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Clerk, Supreme Court of Appeals
Richmond, Va.

201 VA 791

Record No. 5062

In the Supreme Court of Appeals of Virginia at Richmond

ANNA D. FREED, INDIVIDUALLY, ETC.

v.

JUDITH REALTY AND FARM PRODUCTS CORPORATION, TRUSTEE, ET AL.

FROM THE CIRCUIT COURT OF THE CITY OF NORFOLK

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.

LAST WILL AND TESTAMENT

OF

CHARLES C. FREED, DECEASED

Last Will
of
Charles C. Freed

Norfolk, Va
Monday
July 7, 1952

I, Charles C. Freed of 616 Graydon Park, Norfolk, Va. being of sound and disposing mind and memory do hereby make, publish and declare this to be my last will and testament, hereby revoking all wills made by me at anytime heretofore. Being, as I am with-

e June 10 1958
. Freed

This change made Charles

cut children of my own.

(1) I do hereby give, devise and bequeath all my property both real and personal to my brother Loring Freed's ~~or his heirs~~ three children Barbara, Charles and Carolyn

(2) Except my money in bank and my household furniture, which I bequeath to my wife Anna D. Freed;

(3) I hereby appoint my brother Loring Freed Executor of my estate to serve without bond; also I hereby appoint my brother Loring Freed or in his inability to serve, the then managers of the Loring Realty Corp, as trustees to handle the following matters:

(4) I hereby direct the above mentioned Trustee to pay unto my wife Anna D. Freed, the net Income from my shares in the Loring Realty Corp for as long as my wife shall live. The above mentioned payments are to be made to her only if and when my wife does waive all dower rights, homestead rights or any rights or interest in my estate, either real or personal, which the law might give her. The above mentioned payments are to be made at the close of Loring Realty Co's books at the end of the year.

(5) In event the Loring Co is dissolved or its property sold the Trustees shall reinvest the pro-rate value or money received for my interest or share in the proceeds of such sale. This money shall be invested in interest bearing securities, the income from which is to be given to her for her life, subject to

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Clerk of the
Circuit Court
Norfolk, Virginia

M-1-57-B&O—15874

income from which is to be given to her for her life, subject to

the above mentioned stipulations and conditions,

(6) This will is made in accordance with my life long intentions of keeping our little family fortune together in the Freed family so I organised the Loring Realty Corp for this purpose; as a place of Investment for the Freed Bros and their children,; So I want to see the principal of our small amt of money kept to-gether and handed down to the Freed heirs.

Charles C. Freed

7/7/52.

Commonwealth of Virginia

City of Norfolk

SEAL

J. P. Knecht

Notary

my term expires Dec. 1, 1952.

Witnesses

(Over)

Norfolk Va

July 7 1952

The Signature of the testator was made and the will and signature on the other side of this page was acknowledged to be his last will and testament written in his own handwriting, by the said testator, in the presence of us, three competent witness at the same time; and we, the said witnesses, do hereunto subscribe the said will on the date last above written, in the presence of the said testator and each other, at the request of the said testator, who was then of sound mind and over the age of twenty-one years

Witnesses C. S. Freed

Lena H. Knecht

J. P. Knecht

Office of
W. R. HANCKEL
Clerk of the
Circuit Court
Norfolk, Virginia

M—1-57—B&G—15874

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 5062

VIRGINIA:

In the Supreme Court of Appeals held at the Masonic Building in the City of Staunton on Thursday the 3rd day of September, 1959.

ANNA D. FREED, INDIVIDUALLY, ETC., Appellant,

against

JUDITH REALTY AND FARM PRODUCTS CORPORATION, TRUSTEE, ET AL., Appellees.

From the Circuit Court of the City of Norfolk

Upon the petition of Anna D. Freed, Individually and as Administratrix, c. t. a. of the Estate of Charles C. Freed, an appeal and *supersedeas* is awarded her from a decree entered by the Circuit Court of the City of Norfolk on the 18th day of March, 1959, in a certain chancery cause then therein depending wherein Judith Realty and Farm Products Corporation, Trustee, and others, were plaintiffs and the petitioner was defendant; upon Anna D. Freed, individually, or some one for her, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of two thousand dollars, with condition as the law directs, no bond being required of the administratrix.

