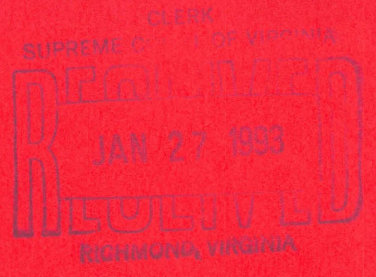


245 Va 465



IN THE
SUPREME COURT OF VIRGINIA
AT RICHMOND

Record No. 920870

THOMAS R. NEDRICH,

Appellant

v.

LES G. JONES, et al,

Appellees

Record No. 920947

JOHN F. WEBER,

Appellant

v.

LES G. JONES, et al,

Appellees

APPELLEES' SUPPLEMENTAL APPENDIX

Kenneth E. Labowitz
B. G. Stephenson
Gregory L. Murphy
J. Thomas Fromme II
Alan B. Croft
David G. Fiske

Counsel for Appellees

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APPELLEES' SUPPLEMENTAL APPENDIX

Kenneth E. Labowitz
510 King Street, Suite 416
Alexandria, Virginia 22314

Beverly G. Stephenson
4157 Chain Bridge Road
Fairfax, Virginia 22030

Gregory L. Murphy
225 Reinekers Lane, Suite 700
Alexandria, Virginia 22314

J. Thomas Fromme II
10482 Armstrong Street
Fairfax, Virginia 22030

Alan B. Croft
David G. Fiske
1501 Farm Credit Drive, Suite 4400
McLean, Virginia 22102

Counsel for Appellees

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V I R G I N I A:

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

JOHN F. WEBER

Plaintiff,

vs.

LES G. JONES, et al.

Defendants.

Law No. 104935

DEMURRER

COME NOW Defendants Les G. Jones, Deanna Jones, a/k/a Dorothy Ann Jones, and Dulles Equities, Inc., by counsel, and demur to the Motion for Judgment herein and as grounds therefor aver:

BREACH OF CONTRACT - BONUS

1. Plaintiff's action is predicated upon a written Employment Agreement between plaintiff and defendant Dulles Equities, Inc. dated October 28, 1987, a copy of which was filed with the Motion for Judgment.

2. The Employment Agreement was solely between plaintiff and defendant Dulles Equities, Inc.

3. Plaintiff seeks payment from defendant Dulles Equities, Inc., and derivatively from defendants Les G. Jones and Deanna Jones, of a bonus in the sum of \$241,976.50, allegedly predicated upon a GSA Lease Agreement executed in August, 1988, a copy of which is attached hereto as Exhibit A; and Section 4 of the Employment Agreement.

4. The GSA Lease for which plaintiff seeks the bonus pertains to a building known as the Atrium, owned solely at the

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time of its execution by Dulles Equities Limited Partnership III.

5. Section 4 of the Employment Agreement predicates payment to plaintiff of any bonus solely upon execution of a lease by Dulles Equities, Inc.

6. Plaintiff incorrectly alleges (Paragraph 6, Motion For Judgment) that defendant Dulles Equities, Inc. executed the GSA Lease on its own behalf, along with defendant Dulles Equities Limited Partnership III, then sole owner and lessor of the Atrium premises.

7. The GSA Lease properly reflects that defendant Dulles Equities, Inc. executed the GSA Lease solely, necessarily, and unequivocally as general partner of Dulles Equities Limited Partnership III, properly disclosing its execution to be entirely in its representative capacity.

8. Accordingly, there is no factual basis for plaintiff's blurring contention that representative execution of the GSA Lease by Dulles Equities, Inc. as general partner of the limited partnership entitled plaintiff to a bonus under the Employment Agreement, when the only basis for a "bonus" was upon a lease executed by Dulles Equities, Inc.

BREACH OF CONTRACT - ADDITIONAL SALARY

9. Plaintiff also asserts he is entitled to additional pro rata salary for January and February, 1991, respectively, aggregating \$9,375.00. The Employment Agreement clearly provides (Section 8) that employment would be for a period of three (3) years, effective January 1, 1988, expiring December 31, 1990; and that the term could be modified only by writing. (Section 9).

The Employment Agreement was not extended by agreement of the parties thereto. Plaintiff (properly) fails to allege any written modification of the Employment Agreement; and there is no factual basis upon which plaintiff is due any salary subsequent to December 31, 1990. Payment through the end of the employment term has been made in full.

ALL REMAINING COUNTS, II - XII

(COLLECTION RELATED CLAIMS)

10. All plaintiff's other claims are merely artful pre-judgment attempts to collect the alleged contractual indebtedness without plaintiff having proved the underlying gravamen - breach of contract. Plaintiff may not "boot strap" causes of action for collection of an indebtedness not yet proved. These ancillary collection-related claims improperly complicate this proceeding and are intended to cause unnecessary expenditure of defendants' time and resources and to harass these defendants. The law provides proper procedures, at plaintiff's risk and expense, to assure protection of corporate assets if plaintiff wishes to pursue such theories.

WHEREFORE, plaintiff having failed to allege facts upon which relief may be granted, the aforesaid defendants pray that the Motion For Judgment be dismissed instanter; and that they be awarded their costs herein, including attorney's fees.

DULLES EQUITIES, INC.,
LES JONES,
DEANNA JONES a/k/a Dorothy Ann Jones

By: 

B.G. Stephenson

V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN F. WEBER,)	
)	
Plaintiff,)	
)	
v.)	Law No. 104935
)	
LES G. JONES, <u>et al.</u> ,)	
)	
Defendants.)	

DEMURRER OF RIGGS NATIONAL BANK OF
WASHINGTON, D.C. TO MOTION FOR JUDGMENT

Defendant RIGGS NATIONAL BANK OF WASHINGTON, D.C. ("Riggs"),
by counsel, pursuant to Rule 3:5 of the Rules of the Supreme
Court of Virginia, states the following as its Demurrer to the
Motion for Judgment:

The Plaintiff does not state any claims or seek any relief
against Riggs in Counts I, II, III, IV, V, VI, VII, VIII, IX, XI,
and XII of the Motion for Judgment. Therefore, Riggs should be
dismissed as to these counts.

Count X of the Motion for Judgment fails to allege facts
sufficient to state a cause of action for quantum meruit recovery
against Riggs. The Plaintiff has affirmatively pled an express
contract and its breach by another defendant upon the same facts
and circumstances under which he alleges quantum meruit recovery
from Riggs. Quantum meruit does not apply where there is an
express contract.

Moreover, the Plaintiff has not and cannot allege any of the
other elements necessary to support a cause of action for quantum
meruit recovery. The Plaintiff clearly alleges that all of the

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actions upon which he bases his claim for quantum meruit recovery occurred prior to the transfer of the property by Plaintiff's employer. The Plaintiff affirmatively pleads that he procured the General Service Administration lease in August 1988 pursuant to the terms of his express employment contract and that the lease was signed by Les G. Jones as president of his employer. Clearly, this was a benefit directly conferred on his employer and no one else.

In addition, the Plaintiff has not and cannot allege that Riggs knew that the Plaintiff was acting for its "benefit." Moreover, the Plaintiff alleges that this "benefit" was accepted and retained by his employer, not Riggs. Finally, the Plaintiff has incorrectly named Riggs as the owner of the subject property. Therefore, Count X of the Motion for Judgment should also be dismissed as to Riggs.

WHEREFORE, Riggs respectfully request that the Motion for Judgment be dismissed as to Riggs and that Riggs be awarded costs incurred herein.

THE RIGGS NATIONAL BANK OF
WASHINGTON, D.C.
By Counsel

HAZEL & THOMAS, P.C.

By Dee Ann Cozzens
David G. Fiske, VSB 14511
Dee Ann Cozzens, VSB 30227
510 King Street, Suite 200
Alexandria, Virginia 22314
(703) 836-8400
Counsel for Riggs National
Bank of Washington, D.C.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of June, 1991, a true copy of the foregoing was mailed, first-class, postage prepaid to:

Thomas R. Nedrich
200 North Little Falls Street
Suite 203
Falls Church, Virginia 22046
Counsel for Plaintiff

Dee Ann Cozzens
Dee Ann Cozzens

V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN F. WEBER,

Plaintiff

v.

Law No. 104935

LES G. JONES, et al,

Defendants

DEMURRER TO PLAINTIFF'S MOTION FOR JUDGMENT ON BEHALF OF
DEFENDANT TRAFALGAR HOUSE PROPERTY, INC.

COMES NOW Defendant Trafalgar House Property, Inc.,¹ by counsel, and respectfully demurs to the Motion for Judgment filed against it by Plaintiff John F. Weber, and for such Demurrer hereby shows as follows:

Factual Background

1. This appears to be a simple lawsuit between an employee and his corporate employer blown up into a major conspiracy case involving ten unrelated defendants, including Trafalgar House Property, Inc. (hereafter Trafalgar House).

The Motion for Judgment makes clear that Mr. Weber believes that, since early 1989, he has been owed in excess of \$250,000 in

¹Trafalgar House Property, Inc., is successor by merger to Capital Homes Virginia, Inc., an entity that Plaintiff apparently intended to make a party-defendant to this action by naming "Capital Homes of Virginia, Inc." Pursuant to the express provisions of Va. Code § 13.1-721, Capital Homes Virginia, Inc., has ceased to exist and its rights and obligations have devolved to Trafalgar House. Accordingly, this submission is sufficient to preclude any further action against Capital Homes Virginia, Inc.

unpaid commissions and salary from his former employer, Dulles Equities, Inc. As is manifest from the Motion for Judgment and the attached contract, Trafalgar House is a stranger to the employment relationship between Mr. Weber and Dulles Equities, Inc. See Motion for Judgment, ¶¶ 1-14; Exhibit 1 to Motion for Judgment (Employment Agreement between Mr. Weber and Dulles Equities, Inc.)

2. Count I of the Motion for Judgment asserts a fairly standard claim for breach of the employment agreement between the parties.

3. Beginning with Count II, however, Mr. Weber proceeds into hitherto unknown legal territory with his allegations and claims. As set forth in Count II, Motion for Judgment ¶¶ 17-18, Mr. Weber tries to convert his status as a creditor of the corporation into a claim for conversion against Les Jones and Dorothy Jones, because they spent corporate funds on themselves rather than paying Mr. Weber the commissions and salary he claims he is owed.²

4. Counts III-VIII expand further this theory, seeking to impose liability against the Joneses and others doing business with the Joneses and their corporate entities under the doctrines of conversion and constructive trust. Mr. Weber proceeds under the following sequence of premises:

A. He is a creditor of a corporate entity, Dulles

²Note that there is no basis for a claim by Mr. Weber for conversion of property belonging to the corporation by Mr. Jones and Ms. Jones. Mr. Weber has no standing to complain as a mere creditor of the corporation; a claim for conversion requires an immediate possessory interest in the property alleged to have been converted. See *infra*, ¶¶ 10-12 and the authorities cited therein.

Equities, Inc.

B. Les Jones and Dorothy Jones are principals of that entity.

C. They spent corporate funds in ways that benefitted themselves rather than the corporation.

D. Therefore, the funds spent included sums that should have been paid to meet the obligation owed to him.

E. Further, he is entitled to judgment against fourth parties³ because they engaged in business activities that left the corporation without sufficient funds to pay him, a fact apparently only known to him because Mr. Jones told him that there was "no money" to pay him what he was owed by the corporation. Motion for Judgment ¶¶ 9-11.

5. Mr. Weber attempts to bridge a panoply of legal concepts in this progression: he is seeking to impose liability for the acts of the corporation upon its principals; he is seeking to impose liability for money owed him by the corporation against other persons and entities trading with the corporation's principals; and his attempts to set up some sort of fiduciary obligation owed to him as a corporate creditor by parties trading with Les Jones and Dorothy Jones. These allegations are breathtaking and groundbreaking if they can be proved.

6. Count IX includes the first allegations against Trafalgar House. The concepts involved mirror those included in the

³Mr. Weber is the first party; Dulles Equities, Inc., is the second party; and Les Jones and Dorothy Jones are the third parties.

proceeding count, seeking to impose a constructive trust on a residence under contract for sale to Mr. Jones.' Acting in his own name, not that of Dulles Equities, Inc., Mr. Jones has leased the Trafalgar House property prior to going to settlement on its purchase, and has expended funds for the lease of the premises prior to settlement and for improvements. Motion for Judgment ¶ 61-62.

Mr. Weber includes allegations that funds of Dulles Equities, Inc., were used to purchase, lease and improve the property. Id., at ¶¶ 63, 65. Paragraph 67 includes the substantive claim against Trafalgar House in Count IX:

Although the lease, purchase and improvement of the Woodland property is being accomplished through use of the funds and assets of the Corporation, the Corporation has derived and will derive no benefit from these transactions and activities, and these transactions and activities were designed and implemented as a scheme by Les Jones and Dorothy Jones, with the active and conscious aid and assistance of Trafalgar, to hinder, delay and defraud Plaintiff and other creditors of the Corporation. (Emphasis supplied)

In Paragraph 68, Mr. Weber contends that, because corporate funds were used to lease, purchase and improve the property under contract to Mr. Jones, he as a creditor of the Corporation is entitled to imposition of a constructive trust on the property "to the extent of the liability of the Corporation, Les Jones and

'Count VIII involves allegations against another property owner under virtually identical circumstances, and seeks the same relief: imposition of a constructive trust "in favor Plaintiff to the extent of funds and assets of the Corporation expended on the" property, and that "this Court declare that the doctrine of Lis Pendens applies to the Lakeport property to the extent of any judgment rendered in favor of the Plaintiff." Motion for Judgment ¶ 58.

Dorothy Jones to the Plaintiff . . . for the benefit of the Corporation and Plaintiff." Motion for Judgment ¶ 68.

7. Mr. Weber concludes Count IX with the suggestion that he "claims an interest in the Woodland property under the doctrine of Lis Pendens [sic]", which apparently Mr. Weber takes to mean that he is entitled to a lien on the property upon the award of a judgment in his favor. Motion for Judgment ¶ 69.

8. Two other counts of the Motion for Judgment may be read to include allegations against Trafalgar House: Count XI, entitled "Conspiracy", and Count XII, labelled "Exemplary Damages".

In Count XI, Mr. Weber makes the following claims:

The pattern of misconduct, diversion of assets and conversion of the assets of the Corporation, by Les and Dorothy Jones, and by others acting in concert with them, evidence a series of conspiratorial combinations, associations and agreements undertaken for the purpose of willfully and maliciously injuring Plaintiff and other creditors of the Corporation, and also evidence the intent to willfully and maliciously prevent and hinder Plaintiff and other creditors from obtaining from the Corporation the monies lawfully owed to them.

Motion for Judgment ¶ 82, emphasis supplied. Mr. Weber then asserts in the prayer to Count XI that he invokes the provisions of the Virginia Business Conspiracy Act, §§ 18.2-499 and -500, Code of Virginia, as amended.

Count XII states the following claim:

The pattern of misconduct, diversion and conversion perpetrated by the Corporation, Les Jones and Dorothy Jones and other defendants acting in concert with them, were [sic] done with the intent to injure or destroy the viability of Plaintiff's creditor rights, were [sic] done willfully maliciously and with a spirit of mischief such as to amount to a criminal indifference to civil obligation and, as such, makes said defendants liable in exemplary damages.

Motion for Judgment ¶ 84, emphasis supplied.

ARGUMENT AND AUTHORITIES

A.

THERE IS NO LEGITIMATE BASIS IN VIRGINIA LAW TO MAINTAIN
THE ACTION FOR "CONVERSION" AGAINST TRAFALGAR HOUSE
UNDER THE CIRCUMSTANCES ALLEGED

9. Plaintiff fails to state any recognizable claim for any compensable damage out of the actions of Trafalgar House included in the allegations of the Motion for Judgment. The wild accusations included in the Motion for Judgment do not rise to a level worthy of this Court's consideration.

10. Mr. Weber in Count IX of the Motion for Judgment asserts a cause of action for "conversion" arising from the contract of sale of a residence between Trafalgar House and Les Jones. Apparently, Mr. Weber believes that his claim against Dulles Equities, Inc., for his unpaid commission and salary provides him with standing to assert a claim of conversion against Trafalgar House for its dealings with Mr. Jones.

Mr. Weber lacks the requisite standing, and no such claim can be asserted under the circumstances alleged. The closest recognizable action to that concocted in the Motion for Judgment is one for a creditors' bill, under which Mr. Weber, as a creditor of Dulles Equities, Inc., could seek his remedies against the assets of the corporation. See generally 5A Michie's Jurisprudence, Creditors Suits §7; 4B Michie's Jurisprudence, Corporations §266. But such an action would be brought by Mr. Weber against Dulles

Equities, Inc., not against Trafalgar House.

11. Mr. Weber simply cannot pursue an action against Trafalgar House for waste of corporate assets on behalf of Dulles Equities, Inc., in his capacity as a former employee and a creditor of that entity. Even "[a]n officer or a shareholder of a corporation, even if he is the sole shareholder, has no personal or individual right of action against third parties for a wrong or injury inflicted by those third parties upon the corporation." 4B Michie's Jurisprudence, Corporations §241. A shareholder has no standing to sue in his own right for an injury to the corporation on the ground that the injury caused a depreciation in the value of his stock. Keepe v. Shell Oil Co., 220 Va. 587, 260 S.E.2d 722 (1979).

There is simply no precedent, in Virginia or elsewhere, under which an employee or creditor of a corporation can sue a third party for impairing the assets of the corporation to satisfy the obligations owed the employee or creditor. Note here that Trafalgar House stands in the capacity of a fourth party to Mr. Weber, removed from direct contact with Mr. Weber by the insulation of the second party (Dulles Equities, Inc.) and the third parties (Les Jones and Dorothy Jones).

12. Finally, Mr. Weber's claim of conversion fades into silliness by the nature of the action itself. "The tort of conversion consists of 'any distinct act of dominion wrongfully exerted over the property of another, and in denial of his rights, or inconsistent therewith.'" Universal C.I.T. Credit Corp. v.

Kaplan, 198 Va. 67, 76, 92 S.E.2d 359, 365 (1956). In an action for conversion, plaintiff must show a property right in a converted item and entitlement to immediate possession thereof, along with the defendant's wrongful exercise of authority over the property." Acorn Structures, Inc. v. Swantz, 657 F.Supp. 70, 74 (W.D. Va. 1987).

Here, Mr. Weber has no claim of a property right in either the residence under contract to Mr. Jones, nor in any identifiable fund of money from which was paid the down payment, rent, or cost of improvements of the residence. Mr. Weber is simply trying to convert a routine collection suit into a multi-count suit for conspiracy, conversion, and anything else that his lawyer can conceive of. Not only is Mr. Weber not entitled to maintain this action, he and his lawyer should be sanctioned for the carelessness they have shown in launching this attack against parties having no earthly connection to Mr. Weber and his problems.

B.

PLAINTIFF FAILS TO STATE A CLAIM FOR CIVIL CONSPIRACY
UNDER SECTIONS 18.2-499 AND -500
AND FOR EXEMPLARY DAMAGES

13. It is apparent that the allegations regarding civil conspiracy were made in complete disregard of the requirements for pleading under the civil conspiracy statutes. As the Supreme Court of Virginia made clear in Hechler Chevrolet, Inc. v. General Motors Corp., 230 Va. 396, 337 S.E.2d 744, 748 (1985),

A civil conspiracy is a combination of two or more persons, by some concerted action, to accomplish some purpose, not in itself criminal or unlawful, by criminal or unlawful means. Werth v. Fire Adjust. Bureau, 160 Va.

845, 855, 171 S.E. 255, 259, cert. denied, 290 U.S. 659 (1933). There can be no conspiracy to do an act which the law allows. Id. Thus, to survive demurrer, an allegation of conspiracy, whether criminal or civil, must at least allege an unlawful act or an unlawful purpose. (Emphasis supplied)

Here, Mr. Weber has alleged, in Count XI, that Trafalgar House engaged in a conspiracy with Les Jones and Dorothy Jones through a "pattern of misconduct, diversion of assets and conversion of the assets of the Corporation . . . for the purpose of willfully and maliciously injuring Plaintiff and other creditors of the Corporation . . . to willfully and maliciously prevent Plaintiff and other creditors from obtaining from the Corporation the monies lawfully owed to them." Motion for Judgment ¶ 82. Read in the context of the other allegations of the Motion for Judgment, the only act complained of by Trafalgar House within the conspiracy alleged was its entry into a contract for sale of a residence to Mr. Jones. Fortunately for the real estate market, and unfortunately for Mr. Weber here, that act is simply not one that permits this action to be maintained against Trafalgar House.

There is nothing illegal, criminal, or unlawful from the conduct alleged by Trafalgar House to maintain an action for civil conspiracy. Trafalgar House contracted to first lease and then sell a residence to Mr. Jones; Mr. Weber has alleged no fact or legal theory that meets the requirements set down in Hechler Chevrolet sufficient to survive this Demurrer. Indeed, the conspiracy allegations are entirely conclusory and devoid of supporting factual allegations regarding the illegal conduct of Trafalgar House about which Mr. Weber complains.

In Paragraph 82 of the Motion for Judgment, Mr. Weber recites his conclusion that he was damaged by a civil conspiracy with references again to the conversion of Dulles Equities' corporate assets. As discussed supra, he has no standing to complain about any conversion of any corporate assets. Other than the reference to conversion, the allegations of conspiracy fail to articulate a basis on which Mr. Weber can proceed on his claims, because he only provides conclusions that he was prevented from obtaining money he was owed by the corporation.

In the absence of specific grounds on which the conspiracy is alleged to have taken place, Count XI cannot survive this Demurrer.

14. Similarly, Mr. Weber fails to specify who he alleges to have conspired against him, beyond Dulles Equities, Inc., Les Jones, and Dorothy Jones. In this regard, see Motion for Judgment ¶ 82:

The pattern of misconduct, diversion of assets and conversion of the assets of the Corporation, by Les and Dorothy Jones, and by others acting in concert with them, evidence a series of conspiratorial combinations, associations and agreements undertaken for the purpose of willfully and maliciously injuring Plaintiff and other creditors of the Corporation . . . (Emphasis supplied)

Trafalgar House assumes for purposes of this Demurrer that it is included among those acting in concert with the named conspirators, given the allegations recited previously in the Motion for Judgment.

It must be noted, however, that Plaintiff's failure to specify those who he believes conspired against him reflects a vain and sloppy attempt to meet the standards required for parties and their

counsel by § 8.01-271.1, Code of Virginia, that the allegations recited in a pleading are "well grounded in fact". There can simply be no excuse for imprecision as to who is being charged with liability under the civil conspiracy statutes. If Trafalgar House cannot be adequately identified in the Motion for Judgment as a party believed in good faith to be a co-conspirator, then this Demurrer should be sustained for that failure.

15. Two other bases support Trafalgar House's Demurrer to the conspiracy count. The civil conspiracy statute provides relief for "[a]ny person who shall be injured in his reputation, trade, business or profession." § 18.2-500 (a), emphasis supplied. This provision has been uniformly interpreted to provide "a remedy for wrongful conduct directed at the business" of an individual or entity. Federated Graphics Co. v. Napotnik, 424 F.Supp. 291, 293 (E.D. Va. 1976). Personal interests are not protected by the statute. This has been repeatedly affirmed by federal courts construing the Virginia statute. Moore v. Allied Chemical Corp., 480 F.Supp. 364 (E.D. Va. 1979); Ward v. Connor, 495 F.Supp. 434 (E.D. Va. 1980), rev'd on other grounds, 657 F.2d 45 (4th Cir. 1981); Campbell v. Board of Supervisors, 553 F.Supp. 644 (E.D. Va. 1982); Nationwide Mutual Fire Insurance Co. v. Jones, 577 F.Supp. 968 (W.D. Va. 1984); Buschi v. Kirven, 775 F.2d 1240 (4th Cir. 1985).

Here, Mr. Weber asserts that his rights as a creditor were the object of this conspiracy. In a word, such allegations are insufficient to sustain an action under the civil conspiracy

statute. His rights as a creditor, owed money by a entity with which Trafalgar House is not alleged to have dealt, are at best personal, and not the business-related interests protected by § 18.2-499 and -500.

16. Secondly, the claimed damages-- Mr. Weber's right to obtain satisfaction for his compensation owed by Dulles Equities, Inc.-- are too indirectly related to the alleged conspiracy to permit this action to be maintained. To avoid demurrer, the plaintiff must allege conduct "directly aimed toward the business, trade, reputation or profession: The injury must not be a result or secondary effect of an action taken for mere personal gain. . .

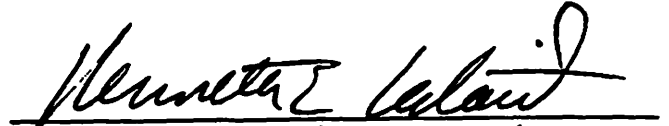
. These statutes are inapplicable to one isolated incident in which a combination of persons defraud a company for their own personal enrichment." Nationwide Mutual Fire Insurance Co. v. Jones, supra, 577 F.Supp. at 970-971.

The conspiracy statutes are inapplicable to the alleged injury to Mr. Weber's rights as a creditor. Whatever else Mr. Weber believes was occurring here, Trafalgar House contracted to lease and to sell a residence to Mr. Jones, for the explicit purpose of profiting Trafalgar House in its business of selling homes. If there is any substance to the allegations that Mr. Weber's rights as a creditor of Dulles Equities, Inc., suffered as a result, that is as indirect a consequence as can be imagined, and is insufficient to avoid this Demurrer.

17. The same allegations regarding a conspiracy to frustrate Mr. Weber's rights as a creditor of Dulles Equities, Inc., underlie

the claim for exemplary damages that constitute Count XII. These allegations, too, are insufficient to sustain this action beyond Trafalgar House's Demurrer.

WHEREFORE Defendant Trafalgar House Property, Inc., respectfully prays that this Court grant its Demurrer and dismiss it as a party to this suit, and award it its costs of this action.



Kenneth E. Labowitz
Virginia Bar No. 16580
Neil D. Goldman
Young and Goldman
510 King Street, Suite 416
P.O. Box 1946
Alexandria, Virginia 22313
703/684-3260

Counsel for Defendant
Trafalgar House Property, Inc.

VIRGINIA:

FILED

IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VA 10:55

JOHN F. WEBER,
Plaintiff,

v.

LES JONES, et al.,
Defendant.

WARRICK F. BROWN
CLERK-CIRCUIT COURT
FAIRFAX COUNTY, VA

Law No. 104935

**DEFENDANT 1ST SOURCE BANK'S
BRIEF IN SUPPORT OF ITS DEMURRER**

Defendant 1st Source Bank ("1stSB"), by counsel, submits this brief in support of its demurrer to plaintiff John F. Weber's ("Weber") motion for judgment.

STATEMENT OF THE CASE

Weber has brought this lawsuit to enforce the provisions of an employment contract he allegedly had with defendant Dulles Equities, Inc. ("DEI"). Weber contends that he is owed \$251,351.50 pursuant to the employment contract. Not satisfied with a cause of action for breach of contract, Weber has also named as defendants 14 other entities. The gist of the allegations against these 14 defendants is that they engaged in a "scheme" to divert corporate assets from DEI. The result of the alleged "scheme" is that DEI is left without sufficient assets to fulfill its obligations to Weber.

With respect to 1stSB, it is alleged that it loaned money to DEI. The loan was secured by a lien on a Lear Jet owned by DEI. It is also alleged that several hundred thousand dollars of the

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loan proceeds were "channeled" into defendant corporation Armed Forces Electronics, Ltd. ("AFE"). (Motion for Judgment para. 26). AFE is owned by defendant Les Jones who is also one of the co-owners of DEI. There is no allegation that 1stSB directed or assisted in the "channeling" of these funds. Nor are there any allegations that 1stSB knew of the "channeling" of funds.

It is further alleged that the Lear Jet is about to be purchased or traded for a new jet aircraft which will be titled in the name of an entity other than DEI. Weber alleges that this transfer "is a scheme designed and being pursued by Les Jones with the aid and assistance of" 1stSB and three other defendants. (Motion for Judgment, para. 43). There is no allegation that this "scheme" has actually occurred and no facts are plead to indicate the nature or extent of 1stSB's involvement in the alleged "scheme."

There are numerous other allegations concerning various transactions undertaken by DEI and its owners. None of these other allegations concerns or otherwise implicates 1stSB.

The only counts of the 12 count motion for judgment which arguably seek relief against 1stSB are Counts XI (Conspiracy) and XII (Exemplary Damages). In these counts Weber requests that judgment be entered against DEI, its owners and "any and all other defendants herein found to have willfully and maliciously conspired against plaintiff." (Motion for Judgment, page 28). 1stSB is not expressly named in either count, nor is it ever specifically alleged to have acted willfully and maliciously

against Weber. Rather, Weber's bare allegations of conspiratorial conduct are limited to DEI, its owners and "others acting in concert with them." (Motion for Judgment, para. 82). Weber also requests that the damages under the Conspiracy count be trebled pursuant to the Virginia Business Conspiracy Act ("VBCA").

ARGUMENT

I. WEBER FAILS TO ALLEGE FACTS SUFFICIENT TO STATE A CLAIM FOR RELIEF UNDER A CONSPIRACY THEORY ACT.

A) Introduction

Although it is not clear from Weber's pleadings whether Count XI seeks relief under a common law or a statutory conspiracy theory, facts supporting either theory are not sufficiently plead. Part I(B) of this brief discusses Weber's claim under the VBCA, while part I(C) will address whether a common law conspiracy action has been sufficiently plead with respect to 1stSB.

B) Weber Has Not Sufficiently Plead a Claim Under the VBCA

1) No "business" has been injured.

To plead and prove an action under the VBCA, a plaintiff must show (1) a combination of two or more persons for the purpose of willfully and maliciously injuring plaintiff in his business and (2) resulting damage to the plaintiff. Allen Realty Corp. v. Hobart, 227 Va. 441, 449, 318 S.E.2d 592, 596 (1984)

(interpreting Va. Code sections 18.2-499 to 500). The two categories of "persons" protected by the VBCA are "corporations or individuals who own or operate a business." Welch v. Kennedy Piggly Wiggly Stores, Inc., 63 Bankr. 888, 897 (W.D.Va. 1986); Moore v. Allied Chemical Corp., 480 F.Supp. 364, 375 (E.D.Va. 1979). In other words, the VBCA creates a right of action arising from conduct directed at a business and not from conduct directed at one's person. Buschi v. Kirven, 775 F.2d 1240, 1259 (4th Cir. 1985). At least one Court has ruled that mere employment is not an activity protected by the VBCA. Campbell v. Board of Supervisors, 553 F.Supp. 644, 645 (E.D.Va. 1982) ("Indeed [the VBCA] must under Virginia law be construed to exclude employment from its scope.").

Here, Weber has alleged no facts from which it might be inferred that the alleged conspiracy was calculated to injure a business. Rather, it is apparent from Weber's allegations that the alleged injury has only been to his employment with DEI. There is a corresponding lack of allegations that Weber owns or operates a business or that any business operation of Weber's has been injured. At bottom, the alleged wrongful conduct was, according to Weber's own pleadings, directed only at his person--not a business. As such, Weber has no cause of action under the VBCA.

2) No facts indicating malice have been pleaded.

On its face, the VBCA requires that the purpose of the conspiracy be to "willfully and maliciously" injure one's business. Va. Code §18.2-499(a). Where the defendant's "primary and overriding purpose is to injure his victim in his . . . business . . . motivated by hatred, spite, or ill will, the element of malice required by Code §18.2-499 is established." Greenspan v. Osheroff, 232 Va. 388, 398-99, 351 S.E.2d 28, 35-36 (1986). The alleged wrongful "conduct must be directly aimed toward damaging the business, trade, reputation or profession. The injury must not be a result or secondary effect of an action taken for mere personal gain." Nationwide Mut. Fire Ins. Co. v. Jones, 577 F.Supp. 968, 970 (W.D.Va. 1984) (dismissing VBCA claim).

Here, Weber has alleged no facts indicating that 1stSB's loan to DEI was for the purpose of injuring Weber in his business, nor are there any facts alleged from which it might be inferred that 1stSB was motivated by "hatred, spite, or ill-will." Rather, Weber's own allegations infer that 1stSB's motivation in extending a loan to DEI was for the usual reason - - profit. Aside from a complete lack of facts indicating malice by 1stSB, there are no facts alleged to indicate that the other defendants actions were motivated by anything other than personal gain. Simply, there is a complete lack of facts alleged from which it can be inferred that 1stSB

acted maliciously or that 1stSB's primary purpose in this whole affair was to injure Weber. The VBCA claim must be dismissed.

C. Weber Has Not Plead A Sufficient Claim Under
A Common Law Conspiracy Claim

"A civil conspiracy is a combination of two or more persons, by some concerted action, to accomplish some criminal or unlawful purpose, or to accomplish some purpose, not in itself criminal or unlawful, by criminal or unlawful means." Hecher Chevrolet, Inc. v. General Motors Corp., 230 Va. 396, 402, 337 S.E.2d 744, 748 (1985); Glass v. Glass, 228 Va. 39, 47, 321 S.E.2d 69, 74 (1984). Although it is not clear from Weber's pleadings whether an unlawful act or unlawful purpose is the object of the conspiracy, the only inference that is raised is that the conspirators seek to fraudulently convey property away from DEI's creditors. There are, however, absolutely no allegations or facts from which it might be inferred that 1stSB knew of the conspiracy or of the alleged purposes of the conspiracy. In cases of fraudulent conveyances, it must be alleged that the putative purchaser must have had notice or knowledge of the grantor's fraudulent intent. 9A Michie's Jurisprudence, Fraudulent & Voluntary Conveyances §83 (1991); see also, Whely v. Moir, 102 Va. 875, 878, 47 S.E. 1005, 1006 (1904). Moreover, since 1stSB had no knowledge of DEI's or its owners intent to defraud Weber or other creditors, it can hardly be alleged to have knowingly conspired with DEI to do the same thing. Thus, no claim for common law conspiracy is alleged as against 1stSB.

II. WEBER HAS NO CLAIM FOR PUNITIVE DAMAGES
AGAINST 1stSB

In Count XII of his lawsuit, Weber contends that DEI, its owners and unspecified "other defendants" acted maliciously and in disregard of Weber's rights. There is, however, no allegation that 1stSB acted in such a manner or that 1stSB had any knowledge of the other defendants' actions or any knowledge of Weber and his claims against DEI. Given that the factual allegations concerning 1stSB are limited to the fact that it gave a secured loan to DEI, there is nothing in the Motion for Judgment which remotely suggests that 1stSB engaged in conduct warranting the imposition of punitive damages.

Moreover, as a matter of pure legal principle, there can be no claim for punitive damages against 1stSB because all of the compensatory damages sought are those damages encompassed by the breach of contract claim against DEI. See, Cancun Adventure Tours v. Underwater Designers Co., 862 F.2d 1044, 1048-49 (4th Cir. 1988) (vacating punitive damage award where tort damages awarded were the same as the contract damages awarded) (applying Virginia law). Thus, since all of Weber's compensatory damages must necessarily be founded on the breach of contract¹ claim, he cannot receive an award of punitive damages because the compensatory damages on the tort claims are not independent from his contract damages.

¹/If Weber does not prevail on his contract claim, then he cannot prevail on the tort claims because he would not be a creditor.

III. WEBER'S CLAIM FOR ATTORNEYS FEES
MUST BE DISMISSED

In Counts XI and XII of his motion for judgment, Weber asks for an award of attorneys fees. Weber, however, has no cause of action under the VBCA and there is no other relevant statute or contractual provision between Weber and 1stSB which would trigger an award of attorneys fees. See, Hiss v. Friedberg, 201 Va. 572, 574, 112 S.E.2d 871, 875 (1960). Weber's claim for attorney's fees must be dismissed as against 1stSB.

CONCLUSION

For the foregoing reasons, 1stSB respectfully requests that this Court sustain its demurrer to the motion for judgment.

1st SOURCE BANK

By Counsel

MURPHY, McGETTIGAN & WEST, P.C.
225 Reinekers Lane, Suite 700
Alexandria, Virginia 22314-2822
(703) 549-5353

By: 

Gregory L. Murphy
David C. Schroeder

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

At Law No. 104935

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In his zeal to capture any asset that may belong to Dulles Equities, Inc., however, Plaintiff has sued Jet Tech, Inc. and Edward Dahlberg. In Count VI, Plaintiff seeks to impose a constructive trust on the future proceeds from the sale of a Lear Jet owned by Dulles Equities, Inc., which sale has not yet occurred, and notwithstanding the fact that neither Jet Tech, Inc. nor Mr. Dahlberg have held or now hold any assets of Dulles Equities, Inc. Indeed, Plaintiff has alleged that Jet Tech, Inc. and Mr. Dahlberg are simply acting as brokers in a yet to be consummated transfer of the Lear Jet.

From this tenuous association with the primary defendant Dulles Equities, Inc., Plaintiff suggests, in Count XI, that it might be appropriate to hold Jet Tech, Inc. and Mr. Dahlberg liable as conspirators if they are found to have conspired with Dulles Equities, Inc. This bizarre assertion is not supported by any allegations as to either Jet Tech, Inc.'s or Mr. Dahlberg's intent in acting as brokers in the Lear Jet transaction. Finally, without seeking any compensatory damages against Jet Tech, Inc. or Mr. Dahlberg, Plaintiff suggests, in Count XII, that exemplary damages may be appropriate by loosely naming "other defendants" therein.

As will be demonstrated more fully below, Jet Tech, Inc.'s and Mr. Dahlberg's Demurrers and Motions to Dismiss must be granted because: (a) There can be no fraudulent conveyance

without a conveyance; (b) Plaintiff has not alleged that either Jet Tech, Inc. or Mr. Dahlberg presently hold any assets of Dulles Equities, Inc. or Plaintiff; (c) Plaintiff has not alleged that Jet Tech, Inc. or Mr. Dahlberg, in fact were part of the alleged conspiracy; (d) Punitive damages cannot be assessed in the absence of compensatory damages; and (e) The actions allegedly taken by Jet Tech, Inc. and Mr. Dahlberg do not arise out of a common transaction or occurrence as the actions of Dulles Equities, Inc.

ARGUMENT

- I. PLAINTIFF FAILS TO STATE A CLAIM FOR FRAUDULENT CONVEYANCE AGAINST EITHER JET TECH, INC. OR MR. DAHLBERG BECAUSE NO CONVEYANCE HAS OCCURRED AND NEITHER JET TECH, INC. NOR MR. DAHLBERG HAD KNOWLEDGE OF THE ALLEGED FRAUDULENT INTENT

The sole purpose for naming Jet Tech, Inc. and Mr. Dahlberg as defendants in this case is that they are allegedly acting as brokers in a yet to be consummated transaction that Plaintiff alleges is a fraudulent conveyance. Mtn. for Jdgmnt., Paras. 11(g), 12 and 43. The essence of a fraudulent conveyance action is to set aside and void conveyances that have already occurred. See Code of Virginia § 55-80.

Here, however, Plaintiff has alleged no consummated transaction involving Jet Tech, Inc. or Mr. Dahlberg whatsoever. Indeed, Paragraph 43 says only that: "Upon information and

belief ABC is about to purchase or trade the Lear Jet owned by the Corporation." (Emphasis added.) By his own allegation, therefore, Plaintiff has admitted that there is no conveyance to set aside.

[If Plaintiff is concerned that Dulles Equities, Inc. is "about" to transfer the Lear Jet in an attempt to defraud its creditors, its proper remedy is by prejudgment attachment against Dulles Equities, Inc., not fraudulent conveyance against the would-be brokers.]

Finally, the recipient of property who takes title without knowledge of the fraud retains title to that property notwithstanding the fraud of the grantor. Code of Virginia § 55-80. Plaintiff has not alleged that either Jet Tech, Inc. or Mr. Dahlberg had or have knowledge of Dulles Equities, Inc.'s alleged fraudulent intent. Since any commission earned by Jet Tech, Inc. or Mr. Dahlberg will be earned and supported by consideration, they are bona fide transferees, protected by Va. Code § 55-80. Therefore, Plaintiff has failed to state a claim against either Jet Tech, Inc. or Mr. Dahlberg.

II. PLAINTIFF HAS NOT PLEADED ANY FACTUAL BASIS FOR HIS CLAIM OF CONVERSION AGAINST JET TECH, INC. AND MR. DAHLBERG

Although Count VI is styled as a conversion claim, Plaintiff fails to allege any factual basis that either Jet Tech, Inc. or

Mr. Dahlberg have converted his property. In order to establish a claim of conversion, Plaintiff must allege that defendant wrongfully exercised dominion over Plaintiff's property in such a way as to deny Plaintiffs' rights of ownership. Universal C.I.T. Credit Corp. v. Kaplan, 198 Va. 67, 92 S.E.2d 359 (1956); Acres v. Swantz, 657 F.Supp. 70 (W.D.Va. 1987).

First, as discussed above, Plaintiff does not allege that either Jet Tech, Inc. or Mr. Dahlberg have in the past or now possess any property that ever belonged to anyone else. Plaintiff admits that the Lear Jet has not yet sold and Plaintiff has not alleged that either Jet Tech, Inc. or Mr. Dahlberg possess, or have ever possessed any other property of his. Second, the property Plaintiff alleges was converted, either the Lear Jet or are sales proceeds, are not his property. They are Dulles Equities, Inc.'s property. Plaintiff may have a claim against that property, and that claim may entitle him to attach that property, but is not in fact his property, and cannot therefore be converted.

III. PLAINTIFF'S DEMAND FOR A CONSTRUCTIVE TRUST NOT PERMITTED IN THE ABSENCE OF ANY PROCEEDS TO PLACE IN THE TRUST

The requested remedy of a constructive trust cannot be granted on the facts set forth in the Motion for Judgment. In order to impose a constructive trust there must exist a trust res. Inter-Ocean Casualty Co. v. Lecony Smokeleys Fuel Co., 175 S.E.2d 51 (W.Va. 1991). Plaintiff has pleaded that the sale of

the Lear Jet has not yet taken place, and Plaintiff has made no allegation that either Jet Tech, Inc. or Mr. Dahlberg presently hold any property that ought to be held for Plaintiff's benefit. Since, by Plaintiff's own allegations, there is no basis for the requested constructive trust, no constructive trust can be imposed.

IV. PLAINTIFF HAS FAILED TO ALLEGE ANY OF THE FACTS REQUIRED TO HOLD JET TECH, INC. AND MR. DAHLBERG LIABLE FOR CONSPIRACY

In Count XI Plaintiff broadly alleged that Dulles Equities, Inc., the Joneses and "other" unidentified defendants conspired to injure Dulles Equities, Inc.'s creditors, including Plaintiff. Plaintiff then prays that "any and all other defendants found to have willfully and maliciously conspired against Plaintiff as aforesaid" be held liable to Plaintiff. This blanket allegation ignores basic rules of pleading by asserting the existence of a conspiracy, but failing to specify the participants or any facts whatsoever that support the assertion.

In order to establish a conspiracy, Plaintiff must allege and prove that (1) two or more persons combined for the purpose of willfully and maliciously injuring plaintiff in his business; and (2) that such combination resulted in damage to plaintiff.

Allen Realty Corp. v. Holbert, 227 Va. 441, 318 S.E.2d 592

(1984). Plaintiff has failed to allege either element of conspiracy against Jet Tech, Inc. or Mr. Dahlberg.

Plaintiff has not alleged that either Jet Tech, Inc. or Mr. Dahlberg, willfully and maliciously combined with any other person or entity in order to injure Plaintiff. Indeed, nowhere in the 84 paragraphs of the Motion for Judgment does Plaintiff make any allegation regarding the state of mind or intent of either Jet Tech, Inc. or Mr. Dahlberg. There is nothing per se wrong or unlawful about acting as a broker in an airplane transfer. Absent any allegation of wrongful purpose, therefore, there can be no conspiracy. Potomac Valve & Fitting, Inc. v. Crowtain Fitting Co., 829 F.2d 1280 (4th Cir. 1987) (conspiracy requires unlawful purpose).

Moreover, Plaintiff has not alleged that any action of either Jet Tech, Inc. or Mr. Dahlberg has caused him injury. Indeed, given that the alleged impending sale of the Lear Jet has yet to take place, it is impossible to see how he could. Accordingly, Plaintiff has failed to allege any element of a civil conspiracy.

Pleadings must be well founded in fact and the allegations therein must be made in good faith. Code of Virginia § 8.01-171.1. It turns this rule on its head to allege broadly that unidentified defendants may be conspirators in the absence of any factual allegations regarding how each defendant is in fact a co-conspirator. Neither Jet Tech, Inc. nor Mr. Dahlberg have adequate notice of the facts similar to Plaintiff's claim.

Accordingly, Count XI must be dismissed with respect to Jet Tech, Inc. and Mr. Dahlberg.

V. JET TECH, INC. AND MR. DAHLBERG CANNOT BE LIABLE FOR EXEMPLARY DAMAGES ABSENT DEMAND FOR COMPENSATORY DAMAGES

Similarly in Count XII Plaintiff seeks exemplary damages against unnamed defendants who may be "found to have acted willfully, maliciously, in concert with them." Since, as stated above, Plaintiff has failed to plead any facts that support "malicious" acts of either Jet Tech, Inc. or Mr. Dahlberg, Count XII must be dismissed.

Moreover, before exemplary damages can be awarded, compensatory damages must be awarded. Gasque v. Moores Motor Car Co., 227 Va. 154, 313 S.E.2d 384 (1984); Valley Acceptance Corp. v. Glasby, 230 Va. 422, 332 S.E.2d 291 (1985). Since Plaintiff does not even seek compensatory damages against Jet Tech, Inc. or Mr. Dahlberg, Plaintiff cannot seek or obtain exemplary damages against them.

VI. IF PLAINTIFF HAS ANY CLAIMS AGAINST JET TECH, INC. OR MR. DAHLBERG, THEY ARE MISJOINED IN THIS SUIT

A plaintiff can bring different claims against different defendants only if those claims arise out of a common transaction or occurrence. Code of Virginia § 8.01-272. Here, Plaintiff has failed to allege any common transaction or occurrence to connect

the potential sale of the Lear Jet to any of the other transactions mentioned in the Motion for Judgment. Specifically, Plaintiff does not allege that either Jet Tech, Inc. or Mr. Dahlberg "combined" or "conspired" with any defendant. In the absence of such a connection, Plaintiff's claims, if any, against Jet Tech, Inc. and/or Mr. Dahlberg must be brought in a separate suit. Therefore, all claims against Jet Tech, Inc. and Mr. Dahlberg must be dismissed.

