

STATE OF ALABAMA       )  
JEFFERSON COUNTY       )

AFFIDAVIT

NOW COMES, James E. Roberts, Attorney at Law, and gives this Affidavit at the request of Land Title Company regarding a title policy on property known as Pelham Plaza Shopping Center.

I have known the DeMarco family since 1974. I handled the estate of Joseph A. DeMarco, Jefferson County Probate Case Number 81267. In connection with that matter, I learned the ownership of Pelham Plaza Shopping Center was as follows: 1/4 interest in Josephine D. Kerns, 1/4 interest in Evelyn D. DeMarco (widow of Joseph A. DeMarco), 1/4 interest in Mary Louise D. O'Flannagan, and 1/4 interest in Joseph S. DeMarco.


At the time of Ms. Kerns' death, her estate was administered in the Circuit Court for Broward County, Florida, Probate Division, File Number 84-6893. During the administration of her estate, the surviving partners of Pelham Plaza Shopping Center, Evelyn D. DeMarco, Mary Louise D. O'Flannagan and Joseph S. DeMarco exercised their right under a Buy and Sell Agreement and purchased all of the decedents interest in and to the shopping center. I prepared the deed and forwarded it to her surviving husband, Thomas N. Kerns. He executed the deed and conveyed all of his right, title and interest in and to the shopping center to the three surviving partners. The deed was recorded in Book 170, Page 201 and 202 of the Jefferson County Probate Court.

04/29/1992-6378  
09:54 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
008 MCD 28.00

*Land Title*

1611T

Although title to Pelham Plaza Shopping Center has always been held in the individual names of the owners, the owners have treated the shopping center as an Alabama general partnership and filed its tax returns accordingly.

  
JAMES E. ROBERTS

STATE OF ALABAMA     )  
JEFFERSON COUNTY    )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that James E. Roberts, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me, on this date that being informed of the contents of this instrument, he has executed the same voluntarily on the day the same bears date.

Given under my hand and seal this 22<sup>nd</sup> day of April, 1992.

  
Notary Public

My commission expires: 2/7/96

[SEAL]

IN THE CIRCUIT COURT FOR THE TENTH JUDICIAL CIRCUIT  
OF ALABAMA, EQUITY DIVISION

(DERIVATIVE PARTIES)

EVELYN D. DeMARCO, individually and as a  
Minority Stockholder,

PLAINTIFF,

VS.

JOSEPH S. DeMARCO, and DeMARCO CONCRETE  
BLOCK, INCORPORATED, a corporation,

DEFENDANTS.

JOSEPH S. DeMARCO,

DEFENDANT/COUNTER-PLAINTIFF,

VS.

EVELYN DeMARCO, and CENTRAL BANK OF  
BIRMINGHAM, as Co-Executors,

COUNTER/DEFENDANTS.

(ESTATE PARTIES)

CENTRAL BANK OF BIRMINGHAM, as Co-Executor,

PLAINTIFF,

VS.