RECORD

• • • • •

BILL OF COMPLAINT.

To the Honorable Clyde H. Jacob, Judge of said Court:

Your complainants show unto this Honorable Court the following:

(1) The complainant, Judith Realty and Farm Products Corporation, a Virginia corporation, represents that it was named Trustee in a certain Declaration of Trust dated April 1st, 1955, a copy of which is attached hereto, marked Exhibit "A" and prayed to be taken and read as a part of this bill of complaint.

(2) The complainants, Carolyn Freed Peterson, Barbara Jean Freed, Charles S. Freed and Loring Freed, are stockholders of the Judith Realty and Farm Products Corporation and, if the trust is executed by the Trustee in accordance with its terms, they will be the sole stockholders of said Corporation.

page 2 } (3) The defendant, Anna D. Freed, is the widow of Charles C. Freed, the donor of said trust, who died on September 25, 1958. The said Anna D. Freed likewise qualified as Administratrix c. t. a. of the Estate of the said Charles C. Freed on the 28th day of October, 1958, and is interested both in her individual capacity and as Administratrix of the Estate in determining the validity of the said trust.

(4) By the terms of the said Declaration of Trust, 349 shares of the capital stock of Judith Realty and Farm Products Corporation were transferred by the donor, Charles C. Freed, to the Charles Freed Trust Fund, said shares being evidenced by Certificate No. 9, dated April 1, 1955, the date of said Trust Indenture, a copy of said Certificate being attached hereto, marked Exhibit "B," and prayed to be taken and read as a part hereof.

(5) The execution of said Trust Indenture by Judith Realty and Farm Products Corporation was authorized by a special meeting of the stockholders held on the 1st day of April, 1955, the minutes of said stockholders' meeting bearing the signatures of all the stockholders thereto. A copy of said minutes is attached hereto, marked Exhibit "C," and prayed to be taken and read as a part hereof.

(6) The terms of said Trust were that Judith Realty and Farm Products Corporation should pay to the said Charles C. Freed the sum of $1,500.00 annually for the remainder of his life, either from the dividends paid by said Corporation on the shares placed in trust, or by purchase by the Corporation of so many shares as might be necessary to provide said payment of $1,500.00 per year. Upon the death of the said
page 3 } Charles C. Freed, the shares remaining were to become treasury stock. This would leave the four individual complainants as the sole stockholders of said Corporation.

(7) The assets of said Corporation consist of the following items:

3 Certificates of stock of Atlantic Permanent Building and Loan Association,	
No. 11925 for 10 shares	
No. 13113 for 69 "	
No. 13816 for 21 "	
Or an aggregate of 100 shares, valued at	$10,000.00
1 Certificate of Indebtedness of the United States, Series "C"—1958, No. 70287, and due August 1, 1958,	10,000.00
Ridgley Apartment, 421 Westover Avenue, Norfolk, Virginia, comprising Lots 31 and 32, Block 8, Plat of the Ghent Company and Norfolk Company—a six-family apartment, with estimated value of	18,000.00
	38,000.00

There appear to be no liabilities, except the current bills incurred in the operation of the apartment.

(8) While your complainant, Loring Freed, is President of said Corporation, the late Charles C. Freed was Secretary-Treasurer, and handled the active management of the Corporation. The complainants do not know where the books and record of said Corporation may be unless in the possession of the defendant. An inquiry from the local banks discloses an inactive bank account, with a balance of
page 4 } $10.35 at the Bank of Virginia, at Norfolk, in which there have been no deposits or withdrawals for a long period of time. It would therefore appear that the said

Charles C. Freed used the income from said Apartment and from the securities for his own personal purposes, and your complainants allege that he applied said income, so far as it may have been required, on the payment of the annuity of $1,500.00 per year provided in the Trust Indenture. Your complainants do not know what disposition was made of the remaining income of said Corporation and allege that an audit of the accounts of the Judith Realty and Farm Products Corporation will be necessary to determine the use by the said Charles C. Freed of the income of said Corporation.

(9) Your complainants allege that said Trust Indenture entered into by the said Charles C. Freed and Judith Realty and Farm Products Corporation created a valid and binding contract between the parties; that the Trust thereby created was irrevocable; and that upon the death of the said Charles C. Freed the said Judith Realty and Farm Products Corporation, as Trustee, should retire the Certificate for 349 shares of stock in accordance with the terms of said contract and trust.

