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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 760867

C. RAY WASKEY
Appellant,

v.

LEON H. THOMAS, MARGARET E. THOMAS AND
CHARLIE M. BARFIELD
Appellee.

JOINT APPENDIX

FROM THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

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Byrd, Dinsmore, Evans H Bryant, Ltd.
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Virginia Beach, Virginia 23455
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393 Denbigh Blvd.
Newport News, Virginia
Counsel for Appellee

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VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF VIRGINIA BEACH

CHARLES M. BARFIELD Plaintiff v. C. RAY WASKEY 920 Holiday Lane Virginia Beach, Virginia 23455 Defendant	:	IN CHANCERY NO. C-75-110 BILL OF COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

The Plaintiff hereby moves the Circuit Court for the City of Virginia Beach, Virginia, to declare void, unenforceable, and rescinded a purported contract of sale for real estate signed by the plaintiff and the defendant; and to order the defendant to return all payments made to him by the plaintiff; to declare the interest on the purported contract void; to order the defendant to pay to the plaintiff double the amount of usurious interest paid by the plaintiff; and, to declare a certain provision of the purported contract of sale to be void and unenforceable, together with the costs of this action, for the reasons set forth to wit:

1. That on or about the 25th day of November, 1973, the plaintiff and the defendant signed a preprinted form document furnished by the defendant and designated as a "Contract of Sale", a copy of which is attached hereto and made a part hereof, wherein the defendant purported himself to be the owner of certain real property and agreed to convey said real property to the plaintiff upon certain therein described terms and conditions.

2. That the land referred to in the aforementioned document is not described with any degree of specificity, and that a preliminary plat was neither attached nor made a part of the aforementioned document.

3. That prior to affixing his signature to the aforementioned document, the plaintiff was shown certain land by the defendant, and that the defendant pointed out the boundaries of that land and agreed to convey it to the plaintiff.

4. That the defendant represented to the plaintiff that the aforementioned document would constitute a valid and adequate contract for the conveyance of the particular parcel of land which the defendant had pointed out to the plaintiff.

5. That the plaintiff paid Fifty Dollars ($50) to the defendant at the time of the signing of the aforementioned document which the defendant promised to use to obtain a certified survey plat of the property and send it to the plaintiff within a reasonable time as soon as the weather would permit and a surveyor could be obtained.

6. That the plaintiff, through a letter dated October 30, 1974 sent by his attorney to the defendant, notified the defendant that the plaintiff elected to rescind and cancel the purported contract.

7. That on or about the 8th day of November, 1974, the defendant caused to be delivered to the plaintiff's attorney a photographically reproduced copy of a survey plat showing a lot designated as #20 upon which the words "Otherwise known as #2, Lot Barfield" appear in ink.

8. That the above described copy of a certified survey plat does not in fact depict the parcel of land which the defendant pointed out to the plaintiff, as aforesaid.

9. That the defendant does not own either the land pointed out to the plaintiff, as aforesaid, or the land described by the aforementioned photographically reproduced copy of the survey plat; and that the land is in fact owned jointly by the defendant and his wife as tenants by the entireties with the right of survivorship.

10. That the defendant fraudulently induced the plaintiff to sign the attached document which is designated as a "Contract of Sale" by falsely representing to the plaintiff that he was the owner of certain real property which was purportedly therein described and that the plaintiff relied upon the defendants representation to his detriment.

11. That the defendant's wife did not, either orally or in writing, agree to convey the real estate to the plaintiff, as required by law.

12. That the attached document which is designated as a "Contract of Sale" is ambiguous on its face, does not evidence a meeting of the minds of the parties thereto, and is therefore unenforceable due to the fact that the contract is totally ambiguous regarding the payments which are to be made by the plaintiff thereunder. Either the payments are to continue until the balance of the Nine Thousand Nine Hundred Ninety-five Dollars ($9,995) purchase price has been paid off in full, or the payments are to continue for a period of twenty-five (25) years. In the event that the payments are to continue for twenty-five (25) years, the plaintiff would have been required to pay interest at a rate of approximately nine and one-fourth percent (9¼%) per annum, which is a usurious rate.

13. That, in the event that the contract is interpreted to require the payment of interest, the contract fails to disclose the annual percentage rate of interest in the form required by federal and state law.

14. That the plaintiff has paid $ 1,093.20 to the defendant on account of this transaction.

15. That the liquidated damages provision of the eighth numbered paragraph of the purported "Contract of Sale" is void and unenforceable due to the fact that the provision comtemplates a penalty rather than a true measure of damages.

16. That the plaintiff was not formally notified of his right to rescind in this type of real estate transaction, and that the plaintiff therefore seasonably exercised his right to rescind and cancel the purported contract by a letter dated October 30, 1974, sent by the plaintiff's attorney to the defendant.

WHEREFORE, your plaintiff prays collectively and alternatively, that the "Contract of Sale" be declared void, unenforceable, and rescinded; that the defendant be ordered to return all payments made to him by the plaintiff, with interest from the date of said payments; that the interest on the purported contract be declared void; that the defendant be ordered to pay to the plaintiff double the amount of the usurious interest paid by the plaintiff; that the eighth numbered paragraph of the purported contract of sale be declared void and unenforceable; and, that the plaintiff be given all other relief, both legal and equitable, to which he may be entitled, together with the costs of this action.

CHARLIE M. BARFIELD

BY _____
Of Counsel

Terrence K. Martin, p.q.
Martin and Bensten
393 Denbigh Boulevard
Newport News, Virginia 23602

CONTRACT OF SALE

C. RAY WASKEY, herein called "Owner", hereby sells to Charlie M. Barfield and Sole herein called "Purchaser", and purchaser hereby buys from owner the certain lot numbered 2, as shown on a preliminary plat of land of C. Ray Waskey attached hereto and made a part of this contract by this reference, said lot containing 10 acres, more or less. This conveyance is a conveyance in gross and not by the acre for a purchase price of $ 9,995.00, subject to the following terms:

1. The purchaser agrees to pay the sum of $ 200.00 in cash as a deposit, receipt of which is hereby acknowledged, toward the downpayment of $ 200.00 (balance to be paid within ten days from date of this contract), and the balance of $ 9,795.00 in monthly installments of $ 84.32 payable on the first of each and every month commencing with the 1st of DEC, 1973, for the period of 25 years, or until the purchase price shall have been paid in full, such monthly payments to be made at P. O. Box 13, Alberta, Virginia, or at such place as the own may designate in writing.

