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Clerk, Supreme Court of Appeals
Richmond, Va.

Record No. 5005

In the Supreme Court of Appeals of Virginia at Richmond

GORDON W. SHELTON

v.

WALTER M. OGUS, ET AL.

FROM THE CIRCUIT COURT OF THE CITY OF FREDERICKSBURG

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

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

HOWARD G. TURNER, Clerk.

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

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 5005

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 13th day of March, 1959.

GORDON W. SHELTON, Appellant,

against

WALTER M. OGUS, ET AL., Appellees.

From the Circuit Court of the City of Fredericksburg

Upon the petition of Gordon W. Shelton an appeal is awarded him from a decree entered by the Circuit Court of the City of Fredericksburg on the 24th day of October, 1958, in certain consolidated chancery causes then therein depending styled: Normandy Village, Inc., et al. *v.* Hadrup, et al.: upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

* * * * *

RECORD

* * * * *

A. HADRUP, ET AL.,

v.

WALTER OGUS, ET AL.

page F-17 } Filed 12/6/57.

M. H. WILLIS, Clerk
By CHARLES H. ....., Deputy.

Virginia:

In the Circuit Court of the City of Fredericksburg.

A. Hadrup, General Contractor, W. C. Spratt and W. C. Spratt, Jr., Partners, T/A Fredericksburg Pipe and Supply Company, Plaintiffs,

v.

Walter Ogus, 4545 Connecticut Avenue, N. W., Washington, D. C., Valerie E. Ogus, 4545 Connecticut Avenue, N. W., Washington, D. C., Defendants.

INTERVENING PETITION.

Gordon W. Shelton exhibits this his Petition under and pursuant to the provisions of Section 43-17 of the Code of Virginia, 1950, against Walter Ogus and Valerie E. Ogus and says as follows:

(1) That as appears from the allegations of the Bill of Complaint, Walter Ogus and Valerie E. Ogus are the owners of lots 80, 82, 83, 84, 85, 86, and 88 in Section 3 of Normandy Village Subdivision in the City of Fredericksburg, Virginia; that all of said lots are encumbered by various overlapping liens in the nature of deeds of trust, judgments and mechanics liens;

(2) That your Petitioner is an electrical contractor.

(3) That your Petitioner upon the express request of Henry A. Cheshire or M. H. Sharlin, acting as agents or representatives of Normandy Village, Inc., Valley Lane Corporation, Dawn Lane Corporation, and Henry A. Cheshire, M. H. Sharlin, and David L. Kinsey, individually, performed certain work in the wiring of the dwellings on the above mentioned lots as described in the Bill of Complaint; that there is due and owing this Petitioner by reason of said work the total sum of $4,108.84 of which $1,120.00 is due and

page F-17 } owing by reason of work and materials provided and performed on said lots 80, 82, 83, 84, 85, 86, and 88, with interest thereon from October 1, 1957 to the

date of payment, all of which is shown on an itemized statement of his account, attached hereto and marked Exhibit B.

(4) That at the time that he commenced the work for which he now claims the lien said properties were standing in the name of Normandy Village, Inc.

(5) That after said labor was performed and the materials furnished but before the expiration of sixty days from the time the work on said buildings was terminated, on October 7, 1957, your Petitioner caused to be recorded in the Office of the Clerk of the Circuit Court of the City of Fredericksburg, Virginia, a Memorandum of Mechanics Lien as provided by statute stating that your Petitioner claimed a lien on the above described properties standing in the name of Walter Ogus and Valerie E. Ogus to secure the payment of said sum of $1,120.00 due by Normandy Village, Inc., Valley Lane Corporation, Dawn Lane Corporation, Henry A. Cheshire, M. H. Sharlin, and David L. Kinsey, individually and jointly, for labor furnished in and about the improvement of said properties; that said Memorandum of Mechanics Lien contained a description of the property intended to be covered by said lien sufficiently adequate for identification, with the name of the owner of said property as above described; that said Memorandum was filed by your Petitioner and acknowledged as set forth above; all of which will more fully appear on a copy of said Memorandum of Mechanics Lien attached hereto marked Exhibit A.

(6) That this Petition was filed within six months from the date of the filing and recording of the Memorandum above mentioned; that the said sum of $1,120.00 is now due and owing to him as set forth above, with interest thereon from the first day of October, 1957: that no part thereof has been paid and that the same constitutes a valid and existing lien against the above described and enumerated lots.

WHEREFORE, your Petitioner prays that he may be allowed to file this, his Answer and Petition in this cause, that

your Petitioner's liens may be duly ascertained and established, that said property shall be sold at public auction or private sale and the proceeds thereof used to satisfy this Petitioner's liens in full, and that in the event there are insufficient funds from the sale of said properties that this Petitioner shall be awarded a personal Judgement against Normandy Village, Inc., Valley Lane Corporation, Dawn Lane Corporation, Henry A. Cheshire, M. H. Sharlin, David L. Kinsey, Walter Ogus and

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Valerie Ogus individually and jointly and that your Petitioner may have all such other, further and general relief as the nature of his case may require.

GORDON W. SHELTON
By HARRY B. F. FRANKLIN
Counsel.

FRANKLIN & RAWLINGS
Law Building
Fredericksburg, Virginia.

I hereby certify that on December 6, 1957, I mailed a copy of the foregoing to Willis & Garnett; Coleman & Gibson; Goolrick, Ashby & Whitticar; Butzner & Hicks; Blake, Taylor, Hazen & Laster; Green, Trueax & Smoot; Stanley A. Owens; and Mason & Stehl, all Attorneys of Record.

HARRY B. F. FRANKLIN
of Counsel for Gordon W. Shelton.

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EXHIBIT "A."

MEMORANDUM FOR MECHANIC'S LIEN.

GORDON SHELTON claims that Walter Ogus and Valerie Ogus are indebted to him in the sum of One Hundred Sixty Dollars ($160.00) for work done and materials furnished in and about the construction of a dwelling house in the City of Fredericksburg, Virginia, pursuant to a contract with Normandy Village, Inc., with interest thereon from the first day of October, 1957 until payment, which sum is now due and payable and for which sum of $160.00 the said Gordon Shelton claims a lien on the following described property of the said Walter Ogus and Valerie Ogus:

All that certain lot or parcel of land with all buildings thereon and rights and privileges thereto appurtenant, situate, lying and being in the City of Fredericksburg, Virginia, and known and described as Lot No. 80, 82, 83, 84, 85 86, 88 in Section 4 of Normandy Village, a Plat of which Section 4 dated April 19, 1955 was made by Harry Otis Wright, Jr., Certified Civil Engineer and Land Surveyor, and recorded along with a deed of re-dedication of Sections 2, 3, 4 and 5 of Normandy Village in Deed Book 97 at page 366 in the Office of the Clerk of the Circuit Court of the City of

Fredericksburg, Virginia, said lot being one of the lots conveyed to the said Walter Ogus and Valerie Ogus by deed dated April 18, 1957 and duly recorded in Deed Book 104 at page 453 in the aforesaid Clerk's Office.

Reference is hereby made to the aforementioned deed and plat for a more particular description of the real estate herein described as if the same were here set out at length.

GIVEN under my hand this 4th day of October, 1957.

GORDON SHELTON.

STATE OF VIRGINIA,
CITY OF FREDERICKSBURG, to-wit:

I, Janice Payne, a Notary Public in and for the City aforesaid in the State of Virginia, do certify that Gordon Shelton this day made oath before me in my City aforesaid that Walter Ogus and Valerie Ogus are justly indebted to him in the sum of $160.00 for the consideration stated in the foregoing memorandum and that the same is payable as therein stated, and acknowledged his signature to the foregoing writing.

Given under my hand this 4th day of October, 1957.
My commission expires June 17, 1961.

JANICE PAYNE
Notary Public.

page F-21 } STATEMENT OF ACCOUNT OF
GORDON W. SHELTON.

* * * * *

House #80, Section 4 Due per contract for wiring	160.00
House #88, Section 3 Due per contract for wiring	160.00
House #82, Section 3 Due per contract for wiring	160.00
House #84, Section 3 Due per contract for wiring	160.00

* * * * *

House #85, Section 3 Due per contract for wiring	160.00
House #86, Section 3 Due per contract for wiring	160.00

* * * * *

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* * * * *

State of Virginia,
City of Fredericksburg, to-wit:

This date personally appeared before me Janice Payne, a Notary Public, Gordon W. Shelton and who after first being duly sworn deposed and said that the above account is a true and just statement of the indebtedness due him of Normandy Village, Inc., Valley Lane Corporation, and Dawn Lane Corporation. In witness whereof he has this date acknowledged this affidavit.

GORDON W. SHELTON.

Subscribed and sworn before me this 4th day of November, 1957.
My commission expires June 17, 1961.

JANICE PAYNE
Notary *Pbulic.*

* * * * *

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* * * * *

A. Hadrup, General Contractor,

v.

Walter Ogus.

ORDER.

This day Gordon W. Shelton, also known as Gordon Shelton, C. W. Pritchett and C. G. Wells, T/A The Floor Shop, tendered their Answers, together with their Petitions to the Bill of Complaint filed against them and others in the above styled cause, and there being no objection from Counsel for the Complaints, it is ordered that the said Answers be, and the same hereby are filed.

