.

Q. At the rear of the front of the building?

page 219] A. At the rear of the building. Actually they go from the stockroom upstairs down into the basement.

Q. Were they approved?

A. Approved solid core doors.

Q. Did you order them and hang them?

A. Yes, I ordered them and installed them.

Q. What did you charge for this work?

A. It was just labor plus materials. I don't know the exact figures now.

Q. You don't have them with you?

A. No, I didn't have time to look it up.

Q. Do you have any estimate at all?

A. I think it was somewhere over \$100, between \$100 and \$200, somewhere in that neighborhood.

Q. I show you a paper writing and ask you if that is the statement you rendered?

A. Yes, it is, and it has by us "Signed and Paid." It is \$316.63 actually.

The Judge: Are you going to offer that?

Mrs. Miller: Yes, sir.

The Judge: That will be Defendant's Exhibit #7.

Q. Did you have a final inspection on this work?

A. The final inspection was actually done at the time when all of it was completed. When I started to put these doors in, when we got to the upstairs stairway to the
page 220] basement stair, which was a stock room, they decided it had to be enclosed in glass and I was

Alfred A. Savia

not capable of doing that so that was the time Howard Rickert was called in.

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ALFRED A. SAVIA,

a witness of lawful age, being first duly sworn, testified as follows:

By Mrs. Miller:

Q. Please state your name.

A. Alfred A. Savia.

Q. And your residence.

A. Vienna.

Q. What is your employment?

A. Assistant Fire Marshal, County of Fairfax.

Q. How long have you worked in that capacity?

A. A little over seven years.

Q. In the course of your duties, do you make inspection of commercial property?

A. Yes, I do.

Q. Where do you make them? Is that throughout the County?

A. Throughout Fairfax County, that is correct.

page 221] Q. Does that include also the town of Vienna?

A. It does.

Q. In the course of your duties, have you had occasion to make inspections of the store building in Vienna known as the Wright and Hunt store?

A. Yes, I have.

Q. Can you tell us when you first inspected those premises?

A. The first time was April 3rd, 1956.

Q. April 3rd, 1956?

A. Yes, ma'am.

Q. What did your inspection show at that time?

A. This was a preliminary inspection which we merely go through to make the building description, and at that time usually we require fire extinguishers be placed in the building. No other details generally are made on this preliminary inspection other than for fire extinguishers.

Q. Did you notify anyone there was a need for fire extinguishers?

A. Yes, on April 3rd, I wrote Mr. Lloyd E. Wright asking

Alfred A. Savia

that he provide fire extinguishers as was discussed at the time of the inspection.

Q. Where were these to be placed?

A. These were to be placed throughout the store

Q. Did they have anything to do with the upstairs area?

A. I don't recall at that time whether the up-
page 222] stairs area was included.

Q. Were steps taken to correct this by Mr. Wright?

A. Yes, I believe so. Apparently they were, because on the next inspection, fire extinguishers were present.

Q. When was your next inspection of the premises?

A. April 14, 1958.

Q. And what did your inspection of the premises show at that time?

A. The only thing I have concerning that is a letter sent to Mr. Hunt regarding some deficiencies in the building.

Q. Will you read that letter, please.

A. Yes, it is addressed to "Mr. William Hunt, 152 Maple Avenue, Vienna, Virginia. Re Wright and Hunt Store. Dear Mr. Hunt: This is to advise you that on April 8, 1958, an inspection of the above building was made in company with James Shipley, Deputy State Fire Marshal, and the following violations were noted.

"1. The public assembly room in the basement must be provided with a second approved exit provided directly to the outside. If it is necessary to go through a corridor in connection with that exit, the corridor must be enclosed with a three-quarter hour fire resistive construction.

"2. Exists must be marked by approved exit signs efficiently illuminated when the floor area is occupied. When exit
page 223] markers are not visible from any part of the room, exit directional signs shall be displayed in conspicuous location to direct occupants thereto.

"3. All decorations must be flameproof.

"4. 'No Smoking' signs must be placed throughout the basement.

"5. The furnace must be enclosed with a three-quarter hour partition.