2. Upon the payment of said purchase price in full, owner shall deliver to purchaser a general warranty deed with the usual covenants of title covey clear and marketable fee simple title to said lot.

3. The right to anticipate or pre-pay the principal balance of the obligation herein is expressly waived by the purchaser.

4. Purchaser shall have possession of lot January 1, 1974. He shall be entitled to use, enjoy ad possess said lot prior to and pending payment in full of the purchase price and delivery of deed; providing, however, that no use shall be made thereof which will interfere with the development of said lot or other properties of owner in the area. As to any use of said lot by purchaser or the purchaser's agent, guests, or invitees, Purchaser agrees to indemnify and hold harmless owner from any and all claims for personal injury, death or property damage.

5. Owner will pay all taxes on said lot when due.

6. The owner shall have the right to place additional materials on all lots and also have the right to remove materials from the lots in this subdivision, as required for the overall development of said area. Owner shall also have the right to place all necessary restrictions and utility easements.

7. This contract shall not be assignable by purchaser without prior written consent of owner.

8. In the event of default by purchaser in payment of any installments due hereunder, or in the breach of any covenant of the purchaser hereunder, and the failure of the purchaser to cure such defaults within thirty days (30) after receipt of notice of such default by owner, then at the option of owner, owner may terminate this contract and retain all payments theretofore made by the purchaser as liquidated damages for the breach hereof by purchaser, in which event purchaser shall not be further liable to owner on account of this contract.

9. Any notice hereunder may be given to C. Ray Waskey at P. O. Box 13, Alberta, Virginia.

10. The owner reserves the right to cancel this contract at any time within the first twelve months hereof upon refunding sums paid to the purchaser of the cost of any capital improvements.

11. Upon the payments in full of this contract, the purchaser agrees to pay seller the sum of $100.00 to defray legal expenses incurred in drawing deed of bargain and sale and other necessary documents. In addition, purchaser shall pay all recording taxes customarily assessed to purchaser of land when the aforementioned deed(s) is (are) recorded.

IN WITNESS WHEREOF, C. Ray Waskey and the purchaser have hereunto set their hands and seals this 25 day of Nov, 1973.

_____ (SEAL)

C. Ray Waskey (SEAL)

Charles M Barfield (SEAL)
Purchaser

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF VIRGINIA BEACH

CHARLIE M. BARFIELD and LEON H. THOMAS Plaintiffs v. C. RAY WASKEY 920 Holiday Lane Virginia Beach, Virginia 23455 Defendant	:	IN CHANCERY NO. [illegible] BILL OF COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

The plaintiffs hereby move the Circuit Court for the City of Virginia Beach, Virginia, to declare void, unenforceable, and rescinded a purported contract of sale for real estate signed by the plaintiffs and the defendant; to order the defendant to return all payments made to him by the plaintiffs; to declare the interest on the purported contract void; to order the defendant to pay to the plaintiffs double the amount of usurious interest paid by the plaintiffs; and, to declare a certain provision of the purported contract of sale to be void and unenforceable, together with the costs of this action, for reasons set forth, to wit:

1. That on or about the 2nd day of December, 1973, the plaintiffs and the defendant signed a preprinted form document furnished by the defendant and designated as a "Contract of Sale", a copy of which is attached hereto and made a part hereof, wherein the defendant purported himself to be the owner of certain real property and agreed to convey said real property to the plaintiffs upon certain therein described terms and conditions.

2. That the land referred to in the aforementioned document is not described with any degree of specificity, and that a preliminary plat was neither attached nor made a part of the aforementioned document.

3. That prior to affixing their signatures to the aforementioned document, the plaintiffs were shown certain land by the defendant, and that the defendant pointed out the boundaries of that land and agreed to convey it to the plaintiffs.

4. That the defendant represented to the plaintiffs that the aforementioned document would constitute a valid and adequate contract for the conveyance of the particular parcel of land which the defendant had pointed out to the plaintiffs.

5. That the plaintiffs paid Fifty Dollars ($50) to the defendant at the time of the signing of the aforementioned document which the defendant promised to use to obtain a certified survey plat of the property and send it to the plaintiffs within a reasonable time as soon as the weather would permit and a surveyor could be obtained.

6. That the plaintiffs, through a letter dated October 30, 1974 sent by their attorney to the defendant, notified the defendant that the plaintiffs elected to rescind and cancel the purported contract.

7. That on or about the eighth day of November, 1974, the defendant caused to be delivered to the plaintiffs' attorney a photographically reproduced copy of a survey plat showing a lot designated as #21 upon which the words "Otherwise known as #1 Lot Thomas and Barfield" appear in ink.

8. That the above described copy of a certified survey plat does not in fact depict the parcel of land which the defendant pointed out to the plaintiffs, as aforesaid.

9. That the defendant does not own either the land pointed out to the plaintiffs, as aforesaid, or the land described by the aforementioned photographically reproduced copy of the survey plat; and that the land is in fact owned jointly by the defendant and his wife as tenants by the entireties with the right of survivorship.

10. That the defendant fraudulently induced the plaintiffs to sign the attached document which is designated as a "Contract of Sale" by falsely representing to the plaintiffs that he was the owner of certain real property which was purportedly therein described and that the plaintiffs relied upon the defendant's representation to their detriment.

11. That the defendant's wife did not, either orally or in writing, agree to convey the real estate to the plaintiffs as required by law.