Whereupon the said Petitions were tendered to the Court in

behalf of said parties and it appearing proper to do so, it is ordered that all of said Answers and Petitions be, and they hereby are filed.

Enter December 6, 1957.

LEON M. BAZILE, Judge.

* * * * *

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* * * * *

Filed 12/23/57.

M. H. WILLIS, Clerk
By CHARLES H. ....., Deputy.

A. Hadrup, General Contractor,

v.

Walter Ogus, Valerie E. Ogus, Defendants.

ANSWER.

The answer of Walter Ogus and Valerie E. Ogus to an intervening petition filed in the above styled cause by Gordon W. Shelton, or so much of said petition as these defendants deem necessary to answer, they hereby answer and say as follows:

(1) *The* admit the allegations alleged in Paragraph 1 of said petition that they are the owners of Lots 80, 82, 84, 85, 86 and 88 of Normandy Village Subdivision in the City of Fredericksburg; they deny that they are the owners of Lot 83; they also admit that there is a deed of trust on said property, but deny that there are any judgments on said property and that there are valid mechanic's liens.

(2) These defendants admit the allegation of Paragraph 2 of said petition.

(3) These defendants neither admit nor deny the allegations contained in Paragraph 3 of said intervening petition.

(4) These defendants neither admit nor deny the allegations set forth in Paragraph 4 of said intervening petition.

(5) These defendants deny the allegations set forth in Paragraph 5 in so far as they allege that the petitioner filed a memorandum of mechanic's lien within sixty days from the time the work on said buildings was terminated as provided by statute; that they admit that the petitioner, page F-34 } as alleged in Paragraph 5 of said petition, did file a memorandum of mechanic's lien, but they dispute the fact that said lien was timely filed.

(6) These defendants deny that the petitioner has a valid and existing lien against the lots and houses owned by these defendants as alleged in Paragraph 6 of said petition.

These defendants deny that the petitioner is entitled to a personal judgment against them for any work performed on said properties since he was never authorized by them to do any work.

And now having fully answered, these defendants ask that said petition be dismissed.

WALTER OGUS
VALERIE E. OGUS
By Counsel.

• • • • •

NORMANDY VILLAGE, INC., DAWN LANE CORPORATION, VALLEY LANE CORPORATION AND M. H. SHARLIN,

v.

A. HADRUP, ET ALS.

(CONSOLIDATED CAUSES).

DECREE.

* * * * *

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Upon consideraiton whereof, it appearing to the Court that the aforementioned suits, that is to say:

A. Hadrup, et als.,

v.

Walter Ogus, et al.

* * * * *

page 4 } each and all raise issues and questions which are similar in nature and have the same parties of interest and that it would be to the best interest of all persons in said suits to consolidate all of said causes under the style of *Normandy Village, Inc., Valley Lane Corporation, Dawn Lane Corporation and M. H. Sharlin* v. *A. Hadrup, et als.* and that the same be therefore conducted as one cause, and it is so ADJUDGED, ORDERED and DECREED.

It is further ORDERED that this cause be, and it is hereby, referred to W. D. Williams, a Special Commissioner in Chancery for this Court, who shall after due and proper notice to the parties concerned proceed to take evidence upon the following inquiries:

* * * * *

2. The assets and liabilities of Normandy Village, Inc., Dawn Lane Corporation, Valley Lane Corporation and Henry A. Cheshire, Inc., together with the priorities, if any, of the respective creditors.

3. The validity of the mechanic's liens which have been asserted in these causes against the properties standing in the names of the parties hereto.

* * * * *

page 6 } Enter Januuary 10, 1958.

LEON M. BAZILE, Judge.

* * * * *

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* * * * *

(CONSOLIDATED CAUSES).

Normandy Village, Inc., Valley Lane Corporation, Dawn Lane Corporation and M. H. Sharlin,

v.

A. Hadrup et als.

To the Honorable Leon M. Bazile, Judge of the said Court:

Filed June 3, 1958.

M. H. WILLIS, Clerk.

* * * * *

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due consideration of all of which your Commissioner respectfully submits the following report:

* * * * *

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* * * * *

B. There are fourteen mechanic's liens which have been filed by Gordon Shelton of which one, which is recorded in Misc. Lien Bk. 3 at pg. 315 against Walter Ogus and Valerie Ogus in the amount of $160.00 against Lot 83, Section 3 of Normandy Village, has been withdrawn by stipulation of counsel for Mr. Shelton. The remaining thirteen were filed in the Clerk's Office of the City of Fredericksburg Oct. 7, 1957. They are each in the amount as set out below with were filed Oct. 7, 1957.

* * * * *

c. Against Walter Ogus and Valerie Ogus, Lot 80, Section 4, Normandy Village, recorded Misc. Lien Bk. 3, pg. 306, $160.00.

* * * * *

page 63 } i. Against Walter Ogus and Valerie Ogus, Lot 86, Section 3, Normandy Village, recorded Misc. Lien Bk. 3, pg. 312, $110.00.

j. Against Walter Ogus and Valerie Ogus, Lot 85, Section 3, Normandy Village, recorded Misc. Lien Bk. 3, pg. 313, $135.00.

k. Against Walter Ogus and Valerie Ogus, Lot 84, Section 4, Normandy Village, recorded Misc. Lien Bk. 3, pg. 314, $135.00.

l. Against Walter Ogus and Valerie Ogus, Lot 82, Section 4, Normandy Village recorded Misc. Lien Bk. 3, pg. 316, $135.00.

m. Against Walter Ogus and Valerie Ogus, Lot 88, Section 3, Normandy Village, recorded Misc. Lien Bk. 3, pg. 317, $135.00.

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3. Your Commissioner respectfully reports that the mechanic's liens as set out in Schedule B, Part 2, are, in the opinion of your Commissioner, valid mechanic's liens. The evidence taken discloses that Kinsey and Sharlin were endeavoring to get the houses completed so that sales could be made and consummated and even in August of 1957 they were still trying to finish the work on the houses. The validity of the mechanic's liens depends upon the issue of whether the houses on which the liens were filed was finished sixty days before the liens were filed or the work otherwise terminated.

* * * * *

page 72 } B. The thirteen liens filed by Gordon Shelton were filed Oct. 7, 1957.

* * * * *

During the hearing there was positive testimony that these houses were unfinished and were worked upon by mechanics during June, July, August and September of 1957 and in your Commissioner's mind, a further fact which supports these liens is the testimony that in July and August of 1957, both Kinsey and Sharlin, officers of the corporations, were still

requesting the mechanics to keep on working so as to finish the houses. See testimony of Shelton, Vol. III, pgs. 962 and 963; Franklin, Vol. III, pgs. 919, 920 and 926; Smoot, Vol. III, pgs. 940 and 949.

By inspection of the premises in August, 1957, the houses were not finished. See testimony of Clark, Vol. III, pgs. 973 and 977. The houses owned by Ogus were not completed Sept. 12, 1957. See testimony of Shelton, Vol. II, pgs. 663, 667, 672, 673, 677 and 678, and for testimony of Gordon Shelton that he worked on these houses on, before and after Sept. 12, 1957, see Shelton, Vol. II, pgs. 633, 635 and 648.

House #71 known as the Model House was not completed inside until after Aug. 9, 1957. See Shelton, Vol. II, pg. 645.

Work was still being done on the premises of these houses in July of 1957 and they were not finished then according to the testimony of Helman, Vol. III, pgs. 824 and 898.

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All of which is respectfully submitted this 3rd day of June, 1958.

W. D. WILLIAMS
Commissioner in Chancery.

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I hereby certify that on the 2nd day of June, 1958, I mailed notice to all counsel of record that I would file the above report on the 3rd day of June, 1958.

W. D. WILLIAMS
Commissioner.

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(CONSOLIDATED CAUSES).

Normandy Village, Inc., Valley Lane Corporation, Dawn Lane Corporation and M. H. Sharlin,

v.

A. Hadrup et als.

Exceptions are hereby taken by Walter M. Ogus and Valerie Ogus, parties in the consolidated cause, to the report of Commissioner W. D. Williams, to whom this cause was referred by decree made herein on the 10th day of January, 1958, and which report bears date on the 3rd day of June, 1958.

FIRST EXCEPTION: For that the said Commissioner did at page 17 of his report find in response to inquiry #2, in the opinion of the Commissioner, that the mechanic's liens, as set out in Schedule B, part 2, of his report, are valid mechanic's liens.

* * * * *

The said Commissioner further found the 14 mechanic's liens filed by Gordon Shelton on October 7, 1957 against Normandy Village, Inc., Walter Ogus and Valerie Ogus, David L. Kinsey and M. H. Sharlin were good and valid mechanic's liens, to which exception is taken.

Filed June 11, 1958.

M. H. WILLIS, Clerk.

* * * * *

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Filed Sept. 26, '58.

L. M. B.

OPINION OF THE COURT.

This cause was referred to Master Commissioner William D. Williams by decree of 10 January, 1958.

As a result thereof 1175 pages of testimony was taken at hearing held before the Commissioner. On 3 June, 1958 he filed his report herein which consists of 24 pages of typewritten matter.

