

VIRGINIA

IN THE CIRCUIT COURT FOR THE COUNTY OF HENRICO

GARIEN WYCOFF,
aka Gary Wycoff,

PLAINTIFF,

v.

CASE NO.: CH03-992
Consolidated w/ Ch03-1366

JOSEPH D. MORRISSEY,

and

LAWRENCE N. SMITH, TRUSTEE,

and

CHARLES D. ROBISON, III, TRUSTEE,

and

CRESTAR MORTGAGE, INC.

Serve: Registered Agent: Ernest L. Hazelwood, Jr.
10660 Cherokee Road
Richmond, VA 23235
(City of Richmond)

and

ERNEST L. HAZELWOOD, JR.

Serve at: 10660 Cherokee Road
Richmond, VA 23235
(City of Richmond)

and

ROBERT H. SMALLENBERG, TRUSTEE,

Serve at: 7 South Adams Street, Richmond, Virginia 23220

and

GARY R. HERSHNER

Serve at: 7 South Adams Street, Richmond, Virginia 23220

and

F. J. MURPHY PEPPER, P.C., TRUSTEE

Serve Registered Agent: F. J. Murphy Pepper

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CLERKS OFFICE
HENRICO CIRCUIT COURT

2541 Dunham Road
Richmond, VA 23233

and

CHARLES MORRISSEY, TRUSTEE

Serve at: Wherever Found

THE ANGELA SCHAEFER IRREVOCABLE TRUST

Serve at: Charles Morrissey, Trustee
Wherever found.

and

ANGELA SCHAEFER

Serve at: wherever found

and

PAUL KLINEFELTER,

Serve at: 9825 Colony Bluff Dr.
Richmond, VA 23233
(804) 740-6980

and

SUE ANN KLINEFELTER

Serve at: 9825 Colony Bluff Dr.
Richmond, VA 23233
(804) 740-6980

and

ROBERT H. SMALLENBERG, TRUSTEE

Serve at: 7 South Adams Street
Richmond, VA 23220

and

SCOTT D. STOLTE, TRUSTEE

Serve at: 710 North Hamilton Street
Richmond, VA 23221

and

ADAMS ROW OF RICHMOND, LLC

Serve Registered Agent Robert H. Smallenberg
7 South Adams Street

Richmond, Virginia 23220

and

WADE AND WADE, P.L.C., TRUSTEE

Serve Registered Agent: Winfrey T. Wade
5911 West Broad Street
P.O. Box 6357
Richmond, VA 23230
(County of Henrico)

and

CITIZENS AND FARMERS BANK

Serve Registered Agent James H. Hudson, III
826 Main Street
West Point, VA 23181

DEFENDANTS.

**First Amended BILL OF COMPLAINT TO ENFORCE JUDGMENT
AND FOR OTHER RELIEF**

To the Honorable Judge of said Court:

Comes now the plaintiff, by counsel, and respectfully represents as follows¹:

1. Garien Wycoff ("Wycoff") who is also known as "Gary Wycoff" is a resident of Virginia.
2. Gary R. Hershner ("Hershner") is a resident of Virginia.
3. Joseph D. Morrissey ("Morrissey") is a resident of Virginia, with a home at 8700 Osborne Turnpike, Henrico County, Virginia. A courts has determined that Morrissey has conclusively shown himself unworthy of this trust, has determined that he has a proclivity for unprofessional and unethical conduct, coupled with a lack of candor.
4. On July 3, 1999, Morrissey, an attorney and former Commonwealth Attorney, (Tr. 412-413)

¹This case is Case No. CH03-992. The bill of complaint in Case No. CH03-1366 remains in effect. The two matters are consolidated.

stated to Wycoff, "I'm going to kill you. I'm going to beat your head in, (Tr at 178.)

Accordingly, Morrissey attacked Wycoff, beating Wycoff's face and head with his fists causing severe injuries to Wycoff. Suit was filed on Wycoff's behalf on July 2, 2001.

