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Mss 381, Wittenberg Family Papers

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Jolles – Friedman Swindel, 1983

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March 6, 1974

Dr. Morton Wittenberg
1515 Gwinnett Street
Augusta, Georgia 30904

Dear Mort:

I am sorry that I am late with the check but as my secretary advised you, I have been out of the country on business. The check is in the amount of $3,200.00. $2,000 on the principal and $1,200 interest at a rate of 6% per annum.

Thanks for your patience.

Yours truly,

Joseph J. Freedman

JXF:mec
Enclosure

xc: Mr. Isaac S. Jolles
February 14, 1983

Honorable Hartley Nordin
Bankruptcy Judge
600 Galaxy Building
330 Second Avenue South
Minneapolis, Minnesota 55401

Dear Judge Nordin:

Today I received notice that you sent out regarding denial of discharge in the Joseph Joel Freedman matter.

I would appreciate it if you would have your clerk send me Mr. Freedman's last known address and the name of his attorney. Thank you for your kindness.

Very sincerely yours,

Morton Wittenberg, D.P.M.
MW:dm

Joseph Joel Freedman
5001 W. 80th St., Suite 801
Minneapolis, MN 55437

Richard D. Bunin
1330 Sheldar Tower
Wayzata Boulevard
Hennepin County Road 18
St. Louis Park, MN
MR. SLABY: This is the deposition of Dr. Morton Wittenberg, taken by the Defendant for the purpose of cross examination and use as discovery or evidence in the trial of the matter. Again, Barry, we can —

MR. WILLIAMS: Same stipulations.

MR. SLABY: Same stipulations as we had before with Dr. Levine’s testimony.

[Reporter’s note: All objections except as to the form of the question will be waived until the time of trial. Signature is waived]

MR. SLABY: Will you swear the witness, please?

(Witness is sworn here)

MORTON WITTENBERG, having been first duly sworn, testifies as follows:

EXAMINATION BY MR. SLABY:

Q. Dr. Wittenberg, you purchased a portion of the partnership interest in the Singleton Apartments, the Singleton Arms Apartments, from Joe Freedman? Is that correct?

A. Yes.

Q. You purchased, I believe, a ten per cent interest from him?
A. That's right.

Q. And that interest that you purchased was actually a portion of his interest in the partnership, which I believe at that time was some fifty-one per cent? Isn't that correct?

A. I believe it's correct. I really didn't know. But I believe that he was -- I don't think that anybody else was involved in the sale of that. I think it was his share.

Q. The Defendant wasn't involved in that transaction?

That was negotiated between you and Joe Freedman?

A. That, that purchase --

Q. That sale --

A. -- was between Mr. Freedman and myself, yes. If I remember correctly, he stated that that was, he was really selling me the stock of a, another person who was involved in this, I believe the contractor, that he wanted to get, in his words, "the contractor out," and sell me, sell me that -- offered fifteen per cent, basically, originally, and I couldn't handle the fifteen per cent. So --

Q. You asked Dr. Levine --?

A. -- I asked Dr. Levine to participate.

Q. -- to take five per cent of the fifteen?

A. Right, right.

Q. And that interest, then, came from, from Joe? That's where you received it from?
A. I believe so. Yeah, I guess it was his; his, or the contractor's stock, I'm not sure which one.

Q. Well, that's --- Didn't you pay Joe the money for the interest?

A. To the best of my knowledge, yes.

Q. Was the contractor ever a member of the partnership?

A. According to Mr. Freedman. I mean, I never even knew who the contractor was.

Q. Okay.

A. Those are the words he said to me.

Q. Do you recall what, what date it was when you acquired your interest from Joe?

A. No, I really don't.

Q. Would it be safe to say, it was in November of 1971? Is that about right?

A. I think that would be a ball park figure, yes.

Q. Do you recall how much you paid Mr. Freedman for that interest?

A. I paid $20,000.00 for an interest.

Q. And that was ---

A. A ten per cent.

Q. And how was that paid?

A. In cash, by check.

Q. And you gave that made payable to Mr. Freedman?
A. I believe that's correct.

Q. And that was all in the early part of November, some time during the month of November, 1971?

A. I'd like to stipulate, I really don't remember the year. But -- or the month, even -- but I know, that would be a ball park figure, as far as I'm concerned.

Q. Didn't Joe approach you about buying an interest in the apartments?

A. I would -- yeah, I guess that would be --

Q. You all were playing tennis or something like that at the time?

A. Right, just started talking about it, and he told me about the apartments, right.

Q. Buddy [Isaac Bolles, the Defendant] didn't have anything to do with that, did he?

A. At that time, no, uh-uh.

Q. And the idea for you to get involved in this situation really initiated with Joe's conversation on the tennis court with you?

A. Basically, that's correct.

Q. And then from that point, you all --

A. Right.

Q. -- came up with a consideration. The amount that you determined to pay, that was agreed upon between you and Joe and
Dr. Levine? Isn't that correct?

A. That's correct.

Q. Buddy [the Defendant] didn't have anything to do with coming up with how much you were to pay, or anything of that nature, did he?

A. I don't believe so.

Q. When I refer to Buddy, for the record, I'm referring to Isaac S. Jolles. Now, sometime — At no time did Mr. Jolles ever come to you and ask you or Dr. Levine to buy a portion of his interest in the partnership, did he?

A. No.

Q. Sometime shortly after you acquired this interest, my understanding is that you and Dr. Levine, maybe mostly you since he was out of town, had a disagreement with Joe about the apartments. Isn't that correct?

A. Well, if it's proper to tell how the so-called disagreement came about, I'd like to put it on the record.

Q. Okay. Now, didn't it come about as a result of your having to come up with some extra money, and then you felt as if the purchase price might not have been a correct price?

A. No, sir, that's not the way it happened.

Q. What happened?

A. What happened was that Mr. Freedman called me on the telephone and told me that he was going to leave Augusta, and
that he had had a job opportunity in another community, and he
wanted to divest himself of his property, of the Singleton A-
partments, and that since I was a partner, he would, he was
offering me his share of, I believe, forty-two-and-a-half per-
cent, for -- I'm not positive, but I'm almost sure it was --
$35,000.00; and that he was offering it to Buddy's [the De-
fendant's] sister, but that as a partner, he wanted to give me
the opportunity of buying it first. I told him that I was in
no position to invest in that. After I hung up the telephone,
I started to think that, how come Mr. Freedman is offering me
forty-two-and-a-half per cent of the property for $35,000.00,
when I just, I think, within a year prior to that, had pur-
chased ten per cent of the apartments for $20,000.00? And the
figures didn't jive. And to make the matter even worse and
what alerted me even more is, just a month or two before that,
on the financial statement that I had to make out, I asked Mr.
Freedman what the value of our property was. And he said,
"Well, I'm sure it's appreciated five -- twenty-five per cent,
or something like that."

Q. So that put you back in contact with Joe?

A. Right. Right.

Q. And then that ended up with an agreement with Joe and
yourself and Dr. Levine for Joe to re-buy your interest at
that time?
A. I -- At that time, it made me suspicious that something was going on that was not to my best interest. And I then started investigating up to this point, as far as I was concerned, because Mr. Jolles was my attorney, was one of the partners, and had played a role in this by having me sign papers at different times for the partner -- for the, for the apartments, I had really not paid any attention to it. It was only when this offer to sell came up that I became suspicious that everything wasn't going right; and I started, I asked for the books to be checked. And that's when the disagreement started, because I felt that there were some -- after having my accountant look at it, I felt that there were some problems.

Q. Wasn't Joe really kind of the driving force behind the whole thing?

A. In what way do you mean?

Q. Well, he kind of was the -- he, it was his idea to start the thing, the apartment project --

A. I don't have any idea about that.

Q. Didn't he, wasn't he the one, really, that kind of looked after the apartments while he was here in Augusta, anyway, during this period of time we're talking about?

A. I had the impression that he was, he had an interest in the apartments.
Q. He was the principal owner.
A. Right, right.