Numerous exceptions have been filed to this report by many of the above counsel and some are trying to sustain the report.

The Court has carefully read the report which shows much work on the part of the Commissioner and only two of the exceptions require any further consideration.

1. His report is clearly correct as to the mechanics liens, with the exception of the houses which had been
page 144 } sold more than sixty days before, these the liens were placed thereon.

As to the Orgus houses: These houses were sold to Orgus on 18 April, 1957. The lien was placed thereon on 10 October, 1957. There is no proof that Shelton ever had a contract with Orgus to do any work on these houses; such work as he may have done on the Orgus houses was as a mere volunteer for which there can be no recovery. *Wallace* v. *Brumback,* 177 Va. 36, 12 S. E. (2d) 801 (1941).

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This disposes of all the exceptions insisted on to the Commissioner's report, with the exception of Battaile Sale to the Commissioner's report.

It appears from the record (p. 1208) that Sale bought his house on 19 March, 1957. That Hadrup's lien was filed on 29 July, 1957 (R., p. 612). That after 19 March, 1957 no work was done on this house or materials furnished by Hadrup. Any work that Hadrup did on the house must have been done for the prior owner before 19 March, 1957, and Hadrup's lien against Sale's house should have been filed within sixty days after 19 March, 1957 whether the house was finished or not. When there is a change of ownership, that is notice to contractors and workmen who do no further work
page 146 } on the house, that the statute has begun to run and the lien even on an unfinished house must be filed within the limitation period from the date of sale.

Shelton did work on the house at the instance of Sale after 19 March, 1957 and he could file a lien for the new work within 60 days from the completion of the house, but not for any work

done prior to 19 March, 1957 unless filed within 60 days from 19 March, 1957. *Bolton* v. *Johns,* 5 Past. 145, 47 Am. Dec. 61 (1947) and note; and 18 R. C. L. sec. 109, p. 967-8.

While the Court is of the opinion that the sale would not have barred the filing of the lien if it had been filed in time, the filing of such a lien four months after the property is *bona fide* sold to a third person such a lien comes too late.

One who has the right to place a mechanic's lien on another's property must take notice of when a sale is made and must thereafter within sixty days after such sale is made place his lien on the building in question whether it is finished or not. One has the right to purchase an unfinished building and those who have the right to put mechanic's liens on such building must do so within sixty days thereafter. One who furnishes work or material on a building is entitled to file his lien if not paid "at any time after the work is done and the material furnished by him and before the expiration of sixty days from the time such building * * * is completed or the work thereon otherwise terminated * * *" (Code Section 43-4) so far as past work and materials are concerned.

page 147 } When the property is sold to a *bona fide* purchaser the work is otherwise terminated.

Possibly the new purchaser would leave the house in an unfinished condition depending on the amount of work to be done thereon and certainly the former owner's creditors cannot put liens on his property unless they strictly comply with the law.

After a house is sold to a *bona fide* purchaser, the work thereon under the former owner's contracts must be "otherwise terminated." Thereafter if any work is to be done on the house, it has to be by new contracts entered into by the new owner. The former owner has no right to order new work on the house sold. It is only the new owner who can order such work. And such new work is not a continuation of the work under the former owner's contracts.

Therefore, when a house is sold to a *bona fide* purchaser, the work on such house under contracts made by the former owner are necessarily terminated and they must file their liens within the sixty days fixed by the statute when the work has been "otherwise terminated."

Therefore, the exception as to any lien filed on Sale's house after sixty days from the sale thereof is sustained.

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LEON M. BAZILE, Judge.

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(CONSOLIDATED CAUSES).

Normandy Village, Inc., et als.

v.

A. Hadrup, et als.

This cause came on this day to be again heard on the report filed June 3, 1958, by W. D. Williams, Master Commissioner, who was appointed by a decree of reference entered in said cause on June 10, 1958.

And the Court having maturely considered the exceptions filed in said cause by Normandy Village, Inc., Valley Lane Corporation, Dawn Lane Corporation, M. H. Sharlin, David L. Kinsey, Walter Ogus and Valerie E. Ogus, John Wood, Jr., Gordon Shelton, T. Battaile Sale, Jr. and Margaret B. Sale, Massaponax Sand and Gravel Corporation, Ethel E. Evans, Wilson Bros., Inc., Sherwin-Williams Paint Co., Inc. and,

It further appearing to the Court that since the filing of their exceptions, the following parties have assigned their claims to M. H. Sharlin and David L. Kinsey, and have withdrawn their exceptions to said report, namely, Massaponax Sand and Gravel Corporation, Ethel E. Evans and John Wood, Jr., and,

It further appearing to the Court that the only matters before the Court to now consider are as follows:

(1) Whether the Commissioner erred in allowing the mechanic's liens filed by Gordon Shelton to be declared valid as to the property of Normandy Village, Inc., Walter Ogus and Valerie E. Ogus, David L. Kinsey and M. H. Sharlin, and T. Battaile Sale, Jr. and Margaret B. Sale, known as Lots 78 and 79 owned by Normandy Village, Inc; Lots 69, 70, 71 and 72 owned by David L. Kinsey and M. H.
page 156 } Sharlin; Lot 67 owned by T. Battaile Sale, Jr. and Margaret B. Sale and Lots 80, 82, 84, 85, 86 and 88 owned by Walter Ogus and Valerie E. Ogus, in varying amounts, all of said lots being in Normandy Village Subdivision.

* * * * *

And the Court having maturely considered the memorandum filed by counsel in this cause, the Court doth hereby sustain the Commissioner's report filed by W. D. Williams on June 3, 1958, in all particulars, except the mechanics' liens hereafter noted are declared not to be valid mechanics' liens:

The mechanics' liens filed by Gordon Shelton against the six properties owned by Walter Ogus and Valerie E. Ogus, which are Lots 80, 82, 84, 85, 86 and 88 in Nor-
page 157 } mandy Village Subdivision and the mechanic's lien filed by Gordon Shelton against T. Battaile Sale, Jr. and Margaret B. Sale on Lot 67 of Normandy Village Subdivision, and the mechanic's lien filed by A. Hadrup against T. Battaile Sale, Jr. and Margaret B. Sale against Lot 67 in Normandy Village Subdivision, and the Court doth so adjudge, order and decree, and to which ruling of the Court counsel for Gordon Shelton and A. Hadrup do hereby take exception.

And the Court doth further adjudge, order and decree that the said Gordon Shelton and A. Hadrup shall become general creditors of Normandy Village, Inc., Valley Lane Corporation and Dawn Lane Corporation, in the amounts sued for in their mechanic's liens.

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Enter this: October 24, 1958.

LEON M. BAZILE, Judge.

Seen and objected to as attys. for Wilson Bros. Inc. and Gordon W. Shelton.

FRANKLIN & RAWLINGS
By HARRY B. F. FRANKLIN

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Filed Oct. 24, 1958.

M. H. WILLIS, Clerk
By CHARLES H. ....., Deputy.

(CONSOLIDATED CAUSE).

Normandy Village, et als.,

v.

A. Hadrup, et als.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

To: M. H. Willis, Clerk:

In accordance with the provisions of Rule 5:1 Section 4, notice is hereby given of the intention of the Respondent, Gordon W. Shelton, to appeal the decision of this Court in the above styled cause and of the intention of said Respondent to present to the Supreme Court of Appeals of Virginia a petition for a writ of error and *supersedeas* to the final Order entered herein, upon the following assignments of error:

1. The Court erred in holding that the work done on the houses in Normandy Village subdivision after the conveyances to Ogus on April 18, 1957 was on a volunteer basis for which there can be no recovery.
2. The Court erred in ruling that the lien of Gordon W. Shelton for work done on the house conveyed to T. Battaile Sale had to be filed within sixty days from the date of the conveyance to T. Battaile Sale, whether the house was finished or not.
3. The Court erred in ruling that when there is a change of ownership of a house under construction, that that is notice to contractors and workmen who do no further work on the house that the statute has begun to run and that the lien, even on an unfinished house, must be filed within the limitation period from the date of sale.
4. The Court erred in ruling that the filing of a lien by a contractor, in this case a mechanic, four months after the property is *bona fide* sold to a third person comes too late.
5. The Court erred in ruling that one who has
page 160 } the right to place a mechanics lien on another's property must take notice of when a sale is made

and must thereafter within sixty days after such sale is made, places his lien on the building in question, whether it is finished or not.

6. The Court erred in ruling that when property under construction is sold to a *bona fide* purchaser that the sale constitutes a termination of the work as contemplated by Section 43-4 of the Code of Virginia.

7. The Court erred in ruling that the sale in this case to the Oguses were a *bona fide* sale.

8. The Court erred in ruling that after the sale of a house under construction, work thereon has to be by new contracts entered into by the new owner and that the former owner has no right to order new work on the house sold.

9. The Court erred in ruling that the work done by this Respondent after the sale of the houses to the Oguses and to T. Battaile Sale, Jr., constituted new work.

10. The Court erred in failing to sustain the report of the Master Commissioner to whom this cause was referred and who recommended that the liens of this Respondent be approved and established on the various properties and who ruled that the same had been properly and duly filed.