WHEREFORE, your complainants pray that the said Anna D. Freed, individually and as Administratrix c. t. a. of the Estate of Charles C. Freed, be made a party defendant to this bill of complaint and required to answer the same; that the Trust Instrument of April 1st, 1955, be construed by the Court as valid and binding, and the Corporation, as Trustee, be directed to carry out its terms by converting said Certificate of stock into treasury stock; that an audit of the page 5 } accounts of said Corporation be made to determine what amount was paid to the said Charles C. Freed in his lifetime and the liability, if any, of his Estate to the Corporation; that the individual complainants be authorized and empowered to proceed wth the election of new officers and take over all assets of said Corporation, free and clear of all claims of the Estate of the said Charles C. Freed.

JUDITH REALTY AND FARM
PRODUCTS CORPORATION,
TRUSTEE,
CAROLYN FREED PETERSON,
BARBARA JEAN FREED,
CHARLES S. FREED,
LORING FREED,
By EASTWOOD D. HERBERT
Of Counsel.

Filed in the Clerk's Office the 13th day of November, 1958.

Teste:

W. R. HANCKEL, Clerk
HELEN .... ROMULUS, D. C.

* * * * *

page 6 } EXHIBIT "A."

Norfolk, Va.
April 1st, 1955.

DECLARATION OF TRUST AND AGREEMENTS IN CONNECTION WITH THE FORMATION OF THE C. FREED TRUST FUND.

In consideration of the fact that C. Freed has from time to time given unto the Judith Realty and Farm Products Corporation, herein after called the Corporation (which Corporation was organized and exists under the laws of the State of Virginia) as much as $30,000, or its equivalent in Guaranteed Securities for which C. Freed has never received proper shares in the above mentioned Corporation.

C. Freed now desires to create and does here and now create a Trust Fund, by naming the Judith Realty and Farm Products Corporation Trustee for the $30,000, C. Freed gave to the above Corporation.

Further, in consideration of the fact that C. Freed here and now also designates the Judith Realty and Farm Products Corporation as Beneficiary of the C. Freed Trust Funds or its residue at the demise of C. Freed.

So now the Judith Realty and Farm Products Corporation accepts the Trusteeship for the C. Freed Trust Fund and the Officers of the Judith Realty & Farm Products Corporation attest the acceptance of the Trust by herein after affixing their Signatures to this Trust agreement.

The Judith Realty and Farm Products Corporation agrees to carry out all the agreements, promises and contracts in connection with this Trust Fund of C. Freed as set forth in this declaration of Trust.

Since the above mentioned Corporation has agreed to accept the Trusteeship of the C. Freed Trust Fund which is $30,000 and since C. Freed desires that the $30,000 be invested along with all other funds of the Corporation, as evidence of the Trust, the Judith Realty and Farm Products

Corporation promises to issue its own shares to the C. Freed Trust Fund, and so identifying them on the certificates. It is further agreed by and between C. Freed and the Trustee that 349 shares of the capital stock of the Corporation is the proper number of shares to be put into the C. Freed Trust Fund, the dividends from the said Trust Fund shares to go back into the Treasury of the Judith Realty & Farm Products Corporation. But in consideration of all the foregoing agreements contracts and promises, the Trustee promises to pay unto the said C. Freed the sum certain of $1,500 per year, or $125.00 per month as nearly as practible. In event the Trust Fund Stock issued by the Judith Realty and Farm Products Corporation does not yield $1,500 per year in dividends then the difference between the dividends paid into the Corporation's Treasury and $1,500 shall be paid out of the Corpus of the Trust Fund shares thus reducing the number of shares in the Trust Fund each year.

In effect then, C. Freed for $30,000 has purchased and annuity from the Judith Realty & Farm Products Corporation as Trustee which pays C. Freed the sum of $1,500.00 for his life.

page 7 } It is further agreed that the Judith Realty and Farm Products Corporation will permit C. Freed to vote any and all stock in the name of the C. Freed Trust Fund, at all Stockholders and directors meetings of the above mentioned Corporation.

It is further agreed and understood by C. Freed and the Trustee, that C. Freed who is now Sec-Treas of the Judith Corporation be permitted to remain Sec-Treas so long as he is physically capable of carrying on the affairs of the Corp.

