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AMENDED BILL OF COMPLAINT

Filed February 16, 1977

Comes now the Complainant, Gertrude Lucille Pleasants, and for an Amended Bill of Complaint herein, respectfully represents as follows:

(1) that by deed dated October 28, 1963, Deed Book 246, page 583, J. E. Early, Jr., and Fay V. Early, his wife, conveyed a certain lot or parcel of land, together with the improvements thereon and the appurtenances thereunto belonging, fronting on Early Street in the City of Charlottesville, Virginia, known and designated as Lot D as shown on a plat showing Revisions to Lots 8, 9, 10, 18, 19 & 20, Block 67 of Belmont, recorded in Deed Book 179, page 125, to the Respondent, Robert B. Pleasants, and the Complainant, Gertrude B. Pleasants.

(2) That said property was to be conveyed to the parties hereto, then husband and wife, as tenants by the entirety, and this was the intention of the parties.

(3) That although the Complainant is named in said deed, due to mutual mistake her name is omitted from the granting clause thereof, and that the language of said deed is ambiguous.

(4) That Complainant assumed certain obligations and encumbrances in connection with the purchase of the aforesaid real estate upon the express understanding that said property was to be titled in the name of the parties hereto as tenants by the entirety: that Complainant had no knowledge that her name was removed from the granting clause of said deed, and, if Complainant's name was removed from said granting clause, it was removed without her knowledge or consent.

(5) That by Final Decree entered in this Court on May 11, 1976, said Complainant and Respondent were divorced a vinculo matrimonii.

(6) That Complainant and Respondent entered into an Agreement dated January 8, 1975, containing the following provision concerning the aforesaid property, which provision was confirmed, ratified and approved by this Court and incorporated into the aforesaid Final Decree:

"The husband and the wife own jointly, as tenants by the entirety, certain real estate situated in the City of Charlottesville, Virginia, and more particularly described as follows: a certain lot or parcel of land with improvements thereon and appurtenances thereunto belonging fronting 48 feet on the east side of Early Street and designated as Lot D on a plat of record in the Clerk's Office of the Circuit Court of the City of Charlottesville in Deed Book 179, page 125.

The husband shall continue to occupy the afore-described premises until the parties hereto are finally divorced providing that he pay all taxes and insurance premiums when due and make all payments due on the liens thereon. "

(7) That until the institution of this cause, Respondent never claimed to be the sole owner of the aforesaid real estate and never denied that Complainant was the owner of a one-half interest therein.

(8) That said real estate is not susceptible of partition in kind.

WHEREFORE, Complainant prays that she be declared an owner of an undivided one-half interest in the aforesaid real estate under the language of said deed; that said deed be reformed to include her name thereon as an owner of an undivided one-half interest thereof; that this Court declare that Respondent holds legal title to said real estate as trustee for Complainant to the extent of one-half interest therein; that this Court find that a binding contract exists between the parties hereto and that Complainant is entitled to one-half of the value of said real estate thereunder; that said real estate be partitioned by this Court in one of the

modes prescribed by law; that Respondent be required to account to Complainant for rents, issue and profits for the use of said real estate; and, that said property be sold by the Court and the proceeds be divided amongst the parties hereto.

[Tr. P. 13]

Stipulated testimony of Honorable Herbert A. Pickford:

"Mr. Robert Pleasants came to see me the first time sometime between 10 November and 21 November, 1975, after his wife had instituted a divorce action against him. Prior to that time I had not been consulted by Mr. Pleasants. His main concern at that time was over the children, primarily the visitation rights afforded him. There was also discussion about the amount of Mrs. Pleasants' attorney's fees that he should pay. He gave me a copy of the agreement dated 8 January 1975, which had already been signed by Mr. and Mrs. Pleasants. He also advised that he wanted to buy the interest of Mrs. Pleasants in the house, if it were not worth more than \$24,000.00 and that \$7,000.00 was owed on the house. I filed an answer in the divorce suit for Mr. Pleasants. On March 11, 1976, I gave Mr. Haugh the figures about Mr. Pleasants' financial situation and on 12 March 1976 I received a call from Mr. Haugh advising that he was getting up a schedule for hearing why Mr. Pleasants could not pay anymore. On 12 March 1976 Mr. Pleasants told me that he would pay the one-half interest of Mrs. Pleasants if the property was

worth no more than \$24,000. On March 16, 1976 it was agreed by the attorneys that we would employ Mr. James Nunnally to appraise the property and that the appraisal fee would be shared equally by the parties. On April 26, 1976 Mr. Nunnally gave his appraisal to the attorneys showing an appraisal of \$26,000. On April 28, 1976 Mr. Pleasants telephoned me and at this time I told him that Mr. Nunnally had appraised this property for \$26,000. All of my negotiations with Mr. Pleasants and Mr. Haugh were premised on the correctness of the recital in the separation agreement that the property had been conveyed to Mr. and Mrs. Pleasants jointly as tenants by the entirety, plus what Mr. Pleasants said. I never checked the title to the property or saw the deed and I had nothing to do with the preparation or execution of the separation agreement.