JET TECH, INC. and
EDWARD DAHLBERG

By Counsel

Shaw, Pittman, Potts & Trowbridge

W. Eric Pilsk

Alan B. Croft
W. Eric Pilsk
1501 Farm Credit Drive
McLean, Virginia 22102
(703)790-7900

Counsel to Jet Tech, Inc.
and Edward Dahlberg

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of June, 1991, a true and correct copy of the foregoing Jet Tech, Inc. and Edward Dahlberg's Memorandum in Support of Their Motion to Dismiss and Demurrer was mailed by U.S. mail, first class, postage prepaid to the following attorneys of record:

Thomas R. Nedrick, Esquire
200 North Little Falls Street
Suite 203
Falls Church, Virginia 22046

J. Thomas Fromme, II, Esquire
10482 Armstrong Street
Fairfax, Virginia 22030

Kenneth E. Labowitz, Esquire
Neil D. Goldman, Esquire
Young and Goldman
510 King Street, Suite 416
P.O. Box 1946
Alexandria, Virginia 22313

Beverly G. Stephenson, Esq.
4157 Chain Bridge Road
Fairfax, Virginia 22030

Gregory L. Murphy, Esquire
Murphy, McGettigan & West
225 Reinekers Lane, #700
Alexandria, Virginia 22314

David G. Fiske, Esquire
Dee Ann Cozzens, Esquire
510 King Street
Suite 200
Alexandria, Virginia 22314



W. Eric Pilsk

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN F. WEBER

Plaintiff

v.

LES G. JONES, et al.

Defendants.

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Law No. 104935

DEMURRER TO PLAINTIFF'S MOTION FOR JUDGMENT
ON BEHALF OF DEFENDANT ARMED FORCES ELECTRONICS, LTD.

COMES NOW, the Defendant, Armed Forces Electronics, Ltd., by Counsel, and respectfully demurs to the Motion for Judgment filed herein against it by the Plaintiff and in support thereof states as follows:

1. The allegations made against Defendant Armed Forces Electronics, Ltd., are in Count IV (Conversion and Constructive Trust), Count XI (Conspiracy), and Count XII (Exemplary Damages).

2. The allegations made in Count IV (Conversion and Constructive Count) fail to state a cause of action against Defendant Armed Forces Electronics, Ltd., for the following reasons:

a. The Plaintiff has yet to be adjudicated as "creditor" Dulles Equities, Inc. (the Corporation), or of Les Jones and/or Dorothy Jones; and

SHERMAN, BURY
& FROMME, P.C.
ATTORNEYS AT LAW
10482 ARMSTRONG STREET
FAIRFAX, VIRGINIA 22030
(703) 385-8008

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b. At best, the Plaintiff is a mere creditor of the Corporation and as such the Plaintiff has no standing to bring an action for conversion and constructive trust. In any action for conversion, Mr. Weber must demonstrate a property right in the converted item and entitlement to immediate possession thereof, along with the Defendant's wrongful exercise of authority over the property. Acorn Acres v. Swantz, 657 Fed.Sup. 70, 74, (WD. Va 1987). Since Mr. Weber has not yet been adjudicated as a creditor of the Corporation or being owed a debt by the Corporation, Mr. Weber has no property right nor does he have any entitlement to immediate possession of the "converted item".

c. There are no allegations of the Defendant's, Armed Forces Electronics, Ltd., wrongful exercise of authority over the property alleged to have been converted.

d. There are no allegations that any monies were diverted from Dulles Equities, Inc. or Les Jones to Defendant Armed Forces Electronics, Ltd. Rather, the Plaintiff simply asserts that Defendant Armed Forces Electronics, Ltd. obtained loans from the Co-Defendant First Source Bank as a result of the pledge of a Lear jet and other assets of the Dulles Equities, Inc.

e. Plaintiff's pleading does not contain factual allegations but rather interpretive conclusions.

3. The allegations made in Count XI (Conspiracy) fail to state a cause of action against this Defendant for the following reasons:

a. The allegations set forth herein fail to allege any injury to the Plaintiff in his business or reputation which is necessary for a claim under Section 18.2-499 and Section 18.2-500 of the Code of Virginia, 1950, as amended.

b. The allegations made in this Count against Defendant Armed Forces Electronics, Ltd., are simply an attempt to utilize this Court for a prejudgment attachment to collect what is alleged to be contractual indebtedness to the Plaintiff, but as yet is an indebtedness that has been unproven and remains to be determined by this Court. If, as the Plaintiff states in paragraph 29 of its Motion for Judgment, the Defendant Les Jones withdrew or otherwise used a substantial portion of the estimated \$20,000.00 per month income of Defendant Armed Forces Electronics, Ltd., then if the Plaintiff is successful in his breach of contract claim, he would have an avenue available to him to secure satisfaction of that judgment.

c. That the Plaintiff failed to allege any unlawful act or unlawful purpose by the Defendant Armed Forces Electronics, Ltd., which must be done in order to survive an allegation of conspiracy, whether criminal or civil.


d. The Plaintiff fails to specifically identify the "other Defendants" alleged to be acting in concert with the Corporation, Les Jones and Dorothy Jones.

4. That as to Count XII, Exemplary Damages, the Plaintiff fails to state a claim of action against the Defendant Armed Forces Electronics, Ltd., and it hereby incorporates the grounds set forth above in 1 through 3 as a basis upon which this Defendant's Demurrer to the exemplary damages Count should also be sustained.

WHEREFORE, your Defendant Armed Forces Electronics, Ltd., moves this Honorable Court to dismiss this Motion for Judgment as to Defendant Armed Forces Electronics, Ltd., and that it be awarded its Court costs and attorneys' fees incurred in this matter.


ARMED FORCES ELECTRONICS, LTD.
By Counsel

SHERMAN, BURY & FROMME, P.C.


J. Thomas Fromme, II, Esquire
Virginia Bar No. 012913
Counsel For Defendant
10482 Armstrong Street
Fairfax, VA 22030
(703) 893-0824

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN F. WEBER

Plaintiff

v.

LES G. JONES, et al.

Defendants.

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Law No. 104935

DEMURRER TO PLAINTIFF'S MOTION FOR JUDGMENT
ON BEHALF OF DEFENDANT DULLES EQUITIES, OF VIRGINIA, INC.

COMES NOW, the Defendant, Dulles Equities of Virginia, Inc., by Counsel, and respectfully demurs to the Motion for Judgment filed herein against it by the Plaintiff and in support thereof states as follows:

1. The allegations made against Defendant Dulles Equities of Virginia, Inc., are in Count V (Conversion and Constructive Trust), Count XI (Conspiracy), and Count XII (Exemplary Damages).

2. The allegations made in Count V (Conspiracy Count) fail to state a cause of action against Dulles Equities of Virginia, Inc., for the following reasons:

a. The Plaintiff has yet to be adjudicated as "creditor" of Dulles Equities, Inc. (the Corporation), or of Les Jones and/or Dorothy Jones; and

SHERMAN, BURY
& FROMME, P.C.
ATTORNEYS AT LAW
0482 ARMSTRONG STREET
FAIRFAX, VIRGINIA 22030
(703) 385-8008

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b. At best, the Plaintiff is a mere creditor of the Corporation and as such the Plaintiff has no standing to bring an action for conversion and constructive trust. In any action for conversion, Mr. Weber must demonstrate a property right in the converted item and entitlement to immediate possession thereof, along with the Defendant's wrongful exercise of authority over the property. Acorn Acres v. Swantz, 657 Fed.Sup. 70, 74, (WD. Va 1987). Since Mr. Weber has not yet been adjudicated as a creditor of the Corporation or being owed a debt by the Corporation, Mr. Weber has no property right nor does he have any entitlement to immediate possession of the "converted item".

c. There are no allegations of the Defendant's, Dulles Equities of Virginia, Inc., wrongful exercise of authority over the property alleged to have been converted.

d. Plaintiff's Count V pleading does not contain factual allegations but rather interpretative conclusions and surmises.

3. The allegations made in Count XI (Conspiracy) fail to state a cause of action against the Defendant for the following reasons:

a. The allegations set forth herein fail to allege any injury to the Plaintiff in his business or reputation as is required by Section 18.2-499 and Section 18.2-500 of the Code of Virginia, 1950, as amended.

b. That the allegations made in this Count against Defendant Dulles Equities of Virginia, Inc., is simply an attempt to utilize this Court for a prejudgment attachment to collect what is alleged to be contractual indebtedness to the Plaintiff, but as yet is an indebtedness that has been unproven and remains to be determined by this Court.

c. That the Plaintiff failed to allege any unlawful act or unlawful purpose by the Defendant Dulles Equities of Virginia, Inc., which must be done in order to survive an allegation of conspiracy, whether criminal or civil.


d. The Plaintiff fails to identify the "other Defendants" acting in concert with the Corporation, Les Jones and Dorothy Jones.

4. That as to Count XII, Exemplary Damages, the Plaintiff fails to state a claim against Defendant Dulles Equities of Virginia, Inc., and it hereby incorporates the grounds set forth above in 1 through 3 as a basis upon which this Defendant's Demurrer to the exemplary damages Count should be sustained.

WHEREFORE, your Defendant Dulles Equities of Virginia, Inc. moves this Honorable Court to dismiss this Motion for Judgment as to Defendant Dulles Equities of Virginia, Inc., and that it be awarded its Court costs and attorneys' fees incurred in this matter.


DULLES EQUITIES OF VIRGINIA, INC.
By Counsel

SHERMAN, BURY & FROMME, P.C.


J. Thomas Fromme, II, Esquire
Virginia Bar No. 012913
Counsel For Defendant
10482 Armstrong Street
Fairfax, VA 22030
(703) 893-0824

CERTIFICATE OF SERVICES

I hereby certify that a true copy of the foregoing Demurrer to Plaintiff's Motion for Judgment on Behalf of Defendant Dulles Equities of Virginia, Inc., was forwarded by first class mail, postage prepaid, this 25th day of June, 1991, to:

Robert J. Beagan, Esquire
Flynn & Beagan
Counsel for Defendant
ERA Five Star Realtors
8330 Boone Boulevard
Suite 440
Vienna, VA 22182

Alan B. Croft, Esquire
Shaw, Pittman, Potts & Trowbridge
Counsel for Defendants Jet Tech, Inc.
and Edward Dahlberg
1501 Farm Credit Drive
Suite 4400
McLean, VA 22102

Kenneth E. Labowitz, Esquire
Neil D. Goldman, Esquire
Young and Goldman
Counsel for Defendant Trafalgar House
Property, Inc.
510 King Street, Suite 416
P.O. Box 1946
Alexandria, VA 22313

Beverly G. Stephenson, Esquire
Counsel for Defendants Les Jones,
Dorothy Jones and Dulles Equities,
Inc.
4157 Chain Bridge Road
Fairfax, VA 22030

Gregory L. Murphy, Esquire
Murphy, McGettigan & West, P.C.
Counsel for First Source Bank
225 Reinekers Lane, Suite 700
Alexandria, VA 22314

David G. Fiske, Esquire
Dee Ann Cozzens, Esquire
Counsel for Riggs National Bank
510 King Street, Suite 200
Alexandria, VA 22314

Mailed and sent via telefax to:

Thomas R. Nedrick, Esquire
Counsel for John F. Weber
200 North Little Falls Street
Suite 203
Falls Church, VA 22046


J. Thomas Fromme, II

V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN F. WEBER,

Plaintiff,

v.

LES G. JONES, et al.,

Defendants.

Law No. 104935

**BRIEF IN SUPPORT OF DEMURRER OF THE
RIGGS NATIONAL BANK OF WASHINGTON, D.C.**

Defendant THE RIGGS NATIONAL BANK OF WASHINGTON, D.C.
("Riggs"), by counsel, submits this Brief in Support of its
Demurrer to the Motion for Judgment.

ARGUMENT

**I. THE MOTION FOR JUDGMENT FAILS TO STATE A CLAIM FOR
QUANTUM MERUIT RECOVERY AGAINST RIGGS.**

**A. Weber Failed To Allege Facts Sufficient To State A
Claim For Quantum Meruit Recovery.**

A claim for quantum meruit recovery exists when one person renders services for another which are requested and accepted by the other; the law then creates an obligation, called an implied-in-law contract, to pay a reasonable compensation, unless something in the relationship of the parties indicates otherwise. Unidyne Corp. v. Aerolineas Argentinas, 590 F. Supp. 391, 397 (E.D. Va. 1984) citing Burke v. Gale, 193 Va. 130, 67 S.E. 2d 917, 919 (1951). "The crux of a quantum meruit claim is the unjust enrichment of one party"; however, "even though the defendant may have benefitted from the plaintiff's services, the

latter cannot recover unless he can show sufficient additional facts that imply a promise to pay." Id. citing Mullins v. Mingo Lime & Lumber Co., 176 Va. 44, 10 S.E.2d 492, 494-95 (1940); see also Burke v. Gale, 193 Va. 130, 67 S.E.2d 917 (1951); Acorn Structures, Inc. v. Swantz, 657 F. Supp. 70, 74 (W.D. Va. 1987), rev'd on other grounds, 846 F.2d 923 (4th Cir. 1988).

Weber has not and cannot allege that Riggs requested any services from him. Additionally, Weber has not and cannot allege that Riggs accepted his services. All of the actions upon which he bases his claim for quantum meruit recovery occurred before the transfer of the property to Riggs. See Motion for Judgment at ¶¶ 6, 74. Indeed, Weber affirmatively alleges that his services were requested, accepted, and retained by his employer, Dulles Equities, Inc., not Riggs. See Motion for Judgment at ¶¶ 5-7.

Weber has also failed to allege any facts that show any promise by Riggs to pay Weber or any understanding by Riggs that it was obligated to pay Weber. Unidyne Corp., 590 F. Supp. at 397 (must allege facts that imply a promise to pay); Acorn Structures, Inc., 657 F. Supp. at 74 (essential element of unjust enrichment claim is defendant's acceptance of work with understanding that he is obligated to pay).

Therefore, since Weber has wholly failed to allege any facts to support a claim for quantum recovery, Count X must be dismissed.

B. Quantum Meruit Does Not Apply Where There Is An Express Contract.

Where an express contract exists, an action for unjust enrichment is improper. Acorn Structures, Inc. v. Swantz, 846 F.2d 923, 926 (4th Cir. 1988); Vollmar v. CSX Transp., Inc., 705 F. Supp. 1154 (E.D. Va. 1989), aff'd, 898 F.2d 413 (4th Cir. 1990). Weber has affirmatively pled an express contract and its breach by another defendant upon the same facts and circumstances under which he alleges quantum meruit recovery from Riggs. See Motion for Judgment at ¶¶ 15, 78-80. However, "an implied contract cannot arise against one benefitted by work performed when the work was done under a special contract with another person." 4B Michie's Jurisprudence Contracts § 99 (1986 & 1990 Supp.).

Therefore, since Weber has alleged and is seeking recovery under an express contract, his claim for quantum meruit recovery against Riggs must be dismissed.

II. THE REMAINING ELEVEN COUNTS OF THE MOTION FOR JUDGMENT FAIL TO STATE ANY CLAIMS AGAINST RIGGS.

The plaintiff does not state any claims or seek any relief against Riggs in Counts I, II, III, IV, V, VI, VII, VIII and IX. Therefore, Riggs should be dismissed as to these counts.

A. Counts XI And XII Are Insufficient As A Matter Of Law.

Riggs is not named in either of the remaining two counts, Count XI and XII. Instead, Weber makes vague assertions that Counts XI and XII apply to "others acting in concert with [the corporation and Les and Dorothy Jones]." See Motion for Judgment at ¶¶ 82, 84. This is grossly insufficient pleading because every pleading must clearly inform the opposite party of the true nature of the claim and set forth facts with sufficient certainty to be understood by the defendant who is to answer it. Va. S. Ct. R. 1:4(d); see Kennedy v. Mullins, 155 Va. 166, 154 S.E. 568 (1930); DuPont de Nemours & Co. v. Snead, 124 Va. 177, 97 S.E. 812 (1919); see also Davis v. City of Portsmouth, 579 F. Supp. 1205 (E.D. Va. 1983), aff'd, 742 F.2d 1448 (4th Cir. 1984) (mere conclusory allegations are not sufficient at law). Therefore, since the plaintiff has failed to meet even the most basic requirement of naming the parties to whom these counts apply, these two counts are insufficient as a matter of law and must be dismissed as to all defendants not specifically named therein.

B. Count XI Fails To Allege Facts Sufficient To State A Cause Of Action Under Va. Code §§ 18.2-499, 18.2-500 Against Riggs.

Count XI seeks to state a cause of action for the violation of the Virginia Business Conspiracy Act. Va. Code §§ 18.2-499, 18.2-500 (1950 and 1991 Supp). To recover under this Act, the plaintiff must allege and prove (1) a combination of two or more persons for the purpose of willfully and maliciously injuring plaintiff in his business, and (2) resulting damage to the

plaintiff. Allen Realty Corp. v. Holbert, 227 Va. 441, 318 S.E.2d 592 (1984).

Nowhere in the Motion for Judgment does Weber allege that Riggs ever combined with anyone for the purpose of injuring him in his business. The only dealings alleged in the Motion for Judgment between Riggs and Dulles Equities, Inc. or Les and Dorothy Jones were a loan, a lawsuit brought by Riggs pursuant to the default on that loan, and ensuing bankruptcy proceedings. See Motion for Judgment at ¶¶ 72-76. There is no allegation that Riggs even knew of Weber, much less that Riggs conspired to damage Weber's business. Moreover, Weber has failed to allege any "business."

In the interest of brevity, Riggs adopts the arguments set forth in the Memoranda in Support of Demurrer of ERA Five Star Realtors and the 1st Source Bank, which detail numerous other deficiencies with Count XI.

For the reasons set forth above, Count XI of the Motion for Judgment must be dismissed.

C. Count XII Fails To Allege Facts Sufficient To State a Claim For Punitive Damages Against Riggs.

Weber has failed to allege any facts or state any cause of action that would entitle him to an award of punitive damages against Riggs. Weber has not alleged that Riggs has engaged in any tortious, outrageous conduct toward him which would merit the award of punitive damages. Philip Morris, Inc. v. Emerson, 235 Va. 380, 368 S.E.2d 268 (1988) (punitive damages should only be

awarded in cases of most egregious conduct). Indeed, Weber's Motion for Judgment is based solely on an alleged breach of his employment contract, for which punitive damages are not available. Kamlar Corp. v. Haley, 224 Va. 699, 299 S.E.2d 514 (1983) (breach of employment agreement action: tortious conduct, beyond mere breach of contractual duty, is required for punitive damages award).

Additionally, Riggs adopts the arguments set forth in the Memoranda in Support of Demurrer by ERA Five Star Realtors and 1st Source Bank which detail other deficiencies with Count XII.

Therefore, since Weber has failed to allege any facts to support an award of punitive damages, Count XII of the Motion for Judgment must be dismissed as to Riggs.

CONCLUSION

For the foregoing reasons, The Riggs National Bank of Washington, D.C. respectfully requests that this Court sustain its demurrer to the Motion for Judgment and that Riggs be awarded costs incurred herein.

THE RIGGS NATIONAL BANK OF
WASHINGTON, D.C.
By Counsel

HAZEL & THOMAS, P.C.

By:

Dee Ann Cozzens
David G. Fiske, VSB 14511
Michael L. Zupan, VSB 24962
Dee Ann Cozzens, VSB 30227
510 King Street, Suite 200
Alexandria, Virginia 22314
(703) 836-8400
Counsel for The Riggs National
Bank of Washington, D.C.

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of July, 1991, I caused a copy of the foregoing document to be faxed and mailed, first-class, postage prepaid to:

Thomas R. Nedrich, Esq.
200 North Little Falls Street
Suite 203
Falls Church, VA 22046
Counsel for John F. Weber

and mailed, first-class, postage prepaid to:

J. Thomas Fromme, II, Esq.
10482 Armstrong Street
Fairfax, VA 22030
Counsel for Dulles Equities of Virginia
Inc. and Armed Forces Electronics, Ltd.

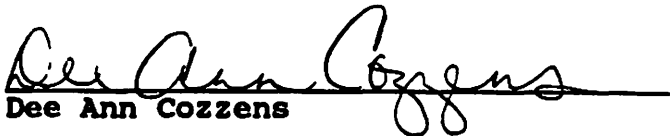
Alan B. Croft, Esq.
Shaw, Pittman, Potts & Trowbridge
1501 Farm Credit Drive
Suite 4400
McLean, VA 22102
Counsel for Defendants Jet Tech Inc.
and Edward Dahlberg

Kenneth E. Labowitz, Esq.
Neil D. Goldman, Esq.
Young and Goldman
510 King Street, Suite 416
P.O. Box 1946
Alexandria, VA 22313
Counsel for Defendant Trafalgar House
Property, Inc.

Beverly G. Stephenson, Esq.
4157 Chain Bridge Road
Fairfax, VA 22030
Counsel for Les Jones, Dorothy Jones
and Dulles Equities, Inc.

Gregory L. Murphy, Esq.
Murphy, McGettigan & West, P.C.
225 Reinekers Lane, #700
Alexandria, VA 22314
Counsel for First Source Bank

Robert J. Beagan, Esq.
Flinn & Beagan
Suite 440
8330 Boone Boulevard
Vienna, VA 22182
Counsel for Era Five Star
Realtors


Dee Ann Cozzens

LAW OFFICES

THOMAS R. NEDRICH

200 LITTLE FALLS STREET, SUITE 203
FALLS CHURCH, VIRGINIA 22046

MEMBER VA. & D.C. BARS

August 12, 1991

(703) 536-3113
FAX (703) 536-0363

Honorable Rosemarie Annunziata
Judges Chambers, 5th Floor
Fairfax County Circuit Court
4110 Chain Bridge Road
Fairfax, Virginia 22030

HAND DELIVERED

RE: Weber v. Jones
Law No. 104935

Dear Judge Annunziata:

Please be advised that Plaintiff is entering nonsuits on the claims against First Source Bank, Jettech, Inc., Jettech, Edward Dahlberg and ABC Aircraft Purchaser. Previously, nonsuits were entered against Nwil Manheimer, Mavis Manheimer and ERA Five Star Realtors. Collectively, these nonsuits dispose of Counts IV (as to First Source), VI, and VIII. Nonsuit as also being entered as to Count X.

Paragraphs 1, 2 and 3 of the Motion for Judgment describe the Plaintiff and the Defendants Les Jones, Dorothy Jones and Dulles Equities, Inc., and apply to all Counts.

Count I, Breach of Contract against Dulles Equities, Inc., is supported by the following Paragraphs: 4, 5, 6, 7, 8, 9, 10 and 16.

Counts II and III, Conversion and Breach of Fiduciary Duty against Les Jones and Dorothy Jones are supported by Paragraphs 11, 12, 13, 18, 20 and 21.

Count IV, Conversion and Constructive Trust against Les Jones and his wholly owned corporation Armed Forces Electronics is supported by Paragraphs 11 (c), 24, 25, 26, 27, 28, 29 and 30.

Count V, Conversion and Constructive Trust against Les Jones and another wholly owned corporation, Dulles Equities of Virginia, Inc., is supported by Paragraphs 11 (f), 32, 33, 34, 35, 36 and 37.

Count VI is deleted.

Count VII, Conversion and Constructive Trust of the Lear Jet against Les Jones and entities controlled by him is supported by Paragraphs 11 (e and g), 45, 46 and 47.

Count VIII is deleted.

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Count IX, Conversion and Constructive Trust of the Woodland Property against Les Jones, Dorothy Jones and Trafalgar/Capital Homes, is supported by Paragraphs 11 (a, c and h), 60, 61, 62, 63, 64, 65, 66, 67, 68 and 69.

Count X, Quantum Merit against Riggs Bank, is supported by Paragraphs 3, 4, 5, 6, 7, 8, 9, 71, 72, 73, 74, 75, 76, 77, 78, 79, and 80. With further regard to this Count, to the extent the Court agrees with Plaintiff's quantum merit theory, Plaintiff would add that during the course of the Riggs v. Jones, litigation Plaintiff was questioned by Riggs. He told Riggs that he had placed the GSA lease and that he was still due to be paid his commission/bonus for the placement. Riggs elected to take the property, together with the procured GSA lease, after Plaintiff disclosed his efforts/money due regarding that lease. Plaintiff would request leave to amend Count X to the extent the Court deems it advisable.

Count XI is deleted.

Count XII, Exemplary Damages against Les Jones, Dorothy Jones, Dulles Equities, and any other Defendant found to have willfully engaged in acts of diverting corporate assets to willfully create a corporate shell and, thus, defeat corporate creditor rights, is supported by all numbered Paragraphs previously specified.

Respectfully submitted,


THOMAS R. NEDRICH

/alh

cc: All Counsel of Record

V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN F. WEBER,

Plaintiff

v.

Law No. 104935

LES G. JONES, et al,

Defendants

MEMORANDUM IN RESPONSE TO PLAINTIFF'S MEMORANDUM
OF AUGUST 12, 1991, AND RENEWED DEMURRER FILED ON BEHALF OF
DEFENDANT TRAFALGAR HOUSE PROPERTY, INC.

COMES NOW Defendant Trafalgar House Property, Inc., by counsel, respectfully responding to the memorandum filed by Plaintiff John F. Weber and dated August 12, 1991, in this action and Trafalgar House's renewed Demurrer to the Motion for Judgment filed against it, and for such matters hereby shows as follows:

1. Defendant Trafalgar House Property, Inc., filed an extensive Demurrer to Plaintiff's Motion for Judgment. The Demurrer was supported by substantial legal arguments and case citations, seeking to establish the point raised by demurrer, that, taking all allegations made by the Plaintiff as true, the Motion for Judgment fails to state a cause of action upon which relief may be granted by this Court. See generally, § 8.01-273 (A), Code of Virginia; 6A Michie's Jurisprudence, Demurrers.

2. Virtually all of the defendants to this matter demurred to the Motion for Judgment. The Court, at the hearing on the collective demurrers on July 31, 1991, heard a great deal of

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argument on the issues raised in the demurrers.¹

The salient point repeatedly made by counsel for Trafalgar House and others was that there was no legal basis for the claims made by Plaintiff. See, e.g., Tr. 33 ("[Mr. Weber's] claim is legally deficient because a conversion requires an immediate possessory interest in an identifiable piece of property . . ."); Tr. 38 et passim.

3. During the extensive discussion among counsel and the Court on the issues raised by the Demurrer, counsel for Plaintiff made repeated, specific references to the authority on which he proceeded in filing this case. He made clear that he would provide this authority to the Court in its consideration of the outstanding demurrers.

In this regard, see the following statements of Thomas Nedrich, counsel for Mr. Weber:

"If you read a combination of the constructive trust, and I will give you some citations on this . . ." (Tr. 19)

"I believe that they violated the Virginia conspiracy law, and I have case law to support the theory . . ." (Tr. 22)

"[The Court]: It is almost more a question of law than anything else. . . .

MR. NEDRICH: I can provide the citations I have just as a commentary on that." (Tr. 62)

Finally, near the conclusion of the July 31 hearing, Mr. Nedrich agrees to undertake what would only be appropriate as a response to the extensive legal briefs offered as substantiation of the Demurrers to the Motion for Judgment:

¹The Court is being provided a transcript of that hearing. References to portions of the transcript of that hearing will be made as "Tr."

"I am willing to write, if the Court will give me a few days, I am willing to write a letter memorandum or a memorandum, and then maybe the other side would want a brief opportunity to respond." Tr. 63-64.

4. With all the verbiage and promises, what Plaintiff and his counsel have provided is no more than a menu of certain paragraphs in the Motion for Judgment tied to the various Counts evidencing theories of the Plaintiff's case against one or another of the Defendants.

There has not been one case authority to refute the extensive legal challenges to the wild accusations made in the Motion for Judgment. In fact, to date in this matter there has been only one case cited by Plaintiff's counsel in any regard, a Bankruptcy Court decision regarding the quantum meruit allegations against Riggs National Bank and for which counsel could not recall the factual application of the rule cited. See Tr. 54; 56. Plaintiff has essentially abandoned any attempt to refute the legal bases for the Demurrers to the Motion for Judgment, either in the hearing or in the Memorandum filed on August 12.

5. Rather than rely on case authorities, Plaintiff's counsel chooses to apply what he terms the "common sense approach", Tr. 56, which appears to mean that it just sounds right to Plaintiff's counsel, so there must be a legal basis for the suit he has brought. There is literally nothing cited by the Plaintiff or his counsel except their own thoughts that supports any aspect of the Motion for Judgment that has been filed. There is literally nothing that has been produced by either the Plaintiff or his counsel that reflects a moment's investigation into the legal bases for the complicated claims made in the Motion for Judgment.

Counsel repeatedly mentions case authority he has but it is never delivered.

The only conclusion that arises from all of this is that there is no such authority. No opposition was filed to the Demurrers originally filed in June. No cases were cited in the oral argument during the hearing. And no authorities are forthcoming in the Memorandum of August 12.

6. Trafalgar House continues to object to the maintenance of this action against it. There can be no law cited to substantiate the claims made that somehow "the doctrine of lis pendens", Motion for Judgment at ¶ 69, or that of constructive trust conveys some enforceable right to Mr. Weber. The law regarding constructive trust in Virginia cannot be stretched to impose any duty upon Trafalgar House to Mr. Weber and his inchoate claims for unpaid commission. See, e.g., Broadbuss v. Gresham, 181 Va. 725, 26 S.E.2d 33, 35 (1943); Schloss v. Powell, 93 F.2d 518 (4th Cir. 1938) (Applying Virginia law).

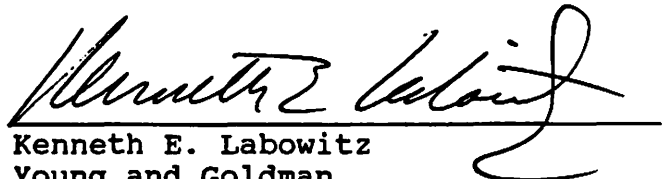
Mr. Weber and his counsel harbor some misguided thought that, because "Trafalgar is taking corporate funds without knowing where they are coming from," Tr. 17, line 8-10, there is some responsibility that is created in favor of Mr. Weber. That is again a proposition that is lacking any authority in Virginia law, and cannot be found to even be a logical extension of existing law in Virginia.

7. As with the incredibly off-hand disposition of the allegations of conspiracy against Trafalgar House and the other defendants not within the Jones empire, the drafting of the Motion

for Judgment fails to recognize the obligation of counsel to advance only those matters which, "to the best of his knowledge, information and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing, and is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." § 8.01-271.1, Code of Virginia.

There remains no indication that Mr. Nedrich has done any inquiry, reasonable or otherwise, into the state of existing Virginia law regarding the matters alleged against Trafalgar House. In light of the wholesale revision of Plaintiff's theory of the case, and the jettisoning of several of the defendants to this action following the argument on the Demurrers, the conclusion is clear that no valid basis existed at the time that this action was filed against Trafalgar House, and none exists now.

8. This Court should dismiss Trafalgar House from this suit, reserving the issue of sanctions under § 8.01-271.1 until an appropriate motion can be argued before the Court.



Kenneth E. Labowitz
Young and Goldman
510 King Street, Suite 416
P.O. Box 1946
Alexandria, Virginia 22313
703/684-3260

Counsel for Defendant
Trafalgar House Property, Inc.

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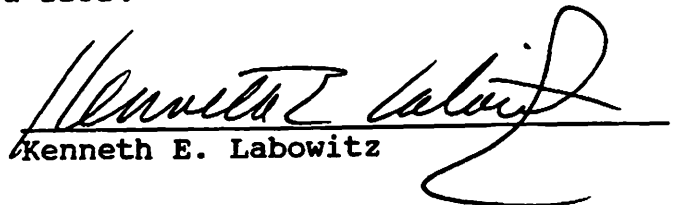
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response has been served by United States Mail, first class postage prepaid, upon Thomas R. Nedrich, Esquire, counsel for Plaintiff, 200 Little Falls Street, Suite 203, Falls Church, Virginia 22046, and upon the following counsel for co-defendants to this action, this 16th day of August, 1991:

J. Thomas Fromme II, Esquire
Counsel for Dulles Equities of Virginia, Inc., and
Armed Forces Electronics, Ltd.
10482 Armstrong Street
Fairfax, Virginia 22030

Beverly G. Stephenson, Esquire
Counsel for Les Jones, Dorothy Jones, and Dulles
Equities, Inc.
4157 Chain Bridge Road
Fairfax, Virginia 22030

Michael L. Zupan, Esquire
Dee Ann Cozzens, Esquire
Counsel for Riggs National Bank
510 King Street, Suite 200
Alexandria, Virginia 22314


Kenneth E. Labowitz

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

Complainant

IN CHANCERY NO. 104935

Defendants.

COMES NOW the Defendant, Armed Forces Electronics, Inc., by Counsel, and respectfully files this, its Memorandum in Response To Plaintiff's Memorandum filed and dated August 12, 1991 in this matter and Defendant Armed Forces Electronics, Inc., hereby renews its Demurrer to the Motion for Judgment filed herein by the Plaintiff and in support thereof states as follows:

1. The Defendant, Armed Forces Electronics, Inc., filed a Demurrer to Plaintiff's Motion for Judgment and for the reasons previously stated in its Demurrer, the Defendant states that the Plaintiff's Motion for Judgment fails to state a cause of action upon which relief may be granted by this Court. The determining factor agreed by Counsel for each of the Defendants (all whom have filed extensive Demurrers) was that there is not any legal basis for the allegations and terms of recovery sought by the Plaintiff. Specifically, not only has the Plaintiff not yet shown this

Court that he is within the purview of the contract upon which he is making but, he has yet to allege a legally sufficient basis upon which he may obtain recovery against this Defendant. As urged by this Defendant in its Demurrer and at the hearing before this Court on July 31, 1991, Mr. Weber fails to state a cause of action upon which relief can be granted as he relies on a conversion theory against all the Defendants. Any conversion theory specifically requires that Mr. Weber have an immediate possessory interest in an identifiable piece of property. This he has not shown in his original Motion for Judgment and, more pointedly, he has failed to do that in his Memorandum submitted to this Court on August 12, 1991.

2. Upon conclusion of the arguments before this Court on July 31, 1991, Mr. Nedrich suggested to the Court that he be allowed an opportunity to file a more defined response to the extensive Demurrers filed by the Defendants herein. Specifically, Mr. Nedrich stated: "I am willing to write, if the Court will give me a few days, I am willing to write a letter of Memorandum or a Memorandum, and then maybe the other side would want to a brief opportunity to respond". (Transcript 63-64). In response to that request, this Court specifically ordered Mr. Nedrich to identify all elements of each claim against each Defendant and to identify all facts as to all claims on all Defendants. It was this Court's Order that Mr. Nedrich submit a Memorandum to this Court as

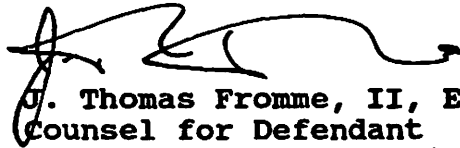
to the theory being imposed against each Defendant and specify the facts that he was proffering to the Court to support his theory against each Defendant. The Memorandum filed on August 12, 1991, by the Plaintiff is not responsive to nor does it meet the burden imposed on the Plaintiff himself, by his aforesaid representation to the Court. The Court's directive was clear, concise and unambiguous. In his letter of August 12, 1991, Plaintiff has merely regurgitated a directory/table of contents of Plaintiff's Motion for Judgment. The Plaintiff has not, in accordance with the Court's directive of July 31, 1991, submitted a Memorandum setting forth in detail the theory being imposed against these Defendants, and identifying the elements of each claim and the facts supporting each claim as to each Defendant. This was the Court's specific directive and the Plaintiff readily has failed to comply with the Court's directive; a directive which the Plaintiff voluntarily unilaterally suggested to the Court he be given.

3. It is respectfully submitted to this Court that the Plaintiff's failure to comply with this Court's Order of July 31, 1991 and provide the appropriate supporting Memorandum is an acknowledgment by the Plaintiff that its Motion for Judgment is legally deficient and should be dismissed. Plaintiff's Memorandum of August 12, 1991 cannot be interpreted either as a refutation of the arguments made by the Defendants in its Demurrer, nor can it be interpreted

as providing any further clarification on facts or elements of theories of the Plaintiff's claims against the Defendant. Furthermore, the Plaintiff has failed to provide any case authority to support its allegations against this Defendant. The burden is on the Plaintiff to provide a legal basis for the suit he has brought. The Plaintiff has failed to do so both in its Motion for Judgment and in its Memorandum of August 12, 1991. Plaintiff's Counsel suggested "common sense approach" is not a recognized legal basis under Virginia law. This is not an equity action and the legal basis for the suit must be clear and concise. This the Plaintiff has failed to plead, not only in his Motion for Judgment but in his responding Memorandum of August 12, 1991.


4. For the reasons set forth above, this Defendant respectfully moves this Court to dismiss Armed Forces Electronics, Inc. from this suit and further, this Defendant joins in the request made before this Court on July 31, 1991, that sanctions be granted in this matter and this Defendant respectfully requests the Court to reserve the issue of sanctions under Section 8.01-271.1 until further hearing in regard to this verbal Motion can be heard by this Court.

Respectfully submitted,



J. Thomas Fromme, II, Esquire
Counsel for Defendant
Armed Forces Electronics, Inc.

SHERMAN, BURY & FROMME, P.C.



J. Thomas Fromme, II, Esquire
Virginia State Bar No. 12913
Counsel for Defendant
Armed Forces Electronics, Inc.
10482 Armstrong Street
Fairfax, Virginia 22030
(703) 385-8008

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Memorandum in Response to Plaintiff's Memorandum of August 12, 1991, and Renewed Demurrer Filed On Behalf of Defendant Armed Forces Electronics, Inc., was forwarded by first-class mail, postage prepaid, this 23rd day of August, 1991, to:

Thomas R. Nedrich, Esquire
Counsel for Plaintiff
John F. Weber
200 Little Falls Street
Suite 203
Falls Church, VA 22046

Kenneth E. Labowitz, Esquire
Young and Goldman
Counsel for Defendant
Trafalgar House Property, Inc.
510 Ing Street, Suite 416
P.O. Box 1946
Alexandria, VA 22313

Beverly G. Stephenson, Esquire
Counsel for Defendants
Les Jones, Dorothy Jones and
Dulles Equities, Inc.
4157 Chain Bridge Road
Fairfax, VA 22030

Michael L. Zupan, Esquire
Dee Ann Cozzens, Esquire
Counsel for Defendants
Riggs National Bank
510 King Street, Suite 200
Alexandria, VA 22314


J. Thomas Fromme, II

LAW OFFICES
MURPHY, McGETTIGAN & WEST, P.C.

GEORGE F. WEST, JR.
MICHAEL McGETTIGAN
GREGORY L. MURPHY
CRAIG C. REILLY
THERESA CARROLL BUCHANAN
DAVID C. SCHROEDER
CHRISTOPHER P. SPERA
F. ALLEN PHAUP II*
JECILY V. SCHULZ*

SUITE 700
KING STREET STATION
225 REINEKERS LANE
ALEXANDRIA, VIRGINIA 22314-2822
TELEPHONE (703) 549-5353
TELECOPIER (703) 683-2941

WASHINGTON OFFICE
1001 PENNSYLVANIA AVENUE, N.W.
SUITE 1300
WASHINGTON, D.C. 20004
*ADMITTED IN VA. ONLY

August 23, 1991

BY HAND DELIVERY

The Honorable Rosemarie Annunziata
Judges Chambers, Fifth Floor
Fairfax County Circuit Court
4110 Chain Bridge Road
Fairfax, Virginia 22030

re: Weber v. Jones, et al
Law No. 104935

Dear Judge Annunziata:

As you may recall, I represent the defendant 1st Source Bank in the above-styled action. I am writing to again request the imposition of sanctions against the plaintiff and his attorney pursuant to Va. Code §8.01-271.1.

At the hearing on July 31st for the demurrers in this matter, you requested that the plaintiff submit a list of facts to support his allegations by August 12th. The plaintiff's submission was a nonsuit against my client and several other defendants. As for the list of facts supporting his allegations, the plaintiff failed to list any which supported the plaintiff's claims against my client. More importantly, plaintiff also admitted at the hearing on the 31st that he never intended to hold my client liable under Counts 11 & 12 of the motion for judgment. In short, plaintiff has failed to provide any evidence which would indicate that he made a reasonable inquiry into the facts to support his cause of action or that the action was well grounded in law. It is also clear that the only reason my client was in this suit is because it has the renowned "deep pockets" that some plaintiffs so brazenly crave.

Sanctions are particularly appropriate in this action in light of the fact that, prior to briefing our demurrer, I urged plaintiff's counsel to drop my client from the suit because there were no facts or legal theories to support the plaintiff's claims. See, letter to Tom Nedrich dated 5/31/91, attached as Exhibit A. I also spoke with Mr. Nedrich around June 5th and repeated my concern about the frivolity of his client's claim against my client. Finally, in the demurrer itself, we specifically requested

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the imposition of sanctions. Thus, despite three warnings from me, as well as numerous warnings from the other attorneys (See, excerpt of letter from Stephenson to Nedrich dated 5/8/91, attached as Exhibit B), Mr. Nedrich failed not only to withdraw the claims, but also failed to tell us that the plaintiff was not seeking to hold my client and certain other defendants liable under Counts 11 and 12. As a result of this failure, we incurred substantial time and expense to brief our demurrers to Counts 11 and 12.

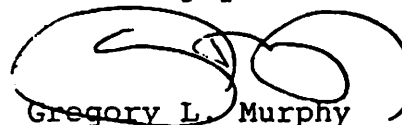
Although my client has received some relief because of the nonsuit, the fact that a nonsuit has occurred should not dissuade the Court from applying Va. Code §8.01-271.1 to the facts of this case. Indeed, the United States Supreme Court recently ruled that sanctions may be awarded despite the fact that the plaintiff has voluntarily dismissed his claim. Cooter & Gell v. Hartmarx Corp., 110 S.Ct. 2447, 2455-57 (1990). In Cooter, the plaintiff filed a complaint to which the defendant filed a motion to dismiss. The plaintiff subsequently filed a notice of dismissal pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure. Id. at 2452. The defendants then moved for and were awarded sanctions. Id. Thus, in terms of procedural posture, this case is no different than Cooter.

Although a sanctions motion is an unpleasant business, there can hardly be a more suitable candidate for sanctions than this action because it is undisputed that the plaintiff has absolutely failed to provide a basis in law or fact for his claims and has even admitted that some of the claims were not well-founded. Moreover, the expense associated with the demurrers could have been avoided had the plaintiff exercised a little candor. Furthermore, had plaintiff's counsel exercised common sense three months ago and not contrived frivolous theories and ambiguous claims to create a dragnet ensnaring innocent parties, my client would not have suffered any litigation expense.

To date, 1st Source Bank has incurred approximately \$3000.00 in fees and costs related to this matter. Most of these fees were incurred after the plaintiff was apprised of my client's intention to seek sanctions. If the Court is inclined to impose sanctions, I will submit a detailed affidavit to support the fees and costs.

Should you have any questions concerning this matter or require further submissions, please do not hesitate to contact me.

Sincerely yours,



Gregory L. Murphy
Counsel for 1st Source Bank

DCS

cc: Thomas Nedrich, Esq.
cc: All other counsel of record
cc: Vince Tamburo

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EXHIBIT A

LAW OFFICES
MURPHY, McGETTIGAN & T, P.C.

SUITE 700
KING STREET STATION
225 REINEKERS LANE
ALEXANDRIA, VIRGINIA 22314-2822

DATE

May 31, 1991

TELEPHONE (703) 549-5353
TELECOPIER (703) 683-2941

TO: Tom Nedrich, Esq.

FROM: Gregg Murphy

Enclosed you will find an Order memorializing our agreement to extend the time for our filing of a responsive pleading. I would appreciate it if you would endorse same and return it to me for filing with the Court. In accordance with that agreement, I am enclosing a copy of our demurrer which was filed May 30. I strongly urge your client to reassess his claim against 1st Source Bank and dismiss it from the case, for I do not think that there is a cause of action against my client. I look forward to talking with you further about this matter.

GLM

cc: Vincent A. Tamburo, Esq.
Allen R. Qualey

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EXHIBIT B

000219

B. G. STEPHENSON, LTD.
ATTORNEY AND COUNSELOR AT LAW
INNS OF COURT
4157 CHAIN BRIDGE ROAD
FAIRFAX, VIRGINIA 22030
U.S.A.

(703) 591-2470
TELEFAX: (703) 359-0638
TELEX: 279671 STEP UR

May 8, 1991

Thomas R. Nedrich, Esquire
200 Little Falls Street, Suite 203
Falls Church, Virginia 22046

Re: Weber vs. Les G. Jones, et al.

Dear Mr. Nedrich:

Following my letter to you of May 1, 1991 I have further read the Motion for Judgement served upon me as registered agent of Dulles Equities, Inc. on April 30, 1991, and I have had an opportunity to discuss this matter with Les G. Jones in his capacity as President of Dulles Equities, Inc. and as a named Defendant in this lawsuit, and I have had discussions with Deanna Jones a/k/a Dorothy Jones one of the other named Defendants in this suit. I also acknowledge receipt of your fax communication dated May 6, 1991 which I have reviewed and discussed with Les Jones.

Although in our telephone conversation you stated that you did not want to discuss the merits of the respective parties' position in addressing whether or not there might be some interest in a settlement of the disputes between them, it is my view that we now have a duty under Virginia Code Sec. 8.01-271.1 to examine whether or not our positions taken in litigation are well grounded in fact and law.

With this in mind, I have reviewed the position of your client under the attached agreement which was entered into between Dulles Equities, Inc. and John F. Weber as of the 28th day of October 1987 referring to Dulles Equities, Inc. as the "Company" and John F. Weber as the "Employee". It is my understanding that this agreement was prepared by Mr. Weber. In order for you to appreciate the position between the parties, you are hereby provided with some background which we expect the evidence to support should it be necessary to develop this evidence in the course of the litigation.

Dulles Equities, Inc. was founded by Les G. Jones. This corporation acted as a contracting party in relation to several real estate transactions which were organized as limited partnerships with Dulles Equities, Inc. taking a general

partnership interest in each of some six real estate ventures.

At the time that the employment agreement was entered into between your client and Dulles Equities, Inc., there already had been a disposition by sale of two of the properties which were developed under Dulles Equities Limited Partnership I and Dulles Equities Limited Partnership II. Dulles Equities, Inc. received its partnership share as general partner in these two ventures, but operating expenses of the corporation exceeded the aggregate income generated by the disposition of the properties involved in these two limited partnerships in which Dulles Equities, Inc. acted as general partner.

To cover the capital needed to carry on the activities of Dulles Equities, Inc., Les G. Jones from time to time advanced funds either directly or indirectly to the corporation, which included funds from loans which he personally guaranteed. Mrs. Jones also guaranteed loans to the corporation and permitted her assets, including the joint assets of Mr. and Mrs. Jones, to be advanced from time to time to the corporation, and for the benefit of the partnerships in which Mr. and Mrs. Jones had an interest as limited partners, and in which Dulles Equities, Inc. acted as the general partner.

To the extent permitted, Mr. and Mrs. Jones attempted to recover advances which they made to the corporation and had every hope that its operations might prove positive so that they could not only be repaid loans which they made to the corporation and advances on behalf of the corporation, but that the corporation might make a profit.

