

11-0490

In the Supreme Court of Appeals of West Virginia

Docket No.

**MIKE HARPER and THE ESTATE OF
LOIS HARPER BY ITS PERSONAL
REPRESENTATIVE**

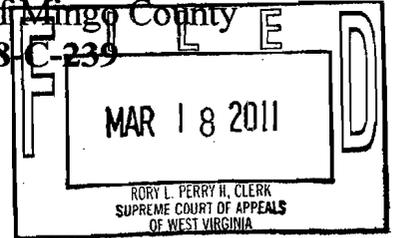
Petitioner/plaintiff

VS

**MARQUIS DEVELOPMENT, LLC,
a West Virginia LLC
and GAVIN SMITH, an individual,**

Respondents/defendants

Appeal from a final order
of the Circuit Court of Mingo County
CIVIL ACTION NO. 08-C-239



FILED
MAR 18 2011
RORY L. PERRY II
CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Petition for Appeal

Counsel for Petitioner, Mike Harper ET AL

Cecil C. Varney(WV Bar #3854)
Counsel of Record
Varney Law Office
PO Box 468
606 237 9800
Varneylaw@me.com

**To the Honorable Justices of the
Supreme Court of Appeals:**

Comes now the Petitioner, Mike Harper, et al, by counsel, and submits this Petition for Appeal of an order of the Circuit Court of Mingo County, West Virginia, granting summary judgment, made and entered on 20th day of October, 2010.

ASSIGNMENTS OF ERROR

SUMMARY JUDGMENT WAS IMPROPER BECAUSE THE PETITIONER DEMONSTRATED A GENUINE ISSUE OF MATERIAL FACT IN AT LEAST THREE WAYS.

1. A question of fact as to whether the defendant Marquis had given proper notice to redeem after the purchase, and thus whether they had obtained a valid deed.
2. A question as to whether the Bank of New York obtained title to the property.
3. A question as to whether the defendant Gavin Smith was a *bone fide* purchaser

STATEMENT OF THE CASE

Defendant, Gavin Smith ("Smith"), filed a complaint against plaintiff, Mike Harper in the Magistrate Court of Mingo County, West Virginia, seeking the eviction of Mike Harper from the property, claiming Mike Harper was a holdover tenant, and that Smith had purchased the property from defendant MARQUIS DEVELOPMENT, LLC, ("Marquis") as shown in that certain deed found in the Office of the Clerk of the County Commission of Mingo County in Deed Book 418 at Page 233.

Mike Harper appeared in said Magistrate Court in person and by counsel, and argued that his mother Lois Harper was the record owner of said property, and that he was living there with her permission, and therefore had a right to remain on the property.

The Magistrate dismissed the eviction action, gleaned from the arguments of the parties that the title to the property was in question and therefore outside the jurisdiction of the Magistrate Court.

Lois Harper claims record title by virtue of a deed dated January 24, 1974, from Thelma Davis, said deed being of record in the aforementioned Clerk's office. Lois Harper, and her late husband, Amos Harper, (the Harpers) had encumbered the property thereby causing a deed of trust to be put of record securing a promissory note. Subsequently, the lender claimed the Harpers fell behind in their payments, and foreclosure was threatened by the lender. The Harpers filed for Bankruptcy protection. Upon further information and belief, the original lender assigned the promissory note and any security documents to another financial institution, without knowledge to the Harpers.

Amos Harper died December 29, 2002, and insurance proceeds paid off the promissory note to the original lender. It is further believed that the assignee lender failed or refused to acknowledge said payment and proceeded to foreclosure against the Harpers, and the Bank of New York as Trustee Under a Pooling and Servicing Agreement became the purchaser, notwithstanding the fact that either the

Harpers were in Bankruptcy, or the loan had been fully discharged by the insurance proceeds.

While the property was entered on the tax records in the name of the Bank of New York, the real property taxes became delinquent, and the property was sold to Defendant, Marquis Development, LLC ("Marquis"), for approximately \$2,463.41, as shown by deed dated January 18, 2008 in the aforesaid Clerk's office in Deed Book 417 at Page 215.

