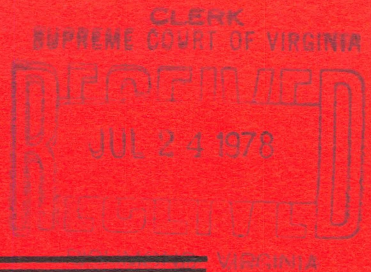


220 VA 529



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 780083

MORTON E. KALUS
AND
EMANUEL S. KALUS

.....Appellants

v.

FOOD FAIR INCORPORATED,
DART DRUG CORPORATION, VIRGINIA
AND
DART DRUG CORPORATION

.....Appellees

APPENDIX

JAMES C. WILKES, JR.
1001 Seminary Plaza Bldg.
4660 Kenmore Ave.
Alexandria, Virginia 22304

Counsel for Appellants

DOUGLAS L. PIERSON
Suite H., Section 4
301 Maple Ave. West
Vienna, Virginia 22180

Counsel for Appellees

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PETITION FOR DECLARATORY JUDGMENT AND INJUNCTION

TO THE HONORABLE JUDGES OF THE CIRCUIT COURT FOR ARLINGTON COUNTY, VIRGINIA:

COMES NOW your Complainant, Food Fair, Inc., by counsel, pursuant to Section 8-578 et seq. and Section 8-610 et seq. of the 1950 Code of Virginia, as amended, and respectfully represents unto this Honorable Court the following:

1. That your Complainant is a Pennsylvania corporation which has a certificate of authority to transact business within the Commonwealth of Virginia.

2. That your Complainant is the successor in interest to both Virginia Super Food Fair Stores, Inc. and Food Fair Stores, Inc.

3. That on or about August 29, 1960, Virginia Super Food Fair Stores, Inc. entered into a written lease agreement with the Defendants, Morton E. Kalus, Emanuel S. Kalus, and Paul I. Burman. In said agreement, the aforementioned Defendants leased unto Virginia Super Food Fair Stores, Inc. the premises located at the south side of Lee Highway and North Harrison Street, Arlington, Virginia, for an initial period of twenty years with four additional five year options. A copy of said agreement is attached hereto; marked "Exhibit A"; and incorporated in its entirety herein by reference.

4. That on or about December 20, 1968, Food Fair Stores, Inc., successors in interest to Virginia Super Food Fair Stores, Inc., entered into a Sublease Agreement with Dart Drug Corporation, Lee Highway, a Virginia corporation, in which Food Fair Stores, Inc. leased the premises located at the south side of Lee Highway and North Harrison Street, Arlington, Virginia to Dart Drug

Corporation, Lee Highway. A copy of said Sublease Agreement is attached hereto; marked "Exhibit B"; and incorporated in its entirety herein by reference.

5. That the Defendant, Dart Drug Corporation, Virginia, is the successor in interest to Dart Drug Corporation, Lee Highway.

6. That the Defendant, Dart Drug Corporation, was the guarantor of the aforementioned Sublease Agreement.

7. That the aforementioned Sublease Agreement was acknowledged and accepted by the Defendants, Morton E. Kalus, Emanuel S. Kalus, and Paul I. Burman.

8. That a dispute has arisen between the Defendant, Dart Drug Corporation, Virginia, (hereinafter referred to as Dart Drug) and the Defendants, Morton E. Kalus, Emanuel S. Kalus, and Paul I. Burman (hereinafter referred to as the Landlords) concerning the responsibility for making necessary repairs to the roof and sidewalk of the subject premises.

9. That despite all efforts on the part of your Complainant to mediate said dispute, the Landlords and Dart Drug have been unable to resolve their differences.

10. That in March, 1977, Dart Drug withheld SEVEN HUNDRED SEVENTY-NINE (\$779.00) DOLLARS from their monthly rental payment to your Complainant, claiming that said amount had been expended by them in the nature of self-help to correct roofing leaks and to repair the sidewalk which should have been performed by the Landlords by virtue of Paragraph 16 of "Exhibit A."

11. That in accordance with the terms of "Exhibit B," your Complainant tendered to the Landlords a check in the amount of TWO THOUSAND TWO HUNDRED NINETY-ONE and 83/100 (\$2,291.83) DOLLARS

which represented the monthly rental payment for April, less the aforementioned SEVEN HUNDRED SEVENTY-NINE (\$779.00) DOLLARS.

12. That on April 20, 1977, your Complainant received a letter from the Landlords demanding payment of April's rent in full within ten (10) days in accordance with Paragraph 36 of "Exhibit A."

13. That the dispute between the Landlords and Dart Drug involves the interpretation of both Exhibits A and B.

14. That said dispute in this matter lies between the Landlords and Dart Drug but unless and until the dispute between the Landlords and Dart Drug is resolved, your Complainant may suffer irreparable injury.

15. That it would be in the best interests of all parties, if the Landlord is temporarily enjoined from using self-help or any other remedy provided for by law or by "Exhibit A" to evict your Complainant and Dart Drug until the dispute between the Landlords and Dart Drug is resolved.

16. That as a gesture of good faith and to toll the running of the aforementioned ten (10) day period, your Complainant has paid into the registry of this Court the sum of THREE THOUSAND SEVENTY and 83/100 (\$3,070.83) DOLLARS which represents the total monthly payment which is in dispute. Said amount shall be disbursed in accordance with the ruling of this Court concerning the respective responsibilities of the Landlords and Dart Drug relative to Exhibits A and B.

17. That by reason of the foregoing, an actual controversy does exist among the parties hereto.

WHEREFORE, pursuant to Section 8-578 et seq. and Section

8-610 et seq. of the 1950 Code of Virginia, as amended, your Complainant prays that this Honorable Court decree the following:

FIRST: That the Defendants, Morton E. Kalus, Emanuel S. Kalus, and Paul I. Burman be enjoined from evicting your Complainant from the subject property until this Honorable Court has made a ruling on the merits of the issues presented in the Petition for Declaratory Judgment;

SECOND: That this Honorable Court suspend the running of the aforementioned ten (10) day period until it has ruled on the issues in this matter.

THIRD: That this Honorable Court, after reviewing the relevant facts and documents, and after hearing all relevant testimony in this matter, decree the responsibilities of the parties relative to the maintenance of the roof and sidewalk of the subject premises.

FOURTH: That this Honorable Court enter any further decree as the nature of this Petition may require and to equity may seem necessary, meet, and just.

FOOD FAIR, INC.

By: Food Fair Inc.

Counsel

LAW OFFICES OF:
Soutzos & Pierson
301 Maple Avenue, West
Vienna, Virginia 22180

By: Rouglas H. Pierson

Counsel for Complainant

ATTACHMENT "A"

AGREEMENT

This agreement is the same as Kalus Exhibit number
2. See Appendix pages 164 through 188.

"EXHIBIT B"

FOOD FAIR STORES COPY

SUBLEASE AGREEMENT

THIS SUBLEASE made the 20th day of December, 1968 between FOOD FAIR STORES, INC., a Pennsylvania corporation (hereinafter called "Lessor") and DART DRUG CORPORATION, LEE HIGHWAY, a corporation of the state of VIRGINIA (hereinafter called "Lessee")

W I T N E S S E T H: -- THAT

WHEREAS by Lease Agreement dated August 29, 1960 (hereafter called "Lease") Morton E. Kalus et als leased certain property which is the subject of this Sublease Agreement to Virginia Super Food Fair Stores, Inc. which lease was subsequently assigned by the Tenant named therein to Food Lane Stores, Inc. on June 16, 1961; the said Food Lane Stores, Inc. assigned the lease to Food Fair Stores, Inc. on February 6, 1965 thereby there now exists a lease between Morton E. Kalus et als as Landlord and Food Fair Stores, Inc. as tenant.

WHEREAS the lessor has agreed to lease the premises, which is the subject of the aforesaid lease, to the lessee above named wherefore this Sublease Agreement is made.

A copy of Lease is attached hereto as Schedule "A".

NOW, THEREFORE, in consideration of the mutual covenants

and agreements contained herein the parties agree as follows:

1. This Sublease is subject to all the terms and conditions of Lease. Lessee covenants with Lessor that Lessee shall fully and faithfully perform all the terms, covenants and conditions of Lease to be performed on the part of Lessor as Tenant excepting however the payment of rent as set forth in Article 6 of Lease. Lessor is hereby released and relieved of any of the obligations of Landlord as set forth in Lease but Lessor agrees to cooperate with Lessee in enforcing any such obligations and causing Landlord to perform the same. Lessor herewith grants to Lessee the power and authority as agent for Lessor to give any notices of default and require any performances by Landlord as set forth under the terms of Lease. Neither Lessor or Lessee shall execute or consent to an Amendment of Lease without the consent of the other.

2. The term of this Sublease shall commence upon delivery of Demised Premises to Lessee and shall expire at noon on August 24, 1981.

3. Commencing thirty days after delivery of Demised Premises to Lessee and thereafter throughout the term of this Sublease Lessee shall pay to Lessor rent equal to the sums payable by Lessor to Landlord under the terms of Lease. Such rent shall be payable to Lessor not later than the date on which the rent payable under Article 6 of Lease is payable by Lessor to Landlord. All rent shall be payable by Lessee without demand and without

set-off. except as is provided for in paragraph 13. All V

4. Upon expiration of the term of this Sublease, Lessee shall surrender possession to Lessor in such condition as will comply with the terms and conditions of Lease. If Lessee shall fail to comply with this provision, Lessee shall indemnify and hold Lessor harmless of and from any and all losses, damages, suits, claims, penalties or other matters asserted by landlord or any other party, pursuant to the terms of Lease or by reason of such holding over.

5. Prior to delivery of Demised Premises to Lessee, Lessor shall remove its personal property, fixtures and equipment from Demised Premises; shall cap off at the floor, ceiling, or wall line in a safe, good and workmanlike manner all utility connections exposed as a result of removal of said fixtures; and shall leave the premises broom clean, all at Lessor's expense.

Lessor shall give Lessee notice by Certified Mail at least ten (10) days prior to delivering possession of Demised Premises. Lessor shall deliver possession of Demised Premises to Lessee not later than March 1, 1969. Lessee has examined the condition of Demised Premises and shall accept possession thereof in the condition existing on the date of this Sublease, fair wear and tear excepted. Any claim with respect to the condition of Demised Premises shall be made by Lessee in writing delivered to Lessor not later than sixty (60) days after the date of delivery of Demised Premises to Lessee.

6. In the event of any condemnation of Demised Premises or any part thereof by any competent authority for any public or quasi-public use, Lessee shall have the rights granted to Lessor as Tenant pursuant to the terms of Lease, and Lessor herewith assigns to Lessee any portion of any award that would otherwise payable to Lessor under the terms of Lease.

7. If Lessee shall default under any of the terms, covenants and conditions of this Sublease, Lessor shall have the same rights as are granted to Landlord by reason of the default Tenant pursuant to the terms of Lease, subject to the right of Lessee to cure any such default no later than five (5) days before the time in which Lessor as Tenant must cure any such default under the terms of Lease.

8. At the request of Lessee, Lessor will exercise any option of renewal provided in Lease and the term of this Sublease Agreement shall be extended for a period of time equal to the period of the renewal option exercised; provided, however, that said request shall be made at least thirty (30) days prior to the last day for exercising said renewal option under the provisions of Lease, and provided further that Lessee shall, at the time of the said request, not then be in default of any of its obligations under this Sublease Agreement.

9. Lessee shall not assign this Sublease nor sublet the Demised Premises or any part thereof nor permit any party other than Lessee to use or occupy the Demised Premises.

10. Throughout the term of this Sublease Lessor shall pay the rent reserved under the terms of Lease to Landlord as and when the same becomes due provided that Lessee shall have paid to Lessor all rents due by Lessee. With the exception of the foregoing, Lessor shall be under no obligation to perform any of the terms, covenants and conditions to be performed by Tenant under the terms of Lease. Lessor shall not do anything that will adversely affect the use and occupation of Demised Premises by Lessee. Lessor has obtained from Landlord under Lease a covenant of quiet enjoyment. Lessor herewith assigns to Lessee all of Lessor's rights under said covenant and Lessor agrees to cooperate with Lessee in enforcing any of the remedies that might be available to Lessee by reason of a breach of such covenant. Lessor covenants that throughout the term of this Sublease so long as Lessee fully and faithfully performs all the covenants and conditions hereof, the rights of possession of Demised Premises by Lessee shall not be disturbed by any party by reason of the acts or omissions of Lessor.

11. All notices or demands required or permitted to be given or served pursuant to this Sublease shall be deemed to have been given or served only if in writing forwarded by registered mail, postage prepaid, and addressed as follows:

to Lessor at:

Food Fair Stores, Inc.
c/o Real Estate Department
3175 John F. Kennedy Boulevard
Philadelphia, Pennsylvania 19104

to Lessee at:

Dart Drug Corporation, Lee Highway
3301 Pennsy Drive
Landover, Md., 20785

Such addresses may be changed from time to time by either party--
by serving notice as above provided.

12. Lessor shall pay all commissions due to Ziegler Corporation by reason of the negotiation or consummation of this Lease. Lessee shall indemnify and hold Lessor harmless of and from any and all claims of any Brokers or other parties claiming to have dealt with Lessee in the negotiation or consummation of this transaction.

IN WITNESS WHEREOF, the parties have executed this
Sublease the day and year first above mentioned.

ATTEST: --

FOOD FAIR STORES, INC.---

Samuel Gorman
ASST. SECRETARY

By: [Signature]

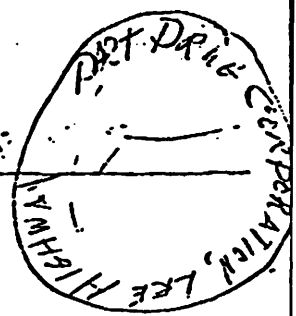
PRESIDENT
J. M. FRANK

ATTEST:

DART DRUG CORPORATION, LEE
HIGHWAY

[Signature]

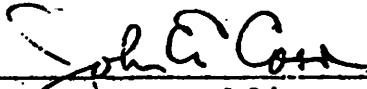
By: [Signature]



STATE OF PENNSYLVANIA :
COUNTY OF PHILADELPHIA : ss

On this 20th day of December 1968, before me appeared Jack M. Friedland and Samuel Forman to me personally known, who being duly sworn did say that they are President and Asst. Secretary of FOOD FAIR STORES, INC. respectively, and acknowledged that they executed the foregoing instrument as the free act and deed of the said corporation, and that the seal affixed thereto is the seal of the said corporation, which was affixed by order of the Board of Directors of said corporation.


Witness my hand and seal.


Notary Public
JOHN E. CARR
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires August 14, 1972

STATE OF *Maryland* :
COUNTY OF *Prince George's* : ss

On this 31st day of January 1969, before me appeared *Herbert H. Haft* and *Charles D. Shipe* to me personally known, who being duly sworn did say that they are President and Secretary of *Dart Drug Corporation* respectively, and acknowledged that they executed the foregoing instrument as the free act and deed of the said corporation, and that the seal affixed thereto is the seal of the said corporation, which was affixed by order of the Board of Directors of said corporation.

Witness my hand and seal.


Notary Public
My Commission Expires July 1, 1972

GUARANTY

In consideration of the sum of ONE DOLLAR. (\$1.00) and other good and valuable consideration, the undersigned does hereby guarantee FOOD FAIR STORES, INC., its successors and assigns, that the undersigned will fully, promptly and faithfully perform all of the terms, covenants, conditions, provisions and obligations imposed upon the Lessee by the Sublease Agreement of even date including but not limited to the payment of all monetary obligations contained or referred to in said Sublease Agreement especially and particularly the covenant(s) to pay rent. The undersigned does further covenant and agree that neither the Lessor in the Sublease Agreement nor the Landlord named in the Lease of August 29, 1960 shall be required to give to the undersigned nor shall the undersigned be entitled to receive any notice of any kind whatsoever pertaining to the Sublease Agreement or the Lease Agreement. The undersigned hereby consents to the amendment and/or modification of the Sublease Agreement at any future time without requiring any consent of the undersigned Guarantor.

WITNESS the hand and seal of the Guarantor this 31st day of January 1969.

ATTEST:

DART DRUG CORPORATION

Charles Hise Sr

By: Hise

"EXHIBIT B"

AMENDMENT OF SUBLEASE

THIS AMENDMENT OF SUBLEASE dated this 3rd day of February 1969, by and between FOOD FAIR STORES, INC., a Pennsylvania corporation (hereinafter called "Lessor") and DART DRUG CORPORATION, LEE HIGHWAY, a corporation of the State of Virginia, (hereinafter called "Lessee")

WHEREAS, MORTON E. KALUS ET ALs by Lease dated August 29, 1960 leased certain premises to VIRGINIA SUPER FOOD FAIR STORES, INC., which lease by mesne assignments subsequently became vested in Food Fair Stores, Inc., the above-named Lessor, and

WHEREAS, the above-named Lessor entered into a Sublease Agreement dated December 20, 1968 with Dart Drug Corporation, Lee Highway, the above-named Lessee, and

WHEREAS, the above-named Lessee as Subtenant has requested the above-named Lessor to amend the Sublease Agreement to provide for certain items that were not contained within the original Sublease Agreement wherefore this Amendment of Sublease Agreement is made.

W I T N E S S E T H:

NOW, THEREFORE, in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable considerations, the parties hereto hereby mutually agree that the Sublease Agreement dated December 20, 1968 is hereby amended and the following paragraphs numbers 13 and 14 be added to and made a part of said Sublease Agreement as though the same were fully incorporated in the original Sublease Agreement as follows:

13. In the event that the Landlord named in the Lease Agreement dated August 29, 1960 is in default for which the Tenant (now Food Fair Stores, Inc) is entitled to an off-set against the rental expressed to be paid under the terms of said Lease dated August 29, 1960 and if said off-set is granted to Food Fair Stores, Inc. then the Subtenant (Dart Drug Corporation, Lee Highway) shall not be liable to Food Fair Stores, Inc. for any greater amount of rental for the period of time for which the off-set is applicable than the amount paid by Food Fair Stores, Inc. to its Landlord. This provision is upon the express understanding that Food Fair Stores, Inc. shall not be liable for the difference or any portion of the difference representing the amount or any portion of the amount of the off-set. It being further distinctly understood that it is the intention of the parties hereto (Food Fair Stores, Inc. and Dart Drug Corporation, Lee Highway) that the amount of money

to be paid to the Landlord of Food Fair Stores, Inc. and the amount of money to be paid by Dart Drug Corporation, Lee Highway to Food Fair Stores, Inc. shall at all times, under the terms of the Sublease Agreement, be one and the same.

14. - In the event the Landlord in the lease dated August 29, 1960 is in default and because of said default the Tenant therein (now Food Fair Stores, Inc.) has a right to terminate or cancel said Lease, then in such event if the Sub-Tenant (Dart Drug Corporation, Lee Highway) desires to have the Lease dated August 29, 1960 terminated it will so advise Food Fair Stores, Inc. in writing to that effect and Food Fair Stores, Inc. agrees to cooperate with Dart Drug Corporation, Lee Highway in securing a termination of the Lease dated August 29, 1960 and if the Lease dated August 29, 1960 is terminated then the Sublease dated December 20, 1968 shall be simultaneously terminated. This understanding and agreement is made upon the express condition that Dart Drug Corporation, Lee Highway will reimburse and indemnify Tenant for any cost, expenses or other sums of money spent to bring about the termination of said Lease to the end and intent that Food Fair Stores, Inc. shall not suffer any monetary loss for cooperating with Dart Drug Corporation, Lee Highway in terminating the Lease so that the Sublease dated December 20, 1968 may be terminated. The Subtenant (Dart Drug Corporation, Lee Highway) shall at all times be fully liable to Food Fair Stores, Inc. for rent and all other obli-

gations until said Lease dated August 29, 1960 and said Sub-lease Agreement dated December 20, 1968 are fully terminated.

It is hereby understood and agreed that the Sublease Agreement dated December 20, 1968 and all provisions and conditions contained therein are hereby ratified and confirmed, the only purpose of this Amendment being to add to said Sublease Agreement the above paragraphs numbered 13 and 14.

IN WITNESS WHEREOF, this Amendment of Sublease has been duly executed by the parties hereto, intending to be legally bound thereby, under seal as of the day and year first above written.

ATTEST:

B. F. Lieber
B. F. Lieber, Secretary

FOOD FAIR STORES, INC.

By:

J. M. Friedland
J. M. Friedland, President

ATTEST:

Clara D. Hyslop

DART DRUG CORPORATION, LEE
HIGHWAY

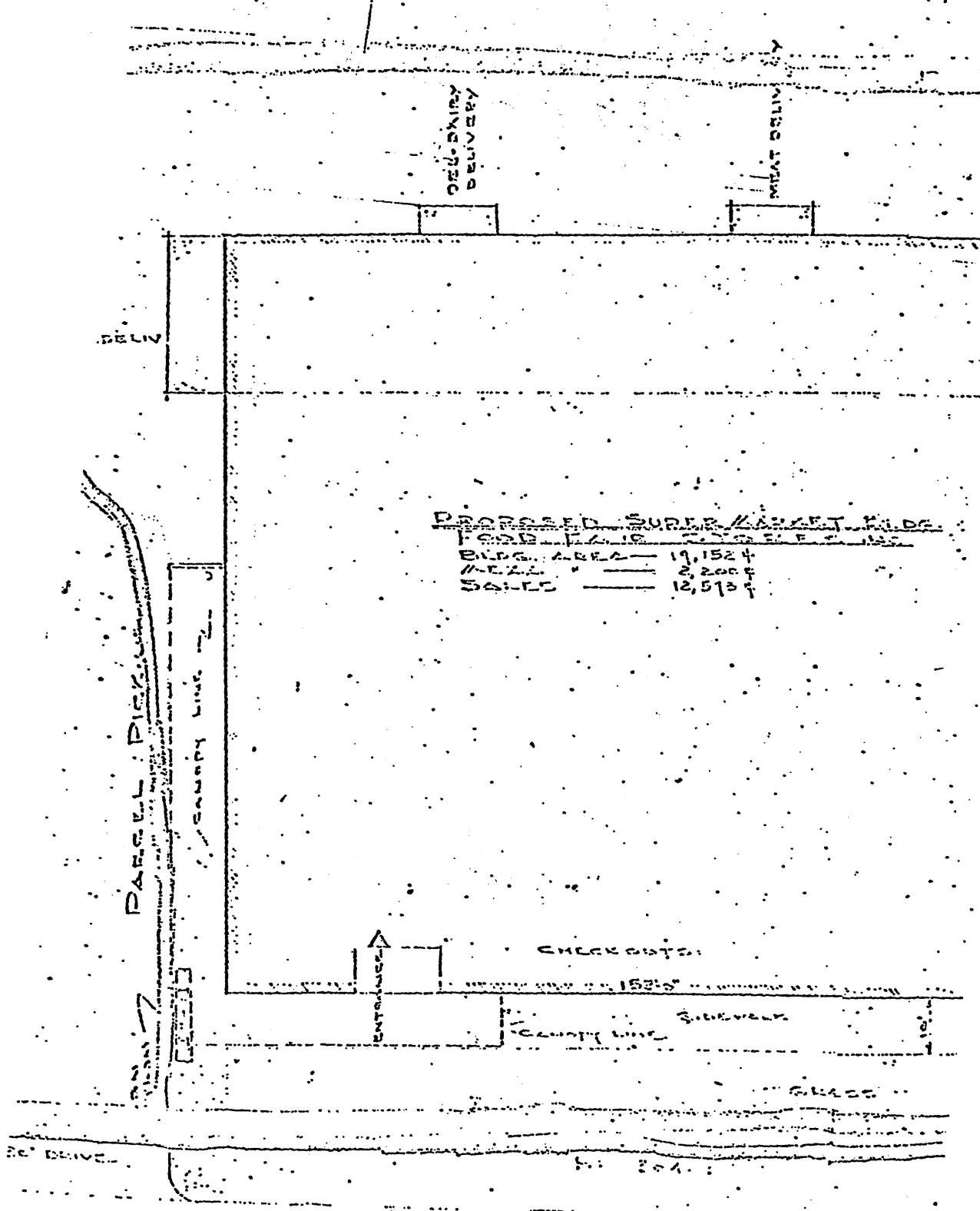
BY:

W. E. Hyslop
DART DRUG CORP.
LEE HIGHWAY

APPROVAL	
FORM	<u>F.F.S.</u>
R. E.	<u>MA</u>
EX	
CONS.	

AGREEMENT

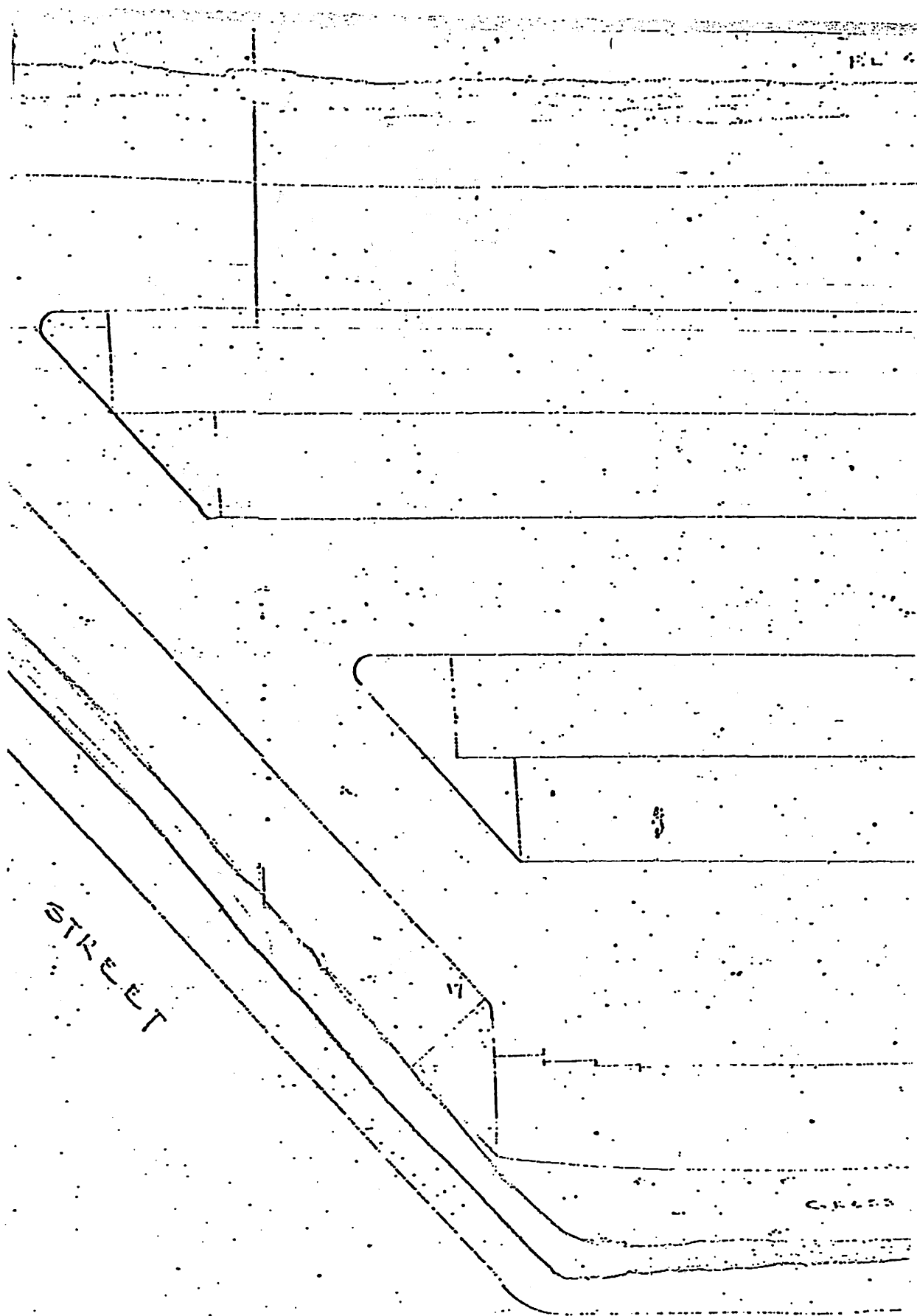
This agreement is the same as the agreement
on Appendix page 188.



PROPOSED SUPERMARKET FLOOR
 FLOOR PLAN
 BLDG. AREA — 19,152 sq.
 MEZ. — 2,200 sq.
 SALES — 12,510 sq.

H I G H W A Y

Handwritten signature or initials.



STREET

17

CROSS

[Handwritten signature]

SCHEDULE "B"

South Side of Lee Highway and North Harrison Street, Arlington, Virginia

It is understood and agreed that the plans and specifications referred to in this lease agreement shall be substantially similar to the plans and specifications used for Food Fair Store #381 located at Severna Park, Maryland, except for the following:

1. Heating of the main store area shall be through ducts by steam coils and gas fired York Shipley steam boiler. Perimeter heating in warehouse to be regular steam unit blowers.
2. Fiberglass ceiling according to specifications will be accepted.
3. Rock lath and plaster may be used in sales area above 8' level.

TEMPORARY INJUNCTION

THIS CAUSE came on to be heard this day upon the Petition of Douglas L. Pierson, counsel for the Complainant herein, who has alleged and established for the Court that his client will suffer irreparable harm if this Temporary Injunction is not granted, and it is therefore

ADJUDGED, ORDERED AND DECREED

1. That the Defendants Morton E. Kalus, Emanuel S. Kalus and Paul I. Burman be and they hereby are enjoined from evicting the Complainant Food Fair, Inc., from the premises located at the corner of Lee Highway and North Harrison Street, Arlington County, Virginia, until the further order of this Court; and

2. That the effect of the ten day notice seeking to terminate the Complainant's leasehold interest be suspended pending the further order of this Court.

AND IT IS FURTHER ORDERED that this temporary injunction be effective until 12 o'clock noon on Friday, May 6, 1977, at which time said injunction shall stand dissolved unless sooner enlarged. Upon said date at 10 o'clock A.M. the cause shall be called on the docket of this court at which time the parties may be heard on motions to dissolve or enlarge this injunction.

IT IS FURTHER ORDERED that this injunction shall not take effect until the Complainant or someone for it has posted in the Clerk's Office of this court a bond of approved surety in the penal sum of \$2,000.00 conditioned according to law.


IT IS FURTHER ORDERED that the Complainant shall forthwith have certified copies hereof served upon the Defendants.

Entered: April 29, 1977.


Judge

WE ASK FOR THIS:

LAW OFFICES OF:
Soutzos & Pierson
301 Maple Avenue West
Vienna, Virginia 22180

By: 
Counsel for Complainant

-2-

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FILED

DAVID A. BELL, Clerk
Clerk of the Circuit Court of Alexandria County, Va.
Deputy Clerk

DEMURRER

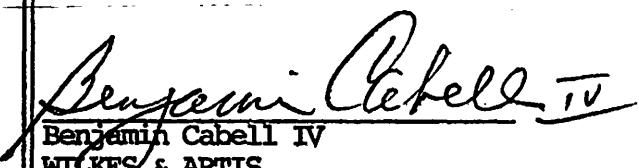
COME NOW the Defendants, Morton E. Kalus, Emanuel S. Kalus and Paul I. Burman, by counsel, and say that the Petition for Declaratory Judgment and Injunction is insufficient.

WHEREFORE, the Defendants, Morton E. Kalus and Emanuel S. Kalus pray that the Complainant's Petition for Declaratory Judgment and Injunction be dismissed with prejudice, that the Temporary Injunction be dissolved and not enlarged, and that said Defendants recover costs on their behalf expended.

MORTON E. KALUS

EMANUEL S. KALUS

By Counsel


Benjamin Cabell IV
WILKES & ARTIS
4660 Kenmore Avenue
Suite 1001
Alexandria, Virginia 22304
751-8600

Counsel for Defendants Morton E. Kalus and Emanuel S. Kalus

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Demurrer was hand-delivered on Douglas L. Pierson, Esquire, counsel for Food Fair, Inc., at Suite H, Section 4, 301 Maple Avenue, West, Vienna, Virginia 22180, and to Le Roy S. Bendheim, Registered Agent, 119-121 N. Washington Street, Alexandria, Virginia, Registered Agent for Defendants Dart Drug Corporation, Virginia, and Dart Drug Corporation, a Delaware Corporation, this 6th day of May, 1977.


