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IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 791009

WINSTON M. HAYTHE

Appellant

V.

GENE H. MAY, MAY HOUSING CORPORATION,
MAY PROPERTIES, INC. and VATIA H. ALBRIGHT

Appellees

JOINT APPENDIX

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FILED
IN CIRCUIT COURT
CLERK'S OFFICE

AUG 24 1978

JAMES L. ... CLERK FAIRFAX COUNTY, VA.
WRIT TAX PAID $

BILL OF COMPLAINT

TO THE HONORABLE JUDGES OF THE CIRCUIT COURT OF FAIRFAX COUNTY:

Your complainant, Winston M. Haythe, respectfully represents unto this Honorable Court as follows:

1. Your complainant is a resident of Fairfax County. Upon information and belief, the defendants Vatia H. Albright, M.D. ("Albright") and Gene H. May ("May") are both residents of Fairfax County. The defendants, May Properties, Inc. ("May Properties") and May Housing Corporation have their principal places of business in McLean, Virginia, 1200 Potomac School Road.

2. On or about June 18, 1977, complainant entered into a purchase contract with May Properties, acting through the defendant May, for the purchase of a single family residential home to be built by May Properties for the plaintiff on a parcel of land owned by May Housing Corporation known as Lot 113, Section 6, Evermay Subdivision, Fairfax County, for the purchase price of $175,332.00. A true copy of said contract is attached hereto as Exhibit 1.

3. Settlement upon said contract was originally scheduled for the 5th day of April, 1978, but at the request of May and May Properties, the settlement was postponed for a period of two weeks from April 5 in accordance with change order No. 11.

4. Pursuant to the terms of said contract, the complainant paid to May Properties the total sum of $19,500.00 to be applied towards the purchase price of the property.

5. On April 4, 1978, the settlement attorney selected by complainant wrote to May and May Properties scheduling settlement on April 21, 1978. Due to the fact that the house was not completed and a residential use permit not available, settlement was postponed by the settlement attorney. Copies of the settlement attorney's letters of April 4 and April 20, 1978, are attached as Exhibits 2 and 3. Although complainant was ready, willing and able to settle at 9:00 a.m. on April 21, a "walk through" inspection of the house with the complainant's architect disclosed some ninety-seven (97) deficiencies. Complainant, through his counsel, William J. Olson, wrote to the defendants May and May Properties on April 21, 1978, confirming that complainant continued to be ready, willing and able to complete settlement on the house as soon as it was completed as required under the contract and made formal demands upon said defendants, May and May Properties, to complete the construction thereof. A copy of the said letter of April 21, 1978, is attached as Exhibit 4.

6. On April 24, 1978, the said William J. Olson again wrote to said defendants May and May Properties enclosing a "punch list" prepared by complainant's architect. True copies of said letter and punch list are attached hereto as Exhibits 5 and 5A.

7. Even though the house had not been completed, on April 27, 1978, Nicholas Malinchak, attorney for May, May Properties and May Housing, wrote to Mr. Olson, and without the consent of the complainant or his attorney, arbitrarily scheduled settlement at the Record Room of the Fairfax County Courthouse at 11:00 a.m. on the following day, April 28, 1978, and demanded full payment of the purchase price by certified check, knowing that it would be next to impossible, if not impossible, for the complainant to settle within such inordinate time constraints.

No explanation as to the usual settlement adjustments were contained in said letter which is attached hereto as Exhibit 6.

8. On April 27, following receipt of the said Exhibit 6, counsel for complainant and defendants entered into discussions, and it was agreed that settlement would be held on Friday, April 28, at a time to be agreed upon but tentatively set for 3:00 p.m.

9. On April 28, at 10:00 a.m., further discussions were held between counsel for complainant and defendants at which time defendants' counsel was notified that complainant was in a position to settle and that complainant's counsel would advise defendants later in the morning when he was leaving for the Circuit Court of Fairax Courthouse so that all parties could meet at the Courthouse at the same time. At 11:20 a.m. on said day, complainant's counsel called defendants' counsel to advise him that he was leaving McLean for the Fairfax County Courthouse and was advised that defendants' counsel had already left for the Courthouse. Complainant's counsel was on his way to the Courthouse with a cashier's check payable to the defendant, May Properties, and with the requisite papers to complete settlement. A copy of the cashier's check is attached hereto as Exhibit 7, together with a copy of the Deed of Trust which is attached as Exhibit 8. A copy of the settlement attorney's escrow check payable to the Clerk of the Circuit Court of Fairfax County, Virginia, in payment of the recording charges is attached as Exhibit 9.

10. Upon arrival at the Clerk's Office of Fairfax County at 12:10 p.m., on April 28, 1978, complainant's counsel was unable to find the defendants or their attorney and subsequently discovered that a deed from May Housing and May Properties conveying

the subject property to the defendant, V. H. Albright, had been recorded at 11:30 a.m. on that date, in flagrant, willful and wanton violation of the complainant's rights under his contract with May Properties, Inc. A true copy of said deed is attached hereto as complainant's Exhibit 10 and is recorded in Deed Book 4858 at Page 754 among the land records of this Court.

11. That at the time the deed was recorded the defendant, Vatia H. Albright, had actual notice of the complainant's prior contract of sale, and indeed her contract with May Properties made reference to said contract of sale. Notwithstanding, said defendant Albright took title to the property on April 28, although settlement was not performed until on or about May 3, 1978, or later. When the deed was recorded to defendant Albright, none of the required purchase price had been paid and the deed itself reserved to the grantor a purchase money vendor's lien payable within one year. The defendant Albright, therefore, took with actual notice of your complainant's rights and subject to complainant's paramount equitable title to said property.

12. That your complainant, by virtue of breach of contract by the defendants May and May Properties, has incurred damages and expenses caused by the delay in settlement of his house.

13. Your complainant has always been ready, willing and able to perform his obligations under the contract, and is now ready, willing and able to comply with the terms of his contract upon delivery of a good and sufficient deed of bargain and sale conveying good fee simple title to him.

IN CONSIDERATION WHEREOF, your complainant respectfully prays for the following relief:

(a) A decree of specific performance ordering the defendants, or a special commissioner appointed by the Court, to convey good fee simple title to your complainant upon his payment of the purchase price in accordance with the aforesaid contract attached hereto as Exhibit 1.

(b) Damages for the delay and expenses incurred by your complainant.

(c) That the defendants May and May Properties be required to complete the house in accordance with the terms of the contract and the architect's punch list.

(d) That your complainant be awarded punitive damages against the defendants May and May Properties, Inc.

(e) For such further relief as to equity may seem meet and the nature of his cause may require.

AND IN DUTY BOUND YOUR COMPLAINANT WILL EVER PRAY, ETC.

WINSTON M. HAYTHE

BOOTHE, PRICHARD & DUDLEY
4085 University Drive
Fairfax, Virginia 22030

By: _____
Haynie S. Trotter

1 P R O C E E D I N G S

2 *

3 *

4 *

5 THE COURT: I think the lawyers in the case
6 representing the three have done an excellent job in pre-
7 paring and presenting this case on behalf of their respective
8 clients and it becomes time for me to try to decide it and
9 try to give you some reasons for the decision I am going
10 to make at this time.

11 I think that since this is primarily a question
12 of fact and application thereto of the law, it's best to
13 decide it at this time and not keep the parties or counsel
14 waiting any further or take the case under advisement.

15 The Court finds that there was a lot reservation
16 contract between the plaintiff in this case, Mr. Haythe --
17 or the complainant -- and the Defendant May. That was
18 February 28, 1976.

19 Subsequent thereto, on or about June 18, 1977,
20 a sales contract for the house and lot was entered into
21 between Mr. Haythe and May Properties, et al, for the
22 settlement date of May 5, 1978.

23 Due to the weather conditions, Mr. May called

1 Mr. Haythe about getting an extension for a couple of
2 weeks due to the bad winter. He agreed to the extension
3 in order to complete the house. The original settlement
4 was then moved from April 5 to April 21.
5 On the walk-through on April 20th by Mr. Jennings
6 and the complainant, Mr. Haythe, they found a punch-list of
7 some numerous items that had not been corrected. The Court
8 finds that there was also the time the settlement didn't
9 go through was the question of the liens.
10 I don't really think that is a real serious
11 question. Mr. Gourley would have been satisfied to see
12 the documents that Mr. Malinchak had and I think that would
13 have been cleared up.
14 There was also the matter of the residential use
15 permit which I think would have also been cleared up in
16 just a few minutes with the proper paperwork by Mr. Gourley.
17 I think the main reason that settlement didn't go
18 through was the punchlist and I think it was proper on
19 Mr. Haythe's part not to go forward at that point with the
20 settlement.
21 Then it became the problem with the situation
22 escalated or, really, prior thereto, the questions con-
23 cerning the McNeils to which Mr. Haythe had tried to assign

1 the contract.

2 Mr. May -- I can use his name; he is not really
3 a party any more, but when I say "Mr. May," I mean the
4 Defendant May Properties, et al -- had a policy of not
5 allowing an assignment contract. He didn't want to be
6 dealing with two different parties in deciding tile schemes
7 or designing of the house. That was his practice and
8 policy. I have no quarrel with that. That is a business
9 decision that he has to make and I have no problem with
10 that.

11 He did not approve the assignment. He was upset
12 with it in the fact that probably what happened is he got
13 a little upset or miffed, I guess. It is his right because
14 the assignment with the McNeils and the problem that was
15 coming about with that.

16 It then became, and I think the critical time now
17 is when the settlement was set for the 28th. I think the
18 situation then escalated. The deal or assignment never
19 went through. I think the situation escalated as a result
20 of the other people who had started to call Mr. May and he
21 didn't want to be bothered at home with real estate agents
22 and that is his business policy. He doesn't want to deal
23 with them. He was getting calls from the public about this

1 house and whether it was on the market and Mr. Haythe
2 being a real estate agent, I think he got upset with him.
3 Be that as it may, he went to his lawyer,
4 Mr. Malinchak. He wanted to get this thing over with and
5 put Mr. Haythe, I think, in a situation of put up -- to go
6 through with it or not to go through with it. So he set
7 the settlement date.
8 Mr. Dulaney at that point, who was counsel for
9 Mr. Haythe -- we get to the conflicts between some of the
10 testimony of Mr. Malinchak and Mr. Haythe and Mr. Gourley.
11 Just to cut it all short, I think probably in fairness in
12 this case, I think that the settlement should not have been
13 held at 11:00 o'clock and I don't think there was a firm
14 time as to that. I think they should have waited for
15 Mr. Haythe to appear at the settlement on the 28th. I
16 think it was highly unusual to have it in the courthouse
17 and I think that goes to the nature of showing that they
18 were forcing Mr. Haythe's hand in this situation. I
19 think as to that, I don't think he was treated fairly, he
20 or Mr. Dulaney, considering the nature of the circumstances
21 of the situation.
22 I say that because I have got to make a decision
23 based on that. I really don't know what happened, but

1 probably what happened. I think that is probably what
2 happened and that is what I am going to go with on the
3 basis of the credibility of the witnesses.
4 I don't think time was of the essence. I think
5 time of the essence was a condition that was really made
6 by Mr. May as a result of his circumstances he felt
7 Mr. Haythe put him to by getting into the assignment and
8 was going to sell the house and what-have-you, and this
9 upset him. I am not criticizing him for being upset because
10 that's his right and privilege if he wants to be or what-
11 have-you.
12 Mr. Haythe's personal situation changed at that
13 point. He had previously decided to use this as his
14 residence for his wife and children but it changed because
15 he had a domestic situation with his wife. It became such
16 that he was going to be the only one to live in the house
17 which was a four- or five-bedroom house.
18 The Court feels in assessing the whole case and
19 trying to arrive at something fair as to whether I think
20 in essence what I told you, I think that Mr. May in essence
21 breached the contract here. The question is whether it's
22 fair now to -- let me mention Dr. Albright, also, as to
23 whether to grant specific performance on the breach of

1 contract. Obviously Dr. Albright, who was married to one
2 of Mr. May's children in this case, took this on a specula-
3 tion. She understood there was the contract -- Mr. May had
4 the backup with her if Mr. Haythe's deal did not go through.
5 She understood that and there is no argument on that and
6 I think basically it's uncontroverted that she understood
7 that Mr. Haythe -- maybe not by name, but there was a Haythe
8 contract.

9 The Court feels that the appropriate remedy in
10 this case is going to be breach of contract for the following
11 reasons. I feel that this is not a question where Mr. Haythe
12 really wanted the property for his own personal use and for
13 his own house. Had I really felt this was a property that
14 he wanted to live in with his children, I will say this:
15 that I feel that specific performance would be the appropriate
16 remedy.

17 I think in this case he's really in a situation
18 that had changed. I think he had good faith in wanting it
19 for his wife and family but since the situation, his personal
20 situation, has changed and he was interested in marketing
21 the property and it was not a property that he really wanted
22 for his own personal use and, as such, I think he would be
23 merely in the posture of reselling it if the Court were to

1 award specific performance.

2 In exercising my discretion, those are the reasons
3 why I feel the appropriate remedy in this case is breach of
4 contract.

5 Therefore, the Court will award in the following
6 damages: The bank for the use of the money, the $100 which
7 he testified to; the title insurance binder of $50; the
8 $300 he paid to Mr. Gourley for the settlement. Mr. Dulaney
9 indicated that the actual figure that he was charged for
10 counsel fees was $994 for representing him in this case
11 and I think that is appropriate.

12 The Court heard Mr. Haythe testify that the
13 deposit interest was $1100 to $1200 and I will take the
14 figure of $1150. Mr. Trotter used the figure $1170 but I
15 think it was $1100 to $1200 in his testimony.

16 So I will award those damages of $1150.

17 Then going to the question of punitive damages,
18 generally the law does not allow punitive damages in a
19 contract situation. There are situations where punitive
20 damages are an appropriate remedy in this type of case.

21 The Court doesn't really find that there was
22 malice here on the part of the defendant, Mr. May, or
23 May Properties or what-have-you against Mr. Haythe as such

1 as it would be an appropriate case to award punitive damages.
2 The Court would deny that.
3 Obviously what I am doing is dismissing
4 Dr. Albright as a defendant in this case and the Court
5 will enter judgment against Defendants May. Mr. Trotter
6 can prepare the appropriate Order and note the exception
7 of each party adverse to it.
8 MR. TROTTER: We would like to note our exception
9 because I would respectfully suggest in this case there was
10 no fraud or --
11 THE COURT: I understand. I think I have given
12 my reasons why I have come down with the decision I have
13 and the reasons I have, sir.
14 Let me see counsel in chambers on another matter.
15 MR. CAMPBELL: On the deposit, is that to be
16 returned, too?
17 THE COURT: Obviously it would have to be, and I
18 will award interest from April 28, '78, to Mr. Haythe, from
19 that date, so you get interest on your judgment.
20 Let me see counsel for a moment in chambers.
21 (Whereupon, at 2:55 p.m., the hearing in the
22 above-entitled matter was concluded)
23 -----

DATE: 4-24-79
INDEXED & DOCKETED BY: 7c
EXAMINED BY:

FINAL DECREE

THIS CAUSE came on to be heard on the 17th, 18th and 25th days of January, 1979, to be heard upon the Complainant's Bill of Complaint, the responsive pleadings of the defendants, upon the evidence heard ore tenus and was argued by counsel.

AND IT APPEARING TO THE COURT for the reasons stated from the bench on January 25, 1979, that the Defendants, May Properties, Inc., committed a breach of contract on the sale of the subject property, Lot 113, Section 6, Evermay Subdivision to the Complainant under contract dated June 18, 1977 made pursuant to a Lot Reservation Agreement dated February 28, 1976 in that the Defendants, May Housing Corporation and May Properties, Inc., conveyed the subject property to the Defendant, Vatia H. Albright, on the 28th day of April, 1978 that being the same day settlement was scheduled for the closing of the sale to the Complainant; that the Defendant, Vatia H. Albright, took title to the property with the knowledge of the Complainant's rights under his prior contract, but that the Court declined specific performance for the reasons stated in its said rulings from the bench; it is therefore

ORDERED and DECREED as follows:

1. That the Defendants, Vatia H. Albright and Gene H. May, are dismissed as parties to this proceeding to which ruling the Complainant noted his exceptions;

2. That the Complainant's prayer for specific perfor-

mance is denied, to which ruling the Complainant duly excepted;

3. That the Complainant is hereby granted judgment against the Defendant, May Properties, Inc., and May Housing Corporation in the amount of $2,594.00 with interest at 8% per annum from the 28th day of April, 1978, until paid to which action the Defendant, May Properties, Inc., noted its exceptions;

4. That the Complainant Winston M. Haythe, recover judgment against the Defendants May Properties, Inc. and May Housing Corporation, in the sum of Nineteen Thousand Five Hundred Dollars ($19,500) with interest at the rate of 8% per annum from the 28th day of April, 1978 until paid, said $19,500 representing the deposit made by Complainant upon said contract;

5. That the Complainant's prayer for punitive damages is hereby denied, to which ruling Complainant excepted;

6. That the Complainant's Motion for permission to produce evidence as to the difference between the value of the property as contracted for and the value at the time of the breach MADE after the court's ruling is denied, to which action the Complainant noted his exceptions;

AND IT APPEARING TO THE COURT that the Complainant intends to prosecute an appeal of this cause to the Supreme Court of Virginia, it is ORDERED that this Decree is suspended pending the prosecution of said appeal and so long as this cause is under consideration by the Supreme Court, provided that the Complainant, or someone for him, shall file an appeal bond in the Clerk's Office of this Court within thirty (30) days of the entry of this Decree in the amount of $10,000 conditioned according to §8.01-676 of the Code of Virginia, 1950, as amended.

It is FURTHER ORDERED that pursuant to Rule 5:9, the transcripts of all hearings and the trial of this cause are hereby made a part of the record.

AND THIS DECREE IS FINAL.

April 13, 1979
DATE

ENTER:

James C. Cacheris, Judge

PRESENTED BY:

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Arlington, Virginia 22201

By: _____
J. Strouse Campbell
Attorney for Gene H. May,
May Housing Corporation
and May Properties, Inc.

WHITAKER AND BUSHMAN
Suite 201
1400 North Uhle Street
Arlington, Virginia 22201

By: _____
Howard M. Bushman
Attorney for Defendant Vania
H. Albright, M.D.

SEEN AND EXCEPTIONS NOTED:

BOOTHE, PRICHARD & DUDLEY
4085 University Drive
Fairfax, Virginia 22030

By: _____
Haynie S. Trotter
Attorney for the Complainant
Winston M. Haythe

ASSIGNMENTS OF ERROR

1. The trial court erred in denying complainant's prayer for specific performance after finding a clear and willful breach of contract.

2. The trial court erred in denying complainant's alternative motion for permission to produce evidence as to the difference between the value of the property as contracted for, and the value at the time of the breach of the contract.

1 that -- I would like to state right at the inception of this
2 case, our view is that Mr. Haythe and Mr. Dulaney were not
3 badly used at all.

4 If Your Honor please, first there was a suit filed
5 by the plaintiff for a breach of contract, alleging that the
6 contract between he and Mr. May was breached.

7 THE COURT: That is the other suit, you mean?

8 MR. CAMPBELL: Yes. That suit was dismissed,
9 nonsuited, and we're now proceeding in specific performance
10 and they seek specific performance of a lot in Evermay, which
11 is in Fairfax County, and I assume Your Honor is familiar
12 with the subdivision. It is directly across from CIA and
13 a very fine subdivision and a very fine house.

14 They also have joined Dr. Albright in the suit,
15 who is the purchaser of the property, and the evidence will
16 show Mrs. Albright, Dr. Albright, is the mother of the man
17 who married Gene May's daughter. We will show that the sale
18 to her was for a good and valuable consideration after the
19 Haythes rescinded or repudiated or refused to go forward
20 with their contract.

21 Now, if Your Honor please, the house -- Mr. May
22 has a unique way of constructing houses, and I think if I
23 could go over it briefly with you --

1 witnesses that you want that they can be on a half-hour
2 notice.
3 MR. CAMPBELL: Tell Mr. Norblock and Mr. Thompson
4 that they can be on call. Mr. Norblock and Mr. Thompson.
5 THE COURT: Anybody you want to call?
6 Call your first witness.
7 MR. TROTTER: Mr. Haythe, Your Honor.
8 (Whereupon, the prospective witness was duly
9 sworn by the Clerk of the Court)
10 THE COURT: Have a seat, sir. Try to speak up.
11 The acoustics are bad in this Court.
12 Whereupon,
13 WINSTON V. HAYTHE,
14 complainant, was called as a witness by and in his own behalf
15 and, having been duly sworn, was examined and testified as
16 follows:
17 DIRECT EXAMINATION
18 BY MR. TROTTER:
19 Q Give us your name, address, and occupation.
20 A My name is Winston M. Haythe. I reside at
21 1512 Buena Vista Avenue, McLean, Virginia, and I am a lawyer.
22 Q Where do you practice?
23 A I practice with the U. S. Consumer Product Safety

Commission, a Federal Regulatory Agency.

Q And you live in McLean, Virginia?

A I do.

Q Are you married or divorced?

A Divorced.

Q When did you become divorced?

A My final decree was entered on about October 3, 1977, by Fairfax County.

Q Did you enter a lot reservation agreement with May Properties?

A Yes, I did.

Q I will show you a document and ask you if that is the lot reservation agreement that you and your wife entered into.

(Handing to witness)

A Yes, it is. It bears my signature.

Q Was this attached to it, the attachment, or was it not? I am going to take it off if it was not.

A I am not certain if that was attached to the reservation agreement. I had a copy of that document.

MR. CAMPBELL: What did you take off?

MR. TROTTER: I took off -- and I am willing to put it back on -- the schedule of the lot prices. Do you

1 have any objection to putting that with it?

2 MR. CAMPBELL: No.

3 BY MR. TROTTER:

4 Q This was given you by Mr. May?

5 A That was given to me. I don't know if it was

6 attached to the reservation when it was signed, though, but

7 I had a copy.

8 MR. TROTTER: I offer this as one document, Plain-

9 tiff's No. 1.

10 THE COURT: Any objection, gentlemen?

11 MR. CAMPBELL: No.

12 MR. BUSHMAN: No.

13 THE COURT: It's admitted.

14 (Document referred to was marked

15 Complainant's Exhibit No. 1 for

16 identification and received in

17 evidence)

18 BY MR. TROTTER:

19 Q Mr. Haythe, at the time that you entered into this,

20 you were married, were you not?

21 A Yes. I was residing in McLean with my wife and

22 three children.

23 Q Now, at this time, between the time that you signed

1 the lot reservation agreement and the time that you signed
2 this contract, did you have a conversation with Mr. May con-
3 cerning the resale of this property, or was that after?
4 A Concerning the resale of this property?
5 Q Yes.
6 A Between the lot reservation and the time we signed
7 the contract?
8 Q Yes.
9 A No.
10 Q You did not.
11 I show you a contract dated the 18th of June with
12 something like nineteen change orders and a builder's warranty
13 attached to it. Is that the contract you entered into with
14 Mr. May, May Properties, Inc., through Mr. May?
15 (Handing to witness)
16 A Yes, this is the contract which I signed and it
17 bears my signature. The attachments were not on it at that
18 time. The change orders developed as we were proceeding with
19 construction.
20 Q What about the builder's warranty? Was that
21 attached at the time or later?
22 A That was furnished to me at the time. I believe a
23 builder's warranty and a copy of the restrictions were

THE COURT: Lot reservation or the sales contract?

MR. TROTTER: The sales contract, the contract we're suing on, Your Honor.

BY MR. TROTTER:

Q Did you discuss with him the question of your reselling the house at a later time?

A The question of my reselling the house came up in a specific way on the 18th or 19th of March of '78 when I was dealing with Dr. and Mrs. McNeil. Prior to that time, my only concern, as I discussed with Mr. May in developing these plans -- it was a very large house -- was that I not only have a residence which suited my needs and one which I liked, which would be a very marketable house should I ever at any point decide to sell it.

I didn't want to build something that other people would not like, so I relied on his good judgment and said, "If you are finding that I am going astray here or if I am building or designing something that you feel would not constitute a good marketable house, I would appreciate your telling me so."

As it turned out, I adopted plans largely verbatim except for the basement level which he redesigned for me which he had used in some other houses sometime in his career.

THE WITNESS: Paragraph 4 states, "The assignee accepts said contract as amended by fourteen change orders as is and the assignee further agrees to accept selections previously made by the assignor for all electrical lighting fixtures, wall coverings for all bathrooms, dining room, kitchen and bar, as well as all paint selections heretofore made by the assignor."

MR. TROTTER: Thank you.

I would like to offer this, Your Honor. I believe that is Plaintiff's Exhibit No. 6.

THE COURT: Yes, sir.

MR. CAMPBELL: I have no objection.

I would like to note there is an attachment to it.

MR. TROTTER: I am going to take the attachment off. I don't know what it is, really.

MR. CAMPBELL: I think it should stay on there.

BY MR. TROTTER:

Q Was this attachment, dated 3/23/78, was that part of the assignment?

A No, it was not.

MR. TROTTER: It was not. If you want to put it in evidence, it's available.

THE COURT: Any objection to 6?

Mr. May for his approval?

A Yes, I did.

Q What was the result of that?

A Well, there was more than one result from that because -- relating to your previous question, all of the dealings with Mr. May, I couldn't describe them as having been any more smoothly run prior to tha time that Dr. and Mrs. McNeil became prospective purchasers.

MR. CAMPBELL: Would you put a point in time on that?

THE WITNESS: May I complete my sentence, please?

MR. BUSHMAN: I am going to object to his answer. It's not responsive.

THE COURT: It is not responsive.

Go ahead. Ask your question again.

BY MR. TROTTER:

Q All right, now, Mr. Haythe, how were your relations with Mr. May prior to presenting the assignment? Cordial?

A Cordial. I would say they were most cordial.

Q You didn't have any difficulties or disagreements before that?

A Absolutely none. In fact, at the time that we went from the preliminary plans to final plans -- then as

1 the house was being constructed, there was a back door which
2 I had asked on the preliminary final plans if it could be
3 larger. It was to be thirty or thirty-six inches wide,
4 and when we caught that, he said, "Well, you've got me here.
5 I can have people tearing out bricks this morning, because I
6 didn't transfer it from one plan to the other."
7 He said, "We will make that one up to you." Things
8 were very agreeable to us.
9 Q Did he accept the assignment?
10 A He refused the assignment. I presented it to him
11 on Sunday, March 19th, and he in fact was on his tennis
12 courts and asked me to leave it on the seat of his vehicle
13 in the Jeep. Then I had to go to Philadelphia the following
14 morning for a Court appearance there.
15 When I arrived in Philadelphia, I called him from
16 there and Mr. May explained to me that he would not accept
17 the assignment. I think he said he had not done it in the
18 past and he was not acting on this one.
19 Q Did he give any reason or object to the assignment?
20 A The only statement he made was that the builder's
21 warranty ran to the first purchaser and he had wanted that
22 to be me and deal with me. Consequently, he did not want to
23 accept an assignment at all and said, in fact, he would just

leave the contract, my contract with Dr. McNeil, in his mailbox so I could pick it up that night if I wanted to when I got back from Philadelphia.

Q As a result, did you have any further dealings with Dr. and Mrs. McNeil?

A Yes, I did, because my agreement with Dr. and Mrs. McNeil was that should Mr. May refuse to accept an assignment, we would go forward with an independent agreement of our own and that I would then settle with Mr. May as originally scheduled, and I would settle with them; they proceeded to secure the financing at that point.

Q Did someone arrange for the settlement with Mr. Gourley's office?

A Yes. Mr. Gourley's office had originally been contacted. In fact, I had never heard of Mr. Gourley until that Sunday, which was March 19th, when this document was drafted and he wanted to have Mr. Gourley review it.

Mr. Gourley did review it. So I said --

Q You say "he."

A Dr. McNeil. So it just seemed sensible to me if I was going to go to back-to-back settlements, it was fine for me for Mr. Gourley to represent me with Dr. McNeil and represent me with Mr. May.

1 Q All right.

2 Now, could you describe your relationship with

3 Mr. May after you had presented and he had denied or declined

4 to go along with the assignment?

5 A Yes. The entire atmosphere changed. I went into

6 his office. As it turned out, I did not pick up the contract

7 that evening. My transmission blew up on the way back from

8 the airport, and a few other little problems. I went by his

9 office -- I believe it was on Wednesday, which would now have

10 put us up to the 21st or 22nd. In fact, it was on Wednesday,

11 as I recall, and I went in to pick that up.

12 Also at that time, he handed me a letter and I

13 started to put it in my briefcase and he said, "Have you

14 received your copy of this?" And I said no and started to

15 put it into my briefcase.

16 He said, "I want you to read it right now," so I

17 took it out and looked at the letter. It made reference to

18 the fact that I had not selected a settlement attorney. Back

19 when our arrangements and everything had been cordial, he

20 had said he wanted me to select an attorney, and I told

21 him I would, and I had not selected one.

22 I said, "Well, when do you need to know?" And he

23 said,"About three weeks before time for us to settle." I

said, "How about giving you a name by the end of the month?" And he said, "That's fine."

When I walked in on the 22nd, he then presented me this letter. And I also just happened to notice on it that he was saying settlement would be in the late afternoon on the 20th, so I just took the letter and left at that point.

Q Do you remember the date of that letter?

A To the best of my recollection, I believe the letter was dated the 21st, and I was in his office on the 22nd. In any event, I was there the morning after it had been written. It was written the previous day, and I had not received my mail when I left at 7:00 o'clock in the morning.

Q Would this be a true copy of that letter?

(Handing to witness)

A Yes, this is the letter dated March 21st. I was correct.

MR. CAMPBELL: No objection.

THE COURT: No. 7 admitted.

Any objection, Mr. Bushman?

MR. BUSHMAN: No.

THE COURT: It's admitted.

1 (Document referred to was marked
2 Complainant's Exhibit No. 7 for
3 identification and received in
4 evidence)
5 BY MR. TROTTER:
6 Q At this time, Mr. Haythe, you and Mr. May, I take
7 it -- let me withdraw that question.
8 Mr. Haythe indicates on that letter, "settlement
9 to be at 4:00 p.m., April 20, 1978." Had you and he agreed
10 upon that date?
11 A We had not agreed on that date at all.
12 Q Had you entered into any sort of change order
13 fixing that date?
14 A No. This had never been done. It's been my
15 experience -- I have handled a few settlements, both on my
16 property and a couple of others -- that settlement attorneys
17 select the date.
18 Q What date did you suggest to him or did the settle-
19 ment attorney suggest?
20 A When you say "to him," you mean to the settlement
21 attorney?
22 Q To Mr. May.
23 A All I said to Mr. May at that time, I said, "Well,

1 I had marked my calendar back when we talked in January,
2 based on your statement of finishing the house on Wednesday
3 and inspection on Thursday and settlement on Friday." I
4 marked mine for the 21st, and there was no further discussion
5 of it at that point.
6 Q Now, did you have any discussions with a
7 Mr. Thompson, one of Mr. May's employees, concerning the
8 wallpaper or any portions of the house during that period
9 of time between the letter and the settlement date?
10 A Yes, I did. It was getting down very close to
11 time for the house to be completed. The wallpaper which I
12 had selected, in fact early at the request of Mr. Thompson
13 when he said he needed to keep his men busy -- I think this
14 was back in the winter, the first of February -- I made the
15 paper selection. This was so he could really do it at his
16 convenience.
17 The paper still had not been installed, and I
18 talked to him about this. He said he was getting the paper
19 hung. Through the course of conversation, I learned that I
20 was going to be charged $22 a roll to hang that. Not only
21 had I had paper hung -- I ascertained the name of the
22 individual who was going to be hanging the paper for him
23 and found out, in fact, the price was being more than doubled

1 to me. In fact, it was going to be double what the house
2 was next door, and I said, "What's going on here?"
3 He said, "Well, Mr. May is very unhappy with you
4 because you are going to make a big profit on this house and
5 he told me and told the electrician and he also told the
6 fellow who did the wood trim -- he said either double or
7 triple the bid."
8 MR. CAMPBELL: I object.
9 MR. TROTTER: I offer this as an admission of an
10 agent of May Properties, a subcontractor.
11 THE COURT: Mr. Campbell?
12 MR. CAMPBELL: As I understood Mr. Haythe's
13 testimony, he had hired this man to do this extra work
14 himself.
15 THE COURT: Why don't you lay the foundation.
16 BY MR. TROTTER:
17 Q Who was Mr. Thompson?
18 A No, I did not do any independent --
19 THE COURT: The question is, "Who is Mr. Thompson?"
20 THE WITNESS: Mr. Thompson is the painter who works
21 exclusively for Mr. May, according to what he told me, what
22 Mr. Thompson told me.
23 MR. TROTTER: I think, Your Honor, an employee --

1 THE COURT: Overrule the objection.

2 Go ahead. Proceed.

3 BY MR. TROTTER:

4 Q I don't know where you stopped. Could you tell us

5 what Mr. Thompson told you that you haven't already related?

6 A Yes.

7 Well, as I was saying, I told him -- I said, "Hal,

8 what are you charging me $22 a roll when the man who is going

9 to hang this" -- I've forgotten the exact figure, but he was

10 going to be charging like $8 or $8.50. In fact, he was

11 going to use the paperhanger who was, I believe, a relative

12 or at least been suggested by the very place I was purchasing

13 the paper.

14 I said, "What's happening?" And he said, "Don't

15 blame me." He said, "Mr. May just won't allow me to do any-

16 thing except stick it to you." He said, "He's going to

17 stick it to you, and if anybody else -- "

18 MR. BUSHMAN: Objection to all of this testimony

19 unless he is more precise. I think the best witness would

20 be calling Mr. Thompson or whoever he would like.

21 THE COURT: The Court would overrule the objection.

22 BY MR. TROTTER:

23 Q Did he tell you why Mr. May wanted to stick it

1 to you?

2 A Yes, because Mr. May felt I was making a profit

3 on the house. He said Mr. May had been down and talked to

4 him, and Mr. Norblock, and now -- I correct that; not to

5 Mr. Norblock -- his foreman whose name escapes me right at

6 the moment, his building foreman.

7 Q That's all right.

8 A Whatever his name was, he told him I was making

9 a $60,000 profit on a house here and that the $60,000 should

10 be going to them and not to me.

11 Q Now, Mr. Haythe, did you enter into a release with

12 Dr. McNeil?

13 A Yes, I did.

14 Q Do you remember what transpired that led up to

15 that?

16 A Yes. The --

17 MR. CAMPBELL: Excuse me. You're going to refer

18 to a release; I would like to have it identified and testify

19 from the release. The release is the best evidence.

20 THE COURT: All right. I think your objection is

21 premature. The question is when.

22 BY MR. TROTTER:

23 Q What were the circumstances leading up to this

1 release?

2 A The circumstances were --

3 Q And when?

4 A Well, let me start with Sunday, the 19th of March,

5 when we signed this document. As soon as I learned on

6 Monday --

7 Q What is this document?

8 A This document being the exhibit which is the

9 assignment agreement which I drafted between me and the

10 McNeils.

11 Q You drafted that?

12 A I drafted that.

13 Q Are you a member of the Virginia Bar?

14 A The Virginia Bar and the District of Columbia Bar.

15 Q Excuse me. Go ahead.

16 A After I found out from Mr. May in that telephone

17 conversation from Friday that he would not accept an assign-

18 ment, to the best of my recollection I called Dr. McNeil

19 from Philadelphia and so informed him, either that day from

20 Philadelphia or the very next morning.

21 In any event, I know that Dr. McNeil proceeded to

22 secure funds for financing the thing. He was going to go

23 to -- he went to Riggs National Bank. He heard that they

1 would not charge points, and they turned him down. Then he
2 went to another bank.
3 Q What led up to the release?
4 A To the release? What led up to the release was
5 that he had -- after he applied for funds, he got an appraisal
6 on the property that was even higher than what he was paying.
7 He was very pleased with that.
8 Then from either Mr. May or someone else --
9 MR. CAMPBELL: I object. I think this witness
10 ought to be more specific and be responsive to the question,
11 particularly in this stage of the case.
12 THE COURT: If you can say the time, go ahead.
13 BY MR. TROTTER:
14 Q What time are you talking about?
15 A I am speaking now of -- he was turned down by Riggs
16 during that week of the five-day period of March 20th to
17 the 25th. It was during that time frame he was turned down,
18 and he talked to me -- as I recall, this was the following
19 day, Monday. It would have been the 28th of March -- and
20 said that he was going at 7:30 that night to make application
21 to the Advance Mortgage Corporation over here in Virginia,
22 which he did.
23 He said that he had first thought that -- he looked

1 around at other properties in Arlington and Falls Church
2 and said he knew I was making a profit but he just made
3 $100,000 in two years on a house in California and thought
4 he had a very good deal.
5 Q What led to the release?
6 A What led to the release? He said -- he then called
7 me later and said he wanted to renegotiate the purchase
8 price; that he was paying too much for this house and it
9 was an exact change in his position from what he had
10 before.
11 He told me he had talked to Mr. May and Mr. May
12 said, "I can build that house any day of the week for
13 $190,000," and he said, "You're making too much on the
14 house."
15 MR. BUSHMAN: I will object to that statement of
16 what Mr. McNeil told him. Mr. McNeil is the best source
17 of that testimony.
18 THE COURT: Sustained as hearsay.
19 BY MR. TROTTER:
20 Q As a result of this, what did you do?
21 A As a result of this, I told Dr. McNeil -- I said,
22 "Look, I'm going through all the unpleasantness which I
23 hoped to avoid by selling you this house at what I considered

a very attractive price." And I said, "If you will be so kind as to send me a release with your and your wife's signatures on it, I will in fact sign that release and return it to you with your deposit."

Q Did you do so?

A I did.

Q Is this the release?

(Handing to witness)

A This is the release which I signed.

MR. CAMPBELL: This is dated April 22, 1978. You're sure this is the release you signed?

THE WITNESS: I signed it before that date.

MR. CAMPBELL: This is the release you signed --

MR. TROTTER: I think he can cross examine.

THE COURT: If he wants to voir dire, voir dire briefly.

VOIR DIRE EXAMINATION

BY MR. CAMPBELL:

Q You spoke of a release. You notice that this is dated April 22, 1978.

A That is correct.

MR. TROTTER: Was it signed on this date or signed before that?

1 that 15?

2 MR. TROTTER: Yes, 15.

3 MR. CAMPBELL: You have 4/22. That would be No. 8?

4 MR. BUSHMAN: No. 8?

5 THE COURT: Yes, sir. It's marked as the release,

6 plaintiff's No. 8.

7 Why don't I just hold you here and we will take

8 a fifteen-minute recess.

9 (Whereupon, a short recess was taken)

10 THE COURT: I think we reached a point on the last

11 question of the release. That was admitted into evidence

12 and you wanted to proceed on your next area of examination.

13 MR. TROTTER: Yes, sir.

14 DIRECT EXAMINATION (resumed)

15 BY MR. TROTTER:

16 Q Now, after the release was signed, were you at

17 that time prepared to go ahead and settle?

18 A Indeed, I was. In fact, I told Mr. Gourley to

19 proceed and Dr. McNeil was now out of the picture and I

20 would go to settlement.

21 Q Were you planning on renting, occupying it, or

22 what at that time?

23 A At that point?

1 Q Yes.

2 A I was going to occupy it.

3 Q Now, did Mr. May have any conversation with you

4 regarding the settlement at the offices of Herrell, Campbell &

5 Lawson?

6 A The conversations which I had with him were back

7 when he suggested my selection, that I select an attorney,

8 and he mentioned that particular firm as having done, I think,

9 a majority of the settlements in there, and it occurred to

10 me to use that particular firm.

11 Q Did you have occasion to inspect the house on or

12 about April 20, 1978?

13 A Yes, indeed, I did. In fact, I had been to the

14 house other times but I certainly inspected it on the 20th.

15 I retained Sidney Jennings, an architect, to give me his

16 professional evaluation.

17 Q Don't go into his evaluation.

18 From the appearance, as a layman, of the house,

19 was it ready for occupancy by you?

20 A No, it was not.

21 Q Was the refrigerator in?

22 A No, the refrigerators were not in.

23 Q What about garage doors?

1 A The garage doors were not there. To get into the
2 property, you had to put on high boots and roll up your
3 trousers to the knees.
4 Q I take it there was no sod.
5 A No sod.
6 Q What about the driveway?
7 A No driveway. It was all mud at that point.
8 Q Now, was settlement postponed?
9 A Settlement was postponed.
10 Q Were any dates selected by you or agreed to by you?
11 A After it was postponed?
12 Q Yes, for the resumed settlement.
13 A For the resumed settlement, no specific date was
14 selected.
15 MR. CAMPBELL: I submit he's answered the question,
16 Your Honor.
17 BY MR. TROTTER:
18 Q All right.
19 Now, did you receive a letter from Mr. Malinchak
20 dated April 27, 1978, a copy of that letter?
21 A Yes, I did. When I arrived home that evening, on
22 the evening of Thursday, the 27th, I found that that letter
23 had been hand-delivered, put through the mail slot in the

door, and was waiting for me on the floor.

Q I show you what appears to be a letter dated April 27th, showing a copy going to you. Is that the letter you are referring to?

(Handing to witness)

A This is the letter.

MR. CAMPBELL: No objection.

THE COURT: It will be Exhibit No. 9 and be received.

(Document referred to was marked Complainant's Exhibit No. 9 for identification and received in evidence)

BY MR. TROTTER:

Q All right, sir.

I believe you mentioned settlement at 11:00 o'clock a.m. in the record room of the Circuit Court of Fairfax County. Did you agree to this arrangement to have the settlement in the record room at 11:00 o'clock on the 28th?

A No.

Q After you got that letter, did you take any steps to see if you could close by then?

A Sir, I was aware of that letter before I received

it at home. I got back from lunch about a quarter of 1:00, as I recall, on Thursday, the 27th, and I had two messages. My secretary remarked, I think, one urgent and the other emergency, one being Mr. Dulaney and one from Mr. Gourley. They were recorded within about five minutes of each other. I think it was about 12:30, 12:35, thereabouts.

I don't recall which gentleman I called first. There were a series of telephone conversations that afternoon between me and Mr. Gourley and Mr. Dulaney.

Q Had you arranged for the purchase price of the house at that time?

A Had arranged for the purchase price?

Q The financing.

A Oh, yes. That had been even back in late March or early April. Money was available, but I didn't want to get the money until I needed it, because the interest is high.

Q What next did you do, if anything?

A Well, I had the representation there of counsel for Mr. May that he had completed the items on the punchlist. Either that letter states it -- I don't have the letter in front of me -- that the residential use permit had been issued, or at least I became aware of it from reading it in there, or Mr. Gourley or Mr. Dulaney -- this had been

1 done.

2 I thought we were going to settlement tomorrow,
3 so I arranged to pick up the money the next morning, get
4 the insurance on the house, and I even changed the utilities
5 in my name -- the electricity and water. I did all that
6 Friday morning and I gave notice to my landlord I was moving
7 out and moving into the house.

8 Q With whom did you arrange the financing?

9 A My financing was arranged -- one lending institution
10 was involved which was the McLean Bank on Old Dominion Drive
11 in McLean, and the balance was provided privately.

12 Q Now, on --

13 MR. CAMPBELL: I'm sorry? Was provided privately?

14 THE WITNESS: Privately.

15 BY MR. TROTTER:

16 Q Now, on the morning of April 28th, did you have
17 occasion to meet with Mr. Dulaney and Mr. Gourley in
18 Mr. Gourley's office?

19 A Yes, I did. In fact, I had retained Mr. Dulaney
20 earlier that week, about Monday or Tuesday, in relation to
21 the Dr. McNeil matter. Actually I had not seen Mr. Dulaney
22 personally. We were good friends; we practiced on a case
23 together.

1 I walked in, and he was on the telephone and he
2 kind of threw up his hand and waved to me.
3 Q This was in Mr. Gourley's office?
4 A In Mr. Gourley's office. That is actually in a
5 house. As you walk in the front, it would be an office
6 conference room on your right rear.
7 Q And Mr. Dulaney was there. Could you hear what
8 he was saying?
9 A Yes, I could.
0 MR. CAMPBELL: I object until he establishes who
1 was in the room, the conditions, and so forth. This is
2 clearly hearsay.
3 THE COURT: Sustained at this point.
4 MR. TROTTER: Your Honor, I hate to call Mr. Dulaney
5 out of turn, but Mr. Dulaney is here. He will be a witness,
6 and I just wanted him to testify to what he heard Mr. Dulaney
7 saying from his end of the telephone.
8 MR. CAMPBELL: If Your Honor please, I have no
9 objection to him testifying that he heard Mr. Dulaney on
0 the telephone. I object to him repeating any evidence at
1 this time as to what he allegedly heard from Mr. Dulaney.
2 MR. TROTTER: Well, Your Honor, I can call him
3 back after Mr. Dulaney testifies.

~~BY MR. TROTTER:~~

Q All right.

What about today? Are you ready, willing, and able to settle now?

A Certainly.

MR. CAMPBELL: I suggest, Your Honor, the proper way to do this as I read the law in the specific performance is for him to tender a check.

THE COURT: I think -- go ahead and break it up, whether he has the check and what-have-you. Go ahead.

MR. CAMPBELL: I don't think this is a proper tender under the law.

MR. TROTTER: I don't think we have to tender at trial a check.

BY MR. TROTTER:

Q Tell the Court, please, if you have any wherewithal or means of settling at this time and, if so, where.

A Yes, indeed. Again, I have not kept funds. I have made arrangements, though, that on reasonable notice, I will have my funds again just as I did last time.

Q ~~Now, can you tell the Court whether or not you incurred any out-of-pocket expenses as a result of the fact -- strike that question.~~

THE WITNESS: I arrived at the courthouse, to the best of my recollection -- it was about 12:30 or it was somewhere between 12:20 and twenty of 1:00. It was sufficient time that we had a conversation with Mr. Dulaney and I had a conversation there in that record room and then came around and got us a sandwich.

As I in fact finished my sandwich, I know he went to make another phone call. It was the 1:00 o'clock phone call, while I got another cup of coffee.

He came back in and said he had called the office and that he did not reach Mr. Malinchak. I think he was told Mr. Malinchak was in conference.