[Tr. p. 17]

Direct examination of Gertrude Lucille Pleasants by Mr. Haugh:

Q. Do you recall when this deed was signed by you and the other parties?

A. Just vaguely.

Q. Do you remember where it was signed?

A. Yes, it was in Mr. Carter's office.

Q. Prior to the time that this deed was executed, did you and your husband ever discuss how this property would be owned? Who would be the owner of it?

A. Yes sir.

Q. Would you tell the court what the conversations were? What the discussions were all about?

A. Well, just the normal conversation between a husband and a wife that we would both own it jointly.

Q. Did you have any discussion about what would happen in case either you or your husband died? What would happen to the property?

A. Yes, it would go to the living party.

Q. To the living party?

A. To the living party.

[Tr. p. 18]

Direct examination of Gertrude Lucille Pleasants by Mr. Haugh:

Q. Mrs. Pleasants I hand you plaintiff's exhibits 2 and 3 and ask you to look - first on exhibit 2 on page 3, and ask if you signed that instrument?

A. Yes sir.

Q. Then I hand you exhibit 3, and again on page 3 and ask if you signed this instrument?

A. Yes sir.

Q. Now are these two deeds of trust - were these executed at the same time as the deed as far as you remember?

A. Yes sir.

Q. When you signed these instruments was there any discussion in the attorney's office about the ownership of the property? How title was to be taken or anything like that?

A. Just that it was going to be in both names.

Q. When did you discover that there was a possible mistake or ambiguity in the deed or a claim that you did not own it - a half interest in it?

A. You told me.

Q. Do you know about when that was?

A. It was after the divorce.

Q. Was it at or about the time of the partition suit?

A. Right.

Q. During - from October 28, 1963, did you and your husband ever discuss who owned the property? Did you have any discussion about ownership of this property?

A. Just normal talk between a man and wife.

Q. Up until the time of divorce did you have any discussions with him?

A. Yes sir.

Q. At any time during - prior to the time that the divorce was obtained, did your husband ever claim that you did not own half of this property?

A. No.

Q. Now I hand you a document dated January 8, 1975, and ask if you can identify for the record what this is?

A. That's my separation agreement.

[Tr. p. 20]

Direct examination of Gertrude Lucille Pleasants by Mr. Haugh:

Q. Mrs. Pleasants, will you tell the court the circumstances surrounding the signing of this agreement by you and your husband?

First, do you know where the signing took place?

A. I was in Mr. Sweet's office.

Q. And that's in the firm of Haugh & Helvin, Charles Sweet?

A. That's right.

Q. Is this your husband's signature signed to this agreement?

A. Yes sir.

Q. Was there any reference to the ownership of the property under discussion in this agreement?

A. Well, Mr. Sweet went through it paragraph by paragraph and explained it and said he did my husband the same way.

[Tr. p. 23]

Direct examination of Gertrude Lucille Pleasants by Mr. Haugh:

Q. All right. Mrs. Pleasants, after the final decree of divorce was entered on May 11, 1976, do you know whether or not negotiations took place whereby your husband wanted to buy your interest in the property?

A. Yes, in fact he talked to me about it.

Q. All right, would you tell the court that conversation?

A. Well, it was shortly after the divorce went through because it was the - his first day of visitation rights and he talked to me about wanting to have some Knight represent him and I told him fine, I would like to have Mr. Marshall represent me and we were going to put the house up for sale.

Q. This is where you all together were going to put the house up for sale?

A. Yes sir.

Q. Now who is Mr. Knight?

A. I can't remember his name...

Q. Was that Keith Knight, the realtor?

A. Yes sir.

Q. And Forest Marshall, Sr., the realtor?

A. Yes sir.

Q. Did you and your husband then agree and did you then jointly list the property for sale.

A. Yes sir.

[Tr. p. 24]

Direct Examination of Gertrude Lucille Pleasants by Mr. Haugh:

Q. Mrs. Pleasants, I hand you exhibit 13 and ask you if this is the signature of your husband and you?

A. Yes sir.

Q. And this is a listing for - exclusive for 120 days expiring September 14, 1976, is that correct?

A. That's right.

Q. And was this signed at or about 120 days prior to September 14th?

A. Yes sir.

Q. And that would have been what, about a month after the divorce decree became final?

A. Yes sir.

Q. Now did you ever authorize your attorney to enter into negotiations - well, let me ask you this, did - were you all able to sell this property under this listing agreement?

A. No sir.

Q. Did there come a time that you received offers to sell your interest in the property to your husband? Did any negotiations take place where he was going to buy your interest for himself?