It is further believed, upon information, that while the property was entered on the tax records in the name of Lois Harper, it was subject to a homestead exemption, and thus the Harpers were not delinquent in payment of real estate taxes.

Defendant Marquis only attempted to give notice to the Bank of New York, but did so incorrectly in that it gave notice to an attorney in West Virginia who acted as trustee in the foreclosure sale, but did not represent Bank of New York *per se*, and therefore could not be said to be an agent of said bank for purposes of receiving notice.

Marquis took no action to cause notice of the tax sale or of the purchase or of the intention to obtain a deed to the Harpers, except to attempt to evict Lois Harper, and/or her son after the tax sale had been consummated. Subsequently, Marquis, with knowledge of the claims of the Harper's to the property, sold the property to the Defendant, Gavin Smith. Smith then sent eviction notices to the Harpers and subsequently filed the Magistrate Court action mentioned above.

Suit was brought in the Circuit Court of Mingo County to determine the ownership of the subject property. Summary judgement was granted in favor of the defendants on October 20, 2010. It is that order from which the petitioner/plaintiffs appeal. Because of the foregoing events, the Harpers, Plaintiffs herein, have had to suffer the indignities of collection activities, eviction activities, and the pressure and depression of the uncertainties surrounding their property.

SUMMARY OF ARGUMENT

1. The Defendant, Marquis, took no action to cause notice of the tax sale or of the purchase or of the intention to obtain a deed to the Plaintiffs, while it had knowledge of the fact that someone was residing on the property, thus evidencing that person's claim to an interest in the property.

2. A genuine issue of fact exists as to whether or not Marquis gave notice to the apparent owner of record of the property, Bank of New York. Defendant Marquis attempted to give notice to the Bank of New York, and did so incorrectly in that it gave notice to an attorney in West Virginia who acted as trustee (for the beneficiary of the trust, the Money Store) in the foreclosure sale, but did not represent the purchaser, Bank of New York *per se*, and therefore could not be said to be an agent of said bank for purposes of receiving notice.

3. A genuine issue of fact exists as to whether or not the Defendant, Marquis, had knowledge of the claims of the Harpers to the property in that it

knew that Mike Harper was residing on the property, but did not give him notice of the tax purchase and moreover, sold said property to the Defendant, Gavin Smith.

4. The Defendant, Gavin Smith, was not a *bone fide* in that he was a purchaser from a tax purchaser, see *Subcarrier Communications, Inc. vs. Neild vs. Reed*, 218 W.Va. 292, 624 S.E.2d 729, (2005), wherein the Court specifically states that, “This Court has recognized that one who purchases real estate from a tax purchaser can never be a *bona fide* purchaser.”

Therefore there are these issues of fact which should have been heard by a jury.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Because the principle issues in this case are somewhat convoluted and complicated, oral argument under Rev. R.A.P. 18(a) is probably necessary unless the Court determines otherwise. If the Court determines that oral argument is necessary, this case is appropriate for a Rule 19 argument and disposition by memorandum decision.

ARGUMENT

I. SUMMARY JUDGMENT STANDARD

Summary Judgment is a device designed to effect a prompt disposition of controversies on their merit without resort to a lengthy trial, if in essence there is no real

dispute as to salient facts or if only a question of law is involved. *Oakes vs. Monongalia Power Company*, 158 W.Va. 18, 207 S.E.2d 191 (1974). A principal purpose of Summary Judgment is to isolate and dispose of meritless litigation. *W.Va. Pride, Inc. vs. Wood County*, 11 F.Sup. 1142 (S.D. W.Va. 1993). The West Virginia Supreme Court has held that Rule 56 of the W.Va. Rules of Civil Procedure plays an important role in litigation in this State. *Williams v. Precision Coal, Inc.*, 459 S.E.2d 329, 335 (W.Va. 1995).

