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# Record No. 5823

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In the  
Supreme Court of Appeals of Virginia  
at Richmond

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H. B. WHITT

v.

JOHN R. GODWIN

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FROM THE CIRCUIT COURT OF CHESTERFIELD COUNTY

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## RULE 5:12 BRIEFS

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

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

HOWARD G. TURNER, Clerk.

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

IN THE

# Supreme Court of Appeals of Virginia

AT RICHMOND.

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Record No. 5823

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VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 16th day of January, 1964.

H. B. WHITT,

Plaintiff in error,

*against*

JOHN R. GODWIN,

Defendant in error.

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From the Circuit Court of Chesterfield County  
William Old, Judge

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Upon the petition of H. B. Whitt a writ of error and *supersedeas* is awarded him to a judgment rendered by the Circuit Court of Chesterfield County on the 11th day of July, 1963, in a certain motion for judgment then therein depending wherein John R. Godwin was plaintiff and the petitioner was defendant.

And it appearing from the certificate of the clerk of the said court that a *supersedeas* bond in the penalty of thirteen thousand dollars, conditioned according to law, has heretofore been given in accordance with the provisions of Code, section 8-477, no additional bond is required

## RECORD

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## ORDER

THIS DAY came the parties by their Attorneys and thereupon came a jury to-wit: Ernest A. Stopf, Ernest A. Cross, Bennie B. Chandler, Ralph A. Dance, James Remmie Rowlett, James A. Kamosky and P. S. Simmons, who were sworn to well and truly try the issues joined and having fully heard the evidence, upon motion of the plaintiff by his Attorney, the Court struck the defendant's evidence, to which action of the Court the said defendant, by his Attorneys, duly excepted. And thereupon the plaintiff by his Attorney made a motion for summary judgment in pursuance of Rule 3:20 of the Rules of Practice and Procedure of Actions at Law promulgated by the Supreme Court of Appeals of Virginia, which motion the Court granted, to which action of the Court the defendant by his Attorneys duly excepted. Whereupon it was considered ADJUDGED AND ORDERED by the Court that the plaintiff John R. Godwin have and recover of the defendant H. B. Whitt the sum of TWELVE THOUSAND DOLLARS (\$12,000.00) with interest thereon from the 6th day of September, 1962, until paid, together with the costs expended by the plaintiff in the prosecution of this action. To which action of the Court in rendering judgment for the plaintiff the defendant duly excepted.

page 25 ] Upon motion of the defendant by his Attorneys, execution of said judgment is suspended until defendant's petition for a writ of error and *supersedeas* shall have been presented and acted upon by the Supreme Court of Appeals of Virginia, or until the time for presenting such a petition shall have expired, provided that the defendant shall, within ten (10) days of the date of this order, enter into a bond in the amount of THIRTEEN THOUSAND DOLLARS (\$13,000.00) with security, to be

approved by the Clerk of this Court, containing all of the conditions prescribed in Section 8-477 of the Code of Virginia.

Enter: WILLIAM OLD  
Judge

July 11, 1963.

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NOTICE OF APPEAL  
and  
ASSIGNMENTS OF ERROR

*To: William R. Shelton, Clerk Circuit Court of Chesterfield County*

NOTICE is hereby given pursuant to the provisions of Section 4, Rule 5:1 of the Rules of the Supreme Court of Appeals of Virginia that H. B. Whitt, by counsel appeals the final judgment entered in this action on July 11, 1963, and will apply to the Supreme Court of Appeals of Virginia for a Writ of Error and *supersedeas*.

Assignments of Error

The following are the errors assigned. The Circuit Court of Chesterfield County erred:

1. In striking the evidence introduced by the defendant and in not submitting the issues to the jury for its determination.
2. In entering summary judgment for the plaintiff after striking the defendant's evidence.

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*John R. Godwin*

page 27 ]

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Received and Filed

Aug. 29, 1963.

WILLIAM R. SHELTON, Clerk

By: MARGARET C. FOSTER, D. C.

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JOHN R. GODWIN,  
called as a witness by and on his own behalf, having been  
previously sworn, testified as follows:

page 5 ]

DIRECT EXAMINATION

By Mr. Allen:

Q. Mr. Godwin, would you state your name, please?

A. John R. Godwin.

Q. How old are you?

A. Seventy years old.

Q. Where do you live, sir?

A. I live at 3002 Seminary Avenue, Richmond.

Q. What business are you in?

A. Motel business.

Q. How long have you been in the motel business?

A. A little better than twenty years.

Q. What business is Mr. Whitt, the defendant here, in?

A. Contracting business.

Q. How long has he been in that business?

A. That, I wouldn't know. Quite a while, I think.

Q. How long have you known him?

A. I believe since '58. I am not too positive, but I think  
it was in '58.

Q. How long have you been having business transactions  
with him?

A. Well, practically ever since I met him.

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*John R. Godwin*

page 6 ]

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By Mr. Allen:

Q. I hand you, Mr. Godwin, a letter dated March the 6, 1962, addressed to you and signed by H. B. Whitt, and also signed in the lefthand corner by you, which letter is the one that is sued on in this case, and I will ask you to identify that as the letter which is the basis of your suit?

A. It is.

Q. Now, I hand you another letter, carbon copy, and apparently signed by Whitt, handed me by Whitt's counsel, dated August the 17, 1961, and I will ask you if paragraph five referred to in this letter is the paragraph that is referred to in the letter I first handed to you?

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A. It is.

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page 7 ]

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Mr. Allen: I think we ought to read the letter and paragraph five. I have no objection to reading the entire letter of August 17, but paragraph five is the one that is pertinent. The letter of March 6, 1962 is signed by Mr. H. B. Whitt, addressed to Mr. John R. Godwin.

“Dear John:

“Under the terms of paragraph five of a certain letter from me to you, dated August the 17, 1961, you agree to buy, and I agree to sell to you, 248 shares of the common capital stock of Associated Motels, Incorporated for \$30,000.

At that time you paid me \$12,000 of that amount, which I used as a commitment fee, as discussed in my letter. We have not gotten a commitment as yet, and as you know, I am experiencing difficulty in obtaining a refund of the commitment fee. It may be that I will have to accept less than \$12,000. But in consideration

page 8 ]

*John R. Godwin*

of you giving up any right to the 248 shares of Associated Motels, Incorporated, which you acquired under paragraph five of my letter of August the 17, 1961, I agree to pay to you upon receipt all of the money which I can recover from the Federated Mortgagee, Incorporated, which I paid \$12,000.00 to, and I will further agree to pay to you the difference between the amount which I am able to recover and the \$12,000, on or before six months from the date of this letter. If this is agreeable, please sign below.

"Yours very truly,

"H. B. Whitt.

"The foregoing is agreeable to me, and I accept the same.

"John R. Godwin."