A. I think he had his attorney talk to you about it.

Q. And you talked to your attorney about it, is that correct?

A. Yes sir.

[Tr. P. 26]

Direct examination of Gertrude Lucille Pleasants by Mr. Haugh:

Q. Now Mrs. Pleasants, on October 28, 1963, the date of the deed, were you employed?

A. Yes sir.

Q. What did you do?

A. I baby sat.

Q. Could you tell the court roughly what your earnings were during that period of time?

A. Well, for the entire time it was between \$60 and \$100 a week.

Q. Now what do you mean by the entire time?

A. The entire time we had the house until I left him and that's still what I am doing.

Q. How many children did you have that you baby sat for?

A. It varies, four or five, six.

Q. In other words this was a regular job that you did?

A. Yes sir.

Q. Can you tell us - did you and your husband at that time have a joint bank account?

A. Yes sir.

Q. Did you have a joint bank account up until the time you left, during your married life, while you lived in this house?

A. Yes sir.

Q. What did you do with your earnings?

A. It all went in together.

Q. In the joint account?

A. Yes.

Q. Was your husband employed at this time?

A. Yes sir.

Q. What happened to his check?

A. His went in too.

Q. Now do you know where the money came from that paid the mortgage payments on this house?

A. From both of our earnings.

Q. From which account?

A. The joint account.

Q. What about real estate taxes?

A. It came from the joint account.

Q. How about insurance on the house?

A. Joint account.

Q. What about any costs incident to maintenance and repairs to the property?

A. It would have come out of the joint account.

Q. Mrs. Pleasants, from the time that this property was purchased clear up through the time you spoke to me, you said at or about the time of the partition suit, did you understand that you owned one-half of this property?

A. Yes sir.

Q. That your husband owned one-half?

A. Yes sir.

Q. And if you should die, he would get your half...

A. Yes sir.

Q. And if he should die, you would get his half?

A. That's right

Q. Did Mr. Carter, your attorney back at this time, or your husband ever tell you differently?

A. No sir.

[Tr. p. 29]

Cross examination of Gertrude Lucille Pleasants by Mr. Kegley:

Q. Mrs. Pleasants, is it true that you were born on the 6th of February, 1943, is that correct?

A. Yes sir.

Q. So in October of 1963 you just would have been 20 years old?

A. Yes sir.

Q. Now did you ever tell Mr. Carter prior to closing that - did you ever talk to Mr. Carter prior to the time you bought this house?

A. No, I don't think so.

Q. Do you know if your husband ever talked to Mr. Carter prior to the time you went for closing?

A. Not to my knowledge.

Q. Do you recall Mr. Carter at the closing telling you something to the effect that your signature didn't mean anything because you were under 21?

A. No, he didn't.

[Tr. p. 31]

Cross Examination of Gertrude Lucille Pleasants by Mr. Kegley:

Q. Now these conversations that you had with your husband about the owner of this would go to the survivor, were you all thinking in terms of doing this by will.

A. No, it was just talk.

Q. It was just sort of understood?

A. We talked about it.

Q. Was this before or after the closing?

A. Before and after.

Q. What about the house before this, that he had bought and you lived in? Was that the same way?

A. No, I was only 18 then.

Q. Now I think in preparation of that separation agreement, one that has already been introduced and dated the 8th of January, 1975, was that prepared by your attorneys?

A. Yes sir.

Q. And who were your attorneys?

A. Mr. Haugh and Mr. Helvin.

Q. And they represented you, is that correct?

A. Yes sir.

Q. You weren't present when your husband, Mr. Pleasants, signed that were you?

A. No sir.

Q. He signed it at a time separate from you?

A. Yes sir.

Q. And I think you described the fact that Mr. Sweet read it out for you?

A. He did.

Q. And was this after your husband had signed it?

A. Yes sir.

Q. Did you tell Mr. Sweet that you owned this property jointly?

A. No, I don't remember that.

Q. At the time that you were dealing with Mr. Haugh's firm and they in turn were dealing with Mr. Pleasants, your husband, what were the main areas of consideration, being areas of disagreement?

Was it the amount of child support?

A. Yes sir, that was the biggest one.

Q. That was the biggest - what was the next biggest?

A. I guess there wasn't really anything. He decided later he wanted visitation rights.

Q. So those are the two things you were quibbling about?

A. Yes, until the divorce was final.

Q. Prior to the time you signed the separation agreement and up until the time you signed the separation agreement, did you have any conversations with him about him conveying part of the property to you, part of the house or maybe your conveying part to him?

A. No.

Q. There were never any discussions about the real estate?

A. Do you mean from the time I left him?

Q. Up until the time you signed the separation agreement?

A. No.

Q. That's all.

[Tr. p. 33]

Redirect examination of Gertrude Lucille Pleasants by Mr. Haugh:

Q. Mrs. Pleasants, I believe Mr. Kegley asked you if you had ever told Mr. Sweet that you owned this property jointly or something, did you ever tell any lawyer in our firm that - how this property was owned?

A. Yes, we discussed it.

Q. You and me?

A. Yes, you and me.

Q. Prior to the time that your husband and you signed the separation agreement or executed it, did you and he have any discussion about who would live on the property, whether any payments would be made on it.

A. I don't think until the separation agreement was drawn up. I think not.

Q. So the first discussion came up on or about the time of the separation agreement?

A. Yes sir.

Q. That's all I have, Your Honor.

The Court: Mrs. Pleasants, who hammered out the details of the agreement between you and your husband?

