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Record No. 6366

In the

Supreme Court of Appeals of Virginia

at Richmond

RAYMOND F. REUTT, ET AL.

v.

J. W. JORDAN, ET AL., T/A, ETC.

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 this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

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

HOWARD G. TURNER, Clerk.

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

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 6366

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 2nd day of March, 1966.

RAYMOND F. REUTT AND
RAY W. DEZERN, Appellants,

against

J. W. JORDAN, LORETTA G. JORDAN AND
ROBERT H. WINBORNE, PARTNERS TRADING
AS VIRLINA PEANUT COMPANY, Appellees.

From the Circuit Court of the City of Norfolk
Thomas M. Johnston, Judge

Upon the petition of Raymond F. Reutt and Ray W. Dezern an appeal and *supersedeas* is awarded them from a decree entered by the Circuit Court of the City of Norfolk on the 9th day of September, 1965, in a certain chancery cause then therein depending wherein the said petitioners were plaintiffs and J. W. Jordan, Loretta G. Jordan and Robert H. Winborne, partners, trading as Virlina Peanut Co., were defendants; upon the petitioners, or some one for them, entering into bond with sufficient security before the clerk of the said court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

* * * * *

page 11]

* * * * *

DECREE

This cause, having been regularly matured, set for hearing and docketed, came on this day to be heard upon the bill of complaint; upon due personal service of process on all of the defendants; upon the amended bill of complaint; upon the answers of all defendants to the original bill of complaint, treated likewise as answers to the amended bill of complaint; upon the testimony of witnesses taken *ore tenus* before the Court and various exhibits filed in evidence; and was argued by counsel.

UPON CONSIDERATION WHEREOF, the Court doth deny specific performance and dismiss the bill of complaint as amended, with prejudice at the cost of plaintiff, to which actions of the Court plaintiffs object and except.

And it further appearing to the Court that the complainants desire to appeal to the Supreme Court of Appeals of Virginia, it is adjudged, ordered and decreed that upon the complainants or someone for them entering into bond before the Clerk of this Court in the penal sum of $1,500.00 conditioned according to law with surety approved by the said Clerk, the provisions of this decree shall stand suspended until the complainants apply for an appeal from this decree and until the same is finally acted upon by the Supreme Court of Appeals of Virginia or until the time for such appeal has lapsed.

Seen: to the Clerk of the Circuit Court of the City of Norfolk. Enter this decree Thos. M. Johnston in Vacation 9-9 1965.

WILLIAM C. WORTHINGTON, p.d.

Seen and objected to:

PHILIP L. RUSSO, p.q.

page 12]

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Filed 9-21-65
VIRGINIA MANNING D.C.

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ASSIGNMENTS OF ERROR

Pursuant to the above-mentioned Rules, the complainants assign the following errors:

1. The Court erred in entering the decree dated September 9, 1965, in favor of the defendants denying specific performance and dismissing the amended bill of complaint of the complainants.

2. The Court erred in refusing to enter a decree granting specific performance to the complainants.

3. The refusal of the Court to grant specific performance was contrary to the law and the evidence.

RAYMOND F. REUTT AND RAY W. DEZERN
By: PHILIP L. RUSSO
Of Counsel

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page 1]

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TO: Messrs. Worthington, White & Harper
Attorneys for the Defendants.

PLEASE TAKE NOTICE that on the 21st day of October, 1965, the undersigned will present to the Honorable Thomas M. Johnston, Judge, a stenographic report of the testimony and other proceedings in the trial of the above entitled case for certification by said Judge, and will, on the same date, make application to the Clerk of said Court for a transcript of the record in said case, for the purpose of presenting same to the Supreme Court of Appeals of Virginia with a petition

for an appeal and *supersedeas* to the final judgment of the trial court in said case.

PHILIP L. RUSSO
Attorneys for the Complainants

Legal service for the above notice
is hereby accepted this 20th day
of October, 1965.

WILLIAM C. WORTHINGTON
Attorneys for the Defendants.

page 2]

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Stenographic transcript of the testimony introduced and proceedings had upon the trial of the above entitled case in the said Court on August 31, 1965, before the Honorable Thomas M. Johnston, Judge

APPEARANCES: Messrs. Russo, White and Katherman, by Mr. Philip Lee Russo, appearing on behalf of the complainants.
Messrs. Worthington, White and Harper, by Mr. William C. Worthington, appearing on behalf of the defendants.

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page 4] (Whereupon, the Reporter was duly sworn.)

Mr. Russo: Judge, this is a case involving a suit for specific performance of a real estate contract for sale, contract for sale of real estate. I might say that the contract was dated August 25, 1963, with a settlement date on the contract of October 15, 1963, and without going into details about what transpired between that time, at any rate, there was a great deal of correspondence and contact between the real estate agent, Mr. Bruce Taylor, and Mr. Woodward for the most part in regard to the details of the contract, the redrafting of the contract, and the upshot of it was that the original contract remained with the Virlina Peanut Company which had been set up as a corporation with a change in it and

initialed by the parties to the effect that it was a partnership.

Then we got into the picture to examine the title for the purchasers, who are the plaintiffs in this suit, Mr. Raymond Reutt and Mr. Ray Dezern, so as late in October of '63, with a closing date of October 15th, we were requesting a copy of the deed so that we could start our title examination, which we did.

page 5] And then in November of 1963, I wrote to Mr. Woodward to advise him about the misspelling of the name of Reutt. He had R-u-e-t-t, which, incidentally, the contract had. It was not his fault. He copied it from the contract. But I learned that the correct spelling was R-e-u-t-t, and the real estate agent had turned over to me the executed copy of the deed and, of course, I hesitated to tamper with that so I mailed it back to Mr. Woodward and asked him to correct it. So there was correspondence back and forth and on November 20, 1963, I wrote to Mr. Woodward and told him that we were ready to close at his convenience.

Also, in the meantime, the City of Norfolk got into the picture relative to the taking of a portion of the front of the property to widen the highway out there, so I suggested to Mr. Woodward that we have a provision in the deed of trust relative to the disposition of the proceeds from the City and the application of the proceeds to the payment of the notes secured by the deed of trust.

On November 21, Mr. Woodward wrote back and said he would rather give a letter relative to the application of the proceeds rather than put provision in the deed of trust, which was all right with me.

page 6] And then on December 9, 1963, this is when I wrote to Mr. Woodward and sent him the deed and asked him to make the change in the deed. He wrote back and said he would change the name in the deed but he was a little bit irritated because the real estate agent had turned the deed over to me prior to closing, and I suppose that there was some justification for his irritations since I was representing the buyers. But, at any rate, I never saw the deed any more after that and, as far as I was concerned, I was ready to close.

December 18, 1963, Mr. Woodward sent back the bond, the note, which he had redrafted and I sent those to the real estate agent who was in contact with the buyers, the plaintiffs in this suit, who, incidentally, were Merchant Seamen and were in and out of town. They were out to sea a good

deal of the time. I sent those on to Mr. Taylor, the real estate agent, to be executed.

The real estate transaction was to be closed probably in the absence of the buyers since they were out of the country a large part of the time.

Mr. Taylor on January 30, 1964, worte to Mr. Woodward to advise that he would have the papers signed shortly.

On March 20, 1964, he wrote to him and said
page 7] that he had their signatures, the buyers' signatures, and was ready to settle and had the necessary money and he asked Mr. Woodward to send the deed either to him or to me. He heard nothing.

