

AFFIDAVIT

STATE OF ALABAMA
SHELBY COUNTY

Before me, the undersigned authority in and for said County and State personally appeared John R. Holliman whose name is signed to this affidavit and who is known to me and who first being duly sworn, deposes and says as follows:

My name is John R. Holliman. I am a practicing attorney in Pelham, Al. Attached to this affidavit are copies of documents received by my office for recording in order to clear the title per Jefferson Title Corporation's title commitment # M25370, insuring * Lot 2, Block 5, according to the Map of First Addition to Indian Hills, Second Sector, as recorded in Map Book 5, Page 7 in the Probate Office of Shelby County, Alabama.

In Witness Whereof, I have unto set my hand and seal on this the 5th day of June 1996.


Affiant
JOHN R. HOLLIMAN

Sworn to and subscribed before me
this the 5th day of June 1996

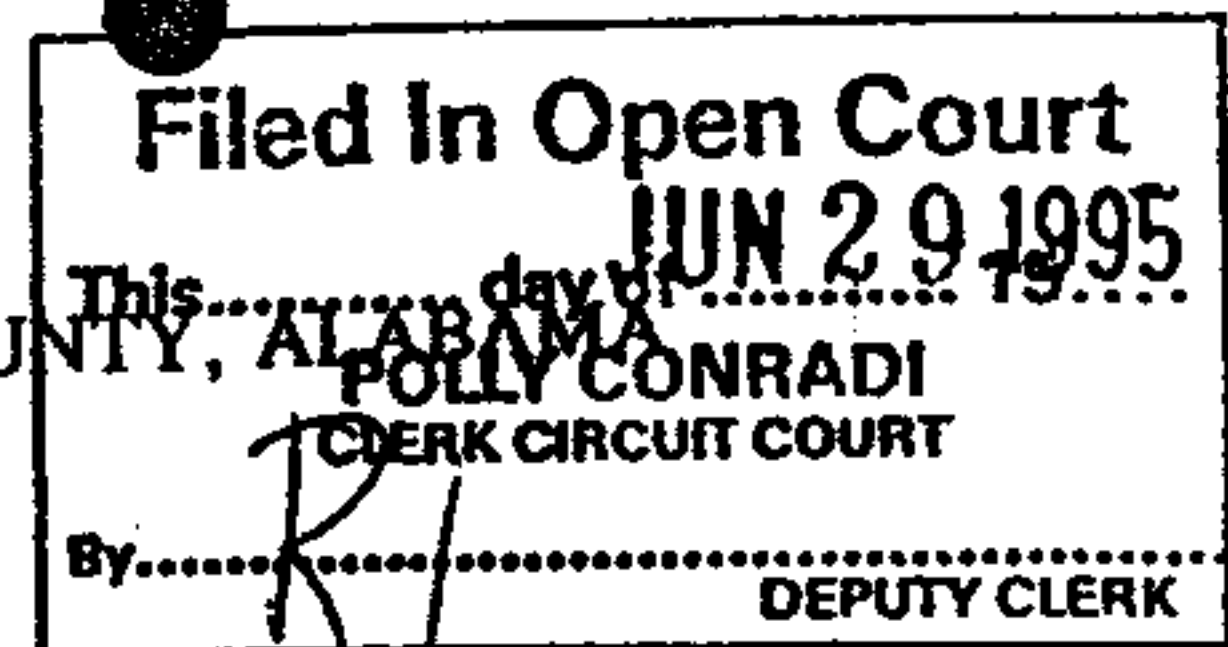

Notary Public

MY COMMISSION EXPIRES AUGUST 3, 1998

Inst # 1996-18342

06/06/1996-18342
09:38 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
014 NEL 41.00

IN THE CIRCUIT COURT FOR JEFFERSON COUNTY, ALABAMA



TIMOTHY D. McCOLLOUGH,)
)
PLAINTIFF,)
)
VS.)
)
AMSOUTH BANK, N.A.,)
)
A National Banking)
Association,)
)
DEFENDANT.)