Based on the assumption that Mr. Weber could produce in the capacity as Vice President for Marketing and Development as he represented, he was employed at the recited \$75,000 per year salary for a period of three years commencing January 1, 1988 and was provided other benefits recited in that agreement. The bonus incentive clause contemplated that there would be successful marketing which would redound to the benefit of Dulles Equities, Inc. It was anticipated that it might promote development projects beyond its role as general partner in the several limited partnerships, and that some of the limited partnership properties might be acquired from the respective partnership when the construction was completed and permanent financing obtained, so that it could enjoy a cash flow from leases of some of these properties.

When Mr. Weber was employed under the employment agreement he was expected to be productive in generating income to the company so that it could cover the agreed upon salary, benefits, bonus, operating expenses of the corporation and provide a profit

for the stockholders.

Unfortunately from the time of Mr. Weber's employment up to the present date Dulles Equities, Inc. has not enjoyed earnings, and funds needed to cover operations including Mr. Weber's salary and benefits have been provided by monies advanced by Mr. and Mrs. Jones directly and indirectly from their resources.

I have carefully examined your pleading and the content of your fax communication dated May 6, 1991 and I do not find any allegation of receipts to Dulles Equities, Inc. or to any of the other parties named in the suit which were generated by the efforts of Mr. Weber. Moreover, I searched in vain to find some indication of income to Dulles Equities, Inc. from any source during Mr. Weber's tenure. I submit that the sole source of funds during Mr. Weber's tenure was loans by Mr. and Mrs. Jones.

With respect to the claim of your client by reason of execution of a lease in August 1988 of space in the Atrium building as recited in paragraph numbered 6 of your Motion for Judgment, as you state this lease was signed by Les G. Jones as President of the corporation serving in its capacity as general partner in Dulles Equities Limited Partnership III. The Company did not enter into any lease within the ambit of paragraph numbered 4 of the employment agreement, but only expected to receive some benefit in its capacity as general partner. Moreover, as your client well knows, the lease entered into between the partnership and GSA had a rent free period of two years and during the time period subsequent to execution of this lease due to the lack of cash flow the loans for construction of the improvements to this partnership property were in default and were called by Riggs National Bank. Ultimately the bank took the property so that neither the partnership nor Dulles Equities, Inc. received any payment from this lease.

The activity you describe in your fax of May 6 is what should be expected on the part of your client to perform his duties under his employment contract, and for which he was paid the substantial salary of \$75,000 per year for the three year term. The duties which you recite that were performed after there were no office buildings to lease represented efforts of Mr. Jones to create a basis for the corporation to fulfill its contract with Mr. Weber by providing employment activity to justify the large executive salary.

My client Dulles Equities, Inc. is extremely disappointed that your client was totally unproductive in performing under the employment contract. In short, the marketing expected of Mr. Weber did not materialize and his execution as the employee for marketing and development was a dismal failure. Mr. Jones as

Letter to Thomas R. Nedrich, Esquire
May 8, 1991
Page 4

President of Dulles Equities, Inc. continued to find and provide resources to cover the employment obligation under the contract.

He learned from various parties some of the reasons why Mr. Weber was not successful. Riggs National Bank, which was the prime lender in relation to the several projects in which Dulles Equities, Inc. was involved as the general partner, and which was an anticipated source of permanent financing, in part terminated the financing relationship because of its displeasure with the conduct of Mr. Weber in handling the activities of Dulles Equities, Inc.

We also expect to be able to adduce evidence that several major brokers would not work with Mr. Weber because of the bad relationships which he generated in the conduct of the affairs of the corporation, and the reputation for this conduct that circulated in the brokerage community. In spite of your references to the various proposals prepared by Mr. Weber none of these resulted in any benefit to Dulles Equities, Inc.

With respect to one of the properties in which Dulles Equities acted as General Partner, my client is informed that a lease purchase agreement providing for a purchase price in the magnitude of \$13,000,000 was not completed because the principal of the lessee/buyer found the conduct of Mr. Weber objectionable. This was at a critical time in the financial life of this organization, and not only deprived Dulles of its anticipated receipt as General Partner, but it had the overall adverse effect of exposing the other substantial financial obligations guaranteed by Mr. and Mrs. Jones to demand for payment, when extension had been expected with the commitment from this deal. Its failure had disastrous consequences for my clients.

Although it is submitted that there are a number of reasons for terminating the employment of Mr. Weber earlier than the period of the employment contract, the company through the efforts of Mr. Jones as its President and Stockholder provided the means for sustaining Mr. Weber in this employment position to the very end of the contract term. Even after the end of the contract term, Mr. Weber was allowed to use the offices of Dulles Equities, Inc. for his personal use for a period of time and now is amazed that Mr. Weber is claiming further employment compensation due after the term of his contract ended, with no productivity which generated any benefit to the corporation during the entire contract term.

Further, as I have notified you, Mr. Weber has in his possession the property of the corporation which he has failed to return after demand. He has on information and belief used the facilities of the corporation during the contract term for his

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Letter to Thomas R. Nedrich, Esquire
May 8, 1991
Page 5

own personal business. He has made use of corporate assets for his own personal business and has failed in the performance of the contract term that required him to use his best efforts to promote the corporation's business.

My clients are utterly appalled at the numerous defendants which you chose to name in this lawsuit which have no relationship to the subject matter of the suit. My clients believe that this is calculated to embarrass and humiliate them in the business community in which they regularly deal. They expect that this is done to impose undue pressure on them to respond to an outrageous claim that recites conduct which you allege as a basis for extraordinary statutory penalty and punitive damages. These defamatory allegations published to the various parties named in the suit are damaging to the reputation of my clients, and they believe that they are interposed to harass them. It also appears that this conduct is deliberate and malicious, which is viewed by my clients as a serious matter.

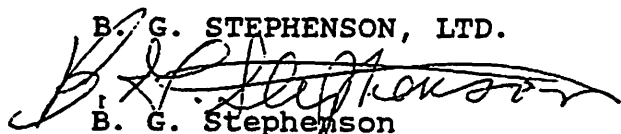
My clients are fully prepared to litigate the claim of Mr. Weber, but believe it should be limited to the parties you have already served. They also expect to seek an accounting for the usurpation of corporate assets for the personal use of Mr. Weber and will raise the issue of the performance of Mr. Weber's contract obligation. They believe the use of the corporate assets by Mr. Weber for personal purposes exceeds \$100,000 in value. However, the other claims which would be in issue by counterclaim are far greater. They urge you not to take lightly the concerns they express over involvement of the other persons named in this suit.

In order to avoid protracted litigation my clients are prepared to settle matters between them and Mr. Weber with mutual releases, provided that Mr. Weber returns the corporate vehicle.

If you have any evidence that is other than the bald allegation that Mr. Weber is due a substantial sum from the corporation and that the corporation has dissipated its assets, and that he performed work while enjoying a large salary and benefits, I will be happy to reevaluate my client's position and address an appropriate disposition of this matter.

Sincerely,

B. G. STEPHENSON, LTD.



B. G. Stephenson

BGS:jc

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V I R G I N I A:

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

JOHN F. WEBER

Plaintiff,

vs.

LES G. JONES, et al.

Defendants.

Law No. 104935

MEMORANDUM IN RESPONSE TO PLAINTIFF'S LETTER MEMORANDUM
OF AUGUST 12, 1991, AND RENEWED DEMURRER ON BEHALF
OF DEFENDANTS DULLES EQUITIES, INC., LES G. JONES, AND
DEANNA JONES, a/k/a DOROTHY JONES

COME NOW Defendants Dulles Equities, Inc., Les G. Jones, and Deanna Jones, a/k/a Dorothy Jones, by counsel, and respectfully respond to the Letter/Memorandum filed by Plaintiff, John F. Weber, under date of August 12, 1991 in this action and these Defendants renew their Demurrer to the Motion for Judgment previously filed herein and state as follows:

1. These Defendants adopt the Memorandum filed by Defendant Trafalgar House Property, Inc. and served on the 16th of August, 1991. The points made in Trafalgar's response are in substantial part applicable to these Defendants and this Memorandum will not attempt to duplicate the well-taken position and sound legal argument submitted by Trafalgar, but request the Court to apply Trafalgar's response to their respective positions.

2. These Defendants were under the impression that the Court directed Plaintiff to prepare a Memorandum outlining with specificity how each of the Defendants were liable to the Plaintiff on a supportable, factual and legal basis and it was

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anticipated that Plaintiff would trace the liability of the respective Defendants to the Plaintiff in his Memorandum supported by citations of authority. It is submitted that Plaintiff has not done this and that he has presented nothing further for the Court's consideration.

3. These Defendants are prompted to make some further comment with regard to the reference in Plaintiff's Letter/Memorandum to his alleged disclosure statement in the Riggs v. Jones litigation that he was still due to be paid a commission/bonus in connection with the GSA lease. These Defendants do not purport to speak on behalf of Riggs on the quantum merit issue except that they oppose any back door effort by Plaintiff to amend his Motion for Judgment by suggesting that he was the procuring cause of the GSA lease exerting a capacity in the nature of a real estate broker, creating some benefit which entitled him to a commission beyond the scope of the employment contract with Dulles Equities, Inc., which is the sole basis for this convoluted action.

Weber was paid a substantial salary by Dulles Equities, Inc. to perform duties as set forth in his employment contract. In his effort to expand the remuneration provided for under the terms of the employment agreement, which he authored, Plaintiff apparently cannot decide whether he is claiming a commission or bonus in that he frames the amount he alleges to be due from entry into the GSA lease as a "commission/bonus". In relation to any quantum merit claim that would pertain to either of these

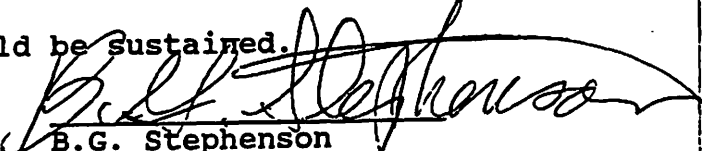
Defendants, Weber was paid a substantial salary as an employee of Dulles Equities, Inc. Any provision for brokerage commissions in acting as a real estate broker under paragraph 5 of his employment contract pertained expressly to brokerage services regarding properties other than the properties owned and developed by Dulles and were permitted only if approved in advance by Dulles and not in any instance which would interfere with the performance of his duties under his employment contract and provided that the commission earned would be shared by Dulles.

With respect to his claim for this substantial sum as a bonus, inasmuch as no monies were ever received by Defendant Dulles Equities, Inc. from the GSA lease, with the property subject to the lease taken over by the lender, there would be no basis for the "Company" to reward Weber with a bonus in the ordinary sense. Plaintiff is relegated to the strict construction of the self serving employment contract which he authored in asserting any claim for further compensation. In construing his employment contract, Plaintiff cannot find any basis for compensation, other than his salary and benefits, for a lease entered into by a party other than Dulles Equities, Inc. The individual Defendants have no contractual obligation to Defendant Weber and no duties to him.

There is no allegation in either the original Motion for Judgment or in the Letter/Memorandum that Weber generated any revenues for Dulles Equities, Inc. during the tenure of his

employment, or that any revenues at all from operations were generated during the tenure of his employment. He has no standing to raise the various collateral matters.

Plaintiff presents no claim upon which he is entitled to relief and the Demurrers should be sustained.


B.G. Stephenson
4157 Chain Bridge Road
Fairfax, Virginia 22030
(703) 591-2470

Counsel for Defendants
Dulles Equities, Inc.
Les G. Jones
Deanna Jones, a/k/a Dorothy Jones


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true copy of the foregoing Response this 31st day of August, 1991, by mailing a copy, postage pre-paid, to Thomas R. Nedrich, Esquire, 200 North Little Falls Street, Suite 203, Falls Church, Virginia, 22046, counsel for Plaintiff, and upon the following co-defendants to this action:

J. Thomas Fromme II, Esquire
Counsel for Dulles Equities of Virginia, Inc., and
Armed Forces Electronics, Ltd.
10482 Armstrong Street
Fairfax, Virginia 22030

Michael L. Zupan, Esquire
Dee Ann Cozzens, Esquire
Counsel for Riggs National Bank
510 King Street, Suite 200
Alexandria, Virginia 22314

Kenneth E. Labowitz, Esquire
Young and Goldman
510 King Street, Suite 416
P.O. Box 1946
Alexandria, Virginia 22313


B. G. Stephenson

V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN F. WEBER,

Plaintiff

v.

Law No. 104935

LES G. JONES, et al

Defendants

MOTION FOR SANCTIONS ON BEHALF OF
TRAFALGAR HOUSE PROPERTY, INC.

COMES NOW Defendant Trafalgar House Property, Inc., by counsel, and respectfully moves for sanctions against Defendant John F. Weber and his counsel Thomas R. Nedrich, and for such Motion hereby shows as follows:

1. Section 8.01-271.1, Code of Virginia, as amended provides that:

The signature of an attorney or party constitutes a certificate by him that (i) he has read the pleading . . . , (ii) to the best of his knowledge, information and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and (iii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. . . .

If a pleading . . . is signed . . . in violation of this rule, the court, upon motion . . . shall impose upon the person who signed the paper . . . , a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, . . . including a reasonable attorneys' fee.

In this matter, the Plaintiff's Motion for Judgment as originally filed on April 22, 1991, was signed both by John F.

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Weber, the Plaintiff, and by Thomas R. Nedrich, his attorney.

2. As the Demurrer and other pleadings filed on its behalf make clear, Defendant Trafalgar House Property, Inc., was sued because it has entered into a real estate sales contract with a pre-occupancy lease agreement with Defendant Les G. Jones. Counsel for Trafalgar House represents to the Court that Trafalgar House has never had any contact with Plaintiff John F. Weber, and, but for this litigation, was blissfully unaware of any dispute between Mr. Weber and Mr. Jones and any entity in which Mr. Jones has an interest.

Further, prior to the institution of this suit, Trafalgar House had received no demand from Mr. Weber or any counsel representing his interests, with regard to the claim advanced in the pleadings in this action or any other claim however denominated.

3. Service was made on Trafalgar House in mid-May, and the pleadings were conveyed to present counsel. On May 22, Neil Goldman, counsel for Trafalgar House, sent a letter via telefax transmission to Mr. Nedrich, specifying that Trafalgar House had no liability to Mr. Weber and suggesting a meeting among Mr. Goldman, Mr. Nedrich, and Mr. Weber to discuss this matter. Mr. Goldman cautioned Mr. Nedrich that Trafalgar House would seek to recover its expenses associated with its defense of what it considered a meritless claim. Mr. Goldman's letter is attached hereto as Exhibit A.

4. In a subsequent telephone conversation between Mr. Goldman and Mr. Nedrich on May 22, Mr. Goldman noted that time was

important if a meeting was to be held regarding this matter, as Trafalgar House was obligated to file responsive pleadings by June 7. Mr. Nedrich indicated that he would attempt to contact Mr. Weber to see if the proposed meeting was acceptable.

5. On May 29, having heard nothing in response to the letter and prior telephone conversation, Mr. Goldman again called Mr. Nedrich. Mr. Nedrich advised that Mr. Weber was very busy and Mr. Nedrich had been unable to reach Mr. Weber regarding the proposed meeting. Mr. Goldman again requested that the claims against Trafalgar House be nonsuited, as they were without foundation, and that, in the absence of any affirmative action by Mr. Nedrich and Mr. Weber, Trafalgar House would pursue a demurrer to the action and seek whatever other remedies were available to it. The conversation concluded with the expectation that Mr. Nedrich would contact Mr. Goldman regarding the proposed meeting by May 31, so as to avoid the necessity of the filing of a responsive pleading on behalf of Trafalgar House.

6. No contact was made between Mr. Goldman and Mr. Nedrich until June 3, when Mr. Nedrich wrote a letter, attached hereto as Exhibit B, in which Mr. Nedrich made clear that no nonsuit was forthcoming and that Trafalgar House should take such action as it believed appropriate in response to the suit. The letter reveals that Mr. Weber received a copy from Mr. Nedrich.

7. Thereafter, Trafalgar House filed an extensive Demurrer, detailing its position that no factual or legal basis existed for any claims against it on behalf of Mr. Weber. As the Court is aware, Trafalgar House and the other defendants responded to the

allegations of conspiracy contained in Court XI of the Motion for Judgment, under the entirely reasonable belief that Trafalgar House was intended as a party-defendant to those claims. At no time prior to the hearing on July 31 was Trafalgar House or its counsel advised of Mr. Weber's position that Mr. Jones and Dulles Equities, Inc., were the only parties intended to be included within the allegations of conspiracy at the initial stage of the suit.

8. The Court is well aware that, following the filing of the extensive demurrers on behalf of Trafalgar House and the other defendants, no response of any kind was received from Mr. Nedrich. Trafalgar House filed interrogatories with its Demurrer, for the express purpose of requiring Mr. Weber to detail the factual and legal bases for his claim against Trafalgar House. No response has been received yet regarding these interrogatories.

9. From Trafalgar House's prior pleadings in this matter, the Court is well advised as to the contention that the claims against Trafalgar House had no factual or legal bases, and that the claims against it included in the Motion for Judgment lacked good faith. There never has been any basis for claims against Trafalgar House; it is evident that no legal or factual investigation was conducted by Mr. Weber or his counsel, as the Court has never been advised as to any substantial legal or factual theory that supported the inclusion of Trafalgar House as a party to this action. Mr. Nedrich and Mr. Weber were repeatedly invited to reconsider the action against Trafalgar House prior to its filing responsive pleadings, but Mr. Nedrich and Mr. Weber chose not to avail

themselves of that opportunity.¹

10. As is detailed in the Memorandum in Response to Plaintiff's Memorandum of August 12, 1991, filed on behalf of Trafalgar House in this matter, Mr. Nedrich repeatedly promised during the hearing of July 31 that he would supply the Court with a memorandum specifying the case authorities he claimed he had on hand that would substantiate the claims against Trafalgar House and other parties. Despite these assurances, to date Mr. Nedrich has been unable to identify any authority, in Virginia or elsewhere, that justified the inclusion of Trafalgar House as a defendant in this matter.

11. The only conclusion to be drawn from the abundant evidence in this matter is that no meaningful investigation was conducted by either Mr. Nedrich or Mr. Weber as to Trafalgar House's liability to Mr. Weber prior to filing the lawsuit here. This failure of their duty to the Court persisted after filing, as they ignored counsel's several attempts to educate them as to the facts and law applicable to their claims against Trafalgar House.

It is manifest that Mr. Nedrich and Mr. Weber failed to comply with the requirements of § 8.10-271.1 when they each signed the Motion for Judgment. In fact, neither had made "reasonable inquiry" that the claims against Trafalgar House were "well

¹Had Mr. Nedrich and Mr. Weber chosen to meet with Trafalgar House's counsel, they would have learned that the key contention that allegedly connected Trafalgar House to the Jones-Dulles Equities "conspiracy" to deprive Mr. Weber of his commission--Trafalgar House's receipt of Dulles Equities' funds as payment for Jones' lease-purchase of the Trafalgar House property -- was wrong. Trafalgar House never received any check drawn on a Dulles Equities bank account.

grounded in fact and [were] warranted by existing law". The continuation of the suit after fair warning of the consequences of their actions, and the failure of counsel to articulate any factual or legal bases for the Trafalgar House claims, compounds the initial violation of their statutory duty.

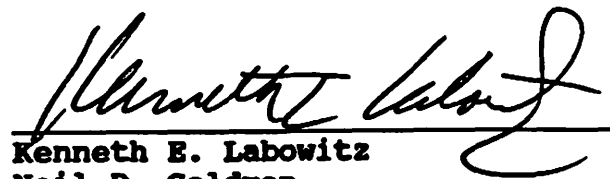
12. Sanctions are appropriate against both Mr. Nedrich and Mr. Weber in light of the circumstances here.

Counsel for Trafalgar House expended a total of 29.0 hours in the attempted dialogue with Mr. Nedrich, researching and drafting the Demurrer and other pleadings, conversing with other defense counsel, and appearing in court regarding the demurrers. The client was billed and paid counsel at the rate of \$125 per hour, for a total legal expense to Trafalgar House of \$3625.

13. In addition, Trafalgar House paid the cost of the court reporter at the July 31 hearing, and the production of the transcript of that hearing, at an expense of \$618.40.

13. Thus the appropriate sanction against Mr. Nedrich and Mr. Weber is \$4,243.40, to be imposed jointly and severally. Such a sanction is consistent with the spirit and letter of § 8.10-271.1.

WHEREFORE, Defendant Trafalgar House Property, Inc., respectfully prays that this Court award it sanctions in the amount of \$4,243.40 against John F. Weber and Thomas R. Nedrich, jointly and severally.



Kenneth E. Labowitz
Neil D. Goldman
Young and Goldman
510 King Street, Suite 416
Post Office Box 1946
Alexandria, Virginia 22313
703/684-3260

Counsel for Defendant
Trafalgar House Property, Inc

000225

YOUNG & GOLDMAN

LAWYERS

P.O. BOX 1946

ALEXANDRIA, VIRGINIA 22313

**M. ALAN YOUNG
NEIL D. GOLDMAN**

OF COUNSEL
JOHN P. VAN BEEK, VA, DC, MD
KENNETH E. LABOWITZ, VA, DC, TX, CA

(703) 684-3260
FACSIMILE: (703) 548-4742

May 22, 1991

BY FACSIMILE

**810 KING STREET
SUITE 418
ALEXANDRIA, VIRGINIA
2000 L STREET, N.W.
SUITE 804
WASHINGTON, D.C.**

**Thomas R. Nedrich, Esquire
200 North Little Falls Street
Suite 203
Falls Church, Virginia 22046**

**Re: Weber v. Jones, et al.
Law No. 104935**

Dear Mr. Nedrich:

This firm represents Trafalgar House Property, Inc. successor by merger to Capital Homes Virginia, Inc. and Capital Homes, Inc.

I have received and reviewed in detail the Motion for Judgment instituting the captioned action. It is clear from that review that our client has no liability to Mr. Weber, and there is no basis for maintaining a claim against Trafalgar House as alleged in the Motion for Judgment.

Responsive pleadings are due to be filed on or before June 7, 1991. I would like to meet with you and your client in advance of the due date for responsive pleadings to discuss non-suiting the claim against Trafalgar House. If you and your client elect to pursue the claims, it appears that Trafalgar House may be entitled to an affirmative recovery based upon the unsupportable allegations against our client contained in the Motion for Judgment, and any actions taken to interfere with our client's title to the property in question suggested by the Motion for Judgment. I will be calling you in the near future in the hope of scheduling a meeting to discuss our respective positions.

As I am sure Mr. Weber will advise you, this firm previously served as counsel to a business entity in which Mr. Weber was a principal, GRW A Corporation. Inasmuch as our representation was of the corporation and not of

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Thomas R. Nedrich, Esquire
Page Two
May 22, 1991

Mr. Weber individually, there is no conflict. Moreover, because this claim is in no way related to the subject matter of the prior representation, even if Mr. Weber were considered the client, his consent would not be required for this firm to represent Trafalgar House in this litigation. I am informing you of the prior unrelated contact with Mr. Weber solely as a matter of courtesy.

Very truly yours,



Neil D. Goldman

NDG:lhd

cc: Mr. Steven D. Palmer

060207

LAW OFFICES

THOMAS R. NEDRICH
200 LITTLE FALLS STREET, SUITE 203
FALLS CHURCH, VIRGINIA 22046

MEMBER VA. & D.C. BARS

(703) 536-3113
FAX (703) 536-0363

June 3, 1991

**Neil D. Goldman, Esquire
Young & Goldman
P.O. Box 1946
Alexandria, Virginia 22313**

RE: Jack Weber

Dear Neil:

I spoke with Jack Weber about possible conflicts of interest vis-a-vis your representing Trafalger. Based on those conversations we have no objection to your continuing as counsel in this case.

With regard to your position concerning the alleged insufficiency of our allegations we feel this matter should be addressed by you in appropriate pleadings to the Court, either by answer, or demurrer, or a combination thereof. If you wish to file a demurrer let us agree to a mutually convenient hearing date.

Very truly yours,


THOMAS R. NEDRICH

**alh
cc: Jack Weber**

RECEIVED JUN - 4 1991

000233

V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN F. WEBER,

Plaintiff

v.

At Law No. 104935

LES G. JONES, et al,

Defendants

SUPPLEMENT TO MOTION FOR SANCTIONS
ON BEHALF OF DEFENDANT TRAFALGAR HOUSE PROPERTY, INC.

Defendant Trafalgar House Property, Inc., by counsel, respectfully offers this Supplemental Motion for Sanctions against Defendant John F. Weber and his counsel, Thomas R. Nedrich, supplementing the Motion for Sanctions filed September 5, 1991.

1. Defendant Trafalgar House Property, Inc., ("Trafalgar House") has now received Defendant's Answers to its Interrogatories in this matter. These Answers were unavailable at the time of filing the original Motion for Sanctions. The matters contained in the Answers further demonstrate Trafalgar House's entitlement to sanctions against Mr. Weber and his counsel for the inadequate investigation done prior to the inclusion of Trafalgar House as a defendant in this case. Further, the Interrogatories Answers reveal that Mr. Weber and Mr. Nedrich were reckless in refusing the offer of Trafalgar House's counsel to meet with them immediately following the commencement of this suit to allow them an opportunity to reassess their claims.

2. Trafalgar House in its Interrogatories attempted to

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discover the substance, in any existed, for the allegations contained in Plaintiff's Motion for Judgment. To that end, Trafalgar House included each allegation made against it in the Interrogatories, and requested that Mr. Weber provide the basis for the claims he made in his suit.

The Court can readily see from the responses to the Interrogatories that there is literally nothing that justifies the inclusion of Trafalgar House as a defendant. There is not one fact that emerges from the evidence offered by Mr. Weber and Mr. Nedrich that reflects adequate investigation of the law or the facts surrounding this suit.

3. Specifically, Interrogatory 1.D. requested the factual basis underlying the contention that " . . . these transactions and activities [regarding the Trafalgar House property under contract to Les G. Jones] were designed and implemented as a scheme by les Jones and Dorothy Jones with the active and conscious aid of Trafalgar, to hinder, delay, and defraud Plaintiff and other creditors" of Dulles Equities, Inc. (Emphasis supplied)

The total response from Mr. Weber and Mr. Nedrich to this inquiry is as follows:

Trafalgar knowingly accepted DEI corporate funds to satisfy Les Jones' personal obligations under the lease/purchase agreement with Trafalgar. Les Jones used and improved the property as his personal residence. DEI had no legal obligations to Trafalgar to pay anything for the property.

In their response to Interrogatory 2, Mr. Weber and Mr. Nedrich acknowledge that the evidence on which they relied for these contentions against Trafalgar House was the lease/purchase agreement itself. However, Mr. Weber and Mr. Nedrich state that

"Plaintiff believes that more documents will be disclosed during discovery which will be cumulative of [sic] supporting this allegation."

4. Mr. Weber and Mr. Nedrich illustrate the problems with the legal bases for their allegations against Trafalgar House in their response to Interrogatory 4. Trafalgar House asked for the basis of the contention that it knew of Mr. Weber and any obligation owed to him by any party at the time of Trafalgar House's dealings with Les Jones. The response is noteworthy:

Trafalgar is a sophisticated/experienced business entity and consequently either knew or should have known that it is not accepted business practice for a business to use corporate funds to pay for the personal expenses of its controlling employees. While Trafalgar may not have known of Plaintiff, or his individual creditor status, Trafalgar had a duty to inquire whether it was accepting corporate funds which should have been used to pay creditors of the corporation, rather than pay for the personal expenses of the controlling employee of the corporation.

Despite the requirement that fraud be pleaded with specificity, Mr. Weber and Mr. Nedrich offer no factual bases whatsoever for the allegations that Trafalgar House participated in an "active and conscious" scheme "to hinder, delay and defraud" Mr. Weber.

5. A number of highly significant points are confirmed by these Interrogatory responses from Mr. Weber and Mr. Nedrich:

A. Trafalgar House had no knowledge of Mr. Weber and his claims against Dulles Equities, Inc.

B. To date the only evidence in the hands of Mr. Weber and Mr. Nedrich in any way touching on Trafalgar House is the lease/purchase agreement for the Woodland Falls Drive property still owned by Trafalgar House.

C. Mr. Weber and Mr. Nedrich hoped to find something through discovery that "will be cumulative of supporting" their allegations against Trafalgar House.

D. The only act identified as implicating Trafalgar House in any scheme involving Mr. Jones was that Trafalgar House accepted payment checks from a maker other than Mr. Jones under the lease/purchase agreement.

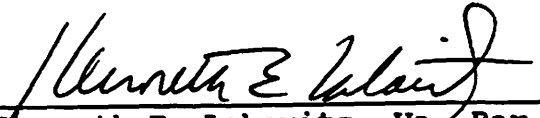
Incredibly, Mr. Weber and Mr. Nedrich rest their claims against Trafalgar House on a "legal" obligation that simply arises out of thin air. They contend that, even without knowledge of Mr. Weber and his specific claims against Dulles Equities, Inc., Trafalgar House "had a duty to inquire whether it was accepting funds that should have been used to pay creditors of" the maker of the checks paid to Trafalgar House.

There is no such duty in Virginia. The modern commercial system would collapse under the weight of the enforcement of this lunatic proposition. Any payment by any party for any purchase represents an allocation of that party's resources; the funds paid to a particular payee are obviously unavailable to be paid to any other payee. No payee under the circumstances at issue here has an obligation to inquire whether there might be some more deserving party out there somewhere who should receive the funds being paid over.

6. There are no facts supporting the contentions against Trafalgar House. There is no law supporting the inclusion of Trafalgar House as a party-defendant to this suit. The

insupportable and contemptible "legal theory" that Mr. Weber and Mr. Nedrich attempted to advance is not supported by any actual facts, because Trafalgar House was never paid any money by Dulles Equities, Inc., of behalf of Mr. Jones. Had Mr. Weber and his counsel simply agreed to meet with Trafalgar House's counsel as requested, Trafalgar House could have avoided the needless expenditure of time and money.

No reasonable inquiry was made by Mr. Weber and Mr. Nedrich, despite the efforts of this defendant and others to alert them to the problems with their case; the claims against Trafalgar House are in no way "well grounded in fact and warranted by existing law." § 8.01-271.1, Code of Virginia. Sanctions are mandated against Mr. Weber and Mr. Nedrich.


Kenneth E. Labowitz, Va. Bar 16580
Neil D. Goldman, Va. Bar 18352
Young and Goldman
510 King Street, Suite 416
Post Office Box 1946
Alexandria, Virginia 22313
703/684-3260

Counsel for Defendant Trafalgar House
Property, Inc.

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN F. WEBER,

Plaintiff,

v.

LES G. JONES, et al.,

Defendants.

Law No. 104935

MOTION OF DEFENDANTS JET TECH, INC.
AND EDWARD DAHLBERG FOR SANCTIONS AGAINST
PLAINTIFF JOHN F. WEBER AND THOMAS R. NEDRICH

Defendants Jet Tech, Inc. ("Jet Tech") and Edward Dahlberg ("Dahlberg"), by counsel, respectfully move for sanctions, pursuant to Code of Virginia § 8.01-271.1, against Plaintiff John F. Weber and his counsel Thomas P. Nedrich. In support of their Motion, Jet Tech and Dahlberg state as follows:

1. The arguments set forth in the Motion for Sanctions on Behalf of Trafalgar House Property, Inc. and in the letter dated August 23, 1991 from Gregory L. Murphy, Esq., counsel for Defendant 1st Source Bank, to Judge Annunziata, both previously filed herein, demonstrate that sanctions are appropriate in this case. Since the facts and law supporting Jet Tech's and Dahlberg's Motion for Sanctions are virtually identical, they adopt those arguments as their own, and incorporate them herein by reference. Additionally, they adopt by reference those arguments which will be made subsequently by other co-defendants.

2. As the Brief in Support of Demurrer of Jet Tech and Dahlberg demonstrates, Mr. Weber did not and could not state any claim against Jet Tech and Dahlberg. In response to Jet Tech and Dahlberg's Demurrer, neither Mr. Weber nor his counsel were ever able to proffer any facts or legal authority to support Mr. Weber's claim against Jet Tech or Dahlberg, despite repeated invitations to do so including a personal meeting with Plaintiff's counsel after the case had initially been filed. Since even a cursory investigation would have revealed the factual and legal failings of the claim for relief, sanctions are warranted.

3. Jet Tech and Dahlberg have incurred legal fees and other costs while defending this matter and preparing this motion, all of which would have been unnecessary had this claim not been pursued against them.

WHEREFORE, Jet Tech, Inc. and Edward Dahlberg respectfully request that the Court award them sanctions against John F. Weber and Thomas P. Nedrich, jointly and severally and such other relief as the Court deems just and necessary.

JET TECH, INC. and
EDWARD DAHLBERG
By Counsel

SHAW, PITTMAN, POTTS AND TROWBRIDGE

By: Alan B. Croft, Esq.
Alan B. Croft
1501 Farm Credit Drive
McLean, Virginia 22102
(703) 790-7099
Counsel for Jet Tech, Inc. and
Edward Dahlberg

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN F. WEBER,

Plaintiff,

v.

LES G. JONES, et al.,

Defendants.

Law No. 104935

**MOTION OF DEFENDANT THE RIGGS NATIONAL BANK
OF WASHINGTON, D.C. FOR SANCTIONS AGAINST
PLAINTIFFS JOHN F. WEBER AND THOMAS R. NEDRICH**

Defendant The Riggs National Bank of Washington, D.C. ("Riggs"), by counsel, respectfully moves for sanctions, pursuant to Code of Virginia § 8.01-271.1, against Plaintiff John F. Weber and his counsel Thomas P. Nedrich. In support of its Motion, Riggs states as follows:

1. The arguments set forth in the Motion for Sanctions on Behalf of Trafalgar House Property, Inc. and in the letter dated August 23, 1991 from Gregory L. Murphy, Esq., counsel for Defendant 1st Source Bank, to Judge Annunziata, both previously filed herein, demonstrate that sanctions are appropriate in this case. Since the facts and law supporting Riggs' Motion for Sanctions are virtually identical, Riggs adopts those arguments as its own, and incorporates them herein by reference.

2. As the Brief in Support of Demurrer of the Riggs National Bank of Washington, D.C. demonstrates, Mr. Weber did not

000247

and could not state any claim against Riggs. In response to Riggs Demurrer, neither Mr. Weber nor his counsel were ever able to proffer any facts or legal authority to support Mr. Weber's claim against Riggs, despite repeated invitations to do so. Since even a cursory investigation would have revealed the factual and legal failings of the claim for relief, sanctions are warranted.

3. Riggs has incurred legal fees and other costs while defending this matter and preparing this motion.

WHEREFORE, The Riggs National Bank of Washington, D.C. respectfully requests that the Court award it sanctions against John F. Weber and Thomas P. Nedrich, jointly and severally, and such other relief as the Court deems just and necessary.

THE RIGGS NATIONAL BANK OF
WASHINGTON, D.C.
By Counsel

SHAW, PITTMAN, POTTS AND TROWBRIDGE

By:

W. Eric Pilsk

David G. Fiske, VSB # 14511
W. Eric Pilsk, VSB # 29291
1501 Farm Credit Drive
McLean, Virginia 22102
(703) 790-7979
Counsel for The Riggs National
Bank of Washington, D.C.

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of October, 1991, a true and correct copy of the foregoing "Motion of The Riggs National Bank of Washington, D.C. for Sanctions Against Plaintiff John F. Weber and Thomas R. Nedrich" was mailed, U.S. mail, first class, postage prepaid to the following counsel of record:

Thomas R. Nedrich, Esq.
200 North Little Falls Street
Suite 203
Falls Church, Virginia 22046

Kenneth E. Labowitz, Esq.
510 King Street, Suite 416
Alexandria, Virginia 22313

B.G. Stephenson, Esq.
4157 Chain Bridge Road
Fairfax, Virginia 22030

J. Thomas Fromme, II, Esq.
10482 Armstrong Street
Fairfax, Virginia 22030

Michael L. Zupan, Esq.
Dee Ann Cozzens, Esq.
510 King Street, Suite 200
Alexandria, Virginia 22314

Robert J. Beagan, Esq.
8330 Boone Boulevard
Suite 4400
Vienna, Virginia 22182

Gregory L. Murphy, Esq.
225 Reinekers Lane, #700
Alexandria, Virginia 222314

Alan B. Croft, Esq.
Shaw, Pittman, Potts & Trowbridge
1501 Farm Credit Drive
McLean, Virginia 22102

W. Eric Pilsk

W. Eric Pilsk

0326/406vcp.91

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN F. WEBER,

Plaintiff,

v.

LES G. JONES, et al.,

Defendants.

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At Law No. 104935

**DEFENDANT 1st SOURCE BANK'S
NOTICE AND MOTION FOR SANCTIONS**

PLEASE TAKE NOTICE that on Friday, October 11, 1991, at 10:00 a.m. or as soon thereafter as counsel may be heard, defendant 1st Source Bank will move this Court for the imposition of sanctions, pursuant to Va. Code §8.01-271.1, on the following grounds and reasons:

1. 1st Source Bank ("1st Source") adopts the arguments made in the brief submitted on behalf of Trafalgar House Property, Inc. for its motion for sanctions.

2. At the hearing on July 31st for the demurrers in this matter, this Court requested that the plaintiff submit a list of facts to support his allegations by August 12th. The plaintiff's submission was a nonsuit against 1st Source and several other defendants. As for the supporting his allegations, the plaintiff failed to list any which supported the plaintiff's claims against 1st Source. More importantly, plaintiff's counsel also admitted at the hearing on the 31st that he never intended to hold 1st Source liable under Counts 11 and 12 of the motion for judgment. See, partial transcript of the hearing on July 31, 1991, attached

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as Exhibit A at pp. 23-25, 42-43, 73-74. In short, plaintiff and his counsel here failed to provide any evidence which would indicate that he made a reasonable inquiry into the facts to support his cause of action or that the action was well grounded in law.

3. Indeed, plaintiff's counsel further illustrated his failure to make reasonable inquiry by recharacterizing the motion for judgment as one for declaratory judgment. Exhibit A at pp. 17-20. This revelation came as a surprise to all at the hearing on demurrers and certainly was not evident from the motion for judgment itself.

4. Sanctions are particularly appropriate in this action in light of the fact that, prior to 1st Source's briefing its demurrer, plaintiff's counsel was urged to drop 1st Source from the suit because there were no facts or legal theories to support the plaintiff's claims. See, letter to Tom Nedrich dated May 31, 1991, attached as Exhibit B. 1st Source's counsel also spoke with Mr. Nedrich around June 5th and repeated his concern about the frivolity of his client's claim against 1st Source.

5. In the demurrer itself, 1st Source specifically requested the imposition of sanctions. Thus, despite three warnings from 1st Source's counsel, as well as numerous warnings from the other attorneys (See, excerpt of letter from Stephenson to Nedrich dated May 8, 1991, attached as Exhibit C), Mr. Nedrich failed not only to withdraw the claims, but also failed to tell anyone that the plaintiff was not seeking to hold 1st Source and

certain other defendants liable under Counts 11 and 12. As a result of this failure, 1st Source incurred substantial time and expense to brief its demurrers to Counts 11 and 12.

6. The fact that a nonsuit has occurred should not dissuade the Court from applying Va. Code §8.01-271.1 to the facts of this case. Indeed, the United States Supreme Court recently ruled that sanctions may be awarded despite the fact that the plaintiff has voluntarily dismissed his claim. Cooter & Gell v. Hartmarx Corp., 110 S.Ct. 2447, 2455-57 (1990). In Cooter, the plaintiff filed a complaint to which the defendant filed a motion to dismiss. The plaintiff subsequently filed a notice of dismissal pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure. Id. at 2452. The defendants then moved for and were awarded sanctions. Id. Thus, in terms of procedural posture, this case is no different than Cooter.

7. Although a sanctions motion is an unpleasant business, there can hardly be a more suitable candidate for sanctions than this action because it is undisputed that the plaintiff has absolutely failed to provide a basis in law or fact for his claims and has even admitted that some of the claims were not well-founded. Moreover, the expense associated with the demurrers could have been avoided had the plaintiff and his attorney exercised a little candor four months ago and not contrived frivolous theories and ambiguous claims to create a dragnet ensnaring innocent parties.

7. As of October 3, 1991, 1st Source has incurred \$3,680.69 in fees and costs related to this matter. Most of these fees were incurred after plaintiff was apprised of 1st Source's intention to seek sanctions. A detailed affidavit to support the fees and costs is attached hereto as Exhibit D.

WHEREFORE, 1st Source Bank respectfully requests that this Court award it sanctions against the plaintiff and his counsel and any other relief which it deems appropriate.

1st SOURCE BANK

By Counsel

Murphy, McGettigan & West, P.C.
225 Reinekers Lane, Suite 700
Alexandria, Virginia 22314
(703) 549-5353

By: 

Gregory L. Murphy
David Schroeder

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing defendant 1st Source Bank's notice and motion for sanctions was mailed first-class, postage prepaid this 4th day of October, 1991 to the following:

Kenneth E. Labowitz, Esq.
Neil D. Goldman, Esq.
Young and Goldman
510 King Street, Suite 416
Post Office Box 1946
Alexandria, Virginia 22313

Thomas R. Nedrich, Esq.
200 Little Falls Street, Suite 203
Falls Church, Virginia 22046

J. Thomas Fromme II, Esq.
10482 Armstrong Street
Fairfax, Virginia 22030

Michael L. Zupan, Esq.
Dee Ann Cozzens, Esq.
510 King Street, 2nd Floor
Alexandria, Virginia 22314

David G. Fiske, Esq.
1501 Farm Credit Drive
Suite 4400
McLean, Virginia 22101

B.G. Stephenson, Esq.
4157 Chain Bridge Road
Fairfax, Virginia 22030

Robert J. Beagan, Esq.
8330 Boone Boulevard, Suite 440
Vienna, Virginia 22182

Alan B. Croft, Esq.
1501 Farm Credit Drive
Suite 4400
McLean, Virginia 22101



David C. Schroeder

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

JOHN F. WEBER

Plaintiff,

v.

LES G. JONES, et al

Defendants.

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At Law No. 104935

AFFIDAVIT

Gregory L. Murphy, being duly sworn, does state the following under oath:

1. I am over 21 years of age and otherwise competent to make this affidavit.

2. I am counsel for the defendant 1st Source Bank in the above-styled action.

3. On behalf of 1st Source Bank in this action, I have worked 12.1 hours at my normal hourly billing rate of \$165.00 per hour, through October 3, 1991. The subtotal for my fees is \$1996.50.

4. David C. Schroeder, an associate attorney with four years of litigation experience in my firm, worked 14.4 hours on this matter at his normal billing rate of \$110.00 per hour through October 3, 1991. The subtotal for Mr. Schroeder's fees is \$1584.00.

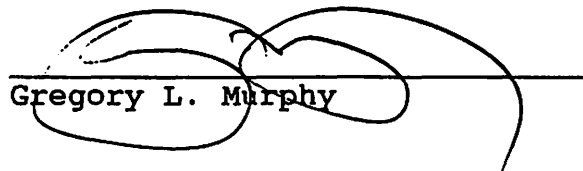
5. The total amount of fees incurred in this matter through September 1, 1991, is \$3580.50

5. This firm has incurred expenses on behalf of 1st Source Bank of \$160.19 in this matter.

000255

6. The attached billing memoranda provide and a true and accurate description of the services provided in this matter through September 1, 1991.


FURTHER AFFIANT SAYETH NOT



Gregory L. Murphy

STATE OF VIRGINIA
CITY OF ALEXANDRIA to wit:

The foregoing affidavit was sworn and subscribed to before me this 3rd day of October, 1991, by Gregory L. Murphy.



Notary Public

My comm. exp.: 10/19/91

000257

CLIENT: 5218 FIRST SOURCE BANK
 MATTER: 1 John F. Heber
 STATUS AS OF: 09/11/91

BILLING ATTORNEY: Gregory L. Murphy

SUMMARY OF INVOICED, AND ALLOCATION INSTRUCTIONS

Receivables	Date of Last	Y-T-D Billed	Non-Billable	Billable	Actual
Fees 891.00	Pat 09/13/91	Fees 2750.00	Hours	Amount	To Be Billed
Disb 7.20	Bill 08/26/91	Disb 29.75			

Amount last payment 1881.55

BILLING INSTRUCTIONS Prepare Bill?

Items to be included:

Bill Items up to 08/31/91

Items as indicated
on Detailed Listing

Send Reminder Statement

Format of Bill Billing Flag: H
 Cover Sheet : 21 Bill/Inv Flag: H
 Services : 36
 Disbursements: 0

OTHER INSTRUCTIONS

ATTORNEY

1 GUN

7 BUS

TOTALS

DISBURSEMENTS

Excess postage

Local delivery

Duplication

Telecopier charges

Computer Research

TOTALS

Matter References

Non-Billable

Billable

Actual

Cat	T/E Bal	Billing Instructions	Budget	Hours	Amount	Hours	Amount	To Be Billed
1	John F. Heber					3.60	489.50	
	HR							
TOTALS	0.00					3.60	489.50	

000000

CLIENT: 5218
MATTER: 1

FIRST SOURCE BANK
John F. Heber

BILLING ATTORNEY: Gregory L. Murphy

MATTER	ATTNY	DATE	HOURS/ CHK #	RATE USED	MATTER ON / DISB AMT	ENTRY NO	DESCRIPTION OF SERVICES
1 John F. Heber	GLH	8/15/91	0.20	165.00	33.00	68113	Finalize letter to counsel and Tamburo
	GLH	8/20/91	0.10	165.00	16.50	68029	Receipt and review of letter from Bedrich; letter from Tamburo
	GLH	8/21/91	0.20	165.00	33.00	68023	Telephone call to Tamburo; inter office conference regarding sanctions
	DCS	8/21/91	1.40	110.00	154.00	67928	Legal research re: sanctions issues; draft letter to Annunziata
	GLH	8/22/91	0.30	165.00	49.50	68020	Review and revise letter to Judge Annunziata; return telephone call to Vince Tamburo
	DCS	8/22/91	0.50	110.00	55.00	67936	Review and revise Annunziata letter and prepare exhibits and services; telephone call to Labowitz
	GLH	8/28/91	0.20	165.00	33.00	68133	Telephone call from Judge Annunziata's chambers; letter from Tamburo; letter to Tamburo
	GLH	8/29/91	0.70	165.00	115.50	68137	Letter from Labowitz; review of transcript; draft follow up letter to Judge Annunziata
	FEES TOTAL		3.60		489.50		
		8/01/91			5.00	63776	Telecopier charges
		8/01/91			60.00	28352	Computer Research
		8/01/91			4.40	28049	Duplication
		8/01/91			30.40	29162	Duplication
		8/27/91			27.00	28857	Local delivery
		8/31/91			3.64	28740	Excess postage
DISBURSEMENTS TOTAL					130.44		
MATTER TOTAL					619.94		

nzir/g's

DATE PREPARED: 9/13/91

MURPHY, McFEEGAN & MESSER, P.C.
FEBRUARY 1991

PAGE 292
REPORT 5.3

000233

STATEMENT

LAW OFFICES

MURPHY, McGETTIGAN & WEST, P.C.