In consideration of the fact that Carolyn Juda Freed, Barbara Jean Freed and Charles S. Freed own all but one share of the outstanding stock of the Corporation, which share belongs to L. Freed, and 349 shares of stock marked C. Freed Trust Fund, and in consideration of the fact that the 349 shares held in the Trust Fund for C. Freed will go into the Treasury upon the demise of C. Freed, in event C. Freed becomes unable to look after the affairs of the Corporation, Barbara, Carolyn and Charles S. Freed agree and promise to take over the management of the affairs of the Judith Realty and Farm Products Corporation, keep the books, render Government Reports, pay taxes elect themselves officers of the Corporation, and to keep the Funds of the Corporation invested, but keep them invested, at 3% in Government Bonds or Building & Loan Guaranteed by the Government or other 3% securities, but they must have the Government Guarantee back of them.

All the stockholders of the Judith Realty & Farm Products Corporation agree and promise to look after the said C. Freed and see that he gets his $1,500 per year and that he is being properly cared for, in event C. Freed becomes so disabled that he cannot take care of the affairs of the Corporation.

Since all the Stockholders have voted unanimously to accept the Trusteeship for C. Freed their Signatures are hereunto affixed.

President /s/ LORING FREED
Vice-Pres. /s/ BARBARA FREED

Sec-Treas. /s/ C. FREED
Director /s/ CAROLYN FREED
Director /s/ CHARLES STANLEY FREED

page 8 } EXHIBIT B (Back).

CERTIFICATE
FOR
349
SHARES
of the
CAPITAL STOCK

JUDITH REALTY AND FARM PRODUCTS CORPORATION

ISSUED TO THE C. FREED TRUST FUND

DATE
April 1st, 1955

EXHIBIT B (Front)

Incorporated Under the Laws
of
VIRGINIA

No. 9 349 Shares

JUDITH REALTY & FARM PRODUCTS CORP.

This Certifies that THE C FREED TRUST FUND is the owner of Three hundred forty-nine....Shares of the Capital

Stock of JUDITH REALTY & FARM PRODUCTS CORP. transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this 1st day of April A. D. 1955.

President
Loring Freed

Sec.-treas.
C. Freed

SHARES $10.00 EACH

page 9 } EXHIBIT "C."

Norfolk, Va.
April 1st 1955.

MINUTES OF A SPECIAL MEETING OF THE JUDITH REALTY AND FARM PRODUCTS CORPORATION.

This Special Meeting of the Judith Realty and Farm Products Corp. was held on April 1st 1955 at 2 o'clock at the office of the above mentioned Corp. 527 W. 37th St. Norfolk, Va. and all stock was represented. Due notice of meeting was given to all stockholders of the meeting.

After the meeting was called to order by the Chairman, Mr. C. Freed, Sec-Treas., took the floor.

Mr. C. Freed then stated that whereas he had put some $30,000 from time to time into the above mentioned corporation, but he had never been issued proper shares for his money, Mr. C. Freed then stated it was now his desire to create a Trust Fund from his shares in the Judith Realty & Farm Products Corp. now due him (C. Freed) which amount to 349. Mr. Freed then stated by an Express Declaration of Trust he had appointed the Judith Realty and Farm Products Corporation as Trustee for C. Freed and the above Trustee to hold the 349 shares of the above mentioned corporation, in a Trust Fund to be called the C. Freed Trust Fund. But at the demise of C. Freed, the Judith Realty Corporation becomes the Beneficiary of the C. Freed Trust Funds, and the 349 shares of the Judith Co. will go into the Treasury of the Judith Realty and Farm Products Corp.

(1) In consideration of the fact that the above mentioned Corporation becomes beneficiary of the C. Freed Trust Fund

at Mr. C. Freed's demise, the above mentioned Corporation, covenants, contracts and agrees to pay the creator of the above mentioned Trust Fund, Mr. C. Freed, the page 10 } sum of $1,500 per year for the rest of Mr. C. Freed's life. If for any reason the above mentioned 349 C. Freed Trust shares do not yield as much income as $1,500 per year then the payment of $1,500 per year to Mr. C. Freed is to be considered as an annuity, a part of $1,500 then will be earned interest or income, and a part will be considered a return of capital, thus reducing the number of Trust Funds shares from year to year.