Benjamin Cabell IV 23

FILED

MAY 6 1977

DAVID A. BELL, Clerk
Circuit Court, Alameda County
By: Deputy Clerk

OPPOSITION OF DEFENDANTS MORTON E. KALUS AND
EMANUEL S. KALUS TO TEMPORARY INJUNCTION AND TO
PETITION FOR DECLARATORY JUDGMENT AND INJUNCTION OF FOOD FAIR, INC.

Defendants Morton E. Kalus and Emanuel S. Kalus (hereinafter referred to collectively as "Owner") have filed a Demurrer to the Petition for Declaratory Judgment and Injunction. This Opposition is filed directly in response to the Temporary Injunction and seeks the immediate dissolution thereof, and opposes the enlargement of the aforesaid Temporary Injunction.

BACKGROUND

During the time Food Fair occupied the premises covered by the subject lease, there were no problems between Food Fair and the Defendant Owners of the premises. The relationship was amicable and cooperative and no substantial disputes over the premises or the lease arose between the parties. In 1969 Defendant Dart Drug took over the premises by a sublease with Food Fair, to which the owner was not a party. In 1974 and 1975, Defendant Dart Drug undertook to install air-conditioning on the roof. The owner was not notified as to Dart Drug's finished plans prior to the renovation involved with the air-conditioning. In 1975, Morton Kalus observed extensive and numerous problems caused by the renovation work and installation of the air-conditioning equipment on the roof of the premises. There was extensive damage and water seepage causing further damage and safety hazards within the building itself. Upon notifying Food Fair, the Tenant under the original lease with the Owner, to make the necessary repairs, Food Fair in turn notified Dart Drug Corporation on September 9, 1975, that it was in default under the sublease section 7 and notified Dart Drug that it had committed waste to the premises including as to the installation of the air-conditioning on the roof. (See Defendant's Exhibit I). In 1976 Dart Drug notified Food Fair and the Owner that Dart

Drug was experiencing serious roof leaks at the subject premises. In response to this, Food Fair wrote a memorandum dated November 15, 1976, which stated in pertinent part that the problems concerning the "roof leaks, damage to canopies, sidewalk repairs and other exterior structural problems. . . have been caused by Dart Drug alone." (Defendant's Exhibit II) At that time, as before in 1975, Food Fair supported the Owner in the position that (a) Dart Drug caused the damage to the roof and other parts of the premises and (b) Dart Drug was responsible as sublessee for seeing to the repair of the damages. Moreover, Food Fair maintained the posture that it was obligated under the lease to see that these repairs were taken care of or else it would be in default and this is indicated by its very position and notice of default in its letter of September 9, 1975. Finally, in 1977, that Dart Drug maintained that roof leaks on the premises were causing damage and Dart Drug would withhold payments to Food Fair and in turn Food Fair would withhold payments to the Owner. Shortly thereafter, Dart Drug withheld payments to Food Fair and in turn Food Fair withheld payments to the Owner, giving rise to the proceedings at hand.

OBLIGATION UNDER LEASE AND SUBLEASE OF
FOOD FAIR AND DART DRUG TO OWNER

1. Morton E. Kalus and Emanuel S. Kalus are the successors in interest to Paul I. Burman, a Defendant named herein. (See also Affidavit of Morton E. Kalus, attached hereto)

2. As pointed out above and in the Affidavit of Morton E. Kalus, Food Fair never had any real dispute with the Owner as to the lease or premises, including as to the maintenance of the roof and the performance of work involving other non-structural items by the Tenant. However, the Temporary Injunction and the Petition are essentially attempts by Food Fair to avoid meeting its clear obligations to the Owner and Landlord under the lease with the Owner, including taking a position which is in effect a disaffirmance of

its long-standing position that the Tenant was obligated to maintain the roof and sidewalk under said lease. And in turn, Food Fair is further attempting to avoid its obligation and its position as to the obligation of the sublessee, Dart Drug, to see to the maintenance of the roof, sidewalk and other non-structural items. In this light, for reasons of its own, the Complainant Food Fair simply does not want to face up to dealing with its own sublessee, Dart Drug, on the issues of roof and sidewalk maintenance. So Food Fair's concern is not so much irreparable harm ~~that~~ ^{that} it claims might ensue if the Owner takes legal steps to rightfully enforce its contract. Rather, it is more concerned with the bothersome task of living up to its contract with the Owner and to enforce the sublease agreement between itself and Dart Drug, to which the Owner is not and has not ever been a party.

3. As pointed out in the Background above, Food Fair, as Tenant on the lease, and lessor on the sublease, has been aware of the problems relating to the dispute over the roof and sidewalk for a long, long time, at least since 1975. (Defendant's Exhibit I) Moreover, Food Fair has for a long time acknowledged the duty of the Tenant to maintain the roof and in any event to repair damages where Tenant was negligent and responsible for making changes on the roof. Consistent with this awareness, acknowledgement and posture, Food Fair specifically gave Dart Drug notice of default in its letter of September 9, 1975, and subsequently continued to force Dart Drug to make the necessary repairs. Thus on October 27, 1975, Thomas F. Frick, general attorney for Food Fair, notified Morton E. Kalus that Food Fair was taking appropriate action on the letter of October 23, 1975, from Mr. Kalus about roof hazards still not taken care of. (Defendant's Exhibit III, letter of October 23, 1975, and Defendant's Exhibit IV, letter of October 27, 1975)

4. Moreover, Food Fair has had a long, long time and great opportunity to take care of the roof and sidewalk problem in conjunction with Dart Drug, as Tenant responsible to the Owner and as lessor to whom Dart Drug, the sub-

lessee, is responsible. Yet, suddenly, in March, April and May, 1977, Food Fair has tried to wash its hands of the whole matter and act as if (a) it had, and has, no duty in respect of its lease agreement with the Owner as to repair of roof and/or sidewalk and other such non-structural items; and (b) that in effect there is no relationship between the damages to the roof stemming from activities in 1974, 1975 and 1976 by Dart Drug, and current problems with the roof. In correspondence dated March 14, 1977, April 21, 1977, and in the pleading at hand, Food Fair has acted as if it never heard of its obligations under the lease with the Owner or its sublease with Dart Drug. (DEFENDANT'S EXHIBIT NO. V and VI)

5. In response to paragraph 7 of Complainant's Petition, the Defendant Owner did not accept the aforementioned sublease agreement, but rather was provided a blank copy of the "contemplated sub-lease with Dart Drug" from Food Fair (see Defendant's Exhibit VII, letter of December 24, 1968, from Marvin Williams). Ultimately, as pointed out in the Affidavit of Morton E. Kalus, an amendment to the sublease was signed and additions to the sublease were added which included the provision which in effect said that Food Fair could withhold rent from the Owner, to the degree Dart Drug withheld rent from Food Fair. No notice or acceptance of this provision was ever provided to or made by the Owner. Moreover, contrary to paragraph 8 of Complainant's Petition, the dispute is between and among Food Fair, Inc., as well as Dart Drug and the Owner. But more basically, the dispute involves the enforcement of the contract between Food Fair and Dart Drug, which Food Fair is refusing to undertake.

6. There is no demonstration of or basis for irreparable harm or injury facing Food Fair in the event that the Injunction is dissolved or that the Injunction is not extended.

WHEREFORE, the Defendant Owner prays that this Honorable Court decree the following:

FIRST: That your Defendant Owner is granted leave to take such action against Food Fair as is provided for in the lease, pursuant to notification

already given by letter dated April 19, 1977, with return receipt delivery dated April 20, 1977, from which the ten-day notice period under paragraph 36(b) begins; (DEFENDANT'S EXHIBIT NO. VIII)

SECOND: That this Honorable Court rule that Food Fair is to take such action against Dart Drug under its sublease therewith as to enforce its rights and to require Dart Drug to meet its obligations under said sublease;

THIRD: That Food Fair be required to pay in the full \$3,070.83 rent due and payable for the month of April, 1977, over to the Defendant Owner, notwithstanding paragraph 13 of the sublease, in as much as said provision is of no effect as to the Owner since it is not a party to said contract nor was aware of it nor approved it.

THIRD: That this Honorable Court enter any further decree as the nature of the Opposition may require and to equity may seem necessary, meet and just.

MORTON E. KALUS

EMANUEL S. KALUS

By Counsel


Benjamin Cabell IV

WILKES & ARTIS

4660 Kenmore Avenue

Suite 1001

Alexandria, Virginia 22304

751-8600

Counsel for Defendants Morton E. Kalus and Emanuel S. Kalus

MAY 2 4 1977

DAVID A. BELL, Clerk
Circuit Court, Arlington County, Va.
By: *J. Waters*, Deputy Clerk

ANSWER AND GROUNDS OF DEFENSE

COMES NOW defendant DART DRUG CORPORATION, by counsel, and for answer to the Petition for Declaratory Judgment states as follows:

1. It admits the allegations in Paragraphs 1, 2, 3, 4, 5, 7, 8, 10, 13, 14, 15 and 16 of the Petition.
2. It denies the allegations in Paragraphs 6 and 9 of the Petition.
3. It is without sufficient information or knowledge to admit or deny the allegations in Paragraphs 11, 12 and 16 of the Petition and therefore denies same.
4. It states that it has not breached any terms of its sublease.
5. It states that it has done everything required of it under its leasehold contracts.
6. It states that defendants Morton E. Kalus and Emanuel S. Kalus and Paul I. Burman have failed to live up to the terms of the leasehold contracts and that Dart Drug has done all that is called for under the leasehold contracts, and has not withheld any sums of money not proper under the leasehold contracts.

WHEREFORE, the defendant DART DRUG CORPORATION REQUESTS:

- A. That Morton E. Kalus, Emanuel S. Kalus and Paul I. Burman be enjoined from evicting them and Food Fair, Inc.

from the premises as requested.

B. That this Honorable Court suspend the running of the ten day period until it has ruled on the issues in this matter.

C. That this Court find that the defendants Morton E. Kalus, Emanuel S. Kalus, and Paul I. Burman be responsible for the roof and sidewalk of the subject premises.

D. That this Honorable Court enter any further decrees that to the Court may seem necessary, meet and just.

DART DRUG CORPORATION, VIRGINIA, AND
DART DRUG CORPORATION

By: _____
Counsel

BRAULT, LEWIS, GESCHICKTER & PALMER

By: _____
Charles F. Geschickter, Jr.
10533 Main Street
Fairfax, Virginia 22030
Counsel for Defendant Dart Drug

I hereby certify that copies of this pleading were mailed to all counsel of record this 24th day of May, 1977.

TEMPORARY INJUNCTION

THIS CAUSE came on to be heard this day upon the Petition of Douglas L. Pierson, counsel for the Complainant herein, to enlarge the original Temporary Injunction entered in this matter; upon the appearance of counsel for the Defendants, Morton E. Kalus and Emanuel S. Kalus in opposition thereto; and upon argument of counsel; it is therefore

ADJUDGED, ORDERED AND DECREED

1. That the Defendants Morton E. Kalus, Emanuel S. Kalus, and Paul I. Burman be and they hereby are enjoined from evicting the Complainant Food Fair, Inc., from the premises located at the corner of Lee Highway and North Harrison Street, Arlington County, Virginia, until the further order of this Court; and

2. That the effect of all ten day notices which have been delivered to date and which are delivered during the pendency of this action seeking to terminate the Complainant's leasehold interest be suspended pending the further order of this Court.

AND IT IS FURTHER ORDERED that this temporary injunction be effective until 12:00 o'clock noon on Wednesday, June 1, 1977, at which time said injunction shall stand dissolved unless sooner enlarged. Upon said date at 10:00 o'clock A. M. the cause shall be called on the docket of this court at which time the parties may be heard on motions to dissolve or enlarge this injunction and to argue all preliminary matters concerning this cause.

IT IS FURTHER ORDERED that the bond previously posted by the Complainant shall remain in full force and effect.

IT IS FURTHER ORDERED that the Complainant shall forthwith have certified copies hereof served upon the Defendants.

RECORDED IN CHANCERY ORDER
BOOK NO. 202 PAGE 532A
ON August 2, 1977

ENTERED this 2nd day of Aug., 1977.

Charles S. Russell
JUDGE

WE ASK FOR THIS:

LAW OFFICES OF:
Soutzos & Pierson
301 Maple Avenue West
Vienna, Virginia 22180

By: Margaret L. Pierson
Counsel for Complainant

SEEN:

WILKES & ARTIS
4660 Kenmore Avenue
Suite 1001
Alexandria, Virginia 22304

By: Benjamin Cabell, IV
Benjamin Cabell, IV
Counsel for Defendants
Morton E. Kalus and
Emanuel S. Kalus

BRAULT, LEWIS, GESCHICKTER and PALMER
10533 Main Street
Fairfax, Virginia 22030

By: Charles F. Geschickter
Charles F. Geschickter
Counsel for Dart Drug Corporation,
Virginia, and Dart Drug Corporation

DECREE

THIS CAUSE came on this day to be heard upon the Demurrer formerly filed by counsel for the Defendants, Morton E. Kalus and Emanuel S. Kalus, and upon the Petition of all parties to set a trial date in this matter and to release a portion of the rental payment held by the Complainant to the Defendants, Morton E. Kalus and Emanuel S. Kalus, and

IT APPEARING from the pleadings and documents formerly filed and read in this matter and from the argument of Counsel that all of the grounds for the Demurrer should be overruled, it is therefore

ADJUDGED, ORDERED, AND DECREED that the Demurrer filed by the Defendants, Morton E. Kalus and Emanuel S. Kalus, is hereby overruled; and it is further

ADJUDGED, ORDERED, AND DECREED that Counsel for the Complainant is hereby authorized to release the sum of TWO THOUSAND TWO HUNDRED NINETY-ONE and 83/100 (\$2,291.83) DOLLARS to the Defendants, Morton E. Kalus and Emanuel S. Kalus, which sum represents the payment of the rent for the month of April, 1977 less SEVEN HUNDRED SEVENTY-NINE (\$779.00) DOLLARS which is still in dispute, and it is further

ADJUDGED, ORDERED, AND DECREED that the Temporary Injunction formerly filed and entered by this Court in this matter be extended until 4:30 o'clock P. M. on August 2, 1977; and it is further

ADJUDGED, ORDERED, AND DECREED that this case be set on the trial docket for August 2, 1977 for a hearing on the merits,

and the Clerk of this Court is hereby directed to take whatever action is necessary to place this matter on the aforesaid docket.

AND THIS CAUSE IS CONTINUED.

ENTERED this _____ day of _____, 1977.

JUDGE

LAW OFFICES OF:
Soutzos & Pierson
301 Maple Avenue, West
Vienna, Virginia 22180

By: _____
Counsel for Complainant

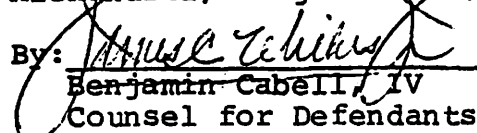
SEEN:

BRAULT, LEWIS, GESCHICKTER AND PALMER
10533 Main Street
Fairfax, Virginia 22030

By: _____
Counsel for Defendants
Dart Drug Corporation, and
Dart Drug Corporation, Virginia

SEEN, EXCEPTIONS NOTED:

WILKES & ARTIS
4660 Kenmore Avenue
Suite 1001
Alexandria, Virginia 22304

By: 
Benjamin Cabell, IV
Counsel for Defendants
Morton E. Kalus and
Emanuel S. Kalus

RECORDED IN CHANCERY ORDER
BOOK NO. 303 PAGE 630
ON Dec 14, 1977

DECREE

THIS CAUSE came on this day to be heard upon the pleadings and motions formerly filed, read, and argued; upon the trial of this matter by the Court without a jury; upon the evidence and testimony presented at said trial; and upon argument of counsel for all parties, and

IT APPEARING that the prayers of the Complainant, Food Fair, Inc., should be granted, and

IT FURTHER APPEARING that the Defendant Landlords, Morton E. Kalus and Emanuel S. Kalus have the legal responsibility, by virtue of Paragraphs 16, 21, 22, and 52 of the subject Lease Agreement, dated August 29, 1960, to maintain and keep in good repair the outside walls, roof, and all other outer portions of the demised premises, which are not decorative in nature, including the external fabric of the roof of the premises and the sidewalk surrounding and adjoining the premises, and

IT FURTHER APPEARING that the Defendant Landlords, Morton E. Kalus and Emanuel S. Kalus, have failed to establish that the instant repairs necessitated by leaks in the fabric of the roof and the buckling of the sidewalk were caused by any negligence on the part of the Complainant or the Defendants, Dart Drug Corporation, Virginia and Dart Drug Corporation, so that the Complainant and Defendants, Dart Drug Corporation, Virginia and Dart Drug Corporation, were legally justified in withholding the amount of \$779.00 from their rental payment for the month of April, 1977, to all of the foregoing referred to in this Decree, counsel for the Defendants Kalus and Kalus duly excepted, it is therefore

ADJUDGED, ORDERED, and DECREED that the Defendant Landlords, Morton E. Kalus and Emanuel S. Kalus, have the legal responsibility, by virtue of Paragraphs 16, 21, 22 and 52 of the subject Lease Agreement, dated August 29,

1960, to maintain and keep in good repair the outside walls, roof, and all other outer portions of the demised premises, which are not decorative in nature, including the external fabric of the roof of the premises and the sidewalk surrounding and adjoining the premises. However, the aforementioned Defendant Landlords shall not be responsible for said maintenance, if repairs are necessitated by the negligence of the tenant, its agents, or assigns; and it is further

ADJUDGED, ORDERED, and DECREED that the repairs to the roof and the sidewalk which were the subject of this litigation were not occasioned by any act of negligence by the Defendants, Dart Drug Corporation, Virginia and Dart Drug Corporation, or the Complainant, or any of their assigns or agents; and it is further

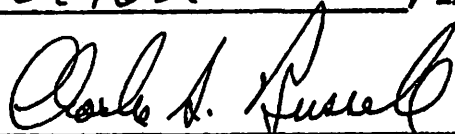
ADJUDGED, ORDERED, and DECREED that the \$779.00 placed into escrow by the Complainant be released to the Complainant, and it is further

ADJUDGED, ORDERED, and DECREED that the cash bond formerly paid by the Complainant, Food Fair, Inc., into the registry of this Court, be returned to it by the Clerk of this Court, and it is further

ADJUDGED, ORDERED, and DECREED that the Court costs be awarded in favor of the Complainant and against the Defendants, Morton E. Kalus and Emanuel S. Kalus, and ~~the Court does hereby direct pursuant to Rule 5.9 that the transcript of the hearing of August 3, 1977, bearing the Certificate of Reporter Dianne Stewart Kubota is hereby made a part of the record.~~

AND THIS CAUSE IS FINAL.

ENTERED this 14th day of October, 1977.



JUDGE

SEEN

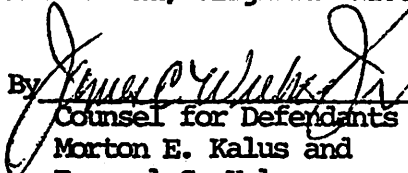
BRAULT, LEWIS, GESCHICKTER AND PALMER
10533 Main Street
Fairfax, Virginia 22030

Notice - No appearance

By _____
Counsel for Defendants
Dart Drug Corporation, and
Dart Drug Corporation, Virginia


SEEN, OBJECTION AND EXCEPTION NOTED:

WILKES & ARTIS
4660 Kenmore Avenue
Suite 1001
Alexandria, Virginia 22304

By  _____
Counsel for Defendants
Morton E. Kalus and
Emanuel S. Kalus

WE ASK FOR THIS:

SOUTZOS & PIERSON
Suite H, Section 4
301 Maple Avenue West
Vienna, Virginia 22180

By  _____
Counsel for Complainant
Food Fair, Inc.

NOTICE OF APPEAL

COME NOW the Defendants, Morton E. Kalus and Emanuel S. Kalus,
by counsel, and pursuant to Rule 5:6 of the Rules of the Supreme Court of
Virginia, notice their appeal to the final judgment of the Circuit Court
of Arlington County entered on the 14th day of October, 1977.
A transcript of the case is to be hereafter filed.

MORTON E. KALUS
EMANUEL S. KALUS

By Counsel.

WILKES & ARTIS

By

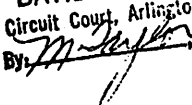

James C. Wilkes, Jr.

1001 Seminary Plaza Building
4660 Kenmore Avenue
Alexandria, Virginia 22304
(703) 751-8600

Attorney for Appellants Morton E. Kalus
and Emanuel S. Kalus

FILED

NOV 9 1977.

DAVID A. BELL, Clerk
Circuit Court, Arlington County, Va.
By  Deputy Clerk

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice of
Appeal was mailed, postage prepaid this 9th day of November,
1977, to Douglas L. Pierson, Esquire, Soutzos & Pierson, 301 Maple Avenue,
West, Vienna, Virginia 22180, counsel for Food Fair, Inc.; and to Charles F.
Geschickter, Esquire, Brault, Lewis, Geschickter and Palmer, 10533 Main
Street, Fairfax, Virginia 22030, counsel for Defendants Dart Drug Corporation-
Virginia and Dart Drug Corporation.


James C. Wilkes, Jr.

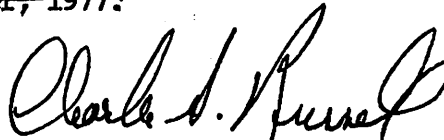
CONSENT ORDER SUPPLEMENTING RECORD TO INCLUDE TRANSCRIPT

THIS CAUSE came to be heard on the 13th day of ^{Jan., 1978} ~~November, 1977~~, on the request of Defendants, Morton E. Kalus and Emanuel S. Kalus, to include the transcript of the hearing of August 3, 1977, bearing the Certificate of Reporter Dianne Stewart Kubota as a part of the record.

AND IT APPEARING to the Court from the endorsement hereon of counsel for all parties that said request ought to be granted, it is therefore

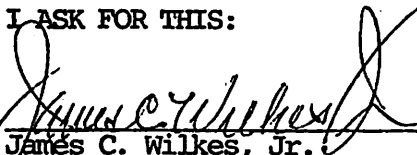
ADJUDGED, ORDERED AND DECREED that the aforesaid transcript of the hearing of August 3, 1977, be, and the same hereby is, made a part of the record of the cause for transmittal to the Clerk of the Supreme Court of Virginia.

ENTERED this 13th day of ^{Jan. 1978} ~~November, 1977~~.



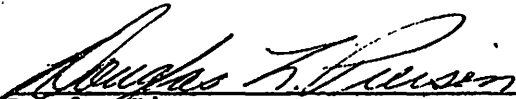
JUDGE

I ASK FOR THIS:



James C. Wilkes, Jr.
Wilkes & Artis
4660 Kenmore Avenue, Suite 1001
Alexandria, Virginia 22304
(703) 751-8600
Counsel for Defendants,
Morton E. Kalus and Emanuel S. Kalus

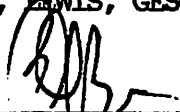
I CONSENT TO THIS:



Douglas Pierson
Soutzos & Pierson
Suite H, Section 4
301 Maple Avenue West
Vienna, Virginia 22180
Counsel for Complainant,
Food Fair, Inc.

I CONSENT TO THIS:

BRAULT, LEWIS, GESCHICKTER & BAKER

By 

10533 Main Street
Fairfax, Virginia
Counsel for Defendants,
Dart Drug Corporation, and
Dart Drug Corporation, Virginia

V I R G I N I A

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

FOOD FAIR, INC., a
Pennsylvania corporation,

Complainant,

vs

DART DRUG CORPORATION,
Virginia, et al,

Defendants.

IN CHANCERY NO.
27474

Arlington, Virginia

Wednesday, August 3, 1977

The above-entitled cause came on to be heard before
the Honorable Charles S. Russell, Judge of the Circuit
Court of Arlington County, in the courthouse, Arlington,
Virginia, beginning at 3:05 o'clock p.m.

APPEARANCES:

On behalf of the Complainant Food Fair, Inc.:

SOUTZOS & PIERSON

By: DOUGLAS L. PIERSON, ESQUIRE

On behalf of the Defendant Dart Drug Corporation:

BRAULT, LEWIS, GESCHICKTER & PALMER

By: CHARLES F. GESCHICKTER, JR., ESQUIRE

On behalf of the Defendant Morton Kalus:

WILKES & ARTIS

By: JAMES C. WILKES, JR., ESQUIRE

C O N T E N T S

EXAMINATION BY:

WITNESSES:

MR. PIERSON MR. GESCHICKTER MR. WILKES

MORTON KALUS	77	89	17
HAROLD E. HARVEY	109	110	105
RICHARD KABAT	120	111	--

E X H I B I T S

FOR IDENTIFICATION

IN EVIDENCE

Kalus Exhibit 1	22	--
Kalus Exhibit 2	25	25
Kalus Exhibit 3	31	31
Kalus Exhibit 4	40	40
Kalus Exhibit 5	43	--
Kalus Exhibit 6	44	--
Kalus Exhibit 7	55	59
Kalus Exhibit 8	61	63
Kalus Exhibit 9	62	64
Kalus Exhibit 10	65	65
Kalus Exhibit 11	65	68

E X H I B I T S (Cont'd)FOR IDENTIFICATIONIN EVIDENCE

Kalus Exhibit 12	66	68
Kalus Exhibit 13	72	73
Dart Exhibit 1	91	92
Dart Exhibit 2	91	--
Dart Exhibit 3	91	--
Dart Exhibit 4		
Dart Exhibit 5		
Dart Exhibit 6		
Dart Exhibit 7		
Dart Exhibit 8	120	--
Dart Exhibit 9	120	--

P R O C E E D I N G S

1
2 THE COURT: Mr. Wilkes, I've been given this
3 order extending the injunction today, and overruling
4 your demurrer, to which you have noted an exception.

5 You note in the exception the overruling of
6 the ruling or the extending of the injunction, or both?

7 MR. WILKES: Both, Your Honor, please.

8 THE COURT: Did anybody give you a hearing on
9 this?

10 MR. WILKES: Yes. There was a hearing. Judge
11 Winston heard it, and that was his verdict as I understand
12 it. An associate of mine who has since gone handled the
13 case up until that time. I've just gotten into the case,
14 if Your Honor please.

15 It's my understanding that it was the ruling
16 of Judge Winston.

17 THE COURT: I shouldn't have signed it then. He
18 has to do it.

19 MR. PIERSON: I apologize, Your Honor, Mr.
20 Cabell argued the motion. Mr. Wilkes had not come into
21 the case when those demurrers were argued.

22 THE COURT: Would you take that down, and get
23 my signature removed, and give it to Judge Winston?

1 All right, Mr. Pierson.

2 MR. PIERSON: Your Honor, for the record, my
3 name is Douglas Pierson. I represent the Petitioner
4 Food Fair in this case.

5 I think that the pleadings as filed by Food
6 Fair and counsel for the two other parties are fairly
7 inclusive of the issues that are before the Court today,
8 but by way of introduction of the matter, Mr. Morton
9 Kalus and Emmanuel Kalus and Paul I. Burman are three
10 individuals who rented -- or constructed a building at
11 the corner of Lee Highway and Harrison Street in Arlington,
12 Virginia, and rented it to my client who is now Food
13 Fair, Inc.

14 The lease was entered into in August of 1960.
15 Shortly thereafter, the lease was subleased to Dart
16 Drug who is the current occupant of that premises.

17 The terms of the sublease do not directly or
18 are not directly at issue in this case, but, in way
19 of explanation, I would point out to the Court that it
20 is what is commonly called a pass-through lease whereby
21 Food Fair is still responsible to the landlord, who
22 I will now refer to as Kalus, if I may.

23 Dart Drug is responsible for carrying out all

1 the terms and provisions, and is responsible to Food Fair.

2 What has happened in the case, and what has
3 brought us to the Court today, is that a dispute has
4 arisen concerning the repair to both the roof of the
5 building as well as the sidewalk outside of the building.

6 There has been a dispute between Dart Drug and,
7 therefore, Food Fair, and Mr. Kalus since -- my records
8 indicate the winter, this past winter, sometime in November,
9 possibly before, leaks have developed.

10 Dart Drug's position is these leaks are caused
11 by normal wear and tear or whatever, certainly not by
12 virtue of any negligent acts of any agent of Dart Drug.
13 Dart Drug has made a request by virtue of the terms of
14 the lease of the Kaluses to make these repairs.

15 Negotiations were carried on, and all of which
16 the Kaluses have refused to respond. Dart Drug took it
17 upon itself, by virtue of the terms of the lease, to make
18 the repairs, and ultimately, in April, elected to withhold
19 a certain portion, approximately \$700.00 of money which
20 they expended to repair the leaks on the roof, and to repair
21 a sidewalk which had buckled.

22 The position of the landlord in response to
23 that withholding of rent was to serve a ten day notice

1 requiring payment or forfeiting the lease.

2 Food Fair, because of its position being in
3 the middle of this, filed the request, the injunction, which
4 has been extended by the Court until today, and has
5 filed an action for declaratory judgment asking that
6 the crucial element of this lease involving the maintenance
7 of the outer portion of this building be interpreted by
8 this Court because the parties cannot reach an agreement
9 as to the relief.

10 It is our position, and I may be presumptuous
11 to speak for Dart Drug, but it is our position that the
12 lease is crystal clear. The provisions of the lease which
13 we will be discussing today are paragraphs 16 and 52,
14 together with paragraphs 21 and 22 of the lease agreement,
15 all having to do with duties of the various parties to
16 make repairs.

17 Paragraphs 36 and 58 have to do with the default
18 provision, and the procedure by which either of the
19 parties can declare a default.

20 The key, and really the real issue involved
21 today, is the meaning of the term "structural repairs"
22 because I think it is quite clear by reading all of the
23 paragraphs which I have cited that the landlord has agreed

1 to make structural repairs as well as, quoting paragraph
2 16, "the landlord shall from time-to-time, at its own
3 cost and expense, maintain and keep in good repair the
4 outside walls, the roof, and all other outer portions of
5 the demise premises." This goes on. Other portions,
6 which we will discuss later, we will talk about all
7 structural repairs.

8 And, paragraph 52 also deals with the term
9 structural repairs, and that the tenant shall provide all
10 nonstructural repairs.

11 The real issue here is not, I think, the \$700.00
12 that is in dispute, Your Honor. The real issue is who
13 is going to be responsible for repairing that roof absent
14 of any showing of negligence on the part of the tenant,
15 and because the parties have been unable to resolve this,
16 we are asking the Court to resolve it.

17 So, that for the duration of this lease, at
18 least in terms of the roof, and structure of the building,
19 that the parties will know what their respective obligations
20 are.

21 MR. GESCHICKTER: Your Honor, if it please the
22 Court, and for the record, my name is Charles Geschickter.
23 I represent Dart Drug. Seated with me at counsel table is

1 Mr. Kabat, who is a corporate officer and general counsel
2 of Dart Drug, and I think Mr. Pierson has fairly stated
3 our position in this case.

4 There is a problem currently with the roof,
5 and the current dispute is only the symptom of the real
6 problem, and that is the construction of the lease.

7 Again, I feel the same as Mr. Pierson, paragraphs
8 16, 21 and 22 and rider 52 are the pertinent portions of
9 this lease. I think, again, Your Honor, that there is
10 no doubt from the reading of the lease that the landlord,
11 Mr. Kalus, is responsible for the repairs to this roof.

12 There is also a situation regarding the sidewalk
13 involved in this money, but the lease, as Your Honor
14 will see from reading it, it calls for the landlord to
15 make structural and outside repairs, Mr. Kalus.

16 And, it calls for Dart Drug, or the tenant, to
17 make inside repairs.

18 THE COURT: Getting to the symptom which triggers
19 this off, is this just a simple leak, just developed? Or
20 are we dealing now with some --

21 MR. GESCHICKTER: No. It's just a leak in the
22 roof, and the sidewalk buckled this winter during the freeze
23 right in front of the front doors, and we had to rip with

1 a jackhammer the cement out and lay some more cement in
2 front of the building. And, that's exactly what the
3 funds were we withheld. We intended to withhold the
4 \$700.00 and some odd dollars from our payment which we
5 have a right -- the tenant has the right to do -- under
6 the lease if he is forced to make repairs that the land-
7 lord refuses to make.

8 Mr. Pierson at Food Fair in order to prevent
9 the harm that might come from the two parties being
10 absolutely at loggerheads deposited the rent with the
11 Court, and the order which you sent down for Judge
12 Winston to sign, which comes from our appearance before
13 the Court on that demurrer back in early July, I believe
14 it was, in essence allows the distribution of that con-
15 tested month's rent to Mr. Kalus except for the \$700.00
16 and some odd dollars, which is the specific amount in
17 dispute here.