Q. Do you recall, shortly after, sometime after, I believe in January of '72, after you and Dr. Levine had purchased your interests, Dr. Levine's attorney wanting a management agreement drawn up as to the control and operation of those apartments?
A. I'm sorry. Would you repeat that? I really didn't understand it.

Q. Sometime during January, 1972, or a little bit before that, Dr. Levine's attorney and possibly yourself and Dr. Levine were concerned about the fact that there was no management agreement between the partners as to control and operation of the apartment complex. And as a result, didn't you all execute in January of '72, all partners execute this document? That's a copy of it, a Xerox copy.
A. I, I really don't know the genesis of this. I don't know if it was Dr. Levine's attorney. I don't remember whether it was Dr. Levine's attorney who insisted on this or not.

Q. Do you recall, though, that someone, somebody bringing up the fact that there needed to be a management agreement, and as a result, you all executed that document? I believe your signature is on it.
A. I don't see my signature on it. Oh, here it is, yeah.
Well, if I signed it, I must have -- You know, I'll be very frank with you. As I stated before, because Mr. Jolles was my attorney, I paid really very little attention to papers that I signed.

Q. Well, you were given the opportunity, though, to read it, I'm sure, were you not?
A. I'm not so sure I was.

Q. Are you saying that you executed it under duress?
A. No, not under duress; under --

Q. You're not saying you were defrauded in executing the document?
A. I'm not saying anything, sir, except that I, as I said, I don't remember the genesis of this, and I don't remember -- I, I'm sure that I signed it. That's my signature here.

Q. And that's Mr. Jolles' signature also, is it not?
A. Looks like his.

Q. And Mr. [sic] Levine's? In fact, all the partners, isn't that correct?
A. Well, it looks to me like it's their signatures, right.

MR. SLABY: I'm going to attach a copy of this as Defendant's Exhibit 1 of the deposition also.

A. And this is what kind of document, again? Would you remind me?

Q. It's a management and control agreement concerning the
operation of the Singleton Arms Apartments.

A. Okay.

Q. Now, this agreement states that all profits and losses in the operation of this property will be shared and borne by the owners in the respective percentages of their ownership. Have you ever at any time paid into the operation of the partnership your percentage of the losses of the partnership, pursuant to this agreement?

MR. WILLIAMS: I object to the form of the question because it assumes a fact which has not been established, that is, that there were losses during the time that —

MR. SLAY: Well, okay.

Q. Well, assuming that there were losses for the sake of argument —

A. That's where I got — that's what led me astray.

A. Have you ever —

Q. I remember this agreement now because this agreement says that we are responsible for our percentage of, of whatever we own, right?

Q. That's correct.

A. Okay. That's what led me astray on these other notes, because I remember that and don't remember the other notes.

Q. And do you mean have you ever paid your percentage of any
loss?

A. I don't believe I ever put any money directly into the partnership.

Q. Other than the original purchase price?

A. Other than the original purchase, right.

Q. Okay. Now, so as a result of these circumstances, in any event, you got back in touch with Mr. Freedman. And as a result of discussions between he and his attorney, Mr. Bill Cooney, you all came to an agreement as to his repurchase of the interests that he had sold you and Dr. Levine? Isn't that correct?

A. Yeah.

Q. And he paid you how much, do you recall how much you agreed to accept from Mr. Freedman for your interests?

A. Uh, yes. I do. It was $22,000.00.

Q. How much of that did Joe Freedman pay to you in cash?

A. None.

Q. How much had he paid pursuant to the installment provisions of that purchase price?

A. None.

Q. You've received nothing from him?

A. Before -- I received nothing for about a year, a year-and-a-half from him.

Q. But you have received something?
A. Oh, yeah, yeah.

Q. Do you recall how much?

A. I believe that he had paid principal and interest down to a total of $10,000.00.

Q. And that paid directly to you and Dr. Levine?

A. Yeah.

Q. Mr. Jolles received none of that?

A. No.

Q. And you were selling your interests back to the individual from whom you received it? Is that correct?

A. Uh-huh. [affirmative]

Q. Now, your interest and that of Dr. Levine did not constitute a controlling interest in the partnership, did it?

A. No, it did not.

Q. And, in fact, Mr. Jolles' interest is not a controlling interest either, was it?

A. As far as I know, no.

Q. Now, when you -- I'm going to hand you your Exhibit A to your Complaint, Amendment to your Complaint. This is the agreement that you are suing upon. Do you see any alteration of language in that Agreement, anything struck out?

A. You mean, do I see a line in this?

Q. Yes.

A. Yes, I see a line.
Q. Would you read into the record the part that is marked out?

A. The part that is stricken out is, "which was to the advantage of the undersigned and all other members of the venture agreement."

Q. If Mr. Jolles were to testify that he marked that language out prior to the execution of the instrument, you could not refute that, could you?

A. I would not refute it.

Q. You never paid him the dollar that's called for in there, did you?

A. I really don't remember.

Q. You never gave him anything of, any consideration at all for executing that document in the way of money, did you?

A. Mr. WILKINS: I object to the form -- Never mind. I withdraw my objection.

A. Well, if -- for the record and for your information, I think that it's very important that you understand why Mr. Jolles offered to, to, to give me this Hold Harmless Agreement. It's because we would not have come to an understanding and purchase of the -- with Mr. Freedman, had this not been given to us. He made a job, I'm sure, of helping us to that end.

Q. But Mr. Freedman's transaction with you and Dr. Levine was concluded on October 24, 1972? Isn't that correct?
A. If you say so. I'm sure there are dates written down someplace.

Q. And this agreement was signed on November 13 of 1972? Isn't that correct? On the next page.

A. Yeah. But I want to reiterate that, at the time that I was negotiating with Mr. Freedman ... because of certain improprieties that I felt were taking place in the apartments, and he did not have any money to give me; and at this time that document which you showed me earlier, which said that my share would be proportionate to the points to the part of my interest, I, up to this point, had assumed was part of the obligations at the bank also.

Q. But you never gave Mr. Jolles any money for signing that agreement? Did you?

A. It says here --

Q. I know what it says, but I'm asking you, you never gave it to him?

A. I don't really remember. I don't really remember. I really don't remember. If it was proper to do so, and I was supposed to do so, and Mr. Jolles, while he was my lawyer, always made us do things exactly the way they were supposed to --

Q. He wasn't your lawyer at this time, though, was he?

A. Oh, yes, sir, he certainly was.

Q. Who was representing you at that time? Wasn't Mr. Wil-
Williams representing you?

A. Yes, but he was my lawyer and had been for fifteen years, and continued to be my lawyer.

Q. Didn't your lawyer, Mr. Williams, prepare that document?

A. Yes, my lawyer Mr. Williams prepared this. I didn't think it was proper for my lawyer who was really my lawyer in everything except this, but who was a partnership partner in this thing, should also draw up the papers.

Q. Well, is your testimony today that you gave him money for executing that document?

A. I'm stating, I don't remember, okay? And I'm stating that Mr. Jollas, who had been my attorney for fifteen years, had always done things exactly the way they were supposed to be done. And if he, if it says that I was supposed to give him a dollar, I probably did. I don't remember actually handing it to him.

Q. Well, you, you don't remember that?

A. I don't remember it.

Q. Were you there when it was signed, when he signed it?

A. Yes, uh-huh.

Q. You were there when he signed that document?

A. This document?

Q. Yes.
A. Of course I was there when he signed this document.

Q. Where did it take place?

A. In this office, in the next office.

Q. Well, then you -- you don't remember giving him any money? Do you recall giving him any consideration, anything of value --

MR. WILLIAMS: I object --

Q. -- whether it be --

MR. WILLIAMS: I object to the form of that question because it calls for a legal conclusion, to which this witness cannot testify.

MR. SIBLEY: He can't testify if he gave him anything of value?

MR. WILLIAMS: Not if he doesn't know the legal definition to it. I think it calls for a legal conclusion.

