

STATE OF ALABAMA)
SHELBY COUNTY)

LIS PENDENS

TO THE JUDGE OF PROBATE OF SAID COUNTY:

You are hereby notified that on the 15th day of March, 1995, John G. Reamer, Jr. and Reamer Development Corporation filed a Complaint in the Circuit Court of Shelby County, Alabama, against Joe A. Scotch, Jr. and Wayne J. Scotch, Case No. CV-95-218, a copy of which is attached hereto and made a part hereof as if set out in full herein, said Complaint seeking, inter alia, specific performance of a Contract for the sale of real property particularly described in the Exhibit "A" attached hereto and made a part hereof as if set out fully herein.

This Lis Pendens is filed against said property to insure and secure the performance of the contract of sale mentioned hereinabove while the matter is being litigated.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand and seal this the 11th day of July, 1995.

John G. Reamer, Jr., and
Reamer Development Corporation

By: W. R. Beals, Jr.
W. R. Beals, Jr., Attorney for
John G. Reamer, Jr. and Reamer
Development Corporation
BEALS & ASSOCIATES, P.C.
200 Cahaba Park South, Suite 125
Birmingham, Alabama 35242
(205) 991-9344

Inst # 1995-18394

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03:25 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
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STATE OF ALABAMA)
SHELBY COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **W. R. Beals, Jr.**, whose name is signed to the foregoing Lis Pendens as **Attorney for John G. Reamer, Jr., and Reamer Development Corporation**, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Lis Pendens, he executed the same voluntarily as the act of, and with full authority of John G. Reamer, Jr., and Reamer Development Corporation.

Given under my hand and seal this ____ day of **March, 1993**.

Janice Whisenant

NOTARY PUBLIC
My Commission Expires: 9/1/98

EXHIBIT "A"

LEGAL DESCRIPTION OF SCOTCH PROPERTY

BEGIN AT THE NORTHEAST CORNER OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 7, TOWNSHIP 19 SOUTH, RANGE 1 WEST; THENCE RUN WEST ALONG THE NORTH LINE OF SAID 1/4-1/4 SECTION FOR 992.30 FEET; THENCE TURN 44°26'14" LEFT AND RUN SOUTHWESTERLY FOR 244.20 FEET; THENCE TURN 25°35'48" LEFT AND RUN SOUTHWESTERLY FOR 117.72 FEET; THENCE TURN 85°00'06" LEFT AND RUN SOUTHEASTERLY FOR 179.17 FEET; THENCE TURN 23°43'10" LEFT AND RUN EASTERLY FOR 54.92 FEET; THENCE TURN 25°10'48" RIGHT AND RUN SOUTHEASTERLY FOR 159.80 FEET; THENCE TURN 88°08'28" RIGHT AND RUN SOUTHWESTERLY FOR 94.83 FEET; THENCE TURN 7°51'44" LEFT AND RUN SOUTHWESTERLY FOR 116.10 FEET; THENCE TURN 9°43'35" LEFT AND RUN SOUTHWESTERLY FOR 105.15 FEET; THENCE TURN 48°18'22" LEFT AND RUN SOUTHEASTERLY FOR 230.71 FEET; THENCE TURN 29°40'28" LEFT AND RUN SOUTHEASTERLY FOR 385.42 FEET; THENCE TURN 6°50'23" LEFT AND RUN SOUTHEASTERLY FOR 102.24 FEET; THENCE TURN 8°13'43" RIGHT AND RUN SOUTHEASTERLY FOR 200.47 FEET; THENCE TURN 23°37'23" RIGHT AND RUN SOUTHEASTERLY FOR 107.21 FEET; THENCE TURN 18°31'08" RIGHT AND RUN SOUTHEASTERLY FOR 65.36 FEET TO THE EAST LINE OF SAID 1/4-1/4 SECTION; THENCE TURN 151°36'37" LEFT AND RUN NORTHERLY ALONG SAID EAST LINE FOR 1,254.06 FEET TO THE POINT OF BEGINNING. SAID PARCEL CONTAINING 22.53 ACRES.