18 But, really and truly, the reason for the
19 declaratory judgment action, the lease has to be construed
20 as between these two parties here, myself and Mr. Artis,
21 as to who is responsible for the structural repairs outside
22 to the roof and the sidewalk.

23 MR. WILKES: I represent the owner who is the

1 landlord, and who constructed this particular building
2 for the Complainant Food Fair.

3 If Your Honor please, the evidence in this
4 case will show that in June of 1960, the parties entered
5 into a written commitment whereby Kalus was to construct
6 two stores for Food Fair in Northern Virginia on the basis
7 of a rent which that commitment stated would be net to
8 the landlord as distinguished from a gross rental-type
9 situation under which a landlord would pay a great many
10 of the expenses.

11 The evidence will further show, if Your Honor
12 please, that a lease dated August 29, 1960, was executed.
13 It will show that this lease was prepared on the standard
14 form of gross to the landlord type of lease of the tenant
15 Food Fair, and that Food Fair took their standard form
16 and modified it in two ways: first, by interlineation,
17 and, secondly, by a rider which was attached to and formed
18 a part of the lease at the time of execution which converted
19 the gross to the landlord type of lease to a net to the
20 landlord type of lease.

21 The evidence, if Your Honor please, will further
22 show that in this original lease form was a specific
23 provision first with respect to sidewalks, placing that

1 obligation upon the landlord Kalus.

2 The testimony will show that the sidewalks were
3 specifically deleted from that printed form. The evidence,
4 if Your Honor please, will further show that in the rider,
5 in several locations in the rider, there was a paragraph
6 commencing: "Notwithstanding anything to the contrary
7 contained herein," and with respect to the repairs,
8 paragraph 52, if Your Honor please, specifically, the
9 evidence will show that that in effect blocks out the
10 language which was read by counsel for Food Fair in his
11 opening remarks.

12 That language, on page 6 of the rider, states,
13 "rider to paragraphs 16, 17 and 18 notwithstanding anything
14 to the contrary contained herein, tenant shall provide
15 all nonstructural repairs to the demise premises."

16 And, in that same paragraph, it reads on, "tenant
17 shall further make any structural repairs the necessity
18 for which arises from tenant's negligence or the negligence
19 of its agents, servants and employees."

20 THE COURT: There's no contention here that
21 this particular problem complained of was caused by the
22 negligence of the tenant, is there?

23 MR. WILKES: Oh, yes. There's a very specific --

1 The evidence will very specifically show, if Your Honor
2 please, that in addition to the fact that we will show
3 that the subject repairs that are involved with regard
4 to the roof, that is, the built-up roof consisting of
5 tar paper and hot tar with gravel on top, the evidence
6 will show that that is nonstructural as distinguished
7 by way of example from the structural steel beams, columns,
8 and joists which would support that waterproof membrane
9 designed to keep water from coming into the building
10 when it rains.

11 But, in addition to that, the testimony will
12 further show that a subtenant, Dart Drug, without having
13 obtained first the approval of Food Fair, who is the
14 actual tenant with whom we have our contract, without
15 obtaining the necessary written approval of the landlord
16 for structural repairs, went in and put mechanical
17 equipment, cooling-type equipment, on the roof, cut through
18 the roof, supported this with beams that were rested
19 upon the parapets, broke tile off the parapets on the
20 roof so that the steel supporting members that would
21 structurally hold the mechanical equipment would rest
22 there, and, in addition to that, damaged those other
23 portions of the roof through which wires went from the

1 inside to the outside of the building, and, in fact,
2 voided a 20-year roof bond and a 20-year flashing bond
3 which the landlord had obtained and which would not have
4 expired until 1981.

5 The evidence, if Your Honor please, will
6 further show with respect to a sidewalk that the sub-
7 tenant has, in fact, used the sidewalks at the front of
8 the building and not the loading platform at the rear
9 for the loading and unloading of heavy carts of merchandise
10 through the front door of the building for which this
11 sidewalk was never designed and the loading dock was
12 designed which has caused negligent damage by the sub-
13 tent to the sidewalk for which they claim the right to
14 be reimbursed.

15 If Your Honor please, the issue in this case
16 does not involve merely the \$620.00 roof repairs which
17 Virginia Roofing did under contract with Dart Drug, and
18 it doesn't involve merely the sidewalk repairs for which
19 Dart Drug claims they had their employees do repair for
20 \$159.00. This is for a declaratory judgment with respect
21 to what that obligation will be during the expiration of
22 the original terms plus the additional four year -- four
23 or five year options which will expire at the end of the

1 last option, after the change of the century.

2 At the conclusion of this case, we will ask
3 Your Honor to find, first, that repairs to the built-up
4 roof consisting of the tar paper and hot tar with gravel
5 on top is not a structural item, but rather that it is
6 nonstructural, and that it is the obligation under para-
7 graph 52 of the rider of the tenant to make that non-
8 structural repair, both with respect to that which has
9 been done and that which may become necessary during
10 the original and all extended terms of this lease; and
11 that Your Honor further find that -- if Your Honor should
12 find against that interpretation, that Your Honor should
13 find that if the tenant's neglect and negligence have
14 resulted in damages to the roof itself for which the
15 tenant is responsible under the provisions also of para-
16 graph 52 of the lease.

17 And, we will further ask you to find further
18 that a sidewalk is a nonstructural object for which the
19 landlord is not obligated under the lease, under the
20 provisions of paragraph 52.

21 And, further, we will ask Your Honor to consider
22 the fact that sidewalk was specifically deleted from the
23 standard form, printed form, of the Food Fair standard

1 form lease.

2 Thank you, Your Honor.

3 THE COURT: Gentlemen, in what order do you
4 propose to call witnesses?

5 MR. PIERSON: Your Honor, as far as Food
6 Fair is concerned, maybe I am under a misapprehension,
7 but I assume we can stipulate to the lease, a copy of
8 which was filed with the pleadings, and the sublease
9 or any other documents filed with the pleadings.

10 MR. GESCHICKTER: We'll stipulate that, Your
11 Honor.

12 MR. WILKES: We'll also stipulate, Your
13 Honor.

14 MR. PIERSON: As far as Food Fair is concerned,
15 that's the only evidence that we want to put before
16 the Court. The Court has that evidence, and I think
17 Dart Drug and Kalus should then proceed according to
18 the Court's wishes.

19 MR. GESCHICKTER: Our position is that we also
20 rely on the lease, and we frankly, as I told Your Honor
21 earlier today, I feel this is a legal argument. We reserve
22 the right to put on any testimony on rebuttal, but I don't
23 know what testimony we'll have.

1 MR. WILKES: Call Mr. Morton Kalus, please.

2 Whereupon,

3 MORTON KALUS,

4 a defendant, was called for examination by counsel on
5 behalf of the Defendant Wilkes, and, after having been
6 duly sworn, was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. WILKES:

9 Q State your full name, please.

10 A Morton, initial "E", Kalus.

11 Q What is your business, Mr. Kalus?

12 A I am a builder, developer, real estate investor.

13 Q Mr. Kalus, you graduated from Johns Hopkins
14 University in 1950, and have been a builder since 1950,
15 for the past 27 years, continuously, is that correct, sir?

16 A That's correct.

17 Q During the last 27 years, you have constructed,
18 shopping centers, post offices, office buildings, and other
19 types of commercial structures, isn't that correct, sir?

20 A That's correct.

21 Q And, that includes a Food Fair located in
22 Alexandria, on Duke Street; a Memorial Station Post Office
23 on Duke Street in Alexandria; and a post office on Columbia

1 Pike here in Arlington, is that not correct, sir?

2 A. That's correct.

3 Q. Mr. Kalus, I'll ask you to pull from your
4 files, please, the commitment of June 27, 1960.

5 A. [Witness complies.]

6 MR. WILKES: May I have this marked as Defendant
7 Kalus --

8 THE COURT: You're offering it for evidence?
9 Would there be an objection to it?

10 MR. PIERSON: There would definitely be an
11 objection if he's going to offer it for evidence. I
12 believe a copy of this letter was filed with the pleadings,
13 unfortunately.

14 It has to with the negotiations leading up to
15 the execution of this lease. It's, first of all, totally
16 irrelevant as far as that is concerned; and, secondly,
17 it's in violation of the parol evidence rule because you
18 have the written document and executed document before
19 you.

20 MR. GESCHICKTER: Dart Drug would object on
21 those grounds, but also on the grounds that Dart was not
22 privy to this. And, of course, we look to the four
23 corners of our lease as to our responsibility.

1 MR. WILKES: Exception, if Your Honor please.

2 May I have this merely identified?

3 THE COURT: Yes. Let the Clerk mark it for
4 identification.

5 MR. WILKES: As Kalus Exhibit 1 for identification.

6 (The document referred to was
7 marked Kalus Exhibit No. 1 for
8 identification.)

8 BY MR. WILKES:

9 Q Would you bring from your files the agreement
10 dated August 29, 1960?

11 MR. PIERSON: Is counsel referring to the lease
12 agreement?

13 MR. WILKES: Yes.

14 MR. GESCHICKTER: We've already stipulated that
15 into evidence.

16 THE COURT: I've got the one attached.

17 MR. WILKES: There's a problem with that one,
18 if Your Honor please.

19 THE COURT: All right. If there is, go ahead.

20 MR. WILKES: I'd like to have this marked as
21 Defendant Kalus's Exhibit No. 2.

22 MR. PIERSON: May I examine that document?

23 MR. WILKES: If Your Honor please, may I state

1 for Your Honor and counsel what the problem is?

2 THE COURT: Yes, sir.

3 MR. WILKES: From the Xerox copies which were
4 attached to the proceedings in this case, just by way
5 of mechanical difficulty, it is not possible to read
6 certain portions of the lease that were specifically
7 stricken by interlineation whereas that can be done from
8 the original.

9 THE COURT: I see. I'll receive it. Go ahead.

10 MR. WILKES: There's no argument about it not
11 being a true copy.

12 MR. GESCHICKTER: Your Honor, if it please the
13 Court, all Dart Drug has ever had is a Xerox copy of this
14 document. That's what we operated from, and we specifically
15 object to entering something that we have not ever had or
16 seen or negotiated from in order to show things that
17 were deleted or not deleted -- Excuse me, but deleted
18 by two parties before we were ever privy to the document
19 if that's the purpose.

20 THE COURT: What I'm tendered is the original
21 which is more legible than the copy I have, and I will
22 be glad to take that.

23 MR. WILKES: Of course, that doesn't affect my

11

1 client at all because our agreement is with Food Fair,
2 and the assignment, if Your Honor please, of that lease --
3 Excuse me, the sublease from Food Fair to Dart was
4 specifically on the basis that it is subject to the terms
5 and conditions of the lease.

6 MR. GESCHICKTER: Your Honor, that would be
7 the lease, not what was deleted from the lease.

8 THE COURT: I understand.

9 MR. GESCHICKTER: Your Honor, without objection, that
10 of course, this is the original of the document in
11 question, but we would object to the Court accepting for
12 the reason of looking into deleted areas, trying to
13 decipher deleted areas, since we were not privy to the
14 deletions and are not bound by what is deleted in the
15 lease.

16 THE COURT: This will be Defendant's No. 2. Do
17 you want to take it out of the folder here, or do you
18 want to introduce it folder and all? Is that all one
19 document?

20 MR. WILKES: It's all one document, if Your
21 Honor please.

22 THE COURT: We'll leave it in the folder if
23 there's nothing extraneous there.

1 MR. WILKES: No, sir. There are attachments
2 which are a part of the integral portion of the lease
3 itself.

4 THE COURT: All right.

5 MR. WILKES: There's nothing extraneous. I'd
6 like to offer that in evidence as Defendant Kalus No. 2.

7 THE COURT: Received in evidence.

8 (The document referred to was
9 marked Kalus Exhibit No. 2 for
10 identification and was entered
11 in evidence.)

12 BY MR. WILKES:

13 Q Mr. Kalus, who prepared the agreement, and
14 who prepared the rider prior to the execution?

15 A The lease was prepared by Food Fair in conformance
16 with the agreement which we marked Exhibit 1, commitment
17 for the store in accordance with the terms contained
18 therein.

19 But, this is Food Fair's basic lease which they
20 insist on sticking with at any location, and then they
21 make changes to conform to whatever they agreed to in the
22 commitment.

23 Q Approximately how many leases have you had with
Food Fair over the years?

1 A. About three.

2 Q I'll ask you, sir, to please turn to page five
3 of Defendant Kalus Exhibit No. 2, and I direct your
4 attention to paragraph 16, and I ask you if you can
5 read to me this portion that has been blacked out --

6 THE COURT: I understand you're not bound by
7 it, Mr. Geschickter.

8 BY MR. WILKES:

9 Q --on the next to last line.

10 MR. GESCHICKTER: I object on two grounds, really.
11 Number one, I object to Mr. Kalus reading something that
12 is deleted; but, number two, the document speaks for
13 itself. I don't see it's pertinent for Mr. Kalus to sit
14 up here and read it to the Court one way or the other.

15 THE COURT: That's all right. Besides deciphering
16 something, he wants to make a point that there was language
17 deleted on the form, and for whatever significance that
18 may have, I'll receive it.

19 MR. GESCHICKTER: Will you note my objection to
20 receiving that, Your Honor?

21 THE COURT: Yes, sir. Go ahead.

22 THE WITNESS: Well, blacked out in here --
23 Should I read the whole 16?

1 THE COURT: Just the blacked out.

2 BY MR. WILKES:

3 Q Just the portion that is blacked out after the
4 words "demise premises", that commence on the next to
5 last line on page 5 of the lease.

6 A It reads, "...and the appurtenances to the
7 demise premises including, but not limited to, the sidewalks,
8 and the curbs adjacent to the demise premises, and the
9 facilities -- and all facilities servicing the demise
10 premises, including utilities and appurtenances."

11 Q Thank you, sir.

12 Now, Mr. Kalus, who --

13 A I'm sorry. I left something out, "...including
14 utilities and appurtenances servicing demise premises."
15 Excuse me. I left that out.

16 Q Now, with respect to the rider that is a portion
17 of Defendant Kalus's Exhibit 2, who prepared that?

18 A This was all prepared by Food Fair.

19 Q Was that rider executed and delivered at the
20 same time that the agreement dated August 29, 1960, was
21 signed and delivered?

22 A That's all part of it, right.

23 MR. GESCHICKTER: For the record, I'd like to

1 note my objection to this testimony. I don't even feel
2 it's pertinent. This document is a signed lease and
3 speaks for itself. And, when parts were delivered or
4 not delivered is not pertinent at this time, not relevant.

5 THE COURT: I think it would all have to be
6 taken as a unit, would it not?

7 MR. WILKES: If Your Honor please, --

8 THE COURT: All parts would be read together
9 and harmonizes, so much as they may be.

10 MR. WILKES: If Your Honor please, it was the
11 purpose of the question to establish that there was an
12 integrated document that the rider was not a subsequent
13 amendment, but, rather, the rider attached to it formed
14 a part of this exhibit at the time of the execution and
15 delivery of the lease.

16 MR. GESCHICKTER: We'll stipulate that this
17 is the lease, the entire lease.

18 THE COURT: I think that is not a disputed
19 matter.

20 MR. WILKES: Your Honor please, in connection
21 with this, I would merely like to read to the Court
22 from paragraph 52 of the rider which states as follows,
23 "The rider to paragraph 16, 17 and 18, notwithstanding

1 anything to the contrary contained herein --".

2 THE COURT: You don't have to read it. I have
3 it before me, and I've already read it.

4 MR. WILKES: Thank you, sir.

5 BY MR. WILKES:

6 Q Mr. Kalus, I ask you whether or not with respect
7 to your activities as a builder, have you been a builder
8 for others, or a builder for investment and holding?

9 A Whatever I build, I own. I run a general
10 contracting.

11 Q Do you additionally manage those buildings
12 which you own?

13 A We manage everything we own, right.

14 Q Mr. Kalus, I ask you this question with respect
15 to your having been a builder for the last 27 years: With
16 respect to the roof repairs to which Food Fair, as to
17 April rent, has deducted \$620.00 for an alleged obligation
18 on your part for roof work, alleging work that was done
19 by Virginia Roofing Corporation, do you know what work
20 was done by Virginia Roofing Corporation?

21 A Truthfully, I don't.

22 Q Pardon me?

23 A I don't know exactly what Virginia Roofers did

1 for the \$620.00.

2 MR. WILKES: May I ask counsel to produce the
3 Virginia Roofing contract?

4 MR. GESCHICKTER: I don't have it.

5 Your Honor, Mr. Kabat indicates that he may
6 have it, but I don't want to search our records and
7 produce a document. I think that for whatever the Defendant
8 Kalus's case is, he'll have to rise or fall on the evidence
9 that he has.

10 THE COURT: What would the materiality be?

11 MR. WILKES: If Your Honor please, I would like
12 to put in as an exhibit the specification description
13 of the actual work that was performed by Virginia Roofing
14 Company in connection with the \$620.00 item that was
15 withheld from rent.

16 THE WITNESS: Excuse me. I do have in my
17 possession a copy of the contract which was written up
18 for that \$620.00. Mr. Goodman, who used to be with Dart
19 Drug, had Virginia Roofers write a contract, and Virginia
20 Roofers sent it to me, and I called Virginia Roofers and
21 said I'd have nothing to do with it, send it to Dart
22 Drug.

23 But, in my file, I have a copy of what they sent me.

1 I don't know if this is exactly what they did, but here
2 it is.

3 MR. WILKES: I'd like this marked as Plaintiff's
4 Exhibit No. 3 -- Pardon me, as Defendant Kalus Exhibit No.
5 3 for identification.

6 (The document referred to was
7 marked Defendant Kalus's Exhibit
8 No. 3 for identification.)

9 MR. GESCHICKTER: Your Honor, Mr. Kabat tells
10 me that this is -- Kalus No. 3 is a copy of the contract
11 that was presented by Virginia Roofers, and as far as
12 we know --

13 THE WITNESS: He didn't change the name or
14 anything.

15 MR. GESCHICKTER: It says, "To Kalus Construction",
16 but, this was submitted to Dart Drug, and it is the
17 contract that Dart Drug authorized the work to be
18 done. I don't know how it's relevant, but that is it.

19 THE COURT: I'll receive it.

20 (The document identified as Defendant
21 Kalus's Exhibit No. 3 was received
22 in evidence.)

23 BY MR. WILKES:

Q Mr. Kalus, showing you Defendants Exhibit No. 3,
from the standpoint of your 27 years of experience as a

1 builder, is there any of the work set forth in the
2 specifications that was done by Virginia Roofing for
3 \$620.00 structural work?

4 MR. PIERSON: I object, Your Honor. First
5 of all, it's asking for a legal definition of the issue
6 that's involved here, Your Honor, which is a legal de-
7 termination; and, secondly, there has been no qualification
8 of Mr. Kalus --I don't care how many years he's been
9 in the construction business -- that would go to his
10 qualifications as to roof repair and roof maintenance.

11 There's been not one question as to roof repairs
12 which qualifies this man as an expert, and I object to
13 him testifying.

14 He's one of the tenants. He's also one of the
15 owners of the building, and any testimony would obviously
16 have to be given little if any weight because of his
17 obvious bias.

18 MR. GESCHICKTER: Your Honor, if it please the
19 Court, also I would join in Mr. Pierson's objections, but
20 I would also object to that on the grounds that Mr. Kalus's
21 qualifications, whatever they are as a builder, don't
22 qualify him to construe the legal effect of the terms
23 structural and nonstructural in this lease. The lease

1 speaks for itself, and it's up to the Court to determine
2 what the lease says, and if the parties cannot agree upon
3 it.

4 THE COURT: Objection overruled. You may go
5 ahead.

6 BY MR. WILKES:

7 Q Would you answer that question, sir?

8 A As I read this, there's absolutely nothing
9 structural involved. This is just a matter of fabrics
10 on the top, and cement and asphalt, and some flashings.
11 There's nothing structural about it in my opinion.

12 Q What is it that makes this roof waterproof?
13 You constructed this roof yourself, is that correct?

14 A The roof -- The waterproofing of the roof,
15 as you put in very layman language before, are the
16 layers of tar, the felt paper, more tar, more felt paper,
17 more tar, and, then, the gravel on top which is a wearing
18 surface. That's what creates the waterproof quality of
19 the roof. Everything underneath that is designed just
20 to hold that up.

21 Q And, what is the type of structural design that
22 holds this building up? Is this reenforced concrete,
23 structural steel?

1 A. Structural steel, exactly. Right.

2 Q Do you have the plans and specifications --

3 A. Yes, sir, I do.

4 Q --which were used to construct the building
5 for Food Fair?

6 A. Right.

7 Q Under the provisions of the lease?

8 A. Yes, sir.

9 MR. WILKES: I would like to have the plans
10 first marked, if I may, as Defendant Kalus No. 4 for
11 identification.

12 MR. PIERSON: May I inquire or ask for a proffer
13 as to the use for these plans in terms of evidential
14 value?

15 MR. WILKES: The issue is whether or not we are
16 dealing here with a structural repair or a nonstructural
17 repair. The plans and specifications would show what
18 was actually constructed, and what is in contention now,
19 from the standpoint of the necessity to repair it, would
20 be shown and is pertinent and material to the issues in
21 this case.

22 What we are talking about is not something in
23 a vacuum, but actually the plans and specifications would

1 show exactly what was constructed on the subject property
2 by the builder Kalus and leased to Food Fair.

3 And, this also shows, of course, what was
4 originally constructed as compared with any structural
5 changes that Dart Drug made to the property after the
6 construction by Kalus that goes to the tenant's neglect.

7 MR. PIERSON: Your Honor, in terms of construc-
8 tion, we're talking about the roof, and I doubt that Mr.
9 Kalus or counsel is going to say that the building was
10 turned over to Food Fair without a covering on the roof.

11 If the plans show how the roof was constructed,
12 and what was put on the roof, I would have no objection
13 to that page, or whatever, document.

14 THE COURT: I can't see the point of putting
15 all the plans in. I am willing to take the testimony
16 of Mr. Kalus as to what the nature of the roof is.

17 He built it, and he can testify to it, and I
18 rather deduced from the earlier answer to your question,
19 he was telling us how the roof was constructed, to build
20 up a flat roof.

21 But, what do the plans add to that? What do
22 they do for us that his oral testimony wouldn't do?

23 MR. WILKES: If Your Honor please, one of the

1 important things that those plans will do in connection
2 with Your Honor's construction of the terminology in
3 the lease is to see with respect to the built-up roof as to
4 whether this is a matter that is dealt with by a struc-
5 tural engineer on the structural engineering drawings,
6 as to the structure of the building as against what is
7 done by the architect with respect to the nonstructural
8 aspect of the building.

9 And, the plans show this very clearly, and I
10 submit that it's a very important factor in Your Honor's
11 interpretation of the language used in the lease.

12 And, the evidence, I submit, will further
13 show that these plans were basically Food Fair plans
14 which Food Fair turned over to Mr. Kalus, and said:
15 This is the building we want.

16 This is the same as another store. This shows
17 in the addendum to the lease which is in evidence with
18 specific changes and adapting it, of course, to the size
19 of the lot and the topography.

20 So, here we would show that the structural plans
21 exclude the built-up roof which I think is very important
22 from the standpoint of Your Honor's interpretation of
23 the language.

1 In 53 of the rider, "Notwithstanding any
2 provision of this lease, nonstructural repairs are the
3 obligation of the tenant.", that blocks off all of the
4 language, I submit, that opposing counsel has cited.

5 "Notwithstanding any provision of this lease,
6 nonstructural repairs are the obligation of the tenant."
7 And, whether or not these plans show, under the structural
8 drawings, the built-up roof, whether that is a structural
9 question for the engineer to deal with, and whether the
10 sidewalks are a structural question for the structural
11 engineer who signs and certifies these plans so that
12 a building permit may be obtained from the County, is
13 a very important fact on that issue, Your Honor.

14 MR. PIERSON: May I respond, Your Honor? These
15 plans are being submitted, as I understand it, for the
16 purpose so the Court can make assumptions based upon the
17 fact that a structural engineer didn't do this, and an
18 architectural engineer didn't do that.

19 Now, if Mr. Wilkes has the structural engineer
20 and the architect here, I would probably even object to
21 their testimony because what he is asking is that we
22 assume, or let them say what their idea is, of what the
23 term "structural" is. It's totally irrelevant to the

1 case, and that's even if they were here.

2 But, introducing the plans and asking the
3 Court to say these are structural engineering plans, and
4 these are architectural plans, and asking you to assume
5 from that that the structural engineer and the architect
6 knew the determination as to the meaning of the word
7 "structural", goes far beyond the scope of what this
8 Court has, probably, the expertise or the ability to make
9 a decision of that kind.

10 If that's the purpose for which these plans
11 are being introduced, I don't see they have any probative
12 value whatsoever. They are asking totally for conjecture
13 on the part of the Court to an item that is not relevant
14 to the case.

15 MR. GESCHICKTER: Your Honor, if it please
16 the Court, I concur with Mr. Pierson, but, further,
17 Your Honor, as far as these plans are concerned, again,
18 there has been no showing that there is any ambiguity
19 in this lease.

20 And, Your Honor, if we're going to have any
21 commercial transactions at all, certainly people entering
22 into a lease can't go back and ask to see all the building
23 plans, and try to go through the building plans and see

1 what, if any, items on the building plans might alter
2 terms of art in the lease, or just the wording, the
3 words of the English language used in the lease.

4 I submit, Your Honor, that wherever the roof
5 appears in these plans, whether it appears on the structural
6 plans or an architectural blueprint or whatever -- I don't
7 even know what you would call it -- that that has no
8 bearing at all on this case right now; number one, because
9 there is no ambiguity, and, number two, because it would
10 be impossible for anyone to transact any business if
11 this is the interpretation that we're going to place
12 on the lease, that you have to go back in the plans
13 in the original building.

14 THE COURT: I think that the objection which
15 you gentlemen make goes to the weight rather than the
16 admissibility of the exhibit. It certainly does not
17 control you or me, but it does seem to me to throw some
18 light on the interpretation of that language; particularly,
19 since it is represented to me that the interpretation
20 put on it by Food Fair and by Mr. Kalus -- since it's
21 represented to me that Food Fair has something to do
22 with the generation of this set of plans.

23 And, therefore, if this is a term of art and

1 has some special meaning to these contracting parties,
2 I'll hear that.

3 The objection is overruled, and the plans will
4 be admitted.

5 THE CLERK: All of them as one exhibit?

6 THE COURT: Yes.

7 (The documents referred to were
8 marked for identification as
9 Defendant Kalus Exhibit No. 4
and were entered in evidence.)

10 BY MR. WILKES:

11 Q. Mr. Kalus, did Food Fair have anything to do
12 with the detail that went into these improvements for
13 these buildings that you leased to them?

14 A. Yes, but Food Fair did in those days -- whether
15 they do it now or not, I don't know, but they did then --
16 They gave the developer a pilot plan which showed about
17 everything in the building, and you adapted it to your
18 site, you adapted the structural, you adapted the plumbing,
19 electrical, what-have-you, to your site, the foundation.

20 So, basically, our architect copied what they
21 gave us and adapted it to the soil conditions or the
22 topography of land, et cetera.

23 Q. Is that what was done in this case?

1 A. Yes.

2 Q I'll ask you, sir, to turn to the structural
3 drawings that were prepared on that basis, and I ask you,
4 sir, to identify the page numbers of the structural
5 drawings, and I'll ask you if there is any detail in the
6 structural drawings, or any reference to the built-up
7 roof consisting of the composition paper or tar paper and
8 hot tar in layers, with gravel on the top?

9 A. There are two structural sheets that are
10 identified as S-1 and S-2, and S-1 shows all the founda-
11 tions, the concrete foundation and footings, and some
12 of the steelwork.

13 Sheet S-2 is to the roof frame plans. It shows
14 all the steel for the roof. It shows the bridging for
15 the roof, the columns of the building. It shows everything
16 in steel in the roof, and nowhere, in either one of these
17 plans, is the slightest note as to the roofing material,
18 or to sidewalk, as far as that goes.

19 Q Now, I ask you, sir, if, on those plans within
20 that exhibit, in the architectural plans outside the
21 four corners of the structural drawings by the structural
22 engineer, there is a description of the type of material
23 to be placed on top of the roof for waterproofing purposes?

1 A. Well, the architectural plan number two, which
2 is marked A-2, we have a roof plan which shows the
3 Ruberoid specification number 203AG 20-year bonded com-
4 position roof, slide surface on two inch board pyrofilled
5 gypsum, and one-half inch sheetrock formboard.

6 There were other of these sections in the
7 architectural; for instance, a section of the building
8 which is a view looking at the side of the building,
9 cut through.

10 It has notes as to the 20-year bonded composition
11 roof slide surface, et cetera, et cetera. The only place
12 it notes for the roof cover exists on these architectural
13 plans, and, also, I think on the architectural -- probably --
14 Yes. Also, it shows the sidewalks on here, too.

15 MR. WILKES: If Your Honor please, Mr. Kalus
16 is, as you know, a party to this suit. We have one witness
17 who has been here. He's an expert witness. That's Mr.
18 Harold Harvey.

19 I respectfully request permission of the Court
20 to call him out-of-turn at this time so that we will
21 be certain to finish with him today.

22 He's just about to go on vacation, and it would
23 be quite a hardship for him if he had to come back.

1 THE COURT: Are you about through with Mr.
2 Kalus?

3 MR. WILKES: I am not through with Mr. Kalus.

4 THE COURT: I propose to stay and finish the
5 evidence today. I don't intend to go over until tomorrow.

6 MR. WILKES: Yes, sir.

7 BY MR. WILKES:

8 Q Mr. Kalus, would you produce your letter of
9 July 31, 1974?

10 A Yes.

11 MR. WILKES: Kalus's exhibit for identification,
12 please.

13 (The document referred to was
14 marked for identification as
15 Defendant Kalus's Exhibit No. 5)

16 MR. GESCHICKTER: No objection, Your Honor.

17 MR. PIERSON: No objection, Your Honor.

18 BY MR. WILKES:

19 Q Did you sign this exhibit and send it to Dart
20 Drug?

21 A Yes, I did. Do you want me to give the back-
22 ground of this?

23 Q No, sir. Reading from the remark at the
bottom, "We'd like to see your finished plan prior to

1 renovation at this facility.", did Dart Drug ever send
2 you that plan before the renovation referred to?

3 A. I didn't know a renovation took place until
4 we had a call that they had a leak in the roof about a
5 year later, or less than a year later, this following
6 summer. But, a call did come from Dart Drug.

7 Q. Would you produce your letter of July 23, 1975?

8 A. It's right here.

9 MR. WILKES: Next defendant's exhibit for
10 identification.

11 (The document referred to was
12 marked Defendant Kalus Exhibit
No. 6 for identification.)

13 MR. GESCHICKTER: Your Honor, this purports
14 to be a letter from Mr. Kalus to Mr. Sidney Tucker at
15 Food Fair. I think it's a self-serving document. It
16 just states his case again, and I would object to it on
17 that ground.

18 I don't know if it has any relevance to the
19 situation.

20 MR. WILKES: It's a letter from one party to
21 the other party directly in connection with the problem
22 at the time the problem arose. And, I submit it is
23 admissible on that basis.

1 THE COURT: Is it in response to an earlier
2 communication?

3 MR. WILKES: It's in response to the complaint
4 of the leaking roof. That's the very issue involved in
5 this case.

6 THE COURT: This item that has been marked
7 number five for identification, there has been no exhibit
8 tendered complaining about the leaking roof, is that
9 right?

10 MR. WILKES: There has been nothing but the
11 pleadings because opposing counsel have submitted
12 no testimony, but they are relying upon those pleadings,
13 if Your Honor please, and the construction of the lease.

14 And, what I want to do is to show, number one,
15 the tenant's negligence in making structural changes in
16 violation of the lease without the landlord's prior
17 approval first.

18 THE COURT: Why don't you do that through his
19 oral testimony. This does seem to me to be self-serving.

20 MR. WILKES: Yes, sir.

21 THE COURT: Actually, the problem is that it's
22 hearsay. There was no opportunity to cross examine him
23 about this. It's not in response to anything that is yet

1 in evidence.

2 BY MR. WILKES:

3 Q Mr. Kalus, did there come a time when there
4 was a complaint about roof leaks?

5 A Yes, sir.

6 Q And, about when was that?

7 A The complaint came to me from Food Fair on or
8 about Thursday, July the 17th of 1975. I had a call
9 from Mr. Marc Rash --

10 MR. PIERSON: May I interrupt at this point,
11 I think for a point of clarification as well as a point
12 of objection?