Q. Well, do you know what, do you know what 'value' means, what's the value of an object, whether it be intrinsic or otherwise, has a value and consideration? Do you understand what I'm saying, Doctor?

A. Well, why don't you finish it, and let me see if I understand what you're getting at.

Q. What I'm asking you is, did you give him any new consideration or anything of value in return for his executing that
document?

A. Yeah.

Q. What did you give him?

A. We decided, we let the deal go through, based upon this document.

Q. But your deal went through on October 24?

A. With the pro- with his promise in advance that he would give it to me.

Q. Was that in writing?

A. No, it was an oral agreement.

Q. Your complaint, though, with Mr. Freedman was directly with Mr. Freedman and had nothing to do with Mr. Jolles? Isn't that correct?

A. NO, not — My complaint was with Mr. Freedman directly, but Mr. Jolles was a principal in this, and he was involved.

Q. How was he involved?

A. He was a partner.

Q. I know, but he, he, the improprieties in the management which you're talking about, or the funds that were missing, Mr. Jolles had nothing to do with that?

A. I don't know whether that's true or not.

Q. You think he might have utilized money from the apartments to his own benefit?

A. I didn't, I never said that about anybody.
Q. Well, do you know of any improprieties at all that Mr. Jolles had to do with insofar as that apartment complex is concerned, that gave rise to your dispute with Mr. Freedman?

A. No, but all I know is that my accountant told me that the case had been managed badly, and since Mr. Jolles was also the attorney for it, he possibly could have had some involvement in it. I don't know.

Q. What was the accountant's name that told you this?

A. Abram Serrotta.

Q. Isn't it a fact that your attorney mailed that document to Mr. Jolles to sign after your consummation on October 24, wherein you divested your interest to Mr. Freedman?

A. No. I think that he mailed me the document.

Q. Do you remember exactly what happened?

A. What do you mean by that?

Q. Are you clear in your mind exactly what happened insofar as who mailed it, and when you signed it, and who was present?

A. To the best of my knowledge, and to the best of my memory, while we were negotiating or demanding out of the Singleton Apartment, including what I found out later, much to my surprise, my responsibility on bank notes, that the bank would not release me of, I did, I wanted out, even if everything was okay. I wanted out because I felt that Mr. Freedman had misrep-
resented a lot of things. And I wanted out.

Q. Well, it wasn't Mr. Jolles, though, that misrepresented those things, is it?

A. May I finish, please? When the figure of $22,000.00 was negotiated, it still left the liability of roughly $150,000.00 which it suddenly occurred to me I was responsible for potentially in toto. I didn't understand, I thought that those notes that I had signed were tied in with that ten per cent, that other document that we referred to earlier, that management document, I guess it is.

Q. All the, all the partners were exposed to that amount of liability, though, weren't they?

A. Right. But I didn't realize that, technically, the bank could come to me totally if they couldn't collect it from anybody else. 

Q. Well, they could go against --

A. -- or everybody, everybody, right. And this -- any one of the principals. And, and when I realized this, and Mr. Freedman was willing to sell us back, or give us back, or give us some money back, but only with notes, and that my name still -- and he offered to give a Hold Harmless Agreement and was leaving the city, I felt that that was not satisfactory, that I wanted some sort of security. And he offered no security. And I told Mr. Jolles, who I reiterate was still my attorney, even

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though he was not representing, he did not draw up this Hold Harmless, this document, this Hold Harmless document, that I -- and Dr. Levine was much more adamant about it -- that we would not settle unless -- we would not settle unless we got some sort of security. Mr. Jolles offered to give me, give us a Hold Harmless Agreement.

Q. At the time that he executed that, you and Mr. Jolles were still on very friendly terms, were you not?
A. Yes.
Q. Very close friends?
A. Uh-huh. [affirmative]
Q. And at, really, at the time you executed that document, Mr. Jolles and Mr. Freedman were still real close friends?
A. I would presume that would be true.
Q. So he was right in the middle of two close friends?
Is that the way it was?
A. I don't know.
Q. Your decision to divest yourself of your interest that you acquired from Joe Freedman, in your initial contact with Mr. Freedman to so divest your interest back to him, that was strictly between you and Joe? Isn't that correct?
A. Yeah, I said, "I want my money back."
Q. All right. Buddy [Mr. Jolles] didn't have anything to do with that?
A. Not at that stage of the game.

Q. That was you all's hassling between yourselves to come to some agreement, and you can get out of the thing and something that you didn't realize at the time you bought it; and for that reason, Joe bought it back? Right?

A. He bought it back because, he bought it back because I was, if necessary, going to --

Q. File suit against him?

A. Yes, that's correct.

Q. File suit against Joe Freedman for misrepresenting to --

A. Or ask, or sell the apartments to get my interest back.

Q. But that disagreement was between you and Joe, not you and Buddy [Jolves]. You didn't have anything against Buddy that gave rise to your wanting to divest yourself of interest?

A. That's correct. That's a true statement.

Q. Actually, wouldn't you say it was to Buddy's detriment that two other partners got out, because that's two less partners to assume the responsibility on the note?

MR. WILLIAMS: I'll object to the form of that question. That's calling for a conclusion.

MR. SLABY: Okay.

Q. Well, you will have to, I want you to answer the question, and the objection will be ruled on by the court later on.

A. Now, would you repeat the question?
Q. At the time that you got out, and Dr. Levine divested his interest --

A. Uh-huh.

Q. -- wasn't it actually to everybody's benefit that those two partners stay in, because that's two more people to be responsible on the note, rather than two less people to be responsible on the note?

A. I don't think that's necessarily true. I didn't know. Those apartments could have made a million dollars, for all I knew at the time. I wanted out because a person that I had trusted had misrepresented the facts. And that's why I wanted out.

Q. And there was nothing in your written agreement with Joe Freedman that was contingent upon the execution of that document, was there?

A. In the written agreement with Joe Freedman?

Q. Yes.

A. That's correct. But as I said before, I wouldn't have signed it had I not had a promise of this.

Q. Well, if Mr. Jolles had refused to sign it on November 13, the transaction was still concluded on October 10? Isn't that correct?

A. Yes. But as I told you before, Mr. Jolles was my lawyer and friend for fifteen years, and I had no reason to doubt
that he would execute it if he said he would.

Q. Well, you didn't ask anybody else to sign a similar indemnity agreement, other than Mr. Freedman and Mr. Jolles, did you?

A. No one else offered.

Q. Are you saying that Mr. Jolles came forward —?

A. Yes.

Q. On his own initiative?

A. Uh-huh. [affirmative]

Q. To sign this document?

A. Uh-huh. [affirmative]

Q. And Mr. Freedman's bankrupt now? Isn't that correct?

A. As far as I know, yeah, he's bankrupt as far as the Singleton's concerned, yeah.

MR. SIMPY: I have no other questions.

MR. WILLIAMS: We don't have any questions.

(Deposition concluded)
April 30, 1979

Mr. Isaac S. Jolles
Jolles & Slaby, P. C.
Attorneys at Law
Suite 601, Marion Building
Augusta, Georgia 30902

Dear Mr. Jolles:

At your request I have computed certain charges which would be made in a hypothetical bankruptcy case. These have been computed after some research and a conference with the chief clerk in the bankruptcy office of the Southern District of Georgia. I have assumed a total asset realization of approximately $52,000.00, a Georgia resident individual as bankrupt, and secured debt (exclusive of real estate) in the approximate amount of $6,500.00.