A. I beg your pardon.

The Court: How did you work out the agreement?

A. It was done through my attorney.

The Court: Now when you told your attorney how it was owned, was that for the preparation of the agreement or was that before the agreement was ever reached?

A. Well, when I talked to Mr. Haugh the first time I just explained to him that we had the house and this was it. He went on from there. I assumed he looked up the deed.

The Court: Did you and your former husband ever get together and try to work this out at all?

A. The house?

The Court: No, the agreement? That is everything with regard to your marriage?

A. No.

The Court: It was all done by the attorneys?

A. Yes sir.

The Court: The proposals were even originated by the attorneys I take it?

A. The only thing we discussed was after the divorce when he came to visit the children and then he was talking about putting it up for sale.

The Court: All right, any other questions by counsel.

Mr. Haugh: Yes, Mrs. Pleasants at that time your husband did not have an attorney, did he?

A. When the divorce...

Mr. Haugh: At the time of the separation agreement?

A. Oh, no sir.

Mr. Haugh: Do you have personal knowledge of whether your husband discussed this with me, as your attorney?

A. I think he did.

Mr. Haugh: That's all the questions I have, Your Honor.

[Tr. p. 38]

Direct examination of Robert Bruce Pleasants by Mr. Kegley:

Q. Now what contact did you have with Mr. Orbin Carter prior to your purchasing this house?

A. Not any at all.

Q. How did you happen to have him represent you at the closing?

A. Through Mr. O'Neill.

Q. Was he in the real estate business?

A. Yes.

Q. Did he recommend Mr. Carter?

A. Yes, he did.

Q. Did you ever see Mr. Carter prior to the closing?

A. No sir.

Q. Did you ever talk to him?

A. No sir.

Q. Did you and your wife have any discussions as to how you were going to take title to this property prior to the closing?

A. No sir, we never talked about that.

Q. Did either one of you ever call Mr. Carter and say how you wanted to take title?

A. Never did.

Q. Who was it that advised you about the closing date?

A. We just got a call to come up and sign the papers.

Q. Do you recall who that call was from?

A. No, I sure don't.

Q. How was this property to be financed when you bought it?

A. Well, we had \$500 which we paid down and then we had \$3,000 on a second mortgage, which had to be paid to Mr. Early, and

then the rest of the money Mr. O'Neill was holding it until we paid off Mr. Early's part.

Q. Was this to be a loan from O'Neill Realty?

A. Yes, a loan from O'Neill Realty.

Q. What do you recall taking place when you went to Mr. Carter's office to close this transaction.

A. The thing I remember when we were signing all of these papers was involved with the situation telling her that she was not old enough to sign it - you know she was signing them - and he said she wasn't old enough to be signing, that her signature wouldn't mean anything. I remember that.

Q. Was he aware of the fact that she was under 21?

A. Evidently he was.

[Tr. p. 41]

Direct examination of Robert Bruce Pleasants by Mr. Kegley:

Q. Did he say why your wife's signature wouldn't be worth anything?

A. She was under age.

Q. Is that what he said?

A. That's what he said, she was under age.

[Tr. p. 41]

Direct examination of Robert Bruce Pleasants by Mr. Kegley:

Q. I show you Mr. Pleasants a paper here bearing a date of October 28, 1963, showing a closing date, is this the closing statement that you got? --when you purchased this?

A. Yes sir, it was.

Q. Do you recall whether Mr. Carter gave it to you or mailed it to you?

A. I sure don't. I don't recall.

Q. But this was at your house and you found it?

A. This was at my house.

Q. And who does that show as being the purchaser?

A. Robert B. Pleasants.

[Tr. p. 42]

Direct examination of Robert Bruce Pleasants by Mr. Kegley:

Q. Could you tell us the circumstances leading up to your signing the separation agreement that is dated the 8th of January, 1975?

A. Yes, it was because I got a summons to go to court, Juvenile Court, on the custody of the children and child support.

Q. What happened after you got that summons?

A. Well, I called her and asked her if she could stop from having to go to court and she said she would call Mr. Haugh and talk

to him, but she didn't know whether she could stop it or not.

Q. Well, what happened after that?

A. I...

Q. Did you prior to that have any conversations with Mr. Haugh?

A. No, not that I recall.

Q. All right, go ahead.

A. That's what brought it up and she said if I would sign this separation agreement, then that she would call him and try to stop it. So I- I didn't have to go to court so I assumed that she stopped it.

Q. Well, what was going to be in the separation agreement?

Did you discuss it?

A. It was never discussed. The only thing we talked about was the child support and the custody of the children.

Q. Well, now did you talk to anybody in Mr. Haugh's office about how much child support there would be?

A. I told him one time I could pay as much as \$80 but he said he had to have \$100.

Q. Was that by telephone or in person?

A. That was in person.

Q. When did you sign the separation agreement?

Do you know what day you went in, if you recall, and why you went in and what happened after you got there?

A. Well, I don't recall what day it was. I know that Mr. Sweet called me at work and said that he had it all drawn up, and that for me not to take off from work to come down that I could come down after I got off from work which was 5:30.

