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Clerk, Supreme Court of Appeals
Richmond, Va.

209 VA 217

Record Nos. 6738, 6739

In the Supreme Court of Appeals of Virginia at Richmond

LaVERNE T. MOTKO STRAUSS

v. Record No. 6738

PRINCESS ANNE MARINE AND BULKHEADING COMPANY, INC., ET AL.

AMERICAN ACCEPTANCE CORPORATION

v. Record No. 6739

LaVERNE T. MOTKO STRAUSS, ET AL.

FROM THE COURT OF LAW AND CHANCERY 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. 6738

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 14th day of June, 1967.

LaVERNE T. MOTKO STRAUSS, Appellant,

against

PRINCESS ANNE MARINE AND BULKHEADING CO., INC.; BURTON LUMBER COMPANY, INC.; EPES-FITZGERALD PAPER COMPANY; COLONIAL BEDDING COMPANY; COFER'S, INC.; CITY OF NORFOLK; ATLANTIC CREOSOTING COMPANY, INCORPORATED; ROBERT C. GEE; J. W. HURST & SON AWNING CO., INC.; VIRGINIA EMPLOYMENT SERVICE; PHILIP L. RUSSO AND SAMUEL I. WHITE, TRUSTEES; AMERICAN ACCEPTANCE CORPORATION; UNITED STATES TREASURY DEPARTMENT, INTERNAL REVENUE SERVICE; AND WILLIAM T. SHUEY, REGISTERED AGENT FOR S & L ENTERPRISES, INC., Appellees.

From the Court of Law and Chancery of the City of Norfolk
Walter A. Page, Judge

Upon the petition of LaVerne T. Motko Strauss an appeal is awarded her from a decree entered by the Court of Law and Chancery of the City of Norfolk on the 24th day of February, 1967, in the consolidated chancery cause entitled: *Princess Anne Marine and Bulkheading Co., Inc.* v. *S & L Enterprises, Inc., etc., et al.,* Case No. 3458, and *Philip L. Russo, et al., Trustees* v. *S & L Enterprises, Inc., et al.,* Case No. 3734; upon the petitioner, or some one for her, entering into bond with sufficient security before the clerk of the said Court of Law and Chancery in the penalty of $300, with condition as the law directs.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 6739

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 14th day of June, 1967.

AMERICAN ACCEPTANCE CORPORATION, Appellant,

against

LaVERNE T. MOTKO STRAUSS; PRINCESS ANNE MARINE & BULKHEADING CO., INC.; BURTON LUMBER COMPANY, INC.; EPES-FITZGERALD PAPER COMPANY; COLONIAL BEDDING COMPANY; COFER'S INC.; CITY OF NORFOLK; ATLANTIC CREOSOTING COMPANY, INCORPORATED; ROBERT C. GEE; J. W. HURST & SON AWNING CO., INC.; VIRGINIA EMPLOYMENT SERVICE; PHILIP L. RUSSO AND SAMUEL I. WHITE, TRUSTEES; UNITED STATES TREASURY DEPARTMENT, INTERNAL REVENUE SERVICE; AND WILLIAM T. SHUEY, REGISTERED AGENT FOR S & L ENTERPRISES, INC., Appellees.

From the Court of Law and Chancery of the City of Norfolk
Walter A. Page, Judge

Upon the petition of American Acceptance Corporation an appeal is awarded it from a decree entered by the Court of Law and Chancery of the City of Norfolk on the 24th day of February, 1967, in the consolidated chancery causes entitled: *Princess Anne Marine and Bulkheading Co., Inc.* v. *S & L Enterprises, Inc., etc., et al.*, Case No. 3458, and *Philip L. Russo, et al., Trustees* v. *S & L Enterprises, Inc., et al.*, Case No. 3734; upon the petitioner, or some one for it, entering into bond with sufficient security before the clerk of the said Court of Law and Chancery in the penalty of $300, with condition as the law directs.

RECORD

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page 1 }

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BILL OF COMPLAINT

To: HONORABLE SIDNEY J. SMITH and WALTER A. PAGE, JUDGES of said COURT:

Your petitioner respectfully represents unto the Court:

1. That PRINCESS ANNE MARINE AND BULKHEADING CO., INC. is doing business in the State of Virginia;

2. That S & L Enterprises, Inc., a Virginia corporation, individually and T/A Sea Mist Motel and/or Sea Mist Motel and Apartments in the City of Norfolk, Virginia, is indebted to the petitioner herein in the sum of TEN THOUSAND, ONE HUNDRED AND FORTY-FOUR DOLLARS ($10,-144.00) with interest from September 27, 1962, for work and labor performed for the said defendant, S & L Enterprises, Inc., T/A Sea Mist Motel and/or Sea Mist Motel and Apartments, pursuant to contract dated August 27, 1962, and affidavit of itemized statement attached hereto and incorporated herein to which reference is hereby made for more particular description;

#3458
page 2 }

3. That the labor and material for which the balance due above is sued for was placed in and about a structure premenantly annexed to the following described real property of the said defendant, S & L Enterprises, Inc., T/A Sea Mist Motel and/or Sea Mist Motel and Apartments, to-wit:

All those certain lots, pieces or parcels of land located in the City of Norfolk, Virginia, and being numbered by the street numbering system in force in said City as 1080 and 1082 West Ocean View Avenue in the City of Norfolk, Virginia, and encompassing the following described property, to-wit:

All those certain lots, pieces and parcels of land with the buildings and improvements thereon situated in the City of Norfolk, State of Virginia, and known, numbered and designated as Lots One (1), One-A (1-A), Two (2), Eighteen-A (18-A), Nineteen (19) and Twenty (20) in Block Twenty-Four

(24) as shown on the Plat of Willoughby Beach Company, which plat is duly recorded in the Clerk's Office of the Circuit Court of the City of Chesapeake, Virginia, (formerly Norfolk County) in Map Book 5 at page 80 to which reference is hereby made for more particular description; and in addition thereto:

All that certain lot, piece or parcel of land with the buildings and improvements thereon being the Eastern 40 feet of 11th View Street, situated, lying and being in the City of Norfolk, State of Virginia, and more particularly described as follows:

Beginning at the Northern intersection of 11th View Street and West Ocean View Avenue and running thence Westerly along the Northern boundary of West Ocean View Avenue a distance of 40 feet; thence Northerly along the middle of 11th View Street and parallel with the Western line of Lot 18-A and 1-A in Block 24 on the plan of Willoughby Beach Company a distance of 470 feet; thence Eastwardly parallel to the Northern line of West Ocean View Avenue 40 feet to the Northern line of Lot 1-A on the aforesaid plat; thence Southerly along the Western line of said lot 18-A and 1-A a distance of 470 feet to the point of beginning at the intersection of West Ocean View Avenue and 11th View Street.

#3458 page 3 } The plat of Willoughby Beach Company hereinabove referred to is duly recorded in the Clerk's Office of the Circuit Court of Norfolk County, now the Circuit Court of the City of Chesapeake, Virginia, in Map Book 5 at page 80, to which reference is hereby made;

4. That the petitioner herein claim a mechanic's lien against the property described hereinbefore and that pursuant to perfecting said mechanic's lien your petitioner did, as provided by law and pursuant to statute in the time prescribed and in the manner prescribed, filed a memorandum of mechanic's lien in the Corporation Court of the City of Norfolk, Virginia, November 23, 1962, and that notice of said mechanic's lien was served on the said S & L Enterprises, Inc., the original of said mechanic's lien and service of notice is attached hereto and incorporated herein;

5. That your petitioner has within the time prescribed by statute and in the manner prescribed by statute instituted this suit for the enforcement of its mechanic's lien;

6. That the records of the Corporation Court of the City of Norfolk, Virginia, in addition to your petitioners' lien on the real property hereinbefore described, reflect the following:

A. Deed of Trust Dated August 21, 1961, recorded in Deed Book 875 at page 484 to Philip L. Russo and Samuel I. White, Trustees, to secure the original sum of $146,000.00 evidenced by policy payable to Durham Life Insurance Company;

B. Deed of Trust Dated January 16, 1962, recorded in Deed Book 888 at page 228, Herbert L. Kramer, Trustee, to secure three notes in the total sum of $40,800.00 payable to the order of bearer;

C. Deed of Trust dated February 27, 1962, duly recorded in Deed Book 892 at page 345, Herbert L. Kramer, Trustee, to secure note payable to the order of Bearer on demand in the original sum of $4,200.00;

D. Mechanic's Lien of Atlantic Creosoting Company, Inc. claiming an indebtedness due them of Princess
#3458 Anne Marine and Bulkheading Co., Inc. for work
page 4 } and labor performed on the property of S & L Interprises, Inc., described hereinbefore in the sum of $4,625.10 for which indebtedness the petitioner herein calls for strict proof thereof.

E. Wherefore your complainant prays that the defendants herein be required to answer this complaint, answer under oath hereby waived, that the lien of your petitioner and the liens and encumbrances set forth herein and any other liens and encumbrances against said property be determined and that Princess Anne Marine and Bulkheading Co., Inc., lien be declared a valid lien against the said property in the sum of $10,144.00 with interest from September 27, 1962, and that the other liens and encumbrances be determined and their priority as one to the other and that the said real estate hereinbefore described be sold or the proceeds from the rental of said property, if it be contrary to statute to sell said property, be applied to your petitioner' lien and costs in the priority to which it is entitled and that it may have judgment against S & L Enterprises, Inc., individually and T/A Sea Mist Motel and/or Sea Mist Motel and Apartments in the sum of $10,144.00 with interest and costs from September 27, 1962, and that any funds received from the sale of said property be credited thereto and that your petitioner may

have such other and further relief as the nature of its case may require and to equity may seem meet.

PRINCESS ANNE MARINE
AND BULKHEADING CO.,
INC.
By JAMES M. PICKRELL
Counsel

* * * * *

Filed in the Clerk's Office the 7th day of March, 1963.

Teste:

W. L. PRIEUR, JR., Clerk
H. L. STRALL, D.C.

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#3458
page 12 }

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ANSWER AND GROUNDS OF DEFENSE

To the Honorable Judges of the aforesaid Court:

Now comes HERBERT L. KRAMER, TRUSTEE, and for his answer and grounds of defense to the bill of complaint exhibited against him and others says as follows:

#3458
page 13 }

(1) "That he is not advised as to the facts alleged in the complainant's bill of complaint, paragraphs numbered one through five, and calls for strict proof thereof.

(2) That the two (2) deeds of trust mentioned in the bill of complaint made by S & L Enterprises, Inc., to Herbert L. Kramer, Trustee, secure an aggregate principal indebtedness in the amount of $56,649.68, plus interest thereon from January 28, 1963. That the holders of both notes are Laverne T. Motko, who this defendant believes to be a resident of Ohio, and Industrial Security Corporation, a Virginia corporation, with its principal office in the City of Norfolk.

(3) That the deeds of trust constitute a valid lien having priority over the lien of this complainant.

WHEREFORE, this defendant prays that the liens of the deed of trust be recognized and granted priority over any claim of the complainant or any other claim in this matter, saving and accepting the lien of the deed of trust in favor of the defendants, Philip L. Russo and Samuel I. White, Trustees, and Durham Life Insurance Company. That the rights of the beneficiary of the trust and the Trustee be protected in all respects. That this defendant may have such other and further relief as the nature of the case may require; that this defendant may be dismissed hence with his reasonable cost in this behalf expended.

HERBERT L. KRAMER, Trustee

Court of Law and Chancery Filed 3-26-63.

By: H. L. STRALL, D.C.

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#3458
page 14 }

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ANSWER AND GROUNDS OF DEFENSE

Now comes S & L Enterprises, Inc., and for its answer and grounds of defense to the bill of complaint heretofore exhibited against it, comes and says as follows:

1. The allegations contained in paragraph one, three, four, five and six, are neither admitted nor denied, but strict proof thereof is demanded.

2. The allegations contained in paragraph two are denied. S & L Enterprises, Inc. is the owner of the Sea Mist Motel, and is not indebted to the petitioner in the amount of $10,144.00.

#3458
page 15 } WHEREFORE, the defendant, S & L Enter-

prises, Inc., prays that the bill of complaint be dismissed.

S & L ENTERPRISES, INC.
By MONTGOMERY KNIGHT, JR.
Of Counsel

* * * * *

Court of Law and Chancery Filed 3-28-63.

By: H. L. STRALL, D.C.

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#3458
page 16 }

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IN THE COURT OF LAW AND CHANCERY OF THE CITY OF NORFOLK, ON THE 17th DAY OF APRIL, 1963.

* * * * *

DECREE OF REFERENCE

This cause came on this day to be heard upon the Bill of Complaint filed herein and upon the answers and petitions filed by the defendants and the answer to said petition by the defendants after due service and was argued by counsel;

Upon consideration whereof, it is ADJUDGED, ORDERED and DECREED that this cause be, and the same hereby is, referred to T. J. Amelson, one of the Commissioners of this Court who shall inquire and report to the Court upon the following matters:

1. Who are the owners of the real estate described in the Bill of Complaint;
2. What liens including delinquent taxes, are against the said property, the amount and character thereof and the priority thereof;
3. Whether S & L Enterprises, Inc., or any other person, firm or corporation has a valid and sustaining mechanic's lien against said property;

4. Whether any of the parties hereto are entitled to judgment against any of the other parties hereto and if so, in what amount;

5. Any other matters specifically stated or provided by law which are required or other matters material for the enforcement of the mechanic's lien or which shall be requested to be reported by any other parties; before executing this reference the Commissioner shall give notice as required by law.

#3458
page 17

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#3458
page 18

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ORDER

It appearing to the Court that these suits, which have heretofore matured, were referred to T. J. Amelson, a Commissioner in Chancery of this Court, that all of the original suit papers and exhibits filed with the testimony heretofore taken were destroyed by fire which completely burned the office of said Commissioner in Chancery;

It is ORDERED that the Clerk of this Court prepare a new file or jacket and place therein, marked "FILED", copies of all pleadings and exhibits as hereinafter mentioned and that said copies shall be deemed the original papers herein.

In the first of the above mentioned suits:

Bill of Complaint; Answers of all of the named defendants and certified copy of Decree of Reference; and,

In the second of the above mentioned suits:

Bill of Complaint; Answers of Burton Lumber Corporation, Epps-Fitzgerald Paper Company, Inc., J. W. Hurst and Son Awning Company, Inc., Laverne T. Motko, Virginia Employment Commission, Jesse H. Daniel and Lacy O. Ridgeway, T/A Colonial Bedding Company; Answers, notice and petition of Princess Anne Marine & Bulkheading Company, Inc., and Atlantic Creosoting Company, Inc.; answer and amended answer of the City of Norfolk, special appearance for Robert C. Gee, notice by complainant to parties that they will appear and ask for a decree to deposit funds and *aske* for a Decree, a report and petition of the complainants and certified copy of

#3458
page 19

Decree entered on December 20, 1963, and reference to T. J. Amelson, Commissioner in Chancery; affidavit for an Order for a subpoena *duces tecum* entered on March 23, 1964; and certified copy of Decree entered on October 19, 1965, directing deposit of $43,409.81 to credit of suit in Southern Bank of Norfolk.

And these causes are consolidated and re-referred to T. J. Amelson, Commissioner in Chancery with directions to report on inquiries in the Decrees of Reference heretofore entered.

It is further ORDERED that the Clrek of this Court draw upon the funds on deposit for the account of this suit for the sum of $323.80, and make same payable to Reginald G. Fentner, Jr., Court Reporter, for appearances and reporting testimony and fee for transcript of record.

Enter 3/9/66. W. A. P.

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#3458
page 20 }

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COURT OF LAW AND CHANCERY
of the City of Norfolk
Norfolk, Virginia

August 11, 1966

Bernard Glasser, Esq.
Sidney Siegel, Esq.
Alexander P. Smith, Esq.
Calvin H. Childress, Esq.
Lawrence Lawless, Esq.
William T. Prince, Esq.
James M. Pickrell, Esq.
William C. Pender, Esq.
F. J. Dean, Jr., Esq.
James M. Hubbard, Esq.
John A. Gurkin, Jr., Esq.
Thomas O. Beane, Esq.
Ralph D. Katherman, Esq.
Walkley E. Johnson, Esq.
Norfolk, Virginia

Re: Princess Anne Marine & Bulkheading Co., Inc.
v. In Chancery #3458
S & L Enterprises, Inc., etc., et al
and
Philip L. Russo, et al, Trustees
v. In Chancery #3734
S & L Enterprises, Inc., etc., et al

Gentlemen:

The court has considered the pleadings, testimony and exhibits, the report of the Commissioner in Chancery and the written memorandum and oral argument of counsel with respect to exceptions filed thereto and is of the opinion that the exceptions should be overruled and the Commissioner's report confirmed.

Appropriate decrees may be presented at your convenience.

Yours very truly,
Walter A. Page
Judge

WAP:meg

cc: Wm. Shuey, Esq., RA for S & L Enterprises, Inc.
C. W. Schell, Esq., Revenue Officer, U. S. Treasury Dept.

#3458
page 21 }

* * * * *

COURT OF LAW AND CHANCERY
of the City of Norfolk
Norfolk, Virginia

November 30, 1966

Messrs. Bernard Glasser
Sidney Siegel
Alexander P. Smith
Calvin H. Childress
Lawrence Lawless
William T. Prince
James M. Pickrell
William C. Pender
F. J. Dean, Jr.

James M. Hubbard
John A. Gurkin, Jr.
Thomas O. Beane
Ralph D. Katherman
Walkley E. Johnson, Jr.
John F. Thomasson, Revenue Officer
Norfolk, Virginia

Re: Princess Anne Marine & Bulkheading Co., Inc.
v. In Chancery #3458
S & L Enterprises, Inc., etc., et al
and
Philip L. Russo, et al, Trustees
v. In Chancery #3734
S & L Enterprises, Inc., etc., et al

Gentlemen:

You will recall that the court by letter of August 11 determined this matter and that the entry of appropriate decrees was postponed at the request of Mr. Pender to assert a defense not heretofore argued. The court has considered the various memorandums submitted by counsel and its opinion is unchanged.

The Clerk has advised counsel that in the interim a notice of lien filed by the United States Treasury Department has been brought to the attention of the court. Provision therefor should be made in the decrees presented.