The deductions which would be subtracted from the total asset realization of $52,000.00 in a bankruptcy situation would be as follows:

(a) Secured debt $ 6,500.00
(b) Charges under § 50 of the Bankruptcy Act 1,820.00
(c) Charges under § 47 of the Bankruptcy Act, assuming a receiver and trustee, applying statutory percentages 1,035.00
(d) State of Georgia Homestead Exemption 5,000.00
(e) Bond fees, insurance, expenses during administration, miscellaneous expenses, long distance telephone calls, etc. 750.00
(f) Probable attorney’s fees:
   (1) Attorney for petitioning creditors 1,000.00
   (2) Attorney for the trustee and receiver 2,500.00
   (3) Attorney for the bankrupt 3,000.00

THE TOTAL OF THE DEDUCTIONS AFOREMENTIONED IS: $ 21,605.00
Thus, if the total asset realization of $52,000.00 in the hypothetical bankruptcy case is reduced by the aforementioned deductions, the remainder is $30,395.00.

In the event that the case is a voluntary as opposed to an involuntary bankruptcy, the attorney's fees for the attorney for the petitioning creditors would be eliminated, but the fees for the attorney for the bankrupt would probably be increased by a similar amount. I do not think that any substantial savings would occur if the case would voluntary as opposed to involuntary.

I understand that this hypothetical bankrupt has unsecured creditors whose claims total approximately $62,500.00. The dividend that those unsecured creditors would expect to receive in this hypothetical bankruptcy case would be computed very simply.

The amount available for distribution (the total asset realization less all costs and expenses of administration and deductions as shown above) which is the amount of $30,395.00 would be divided by the total amount of unsecured claims which is $62,500.00. The resulting percentage (48.6%) is the percentage that each unsecured creditor would receive on its claims which are duly proved and allowed by the Court. Of course, post bankruptcy interest could not be allowed to any unsecured creditor. Thus, the $49,000.00 creditor which you have mentioned to me would receive a distribution of 48.6%, or $23,814.00.

It should be kept in mind that the administration of this hypothetical bankruptcy case, if it includes joint ownerships of property and other such questions about the disposition of assets, and requires the sale of real property would take anywhere from 12 to 18 months to conclude.

I hope that this response satisfies the many questions which you have but if further information is required, please do not hesitate to let me know.

With kindest regards, I remain

Sincerely,

[Signature]

Dudley H. Bowen, Jr.

CC: Mr. Jay M. Sawilowsky
    Mr. W. Barry Williams
August 12, 1977

Dr. Morton Wittenberg
1515 Laney Walker Boulevard
Augusta, Georgia 30904

Re: Wittenberg and Levine vs. Jolles

Dear Mort:

I am enclosing for your information a copy of the defensive pleadings which have been filed. There are no real surprises in the answer and our next step will be to assign it for trial at the earliest time possible and I will let you know what that date is and will get together with you and Dr. Levine concerning our final preparations and the evidence we will expect to produce at the trial.

Yours very truly,

CONGDON & WILLIAMS

By

Enclosure
Dr. Jerome Levine
18215 Joy Road
Detroit, Michigan 48228

Dr. Morton Wittenberg
1515 Laney-Walker Boulevard
Augusta, Georgia 30904

Re: Morton Wittenberg and
Jerome Levine vs.
Isaac S. Jolles

January 17, 1978

Dear Dr. Levine and Dr. Wittenberg:

Just a note to let you know Mr. Jolles' attorney has filed a motion to dismiss the complaint on the ground it fails to state a cause of action upon which relief can be granted. This is a very broad motion and I fully expect the Judge to overrule the motion. A hearing has been set on this motion for January 31st, and I will let you know promptly of the Judge's decision.

Yours very truly,

W. BARRY WILLIAMS

WBW:lbs
January 31, 1978

Dr. Jerome Levine  
18215 Joy Road  
Detroit, Michigan 48228

Dr. Morton Wittenberg  
1515 Laney-Walker Boulevard  
Augusta, Georgia 30904

Re: Wittenberg and Levine vs. Jolles

Dear Dr. Levine and Dr. Wittenberg:

I am enclosing to each of you a copy of our original complaint, a copy of our amendment which we are filing today, and a copy of the defendant's answer to the complaint for your information and file.

We defended the motion of the defendant to dismiss the complaint this morning and the amendment we are filing is to overcome all points raised by the defendant at the hearing. I do not believe the defendant's motion was well taken in the first instance, but, in either event I think the amendment we are filing will overcome any possible grounds for the complaint to be dismissed.

I will continue to keep you informed as we progress.

Yours very truly,

CONGDON & WILLIAMS

By

Enclosure
THE SUPERIOR COURT FOR THE COUNTY OF
RICHMOND, STATE OF GEORGIA

CIVIL ACTION, FILE NO.

MORTON WITTENBERG AND
JEROME LEVINE,

PLAINTIFFS

VS.

ISAAC S. JOLLES,

DEFENDANT

(1) The defendant, herein named, is a resident of
402 Sheffield Circle, Augusta, Richmond County, Georgia, and
is subject to the jurisdiction of this Court.

(2) On December 15, 1971, plaintiffs entered into
a guaranty agreement with the Georgia Railroad Bank & Trust
Company, Augusta, Georgia, along with defendant and others
whereby plaintiffs and the others guaranteed payment of certain
loans which were secured for the construction and operation of
an apartment project in Augusta, Georgia, known as Singleton
Arms Apartments.

(3) On February 17, 1972, plaintiffs entered into
a similar guaranty agreement with the Citizens and Southern
National Bank, Augusta, Georgia, for the same purposes and with
the same parties.

(4) In October, 1972, plaintiffs divested their
interests in the Singleton Arms Apartment Project, by conveying
their interests to one of the parties to the joint venture by
the name of Joseph/Freedman.

(5) On and before the time plaintiffs divested their
interests in the same apartment project by conveying their
interest to Mr. Joseph J. Freedman, there were certain difficulties
existing in the management, operation and expansion of the apart-
ment projects. In order to avoid controversy and litigation,
plaintiffs negotiated to divest their interest and negotiated
to secure a hold harmless agreement on their aforesaid guaranty
agreements with Mr. Isaac S. Jelles, one of the co-venturers
in the construction, operation and maintenance of the said
apartment project. A copy of said hold harmless agreement is
attached hereto as Exhibit A.

(6) The notes which were given to the Georgia Railroad
Bank & Trust Company and to The Citizens and Southern National
Bank, Augusta, Georgia, which were secured by the aforesaid
guaranty agreements, became in default and in order to avoid
suit by the said Banks, plaintiffs and others on the guaranty
agreement were required to pay to the respective Banks the
amounts due thereon.

(7) Plaintiffs made requests and demands upon defendant
to honor his hold-harmless agreement to them and to pay the obli-
gations which he covenanted and agreed to pay, including expressly
those due the aforesaid Banks. Defendant failed and refused to
pay these amounts, as a consequence of which plaintiffs were
compelled to pay the said Banks the total sum of $43,567.52,
for which defendant is responsible to pay plaintiffs under the
terms and provisions of the aforesaid hold-harmless agreement.

(8) Defendant refuses to pay the amount due the
plaintiffs, as aforesaid, after demand has been made therefor.

WHEREFORE, plaintiffs demand judgment against defendant
in the sum of $43,567.52, interest as provided by law, and costs.

OF COUNSEL:
CONDON & WILLIAMS
631 Telfair Street
Augusta, Georgia 30902

W. Barry Williams, Attorney for Plaintiffs
STATE OF GEORGIA
 RICHMOND COUNTY

WITNESSETH, that WHEREAS, MORTON WITTEMBERG, JEROME LEVINE
and Others, with the undersigned, were owners of an apartment com-
p lex known as Singleton Arms Apartments, in Augusta, Richmond
County, Georgia;

WHEREAS, Morton Wittenberg and Jerome Levine have
divested their interests in the project, but still have contingent
liabilities and are primarily responsible on certain obligations
pertaining to the project, along with the other joint venturers;

WHEREAS, the undersigned, along with others, now have
least people involved in the venture agreement and are free to
expand and continue the operation of the apartment project,
without conflicts among the joint venturers which were resolved
at the time Morton Wittenberg and Jerome Levine divested their
interest to Mr. Joseph J. Freedman, one of the joint venturers,
which was to the advantage of the undersigned and all other members
of the venture agreement;

NOW, THEREFORE, in consideration of the sum of one ($1.00)
Dollar, cash in hand paid, the receipt and adequacy of which in
heretofore acknowledged, and the benefits hereby acknowledged to be
flowing to the undersigned, the undersigned does herewith covenant
and agree he will indemnify and hold Morton Wittenberg and Jerome
Levine harmless from any obligation they incurred or assumed as
a part of the joint venture agreement on the Singleton Arms Apart-
ments Project and which existed on October 24, 1972, the date they
divested their interest in the project.