Q. Did you all discuss any of the terms of it at that time on the phone?

A. No, sir, we did not.

Q. Had you agreed with anybody on the \$100 a month?

A. I hadn't really agreed on it but that's-it was all I could get by with.

Q. So he called and said to come down after work?

A. Right.

Q. Now is Mr. Sweet an attorney?

A. Yes, he is.

Q. In whose law firm?

A. Mr. Haugh's.

Q. What happened when you went down?

A. Well, I went down there and he met me and we went upstairs and he handed me a copy of the separation agreement and then he had one and he read it - on through the whole thing on it, read it all out to me and he said the only thing in this agreement that he would even question was the \$150 attorney's fee. Of course, I told him, well I would just go ahead and leave that like it was.

Q. Did he read the whole agreement to you?

A. He read the whole thing, from the front to the end.

Q. And you signed it that day?

A. Yes, I did, I signed it that evening.

Q. Did you ever have any discussions with either he or anybody else about - up to the time of that separation agreement, about conveying any interest in the real estate that you might own, to her?

A. No, when he read that out, I figured he had - he knew what he was talking about as far as the property being owned jointly. I had no reason to question it and from then on I just thought that was the way it was. I didn't go and question anything because I thought he knew what he was talking about.

Q. Prior to him advising you of that, did you know how the title - how the property was titled?

A. No, I did not.

Q. Had you ever looked at the deed?

A. Not, that I know of.

Q. Had you ever had anybody check it out for you?

A. No sir.

Q. When you consulted Mr. Pickford, did you have discussions with him about buying your wife's interest in the property?

A. Yes, when I talked to him he said the separation agreement has been signed you know, and he said there is really nothing I can do right now. It has to go, you know, as it is. So we went ahead and I told him, I said, what would you suggest, you know, as far as the property is concerned. And he said it's whether you want to buy her half out or not. And of course the way he had it set down, he had some figures there. He done some figuring there and he figured by the time it was paid off and everything, she should be getting around \$7,000 or \$7,500, by the figures that he had.

Q. Did you ever question Mr. Sweet's statement in the separation agreement that the property was owned jointly?

A. No, I did not.

Q. You knew that he was a reputable lawyer?

A. Yes.

Q. When was the first time that you were advised that the property had not been conveyed to you and your wife?

A. After I had employed you as an attorney.

Q. Did that come as a surprise?

A. It sure did, because I didn't know.

Q. Had you and your wife prior to the time of this separation agreement ever had any agreements of your giving her a half interest in the property or anything like that?

A. No sir.

Q. At the time of purchase you didn't have any agreements with her ?

A. No, I sure didn't.

[Tr. p. 47]

Cross examination of Robert Bruce Pleasants by Mr. Haugh:

A. Now the only thing I can recall was sitting in his office and there was a long table there and he was bringing us a whole list of papers, a lot of papers - he said you have to sign these. And he was bringing them all around and that's when he mentioned something about her being under age that her signature wouldn't mean anything because she had started signing them, at that time, and that's about all I can recall.

Q. But you do recall your wife signing all these papers ?

A. Yes.

Q. And you don't remember any conversation where he said no, this deed is only to Mr. Pleasants - you don't remember any statement like that ?

A. No, I do not remember a statement at all like that.

Q. Now did you and Mr. O'Neill discuss buying this property, that both names would be on it ?

A. No sir, we never did.

Q. And neither one required Mrs. Pleasants to sign the contract of sale? Did Mr. O'Neill - was he the one that suggested that, that if you put in both names...

A. Well, he never did. He never suggested anything at all.

Q. He didn't make any suggestions at all?

A. No sir.

[Tr. p. 51]

Cross examination of Robert Bruce Pleasants by Mr. Haugh:

Q. Now I may have misunderstood you, but when you consulted with Mr. Pickford, Herbert Pickford...

A. Right.

Q. No question was ever raised as to the ownership of this property, was it, either by you or Mr. Pickford?

A. No, it was not, no sir.

Q. And the fact is, that after you were divorced and the decree was final you and your wife agreed to list the property, putting a listing agreement that you have already introduced into evidence as exhibit number 13 - plaintiff's 13?

A. Yes sir, I talked with the real estate agent but I didn't talk with Mrs. Pleasants.

Q. But you talked with the real estate agent...

A. Right.

Q. And the idea was that you would sell this property and each of you would get a half of the proceeds?

A. Right.

Q. And I understand you to say that when you were informed - well okay. Do you recall discussing with me prior to the time this separation agreement was entered into that if you and your wife agreed on everything, you didn't need a lawyer but if you didn't agree on everything you should get a lawyer - do you recall that in my office?

A. No, the only thing I remember is about the custody of the children and child support. That's the only thing I recall.

Q. Do you recall us mentioning who was going to make the payments on the home after she had moved out, and you were living there, after the divorce was final?

A. No sir, we never did talk about that.

Q. Do you recall discussing what would happen to the property owned as tenants by the entirety, your property, when the divorce decree became final - you would each own it jointly, and that prior to the time of the divorce decree you could live there free, either one of you could?