Sincerely yours,
Walter A. Page
Judge

WAP:meg

cc: Mr. Wm. Shuey, Esq. RA for S & L Enterprises, Inc.
Mr. C. W. Schell, Revenue Officer

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#3734
page 2

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BILL IN CHANCERY

To the Honorable Judges of the Court aforesaid:

Philip L. Russo and Samuel I. White, petitioners herein, respectfully represent unto the Court:

1.) That by deed of trust dated August 21, 1961, S & L Enterprises, Incorporated conveyed unto your Petitioners certain real property located in the City of Norfolk in trust to secure the payment of a bond in the amount of $146,000.00 payable to Durham Life Insurance Company, Raleigh, North Carolina; that said deed of trust was duly recorded in the Clerk's Office of the Corporation Court of the City of Norfolk, Virginia, in Deed Book 875, at page 484;

2.) That the said S & L Enterprises, Incorporated defaulted in the payment of said bond, and your Petitioners, at the request of the holder of the aforesaid bond, caused the property conveyed by said deed of trust to be sold at public auction on June 13, 1963, pursuant to the terms of said trust, at which sale all of the property conveyed by the aforesaid deed of trust was sold to Ken-Carl Corporation for the sum of $202,000.00;

3.) That said Ken-Carl Corporation has paid to your petitioners the sum of $202,000.00, and in addition, the sum of $391.00 which represents interest which Ken-Carl Corporation agreed to pay; that your petitioners have, therefore, received from Ken-Carl Corporation a total of $202,391.00;

4.) That your petitioners have discharged the terms of the trust and expended from said receipts the sum of $158,708.49, thereby leaving a balance in the hands of your petitioners of $43,682.51 less the costs of filing this bill and the costs of service upon the respondents or a net of $43,657.26;

#3734 page 3 } 5.) That at the time of the foreclosure sale held on June 13, 1963, there were numerous inferior liens against the real property which *was* sold by your petitioners as set forth hereinafter;

6.) That the said LaVerne T. Motko is allegedly holding four notes executed by S & L Enterprises, Incorporated, having an aggregate of $45,000.00, three of which notes are secured by a deed of trust dated January 16, 1962, from S & L Enterprises, Incorporated to H. L. Kramer, Trustee, recorded in the aforesaid Clerk's Office in Deed Book 888, at page 228; that the fourth note was recorded by deed of trust from S & L Enterprises, Incorporated to H. L. Kramer, Trustee, dated February 27, 1962, recorded in the aforesaid Clerk's Office in Deed Book 892, at page 345;

7.) That on November 23, 1962, Princess Anne Marine and Bulkheading Company, Incorporated recorded a memorandum of mechanics' lien against the property sold by your

petitioners, which memorandum was recorded in the aforesaid Clerk's Office in Deed Book 919, at page 229; that subsequent thereto, said Princess Anne Marine and Bulkheading Company, Incorporated instituted a suit to enforce said lien, which cause is presently pending in this Court, being Chancery Docket Number 3458;

8.) That on December 7, 1962, Atlantic Creosoting Company, Incorporated filed a memorandum of mechanics' lien against the property sold by your petitioners, which memorandum was recorded in the aforesaid Clerk's Office in Deed Book 920, at page 481; that said Atlantic Creosoting Company, Incorporated has been made a party to the chancery cause aforesaid;

9.) That as of the date of the filing of this petition herein, the aforesaid chancery cause has not been determined;

10.) That the following judgments have been recorded in the aforesaid Clerk's Office:

A. Epes-Fitzgerald Paper Company,
JLD 46, p. 67,
Docketed April 9, 1963,
$202.17 with interest from September 1, 1962,
plus $3.75 costs;

B. Winn Nursery, Inc.,
JLD 46, p. 48,
Docketed March 15, 1963,
$215.00 with interest from March 12, 1963,
#3734 plus $3.75 costs;
page 4 } C. J. W. Hurst and Son Awning Company, Inc.,
JLD 46, p. 13,
Docketed February 5, 1963,
$157.00 with interest from June 1, 1962,
plus $3.75 costs;

D. Jesse H. Daniel and Lacy O. Ridgeway, t/a
Colonial Bedding Company,
JLD 45, p. 279,
Docketed December 17, 1962,
$325.00 with interest from December 17, 1962,
plus $3.75 costs;

E. Cofer's, Incorporated,
JLD 45, p. 274,
Docketed December 11, 1962,
$516.81 with interest from December 11, 1962,
plus $77.52 attorney's fees and $3.75 costs;

F. Cofer's Incorporated,
JLD 45, page 274,

Docketed December 11, 1962,
$1,114.68 with interest from December 11, 1962,
plus $167.20 attorney's fees and $3.75 costs; and

G. Burton Lumber Corporation,
JLD 45, p. 259,
Docketed November 21, 1962,
$432.50 with interest from November 14, 1962,
plus $3.75 costs;

H. W. R. Williford, t/a Artic Services,
JLD 46, p. 123,
Docketed June 20, 1963,
$506.51 with interest from February 7, 1963,
plus $3.75 Costs;

I. Norfolk-Portsmouth Newspapers, Inc.,
JLD 46, p. 141,
Docketed July 15, 1963,
$81.84 with interest from January 8, 1963,
plus $3.75 costs;

that your petitioners are not aware of any credits which may be due on any of the aforesaid judgments;

11.) That S & L Enterprises, Incorporated is also indebted to Internal Revenue Service and Virginia Employment Commission in amounts undetermined by your petitioners;

12.) That taxes are due to the City of Norfolk on personal property which was sold by your petitioners as part of the security of the foreclosed loan; that taxes have not been paid on said personality for years 1962 and 1963;

13.) That Robert C. Gee instituted suit against S & L Enterprises in the Circuit Court of this City on June 14, 1963 claiming an equitable lien against the foreclosed property and recorded a *Lis Pendens;* your petitioners are not advised as to the status of said action;

#3734
page 5

14.) That there is a dispute between certain of the above parties, particularly, LaVerne Motko and Princess Anne Marine and Bulkheading Company, Incorporated, as to the order in which the funds in the hands of your petitioners; that your petitioners are unable to resolve the matters in controversy and *desere* to pay said money into Court for a judicial determination of the rights of the foregoing parties in and to the said money;

WHEREFORE, your petitioners pray that a Subpoena in Chancery issue against each of the Respondents named herein; that the Clerk of this Court be directed to accept the said funds from the petitioners and hold same as General Receiver

of the funds of this Court; that the Court determine the claims of the aforesaid Respondents and the order of priority of payment as between said Respondents; that your Petitioners may be allowed a reasonable fee for the preparation and filing of this Bill in Chancery; and, that they may have such further and general relief in the premises as may be required.

PHILIP L. RUSSO, Petitioner
SAMUEL I. WHITE, Petitioner

Filed in the Clerk's Office the 21 day of August, 1963.

Teste:

W. L. PRIEUR, JR., Clerk
W. G. STRALL, D.C.

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#3734
page 16 }

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ANSWER AND NOTICE

Your defendant, Princess Anne Marine and Bulkheading Company, Inc., in answer to the Bill of Complaint filed in the above-styled cause answers and says:

(1) That the allegations in paragraph One (1), Two (2), Three (3), Four (4) and Five (5), are believed to be correct.

(2) The allegation in paragraph Six (6) is expressly denied as follows: It is denied that LaVerne T. Motko is the holder in due course of the alleged notes and that she is in effect merely an unsecured creditor. That LaVerne T. Motko did not receive possession of the notes until after an unsuccessful foreclosure of the property by Russo and White, the Plaintiffs. That prior to the original foreclosure and receipt of the notes by her, if she actually has said notes, that she took over the operation, management and control of S & L Enterprises, Incorporated-Sea Mist Motel. That your defendant alleges that the stock was actually transferred to her or sold to her or assigned to her; said stock being the stock of S & L Enterprises, Incorporated, the owner of the Sea Mist Motel. That LaVerne T. Motko, in addition to

taking over the operation and ownership of the Sea Mist Motel, which was owned by S & L Enterprises, Incorporated, paid debts and incurred responsibilities with reference to the operation; and, that she is not and never has been a holder in due course of said notes. That she is the sister of one of the two stockholders in S & L Enterprises, Incorporated, and that unfortunately, as it may be, she has invested her money in a losing venture for her brother and she stands in the shoes of an unsecured creditor.

#3734
page 17

(3) That the allegations in paragraph Seven (7) and Eight (8) are admitted. Your defendant further states that Princess Anne Marine and Bulkheading Company, Inc. has a duly recorded Mechanic's Lien against the Sea Mist Motel, which lien transferred itself and became a first lien on the proceeds of the funds now deposited to the Court; and, that Atlantic Creosoting Company, Incorporated, an operator of Princess Anne Marine and Bulkheading Company, Inc., stands in the shoes and with the same rights as Princess Anne Marine and Bulkheading Company, Inc. That the sum due Princess Anne Marine and Bulkheading Company, Inc., which sum includes the funds owed Atlantic Creosoting Company, Incorporated, is TEN THOUSAND ONE HUNDRED FORTY-FOUR and 30/100 ($10,144.30) DOLLARS, plus interest, as alleged in the Mechanic's Lien duly recorded.

(4) The allegations in paragraph Nine (9) are denied as alleged, and state that while the report has not been written, that the evidence taken without dispute would sustain the lien of your petitioner and is binding on the Court in this cause.

(5) Your petitioner neither affirms nor denies the allegations in paragraph Ten (10) and calls for strict proof thereof.

(6) The allegations in paragraph Eleven (11), Twelve (12), Thirteen (13) and Fourteen (14), are not denied.

WHEREFORE, your defendant prays that its lien in the sum of TEN THOUSAND ONE HUNDRED FORTY-FOUR and 30/100 ($10,144.30) DOLLARS, be declared a first and valid lien against the proceeds indebted in this cause and that it may have such other and further relief as the nature of its case may require or to equity seen meet.

PRINCESS ANNE MARINE
AND BULKHEADING CO., INC.
By J. M. PICKRELL

Filed 9/4/63.

H. L. STRALL, D.C.

#3734
page 18 }

NOTICE

YOU ARE HEREBY NOTIFIED that the undersigned will on the 20th day of September, 1963, at 9:45 A.M., move the above Court to consolidate this Chancery cause Number 3734 with Chancery cause Number 3458 now pending in this Court and refer the same to Theodore Amalson, Commissioner in Chancery, to whom Chancery Number 3458 has heretofore been referred.

PRINCESS ANNE MARINE
AND BULKHEADING CO., INC.
By J. M. PICKRELL

KELLAM and KELLAM,
Attorneys
Board of Trade Bldg
Norfolk, Va.

Filed 9/4/63.

H. L. STRALL, D.C.

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#3734
page 19 }

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The answer of Laverne T. Motko to Bill in Chancery filed against her et als by Philip L. Russo and Samuel I. White, trustees, petitioners.

This respondent reserving to herself the benefit of all just exceptions to the said bill, for answer thereto, or to so much thereof as she is advised that it is material she should answer, answers and says:

This respondent is the holder of four notes signed by S & L Enterprises, Incorporated, amounting to $45,000 with interest on $40,800.00 from January 16, 1962, and on $4,200.00 from February 27, 1962, which are secured by two Deeds of Trust to Herbert L. Kramer, trustee, on the real and personal property sold by petitioners. These deeds are recorded in the clerk's office of the Corporation Court on January 16, 1962, and March 8, 1962, respectively. The only prior lien on the said property is that of the Durham Life Insurance Company

and this respondent is entitled to any excess thereof up to $45,000.00 plus interest as aforesaid.

1. This respondent neither denies nor admits the allegations in paragraph 1 of the Bill, and calls for strict proof thereof.

2. This respondent neither denies nor admits allegations in paragraph 2 of the Bill, and calls for strict proof thereof.

3. This respondent assumes that the allegations of paragraph 3 of the Bill are correct.

4. This respondent neither denies nor admits the allegations in paragraph 4 of the Bill, and calls for strict proof thereof, including curtails prior to foreclosure, principal balance, expenses and charges against the gross amount received from the sale of the property.

5. This respondent neither denies nor admits the allegations set out in paragraph 5 of the Bill.

6. (a) This respondent is the holder of three notes dated January 16, 1962, in the principal amounts of $10,200.00, payable June 30, 1962, $20,400.00, payable September 30, 1962, and $10,200.00, payable January 15, 1963, with interest from January 16, 1962, signed by S & L Enterprises, Incorporated and secured by Deed of Trust on real estate and chattels described therein to Herbert L. Kramer, trustee, for $40,800.00 dated January 16, 1962, recorded in the clerk's office of the corporation Court of the City of Norfolk in Deed Book 888 at page 228 on January 16, 1962.

#3734 page 20

(b) This respondent is also the holder of a note dated February 27, 1962, for principal amount of $4,200.00 with interest from February 27, 1962, signed by S & L Enterprises, Incorporated, and secured by Deed of Trust on real estate and chattels described therein to Herbert L. Kramer, trustee, dated February 27, 1962, and recorded in the clerk's office of the Corporation Court of Norfolk, Virginia, in Book 892 at page 345, on March 8, 1962.

Nothing has been paid on any of the said notes.

7. This respondent neither admits nor denies the allegations in paragraph 7 of the Bill, and calls for strict proof thereof.

8. This respondent neither admits nor denies the allegations in paragraph 8 of the Bill, but is informed and verily believes that the claim of the Atlantic Creosoting Company is a part of, and included in the claim of Princess Anne Marine & Bulkheading Company, Incorporated, referred to in paragraph 7 of the Bill.

9. This respondent is not advised of the status of the aforesaid Chancery Cause.

10. This respondent has no knowledge of the status of judgments against the S & L Enterprises, Incorporated, except as to item (F). This respondent purchased from Cofer's, Incorporated, its judgment for $1,114.68 with interest from December 11, 1962, plus $167.00 attorneys fees and $3.75 costs recorded in JLD 45, page 274, is the owner of said claim and assignee of the plaintiff therein.

11. This respondent neither denies nor admits the allegations in paragraph 11 of the Bill, and calls for strict proof thereof.

12. This respondent is not advised of the status of taxes allegedly due the City of Norfolk on personal property referred to in the Bill, but is informed that such personal property belonged to American Acceptance Corporation, of Philadelphia, Pennsylvania, from which it was leased by the S & L Enterprises, Incorporated, that S & L Enterprises, Incorporated, never held title to said chattels. Respondent denies that any taxes on personal property of the S & L Enterprises, Incorporated, should be paid from the proceeds of the sale herein referred to.

#3734
page 21

13. This respondent is not aware of the alleged claim of Robert C. Gee or any of the allegations in paragraph 13 of the Bill, and calls for strict proof thereof.

14. This respondent admits there is a dispute between her and Princess Anne Marine & Bulkheading Company, Incorporated, as to the order in which the funds in the hands of petitioners should be disbursed.

WHEREFORE, this respondent prays that the Court determine the claims of the respondents named in the Bill and the order of priority of payment thereof, and that she may have such further and general relief in the premises as may be justified.

LAVERNE T. MOTKO
By F. J. DEAN, JR.
Her Counsel

Filed 9/6/63.

H. L. STRALL, D.C.

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#3734
page 37 }

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REPORT AND PETITION

To the Honorable Judges of the Court aforesaid:

Philip L. Russo and Samuel I. White, Trustees, Petitioners herein, represent unto the Court:

1. That all of the respondents in this matter have been served in a manner provided by law; that it was necessary to serve S & L Enterprises, Inc. through the Clerk of the State Corporation Commission for which $5.75 was expended;

2. That since filing their original bill of complaint herein, your petitioners have received $58.30 from General Insurance Agency, Inc. which was for unused premium on a cancelled insurance policy; that your petitioners desire to pay said money into court along with the residue from the foreclosure sale of the property of S & L Enterprises, Inc.; the total amount which your petitioners now have on hand is $43,709.81;

3. That there is presently pending in this court the suit of Princess Anne Marine and Bulkheading Company, Incorporated, versus S & L Enterprises, Incorporated, chancery docket number 3458, which suit was brought for the purpose of subjecting the property of S & L Enterprises, Incorporated to the mechanic's liens of the complainant; that in said suit T. J. Amelson, a commissioner in chancery of this court, was designated to make certain inquiries; that it is the understanding of your petitioners herein that said matter is still pending before said commissioner in chancery who is thoroughly familiar with all of the facts arising out of the suit to enforce the mechanic's liens; that it is the opinion of your petitioners that this matter should be referred to said T. J. Amelson for the purpose of determining the priorities of the claims against the funds which your petitioners desire to turn over to the court;

4. Your petitioners respectfully request that out of said funds that they be allowed a reasonable fee for services rendered herein;

#3734
page 38 }

WHEREFORE, the petitioners herein pray that a decree be entered in this cause whereby the funds on hand may be paid into court; that this matter be referred to T. J. Amelson, commissioner in chancery, for the purpose

of determining the priorities of the claimants to said funds, whereby your petitioners may be allowed a reasonable fee for services rendered in this matter.

Respectfully submitted,
PHILIP L. RUSSO, Trustee
SAMUEL I. WHITE, Trustee

Filed 12/11/63.

H. L. STRALL, D.C.

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#3734
page 39 }

* * * * *

In the Court of Law and Chancery of the City of Norfolk, on the 20th Day of December, 1963.

* * * * *

DECREE

This cause came on this day to be heard upon the original petition; the answers of the respondents filed thereto; the supplemental report and petition of the petitioners; and was argued by counsel;

And it appearing to the court that the respondents have been duly served as provided by law; that the petitioners have received an additional sum of $58.30 since the filing of their original petition herein; that the total amount now held by the petitioners is $43,709.81 which they desire to submit to the jurisdiction of this court; that there is pending before this court a chancery cause of Princess Anne Marine and Bulkheading Company, Incorporated versus S. & L. Enterprises, Incorporated, chancery docket number 3458, which cause involved the property foreclosed by the petitioning trustees; that said cause was referred to T. J. Amelson, a commissioner in chancery of this court; that the said chancery cause remains undetermined and that it would be proper to refer to T. J. Amelson, commissioner in chancery, the matter of determination of the priority of the claimants to the funds heretofore mentioned;

And it further appearing to the court that the petitioners have rendered a valuable service to the respondent's herein and that it would be proper to allow the petitioners a reasonable fee;

#3734
page 40 } UPON CONSIDERATION WHEREOF, the court doth ADJUDGE, ORDER and DECREE:

1. That the petitioners herein be, and they hereby are, allowed a fee of $300.00 for services rendered in this matter;

2. That after deducting the aforesaid amount from the funds in their possession, that the petitioners pay unto W. L. Prieur, Jr., Clerk of this Court, the balance of $43,409.81, to be deposited by him to the credit of this cause, subject to further order of the court;

3. That the said Clerk shall issue to the petitioners his receipt for the amount received by him;

4. That this matter be referred to T. J. Amelson, commissioner in chancery, who shall forthwith proceed to make such inquiries into this matter as he shall deem necessary in the premises for the purpose of determining the priorities as between the various respondents to the funds hereby paid into court and to make such further inquiries as the court may direct;

And this matter is continued on the docket.

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#3734
page 44 }

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In the Court of Law and Chancery of the City of Norfolk on the 19th day of October, 1965.

* * * * *

ORDER

On motion of Counsel for Laverne T. Motko and agreed to by Counsel for Princess Anne Marine and Bulkheading Co., Inc., Atlantic Creosoting Co., Inc. and American Acceptance Corporation;

It is hereby Adjudged, Ordered and Decreed that the monies totaling $43,409.81 paid into the Court by the petitioners in this cause and subsequently deposited in the South-

ern Bank of Norfolk, A Corporation, be placed in a 3½% interest bearing account, compounded semi-annually, by the Clerk of this Court with the express understanding that the said monies may be withdrawn at any time pursuant to an order of this Court.

SEEN AND CONSENTED TO:
F. J. DEAN, JR.
Attorney for Laverne T. Motko

JAMES M. PICKRELL
Attorney for Princess Anne Marine
and Bulkheading Co., Inc.

WILLIAM T. PRINCE
Attorney for Atlantic Creosoting Company, Inc.

WALKLEY E. JOHNSON, JR.
Attorney for American Acceptance Corporation

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#3734
page 58 }

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REPORT OF COMMISSIONER IN CHANCERY

To The Honorable Judges of the aforesaid Court.

S & L Enterprises, Incorporated, hereinafter referred to as S & L, owned the property in the City of Norfolk, State of Virginia, known, numbered and designated as Lots 1, 1A, 2, 18A, 19 and 20, in Block 24, on the corrected Plat of Willoughby Beach Company, of record in the Clerk's Office of the Circuit Court of the City of Chesapeake (formerly Norfolk County) State of Virginia, in Map Book 5, pages 80 and 81, together with a parcel of land forty (40′) feet in width, adjoining lots 1A and 18A as aforesaid, which was formerly the eastern one-half (½) of Eleventh View Street, as shown on the aforementioned plat. The improvements on said lots are known as the Sea Mist Motel.

The property fronts on West Ocean View Avenue and extends back to a paper street known as Chesapeake Bay Avenue which abuts the Chesapeake Bay.

The Eastern Section of the United States, ad-

#3734 joining the Atlantic Ocean, was stricken by a vio-
page 59 } lent storm on March 7, 1962. This storm is commonly referred to as the "Ash Wednesday Storm," and the damage was great and the Sea Mist Motel property suffered considerable damage.

The sand and dirt between the bay front and the part of the Sea Mist Motel fronting thereon, was eroded and washed away by the tides. The evidence, which will be reported on in detail, disclosed that the back steps that lead to the upstairs were hanging in the air.

By an agreement dated August 27, 1962, Princess Anne Marine and Bulkheading Company, Incorporated, hereinafter referred to as Princess Anne, agreed with S & L to erect a three hundred seventeen (317′) foot bulkhead at the cost of $32.00 a linear foot. A copy of said agreement is attached to the Bill of Complaint filed by Princess Anne. The cost of this work was $10,144.00 as evidenced by sworn statement attached to said Bill of Complaint. The work commenced immediately and work was completed on September 26, 1962.

S & L failed to pay Princess Anne for erecting the bulkhead, and on November 23, 1962, Princess Anne filed a mechanic's lien against the Sea Mist Motel, claiming $10,144.00 with interest from September 26, 1962. Said lien was recorded in the Clerk's Office of the Corporation Court of the City of Norfolk, State of Virginia, in Deed Book 919, page 229.

Atlantic Creosoting Company, Incorporated, hereinafter referred to as Atlantic, was a sub-contractor on the bulkhead job, and on December 7, 1962, Atlantic filed a mechanic's lien against the Sea Mist Motel for $4,625.10 with interest from December 3, 1962. This lien is of record in the aforementioned Clerk's Office in Deed Book 920, page
#3734 481.
page 60 } At the time these mechanic's liens were filed, there was of record in the aforementioned Clerk's Office three (3) deeds of trust in order of priority as hereinafter set forth:

1. Deed of Trust dated August 21, 1961, and of record in Deed Book 875, page 484, from S & L Enterprises, Incorporated, to Philip L. Russo and Samuel I. White, Trustees, given to secure a loan of $146,000.00, made by Durham Life Insurance Company.