11. The Court erred in rejecting the claim of Gordon W. Shelton for mechanics' liens on the said Ogus and Sale houses.

It is requested that you proceed to make up the record in this cause in accordance with Rule 5:1 Section 5 of the Supreme Court of Appeals of Virginia.

GORDON W. SHELTON
By HARRY B. F. FRANKLIN
Of Counsel.

* * * * *

* * * * *

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* * * * *

CHARLES BERRY,

called as a witness by Mr. Franklin, having previously been duly sworn, deposes and states as follows:

Charles Berry.

DIRECT EXAMINATION.

By Mr. Franklin:

Q. Will you please read from Miscellaneous Lien Book No. 3 of the records of the Circuit Court of the City of Fredericksburg the information in regard to all mechanics' liens filed against Normandy Village, Incorporated, Dawn Lane Corporation, Valley Lane Corporation, M. H. Sharlin, David L. Kinsey, Walter Ogus, Valorie Ogus, T. Battaile Sale, Jr., Woodrow Shelton and Charles Grizzle giving us the following information: The page number, the name of the person claiming the lien, the name of the owner of the real estate against which the lien is claimed, the amount of the lien claimed and the date on which the lien was filed?

A. All right.

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MLB #3 Gordon Shelton Recorded 10/7/57
Page 306 v. Walter Ogus
& Valerie E. Ogus
$160.00, w/int from 1 October, 1957
Lot #80
Section 4, Normandy Village

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MLB #3 Gordon Shelton Recorded 10/7/57
Page 312 v. Walter Ogus
& Valerie E. Ogus
$160.00, w/int from 1 October, 1957
Lot #86
Section 3, Normandy Village

page 626 } MLB #3 Gordon Shelton Recorded 10/7/57
Page 313 v. Walter Ogus
& Valerie E. Ogus

	$160.00, w/int from 1 October, 1957 Lot #85 Section 3, Normandy Village
MLB #3 Page 314	Gordon Shelton Recorded 10/7/57 v. Walter Ogus & Valerie E. Ogus $160.00, w/int from 1 October, 1957 Lot #84 Section 3, Normandy Village

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MLB #3 Page 316	Gordon W. Shelton Recorded 10/7/57 v. Walter Ogus & Valerie E. Ogus $160.00, w/int from 1 October, 1957 Lot #82 Section 3, Normandy Village
MLB #3 Page 317	Gordon W. Shelton Recorded 10/7/57 v. Walter Ogus & Valerie E. Ogus $160.00, w/int from 1 October, 1957 Lot #88 Section 3, Normandy Village

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GORDON SHELTON,
recalled for further examination by Mr. Franklin, deposes and states as follows:

DIRECT EXAMINATION.

Q. You did not then as I understand it have a written contract for the last group of houses and in which are covered by these mechanics' liens, is that correct?

Gordon W. Shelton.

A. Not a written contract.

Q. What agreement did you have?

A. I kept pressing them for a contract on this bunch of houses, and Mr. Cheshire said that was all the same outfit anyway, so we could keep working on the same basis we had been working on.

Q. Then what was that basis?

page 630 } A. It was $160.00 a house I think.

Q. What were you to do for $160.00?

A. Install the electrical work.

Q. Were you to provide any materials?

A. I provided all the wire, boxes, connectors, insulators, wire connectors and such as that that went in the houses.

Q. Were you to perform any labor?

A. And all the labor necessary to install same.

Q. Did you provide or install any fixtures?

A. Yes, the lighting fixtures for this project came from Dominion Electric Company were supplied to me on the job site and I installed same.

Q. Calling your attention in particular to the lots on which you have filed mechanics' liens, do you have a list of those?

A. Yes, I do.

Q. Have you completed your work on all of those houses?

A. No.

Q. On which ones have you not completed your work?

A. I only have them by house numbers, not by street numbers. I can give you that. House No. 69—

Q. What is the address?

page 631 } A. 3211 Normandy Avenue; house No. 70, 3209 Normandy Avenue; House No. 72, 3205 Normandy Avenue; house No. 78, 3107 Normandy Avenue; house No. 79, 3105 Normandy Avenue; house No. 80, 3103 Normandy Avenue.

Q. Do you know what work in particular or materials had been required to complete the job on those houses?

A. Actually, in some of these houses there has not been, or if there had been, they would have been borrowed and put somewhere else, a kitchen exhaust fan, some of the lighting fixtures and some of the necessary connections to hook the circuits up to the main panel to be done. In none of those houses I just gave to you has the necessary cable been put in, which is installed by VEPCO to bring the wiring into the house.

Q. Did I understand your testimony then to mean there is no electricity in those houses at the present time?

A. There is not at the present time.

Gordon W. Shelton.

Q. Can you complete your work before that electricity is brought in?

A. I will say this: Some of it can be and some of it cannot be.

Q. Why haven't you completed the work on those houses that you have just read off?

page 632 } A. I have actually been waiting on this group of houses to get notification to finish the work so they could be cut in. As they sold the houses, they generally notified me and I went up and did the work and they cut in and turned them on.

Q. In reference to the group of houses which you filed mechanics' liens, on which of those houses have you completed your work?

A. House No. 67 which is 3215 Normandy Avenue, house No. 88 which is 703 Hanson Avenue, house No. 82 which is 3011 Normandy Avenue, 84 which is 3007 Normandy Avenue, 85 which is 3005 Normandy Avenue, 86 which is 3003 Normandy Avenue.

Q. Have you been paid for the work which you have done on any of the houses which you have mentioned including those finished and those not finished? Have you been paid for your electrical work on those?

A. No, no, I haven't.

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page 633 }

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Q. Referring now to the house on lot No. 82, when did you last work on that house or about when?

A. On or about September 12, 1957.

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Q. Did you ever get any instructions from Mr. Cheshire to finish any of these group of houses here we are referring to?

A. This group, yes, on the occasion of one of these meetings that we had at the police court, and exactly which one I can't pinpoint, but he again told me to go ahead and fin-

ish up some of these in this first group, 84, 82, 86
page 635 } and 85, that group.

Q. Referring to the house on lot 84, when did you last work on that house?

A. On or about September 12 or 13.

Q. Do you know what work you did?

A. Some of the houses, now this particular one I can't pinpoint, but some of these houses we had temporary connections made through the houses for electricity to be used for skill saws and things of that nature, and in a lot of cases, lot of occasions, we connect into the switch box circuits which had not been connected up previously.

Q. What record do you have to show, or what occurred on or about September 12 that makes you believe you worked on that house on that date?

A. On September 12 was the date that the Virginia Electric and Power Company released that particular job for construction, that is released it to the engineering men, released it to the actual construction forces to be cut in from the pole.

Q. Referring to the house on Lot No. 85, when or about when did you last work on that house?

A. September 4, 1957.

Q. What makes you believe that you worked on it on or about that date?

A. According—that was the date on which Vir-
page 636 } ginia Electric and Power Company released that job to be connected up.

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page 642 }

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Q. Mr. Shelton, going back to house No. 85, do
page 643 } you know of your own knowledge when you last worked on that house?

A. (Referring to paper writing) The 4th of September, 1957.

Q. Do you know what work you did or what materials you provided on that date?

A. I would say in that particular case circuits were hooked into the panel, the grounds were run, tying into the water pipe, and the job was checked over ready to be cut in.

Q. Do you know whether or not there was electricity to the house at that time?

Gordon W. Shelton.

A. 85? Was 85 the number?

Q. Yes, without referring to the records which you got from the Virginia Electric and Power Company.

A. No, there wasn't any electricity connected at that time.

Q. Was the electricity connected later?

A. Yes.

Q. Did you have to do any work after the electricity was connected?

A. We always—of course, lots of times you figure that after the Virginia Electric and Power Company or any power company cuts up to an electrical circuit, you always have some work to do afterwards, whether it is in the nature page 644 } of checking out or in the nature of checking out shorts, grounds and so forth, you still have some work yet that you still have to do.

Q. Approximately how long elapsed from the time that you last worked on that house until the electricity was turned on?

A. Just a matter of days.

Q. I am referring to the work which you said you did before the electricity was turned on?

A. I would say two or three days at the most. We were set up with the power company that they would almost the same day or the day after come up there and cut the houses in because they had all the poles set for the subdivision and they just had to drop it from the pole over.

Q. Approximately what length of time elapsed between the time they cut the electricity on and you did what you referred to as checking it over and went back and finished the job?

A. It could have happened the same day or it could have been the next day or it could have been the next day. I would say within one or two days, or in some cases it could have been something that didn't show up until three or four days.

Q. Referring to lot No. 86, house on lot No. 86, do you know when or approximately when without referring to page 645 } the Virginia Electric and Power Company records—

A. I haven't the Virginia Electric and Power Company records here.

Q. Do you know approximately when you last worked on that house?

A. August 24th or 25th.

Q. Referring to the house on lot No. 88, do you know when you last worked on that house?

A. On or about August 9.

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CROSS EXAMINATION.

By Mr. Ashby:

Q. Mr. Shelton, you have referred in your direct testimony to what your practice was in working on these jobs and not specifically what you did on these houses, have you not?