SUITE 700

KING STREET STATION

225 REINEKERS LANE

ALEXANDRIA, VIRGINIA 22314-2822

TELEPHONE (703) 549-5353

TELECOPIER (703) 683-2941

August 26, 1991

First Source Bank
P.O. Box 1602
South Bend, Indiana 46634
ATTN: VINCENT A. TAMBURO, ESQ.

12711

RE: John F. Weber

FOR LEGAL SERVICES RENDERED
from July 1, 1991 through July 31, 1991

SERVICES\$ 891.00

DISBURSEMENTS

Telephone charges 5.00
Duplication 2.20

TOTAL DISBURSEMENTS 7.20

TOTAL\$ 898.20

BALANCE ON PREVIOUS STATEMENTS\$ 1,881.55

TOTAL DUE\$ 2,779.75

Less \$ 1,881.55 received on 8/13/91 (1,881.55)

TOTAL AMOUNT DUE \$ 898.20

August 26, 1991

PAGE 2

First Source Bank

DESCRIPTION OF SERVICES

July 1, 1991 through July 31, 1991

			HOURS		
7/13/91	GLM	Receipt and review of pleadings; note to Tamburo.	0.50		
7/31/91	GLM	Attend hearing on demurrer; draft letter to Tamburo; return telephone call to Labowitz.	4.90		
			5.40	\$	891.00
		TOTAL SERVICES		\$	891.00

GLM -- Gregory L. Murphy

000281

STATEMENT

LAW OFFICES

MURPHY, McGETTIGAN & WEST, P. C.

SUITE 700
KING STREET STATION
225 REINEKERS LANE
ALEXANDRIA, VIRGINIA 22314-2822

TELEPHONE (703) 549-5353
TELECOPIER (703) 683-2941

July 15, 1991

First Source Bank
P.O. Box 1602
South Bend, Indiana 46634
ATTN: VINCENT A. TAMBURO, ESQ.

12503

RE: John F. Weber

FOR LEGAL SERVICES RENDERED
from June 1, 1991 through June 30, 1991

SERVICES-----\$ 1,028.50

DISBURSEMENTS

Excess postage 0.75
Duplication 11.80

TOTAL DISBURSEMENTS 12.55

TOTAL-----\$ 1,041.05

BALANCE ON PREVIOUS STATEMENTS-----\$ 840.50

TOTAL DUE-----\$ 1,881.55

000200

July 15, 1991

PAGE 2

First Source Bank

DESCRIPTION OF SERVICES

June 1, 1991 through June 30, 1991

			HOURS
6/03/91	GLM	Return telephone call to Tamburo.	0.10
6/06/91	GLM	Forward order for late filing to court; note to clerk.	0.10
6/07/91	DCS	Legal research re: conspiracy cases; draft brief for demurrer.	4.90
6/09/91	DCS	Draft and finish demurrer brief.	0.40
6/10/91	GLM	Letter from Labowitz; receipt and review of notices, demurrer, memorandum, answer to counterclaim; letter to Labowitz and party counsel.	0.80
6/10/91	DCS	Review and revise brief.	0.30
6/11/91	GLM	Review and revise brief.	0.70
6/11/91	DCS	Proof brief.	0.40
6/17/91	DCS	Copy counsel with demurrer.	0.20
6/19/91	DCS	Draft notice of hearing and serve it to all; review	0.60

000263

July 15, 1991

PAGE 3

demurrer of Star.

8.50	\$	1,028.50
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TOTAL SERVICES	\$	1,028.50
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GLM - Gregory L. Murphy
DCS - David C. Schroeder

000244

STATEMENT

LAW OFFICES

MURPHY, McGETTIGAN & WEST, P. C.

SUITE 700
KING STREET STATION
225 REINEKERS LANE
ALEXANDRIA, VIRGINIA 22314-2822

TELEPHONE (703) 549-5353
TELECOPIER (703) 683-2941

June 17, 1991

First Source Bank
P.O. Box 1602
South Bend, Indiana 46634

12260

RE: John F. Weber

FOR LEGAL SERVICES RENDERED
from May 1, 1991 through May 31, 1991

SERVICES-----\$ 830.50

DISBURSEMENTS

Telecopier charges 10.00

TOTAL DUE-----\$ 840.50

June 17, 1991

PAGE 2

First Source Bank

DESCRIPTION OF SERVICES

May 1, 1991 through May 31, 1991

			HOURS
5/13/91	GLM	Telephone call from Christopher Murphy and Vince Tamburo; receipt and review of pleadings; telephone call to Tamburo and Qualey.	0.90
5/14/91	GLM	Receipt and review of letter from Allen Qualey and draft security agreement.	0.20
5/15/91	GLM	Telephone call to Tom Nedrich, Esquire; inter office conference.	0.30
5/15/91	DCS	Intra-office conference with GLM re: views on case.	0.00
5/21/91	DCS	Letter to Nedrich re: continuance; review motion for judgment; draft demurrer.	2.90
5/23/91	DCS	Finalize draft of demurrer.	0.30
5/28/91	GLM	Review and revise demurrer.	0.40
5/29/91	GLM	Draft order for extension; note to Nedrich.	0.40

000246

June 17, 1991

PAGE 3

5/30/91 GLM File demurrer; draft letter 0.70
to Clerk of Court; letter
to Nedrich.

.....
6.10 \$ 830.50

TOTAL SERVICES \$ 830.50

GLM - Gregory L. Murphy
DCS - David C. Schroeder

000207

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN F. WEBER

Plaintiff

v.

Law No. 104935

LES G. JONES, et al.

Defendants.

NOTICE AND MOTION

PLEASE BE ADVISED AND ON NOTICE that on Friday, October, 11, 1991, at 10:00 a.m., or as soon thereafter as Counsel may be heard, Counsel for the Defendant, Armed Forces Electronics, Inc., and Dulles Equities of Virginia, will move this Honorable Court for sanctions against the Plaintiff, John F. Weber and his Counsel, Thomas R. Nedrich, Esquire, in accordance with Section 8.01-271.1 of the Code of Virginia, 1950, as amended, including an Order to pay attorneys' fees, costs and expenses incurred by these Defendants in responding to the Motion for Judgment filed herein and for such other relief as to the Court may seem meet.

As and for its grounds for sanctions, these Defendants state as follows:

SHERMAN, BURY
& FROMME, P.C.
ATTORNEYS AT LAW
6402 ARMSTRONG STREET
FAIRFAX, VIRGINIA 22030
(703) 385-8008

000266

1. That the action instituted by Mr. Weber and Mr. Nedrich against these Defendants was not grounded in fact, nor was it warranted by existing law.

2. That the Plaintiff has admitted having in his custody, possession or control, over 800 business documents that are the private property of the Defendant Dulles Equities for Defendant Les Jones, and that both the Plaintiff and Plaintiff's Counsel have sufficient information and resource before them to determine, after a reasonable inquiry, that the action being instituted by the Plaintiff and his Counsel against these Defendants was not grounded in fact, nor was it warranted by existing law, nor was it warranted by the contract upon which the Plaintiff based its claim (which contract was drafted by the Plaintiff himself).

3. That prior to the institution of this action, Counsel for Defendant Les Jones, attorney Beverly Stephenson, specifically wrote Mr. Nedrich and Mr. Weber asking them to refrain from this action as it had no basis in fact or existing law and to refrain from including in this action, these two Defendants as well as other Defendants. Mr. Stephenson very specifically set forth valid reasons both in law and in fact why these two Defendants should not be included in this law suit and should not have been brought into the law suit. Both the

Plaintiff and Mr. Nedrich recklessly and with a conscious disregard of the existing law and the facts, have insisted on pursuing this action which will ultimately result in the needless expenditure of time and money by these two Corporations in responding to the groundless allegations made against them by the Plaintiff and his Counsel.

4. Further, when ordered by this Court to provide a written Brief setting forth specifically the factual basis upon which the Plaintiff and his Counsel were relying for its action against these Defendants, neither the Plaintiff nor his Counsel complied with this Court's mandate and no Brief setting forth any factual basis for this action against these two Defendants was ever filed with this Court.

5. There was never a defined recognized legal theory espoused by the Plaintiff or his Counsel as a basis for the inclusion of these two Defendants as Defendants in this action and further, there was no additional factual basis ever espoused supporting the nebulous legal theory sought to be advanced against these Defendants by Mr. Weber and Mr. Nedrich.

6. The actions of both Mr. Weber and his Counsel, Mr. Nedrich, clearly demonstrate sanctions in this matter should be readily granted against the Plaintiff and his Counsel. This action was neither well grounded in fact, nor warranted by existing law. This matter was simply interposed to

harass and cause needless increase for the cost of litigation by these Defendants in hopes that "cost of defense funds" would be paid. These Defendants, by and through their Counsel, respectfully request that sanctions be imposed against both Mr. Weber and Mr. Nedrich for the foregoing reasons.

J. Thomas Fromme II
ARMED FORCES ELECTRONICS, INC. *JTR*
and
DULLES EQUITIES OF VIRGINIA
By Counsel

SHERMAN, BURY & FROMME, P.C.

J. Thomas Fromme II
J. Thomas Fromme, II, Esquire *JTR*
Virginia Bar No. 012913
Counsel For Defendants
Armed Forces Electronics, Inc.
and Dulles Equities of Virginia
10482 Armstrong Street
Fairfax, VA 22030
(703) 893-0824

CERTIFICATE OF SERVICES

I hereby certify that a true copy of the foregoing Notice and Motion were forwarded by first class mail, postage prepaid, this 4th day of October, 1991, to:

Robert J. Beagan, Esquire
Flynn & Beagan
Counsel for Defendant
ERA Five Star Realtors
8330 Boone Boulevard
Suite 440
Vienna, VA 22182

SHERMAN, BURY
& FROMME, P.C.
ATTORNEYS AT LAW
10482 ARMSTRONG STREET
FAIRFAX, VIRGINIA 22030
(703) 382-8008

Alan B. Croft, Esquire
Shaw, Pittman, Potts & Trowbridge
Counsel for Defendants Jet Tech, Inc.
and Edward Dahlberg
1501 Farm Credit Drive
Suite 4400
McLean, VA 22102

Kenneth E. Labowitz, Esquire
Neil D. Goldman, Esquire
Young and Goldman
Counsel for Defendant Trafalgar House
Property, Inc.
510 King Street, Suite 416
P.O. Box 1946
Alexandria, VA 22313

Beverly G. Stephenson, Esquire
Counsel for Defendants Les Jones,
Dorothy Jones and Dulles Equities,
Inc.
4157 Chain Bridge Road
Fairfax, VA 22030

Gregory L. Murphy, Esquire
Murphy, McGettigan & West, P.C.
Counsel for First Source Bank
225 Reinekers Lane, Suite 700
Alexandria, VA 22314

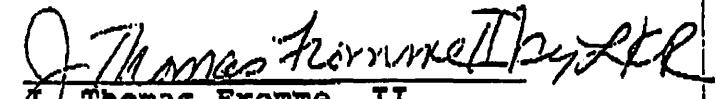
David G. Fiske, Esquire
Dee Ann Cozzens, Esquire
Counsel for Riggs National Bank
510 King Street, Suite 200
Alexandria, VA 22314

Michael L. Zupan, Esquire
Dee Ann Cozzens, Esquire
510 King Street, 2nd Floor
Alexandria, VA 22314

SHERMAN, GURY
& FROMME, P.C.
ATTORNEYS AT LAW
10482 ARMSTRONG STREET
FAIRFAX, VIRGINIA 22030
(703) 385-0006

Also, via telefax to:

Thomas R. Nedrick, Esquire
Counsel for John F. Weber
200 North Little Falls Street
Suite 203
Falls Church, VA 22046


J. Thomas Fromme, II

SHERMAN, BURY
& FROMME, P.C.
ATTORNEYS AT LAW
10482 ARMSTRONG STREET
FAIRFAX, VIRGINIA 22030
(703) 385-8008

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF FAIRFAX COUNTY

3 - - - - - X

4 JOHN F. WEBER, :

5 Plaintiff, : Law No. 104935

6 v. :

7 LES G. JONES, et al., :

8 Defendants. :

9 - - - - - X

10

11 Wednesday, July 31, 1991
 12 Fairfax County Circuit Court
 13 4110 Chain Bridge Road
 14 Fairfax, Virginia

15

16 The hearing in the above-entitled matter was
 17 convened at 12:02 p.m.

18

19 BEFORE:

20 HONORABLE ROSEMARIE ANNUNZIATA

21

22

23

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25

1 through giving me the background?

2 MR. NEDRICH: Yes, please.

3 JUDGE ANNUNZIATA: If you all want to give me
4 background, that's fine.

5 MR. CROFT: I think it would be helpful if we
6 each gave you background so you will know the players
7 and that will help you understand.

8 JUDGE ANNUNZIATA: Each defense counsel wants
9 to give a background? I will tell you what, let's start
10 with Mr. Croft, and then anything you want to add, feel
11 free to stand up and give me your point of view and then
12 we will proceed at least until 1 o'clock and see where
13 we are.

14 I know that at some point I probably will want
15 to read the pleading and briefs, but maybe not. Maybe
16 you can give me a comprehensive overview.

17 MR. NEDRICH: Let me start.

18 JUDGE ANNUNZIATA: I will tell you one thing I
19 would like to do. I would like you to enunciate
20 initially, if you can, if you can do it this way, the
21 various theories of law upon which the plaintiff is
22 proceeding, just right up front, and then give me the
23 facts as you go through it.

24 MR. NEDRICH: Your Honor, we are proceeding on
25 a breach of contract count. We are proceeding on a

1 fraud and conversion count with regard to the
2 defendants, Les Jones and Dorothy Jones. We are
3 proceeding on fraud and conversion counts with regard to
4 the companies called Dulles Equities of Virginia, Inc.
5 and the company called Armed Forces Radio.

6 Your Honor needs to understand that Les Jones
7 owns virtually all, if not all, of the stock of the
8 three corporations, Dulles Equities, Inc., Dulles
9 Equities of Virginia, Inc., and Armed Forces Service
10 Radio, Inc.

11 We are contending that initially monies which
12 were in Dulles Equities, Inc. were funneled out to these
13 other companies as well as to himself and his wife
14 personally.

15 JUDGE ANNUNZIATA: What about quantum meruit?

16 MR. NEDRICH: Quantum meruit is Riggs Bank,
17 Your Honor, and only Riggs Bank. Let me give you a
18 brief background.

19 JUDGE ANNUNZIATA: Are there any other legal
20 theories in issue here?

21 MR. NEDRICH: Quantum meruit is Riggs Bank.
22 We also are asking for constructive trust determinations
23 by this Court with regard to literally almost all of the
24 other defendants.

25 JUDGE ANNUNZIATA: I will try to piece

1 together the theories for the defendants as we go along,
2 but I just wanted to know up front what the law at issue
3 will be.

4 MR. NEDRICH: We also have common law
5 conspiracy and conspiracy under the Virginia business
6 conspiracy statute.

7 JUDGE ANNUNZIATA: So common law and statutory
8 conspiracy.

9 MR. NEDRICH: We have added a count of
10 exemplary damages.

11 JUDGE ANNUNZIATA: Under the statute?

12 MR. NEDRICH: No, that's a separate count. We
13 have, at this point in time, we are pleading in the
14 alternative there. If we would find the statutory
15 conspiracy, obviously that would govern; if not, we can
16 go to common law.

17 Conversion with the constructive trust, Your
18 Honor, and that essentially covers all of the counts
19 with regard to all of the defendants who are still in
20 the case or who are present here today.

21 JUDGE ANNUNZIATA: Do you want to give me a
22 factual statement as well?

23 MR. NEDRICH: I thought we were going to turn
24 it over to the other side?

25 JUDGE ANNUNZIATA: If they want to add

1 something to the facts, we will get to it eventually.

2 MR. NEDRICH: We have, I believe, 21 numbered
3 paragraphs that deal with a fair amount of detail with
4 regard to what happened.

5 The sum and substance of it, my client, Jack
6 Weber, is a licensed real estate agent both in
7 California and Virginia, and apparently a very good one,
8 and a very successful person in business. He was
9 procured by Les Jones in 1987, solicited by Les Jones in
10 1987 to come to work for Mr. Jones vis-a-vis being able
11 to market Mr. Jones' still-being-created real estate
12 empire in Northern Virginia.

13 To induce Mr. Weber to come, a written
14 contract was entered into whereby Mr. Weber was to
15 receive a base salary of \$75,000 per year. He was, in
16 addition, to receive a commission, and the issue in the
17 case primarily is the commission, for any leases which
18 he procured on behalf of Mr. Jones' various legal
19 entities.

20 There was one point in time a limited
21 partnership evolved. That went into bankruptcy. And
22 Riggs, I think, got that property back, but it was a
23 particular property called the Atrium, which is located
24 in Herndon, which Mr. Jones procured a lease from the
25 General Services Administration, a big lease, multi-year

1 lease, over 100,000 square feet.

2 Mr. Jones' commission was to be about a
3 quarter of a million dollars. He has not yet seen one
4 penny, although the contract obligation of Mr. Jones'
5 company, Dulles Equities, Inc., said that he would be
6 paid that money by the end of 1989 or 1990.

7 In addition, there is what we will call a
8 collateral count that he was not paid his last monthly
9 wages amounting to about \$10,000.

10 What has occurred here is that, although Mr.
11 Weber was more or less on the hook for two years waiting
12 for his commission to be paid, Mr. Jones constantly
13 promised he would pay it, he never did so. Mr. Jones'
14 position all of the time to Mr. Weber, and, by the way,
15 Mrs. Jones is working in the company. She was working
16 with him and she had stock interest and limited
17 partnership interests. So when I say Mr. Jones, I am
18 also to a great extent also meaning Mrs. Jones, the
19 present Mrs. Jones, Dorothy Jones.

20 He kept saying no money. When the money
21 comes, you will get paid. This obviously wasn't
22 happening because what Mr. Jones, or Mr. Weber
23 discovered, particularly through the Riggs litigation
24 against Mr. Jones, was that a lot of the money that his
25 corporate, one corporate entity in this partnership and

1 the other corporate entities seemed to be dribbling away
2 in 100 different directions, one example being leasing
3 houses, improving houses to purchase them, and that
4 involves the Trafalgar defendant.

5 Effectively, corporate monies out of Dulles
6 Equities, Inc. were being paid to Trafalgar to lease
7 with an option to buy, and also to include a piece of
8 real estate in Great Falls, Virginia, which is on the
9 contract the name of Les Jones but is being paid for by
10 Dulles Equities, Inc. which had the contract with my
11 client.

12 Dulles Equities, by the way, was also the
13 general partner along with Mr. and Mrs. Jones of the
14 Dulles Equities Limited Partnership III which owned the
15 Atrium, which Riggs eventually got back.

16 Another instance was a Lear jet, okay, and
17 that's the reason why Jettech, Inc. and Mr. Dahlberg are
18 involved in the case because, even though it was a
19 Dulles Equities, Inc. asset, it has been used by Mr.
20 Jones for any number of things having to do with his
21 personal business affairs and his personal affairs
22 effectively costing, I am not sure whether it is \$20,000
23 a month or \$50,000 a month to operate. To the best of
24 my knowledge, he may still have that aircraft.

25 In addition to that, Mr. Jones apparently

1 never drew a salary or a very substantial salary, nor
2 did Mrs. Jones, from Dulles Equities, Inc., yet we have
3 evidence, of course we don't have that here today, this
4 is strictly the demurrer argument, of hundreds and
5 hundreds of thousands of dollars of Dulles Equities,
6 Inc. money being used to pay for other expenses of the
7 Jones, things like private school tuitions for their
8 children, things like exercise gymnasium equipment,
9 personal travel expenses, rental fees on these items.

10 We have quite a lot of lists and a whole bunch
11 of credit cards that were just directly paid out of the
12 corporate account.

13 That will tie into how they were managing the
14 tax ramifications of all of this. This essentially was
15 going on. Mr. Jones also created a company called Armed
16 Forces Electronics, Inc. That company was totally
17 funded out of Dulles Equities, Inc. and also
18 substantially all of the operating expenses of its
19 continuing operation, and I am not sure whether it is
20 operating today, but it was three months ago, was paid
21 for by Dulles Equities, Inc. or Dulles Equity, Inc.
22 employees, yet the money would go into Armed Forces
23 Electronics and into Mr. Jones' personal pocket, and
24 also Mrs. Jones, the same kind of situation.

25 People who worked for Dulles Equities, Inc.

1 literally became the contractors for the house Mr. Jones
2 is attempting to buy from Trafalgar. It is important,
3 because we think there is lis pendens here, but because
4 we have these parties in court we want to see how
5 further evidence develops, but we believe that more than
6 \$100,000 in assets of Dulles Equities, Inc. has gone
7 into that house for modifications, enhancements,
8 improvements. How much more than \$100,000 we don't
9 know.

10 The house that Mr. Jones has leased with an
11 option to purchase from Trafalgar, and all payments, to
12 the best of our knowledge, and we tracked some payments
13 so far, have been from Dulles Equities, Inc. checks,
14 Dulles Equities, Inc. purchases, Dulles Equities, Inc.
15 personnel, just on and on and on.

16 That is the gravamen of it. I can go through
17 with regard to each of the individual defendants, but
18 effectively Mr. Jones has created a series of shells to
19 conduct all kinds of businesses. We like to call it the
20 cookie jar scenario. He has a cookie jar here, here and
21 here. He calls them corporations, yet he can take at
22 any time, without any proper documentation or
23 tradebacks, he can take the cookies out of this jar, put
24 them into this jar, put them here, put them here, with
25 no rebates, no tradebacks.

1 Effectively the whole thing is a sham. All of
2 these corporations, in our opinion, are a sham to
3 personally benefit Mr. Jones at the expense of his
4 creditors, and one of those creditors, of course, being
5 Mr. Weber, who is the plaintiff in this case.

6 JUDGE ANNUNZIATA: Is it your claim that all
7 of the defendants named have some responsibility?

8 MR. NEDRICH: Each one differently. For
9 example, Trafalgar is taking corporate funds without
10 knowing where they are coming from.

11 I like to try to go back to common sense
12 before I read cases, and, Your Honor, if you were a car
13 dealer, say you sold Mercedes Benz new cars, and I
14 walked in with my 20-year-old son and I said I want my
15 boy to have a car, and I am going to pay for it, and I
16 write you a check for \$50,000. You would know pretty
17 much what is going on. I am giving a car to my son.

18 Well, it kind of like happened here with
19 regard to Trafalgar. Jones comes in and says I want to
20 buy this property; by the way you will get paid by my
21 corporation. And that's essentially what is going on.

22 They knew, I think, and we are asking under, I
23 have got the citation here, 8.1, I believe, 80. We are
24 operating under the Virginia Declaratory Judgment Act,
25 which is a liberal act which asks for declarations as to

1 whether or not different rights and obligations ought to
2 be imposed.

3 We think there should be a declaration here
4 that, to the extent that Dulles Equity assets went into
5 that house by way of cash, by way of labor, by way of
6 materials --

7 JUDGE ANNUNZIATA: Is this a declaratory
8 judgment case?

9 MR. NEDRICH: Only in part. It is a motion
10 for judgment, but under the law declaratory judgment can
11 be brought into a case as part and parcel of it. The
12 Court will have to make a decision as to whether we are
13 going out too far or whether this is a good economic way
14 to discredit all of this stuff because all of these
15 people are touching the assets which we believe should
16 have stayed in Dulles Equities, Inc. to pay Mr. Weber
17 his commission. That's where we are coming from.

18 JUDGE ANNUNZIATA: Is there anything before me
19 that challenges the propriety of proceeding under the
20 Declaratory Judgment Act? Has any defendant raised
21 that?

22 MR. ZUPAN: It is the first I heard of it,
23 Your Honor.

24 JUDGE ANNUNZIATA: You first heard that it is
25 in the case?

1 MR. ZUPAN: First that I have become aware
2 that the Declaratory Judgment Act is part of this case.

3 MR. STEPHENSON: I think that's true with all
4 of us, Your Honor.

5 MR. FROMME: Yes.

6 MR. NEDRICH: The prayers for relief say we
7 want a declaration from this Court that constructive
8 trusts exist. I think that is sufficient. I don't
9 think I have to cite the statute in the motion for
10 judgment.

11 MR. MURPHY: We challenge the constructive
12 trust notion. He didn't characterize it as a
13 declaratory judgment under the Declaratory Judgment
14 Act.

15 We did state in our response, First Source's
16 response, that the equitable relief here has to be
17 brought in the equity side of the Court, not in this
18 proceeding.

19 JUDGE ANNUNZIATA: Not a constructive trust?

20 MR. MURPHY: Yes.

21 MR. NEDRICH: I think if you read a
22 combination of the constructive trust, and I will give
23 you some citations on this, the constructive trust law
24 coupled with the Declaratory Judgment Act, we haven't
25 asked for an injunction; we have only asked for a

1 declaration.

2 We think in the main, outside of Mr. Jones and
3 his immediate companies, we think these are all at least
4 quasi respectable defendants, and if the Court issued a
5 declaration that said it seems, you know, the Court
6 rules that, for example, Trafalgar has an increased
7 valued house, whether or not Mr. Jones buys it, by
8 reason of the fact that all this Dulles Equities money
9 went into fix it, to put in gymnasium equipment, to put
10 in skylights, to put in Jacuzzis, this sort of thing,
11 that under the Declaratory Judgment Act, and that is
12 discretionary with the Court, that is discretionary with
13 the Court, if the Court thinks this is an appropriate
14 mechanism to get all of this sorted out, which we
15 believe it is, then I think the Declaratory Judgment Act
16 will go forward because what the Court will be declaring
17 is that constructive trusts exist.

18 And I think because of that statute, which
19 says you can appear on either side of the Court, that we
20 are not in the wrong side, and I don't think anybody has
21 actually specifically said, I have read all of their
22 demurrers to some length, and I don't think anybody has
23 said we ought to be on the equity side of the court.
24 They are just saying we ought to be out of here, or at
25 least we ought to be replead on it.

1 Riggs National Bank stands in a different
2 footing on the issue of the quantum meruit. What
3 happened here was that Riggs went into foreclosure
4 proceedings against Dulles Equities, Inc., Dulles
5 Equities Limited Partnership and the Jones with personal
6 guarantees and notes and everything floating around, and
7 a whole litigation went off and Mr. Weber was a
8 participant in that to the extent that he was a key
9 officer of Mr. Jones' operations and he also was a key
10 witness.

11 And during the course of that litigation he
12 advised the Riggs people that he was due money from
13 Dulles Equities, Inc. by way of this commission.

14 And he said the reason why he was due it is
15 because the only good paying tenant in that big building
16 was the tenant he procured and he never was paid for the
17 work he did. Riggs took the building back and Riggs
18 essentially let Jones, Mr. Jones, Mrs. Jones and his
19 companies walk.

20 What we are saying is if Riggs knew that when
21 they took that property that they were getting a benefit
22 which was derived from Mr. Weber's efforts, then they
23 are, under the quantum meruit theory, even though there
24 was no contract with Riggs and Mr. Weber, they are
25 responsible for the payment of that commission to the

1 extent that it is a fair and reasonable commission or
2 whatever fair and reasonable number the Court would deem
3 it to be. That's the quantum meruit theory.

4 Your Honor, I think I fairly well covered an
5 overview of what the case is about. Obviously you can
6 get into the detail by reading the specific
7 allegations. I don't think I have missed much from our
8 point of view. I know we are going to hear things from
9 the other side.

10 I would point out, and this is very specific,
11 I believe Mr. Jones and Mrs. Jones were engaged in
12 multiple conspiracy here. I believe they violated the
13 Virginia conspiracy law, and I have case law to support
14 the theory, and I believe they have violated Virginia
15 common law, and I believe under the circumstances they
16 did it willfully. They did it to enrich themselves
17 while they kept lying to Mr. Weber that they didn't have
18 money. They lied to him for over two years.

19 And I think they could be held liable for
20 those conspiracies in exemplary damages, either
21 statutory or common law.

22 We have also stated, and this is general and
23 we had a specific reason for doing it this way, we also
24 stated any other of the named defendants whom the Court
25 finds to have engaged in that conspiracy by way of a

1 trial, judge or jury trial, would be also subject to
2 exemplary damages. And I am not saying that any of
3 these defendants have done that yet, but they may have.

4 JUDGE ANNUNZIATA: Have you pled?

5 MR. NEDRICH: What we have pled is, as to
6 Jones and Dulles Equities, they definitely did, and
7 since there was no real corporation, the conspiracy
8 already existed between Mr. and Mrs. Jones.

9 JUDGE ANNUNZIATA: I understand that. What
10 about everybody else?

11 MR. NEDRICH: Since we haven't really alleged
12 that they are defendants in those, we don't think
13 demurrers would be right at this point in time. We may
14 at some point in time down the road move the Court for
15 leave to amend depending on what the discovery shows.

16 All I am saying is that, to the extent that
17 everybody here other than Mr. and Mrs. Jones and those
18 corporations controlled by Mr. Jones are saying that we
19 are suing them for conspiracy, common law or statutory,
20 we are not. And I think they have overread that at this
21 point in time.

22 So we can't very well go with the demurrer to
23 dismiss the conspiracy counts against them when we
24 haven't specifically named them as potential
25 coconspirators.

1 I would only just advise the Court and advice
2 counsel, that if we would ever do that, we would look
3 seriously about adding them, whether in this case or in
4 some other proceeding. We are very premature right
5 now. That was the only reason why we said such other
6 defendants who may have or did, in fact, engage in such
7 conspiratorial actions.

8 We have some real doubts with regard to a
9 couple of them. I won't name them specifically because
10 it almost gets to be libelous and protected by privilege
11 here. I don't want to say, but we believe certain, but
12 not all, of the defendants have done, or they knew
13 something more was going on and they willingly
14 participated in it, but until we have some more solid
15 evidence, which we hope to procure through discovery, we
16 are not going to name anybody.

17 I will say there were certain who we believe
18 reasonably were not engaged in anything at all other
19 than a transaction which simply, on the basis of
20 declaratory judgment or constructive trust, should be
21 held accountable to not disburse money, say, back to Mr.
22 Jones or Mrs. Jones or whomever.

23 That's the essence of where I am at right now.

24 JUDGE ANNUNZIATA: Mr. Croft?

25 MR. CROFT: Your Honor, I represent, as I

1 indicated preliminarily, I represent two of the
2 defendants, Jettech and Edward Dahlberg. I must say,
3 though, hearing what Mr. Nedrich just said, I am really
4 very surprised.

5 On the one hand I am elated because I believe
6 he is saying that my clients, he is not seeking damages
7 against my clients on the conspiracy and the exemplary
8 damages counts, that is Counts 11 and 12.

9 I am a little bit shocked, though, because
10 throughout this proceeding, I mean, we filed a demurrer,
11 never heard anything. We filed a memorandum. My client
12 has had some considerable expense in this matter. And
13 this is the first time that I hear, and I would assume
14 the other defendants, counsel for the other defendants,
15 that we are not being joined in those counts, which are
16 very serious counts, and to which we all took issue, but
17 perhaps we will address that later on.

18 Insofar as my client is concerned, Jettech,
19 and it pleaded in this fashion, is an airplane broker,
20 and Mr. Dahlberg is an employee of that company. And
21 there is only one count now, that is Count 6, in view of
22 the statement of Mr. Nedrich that Counts 11 and 12 don't
23 apply to my clients, it is Count 6 that even addresses
24 them in this proceeding.

25 And in that count, and it is just two

1 paragraphs, it is very simple, plaintiff states that a
2 company, ABC, is about to purchase, let me read, well, I
3 have read it correctly, I quote, "ABC is about to
4 purchase or trade the Lear jet owned by the corporation
5 in exchange for another jet." And allegedly my client
6 is acting as a broker for that sale.

7 Now, I believe I heard Mr. Nedrich say earlier
8 that, to the best of his knowledge, that sale still has
9 not occurred. So what we are dealing with here is a
10 dispute, if I can characterize it as an employment
11 dispute, between Mr. Weber and the Jones and the Jones'
12 companies, Dulles Equities, whatever the names of all of
13 those companies might be. That is contained in Counts
14 1, 2 and 3.

15 And then you look at Counts 4 through 10, I
16 believe, for the most part 4 through 10, I think 10 is
17 the quantum meruit count against Riggs, but those counts
18 I will put under the heading conversion counts, and that
19 is where the rest of the defendants are brought in with
20 the claims that somehow property that was converted
21 relates to us, that we are involved with those
22 properties.

23 And then the last two counts are the
24 conspiracy, Count 11, and the exemplary damages, Count
25 12.

1 Your Honor, all that is alleged is that my
2 client acted as a broker in trying to consummate a sale
3 which has never occurred.

4 Now, the basis, as I understand it, for the
5 plaintiff's claim to this particular property or the
6 monies flowing from the sale of this property would be
7 if it were a fraudulent conveyance, but the essential
8 element of a fraudulent conveyance suit is that the
9 conveyance has to have occurred.

10 In other words, the property has to go from
11 the owner, in this case Jones or Dulles or whomever, to
12 some third party, and a creditor comes in and is trying
13 to say that conveyance is void, it is improper, it was
14 fraudulent, it was done with the intent to defraud
15 creditors.

16 Here it has never occurred. It still is owned
17 by the company.

18 JUDGE ANNUNZIATA: The pleading says it has
19 occurred.

20 MR. CROFT: No, Paragraph 42 says it has not.

21 JUDGE ANNUNZIATA: Just a second.

22 MR. CROFT: ABC is about to purchase or trade.

23 JUDGE ANNUNZIATA: I see. You are right.

24 MR. CROFT: And Mr. Nedrich said in his
25 opening statement, unless I misunderstood, that it still

1 hasn't occurred.

2 JUDGE ANNUNZIATA: I was looking at 43, which
3 seemed to suggest that it had occurred, but I missed
4 what the allegation was in 42.

5 MR. CROFT: And then if you look, if I
6 understood correctly, Counts 11 and 12 are not against
7 my client, but if you look at the way it is pleaded, it
8 alleged not only that the Jones took part in this
9 conspiracy but, and I quote, "and by others acting in
10 concert with them."

11 I think all of us indicated, all of the
12 defendants, that is, or counsel for the defendants that
13 there hasn't been any specific allegations lodged
14 against any of our clients. We don't know if we are any
15 of those others.

16 JUDGE ANNUNZIATA: I think that is taken out
17 of the case at this point.

18 MR. CROFT: So those are the points I wish to
19 raise.

20 MR. STEPHENSON: I think, since I represent
21 Dulles Equities, Inc. and Mr. and Mrs. Jones, that I
22 should make some comments about their position and some
23 response to comments made by counsel for the plaintiff.

24 Mr. Nedrich represented in his statement that
25 his client, Mr. Weber, was a successful businessman and

1 was wooed by Dulles Equities, Inc. to come in and enter
2 into an employment relationship. And I invite the
3 Court's attention to the employment contract that is
4 attached to the motion for judgment because I think that
5 this is the guts of the case, you know, what is that
6 employment contract?

7 Unfortunately, for Dulles Equities, Inc., Mr.
8 Weber never produced any revenue that benefitted the
9 corporation during his tenure under the three-year
10 employment contract that provided for the payment to him
11 of a salary of \$75,000 a year which, as I read the
12 allegations, he was paid in full, although there is some
13 reference that there was a time when he made demand for
14 the payment of his salary and there was, you know, some
15 representation that funds were not available, but, as I
16 read the allegations, he was paid in full.

17 His salary aggregated \$225,000 for a
18 three-year employment term. And that was his
19 agreed-upon salary for a contract that began January 1
20 of 1988 and terminated, by its terms, at the end of
21 December in 1990.

22 There is a claim in this motion for judgment
23 of some salary due for the months of January and
24 February which were certainly outside the term --

25 JUDGE ANNUNZIATA: Of '91?

1 MR. STEPHENSON: Of '91, and I don't know what
2 the basis for that is because the contract I submit was
3 authored by Mr. Weber and was written in a manner that I
4 would consider basically unconscionably in his favor and
5 had express terms, that is the subject matter of this
6 suit, clearly provided in the contract that no
7 modification could be made thereto except by a written
8 agreement between the parties.

9 We don't have any allegation in the motion for
10 judgment in these 29 pages that there was ever a
11 modification to the contract.

12 Moreover, the essence of the claim of Mr.
13 Weber is that he was due a bonus under a provision in
14 the contract for having, for the lease that he does not
15 allege, in spite of the representations in Mr. Nedrich's
16 statements about being the procuring cause, Mr. Weber,
17 as I read the pleading, does not allege that he was the
18 procuring cause of the GSA lease.

19 Let me add that the GSA lease that was entered
20 into between GSA and the partnership, Dulles Equities
21 Limited Partnership III as the lessor, was a lease that
22 provided for a two-year rent-free period which then
23 ultimately spelled the demise of the partnership and was
24 a reason that the bankruptcy ensued and the property was
25 taken over by Riggs Bank because there was never a

1 nickel of revenue that was generated from the GSA
2 lease.

3 My demurrer is addressed to the parties
4 involved because Mr. Weber, in authoring the employment
5 contract to his benefit, had written a provision in the
6 employment agreement that any lease entered into by the
7 company, which is Dulles Equities, Inc., during the
8 tenure of his employment, would result in a bonus in
9 addition to his salary.

10 This lease clearly was not entered into by the
11 company. Dulles Equities, Inc. was the general partner
12 in Dulles Equities Limited Partnership III, and clearly
13 executed the lease as the general partner.

14 He has no basis at all for this suit, and that
15 is the whole guts of it. And I think he is attempting
16 to bring in these ancillary parties and also to adopt
17 some standing, which he does not have, for trying to
18 determine the business carried on by not only Dulles
19 Equities, Inc., but other corporations in which Mr.
20 Jones, my individual client, has an interest.

21 And he is attempting to just go completely
22 overboard in trying to harass not only my clients but
23 all of the other parties. I expect, in the interest of
24 trying to induce some settlement, but I think the Court
25 needs to focus on the very document upon which the

1 plaintiff relies.

2 And under that document, strictly looking at
3 the document itself, he has no claim. And that's what
4 we invite the Court's attention to.

5 JUDGE ANNUNZIATA: Do I understand that your
6 argument would be that the conspiracy count would fall
7 if the contract claim were found to be --

8 MR. STEPHENSON: I think the contract claim
9 has to be there for any of the other counts to lie.

10 JUDGE ANNUNZIATA: Because if you were not due
11 the money --

12 MR. STEPHENSON: If he is not due the money,
13 what is the suit about?

14 JUDGE ANNUNZIATA: Does anyone else want to
15 add? I don't know if we are getting into legal
16 arguments or not at this point. I was trying to get a
17 sense of the facts. I think I have them all, although I
18 don't know exactly yet how all of the other defendants
19 or factually heard how the allegations are related, so
20 if you want to do that and go into legal argument,
21 that's fine.

22 MR. LABOWITZ: I am happy to take a shot at
23 this, Your Honor. Trafalgar House is a builder which is
24 building a house in Great Falls, which had built a house
25 in Great Falls under a contract signed by Les Jones.

1 Nowhere in the pleadings and nowhere in Mr.
2 Nedrich's argument today does it say that Trafalgar
3 House had any knowledge of John Weber or his contract or
4 his claim against Dulles Equities, Inc. It is just not
5 there. I believe it is not there because it is not
6 true.

7 JUDGE ANNUNZIATA: Do you claim it is
8 Trafalgar's conversion?

9 MR. LABOWITZ: That's correct, and that claim
10 is legally deficient because a conversion requires an
11 immediate possessory interest in an identifiable piece
12 of property, item of property.

13 Apparently Mr. Weber thinks that because he
14 earned a commission in 1989 from an entity called Dulles
15 Equities, Inc., therefore he can trace to some kind of
16 fund that goes in some relationship to a house in Great
17 Falls, that was not the subject of a contract between
18 Trafalgar and Les Jones until July of 1990, and Mr.
19 Weber has no contact with that house. I am not sure he
20 knows where that house is.

21 He was not a party to that deal. He is not
22 alleging that he had anything to do with it. He is
23 simply saying that because he thinks he was owed some
24 money in 1989, therefore, when Mr. Jones in his
25 individual capacity enters into a deal to buy that

1 house, and he still hasn't gone to settlement, when he
2 enters into a contract to buy that house in 1990,
3 somehow there is an identifiable immediate possessory
4 interest that Mr. Weber has in what is going on with
5 that house.

6 And there is an amazing leap that is required
7 to get to that line of reasoning. You just can't do
8 it. He is talking about, we are piercing one corporate
9 veil in the name of Dulles Equities. We are going to, I
10 think, prejudgment attachment against a house which is
11 not the subject of any contract between either Mr. Weber
12 or Dulles Equities.

13 How do we get to the house? The house, which.
14 is still owned by Trafalgar, we would be happy to sell
15 it to whoever wanted to buy it, frankly, but somehow
16 through ledger domain, that I can't begin to tell the
17 Court how it is accomplished, we are doing a creditor's
18 bill through Mr. Weber to Dulles Equities to its
19 principal, Mr. Jones, and then to Trafalgar House.

20 We don't have anything to do with Mr. Weber.
21 We never heard of Mr. Weber. We don't want to have
22 anything to do with Mr. Weber. We want to sell a
23 house.

24 On top of it all, what Mr. Jones owns is an
25 obligation to buy the house. He doesn't own a piece of

1 property in the sense that there is something out there
2 that is identifiable and that could be seized if Mr.
3 Weber wanted to put up the requisite prejudgment
4 attachment bond to bond off Trafalgar House's losses if
5 we cannot sell this house to anyone as a consequence of
6 this lawsuit.

7 And I have heard Mr. Nedrich say today, I
8 can't understand what he is talking about when he starts
9 talking about the doctrine of lis pendens. That's not
10 what lis pendens is. Either he has a lis pendens claim,
11 in which case he has a claim for the title to that
12 property, or he doesn't have a lis pendens claim.

13 There is not a concept that is sort of the
14 theory of lis pendens concept that you can somehow then
15 say, Trafalgar House, you have to freeze everything in
16 this deal because Mr. Weber has got a lis pendens.
17 There is no such animal. Either he has a claim to the
18 title or he doesn't have a claim to the title.

19 He doesn't have a claim to the title. He is
20 not on that contract. He doesn't allege that he is on
21 the contract to buy the house from Trafalgar. What he
22 says is Trafalgar had a fiduciary duty to a fourth
23 party, that because we might be getting money from an
24 entity other than the contract purchaser, we, therefore,
25 have a duty not to sell that property?

1 It doesn't make any sense. You can't get
2 there. Every day in Fairfax County people sell houses
3 and get checks from Sovran Mortgage Corporation. We are
4 supposed to say, oh, Sovran Mortgage Corporation is not
5 the name of the purchaser; we are supposed to do
6 something about that? It doesn't fly. You can't get
7 there.

8 You can't get legally from Weber's claim
9 against Dulles Equities to Les Jones buying a house from
10 Trafalgar to we owe a lot of money to John Weber? It
11 doesn't hold together.

12 It is offensive in the sense that my client is
13 paying me to stand here and say this to you. It doesn't
14 meet any legal requirement for conversion because Jack
15 Weber doesn't own anything that is involved in the
16 Trafalgar deal.

17 What he has is apparently an inchoate claim,
18 and I confess, until Mr. Stephenson said it, I hadn't
19 really grasped the fact that his claim may have expired
20 on the first of 1991 when the contract expired. He has
21 an inchoate claim against a corporation which may or may
22 not be, the claim may or may not be supportable, and
23 that somehow gives him a claim to trace the money that
24 will ultimately be paid to Trafalgar when we go to
25 settlement on a house we haven't sold yet. It is under

1 contract, but we haven't sold it yet.

2 That is not there. There is not a logical
3 theory of law that will get you to having Trafalgar
4 House be a defendant in this case. And that's why we
5 have demurred and that's why we think, if we are not now
6 a party to this conspiracy nonsense, where somehow
7 because we dealt with Les Jones we are conspiring
8 against a person we have no knowledge of?

9 I mean, it means that VEPCO, C&P Telephone,
10 all of whom probably deal with Les Jones, probably
11 provide him electric power and telephone services, they
12 are somehow coconspirators because in taking money from
13 Les Jones we are depriving money to Jack Weber because
14 he is owed money somewhere down the line by an entity?
15 It doesn't get there, and it is offensive.

16 JUDGE ANNUNZIATA: I take it that Trafalgar's
17 knowledge of the wrongdoing or the potential wrongdoing
18 is fairly key here?

19 MR. LABOWITZ: Trafalgar's knowledge is not
20 alleged.

21 JUDGE ANNUNZIATA: That's what I mean. That's
22 an element that would have to be in the case?

23 MR. LABOWITZ: Yes, ma'am.

24 JUDGE ANNUNZIATA: If it were in the case, I
25 take it the results would be different?

1 MR. LABOWITZ: The conversion count, you can't
2 get there. We don't have anything that belonged to Jack
3 Weber, in any way, shape or form, arguably. If we are
4 in the conspiracy case at all, it must be because we had
5 some knowledge that Jack Weber was owed a quarter
6 million dollars by Dulles Equities, and when we took the
7 money from Les Jones --

8 JUDGE ANNUNZIATA: You are not in a conspiracy
9 case.

10 MR. LABOWITZ: Thank the Lord, yes, ma'am.

11 JUDGE ANNUNZIATA: The issue of your knowledge
12 then becomes irrelevant on the conversion count.

13 MR. LABOWITZ: Yes, ma'am. There has to be a
14 factual basis, a legal basis for saying that Mr. Weber
15 had an immediate possessory interest in something we
16 took from Mr. Jones, and that's not a fact.

17 That's not a fact that is alleged. It is not
18 a fact in reality, although that's not the issue at this
19 point.

20 JUDGE ANNUNZIATA: Is the absence of an
21 immediate possessory interest in part due to the fact
22 that there is no adjudication of the underlying claim?

23 MR. LABOWITZ: He doesn't identify anything he
24 would have. I don't believe just because he is a
25 creditor of Dulles Equities, and Mr. Jones may have been

1 paid money by Dulles Equities somewhere along the line,
2 and that he then paid us out of Dulles Equities' funds,
3 if I follow the reasoning, that somehow we then owe an
4 obligation to Mr. Weber because those are funds that
5 might have gone to him.

6 Money doesn't qualify as an identifiable race
7 or property that can be -- I suppose you could come up
8 with a set of facts, you know, this \$10,000 is yours,
9 Jack, but I will give it away to Trafalgar House, but
10 that's not what happened here. That's not what is
11 alleged here.

12 There is a lot of money that probably went in
13 and out of Dulles Equities over the course of time. Mr.
14 Weber says he got \$75,000 a year for three years. So
15 some of the money that went to him to pay his salary, I
16 guess he could also say was some of the money that
17 should have gone to him before that, before he became
18 due his salary as part of the commission, but, again,
19 money went a lot of places I am sure, the Fairfax County
20 Water Authority, you know, the IRS, they are not parties
21 here.