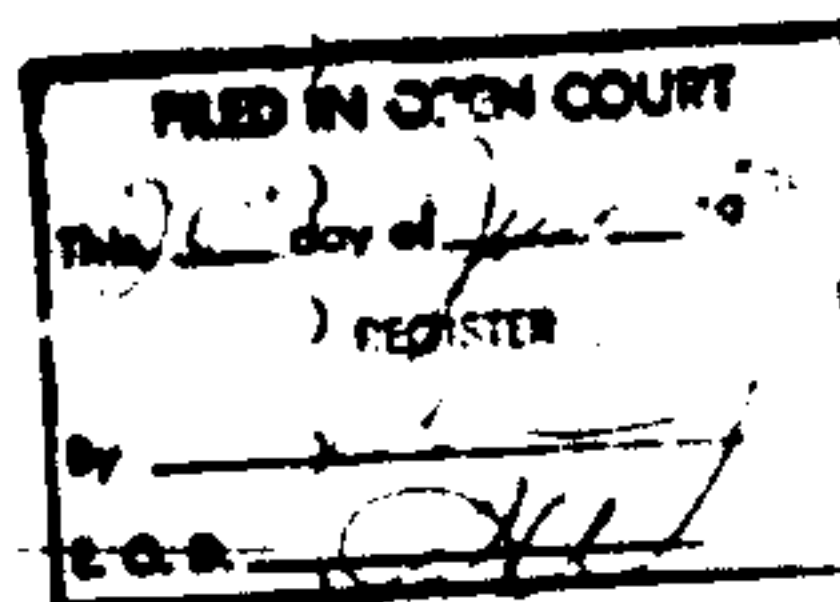
EVELYN DeMARCO, individually and in her  
Capacity as Co-Executor and Trustee;  
DeMARCO CONCRETE BLOCK INCORPORATED, a  
corporation; JOSEPH S. DeMARCO;  
JOSEPHINE D. KEARNS; MARY LOUISE  
O'FLANAGAN; THOMAS PATRICK O'FLANAGAN,  
a minor; ANN MARIE O'FLANAGAN, a minor;  
MICHAEL DeMARCO, a minor; JOSEPH JOHN  
DeMARCO, a minor; MAUREEN LOUISE O'FLANAGAN,  
an adult; DOROTHY ELLENE O'FLANAGAN, an  
adult; LINDA ANN DeMARCO, an adult; and  
EVELYN MARIE DeMARCO (STRICKLAND), an  
adult,

DEFENDANTS.

CIVIL ACTION NO. CV 79 503-103

WCB

(CONSOLIDATION RESERVED)



ADDENDUM TO FINAL DECREE

THIS MATTER coming on to be heard under Item 15 of that Final Decree dated  
March 12, 1980, the Court being advised that all items in the Estate have been  
completed except for a final mathematical computer accounting and allowance of  
fees and costs of Court, the Court finds as follows:

IN THE CIRCUIT COURT FOR THE TENTH JUDICIAL CIRCUIT  
OF ALABAMA, EQUITY DIVISION

(DERIVATIVE PARTIES)

EVELYN D. DeMARCO, Individually and as a  
Minority Stockholder,

PLAINTIFF,

VS.

JOSEPH S. DeMARCO, and DeMARCO CONCRETE  
BLOCK, INCORPORATED, a corporation,

DEFENDANTS.

JOSEPH S. DeMARCO,

DEFENDANT/COUNTER-PLAINTIFF,

VS.

EVELYN DeMARCO, and CENTRAL BANK OF  
BIRMINGHAM, as Co-Executors,

COUNTER/DEFENDANTS.

CENTRAL BANK OF BIRMINGHAM, as Co-Executor,

PLAINTIFF,

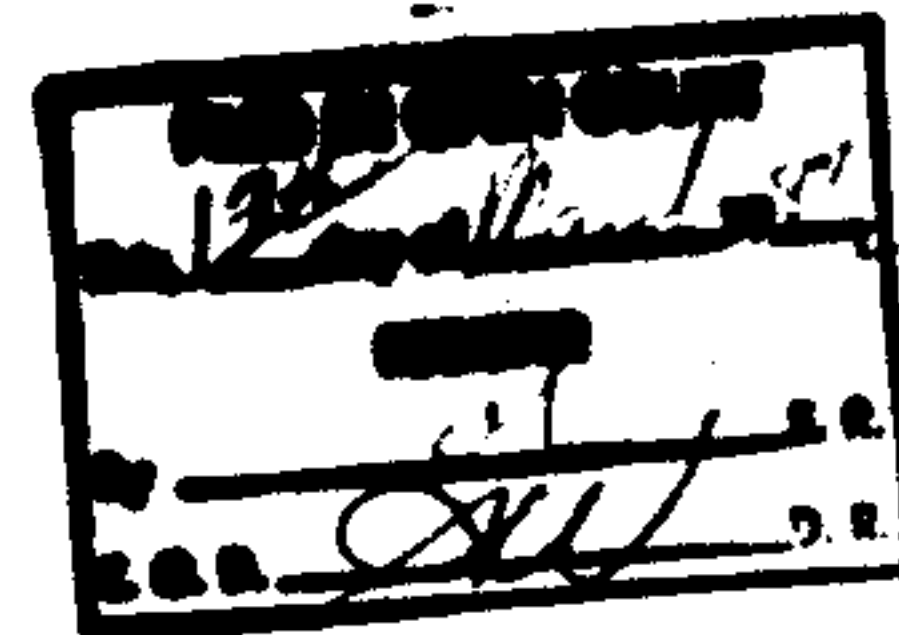
VS.