"6. One Class Two-A fire extinguisher must be provided for every thirty five hundred square feet of floor space. Extinguishers to be hung up so as to be accessible at all times in case of fire. I would recommend the water pressure type extinguisher.

Alfred A. Savia

"If I can be of any further assistance, please feel free to call at any time.

"Very truly yours, Alfred A. Savia, Assistant Fire Marshal"

Q. Do your records show or do you know whether the violations were corrected?

Q. I have a note here dated May 23, 1958 that I talked with Mr. Hunt regarding these requirements. I have no indication as to whether any action was taken at that time or not.

Q. Do you have occasion to make subsequent inspection of the premises?

A. Yes, I believe the next one was made on February 2, 1960.

Q. And what did that inspection show?

page 224] A. This was a follow-up inspection with Mr. Shipley. I have notes here indicating the basement was clean but no otherwork was done. Mr. Shipley indicated he would send a letter to Mr. Wright and a copy to Mrs. Miller.

Q. And did you make any further inspection?

A. January 19, 1961.

Q. And what did you find at that time?

A. I just stated they had an outside fire caused by the incinerator. Inspection of the inside store indicated oversize fuses in the fuse panel, extension cords, and an open fuse panel in the basement, open paint in an area with window trimming material, trash, lawn mower with inflammable liquid inside. The extinguishers were due for recharge and the stairway had not yet been cut off.

Q. Do your records indicate where you found the paint cans and lawn mower? What section of the building?

A. These were in the basement?

Q. In the basement?

A. Yes, ma'am.

Q. Did you make another inspection of the premises?

A. February 14, 1961.

Q. What did your inspection reveal at that time?

A. This was a follow-up inspection with the insurance agent concerning fire doors for the separation of the basement and the first floor, and on February 24th an inspection
page 225] with Mr. Stinnett for the enclosure requirement.

Q. That was February 24, 1961?

A. That is correct.

Q. When did you make your next inspection?

Alfred A. Savia

A. November 15, 1961.

Q. All right, and what did you find at that time?

A. It is indicated under remarks that a big improvement had been made in the building. All stairs were cut off and enclosed. The only problem was in the stock area.

Q. And what were those problems?

A. I didn't indicate it on the report.

Q. Do you have any independent recollection of what they were?

A. Yes, I believe it was related to the stock area on the first floor. They built another floor actually between the original floor and the ceiling and they had an arrangement where you went up several steps to the stock and they had an area above also for stock. This was a crowded condition and it would be very hazardous for firemen if they had to enter a place of this type in case of a fire.

Q. Is that the only stock area you recall was a problem?

A. At that inspection, yes, ma'am.

Q. Was this called to the attention of anyone, what is considered a violation?

A. Yes, I brought it to Mr. Hunt's attention.

page 226] Q. And do your records indicate whether or not this was thereafter corrected?

A. They do not indicate such, no.

Q. When did you make your next inspection of the premises?

A. October 24, 1962.

Q. What did you find at that time?

A. Extension cords in the basement, fire extinguishers were due, combustibles near the dryer in the speed wash, and trash in the basement.

Q. To whom did you report these violations?

A. I have an inspection report addressed to Mr. Hunt on October 26, 1962.

Q. And have those conditions been corrected, as far as you know.

A. That is the last inspection I have made.

Q. On your inspection of the premises, did you observe how the basement areas were being utilized, for what purpose?

A. Yes, ma'am.

Q. What were those purposes or purpose?

A. At one time they were being used, the basement was being used as a public assembly room in that they were having some sort of shows, fashion shows, or whatever they might be

Harold Whitmore

entitled, there. Other parts of the basement were being used as storage.

Q. On any of these occasions, was any part of page 227] the basement being used for sales purposes?

A. No, at any time that I have ever made an inspection there. I recall it was set up as a sales area but I don't recall it ever being opened as a sales area during an inspection.

Q. Do you know any reason why it cannot be used as a sales area?

A. Other than the fact that it would be deficient in exit facilities.

Q. What is the deficiency insofar as you know?

A. As I recall, the building code, I believe, is what provides for the number of exits that is required from a building. In a store below grade or in a sales area below grade, I think you are required to have at least two direct means of exit from that particular area.