Now, the paragraph five of the letter of August the 17, Mr. Godwin identifies it, and here it is:

page 9 ] "Pursuant to our understanding, I am willing to sell you 248 of the remaining 250 shares which I purchased from Frank Giles and Lee Manning for \$30,000, \$12,000 for which you will pay now, and which will be used by me to obtain the commitment which you and I have discussed. As I understand it, the commitment will net us \$530,000, \$30,000 of which will have to be used to pay a six point brokerage. As I also explained to you, there will be an add-on fee of \$100,000 payable over the life of the loan, namely, twenty years, at the rate of \$5,000 per year, and the \$530,000 will be repaid in quarter-annual installments over the life of the loan, and will bear interest at six and one-half percent. Of course, the \$12,000 is merely a standby fee which we will either recover through a credit against the brokerage or a credit on the loan."

And the last paragraph of that letter reads:

"In case the commitment is not satisfactory to our attorneys, I, of course, will not release the \$12,000, but will return the same to you."

By Mr. Allen:

page 10 ] Q. Now, did you give up your interest or claim to that stock which you had a right to by — under paragraph five of the letter of August 17, 1961?

A. I did.

*John R. Godwin*

Q. Whom did you give it up to?

A. Mr. Whitt.

Q. Was there any other consideration for your signing that letter of March the 6, 1962; that is, other than giving up your right to that stock and getting out of that deal?

A. There was not.

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Q. Where was this letter of March the 6, 1962, typed and signed?

A. Mr. Whitt's office.

Q. Where was that?

A. In his home. I don't know the address.

Q. On 7003 Jahnke Road?

A. I believe that is correct.

Q. Who was present?

A. Mr. Wells, C.P.A. man.

Q. Was he the Mr. Wells referred to by Mr. Walker in the opening statement here?

page 11 ] A. That is right.

Q. Was anybody there other than you and Mr. Wells and Mr. Whitt?

A. No, sir.

Q. Well now, how did that letter come to be written so plainly and so well?

A. Mr. Whitt called me up at the motel and asked me would I come over to his house. I said, "sure." So I went over there, and he explained to me about he didn't want me to lose any money on the deal and he would give me a note for the \$12,000, and he said, "I can't pay it now." He said, "I will give it to you in six months," and he didn't say anything about the relinquishing of the former contract at the time he mentioned it to me; but he asked Mr. Wells to write the agreement.

Mr. Wells said he would rather not, because he didn't know enough about it, and he suggested we call Mr. Neal, his attorney.

Q. Whose attorney?

A. Mr. Whitt's attorney. So he called Mr. Neal, and Mr. Neal dictated the letter that we signed.

Q. Over the telephone?

A. On the telephone.



*John R. Godwin*

Q. You mean the letter that is dated March the  
page 12 ] 6, '62?

A. That is correct.

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By Mr. Allen:

Q. Did you have anything to do with the phraseology or the wording of this letter?

A. Nothing whatever.

Q. It was dictated by Mr. Neal, Mr. Whitt's lawyer, over the telephone to Mr. Wells?

A. That is correct.

Q. Did Mr. Wells write it up right there?

A. Yes, sir.

Q. And after he wrote it up from Mr. Neal's dictation, both of you signed it?

A. That is correct.

Q. Now, you heard the opening statement of Mr. Walker for the defense here, in which he said that subsequent to the signing — that is, after the signing of this agreement of March the 6, 1962, that Mr. Whitt contacted you and informed you that the Federated Mortgagee had offered to return \$6,000 of the money deposited with it, and  
page 13 ] that as a prerequisite to the return of that money, he couldn't get that money, unless they got a release from you, as well as from Whitt, and that Whitt had requested you to execute a release to help him to get the \$6,000, and you would immediately get that \$6,000, and then Whitt would pay you the balance, and that you refused to execute the release and on that ground, he claims that you knocked him out of collecting \$6,000 and therefore he doesn't owe you the whole \$12,000, but only \$6,000.

Now, what have you got to say to that?

A. He never asked me to sign no release of any kind, shape or form. In fact, I don't recall seeing Mr. Whitt since he signed that note. I'd like to know where I was at when he asked me to sign a release, and for what kind of release. I had nothing to do with the deal, nothing whatsoever. I had signed nothing in the deal. It was all in his name. He made all the agreements.

Q. Did you have anything to do with this deal concerning the deposit of that \$12,000?

A. I turned the deposit over to his attorney.

*John R. Godwin*

Q. Who was that?

A. I forget the gentleman's name.

Q. What is that?

A. I forget the gentleman's name.

Q. Was it Mr. Neal or Mr. Walker?

page 14 ] A. Mr. Walker. Whoever went to New York to take care of the deal. I gave it to him.

Q. You gave the check to Mr. Whitt's attorney in New York?

A. Yes.

Q. Well, now who was there in New York?

A. Mr. Whitt and an attorney and I.

Q. Well, what did you all go to New York for?

A. To get a commitment.

Q. To get a commitment for what?

A. To build the motel.

Q. What did that have to do with the Federated Mortgagee, Incorporated?

A. Well, how that came about, Mr. Whitt called me up. I was in Atlanta, and wanted to know if I had any money. I said, "yes, I have got a little." I said "why?" He said, "well, I have got a commitment for the amount of money that is stated in that contract;" and he said, "if you want to come in, if you put up \$12,000, why I will let you come in one-half of the deal." So I said, "well, Henry, I will tell you what I will do. I will think it over and I will call you back." So I went down to a friend of mine by the name of Teal and talked to Mr. Teal about it, and I said, "Henry has got a commitment to build this motel at Petersburg." We had formerly —

page 15 ] Q. Was that the Congress Motel?

A. That is the Congress. We formerly had been down and looked at it, and he said for \$12,000 you can get this commitment amounting to whatever it says there. So he said, "Well, let's call Henry up." So we did. And Mr. Teal and I both talked to him on the phone, and he said he had a commitment.

Q. Now, that was a commitment for the project mentioned in paragraph five of the letter of August 17?

A. That is correct.

Q. All right, go ahead.

A. And I am pretty sure that he read the commitment on the phone. Well, we in turn wanted to be positive, of course, so we called Mr. Neal on the phone, and Mr. Teal and I talked

*John R. Godwin*

to Mr. Neal, and he informed us that they did have a commitment.

Well, I said, "okay, I will get the plane and bring you the \$12,000." So I caught the plane, met him in Richmond, and they met me at the airport ready to go to New York. They said they had to be there by a Friday, or something, a day or two, with the \$12,000 in order to get the commitment consummated, and then is when he handed me that agreement.

Q. What agreement, now?

A. The one that we have there. That first one.

Q. The one marked Exhibit 1, which is March  
page 16 ] 6, 1962?

A. That is the one he handed me in the depot. We catch a plane and we goes to New York, went down to the Mortgage Company, and they wanted to put up this \$12,000 for the commitment. They said they didn't have any commitment. Henry told me, he said, "Well now, the man told me he had a commitment." In fact, he had a telegram to that effect, that he did have a commitment. I think it was a salesman. Anyway, they said, "You have got no commitment." But they could get a commitment.