22 JUDGE ANNUNZIATA: You use the term immediate
23 possessory interest as not being contingent, period?

24 MR. LABOWITZ: I think it is something in
25 which I have an ownership interest and it is

1 • identifiable.

2 JUDGE ANNUNZIATA: It is not contingent on
3 anything else happening?

4 MR. LABOWITZ: That's what the cases as well
5 say, otherwise we are simply eliminating the concept of
6 prejudgment attachment. If I have a claim that is not
7 yet reduced to judgment and all I need to say is, well,
8 you have converted my money, although I don't have a
9 right to that money just yet, that is prejudgment
10 attachment, and there are lots of issues about bonds,
11 you have to have a showing.

12 There are a lot of due process issues in a
13 prejudgment attachment, none of which is shown here.

14 JUDGE ANNUNZIATA: Of course you say you
15 weren't aware of this, but if this were treated in the
16 context of declaratory judgment, does that change
17 anything?

18 MR. LABOWITZ: I don't think so. I don't
19 think he can eliminate the concept of prejudgment
20 attachment by simply calling it something else and
21 invoking declaratory judgment relief.

22 My client is looking at the problem, what do
23 they do with this now, besides that they are paying me a
24 lot of money to stand here and write all this out for
25 you, what do they do with this house that is subject to

1 some claim, they can't quite figure out what it is, for
2 somebody they never heard of before they were served
3 with the paperwork, and they think they have an
4 obligation to sell that house to Les Jones when he shows
5 up for settlement and demands settlement.

6 What do we do in that situation? We are now
7 being put in an intolerable situation for which, if this
8 was a prejudgment attachment situation, we would have a
9 bond to protect us from losses. Instead all we have got
10 is the right to come out here and litigate.

11 Thank you.

12 MR. NEDRICH: Your Honor, can I briefly
13 comment on that? The day he tells me they are going to
14 closing we will give him appropriate documents that will
15 save his clients a lot of nightmares. We have already
16 done that with regard to the Manheimer property and the
17 ERA Five Star.

18 I want to say we are not trying to stop the
19 sale of this house to Mr. and Mrs. Jones. I don't want
20 that to be an issue, that we are freezing him out.

21 JUDGE ANNUNZIATA: All right.

22 MR. MURPHY: Greg Murphy for First Source,
23 Your Honor. First Source Bank lent money to Dulles
24 Equities and took a lien back on a Lear jet which Dulles
25 Equities still owns. There was a prior jet that was

1 owned with a larger lien. It was sold and part of the
2 lien paid back, a new loan taken out on the smaller jet
3 to reduce some of the indebtedness of Dulles Equities.

4 Let me first state, I don't know if the Court
5 will have to spend as much time as we originally thought
6 reading the briefs of either ERA Realty or Riggs or
7 ours, although we welcome you to do it. I think at some
8 point in time you may have to.

9 I say that because of the concessions made by
10 Mr. Nedrich today as to Counts 11 and 12 which were the
11 focus of our briefs. My first thought was it took a lot
12 of wind out of the sails here. However, it really
13 hasn't taken the wind. What has happened is Mr. Nedrich
14 has simply taken the sails down because I think it would
15 have blown him into the shoals of sanctions here.

16 I am astounded to find that he would say to
17 this Court that those counts were not intended to be
18 applied yet against First Source or some of the other
19 defendants when, in fact, as has been told to you, we
20 have briefed it, others have briefed it, we have never
21 heard a response, never received a phone call, never
22 have been told that we don't have to worry about those
23 counts because those are the ones, when you read his
24 entire pleading, are the only ones that really seem to
25 suggest that there is some liability on behalf of First

1 Source and some of the other defendants.

2 This could have been short-circuited two
3 months ago with that statement, and instead we have gone
4 to great expense for our clients in that regard.

5 We apparently don't have to address 11 and 12
6 at this point. First Source is only mentioned in the
7 conversion and constructive trust counts, at Count 4 and
8 Count 6.

9 Again, I am uncertain as to what I am supposed
10 to be responding to. When I read those counts it
11 doesn't state that First Source did anything wrong. It
12 just simply says in Count 4, which is directed against
13 Armed Forces Electronics, the allegation in other counts
14 being that Dulles Equities took money and funded this
15 other corporation, and, therefore, Mr. Weber apparently
16 wanting to make sure that monies come back from Armed
17 Forces back to Dulles Equities to pay him whatever he
18 may be owed, but what Mr. Nedrich does is pleads in the
19 end that says that all funds and other assets of Armed
20 Forces, that this Court declare that those funds and
21 assets of Armed Forces held by Armed Forces or held by
22 First Source be held in trust for benefiting some
23 judgment if he gets a judgment.

24 JUDGE ANNUNZIATA: What is the relationship
25 between First Source and Armed Forces?

1 MR. MURPHY: None.

2 JUDGE ANNUNZIATA: What money are you talking
3 about that you hold?

4 MR. MURPHY: That's just it. I don't know why
5 we are even mentioned. We hold no money of Armed
6 Forces. We are owed a debt.

7 JUDGE ANNUNZIATA: It is not alleged?

8 MR. MURPHY: It is not alleged at all that we
9 hold any money of Armed Forces. The only thing alleged
10 is that we have a lien, and it doesn't say that we have
11 an improper lien, on a Lear jet owned by Dulles
12 Equities.

13 JUDGE ANNUNZIATA: Is there any relationship
14 between the jet and Armed Forces Electronics?

15 MR. MURPHY: Armed Forces Electronics is a
16 guarantor of that lien, the lien that is on the Lear
17 jet.

18 JUDGE ANNUNZIATA: They are the guarantor on
19 the lien?

20 MR. MURPHY: Yes. That is not even alleged,
21 Your Honor. That is not alleged.

22 JUDGE ANNUNZIATA: You hold the lien?

23 MR. MURPHY: We hold the lien on the Lear jet
24 that is owned by Dulles Equities. We are owed \$1.4
25 million. We don't own anything or hold anything of

1 either Dulles Equities at this point or of Armed Forces
2 except for the lien on the Lear jet owned by Dulles
3 Equities.

4 Count 6 is a constructive fraud conversion
5 count against the Lear jet itself. And, again, all it
6 alleges is that we have the lien. It alleges a lot of
7 facts that simply have no basis for the statement and,
8 that is, that the Lear jet is about to be purchased or
9 traded for another Lear jet to be put into another
10 company's name.

11 First off, that has nothing to do with First
12 Source. If Dulles Equities is going to sell the Lear
13 jet, our lien will have to be paid off, and what they do
14 is between Dulles Equities, what they do if there is any
15 money beyond that lien, they can have whatever trust
16 they want on those funds, but we have nothing to do with
17 the sale or know anything about a sale or a refinance or
18 a trade or anything. We are simply holding our lien.

19 JUDGE ANNUNZIATA: Is the plaintiff saying
20 they want to be paid first out of that money that you
21 would collect on the lien? He wants to be paid first?

22 MR. MURPHY: Their prayer for relief in Count
23 6 is that the Court declare that the Lear jet or the
24 proceeds from the sale are held in trust for the benefit
25 of satisfying any judgment.

1 When they don't allege that our lien is
2 improper, I don't know how they can ask this Court to
3 impose some kind of trust against monies that would come
4 to First Source for what it is owed. Any monies beyond
5 that from the sale of the Lear jet certainly aren't
6 coming to First Source.

7 So I don't know why First Source is put to the
8 burden in this lawsuit.

9 JUDGE ANNUNZIATA: If your lien were improper,
10 would there be a claim?

11 MR. MURPHY: I guess if the allegation is that
12 the lien is improper, we may not have a lien, but that's
13 not the allegation. The only money coming to First
14 Source will be what it is owed under the lien.

15 JUDGE ANNUNZIATA: Okay. I think I understand
16 what your position is.

17 MR. MURPHY: We didn't address this in our
18 brief, is this general declaratory relief that is being
19 asked, but we addressed all Counts 11 and 12 because
20 that's where we thought we were being asked something
21 and apparently we weren't.

22 MR. FROMME: Thomas Fromme for Armed Forces
23 and Dulles Equities of Virginia. Judge, these are two
24 corporations that are owned by Mr. Jones, and, again, I
25 would have to really pretty much follow the arguments.

1 JUDGE ANNUNZIATA: I think I understand that
2 point.

3 MR. NEDRICH: I think we are all done. I can
4 be brief on these points. I am not sure how much
5 further we need to go today.

6 JUDGE ANNUNZIATA: Tell me what your basis is
7 for quantum meruit. Let's go backwards.

8 MR. NEDRICH: I have not found the case one
9 way or the other. I am not saying there is a case that
10 deals with this issue of what if somebody comes along
11 later and knows what happens and takes the benefit? I
12 do have a case, MBA versus VNU Amvest, a bankruptcy
13 decision out of Judge Bostetter's court, 51 Bankruptcy
14 956, and I somewhat relied upon this case because it
15 says the three elements of quantum meruit are that the
16 defendant gets a benefit from the activities of the
17 plaintiff, that's the first benefit; number 2, that the
18 defendant appreciated or knew of the benefit which the
19 plaintiff conferred, and; number 3, that the defendant
20 agreed to accept and did, in fact, accept and retain the
21 benefit.

22 Now, what we have here is that even that Riggs
23 came along a bit later than Mr. Weber did his thing,
24 Weber told them I am owed money because they had this
25 huge lawsuit. So Riggs knew that Weber had been, at

1 least in Weber's opinion --

2 JUDGE ANNUNZIATA: Isn't the benefit that is
3 referenced there the services, an appreciation for the
4 services to be provided at or before the time the
5 services are provided, isn't that the nature --

6 MR. NEDRICH: I don't think it is.

7 JUDGE ANNUNZIATA: I think quantum meruit
8 affords, although it is not based on contract, it
9 partakes of contractual principles. It would be like
10 saying I found out that, it would be like saying that
11 you have an executed contract, a third party comes in
12 and says I know you executed it, I know you did what you
13 are supposed to do, and I know you are making a claim.

14 MR. NEDRICH: And you haven't been paid. And
15 there is this benefit here, and we will take this
16 benefit, but we don't think we owe you the money.
17 That's where it is at.

18 Riggs decided to take not just the building;
19 it took the lease. The lease was procured by Mr.
20 Weber. Mr. Weber told them that's my lease. I am due
21 money.

22 Your Honor may have a first impression
23 question, I don't know, because I can't find a case
24 exactly on point.

25 JUDGE ANNUNZIATA: There may not be a case

1 exactly on point, but I think that, and actually quantum
2 meruit is terribly well developed in the case law and
3 the principles are stated, the facts that you see in the
4 case law are not terribly varied, but it seems to me
5 that it is tied in timewise to a time, at the time or
6 before the services are provided, however.

7 MR. NEDRICH: I can't find any case law that
8 seems to say that specifically.

9 JUDGE ANNUNZIATA: I think that's the
10 implication.

11 MR. NEDRICH: Your Honor will decide what she
12 believes the law is. We believe that under the MBA case
13 and under what I call a common sense approach --

14 JUDGE ANNUNZIATA: What were the facts in
15 MBA?

16 MR. NEDRICH: Essentially, I don't have all of
17 the facts before me. I wrote my notes down here.

18 JUDGE ANNUNZIATA: I will take a look at it.

19 MR. NEDRICH: I apologize to the Court. I
20 don't have those. I do know it had to do with placement
21 of employees. I recall that. It had to do with the
22 fact that the employees wound up with the defendant and
23 there was this argument about, well, we never really had
24 a deal.

25 The thing that was key to me was, when the

1 Court addressed the issues, Judge Bostetter said these
2 are the key issues, this benefit received, knowledge
3 that it was there, and saying I am going to take the
4 benefit. And I think that is quantum meruit because it
5 is kind of a flexible principle that the courts have
6 espoused over the years.

7 It is almost sort of like a good conscience
8 type principle.

9 JUDGE ANNUNZIATA: It has to do a lot with
10 what equities are in the case and whether, in the
11 interest of justice, someone ought to be recompensed,
12 usually for services.

13 MR. NEDRICH: Exactly, when the benefit went
14 into the hands of this new third party now, although
15 they had been around for a while before as the lien
16 holder.

17 JUDGE ANNUNZIATA: When you have a contract
18 that specifically provides that the payment will be made
19 by another party, how do you get to quantum meruit?

20 MR. NEDRICH: I am relying on these
21 principles, Your Honor. I can only say that I think if
22 Judge Bostetter is to be believed, that these are the
23 essential points.

24 JUDGE ANNUNZIATA: Doesn't that limit the
25 relief? Doesn't that say to the third party X is

COPY

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V I R G I N I A

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

- - - - - X

JOHN F. WEBER, :

Plaintiff, :

-vs- : AT LAW NO. 104935

LES G. JONES, et al, :

Defendants. :

- - - - - X

Fairfax, Virginia

Thursday, January 30, 1992

The above-entitled matter came on for hearing
before the Honorable Judge Rosemarie Annunziata, Judge,
in and for the Circuit Court of Fairfax County, Virginia,
beginning at 10:00 o'clock, a.m., when there were present
on behalf of the respective parties:

For the Plaintiff:

THOMAS R. NEDRICH, ESQUIRE
200 North Little Falls Street
Suite 203
Falls Church, Virginia 22046

For the Defendants Les G. Jones, Deanna Jones, and
Dulles Equities, Inc.:

B. G. STEPHENSON, ATTORNEY-AT-LAW
4157 Chain Bridge Road
Fairfax, Virginia 22030

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1 MR. LABOWITZ: Thank you, Your Honor. If it
2 please the Court, my colleagues have appointed me to be
3 the one to do the opening on behalf of all of us. Not to
4 belabor why we are here. We are here basically because
5 this is a suit that should not have been filed.

6 As I suspect the Court is going to hear from
7 the defense lawyers, each of us -- I think each of us, in
8 turn, when we became aware of this lawsuit, tried to make
9 clear to Mr. Nedrich and Mr. Weber that this was a case
10 that should not be pursued along the lines that
11 apparently it was being pursued on -- that there was not
12 a conspiracy, that there was not any reason that these
13 people -- that these other entities, excepting Mr.
14 Stephenson's client, Mr. Jones, and Dulles Equities. If
15 there was an employment contract that had been breached,
16 fine; have a litigation about whether or not there was an
17 employment contract that had been breached. But with
18 regard to virtually all of the other defendants, there
19 was no basis in law or in fact for what it is that was
20 being alleged in the Complaint against us. We attempted
21 to make that clear to Mr. Nedrich, each of us in turn,
22 and acting independently, because we didn't know each of
23 the lawyers who were involved until the papers started

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1 getting filed. Each of us, in turn, attempted to make
2 that clear to Mr. Nedrich, and offered him opportunities
3 to sit down with us, take his best shot, if you will, and
4 we would attempt to explain to him why he was misguided.
5 He chose not to do that, as I understand it. He
6 certainly chose not to do that with regard to my client
7 and my law firm.

8 We went to a hearing on demurrers. Each of us
9 briefed demurrers, submitted them to Court, came into
10 court on July the 31st to find out what it was that this
11 was about in terms of Mr. Nedrich's client and his
12 argument.

13 We learned for the first time that Mr. Nedrich
14 considered this not to be a conspiracy case against
15 anyone except Dulles Equities and Mr. Jones, although the
16 pleadings don't say that.

17 The pleadings say the defendants conspired,
18 and, in fact, there are specific allegations, certainly
19 with regard to Trafalgar House, that relate to a
20 conspiracy allegation.

21 We also learned for the first time on July the
22 31st that Mr. Nedrich considered this to be a declaratory
23 judgment action. Again, a novel proposition that we

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1 would have -- which would have been interesting to know
2 about some time in advance of the hearing.

3 The Court asked Mr. Nedrich to supplement his
4 argument, certainly his written argument, with the
5 addition of citations and precedent that could support
6 the allegations he was making; even the revised
7 allegations he was making in the oral presentations on
8 July the 31st.

9 And, as to some of the defendants, Mr. Nedrich
10 chose, instead, to submit non-suit orders. With regard
11 to other defendants, he did not submit any substance of
12 legal argument with citations and authorities and
13 precedents, and the Court advised us that she granted --
14 that you had granted the demurrers, with the exception of
15 Mr. Stephenson's clients.

16 As I understand it further from Mr. Stephenson,
17 there was another argument as to the demurrer to the
18 underlying contract; what it was, at bare minimum, that
19 Mr. Nedrich needed to show to sustain any Complaint. He
20 had to have some basis -- some platform from which to
21 work, and apparently he couldn't do that.

22 Apparently, as I understand it from Mr.
23 Stephenson, the Court sustained the demurrer as to the

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1 underlying contract which would have, if there was any
2 theory at all here, it would have given rise to the
3 action which sort of mutated into an eight-headed monster
4 against the various defendants who are here today seeking
5 sanctions.

6 The Court is going to hear, I think, from each
7 of the lawyers involved in the case, that each of us and
8 our law firms spent considerable amounts of time. Not
9 unlimited amounts of time. I think that the claims are
10 actually fairly modest for what it is that was going on
11 here.

12 Each of us had to advise our clients, and had
13 to prepare pleadings, and come to hearings to attempt to
14 get rid of this case as it deserved to be gotten rid of.

15 This is a case that should never have been
16 brought, and under the theory of 8.01-271.1, the cost of
17 having brought it should be borne by those who are
18 responsible, Mr. Nedrich and Mr. Weber.

19 I am a little bit uncertain as to how the Court
20 wishes to proceed. I am not particularly looking forward
21 to calling each of my colleagues as witnesses, or we can
22 just stand up, or however the Court wants to do that.

23 THE COURT: I will hear from Mr. Nedrich first.

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1 MR. LABOWITZ: That would be fine.

2 THE COURT: Then, each of you, in turn, can
3 come up and present whatever additional evidence you
4 think I should consider.

5 MR. LABOWITZ: That would be fine. Thank you,
6 Your Honor.

7 MR. NEDRICH: Your Honor, I propose to put Mr.
8 Weber on the stand. To the extent that the counsel wish
9 to testify as to communications between me and them,
10 then, obviously, I would want to cross-examine and
11 reserve the right to put any rebuttal evidence on
12 relative to my own testimony.

13 Your Honor, under 8.01-271, I will just make a
14 few preliminary proffers. We feel today there was a
15 massive conspiracy. When I say "massive conspiracy,"
16 there was a conspiracy by Mr. Les Jones, and we are going
17 to show documentation now which we haven't presented to
18 the Court before, through Mr. Weber's testimony, to show
19 he was effectively funneling an incredible amount of
20 money out of Dulles Equities, Inc. and other properties
21 out of Dulles Equities, Inc.

22 At the same time, he had orally acknowledged
23 his indebtedness and Dulles Equities, Inc.'s indebtedness

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1 to him for a \$230,000 commission for having leased 75
2 percent of the building called the Atrium, which Mr.
3 Jones had developed under a loan from Riggs National
4 Bank.

5 Now, we looked very diligently, and I am going
6 to make a representation to the Court. I have examined,
7 prior to the filing of this lawsuit -- Mr. Weber and I
8 spent a substantial amount of time over a three-month
9 period examining what amounts to records this thick.
10 These are all the records Mr. Weber maintained during the
11 course of his employment with Mr. Jones and Dulles
12 Equities, Inc.

13 We came up with what we believe were good faith
14 theories in law, based upon the facts as we understood
15 them. I will confess that I may not have given Your
16 Honor enough of my legal theory, but I assure you my
17 legal theories were established by the time I filed this
18 suit, because there were at least five other parties that
19 we rejected the notion of even suing in this case,
20 although we felt that we had good causes of action.

21 Now, let me proffer a few things, just with
22 regard to two of the defendants who are represented here
23 today. I am not disparaging their counsel, so don't

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1 think that I am saying that they did anything wrong. But
2 we will have evidence to show that representations made
3 to this Court by Trafalgar -- in fact, they have already
4 acknowledged it -- are materially different from what,
5 not Mr. Labowitz, but what Mr. Goldman told me and urged
6 upon me before he filed his demurrer. Which is to say
7 Trafalgar emphatically denied it was taking dollars and
8 checks from Dulles Equities, Inc. to pay for Mr. Jones'
9 house. That's the deposit and the lease in what I would
10 call a conditional sales contract. They have since
11 acknowledged that in a letter written by Mr. Labowitz
12 three months ago. It is interesting Mr. Goldman doesn't
13 appear after making all the complaints, and Mr. Labowitz
14 does, but for whatever reasons, they have decided to
15 switch. Mr. Labowitz said, "Oh, we made a mistake when
16 we said we didn't take any money. In fact, we were
17 taking money out of Dulles Equities, Inc." That is the
18 first thing. But then Mr. Labowitz said, "It shouldn't
19 really affect this case." Well, we think it does. And
20 one of the problems you have here is we were only at the
21 demurrer stage in this case.

22 Now, with regard to Riggs National Bank,
23 counsel for Riggs Bank came to this court and says, "What

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1 are you talking about; the Atrium building? We don't own
2 that building." We will present evidence today to show
3 Riggs owns that building, by way of photography and by
4 way of statements attributed to them in the Washington
5 Post.

6 And we can get more evidence, but I just wanted
7 enough to say, in those two specific instances, these two
8 parties came to the Court based upon what their clients
9 did tell them or didn't tell them or misleadingly told
10 them, and they told this Court things that supported
11 their position, but weren't true and were inconsistent
12 with what we knew.

13 Now, with regard to Jettech and Mr. Dahlberg, I
14 had discussions with Mr. Croft, and he said, "Well, why
15 don't you draw up a lawsuit? You know, if you find
16 something more later, maybe you can bring them in."

17 The fact of the matter is, and Mr. Weber will
18 testify, that Dahlberg told Weber well before this suit
19 was filed, in the fall of '90, that Dahlberg and Jettech
20 were working with Jones to take the Lear Jet out of
21 Dulles Equities, Inc. by way of a trade and to put it
22 into a new company that Les Jones was forming so that the
23 equity could be shifted over to this new company.

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1 Now, that is going to be consistent with the
2 patterns of all of these other transactions that Les
3 Jones was pulling off at this time. We are not talking
4 about every transaction we know about. As I said, we
5 have got probably about an inch worth of exhibits here,
6 about 18 exhibits. So, that is just really skimming the
7 surface.

8 With regard to First Source Bank, which -- By
9 the way, we non-suited as to Dahlberg and we non-suited
10 as to Jettech prior to the time the Court entered any
11 rulings on this, after the time they filed their
12 objections. I am not sure that I am obligated to say
13 why, other than the fact I don't think our case was
14 weakened in any way, one way or the other, based on our
15 original theories.

16 But, quite candidly, I will say the case was
17 getting more complicated, we felt, than was necessary
18 under the circumstances, and it was possible it would be
19 better to just let some parties walk and concentrate on
20 other parties, essentially local parties, where there was
21 some substantial likelihood that we were going to get
22 some recovery. And we felt, with regard to Jettech and
23 Dahlberg, what we had believed was going to happen

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1 apparently didn't happen, which was that the Lear was
2 going to disappear.

3 Now, with regard to First Source Bank, we had
4 somewhat the same situation. Mr. Weber will testify
5 that, in 1989 -- and he will have documentation to
6 support this -- First Source Bank made a deal with Dulles
7 Equities whereby Dulles Equities refinanced the same Lear
8 Jet we are talking about for three million dollars.

9 On Mr. Jones' express instructions, First
10 Source Bank moved \$300,000 of that Dulles Equities money
11 into another company that Mr. Jones owns and controls,
12 called Armed Forces Electronics.

13 In turn, Armed Forces Electronics used the
14 \$300,000 to buy electronic equipment, essentially
15 stereos, radios, things like this, which Mr. Jones then
16 used Armed Forces Electronics for, for the purpose of
17 generating about \$30,000 a month in income.

18 Mr. Weber got involved because Mr. Jones said,
19 "I need to factor this thing." And when he got involved,
20 he found out that this money that used to belong to
21 Dulles Equities, the profits that should have come out
22 and gone into Dulles Equities, were all going into First
23 Source Bank in the Armed Forces Services (sic) account.

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1 We believe that possibly those monies were in
2 part used to pay down the loan, but we don't know that.
3 We didn't have access to that documentation. Now, when
4 we filed the suit against First Source Bank, we asked for
5 the imposition of a constructive trust.

6 Again, I will apologize if my language was not
7 artful, but if they carefully read the pleadings, they
8 would have seen that exactly what I said was: Number
9 one, First Source Bank, we believe, is holding money that
10 belongs to Dulles Equities and Les Jones' other related
11 companies that should be held in constructive trust.

12 Now, with regard to Mr. Labowitz's comments, we
13 said that we believed that Trafalgar House knowingly
14 accepted money from Dulles Equities as the deposits and
15 the installment payments for the purchase of a house to
16 be titled in Les Jones' name. We will have those
17 contracts here today, Your Honor.

18 Now, that didn't say we said they were trying
19 to cheat Weber or cheat anybody else. If Your Honor
20 looks at our punitive damages count, which these
21 gentlemen got excited with, what I stated -- and I was
22 very careful with my language -- I said, "I want punitive
23 damages against Dulles Equities. I want punitive damages

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1 against Les Jones and Dorothy Jones, his wife, because we
2 knew they willingly were moving assets while they were
3 lying to my client." And then I said, to the extent --
4 and I forgot the exact way I said this -- and any other
5 defendants the Court finds to have willfully engaged in
6 an act of conspiracy. Now, unfortunately, what these men
7 are trying to do is take communications I had with some
8 of them, and not all of them.

9 For example, I talked with Mr. Goldman; I
10 talked with Mr. Stephenson. I don't believe I ever
11 talked with Mr. Murphy prior to the time the demurrers
12 were filed, but I don't recall that. And I know I talked
13 with Mr. Croft. Well, he can testify differently. I
14 don't have a note on it, and I don't have a recollection
15 of it.

16 The issue now becomes another problem in that
17 we were here on the level of demurrer. We were not here
18 on the level of evidentiary hearing. Already, with just
19 a little bit of time and a little bit of looking around,
20 we found two representations made by two of the
21 defendants who are still before the court, from our point
22 of view. In other words, we haven't decided to non-suit
23 them, which is Trafalgar and Riggs Bank. Two of them --

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1 One of them has already said, "Well, we made a mistake in
2 the facts we told the court." And the other one has
3 still pretty much held the position that they don't own
4 the property, although the Washington Post, per Mr.
5 Albritton, says they do, and although they've got signs
6 up in front of the building that says they do. By the
7 way, they sold the building for a profit.

8 Our claim against Riggs is a bit different from
9 everybody else's. If Your Honor recalls, it is quantum
10 meruit. What we have evidence to show is that Mr. Jones,
11 Dulles Equities, got into a substantial fight in the fall
12 of 1989 because of defaults on his construction loans for
13 these buildings. Mr. Jones filed a bankruptcy Chapter 11
14 for the limited partnership.

15 Again, Dulles Equities was the general partner.
16 In fact, I don't even know how they had a legal limited
17 partnership. One of my theories here is, I can't
18 understand how a man can be a limited partner and the
19 President and Chief Operating Officer of the general
20 partner, making all the effective decisions.

21 That's why I said that it was kind of a
22 fictitious thing, and I didn't want to go to bankruptcy
23 court to upset it, but we thought, in this particular

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1 interest, the whole thing was just a different kind of a
2 device to try to get money into Les Jones' hands.

3 MR. STEPHENSON: Your Honor, I don't know that
4 it is appropriate not to interpose any objection to the
5 comments that Mr. Nedrich continues to make, and the
6 misstatements. For instance, he just asserted that Mr.
7 Jones filed a bankruptcy petition, when he did not.
8 There was a partnership that did file one, so there are a
9 lot of distortions and misstatements that are coming into
10 the record, so I just want to make it known that we don't
11 accept that.

12 THE COURT: Well, this is only an opening
13 statement, and unless it is supported by the evidence, it
14 is going to be totally disregarded.

15 MR. NEDRICH: Your Honor, please. In December
16 of '89 and January of '90, Mr. Jones had communication
17 with Riggs Bank; the senior vice president being
18 Langhammer who apparently was the man in charge of this
19 loan problem. In January of '90, Mr. Weber was deposed
20 by Riggs' counsel.

21 In both instances, Weber said, "Hey, Mr. --"
22 and it was Dulles Equities Limited Partnership III, and
23 the other limited partnerships had filed bankruptcy. I

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1 thought I had made that statement correctly the first
2 time. Definitely, Mr. Jones had not individually filed,
3 and I never meant to suggest that.

4 When he was deposed and also when he had
5 discussions with Mr. Jones and Mr. Jones' counsel, some
6 of whom are here today, he said, "Why haven't I been
7 listed as a creditor?" Riggs Bank said, "Go talk to a
8 lawyer." Weber said, "I am owed over \$200,000; I'm the
9 one who made the Atrium Building successful enough that
10 you can actually make a profit off of it."

11 We believe that we can reasonably show at any
12 evidentiary hearing that the value of that property,
13 based upon Mr. Weber's efforts, is in excess of five
14 million dollars over what it otherwise would have been.

15 Riggs, after that deposition was taken and
16 after those statements were made to Mr. Langhammer,
17 decided to settle with Mr. Jones, who was, by the way,
18 being personally sued as well as the limited partnership,
19 where, essentially, the parties agreed to walk if Mr.
20 Jones gave Riggs Bank the building back.

21 So, Mr. Weber created an asset which Mr. Jones,
22 DEI didn't pay for it or the limited partnership didn't
23 pay for it, Riggs got and they refused to acknowledge and

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1 say, "We're acting in bad faith to even sue them for the
2 five mil."

3 And we have a case that was decided by Judge --
4 I think it was Judge Bostetter in the bankruptcy court.
5 It says we have the elements for a quantum meruit claim
6 against Riggs Bank. And, again, we never said Riggs was
7 conspiring.

8 Now, we think something else happened there,
9 but we don't want to get into it at this point. But all
10 that I said with regard to Riggs -- and I think that was
11 count nine -- was that they got the benefit. They knew
12 Weber did the work. Weber advised them. They elected to
13 take the benefit. And we believe, under the law, he is
14 entitled to be paid by Riggs.

15 Your Honor, the sum and substance of what we've
16 got, and again, there is a case called -- if I can just
17 take a moment. I studied the -- And recognizing these
18 attorneys are talking about Federal cases and the Federal
19 Rule 11, but I think 271.1 has to govern.

20 It seems to me the controlling case is Tullidge
21 versus the Board of Supervisors, cited at 239 Virginia
22 611. And the principal holding there is -- Well, to
23 quote the court on page 614, "We agree with --

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1 application that an objective standard of reasonableness
2 in determining whether the case was warranted by existing
3 law has been violated. Because Tullidge is an attorney,
4 it must be shown that a competent attorney, after
5 reasonable inquiry, would not have formed a reasonable
6 belief that Tullidge's contention was warranted existing
7 law."

8 Now, their opinion and my opinion may differ,
9 but I guess the Court is going to have to make a
10 determination as to whether, on the basis of the other
11 cases and the other citations, I didn't have any
12 reasonable basis to file this suit against these parties.

13 "In addition, any doubts should be resolved in
14 Tullidge's favor. However, it is clear that Tullidge's
15 claim has no chance of success in existing law. His
16 conduct is appropriate." Then, it goes on. But what it
17 says is you've got to have a statement of the facts, and
18 then you've got to have an application of a good faith
19 position of law.

20 Your Honor, what confuses me a little bit about
21 the Tullidge case is, again, we never got to an
22 evidentiary hearing in this matter. All we got to were
23 demurrers. In the case of Hop Food Stores at 237

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1 Virginia 206, citing the Bellamy case at 214 Virginia
2 314, the Supreme Court says that the demurrer stage of
3 pleading is strictly to determine the legal sufficiency
4 of the pleading, not to determine the truth of contested
5 facts. Yet, it seems to me that if that is the
6 situation, that unless they said that we filed a
7 fraudulent claim, we would have to go through the whole
8 hearing of the facts, the evidentiary hearing of the
9 facts; not just what we pled, because we were never given
10 a chance to amend to replead facts.

11 One of the problems you have when you try to
12 bring a case that involves all of these kinds of people,
13 is you try to keep compressing it. We could have filed a
14 sixty-page lawsuit instead of what I think was a twenty-
15 eight or twenty-seven page lawsuit. We weren't given the
16 opportunity for leave to amend.

17 All we were told was the demurrers were
18 sustained and sanctions were coming up. This is going to
19 be the only evidentiary hearing. The evidence,
20 apparently, is going to be Mr. Weber is going to say what
21 he knew. These gentlemen are going to say what they told
22 me and what I told them. Now, I don't think that is
23 enough basis.

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1 I think that, right now, because it was
2 strictly demurrer stage and particularly since these
3 other two parties are out, I think I have a right to non-
4 suit anybody at any time for any reason or no reason,
5 unless they prove that I acted in bad faith. If they can
6 demonstrate that this was an action in bad faith, then
7 maybe they have contention, but I don't think so.

8 I will be willing to testify to that as to why
9 I believe there was a good cause of action against any
10 and all of these people.

11 THE COURT: Mr. Labowitz, are you ready?

12 MR. LABOWITZ: That would be fine, Your Honor.
13 Do you want me to take the witness stand?

14 THE COURT: Please swear Mr. Labowitz in.
15 Whereupon,

16 KENNETH E. LABOWITZ
17 counsel for the defendant Trafalgar House Properties,
18 Inc., was called for examination, and, having been duly
19 sworn by the Clerk, was examined and testified as
20 follows:

21 DIRECT TESTIMONY

22 MR. LABOWITZ: Your Honor, my name is Ken
23 Labowitz. I am counsel to the firm Young, Goldman &

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1 VanBeek, which at the time that this lawsuit was
2 initiated was Young & Goldman.

3 I have been directly involved in the conduct of
4 the defense of defendant Trafalgar House Properties,
5 Incorporated to the claims made by Mr. Weber in this
6 lawsuit.

7 I was present during conversations via
8 telephone, via speakerphone, between Neil Goldman of the
9 firm and Mr. Nedrich on two occasions. I have reviewed
10 the records maintained by the law firm with regards to
11 this litigation, and find maintained within those
12 records, the letter from Mr. Goldman to Mr. Nedrich dated
13 May 22nd, 1991 that has been included as Exhibit A to the
14 motion for sanctions. And I received the letter that is
15 attached as Exhibit B from Mr. Nedrich to Mr. Goldman,
16 dated June 3rd, 1991. The letters speak for themselves.

17 Essentially, Mr. Goldman suggested to Mr.
18 Nedrich that the allegations contained in the lawsuit
19 were unfounded with regard to Trafalgar House.

20 MR. NEDRICH: Your Honor, I am going to object.
21 If the letter speaks for itself, he shouldn't have to
22 testify to it.

23 THE COURT: All right.

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1 MR. LABOWITZ: It is hard for me to argue that,
2 Your Honor.

3 THE COURT: Let me just take a look at it
4 again. I did read it on the sanctions motion. What
5 exhibit is it?

6 MR. LABOWITZ: Exhibit A to the Motion for
7 Sanctions, Your Honor.

8 THE COURT: All right, I have it, yes. All
9 right.

10 MR. LABOWITZ: To the extent that I can testify
11 as to a negative, Your Honor, to my knowledge, there was
12 no meeting that was conducted between Mr. Goldman and
13 myself, on the one hand, and Mr. Nedrich and Mr. Weber on
14 the other hand, with regard to the allegations contained
15 in the lawsuit.

16 With regard to the fees that are involved, Your
17 Honor, in the Motion for Sanctions, there is a proffer in
18 paragraph twelve that the law firm expended a total of 29
19 hours with regard to the discussion with Mr. Nedrich and
20 the exchange of correspondence and researching and
21 drafting the demurrer and other pleadings.

22 I should note that the total number of hours
23 does not include the preparation of any sanctions

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1 motions, nor does it include my time appearing here
2 today. The rate that we charged to Trafalgar House has
3 gone up since all this was done.

4 At the time, it was consistently \$125 per hour
5 for Mr. Goldman's time and for my time. Mr. Goldman and
6 I have roughly the same experience. I have been
7 practicing eighteen years; it will be eighteen years in
8 October. Mr. Goldman has been sixteen years. We believe
9 that the rate of \$125 an hour for attorneys of our
10 experience is at the low end of what is reasonable in the
11 Northern Virginia area during the period in which the
12 fees were expended or the fees were incurred.

13 And the total amount of time that was expended
14 in preparing for and arguing the demurrers and other
15 motions, short of the sanctions motion, comes to \$3,625.

16 In addition, Trafalgar House paid for the
17 provision of a reporter at the July 31st hearing. Some
18 of the other defendants have contributed to that. The
19 total cost was \$618.40, which Trafalgar House has paid.
20 I would represent to the Court that if and when we
21 recover any sanctions that include the reimbursement of
22 that, we will reimburse the parties who have paid us for
23 their share of that expense.

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1 The total amount of money that was expended by
2 Trafalgar House for its defense of these claims was
3 \$4,243.40, which, I would submit to the Court, from my
4 experience, is reasonable within the Northern Virginia
5 legal community.

6 THE COURT: All right.

7 MR. NEDRICH: Cross?

8 THE COURT: Yes. Any other defendants' counsel
9 wish to ask Mr. Labowitz any questions?

10 CROSS EXAMINATION

11 BY MR. NEDRICH:

12 Q Mr. Labowitz, how many times were you listening
13 in on conversations between Mr. Goldman and myself?

14 A I can recall at least once. I don't recall
15 whether it was May 22nd, May 29th, or -- I think there
16 were just two phone calls, and I know I was in the room
17 at least once.

18 Q Did you identify yourself as listening in?

19 A No. I didn't speak.

20 Q Do you recall Mr. Goldman saying that you were
21 listening, that you were there in the room?

22 A I am sure he did not.

23 Q So, so far as I was concerned, I didn't even

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1 proffer or testify. Mr. Goldman and I had discussions.
2 I never knew Mr. Labowitz was on the phone. I think that
3 is regretful that I didn't know another attorney was in
4 that room. But, regardless, we had more than one
5 discussion.

6 THE COURT: Well, I don't want you to testify.
7 Let me just ask you to address the legal question, that
8 is: What evidence can I now review --

9 MR. NEDRICH: I will give you evidence today,
10 Your Honor --

11 THE COURT: I am asking you a legal question.

12 MR. NEDRICH: Yes, ma'am.

13 THE COURT: I am not asking you for the
14 evidence. Does any of the defense counsel have any
15 position on this? Well, the question I have is: To what
16 extent is it proper to be getting into the facts that
17 developed after the pleading stage?

18 MR. STEPHENSON: I don't believe it is
19 appropriate to do so, Your Honor.

20 THE COURT: Does anyone have any idea?

21 MR. FROMME: I don't think so, either, because
22 it has to deal with the pleadings as far as the --

23 THE COURT: Well, I'm not sure it does, either.

1 Because, I guess, I don't know -- I don't have a case
2 right here, so I feel a bit uncomfortable. I am going to
3 let you go on with this, but I will tell you now that I
4 believe -- Unless there is some nexus --

5 MR. NEDRICH: Can I make a proffer?

6 THE COURT: Not of the evidence, no. If that's
7 what you're going to do, absolutely not. But what you
8 may do is, in your case, you certainly can testify. I
9 will let you go ahead. Let me have you pursue this
10 matter just a bit further. I will take the evidence, and
11 I will not consider it if it is inappropriate when I get
12 a full answer on the legal matter that underlies the
13 question. Mr. Croft?

14 MR. CROFT: If I may just make a brief
15 statement. I concur with the Court, and I think that you
16 could not reach a different conclusion, because my
17 understanding is, when a lawyer files a pleading, he or
18 she is certifying that the facts, to the best of his
19 knowledge, are correct and accurate as of the time you
20 file that pleading.

21 It would be absurd to file something with the
22 idea that I am going to develop those facts later on,
23 unless you have some basis upon which to make your

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1 representations in the pleadings. That's why, many
2 times, we say "upon information and belief," but we have
3 to have that basis before filing the pleadings.

4 THE COURT: Well, let's go on with it.

5 MR. NEDRICH: I am getting stung on the side
6 here. I just need to make --

7 THE COURT: Mr. Nedrich?

8 MR. NEDRICH: Yes, ma'am.

9 THE COURT: If you want to address whether
10 legally it is relevant to look beyond the pleading stage,
11 you may address it.

12 MR. NEDRICH: Yes, I would.

13 THE COURT: Give me a case.

14 MR. NEDRICH: I would.

15 THE COURT: I don't want you to proffer the
16 evidence right now. I don't want to take that time.

17 MR. NEDRICH: Your Honor, you have to do it in
18 relationship to the case. As you said, you asked for a
19 nexus.

20 THE COURT: Well, you can do that in testimony.

21 MR. NEDRICH: Yes.

22 THE COURT: That's it. You are now cross-
23 examining a witness. You are not going to testify now,

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1 Mr. Nedrich. You can give me a legal argument, but
2 that's all you can give me.

3 MR. NEDRICH: I would give a legal argument
4 that in a sanctions situation -- I don't have a case to
5 cite, but my legal argument would be if I understood --

6 THE COURT: If you don't have a case to cite or
7 have some other legal precedents to point me to, I don't
8 want to hear the argument. Let me put it this way.
9 We're not going to have a lot of time today. And I
10 understand that all attorneys have their opinions as to
11 what might be appropriate, and I am happy to listen to
12 attorneys' opinions, generally speaking, but all I am
13 looking for now is a case, and I'll get it later myself
14 if one exists. If you don't have it, let's go on.

15 MR. NEDRICH: Okay.

16 CROSS EXAMINATION RESUMED

17 BY MR. NEDRICH:

18 Q Let me just ask you, then. Mr. Labowitz, is a
19 fair characterization of your testimony that prior to the
20 time you wrote that letter and at the time you and Mr.
21 Goldman were -- or, say, Mr. Goldman talked with me, and
22 at the time you prepared the demurrer, you were laboring
23 under an assumption of fact that Trafalgar, in fact, had

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1 supports the proposition that you set forth.

2 THE COURT: I think the statute certainly does,
3 and I was just wondering if there was any other case that
4 needed to be reviewed on this issue before I cut off that
5 testimony. But, in any event, you know what my position
6 is. I will just have to disregard it unless there is
7 some other basis for considering it.

8 Mr. Labowitz, is there anything else you want
9 to add now in the form of redirect?

10 MR. LABOWITZ: No.

11 THE COURT: All right. Next counsel?

12 MR. CROFT: I will assume the position.

13 THE COURT: All right, sir.

14 Whereupon,

15 ALAN B. CROFT
16 counsel for the defendants Jettech Corporation and Edward
17 Dahlberg, was called for examination, and, having been
18 duly sworn by the Clerk, was examined and testified as
19 follows:

20 DIRECT TESTIMONY

21 MR. CROFT: Your Honor, my name is Alan Croft.
22 I am an attorney with the law firm of Shaw, Pittman,
23 Potts & Trowbridge. I am appearing today on behalf of

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1 three of the defendants, Jettech, Edward Dahlberg, and
2 also on behalf of the Riggs National Bank.

3 I will say preliminarily that I have not had
4 any involvement with representing the Riggs National
5 Bank. My partner, my recent partner, David Fiske, who
6 joined the firm in the last few months, was counsel of
7 record.

8 Quite frankly, Your Honor, in an effort to keep
9 costs to a minimum, I am appearing today on behalf of
10 Riggs, but I cannot answer any of the questions. I am
11 not here to present any testimony relating to the
12 representations that Mr. Nedrich made earlier.

13 I do want to make a brief statement regarding
14 my representation of the two defendants I first
15 indicated, Jettech and Mr. Dahlberg.

16 In the May time frame, right after the lawsuit
17 was filed, and before an answer had been filed by either
18 Jettech or Mr. Dahlberg, I met with Mr. Nedrich. It was
19 the first time, to my knowledge, that he and I have met
20 about a case. We might have seen each other in court. I
21 recognized him, but we have never worked on a case
22 together, against each other or with each other.

23 At the time, I had conferred with my clients.

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1 I read the pleadings. I was aware from reviewing the
2 pleadings that it was a dispute, if you will, an
3 employment dispute, between Mr. Weber and his previous
4 employer, Dulles Equities and perhaps Les Jones as well.

5 But it appeared to me that that was the major
6 portion of the claim, and that there were other
7 defendants who were brought into this, if you will, in
8 the form of a fishnet, and other defendants brought in,
9 because of various other relationships that our clients
10 or the defendants might have had with Les Jones or his
11 corporation, Dulles Equities.

12 I specifically suggested to Mr. Nedrich that,
13 given the nature of the claim, would it not be more
14 prudent to take a non-suit, to delay action against the
15 clients such as my two. And if the court will remember
16 from the pleadings, my reason for raising this is there
17 are just -- there is really one count that addresses my
18 clients.

19 Dulles -- Excuse me. Jettech is a corporation;
20 Mr. Dahlberg is employed by Jettech. They are in the
21 business of brokering the sale of airplanes. And the
22 claim was that Les Jones or Dulles Equities owned an
23 airplane, a Lear Jet, and they were attempting to sell it

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1 and that my clients were acting as the brokers to sell
2 that plane. And that's it.

3 I specifically said, "Delay it. Let's put off.
4 Don't make me file answers or demurrers or go through the
5 expense of litigating this. If at a later date you
6 discover that there are some facts that support some
7 wrongdoing on the part of my client, bring us in. We'll
8 come in quickly. We won't try to delay the case at all.
9 But certainly at this stage, there isn't enough to
10 warrant proceeding in this fashion."

11 Mr. Nedrich very courteous and said that he
12 would consider it. I never heard anything further, and
13 then I had to file the appropriate demurrer motion to
14 dismiss. I won't argue my case as I am sitting up here
15 now, but, basically, that is the only conversation that I
16 had with Mr. Nedrich up to the time that we came to court
17 and argued our various positions on, I believe, July
18 31st.

19 THE COURT: Any questions?

20 You may step down.

21 The next witness, please? Would you like to be
22 next?
23

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1 Whereupon,

2 GREGORY L. MURPHY

3 counsel for the defendant First Source Bank, was called
4 for examination, and, having been duly sworn by the
5 Clerk, was examined and testified as follows:

6 DIRECT TESTIMONY

7 MR. MURPHY: Your Honor, I am Greg Murphy, and
8 I represent First Source Bank in this litigation, and
9 have represented them since May when they were informed
10 that they were being sued in this action.

11 As soon as I got into it, I inquired of First
12 Source what the facts were in the case, and what they
13 understood about it. Then I proceeded to call Mr.
14 Nedrich somewhere, I believe, on May 21st, after I had
15 already heard from my client.

16 I did not know Mr. Nedrich. I called him and
17 asked him -- told him in the conversation that I didn't
18 understand why First Source was in there; that First
19 Source was very upset that they were in this lawsuit;
20 that First Source had only lent money and took a lien
21 back on a jet airplane. As a matter of fact, there had
22 been a couple of different transactions over planes. I
23 informed him that I had seen the bank; that they had all

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1 their papers in order with their lien properly
2 established and financing statements, et cetera. That's
3 the only part they played in this is to loan money.