Included in the deed of trust was considerable personal property which S & L had no legal right to encumber.

2. Deed of Trust dated January 16, 1962, and recorded on

January 17, 1962, in Deed Book 888, page 228, from S & L Enterprises, Incorporated, to Herbert L. Kramer, Trustee, given to secure the payment of three (3) notes in the principal aggregate sum of $40,800.00.

3. Deed of Trust dated February 27, 1962, and recorded on March 8, 1962, of record in Deed Book 892, page 345, from S & L Enterprises, Incorporated, to Herbert L. Kramer, Trustee, given to secure the payment of a note in the principal sum of $4,200.00.

The notes secured by the second and third deed of trust were originally owned by Industrial Security Loan Corporation. Herbert L. Kramer, the Trustee, testified that J. Bruce Kitchen, an attorney from Cleveland, Ohio, purchased the notes from Industrial Security Loan Corporation for Mrs. Laverne T. Motko.

#3734 page 61 } On March 7, 1963, Princess Anne instituted suit to enforce its mechanic's lien, and named as defendants all parties having an interest excepting the owners of the notes secured by the second and third deed of trust. This omission is not material for reasons as hereinafter reported.

The first cause was referred to the undersigned Commissioner in Chancery by a Decretal Order entered on April 17, 1963.

Your Commissioner proceeded to execute the terms of the aforementioned Decretal Order and gave notice to all parties that he would proceed to hear evidence at his offices on May 20, 1963, at 10:00 A.M.

James M. Pickrell, Esquire, of Kellam and Kellam, appeared as Counsel for Princess Anne, and William T. Prince, Esquire, of Williams, Cocke, Worrell and Kelly, appeared as Counsel for Atlantic. William T. Shuey, President of S & L, appeared. The other named defendants did not appear.

Your Commissioner respectfully reports that the taking of evidence was completed at the time of the hearing in his office on May 20, 1963.

It appears that shortly thereafter, S & L defaulted under the terms of the Deed of Trust to Russo and White, Trustees, and the property was sold at public auction, at which time, either Shuey or Levidy were the highest bidders. This sale was not consummated and the Trustees preceeded to re-advertise the property in accordance with the terms of the Deed of Trust. The sale was held on June 13, 1963, at which time, Ken-Carl Corporation submitted a bid of $202,000.00. The Trustees, by their Deed dated July 20, 1963, and recorded in the Clerk's Office of the Corporation Court of the City of

Norfolk, Virginia, in Deed Book 944, at Page 435, conveyed the property to the successful purchaser. It is to be noted that a large portion of the personal property conveyed in the Deed of Trust as security for the loan by Durham Life Insurance Company, was not conveyed and/or sold by said Trustees.

#3734 page 62

Russo and White, Trustees under the first Deed of Trust, proceeded to pay off the claim of the creditor secured in their Deed of Trust. In the meantime, a number of judgments were duly recorded as hereinafter reported, and the claimants under the two mechanics liens above referred to, asserted a claim against the funds remaining in the custody and control of said Trustees, contending that the claim under their mechanics liens had priority over the claim of the note holder secured by the second and third deed of Trust.

Your Commissioner wishes to report that after the second suit abovementioned was instituted, additional judgments were secured against S & L Enterprises, Inc. These judgments are of record in the Clerk's Office of the Corporation Court of the City of Norfolk, Virginia, and are hereinafter listed in the order of their recordation:

1. Burton Lumber Corporation. $432.50 with interest from November 14, 1962, and $3.75 costs. Docketed November 21, 1962, Judgment Docket 45, Page 259.

2. Cofer's Incorporated. $1,114.68 with interest from December 11, 1962, $167.20 attorney's fee and $3.75 costs. Docketed December 11, 1962, Judgment Docket 45, Page 274.

3. Cofer's Incorporated. $516.81 with interest from December 11, 1962, $77.52 attorney's fee and $3.75 costs. Docketed December 11, 1962, Judgment Docket 45, Page 274.

4. Jesse H. Daniel and Lacy O. Ridgeway, T/A Colonial Bedding Company. $325.00 with interest from December 17, 1962, $3.75 costs. Docketed December 17, 1962, Judgment Docket 45, Page 279.

5. J. W. Hurst and Son Awning Company, Inc., $157.00 with interest from June 1, 1962 and $3.75 costs. Docketed February 5, 1963, Judgment Docket 46, Page 13.

6. The judgment of Winn Nursery, Inc., docketed March 15, 1963, and recorded in Judgment Docket 46, Page 48, has been released.

#3734 page 63

7. Epes-Fitzgerald Paper Company, $202.17 with interest from September 1, 1962, and $3.75 costs. Docketed April 9, 1963, Judgment Docket 46, Page 67.

8. W. R. Williford, T/A Artic Services, $506.51 with inter-

est from February 7, 1963, and $3.75 costs. Docketed June 20, 1963, Judgment Docket 46, Page 123.

9. Norfolk-Portsmouth Newspapers, Inc. $81.84 with interest from January 8, 1963, and $3.75 costs. Docketed July 15, 1963, Judgment Docket 46, Page 141.

10. Tax lien of the United States of America, for sum of $85.58 with interest from August 30, 1963. Docketed September 3, 1963, Judgment Docket 46, Page 186.

11. American Acceptance Corporation, for the sum of $6,035.04 with interest from October 14, 1963, $905.26 attorney's fees, and $120.70 accumulated interest, and $18.75 costs. Docketed October 15, 1963, Judgment Docket 46, Page 225.

12. Tax lien of the United States of America for sum of $53.93 with interest from December 13, 1963. Docketed December 14, 1963, Judgment Docket 46, Page 285.

13. Tax lien of the United States of America for sum of $307.42 with interest from January 15, 1964. Docketed in Judgment Docket 47, Page 8.

14. American Acceptance Corporation, for the sum of $29,620.50 with interest from February 25, 1964, $4,000.00 attorney's fee, and $19.50 costs. Docketed February 25, 1964. Judgment Docket 47, Page 42.

In addition to the foregoing judgments, Robert C. Gee filed a *lis pendens* on June 14, 1963, which is recorded in Deed Book 940, at Page 65, claiming that there was a parol agreement by S & L to convey the property known as Sea Mist Motel and other properties, to him. The suit was filed on the same date in the Circuit Court of the City of Norfolk, Virginia, Docket Number 8244-C, asking for specific performance. A Demurrer was filed on July 5, 1963, and as of this date, nothing further has been done in this suit.

The suit instituted by the Trustees was matured and thereafter the Trustees filed a report and Petition setting forth that $43,709.81 remained to be disbursed by them, and they asked that they be permitted to deposit said funds with the Clerk of this Court pending the adjudication of the rights of the several parties hereto. By a Decree entered on December 20, 1963, the complainants in said suit were awarded a fee of $300.00, and directed to deposit the sum of $43,409.81 with the Clerk of this Court to the credit of this suit, and this matter was referred to your Commissioner to determine the priorities of the several claimants to said funds.

#3734 page 64

Your Commissioner gave notice as required by law, that he would proceed to execute the terms of the last mentioned

Decretal Order by the taking of evidence at the offices of Kellam and Kellam, Board of Trade Building, Norfolk, Virginia, on March 6, 1964, at 10:00 A.M.

Pursuant to said notice James A. Pickrell, Esq., of Kellam and Kellam, appeared for Princess Anne Marine and Bulkheading Company; William T. Prince, Esq., of Williams, Cocke, Worrell and Kelly, appeared for Atlantic Creosoting Company; Sidney Siegel Esq., appeared for Epes-Fitzgerald Paper Company; Carroll Melton, Esq., an Assistant City Attorney, appeared for the City of Norfolk, Virginia; Herbert L. Kramer, Esq., appeared in his own behalf; Walkley E. Johnson, Jr., Esq., and Michael A. O'Brien, Esq., of Baird, Crenshaw and Ware, appeared for American Acceptance Corporation; J. W. Hurst represented his corporation; W. R. Wright, and C. W. Shell, of the U. S. Internal Revenue Service, appeared for the United States of America; Fred J. Dean, Jr., Esq., of Dean and Perry, appeared for LaVerne T. Motko, and J. Bruce Kitchen, Esq., of Cleveland, Ohio, an attorney, also represented the interest of Laverne T. Motko, by testifying but did not participate in the examination of witnesses.

The taking of evidence was not completed and the hearing was continued until March 30, 1964, at 10:00 A.M., at which time, the taking of testimony was completed.

#3734
page 65 } At this hearing, James A. Pickrell, Esq., William T. Prince, Esq., Walkley E. Johnson, Jr., Esq., and Fred J. Dean, Jr., Esq., appeared. Alexander Smith, Esq., appeared for Colonial Bedding Company.

Upon the completion of the taking of evidence, your Commissioner suggested to counsel that they prepare memorandums of authority to justify their claims in the funds deposited in this suit. Considerable time elapsed before your Commissioner received a transcript of the evidence, and the memorandums of authority prepared by counsel for Princess Anne Marine and Bulkheading Company, Atlantic Creosoting Company, Inc., American Acceptance Corporation, and LaVerne T. Motko. In the meantime, your Commissioner was not too well, all of which contributed to the delay in filing the report.

The funds deposited with the Clerk of this Court had been deposited in a general account, and by a Decree entered on October 19, 1965, the sum of $43,409.81, was transferred to a savings account so as to bear interest pending the Court's decision in this matter.

Your Commissioner had practically completed his report when his office was completely destroyed by fire, and as a result of said fire, all of the suitpapers, the transcript of evidence and the exhibits were completely destroyed. It became necessary to reconstruct the files in these suits, and that by a Decree entered on March 9, 1966, copies of all the Pleadings and Decrees were Ordered to be filed, with the direction that they be deemed to be the original papers in these
#3734 suits.

page 66 } PARTIES TO SUIT

Philip L. Russo and Samuel I. White, Trustees, Durham Life Insurance Company, and Herbert L. Kramer, Trustee, were named as defendants in the suit instituted by Princess Anne Marine and Bulkheading Company, Inc.; LaVerne T. Motko, the holder of the notes, the payment of which were secured by the Kramer Deeds of Trust, was not named as a party defendant.

In the suit instituted by Russo and White as Trustees, Durham Life Insurance Company and Herbert L. Kramer, Trustee, were not named as defendants. At this time, the first Deed of Trust had been foreclosed and Durham Life Insurance Company had been paid. The foreclosure eliminated any interest that Herbert L. Kramer, as Trustee, may have had, and LaVerne T. Motko was made a party to this suit.

The Bill of Complaint filed in the suit by Russo and White, lists two judgments secured against S & L, the first by W. R. Williford, T/A Artic Services, and the second by Norfolk-Portsmouth Newspapers, Inc. (See Items 8 and 9 on Page 6, of this report), but for some unexplained reason these judgment creditors were not named as defendants in said suit. It is probable that the wording in the judgment docket may have misled counsel for the complainants as there was a recital that the judgment was secured for work done on property other than the Sea Mist. Dean and Perry, who appeared as counsel for Mrs. Motko, secured the judgment in behalf of Norfolk-Portsmouth Newspapers, Inc.

The claim of priority against the moneys on deposit is one that applies to all of the judgment creditors, so
#3734 that this is in fact a "class suit."

page 67 } Your Commissioner is of the opinion that the failure to name these judgment creditors as defendants, is not material to the determination of the issues of this suit. Your Commissioner will mail a copy of this re-

port to Mr. Williford so that he may be fully advised, and if he desires to retain counsel, he can do so prior to the entry of any further Decrees by this Court.

American Acceptance Corporation secured its judgments against S & L after the second suit was instituted. Their counsel appeared and took an active part in the proceedings before your Commissioner on March 6, 1964, and March 30, 1964, and has filed a memorandum to sustantiate its claim on the funds on deposit to the credit of this suit. At the time that the suit papers were "reconstructed," this omission was discovered, and by a Decree entered on March 10, 1966, American Acceptance Corporation was made a party defendant to this suit. Your Commissioner is of the opinion that the delay in making American Acceptance Corporation a party defendant is not material, and for the purpose of the record, all of the *activies* of its counsel should be considered a part of the record of this suit.

As heretofore mentioned, the suit instituted by Princess Anne, was for the purpose of enforcing its mechanics lien against the Sea Mist, and the Russo and White suit, was for the guidance of the Court to direct the payment to the claimants of the funds remaining after the debt due Durham Life Insurance Company had been satisfied by virtue of the foreclosure of the Deed of Trust by Russo and White, Trustees. Even though the mechanics lienors were made party defendants in the Russo and White suit, the Court has to dispose of the Princess Anne suit. The Decree of Reference apparently did not consolidate both suits, but this has been done by the Decree of this Court entered on March 9, 1966.

#3734

page 68 } *LIS PENDENS* OF ROBERT C. GEE

Your Commissioner has heretofore reported on Page 6, of this report, that Robert C. Gee had instituted a suit for specific performance, and in connection therewith, had filed a *lis pendens*.

The suit and *lis pendens* were filed on June 14, 1963, one day after Russo and White, Trustees, had sold the Sea Mist property at public auction. At the time Gee's suit was filed, S & L had no further interest in the Sea Mist. As a matter of fact, the suit papers indicate that specific performance was asked to enforce an oral agreement. S & L filed a Demurrer, which has not been acted on. It is quite apparent from reading the pleadings in this suit, that such an agree-

ment as he alleged, could not be enforced as being in violation of Section 11-2, Code of Virginia, 1950, commonly known as the "Statute of Frauds." Furthermore, it appears that this suit has been abandoned.

Your Commissioner therefor respectfully reports that Robert C. Gee does not have a claim that can be enforced against the funds on deposit to the credit of this suit.

CLAIMS OF PRIORITY

Your Commissioner respectfully reports that there are four groups of creditors who are asserting a claim to the funds on deposit.

The first group consists of tax claimants, namely, the Commonwealth of Virginia, the City of Norfolk, Virginia, and the United States Internal Revenue Service.

The second group consists of the two mechanics lienors.

The third group consists of the judgment creditors of S & L.

The fourth is LaVerne T. Motko, the holder of
#3734 the notes secured by the Kramer Deeds of Trust.

page 69 }

TAX CLAIMS

(a) Liens of United States of America.

The three liens of the United States are for taxes due and owing by S & L, the owner of the foreclosed property. As heretofore reported, said liens are recorded in the Judgment Dockets of the Corporation Court of the City of Norfolk, Virginia, and properly indexed, all of which is provided for by Section 55-139, Code of Virginia, which applies to recording of federal tax liens.

Whether or not the liens of the United States have priority is governed by Sections 6321, and 6323 of the Internal Revenue Code, 1954, Public Law 591, 26 U.S.C. Said laws were approved August 16, 1954, and still the law without modification.

Section 6321, supra, in essence declares that taxes due the United States shall be a lien in favor of the United States against all the property of the person owing such tax or taxes.

However, this section has been modified by Section 6323 supra, which sets forth the validity of such preference in favor of the United States against mortgagees, pledgees, purchasers and judgment creditors, as follows:

(a) Invalidity of lien without notice.—except as otherwise

provided in subsection (c), the lien imposed by Section 6321 shall not be valid as against any mortgagee, pledgee, purchaser or judgment creditor until notice thereof has been filed by the Secretary or his delegate—

(1) Under State or Territorial Laws.—In the office designated by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law designated an office within the State or Territory for the filing of such notice; or

Subsection (c) above referred to as an exception
#3734 involves the Case of Securities.
page 70 } The Supreme Court of Appeals of Virginia in *United States of America* v. *E. E. Lawler, et al,* 201 Va. 686, in an opinion written by Mr. Justice Lawrence W. I'Anson, discussed the question concerning the priority of claims of the United States of America. After having given careful consideration to the recording acts and the federal statutes concerning priorities and the opinion of Mr. Justice I'Anson, your Commissioner is of the opinion that the United States of America does not have a priority in its claim for taxes against the funds which are the subject matter of this suit.

(b) Lien of Commonwealth of Virginia.

The Virginia Employment Commission, an instrumentality of the Commonwealth of Virginia, has filed a claim for payroll taxes which commenced as of October 1, 1962.

Said Commission claims a priority by virtue of Section 60-80 Code of Virginia, which applies to a distribution of assets of an employer.

The Circuit Court of the City of Norfolk, Virginia, and the Court of Law and Chancery of the City of Roanoke, Virginia, have held that the Commission has a prior claim on any tax to accrue as of the date when the taxes commence to accrue. In this case, even though the claim has not been recorded, the Commission has a priority as against any liens that may have been recorded after October 1, 1962.

It is to be noted that the two Deeds of Trust to Kramer, Trustee, were recorded prior to October 1, 1962, and that all the judgments heretofore reported were docketed after October 1, 1962, and the same applies to the two mechanics liens hereinbefore reported.

If the Court holds that the claim of Mrs. Motko
#3734 is superior, then and in that event, the Commis-
page 71 } s'on's claim would be subordinate, but if the Court

holds that the Kramer Trusts should be released, then and in that event, the claim of the Virginia Employment Commission has priority over the claims of the judgment and mechanics liens creditors.

However, if the Court holds that the two mechanics liens creditors are entitled to receive payment out of the monies on deposit to the credit of this suit in satisfaction of their liens heretofore mentioned and that any monies remaining be paid to Mrs. Motko to be applied on account of the notes held by her, then and in that event the claim of Virginia Employment Commission should be paid out of and charged against the amounts payable to the mechanics liens creditors.

(c) City of Norfolk, Virginia.

The City of Norfolk asserts that it has a prior claim against the funds on deposit in this suit, to satisfy its claim for delinquent license taxes and taxes levied on the personal property used at the Sea Mist and other properties owned by S & L.

Your Commissioner has been unable to find a statutory provision which entitles the City of Norfolk to a priority for the payment of license and personal property taxes from the monies on deposit. Under the circumstances of the present case, the City of Norfolk is a general creditor of S & L as its claim has not been reduced to judgment.

Your Commissioner respectfully reports that it is his opinion that the City of Norfolk does not have a claim against the funds on deposit to the credit of this suit.

#3734

page 72 }

MECHANICS LIENS

(a) Statutory Requirements.

Your Commissioner has reported on the contract for the erection of the bulkhead, the filing of mechanics liens and the institution of the suit to enforce the mechanics liens (See Page 2.)

The evidence is uncontradicted that the mechanics lien of Princess Anne was filed within sixty days of completion of the bulkhead and that the suit to enforce its mechanics lien was filed within six months of completion of work. This was in full compliance with Sections 43-4 and 43-17, Code of Virginia, 1950.

It appears that Atlantic, a sub-contractor, did not give notice to S & L that it was filing a mechanics lien, and it is apparent that its lien was not filed within the time provided by statute.

However, these omissions are immaterial as the interest of Atlantic is protected by the provisions of Section 43-18, Code of Virginia, which provides that the perfected lien of a general contractor shall inure to the benefit of any sub-contractor.

In view of the foregoing, your Commissioner respectfully reports that Princess Anne has legally perfected its mechanics lien, that its suit was instituted within the time provided by statute and by reason thereof Atlantic is entitled to receive all the benefits thereof, in the same manner as if it has filed its lien in time and otherwise complied with the several requirements Title 43, Chapter 1, Code of Virginia, 1950.

#3734

page 73 } STATEMENT OF FACTS

George Susewind and M. J. Owens, President and General Manager respectively of Princess Anne, testified with regards to the negotiations for and effect of work for erecting the bulkhead.

Mr. Owens testified that he was consulted by Ernest Levidy, one of the principals of S & L. Mr. Levidy advised that he was concerned because he was losing tenants who were afraid that a high tide or another storm would damage the building. In brief, Mr. Owens testified that the sand had been washed away from under the back of the building; that the back steps to the upstairs were hanging in the air and that at the time the normal tide was coming almost to the building. The foundation of the building was exposed and a bulkhead was necessary for the protection of the building. From the evidence of Mr. Owens and Mr. Susewind, it appears that all interested parties were of the opinion that a very strong tide or another storm would have done considerable damage to the building.

Some time had elapsed between the Ash Wednesday storm and the time that work on the bulkhead commenced and it appears that the City of Norfolk did some dredging to fill in the holes, but the threat of another high tide or a storm remained.

On cross examination William Shuey, the other principal in S & L, in reply to a question concerning the necessity of the bulkhead admitted that another storm "would carry the building out." Upon being asked "out where," he replied "out into the Bay, I imagine." (Page 104 of transcript of evidence.)