BY MR. TROTTER:

Q I show you a certified copy of the Deed dated April 28, 1978, to Dr. Albright. Is this the Deed that you looked at that day?

(Handing to witness)

A Yes.

MR. TROTTER: I would like to offer this certified copy of the Deed, Your Honor.

THE COURT: Any objection?

MR. BUSHMAN: I object. There has been no foundation that this in fact was from May Properties to Albright.

THE COURT: What is your position?

MR. BUSHMAN: I would agree with Mr. Campbell.

THE COURT: I would overrule you, not on the specific performance or damages.

MR. TROTTER: It's our position that we have a right to both.

BY MR. TROTTER:

Q What out-of-pocket expenses did you have?

A At that point, the bank charged me $100 for the day's use of the money. I also paid the title insurance binder, which was $50. I also paid $300 to Mr. Gourley as the settlement attorney because he had performed his services, and that would be it because the insurance company did not charge me anything. They just returned my check.

Q Did you incur any expenses through Mr. Dulaney?

A Yes, I certainly did. I had attorney fees to Mr. Dulaney and Mr. Olson.

Q How much were they?

A Approximately $1,000.

Q Have you computed the interest you have lost on the $19,500 for the last eight or nine months, whatever it is?

A Yes, I have.

Q What was that?

A That was some $1100, $1200.

MR. CAMPBELL: Do you have a total there, Mr. Trotter?

MR. TROTTER: About $2500.

Your Honor, I have cancelled checks which I would just as soon not put in evidence unless opposing counsel would like them in evidence.

If I may have the Court's indulgence. . .

(Pause)

I believe that is all I have.

THE COURT: Sure.

MR. TROTTER: That is all I have, Your Honor.

MR. CAMPBELL: Did you offer these in evidence?

MR. TROTTER: No, I did not.

THE COURT: He said he didn't want to offer them, is what he was saying, unless you want them.

MR. CAMPBELL: Do you want to mark them for identification?

MR. TROTTER: I have no objection to you putting them in evidence.

MR. CAMPBELL: He referred to them, so I would just like to mark them.

THE COURT: You want to mark them?

MR. CAMPBELL: You want to mark them?

MR. TROTTER: I don't want to offer them.

MR. CAMPBELL: I submit for the record the witness referred to them; we should have it marked and identified as an exhibit. I don't even know what it is.

THE COURT: He indicated what it was, and he said he doesn't want to have it marked. But you can have it marked as your exhibit, Exhibit No. 1.

MR. CAMPBELL: I would just refer to them.

THE COURT: Mark it Defendants' Exhibit No. 1, which would be the checks.

MR. CAMPBELL: I am not offering this.

THE COURT: I understand; it's just marked for identification.

(Documents referred to were marked Defendants' Exhibit No. 1 for identification)

CROSS EXAMINATION

BY MR. CAMPBELL:

Q You testified to your out-of-pocket expenses.

A That is correct.

Q What is this check to M. G. Apartments?

(Handing to witness)

A This was by a check I had presented Mr. May. May I look at the check?

Q Yes.

A I had given Mr. Gourley two checks. One was from McLean Bank for $160,000. And I also presented to him a check for $9,512.83 which was the difference between the $160,000 -- if you add the two checks together, they total up the total amount of money that was due to go to Mr. May, as well as the recording expenses and the fees to Mr. Gourley's office.

So what this check represents is -- then after I learned the property had been deeded to Dr. Albright that day, I went back to Mr. Gourley that day. He wrote a check for -- I took back from him the check.

Q Which check?

A The two checks that Mr. Dulaney had, one to give to Mr. May and the other one to record. I took those two checks, handed them to Mr. Gourley, and Mr. Gourley then wrote me a check for $160,100, which was the additional $100 the bank was charging me. That was his check No. 4298.

He then wrote a check to himself, check No. 4300, for $300. That was his fee. And then to Colonial Title

1 Company, the insurance company, check No. 4299. That was
2 $50, and he wrote a check to me for the balance, which was
3 $9,062.83.
4 If you take that check over $9,000, the $50 check,
5 the $300 check, and the -- take those three checks, add it
6 together, they total the amount of my check to M. G. Apart-
7 ments, which was $9512.83, to repay that amount of money.
8 Q You have shown me --
9 MR. BUSHMAN: I would object to the response. The
10 question was why was this check payable to M. G. Apartments
11 that he presented to Mr. Gourley, and he never answered.
12 BY MR. CAMPBELL:
13 Q Mr. Haythe, you have referred to your check No.797
14 which is dated April 28th.
15 A That is correct.
16 Q April 28, 1975?
17 A No; 1978.
18 Q To the order of M. G. Apartments.
19 A That is correct.
20 Q In the amount of $9,512,83.
21 A Correct.
22 Q And that is for deposit to M. G. Apartments.
23 A That is correct.

Q You contend that check went towards settlement?

A No, that was not my testimony.

Q You have also shown me a check No. 4301 apparently issued upon the account of Tudor Stewart Gourley, Jr., in the amount of $9,062.83, to you.

A Yes, that is correct.

Q Where did the $9,062,83 come from? A private source?

A Originally that morning, I had taken -- I keep forgetting. The green check, if I could see that . . .

Q Answer my question. You previously --

MR. TROTTER: Your Honor, I think if he is being asked a question about that check, he should be able to see it.

THE COURT: If he needs something to refresh his recollection, fine.

THE WITNESS: I had taken Mr. Gourley a check payable to him from the private source of M. G. Apartments for $9,512.83, which was the difference from what I was borrowing from the bank and what I owed to complete the settlement.

When the settlement did not take place, I then took those two checks that were payable to Mr. May and

1 payable to the County of Fairfax back to Mr. Gourley.
2 Mr. Gourley first gave me a check for $160,100 to take back
3 to the McLean Bank that very day, which I did.
4 He then wrote off the three expense checks, one
5 for $50, one for $300 to himself, and he gave me a check
6 for the balance, which was the check for $9,062.83.
7 Now, I had borrowed, or, rather, the private
8 source of M. G. Apartments on my behalf had presented
9 Mr. Gourley a check that morning for $9,512.83. So what
10 I then did was to deposit the check which Mr. Gourley had
11 written to me into my checking account, and I then wrote a
12 check back to M. G. Apartments.
13 BY MR. CAMPBELL:
14 Q Who is M. G. Apartments?
15 A M. G. Apartments is two friends of mine who are
16 in business who own apartments.
17 Q Mr. Haythe, would you please tell me what
18 attorneys have represented you in this matter?
19 A I have been represented by the firm of Jackson,
20 Campbell & Parkinson, specifically, Mr. Ben Dulaney;
21 Mr. Olson, who is an associate of Mr. Dulaney's; and then
22 for purposes of settlement, Mr. Gourley.
23 Q When did you employ Mr. Olson?

A I initially employed Mr. Dulaney.

Q And they are of the same firm?

A The same firm.

Q When did you employ Mr. Dulaney?

A I employed Mr. Dulaney -- it was on either Monday or Tuesday. Let's see. If it would be the 17th or 18th of April because --

Q Of 1978?

A 1978, yes.

Q And that is the first contact you had with him?

A No.

Q With Mr. Dulaney.

A No.

Q In response to this matter.

A Yes. And when I say "this matter," I did not initially contact Mr. Dulaney in regard to matters between me and Mr. May.

Q But the fact is that the first time you contacted Mr. Dulaney was on April 17th or 18th of 1978.

A That is true.

Q And did he subsequently leave town on the 19th?

A I don't know when he left town.

Q When is the next time that you saw Mr. Dulaney

after April 18th?

A I did not see him on April 18th.

Q When did you see him?

A I saw him for the first time in regard to this matter on the morning that I walked into Mr. Gourley's office, which was Friday morning at 10:00 o'clock on the 28th when he was on the telephone.

Q On the 28th of April 1978?

A That's right. All my previous contact had been by telephone.

Q And did there come a time after you initially contacted Mr. Dulaney on April 18th or thereabouts about any matter that you had some dealings with Mr. Olson?

A Mr. Dulaney informed me that he was going on some trip, fishing or hunting or something. In any event, he was going to be out of town on the day that my settlement was to take place. I know he was to be out of town on the 21st.

When he left between the Monday, Tuesday, when I first talked to him, and Friday -- I don't know. He was to be out of town there, and he told me Mr. Olson was a bright associate in his office and that Mr. Olson would certainly represent me in any matter until he got back.

Q So all of the references you have made to conferences or statements of Mr. Dulaney between April 18th and April 28th are really hearsay because you didn't even see him again until the morning of April 28th?

A I don't understand the nature of your question.

Q You did not have any personal contact with Mr. Dulaney until April 28th.

A That is not what I testified to.

Q When did you see him prior to April 28th?

A Well, having a discussion or business dealings with someone and seeing someone is totally two different things. I conduct a vast majority of my business by telephone.

Q When did you have any conversations with Mr. Dulaney? Did you have any conversations with Mr. Dulaney on the 27th?

A I did indeed, as I previously testified. I returned his call, his telephone call, when I got in to my office about quarter to 1:00, and he had received Mr. Malinchak's letter and Mr. Gourley also had called me, and we had several conversations that afternoon.

Q This was with Mr. Dulaney on the 27th?

A I indeed did.

1 Q Now, when did you first have contact with
2 Mr. Gourley?
3 A I don't recall the first time that I personally
4 had contact with Mr. Gourley. I remember the date I met
5 him. When it was, I don't recall because Mr. -- rather,
6 Dr. and Mrs. McNeil had originally retained Mr. Gourley.
7 And I said, "Well, we might as well use the same attorney.
8 That is fine with me."
9 Q Would this be March 19th, to refresh your recollec-
10 tion, or the 20th, which was a Sunday?
11 A No. The Sunday was the 19th; the 20th was a Monday.
12 Q The 19th was a Sunday.
A The 19th was a Sunday. That was the first time I
heard the name of Mr. Gourley, but I didn't contact him that
day.
Q Did you take this assignment to his office on
Sunday to be reviewed?
A No, I did not.
Q You did not?
A I did not.
Q When was the first time that you had any meetings
with Mr. Gourley?
A I don't recall the date of it.

1 Q You never took the assignment to him?

2 A No, I did not.

3 Q So you didn't know what the settlement date was,

4 did you?

5 A I had, in dealings with Dr. McNeil, knowing it

6 was sometime after March 20th, that is when I knew that

7 Mr. May would not accept an assignment. Now, I then at

8 some point after that, one evening after work, I went by

9 Mr. Gourley's office. And at that point in time, I thought

10 we were still going to have back-to-back settlements and

11 that Mr. Gourley would be representing me with Mr. May

12 and that he would then turn around and represent me with

13 Dr. and Mrs. McNeil.

14 Q At that time, Mr. May had not refused to sign the

15 assignment?

16 A No, that is not what I said. I said that it was

17 sometime after the conversation, as I previously testified,

18 that I took the assignment to Mr. May's home and he was

19 playing tennis on Sunday, the 19th.

20 Q Sunday the 19th?

21 A That is what I am testifying to, sir.

22 Q Had you shown that assignment to Mr. Gourley prior

23 to taking it to Mr. May on the 19th?

A I testified I did not.

Q When did you take it to Mr. Gourley?

A I took it to Mr. Gourley sometime after it was -- sometime after the 21st; the 20th, I was in Philadelphia on a Court appearance on behalf of my own work. It was sometime after that that I first met face to face with Mr. Gourley.

Q Now, when was the first time you met with Mr. Olson?

A I have never laid eyes on Mr. Olson, to my knowledge.

Q You never talked to Mr. Olson?

A That isn't what I said.

Q You never met with him in person?

A All my business dealings have been, with him, by phone.

Q You never met him, other than just telephone conversation?

A That is correct.

Q When was the first telephone conversation that you had with Mr. Olson?

A I believe that my first telephone conversation with Mr. Olson was -- I am trying to recall if I spoke with him. If I did, it was just a kind of courteous thing on the

day Mr. Dulaney told me he was leaving town. He had orally told me earlier that week when Mr. Gourley had told me -- he says, "I am not going to be anything other than a settlement attorney," and he said, "It looks like something is going to be developing between you and Dr. McNeil, and Dr. McNeil is going out and hire him another lawyer."

I said, "I'd better hire my own," so I called Mr. Dulaney.

Q When did Mr. Dulaney or Mr. Gourley say there was something developing between you and Mr. McNeil?

A He told me that Dr. McNeil had asked him for the names of some -- I think he even asked Mr. Gourley to recommend an attorney to him, when he said he couldn't represent him. He was representing both of us; to my best recollection, he said he did not recommend anyone, and he gave the man three names.

Q I thought you said you and Mr. McNeil were going to have a separate settlement immediately after your settlement with Mr. May. Did some difficulty develop between you and Mr. McNeil?

A I wouldn't say difficulty. It was only after he had received an appraisal on the property and, according to

him, Mr. May informed him it wasn't worth the paper it was written on and he could build him a house for $190,000; and he wanted to renegotiate the purchase price.

If I may complete -- I said, "If you want to just sign a release and get out of it, fine."

Q That is what you told him?

A That is what I told Dr. McNeil.

Q Did you tell Mr. May that Dr. McNeil said these things about him?

A I don't believe Mr. May and I had another conversation after about the 22nd of March, which was the morning that he gave me that letter in his office which he had allegedly written on the 21st. We did not meet face to face after that, and I don't recall any conversations.

He would have his secretary call me if there was something that was to transpire.

Q So it is your testimony, Mr. Haythe, that you had no telephone conversations or any kind of conferences with Gene H. May after March 22, 1978?

A After March 22nd, I dealt with Mr. May. I had a book of plans he wanted back so he would have his secretary to call me.

Q That is not my question. My question is, after

A Yes, that is correct.

Q I believe it states that you thought you would bring a couple of things to Mr. May's attention, and the banisters and the intercom system -- is that right?

A As I recall, going through one day, I had seen some static. It was a big speaker in the rec room and the banisters at the top of the steps -- I think it was the steps, the main floor going upstairs -- I thought these were items obviously -- there was a big major item but I thought these would be something that he might not catch in the final walk-through.

They told me they had their final walk-through on the 19th before I was to do mine on the 20th.

Q I am sure, as you say here, "...as you complete the house in the next few days that minor or small matters will be noted and these might be covered." Is that correct?

A May I see the letter?

No. As I say here, not as you read, but "I thought these two might not be caught."

Q Were you getting ready to move, to occupy the house?

A On the 11th of April?

Q Yes.

A On the 11th of April, I thought I would be deeding it to Dr. and Mrs. McNeil.

Q Did Dr. and Mrs. McNeil -- were they planning to move in?

A Yes.

Q And you didn't even think you would move in on the 11th of April?

A On the 11th of April?

Q Yes.

A I didn't intend to move into the house.

Q You didn't indeed.

A Yes.

Q What is the postscript on that letter?

A "Please note above, my mailing address recently changed."

Q Where did you move?

A 1512 Buena Vista Avenue, which is the return address.

Q You moved on April 11th?

A No, I did not.

Q What change in address was it?

A I had moved from 6837 Saint Albans Road, which is a house that I owned in McLean and still own.

1 Q Where is that?

2 A 6837 Saint Albans Road?

3 Q Is that in the District of Columbia?

4 A In McLean, Virginia.

5 Q McLean?

6 A Where I resided with my wife and three children.

7 Q And I believe you and your wife now live in a

8 different address?

9 A That is correct; we're divorced.

10 Q In fact, she got the furniture out of the settle-

11 ment agreement, didn't she?

12 A No, she did not.

13 MR. TROTTER: I think this is completely irrelevant.

14 THE COURT: Sustained.

15 BY MR. CAMPBELL:

16 Q When did you make moving arrangements for the

17 furniture in this house?

18 A What moving arrangements?

19 Q When did you first make arrangements to move into

20 the house owned by Mr. May?

21 MR. TROTTER: I think he could give us a time.

22 MR. CAMPBELL: After April 11th.

23 MR. TROTTER: Excuse me. He's testified that he

1 did not intend to, on April 11th. I don't think this is a
2 fair question.
3 BY MR. CAMPBELL:
4 Q When did you intend to move into the May house?
5 A I intended to move into the May house on Friday,
6 April 28th.
7 Q April 28th?
8 A That is correct.
9 Q That is correct? The 28th?
10 A That is correct.
11 Q Did you have any conferences with Thomas J.
12 Harrigan, who is an attorney in Arlington, Virginia?
13 A He may be that -- the name sounds familiar. I
14 think that he was one of the three names that Mr. Gourley
15 had suggested and that he would be the lawyer that Dr. McNeil
16 had hired, and I don't recall if he is the one. I don't
17 recall if I ever had a conversation with him or not, but
18 I do know that I retained Mr. Dulaney to deal with him. And
19 I don't think I had a conversation with him. I may or may
20 not.
21 I don't recall, but in any event, in any subsequent
22 discussions with him, I retained Mr. Dulaney to handle it.
23 Q Let's see if I can understand you correctly. On

1 April 11th, you were expecting the McNeils to move into the
2 house.
3 A That is correct.
4 Q And Mr. Gourley evidently told you there was a
5 conflict developing between you and Mr. McNeil and he
6 couldn't represent both of you.
7 A He told me that Dr. McNeil was retaining private
8 counsel and that he would not be in a position to represent
9 either one of us.
10 Q What was the dispute between Dr. McNeil and
11 yourself?
12 A Dr. McNeil and I never had any words of dispute.
13 Q Didn't you obtain an attorney to deal with him?
14 A I obtained counsel to represent me in dealings with
15 counsel for Dr. McNeil.
16 Q Over what problem?
17 A Over the negotiations of a release.
18 Q A release that you offered here in evidence?
19 A That is correct.
20 Q Was there another release between you and Dr. McNeil?
21 A No; that is the only release.
22 Q I show you a letter dated April -- let me mark
23 this, if I may. This is the letter from Thomas Harrigan to

1 Mr. Haythe.

2 THE COURT: I will mark the letter from Mr. Haythe
3 to Mr. May as Exhibit No. 2. This will be Exhibit 3.
4 MR. CAMPBELL: All right.
5 (Documents referred to were
6 marked Defendants' Exhibits
7 Nos. 2 and 3 for identification)
8 MR. CAMPBELL: Also, I would like to mark at the
9 same time a document entitled "Mutual Release Agreement" --
10 that would be 4 -- and a letter from Routh Robbins to the
11 Haythes dated March 19, 1978.
12 THE COURT: Those will be 4 and 5, respectively.
13 (Documents referred to were
14 marked Defendants' Exhibits
15 Nos. 4 and 5 for identification)
16 MR. CAMPBELL: I think Mr. Trotter has all of
those. Maybe he doesn't have this one.
MR. TROTTER: I can't hear you.
MR. CAMPBELL: You have all these, copies?
MR. TROTTER: I don't think so.
MR. CAMPBELL: I will show them to you.
MR. TROTTER: May I take a look at them?
MR. CAMPBELL: Mr. Harrigan is on call if we need

1 Court that Mr. Harrigan will come and identify the letter.

2 THE COURT: All right.

3 THE WITNESS: At the moment, I probably did receive

4 this.

5 BY MR. CAMPBELL:

6 Q Probably did receive this. Did you receive the

7 release, this release which is --

8 MR. TROTTER: I object to the form of the question.

9 That is only signed by one party, Your Honor.

10 BY MR. CAMPBELL:

11 Q Did you receive that release?

12 A I don't know if I received this or not. As I

13 recall, I did receive some release form. This may or may

14 not be it. I know I only signed one release which was on

15 Routh Robbins letterhead.

16 Q You never signed this release sent to you by

17 Mr. Harrington?

18 A To the best of my recollection, that is correct.

19 Q When did you receive this document and this further

20 release agreement?

21 A I don't recall. As I say, the letter is dated the

22 18th and he makes reference there to his conversation with

23 my counsel, Mr. Dulaney, and I know I did in fact retain

1 Mr. Dulaney that Monday or Tuesday or Wednesday, so the
2 time frame sounds right.
3 Q Do you agree with his statement that the Riggs
4 Bank had declined to loan Dr. McNeil $125,000?
5 MR. TROTTER: I object.
6 THE COURT: Sustained.
7 BY MR. CAMPBELL:
8 Q To your knowledge, did Riggs decline to loan
9 Dr. McNeil $125,000?
10 MR. TROTTER: This has to be hearsay.
11 MR. CAMPBELL: He has already testified to that,
12 if Your Honor please.
13 THE COURT: He has indicated that earlier.
14 BY MR. CAMPBELL:
15 Q Is that right?
16 A I was so informed by Dr. McNeil.
17 Q Then you knew on April 18, 1978, that Dr. McNeil
18 had no loan; is that right?
19 A On April 18th?
20 Q 1978.
21 A No. Actually, Dr. McNeil had a loan approved by
22 Advance Mortgage Corporation. He went to Riggs National
23 Bank, I believe, on Monday, the 20th of March, and they

1 turned him down at the end of the week or -- I think it was
2 the end of that week. In any event, he then talked to me
3 one morning from his office and said he had made application
4 to Riggs and they turned him down.
5 He was now going to Advance Mortgage and in fact
6 I think he was going over at 7:30 in the evening to make the
7 application.
8 Q When did you receive -- when did you authorize
9 anyone to accept $5,000 from the McNeils as a deposit on
10 the contract for the purchase of this house?
11 A The McNeils wrote a $5,000 check on Sunday,
12 March 19th, the time we executed that assignment.
13 Q I show you Defendants' Exhibit 5; is that a
14 confirmation between Routh Robbins and yourself and
15 Dr. McNeil that $5,000 had been deposited on the contract
16 between you and the McNeils?
17 (Handing to witness)
18 A That is correct. I personally typed that letter,
19 got my own strikeovers.
20 Q You personally put that in the letter?
21 A Yes.
22 Q And who held the money?
23 A Routh Robbins.

Q How did Routh Robbins get into the picture?

A Routh Robbins was a real estate firm that was assisting Dr. and Mrs. McNeil in finding a residence in McLean; specifically, Virginia Neal, who is either an agent or broker -- I don't know which -- was in that Routh Robbins office and was aware I had the property at Evermay and was desiring to sell that property.

Q This letter is dated April 18, 1978?

A No, it is not.

Q This letter isn't from Mr. Harrington?

A Oh, Harrington. I thought you were speaking of the last letter which you had just given me, which was dated March 19th.

Q The letter from Mr. Harrington was dated April 18th.

A I don't recall the date; it would speak for itself.

Q I don't want to confuse you.

Incidentally, what type of law do you practice?

A What type of law? I appear in Federal Courts throughout the nation as an enforcement trial attorney.

Q In what department?

A The Consumer Product Safety Commission, an independent regulatory agency with five presently appointed positions.

1 Q How many?

2 A Five.

3 Q Have you done any real estate?

4 A Yes, I have.

5 Q When did you do that?

6 A I have done real estate work for myself and also

7 on occasion a friend will ask me if I will handle the matter.

8 Sometimes it's been with someone of -- a friend.

9 Q This is dated April 18th?

10 A That is what it says, yes, sir.

11 Q Now, April 18th -- you had known since March 20th,

12 had you not, that Gene May wasn't going to give you an

13 assignment. Is that right?

14 A He so informed me, and in my long distance phone

15 call from Philadelphia on Monday, the date was March 20th.

16 Q So you held this money or let Routh Robbins hold

17 it until the 28th. When was that money returned to the

18 McNeils?

19 A I assume it was returned to them on April 22,

20 which is the date that the release is dated, because, as I

21 stated earlier, I signed the release. And to the best of

22 my recollection that was on Wednesday, the 19th, and then

23 had to go back over to Routh Robbins. I signed it, and I

1 know the McNeils signed it. The McNeils signed it when it
2 was presented to me; then I signed it. It was then going
3 to be signed by a Mrs. Gardner and Mr. Mitchell who are
4 in partnership as Gardner Homes, and they were to receive
5 a finder's fee; also, Routh Robbins was to receive a finder's
6 fee.

7 Q You stated that the McNeils were to obtain a loan.

8 A They were obtaining financing on the house.

9 Q Did they obtain an appraiser, if you know?

10 A I don't think they independently did that. As I
11 recall, I have used Advance Mortgage myself and you contact
12 the lending institution and pay them money -- I think it's
13 like $100 or so -- and they take care of all the rest of
14 the paperwork, including getting an appraiser.

15 Q Did you know that they had obtained an appraiser
16 for the purpose of this loan?

17 A I know an appraisal was made on the loan for the
18 purposes of Advance Mortgage.

19 Q And you had contact with this mortgage company; is
20 that right?

21 A At that point in time?

22 Q Yes.

23 A Yes.

1 Q You said you had been doing business with them.

2 A That is subsequently.

3 Q When did they obtain this appraisal? After

4 Mr. May told you that he was not going to sign the contract?

5 A It would have to be, because that is -- he told me

6 he would not accept an assignment. The McNeils signed the

7 form with me on Sunday the 19th and he, Mr. May, said on

8 the 20th he would not accept an assignment. That is when

9 Dr. McNeil was going to Riggs to get his money.

10 I don't think -- his first contact with Advance

11 was either sometime the next week or the week thereafter,

12 the 7:30 p.m. meeting.

13 Q How much did you sell the house to Dr. and Mrs.

14 McNeil for?

15 A I never sold the house to Dr. McNeil.

16 Q What was the price?

17 A $233,000.

18 Q This appraisal was also, as you know, $233,387.

19 A If the appraisal is there, it would speak for

20 itself. There was an appraisal for $234,500.

21 Q Had you ever seen that appraisal?

22 MR. TROTTER: I think we're getting a little far

23 afield. I don't see the point in getting into hearsay

1 Dr. McNeil personally because as of the -- it would have
2 been, to the best of my recollection, the end of the week
3 preceding the Monday of the 17th of April because by that
4 point in time, I was informed that he had gone out and hired
5 his own lawyer.
6 Q When did you first tell Dr. McNeil what you paid
7 for this house?
8 A I never told Dr. McNeil what I paid for this house.
9 Q Did he ever find out?
10 A I don't know.
11 Q You do know, don't you?
12 MR. TROTTER: Your Honor, I object.
BY MR. CAMPBELL:
Q Let me rephrase the question. Didn't he go to
Mr. May and ask what the price was?
A I have read that in Mr. May's deposition.
Q You never told this man what you were purchasing
the house for?
A That is correct. My contract with Mr. May -- I
had taken a magic marker and blacked out what the purchase
price was.
Q And you knew at that time you did not have approval
of Mr. May for the assignment?

1 A At what time?

2 Q At the time you blocked out this price.

3 A Of course not. I blocked it out on the Sunday --

4 Sunday, the 19th of March.

5 Q Let's go to another phase. You went in to Mr. May

6 to buy this house. Were you aware there was attached to the

7 contract a statement that the warranties to the house were

8 not assignable?

9 MR. TROTTER: The warranty will speak for itself.

10 I don't see any point in going into it.

11 MR. CAMPBELL: I think it is very important.

12 THE COURT: Go ahead. I will let him answer if

13 he knows.

14 BY MR. CAMPBELL:

15 Q I will show you the builder's warranty which was

16 attached to the contract. Doesn't that warranty say certain

17 parts of the warranty are not assignable?

18 A It says at the very top in very large letters,

19 "Evermay dwellings carry a one-year structural and waterproof

20 basement warranty to the original purchaser by May Properties,

21 Inc., which commences on the date of completion."

22 Q You were aware of that?

23 A I have seen that document, yes.

1 that the firm of Routh Robbins would hold the $5,000 deposit.

2 I recall also that I signed a letter, to the best

3 of my recollection, to Routh Robbins and to Gardner Homes

4 indicating the finder's fee which I was going to be paying

5 to the respective firms.

6 Q Were you going to participate in the finder's

7 fee?

8 A Was I going to participate in it?

9 Q Yes.

10 A I was paying it, sir.

11 Q Do you have a copy of that statement, sir, the

12 finder's fee agreement?

13 A I may have one in my records somewhere. I don't

14 have it now.

15 Q When did you become a real estate agent?

16 A I took the courses in the fall of '77. I took

17 the examination -- I think it was the first part of December

18 of '77 and the license itself was issued either in late

19 December or maybe early January. Anyway, it was the end of

20 '77 or the beginning of '78 that my license was actually

21 issued and activated.

22 Q Who sponsored you for the real estate license?

23 A For the activation of my license?

1 Q Yes.

2 A Gardner Homes.

3 Q Were you employed by Gardner Homes throughout

4 these transactions?

5 A No, that is not correct.

6 Q Now, I show you Plaintiff's Exhibit No. 6 which

7 is the agreement of assignment; is that correct?

8 A This is the agreement of assignment, yes.

9 Q What is that date?

10 A March 19, 1978, which was a Sunday.

11 Q In the last paragraph, you recite, "assignee agrees

12 that they have been informed that the assignor" -- that

13 would be you -- "is a duly licensed real estate agent within

14 the Commonwealth of Virginia and is also a duly licensed

15 attorney-at-law admitted to practice before the highest

16 Court of the Commonwealth of Virginia." Is that right?

17 A It states those two things, yes.

18 Q Were you a real estate agent then?

19 A Yes. My license had been issued, as I said.

20 Q Were you to get a commission as a result of this

21 agreement of assignment?

22 A No, sir. As I indicated, I was the one paying it.

23 I was getting no commission from anyone. I was paying a

1 commission. The reason that it states there I was an agent
2 is because, as a matter of law, I believe you're required --
3 you're required to state if in fact you are a licensed agent.
4 I was doing this in the private capacity.

5 MR. BUSHMAN: Your Honor, that is not responsive,
6 whether or not he received a commission, because under the
7 law if Gardner Homes was his sponsor -- therefore, the money
8 was going to an employee, of course, which could be paid
9 and split between him and his broker. He could have sold
10 the house as a private party without any real estate people
11 involved, so I don't think he has been responsive at all.

THE COURT: The Court will overrule the objection.
I think he has answered.

Go ahead.

BY MR. CAMPBELL:

Q Now, Mr. Haythe, you stated that you did not know of the settlement date on April 21, 1978, until when?

A The settlement date of April 21, 1978 -- first I talked about that was the second week of January when Mr. May called me and wanted to change the completion date and said, "Why don't we -- we will complete on a Wednesday and inspect on a Thursday and settle on Friday."

Q So you realized time was important in this

1 A ~~That is correct.~~

2 Q Now, Mr. Haythe, didn't you put in your assignment
3 agreement, the part that was not read by you previously --
4 and I am reading now into the record the paragraph which
5 you did not previously read -- "However, if such approval
6 of assignment is not granted by the president of May
7 Properties, Inc., this agreement shall be null and void."
8 That is where we stopped.

9 "Nevertheless, the assignees agree to enter into
10 a separate contract to purchase with this assignor upon the
11 terms and conditions as set forth in this agreement of
12 assignment for the purchase," and then the lot in question,
13 "and the assignees agree to go to settlement with assignor
14 on or by April 21, 1978."

15 Is that correct?

16 A That is correct.

17 Q That was one of the conditions of this assignment?

18 A It is stated in the assignment as that would be
19 the approximate date of settlement.

20 Q Now, after you found out in March, March 20, 1978,
21 that Mr. May would not give you the assignment, did you then
22 enter into a separate contract to purchase with the McNeils?

23 A A separate document from this one?

Q Yes, sir.

A No, sir.

Q There was never any contract between you and the McNeils other than this document?

A That is correct.

Q By "this document," I refer to Exhibit No. 2.

A That is correct.

Q Is that right?

A That is correct, yes, sir.

Q In fact, they refused to enter into a separate contract with you, didn't they?

A No, that is not true.

Q Did they tell you the price was too high?

A No. As I said earlier, Dr. McNeil started finding things wrong with the house and I suggested to him that he sign a release and he would get his money back and we would part company.

Q He didn't state that there was warranties involved in the matter?

A As I said earlier, he was wanting to make sure -- in case there was a structural defect that would show up sometime, he wanted to be sure that he was getting a good house. We discussed that.

1978, that the cordial relationship which existed prior thereto between me and Mr. May no longer existed.

Q I believe you testified you only saw him on one more occasion and that was in April of 1978.

A No. I said that I saw him on the morning of the 22nd when I was presented that letter dated the 21st; and then within the last couple of weeks prior to April 21st, I saw him.

Q During that period, did you advertise this home for sale in any metropolitan newspaper?

A During what -- papers?

Q From March 20, 1978, to April 28, 1978, did you advertise this in the papers?

A Not to the best of my knowledge.

Q Did you advertise the property for sale?

MR. TROTTER: The question is whether this is at all relevant. It wasn't brought up on direct examination.

MR. CAMPBELL: One of the questions was -- one of the issues is if he intended to go through with the contract.

THE COURT: Overrule the objection.

The question is whether you ever advertised it for sale and the answer was no, not personally.

BY MR. CAMPBELL:

Q Did you authorize any real estate agency to advertise the property for sale?

A I authorized Gardner Homes to run an ad in the Washington Post.

Q And was this during the time that you had a contract with the McNeils or this agreement with the McNeils?

A No.

Q It was not?

A That is correct.

Q When did you first -- what is the date of this assignment?

A The 18th of March 1978.

Q When did you terminate your relationship with them according to the release?

A April 22nd. The release, I believe, is dated April 22, 1978.

Q When did they -- when did these ads run in the paper?

A I had authorized Gardner Homes to run an ad, I believe it was the second week of March, which would have made -- I think the 10th was on a Friday so it would have

been right around the first of March, that weekend, whatever falls previous to the 9th or 10th. It was the weekend before I moved to Buena Vista.

Q Is this the weekend Mr. May complained about people coming into the property, the Evermay property?

A Mr. May did not complain to me. I was out of town that week.

Q Did Mr. Thompson complain to you about people coming through the house?

A He never complained.

Q He never did?

A No, he never did. Mr. Thompson never complained to me.

Q How many agents, real estate agents, went through the property at Evermay that you know of?

A I know of two, a Mrs. Gardner, who walked through the house with me --

Q And when she walked through the house, did she bring another associate or associates or agents of Gardner with her?

A No, she did not. She and I personally went over there at lunchtime one day; and the other lady is Kit -- I don't remember her last name.

would be April the 21st, because there had not been, in the professional opinion of my consulting architect, substantial completion of the house."

Is that correct? Is that your testimony?

A That was my testimony on June 28, 1978, in deposition.

Q And am I correct in stating or believing that you instructed Mr. Gourley not to handle the settlement on April 21st?

A Well, this was one of the reasons not to have settlement.

Q That is not my question. Did you instruct Mr. Gourley not to have the settlement on the 21st?

A When I called Mr. Gourley after my inspection that day, I told him there had not been substantial completion. At the same time, he couldn't recommend a settlement, that I even go to settlement. There were liens against the property and there had not been a permit issued on the property.

Q Now, Mr. Haythe, when did you employ this architect to inspect the May house?

A I employed Mr. Jennings on the afternoon of Wednesday, April 19th.

Q And that is when -- when did he go to the property?

A That is 1978.

Q When did he go to the property?

A He went to the property, to my knowledge, for the very first time when he accompanied me there on the morning of Thursday, April 20th, at approximately 8:00 o'clock in the morning.

Q And I notice that -- did you know the gentleman?

A What gentleman?

Q Mr. Jennings, previously.

A Surely.

Q How long had you known him?

A I would say roughly five years.

Q I notice in your costs that you allege you have sustained, you have no item for his bill; is that right?

A A cost for his bill?

Q Yes, sir.

A I am being billed by him.

Q You haven't paid him?

A I have not paid him; he has not sent me the bill since the matter is completed. I know what I am paying him.

Q What are you paying him?

1 and the grounds and the exterior. We took a short lunch
2 break to go grab a sandwich in the McLean area and went
3 right back and completed it that afternoon sometime, I
4 would say, roughly between 4:30 and a quarter till 5:00.
5 Q Did you leave during that period for lunch?
6 A I just said we did, yes.
7 Q How long were you gone?
8 A I don't know. Half an hour or so. We went from
9 his office down -- I think we went to the Three Pigs and
10 grabbed a barbecue sandwich.
11 Q And came back?
12 A Yes, sir.
13 Q In this examination, was a list being prepared by
14 Mr. Norblock?
15 A I believe he was preparing a list and Mr. Jennings
16 was preparing a list.
17 Q Did you look at the list?
18 A I did not look at the lists, either one.
19 Q You didn't look at either one?
20 A Only to the extent that I noted that Mr. Jennings
21 was itemizing, item by item per room, and Mr. Norblock would
22 write down more general things by room.
23 Q And you were going to settle the next day -- is

1 that right? -- until this inspection?

2 A I was prepared to settle the next day, if there

3 had been substantial completion and no encumbrances on the

4 property and if a permit had been issued, yes.

5 Q And I show you a letter dated April 21, 1978,

6 from your attorney, Mr. Olson.

7 MR. TROTTER: Hasn't that been put in evidence?

8 THE COURT: Defendants' Exhibit 6.

9 MR. CAMPBELL: And 7, Your Honor. That is a

10 letter from Mr. Gourley to Mr. May dated April 20th.

11 THE COURT: Any objection?

12 You want to offer them or not?

13 MR. CAMPBELL: No, sir; just marked.

14 THE COURT: All right.

15 (Documents referred to were

16 marked Defendants' Exhibits

17 Nos. 6 and 7 for identifica-

18 tion)

19 BY MR. CAMPBELL:

20 Q Was Mr. Olson the attorney that wrote this letter

21 dated April 21, 1978, when you made the inspection on the

22 20th?

23 A As I stated this morning, I have never physically

laid eyes on Mr. Olson.

Q Did you receive a copy of this letter?

MR. TROTTER: I have objection to its admission.

THE COURT: Counsel doesn't want to offer them at this time.

THE WITNESS: Yes, I received a copy from Mr. Olson to Mr. May sent certified mail.

BY MR. CAMPBELL:

Q When did you receive this?

A I don't know.

Q Of course, you didn't participate in the dictation, did you? You weren't with Mr. Olson?

A Of course not.

Q Did you authorize him to state, "On behalf of Mr. Haythe, we hereby make a formal demand upon you to complete the work required to be done on the house and tender the monies to you under the contract upon your completion of the house. Mr. Haythe will be ready to settle on the property at any time after you have completed your obligations under the contract"?

A Yes, I authorized that letter.

Q Yes, sir.

Do you know when this was received by Mr. May?

A I would have no idea.

Q Did you receive this after April 21st, the date f the proposed settlement?

A Of course, I did. It was written in downtown ashington that day.

Q How do you know, sir?

A Well, that is where Mr. Olson's offices are. I had spoken to him. I had called his office and spoken to him, and in fact he called me that day. I would assume he was in his office.

Q Is it not a fact, Mr. Haythe, that the defects referred to by Mr. Jennings and the ninety-seven items had not been prepared on April 21st by Mr. Jennings?

A Mr. Jennings prepared the punchlist after the inspection on Thursday. Whether or not he typed it up Thursday night or Friday, I don't know when he did it.

Q You hadn't seen it, had you?

A As of when?

Q April 21, 1978.

A The finished typed copy of Mr. Jennings' punchlist, no.

Q I show you a letter dated April 20th from Mr. Gourley and I believe a copy was sent to you. Do you

Q ~~Do you have any commitment letter?~~

A Do I have a commitment letter?

Q Yes.

A No, I don't have a commitment letter. I just got the cash when I needed it.

Q You made arrangements for financing?

A That is true.

Q What is this investment company here that you went and borrowed money from, M. G. Apartments?

A I did not say that was an investment company; I said it was two friends of mine that own apartments.

Q Why did you go to them?

A Why did I go to them?

Q Correct.

A Well, that represents the difference between the maximum loan I would get from McLean Bank and the difference as to what was owed to Mr. May.

Q Did you sign a note for the loan?

A For which loan?

Q To this M. G. Apartments.

A No.

Q They didn't take any security from you?

A That is correct; I was dealing with friends.

A Yes.

Q Do you remember approximately when this was and who hired you?

A May of '78, I was asked by Mr. Haythe to handle his purchase of the property from May Properties and by Mr. -- rather, Dr. McNeil to handle his purchase from Mr. Haythe of the same property.

MR. CAMPBELL: Did you say May?

THE WITNESS: March of '78.

BY MR. TROTTER:

Q Who first contacted you? Do you remember?

A Dr. McNeil and Richard Price. Richard Price was the real estate broker from Routh Robbins in McLean.

Q Now, did you have occasion to write to Mr. May concerning the settlement on behalf of Mr. Haythe on about March 29, 1978? And I will show you a letter which purports to have been written by you.

(Handing to witness)

A Yes, that is my letter. It was written under my authority; one of my secretaries wrote it and signed it for me.

MR. TROTTER: I think you have seen this. I would like to offer this.

1 THE COURT: What is your next number?

2 MR. TROTTER: No. 11.

3 THE COURT: I take it it's without objection.

4 MR. CAMPBELL: Gourley to May --

5 THE COURT: March 29, '78.

6 MR. CAMPBELL: No objection.

7 THE COURT: Received.

8 (Document referred to was marked

9 Complainant's Exhibit No. 11

10 for identification and received

11 in evidence)

12 BY MR. TROTTER:

13 Q As a result of this, did Mr. May respond to you?

14 A I believe he wrote me back.

15 Q I show you a letter previously identified as

16 Defendants' Exhibit No. 9 in someone's deposition dated

17 April 3, 1978. Do you recognize that document?

18 (Handing to witness)

19 A Yes; I received this letter.

20 Q From Mr. May?

21 A Yes.

22 Q Now, in this letter, which I will, for the record,

ask to be identified as Complainant's No. 12, it refers to

1 a settlement at your office at 4:00 p.m. on April 20, 1978.
2 Had he consulted you concerning this?
3 A No, he had not.
4 Q Had you agreed to the settlement at 4:00 p.m. on
5 4/20/78?
6 A At this time, no.
7 MR. TROTTER: I will offer this as Complainant's
8 No. 12.
9 THE COURT: Any objection?
10 MR. CAMPBELL: No.
11 THE COURT: It's admitted.
12 (Document referred to was marked
13 Complainant's Exhibit No. 12
14 for identification and received
15 in evidence)
16 BY MR. TROTTER:
17 Q Did you respond to that letter?
18 A I believe I did.
19 Q And refreshing your recollection, is that your
20 signature?
21 A Yes. That was my reply.
22 Q And that was the next day or shortly after you got
the letter?

A After I got the letter from Mr. May.

Q And you indicate in that letter, which I will ask to be marked or identified as No. 13 for the record: "I have scheduled Mr. Haythe's settlement on the morning of the 21st as stated in my prior letter," and omitting the next sentence, ". . . anticipate the same day recording and disbursement."

Can you explain what that means for the record?

A I was preparing to settle on the basis that the purchaser would have arranged to have all cash or the equivalent at my settlement and that meant that I needed to get to the record room and record so I could disburse to the seller.

Q And that same-day disbursement, the seller would get his money on the same day?

A Correct.

Q Is that what is known as a wet settlement?

A That is one interpretation of the settlement, yes.

MR. TROTTER: I will offer this as No. 13.

THE COURT: Any objection?

MR. CAMPBELL: No.

THE COURT: All right. It's admitted.

because it's not the best, and testify if this is the document you prepared for the April 21st settlement.

(Handing to witness)

A This document contains four pages. The settlement statement I prepared and gave to you, it contains two pages and it's handwritten.

MR. TROTTER: May I have the Court's indulgence?

(Pause)

THE WITNESS: I recall inserting in the place of the document or exhibit file as this one appears.

MR. TROTTER: You're correct.

MR. CAMPBELL: May I look at that, please?

(Document tendered to counsel)

MR. CAMPBELL: I object, if Your Honor please.

THE COURT: Well, would counsel lay a foundation on it, please? Exhibit 15 for identification, at this point.

(Document referred to was marked Complainant's Exhibit No. 15 for identification)

BY MR. TROTTER:

Q I show you Exhibit 15 for identification; would you tell the Court whether or not that is the original settlement statement that you drafted for the April 21, 1978,

settlement?

(Handing to witness)

A It is.

Q I notice there are some changes in ink at the bottom. Could you explain those?

A The changes are for moving settlement from the 21st to the 28th of April.

Q Before the changes were made, would that represent the settlement statement that you drafted in your hand?

A The ink in blue represents the figures for the 21st; the ink in black, which was done by my secretary, indicates the revised figures for the 28th.

Q I take it the settlement was subsequently rescheduled for the 28th.

A Correct.

Q And on the back of it, there are some figures in ink. Is that your handwriting or your secretary's?

A Yes, it's mine. There were some changes on the 28th settlement. They had slightly different figures on the back.

Q Were any charges made to May Housing or May Properties?

A Not on my behalf. I was going to collect $125 and

transmit it to the surveyor.

Q You weren't charging anything for your services?

A No, I was not.

MR. TROTTER: I would reoffer this. And, Your Honor, this is his original document. I would rather substitute a copy.

THE COURT: Let me hear what the grounds of the objection are.

MR. BUSHMAN: I would object. We would like to examine that settlement sheet in comparison to the one we received a copy of at the deposition.

THE COURT: I will rule on it after cross examination. You want to hold onto it?

MR. TROTTER: All right.

BY MR. TROTTER:

Q Mr. Gourley, did you have occasion to write to Mr. May again on April 20, 1978, concerning this settlement or his visit to the office?

A Yes.

Q And before you answer, you can look at the letter. (Handing to witness)

A Yes.

Q You did?

1 BY MR. TROTTER:

2 Q In Exhibit 16, I believe you mention that you were,
3 because of the absence of the RUP, which I take it represents
4 the Residential Use Permit --

5 A Yes, correct.

6 Q -- and due to other factors, you were postponing
7 settlement.

8 A Correct.

9 Q My question is, did you select another date?

10 A Not at that time.

11 Q You didn't have any discussions with Mr. May about
12 another date for the final settlement?

13 A I don't recall if we did or not. I note in the
14 letter I did not select another date.

15 Q Now, at the time that Mr. May appeared on the 20th
16 of April, had you had a title examination performed?

17 A Yes.

18 Q And had you made a report to a title insurance
19 company concerning this lot?

20 A I had the title insurance company do the search
21 at my request, and they prepared a commitment based on their
22 search and that is what they sent to me.