4 I told him I did not understand why they were
5 being sued, although I saw under counts eleven and twelve
6 that they were being sued as part of a business
7 conspiracy, and they were seeking exemplary damages. The
8 only other counts I saw them mentioned in were counts
9 four and six, which I was told him I believed were more
10 of a post-judgment remedies in those counts he was
11 seeking for -- If there was any money -- The way I read
12 it, if there was any money that came out of the sale of
13 Dulles Equities' jet, beyond paying off the lien of First
14 Source, that that money would be held in some
15 constructive trust or be attached for the benefit of Mr.
16 Jones. But I wasn't certain; there didn't seem to be --
17 It was hard to tell whether they were asking for relief
18 other than what I thought was post-judgment relief or
19 seeking a pre-trial attachment. Mr. Nedrich -- My
20 purpose, also, for calling him, was to ask for an
21 extension of time to file a responsive pleading.

22 Mr. Nedrich was kind enough to grant that and
23 said, "That's fine," and informed me at the time that

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1 that would be helpful because he said there were serious
2 settlement discussions going on with Mr. Weber and Mr.
3 Jones.

4 THE COURT: I'm sorry. What did you ask Mr.
5 Nedrich to do?

6 MR. MURPHY: For an extension of the time to
7 file a responsive pleading, which he said that would be
8 fine and it would be helpful because there were
9 settlement negotiations which he thought may resolve all
10 of this by the end of the month, and therefore, we
11 wouldn't have to get into it. And I said, "Well, fine;
12 please let me know as soon as possible."

13 I had an extension, and I confirmed that to him
14 by letter of May 21st, and sent him under separate cover
15 an extension of time, or said I would send it under a
16 separate cover, which I did. I did not hear back from
17 him by the end of May, so on May 31st, I wrote to Mr.
18 Nedrich, sending him the order extending the time for our
19 filing the responsive pleading. I also enclosed a copy
20 of our demurrer, as I said I would, which we filed on May
21 30th. In my note to Mr. Nedrich, which Mr. Nedrich
22 returned a copy back to me with his stamp that he
23 received this on June 3rd -- In my note I said, "I

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1 strongly urge your client to reassess his claim against
2 First Source Bank and dismiss it from the case, for I do
3 not think there is a cause of action against my client.
4 I look forward to talking to you further about this."

5 He apparently received this on June 3rd and
6 sent it back to me, and it was received on June 4th back
7 in my office, signed on his behalf by a Mr. Halman or
8 Howman. On June 5th, I called him to discuss, again -- I
9 told him I had not filed a brief as I was going to do,
10 but I really didn't want to put any more work in this
11 than I had to, and I wanted to know if the settlement
12 negotiations had borne any fruit, or whether I had to
13 proceed.

14 He indicated that he would get back to me, that
15 they were still talking. I told him that I still had to
16 file something, even though I wasn't certain as to why we
17 were in it. Subsequently, I did not hear back from him,
18 so I finally filed a brief in response; a brief
19 supporting our demurrer to the counts, on June -- I think
20 it was the 14th, June 14th, stating our case.

21 I never heard back from Mr. Nedrich in response
22 to our view of the case as set forth in there. I just
23 said that it seemed that counts eleven and twelve were

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1 the ones that were really seeking some kind of remedy
2 from us. It was hard to tell why we were -- what he was
3 seeking in counts four and six.

4 I didn't hear anything until we came to court
5 on July 31st. And for the first time I heard, on July
6 31st, Mr. Nedrich's statement which -- and I quote from
7 the transcript which has been prepared for that day,
8 where he said, "All I am saying is that to the extent
9 that everybody here, other than Mr. and Mrs. Jones and
10 those corporations controlled by Mr. Jones, are saying
11 that we are suing them for conspiracy, common law or
12 statutory; we are not. And I think they have over-read
13 that at this point in time. So, we can't very well go
14 with the demurrer to dismiss the conspiracy counts
15 against them when we haven't specifically named them as
16 potential co-conspirators. We are very premature right
17 now."

18 That is the first time I had heard, despite my
19 conversations and despite the briefs, that First Source
20 Bank was not considered one of the defendants being
21 referred to in counts eleven and twelve.

22 He also stated, and it is in the transcript,
23 and I quote, "And I'm not saying that any of these, the

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1 unnamed defendants, have not done that...." "That" being
2 engaged in the conspiracy. "...yet, but they may have.
3 Since we really haven't alleged that they are defendants
4 in those, we don't think demurrers would be right at this
5 point in time."

6 It is also the first time that I had heard that
7 he really intended this as a declaratory judgment action,
8 despite the way the pleadings read. At that time, the
9 court said that he should submit facts supporting his
10 claim if he wanted to keep -- intended to keep the
11 defendants in the case.

12 We waited to receive that and received nothing,
13 so we prepared the letter to Your Honor, as Your Honor
14 suggested, supporting our view in the case, and provided
15 further argument on August 23rd. I had received prior to
16 that, on August 9th, Mr. Stephenson's letter to Mr.
17 Nedrich of May 8th, which is attached to our motion and I
18 believe the court already has.

19 I did not hear from Mr. Nedrich. The next
20 thing I heard from Mr. Nedrich was that my clients were
21 non-suited -- my client was non-suited from the case. I
22 have yet to receive any support for any of the
23 allegations as to why First Source -- by what theory

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1 First Source could be kept in there. The only one which
2 could have been was the conspiracy, which he non-suited
3 and said he didn't intend to apply to them. So, I don't
4 know why they were sued.

5 We filed, then, our notice and motion. We had
6 previously asked for sanctions. We filed the full notice
7 and motion for sanctions and forwarded it on October 4th.
8 We have never heard a response back from Mr. Nedrich as
9 to the -- anything he may have to state in apposite to
10 our basis for the notice and motion, or any facts that he
11 has to support why his pleading was proper.

12 Attached to our notice and motion is the
13 complete list of our attorney's fees and costs that have
14 been incurred up through September. I believe it is
15 through September 1, Your Honor. And the affidavit as
16 set forth is up through -- yes, through September 1. And
17 does not include the -- And the fees at that time were
18 \$3,580.50, \$160.19 in costs.

19 We also reimbursed part of the transcript of
20 \$77.30, but I think Mr. Labowitz indicated that he has
21 put in for the total amount, that he will just simply
22 reimburse.

23 That, up through September 1st, does not

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1 include the additional time spent in preparing the notice
2 and motion or reviewing the other defendants' submissions
3 to the Court, which we adapted as part of our argument.

4 I will also tell the Court that the -- Well,
5 the hourly rates of the firm -- There are two of us, I
6 believe, that worked on the matter, and the rates run
7 between \$110 and \$165, depending on which of the two of
8 us was working on the case.

9 There has been a total of approximately,
10 through September 1st, of about 25 hours spent on the
11 case. There has been, probably, including today, another
12 ten hours spent on the case. I will tell the Court,
13 also, that there was some considerable time not charged
14 by myself, and we are not seeking reimbursement for it.
15 It would have been substantially higher had we charged.
16 It is because of my relationship with the bank, again,
17 which happens to be my brother's bank. So we didn't
18 charge for that time.

19 Also, our time would have been considerably
20 greater had it not been for the fact that the other
21 defendants submitted things. So, we piggy-backed onto
22 theirs and did not try to be competitive or redundant
23 with regard to that.

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1 THE COURT: All right.

2 MR. MURPHY: And, I believe that's the full
3 extent of my testimony, Your Honor. There are total
4 bills of about \$4,000 at this point excluding the
5 additional time that we didn't bill for.

6 THE COURT: Is that including today?

7 MR. MURPHY: No, it is not including today.

8 THE COURT: Just the total in your affidavit?

9 MR. MURPHY: Correct.

10 THE COURT: All right. Any questions, Mr.
11 Nedrich?

12 MR. NEDRICH: Yes.

13 CROSS EXAMINATION

14 BY MR. NEDRICH:

15 Q Just briefly, Mr. Murphy. You provided a copy
16 of the transcript as part of your motion; is that
17 correct, sir?

18 A Yes, I believe so.

19 Q You stated In your examination that the Court
20 asked me for more facts. Is that anywhere in the
21 transcript?

22 A I don't have the transcript right here.

23 Q I can provide you with a copy, if you'd like.

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1 the money and wasting it somewhere, that doesn't have
2 anything to do with the lender. It is like whatever I do
3 with money I borrow on my house.

4 THE COURT: Could I ask for a clarification on
5 the part of all defendants who haven't spoken yet?

6 As I understand it, the contentions are
7 essentially -- the contentions that sanctions are
8 appropriate are essentially based on the defendants'
9 conclusions that, as a matter of law, even accepting the
10 facts as true, there were no theories -- So, this is
11 really a question of whether it was warranted under
12 existing law, not whether the facts were true.

13 MR. LABOWITZ: That is certainly Trafalgar
14 House's position, Your Honor.

15 MR. NEDRICH: Oh, it can't be.

16 THE COURT: Well, that is the way the demurrers
17 came down -- accepting the facts as true. And the
18 demurrers were granted because there was no theory of law
19 upon which they could be premised. At least that was my
20 conclusion.

21 So, the reason I even interject again is
22 because I don't think we need to go through an
23 evidentiary hearing as to whether he contests the facts

1 avoid, increased costs, we're incurring as we sit here.

2 THE COURT: Okay. Let me find out who else is
3 going to testify. Mr. Fromme?

4 MR. FROMME: Judge, I am going to testify to
5 the fees and so on incurred by Dulles Equities.

6 THE COURT: All right. Come on up. Do you
7 need a break first? I keep jumping over this break
8 issue. Let's keep going for a while. Come on up.
9 Whereupon,

10 J. THOMAS FROMME
11 counsel for the defendant Dulles Equities of Virginia,
12 Inc. and Armed Forces Electronics, was called for
13 examination, and, having been duly sworn by the Clerk,
14 was examined and testified as follows:

15 DIRECT TESTIMONY

16 MR. FROMME: If it please the court, my name is
17 J. Thomas Fromme, II, with the law firm of Sherman, Bury
18 & Fromme, P.C. at 10482 Armstrong Street in Fairfax,
19 Virginia. I have been representing Dulles Equities of
20 Virginia, Inc. and also Armed Forces Electronics, Ltd.
21 Dulles Equities of Virginia was sued in count four.
22 Armed Forces Electronics, Limited was sued in count five,
23 in addition to the conspiracy count and the damage count,

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1 which I believe were ten and eleven.

2 When this was initially brought forward, Judge,
3 I was contacted by Mr. Jones and by Mr. Stephenson, who
4 advised me this suit was filed in approximately early
5 April. I think it was April 22nd, 1991.

6 At that time, I viewed the pleadings with Mr.
7 Jones and Mr. Stephenson. A letter was -- Because I was
8 just going to be employed to represent these two
9 defendants when they were served, I worked with Mr.
10 Stephenson in developing a letter of May 8th, 1991 which
11 was sent by Mr. Stephenson to Mr. Nedrich, imploring him
12 not to institute this action, as it was simply an
13 employment dispute, which is what I viewed it as, between
14 Mr. Weber and Dulles Equities.

15 He had several other defendants listed there,
16 and two of whom I am representing. There was no response
17 to the letter of May 8th, 1991, to my knowledge, and I
18 requested an extension once I was served as registered
19 agent, which occurred on -- I'm sorry -- May 22nd, I was
20 served as registered agent and then requested an
21 extension of time in which to file the responsive
22 pleadings in the hopes that Mr. Nedrich would withdraw
23 his counts as to my two defendants and as to the other

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1 defendants, and simply proceed on a contractual basis,
2 which was what Dulles Equities and Mr. Jones were
3 prepared to litigate if necessary.

4 When that was not done, I proceeded to file my
5 demurrer and proceeded to enter my appearance in this
6 matter and then went forward and argued subsequent
7 arguments before the Court on the demurrers and so on.

8 I concur in prior counsel's statements that
9 this Court did order Mr. Nedrich, when we were in court
10 on July 31st, to proceed to file, by August 12th, 1991, a
11 declaration specifying the elements of each of his claims
12 against each of the defendants and also for him to
13 identify the facts as to all claims as to each of the
14 defendants.

15 He did not do that. He filed a letter in
16 response to the Court, which was directed to yourself on
17 August 12th, 1991. In view of that, it was simply a
18 recapitulation, is my interpretation of it, of his Motion
19 for Judgment that he had filed.

20 It simply says, count four, conversion of
21 constructive trust against Les Jones and his wholly-owned
22 corporation, Armed Forces Electronics, as supported by
23 paragraphs 11(c), 24, 25, 26, 27, 28, 29, and 30.

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1 He did not enumerate or proceed to state
2 specifically, as requested by the Court, the elements of
3 each of his claims against my two defendants, nor did he
4 state any further detailed facts as to the claims against
5 my clients.

6 The fees that have been incurred by my
7 representation of these two defendants, Judge, total
8 \$3,679. I have my bills here to submit to the Court, and
9 I would be happy to provide Mr. Nedrich with a copy of
10 those. The fees which were charged were \$150 an hour.

11 I have been practicing law in Northern Virginia
12 since 1972, and it is my belief that the fee of \$150 an
13 hour is a reasonable fee for the services rendered in
14 this matter.

15 THE COURT: Any questions for Mr. Fromme?

16 MR. NEDRICH: No, I don't have anything at this
17 time.

18 THE COURT: You can step down.

19 MR. FROMME: May I submit my bills to the
20 court?

21 THE COURT: Yes, I'm sorry, if you will. We
22 will mark them as Exhibits -- Dulles Equities of
23 Virginia, Inc. and Armed Forces Exhibit 1.

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1 or anything else at this point.

2 As I understood it, the defense accepted for
3 the purposes of the pleading stage, that the facts were
4 true, and certainly I did for the purposes of the
5 demurrer. So, I don't think you have to belabor that
6 point.

7 MR. NEDRICH: I understand what you are saying.

8 MR. STEPHENSON: If I may just inject a further
9 position on the part of my clients, Your Honor, Dulles
10 Equities, Inc. and the Joneses. The concern that they
11 had as parties with the peripheral parties involved --

12 THE COURT: Well, we will get to that. I am
13 going to let you testify. I just don't want to get into
14 an excessive review of the facts when, really, that's not
15 the predicate for the dispute here. But if there is
16 something factually that needs to be aired, which is
17 written in the pleadings, we will get there.

18 MR. MURPHY: Redirect, if I may, Your Honor. I
19 avoided in my direct testimony the factual dispute that I
20 have with representations made by Mr. Nedrich in his
21 opening statement. I assume I don't have to do that at
22 this point unless he puts it into evidence.

23 THE COURT: Yes. You can rebut it if you wish

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(The item referred to above was marked for identification as Dulles Equities of Virginia, Inc. and Armed Forces Electronics Exhibit No. 1, and received in evidence.)

MR. CROFT: Your Honor, may I make one further statement?

THE COURT: All right.

MR. CROFT: Your Honor, I was not aware of the procedure that the Court was going to follow as far as submitting copies of legal bills, et cetera. I do not have a copy of my legal bill -- that is, the bill that relates to my representation of Jettech and Mr. Dahlberg.

I would represent to the Court that, in the case of my representation in the case of Mr. Fiske, our rates are higher than those recited by the other lawyers. I would proffer to the Court that our bills are in excess of \$4,000 for each of the respective clients. That is, the bill to Riggs was in excess of \$4,000. I believe that Mr. Murphy testified that his bills were approximately \$4,000.

I think the other lawyers, as well, testified

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1 it is very close to that. I would also represent that my
2 bills to Jettech and Dahlberg are in excess of \$4,000,
3 and I say that while I am still under oath. If Mr.
4 Nedrich would like details of those, I could provide them
5 at a later date.

6 THE COURT: Well, at this point, we have your
7 testimony.

8 MR. CROFT: Very good. Thank you. If he wants
9 to cross-examine me, I'll be available for that.

10 THE COURT: Mr. Nedrich, do you want to go any
11 further on the examination of Mr. Croft on his bills?

12 MR. NEDRICH: No.

13 MR. MURPHY: Your Honor, I previously testified
14 I submitted our bills with our motion. I don't know if
15 we needed to identify this in an exhibit or not.

16 THE COURT: I will have it marked as an
17 exhibit.

18 MR. MURPHY: First Source Exhibit 1.

19 THE COURT: All right.

20 (The item referred to above was
21 marked for identification as
22 First Source Exhibit No. 1,
23 and received in evidence.)

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1 MR. MURPHY: May I submit as First Source
2 Exhibit Number 2, the note back from Mr. Nedrich? The
3 note from myself to Mr. Nedrich that came back that I
4 just testified to?

5 THE COURT: That is not part of your exhibit?
6 No, that is something else.

7 MR. MURPHY: No, it wasn't.

8 THE COURT: We will do that. First Source
9 Exhibit 2. Well, actually it is in the exhibit. It's
10 part of your filing. From your description, I thought --

11 MR. MURPHY: I'm sorry.

12 THE COURT: Let me just make sure again. I am
13 pretty sure I saw it there.

14 MR. MURPHY: Well, I just wanted it marked as
15 Exhibit Number 2 so we will have an identification.

16 THE COURT: Yes, it is B. We will mark that as
17 Exhibit 2, or we can mark that as 2. If you wish, we'll
18 mark that as 2. Let me just double-check. What I have
19 is your affidavit, and the bills attached. We will mark
20 that as Exhibit 1.

21 (The item referred to above was
22 marked for identification as
23 First Source Exhibit No. 2, and

1 received in evidence.)

2 MR. MURPHY: All right, thank you.

3 MR. FROMME: Judge, I just want to advise the
4 Court that my bills do not include any time in
5 preparation for today or today's fees.

6 THE COURT: Yes, all right. Let me just do
7 this little housekeeping project here and get these
8 marked. One moment. All right.

9 MR. STEPHENSON: Would you like to hear from
10 me?

11 THE COURT: Yes, sir.

12 MR. STEPHENSON: I have not been sworn.

13 THE COURT: You have not been sworn?

14 MR. STEPHENSON: No, I don't think so.

15 (The witness was sworn by the Court.)

16 THE COURT: Have a seat, please, and begin as
17 soon as you are ready.

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1 Whereupon,

2 B. G. STEPHENSON

3 counsel for the defendants Les G. Jones, Dorothy Jones,
4 and Dulles Equities, Inc., was called for examination by
5 the Court, and, having been duly sworn by the Court, was
6 examined and testified as follows:

7 DIRECT TESTIMONY

8 MR. STEPHENSON: If the Court please, I am B.G.
9 Stephenson of the firm B.G. Stephenson, Ltd. I represent
10 defendants Dulles Equities, Inc., Deanna Jones, also
11 known as Dorothy Jones, and Les G. Jones, two individual
12 defendants.

13 I have brought with me my files related to this
14 case, which I think are something in excess of four
15 inches thick. My clients were the first to be served
16 with the Motion for Judgment, and I think, deliberately,
17 the others were not served at the time my clients were
18 served.

19 Apparently, there was some pressure to address
20 this on the part of my clients. I was given these
21 pleadings which were exhaustive, and reviewed them, and
22 my clients were rightfully concerned that the involvement
23 --

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1 MR. NEDRICH: Your Honor, objection; hearsay.

2 THE COURT: Mr. Stephenson, you are raising the
3 issue of what your clients were concerned about?

4 MR. STEPHENSON: Let me state that another way.

5 THE COURT: All right.

6 MR. STEPHENSON: As I reviewed this matter with
7 my client, I considered the harassing nature of the
8 allegations and the involvement of all of the other
9 parties' defendant -- you know, what overall effect that
10 that may have on my clients.

11 MR. NEDRICH: Your Honor, I would object to
12 that, too. I mean what is going on in his mind and what
13 he is concerned about advocates his clients' position. I
14 think the relevant things were what he and I talked
15 about, or communicated by letter, not what his opinions
16 were, or his clients opinions were, or whatever.

17 THE COURT: Well, the only relevant nexus would
18 be to help me understand what you did about it, what you
19 did next. If it relates, in other words --

20 MR. STEPHENSON: I was trying to lay that as a
21 predicate to my letter of May 8th, Your Honor.

22 THE COURT: -- to the work that was done. Yes,
23 that's why, in a way, I was about to rule the clients'

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1 concern, as I understood it, would not be offered for the
2 truth of the matter, but to explain why you did what you
3 did in terms of generating the attorney's fees.

4 MR. STEPHENSON: The action that I took.

5 THE COURT: Go ahead. It is only to that
6 extent will I consider it.

7 MR. STEPHENSON: On that basis, Your Honor, I
8 did prepare a five-page letter to Mr. Nedrich of May 8th
9 -- I think that it is already introduced by other parties
10 and attached to this exhibit -- in which I implored Mr.
11 Nedrich to not proceed against the other parties and let
12 us try to resolve any dispute that was genuine.

13 I advised him that, as I reviewed the documents
14 then that included the employment agreement and the lease
15 on which he has predicated a claim of an amount due, did
16 not justify his claim, and I insisted that that was our
17 position from the beginning.

18 We filed the first demurrer in the case, and
19 then Mr. Nedrich chose to proceed with the suit against
20 the other parties, and the other parties were served, and
21 they did, in turn, file their demurrers.

22 During the course of the proceedings, when we
23 had the hearing on the demurrers, Mr. Nedrich had also

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1 filed discovery by interrogatories and requests for
2 production of documents.

3 I suggested that we should not proceed with any
4 discovery while the demurrers were pending until they
5 were ruled on. But, as Your Honor will recall, after the
6 hearing on the demurrers, Mr. Nedrich wanted to proceed
7 with the motion to compel discovery. And Your Honor
8 considered his discovery request and ruled that he was
9 entitled to receive documents that pertained to the lease
10 agreement and the employment contract.

11 The documents pertaining to the lease agreement
12 were voluminous, and they were off in storage, and my
13 client had to retrieve those out of storage. I compiled
14 those and had them in boxes in my office, and made a
15 response that we had them available for his review.

16 I designated time periods that he could come
17 over and see those, and I've never had any response after
18 that from Mr. Nedrich asking and setting a time to come
19 over and review the documents. So, we went through all
20 that procedure.

21 THE COURT: When did you have them ready for
22 their review; do you remember approximately?

23 MR. STEPHENSON: Yes, I think I have the

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1 discovery response in which I outlined the dates that
2 they would be available in my office, and that was before
3 I had requested discovery that I sought about what
4 documents Mr. Nedrich had. That required me to file a
5 motion to compel before he made any discovery response.

6 Then he answered that his client had some
7 eight-hundred pages of documents that he had gleaned from
8 my client's offices, which I submit were documents taken
9 without authority. I have objected to that. I have sent
10 him letters requesting return of those documents; they
11 have not been returned.

12 MR. NEDRICH: Objection, Your Honor. That's
13 not pertinent right now. He could have filed motions
14 with this Court if he felt that he had some right to
15 pursue on those documents.

16 THE COURT: Yes, I don't think that is
17 relevant. All I needed to know was the time frame when
18 you had your discovery prepared for their review, the
19 documents that they asked for, and when their discovery
20 came through. I take it it was before the demurrer was
21 granted.

22 MR. STEPHENSON: Yes, it was before the
23 demurrer was granted -- was sustained.

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1 THE COURT: I beg your pardon; sustained. Go
2 ahead, please.

3 MR. STEPHENSON: And, in connection with the
4 consideration of my demurrer on behalf of my clients,
5 that was the last one that the Court ruled on. And the
6 Court will recall that, during that period, I had made
7 reference to the exhibits attached to the Motion for
8 Judgment in my demurrer, which were the employment
9 agreement and the subject lease involved.

10 The employment agreement apparently was not
11 attached to the Court's copy of the Motion for Judgment,
12 which prompted me to file another pleading to have that
13 properly attached so that the Court could consider the
14 very agreement upon which this action was predicated,
15 which was not an agreement that supported the claims
16 asserted by the plaintiff.

17 So, I submit that throughout these proceedings,
18 that the involvement on behalf of my clients well
19 exceeded that of any of the other defendants. I would
20 roll back to say that we would be satisfied with
21 something in the nature of an award to any of the other
22 defendants, Your Honor, because my time has substantially
23 exceeded any of the other parties, and I had involvement

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1 with all of the other parties' defendants.

2 THE COURT: Do you have any specific time
3 estimates and rate?

4 MR. STEPHENSON: I have not carved out the
5 time, because I have spent considerable time with this
6 client on a number of matters, and I have lumped my time,
7 and my billing rate to the client is between \$175 and
8 \$200 an hour, depending upon the nature of the matters.
9 I would say, for this case, it would be at \$175.

10 THE COURT: Any questions?

11 CROSS EXAMINATION

12 BY MR. NEDRICH:

13 Q Is it your practice to bill Mr. Jones or any of
14 his companies by an hourly basis?

15 A Yes.

16 Q Do you have copies of those bills? Not
17 necessarily here, but do you have copies of those bills,
18 in writing?

19 A Through the years, yes.

20 Q Sir, do you have copies of the bills?

21 A I don't have any with me.

22 Q No, do you have copies of the bills in writing
23 from billing Mr. Jones or Dulles Equities or whomever

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1 right. Mr. Nedrich?

2 MR. LABOWITZ: Your Honor, before you start. I
3 had attached to my Motion for Sanctions, copies of the
4 letters back and forth between Mr. Goldman and Mr.
5 Nedrich. I don't know what the Court's pleasure is, and
6 whether that needs to be an exhibit -- those need to be
7 exhibits.

8 THE COURT: You want to move them into
9 evidence?

10 MR. LABOWITZ: I would, Your Honor.

11 THE COURT: I will do that.

12 (The items referred to above were
13 marked for identification as
14 Trafalgar House Properties, Inc.
15 Exhibit 1, and received in
16 evidence.)

17 THE COURT: I am going to make all the
18 attachments that -- unless there is an objection, but so
19 far I think everything has been admitted. But I will
20 make all the attachments as exhibits and admit them as
21 evidence in the case, plus, of course, we have the
22 transcript of the hearing involved, as well, which I
23 believe should be considered part of the record in this

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1 matter. I will consider it.

2 (The items referred to above
3 were marked for identification
4 as the Court's Exhibit No 1,
5 and received in evidence.)

6 THE COURT: All right. Mr. Nedrich?

7 MR. NEDRICH: Yes, Your Honor.

8 THE COURT: Why don't you take a look at this
9 and see that they are all in there attached, I hope.
10 They are attached to each motion. If you have a problem
11 finding them, I will look through it later.

12 MR. NEDRICH: Could I put Mr. Weber on the
13 stand first?

14 THE COURT: All right.

15 (The witness was sworn by the Court.)

16 THE COURT: Let me alert you, again, to the
17 fact that, in this case, we are looking at what was pled,
18 and the context of this sanction motion accepts as true
19 the facts pled.

20 MR. NEDRICH: I understand that.
21
22
23

1 that some monies were received.

2 MR. LABOWITZ: From Dulles Equities, yes,
3 ma'am.

4 THE COURT: I think your letter suggests that
5 it wouldn't make any difference. I don't know that it
6 does. Does it? Why would that make a difference?

7 MR. NEDRICH: Whether they concede it or not?
8 Because previously they said they weren't getting
9 anything. I think that is important, because I think
10 that is the fundamental basis -- I'm sorry, Your Honor.

11 THE COURT: No, the question is, as to the
12 cause of action against Trafalgar, does it sustain the
13 cause of action in light of the rest of the pleadings?

14 MR. NEDRICH: Yes.

15 THE COURT: In what respect?

16 MR. NEDRICH: Well, I think the cause of action
17 is sustained if they are taking monies from a company for
18 payment of benefits to someone else, and they knowingly
19 took them, and Jones had a scheme and they actively
20 assisted Jones.

21 Now, that doesn't mean and I haven't said, and
22 I know this is -- I recognize what these people are
23 saying, but that doesn't say -- I never said in this

1 lawsuit that Trafalgar House intended to cheat Jones or
2 other competitors. I never said that.

3 What I said was they actively assisted. I
4 always used the term "actively assisted" in the
5 hindering, fraud, and delay.

6 THE COURT: Well, what is the cause of action?

7 MR. NEDRICH: The cause of action effectively
8 is a constructive trust, under 55-80 of the Virginia Code
9 for fraudulent and preferential transfers, Your Honor.
10 And under Section 55-82, I am entitled to sue --

11 THE COURT: Can there be a preferential
12 transfer when there is no debt that has been --

13 MR. NEDRICH: Yes. If you look at 55-82, it
14 says even before I get my judgment, I can sue the people
15 that --

16 THE COURT: Well, I have already ruled on this.

17 MR. NEDRICH: I understand, Your Honor.

18 THE COURT: I did not think it supported the
19 cause of action pled, and the fact that they were
20 receiving money, is that all you need? In other words,
21 anybody who receives money can be sued on the theory of
22 constructive trust?

23 MR. NEDRICH: If they are receiving money, in

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1 this particular instance, from one company for the
2 purpose of a personal purchase for somebody who controls
3 that company, yes. I believe that is true. I think if
4 it were Dulles Equities --

5 THE COURT: Wait a minute.

6 MR. NEDRICH: Okay. I'm sorry.

7 THE COURT: Again, on what authority do you
8 rely?

9 MR. NEDRICH: Your Honor, the authority I rely
10 on is the fact that any unusual -- and you may disagree
11 on this --

12 THE COURT: Let me have the Code section again.

13 MR. NEDRICH: Section 55-80, Your Honor.

14 THE COURT: Actually, we are getting a little
15 far afield, because at this point the only fact that was
16 known was what was pled. If you knew that fact, and you
17 didn't plead it -- Did you plead the fact?

18 MR. NEDRICH: Yes.

19 THE COURT: You did plead the fact. Well then,
20 all right. So, I considered it then, I guess. If it's
21 pled, I considered it. What you are saying is that Mr.
22 Labowitz denied it was a fact that I should consider, but
23 the fact is I have to consider it; it was in the

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1 pleading. I couldn't not consider it based on his
2 representation.

3 MR. NEDRICH: Okay, I understand.

4 THE COURT: I understand where you are going
5 now. I thought you were saying it wasn't in the
6 pleading. I thought we were two steps removed from the
7 issue. It is in the pleading, and I had to have
8 considered it. To this day -- That's what prompts my
9 question at this point. What difference does it make?

10 MR. NEDRICH: Well, I think it makes a great
11 deal of difference when one has reason to believe there
12 is a fraud going on. Now, I am not saying wilful
13 conspiracy to conspire, but they actively knew. Now, two
14 things were alleged with regard --

15 THE COURT: I am not following what you are
16 saying. Let me have the Code section again.

17 MR. NEDRICH: Section 55-80 and section 55-82.

18 THE COURT: All right. In any event, I am
19 going to accept, from an evidentiary point of view, that,
20 first of all, it is in the pleading and I accept that for
21 the purposes of this case that it is supported by your
22 documents. Okay?

23 MR. NEDRICH: Yes, ma'am, it is.

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1 THE COURT: That's fine. Go ahead.

2 MR. NEDRICH: Now, we just discussed Trafalgar
3 House. Am I correct that we are also talking with regard
4 to Dulles Equities, Inc., that all our factual
5 allegations that we have both testimony and evidence to
6 support everything we said with regard to Dulles
7 Equities, Dulles Equities of Virginia, Armed Forces Radio
8 (sic), Les and Dorothy Jones -- that they intentionally
9 conspired to move assets in and out of various companies
10 and that they got the advice -- excuse me -- they got the
11 aid and assistance?

12 Again, I am not saying those other people were
13 intentionally conspiring, but they could have been. I
14 just don't know. I couldn't know that until I went into
15 discovery. But one of the things I did know, and what
16 the facts or the documents --

17 THE COURT: Mr. Nedrich, I'm sorry, but you are
18 going to have a chance to argue this.

19 MR. NEDRICH: Well, what I am trying to do is
20 get the proffer.

21 THE COURT: We need to get the evidence.

22 BY MR. NEDRICH:

23 Q Okay. Let me ask you this, then. Mr. Jones,

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1 with regard to Trafalgar -- I'm sorry. Mr. Weber, with
2 regard to Trafalgar, were you in receipt of information
3 that Mr. Jones was using Dulles Equities monies for other
4 purposes in his house than to directly pay cash to
5 Trafalgar?

6 MR. LABOWITZ: I am going to object again. He
7 is leading the witness.

8 THE COURT: I am going to sustain. Well, first
9 of all, it is leading, but -- No, I don't think it's
10 leading. Again, I'm concerned with spending time to
11 establish support for the factual allegations in this
12 pleading. That is not what is at issue here, I don't
13 believe.

14 The issue is, based on the facts that you
15 contend exist, you proceeded with causes of action that
16 could not be supported as a matter of law. The issue
17 here is, were the causes of action upon which you sued
18 these defendants warranted under existing law, given the
19 facts as you knew them to exist and as they were pled.

20 MR. NEDRICH: Under existing laws or under
21 where, I believe, the law would go in the next logical
22 step.

23 THE COURT: At the next logical step.

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1 MR. NEDRICH: Yes.

2 THE COURT: But, given the facts as you knew
3 them.

4 MR. NEDRICH: Given the facts as we knew them.

5 THE COURT: In the pleading stage.

6 MR. NEDRICH: In the pleading stage.

7 THE COURT: Well, in fact, in some respects, I
8 think this can go on even up to the time of the demurrer,
9 I suppose, because even as late as the demurrer, I asked
10 you to identify in your pleading the legal theories, the
11 elements and the facts in support of the legal theories.
12 Because of the nature of the way the pleadings were
13 constructed, I found it very difficult to follow what was
14 being pled.

15 MR. NEDRICH: If I can comment on that, Your
16 Honor.

17 THE COURT: In light of your representations
18 that you didn't mean to sue the defendants here and it
19 wasn't to be read there, I had my own view as to how the
20 pleadings should be read. And I thought, well, I'll give
21 you one more opportunity to show me something that
22 perhaps I was missing.

23 That is when I asked you again to go through

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1 the facts of your case.

2 MR. NEDRICH: Well, Your Honor, and I am going
3 to comment that I probably misunderstood what I thought
4 you wanted. I thought all you had been asking me, and I
5 don't have --

6 THE COURT: It was the facts in the pleadings.

7 MR. NEDRICH: Yes. I thought you had said,
8 "Well, show me which facts applied to which defendants."

9 THE COURT: That's right.

10 MR. NEDRICH: And I thought that was all you
11 wanted.

12 THE COURT: And you didn't do that.

13 MR. NEDRICH: Well, what I did was I took the
14 paragraphs --

15 THE COURT: I know what you did. I am just
16 telling you you did not do anything to help me understand
17 your position that you had bona fide causes of action
18 against these defendants. We went through this in the
19 courtroom that day.

20 MR. NEDRICH: I understand that, and I had
21 assumed that that was all you wanted was a direct
22 reference to the particular allegations.

23 THE COURT: Well, let's go on. I don't want to

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1 go through the facts again unless there is some reason
2 why you think, at this point in time, I am supposed to be
3 considering all the evidence in support of it or anything
4 else. There has been no claim here that you have alleged
5 facts in bad faith.

6 MR. NEDRICH: Oh, I think so. If you look at
7 Mr. Stephenson's letter of May 8th --

8 THE COURT: Well, that is not the ruling that I
9 was dealing with. I was dealing with as a matter of law,
10 assuming the facts were all set forth. Is that the way
11 the defendants were proceeding, basically?

12 MR. LABOWITZ: I'm sorry, ma'am?

13 THE COURT: Are you proceeding on the ground
14 that he didn't have either facts or law?

15 MR. LABOWITZ: Absolutely, Your Honor, and it
16 was my understanding of the court's ruling in July that
17 you were giving him the opportunity to give him more
18 facts at that point. And, you know, where are the facts?
19 We're still waiting for the first citation --

20 THE COURT: I don't know how that read, but at
21 this point, the only ruling I made, and the only thing I
22 was interested in is what in the pleadings supported the
23 cause of action. And there was nothing in the pleading,

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1 from what I read, that supported the cause of action.

2 MR. LABOWITZ: Yes, ma'am.

3 THE COURT: The reason I went through the
4 exercise is, I thought Mr. Nedrich should have another
5 opportunity to point the Court to which facts belonged
6 with which cause of action.

7 You didn't do that, and so I just proceeded
8 with my reading of the pleadings. And I did my own
9 analysis. I have a big sheet here.

10 MR. NEDRICH: I'm sorry, Your Honor. I thought
11 I had done what you wanted.

12 THE COURT: And I concluded the facts as pled
13 didn't support the causes of action. Now, if you are
14 saying that over and above that, the facts as pled were
15 not warranted, that a sufficient investigation was not
16 completed, then I am going to let them go through what
17 they did on each of the facts pled. We'll just go
18 through it.

19 MR. NEDRICH: Your Honor, I have a series of
20 exhibits.

21 THE COURT: All right.

22 MR. FROMME: Judge, I think -- I would respect
23 the Court's decision, but I reject the way this is going,

1 because I think the Court has already given him the
2 previous order by this Court to clarify his pleadings at
3 that time. I would be happy to read into the record.

4 THE COURT: Yes, I have been looking for that.
5 What does it say?

6 MR. FROMME: It says, if I may read it into the
7 record. On page 59, commencing on line 22, and this is
8 your ruling, Judge. It says, "Let me ask you briefly.
9 You may want to do this in writing, but it seems to me
10 that you need to identify the elements of each of your
11 claims, and you need to identify the allegations that
12 support those elements. For example, on fraud and
13 conversion, with respect to each defendant against whom
14 the claims arise, or constructive trust. The defendants
15 have argued that there are no facts alleged that support
16 conversion. For example, because there is no right to
17 immediate possessory interest has not been alleged, and
18 therefore, there is no right to the property in question.
19 You need to identify what those facts are in your
20 allegations that support those elements.

21 "Mr. Nedrich: You are talking about all
22 defendants other than Jones and Dulles Equities, I
23 presume, Your Honor."

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1 "Judge Annunziata: Yes, I am."

2 "Mr. Nedrich: I presumed that. I thought you
3 were talking about the others. I understand and I can
4 appreciate that."

5 He goes on and he says, "I don't think I can
6 restructure the whole pleading now. I don't think that
7 would be appropriate." And Your Honor goes on and says,
8 "I would like you to submit a memorandum in which you
9 take each theory and for each defendant, and you
10 reference those allegations that support the cause of
11 action -- that you can identify what is in your pleading
12 that supports conversion."

13 "Mr. Nedrich: Yes, I can."

14 And that is the Court's order at that point.

15 THE COURT: I don't think we are saying
16 anything differently. I asked Mr. Nedrich to identify
17 those allegations in his pleading that supported each
18 cause of action. I didn't ask him to go beyond that
19 pleading at that time. I just said, give me the facts
20 that support it.

21 MR. FROMME: I agree with Your Honor. I don't
22 think you are. What I am saying is that he has already
23 had his opportunity, and we are here now.

1 THE COURT: Yes.

2 MR. FROMME: Now, he is coming and trying to
3 put on the evidence.

4 THE COURT: No, I don't want to go through the
5 pleading again. That's exactly what I don't want to do,
6 because I accept those facts as given. But, as to the
7 claim for sanctions, based on a failure to properly
8 investigate the facts in support of allegations, he can
9 put evidence on what they did to investigate.

10 To the extent the sanctions motion is premised
11 on both a failure to properly investigate and allege
12 facts that were warranted, and to the extent that, of
13 course, we already have discussed that this, as a matter
14 of law, there was no theory upon which such a claim could
15 be properly premised -- and we have to do both. So, let
16 me just take one more look here.

17 (The Court reviews the documents.)

18 THE COURT: I was really reading this too
19 narrowly. I certainly see that First Source claims that
20 there were neither facts nor legal theories. We are
21 going to have to look at this factually, but not to re-
22 establish the facts alleged, but as to the adequacy of
23 the investigation in support of the facts.

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1 MR. FROMME: Judge, I think you already ruled,
2 if I may. I think you already ruled on the issue of the
3 theory of law. He has never really stated any existing
4 theory.

5 THE COURT: I know. I am just talking about
6 the facts now. For example, he has claimed that First
7 Source had a lien on Jettech, and that's the fact in the
8 pleading. I don't even think there is any dispute as to
9 that fact, for example. So, we shouldn't have to take
10 any evidence on that question. But for, perhaps,
11 Trafalgar Square (sic) --

12 MR. LABOWITZ: Trafalgar House, Your Honor.

13 THE COURT: Trafalgar House. Yes, there may be
14 facts there, or the Stephenson client claims. To the
15 extent that there is a dispute that the facts alleged are
16 incorrect in some way, I need to know at least that --
17 and have some evidence on the investigation of the facts
18 that was made.

19 I am not going to deal with whether the facts
20 are incorrect, but I want to see what the investigation
21 was, and whether it was a sufficient basis to make the
22 allegation. I think that's what the law requires.

23 MR. FROMME: Judge, doesn't the sanctions

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1 motions require only one violation of the statute, either
2 the theory or the facts? It doesn't require a
3 combination of the two.

4 THE COURT: I agree, but theoretically, it
5 could go either on a failure to properly investigate
6 facts, or on the insufficiency of the legal causes of
7 action. It may not necessarily -- In other words, if I
8 were to rule that these causes of actions,
9 notwithstanding the granting of the demurrer, were
10 warranted in some way, I'm not sure that the standards
11 are the same for demurrer. Then I am going to have to
12 look at the factual question.

13 You are suggesting that it is axiomatic, that I
14 would have to conclude they are not warranted under
15 existing law.

16 MR. FROMME: Yes, Judge --

17 THE COURT: Well, I have to hear the argument
18 on that first. I have already ruled the causes of action
19 are not supported by the facts alleged. Now, the
20 question is, is there -- The question still remains is
21 whether there is any argument. That's what I want to
22 hear.

23 Is there any argument that somehow,

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1 notwithstanding my view that there is no cause of action,
2 that somehow they were warranted under existing law. I
3 don't know what the argument would be, but I have to
4 listen to it, seems to me.

5 MR. STEPHENSON: Your Honor, as I understand
6 it, if he can present evidence that there were additional
7 facts known by Mr. Nedrich or his client prior to the
8 time that the lawsuit was filed, then he is entitled to
9 present that so the Court has the benefit of that
10 additional information.

11 THE COURT: No. I just want to know what
12 investigation was done. To the extent that your motions
13 say -- let me get back to the statute -- that there was
14 neither fact nor law that supported the cause of action,
15 I think the issue of facts in the case -- Let's take a
16 look at this.

17 MR. STEPHENSON: Your Honor, please. As I
18 interpret the statute, it goes to them both and it may be
19 the gravity and extent of it if you have both a failure
20 to investigate the facts and to apply that correctly
21 under the law. So, I thought that the extent of it.

22 THE COURT: Yes, it can go to both; it can go
23 to either.

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1 MR. STEPHENSON: Well, if you have either one,
2 there is a basis under the statute. If you have both, it
3 extends the gravity of it.

4 MR. CROFT: Your Honor, the confusion that I
5 have, if the Court please.

6 THE COURT: Yes?

7 MR. CROFT: The confusion I have with this was
8 if they made a bona fide investigation, everything that
9 they did was proper, but they never developed any facts
10 as a result of that investigation, even though we know
11 what they pleaded was insufficient -- but if they have
12 some other facts that they knew before they filed the
13 suit, and elected not to plead it, okay.

14 THE COURT: You're right.

15 MR. CROFT: That, perhaps, the Court could
16 consider. But I don't think -- I guess what I am saying
17 is if they never did a thorough investigation, they
18 obviously couldn't come up with facts. So, the Court,
19 perhaps, needs to look at two things -- the type of
20 investigation they did, the facts they came up with, and
21 the facts that they plead. But for purposes of this
22 argument, perhaps we'll say forget about the bonafideness
23 of their investigation. Let's just look at the

1 additional facts that they knew that they didn't plead.
2 And with that additional information, I think the Court
3 will conclude that there was no basis in fact to file
4 these counts. Is that a correct statement of fact?

5 MR. NEDRICH: No basis in fact or in law?

6 MR. CROFT: We already know there is no basis
7 in law.

8 THE COURT: The problem is if you are going to
9 raise that claim, there was no basis in fact, then it
10 seems to me we have to look at what other facts were
11 there at the time; do we not?

12 MR. CROFT: Judge, may we have one minute?

13 THE COURT: Why don't we take a five-minute
14 break? You also need to confer about when you are going
15 to come back, because it is clear we are not going to
16 finish.

17 MR. FROMME: What time will Your Honor be
18 recessing today?

19 THE COURT: I am going to recess again at 1:00.
20 What I may do is touch base with this particular
21 committee, come back at about 1:20 and go on until 2:00,
22 but after that, I have to leave.

23 MR. STEPHENSON: It may be that we can take

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1 some action that would shorten it.

2 THE COURT: I want to take a look at something,
3 also, so let's all look.

4 (Brief pause)

5 MR. CROFT: Your Honor, if I may, perhaps we
6 could expedite things. We have talked -- the counsel for
7 the defendants, and we are agreeable to Mr. Nedrich
8 proffering to the Court what the additional evidence is,
9 or the additional facts that he or his client had
10 available to them prior to the time they filed the
11 lawsuit, with one caveat. And, that is, if as a result
12 of the proffer, we would like to perhaps have direct
13 testimony on that and the opportunity to cross-examine.
14 We would like to reserve that right, and the hope would
15 be that if there are twenty items proffered, fifteen of
16 them are not dispute, so we can expedite it that way. We
17 do request the opportunity to cross examine.

18 THE COURT: Do you have any problem in
19 proceeding in that way?

20 MR. STEPHENSON: With the understanding, Your
21 Honor, that a proffer would be to the issue of the basis
22 for having filed the suit on the factual --

23 MR. CROFT: Absolutely.

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000315

1 MR. NEDRICH: The proffer, essentially, is
2 going to be through Mr. Weber's testimony, since he knew
3 the facts and he would better be able to explain them,
4 rather than me representing what he would say.

5 Obviously, they couldn't cross examine me. So,
6 if that is acceptable, Your Honor.

7 THE COURT: Let's just go through it, then.
8 Can we do it in some systematic way?

9 MR. NEDRICH: I have a fairly good system. I'm
10 not going to say it is real short, but that's what I have
11 to deal with, Your Honor. I've got four sets of exhibits
12 here for counsel. There is too many counsel -- and I
13 have the original for the Court. Mr. Weber is holding a
14 copy.

15 Is anybody holding the original? I'm sorry.
16 Is there a yellow sticker on yours? I found it.

17 THE COURT: All right, bring it up.

18 MR. NEDRICH: There are, I believe, 17 numbered
19 exhibits here. I will go through them one by one, Your
20 Honor, and have Mr. Weber explain.

21 MR. LABOWITZ: Can I get premised again? These
22 documents reflect Mr. Weber's -- the product of Mr.
23 Weber's investigation as of the time he filed the

1 lawsuit?

2 MR. NEDRICH: Absolutely. That's just part of
3 what we have.

4 MR. LABOWITZ: Okay, tell me what part is what?
5 Some of it does not include?

6 MR. NEDRICH: No, no, no, no. Except for the
7 one, Your Honor, I believe, and you have two photographs
8 which we will address specifically afterwards, and one
9 newspaper article, everything here, we had in our
10 possession and a great deal more, at the time this
11 lawsuit was filed.