CIVIL ACTION NO.: CV 92-08510

COPY

CONSENT ORDER

This matter being before the Court on defendant Guyer's Motion for Addition Relief, Motion for Emergency Hearing, and Motion to Enforce Judgment of Specific Performance. Also pending are the plaintiff's Motion to Vacate the Order previously entered by this Court on May 18, 1995 and the plaintiff's Motion for a New Trial. Also pending is the Joint Motion of the Parties for a Consent Order, the same being considered and understood and for good cause shown, it is

ORDERED, ADJUDGED, and DECREED as follows:

1. Defendant Guyer's Motion for Addition Relief and Motion for Emergency Hearing are hereby determined to be moot.
2. Defendant Guyer's Motion to Enforce Judgment of Specific Performance is hereby granted and defendant AmSouth Bank of Alabama, as Trustee under the Will of Bill McCollough, Jr. and plaintiff, Timothy D. McCollough, be and are hereby ordered to execute and deliver a deed (in the form of Exhibit "A") conveying their respective interest in the subject property to the Guyers in exchange for the purchase price per the terms of the Court's Order of May 18, 1995. The parties are ordered to execute all appropriate documents to effect the


transfer of the subject property in favor of the Guyers pursuant to the Court's previous orders and to execute the necessary closing documents in a timely manner so as to allow for the closing which is presently anticipated to take place on July 5, 1995.

3. Plaintiff's Motion to Vacate Judgment entered in this cause on May 18, 1995 to be and the same is hereby denied.

4. Plaintiff's Motion for a New Trial be and the same is hereby denied.

5. Court costs are taxed to the plaintiff.

Done and Ordered this the 29th day of June, 1995.


Kenneth O. Simon, Circuit Judge

8/7/95

This instrument prepared by:
Frank G. Alfano
GORHAM & WALDREP, P.C.
2101 6th Avenue North
Suite 700
Birmingham, Alabama 35203

Inst # 1995-19139

07/20/1995-19139
10:29 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
004 MCD 17.00

Inst # 1995-19139

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DEED, JOINTLY FOR LIFE WITH REMAINDER TO SURVIVOR

STATE OF ALABAMA)
JEFFERSON COUNTY)

KNOW ALL MEN BY THESE PRESENTS

That in consideration of Fifty-Six Thousand, Nine Hundred and no/100ths (\$56,900.00) Dollars to the undersigned grantors, AmSouth Bank of Alabama, as Trustee under the Will of Bill McCollough, Jr. (hereinafter referred to as "AmSouth"), and Timothy D. McCollough, a married man (hereinafter referred to as "McCollough"), in hand paid by Darnell K. Guyer and wife, Marilyn Guyer, (hereinafter referred to as Grantees), the receipt whereof is hereby acknowledged, AmSouth and McCollough do grant, bargain, sell and convey, unto the said grantees for and during their joint lives and upon the death of either of them, then to the survivor thereof in fee simple, together with every contingent remainder and right of reversion, that 65.3% undivided interest in the following described real estate, situated in Shelby County, Alabama, held by the Bill McCollough Testamentary Trust f/b/o/ Timothy D. McCollough, to wit:

Lot 2, Block 5, according to a survey of the first addition to Indian Hills, second sector, as it is recorded in Map Book 5, at Page 7, in the Office of Judge of Probate of Shelby County, Alabama.

This conveyance is free and clear of all encumbrances, but shall not affect the contractual rights, if any, of Timothy D. McCollough (one of the grantors herein) contained in paragraph four (4) of that certain agreement recorded in book number 342, page 343 through page 352. This conveyance is subject to ad valorem taxes not now due and payable and any easements for roads and public utilities and other encroachments on the property.

This deed is executed pursuant to the Final Order entered in Jefferson County Civil Action No. CV 92-8510.

TAX ASSESSOR'S NOTE: For assessment purposes, assess in name of Grantee(s) named above at 1715 Burningtrees Drive, Pelham, AL 35124.