23 Prior to that, I received a report of title. I

1 received two documents from the title company. One, a
2 report of title; one, a commitment to insure. And I
3 have both documents with me.
4 Q Was the title free and clear?
5 A No, it was not.
6 Q What encumbrances appeared of record?
7 A This is the original document that I received
8 (indicating). This is dated March 29th, 8:00 a.m.
9 Q What is that?
10 A This is the report of title that I ordered from
11 Colonial Title on the subject property.
12 Q That is your original document. I don't have a
13 copy. What, if anything, showed in the way of encumbrances
14 as of that date of record?
15 A Three Deeds of Trust and a consolidation instru-
16 ment consolidating the three of them.
17 Q Could you tell us roughly the face amount of
18 those trusts in round figures?
19 A The principal amount recited in the instrument was
20 $81,226.53; $332,706.16; and $117,089.16.
21 Q Is that reflected upon the binder?
22 A Yes. They would be in Schedule B, one of the
23 binders.

1 Q I will ask you if this is a true copy of the
2 binder that you secured?
3 A Yes.
4 MR. CAMPBELL: I wonder if you would mark the
5 binder? He's referred to it, and we can make a photostat
6 and also the title policy.
7 THE WITNESS: There is no title policy.
8 MR. CAMPBELL: The report.
9 THE WITNESS: The report of title and commitment
10 to insure. I don't mind the originals going into the record.
11 MR. CAMPBELL: You don't mind?
12 THE WITNESS: Not at this point.
13 MR. CAMPBELL: Is there anything you would object
14 to going into the record?
15 THE WITNESS: I don't know. We can wait and see.
16 BY MR. TROTTER:
17 Q If I may, did anyone on behalf of May Properties,
18 including their attorneys, ever present to you a release of
19 these three liens that you mentioned earlier?
20 A No.
21 Q Do you know to this date whether they have been
22 released, to your personal knowledge?
23 A No.

1 Q Would the same hold true as of April 27th and
2 April 28th, to your knowledge?
3 A Yes.
4 THE COURT: Exhibit 17 will be the title examina-
5 tion and 18 will be the binder. I take it there is no
6 objection to them.
7 Any objection to 17 or 18?
8 MR. BUSHMAN: No, Your Honor.
9 THE COURT: 17 and 18 are admitted.
10 (Documents referred to were
11 marked Complainant's Exhibits
12 Nos. 17 and 18 for identifica-
13 tion and received in evidence)
14 THE COURT: Why don't we take a fifteen-minute
15 recess at this point.
16 (Whereupon, a short recess was taken)
17 THE COURT: All right, sir.
18 BY MR. TROTTER:
19 Q Did you have any conversations with Mr. Malinchak
20 concerning the release of these three liens on the subject
21 property?
22 A Yes, I did.
23 Q Could you tell us what he told you?

A He informed me that the notes were paid and that he would produce a release signed by the trustees.

Q Did he ever produce such a release to you?

A Not to me personally, no.

Q Now, did you receive a copy of a letter from Mr. Olson of the firm of Jackson, Campbell & Parkinson dated April 28, 1978, which was previously marked Defendants' Exhibit No. 8?

A April 21st?

Q April 21st, I stand corrected.

A I received a copy of that letter.

Q And that shows a copy going to you, and the letter speaks for itself.

THE COURT: This will be No. 19?

MR. TROTTER: Yes, sir.

(Document referred to was marked Complainant's Exhibit No. 19 for identification)

BY MR. TROTTER:

Q Did you receive a letter from the same gentleman in the same firm dated April 24, 1978, with an attachment? I don't want to put you on the spot. It shows cc to Winston Haythe.

1 A I don't recall seeing the punchlist. I don't
2 recall seeing the first letter or the second letter.
3 MR. TROTTER: Any objection to that?
4 MR. CAMPBELL: No objection.
5 MR. TROTTER: Any objection to the April 24th
6 letter?
7 MR. CAMPBELL: No objection.
8 MR. BUSHMAN: I would have an objection.
9 MR. CAMPBELL: If you're going to add the punchlist,
10 I will note only that Olson wrote to Mr. May and sent it to
11 him, but I object to the authenticity.
12 MR. TROTTER: Could I have that marked for
13 identification?
14 THE COURT: Exhibit 20. 19 is in without objection.
15 (Document previously identified
16 as Complainant's Exhibit No. 19
17 was received in evidence)
18 (Document referred to was marked
19 Complainant's Exhibit No. 20
20 for identification)
21 BY MR. TROTTER:
22 Q Now, Mr. Gourley, did you subsequently have any
23 conversations with Mr. May or Mr. Malinchak concerning the

A At that point, Thursday afternoon, I had left it that I was going to extracate myself completely. I later recanted and agreed to prepare the papers and walk through it step by step with Mr. Dulaney. That is, the procedure of what he would have to do in order to meet with Mr. Malinchak at the record room.

Q Did you have a conversation, a telephone conversation, with Mr. Dulaney that afternoon on the 27th?

A Yes, I did.

Q What was discussed?

A The logistics of how settlement would take place, who would do the funding of the loan, and so forth.

Q Would you tell us what you told him?

A I don't recall specifically, but we addressed the question of getting a mortgage title insurance commitment over to the bank so they would fund the loan. He wasn't approved by the title insurance company that had done the search, so it became apparent I would have to stay in it at least for the purposes of handling the escrow.

Since I had facilities with loan documents, settlements, trust notes, things like that, it became apparent even though I didn't want to stay in the case, it was becoming controverted. I elected to do it just to get

1 rid of it, more or less.

2 Q At that time, did you have any question about the

3 fact that -- as to whether the Deeds of Trust liens had

4 been released or been paid?

5 A My understanding was that the Deed, the executed

6 deed of release was presented along with the seller's deed

7 in the record room at closing.

8 Q This was from Mr. Malinchak?

9 A Yes.

10 MR. CAMPBELL: I didn't hear that last answer.

11 BY MR. TROTTER:

12 Q This was conversation with Mr. Malinchak?

13 A My last answer was yes.

14 Q Mr. Gourley, following that, did you have any

15 further conversations, telephone conversations, with

16 Mr. Malinchak?

17 A I attempted to call his office the following

18 morning, Thursday morning, and attempted to reach him, and

19 I didn't.

20 Q Did you tell Mr. Dulaney when settlement was

21 scheduled?

22 A I had arranged for Mr. Dulaney to be at my office

23 first thing Friday morning.

of it. There was another document stapled to the back of it, which contained two pages.

Q Where is that document?

A I don't know. I don't have it in my person at this time. Page 2 is one of the four pages in this packet.

Q Isn't the one that you produced at your deposition, wasn't it in pencil?

A I handed you the document, handing two pieces of paper stapled together. You exited the room to Xerox it, brought it back disassembled consisting of two separate pieces of paper. You did not reassemble it in the form I handed it to you and I don't recall now. I would have to try to reconstruct it.

Q Did you ever show this settlement sheet to Mr. May?

A Yes.

Q Gene H. May?

A He may have seen it while he was sitting in the reception area on the afternoon of the 20th.

Q Did he direct your -- is this what you showed him, one of these? Be what it may, is what you showed him -- was it either a settlement sheet in ink or pencil?

A It would have been a draft.

Q It was not a final typed-out statement?

A It wouldn't have been typed on the 20th.

Q Did you ask him to sign the settlement statement on the 20th?

A I don't recall if I did or did not.

Q But the only thing that you had prepared on April 20th for the settlement was a document similar to this? I don't mean to embarrass anybody; it was very similar to this?

A It was that Page 1; it was not necessarily that Page 2.

Q Did he direct your attention to an error on the settlement sheet?

A I don't recall.

Q To refresh your recollection, did he direct your attention to a $510 credit to him which was not due him?

A I don't recall.

Q You don't recall.

In any event, this was the only document that you showed Mr. May on the 20th?

A I don't recall showing it to him on the 20th. If I did, it would have been that document.

Q What time did you meet him there?

A He came to my office in the late afternoon.

Q This really wasn't a surprise to you on the 20th or 21st, was it?

A Would you repeat the question?

Q This lien wasn't a surprise to you on the 21st; you previously had known about it.

A I knew of it from the time I first reviewed the report of title, whenever that was.

Q When was the first time that you met the McNeils?

A I guess it was middle March.

Q Of 1978?

A Yes.

Q How did you -- what makes you remember that particular date?

A They visited my home on a Sunday afternoon.

Q Who was with them?

A Dick Price.

Q Who is Dick Price?

A Routh Robbins Real Estate McLean manager.

Q The McLean manager. Did they tell you -- did he tell you they had been showing the property?

A He didn't tell me anything.

Q He just walked in?

A With a contract, and asked me to review it.

Q And was he the agent selling it?

A At that point, I didn't know anything about the transaction.

Q Does your settlement sheet show the payment of a finder's fee?

A No, it does not.

Q Did you ever discuss a finder's fee or commission?

A I have discussed a finder's fee or commissions, yes.

Q With whom?

A With Mr. Haythe and Dick Price.

Q And Dick Price. And how much was the finder's fee?

A I don't recall. It was a percentage on the sale, between the sale of Haythe and McNeil.

Q Was Haythe to get credit on the settlement sheet?

A He was to be charged.

Q Was he to get any of it?

A I don't know.

Q You don't know.

Now, when did you first meet Mr. Haythe? The same meeting, you met the McNeils and Haythe together?

A Correct.

Q Mr. Haythe came in later?

A Correct.

Q When did you meet Mr. Haythe?

A I don't recall.

Q What was the occasion?

A I don't recall the first meeting.

Q Did he come to your house?

A No.

Q Did he bring an assignment with him of his contractual rights with Mr. May at any time for you to review?

A I read the document in question. I don't recall him bringing it to me.

Q You don't recall him --

A I don't recall the circumstances of my first meeting with him.

Q Do you recall what that document said as to a settlement date?

A No, I don't. I would have to see the document again.

Q Were you advised that -- what date did you set for settlement?

A For which transaction, sir?

Q For the Haythe.

A To McNeil?

Q For Haythe to May, from May to Haythe.

A From May to Haythe?

Q Yes, sir.

A My original settlement was April 21st.

Q And you set that yourself?

A Yes.

Q Did you get that date from the assignment?

A I got it from discussions with Mr. Haythe, discussions with my title people, just the procedure that I go through in establishing a settlement date.

Q And you called Mr. Gourley approximately when you set this date of April 21st?

A No; I don't recall exactly.

Q You realize you wrote the letters; did you set it before then?

A Obviously before then.

Q You don't remember when?

A Not the specific date, no.

Q When did you set the settlement for Haythe to McNeil?

A It was to occur simultaneously, immediately after.

Q The same day?

A Correct.

1 Q So that is why you wanted to be able to disburse
2 the funds one to the other immediately?
3 A No. I wanted to minimize the amount of time
4 involved in any interim financing to Mr. Haythe.
5 Q And you realized, did you not, sir, that the
6 settlement, the assignment agreement provided that Mr. May
7 did not agree to the assignment; there would be a separate
8 contract?
9 A You will have to repeat the question.
10 Q I will show you the assignment.
11 You were aware, were you not, Mr. Gourley, that
12 this assignment provided that if you didn't get a -- I have
13 not identified this yet.
14 A I would like to see it.
15 Q Take a look at it.
16 (Handing to witness)
17 A Okay. Question?
18 Q You were aware, were you not, there had been a
19 separate contract in the event Mr. May did not give consent
20 to the assignment?
21 MR. TROTTER: I object.
22 THE WITNESS: I am not specifically aware of that.
23 THE COURT: Objection overruled.

THE WITNESS: I am not specifically aware of it.

BY MR. CAMPBELL:

Q You didn't know about it?

A I knew there had been conversations to that extent.

Q Now, did there come a time, Mr. Gourley, when you felt like you were occupying a position that all attorneys get in where you had a problem of a conflict of interest?

A I felt that the possible conflict of interest was approaching.

Q And what led you to come to that conclusion?

A I was getting information that Dr. McNeil wanted out of his agreement with Mr. Haythe.

Q And did Dr. McNeil give you reasons why he wanted out?

A I don't recall specifics, but the appraisal and the --

Q The price?

A I don't recall price being one of them.

(Pause)

Yes, I do recall price, too.

Q Price.

Did you ever tell Dr. McNeil what Mr. Haythe was paying for the property in comparison to what he was paying

for the property?

A No, I didn't.

Q Did Dr. McNeil ever ask you?

A Not to my recollection.

Q All right, sir.

When did you make a suggestion -- which of these people did you suggest they get other counsel?

A I believe I suggested to Dr. McNeil that he get another lawyer to represent him in his efforts to terminate the contract between himself and Mr. Haythe.

Q About when was that? April 18th or so?

A I don't recall the date.

Q Was that Tom Harrigan?

A He was one of three names I gave Dr. McNeil.

Q Did Dr. McNeil go to see Tom Harrigan?

A I believe so. I don't know that.

Q Did you suggest to Mr. Haythe that he get another counsel?

A I believe he already had another counsel. I am not sure when, but he mentioned that he was looking to me as the settlement attorney and he had other counsel representing him as advocates.

Q That was only in the McNeil proposition that

1 A I may have suggested he bring in someone skilled
2 in settlement work.
3 Q Did you suggest Mr. McCandlish?
4 A I may have said Mr. McCandlish. I don't know why
5 I would have said him.
6 Q Did you transfer any papers to him?
7 A I don't recall.
8 Q Did you tell Mr. Dulaney and did you tell Mr. Haythe
9 and did you tell Mr. May that you were not going to handle
10 the settlement on the 28th?
11 A I don't know if I told Mr. May. I believe I told
12 Mr. Dulaney and Mr. Haythe.
13 Q That you weren't going to handle the settlement?
14 A That was in the late afternoon of the 27th.
15 Q So you had nothing to do with setting the time of
16 the settlement at 3:00 o'clock because you had washed your
17 hands of it?
18 A I don't understand the question.
19 Q Well, let me ask the question again, then. Since
20 you washed your hands of the settlement --
21 MR. TROTTER: I don't believe he testified to that,
22 and I object.
23 THE COURT: Let him ask the question.

A Late into the evening. I got up in the morning and got it done.

Q You didn't have the papers done in time to settle at 11:00 o'clock?

A The things that I was working on was the review of the binder and settlement statements.

Q Didn't you know that Mr. Malinchak had released the deed at a release with the lien and didn't you know that a use permit had been issued by Fairfax County authorities on April 26th?

A No, I did not.

Q You did not know that. Did you inquire?

A I discussed both of those matters with Mr. Malinchak on the afternoon of the 27th. I don't recall whether he said he had them or not.

Q There was nothing to hinder a settlement to be held at 11:00 o'clock on April 28th, was there?

A Yes, there was.

Q What?

A The logistics, that I had to prepare a settlement; I had to prepare documents.

Q That is your own personal problem.

MR. TROTTER: Objection.

1 that it was going to be at 11:00 o'clock?

2 A Subsequent, Mr. Dulaney had agreed with

3 Mr. Malinchak to another time, was my information.

4 Q You weren't involved in that?

5 A No, I was not.

6 Q So, in other words, if it was at any other time

7 other than 11:00 o'clock, it had to be between Mr. Malinchak

8 and Mr. Dulaney?

9 A If there was an agreement, it was between

10 Mr. Malinchak and Mr. Dulaney.

11 Q You don't know anything about any other subsequent

12 times; correct?

13 A No.

14 Q You weren't a party to that?

15 A No.

16 MR. BUSHMAN: I have no other questions.

17 THE COURT: Any redirect?

18 MR. TROTTER: Could I have Exhibit 16, which you

19 borrowed from me, Mr. Bushman?

20 (Document tendered to counsel)

MR. TROTTER: Your Honor, I would like to reoffer

that. 15; I am sorry.

THE COURT: Exhibit 15, which is the handwritten

1 and qualifications, both educational and practical, to be
2 able to testify as to what he saw when he went out there
3 to this building.
4 THE COURT: Anything further?
5 MR. BUSHMAN: I would only point out for
6 purposes of being an expert, it's to assist the Court in
7 evaluating this case as to what was seen or not done. Mr.
8 Haythe is capable of testifying to that, if there is no
9 refrigerator in the house.
10 THE COURT: The Court will sustain the
11 objection as to his expertise on architectural matters
12 because of the examination of this witness. He is not
13 familiar with the Boca Code differences in Virginia or not.
14 He can certainly testify as to anything he commonly observed
15 or what have you, as any witness who -- non-expert witness
16 could observe. So that is the differentiation. I won't
17 let him express an opinion as to the violation of some
18 architectural standards.
19 Counsel understand the Court's ruling?
20 MR. TROTTER: Yes, sir, I really didn't
21 proffer him for that purpose.
22 THE COURT: All right, go ahead.
23 DIRECT EXAMINATION (Resumed)

1 Q. You wish to say anything else?

2 A. I think that would cover the subject.

3 Q. Carry on.

4 A. I suspect that pretty well covers it unless

5 there is something else in my punch list.

6 Q. On item 22, the sump pump.

7 A. Yes, sir.

8 Q. Where do you say the sump pump was defective

9 on these plans?

10 A. The sump pump was defective because, in my

11 estimation as I say, and I realize that right away, Your

12 Honor, I have got to back up to this because going by --

13 Q. Back up to what?

14 A. Back to the Boca Code.

15 Q. These are not your Boca Codes, these are

16 from the Boothe, Dudley library.

17 A. Right.

18 Q. Do you have this Boca Code in your office?

19 A. No, I usually borrow them in whatever office

20 I would be working in at the time.

21 Q. Go ahead, sir.

22 A. The calling for a sump pump would require

23 that the sump be able to pump to an approved drainage system,

a drainage field.

Q. Maybe we better be specific here. I hate to prolong it. A sump pump performs what function?

A. Well what happens, sir, is that moisture, there are two types of sump pumps first. One would be for ground water or rain water situations around the perimeter of a building where moisture, rain being thrown together, it gathers around the perimeter of the house and in percolating down into the soil it should be carried into a drain field, a drain system around the perimeter of the foundation.

Now there are several ways of handling it.

Q. How was this sump pump designed and approved by the County?

MR. TROTTER: I don't think --

MR. CAMPBELL: On those plans.

MR. TROTTER: I don't know that it was.

THE WITNESS: I don't think it was.

BY MR. CAMPBELL:

Q. On those plans?

A. I don't see anything here that says it was approved by the County.

Q. And how would you say the sump pump should be connected?

A. The sump pump should be connected to an approved drainage system.

Q. And I believe in your deposition, either the sanitary sewer or the storm sewer is what you said, is that correct?

A. No, sir, I did not say that.

Q. What did you say?

A. That the sump pump can be connected to the storm sewer.

Q. Storm sewer?

A. But in those cases where there is a combination sewer, that it's acceptable in that area and this depends on the local people for instance.

Q. We're talking about Virginia now, Fairfax County. How would you, if you didn't connect this sump pump to the storm sewer or the sanitary sewer, as you suggest you can, how else would you run the water from the sump pump away from the property?

A. All right. If you don't mind, may I finish?

Q. Tell me how you would do it.

A. I will be glad to, Mr. Campbell. The way that I handled the water can either go by a direct line to a storm sewer or where it is allowed, a combination sewer.

Q. Is it allowed in Fairfax County? This is a basic question, Mr. Jennings, do you know?

A. It is not allowed unless it is a combination sewer.

Q. Go ahead.

A. Or it can, if approved, and does no damage to the building, being carried away from the building, it can be allowed to percolate down into either dry wells or a dry well, Your Honor, being a cavity made in the earth that can be filled with porous material but it's substantially away from the house, if the property is sufficiently large, where it won't do damage to that house or any adjacent property. I have looked at the Boca Code. Would you like to give [illegible] All of this goes back to the other codes, that is why I have all of these. The earlier codes, for protection of adjacent properties, you can allow, for instance, with a properly designed drain field, you can allow the water to simply go through your own lawn and percolate out the edge of the lawn or you can carry a pipe system to the edge of the lawn, to the curbing and evacuate it over into the curb where it would carry itself into the storm sewer or if you're willing to pay the expense of curb cuts and that sort of thing, be able to tap directly into the storm sewers.

1 There are a variety of things.

2 Q. Now, Mr. Jennings, are you through? In

3 Fairfax County, can a builder cut the curb line and dispose

4 of the water as you have just described?

5 A. If given permission, sir.

6 Q. Against the Code, have you looked at it?

7 A. About curb cuts?

8 Q. Yes, sir.

9 A. No, I have not read curb cuts, I will be glad

10 to look it up.

11 Q. You criticized this sump pump system without

12 looking at the Boca Code?

13 A. I have looked at the Boca Code. Would you

14 care to give me the citations in the Boca Code that applies?

15 MR. CAMPBELL: I have no further questions.

16 CROSS EXAMINATION

17 BY MR. BUSHMAN:

18 Q. Mr. Jennings, let me ask you a couple of

19 questions dealing with the grate in the basement. You

20 indicate it was all stopped up, is that correct?

21 A. Which one, sir?

22 Q. The one you said there was a missing grate?

23 A. That was in the area right here, sir.

1 (Witness excused.)

2 MR. TROTTER: I would call Mr. Dulaney, please.

3 Whereupon,

4 BENJAMIN DULANEY,

5 was called as a witness by and on behalf of the plaintiff,

6 and having been first duly sworn by the Clerk of the Court,

7 was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. TROTTER:

10 Q Would you give us your name, occupation, and

11 address please, sir?

12 A. Benjamin Dulaney, I am an attorney. My

13 office address or home?

14 Q Both.

15 A. I am presently living at 3849 McComb Street,

16 N.W., Washington and I have an office at 1828 L Street and

17 I have an office in Arlington.

18 Q Arlington, Virginia?

19 A. Yes, sir.

20 Q Are you a member of the legal profession?

21 A. Yes, I am.

22 Q Where did you obtain your education?

23 THE COURT: You all question Mr. Dulaney's

1 qualifications?

2 MR. CAMPBELL: No, sir, we stipulate to that,

3 Your Honor.

4 MR. TROTTER: You will stipulate?

5 MR. CAMPBELL: That he is a lawyer.

6 BY MR. TROTTER:

7 Q. I have just a couple of questions. Where

8 did you receive your degree and when?

9 A. I received a B.A. from the University of

10 Virginia and an L.L.B. from George Washington University,

11 later Virginia was before the war, I think in '42, and the

12 L.L.B. would be '45.

13 Q. And since?

14 A. Or '47, excuse me.

15 Q. How long have you been engaged in the active

16 practice of law?

17 A. A little over 30 years.

18 Q. What firm?

19 A. Originally the firm of Douglas, Auber and

20 Campbell which subsequently merged in June two years and

21 the name of the firm is Jackson, Campbell and Parkinson.

22 Q. Thank you, sir.

23 Were you engaged by the plaintiff, Winston

1 Haythe, to perform certain services with respect to a
2 contract to purchase or a building contract of a lot in
3 Evermay?
4 A. Yes, I was.
5 Q. Now are you familiar with the locality of
6 Everymay Subdivision?
7 A. Yes.
8 Q. Did you used to live close to there?
9 A. I lived for 27 years on the back field owned
10 by Vernon Palmer, the old dairy farm, and Mr. May or May's
11 corporation bought the whole frontage from him.
12 Q. Were you familiar with this particular house
13 before you were contacted by Mr. Haythe?
14 A. No.
15 Q. When were you contacted by Mr. Haythe with
16 reference to April 21st, 1978?
17 A. You said when?
18 Q. Approximately when?
19 A. I received a phone call from him on April
20 the 8th.
21 MR. CAMPBELL: April 8th?
22 THE WITNESS: The 8th, to my recollection.
23 BY MR. TROTTER:

1 of this purchase from May Properties, or were you in town
2 during that period?
3 THE COURT: I didn't hear the last part of
4 your question, Mr. Trotter.
5 BY MR. TROTTER:
6 Q. Let me be a little more specific.
7 Mr. Dulaney, what did you do on behalf of
8 Mr. Haythe in regard to facilitate the closing of this
9 property, if anything?
10 A. The first thing I did was call Mr. Tom
11 Harrigan that was representing Dr. McNeil and by agreement
12 with him, terminated and cancelled the assignment of the
13 May-Haythe contract, a mutual release or releases were
14 prepared by Mr. Harrigan, executed to the best of my
15 knowledge.
16 MR. CAMPBELL: I am sorry?
17 THE WITNESS: To the best of my knowledge,
18 and the deposit was returned.
19 BY MR. TROTTER:
20 Q. What next did you do?
21 A. I had advised --
22 THE COURT: You mean on the May-Haythe
23 contract or the McNeil contract?

1 THE WITNESS: The McNeil contract.

2 BY MR. TROTTER:

3 Q. I am speaking of the May-Haythe contract now.

4 A. That seems to be the assignment of the contract

5 to McNeil, there seemed to be a stumbling in the settlement

6 of Mr. Haythe's contract with the May Company. We wanted

7 to get that out of the way so there would not be any further

8 impediment to settlement.

9 Q. Did you do so?

10 A. I did so.

11 Q. Next what did you do?

12 A. I then left on a vacation at Hatteras to catch

13 some bluefish, which I missed by one day.

14 MR. CAMPBELL: Excuse me, Mr. Dulaney, would

15 you please state the date you left, was that the 19th,

16 Wednesday?

17 THE WITNESS: I would have to look at my time

18 records here. That would have been Wednesday that I left.

19 MR. CAMPBELL: The 19th?

20 THE WITNESS: Yes, sir, and I advised Mr.

21 Haythe that Mr. Bill Olson, William Olson would have the

22 file, and if anything came up before I returned, that he

23 would have the file and give whatever assistance would be

1 Mr. May was not there, Mr. Gorley has testified in this case
2 as to what took place, and I submit this is rank hearsay
3 and I would object.
4 THE COURT: I would have to sustain it at
5 this point.
6 BY MR. TROTTER:
7 Q Did you talk to Mr. Malinchak again?
8 A I talked to him three times that day.
9 Q What was discussed on the next occasion, do
10 you remember?
11 A I don't recall. The substance, as I recall,
12 that was the substance.
13 Q As you left it with Mr. Malinchak, was there
14 any change in the settlement date or the time of the
15 settlement?
16 A I understood that the settlement was to be
17 on the following day at 3:00 o'clock in the afternoon and
18 I made arrangements to be at Mr. Gorley's office at 10:00
19 o'clock the next morning to meet Mr. Haythe and Mr.
20 Malinchak was aware of this.
21 Q What role were you to take in the settlement?
22 A I was merely advising Mr. Haythe by going
23 over the various documents to be signed. I was not to act

1 as the settlement attorney. I finally agreed, with some
2 reluctance, that if all of the papers were prepared, that
3 settlement was prepared by Mr. Gorley, and if someone under
4 him made the last minute rundown of title, which I was not
5 going to do, that I would specifically deliver the documents
6 here at the Courthouse and that I would transport the
7 checks, because Mr. Gorley said he was not going to attend
8 the settlement with Mr. Malinchak.
9 Q. Did he tell you why?
10 A. He said they had a fight and he had been
11 absolutely insulting.
12 Q. You don't mean a fist fight?
13 A. A verbal argument. I don't know what the
14 reason was.
15 Q. Who in fact did prepare all of the settlement
16 documents and hold the settlement for Mr. Haythe's point
17 of view?
18 A. Settlement, Mr. Gorley prepared all of the
19 documents. He prepared the settlement sheet and the deed
20 of trust, the note, I presume he did. I can't speak for
21 that. The form of affidavit to be executed, as far as the
22 release of liens was concerned.
23 MR. TROTTER: Could I see Exhibits 21, 22,

1 23, 24, 25, 26 and 27, please.

2 BY MR. TROTTER:

3 Q Now, did you on the 28th, the following day,

4 meet at Mr. Gorley's office?

5 A I arrived at Mr. Gorley's office within five

6 minutes of 10:00 o'clock, give or take.

7 Q And was any message there for you at that

8 time?

9 MR. CAMPBELL: Please don't lead the witness.

10 THE COURT: Sustained.

11 BY MR. TROTTER:

12 Q What did you do when you got to Mr. Gorley's

13 office?

14 A When I first came in, Mr. Haythe had not

15 gotten there and the switchboard operator said I have a

16 message for you, Mr. Dulaney, and handed me a slip which

17 was a message for me to call Mr. Malinchak.

18 Q Did you call him?

19 A I called him right away and he confirmed the

20 fact that the settlement was for 3:00 o'clock in the after-

21 noon.

22 Q You said right away -- what time did you get

23 there?

1 A. Between 10:00 and ten minutes after.

2 Q. Fine.

3 A. I told him that we were ready to settle,

4 Mr. Haythe had the funds available, he was getting them

5 and the papers were being prepared and that I was in hopes

6 that it could be settled before 3:00 o'clock, because I

7 wanted to get back to my office and did not want to spend

8 all day on what appeared to be a relatively simple real

9 estate transaction.

10 Q. What did he say?

11 A. He asked me what time I wanted to settle,

12 I said I would like to shoot for 11:30; then I asked

13 him if he was going to be in his office all morning and he

14 said he was. I said, I will call you when I have all of

15 the papers and checks in hand and ready to leave for Fairfax

16 so that we can coordinate our time in getting there at

17 approximately the same time.

18 He was going from Arlington and I was going

19 from McLean.

20 Q. Did he agree to this or not?

21 A. Absolutely.

22 Q. Now what transpired, from your point of view?

23 A. I went with Mr. Haythe to the McLean Bank

1 where he picked up a check, I came back with him to Mr.
2 Gorley's office and Mr. Gorley took the check and walked
3 it over to the bank and I am not sure which one without
4 looking, and it took him possibly 15 - 20 minutes, and he
5 came back with a cashier's check and he went over with me
6 the settlement sheet briefly and gave me the deed of trust
7 to be recorded and gave me the check payable to the Clerk
8 for the recording of the deed and the deed of trust, and
9 he gave me the check payable for the purchase price of the
10 property.
11 And at about 11:20, I called Mr. Malinchak
12 to tell him I had everything in hand.
13 Q. Did you reach him?
14 A. I was told by the switchboard operator that
15 he was not in the office.
16 Q. Did you leave a message?
17 A. I asked where he was and she said he had gone
18 to Fairfax and I said, if he calls, that I am on the way
19 to the Courthouse, that the check and papers are in hand.
20 Q. Did you receive any -- well, what did you do
21 next?
22 A. I got in the car with the papers in hand and
23 drove to Fairfax Courthouse.

1 Q. I will show you Exhibit 21 through 27, which
2 have already been admitted into evidence, and ask you if
3 these are the papers you had in hand or which, if any, of
4 those? I suppose the settlement sheet statement, was that
5 signed by Mr. Haythe?
6 A. I don't think I had that with me, that is
7 Exhibit 21. Exhibit 22 I had.
8 Q. That is the check?
9 MR. CAMPBELL: What was 21, Mr. Trotter?
10 MR. TROTTER: The settlement statement.
11 THE WITNESS: I don't think I had that. I
12 had seen it at the office.
13 BY MR. TROTTER:
14 Q. And I believe you said Exhibit 22 was the
15 check for the balance of the purchase price to May Properties?
16 A. Yes.
17 Q. You had the original of that check?
18 A. I had the original of that check.
19 Q. What happened to the original?
20 A. I gave it back to Mr. Haythe after the settle-
21 ment did not take place to be returned to Mr. Gorley.
22 Q. And Exhibit 23 is a check payable to the Clerk
23 for the recording costs?

1 A. I had that with me, the original, and I gave
2 that back to Mr. Gorley.
3 Q. What about Exhibit 24?
4 A. Exhibit 24 is a note which had been given to
5 the McLean Bank, I did not have that with me.
6 Q. You had the deed of trust?
7 A. The original deed of trust, which is 25, I
8 had with me for recording.
9 Q. Of course you did not record that, I take it?
10 A. No.
11 Q. What is the next document that you had with
12 you?
13 A. I don't recall having this with me and the
14 title insurance company affidavit and agreement I did have
15 with me.
16 Q. What time did you get to the Courthouse, Mr.
17 Dulaney?
18 A. Roughly 12:00 or a little after, a few minutes
19 after the time I actually parked the car and got into the
20 Courthouse.
21 Q. What did you do?
22 A. I went downstairs to the office of the Clerk
23 with the papers for recordation, I looked around and did not

1 see Mr. May or Mr. Malinchak. I had never met Mr. Malinchak
2 and I asked if anybody had seen him and they said yes, he
3 had been there with a gentleman but had left.
4 Q. Did you know Mr. May before this?
5 A. Yes, I knew Mr. May.
6 Q. Go ahead, what did you do next?
7 A. I then tried to find a Mr. Buckrop, Mr.
8 Gorley's man that did the last minute rundown of title.
9 He was out to lunch and I couldn't find him, so I left
10 word with the lady down there who accepts documents for
11 recording, gave her my name, told her I was going to the
12 cafeteria to have a sandwich, if anybody came in asking for
13 either Mr. Haythe or myself, that I would be in the cafeteria.
14 Mr. Haythe and I had left in separate cars
15 and he was going to finalize the insurance on the new
16 property and so he was not with me at that particular time.
17 Q. Did you call Mr. Malinchak before you ate
18 lunch?
19 A. I called Mr. Malinchak before I ate lunch.
20 They knew he would be out because they said he would be
21 back by 1:00, he had a settlement scheduled at 1:00 o'clock.
22 Q. Did you call him after lunch?
23 A. I called after lunch and at about, my

1 recollection is, at about ten minutes of 1:00 and he was
2 still not in. I called again at 1:00 o'clock and he was
3 in settlement and would not speak to me. He left word
4 that he was not to be disturbed during settlement.
5 I called again at 1:30, and having gotten the
6 same message at which time I left word that I thought it
7 was extremely rude to leave counsel standing out here
8 waiting for a settlement without even talking to me.
9 Q. At that time, were you aware of the fact that
10 he had recorded the deed to Dr. Albright?
11 A. No.
12 Q. What transpired next?
13 A. Mr. Haythe had joined me for a sandwich, the
14 two of us walked back into the record room and we found
15 Mr. Buckrup and a deed had been recorded from May Properties
16 earlier in the morning.
17 Q. To Dr. Albright?
18 A. Yes.
19 Q. Then what did you do, sir?
20 A. I went to your firm's office, you were not in
21 and I asked for Mr. Prichard and he was not in, and I think
22 it was about that time that you walked in the front door
23 of the office.

1 Q. Mr. May, Mr. Dulaney, excuse me, did you make
2 a record of these events as to when they took place at the
3 same time that they transpired, on that day?
4 A. I sat down that afternoon in either your
5 office or your conference room, I am not real sure which.
6 I think in the conference room, and wrote down, while it was
7 fresh in my mind, exactly what had transpired that day.
8 Q. I will show you a memorandum dated April 28th
9 at 2:30, is this the memorandum to which you refer?
10 A. That is a copy of the memorandum, the
11 original of which I have here.
12 MR. TROTTER: Your Honor, I understand that
13 there is no objection to this. I would like to offer that
14 as an Exhibit.
15 THE COURT: Exhibit 29.
16 MR. CAMPBELL: You want to put theoriginal
17 in?
18 MR. TROTTER: That is up to Mr. Dulaney.
19 THE WITNESS: As long as somebody gives me a
20 copy, I have no objection to the original going in, Your
21 Honor.
22
23

1 (The document referred to was marked
2 Plaintiff's Exhibit No. 29 for
3 identification, and was received
4 in evidence.)
5 BY MR. TROTTER:
6 Q. There is a notation in the margin here, did
7 you make that notation?
8 A. I made that notation, I made that compara-
9 tively recently, within the last couple of weeks.
10 Q. Why did you make that notation?
11 A. To refresh my recollection on one other
12 thing that I thought of subsequently.
13 Q. About which meeting?
14 A. The telephone conversation, not the meeting.
15 Q. The telephone conversation with Mr. Malinchak?
16 A. We discussed during my telephone conversation
17 at about ten after ten on the 28th, there was a discussion
18 with regard to the release of a blanket deed of trust held
19 by Bessie Cramer Palmer which was some problems, she
20 apparently sent a release and it couldn't be located. He
21 was attempting to locate it or have her sign another
22 immediately. There was a discussion to whether that problem
23 had been mentioned in our conversation of the 27th, and he

1 assured me it had been.

2 That is the only notation on there that was

3 not made on the 28th.

4 Q. Did you see that notation, I don't see it on

5 the copy?

6 MR. CAMPBELL: It's on my copy.

7 MR. TROTTER: I would offer this.

8 THE COURT: 29 is admitted without objection.

9 MR. TROTTER: I have no further questions.

10 CROSS EXAMINATION

11 BY MR. CAMPBELL:

12 Q. Mr. Dulaney, I understand from your last

13 testimony about the lien and the problem about the permit

14 and it was resolved in your mind, were the punch list items--

15 MR. TROTTER: Could you break that down?

16 BY MR. CAMPBELL:

17 Q. Had these things been resolved by April 28th?

18 A. Mr. Malinchak had advised me he had the

19 release of the blanket trust, I was obviously going to

20 check it to make sure it was properly releasing this

21 property.

22 Q. And you were satisfied that the work had been

23 done on the punch list items?

1 Harrigan.

2 Q. Did that enclose a copy of the release?

3 A. Yes.

4 Q. Was it signed?

5 A. Not the copy I got.

6 Q. When was the release signed that you know

7 which was prepared by Mr. Harrigan?

8 A. I don't know.

9 Q. You don't know?

10 A. I understood it had been, but I don't know

11 when.

12 Q. Do you know when that was filed or mailed or

13 executed by the parties or if it ever was?

14 A. I understood it was. I don't know when it

15 was or when it was mailed.

16 Q. Are you familiar, Mr. Dulaney, with a release

17 agreement which was dated April 21st, 1978, which was signed

18 by Routh Robbins?

19 A. I knew that Routh Robbins had agreed to this

20 and that there was to be a release agreement. I don't

21 think I have ever seen it.

22 Q. All right, sir. Was your testimony that --

23 did you know that this property was scheduled to be settled

A. I had, I can't answer that that way.

Q. But you hadn't raised any problem about it?

A. No, I had advised Mr. Haythe that I thought Mr. May was a man of reputation. If he had said it had been done, in all likelihood, it had been done. If there were not any that had not been done, I thought that he would make them good and that would not prevent the settlement on the 28th, and he agreed with me.

Q. Did you also, Mr. Haythe agreed with you?

A. Yes, he did.

Q. Now had you made a personal investigation of whether the permit had been issued?

A. No, I did not.

Q. Were you satisfied that it had been?

A. When Mr. Malinchak told me it had, I certainly was willing to accept his word for it.

Q. I don't believe either you, Mr. Gorley or anyone else checked on that particular item?

A. I didn't. If anyone else did, I wouldn't know.

Q. On the 28th, as far as you know, everything was ready?

A. Everything was ready subject to getting an

on April 21st, 1978?

A. I did.

Q. And were these releases that I just mentioned part of -- was there a controversy between the parties on April 21st, 1978?

A. Did I have personal knowledge of that?

Q. Yes.

A. I don't have any personal knowledge.

Q. You do know these releases were not executed until the 22nd?

A. I don't know when they were executed. I have said that. I know that when I finished talking to Mr. Harrigan on the 18th, and everything had been agreed to and it was merely the execution of simultaneous releases and the return of the deposit.

Q. Were you involved in any way with the settlement which was scheduled for April 21st?

A. I wasn't in town, sir.

Q. Did you know there was to be a settlement on the 21st?

A. I think I did.

Q. When you left Washington, you gave this case to your associate, Mr. Olson?

1 Q. You testified, I believe, that -- are you
2 familiar with title work, Mr. Dulaney?
3 A. I have some familiarity with it, yes.
4 Q. Have you participated in settlements?
5 A. I am not a settlement attorney, I don't think
6 I have ever settled a real estate transaction. If you're
7 asking about title work, I have represented Lawyers' Title,
8 I have been involved in settlements and I have attended
9 for a purchaser or a seller.
10 Q. Have you done any of the title work yourself
11 like preparation of deeds of trust and search the records?
12 A. Search the records for a particular case,
13 I have never just to be searching records.
14 Q. Am I fair in stating, and you tell me other-
15 wise, that you feel that you are qualified to handle a
16 settlement of a residential home in Virginia?
17 A. I wouldn't feel that I was qualified to
18 handle that settlement. I wouldn't have attended it.
19 Q. When did Mr. Haythe first ask you to partici-
20 pate in the settlement on April 28th?
21 A. He asked me to be his counsel at settlement,
22 the first time I talked to him on the telephone ten days
23 before the 28th, or the 18th. That was our first

1 conversation. That was the reason, one of the primary
2 reasons, that he gave for what he wanted me to do.
3 Q. I thought he only employed you then or
4 discussed with you then the controversy with the McNeils?
5 A. No, that was part and parcel of the whole
6 thing.
7 Q. You were to also participate in the settlement
8 of the house?
9 A. I don't know what you mean participate, if you
10 mean represent him at settlement, yes. If you mean search
11 titles and run the settlement sheets, no.
12 Q. At that time on the 18th, did you obtain a
13 settlement lawyer?
14 A. No.
15 Q. Did you talk to -- you didn't talk to anyone?
16 A. No.
17 Q. Who did you think was going to handle the
18 settlement?
19 A. Mr. Gorley.
20 Q. When was the first time you saw Mr. Gorley?
21 A. I believe the 28th.
22 Q. The morning of the 28th?
23 A. Yes.

1 Q. So you had never seen any of the papers and
2 you don't know if they were in existence for the alleged
3 settlement on the 21st?
4 A. I don't know.
5 Q. When did you receive the letter from Mr.
6 Malinchak?
7 A. On the 27th.
8 Q. In your office?
9 A. In my office, hand delivered.
10 Q. Hand delivered by courier?
11 A. I don't know who hand delivered it, it went
12 to Mr. Olson when he was out, his secretary brought it.
13 My recollection is that it was early afternoon, but it
14 could have been as late as 3:00 o'clock.
15 Q. So it was delivered to Mr. Olson and Mr.
16 Olson gave it to you?
17 A. No, Mr. Olson was not in, Mr. Olson's
18 secretary brought it in to me. She recognized it as being
19 something in this case.
20 Q. So Mr. Olson didn't see the letter?
21 A. I don't believe he did. He has seen it
22 since, I would assume.
23 Q. What did you do then?

A. When I got the letter?

Q. Yes, sir.

A. I think the first person I called was Mr. Winston Haythe.

Q. Where did you call him?

A. At his office.

Q. And what was that conference about?

A. I asked him if he had gotten the letter.

Q. At that time, did you tell him you would be unable to attend the settlement at 11:00 o'clock on the 28th?

A. No.

Q. You had no bookings or appointments for the following day?

A. No.

Q. You had the whole day clear?

A. Yes.

Q. You called Mr. Gorley?

A. I talked to Mr. Haythe four times that day, Mr. Gorley three times that day, and Mr. Malinchak, your partner, three times that day.

Q. When did Mr. Gorley tell you that this settlement was at 3:00 o'clock?

1 call Mr. Haythe and tell him of the change in times or who
2 was going to handle this title work?
3 A. He was obviously advised by me in a conversa-
4 tion of where we were to meet and what the time schedule
5 was.
6 Q. Who told him?
7 A. I told him.
8 Q. What time?
9 A. I don't remember.
10 Q. Was it after 8:00 o'clock?
11 A. No, sir.
12 Q. It wasn't at his place of employment, was it?
13 A. Any conversations I had with him were at
14 his place of employment.
15 Q. Are you certain?
16 A. I can't be that certain, Mr. Campbell. I
17 have got his office number and his home number.
18 Q. Were you aware that he moved?
19 A. Yes, I was aware and he had given me his
20 home number and office number.
21 Q. When did he move?
22 A. When, I don't know.
23 Q. Now what happened on the following morning,

1 the 28th? You have Mr. Gorley there, you have come in at
2 about what time, ten after ten?
3 A. Within five minutes of 10:00 o'clock, one way
4 or the other.
5 Q. What took place then?
6 A. What?
7 Q. What took place then?
8 A. I went in an office and called Mr. Malinchak.
9 Q. Which office?
10 A. I don't recall specifically whether it was an
11 empty office or, I say empty in the sense of no one being
12 there. I am not sure whether it was Mr. Gorley's office or
13 one of the other men in his office, I don't recall.
14 Q. Who else was present when you called? Did
15 you go in by yourself to make a private call?
16 A. No, the door was wide open, and during the
17 course of the conversation, it's my recollection that Mr.
18 Haythe came in.
19 Q. Mr. Haythe came in, not Mr. Gorley?
20 A. Mr. Gorley was in and out and I don't recall
21 him being in the room when that conversation took place, but
22 I couldn't be one hundred percent positive.
23 Q. How long was your telephone conference with

1 Mr. Malinchak?

2 A. I don't know, I didn't time it.

3 Q. Was it a short conference, a long conference?

4 A. Say about five minutes, seven minutes.

5 Q. Five to seven minutes?

6 A. Something like that.

7 Q. What took place in this conference, what did

8 you say to Mr. Malinchak?

9 A. Well, first after saying good morning, Dick,

10 and good morning, Ben, he said are you ready to go to

11 settlement at 3:00 o'clock and I said, we will have all of

12 the papers assembled, we will have checks in hand, but

13 quite frankly I would like to get this out of the way so I

14 can get back to my office so I can get some work out this

15 afternoon and not spend all day settling on one real estate

16 transaction. He said what time do you want it, and I said,

17 well, let me shoot for 11:30 and are you going to be in all

18 morning and he said, or assured me that he was.

19 I said, then I will call you when I have

20 everything in hand ready to go so that we can coordinate

21 our time at the Courthouse.

22 Q. What did Mr. Malinchak say?

23 A. He agreed to that, sir.

1 Q. That conversation took five to seven minutes,
2 sir?
3 A. I don't recall the time, sir.
4 Q. Mr. Dulaney, didn't you ask Mr. Malinchak in
5 that call to extend the conference settlement to 3:00
6 o'clock and he refused?
7 A. Absolutely not. We had a perfectly clear
8 understanding.
9 Q. Did you know that Mr. May was going to the
10 Courthouse while you were in McLean?
11 A. I had absolutely no idea he was going to the
12 Courthouse while I was in McLean. If I had, I would have
13 called him.
14 Q. When you called Mr. Malinchak later, did you
15 find out he had gone to the Courthouse?
16 A. I did.
17 Q. How many people were there in this office
18 when you were aware that both -- when you were aware that
19 Mr. Malinchak had gone to the Courthouse? Who was there
20 in Gorley's office?
21 A. I am not sure anybody was. If there were, I
22 don't recall.
23 Q. Weren't you there with Mr. Haythe and Mr.