12 MR. LABOWITZ: And the premise is that this is
13 the information that supports the allegations made in the
14 lawsuit at the time that it was filed?

15 MR. NEDRICH: This is some of the information
16 that supports those allegations. Mr. Weber's testimony
17 is going to be using these by way of example.

18 MR. CROFT: I thought we were all in agreement
19 that the allegations in the Motion for Judgment are
20 accepted by the Court as fact. We don't need any
21 extensive evidence to support that. All I thought we
22 needed was the additional facts that they had that were
23 not pleaded. I look at this; there is Articles of

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000307

1 Incorporation in this. There is an employment agreement.

2 THE COURT: Let's just go through it. We will
3 deal with it later. Let's just go on through it. If it
4 is not relevant, given the parameters of this hearing,
5 I'll just disregard it.

6 MR. STEPHENSON: Your Honor, I want an
7 objection in the record in that Mr. Weber gleaned various
8 documents from the offices of my clients, without
9 authority, and I want that clearly on the record that I
10 object to his having confiscated those documents without
11 any authority, and he is now making some use of them, and
12 I don't even know what they are.

13 THE COURT: You made that objection. I'm not
14 sure he is precluded from using them, but you may have --
15 I don't know what your remedies may be, but I understand
16 that there is an objection that these do not belong to
17 him. In any event, they are here. All right, Mr.
18 Nedrich.

19 MR. NEDRICH: Thank you, Your Honor.

20 DIRECT EXAMINATION RESUMED

21 BY MR. NEDRICH:

22 Q Mr. Weber, just very briefly, when you came to
23 me, generally, what did you know with regard to Mr. Jones

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000398

1 and what were you trying to accomplish?

2 A I was employed by Mr. Jones at Dulles Equities,
3 Incorporated. Part of my employment agreement dealt with
4 leasing properties which Dulles Equities, Incorporated
5 had developed. One of those buildings was the property
6 known as the Atrium in Herndon.

7 According to my employment agreement, I was to
8 be paid a commission for \$1.75 per square foot for any
9 tenants that I had procured in Dulles Equities,
10 Incorporated's properties during my employment. I
11 successfully procured a tenant for the Atrium building,
12 the U.S. General Services Administration, for
13 approximately 130,000 square feet, for which I was due a
14 commission of approximately \$230,000.

15 I was not paid for that commission, despite Mr.
16 Jones' many assurances to me that I would be. And I came
17 to your offices because I felt that I had a valid claim
18 against Mr. Jones. I also brought with me other
19 documents which I believed supported my belief that Mr.
20 Jones was systematically attempting to transfer assets
21 out of Dulles Equities, Incorporated so that he could
22 substantiate his claim -- one, that the company did not
23 have any money to pay me; and that two, if we were ever

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000399

1 successful in getting a judgment from him, that there
2 would be no monies in the corporation for which I would
3 have any claim.

4 Q Now, with regard to the other defendants named
5 in this cause, did you -- Who, to your knowledge, was the
6 owner and controller of Dulles Equities, Inc.?

7 A Les Jones and Dorothy Jones.

8 Q And who, to your knowledge, was the owner and
9 controller of Dulles Equities Limited Partnership III?

10 A Les Jones and Dorothy Jones.

11 Q And who was the owner and controller of Armed
12 Forces Electronics, Inc.?

13 A Les Jones and Dorothy Jones.

14 Q Did you actually do work for Armed Forces
15 Electronics?

16 A Yes, I did work for Dulles Equities
17 Incorporated, the limited partnerships in question, Armed
18 Forces Electronics, and Dulles Equities of Virginia
19 Incorporated.

20 Q With regard to Armed Forces Electronics and
21 Dulles Equities of Virginia, who, to your knowledge, was
22 the owner and/or controller of those business entities?

23 A As I said, Les and Dorothy Jones.

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000400

1 Q Also, in the course of your working for Mr.
2 Jones and these various entities, did you have direct
3 communication with officials, first of all, of Riggs
4 National Bank?

5 A Yes, I did.

6 Q Did you gain information by way of those
7 communications that you provided to me?

8 A Yes, I did.

9 Q Did you have -- Not direct communications, but
10 did you have activity involvement with the Trafalgar
11 House purchase?

12 A Yes, I did. Not directly with the purchase
13 itself, but with the ongoing activities with the
14 property.

15 Q With regard to the jet plane, the Lear Jet, and
16 with regard to Jettech and Dahlberg, did you have direct
17 communications with them?

18 A Yes, I did.

19 Q With regard to First Source Bank, you did not
20 have direct communication with them; is that correct?

21 A No, sir, not with the bank, but as I have
22 already testified, was intimately involved in the
23 activities of Armed Forces Electronics and performed work

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000401

1 for them.

2 Q Now, did you share all the information you had
3 at that time with me?

4 A Yes. I presented all of the information upon
5 which I believed that these activities were going on.
6 For example, in the case of the Trafalgar House property,
7 I had receipts which showed that the residence which was
8 a personal residence for Mr. Jones, which is stated
9 clearly in his purchase contract, even though it was his
10 personal residence, that he was using Dulles Equities
11 Incorporated monies to pay for the improvements at the
12 property in excess of \$100,000, as well as his monthly
13 payments to Trafalgar House.

14 Q Let me go back to that a little later, Mr.
15 Weber. The documents you provided; would it be fair to
16 say, just to save time, that they are three feet deep?

17 A Yes, the volume. There are several boxes.

18 Q And we looked at all of those documents?

19 A Yes, we did.

20 Q How much of a period of time would you say we
21 spent just examining documents and discussing them?

22 A Approximately four or five months. If I might
23 just add --

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000482

1 Q Go ahead.

2 A That what I did was, I presented all of this
3 information, and I said that I had reason to believe
4 that, in every one of these cases, Mr. Jones was
5 attempting to lose the corporation of Dulles Equities
6 Incorporated, and I didn't know what rights I had to
7 prevent that from happening, and that's what I came and
8 talked to you about.

9 Q Okay. A question, Mr. Weber: The documents
10 that you had in your possession, in light of Mr.
11 Stephenson's objections, did you have any contractual
12 agreement -- Well, first of all, how did you pull those
13 files together? What was the reason for your pulling
14 those files together?

15 A Well, as I said, they were part and parcel to
16 my everyday activities at Dulles Equities Incorporated.
17 I had no kind of agreement as to, you know, that I could
18 not keep personal files. I had no agreement that said
19 that I could not take files with me when I left the
20 corporation, and I had never received any kind of
21 communication either from Mr. Jones or his counsel, by
22 letter or by phone call or otherwise, prior to filing the
23 lawsuit, asking that I send back any files.

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000402

1 Q When was the last time you worked with Mr.
2 Jones?

3 A February of 1991.

4 Q So far as you are aware, when you took those
5 files out, you considered them all to be your personal
6 work files?

7 A Yes, I did.

8 Q And so far as you were aware, you were in
9 violation of any kinds of agreements?

10 THE COURT: I am not going to deal with this
11 issue. It is not before me.

12 MR. NEDRICH: Not for the truth of it, Your
13 Honor; just the state of mind.

14 THE COURT: We are very limited in time. Let's
15 not get into extraneous issues. I have tried to state
16 that many times today. It's not before me, and I'm not
17 going to deal with that question.

18 MR. NEDRICH: Your Honor, I would like to hand
19 Mr. Weber Exhibits 1 through 4.

20 THE COURT: All right.

21 MR. NEDRICH: Mr. Weber, be careful, some of
22 these may be -- Well, you have copies, correct?

23 THE WITNESS: Yes.

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000404

1 BY MR. NEDRICH:

2 Q Is it a fair statement that Exhibit 1 is a copy
3 of your employment agreement?

4 A Yes.

5 Q With Dulles Equities, Inc.?

6 A Yes. --

7 Q Signed by Les Jones as President?

8 A Yes.

9 Q Those are true signatures, to the best of your
10 knowledge?

11 A Yes.

12 Q What is Exhibit 2?

13 A Exhibit 2 is the cover letter from the General
14 Service Administration to me, notifying me that General
15 Services has agreed to lease the Atrium property.

16 THE COURT: These issues are not in dispute;
17 right?

18 MR. STEPHENSON: The first document is the very
19 employment agreement that was one of the exhibits.

20 MR. NEDRICH: Well, one of the issues in the
21 counterclaim -- They filed a counterclaim against us.

22 Well, I understand that's not --

23 THE COURT: There is no dispute that he found a

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000485

1 tenant, I believe. Let's go on.

2 MR. STEPHENSON: The basis for our demurrer.

3 BY MR. NEDRICH:

4 Q What is Exhibit 3?

5 A Exhibit 3 is the limited partnership agreement
6 for Dulles Equities Limited Partnership III.

7 Q Does that identify the general and limited
8 partners?

9 A Yes.

10 Q It identifies Dulles Equities, Inc. as the
11 general partner?

12 A Yes.

13 Q And Dulles Equities Limited Partnership III --
14 the limited partners as Mr. and Mrs. Jones; correct?

15 A Yes.

16 Q And Mr. Jones was also the President of Dulles
17 Equities, Inc.?

18 A Yes.

19 Q Did Mr. Jones at any time say, "Hey, you are
20 not owed a commission because it really wasn't a Dulles
21 Equities --"

22 MR. STEPHENSON: Your Honor, I don't want to
23 try the merits of the suit.

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000486

1 MR. FROMME: What are we going to try in this
2 case, Judge?

3 THE COURT: We are not going to try the case.

4 MR. CROFT: Your Honor, I am going to interpose
5 another objection. Because the very reason we are here
6 is because, if I may be so bold as to say the judgment of
7 this counsel in the way he filed his case, and now the
8 way he is putting on evidence.

9 My God, we are here -- I asked for a proffer.
10 We stipulated to a proffer. What are we doing? This
11 witness is testifying as he would in a jury trial.

12 THE COURT: We are not going to go through the
13 merits of the case.

14 MR. CROFT: We don't want to be here for five
15 more hours. It's costing our clients money.

16 THE COURT: Mr. Nedrich?

17 BY MR. NEDRICH:

18 Q What is Exhibit 4?

19 A Exhibit 4 is an exhibit that shows that there
20 was a meeting of the board of directors of Dulles
21 Equities Incorporated, authorizing Mr. Jones, as
22 President of Dulles Equities Incorporated, to sign the
23 lease with the General Services Administration.

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000407

1 THE COURT: That is not in dispute. Is it?
2 Right?

3 MR. LABOWITZ: Let me take a shot at this.
4 Your Honor, I am willing to proffer that the documents
5 speak for themselves. And I am willing to proffer that
6 up through number nine -- I am making a proffer on behalf
7 of Mr. Weber, I guess, that up through number nine, he
8 may even have had all that stuff at the time the lawsuit
9 was filed in April of 1991.

10 THE COURT: Let me just take a look. What is
11 seven in your exhibits?

12 MR. NEDRICH: Exhibit 7 is the letter from Mr.
13 Fromme.

14 THE COURT: On what issue is it proffered?

15 MR. NEDRICH: It is on the issue of the control
16 of Dulles -- excuse me -- Armed Forces Electronics,
17 because one of the issues raised in this case, "Well,
18 these are separate and independent entities."

19 Of course, we contend that they were nothing
20 but a series of shell corporations that Mr. Jones used at
21 his whimsy. I would submit that this letter is going to
22 be shown to be somewhat inconsistent with the
23 representations that were made before this Court.

1 By the way, this letter was found in the
2 records of the United States District Court in the case.
3 In the case of Riggs National Bank --

4 THE COURT: It doesn't matter.

5 MR. NEDRICH: I understand.

6 THE COURT: Eight? What is eight?

7 MR. FROMME: I would simply point out to the
8 Court there is an order that that was to be closed and
9 confidential. It was not to be disseminated anywhere.

10 THE COURT: Well, you may have a dispute with
11 the Court if they disseminated it. What is eight
12 proffered for?

13 MR. NEDRICH: Your Honor, eight is --

14 THE COURT: Accounts receivable.

15 MR. NEDRICH: Yes. The question is what facts
16 did we know, and that goes to the question of what Mr.
17 Weber briefly alluded to in his deposition with regard to
18 his work at Armed Forces Electronics, which tied him into
19 First Source Bank, which is Exhibit 9.

20 THE COURT: This ties First Source Bank into?

21 MR. NEDRICH: Armed Forces Electronics, and it
22 also ties them into Les Jones and Dulles Equities, Inc.
23 In other words, these two documents form a linkage in our

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000488

1 mind between --

2 THE COURT: To support your allegation that
3 First Source had financed the sale of the jet or was
4 about to finance the sale of the jet?

5 MR. NEDRICH: Well, actually had and actually
6 had put money into the accounts of Armed Forces.

7 THE COURT: To finance the sale of the jet as
8 claimed in your allegations?

9 MR. NEDRICH: Refinance the jet, not the sale.
10 They were keeping the jet.

11 THE COURT: So, it is related to that fact?

12 MR. NEDRICH: Yes, ma'am.

13 THE COURT: All right.

14 MR. NEDRICH: Can I ask a question of the
15 witness just on this proffer?

16 BY MR. NEDRICH:

17 Q Mr. Jones -- I'm sorry. Mr. Weber, would you
18 take a quick look at Exhibits 8 and 9? Why were you
19 involved in Armed Forces Electronics --

20 THE COURT: Well, let me stop you. There has
21 been a proffer this morning, as I understand Mr. Murphy's
22 testimony on behalf of his client, that they don't
23 dispute that First Source lent money for the refinancing.

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000410

1 Right?

2 MR. MURPHY: They lent money and took back as
3 collateral the lien on the jet, and they had a guarantee
4 from the Joneses and they had a guarantee and pledge from
5 Armed Forces.

6 MR. NEDRICH: Is he willing to stipulate that
7 under Jones' instructions, Dulles Equities monies was
8 transferred into a new account for Armed Forces
9 Electronics which First Source held, and that monthly
10 collections of monies of Armed Forces Electronics went
11 into that account, and at the time of this lawsuit, that
12 we were reasonably entitled to believe that money held by
13 First Source Bank in the name of Armed Forces Electronics
14 rightfully belonged to Dulles Equities, Inc.?

15 MR. MURPHY: No.

16 THE COURT: That is a conclusion of law.

17 MR. MURPHY: No, indeed not.

18 MR. LABOWITZ: There is not even a fact that
19 supports that in any of the documents.

20 THE COURT: How about the allegation that there
21 was another account for Armed Forces in your bank?

22 MR. MURPHY: They have a letter here on Exhibit
23 Number 9, the instruction from the Dulles Equities

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000411

1 telling First Source on the monies -- the three million
2 that was borrowed to put the balance of the account into
3 a checking account at First Source for Armed Forces
4 Electronics.

5 THE COURT: It is established by the letter?

6 MR. NEDRICH: It is established by the letter.

7 MR. STEPHENSON: As I understood the proffer,
8 all the parties were on the loan as well.

9 MR. MURPHY: Right. Armed Forces is on the
10 loan by their own documents. The Joneses are on the
11 loan. Dulles Equities is on the loan.

12 THE COURT: All right. Let's go on.

13 BY MR. NEDRICH:

14 Q Mr. Weber, when you looked through this
15 documentation, what was your purpose? What were you
16 involved with at Armed Forces Electronics?

17 A Well, Mr. Jones had me perform a number of
18 different activities on behalf of the corporation. I was
19 asked to find a source to refinance these accounts
20 receivables. And in the course of my activities in
21 working with Armed Forces, I was given the files on the
22 corporation to review. I also had to justify to the
23 potential lenders the validity of the receivables.

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000412

1 Q Okay. Now, in the course of that, did you
2 investigate the financial status of Armed Forces
3 Electronics?

4 A To the extent that they were included in the
5 records, yes.

6 Q What kind of assets did Armed Forces
7 Electronics hold?

8 A Accounts receivables.

9 Q And what else? Did they hold any merchandise?

10 A They had some merchandise, as well.

11 Q As best you were able to determine, how were
12 these things acquired -- with what capital?

13 A With money that was loaned to Dulles Equities,
14 Incorporated.

15 Q To the best of your knowledge, was First Source
16 Bank still holding monies of Armed Forces Electronics
17 arising out of this capital of Dulles Equities?

18 A To the best of my knowledge, the wire transfers
19 were going from Armed Forces Electronics to its accounts
20 at First Source Bank.

21 Q To the best of your knowledge, was any monies
22 from Armed Forces Electronics going back to Dulles
23 Equities for the advancement of the capital?

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000418

1 A No, sir.

2 Q Or for any other considerations?

3 A No, sir.

4 Q Was anything going into Dulles Equities at that
5 point in time?

6 A No. --

7 Q What was happening to Dulles Equities?

8 A Dulles Equities was in the process of
9 liquidating its assets into new corporations in Les
10 Jones' name.

11 MR. FROMME: Your Honor, I am going to object.
12 This is absolutely conclusory on his part as he sees the
13 documents, and I object to this testimony. That all was
14 part of this pleading, and is all conclusory. There was
15 no facts pleaded, and he is not pleading a fact now.
16 He's simply making a conclusion.

17 THE WITNESS: I would be happy to show the
18 facts.

19 THE COURT: It was not part of the pleading
20 that Armed Forces was in the process of -- Was it Armed
21 Forces that you say was in the process of liquidating?

22 THE WITNESS: No, no, no. It was Dulles
23 Equities.

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000414

1 THE COURT: Dulles Equities was in the process
2 of liquidating?

3 THE WITNESS: If I might just explain
4 something?

5 THE COURT: No. A question first.

6 BY MR. NEDRICH:

7 Q Let me ask you this --

8 THE COURT: I am going to sustain the
9 objection. Go ahead, please.

10 BY MR. NEDRICH:

11 Q There was another company called Dulles
12 Equities of Virginia; is that correct?

13 A Yes.

14 Q And there was an issue with regard to motor
15 vehicles. Could you tell us, did Dulles Equities, Inc.
16 own a fleet of cars?

17 A Yes, they did.

18 Q How many, approximately?

19 A Well, they owned a Mercedes Benz, two Jaguars,
20 a Cadillac, a Ford Bronco, a Pontiac station wagon, and a
21 truck, I believe. There may be more, but that's the best
22 of my recollection.

23 Q There was another employee at Dulles Equities,

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000418

1 Inc. called Alan Moore?

2 A Yes.

3 Q Did you have discussions with Mr. Moore and/or
4 observe him doing something with these vehicles?

5 A Yes. The automobiles, some of which he was
6 attempting to sell for cash, and others were traded by
7 Mr. Jones in on purchase of new vehicles. All of these
8 vehicles were titled in Dulles Equities, Incorporated.

9 Q The new vehicles or the old vehicles?

10 A The vehicles I just described. And that those
11 vehicles, then, were traded in for the purchase of new
12 cars, which were then titled in the name of Dulles
13 Equities of Virginia, Incorporated. So, the net result
14 of this was that the assets that were owned by Dulles
15 Equities, Incorporated were transferred towards the
16 purchase of new cars titled in the name of Dulles
17 Equities of Virginia.

18 MR. STEPHENSON: I think we have the same
19 objection that we have a continuing conclusory testimony,
20 Your Honor.

21 THE COURT: The title of the cars -- The cars
22 held by Dulles Equities, Inc. were traded in and new cars
23 purchased as a result were then titled in Dulles Equities

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1 of Virginia, Inc.?

2 THE WITNESS: Yes, ma'am.

3 THE COURT: And that was the basis of your
4 conclusion that -- or the basis of your allegation?

5 MR. NEDRICH: One of them. One of the bases
6 for the allegation of transfer of assets.

7 THE COURT: That what?

8 MR. NEDRICH: That Mr. Jones and Dulles
9 Equities, Inc. were transferring assets, tangible assets
10 and cash, out of Dulles Equities, Incorporated and into
11 other companies and other entities that he owned or
12 controlled.

13 THE COURT: Well, in this case, Dulles Equities
14 of Virginia?

15 MR. NEDRICH: That's correct.

16 THE COURT: Which is pled?

17 MR. NEDRICH: Which is pled, yes.

18 BY MR. NEDRICH:

19 Q To the best of your knowledge, based on what
20 you saw at that time, was there any money owed on any of
21 these vehicles?

22 A No.

23 Q When Dulles Equities owned them?

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1 A No.

2 Q Did you see the titles to them?

3 A Yes.

4 Q And did you see the titles to the new vehicles,
5 Dulles Equities of Virginia?

6 A Yes. --

7 Q Did you see any credits back in any way, shape,
8 or form going from Dulles Equities of Virginia to Dulles
9 Equities for having a purchase price?

10 A No.

11 Q Now, let me also ask you. Let's talk a little
12 bit with regard to Mr. Dahlberg and Jettech. Did you
13 have some discussions with Mr. Dahlberg?

14 A Yes, I did.

15 Q Approximately when were these discussions?

16 A These were in the fall of 1990.

17 Q What was the reason for you talking to him?

18 A Mr. Dahlberg called up Dulles Equities and was
19 looking to speak to Mr. Jones.

20 Q Did you have any conversations with him?

21 A Yes.

22 Q Tell us what those were about. What did you
23 learn from him?

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1 A Well, Mr. Dahlberg had, over a period of time,
2 had numerous contacts with Dulles Equities offices, and I
3 had spoken to him on a number of different occasions. He
4 knew who I was. He asked me if Mr. Jones was in, and I
5 said no. I asked him how the efforts were going to sell
6 the aircraft, because Mr. Jones had said --

7 MR. STEPHENSON: Objection to hearsay testimony
8 of Mr. Dahlberg.

9 THE COURT: I think I am going to have him
10 testify to it. Not for the truth of what was stated, but
11 what his investigation disclosed. Go ahead.

12 BY MR. NEDRICH:

13 Q Go ahead, Mr. Weber.

14 A Well, I asked him how the sale of the Lear Jet
15 was going, because Mr. Jones had told me that he was
16 selling the Lear Jet in an effort to raise capital for
17 Dulles Equities, Incorporated, in part to pay me the
18 money that he owed me. Mr. Dahlberg told me that his
19 efforts were going very well, that he was very close to a
20 deal in Arizona with a party, whereby there would be a
21 trade of the Dulles Equities aircraft for another plane,
22 and that plane would be titled in the name of Dulles
23 Equities of Virginia, Incorporated.

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1 Q Did Mr. Dahlberg say anything more about this
2 transferring one plane out of the Corporation A and a
3 second plane into Corporation B?

4 A He said that it was easier to do it that way,
5 to facilitate the deal. And I was surprised, one, by the
6 fact that Mr. Jones would be attempting to trade the
7 aircraft. I was also --

8 MR. FROMME: I am going to object.

9 THE COURT: Yes, I think that is irrelevant.

10 BY MR. NEDRICH:

11 Q That is the end of the question, Mr. Weber. So
12 far as you knew at the time that this lawsuit was filed,
13 was Jettech and Dahlberg still in the retainage of Dulles
14 Equities, Inc. to sell that aircraft?

15 A I'm sorry?

16 Q Were they still under employment to Dulles
17 Equities, Inc. to sell that aircraft?

18 A To the best of my knowledge, they were still
19 the broker attempting to sell the aircraft, yes.

20 Q Okay. Did you have discussions with Mr.
21 Dahlberg in 1991 before you left?

22 A No, I did not. I did have --

23 Q Go ahead. I'm sorry.

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1 A I did have extensive conversations with another
2 individual who is an employee of Dulles Equities, the
3 pilot for the aircraft, Louis Vincenes. He told me that
4 Mr. Jones' efforts to dispose of the plane were ongoing.

5 Q Would you take a look at Exhibit 11? This is
6 the Trafalgar House contract with Mr. Jones?

7 A Yes.

8 Q Take also a look at Exhibit 12. Are these
9 copies -- I'm sorry.

10 THE COURT: What about 10?

11 MR. NEDRICH: Did I miss 10, Your Honor?

12 THE COURT: Is that --

13 MR. NEDRICH: Oh, 10 is Mr. Labowitz's letter.

14 THE COURT: That has already been established.

15 Okay, go ahead. I'm sorry.

16 BY MR. NEDRICH:

17 Q Eleven is the contract documents between Mr.
18 Jones and Trafalgar House for the buy of the house?

19 A Yes, it is.

20 Q What is Exhibit 12?

21 A This is just a sample of many invoices in which
22 I was contacted at Dulles Equities and asked why these
23 bills had not been paid. And I inquired as to what type

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1 of bill it was, went into the file to find it.

2 In this case, it was a bill to Dulles Equities,
3 Incorporated for approximately 600 square feet of marble
4 which was being shipped to Mr. Jones' personal address,
5 and a notation that the payment for the marble was via
6 Dulles Equities check.

7 Q Did you also -- Well, what did you --

8 MR. LABOWITZ: Excuse me, Mr. Nedrich.

9 MR. NEDRICH: I'm sorry; go ahead.

10 MR. LABOWITZ: I am not sure what you are
11 saying. There is some notation on this document, Exhibit
12 12?

13 THE WITNESS: On the invoice, you are saying?

14 MR. LABOWITZ: Yes.

15 THE WITNESS: Yes.

16 MR. LABOWITZ: Do you mean you contend this is
17 a Dulles Equities check?

18 THE WITNESS: Yes, sir.

19 MR. LABOWITZ: How do you know that? Where did
20 that come from?

21 THE WITNESS: It came from my inspection of the
22 check records themselves.

23 MR. LABOWITZ: Okay.

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1 BY MR. NEDRICH:

2 Q You don't have these checkbooks? You didn't
3 take the Dulles Equities checkbooks with you, or anything
4 like that?

5 A No. What had happened in this particular case,
6 I was very often the last employee in the office, and Mr.
7 Jones very rarely spent his time at Dulles Equities. He
8 also worked at numerous different places; he travelled
9 extensively to Europe.

10 It was very often the case that many of the
11 creditors that Mr. Jones owed money to would call up
12 looking for him and asking where monies were. In various
13 different cases, I was the one that took those phone
14 calls.

15 MR. FROMME: I am going to object to this
16 testimony. It is not relevant, and no question is
17 pending.

18 THE COURT: I don't think it is relevant unless
19 there is some contention that the information -- he
20 wouldn't be privy to the information or that it's
21 competent in evidence. I don't know if that's what the
22 matter is about.
23

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1 BY MR. NEDRICH:

2 Q Would you generally be the one who usually
3 worked latest at the office?

4 A Yes.

5 Q Would you handle many things in Mr. Jones' life
6 at that time, not just strictly trying to buy himself
7 real estate or lease real estate?

8 A Absolutely.

9 Q Did you take it upon yourself to try to get
10 these accounts straightened out?

11 A Well, whenever I received --

12 MR. LABOWITZ: Your Honor, I don't understand
13 the relevance of this.

14 THE COURT: I don't think it is relevant.

15 MR. NEDRICH: Well, it is preliminary, Your
16 Honor, because it is going to tie in with why he knows
17 other things that he knows.

18 THE COURT: All right, go ahead.

19 BY MR. NEDRICH:

20 Q Did you undertake to try and figure out what to
21 do with these bills?

22 A Yes.

23 Q Did you happen to have discussions with Alan

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1 Moore?

2 A Yes, I did.

3 Q Now, Alan Moore was a Dulles Equities employee?

4 A Yes.

5 Q Did he report to Mr. Les Jones?

6 A Yes. --

7 Q What did Mr. Moore tell you about the Trafalgar
8 House, what was going on there when these things came up?

9 MR. LABOWITZ: Your Honor, I am going to object
10 at least as to hearsay as to what it is that he is
11 saying. I understand the Court's prior ruling about
12 we're not talking about the truth of this. If we are
13 talking about simply what it is he was told --

14 THE COURT: Yes.

15 BY MR. NEDRICH:

16 Q All right, what did he tell you?

17 A Well, Mr. Moore told me that he was involved
18 with the extensive renovations and improvements to the
19 Woodland Falls property, which was something that I also
20 knew myself, because throughout the late summer and early
21 fall of 1990, the office was deluged with calls from
22 carpet layers, marble suppliers, as I have already talked
23 about, various different folks that were involved in

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1 improving that property.

2 Mr. Moore also told me that Mr. Jones had a
3 very interesting way of paying for these activities. And
4 he said that Mr. Moore would go out and hire contractors
5 and would also go out and buy building materials. He
6 would do that personally. Then Mr. Jones would then
7 reimburse him with a Dulles Equities, Incorporated check
8 for both his labors as well as the labors of others.

9 I was concerned about that, given the fact that
10 Mr. Jones was telling me that Dulles Equities had no
11 money to pay me, and I looked and, in fact, corroborated
12 that, indeed, Mr. Moore was submitting these invoices to
13 Mr. Jones and that they were being paid with Dulles
14 Equities, Incorporated checks.

15 Q Did Mr. Moore tell you how much money Mr. Jones
16 was using out of Dulles Equities to upgrade this
17 property?

18 A Yes, he did.

19 Q What did he tell you?

20 A He said it was in excess of a hundred thousand
21 dollars.

22 Q Did he tell you what kind of improvements were
23 being made?

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1 A Yes. He told me that there was over 2,000
2 square feet of marble that had been installed at the
3 property; that they had built a gymnasium and workout
4 facility; that they had installed a quite elaborate
5 electronic security system; that they had installed
6 approximately twenty telephone lines; and there may have
7 been others as well that I don't recall.

8 MR. LABOWITZ: Your Honor, so far we haven't
9 heard about any money of this \$100,000 going to Trafalgar
10 House Property, Incorporated. If I understand it
11 correctly, there are twenty phone lines, which means C&P
12 Telephone ought to be in here as a defendant because they
13 are part of that same conspiracy, according to the
14 understanding that Mr. Weber had in April of 1991. This
15 isn't relevant to what it is we are talking about.

16 THE COURT: We are going to have to stop, in
17 any event, because I am going to have to go to my
18 meeting. And it is 1:15, and I think we just should stop
19 for lunch.

20 Now, I don't know what time I will be back this
21 afternoon, and I'm not sure that it is a good idea to try
22 to schedule this again for this afternoon, because it
23 certainly will be probably close to 4:00 if I can get

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A F T E R N O O N S E S S I O N

THE COURT: Good afternoon. You may proceed with Mr. Weber.

MR. NEDRICH: I understand Mr. Fromme has not returned, but everybody else has.

THE COURT: We are going to go on now.

MR. NEDRICH: Your Honor, I believe we were interrogating Mr. Weber with regard to the Trafalgar situation, and I was asking him about Exhibits 11 and 12. I can proceed?

THE COURT: Yes, proceed.

DIRECT EXAMINATION RESUMED

BY MR. NEDRICH:

Q Mr. Weber, what information do you have or did you have at the time this case was filed that Trafalgar was receiving cash from Dulles Equities, Inc. with regard to the purchase of this house by Mr. Jones?

A There were checks that were written on the Dulles Equities Incorporated account to Trafalgar that indicated they were for the Woodland Falls property.

Q Do you have those checks?

A I know what the check numbers are, yes. I made notations of those.

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1 MR. LABOWITZ: You know what the check numbers
2 are?

3 THE WITNESS: Yes, I do. I know some of them,
4 yes.

5 MR. LABOWITZ: I didn't hear what you said.

6 THE WITNESS: I'm sorry?

7 MR. LABOWITZ: You said, "I know what the check
8 numbers are." I couldn't --

9 THE WITNESS: And I had seen the check
10 register, yes.

11 MR. LABOWITZ: Okay.

12 BY MR. NEDRICH:

13 Q Did you have an estimate of how much cash was
14 paid by Dulles Equities to Trafalgar for this purchase?

15 A Well, I based my understanding on what Mr.
16 Moore had told me about his activities at the property,
17 and also the checks that were being paid to Trafalgar
18 House with Dulles Equities funds, and that was, I
19 estimated, approximately \$150,000.

20 Q Let's take a look at Exhibit 13. This is
21 actually in a series -- 13 through 17. I represent these
22 all to deal with Riggs Bank. What is this affidavit
23 number 13?

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1 A This was, I believe, an affidavit that was in
2 the case between Riggs Bank and Dulles Equities,
3 Incorporated.

4 Q How were you involved in that lawsuit?

5 A Well, I was subpoenaed by Riggs Bank in the
6 case against Mr. Jones. I presented a deposition to
7 Riggs' attorneys on the matter.

8 Q And Exhibit 14 is a copy of the deposition
9 notice to you? Or the subpoena, rather?

10 A Yes.

11 Q It says January 13, 1990. When were you, in
12 fact, deposed?

13 A I believe it was on that date.

14 Q And was the Riggs' suit subsequently settled?

15 A Yes, it was.

16 Q Exhibit 15 --

17 THE COURT: What exhibit are you looking at?

18 MR. NEDRICH: I'm sorry, Your Honor; 13 and 14.

19 THE COURT: Thirteen is an affidavit?

20 MR. NEDRICH: Thirteen is an affidavit,
21 correct.

22 THE WITNESS: Oh, 13. I guess I didn't
23 describe it.

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1 BY MR. NEDRICH:

2 Q Yes, what is this affidavit about? Why is it
3 here?

4 A Well, this affidavit was from an accountant
5 working for Riggs Bank, and the accountant said that more
6 than three and a half million dollars in loan proceeds to
7 Dulles Equities Incorporated were unaccounted for. And
8 that was one of the key points that Riggs was alleging in
9 their lawsuit against Dulles Equities, Incorporated.

10 They are similar allegations to --

11 MR. FROMME: Judge, I am going to object to any
12 testimony on what Riggs was alleging. I think he is
13 going to have produce those documents if he has them.

14 MR. NEDRICH: Well, the document speaks for
15 itself, Your Honor.

16 THE COURT: He can testify as to the affidavit.

17 MR. FROMME: I think the affidavit speaks for
18 itself.

19 THE COURT: I think he can also testify to what
20 he knew about the pleading. Again, this is not for the
21 truth of the matter stated, but for an explanation as to
22 what he did.
23

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1 BY MR. NEDRICH:

2 Q Let me ask you this, Mr. Weber: Were you aware
3 of Mr. Jones transferring substantial amounts of money at
4 about the 1988, '89 time frame when he was receiving
5 funds from Riggs?

6 A Was I aware of the activities that I described
7 to you?

8 Q Yes, sir.

9 A Yes.

10 Q Okay. Would you briefly describe for us what
11 you understood Mr. Jones to be doing at that time?

12 A Well, Mr. Jones was systematically moving
13 assets out of Dulles Equities, Incorporated. And I was
14 aware of this both because of my personal knowledge of
15 being at the company, as well as the allegations that
16 were charged in many of the lawsuits filed against him,
17 including some of the people here in this room today.

18 It was on that basis that I became very
19 concerned that by the time my case was brought to trial,
20 that there wouldn't be any assets left for me to have a
21 claim against. On that basis, I brought the information
22 that I had available to me.

23 I went to a competent attorney. I presented

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1 the information to the attorney, and I asked him whether
2 or not I had a valid case. And it was his judgment and
3 your judgment that I did, and on that basis, we went
4 forward.

5 Q The case with Riggs against the Dulles Equities
6 Limited Partnerships, was there also a pending case
7 against Mr. Jones? Was he part of this United States
8 District Court case?

9 A Yes, he was, personally.

10 Q Okay. Approximately when was this case
11 settled?

12 A It was settled in approximately, I believe,
13 sometime in February.

14 Q Of 1990?

15 A 1990; that's correct.

16 Q Now, prior to the settlement, you said you had
17 the deposition. Who took your deposition?

18 A I don't recall the particular attorneys, but
19 they were counsel to Riggs Bank, and I believe that Hazel
20 Fiske was the law firm. I believe there were two
21 attorneys present representing the firm, and I don't
22 recall their names.

23 Q In the course of that deposition, did you have

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1 any testimony with regard to these commissions?

2 A Yes, sir, I did.

3 Q Tell us how that matter arose.

4 A Well, the Riggs attorneys were, as I said,
5 trying to look into the issue of where monies were going.
6 And they asked me how I was compensated and how I was
7 paid. I explained to them that I received a salary and
8 that I also received commissions for leases that I
9 procured. I explained that I had procured the lease in
10 this instance for one of the properties, and that the
11 commission was approximately \$230,000.

12 Q Did you identify the property in the
13 deposition?

14 A I don't recall specifically, but I believe I
15 did.

16 Q Did you also have telephone discussions or
17 personal discussions with any Riggs officers?

18 A Yes.

19 Q When was that?

20 A That was about the same period of time. It was
21 December and January of 1990; '89 and '90. December of
22 1989 and January of 1990. The discussions were with
23 Frank Langhammer, who was a Vice President of Riggs Bank.

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1 Mr. Langhammer initiated the phone calls to me.

2 He was concerned because we were continuing to
3 attempt to lease the other properties that Dulles
4 Equities owned, and he wanted to know why I was
5 continuing to write proposals for prospective tenants.
6 In the course of that conversation, I explained to him
7 that I was very concerned about the proceedings going on
8 between Riggs Bank and Dulles Equities, given the fact
9 that I was involved as a leasing agent for the
10 properties. I said that I felt that I ought to be
11 considered a creditor in the proceeding.

12 Q Did you tell him how much money you were
13 claiming?

14 A I believe I told him it was in excess of
15 \$200,000.

16 Q What was his response to you?

17 A He said to go see a lawyer.

18 Q Did you review the court record of the
19 bankruptcy filing for Dulles Equities Limited
20 Partnership, III?

21 A Well, yes. As a matter of fact, I was, at one
22 time, had been a press-spokesperson at the White House,
23 and I had some experience in dealing with the media.

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1 This case was very prominent in the Washington Post and
2 other newspapers, and Mr. Jones, on several occasions,
3 asked me to speak on his behalf on background to
4 reporters and such.

5 One of the allegations in the Riggs suit was
6 that Mr. Jones had declared personal bankruptcy and had
7 not disclosed it in the loans that he had received from
8 Riggs Bank amounting to seventy million dollars. So it
9 was a pretty significant issue.

10 Jones told me personally that he had never been
11 bankrupt; that these were all lies and it was not
12 accurate. I felt personally in a very awkward position,
13 because I didn't want to say anything that was incorrect.
14 So, I contacted the Court in Houston where this alleged
15 activity was supposed to have occurred, and found out
16 that, indeed, Mr. Jones had declared bankruptcy in
17 Houston, Texas, as Riggs had alleged.

18 Q Were you listed as a creditor for the
19 commissions on the Dulles Limited Partnership Chapter 11
20 bankruptcy filings?

21 A No, I was not.

22 Q Did you discuss that with Mr. Jones?

23 A Yes, I did.

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000438

1 Q What did he tell you?

2 A He said that he was going to pay me; that the
3 only creditor was Riggs Bank; and that I shouldn't worry
4 about it.

5 Q Did you ever consult with any of Mr. Jones'
6 lawyers about that?

7 A Not that I can recall.

8 THE COURT: I'm sorry. Listed as a creditor on
9 what document?

10 MR. NEDRICH: The Dulles Equities Limited
11 Partnership, III Chapter 11 bankruptcy, Your Honor.

12 THE COURT: Dulles Equities Limited Partnership
13 III bankruptcy, but not Dulles Equities, Inc.?

14 MR. NEDRICH: Dulles Equities, Inc. never filed
15 bankruptcy, Your Honor.

16 BY MR. NEDRICH:

17 Q Was Dulles Equities Limited Partnership III the
18 record owner of the Atrium building that you leased to
19 the GSA?

20 A Yes.

21 Q Would you briefly describe for us --

22 THE COURT: Dulles Equities Limited
23 Partnership, III?

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1 MR. NEDRICH: We use Dulles Equities III, Your
2 Honor; roman numeral three.

3 THE COURT: All right.

4 BY MR. NEDRICH:

5 Q What were the terms of the lease that you
6 arranged with GSA?

7 MR. LABOWITZ: Your Honor, isn't there a
8 document that says that?

9 MR. NEDRICH: Well, I am just trying --

10 THE COURT: I thought there was.

11 MR. FROMME: There is an exhibit at least,
12 attached.

13 MR. NEDRICH: That's only part of it, Your
14 Honor. The full lease is like this. I just gave him the
15 indicators -- the front indicators that show that the
16 execution had been done by Dulles Equities and Mr. Jones.
17 It does have some of the terms, but not all of them.

18 THE COURT: Are you referring to something that
19 is not before me now?

20 MR. NEDRICH: Oh, no, Your Honor. It is
21 Exhibit 2. That has part of the lease.

22 THE COURT: Now what is it you are directing
23 his attention to?

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000432

1 MR. NEDRICH: I just want to know what the
2 terms were, in terms of the years and the amount of rent
3 per year.

4 THE COURT: Well, why is that relevant?

5 MR. NEDRICH: Well, it goes to the issue of the
6 quantum meruit claim we have against Riggs Bank in this
7 lawsuit, Your Honor, with regard to increased value,
8 since, effectively, it is our position that what Mr.
9 Weber did was substantially -- not just procure the lease
10 -- but thereby substantially enhanced the value of this
11 real estate.

12 I will proffer to the Court that the term of
13 the lease with the General Services Administration and
14 the United States Government, pretty good credit rating,
15 was ten years, two and a half million dollars per year,
16 or a twenty five million dollar minimum payout; that it
17 constituted -- I'll just make a few more proffers at this
18 point and we'll see if there is any objections to them.
19 That the building was approximately 80 percent leased as
20 a result of Mr. Weber's efforts, and that Mr. Weber was
21 supposed to get paid about \$230,000 for placing this
22 lease. He got none of it. We would further proffer, and
23 Mr. Weber doesn't have to testify to this because it is

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000438'

1 in the public records, but Riggs acquired the property
2 through what we considered to be a wholly-owned
3 subsidiary, but they effectively held the beneficial
4 interest, and our position -- And Riggs Bank profited
5 immensely; probably in excess of five million dollars in
6 present cash value as a result of that lease. That would
7 be our evidence at trial if we ever get to trial. And
8 that we think it is fair and equitable under the
9 circumstances, particularly since Riggs knew that Mr.
10 Weber was the procuring agent, that he should be paid,
11 even if he never gets paid by Mr. Jones and Dulles
12 Equities, under quantum meruit. And I have a case in
13 support of that, Your Honor. He is entitled to that
14 money.

15 Now, I will just proffer very briefly Exhibits
16 16 and 17. In the course of this litigation, some time
17 last summer, Riggs counsel -- not Mr. Croft but the other
18 people from the Hazel firm -- represented to the Court --
19 again, I am not saying they were trying to mislead the
20 Court -- that Riggs never owned the property.

21 Exhibit 16 is photographs that I had Mr. Weber
22 take about a week after they made that allegation, and
23 this is a picture. I have the real photographs; I made a

1 xerox off of this. Of the building we call the Atrium,
2 which is where the commission arises from or where we
3 think it arises from, with this sign in front of it,
4 "Owned by Riggs."

5 Your Honor, Exhibit 17 is a clipping I just
6 found out of the Washington Post where Riggs reported to
7 the Post that it owned and was trying to sell the Atrium
8 building, which is the street address -- it is the top
9 street address on Riggs properties for sale; 381 Elden
10 Street in Herndon.

11 We would further represent to the Court that
12 there are two properties that we would, in the course of
13 the evidence, show -- And these matters have occurred
14 since the lawsuit was filed. I believe both have
15 occurred since then. The Elden Street building was sold
16 toward the end of this last year -- Well, just last --

17 THE COURT: You allege in your pleading that
18 Riggs owned the property?

19 MR. NEDRICH: Yes, ma'am.

20 THE COURT: Well, that is what I considered. I
21 accepted that as true.

22 MR. NEDRICH: Insofar as quantum meruit, we
23 think we're kind of proved by what happened to the

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000411

1 properties since we filed the lawsuit. Elden Street was
2 sold --

3 THE COURT: Well, I don't know that I should be
4 looking at the merits of the case, because this went out
5 on demurrer. I accepted your allegation that Riggs owned
6 the property, and I believe you alleged that, of course,
7 there was an enhancement that they enjoyed. I don't see
8 that this is inconsistent with anything you are saying
9 today.

10 MR. NEDRICH: Well, no, this goes to the issue,
11 particularly since Riggs, at least at one point, said,
12 "Hey, you are all wet."

13 THE COURT: Well, I understand that, but, there
14 again, it seems to me that -- First of all, I think we
15 are limited to the time of the pleading, or at the very
16 best, a period of time where you had an opportunity to
17 change that pleading. After the demurrer, it was too
18 late. Then I understand this --

19 MR. NEDRICH: But this all precedes the
20 lawsuit, really, except -- the only things that are
21 subsequent -- All this precedes the lawsuit.

22 THE COURT: What subsequent things?

23 MR. NEDRICH: The only thing that is subsequent

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1 to the lawsuit is this building sign, and I can ask Mr.
2 Weber.

3 BY MR. NEDRICH:

4 Q Was this sign up before the lawsuit was filed?

5 A Yes.

6 Q Okay.. Now, obviously, this article was not
7 printed until October of '91 --

8 THE COURT: Well, again, it's just -- You are
9 basically back to whether or not you had a sufficient
10 basis for making that allegation.

11 MR. NEDRICH: In fact.

12 THE COURT: All right. And the article was
13 before the lawsuit, you say?

14 MR. NEDRICH: The article was after the
15 lawsuit.

16 THE COURT: After. But the sign was up?

17 MR. NEDRICH: The sign was up, and we believe
18 the record will show -- there will be some discovery
19 required, but we believe we can demonstrate on the record
20 that Riggs has always been the beneficial owner and was
21 from the time -- prior to the time the lawsuit was filed.

22 Let me just look at my notes, Your Honor.

23 THE COURT: All right.

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1 BY MR. NEDRICH:

2 Q Dulles Equities of Virginia, Inc., other than
3 holding titles to the vehicles that came out of Dulles
4 Equities and other than the statements Mr. Dahlberg made
5 to you that that was where the new plane was going to be
6 deposited, was there any business activity going on at
7 Dulles Equities of Virginia while you were there through
8 the spring of '91?

9 A To my knowledge, Dulles Equities of Virginia
10 was a corporation in name only. I had been asked by Mr.
11 Jones to locate a variety of different properties -- that
12 he represented that investors that he was working with
13 were prepared to buy. And he told me that he was going
14 to use a new corporation, Dulles Equities of Virginia, to
15 acquire those properties. To my knowledge, there were
16 never any properties ever acquired.

17 Q Earlier, there was some discussion about Mr.
18 Stephenson and I having discussions. Immediately after
19 the lawsuit was filed, did you have any discussions with
20 Mr. Jones?

21 A Yes. Mr. Jones called me at my house and said
22 what am I doing.

23 Q Did he make a request of you to the extent

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1 other defendants had not been served to not serve them?