This is what the evidence will develop that from March 20, 1964, until April 2, 1964, Mr. Taylor heard nothing from Mr. Woodward, so he wrote him again on April 2nd a follow up. And then on April 4, 1964, Mr. Woodward wrote to Mr. Taylor and told him that they would not settle due to the passage of time, tax implications, loss of interest and a number of things they would not settle.

So that is the background for this suit. We say that it was a contract for the sale of real estate that had a closing date of October 15th; that we were not provided with the necessary information to examine the title until shortly before that time; that afterwards there were legal complications which developed about bonds and deeds of trust; that the buyers were out of the country for a portion of the time, and the evidence will develop that Mr. Taylor has had in his possession enough money to close this transaction as well as the executed note and deed of trust since around about March,

March 20th, to be exact, of 1964; that actually
page 8] prior to that time he had enough money but that he had a little trouble getting the buyers' signatures on the note and the deed of trust. We are saying that it was a binding contract; that, true, it called for a closing date of October 15, 1964, but there were things that both parties were aware of. There was correspondence back and forth and negotiations back and forth, and that all of this was reasonable; that the contract did not state that time was of the essence and the parties should have closed in March of 1964 when Mr. Taylor advised we were ready to do so.

The Court: Mr. Worthington.

Mr. Worthington: Your Honor, on behalf of the sellers, the sellers, the defense to this that it is admitted that valid and binding contact was made in August of 1963, and it specified a closing date of October 15th. We expect to show that the proposed deed was prepared by the sellers' attorney in early

October, and I am not sure exactly what the evidence will be, at least it went forward sometime in October; that something like thirty days or more passed past the time that the transaction was supposed to be closed in which the title examination was not completed and wasn't completed until November 20th, which was more than thirty days
page 9] after the closing date, which is no fault of the sellers; that on November 21, the sellers' attorney wrote to the buyers' attorney having been notified the title had been settled and stated that the sellers were ready to close even at that late date.

And again on December 13th when there was some more questions raised about the spelling and the deed, and so forth, which could easily be corrected and was no reason for 60 days delay, the purchasers were put on notice in a letter which was written by the sellers' attorney in which he stated among other things that the seller was threadbare with the whole transaction and he felt it was high time it should be closed. So from December 13th when the purchaser was put on notice that it was high time to close and that the seller was threadbare, the matter was delayed something over three months.

Now, sometime in December or January, one of the partners composing the partnership of the seller inquired as to when this thing was going to be closed and was told that purchasers were out of the country and there was no information when they would return. And with the lapse of time from actually the original closing date of October 15th, which was extended until December, but from December until
page 10] March the seller was completely uncertain as to whether the purchasers would go through with the matter and finally received word three months later of a tender of the original purchase price and the original note. In the meantime while he had to pay taxes on the property, he had been deprived of the use of it. He had no use of the *purchasers* money. And he was advised by counsel and declared that this delay and uncertainty was too long and that the contract was rescinded.

The question for the Court to decide and the chancellor's descretion is whether a delay of this character where the seller was nowise at fault for any of the delay and had prepared the deed and was ready to go ahead at the right time, and all of the delays were a failure to examine title and the purchasers going out of the country and not being in touch, a delay for almost six months, it is within the descretion of the chancellor, and we say under those circumstances,

that the contract was rescinded.

Mr. Russo: Before we start, your Honor, I filed an amended bill of complaint in which I corrected or changed the discription and there is a copy of the survey made by Mr. Wilfred Large attached to that amended bill of complaint. Prior to Court this morning, Mr. Large was in here and
page 11] we agreed that that was a survey of the property and that if we should prevail in this proceeding that the property would be conveyed to us with that description in the amended bill of complaint.

Mr. Worthington: Yes, sir.

The Court: All right.

B. BRUCE TAYLOR,

called as a witness on behalf of the complainants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Russo:

Q. Would you state your name, please, sir?

A. B. Bruce Taylor.

Q. Where are you employed, sir?

A. I am a real estate broker and I have an office at 6219 Virginia Beach Boulevard in Norfolk, Virginia.

Q. Are you familiar with the real estate transaction involving the sale of property from Virlina Peanut Company to Raymond Reutt and Ray Dezern?

A. Yes, I am.

Q. Did you actually draw the contract?

A. I believe, yes, sir, I did.

page 12] Q. Do you have the contract in your possession?

A. Yes, sir.

Q. Would you produce that, please?

Mr. Russo: Offer this as a complainants' exhibit, please, sir.

The Court: It will be complainants' exhibit 1.

(Whereupon, said foregoing contract was marked as Complainants' Exhibit No. 1.)

By Mr. Russo:

Q. Mr. Taylor, you were in this transaction then at the outset, were you not?

B. Bruce Taylor

A. I was, sir. I had a listing on the property to sell with the sellers, Virlina Peanut Company.

Q. Now, the date of the contract, I believe, was August 26, 1963?

A. I believe that is correct.

Q. Now, could you tell us from the correspondence that you have in your file and also from things of your own personal knowledge as succinctly as possible the sequence of events between the signing of that contract and to date?

A. All right, sir. I have this file with all the correspondence back and forth between Mr. Woodward and myself and then between you and myself and between your firm and Mr. Woodward. There was quite a lengthy number

page 13] of letters back and forth. I think I have got a list here saying roughly twenty-seven. I checked my phone records. We have about twelve telephone calls back and forth between Suffolk and Norfolk. All this started around August 26th with Messrs. Reutt and Dezern when they signed a contract. They deposited $500.00 on the contract and I sent the contract to Mr. Woodward, I believe—or I sent it to the sellers. August 26th, I sent it to Mr. Jordan with the Virlina Peanut Company. He was a principal.

And from then on into, let's see, September 9th I wrote back wanting to know about the contract, had they received it, and I said I would like to have a signed contract back so that the buyers would know that they had a sale, and heard back from Mr. Woodward.

Would you like, your Honor, me to more or less give you a play by play?

The Court: Just respond to the question.

By Mr. Russo:

Q. Yes, if you would, just testifying from things of your own knowledge, from correspondence and so on.

A. The settlement was October 15th. On September 12th, Mr. Woodward wrote me back and says please redraft the contract. It's not a corporation.

On September 16th, evidently he had called

page 14] me or I had called him and I am sending him back a letter and the contract back. We had a verbal understanding on the telephone that instead of redrafting the contract and having to resign them we would just scratch out

B. Bruce Taylor

the part on the contract that said Virlina Peanut Company, a Virginia corporation. We just said Virlina Peanut Company and scratched out a Virginia corporation and both parties initialed the contract and I sent that back to them and asked them to let me hear from them.

And on September 18th, Mr. Woodward returned the contract back to me.

On September 20th, I thanked him for—I wrote him a letter back and thanked him for the contract and asked him on September 20th to *foward* us a copy of the promissory note, deed of trust and the deed so that the buyers could have their attorney check the title.

On October 2nd, I wrote him a letter and asked him again to remind you, Mr. Woodward, I want to remind you to forward us a copy of the deed, et cetera, our buyers are ready to settle as soon as their attorney receives and checks these papers. And as of that date, October 2nd, I had sent a carbon copy to Mr. Jordan of this letter.

Now, Mr. Woodward sent me back the same letter that I wrote him and he had a note here, it says let me know to whom you wish the deed sent. I don't know what date I got that, but on October 7th I wrote him another letter

page 15] and stated, attached please find copy of my letter dated September 18th which would give you the necessary information you desire concerning the buyers. I will appreciate your mailing the deed to me at your earliest convenience.