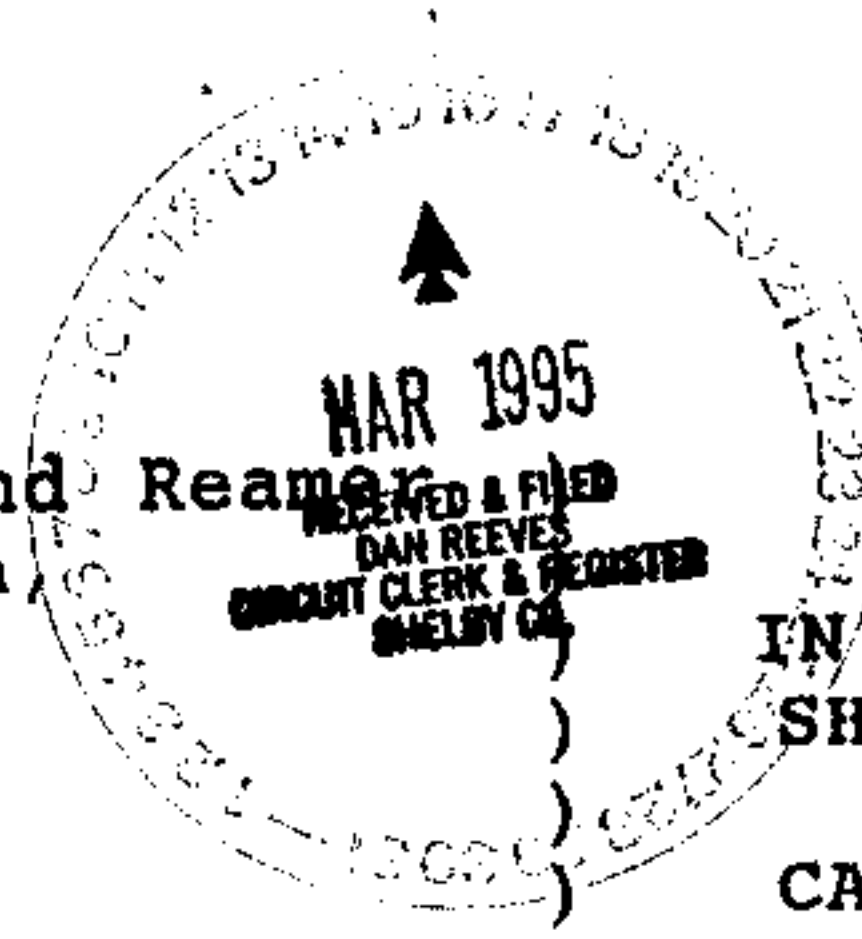
John G. Reamer, Jr. and Reamer
Development Corporation,

Plaintiffs,

vs.

Joe A. Scotch, Jr. and Wayne J.
Scotch

Defendants.



IN THE CIRCUIT COURT OF
SHELBY COUNTY, ALABAMA

CASE NO. CV-95-218

COMPLAINT

COMES NOW John G. Reamer, Jr., and Reamer Development Corporation, Plaintiffs herein, and say unto this Honorable Court as follows:

1. On or about April 5, 1994, Plaintiffs entered into a contract with Defendants for the sale of land located in the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 7, Township 19 South, Range 1 West, Shelby County, Alabama, a copy of which is attached hereto as Exhibit "A" the same consisting of one (1) page, front and back, a one (1) Addendum, and a one (1) page map showing certain elements of the contract contained in the Addendum (the "contract").

2. The object of said contract was the purchase of 20 acres of land, more or less, shown on the map attached to the contract as Eagle Point 9th Sector lying immediately adjacent to and South of lands being developed by Reamer Development Corporation being known as Eagle Point 5th Sector. Said lands also being immediately adjacent to and West of land being development by Reamer Development Corporation being known as Eagle Point 3rd Sector. Said purchase being necessary to provide a continuum of Eagle Point Subdivision from U.S. Highway 280 on the East to Alabama Highway 119 on the West.

3. As part of the consideration for the contract, Plaintiffs paid Defendants \$5,000.00 in earnest money.

4. Time was not of the essence in the contract.

5. The contract called for the closing of the sale to occur on or before "60 days from execution" such time being on or about June 5, 1994.

6. On or about July 13, 1994, the parties agreed in an addendum to extend the closing date to August 20, 1994, a copy of which addendum is attached hereto as Exhibit "B".