Q. Are the two existing exits, or are there existing exits in that number in the store at the present time?

A. Not from the sales area. There are doorways from the basement, but I don't believe that there is. Let's put it that way.

Q. You don't know?

A. I don't recall there being two exits there.

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HAROLD WHITMORE,

a witness of lawful age, being first duly sworn, testified as follows:

By Mrs. Miller:

Q. Would you state your full name, please.

A. Harold Whitmore.

Q. Where do you reside, Mr. Whitmore?

A. I live in Vienna.

Q. What is your occupation?

A. My title is Superintendent in the United States Patent

Harold Whitmore

Office, as the occupation includes engineering, law, administration, and various other things.

Q. What is your relationship, if any, to Wright and Hunt, Inc.?

A. Only that Mr. Hunt at the time the business was reorganized some years ago asked me if I would like to have some stock of the reorganized company, and I took a little, and later when there was a resignation from the Board of Directors, he said he would like to have me come in with the other Directors if I had time to do so, so I said yes.

Q. What is your relationship to the Vienna Speed Wash, if any?

A. One of the syndicate of owners. The syndicate was organized as a contributing factor to try to utilize
page 229] the space at Wright and Hunt, Inc., which was not being presentably used.

Q. Do you recall when that was organized?

A. 1959.

Q. Do you have with you today the records of Vienna Speed Wash which would indicate the gross receipts of the Speed Wash on an annual basis.

A. I think so.

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Q. What is your fiscal year insofar as the Speed Wash is concerned?

A. The calendar year.

Q. Do you have with you the records which would indicate the gross receipts for the laundry during your first calendar year of operation?

A. I have them with me.

Q. Do you have also the records with you indicating the gross receipts for the other years of
page 230] operation?

A. Yes, ma'am.

Q. May I see those, please. (The records were handed to Mrs. Miller).

Mrs. Miller: You have seen them, is that correct?

Mr. Lillard: I assume that is a copy of this, yes.

Mrs. Miller: I would like to offer these into evidence and question him concerning them.

The Judge: All right. What is the purpose of the offer?

Harold Whitmore

Mrs. Miller: The purpose would be that, according to the lease itself, the definition of gross sales of Wright and Hunt, Inc. — perhaps it would be well if I read that, except that it is in evidence.

The Judge: As I understand it in brief, the gross profits of the Speed Wash would be added to the gross profits of Wright and Hunt.

Mrs. Millar: It would be gross receipts, Your Honor.

The Judge: Gross receipts, I meant, in determining the amount of rent.

Mrs. Miller: That is correct. We think it goes to a showing of whether or not there has in fact been a profit or loss to Wright and Hunt, Inc. We show Your Honor because in this particular case it is, we feel, incumbent upon the Complainant to show that they are including in their profits or their losses the figure which would be the gross receipts.

page 231] It was their choosing that they take a certain amount of this space that was in the original lease and do something else with it. We feel it would be very similar to a man who starts out with four rooms and decides he will let someone have the fourth room for nothing. Then next on a percentage basis and next on a fixed rent. On the percentage basis and on the arrangement of just giving them away, then we feel it would be a very essential part, not essential, but when he comes in and says, "I have only one room left and the landlord has taken one-fourth of that room," then he says, "annual receipts and gross sales have come down and my profits have suffered," and so forth. We would like to have a picture of the entire operation because we believe this is based on entire annual rental.

The Judge: The evidence shows gross receipts for Wright and Hunt have been so much per year. Is it your opinion that gross receipts of Vienna Speed Wash have to be added too?

Mrs. Miller: That is correct, and that is shown by the deposition of Mr. Hunt which is in the file, which we have not offered at this point.

The Judge: Mr. Lillard?

Mr. Lillard: The gross receipts of Vienna Speed Wash have not been added in, but the rentals of the Speed Wash have been added in, and that is the only figure which page 232] would be material in this case.

Mrs. Miller: Your Honor, we do not agree with that.