October 10th, five days before the settlement, I have a letter here from Mr. George Walker, the assistant real estate agent for the City of Norfolk, where they came in the picture and they wanted an option on the 15 foot of frontage on the front so that the City could go in there and buy the property at a later date and install their street, street widening, so they wanted options to be signed on that.

And on October 21st, I write to Mr. Woodward, per our conversation with your secretary this morning, attached please find two copies of the official sales contract. Evidently his secretary called me that morning and they didn't have the sales contract in their file so I sent them a couple of copies.

October 28th, I write a letter to Mr. Woodward again, please forward us copies of the promissory note and deed of trust so that the buyers can check this before settlement date.

On November 5th, here is a copy of a letter that I got a

copy, it's a letter from Mr. Russo to Mr. Woodward stating that the name of Reutt is spelled R-e-u-t-t not R-u-e-t-t. Now, the contract states R-u-e-t-t. I don't know whether page 16] I made the mistake or our secretary made the mistake. But anyway the deed—we received the deed by that time, evidently, I am not sure. He is saying to Mr. Woodward, Mr. Russo is saying to Mr. Woodward, the name is Reutt, spelled correctly, and the real reason for writing you at this time, it has come to our attention the taking of the 25 foot strip. Mr. Russo is negotiating here with Mr. Woodward on the disposition of the $3,000.00 of funds that are going to come from the City of Norfolk for the purchase of this property. There is a discussion in this letter about should the money be applied to the note or should the people split the money, how it was to be disbursed.

And November 7th, Mr. Woodward writes back and says the money should all apply towards the deed of trust.

And November 13th, I write a letter to Mr. Russo telling him here is a copy of the agreement of the option on Virlina Peanut Company. I sent that to Mr. Russo. That is with the City option. I sent that to Mr. Russo.

And November 20th, Mr. Russo writes Mr. Woodward advising that we have completed our title examination on the property and we are ready to close at your convenience.

Mr. Worthington: Your Honor, we would object to any testimony by this witness about correspondence between Mr. Russo and Mr. Woodward.

The Court: I think that is right. I sustain the page 17] objection.

Mr. Worthington: He can testify only about correspondence he participated in.

Mr. Russo: I think that is correct. I did send a copy of the letter to Mr. Taylor. I will have to prove it another way. I think Mr. Woodward is going to testify. I will call him as an adverse witness and ask him.

The Court: All right, go ahead.

By Mr. Russo:

Q. All right, go ahead.

A. You don't want me to refer to this letter?

Q. No.

The Court: Any correspondence that you had with the

other party, fine, you may talk about that. But don't talk about a letter between the attorneys.

The Witness: Even though I got a copy of it?

The Court: That is right.

The Witness: All right, sir.

November 21, Mr. Woodward writes to Mr. Russo so I can't testify to that.

I am having to go through this. November 29, 1963, I write a letter to Mr. Russo and I say Mr. Woodward page 18] sent me attached papers today. Evidently this is the notes, deed of trust and the deed coming. Mr. Woodward sent me attached papers today and, sure enough, he didn't change a thing per your instructions. Would you be so kind as to prepare them correctly and return them to me for the signatures. This will be the only way we can get it done, I believe. If you have any questions, please call me. That was November 29th.

Here is another letter from Mr. Woodward to Russo — Russo to Woodward.

Here is a letter from Mr. Woodward to Russo and a letter from Woodward to Russo. And here from Woodward to Russo.

Here is a letter dated December 19th from Mr. Russo to me: Enclosed herewith is a note and a deed of trust, both of which should be signed by Mr. Reutt and Mr. Dezern. The note should be witnessed and the deed of trust should be notarized.

Mr. Woodward did not send us the deed of bargain and sale so we assume that he mailed it directly to you.

If you have any questions is regard to this matter, please give us a call.

Now, the next letter I have in here is January 7th. So this was December 19th. I did not get the deed page 19] from Mr. Woodward. I had received in here the deed of trust and note. And on January 7th, I write to Mr. Woodward and state Messrs. Reutt and Dezern are presently out of town and therefore we will have a delay in securing their signatures on the papers, and they are in the Merchant Marine Service and should be back in town shortly. As soon as they arrive, I will secure the signatures and we will immediately close this transaction. I sent a

carbon copy of that letter to Mr. Russo and to Virlina Peanut Company.

January 9th, Russo writes to Suffolk.

January 30th, I write Mr. Woodward again just a note to let you know that we hope to have Messrs. Reutt's and Dezern's signatures on the paper. Within a week or so we can proceed with the settlement.

Messrs. Reutt and Dezern are in the Merchant Marine, your Honor.

The Court: Did you get a reply from Mr. Woodward as to that letter?

The Witness: No, we didn't receive a copy from them. I wrote them January 7th telling them I didn't have all the papers signed correctly. He didn't reply to me then.

page 20] And, let's see, I have got a list of my phone calls here. Well, I could have called him — no, I didn't have any phone calls at that time going over there. As I recall, I didn't hear from Mr. Woodward, my letter of January 7th. I didn't hear from him, letter of January 30th.

By Mr. Russo:

Q. Did you write to him again on January 30th?

A. I wrote to him on January 30th and a carbon copy to Virlina Peanut Company and carbon copy to you saying that I still did not have their signatures.

April 2nd, I write to Mr. Woodward again. This is a follow up on March 20th letter.

Q. I think you told us about March 20th.

A. I am sorry. The next letter in my file — well, there is a letter prior to that from Mr. Russo to me. Is that all right to report on that?

Q. Yes, anything that you received.

A. Letter from Mr. Russo to me on February 24th stating: Dear Bruce, just a note to inquire into the status of this matter. As you are aware, we have completed our title examination. We are not trying to hurry anyone but we thought we would follow up. We will await further from you.

On March 20th, I write to Mr. Woodward and

page 21] state we have finally secured the *grantees* signature and money and we are ready to settle. If you will kindly forward the deed to us or to our attorney,

B. Bruce Taylor

Mr. Russo, we will send you the executed note and deed of trust together with our check for $1,750.00. This sum represents a $3,000.00 down payment less our $1,250.00 commission.

I didn't hear anything from him and I wrote again April 2nd. This is to follow up on our March 20th letter. May I hear from you soon as to a settlement date. I sent a carbon copy to Virlina Peanut Company, a carbon copy to Mr. Russo.

I received a letter April 4th from Mr. Woodward stating he has my letter and says the difficulties, length of time, the trouble, annoyance, taxation, loss of interest, change of conditions and many other reasons prompt Virlina Peanut Company to say that they consider your proposed purchases — I guess they mean here did not fulfill their obligation in any reasonable way. Hence, there is no obligation on Virlinia Peanut Company to convey the property.

And April 9th there is a letter from Russo to Woodward. I can't comment on that. I got a copy of that.

The Court: I think this gets to the point of it, does it not? All right, what else?

By Mr. Russo:

page 22] Q. Now, Mr. Taylor, do you have in your possession funds belonging to Messrs. Reutt and Dezern in order to close this transaction?

A. Yes, we do.

Q. Do you have in your possession the executed bond Mr. Woodward referred to and deed of trust duly executed by those two gentlemen?