Q. Had you put up the \$12,000 then?

A. No, sir. No, sir.

Q. So his attorney talked with these mortgage men?

A. They called back Mr. Neal, back and forth, until they were satisfied that they were going to get the commitment, and everything would be all right. They were satisfied. Mr. Neal was satisfied, and that is when, after they became satisfied, that the attorney handed the \$12,000.

Q. The certified check that you had taken up there, or cashier's check for the \$12,000?

A. That is right.

Q. Well, did they ever get the commitment?

A. No, sir, not to my knowledge, they never did; but I understand they later did get one.

page 17 ] Q. You don't know anything about that?

A. No, sir; don't know a thing in the world about it.

Q. But in the meantime, what had become of your \$12,000?

A. I don't know. Only thing I knew —

Q. Who got it? Who was it paid to?

A. It was made out to me from the bank, and I endorsed it and handed it to the attorney.

Q. What attorney?

*John R. Godwin*

A. Mr. Neal's attorney, or assistant.

Q. Was that in New York?

A. That is in New York.

Q. Well, how long was that before March the 6, 1962, when this letter was written?

A. Well, the date that is on that other contract —

Q. August the 17, 1961?

A. It would be about the 18th.

Q. About the 18th?

A. That is right.

Q. Well, why was that letter written of August the 17, which has got this paragraph five in it?

A. Why was it written?

Q. Where was it written?

page 18 ] A. Mr. Neal wrote it, I presume. I know he did. He wrote it in his office and give it to Henry and Henry gave it to me when he met me at the airport.

Q. To go to New York?

A. That is right.

Q. Well, Mr. Neal did not go with you to New York?

A. Yes.

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By Mr. Allen:

Q. Now, what about Mr. Whitt's contention, Mr. Godwin, that you subsequently — they say after the writing of this agreement of March the 6, 1962, something happened in reference to this matter in which you became entitled to get only \$6,000 instead of \$12,000?

A. I don't know. The only thing that I do know about the \$6,000, I know Mr. Neal decided that, several times, that they weren't going to be able to get all the money, as I understood it. Now, I never contacted these people;  
page 19 ] never talked to them. The only thing, I talked to Henry and Mr. Neal, that they had offered them \$6,000. Whether they did, I don't know. I do know one time that Mr. Whitt called me up and said that they had sent the \$12,000 to the bank in Richmond, and it was made out to Mr. Neal and me. I said, "It is at the bank now?" He said, "Yes." So I said, "Well, goodness, I will get ahold of Mr. Neal." And I called up and Mr. Neal was in Florida, and he told me it was in the bank at that time, the whole amount.

*John R. Godwin*

Q. Well, did you ever later find out whether it was ever put in the bank or not?

A. I have no idea. They say it was, but I don't know anything about it.

Q. Have you ever been paid any part of the \$12,000?

A. No, sir.

Q. Well, this transaction about they being able to get \$6,000 from the Federated Mortgagee and if they couldn't get any more, why then they weren't going to pay you but \$6,000. What took place? When did that take place?

A. I don't know. The conversation was quite a lot about \$6,000. Whether he could get \$6,000. Which had no bearing on me whatsoever.

Q. Why?

A. Because they agreed to pay me if they didn't  
page 20 ] get the commitment. They agreed to pay me my \$12,000 back.

Q. If they had gotten the commitment and the transaction had gone through as originally contemplated when you put up the \$12,000, would you have gotten this stock mentioned in paragraph five here?

A. That is correct. That is correct. That was the offer. That was the deal. If the commitment — and my understanding when I left Atlanta was we had a commitment, or I wouldn't have caught a plane up here and brought \$12,000.

Q. Well, when you put up the \$12,000, was it in contemplation that you were to get this stock?

A. Yes, sir. That Mr. Neal, which I had a lot of confidence in his ability as to when a thing was right, and he sanctioned it and said it was all right.

Q. Then you gave up your right to the stock upon his agreeing to pay you the \$12,000?

A. That is right, at his suggestion. He asked me when he took me over there, when he told me that he had a loan, construction loan I believe is the way he put it, to build the motel, and wanted to know if I would go on his bond so he could get the construction loan. I said, "I don't know. It depends." Well, then he said, "would you want to take this note for the \$12,000?" I said, "Yes; all I want Henry is my money; all I want."

page 21 ] Q. Well, when was the first time you ever heard of any objection to paying the \$12,000 because of your not going into this other deal and enabling him to get \$6,000?

*John R. Godwin*

A. After you entered suit.

Q. Had he ever mentioned that to you before?

A. No, sir.

Q. Had he raised any objection to the payment of the \$12,000 before suit was filed?

A. Never.

Q. Had you demanded it and talked to him about it and tried to get it from him?

A. No, I had not. In fact, he was the one that suggested to give the note. See, he had the commitment so he could build the motel, and by me being out of it, giving me the \$12,000, he gets the whole hundred percent of the stock on his motel, which was perfectly all right with me. I didn't care. It seemed to me that was the idea, and which he did, and built the motel.

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CROSS EXAMINATION

By Mr. Walker:

Q. Mr. Godwin, as I understand, you don't contend that there never was any discussion about the refund page 22 ] of the \$6,000?

A. There was discussion that they were going to be able — they got, \$6,000, but there was never no discussion to give me \$6,000.

Q. Well, did you have any objection to them getting the \$6,000?

A. None whatever. Why should I.

Q. Well, didn't you state on March the 6th in Mr. Whitt's office at his home at 7382 Jahnke Road, that you wanted the whole \$12,000 back, and you wouldn't accept any \$6,000 back, and you were going to get it?

A. I wanted my \$12,000 back. Where it come from, I didn't care.

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page 23 ]

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Q. Now, as I understood you a minute ago, you said that since they had agreed to refund you your \$12,000, you didn't

*John R. Godwin*

care what they got back from Federated Mortgagees; is that what you said?

A. No, sir. None of my affair. If I got my \$12,000, that was all I was interested in.

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page 31 ]

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Q. I am not asking you the law. I am just asking you whether or not you are saying that you didn't have any — there was no call for you to put up the \$18,000?

A. Well, yes. I beg your pardon. There was, because he said at that time when he signed that that he had a construction loan to build a motel, and if I would sign a bond he could go ahead and build the motel, that he had the commitment for the Congress Inn, which he did have, which he did do, and built the motel.

Q. Did you put up your \$18,000 then?

A. No, I relinquished it to him in the consideration of just paying me my money back.

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page 33 ]

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Q. Well now, then to say that you had nothing to do with this deal isn't quite true; you had a great much  
page 34 ] to do with the deal; didn't you. It was your money?

A. No. I had not contacted any of them at all. Never had met any of them. Didn't know anything about them until I got into New York.