The Judge: Gross sales is defined to mean the "gross sel-

Harold Whitmore

ling price of all merchandise sold and the gross charges for all services rendered in, upon, or from the demised premises, less all refunds, returns or allowances made or any sales tax which the tenant may be required to collect and account for to any governmental agency." Is that the provision?

Mr. Lillard: It is of course, but it refers only to the override of rent and there has been no claim here that — that is not involved.

Mrs. Miller: There is an item here of rent in 1956, and we say it is very important what those people have brought in, that you cannot get a true picture of the gross sales if you are only considering those of a certain area. Mr. and Mrs. Wright don't care what those areas are. We are interested in what was done in the total area. If Wright and Hunt decided to give away one portion of it, that is of no concern to us, but when they come in and say they have gross receipts only on the part they have retained, we feel we have a right to know what the gross receipts was on those premises.

Mr. Lillard: I agree. They are entitled to know the income of Wright and Hunt, Inc., but not the gross receipts.
page 233] The Judge: Doesn't the lease itself define gross sales, which means those charges for any services rendered in, upon or from the rented premises, including gross services from the Vienna Speed Wash?

Mr. Lillard: That is true, but that provision of the lease has no function except the basis for calculating the amount of rent due on the overriding percentage under the lease, and there is no claim that there has been rent due under the overriding percentage, and therefore, gross sales for that purpose, for either the corporation or the syndicate, would be immaterial. The only reason gross receipts of the corporation are material is that we have in issue a claim of loss of profit.

If you want to include this figure here, it is obvious you would have to include the cost of operating the Speed Wash. Gross receipts would have to be offset by operating costs and other expenses. If that is coming in, the entire organization has to come into the picture if we are going to talk about profits.

But I maintain, if Mr. and Mrs. Wright claimed in this litigation that money was due them under that overriding provision, that has not been paid, then they would be entitled to add the gross receipts of the Speed Wash to the gross sales of Wright and Hunt, Inc., to ascertain whether money was due under the overriding provision. There
page 234] can be no other connection. Since that is not an

Harold Whitmore

issue, then gross receipts of the Speed Wash are not material and the only issue is rent paid to Wright and Hunt, Inc. by the Speed Wash, which is not in evidence.

The Judge: I think she is entitled to know what they are, Mr. Lillard.

Mr. Lillard: He has a right to know what they are, under the lease, and we have an affidavit of that, but I feel it is quite immaterial to the issues in this case, and if sometime Mr. and Mrs. Wright think they have a claim under that, they have a right to assert it.

The Judge: There is no question of that. Mr. and Mrs. Wright have that right, but I think she has a right to examine the matter and go into the matter of the gross receipts.

Mr. Lillard: I would like to note an exception here because these are not gross receipts of Wright and Hunt, Inc.

The Judge: They are gross receipts here. As far as deciding the case, it is not going to sway me a particle, and I am not interested in it, but if you want to put it in, it is all right with me.

Mr. Lillard: I would like to note an exception to the ruling permitting this to be put into evidence, please.

Mrs. Miller: I will tender this, please.

Q. Mr. Whitmore, did there come a time that you approached Mr. and Mrs. Wright about a lease of the basement area?

page 235 } A. Yes, ma'am.

Q. When was that?

A. I don't remember. I would say at least two years ago, but I don't remember.

Q. For what purpose did you ask them about the subletting?

A. Because I felt it would be to their advantage and to the advantage of Wright and Hunt, Inc. to proceed with a modification under which they would get more than they were getting and Wright and Hunt also would get more than they were getting.

Q. And for what specific purpose were the premises to be leased?

A. For making use of some portion of that premises which they did not need in the basement as a display room. This was an unused portion at that time.

Q. Was there any specific tenant in mind at that time?

A. We had looked for tenants. There was some contacted who couldn't come in if we reached the 3% override but they

Louisa Wright

did not have a retail store. It was a wholesaler and they could not operate on 3% override, but I thought if that portion of the business could be changed, Wright and Hunt, Inc. could get more out of the business than they were getting, and I thought it would be advantageous to both, but both tenants could not consider it because they both operated on such a narrow margin.

page 236 } Q. At the time you called this to their attention, concerning a possible subletting, was the lower floor, the downstairs store, was it available as a sales area, in your opinion?