IN WITNESS WHEREOF, the undersigned has hereunto set
his hand and seal, this ______ day of November, 1972.

SIGNED, SEALED AND DELIVERED

in the presence of:

NOTARY PUBLIC, RICHMOND COUNTY, GEORGIA

Isaac S. Jolles (L.S.)
THE SUPERIOR COURT FOR THE COUNTY OF
RICHMOND, STATE OF GEORGIA

MORRIS WITTENBERG AND
JEROME LEVINE,
Plaintiffs

vs.

ISAAC S. JOLIES,
Defendant

CIVIL ACTION
FILE NO.

DEFENSIVE PLEADINGS

NOW COMES the Defendant, ISAAC S. JOLIES, and files these his
Defensive Pleadings to the Complaint of the Plaintiffs heretofore filed in
the within matter and respectfully shows this Honorable Court:

ANSWER

1-

That the Defendant admits the allegations contained in Paragraphs
One (1), Two (2), Three (3) and Four (4) of Plaintiffs' Complaint;

2-

That the Defendant denies the allegations contained in Paragraph
Five (5) of Plaintiffs' Complaint;

3-

That the Defendant admits the allegations contained in Paragraph
Six (6) of Plaintiffs' Complaint;

4-

That the Defendant, in response to Paragraph Seven (7) of
Plaintiffs' Complaint, states that Plaintiff Wittenberg did make, "requests
and demands upon Defendant." For lack of sufficient information Defendant
can neither admit nor deny the remaining allegations contained in Paragraph
Seven (7) of Plaintiffs' Complaint and for further response thereto states
that this Defendant has refused to pay any sum of money to Plaintiff in that
this Defendant is not indebted to Plaintiff in any sum whatsoever.
FIRST DEFENSE
That the Plaintiff's Complaint fails to state a claim against this Defendant upon which relief can be granted.

SECOND DEFENSE
That the instrument sued upon was executed and delivered without any consideration whatever and is therefore void and unenforceable.

THIRD DEFENSE
That the instrument upon which the Plaintiffs seek to recover lacks mutuality and is therefore void and unenforceable.

FOURTH DEFENSE
That the instrument upon which the Plaintiffs seek to recover is void and unenforceable because of a failure of consideration.

FIFTH DEFENSE
That the instrument upon which the Plaintiffs seek to recover is so vague and indefinite that it cannot be enforced.

SIXTH DEFENSE
That there was no meeting of the minds of the parties on the instrument upon which the Plaintiffs seek to recover.

Seventh Defense
That the indemnity agreement in the shape and form now sued upon by Plaintiff was never made, signed, nor executed by Defendant, nor was any person by him so authorized to do, and the same is not his act or deed.

Eighth Defense
That the indemnity agreement upon which Plaintiffs seek to recover is not enforceable in that the document was not freely assented to by the Defendant.

Therefore having fully answered Plaintiffs' Complaint, Defendant prays that he be henceforth discharged and all costs taxed to the Plaintiffs.

JOLLY AND SABBY, P.C.

By: Richard A. Sabby, Attorney for Defendant

This is to certify that I have, prior to filing, served a copy of the within and foregoing pleading on opposing counsel as required by law.

Jolly and Sabby, P.C.

By: Richard A. Sabby, Attorney for Defendant
THE SUPERIOR COURT FOR THE COUNTY OF
RICHMOND, STATE OF GEORGIA

CIVIL ACTION, FILE NO. 5910-C

HORST WITTENBERG AND
JEROME LEVINE,

PLAINTIFFS

VS.

ISAAC S. JOLLES,

DEFENDANT

STATE OF GEORGIA

RICHMOND COUNTY

Now come Horst Wittenberg and Jerome Levine, plaintiffs
in the above named and stated case, and amend their original
complaint herein in the following respects:

(1) By amending paragraph 5 of the complaint to
delete the copy of the hold-harmless agreement attached as
Exhibit A, and substituting in lieu thereof a copy of the
executed hold-harmless agreement as Exhibit A.

(2) By adding a new paragraph to be known as para-
graph (5)(b) and to read as follows:

(5-b) As a requisite to divesting their interest
in the property to Mr. Joseph J. Freedman, plaintiffs negotiated
with the defendant for him to give plaintiffs a hold-harmless
agreement, which he agreed to do, and, in fact, did deliver.
It was in reliance upon defendant's promise to deliver the
hold-harmless agreement the plaintiffs consummated their agree-
ment with Mr. Freedman and the other co-venturers and divested
their interest in the property by conveying the same to Mr.
Freedman.

Respectfully submitted, this 1st day of February,
1978.

OF COUNSEL:
CONEYER & WILLIAMS
631 Telfair Street
Augusta, Georgia 30902

W. Barry Williams, Attorney for
Plaintiffs

I hereby certify that I have served a copy of the
within and foregoing pleading on the defendant by mailing the
came to his attorney of record prior to the filing thereof.

Plaintiffs' Attorney
STATE OF GEORGIA
RICHMOND COUNTY

WITNESSETH, that WHEREAS, MORTON WITTENBERG, JEROME LEVINE,
and Others, with the undersigned, were owners of an apartment com-
p lex known as Singleton Arms Apartments, in Augusta, Richmond
County, Georgia;

WHEREAS, Morton Wittenberg and Jerome Levine have
divested their interests in the project, but still have contingent
liabilities and are primarily responsible on certain obligations
pertaining to the project, along with the other joint venturers;

WHEREAS, the undersigned, along with others, now have
less people involved in the venture agreement and are free to
expand and continue the operation of the apartment project,
without conflicts among the joint venturers which were resolved
at the time Morton Wittenberg and Jerome Levine divested their
interest to Mr. Joseph J. Freedman, one of the joint venturers,
which was to the advantage of the undersigned and all other members
of the venture agreement;

NOW, THEREFORE, in consideration of the sum of One ($1.00)
Dollar, cash in hand paid, the receipt and adequacy of which is
hereby acknowledged, and the benefits hereby acknowledged to be
flowing to the undersigned, the undersigned does herewith covenant
and agree he will indemnify and hold Morton Wittenberg and Jerome
Levine harmless from any obligation they incurred or assumed as
a part of the joint venture agreement on the Singleton Arms Apart-
ments' Project and which existed on October 24, 1972, the date they
divested their interest in the project.

IN WITNESS WHEREOF, the undersigned has hereunto set
his hand and seal, this 13th day of November, 1972.

SIGNED, SEALED AND DELIVERED

in the presence of:

Jane Taylor
NOTARY PUBLIC RICHMOND COUNTY, GEORGIA

Isaac S. Jolico (L.S.)
THE SUPERIOR COURT FOR THE COUNTY OF
RICHMOND, STATE OF GEORGIA

MORTON WITTENBERG AND

JEROME LEVINE,

Plaintiffs

vs.