1 the fact that there would be title insurance.

2 Q. And did you look at the settlement sheets?

3 A. I looked at it briefly and asked Mr. Haythe

4 if he had any questions and he said no.

5 Q. Did you review it, sir?

6 A. Yes, briefly.

7 Q. Did you see any particular item on the

8 settlement sheet? Did you see a $510.00 item on the

9 settlement sheet?

10 A. I would have to look at it and refresh my

11 recollection.

12 Q. Which was a credit to the purchaser and the

13 seller, did you notice that?

14 A. No, I don't recall it now.

15 Q. Did you know, Mr. Dulaney, that all of these

16 documents were dated April 28th?

17 A. No, I didn't know that particularly either.

18 Q. Did you ask to see any documents which had

19 been prepared on the 21st?

20 A. No, sir.

21 Q. All right, sir. Who was in the office when

22 Mr. Gorley left, who went to the bank?

23 A. Mr. Gorley by himself.

1 A. I went with Mr. Winston Haythe and the
2 gentleman whose name still escapes me, I may have it. I
3 don't know.
4 Q. And what occurred at the McLean Bank?
5 A. Mr. Haythe signed a note and gave it to the
6 gentleman sitting at the desk and was handed a check.
7 Q. Did he sign any other documents at the McLean
8 Bank?
9 A. If he did, I don't recall.
10 Q. Did you review the documents he signed?
11 A. No, he made the financial arrangements himself.
12 Q. Was Mr. Gorley with you when you went to the
13 McLean Bank?
14 A. No.
15 Q. I am going to show you an exhibit that was
16 marked Plaintiff's Exhibit No. 24, is that a copy of the
17 note that Mr. Haythe signed?
18 A. I can't testify to that.
19 Q. I believe you testified earlier that you
20 reviewed the documents?
21 A. I don't know that I reviewed this because
22 this is, Mr. Haythe being an attorney and knowledgeable made
23 these arrangements in advance. I didn't know how he was

raising his money.

Q. Would you mind stating to the Court again what documents did you review on behalf of Mr. Haythe?

A. I think the settlement sheet, and whether I reviewed the deed of trust, I think so, I am not one hundred percent positive.

Q. You're familiar with -- you indicated earlier you had a lot of experience with buyers and sellers, even though you had not actually conducted settlements?

A. Yes.

Q. Don't you, in the normal course of events, sign the note and deed of trust immediately thereafter?

A. I would normally review them with more care where I was not representing a knowledgeable attorney and if he had asked me any questions about them, I would simply have re-answered them.

Q. My question is, isn't it not normally signed first, then the deed of trust? They're usually signed together?

A. I think they were signed contemporaneously.

Q. This was signed at the bank?

A. I don't know whether it was signed at the bank, I didn't pay that much attention.

1 Q. I thought you said he went to the bankand
2 signed a note?
3 A. He would have had the signed note with him.
4 I don't know whether he signed it there, he delivered a
5 note and picked up a check. I didn't look at the check.
6 I presume it was made payable to Mr. Gorley.
7 Q. Did you review the note?
8 A. I don't remember whether I did or not.
9 Q. Is there anything unusual that you recall
10 about the note?
11 A. No.
12 Q. Let me show you the note again and ask you
13 to read the note and see if there is anything unusual about
14 the type of financing?
15 A. You mean the fact that it's a 120 day note?
16 Q. Is that unusual to you?
17 A. It depends on the circumstances of the case.
18 If somebody's buying a house they intend to live in, this
19 wouldn't be the type of -- this would be at least a short
20 term financing until they could work out something else.
21 I knew Mr. Haythe and he was separated from his wife a d
22 she had custody of the children and he therefore needed a
23 five bedroom house -- did not need it at all, and he planned

to sell it. The separation having occurred during the process of the building of the house.

Q. You didn't think he was going to occupy this house?

A. I don't know if he was going to occupy it until he sold it, I knew he wasn't going to plan to live in it permanently.

Q. When did you find out who the lender was that Mr. Haythe was going to use?

A. On the 28th.

Q. On the day of settlement?

A. I had asked him if he could raise the money to pay the price and he said yes, he had.

Q. When do you think Mr. Gorley told you that the settlement time was for 3:00 o'clock?

A. 5:15 on the 27th.

Q. It was for 3:00 o'clock, why did you show up in Mr. Gorley's office at 10:00 o'clock?

A. Because I was -- Mr. Gorley asked me to meet him at that time so we could get everything lined up. At that time, I was hoping I could move him up. I didn't want to spend the whole day there.

Q. Why did you then proceed to the Courthouse at

1 clear.

2 MR. TROTTER:

3 "Question: You don't know whether or

4 not you told him that in response to a question?

5 "Answer: No, sir.

6 If he asked me the question, if he

7 could sell it after a year, the answer is real fast.

8 If he asked me if he could sell it the day after he

9 bought it, the answer would be a fast yes. That

10 would be to anybody.

11 "Question: That was going to be my

12 next question. There wouldn't be any prohibition

13 against him reselling the house after he got title?

14 "Answer: No, sir, none whatsoever.

15 The date they take possession, I wouldn't advise

16 them burning it down, the insurance company might

17 not like that, but anything else.

18 "Question: But in effect he could

19 achieve the assignment by going to settlement with

20 you and then reconveying it over to Dr. and Mrs.

21 McNeil?

22 "Answer: There is no problem whatsoever

23 to that, sir."

remaining motions, both defendants or the three that are remaining. I assume that we cannot complete this today. Off the record.

(Discussion off the record.)

(A short recess was taken.)

THE COURT: Call your first witness, Mr. Campbell.

MR. CAMPBELL: I would call Mr. Fitzpatrick.

Whereupon,

THOMAS LYNN FITZPATRICK

was called as a witness by counsel for the defendants, and having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q. Sir, would you please state your full name?

A. Thomas Lynn Fitzpatrick.

Q. Where do you reside, Mr. Fitzpatrick?

A. At 2103 Melanie Drive, Herndon, Virginia.

Q. I apologize, but could you keep your voice up. Where are you employed?

A. Fairfax County, Department of Environmental Management, Division of Public Utilities, Senior Engineering

1 Inspector.

2 Q. And how long have you been so employed there?

3 A. Two years.

4 Q. And you were so employed on April 26th, 1978?

5 A. Yes, sir.

6 Q. Are you familiar with the May Properties and

7 May Housing homes in Evermay?

8 A. Yes, sir.

9 Q. I show you a residential use permit and ask

10 you if you can identify it?

11 A. Yes, sir.

12 Q. Was it issued by your department?

13 A. Issued by my department.

14 MR. CAMPBELL: I wonder if I might have it

15 marked, Your Honor.

16 THE COURT: Defendants' 12.

17 MR. CAMPBELL: I offer all of our exhibits

18 into evidence.

19 THE COURT: 1 through 11?

20 MR. TROTTER: I have no objection.

21 THE COURT: Any objection to 12?

22 MR. TROTTER: No objection to 12.

23

1 (The documents referred to,
2 heretofore marked as Defendants'
3 Exhibits Nos. 1 through 12 for
4 identification, were received in
5 evidence.)
6 MR. CAMPBELL: Thank you. May I ask for the
7 Defendants' May Housing and May Properties exhibits?
8 THE COURT: Well, I think 10 and 11 were
9 really actually offered on behalf of Dr. Albright by Mr.
10 Bushman.
11 MR. TROTTER: I have no objection.
12 THE COURT: They have already been offered in.
13 BY MR. CAMPBELL:
14 Q. When was this issued by your department, Mr.
15 Fitzpatrick?
16 A. This was issued on the date specified here,
17 April 26, 1978.
18 Q. And what does this use permit --
19 THE COURT: It was issued what date, I am
20 sorry, I didn't hear you.
21 THE WITNESS: April 26, 1978.
22 BY MR. CAMPBELL:
23 Q. Does that indicate inspections had been made

of the house shown on it?

A. Yes, sir, all inspections shown on the residential use permit had been made and being the last one to sign off on utilities, I signed it over as completed.

Q. This is applicable to Lot 113, Subdivision Evermay, Section 6?

A. Yes, sir.

Q. And who made the inspection, what inspections were made?

A. An electrical inspection was made, plumbing inspection was made, mechanical inspection, building inspection, and public utilities inspection.

Q. What do those men do when they inspect the house?

A. I am not totally familiar with the electrical, plumbing, mechanical and building inspection work, but they sign the sticker on the circuit breaker box in the house and I designate on this permit they have signed off. I inspect the surrounding lot, the overlot grading to see that they have signed off.

Q. That permit means may be used, is that correct?

A. Yes, sir.

Q. It may be occupied?

1 BY MR. CAMPBELL:

2 Q. Has this house been substantially completed?

3 A. Yes, sir.

4 Q. What condition was it in?

5 A. Excellent, the house structure itself.

6 MR. CAMPBELL: Thank you. No further

7 questions.

8 CROSS EXAMINATION

9 BY MR. TROTTER:

10 Q. Mr. Fitzpatrick, what did you personally

11 inspect on this house?

12 A. I personally inspected the over lot grading,

13 the lead walks, driveways.

14 Q. And you said there were walkways to the

15 front door?

16 A. Yes, sir.

17 Q. When had that been laid?

18 A. That had been laid before I inspected it,

19 before April 26th.

20 Q. You don't know when?

21 A. No, sir, not exactly.

22 Q. What kind of walk was it?

23 A. In this particular case, it was a wooden walk.

1 BY MR. BUSHMAN:

2 Q In your opinion, is financing for 120 days

3 normal?

4 MR. TROTTER: Objection, Your Honor.

5 MR. BUSHMAN: He can answer that question,

6 Your Honor.

7 THE COURT: What are you offering it for?

8 MR. BUSHMAN: For the purposes of showing he

9 had no intention to occupy this house based on the fact

10 that he only had a 120 day loan.

11 THE COURT: I don't think Mr. Malinchak could

12 answer that. I will sustain the objection and note your

13 exception.

14 BY MR. BUSHMAN:

15 Q In your last conference with Mr. Dulaney,

16 did you say anything to him after he said he was in the

17 process of getting the paperwork?

18 A I don't understand your question.

19 Q Did you indicate to him you would be out

20 there at 11:00 o'clock?

21 A Yes, sir.

22 Q Did you ever indicate to him any other time?

23 A No.

1 Q 11:30?

2 A. No.

3 Q 3:00 o'clock?

4 A. No.

5 Q Did he talk to you about going fishing or

6 anything else?

7 A. I don't recall any fishing, no.

8 Q Did he tell you that he had other things to do?

9 A. Yes, I recall that, he said he didn't want to

10 spend all day out there in Fairfax.

11 Q Whose idea was it to have the settlement at

12 3:00 o'clock?

13 A. It was Mr. Dulaney's.

14 MR. BUSHMAN: I have no other questions.

15 CROSS EXAMINATION

16 BY MR. TROTTER:

17 Q That was before the final arrangement to meet

18 at the record room, wasn't it, that 3:00 request?

19 A. No.

20 Q You're saying that Mr. Dulaney finally agreed

21 with you to settle or told you he was going to settle at

22 3:00?

23 A. No, sir, he said possibly can we postpone

1 the settlement from 11:00 to 3:00 o'clock and I said Mr.
2 Dulaney, I will have to talk to my client, it's late in the
3 night and I will try to reach him tomorrow morning. If
4 you don't hear from me, we will meet you at the record
5 room at 11:00 o'clock.
6 Q. Did you talk to him the next morning?
7 A. Yes, sir, I told him I had not been able to
8 reach Mr. May.
9 Q. Did he tell you at that time he did not want
10 to spend the whole day on one settlement and could you
11 change the 3:00 o'clock settlement time to the morning?
12 A. I said if you don't hear from me, Mr. Dulaney,
13 we will meet you at the record room at 11:00 o'clock.
14 Q. Did he tell you that he was going to call you
15 when he left from McLean?
16 A. Yes.
17 Q. You did not wait for that call?
18 A. It was 10:15, sir.
19 Q. The question is, you did not wait for that
20 call?
21 A. It was 10:15.
22 Q. I said you did not wait for that call, did
23 you?

1 A. No, sir.

2 MR. TROTTER: That is all.

3 MR. CAMPBELL: No questions.

4 THE COURT: You want Mr. Malinchak excused or

5 subject to recall?

6 MR. CAMPBELL: Yes, sir.

7 THE COURT: Which is it?

8 MR. CAMPBELL: I will excuse him.

9 THE COURT: Any objection?

10 MR. TROTTER: No objection.

11 THE COURT: Mr. Malinchak, you are excused and

12 free to go, sir.

13 (witness excused)

14 MR. CAMPBELL: Your Honor, it is 4:30, do

15 you want me to start with Mr. May?

16 THE COURT: Off the record.

17 (Whereupon, the hearing in the above matter

18 was adjourned, to reconvene at 10:00 o'clock a.m.,

19 January 25, 1979.)

20

21

22

23

1 THE COURT: Any objection, gentlemen, to
2 Dr. Albright being called as an adverse witness?
3 Whereupon,
4 VATIA H. ALBRIGHT
5 was called as a witness by counsel for the Complainant, and
6 having been first duly sworn by the Clerk of the Court,
7 was examined and testified as follows:
8 DIRECT EXAMINATION
9 BY MR. TROTTER:
10 Q. Dr., would you identify yourself for the record,
11 please?
12 A. Dr. Vatia Albright.
13 Q. Your address?
14 A. Well, I hesitated when you asked me this in
15 deposition. May I explain why?
16 Q. Just give me your residence address, if you
17 don't mind, and you may explain. What is your residence
18 address?
19 A. Temporarily I am in Texas.
20 Q. Where is your permanent address?
21 A. Well, that is where I don't know.
22 Q. Where did you last live?
23 A. May I explain?

1 Q. Where did you last live in the State of
2 Virginia or if you did?
3 A. I lived at 1600 South Eads in Virginia.
4 Q. And before you went to Texas, where did you
5 live?
6 A. I lived in Washington, D. C.
7 Q. And when you return, are you planning to
8 return from Texas?
9 A. I may or I may not, it depends upon the out-
10 come of these trials.
11 Q. Are you employed?
12 A. I take special projects at will.
13 Q. Now, Dr. Albright, when did you first become
14 aware of the property in question that I believe is
15 described as Lot 113, Section 6 of Evermay or the Haythe
16 property?
17 A. Well in deposition I said it was either on a
18 Tuesday or Wednesday and I guess it was on a Wednesday, the
19 26th of April.
20 Q. The 26th of April. How did you learn of it,
21 did Mr. May call you about it?
22 A. Mr. May called me.
23 Q. And what did he say?

1 A. He said that he had an unreasonable client
2 and his client had missed two settlements and there may be
3 a possibility that he would miss a third. If he did, that
4 he had this house on Perry Williams Drive and that it would
5 be up for grabs and was I interested.
6 Q. Did he say it was a good buy?
7 A. I don't think he used that exact term. He
8 said he thought it would be a good investment for rent or
9 resale.
10 Q. Didn't you testify at your deposition it was
11 a good buy?
12 A. You're looking at my deposition?
13 Q. I will refer you to page 9 of your deposition,
14 the question on line 20, what price did he mention, I think
15 it was $189,000. He told me that it was -- he felt a good
16 buy; does that refresh your recollection?
17 A. It also refreshes my recollection that it
18 wasn't $189,000, it was $188,000.
19 Q. Fine. Had you seen the house before this?
20 A. I had never seen the house except probably
21 under construction.
22 Q. What did you tell him, that you were agreeable
23 to buying it?

1 A. I was eager to buy.

2 Q. Were you buying it as a nominee or a straw

3 party for him or your own account, do you know what a straw

4 party is or a nominee?

5 A. Are you asking me if I am buying it for Mr.

6 May or am I putting up my money to buy it for me?

7 Q. That is right.

8 A. I put up my money to buy the house for

9 speculation.

10 Q. You did not intend to live there?

11 A. Absolutely not.

12 Q. You intended either to rent or resell it?

13 A. That is right.

14 Q. Did Mr. May, you said you put up your money,

15 how much money did you put up?

16 A. He told me that it would be ten percent, which

17 was $19,000.

18 Q. And did you pay that to Mr. May?

19 A. No, I paid it to the settlement attorney.

20 Q. You have never been refunded that?

21 A. The $19,000?

22 Q. Have you ever been refunded that money at

23 any time?

1 A. Why would they refund me?

2 Q. I just asked the question.

3 A. No, I am sorry.

4 Q. You have not been. Were you aware of the

5 fact that a deed had been recorded in your name on April 28th?

6 A. April 28th, the evening Mr. May called me up

7 and he said you own a house.

8 Q. And did he tell you that the deed contained

9 a purchase money lien?

10 A. No, he didn't.

11 Q. You don't know what that is, I take it?

12 A. No.

13 Q. Had you signed a contract to buy the house?

14 A. I have signed nothing. He told me when he

15 called me up on the 26th that this was contingent upon

16 whether his client went to a settlement and I offered to

17 send him a check or to send it to the settlement attorney

18 and he said no, he said that he could not assure me that I

19 would even get the house.

20 Q. Was this because of Mr. Haythe's contract,

21 excuse me.

22 A. At the time I did not know, I never heard of

23 Mr. Haythe. He referred to him as a client.

1 Q. No question about the fact who he was talking
2 about, is it?
3 A. I am sure it was.
4 Q. I show you what appears to be a contract and
5 ask if this is your signature, a copy of your signature on
6 the second page?
7 A. That is right.
8 Q. And do you remember when you signed that
9 contract?
10 A. I would have had to have signed it May the 3rd,
11 because I saw no one from the time I talked to Mr. May until
12 May the 3rd.
13 Q. And in this contract it says, does it not, it
14 is specifically agreed and understood this contract will
15 become null and void if Mr. W. M. Haythe does make the
16 settlement at 11:00 o'clock a.m. on April 28th?
17 A. That is right, you read little things like
18 that. I was interested in buying a house, putting down my
19 money, getting my note and that was it.
20 Q. You knew that Mr. Haythe or someone, whoever
21 it was, was going to purchase?
22 A. I knew someone had missed settlement twice.
23 Evidently they missed it the third time or I wouldn't have

1 had a house.

2 Q. This was based on what Mr. May told you, you

3 didn't know this of your own knowledge?

4 A. That is all I knew.

5 Q. Do you know why the contract was back dated

6 to the 27th of April?

7 A. Well because this was a back-up in case they

8 did not settle on Friday, that I would have the next

9 opportunity of getting it. Had I not gotten it, someone

10 else would have.

11 Q. Are you saying this was prepared on the 27th

12 of April and not signed until May 3rd?

13 A. I don't know when it was prepared.

14 MR. TROTTER: I would like to offer this as

15 an Exhibit. I assume you all have copies.

16 MR. CAMPBELL: No objection.

17 MR. BUSHMAN: No objection.

18 THE COURT: Exhibit 30 admitted.

19 (The document referred to was marked

20 Plaintiff's Exhibit No. 30 for

21 identification, and was received in

22 evidence.)

23 BY MR. TROTTER:

1 Q. Now, Dr. Albright, you are fairly knowledgeable
2 in the field of real estate, are you not? Haven't you
3 purchased some 12 or 13 properties over the years?
4 A. I have.
5 Q. Including a number of houses in the Northern
6 Virginia area?
7 A. That is right.
8 Q. You have gone to a lot of settlements, have
9 you not, real estate settlements?
10 A. Yes.
11 Q. And have you ever had a situation where a deed
12 was recorded before you went to settlement?
13 A. I honestly don't know.
14 Q. But in any event, this settlement took place
15 on May 3rd, 1978?
16 A. That is correct.
17 Q. And where was this settlement, where was it
18 conducted, in Mr. Campbell's office?
19 A. Yes.
20 Q. Did he advise you as to the status of the
21 Haythe contract?
22 A. Clear up what you mean by the status?
23 Q. Did he tell you that your title was subject to

1 Mr. Haythe's contract?

2 A. Well he had it, he didn't have a contract at

3 that time. Evidently he didn't go to settlement.

4 Q. Did you get title insurance from that settle-

5 ment?

6 A. No.

7 Q. Did you get a certificate of title from Mr.

8 Campbell?

9 MR. CAMPBELL: Mr. Malinchak.

10 BY MR. TROTTER:

11 Q. Was it Mr. Malinchak or Mr. Campbell?

12 A. Mr. Malinchak.

13 Q. Did you get -- Mr. Malinchak is Mr. Campbell's

14 partner, right?

15 A. I assume he is.

16 Q. Did you get a certificate of title from

17 Mr. Malinchak from Mr. Campbell's law firm?

18 A. Yes, didn't I.

19 Q. Do you have it with you?

20 THE COURT: You have to answer to the best of

21 your knowledge.

22 THE WITNESS: I don't know if I got a

23 certificate of title. Are you telling me, is this the same

1 MR. BUSHMAN: Your Honor, not to belabor the
2 point, what is the relevancy of the certificate of title to
3 a purchaser at this point in time?
4 THE COURT: Well, I don't know, I will let
5 him continue.
6 MR. BUSHMAN: I would ask that he make an
7 offer of proof and show relevance.
8 THE COURT: What are you offering this for,
9 on time sequence?
10 MR. TROTTER: No, sir, to show notice.
11 THE COURT: Go ahead.
12 MR. BUSHMAN: To show notice?
13 BY MR. TROTTER:
14 Q Are you related to Mr. May by marriage?
15 A I don't know if you would term it related by
16 marriage, my son married Mr. May's daughter.
17 Q So you were well aware or acquainted with Mr.
18 May before this transaction, I take it?
19 A. Not particularly.
20 Q I take it your son was?
21 A Yes.
22 Q You were on very friendly terms, of course?
23 A Yes, how is very friendly terms defined. I saw

1 Mr. May and Mrs. May about three times, maybe four at the
2 most a year.
3 Q. Now had you signed up on any sort of a waiting
4 list for this house?
5 A. Yes.
6 Q. You had?
7 A. Not for this particular house, no, about two
8 and a half years ago when I was out there, everybody was
9 speculating and I didn't know why I shouldn't too, and I had
10 them explaining to him that I would buy it for just resale
11 and I figured this probably is why my name wasn't coming up.
12 I was on some kind of a waiting list though.
13 Q. You don't know, you say you weren't on a
14 waiting list for this particular lot, to your knowledge?
15 A. Not to my knowledge.
16 Q. And I believe you said in your deposition,
17 did you not, that you had not inspected this house on a walk-
18 through inspection before you took title?
19 A. That is correct.
20 Q. You didn't inspect it before settlement?
21 A. No.
22 Q. You bought this house sight unseen?
23 A. As I testified, I saw that it was a house there.

1 Q. Ma'am, didn't you say in the deposition you
2 bought the house sight unseen?
3 A. I had not walked through.
4 Q. Didn't you testify you bought the house sight
5 unseen?
6 A. I hope I testified that I knew there was a
7 house there.
8 Q. Maybe I can straighten you out on that.
9 MR. BUSHMAN: Why don't you show her the
10 deposition, she's your witness.
11 BY MR. TROTTER:
12 Q. Look at page 30, line 12, you bought the
13 house sight unseen. I am sorry, I am referring to another
14 house.
15 A. It wouldn't be the first one I bought sight
16 unseen.
17 Q. I will go back to line 2, when you talked to
18 Mr. May first, I believe you said around the 25th or the
19 26th, if I am not mistaken, April of '78?
20 A. Right.
21 Q. Continuing the question -- about purchasing
22 this house, had you ever seen this house?
23 A. I am sure I saw it under construction because

1 I had seen this house. No, I had not gone through the
2 property. As a matter of fact, I didn't go through it.
3 Q You bought that one sight unseen also?
4 A Yes.
5 Q Was that your testimony, was it not?
6 A That is correct, if that is what you are
7 reading. Would you read further?
8 Q I will let your attorney do that.
9 A Just next to it. I think I testified there
10 was a house on the block.
11 Q I will read the next question. Did you have
12 occasion to visit Mr. May socially, frequently?
13 Answer, yes.
14 Question: As a member of the family, of
15 course?
16 Answer; Yes.
17 Question; If that is what you mean.
18 Now, do you have a prospective purchaser for
19 this house named Mr. Richard Adams?
20 A Yes.
21 Q Did you call him? I have to ask the questions,
22 ma'am.
23 Do you have the contract with you?

1 Q. Yes.

2 A. No, we were going to have to get those at a

3 later date. He thought it was a fair agreement.

4 Q. Did you have an agreement to -- I will withdraw

5 that question.

6 In the event you do sell it to Mr. Adams,

7 would part of the price be paid to Mr. May?

8 A. Why should part of the price be paid --

9 Q. Ma'am, I am asking a simple question.

10 A. No.

11 Q. When you became aware that this house might

12 be available, you jumped at the chance, did you not?

13 A. You better believe I did.

14 MR. TROTTER: No further questions.

15 CROSS EXAMINATION

16 BY MR. BUSHMAN:

17 Q. Dr. Albright, how many houses at the present

18 time do you own?

19 A. Well I have just given two away, so I am

20 two less at this time. I own commercial property in Texas.

21 Q. What kind of property is that?

22 A. It is a plant I own.

23 Q. A plant?

THE COURT: You can consult with your client.

MR. CAMPBELL: What is your objection, Mr. Trotter?

MR. TROTTER: I don't have any objection at all.

THE COURT: Let's go off the record.

(Discussion off the record)

THE COURT: Back on the record.

Added onto No. 17.

Go ahead, sir.

BY MR. CAMPBELL:

Q Where do you reside, Mr. May?

A McLean, Virginia.

Q How long have you lived in Virginia?

A In Virginia since 1943 or '44. During World War II, I was with the Corps of Engineers at Fort Belvoir, Virginia, and I remained until this day as a resident of Virginia.

Q What is your business, sir?

A I am a builder.

Q Would you tell His Honor what divisions you have been involved in and what building you have done?

A Prior to 1954-55, we built small sections of -- comprising maybe five, ten, twenty, thirty-two lots -- in Broadmont, Falls Hill, Forest Hills, a few in Sleepy Hollow,

and in 1955, '56, '57, we built Milton Forest, comprising of 136 lots, 1958, in a period of seven, eight years. The next one was Villamay, 265 lots. And we're currently in Evermay which on one side of the street comprises 126 lots and we're now on -- of the 126 lots, we're on Lot 117. That is being finished.

During that interim period of time, up until about 1960, we did what we call custom building for other people -- plans the architects had drawn and so forth -- and that amounted to either 81 or 83 that we did during that period of time in addition to what we're talking about here.

Q What price range house do you build, Mr. May?

A Presently, at the time, you mean?

Q Yes, sir.

A The lowest priced house at the time probably is the $165,000 range and the most expensive house we delivered last year, with extras, was Lot 116. I believe it was around $250,000, $251,000. This is not true for the whole section.

We have had houses more expensive and less expensive.

Q Where were you born?

A Born in Texas.

Q What schools did you attend in Texas?

A I attended Texas Tech University before the War and --

THE COURT: Mr. May, could you keep your voice up? This wind is whistling out here and it's sometimes hard to hear you.

THE WITNESS: I attended Texas Tech University and this overlapped into the War. I did have some schooling while I was teaching during the War, teaching engineering courses during the War for a period of forty months, and I did receive additional courses at that time.

BY MR. CAMPBELL:

Q Now, are you on any local boards in the Northern Virginia area?

A I have been on several occasions, yes, sir.

Q Have you been on any school boards?

A I was on the school boards, City of Falls Church, 1953, '54, and '58. I was on the advisory board of a junior college in a suburb of Detroit.

MR. TROTTER: I don't want to be impolite but I don't see what this has to do with this case.

THE COURT: I don't understand it.

BY MR. CAMPBELL:

Q Were you involved in building advice in any of these schools that you mentioned?

A In every case, yes, sir.

Q What advice was requested by the schools? What building did they do while you were on the board?

MR. TROTTER: I don't think that is a proper way to qualify this witness as an expert. He might well be qualified, but I don't think the fact that he is on the school board and asked to advise them would qualify him as an expert.

THE COURT: I will overrule you on that.

MR. CAMPBELL: Your Honor, I submit he is qualified as a builder.

THE COURT: You want to question his qualifications?

MR. TROTTER: No, sir. I know he is a qualified builder.

THE COURT: Are you satisfied that he is a builder?

MR. TROTTER: I am satisfied he is a well-qualified builder.

THE COURT: Do you want to accept the stipulation?

MR. CAMPBELL: Yes, sir, Your Honor.

THE COURT: Go ahead. Proceed.

BY MR. CAMPBELL:

Q Mr. May, how many homes did you construct, approximately, in Villamay?

A Two hundred sixty-five.

Q Where is Villamay?

A Villamay is two miles south of Alexandria, Fairfax County. In Fairfax County, not in the city.

Q Approximately how many homes did you construct in Belleview Forest?

MR. TROTTER: Your Honor, again, I don't see the relevancy.

THE COURT: They have stipulated and you have accepted it, so he is qualified.

BY MR. CAMPBELL:

Q Mr. May, where do you live? Do you live in Evermay subdivision at this time?

A I live in the subdivision, yes, sir.

Q Is that your practice, to live in the subdivision that you're building?

A Yes, sir, it is.

Q Where do you live in this particular subdivision of Evermay?

A I live at 1229 Perry Williams Drive, which is about

the corner of the -- one lot from 136, Section 6.

Q Do you have a tennis court?

A No, sir, I do not.

Q Does your whole family live in Evermay in your home? You have a regular Evermay house?

A Yes, sir, I do. I do have one married daughter that lives in Alexandria.

Q Mr. May, is there anything unique in the building processes, if you know, concerning the construction of the homes, custom homes, you build?

A Mr. Campbell, I feel it's unique in that we have quite a few pieces of paper and so forth which we give to each and every customer that buys a house. It tells them exactly how we conduct our business and so forth.

These various pieces of paper are given to these purchasers and explained in detail to them at the time they put up a $1,000 lot reservation agreement.

Q When the person comes in and gives you the lot reservation agreement, do you set up a time schedule for completion?

A A time schedule is set from that date forward to completion, yes, sir.

Q Now, in your practice as a builder, when did you

1 try to complete a house? On what -- do you have a
2 particular day of the week?
3 MR. TROTTER: I don't see what this has to do with
4 this case.
5 MR. CAMPBELL: I think this is very important.
6 MR. TROTTER: The contract itself would govern
7 any time sequences in the building of the Haythe house.
8 What he does for other houses I don't think is material.
9 MR. CAMPBELL: I want to show that the Haythe
10 house fits in this pattern, Your Honor.
11 THE COURT: All right, sir. If you connect it up,
12 I will give you some latitude.
13 MR. CAMPBELL: Thank you.
14 BY MR. CAMPBELL:
15 Q Do you finish on a particular day of the week?
16 A We are on a forty-nine day schedule, sir. We
17 finish a house on a Wednesday every forty-nine days.
18 Q Every forty-nine days, you finish a house on a
19 Wednesday?
20 A Yes, sir.
21 Q Now, in 1970, in your last period, what is your
22 yearly period? February?
23 A Our fiscal year? Is that what you're talking

about, for the corporation?

Q Yes, sir.

A It runs through February 28th of each year.

Q In your last fiscal year, how many houses did you construct?

A By arithmetic, seven -- forty-nine. That doesn't work. Seven or eight; seven one year and eight the next year and so forth.

Q Then do you have a particular day that you have your walk-through inspection?

A It's always on a Thursday, yes, sir, and the following day is settlement.

Q When did you settle?

A The same day, in the afternoon, Thursday.

Q Mr. May, you mentioned documents you give at settlement. I made a packet for you. Some are already in there, I think.

THE COURT: What exhibit? 14?

MR. CAMPBELL: Yes, sir.

THE COURT: 14 for identification.

(Packet of documents referred to was marked Defendants' Exhibit No. 14 for identification)

1 comes on the market; we will move into the two-story house
2 with a daylight basement," and their name goes on that list.
3 All these names are dated.
4 In essence, we do have two lists. We still go
5 by the dates on these two lists.
6 Q You use no real estate agents?
7 A We do not, sir.
8 Q Do you use any -- you use no advertisement?
9 A We do not advertise.
10 Q I believe Mr. Haythe testified he came to your
11 company and put his name on the list around 1970?
12 A It would be later than that.
13 MR. BUSHMAN: I believe it was 1977.
14 BY MR. CAMPBELL:
15 Q I don't think that is what was said, but anyway,
16 there came a time Mr. Haythe came to you and put his name
17 on the list?
18 A He came probably to Mr. Lissitt first.
19 Q But his name was on the list?
20 A His name was on the list, yes, sir.
21 Q Would you tell His Honor what happened after that?
22 A His name could have been on the list for -- I
23 haven't looked it up -- one year, one month. We have a

he would call these people. He would call these twenty-one or more people and say, "You have a week to come in and review it, look at it, put up a $1,000 deposit."

At the end of the week, let's assume there are twelve unsold. He would go to the number two. If they're still unsold, he would go to the number three name, number four name. Our experience has been in the past, Your Honor, that within --

MR. TROTTER: Your Honor, I think we have to draw the line somewhere. I really don't see how this bears on the issues in this case.

THE COURT: Why don't we get to this case.

BY MR. CAMPBELL:

Q Mr. May, there came a time when you filled out the lot reservations for this particular section of Evermay; is that correct?

A Within one month, sir.

Q And you would then be in building Lot 101, 106, 107, on up the line; is that right? Mr. Haythe was Lot 113?

A Yes, sir.

Q Did you have a conference with Mr. Haythe?

A Yes, sir.

Q Did you show him these documents? And I show you

1 Defendants' Exhibit No. 14.

2 (Handing to witness)

3 A Yes.

4 Q Would you briefly go through and tell His Honor

5 what those documents are used for by May Properties?

6 A The first one is the lot reservation agreement,

7 agreement of contract signed with Mr. Haythe in February,

8 March, 1976, with Mr. and Mrs. -- at this time, they

9 tendered a $1,000 lot deposit to May Properties, Incorporated.

10 On that date, Mr. and Mrs. Haythe were furnished

11 every piece of paper that I have in my hand right here, with

12 a brief explanation.

13 Q Is that lot reservation reserved to a particular

14 period?

15 A There would be a date filled in on the front of

16 it, sir. I am looking at a blank copy.

17 MR. TROTTER: That is the same as Complainant's

18 Exhibit 1, Your Honor. It's already in evidence and I

19 don't see any reason in going through this.

20 BY MR. CAMPBELL:

21 Q What is the next document, Mr. May?

22 THE COURT: He wants to briefly explain the

23 system; that is fine. Go ahead.

THE WITNESS: The next document is the contract they will enter into on the date that coincides with the date on the front, which we tell each and every purchaser that we request that they read the contract. If they have any questions, they ask us. They can take it to an attorney and advise us. We want them to be prepared for what's coming later.

BY MR. CAMPBELL:

Q In this case, Mr. Haythe signed the contract; is that correct, the sales contract?

A This came along a year later, and by that time I believe Mr. Haythe was separated. Yes, sir.

Q Between the time of the lot reservation and the sales contract, you held this lot for Mr. and Mrs. Haythe; is that correct?

A Right.

Q Mr. Haythe came in and signed the contract?

A Yes, sir.

Q All right, sir. Go ahead.

A The third section is the reservation. We want each and every customer to be aware of the restrictive covenants that go with the lot that they're buying. We ask them to read it.

The fourth is a copy of the builder's warranty. We want them to be acquainted so there are no surprises later.

Q That warranty provides, in the first line, the warranties are not transferable; correct?

A Words to that effect, to the original owner, original purchaser.

Q All right, sir. Go ahead.

A The fifth is a copy of the specifications which we feel is very important. It's written very small and we ask them to please read it.

Q Please speak up.

A We ask them to please read it. They have probably a year to read it. If they have any questions, we want them to ask. We emphasize a lot more than that.

Q When do they fill out or give you the information on miscellaneous selections? Do you have that in a conference with them?

A We give them a copy, a blank copy, at that time, explaining why we give it to them. We tell them that we want them to be concerned with the design of the house, the dimensions of the house; everything on the miscellaneous selections has to do with color tile, electrical outlets,

1 fixtures, and so forth.

2 We want to have the planned design. We tell them
3 once they have signed the contract, we will give this sheet
4 to them with deadline dates filled in where they can make
5 the selection. This tells them where to go and make the
6 selections.

7 This is done to endeavor them to keep their minds
8 on the problems. We want the house right and proper and so
9 forth.

10 Q Go ahead, sir.

11 A The next sheet is some details. We give them
12 that at the same time as these two sheets; they're together.
13 On the selection sheet, there is -- right in the middle of
14 the page it says "trim details," and we explain to them
15 what that is about, and we tell them at a date which will
16 come about when the house is under roof, approximately under
17 roof, ready for these, we will sit down with them and fill
18 out all of these selections which do pertain to the stain
19 on the cabinets, hardware, etc.

20 Q Now, Mr. Haythe got to that stage, did he not?

21 A Yes, sir.

22 Q All right, sir. Go ahead.

23 A We also give them a plat of the lot involved. In

this case, Mr. Haythe would have received a copy, probably with a red circle showing Lot No. 113.

MR. TROTTER: In the interest of saving time, Your Honor, we will stipulate that Mr. Haythe received every single one of these documents.

THE COURT: Will you accept that?

MR. CAMPBELL: I would like to go through several others, Your Honor.

THE COURT: All right.

BY MR. CAMPBELL:

Q Please proceed.

A The next one is the overall plat of the project, and that is furnished for additional information. They can see adjoining lots, etc.

The next page we furnish is a price list that is taken right out of the book of literally hundreds of these sheets where we have given them to everybody.

The next page is the schedule that we maintain. This is given to each and every customer. You can follow the schedule down.

Q With respect to Lot 113, was that the Haythe lot?

A Yes.

Q Would you tell His Honor briefly the time schedule

for the construction of that particular house and whether you arrived at those time schedules?

A The time schedules are written. I will be glad to explain it, if it will save time.

Q Go right ahead. Tell us what the time schedules are.

A The time schedules on Lot 113, the preliminary plan would be drawn April 7th. The final plan would be June 7th. The brick would be completed on August 26th. The electrical work would be done and the roof would be done on 10/14.

The main reason this appears on there is to give the customer an idea of the time he will come in, and that date is already written on the preceding page, to make the trim selections because at that stage we need to order the formica, vanities, every color in the house. There is a trim date on there and the main reason that is chosen is so they will know what date to come in and meet with the trim foreman to discuss every closet in the house, see if they want valances and so forth.

The painting date in this particular case was March 22 and the finish date was March 5. These last two dates were changed, to the best of my recollection, on

Change Order No. 11 by telephone agreement with Winston Haythe and myself for a period of exactly two weeks.

Q Now, you asked for an extension of two weeks on the last date. What was the reason for it, Mr. May?

A Mr. Campbell, we had -- we had a terrible winter. It was not good.

MR. TROTTER: I will stipulate to that, too, Your Honor.

THE WITNESS: I called Mr. Haythe and explained it to him on the phone, and I don't want to take up the time of the Court. I called seven people; we had seven, all who had agreed to this, all seven did. And I called Mr. Haythe and he said yes, it was all right. "You can have a month more, if you need it." He had not sold his house.

I said, "Mr. Haythe, we want two weeks," and a month would have done no good. Ten days would have done us no good because it would have thrown this schedule all to pieces. We're on a weekly schedule; everything is a Wednesday or Thursday.

BY MR. CAMPBELL:

Q So you continued it for two weeks to the next Wednesday?

A We asked for two weeks instead of two-and-a-half

1 weeks. A month would have thrown us all to pieces here.

2 Q You continued it for two weeks to the following

3 Wednesday; what date was that, Mr. May?

4 A The completion date was the 5th; it would be the

5 19th. We asked for an extension to the 19th.

6 Q Mr. Haythe agreed to it?

7 A On the telephone, yes, sir. And that is on the

8 change order.

9 Q And you confirmed that with a change order?

10 A Yes, on the change order. I think it's No. 11, but

11 I am not sure.

12 Q What is the last document? Is that the change

13 order form sheet you use?

14 A That is the last one. That is a change order

15 form. We explained to the people -- we realize from thirty

16 years building experience, they will make changes. There is

17 just no way around it. They will make a few changes.

18 We also explain at that time our pricing and so

19 forth and that any time they select anything -- for instance

20 a refrigerator that costs $200 versus $210, anything, we do

21 it at cost -- they can see the cost right in the book

22 because all we do is pick up the phone and order it. Any

23 time we order anything more expensive or less expensive and

so forth, there is no overhead, no profit involved.

We also explain they can come along and write a change order involving the use of our manpower and our materials. We charge a ten percent overhead and a seven percent profit. This would be an additional portion, such as maybe they want an addition to the garage, book shelves, anything we might do with our manpower in the house.

Q How many change orders were there made with respect to the Haythe house?

A There are nineteen pages, Mr. Campbell. I haven't counted them. There are two, three, four, five to a page. So I'd guess maybe forty.

Q Is there any item that he requested that you did not perform or you could not give him?

A To my knowledge, we did everything that he requested, sir.

Q Did he request a curved entrance to the house, a curved walkway?

A Yes, sir, he did, and we did install that. He also requested another little auxiliary walkway, he was prepared to pay for by way of a note I received from my secretary, and I immediately sat down and wrote a change order that it would be a curved walkway that we were supposed

1 BY MR. CAMPBELL:

2 Q Mr. May, did you give him any oral instructions?

3 MR. TROTTER: I object to that.

4 THE COURT: I will have to sustain the objection

5 unless you are using this to impeach what Mr. Haythe said

6 in the case.

7 MR. CAMPBELL: I am going to inquire as to the

8 punchlist.

9 THE COURT: Go ahead.

10 MR. CAMPBELL: And the use permit.

11 THE COURT: Go ahead, sir.

12 BY MR. CAMPBELL:

13 Q Do you give any oral instructions to purchasers

14 concerning punchlists?

A Yes. They're advised at the same time we finish these ten or twelve pages that a residential use permit will be furnished by the time they're ready and they're also advised that as a courtesy, we do have a punchlist on the morning of the day following completion.

Q What about your residential use permit?

A They're advised at that time --

MR. TROTTER: Your Honor, I think we're concerned with Mr. Haythe, not purchasers in general.

to Mr. Haythe?

A Yes, sir.

Q And to who was that letter mailed?

A Without looking at it --

Q Look at it, if you like.

A I need to back up, if I can.

Q Well, all right, sir.

A I called Mr. Haythe on March 6th, which is forty-five days prior to completion, and advised Mr. Haythe I would like to know if he selected a title firm.

Q Those calls are reflected in that letter?

A I think they are. I called him on March 6th, which is our custom on every house, forty-five days ahead of time, suggesting to the customer -- no matter what customer -- unless they are going to pay cash. If not, they have to select a title attorney and a lending institution.

Mr. Haythe advised me on March 6th that he had not decided and he said, "I will let you know about the first of the month," I believe. I said, "Mr. Haythe, I need to know at least a month ahead of time."

I immediately marked my calendar for fourteen days, March 20th, and I called Mr. Haythe on March 20th and told

him again I needed to know; otherwise, we could have problems at the last minute on the settlement. We needed to know the title company and the lending institution, and it would have to be hand delivery instead of mail, etc.

At that time, he said, "I have not decided who the lending institution will be, or the title company."

Q You mean a settlement lawyer?

A That's the same thing, yes, sir.

So instead of writing this letter to his title attorney, we also wrote this letter, sir, to a title attorney. A copy goes to the lending institution, if we know it, a copy to the purchaser, a copy to the engineer that does the survey. A copy is put in my file.

I had to write this letter to Mr. Haythe because the title attorney was not known to me and the lending institution was unknown at that time. And on the conclusion of the letter, I told Mr. Haythe that I was enclosing two extra copies, one for him to pass along to the title attorney if he selected one, and one to pass along to a lending institution if he did select one.

Q You mailed the letter to Mr. Haythe?

A The letter was mailed that day or the next day.

Q It's dated March 21.

A It was either mailed that day or the next day.

Q Did he respond to this letter?

A No, sir. I believe Mr. Gourley did.

Q Did you make -- does that letter also refer to having a survey made for the property?

A Yes, sir. There is a telephone number listed for the title attorney to call and order an arm type survey.

Q Mr. May, I believe you testified you have no real estate agents, you deal with no real estate agents. You have this section -- did there come a time the general public began to call you about Lot 113?

A Yes, sir, on Sunday or Saturday, March the 4th or 5th, I returned to McLean, Virginia, having been out of town six days, and this was on a Saturday. I went on to the office on a Sunday; probably five to ten calls started to come in about a brick colonial for sale, and people started coming in.

Q You were not advertising your homes during that period?

A We never advertised. We don't even put a For Sale sign up or a Sold sign. We use no signs, no advertising.

Q All right, sir.

A This continued for a space of about approximately two weeks, starting that date. And in the meantime, when I

was out of town, my foreman loaned Mr. Haythe a key so he could get into his house and look after hours, as we do every customer.

The boys knock off at 4:30, Your Honor; we realize people that work for a living come by at 6:00 o'clock and want to see what is done in the house, and everybody is loaned a key once that time comes that we have to lock it up and start painting.

Q Now, did any of these calls quote a price for this house?

A On March 10th?

MR. TROTTER: We're getting into an awful lot of irrelevant hearsay, Your Honor.

THE COURT: I will have to sustain it. Why don't we get to the issues in this case?

MR. CAMPBELL: Yes, Your Honor.

BY MR. CAMPBELL:

Q Mr. May, did you finally talk to Mr. Haythe about these problems?

A Yes, sir. An incident occurred on March 15th, I believe. That problem prompted me to change the locks on the house.

Q What was that?

A Mr. Thompson said, "Mr. May, I am going to have to quit."

MR. TROTTER: I object to that.

THE COURT: Sustained.

MR. BUSHMAN: I would note my objection to that point. I think this is all becoming relevant in terms of --

THE COURT: It is hearsay as to what a contractor told Mr. May, Mr. Bushman.

MR. BUSHMAN: Well, I think Mr. May can answer the question as to what he did as a result of that conversation.

THE COURT: That isn't the question, though. I can only rule on what the question asked is.

BY MR. CAMPBELL:

Q As a result of these calls and people coming into the subdivision section, did you have any difficulty with any of your employees or subcontractors?

A Yes, sir.

Q Which one?

A The paint contractor.

Q What did you do?

A To prevent him from leaving my employment, I changed the cylinders on the lock.