12. That the attached document which is designated as a "Contract of Sale" is ambiguous on its face, does not evidence a meeting of the minds of the parties thereto, and is therefore unenforceable due to the fact that the contract is totally ambiguous regarding the payments which are to be made by the plaintiffs thereunder. Either the payments are to continue until the balance of the Nine Thousand Nine Hundred Ninety-five Dollars ($9,995) purchase price has been paid off in full, or the payments are to continue for a period of Twenty-five (25) years. In the event that the payments are to continue for Twenty-five (25) years, the plaintiffs would have been required to pay interest at a rate of Nine and one-fourth (9¼) percent per annum, which is a usurious rate.

13. That, in the event that the contract is interpreted to require the payment of interest, the contract fails to disclose the annual percentage rate of interest in the form required by federal and state law.

14. That the plaintiffs have paid $ [illegible] to the defendant on account of this transaction.

15. That the liquidated damages provision of the eithth numbered paragraph of the purported "Contract of Sale" is void and unenforceable due to the fact that the provision contemplates a penalty rather than a true measure of damages.

AND BENSTEN
YS & COUNSELORS

WHEREFORE, your plaintiffs pray collectively and alternatively, that the "Contract of Sale" be declared void, unenforceable, and rescinded; that the defendant be ordered to return all payments made to him by the plaintiff with interest from the date of such payments; that the interest on the purported contract be declared void; that the defendant be ordered to pay to the plaintiffs double the amount of usurious interest paid by the plaintiffs, that the eighth numbered paragraph of the purported contract of sale be declared void and unenforceable; and, that the plaintiffs be given all other relief, both legal and equitable, to which they may be entitled, together with the costs of this action.

CHARLIE M. BARFIELD and
LEON H. THOMAS

BY _____
Of Counsel

Terrence K. Martin
Martin and Bensten
393 Denbigh Boulevard
Newport News, Virginia 23602

CONTRACT OF SALE

C. RAY WASKEY, herein called "Owner", hereby sells to LEON H. THOMAS and CHARLIE M. BARFIELD herein called "Purchaser", and purchaser hereby buys from owner the certain lot numbered 1, as shown on a preliminary plat of land of C. Ray Waskey attached hereto and made a part of this contract by this reference, said lot containing 10 acres, more or less. This conveyance is a conveyance in gross and not by the acre for a purchase price of $ 9,995.00, subject to the following terms:

1. The purchaser agrees to pay the sum of $ 100.00 in cash as a deposit, receipt of which is hereby acknowledged, toward the downpayment of $ 100.00 (balance to be paid within ten days from date of this contract), and the balance of $ 9,895.00 in monthly installments of $ 84.86 payable on the first of each and every month commencing with the 1st of JAN, 1974, for the period of 25 years, or until the purchase price shall have been paid in full, such monthly payments to be made at P. O. Box 13, Alberta, Virginia, or at such place as the own may designate in writing.

2. Upon the payment of said purchase price in full, owner shall deliver to purchaser a general warranty deed with the usual covenants of title covey clear and marketable fee simple title to said lot.

3. The right to anticipate or pre-pay the principal balance of the obligation herein is expressly waived by the purchaser.

4. Purchaser shall have possession of lot January 1, 1974. He shall be entitled to use, enjoy nd possess said lot prior to and pending payment in full of the purchase price and delivery of deed; providing, however, that no use shall be made thereof which will interfere with the development of said lot or other properties of owner in the area. As to any use of said lot by purchaser or the purchaser's agent, guests, or invitees, Purchaser agrees to indemnify and hold harmless owner from any and all claims for personal injury, death or property damage.

5. Owner will pay all taxes on said lot when due.

6. The owner shall have the right to place additional materials on all lots and also have the right to remove materials from the lots in this subdivision, as required for the overall development of said area. Owner shall also have the right to place all necessary restrictions and utility easements.

7. This contract shall not be assignable by purchaser without prior written consent of owner.

8. In the event of default by purchaser in payment of any installments due hereunder, or in the breach of any covenant of the purchaser hereunder, and the failure of the purchaser to cure such defaults within thirty days (30) after receipt of notice of such default by owner, then at the option of owner, owner may terminate this contract and retain all payments theretofore made by the purchaser as liquidated damages for the breach hereof by purchaser, in which event purchaser shall not be further liable to owner on account of this contract.

9. Any notice hereunder may be given to C. Ray Waskey at P. O. Box 13, Alberta, Virginia.

10. The owner reserves the right to cancel this contract at any time within the first twelve months hereof upon refunding sums paid to the purchaser of the cost of any capital improvements.

11. Upon the payments in full of this contract, the purchaser agrees to pay seller the sum of $100.00 to defray legal expenses incurred in drawing deed of bargain and sale and other necessary documents. In addition, purchaser shall pay all recording taxes customarily assessed to purchaser of land when the aforementioned deed(s) is (are) recorded.

IN WITNESS WHEREOF, C. Ray Waskey and the purchaser have hereunto set their hands and seals this 7th day of Dec, 1973.

_____ (SEAL)

_____ (SEAL)

_____ (SEAL)
Purchaser

_____ (SEAL)
Purchaser

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF VIRGINIA BEACH

LEON H. THOMAS and MARGARET E. THOMAS Plaintiffs	:	
v.	:	IN CHANCERY NO. C-75-108
C. RAY WASKEY 920 Holiday Lane Virginia Beach, Virginia 23455 Defendant	:	BILL OF COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

The plaintiffs hereby move the Circuit Court for the City of Virginia Beach, Virginia, to declare void, unenforceable, and rescinded a purported contract of sale for real estate signed by the plaintiffs and the defendant; to order the defendant to return all payments made to him by the plaintiffs; to declare the interest on the purported contract void; to order the defendant to pay to the plaintiffs double the amount of usurious interest paid by the plaintiffs; and, to declare a certain provision of the purported contract of sale to be void and unenforceable, together with the costs of this action, for the reasons set forth, to wit:

1. That on or about the 18th day of November, 1973, the plaintiffs and the defendant signed a preprinted form document furnished by the defendant and designated as a "Contract of Sale", a copy of which is attached hereto and made a part hereof, wherein the defendant purported himself to be the owner of certain real property and agreed to convey said real property to the

plaintiffs upon certain therein described terms and conditions.

2. That the land referred to in the aforementioned document is not described with any degree of specificity, and that a preliminary plat was neither attached nor made a part of the aforementioned document.