The procedure for a hearing on a Motion for Summary Judgment calls for the moving party to meet an initial burden in favor of summary judgment by properly submitting support affidavits or memoranda showing affirmatively that there is no genuine material fact issue. At that point, the burden of production shifts to the non-moving party who must either rehabilitate the evidence attached by the movant, produce additional evidence showing the exercise of a genuine issue for trial, or submit an affidavit explaining why further discovery is necessary. *Williams v. Precision Coal, Inc.*, 459 S.E.2d 337. An adverse party may not merely rest upon allegations or denials in his pleadings, but his response, by affidavit or otherwise, provided in this Rule, must set forth specific facts showing that there is a genuine issue for trial. Rule 56 WVRCP. To satisfy the burden, the opposing party must of-

fer more than a mere scintilla of evidence, and must produce evidence sufficient for a reasonable jury to find in a non-moving party's favor. *Williams v. Precision Coal, Inc.*, 459 S.E.2d 337.

Summary Judgment is appropriate, if from the totality of the evidence present, the record cannot lead a rational trier of fact to find for the non-moving party, such as where the non-moving party has failed to make a sufficient showing on an essential element of the case that it has the burden to prove. *Celotex Corporation vs. Catrett*, 477 U.S. 317, 106 Sup. Ct. 2548, 91 Law Ed. 2d 265 (1986).

II. A question of fact exists as to whether the defendant Marquis had given proper notice to redeem after the tax sale purchase, and thus whether they had obtained a valid deed.

There is no dispute that the principles of Marquis were aware that Mike Harper was residing in the house after the tax sale and before notice was given. The house is within two doors of the Smiths, the eventual purchasers. Moreover, the house is located in the Gilbert area, just a short distance from Mr. Lyall, a principle in Marquis and the attorney who sent the letter to the auditor with the names of those to be given notice. This is actual notice that Mike Harper had some interest in the property. Nevertheless, notice to redeem was not given to him. No effort at all was made to contact him. If there had been such an effort, Marquis would have learned of the claim of his mother. Lois Harper.

However, even if it is determined that Mike Harper had no right to notice, the notice given by Marquis to the apparent owner of the property, Bank of New York, is fatally defective. As is shown in the "State Auditor's Office Notice To Redeem Form" that is found in Deed Book 417 at page 217, in the aforesaid Clerk's office, the notice to the Bank of New York was sent to R. Vance Golden, III, Esq., at an address of 543 Fifth Avenue, Parkersburg, WV (See Exhibit "A"). As further evidence of this fact, see the actual notice recorded in Deed Book 417 at Page 219, which is addressed to "BANK OF NEW YORK, R VANCE GOLDEN III ESQ." The address is noted at the lower right corner of that document as being in Parkersburg, WV 26102. (Exhibit "B"). A document filed in Deed Book 417 at Page 220, contains delivery information further indicating the notice was signed for by someone on 12/06/2007 at 09:55 a.m. in Parkersburg, WV, 26101. (Exhibit "C"). Lastly, the copy of the envelope used to send the notice by certified mail, is recorded in Deed Book 417 at Page 221. It not only shows that the notice was sent to Bank of New York, 534 Fifth Avenue, Parkersburg, WV 26102, (Mr Golden's address), it further indicates that the letter was undeliverable. See the notation "UNK" above the address. This is postal notation for "Unknown". Additionally there is the sticker attached to the lower right of the envelope stating "Return to Sender Attempted - Not Known, unable to forward. (Exhibit "D"). If Mr. Golden had recognized himself to be an agent or representative of Bank of New York, he most likely would have accepted the letter.