MR. TROTTER: That is getting to the same objection.

Mr. Thompson testified, and I don't believe he ever testified he threatened to quit. That is the time he should have brought that out, and I object.

THE COURT: Overruled. He can testify as a result of talking to Mr. Thompson.

BY MR. CAMPBELL:

Q Mr. May, did Mr. Haythe -- did you finally discuss these problems with Mr. Haythe?

A After changing the locks on the house?

Q Yes, sir.

A Yes, sir. This was Mr. Haythe -- he came to the house on Saturday morning following the change of my locks, probably on Wednesday, Thursday, or Friday, and I think the 15th. I was with a customer, I believe Lot 120. And he said, "Gene, my key won't work on the lock on my house."

I said, "Winston, please go down and have Bill come up." Bill came up, and I said, "Will you please go down and unlock the house for Mr. Haythe and, when he is finished, lock it again?" And he did let him in the house.

Q When was the next time you saw Mr. Haythe?

A The next time I saw him was the next day. He did call that evening about 6:00, 6:30.

Q What day was this, approximately, Mr. May?

A The same day, sir.

Q What did he tell you?

A He called about 6:30 and he was upset, and I guess you might say humiliated that the key had been taken away and that somebody was appointed to lock and unlock the house.

At that time, I went ahead and tried to explain to Mr. Haythe that everything -- I can't say here. I told him of the inconvenience, the fact that agents had left -- had gone into the house and left it unlocked twice. They left the door wide open once. They had turned thermostats on 83, which would damage plaster.

The morning we found the door wide open on the house, the temperature was about fifteen degrees that night. The hall was so cold and the adjoining living room and the dining room on the left, and we couldn't even start to paint it until at least noon the next day.

The cost of the locks changing involved -- I had spent about approximately eleven hours at that time talking to customers that his agents showed the house to, asking me about change orders --

MR. TROTTER: Your Honor, I object to this.

THE COURT: Sustained.

Go ahead.

A It is.

Q All right. Go ahead.

A I explained then, "Winston," I said, "I have got to take a shower. I have twenty minutes to be at church," and I told him to put it in my wagon, "It's parked right there. And I will read it tomorrow or read it in the morning."

He put it in the wagon and departed.

I would like to point out I was playing on my neighbor's tennis courts; I was not playing on tennis courts I own because I do not own a tennis court.

The next morning, I went to the office, and calls were coming in; I returned calls and did some other work and so forth, and I picked up what he left me. I think it may have been in a folder. I am not real sure of that.

It was the original with some papers attached to it.

Q What you're talking about now is this assignment?

A Yes, sir.

Q All right, sir.

A There was an original with some papers attached to it. There was a copy, the best I recall, with those papers attached to it. I looked at the original, and before I even

read it, I started to look at the attachments. The attachments were the first things I saw, and it was a contract without price missing.

Q Without what?

A No price in it. It was a copy of the contract that I executed with Mr. Haythe back in June '77. I folded it up and put it back in the thing and laid it back in the box in my desk, which is right there.

Q And so you didn't read it?

A I did not read it.

Q Did you later advise Mr. Haythe you would not grant an assignment?

A He called me sometime that day. My recollection is it was in the afternoon, and I don't know when it was, and he asked me if I would accept an assignment and I explained to him -- I said, "There is just no way."

He thought I was being unfair; it was going to cost him extra money, $400 or something he said he could save on the deeds, on the stamps. And I said, "Winston, I am sorry. You invented this problem yourself and you can sell the house to anybody you want to. That is your business. But I am not going to accept an assignment. I have never accepted one before and I have never accepted an assignment

before." And on that very date, I asked Mr. Haythe again -- I said, "Winston, I am looking at a calendar right here, which is in this book, if anybody wants to see it. I said, "Winston, I have got to get the letter of instructions to some type of an attorney. Do you know who is going to be your lending institution?"

He said, "No, I don't." I said, "Can we agree on the 20th at 4:00 o'clock?" And he said, "Sure."

Q He said, "Sure"?

A Yes, "Sure."

I said, "I am going to go ahead and prepare the letter, mail it to you," and before I could get that letter in the mail -- in fact, it was in an envelope -- Mr. Haythe walked in. I told Mr. Haythe that was probably the last day by the timing.

I said, "Mr. Haythe, there is a copy of a letter in there. You can pick it up and save fifteen cents," and he did read it. I said, "Winston, now, there are two copies in here. You're going to have to give one copy to your lending institution and one copy to your title attorney so they know what is going on."

I said, "In the meantime, now, a copy of this is going to Mr. Malinchak."

1 The same date, another letter was written to
2 Mr. Malinchak, a copy of which I have in the file right
3 here, if you care to read it, asking him to prepare --
4 MR. TROTTER: I don't think the witness is being
5 very responsive to these questions.
6 BY MR. CAMPBELL:
7 Q Mr. May, did you subsequently hear from a title
8 lawyer?
9 A By letter from Mr. Ted Gourley.
10 Q And when did you hear -- I show you Plaintiff's
11 Exhibit No. 11 and ask if this is the first time you heard
12 from Mr. Gourley. This is dated March 29, '78.
13 A Uh-huh.
14 Q Did he advise you that settlement would be held
15 at 9:00 o'clock on April 21st?
16 A Yes, sir.
17 Q What did you do, sir?
18 A I wrote Mr. Gourley that day or the next day --
19 and I am not sure that is the first letter.
20 Q Would you like to see your letters?
21 A I would like to see that. I couldn't -- I am not
22 sure that is the first letter I received or not.
23 Q I will hand you letters 29 from Mr. Gourley, your

1 letter of April 3rd, his letter to you of April 4th, and ask
2 you if those letters were exchanged, as well as a letter
3 dated April 20, 1978, from Mr. Gourley. Does that refresh
4 your recollection?
5 (Handing to witness)
6 A Yes, sir.
7 Q Would you please tell His Honor what those letters
8 concerned?
9 A The first letter states that he had been retained
10 to represent the settlement on Lot 113.
11 MR. TROTTER: I don't have any objection to what
12 these letters say. I think they're in evidence.
13 THE COURT: I think he is entitled to lay the
14 foundation for his witness. If it is being used to impeach,
15 fine, but if it is something I have already heard and you
16 agree, there is no sense going into it.
17 BY MR. CAMPBELL:
18 Q And did you respond to Mr. Gourley's letters?
19 A I don't know whether I can answer that, sir.
20 Q Did you answer or respond to Mr. Gourley's letters
21 on the 29th?
22 A Yes, sir.
23 Q What did you tell him?

1 A Well, first of all, he asked me to -- he had
2 advised me it was changed to the 21st and requested payoff
3 figures for the construction loan, or words to that effect.
4 I wrote him the next day and sent him a copy of
5 the letter that I had mailed Mr. Haythe and also told him
6 in that letter that settlement was scheduled on the 20th,
7 maybe one or two other things I do not recall.
8 I received another letter from Mr. Gourley one
9 or two days or three days later, and he stated that the
10 settlement was to be on the 21st at 9:00 o'clock; that you're
11 welcome to come in on the 20th at 4:00 o'clock per your
12 letter if you so desire.
13 Q Did you go to Mr. Gourley's office on the 20th?
14 A Yes, sir, I did, at 4:00 o'clock.
15 Q Where did you go?
16 A His office is a remodeled home down in the middle
17 of McLean. I went there at 4:00 o'clock. The receptionist
18 was sitting out in the middle of it. She was not sure why
19 I was there at first.
20 Q Did you see Mr. Gourley?
21 A Yes, sir.
22 Q Where did you see him?
23 A Mr. Gourley came out of his office. There is an

office here (indicating), one here (indicating), and he walked out of the office and he said, "What can I do for you?"

I said, "I am Gene May." He was very friendly, and I said, "I am here for the settlement." He said, "Well, that is good." "I have all the papers with me."

Q What papers did you take with you to settlement, Mr. May?

A Here is the folder.

Q You can refer to it. Would you tell His Honor what documents you took to settlement from that folder?

A The first one is a release of lien, and I forgot to date it. I said -- he said, "Gene, I think you'd better date it April 20th."

The second is the termite certificate.

The third is the extras which I had forgotten he requested in one of his letters. The letter of inspection stated, sir, that I would furnish extras prior to settlement. I had a copy in here.

A copy of the warranty to be passed on to Mr. Haythe the next day.

The Deed, which was dated March 22nd, has been in my files.

1 Q That Deed had been prepared?

2 A That Deed was prepared on March 22nd and received
3 March 24th.

4 Q And you had executed the Deed; is that right?

5 A The Deed had been executed.

6 Q Go ahead, sir.

7 A I apologized to Ted and I said, "I am sorry I had
8 to cause you double trouble, so to speak." And he said,
9 "Gene, we can do it this way. We don't need to get into
10 shouting matches."

11 Q What did Mr. Gourley do?

12 A And that was about 4:35, 4:40, and that was it.
13 The settlement -- I am sorry. He suggested that I leave
14 these papers with him. And I said, "Ted, I will be glad
15 to leave the papers with you if I can see the settlement
16 sheet."

17 Q Did he show you a settlement sheet?

18 A Yes, sir. He went back into an office which was
19 vacant of people and he brought a settlement sheet out, which
20 was a one-page affair with penciled -- and I looked at it
21 hurriedly.

22 Q That is the settlement sheet which we discussed
23 in Court previously?

1 A That has ink on it. The one I saw had pencil.

2 Q It was not typed? It was not completed?

3 A It was a penciled copy.

4 Q All right.

5 A He brought a penciled copy out. I looked at it

6 very hurriedly and I looked at the deposit and I said, "Ted,

7 you've got a mistake, either $500 or $700," and it was in

8 my favor. And he said, "We would have caught it before

9 morning. Don't worry about that."

10 Q When did you think you were going to settle at

11 that moment when you were talking with Mr. Gourley?

12 A He reminded me it was scheduled the next morning,

13 and I reminded Ted, I said, "Ted, you also told me I could

14 come. That is perfect," I said, "no problem."

15 At this point, Ted asked me to leave it and I

16 said Ted, do I have to be here the next morning? And he

17 said no and he said it would probably save a shouting match.

18 I said, "Ted, I drive a tan wagon. Do you know

19 where Evermay is?" I said, "If you come down, I will be

20 on the job all day tomorrow just like this. Can you come

21 down and pick them up when you have consummated the settle-

22 ment, the other half of it?"

23 He said, "I cannot come myself but I will send one

of my secretaries." I think he mentioned his secretary, to pick these up; these papers laid on the seat of my wagon and they were never picked up.

Q At that meeting with Mr. Gourley, did he say anything about the settlement not taking place on the following day?

A No, sir. He called me back.

Q He did not. At that time, did he say anything?

A Between 4:00 and 4:40?

Q Yes.

A No, sir.

Q At that time, Mr. May, in your opinion, was the house substantially completed?

A Yes, sir.

Q Would you tell His Honor what you mean by substantially completed?

A The house was in accordance with the contract; it was substantially completed. It had no essential elements missing, so far as the inside was concerned. The refrigerators were in storage.

I don't want to take the time of this Court, but I do it like that on every house. We keep the refrigerator or refrigerators sitting in the carton until the inspection

so we can deliver brand new refrigerators. It's unfavorable, sir, what happens when you put a refrigerator in two weeks ahead of time. The men use it to pack their lunches in and it can get damaged. We try to deliver it last.

I have forgotten the question now. I am sorry.

Q The house, in your opinion, was substantially completed?

A The house was substantially completed.

Q At that time, did you know whether Mr. Haythe advised you when he was going to move in?

A Mr. Haythe had been asked on March 6th when he might move. He did not tell me. When I tried to set up the first settlement date, Mr. Haythe had been asked on March the 20th, when I asked him --

Q The question is, Mr. May, had Mr. Haythe told you when he was going to move in?

A I asked him three times. He did not tell me, sir.

Q At that time, had Mr. Gourley told you there was going to be a double settlement?

A By implication in the letter; he told me I could come in on the 20th and that the other settlement would be held with Mr. Haythe the next morning on the 21st.

Q All right, sir.

1 And who did you think, if you did, was going to
2 buy the house?
3 MR. TROTTER: I object to that.
4 THE COURT: Sustained.
5 BY MR. CAMPBELL:
6 Q Did you know of any contract at that time between
7 the Haythes and the McNeils?
8 MR. TROTTER: The contract will speak for itself.
9 He was told by someone else; therefore, it's hearsay.
10 THE COURT: He was told by Mr. Haythe.
11 Were you told by Mr. Haythe? If you were, you can
12 answer.
13 BY MR. CAMPBELL:
14 Q Were you told by Mr. Haythe that he sold the house
15 and there would be another settlement?
16 A He told me that on the Sunday afternoon when I
17 was getting ready to go to church.
18 Q At that time, Mr. May, had all of the extras been
19 put into the house? I am talking about on the 20th now, on
20 April 20th.
21 A Yes, every extra had been installed in the house.
22 Q Had Mr. Haythe paid for them?
23 A He had not paid one penny, no.

1 THE COURT: Dr. McNeil or Mr. Haythe?

2 THE WITNESS: I am sorry. The doctor.

3 BY MR. CAMPBELL:

4 Q As a result of his conversation, did he indicate

5 to you that he was negotiating with Mr. Haythe for the

6 purchase of the house?

7 MR. TROTTER: I object to the hearsay.

8 THE COURT: Sustained.

9 BY MR. CAMPBELL:

10 Q Did you ever see a contract between the McNeils

11 and Mr. Haythe?

12 A Winston left this in my wagon the Sunday he came

13 back asking for an assignment. I did not read it. I put it

14 in the book over here. And finally there came a time when I

15 delivered this and many other letters to an attorney to help

16 get this straightened out, and we sat down and read it at

17 that time.

18 Q This assignment makes reference to the McNeils; is

19 that right?

20 A The one we read on April 24th, yes, sir.

21 Q Were you subsequently advised by Mr. Haythe that

22 Dr. McNeil was not going to purchase the house as provided

23 in this assignment?

A No, sir.

Q He did not tell you?

A No, sir.

Q Did you ever receive any information from attorneys for Mr. Haythe that Dr. McNeil was not going to buy the house?

A No.

Q Did Dr. McNeil ever call you after April 12, 1978?

A He called me on April 12. He did not call me after that, no, sir.

Q He did not?

A He did not.

Q Did you talk with him after that?

A I called him after that, yes, sir.

Q As a result of that conversation, you have an opinion as to what was the condition between Mr. Haythe and Dr. McNeil?

MR. TROTTER: Objection.

THE COURT: State your grounds.

MR. TROTTER: He is asking for an opinion as to the conditions.

THE COURT: Sustain the objection.

1 BY MR. CAMPBELL:

2 Q Mr. May, as a result of your reading the agreement,
3 the assignment, was it your understanding after your call
4 with Mr. McNeil there was going to be a separate -- an
5 additional settlement after the Haythe settlement?

6 A That was brought to my attention by the attorney
7 on April 24th along with these many letters that it would
8 have been a double settlement, yes, sir.

9 Q Now, Mr. May --

10 A I think it was probably pointed out by Winston,
11 come to think of it, because he did mention he would have
12 a double settlement charge when he called me that Monday
13 morning, the day I wrote the letter of instruction. And he
14 said, "It will cost me double settlement charges," so I was
15 aware there was a double settlement that day.

16 Q Did any of the attorneys advise you on the 20th,
17 Mr. May, that Mr. Haythe was not going to buy the house?

18 A At Ted Gourley's office at 4:30 or 4:40 -- in
19 fact, he told me the settlement would be the next morning,
20 and he agreed to come and pick up these papers in my wagon
21 on the job.

22 Q Now, did you participate or was there a punchlist
23 inspection going on on the 20th?

1 A Yes, sir, all day long.

2 Q That was at Evermay?

3 A Yes, sir.

4 Q Who was participating in the punchlist inspection?

5 A To my knowledge, until 5:30 that day, Frank

6 Norblock and Mr. Haythe.

7 Q Was anyone with Mr. Haythe?

8 A I found at 5:30 the next day, somebody was with

9 him.

10 Q At that time, had Mr. Haythe ever complained to

11 you about the conditions of the house?

12 A On April the 11th, I believe it was, he wrote me

13 a letter and stated we might overlook a loose banister, he

14 mentioned, on the upper floor and we might have overlooked

15 a noise in a speaker and he would like to call that to our

16 attention.

17 Q Now, when was the first time that you heard from

18 Mr. Olson or Mr. Dulaney, who are attorneys in the District

19 of Columbia?

20 A Mr. Olson -- let's see. Went to settlement on

21 Thursday. Mr. Gourley told me he would pick these up on

22 a Friday, and I returned from work off the job, and went

23 back to the job at 4:30.

1 Q This is on the 20th?

2 A On the 21st.

3 May I hear the question again?

4 Q When was the first time you had any communications

5 from Mr. Olson?

6 A It was the day following the day I went to settle-

7 ment, which would be the -- this was on a Thursday at 4:00

8 o'clock. I returned from the job on Friday, the next day,

9 which would be the 21st and my secretary -- apparently it

10 was at 4:30 because she wrote that on here.

11 Q Was it on the 21st?

12 A On the 21st. I asked Frank, I said, "Nobody ever

13 picked up the papers. Did they come by here?" And he said,

14 "I haven't heard from anybody," and I went in and started

15 working at my desk and started returning calls and so forth.

16 By 5:15, I got down to call Mr. Olson at a certain

17 telephone number.

18 Q Did you call Mr. Olson?

19 A I called Mr. Olson.

20 Q About what time was this on the 21st?

21 A I returned it at 5:15. The call stated it came in

22 at 4:30.

23 Q What was the call with Mr. Olson concerning --

1 Mr. Haythe's attorney.

2 A Mr. Olson advised me he was with a certain firm --
3 it was a long name -- and he had been retained to represent
4 Mr. Haythe and they had found -- I think he mentioned the
5 number of punchlist items that they found at that time.

6 Q Did he mention there was any controversy between
7 Mr. Haythe and Dr. McNeil?

8 A No, sir.

9 Q Did he mention that Dr. McNeil was involved with
10 any other attorney?

11 A No, sir.

12 Q I show you Plaintiff's -- Defendants' Exhibit No. 8
13 and ask you if you received this letter from Mr. Olson.
14 (Handing to witness)
15 A That is dated.

16 Q You received the letter?

17 A Yes, sir.

18 Q When did you receive it?

19 A That was certified and was received on Monday.

20 Q Which would be the 24th?

21 A The 24th, yes, sir. It was certified receipt.

22 Q And with this letter on the 21st, was there any
23 punchlist item?

1 A No, sir. He wrote me two letters.

2 Q Did you receive any punchlist items with this

3 letter?

4 A No.

5 Q Directing your attention to his letter, I believe

6 he mentions there was no permit. Is that right?

7 A No, sir. He states that he wants to know when

8 an occupancy permit will be issued.

9 Q Had anybody discussed an occupancy permit with

10 you prior to your receiving this letter of April 21st from

11 Mr. Olson?

12 A Yes. I went, as I mentioned -- I had a settlement

13 with Mr. Gourley that ended at 4:40 on the 20th. Mr. Gourley

14 called me back at 5:30, approximately, which is less than an

15 hour later, and he said, "Gene, I don't recall seeing the

16 residential use permit in the file" -- that is the file

17 right here -- "that you brought to my office."

18 And I said, "There's none in it," and I tried to

19 explain. I said, "Wait just a minute." I wanted to talk to

20 the architect and he was getting ready to leave. That is

21 the date they had the inspection.

22 And I said, "Frank, did Mr. Haythe give you any

23 idea when he was moving?" so I could tell Mr. Gourley what

1 to expect on this.

2 Frank said --

3 MR. TROTTER: I object to what Mr. Norblock might

4 have told him.

5 THE COURT: Sustained.

6 BY MR. CAMPBELL:

7 Q Did you subsequently receive a letter from

8 Mr. Olson dated April 24, 1978?

9 A Yes.

10 Q When did you receive this letter, Mr. May?

11 A That was received the day following the registered

12 letter.

13 Q The day following would be the 25th?

14 A The 25th.

15 THE COURT: Why don't I hold you there and we will

16 take a fifteen-minute recess.

17 (Whereupon, a short recess was taken)

18 THE COURT: Let's proceed.

19 BY MR. CAMPBELL:

20 Q Did you receive the letter of April 24th from

21 Mr. Olson with the punchlist?

22 A I received -- I don't know what the date was. I

23 received it on the 25th.

1 Q On the 25th, sir, at that time, had you yourself,
2 your company, performed a punchlist?
3 A On Thursday?
4 Q April 25th.
5 A April the 20th, Mr. Norblock prepared it at the same
6 time Mr. Jennings prepared it.
7 Q And have you compared the punchlist prepared by
8 Mr. Jennings with the punchlist prepared by Mr. Norblock?
9 A Yes.
10 Q Do you have it with you? Have you personally gone
11 over these items?
12 A Yes, sir.
13 Q Have you personally looked at the house?
14 A Yes, sir.
15 Q Would you please tell us the difference in these
16 two punchlists?
17 A The punchlist that Mr. Frank Norblock prepared
18 and my secretary typed, we have nine items on this list that
19 do not appear on the list prepared by Mr. Jennings, which
20 contains 97 items. On Mr. Jennings list, there are seven
21 items that appear on that list that do not appear on
22 Mr. Norblock's list and every one of those items have to
23 do with seven plaster cracks.

Q Now, Mr. May, as president of May Properties, can you tell us whether or not the items on either one of those lists were completed or corrected?

A Every item except the seven plaster cracks, which are not a warranty item, in the house had been corrected to this date.

Q When were these corrections made?

A Those corrections were made --

Q Were they made over a period of time?

A Yes, sir. They were made, with two exceptions.

Q Over what period of time were these corrections made, Mr. May?

A By the end of the working hours on April 24th, Monday.

Q Over what period of time were they made?

A We worked on the house on Friday, Saturday, and Monday, with two exceptions.

Q Were any of the items completed?

A On what day, sir?

Q On the 25th or the 24th.

A On the 24th, the gravel had not been installed on the driveway and the garage doors had not been painted.

MR. TROTTER: The garage doors had not been painted?

A Monday at quitting time, April -- following April 24th or April 25th.

Q All right, sir.

Now, in your opinion, were there any items on either list which constituted errors in construction?

A No, sir, positively not.

Q And in your opinion, did the items on either list result in the house not being substantially completed?

A No, sir.

Q Now, would you tell us how you would obtain a residential use permit for houses at Evermay?

A You have to call by 1:00 o'clock in the day if you want the inspection tomorrow.

Q Who do you call?

A Mr. Guthrie makes all of the calls for that. He is the superintendent on the project.

Q Who do you call in the County? Mr. Bertoni?

A No, sir. There is a certain order you go through, and Mr. Guthrie makes all of the calls. It's his responsibility.

Q Then what happens?

A If the call is placed before 1:00 o'clock Thursday, if the call is placed by 1:00 o'clock today, Your Honor,

1 A Wait just a minute. I would like to talk to
2 Mr. Norblock, who just made the inspection, because I was
3 going to try to explain the situation and Mr. Norblock,
4 when he went on the job, was instructed to ask Mr. Haythe --
5 this would be for the third or fourth time -- "When are you
6 going to move?"
7 At that time, I didn't know what conversation had
8 taken place. I said, "Hold the phone, Ted. Mr. Norblock
9 is just now ready to leave." Usually he leaves at 5:00; it
10 was 5:30.
11 I said, "Frank, did you talk to Mr. Haythe and ask
12 him when he was going to move?"
13 "I asked him when he started, I asked him about
14 11:30 when he broke for lunch to go by and see you, and I
15 asked him at quitting time, and he never did tell me when he
16 was moving."
17 I passed this along to Ted and tried to explain
18 to him that the residential use permit was involved in
19 people occupying, not in the completion of the house.
20 MR. TROTTER: I object to the hearsay again.
21 THE COURT: Sustained.
22 BY MR. CAMPBELL:
23 Q Did you subsequently receive a letter from

~~and I object.~~

~~THE COURT: Sustained.~~

~~BY MR. CAMPBELL:~~

Q Mr. May, did there come a time when you subsequently instructed that a letter be written which set the settlement on April 28th?

A We received the residential use permit by noon on the 26th, and I called Mr. Malinchak that afternoon.

Q Did you instruct him to write the letter?

A I told him to write the letter at that time.

Q And the letter was written?

A I am told.

Q And delivered?

A That is what I have been told.

Q Now, at any time had you -- did you hear from either Mr. Olson or Mr. Gourley or Mr. Haythe between the time that the letter was written, setting any other settlement date?

A No, sir.

Q Did anybody contact you?

A Nobody.

Q You heard no word from anybody?

A Nobody.

Q Did you ever instruct anybody to raise the prices and take an unfair advantage of Mr. Haythe?

A No, sir, I did not.

Q In your opinion, was the work done in a fair and reasonable manner for this house?

A With one exception, sir.

Q What is the exception?

A When the paint bill was paid to M. A. Thompson, -- he presented his bills. The labor charge, I think, is what we are talking about -- I told him those charges looked to me to be high. He said, "Mr. May, either I charge that or I don't hang the paper." And I said Tommy has the paper and --

MR. TROTTER: I object to this.

THE COURT: State your grounds.

MR. TROTTER: Hearsay.

THE COURT: Sustained.

BY MR. CAMPBELL:

Q Mr. May, have you -- would you wish the Court to inspect the house if it so desires?

A Sir, if His Honor would, I would be forever grateful.

Q Now, at the time this house was being negotiated or built for the Haythes, were people living in the adjoining

houses?

A The one to the right, Lot 112.

Q What was the condition of their sod and exterior?

A They had straw over dirt, they had gravel on dirt, and they had a boardwalk built into the house.

Q Now, did you have bonds with the county for completion and performance?

A Yes, sir.

MR. TROTTER: I object to this. I don't see how that has any relevancy.

MR. CAMPBELL: Some builders don't have bonds, Your Honor.

MR. TROTTER: He didn't give us a bond.

THE COURT: That is not at issue in this case.

MR. CAMPBELL: No further questions.

MR. TROTTER: I have a few questions, Your Honor.

CROSS EXAMINATION

BY MR. TROTTER:

Q Mr. May, Mr. Haythe, pursuant to the terms of the lot reservation agreement, paid you $1,000?

MR. CAMPBELL: Let me ask --

THE COURT: Go ahead, sir.

1 DIRECT EXAMINATION (resumed)

2 BY MR. CAMPBELL:

3 Q Mr. May, did you ask anyone, pertaining to this

4 house, when they were moving, and whom did you ask?

5 A On March 6th, I asked Mr. Haythe if he might be

6 moving. He did not tell me. That is when he tried to

7 write the first letter of inspection.

8 On March 15th or March 20th, I think that is when

9 I did write the letter of inspection, he did not tell me.

10 And on April 15th when he came in and complained of the

11 high paperhanging bill from Mr. Thompson, I asked him again

12 and he did not tell me.

13 On the day of inspection, he said -- this is

14 hearsay, so I will have to drop it.

15 Q In your opinion --

16 A Incidentally, sir, I did ask Dr. McNeil and he

17 told me he was not --

18 MR. TROTTER: Objection.

19 THE COURT: Sustained.

20 MR. CAMPBELL: No further questions.

21 CROSS EXAMINATION

22 BY MR. TROTTER:

23 Q Mr. May, Mr. Haythe paid you the $1,000 that was

1 called for in the lot reservation agreement, did he not?
2 He paid all of the deposits called for in your papers,
3 totaling $19,500?

4 A Either Mr. or Mrs. Haythe, one of the two paid it.

5 Q Well, Mr. Haythe is the only one that signed the
6 sales contract for Evermany.

7 A That is exactly right.

8 Q He is the one that paid $18,500, the balance?

9 A That is exactly right.

0 Q And you still have that money?

1 A No, sir. It's in an escrow account, an interest-
2 bearing account. It's being held by the firm of Herrell,
3 Campbell & Lawson.

Q Now, at the time that Mr. Haythe entered this
5 contract, he was separated and Mrs. Haythe's name does not
6 appear on this contract.

A Exactly.

Q And you agreed to this assignment of Mrs. Haythe's
interest in this property to him?

MR. BUSHMAN: I object. That is a conclusion as
to whether or not she had any interest at the time.

THE COURT: I will overrule the objection.

1 BY MR. TROTTER:

2 Q Don't you agree with that, sir?

3 A I agreed to the contract, sir. That is the only

4 way I can understand your question.

5 Q Did Mr. Haythe show you the Property Settlement

6 Agreement whereby his wife signed her interest to him?

7 A May I explain that to you?

8 Q No, sir. I just want you to answer the question.

9 Did Mr. Haythe show you copies of the settlement agreement

10 where the wife assigned her interest in this contract to

11 him?

12 MR. CAMPBELL: That is a legal conclusion, Your

13 Honor. That is a matter for Your Honor.

14 THE COURT: Overrule the objection. The question

15 is whether he showed him the Property Settlement Agreement.

16 THE WITNESS: Mr. Haythe didn't; another man did.

17 I am trying to help you, Haynie, not hurt you.

18 BY MR. TROTTER:

19 Q Who did?

20 A The attorney that came along with Mr. Haythe when

21 we had our design meeting to design the house and establish

22 the price and etc. You can tie the dates down by going back

23 into the file. The gentleman was in his mid -- well, forget

1 that. I don't recall his name.

2 Q He showed you Plaintiff's Exhibit No. 3, did he not,

3 the Property Settlement Agreement, which assigned Mrs. Haythe's

4 interest to Mr. Haythe?

5 A I did not keep a copy.

6 Q I understand.

7 A I assume he did. This attorney explained it.

8 Q Well, I just want to know.

9 A He explained the separation and so forth, and he

10 pointed out that paragraph, the paragraph that stated, as a

11 layman would read it, that the rights his wife had in it

12 was not his right. And I asked no question about that.

13 Q You had no problem with that at all?

14 A No, sir.

15 Q You didn't have any discussions at all with

16 Mr. Haythe until he presented the assignment. Isn't that

17 a fair statement, Plaintiff's Exhibit No. 2?

18 A We had no difficulties whatsoever on either part,

19 so far as I know, up until the time he asked for his key

20 back, which was before the assignment.

21 Q That is Plaintiff's Exhibit No. 6. I am sorry.

22 You did not agree to execute, to consent -- you did

23 not agree to the assignment by Mr. Haythe of the contract to

1 Dr. and Mrs. McNeil?

2 A That is my testimony, Haynie, yes, sir.

3 Q And this contract, what was your reason for not

4 agreeing to that?

5 A Haynie, I never had done it before, as I mentioned,

6 and we had pieces of paper attached to that original. We

7 had copies, one or two copies, and it was laying in my wagon.

8 I looked at it the next day and I looked at the papers

9 attached to that. When I saw the contract, I closed it and

10 laid it in my box.

11 Q The reason you objected is the contract was --

12 the price was blanked out of the contract?

13 A That is the reason I didn't read it.

14 Q Was that the reason that you rejected the assign-

15 ment?

16 A I had never assigned one before. We never have,

17 thirty-and-a-half years of building experience. I never

18 signed one.

19 Q Was there any other reason that you objected to

20 the assignment to Dr. McNeil for the house?

21 A I didn't read it, sir.

22 Q Wasn't his money just as good as Mr. Haythe's?

23 A I am sure that it was.

1 Q It doesn't say "turned in." It says "as of,"
2 does it not?
3 A You will have to ask Mr. Norblock that.
4 MR. TROTTER: I would like to offer this.
5 THE COURT: Do you have any objection?
6 THE WITNESS: It's perfectly all right.
7 THE COURT: Plaintiff's 31, sir, received and
8 admitted.
9 (Document referred to was marked
10 Complainant's Exhibit No. 31
11 for identification and received
12 in evidence)
13 BY MR. TROTTER:
14 Q Now, when you scheduled settlement on the 20th of
15 April, this was done without Mr. Gourley's concurrence, was
16 it not?
17 A I never heard of Mr. Gourley the date I wrote the
18 letter.
19 Q Now, that was scheduled by you unilaterally by you
20 on April 20th at 4:00 p.m.
21 A I don't understand.
22 Q Could I see it? I will show you the letter. Maybe
23 that will clarify it. I believe it's Complainant's Exhibit 7.

I show you No. 7, which is a letter to Mr. Haythe -- I said Mr. Gourley -- a letter of yours to Mr. Haythe on March 21, 1978, and this scheduled settlement on 4/20 at 4:00 p.m. at the office of blank.

A We don't know there. Mr. Haythe hasn't given us it.

Q You subsequently wrote Mr. Gourley and told him that settlement would be at 4:00 p.m. on 4/20/78; right?

A After receiving the letter from Mr. Gourley, we responded to his.

Q That hour of the day wasn't agreeable with him?

A It was not, for some reason. Mr. Gourley wanted it on the 21st.

Q For some reason. Wasn't the reason that the 21st was due to the fact that the McNeil contract was scheduled to be settled on the 21st, also?

A Sir, I don't know.

Q Isn't that the reason that you didn't want it on that date, Mr. May?

A I had not read that thing until April 24th, as I said, Haynie.

Q You had not read that thing?

A I had read the papers that came with it, Haynie,

1 A In Evermay, probably two, three, four in Evermay;
2 probably a total of thirty or forty in thirty-and-a-half
3 years.
4 Q Had you ever settled the sale of a house purchase
5 in Evermay at the record room?
6 MR. CAMPBELL: He said he had.
7 THE WITNESS: Two, three, four, five, yes, sir.
8 BY MR. TROTTER:
9 Q You had. Did you not testify to the contrary in
10 a deposition given on July 20, 1978?
11 MR. CAMPBELL: What page?
12 THE WITNESS: I testified on that day I held at
13 least one there.
14 BY MR. TROTTER:
15 Q In Evermay.
16 A I don't think that ever mentioned Evermay. Could
17 we please read it? I don't recall.
18 Q Mr. May, can you name the purchasers of the properties
19 in Evermay that you settled with at the Clerk's office at the
20 record room?
21 A I can get them out of my file.
22 Q You don't remember that?
23 Who handled those settlements?

not a house. Yes, sir."

Didn't you make that statement?

A That is exactly right.

Q How long have you known Dr. Albright?

A I can't remember the year my daughter got married.

Q Approximately?

A Either '74 or '75, Haynie; I am sorry.

Q When your daughter married her son?

A That is correct.

Q I believe the last name was Frank; is that correct, a son by a previous marriage, and I believe his name is Robert Frank?

A Robert H. Frank.

Q Did you instruct Mr. Malinchak to prepare a Deed to Dr. Albright on April the 25th 1978?

A No, sir. He was called on the 26th.

Q April 26th.

At that time, the Haythe contract, the settlement of the Haythe contract, had not been rescheduled, had it? I believe you testified earlier you instructed Mr. Malinchak to write Mr. Olson on the 27th of April, did you not?

A These happened at the same time, Haynie. I called Nick and told him to set the settlement, and also I entered

1 into a backup contract, contingent contract, and gave him
2 the details at the same time.
3 Haynie, I would like to say something. I may be
4 out of turn.
5 Q You probably are. I think you'd better just answer
6 my questions.
7 You instructed him on the 26th to prepare the
8 Deed to Dr. Albright?
9 A This has nothing to do with the Deed. It's a
10 matter of correcting something.
11 Q I don't want you -- if it is correcting something
12 that has gone before, you can correct it.
13 A You read from a deposition that I had done one
14 settlement. I told you more, and in view of the records,
15 that is when that came about and that is what I wanted to
16 explain, if you would let me explain. And if you don't, it
17 will never be clear to the judge.
18 Q All right, fine. That deposition, you did make
19 that statement, though?
20 A At the deposition. But unless you let me explain,
21 the record will never be clear for the judge.
22 Q All right.
23 Now, on the 26th of April, did you not --

1 When you sold this to Dr. Albright, you say it was
2 contingent on the Haythe contract not being settled. Is
3 that what you said?
4 A It was contingent. I have the contract, sir.
5 Q The doctor -- you explained to Dr. Albright that
6 her contract was contingent on the Haythe contract not
7 closing?
8 A Yes, sir.
9 Q And she did not pay you any money until May 3rd
10 at her settlement; correct?
11 A She offered to tender -- it was either $18,000
12 or $19,000.
13 Q She did not pay you until settlement?
14 A She didn't pay me at all; she paid Herrell, Campbell
15 & Lawson and they paid me.
16 Q That was May 3rd?
17 A No, sir. I didn't receive disbursement until
18 probably a week after May 3rd.
19 Q Settlement was on May 3rd with Dr. Albright?
20 A May 2nd or May 3rd, yes, sir.
21 Q And did you have a written contract with her on
22 April 28th? When did you sign the written contract with
23 Dr. Albright?

1 A She signed it at settlement.

2 Q May 3rd?

3 A May 2nd or May 3rd.

4 Q It was back-dated to April 28th?

5 A The contract was written the date that it states

6 on it because I read her the contract and every detail on

7 the telephone, and she agreed to it.

8 Q So that the contract was written, you're saying,

9 on April 27th or 28th, whatever date it was?

10 A I am not sure what it is myself. I will let you

11 look at it.

12 Q I will show you Complainant's Exhibit No. 30,

13 Mr. May. This is dated the 27th of April; correct?

14 (Handing to witness)

15 A That is correct.

16 Q That is when it was prepared?

17 A That is when it was typed, yes, sir.

18 Q And you signed it on April 27th, and she signed

19 it at settlement?

20 A I signed it -- I signed it one of the two days; I

21 do not recall which.

22 Q You signed it either April 27th or the day of

settlement, is what you're saying?

A One of the two, yes, sir.

Q And the settlement statement itself was back-dated to April 28th, was it not?

A I would have to see a copy; I believe that is correct.

Q We will accept your recollection. I will be glad to show you a copy of it.

Now, when you talked to Dr. Albright -- I assume you talked to her on the 28th and told her the house was hers.

A I called her on the afternoon of the 28th. I am trying to remember what time. And -- the answer is yes.

THE COURT: Can you try to keep your voice up? We have this wind coming in and it's very hard to hear.

THE WITNESS: I did call her on the afternoon of the 28th, I have forgotten what time, and told her she had bought a house.

BY MR. TROTTER:

Q Was this before Mr. Dulaney came around with the suit papers?

A Yes, sir. He didn't show up at my office until about 5:15, and I am guessing it was probably between 1:00 and 3:00 o'clock when I called her for sure.

1 Q Did you call her after and tell her she had been
2 sued?
3 A No.
4 Q Did you call her the next day?
5 A No, sir.
6 Q Did you ever tell her that you were sued because
7 of this transaction?
8 A I am sure she found out in the next two or three
9 months.
10 Q You didn't tell her at settlement you had been sued
11 on account of this Haythe contract?
12 A I have no recollection of telling her, no, sir.
13 Q Did you have an understanding with Dr. Albright
14 that in the event Mr. Haythe prevails in this suit, that she
15 is to deed the house to him?
16 A I most certainly did not, Mr. Trotter.
17 Q Did you have an understanding with Dr. Albright
18 that in the event you prevailed, the house would be deeded
19 to Mr. Richard Adams?
20 A Come again on that?
21 Q Do you know Mr. Richard Adams?
22 A Yes, sir.
23 Q He is a neighbor of yours?

A He is a customer that lives two doors from the office.

Q And he is interested in buying this house, is he not?

A I have been told.

Q Don't you have an understanding with Dr. Albright and Mr. Adams that if you prevail in this suit, you will sell it to him at the current market value?

A That I am going to sell it to him?

Q Yes.

A No, indeed. It's not my house to sell.

Q In other words, if Dr. Albright sells it to Mr. Adams, you don't have any interest in that?

A No interest whatsoever.

Q Have you ever been paid any interest on the loan that you loaned Dr. Albright, the purchase money for this house?

A No. It's due in about two months, three months.

Q And, of course, she hasn't paid any principal, has she?

A No, sir.

Haynie, did you want this back?

MR. TROTTER: May I have the Court's indulgence for one moment, please?

1 THE COURT: Yes, sir.

2 BY MR. TROTTER:

3 Q (Pause)

4 Now, with respect to the residential use permit,

5 I believe that is dated April 26th, if I am not mistaken,

6 Defendants' Exhibit 12. Is that correct?

7 A I believe it is the 26th.

8 Q Is that the same date you got it or did you get

9 it after that?

10 A It's hand-delivered to the superintendent on the

11 job.

12 Q Now, with respect to the work that was done by

13 Mr. Thompson, including the hanging of the wallpaper at

14 $22 a roll, he said, I believe, that that is what he charged

15 you and you said that is what you paid him. Correct?

16 A Did I pay him that amount of money?

17 Q Yes.

18 A I paid him the exact amount that shows on your

19 piece of paper, yes.

20 Q This, of course, was added to the contract price

21 of the house sold to Mr. Haythe?

22 A It became part of the extras.

23 Q Mr. Haythe would be paying it, not you?

A In the event he would have settled, he would have reimbursed me exactly what I paid M. A. Thompson.

Q Now, Mr. May, May Housing Corporation had legal title to this lot in Evermay at the time it was conveyed to Dr. Albright; is that correct?

A Yes, sir.

Q And May Housing, I take it, was the land-holding corporation and May Properties was the building corporation?

A For all?

Q Yes.

A For all practical purposes; May Housing Corporation develops the land, if that is the same as what you are saying.

Q I will accept it.

A I think we're in agreement.

Q And you either own or control all of the stock in both those entitles?

A No, sir.

Q How much, percentagewise, do you own?

A May Properties owns approximately -- I am going to have to guess, Mr. Trotter -- fifty-six, sixty-two percent. I am sorry.

Q Who owns the balance of it?

A My wife.

1 A No, sir. He would never give me any information
2 at all. That is the reason I had to wrap it up on the 21st.
3 Q When did you find out who the lender was that he
4 was going to use?
5 A I never knew he had a lender.
6 Q You indicated that you had to call Dr. McNeil on
7 the 24th.
8 A Yes.
9 Q Of April. What specifically did you call Dr. McNeil
10 for?
11 A To see how soon he was going to move, in trying to
12 accommodate him. I was going to explain to him that we had
13 to finish the punchlist and the gravel driveway, and I wanted
14 to find out, and I advised him we also had been advised that
15 97 items were being send to us in the mail, and we would get
16 it two or three days later.
17 We lucked out and got it the next day, and he said
18 two or three days, and I wanted to advise Dr. McNeil that if
19 he wanted to move immediately, I would put the gravel drive-
20 way down because the rest of it was completed, with the two
21 or three exceptions we have noted. If he was not going to
22 move for two or three days, let us take a wait-and-see and
23 look at the 97 items, and then I could put down the permanent

one because by that time, it was starting to clear.

That is when he told me --

MR. TROTTER: Your Honor, I object.

THE COURT: Mr. May, stop short.

BY MR. BUSHMAN:

Q Why would you call Dr. McNeil as to whether a driveway should be in or gravel? Why did it make a difference to you?

A To the best of my knowledge, I was building a house for Dr. McNeil and Mr. Haythe at that time because I had been informed somehow, some way, that he was going to buy it. And I was trying at that time to really please Dr. McNeil because I figured that he was the one going to move in.

Q Would this save May Properties any money?

A If we could have put down the finished asphalt in lieu of the gravel, we would have saved $100, $200 worth of gravel. We would have saved even more than that, Mr. Bushman, because the cost of labor to put it down, there was a double labor to take it back and put it on the Dumpster.

Q That is my point.

This settlement that didn't occur on the 21st in Mr. Gourley's office, this first settlement, how expensive

1 to go out and put a sidewalk down with his bare hands, and
2 I think it's completely irrelevant and immaterial.
3 THE COURT: Sustained.
4 BY MR. BUSHMAN:
5 Q Calling your attention to the conversation with
6 Mr. Gourley at the time you left his office, did you feel
7 that you had provided him with all of the information to
8 conduct the settlement on your behalf?
9 MR. TROTTER: Your Honor, this is highly leading.
10 THE COURT: It's cross examination and he does
11 represent another party, and I think he can lead.
12 MR. TROTTER: He is asking for his mental impres-
13 sion.
14 MR. BUSHMAN: I would withdraw the question.
15 BY MR. BUSHMAN:
16 Q Mr. May, do you handle settlements on May Properties
17 yourself as you have described earlier -- that is, going to
18 the lawyer's office and providing them with information?
19 A I go to every settlement myself, yes, sir.
20 Q How many settlements in your thirty years or so
21 of construction have you actually gone to?
22 A 700, 800.
23 Q And when you go to settlements, what documents do

1 you normally bring with you?

2 A The same thing as in this file, sir.

3 Q Have you ever had any difficulties in any other

4 settlement?

5 A This is the first one.

6 MR. TROTTER: I don't believe that is material,

7 Your Honor, and I object.

8 THE COURT: Sustained.

9 BY MR. BUSHMAN:

10 Q When you were at Mr. Gourley's office, did you

11 know or were you aware that you were missing any documents?

12 A No, sir.

13 Q Did Mr. Gourley ever call you to tell you that day,

14 to inform you?

15 A I testified that he called about 5:30 and said I

16 was missing something; he didn't recall seeing the RUP.

17 Q Mr. Trotter made reference in one of the questions

18 about a split between you and Dr. Albright as a result of

19 the potential sale of this property. You testified there

20 was none.

21 A Positively.

22 Q Are you going to share in it if Mr. Haythe gets

23 this house and goes to sell it to anybody?

PLF-DEF-EX. # 1
DATE 1/17/79
JUDGE
21.590

Evermay

LOT RESERVATION AGREEMENT AND AGREEMENT OF CONTRACT

This Agreement, made and entered into this 28th day of February, 19 76, at Fairfax County, Virginia sets forth the agreements of the parties that for and in consideration of the sums paid herewith and to be paid hereafter to May Properties, Inc. by Winston M. Haythe and Gerald R. Haythe hereinafter called Payors, and other good and valuable undertakings, agreements, and considerations exchanged and received by the parties as stated herein, the parties agree as follows:

1. During the term of this Agreement, May Properties, Inc. agrees to reserve for Payor's purchase Lot Number 113, Section 6, Evermay, Fairfax County, Virginia together with a residence to be constructed thereon by May Properties, Inc., and to decline acceptance of all offers thereto from others until 4/7/77, 19____, which latter date is hereafter called the Termination Date or until this Agreement is otherwise terminated as herein provided and to provide to Payors construction schedules, advice as to type house suitable for this Lot, and similar and related construction data and advice relative to the planned construction.