\$56,900.00 of the purchase price recited above was paid from the proceeds of a first mortgage loan executed and recorded simultaneously herewith.

For Holliman

Deed, Jointly For Life
with Remainder to Survivor
AmSouth and McCollough to Guyers
Page 2 of 4

Subject to the following restrictions of record:

1. Agreement concerning water service as set out in Deed Book 229, Page 109.
2. Right of Way granted to Alabama Power Company by instrument(s) recorded in Deed Book 234, Page 657 and Deed Book 179, Page 380.
3. Right of Way in favor of Alabama Power Company and Southern Bell Telephone & Telegraph Company by instrument(s) recorded in Deed Book 238, Page 385 and Deed Book 239, Page 536.
4. Restrictions appearing of record in Deed Book 247, page 323.
5. 40 foot building line from Burning Tree Drive; a 25 foot utility easement along the rear lot line and an easement of undetermined size along the Northeasterly lot line, as shown on recorded map.

The above-described property is not the homestead of McCollough or of his wife.

TO HAVE AND TO HOLD to the said grantees, for and during their joint lives and upon the death of either of them, then to the survivor of them in fee simple, and to the heirs and assigns of such survivor forever together with every contingent remainder and right of reversion.

This instrument is executed by AmSouth without warranty or representation of any kind on the part of the undersigned, express or implied, except that there are no liens or encumbrances outstanding against the premises conveyed which were created or suffered by the undersigned and not specifically excepted herein.

And McCollough does for himself and for his heirs, executors, and administrators covenant with the said GRANTEES, their heirs and assigns, that he is lawfully seized in fee simple of said premises; that they are free from all encumbrances, unless otherwise noted above; that he has a good right to sell and convey the same as aforesaid; that he will and his heirs, executors, and administrators shall warrant and defend the same to the said GRANTEES, their

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Deed, Jointly For Life
with Remainder to Survivor
AmSouth and McCollough to Guyers
Page 3 of 4

heirs, and assigns forever, against the lawful claims of all persons.

IN WITNESS WHEREOF, they have hereunto set their hand and seal on this the 5th
day of July, 1995.

AMSOUTH BANK OF ALABAMA, AS
TRUSTEE UNDER THE WILL OF BILL
MCCOLLOUGH, JR.

Attest:

By: [Signature]

Its: Assistant Vice President
and Trust Officer

STATE OF ALABAMA)
JEFFERSON COUNTY)

By: [Signature]

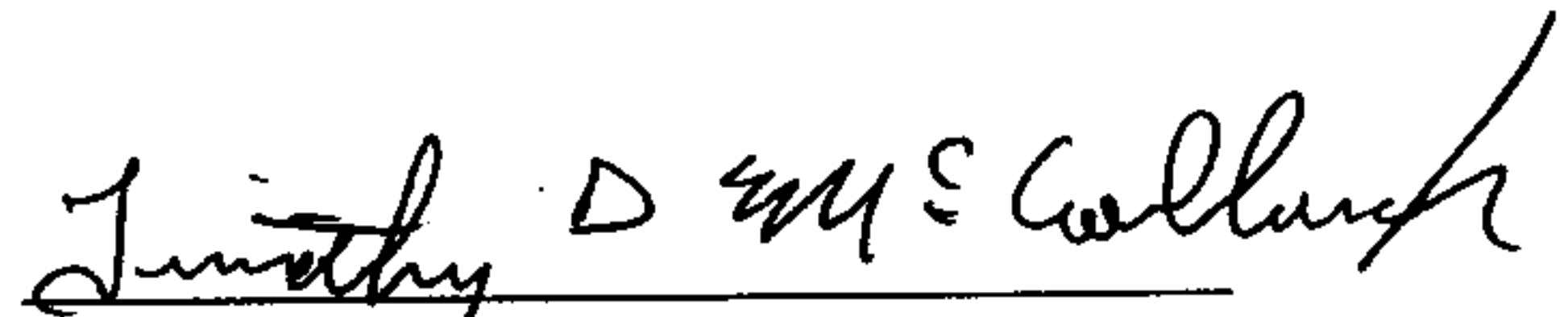
Its: Vice President and Trust Real Estate
Officer