A. No the first time I saw that was in the separation agreement. I hadn't talked to anybody until he read it to me in that.

[Tr. p. 55]

Direct examination of Robert E. Taylor by Mr. Kegley:

Q. Did you handle this transaction for Mr. Early?

A. Your Honor, that requires some explaining. Mr. Early was a regular client of mine and I had represented him in a number of real estate transactions as I did other clients. This is a file of the firm of Taylor, Camblos & Michie in 1963 in which I was the senior partner and the file shows that I am the lead attorney. I have no independent recollection of the transaction other than the file and have to testify from the file. I participated in part of it and part of it was done by Mr. Robert Callaghan, who was an associate in the firm at that time, but it is my file.

[Tr. p. 58]

Direct examination of Robert E. Taylor by Mr. Kegley:

A. All right, sir. Taking it chronologically, I have in my file a printed form of A. B. Davis, Real Estate, dated October 14, 1963, which is the contract of sale in this transaction - why the need of a real estate agent to sell it to the tenant, I don't know. In the caption....

Mr. Haugh: I believe that's been introduced into evidence,
Your Honor.

The Court: Yes, we have that in evidence, I think.

A. It purports to be just Robert but Gertrude did sign it. Then in my file is a page of hand written notes in pencil which are written in the handwriting of Robert M. Callaghan, an associate of the firm at that time, directed to me. It raises certain questions, number 1 being, to whom is the deed going to be made? And then in ink, it has to Robert B. Pleasants and Gertrude B. Pleasants, which again is in his handwriting. Across from that, across that is a red pencil note, T/E, which is in my handwriting, and that is interpreted as tenants by the entirety. Now this is information that Mr. Callaghan received from Mr. Carter, the attorney for the purchaser. Then I have some notes about the lien, handwritten notes and about a joint driveway which is established. Then I have the letter of October 23, which has just been referred to, and then there is a telephone message from...

[Tr. p. 60]

Direct examination of Robert E. Taylor by Mr. Kegley:

Q. Can you tell who typed up that closing statement?

Would that have been your office or Mr. Carter's office?

A. It was my office. I can't tell you who now.

Q. Would you have dictated it?

A. Yes. Then I have a letter sending Mr. Early the bond, a check and closing out the transaction to him. That's the extent of my knowledge of the transaction.

[Tr. p. 61]

Cross examination of Robert E. Taylor by Mr. Haugh:

The Court: The question is, Mr. Taylor, as I understand it, whether that would be consistent with your practice to mention the plural when in fact the other indications were.....

A. Only singular grantee. It would not be consistent, no sir.

[Tr. p. 62]

Redirect examination of Robert E. Taylor by Mr. Kegley:

Q. I think you stated Mr. Taylor, correct me if I am wrong, if you changed the page of a deed, you would throw the old page away and not keep it in your files, is that correct?

A. If a deed is changed, redrafted, my practice was normally to destroy the draft of the first draft and only keep the corrected draft. That is not true of wills, however.

Q. Now let me ask you another question, rephrasing an earlier one, as an expert, if in 1963, you were representing the seller, and if you knew that the wife of a buyer was under 21 at that time and was to give a deferred purchase money deed of trust back to your client, the seller, would you have advised your client to accept a second mortgage from a husband and wife, if the wife was under 21, and if the property had been conveyed to them jointly?

A. No....

[Tr. p. 63]

Redirect examination of Robert E. Taylor by Mr. Kegley:

The Court: Now the question is whether under the practice then existing, Mr. Taylor would have done that or in response to Mr. Kegley's question, would you have permitted an underage joint owner to have given a deed of trust?

A. If I had known that Gertrude Pleasants was under age at the time of this transaction, I would not have permitted my client to let her be a grantee, particularly since there was a second lien coming back.

The Court: In other words the practice would have precluded that if you had had any opportunity to advise you client?

A. That's correct.

[Tr. p. 63]

Redirect examination of Robert E. Taylor by Mr. Kegley:

The Court: Now Mr. Taylor, I take it that there was nothing in the files indicating that that was in fact the case but had it been indicated to you, that would have been your method of handling it?

A. Yes sir. There is nothing in my file to indicate the age of any of the parties.

The Court: All right , any other questions.

Mr. Haugh: Yes sir.

[Tr. p. 64]

Recross examination of Mr. Robert E. Taylor by Mr. Haugh:

Q. So with that in mind, you would have no reason not to accept instruments back signed by Mrs. Pleasants, the deeds of trust or anything else?

A. That's correct.

Q. That's all - one second. Is there any mention in your file of Mrs. Pleasants signing the bond, the deferred purchase money bond?

A. I will have to review it a little bit. Yes, in my covering letter to Mr. Early, dated November 1, I state that the above transaction was closed and I enclose the following, (1) closing statement (2) bond of Robert B. and Gertrude B. Pleasants, dated November 28, 1963, and the sum of \$3,000. But he may have wanted her on that for the additional maker - is what the banker would have wanted.