2. Prior to the Termination Date and in accord with the schedule and normal procedure of May Properties, Inc. Payors agree to enter into planning conferences with May Properties, Inc. to develop preliminary plans of the residence to be constructed on said Lot. Failure by Payors to abide by and comply with the foregoing shall constitute a breach of this Agreement by Payors.

3. Payors agree to enter into a purchase contract a blank copy of which is attached hereto for the aforesaid Lot together with a residence to be constructed thereon by May Properties, Inc. no later than seven days following completion of final plans drawn beginning on the Termination Date in accord with the schedule and normal procedure of May Properties, Inc. The residence to be constructed hereunder is agreed to be one selected from the Evermay Plan Book, the scope and range of which the Payors are fully aware, or a variation of a Plan Book plan, or a non-Plan Book plan, provided such plan variation or non-Plan Book plan is approved by May Properties, Inc. and provided such plan variation or non-Plan Book plan in the sole discretionary determination by May Properties, Inc. conforms to standards of design, construction, architecture, value, size, and price range as reflected by the Evermay Plan Book and the Evermay community development. All construction is agreed to be in conformity with current Evermay features of construction and specifications and subject to the Evermay Community Restrictions and Builder's Warranty, copies of which are attached hereto, the scope of which are understood, acceptable to, and concurred in by Payors. Any and all house plans shall remain the property of May Properties, Inc. Failure by Payors to abide by and comply with the foregoing shall constitute refusal by Payors to enter into the aforesaid purchase contract.

4. The Payors have herewith paid to May Properties, Inc. the sum of One Thousand Dollars ($1000.00), receipt of which is hereby acknowledged. The Payors agree to pay to May Properties, Inc. an additional sum of One Thousand Dollars ($1000.00) on or before the Termination Date, the same being also the date upon which the preliminary plans are completed and the drawing of final, detailed construction plans commence. Both foregoing sums shall be credited as a deposit applicable to the purchase price when settlement is consummated under said purchase contract. Payor's purchase contract shall provide for deposit by Payors of an additional 5% of total house and lot contract purchase price payable on signing purchase contract for an Evermay Plan Book house and deposit of an additional 5% of said price payable when the house is under roof. Deposit by Payors at signing purchase contract for variations of Plan Book plans or for non-Plan Book plans shall be not less than 10% of total house and lot contract purchase price or be such other higher percentage selected by May Properties, Inc. The balance of the total purchase price, plus any extras as requested by Payors during construction, shall be paid by Payors in accord with the purchase contract upon substantial completion of contract construction, such being interior completed with no essential element missing and exterior complete except for items delayed due to weather limitations.

5. The Payors agree in consideration of May Properties, Inc. actions under this Agreement as aforesaid including the furnishing to Payors of construction schedules and data and advice as to type of house suitable for this lot, and similar and related construction data furnished to Payors incident to this Agreement, that

** (a) If Payors fail, refuse, or do not enter into the aforesaid planning conferences referred to in Paragraph 2 or upon failure, refusal, or notice prior to the Termination Date by Payors to May Properties, Inc. that they will not enter into said contract, then as to the sum of $1000.00 paid herewith, said sum shall immediately become the sole property of May Properties, Inc., non-refundable to Payors as full payment paid by them to May Properties, Inc. for actions and services performed by May Properties, Inc. under this agreement. The parties hereto agree in such event that this Agreement shall terminate and become null and void and all parties hereto be released from all terms of this Agreement.

** (b) If subsequent to the Termination Date and/or date upon which the drawing of the final, detailed construction plans commence, and/or finish Payors fail, refuse, or do not enter into the aforesaid purchase contract at the time referred to in Paragraph 3 or upon notice by Payors to May Properties, Inc. that they will not enter into said contract, then as to the sum of $1000.00 paid herewith and as to the additional sum of $1000.00 paid on or before the Termination date, said sums shall immediately become the sole property of May Properties, Inc., non-refundable to Payors as payment in full paid by them to May Properties, Inc. for actions and services performed by May Properties, Inc. under this Agreement. The parties hereto agree in such event that this Agreement shall terminate and become null and void and all parties hereto shall be released from all terms of this Agreement.

*** 6. May Properties, Inc. hereby advises Payors that Evermay Plan Book prices stated on Evermay price list of Feb., 1976 are firm as of that date only. It is agreed between the parties that Evermay Plan Book prices as stated on price list and as adjusted below to date of this Agreement may be additionally increased to date of contract at the rate of not more than 4% per year prorated over the year (s) or any portion thereof between this date and contract date to cover increased costs of labor and materials incurred or to be incurred in construction for this particular lot. If at time of entering into the purchase contract May Properties, Inc. proposes a price increase due to increased costs of labor and materials in excess of the above percentage, prorated, then Payors may terminate this Agreement no later than two weeks prior to the Termination Date and the $1000.00 sum paid herewith shall be refunded to Payors whereupon this Agreement shall terminate and all parties released from all terms of this Agreement. It is further agreed that when the Payors have entered into a purchase contract at the termination date mentioned above that all further price increases after that date as to items then contracted for between the parties as to this lot and structure will be borne in full by May Properties, Inc.

7. All prices are to be increased by extras ordered by Payors. In the event any sales or use taxes are imposed or paid with respect to any component included in or embodied in the development and construction of this lot and its improvements, or with respect to the sale of said property to Payors then Payors agree to pay directly or reimburse the amount of such taxes to May Properties, Inc. in addition to the purchase price otherwise applicable to said property. Prices otherwise applicable to said property do not include any financing charges initiated by purchaser.

8. Payors acknowledge they have been advised that the approximate 14 acre parcel across State Route 123 on the northerly boundary of Evermay is under the control of officers of May Properties, Inc. and that they are further advised that it is not the intention of said officers to develop said property into single family dwellings.

9. This Agreement is personal to the Payors and shall not be assigned or transferred by them. May Properties, Inc. reserves the right to return the sums paid hereunder and cancel this Agreement without liability or obligation on its part in case of war, national emergency, or major strike, or factors beyond the control of May Properties, Inc. or incompatibility between employees of May Properties, Inc. and Payors.

WITNESS the following signatures by which the undersigned hereby ratify, accept, and agree to the above and acknowledge it to be our Agreement on the date and at the place above named.

AS TO PAYORS

Home Address 6837 Sl. Albans Rd. Justin M. Hyatt
Mulcan, VA. 22101 Payor

Home Telephone 326-3532 Eleanor G. Hyatt
Payor

Office Telephone 497-6629 MAY PROPERTIES, INC.

By

PRICE INCREASE AS OF DATE OF THIS AGREEMENT = (-) 2,984

- * FOR LOTS WITH PREMIUMS OF $4,000.00 OR MORE, ADDITIONAL DEPOSITS OF TEN PERCENT (10%) OF THE PREMIUM PRICE WILL BE REQUIRED.
- ** DEPOSITS IN ADDITION TO THE $1,000.00 SUM ARE NONREFUNDABLE.
- *** DEPOSITS IN ADDITION TO THE $1,000.00 SUM ARE NONREFUNDABLE.
- **** ALL DEPOSITS ARE REFUNDABLE.

G.E. Kitchens in all Evermay Homes

#1,2 5%

SCHEDULE, EVERMAY - SECTION 6

LOT	PREMIUM*	MAXIMUM LENGTH	TYPE**	PRELIM. PLAN	FINAL PLAN	BRICK	ELEC. ROOF.	TRIM	PAINT	FINISH
106	2,900	73	B	4/30/76	6/30/76	9/18/76	11/6/76	2/23/77	4/13/77	4/27/77
107	2,200	73	B	6/18/76	8/18/76	11/6/76	12/23/76	4/13/77	6/1/77	6/15/77
108	6,900	78	B	8/6/76	10/6/76	12/23/76	2/13/77	6/1/77	7/20/77	8/3/77
109	5,300	93.5	SL	9/23/76	11/23/76	2/13/77	4/1/77	7/20/77	9/7/77	9/21/77
110	6,000	93.5	SL	11/13/76	1/13/77	4/1/77	5/20/77	9/7/77	10/26/77	11/9/77
111	4,300	93.5	SL	1/1/77	3/1/77	5/20/77	7/7/77	10/26/77	12/14/77	12/28/77
112	4,000	94	PB	2/20/77	4/20/77	7/7/77	8/26/77	12/14/77	2/1/78	2/15/78
113	3,800	105	PB	4/7/77	6/7/77	8/26/77	10/14/77	2/1/78	3/22/78	4/5/78
114	2,800	84	B,SL	5/26/77	7/26/77	10/14/77	12/1/77	3/22/78	5/10/78	5/24/78
115	5,900	93.5	SL	7/14/77	9/14/77	12/1/77	1/22/78	5/10/78	6/28/78	7/12/78
116	3,500	93.5	SL	9/1/77	11/1/77	1/22/78	3/10/78	6/28/78	8/16/78	8/30/78
117	2,900	93.5	SL	10/22/77	12/22/77	3/10/78	4/28/78	8/16/78	10/4/78	10/18/78
118	-3,000	86	SL	12/10/77	2/10/78	4/28/78	6/16/78	10/4/78	11/22/78	12/6/78
119	-3,000	86	NDB	1/28/78	3/28/78	6/16/78	8/4/78	11/22/78	1/10/79	1/24/79
120	-3,000	86	NDB	3/16/78	5/16/78	8/4/78	9/22/78	1/10/79	2/28/79	3/14/79
121	3,200	86	SL	5/4/78	7/4/78	9/22/78	11/10/78	2/28/79	4/18/79	5/2/79
122	4,800	93.5	SL	6/22/78	8/22/78	11/10/78	12/28/78	4/18/79	6/6/79	6/20/79
123	5,000	93.5	SL	8/10/78	10/10/78	12/28/78	2/18/79	6/6/79	7/25/79	8/8/79
124	4,200	86.5	SL	9/28/78	11/28/78	2/18/79	4/6/79	7/25/79	9/12/79	9/26/79
125	2,800	73	B	11/18/78	1/18/79	4/6/79	5/25/79	9/12/79	10/31/79	11/14/79
126	2,000	71	B	1/6/79	3/6/79	5/25/79	7/12/79	10/31/79	12/19/79	1/2/80

* = Price of lot in addition to 15,000 sq. ft. allowance. (All Evermay Book Plan prices are based on and include a 90 ft. wide, 15,000 sq. ft. lot of average topography, etc.)

** B = Daylight Basement Rambler or 2 Story .... SL = Split Level ....PB = Part Daylight Basement .... NDB = Non Daylight Basement.

Factors beyond the control of May Properties, Inc., if any, such as Fairfax County actions involving sanitary sewer availability, etc., will be brought to the attention of each purchaser immediately upon receipt by May Properties, Inc.

In the event of any such factors or actions beyond our control, construction dates will of necessity be changed to conform with current existing conditions.

Price is Firm.

261

Attach. #2

FILE DEF-EX. # 2
DATE 1/17/79
JUDGE
#59059

SALES CONTRACT
for an
EVERMAY HOME
By
May Properties, Inc.

Made this 13th day of June 19 77, between Winston H. Haythe, VENDEE, and MAY PROPERTIES, INC., VENDOR, WITNESSETH:

That for and in consideration of an initial deposit in the sum of Ten Thousand Seven Hundred Fifty (1000.00 + 1000.00 + 8750.00) Dollars ($10,750.00 (cash) (check), receipt of which is hereby acknowledged by May Properties, Inc., the Vendee agrees to buy and the Vendor agrees to sell for the sum of One Hundred Seventy Five Thousand Three Hundred Thirty Two Dollars ($175,332.00 all of Lot 113, Section 6, of Evermay Subdivision, Fairfax County, Virginia, together with the improvements to be erected thereon in accordance with the plans, features of construction, and specifications, signed by the parties, attached hereto and made a part hereof, and being identified further as a 12 room Brick Dwelling Plan No. B 233-6 Revised & enlarged.

This Contract is personal to the Vendee and shall not be assigned or transferred by them without Vendor Approval.

The said improvements to be erected in a good and workmanlike manner. Construction under this contract is subject to Builder's Warranty dated May 1970 and Evermay Restrictions, attached hereto and made a part hereof and accepted completely by the Vendee. The Vendor will make no changes in the aforesaid plans, features of construction, and specifications without the permission of the Vendee to make such change and the Vendee's agreement on the charge or credit to be made therefor.

TERMS OF SALE: The Vendee agrees that when the dwelling being erected under this contract is under roof, they will make an additional deposit to May Properties, Inc. in the amount of Eight Thousand Seven Hundred Fifty (Dollars ($8750.00). At scheduled date of settlement the Vendee agrees to pay in cash the above-mentioned purchase price, plus any extras as requested by Vendee during construction, the above mentioned deposits being a portion thereof.

The Vendor agrees to convey the above described property by General Warranty Deed prepared at the expense of the Vendor. Examination of title, conveyancing, notary fees and all recording charges, such as Virginia Revenue Stamps and including those for purchase money trust, if any, to be at the cost of the Vendee. Trustees in all deeds of trust are to be named by the parties secured thereby. All taxes, insurance, rents, and interest are to be pro-rated as of the day of settlement. The property is sold free and clear of all liens or indebtedness of every kind. This property, however, is to be conveyed subject to any and all restrictions of record now thereon, and/or attached hereto, and subject to any utility easements that the Vendor may have to grant or reserve to facilitate the development of any surrounding property, or subject property.

It is further understood and agreed that all risk or damage to the property prior to possession, occupancy, use, or settlement by the Vendee in whole or in part, whichever occurs first, from fire, storm or other hazard are to be the responsibility of the Vendor and that thereafter the said risk or damage shall be the responsibility of the Vendee. Vendee agrees not to place, install, or construct anything in or on the premises contracted for prior to settlement.

In the event of a defective title, the deposit is to be returned and the sale declared off at the option of the Vendee, unless the defects are of such a character that they may be readily remedied by legal action by the Vendor. Vendor will hereby expressly be relieved from all liability for damage by reason of any defect in title. In case legal steps are necessary to perfect the title, such action must be promptly taken by the Vendor at the expense of the Vendor, whereupon the time herein specified for full settlement by the Vendee will thereby be extended for a period necessary for such prompt action. If settlement is not made because of defective title, the Vendor agrees to pay all title charges incurred.

Possession to be given on date of settlement. Settlement shall be made upon substantial completion of contract construction of the plans attached hereto. Substantial completion on or before ----4/5/78---------- Substantial completion shall be interior completed with no essential element missing and exterior complete except for items delayed due to weather limitations. Additional time for such completion shall be allowed the Vendor for delays occasioned by war, national emergency, factors beyond the control of Vendor or a major strike. The Vendee agrees to make settlement at the offices of --------to be selected---------- If the Vendee shall fail to settle, the deposits herein provided may be forfeited at the option of the Vendor, in which event the Vendee shall be relieved from further liability hereunder, or without forfeiting the said deposits, the Vendor may avail themselves of any legal or equitable rights which they may have under this contract.

Vendee acknowledges they have been advised that the approximate 14 acre parcel across State Route 123 on the northerly boundary of Evermay is under the control of officers of May Properties, Inc., and that they are further advised that it is not the intention of said officers to develop said property into single family dwellings.

*Price to be increased in amount of any sales or use taxes imposed or paid with respect to any component included in or embodied in the development and construction of this lot and its improvements, or with respect to the sale or transfer of said property to Vendee.

WITNESS THE FOLLOWING SIGNATURES by which the undersigned hereby ratify, accept and agree to the above contract of sale and acknowledge it to be our contract.

Winston M. Haythe ---------- Vendee ---------- Vendee

Winston M. Haythe

MAY PROPERTIES, INC.

By ----------

GENE H. MAY, President

Vendor

ACKNOWLEDGMENT

STATE OF VIRGINIA

_____ OF _____, to wit:

I, _____, a Notary Public in and for the _____ and State aforesaid, do hereby certify that _____ and _____, his wife, whose names are signed to the foregoing writing bearing date on the _____ day of _____, 19_____, have personally appeared before me in my _____ aforesaid and acknowledged the same. GIVEN under my hand this _____ day of _____, 19_____

My commission expires _____

_____
Notary Public

STATE OF VIRGINIA

_____ OF _____, to wit:

I, _____, a Notary Public in and for the _____ and State aforesaid, do hereby certify that _____ as _____ of MAY PROPERTIES, INC., a Virginia Corporation, whose name is signed to the foregoing writing bearing date on the _____ day of _____, 19_____, has personally appeared before me in my _____ aforesaid and acknowledged the same. GIVEN under my hand this _____ day of _____, 19_____ My commission expires _____

_____
Notary Public

SPECIFICATIONS IN ADDITION TO PRINTED SPECIFICATIONS
Lot 113, Section 6, Evermay

Plan B 233-6 Revised with window, door, closet, fireplace, bath, attached garage and room arrangement per plan.

Heat & Cooling in Basement & First Floor
CHP 130 York blower, 10 K.W. furnace
CHP 030 York heat pump
FH 400 C Humidaire humidifier
Heat & Cooling in Upper Level B.R. Area
CHP 130 York blower, 10 K.W. furnace
CHP 030 York heat pump

3/4" - 1" Urethane wall insulation on all finished block wall areas.

Wet bar per plan, birch plywood cabinets, Formica tops &under counter bar refrigerator.

Kern wood double hung windows with storm window allowance.

Exterior brick belt per plan.
Brick corner quoins per plan.

TFF 24R GE refrigerator.
Water line to refrigerator.
JKP 97 G microwave GE double oven.

220 volt dryer line. P.T.(N. I.)
Dryer vent.
12' X 16'-4" ground supported(floating) concrete patio per plan.

Automatic garage door controls.

Sump pump in basement per plan.

Elec. fixtures (Extra allowance) 1,000.00

42" fire place in rec. room.

Area way entrance to basement per plan.

Exterior brick,
Rec. rm. F.P. brick,
Fam. rm. F. P. brick,
L.R.F.P. brick,

265

Winston M. Haythe

6/18/77

Gene H. May, President
May Properties, Inc.

PROPERTY SETTLEMENT AGREEMENT

THIS AGREEMENT made this 16th day of December, 1976, by and between GLENANN R. HAYTHE, hereinafter referred to as the Wife; and WINSTON M. HAYTHE, hereinafter referred to as the Husband.

W I T N E S S E T H :

WHEREAS, the parties hereto were married to each other on the 17th day of August, 1963, in Springfield, Missouri; and certain unfortunate differences have arisen between the parties which appear to be irreconcilable; and they have been living separate and apart since on or about August 28, 1976; and

WHEREAS, three (3) children were born of the marriage; namely, Sheila Elaine Haythe, born February 14, 1969; Kevin McDonald Haythe, born January 20, 1971; and Rhonda Leigh Haythe, born July 17, 1973; and

WHEREAS, the parties hereto are desirous of entering into this Agreement in order to settle their several real and personal property rights and the custody of the said minor children of the parties and any and all other rights existing between them.

NOW THEREFORE, in consideration of the premises, and the sum of One Dollar ($1.00), lawful money of the United States of America, by each of the parties to the other in hand paid, receipt of which each duly acknowledges, and in further consideration of the mutual promises, covenants, agreements and undertakings hereinafter more fully set forth, and for other good and valuable consideration, the Wife and Husband agree as follows:

PLF DEF EX. # 3
DATE 11/17/79
JUDGE
#59059

3. The parties are joint contract purchasers of unimproved real property more particularly described as Lot 113, Evermay, Fairfax County, Virginia, and the Wife agrees to release, remise and quit claim to the Husband any and all interest she may have in and to said realty by virtue of said purchase contract upon presentation to her of such document or ducuments as will accomplish same subsequent to the execution of this Agreement. The Husband agrees to thereafter be solely responsible for the execution of the terms of said real property purchase contract and to hold the Wife harmless from any suits, actions at law, judgments, indebtedness, liens, encumbrances or other penalties at law or in equity in the event of his failure to perform the terms of said real estate purchase contract. The Husband agrees that he shall be solely responsible for all costs incident in accomplishing the purposes of this paragraph.

XVIII

GOVERNING LAW

The validity, enforceability and interpretation of this Agreement shall be determined and governed by the laws of the Commonwealth of Virginia.

The effective date of this Agreement shall be the 16th day of December, 1976. My Commission expires 6/6/77

IN WITNESS WHEREOF, the parties have signed, sealed, and acknowledged this Agreement.

/s/ Glenann R. Haythe
GLENANN R. HAYTHE (Seal)

/s/ Winston M. Haythe
WINSTON M. HAYTHE (Seal)

STATE OF VIRGINIA

COUNTY OF FAIRFAX, to wit:

I, _____, a Notary Public in and for the County aforesaid, do hereby certify that GLENANN R. HAYTHE, whose name is signed to the foregoing instrument, has personally appeared before me in my County aforesaid and acknowledged the same.

GIVEN under my hand this _____ day of _____, 1976.

_____
Notary

My Commission expires_____

STATE OF VIRGINIA

COUNTY OF FAIRFAX, to wit:

I, Elizabeth A. Hochholzer, a Notary Public in and for the County aforesaid, do hereby certify that WINSTON H. HAYTHE whose name is signed to the foregoing instrument, has personally appeared before me in my County aforesaid and acknowledged the same.

GIVEN under my hand this 16th day of December, 1976.

Notary

My Commission expires 6/6/79

EVERY FEATURES OF CONSTRUCTION AND SPECIFI

MAY PROPERTIES, INC.

LOT AND PLANS

All book prices are based on and include a 90 ft. wide, 15,000 square foot lot, brick construction and hand split Cedar Shake roof. All plans are individually designed by May Properties, Inc., to conform to each individual lot.

FOUNDATION AND BASEMENT

Footings of 1-2-4 concrete mix. Walls of cinder block. Water proofing. ½" parge-tarred. Brick piers. Brick sills. Galvanized window areaways for windows below yard grade with drain tile. 4" TC tile footing drain around outside perimeter of basement. 4" concrete basement floor over 3" stone/gravel separated by layer of 4 mil poly waterproof membrane. Plan Series S, SL, . S and 2SSFR with slab construction for living area floors 7" to 15" above front yard grade of 4" concrete over 4" washed gravel separated by 4 mil poly waterproof membrane. Where applicable (subject to low virgin lot grade as indicated on sales plat by SL-CS, or when requested by purchaser) main living areas of the SL type plans will be constructed with a crawl space under in lieu of slab construction on virgin grade. Drain tile and waterproofing as mentioned above plus termite shield is used in this type of construction. Foundation soil of all dwellings treated with Dieldrin solution for the prevention of termites.

CHIMNEYS, FIREPLACES, HEARTHS, MANTLES AND EXTERIOR WALLS

Brick chimneys with 13" x 13" TC flue for 36" fireplace opening with poker control damper. Larger fireplace openings as noted per scale on some plans, with 13" x 18" TC flue. Brick fireplace facing. Fire brick lining. Tile, brick or slate hearths. Choice of Morgan stock wood mantles or brick faced profiles without mantles. Exterior walls of brick with optional veneer fronts. Brick allowance to $70.00 per thousand. Brick backed with 4" cinder block and back parged with wall ties. Concrete door sills. Brick window sills. Steel and slag lintels.

FRAMING, SUB-FLOORING, WOOD FLOORING, ROOFING AND GUTTERS

Framing of No. Two and better Douglas fir. All sizes of framing in accordance with Fairfax County building code. Sub-flooring and roof sheathing of ½" and 3/8" plyscord sheathing. Finish flooring for main living and bedroom areas of clear grade 2¼" strip oak sanded, 2 coats sealer and waxed. Finish flooring for concrete slab main living areas of S, SL, 2S and 2SSFR type plans of Harris Bond wood block floor eagle prime grade 5/16" x 1" x 5" solid oak glued to slab, sanded, 2 coats sealer and waxed. 8' strip of ½" plyscord attic flooring. Hand split Cedar Shake roof over 30 lb. felt. Roof substitutions only as approved by May Properties, Inc., and if they are equivalent in cost to a Cedar Shake roof. Copper flashing and valleys. Aluminum downspouts and aluminum gutters. Vinyl splash blocks. *STRIP AND BLOCK FLOORING ALLOWANCE = .90 PER SQ. FT.

PLUMBING

American Standard fixtures of same design and quality as model house. Choice of colors in two baths. Double sink in kitchen finished in color, stainless steel, or white. Laundry tray in utility room. Hot and cold water outlet over laundry tray for automatic washer connection. ABS waste and vents. Cast iron soil pipes, with no hub joint. Copper water tubing. Three outside sill cocks. 80 gallon electric glass lined hot water heater. Public sewer and water. 1" water tap and service. ¾" water meter.

HEAT

Heat in finished areas only. Elec. hot air (single Bryant furnace unless otherwise noted on plan) with ducts suitable for future air conditioning. Dual Bryant Hot Air furnaces when noted on plan as dual H.A. or H.W.H. Condensate drain installed for future air conditioning on all heating systems. All heating systems guaranteed to heat dwelling to 70 degrees at zero temperature.

ELECTRICAL

300+ ampere electric service with circuit breaker panel box. Non metallic electric cable. Quiet switches. $300.00 cash allowance for electric fixtures. Lights with pull chain switch in all closets. Two exterior waterproof electrical outlets. One exterior flood light. Exterior lights at all entrance doors. Three telephone outlets. Two television outlets. Underground electric service from VEPCO line to dwelling. VEPCO lines underground except for existing 120,000 volt main line, on Route 688.

INSULATION

6" fiber glass batts stapled between ceiling joist at attic level of living areas, full thick in basement garage ceilings and slope ceilings. Fiber glass builder batts in veneer walls, ½" Alfol insulation in all finished area exterior masonry walls. Styrofoam perimeter insulation for all slab areas and crawl spaces, except basements below grade and garages.

HARDWARE, SCREENS, LOUVERS, RAILINGS AND SHOWER DOORS

Solid brass Schlage Plymouth design, F series locks with Dexter solid brass No. 52 door handles at front doors. All locks keyed alike except garage door. Storm window ALLOW. of 600.00. (No venetian blinds or pull shades.) Aluminum or copper weather stripping on all wood windows. Aluminum or chromic thresholds on all exterior doors. No screen doors. Aluminum gable louvers except on hip roofs. Approximately 4" wide aluminum soffit perimeter ventilating screen for hip roof dwellings. Ornamental iron railings and trellages inside and outside when applicable. Door knocker. Mail box at street. House numbers. Window locks. Door bumpers. Aluminum shower doors for all shower stalls except basement showers.

LATH AND PLASTER

Main living and bedroom areas of 3/8" rock lath and two coats of plaster, white trowel finish on furred walls. Basement areas except utility, laundry and garage of 3/8" rock lath and two coats of plaster, white sand finish on furred walls. (Garage ceiling of white sand finish plaster.)

DOOR, TRIM, WINDOWS, SHUTTERS, STAIRS, PATIO DOORS AND GARAGE DOORS

Interior masonite doors 1 3/8", 2¼ DC 98 door and window trim. Chair rail in kitchen and dining room. Morgan exterior doors. 4" crown ceiling mold at living room and dining room flat ceilings. 2½" white pine baseboard with O.G. mold. Morgan double hung cover-seal windows. Center picture windows of fixed special sash (small pane style). Choice of louver or 2 panel shutters where applicable on front of dwelling. Stairs of oak treads and risers with wood hand rail. Ornamental iron rail around stairwell except in basement areas. Redwood exterior mill work except soffit areas of wide overhangs (wide soffits of plywood) Disappearing stair to attic. Shelving material of No. 2 white pine. Peachtree aluminum patio doors, or equivalent, with 5/8" insulated glass. Overhead garage doors.

DECORATING

Choice of any color for exterior and interior wood trim, doors and finished walls. (No charge for job mixing colors by May Properties, Inc.). White or off-white on all smooth plaster ceilings. (Sand finish plaster ceilings are of an off-white installation and are not painted.) Wall paper allowance $2.00 per single roll including labor and material. Two coats of American or Duron oil base paint for plaster walls. Three coats of Duron oil base enamel satin finish for interior wood trim, windows and doors. Interior smooth plaster ceilings of American flat oil base paint. One coat of primer plus two coats of exterior Duron oil base paint on outside windows. Three coats of exterior Duron oil base paint on exterior redwood trim. Two coats of exterior Duron oil base paint on exterior pine or plywood trim. All Duron and American paints are of the best grade and are used interchangeably for priming coats.

KITCHEN CABINETS, COUNTER TOPS, HOODS AND FANS

Rutt cherry cabinets. Formica, Textolite or Nevamar counter tops. NuTone 3000 Series hood and 3063 Series fan over burner. Fan vented to exterior of dwelling.

KITCHEN EQUIPMENT

GE refrigerator – TBF-15, 14.7 Cu. Ft., 2 door, frost guard. Oven – JK16 self cleaning model. Burner – JP6. Dishwasher – SD661. Disposal – FA551. (Or equivalent current model as to each.)

BATHROOM VANITIES AND ACCESSORIES

Formica, Nevamar or Textolite vanities by Lin-Mar when indicated on plan. Choice of American Standard round, oval or rectangular bowls. 42" high, full length mirror above all vanities. One Turnette 8090, concealed lavatory unit with each vanity. American Standard F 124 lavatory with Miami medicine cabinet above in lieu of vanity when indicated on plan. Ceiling exhaust fans in baths without windows.

KITCHEN AND BASEMENT FLOORS

Kitchen floor: Choice of Armstrong linoleum standard gauge or Kentile solid vinyl marbelized patterns standard gauge. Basement floor: C grade asphalt tile floor in recreation room, hall, den and bed room areas of SL, B, and SLF type plans. Concrete floors only in garage, furnace, utility and laundry rooms of all plans.

CERAMIC TILE

Wall tile of stock 4¼ x 4¼ glazed standard or Essexx grade by Wenczel. Floor tile of unglazed 1 x 1 Modular or Stardust range by Keystone Ridgeway. Quick-set fixtures by Mosaic. Color, chrome or white tile fixtures. Wall tile to 6' height above floor in all tub and shower areas, and 4' high in all toilet areas except basement bath and ½ baths. Tile floor and base only in vanity areas. ½ bath, and in toilet and lavatory areas of basement bath. Marble thresholds.

DRIVEWAYS, WALKS, PATIOS, LAWNS AND LANDSCAPING

Asphalt drives 4½" thick, 10' wide to 30' aprons for side and rear entrance garages. 17' to 19' wide for front entrance garages. 2' x 4' rectangular Pennsylvania stepping stones from front door to street or drive. Exposed aggregate concrete stoops and patios. Seeded yards of Kentucky No. 31 fescue. Fertilizer of 10:6:4, 10:5:5 or equivalent mixture is applied on entire seeded area. $500 cash tree and shrub allowance.

All final specifications to be either the equivalent of the above, or as approved by May Properties, Inc., at their discretion.

All allowances noted above are included in plan book prices.

*Flooring allowance due to fluctuating market.

February, 1973

FLE DEF EX. # 4
DATE 11/7/79
JUDGE
#59059

Def. Pltf. Ex. 2
For Ident. In Evid.
Date 6-28-78
Reporter Fuller

AGREEMENT OF ASSIGNMENT

THIS AGREEMENT OF ASSIGNMENT made this 19th day of March 1978, by and between Robert J. McNeal and Jean P. McNeal, hereinafter known as the Assignees, and Winston M. Haythe, hereinafter known as the Assignor.

WITNESSETH: That for and in consideration of an earnest money deposit of $Five Thousand& no/100 ($5,000.00) to be applied as part of the payment of the sum to be paid by the Assignees to the Assignor for the assignment of a contract for the purchase of Lot 113, Section 6, Evermay Subdivision, Fairfax County, Virginia, together with the improvements thereon,

1. Assignor agrees to transfer and assign all of his rights, title, interest, duties, obligation, and responsibilities to the Assignees of a certain "Sales Contract for an Evermay Home by May Properties, Inc.", which contract was made and executed on or about June 18, 1977 between the Assignor as Vendee under said Contract and May Properties, Inc. as Vendor by Gene H. May, President.

2. The sum to be paid by the Assignees to the Assignor for the assignment of this contract at the time of delivery of a Deed to Assignees is TWO HUNDRED THIRTY THREE THOUSAND DOLLARS ($233,000), out of which amount all sums due and owing by the Assignor to May Properties, Inc. shall be dispensed by the settlement attorney directly to May Properties, Inc.

3. The above-referenced contract between May Properties, Inc. and the Assignor is attached hereto and incorporated herein by reference, as is also a set of "Evermay Restrictions", as well as a set of the architectural plans for the colonial residence currently under construction on Lot 113, Section 6, Evermay Subdivision, Fairfax County, Virginia, and a copy of the "Evermay Builders Warranty".

4. The assignees accept said contract, as amended by fourteen (14) change orders, as is and the Assignees further agree to accept the selections

PLD DEF. EX. #6
DATE 11/17/77
JUDGE
#59059

2

previously made by the Assignor for all electrical lighting fixtures, wall-coverings for all bathrooms, dining room, kitchen and bar, as well as all paint selections heretofore made by the Assignor.

5. The Assignor agrees that the said residence when completed, in addition to the items of specification as set forth in the above-referenced documents relating to the construction of said residence, shall be equipped with storm windows on all windows except the garage (which shall be equipped with screens) and the lot will be sodded with quality grass.

6. Both the Assignor and the Assignees covenant, agree, and understand that the assignment of the Evermay contract intended herein is a personal contract to the Assignor by May Properties, Inc. and shall not be assigned or transferred by the Assignor without approval by the President of May Properties, Inc.; accordingly, the Assignor and the Assignees agree that this agreement of assignment is conditional on the approval by the President of May Properties, Inc. of said assignment. However, if such approval of assignment is not granted by the President of May Properties, Inc. this agreement shall be null and void; nevertheless, the Assignees agree to enter into a separate Contract of Purchase with the Assignor upon the same terms and conditions as set forth in this agreement of assignment for the purchase of Lot 113, Section 6, Evermay Subdivision, Fairfax County, Virginia, and the Assignees agree to go to settlement with the Assignor on or about April 21, 1978, with a General Warranty Deed being executed by the Assignor to the Assignees immediately after a General Warranty Deed to said property is executed by May Properties, Inc. to the Assignor.

7. This agreement is contingent upon the Assignees obtaining a first deed of trust for one hundred twenty-five thousand dollars ($125,000) at 9½% interest or better. The Assignees shall make loan application within three (3) days after the date of acceptance of this agreement. Should the above described financing not be obtainable, then this agreement shall be null and void and all monies on deposit shall be returned in full to the Assignees.

7a. Terms of this Agreement shall survive the delivery of the deed to Assignees.

8. Should the Assignees fail to perform the requirements of this assignment or be unable to obtain financing as provided above, the Assignor shall remain fully liable to May Properties, Inc. under the terms and conditions of the Everymay contract executed June 18, 1977 for the purchase of Lot 113, Section 6, Evermay Subdivision, Fairfax County, Virginia and the erection of a residence thereon.

9. The Assignees agree that they have bean informed that the Assignor is a duly licensed real estate agent within the Commonwealth of Virginia and is also a duly licensed attorney at law, admitted to practice before the highest court of the Commonwealth of Virginia.

Winston M. Haythe (L.S.)

Robert J. McNeal (L.S.)

Jean P. McNeal (L.S.)

This _____ day of March, 1978, the above assignment of an Evermay contract is hereby accepted by May Properties, Inc.

_____
Gene H. May, President
May Properties, Inc.

Evermay

MAY PROPERTIES, INC. Builders • Developers

1200 POTOMAC SCHOOL ROAD McLEAN, VIRGINIA 22101

RECEIVED JUL 13 1978 BOOTHE, PRICHARD & DUDLEY

March 21, 1978

Def. Pltf. Ex. 3
For Ident. ✓ In Evid.
Date 6-28-78
Reporter Fields

Mr. Winston M. Haythe
6837 St. Albans Drive
McLean, Virginia 22101

Dear Mr. Haythe:

Re: Settlement of Lot 113, Section 6, Evermay.
Completion: 4/19/78
Inspection: 4/20/78 @ 8:30 A.M. - 12:30 Noon
Settlement: 4/20/78 @ 4:00 P. M.

I talked with you by telephone on 3/6/78 and again on 3/20/78 recommending that you select a title attorney and secure a loan committment, if needed, so no last minute delays would be encountered on the settlement date noted above.

Since you have not furnished this information, we enumerate below all the information needed by your title attorney and request that you give a copy of this letter to him and the lending institution.

We enclose a copy of the Contract and Recorded Restrictions to be given to your title attorney.

The price per the 6/18/77 contract is $175,332.00 with four deposits as follows:

3/5/76	1000.00
4/25/77	1000.00
6/18/77	8750.00
10/24/77	8750.00
Total deposits	19,500.00

Settlement is to be at the office of _____ on 4/20/78 @ 4:00 P. M. (Please advise us by letter of the Title Company, address and telephone number)

Extras in addition to the contract price will be furnished to you several days prior to settlement. Those extras are to be noted on

PLF DEF-EX. # 7
DATE 1/17/79
JUDGE
#59059

(2)

the settlement sheet as "Extras in addition to the contract price".

Real property taxes will be adjusted as of 4/20/78. The value established by Fairfax County as of 1/1/78 is $73,745.00.

The taxes from 1/1/78 to 4/20/78 = $73,745.00 at $1.77 per hundred = $1305.29 per year = $3.576127 per day x 110 days = $393.37. This amount is to be credited to the purchaser.

The survey is to be by DeLashmutt Assocaites. Please contact them at 527-2588 or 527-5588 and inform them of the title attorney's name and address.

A Termite Certificate, Occupancy Permit, General Warranty Deed drawn by the law firm of Herrell, Campbell & Lawson, Release of Lien and a Builder's Warranty "To the original purchaser" will be furnished on date of settlement.

We request that all monies except for the lending institution funds, if any, be by certified or cashier's check.

If you have any questions, please call 356-0500.

Sincerely yours,

Gene H. May, President
May Properties, Inc.

cc: DeLashmutt Associates, 1327 Court House Rd., Arlington, Va. 22211

cc: Herrell, Campbell & Lawson, 1400 N. Uhle St., Arlington, Va. 22201

Enclosures to be given to title attorney and lending institution.
1 - copy for title attorney
1 - copy for lending institution

GHM:b

Routh Robbins Realtors

A Coldwell Banker Company

RELEASE AGREEMENT

April 22, 1978

REFERENCE is made to a Purchase Agreement dated March 19, 1978 ming Robert J. McNeal and Jean P. McNeal as Purchasers, d Winston M. Haythe and ---- as Owners, r the purchase of property located at 1209 Perry William Dr., McLean, Va. and legally described as Lot 113, Section 6, ermay, Fairfax, Va., naming Routh Robbins Real Estate orporation as Agent.

NOW, THEREFORE, in consideration of good and valuable services, hich consideration is deemed sufficient,

he Purchasers ~~[illegible]~~ Robert J. McNeal and Jean P. McNeal,

he Owners Winston M. Haythe and ----,

nd the Agent, Routh Robbins Real Estate Corporation, do hereby mutually elease each other from all the terms and conditions of the hereinbefore-escribed Purchase Agreement for now and forevermore and, further, do ereby authorize said Agent to return in full the earnest money deposit o the Purchaser. The reference to Purchase Agreement in this Release Agreement shall clude the two (2) agreements signed by both the Seller and Purchaser (1. Agreement of signment and 2. the agreement authorizing Routh Robbins Real Estate Corp. to hold rnest Money deposit) as well as the Finders Fee Agreement signed by Seller and Routh bbins Real Estate Corp. and Gardner Homes, Realtors.

LL OF THE HEREINBEFORE-mentioned parties do herein and hereby certify hat they have read carefully the terms of this Release Agreement and, n affixing their signatures hereto, they certify that they enter into his Agreement in a spirit of good will and mutual cooperation without he use of force or coercion upon the part of any of the parties hereto.

Winston M. Haythe
eller

Robert J. McNeal
Purchaser Signed on behalf of Jean P. McNeal per authority in Datagram dated 4-24-78.
By Richard Blume Resident Manager, McLean Offic

eller

Jean P. McNeal
Purchaser

ROUTH ROBBINS REAL ESTATE CORPORATION

r- Gardner Homes, Realtors

PLF-DEF-EX. # 8
DATE 11/7/79
JUDGE
#59059

By: Richard Blume

Attach #8

HERRELL, CAMPBELL & LAWSON
ATTORNEYS AT LAW
1400 NORTH UHLE STREET
ARLINGTON, VIRGINIA 22201
(703) 524-7600

PAUL G. HERRELL (1917-1974)
J. STROUSE CAMPBELL
WILLIAM BARNES LAWSON
NICHOLAS MALINCHAK
THOMAS J. COLUCCI
WILLIAM G. MURRAY
MARTIN D. WALSH

MAILING ADDRESS
P. O. BOX 787
ARLINGTON, VIRGINIA 22216

April 27, 1978

William J. Olson, Esquire
Jackson, Campbell & Parkinson
1828 L Street, N. W.
Washington, D. C. 20036

Re: Lot 113, Section 6
Evermay Subdivision

Dear Mr. Olson:

This office represents Gene H. May, President of May Properties, Inc. Mr. May informs us that he has read the architect's "punch list" concerning the above-described residence. He has corrected all of the items. We, therefore, hereby notify you that we will tender delivery of the Deed at 11:00 o'clock A. M. in the Record Room of the Fairfax County Court House on Friday, April 28, 1978. We expect that your client will bring a Certified Check, made payable to May Properties, Inc., for the total purchase price less the down payment, in order to consummate the transaction, at which time we will deliver the Deed to you and your client.

Sincerely yours,

HERRELL, CAMPBELL & LAWSON

Nicholas Malinchak

NM/j

cc: Mr. Winston M. Haythe
1512 Buena Vista Avenue
McLean, Virginia 22101

Tudor F. Gourley, Esquire
6810 Fleetwood Avenue
McLean, Virginia 22101

PLF-DEF-EX. # 9
DATE 11/12/79
JUDGE
#59059

25381

THIS DEED, Made this 27th day of April 1978, by and among MAY HOUSING CORPORATION, a Virginia corporation, party of the first part; MAY PROPERTIES, INCORPORATED, a Virginia corporation, party of the second part; and V. H. ALBRIGHT, party of the third part:

***** W I T N E S S E T H *****

THAT WHEREAS, the party of the first part is the record owner of the hereinafter described property together with the improvements thereon; and

WHEREAS, the party of the second part heretofore contracted to purchase said property from the party of the first part; and

WHEREAS, the party of the third part has contracted to purchase said property together with the improvements thereon from the party of the second part; and the parties of the first and second parts are desirous of conveying said property together with the improvements thereon directly to the party of the third part:

NOW, THEREFORE, in consideration of the sum of Ten Dollars ($10.00) in hand paid, receipt of which is hereby acknowledged, the parties of the first and second parts do hereby grant and convey with general warranty of title unto the party of the third part as and for her sole and separate equitable estate with full and complete authority in and to the party of the third part to alien, convey, encumber and otherwise deal with and dispose of the same by her sole act without necessity of joinder by or with any present or future husband of the party of the third part, the following described property situate and being in Fairfax County,

Newell, Crystal, Inc.

FILED DEF-EX. # 10
DATE 1/17/79
JUDGE

Virginia:

Lot 113, Section 6, EVERMAY, as the same appears duly dedicated, platted and recorded in Deed Book 4034 at page 93 among the land records of Fairfax County, Virginia;

AND BEING part of the same property conveyed to the party of the first part by Deed recorded in Deed Book 4339 at page 473 among the aforesaid land records;

TO HAVE AND TO HOLD the said property unto the party of the third part as her sole and separate equitable estate free from any liability whatsoever and from debts and claims against any present or future husband of the party of the third part and free from any curtesy rights or inchoate curtesy rights of any present or future husband of the party of the second part; and to alien, convey, encumber and otherwise deal with and dispose of the same by her sole act without necessity of joinder by or with any present or future husband of the party of the third part;

RESERVING, HOWEVER, UNTO THE PARTY OF THE SECOND PART, one of the grantors herein, a vendor's lien on the hereinabove described property, which said vendor's lien is evidenced by one note of even date herewith executed by the party of the third part in the principal sum of $169,000.00, bearing interest at the rate of 9% per annum, payable to the order of the party of the second part on or before one year after date with interest payable at maturity.

This conveyance is made subject to the restrictions, conditions and rights of way contained in the deeds forming the chain of title to the above property.

The parties of the first and second parts covenant that they have the right to convey the above described property; that

they have done no act to encumber said land; that the grantee shall have quiet possession thereof; and that the grantors will execute such further assurances of the land as may be requisite.

IN WITNESS WHEREOF, said MAY HOUSING CORPORATION has caused this Deed to be executed in its corporate name by GENE H. MAY, President, and its corporate seal to be hereto affixed and attested by NICHOLAS MALINCHAK, Secretary, said officers being thereunto duly authorized all as of the day, month and year first hereinabove written.

MAY HOUSING CORPORATION

ATTEST:

BY: _____
President

_____
Secretary

FURTHER, IN WITNESS WHEREOF, said MAY PROPERTIES, INCORPORATED, has caused this Deed to be executed in its corporate name by GENE H. MAY, President, and its corporate seal to be hereto affixed and attested by NICHOLAS MALINCHAK, Assistant Secretary, said officers being thereunto duly authorized all as of the day, month and year first hereinabove written.

MAY PROPERTIES, INCORPORATED

ATTEST:

BY: _____
President

_____
Assistant Secretary

Tax Paid
Sec 58-54 282 -
Sec 58-65.1 141 -
Sec 58-54.1 188 -
Consideration 188,000

STATE OF VIRGINIA, ARLINGTON COUNTY, SS:

The foregoing instrument was acknowledged before me this 28th day of April 1978, by GENE H. MAY, President, MAY HOUSING CORPORATION and MAY PROPERTIES, INCORPORATED, on behalf of said Corporations.

Ludwil R. Gaum, Jr.
NOTARY PUBLIC

My commission expires:
October 14, 1979

This instrument with certificate annexed, admitted to record-Office of Circuit Court Fairfax County, Va. APR 28 1978 at 11:30 a.m.