EVELYN DeMARCO, Individually and in her  
Capacity as Co-Executor and Trustee;  
DeMARCO CONCRETE BLOCK INCORPORATED, a  
corporation; JOSEPH S. DeMARCO;  
JOSEPHINE D. KEARNS; MARY LOUISE  
O'FLANAGAN; THOMAS PATRICK O'FLANAGAN,  
a minor; ANN MARIE O'FLANAGAN, a minor;  
MICHAEL DeMARCO, a minor; JOSEPH JOHN  
DeMARCO, a minor; MAUREEN LOUISE  
O'FLANAGAN, an adult; DOROTHY ELLENE  
O'FLANAGAN, an adult; LINDA ANN DeMARCO,  
an adult; and EVELYN MARIE DeMARCO  
(STRICKLAND) an adult,

DEFENDANTS.

CIVIL ACTION NO. CV 79 503-103 WCB

(CONSOLIDATION RESERVED)



FINAL DECREE

THIS MATTER coming on to be heard on the Central Bank of Birmingham's  
Petition for Instructions and Declaratory Judgment, Guardian ad Litem's Bill  
for Declaratory Judgment, and the Cross-Complaint of Joseph S. DeMarco, Jr.'s  
Complaint against Central Bank of Birmingham, the Court being informed by the

various parties before the Court that the matters set out in the Bill of Declaratory Judgment of Central Bank of Birmingham have been resolved, compromised and settled according to and contained in the attached proceedings before this Court on March 5, 1980. Said statement of resolution made in Open Court being incorporated into this Order by reference thereto and marked Exhibit "A". The Court being of the opinion that relief is due to be granted to Central Bank of Birmingham, it is, therefore,

ORDERED, ADJUDGED and DECREED as follows:

1. The Court finds that the named parties were all interested parties in this proceeding and that said parties have been duly served with the Petition for Instructions in this cause and have been given adequate notice by this Court of this proceeding. The Court notes that the Defendant Josephine Kearns appeared in Court without counsel and participated in the settlement discussions before the Court. That all other adult parties received notice by this proceeding by mailing from the Clerk's office but did not appear before this Court. That the minor Defendants, namely Thomas Patrick O'Flanagan, Ann Marie O'Flanagan, Michael DeMarco and Joseph John DeMarco, who are the beneficiaries of the grandchildren's trust were duly represented by George H. Jones, their duly appointed Guardian ad Litem. That Evelyn DeMarco, individually and as Co-Executor, appeared by her attorneys of record, Allan D. Rushton and Larry Clark, and Joseph S. DeMarco, Jr. appeared by his attorney, Lee Zell and Susan Salonimer. That DeMarco Concrete Block, Inc. was present by its attorney, Larry K. Anderson, and Central Bank of Birmingham was present by its attorney, M. Wayne Wheeler.

2. That Evelyn DeMarco does hereby resign as Co-Executrix of the Estate of Joseph A. DeMarco as of March 5, 1980, and the Central Bank of Birmingham be and hereby is designated as the sole Executor of the Estate of Joseph A. DeMarco, deceased.

3. That the Central Bank of Birmingham be and hereby is duly authorized and ordered to make the following priority payments and disbursements from the estate:

(a) The estate tax liability to the Internal Revenue Service of approximately \$250,000.00.



- (b) All final administrative and court costs, debts of the estate, executor and attorneys' fees, in the approximate amount of \$50,000.00.
- (c) The transfer and completion of all items of specific bequests as set out in the Will; said acts to include the transfer of all stock of DeMarco Concrete Block Co., Inc., in the Estate, to Joseph S. DeMarco, Jr.
- (d) The payment of the sum of \$5,000.00 for each of the eight grandchildren under the grandchildren's trust.
- (e) All funds remaining to be paid and distributed under the terms and conditions of the residuary clause.