A. That would be partially true.

Q. In other words, you have told the Commissioner and the Court that generally or sometimes or many times—I think they were in various terms that you used—you did it thus and so in a certain way, but you have not told the Commissioner with regard to house No. 82, let's say, specifically what you did on that house on a certain date. You have referred to the Virginia Electric and Power Company records as to when they issued a work order. If it developed, according to your testimony here, that the Virginia Electric and Power Company through any failure on their part or because they did not function exactly as you think they did in act-
page 649 } ing on those orders did not proceed to give their engineers or construction crew the work order immediately and some time elapsed, then the date on which you say that you did your last work there would be in error, would it not?

A. That would be true speaking about the whole bunch of houses, but this particular group it would not be true.

Q. Why would it not be true?

A. This particular group of houses, and I will name them—

Q. This is 67, 88, 82, 84 and 86 to which I am referring.

A. That is correct, this particular group of houses were the last houses that were completed in Normandy Village.

Q. At the time that you went there to do this work you had already attended meetings of the creditors in these suits, had you not, down here in the room in the office here, had you not?

A. That is true, yes, sir.

Q. Had you heard discussion there about naming various people as trustees or receivers or something of the sort to take this thing over and see it wound up, had you not?

A. Yes, sir.

Gordon W. Shelton.

Q. I am referring to July.

page 650 } A. In police court, yes, sir.

Q. Also a very early date in August you heard that, did you not?

A. Yes, sir.

Q. You had been present?

A. Yes, sir.

Q. You had been represented there by Mr. Franklin, or were you represented by counsel there at that time?

A. No.

Q. You do not know who told you to complete these houses, but you sometimes got your orders from Messrs. Franklin and Rawlings, didn't you?

A. I would say probably the last two or three of those houses that would hold true, but in most cases it was with Mr. John D. Wood.

Q. In the last two or three of those houses, tell us *who* are the last two or three houses that Messrs. Franklin and Rawlings instructed you to go there and complete?

A. (Referring to paper writings) House No. 84—now house No. 84 and house No. 82 I believe to be the two houses which occurred around about September 12.

Q. Mr. Franklin and Mr. Rawlings instructed you on both of those, 82 and 84?

A. I believe.

page 651 } Q. You think they gave you the instructions on those two, but you are not sure?

A. No, I am going to qualify that further. It's been such a mess that you kind of got to get one thing instead of something else.

Q. You have to get it now.

A. Mr. Cheshire at one of these meetings in police court, after that told me that I could—let's see—to go ahead and finish the houses up.

Q. By the houses, to what are you referring?

A. This group that we are speaking of.

Q. The same ones to which you have been referring?

A. Yes.

Q. Was that at a July meeting or the August meeting?

A. There were two meetings, and I don't think I attended the second meeting. I may have.

Q. So it was the July meeting?

A. I think.

Q. The first one was August 5th?

Gordon W. Shelton.

A. If the record shows I did attend the first one and that I was to get the payment of $25.00 toward the contract from Mr. Franklin, but now that I think about it I don't think Mr. Franklin told me directly to finish that house up.

page 652 } In fact, I am quite sure.

Q. As of that time how much had you been paid on your contract on these houses in accordance with the contract?

A. In accordance with the contract?

Q. If you were so paid?

A. I was still owed for these 13 houses that I had filed mechanics' liens on.

Q. So that as of that date the contract had already been breached insofar as Normandy Village was concerned in not paying in accordance with its terms, is that right, or did it have terms of payment?

A. Well, to go back just a little bit in answer to your question, we received—has that been introduced in evidence?

Q. Yes, sir, but what I want to know how were you supposed to be paid by Normandy Village on this verbal contract that you had?

A. Well, the terms of that Valley Lane contract was supposed—I asked Mr. Cheshire myself on several occasions, as did other contractors, what was the status of the last bunch of houses, and he said, "It is all one big outfit, so we will go ahead like we have been going," and with that in mind I was still working under contract that I had received before that as to the amount of money involved.

page 653 } However, in the very first group of houses they made payments to me. In other words, at that time they seemed to be pretty flush. They would pay you whenever you wanted a draw, so in lots of cases I would let a little bit build up, and when I really got cramped for money, I would draw some money, so they didn't pay me according to the way that is set up, no.

Q. With regard to your records, of course, you keep an account of your accounts receivable?

A. Oh, yes.

Q. Do you have that record of those accounts receivable with you?

A. No, I don't.

Q. How much difficulty would it be for you to bring your records of accounts receivable house by house with Normandy

Gordon W. Shelton.

Village or Valley Lane or Dawn Lane, whichever the case might be?

A. As in the case of this particular contract I will answer your question. It calls for $5,000 and some odd dollars for 32 houses, and as they paid me for that particular contract and not house by house, did I credit them.

Q. This other contract called for what?

A. Which contract?

Q. The one that you are talking about that was not in writing.

page 654 } A. The verbal contracts covered 33 houses.

Q. Did you keep your records of accounts receivables and credit those accounts house by house?

A. Not house by house, no, because a lot of times they would give me a check, a Valley Lane check, in payment of Normandy Village account or vice versa.

Q. But you knew what houses they were for, did you not?

A. No.

Q. In other words, you didn't keep any record of what you were being paid for.

A. I had a contract of $160.00 a house on so many houses. I mean that is a verbal contract.

Q. Do you have a record in your books as to what those 33 houses were?

A. What numbers?

Q. Yes.

A. Not in this book.

Q. In other words, that book only deals with these 13?

A. It is just a book.

Q. You just made some notes there for this trial?

A. No. Some of those notes here—

Q. What I am getting at is that book your regular work book that you use in doing your work or is it a

page 655 } book that you made notes on for this trial?

A. No, this book here is the book that stays in the truck with me and I make various notes in it on contract work. For instance, if I give a man a price on a job, I write it down so much per contract. All time and material I keep details on, but on the contract work once I figure it, that is it, contract $500.00, contract $100.00 and then on the big book and then I put it on this, so much.

Q. Getting back to the question I asked you just now with respect to your own accounts receivables, the accountant in

your own office of your own business, in order that this Court and Commissioner can see what you were paid for and when, will you be able to produce those and answer questions concerning them?

A. I think so.

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page 656 }

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CROSS EXAMINATION.

By Mr. Mason:

Q. Mr. Shelton, I understand that you told Mr. Ashby that you attended the creditors meeting on August 5, page 657 } 1957?

A. That was the first one?

Q. So far as I know, that was the first meeting which was held in the city court in the City of Fredericksburg.

A. Yes, sir.

Q. At that time you were told along with the other creditors that these corporations were in difficulties and some arrangements were being made to try to arrive at some equitable agreement to see that the creditors were paid off a pro rata share or whatever it might be, isn't that correct?

A. Yes, sir.

Q. That was the purpose of the meeting, was it not?

A. Yes, sir.

Q. I believe you testified that you were notified by Mr. Franklin or Mr. Rawlings to do the work on Lots 82 and 84 around September 12?

A. I later corrected that statement, that I was told by Mr. Cheshire to do it and to go by and see Mr. Franklin and pick up my check.

Q. How much was that check?

A. It was in the amount—it was supposed to have been $25.00 a house that they were paying me on the contract, but at the same time we done that work we put in page 658 } some range connections on one of the other of the houses that I can't pinpoint just this minute, so the check would be either $25.00 or fifty-some dollars, yes, sir.

Q. In filing your mechanics' lien have you given a credit of

$25.00 on the $160.00 that you were supposed to have been paid when you were paid by Mr. Franklin?

A. No.

Q. Do you now claim that you are owed a full $160.00 on lots 82 and 84 or $160.00, less $25.00?

A. You are speaking entirely about contracts now?

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By Mr. Mason: (Continued)

Q. Mr. Shelton, before we just took this brief recess I believe I was asking you about the $25.00 that you received from Mr. Franklin or Mr. Rawlings for the release of the lots 82 and 84. I further asked you I believe how you credited the $25.00 that you received, $25.00 or $50.00 that you received from Mr. Franklin or Mr. Rawlings.

A. You say release? Repeat that question. You say that I received $25.00 as a release?

Q. Well, now for turning the lights on? What did you receive it for? I thought I was repeating your words that you used, and I just wanted to know in your words.

A. You asked me what did I credit that to?

Q. What did you receive it for?

page 661 } A. What did I receive it for? I assume that I received it on the account. Actually, in the case of the $25.00 and also in the fifty-some dollars—I just can't get the figure out of the air—on that particular house that was extra work over and above the contract for the electric range connections and so forth, so I credited it toward the extras in that particular house involved.

Q. Is it not a fact that you charged $25.00 to go there and put in your ground wire and give your certificate to the City of Fredericksburg that the house was wired and completed and ready to go?

A. No. Mr. Cheshire in front of the police court told me that he would try to pay me as we finished up the houses, and that I was to get from Mr. Harry Franklin—that was his own idea of the $25.00. It was not my own idea; it was Mr. Cheshire's idea that he was to pay me $25.00 as we complete each house up toward going off what they actually owed me. That was his

own words. That was not my idea. He originally brought that up himself right out between these two buildings (indicating). I don't know where he got the $25.00 from. I certainly didn't raise it.

Q. But it was for your turning the lights on or what?

A. No, I wouldn't say that.

page 662 } Q. Well, there is some connection between the payment of $25.00 and your going there and doing something in connection with the lights and the Virginia Electric and Power Company from your testimony, and I just want to know what it is.