Testes: James E. Hoffman Clerk

A COPY TESTE:
JAMES E. HOFFMAN, CLERK
By: [illegible]
Deputy Clerk

TUDOR S. GOURLEY, JR.
ATTORNEY AT LAW
6810 Fleetwood Road
McLean, Virginia 22101
703/893-3050

Mailing Address:
P. O. Box 567
McLean, Virginia 22101

March 29, 1978

Gene H. May, President
May Properties, Inc.
1200 Potomac School Road
McLean, Va. 22101

Re: Lot 113, Section 6, Evermay
May Properties, Inc. - Haythe

Dear Mr. May:

I have been retained to conduct the above settlement on behalf of Mr. Haythe. I have scheduled settlement for 9:00 a.m., Friday, April 21, 1978 in my office.

At your earliest convenience please furnish my office with information on the pay-off of existing encumbrances, and any other charges not shown in your contract or letter of 3/21/78: to Mr. Haythe.

Very Truly Yours,

Tudor S. Gourley, Jr.-DR

Tudor S. Gourley, Jr.

TSG:pjr

PLF DEF-EX # 11
DATE 1/17/79
JUDGE
CASE # 59059

RECEIVED
JUL 13 1978
BOOTHE, PRICHARD & DUDLEY

April 3, 1978

Mr. Tudor S. Gourley, Jr.
P. O. Box 567
McLean, Virginia 22101

Dear Mr. Gourley:

Receipt of your letter dated 3/29/78, pertaining to Lot 113, Section 6, Evermay settlement is acknowledged.

We enclose a copy of a letter furnished to Mr. Haythe on 3/21/78 that pertains to this settlement. Please note that:

A. Settlement is to be at the office of Tudor S. Gourley, Jr., on 4/20/78, at 4:00 p.m.

B. Extras will be furnished you several days prior to settlement.
   1. The extras will be typed on 4/11/78 and given or mailed to Mr. Haythe.
   2. Mr. Haythe will furnish you these extras after his approval.

Your title examination will reveal that the title is free and clear of all encumbrances.

Sincerely yours,

MAY PROPERTIES, INC.

Gene H. May, President

GHM/b

PLF-DEF-EX # 12
DATE 1/12/79
JUDGE
CASE # 59059

Def. Pltf. Ex. 9
For Ident. In Evid.
Date 6-28-78
Reporter

12

TUDOR S. GOURLEY, JR.
ATTORNEY AT LAW
6810 Fleetwood Road
McLean, Virginia 22101
703/893-3050

Mailing Address:
P. O. Box 567
McLean, Virginia 22101

RECEIVED
JUL 13 1978
BOOTHE, PRICHARD & DUDLEY

April 4, 1978

Gene H. May, President
May Properties, Inc.
1200 Potomac School Road
McLean, VA 22101

Re: Lot 113, Sec. 6, Evermay

Dear Mr. May:

Thank you for your letter of April 3, 1978; I have scheduled Mr. Haythe's settlement for the morning of the 21st as stated in my prior letter. You are certainly welcome to deliver the Deed on the 20th, however settlement will not be concluded until the following morning. I anticipate same day recording and disbursement.

Very truly yours,

Tudor S. Gourley

Tudor S. Gourley, Jr.
Attorney at Law

TSG:rcm

Def. Bill. Ex. 4
For Ident. ✓ In Evid.
Date 6-28-78
Reporter

PLF-DEF-EX # 13
DATE 4/17/79
JUDGE JW
CASE # 59059

13

(4)

THIS DEED, Made this 22nd day of March 1978, by and among MAY HOUSING CORPORATION, a Virginia corporation, party of the first part; MAY PROPERTIES, INCORPORATED, a Virginia corporation, party of the second part; and WINSTON M. HAYTHE, Unmarried, party of the third part:

***** W I T N E S S E T H *****

THAT WHEREAS, the party of the first part is the record owner of the hereinafter described property together with the improvements thereon; and

WHEREAS, the party of the second part heretofore contracted to purchase said property from the party of the first part; and

WHEREAS, the party of the third part has contracted to purchase said property together with the improvements thereon from the party of the second part, and the parties of the first and second parts are desirous of conveying said property together with improvements thereon directly to the party of the third part:

NOW, THEREFORE, in consideration of the sum of Ten Dollars ($10.00) in hand paid, receipt of which is hereby acknowledged, the parties of the first and second parts do hereby grant and convey with general warranty of title unto the party of the third part, the following described property situate and being in Fairfax County, Virginia:

Lot 113, Section 6, EVERMAY, as the same appears duly dedicated, platted and recorded in Deed Book 4034 at page 93 among the land records of Fairfax County, Virginia;

AND BEING part of the same property conveyed to the party of the first part by Deed recorded in Deed Book 4339 at page 473 among the aforesaid land records.

DEF-EX # 14
DATE 1/17/79
JUDGE
CASE # 59059

May Depo Ex No. 3
7-20-78 lal

This conveyance is made subject to the restrictions, conditions and rights of way contained in the deeds forming the chain of title to the above property.

The parties of the first and second parts covenant that they have the right to convey the above described land; that they have done no act to encumber said land; that the grantee shall have quiet possession thereof; and that the grantors will execute such further assurances of the land as may be requisite.

IN WITNESS WHEREOF, said MAY HOUSING CORPORATION has caused this Deed to be executed in its corporate name by GENE H. MAY, President, and its corporate seal to be hereto affixed and attested by NICHOLAS MALINCHAK, Secretary, said officers being thereunto duly authorized all as of the day, month and year first hereinabove written.

MAY HOUSING CORPORATION

ATTEST:

BY: _____
President

_____
Secretary

FURTHER, IN WITNESS WHEREOF, said MAY PROPERTIES, INCORPORATED, has caused this Deed to be executed in its corporate name by GENE H. MAY, President , and its corporate seal to be hereto affixed and attested by NICHOLAS MALINCHAK, Assistant Secretary, said officers being thereunto duly authorized all as of the day, month and year first hereinabove written.

MAY PROPERTIES, INCORPORATED

ATTEST:

BY: _____
President

_____
Assistant Secretary

STATE OF VIRGINIA, ARLINGTON COUNTY, SS:

The foregoing instrument was acknowledged before me this 22nd day of March 1978, by GENE H. MAY, President, MAY HOUSING CORPORATION and MAY PROPERTIES, INCORPORATED, on behalf of said Corporations.

Marilyn Reamy
NOTARY PUBLIC

My commission expires: 8/18/81

A.

B. TYPE OF LOAN

1. ☐ FHA 2. ☐ FMHA 3. ☐ CONV. UNINS.
4. ☐ VA 5. ☐ CONV. INS.

DISCLOSURE/SETTLEMENT STATEMENT
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

6. FILE NUMBER: 350
7. LOAN NUMBER:
8. MORTG. INS. CASE NO.:

If the Truth-in-Lending Act applies to this transaction, a Truth-in-Lending statement is attached as page 3 of this form.

C. NOTE: This form is furnished to you prior to settlement to give you information about your settlement costs, and again after settlement to show the actual costs you have paid. The present copy of the form is:

☐ ADVANCE DISCLOSURE OF COSTS. Some items are estimated, and are marked "(e)". Some amounts may change if the settlement is held on a date other than the date estimated below. The preparer of this form is not responsible for errors or changes in amounts furnished by others. *Advance disclosure of prorations of taxes and assessments is based upon the assumption that taxes and assessments are not delinquent.*

☐ STATEMENT OF ACTUAL COSTS. Amounts paid to and by the settlement agent are shown. Items marked *"(p.o.c.)"* were paid outside the closing; they are shown here for informational purposes and are not included in totals.

D. NAME OF BORROWER

E. SELLER

F. LENDER

G. PROPERTY LOCATION

FILE DEF-EX # 15
DATE 4/17/79
JUDGE JW
CASE # 59059

H. SETTLEMENT AGENT

PLACE OF SETTLEMENT

I. DATES

LOAN COMMITMENT

ADVANCE DISCLOSURE

SETTLEMENT 4/21/78

DATE OF PRORATIONS IF DIFFERENT FROM SETTLEMENT

J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER:		400. GROSS AMOUNT DUE TO SELLER:	
101. Contract sales price	175,332.00	401. Contract sales price	175,332.00
102. Personal property		402. Personal property	
103. Settlement charges to borrower (from line 1400, Section L)	1,800.26	403. Extras in addition to contract price	12,808.97
104. Extras in addition	12,808.97	404.	
105. to Contract Price		Adjustments for items paid by seller in advance:	
Adjustments for items paid by seller in advance:		405. City/town taxes to	
106. City/town taxes to		406. County taxes to	
107. County taxes to		407. Assessments to	
108. Assessments to		408. to	
109. to		409. to	
110. to		410. to	
111. to		411. to	
112.	189,941.23 ~~188,140.97~~	420. GROSS AMOUNT DUE TO SELLER	188,140.97
120. GROSS AMOUNT DUE FROM BORROWER		NOTE: The following 500 and 600 series sections are not required to be completed when this form is used for advance disclosure of settlement costs prior to settlement.	
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		500. REDUCTIONS IN AMOUNT DUE TO SELLER:	
201. Deposit or earnest money	19,500.00	501. Payoff of first mortgage loan	
202. Principal amount of new loan(s)	160,000.00	502. Payoff of second mortgage loan	
203. Existing loan(s) taken subject to		503. Settlement charges to seller (from line 1400, Section L)	125.00
204.		504. Existing loan(s) taken subject to	
205. Credits from Seller	510.00	505. Deposits	19,500.00
Credits to borrower for items unpaid by seller:		506.	
206. City/town taxes to	418.40	507. Credits to purchaser	510.00
207. County taxes 1/1 to 4/21	~~393.37~~	508.	
208. Assessments to		509.	
209. to		Credits to buyer for items unpaid by seller:	
210. to		510. City/town taxes to	~~418.40~~
211. to		511. County taxes 1/1 to 4/21	~~393.37~~
212. to	20,428.40 ~~20,463.37~~	512. Assessments to	
220. TOTAL AMOUNTS PAID BY OR IN BEHALF OF BORROWER		513. to	
300. CASH AT SETTLEMENT REQUIRED FROM OR PAYABLE TO BORROWER:	180,428.40	514. to	
		515. to	
		516. to	20,553.40 ~~20,506.37~~
301. Gross amount due from borrower (from line 120)	189,941.23 ~~188,140.97~~	520. TOTAL REDUCTIONS IN AMOUNT DUE TO SELLER	
302. Less amounts paid by or in behalf of borrower (from line 220)	180,428.40 ~~(20,463.37)~~	600. CASH TO SELLER FROM SETTLEMENT:	
		601. Gross amount due to seller (from line 420)	~~188,140.97~~ ~~188,140.97~~
303. CASH (☒ REQUIRED FROM) OR (☐ PAYABLE TO) BORROWER	~~167,737.60~~ ~~9,512.83~~	602. Less total reductions in amount due to seller (from line 520)	~~(20,506.37)~~
		603. CASH TO SELLER FROM SETTLEMENT	~~167,582.60~~

288

HUD-1 (5-75)

167,587.57

L. SETTLEMENT CHARGES	PAID FROM BORROWER'S FUNDS	PAID FROM SELLER'S FUNDS
700. SALES BROKER'S COMMISSION based on price $ @ %		
701. Total commission paid by seller		
Division of commission as follows:		
702. $ to		
703. $ to		
704.		
800. ITEMS PAYABLE IN CONNECTION WITH LOAN:		
801. Loan Origination fee %		
802. Loan Discount %		
803. Appraisal Fee to		
804. Credit Report to		
805. Lender's inspection fee		
806. Mortgage Insurance application fee to		
807. Assumption/refinancing fee		
808.		
809.		
810.		
811.		
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE:		
901. Interest from to @$ /day		
902. Mortgage insurance premium for mo. to		
903. Hazard insurance premium for yrs. to		
904. yrs. to		
905.		
1000. RESERVES DEPOSITED WITH LENDER FOR:		
1001. Hazard insurance mo. @ $ /mo.		
1002. Mortgage insurance mo. @ $ /mo.		
1003. City property taxes mo. @ $ /mo.		
1004. County property taxes mo. @ $ /mo.		
1005. Annual assessments mo. @ $ /mo.		
1006. mo. @ $ /mo.		
1007. mo. @ $ /mo.		
1008. mo. @ $ /mo.		
1100. TITLE CHARGES:		
1101. Settlement or closing fee to T S G		~~[illegible]~~
1102. Abstract or title search to		
1103. Title examination to		
1104. Title insurance binder to		
1105. Document preparation to		
1106. Notary fees to		
1107. Attorney's Fees to	~~[illegible]~~	
(includes above items No.:)		
1108. Title insurance to Colonial Title Company	501.28	
(includes above items No.:)		
1109. Lender's coverage $		
1110. Owner's coverage $ 501.28 ~~[illegible]~~		
1111.		
1112.		
1113.		
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES:		
1201. Recording fees: Deed $ 11.00 ; Mortgage $ 10.00 Release $	11.00	
1202. City/county tax/stamps: Deed $ 87.70 ; Mortgage $	87.70	
1203. State tax/stamps: Deed $ 263.10 ; Mortgage $	263.10	
1204. Grantor Tax	175.50	
1300. ADDITIONAL SETTLEMENT CHARGES:		
1301. Survey to De Cashmutt Assoc	100.00	125.00
1302. Pest inspection to		
1303.		
1304.		
1305.		
1306.		
1307.		
1400. TOTAL SETTLEMENT CHARGES *(entered on lines 103 and 503, Sections J and K)*	812.30	125.00

NOTE: Under certain circumstances the borrower and seller may be permitted to waive the 12-day period which must normally occur between advance disclosure and settlement. In the event such a waiver is made, copies of the statements of waiver, executed as provided in the regulations of the Department of Housing and Urban Development, shall be attached to and made a part of this form when the form is used as a settlement statement.

TUDOR S. GOURLEY, JR.
ATTORNEY AT LAW
6810 Fleetwood Road
McLean, Virginia 22101
703/893-3050

Mailing Address:
P. O. Box 567
McLean, Virginia 22101

Def. Pltf. Ex. 6
For Ident. In Evid.
Date 6-28-78
Reporter

April 20, 1978

Gene H. May, President
May Properties, Inc.
1200 Potomac School Road
McLean, VA 22101

Re: Lot 113, Evermay
May to Haythe

Dear Mr. May:

This letter will confirm your visit to my office and our subsequent conversation on the phone regarding the absence of a Residential Use Permit on Lot 113, Evermay.

Inasmuchas the RUP will not be available until the property is sodded, and settlement is contingent on the RUP, I have temporarily postponed settlement until I am advised that the Use Permit is at hand. I would appreciate a day or two notice prior to receipt of same so that we may prepare the settlement statement.

Very truly yours,

Tudor S. Gourley, Jr.
Attorney at Law

TSG:rcm

File: 350

cc: Winston M. Haythe

PLF-DEF-EX # 16
DATE 1/12/79
JUDGE
CASE # 59059

16

EDMUND D. CAMPBELL*
THOMAS SEARING JACKSON+
JACQUELIN AMBLER MARSHALL
H. DONALD RISTLER
BENJAMIN W. DULANY*
KENNETH WELLS PARKINSON
DANIEL WEBSTER COON+
THOMAS PENFIELD JACKSON+
ARTHUR C. ELGIN, JR.+
JAMES P. SCHALLER*
JAMES E. BRANNER
PATRICIA D. GURNE
HERMAN O. LAUTEN
JOHN S. MILES+
NICHOLAS S. McCONNELL*
JAMES R. MICHAL
ALAN R. SWENDMAN+
WILLIAM J. OLSON*

+ALSO ADMITTED IN MARYLAND
*ALSO ADMITTED IN VIRGINIA

LAW OFFICES
JACKSON, CAMPBELL & PARKINSON
1828 L STREET, N. W.
WASHINGTON, D. C. 20036

(202) 457-1600

MARYLAND OFFICE
414 HUNGERFORD DRIVE
ROCKVILLE, MARYLAND 20850
(301) 340-0450

VIRGINIA OFFICE
2000 N. 16TH STREET
ARLINGTON, VIRGINIA 22201
(703) 522-1330

ROGER H. MUZZALL
COUNSEL

DIRECT DIAL NUMBER

April 21, 1978

Mr. Gene H. May, President
May Properties, Inc.
1200 Potomac School Road
McLean, Virginia 22101

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dep. Pltf. Ex. 8
For Ident. In Evid.
Date 6-28-78
Reporter Fielder

Re: Lot 113, Section 6
Evermay Subdivision

Dear Mr. May:

As I informed you on the phone this afternoon, we represent Winston M. Haythe, the contract purchaser of the above-referenced residential dwelling located in Fairfax County, Virginia.

Our client advises us that the settlement conference on the above property was scheduled for 9:00 a.m. this morning, Friday, April 21, 1978, at the offices of Tudor F. Gourley, Jr., 6810 Fleetwood Avenue, McLean, Virginia. Mr. Haythe was ready and able to complete settlement on the house, but, as a walk-through of the property yesterday disclosed, the house had not been substantially completed, and therefore settlement today was impossible.

The walk-through disclosed some ninety-seven (97) problems with the house in its present state. Mr. Haythe's architect, J. L. Sibley Jennings, Jr., prepared a detailed "punch list" which will be fowarded to you as soon as possible, early next week. Mr. Frank Knoblock, an architect in your employ, accompanied Mr. Haythe and Mr. Jennings on the walk-through and drafted a "punch list" of his own. We are advised that the Fairfax County occupancy permit had not been issued for this residence.

Mr. Haythe has asked us to inform you of his continuing willingness and ability to complete settlement when the house has been completed as required under the contract. Mr. Haythe would appreciate your informing either him or myself as to when the work will be completed, when an occupancy permit will be issued, and when a second walk-through and settlement conference can be held.

PLF DEF-EX #11
DATE 1/17/79
JUDGE
CASE # 59151

On behalf of Mr. Haythe, we hereby make a formal demand upon you to complete the work required to be done on the house, and tender the monies due to you under that contract, upon your completion of the house. Mr. Haythe will be ready to settle on the property at any time after you complete your obligations under the contract.

Sincerely yours

JACKSON, CAMPBELL & PARKINSON

William J. Olson

William J. Olson

WJO:bjp

cc: Mr. Winston M. Haythe
1512 Buena Vista Avenue
McLean, Virginia 22101

Tudor F. Gourley, Esquire
6810 Fleetwood Avenue
McLean, Virginia 22101

MUND D. CAMPBELL*
OMAS SEARING JACKSON+
OUELIN AMBLER MARSHALL
DONALD BISTLER
NJAMIN W. DULANY*
NNETH WELLS PARKINSON
NIEL WEBSTER COON+
OMAS PENFIELD JACKSON+
THUR C. ELGIN, JR.+
MES P. SCHALLER*
MES E. BRAMMER
TRICIA D. GURNE
RMAN D. LAUTEN
HN S. MILES+
CHOLAS S. McCONNELL*
MES R. MICHAL
AN R. SWENDIMAN+
LLIAM J. OLSON*

*SO ADMITTED IN MARYLAND
+SO ADMITTED IN VIRGINIA

LAW OFFICES
JACKSON, CAMPBELL & PARKINSON
1828 L STREET, N. W.
WASHINGTON, D. C. 20036

(202) 457-1600

MARYLAND OFFICE
414 HUNGERFORD DRIVE
ROCKVILLE, MARYLAND 20850
(301) 340-0450

VIRGINIA OFFICE
2000 N. 15TH STREET
ARLINGTON, VIRGINIA 22201
(703) 522-1330

ROGER H. MUZZALL
COUNSEL

DIRECT DIAL NUMBER
457-1638

April 24, 1978

RECEIVED
JUL 13 1978
BOOTHE, PRICHARD & DUDLEY

Mr. Gene H. May, President
May Properties, Inc.
1200 Potomac School Road
McLean, Virginia 22101

Re: Lot 113, Section 6
Evermay Subdivision

Dear Mr. May:

In my letter of April 21, 1978, I informed you that J. L. Sibley Jennings, Jr., had prepared a detailed "punch list" concerning the above-referenced property. I am enclosing a copy of that five-page document and the letter of transmittal from Mr. Jennings.

We look forward to hearing from you regarding the matters raised in my letter of April 21, 1978.

D-8

Sincerely yours,

JACKSON, CAMPBELL & PARKINSON

William J. Olson

William J. Olson

WJO:kcs
Enclosures
cc: Mr. Winston M. Haythe

PLD DEF-EX # 20
DATE 1/17/79
JUDGE Jer
CASE # 59059

Def. Pltf. Ex. 5
For Ident. In Evid.
Date 6-28-78
Reporter Golden

MEMO TO: Mr. Winston M. Haythe
1512 Buena Vista Avenue
McLean, Virginia, 22101

RE: Inspection of construction, Lot 113, Section 6
Evermay Subdivision, Fairfax, County, Virginia

Enclosed please find my punchlist of items to be corrected in order to satisfy the contract documents of your new home. This residence is, of course, some time from substantial completion. Not only is construction still underway, but not all fixtures and equipment have been installed. The fixtures and equipment that are already installed, frequently have not been checked out, and some are faulty requiring replacement. Since construction is not complete, the final cleaning has not been undertaken, and the house is generally dirty, scarred, and requires repair and repainting throughout.

There have been several obvious errors in construction and installation that will require replacement and repair.

The grounds are in such condition that it would be almost impossible for the movers to reach your house to deliver your furniture, at this time.

Yours,

J. L. Sibley Jennings, Jr., AIA
Architect
700 7th Street SW
Washington, D. C., 20024

21 April 1978

Punchlist for correction - completion
New residence for Mr. Winston M. Haythe
McLean, Virginia "Evermay"

J. L. Sibley Jennings, Jr. AIA

1. Exterior brick to be cleaned.
2. Install walk; prepare grade, subgrade.
3. Prepare subgrade for driveway paving.
4. Pave driveway.
5. Sod lot.
6. Area drain-pipe incomplete, install CI grate, drain clogged.
7. Replace broken brick over basement door.
8. Paint basement door.
9. Caulk around basement door.
10. Attach two vent hoods that hang loose at right elevation.
11. Install clothes-dryer vent as per drawings.
12. Caulk cavities in brick wall for heat-pump lines into house.
13. Install splash blocks at downspouts.
14. Replace broken bricks above and to right of front door.
15. Prime and Paint exterior shutters.
16. Caulk about sidelights and front door.
17. Remove rust, prime and paint steel lintel above basement door.
18. Remove rust, prime and paint WI railing at basement area.
19. Attach and tighten exterior light fixtures.
20. Remove mortar from belt course and chimney pent, and clean brick.
21. Repair or replace malfunctioning "York" heat-pump at corner of right and front elevations.
22. Conduct water of sump pump drain away from house as per code.
23. Install garage doors as per drawings and contract.
24. Install automatic garage door opener as per contract.
25. Fill cavities below garage windows and install aprons.
26. Prime and paint all garage space doors and windows, and architraves.
27. Connect appropriate appliances to four sets of loose, unconnected wires at rear elevation.
28. Replace broken storm window at family room picture window.
29. Replace or repair broken sash of storm window of 28 above.

Haythe punchlist -

KITCHEN AND FAMILY ROOM:

30. Deliver and install two refrigerators as per contract.
31. Replace or repair sink faucet.
32. Replace or repair broken fire-place damper, clean out loose mortar and trash.
33. Make operable stove vent hood light.
34. Replace or repair front scarred panel of dishwasher.
35. Install missing strip of wallpaper.
36. Clean aerator screen of sink faucet.
37. Fill and finish crack between T&G floor and base of brick hearth.

DINING ROOM:

38. Reposition ceiling fixture, replace bulbs.
39. Replace or repair broken vinyl window sash channel of middle dining room window.

ENTRANCE HALL:

40. Replace or repair vacuum cleaner outlet; repair plaster wall; prime and paint.
41. Repair hall ceiling fixture.
42. Clean, touch-up and re-paint throughout.
43. Replace or repair light at Bath "A" door.

LIVING ROOM:

44. Replace or repair fireplace damper; remove broken brick and mortar.
45. Clean paint and trash from vinyl window sash channel.

BATH "A" - FIRST FLOOR:

46. Install shower rod as per contract.
47. Repair inoperable light fixture.
48. Clean plaster from door frames.
49. Replace water damaged plaster ceiling, prime and paint.

Haythe punchlist

BEDROOM NO. 1

50. Repair cracked plaster between bath and closet door.
51. Clean paint and trash from vinyl window sash channel.
52. Paint closet.

BASEMENT HALL:

53. Clean walls and floor of dirt, mastic and spatters.

UTILITY ROOM:

54. Remove, re-fabricate and re-install existing incorrect H&AC duct to dining room.
55. Install power to dead outlet to humidifier.
56. Verify operable humidifier.

RECREATION ROOM:

57. Fix pull chain to ceiling light in closet.
58. Clean dirty walls.
59. Clean floors of mastic and dirt, adhere loose tiles.
60. Replace or correct tile in bar.

GAME ROOM:

61. Clean floors of mastic, adhere loose tiles.
62. Supply and install handles to casement windows.

DEN:

63. Supply and install handle to casement window.
64. Replace or repair broken ceiling light fixture; bulbs.
65. Trim linen shelf in closet to fit.
66. Repaint closet interior.

Haythe punchl -

BATH "E":

67. Install shower rod.

SECOND FLOOR - BEDROOM NO. 2, BATH "B":

68. Repair screen at vent of storage garage attic.
69. Repair cracked plaster at closet door, closet and bedroom sides.
70. Touch-up and paint closet, particularly red mark in corner.
71. Rehang closet door - stuck.
72. Repair Bath "B" toilet - does not flush correctly.
73. Repair gouge in plaster ceiling over shower, Bath "B", prime and paint.

BEDROOM 4, BATH "C":

74. Install glass panel and shower rod as per contract.
75. Repair toilet, does not flush correctly, noticeable vibration.
76. Repair tub drain.
77. Clean stained bath cabinets and mirror.
78. Repair cracked plaster in closet.
79. Touch-up and repaint closet.
80. Rehang sticking closet door.
81. Repair plaster cracks at closet door and above window.

BEDROOM 3:

82. Finish painting closet, especially high wall and ceiling.
83. Repair cracked plaster at closet door, and between closet-bathroom doors.
84. Replace warped wooden sash.

BATH "D":

85. Rehang correctly the lights over vanity.
86. Repair leaking lavatory faucet.
87. Install shower rod as per contract.

BATH "D" continued:

88. Recaulk tub.
89. Repaint ceiling to remove blemishes.
90. Clean inside light fixtures.
91. Repair tile at bathtub faucet.
92. Rehang sticking door to Bedroom no. 5.
93. Rehang sticking door to Bedroom no. 3.

BEDROOM NO. 5:

94. Repair plaster crack at "D" Bath door.
95. Clean paint and trash from vinyl window sash channels.
96. Repair cracked plaster inside closet, over door.
97. Repaint closet.

F.2653-01 Approved OMB No. 63-R1501

A.

DISCLOSURE/SETTLEMENT STATEMENT
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

If the Truth-in-Lending Act applies to this transaction, a Truth-in-Lending statement is attached as page 3 of this form.

3. TYPE OF LOAN: 1. ☐ FHA 2. ☐ FMHA 3. ☒ CONV. UNINS. 4. ☐ VA 5. ☐ CONV. INS.

6. FILE NUMBER: 350

7. LOAN NUMBER:

8. MORTG. INS. CASE NO.:

C. NOTE: This form is furnished to you prior to settlement to give you information about your settlement costs, and again after settlement to show the actual costs you have paid. The present copy of the form is:

☐ ADVANCE DISCLOSURE OF COSTS. Some items are estimated, and are marked "(e)". Some amounts may change if the settlement is held on a date other than the date estimated below. The preparer of this form is not responsible for errors or changes in amounts furnished by others. *Advance disclosure of prorations of taxes and assessments is based upon the assumption that taxes and assessments are not delinquent.*

☒ STATEMENT OF ACTUAL COSTS. Amounts paid to and by the settlement agent are shown. Items marked *"(p.o.c.)"* were paid outside the closing; they are shown here for informational purposes and are not included in totals.

D. NAME OF BORROWER: Winston M. Haythe

E. SELLER: May Properties, Inc.
By:

F. LENDER: McLean Bank

Ck. #21 1/7/79 $59059

G. PROPERTY LOCATION: Lot 113, Section 6, Evermay, Fairfax County, Virginia

H. SETTLEMENT AGENT: T. S. Courtley, Jr.

PLACE OF SETTLEMENT: 6810 Fleetwood Rd. McLean, VA 22101

I. DATES

LOAN COMMITMENT	ADVANCE DISCLOSURE
SETTLEMENT: 4/28/78	DATE OF PRORATIONS IF DIFFERENT FROM SETTLEMENT

J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER:		400. GROSS AMOUNT DUE TO SELLER:	
101. Contract sales price	175,332.00	401. Contract sales price	175,332.00
102. Personal property		402. Personal property	
103. Settlement charges to borrower (from line 1400, Section L)	1,800.26	403. Extras in addition to	
104. Extras in addition to		404. contract price	12,808.97
105. contract price	12,808.97	Adjustments for items paid by seller in advance:	
Adjustments for items paid by seller in advance:		405. City/town taxes to	
		406. County taxes to	
		407. Assessments to	
106. City/town taxes to		408. to	
107. County taxes to		409. to	
108. Assessments to		410. to	
109. to		411. to	
110. to		420. GROSS AMOUNT DUE TO SELLER	188,140.97
111. to			
112.		*NOTE: The following 500 and 600 series sections are not required to be completed when this form is used for advance disclosure of settlement costs prior to settlement.*	
120. GROSS AMOUNT DUE FROM BORROWER	189,941.23		
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		500. REDUCTIONS IN AMOUNT DUE TO SELLER:	
201. Deposit or earnest money	19,500.00	501. Payoff of first mortgage loan	
202. Principal amount of new loan(s)	160,000.00	502. Payoff of second mortgage loan	
203. Existing loan(s) taken subject to		503. Settlement charges to seller (from line 1400, Section L)	125.00
204.			
205. Credit from seller	510.00	504. Existing loan(s) taken subject to	
Credits to borrower for items unpaid by seller:		505. Credit to purchaser	510.00
		506.	
206. City/town taxes to		507. Deposit	19,500.00
207. County taxes 1/1 to 4/28	418.40	508.	
208. Assessments to		509.	
209. to		Credits to buyer for items unpaid by seller:	
210. to			
211. to		510. City/town taxes to	
212. to		511. County taxes 1/1 to 4/28	418.40
220. TOTAL AMOUNTS PAID BY OR IN BEHALF OF BORROWER	180,428.40	512. Assessments to	
		513. to	
300. CASH AT SETTLEMENT REQUIRED FROM OR PAYABLE TO BORROWER:		514. to	
		515. to	
		516. to	
301. Gross amount due from borrower (from line 120)	189,941.23	520. TOTAL REDUCTIONS IN AMOUNT DUE TO SELLER	20,553.40
		600. CASH TO SELLER FROM SETTLEMENT:	
302. Less amounts paid by or in behalf of borrower (from line 220)	(180,428.40)	601. Gross amount due to seller (from line 420)	188,140.97
303. CASH (☒ REQUIRED FROM) OR (☐ PAYABLE TO) BORROWER	9,512.83	602. Less total reductions in amount due to seller (from line 520)	(20,553.40)
		603. CASH TO SELLER FROM SETTLEMENT	167,587.57 *

300

SETTLEMENT CHARGES	BORROWER'S FUNDS	SELLER'S FUNDS
700. SALES BROKER'S COMMISSION based on price $ @ %		
701. Total commission paid by seller		
Division of commission as follows:		
702. $ to		
703. $ to		
704.		
800. ITEMS PAYABLE IN CONNECTION WITH LOAN:		
801. Loan Origination fee %		
802. Loan Discount %		
803. Appraisal Fee to		
804. Credit Report to		
805. Lender's inspection fee		
806. Mortgage Insurance application fee to		
807. Assumption/refinancing fee		
808.		
809.		
810.		
811.		
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE:		
901. Interest from to @ $ /day		
902. Mortgage insurance premium for mo. to		
903. Hazard insurance premium for yrs. to		
904. yrs. to		
905.		
1000. RESERVES DEPOSITED WITH LENDER FOR:		
1001. Hazard insurance mo. @ $ /mo.		
1002. Mortgage insurance mo. @ $ /mo.		
1003. City property taxes mo. @ $ /mo.		
1004. County property taxes mo. @ $ /mo.		
1005. Annual assessments mo. @ $ /mo.		
1006. mo. @ $ /mo.		
1007. mo. @ $ /mo.		
1008. mo. @ $ /mo.		
1100. TITLE CHARGES:		
1101. Settlement or closing fee to Tudor S. Gourley, Jr.	300.00	
1102. Abstract or title search to		
1103. Title examination to Colonial Title	50.00	
1104. Title insurance binder to		
1105. Document preparation to		
1106. Notary fees to		
1107. Attorney's Fees to		
(includes above items No.:)		
1108. Title insurance to Colonial Title Company	483.16	
(includes above items No.:)		
1109. Lender's coverage $		
1110. Owner's coverage $		
1111.		
1112.		
1113.		
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES:		
1201. Recording fees: Deed $ 11.00; Mortgage $ 10.00 Release $	21.00	
1202. City/county tax/stamps: Deed $ 87.70 ; Mortgage $ 80.00	167.50	
1203. State tax/stamps: Deed $ 263.10 ; Mortgage $ 240.00	503.10	
1204. Grantor Tax	175.50	
1300. ADDITIONAL SETTLEMENT CHARGES:		
1301. Survey to DeLashmutt Assoc.	100.00	125.00
1302. Pest inspection to		
1303.		
1304.		
1305.		
1306.		
1307.		
1400. TOTAL SETTLEMENT CHARGES *(entered on lines 103 and 503, Sections J and K)*	1,800.26	125.00

301

NOTE: Under certain circumstances the borrower and seller may be permitted to waive the 12-day period which must normally occur between advance disclosure and settlement. In the event such a waiver is made, copies of the statements of waiver, executed as provided in the regulations of the Department of Housing and Urban Development, shall be attached to and made a part of this form when the form is used as a settlement statement.

NBF
The National Bank of Fairfax
FAIRFAX, VIRGINIA 22030

10- 3616

EMITTER Tyler Self Crowley

April 28 19 78 68-356/560 10

PAY TO THE ORDER OF * * * * * * * * * May Properties, Inc. * * * * * * * * * * * $167,587.57

⑩ NAT'L BANK OF FAIRFAX 167587 dolls 57 cts DOLLARS

CASHIER'S CHECK
McLEAN BRANCH

Gary Goodwill AUTH. SIG.

NT ⑆0560⑈0356⑆ ⑈080000 7⑈

PLF DEF-EX # 22
DATE 1/17/79
JUDGE JL
CASE # 59059

TUDOR STUART GOURLEY, JR.
P. O. BOX
McLEAN, VIRGINIA 22101
ATTORNEY AT LAW
ESCROW ACCOUNT

The National Bank of Fairfax
FAIRFAX, VIRGINIA 22030

4289

April 28 19 78

68-356
660

PAY EIGHT HUNDRED SIXTY SEVEN and 10/100----------DOLLARS $ 867.10

TO THE ORDER OF Clerk, Fairfax County, Virginia

Tudor Stuart Gourley

350 ⑈00004289⑈ ⑆0560⑈0356⑆ ⑈411193 1⑈

DELUXE CHECK PRINTERS

TUDOR STUART GOURLEY, JR.
MC LEAN, VIRGINIA 22101

DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW.
IF NOT CORRECT PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED.

DELUXE - FORM WVC-3 V-7

To record Deed and First Deed of Trust

May Properties to Haythe

350

PLF DEF-EX # 23
DATE 1/17/79
JUDGE
CASE # 59059

NOTE

US $ 160,000.00 ..... McLean ....., Virginia
City

April 28 ....., 1978

FOR VALUE RECEIVED, the undersigned ("Borrower") promise(s) to pay THE McLEAN BANK ....., or order, the principal sum of ONE HUNDRED SIXTY THOUSAND AND NO/100 .....Dollars, with interest on the unpaid principal balance from the date of this Note, until paid, at the rate of ELEVEN (11.000%) .....percent per annum. Principal and interest shall be payable at P.O. Box 309, McLean, Virginia 22101 ..., or such other place as the Note holder may designate, in consecutive monthly installments of ....NA ....Dollars (US $...NA .....), on the...NA ....day of each month beginning.....NA ....., 19..... Such monthly installments shall continue until the entire indebtedness evidenced by this Note is fully paid, except that any remaining indebtedness, if not sooner paid, shall be due and payable ~~on~~ in 120 days from date first mentioned above

If any monthly installment under this Note is not paid when due and remains unpaid after a date specified by a notice to Borrower, the entire principal amount outstanding and accrued interest thereon shall at once become due and payable at the option of the Note holder. The date specified shall not be less than thirty days from the date such notice is mailed. The Note holder may exercise this option to accelerate during any default by Borrower regardless of any prior forbearance. If suit is brought to collect this Note, the Note holder shall be entitled to collect all reasonable costs and expenses of suit, including, but not limited to, reasonable attorney's fees.

Borrower shall pay to the Note holder a late charge of .....na .....percent of any monthly installment not received by the Note holder within .....na .....days after the installment is due.

Borrower may prepay the principal amount outstanding in whole or in part. The Note holder may require that any partial prepayments (i) be made on the date monthly installments are due and (ii) be in the amount of that part of one or more monthly installments which would be applicable to principal. Any partial prepayment shall be applied against the principal amount outstanding and shall not postpone the due date of any subsequent monthly installments or change the amount of such installments, unless the Note holder shall otherwise agree in writing. If, within five years from the date of this Note, Borrower make(s) any prepayments in any twelve month period beginning with the date of this Note or anniversary dates thereof ("loan year") with money lent to Borrower by a lender other than the Note holder, Borrower shall pay the Note holder (a) during each of the first three loan years .....NONE .....percent of the amount by which the sum of prepayments made in any such loan year exceeds twenty percent of the original principal amount of this Note and (b) during the fourth and fifth loan years .....NONE .....percent of the amount by which the sum of prepayments made in any such loan year exceeds twenty percent of the original principal amount of this Note.

Presentment, notice of dishonor, and protest are hereby waived by all makers, sureties, guarantors and endorsers hereof. This Note shall be the joint and several obligation of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their successors and assigns.

Any notice to Borrower provided for in this Note shall be given by mailing such notice by certified mail addressed to Borrower at the Property Address stated below, or to such other address as Borrower may designate by notice to the Note holder. Any notice to the Note holder shall be given by mailing such notice by certified mail, return receipt requested, to the Note holder at the address stated in the first paragraph of this Note, or at such other address as may have been designated by notice to Borrower.

The indebtedness evidenced by this Note is secured by a Deed of Trust, dated April 28, 1978 ....., and reference is made to the Deed of Trust for rights as to acceleration of the indebtedness evidenced by this Note.

Winston M. Haythe .....(Seal)
Winston M. Haythe

1209 Perry William Drive ....(Seal)

McLean, Virginia 22101 ....(Seal)
Property Address

(Execute Original Only)

Compl. EXH. 24

This is to certify that this is the Note described in and secured by a Deed of Trust dated April 28, 1978 on property located in Fairfax County, Virginia.

My commission expires: July 27, 1980

Notary Public

VIRGINIA—1 to 4 Family—6/75*—FNMA/FHLMC UNIFORM INSTRUMENT

PLF-DEF-EX # 24
DATE 1/17/79
JUDGE
CASE # 59059

THE TITLE INSURANCE COMPANY OF MINNESOTA
and
Colonial Title Company

Attorney's Final Certificate

Binder No.: FX4034, County/~~City~~ of: Fairfax, VA.

Bring Title Down from: March 29, 1978

The undersigned attorney hereby certifies to Colonial Title Company and to the Title Insurance Company of Minnesota that: settlement has taken place under the direction and control of the undersigned on the subject real estate described under Schedule "A" of the committment to insure.

The following instruments were executed in connection with the settlement and: ( ) are enclosed herewith for recording, ( ) were duly recorded by or under the direction and control of the undersigned:

WARRANTY DEED in consideration of $ 175,332.00, (and in the case of assumption, with grantor's equity of $_____) Dated_____, (Recorded_____, at_____o'clock, Instrument Number_____) from the grantor and to the grantee as stated in and in conformance with, Schedule B-1 of the Committment to insure, or from the grantor:_____, or to the grantee: _____ *[Deed Book____, Page____]*

DEED OF TRUST in principal amount of $ 160,000.00, Dated 4/28/78, (Recorded_____, at_____o'clock, Instrument Number_____) from the above described grantee, or from:_____, to: Henry MacKall and Douglas MacKall _____, Trustees, to secure the lender as stated in the committment to insure, or the following lender:_____

_____. *[Deed Book____, Page____]*

OTHER INSTRUMENT: _____, Dated_____ (Recorded_____ at_____o'clock, Instrument Number_____) *[Deed Book____, Page____]*. Description of Parties; Consideration, Purport, etc. _____

The purchaser has elected to obtain owners title insurance, or the purchaser has declined owners title insurance as evidenced by the executed WAIVER OF OWNERS TITLE INSURANCE transmitted herewith.

The undersigned further certifies the said instruments creating the estate or interest in said real estate are sufficient, legal and valid, each according to its tenor and purport, that all requirements of the committment to insure, including Schedule B, Part 1, have been complied with, including the satisfaction of all liens and encumbrances required therein and the same have been paid and have been or will be properly disbursed, that nothing has come to the attention of the undersigned that would adversely affect the fee simple title to the grantee in said Warranty Deed, or Mortgagor in said Deed of Trust (s), or the lien of and priority of said loan instruments; that if said instruments were recorded by, or under the direction and control of the undersigned, the said instruments were recorded after completion of a thorough and satisfactory bringdown of title from the date and time of the committment to insure, up to the time of recording as shown hereinabove; that the said title bringdown revealed no change in the estate or title to said property as described under Schedule A of the committment to insure; that all taxes and assessments against said real estate shown in the committment to insure as not paid, or which have become due, have been paid up to and including those for: _____ 1977.

Compl. EXH. 26

Approved Attorney

By: _____

Member of Firm

TIM Form 2574

Enclosed herewith is the premium for, and the Company is requested to issue:

X Owners Title Insurance
X Mortgagee Title Insurance
___ Other _____

PLF-DEF-EX #26
DATE 1/12/79
JUDGE JU
CASE #59059

Chancery No 59059
Fairfax Co. Virginia.

BIOGRAPHICAL INFORMATION

James Longstreet Sibley Jennings, Jr.
Architect
700 7th Street SW #142
Washington, D. C. 20024

Born: 27 October 1941, Milledgeville, Georgia.

High-School: Georgia Military College, Milledgeville, 1954-1959.

College: Georgia Institute of Technology, Atlanta, 1959-1964.

Degrees: Bachelor of Science and Bachelor of Architecture.

Advanced education: Attingham, Shrewsbury, Shropshire, England, 1969.
(architecture, landscape and urban design)

Licensed Architect: Georgia (1968 to present); District of Columbia (1976-)

Member: American Institute of Architects
National Council of Architectural Registration Boards
Society of Architectural Historians
Association for Preservation Technology
Victorian Society in America
Georgia Historical Society
Columbia Historical Society

Boards: Secretary, Special Council Committee, American Society of Landscape Architects.
Chairman, Frederick Law Olmsted Committee, Washington.
Advisor, Logan Circle Foundation, Washington.
Advisor, Old Clinton Historic Foundation, Clinton, Georgia.
Advisor, Committee for a National Museum of the Building Arts.

Offices:	August 1964- February 1968	W. Elliott Dunwody, Jr, FAIA Macon, Georgia
	March 1968- August 1969	Dunwody and Associates.
	August 1969- January 1970	Hospital, surgery
	January 1970- July 1970	Orin M. Bullock, FAIA
	August 1970 - ~~present~~ Sept. 1978	Commission of Fine Arts

PLF DEF-EX # 28
DATE 1/18/79
JUDGE JW
CASE # 59059

Presently: Dept. of Justice, Immigration & Naturalization Service
Supervisory Architect.

Office Phone: 376-8306
Home Phone: 554-5422

James Longstreet Sibley Jennings, Jr.
Architect

PUBLICATIONS, MANUSCRIPTS, AWARDS AND RECOGNITIONS:

Massachusetts Avenue Architecture: Volume 1; GPO, CFA, 1973; 475 pp., 200 illustrations.

Massachusetts Avenue Architecture: Volume 2; GPO, CFA, 1975; 296 pp., 291 illustrations.

City Plan & Architectural Survey: Milledgeville, Georgia

Planning and design of Washington, D. C., 1791 & 1901.

Frederick Law Olmsted, Jr. - Urban Planning & the City Beautiful Movement.

Hamilton Fulton: Scottish Engineer, His American Work, 1824-29.
(Internal Improvements - Turnpikes, Railroads and Canals)
(protege of Thomas Telford and John Rennie)

Charles Blaney Cluskey: Irish Architect, 1807-1873.
(U S Capitol Building, Galveston Custom House, Savannah residences)

John Marlor: English Architect - American work, 1820-34.

America's First Gothic Public Building: Georgia State House.

Urban and Landscape Design: the South and Latin America; "Americas" the Organization or American States publication, December, 1977.

John Henry Cardingal Newman Honorary Society.