13 What we are about to embark on is a discussion
14 of a prior problem with a leaking roof which Mr. Kalus
15 says was as a result of the installation of an additional
16 airconditioning unit at the store.

17 The problem, and I think one that has to be
18 made very clear here, is that there are two arguments
19 being put before the Court. One is that the roof leaks
20 which resulted this past winter were a result of Dart
21 Drug's or Food Fair's negligence. That's the first issue
22 which, I might add, has never been raised in the pleadings.

23 The second issue is the meaning of the term

1 "structural". The only evidence, or the only probative
2 effect of the evidence concerning a prior roof leak in
3 1975 is relevant only if it can be correlated with the
4 roof leak that occurred this past winter.

5 Now, Mr. Wilkes may have testimony that will
6 correlate these two, but I would like to voice my objection
7 now.

8 I assume the Court will hear this testimony,
9 but I would like the opportunity to renew my objection
10 if he cannot correlate factually the roof leak in 1975
11 with the roof leak that is the immediate subject of
12 this suit. And, I want to make that clear to the Court.

13 MR. WILKES: I fully intend to tie that in.

14 MR. GESCHICKTER: Your Honor, if it please the
15 Court, I would have to object, if what we're going to
16 talk about is whether or not the leaking of the roof
17 that we're talking about here, comes from the aircondi-
18 tioner installation or not.

19 As far as this case is concerned, I was under
20 the impression that we're here on a declaratory judgment
21 on the lease. Now, maybe I'm mistaken, but I've not
22 seen anything else in the pleadings.

23 This sheaf here is a copy of the correspondence

1 back from 1973 about roof leaks in this particular
2 building. And, some of these leaks have been fixed,
3 and, you know, over the years and some haven't, some
4 of them fixed by Mr. Kalus over the years.

5 What the indication would be --

6 THE WITNESS: Not -- Beg your pardon, but not --

7 MR. GESCHICKTER: I am just saying all these
8 documents, if we're going into those. Now, I have not,
9 frankly, prepared myself to go into all these documents
10 and decide what made the roof leak, but I thought we
11 were here to say whether or not the responsibility of
12 the repair of the roof lies with Mr. Kalus or with Dart
13 Drug.

14 THE COURT: It would appear that part of the
15 answer to that depends upon whether the roof leak was
16 caused by the negligence of the tenant or his employees;
17 and, under this rider 52, it would seem to me that Mr.
18 Wilkes has indicated that he will show by his evidence
19 that is, indeed, the cause of this particular roof leak.

20 I don't see how he can be precluded from showing
21 that. Go ahead, sir.

22 MR. GESCHICKTER: If that's so, could I ask
23 at this late date for a rule on this witness if we're going

1 to get into that question.

2 I don't know what he's here to testify to.

3 THE COURT: I think it's a little late in the
4 day for that.

5 MR. GESCHICKTER: I plead complete surprise
6 to the Court.

7 BY MR. WILKES:

8 Q Did you, then, go to the building and physically
9 inspect it to see what Dart Drug and the tenant Food Fair
10 had actually done?

11 A. When I was interrupted before, I was telling
12 you that Mr. Marc Rash of Food Fair Stores called me and
13 said that they'd just had a call from Dart Drug, and
14 they had a very serious leakage in the store. They
15 had water running down lighting fixtures, down the walls,
16 across the floor.

17 I immediately jumped in the car and ran down
18 there because, after all, it is my building. And, as
19 he said, water was running out of the light fixtures, and
20 down the walls, and the place was very wet.

21 I think the rain had been the day before.

22 I went up onto the second floor and looked up
23 and there were holes in the roof that somebody had chopped

1 and run pipes through and left holes, a six inch hole for
2 a three inch pipe, and a four inch hole for a two inch
3 pipe, and there's where the water was coming in.

4 Well, I got ahold of the assistant manager and
5 he unlocked the roof hatch, and I went up on the roof
6 and, lo and behold, there was all this new airconditioning
7 equipment, or refrigeration equipment, that had been put
8 up there.

9 And, apparently, they put it up there and
10 they just left it after they put it up there because,
11 as I said, there were holes, six inch holes with a three
12 inch pipe, running through, no flashing.

13 The normal procedure when you run something
14 through a roof, you put a pitchpocket around it, and a
15 pitchpocket is a high hat, if you can visualize a high
16 hat, and you punch the end of it, and you set it down
17 over the pipe.

18 And, you put the flat part of the hat down on
19 the roof deck, and it's then sliced around, and filled
20 with tar to create a waterproof barrier.

21 And, not one pitchpocket had been put on that
22 roof.

23 In addition to that, one of the reasons the

1 water had all flooded down into the building is that
2 the workmen, in putting steel beams across from one
3 parapet wall to another parapet wall to support the
4 mechanical equipment, had chopped the terra cotta coping
5 off the walls, and rested the beams right on the terra
6 cotta coping.

7 They didn't patch back the coping so the open
8 cells of the block were exposed.

9 It appeared as if they had contests on the
10 roof to see how far they could throw. These pieces of
11 terra cotta coping --

12 MR. PIERSON: I obviously object to the repre-
13 sentation made by Mr. Kalus, and particularly the last
14 one.

15 THE WITNESS: Well, what happened is terra
16 cotta coping, and tin, and pieces of rubble and paper,
17 and sheet metal, and so forth, had clogged up the roof
18 drains, and the roof had received more water than would
19 go off, and it ran back down into the store.

20 And, immediately, I went back to the office
21 and wrote this letter back to Food Fair. I take it
22 back. I wrote it several days later because I was busy.
23 The letter is dated July 23rd, but I called them and told

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1 them what the situation was.

2 And, I would assume that they immediately
3 got in touch with Dart Drug.

4 As it happens, today I went over to this store
5 while we were waiting this morning to have a hearing,
6 and there is a pile of terra cotta coping still sitting
7 on the roof.

8 Now, in doing what they did on the roof -- We
9 had a roof bond with the Barrett Corporation. It was
10 a roof bond for 20 years, and a flashing bond for 20
11 years. This was part of what we had supplied in conjunction
12 with the referred specifications.

13 MR. PIERSON: I'm sorry to keep interrupting.
14 Mr. Kalus is now giving us a running narrative, and he's
15 obviously not responding to the last question which was
16 made about five minutes ago.

17 THE COURT: Objection sustained. I also want
18 you to tie-in this thing that he has described, the leak
19 at that time, and the cause, with the present cause for
20 the present complaint.

21 MR. WILKES: Yes, Your Honor.

22 BY MR. WILKES:

23 Q When did you last inspect the building?

1 A. I inspected the building this morning.

2 Q. Did that piece of terra cotta come off that
3 roof today?

4 A. There were five pieces resting on the roof,
5 and this was about the average size of the pieces, and
6 they were resting near the same spot that had been
7 clogged up about two years ago, and they had never been
8 removed from the roof.

9 Q. Is that proper maintenance practice?

10 A. Absolutely not. In fact, in conjunction with
11 the roof bond, which already had been violated --

12 Q. Just a moment, please. Let me ask the questions,
13 if I may, please.

14 MR. WILKES: I'd like to have this terra cotta
15 marked as the next defendants exhibit.

16 THE COURT: I can see it, but I'd rather you
17 didn't put it in evidence. It's going to clutter up the
18 Clerk's files. I'd rather have you carry it back with you.

19 BY MR. WILKES:

20 Q. Is this the same terra cotta that you testified
21 was broken away in order to put in the steel beams to
22 support the airconditioning equipment on the roof that
23 the tenant did?

1 A. That's correct.

2 Q And, in inspecting this building subsequent to
3 your inspection of July, 1975, can you tell me whether or
4 not what the subtenant Dart Drug had done to that roof,
5 or that has continued to cause leaking problems down to
6 date?

7 MR. GESCHICKTER: If it please the Court, ob-
8 jection. First of all, I don't know what foundation is
9 laid for that; second of all, I don't know what expertise
10 the gentleman has or what he has looked at which would
11 indicate that he has anyway to testify --

12 THE COURT: I don't know if you can attribute
13 it to Dart Drug, but I think he's competent to testify
14 what he's found on the roof, by whomever it was caused.

15 MR. GESCHICKTER: I think he can say what he
16 found on the roof, but I think the question was: Has
17 that contributed down to today to the roof leaking.

18 THE COURT: I sustain on that. I think he is
19 not a sufficient expert on that.

20 THE WITNESS: Pursuant -- Maybe two weeks after
21 I wrote this letter to Food Fair. We decided we'd better
22 keep an eye on that building even though it was a net
23 lease. And, in checking the property, we found that

1 Dart Drug did, for the record --

2 MR. GESCHICKTER: Your Honor, I have to object
3 to the gratuitous term that this is a net lease by the
4 witness, just for the record. I don't want to let that
5 go by.

6 THE WITNESS: Several weeks later, we inspected
7 the property, and Dart Drug had come in and put in pitch-
8 pockets around the pipes that had been leaking.

9 As far as what else they did, I really couldn't
10 tell you at the time. However, that was the start
11 of the roof problems at that location. Prior to that,
12 I had never heard of any roof leaks.

13 And, since then, I think Food Fair has had
14 several. Letters from -- They sent me copies to that
15 effect, that they are having trouble.

16 MR. WILKES: The roof bond and the flashing
17 bond that's attached, I'd like to have this marked together
18 as the next exhibit for identification.

19 (The documents referred to were
20 marked Kalus Exhibit No. 7 for
identification.)

21 THE COURT: Mr. Kalus, do you know what the
22 cause was of the leak that was covered by this estimate
23 from Virginia Roofing of August, 1976? Were you there in

1 order to ascertain what, if anything, was leaking, or
2 caused the leak at that time?

3 THE WITNESS: No, sir. I assume some of it
4 was an aftermath of the installation on the roof.

5 THE COURT: That's when you went and investiga-
6 ted and found no pitchpockets? When was that?

7 THE WITNESS: I was down there on July 17th
8 of 1975.

9 THE COURT: All right. This estimate says:
10 Leaking area main roof, one at the rear and one on the
11 left side.

12 Does that connect itself with any of the
13 airconditioning or refrigeration structure?

14 THE WITNESS: I really don't know because it
15 depends on whether you're facing the building, the left
16 side is over here, and the refrigeration's over there;
17 but, if you're facing with the building, the left side --

18 THE COURT: If you are standing on Lee Highway
19 and looking at it?

20 THE WITNESS: The left side would be away from
21 the airconditioning equipment.

22 They've complained of the other side. They
23 were running trucks into the building.

1 MR. GESCHICKTER: If it please the Court, as to
2 Defendant Kalus's Exhibit No. 7, I would object, first
3 of all, on the grounds that the first page of this
4 exhibit is not a roof bond, but something that says:
5 Please read carefully the attached bond. And, then,
6 you know, it has some literature that has nothing to
7 do with the bond itself.

8 Second of all, Your Honor, I would object to
9 the bond being admitted because I don't know how the
10 roof bond is relevant to the case at hand.

11 THE COURT: I don't either. Can you explain
12 it, Mr. Wilkes?

13 MR. WILKES: Yes, if Your Honor please. I
14 offer it to show that under the plans and specifications
15 it was the obligation of Kalus to furnish the roof bond
16 which, I think, clearly has a bearing with respect to whether
17 that roof was considered by the parties to be structural
18 or nonstructural.

19 Secondly, I offer it to show that by reason of
20 the acts in cutting through this roof that have been
21 discussed by Mr. Kalus that the roof bond itself which
22 would not, by its terms, have expired until 1980 or '81 --
23 1981, I believe -- was voided or there wouldn't be any

1 issue so far as between now and 1981 was concerned because
2 of the very acts of Dart Drug in cutting through the
3 roof, and making these structural changes without the
4 prior approval of the landlord.

5 MR. GESCHICKTER: Your Honor --

6 THE COURT: How does that relate, though, to
7 the particular leak that is now complained of if, in fact,
8 Dart Drug did something wrong in 1975? Even though it
9 went to the extent of this bond, I take it there was no
10 claim for a leak that occurred then, and they fixed
11 it themselves.

12 It doesn't appear to be part of the suit, is
13 that right?

14 MR. WILKES: If Your Honor please, I think it's
15 clear that what the landlord obtained and provided as the
16 landlord's obligations under the lease, namely, the roof
17 bond, the fact that that was an obligation helps in inter-
18 preting the lease itself; secondly, from the standpoint of
19 the tenant's negligence, if the tenant's negligence results
20 in the voiding of a roof bond which by its terms would
21 have expired in 1981, then it seems quite clear, if Your
22 Honor please, that that constitutes negligence by the
23 tenants under the provisions of rider 52 which further

1 exculpates or excuses the landlord from any obligation.

2 THE COURT: All right, sir. Your objection
3 is overruled. I'll hear it. This will be admitted.

4 (The document marked Defendant
5 Kalus Exhibit No. 7 was admitted
6 in evidence.)

7 BY MR. WILKES:

8 Q Mr. Kalus, did the actions of making the
9 structural changes in cutting through the roof by Dart
10 Drug, the subtenant, have any effect upon this bond?

11 MR. GESCHICKTER: Objection, Your Honor.
12 Certainly, if Mr. Kalus didn't have anything to do with
13 whether or not this bond was voided, he's insisting that,
14 and -- What's the name of the company? Barrett?

15 THE WITNESS: Barrett, a Division of Allied
16 Chemicals.

17 MR. GESCHICKTER: That's hearsay, and Mr.
18 Kalus can't testify as to how that happened or why.

19 THE COURT: I would think that would be well
20 taken. He can testify as to the facts of as to whether
21 they notified him as to whether it was voided.

22 THE WITNESS: Mr. Goodman, who used to be with
23 Dart --

MR. GESCHICKTER: I didn't hear what you said.

1 THE WITNESS: I said you don't go to Barrett.
2 You go to the roofer who did the job, and the roofer
3 that originally put the roof on there was Virginia
4 Roofing Company.

5 BY MR. WILKES:

6 Q Is that the same roofing company that --

7 A The same one that did Dart Drug, right.

8 And, Mr. Goodman, who was with Dart Drug at the time
9 was in direct contact with them, and tried to get -- I
10 had sent him a copy if I recall correctly -- tried to
11 get them, meaning Virginia Roofers, to honor this bond,
12 and Virginia Roofers --

13 MR. GESCHICKTER: I would object to that, Your
14 Honor. How this man would have any idea of that conver-
15 sation without it being hearsay is just impossible for
16 me to conceive. How Mr. Kalus would know what happened
17 between --

18 THE WITNESS: I spoke to Virginia Roofers.

19 MR. GESCHICKTER: That's hearsay, Your Honor.

20 THE WITNESS: Can I read something from this,
21 sir?

22 THE COURT: It would seem to me that what is
23 sought here is the fact of utterance by Virginia Roofers,

1 and not the truth of what they say.

2 If Virginia Roofers say that this is voided
3 by some action of Dart Drug, I, obviously, can't receive
4 that. That's hearsay.

5 If Virginia Roofers say that they refused to honor
6 that bond, he can testify to that, but that's a mere
7 verbal act on their part. It's just as though they
8 hit him with something, struck a blow.

9 He can testify to that: He was on the receiving
10 end of a blow, even though it was a verbal blow.

11 MR. GESCHICKTER: The question I was objecting
12 to was --

13 MR. WILKES: May I withdraw that question?

14 BY MR. WILKES:

15 Q Mr. Kalus, would you hand me a letter of
16 August 13, 1975?

17 A August 13, what?

18 Q August 13, 1975.

19 MR. KALUS: Defendant Kalus Exhibit No. 8 for
20 identification.

21 (The document referred to was
22 marked Defendant Kalus's
23 Exhibit No. 8 for identification.)

1 BY MR. WILKES:

2 Q Would you also take out September 9, 1975,
3 a letter from Food Fair to Dart Drug?

4 A [Witness complies.]

5 MR. WILKES: And, I'd like to ask that that
6 be marked as Defendant Kalus's next exhibit for identi-
7 fication.

8 (The document referred to was
9 marked Defendant Kalus's Exhibit
No. 9 for identification.)

10 THE COURT: Let's take a five minute recess,
11 gentlemen.

12 THE BAILIFF: All rise.

13 (Brief recess was taken.)

14 MR. WILKES: I offer in evidence the last
15 two exhibits which have been marked for identification.

16 MR. PIERSON: May I inquire as to the purpose
17 of the August 13th letter? It simply states that the
18 copy of the bond was sent to Food Fair. If that's the
19 purpose for which it's introduced, I have no objection.

20 MR. WILKES: That is the purpose, if Your
21 Honor please.

22 MR. PIERSON: We can stipulate that we've seen
23 the bond. Either way, I have no problem with that letter.

1 MR. GESCHICKTER: If it please the Court, as
2 far as the Exhibit 8, this refers again to the do's and
3 don't page which I objected to being attached to the
4 front of the bond. I object again because Exhibit No. 8
5 refers to the do's and don't's page, and that's my
6 objection to Exhibit No. 8.

7 THE COURT: The objection is overruled. Number
8 8 will be received.

9 (The document marked Defendant
10 Kalus's Exhibit No. 8 was
received in evidence.)

11 MR. GESCHICKTER: As to Exhibit No. 9, I object
12 to that. Again, this goes into statements that have to
13 be hearsay. This is a notice of default by Mr. Kalus,
14 and, again, in that document he gives the reasons, and
15 he said the roof bond had been voided, and it says why
16 it's been voided which has to be grounded in hearsay.

17 I think the fact that Mr. Kalus sent notice of
18 default may be significant in this case, but, again,
19 his contentions, and his opinions as to what has happened
20 in this case are grounded on hearsay and would be inadmissible.

21 And, for that reason, I say the letter itself
22 should be inadmissible.

23 MR. WILKES: If Your Honor please, this is not

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1 anything of Mr. Kalus's. This is the September 9, 1975,
2 which is the Food Fair's notice to Dart Drug of default
3 stating that Dart Drug has committed and voided the
4 owner's roof bond.

5 MR. GESCHICKTER: That would be double hearsay.

6 THE COURT: I will disregard that part of it.
7 I'll receive it for whatever value it may have. Number
8 9 is admitted.

9 (The document marked Defendant
10 Kalus's Exhibit No. 9 was
received in evidence.)

11 MR. GESCHICKTER: Your Honor, if you please,
12 all of the numbered paragraphs, again, would involve
13 hearsay since this is from Food Fair to Dart Drug.

14 All they are doing is recounting what they had
15 been told.

16 THE COURT: What is No. 6? A letter to Food
17 Fair in July of '75.

18 MR. PIERSON: That is the beginning of the
19 roof problem, Your Honor.

20 THE COURT: That was excluded on the ground
21 it was entirely self-serving, I think.

22 BY MR. WILKES:

23 Q Mr. Kalus, would you pull out the October 27,

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1 1975 letter from Food Fair to you?

2 A. [Witness complies.]

3 MR. WILKES: If Your Honor please, that was
4 an attachment to one of our pleadings in this case, and
5 I think that's covered by the stipulation. I'd like to
6 have it marked and offered into evidence.

7 (The document referred to was
8 marked Defendant Kalus's Exhibit
9 No. 10 for identification and
received in evidence.)

10 BY MR. WILKES:

11 Q Would you pull out the November 15, 1976,
12 memorandum of Food Fair, please?

13 A. [Witness complies.]

14 MR. WILKES: If Your Honor please, I'll ask
15 that that be given the next Defendant Kalus's exhibit
16 number for identification.

17 (The document referred to was
18 marked Defendant Kalus's Exhibit
No. 11 for identification.)

19 BY MR. WILKES:

20 Q May I have the April 19, 1977, letter from
21 you to Food Fair?

22 A. [Witness complies.]

23 MR. WILKES: Again, this is one of the attachments

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1 to the pleadings, April 19, 1977.

2 MR. PIERSON: Mr. Wilkes is trying to shoot
3 through one of these letters. I'm not sure they are
4 being introduced, but I certainly want to respond to the
5 introduction of some of these.

6 For example, the memorandum which he discussed,
7 dated November 15th is an intercorporate memorandum. I'm not
8 sure how it was obtained by Mr. Kalus, but it is from
9 Marc Rash to members of my corporation.

10 And, I would certainly object to that being
11 introduced from Mr. Kalus.

12 THE WITNESS: It's been sent to me by Mr.
13 Rash.

14 MR. PIERSON: There's certainly been no testimony.
15 I think Mr. Wilkes has covered two or three others while
16 I was reviewing this one, and I want to make sure that
17 nothing's introduced over my --

18 THE COURT: This is being marked for introduction.

19 (The document referred to was
20 marked Defendant Kalus's Exhibit
21 No. 12 for identification.)

22 BY MR. WILKES:

23 Q Mr. Kalus, referring to Defendant's Exhibit No.
11 for identification only, would you tell me whether you

1 know who Rash, Tucker, Wainfan, Grossman and Horgan are
2 and how you received this copy?

3 A. Well, Marc Rash is Food Fair's man in Baltimore.
4 He has charge of the Baltimore stores for maintenance,
5 and dealings with all their subtenants, et cetera.
6 This is the man, to my knowledge, who Dart Drug always
7 calls when they have a problem and he sent copies of the
8 memo to Sidney Tucker, who is the director of real
9 estate.

10 Mr. Wainfan is in the real estate office. I
11 don't know his exact title. Horgan is in their real
12 estate office. I assume Grossman is, also.

13 Q. Where did you get this?

14 A. When did I get it?

15 Q. How did you get it, possession of that piece
16 of mail?

17 A. He mailed it to me with a little note on the
18 16th of November 1976.

19 Q. Who is "he"?

20 A. Mr. Rash, I'm sorry.

21 MR. WILKES: I offer that in evidence, if
22 Your Honor please.

23 THE COURT: I'll receive it in evidence with the

1 cover note.

2 (The document marked as Defendant
3 Kalus's Exhibit No. 12 was
4 received in evidence.)

5 MR. GESCHICKTER: I object to the document
6 because it's hearsay on the forfeiture of those bonds.
7 What we are having is this matter that the Court's
8 already ruled on as to why the bond was forfeited, and
9 it was introduced again and again and again because of
10 the original statement made by Mr. Kalus to various
11 people.

12 THE COURT: I understand. Number 11 is admitted.

13 (The document marked as Defendant
14 Kalus's Exhibit No. 11 was re-
15 ceived in evidence.)

16 BY MR. WILKES:

17 Q. May I have the notice of April 19, 1977?

18 A. [Witness complies.]

19 MR. WILKES: Do you have any objection to this?

20 MR. PIERSON: No objection.

21 MR. GESCHICKTER: I object as to relevancy. It
22 talks as to gross sales, not about the roof of the building.

23 MR. WILKES: I'd like to offer, if Your Honor
please, the notice of default in the payment of rent as
the next exhibit.

1 THE COURT: Is there an objection to that?

2 MR. GESCHICKTER: I object to that on the
3 grounds of relevancy as to the payment of rent is con-
4 cerned.

5 THE COURT: Objection sustained.

6 BY MR. WILKES:

7 Q Mr. Kalus, have you had any personal observa-
8 tion with respect to how a Dart truck has been using
9 the front sidewalk?

10 A Yes, sir.

11 Q Describe it, please.

12 A Dart Drug --

13 MR. PIERSON: Your Honor, excuse me. It
14 would be nice to clear up any and all of the long laundry
15 list of complaints that Mr. Kalus has about the main-
16 tenance of his building, but care and maintenance of
17 the front door, unless it relates to the sidewalk or
18 the roof, is something that is well beyond the scope
19 of what we're here for today.

20 Mr. Wilkes in his opening statement -- I did
21 not object to it --
22
23

1 MR. WILKES: Did I say door or sidewalk?

2 MR. PIERSON: He's talking about the front of
3 the door.

4 MR. WILKES: I didn't make my question clear,
5 then, if Your Honor please. I'm talking about the
6 sidewalk that's out by the front door of the building.
7 I am not talking about the door.

8 MR. PIERSON: Excuse me. I withdraw my objection.

9 THE WITNESS: I have observed on numerous
10 occasions, the latest as recently as two weeks ago, trucks
11 unloading at the front door.

12 We have objected to it. We have put it in
13 writing to Food Fair, who, in turn, I'm sure, have sub-
14 mitted the same to Dart Drug.

15 On one occasion, I observed a truck unloading
16 motor oil onto the front sidewalk onto a three foot
17 wide, six or eight foot long, dolly that used normally
18 in a loading dock, and they struggled through the front
19 door with it.

20 I have observed them taking dollies of fertilizer
21 and other products, heavy products, in through the
22 front doors. The last one, as I say was last week, I
23 observed them taking bread in the front door which is a

1 much lighter product.

2 MR. PIERSON: I will renew my objection in
3 terms of relevancy. I fail to see any relevancy.

4 THE COURT: Objection overruled. I think it
5 goes to negligence.

6 MR. PIERSON: I am not sure I understand your
7 reasoning for the overruling of the objection. It
8 goes to negligence in terms of maintenance of the sidewalk?

9 THE COURT: Yes. It appears that even those
10 things which are nonstructural -- or, excuse me, even
11 those things which are structural are the responsibility
12 of the tenant if it's caused by the tenant's negligence.
13 He contends they are caused by the tenant's negligence.

14 BY MR. WILKES:

15 Q Are there loading facilities for this building?

16 A Yes.

17 Q Where are they located?

18 A At the rear of the building.

19 Q Was this sidewalk ever designed or constructed
20 to serve as a loading dock-type of a function?

21 A No, sir. The sidewalk normally has anywhere
22 from three to four inches of concrete. It's not designed
23 to take the weight of, say, a loading dock cartfull of

1 something like motor oil. It's just too much weight
2 for that type of structure.

3 Q Have you advised Food Fair to have Dart Drug
4 cease and desist from that activity?

5 A We gave them notice. I don't have it right
6 in front of me, but we made mention of it to them.

7 Q And, have they ceased and desisted in doing so?

8 A Somewhere in my files is a letter from Food
9 Fair, and a covering letter back from Mr. Kabat, to
10 the extent that they don't do that.

11 And, shortly thereafter I observed another
12 truck doing that. And, these trucks end up hitting the
13 canopy in front, and the fences in front, and cause
14 other damage to the building.

15 Q May I have your letter of January 15, 1969?

16 A [Witness complies.]

17 MR. WILKES: If you will mark that for the next
18 Defendants exhibit for identification, please?

19 (The document referred to was
20 marked Defendant Kalus's Exhibit
No. 13 for identification.)

21 MR. WILKES: I offer, without objection from
22 opposing counsel, if Your Honor please, the letter to
23 Food Fair from Mr. Kalus, approving a sublease to Dart

1 Drug subject to the terms and conditions of the lease
2 which is already an exhibit in this case.

3 THE COURT: Number 13.

4 (The document marked Defendant
5 Kalus's Exhibit No. 13 was
6 received in evidence.)

7 BY MR. WILKES:

8 Q Going back to the roof, sir, have you observed
9 anything on the front of the building from the stand-
10 point of truck movement that would have any effect on
11 the roof, as the same is tied-in structurally with the
12 canopy?

13 A Yes, sir. The front canopy has been struck
14 on numerous occasions by tractor trailers as they
15 back in.

16 MR. GESCHICKTER: I am going to object to that.
17 First of all, if this gentleman has seen a tractor trailer
18 strike that canopy, that's one thing; but, second of all,
19 even if he is a builder, I am going to object to his
20 conclusions as to what a tractor trailer truck striking
21 a canopy can do.

22 He can tell what he observed, but it's up to
23 the Court to decide.

THE COURT: What do you mean by canopy?

1 THE WITNESS: The canopy is the covered sidewalk,
2 it's the covering over the sidewalk. It's about 12
3 feet off the ground, and it comes down the front walk,
4 and it turns to the side. And, the canopy is on the
5 corner of the building where the door is -- Where the
6 front doors are -- and, that's where he struck --

7 MR. GESCHICKTER: Mr. Kalus and Mr. Wilkes
8 have seen these pictures, and I have no objection to him
9 using these to show you what he's talking about since
10 they will be introduced anyway.

11 MR. WILKES: I have no objection to photographs
12 going in.

13 MR. GESCHICKTER: I guess they should be marked.

14 MR. WILKES: Go ahead.

15 BY MR. WILKES:

16 Q My whole question is, Mr. Kalus, is the canopy
17 physically connected with the building?

18 A Absolutely. It's tied back into the brick and
19 steel fabric of the building.

20 Q Based on your 27 years of experience as a builder,
21 would the contact which would cause a dent to the front
22 of the canopy in the direction of the building have any
23 effect on the roof?

1 MR. GESCHICKTER: I object on the grounds I've
2 just stated as far as, number one, whether this gentleman
3 has ever seen that truck hit that canopy. No foundation
4 has been laid in that regard.

5 But, more importantly, number two, as to his
6 assumption and speculation as to what that truck hitting
7 that canopy would do to the rest of the building. Even
8 though he's a builder, he would have to have some -- I
9 think the Court is, as is any person, layman, is as able
10 to draw a conclusion as to what a truck hitting that
11 canopy is going to do as Mr. Kalus.

12 He has no particular expertise in the transfer
13 of forces from one body to another.

14 THE COURT: Your objection is overruled. Go
15 ahead.

16 BY MR. WILKES:

17 Q Mr. Kalus --

18 THE COURT: Let him answer the question.

19 THE WITNESS: The question, I believe was --

20 THE COURT: What would happen if the truck
21 hit the canopy?

22 THE WITNESS: It would move the entire front
23 wall to a certain extent. And, the question was would it

1 do anything to the roof? And, absolutely, in my estimation.
2 It can loosen up all the flashings in the front part
3 of the wall.

4 THE COURT: Have there been any leaks at that
5 point?

6 THE WITNESS: I think there have been, over
7 the original area of the vestibule, the inside vestibule,
8 which Dart Drug had torn out when they moved the doors
9 over; but over the original vestibule, there's a stain
10 in the ceiling of the store where at some past date
11 there was a leak.

12 And, that could definitely be from the canopy.

13 BY MR. WILKES:

14 Q Referring to the structural steel which supports
15 this building, and supports the built-up roofing, have
16 you looked at that to determine whether there was any
17 sagging or structural defects from time-to-time?

18 A As I say, I was there today with the structural
19 engineer, and from the mezzanine floor, which is right
20 under the roof deck, where the new installation went,
21 there does not appear to be any structural damage that's
22 visible to the eye.

23 MR. WILKES: No further questions, Your Honor.

1 THE WITNESS: It could conceivably come from
2 where they rested steel beams on the walls, if the walls
3 were not prepared properly for that.

4 And, proper preparation would be to put solid
5 masonry underneath the steel. In other words, take out
6 a couple of blocks and put in brick, solid brick, or to
7 fill the block area with cement. Whether that was ever
8 done or not, I don't know.

9 BY MR. WILKES:

10 Q This is in connection with the steel beams that
11 were put on?

12 A To support the airconditioning.

13 Q That were added to the roof?

14 A That's right.

15 MR. WILKES: No further questions, Your Honor.

16 CROSS EXAMINATION

17 BY MR. PIERSON:

18 Q Mr. Kalus, you do acknowledge that you signed
19 this lease agreement and the riders, is that right?

20 A Yes, sir.

21 Q And, you are here on behalf of all of the signers
22 of that lease agreement, is that correct?

23 A That's correct.

1 Q Now, you said that Food Fair prepared -- or
2 that this is Food Fair's form lease?

3 A Right.

4 Q You also testified that you have entered into
5 a similar lease on three other occasions?

6 A Two other occasions.

7 Q So, you are familiar with the terms of this
8 lease?

9 A This lease agreement?

10 Q Yes.

11 A Lately, I've become more familiar with it
12 because every lease is a little different.

13 Q The rider, you say that Food Fair prepared
14 this?

15 A Yes.

16 Q At who's request were these provisions made?

17 A These provisions were made not in anybody's
18 request, but in connection with the letter of the commitment
19 which he did not want to admit into evidence.

20 Q These paragraphs were as a result of negotiations
21 or discussions between you and Food Fair?

22 A Negotiations? You mean the exact wording that
23 they put in here?

1 Q The terms.

2 A The terms contained in the commitment letter
3 were by negotiation with Food Fair. The lease was drawn
4 to reflect the terms and conditions in the commitment
5 letter. The commitment letter between Food Fair and
6 ourselves was always binding.

7 Q Mr. Kalus, you read the lease before you signed
8 it, did you not?

9 A Yes.

10 Q There were some deletions made throughout this
11 lease agreement in black, I guess they were black. Who
12 made the actual deletions, Food Fair?