3. That prior to affixing their signatures to the aforementioned document, the plaintiffs were shown certain land by the defendant, and that the defendant pointed out the boundaries of that land and agreed to convey it to the plaintiffs.

4. That the defendant represented to the plaintiffs that aforementioned document would constitute a valid and adequate contract for the conveyance of the particular parcel of land which the defendant had pointed out to the plaintiffs.

5. That the plaintiffs paid Fifty Dollars ($50) to the defendant at the time of the signing of the aforementioned document which the defendant promised to use to obtain a certified survey plat of the property and send it to the plaintiffs within a reasonable time as soon as the weather would permit and a surveyor could be obtained.

6. That the plaintiffs, through a letter dated October 30, 1974, sent by their attorney to the defendant, notified the defendant that the plaintiffs elected to rescind and cancel the purported contract.

7. That on or about the 8th day of November, 1974, the defendant caused to be delivered to the plaintiffs' attorney a photographically reproduced copy of a survey plat showing a lot designated as #19 upon which the words "Otherwise known as #3 Lot Thomas's" appear in ink.

8. That the above described copy of a certified survey plat does not in fact depict the parcel of land which the defendant pointed out to the plaintiffs as aforesaid.

9. That the defendant does not own either the land pointed out to the plaintiffs as aforesaid, or the land described by the aforementioned photographically reproduced copy of the survey plat; and that the land is in fact owned jointly by the defendant and his wife as tenants by the entireties with the right of survivorship.

10. That the defendant fraudulently induced the plaintiffs to sign the attached document which is designated as a "Contract of Sale" by falsely representing to the plaintiffs that he was the owner of certain property which was purportedly therein described and that the plaintiffs relied upon the defendant's representation to their detriment.

11. That the defendant's wife did not, either orally or in writing, agree to convey the real estate to the plaintiffs as required by law.

12. That the attached document which is designated as a "Contract of Sale" is ambiguous on its face, does not evidence a meeting of the minds of the parties thereto, and is therefore unenforceable due to the fact that the contract is totally ambiguous regarding the payments which are to be made by the plaintiffs thereunder. Either the payments are to continue until the balance of the Nine Thousand Nine Hundred Ninety-five Dollars ($9,995) purchase price has been paid off in full, or the payments are to continue for a period of Twenty-five (25) years. In the eventthat the payments are to continue for Twenty-five (25) years, the plaintiffs would have been required to pay interest at a rate of Nine and one-fourth percent (9¼%) per annum, which is a usurious rate.

13. That, in the event that the contract is interpreted to require the payment of interest, the contract fails to disclose the annual percentage rate of interest in the form required by federal and state law.

RTIN AND BENSTEN
ORNEYS & COUNSELORS
AT LAW
WPORT NEWS, VIRGINIA

14. That the plaintiffs have paid $913.47 to the defendant on account of this transaction.

15. That the liquidated damages provision of the eighth numbered paragraph of the purported "Contract of Sale" is void and unenforceable due to the fact that the provision contemplates a penalty rather than a true measure of damages.

WHEREFORE, your plaintiffs pray collectively and alternatively, that the "Contract of Sale" be declared void, unenforceable, and rescinded; that the defendant be ordered to return all payments made to him by the plaintiffs with interest from the date of such payments; that the interest on the purported contract be declared void; that the defendant be ordered to pay to the plaintiffs double the amount of usurious interest paid by the plaintiffs; that the eighth numbered paragraph of the purported contract of sale be declared void and unenforceable; and, that the plaintiffs be given all other relief, both legal and equitable, to which they may be entitled, together with the costs of this action.

LEON H. THOMAS and
MARGARET E. THOMAS

BY _____
Of Counsel

Terrence K. Martin, p.q.
Martin and Bensten
393 Denbigh Boulevard
Newport News, Virginia 23602

H AND BENSTEN
EYS & COUNSELORS
AT LAW
T NEWS, VIRGINIA

CONTRACT OF SALE

C. RAY WASKEY, herein called "Owner", hereby sells to Leon H. Thomas and Margaret E. Thomas herein called "Purchaser", and purchaser hereby buys from owner the certain lot numbered 3, as shown on a preliminary plat of land of C. Ray Waskey attached hereto and made a part of this contract by this reference, said lot containing 10 acres, more or less. This conveyance is a conveyance in gross and not by the acre for a purchase price of $ 0,005.00, subject to the following terms:

1. The purchaser agrees to pay the sum of $ 100.00 in cash as a deposit, receipt of which is hereby acknowledged, toward the downpayment of $ 100.00 (balance to be paid within ten days from date of this contract), and the balance of $ 0,805.00 in monthly installments of $ 84.83 payable on the first of each and every month commencing with the 1st of December, 1973, for the period of 25 years, or until the purchase price shall have been paid in full, such monthly payments to be made at P. O. Box 13, Alberta, Virginia, or at such place as the own may designate in writing.

2. Upon the payment of said purchase price in full, owner shall deliver to purchaser a general warranty deed with the usual covenants of title covey clear and marketable fee simple title to said lot.

3. The right to anticipate or pre-pay the principal balance of the obligation herein is expressly waived by the purchaser.

4. Purchaser shall have possession of lot January 1, 1974, He shall be entitled to use, enjoy nd possess said lot prior to and pending payment in full of the purchase price and delivery of deed; providing, however, that no use shall be made thereof which will interfere with the development of said lot or other properties of owner in the area. As to any use of said lot by purchaser or the purchaser's agent, guests, or invitees, Purchaser agrees to indemnify and hold harmless owner from any and all claims for personal injury, death or property damage.

5. Owner will pay all taxes on said lot when due.

6. The owner shall have the right to place additional materials on all lots and also have the right to remove materials from the lots in this subdivision, as required for the overall development of said area. Owner shall also have the right to place all necessary restrictions and utility easements.