5. After July 3, 1999, Joseph D. Morrissey began a course of conduct intending delay, hinder or defraud Wycoff of what may be lawfully entitled to by gift, conveyance, assignment or transfer of, or charge upon, estate, real or personal.
6. After July 3, 1999, Joseph D. Morrissey engaged in a course of conduct with presumptions or "badges" of fraud." The course of conduct was done with fraudulent intent, which is legitimately inferred by circumstances including but not limited to (1) the close relationship of the parties, (2) the grantor's insolvency, (3) pursuit of the grantor by creditors at the time of the transfer, (4) inadequate consideration, and (5) retention of possession of the property by the grantor." The transactions, gifts, conveyances, encumbrances and liens identified below are a part of this course of conduct.
7. Within weeks of the deadline for Wycoff to file suit against Morrissey, on or about March 14, 2001, Morrissey, by and through Robert H. Smallenberg, his attorney in fact with powers of attorney, permitted or caused to be recorded in the office of the Clerk for the County of Henrico a deed, **EXHIBIT 1**, a true and accurate copy of which is attached hereto, deeding to Paul Klinefelter and Sue Ann Klinefelter certain real estate (referenced to herein as "the Acreage") then assessed by the County of Henrico at \$459,400.00 and (in 2005 assessed at \$787,200.00) reciting consideration of only \$150,000.00, a wholly inadequate consideration and as part of a plan and conspiracy between Morrissey and Paul Klinefelter and Sue Ann Klinefelter in violation of 55-80 of the Code of Virginia. Additionally, Morrissey continued

to enjoy the real estate. Paul Klinefelter and Sue Ann Klinefelter are close friends to Morrissey. Additionally, on March 14, 2001, a document purporting to be a deed of trust, **EXHIBIT 2**, a true and accurate copy of which is attached, was filed in the Clerk's office for the County of Henrico, naming Robert H. Smallenberg and Scott D. Stolte as trustees for the benefit of Joseph d. Morrissey to secure a certain note in the amount of \$75,000. As described below, Paul Klinefelter most recently also participated in the fraudulent attempt to strip the judgment lien of Wycoff by means of a foreclosure sale.

8. With intent to defraud Wycoff, Morrissey and Gary R. Hershner deeded to Adams Row of Richmond, LLC, a Virginia limited liability company, certain real estate and improvements, generally described as No. 7 and 9 South Adams Street, (referred to herein as "South Adams Street Offices") a true and accurate copy of the deed recorded in the Clerk's office for the Circuit Court of the City of Richmond, Virginia attached as **EXHIBIT 3** and subject to a recorded deed of trust attached as **EXHIBIT 4. Wade and Wade P.L.C.**, is named as the trustee and Citizens and Farmers Bank is the beneficiary, **EXHIBIT 5**. Although testifying under oath that he had no other interest including equitable interest in real estate other than 8700 Osborne Turnpike on one occasion (12/1/2003 at tr 8), he has on another occasion admitted that he retained a previously undisclosed interest and possession in the real estate having two (2) offices in the No. 7 and 9 South Adams Street, rent free until perpetuity. The disclosed members of the Adams Row of Richmond, LLC are close friends and present or past business associates of Morrissey.
9. Morrissey, with the intent to defraud Wycoff, fraudulently created **The Angela Schaefer Irrevocable Trust** (referred to herein as "the trust") and funded the same and conveyed

assets of Morrissey to the trust. Upon information and belief **Charles Morrissey** is the current trustee of the trust.

10. Upon information and belief, Angela Schaefer is the daughter of Morrissey who at the time of the creation of the trust was not in necessitous circumstances, was not the beneficiary of any court ordered support, was not the intended beneficiary of any contract or agreement by Morrissey to create a trust.
11. Upon information and belief, **Angela Schaefer** was covered by medical insurance at the time that the putative gifts or transfers were made by or at Morrissey's direction to the trust
12. Morrissey is the owner of record of real estate and improvements, (hereinafter "the property") described as ALL that certain lot, piece or parcel of land, with improvements thereon and appurtenances thereunto belonging, lying and being in Henrico County, Virginia, known and designated as 7.7 + Acres, as more particularly shown on the plat attached to **EXHIBIT 6**, being the same real estate conveyed to Joseph D. Morrissey by deed from Lark A. Busbee (a/k/a/ L.A. Busbee) and Catherine H. Busbee, husband and wife, recorded in the Clerk's Office, Circuit Court of Henrico County, Virginia.
13. On April 10, 1997, a deed of trust was filed in the Clerk's office of the County of Henrico, a true and accurate copy of which is attached hereto as **EXHIBIT 7**, (hereinafter the "deed of trust") for the benefit of Resource Bank dba Resource Mortgage.
14. Lawrence N. Smith and Charles D. Robison, III, are the trustees named in the certain deed of trust immediately described above.
15. On June 13, 1997, an Assignment of Security Instrument was filed in the Clerk's office of the County of Henrico, a true and accurate copy of which is attached hereto as **EXHIBIT 8**,