13 A Food Fair.

14 Q And, you initialled them, or recognized them?

15 A Right.

16 Q You say, if I understand your discussion about
17 these plans that have been submitted into evidence, you
18 have two structural design plans; one, I guess, S-1 and
19 S-2, and you say on those structural sheets there's no
20 mention of roofing materials, is that correct?

21 A That's correct.

22 Q But, you say, on the architectural sheet there
23 is a roof plan?

1 A. Right.

2 Q. And, the roof -- the top of the roof, so we
3 won't get into any arguments, was laid or prepared or
4 placed there by your company or by agents of you or
5 your company, is that correct, Kalus Construction, or
6 whoever built the building?

7 Let me rephrase the question.

8 A. I wish you would.

9 Q. Who laid the roofing, the top of the roof?

10 A. Virginia Roofing -- Virginia Roofers.

11 Q. Were they acting as your agents?

12 A. As my subcontractor.

13 Q. After they laid that roof, they gave you a bond
14 for 20 years?

15 A. That's correct.

16 Q. And, you, in accordance with your understanding
17 of the lease agreement and your obligations -- Well,
18 all right. Let me rephrase that.

19 Was it your normal course of business to get
20 a 20 year bond, or was this in accordance with your
21 understanding with Food Fair?

22 A. This was a Food Fair warranty, 20 year bond.

23 Q. And, you agreed to do this?

1 A. That's correct.

2 Q. And, you met that obligation?

3 A. I met that obligation.

4 Q. Who, in your understanding in the maintenance
5 of that roof from the time you entered into this lease,
6 at the time of 1960, until the time these problems first
7 developed in 1975 or so, who was responsible for the
8 maintenance of that roof, Virginia Roofing?

9 A. No, Food Fair.

10 Q. Food Fair was?

11 A. And/or their subleasee.

12 Q. That was your understanding, is that correct?

13 A. Not only was it my understanding, but we never
14 had one call from Food Fair for all the years that Food
15 Fair occupied the store.

16 Q. So, between 1960 and 1975, really, until the
17 problem developed with the airconditioner?

18 A. That was the first.

19 Q. Between 1960, there was no problem, you have
20 never been aware of any leaks in that roof?

21 A. To the best of my knowledge, that's correct.

22 Q. As we look at the roof of that store is not
23 one level surface, is that correct?

1 A. Yes.

2 Q. Are there two tiers?

3 A. Two tiers, correct.

4 Q. And, if you look at the front door of that store,
5 the right-hand portion of that building is the upper tier,
6 is that fair to say?

7 A. Part of it is, right. That's correct.

8 Q. And, it is also fair to say that that upper
9 tier has far less surface area than the main, or lower,
10 tier?

11 A. That's correct.

12 Q. And, as I understand, or I think I understand
13 what your contention is here today, there came a time
14 when an additional airconditioning or refrigeration unit
15 was placed on the roof of your store, is that correct?

16 A. That's correct.

17 Q. Where was that airconditioner or air-refrigera-
18 tion unit placed, on the upper or lower?

19 A. Upper tier.

20 Q. Where did the leaks result in that first
21 occurrence?

22 A. They were leaks in the upper tier for the most
23 part, but there were also some leaks in the lower tier.

1 Q At that time?

2 A At that time.

3 Q Now, is it your contention that the installation
4 of that machinery caused the leaks in the lower portion
5 of that roof?

6 A Well, if you'll let me go one step farther, I
7 would say not just the installation of the machinery, but
8 the way that the workmen that installed it. I went up
9 there, if you'll let me finish, I went up to look at that
10 leak when water was coming out of everything in the
11 building.

12 I found chunks of terra cotta coping, pieces
13 of block, thrown all over the roof.

14 Q What has that got to do with anything?

15 A There are leaks in other parts of the roof. You
16 take a piece of terra cotta coping, it probably weighs
17 ten pounds.

18 Q Do you know that that was thrown on the roof?

19 A I personally picked pieces up and threw it over
20 the side of the roof to get it the hell off the roof.

21 Q You say you found five pieces today?

22 A Here's one of them.

23 Q What have they got to do with any leaks in the

1 roof, the fact that you found them on the roof itself?

2 A. They are still on the roof.

3 Q What does that have to do with any leaks? How
4 does a piece of terra cotta lying on the roof cause any
5 leaks?

6 A. Did you read the first sheet that everybody
7 was against admitting into evidence?

8 Q We still are. It's irrelevant.

9 Tell me, in your 26 years knowledge, would
10 a piece of terra cotta --

11 A. If you pick it up and drop it, it will punch
12 the roof deck.

13 Q That's fine. So, you are saying: If somebody
14 physically it and punches the roof, you will have a hole?

15 A. I just said somebody took it and threw it
16 around the roof. You don't have a piece of terra cotta
17 20 feet from where it was chopped off the wall and have
18 it walk there by itself.

19 Q Have you ever observed anyone up on the roof
20 of the structure throw terra cotta, personally, of your
21 own knowledge?

22 A. No.

23 Q The Virginia Roofers bill -- You have seen a copy

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1 of the bill of Virginia Roofers that was submitted for
2 their recent work, is that right?

3 A. I think somebody sent me a copy of the bill.
4 I know I've seen a copy for \$620.00 -- Here it is. I
5 don't know who sent it to me. I guess it was, probably,
6 came from Dart Drug to Food Fair to me because I have
7 never had any direct dealings with Dart Drug.

8 Q. As I understand it, though I don't have a copy
9 in front of me, but it indicates that they installed
10 fabric on the top of the roof as well as cement and
11 asphalt?

12 A. All it says is all repairs in accordance with
13 our contract, August 10, '76. \$620.00.

14 Q. I'm referring to the contract.

15 A. You have the contract? I don't know.

16 Q. What is plastic cement?

17 A. Plastic cement? It's a roofing cement.

18 Q. What is the consistency of it? I mean, is it
19 similar --

20 A. It's black, and it's sticky, and it's made like
21 tar.

22 Q. It doesn't look like normal cement that you
23 make sidewalks out of?

1 A. Oh, no. No.

2 Q. Since -- I'm sorry to go over this again. I
3 apologize, but between the time this lease was entered
4 into and the time -- or the first time you were made
5 aware of any leaks in the roof, was this occasion approxi-
6 mately 1975, when the airconditioning unit was installed?

7 A. That's correct.

8 Q. When you went up to observe in 1975, assuming
9 that that's the correct year, the roof and the leaks,
10 did you, yourself, observe any leaks in the main part of
11 the roof as opposed to the upper part? The lower part
12 of the roof as opposed to the upper part?

13 A. I think, at the time, it was pointed out to
14 me they had one or two little leaks in the flashing.

15 Q. Where?

16 A. I think in the front wall, along the front
17 wall, near the front door. And, I think one on the
18 back wall. I really don't remember. But, there were
19 one or two other little areas that showed some damage.

20 Q. In comparison that the leaks that you found
21 in and about the refrigeration unit, how would they
22 compare?

23 A. Minor.

1 Q How many did you find on the main roof?

2 A There could have been two, possibly three, I
3 just don't remember.

4 Q Now, let me make one other thing clear, as
5 a result --

6 THE COURT: Don't make things clear, just
7 ask the question.

8 BY MR. PIERSON:

9 Q As a result of your discoveries on the roof
10 on that occasion, it is a fact, is it not, that the
11 leaks on the occasion 1975 were repaired?

12 A They were not repaired right then. What they
13 did was --

14 Q Subsequently, they were repaired?

15 A Subsequently, I assume they were all repaired.
16 I have never been down there while there was a driving
17 rain storm. But, I know they came in and repaired. They
18 put high hats or pitchpockets around some of the pipes.
19 And, I found, later, I found one pitchpocket had been
20 repaired.

21 Q Was it at a later time repaired, to your
22 knowledge?

23 A Pardon?

1 Q At a later time?

2 A All the pitchpockets were filed, now.

3 Q From the time in which you were satisfied that
4 all repairs had been made to correct that leaking problem,
5 okay? Up until the time that this new problem arose,
6 were you aware of any leaks in the interim?

7 A I'm not sure there's a new problem. I think
8 the problem is a continuation of their old problem. Now,
9 no, nobody notified me.

10 Food Fair -- I forget the dates, but Food Fair,
11 like, in the recent months started sending us notices
12 that they were getting notices from Dart Drug.

13 Q Have you, of your own personal knowledge, or
14 did you have an opportunity to personally view, the leaks
15 for which Dart Drug was complaining in this recent action?

16 A I don't think so.

17 Q You were also familiar -- We've talked a lot
18 about paragraph 16 and 52 -- You are also familiar, are
19 you not, with paragraphs 21 and 22 of that lease agree-
20 ment which also talks about structural repairs? On
21 paragraph 21, specifically, to the middle of that paragraph,
22 beginning, "Tenant's obligation to make any repair here-
23 under shall at all times be limited to the making of

1 ordinary repairs, and shall not include any obligation
2 to make structural repair."?

3 A. Yeah.

4 Q You are also familiar with the following
5 paragraph 22 --

6 THE COURT: It's not necessary to do that.
7 I've read all that.

8 BY MR. PIERSON:

9 Q Directing your attention, then, to paragraph
10 52, with the language there, and you're familiar -- You're
11 aware I presume that that rider is only a rider to
12 paragraphs 16, 17 and 18 and not to paragraphs 21 and 22?

13 MR. WILKES: I object to that. I think the
14 language speaks for itself. And, the language says,
15 "Notwithstanding any provision..."

16 THE COURT: That's an argument.

17 MR. PIERSON: I have no further questions.

18 CROSS EXAMINATION

19 BY MR. GESCHICKTER:

20 Q Mr. Kalus, when was the airconditioner put on
21 the roof?

22 A. When was it put on the roof?

23 Q Yes, sir.

1 A. Excuse me, sir. To go back a little bit, on
2 July 31, '74 --

3 Q. Can you just tell us when the airconditioner --

4 A. I don't know.

5 It was sometime after July 31 of '74, that's
6 when they asked me to send the plan so they could make
7 their designs.

8 Q. So, it was sometime after July of '74, and some-
9 time before when?

10 A. Before the complaint they had a leak in the
11 roof, in 1975.

12 Q. So, you have no idea?

13 A. I have no idea. They never sent me the plans
14 as I requested so I could see what they were doing.

15 Q. Didn't you testify that you never had any
16 knowledge of leaks in this roof before this airconditioner
17 was put up there?

18 A. That's correct.

19 Q. You say, then, that before July 31 of 1974,
20 you never had any knowledge of any leaks to the roof,
21 is that correct?

22 A. That's correct.

23 MR. GESCHICKTER: I'd like this document marked.

1 That would be Defendant Dart's Exhibit 1.

2 (The document referred to was
3 marked Defendant Dart's Exhibit No.
4 1 for identification.)

5 MR. GESCHICKTER: And, this is Dart's Number
6 2 and Number 3 for identification.

7 (The documents referred to were
8 marked Defendant Dart's Exhibits
9 No. 2 and 3 for identification.)

10 BY MR. GESCHICKTER:

11 Q Can you tell me, sir, if you recognize this
12 document? It bears Kalus Construction Company letterhead
13 on Whitehead Court in Maryland. Is that your company?

14 A That's correct.

15 Q Do you know Marion Bernstein?

16 A She's the secretary of the office.

17 Q And, Store 551, Arlington, Virginia, that's
18 the store under discussion here, is that correct?

19 A That's correct.

20 Q And, does that letter say that there are leaks
21 in the roof in that store, and that they are Kalus
22 Construction Company's responsibility except the leak
23 over the trash room?

A That's what it says here, right. But, it's
the secretary of the office that wrote that.

1 MR. GESCHICKTER: I offer that as Defendants'
2 Exhibit No. 1, Defendant Dart's Exhibit No. 1.

3 MR. WILKES: Your Honor, please, if this
4 is offered for the purpose of mere impeachment of the
5 witness, in an attempt to impeach the witness's credibility,
6 I have no objection to it.

7 But, if it's offered of trying to modify the
8 terms of the lease by a signature of a secretary to Mr.
9 Kalus, I would object to it for that purpose.

10 THE COURT: I think it's being offered just
11 for impeachment, I would assume.

12 (The document marked Defendant
13 Dart's Exhibit No. 1 was
14 received in evidence.)

15 BY MR. GESCHICKTER:

16 Q Are you unaware of documents that go out from
17 your office by your secretary on your letterhead? You've
18 never seen this document before?

19 A Not to my knowledge.

20 Q Let me see Defendant's Exhibits No. 2 and 3.

21 I show you this document addressed to Morton
22 Kalus and Paul Burman, dated November 15, 1973, marked
23 as Defendant Dart's Exhibit 2. Do you recognize that
document?

1 A. No.

2 Q. Is that addressed to you?

3 A. Well, it's addressed to three people. At that
4 time, Burman wasn't even a partner.

5 Q. It's 1657 Whitehead Court. Is that your
6 address?

7 A. That's right.

8 Q. And, you say you never got it?

9 A. I just said I didn't see it.

10 Q. You've never seen this document?

11 A. No, sir. Now, Mrs. Calabrese, apparently, talked
12 to my secretary, between them, you know, they had a
13 conversation.

14 MR. GESCHICKTER: I offer that, Defendant's
15 Exhibit No. 3.

16 THE WITNESS: Let me say this to you: The roof
17 bond would cover any leaks in that roof.

18 BY MR. GESCHICKTER:

19 Q. I show you Defendant Dart's Exhibit No. 3 addressed to
20 Morton Kalus and Emanuel Kalus. Is he any relation to you?

21 A. A partner.

22 Q. Is he kin to you?

23 A. A cousin.

1 Q That's addressed to both of you. And, that's
2 the Whitehead address, also, is it not?

3 A That's correct.

4 Q Do you deny you ever got that document?

5 A I don't deny it, no.

6 Q Did you see it?

7 A Truthfully, I don't think I did.

8 Q What do you do with the records and letters
9 that come into your office, Mr. Kalus? How are they
10 handled?

11 A How are they handled?

12 Q Yes, sir. Do they ever cross your desk if
13 they are addressed to you?

14 A This could have been seen by my partner.

15 Q And, you and your partner never discuss the
16 problems in the properties that you say you manage
17 yourself?

18 A Yes, we do.

19 Q And, you never discussed a leak in the roof of
20 this store?

21 A To my knowledge, we never did.

22 Q So, these leaks went unheralded and unheeded,
23 is that correct?

1 A. At far as I was concerned, at this time, this
2 was not a responsibility.

3 Q. I didn't ask you whether or not it was your
4 responsibility.

5 A. I didn't see it, no, sir.

6 THE COURT: Is there anything in the lease
7 here that requires you to provide this bond?

8 THE WITNESS: No, sir. It's in the general
9 specifications that Food Fair lays out for you. It's
10 included on the plans. It calls for a 20 year bond.

11 MR. GESCHICKTER: I offer this letter, Defendant
12 Dart's Exhibit No. 3, Your Honor.

13 BY MR. GESCHICKTER:

14 Q. How do handle complaints that come into the
15 store, Mr. Kalus, or comes into the office?

16 A. If a complaint comes to me, for instance, if
17 I had spoken to this Mrs. Calabrese, or whatever her name
18 is from Food Fair, I would immediately double-check the
19 lease and find out if it's our obligation.

20 And, if, in my estimation, it wasn't, I would
21 have told her we wouldn't take care of it.

22 Q. If a complaint happens to cross your partner's
23 desk, or your secretary's desk, it's never brought to your

1 attention, right?

2 A. If it crosses my partner's desk, it may not
3 be brought to my attention. And, he would have done
4 the same thing I would have done. He would have told
5 them to fix it themselves; or, since there was a roof
6 bond involved, he would have told them to contact the
7 bonding company.

8 Q. What if it crosses your secretary's desk, would
9 she show it to anybody?

10 A. She should.

11 Q. Does she?

12 A. Not always.

13 Q. As far as letters your secretary writes, as
14 in Defendants' Exhibit 1, the January 2nd letter that
15 she wrote to Food Fair, would that letter from her never
16 cross anybody's desk?

17 A. Not necessarily, no, sir.

18 Q. Do you keep a file on each of these stores
19 for maintenance problems?

20 A. Yes.

21 Q. Do you ever review them?

22 A. I've been reviewing constantly through this
23 hearing, sir.

1 Q Do you files contain all the documents per-
2 taining to the store?

3 A They should.

4 Q Do they?

5 A I have not one of these letters in my file.

6 Q So, none of these letters were ever in your
7 maintenance file?

8 A No.

9 Q So, you've missed complaints up until this
10 particular complaint that we're in Court about here today?
11 You've missed all of the complaints about the roof on
12 this particular store?

13 A The roof is not mine to take care of.

14 Q I didn't ask you that, Mr. Kalus. I asked you
15 if you've missed all of the complaints about leaks in
16 this roof up until the leaks that we're here today about,
17 haven't you?

18 A I would think so.

19 Q I show you these pictures, Mr. Kalus. Can
20 you identify that picture which is Defendant Dart's
21 Exhibit No. 7?

22 A This is a picture of the right side of the
23 building taken from the parking lot.

1 Q Is that the canopy that you are talking about?

2 A It certainly is.

3 Q So, the Court can see the canopy.

4 All right, I show you Defendant Dart's Exhibit
5 No. 5, are those the front doors that you're talking
6 about?

7 A I'm not talking about the doors. I am talking
8 about this door jam right here that isn't even shown
9 in the picture the way you took the picture.

10 Q All right, and, Defendant Dart's Exhibit No. 6?

11 A That's the front door head-on. Take a look
12 at that door jam. You can see where it's been banged.
13 And, with the door closed, you can't see how it's beat-up.

14 Q This is the area where you've seen trucks
15 unloading?

16 A Yes, sir.

17 Q Would you show the Court where they go when
18 they unload?

19 A Trucks back in right beside the front door, or
20 they back in from the front, with their rear end right
21 across the top here, and right in the corner which doesn't
22 show here because he took it from so far.

23 There's a patch, and it looks like it was put

1 on by a shoemaker, out of plain tin, right in the corner.

2 Q That's the dent that you saw in the canopy
3 in the corner there?

4 A There's a piece, I'll repeat, from about two
5 feet in, about two feet in the front, there's a patch
6 on there out of plain tin, or --

7 Q Is that the dent that you're talking about?

8 A There's a dent here. You can see there's
9 another dent right there. You can't see because the
10 pictures were taken from so far.

11 And, I think if you look here, unless I'm
12 mistaken, that column's a little bent, too.

13 Q On what occasions did you see trucks in that
14 area?

15 A On what occasions?

16 Q Yes.

17 A Dates?

18 Q What trucks did you see there?

19 A I don't know dates.

20 Q What trucks did you see there?

21 A They were delivery trucks.

22 Q How many times have you seen delivery trucks
23 there?

1 A. On at least four occasions.

2 Q. And, in what years?

3 A. As late as two weeks ago, or as early as
4 two weeks ago.

5 Q. As far back as when?

6 A. Two years ago.

7 Q. Two years ago?

8 A. Uh-huh.

9 Q. 1974?

10 A. Right.

11 Q. '75?

12 A. Somewhere in there.

13 Q. Now, calling your attention to Defendant Dart's
14 Exhibit No. 7, will you show us where you saw the truck
15 two weeks ago?

16 A. Two weeks ago? It was parked right along
17 here with its back out towards Lee Highway, and the man
18 was unloading bread, and it was piling it.

19 I looked at the name of that truck. Wholesome
20 Bread, or whatever. He was loading it into a cart used
21 in a supermarket, and running it in the front door.

22 Q. Where is the front door in this picture?

23 A. Front door is right around the corner, right

1 here [indicating].

2 Q On the other side of the building as we're
3 looking at it?

4 A It's about ten feet, or eight feet in from
5 this corner of the building [indicating].

6 Q The time before that, where did you see the
7 truck unloading?

8 A At the same location.

9 Q Exactly the same? And, what was that truck
10 unloading?

11 A It was something very heavy because there were
12 three guys pushing it and skidding the cart across -- just
13 strikes me they were unloading at that time.

14 Q That truck was at the same spot?

15 A As I recall, that guy was backed in almost
16 resting against the front canopy.

17 Q Almost?

18 A On other occasions, I've seen them --

19 Q Wait a minute. That's two occasions. On the
20 third occasion, going back from the most recent, where
21 did you see the truck?

22 A At the same location.

23 Q Exactly the same?

1 A. At the corner. It might not have been backed
2 in this way [indicating]. It could have been pulled in
3 along side.

4 Q. What was he unloading?

5 A. I really don't know. They were cartons. They
6 were skidding them in on the same three by six or
7 three by eight.

8 Q. This is the door they would have gone in, on
9 Defendant's Exhibit No. 6?

10 A. The out doors. When they go in, they can't
11 go in the other.

12 Q. The first time you ever saw the truck unloading
13 where was he?

14 A. At the same location.

15 Q. Exactly the same?

16 A. When you say exactly the same --

17 Q. At the corner of the canopy? They always
18 go to that corner?

19 A. There's no place else to go unless they go to
20 the back. The reason they unload out there is that's
21 where they pile the stuff in the store.

22 Q. I don't want to know the reason they unload it.
23 I think that calls for an assumption on your part.

1 Now, were any of these Dart Drug delivery
2 trucks?

3 A. No, they weren't. I didn't say that. Dart
4 always comes out there and helps them unload.

5 Q. You said, if I recall correctly, that Virginia
6 Roofing sent you this proposal to repair the roof, that
7 they first sent that proposal to you, and you told them
8 to take it back and send it to Dart, is that correct?

9 A. I told them to send it to Mr. Goodman, who was,
10 I believe, Mr. Kabat's predecessor at Dart.

11 Q. And, so, you did see the proposal before
12 Virginia Roofing did the work, you just told them --

13 A. I saw exactly what I gave you.

14 Q. And, when you saw those trucks unloading, did
15 you have any conversation with anybody there at the
16 store?

17 THE COURT: Mr. Geschickter, I am not really
18 concerned.

19 BY MR. GESCHICKTER:

20 Q. One other question. Mr. Kalus, what is the
21 rental being paid you under this particular lease?

22 A. I think it's \$36,000.00.

23 MR. WILKES: The lease speaks for itself, if

1 Your Honor please.

2 THE COURT: It does. I don't see the materiality
3 in it.

4 MR. GESCHICKTER: Your Honor, I'll tie that
5 in in just a moment.

6 BY MR. GESCHICKTER:

7 Q Does the lease have the price in there?

8 A Pardon?

9 Q I assume the lease has the rental figure in
10 there?

11 A Yes.

12 Q What can you rent that store for now if you
13 weren't tied into that lease?

14 THE COURT: What does that have to do with it?

15 MR. GESCHICKTER: Because, if it please the
16 Court, I am going to ask Mr. Kalus if, in fact, he didn't
17 tell a member of the Dart staff that he was going to
18 break this lease one way or the other.

19 THE COURT: It doesn't make any difference
20 who's motivation is what. I am concerned to leave
21 the interpretation to the lease. Objection sustained.

22 MR. GESCHICKTER: I don't have any further
23 questions.

1 MR. WILKES: Mr. Kalus, step down. Mr.
2 Harold Harvey take the stand.

3 [Witness steps down.]

4 Whereupon,

5 HAROLD E. HARVEY,
6 a witness, was called for examination by counsel on
7 behalf of the Defendant Kalus, and, after having been
8 duly sworn, was examined and testified as follows:

9 BY MR. WILKES:

10 Q State your name, please?

11 A Harold E. Harvey.

12 Q Mr. Harvey, in 1948, you graduated from Texas
13 A & M with a Bachelor of Science in civil engineering
14 with structural engineering as your speciality, and,
15 thereafter, did graduate work at Johns Hopkins University,
16 isn't that correct, sir?

17 A That's correct.

18 Q And, you are a licensed structural engineer
19 in the Commonwealth of Virginia?

20 A I am.

21 Q And, in the District of Columbia, Maryland,
22 Delaware, Pennsylvania and New York?

23 A I am.

1 Q And, you've been practicing as a structural
2 engineer for the past 29 years continuously, is that
3 correct?

4 A That's correct.

5 Q And, you are the head structural engineer of
6 Bacharach Associates, is that correct.

7 A That's correct.

8 Q And, you've been with that firm for 14 years?

9 A Yes.

10 Q And, Mr. Harvey, have you reviewed the plans
11 which have been introduced as an exhibit in this case?

12 A Yes, I have.

13 Q Would you turn to the structural plans, please?

14 A [Witness complies.]

15 Q Do any part of these structural plans specify
16 the build-up roofing consisting of layers of tar paper,
17 with hot tar, with gravel on top?

18 A They do not.

19 MR. PIERSON: The plans speak for themselves.

20 THE COURT: I'll accept the interpretation of
21 an expert. Objection overruled.

22 BY MR. WILKES:

23 Q On the basis of your schooling, and on the basis

1 of your experience as a structural engineer, is it or
2 is it not common practice for a structural engineer
3 not to deal with the waterproof membrane to keep water
4 from coming into a building?

5 MR. PIERSON: For the record, I'll object to
6 that question as being irrelevant to the issue before
7 the Court.

8 THE COURT: This is a structural engineer to
9 deal with that phase of construction.

10 MR. WILKES: To deal with the preparation of
11 the structural plans.

12 THE COURT: Does a structural engineer ordinarily
13 prepare the plans for that part of the roof?

14 MR. WILKES: That is my question.

15 THE COURT: Objection overruled.

16 MR. GESCHICKTER: Note my objection.

17 THE WITNESS: Structural engineers do not con-
18 cern themselves with the built-up roof.

19 BY MR. WILKES:

20 Q Does a structural engineer concern himself
21 with sidewalks?

22 A He does not.

23 THE COURT: A structural engineer, I suppose,

1 concerns himself with the supporting members that would
2 bear the load, but not the substance of the roofing?

3 THE WITNESS: The membrane, that's correct.

4 BY MR. WILKES:

5 Q Mr. Harvey --

6 MR. GESCHICKTER: Your Honor, would you note
7 my objection for the record to his testimony about the
8 sidewalk, also.

9 THE COURT: It isn't determinative of the issue.

10 BY MR. WILKES:

11 Q Does built-up roofing consisting of successive
12 layers of tar paper, and hot tar, and with gravel on top,
13 is that structural or nonstructural?

14 A It is nonstructural.

15 Q Is a sidewalk out on the ground surrounding
16 a building structural or nonstructural?

17 A It is a nonstructural item.

18 MR. GESCHICKTER: Would you note my exception
19 to both those questions and answers, also?

20 THE COURT: Sure.

21 BY MR. WILKES:

22 Q You inspected the subject property, personally,
23 today?

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1 A Yes, I did.

2 Q In connection with that inspection, did you
3 observe any structural defects in the subject building?

4 A No, I did not.

5 Q Mr. Harvey, did you observe the airconditioning
6 equipment on the roof of the building?

7 A Yes, I did.

8 Q Did you observe the steel which was used to
9 support that mechanical equipment on the roof?

10 A Yes, I did observe it.

11 Q Those metal beams to support that mechanical
12 airconditioning equipment, is that structural or non-
13 structural?

14 A The beams are structural.

15 Q That's my question.

16 A Yes, sir.

17 MR. WILKES: No further questions, Your Honor.

18 CROSS EXAMINATION

19 BY MR. PIERSON:

20 Q Mr. Harvey, how many leases have you written?

21 A None.

22 Q How many leases have you participated in the
23 wording, of leases?

1 A. None.

2 Q I presume you went up on the roof today, is
3 that correct?

4 A. Yes, I did.

5 Q Did you observe the roof itself up there, the
6 entire roof?

7 A. Yes, I did.

8 Q Did you make it total? Did you walk the entire
9 roof?

10 A. Not the entire roof. I walked a portion of it.

11 Q What is the overall condition of that roof
12 right now as you observed it?

13 A. It is in a satisfactory condition today.

14 MR. PIERSON: I have no further questions.

15 CROSS EXAMINATION

16 BY MR. GESCHICKTER:

17 Q Just a couple, Mr. Harvey, as far as structural
18 engineering is concerned, you say you are not concerned
19 with the skin on that roof?

20 A. Only insofar as the weight that it contributes
21 to the structure underneath.

22 Q Then you are concerned with that?

23 A. Insofar as the weight of it.

1 Q If that roof isn't watertight, does it damage
2 the structure underneath?

3 A No, it does not.

4 Q It wouldn't have any damage to the structure
5 underneath?

6 A No permanent damage.

7 MR. GESCHICKTER: I don't have any other questions.

8 MR. WILKES: No further questions, Your Honor.

9 THE COURT: You may step down.

10 [Witness excused.]

11 THE COURT: Any further evidence?

12 MR. WILKES: No further evidence.

13 THE COURT: Gentlemen, do either of you wish
14 to introduce any evidence?

15 MR. GESCHICKTER: Yes, Mr. Kabat.

16 Whereupon,

17 RICHARD KABAT,

18 a witness, was called for examination by counsel on behalf
19 of Defendant Dart Drug Corporation, and, after having
20 been duly sworn, was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. GESCHICKTER:

23 Q Would you state your name, please, sir?

1 A. My name is Richard Kabat, K-a-b-a-t.

2 Q. And, are you affiliated with Dart Drug?

3 A. Yes, I am. I am general counsel of Dart Drug,
4 and secretary to the corporation.

5 Q. In the position of general counsel and secretary,
6 do problems concerning maintenance and defects in the
7 various Dart Drug stores go through your office?

8 A. Yes. I am also in charge of Dart's real
9 estate function in the sense of negotiating on leases,
10 and making sure that maintenance items which are the
11 landlord's responsibility are taken care of. So, any
12 maintenance items required in the store that would be
13 a landlord's responsibility would come to my office.

14 And, then, I would either have our own mainten-
15 ance crews take care of it, or I would put the landlord --
16 or my associate who works for me, would put the landlord
17 on notice to have it fixed.

18 Q. In this capacity, did you have occasion to
19 deal with Mr. Kalus and Food Fair in regard to leaks
20 in the store in question here, in this lease, leaks
21 in the roof?

22 A. Yes, I did.

23 Q. Did you have occasion to raise complaints about

1 leaks on this roof prior to 1975 when the airconditioning
2 unit was installed?

3 MR. WILKES: I object to that unless, insofar
4 as my client is concerned, unless that were communicated
5 to the landlord as distinguished from Food Fair.

6 MR. GESCHICKTER: Food Fair is a party to this
7 action.

8 THE COURT: Objection overruled.

9 BY MR. GESCHICKTER:

10 Q Have you had occasion to make complaints with
11 regard to leaks in the roof?

12 A I was not with Dart Drug prior to 1975.
13 However, my predecessor at Dart Drug has the same function
14 that I do prior to --

15 MR. WILKES: I object to any testimony with
16 respect to his predecessor which would be strictly hearsay.

17 BY MR. GESCHICKTER:

18 Q With regard to the correspondence and records
19 of Dart Drug, and let's deal specifically with the store
20 in question here, are you in charge of the general
21 bookkeeping practices as far as the records on maintenance
22 are concerned of the store?

23 A I am custodian of all the files regarding our

1 individual stores, and in those files are all of the correspon-
2 dence regarding maintenance of the stores.

3 Q And, is the correspondence relating to, and,
4 again, for the purposes of this trial, or this store, is
5 the correspondence with regards to maintenance on this
6 store kept in the general course of business? Is a copy
7 kept by Dart Drug in the files?

8 A Yes. At any time a letter is written to a
9 landlord in regards to a maintenance obligation, a copy
10 is preserved in our files.

11 Q And, does a person in your capacity with Dart
12 Drug supervise the keeping of those files?

13 A At all times. That is correct.

14 Q Have you had occasion to review the file as
15 far as this particular store is concerned?

16 A I have.

17 Q Have you noticed anything unusual or out-of-the-
18 ordinary with regard to the records that you found on
19 this store prior to your coming with Dart Drug?

20 MR. WILKES: I object. I think the records
21 will speak for themselves if they are, in fact, admissible.
22 But, I don't know which records he's talking about.

23 MR. GESCHICKTER: I submit that the records kept

1 in the normal course of business would be admissible,
2 and I am trying to show that these records were kept
3 in the normal course of business, and that --

4 THE COURT: You're going through a lot of effort
5 to cover something that has already been introduced. We
6 already have correspondence that you've put in through
7 your cross examination.

8 MR. GESCHICKTER:

9 Q Let me ask another question. I'll elicit another
10 objection, but, Mr. Kabat, were the leaks that you
11 complained of prior to 1975 fixed?