ISAAC S. JOLLES,

Defendant

CIVIL ACTION

FILE NO. __________

DEFENSIVE PLEADINGS

NOW COMES the Defendant, ISAAC S. JOLLES, and files these his
Defensive Pleadings to the Complaint of the Plaintiff heretofore filed in
the within matter and respectfully shows this Honorable Court:

ANSWER

-1-

That the Defendant admits the allegations contained in Paragraphs
One (1), Two (2), Three (3) and Four (4) of Plaintiffs' Complaint;

-2-

That the Defendant denies the allegations contained in Paragraph
Five (5) of Plaintiffs' Complaint;

-3-

That the Defendant admits the allegations contained in Paragraph
Six (6) of Plaintiffs' Complaint;

-4-

That the Defendant, in response to Paragraph Seven (7) of
 Plaintiffs' Complaint, states that Plaintiff Wittenberg did make, "requests
and demands upon Defendant." For lack of sufficient information Defendant
can neither admit nor deny the remaining allegations contained in Paragraph
Seven (7) of Plaintiffs' Complaint and for further response thereto states
that this Defendant has refused to pay any sum of money to Plaintiff in that
this Defendant is not indebted to Plaintiff in any sum whatsoever.
FIRST DEFENSE
That the Plaintiffs' Complaint fails to state a claim against this Defendant upon which relief can be granted.

SECOND DEFENSE
That the instrument sued upon was executed and delivered without any consideration whatever and is therefore void and unenforceable.

THIRD DEFENSE
That the instrument upon which the Plaintiffs seek to recover lacks mutuality and is therefore void and unenforceable.

FOURTH DEFENSE
That the instrument upon which the Plaintiffs seek to recover is void and unenforceable because of a failure of consideration.

FIFTH DEFENSE
That the instrument upon which the Plaintiffs seek to recover is so vague and indefinite that it cannot be enforced.

SIXTH DEFENSE
That there was no meeting of the minds of the parties on the instrument upon which the Plaintiffs seek to recover.

SEVENTH DEFENSE
That the indemnity agreement in the shape and form now sued upon by Plaintiffs was never made, signed, nor executed by Defendant, nor was any person by him so authorized to do, and the same is not his act or deed.

EIGHTH DEFENSE
That the indemnity agreement upon which Plaintiffs seek to recover is not enforceable in that the document was not freely assented to by the Defendant.

Wherefore having fully answered Plaintiffs’ Complaint, Defendant prays that he be henceforth discharged and all costs taxed to the Plaintiffs.

JOLLIE AND SLABY, P.C.

By: ________________

This is to certify that I have, prior to filing, served a copy of the within and foregoing pleading on opposing counsel as required by law.

JOLLIE AND SLABY, P.C.

By: ________________
STATE OF GEORGIA

COUNTY OF RICHMOND

Personally appeared before the undersigned, an officer authorized by the laws of the State of Georgia to administer oaths, ISAAC S. JOLLES, who after being duly sworn depooses and says that the facts alleged in the within and foregoing Defensive Pleadings are true and correct to the best of his knowledge and belief.

This 9th day of August, 1977.

[Signature]

Isaac S. Jolles

Sworn to and subscribed before me

this 9th day of August, 1977.

[Signature]

Notary Public, Richmond County, Georgia
Observe. Bank as attorney for C & S Bank.

For deposit to trust account Bausch, Dye Miller & Bowman, D.A.

APR 2077 64033
YOUR ACCOUNT HAS BEEN CHARGED FOR THE TRANSACTION (S) AND AMOUNT (S) DESCRIBED BELOW:

FORM BK102 - MCG

DEBIT ACCOUNT OF

TOTAL $ 13,388.60

APR 08 1977

T. Slay

APPROVED

Dr. Morton Wittenberg

09-686-3
THE FIRST NATIONAL BANK & TRUST CO. of AUGUSTA
AUGUSTA, GEORGIA

REMITTER: Dr. Morton Wittenberg

DATE: April 8, 1977

Pay
TO THE ORDER OF: Dr. Morton Wittenberg & Co. Railroad Bank & Trust Co.

CASHIER'S CHECK

Authorized Signature: John B. Bowman

Dollars: $12,388.60

This is a certified copy of the First National Bank & Trust Company of Augusta's cashier's check No. WWO 040097.

Louis F. Beall, Jr.
Vice President & Cashier

March 13, 1978
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THE SUPERIOR COURT FOR THE COUNTY OF
RICHMOND, STATE OF GEORGIA

CIVIL ACTION, FILE NO. 5910-C

MORTON WITTENBERG AND
JEROME LEVINE,

PLAINTIFFS

VS.

ISAAC S. JOLLES,

DEFENDANT

This action came on for trial before the Court and
a jury, Honorable Edwin D. Fulcher presiding, and the issues
having been duly tried, and the jury having duly rendered its
verdict at the direction of the Court,

IT IS ORDERED AND ADJUDGED

That the plaintiffs, Morton Wittenberg and Jerome
Levine, recover of the defendant, Isaac S. Jolles, the sum of
$43,567.52, principal, and the sum of $2,287.30, accrued
interest, with interest on the principal sum at the rate of
7%, as provided by law, and their costs of action.

Dated at Augusta, Georgia, this 16th day of March,
1978.

Judge, Superior Court, Richmond
County, Georgia
I hereby certify that I have served a conformed copy of the within and foregoing judgment on the defendant by mailing the same to his attorney of record, prior to the filing thereof.

[Signature]
W. Barry Williams
STATE OF GEORGIA

RICHMOND COUNTY

THIS AGREEMENT, made and entered into this 22nd day of October, 1972, by and between JOSEPH J. FREEDMAN, of Richmond County, Georgia, hereinafter referred to as "first party", and MORTON WHITTENBERG, of Richmond County, Georgia, and JEROME LEVINE, of Oakland County, Michigan, hereinafter referred to as "second parties";

WITNESSETH, that WHEREAS, the parties hereto have been engaged in a joint venture agreement in connection with the construction, development and operation of property in Augusta, Richmond County, Georgia, known as Singleton Arms Apartments, with the first party owning a 42.5% undivided interest in the property and second parties owning, jointly, a 15% undivided interest in the property; and

WHEREAS, the parties hereto have reached an agreement concerning the divestment by the second parties to the first party of their interest in the property; and

WHEREAS, the parties desire to reduce their agreement to writing;

NOW, THEREFORE, in consideration of the sum of One ($1.00) Dollar, cash in hand paid each to the other, and in receipt of the premises and the mutual benefits hereby acknowledged to be flowing to each of them under the terms of this agreement, the parties hereto do hereby agree as follows:

1) Second parties shall convey their interest in the property, by quitclaim deed, to first party.

2) First party shall convey to second parties all of his undivided interest in the property, by security deed, which shall be subject and subordinate only to those security deeds presently outstanding on the property and which have been disclosed to second parties, as security for the purchase price, which is $22,000.00, payable with interest at 6% per annum, $2,000.00 on December 1, 1972, and the balance of $20,000.00 payable in six equal annual installments commencing March 1, 1974, with payment to be made by a note for the total consideration, reflecting these terms.

3) The first party herewith indemnifies, covenants, and agrees he will hold second parties harmless from any and all obligations, of every kind and character, connected, in any way with the Singleton Arms Apartments, and a certain agreement between the parties hereto and Isaac J. Jolles, Theodore Everett, Robert Miller, and W. F. Barton concerning the development and operation of the
Singleton Arms Apartments, unsecured or secured by the
Singleton Arms property and made by any party to said
agreement, to any and all lending institutions, companies,
individuals, or other legal entities, including the individuals
to said agreement and the parties to this agreement on any
written instrument or any other account whatever, or cause
whatever.

4) Upon the time second parties have been released from
any obligation, contingent or otherwise, they have on account of
the construction, development and operation of the Singleton Arms
Apartments and on account of any obligation they might have under
the terms of the agreement between the parties named here and above,
and upon payment of the purchase price of their interest in the
project by the first party, execute and deliver to first party a
full and complete release and acquittance of any and all claims
of every kind and character they have or might have against first
party on account of the development, construction and operation
of said apartments and on account of any obligation or claim they
might have arising under the terms of the aforesaid agreement between
the parties hereto and other parties named hereinabove.

5) This agreement is a compromise agreement between the
parties hereto on account of certain issues and claims between the
parties, none of whom admit liability, and is entered into to
resolve the differences between them in an amicable way.

6) All instruments required to be executed by the
parties to this agreement shall be executed promptly upon the
execution of this agreement and shall be recorded and delivered
to the proper parties, with each paying his proportionate share
of recording costs.