There is absolutely no evidence the attorney R. Vance Golden was an agent or representative of the Bank of New York. Quite the contrary, attorney Golden was the trustee for the lender that held the deed of trust on the Harper property. He conducted a sale

for that lender. He sold the property to the Bank of New York, who was the highest bidder. (See Report of Trustee filed in Report of Sales Under Trust Deed, Book 0006 at Page 163; Exhibit "E", and Trustee Deed, Deed Book 384 at Page 096, Exhibit "F")

III. A question as to whether the Bank of New York obtained title to the property.

Records show that the Harpers filed for bankruptcy protection on July 19, 2001. (See Discharge showing date of filing: Exhibit "G")The Trustee's sale occurred on July 10, 2001 (Exhibit "E"), but the Trustee's deed was dated July 16, 2001, and NOT RECORDED until October 1, 2001. The question arises as to the application of the automatic stay that took effect on July 19, 2001. That stay should have prevented any further steps in the foreclosure proceedings. We do not know when the deed was "delivered" to Bank of New York, but from the evidence it could have been long after the filing of the bankruptcy petition, as shown by the long period of time that passed before filing the deed with the County Clerk. (about 75 days).

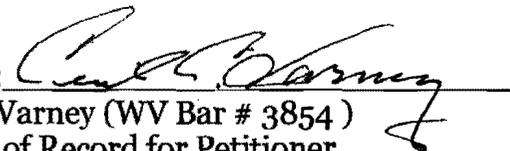
IV. A question as to whether the defendant Gavin Smith was a *bone fide* purchaser

The lower Court apparently gave a great deal of weight to the perception that the Smiths were *bone fide* purchasers. In so doing, the applicable case law was ignored. This Court was very clear when in the case of *Subcarrier Communications, Inc. vs. Neild vs. Reed*, 218 W.Va. 292, 624 S.E.2d 729, (2005), the Court specifically states that, "This Court has recognized that one who purchases real estate from a tax purchaser can never be a *bona fide* purchaser." There is no dispute that the Smiths purchased the property from a tax purchaser, Marquis. Therefore there should

be no question that they are not *bone fide* purchasers and should not have the advantages under the law afforded that status. .

CONCLUSION

The Circuit Court's order granting summart judgment should be reversed, and this matter should be remanded for further proceedings.

Signed: 
Cecil C. Varney (WV Bar # 3854)
Counsel of Record for Petitioner

CERTIFICATE OF SERVICE

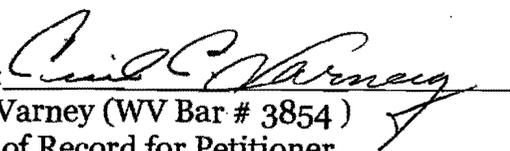
I hereby certify that on this 18th day of February, 2011, a true and accurate copies of the foregoing **Petitioner's Brief** were deposited in the U.S. Mail contained in postage-paid envelope addressed to counsel for all other parties to this appeal as follows:

Counsel for Respondent Marquis

Jerry Lyall,
PO Box 2660
Williamson, WV 25661

Counsel for Respondent Smith

James R. Fox
3359 Teays Valley Rd.
Hurrican WV 25526

Signed: 
Cecil C. Varney (WV Bar # 3854)
Counsel of Record for Petitioner

EXHIBITS

DEED

State Auditor's Office Notice to Redeem Form

REC'D CIVIL RIGHTS DIVISION

Purchaser(s) Name & Address

Billing Address If Different

Marquis Development LLC
Jerome Marcum
P.O. Box 1985
Williamson, WV 25661

Certification Number: 294761 (one certification per page)
Legal Description: Pt Lt 9 Ellis Hgts S D

Name and address of those to be notified

Please Check All that Apply

Certified Mail Publication Personal Service

Bank of New York
R. Vance Golden, III, Esq.
543 Fifth Avenue
Parkersburg, WV 26102

Certified Mail Publication Personal Service

Certified Mail Publication Personal Service

Certified Mail Publication Personal Service

Exhibit "A"

If you wish to have regular mail in addition to certified mail and/or personal service please check here.

(If you are an Attorney preparing a title exam please submit your fee's, bar number and signature on your Firm's letterhead.) Please check the box if you are attaching additional pages with this NTR

DEED

To: BANK OF NEW YORK, R VANCE GOLDEN III ESQ, or heirs at law, devisees, creditors, representatives, successors or assigns.