12 MR. WILKES: I object to it.

13 THE COURT: What is the purpose of that? What
14 is the relevancy of that?

15 THE GESCHICKTER: To show, Your Honor, that
16 somebody fixed them. I am going to ask him if Dart Drug
17 fixed them. If Dart Drug didn't, and the roof was fixed,
18 now, somebody fixed it.

19 THE COURT: What difference does it make who
20 fixed it?

21 MR. GESCHICKTER: Because Mr. Kalus has testified
22 as far as he knows no action was taken by Kalus, and
23 he wasn't even aware of those letters of complaint and

1 correspondence from his office. Now, if Dart Drug didn't
2 fix the roof, either Food Fair or Kalus Construction
3 fixed the roof. That's my argument.

4 THE COURT: I don't really think it makes any
5 difference who fixed it. Somebody operated under a
6 misapprehension of what the law was, or somebody got
7 good-hearted and did something he didn't have to do.
8 That doesn't bind him forever.

9 I am supposed to construe this lease from hereon
10 forward, but I can't do anything about what happened in
11 the past, and I don't think the parties paint themselves
12 in a corner by what they did in the past.

13 MR. GESCHICKTER: I have no further questions
14 in that regard.

15 MR. WILKES: No questions.

16 BY MR. GESCHICKTER:

17 Q Mr. Kabat, did there come a time after the
18 airconditioning on the roof was installed when the roof
19 leaked?

20 A Yes, right after the airconditioning was
21 installed there were leaks in the upper part of the
22 roof. I understand there are two roofs there. There
23 is the upper part which, if you were standing in the

1 low parking lot, looking at the front of the store, on
2 the right the roof is higher than it is on the main part
3 of the store.

4 There are two levels. The roof is in two
5 separate roofs, in essence. And, the upper part is where
6 the airconditioning was installed by Dart.

7 And, right after that, some leaks did occur.

8 MR. WILKES: If Your Honor please, I am confused
9 with respect to whether or not this witness is testifying
10 as to what he knows of his own knowledge, or whether
11 he's testifying as to hearsay.

12 It's my understanding he's only been with the
13 company about a year-and-a-half.

14 THE COURT: 1975, he said. And, as I understood,
15 that was the period when these leaks occurred.

16 THE WITNESS: If I can clarify --

17 THE COURT: Do you have personal knowledge of
18 this situation?

19 THE WITNESS: I have personal knowledge of
20 the correspondence in the file.

21 THE COURT: If it doesn't relate back to prior
22 to your tenure, then objection is sustained.
23

1 BY MR. GESCHICKTER:

2 Q Can you draw for us the general configuration
3 of the roof on that piece of paper?

4 A [Witness complies.]

5 What I've done here is make a little sketch
6 if you were standing in the parking lot, looking at the
7 front doors of the store.

8 THE COURT: Is there a front door facing the
9 parking lot? My recollection is the front door is on
10 Lee Highway.

11 THE WITNESS: Excuse me. I mean Lee Highway.

12 THE COURT: There is no front door facing --

13 THE WITNESS: Facing the front doors of the
14 store, the roof to your right, as you face the front
15 door, is higher at one point than is the main body of
16 the roof.

17 On top of this upper portion of the roof is
18 where the airconditioning was installed by Dart Drug,
19 and up at this point [indicating], after this aircon-
20 ditioning was installed, there were some roof leaks.

21 There was correspondence from Mr. Kalus to
22 Food Fair which, in turn, came to Dart complaining about
23 the manner in which that airconditioner was installed.

1 BY MR. GESCHICKTER:

2 Q Did Dart fix that area?

3 A Subsequently, Dart Drug went and did some
4 additional --

5 MR. WILKES: I am going to object unless this
6 man knows of his own knowledge that Dart did indeed --

7 THE COURT: We are back to the same point. Mr.
8 Kalus testified that Dart fixed it.

9 MR. GESCHICKTER: That is my recollection.

10 BY MR. GESCHICKTER:

11 Q The leaks which are the subject of the argument
12 now, will you show us where those leaks are?

13 A The leak which is the subject of the current
14 argument occurred on the lower portion of the roof, towards
15 the front of the store, over the portion where the front
16 doors of the store are.

17 These were the only leaks we had from the time
18 the airconditioning was put in until the leaks which are
19 the subject of the suit. There were no leaks in-between
20 that 1975 airconditioning repair and the leaks which are
21 the subject of this lawsuit.

22 Q I show you some pictures, and ask you are
23 these pictures of the interior of the store where the

1 leaks occurred?

2 MR. WILKES: May I see them?

3 MR. GESCHICKTER: I'll have them marked and
4 show them to you. I don't want to get into that if they
5 are not the right ones.

6 THE WITNESS: They are.

7 MR. GESCHICKTER: I offer those two pictures as
8 Defendant Dart's Exhibits 8 and 9, Your Honor.

9 (The pictures referred to were
10 marked Defendant Dart's Exhibits
No. 8 and 9 for identification.)

11 MR. GESCHICKTER: I don't have any other
12 questions of this witness.

13 THE COURT: All right.

14 Mr. Pierson, do you have questions?

15 CROSS EXAMINATION

16 BY MR. PIERSON:

17 Q Mr. Kabat, how much time elapsed between the
18 airconditioning problem, as we'll call it, and the newest
19 leak problem? When did these new leaks first become
20 apparent?

21 A The first leaks first became apparent approxi-
22 mately July 1976. And, the airconditioning problem, which
23 has been referred to, took place approximately in December

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1 1975.

2 Q When was this repair work done, the newest
3 repair work done?

4 A In August -- I think it was mid- to late-August,
5 1976.

6 Q Since August 1976 until the present, have you
7 had any leaks in that roof?

8 A No.

9 MR. PIERSON: I have no further questions.

10 THE COURT: Mr. Wilkes?

11 MR. WILKES: No further questions, Your Honor.

12 THE COURT: You may step down.

13 [Witness steps down.]

14 THE COURT: Any further evidence?

15 MR. GESCHICKTER: That's all I have, Your Honor.

16 THE COURT: Gentlemen, I don't think I need
17 any argument in the case. You've been arguing as you
18 went along.

19 In my view, what this lease means is ^{that} those
20 parts of the building ~~which~~ -- and its exterior appurtenances,
21 which are structural as opposed to decorative are the
22 responsibility of the owner, and that the technical
23 sense in which Mr. Harvey characterized it, does not

1 govern. I recognize that in the preparation of plans
2 and specifications for a builder, a structural engineer
3 would not concern himself with the skin of the roof,
4 and that would not be a part of the structural plan.

5 But, I do not think that lawyers and business-
6 men dealing with commercial leases construe that term
7 so narrowly.

8 If we were dealing with a roof other than a
9 flat roof, a pitched roof which has some visibility on
10 the outside, I would take that distinction to mean
11 that, if a leak developed in the roof, that was a
12 structural problem and the landlord would be responsible.

13 But, since a roof of that kind is visible
14 to the outside world, and, therefore, have a decorative
15 facet as opposed to a roof which was supposed to be of
16 a certain color and was stained and became discolored,
17 that would be a nonstructural roof problem and would be
18 the tenant's responsibility.

19 One can imagine a Spanish-type tile roof that
20 someone spilled paint on, or became discolored for some
21 other reason, the landlord wouldn't be responsible for
22 that. It would be a roof problem, but it wouldn't be
23 a structural roof problem.

1 But, if the roof began to leak, that would be
2 structural problem having to do with the roof. I think
3 the external fabric of this building is the landlord's
4 responsibility under this lease,

5 And, that he is responsible for this roof,
6 and he is responsible for the sidewalk. That is a matter
7 of structure.

8 And, I do not think that paragraph 52, which
9 is a rider, and does narrow the scope of 16, 17 and 18,
10 relieves the landlord of these exterior, structural
11 problems relating to the fabric of the building.

12 Now, that is limited by the fact that if any
13 part of this can be traced to the negligence of the
14 tenant or its employees, ^{or} ~~their~~ agents, the landlord is
15 exonerated from that whether it's structural or not,
16 and ^{then} ~~that~~ the tenant is responsible for that.

17 It does appear in the past there were leaks
18 in the roof which were caused by the negligence of the
19 tenant, but it appears that the tenant did, in fact,
20 repair those.

21 The landlord has the burden of showing, by a
22 preponderance of the evidence, it seems to me, because
23 it is an affirmative defense in this case that any particular

1 leak complained of is caused by the negligence of the
2 tenant.

3 He fails, in my view, to show that in this
4 case as to the leaks which are presently complained of,
5 not the past leaks.

6 Although there is a suspicion shown by the
7 fact that someone has apparently thrown coping tiles
8 around on the roof, and that could have done it, yet
9 the essential link of proximate cause is not shown here.

10 There is no way for me to conclude by a pre-
11 ponderance of the evidence that ~~the~~^{any} particular leaks/
12 complained of was^{caused} by a particular puncture made by the
13 ~~particular~~ tenant. Only the seed of suspicion is shown,
14 and that's not enough.

15 The landlord, I think, would have the burden
16 of showing that a particular leak that is complained
17 of was caused by the tenant's negligence. That, not
18 having been done, I would say that the leak complained
19 of here is the landlord's responsibility.

20 As far as the declaratory judgment in the
21 case is concerned, I will have to say that this particular
22 damage to the sidewalk,^{and} this particular damage to the
23 roof, is the landlord's responsibility.

1 As to the future, problems with this roof
2 and problems with the sidewalk are the landlord's
3 responsibility unless the landlord can carry the burden
4 of showing that those problems were caused by the
5 negligence of the tenant in which case they will be
6 the tenant's responsibility.

7 And, I am sorry to leave you with another
8 lawsuit for another day, but that appears to be where
9 that rests.

10 Will you prepare an order on that, Mr. Geschickter?

11 MR. GESCHICKTER: Yes.

12 MR. WILKES: Exception, if Your Honor please.

13 THE COURT: Court is recessed.

14 (Whereupon, at 6:00 o'clock p.m., the hearing
15 in the above matter was concluded.)
16 -----

17 CERTIFICATE OF REPORTER

18 I, Dianne Stewart Kubota, do hereby certify that
19 I took the stenographic notes of the foregoing testimony
20 and reduced the same to typewriting; that the foregoing
21 is a true record of the testimony given by said witnesses;
22 that I am neither related to nor employed by any of the
23 parties to the action in which this testimony was taken;

1 and further, that I am not a relative or employee of any
2 attorney or counsel employed by the parties hereto,
3 nor financially interested in the action.
4

5 *Dominic Stewart Kubota*
6 Court Reporter
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This Agreement, made and entered into this ^{29th} day of August

, 1960

by and between MORTON E. KALUS, EMANUEL S. KALUS and
PAUL I. BURMAN

DEFENDANT
KALUS EXH. #2

(hereinafter sometimes referred to as Landlord and sometimes referred to as "it"), party of the first part, and VIRGINIA SUPER FOOD FAIR STORES, INC.

a corporation of the State of Virginia

having offices at No. 2223 East Allegheny Avenue, Philadelphia, Pennsylvania.
(hereinafter sometimes referred to as "Tenant" and sometimes referred to as "it"), party of the second part.

WITNESSETH: That Landlord does hereby let unto Tenant, and Tenant does hereby hire from Landlord, premises located at

South side of Lee Highway and North Harrison
Street, Arlington, Virginia

as outlined in red on the sketch, annexed hereto, made a part hereof and marked Schedule "A" together with the building to be erected thereon by Landlord as hereinafter set forth, (said building being hereinafter sometimes referred to as "Building" and said premises and any building and any improvements now or hereafter erected thereon being hereinafter sometimes referred to as "Demised Premises" or "Premises") and together with the right to use the premises outlined in yellow on Schedule "A" and marked "Parking Area", ~~for a term of 20 years, commencing as hereinafter provided on the following terms, covenants and conditions:~~

mezza-
nine

1. Landlord agrees to erect, at its own cost and expense, upon Demised Premises at the location outlined in red on Schedule "A" annexed hereto, Building containing at least 19,162 square feet on the street level floor, with a ~~basement~~ of at least 2,000 square feet ~~(below ground level)~~. Said Building and Parking Area shall be constructed in accordance with the plans and specifications to be prepared by Landlord and to be approved, in writing, by Landlord and Tenant and to be initialed by the parties hereto. ~~The Building shall be substantially similar to the Fairlee Supermarket building located at 2223 East Allegheny Avenue, Philadelphia, Pennsylvania.~~

A general synopsis of said proposed plans and specifications is annexed hereto, made a part hereof and marked Schedule "B", it being agreed that the final plans and specifications will embody substantially the items set forth in said general synopsis.

2. Landlord covenants and agrees that immediately upon written approval by Landlord and Tenant of plans and specifications for Building and the Parking Area, Landlord will apply to all municipal, federal and other governmental agencies having jurisdiction for permission to erect Building and to make all the improvements required by this Lease, and Landlord shall proceed diligently with said applications for said permits. Tenant agrees to cooperate with Landlord and to furnish Landlord with all necessary information and data in its possession required in connection with such applications. Landlord covenants and agrees to proceed with diligence to the completion of the construction of Building and the other improvements to be erected and performed by Landlord hereunder. If the said Building is not commenced ~~within~~ by JAN. 1, 1961 ~~or is not completed ready for use and occupancy by Tenant and possession thereof actually delivered to Tenant~~

For \$1.00 and other good and valuable consideration, title and interest in and to the foregoing lease is hereby assigned to Fairlee, Incorporated, a Virginia Corporation.
Given under our hands this of , 1961.

Morton E. Kalus, Emanuel S. Kalus,

Paul I. Burman. *Morton E. Kalus*
Emanuel S. Kalus

JEG

by Dec 31, 1961

[REDACTED] (barring unavoidable delays arising from strikes affecting construction generally in or about [REDACTED], or barring unavoidable delays in procuring materials, the availability of which is restricted by governmental action, Landlord agreeing that it will advise Tenant, in writing, of lack of any restricted materials which is delaying the construction or completion thereof, affording Tenant an opportunity to procure at Landlord's cost and expense any such materials, Landlord agreeing to accept and pay the costs of any material so procured or furnished by Tenant for said purposes), Tenant shall have the right, at any time thereafter so long as the construction of Building has not been commenced or Building and Parking Area have not been completed within the time hereinabove set forth, to (a) terminate this Lease by giving Landlord ten (10) days' written notice, and thereupon Tenant shall be relieved and released of all its obligations hereunder as if this Agreement had never been drawn; or (b) extend Landlord's time for completion thereof and delivery of possession to Tenant. If Tenant terminates this Lease pursuant to this Paragraph 2, or any other provision of this Lease, the Landlord agrees it will not, for a period of three (3) years after such termination, permit, suffer or consent to the use of any portion of Shopping Center, of which Demised Premises is a part, as a supermarket; and this clause shall be self-operative and no further instrument shall be required of Landlord to make same effective. In confirmation thereof, Landlord shall execute any instrument that Tenant may request, hereby constituting and appointing Tenant the Landlord's attorney-in-fact to execute any such instrument for and on behalf of Landlord. SEE RIDER ATTACHED PARAGRAPH 49

3. Landlord covenants and agrees that construction of the Building and the Parking Area, and any other work to be performed by Landlord hereunder at any time, shall be undertaken, performed and completed in a good and workmanlike manner and in full compliance with all provisions of all federal, state and local authorities having jurisdiction.

4. For the purposes of this Agreement, the Building shall be deemed to have been completed when Landlord furnishes Tenant with written proof that:

- (a) All the work provided for by the plans and specifications mentioned in Paragraph 1 hereof has been fully completed in accordance therewith; (by virtue of certificates required under (b) hereof)
- (b) The certificate of the architects of both the Landlord and Tenant that the plans and specifications have been complied with are issued to Landlord and notice thereof given to Tenant;
- (c) A Certificate of Occupancy is issued by the governmental agency in authority, if required
- (d) Building and Parking Area shall have been examined and accepted by the municipal or other governmental authorities having jurisdiction.
- (e) All streets and highways shown on Schedule A shall have been fully opened as public streets with public sewers installed therein and shall have been fully paved.

(f) [REDACTED] (part) referred to in Paragraph 29 hereof shall have been completed, ready for occupancy as therein provided, under leases providing for occupancy and opening of business by such other tenants and payment of [REDACTED] by such other tenants no later than the commencement date of this lease, and sufficient proof thereof shall have been given to Tenant [REDACTED]

5. The Certificate of Occupancy, if required, referred to in Paragraph 4 (c) hereof at the time of the completion of Building by Landlord shall authorize the use of the Demised Premises for supermarket and for general retail purposes. Landlord warrants that at the time of the completion of Building, the street level floor of the Demised Premises when completed may be occupied by Tenant as a supermarket and for the sale, storage and processing of items sold in such supermarket, that the [REDACTED] mezzanine of Demised Premises may be used for the storage and processing of items sold in such supermarket, and that Building will comply with all provisions of all Federal, State and Municipal Governments.

6. Tenant agrees to pay, and Landlord agrees to accept, as rental for each lease year (as hereinafter defined) of this Lease the sums hereinafter set forth in this paragraph; provided, however, that for and with respect to each full lease year, Tenant shall pay a minimum annual rental of \$36,850

Said rental shall be payable as follows:—On the first day of each month, in advance, Tenant shall pay the sum of \$3,070.83 representing one-twelfth of the said minimum annual rental. On or before the tenth day after the expiration of each three-month quarterly period of each lease year, Tenant shall deliver to Landlord a statement certified by an executive officer indicating the amount of gross sales during the preceding quarterly period, ~~the first~~ ~~quarterly statement shall be delivered to Landlord during the first month of the first lease year.~~ Landlord shall have the right to inspect, audit and verify the Tenant's permanent books of account and records of gross sales relating to Demised Premises only at Tenant's office in the City of Philadelphia, at reasonable times during the course of each lease year, upon notice, but not more often than twice in any such lease year. If, during but before the expiration of any such lease year, the said gross sales exceed \$2,948,000.00, then 1/4 % of such excess gross sales

~~shall be paid to Landlord.~~ accrued to the end of each quarterly period of said lease year, shall be paid by Tenant to Landlord at the time of and together with delivery of such quarterly statement. Any claim by Landlord for revision of any statement of gross sales which is not made to Tenant within thirty (30) days after the date when such statement of gross sales is mailed or delivered to the Landlord shall be deemed and hereby is waived by the Landlord. Landlord agrees to hold in confidence all gross sales figures and other information obtained from Tenant's records. It is understood that Tenant makes no representation or warranty in anywise in regard to gross sales or excess rentals.

For the purposes of this Agreement "gross sales" shall mean the selling price of all goods, wares and merchandise sold in, upon or from any part of the Demised Premises by the Tenant or any licensee of Tenant, at retail, on credit or any other terms, without any deduction or allowances except that the following shall not be included in gross sales and shall be deducted therefrom:

- (a) Returns or refunds, or credits received in settlement of claims for loss or damage to goods, wares or merchandise.
- (b) All sales taxes, excise taxes, gross receipts taxes and similar taxes, whether imposed under any existing or future rules, regulations, laws or ordinances.
- (c) Any transfer of goods, wares or merchandise from the Demised Premises to any other store or warehouse in the chain of stores operated by Tenant or its affiliates.
- (d) Any delivery of goods, wares or merchandise from Demised Premises to any manufacturers or suppliers thereof, for any purpose except a sale.
- (e) All receipts from vending machines, weighing machines, stamp machines, telephones, and the like, except such portion thereof as may be retained by Tenant.
- (f) All sales to employees made at a discount.
SEE RIDER ATTACHED PARAGRAPH 41

The term "lease year" as used above shall mean a period of twelve (12) calendar months commencing on any anniversary date of the commencement of the term of this lease. The "first lease year" as used above shall mean a period of twelve (12) calendar months commencing on the commencement date of the term hereof as defined in Paragraph 7 hereof.

7. The commencement date of the original term of this lease shall be the earlier of (a) the first day of the month following the expiration of sixty (60) days after completion of the Building as defined in Paragraph 4 hereof, or (b) then first day of the month following the opening of demised premises for business with the public. See Rider Paragraph 5

8. Tenant may enter upon the Demised Premises during the course of construction of Building, to do such work in the Demised Premises as it deems necessary, and may commence business operations thereon prior to the commencement date of the term hereof (as defined in Paragraph 7 hereof).

Tenant's taking of possession and/or commencement of business operations or payment of any rentals or other sums under any provision of this lease shall not relieve or release Landlord from any obligations imposed on Landlord under this Lease, and shall not be deemed a waiver of any such obligations imposed upon Landlord under this Lease, or an acceptance by Tenant of Building as fully completed, or cause the term hereof to begin or the rent hereunder to accrue prior to the time herein mentioned as the commencement date of the term. ~~_____~~
~~_____~~

~~_____~~ During such interim period both parties shall be governed by all other provisions of this lease, it being understood and agreed, however, that the term of this lease for the purpose of any renewal options or any other provisions measured by the term shall be deemed to commence on the date fixed for the commencement of the term as defined in Paragraph 7 hereof.

SEE RIDER PARAGRAPH 53

9. Tenant is herewith given the option to renew the term of this lease for an additional period of five (5) years commencing upon the expiration of the original term hereof under the same terms and conditions as are set forth herein for the original term hereof; if Tenant decides to exercise this option, it shall give Landlord written notice of its said intention not later than ~~_____~~ months preceding the termination of the original term hereof. This five-year period is sometimes hereinafter referred to as the "First Renewal Period." six (6)

SEE RIDER PARAGRAPH 50

10. Tenant is herewith given the further option to renew the term of this lease for an additional period of five (5) years commencing upon the expiration of the First Renewal Period, under the same terms and condition as are herein set forth for the original term hereof; if Tenant decides to exercise this option, it shall give Landlord written notice of its said intention not later than ~~_____~~ months preceding the termination of the First Renewal Period. This five-year period is sometimes hereinafter referred to as the "Second Renewal Period." six (6)

SEE RIDER ATTACHED PARAGRAPH 50

11. Tenant is herewith given the further option to renew the term of this lease for an additional period of five (5) years commencing upon the expiration of the Second Renewal Period, under the same terms and conditions as are herein set forth for the original term hereof; if Tenant decides to exercise this option, it shall give Landlord written notice of its said intention not later than ~~_____~~ months preceding the termination of the Second Renewal Period. This five-year period is sometimes hereinafter referred to as the "Third Renewal Period." six (6)

SEE RIDER ATTACHED PARAGRAPH 50

12. Tenant is herewith given the further option to renew the term of this lease for an additional period of five (5) years commencing upon the expiration of the Third Renewal Period, under the same terms and conditions as are herein set forth for the original term hereof; if Tenant decides to exercise this option, it shall give Landlord written notice of its said intention not later than ~~_____~~ months preceding the termination of the Third Renewal Period. This five-year period is sometimes hereinafter referred to as the "Fourth Renewal Period." six (6)

SEE RIDER ATTACHED PARAGRAPH 50

13. Landlord covenants and agrees that Tenant may use the Demised Premises for any lawful purposes, including, but not limited to all of the following: the sale and marketing of groceries, meats, seafoods, fruits, produce, poultry, vegetables, delicatessen, dairy products, baked goods, beverages, food products of all kinds, pharmaceuticals, cosmetics, toiletries, drugs which can be sold without the presence of a registered pharmacist, soap powders, shampoos, babies' needs, books, magazines, kitchen and household supplies, beer for off-premises consumption and wine for off-premises consumption, (if beer license includes the sale of wine, and if Tenant procures license therefor), and other articles sold in any supermarket at any time during the term of this lease, and for the sale, storage, warehousing and processing of said items in the basement of the Demised Premises and the incidental storage and processing of said items on the first floor of the Demised Premises. If at any time after the execution hereof, it shall become unlawful to use any part of Demised Premises for food merchandising purposes as ordinarily conducted in supermarkets of Tenant or any of its affiliates at said time, then, and in that event, Tenant shall have the right to declare this lease to be at an end and for nothing holden, on giving written notice thereof to Landlord, and in such event, both parties shall be relieved of all further obligations hereunder except obligations accruing prior to said termination.

14. Landlord covenants that the Demised Premises, [REDACTED] and Parking Area during the term hereof will be free and clear of all liens, encroachments, restrictions, encumbrances, mortgages, judgments and claims of any kind whatsoever which may be prior in lien to the lien of this Lease, except a [REDACTED] mortgage, which is at all times held by so-called "Public Institutions" such as a bank, savings institution, cemetery, annuity, trust or retirement fund, insurance company or a recognized financial institution (such [REDACTED] mortgage being hereinafter referred to as "Permanent Mortgage") provided that the conditions hereinafter set forth in this paragraph with respect to subordination of this Lease are agreed to by any holder of said Permanent Mortgage. Landlord agrees to pay all installments of interest and principal due or to grow due on said Permanent Mortgage and to maintain same in good standing without default. This lease shall, without the necessity of the execution of any further instrument, be deemed subordinate to said Permanent Mortgage and Tenant agrees to execute and deliver to the holder of said Permanent Mortgage any instrument of subordination reasonably requested by such mortgagee; provided, however, that said subordination of this lease to Permanent Mortgage is conditioned upon the following provisions against the disturbance of the possession of Tenant:

- (a) So long as Tenant continues to pay the rent as in this lease reserved and otherwise complies with the terms and provisions of this lease, the right of possession of Tenant to Demised Premises and the use of Parking Area and the terms and provisions of this lease otherwise shall not be affected or disturbed by Permanent Mortgagee in the exercise of any of its rights under the said Permanent Mortgage, or the bond or debt secured thereby, or otherwise by law provided.
- (b) In the event that Permanent Mortgagee comes into possession of or ownership of the title of said Demised Premises and/or Parking Area by foreclosure of the said Permanent Mortgage, or by proceedings on the said bond, or otherwise, this lease shall not be terminated by said foreclosure or any of said proceedings.
- (c) In the event that said Demised Premises and/or Parking Area are sold or otherwise disposed of pursuant to any right or any power contained in the said Permanent Mortgage or the said bond, or as a result of proceedings thereon, or as otherwise authorized by law the purchaser of said Demised Premises and/or Parking Area at such sale, or any person acquiring title through or by virtue of said sale, shall take title subject to this lease.
- (d) If any building upon the Demised Premises is damaged or destroyed by fire or other casualty, for which under any of the insurance policies the loss is payable to the Permanent Mortgagee, Permanent Mortgagee agrees that such insurance funds, if and when payable to it, will be made available for the purpose of repair or rebuilding of the Demised Premises, as provided in this lease.
- (e) Permanent Mortgagee will agree that Tenant shall be given at least ten (10) days advance written notice of any default under Permanent Mortgage, and Tenant shall have the right to cure any such default and to deduct the cost and expense incurred by reason thereof from any sums due under this Lease.
- (f) This agreement shall be binding upon and inure to the benefit of said Permanent Mortgagee, Landlord and Tenant, and their respective successors and assigns.

Tenant

15. [REDACTED] agrees to pay all real estate taxes, real estate assessments, and any and all other governmental charges, assessments or taxes payable in respect to the Demised Premises, Shopping Center and/or Parking Area or any part thereof, and in default thereof, [REDACTED] shall have the right to pay the same, and the amount so paid shall be payable by [REDACTED] on demand [REDACTED] and [REDACTED] may [REDACTED] the amount so paid [REDACTED] any rents [REDACTED]

add 1

Landlord
Tenant to Landlord

SEE RIDERS PARAGRAPHS 51 and 54

16. Landlord shall, from time to time, at its own cost and expense, maintain and keep in good repair, the outside walls, roof and all other outer portions of the Demised Premises, [REDACTED]

Landlord shall also promptly execute and comply with all statutes, ordinances, rules, orders, regulations and requirements of the Federal, State and Municipal Governments and of any and all their departments and bureaus and of the Board of Fire Underwriters and Board of Health applicable to the Building, Demised Premises, appurtenances thereto and all facilities servicing Demised Premises. Landlord also covenants and

as may be necessary agrees that it will from time to time at its own cost and expense, make all structural repairs to Building, and repair any damage to any portion of the interior of Building resulting from Landlord's failure to repair and/or maintain the outer portions of Building, including, without limitation, damage to the interior arising from defective construction or maintenance of other portions of Building, damage to the interior and exterior of Building arising from defective workmanship in the original construction and damage arising from the settling of the Building and the laying of the concrete foundations and floors. If the Landlord shall fail, neglect or refuse to keep or place in repair said outside walls, roof or other outer portions, or fail to repair any interior damage arising from failure to repair or maintain other portions, as aforesaid, or fail to comply with any of the aforesaid statutes, ordinances, etc., or fail to make any repairs required to be made by Landlord under any of the provisions of this lease, Tenant shall have the right to make such repairs and comply with said statutes, ordinances, etc., and the cost thereof shall be payable by Landlord to Tenant on demand

and Tenant may deduct or retain the amount so paid out of any rents (minimum and percentage rentals) or other sums that may then be due or that may thereafter become due hereunder. In the event of an emergency requiring immediate action i.e., fire, water seepage, sewer back-up, cessation or interruption of any facility servicing Demised Premises, and the like (hereinafter called "Emergency"), Tenant may make such repairs at Landlord's expense, prior to giving any written notice to Landlord; provided, however, that Tenant notifies Landlord in writing within three (3) business days after the expiration of the Emergency.

SEE RIDER ATTACHED 52

17. Landlord covenants that the heating plant and equipment to be installed in the Building on Demised Premises will be, at the commencement of the term, in good working order capable of producing temperature in the Building on Demised Premises of at least 70° Fahrenheit at 0° outside and will be in compliance with all orders, regulations and requirements of the Federal, State, and Municipal Governments and of any and all of their departments and bureaus. Landlord agrees that it will at all times during the of the term hereof, at its own cost and expense, keep said heating plant and equipment in good order and make any and all necessary repairs to and replacements thereto. If Landlord fails to make said repairs or replacements, Tenant shall have the right to make such repairs or replacements and the cost thereof shall be payable by Landlord to Tenant on demand and Tenant may deduct or retain the amount so paid out of any rents (minimum and percentage rentals) or other sums that may then be due or that may thereafter become due hereunder. In the event of Emergency, Tenant may make such repairs at Landlord's expense, prior to giving any written notice to Landlord; provided, however, that Tenant notifies Landlord in writing, within three (3) business days after the expiration of the Emergency.

SEE RIDER PARAGRAPH 52

18. Landlord covenants that the storage boxes, electrical, sprinkler, plumbing and sewerage systems, air-conditioning systems and ducts and other mechanical installations and facilities installed or to be installed in Building on Demised Premises or servicing Demised Premises will be, at the commencement of the term, in good working order, and will be in compliance with all orders, regulations and requirements of the Federal, State, and Municipal Governments and of any and all their departments and bureaus. Landlord further agrees that it will at all times during the of the term hereof, at its own cost and expense, make any repairs or replacements thereto. If Landlord fails to make said repairs or replacements, Tenant shall have the right to make such repairs and replacements and the cost thereof shall be payable by Landlord to Tenant on demand and Tenant may deduct or retain the amount so paid out of any rents (minimum and percentage rentals) or other sums that may then be due or that may thereafter become due hereunder. In the event of Emergency, Tenant may make such repairs at Landlord's expense, prior to giving any written notice to Landlord; provided, however, that Tenant notifies Landlord in writing, within three (3) business days after the expiration of the Emergency.

SEE RIDER PARAGRAPH 52

19. Landlord warrants that the Demised Premises when completed may be occupied by Tenant as a supermarket of substantially the same type and operated in substantially the same manner as the supermarket now being operated by Food Fair at Severna Park, Maryland

with an unlimited number of employees therein. Landlord further warrants that the Demised Premises and the said supermarket therein as aforesaid, will, on the commencement date of the term of this lease, be in full compliance with all provisions of all Federal, State and Municipal authorities having jurisdiction, including, without limitation, all applicable municipal zoning building and licensing ordinances, rules and regulations. Landlord further warrants that Building shall not be deemed completed until Landlord has fully complied with all the provisions of this paragraph, and (if a license for supermarket operations is required) Landlord has delivered to Tenant certification from the appropriate licensing authority that such licenses will be issued to Tenant for the supermarket as aforesaid. Anything herein contained in this lease to the contrary notwithstanding, it is understood and agreed that this lease and any and all obligations on the part of Tenant hereunder is contingent and conditioned upon Landlord's full compliance with all the provisions of this paragraph.

20. Landlord agrees to install a separate water meter for Tenant at Landlord's own cost and expense. Tenant agrees to pay for all water, gas and electricity consumed by it on the Demised Premises. If Tenant shall fail, refuse or neglect to pay such water, gas and electricity charges, Landlord shall have the right to pay same and add the amount thereof to the rent which may be due and which may grow due hereunder.