7. This contract shall not be assignable by purchaser without prior written consent of owner.

8. In the event of default by purchaser in payment of any installments due hereunder, or in the breach of any covenant of the purchaser hereunder, and the failure of the purchaser to cure such defaults within thirty days (30) after receipt of notice of such default by owner, then at the option of owner, owner may terminate this contract and retain all payments theretofore made by the purchaser as liquidated damages for the breach hereof by purchaser, in which event purchaser shall not be further liable to owner on account of this contract.

9. Any notice hereunder may be given to C. Ray Waskey at P. O. Box 13, Alberta, Virginia.

10. The owner reserves the right to cancel this contract at any time within the first twelve months hereof upon refunding sums paid to the purchaser of the cost of any capital improvements.

11. Upon the payments in full of this contract, the purchaser agrees to pay seller the sum of $100.00 to defray legal expenses incurred in drawing deed of bargain and sale and other necessary documents. In addition, purchaser shall pay all recording taxes customarily assessed to purchaser of land when the aforementioned deed(s) is (are) recorded.

IN WITNESS WHEREOF, C. Ray Wackey and the purchaser have hereunto set their hands and seals this 18 th day of November, 1973.

_____ (SEAL)

C. Ray Wackey (SEAL)

Don H. Thomas (SEAL)
Purchaser

Margaret E. Thomas (SEAL)
Purchaser

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF VIRGINIA BEACH

LEON H. THOMAS, et als,	)	
Complainants,	)	
	)	IN CHANCERY NOS. C-75-108
vs.	)	C-75-109
	)	C-75-110
C. RAY WASKEY,	)	
	)	
Defendant.	)	

STATEMENT OF FACTS AND INCIDENTS OF TRIAL

In November, 1973, the Defendant and his wife owned a tract of land in Alberta, Virginia, as tenants by the entirety with the right of survivorship as at common law. On November 18, 1973, the Defendant, C. RAY WASKEY, held out to LEON H. THOMAS and his wife, MARGARET E. THOMAS, that he was the owner of certain land in Alberta, Virginia, and as such he entered into a contract of sale with LEON H. THOMAS and MARGARET E. THOMAS, whereby Mr. and Mrs. Thomas were to purchase "the certain lot numbered 3, as shown on a preliminary plat of land of C. Ray Waskey attached hereto and made a part of this contract by this reference, said lot containing ten acres, more or less" for a purchase price of $9,995.00. A plat of the property was not attached to the contract and Mr. and Mrs. Thomas paid the Defendant $100.00 cash as a deposit and $50.00 as advance payment for the survey, which was to be prepared when the "weather cleared." Monthly installments in the amount of $84.83 were to commence on the first day of December, 1973, and to continue for 25 years until the purchase price had been paid in full. Upon the payment of the purchase price in full the owner was to deliver a general warranty deed to the purchasers.

On November 25, 1973, CHARLIE M. BARFIELD, in the company of LEON H. THOMAS and his wife, entered into a contract with C. RAY WASKEY for the purchase of "lot numbered 2," under a separate agreement embodying the same terms as that entered into by LEON H. THOMAS and his wife with the exception that CHARLIE M. BARFIELD paid $200.00 cash as a deposit with his payments to be $84.32 per month commencing on the first day of December, 1973, and continuing for a period of 25 years. There was no survey attached to the contract, but upon the execution of the contract, Mr. Barfield also paid the Defendant $50.00 for a plat under the aforementioned terms.

MARTIN AND BENSTEN
ATTORNEYS & COUNSELORS

Under the same conditions, LEON H. THOMAS and CHARLIE M. BARFIELD entered into an agreement with C. RAY WASKEY on December 2, 1973, to purchase "a lot numbered 1" for $9,995.00. The Complainants paid the Defendant $100.00 cash deposit and the balance of the purchase price was to be paid in monthly installments of $84.86 commencing with January 1, 1974, and extending for a period of 25 years. There was no survey attached to this contract, but the Complainants paid the Defendant $50.00 for a survey.

The Complainants testified that the property was bounded on two sides by a state-maintained road and on a third side by a stream; but that the side lot lines were pointed out by the Defendant as running from approximate locations on the road to the stream.

After entering into these contracts, the Complainants made all payments through September, 1974. During this time, the Complainants made several requests for the Defendant to furnish the plats and surveys.

The Defendant testified that he pointed out the boundaries of each lot to the Complainants and further testified that he showed them the boundaries of a plat of the entire tract on which pencil lines separated the tracts. The Complainants denied ever seeing such a plat or survey.

The Complainants did not forward the October, 1974, payments to the Defendant and on October 15, 1974, C. RAY WASKEY advised the Complainants by letter that the farm land would be surveyed the following week and that a copy of a certified plat would be delivered to them within 30 days. Mr. Waskey also informed the Complainants that he had not received the October payments at that time.

On October 21, 1974, the Defendant advised the Complainants that the land had been surveyed, that a copy of the survey would be mailed to them shortly, and that if the October payments were not received by the Defendant by November 15, 1974, he would exercise his right to cancel the contracts in accordance with section eight of the contract.

By letter dated October 30, 1974, the Complainants, by counsel, rescinded and cancelled the above-mentioned contracts citing the following reasons:

> "1. The land referred to in the above contract is not described with any degree of specificity, and you have failed to produce a survey or description of the properties specifically setting forth the location and limits of the same.
>
> "2. The land allegedly referred to in the contract is owned by C. Ray Waskey and his wife as tenants by the entirety and your wife is not a party to this contract.
>
> "3. That you failed to comply with the federal and state truth-in-lending disclosure requirements.
>
> "4. That the interest rate and finance charges set forth in the contract is usurious and that the contract is therefore void and against public policy of the state of Virginia."

On November 8, 1974, the Defendant, C. RAY WASKEY, by counsel, forwarded a copy of three "plats" made by J. L. Lentz, Certified Land Surveyor, setting forth the alleged boundaries of the lots in questions. Each plat contained the notation "this plat of a lot surveyed for C. Ray Waskey." The letter also contained the following statement: "Should you require Mrs. Waskey's signature on any contract, we shall be happy to provide it."

The Complainants did not view the land after receipt of the plats and were, therefore, unable to admit or deny that the plats accurately depicted the property as described to them by the Defendant.