A. Yes, I do.

Q. Do you know how long you have had in your possession the funds to close this transaction?

A. We had these funds, the best I can recall to my memory, it was in December we had sufficient funds to close.

Q. What has been the delay beyond that point?

A. The delay was the getting the signatures on the note and the promissory — the note and the deed of trust properly executed and signed, and Mr. Reutt and Dezern were not available to complete those papers until evidently the first part there of March.

Q. But that was the delay in addition to the other things that you have talked about, the correspondenc? correspondence between you and Mr. Woodward and so on? I say that was the delay in conjunction with the other delays that you have talked about, the correspondence?

A. That is right.

Mr. Russo: Answer Mr. Worthington.

page 23] CROSS-EXAMINATION

By Mr. Worthington:

Q. Mr. Taylor, I believe you testified that you were acting under a listing of this property on behalf of the seller?

A. That is correct.

Q. As a matter of fact, you had previously had a listing on behalf of the seller, had you not, but it had expired?

A. I believe that is correct. I don't know if I renewed that or not. We had a listing agreement for, I believe it was — the first record I have is back in October 22, 1962. A listing agreement I had is dated October 8, 1962.

Q. How long did that run?

A. Let me see, until the 30th day of April, '63.

Q. It expired on that date, didn't it?

A. Yes, sir, it did.

Q. Did you have any renewal of it?

A. I don't believe we renewed that.

Q. So actually in August of '63 when this sales contract was drawn up, you came to Mr. Jordan and his partners suggesting that you had a purchaser?

A. That is correct.

Q. So that you had no arrangement to rep-
page 24] resent the sellers at that time? It had expired?

A. The best of my recollection, it did expire and I see here in my files that I had a possibility of another buyer but they did not materialize and I don't believe we renewed our listing agreement with them.

Q. And the dealings that they had with Reutt and Dezern, the purchasers, were through you, were they not?

A. That is correct.

Q. They didn't have any direct dealing with them?

B. Bruce Taylor

A. No, sir, I don't believe they have ever met them.

Q. So to that extent you were the representative of the purchasers, Reutt and Dezern, because they dealt with you in any dealings they had with Reutt and Dezern to start with, did they?

A. I was a double agent, I guess you might say.

Q. Now, the contract then was drawn up and signed by the proposed purchasers in August and, according to your testimony, it was signed originally by the sellers in September, isn't that what you testified to?

A. The contract was dated and signed the 26th day of August.

Q. All right, sir, and called for a closing on the 15th of October?

A. That is correct.

page 25] Q. Now, on September 20th, you wrote to Mr. Woodward. Can you find a copy of that letter in your file?

A. Yes, sir.

Q. And asked him for the deed and the note and deed of trust, is that right?

A. Yes, sir, copy of the deed in order that the buyers' attorney —

Q. And on the 7th of October, I believe you testified that you had some request from Mr. Woodward —

A. October 7th?

Q. Yes. Does your file show that?

A. October 7th I write to him and say please find copy of my letter dated September 6 which would give you the necessary information you desire concerning the buyers.

Q. So evidently he called you on the 7th and asked you to give it to him and you wrote a letter and said here is a letter which will tell you how to convey?

A. Yes.

Q. And shortly after that letter that you sent him the information, he prepared the deed and sent it to you, did he not?

A. Shortly after October 7th?

Q. Yes.

A. I will have to go back through my files here and see if

B. Bruce Taylor

I can determine when they actually sent us the
page 26] deed.

Q. If you will look at the letter of October 28th.

A. I believe I got the deed on November 29th.

Q. Well, look at your letter of October 28th, 1963, to Mr. Woodward.

A. Please forward us two copies of the *prommissory* note and deed of trust so that the buyers can check this before the settlement date. I did not refer in there to the deed. I believe Mr. Woodward had sent the copy of the deed to Mr. Russo because Mr. Russo in his letter of November 5th points out the reference to the correction of the spelling in Mr. Reutt's name.

Q. That letter of October 28th would indicate that as of the date of October 28th you were no longer asking for a proposed deed. You were only asking for the note and deed of trust to be prepared by the sellers' attorney, is that correct?

A. That appears to be correct, yes, sir.

Q. So presumably, and you don't have any other recollection, the deed or a copy of it had already been forwarded before October 28th, had it not?

A. The deed did not come at that time. Possibly a copy of the deed went directly to Mr. Russo. It appears from my correspondence in here that Mr. Woodward sent me the papers, the actual deed, on November 29th.

page 27] Q. But that was the executed deed, wasn't it?

A. I believe that is correct.

Q. And that is after Mr. Russo had completed his title examination, wasn't it?

A. I believe you are correct.

Q. So you don't really know when the advance copy of the deed went forward to Mr. Russo, do you?

A. The advance copy of the deed was forwarded to me — you mean the advance copy? No, I do not know. It evidently went sometime — October 24th his secretary called me up for the copy of the contract and on October 28th I asked them to send a note, a deed of trust. Evidently Mr. Russo may have gotten a copy of that deed somewhere between the 21st and the 28th.

B. Bruce Taylor

The Court: Just a minute. I am not interested in what may have occurred. If you know about it, fine. If you don't, just say you don't.

The Witness: I don't know exactly what the date was.

The Court: All right, go ahead.

By Mr. Worthington:

Q. As a matter of fact, in November the executed deed and the other papers were sent to you and you turned them all over to Mr. Russo, didn't you, including the

page 28] executed deed?

A. Apparently I got those in November 29th, I believe.

Q. And you delivered the deed, executed deed to Mr. Russo at that time, didn't you?

A. I noted on there that the spelling was incorrect in the deed and I went down to talk to Mr. Russo about that. Our opinion was at that time that the best way to handle that was to return the deed back to Mr. Woodward so that he could change it rather than our tampering with the deed.

Q. Now, I believe you testified that as of December 19th that you had some dealings with Mr. Russo that would indicate that the matter was ready to be closed and all that had to be done was to get the corrected executed deed back from Mr. Woodward and the matter could be closed, is that right?

A. That is correct. I believe on the 19th I received from Mr. Russo the notes and deed of trust that he had just received the day before from Mr. Woodward.

Q. And December 19th until March 20th, the transaction was not ready to be closed because the purchasers hadn't signed the necessary papers, isn't that correct?

A. That is correct.

Q. And it is also true, referring to your letter of March 20, 1964, that you wrote to the sellers' attorney

page 29] and said we have finally secured the grantees' signatures and money and we are ready to settle. Did you not then tell the sellers that you had finally gotten the money as of March 20, 1964, along with the papers?

A. I stated in this letter that — I say and money. And the monies were deposited all along. We had $500.00 from the

date of the contract and then the buyers had tendered various sums of money to my partner, Mr. Tolson.

Q. Do you have any record to show that the other $2,500.00 was in your possession before March 20, 1964?

A. Yes. I don't have them with me.

Q. You do not have them?

A. I have the $500.00 in our escrow account, Taylor escrow account. Mr. Tolson is my associate.

Q. How about the other $2,500.00 that would go to make up the complete down payment at settlement?

A. Mr. Tolson had about $2,000.00, $1500.00, $2,000.00 in his account also from the buyers which made up roughly around $2,500.00.

Q. And you have no record here in Court to show the date you got that money?

A. No, sir.

Q. Do you have any record in your file to show that the sellers were notified that you had this balance of $2,500.00 in hand at any time before March 20, 1964?

page 30] A. There was no record that I wrote them. Is that the question?