wherein Resource Bank assigned its interest in the Deed of Trust to Ohio Savings Bank, F.S.B.

16. On July 19, 2002, Gary Wycoff obtained a jury verdict in the Circuit Court for the County of Henrico against Joseph D. Morrissey.
17. On July 29, 2002 a document was filed in the office of the Clerk for Henrico County entitled "Deed of Trust", (hereinafter referenced as the "2nd deed of trust") a true and accurate copy of which is attached hereto as **EXHIBIT 9**, wherein Robert H. Smallenberg, (Morrissey's attorney in fact), is named trustee and Gary R. Hershner or Order is named the beneficiary.
18. Among other things, by this suit, Wycoff as a judgment creditor asks the court to subject the real estate and personal property of Joseph D. Morrissey, including that conveyed in violation of 55-80 of the Code of Virginia to the payment of a certain judgment acquired by plaintiff against the said Joseph D. Morrissey in the Circuit Court of Henrico County on August 27 2002, in the amount of \$390,000.00 with costs and interest thereon from July 19, 2002, and costs, which judgment was filed and docketed on August 28, 2002 in the Clerk's Office of this Henrico Circuit Court in Judgment Lien Docket Book 112 page 893, a true and accurate copy of which is attached hereto as **EXHIBIT 10**.
19. On or about April 30, 2003, at the direction and control of Morrissey, The Angela Schaefer Irrevocable Trust entered into an agreement as set forth in **EXHIBIT 11**, a true and accurate copy of which is attached hereto, providing in part that the Trust retained the services of Crestar to purchase the Promissory Note from Ohio Savings Bank then with a balance of \$435,446.46.
20. Crestar purchased the Promissory Note from Ohio Savings Bank on behalf of Morrissey and

the Angela Schaefer Irrevocable Trust.

21. On June 2, 2003, an Assignment of Mortgage/Deed of Trust was filed in the Clerk's office for the County of Henrico, a true and accurate copy of which is attached hereto as **EXHIBIT 12**, stating in pertinent part "that all beneficial interest under that certain Deed of Trust date April 9, 1997, executed by Joseph D Morrissey, a single man, (Trustor), to Crestar Mortgage, Inc., a Virginia CORPORATION (**Trustee**)," emphasis added, (hereinafter referred to as "the 1st deed of trust" or the "Deed of Trust").
22. On May 18, 2005 at 10:55 a.m. a document entitled "Substitution of Trustee" was filed in the Clerk's office for the County of Henrico, a true and accurate copy of which is attached hereto as **EXHIBIT 13**, stating in pertinent part that F. J. Murphy Pepper, P.C. was appointed as Trustee of the Deed of Trust.
23. The rents and profits of all real estate subject to the lien will not satisfy the judgment in five years.
24. On or about May 27, 2005, in conspiracy with Joseph D. Morrissey and The Angela Schaefer Irrevocable Trust, an attempt was made to fraudulently stip the judgment lien of the plaintiff on the property by a foreclosure at the direction of Ernest L. Hazelwood, Jr. and Crestar Mortgage, Inc., by which F.J. Murphy Pepper, P.C. was directed to advertise the foreclosure sale of the property in the Richmond Free Press and to conduct the sale. Accordingly, the sale was conducted with only three bidders and a certain Paul Klinefelter (hereinafter "Klinefelter") bid \$860,000.00 to purchase said property depositing \$90,000.00, and entering into a contract with the trustee F.J. Murphy Pepper, P.C. with time being of the essence.

EXHIBIT 14.