7. Time was not of the essence in the said addendum for extension of the closing date.

8. As consideration for the agreement to extend the closing date, Plaintiffs agreed to pay Defendants "loan interest" on the purchase price less the earnest money from June 5 to date of closing.

9. The contract, in Paragraph 2 of the Addendum, called for Plaintiff to "...grant to the seller (Defendants herein) a right-of-way from seller's north property line along the proposed subdivision road of the proposed Eagle Point 5th Sector Subdivision to the present 4th Sector of Eagle Point Subdivision...". Plaintiffs completed performance this portion of the contract on or about August 19, 1994, when Final Plat Approval was obtained by the Shelby County Planning Commission for Eagle Point 5th Sector, said plat containing an extension of the right-of-way as described in the contract. The plat was submitted for approval on or about June, 1994. This extension was to the detriment of Plaintiff as it was not required of the said planning commission nor the County Engineer, because at the time of filing of the Final Plat the Defendants' lands and homes had access to public roads by alternative routes.

10. The contract, in Paragraph 4 of the Addendum, provided for Plaintiff to begin construction of the roadway connecting Eagle Point 4th Sector and 5th Sector with the 3rd Sector, contingent upon, inter alia, "(b) access from the above road to Seller's remaining acreage both on the ridge property as well as the bottom property...". Plaintiff performed this portion of said contract addendum on or about June, 1994, at an expense of \$40,000.00.

11. Following Plaintiff's performances noted hereinabove in Paragraphs 9 and 10, Defendants access to Highway 119 was conveyed away when the property to the West of theirs was sold for approximately \$724,000.00, a copy of the deed of conveyance is attached hereto as Exhibit "C". The Grantor in said Deed is the Peggy P. Scotch Charitable Remainder Trust, Peggy P. Scotch being the mother of the Defendants.

12. On or about August 29, 1994, Plaintiff performed again by paying interest to the Defendants in the amount of \$8,393.75, representing 8.5% of \$395,000.00 for a period of 91 days, a copy Plaintiff's check being attached as Exhibit "D" hereto.

13. The parties met on the property on or about August 17, 1994, to discuss the location of the southern boundary of the property to be sold and to view the recent survey thereof. At the conclusion of the meeting Plaintiff, John Reamer told Defendants he was ready to close anytime and for them to let him know when they were ready. Plaintiffs expended \$8,100.00 for aforesaid survey.

14. Defendants did not further communicate with Plaintiff concerning the closing of the sale, although there was one exchange of phone messages during the last week of September, 1994, the last

being Plaintiff's return call to Defendant Joe Scotch who was not available. Defendants did not call again.

15. Defendant Joe A. Scotch, Jr. wrote a letter to Plaintiff dated October 5, 1994, (copy attached as Exhibit "E" hereto) said letter being hand delivered to Plaintiff at a Planning Commission meeting on or about October 17, 1994, by engineer Bart Carr, wherein it is alleged that there had been personal communication regarding the closing of the sale and that Plaintiff had not set the closing. The letter then declared the contract in breach and the earnest money forfeited, and ordered that Plaintiff discontinue all work on their property. Defendant protested personally.

16. Plaintiffs met with Defendants on or about October 24, 1994, and advised Defendants that they were then, and at all times before ready, willing and able to close the sale on 48 hours notice. Plaintiff confirmed this discussion in writing in a letter dated the same day, a copy of which is attached hereto as Exhibit "F". Defendants did not close on the sale, but rather demanded an increase in the Purchase Price to \$26,500.00 per acre (original contract price was \$20,000.00 per acre). Plaintiff refused, but continued to try to resolve the dispute and close the sale. Plaintiff is now and at all times since August 18, 1994, ready willing and able to close on said sale under the terms and conditions of the contract dated April 5, 1994 as amended in addendums thereto.

17. On or about December, 1994, Plaintiffs were required to re-engineer the water supply and sewer from the 5th Sector into the 3rd Sector of Eagle Point, as they did not as yet own the property of Defendants wherein the water supply and sewer had intended to be located. Said relocation design and installation adding approximately \$110,000.00 to Plaintiffs' cost of development.