A. Well, inasmuch as we were finally finishing up the electrical work for that particular house, I just assumed he figured the $25.00 was in payment on what they owed me. In other words, that was all they could make payment at that particular time. That is just my assumption of it, but it was only involved there in two houses I think. I think it is two or three, maybe, houses involved in that particular setup.

Q. Did Mr. John Wood ever pay you $25.00?

A. He did.

Q. On how many houses?

A. I think it was one; it may have been two.

Q. On the particular date that you are speaking of lots 82 and 84 were owned by Walter and Valorie Ogus, were they not?

A. I assume they were; I don't know. You mean on the particular date? No, I would say on that particular date I didn't know whether they were or not.

Q. Well, you filed a mechanics' lien.

A. What date are we speaking about and then I can answer your question?

page 663 } Q. In September.

A. September 12th, yes, I would say yes to that, yes.

Q. Did you know at that time that Mr. and Mrs. Ogus owned that house?

A. In September?

Q. In September.

A. The meeting was in August; I would say yes.

Q. You found out certainly by the time of that meeting in August that Mr. and Mrs. Ogus owned those houses?

A. Yes.

Q. About what time were those houses completed generally except for these little details of yours of putting in a ground wire and one or two little fixtures?

Gordon W. Shelton.

A. At the same time, as I previously stated, in a good many of these houses they were doing various things such as putting down asphalt tiling, shoe molding and touching up things and various things to complete the houses, because these houses were not complete.

Q. That would be September 12, 1957, at the time that you went there to complete those two houses belonging to Mr. and Mrs. Ogus and they were putting shoe moulding and touching the house up? Is that your testimony?

A. On or about September 12.

Q. These houses were generally complete in
page 664 } April, 1957?

A. No, I wouldn't say that. They would go in and build the house and slap a roof on it and go to another one.

Q. Then you deny that the major part of your electrical equipment work was done in April, 1957?

A. Major part?

Q. All except the few very minor details such as putting in ground wire?

A. No, I wouldn't say that they were, because one phase of an electrical system is just as important as the other, and you are not actually complete until you actually have tried out everything and made sure it works.

Q. That is correct, and that is done usually when the Virginia Electric and Power Company in this particular case turned the electricity on in the house and—

A. Prior to or immediately after.

Q. —then immediately after that, if there are no sparks flying, you have a pretty good idea that she is all right?

A. That is right.

Q. But except for that particular item was this house not completed in April of 1957?

A. No, I wouldn't say it was completed.

Q. Hadn't you terminated your work on this
page 665 } house in April of 1957, except for the detail of
putting in the ground wire?

A. No, actually I am not terminated of any house until it is actually passed by the city inspector and cut in by the power company and I have checked it out and made sure that everything works?

Q. The city inspector issues the permit on your statement, does he not?

A. No, not in all cases.

Q. Well, 99 out of a hundred he does, doesn't he?

Gordon W. Shelton.

A. Issues what now?
Q. A certificate.
A. A certificate of approval?
Q. Yes, it is just a formality that you go through?
A. I wouldn't say that; I wouldn't say that percentage would be that great.
Q. All right, let's get this answer from you then. If you did do work from April up until September on those houses, were you authorized to do so by Mr. and Mrs. Ogus who were the owners of the houses?
A. No, sir.
Q. Have you ever met them?
A. No, sir.
page 666 } Q. Have you ever seen them?
A. No, sir.
Q. Have you ever had any conversations with them, Mr. and Mrs. Ogus?
A. No, sir.
Q. Do you know what the relationship was as far as your work on these houses was concerned and the actual owners being someone other than the people who were directing your work?
A. Would you repeat that?
Q. Mr. Cheshire directed your work on this project, did he not?
A. Yes, sir, the majority of it.
Q. Mr. Cheshire directed you to do work after August 5 of 1957? That is the time of the first meeting of the creditors?
A. Yes, that same date. I mean I can't pinpoint the date, but at that particular day, yes, sir, and I never was told not to.
Q. You knew that a Mr. and Mrs. Ogus—I believe that you testified here you knew about that at the same time that Mr. and Mrs. Ogus owned the houses?
A. Some houses. I believe at that time it was a photostatic copy circulated of assets and liabilities among us and there were some names of Ogus. I believe that is
page 667 } right.
Q. You were on notice that Mr. and Mrs. Ogus owned six houses? Did you ever make any attempt to find out what houses *were* doing work on that were owned by Mr. and Mrs. Ogus?
A. I assumed, inasmuch as they were vacant, nobody lived in them, that they would have still belonged to Normandy Village at the time.

Gordon W. Shelton.

Q. Because they were vacant?

A. Because they were never finished; I don't see why anybody would have bought a house that was vacant and had never been finished and no lights connected to it and no water and no painting or stuff of that sort. On the same piece of paper circulated around I saw the initials K & S but that didn't ring a bell, but I see since *them* some houses have been transferred to Kinsey and Sharlin. We all figured—I speak about me—that the property all belonged to Normandy Village.

Q. Is it not true that there was a foreman on that job that gave you some orders as to what you were to do, what houses you were to work on?

A. On some occasions, yes.

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Q. How about Mr. Kinsey and Mr. Sharlin?

A. Toward the last Mr. Kinsey, I spoke to him on one occasion as to just what the story was, and he said, "You go ahead and finish these houses up and then we will see that you don't lose anything."

Q. Mr. Kinsey told you that?

A. Yes.

Q. Would you mind telling me where he told you that?

A. In my truck; I moved him from Normandy Village to the first house in B and C Homes, Incorporated. In other words, I picked him up.

Q. What was the approximate date?

A. It was about the same time that we were finishing up these houses. The approximate date, I couldn't tell you.

Q. You say you didn't finish up until September? Would that be about the time?

A. The reason that I say it was about that time was because he walked up to one of these houses along in this page 669 } group we were referring to, and I was working with that house that particular day and I got finished, and he asked me if I would take him over to the first house which was the model home in the B and C Homes, that he wanted to catch Mr. Sharlin over there, that he was to ride

back with him, and I told him I would. We developed a conversation and he told me about various things, and he said, "I will see that you don't check up short." That is what he told me.

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Q. I believe you testified that there were some houses in your opinion which were still not completed today?

A. Yes, sir.

Q. Lots 69, 70, 72, 78, 79 and 80, is that correct?

A. 80, 69, 70, 72, 78 and 79, is that right?

Q. Yes.

A. Yes, sir.

Q. How long has it been since you have done any work on those houses?

A. I would say the latter part of September, 1957, because in some cases we go up to finish one of these other houses and I would have two or three extra hours and go up and do something on these other houses that needed to be done.

Q. Is it not a fact that this job was closed up and Mr. Cheshire and Paynter left Normandy Village in July of 1957, and that no more houses or work was done over there after July of 1957? Isn't that a fact?

A. No.

Q. Is it not further a fact that anything that
page 674 } you did after the latter part of July, 1957, was as a volunteer?

A. No.

Q. Is it not a further fact, Mr. Shelton, that you have even made the statement that you were going to go around on these houses from time to time and do a little work so you could keep your mechanics' lien alive? Do you deny making that statement?

A. Repeat that now.

Q. Is it not a fact that you have made the statement to, not only one but to a number of, people that you were going to go around to these houses from time to time and do a little bit of work to keep your mechanic's liens alive?

A. I refuse to answer that question on the ground that—

Gordon W. Shelton.

Q. That is might incriminate you?
A. Yes.
Q. I don't blame you.

Mr. Mason: I would like for the Commissioner to direct him to answer that. He is not subject to any criminal prosecution.

By the Commissioner:
Q. Mr. Shelton, your not answering will do you more harm.
A. Will he produce the man that is going to
page 675 } back up his claim?

By Mr. Mason: (Continued)
Q. If you say you didn't, I assure you I will.

Mr. Coleman: I do not think you should threaten him.

A. Repeat that. I will answer your question, yes.
Q. Then you did make that statement. All right, sir, the keys to these houses had been in the possession of Mr. Wood who was the agent to sell these houses since July 1957, is that not true?
A. I don't know.
Q. The houses are locked, are they not?
A. We do quite a lot of work in the utility room which is out back of those houses and have been since the job was started, getting in those doors in the utility room with just a knife. That was not breaking and entering because I had Mr. Cheshire's okay on that, and also a good bit of work is done underneath the houses. I did get keys, I believe, on some of these houses that we did finish up that is on record, the last house, and in some cases there were already people working in those houses, so it wasn't necessary to get a key.
Q. That was in July of 1957, was it not?
A. No, it was—(referring to paper writing)
page 676 } In August and September of 1957, the dates which we finished up the electrical work.
Q. After they had this creditors meeting down here on August 5, 1957, and you knew that these corporations were in financial difficulties you still went back out there and did electrical work, is that correct?
A. Yes, sir, I knew it for some time, they had been having difficulty.

Gordon W. Shelton.

Q. You also knew for some time that the houses which you were working on were owned by Mr. and Mrs. Ogus?

A. No, sir.

Q. Well, you said that you did work on them in September and you found out in August?

A. You were speaking about July. I said I didn't know at that time.

Q. But you did know in August?

A. I knew at the creditors meeting.

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page 687 }

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Q. To get right to the point, you have only billed Normandy Village and you have billed Normandy Village for the amount of money that they owed you, is that not correct?