Q. Well, you met them up there?

A. That is right.

Q. You went through the whole transaction up there?

A. I sat down and listened to it.

Q. You put up your money?

A. Yes.

Q. And Teal's money?

*John R. Godwin*

A. That is right.

Q. Now, on the release, wasn't there a conversation in Mr. Whitt's office on the day of this March the 6th contract, 1962, in which Mr. Whitt told you that they could recover the \$6,000 providing that you and he and Mr. Neal signed a release that would relieve Federated Mortgagees of any further liability?

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page 36 ]

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By Mr. Walker:

Q. Did such a conversation take place, Mr. Godwin?

A. No, sir.

Q. All right, sir.

page 37 ]

A. It wouldn't have made any difference. I wouldn't have to release — What would I have to release from Federated Mortgagees. My name ain't on nothing with Federated Mortgagees. I ain't got nothing to do with the deal.

Q. They have got your check for \$12,000?

A. That is all.

Q. That is all —

A. Why would they want a release?

Q. That is all we are talking about here is the money?

A. That is a cashier's check.

Q. Endorsed by you, payable to you, and endorsed by you?

A. What difference would it make to me. If they paid him 6 — and Henry paid me 6 —, I got my money.

Q. In other words, if you get your 12 — never mind whether Henry can get his 6—?

A. That is correct.

Q. All right —

A. That is right. It doesn't make a bit of difference. That is what the note says.

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page 38 ]

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*John R. Godwin*

Q. The \$12,000 was never a direct loan of money  
page 39 ] from you to Henry?

A. No.

Q. Have you ever contended that that was the case?

A. No, sir.

Q. It was a loan of money?

A. No, sir.

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# RE-DIRECT EXAMINATION

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By Mr. Allen:

Q. Mr. Godwin, counsel for Mr. Whitt was asking you about this stock transaction in paragraph five and about wherein is any promise about you paying the other \$18,000. Now, the agreement reads, Whitt agrees to sell to you the 248 shares for \$30,000, \$12,000 of which you will pay now, and which will be used by me to obtain the commitment. That left \$18,000?

page 40 ] A. Yes.

Q. Well, were you to pay the \$18,000 if you had decided to keep the stock?

A. Would I?

Q. You were to pay it, I say?

A. Yes.

Q. Well now, who made the proposition, or raised the question about Whitt buying your stock interest?

Who first brought that up?

A. Mr. Whitt.

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By Mr. Allen:

Q. Now, Mr. Walker read to you — questioned you about Whitt promising to pay you the \$12,000. I ask you to read to the jury the last paragraph in this letter of August the 17th, 1961, beginning with the words “in case.”

A. You want me to read it out loud?

Q. Yes.

A. “In case the commitment is not satisfactory to our

*Ronald Wells*

attorney, I, of course, will not release the \$12,000,  
page 41 ] but will return same to you."

Q. Well now, did he ever, so far as you know,  
get a satisfactory commitment?

A. Not as far as I know.

Q. Now let's see — this letter, first letter, dated August  
the 17th, 1961 — When was the \$12,000 turned over to Mr.  
Whitt's attorney?

A. In the New York office; I think it must have been on the  
18th.

Q. Of what?

A. Well, when that contract —

Q. The contract is dated —

A. It must have been August the 18th.

Q. 1961?

A. That is correct.

Q. And the letter in which he agrees to pay you back the  
difference, whatever it may be, between the \$12,000 and what  
he gets from Federated Mortgagees, is dated March the 6,  
1962?

A. Yes.

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page 45 ] RONALD WELLS,  
called as a witness by and on behalf of the Plain-  
tiff, having been previously duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Allen:

Q. Mr. Wells, would you state your occupation, please?

A. I am an accountant, sir.

Q. How long have you been engaged in that business?

A. Since 1923.

Q. Do you know Mr. Godwin here?

A. Yes, sir.

Q. Do you know Mr. Whitt?

A. Yes, sir.

Q. Have you been doing any work for them?

A. I have been doing work for both of them, yes, sir.

Q. Both of them. Well now, I hand you a letter dated  
March the 6, 1962, addressed to Mr. John R. Godwin, signed  
by Mr. H. B. Whitt, and then signed in the lefthand corner,

*Ronald Wells*

John R. Godwin, and will ask you if you know who wrote that letter?

A. (No response)

Q. Who typed it?

A. Yes, sir. I typed it.

Q. Where was the letter typed?

page 46 ] A. In Mr. Whitt's office, 7382 Jahnke Road.

Q. Who was present?

A. Mr. Godwin and Mr. Whitt.

Q. Anybody else?

A. No, sir.

Q. Besides yourself?

A. That is all; myself.

Q. Well now, who dictated the phraseology of that letter?

A. This final letter was dictated by Mr. Neal over the telephone to me.

Q. How did it come about that Mr. Neal dictated the letter?

A. Well, Mr. Allen, I am not an attorney.

Q. I mean, who asked him to do it?

A. I suggested to Mr. Whitt that he call Mr. Neal before this letter was written, because, as I say, I am not an attorney, and phrasing a letter like this could get somebody in a lot of dutch or a lot of trouble.

Q. Well, who gave Mr. Neal the information on which to write the letter?

A. Mr. Whitt had a conversation with Mr. Neal, and then I talked with Mr. Neal, and this letter was dictated to me on the telephone.

page 47 ] Q. And were you present when Mr. Whitt talked to Mr. Neal?

A. Yes.

Q. And, of course, you talked to Mr. Neal, too?

A. That is the way I got this dictation.

Q. And then Mr. Neal, as I understand it, dictated the letter to you?

A. Yes, sir.

Q. Did you write it up strictly in accordance with Mr. Neal's dictation?

A. Yes. I am sure I did.

Q. Well, where was the letter signed?

A. In Mr. Whitt's office.

Q. Anybody there besides you and Mr. Godwin and Mr. Whitt?

A. Mr. Godwin, Mr. Whitt and myself.

*Ronald Wells*

Q. Was anything said that was explanatory of the contract, any more than is in the contract itself?

A. No. I think the contract here speaks for itself. Mr. Whitt and Mr. Godwin had some conversation in regard to this letter from the Attorney General's office in New York before this letter was written, Mr. Allen, in regard to a \$6,000, or better, refund from Federated Mortgagees also; and the letter from the Attorney General's office  
page 48 ] to Mr. Whitt was asking Mr. Whitt if he would appear in the Attorney General's office as a witness against these principals of Federated Mortgagees, Incorporated.

Q. Do I understand you to say that before that letter was written, while Mr. Whitt and Mr. Godwin was in your office, they had some conversation about Federated Mortgagees and what they might get out of Federated Mortgagees?

A. That is correct, sir.

Q. And then the letter was written and signed?

A. Yes.

Q. Well, did Mr. Whitt say anything there to the effect that he didn't owe that money, or any conditions about paying it, or anything of the kind?