25. In response to inquiry by prospective bidders prior to the sale, Ernest L. Hazelwood, Jr. informed them that the property could be purchased apart from the foreclosure.
26. Hershner asserted to the trustee F.J.Murphy Pepper P.C. a claim against any proceeds from the foreclosure sale based upon the asserted 2nd deed of trust, asserting that he had not received any payment on the \$80,000 promissory note despite the fact that he had received \$26,749.59 on said note. See **EXHIBITS 15-18** attached hereto.
27. To avoid any proceeds being paid to Wycoff, in conspiracy with Joseph D. Morrissey, The Angela Schaefer Irrevocable Trust, Klinefelter, Ernest L. Hazelwood, Jr. and Crestar Mortgage, Inc. directed the trustee F. J. Murphy Pepper, P.C. to abandon, cancel, void and nullify the sale to Klinefelter on or about August 30, 2005 and further directing that the bidder's deposit be returned to Klinefelter. F. J. Murphy Pepper, P.C. complied with the direction given.
28. The deeds of trust are not valid liens against the property in violation of Virginia Code § 55-80, as amended being a "gift, conveyance, assignment or transfer of, or charge upon, any estate, real or personal, ... or other writing given with **intent to delay, hinder or defraud creditors**, purchasers or other persons of or from what they are or may be lawfully entitled to" and therefore "shall, as to such creditors, purchasers or other persons, their representatives or assigns, be void." Further neither Crestar Mortgage, Inc. on its own or as trustee nor Hershner is a purchaser for valuable consideration.
29. The transfers are also in violation of 55-81 without consideration.
30. § 55-81 of the Code of Virginia provides in pertinent part as follows: 'Every * * * conveyance * * * which is not upon consideration deemed valuable in law * * * shall be void

as to creditors whose debts shall have been contracted at the time it was made, but shall not, on that account merely, be void as to creditors whose debts shall have been contracted or as to purchasers who shall have purchased after it was made.'

31. Hershner was a law partner of Morrissey and had other relationships with Morrissey.
32. Hershner has a close relationship with Morrissey.
33. Hershner, Paul Klinefelter, Sue Ann Klinefelter, Ernest L. Hazelwood, Jr., Crestar Mortgage, Inc., The Angela Schaefer Irrevocable Trust, and Angela Schaefer knew of Wycoff's claims against Morrissey.
34. Hershner knew that Wycoff had obtained a verdict against Morrissey on July 22, 2002.
35. Following the verdict, Morrissey attempted to delay, hinder or defraud Wycoff by executing a deed of trust to Robert H. Smallenberg for the benefit of Hershner which was recorded on July 29, 2002 in the Circuit Court for the County of Henrico, a copy of which is attached hereto as **Exhibit 9**.
36. In an attempt to hinder and delay and to prevent detection by Wycoff's counsel, Hershner and Morrissey spelled Morrissey's first name as "JOESPHE" instead of "JOSEPH" in order to prevent the transaction from appearing in response to a search of the deed records under the name "Joseph D. Morrissey" or "Joseph Morrissey."
37. Said deed was in fact without consideration and was made for the purpose of defrauding the complainant Wycoff, which said intent was known to and participated in by Hershner who prepared the said deed.
38. Said actions were prohibited and against the clearly established law as set forth in *Tucker v. Foster*, 154 Va. 182, 152 S.E. 376 (Va.1930)

39. The above mentioned deed of trust is void and was made for the purpose of hindering, delaying and defrauding your complainant, a creditor of the said Morrissey, and that said intent was participated in by Hershner.
40. Hershner participated in a scheme to defraud the judgment creditor Wycoff, and has not surrendered the property or released the asserted record interest to either Morrissey or Wycoff, prior to institution of creditor's efforts to collect on the judgment, but, rather, he has continued in his scheme after the creditor's collection efforts began. (See Price v. Hawkins 247 Va. 32, 439 S.E.2d 382 (Va.,1994))
41. Hershner and Morrissey's actions are taken with wanton and utter disregard of the rights of Wycoff, evincing malice.
42. Morrissey has taken other actions with respect to other of his property and assets for the purpose of hindering, delaying and defrauding your complainant, Wycoff.
43. Wycoff has suffered and will suffer damages as a result of the actions of Hershner and Morrissey, including but not limited to sleeplessness, nausea, loss of appetite, anxiety, severe distress, and attorneys fees and costs.
44. Wycoff demands that the deed of trust from Morrissey to Robert H. Smallenberg for the benefit of Hershner be declared void, and that he be awarded his attorneys fees and costs herein.
45. No independent consideration was given for the 2nd deed of trust.
46. The 2nd deed of trust violates § 55-80 and §55-81.
47. Hershner had notice of the fraudulent intent of his immediate grantor or of the fraud rendering void the title of such grantor.