I, the undersigned, a Notary Public, in and for said County in said State hereby certify
that D.A. Ferguson, whose name as Vice President and Trust Real Estate Offr
of AmSouth Bank, a corporation, in its capacity as trustee, is signed to the foregoing instrument,
and who is known to me acknowledged before me on this day, that being informed of the
contents of said instrument, D.A. Ferguson, as such officer and with
full authority, executed the same voluntarily for and as the act of said corporation, in its capacity
as trustee.

Given under my hand and seal this 5th day of July, 1995.

[Signature]
Notary Public
My Commission Expires: 12-9-97

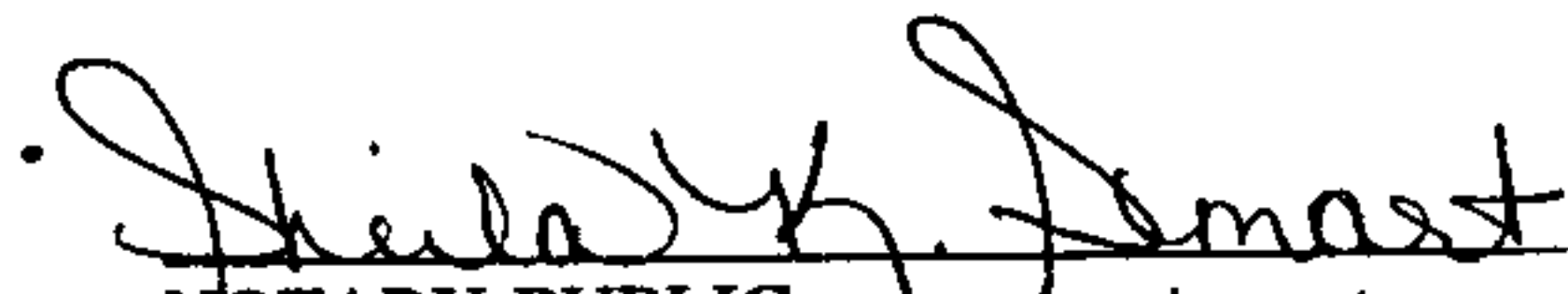
Deed, Jointly For Life
with Remainder to Survivor
AmSouth and McCollough to Guyers
Page 4 of 4


TIMOTHY D. MCCOLLOUGH

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Timothy D. McCollough, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day, that being informed of the contents of said conveyance, the same was executed voluntarily on the day the same bears date.