A. I believe at that time it was in use as a sales area. I would have to check with Mr. Hunt as to that. This was the portion used only as storage space and not much of that, but it was my recollection that a portion of the downstairs store at that time was in use as a sales area.

Q. Referring to the chart over there, the lower diagram, which of the various areas was under proposal to lease to someone?

A. There were two considerations. One was the back portion of the lower righthand corner where it says "Stock Room" and a back portion of that with a small entrance out was one. If that wasn't large enough, it would be a portion of the upper stock room related to that back entrance in the upper stock room. That is my recollection of it.

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LOUISA WRIGHT,

a witness of lawful age, being first duly sworn, testified as follows:

page 237 } By Mrs. Miller:

Q. Will you state your name, please.

A. Louisa Wright.

Q. You are one of the defendants in this case, is that correct?

A. I am.

Q. Mrs. Wright, did there come a time you and your husband leased certain premises to Wright and Hunt, Inc., is that correct?

A. Yes, ma'am.

Q. Do you recall the period was 1956, is that correct?

A. Yes, ma'am.

Louisa Wright

Q. Did there come a time thereafter when you were approached by Wright and Hunt, Inc., or a representative of Wright and Hunt, Inc. regarding a reduction in rent?

A. Yes, ma'am.

Mr. Lillard: That is a leading question.

The Judge: Objection sustained.

Q. What was the yearly rental on the property?

A. \$10,500.00.

Q. Has that rental ever been decreased?

A. No. At one time they applied for a decrease.

Q. When was that?

A. It was sometime after the year was up that they had been there. I don't know whether it was a year or a year-and-a-half, but it was something like that.

page 238] Q. After their first year of operation?

A. Yes, it would be in the second year.

Q. Were you approached directly?

A. We were called on the phone and asked for a conference on the subject.

Q. Did you then have a conference on it?

A. Yes, we did. I did. My husband was not able to go at the time they wanted, so I went.

Q. Who was this conference with?

A. Mr. Jack Nichols. He was at the time acting in their capacity.

Q. Mr. Jack Nichols was their attorney at that time?

A. I believe he had been. I imagine he was connected in some way.

Q. What was the result of that conference?

A. Well, he told me things were not going too well, that he needed consideration for the rent and he showed me the profit and loss statement and balance sheet which he and I went over very carefully together and I proceeded to show him, that is, I proceeded to point out to him certain things that in my opinion did not indicate that it was an unfair hardship or anything that would call for a reduction in rent.

Q. So as a result of that conference, was the rent lowered?

A. No, it was not, because we felt — I pointed out and he evidently agreed, because the subject was never
page 239] brought up again, that if they would concentrate a little more on the operation rather than on cutting down certain things like rent, I would say uncontrollable

Louisa Wright

expenses and they could concentrate on controllable expenses, this perhaps would result in a better state of affairs, so no doubt Mr. Nichols felt this was true and they went on from there.

Mr. Lillard: Objection.

The Judge: Sustained.

Q. Were you a partner in the partnership of Wright and Hunt, Inc.

A. Yes, ma'am.

Q. In that operation, what type stores did you have?

A. We had a variety store, hardware store, department store.

Q. Did you have any particular type variety store?

A. We had a Ben Franklin store.

Q. Is that under a franchise?

A. Under a franchise, yes, ma'am.

Q. How long did the partnership exist of which you were a member?

A. Well, it was ten years plus.

* * * * *

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* * * * *

Q. Do you own the land in connection with the building itself?

A. Yes, we do.

Q. Could you tell us how much land, if you know?

A. I don't remember exactly how much it is.

Mrs. Miller (to Mr. Lillard): I have to let her refer to this plat. I am showing it to her. I am going to ask her if that is a correct portrayal insofar as she can see of the land that goes with the building.