A. Well, Mr. Whitt wanted to get back as much as he could from Federated Mortgagees, yes.

Q. But I mean, as between Mr. Whitt and Mr. Godwin, did Mr. Whitt in any way, shape or form deny that he owed Mr. Godwin —

A. No, sir.

Q. The full \$12,000?

A. No, that is spoken for right here in the letter, but they had discussed if they could get \$6,000, or Mr. Whitt could get \$6,000, or X-dollars over that, Mr. Whitt would not be required to pay the \$12,000. He would only pay the difference.

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## CROSS EXAMINATION

By Mr. Walker:

Q. Mr. Wells, in the conversation that took place, I take it that you were not able to hear all of the conversation by

*Ronald Wells*

virtue of your working on the contract and talking on the telephone?

A. No. They continued talking back and forth amongst themselves, and I wondered if I would ever get the letter written.

Q. And while it wasn't any heated discussion, I take it it was somewhat —

A. It wasn't too amicable, I will say.

Q. Now, Mr. Wells, there wasn't anything in this discussion that indicated to you that Mr. Whitt owed Mr. Godwin the \$12,000 up until he said he would pay him the difference between what he could get back from Federated Mortgagees and the \$12,000?

A. That is right, until this letter was written.

Q. And as a matter of fact, Mr. Whitt said he would do that in order that Mr. Godwin didn't lose any of the money he put up?

A. Yes. I remember his telling Mr. Godwin he page 50 ] didn't want him to lose any money if he could help it.

Q. And during this conversation, you heard them discussing this outfit in New York and the Attorney General and the fact that if they executed a release they could get the \$6,000, maybe more, back from Federated Mortgagees?

A. The release was mentioned. I don't remember the exact wording, because as I say, I was trying to do something else while they were talking.

Q. Without remembering the exact wording, in the sense of it, did Mr. Godwin have anything to say about his feeling of his signing any such release?

A. He said he wanted his whole \$12,000. He didn't want 6—, or he didn't want 8—. He wanted his whole 12—.

Q. So his objection —

Mr. Allen: Wait a minute. Let him finish.

A. And that if Mr. Whitt couldn't appear before the Attorney General's Office in New York against these people, to give him the necessary papers that we had, or that Mr. Whitt had — not we — pertaining to it, and that he would get Mr. Teal, — whom I don't know — and Mr. Teal would in turn get a Mr. Talmadge, and they would go to New York and see if they couldn't get the \$12,000 back.

Q. So that, his objection to signing a release at that point

*Ronald Wells*

to Federated Mortgagees was that he thought he ought to get the whole \$12,000 back?

A. Well, he said he wanted \$12,000.

Q. And once Mr. Whitt had put his name on that contract of March the 6th, Mr. Godwin didn't have any more concern about getting the money back from Federated Mortgagees; he didn't talk about it any more?

A. Didn't talk about it.

Q. All right. Now, Mr. Wells, on this letter, isn't it a fact that when this thing came up and Mr. Whitt, after this heated discussion was going to do something to satisfy Mr. Godwin's feelings, that you suggested that he ought to get ahold of Mr. Neal before he got himself out an a limb too far —

A. Absolutely.

Q. And that he did do this, and at that time you had already roughed out an idea of what you wanted?

A. It had been roughed out, yes, that way.

Q. And using your own language?

A. And using my language and Mr. Whitt's language.

Q. Combined, and you got Mr. Neal on the telephone and told him — Henry got him on the telephone and you could hear his conversation —

A. I could hear what Mr. Whitt was saying, not what Mr. Neal said.

page 52 ] Q. I know you couldn't testify what Mr. Neal said, and Mr. Whitt told him what he wanted to do, that he wanted to give Mr. Godwin back the difference between what he could get out of Federated Mortgagees and \$12,000?

A. That is so.

Q. And then you got on the phone and talked to Mr. Neal?

A. That is correct.

Q. And didn't Mr. Neal, in effect, tell you, "well, if you are going to go ahead and do something like that, then you ought to put in this contract if he is going to pay him back any of this \$12,000 that he waives any right he had in the stock of Associated Motels?

A. Yes, that he would waive any rights that he would have in the 248 shares, and he wouldn't be required, of course, to put up the additional \$18,000.

Q. Right, and — may I have that contract a minute?

And the language in here, the first paragraph that sounds wordy, like lawyers are apt to be, which says: "Under the

*Ronald Wells -*

terms of paragraph five of a certain letter from me to you dated," such and such — that was Mr. Neal's dictation?

A. That had to be Mr. Neal's, because I had never seen this letter of August the 17th. When that letter was written.

page 53 ] Q. And then this language: "It may be that

I will have to accept less than the \$12,000, but in consideration of your giving up the rights," and so forth — this language was given to you by Mr. Neal?

A. That is right.

Q. But the basic language in this contract, Mr. Wells, as to what Mr. Whitt was going to agree to do, which is worded in much more simple terms than lawyers are apt to use, he says: "I agree to pay the money I can recover from Federated Mortgagees, which I paid the \$12,000 to, and I will further agree to pay to you the difference between the amount which I am able to recover and the \$12,000 on or before six months —" That was the language that was adopted and added in to what Mr. Neal suggested from the original rough draft; isn't that true?

A. Yes.

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page 54 ]

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#### RE-DIRECT EXAMINATION

By Mr. Allen:

Q. Mr. Wells, can you tell us whether or not the writing and the final reduction to writing and the signing  
page 55 ] of this was the last act of the parties after they had been doing all of that talking we have been talking about?

A. Yes. Mr. Godwin took this letter and he left the office after it was signed.

Q. Well now, can you tell me, so far as you know, whether that letter is the final agreement of the parties on that occasion?

A. So far as I know.

Q. Do you happen to have the roughed-out notes that you have been talking about?

A. Roughed-out notes?

Q. I understood you to say —

*Ronald Wells*

A. No. I will tell you, after I had started roughing this letter out between Mr. Whitt and myself and then when I got Mr. Neal on the telephone, I just tore the sheet off and in the wastebasket it went, and I started all over.

Q. Now, this letter of March the 6th, 1962, designated as Plaintiff's Exhibit No. 1, concludes; "I agree to pay you upon receipt all of the money which I can recover from Federated Mortgagees, which I paid the \$12,000 to. I also further agree to pay to you the difference between the amount which I am able to recover, and the \$12,000 on or before six months from the date of this letter."

Well, at the time that letter was written, do you page 56 ] know whether there was any certainty about collecting any amount from Federated Mortgagees and if so, what amount probable to be collected?

A. Mr. Allen, I had not talked to any principals of Federated Mortgagees during this whole thing myself, and I had only information that had come to me from other people that Federated Mortgagees had agreed to pay what would be a refund of \$6,000 and possibly more if they hadn't used it as expenses; so that is the reason I said \$6,000 plus X-dollars.

Q. But there was no certainty when that agreement was written whether they could get the 6 — or not; was there?

A. Not to my knowledge. It was all from someone else. As I said, I hadn't talked to any of the principals of the Federated *Mortgees*, Incorporated.

Q. But from the conversations there with Mr. Godwin and Mr. Neal over the telephone and Mr. Whitt, was there any definite opinion expressed as to whether anything could be recovered, and if so, how much?