The Defendant refused to return the payments as requested, and the Complainants filed a Bill of Complaint to rescind the contracts on the grounds noted.

On Demurrer by the Defendant, the trial Court ruled that the Bill of Complaint did not state a cause of action under the Federal Truth-in-Lending Act and that the Virginia Usury Statutes did not apply. At trial, the above facts were adduced. In addition, the Defendant testified that the contract form in question was prepared by the Defendant's counsel and drawn under the Defendant's direction indicating "C. RAY WASKEY, herein called 'Owner' hereby sells to. . . ." The contracts were executed only by the Complainants and the Defendant and not by the Defendant's wife. Counsel for the Complainants and the Defendant stipulated that title to the land in question was held by Curtis Ray Waskey and Geneva C. Waskey, husband and wife, as tenants by the entirety with the right of survivorship as at common law, at the time of the execution of the contracts, at the time of rescission by the Complainants and at the time of trial.

The Defendant's wife testified that she was at all times ready, willing and able to sign said contracts, but had not done so because she was not present when they were executed. She further testified that she authorized her attorney to respond to the notice of rescission with the statement that she would execute such assurances of title as Complainants or their counsel might require, which was communicated to the Complainants. At trial, the Defendant's wife testified that she was still willing and able to do so.

After hearing the evidence the Chancellor ruled that the land contracts in question, being written contracts for the sale of land held by C. RAY WASKEY and his wife as tenants by the entirety with the right of survivorship, required the signature of both husband and wife, that C. RAY WASKEY individually held no interest in the land in question, and that, since the Complainants' rescissions of the contracts were timely, the said contracts were void and unenforceable and that judgment should be entered against the Defendant for the Complainants' payments on the contracts, from which order the Defendant appeals.

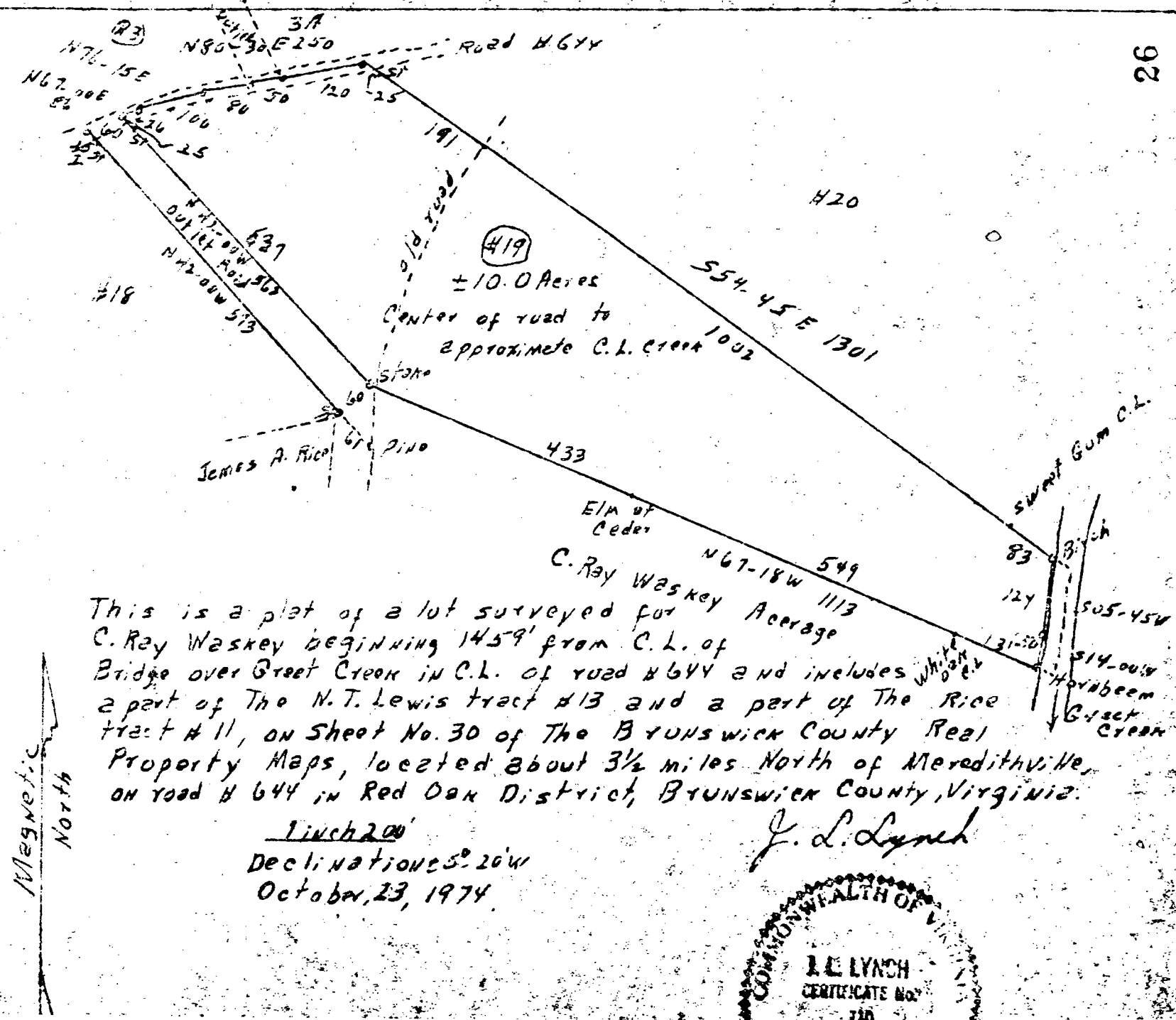
LEON H. THOMAS
MARGARET E. THOMAS
CHARLIE M. BARFIELD

By_____
Of counsel

Terrence K. Martin, p.q.
MARTIN AND BENSTEN
393 Denbigh Boulevard
Newport News, Virginia 23602

I hereby certify that I have this _____ day of May, 1976, delivered a copy of the foregoing writing to all counsel of record.