Q. Yes.

A. Did I write them and say that?

Q. Yes.

A. No, I did not.

Q. Did you ever tell them you had the money?

A. I don't believe the point was ever brought up.

Q. Do you recollect having a call from Mr. Jordan sometime in December or January while this transaction was pending asking you when it was going to be closed and where the purchasers were?

A. I do not specifically recall the date. I do recall Mr. Jordan possibly calling me once or two times.

Q. And he wanted to know when the thing was going to be closed, didn't he?

A. That I can't recall. I do recall that Mr. Jordan called me and I am certain that that was about the substance of his conversation.

Q. Do you recall telling him that the purchasers were out of the country?

B. Bruce Taylor

The Court: The witness has just said he doesn't recall the conversation.

Mr. Worthington: He said he didn't recall
page 31] the date.

The Witness: I don't recall the actual date or the specific content of the conversation, but I am sure it is bound to be about the contract.

By Mr. Worthington:

Q. How is that?

A. It was about the contract. That was our only transaction.

Q. You don't remember any other details of that conversation, whether it be one conversation or two conversations? You don't remember?

A. No. I do recall Mr. Jordan calling me.

Q. Where were the purchases, Reutt and Dezern during the period from the time the contract was signed until March 20, 1964, when you had the papers signed by the purchasers?

A. They were in the area up until sometime in December, I believe. And then, the best of my recollection, when I write to them on January 7th — I get the papers from Mr. Russo on the 19th of December and January 7th I write to Mr. Woodward and say I don't have the papers actually signed. Somewhere between the 19th and the 7th, Mr. Reutt and Dezern are not available.

Q. Do you have any record where they were at any given time?

page 32] A. No, I don't.

The Court: Just a moment.

(Whereupon, a short recess was taken in the trial.)

By Mr. Worthington:

Q. The question that I was in the middle of asking you, do you have any record keeping track of their whereabouts during the period of this thing?

A. No.

Q. You don't know when they left the country?

A. No, sir.

Q. Do you know when they got back?

A. The only thing I know — no, I do not know the exact date they got back. Evidently they came back or I was able to get in touch with them just prior to March 20th and we were able to get these papers straight.

Q. So you were not able to say at any time between December and March where they were or when they would be back?

A. No, I did not.

Q. And no arrangement was made for them to execute these papers before they left? They didn't call you up to make any such arrangement or be in touch with you to make any such arrangement?

page 33] A. Not that I recall. You see, I have an office and secretary and sometimes they would stop in and see Mr. Tolson and my secretary and I am in and out. I don't have any dates when they came in and out of the office.

Mr. Worthington: I have no further questions.

REDIRECT EXAMINATION

By Mr. Russo:

Q. Mr. Taylor, you said that the contract was dated and signed, in answer to Mr. Worthington, on August 26, 1963.

A. Yes, sir.

Q. Isn't that in conflict with your direct testimony? That is certainly the date of the contract. We have that. Are you certain that it was signed on August 26th?

A. No, I am not. I suppose it was that day or it could have been the day before. I cannot state specifically that it was signed on the 26th. It was dated the 26th.

Q. Well, there were changes made in the contract?

A. Subsequently, after that, yes, sir.

Q. So it had to be signed at a later date?

A. Yes, sir, had to be initialed at a later date, I believe.

Q. That is right.

page 34] A. Signed before the 26th or on the 26th. It was initialed at a later date.

Q. I see. Was it actually signed on August 26th then and initialed at a later date?

A. Yes, sir, the best of my recollection, it was.

Q. Now, insofar as your testimony is concerned, if you would refer to your letters, a letter you referred to of October 2nd, 1963 —

A. Yes, sir.

Q. You wrote to Mr. Woodward. In your letter of that date, what did you request?

A. October 2nd?

Q. Yes, sir.

A. I requested a copy of the deed, promissory note and deed of trust.

Q. Did you request a copy of the deed in your letter of October 2nd?

A. Yes, sir.

Q. And then I believe Mr. Woodward answered that, did he not?

A. He replied back on the same letter I wrote him. He just returned back my letter and he made a note on the bottom. It says let me know to whom you wish the deed.

Q. But he didn't date his note?

page 35] A. No.

Q. What is the next item you have with a date?

A. The next thing I have, on October 7th I write him and say please find copy of my letter dated September 16th which will give you the necessary information you desire concerning the buyers.

Q. So of your own knowledge as late as October 7th you did not have a copy of the deed?

A. No, sir.

Mr. Russo: That is all I have.

The Court: Step down.

(Whereupon, the witness was excused.)

RAYMOND REUTT,

the complainant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Russo:

Q. Would you state your name, please, sir.

Raymond Reutt

A. Raymond Reutt.
Q. Where do you live?
A. Chesapeake Beach.
Q. What is your occupation, sir?
A. Marine engineer.
page 36] Q. Are you familiar with this contract that you heard testified to?
A. Well, after going over it like this, I guess —
Q. Is that your signature?
A. Yes, sir.
Q. Is that the signature of Mr. Dezern?
A. Yes, sir.
Q. Did you say what your occupation is?
A. Marine engineer, sir.
Q. Does that require you to be on ships?
A. Yes, sir.
Q. Have you paid in to Tolson and Taylor enough money to close out this contract?
A. Yes, sir, I did.
Q. Did you sign the note and the deed of trust and deposit that with them in order to close this contract?
A. Yes, sir.
Q. Are you as of this moment ready, willing and able to go through with the purchase pursuant to this contract?
A. Yes, sir.
Q. Have you been out to sea within the last six, seven months?
A. Yes, sir.
Q. Can you tell us the dates when you were out of the country to the best of your knowledge?
page 37] A. Well, to the best of my knowledge — dates in the last how many years and so forth?
Q. I would say within certainly since August of 1963. We wouldn't want to go any further back than that.
A. Well, I went to sea, I think it was sometime in December of '63 until around in March when I came home, March of '64, and then I became involved in buying some houses and so forth and I didn't go to sea until this past springtime again.
Q. But you did leave in December of 1963?
A. Yes, sir.

Raymond Reutt

Q. Could you specifically remember the date?

A. Well, I don't know exactly what date, you know, what actual date. I would have to go back and get my discharge.

Mr. Russo: Answer Mr. Worthington.

CROSS-EXAMINATION

By Mr. Worthington:

Q. I believe you said that from March of '64 until fairly recently, you didn't go to sea?

A. No, sir. Well, I went, I think, about a month and a half or two months just approximately three or four months ago.

page 38] Q. So from that period until three or four months ago, you didn't go at all?

A. Yes, sir.

Q. And the reason was you were engaged in buying some real estate, is that right?

A. Yes, sir.

Q. Do you have some records or receipts to show when you paid the money in on account of this purchase from Virlina Peanut Company?

A. Not offhand. I may have the receipts for the $500.00. The $1,500.00, I don't know whether Mr. Dezern has it or not here.

Q. You do not have it?

A. No, sir.

Q. And it was $2,500.00 rather than $1,500.00, wasn't it?

A. Sir?

Q. It was $500.00 plus $2,500.00?

A. It was fifteen and then it was ten.

Q. Well, are you aware of the provisions of the contract which recited that you were supposed to pay $500.00 down and you were supposed to pay $2,500.00 at the date of settlement which was supposed to be on or before October 15th?

A. Well, I wasn't completely sure of all that. I mean it's been a year and a half.

page 39] Q. But your impression then was that you were only supposed to have $1,500.00 more beyond the $500.00?