#3734

page 74 } On direct examination Mr. Susewind stated that the property was worth around $200,000.00 without bulkheading. He went on further and stated that the property would be "unsaleable" without the bulkheading. He further stated that by reason of bulkheading he thought that the property would increase in value by 50%. Taking this into consideration, the only inference that can be drawn from this evidence is that Mr. Susewind estimated the value of the property to be $300,000.00 after the bulkheading was completed. His evidence was not contradicted by a competent witness.

Your Commissioner realizes that Mr. Susewind is not a real estate appraiser, but from the nature of his business, he is well qualified to testify as to the effect of bulkheading on the value of property exposed to Chesapeake Bay or other waterways.

Your Commissioner examined the records in the Clerk's Office of the Corporation Court of the City of Norfolk, Virginia to check the deed of bargain and sale from Russo and White, Trustees to Ken-Car Corporation and found that simultaneously with the recordation of said deed the new owners gave a deed of trust to secure a loan of $146,000.00 made by Durham Life Insurance Company.

In checking the land books it appears that in 1962 the Sea Mist was assessed by the City of Norfolk for tax purposes at $131,440.00; $2,840.00 for land and $128,600.00 for improvements. In 1963, the assessments was raised to $145,220.00; $4,220.00 for land and $141,000.00 for the
#3734 improvements. It is to be noted that the assessment
page 75 } on the improvements was raised by $12,400.00. This increase went into effect as of January 1, 1963 and prior to the sale at foreclosure.

That portion of the Sea Mist Motel exposed to the Chesapeake Bay was unprotected against water damage as is evidenced by the effect of the Ash Wednesday storm. Levidy and Shuey were concerned with the probability of additional damage to the premises and it was for this reason that they contracted with Princess Anne to erect a bulkhead on the premises. The bulkhead was not for the purpose of repairing damages to the previously existing building, but is in fact a new structure erected on the premises for the express purpose of protecting the motel building against future damage arising out of an excessive high tide or a storm.

Your Commissioner is of the opinion that the bulkhead is a new structure and the law concerning new structures should be applied in adjudicating the claim of Princess Anne and its sub-contractor, Atlantic Creosoting.

EFFECT OF SECTION 43-21 CODE OF VIRGINIA

The mechanic's lien is purely a creature of statute. *Cain* v. *Lea,* 159, Va. 446, 166 S.E. 478; *Wallace* v. *Brumback,* 177 Va. 36, 12 S.E. (2d) 801.

Your Commissioner is of the opinion that whether or not the mechanics' liens of Princess Anne and Atlantic have priority over the liens of the two Kramer deeds of trust, (if the Court should hold that the Kramer deeds of trust have not been released), and the other liens heretofore reported are dependent on the provisions of Section 43-21 Code of Virginia, 1950 which is set forth as fol-
#3734 lows:

page 76 } No lien or encumbrance upon the land created before the work was commenced or materials furnished shall operate upon the building or structure erected thereon, or materials furnished for and used in the same, until the lien in favor of the person doing the work or furnishing the materials shall have been satisfied; nor shall any lien or encumbrance upon the land created after the work was commenced or materials furnished operate on the land, or such building or structure, until the lien in favor of the person doing the work or furnishing the materials shall have been satisfied. In the enforcement of the liens acquired under the previous sections of this chapter, any lien or encumbrance created on the land before the work was commenced or materials furnished shall be preferred in the distribution of the proceeds of sale only to the extent of the value of the land estimated, exclusive of the buildings or structures, at the time of sale, and the residue of the proceeds of sale shall be applied to the satisfaction of the liens provided for in the previous sections of this chapter. Provided that liens filed for performing labor or furnishing materials for the repair or improvement of any building or structure shall be subject to any encumbrance against such land and building or structure of record prior to the commencement of the improvements or repairs or the furnishing of materials or supplies therefor. Nothing contained in the foregoing proviso shall apply to liens that may be filed for the construction or removal of any building or structure.

The foregoing Section specifically sets forth that mechanics' liens for repair and material used for the repair or improve-

ment of any building shall be subject to liens duly of record prior to the commencement of work or the furnishing of material.

However, the foregoing Section also provides that any lien or encumbrance created on the land before the work was commenced or materials furnished shall be preferred in the distribution of the proceeds of sale only to the extent of the value of the land estimated, exclusive of the buildings or structures, at the time of sale, and the residue of the proceeds of sale shall be applied to the satisfaction of the liens created pursuant to the mechanics' liens statutes.

#3734
page 77 } Counsel for Mrs. Motko contends that the bulkhead erected by Princess Anne and Atlantic is for repairs and improvements and has cited the case of *Fidelity Land & Trust Co.* vs. *Dennis, et als* 93 Va. 507, 25 S.E. 546, as authority for their position. However, the facts in the aforementioned case and the case at bar are dissimilar.

As heretofore reported, your Commissioner has expressed the opinion that the bulkhead was a new structure erected on the premises and your Commissioner is of the further opinion that this construction does not fall under the restriction of the foregoing Code provision which provides that liens for performing labor or furnishing materials for the repair or improvement shall be subject to any encumbrance against *such land and buildings or structure* of record prior to the commencement of the improvements or repairs or the furnishing of materials or supplies therefor.

Your Commissioner is of the opinion that the mechanics' liens have priority over the liens created by the two Kramer deeds of trust as well as the judgment heretofore reported, provided the bulkhead had the effect of increasing the value of the property and then only to the extent of the increase, excluding any consideration of land values. The latter exclusion is specifically set out in Section 43-21, Code of Virginia.

EFFECT OF NEW BULKHEAD ON VALUATION OF PROPERTY

Counsel for Mrs. Motko contended that the best evidence of the valuation of the property is the amount paid by the new purchaser, who acquired title from Russo and White, Trustees, who sold the property under the terms of the first deed of trust.

#3734
page 78 } Your Commissioner is of the opinion from past

experience that the highest bid at a foreclosure sale is not the true criteria for arriving at a fair valuation of property, particularly in cases where the property sells for a large sum of money. The number of bidders who are financially able to buy property similar to the Sea Mist are limited and the competition has a tendency to decrease. Unless the parties in interest have the necessary financial resources and are present to bid to protect their interest, it is common knowledge that many a valuable property has been sold at public auction for a price far below its true value, and it appears to your Commissioner that this is what occurred at the foreclosure sale conducted by Russo and White, Trustees.

As heretofore reported, Mr. Susewind testified that in his opinion, the new bulkhead increased the value of the property by 50% and made the property more saleable. His testimony stands uncontradicted and your Commissioner was impressed with his testimony.

Your Commissioner, therefore, respectfully reports that in his opinion the value of the property exclusive of the land was increased by an amount in excess of the claims of the mechanics' lienors and that the mechanics' lienors are entitled to be preferred over the creditor secured by the Kramar deeds of trust and the judgment creditors as hereinbefore reported.

#3734
page 79 } Your Commissioner received notice on or a day or so after November 3, 1964 from Princess Anne by counsel, whereby Princess Anne assigned to the Bank of Virginia Beach the sum of $3,321.60 to be paid out of funds paid on its mechanic's lien, but the assignment was made subject to the Atlantic Creosoting mechanic's lien and fee due Kellam and Kellam, Attorneys.

On January 6, 1965 Atlantic secured a judgment against Princess Anne in the Circuit Court of Virginia Beach for $9,044.42 which included the funds due Atlantic on their aforementioned mechanic's lien.

Your Commissioner respectfully reports that all notices received by him have been destroyed by fire, but copies were made available to him and are being filed with this report.

Atlantic Creosoting is a sub-contractor and as such their mechanic's lien is to be paid first. Of the funds remaining, Kellam and Kellam, Attorneys for Princess Anne are entitled to payment and thereafter the amount due and payable First and Merchants National Bank, successor to the Bank of Virginia Beach, is entitled to be paid. Any funds re-

maining are to be applied on the judgment if there are sufficient funds to satisfy all of the above mentioned claims, any monies remaining are to be paid Princess Anne.

William T. Prince, Esq., of counsel for Atlantic Creosoting, advised your Commissioner by a letter dated March 4, 1965 that he could not refute the claims of the Bank and Kellam and Kellam and that by reason thereof the recommendation of your Commissioner is not questioned by him as
#3734 counsel for Atlantic Creosoting.

page 80 } CLAIM OF LAVERNE MOTKO

Under the usual prevailing conditions in an average foreclosure, LaVerne Motko as the alleged owner of the notes secured by the two Kramar deeds of trust, would be entitled to receive the remaining funds on deposit to the credit of this suit.

However, the circumstances prevailing in this suit are not ordinary. Shortly after the foreclosure by Russo & White, Trustees, William T. Shuey was adjudicated a bankrupt and in the course of the bankruptcy proceedings there was introduced an agreement entitled "Contract of Sale, Release and Pledge Agreement" between William Shuey, Jr. and LaVerne Motko. A copy of this agreement is being filed with this report.

The evidence indicates that the William Shuey, Jr. who signed this agreement is the same person as William T. Shuey referred to in this report.

Counsel for American Acceptance Corporation contend that by virtue of the terms of said agreement, the Kramer deeds of trust should be released, in which event any monies remaining would be paid to the judgment creditors of S & L in the order of their priority.

Counsel for Mrs. Motko claim that she is the holder and owner of said notes and that the said deeds of trust should not be released and by reason thereof her claim is superior to the claims of the judgment creditors as well as the mechanics lienors.

William T. Shuey and LaVerne Motko are brother and sister. The evidence discloses that Mrs. Motko endorsed a number of notes for Shuey, Levidy and S & L and that in addition to her endorsements, pledged valuable stock as collateral for the payment of loans to Shuey, Le-
#3734 vidy and S & L.
page 81 } The evidence further discloses that Mrs. Motko has paid out a sum in excess of $122,000 because

of her endorsements and pledge of collateral and that the only monies that she will be in a position to salvage will be the balance of the funds remaining on deposit to the credit of this suit, provided the court holds that she is entitled to a priority over the judgment creditors.

Industrial Security Corporation had made a number of loans to the interested parties and that in March of 1963 the balance due them was $92,576.46. A part of this indebtedness was paid on March 7, 1963. Thereafter another payment was made and the final payment was made on May 22, 1963. (Testimony of Herbert L. Kramer, March 6, 1964, Page 52 of transcript). Mr. Kramer further testified that thereafter he delivered the notes and the deeds of trust to Mr. Dean. In order to make these payments considerable stock had to be sold and this may have accounted for some of the delay.

Mr. Kramer was questioned concerning an agreement for the transfer of the S & L stock to Mrs. Motko and your Commissioner wishes to bring to the attention of the Court the testimony of Mr. Kramer which appears on pages 62 and 63 of the transcript above referred to and for the purpose of the record, the statement made by Mr. Kramer to a question by Mr. Pickrell is set forth as follows:

Q. It fell through after they made the payment.

A. No. Very definitely when Mr. Kitchen made the purchase for Mrs. Motko, Shuey was griping and concerned because the transaction with Mr. Dean and Mrs. Motko had fallen through to his detriment. They bought the stock, they bought the notes from us after it had fallen through and he was upset that it had fallen through. Very definitely that. Mr. Kitchen, when he made his arrangement with me, was doing so after their arrangement had fallen through between him and Shuey, and Shuey was upset that it had.

#3734
page 82

Q. Don't you know as a fact that after the payments were made on behalf of Mrs. Motko that Mrs. Motko's interests operated the S & L Enterprises?

Mr. Dean: That is not true.

The Witness: I don't know anything about that.

Mr. Pickrell: I have no further questions.

J. Bruce Kitchen, Esquire of Cleveland, Ohio and F. J. Dear, Jr. of Norfolk, Virginia represented Mrs. Motko in trying to work out an agreement to protect the interests of

Mrs. Motko in her negotiations with her brother. Both of them testified, Mr. Dean by agreement with the counsel who were present at the hearing.

Both Mr. Kitchen and Mr. Dean denied that the contract between Mrs. Motko and Shuey ever became effective and that Mr. Shuey must have taken the signed contract from either of them without their knowledge. They both testified that Mrs. Motko had signed the agreement, but that the contract was not to be put into effect until such time as the conditions hereinafter reported on were fully complied with.

Mrs. Motko's signature was acknowledged on April 23, 1963 and yet the blank for the date in said contract was filled in with the date of May 3, 1963. Mr. Shuey's signature was acknowledged on May 3, 1963 by Mr. Dean's secretary. Mr. Dean suggested that Shuey took the contract without his knowledge and had Mrs. Perry, the Notary in Mr. Dean's office, acknowledge same. It was indicated that the first knowledge of Mr. Shuey's possession was revealed by testimony of Shuey in the Bankruptcy Court. There is a direct conflict of evidence as to how Shuey came into possession of the Contract of Sale, Release and Pledge Agreement.

#3734
page 83

Mr. Shuey contradicted himself as to how he came into possession of the agreement, but it is apparent to your Commissioner that Mr. Kitchen did not mail him a copy and the explanation of Mr. Dean, in which it was stated that he, Mr. Dean, refused to deliver the contract until Mr. Shuey had arranged the financing (see page 130 of record) clearly indicates to your Commissioner that Shuey took the agreement from Mr. Dean's desk without the knowledge of Mr. Dean.

Shuey by the very terms of the so-called agreement was bound by certain terms and conditions which are hereinafter set forth:

NOW, THEREFORE, in consideration of William T. Shuey securing a loan, which loan and all its terms and conditions must be acceptable to the aforesaid LaVerne T. Motko, in the name of S & L Enterprises, Inc. in sufficient amount to pay in full the debt owed by the S & L Enterprises to the Princess Anne Marine and Bulkheading Co.; to pay all delinquent real estate taxes assessed against the Sea Mist Motel; to pay all delinquent mortgage payments owed to the Durham Life Insurance Co., including monies advanced by the aforesaid life insurance company to pay fire insurance premiums on the aforesaid motel.

As a matter of fact, Shuey knew or should have known that he could not fulfill his part of the proposed agreement.

Your Commissioner is filing with this report a copy of letter addressed to Mr. Shuey for S & L Enterprises, Incorporated from Durham Life Insurance Company, dated April 11, 1963, calling to his attention that on April 15, 1963, three monthly payments will be due and past due together with fire insurance premiums advanced, in the aggregate sum of $4,703.49 with an admonition that unless the payments were made on or before April 23, 1963 the Trustee under the Durham Life deed of trust would be requested to foreclose the property.

#3734
page 84 } The least that can be said of Shuey is that he was guilty of gross deception. On May 3, 1963, he knew that foreclosure was imminent and it was quite apparent that there was nothing that he could do to stop it.

Shuey was in financial straits and faced with many problems arising out of the affairs of S & L Enterprises Incorporated, not only from the operation of the Sea Mist Motel, but from other properties as well and it is the opinion of your Commissioner that he was doing everything possible to save himself from financial ruin which occurred as evidenced by his adjudication as a bankrupt. It is further apparent that Mrs. Motko through her counsel in Cleveland and in Norfolk was making every effort to salvage as much as she could as the result of her having endorsed notes for Shuey and S & L and pledging of valuable securities therefor.

In the course of his testimony, Shuey was evasive and yet, he made a number of statements which to your Commissioner appears to resolve the issue that the Kramer trusts were to be released.

On direct examination by Mr. Pickrell, Mr. Shuey was questioned regarding the contract and the following appears on page 96 of the record:

Q. Is this agreement the agreement and understanding you had with your sister?

A. This agreement that I entered into with my sister, Mr. Pickrell, is to put her in the place, the same position Mr. Caplan was in, as the holder of the second deed of trust.

The Mr. Caplan referred to is Armond Caplan, President of Industrial Security Loan Corporation, Mr. Kra-

#3734 mer's client. (See page 24 of this report)

page 85 } In referring to the second mortgage, Mr. Shuey must have intended the second and third lien or the Kramer trusts.

On cross examination by Mr. Dean, Shuey was asked if he had done the things that he was "supposed" to do under the terms of the so-called contract to which he replied as follows:

The requirements as far as to pay up this and paying up that, no I did not take care of any of those. (Page 101 of record)

Your Commissioner deems it advisable to report on the credibility of the witnesses because of the apparent conflict of evidence.

Shuey and Levidy were evasive in their testimony and your Commissioner was not impressed by the explanation of Shuey with reference to the contract and the manner in which it came into his possession. Upon reading his testimony it appears that he had to be pressed to be forthright in his answer.

Mr. J. Bruce Kitchen, a member of the Ohio Bar, impressed your Commissioner with his testimony.

Messrs. Dean and Kramer are members of the Virginia Bar and are well known to your Commissioner. Your Commissioner was a member of the Virginia Bar when both of them came to practice their profession in the City of Norfolk. These gentlemen have an excellent reputation for their honesty and integrity and are respected for the manner in which they have conducted themselves at the Bar.

Your Commissioner is of the opinion that the testimony of the attorneys who testified are worthy of belief.

In addition to the questions of fact which are to be resolved in this suit there is a question of law which your Commissioner wishes to bring to the attention of the Court.

#3734
page 86 } It is to be noted that the so-called contract was signed by William T. Shuey, individually and as President and Director of S & L Enterprises Incorporated. However, S & L Enterprises Incorporated was not a party to the agreement and by reason thereof the setting forth of his position with S & L Enterprises Incorporated is surplasage.

Counsel for American Acceptance Corporation have insisted that the judgment creditors are to benefit by the so-called agreement by asking the Court to hold that the Kramer trusts be released, in which event the judgment creditors of

S & L Enterprises Incorporated would be paid in the order of their priority to the extent that the funds on deposit will go.

In other words, American Acceptance Corporation is asking the Court to interpret the so-called contract as to having been executed for the benefit of the creditors of S & L Enterprises Incorporation when as a matter of fact all the evidence indicates that the purpose of the so-called contract was to relieve Shuey of his personal liability on the obligations, the payment of which was secured by the endorsement of and the supplying of collateral by Mrs. Motko.

Your Commissioner is of the opinion that it was not the intention of Mrs. Motko to release the deeds of trust, nor was it her intention to give up valuable securities, the notes secured by the two Kramer trusts, for the purpose of paying the creditors of S & L Enterprises Incorporated.

It is probable that if Shuey had been successful in refinancing the Sea Mist property, that in time the creditors of S & L would have been paid.

#3734
page 87 } Nevertheless, the facts clearly indicate that the affairs of S & L were hopelessly involved and this explains the reason why certain duties were imposed on Mr. Shuey and the reason that Mr. Dean refused to deliver the signed Contract of Sale, Release and Pledge Agreement until such time that Mr. Shuey had arranged the financing approved by Mrs. Motko for the payment of the obligations referred to in said Contract.

Your Commissioner therefore respectfully reports, that first; that the so-called contract was not delivered to Shuey; second; that assuming that the contract had been delivered, that Shuey had not fulfilled his obligations thereunder, and third; that the intent of the contract was to benefit only Shuey and Motko and was not intended to obligate Mrs. Motko to release the Kramer trusts so as to benefit the judgment creditors of S & L Enterprises Incorporated.

RESUME OF RECOMMENDATIONS

As heretofore reported, your Commissioner is of the opinion that the City of Norfolk and the United States of America are not entitled to a preference; that the mechanics lien of Princess Anne which is for its own benefit as general contractor and Atlantic are entitled to a preferential payment out of the funds on deposit and that out of said funds, the lien of the Commonwealth of Virginia is to be paid as

hereinbefore reported; and that any monies remaining are to be paid on account of the notes held by Mrs. Motko, the payment of which was secured by the two Kramer trusts.

The notes held by Mrs. Motko will not be paid in full as the evidence discloses that the principal amount together with interest and attorney's fees far exceed the balance due thereon.

#3734
page 88 } Princess Anne had to bring its suit to enforce its mechanics lien or lose the benefit of their lien. Russo and White as Trustees were justified in instituting their suit for the purpose of having the Court to adjudicate the rights of the parties claiming the funds in their possession after having paid the costs of foreclosure and the indebtedness due Durham Life Insurance Company.

For the reasons as stated, the costs of these suits which have been consolidated, are chargeable against the funds on deposit to the credit of this suit.

OTHER MATTERS

After the completion of the taking of testimony, your Commissioner was requested by Mr. Dean to reopen the matter so that Mrs. Motko could testify in her behalf. Your Commissioner advised Mr. Dean that this request should be presented to the Court. Your Commissioner assumes that Mr. Dean did not press this matter further and is reporting the above for the purpose of the record only.