(2) It is further agreed that the Judith Realty and Farm Products Corporation will permit C. Freed to vote any and all stock in the name of the C. Freed Trust Fund at all stockholders meetings.

(3) It is further agreed that the Judith Realty & Farm Products Corporation will permit C. Freed to remain as Executive Secretary and Treasurer so long as he is mentally and physically able to administer the affairs of the above mentioned corporation.

(4) Since Mr. Loring Freed has assigned his stock in the above mentioned Corp. to his three children, Barbara Jean, Charles S. and Carolyn Juda, save one share he holds for himself.

The outstanding stock of the above mentioned Corporation then will be as follows:

Loring Freed	1 share
Carolyn Juda	50 shares
Barbara Jean	50 shares
Charles S.	50 shares
C. Freed Trust Fund	349 shares
	500 shares all common

(5) In consideration of the fact that Carolyn Juda Freed and Barbara Jean Freed and Charles C. Freed page 11 } will own all the outstanding stock but one share in the Judith Realty & Farm Products Corp. at the demise of C. Freed (the 349 Trust Fund shares going into the Treasury of the Judith Realty & Farm Products Corp. and so not outstanding), the three Carolyn Juda, Barbara Jean, and Charles S. agree and promise to take over the affairs of the Judith Realty & Farm Products Corporation, elect themselves officers, keep the books, and render Gov. reports; in event C. Freed becomes mentally or physically disabled and unable to attend to the affairs of the above men-

tioned Corporation. The three Carolyn, Barbara and Charles S. further agree and promise to see that C. Freed is properly taken care of and that he will continue to get the $1,500 so long as he may live. Further the three agree in case of C. Freed's becoming so disabled as described above, to invest all funds (not already so invested) in three per cent Gov. Bonds or three per cent. Building & Loan or Savings and Loan Stock, which carries the *Government Guarantee.*

Further it is thoroughly understood by all stockholders of the Judith Realty & Farm Products Corp. that all moneys paid to C. Freed will come from Judith Realty and Farm Products Corp. that all moneys paid to C. Freed will come from Judith Realty and Farm Products Corporation, *and no liability* whatever will be attached to the individual members of the Corporation.

Since all the stock was voted in favor of accepting the above proposal of C. Freed, the Trust Fund agreements then were read, and all the stockholders agreed to putting the Trust Fund into immediate force. As evidence
page 12 } that all stockholders agree to the C. Freed Trust fund agreements, and promise to carry out their contract with C. Freed, in consideration of the fact that the Judith Realty & Farm Products Corp. becomes the Beneficiary of C. Freed Trust Fund, all stockholders have hereunto affixed their names.

No further business, all members agreed to adjourn the Special Meeting.

President /s/ LORING FREED
Sec-Treas. /s/ C. FREED
Vice-Pres. /s/ BARBARA FREED
Director /s/ CHARLES STANLEY FREED
Director /s/ CAROLYN J. FREED

page 13 }

• • • • •

Filed 12-4-58.

VIRGINIA MANNING, D. C.

DEFENDANT'S ANSWER.

(1) Defendant admits only Judith Realty and Farm Products Corporation is mentioned in the paper writing marked

Exhibit "A," but otherwise denies the allegation of paragraph (1) of the Complaint;

(2) Defendant does not know whether the matters alleged in paragraph (2) of the Complaint exist, or are true or false, and consequently denies the same;

(3) Defendant admits the allegations of paragraph (3) of the Complaint;

(4) Defendant denies the allegations of paragraph (4) of the Complaint and denies any valid trust exists.

(5) Defendant denies the allegations of paragraph (5) of the Complaint;

(6) Defendant denies any valid trust exists such as alleged in paragraph (6) of the Complaint, and says that even if Exhibit "A" exists, as alleged in paragraph (1), the construction placed thereon as set forth in paragraph (6) is not the true and correct construction if such can ever

page 14 } be had, which Defendant expressly denies;

(7) Defendant admits the allegations of paragraph (7) of the Complaint;

(8) Defendant does not know whether the matter alleged in paragraph (8) of the Complaint exists, or whether it be true or false, or the conclusions in anywise warranted, and consequently denies the allegations thereof.