A. Yes, sir.

page 688 } Q. All right, you filed a mechanic's lien on certain houses? Is that also not true?

A. Yes.

Q. But you have not filed mechanic's liens on sufficient houses to take care of all of the bills owed you? Is that also not true?

A. That is correct.

Q. So some of these houses must have been completed, even the way you look at it, at least some 60 days before you started filing mechanic's liens? Isn't that true?

A. Wait a minute. You have to back up. Go over that again.

Q. You were owed a couple of thousand dollars?

A. That is on contract.

Q. Some of the houses you filed mechanic's liens on?

A. Yes, sir.

Q. Some you have not? Some that are now owned by these three corporations you have never filed mechanic's liens on? Isn't that true?

A. That is correct.

Q. Because they were completed some time ago?

A. No, sir, that wouldn't be necessarily the fact. The amount of my mechanic's liens, let's see. To explain this,

Gordon W. Shelton.

the way that these corporations would pay was
page 689 } not consistent with any type of billing, because if
I billed them as having so many houses finished or billed them for something, say extras that didn't have anything to do with the contract, they would say, "We are only able to pay these number of bills today, and you take these bills back and bring them back next week, and I will pay you those." That was for the extras also.

The way Mr. Cheshire paid me, I would credit him to such and such a house. Now the houses that they still owe me for and the houses that I filed mechanic's liens are practically one and the same.

Q. For houses they still owe you?

A. The houses they still owe me for and the houses I filed mechanic's liens for are houses they owed me for. They never gave me a check and said, "This is for house No. 21 or 26." They said, "This is to be applied on the contract."

* * * * *

page 693 }

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Q. Is that the book that you gave your counsel the information for on the basis of which he filed this mechanic's lien suit for you or petition for you? Did you give him the information or did he give it to you?

A. I gave him the information, the number of the houses and approximate dates that I had worked on them.

Q. The approximate dates that you had worked on them?

A. Within one or two days, yes.

Q. You gave him information on house No. 83, didn't you, because he put it in the petition and it came from the information you gave him, did it not?

A. Yes, sir.

Q. It now developes that house was completed sometime in December of 1956, closed for in January of 1957, and there
were people in it at the time it was closed, were
page 694 } they not?

A. That is correct.

Q. So your record as to that house is incorrect and admittedly so?

Gordon W. Shelton.

A. Absolutely.

Q. You have no right to any lien on this house, do you?

A. Which house?

Q. You have no record there that substantiates any lien on that house?

A. 83, that is correct.

Q. These other houses were worked on simultaneously with 83 according to your testimony when Mr. Coleman was examining you, were they not?

A. Different phases of the work on them, yes, sir.

Q. No. 81 you have just testified to in response to a question by Mr. Pribble was finished about the same time as No. 83?

A. I said my part of the work.

Q. That you wouldn't be surprised that the people moved into it the first of February, 1957, as a completed house?

A. That is what I testified to, yes.

Q. There are other houses in there that you wouldn't be surprised if people came in and told you that they page 695 } were completed about the same time, would you?

A. If they came in and told me on any of these houses I have got, I would be surprised because I haven't got wires—well, they wouldn't have any lights.

Q. They wouldn't have any lights?

A. That is in the last ones that I said have not been completed.

Q. I am talking about the 13 houses you have testified to here?

A. Yes, but they were in two groups.

Q. If witnesses testified here that those houses were in the same condition or similar condition of completion, a like situation, with regard to lights and with regard to everything—maybe they were not hooked up by the power company—but with regard to completion, as 83 and 81, you would not be so surprised, would you?

A. Yes.

Q. You have gone out and said you were going to keep your liens up and you picked the back door of the utility rooms or the door of the utility rooms in some instances—

Mr. Franklin: I object to that statement. He has never testfiied that he picked the back door.

Mr. Mason: He did so.

Gordon W. Shelton.

The Commissioner: My recollection is he said
page 696 } he used a penknife to get in the lock.

Mr. Ashby: He said that he was not breaking and entering. He said he used a penknife and that he had talked to Mr. Cheshire about entering other houses.

By Mr. Ashby: (Continued)

Q. You did testify to that, did you not, as to how you got into these houses that were locked?

A. Well, I did that from the very beginning. If I have to run after somebody to get the keys, I lose half an hour sometimes.

Q. You just opened them up and went in?

A. In a lot of cases the windows were not locked. That is common practice in construction work.

Q. Particularly with regard to the ones you contend you completed after the August 5th time, notwithstanding the date on which you may have done some work prior to that in April or February or March or January or December, you went to the backs of these houses with your penknife because the houses were locked, were they not?

A. Some of them.

Q. You did whatever you have told the Commissioner here that you did on them because you didn't have a key, did you?

page 697 } A. I at no time had a key.

* * * * *

page 698 }

* * * * *

Q. Mr. Mason questioned you in regard to the statement which you had made that you were going to do some work to keep your liens open. I believe that was the context of it. Do you remember when you made that statement?

A. No, sir, I don't.

Q. Do you remember to whom you made it?

A. No, I don't.

page 699 } Q. Did you do any work in Normandy Village or on this group of houses for the purpose of keeping your liens open?

Gordon W. Shelton.

Mr. Mason: I believe I will have to object to that. Of course, I realize that he is reluctant to answer it, and maybe it might be just as well for him to go ahead and answer it. I believe I will withdraw my objection. I believe he is going to be honest about that.

Mr. Franklin: I was surprised by his question and surprised by his answer, as his counsel.

By Mr. Franklin: (Continued)

Q. Did you do any work for the sole purpose of keeping your lien open?

A. I don't know where you draw the line.

Q. Let me ask you—

Mr. Mason: Let him answer that first one.

The Commissioner: I think he has a right to answer the question.

A. (Continued) I don't know where you draw the line on just being a workman. I don't know about these mechanic's liens and so forth. I don't know where you draw the line on where I went back and did various work which page 700 } would have been done in any event maybe in that particular week or the following week, whenever the house was sold or whenever it was finished. I don't know where you draw the line. I did admit that I did make that statement. I don't deny it.

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GORDON W. SHELTON,

recalled for further examination, deposes and states as follows:

CROSS EXAMINATION.

By Mr. Ashby: (Continued)

Q. When you were on the stand on direct examination and cross examination, you were requested to bring back or bring your accounts, specifically, as they pertain to the three corporations about which this hearing is being held and your dealings with those corporations, and I refer you, sir, to

Gordon W. Shelton.

Normandy Village open account, 1956, and ask you if certain credits, the amounts of which are not in issue at this time, were not made on houses 85, 88, 67, 86, 82, 84
page 954 } and 86?

A. Yes, sir.

Q. You credited those as far as your bookkeeping is concerned to specific houses?

A. Yes, sir.

Q. I notice from your accounts, referring to the page beginning with 1954 and going through the page with the 1956 at the top, that you received monies from Normandy Village or others which you credited to the account of Normandy Village from time to time, and at times you showed that the accounts were overpaid, is that not correct?

A. Yes, sir.

Q. The amounts of which overpayments are not here in issue and that as of May, 1957, under a Caputo note received by you, that your account with Normandy Village was overpaid by them?

A. Open account with them.

Q. They were, of course, as of that time entitled to the amount of that credit of $356.68?

A. Yes, sir.

Q. That note, of course, was a $1,500-note, was it not?

A. Yes, sir.

Q. You accepted that on a discount, $1,200.00?

A. Yes, sir.

page 955 } Q. You allowed them a credit?

A. Yes, sir.

CROSS EXAMINATION.

By Mr. Mason:

Q. Mr. Shelton, the account of Normandy Village, Incorporated, carried in your name of Gordon W. Shelton, shows that March 31, 1957, there was $1,630.00 owed because apparently a check of $250.00 was credited to you. Was that a bad check that was given to you in March, 1957? Do you remember getting a bad check from them or something of that nature?

A. I think that check you are speaking about, I got two bad ones, and then I got a third one that made those good.

Q. Anyway, they gave you a credit of $250.00 because December 31, 1956 they owed you $1,380.00 on your account for doing the wiring on these last 33 houses?

Gordon W. Shelton.

A. What was the date now?

Q. December 31, 1956.

A. Yes, that check bounced, that is right. December 31, is it? I got the check prior to December 31 and the check bounced.

Q. So they showed as giving you a credit back to make your account at that time $1,630.00?

A. Well, the account at that time or the first page 956 } of 1957 was in the amount of $2,626.80.

Q. According to your records?

A. Yes, sir.

Q. I notice that in their account there is $1,229.67 credited to your account. Do you know what that was for?

A. Yes, sir. Now the way they have got it, that should be $1,229.67 and I know what that amount included. It was ranges, water heaters and so forth put in over and above my contract with Normandy Village. In other words, that was for extra work I have the sheets on (indicating).

Q. When was that extra work done?

A. It was done from the very first—well, I won't say the very first, but I will say probably the second, possibly, from July, right straight on through 1956.

Q. There is $383.83 credited to you. What is that for?

A. Well, on the open account sheet I show that as credit for Terrell Heating Company, which was extra work authorized by Henry Cheshire.