A. No, sir.

Q. How much was it, sir?

A. It was twenty-five beyond the $500.00. It was $3,000.00 all told.

Q. Didn't you just testify you put up $1,500.00 one time?

A. In other words, it was three times. In other words, I had $500.00 and then $1,500.00 and then we gave them another thousand.

Q. Do you know the dates of those payments?

A. No, sir, I do not.

Q. Now, you went to sea sometime in December, 1963?

A. Yes, sir.

Q. Did you make any effort to get in touch with Mr. Jordan or any of them that were selling this property to you before you went?

A. No, sir.

Mr. Worthington: I have no further questions.

The Court: Step down.

(Whereupon, the witness was excused.)

Mr. Russo: Put Mr. Taylor back on for one minute.

page 40] B. BRUCE TAYLOR,

called as a witness on behalf of the complainants, having been heretofore duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Russo:

Q. Can you explain about the amount of money that you and Mr. Tolson have received on account of this purchase? What amount of money have you received?

A. We have $500.00 on deposit and they have given Mr. Tolson direct $1,500.00 to $2,000.00. I am a little vague whether it's $1,500.00 or $2,000.00 because Mr. Tolson has those in his account.

The money — I never asked them to put up the balance. I never asked Mr. Reutt. I am sure Mr. Tolson didn't, didn't

B. Bruce Taylor

ask Reutt and Dezern to put up the balance of the money until we had all the papers and everything ready to sign.

Q. But were you ready to pay to Virlina Peanut Company the amount that they were due under this contract?

A. Virlina Peanut Company was due $1,750.00 under the contract, which was actually $3,000.00 less $1,250.00, our commission, and we had anywhere from $2,000.00 to $2,500.00 in escrow. The balance represented our commis-
page 41] sion. Mr. Reutt and Mr. Dezern are very good friends to Mr. Tolson and if there was any discrepancy, Mr. Tolson would put it up or Mr. Dezern would owe us the balance.

Q. So that any balance that was not paid into you was on account of the commission?

A. That is right. I mean it wasn't an issue because we weren't ready to settle because of the lack of the papers.

Mr. Worthington: I would like to ask just one.

CROSS-EXAMINATION

By Mr. Worthington:

Q. You say that Mr. Tolson was a pretty good friend of the purchasers, Reutt and Dezern, is that right?

A. That is correct.

Q. And if they needed any money to meet the closing that he would put it up for them?

A. Well, that was never actually — that was always an implied position. I mean the subject never was even broached because there never was a settlement date as such. We needed to get them to get their signature. Then when we got ready to settle, they were able to pay the money, then Mr. Woodward refused to go through with it.

page 42] Q. Mr. Tolson to your knowledge never made any binding commitment to put this money up? There was no contract?

A. The subject was never asked.

Q. So you just assume that he would have done it?

A. Didn't assume anything. The time to put the money up never came up because we didn't have the papers ready. When we had the papers ready and Mr. Reutt and Mr. Dezern

got their paper work completed, then we presented ourselves for settlement and Mr. Woodward refused to settle.

Mr. Worthington: No further questions.
The Court: Step down.

(Whereupon, the witness was excused.)

The Court: Anybody else, Mr. Russo?
Mr. Russo: I would just like to call Mr. Woodward to identify some of these letters.

THOMAS L. WOODWARD,
called as an adverse witness on behalf of the complainants, having been first duly sworn, was examined and testified as follows:

By Mr. Russo:
Q. Since we have a reporter, for the record, I will ask Mr. Woodward his name and address. We are very familiar with it.
A. Thomas L. Woodward.
page 43] Q. You are an attorney at law practicing in Suffolk?
A. Attorney at law practicing forty-five years in Suffolk.
Q. You represent Virlina Peanut Company?
A. Yes, sir.
Q. You have had some dealings with Mr. Taylor and with me in regard to this transaction?
A. Yes, sir.
Q. I show you a copy of letter dated November 20, 1963, addressed to Mr. Thomas L. Woodward.

Mr. Worthington: Excuse me, Mr. Russo, I think we can just save time. Let the Court read them. We admit that those letters passed. Let the Court read them.
Mr. Russo: All right. For the record, these are letters that Mr. Taylor was going to testify to but which he was not competent to testify about due to the fact that they passed between Mr. Woodward and me and not between him and any party.

Thomas L. Woodward

The Court: Suppose we clip these. These are your letters that you are offering, Mr. Russo?

Mr. Russo: Yes, sir.

The Court: Complainants' 2.

(Whereupon, said foregoing series of letters were marked as Complainants' Exhibit No. 2.)

page 44] By Mr. Russo:

Q. Mr. Woodward, in your letter of December 18th, 1963, you sent to me the bond which you had redrafted, did you not, sir?

A. I don't recall the date.

Q. Do you have a file copy of a letter to me dated December 18th? I believe the original of it is here. This is your letter here, is it not, sir?

A. Yes, sir.

Q. So suffice it to say that as late as December 18th, 1963, you sent me the bond which you considered to be all right and pertinent to the situation?

A. I redrafted the bond because it was neither a note or a bond. It had parts of both in it and I corrected it to make it a bond. The original had been prepared on October 12th.

Q. And also needless to say you and I had much correspondence between us?

A. We had some, yes, sir.

Q. And you and Mr. Taylor had even more, is that correct?

A. No, sir, we didn't.

Q. Did not?

A. No. Let me say this to you. I sent Mr. Taylor the original deed for closing of this transaction and
page 45] he turned the original deed over to you and you had the original deed in your possession and I was alarmed when I found out he had turned the original deed over to the attorney for the purchasers and requested him to bring it back or send it back to me, which he did subsequently, and I have it in my pocket.

Q. So you still have the original deed?

A. I have the original deed.

Q. And aside from the fact that you were alarmed at the original deed being given to the other side, there were other

matters including this bond that were not resolved as late as December 18th, 1963, is that correct?

A. But that wasn't any fault of ours, Mr. Russo. That was your fault because it wasn't a bond and it wasn't a negotiable instrument.

Q. And to this day you say that you have the original deed in your pocket?

A. Yes, I have the original deed in my pocket.

Q. Would you show me that, sir?

A. Yes, sir.

Q. So the name of Reutt was finally corrected from R-u-e-t-t to R-e-u-t-t?

A. I fixed it just like you had it in your contract and you wanted it corrected and it amounted to changing an e to u and u to an e.

Q. But I told you that I hesitate to tamper
page 46] with an executed deed, is that correct?

A. Well, I think so. It wasn't a question of challenging your sincerety but delivery has right much affect on the validity of a deed and I didn't want to be in that position.

Q. Yes, sir, I understand. But the reason why the deed was returned to you by me was for the change of the name from R-u-e-t-t to R-e-u-t-t?

A. That is right.

Mr. Russo: I have no further questions.

DIRECT EXAMINATION

Mr. Worthington: We would like to offer the deed. Just mark it as our exhibit.

The Court: It will be Respondents' 1.

(Whereupon, said foregoing deed was marked as Respondents' Exhibit No. 1.)

By Mr. Worthington:

Q. Mr. Woodward, this deed bears date on the face of it the 9th day of October, 1963. Can you say when it was drafted?

A. It was drafted on the same date it's dated and the deed of trust was dated on the 12th day of October because

Thomas L. Woodward

I wanted to be ready on the 15th to close the transaction.

page 47] Q. Do you know when the deed was signed by the partners trading as Virlina Peanut Company?