Your Commissioner further reports that pursuant to a decree entered on March 9, 1966, the Clerk of this Court paid Reginald G. Fentner, Jr., the court reporter, the sum of $323.80 out of the funds deposited in the Southern Bank of Norfolk to the credit of this suit.

Your Honor will recall that your Commissioner was criticized for his delay in filing this report by counsel for American Acceptance Corporation. Your Commissioner wishes to report that counsel for Mrs. Motko did not file his memorandum of authority until March 12, 1965 and that shortly thereafter a reply memorandum was filed by counsel for American Acceptance Corporation.

#3734
page 89 }

The Court is acquainted with my physical condition during 1965 and your Commissioner was a little slow in working on the report. As a matter of fact, your Commissioner had completed about two-thirds of the report at the time his office was completely destroyed by fire which included all contents of his office and many suit papers, including the suit papers in these suits as well as the exhibits.

Your Commissioner has had to reconstruct the files in both of these cases and at this time wishes to express his gratitude to Hugh Stovall, the Deputy Clerk of this Court and counsel in this suit who graciously cooperated with him to assemble copies of all pleadings and several of the exhibits, particularly two photostat copies of the agreement between Mr. Shuey and Mrs. Motko.

Your Commissioner respectfully reports that there are no other matters requiring determination in this suit.

Your Commissioner respectfully reports that he has either mailed or delivered a copy of this report to counsel for all of the parties hereto and to W. R. Williford T/A Artic Services, 3109 Bapaume Avenue, Norfolk, Virginia and this certificate is notice to them that this report, suit papers and available copy of exhibits and the memorandum of authority filed by counsel for Princess Anne Marine and Bulkheading Company, Inc., American Acceptance Corporation, letter by counsel for Atlantic Creosoting Company, Inc. that they join in the memorandum filed by Princess Anne Marine and Bulkheading Company, Inc. and reply memorandum on behalf of American Acceptance Corporation.

#3734
page 90 } The following is a list of counsel to whom your Commissioner has either mailed or delivered a copy of this report.

Bernard Glasser, Esq. Counsel for Burton Lumber Company, Inc.

Sidney Siegel, Esq. Counsel for Epes-Fitzgerald Paper Company.

Alexander P. Smith, Esq. Counsel for Colonial Bedding Company.

Calvin H. Childress, Esq. Counsel for Cofer's Inc.

Lawrence Lawless, Esq. Assistant City Attorney for the City of Norfolk.

William T. Prince, Esq., Williams, Cocke, Worrell & Kelly, Counsel for Atlantic Creosoting Company, Inc.

James M. Pickrell, Esq. Kellam and Kellam, Counsel for Princess Anne Marine & Bulkheading Company, Inc.

F. J. Dean, Jr. Esq. Counsel for LaVerne T. Motko.

James M. Hubbard, Esq. Counsel for Robert C. Gee.

John A. Gurkin, Esq. Counsel for J. W. Hurst & Son Awning Co. Inc.

Thomas O. Beane, Esq. Special Counsel Virginia Employment Service.

Ralph D. Katherman, Esq., Russo, White & Katherman, Counsel for Philip L. Russo and Samuel I. White, Trustees.

Walkley E. Johnson, Esq. Baird, Crenshaw & Ware, Counsel for American Acceptance Corporation.

Your Commissioner has mailed a copy of this report to William Shuey, Registered Agent for S & L Enterprises, Inc. and to C. W. Schell, Esq., Revenue Officer, U. S. Treasury Department.

Respectfully Submitted,
T. J. AMELSON
Commissioner in Chancery for the Court of Law and Chancery for The City of Norfolk, Virginia.

T. J. Amelson, Commissioner in Chancery
Fee for Report—$1,500.00.
T. J. Amelson, Costs for Xerox copies
of original report—52.80.

Court of Law and Chancery Filed Apr. 27, 1966.

By: H. L. STRAUD, D.C.

#3734
page 91 }

* * * * *

EXCEPTIONS TO COMMISSIONER'S REPORT

American Acceptance Corporation excepts to the Commissioner's Report filed herein on April 27, 1966 as follows:

1. In finding that the second and third deeds of trust to Herbert L. Kramer, Trustee were purchased by Laverne T. Motko, the Commissioner's Report is contrary to the law and the evidence.

2. In failing to find that the second and third deeds of trust to Herbert L. Kramer, Trustee were satisfied upon the payment of the balance due, the Commissioner's Report is contrary to the law and the evidence.

3. In finding that the bulkhead improvements were new structures and that the mechanics lienors are entitled to priority over the judgment creditors, the Commissioner's Report is contrary to the law and the evidence.

#3734
page 92 }

4. In finding that the Contract of Sale, Release and Pledge Agreement was not delivered to Wil-

liam T. Shuey, the Commissioner's Report is contrary to the law and the evidence.

5. The Commissioner's Report misstates the position of American Acceptance Corporation (see particularly page 29) which, as the memoranda clearly show, is that the Contract of Sale, Release and Pledge Agreement, even if unenforceable, constituted uncontradicted evidence of the intention of Laverne T. Motko to satisfy rather than purchase the deeds of trust.

6. The Commissioner's Report fails to make a fair statement of the evidence pertinent to the issue of the validity of the second and third deeds of trust and contains testimony from the Commissioner not founded in the evidence (see particularly the comments upon the credibility of witnesses on page 28).

7. The Commissioner's Report was not timely filed.

Wherefore, American Acceptance Corporation excepts to the Commissioner's Report and prays that its exceptions be sustained and that the fund on deposit to the credit of this cause be distributed to the judgment creditors of S. & L. Enterprises in the order of their priority and that it may have such other and further relief as the nature of its cause may require.

AMERICAN ACCEPTANCE
CORPORATION
By WALLEY E. JOHNS, JR.

* * * * *

#3734
page 93

* * * * *

Court of Law and Chancery Filed Apr. 29, 1966.

By. W. K. McCROY, D.C.

* * * * *

#3734
page 94 }

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EXCEPTIONS TO COMMISSIONER'S REPORT

Laverne T. Motko excepts to the Commissioner's Report filed herein on April 27, 1966, as follows:

1. In finding that the bulkhead improvement was a new structure and that the mechanics lienors are entitled to priority over this defendant as holder of the notes secured by Deeds of Trust on the real property of S. & L. Enterprises, Inc, the Commissioner's Report is contrary to the law and the evidence.

Wherefore, this defendant excepts to the Commissioner's Report and prays that its exception be sustained and that the funds on deposit to the credit of this cause be distributed to the undersigned and that she may have such other and further relief as the nature of her cause may require.

LAVERNE T. MOTKO
By F. J. DEAN, III
Counsel

* * * * *

Court of Law and Chancery Filed May 6, 1966.

By W. K. McCROY, D.C.

* * * * *

#3734
page 95 }

* * * * *

COURT OF LAW AND CHANCERY
Of The City of Norfolk
Norfolk, Virginia

August 11, 1966

Bernard Glasser, Esq.
Sidney Siegel, Esq.
Alexander P. Smith, Esq.

Calvin H. Childress, Esq.
Lawrence Lawless, Esq.
William T. Prince, Esq.
James M. Pickrell, Esq.
William C. Pender, Esq.
F. J. Dean, Jr., Esq.
James M. Hubbard, Esq.
John A. Gurkin, Jr., Esq.
Thomas O. Beane, Esq.
Ralph D. Katherman, Esq.
Walkley E. Johnson, Esq.
Norfolk, Virginia

Re: Princess Anne Marine & Bulkheading Co., Inc.
v. In Chancery #3458
S & L Enterprises, Inc., etc., et al
and
Philip L. Russo, et al, Trustees
v. In Chancery #3734
S & L Enterprises, Inc., etc., et al

Gentlemen:

The court has considered the pleadings, testimony and exhibits, the report of the Commissioner in Chancery and the written memorandum and oral argument of counsel with respect to exceptions filed thereto and is of the opinion that the exceptions should be overruled and the Commissioner's report confirmed.

Appropriate decrees may be presented at your convenience.

Yours very truly,
Walter A. Page
Judge

WAP:meg

cc: Wm. Shuey, Esq., RA for S & L Enterprises, Inc.
C. W. Schell, Esq., Revenue Officer, U. S. Treasury Dept.
#3734

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page 98 }

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COURT OF LAW AND CHANCERY
Of The City Of Norfolk
Norfolk, Virginia

November 30, 1966

Messrs. Bernard Glasser
Sidney Siegel
Alexander P. Smith
Calvin H. Childress
Lawrence Lawless
William T. Prince
James M. Pickrell
William C. Pender
F. J. Dean, Jr.
James M. Hubbard
John A. Gurkin, Jr.
Thomas O. Beane
Ralph D. Katherman
Walkley E. Johnson, Jr.
John F. Thomasson, Revenue Officer
Norfolk, Virginia

Re: Princess Anne Marine & Bulkheading Co., Inc.
v. In Chancery #3458
S & L Enterprises, Inc., etc., et al
and
Philip L. Russo, et al, Trustees
v. In Chancery #3734
S & L Enterprises, Inc., etc., et al

Gentlemen:

You will recall that the court by letter of August 11 determined this matter and that the entry of appropriate decrees was postponed at the request of Mr. Pender to assert a defense not heretofore argued. The court has considered the various memorandums submitted by counsel and its opinion is unchanged.

The Clerk has advised counsel that in the interim a notice of lien filed by the United States Treasury Department has

been brought to the attention of the court. Provision therefor should be made in the decrees presented.

Sincerely yours,
Walter A. Page
Judge

WAP:meg

cc: Mr. Wm. Shuey, Esq. RA for S & L Enterprises, Inc.
#3734 Mr. C. W. Schell, Revenue Officer

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page 100 }

* * * * *

DECREE

THIS CAUSE came again on this day to be heard after due notice to all counsel of record on the motion to identify exhibits filed in said cause, overrule exceptions to Commissioner's report and confirm Commissioner's report and was argued by counsel.

And it appearing to the court that the records of this cause were destroyed by fire during the pendency of said suit, which suit papers and records were re-established and supplied in forms of copies by order of this court entered on the 9th day of September, 1965 but that all of the exhibits have not been marked and the court deems it proper that said exhibits be marked and identified, it hereby is:

ADJUDGED, ORDERED and DECREED that the following exhibits, either original or copies, are hereby designated and marked in numerical order as follows:

EXHIBIT 1—Note dated January 16th, 1962, for $10,-200.00, by S & L Enterprises, Inc., due June 30th, 1962.

EXHIBIT 2—Note dated January 16th, 1962, for $10,-200.00, by S & L Enterprises, Inc., due January 15th, 1963.

#3734
page 101 } EXHIBIT 3—Note dated January 16th, 1962, for $20,400.00, by S & L Enterprises, Inc., due September 30th, 1962.

EXHIBIT 4—Note dated February 27th, 1962, on demand for $4,200.00, made by S & L Enterprises, Inc.

EXHIBIT 5—Memorandum of Mechanic's Lien, Atlantic Creosoting Company, dated December 3rd, 1962.

EXHIBIT 6—A document entitled: "Contract of Sale and Release and Pledge Agreement."

EXHIBIT 7—Memorandum of Mechanic's Lien, Princess Anne Marine & Bulkheading Co., Inc. against S & L Enterprises, Inc., showing service.

EXHIBIT 8—Reporter's Transcript of evidence taken before Commissioner in Chancery T. J. Amelson on May 30, 1963.

EXHIBIT 9—Reporter's Transcript of evidence taken before Commissioner in Chancery T. J. Amelson on March 6, 1964.

EXHIBIT 10—Reporter's Transcript of evidence taken before Commissioner in Chancery T. J. Amelson on March 30, 1964.

EXHIBIT 11—Certified copy of statements of Princess Anne Marine & Bulkheading Co., Inc., dated January 21, 1963, to Sea Mist Motel and Apartments, $10,144.00.

EXHIBIT 12—Photographic copy of contract between Princess Anne Marine & Bulkheading Co., Inc. and S & L Enterprises, Inc., August 27, 1962.

EXHIBIT 13—Picture of completed bulkhead No. L 31716.

EXHIBIT 14—Letter of Durham Insurance Company April 11, 1963 to S & L Enterprises, Inc., notifying of foreclosure procedure.

EXHIBIT 15—Assignment of Princess Anne Marine & Bulkheading Co., Inc., of $3,321.60 of funds due.

EXHIBIT 16—Notice of assignment of Princess Anne Marine & Bulkheading Co., Inc., to Bank of Virginia Beach to Commissioner.

EXHIBIT 17—Copy of order of Circuit Court of the City of Virginia Beach—Atlantic Creosoting Company, Inc. v. Princess Anne Marine & Bulkheading Co., Inc., judgment $9,044.22 and notice of lien.

EXHIBIT 18—American Acceptance Corporation Judgment of $6,035.04 against S & L Enterprises, Inc., June 23, 1964, Circuit Court of the City of Norfolk.

EXHIBIT 19—Abstract of American Acceptance Corporation v. S & L Enterprises, Inc. of judgment against S & L Enterprises, Inc., William T. Shuey, Dorothy L. Shuey, Ernest W. *Lenidy* and Bonita *Lenidy*.

EXHIBIT 20—U. S. Treasury tax lien against S & L Enterprises, Inc. taxes due August 30, 1963, December 13, 1963 and January 15, 1964.

#3734

page 102 } EXHIBIT 21—Abstract of judgment American Acceptance Corporation v. S & L Enterprises, Inc., Dorothy L. Shuey, $29,620.00 etc., Judgment Book 47, Page 42, Corporation Court of the City of Norfolk.

EXHIBIT 22—Notice of levy of U. S. Treasury Department 10/11/66 against Princess Anne Marine & Bulkheading Co., Inc. $4,582.32, addressed to James M. Pickrell.

It further appearing to the court that defendant Laverne T. Motko has married pending this litigation, it is ORDERED that the cause proceed as to her in the name of Laverne T. Motko Strauss.

And it is further ADJUDGED, ORDERED and DECREED that the exceptions filed to the Commissioner's report April 27, 1966, are hereby overruled and the Commissioner's report hereby is confirmed.

And it appearing further to the court that there is on deposit with the Clerk of this Court $43,409.12 in an interest drawing account, it is hereby ADJUDGED, ORDERED AND DECREED that disbursement be made in the following priority by the Clerk from said funds upon this ORDER becoming final except as set forth hereinafter:

First to T. J. Amelson, Commissioner in Chancery, the sum of $1,500.00 as fee and $52.80 for costs incurred by him.

On behalf of Princess Anne Marine & Bulkheading Co., Inc., the sum of $10,144.00 with interest at 6% from September 26, 1962 disbursed with preferences as follows:

1. To Virginia Unemployment Commission $59.57 with interest at the rate of 1% per month until paid on $32.57 from February 1st, 1963, on $20.25 from May 1st, 1963 and on $6.75 from August 1st, 1963.

2. To Kellam and Kellam, Attorneys for Princess Anne Marine & Bulkheading Co., Inc., the sum of $3,381.00 with interest from September 26, 1962, until paid.

3. To Atlantic Creosoting Company, Inc., the sum of $4,625.10 with interest from September 20, 1962.

4.a. To First & Merchants National Bank, successors of the Bank of Virginia Beach, pursuant to assignment, $581.28.

4.b. To Atlantic Creosoting Company, Inc., the sum of $1,423.00 with interest from January 6, 1965.

5. To the Internal Revenue Service of the United States of America the balance of said funds, principal and interest, due Princess Anne Marine & Bulkheading Co., Inc. with reference to the preferences of the funds due Princess Anne Marine and Bulkheading Co., Inc., the United States

Government relies on the record and offers no evidence on the question of the insolvency of said Corporation.

#3734
page 103 } It is further ADJUDGED, ORDERED AND DECREED that the balance of said funds on deposit over and above the $10,144.00 with interest as aforesaid be paid by the Clerk of this court to Laverne T. Mokto to be applied to the notes secured by the deeds of trust referred to in the Commissioner's report.

The funds due T. J. Amelson, Commissioner, are to be paid by the Clerk of this Court forthwith, there being no exceptions thereto.

Laverne T. Mokto Strauss by counsel excepts to the entry of this ORDER in all respects except that part thereof which confirmed the recommendation of the Commissioner in Chancery herein with respect to the sufficiency of the lien and the priority thereof claimed by the said Laverne T. Mokto Strauss, and that part relating to payment to said T. J. Amelson.

Upon agreement of all parties it further is ordered that, with the exception of the Commissioners fees and costs, the funds on deposit to the credit of this cause shall remain on deposit in an interest bearing account until the parties hereto have exhausted any remedies of appeal.

The Clerk of this Court hereby is directed to reinvest the above funds, after the payment to said Commissioner, in six month interest bearing certificates in the bank in which said funds now are on or before April 5, 1967.

Enter 2/24/67. W. A. P.

Seen: RALPH D. KATHERMAN
of Counsel for Philip L. Russo
and Samuel I. White, Trustees

Seen and Excepted to except
as to the payment of the
Commissioner's fee and costs:
WALKLEY E. JOHNSON, JR.
of Counsel for American Acceptance Corp.

ALFRED D. SWERSKEY, United States
of America

I ask for this in part and except in part:
WILLIAM T. PRINCE
Counsel for Atlantic Creosoting Co.

JAMES M. PICKRELL
Counsel for Princess Anne Marine &
Bulkheading Co., Inc.

* * * * *

#3734
page 104 }

* * * * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

TO: W. L. Prieur, Jr., Clerk of the Court of Law & Chancery of the City of Norfolk.

Defendant American Acceptance Corporation, by counsel, hereby gives notice of appeal from a Decree entered in this cause on February 24, 1967 and sets forth the following assignments of error:

1. The Court erred in overruling the exceptions to the report of the Commissioner in Chancery filed by American Acceptance Corporation and in confirming said report.

2. The Court erred in confirming the Commissioner's findings that the notes secured by the second and third deeds of trust to Herbert L. Kramer, Trustee were purchased by Laverne T. Motko and in failing to hold that said notes were paid and satisfied by Laverne T. Motko thereby releasing the liens of the deeds of trust.

#3734
page 105 }

3. The Court erred in confirming the Commissioner's findings that the bulkhead improvements were new structures and that the mechanic's lienors are entitled to priority over the judgment creditors.

4. The Court erred in failing to find that American Acceptance Corporation, as a judgment creditor, was entitled to first priority in the distribution of the funds held on deposit to the credit of this cause and in failing to order the disbursement of said funds accordingly.

5. The Court erred in ordering the sum of $10,144.00 with interest at 6% from September 26, 1962 to be disbursed on behalf of Princess Anne Marine & Bulkheading Co., Inc. and

in ordering the balance of the fund on deposit to the credit of this cause to be paid to Laverne T. Motko.

AMERICAN ACCEPTANCE
CORPORATION
By WALKLEY H. JOHNSON, JR.

* * * * *

#3734
page 106 }

* * * * *

Court of Law and Chancery Filed Mar. 9, 1967.

By: H. L. STRALL, D.C.

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#3734
page 107 }

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NOTICE OF APPEAL AND
ASSIGNMENTS OF ERROR

Pursuant to Rule 5:1, Paragraph 4, of the Rules of the Supreme Court of Appeals of Virginia, Laverne T. Motko Strauss hereby gives notice of her intention to petition the Supreme Court of Appeals of Virginia for a Writ of Error in this action and hereby sets forth as her Assignments of Error:

1) The Court erred in confirming the report of the Commissioner in Chancery herein with respect to the lien of plaintiff Princess Anne Marine & Bulkheading Co., Inc., enjoying a priority or any claim soever against the surplus funds at issue in this proceeding.

2) The Court erred in holding that plaintiff Princess Anne Marine & Bulkheading Co., Inc. was entitled to any claim of any character against the proceeds on deposit with the Court in this cause.

3) The Court erred in holding that the mechanics lien in this case filed on behalf of Princess Anne Marine & Bulkheading Co., Inc. was of such a character as to take priority

#3734 page 108 } in any event over pre-existing deeds of trust liens against the property.

LAVERNE T. MOTKO STRAUSS
By: W. C. PENDER
Of Counsel

* * * * *

Court of Law and Chancery Filed Mar. 16, 1967.

By: H. L. STROUD, D.C.

* * * * *

Dep.
5/20/63
page 1 }

* * * * *

Depositions of witnesses, taken before T. J. Amelson, a Commissioner in Chancery, pursuant to Notice, in the Offices of the said Commissioner, Western Union Building, Norfolk, Virginia, on May 20, 1963, at 10:00 o'clock a.m., to be read in evidence in the above entitled cause, pending in the Court of Law and Chancery of the City of Norfolk, Virginia.