(9) Defendant denies the allegations of paragraph (9) of the Complaint and says no valid trust exists, or has ever existed, and the paper writing alleged as Exhibit "A" is not effective for any purpose. It is but an ineffectual, fraudulent and wilfull attempt to defeat the defendant's right to dower in the property in issue.

Wherefore Defendant prays that Complainants' bill be dismissed, and she recover her costs and counsel fees incurred herein.

ANNA D. FREED, INDIVIDUALLY
AND AS ADMINISTRATRIX C. T. A.
OF THE ESTATE OF CHARLES C.
FREED, DECEASED
By WILLIAM W. JONES
Of Counsel.

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page 16 }

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DECREE.

THIS CAUSE, which has been duly matured, set for hearing, and docketed, came on this day to be heard upon complainants' bill and exhibits, defendant's answer, and the exhibits offered in evidence by the respective parties, initialed by the Court and made a part of the record, and was argued by counsel.

AND IT APPEARING to the Court that the paper writing, dated April 1, 1955, marked Exhibit "A," made by C. Freed, operated to create a trust by transfer to Judith Realty and Farm Products Corporation as Trustee, 349 shares of Judith Realty and Farm Products Corporation, which constituted a majority of the capital stock of said Corporation, upon the trust that the Corporation pay the said C. Freed the sum of $1,500.00 per year, from dividends and the sale of a portion of the shares to the Corporation, and at his demise the remaining shares were to become treasury stock, and that during his life he was to have all voting rights of said stock in the name of C. Freed Trust Fund and remain Secretary-Treasurer of said Corporation so long as he was physically capable of carrying on the affairs of the Corporation, the Court doth so hold.

page 17 } AND IT FURTHER APPEARING that C. Freed, also known as Charles C. Freed, died on September 25, 1958, it is further ADJUDGED, ORDERED AND DECREED that his death terminated said trust and the proper officers of Judith Realty and Farm Products Corporation be, and they hereby are directed to cancel said certificate No. 9 for 349 shares of stock and convert said shares to treasury stock.

The Court doth further ADJUDGE, ORDER AND DECREE that this cause be, and the same hereby is, referred to William E. Cruser, one of the Commissioners in Chancery of this Court, who shall take and state the accounts of Judith Realty and Farm Products Corporation and C. Freed with respect to any sum Judith Realty and Farm Products Corporation may be indebted to C. Freed and what funds, if any, were received by C. Freed for and on behalf of the Corporation for which he should account.

To all which defendant duly objected and excepted, and having indicated her intention of praying an appeal and *supersedeas* to the Supreme Court of Appeals of Virginia, execution of this decree is suspended for a period of ninety

days upon her giving bond in the penalty of $300.00, conditioned as the law directs.

Enter March 18, 1959.

C. H. J.

Seen:

THOS. L. WOODWARD
WM. W. JONES

Counsel for Defendant
EASTWOOD D. HERBERT, p. q.

page 18 }

• • • • •

Filed 4-9-59.

VIRGINIA MANNING, D. C.

To: W. R. Hanckel, Clerk,
Circuit Court of the City of Norfolk,
Norfolk, Virginia.

Defendant, (Appellant), Anna D. Freed, individually and as Administratrix c. t. a. of the Estate of Charles C. Freed, hereby gives notice of appeal from final decree entered in this cause on March 18th, 1959, to the Supreme Court of Appeals of Virginia, and assigns the following errors:

That the Court erred in

(1) Entering its decree of March 18th, 1959;
(2) Holding that the paper writing dated April 1st, 1955, identified as Exhibit "A," constitutes a valid trust;
(3) Holding that complainants have any interest in 349 shares of the capital stock of Judith Realty and Farm Products Corporation issued to Charles C. Freed; and
(4) In refusing to dismiss complainants' bill.

You are further requested to promptly make up the record in this cause in accordance with Part 5, Rule 5:1, Paragraph 5, of the Rules of the Supreme Court of Appeals of Virginia.

page 19 } Respectfully,

ANNA D. FREED, INDIVIDUALLY
AND AS ADMINISTRATRIX C. T. A.
OF THE ESTATE OF CHARLES C.
FREED
By THOS. L. WOODWARD
Of Counsel for Defendant.

• • • • •

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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