21. Except as herein otherwise provided, Tenant shall keep the interior of the Demised Premises in tenantable repair, at its own cost and expense, and at the end or other expiration of the term hereof shall deliver up the Demised Premises in substantially as good a condition as they are at the beginning of the term hereof, damage by reasonable wear and tear, ~~except as herein otherwise provided~~ excepted. Tenant shall also promptly execute and comply with all statutes, ordinances, rules, orders, regulations and requirements of the Federal, State and Municipal Governments and of any and all their departments and bureaus and of the Board of Fire Underwriters and Board of Health; provided, nevertheless, that same are applicable solely to Tenant's use of the Demised Premises. Tenant's obligation to make any repairs hereunder shall at all times be limited to the making of ordinary repairs and shall not include any obligation to make structural repairs or repairs necessary to remedy damages caused by wear and tear, fire, war, civil riot and commotion, casualty, the elements, and acts beyond the control of the Tenant, whether or not such repairs shall be ordered by any Municipal, County, State, Federal or other governmental authority, all of which repairs shall be made by Landlord at Landlord's expense. Landlord agrees that at the commencement of and during the term of this Lease it will assign and transfer to Tenant any warranties, guarantees or other representations received by it from any parties who may have supplied Landlord with labor and/or materials with respect to any portion of Demised Premises which Tenant is required to repair and/or maintain pursuant to this Lease.

22. Tenant shall have the right to make such repairs, alterations, additions and improvements to the Demised Premises, (including alterations, additions and improvements to store fronts or in connection with the installation of Tenant's fixtures, facilities and equipment), as it may desire without the necessity of obtaining any prior consent thereto from Landlord, excepting, however, that Tenant shall not have the right to make any other structural repairs thereto unless and until the prior consent, in writing, is obtained, which consent Landlord agrees not to unreasonably withhold, or unless and until Landlord shall have failed to comply with the making of any structural repairs pursuant to any provisions of this lease. Nothing contained in this lease shall require Tenant to restore Demised Premises, at the expiration of the term of this lease, to the condition in which they were prior to any repairs or alterations, additions or improvements made by it pursuant to the terms hereof or with Landlord's consent.

23. Tenant shall have the right to paint or erect in, on or about the Demised Premises and Parking Area such signs as it shall in its discretion deem to its advantage, and to remove such sign or signs at any time during the term of this lease and/or at the expiration thereof.

See Rider Paragraph 55

24. Tenant shall have the right, at any time during the term herof or during any renewal term or after the expiration of the original term or of any renewal term, as it shall see fit, to remove any and all property, fixtures, refrigeration and other equipment and improvements placed, installed, supplied or made by it on the Demised Premises, any rule, law, regulation or statute to the contrary notwithstanding; provided, however that any damage to the Demised Premises or any part thereof occasioned by such removal shall be repaired by Tenant, at its own cost and expense.

Tenant

25. [redacted] agrees that it will at all times during the term of this lease, at its own cost and expense, insure and keep in effect on the Building or Buildings erected on Demised Premises, fire insurance (with additional coverage commonly known as supplemental contract or extended coverage) covering interests of Landlord and Tenant written by an insurance company or companies authorized to do business in the State in which Demised Premises are situate in an amount or amounts sufficient to pay in full all losses covered thereby. If [redacted] shall fail, refuse or neglect to obtain such insurance or to maintain same, and furnish [redacted] with proof of same upon demand, [redacted] shall have the right to procure such insurance and to [redacted] the cost thereof [redacted] any rental or other sums payable hereunder, and the amount thereof shall be payable [redacted] Tenant on demand [redacted] All proceeds of such insurance if and when received by Landlord shall be considered as having been received by it in trust, and Landlord shall use the same first to restore the Demised Premises and the Building thereon to the condition in which they were in prior to the occurrence of the damage. Landlord agrees that [redacted] procure endorsements on the policies required to be maintained by it under the provisions of this Paragraph wherein and whereby:

Tenant

Landlord

Add

to

by

Tenant may

Landlord

- (a) the insurance company will agree that [redacted] will be given ten days' advance written notice of any cancellation or reduction of insurance under any such policy and that copies of all endorsements issued after the date of such policy will be forwarded to Tenant, all endorsements and notices to be given [redacted] at 6416 Park Heights Ave., Baltimore 15, Md.
- (b) the insurance company will agree to waive any right of subrogation against Tenant on any claim that Landlord, or any other party having an interest in such insurance policies or proceeds, may have against Tenant, in connection with fire or other risks or casualty covered by said insurance.

See Rider Paragraph 54

26. In the event that the Building on Demised Premises [redacted] shall be damaged by fire or other casualty, the Demised Premises [redacted] shall forthwith be repaired, restored or rebuilt, as the case may be, by the Landlord, at Landlord's expense, to their condition immediately prior to said damage or destruction as speedily as possible. If Landlord fails forthwith to commence or to complete the same with diligence, Tenant shall have the option to make any such repairs, restoration or rebuilding and charge the cost thereof to Landlord, the amount of such cost to be payable by Landlord to Tenant on demand [redacted] and to be deductible by Tenant from any rent or other sums due or to grow due under this lease. Until such repairs are completed, all provisions in this lease with respect to the payment of any guaranteed minimum annual rental shall be eliminated and Tenant's only obligation with respect to rental shall be the payment of [redacted]

a pro-rata
rental
based on
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usable area
of the
demised
premises

[redacted] In any case where such repairs are not proceeded with diligently by Landlord or in the case of substantial damage are not fully completed within four (4) months after the date of damage, Tenant may at any time after such default, in addition to any other remedy available to it, terminate this lease, in which event, this lease shall terminate and both parties shall be relieved and discharged of and from any further liability hereunder, subject, however, to the provisions of Paragraph 2 hereof. Landlord further agrees that it will make no claim nor authorize any claim to be made against Tenant, its employees, servants or agents in connection with or as a result of fire, explosion or other casualty damaging the Demised Premises.

27. Tenant shall, at its own cost and expense, obtain public liability insurance covering the interests of Landlord and Tenant in Demised Premises; said public liability insurance to be in the sum of \$100,000/[redacted] Said policies may be blanket policies covering other locations and evidence of such insurance shall be delivered to Landlord upon demand; provided, however, that the Tenant may, in lieu of maintaining the public liability insurance hereinabove set forth, maintain self insurance against public liability in which event Tenant agrees to carry excess insurance beyond the amount of such self insurance within the limits hereinabove set forth, and to furnish evidence of such excess insurance coverage to Landlord on demand. If Tenant fails to obtain such insurance or to maintain same in effect or to furnish Landlord with such evidence, Landlord shall have the right to obtain such insurance and to add the cost thereof to the rent then due or to grow due hereunder.

\$300,000.

28. Tenant agrees that it will replace any plate glass broken or damaged upon the Demised Premises at its own cost and expense, ~~and shall not be entitled to reimbursement therefor from Landlord.~~ glass broken or damaged by or as a result of any casualty included as a risk in the insurance policies maintained or required to be maintained by Landlord under this lease. ~~Tenant may replace any plate glass broken or damaged by, or as a result of a casualty included as a risk in any insurance policies maintained or required to be maintained by Landlord under this lease, in which event, however, Landlord shall reimburse Tenant for the cost or expense thereof, and Tenant may deduct the costs thereof from any rents or other sums due or to grow due hereunder, and the amount thereof shall be payable to~~

~~29. Landlord warrants that within~~ ~~thirty~~ ~~months of the signing of this agreement it will~~ exhibit to Tenant signed lease agreements covering other portions of the Shopping Center of which Demised Premises are a part, made with other tenants who meet the qualifications and requirements set forth on Schedule C annexed hereto (said other tenants being hereinafter referred to as "Other Tenants", and said other leases being hereinafter referred to as "Other Leases"). Landlord warrants that Other Leases shall contain the obligation by Landlord to erect and complete stores for such Other Tenants which shall be ready for occupancy by Other Tenants at or prior to the commencement date of this lease and shall contain obligations by Other Tenants requiring each of them to occupy their respective stores, open for business, and pay rentals under their respective Other Leases no later than the commencement date of this lease. Landlord shall furnish Tenant, simultaneously with the furnishing of the various proofs referred to in Paragraph 4 hereof, certificates by Landlord's architect as to the completion of the stores required by Other Leases ready for occupancy by such Other Tenants and copies of the Certificates of Occupancy, if any, relating to the stores included in such Other Leases issued by any governmental agency in authority. At the same time Landlord shall also notify Tenant herein that Other Tenants are required to occupy their respective stores, open for business, and pay rental no later than the commencement date of this lease.

If Landlord fails to exhibit other Leases within the time hereinabove set forth, or if Landlord or any of such Other Tenants fails to comply with any of the foregoing provisions respectively applicable to them relating to completion of stores, occupancy and opening for business, Tenant herein shall have the right at its option to:

(a) occupy Demised Premises and commence or continue with business operations except that Tenant's only obligation with respect to rental shall thereupon be the payment of percentage rentals only, with no guaranteed minimum annual rentals, on the basis of the percentages of gross sales set forth in Paragraph 6 hereof, such percentage rentals to be payable only after the expiration of each twelve (12) month period of such business operation, so long as said condition shall continue. If Tenant elects to exercise this option, the provisions of this subparagraph shall supersede any inconsistent provisions with respect to the payment of rental otherwise provided in this lease, and Landlord shall continue to perform any obligations imposed upon Landlord under this lease without being relieved or released therefrom by Tenant's exercise of said option; or

(b) terminate this lease at any time on written notice so long as such condition continues, which right to terminate may be exercised notwithstanding Tenant's exercise of the option of preceding subparagraph (a) hereof, it being agreed that said options are not mutually exclusive but that this option (b) may be exercisable at any time so long as Landlord

~~shall not lease, use, permit, suffer or consent to the use of any portion of the Shopping Center as a supermarket or for the retail sale of meats, poultry, produce, fruits, vegetables, seafood, dairy, delicatessen, or any other perishable food but this provision shall not prohibit or prevent Landlord from leasing or erecting any store erected thereon for the operations set forth in Schedule "D" annexed hereto. Landlord expressly agrees that no portion of Shopping Center shall be used for~~

from conducting thereon a food department and shall refrain from selling food thereon but may operate a restaurant, lunch room or lunch counter and deal in candies.

In the event that there is a breach of any of the provisions of this paragraph, Tenant shall have the following rights and remedies, none of which shall be exclusive of the other; or any other remedy otherwise available to Tenant:

- (a) Tenant may institute proceedings to enjoin the violation in its name or in the name of the Landlord.
- (b) If such conflicting use continues for a period of ten (10) days after written notice thereof shall have been given by Tenant to Landlord, Tenant may, at any time thereafter, elect to terminate this lease, and upon its said election, this lease shall, on the date fixed in the notice of such election, be terminated, and Tenant shall be released and discharged of and from any and all further liability hereunder.
- (c) So long as such condition exists, Tenant's only obligation with respect to rental shall be the payment of percentage rentals only, with no guaranteed minimum annual rentals, on the basis of the percentages of gross sales set forth in Paragraph 6 hereof, such percentage rentals to be payable only after the expiration of each lease year of the term, so long as said condition shall continue.
- (d) Tenant may hold Landlord liable for any costs and expenses, including counsel fees, sustained or incurred in connection with any proceedings instituted by Tenant, and in the event Landlord does not institute and proceed diligently with suit to enjoin such conflicting use, may hold Landlord liable for any and all other damages sustained or to be sustained

31. Landlord covenants that it is the owner in fee simple of the Shopping Center, Demised Premises and of the Parking Area; Landlord further covenants that Tenant shall have quiet possession and enjoyment of the Demised Premises and said Parking Area during the term of this lease. Simultaneously herewith Landlord has furnished Tenant with certificate from a reputable title insurance company evidencing Landlord's title to Shopping Center, Demised Premises and Parking Area, as aforesaid, and that Tenant can use same for the purposes herein stated, knowing that Tenant relies thereon in executing this lease. A similar certificate from the same Title Insurance Company will be furnished to Tenant on the day that Landlord notifies Tenant that Building is completed which certificate, however, shall be dated as of the time of such completion notice. The premises indicated as "Loading Area" on Schedule "A" annexed hereto and crosshatched in red shall be deemed a part of the Demised Premises leased to Tenant hereunder for the sole and exclusive use of the Tenant and shall not be deemed a part of the Parking Area.

32. Landlord represents, warrants and agrees and this lease is upon the express condition that:

- (a) Landlord shall at all times during the term of this lease or any extension or renewal thereof maintain [REDACTED] upon the premises [REDACTED]
[REDACTED]
[REDACTED], a Parking Area [REDACTED]
[REDACTED] as shown on Schedule A annexed hereto; [REDACTED] to furnish parking space without charge to all customers of the Shopping Center seeking parking, so that there shall be maintained at all times a ratio of at least [REDACTED] square feet of parking space for each square foot of floor area in said Shopping Center. [23]
- (b) Tenant shall at all times have the [REDACTED] exclusive and non-revocable right [REDACTED]
[REDACTED] to the use of said Parking Area and driveways appurtenant thereto for purposes of egress, ingress, parking of motor

vehicles for itself and its customers and loading and unloading of vehicles in connection with and incidental to the business conducted by Tenant on Demised Premises, all without charge.

~~(c) The Parking Area will not be made available for use by employees of any tenants of the Landlord.~~

- (d) Landlord will, at its own cost and expense, grade, drain and suitably hard surface the said Parking Area to conform with Tenant's requirements at or prior to the commencement of the term hereof.

Tenant

- (e) ~~Landlord~~ will at all times, during the term of this lease, at its own cost and expense:

- (i) Maintain floodlights and other means of illumination sufficient to illuminate Parking Area during all twilight and evening hours that Tenant's store is open for business and in operation;
- (ii) Maintain and keep Parking Area in good condition with a hard-top surface pavement and properly striped, and clean and remove debris, ice and snow therefrom and provide suitable and sufficient traffic direction personnel as required;
- (iii) Permit free parking on Parking Area at all times by Tenant, its customers and/or persons dealing with Tenant; and
- (iv) Obtain and maintain public liability insurance covering the interests of Landlord and Tenant indemnifying Tenant and holding Tenant harmless from any liability for personal injury, death or property damage arising on or about the operations on Parking Area, such insurance to be within limits of 100,000/300,000 for personal injury and death, and 25,000 for property damage and to furnish Tenant on demand with certificates evidencing the existence of such insurance as so required by Tenant.

SEE RIDERS ATTACHED PARAGRAPHS 53 and 54

~~Landlord shall have the right to terminate this lease if Tenant fails to comply with any of the provisions of this Paragraph 32, then, and in any such event, Tenant shall have the following rights and remedies none of which shall be exclusive of the others or any other remedy otherwise available to Tenant:~~

- (i) Tenant may remedy or attempt to remedy any such default or other non-compliance, expend any sums necessary therefor at the cost and expense of Landlord, and the sums so expended shall be payable to Tenant on demand with lawful interest thereon and be deducted by Tenant from any rents or other sums due or to grow due hereunder;
- (ii) So long as any such default or other non-compliance continues all provisions in this lease with respect to the payment of any guaranteed minimum annual rental shall be eliminated and Tenant's only obligation with respect to rental shall be the payment of the percentage rentals on gross sales in the amounts set forth in Paragraph 6 hereof, payable only after the expiration of each lease year of the term so long as said condition shall continue.
- (iii) So long as any such default or other non-compliance continues, Tenant may, on written notice, at its option, terminate and cancel this lease, in which event Tenant

33. (A) If there shall be taken or condemned by any competent authority for any period of time:

(a) the whole of the Demised Premises

(b) less than the whole of the Demised Premises,

as set
forth
in
Par. 57
hereof

and Tenant so notifies Landlord within one (1) month after such taking, then, and in any such event, this lease shall thereupon terminate, and the parties hereto shall be relieved and discharged of all further liability hereunder accruing after the date of such taking, except that the rental accruing during the month of such taking shall be apportioned pro-rata on a daily basis; and, in any such event, each party shall keep its own award, (if separate awards are given by the condemning authority) or, if only one award is given by the condemning authority for all interests in the Demised Premises, the said award shall be apportioned between the parties as their respective interests shall appear;

(B) In the event that:

(a) Tenant does not exercise the option to terminate arising upon a condemnation in the manner set forth in the preceding paragraph of this section; or

(b) The taking on condemnation does not terminate this lease,

then, and in any such event, this lease shall continue in full force and effect, and the Landlord shall forthwith and diligently proceed to restore the Demised Premises to a condition as nearly as possible to that in which the Demised Premises were prior to such taking, in the light of any reduced area of Demised Premises, such restoration to be made under the supervision of any architect to be selected by Landlord and Tenant in accordance with plans and specifications to be prepared by Landlord and to be approved by Tenant and to be prepared in such manner as to comply with the requirements of Tenant in its business operations, Tenant agreeing to cooperate in the preparation thereof. Until such restoration is completed, all provisions in this Lease with respect to the payment of any guaranteed minimum annual rental shall be eliminated and Tenant's only obligation with respect to rental shall be the payment of the percentage of gross sales in the amounts set forth in Paragraph 6 hereof, payable only after the expiration of the lease year in which such restoration is completed. Thereafter such guaranteed minimum annual rental shall be equitably adjusted, taking into consideration the proportion and area of the Demised Premises taken, and the period of time of such taking. The cost of such restoration shall be borne by Landlord and Tenant pro rata in proportion to the amount of their respective awards but in no event shall Tenant's share thereof exceed the amount of Tenant's award; and upon the completion of said restoration the issuance of a certificate therefor by the architect selected by the Landlord and Tenant to take charge of the work, and upon proper proof that all labor and materials in such work of restoration have been paid for and that no liens exist against Demised Premises by reason thereof, Tenant shall pay Landlord its share of the cost of such restoration. Any controversy under this paragraph shall be submitted to three (3) arbitrators; one selected by each party and the third by the other two arbitrators; the decision of a majority of the arbitrators being conclusive and binding. If arbitrators are not so chosen or fail to render decision, either party may apply for relief to a court of competent jurisdiction of the State where Demised Premises are located for the enforcement thereof.

34. Landlord agrees that whenever any repairs, alterations or other work, including original construction of Building, is to be performed by or for Landlord on Demised Premises, such work shall be performed only by recognized building trades union labor, to the extent permitted by law.

35. For the purpose of recording some of the basic terms and conditions of this Lease, Landlord agrees to execute, simultaneously upon the execution of this Lease, the form of agreement annexed hereto, made a part hereof and marked Schedule "E", or such other form of agreement as Tenant may require. It is understood that the agreement mentioned in this Paragraph 35 is for purposes of recordation only and is not intended to and shall not in anywise modify, amend, supersede or otherwise affect this Lease.

36. Many of the foregoing provisions of this lease agreement contain obligations on the part of Landlord or Tenant or both. In many instances, various rights are granted to each party consequent upon default by the other party in the performance of said obligations. It is expressly understood and agreed that, notwithstanding anything herein contained to the contrary (except as otherwise provided in this paragraph 36), each and every one of said rights on the part of either party to take advantage of a failure on the part of the other party to fulfill its said obligations shall be subject to the following limitations:

- (a) Tenant shall not have the right to declare this lease at an end by reason of any default of Landlord or to proceed with any suit or to avail itself of any remedy whatsoever provided for in this lease or under the law, unless Tenant shall have given to Landlord written notice of the alleged default, and Landlord for a period of ten (10) days thereafter shall have failed to correct the alleged default. If the alleged default is of such a nature that it cannot be completely remedied or cured within such ten-day period, then such default shall not be an enforceable default against Landlord, if Landlord shall have commenced curing such default within such ten-day period and shall proceed with reasonable diligence and good faith to complete the curing thereof. The ten-day notice provision herein set forth shall be inapplicable to any Emergency.
SEE RIDER PARAGRAPH 48
- (b) Landlord shall not have the right to declare this lease at an end by reason of any default of Tenant or to proceed with any suit or to avail itself of any remedy whatsoever provided for in this lease or under the law, nor shall Tenant's right to exercise any option granted herein be deemed to have expired, unless Landlord shall have given to Tenant written notice of the alleged default or the failure to exercise any option, and Tenant for a period of ten days thereafter shall have failed to correct the alleged default or to exercise said option. If the alleged default or failure to exercise any option is of such a nature that it cannot be completely remedied or cured or exercised within such ten-day period, then such default or failure to exercise shall not be deemed an enforceable default or failure of Tenant, if Tenant shall have commenced curing such default or undertaken to exercise said option within such ten-day period and shall proceed with reasonable diligence and good faith to complete the curing and/or exercising thereof, as the case may be.

but sub-
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para-
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hereof

37. Notwithstanding anything herein contained, it is specifically understood and agreed between the parties, that, in the event of any default on the part of the Landlord under this lease agreement, Tenant shall, in addition to any other remedies available to it, have the right at its option:

- (a) to continue this lease agreement in full force and effect except that Tenant's only obligation with respect to rental shall be the payment of the percentage rentals on gross sales in the amounts set forth in Paragraph 6 hereof during said period, in lieu of any guaranteed minimum rental set forth in this lease, payable after the expiration of each lease year of the term hereof so long as said condition shall continue. If Tenant shall elect this option (a), the provisions of this subparagraph shall supersede any inconsistent provisions with respect to the payment of any rental. Notwithstanding Tenant's election to continue this lease agreement pursuant to this option (a), Tenant may, at any time while such condition exists, on ten (10) days' written notice, terminate this lease;
- (b) to terminate this lease on ten (10) days' written notice, in which event Tenant shall be relieved of and from any further liability hereunder.

38. It is hereby agreed that the mailing of a written notice and/or demand by registered mail in a sealed, postpaid envelope addressed to Tenant % Real Estate Department at 2223 E. Allegheny Avenue, Philadelphia, Penna., shall be sufficient notice and/or demand in any case arising under this agreement.

39. It is hereby agreed that the mailing of a written notice and/or demand by registered mail in a sealed, postpaid envelope addressed to Landlord at 6416 Park Heights, Baltimore/5, Maryland shall be sufficient notice and/or demand in any case arising under this agreement.

SEE RIDERS ATTACHED

40. This lease sets forth all the promises, inducements, agreements, conditions, and understandings between Landlord and Tenant relative to the Demised Premises, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by them.

This agreement is binding upon and shall inure to the benefit of the respective parties hereto, their respective successors, legal representatives and assigns.

IN WITNESS WHEREOF, the parties hereto have interchangeably set their hands and seals or caused these presents to be signed by their proper corporate officers and caused their proper corporate seals to be hereunto affixed the day and year first above written.

WITNESS:

Morton E. Kalus
Morton E. Kalus

Emanuel S. Kalus
Emanuel S. Kalus

Paul I. Burman
Paul I. Burman

ATTEST:

VIRGINIA SUPER FOOD FAIR STORES, INC.

BY: Joseph E. ...

VICE-PRESIDENT

JEG

RIDER ATTACHED TO AND MADE A PART OF LEASE AGREEMENT
DATED August 29th, 1960, BY AND BETWEEN
MORTON KALUS et al (Landlord) and
VIRGINIA SUPER FOOD FAIR STORES, INC. (Tenant).

41. RIDER TO PARAGRAPH 6.

- (g) Any sale of trade fixtures and equipment.
- (h) Any exchange of merchandise or items pursuant to a stamp redemption plan, register tape or similar plan,

42. ~~41~~. Tenant may assign this lease or sub-lease the Demised Premises or any portion thereof to be used for any lawful purpose, provided, nevertheless, that the obligations of Tenant arising hereunder shall not be terminated by any such assignment or sub-lease. Notwithstanding any such assignment of this lease, notice of any alleged default by any such assignee shall be given by Landlord to the original Tenant herein in the same manner as provided with respect to the default of Tenant under Paragraph 36 (b) of this lease, and the original Tenant herein shall have the same right and remedy to care for such alleged default as though no assignment had taken place, it being agreed that a duplicate written notice of default shall be given to the original Tenant herein at the same time and in the same manner as given to any such assignee in accordance with Paragraph 36 (b) hereof.

In the event Tenant desires to assign this lease agreement as aforesaid (other than to a parent corporation of Tenant or any of its subsidiaries or affiliated corporations or by reason of merger, consolidation or acquisition) Tenant shall give Landlord notice of such proposed assignment and Landlord shall approve the same within 30 days after such notice. If the Landlord does not so approve, then in that event, Tenant shall have the right and option to cancel this lease agreement upon notice to the Landlord and to be relieved and released of any and all liabilities hereunder, except, however, liabilities accruing prior to the said termination of this lease agreement and other conditions contained herein.

43. Landlord agrees that so long as Tenant shall issue trading stamps to its customers in connection with its business operations, Landlord will not lease, use or consent to the use of any portion of Shopping Center as a stamp premium redemption store or location excepting only for the redemption of trading stamps of the type issued by Tenant to its customers.

44. Landlord agrees for itself, its successors and assigns, and for any subsidiary or controlling corporation, that the same will not, without the consent of the Tenant in each instance, erect store premises or building improvements on any parcels of land adjoining or adjacent to Demised Premises, nor will the

Landlord, its successors or assigns or any subsidiary or controlling corporation, alter, change or vary in any manner the location of the building improvements and parking facilities as the said improvements and parking facilities are shown on Schedule "A" attached hereto.

45. In no event shall the premises shown on Schedule "A" or any part thereof, be sold to any third party unless in each instance Tenant shall have first been given written notice thereof together with a bona fide written statement from such third party and a period of thirty days (30) in which to purchase the said premises, or any part thereof, as the case may be, upon the terms offered by such third party.

46. In the event that Landlord or any of the officers, directors or stockholders of Landlord, or any party affiliated directly or indirectly with Landlord or its officers, directors or stockholders, enlarge Shopping Center or acquires or controls additional premises in the vicinity of Shopping Center for any retail or parking purposes, all provisions of this lease shall be applicable to such enlargement or additional property and without limiting the foregoing, any parking areas included in additional property shall be included in Demised Premises hereunder, and such additional property shall be considered part of the Shopping Center. In the event that Landlord or any of the officers, directors or stockholders of Landlord or any party affiliated directly or

indirectly with Landlord or its officers, directors or stockholders, shall construct, allow or consent to the use of any property within five (5) miles of Shopping Center for use as a supermarket, Tenant hereunder shall be given the right of first refusal to lease or purchase the said premises and all parking areas in connection therewith on the same terms as shall be made available to any third party; and all deeds, leases or other instruments of any of the parties referred to in this paragraph, covering any premises within such radius shall contain a restriction binding upon the owners and occupants of such premises to effectuate the provisions hereof.

47. ~~_____~~
commencement of the term of this lease have proper public fire hydrant and fire department protection with an ample supply of fire hydrants within 600 feet of the premises, and adequate fire department protection within three (3) miles of the premises. Landlord further warrants that the location of the Demised Premises is recognized as being in "protected" territory by the insurance rating organization or authority having jurisdiction. Anything contained in this lease agreement to the contrary notwithstanding it is agreed that this lease and any obligations on the part of Tenant hereunder is contingent and conditioned upon full compliance
~~_____~~

48. RIDER TO PARAGRAPH 36. The provisions of Paragraph 36 (a) of this lease shall not apply to a termination by Tenant pursuant to the terms of Paragraphs 2 or 29 of this lease agreement, nor to any other provisions of this lease in which any notice period

different from that set forth in Paragraph 36 is provided.

49. RIDER TO PARAGRAPH 2. If Tenant cancels this lease for delay in completion of Demised Premises pursuant to the provisions of Paragraph 2 hereof, such cancellation shall be inoperative if Landlord does the following:

- (a) Within ten (10) days after receipt of such notice of cancellation Landlord notifies Tenant that Landlord intends to deliver the Demised Premises completed in accordance herewith to the Tenant within sixty (60) days of receipt of notice of cancellation from Tenant.
- (b) Landlord actually delivers possession of Demised Premises completed in accordance with this lease within sixty (60) days of Tenant's original notice of cancellation.

If Landlord fails to deliver Demised Premises to the Tenant within sixty (60) days of Tenant's notice of cancellation, no further notice shall be required of Tenant and the lease shall be cancelled as provided in Paragraph 2 hereof.

50. RIDER TO PARAGRAPHS 9, 10, 11, and 12. Notwithstanding any of the provisions herein contained to the contrary, the minimum rental payable hereunder during the renewal periods, if any of such options are exercised by Tenant, shall be Thirty-one thousand, Three hundred Twenty-two dollars and fifty cents (31,322.50) per year payable in equal monthly installments of Two thousand, Six hundred, Ten dollars and Twenty-one cents (\$2,610.21) each.

During such renewal periods, percentage rentals shall be paid at the rate of one and one quarter per cent (1 $\frac{1}{4}$ %) of all gross sales not in excess of Two million, ~~Seven Hundred Twenty-Six Thousand Nine Hundred Dollars~~ (\$2,726,900.00). The above rentals shall be payable as set forth in Paragraph 6 of this lease.

51. RIDER TO PARAGRAPH 15. Tenant shall have the right, at its own expense to undertake such proceedings to review or contest any such taxes as it may deem necessary in its or in Landlord's name, and Landlord agrees to cooperate fully with Tenant and execute all instruments and papers which may be required for the prosecution of any such proceedings; and in confirmation thereof, Landlord does hereby designate and appoint Tenant as its duly authorized agent and attorney-in-fact to execute any and all instruments and papers in and on its behalf.

52. RIDER TO PARAGRAPHS 16, 17, and 18. Notwithstanding anything to the contrary contained herein, Tenant shall provide all non-structural repairs to Demised Premises and to the mechanical systems enumerated in Paragraphs 16, 17 and 18 of this lease contained in Demised Premises. Tenant shall further make any structural repairs, the necessity for which arises from Tenant's negligence or the negligence of its agents, servants and employees. Landlord shall assign to Tenant all warranties or guarantees or other representations received by it from any parties who may have supplied Landlord with any of such systems installed in Demised Premises.

53. RIDER TO PARAGRAPHS 7 and 8. The minimum annual rent as set forth in Paragraph 6 shall commence on the day that Tenant shall open for business to the public, and shall be pro rated on a daily basis to the commencement date as herein set forth, provided, however, that no percentage rent shall begin to accrue and no gross sales shall be added to the first lease year for the period of time from the day Tenant shall commence business to the commencement date hereunder.

54. RIDER TO PARAGRAPHS 15, 25 ~~_____~~. Notwithstanding any of the provisions herein contained to the contrary, any amount expended by Tenant, pursuant to Paragraphs 15, 25, ~~_____~~ of this lease, shall be deductible from any percentage rentals paid or to be paid hereunder.

55. RIDER TO PARAGRAPH 23. Tenant shall secure any permits required for the erection of signs on the Demised Premises at Tenant's own cost and expense, and all such signs shall comply with the requirements of all governmental authorities having jurisdiction over the premises. Tenant may remove any such signs from the premises at any time during the term of this lease or at the expiration or sooner termination thereof, provided that Tenant shall repair any damage to the premises caused by removal of such signs.

56. RIDER TO PARAGRAPH 25. Notwithstanding the provisions hereof to the contrary, the fire insurance to be maintained by Tenant hereunder shall be in/ ~~_____~~ such amount as may be required by any Mortgagee ~~_____~~ complying with Paragraph 14 hereof and shall be maintained with companies acceptable to the Mortgagee.

57. RIDER TO PARAGRAPH 33 (A) (b). Pursuant to subparagraph 33 (A) (b) hereof, if less than the whole of the Demised Premises but ten (10%) per cent of the building area thereof, or more than twenty (20) parking spaces shall be condemned and the remaining portions of Demised Premises are not sufficient in Tenant's reasonable business judgment for the conduct of its normal business operations, Tenant shall have the rights set forth in Paragraph 33 (a) subject to the notice requirements therein set forth.

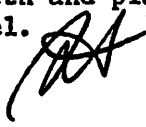
58. Subject to Paragraph 36 hereof, the Tenant agrees that any enforceable default by it of any of the covenants contained in this lease, including the payment of rental, shall either operate as a forfeiture or may not be treated as a forfeiture by Landlord, as it wishes, but if treated as a forfeiture then Landlord shall have the right to re-enter and repossess itself of said premises as of its original estate therein and to pursue any other lawful remedies; if Landlord does not treat such breach as a forfeiture, then it may still pursue any other legal remedies available for the damages occasioned by such breach; provided, however, that as to any and all defaults of the Tenant under the provisions of this lease (other than defaults in the payment of money), capable of being remedied by the Tenant's performance of affirmative acts, any such default or defaults shall be deemed to have been cured if the Tenant shall commence the performance of said affirmative acts within ten (10) days from the receipt of said notice and thereafter in good faith diligently prosecute the same to completion.