* * * * *

Q. Will you tell us what this indicates insofar as the building goes?

A. It indicates it is sitting on a piece of land bounded on the north side by Mill Street and by Maple Avenue. Insofar as the building is concerned —

William H. Hunt

Q. (Interrupting) Would you indicate which of page 241] those areas around the building are parking areas, if any.

A. Yes, there is a parking area across the front and down one side and down further into the back.

Q. All right. Does this plat reflect what is seen as the parking area when you look at the premises?

A. No, there is a part of it that is leased.

Q. To whom is that leased?

A. Washington and Old Dominion Railroad.

Q. Will you indicate on this plat the side of the building, that is, the side next to what is shown as the large parking lot? Will you indicate where that is?

A. Right here (indicating). This is the side.

Q. Is that the line with 92.93 feet shown?

A. Yes ma'am.

Q. That would be the side toward the railroad, is that correct?

A. Yes ma'am.

Q. I would like to offer this into evidence.

The Judge; That will be Defendant's Exhibit 9.

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WILLIAM H. HUNT,

returned to the stand and further testified as follows:

By Mr. Lillard:

Q. Mr. Hunt, when did you first learn the building which Wright and Hunt, Inc. occupied might be deemed to be in violation of the Virginia Fire Safety Regulations?

Mrs. Miller: Your Honor, Mr. Hunt has already answered that question on direct examination.

Mr. Lillard: I am coming to another question.

Mrs. Miller: All right.

The Judge: Didn't he testify before that he knew it didn't comply with the Fire Regulations? He doesn't have to say it again.

William H. Hunt

Q. Yes, we can assume that was his testimony. At that time were you a partner of Mr. Wright?

A. Yes, sir.

Q. Who was owner of the building?

A. Mr. and Mrs. Wright.

Q. The two together?

A. Yes sir.

Q. Did you discuss the fact with them?

A. Yes sir.

* * * * *

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Mr. Lillard: I am going to suggest to you, Mrs. Miller, and to the Court, that inasmuch as a great amount of testimony in this cause has contained references to these diagrams and the areas shown thereon, that they be made exhibits. I believe they have been identified and described and I do not think they have formally been admitted as exhibits.

The Judge: They have not formally been admitted as exhibits, but they have been referred to by every witness who has testified. I would admit them as Exhibits 22 and 23.

* * * * *

page 278] The Judge: I have jotted down a few words and they are as follows:

It seems to the Court that the complainants are seeking damages allegedly resulting from a condition under which they never attempted to do business. In other words, the complainants, to all intents and purposes, ceased to do business in the downstairs store and now ask the Court to fix their damages. I feel certain their damages, if they be so, could have been lessened had it been maintained in operation for a reasonable time after the erection of the enclosure surrounding the stairway.

Furthermore, I am not particularly impressed by the manner of ascertaining loss by taking the best five or six months, and I believe it would be five, of a particular year and projecting those figures into the future, in the face of the partic-

ular evidence showing declining profit every year of operation.

The undisputable evidence was that Mr. Hunt wanted a sprinkler system installed in the basement, as he might well have, but he refused to do business in the downstairs store after the enclosure of the stairway, although he could have continued to do business by use of the exit to the outside, a door which was then and is now in existence.

If the provision of the lease was that the entire page 279] premises were to be used for the operation of a retail store, then it is difficult to reconcile this with the fact that complainants attempted to lease certain of the area in the basement to others, and it is even more difficult to reconcile a claimed loss of valuable basement space with a voluntary leasing of certain ground floor space, and I refer to the lease to the automatic laundry.

I further feel, from the testimony and the view taken, that Wright and Hunt, like so many independent merchants, is a victim of today's modern methods of merchandising used by chain stores and shopping centers, with which it is difficult, if not impossible, to compete.

And finally and specifically, whether the defendants' action in providing for fire safety is reasonable, I would answer that in the affirmative. Were the premises rendered untenable by providing for fire safety? I would answer that in the negative. And lastly, is the complainant entitled to any of the relief prayed for, I would answer that in the negative.

Would you all please prepare a final decree.

A Copy—Teste:

H. G. TURNER, Clerk.

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