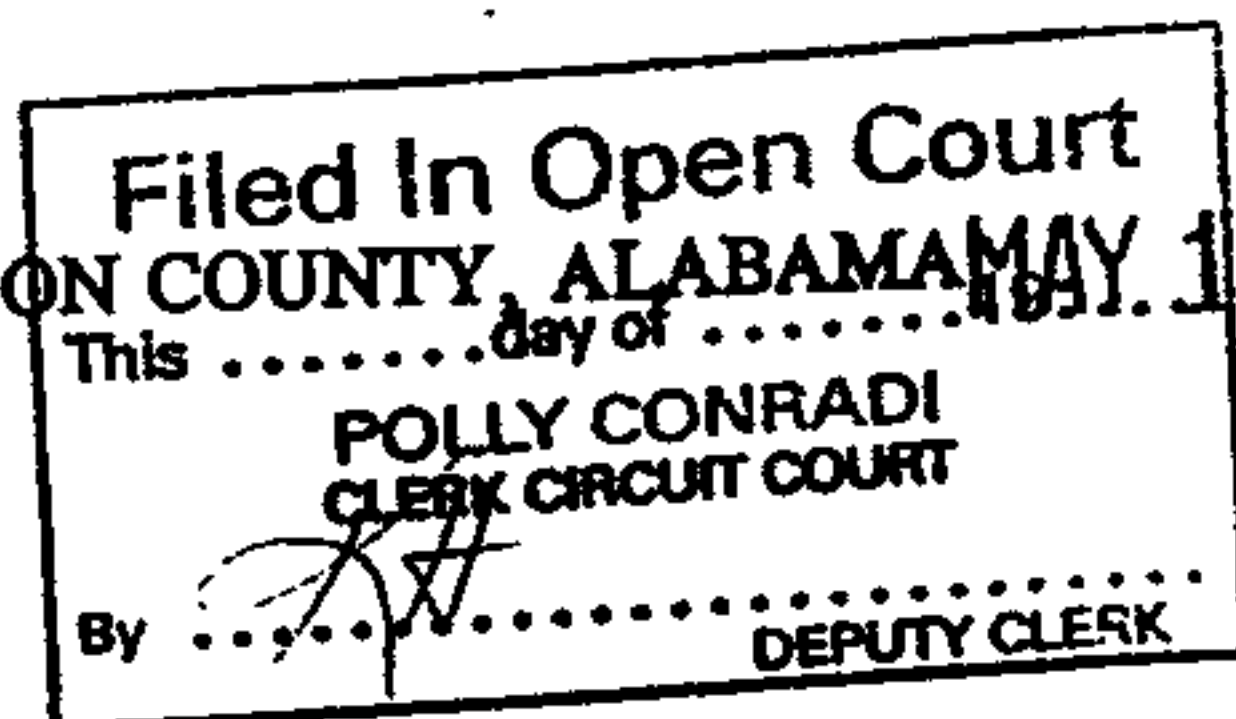
Given under my hand and official seal this the 29th day of June, 1995.


NOTARY PUBLIC
My Commission Expires: 4/15/97

Inst # 1995-19139

07/20/1995-19139
10:29 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
004 MCD 17.00

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
IN EQUITY



MAY 18 1995

TIMOTHY D. McCOLLOUGH,

Plaintiff,

v.

AMSOUTH BANK N.A., a national
banking association,

Defendant.

CIVIL ACTION NO. CV 92-8510

COPY

FINAL JUDGMENT

This cause, coming on to be heard, was submitted for final Order on April 21, 1995. Pursuant to the Order of this Court entered on December 7, 1994, which Order is incorporated by reference herein, and based upon the evidence heard by this Court at the non-jury trial of this case in October, 1994, the post-trial submissions of the parties, and this Court's thorough understanding of the contentions and claims of the parties, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. Defendants Darnell and Marilyn Guyer (the "Guyers") are entitled to consummate the exercise of their option, held under an agreement recorded in the Probate Office of Jefferson County, Alabama in Book 342, Page 343, between defendant AmSouth Bank of Alabama, as Executor and Trustee under the will of Bill McCollough, Jr. ("AmSouth"), and the Guyers dated September 9, 1982 (the "Agreement"), to purchase that undivided 65.3% interest held by the Bill McCollough, Jr., Trust f/b/o Timothy McCollough (the "Trust") in the following described real property situated in Shelby County, Alabama: Lot 2, Block 5, according to a survey of the first addition to Indian Hills, second sector, as it is recorded in Map Book 5, at Page 7, in the

Office of Judge of Probate of Shelby County, Alabama (the "Subject Property"). The option to purchase the Subject Property, which option was exercised by the Guyers in March of 1993, remains valid, notwithstanding the intervening passage of time due to the litigation of this matter. As such, AmSouth and plaintiff Timothy McCollough are hereby directed to honor the exercise of such option and to convey, at the closing of the sale of the Subject Property, the interest of the Trust to the Guyers in accordance with the terms of the Agreement.