2 A Well, I was not aware of the logistics of how
3 the lawsuits were being served or distributed. I had no
4 knowledge. I assumed that they were all going out. And
5 Mr. Jones called me and said, "What are you doing?" And
6 I said, "Well, Les, you owe me the money that you have
7 always said you were going to pay me, and you haven't;
8 and, therefore, I am suing you." And he said, "You are
9 making a big mistake." And I said, "Well, I don't think
10 so." And he said, "I urge you, please, not to do this."
11 And I said, "Well, if you want to have any conversations
12 with me, please do it through my attorney." And he said,
13 "I will not talk to an attorney; I will only talk to
14 you." And I said, "Les, I am not at this point in a
15 position where I can talk to you directly; I will only
16 talk through your attorney." And he said that he would
17 not talk to anyone but me, and again urged me to please
18 refrain from the lawsuit. So I immediately called you,
19 and I said that I had received this phone call and that I
20 thought it was a good idea that you and Mr. Stephenson
21 talk to one another.

22 Q By the summer of 1990, approximately eight or
23 nine months before you left Dulles Equities and Mr.

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1 Jones, was it generating any income any longer from any
2 source?

3 A Not that I was aware of.

4 Q Were you in a position to know if that had been
5 occurring?

6 A I believe so.

7 Q Was it still accruing debt?

8 A I might add that Mr. Jones was making it very
9 clear to me and had told me that it was not generating
10 income.

11 Q Was it still incurring debt?

12 A Yes, through a lot of the activities that we
13 just talked about, such as the loan for First Source
14 Bank, the continued -- the fact that he purchased a home
15 for himself; and yet, Dulles Equities was paying the
16 monies. I don't know whether that means that it was a
17 debt of Dulles Equities, Incorporated or not -- I am not
18 a lawyer -- but it seems to me if you are using corporate
19 monies to pay for a debt, somehow or another, the money
20 is going out of the corporation.

21 Q By the latter part of 1990, was the company
22 solvent in a sense that it was able to generate income to
23 pay its current bills?

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000448

1 A I had no way of --

2 MR. STEPHENSON: Counsel, I was unable to hear
3 your question.

4 MR. NEDRICH: I am withdrawing the question.
5 He said he didn't know.

6 THE WITNESS: May I -- I would like to --

7 MR. NEDRICH: No, no.

8 BY MR. NEDRICH:

9 Q Just following on in that question, when you
10 were going out, what was your biggest concern? You had
11 talked with Mr. Jones about trying to negotiate a deal.
12 Were you punishing -- what was your purpose in filing the
13 suit?

14 A The purpose I had in filing the lawsuit was
15 that I had a valid contract, in my opinion, to be paid a
16 commission for work that I had done and worked very long
17 and hard on. I stayed with Mr. Jones for a year and a
18 half after the activity, because he kept on making
19 representations that he was going to pay me. And, as I
20 watched the situation unfold, it became very clear to me
21 that that was not his intent, and that, in fact, his
22 intent, not only with me, but with others who were at
23 that time trying to collect debts, was to make sure that

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1 there was nothing left in it. And, again, I have
2 absolutely no way of passing judgment on whether or not
3 any of these --

4 (Multiple objections by counsel.)

5 THE COURT: Just a minute. I can't hear all of
6 you speaking at the same time. Mr. Weber, please stop
7 when there is an objection.

8 MR. STEPHENSON: The objection I have is that
9 he is now expressing an intent of Mr. Jones, and I don't
10 know what the foundation is with his expressing that
11 intent. I think we really are letting that go far
12 afield.

13 THE COURT: I think it's going to need a better
14 foundation.

15 MR. NEDRICH: I would agree with that, Your
16 Honor.

17 THE WITNESS: Am I still allowed to finish my
18 statement?

19 THE COURT: Not as to intent. Why don't you
20 start again with a question.

21 BY MR. NEDRICH:

22 Q Why don't you continue -- Don't try to
23 speculate as to what Mr. Jones was thinking -- just what

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1 he told you.

2 A I think the question was relating to what my
3 intentions were. And I think that's what I was trying to
4 describe. And what I was saying is that I am not a
5 lawyer; I do not know anything about legal theories; I do
6 not know about quantum meruit theories or anything else.
7 I just know the facts of the case and I know the
8 documents that I had to demonstrate what I was saying.
9 And I brought those to a competent attorney and I asked
10 my attorney to evaluate that material and make a judgment
11 as to whether or not I had a case. And that's what I
12 have done. I have had no malice or no intent, other than
13 strictly to collect the monies that I feel owed.

14 Q Was it your understanding at that time that
15 Trafalgar was, in fact, collecting monies out of Dulles
16 Equities for Mr. Jones' benefit, not Dulles Equities
17 creditors?

18 A Yes.

19 THE COURT: I am sorry. Your question was?

20 MR. NEDRICH: For Mr. Jones' personal benefit,
21 not the benefit of Dulles Equities or its creditors.

22 THE COURT: What was the question? I didn't
23 hear the first part of it.

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1 MR. NEDRICH: I am sorry. Let me pull back.

2 BY MR. NEDRICH:

3 Q Was it your understanding of the facts at that
4 point that Trafalgar was collecting monies from Dulles
5 Equities, not for the benefit of Dulles Equities or its
6 creditors, but for the benefit of Mr. Jones personally?

7 A Yes.

8 Q Was it your understanding that First Source
9 Bank was collecting and holding monies --

10 MR. FROMME: This is repetitive, as far as I
11 can tell. He has already asked this previously earlier
12 today.

13 MR. MURPHY: And it is also, Your Honor, very
14 speculative. He has already testified earlier he didn't
15 talk to anybody at First Source. He can't testify what
16 First Source's intention was. All he can do is testify
17 what he has testified to up until this point, and not now
18 just express their intention.

19 MR. NEDRICH: I didn't ask him the intent of
20 First Source Bank, but what he understood the facts to
21 be.

22 THE COURT: Well, the facts, I think, will
23 provide a basis for my conclusions as to whether they

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1 support a cause of action. I think the facts are that,
2 according to this testimony that First Source was
3 collecting funds in the form testified to -- Armed Forces
4 and so forth and so on, and Trafalgar, as well. If you
5 are asking is that the basis upon which he brought this
6 suit --

7 MR. NEDRICH: The factual underpinning, yes,
8 that is. That's all I am asking.

9 BY MR. NEDRICH:

10 Q Is that the basis for the Complaint, that First
11 Source was collecting monies that should belong to Dulles
12 Equities, Inc., that were being deposited to Armed
13 Forces, Inc.?

14 A Well, my information was that First Source Bank
15 had loaned money to Dulles Equities, Incorporated; that
16 Dulles Equities, in turn, had turned that money over to
17 Armed Forces Electronics; and Armed Forces, in turn,
18 deposited that money into an Armed Forces account at
19 First Source Bank. And those were the facts as I knew
20 them. I have no way of knowing any intent of First
21 Source Bank. Those were just the facts that I knew.

22 Q What about Jettech and Mr. Dahlberg? What did
23 you understand him to be doing with Mr. Jones and Dulles

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1 Equities?

2 A What Mr. Dahlberg told me, which was that he
3 was representing Dulles Equities, Incorporated in the
4 sale of a Dulles Equities, Incorporated asset, and that
5 what he was attempting to do was structure a deal whereby
6 the corporate asset would be traded towards the value of
7 a new aircraft to be titled in the name of another
8 corporation.

9 Q In your opinion, what was the minimum enhanced
10 value of the Atrium Building as a result of the GSA
11 lease?

12 MR. LABOWITZ: Objection, Your Honor.

13 MR. NEDRICH: I'll withdraw it. I have nothing
14 else, Your Honor?

15 THE COURT: Any questions?

16 MR. LABOWITZ: Your Honor, my name is Ken
17 Labowitz. I represent Trafalgar House.

18 CROSS EXAMINATION

19 BY MR. LABOWITZ:

20 Q You were very careful in your answer to Mr.
21 Nedrich's question about your involvement with the
22 property -- the Trafalgar House property being sold to
23 Mr. Jones. Do I understand that you did not have any

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1 offer information over and above what is asked. If,
2 then, Mr. Nedrich thinks he needs to develop the
3 information that remains to be stated, he is going to ask
4 you that. But each attorney is entitled to have only the
5 question they ask answered.

6 THE WITNESS: Okay.

7 BY MR. LABOWITZ:

8 Q Is what you told us today here everything that
9 you know that would relate to what I am now going to
10 quote to you from your own lawsuit, from paragraph 67?
11 Is everything that you told us today what you know and
12 what you knew in April of 1991 when you filed the lawsuit
13 about the allegation that "the transactions and
14 activities (that is, related to this Trafalgar House)
15 were designed and implemented as a scheme by Les Jones
16 and Dorothy Jones with the active and conscious aid and
17 assistance of Trafalgar to hinder, delay and defraud
18 plaintiff (that's you) and other creditors of the
19 corporation"? Is what you told us today what you know
20 that relates to that allegation?

21 A That was my belief, yes.

22 MR. LABOWITZ: That's all the questions I have,
23 Your Honor. Thank you.

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1 MR. MURPHY: There is, Your Honor. Mr. Nedrich
2 is testifying as to what his understanding was. I don't
3 believe this is the time for testimony. He had the
4 opportunity to testify or to have other counsel to cross
5 examine him, direct examine him. To the extent that he
6 is saying what his understanding was and his motivation
7 was, I think that time has passed.

8 THE COURT: Proceed, Mr. Nedrich.

9 MR. NEDRICH: Thank you, Your Honor. A company
10 such as Mr. Labowitz' company, Trafalgar, signs a
11 contract for a man to buy a house, gets over \$50,000
12 cash, not from the man, but from a corporation which he
13 is involved with, that same man then puts over \$100,000
14 into improvements into that house. Now, I am not saying
15 that Trafalgar knew where the \$100,000 came from, but I
16 am saying that, certainly, at that point in time, and
17 this is the basis for the constructive trust -- they knew
18 that property was being --

19 THE COURT: Wait a minute. What did they know
20 about Weber and his claim?

21 MR. NEDRICH: I don't think they had to know
22 anything about Weber.

23 THE COURT: They don't have to know?

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1 MR. NEDRICH: That's my opinion, Your Honor,
2 that they wouldn't have had to know about Weber.

3 THE COURT: Let's take a look, then. Well, any
4 creditor, for that matter. Where is the evidence that
5 they knew about any creditor?

6 MR. NEDRICH: I am not suggesting that they
7 knew about a creditor.

8 THE COURT: Okay; let's take a look. I am just
9 looking at one case, Bank of Commerce versus Rosemary and
10 Thyme, Inc. 218 Va 781. Am I reading this incorrectly?
11 "In order to set aside a preference...." This is really
12 what 55-80 is all about; it's to set aside a preference.
13 I think the procedure is to declare the conveyance void
14 and then set it aside. But, in any event -- "In order
15 to set aside a preference, the Plaintiff must not only
16 prove that the debtor intended...." The debtor here
17 being Jones, et al; right? Jones and Mrs. Jones and
18 Dulles Equities, Inc.

19 MR. NEDRICH: Correct.

20 THE COURT: "...intended to delay, hinder, or
21 defraud his other creditors. He must also show that the
22 preferred creditor...." -- in this case Trafalgar or
23 Armed Forces, or I guess First Source, et cetera -- "...

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1 had notice of the intent to defraud the debtor." Pardon
2 me, to defraud the other creditor, in this case, Mr.
3 Weber.

4 MR. NEDRICH: I do not believe that is required
5 law. Let me see if I can find the citation. I do not
6 believe that is required that a particular creditor has
7 to be identified for this provision to be effective.

8 THE COURT: Well, any creditor.

9 MR. NEDRICH: Your Honor --

10 THE COURT: In other words, there has to be
11 some knowledge on the part of the Defendant whom you are
12 suing that says, "You are part of this; you knew that
13 this money you have in your hands --

14 MR. NEDRICH: Is an improper transfer.

15 THE COURT: That's right, because it was
16 intended to defraud the creditors of the debtor who
17 transferred the property.

18 MR. NEDRICH: When corporations pay for
19 personal debt, I take it, because certainly the Internal
20 Revenue Service takes it that that is a suspicious
21 transaction.

22 THE COURT: Well, it may be suspicious, but
23 does it necessarily imply that there is an intent there

1 to defraud creditors?

2 MR. NEDRICH: That is inclusive within it,
3 because corporations do not pay personal debts of their
4 employees, even when they control them.

5 THE COURT: Oh, I don't know about that. It
6 may not be proper, but it --

7 MR. NEDRICH: It's not proper. That's the
8 point.

9 THE COURT: There is nothing in your pleading
10 to suggest that, other than a transfer of monies from one
11 entity to another, there was any basis for the Defendants
12 -- to claim that the Defendants had knowledge --

13 MR. NEDRICH: Which Defendants, Your Honor? I
14 am not sure -- There are different ones here.

15 THE COURT: All the Defendants had knowledge
16 that this was with the intent to defraud Mr. Weber or any
17 other creditor.

18 MR. NEDRICH: Your Honor, it is a position in
19 the case law as I understand, under 55-80, under 55-82,
20 that if -- and these are what they call the indicia of
21 fraud or the badges of fraud -- and I think there are six
22 or seven of them, Your Honor, that they usually talk
23 about. Transfer between family members. Well, transfer

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1 to a controlling person out of the corporation, I submit
2 is the same. This is the case of -- Well, there are two
3 cases here. Let's cite the Virginia case. Hutchinson
4 versus Savings Bank at 129 Va 281. In the Code, it's on
5 page 151, column left.

6 THE COURT: Yes.

7 MR. NEDRICH: Relationships of the parties,
8 grantor's insolvency, pursuit by him of creditors at the
9 time, one of consideration, retention and possession of
10 the property by grantor, fraudulent incurrence of
11 indebtedness after conveyance. Now, one of the things
12 going on here is a man controls a company which is
13 supposedly doing business. He is buying a house
14 personally. This is Trafalgar again. And he is paying
15 for the house with corporation money. Your Honor, I
16 submit that's an evidence or badge of fraud.

17 Now, maybe these people were lackadaisical and
18 they really didn't care or they really didn't know, but
19 the simple fact of the matter was, they were taking
20 corporate monies to pay for an individual's house and
21 they kept that and said, "Well, there is nothing wrong
22 with that." Absolutely there can be. Because that
23 relates to a reasonably suspicious businessman. And I

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1 don't think Trafalgar's business people are foolish.
2 That they knew that this man was secreting assets out of
3 his company for his personal benefit. Now, maybe that's
4 a circumstantial element that is a question of fact for a
5 jury, and we have asked for a jury on this, but I submit
6 that is enough with regard to that issue.

7 Now, the same principle applies to Mr. Murphy's
8 client, First Source Bank, except that -- We didn't say
9 they were getting any extraordinary benefit out of it.
10 But they knew that this man controlled both companies.
11 They knew this man took assets from Company A, put it
12 into Company B, derived the income out of Company B, and
13 there is no evidence it went back to Company A, which is
14 really where it should have been in the first place.

15 Your Honor, the problem you run into here is
16 the fact that these people tried to overextend what I was
17 saying. And maybe my language wasn't artful, but it's
18 possible some of these people knew a lot more than I
19 thought they knew. But all I can safely say is that if
20 any other Defendants were involved consciously with Les
21 and Dorothy Jones and their controlled companies, they
22 may be --

23 THE COURT: But you haven't established one

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1 fact that they knew anything about Mr. Weber as creditor.
2 All you have established -- You have no facts today and
3 you had no facts then that Trafalgar, First Source,
4 Dahlberg, Jettech, Riggs --

5 MR. NEDRICH: Riggs is quantum meruit; they are
6 not --

7 THE COURT: Well, that's true. Riggs is not on
8 this count. Had any knowledge that Mr. Weber was a
9 creditor of Dulles Equities, Inc.

10 MR. NEDRICH: Would it be fair to say, Your
11 Honor, that, except for Counts 11 and 12, I made myself
12 clear that all we wanted against Dahlberg, Jettech, First
13 Source, Trafalgar, and even to a kind of a strange
14 extent, Armed Forces and Dulles Equities, was that we
15 wanted constructive trust under 582?

16 THE COURT: No, I think -- Are you asking me
17 whether I think you set forth a claim for conspiracy
18 against these people?

19 MR. NEDRICH: No, because I didn't say that
20 these other people -- I said they were aids and
21 assisting, but I didn't say that they were wilful and
22 malicious. That's why I asked Mr. --

23 THE COURT: Well, the pleading -- Let's get

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1 this out right now. As far as I am concerned, the
2 pleading can reasonably be read as claiming a count -- as
3 setting forth a count of conspiracy with a demand for
4 punitive damages against all the Defendants.

5 MR. NEDRICH: And it also reasonably can be
6 read as not ---

7 THE COURT: I don't think so, sir.

8 MR. NEDRICH: I think so. Well, in any event,
9 that was my --

10 THE COURT: Let me ask you now. Which
11 Defendants did you have in mind?

12 MR. NEDRICH: Your Honor, at that stage in the
13 proceedings, I did not have access to what real
14 conversations were going on. I had records; I had Mr.
15 Weber's information.

16 THE COURT: Well, which Defendants did you have
17 in mind?

18 MR. NEDRICH: I have a lot of suspicion with
19 regard to, number one, Trafalgar, okay, because too much
20 was going on at that house being paid for by the Dulles
21 Equities monies to be just casual. There was too much --
22 I mean, if you were talking a couple of thousand or a
23 couple hundred dollars, it would have been different, but

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1 over \$50,000 paid and over \$100,000 in improvements going
2 in, that is a very unusual transaction when the monies
3 are coming out of a corporation.

4 THE COURT: Other than that, did you have any
5 other basis for concluding that Trafalgar was involved in
6 a conspiracy? --

7 MR. NEDRICH: I didn't say they were involved.
8 I said if more evidence were to develop, it could be that
9 they were involved. That's why I said --

10 THE COURT: But you didn't have any evidence
11 then.

12 MR. NEDRICH: At that point in time, and I
13 didn't name them in Count 10, nor did I name them in
14 Count 11.

15 THE COURT: Who did you name, then? Who were
16 you referencing?

17 MR. NEDRICH: I named only three people in
18 Counts 10 and 11. I named the corporation, Dulles
19 Equities. I named Les Jones. And I named Dorothy Jones.

20 THE COURT: Where?

21 MR. NEDRICH: Counts 10 and 11, Your Honor.

22 THE COURT: Well, when you make reference to
23 such other Defendants, who is that?

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1 MR. NEDRICH: Found to have been --

2 THE COURT: Well, naturally, found to have
3 been, but who is that? At this point, what you are
4 looking at is putting the Defendants on notice of a claim
5 that they are going to have to defend against.

6 MR. NEDRICH: I thought that was fairer, than
7 not including him at all and then surprising him in a
8 deposition. It seemed to me that that was the only
9 reasonable route to go. They may be --

10 THE COURT: Did you consider waiting until you
11 had some evidence, based on discovery, that there was a
12 conspiracy before you even pled it?

13 MR. NEDRICH: Well, in my opinion, there is no
14 doubt there was a conspiracy between Les and Dorothy
15 doing this money out. And I doubt to the extent that you
16 could separate these entities, I didn't believe that
17 there was any question but Dulles Equities, Dulles
18 Equities of Virginia and Armed Forces, which Mr. Jones
19 totally controls with his wife, were all involved in
20 this. With regard to the rest of these people, no. But
21 I said -- And that question was only asked of me, and I
22 am sorry I didn't get up to say it, by Mr. Goldman. None
23 of these other men were this specific. He said, "How can

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1 you tell my people that they are cheats?" I said, "I
2 don't know, but they could be." He says, "Why don't you
3 cut that out and just we'll go with other things."

4 THE COURT: Let me just cut this short. Mr.
5 Nedrich, I read this pleading as one in which all of the
6 Defendants had to respond on a theory of conspiracy, and
7 had they not -- for example, had they chosen not to do a
8 demurrer and, instead, just failed to answer, I think
9 there would be a claim of default on the conspiracy
10 theory, because you name all Defendants as --

11 MR. NEDRICH: No.

12 THE COURT: You reference all other Defendants.
13 The fact that you tried to shift the burden of
14 identifying Defendants to the trier of fact, at such time
15 as there would be a trial, I don't think changes the fact
16 that in the pleading, any one of these Defendants, given
17 the nature of the allegation, particularly with respect
18 to some of your language -- particularly the word
19 "scheme," I think reasonably could have put a Defendant
20 on notice that it was encompassed within your reference
21 to conspiracy, because you re-allege and incorporate
22 thereby all of the pleadings, every single one of them.

23 MR. NEDRICH: That's right.

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1 THE COURT: And so, when you read all of the
2 pleadings and each one of these Defendants who are
3 described as having participated in a scheme to defraud,
4 you are getting pretty close to alleging conspiracy.

5 MR. NEDRICH: Close, maybe.

6 THE COURT: Well, I am speaking --

7 MR. NEDRICH: But I didn't say they conspired
8 and we want punitive damages, not with any one of them.
9 And no one of them accepts --

10 THE COURT: Mr. Nedrich, after you got -- You
11 had some notice from some of these Defendants that they
12 were concerned about the claim of conspiracy and punitive
13 damages.

14 MR. NEDRICH: Your Honor, all of these things
15 came in in June. It was never my intent to play a game
16 with them. I was surprised --

17 THE COURT: Well, you had some notice, but you
18 apparently did not advise them that they were not among
19 those Defendants that you --

20 MR. NEDRICH: Maybe I --

21 THE COURT: And then you got a memorandum of
22 law and every single one of them addressed that claim.

23 MR. NEDRICH: All those memos came in roughly

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1 about the same time. And, quite candidly, except with
2 regard --

3 THE COURT: In June?

4 MR. NEDRICH: Yes, Your Honor. And I was quite
5 surprised they even brought them up. And there was no
6 discussion amongst us one way or the other. I will admit
7 to that, but it was not my intent to run them round the
8 rosy bush. I was surprised that they construed me as
9 saying, "Yes, I definitely believe you conspired
10 wilfully, and you are liable for punitives." That's why
11 I tried to limit it the way I limited it. And maybe it's
12 art form or the language that I used, but that definitely
13 was my intent at the time, that if I found other evidence
14 later down the road through discovery that said, "Yes, we
15 have drinks every night at the bar and we said we are
16 really going to jam these people to the wall --

17 THE COURT: That suggests you had some evidence
18 when you filed the pleading.

19 MR. NEDRICH: Your Honor, I am very suspicious
20 of Trafalgar still, but I can't --

21 THE COURT: Aside from your suspicions, did you
22 have any evidence at the time of the pleading that would
23 support a conspiracy theory against Trafalgar?

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1 MR. NEDRICH: Why would a company take money
2 from a corporation for the purchase of a house by the
3 controlling person of that corporation? What's the
4 reason those things are typically done in this economy
5 and this society? It's to move assets out of the
6 corporation. Okay? That's what it is, without declaring
7 taxes, or whatever else.

8 THE COURT: Well, I don't know. Perhaps I need
9 an expert to explain it to me. But I don't necessarily
10 see it that way.

11 MR. NEDRICH: Well, I understand what you are
12 saying, Your Honor. I am simply saying that's how I
13 viewed it. And I can't --

14 THE COURT: And it was conspiracy specifically
15 to defraud the Plaintiff. There was evidence of that?

16 MR. NEDRICH: No, I never suggested that, but I
17 don't believe, again, that's required under the law.

18 THE COURT: Then what claim would the Plaintiff
19 have on the basis of a conspiracy theory if it wasn't to
20 defraud him?

21 MR. NEDRICH: Your Honor, I asked only for
22 constructive trust monies --

23 THE COURT: I am just trying to get Counts 11

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1 and 12 out of the way.

2 MR. NEDRICH: Your Honor, let me leave this,
3 and I'll just briefly comment. It was not my intent to
4 say that Counts 11 and 12 were addressed to Jettech or
5 addressed to Trafalgar or addressed to First Source Bank
6 or were addressed to Riggs Bank at that time. They were
7 not. It was addressed to the Jones; it was addressed to
8 DEI, because they clearly were lying. They clearly were
9 maneuvering to move assets. They were telling Weber he
10 was going to get paid, but they couldn't afford it; in
11 the meantime, they were sucking the money out right and
12 left. I am just going to leave it at that, because I
13 think, otherwise, we will be in a --

14 THE COURT: Well, you can leave it there, but
15 it doesn't change the fact that you didn't limit your
16 pleadings in that way.

17 MR. NEDRICH: Well, I guess that's a question
18 of how you interpret the way I wrote what I wrote.

19 THE COURT: You have language in there, Mr.
20 Nedrich, and I am not going to pursue this anymore, but I
21 think you need to understand that at the pleading stage
22 of this trial, you have to look at the language in the ad
23 damnum and in the prayer for relief, and the Wherefor

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1 clauses. And those clauses simply do not limit your
2 conspiracy count to those three Defendants. It just does
3 not read that way. You can't ignore the rest of the
4 language. I can't, anyway.

5 MR. NEDRICH: Well, that was my intent to do it
6 that way, and that's why I mentioned specific ones in the
7 particular counts for the trust that I wanted.

8 THE COURT: All right.

9 MR. NEDRICH: I combined three statutes. I
10 combined 55-80, I combined 55-82, I combined 8.01-184,
11 which is the constructive trust -- excuse me --
12 Declaratory Judgment Act. What my intent was with regard
13 to the -- we'll call it the outsider, the Defendants that
14 Mr. Jones didn't own. Dahlberg and Jettech said, "We are
15 going to move this aircraft...." This is what they told
16 Weber. "...and we are going to help Jones put it into
17 another company." They are being paid a fee to do this.
18 Their client under contract, according to Mr. Weber, is
19 Dulles Equities, Inc. Yet, they are helping move the
20 plane to another company that has nothing to do with
21 Dulles Equities, Inc.

22 What we said was, that deal is already in the
23 process of happening. In other words, they had signed a

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1 contract; they were out trying to get the sale. We were
2 saying, "If they are going to move that aircraft, then we
3 want a trust imposed on any monies that they get for the
4 benefit of Dulles Equities, Inc., to the extent it's
5 their money, because there was equity in the aircraft at
6 that time, according to Mr. Dahlberg. The equity was
7 going to be transferred.

8 THE COURT: Well, wait a minute. Let me just
9 get something else straight. Because this, I found also
10 quite confusing in these discussions. Your pleading
11 talks about constructive trust, but then you seem to be
12 proceeding under 55-80, which, as I understand it,
13 provides for a finding that a conveyance is fraud and a
14 setting aside of the conveyance. Isn't that something
15 else?

16 MR. NEDRICH: That's why I wanted to use 184,
17 because I wanted a declaration from the Court, based on
18 the evidence, that, to the extent those assets were going
19 over, they belonged to Dulles Equities, Inc. and its
20 creditors, including Mr. Weber. That was my theory. The
21 Declaratory Judgment Act does say that this kind of
22 proceeding is appropriate. I have about a half a dozen
23 cases on this I can cite, Your Honor, that says this is a

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1 liberally construed law to try to stop what might become
2 what is called an irretrievable situation. And we
3 believe the situation was going to rapidly become
4 irretrievable. Remember, one of the other allegations we
5 have made in the Complaint was Mr. Jones was also in the
6 process of transferring an awful lot of assets overseas.

7 THE COURT: Well, doesn't the Declaratory
8 Judgment Act require or only kick in, if you will, when
9 there is no action at law that is available for the same
10 relief?

11 MR. NEDRICH: Yes, it does, but if you read 55-
12 82 in conjunction with 184, the Declaratory Judgment Act,
13 what I read to this -- and this is a case that was --

14 THE COURT: First of all, why are you reading
15 55-82 in conjunction with the Declaratory Judgment Act?
16 On what basis?

17 MR. NEDRICH: Let me just tell you what my
18 theory was. It says: Before obtaining a judgment under
19 55-82, under 55-80 or 81, you can file a suit, making a
20 claim, whether it is immediately due and payable or not,
21 saying, "Hey, you know, we want remedies; we want relief
22 here." And the old case of Lawless' Administrator, which
23 is back in 1876 -- it is cited at the bottom of page 68

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1 Va 479 -- holds to that proposition that this statute
2 changed the common law. Before this section was enacted,
3 the Court said a creditor could not attack the conveyance
4 required without first obtaining a judgment or decree
5 against the debtor. This section was originated in the
6 1849 Code and changed this rule and authorized a creditor
7 at large to institute such suit without obtaining a
8 judgment.

9 Well, obviously, we hadn't obtained a judgment
10 against any of the Jones --

11 THE COURT: But I think 55-82 is premised on
12 55-80 --

13 MR. NEDRICH: Correct.

14 THE COURT: -- where the Court is asked to
15 declare a conveyance void --

16 MR. NEDRICH: Correct.

17 THE COURT: -- and then is asked to --

18 MR. NEDRICH: I am saying that Mr. Jones is --

19 THE COURT: Well, why do you need a Declaratory
20 Judgment Act?

21 MR. NEDRICH: Because we don't have the
22 judgment at this point in time against Mr. Jones as
23 defendants. Let's call them that. These other people

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1 are about to help Mr. Jones, innocently or not, to move
2 or continue to move assets out of Dulles Equities, Inc.
3 For all we know, within ninety or two hundred and seventy
4 days, Mr. Jones will have cleaned out the accounts, and
5 he is in Europe and he is gone and we are lost and all
6 these other things have dissipated. So what do we do?
7 Well, I read these three statutes to say I have a
8 legitimate right to say, if I truly believe these other
9 people are in possession of or about to become in
10 possession of Dulles Equities assets, then I can plead
11 under these three statutes, in combination, for the Court
12 to make a declaration that those monies belong to Dulles
13 Equities, Inc. And that was the theory I was operating
14 under when I looked at Trafalgar, when I looked at
15 Jettech and when I looked at Dahlberg and First Source
16 Bank. First Source is somewhat different, because our
17 best information was all of the money of Armed Forces
18 Electronics, which had been generated out of Dulles
19 Equities assets were going into that bank. And all I
20 wanted to do was say, "Hey, that money belongs to Dulles
21 Equities and its creditors, Mr. Weber." That was my
22 theory.

23 MR. CROFT: Your Honor, may I interpose an

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1 objection here, just on this. This argument that he is
2 making is highly consistent with the pleadings.

3 MR. NEDRICH: Well, Your Honor, that is
4 rebuttal. That is not an objection.

5 THE COURT: It's clearly rebuttal, but it is
6 going to be rebuttal on another day.

7 MR. CROFT: If I could clarify something,
8 because it is not in the record what he is now saying.

9 MR. NEDRICH: Your Honor, Mr. Croft was totally
10 inaccurate talking about Riggs Bank, and I kept my mouth
11 quiet because I was going to get up and talk about it.

12 THE COURT: Just do it. I don't think we are
13 going to finish this. I don't know how much longer to
14 let you go. I don't mind doing a little bit, but I
15 suspect this is going to take a while longer.

16 MR. FROMME: Your Honor, it was my
17 understanding earlier that all the parties, the
18 Defendants had thirty minutes and he had thirty minutes.
19 He has now used thirty minutes. I would ask the Court to
20 proceed to rule at this point.

21 THE COURT: I am not going to do that, as well,
22 but if there is going to be rebuttal, that's what I am
23 concerned about. Let me just make one comment on the

1 thirty minute rule. I mean, I think that's a guideline.
2 I am not -- within reason, I am not interested in cutting
3 off legitimate argument that would enlighten the Court.
4 I say within reason. It is just that it is getting so
5 late. If you want any further argument -- I don't know
6 if there is anything further to be said at this point.
7 Maybe you can just -- Let me ask you, Mr. Nedrich: What
8 else to you think needs to be addressed here that hasn't
9 already been reviewed by the Court in the demurrer?

10 MR. NEDRICH: Your Honor, just a couple of
11 seconds. I think it will go quickly, Your Honor.

12 THE COURT: I'll read Landbank. What does
13 Landbank stand for, just in a nutshell?

14 MR. NEDRICH: Landbank stands for the fact that
15 people who control corporations ought not to suck them
16 dry or they are going to get caught. And there are a
17 whole bunch of interesting cases.

18 THE COURT: I take it this only refers to --

19 MR. NEDRICH: Les and Dorothy Jones and the
20 companies which they control.

21 THE COURT: Of course, your claim -- Mr.
22 Weber's claim against them is premised on the bona fide
23 claim for the bonuses and -- the bonus and the salary.

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1 It appears that there is certainly no claim for the
2 salary, given the facts that I understand from today.
3 Whether your theory that, in fact, it was Dulles Equities
4 that signed that lease needs to be further addressed by
5 you, Mr. Stephenson, or not, I leave it up to you. But
6 that's the contention that by signing as general partner,
7 Mr. Jones, in effect, made Dulles Equities a partner to
8 that lease. That's the argument I heard today. I don't
9 know if you want to address it any further. I don't have
10 any particular expertise in that field, partnerships.

11 MR. STEPHENSON: Well, perhaps I should address
12 it a little further, Your Honor.

13 THE COURT: Well, perhaps so. Anyway --

14 MR. NEDRICH: Maybe it's another day. I'll
15 give you a couple of citations, but I don't know what
16 else we are doing here.

17 THE COURT: Let me focus this, though, Mr.
18 Nedrich. And you have to start with the premise that
19 there isn't any other underlying claim. So there's --

20 MR. NEDRICH: Well, I grant that that's what
21 Your Honor is saying. I disagree with that.

22 THE COURT: I understand that, but the fact is,
23 the rest of your claim against the Jones' falls because

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1 there is nothing owed to Mr. Weber that is being
2 converted to their own personal use.

3 MR. NEDRICH: Obviously, if Your Honor is in
4 that direction that that's what the contract limits --

5 THE COURT: Well, that's my verdict.

6 MR. NEDRICH: Well, that's -- But you
7 understand, Your Honor, I had a good faith belief that
8 that's not the position that the Court ought to be
9 taking.

10 THE COURT: Well, Mr. Weber today testified
11 that he didn't expect to be paid for January and
12 February.

13 MR. NEDRICH: Oh, you are just talking -- I am
14 talking about the \$230,000.

15 THE COURT: Well, let's check the salary and
16 all. Then there is the bonus issue. That's a question
17 of law.

18 MR. NEDRICH: I had thought it differently.
19 When I put the pleading together, I had --

20 THE COURT: Well, do you have any -- Let me
21 focus you on that question, then, because that's where we
22 are with the Landbank. That's why we got into this.

23 MR. NEDRICH: Right.

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1 THE COURT: If you want to present me law that
2 says that, in fact, you had a bona fide theory which made
3 Dulles Equities, Inc. the party to the -- the true party
4 to the lease -- That certainly has not -- as far as I
5 know, has never been presented to me. That was the
6 ruling of the Court once before that they were not
7 parties under the lease. Then I'll look at it, but if
8 you have it today, I prefer to have the cites and I'll
9 just look at it myself. I really don't want to have you
10 all back.

11 MR. NEDRICH: I don't have it today, because,
12 quite candidly, I never knew until thirty, forty minutes
13 ago that you had made that ruling, because there is
14 nothing --

15 THE COURT: That was the argument all along.
16 We spent time on the phone with this argument. It was a
17 very simple argument in my view, and it was that the
18 employment agreement says the lease has to be between the
19 company, Dulles Equities, and the lessor. And Mr.
20 Stephenson argued, "But this isn't the company." The
21 party to the lease is not the company that agreed to pay
22 the bonus. So that's the only thing that was before me,
23 and that's what I ruled on.

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1 MR. STEPHENSON: And that was set out further
2 in the papers and argued --

3 THE COURT: And it was in the papers, as well.
4 All I am asking from you is to give me a case --

5 MR. NEDRICH: Let me give you paragraph number
6 4, Your Honor. In addition to the salary described in
7 paragraph three above, the company shall pay to the
8 employee a bonus for all leases executed by the company.

9 THE COURT: Right.

10 MR. NEDRICH: The company executed the lease.

11 THE COURT: I thought Dulles Equities Limited
12 Partnership III --

13 MR. NEDRICH: It executed the lease as a
14 general partner.

15 MR. STEPHENSON: It says right on the face of
16 his other exhibit, Your Honor.

17 MR. NEDRICH: Your Honor, I never anticipated
18 --

19 THE COURT: I just want to get this clear. I
20 don't want to belabor this. But, as I understand your
21 argument, because the general partner signed that lease
22 in its representative capacity -- It says "By." It says,
23 "Dulles Equities Limited Partnership III," I believe -- I

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1 don't have it right before me -- "By -- I think it's "By
2 Les Jones."

3 MR. NEDRICH: Yes.

4 THE COURT: You are saying that the company
5 signed the lease?

6 MR. NEDRICH: Yes, and that's what it says
7 here. Executed by the company. It doesn't say leased by
8 the company directly, but I have a second -- It says,
9 "Leases executed by the company."

10 THE COURT: Oh, I see.

11 MR. NEDRICH: You see?

12 THE COURT: So, even if they just sign it in
13 order -- not to actually enter into the lease themselves,
14 but to lease it on behalf of another company, you think
15 that's enough to trigger this provision?

16 MR. NEDRICH: I think it is. I think that's
17 one point. And the second point, of course, is, I don't
18 believe there ever was a true limited partnership, which
19 means you really had three general partners, of which
20 Dulles Equities is one.

21 THE COURT: I don't think the lease was
22 executed by the company. I think it was signed by a
23 general partner that was executed in fact -- A company

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1 can only act through its agents.

2 MR. NEDRICH: Wouldn't this be interpretative,
3 Your Honor? Wouldn't this be interpretative between the
4 parties?

5 THE COURT: I am reading it as a matter of law.

6 MR. NEDRICH: Yes, I know it. And you are
7 saying there is no possibility that the parties could
8 have different interpretations as to what that meant?
9 Remember, this gentleman has testified that for full a
10 year and a half after this lease was executed, the
11 President of Dulles Equities, Inc. kept saying to him,
12 "You are owed the money; you will get it." Now, that
13 certainly is consistent with our theory of what this
14 contract says. It is also consistent with -- Your Honor
15 understands my thought.

16 THE COURT: Anything else quickly?

17 MR. NEDRICH: Just very quickly, Your Honor. I
18 just want to give you 4B Michie's Jurisprudence, looking
19 at conversion of corporate funds, section 193, 194, and
20 195, if you wish to look at that. And it just says what
21 we all know is pretty much Hornbook Law, which is,
22 officers and directors really do have a fiduciary duty
23 including a duty to make sure the corporate debts are

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1 properly paid, and if they don't do that, they can be
2 held personally liable. Landbank, essentially, is an
3 exposition of that principle.

4 The other thing is, I am citing the case of
5 MBA, Inc. versus AMV Amvest, and I think I gave Your
6 Honor this in a letter earlier.

7 THE COURT: Yes, I have it.

8 MR. NEDRICH: I believe that we, under the
9 quantum meruit theory against Riggs meet all the tests
10 there, because we have, according to Mr. Weber's
11 testimony, we have the fact that Riggs knew that Mr.
12 Weber was the procuring cause -- or at least had reason
13 to believe that he was the procuring cause of the lease
14 and before they acquired the property that Mr. Weber was
15 complaining that he hadn't been paid his commission and
16 that he was a creditor, to which he said the Vice
17 President of Riggs Bank said, "Go talk to a lawyer,"
18 which, of course, he did do, which now we are getting
19 sued for sort of counter-reverse like. They had
20 appreciation to know that that was a substantial benefit.
21 Now, we have stated that the value of that one property,
22 the Atrium, was enhanced dramatically by the fact that it
23 was now going to experience a ten-year, twenty-five

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1 million dollar cash flow. And they accepted or retained
2 the benefit, which they did, because, unlike what Mr.
3 Croft said and he is in error -- and I recognize that he
4 is not the lawyer who fought this thing -- you don't have
5 to accept, according to Judge Bostetter -- I mean, you
6 don't have to request the benefit. All you have to do is
7 know it is there and offered to you and you take it. And
8 they took it. And they didn't take it on a foreclosure
9 in front of the courthouse; they took it on a deed in
10 lieu of foreclosure. They took a voluntary transfer and
11 let -- the evidence will show -- let Mr. Jones and Mrs.
12 Jones walk away from all their other liabilities, all
13 their guarantees. Riggs Bank got a twenty-five million
14 dollar benefit because of this man's contacts, his
15 energy, his efforts, his results. And we suggest to the
16 Court that the commission would be due from Riggs, by
17 reason of the fact that, after they knew all of this,
18 they said, "Well, let's take this property back, because
19 it's worth some money." And we would have evidence later
20 to show, in fact, that was the only building of all of
21 these where Riggs, at least on the basis of loan to
22 return actually made a little bit of money. All the rest
23 of them, they lost their shirt on, which is not unusual

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1 in this marketplace. So we believe that the quantum
2 merit count, Your Honor, was definitely taken in good
3 faith.

4 Your Honor, let me just mention one other
5 thing, and straightaway on this. And I recognize what
6 these people are trying to do -- these counsel are trying
7 to represent their clients to the best of their ability.
8 But this sanction position effectively is a form of a
9 show cause for contempt for a lawyer. I can't treat it
10 in substance as any other way. Now, maybe there is
11 another way to look at it. The way I look at it is
12 essentially saying that I misused the Court system
13 because I didn't believe I had a good lawsuit, and it has
14 been stated here by at least one of these attorneys that
15 this was really nothing more than a lever to extort a
16 settlement out of Mr. Jones. Your Honor, that is not
17 what I did this lawsuit for. That is not what we worked
18 months for on the paperwork, why we accepted some and
19 rejected some. I don't say I have perfect foresight. I
20 think the rule is if you are winning 60% after five
21 years, you are a miracle worker. But I will say that, to
22 me, that is essentially what this kind of statute is
23 about. I think it says all the benefits resolve in favor

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1 of the respondent in something like this. But I am
2 making an affirmative assertion that it was my good faith
3 belief that I had read this sufficiently well, that I had
4 good causes of action against all of these people, based
5 upon what my understanding of the law was at that point
6 in time. And I have done enough of these things to know
7 that sometimes I have been right and sometimes I have
8 been wrong. But this is the first time in twenty-three
9 years that somebody has said, "This man is trying to
10 defraud the Court and my clients." And that disturbs me
11 a great deal. That's all I have.

12 THE COURT: Is there anything else?

13 MR. MURPHY: One point, Your Honor. Mr.
14 Nedrich mentions a letter that he sent to the Court and
15 gave some citation to the Court. None of the defense
16 counsel have received a copy of that correspondence.
17 Also, I won't belabor the point, but he has mentioned
18 good faith several times. Good faith as a defense was
19 removed several years ago, as the Court knows, under 11
20 Sanctions.

21 THE COURT: Anything else?

22 MR. CROFT: May I have thirty seconds, just on
23 this point of clarification?

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1 claim in this lawsuit. And the Court has properly so
2 ruled, considered very carefully the papers, reviewed
3 those and certainly took its time in reviewing them very
4 carefully. And that was from the outset, set forth in my
5 papers and made in the argument. And Mr. Nedrich, I
6 suspect, had some difficulty in framing his pleading and
7 recognizing that, and that's why it's troublesome that he
8 saw that, he had those documents, he reviewed them with
9 his client and tried to frame something to get him into
10 court and bring all the other parties in. I think it was
11 designed to generate some settlement.

12 THE COURT: I am going to grant the motion for
13 sanctions. I think there is an insufficient basis,
14 either in fact, or certainly in law, to support this
15 cause of action. I don't think any legal theories are
16 supported by the facts alleged, and I have yet to find a
17 thread, if you will, that would permit me to conclude
18 that the pleadings were warranted in accordance with
19 existing law or that there is some new gloss on existing
20 law that could be advanced. I am going to award the
21 sanctions as requested by the Defendants in their motion.
22 I am considering, number one, the portion of time that
23 you spent here today, and I consider the attorneys fees

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1 that were actually incurred, and I consider the law that
2 directs the Court that a proper measure would be
3 reasonable attorneys fees instead of actual attorneys
4 fees. I am going to award each of the Defendants \$3,500.

5 I would ask one of you to prepare an order.

6 MR. STEPHENSON: Can this be marked as a final
7 order?

8 THE COURT: Yes, this will be marked a final
9 order. The demurrers will be reflected -- the decision
10 on the demurrers will be reflected in the order, as well.

11 MR. STEPHENSON: Same order?

12 THE COURT: Yes; both the same order.

13 MR. LABOWITZ: Your Honor, I'll undertake to
14 organize the effort on behalf of the Defendants to
15 circulate an order that embodies all of the rulings of
16 the Court in terms of the sanctions motion and the
17 demurrer as to the non-Jones Defendants, and then there
18 is the demurrer as to the Jones Defendants, if I
19 understand it correctly.

20 THE COURT: Perhaps, Mr. Stephenson, you can
21 prepare one for the Jones --

22 MR. STEPHENSON: I have done some draft orders,
23 but being uncertain as to the outcome here, I was unable

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V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN F. WEBER,

Plaintiff

v.

Law No. 104935

LES G. JONES,

Defendant

ORDER

THIS CAUSE came to be heard upon the Demurrers filed herein by each of the Defendants who have not been previously dismissed by the Plaintiff, and, upon consideration of the Memoranda filed in support of the respective Demurrers, and upon argument of counsel,

It appears to the Court that each of the Demurrers filed on behalf of the remaining Defendants should be sustained and that the Plaintiff's Motion for Judgment as to all parties and all counts thereof should be dismissed; therefore it is

ORDERED AND ADJUDGED that the Demurrers of each and all of the remaining Defendants are hereby SUSTAINED and the Motion for Judgment is hereby DISMISSED WITH PREJUDICE regarding all parties Defendant; and this Order is Final as to the Motion for Judgment.

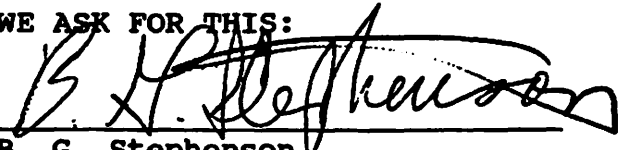
AND THIS MATTER IS CONTINUED WITH RESPECT TO THE PENDING COUNTERCLAIM.


ENTERED this 13 day of March, 1992.

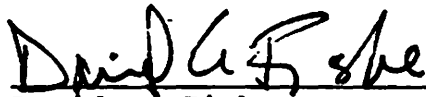
By (Sgd) ROSEMARIE ANNUNZIATA, Judge
ROSEMARIE ANNUNZIATA
Judge of the Circuit Court

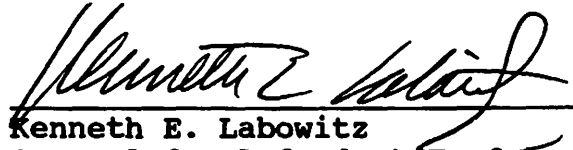
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WE ASK FOR THIS:

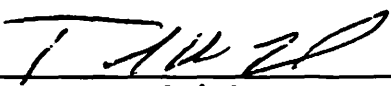

B. G. Stephenson
Counsel for Defendants Les G. Jones,
Deanna Jones, and Dulles Equities, Inc.


J. Thomas Fromme II
Counsel for Defendants Armed Forces
Electronics, Inc., and
Dulles Equities of Virginia, Inc.


David G. Fiske
Counsel for Defendant Riggs
National Bank of Washington, D.C.


Kenneth E. Labowitz
Counsel for Defendant Trafalgar
House Property, Inc.

SEEN AND OBJECTED TO:


Thomas R. Nedrich
Counsel for Plaintiff John F. Weber

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