_____
Terrence K. Martin

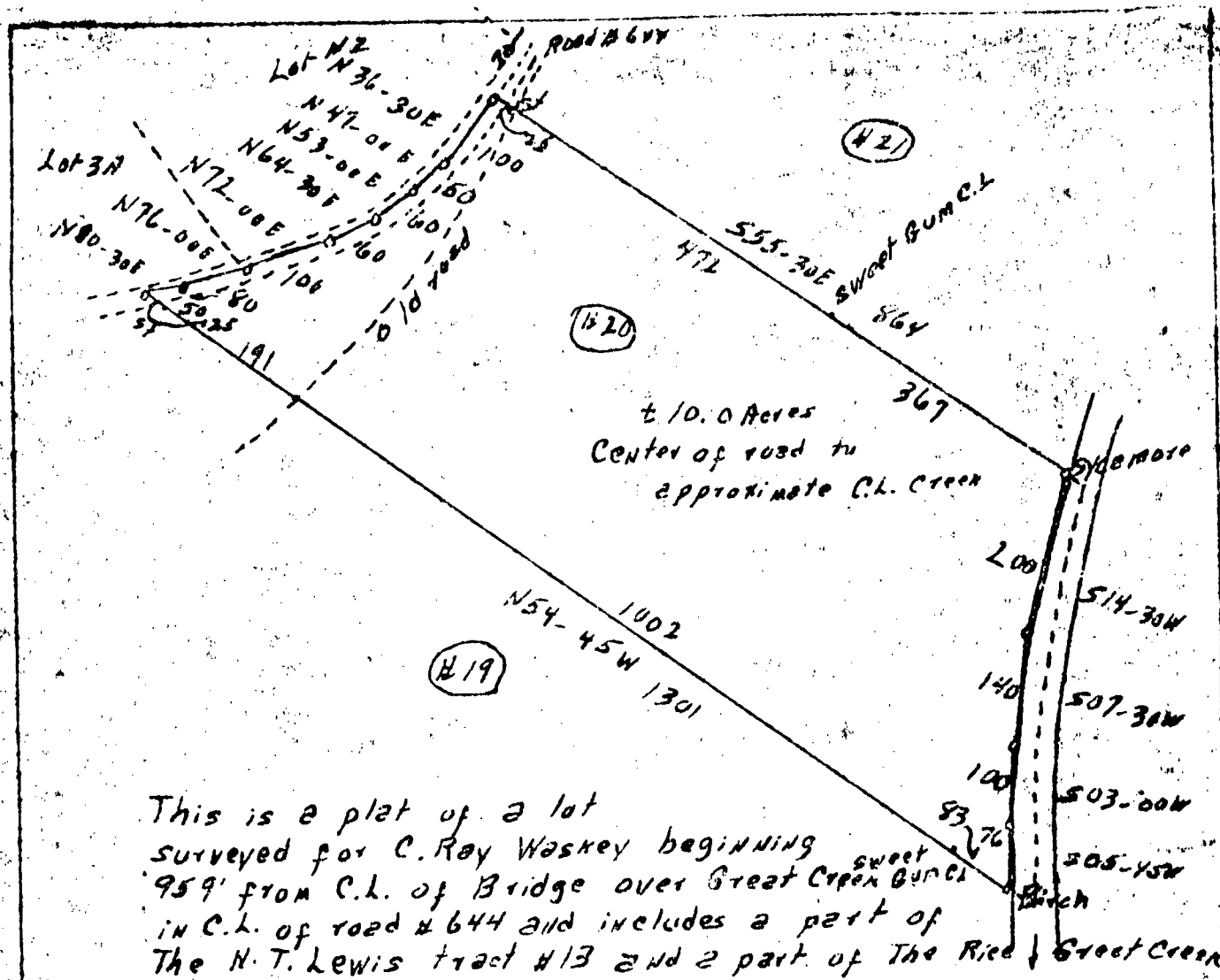


This is a plat of a lot surveyed for C. Ray Waskey beginning 145'9' from C.L. of Bridge over Great Creek in C.L. of road #644 and includes a part of The N.T. Lewis tract #13 and a part of The Rice tract #11, on Sheet No. 30 of The Brunswick County Real Property Maps, located about 3½ miles North of Meredithville, on road #644 in Red Oak District, Brunswick County, Virginia.