A. \$6,000.

Q. That was the opinion that you might recover?

A. Yes.

Q. But whatever it was, you wrote that letter as it is written there?

A. Oh, yes.

page 57 ]

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**RE-CROSS EXAMINATION**

By Mr. Walker:

Q. Mr. Wells, one thing you have just said there that interests me. You said that that was the reason why you said



*Henry B. Whitt*

in the letter, \$6,000, plus — That *wasthe* reason you wrote the contract that way, was because they were going to get \$6,000 and then what was to be over would be what Mr. Whitt would pay to Mr. Godwin. In other words, \$6,000?

A. \$6,000, plus X-dollars is what I understood Federated Mortgagees had promised they could refund. The performance of the necessary release with the signatures of Mr. Godwin, Mr Whitt and their attorney to be placed with Lawyers Title.

Q. So the only open part of this was whether or not they might get back more than \$6,000 and thereby make it so Mr. Whitt would owe Mr. Godwin less than \$6,000?

Mr. Allen: I thought I understood —

Mr. Walker: Your Honor, he is going to impeach his own witness now. This is on direct.

Mr. Allen: I am not going to impeach him. I don't want to impeach him. Except to what he says.

page 58 ] By Mr. Allen:

Q. The letter doesn't say anything about the \$6,000; you observed that, didn't you?

A. I didn't say that the letter did. This was conversation.

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page 59 ]

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HENRY B. WHITT,  
called as a witness by and on his own behalf, having been  
previously duly sworn, testified as follows:

## DIRECT EXAMINATION

By Mr. Walker:

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page 60 ]

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Q. Have you in recent years done any work, for yourself,  
that is?

*Henry B. Whitt*

A. Well, I built the Congress Motel over at Petersburg, which was a joint venture to start with — with four of us.

Q. That is the one that is under discussion here?

A. Yes, sir.

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page 61 ]

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Q. And you had then all of the stock, or had the right to all of the stock in the corporation?

A. We had an agreement, Mr. Walker, prior to buying the stock, if we could buy it, whereby Mr. Godwin and I had decided to give Mr. Neal four shares, which he and Mr. Teal would own fifty percent of the balance, and Mr. Travis and I would own fifty percent of the balance, if he chose to stay in.

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page 70 ]

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Q. All right, coming up into the spring now, Mr. Whitt, of 1962, was there any communication from the people up there after they couldn't get the commitment as to what they would do about returning the commitment fee of \$12,000?

A. Well, naturally we all were eager to get a commitment, so we were from time to time, we were talking to Mr. Godwin, and Mr. Travis and myself, and finally we decided that we were not going to get the commitment and the best thing to do is to proceed to get the money back; and we talked it over some length of time — Mr. Travis, Mr. Godwin and myself — and we decided we were not going to get no commitment, so we could see what we were going to do, and then they authorized me — which I was president of the corporation — I called Federated Mortgagee and talked to Federated Mortgagee and told them that we wanted a commitment or wanted the money back. Federated Mortgagee at that time said, "Give us until tomorrow, and we will have a commitment." Which I gave them a deadline as of that date. The next day, I think I was hunting in Buckingham,

*Henry B. Whitt*

which I am sure I was. When I got back to Rich-  
page 71 ] mond, they had called; and I called Mr. Lesser,  
and finally got a call through to Mr. Lesser, and  
he said that they would have this commitment the next day  
if we'd fly up. So I talked to Mr. Godwin and Mr. Travis,  
and I flew to New York with Mr. Neal on my expenses and  
my time, and we arrived there, and Lesser Brothers come in  
late, and they didn't have any commitment. It was just an-  
other trip up there.

Q. What did they tell you, if anything, they would do  
about the \$12,000?

A. They said they had two agreements with us: One, where-  
by we could get \$6,000 back; the other one was whereby they  
had a right to hold a portion of the \$6,000 on the one agree-  
ment which was their legal expenses and their expenses for  
whatever they had spent. They didn't know. They would  
have to go through their counsel, and they gave us some  
attorney over on the other side of New York, which was the  
second time I had been in New York, to see.

Q. All right now, was this information that they were  
willing to pay you back \$6000 and possibly more relayed on  
to Mr. Godwin.

A. Yes, sir.

Q. Was this prior to March the 6, 1962.

A. Yes, sir.

Q. Did he have anything to say about signing  
page 72 ] — or was there any requirement, Mr. Whitt, as  
to getting this money back.

A. Mr. Godwin and I knew, and it was told to me the first  
time that I talked with these people that we would have to  
have a release signed by Mr. Godwin, myself and the attorney  
for the corporation. We talked that over.

Q. This was to take them off the hook as to any additional  
money.

A. Yes, sir.

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page 73 ]

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Q. Did you receive — well, on the 6th of March, 1962, was  
there any discussion between you and Mr. Godwin about  
getting back the \$6,000?

*Henry B. Whitt*

A. On March 6th, Mr. Godwin came in my office, and he told me that he had been up to Mr. Neal's office, and he and I a few days prior, several days, maybe every day or so, we were talking back and forth about this deal. It was both our concern. So he came in the office that morning and sat down and kicked the thing around, like he and I would; and finally arrived at we weren't going to get no commitment. We knew we weren't going to get a commitment, and we would try to recover the money. The people had agreed to give us that \$6,000 and part of the other \$6,000. We talked that over, so I told Mr. Godwin, I said, "Mr. Godwin, this deal now that we have got has almost broke me. You are dropping out, so I have got to go forward with it. I can't stop." So we sat down and talked a little, and we agreed to take \$6,000 from Federated Mortgagee. We agreed that there would have to be a release drawn and put in a place whereby we could be protected as well as those people, and we arrived at Lawyers Title, that the release would be signed and put in Lawyers Title, whereby the money would be deposited  
page 74 } with Lawyers Title and the release exchanged  
with those people. We couldn't afford to give them a release relying on them sending us the money. It had to be an agreement in a place whereby both parties could be protected.

Q. Well, stop just a minute. Prior to getting to this point in your discussions, did Mr. Godwin indicate his attitude towards signing the release to Federated Mortgagee?

A. Mr. Godwin told me this in the office when we was kicking this thing around — I didn't have time to go to New York to the Attorney General, that he would, he had friends in Georgia — Talmadge, Mr. Teal — that he himself would go before the Attorney General in New York to recover this money; and he was not willing to sign a release, that they were swindlers.

Q. After you signed the contract on March 6, did he indicate that he was not willing to sign a release?

A. After he signed it?

Q. After you signed that contract, did he indicate that he wasn't willing.

A. I talked to Mr. Godwin on the phone about a release, and he refused to sign a release.

Q. Even after this contract of March 6?

A. Yes, sir.

*Henry B. Whitt*

Q. Did you write Mr. Godwin a letter?  
page 75 } A. I dictated a letter to Mr. Godwin which I  
did not write. Mr. Wells does all my typing and  
bookkeeping. He wrote it.