2. The terms of the Agreement control the purchase of the partial interest in the Subject Property by the Guyers, notwithstanding the intervening passage of time from the exercise of the option to the present due to the litigation of this matter. Therefore, AmSouth and plaintiff Timothy McCollough are directed to honor the terms of the Agreement and the sale should be consummated as if the sale were closing within ninety (90) days of the exercise of the option to purchase.

3. Pursuant to paragraph 2(b) of the Agreement, AmSouth and plaintiff Timothy McCollough are hereby ordered to sign, within five (5) days of the date of this Order, a Deed, which Deed is attached hereto as Exhibit "A" and incorporated herein by reference as if fully set forth at this point, conveying their undivided interest in the Subject Property, free and clear of all encumbrances excepting only ad valorem taxes not now due and payable and easements for roads and public utilities. The Court does hereby determine that plaintiff Timothy McCollough's rights in paragraph 4 of said Agreement under the provision entitled "Future Sales of the New Residence" do not constitute an encumbrance against the title to the Subject Property because the rights, if any, are contractual in nature and do not constitute a right or interest in the Subject Property. *Colonial Capital Corporation v. Smith*, 367 So. 2nd 490 (Ala. Civ. App.

1979). The plaintiff's right, if any, is a contractual right to receive a payment of a sum of money from the Guyers upon the occurrence of certain events and does not affect the Guyers' right to title, use, dominion or control over the Subject Property. *Tuskegee Land & Sec. Co. v. Birmingham Realty Co.*, 161 Ala. 542, 49 So. 378 (1909). The Court does hereby determine that plaintiff Timothy McCollough's contractual rights in paragraph 4 of the said Agreement shall survive the execution and delivery of the Deed in favor of the Guyers as hereinabove referenced. Plaintiff Timothy McCollough's right or entitlement to a portion of the gain on a subsequent sale by the Guyers, as set forth in paragraph 4 of said Agreement, is in no way altered or changed by virtue of this Order and said contract right, if any, survives the delivery of the deed hereinabove referenced.

4. AmSouth shall receive the proceeds of the sale of the subject property and shall hold such proceeds as trustee, together with any other property of the Trust, until the time period for appeal from this Order has expired with no notice of appeal having been filed, or until any appeal of this Order is finally resolved, whichever occurs first, such period to be referred to herein as the "Prescribed Period."

5. Upon the expiration of the Prescribed Period, AmSouth shall distribute the Trust proceeds in accordance with this Court's Order of May 8, 1995, which Order is incorporated by reference herein.

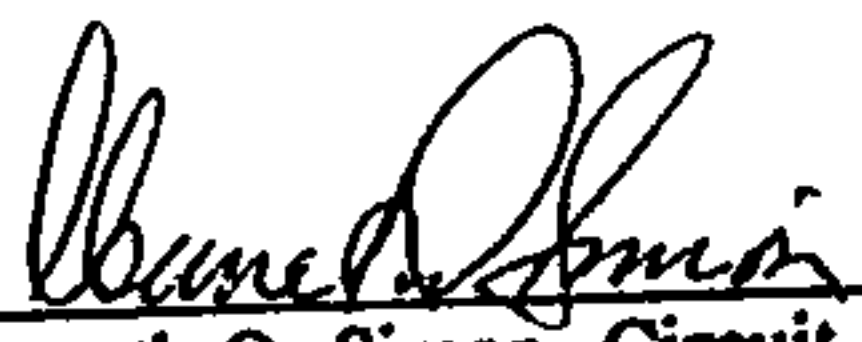
6. Any additional costs of this action are taxed to plaintiff.

7. Plaintiff Timothy McCollough has been ably and well represented in this cause and, during the pendency of this litigation, upon motion of Plaintiff, AmSouth as trustee has been ordered to make distributions to him in the aggregate amount of \$34,000. After AmSouth

as trustee makes the disbursements ordered in paragraph 5 above, any remaining assets of the Trust shall also be distributed to plaintiff Timothy D. McCollough.