Outstanding Young Man in America, 1969.(Jaycees)

Lectures, recent: Smithsonian Institution
Tulane University/ Louisiana Council on the Arts
Washington Center for Learning Alternatives
University of Georgia/Athens-Clarke Heritage Foundation
National Symphony Guild/ Folger Shakespeare Library
American University/ American Studies
Victorian Society in America

James Longstreet Sibley Jennings, Jr.
Architect

PARTIAL LIST OF COMMISSIONS

1. *Contemporary residence for Mr. and Mrs. Alan B. Sibley, Deering-Millikin Corporation; (private, 1963-1964)*

2. *"Lockerley Hall", (1850-1852) historical, architectural, and furnishings research: Lockerley Arboretum Foundation, Elizabeth, New Jersey; (private, 1964-1966)*

3. *Wesleyan College, Macon, Georgia; dormitory, and chapel; (office, 1964-1967)*

4. *Mercer University, Macon, Georgia; Law School, library, and a dormitory; (office, 1964-1967)*

5. *General Classroom Building, University of Georgia, Board of Regents, University System, State of Georgia; general classroom building; School of Journalism; School of Psychology and psychology research center; offices of Dean of Arts and Sciences; state educational radio and television studios and offices: (office, 1964-1966)*

6. *Relocation and restoration, "Sanford House" (ca. 1820), Old Capital Historical Society, Milledgeville, Georgia (private, 1964-1977)*

7. *Citizens Bank of Forsyth, Forsyth, Georgia (office, 1965-1967)*

8. *Restoration, renovation and additions to residence of Hon. and Mrs. E. Roy Lambert, Rep.; (ca. 1835) Madison, Georgia; (office, 1965-1966)*

9. *Renovation and recycling of federal post office (surplus) for city library, Mary Vinson Memorial Library, for collections of the Hon. Carl Vinson, M. C., and Flannery O'Connor, Milledgeville, Georgia; (private, 1966-1968)*

10. *Contemporary residence for Mr. and Mrs. Carter S. Terrell, Milledgeville, Georgia (private, 1966-1967)*

11. *Carriage house, out-buildings, and site design, Washington-Wilkes Museum, Georgia Historical Commission; a period reconstruction of a destroyed building. (private, 1966-1967)*

12. *Contemporary residence for Dr. and Mrs. David Cardosa, Milledgeville, Georgia; (private, 1967-1969)*

13. *"Mulberry Street Redevelopment", Macon, Georgia, for the Downtown Council, Macon-Bibb County Chamber of Commerce; (office, 1967-1968)*

14. *"Development of a Co-Educational College", for Georgia College at Milledgeville, Milledgeville, Georgia: proposals for protecting an historic district; (office, 1967)*

15. *Restoration and additions, residence of Mr. and Mrs. Bob Hays, (ca. 1760) Thomson, Georgia; (office, 1967-1968)*

16. *Architectural and historical survey (1803-1870), privately owned structures, Milledgeville, Georgia; (private, 1967-1976)*

17. *Site-Pak, Inc.; design of interstate highway properties for commercial development nation-wide; temporary office in San Bernadino, California, for design of company headquarters; (office, 1968-1970)*

18. *Architectural survey, (1790-1880) Washington, Georgia; Georgia Historical Commission, and Georgia Board of Industry and Trade; (private, 1968)*

19. *"Bonnor House" restoration, (ca. 1840), West Georgia College, Carrollton, Georgia: President's Advisory Committee, Advisor and architect; (private, 1968-1970)*

20. *"Whittick House" (ca. 1800), for the Morgan County Historical Society, Madison, Georgia; advisor; (private, 1968)*

21. *"Beauvoir" (1830-1833), historical and architectural research and report, appraisal, (now the "Georgia Dining Room"); Henry Frances du Pont Winterthur Museum, Wilmington, Delaware; (private, 1969-1970)*

22. *Additions to residence (1820-1830), Mr. and Mrs. John D. Harris, Greensboro, Georgia; (private, 1969)*

23. *Restoration and renovation, residence (ca. 1840) for Colonel and Mrs. Walter Washburn, Madison, Georgia; (office, 1969)*

24. *Renovation of City Auditorium for city library, 800,000 volumes, Macon, Georgia; (office, 1969)*

25. *Library, Dalton Junio College, Dalton, Georgia; (office, 1969)*

26. *Architectural Survey, Macon, Georgia; Middle Georgia Historical Society; (private, 1969-1970)*

27. *Tudor Hall Library; (ca. 1780-1830), Leonardtown, Maryland; (office, 1970)*

28. *77-79 Main Street, Annapolis, Maryland (ca. 1815) store and warehouse resoration for Annapolis waterfront; Maryland Historical Trust; (office, 1970)*

29. *Design review and reports to Commission of Fine Arts, Washington, D. C., concerning architecture, landscape, and construction; (office, 1970-1976)*

30. *Volume I, Massachusetts Avenue Architecture, GPO, 1973; (office)*

31. *Consultant, Mrs. Robert Low Bacon, Washington, D. C., office building, Organization of American States; (private, 1974-1975)*

32. *Consultant, Downtown Revitalization Commission, Milledgeville, Georgia; (private, 1974-1975)*

33. *Residence, 1402 12th Street N. W., Washington, D. C. (private, 1975)*

34. *Volume II, Massachusetts Avenue Architecture, GPO, 1975; (Volumes I & II the only work concerning Beaux-Arts architecture prior to the opening of the Beaux-Arts exhibit, Museum of Modern Art, New York)*

35. *Residence, 700 7th Street S.W., Washington, D. C.; (private)*

36 *Adas Israel Synagogue; remodelling; Washington, D. C.; (private, 1976)*

37 *Disco and Lounge, Key West, Florida; (private, 1976)*

38. *<u>The L'Enfant Plan of Washington, 1791: A Reconsideration;</u> The intent vs. what was built. (private, 1977)*

Friday April 28th at 2:30.

At ten o'clock I arrived at Ted Gorley's office and received a message to call Nick Malinchak - It had been left on Thursday that settlement would be on Friday at a time to be agreed upon and I understood that ~~six~~ three o'clock had been agreed ~~up~~ upon but Malinchak & Gorley had gotten into a rhubarb and ~~he~~ Gorley had hung up and told me that he would not personally appear at settlement but would provide me with settlement statements, deed of trust, checks, Affidavit of release of liens and the like

I called Nick at about 10 a.m. and told him we were assembling cash and would be ready to settle today. He suggested 3 p.m. for settlement at the Court House. I advised Nick that I hoped to complete settlement in the morning so that I could get back to my office in the afternoon. He asked me when I thought I would be ready and I told him that I was shooting for 11:30 but would notify him when I was leaving McLean for Fairfax so we could coordinate time. I asked him

re ase of inhet Trust

DATE ____ JUDGE Lee CASE # 590659

if he would be in his office all morning and he assured me he would.

At approx 11:20 I had all papers in hand, ie an executed deed of trust, a check (cashier's) to May Properties Inc. a check to the clerk of the court for recording and a form of affidavit for May to execute re mechanics liens. I called Malinchak to advise him that I was leaving and to my suprise was advised by the switchboard that he was not in. Upon inquiry I was advised that he had left for Fairfax Court House and I left word that if he called back to tell him that I was on my way with check in hand.

I arrived in Fairfax about noon and by the time I parked and got to the clerks office it was approx 12:10 I was advised that Mr Malinchak and "a gentleman" had been there and left. I tried to find the title man (Jim Buckrup (sp?)) who was to make the last minute rundown of title but he was at lunch, I left word at the clerks office that I would be in the cafeteria if anyone asked

for me, and went and had a sandwich. -

At approx 12:20, before I ate I called Malinchak, he was out but was due in at 1 p.m. for a settlement. I called at 12:50 but he was still out. I called at 1 p.m. and he was in settlement and refused my call. I called at 1:30 and he again refused the call.

At approx 1:45 - 2:00 I located Jim Buckrup who advised me that a deed from May Properties Inc to V.H. Albright had been recorded at 11:30 (Instr. 025381) Notarized April 28th 1978 Recorded Deed Book 4858 at Page 754. The deed showed consideration of $188,000

Just before I located Jim Buckrup I saw Haynie Trotter in the Corridor & told him I might need a quick suit filed as I was getting suspiscious because of Malinchak's obvious rudeness and his refusal to talk to me on the phone.

I am writing this while it is fresh in my mind.

Benj. L. Dulany

SALES CONTRACT
for an
EVERMAY HOME
By
May Properties, Inc.

Made this 27th day of April 19 78, between Dr. V. H. Albright, VENDEE, and MAY PROPERTIES, INC., VENDOR, WITNESSETH:

That for and in consideration of an initial deposit in the sum of Nineteen Thousand * Dollars ($19,000.00 (cash) (check), receipt of which is hereby acknowledged by May Properties, Inc., the Vendee agrees to buy and the Vendor agrees to sell for the sum of One Hundred Eighty Eight Thousand Dollars ($188,000.00 all of Lot 113, Section 6, of Evermay Subdivision, Fairfax County, Virginia, together with the improvements ~~[illegible]~~ thereon ~~[illegible]~~ and being identified further as a ~~[illegible]~~ Finished Dwelling ~~[illegible]~~ per R. U. P. #1209

This Contract is personal to the Vendee and shall not be assigned or transferred by them without Vendor Approval.

~~[illegible]~~ Construction under this contract is subject to Builder's Warranty dated May 1, 1970 and Evermay Restrictions, attached hereto and made a part hereof and accepted completely by the Vendee. ~~[illegible]~~

TERMS OF SALE: The Vendee agrees that when the dwelling being erected under this contract is under roof, they will make an additional deposit to May Properties, Inc. in the amount of (Finished dwelling) (Dollars ($--=--). At scheduled date of settlement the Vendee agrees to pay in cash the above-mentioned purchase price, plus ** any extras as requested by Vendee ~~[illegible]~~ the above mentioned deposit being a portion thereof.

The Vendor agrees to convey the above described property by General Warranty Deed prepared at the expense of the Vendor. Examination of title, conveyancing, notary fees and all recording charges, such as Virginia Revenue Stamps and including those for purchase money trust, if any, to be at the cost of the Vendee. Trustees in all deeds of trust are to be named by the parties secured thereby. All taxes, insurance, rents, and interest are to be pro-rated as of the day of settlement. The property is sold free and clear of all liens or indebtedness of every kind. This property, however, is to be conveyed subject to any and all restrictions of record now thereon, and/or attached hereto, and subject to any utility easements that the Vendor may have to grant or reserve to facilitate the development of any surrounding property, or subject property.

It is further understood and agreed that all risk or damage to the property prior to possession, occupancy, use, or settlement by the Vendee in whole or in part, whichever occurs first, from fire, storm or other hazard are to be the responsibility of the Vendor and that thereafter the said risk or damage shall be the responsibility of the Vendee. Vendee agrees not to place, install, or construct anything in or on the premises contracted for prior to settlement.

In the event of a defective title, the deposit is to be returned and the sale declared off at the option of the Vendee, unless the defects are of such a character that they may be readily remedied by legal action by the Vendor. Vendor will hereby expressly be relieved from all liability for damage by reason of any defect in title. In case legal steps are necessary to perfect the title, such action must be promptly taken by the Vendor at the expense of the Vendor, whereupon the time herein specified for full settlement by the Vendee will thereby be extended for a period necessary for such prompt action. If settlement is not made because of defective title, the Vendor agrees to pay all title charges incurred.

Possession to be given on date of settlement. Settlement shall be made upon substantial completion of contract construction of the plans attached hereto. Substantial completion on or before ---***--- ---Finished--------. Substantial completion shall be interior completed with no essential element missing and exterior complete except for items delayed due to weather limitations. Additional time for such completion shall be allowed the Vendor for delays occasioned by war, national emergency, factors beyond the control of Vendor or a major strike. The Vendee agrees to make settlement at the offices of ---Herrell, Campbell & Lawson------. If the Vendee shall fail to settle, the deposit herein provided may be forfeited at the option of the Vendor, in which event the Vendee shall be relieved from further liability hereunder, or without forfeiting the said deposits, the Vendor may avail themselves of any legal or equitable rights which they may have under this contract.

Vendee acknowledges they have been advised that the approximate [illegible] acre parcel across State Route 123 on the northerly boundary of Evermay is under the control of officers of May Properties, Inc., and that they are further advised that it is not the intention of said officers to develop said property into single family dwellings.

~~*This contract is conditioned upon the exclusion of any covenants included in the development and protection of this tract and its improvements, which are to be set out in the deed of property to Vendee.~~

WITNESS THE FOLLOWING SIGNATURES by which the undersigned hereby ratify, accept and agree to the above contract of sale and acknowledge it to be our contract.

Dr. V. H. Albright Vendee ---------- Vendee

Dr. V. H. Albright

MAY PROPERTIES, INC.

By [illegible]

GENE H. MAY, President

Vendor

Deposit to be held in escrow by Herrell, Campbell & Lawson.

*At vendee's election, May Properties, Inc. will finance a vendor's lien in the amount of $169,000.00, 9% interest, with a one year maturity date.

**Settlement to be by or before 5/3/78.
It is specifically agreed and understood that this contract will become null and void if W. M. Haythe makes settlement on said property by 11:00 a.m., 4/28/78.

ACKNOWLEDGMENT

STATE OF VIRGINIA

_____ OF _____, to wit:

I, _____, a Notary Public in and for the _____ and State aforesaid, do hereby certify that _____ and _____, his wife, whose names are signed to the foregoing writing bearing date on the _____ day of _____, 19_____, have personally appeared before me in my _____ aforesaid and acknowledged the same. GIVEN under my hand this _____ day of _____, 19_____. My commission expires _____.

_____
Notary Public

STATE OF VIRGINIA

_____ OF _____, to wit:

I, _____, a Notary Public in and for the _____ and State aforesaid, do hereby certify that _____ as _____ of MAY PROPERTIES, INC., a Virginia Corporation, whose name is signed to the foregoing writing bearing date on the _____ day of _____, 19_____, has personally appeared before me in my _____ aforesaid and acknowledged the same. GIVEN under my hand this _____ day of _____, 19_____. My commission expires _____.

_____
Notary Public

Inspection checkout list:113/6: Haythe:1209 Perry Wm. Dr.;4/20/78
Please do as soon as possible and NOTIFY OFFICE when done.

GUTHRIE LEVI

Complete yard work including sod, walk, splash blocks, etc. per CO #18.
Clean exterior brick - remove nails, loose mortar etc.
Check garage door after installation.
Install light bulbs at cook top hood.
Clean vinyl tracks on windows where spotted with priming paint.
Clean mastic smudges and several streaks on floors - lower level.
Clean vanity front in Bath C.
Screen on gable lower vent is loose.
Clean caulking smear on jamb at door from Bath A to hall.
Check humidifier at furnace in utility room after elec. gets electricity to outlet box.

Comp. 4/27/78 Complete 4/27/78 a/c

D. MOONEY

Install ref. and icemaker.
Stain ends of shoe mold in kitchen.
Try to fill wider parts of crack between floor board and front of raised brick hearth in family room with plastic wood.
Vinyl window track on left side near top of right hand dining room window has cracked at staple.
Install bar ref.
Install handles on casement windows in game room and den.
Trim one shelf in den closet which will not lay flat.
Left front sash at BR #3 window has warped bottom rail which binds on sill.
Doors from Bath D to BR #3 and 4 bind at top.
BR #2 closet door binds.

Comp. 4/25/78 Complete 4/27/78 a/c

TODD

Patch chipped bricks in horizontal band at front of house.
Fill crack below one garage window.
Damper lever missing at family room fireplace.
L.R. fireplace damper clogged with mortar.
Patch around sump pump drain pipe.

Comp. 4/29/78

SCHOOLS

Complete areaway drain. Completed by J. G. 4/26/78
Low pressure and crooked stream at kitchen sink faucet (Aeroater may be clogged).
Install dryer vent.
Toilets in Baths B and C do not drain properly.
Drain in Bath C tub doesn't work.
Right Vanity faucet in Bath D drips.
Install shower curtain rod at tub.

Complete 4/27/78

WELLER

Tile cracked at Bath D tub faucet.
Dirt mixed in grout and loose grout in Bath D. tub.

Will complete on Fri. 4/28/78 Per Richard

FAIRFAX GLASS

Install glass end panel and shower rod at Bath C tub.
Will install 5/5/78

FLP-DEF-EX # 31
DATE 11/25/79
JUDGE
CASE # 59059

JONES-ROGERS

All Complete 4/27/78

- One heat pump fan doesn't work properly and vibrates when running.
- Two fan exhaust hood covers on right end of house are not tight against the brick wall.
- Excessive air noise at D.R. floor registers.

R AND R — Cracked storm window glass at family room center sash.
We Trying to have finished by Mon. 5/1/78

G.E. — Wood grain finish on dishwasher switch panel is chipped. (GE repair phones on 4/21/78)

Repairman will install as soon as new panel has ordered on 4/28/78 comes in.

CHECKOUT LIST: 13/6: Haythe: 4/20/78

LETON

Comp. 5/78

- Install vacuum tank after garage door is installed.
- One bulb is missing at D.R.chandelier. Also adjust plate at ceiling, if possible, so that small crack doesn't show at edge.
- Crystal hanging loose at front hall ceiling fixture.
- One light fixture above Bath A vanity doesn't work. (May be bulb)
- One bulb missing in fixture above stair from hall to lower level.
- Re-install vacuum outlet hanging loose in front hall.
- Humidifier at furnace in utility room has no electricity. Wire which starts at switch box for ceiling light may not be connected inside box.
- Pull chain switch on rec. room closet doesn't work properly.
- Remove straw from inside one light globe above Bath D vanity.
- Hole in plastic on light fixture in Den.
- Furnish dryer cord and plug.
- There are wires at 3 places in rear terrace area. Owner says one is for intercom speaker but doesn't know what the 2 others are.

TOMMY

Complete 4/27/78 except exterior painting on shedding Greenhouse Door

- Install strip of wall paper on soffit at end of wall cabinet above cook top counter.
- Repaint Bath A ceiling where damaged by water leak.
- Touch up at split near latch on door jamb from hall to Bath A.
- Touch up several places in main level and Lower level halls.
- Touch up a vacuum outlet in main hall.
- Paint upper part of BR #2 closet.
- Spackle and touch up small gouged out place in ceiling above shower door in Bath B.
- Touch up near light fixture on Bath D ceiling.
- Finish exterior caulking and painting where required. (Bermt door in Arcaway and Front Entrance in particular). (W. I. Rails at Front Entrance and Basement Arcaway)

* Mr. Haythe ordered roughing in only for outside speaker. This is what he asked for, (and will pay for), and is what he has.

797

WINSTON M. HAYTHE
ST. ALBANS ROAD PH. 703-356-3552
MC LEAN, VA. 22101

68-356
560

April 29, 1978

PAY TO THE ORDER OF M. L. Apartments $ 9,512.83

Nine thousand five hundred twelve and 83/100 DOLLARS

NBF
The National Bank of Fairfax
FAIRFAX, VIRGINIA 22030

MEMO

⑆0560⑈0356⑆ ⑈403688 3⑈ 0797 ⑈ 2⑈000951283⑈

DEF'S EXH. 1

CARB-OUT
DE LUXE CHECK PRINTERS, INC.
DOUBLE VOUCHER

TUDOR STUART GOURLEY, JR.
P. O. BOX 567
McLEAN, VIRGINIA 22101
ATTORNEY AT LAW
ESCROW ACCOUNT

NBF
The National Bank of Fairfax
FAIRFAX, VIRGINIA 22030

4299

Apr 28 1978 (756)

68-356 / 560 10

PAY Fifty DOLLARS $ 50.00

TO THE ORDER OF Colonial Title Company

#350

Tudor Stuart Gourley

⑈00004299⑈ ⑆0560⑈0356⑆ ⑈411193 1⑈

DE LUXE CHECK PRINTERS

TUDOR STUART GOURLEY, JR.
MC LEAN, VIRGINIA 22101

DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW.
IF NOT CORRECT PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED.

DELUXE - FORM WVC-3 V-7

#350 Title Lt 113, Sec 6 Evermay (May - Hastie)

PLF ⓓ EX. # 1
DATE 11/12/79
JUDGE
323
459055

CARB-OUT
DE LUXE CHECK PRINTERS, INC.
DOUBLE VOUCHER

TUDOR STUART GOURLEY, JR.
P. O. BOX 567
McLEAN, VIRGINIA 22101
ATTORNEY AT LAW
ESCROW ACCOUNT

NBF
The National Bank of Fairfax
FAIRFAX, VIRGINIA 22030

4300

Apr 1 28 1978

68-356
560 10

PAY Three Hundred DOLLARS $ 300.00

TO THE ORDER OF Tudor Stuart Gourley Jr

Tudor Stuart Gourley

$350.

⑈00004300⑈ ⑆0560⑈0356⑆ ⑈411193 1⑈

DELUXE CHECK PRINTERS

TUDOR STUART GOURLEY, JR.
MC LEAN, VIRGINIA 22101

DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW
IF NOT CORRECT PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED.

DELUXE - FORM WVC-3 V-7

$350 - fee

TUDOR STUART GOURLEY, JR.
P. O. BOX 567
McLEAN, VIRGINIA 22101
ATTORNEY AT LAW
ESCROW ACCOUNT

NBF
The National Bank of Fairfax
FAIRFAX, VIRGINIA 22030

4301

April 28 1978

68-356
560

10

PAY Nine Thousand Sixty Two + TSG 83/100 DOLLARS $ 9,062.83

TO THE ORDER OF Winston Haythe

#350

⑈00004301⑈ ⑆0560⑈0356⑆ ⑈411193 1⑈

DELUXE CHECK PRINTERS

TUDOR STUART GOURLEY, JR.
MC LEAN, VIRGINIA 22101

DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW.
IF NOT CORRECT PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED.

DELUXE - FORM WVC-3 V-7

325

#350 refund of balance to settle on closing of lot 113 Sec. 6, Evermay - less

	$100.00	interest to McLean Bank
9512.83	300.00	fee to T.S. Gourley
9062.83	50.00	Binder fee to Colonial Title Co.
450.00	450.00	

TUDOR STUART GOURLEY, JR.
P. O. BOX 567
McLEAN, VIRGINIA 22101
ATTORNEY AT LAW
ESCROW ACCOUNT

NBF
The National Bank of Fairfax
FAIRFAX, VIRGINIA 22030

4298

Apr. 28 1978

68-356
660 10

PAY One Hundred Sixty Thousand One Hundred DOLLARS $ 160,100.00

TO THE ORDER OF McLean Bank

#350

Tudor Stuart Gourley

⑈00004298⑈ ⑆056003561⑆ ⑈411193 1⑈

DELUXE CHECK PRINTERS

TUDOR STUART GOURLEY, JR.
MC LEAN, VIRGINIA 22101

DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW.
IF NOT CORRECT PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED.

DELUXE FORM WVC-3 V-7

350 Pay off loan to Winston Hay the Deed of Trust was not recorded, therefore no release is required

326

552

10

1512 Buena Vista Avenue
McLean, VA 22101
April 11, 1978

Mr. Gene H. May, President
May Properties, Inc.
1200 Potomac School Road
McLean, Virginia 22101

Re: Lot 113 - HAYTHE

Dear Mr. May:

When I walked through my house early this morning, I noticed a couple of problems in finished items which I thought I should bring to your attention now before the final inspection next week, since I did not see Mr. Gutherie around the house this morning.

The banister rails at the top of each set of stairs are not sturdy. I had noticed them some weeks ago but thought they were going to be made more sturdy when the floors were finished. I have not been there at a time when I could discuss it with Mr. Pillow. I noted that by comparison the banister rails at the foot of the stairs leading to the second story are quite sturdy.

Secondly, the large inter-com speaker in the rec room has a background noise when the volume is turned up. I would appreciate your mentioning this to Mr. Appleton so he can check on it.

I am sure that as you complete the house in the next few days the myriad of small matters will be noted, but I thought these two might not be caught.

Sincerely yours,

Winston M. Haythe

P.S. Please note above that my mailing address has changed recently.

PLF. DEF. EX. # 2
DATE 11/17/79
JUDGE
#59059

Deft. Pltf. Ex. 7
For Ident. In Evid.
Date 6-28-78
Reporter

THOMAS J. HARRIGAN
ATTORNEY AT LAW
THE DIXIE BUILDING, SUITES 103-108
2060 NORTH 14TH STREET
ARLINGTON, VIRGINIA 22201
703 - 522-9200

April 18, 1978

Mr. Winston Haythe
1512 Buena Vista Avenue
McLean, Virginia 22101

Re: Agreement of Assignment to Dr. Robert J. McNeal

Dear Mr. Haythe:

I have discussed the difficulties with the Agreement of Assignment with your attorney, Mr. Ben Dulaney, and pursuant to that discussion he suggested I write to you and prepare a release agreement so that you and Dr. McNeal would release each other from the Assignment, and that you would refund Dr. McNeal's $5,000.00 deposit.

As you know Dr. McNeal applied to the Riggs National Bank and made a loan application for $125,000.00 at the prevailing interest rate. As you were previously informed, Riggs declined to loan Dr. McNeal the $125,000.00 requested. In addition, the failure of Gene May to approve the Assignment and transfer his warranties to Dr. McNeal would make enforcement of Paragraph 1 of the Assignment impossible.

As a result of the above and my discussions with your attorney, I have prepared a Mutual Release for you and Dr. McNeal to sign, which has the effect of both parties releasing each other from all further rights and liabilities under the contract. Pursuant to our understanding I would appreciate your signing the enclosed Mutual Release and keeping a copy for yourself, and sending back the original with Dr. McNeal's $5,000.00 deposit.

Thanking you for your prompt attention to this matter, and trusting this will resolve the entire problem I remain

Very truly yours,

Thomas J. Harrigan

PLF-DEF EX. # 3
DATE 1/12/78
JUDGE
#59059

TJH:sct
Enclosure

MUTUAL RELEASE AGREEMENT

THIS MUTUAL RELEASE, dated this ____ day of April, 1978, by and between Robert J. McNeal, Jean P. McNeal and Winston Haythe is entered into for the following purposes:

Robert J. McNeal and Jean P. McNeal, assignees, and Winston Haythe, assignor, hereby release and discharge each other from any and all liabilities and responsibilities arising out of the Agreement of Assignment, dated 19 March, 1978, relating to the assignment of a purchase agreement for property known as Lot 113, Section 6, Evermay Subdivision, Fairfax, Virginia.

It is agreed by all parties that Robert J. McNeal and Jean P. McNeal complied with Paragraph 7, of the above Assignment and made a timely loan application with Riggs National Bank for $125,000.00 at the prevailing interest rate. All parties agreed that Riggs National Bank refused to approve the $125,000.00 loan application and, therefore, under Paragraph 7, the Agreement of Assignment is null and void.

It is further agreed that the failure of May Properties, Inc. to approve the Agreement of Assignment prevents the performance of Paragraph 1 of the Assignment. The parties agree that the provisions of Paragraph 1 are material to the Assignment. Since performance of the provisions of Paragraph 1 cannot be compelled and financing has not been obtained, the parties agree to release each other from all rights and liabilities under the entire Agreement.

Winston Haythe agrees that Dr. Robert J. McNeal gave a $5,000.00 deposit upon signing the Agreement of Assignment, and he hereby agrees that upon the execution of this Mutual Release,

 DEF'S EXH. 4

he will immediately return the entire $5,000.00 deposit to Robert J. McNeal.

WINSTON HAYTHE

Robert J. McNeal

ROBERT J. MCNEAL

Jean P. McNeal /by R.J.M.

JEAN P. MCNEAL

PLF DEF EX. # 4
DATE 1/17/79
JUDGE
#59059

March 19, 1978
McLean, VA 22101

Routh Robbins Realtors
1359 Chain Bridge Road
McLean, VA 22101

Gentlemen and/or Ladies:

It is hereby understood and agreed to by the undersigned that the earnest money deposit in the amount of FIVE THOUSAND DOLLARS ($5,000) being paid by the Assignees to the Assignor under a certain contract dated March 19, 1978 for the assignment of a contract of sale on Lot 113, Section 6, Evermay Subdivision, Fairfax County, Virginia, shall be held in an escrow by Routh Robbins Realtors until the time of settlement.

Robert J. McNeal
Robert J. McNeal

Jean P. McNeal
Jean P. McNeal

Winston M. Haythe
Winston M. Haythe

PLF-DEF-EX. #5
DATE 1/17/79
JUDGE
#59059

EDMUND D. CAMPBELL*
THOMAS SEARING JACKSON+
JAQUELIN AMBLER MARSHALL
H. DONALD KISTLER
BENJAMIN W. DULANY+
KENNETH WELLS PARKINSON
DANIEL WEBSTER COON+
THOMAS PENFIELD JACKSON+
ARTHUR C. ELGIN, JR.+
JAMES P. SCHALLER+
JAMES E. DRAMMER
PATRICIA D. BURNS
HERMAN O. LAUTEN
JOHN S. HILES+
NICHOLAS D. McCONNELL*
JAMES R. MICHAL
ALAN R. SWENDIMAN+
WILLIAM J. OLSON*

+ALSO ADMITTED IN MARYLAND
*ALSO ADMITTED IN VIRGINIA

LAW OFFICES
JACKSON, CAMPBELL & PARKINSON
1828 L STREET, N. W.
WASHINGTON, D. C. 20036

(202) 457-1600

MARYLAND OFFICE
414 HUNGERFORD DRIVE
ROCKVILLE, MARYLAND 20850
(301) 340-0450

VIRGINIA OFFICE
2000 N. 16TH STREET
ARLINGTON, VIRGINIA 22201
(703) 522-1330

ROGER H. MUZZALL
COUNSEL

DIRECT DIAL NUMBER

April 21, 1978

Mr. Gene H. May, President
May Properties, Inc.
1200 Potomac School Road
McLean, Virginia 22101

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Re: Lot 113, Section 6
Evermay Subdivision

Dfnt. Pltf. Ex. 8
For Ident. ✓ In Evid.
Date 6-28-78
Reporter

Dear Mr. May:

As I informed you on the phone this afternoon, we represent Winston M. Haythe, the contract purchaser of the above-referenced residential dwelling located in Fairfax County, Virginia.

Our client advises us that the settlement conference on the above property was scheduled for 9:00 a.m. this morning, Friday, April 21, 1978, at the offices of Tudor F. Gourley, Jr., 6810 Fleetwood Avenue, McLean, Virginia. Mr. Haythe was ready and able to complete settlement on the house, but, as a walk-through of the property yesterday disclosed, the house had not been substantially completed, and therefore settlement today was impossible.

The walk-through disclosed some ninety-seven (97) problems with the house in its present state. Mr. Haythe's architect, J. L. Sibley Jennings, Jr., prepared a detailed "punch list" which will be fowarded to you as soon as possible, early next week. Mr. Frank Knoblock, an architect in your employ, accompanied Mr. Haythe and Mr. Jennings on the walk-through and drafted a "punch list" of his own. We are advised that the Fairfax County occupancy permit had not been issued for this residence.

Mr. Haythe has asked us to inform you of his continuing willingness and ability to complete settlement when the house has been completed as required under the contract. Mr. Haythe would appreciate your informing either him or myself as to when the work will be completed, when an occupancy permit will be issued, and when a second walk-through and settlement conference can be held.

FILE-D EX # 6
DATE 1/17/79
JUDGE
CASE # 59059

On behalf of Mr. Haythe, we hereby make a formal demand upon you to complete the work required to be done on the house, and tender the monies due to you under that contract, upon your completion of the house. Mr. Haythe will be ready to settle on the property at any time after you complete your obligations under the contract.

Sincerely yours

JACKSON, CAMPBELL & PARKINSON

William J. Olson

WJO:bjp

cc: Mr. Winston M. Haythe
1512 Buena Vista Avenue
McLean, Virginia 22101

Tudor F. Gourley, Esquire
6810 Fleetwood Avenue
McLean, Virginia 22101

TUDOR S. GOURLEY, JR.
ATTORNEY AT LAW
6810 Fleetwood Road
McLean, Virginia 22101
703/893-3050

Mailing Address:
P. O. Box 567
McLean, Virginia 22101

Def. Pltf. Ex. 6
For Ident. In Evid.
Date 6-28-78
Reporter

April 20, 1978

Postponed April 21
4/21 A.M.
4/24/78 recd

Gene H. May, President
May Properties, Inc.
1200 Potomac School Road
McLean, VA 22101

Re: Lot 113, Evermay
May to Haythe

Dear Mr. May:

This letter will confirm your visit to my office and our subsequent conversation on the phone regarding the absence of a Residential Use Permit on Lot 113, Evermay.

Inasmuchas the RUP will not be available until the property is sodded, and settlement is contingent on the RUP, I have temporarily postponed settlement until I am advised that the Use Permit is at hand. I would appreciate a day or two notice prior to receipt of same so that we may prepare the settlement statement.

Very truly yours,

Tudor S. Gourley, Jr.
Attorney at Law

TSG:rcm

File: 350

cc: Winston M. Haythe

Pltf

3 times

PLF-DEF EX # 7
DATE 1/12/79
JUDGE JSN
CASE # 59059

1.285101 Approved OMB No. 63-R1501 Page: 1

A.

B. TYPE OF LOAN
1. [ ] FHA 2. [ ] FMHA 3. [ ] CONV. UNINS.
4. [ ] VA 5. [ ] CONV. INS.

DISCLOSURE/SETTLEMENT STATEMENT
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

6. FILE NUMBER
7. LOAN NUMBER

If the Truth-in-Lending Act applies to this transaction, a Truth-in-Lending statement is attached as page 3 of this form.

8. MORTG. INS. CASE NO.

C. NOTE: This form is furnished to you prior to settlement to give you information about your settlement costs, and again after settlement to show the actual costs you have paid. The present copy of the form is:

[ ] ADVANCE DISCLOSURE OF COSTS. Some items are estimated, and are marked "(e)". Some amounts may change if the settlement is held on a date other than the date estimated below. The preparer of this form is not responsible for errors or changes in amounts furnished by others. *Advance disclosure of prorations of taxes and assessments is based upon the assumption that taxes and assessments are not delinquent.*

[ ] STATEMENT OF ACTUAL COSTS. Amounts paid to and by the settlement agent are shown. Items marked *"(p.o.c.)"* were paid outside the closing; they are shown here for informational purposes and are not included in totals.

D. NAME OF BORROWER

E. SELLER
PLF-DEF-EX #8
DATE 1/12/79
JUDGE
CASE #59659

F. LENDER

G. PROPERTY LOCATION

H. SETTLEMENT AGENT

PLACE OF SETTLEMENT

I. DATES

LOAN COMMITMENT	ADVANCE DISCLOSURE
SETTLEMENT 4/21/78	DATE OF PRORATIONS IF DIFFERENT FROM SETTLEMENT

J. SUMMARY OF BORROWER'S TRANSACTION

100. GROSS AMOUNT DUE FROM BORROWER:		
101. Contract sales price		175,332.00
102. Personal property		
103. Settlement charges to borrower (from line 1400, Section L)		1,800.26
104. Extras in addition		12,808.97
105. to Contract Price		
Adjustments for items paid by seller in advance:		
106. City/town taxes	to	
107. County taxes	to	
108. Assessments	to	
109.	to	
110.	to	
111.	to	
112.		189,941.23
120. GROSS AMOUNT DUE FROM BORROWER		1~~26,140.97~~
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		
201. Deposit or earnest money		19,500.00
202. Principal amount of new loan(s)		160,000.00
203. Existing loan(s) taken subject to		
204.		
205. Credits from Seller		510.00
Credits to borrower for items unpaid by seller:		
206. City/town taxes	to	418.40
207. County taxes 1/1	to 4/21	~~343.37~~
208. Assessments	to	
209.	to	
210.	to	
211.	to	
212.	to	~~30,428.40~~
220. TOTAL AMOUNTS PAID BY OR IN BEHALF OF BORROWER		~~1,463.77~~
300. CASH AT SETTLEMENT REQUIRED FROM OR PAYABLE TO BORROWER:		180,728.40
301. Gross amount due from borrower (from line 120)		189941.23 ~~126,140.97~~
302. Less amounts paid by or in behalf of borrower (from line 220)		180,428.40 ~~30,428.40~~
303. CASH ([X] REQUIRED FROM) OR ([ ] PAYABLE TO) BORROWER		~~167,777.00~~ ~~9,512.83~~

K. SUMMARY OF SELLER'S TRANSACTION

400. GROSS AMOUNT DUE TO SELLER:		
401. Contract sales price		175,332.00
402. Personal property		
403. Extras in addition		12,808.97
404. contract price		
Adjustments for items paid by seller in advance:		
405. City/town taxes	to	
406. County taxes	to	
407. Assessments	to	
408.	to	
409.	to	
410.	to	
411.	to	
420. GROSS AMOUNT DUE TO SELLER		188,140.97

NOTE: The following 500 and 600 series sections are not required to be completed when this form is used for advance disclosure of settlement costs prior to settlement.

500. REDUCTIONS IN AMOUNT DUE TO SELLER:		
501. Payoff of first mortgage loan		
502. Payoff of second mortgage loan		
503. Settlement charges to seller (from line 1400, Section L)		125.00
504. Existing loan(s) taken subject to		
505. Deposit		19,500.00
506.		
507. Credits to purchaser		510
508.		
509.		
Credits to buyer for items unpaid by seller:		
510. City/town taxes	to	418.40
511. County taxes 1/1	to 4/21	~~343.37~~
512. Assessments	to	
513.	to	
514.	to	
515.	to	
516.	to	20,553.40
520. TOTAL REDUCTIONS IN AMOUNT DUE TO SELLER		~~20,553.37~~
600. CASH TO SELLER FROM SETTLEMENT:		
601. Gross amount due to seller (from line 420)		188,140.97 ~~126,140.97~~
602. Less total reductions in amount due to seller (from line 520)		~~20,553.37~~
603. CASH TO SELLER FROM SETTLEMENT		167,587.60

335

HUD-1 (5-75)

;LEMENT CHARGES	PAID FROM BORROWER'S FUNDS	PAID FROM SELLER'S FUNDS
700. SALES BROKER'S COMMISSION based on price $ @ %		
701. Total commission paid by seller		
Division of commission as follows:		
702. $ to		
703. $ to		
704.		
800. ITEMS PAYABLE IN CONNECTION WITH LOAN:		
801. Loan Origination fee %		
802. Loan Discount %		
803. Appraisal Fee to		
804. Credit Report to		
805. Lender's inspection fee		
806. Mortgage Insurance application fee to		
807. Assumption/refinancing fee		
808.		
809.		
810.		
811.		
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE:		
901. Interest from to @ $ /day		
902. Mortgage insurance premium for mo. to		
903. Hazard insurance premium for yrs. to		
904. yrs. to		
905.		
1000. RESERVES DEPOSITED WITH LENDER FOR:		
1001. Hazard insurance mo. @ $ /mo.		
1002. Mortgage insurance mo. @ $ /mo.		
1003. City property taxes mo. @ $ /mo.		
1004. County property taxes mo. @ $ /mo.		
1005. Annual assessments mo. @ $ /mo.		
1006. mo. @ $ /mo.		
1007. mo. @ $ /mo.		
1008. mo. @ $ /mo.		
1100. TITLE CHARGES:		
1101. Settlement or closing fee to T. S. C.		~~[illegible]~~
1102. Abstract or title search to		
1103. Title examination to		
1104. Title insurance binder to		
1105. Document preparation to		
1106. Notary fees to		
1107. Attorney's Fees to	~~[illegible]~~	
(includes above items No.:)		
1108. Title insurance to Colonial Title Company	501.28	
(includes above items No.:)		
1109. Lender's coverage $		
1110. Owner's coverage $ 501.28 ~~[illegible]~~		
1111.		
1112.		
1113.		
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES:		
1201. Recording fees: Deed $ 11.00 ; Mortgage $ 10.00 Release $	11.00	
1202. City/county tax/stamps: Deed $ 27.70 ; Mortgage $	27.70	
1203. State tax/stamps: Deed $ 263.10 ; Mortgage $	263.10	
1204. Grand Jury Tax	175.50	
1300. ADDITIONAL SETTLEMENT CHARGES:		
1301. Survey to Dr Cashmatt Hesse	100.00	125.00
1302. Pest inspection to		
1303.		
1304.		
1305.		
1306.		
1307.		
1400. TOTAL SETTLEMENT CHARGES *(entered on lines 103 and 503, Sections J and K)*	812.30	125.00

NOTE: Under certain circumstances the borrower and seller may be permitted to waive the 12-day period which must normally occur between advance disclosure and settlement. In the event such a waiver is made, copies of the statements of waiver, executed as provided in the regulations of the Department of Housing and Urban Development, shall be attached to and made a part of this form when the form is used as a settlement statement.

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Approved OMB No. 63 R1501 Page

B. TYPE OF LOAN

1. ☐ FHA 2. ☐ FMHA 3. ☐ CONV. UNINS.

4. ☐ VA 5. ☐ CONV. INS.

DISCLOSURE/SETTLEMENT STATEMENT

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

6. FILE NUMBER: 350

7. LOAN NUMBER

8. MORTG. INS. CASE NO.

If the Truth-in-Lending Act applies to this transaction, a Truth-in-Lending statement is attached as page 3 of this form.

C. NOTE: This form is furnished to you prior to settlement to give you information about your settlement costs, and again after settlement to show the actual costs you have paid. The present copy of the form is:

☐ ADVANCE DISCLOSURE OF COSTS. Some items are estimated, and are marked "(e)". Some amounts may change if the settlement is held on a date other than the date estimated below. The preparer of this form is not responsible for errors or changes in amounts furnished by others. *Advance disclosure of prorations of taxes and assessments is based upon the assumption that taxes and assessments are not delinquent.*

☒ STATEMENT OF ACTUAL COSTS. Amounts paid to and by the settlement agent are shown. Items marked *"(p.o.c.)"* were paid outside the closing; they are shown here for informational purposes and are not included in totals.

D. NAME OF BORROWER	E. SELLER	F. LENDER
Winston M. Haythe		

G. PROPERTY LOCATION	H. SETTLEMENT AGENT	I. DATES	
		LOAN COMMITMENT	ADVANCE DISCLOSURE
	PLACE OF SETTLEMENT	SETTLEMENT	DATE OF PRORATIONS IF DIFFERENT FROM SETTLEMENT

J. SUMMARY OF BORROWER'S TRANSACTION

100. GROSS AMOUNT DUE FROM BORROWER:		
101. Contract sales price		
102. Personal property		
103. Settlement charges to borrower *(from line 1400, Section L)*		
104.		
105.		
Adjustments for items paid by seller in advance:		
106. City/town taxes	to	
107. County taxes	to	
108. Assessments	to	
109.	to	
110.	to	
111.	to	
112.		
120. GROSS AMOUNT DUE FROM BORROWER		
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		
201. Deposit or earnest money		
202. Principal amount of new loan(s)		
203. Existing loan(s) taken subject to		
204.		
205.		
Credits to borrower for items unpaid by seller:		
206. City/town taxes	to	
207. County taxes	to	
208. Assessments	to	
209.	to	
210.	to	
211.	to	
212.	to	
220. TOTAL AMOUNTS PAID BY OR IN BEHALF OF BORROWER		
300. CASH AT SETTLEMENT REQUIRED FROM OR PAYABLE TO BORROWER:		
301. Gross amount due from borrower *(from line 120)*		
302. Less amounts paid by or in behalf of borrower *(from line 220)*		( )
303. CASH (☐ REQUIRED FROM) OR (☐ PAYABLE TO) BORROWER		

K. SUMMARY OF SELLER'S TRANSACTION

400. GROSS AMOUNT DUE TO SELLER:		
401. Contract sales price		
402. Personal property		
403.		
404.		
Adjustments for items paid by seller in advance:		
405. City/town taxes	to	
406. County taxes	to	
407. Assessments	to	
408.	to	
409.	to	
410.	to	
411.	to	
420. GROSS AMOUNT DUE TO SELLER		
NOTE: The following 500 and 600 series sections are not required to be completed when this form is used for advance disclosure of settlement costs prior to settlement.		
500. REDUCTIONS IN AMOUNT DUE TO SELLER:		
501. Payoff of first mortgage loan		
502. Payoff of second mortgage loan		
503. Settlement charges to seller *(from line 1400, Section L)*		
504. Existing loan(s) taken subject to		
505.		
506.		
507.		
508.		
509.		
Credits to buyer for items unpaid by seller:		
510. City/town taxes	to	
511. County taxes	to	
512. Assessments	to	
513.	to	
514.	to	
515.	to	
516.	to	
520. TOTAL REDUCTIONS IN AMOUNT DUE TO SELLER		
600. CASH TO SELLER FROM SETTLEMENT:		
601. Gross amount due to seller *(from line 420)*		
602. Less total reductions in amount due to seller *(from line 520)*		( )
603. CASH TO SELLER FROM SETTLEMENT		

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.LEMENT CHARGES	PAID FROM BORROWER'S FUNDS	PAID FROM SELLER'S FUNDS
700. SALES BROKER'S COMMISSION based on price $ @ %		
701. Total commission paid by seller		
Division of commission as follows:		
702. $ to		
703. $ to		
704.		
800. ITEMS PAYABLE IN CONNECTION WITH LOAN:		
801. Loan Origination fee %		
802. Loan Discount %		
803. Appraisal Fee to		
804. Credit Report to		
805. Lender's inspection fee		
806. Mortgage Insurance application fee to		
807. Assumption/refinancing fee		
808.		
809.		
810.		
811.		
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE:		
901. Interest from to @ $ /day		
902. Mortgage insurance premium for mo. to		
903. Hazard insurance premium for yrs. to		
904. yrs. to		
905.		
1000. RESERVES DEPOSITED WITH LENDER FOR:		
1001. Hazard insurance mo. @ $ /mo.		
1002. Mortgage insurance mo. @ $ /mo.		
1003. City property taxes mo. @ $ /mo.		
1004. County property taxes mo. @ $ /mo.		
1005. Annual assessments mo. @ $ /mo.		
1006. mo. @ $ /mo.		
1007. mo. @ $ /mo.		
1008. mo. @ $ /mo.		
1100. TITLE CHARGES:		
1101. Settlement or closing fee to		
1102. Abstract or title search to		
1103. Title examination to	300.00	
1104. Title insurance binder to Colonial Title Company	50.00	
1105. Document preparation to		
1106. Notary fees to		
1107. Attorney's Fees to		
(includes above items No.:)		
1108. Title insurance to Colonial Title Company	452.16	
(includes above items No.:)		
1109. Lender's coverage $		
1110. Owner's coverage $		
1111.		
1112.		
1113.		
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES:		
1201. Recording fees: Deed $ 11.00 ; Mortgage $ 10.00 Release $	21.00	
1202. City/county tax/stamps: Deed $ 337.50 ; Mortgage $	167.50	
1203. State tax/stamps: Deed $ 263.10 ; Mortgage $ 240.00	503.10	
1204. County Tax	126.60	
1300. ADDITIONAL SETTLEMENT CHARGES:		
1301. Survey to Ne. Lastrum Assoc.	100.00	125.00
1302. Pest inspection to		
1303.		
1304.		
1305.		
1306.		
1307.		
1400. TOTAL SETTLEMENT CHARGES (entered on lines 103 and 503, Sections J and K)	1800.26	1250.00

NOTE: Under certain circumstances the borrower and seller may be permitted to waive the 12-day period which must normally occur between advance disclosure and settlement. In the event such a waiver is made, copies of the statements of waiver, executed as provided in the regulations of the Department of Housing and Urban Development, shall be attached to and made a part of this form when the form is used as a settlement statement.

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