Q. Did you sign it?

A. Yes, sir.

Mr. Allen: Let's see it.

Mr. Walker: You have seen it. I am not offering it.

Mr. Allen: I object to that as a pure self-serving statement  
in an effort to vary the terms of the written agreement.

Mr. Walker: I have not offered it. I just want him to look  
at it and tell me whether this is the letter.

By Mr. Walker:

Q. Look that over and tell me if that is the letter.

A. Yes, sir.

Q. Did you sign that letter?

A. Yes, sir.

Q. Did you put it in an envelope and put it in the United  
States Mail?

A. Put a stamp on it and mailed it to Mr. Godwin at his  
address he had given me, Monument Avenue.

Q. What occurred prior to your writing that  
page 76 } letter to Mr. Godwin that caused you to write it?

A. I was at the Holiday Inn Motel in Peters-  
burg, and this attorney I was referring to called.

Q. Don't say what he said.

A. Well, this attorney called me, and I tried to reach Mr.  
Godwin, and he didn't call me back, and I wrote the letter  
asking him to.

Q. Is this the attorney for the Lessers?

A. Yes, sir.

Q. In Norfolk?

Mr. Walker: If Your Honor please, we want to offer this  
in evidence.

Mr. Allen: What did you say?

Mr. Walker: We want to offer this.

Mr. Allen: We object, if Your Honor please. The contract  
is plain, and he is coming to Mr. Godwin afterwards and  
trying to get him to do something like that and releasing  
something. Mr. Godwin was not obligated in any way, shape  
or form in connection with these commitments, and when he

*Henry B. Whitt*

signs this agreement — Mr. Wells says after all the discussions that was the final expression of the parties — and then he comes back with something of this kind afterwards, it is no part of the contract whatsoever. It is nothing page 77 ] but self-serving statements that are irrelevant.

Mr. Walker: If Your Honor please —

Mr. Sheriff, would you hand that letter up to the Court, because he could not possibly be in a position to rule on it until after he had seen it.

(Letter passed to the Court.)

Mr. Walker: If Your Honor please, we are offering that on this basis: We do not think that it is varying in the terms of the contract of March 6. The terms of the contract of March 6 has been read over several times here, indicate that this contract is conditional on certain things that have transpired behind the contract, or around the contract, with respect to the return of money from Federated Mortgagees, Incorporated. We are offering that letter, and the proof of it, we have asked the plaintiff to produce the original. They have denied they have it, so they cannot produce the original.

The Court: He denied he had seen the letter.

Mr. Walker: So he cannot produce the original, certainly, if he didn't see it, or says he doesn't have it. So we are offering a copy of it under the Best Evidence Rule. This letter was put in an envelope, as stated by this page 78 ] witness, and put in the United States Mail, and that is proof of mailing; and I think the letter is perfectly admissible, not to vary the terms of the contract, but to explain the situation with respect to the signing of a release to get the money back from Federated Mortgagees before they absconded and blew the whole money; and that is the purpose of the introduction.

Mr. Allen: But it is a self-serving explanation. It is a one-sided explanation, if Your Honor please. It is something written by him to serve his interest, and that this man never agreed to.

The Court: I don't think it is admissible.

Mr. Walker: All right, we note our exception for the reasons stated.

By Mr. Walker:

Q. Mr. Whitt, were you able to get a release signed, or to get Mr. Godwin to sign a release?

A. No, sir.

*Henry B. Whitt*

Q. Did you ever get any money back from Federated Mortgagees, Incorporated?

A. No, sir.

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page 80 ] Q. All right, sir. Mr. Whitt, just to make sure we have covered this, did you after March 6, 1962 receive an offer from Federated Mortgagees to refund \$6,000 upon the execution of a release by you, Godwin and Neal?

A. Yes, sir.

Q. Did you communicate this information to Mr. Godwin by telephone, letter or otherwise?

A. Yes, sir.

Q. Did he agree or refuse to execute such release?

A. He did not sign the release. He never agreed to.

Mr. Walker: Answer Mr. Allen.

### CROSS EXAMINATION

By Mr. Allen:

Q. Mr. Whitt, I hand you Plaintiff's Exhibit No. 2 and will ask you to have before you paragraph 5 while I am asking you some questions.

Now, paragraph 5 says, "Pursuant to our understanding, I am willing to sell you 248 of the remaining 250 shares which I purchased from Frank Giles and Lee Manning for \$30,000, \$12,000 of which you will pay now, and which will be used by me to obtain the commitment which you and I discussed."

Now, what property did that 248 shares concern?  
page 81 ]

A. What was it?

Q. What motel?

A. The Congress Inn Motel that I described.

Q. Well now, where is the Congress Inn Motel?

A. It is at Interchange 35 and Interstate 95 of Prince George County below Petersburg.

Q. Well now, you had acquired a considerable number of shares in that motel?

A. I had 25 percent of the stock to start with, yes, sir.

Q. Now, you say you were willing to sell him 248 shares?

A. I was willing to sell him exactly what Mr. Godwin and I had agreed on the telephone, which was 248 shares of the

*Henry B. Whitt*

250 shares which he and I agreed to give Mr. Neal four shares, as I have previously stated.

Q. I am just asking you about 248 shares. That is what you agreed to sell him, and that was in the Congress Motel; that is right, isn't it?

A. Associated Motels.

Q. What did you say?

A. It was not the Congress at that time.

Q. At that time, but that is what it resulted in?

A. Yes.

Q. Now you have still got your stock in that, I suppose?

page 82 ] A. Yes.

Q. Now, he was to pay you \$30,000 for that stock, \$12,000 cash, which he paid. Is that right?

A. Which he put up for Federated Mortgagee, yes, sir.

Q. Well, that was a part of the \$30,000, wasn't it?

A. That was put up, yes, sir.

Q. In other words, if he had gone through with the deal, all he would have had to do was to pay you \$18,000 more to get that \$30,000 worth of stock?

A. Yes, sir.

Q. However, instead of that, you offered to pay him that \$12,000 if he would release his right to buy that \$30,000 worth of stock?

A. Well, the letter was phrased that way.

Q. I am just asking you the facts about the thing.

A. Yes.

Q. You did offer if he would release you from selling him that 248 shares of stock in that Motel, you would return him his \$12,000. Isn't that right?

A. That is according to the letter.

Q. Yes. So when the letter was written; that is, the letter of March 6, which is Plaintiff's Exhibit No. 1, that was the situation; wasn't it?

A. Yes. That is what we agreed.

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Q. Well now, that \$12,000 was the same \$12,000 that is mentioned here?

A. For the purchase of stock.



*Henry B. Whitt*

Q. For the purchase of stock?

A. Yes.

Q. And then in this agreement of March the 6, 1962 which you have there in your hand, this letter signed by you and signed by Mr. Godwin, how long have you and Mr. Godwin and Mr. Wells been in the office there discussing this matter and talking to Mr. Neal over the telephone before this letter was finally drafted.