Q. You just don't know - I mean you have no recollection of that?

A. No.

Q. That's all.

[Tr. p. 71]

Direct examination of Orbin F. Carter by Mr. Kegley:

A. If it's a husband and wife, a young couple buying property, in those days I would say almost invariably I would request a deed from the seller to them as tenants by the entirety.

Q. Would this be without prior consultation with your clients?

A. Yes.

[Tr. p. 72]

Direct examination of Orbin F. Carter by Mr. Kegley:

The Court: If you had found out - you say you did not - there was nothing to indicate that you knew what their ages were. The question is if you found out what the ages were, what effect would it have on your handling the transaction?

A. I would put it in the name of the adult party and at that time it was age 21. At that time the spouse could unite to release a dower or curtesy interest but could not actually convey like in a deed of trust. So I would have put it in the adult person's name.

[Tr. p. 73]

Direct examination of Orbin F. Carter by Mr. Kegley:

The Court: Well the question is as to the lender, whether he would have permitted the loan to have been made to an underage party, as one of the title holders, joint tenants.

Q. Would you have been able to certify to a lending institution if they had first mortgage, if the property were conveyed to a husband and wife, as the entireties, if one of them is under 21?

A. No, you would not.

[Tr. P. 78]

Direct examination of J. S. Barnett by Mr. Helvin:

Q. Did you have occasion to talk to Mr. Orbin Carter?

A. Yes sir, I did.

Q. When did you talk to him?

A. I guess in time it was in February probably.

Q. This year of 1977?

A. Yes sir.

Q. Did he make any statement to you concerning this property, what happened in 1963 relative to it?

A. Yes sir.

Q. What statement did he make to you?

A. It was on a telephone conversation that I was talking to him concerning what was going on and he made a statement similar to what - that possibly he made a mistake or something in writing up the deed or something, that he didn't think my sister had any problems.

Q. That he made a mistake and left her name off?

A. Yes sir.

The Court: You are leading the witness Mr. Helvin....

Mr. Kegley: Objection....

The Court: Said he made a mistake in writing the deed.

Q. Tell us exactly what you recall Mr. Carter said? I agree,
Your Honor.

A. It's been a long time ago.

Q. Well, as best you can, what he said?

A. Well, I was talking to him concerning the matter of Lucille
and he said something about maybe there could have been a mistake
when he wrote the deed. And during the conversation he said he didn't
think my sister had any problems with the situation whatsoever. So
it was a very short conversation.

[Tr. p. 97]

The trial court's opinion and holding from the transcript at the conclusion
of the evidence:

The Court: Gentlemen, I won't try to encumber the record here
by making observations about what may or may not have been the case
with the closing attorneys, all I can say is if they can't figure out what they

did, I'm not going to try to do it for them. It's obvious that there was a change in the manner of conveying title. The evidence is undisputed that there was a different draft of the deed from that which was actually used which is admitted into evidence as Defendant's Exhibit Number 3 which did have the conveyance of the two as tenants by the entirety. Now, the actual deed obviously was revised in a manner in which it did not entirely revise it, left it ambiguous, but it seems to me in construing a deed on the face of it except for certain references to the parties for identification purposes the heading of the deed is not even necessary. You can disregard the heading altogether and the deed would be effective by leaving out the first paragraph, but in order to identify the parties with any clarity at all you have to refer back to it and these covenants and other clauses that have to do with other grants, the plural is certainly used. That is, in my judgment, satisfactorily explained though by the redrafting of the deed. And leaving that for the moment and not undertaking to say why the deed was redrafted and coming down to the separation agreement. I have the distinct impression that this case must be approached from the event that was last in time and work back, and that is that Mr. Pleasants has acted upon this separation agreement and has in effect conceded that Mrs. Pleasants is the owner of the one-half interest whether it was in fact the case or not legally, the factual treatment of it was that she was the owner of half interest. The fact

that this agreement was made and incorporated into a divorce decree and which under our law would not allow the Judge to make one change in it and our Supreme Court has said in a case in which this Court was reversed that the parties having reached an agreement the Court cannot change it, it's public policy to encourage the agreement between the husband and wife who can no longer remain married and not have to litigate. In other words, to make it unnecessary to litigate, and not the Court's business to inquire behind it if the party to whom the agreement runs wants it confirmed, and that was done in this case. Everything in that agreement and everything done thereafter indicates that the parties treated this property as jointly owned whether it was in fact jointly owned did not seem that material to them.