Dep.
5/20/63

* * * * *

page 4 } M. J. OWENS, called as a witness on behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Pickrell:
Q. Mr. Owens, state your name and address.
A. M. J. Owens, 300.

M. J. Owens

Q. And what is your position with Princess Anne Marine and Bulkheading Co., Inc.?

A. Sales Manager.

Q. Mr. Owens, did you, as sales manager, enter into an agreement, a contract, with S & L Enterprises, Inc., of 3800 East Ocean View Avenue, on behalf of Princess Anne Marine and Bulkheading Co., Inc., dated the 27th day of August, 1962?

A. Yes.

Q. Is this the contract? (Indicating)

A. That is the contract.

Dep. 5/20/63 page 5 } Mr. Pickrell: I introduce the contract, filed with the Bill of Complaint, as Exhibit 1.

The Commissioner: We will refer to it as being attached to your Bill of Complaint, already a part of the proceedings.

By Mr. Pickrell:

Q. Was the work set forth in the contract done?

A. It was, yes.

Q. Where was it done?

A. At the mentioned address, Sea Mist Motel.

Q. Is that the property described in the Bill of Complaint as Lots One (1), One-A (1-A), Two (2), Eighteen-A (18-A), Nineteen (19) and Twenty (20), in Block Twenty-Four (24), as shown on the Plat of Willoughby Beach Company, in the City of Norfolk, Virginia?

A. Yes.

Q. Is it also that portion of 11 View Street and West Ocean View Avenue described in the Bill of Complaint?

A. Yes.

Q. Would you tell the Commissioner briefly, what the work done consisted of?

A. It consisted of a bulkhead, and the work that we did, we followed the contract specifically.

Dep. 5/20/63 page 6 } The Commissioner: The work that was set forth in your contract, that was actually done?

The Witness: Yes, yes, sir.

By Mr. Pickrell:

Q. The contract called for a payment of $1600. to the site on the material. Has anything been paid on this contract?

A. Nothing has been paid.
Q. The contract calls for $32.00 per linear foot of the bulkhead; is that correct?
A. That is correct.
Q. How many linear feet were there?
A. Three hundred seventeen feet.
Q. At $32.00, how much is that?
A. $10,144.
Q. Has anything been paid on this?
A. Nothing has been paid.
Q. Is that statement attached to the Bill of Complaint, and sworn to, a true and correct statement of the account?
A. Yes.

Mr. Pickrell: That is all I have from you.

Dep. 5/20/63 page 7 }

The Commissioner: How soon after this contract was signed did you start your work?
Mr. Pickrell: I have that on another witness.

By Mr. Pickrell:
Q. Atlantic Creosoting Company, Inc. is a defendant in this suit. Did they furnish you material that went on this job?

* * * * *

Dep. 5/20/63 page 8 }

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

DIRECT EXAMINATION

By Mr. Pickrell:

* * * * *

Q. Mr. Susewind, with reference to the contract with S & L Enterprises, Inc., are you familiar with the work

George Susewind

Dep. 5/20/63 page 9 } done on that job?

A. Yes, I was supervising construction of it the total time it was being built.

Q. Tell us, from your records, the date you commenced on the project.

A. Work began August 29, 1962.

Q. When was the last day you worked on the job?

A. September 26, 1962.

Q. Where are you getting your records from—your information from with reference to these dates?

A. From the time book that runs from January, 1962, through December, 1962.

Q. Are these your official records of your work?

A. Official time records.

Q. And the work was completed?

A. The work was completed September 26, 1962.

Mr. Pickrell: I introduce at this time, the original Mechanic's Lien, which was filed with the Bill of Complaint, which shows it was recorded November 23, 1962, in Deed Book 919, at Page 229, within 60 days.

The Commissioner: Let the record show that Princess Anne Marine and Bulkheading Co., by G. Susewind, President and Agent, prepared and caused a Mechanic's Lien to be filed on November 23, 1962, in the Clerk's Office of the Corporation Court of the City of Norfolk, Virginia, and recorded in Deed Book 919, at Page 229.

Dep. 5/20/63 page 10 }

The record will also show that the proper affidavit by Mr. Susewind, as President and Agent, sets forth the amount that was due and that a copy of all of this was served on Mr. William T. Shuey, Resident Agent of S & L Enterprises, Inc.

The return was made by the City Sergeant, on December 11, 1962. The return and the recorded Mechanic's Lien are a part of the Bill of Complaint.

Let the record show that the suit was filed on March 7, 1963, which was within the period required by Statute.

Mr. Pickrell: That is all I have of this witness.

(Witness excused)

Dep. 5/20/63 Mr. Pickrell: I would like to call Mr. Owens back for one more thing.

M. J. Owens

page 11 } M. J. OWENS, having been previously duly sworn, was recalled to the witness stand, and was examined and testified further as follows:

DIRECT EXAMINATION (Rec)

By Mr. Pickrell:

Q. Mr. Owens, you have heard the testimony that the last actual placing of the bulkhead was done on September 26, 1962. When was the last work done under the contract and what was that?

A. The last work was the measurement of the bulkhead myself, to determine the number of feet and deliver the bill to Mr. Shuey's office.

Q. What date was that?

A. September 27.

Q. Does the contract call for the bill to be determined by the measurement of the bulkhead?

A. It does.

Q. And you did it the day after completion?

A. Yes.

Dep. 5/20/63 page 12 } By The Commissioner:

Q. This bulkhead is on the Bay side or Willoughby side of this motel?

A. That is correct.

Q. And what was the occasion of a bulkhead being put there?

A. I imagine they wanted it installed because of the Ash Wednesday storm. A lot of land had been washed away and the occasion was, a customer called to get us to install a bulkhead and a contract was drawn up.

Q. You have built them before?

A. Yes.

Q. And this bulkhead was necessary to protect the land in front of the motel, to keep it from washing away?

A. Yes, sir.

Q. And do you think that was an improvement to the property there?

A. Definitely. It is a protection and would be an improvement.

Q. And without it another Ash Wednesday storm would have destroyed part of that building there?

A. Yes, sir.

* * * * *

Dep.
5/20/63
page 15 }

* * * * *

WILLIAM T. SHUEY, called as a witness, a party defendant, having been duly sworn, was examined and testified as follows:

By The Commissioner:

Q. Mr. Shuey, you are here, apparently you have no attorney. Nevertheless, you are the Registered Agent of S & L Enterprises. Mr. Shuey, do you have anything to say today?

Dep.
5/20/63
page 16 }

A. I don't want to be too lengthy, but it was actually two contracts. Mr. Owens originally spoke to Mr. Levidy. In other words, the ones that originally got together in regard to this bulkhead.

As conversation ensued, there was supposedly an SBA Loan, which is Small Business, which was to be used to take care of the bulkhead, to take care of the paving, to take care of the shrubbery, which amounted to Ten Thousand some odd dollars.

Q. May I interrupt. This Small Business Administration Loan was the result of that Ash Wednesday storm which had damaged your premises?

A. That is right.

Q. And this work that was contemplated was for the purpose of repairs and also to protect the property against any future storm of this type?

A. Yes, sir, that is right.

This loan was approved for this amount of money, which incorporated this entire thing—the shrubbery, the bulkhead. Now, between that time, the Corps of Engineers pumped in a great amount of sand in front of our building, which then changed the situation of the bulkhead —the situation of the water.

Dep.
5/20/63
page 17 }

Q. Yes, sir, go ahead with your statement. I will consider that portion of it—

A. Which changed the construction, possibly, of the bulkhead because of the sand now, whereas, we had nothing but water.

But the important thing, that Mr. Levidy did talk to Mr. Owens in this thing in its entirety. I only came into it afterwards. There is another contract.

Q. Do you have it?

A. No, Mr. Dean has all of that, for a considerable amount less, which was the reason for the SBA Loan. Mr. Levidy and I separated, a parting of the ways, and Mr. Owens got in touch with me and this is the contract before you.

Q. You signed this as President, and an agreement was dated August 27, 1962. Now, the conversations that were had was before this contract was signed?

Was any other contract signed subsequent to this contract to change any terms?

A. No, there was only one contract before that.

Q. This was the final contract?

A. Yes, sir.

(Witness excused)

* * * * *

* * * * *

Depositions of witnesses before Mr. T. J. Amelson, Commissioner in Chancery, in the Law Offices of Messrs. Kellam and Kellam, Board of Trade Building, Norfolk, Virginia, on March 6th, 1964, at 10:00 o'clock a.m., to be read in evidence in the above entitled case, pending in the Court of Law and Chancery of the City of Norfolk, Virginia.

* * * * *

Dep.
3/6/64
page 9

* * * * *

M. J. OWENS, called as a witness, having been first duly sworn, was examined and testified as follows:

M. J. Owens

By Mr. Pickrell:

* * * * *

Q. What is your experience with reference to property, in general, and improvements?

A. Well, property in general in relation to bulkheads is that most of the times the bulkheads aren't installed, it gets to the point that it decreases in value as much as fifty per cent. I know recently we had one piece of property that went unrented for three months because the bulkhead wasn't in. The property eroded to such an extent that people were afraid to move into the house. The man had to bulkhead the property before he could rent the house.

Dep. 3/6/64 page 10

Q. Will you describe the physical condition of the Sea Mist Motel, which is the subject of your mechanics lien? Will you describe it as it was before you started your improvements?

A. Well, the improvements were started, that was right after this storm.

Q. Identify the storm.

A. Ash Wednesday storm.

Q. What year?

A. '62. That property, the back steps had fallen down and we were—I met with Mr. Levidy.

Q. Who is Mr. Levidy?

A. Mr. Levidy is the part owner of the S & L. At that time, he stated he was losing his tenants from the building. They were afraid to stay in the building with the condition in the back of the building because it looked that if a high tide or another storm would sink the back of the building in.

Q. Would you describe the condition that existed there?

A. Sand had eroded out from under the back end of the building, and as I said, the back steps that went to the upstairs were hanging down in the air. The sand had gone out from under that. The tide was coming up almost to the building, a normal high tide, and he was concerned that if a bulkhead wasn't put in that an abnormal high tide would come in and that there would be more damage to the building. His concern was the protection of the building.

Dep. 3/6/64 page 11

Q. Was there any bulkhead or anything to obstruct the tide from reaching the building before you put your bulkhead in?

M. J. Owens

A. That had all been destroyed. He had a concrete block wall at one time. That had been destroyed. It had nothing.

Q. When you went there, can you describe the conditions as to whether or not there was—what was standing there and things like that?

A. The water was getting up to the building at high tide, yes.

Q. Can you state whether or not the foundation of the building on the back was exposed?

A. The foundation was exposed, yes.

Q. Can you give us some estimate of the distance from the stairs that was hanging down to the ground? How much was separated?

A. It looked like approximately two and a half feet. In other words, at one time it was sitting on solid land.

Dep. 3/6/64 page 12 } Q. What type of stairway was this from the building?

A. I think it was concrete steps, Jim, that went up to the second story. I am not sure about that.

Q. Did you state whether or not in your opinion it was an emergency with reference to the bulkheading to be done?

A. It was an emergency from my experience. Because he stated at the time that he had to put a bulkhead in in order to secure future loans on the building, in case he wanted future loans to build swimming pools in the back. A lot of his parking area had been destroyed and he needed to replace that so he could have parking for people that would be in the building.

Q. In the condition that the building was in at the time before you started your bulkheading what percentage would you say it would decease the value of the property?

A. I would say roughly fifty per cent.

Q. Can you state whether or not this work was done on the emergency basis? I mean, was it started and commenced as quickly as possible?

A. It was started as fast as possible and finished as fast as possible under his insistence. He was concerned over the safety of the building.

Dep. 3/6/64 page 13 } Q. At the time you did the work, do you have any information with reference as to whether or not the bulkheading was required with reference to a small business loan that S & L Enterprises was then negotiating?

M. J. Owens

A. They were negotiating this small business loan to have the bulkheading put in in reference to the storm protection that the government had offered.

Then after the bulkhead was installed, the bulkhead, itself, acted almost as a jetty and the sand from the ocean did build up in front of the bulkhead and gave further support to this building.

Mr. Pickrell: That is all I have.

By Mr. Dean:

Q. Mr. Owens, how far back from the water is this building?

A. Well, at that time, Mr. Dean, the water had—high tide after the storm was coming up to the building. Now, in the meantime, dredging had been accomplished on this site all the way up and down the beach to fill in this area. In fact, even at low tide, approximately fifty feet back of this building was a hole that had been dug out by the Ash Wednesday storm. That water stayed at all times, even at low tide, as much as fifty feet back of the building.

The building is way back from the water at the present time on that one account, the dredging plus the fact that bulkhead has built the sand up as the tide has come and gone.

Dep. 3/6/64 page 14 } Q. That is the area between the building and the water line, it is all sandy, isn't it?

A. It's sandy, yes, sir.

Q. You say water was standing in it?

A. Water was standing after the storm in some dug out area right directly back of the building as much as fifty feet, yes.

Q. Well, that storm was Ash Wednesday?

A. Ash Wednesday storm.

Q. Do you recall the date?

A. Was that March 7th? Is Ash Wednesday the 7th? That would be tomorrow then.

Q. I think that's approximately correct. Let me see that testimony a minute.

According to your testimony, this work was not done until September, 1962?

A. That is when it was started, yes, sir.

Q. Some six months later?

A. Well, that was due to the negotiations of Mr. Shuey

with the Small Business Administration to secure loans to have this installation made and we did not get into the work until he had secured the money from them, supposedly had it secured, and then taxes cropped up to stop the payment of that money when it came from Washington. Back taxes were owed on the property and the U. S. Government would not clear that loan because of those taxes.

Dep. 3/6/64 page 15

Q. You say this stairway was hanging down from the second floor. Now, isn't that stairway fixed to a concrete abutment there?

A. It's affixed to the second story, but the bottom of it, the sand had washed out from under the bottom of it and it was hanging in mid air after the storm, yes, sir.

Q. In September, 1962, was not a solid concrete block at the bottom of that stairway?

A. Well, now, in the meantime, he might have gone in there and made repairs from the time of the storm and when we went in there and started work. He could have made his repairs because he was working on it.

Q. Then your testimony was based on the condition in March, 1962, and not in September?

A. Not necessarily March, no, sir. It was based on the visits which we made at the property sometime after the storm. The exact dates I don't remember, no, sir.

Q. At the time you started your work, this stairway was affixed to a concrete block, was it not?

A. I wouldn't ascertain that that would be true. I don't remember, sir.

Dep. 3/6/64 page 16

Q. This parking area that you referred to, that's at the side of the building, isn't it?

A. That was at the side and went down towards the back, yes, sir. He had lost some of his parking area by the storm.

Q. In referring to the parking area, are you referring to the part that was concreted over or just the sand?

A. The part that was asphalt, sir.

Q. You say part of that was washed away?

A. Part of that, yes, sir, facing the building going down the left side as you get to the back of the building, everything was washed away almost level with the back of the building on back, and he lost that area he had been using for parking.

Q. Wasn't that an area that was not paved?

A. Well, now, we found hunks of asphalt when we were putting the bulkhead in which indicated that was the area, plus his statement that he had lost quite a few of his parking spaces.

Q. You say that the value of this property decreased fifty per cent in value?

A. That would be my estimate, yes, sir.

Q. That is a mere guess, isn't it?

A. That is my estimate, yes, sir.

Dep. 3/6/64 page 17 }

Q. There were a number of heavy blocks of concrete in this area which this bulkhead encloses, were there not?

A. I don't remember exactly whether there were, or not. It doesn't come to mind now, it has been so long. There could have been heavy blocks, yes, sir, especially on the south side of the building.

Mr. Dean: That is all about that.

By Mr. Pickrell:

Q. Mr. Owens, was the condition with reference to the exposure of the foundations and vulnerability of the building to the tides the same when you started your work as it was when you visited in contemplation of securing the work?

A. State your question again, if you will.

Q. Was the condition as to the exposure of the foundations of the building and the building's vulnerability from the water the same when you started your work as it was when you made your investigation in talking about the job?

A. It was the same with the exception of the dredging that had been done, supposedly by the City, along the beach. That dredging had filled in the hole that was back of the building where the water was approximately fifty feet from the building. But the conditions as to whether or not the tides could come and go were still the same.

Dep. 3/6/64 page 18 }

Q. Still the same?

A. Still the same.

* * * * *

GEORGE SUSEWIND, called as a witness, having been first duly sworn, was examined and testified as follows:

George Susewind

By Mr. Pickrell:

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

A. George Susewind.

Q. Your address, Mr. Susewind?

A. 1017 Broad Bay Road, Virginia Beach.

Q. What is your position with Princess Anne Marine and Bulkheading Company, Inc.?

A. I am president of the corporation and do the corporation work.

Dep. 3/6/64 page 19

Q. You actually do the construction work when it was done?

A. I did.

Q. When you went there to do the construction work, would you describe the physical condition that existed with reference to this property?

A. The physical condition of the property, the foundation was exposed on the complete end facing the water; the lines leading from under the foundation going to the sewerage system was exposed; the steps, when we started installation, had been secured to four concrete blocks, one piled on the other one, and they stepped down or jumped down from there to whatever hit the sand, which had blown away. They jumped down on the sand to go around to the laundry. The footing of the laundry, the people had to climb up the sand to get into the laundry. There was no steps there.

There was previously some concrete that had been poured even with the first floor level. That was all broken down and the sand was torn out by the storm.

Q. Can you state whether or not from your experience whether an emergency existed with reference to the safety of the whole building because of the condition that existed at that time?

A. I would say a definite emergency existed.

Dep. 3/6/64 page 20

Q. What could that emergency arise from?

A. Had another abnormal tide, not necessarily as high as Ash Wednesday, just a normal northeast tide come in, the foundation could have been eroded and the building collapsed on that end.

Q. Would that have been a probable result?

A. I would say it would have been a definite result because the footing was cracked from lack of support as it was.

Q. What was the purpose of the bulkheading?

A. It was to keep the seas from coming back in if a storm did occur, to save the property.

Q. In your opinion, without the bulkheading, what affect would that have on the percentage of the value of the property?

A. I wouldn't guess at the percentage of the value of the property. I would guess somewhere around $200,000 but that would be just a shot in the dark. But I would think it would be unsaleable other than the lot, itself, and salvage as far as the building is concerned if the bulkhead weren't put in.

Mr. Pickrell: Answer Mr. Dean.

By Mr. Dean:

Q. The storm occurred in March?

Dep. A. Yes, sir.

3/6/64 Q. You didn't start the repairs until September?

page 21 } A. August 29; finished September 26.

Q. You say this was an emergency?

A. It was an emergency. It should have been done earlier had his Small Business Administration loan been approved. We started after we got the small business loan approved.

Mr. Dean: That is all.

Mr. Pickrell: That is all the testimony we have at this time.

(Whereupon, the witness was excused.)

The Commissioner: Mr. Dean, I think the next thing, you might as well go ahead and prove the claim of your client, Mrs. Motko.

J. BRUCE KITCHEN, called as a witness, having been first duly sworn, was examined and testified as follows:

By Mr. Dean:

Q. State your name, address and occupation.

A. J. Bruce Kitchen; 1018 Standard Building, Cleveland, Ohio; occupation, attorney.

Q. Do you represent LaVerne T. Motko?

Dep. A. I do.

3/6/64 Q. She is the sister of William T. Shuey, Presi-

page 22 } dent of the S & L Enterprises, Inc.?

A. She is the sister of William T. Shuey, yes.

Q. Mr. Kitchen, I hand you four notes, one for $4,200.00, dated February 27, 1962, one for $10,200.00, dated January 16, 1962, one for $20,400.00 dated January 16, 1962, and one for $10,200.00, dated January 16, 1962, and ask you if you know who owns these notes?

Mr. Pickrell: I object.

The Commissioner: State the reason for your objection.

Mr. Pickrell: Because it could only be hearsay. In other words, I think you have first got to offer proof of who owns it, then any contest as to who owns it, and then you would offer proof as to who owns them.

The Commissioner: Well, under the chancery procedure, the testimony comes in over objection. I will rule at a later date whether it's admissible or not. Do you object to the whole line of testimony on this so you won't have to interrupt?

Mr. Pickrell: I would like my objection to go to the whole line of testimony, that the owner of the note ought to testify as to her ownership and to when and how she purchased them and what condition she purchased them.

Dep. 3/6/64 page 23

The Commissioner: All right.

By Mr. Dean:

Q. Did you answer the question?

A. They are the property of LaVerne T. Motko.

Q. Will you state how she came into the possession of these notes?

Mr. Pickrell: Objection goes through it all.

The Commissioner: All right, I understand.