A. It was signed at that time. It was not acknowledged until sometime later.

Q. It was signed on the 10th of October?

A. That is right.

Q. Now, referring to the letters that have been introduced here, Complainants' Exhibit 2, I ask you to refer to a letter of November 21, 1963, and read the first clause of that sentence, which is a one sentence letter of November 21. Read that to the Court, please.

A. I have your letter of November 20th, and will be glad to complete the transaction concerning the Virlina Peanut Company property, but rather than insert a provision in the deed of trust the Virlina Peanut Company will give you a letter with the same provision therein as quoted in your letter, which, I believe, will have the desired effect.

Q. Then on November 21, you expressed yourself ready, willing and able to close the transaction?

A. Yes, sir. We were ready all the time from October 15th on if he had wanted to.

Q. Then I call your attention in the same sheaf of papers to a letter of December 13, 1963, which you wrote to Mr. Russo and ask you to read to the Court the fourth paragraph on the first page.

page 48] A. The sellers have no privity with the Lawyers Title Insurance Company, and they are pretty well threadbare in the whole transaction. It took thirty-nine days to hear anything about the transaction after the deed was forwarded. It is requested that you forward the deed of trust which you have in your possession so that any changes necessary therein can be made here. Virlina Peanut Company does not object to anticipation nor deletion with respect to fire insurance.

Q. Now, the following paragraph at the top of page 2 of the same letter.

A. It is high time this transaction be closed. I don't believe Mr. Taylor had any right to let the deed in issue go out

of his possession until the collection of the purchase money and execution of the deed of trust and bond in accordance with its terms.

Q. As of December 13th, 1963, what was the situation as to the purchasers being ready to close and able to close?

A. They were not ready. They never got ready.

Q. How about the sellers?

A. The seller was ready any time, could have closed it in thirty minutes.

Q. What was the attitude of you and your clients, the sellers, as to wanting to get the transaction closed?

A. We wanted to get along with it and get it

page 49] over with.

Q. Was that letter then mailed to Mr. Russo demanding that it be done?

A. I assume that it was. In the normal course of events, it would have been.

CROSS-EXAMINATION

By Mr. Russo:

Q. Mr. Woodward, this deed that you showed here today all executed and ready to go with the name Reutt changed from R-u-e-t-t to R-e-u-t-t, that has always been in your possession since the time I returned it to you for the change, has it not?

A. I don't think so. I am not certain about that. I don't want to be certain about it but I have a letter here written to you on November 7th which says I have your letter about the Virlina Peanut Company deed. I have no objection to changing the name of Reutt to R-e-u-t-t.

Q. But that was after I had returned the deed to you, was it not?

A. No, I think still had it in your possession at that time.

Q. No, sir, I think if you will check your correspondence, you will find that I had already returned the

page 50] deed to you.

A. I wouldn't say, Mr. Russo.

Q. Now, insofar as having title examination ready by October 15th, do you have a letter there from Mr. Taylor dated October 7th, 1963, in which he sent you a copy of a

letter dated September 16th, 1963, in which there was the necessary information for the buyers' names?

A. Yes, I have a letter of October 7th that says attached please find copy of my letter dated September 16th which will give you the necessary information you desire concerning the buyers. I would appreciate your mailing the deed to me at your earliest convenience.

Q. So as late as October 7th, with a closing date of October 15th, you had not sent a copy of the deed to anyone, is that correct?

A. I don't think so. But the records are here in the office for you to get them irrespective of the deed.

Q. Isn't it a customary practice for the sellers' attorney to send the buyers' attorney a copy of the deed so he can start the title search?

A. It is done but I wouldn't consider it customary.

Q. Now, Mr. Woodward, at any time after December 18th, 1963, did you ever call upon anyone to close this transaction after December 18th, 1963?

page 51] A. No, I had no duty to call on anyone, Mr. Russo. They had an agent down there that was selling the property. It was up to him to complete the transaction, not me. I was simply acting as counsel in the matter. It wasn't up to me to call on them. Mr. Taylor there knew what the situation was and every time I heard about it, the people were out of the country.

Mr. Russo: I have no further questions.

Mr. Worthington: No further questions at this time.

(Whereupon, the witness was excused.)

Mr. Russo: That is the complainants' case, your Honor.

The Court: All right, who do you have?

Mr. Worthington: We will put on Mr. Jordan.

J. W. JORDAN,

the respondent, having been first duly sworn, was examined and testified as follows:

J. W. Jordan

DIRECT EXAMINATION

By Mr. Worthington:

Q. State your name, please, sir.

A. J. W. Jordan.

Q. Where do you live?

page 52] A. Suffolk.

Q. How old are you?

A. Seventy-one.

Q. What is your occupation?

A. Peanut business.

Q. How long have you been engaged in it?

A. Twenty-four years.

Q. Are you a partner in the Virlina Peanut Company?

A. Yes, sir.

Q. That operates in Suffolk?

A. That is right.

Q. Did you sign a contract on behalf of your partnership to sell this land on Azalea Garden Road in Norfolk that is in question here?

A. Yes, sir.

Q. Do you know what date the contract was signed?

A. No, I don't recollect that. I don't remember.

Q. From the time that you signed the contract, what was your understanding as to when the transaction would be closed out?

A. I don't remember just when it was to be closed. It was to be closed immediately, within a reasonable length of time. I can't tell you exactly when it was to be.

Q. What agreement, if any, did you ever make

page 53] or did your partnership ever make to extend the time of the closing?

A. We never had any extension or knew anything about it.

Q. What efforts, if any, did you make to follow along to find out when the thing was going to be closed?

A. Well, Mr. Woodward was handling that for me and it got so it just seemed it wouldn't be closed at all and I called Mr. Taylor and asked him about it and Mr. Taylor said the man had left town and gone on out of the country and didn't tell me what for or anything about it. So then from then on,

we decided we didn't want to sell. We didn't think the man was ever going to take it as far as we were concerned.

Q. Had any tender been made to you of the balance of this $3,000.00?

A. No, sir.

Q. Had any tender been made to you of the note and deed of trust?

A. No, sir.

Q. Did you know the whereabouts of either of the purchasers?

A. No, sir.

Q. Did you know anything about their financial ability?

A. No, sir.

Q. Were you able to find out?

page 54] A. No. Mr. Taylor was the only man I knew anything about.

Q. Was he the one you had the dealings with with reference to the purchase?

A. Yes, sir.

Q. Prior to the time that he told you the people had gone out of the country, what was your readiness and willingness to settle the matter and sell it?

A. We were ready from the time we obligated ourselves to sell it.

Q. At the time of this contract, what, if anything, has happened to the market value of this property?

A. Well, I wouldn't know about that down there.

Q. You don't know what happened to it?

A. It certainly hasn't gone down any.

CROSS EXAMINATION

By Mr. Russo:

Q. Mr. Jordan, can you tell us when you and your partners decided not to sell?

A. After we found that the man had gone and left town.

Q. At what point of time was this, do you know?

A. I don't recall. I think it was somewhere

page 55] around Christmas.

Q. Somewhere around Christmas?

A. Yes, sir.

Q. Did you communicate that to Mr. Woodward?

A. Yes, sir. Mr. Taylor, too. Told Mr. Taylor then that we didn't care to sell it then if the man had left town. We didn't think we were obligated to sell it then.

Q. Then you wouldn't have any idea then why as late as April 4th Mr. Woodward wrote to Mr. Taylor to advise him that —

A. I wouldn't have any idea at all. I don't know anything about that.

Q. Are you certain that around Christmas you told all parties that you weren't going to sell?

A. Yes, sir, told Mr. Taylor and told Mr. Woodward, the only two parties that I had contact with with reference to the selling.