59. This agreement contains printed pages 1 through 14 inclusive, together with Schedules "A", "B", and "E", and eight (8) pages of typewritten riders, of which this sentence concludes such riders.

SCHEDULE "B"

South Side of Lee Highway and North Harrison Street, Arlington, Virginia

It is understood and agreed that the plans and specifications referred to in this lease agreement shall be substantially similar to the plans and specifications used ~~for~~ Food Fair Store #381 located at Severna Park, Maryland, except for the following:

1. Heating of the main store area shall be through ducts by steam coils and gas fired York Shipley steam boiler. Perimeter heating in warehouse to be regular steam unit blowers.
 2. Fiberglass ceiling according to our specifications will be accepted.
 3. Rock lath and plaster may be used in sales area above 8' level.
- 

Guaranty

In order to induce MORTON E. KALUS, EMANUEL S. KALUS, and PAUL I. BURMAN as Landlord, to enter into a certain lease agreement, being executed BURMAN simultaneously herewith, with VIRGINIA SUPER FOOD FAIR STORES, INC., as Tenant, the undersigned does guaranty the payment of all rents in said lease agreement on the part of Tenant to be paid.

It is hereby agreed that no modification, extension or indulgence granted to the Tenant, its successors and assigns, shall release us from this Guaranty, and that this Guaranty shall continue in full force and effect as to any renewal, extension or modification of the attached lease. Nothing herein contained shall modify any requirement in said lease agreement for the giving of notice of default to Tenant.

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be executed by its duly authorized officers and its corporate seal to be affixed this 29th day of August, 19 60

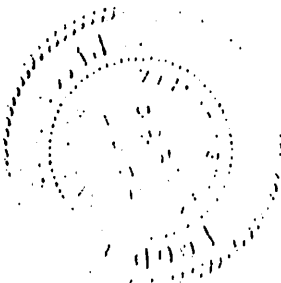
FOOD FAIR STORES, INC.

By [Signature]
VICE-PRESIDENT

ATTEST:

[Signature]

ASSISTANT SECRETARY



AGREEMENT

This Agreement dated *August 29th, 1960* by and between MORTON E. KALUS, EMANUEL S. KALUS and PAUL I. BURMAN (hereinafter referred to as Landlord) and VIRGINIA SUPER FOOD FAIR STORES, INC., a Virginia corporation (hereinafter referred to as Tenant) witnesses that:

Landlord is the equitable owner by virtue of an Agreement to Purchase of premises located at South side of Lee Highway and North Harrison Street, Arlington, Virginia.

Tenant desires to lease said premises from Landlord if, as and when Landlord acquires title thereto.

NOW THEREFORE, in consideration of the premises and of good and valuable consideration, receipt whereof is hereby acknowledged, the parties hereto agree as follows:

When Landlord acquires title to the premises above described in fee simple absolute, the Lease Agreement attached hereto shall thereupon become an Agreement in full force and effect, without any further acts required on the part of Landlord or Tenant. Landlord agrees that upon acquisition of title as above provided, it shall record the short form of Lease annexed to Exhibit 1 and referred to as Schedule E in the proper office for the county in which the premises is located.

IN WITNESS WHEREOF, we have executed this Agreement the day and year first above mentioned.

WITNESS:

[Handwritten signatures of witnesses]

Morton E. Kalus
Morton E. Kalus

Emanuel S. Kalus
Emanuel S. Kalus

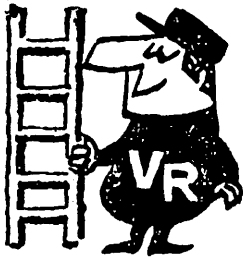
Paul I. Burman
Paul I. Burman

ATTEST:

[Handwritten signature of Assistant Secretary]
ASSISTANT SECRETARY

VIRGINIA SUPER FOOD FAIR STORES, INC.

188
BY: *[Handwritten signature]*
VICE-PRESIDENT



DEFENDANT
KALUS EXH. #3

CONTRACT

NEW ROOFING AND COMMERCIAL REPAIRS
COMPLETE SHEET METAL SERVICE

BONDED ROOFERS
PHONE: 751-3200

VIRGINIA ROOFING CORPORATION

800 SOUTH PICKETT ST. • ALEXANDRIA, VA. • 22304 • BOX 9350

To:

KALUS CONSTRUCTION Co.

ATTN: MORT KALUS

1657 WHITEHEAD COURT

BALTIMORE, MARYLAND 21207

, Purchaser

Date August 16, 1976

Re: ROOF REPAIRS

Virginia Roofing Corporation, hereinafter called the Contractor, proposes to furnish all material and labor to install, construct, and place the improvements described herein on/in building located at

No. 5400 Street LEE HIGHWAY

City ARLINGTON, State VIRGINIA, according to the following specifications:

SCRAPE BACK GRAVEL ABOVE LEAKING AREAS IN MAIN ROOF (ONE AT THE REAR AND ONE ON THE LEFT SIDE) AND SWEEP CLEAN.

REPAIR ANY BREAKS WITH PLASTIC CEMENT AND ASPHALTIC FABRIC.

REPAIR ALL BREAKS IN MEMBRANE BASE FLASHING AT ALL LEVELS OF ROOF. SOME SECTIONS OF FLASHING AT THE FRONT CANOPY MAY NEED REPLACING.

WE WILL DO THE ABOVE WORK FOR THE SUM OF SIX HUNDRED TWENTY DOLLARS (\$620.00).

NOTE: DUE TO THE CONDITION OF THE EXISTING ROOFING WE CANNOT GUARANTEE THIS WORK.

NOTE: ACCEPTANCE OF THIS CONTRACT TO BE MADE WITHIN 30 DAYS. BID WILL BE SUBJECT TO REVISION AFTER 30 DAYS.

AN EQUAL OPPORTUNITY EMPLOYER

Terms: All amounts are due and payable upon receipt of invoice.

This agreement shall become binding only when signed by the authorized representative of the Contractor or upon the Contractor's commencing performance, and upon acceptance or commencement of performance this shall constitute the entire contract and be binding upon the parties hereto, there being no covenant, promises or agreements, written or oral, except as herein set forth. It is further understood that: (A) The contractor shall not be responsible for damage or delay due to strikes, fires, accidents or other causes beyond his reasonable control. (B) The proposal is limited to 30 days acceptance from date hereof. (C) Contractor assumes no responsibility for leaks through walls or woodwork, or for water damage to building or contents thereof. (D) Should conditions render unavailable at reasonable cost any material or product specified herein or otherwise required in order to fulfill this contract, a substitute of suitable value and utility may be supplied or, in the event that substitution in the opinion of the Contractor is not possible, Contractor's obligation hereunder shall cease upon notification to Purchaser. (E) When the above specifications include installation of roofing on a surface whose slope is greater than 5" to the foot or whose height is greater than 2 stories, the purchaser shall, at Contractor's request, provide a safe scaffold suitable for starting roofing work at the building eaves. (F) Purchaser shall give Contractor at least 48 hours notice before the above work is to be commenced, which notice may be waived at Contractor's option. (G) This contract includes only the items and materials specified above and is based on any sketch(es) on reverse side hereof and/or attached hereto. (H) Purchaser agrees to pay 1.5% interest per month on any unpaid balance due over 30 days after presentation of invoice, Purchaser further agrees to pay attorney's fees or other charges incurred by Contractor if monies due under this contract are placed for collection any time 30 days after presentation of invoice. (I) Contractor's work is to be done on an open shop basis. (J) All contracts are subject to approval of Contractor's credit department. (K) Should Contractors work during re-roofing or repairs disclose the need for replacement of sheathing, fascias or other wood work, such replacement will be performed and charged for on a time and material basis, unless other arrangements are made, in writing, prior to commencement of work. (L) All work performed under this contract is guaranteed against defects in material and workmanship for one (1) year from date of invoice unless otherwise stated in writing, provided payment is made in accordance with the terms hereof. It is the intent of this guarantee to insure that any defects of work performed shall be corrected at no cost to the Purchaser. However, should Purchaser call for guaranteed repairs and it is found that our work was not deficient, then a service charge will be made. Non-payment of service charge may cancel guarantee at Contractor's option. There are no warranties, express or implied, other than those specifically set forth in this agreement.

ACCEPTED: Date _____

Purchaser

By _____

VIRGINIA ROOFING CORPORATION

By _____
PAUL W. DAVIS

AN EQUAL OPPORTUNITY EMPLOYER

MEMO

from the desk of: MARC D. RASH

Ther.
11/14/76

Dear Motie:

It was nice seeing you yesterday
& appreciate all your cooperation &
consideration in the past. This is a
letter to Philadelphia Real Estate about
the problem at Lee Highway.

Best personal regards to the
family

Sincerely,
Mare

FOOD FAIR STORES, INC.
6419 York Road, Baltimore, Maryland 21212 / Phone: 301/377-0800

DEFENDANT
KALUS EXH.#5

AREA CODE 301
944-2331

3 Aug 77 *cep*
KALUS CONSTRUCTION COMPANY

1857 WHITEHEAD COURT • WOODLAWN

BALTIMORE, MARYLAND 21207

DATE: July 31, 1974

TO: Mr. Rick Formanski
Dart Drug
3301 Pennsy Drive
Landover, Maryland 20785

JOB:

We are sending you ☒ Enclosed () Under separate cover

The following:

One set of plans for the former Food Fair Supermarket at
5400 Lee Highway, Arlington, Virginia, now occupied by
Dart Drugs

- () For Approval
- () Approved
- () Approved & For File
- () With Corrections
- () Approved With Corrections
- () With Color Selections
- ☒ For Your File

REMARKS:

We would like to see your finished plan prior to renovation at
this facility.

KALUS CONSTRUCTION CO.

Morton E. Kalus

192

DEFENDANT
KALUS EXH. #7

OK
id

3 Aug 77

Please read carefully

The attached bond assures that the Barrett roof installed on this building has been designed to provide years of trouble-free service. To obtain maximum service from this bonded roof, the following should be observed:

1. HOUSEKEEPING. Keep roof clean. Be sure that debris, leaves, etc. are regularly removed. Keep drain outlets open.

2. SNOW REMOVAL. If necessary to remove snow, extreme care shall be observed to avoid damage to roofing and metal work by shovels and other snow removal equipment. NEVER USE ICE BREAKERS. DO NOT PILE SNOW AGAINST FLASHINGS.

3. TRAFFIC. Do not permit anyone to treat the roof as though it were a street. It is not built to withstand abuse or excessive traffic. If any form of traffic is intended, consult the roofing contractor who installed roofing and he will advise you of the best method for erecting treated wood walkways to protect roofing from damage. Such recommendations must be accepted and approved by Barrett before work proceeds. Do not permit moving picture cameras, TV cameras or other equipment supported on tripods to be placed on roofing without proper and adequate wooden platforms to protect the roofing materials.

4. WORK BY OTHER TRADES. Do not permit any alteration of or addition to the roof surface of any

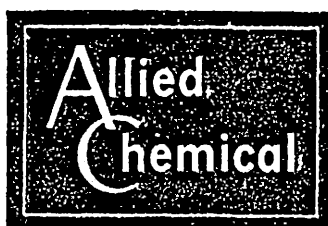
kind, including but not limited to sprinkler systems, water or air cooling equipment, radio or television aerials, framework for signs, water towers or other additions, until Barrett has been notified, in writing, of such proposed alteration or change and such proposed alteration or change has been accepted by Barrett, in writing.

5. If "leaks" occur, check the following conditions:

(a) CONDENSATION—SWEATING. Some leaks are not leaks at all but are caused by condensation (moist warm air inside of building coming in contact with cold undersurfaces of roof decks, skylights, etc.). This may occur during cold weather. Correction requires adequate ventilation below structural roof deck.

(b) MASONRY WALLS AND/OR COPINGS. Check for open joints, structural cracks, porous masonry, cracked copings, etc. These conditions may lead to eventual roof leaks and are not covered by this bonded guaranty. Call your general contractor or mason contractor for corrective measures.

(c) SKYLIGHTS—DOORS—ETC. Check skylights for broken glass. Check "condensation gutters" in skylights to be certain that they are open and functioning properly. Ascertain that all windows and/or doors and other openings leading to roof are closed and in good condition.



BARRETT DIVISION

40 Rector Street, New York 6, N.Y.

District Offices: 1327 Erie St., Birmingham 14, Alabama; 1125 East Morehead St., Charlotte, N. C.; Merchandise Mart, Chicago 54, Illinois; 3121 Euclid Avenue, Cleveland 15, Ohio; 323 South 67th St., Houston 11, Texas; 378 Commercial St., Malden 48, Massachusetts; 261 Madison Ave., New York 16, N. Y.; 36th & Grays Ferry Ave., Philadelphia 46, Pennsylvania; 764 Vandalla St., St. Paul, Minnesota

\$1,065.00

NUMBER
AA-1371

THE TRAVELERS INDEMNITY COMPANY
HARTFORD, CONN.

Barrett[®]

**ANCHORBOND
(FLAT) ROOF**

20-Year Guaranty Bond

Know all men by these presents, That we, BARRETT DIVISION, Allied Chemical Corporation, with offices in New York City (hereinafter called "Barrett"), as Principal, and The Travelers Indemnity Company, a corporation organized under the laws of the State of Connecticut, as Surety, are held firmly bound to the owner named below, successors and assigns, in the penal sum of not exceeding.....ONE THOUSAND SIXTY FIVE DOLLARS.....lawful

money of the United States of America, and for the payment of which we, and each of us, hereby bind ourselves, our successors and assigns, jointly and severally by these presents.

The condition of this obligation is such that:

Whereas, said Principal has sold the necessary BARRETT materials to construct a BARRETT ANCHORBOND (Flat) Roof on the building described below:

Owner.....E. S. and M. E. Kalus.....

Building.....Supermarket.....

Location.....Lee Highway and North Harrison Street,.....

.....Arlington, Virginia.....

Approximate area of Roof guaranteed.....213.....squares

Date of completion of Roof.....June 5, 1961.....

Applied by.....Virginia Roofing Corporation, Alexandria, Va.....

and

Whereas, said materials have been applied in the manner specified by Barrett; and

Whereas, Barrett, Principal as aforesaid, guarantees, under the conditions herein, that during a period of twenty years from said date of completion of Roof it will at its own expense make any repairs (excepting repair of injury to said Roof from any cause other than ordinary wear and tear by the elements) that may become necessary to maintain said Roof, exclusive of flashings, metal work and steep surfaces, in water-tight condition; and

Whereas, said guaranty is made with further conditions as follows:

- (a) The owner of said Roof will notify Barrett in writing if such repairs are required and in case of failure by Barrett to make said repairs within a reasonable time, then the owner shall immediately notify The Travelers Indemnity Company at Hartford, Connecticut, of such default, by registered letter.
- (b) Neither Barrett, nor said Surety, shall be liable in any respect for any damage to said building or contents thereof.
- (c) Neither Barrett, nor said Surety, shall be responsible for any damage to the Roof caused by defects in, or failure of, any roof deck, insulation or other material used in the base over which the Roof is applied.

Now, therefore, if Barrett, its successors and assigns, shall in all things well and truly perform and observe all and singular the covenants, agreements, stipulations and conditions shown above to be performed and observed by it, then this obligation shall be void; otherwise to be in full force and effect.

In Witness Whereof, the parties hereto have caused this instrument to be executed by their duly authorized representatives this.....third.....day of.....August....., 1961.

ATTEST:

h. C. Quick

George McDouglass
Secretary

BARRETT DIVISION
ALLIED CHEMICAL CORPORATION

By *C. B. Hausman*
Attorney-in-fact
The Travelers Indemnity Company

By *J. D. Davis*
President 194

\$273.00

NUMBER
VF-22,420

THE TRAVELERS INDEMNITY COMPANY
HARTFORD, CONN.

Barrett FLASHING
TYPE "AA"
20-Year Guaranty Bond

Know all men by these presents, That we, BARRETT DIVISION, Allied Chemical Corporation, with offices in New York City (hereinafter called "Barrett"), as Principal, and The Travelers Indemnity Company, a corporation organized under the laws of the State of Connecticut, as Surety, are held firmly bound to the owner named below, successors and assigns, in the penal sum of not exceeding.....

TWO HUNDRED SEVENTY THREE DOLLARS.....lawful money of the United States of America, and for the payment of which we, and each of us, hereby bind ourselves, our successors and assigns, jointly and severally by these presents.

The condition of this obligation is such that:

Whereas, said Principal has sold the necessary BARRETT flashing materials for Flashing to connect with BARRETT Roof (Bond Number.....AA-1371.....) on the building described below:

Owner.....E. S. and M. E. Kalus.....

Building.....Supermarket.....

Location.....Lee Highway and North Harrison Street.....

.....Arlington, Virginia.....

Approximate number of lineal feet of Flashing guaranteed.....1,090.....

Date of completion of Flashing.....June 5, 1961.....

Applied by.....Virginia Roofing Corporation, Alexandria, Va.....
and

Whereas, said flashing materials have been applied in the manner specified by Barrett; and

Whereas, Barrett, Principal as aforesaid, guarantees, under the conditions herein, that during a period of twenty years from said date of completion of Flashing, it will at its own expense make any repairs (excepting repair of metal work or flashing receptacles furnished by others, and repair of injury occasioned by weakness or defects in the walls, copings or building structure, or from any cause other than ordinary wear and tear by the elements) that may become necessary to maintain said Flashing in a water-tight condition; and

Whereas, said guaranty is made with further conditions as follows:

- (a) The owner of said Flashing will notify Barrett in writing if such repairs are required and in case of failure by Barrett to make said repairs within a reasonable time, then the owner shall immediately notify The Travelers Indemnity Company at Hartford, Connecticut, of such default, by registered letter.
- (b) Nothing in said guaranty or in this bond shall render Barrett, or said Surety, liable in any respect for any damage to said building or contents thereof.

Now, therefore, if Barrett, its successors and assigns, shall in all things well and truly perform and observe all and singular the covenants, agreements, stipulations and conditions shown above to be performed and observed by it, then this obligation shall be void; otherwise to be in full force and effect.

In Witness Whereof, the parties hereto have caused this instrument to be executed by their duly authorized representatives this.....third.....day of.....August.....1961.....

ATTEST:

h. C. Quick

George McDouglass

Secretary

• Reg. U.S. Pat. Off.

BARRETT DIVISION
ALLIED CHEMICAL CORPORATION

By *C. B. Hausman*
Attorney-in-fact

The Travelers Indemnity Company

By *J. D. Davis*

President 135

DEFENDANT
KALUS EXH. #8

3 Aug 77

CLK
iif

August 13, 1975

Mr. Thomas F. Fricke, General Attorney
Food Fair Stores, Inc.
Suite 1003
3175 John F. Kennedy Boulevard
Philadelphia, Pa. 19104

Re: Store #551 - 5400 Lee Highway, Arlington, Va.

Dear Mr. Fricke:

In answer to your letter of August 1, 1975, please find enclosed a complete copy of our 20-year Roof Bond and our 20-year Flashing Bond for the captioned location. Attached to the Bonds are a copy of the instructions from the bonding company which list the "do's and don'ts" in connection with the Bond. Items 1, 3, 4 and 5-b, which I have checked in red, have been violated by the actions of your sub-lessee, Dart Drug.

I am also enclosing, for your file, a copy of a covering letter which was enclosed with a complete set of blueprints for the building, requested by Mr. Rick Formanski of Dart Drug on July 31, 1974. Mr. Formanski telephoned and requested same because of some design changes which Dart was making in the air conditioning system. Mr. Formanski was notified verbally, and also by note under our remarks section on the enclosed covering letter, that prior to construction or renovation, plans should be submitted to us. Plans were never submitted to us for this work.

If there is any other material which you might need, please feel free to call.

Very truly yours,

KALUS CONSTRUCTION COMPANY

Morton E. Kalus

MEK:mb
Enc.

DEFENDANT
KALUS EXH. #9



3 Aug 75
FOOD FAIR STORES, INC.

CAR
REPLY TO
LEGAL DEPARTMENT
SUITE 1003, 3175 J.F.K. BLVD.
PHILADELPHIA, PA. 19104

September 9, 1975

res done

CERTIFIED MAIL #49731: RETURN RECEIPT REQUESTED

Dart Drug Corporation
3301 Pennsy Drive, Lee Highway
Landover, Maryland 20785

Re: Food Fair Store #551X, Arlington, Va.
(OUR FILE RE61-38)

NOTICE OF DEFAULT

Gentlemen:

Pursuant to Section 7 of the Sublease whereby you occupy the above-captioned location, and further pursuant to Section 36(b) of the Overlease applicable thereto, you are hereby formally notified that you have committed waste to the premises in all of the following respects:

1. You have removed the refrigerated walk-in boxes from the store without permission or consent of the owner or Lessor.
2. You have installed additional air conditioning on the roof of the building in such a manner as to void the owner's roof bond, cause leaks, create a substantially-increased risk of future leaks, create a serious fire hazard, and a risk that the wall bearing the air conditioner I-beam supports will crack and collapse. Specifically, these problems are caused by:
 - (a) The terra cotta coping having been removed from the mezzanine parapet walls, at the point where the walls support the I-beams.

September 9, 1975

- (b) New piping having been run through the roof deck, without pitch pockets.
 - (c) Pitch pockets which protected electrical wiring having been destroyed.
 - (d) The roof being cluttered with sheet metal, cans, bottles, cans from roofing compound, lumber, terra cotta, etc.
 - (e) The improvements installed on the roof without first giving the owner the opportunity to consult with the obligor of his roof bond, in violation of the terms of the said bond.
3. You have damaged the entrance door frame, apparently by having merchandise delivered to the front entrance door.

Accordingly, demand is hereby made that all of the foregoing defaults be cured within five (5) days of your receipt of this letter or, in the case of such defaults as require more than five days to cure, that you commence cure within five days and diligently pursue the same to completion. Of course, it is our position that the leaks now existing in the liquor department are caused by your wrongful acts, and we shall look to you to repair them as soon as possible. Furthermore, to the extent that your wrongful acts have voided the owner's roof bond, we shall look to you for any future resulting roof repair expense.

In the event that you shall fail to cure all of the said defaults within the time above specified, you may expect us to avail ourselves of those rights and remedies to which your defaults have given rise.

Yours very truly,

Thomas F. Fricke
Thomas F. Fricke
General Attorney

TFF:EDC

cc: Mr. Leon Rovins
Mr. Morton E. Kalus
Mr. Jack Horgan
Mr. Sidney Tucker

b/P.S. Mr. Kalus: Please excuse the delay in our taking action in this matter. I have sought the advice of our maintenance department concerning the technical aspects. You will note that I made no

(OVER)

mention of the ceiling structure problems discussed in your letter of December 17th. Our maintenance people did not observe these during the recent visit to the store.



3 Aug 77
FOOD FAIR STORES, INC.

[Handwritten signature]
tct

REPLY TO
LEGAL DEPARTMENT
SUITE 1003, 3175 J.F.K. BLVD.
PHILADELPHIA, PA. 19104

DEFENDANT
KALUS EXH. #10

rec'd 10/30/75

October 27, 1975

Mr. Morton E. Kalus
Kalus Construction Co.,
1657 Whitehead Court
Baltimore, Maryland 21207

Re: Food Fair Store #551, Arlington, Va.
Our File RE61-38

Dear Mr. Kalus:

I have received your letter of October 23, 1975, and am taking appropriate action on the items you mentioned.

Very truly yours,

Thomas F. Fricke

Thomas F. Fricke
General Attorney

TFF:aod

200

DEFENDANT
KALUS EXH. #11

3 Reg 77

CMP
[Signature]

NOV. 18
1976

M E M O R A N D U M

DATE: November 15, 1976

FROM: Marc D. Rash

TO: Mr. Sidney Tucker

cc: Mr. Martin S. Wainfan

Mr. Carl L. Grossman

Mr. Jack Horgan

RE: Dart Drug Sublets
Lee Highway, Arlington, Va. &
Kenilworth Ave., Riverdale, Md.

Ever since I have been affiliated with the Real Estate Department, I have received many disturbing letters from Dart Drug's Real Estate Department and Legal Department, concerning roof leaks, damage to canopys, sidewalk repairs and other exterior structural problems.

These problems have been caused by Dart Drug alone; for example, the Lee Highway unit - Morton Kalus, landlord, met a few months ago with Earl Goodman, Dart Drug's Real Estate Manager (who recently resigned after being there for only two months) to show Mr. Goodman that Dart Drug had placed a new air-conditioning unit on the roof, which caused severe roof damage and, therefore, forfeited the bond on the roof. Also, since Dart Drug trucks only unload out in front, these trucks back into the canopy of the building and not only damage the canopy, but sections of the roof. In addition, by Dart Drug unloading out in front, the sidewalks have become cracked and broken-up. Dart Drug feels we are responsible for their negligence, and the enclosed letter speaks for itself.

Please advise me on the above.

MDR:ar
encl.

DEFENDANT
KALUS EXH. #12

Arlington

Registered Mail
Ret. Rec. Req.

128671

April 19, 1977

3 Aug 77

Tel

Mr. Sidney Tucker
Food Fair Stores, Inc.
33rd & Arch Streets - P. O. Box 7916
Philadelphia, Pa. 19101

Re: Food Fair Store #551X
(Sub-leased to Dart Drug) Lee Highway and N. Harrison Street,
Arlington, Virginia

Dear Mr. Tucker:

This is to advise you that pursuant to the Landlord's rights, as set forth in Paragraph 36 of the Lease between us and Food Fair Stores, Inc., dated August 29, 1960, covering the subject property, we are hereby giving you notice on this date that the monthly rental of \$3,070.83 as prescribed in Paragraph 6 of said Lease is unpaid, and Food Fair Stores, Inc. is therefore in default of the Lease Agreement.

In addition to the aforementioned default, we are further notifying you herewith, that Food Fair Stores, Inc. is also in default on that portion of Paragraph 6 which calls for delivery to the Landlord of the Tenant's "Gross Sales" statements. The last statement received by us reported through March 31, 1975.

We are hereby giving Food Fair Stores, Inc. the prescribed period of ten (10) days as outlined in Paragraph 36, to cure the aforementioned defaults.

Very truly yours,

KALUS CONSTRUCTION COMPANY

Morton E. Kalus

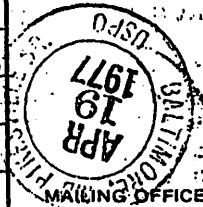
MEK:mb

202

REGISTERED NO. 228671

POSTMARK OF

Value \$ <u>N.V.</u>	Special Delivery \$
Reg. Fee \$ <u>2.10</u>	Return Receipt \$ <u>25</u>
Handling Charge \$	Restricted Delivery \$
Postage \$ <u>.13</u>	<input type="checkbox"/> AIRMAIL

POSTMASTER (By) mpch
 FROM Kalus Construction Co.
1657 Whitehead Ct.
21207

 TO Sidney Tucker
Food Fair Stores, Inc.
33rd & Arch Sts.
Phila. Pa. 19101

★ G.P.O.: 1974-583-269

PS Form 3811, Mar. 1976

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

 ● SENDER: Complete items 1, 2, and 3.
 Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).

- ☐ Show to whom and date delivered..... 15¢
- ☐ Show to whom, date, & address of delivery.. 35¢
- ☐ RESTRICTED DELIVERY.
Show to whom and date delivered..... 65¢
- ☐ RESTRICTED DELIVERY.
Show to whom, date, and address of delivery 85¢

2. ARTICLE ADDRESSED TO:

Food Fair Stores
Phila Pa. 19101

3. ARTICLE DESCRIPTION:

REGISTERED NO. CERTIFIED NO. INSURED NO.

228671

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

4. DATE OF DELIVERY

APR 20 1977

POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

★ G.P.O.: 1976-O-203-450

ED NO. 722283		POSTMARK OF PIESVILLE PR. JAN 15 1969 MAILING OFFICE
Special Delivery \$	Return Receipt \$ 10	
Restricted Delivery \$		
Postage \$ 06	<input type="checkbox"/> AIRMAIL	
POSTMASTER (By) <i>AE.</i>		
FROM <i>E.S. Kalus - M.E. Kalus</i> <i>1657 Whitehead Court</i> <i>Balto. Md. 21207</i>		
TO <i>Food Fair Stores, Inc.</i> <i>3175 John F. Kennedy Blvd.</i> <i>Philad. Pa. 19104</i>		
POD Form 3806, Dec. 1965		RECEIPT FOR REGISTERED MAIL

DEFENDANT
KALUS EXH. #13

3 Aug 77 *CMP*
ICP

Food Fair Stores, Inc.
3175 John F. Kennedy Boulevard
Philadelphia, Pa. 19104

Re: Store #551 - 5400 Lee Highway, Arlington, Virginia

Gentlemen:

This is to acknowledge the receipt of your request dated December 24, 1968, for approval of a Sub-Lease re the captioned premises subject to the terms of our Lease Agreement, dated August 29, 1960; to Dart Drug Corporation, Lee Highway.

Please be advised that we hereby approve this Sub-Leasing, subject to all terms and conditions of the aforementioned Lease dated August 29, 1960.

Very truly yours,

Morton E. Kalus

Morton E. Kalus

Date:

1/15/69

Emanuel S. Kalus
Emanuel S. Kalus

DEFENDANT DART
EXHIBIT #1

KALUS CONSTRUCTION COMPANY
1857 WHITEHEAD COURT • WOODLAWN
BALTIMORE, MARYLAND 21207

AREA CODE :
944-233

*Marc
Rash*

January 2, 1974

Food Fair Stores, Inc.
Mrs. Bettye Calabrese, Real Estate Dept.
Suite 1003, 3175 John F. Kennedy Boulevard
Philadelphia, Pennsylvania 19104

Re: Store #551, Arlington, Virginia

Dear Bettye:

The following is in response to your telephone conversations with me on November 14, November 15, and December 20, 1973; also your December 20, 1973 letter which we received on the 28th.

The roof leaks, other than the trash room, are our responsibility, and the order to repair same had been placed after our first conversation.

I shall advise you upon completion of the necessary repairs.

Very truly yours,

KALUS CONSTRUCTION COMPA

Marion

(Mrs.) Marion B. Bernstein,
Secretary to Mr. Kalus

mb

1/11/74

Dear Bettye,

*This letter is self-explanatory. Any further questions,
please contact me. Hope everything is resolved.*

Marc

205



FOOD FAIR STORES, INC.

DEFENDANT DART
EXHIBIT # 2

S. Aug 27

REPLY TO
REAL ESTATE DEPT.
P. O. BOX 7916
33rd AND ARCH STREETS
PHILADELPHIA, PENNSYLVANIA 19101

[Handwritten signature]

Call - 11/26/73

November 15, 1973

Morton E. Kalus, Emanuel Kalus
and Paul J. Burman
1657 Whitehead Court
Baltimore, Maryland 21207

re: Food Fair Store #551X
Arlington, Virginia

Gentlemen:

This will confirm my telephone conversation of yesterday with your office with respect to roof leaks at the referenced location. Specifically, the roof is leaking over the trash room and pharmacy area.

Pursuant to the terms of our lease agreement the correction of this condition is a responsibility of the landlord, and I ask that you immediately take the necessary steps to rectify same and advise me accordingly, so that I may close my files.

Thank you.

Very truly yours,
FOOD FAIR STORES, INC.

(Mrs.) Bettye Calabrese
Real Estate Department

BC/al

cc: Mr. Marc Rash
Mr. Tom Frederick
Mr. Earl Nicholson
Mr. Marvin Kushner
Mr. Gary T. Maufer, Dart Drug Corporation

DEFENDANT DART
EXHIBIT #3

5/18/77

id

March 13, 1974

Morton E. Kalus & Emanuel S. Kalus
1657 Whitehead Court
Baltimore, Md. 21207

RE: STORE #551X
DART DRUG STORE
ARLINGTON, VA.

Gentlemen:

Concerning your letter of January 2, 1974, regarding the roof leaks at the above reference location, Please be advised that these leaks still exist and are causing us grave inconvenience when it rains.

Would you please check into this matter, as it is your responsibility, and advise me of the date of the possible solution to this problem, so I may inform those directly concerned with the operation of this store.

Your immediate attention to this matter will be greatly appreciated.

Thank you.

Very truly yours,
Food Fair Stores, Inc.

John Whalen
Tulip Realty Division

JW:cjm
CC: Marc Rash
Gary Maufer

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