The Witness: The notes were purchased from Industrial Securities.

By Mr. Dean:

Q. When was the purchase made?

A. I am not sure of the exact date on that.

Q. With whom did you have negotiations regarding the purchase of these notes?

A. With Mr. Herbert Kramer, attorney for Industrial Securities, and Mr. Caplan, I believe one of the principals of Industrial Securities.

J. Bruce Kitchen

Mr. Pickrell: At this point, I would like to ask that Mr. Kramer, who would testify, be excused not for any reason except that there might be a question of memory and understanding of the transaction.

Dep. 3/6/64 page 24

* * * * *

By Mr. Pickrell:

Q. Mr. Kitchen, Mrs. Motko is the sister of Mr. Shuey, who was one of the two stockholders in S & L Enterprises, is that correct?

A. She is the sister of William T. Shuey.

Q. William T. Shuey was equal or principal stockholder in S & L Enterprises, isn't that right?

A. This I don't know.

Q. You don't know that?

A. He stated it but I am not—

Dep. 3/6/64 page 25

Q. What monies did Mrs. LaVerne Motko give to her brother, or give to Mr. Shuey or to S & L Enterprises between June 30, 1962 and the present?

A. Between June 30, 1962—

Q. And the present? What cash deposits or money did she advance to Mr. Shuey?

A. She advanced him, Mr. Shuey—she did not advance any money to Mr. Shuey.

Q. Who did she advance it to?

A. She advanced to S & L Enterprises 794 shares of American Home Products. They were pledged and he was permitted or authorized to pledge these shares of stock in the amount of $22,000.

Q. That was pledged to a loan with the National Bank of Commerce, now Virginia National Bank?

A. No, it was not.

Q. Where was it pledged?

A. Seaboard Citizens.

Q. And that was pledged for a loan for S & L Enterprises?

A. S & L Enterprises was one of the parties, that is right.

Q. And the money from Seaboard was used in the Sea Mist Motel operation, wasn't it?

A. This I don't know.

Dep. 3/6/64 page 26

Q. You don't deny it?

J. Bruce Kitchen

The Commissioner: He doesn't know.
The Witness: I don't know. I can't deny it.

By Mr. Pickrell:
Q. What happened to that stock?
A. It was pledged with the Seaboard National Bank.
Q. Did Mrs. LaVerne Motko ever get the stock back?
A. The stock was never returned to her, no.
Q. Actually, the stock was used by Seaboard to cover the note for which it was collateral; isn't that correct?
A. Would you state that question again?
Q. The stock was taken in, the stock that was placed as collateral for the $22,000 loan? Didn't Seaboard take in that stock to pay off the loan that S & L got?
A. No, they did not.
Q. Where is the stock now?
A. The stock was sold.
Dep. 3/6/64 page 27
Q. Who sold it?
A. Mr. Nick Billie.
Q. Who received the proceeds from the stock?
A. The proceeds were used to pay off the loan at Seaboard Citizens and the balance was used to buy the four notes and the deeds of trust securing same from Industrial Securities.
Q. What was the balance after you paid off the loan at Seaboard?
A. In the neighborhood—

Mr. Dean: Your Honor, I object to the form of that question. He said paid off. The testimony shows that it was posted as collateral for the loan and was liquidated, the proceeds of the sale applied to the liquidation of it.

By Mr. Pickrell:
Q. What was the balance that was used to buy the four notes?
A. $5,600.
Q. $5,600?
A. Approximately $5,600, yes—$56,000, excuse me.
Q. Now, what was the date that the money was paid—was the money paid in one lump sum to Industrial Securities?
Dep. 3/6/64
A. No, it was paid in two.

J. Bruce Kitchen

page 28 } Q. What was the date of the first payment?
A. January 28th—now, this is around January 28th of '63.
Q. How much was that payment?
A. Approximately $53,000.
Q. Was it paid by check?
A. Pardon?
Q. Was it paid by check?
A. This I do not know, sir.
Q. Who paid the payment?
A. Mr. Nick Billie of Cleveland, Ohio.
Q. Do you know whom it was made to?
A. Industrial Securities.
Q. Was the check made payable to Industrial Securities?
A. To the best of my knowledge, yes.
Q. What was the balance due on the four notes as of January 28, 1963 before you made your $53,000 payment?
A. The balance due on the notes?
Q. Yes, all four notes. What was the total indebtedness on all four notes as of January 28, 1963?
A. Well, I will have to qualify my statement. But it was in the amount of $56,000. In there were additional funds which had been paid to Durham Life Insurance Company on the first mortgage.

Dep. 3/6/64

page 29 } Q. By whom?
A. Industrial Securities.
Q. But do you know what the balance due on all four notes was as of January 28, 1963, the balance due the noteholders, and I am paraphrasing my question, and they would be entitled to money they had paid on the first mortgage, too. I want to know all of that.
A. All of that? In the neighborhood of $59,000.
Q. At the time the notes were purchased, they were all delinquent, isn't that correct?
A. Yes, they were.
Q. And demand had been made; is that correct?
A. Demand had been made, yes.
Q. And foreclosure had been threatened?
A. Had been threatened, yes.
Q. At the time Mrs. LaVerne Motko made this payment, or payment was made on her behalf, isn't it true that she received certain property of S & L Enterprises and William T. Shuey and Mr. Levidy?
A. Would you please state that again?

J. Bruce Kitchen

Q. Isn't it true that at the time she made this payment that she received certain properties of S & L and Mr. Shuey and Mr. Levidy?

A. No, it's not true.

Dep. 3/6/64 page 30

Q. Didn't she receive the stock of the corporation?

A. She never received the stock.

Q. Wasn't it pledged to her or given to her?

A. The stock was put in the office but she never received it.

Q. What office was the stock put in?

A. Mr. Dean's office.

Q. Mr. Dean was representing the lady?

A. Mr. Dean was representing her for me, yes.

Q. At that time, didn't Mrs. Motko take over the actual operation of the Sea Mist Motel?

A. We did not take the stock.

Q. Didn't you take over the actual operation of the Sea Mist Motel and attempt to negotiate with the creditors?

A. This I cannot testify. I did not.

Q. Didn't Mr. Dean do it for you?

A. I suggest you ask Mr. Dean.

Q. Well, isn't it true that when Mrs. Motko made the $56,000 payment that she took over the Sea Mist Motel?

A. No, she did not take over the Sea Mist Motel.

Q. When did you actually come into physical possession of the notes? What date?

A. This I cannot testify.

Dep. 3/6/64 page 31

Q. Isn't it true that you didn't come into the notes until after the second foreclosure statement, foreclosure payment, after the second foreclosure under which this property was sold, or the day of the second foreclosure?

A. Do you want to give me the date of the second foreclosure sale?

Q. Well, I would rather have you tell me, if you can, sir, when the physical possession of the notes was taken from Industrial Securities?

A. When the physical possession of the notes—

Q. Was taken from Industrial Securities?

A. This I could not testify to.

Q. Let me ask you this, sir. You were handling Mrs. Motko's affairs from Cleveland?

J. Bruce Kitchen

A. That is right.

Q. Isn't it true, sir, that to protect Mrs. Motko after she made this payment of some $56,000, that you instructed Mr. Dean and Mr. Dean did take over the operation of the Sea Mist Motel?

A. We were attempting in negotiation, which was never consummated.

Q. But the negotiations were this, were they not, sir, that you had the motel and your negotiations were trying to work out a plan with the creditors to save the property for Mrs. Motko so she wouldn't lose her money; isn't that right?

Dep. 3/6/64 page 32

A. My intent at all times was to protect Mrs. Motko's investment.

Q. That is right, and she had at this time—you had a piece of property which was in excess, without a distress, anywhere from two hundred fifty to three hundred thousand dollars; isn't that correct?

A. I would say the value of the property is that.

Q. And at that time, there was a first mortgage on it for approximately $150,000; isn't that right?

A. Approximately, yes.

Q. And Mrs. Motko had approximately $56,000 in it; isn't that correct?

A. That is true.

Q. If she could work out these negotiations with the creditors, she stood to get all her money back plus a going motel and business worth an additional hundred thousand dollars, isn't that correct?

A. That would be true.

Q. Isn't that what you all, in representing Mrs. Motko's best interest, were trying to do?

A. Yes.

Q. And the only reason that you now claim that she is the holder of the notes and entitled to priority under the deed of trust is because Durham Life Insurance Company foreclosed?

Dep. 3/6/64 page 33

A. This is not true.

Q. Well, if Durham Life Insurance Company hadn't foreclosed and you could have worked out the arrangements, you all would still be operating the motel; isn't that right?

A. Probably.

Q. And you had the stock?

A. What stock?

Q. The stock of the Sea Mist Motel? S & L Enterprises, which comprised the Sea Mist Motel, you had that.

A. We never had the stock of S & L Enterprises.

Q. It was delivered to Mr. Dean you testified to.

A. It was delivered to Mr. Dean.

Q. Mr. Dean didn't represent Mr. Shuey or Mr. Levidy, did he?

A. He did not.

Q. He took the stock in to protect Mrs. Motko, didn't he?

A. He took the stock in on an agreement which was never consummated.

Q. How do you mean that the agreement was never consummated?

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Dep.
3/6/64
page 48 }

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HERBERT L. KRAMER, called as a witness, having been first duly sworn, was examined and testified as follows:

By Mr. Dean:

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Dep.
3/6/64
page 51 }

* * * * *

A. All right, yes, principal and interest at that time of—we calculated to be $56,649.68, which was made up of the principal that you referred to, two hundred nine dollars and some change advertising costs under the deed of trust foreclosure notice that was then running, $2,000 in fees that I charged as Trustee for the services at that point. The remaining difference was interest.

Herbert L. Kramer

Q. Mr. Kramer, there were also certain payments made on the first mortgage to the Durham Life Insurance Company by you in behalf of the S & L Enterprises?

A. Yes. They were included in our fifty-six thousand. We had, during the previous fall, November I believe the date was, we had paid a total of $4,928 to the first mortgage holder, and we thereafter, and I say thereafter, immediately after Mr. Kitchen and I concluded our transaction and under the agreement we had, we advanced two additional payments to keep that Durham Life mortgage up to date. We advanced $2,464 at that time.

Dep. 3/6/64 page 52 } The Commissioner: That is six payments?
The Witness: We had six payments.
The Commissioner: Twelve hundred and some dollars apiece, approximately.

By Mr. Dean:

Q. $7,392.00 is the exact amount?

A. That is correct.

Q. And the total on it was ninety-two thousand odd dollars?

The Commissioner: $92,453.34.

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Dep. 3/6/64 page 53 }

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By Mr. Pickrell:

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Dep. 3/6/64 page 57 }

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A. No. We held the notes as collateral to her undertaking to us. She owed us the money and I wrote them that I was

going to hold those notes to secure the balance that she owed us on the purchase price of those notes.

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Depositions of witnesses before Mr. T. J. Amelson, Commissioner in Chancery, in the Law Offices of Messrs. Kellam and Kellam, Board of Trade Building, Norfolk, Virginia, on March 30th, 1964, at 10:00 o'clock a.m., to be read in evidence in the above entitled case, pending in the Court of Law and Chancery of the City of Norfolk, Virginia.

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Dep.
3/30/64
page 78 }

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ARMOND CAPLAN, called as a witness, having been first duly sworn, was examined and testified as follows:

By Mr. Johnson:
Q. State your full name.
A. Armond Caplan.
Q. What is the nature of your business?
A. I am in the finance business.
Q. You have a connection with the Industrial Security Loan Corporation?
A. Yes.

Dep.
3/30/64
page 79 }

* * * * *

Armond Caplan

By Mr. Pickrell:

Dep.
3/30/64

* * * * *

page 80 } Q. You said there were two payments made and one was March 8th, 1963, and one was April 16th, 1963.

A. It was a payment of $40,800.00 and $45,043.73.

Mr. Dean: It's forty-five hundred.
The Witness: $4,543.73.

By Mr. Pickrell:

Q. That was payment of the deed of trust?

A. I don't know whether it's payment of Deed of Trust—

Q. Well, the money was paid?

A. Paid to us through an attorney. Through Mr. Kramer. It was never paid directly to us.

Q. Did you have any dealings with the parties making the payments?

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Dep.
3/30/64
page 81 }

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By Mr. Dean:

Q. Mr. Caplan, on March 8th, $40,800.00 was paid to you?

A. Was not paid to us. It was paid to the attorney. We got the money.

Dep.
3/30/64
page 82 }

Q. From the attorney on that date?

A. That is right.

Q. You got $4,543.73 on April 16th?

A. That was the same day. We got a total payment of—the figures I gave you was a total payment of March 8th.

Q. What was the total amount you got on March 8th?

Armond Caplan

A. On April 16th, we got a payment of forty-nine twenty-eight.

Q. Is that $4,928.00 or $49.28?

A. $4,928.00. Those other two figures I gave you were the March 8th payment.

Q. $4,928.00 even?

A. Right.

Q. And the total amount you got on March 8th was how much?

A. Well, it's $4,543.73 plus $40,800.00.

Q. You got $40,800.00?

A. Plus forty-five hundred.

Q. So you have received a total of $50,271.73?

A. That is right.

Q. That is the total of those three figures?

A. That is right.

Dep. 3/30/64 page 83

Q. Did your firm make any of the advancements to the Durham Life Insurance Company for payments on the first mortgage?

A. Yes, I think that we did on one or two occasions when they notified us it was past due. We always do that to protect our second deed of trust.

Q. Do your records show when those payments were made and the amounts?

A. It doesn't state any. I think it was in November of sixty-two. November 6, 1962.

Q. Do you have that statement?

The Commissioner: Here is a statement that Mr. Kramer filed. This was a rough calculation he had here.

By Mr. Pickrell:

Q. The total amount, Industrial Security Corporation—is that the name of your firm?

A. Right.

Q. Received was $50,271.73?

A. That is right. That is the figures there.

Q. $4,928.00 is four times $1,232.00.

A. That is probably the payments.

Q. That represents payments on the first mortgage?

Dep.

A. First mortgage, yes, which we always notified the first mortgage holder.

Armond Caplan

3/30/64 Q. And that leaves a difference of $45,343.73
page 84 } which you received for the second mortgage?

A. I don't follow your question. You mean take that off?

Q. Yes.

A. Yes, I guess that is right.

Q. That only leaves a principal of—your mortgage was $45,000.00, so that only leaves a difference of $343.73 for interest, is that correct?

A. That is correct, yes, sir. The interest was taken out in advance, but that is correct.

Q. You say the interest was taken out in advance?

A. That is right. In other words, the note—the interest was added into the note. It was not taken out, it was added into the note.

Q. According to the statements rendered here, there has been a total of $92,576.46 paid, plus some additional amount of interest from March 7, 1963. Do you know anything about that?

A. No. I mean I know of transactions that were going on about the stock that we picked up at the Seaboard Citizens, but Mr. Kramer could fill you in better than I could on that. He handled that.

Dep.
3/30/64 Mr. Dean: All right, sir.

page 85 } By Mr. Johnson:

Q. Just one more question. In other words, the entire indebtedness had been paid by the end of April of 1963, is that correct?

A. That is right.

By Mr. Dean:

Q. When you say "paid" Mr. Caplan, you mean that you had received your money? You had received this much money?

A. That is right.

Q. As far as you were concerned, there was no further debt from the S & L Enterprises, Incorporated?

A. That is right. We had delivered our note to Mr. Kramer, and I think Mr. Kramer, in turn, delivered the note to the parties that purchased it.

By Mr. Pickrell:

Q. You use the word "purchased." You don't know what

the arrangements were, do you, Mr. Caplan? You didn't have anything to do with them?

A. No.

Mr. Pickrell: All right, thank you.

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Dep.
3/30/64
page 91 }

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WILLIAM T. SHUEY, called as a witness, having been first duly sworn, was examined and testified as follows:

By Mr. Pickrell:

Q. Will you give your name and your address?

A. William T. Shuey, 1602 Allerson Lane, Virginia Beach.

Dep.
3/30/64
page 92 }

Q. Mr. Shuey, you and Mr. Levidy were the original incorporators and promoters of the corporation known as S & L Enterprises?

A. That is right.

Q. One of the main assets of the corporation was the Sea Mist Motel, is that correct?

A. That is right.

Q. Who were the original stockholders of the corporation?

A. Ernest T. Levidy and William T. Shuey.

Q. Did Mr. Levidy at any time get out of the corporation by sale of his stock?

A. Well, the transfer of stock was made on two or three occasions, the transfer of fifty shares to me and then transferred back again in odd amounts on a number of occasions.

Q. Approximately when was Mr. Levidy's interest as a stockholder in S & L Enterprises terminated, approximately? Would it have been prior to May of 1963?

A. Yes, it would be.

Q. At a time when you and Mr. Levidy were the sole stockholders, did you place two deeds of trust on the property, the first one with Durham Life?

A. That is one.

William T. Shuey

Q. Did you place another one through Industrial Securities? Is that correct?

Dep. 3/30/64 page 93

A. That is right.

Q. Who is LaVerne T. Motko?

A. That is my sister.

Q. Did you enter into an agreement with LaVerne T. Motko on or about May 3rd, 1963, in which the second deed of trust of some $60,011.87 was referred to in the agreement as being satisfied?

A. You are speaking of this piece of paper?

Q. Yes.

A. Yes.

Q. I show you an agreement dated—well, it is acknowledged as given May 3rd, 1963, and ask you if this is the agreement? Is that your signature and is that your sister's signature and is that the agreement that you all entered into?

A. That is the one I am familiar with.

Mr. Pickrell: We would like to introduce it into the record by a copy, Mr. Amelson. This is a photostatic copy of it.

The Commissioner: You have seen this, have you, Mr. Dean?

Mr. Dean: Yes.

The Commissioner: For the purpose of the record, we will mark this as Shuey Exhibit 1.

Dep. 3/30/64 page 94

By Mr. Pickrell:

Q. Mr. Shuey, was there ever a time in which the operation of the Sea Mist Motel was turned over to Mrs. Motko or her agents, and if so, when?

A. Yes, about the 15th of April of '63.

Q. What happened at that time?

A. Mr. Dean started to pick up the money from Mr. Sinclair.

Q. Did you have any further interest in the operation of it after that?

A. No.

Q. Did you receive any monies from the income at that time?

A. After that?

Q. Yes.

A. No.

Q. Do you know who received the monies?

William T. Shuey

A. Mr. Dean picked it up. I don't have any idea what went.

Q. Did you understand that Mr. Dean was representing and acting for Mrs. Motko, your sister?

A. Through Mr. Kitchen, who was the attorney in Cleveland.

Q. I show you three notes, each one dated January 16, 1962, two of them in the sum of $10,200.00 and one of them in the sum of $20,400.00, which are reportedly secured by a deed of trust of record, in which there is an endorsement on the back which purports to be your signature. Will you tell us whether or not that is your signature on the back of those notes and your wife's signature.

Dep. 3/30/64 page 95

A. Yes.

Q. Is Mr. Levidy also on those notes?

A. Yes.

Q. Can you tell us whether or not you are indebted on those notes, or has that indebtedness been satisfied with your sister?

A. Mr. Pickrell, they have been satisfied inasmuch as Mr. Caplan is concerned.

Q. Were you personally obligated on those notes to your sister?

A. I wouldn't say that I was.

Q. Was it your understanding with your sister that the debt had been satisfied?

A. Through this agreement?

Q. Through the agreement. The agreement says in the second paragraph some lines down, "with the sum of $60,-011.87 advanced by the said LaVerne T. Motko in satisfaction of a second deed of trust existing on the Sea Mist Motel," and that is the debt that you all are talking about here?

Dep. 3/30/64 page 96

A. I would assume that it would be.

Q. I show you a note dated February 27, 1962, in the sum of $4,200.00, which purports to have your endorsement, personally, on the back of it, and Mr. Levidy and Mrs. Shuey and Mrs. Levidy. Is the same true of that note as to this agreement as was to the notes you just testified to?

A. I would assume so.

Q. Was that your understanding?

A. Yes.

William T. Shuey

Q. Is this agreement the agreement and understanding that you had with your sister?

A. This agreement that I entered into with my sister, Mr. Pickrell, is to put her in the place, the same position Mr. Caplan was in, as the holder of the second deed of trust.

Q. You turned over the operation of the business to her, didn't you.

A. To her agent.

Q. And you were released on the personal obligation on these notes?

A. I would assume that I was.

Q. Who prepared this instrument for you?

A. Well, it was prepared one or two times. This is the second copy of one that was originally prepared that was changed, but I assumed it was prepared by Mr. Kitchen in Cleveland.