Mr. Russo: I have no further questions.

Mr. Worthington: No further questions.

(Whereupon, the witness was excused.)

The Court: All right, gentlemen.

Mr. Worthington: We have nothing further.

Mr. Russo: I would just like to call Mr. Taylor back just in rebuttal.

The Court: This is rebuttal, strictly rebuttal?

page 56] Mr. Russo: Yes, sir.

B. BRUCE TAYLOR,

called as a witness in rebuttal in behalf of the complainants, having been heretofore duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Russo:

Q. Mr. Taylor, when was the first that anyone had notified you that this contract would not be settled?

A. I received a letter from Mr. Woodward sometime in April, I believe it was.

Q. This letter that you testified to before?

R. Bruce Taylor

A. Yes, sir.
Q. Do you have that letter in your file?
A. I believe so, yes, sir.
Q. I believe it's dated April 4th?
A. April 4th, that is correct, sir.
Q. Do you have that letter? Would you pull it out, please?

Mr. Russo: We would also like to offer this.
The Court: Complainants' 3.

(Whereupon, said foregoing letter was marked as Complainants' Exhibit No. 3.)

page 57] By Mr. Russo:
Q. You say this was the first time that you heard from anyone that this contract was not going to be settled?
A. That is right. Mr. Jordan called me.
Q. When was this, now?
A. I don't know, Mr. Russo. It was sometime, I guess, after —
Q. Was it before or after April 4th?
A. It was before April 4th and I don't know whether it was before my January 7th letter, or something like that, to him stating that they were out of town. I know I received one call from him, it may have been two, and I do not know —
Q. What was the essence of your conversation.
A. The essence of the conversation as best I can recall —

The Court: We are not going to go into this. This is not a question of rebuttal. What have you in rebuttal?
You introduced evidence that no one had told him, and I believe this gentleman stated around about Christmastime he conveyed the fact they were not going to go through with it. All right, what's next?

page 58] By Mr. Russo:
Q. But, at any rate, no one told you until April 4th?
A. No, I did not ever recall Mr. Jordan saying that there would be no settlement. He never told that to me. I do not

ever recall that conversation. The best I remember the conversation was where are the people, what's the story with them. It was never a statement that we are never going to settle.

Mr. Russo: I have no further questions.

CROSS-EXAMINATION

By Mr. Worthington:

Q. Didn't you previously testify here just about a half hour ago that you didn't remember the conversation and you just knew that he had called you but you didn't know what was said?

A. I believe that I said that I didn't recall all the gists — I mean I didn't recall all the exact words of the conversation. But at no time did I ever receive any information to the effect either from Mr. Woodward or from Mr. Jordan to the effect that they would not settle. I certainly would not have proceeded forward with the thing.

Mr. Worthington: No further questions.

page 59] The Court: Step down.

(Whereupon, the witness was excused.)

The Court: All right, gentlemen, do you care to argue?

Mr. Russo: Yes, sir. Judge, I would just like to say that, as you have heard, correspondence back and forth, telephone conversations back and forth, and so on, that as late as October 7th with a closing date of October 15th we didn't even have a copy of the deed to start the title examination. Since that time it's clear that there was a lot of correspondence back and forth between the parties about revising papers, bringing bonds up-to-date, and so on, and as late as December 18th, 1963, Mr. Woodward sent to me the redrafted bond without which we could not close. This was the note to be secured by the deed of trust for the balance of the purchase price, and Mr. Reutt's testimony was that he was out of the country from December of 1963 until March of 1964. So through no fault of his because of legal entanglements, straightening out of bonds and things of this kind, negotiations with the City about taking of frontage, that as late as December

18, 1963, I received a bond which was absolutely necessary to close this transaction. Mr. Reutt and Mr. De-
page 60] zern were out of the country at that time and as soon as they came back to sign it, we were ready to close and Mr. Taylor so notified Mr. Woodward in March of 1964.

So I am saying here we have a contract. It called for a closing date of October 15th. Time was not of the essence. We had legal entanglements. I think everything is understandable. What has happened, these gentlemen were out of the country, we needed this bond to close, and I think that these people should be made to perform their contract.

The Court: Mr. Russo, in considering this evidence and from the view that I take of it, all things considered, it was no fault of counsel but there were a combination of things which delayed the settlement in this matter for several months or more. Under these circumstances the Court will not grant specific performance. I am going to deny it. You prepare the decree, note an exception and submit it to the Clerk.

page 61] CLERK'S CERTIFICATE

I, W. R. Hanckel, Clerk of the Circuit Court of the City of Norfolk, Virginia, do hereby certify that the foregoing is a true and correct copy of all of the testimony, exhibits and other incidents of the trial of the case of *Raymond F. Reutt and Ray W. Dezern, plaintiffs* vs. *J. W. Jordan, Loretta G. Jordan and Robert A. Winborne, Partners, t/a Virlina Peanut Company, defendants,* and that the original thereof, together with the original exhibits therein referred to, duly initialed and authenticated by the Judge who presided over the trial of said case, were lodged and filed with me as Clerk of the said Court on the 22nd day of October, 1965.

W. R. HANCKEL
Clerk of the Circuit Court of the City of Norfolk.

By: VIRGINIA MANNING
Deputy

page 62] JUDGE'S CERTIFICATE

I, Thomas M. Johnston, Judge of the Circuit Court of the City of Norfolk, State of Virginia, who presided over the

trial of the case of *Raymond F. Reutt and Ray W. Dezern, plaintiffs,* vs. *J. W. Jordan, Loretta G. Jordan and Robert A. Winborne, Partners, t/a Virlina Peanut Co., defendants,* in said Court on August 31, 1965, do hereby certify that the foregoing is a true and correct transcript of the trial of said case, including all of the evidence adduced, all of the exhibits offered in evidence, all of the objections to the evidence or any part thereof offered, admitted, rejected or stricken out, together with all motions and objections of the parties, all rulings thereto, together with all other incidents of the trial of said case.

As to the original exhibits introduced in evidence as shown by the foregoing report, to-wit: Complainants' Exhibits 1 through 3 and Respondents' Exhibit 1 which have been initialed by me for the purpose of identification, it is agreed between the attorneys for the plaintiffs and the attorneys for the defendants that they shall be transmitted to the Supreme Court of Appeals of Virginia, together with the record in this case, in lieu of certifying to the said Court copies of said exhibits.

I further certify that this certificate has been tendered to and signed by me within the time prescribed page 63] by Section 8-330 of the Code of Virginia for tendering and signing bills of exception and certificates of record, and that reasonable notice in writing has been given to the attorneys for the defendants of the time and place at which said certificate has been tendered. Received by me 10-21-65. Signed and returned to Clerk of this Court this date.

Given under my hand this 22nd day of October, 1965.

THOS. M. JOHNSTON
Judge of the Circuit Court of the City of Norfolk, Virginia.

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A Copy — Teste:

H. G. TURNER, Clerk.

INDEX TO RECORD

	page
Appeal and *Supersedeas* Awarded	1
Record	2
Final Decree — September 9, 1965	2
Assignments of Error	3
Proceedings	3, 37
Witnesses:	
B. Bruce Taylor	8, 25, 35
Raymond Reutt	22
Thomas L. Woodward	27
J. W. Jordan	32
Certificates	38