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Q. My question was, how long had you all been discussing this letter when this agreement was signed.

A. It could have been 30 minutes. It could have been 2 hours, or it could have been 3 hours.

Q. And I understand from Mr. Wells, and I ask you if that is true, that Mr. Alex Neal finally dictated the terms of this agreement.

A. That is right.

Q. Well now, who told him what to put in the agreement — you or Mr. Wells or Mr. Godwin.

A. Well, Mr. Godwin and I had discussed our situation amongst ourselves with Mr. Wells there, and Mr. Wells dictated a very short letter that I dictated to him to type, and Mr. Godwin and I began to get on different sides. Mr. Wells said before he typed it that he would call Mr. Neal, and I talked to Mr. Neal. I told Mr. Neal this, that Mr.

Godwin —

page 85 ] Q. I am not asking you what you told Mr. Neal. I am asking you if you didn't talk to Mr. Neal before this agreement was written?

A. Yes, sir.

Q. And before he dictated it?

A. Yes, sir.

Q. Mr. Neal didn't make any mistake in dictating the agreement, so far as you know, did he?

A. I am sure he didn't.

Q. And so far as Mr. Godwin is concerned, it was satisfactory to him?

A. Yes, sir.

*Alexander W. Neal*

Q. And both of you signed it?

A. Yes, sir.

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page 101 ]

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ALEXANDER W. NEAL,  
called as a witness by and on behalf of the defendant being  
first duly sworn, testified as follows:

# DIRECT EXAMINATION

By Mr. Walker:

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page 105 ]

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Q. And in conjunction with the contract of March 6, 1962, were you called by Mr. Whitt and Mr. Wells, both, about that contract?

A. I was called by Mr. Wells at my office. It must have been on March 6th, and at that time Mr. Whitt and Mr. Godwin, I was led to believe, were in the office. I am sure they were, because I talked to Mr. Whitt later, and I could hear Mr. Godwin's voice in the background talking. They, obviously, were all three there; and a letter, or a rough copy of a letter was read to me on the telephone, the substance of which was substantially what is in that letter of March 6th which has been introduced in evidence. And I was asked for my thoughts on it. My statement was that if Mr. Whitt and Mr. Godwin had gotten together on the \$12,000 under those terms, that I thought any agreement between them should contain a waiver of any rights, any further rights  
page 106 ] which Mr. Godwin had to the 248 shares of stock of Associated Motels, and I inserted that part by dictating it to Mr. Wells on the telephone, and that was my contribution to that letter. I didn't change any of the substantive parts of it insofar as what Mr. Godwin and Mr.

*Alexander W. Neal*

Whitt had agreed to, but I did want, if that was to be the agreement, to clear up the question of stock. And nothing else was discussed with me at that time.

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### CROSS EXAMINATION

By Mr. Allen:

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Q. Now, what is the name of that motel that is referred to in paragraph five of that letter in which Mr. Godwin released his right to the stock in consideration of the \$12,000 refund? What is the name of that motel? Is that the Congress Motel over there between —

A. Well, no.

Q. Near Emporia?

A. No. He waived his rights to 248 shares of capitol stock of Associated Motels, Inc. Now, Associated Motels was a corporation that owned the building site down here on Petersburg Pike that the Congress Inn is now built on. Now, that was its asset.

Q. Well, is Associated Motels, Inc. one of Mr. Whitt's corporations?

A. Well, that was the corporation that started out with four stockholders. There was Manning, Giles, Whitt  
page 109 ] and Travis.

Q. Yes.

A. And that letter gives the entire details, not only paragraph five, but I think the letter is in evidence.

Q. Yes, it is.

A. Whitt bought out Manning and Giles and had an option to buy out Travis, and he accomplished that, I think, on the 15th of August and gave his note, which was due November 15. All this happened about the same time. At that time I was not in on the negotiations between Mr. Godwin and Mr. Whitt, except that after Mr. Whitt had arranged to buy the fifty percent, or the 250 shares out of 500 shares which Mann-

*Alexander W. Neal*

ing and Giles had, they each had 125 shares each, Whitt and Godwin got together and then this commitment, or this telegram which speaks of a commitment materialized. The next thing I knew Mr. Godwin was on his way up to Richmond with \$12,000 and he was going to New York with Mr. Whitt, and I thought before they went to New York and put up any money there certainly ought to be some agreement between them setting forth exactly the terms under which Mr. Godwin was going to put up this \$12,000 and what he was going to get for it. So Mr. Whitt sat up in my office and told me the deal that he had made with Mr. Godwin, and I attempted to put it in letter form.

Q. Now, that is the agreement expressed in paragraph five?

page 110 ] A. Well, that is the whole letter. I mean, the —

Q. Well, what is the total capitol stock of this Associated Motels, Incorporated?

A. Mr. Allen, it was \$50,000. It was.

Q. I mean, the number of shares?

A. 500 shares.

Q. All right, Frank Giles and Lee Manning had 250 shares of it?

A. They had 125 shares each.

Q. And Mr. Whitt had the rest of it?

A. No. Mr. Whitt had 125 and Mr. Travis had 125.

Q. That is right. Well now, then Mr. Whitt buys 248 of the shares. Well, Mr. Whitt had bought — he had bought 248 shares. Look at paragraph five. He said, "I am willing to sell you —" That is Whitt talking to Godwin. "I am willing to sell you 248 of the remaining 250 shares which I purchased from Frank Giles and Lee Manning."

A. That is true, but if you will read paragraph one, you will see that on August 15 — which states that he had purchased all of the issued and outstanding shares other than 125 shares which he owned.

Q. Which who owned?

A. Whitt. Now, he got those from Giles and Manning and Travis. Roy Travis. So that Whitt at that time  
page 111 ] had given in payment for those shares, those 375 shares, he had given his notes which aggregated \$45,000. Now, what he is agreeing to do is to sell Godwin 248 out of 500 shares.

Q. That is right. For \$30,000?

A. That is right.

*Alexander W. Neal*

Q. Now, the \$12,000 that was paid that was afterwards used as a commitment was also a part payment of the —

A. \$30,000.

Q. Of the \$30,000?

A. That is right.

Q. Now, when the agreement of March 6, 1962 was written, Mr. Godwin releases or gives up his right to buy that 248 shares in lieu of the refunding to him of the \$12,000. That was the sense of it, wasn't it?

A. Well, yes, but there evidently had been a subsequent agreement between Whitt and Godwin at that time.

Q. But this is the last agreement so far as you know that was made, isn't it?

A. That is the last agreement so far as I know that they had other than when Wells called me up on March 6. Godwin and Whitt had made another agreement.

Q. But I mean after this agreement was signed on March 6 by these two, you don't know of any other agreement that modified that? Any other written agreement page 112 } that modified that?

A. No. I don't know of any other written agreement.

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A Copy — Teste:

H. G. TURNER, Clerk.

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