1 inch 200'
Declination 5° 20' W
October, 23, 1974

J. L. Lynch

COMMONWEALTH OF VIRGINIA
J. L. LYNCH
CERTIFICATE No. 710



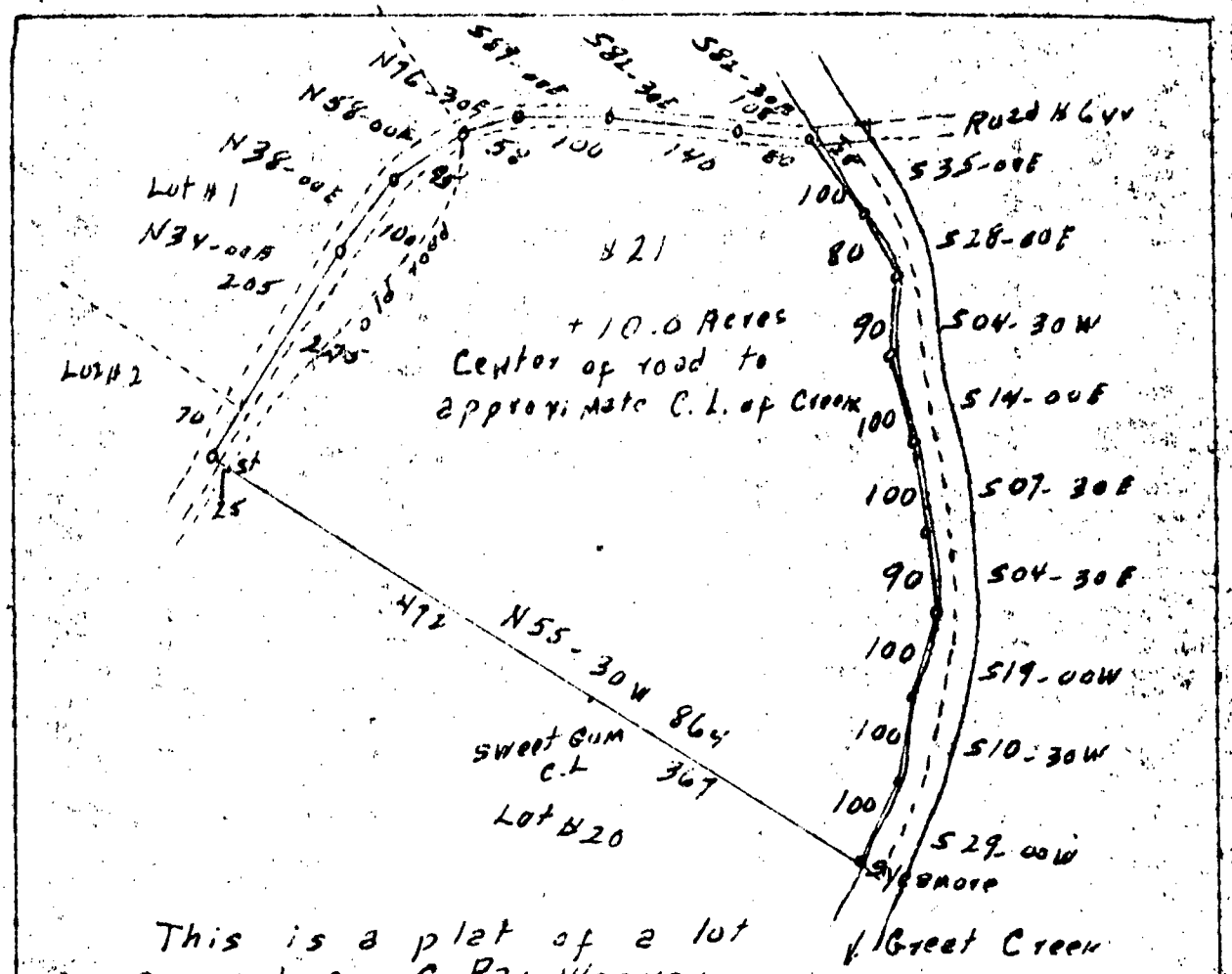
This is a plat of a lot surveyed for C. Ray Waskey beginning 959' from C.L. of Bridge over Great Creek in C.L. of road #644 and includes a part of The N. T. Lewis tract #13 and a part of The Rice tract #11, on Sheet No. 30 of The Brunswick County Real Property Maps, located about 3½ miles North of Meredithville on road #644, in Red Oak District, Brunswick County, Virginia.

1 inch 200'
Declination ± 5° 20' W
October, 22, 1974.

J. L. Lynch

COMMONWEALTH OF VIRGINIA
J. L. LYNCH
CERTIFICATE NO.
710
CERTIFIED LAND SURVEYOR

Magnetic North



This is a plat of a lot surveyed for C. Ray Waskey beginning at center of Bridge over Great Creek in C.L. of road #644 and includes a part of The N. T. Lewis tract #13 and a part of The Rice tract #11 on Sheet No. 30 of The Brunswick County Real Property Maps, located about 3½ miles North of Meredithville on road #644 in Red Oak District, Brunswick County, Virginia

1 inch 200'

Declination: 5°20'W

October, 22, 1974.

J. L. Lynch

Magnetic North

COMMONWEALTH OF VIRGINIA
J. L. LYNCH
CERTIFICATE No.
710
CERTIFIED LAND SURVEYOR

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF VIRGINIA BEACH

LEON H. THOMAS and
MARGARET E. THOMAS,

CHARLIE M. BARFIELD and
LEON H. THOMAS,

CHARLIE M. BARFIELD,

Plaintiffs,

vs.

C. RAY WASKEY,

Defendant.

IN CHANCERY

NOS. C-75-108
C-75-109
C-75-110

D E C R E E

THIS CAUSE came on this day to be heard, upon the papers formerly filed, and the Plaintiffs appearing in person and by counsel, and the Defendant appearing in person and by counsel;

AND, it appearing to the Court that the property which was the subject of the contracts in question was held by the defendant and his wife as tenants by the entireties and that the defendant's wife had not signed said contracts prior to the notice of rescission by complainants' counsel and that, as a result said contracts are void, unenforceable and rescinded, to which ruling defendant excepts and objects;

IT IS FURTHER ADJUDGED, ORDERED AND DECREED that the defendant pay unto the respective plaintiffs, all payments previously made by them to him, to-wit: LEON H. THOMAS and MARGARET E. THOMAS: $913.47; CHARLIE M. BARFIELD: $1,093.20; CHARLIE M. BARFIELD and LEON H. THOMAS: $1,006.55; to all of which the defendant excepts and objects.

Enter this _____ day of April, 1976.

_____
JUDGE

I ask for this:

_____ p.q.

Seen and exceptions noted:

_____ p.d.

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

LEON H. THOMAS, et als,

Complainants,

IN CHANCERY NOS. C-75-108
C-75-109
C-75-110

vs.

C. RAY WASKEY,

Defendant.

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

TO: THE CLERK OF THE CIRCUIT COURT FOR THE CITY OF VIRGINIA BEACH, VIRGINIA

Counsel for C. Ray Waskey, defendant herein hereby gives notice of appeal from the judgment of this Court rendered on April 1, 1976, and set forth the following assignment of error:

1. The Trial Court erred in ruling that when property is owned by a husband and wife as tenants by the entireties, a written contract for sale of the property signed only by the husband is void where there is no showing that the wife could not or would execute the contract and where there had been substantial part performance by all parties.

Counsel for the defendant further gives notice that a written statement of facts concerning the trial held on April 1, 1976, will be filed for inclusion in the record pursuant to the Rules of Court.

C. RAY WASKEY

By_____
Of Counsel

John B. Dinsmore, p.d.
Byrd, Dinsmore, Evans & Bryant, Ltd.
P. O. Box 5526
Virginia Beach, Virginia 23455

CERTIFICATE OF MAILING

I certify that I mailed a true copy of the foregoing to Terrence K. Martin, counsel for the complainants this _____ day of April, 1976.