COUNT 1 - Specific Performance

18. Defendants are in breach of the contract made the subject of this Complaint in failing to close the sale transaction with Plaintiffs in accordance with the contract terms and after substantial performance by Plaintiffs.

19. Whereof Plaintiffs pray this Honorable Court to enter an Order in Plaintiffs favor directing Defendants to proceed to closing of said contract without further delay, and within ten (10) days of said Order, and without further expense or detriment to the Plaintiffs.

COUNT 2 - Bad Faith

20. Plaintiffs hereby include all allegations contained in Paragraphs 1 through 17 hereinabove.

21. Defendants knew Plaintiffs were ready to close on the sale/purchase of the property made the subject of this complaint at all times on or after August 18, 1994, and failed to set a time for said closing transaction.

22. Defendants knew, or should have known, that Plaintiffs had performed the conditions precedent to the final sale of the subject property and was continuing to perform in every way required therein.

23. Defendants then had a duty to perform.

24. Defendants knew, or should have known, that Plaintiffs would be damaged if the contracted sale could not be finalized due to Plaintiffs inability to tie Eagle Point 5th Sector to Eagle Point 3rd Sector.

25. Defendants terminated said contract with Plaintiffs advising Plaintiffs of forfeiture of "earnest money" following Plaintiffs substantial performance of the contract requirements to their detriment, and then made demand for additional consideration in order to perform.

26. Whereof Plaintiffs request this Honorable Court to enter Judgment in favor of Plaintiffs and against the Defendants in the amount of \$1,000,000.00 for their bad faith in dealing with the Plaintiffs.

COUNT 3 - Damages for Breach

27. Plaintiffs hereby include all allegations contained in Paragraphs 1 through 17 hereinabove.

28. Plaintiffs have incurred additional expense in the months following the breach described herein for re-engineering and relocation of the water supply, the same being in addition to a water supply for the lands to be sold herein.

29. Plaintiffs had a right to the benefit of their bargain and have had to hire legal counsel and file this action to force performance of their contract with Defendants.

30. In the event of final performance of the contract, Plaintiffs will incur additional expense in the development of the subject property due to a deterioration of the work already performed.


31. Plaintiff has lost sales of lots and/or homes in the proposed 9th Sector of Eagle Point, and as consequence thereof has lost profits and interest thereon that may not be recovered.

32. Whereof Plaintiffs request this Honorable Court to enter

a Judgment in favor of Plaintiffs in the amount of \$100,000.00 for damages to Plaintiffs for untimely performance, lost profits and attorney's fees and costs.

33. In the alternative, if specific performance is not due the Plaintiffs herein, then Plaintiffs pray this Honorable Court to award them \$210,000.00 in damages for breach of the contract.

Plaintiffs pray this Honorable Court to take jurisdiction of this matter and summon the Defendants herein to answer to plaintiffs' complaint, and having heard the their answer to grant unto Plaintiffs the relief prayed for herein or other such just and more complete relief as the Court should find appropriate. Plaintiffs herein are ready to do equity in this matter as the Court may direct.