IN WITNESS WHEREOF, the parties hereto have hereunto set
their hands and seals, as of the day and year first above written.

SIGNED, SEALED AND DELIVERED
in the presence of:

(Notary Public, Richmond County, Georgia)

FIRST PARTY

Joseph J. Freedman
(I.S.)

SIGNED, SEALED AND DELIVERED
in the presence of:

(Notary Public, Richmond County, Georgia)

Morton Wittenberg
(I.S.)
SIGNED, SEALED AND DELIVERED
in the presence of:

Mary A. Ellerby

NOTARY PUBLIC, OAKLAND COUNTY, MICHIGAN

No. of commission expires July 26, 1915

(L.S.)

Jerome Levine

SECOND PARTIES
$22,000.00

Augusta, Georgia, October 24, 1972

After date, as herein agreed, I promise to pay to the order of MORTON WITTENBERG and JEROME LEVINE

Twenty-Two Thousand and No/100 --------------------------------- Dollars

in lawful money of the United States, with interest from date at the rate of six (6) per cent per annum, with all costs of collection, including fifteen (15) per cent attorney's fees. VALUE RECEIVED.

Said sum shall be payable $2,000.00 on December 1, 1972, and the balance of $20,000.00 payable in six equal annual installments, the first of such annual installment being due and payable on March 1, 1974, and annually thereafter on the same day, to and including March 1, 1979, when the last installment of principal and interest is due and payable.

I, for myself and family, transfer, assign and convey to the owner of this note a sufficient amount of my homestead and exemptions I may be entitled to under the Laws of Georgia, or of the United States, or of any other State, as against this debt or any renewal thereof to pay this note in full with the costs and attorney's fees. The holder of this note is hereby appointed attorney in fact to claim any and all such exemptions allowed by law. Should any of the covenants and agreements of this note or of a security deed executed herewith not be complied with, the holders of this note shall have the right to declare the principal sum to be due in advance of the date named herein, time being the essence of this contract.

The maker of this note agrees to pay all principal and interest when due, to keep the property given as security for this note fully insured as provided, and to pay all State, County and Municipal taxes and assessments.

Principal and interest of this note are secured by deed, of even date herewith, to real estate known as Singleton Arms Apartments, Damascus Road, Richmond County, Georgia.

WITNESS, my hand and seal, the day and year above written.

Joseph J. Freedman
STATE OF GEORGIA
COUNTY OF RICHMOND

THIS INDENTURE, made this 13th day of October, 1971, between
JOSEPH J. FREEMAN, of Richmond County, Georgia, as party of the first part, and
MORTON WITTEMBERG, of Richmond County, Georgia, as party of the second part,

WITNESSETH

WHEREAS, party of the first part is the owner of the hereinafter described property and has heretofore agreed to sell and convey a one-tenth (1/10) undivided interest in and to the hereinafter described property to MORTON WITTEMBERG.

NOW THEREFORE, Party of the first part for and in consideration of the sum of Ten ($10.00) Dollars and other good and valuable consideration, in hand paid, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto: Morton Wittenberg, his heirs and assigns, a one-tenth (1/10) undivided interest in and to the following described property, to-wit:

All that lot, parcel or tract of land, situate, lying and being in the State of Georgia, County of Richmond, City of Augusta, fronting a distance of 349.57 feet on the South side of Hillsinger Road and extending back on its western boundary line a distance of 152.45 feet and extending back on its western boundary line a distance of 165.35 feet to a rear width of 248.83 feet. Said property is designated as Lots 1, 2, 3 and 4 on a plat prepared by Billy E. Beasley, C.E., dated October 18, 1966, which plat is recorded in the Office of the Clerk of the Superior Court of Richmond County, Georgia in Realty Book 35-E, page 354, to which plat reference is made for a more particular description as to metes, bounds, distances and locations of said property.

All that lot or parcel of land with improvements thereon, situate, lying and being in the City of Augusta, Richmond County, Georgia, fronting 398.0 feet on the North side of Caldwell Road, and extending back a distance of 209.5 feet on its Eastern boundary and a distance of 109.3 feet on its western boundary and having a rear width of 457.5 feet. Said property is shown and delineated on a plat prepared by J. M. Pope, dated September 21, 1968 and recorded in the Office of the Clerk of the Superior Court of Richmond County, Georgia in Realty Book 35-E, page 165, which plat is incorporated herein by reference thereto.

All those lots, parcels or tracts of land with improvements thereon, situate, lying and being in the City of Augusta, Richmond County, Georgia, and being known and designated as Lots 74, 75 and 76, shown on a plat prepared by J. T. Wise for Fairmont Land & Improvement Company, dated March 29, 1945, and recorded in the Office of the Clerk of the Superior Court of Richmond County, Georgia, in Realty Book 20-M, page 325. Said property being triangular in shape and being bounded on the North by Kelly Street, on the South by Hillsinger Road and on the East by property now
or formerly belonging to the Veterans Administration. Said property being more specifically shown on a plat prepared for J. J. Freedman by Bobby G. Price, dated January, 1971, a copy of which plat is of record in said Clerk's Office in Realty Book 39-P, page 127, to which reference is hereto made for a more accurate description as to the metes, bounds and location of said property.

This conveyance is made subject and subordinate to a security deed dated December 23, 1970 from party of the first part to the First Federal Savings and Loan Association of Augusta in the original principal sum of $280,000.00 and a security deed dated the 15th day of October, 1971 from Joseph J. Freedman, et al. to the First Federal Savings and Loan Association of Augusta in the original principal sum of $210,000.00. As a part of the consideration for this conveyance Morton Wittenberg agrees to assume one-tenth (1/10) of the remaining unpaid balance of the indebtedness for which said security deeds were given and in accordance with the terms and conditions of the said security deeds.

TO HAVE AND TO HOLD the said bargained premises, together with all and singular the right, members and appurtenances thereof, to the same being, belonging or in anywise appertaining to the only proper use, benefit and behoof of the said party of the second part, their heirs and assigns, forever, in fee simple.

AND, the said Joseph J. Freedman, for his heirs and assigns, will warrant and forever defend the right and title to the above described property, subject to said security deeds, unto said party of the second part, his heirs and assigns, against the lawful claims of all persons whosoever.

IN WITNESS WHEREOF, the said JOSEPH J. FREEEDMAN has hereunto set his hand and seal, the day and year first above written.

Signed, sealed and delivered
in the presence of

[Seals and signs]

Notary Public, Richmond County, Georgia
SECURITY DEED

THIS INDENTURE, made this 24th day of October 1972, between JOSEPH J. FREEDMAN, of Richmond County, Georgia, hereinafter called the Grantor, and MORTON WITTMENBERG and JEROME LEVINE, hereinafter called the Grantee, which expressions "Grantor" and "Grantee" shall be construed to embrace the singular or plural, a natural person or corporation, and all genders, and heirs, legal representatives, successors or assigns, where the context so requires or admits;

WITNESSETH that the Grantor, for and in consideration of the sum of Twenty-Two Thousand and No/100 ($22,000.00) Dollars, cash in hand paid to the Grantor by the Grantee, at and before the sealing and delivery of these presents, the receipt whereof is acknowledged, does hereby grant, bargain, sell, release, convey and confirm unto the Grantee, the following described property, to-wit:

A 57.5% undivided interest in and to the following described property, to-wit:

ALL that lot, parcel or tract of land, situate, lying and being in the State of Georgia, County of Richmond, City of Augusta, fronting a distance of 349.57 feet on the South side of Hillsinger Road and extending back on its Western boundary line a distance of 152.45 feet and extending back on its Eastern boundary line a distance of 165.35 feet and extending back on its Eastern boundary line a distance of 165.35 feet to a rear width of 248.83 feet. Said property is designated as Lots 1, 2, 3 and 4 on a plat prepared by Billy B. Beazley, C.E., dated October 18, 1966, which plat is recorded in the office of the Clerk of the Superior Court of Richmond County, Georgia, in Realty Book 35-E, page 354, to which plat reference is made for a more particular description as to metes, bounds, and location of said property.