Going on back further, to the obligations that were incurred by Mrs. Pleasants making her obligated at least on the face of it for one-half of the purchase price, the deed recites that \$9500.00 cash was paid by the parties of the second part and there again the parties of the second part are identified as the husband and the wife. While I don't hold that the deed itself is so ambiguous as to be reformed, it seems to me that looking at this entire transaction in fairness and in equity between the husband and wife who had dissolved their marriage and now operating under a separation agreement it would be a miscarriage of

justice for this Court to allow the husband to go off with the entire ownership of this property. Looking at it from the equities of both sides, it does not seem to me to be appropriate while on a bare legal point it could easily be accomplished it seems to me and I don't fault Mr. Kegley for his raising this point and in fact it shows the lack of diligence on the part of the attorneys frequently in dealing with things on assumptions rather than going back to the documents themselves and being very careful about it. However, that may have been I find nothing overriding as far as the agreement is concerned and no reason to set aside and they having reached that agreement the Court feels that it should be enforced and that means that the Court should find and does hereby hold that a resulting trust should be imposed or constructed trust would be a more appropriate term since we are dealing with a later instrument under the divorce that it ought to enforce the performance of the agreement which was incorporated into the divorce the Court hereby imposes a trust of one-half of the proceeds of that property for the benefit of Mrs. Pleasants, subject to any other provisions that the agreement might have with regard to that property. In a sense holding that agreement to be paramount to anything else that may have occurred. Now, is there anything else that would be required to be addressed in these proceedings?

FINAL ORDER

Filed February 6, 1979

This cause came on this 28th day of June, 1977, to be heard upon Complainant's Amended Bill of Complaint; upon Respondent's Answer to the Amended Bill of Complaint; upon the evidence taken enore tenus before the Court; came the parties in person and by counsel; and, was argued by counsel.

It appearing to the Court that Lot D on Early Street in the City of Charlottesville, Virginia, described in a deed from J. F. Early, Jr., et al, dated October 28, 1963, and recorded in the Clerk's Office of this Court in D. B. 246, p. 583, is titled in the name of Robert B. Pleasants; that by a separation agreement dated January 8, 1975, there was a recital that the parties hereto owned the lot jointly, as tenants by the entirety; that the parties were divorced a vinculo matrimonii by decree of this Court entered May 11, 1976, which decree confirmed, ratified, approved and incorporated therein said separation agreement dated January 8, 1975, which is entitled to be enforced, it is accordingly ADJUDGED, ORDERED and DECREED that the Respondent holds legal title to said real estate as constructive trustee on behalf of the Complainant to the extent of one-half the equity thereof.

And the Court doth further find that each of the parties is entitled to one-half of the proceeds of the sale of such property, except that the Respondent shall receive credit for the principal payments made by him since the date of the divorce in the amount of \$1,000.00.

It having been represented to the court, by counsel for the parties, that by stipulation agreement, and after entering into a contract, the subject property has been sold by deed from the parties, that all liens against the property have been satisfied, and that attorneys for the parties hold \$19,347.92 in an escrow account at United Virginia Bank, it is further ORDERED that the said monies will remain in the said escrow account until final determination of this cause, or until such other further and appropriate order of this Court as may be appropriate to cause disbursement of the said monies.

The Respondent does specifically object and except to the Court's ruling on the following grounds:

The court erred by in effect reforming the separation agreement dated January 8, 1975, because:

(a) The recital in paragraph 6 of the separation agreement was plainly an erroneous recital for the purpose of describing the real estate, and in no way was intended, or worded to imply, that there would be any change in the existing ownership. As the recital was in error,

but relied on by the Respondent, because of the misrepresentations of the Complainant's attorney, it is inequitable for this court to compound the error by in effect reforming the separation agreement to provide for something not in the separation agreement, that the Respondent never agreed to, and to then enforce the agreement as reformed.

(b) The Complainant did not ask for a reformation of the agreement, but if any reformation is to be made by the Court, it should be by the elimination of the plainly erroneous language, and should have been by reopening the former divorce cause.

(c) Under Virginia Code §20-109, the Court has no authority to amend the separation agreement.

(d) The only proper procedure to enforce the separation agreement would be by reopening the former divorce cause.

It is ORDERED that the transcript shall become a part of the record.

Upon motion of Robert Bruce Pleasants indicating his intention to appeal to the Supreme Court, it is ORDERED that the execution of this decree is suspended so long as Robert Bruce Pleasants timely prosecutes his appeal and thereafter so long as the matter is under consideration by the Supreme Court; provided that Robert Bruce Pleasants or someone for him shall file an appeal bond in the Clerk's Office of this Court within

45 days of this date, with surety to be approved by the Clerk of this Court, in the penalty of One Thousand Dollars (\$1,000.00), conditioned as provided by law.

NOTICE OF APPEAL & ASSIGNMENT OF ERROR

Filed February 28, 1979

The following is assigned as error:

(a) The recital in paragraph 6 of said separation agreement was plainly an erroneous recital for the purpose of describing the real estate, and in no way was intended, or worded to imply, that there would be any change in the existing ownership. As the recital was in error, but relied on by the Respondent, because of the misrepresentations of the Complainant's attorney, it is inequitable for this court to compound the error by in effect reforming the separation agreement to provide for something not in the separation agreement, that the Respondent never agreed to, and to then enforce the agreement as so reformed.

(b) The Complainant did not ask for a reformation of the agreement, but if any reformation is to be made by the Court, it should be by the elimination of the plainly erroneous language, and should have been by reopening the former divorce cause.

(c) Under Virginia Code §20-109, the Court has no authority to amend the separation agreement.

(d) The only procedure to enforce the separation agreement would be by reopening the former divorce cause.