48. Upon information and belief, Ernest Hazelwood and Crestar Mortgage, Inc. have acted in concert with Morrissey and others to create a fraudulent lien against the real property.
49. Pursuant to § 8.01-462 of the Code of Virginia, 1950, as amended, this Court has jurisdiction to enforce the lien of a judgment, and if it appear to the court that the rents and profits of all real estate subject to the lien will not satisfy the judgment in five years, the court may decree such real estate, or any part thereof, to be sold, and the proceeds applied to the discharge of the judgment.

Count 1
DECLARE VOID & LIQUIDATE

50. The foregoing paragraphs of the bill of complaint are incorporated herein.

WHEREFORE, your plaintiff, by counsel, prays that the gifts, conveyances, assignments or transfers of, or charges upon, any estate, real or personal of Morrissey, including but not limited to gifts, conveyances, assignments, transfers of or charges upon, (a) the Acreage, (b) the trust, (c) the 1st deed of trust, (d) the 2nd deed of trust, and (e) the South Adams Street Offices conveyance be declared void, and that the real and personal property of Morrissey be sold with the proceeds, subject to any superior liens as determined by the Court, being paid to Wycoff to satisfy the judgment, and for interest, attorneys fees, costs and a award of compensatory and punitive damages and for such further and other relief as the court deems just.

Count 2
Declare the 2nd Deed of Trust subordinate to Wycoff's Lien

51. The foregoing paragraphs of the bill of complaint are incorporated herein

52. The purported second deed of trust dated July 22, 2002 and recorded on July 29, 2002 is not an effective deed of trust and is not indexed in the record owner's name under the Grantor's

Index, because by its terms the grantor is "JOEESPH D. MORRISSEY" and not "JOSEPH D. MORRISSEY" the record owner of the real estate described therein.

Wherefore plaintiff prays that the deed of trust dated July 22, 2002 and recorded July 29, 2002 be declared of no affect on the superior judgment lien of plaintiff, and for judgment against Morrissey for his attorneys fees and costs and for such further and other relief as the court deems just.

Count - 3
Intentional Infliction of Emotional Distress

53. The foregoing paragraphs of the bill of complaint are incorporated herein.

54. The actions of Morrissey are in violation of his duties to Wycoff under the law.

55. Morrissey knew or should have known that his actions would cause Wycoff severe distress.

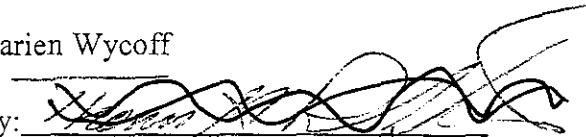
56. Morrissey's actions are intolerable.

57. Morrissey actions constitute gross negligence.

58. Morrissey's actions are done with actual malice and personal animus towards Wycoff.

WHEREFORE, Wycoff demands judgment against Morrissey, in the amount of \$250,000.00 compensatory and \$350,000.00 punitive damages, and for his attorney fees, costs and expenses herein incurred.

Garien Wycoff

By: 
Counsel

Thomas H. Roberts
VSB #26014
Thomas H. Roberts and Associates, P.C.
105 S. First Street
Richmond, VA 23219

T (804) 783-2000
F (804) 783-2105

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing was delivered to the following on this 22nd day of September, 2005

Gary R. Hershner
7 South Adams Street
Richmond, Virginia 23220

Joseph D. Morrissey
Seven South Adams Street
Richmond, Virginia 23220

A handwritten signature in black ink, appearing to read "Joseph D. Morrissey", is written over a horizontal line. The signature is stylized and somewhat cursive.