ALL that lot or parcel of land, with improvements thereon, situate, lying and being in the City of Augusta, Richmond County, Georgia, fronting 398.0 feet on the North side of Caldwell Road, and extending back a distance of 209.5 feet on its Eastern boundary and a distance of 109.3 feet on its Western boundary and having a rear width of 457.5 feet. Said property is shown and delineated on a plat prepared by J. M. Pope, dated September 21, 1968, and recorded in the office of the Clerk of the Superior Court of Richmond County, Georgia, in Realty Book 35-S, page 165, which plat is incorporated herein by reference thereto.

ALL those lots, parcels or tracts of land, with improvements thereon, situate, lying and being in the City of Augusta, Richmond County, Georgia, and being known and designated as Lots 74, 75 and 76, shown on a plat prepared by J. T. Wise for Fairmont Land & Improvement Company, dated March 29, 1949, and recorded in the office of the Clerk of the Superior Court of Richmond County, Georgia, in Realty Book 20-M, page 325. Said property being triangular in shape and being bounded on the North by Kelly Street; on the South by Hillsinger Road and on the East by property now or formerly belonging to the Veterans Administration. Said property being more specifically shown on a plat prepared for J. J. Freedman by Bobby G. Price, dated January, 1971, a copy of which plat is of record in said Clerk's office in Realty Book 39-P, page 127, to which reference is hereto made for a more accurate description as to the metes, bounds and location of said property.

This conveyance is subject to outstanding security deeds presently on the property and shall be subordinate to any valid first security deed on the property, for the construction of a third section of apartments separate and apart from those presently on the property and being constructed on the property.

Grantor expressly warrants there are no mortgages on the property undisclosed to Grantees.
TOGETHER with all present improvements and those which may hereafter be erected thereon, and all easily removed equipment such as plumbing, heating, ventilating and lighting fixtures which may now or hereafter be attached to the improvements, together with all rights, ways, easements and appurtenances thereto belonging or in anywise appertaining, and all rents, issues and profits thereof.

TO HAVE AND TO HOLD said property, and all and singular the rights and privileges, unto the Grantee, in fee simple, forever.

AND said Grantee does represent that said property is free of all liens or security bills of sale covering personality attached to said improvements, and the Grantee does hereby warrant the title to said property unto the Grantee, and will forever defend the same against the claims of all persons whomsoever.

It is agreed by the Grantee that no trees or timber are to be cut and removed from the property and that no assignment of the rentals therefrom shall be valid without first obtaining the written consent of the Grantee.

No bond for title conditioned to reconvey the above described property is delivered by the Grantee in connection with this deed, which, nevertheless, is intended to convey the title to said property as provided by Section 67-1301 et sequitur of the Civil Code of Georgia, as amended, to secure the payment of the debt described herein and all extensions and renewals thereof, in whole or in part, together with all additional and subsequent loans or advancements, as well as all interest and attorney's fees and costs, which are due to the Grantee by the terms hereof. The debt secured hereby is evidenced by one (1) principal promissory note of even date herewith in the amount of $22,000.00, and bearing interest at the rate of 6% per annum, payable $2,000.00 on December 1, 1972, and the balance of $20,000.00 in six equal annual installments, commencing March 1, 1974, and annually thereafter to and including March 1, 1979, when the last installment of principal and interest is due and payable.

The Grantee does agree to procure, maintain and deliver unto the Grantee policies of fire and extended coverage insurance and such other forms of insurance as may be required by the Grantee, in company or companies selected by the Grantee, insuring the improvements upon the property against the loss or damage in a total amount of not less than $25,000.00, with Standard New York Mortgagee Clause attached thereto in favor of the Grantee, as the interest of the Grantee may appear, and place the policy and Standard New York Mortgage Clause with the Grantee.

The Grantee does agree that if this security deed is subject or subordinate to any prior security deed, mortgage or lien for repairs or construction work begun or completed prior to the execution of this deed; and if any default is made in the terms of said prior security deed or mortgage, or if payment of said lien is not made, and if proceedings are commenced to foreclose said prior security deed, mortgage or lien, then the entire debt secured hereby may be declared immediately due and payable at the option of the Grantee without notice to the Grantor.)

In the event of damage to the property herein conveyed, or to any improvements thereon, which are covered by insurance, Grantee is authorized and constituted the Attorney in Fact for the Grantee to collect all insurance monies due upon any policies of insurance covering the premises above described, and to apply the same to the payment of the debt secured hereby, whether the same or any part thereof is then due or not.
Time is of the essence of this contract and the Granter agrees that in case default is made in the payment of any interest due hereunder, or in the payment of any of the principal as the same matures, or in the payment of any installment including both, or in the payment of any tax assessment, insurance premium or other charge upon the property, or against the Granter, which by remaining unpaid might lessen the security for the loan or disturb it; or in case of actual or threatened demolition or removal of any of the buildings erected upon the premises; or in case of said building or buildings shall not be maintained in good order and repair; or should the Granter fail to abide by, keep and observe in every particular any of the covenants herein contained; then and upon the happenings of any such event the entire remaining indebtedness secured hereby shall, at the option of the Grantee, become due and payable at once without notice to the Granter, anything in this deed or in the note representing said indebtedness to the contrary notwithstanding; and the Grantee may proceed to collect the same, together with all costs and expenses, including any taxes, assessments or insurance premiums paid by the Grantee with interest on the same at eight per cent per annum, including also an attorney's fee of fifteen per cent of the principal, interest, charges, taxes, assessments and insurance premiums to be collected.

In addition to the remedies provided now or hereafter by law, and not in lieu thereof, all of which may be pursued concurrently, it is further agreed by the Granter that, if the debt secured hereby is not paid at maturity, or when the same becomes due and payable under the terms and options of this contract, said Grantee is hereby authorized to sell any or all of the property described herein at public outcry, at the Courthouse of the County in which the land is situate, between the legal hours of sale, or any public sale day, to the highest bidder for cash, after advertising the time, place and terms of the sale in the newspaper in which Sheriff's sales for said County are published, once a week for four weeks; (that is one insertion each week for each of the four weeks immediately preceding the day on which the sale is to take place, regardless of the number of days or calendar weeks between the date of the first publication and the date of the sale.)

The Grantee is hereby constituted and appointed the attorney-in-fact for the Granter to publish said advertisement and to make such sale or sales, and to execute and deliver to the purchaser or purchasers good and sufficient conveyances, including therein a warranty of title, in fee simple, to said property, which conveyance shall divest the Granter of all right, title and equity therein, and vest the same in the purchaser or purchasers; and the Grantee may become the purchaser at such sale if the Grantee submits the highest and best bid. The Granter agrees that all recitals of fact contained in any deed made by the Grantee under this power, showing default, advertisement, sale, and payment of recording taxes shall be conclusive of the truth thereof against the Granter.

From the proceeds of such sale, the Grantee shall pay the indebtedness secured hereby with all interest and all taxes, assessments and insurance premiums and all attorney's fees; and the balance if any shall be paid to the Granter.

The possession of the premises, whether it be the Granter or anyone else, after foreclosure of this security deed either by the exercise of the power of sale contained herein or otherwise shall be as a tenant holding over, and such tenant shall be subject to all summary remedies provided by law.

IT WITNESS WHEREOF, said Granter has hereunto set his hand and seal,

the day and year first above written.

SIGNED, SEALED and DELIVERED in

Richmond County, Georgia

State of

in the presence of

NOTARY PUBLIC, Richmond County, Georgia

[Signature]

[Stamp]
SECURITY DEED

JOSEPH J. FREEDMAN

TO
MORTON WITTENBERG AND
JEROME LEVINE

Dated October 24, 1972

CONGDON, WILLIAMS & DANIEL
CONGDON & ROEY

Attorneys At Law
AUGUSTA, GEORGIA