Dep. 3/30/64 page 97 } Q. So then he would have had knowledge of this agreement?

A. I am sure that he would have.

Mr. Pickrell: I have no further questions.

By Mr. Johnson:

Q. You have transferred all of your stock in S & L Enterprises to Mrs. Motko, is that correct?

A. Yes.

Q. On some previous occasions, your sister had advanced monies to you in connection with your operation, is that correct?

A. Yes.

Q. On these occasions, no deed of trust was given to secure those indebtednesses?

A. Other than notes, signatures.

Q. Just your personal notes, is that correct? No other collateral was required?

A. No.

Mr. Johnson: That is all.

By Mr. Dean:

Q. Mr. Shuey, *were* did you get this Contract of Sale, Release and Pledge Agreement from?

Dep. 3/30/64 page 98 } A. From our file.

Q. From your file?

William T. Shuey

A. Yes.
Q. Where did you get it from to put in your file?
A. From your office, Mr. Dean.
Q. From my office?
A. Yes, sir.
Q. How did you get it?
A. It was handed to me.
Q. By whom?
A. It was by you after your notary signed it.

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Dep.
3/30/64
page 99 }

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By Mr. Dean:

Q. Mr. Shuey, you agreed to do certain things in this agreement. "In consideration of William T. Shuey securing a loan, which loan and all its terms and conditions must be acceptable to the aforesaid LaVerne T. Motko, in the name of S & L Enterprises, Incorporated, in sufficient amount to pay in full the debt owed by the S & L Enterprises to the Princess Anne Marine and Bulkheading Company; to pay all delinquent real estate taxes assessed against the Sea Mist Motel; to pay all delinquent mortgage payments owed to the Durham Life Insurance Company, including monies advanced by the aforesaid Life Insurance Company to pay fire insurance premiums on the aforesaid motel; and which loan is to be paid back only after all operating expenses and obligations of the Sea Mist Motel have been paid." Did you do any of those things?

A. No, I didn't.

Q. You did not? Was there ever any intention, to your knowledge, to release the corporation from this second deed of trust by Mrs. Motko or anyone else?

Dep.
3/30/64
page 100 }

Mr. Pickrell: I object to what the intentions were.

The Commissioner: Let him answer over objection, but I will have to pass on this agreement about whether or not it has been complied with. Answer the question.

William T. Shuey

The Witness: Ask it to me in a different way, Mr. Dean, would you please? I am not sure I know what you are asking.

By Mr. Dean:

Q. In all of the negotiations regarding this affair, to your knowledge, was there to be a release of the corporate obligation under this deed of trust?

A. You mean as far as Bill Shuey and S & L was concerned?

Q. I mean as far as Mrs. Motko was concerned. Was there ever any discussion of a release of the Sea Mist, the motel, the corporation?

A. What you are asking me is that I wouldn't be responsible anymore for the—

Q. I am asking you about the corporation's affairs.

A. I don't know how to answer it. I really don't know how to answer it.

Dep. 3/30/64 page 101

Q. Let me ask you this. Weren't you told that this release would not be effective until you had complied with these requirements?

A. There was conversation to that effect.

Q. You did not comply with any of the requirements that you were supposed to.

A. The requirements as far as paying up this and paying up that, no, I didn't take care of any of those.

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Dep. 3/30/64 page 102

A. That is right, and that three hundred might have included the furniture.

Q. But it was fully furnished?

A. That is right.

Q. And that included, when I say fully furnished, they had refrigerators and stoves in them, didn't they?

A. That is right.

Q. When the motel was turned over to Mrs. Motko or her agent, all of the personal property and assets of the Sea Mist Motel were turned over at that time, too, including the real estate?

* * * * *

By The Commissioner:

Q. In this particular agreement, you knew that the me-

chanics lien had been filed against your property, didn't you?

A. Yes, sir.

Q. You also knew that there was a suit filed or about to be filed to sell the property to satisfy the mechanics lien?

A. Yes.

Q. That was also one of the pressures that were on you in addition to those two mortgages that were held by Mr. Caplan's firm, is that correct?

Dep. 3/30/64 A. Yes, sir.

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page 121 }

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By Mr. Pickrell:

Q. This agreement between William Shuey which is styled Contract of Sale, Release and Pledge Agreement, as I understand, was given to you by Mr. Dean in his office, is that correct?

A. That is right.

Q. Delivered to you and you took it and eventually gave it to your attorney, Mr. Smith, is that correct?

A. That is right.

Q. And it was brought here and introduced as an exhibit and identified by you today, is that correct?

Dep. 3/30/64 A. That is right.

page 122 } Mr. Pickrell: That is all.

The Commissioner: That has already been introduced.

Mr. Pickrell: I just wanted to show the Court how it got here. In other words, it was in his possession.

By Mr. Pickrell:

Q. And the notary on the contract is Evelyn Perry, is that correct?

A. Yes.

Q. Was that acknowledgment taken in Mr. Dean's office?

A. Is Mrs. Perry in his office?

Mr. Dean: That is right.

By Mr. Pickrell:
Q. But you acknowledged it in Mr. Dean's office?
A. Yes.

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Dep.
3/30/64
page 123 }

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FRED J. DEAN, JR., called as a witness, having been first duly sworn, was examined and testified as follows:

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Dep.
3/30/64
page 124 }

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The Commissioner: Suppose you proceed, Mr. Dean, and then they can ask you any questions they want thereafter. Make your statement.

The Witness: My first contact with Mr. Shuey was after we had obtained a judgment against him for Mrs. Motko on a note for $29,500.00. A summons had been issued for him and Mr. Levidy's appearance before Mr. Amelson as Commissioner in Chancery. Mr. Shuey at that time was represented by Montgomery Knight. The Commissioner's hearing, or examination, or interrogatories was continued from time to time in an effort to see if we couldn't save this Sea Mist Motel from foreclosure. By agreement between Mr. Shuey, Mr. Levidy, Mr. Knight and myself, it was agreed that the money that had been taken down there had not been going to the right places and I was designated to pick up the money down there and apply it to the current obligations as far as it would go to keep the Sea Mist from folding up. It was represented to me that practically the only obligations down there were the first mortgage, the second mortgage

Dep. 3/30/64 page 125

and a few judgments that didn't amount to very much.

I found that the taxes had not been paid. The delinquent tax office for personal property was far in arrears. We had to make some arrangement with them.

I found out that the Power Company was owed something over $2100.00. They were about to cut off the lights.

The garbage disposal man was far in arrears and he was about to stop picking up the garbage.

I believe the water bill was delinquent. That was about to be cut off, and the same with the sanitation.

By The Commissioner:

Q. Can you clarify when this was? Do you recall exactly the date when this happened, when you took charge?

A. I have been trying to find it. I didn't take any charge of the operation at all. Mr. Sinclair was the manager of the place down there, and in the opinion of everyone, he was doing a good job. So he was really the man in charge.

But garnishments had been served on the bank account of the corporation so they couldn't keep any money in the bank. The Federal taxes were delinquent and I was served with a notice of lien from the Federal Tax Office.

Dep. 3/30/64

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page 127

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A. I had the statement up here the last time we were here. It may be in my file. It was only about three weeks that I had anything to do about getting the money down there. Things were just getting tighter and tighter. It went pretty closely up to the first advertised sale.

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Fred J. Dean, Jr.

Dep.
3/30/64
page 128 }

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Q. Let's go back to this agreement, Mr. Dean.
A. I want to.
Q. That seems to be the most important issue at this time.
A. That was a proposal, your Honor, and it was never delivered by me to Mr. Shuey. He picked that up off of my desk and took it out with him. I didn't know it.
Q. Had he signed it in your presence?
A. Yes, he signed it in my presence.
Q. And it had been notarized in your office?
A. Yes, sir.
Q. He also testified that he left his stock there?
A. Yes, sir, that is exactly what he did. He left it there. We did not accept it.

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Dep.
3/30/64
page 130 }

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As to this agreement, I have never given that to Mr. Shuey. On the other hand, I told him that it would not be acceptable until he had arranged the financing. How he got it into his hands without my knowledge—I certainly did not deliver it to him.

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Dep.
3/30/64
page 135 }

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By Mr. Pickrell:

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Fred J. Dean, Jr.

Dep. 3/30/64

A. Mr. Pickrell, there was no agreement on my part in behalf of Mrs. Motko to accept any stock. Those certificates were left in my office.

page 136 } By The Commissioner:

Q. Are they with you? Do you have those certificates?

A. I have them here.

By Mr. Pickrell:

Q. They were assigned to Mrs. Motko, is that correct, sir?

The Commissioner: Let's look at the stock certificates. The agreement refers to 51 shares and 49 shares.

Let the record show that Mr. Dean has presented a stock certificate number 2, dated December 10, 1960, to Mr. William T. Shuey, and there is no endorsement on this stock of transfer.

Then there is another 50 shares, William T. Shuey, dated the 13th day of July, 1962, and there is no assignment on either of these. As far as the records would show, this is a hundred shares of stock, but in the meantime, there are stock certificates 1, 3, 4 and 5 that are missing.

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Dep.
3/30/64
page 144 }

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Dep.
3/30/64
page 145 }

By Mr. Johnson:

Q. Mr. Dean, after these certificates were delivered to you, you made no effort to return them to Mr. Shuey, did you?

A. They were not delivered to me. They were left in the office. I just stuck them in the file.

Q. You have retained them since that time?

A. I offered them back to Mr. Shuey, if I am not mistaken.

Q. On what occasion was that?

Fred J. Dean, Jr.

A. Well, he was in the office every day or so.
Q. Could you be definite?
A. No, sir, I could not.
Q. They have been retained by you since?
A. They have been in my file ever since they were left in my office.

Mr. Dean: I see one other thing here which I was asked. I didn't know the dates. I wrote to the Durham Life Insurance Company on May 10th that I had handled the corporation for only three weeks. That was on May 10th. It looks like the last two weeks in April and the first week in May, 1963.

The Commissioner: The record shows that there was a hundred shares of stock authorized to be issued. This authority was granted on December 8th, 1960, by the State Corporation of Virginia. Apparently no regular stockbook was issued, but the stock certificates, and apparently whoever undertook this showed a stock certificate number 1 was issued December 10, 1960, for 50 shares to Ernest T. Levidy. And on a certificate on the back, it seems that 40 shares were released to William T. Shuey on the 15th day of February, 1962, and 10 shares released to Ernest T. Levidy on February 15, 1962.

Dep. 3/30/64 page 146

Then there is a stock certificate 3 which shows 40 shares were issued to William T. Shuey and 10 shares were issued to Ernest T. Levidy and they apparently are dated February 15, 1962.

On June 26, 1962, 40 shares were issued to Ernest T. Levidy and apparently this certificate to that we referred to before was the 50 shares originally issued to William T. Shuey on December 10, 1960. Apparently the other 50 shares were not even back in so that William T. Shuey would have had all hundred shares. Then, apparently, 51 shares were issued on May 3rd, 1963, in the name of LaVerne T. Motko, and another 49 shares on that date were put in the name of William T. Shuey and William T. Shuey endorsed the 49 shares over to LaVerne T. Motko, and the signature was in the presence of C. C. Sharp, who apparently was the attorney, and these 2 stock certificates of 100 shares, one of 50 shares that were issued on July 13, '62, and the 50 shares in Shuey's name should have been endorsed before these new

Dep. 3/30/64 page 147

certificates could have been issued. Apparently somebody overlooked it. These two certificates here, that is, the new certificates, 1 and 2, apparently were prepared pursuant to this agreement which was acknowledged on the 3rd day of May, 1963.

I would like to keep this book and these stock certificates as a part of the evidence in this case and we will designate the stockbook and all the stock certificates as Commissioner's Exhibit No. 1 and retain this.

(Whereupon, said foregoing documents were marked as Commissioner's Exhibit No. 1.)

Mr. Johnson: I believe the record should show that the stockbook and certificates were delivered to you by Mr. Dean.

The Commissioner: Let the records show that these papers were all in the possession of Mr. Frederick J. Dean, Jr., who has been testifying.

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Dep.
3/30/64
page 148 } ERNEST T. LEVIDY, called as a witness, having been first duly sworn, was examined and testified as follows:

By Mr. Pickrell:

Q. Mr. Levidy, would you state your name, please, and your address?

A. Ernest Levidy, 1220 Lindale Lane.

Q. You are the Mr. Levidy at one time that was one of the owners of S & L Enterprises, is that correct?

A. That is correct.

Q. You later sold your stock or transferred it to Mr. Shuey, is that correct?

A. That is correct.

Q. I show you Shuey Exhibit No. 1, which is styled Contract of Sale, Release and Pledge Agreement, and ask you do you have any personal knowledge of the signing of this by Mr. Shuey and the actual execution and of the transaction, and if so, what is it?

A. At the time that this agreement was drawn, Montgomery

Knight was Mr. Shuey's attorney. Montgomery Knight read off this agreement by phone to Mr. Kitchen in Ohio.

Dep. 3/30/64 page 149 } By The Commissioner:

Q. Were you present when he called?

A. Yes, I was present. After this was drawn up, it was drawn up by Mr. Kitchen in Ohio almost word for word the same as Mr. Montgomery Knight had quoted it on the phone. In order to follow through with this agreement, we were told that we were to give 100 shares of stock to LaVerne T. Motko, 51 shares in her name and 49 shares which were to be pledged.

Montgomery Knight had drawn up the necessary papers and had drawn up the stock certificates. We went into the office. Mr. Dean had these papers in his office from Mr. Kitchen and we were ready to proceed with this action.

By Mr. Pickrell:

Q. Who was present when you say you went in the office?

A. Mr. Shuey, myself and Mr. Knight.

By The Commissioner:

Q. Was Mr. Dean present?

A. No, Mr. Dean wasn't present. Mr. Dean was at his office with these papers. He had let us know that the paper had come in and Mr. Knight was informed to go ahead and make the transfer of the stock.

Dep. 3/30/64 page 150 } We went to Mr. Knight's office and Mr. Knight very kindly had the stock prepared. But before he would release the stock, he called upon Mr. Shuey for a sizeable amount of money, a fee. I can't recall the amount but it was in the thousands. I believe it was $2500.00. Naturally, Mr. Shuey became very upset and there was a few words spoken and Mr. Shuey walked out and we then went to C. C. Sharp who did prepare these papers for $25.00, the same work that was done that Mr. Knight wanted $2500.00 for.

We went to Mr. Dean's office and Mr. Dean received the stock certificates.

By Mr. Pickrell:

Q. Who went to Mr. Dean's office?

A. Mr. Shuey and I. After the stock certificates were drawn up, such as you see them there, we went to Mr. Dean's

office and we gave him the stock certificates, and Mr. Shuey signed this paper, but not exactly this paper. Page 2 was different. I believe you have a copy there. Page 2 releasing Mr. Shuey of any obligations of S & L Enterprises.

Mr. Dean, acting on behalf of Mrs. Motko, then said that this was a foolish move for LaVerne T. Motko to make. Mr. Shuey did not say it was a foolish move for his sister to make. Mr. Shuey merely agreed with Mr. Dean that it was a foolish move and that Mr. Dean was right, it was a foolish move.

Dep. 3/30/64 page 151

Q. Without getting into what your thoughts are on the matter, if you would just tell us about what happened.

A. We had this paper. Mr. Shuey had this paper in his hand and he endorsed it. Mr. Shuey endorsed the paper. Mr. Shuey was happy. Ernest Levidy was happy with the exception of the fact that Mr. Shuey was released of the judgment but I wasn't, but it didn't make too much difference at that time. And Mr. Dean was happy because he had the stock certificates.

Now, just as we were getting ready to walk out of the office, Mr. Dean took the paper back again, or at least the one he had in his hand, and reviewed it and said, "Oh, my heavens, this paper is not valid because Mr. Kitchen has not notarized it. I am going to have to send it back to Ohio and get it notarized."

So, Mr. Shuey then said, "Well, Mr. Dean, I have given you all of the stock. I have nothing to show for it. Do you have a copy machine."

Mr. Dean said, "We do have one, but it is out of order."

So we, in good faith, walked out of the office feeling—or, at least, Mr. Dean told us he was going to forward these papers for the proper endorsement by Mr. Kitchen.

Dep. 3/30/64 page 152

At that stage of the game, Mr. Kitchen was convinced of the fact that Mrs. Motko should not go through with this. They never did return these papers to us.

In other words, what the story at that stage of the game was, LaVerne T. Motko had 50 shares of stock in her name, 49 shares of stock assigned to her, she owned the Sea Mist. She didn't release Ernest Levidy from the judgment and she had it all and we had no paper to show anything.

Then the big fireball came when Durham Life sent this

letter that they were about to foreclose on the Sea Mist. It is at that time that we contacted Mr. Dean and Bruce Kichen and conversed back and forth. They saw the possibility of losing the Sea Mist, so they then agreed to return this paper to us with the exception of the fact that page 2, the original page 2, was omitted and a new page 2 was put in. This would have been true because on page 2 it states about the Durham Life foreclosure, or the payment of Durham Life. The situation did not exist on April 23, 1963.

Q. How did this paper get back into Mr. Shuey's hands?

A. This paper was mailed to Mr. Shuey by Mr. Kitchen with a very strong letter explaining his position, what the position was to be.

Dep. 3/30/64 page 153

At that time, when things were possibly going to be good, Mr. Shuey was to be scratched out as president of the corporation and so forth and so on. Then when things began to look bad he was welcome to the position of president of the corporation. The endorsement of Mr. Dean's notary on May 3rd, 1963, was made prior to the endorsement of Bruce Kitchen on April 23, 1963.

Q. The agreement was signed by Mrs. Motko when it was in there on May 3rd?

A. Right.

Q. When you say the endorsement, you mean the—

A. The acknowledgement.

Q. The acknowledgement hadn't been made by Mr. Kitchen at that time?

A. That is correct.

Q. But the signature of Mrs. Motko was on there?

A. That is right. I would just like to clarify this point that Mr. Shuey did not remove these papers from Mr. Dean's desk, nor did he sneak into Mr. Dean's office and place the stock certificates under a book cover for Mr. Dean to find a week later. This was a transaction that was reviewed thoroughly by Mr. Dean, Mr. Kitchen, LaVerne T. Motko and Montgomery Knight and they called the punches because we were not in the position to call any punches, and any statements that were made by Bill Shuey saying that his sister was foolish, it was made on the part of Frederick Dean and Frederick Dean's suggestions were right.

Dep. 3/30/64

Mr. Pickrell: I have no further questions.

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page 158 }

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WILLIAM T. SHUEY, called as a witness, having been first duly sworn, was examined and testified as follows:

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Dep.
3/30/64
page 159 }

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By The Commissioner:

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Q. In other words you now say that you got your copy back from Mr. Kitchen?
A. That is right.
Q. Not from Mr. Dean?
A. That is correct.

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Dep.
3/30/64

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A Copy—Teste:

Howard G. Turner, Clerk.

INDEX TO RECORD

	Page
Appeal Awarded—June 14, 1967	1
Appeal Awarded—June 14, 1967	2
Record	3
Bill of Complaint of Princess Anne Marine and Bulkheading Co., Inc.	3
Answer and Grounds of Defense of Herbert L. Kramer, Trustee	6
Answer and Grounds of Defense of S & L Enterprises, Inc.	7
Decree—April 17, 1963	8
Order—March 9, 1966	9
Letter, Opinion—August 11, 1966	10
Letter to Counsel from Judge Walter A. Page	11
dated November 30, 1966	11
Bill in Chancery of Philip L. Ruso, et al.	12
Answer and Notice of Princess Anne Marine and Bulkheading Co., Inc.	16
Notice to Consolidate Chancery Causes	18
Answer of Laverne T. Motko	18
Report and Petition of Philip L. Russo, et al.	21
Decree—December 20, 1963	22
Order—October 19, 1965	23
Report of Commissioner in Chancery	24
Exceptions to Commissioner's Report by American Acceptance Corporation	48
Exceptions to Commissioner's Report by Laverne T. Motko	50
Letter, Opinion—August 11, 1966	50
Letter to Counsel from Judge Walter A. Page dated November 30, 1966	52
Decree—February 24, 1967	53
Notice of Appeal and Assignments of Error of American Acceptance Corporation	57
Notice of Appeal and Assignments of Error of Laverne T. Motko Strauss	58
Depositions:	
M. J. Owens	59
George Susewind	61, 70
M. J. Owens	63, 65
William T. Shuey	64, 85, 101
J. Bruce Kitchen	72
Herbert L. Kramer	79
Armond Caplan	81
Fred J. Dean, Jr.	92
Ernest T. Levidy	97