Q. Did you do certain work for Terrell Heating Company when they were working on it?

A. No, not for Terrell Heating Company; I did it directly for Normandy Village. It was charged, I was told, to Terrell Heating Company's contract, against that con- page 957 } tract.

Q. Do you know when that work was done, the same as the other, beginning in July of 1956?

A. Yes, sir, I would say that is substantially correct, 1956.

Q. They also give you a credit of $229.82, which I see that you have on your books, $229.82.

A. That was for extra work.

Q. Extra work?

A. Over and above the contract.

Q. In October, 1956.

A. Extra work billed as of October; that is when it was billed.

Gordon W. Shelton.

Q. Mr. Shelton, in view of the fact that your claim is now $1,918.32, which was just stipulated, that is what your account was?

A. It was actually $1,915.00.

Q. You have actually been paid by Normandy Village for all of the wiring that you did on the 33 houses with the exception of a very few dollars, have you not?

A. No, sir.

Q. Well, Mr. Shelton, part of your claim of $1,918.32 consists of the following items: $1,229.67, $383.83 and $229.82. Is that not correct?

A. No, sir.

Q. It is not?

page 958 } A. No, sir.

Q. It is not?

A. No, sir, you said that I got this amount—

Q. No, I didn't say that you got that amount of $1,229.67, $383.83 and $229.82. I do not claim that you got that amount. I claim that amount is still owed to you and they total $1,843.32, does it not?

A. Those amounts are not owed to me. I have credited that off. The Normandy Village open account has been closed out. At the time I received the $1,500-note—

Q. When did you close out the open account of Normandy Village?

A. Well, actually, this amount which is not on this sheet, this amount is on this sheet (indicating), but the last entry that I made on 1957 I showed a credit balance due on Normandy Village open account in the amount of $356.68. The reason for that was Mr. Cheshire gave me this note, face value I guess you would say, for $1,500.00 discounted down, so that actually that was for $1,200.00.

Q. I understand that, and when you got these credits you made the decision as to whether you would charge it up against an open account or a contract account, is that correct?

A. When I got these credits—are you speaking about all of the credits or just the $1,200.00?

page 959 } Q. I am talking about this $1,843.32 that was owed to you by Normandy Village, Incorporated, and which is now still owed to you, but you have received certain payments, and instead of charging those up to the general account, you say that you charged it against an open account?

Gordon W. Shelton.

A. No, that is not correct. I received from Mr. John Wood monies and from Mr. Acers monies and from Mr. Franklin and Mr. Rawlings two checks of which I applied to the actual houses, and the receipts that I gave Mr. Acers indicated that they did apply to.

Q. But I think you can follow me on this, and I am not attempting to trick you here. You had a contract for so many houses at so much money, correct?

A. That is correct.

Q. You did extra work for stoves or for Terrell Heating Company or for so and so, which you added on to that amount that they agreed to pay you for contracting each house?

A. No, I got the contract separate from the extras.

Q. But that is as far as your bookkeeping is concerned, and is it not true that you had a contract for so much per house and then you did extra work that you charged up against Normandy Village, Incorporated? Is that not correct?

A. That is correct.

page 960 } Q. Now you were paid certain monies by Normandy Village, Incorporated, either in cash or by that $1,200.00 note, is that not correct?

A. That is correct.

Q. The total amount now owed to you is $1,918.32? Is that not correct? You have just stipulated to that.

A. We have a difference here of $3.00.

Q. It should be $1,915.32?

A. Well—

Q. Well, I am giving you $3.00. The point is that, in effect, you have been paid for all of the actual contract wiring out there within a hundred dollars, but that you charged up against Normandy Village what you received against the extras which you did?

A. No, sir, Mr. Cheshire at the time he gave me the note—this is hearsay—he said, "Gordon, I don't want to see you get burnt on this job. You take this $1,200.00 and let that cover the extras as far as it will on this job." That is the very words he said sitting in the front yard. That is hearsay and that is exactly what I did.

Q. You charged those against the extras?

A. Because I was still working on the houses; actually, I thought the houses would stand for themselves. Actually, I didn't think I would lose anything on the work on

page 961 } the houses.

Gordon W. Shelton.

CROSS EXAMINATION.

By Mr. Franklin:

Q. Mr. Shelton, you testified that there was $175.00—I think it is shown on your books—which you credited to certain houses because of checks, or the receipts showed they were to be credited to those houses. Can you now state what amount is credited to what house? Referring now to that $175.00 you are talking about, to what houses did you credit what portion of that?

A. Broken down into the amount of $25.00 each for seven houses.

Q. What are those houses?

A. 82, 84, 86, 88, 85, 67 and 86. Now 86 is twice.

Q. So 86 is entitled to a credit of $50.00, is that correct?

A. That is correct.

Q. So your claim for mechanics liens on those houses reduced from $160.00 each to $135.00, is that correct? And on house No. 86, which was entitled to an additional $25.00, to $110.00, is that correct?

A. That is correct.

page 962 } Q. You testified that on some occasion you talked to Mr. Kinsey. Do you remember on or about what date that was that you talked to Mr. Kinsey?

A. I talked to Mr. Kinsey on several occasions.

Q. Do you recall having testified that you talked to Mr. Kinsey on the job for about an hour?

A. Yes.

Q. Do you remember when that occasion was?

A. Now the first meeting that we had in police court over here he talked to me during that meeting, and then I talked to him sometime around that date in my truck for about an hour.

Q. What was the substance of that conversation?

A. He told me Mr. Sharlin and Mr. Kinsey were more or less taking over for Mr. Cheshire, that he had gotten the boot, and that for me to go ahead like I had been going, not to hold up the job any.

Q. Did he tell you that they had abandoned the work on the rest of those houses?

A. No, sir. He was in hopes that I and nobody else would put any liens on it so they could go ahead and finish it.

Q. Did he ask you to finish it?

A. He did.

By Mr. Mason:

Q. Can you give me any date as to the time when this statement was made to you by Mr. Kinsey?

page 963 } A. He talked to me on numerous occasions. I do know this: That the first meeting that we had over here in police court, at that time he talked to me along the same lines. Now what was the date of that? I don't remember.

Q. The date of that first meeting was August 5, 1957.

A. That date would be correct for one date. I can testify to that.

Q. What did he tell you on August 5, 1957?

A. Well, at that time I believe Mr. Spratt and Mr. Hadrup had filed mechanics liens on the property. August 4, did you say?

Q. August 5.

A. And at that time he told me that they were hoping to get it straight and to keep on continue working up there and for me to keep on working up there like I was, that I wouldn't lose any money. Mr. Cheshire assured me lots of times that I wouldn't lose any money, but Mr. Kinsey indicated to me that they were going to try to finish the houses up, were going to form some kind of committee or something to get things straight and to run it and finish it up.

Q. Was he talking to you about the creditors committee?

A. No—well, I think the creditors committee

page 964 } was talked about at that meeting, but I was talking to him in the back of the courtroom there sitting right next to him. In fact, I was sitting directly in front of him, because at that time he and I both were looking at this photostatic copy of accounts. I told him at that time, "I hope I don't lose that amount," and he said, "You won't." We were looking at that together.

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page 1181 }

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E. F. FLOEGE,

a witness called by Mr. Garnett, first being duly sworn, deposes and states as follows:

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page 1197 }

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By Mr. Mason: (Continued)

Q. I would like to find out from you if you were working around there up until the second week in May? Is that what you said?

A. That is right.

Q. When you left the Normandy Village project the second week in May, 1957, had not these houses been finished except for the grading which you were doing?

A. The houses I graded were all completed at the time.

Q. Do you know the number of those houses that you were grading?

A. On the plan I could easily show them.

Q. Would you do that, please?

A. Yes (referring to plat).

page 1198 } Q. Just call the lot numbers off.

A. No. 103 is the last one on this side I did, and on the other side I did 92. I believe it is 92, and the next one to it, that must be 94 on this side here, and all the others, I did all of them except from here on down and that is where Mr. Cheshire stepped in (indicating on plat).

* * * * *

Q. From 66 through 80 Mr. Cheshire did?

A. Yes, and I did all the rest up here, and he did two buildings up here on this side, too. Mr. Wood, what is the number of your building?

Mr. Wood: 102.

A. (Continued) That No. 102 Mr. Cheshire did.

Q. How about 81 through 86?

A. I did all of them and all of it here, too (Indicating).

Q. That would be 81, 82, 83, 84, 85, 86, 90, 89,

page 1199 } 88?

A. That is right, and over here, too (indicating).

E. F. Floege.

Q. And 95, 96, 97 and 98?

A. That is right, and 99 and 100. These are the 15 houses which are not on contract that were on the verbal agreement, these 15 here.

Q. It is my understanding from your testimony that at the time you finished grading those houses in May of 1957 they were completed?

A. Oh, I believe so. Most of the people were in most of them. There were only one, two, that were not inhabited, only two.

Q. Which two were not inhabited?

A. I think I can show you. It is on the 80 side. (Referring to plat) This one wasn't and that one wasn't. 82 definitely wasn't. 83 was and 84 and 85. All the rest were.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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RULE 5:12—BRIEFS

§1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

§2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

§3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

§4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of the fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

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

§7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

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