4. The Court finds that any additional claims between and among Evelyn DeMarco and Joseph S. DeMarco, Jr., are specifically reserved and said additional claims are transferred to the pending derivative suit. Each of the above named parties shall file appropriate pleadings to set out their respective additional claims in the pending derivative suit.

5. That the Central Bank of Birmingham is dismissed with prejudice in the pending derivative suit.

6. That the settlement and compromise by the Central Bank of the claim against Josephine Kearns is approved.

7. That the amount of the Deferred Compensation Agreement is determined to be \$96,000.00. Said sum of \$96,000.00, paid to Central Bank of Birmingham on or before May 5, 1980.

8. That the Central Bank of Birmingham be and hereby is duly authorized to file its mathematical/computer accounting statements in lieu of a formalized accounting.

9. The Clerk shall mail a copy of this notice and final decree to all parties of record and said mailing shall serve as notice of the final mathematical settlement.

10. That the above named grandchildren: namely, Maureen Louise O'Flanagan, Dorothy Ellene O'Flanagan, Thomas Patrick O'Flanagan, Ann Marie O'Flanagan, Linda Ann DeMarco, Evelyn Marie DeMarco, Michael DeMarco, and Joseph John DeMarco, are the only grandchildren to inherit under Item III of the Will.

11. The Bill for Declaratory Judgment as filed by the Guardian ad Litem is dismissed with prejudice upon the funding of the grandchildren's trust as set out above.

12. That the resignation of Central Bank of Birmingham as Co-Trustee under Item VIII of the Will as a residuary co-trustee is accepted and confirmed, and Evelyn DeMarco is designated as sole Trustee under Item VIII of the Will.

13. That the resignation of Evelyn DeMarco as Co-Trustee under Item III (Grandchildren's Trust) is accepted and confirmed, and Central Bank of Birmingham is designated as sole Trustee under Item II of the Will.

14. That all other issues, claims, and pleadings are resolved (except claims under Item 4 of of this Decree) and made final. The Court expressly determines that there is no just reason for delay, and all Items 1 - 14, are made final as of March 5, 1980, under Rule 54(b).

15. That the final mathematical computer accounting and allowance of fees and costs is set for *May 13<sup>th</sup>*

, 1980 at 9:00 AM.

DONE and ORDERED on this *12<sup>th</sup>* March, 1980.



CIRCUIT COURT JUDGE

EVELYN D. DeMARCO, individually )  
and as a minority shareholder, )

PLAINTIFF

VS.

JOSEPH S. DeMARCO AND DeMARCO  
CONCRETE BLOCK, INCORPORATED,  
a corporation,

DEFENDANTS

JAN 14 9 57 AM '80 CIVIL ACTION NO.

CV 79 503-103 WCB

ACCEPTANCE OF SERVICE

Comes now Lawrence B. Clark  
as Attorney for Evelyn D. DeMarco, does hereby  
accept service of process in the above styled cause heretofore  
filed by the Guardian Ad Litem.

Lawrence B. Clark

CERTIFICATE OF SERVICE

I hereby certify that I have on this the 4th day of  
December, 1979 served a copy of the foregoing pleadings  
of counsel for GUARDIAN CROSS-DEFENDANTS: Evelyn D. DeMarco,  
Joseph S. DeMarco, DeMarco Concrete Block Company, Inc., and  
Central Bank of Birmingham, by mailing the same by United States  
mail properly addressed and First Class postage prepaid.

George H. Jones  
George H. Jones  
Guardian Ad Litem

I, Polly Conradi, Clerk of the Circuit Court of  
Jefferson County, do hereby certify that the  
foregoing is a true, correct and full copy of  
the instrument herewith set out as appears of  
record in said Court.

WITNESS my hand and the seal of said Court,  
this

the APR 20 1992 day of April, 1992

Polly Conradi  
CLERK

04/29/1992-6378  
54 AM CERTIFIED  
JEFFERSON COUNTY JUDGE OF PROBATE  
28.00