8. Furthermore, to avoid any confusion and because there is no just reason for delay, this judgment shall be entered by the Clerk pursuant to Alabama Rule of Civil Procedure 54(b).

DONE this the 18th day of May, 1995.


Kenneth O. Simon, Circuit Judge

IN THE CIRCUIT COURT FOR JEFFERSON COUNTY, ALABAMA

TIMOTHY D. McCOLLOUGH,
PLAINTIFF,

VS.

AMSOUTH BANK, N.A.,
A National Banking
Association,

DEFENDANT.

CIVIL ACTION NO.: CV 92-08510

SETTLEMENT AGREEMENT

WHEREAS, defendants, Darnell K. Guyer and wife, Marilyn Guyer (hereinafter "Guyers") were awarded a judgment of specific performance in this cause pertaining to the following property situated in Shelby County, Alabama: Lot 2, Block 5, according to a survey of the first addition to Indian Hills, second sector, as it is recorded in Map Book 5, at Page 7, in the Office of Judge of Probate of Shelby County, Alabama. Said property is also described as 1715 Burning Tree Drive, Pelham, Alabama; and

WHEREAS, the plaintiff, Timothy D. McCollough, (hereinafter referred to at "plaintiff" or "McCollough") has executed a warranty deed (contemporaneous herewith) pursuant to the Court's previous Order of December 7, 1994 and May 18, 1995 in anticipation of the July 5, 1995 closing; and

WHEREAS, McCollough wishes to sell, transfer, and assign his remaining interest in the subject property to the Guyers; and

WHEREAS, the Guyers and McCollough jointly wish to resolve all remaining issues regarding the subject property and Civil Action 92-8510.

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NOW, THEREFORE, it is mutually stipulated to and agreed by and between the parties hereto as follows:

1. That in exchange for the sum of \$6,500.00 in cash paid by the Guyers to McCollough, the receipt of which is hereby acknowledged, McCollough does hereby sell, transfer, and assign, unto the Guyers (jointly), any and all of his interest in the subject property whether by virtue of paragraph 4 of that certain agreement recorded in Book Number 342, Page 343 through 352, or otherwise.

2. As additional consideration for the money paid to McCollough, he warrants that he has not otherwise transferred the interest represented by paragraph 4 of the agreement recorded in Book Number 342, Page 343 through 352.

3. McCollough does hereby waive and relinquish any and all rights to appeal the previous orders entered by the Court in this cause to any state or federal court with jurisdiction over the same, including, but not limited to, the Alabama Court of Civil Appeals or the Alabama Supreme Court; and McCollough does hereby further waive and relinquish any and all rights to appeal the Consent Order of this Court to be entered in this cause.

4. That should McCollough appeal any of the orders in this cause, McCollough does hereby agree that he will voluntarily dismiss any such appeal against any party in this cause and that he will be responsible for the reasonable attorney's fees and costs, if any, incurred by the Guyers relative to the defense of any such appeal.

5. That as additional consideration for the above stated payment, McCollough does hereby sell, assign, and transfer to the Guyers, any of his remaining interest in the Testamentary Trust established under the Last Will and Testament of Bill McCollough, Jr.

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6. That should any provision of this Settlement Agreement be held to be invalid, illegal, or unconstitutional, such finding shall not effect the remaining provisions of this Settlement Agreement which provisions shall continue in full force and effect.

7. The parties hereto acknowledge that McCollough shall not be responsible for the Guyer's closing costs.

8. McCollough acknowledges that he has entered into this agreement knowingly and with advise of counsel, and that he is not under any compulsion or duress at this time, but that the execution of this document is his free and voluntary act.

IN WITNESS WHEREOF, we have set our hands and seals on this the 5th day of July, 1995.

Timothy D McCollough
Timothy McCollough, Plaintiff

Darnell K. Guyer
Darnell K. Guyer, Defendant

Marilyn Guyer
Marilyn Guyer, Defendant

Inst # 1996-18342

06/06/1996-18342
09:38 AM CERTIFIED
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