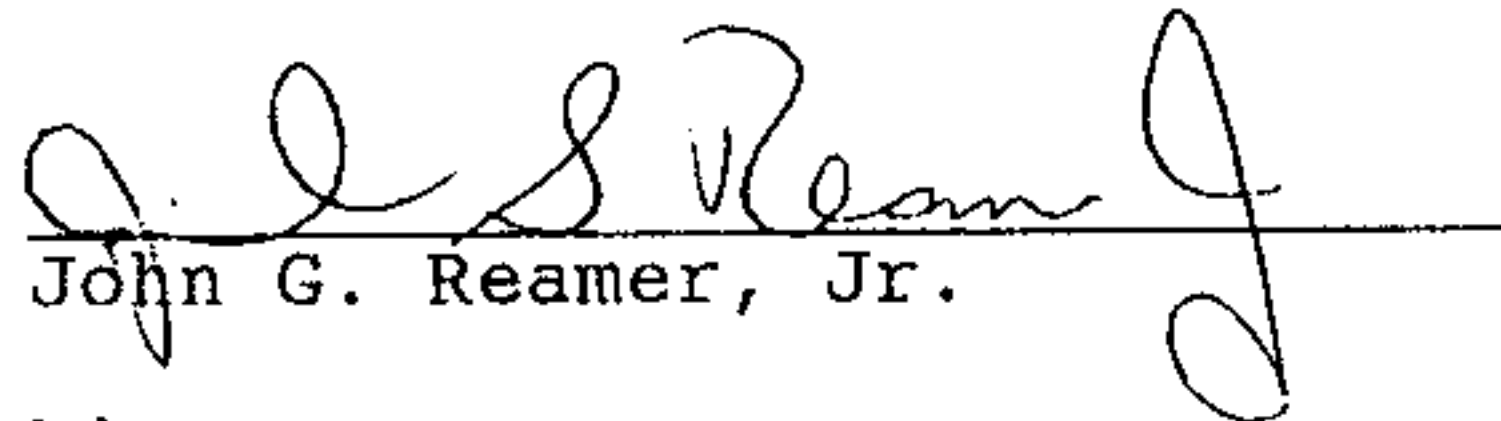

W. Russell Beals, Jr.
Attorney for Plaintiffs
#10 Inverness Parkway, Suite 110
Birmingham AL 35242-4818
(205) 991-9344
(205) 991-7876 FAX

Dated: March 15, 1995
STATE OF ALABAMA
COUNTY OF SHELBY

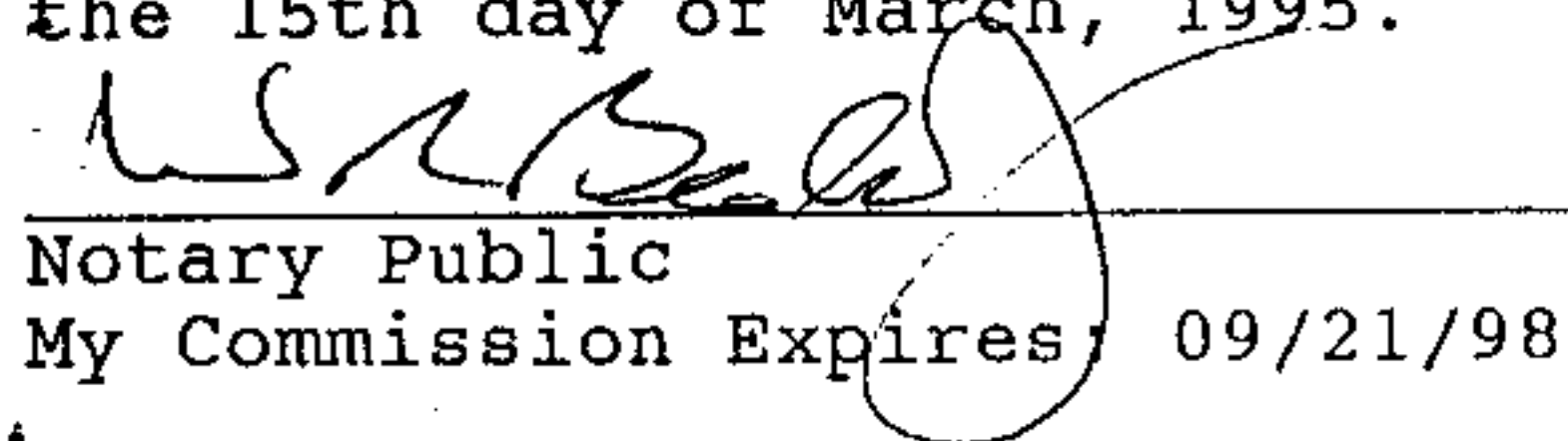
VERIFICATION

I, the undersigned Plaintiff, John G. Reamer, Jr., individually and as President of Reamer Development Corporation, being first duly sworn, depose and say:

I am a resident citizen of Shelby County, in the State of Alabama. I am one of the Plaintiffs named in the foregoing Complaint and President of the Plaintiff corporation. I have read over the Complaint, and the facts stated therein are true and correct according to my information, knowledge and belief.


John G. Reamer, Jr.

Sworn to and subscribed before me this
the 15th day of March, 1995.


Notary Public
My Commission Expires 09/21/98

Plaintiffs' Address: 4716 Eagle Wood Court
Birmingham AL 35242

Defendants' Address: c/o Scotch Companies
503-C Cahaba Park Circle
Birmingham AL 35242

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