You will take notice that Marquis Development LLC the purchaser of the following real estate, Certification No.: 294761, located in Stafford District, described as: Pt Lt 9 Ellis Hgts S D, which was returned delinquent or nonentered in the name of Bank of New York as Trustee, and was sold by the deputy commissioner of delinquent and nonentered lands of Mingo County at the sale for delinquent taxes on 10/9/2007. Marquis Development LLC requests that you be notified a deed for such real estate will be made on or after 01/08/2008, as provided by law, unless before that day you redeem such real estate. The amount needed to redeem on or before 01/08/2008, will be as follows:

Amount equal to the taxes and charges due on the date of the sale, with interest, to 01/08/2008. \$2,243.18

Amount of taxes paid on the property, since the sale, with interest to 01/08/2008. 0.00

Amount paid for Title Examination and preparation of the list to be served and for preparation and service of notice with interest to 01/08/2008. \$220.23

Additional Statutory Fees with Interest to 01/08/2008. 0.00

Total Required: \$2,463.41

You may redeem at any time before 01/08/2008 by paying the above total less any unearned interest.

Given under my hand December 5, 2007. 91 7108 2133 3933 4164 0244

Angela D. Bruce

Angela D. Bruce
Deputy Commissioner of De
Nonentered Lands of Mingo
State of West Virginia

Please make certified cl
to WV State Auditor's

Package ID: 9171082133393341640244
Destination ZIP Code: 26102
Customer Reference: 204761
E-RECORDING
STCL REGULAR 15
DEC 5 2007

(Cert No. 294761)
R. VANCE GOLDEN III ESQ
543 FIFTH AVENUE
PARKERSBURG, WV 26102

Exhibit "B"

DEAD



Date Produced: 12/10/2007

STATE OF WEST VIRGINIA AUDITORS OFFICE

The following is the delivery information for Certified item number 7108 2133 3933 4164 0244. Our records indicate that this item was delivered on 12/06/2007 at 09:55 a.m. in PARKERSBURG, WV, 26101. The scanned image of the recipient information is provided below.

Signature of Recipient:

Signature of Recipient: [Handwritten signature: Tom E. Lozzos]

Address of Recipient:

Address of Recipient: 543 5TH ST - 26101

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,

United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: 4623496 40068009294761

Exhibit "C"

DEED



State of West Virginia
OFFICE OF THE STATE AUDITOR
COUNTY COLLECTIONS DIVISION
Building 1, Room W-116
Charleston, West Virginia 25305

BOOK 0417 PAGE 221

UW
3/2

(Cert No. 294761)
BANK OF NEW YORK
543 FIFTH AVENUE
PARKERSBURG, WV 26102

CERTIFIED MAIL



11 7108 2133 3933 4164 0237

DEC 05 2007
MAIL ROOM ZIP CODE 25305

RCVD 07 DEC 04 AM 11:07:13

Questions please call

NIXIE 250 40 25 12/13/07

RETURN TO SENDER
ATTEMPTED - NOT KNOWN
UNABLE TO FORWARD

BC: 25305023099 *1771-00987-13-24



Exhibit "D"

1194

REPORT OF SALES
UNDER TRUST DEED

BOOK 0006 PAGE 183

142

REPORT OF TRUSTEE

R. VANCE GOLDEN, III, Trustee, respectfully reports that pursuant to authority vested in him under a deed of trust executed by Amos A. Harper and Lois M. Harper, husband and wife as joint tenants with rights of survivorship, of record in the Office of the Clerk of the County Commission of Mingo County, West Virginia, in Trust Deed Book 298, at page 270, said Trustee being fully vested with the powers to sell said property and after advertising and giving notice of the sale in accordance with the provision of said deed of trust and the laws of the State of West Virginia, and as shown by copies of notice attached hereto and made a part hereof he did sell the real estate described in said deed of trust at the front door of the Courthouse of Mingo County, West Virginia, on the 10th day of July, 2001, at 4:30 p.m. at which said sale The Bank of New York As Trustee Under The Pooling and Servicing Agreement dated as of August 31, 1997, Series 1997-C, became the purchaser of said land for the sum of Nine Thousand Eight Two Dollars and 81/100 (\$9,082.81) Dollars and that said purchaser has paid said purchase price to the Trustee and the deed of conveyance has been delivered to said purchaser by said Trustee and that the proceeds of said sale have been disbursed as follows:

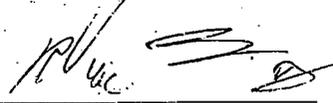
The undersigned further reports that no subsequent creditor requested notice of the foreclosure sale of the Trustee or the Lender.

DISBURSEMENTS

R. Vance Golden, III (trustee and attorney fee)	.....	\$500.00
Williamson Daily News (Publication notice of Sale)	.....	\$
County clerk of Mingo County (Recording Costs)	.....	\$30.00
County Clerk of Mingo County (transfer tax)	.....	\$39.60
R. Vance Golden, III (Certified Mail)	.....	\$7.48
R. Vance Golden, III (Title Work)	.....	\$225.00
Indebtedness	.....	\$
Total Disbursements	.....	\$9,082.81

Oct 1 3 17 PM '01
ADDITIONAL RECORDS
TRUSTEE'S OFFICE
MINGO COUNTY CLERK
OFFICE

Dated this 16th day of July, 2001.

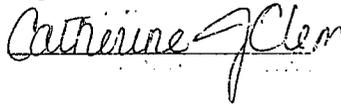

R. VANCE GOLDEN, III, Trustee

STATE OF WEST VIRGINIA
COUNTY OF WOOD, to-wit

The foregoing instrument was acknowledged before me this 16th day of July, 2001, by R. VANCE GOLDEN, III, Trustee.

My commission expires: April 3, 2007

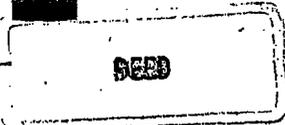
Notary Public



This instrument was prepared under the direction of
R. VANCE GOLDEN, III, Attorney at Law
543 Fifth Street, Parkersburg, Wv 26101
harperamos.rts/113cc

Exhibit "E"

#1797



BOOK 0384 PAGE 096

ADMITTED TO RECORD
TODAY
MINGO COUNTY, WEST VIRGINIA

OCT 1 3 27 PM '01

TRUSTEE DEED

THIS DEED, Made this 16th day of July, 2001, by and between

R. VANCE GOLDEN, III, Trustee,
party of the first part,

and

THE BANK OF NEW YORK AS TRUSTEE UNDER THE
POOLING AND SERVICING AGREEMENT DATED AS
OF AUGUST 31, 1997, SERIES 1997-C,
party of the second part.

WHEREAS, pursuant to the authority vested in him by virtue of the terms and conditions set forth in a certain deed of trust dated the 9th day of September, 1997, from Amos A. Harper and Lois M. Harper, husband and wife, as joint tenants with rights of survivorship, which said deed of trust is of record in the office of the Clerk of the County Commission of Mingo County, West Virginia, in Trust Deed Book 298, at page 270, and the undersigned, R. Vance Golden, III, Trustee, having been requested so to do by the Lender and the provisions in said deed of trust concerning acceleration and notice having been complied with by said Trustee and the Lender as recited in the Report of Trustee which is incorporated herein by reference, the said Trustee, did sell the hereinafter described real estate on the 10th day of July, 2001, at public auction, at the front door of the Courthouse in Mingo County, West Virginia, at which sale The Bank of New York As Trustee Under The Pooling and Servicing Agreement dated as of August 31, 1997, Series 1997-C, party of the second part in this deed, became the purchaser of said real estate for the total sum of Nine Thousand Eighty Two Dollars and 81/100 (\$9,082.81) Dollars; and

WHEREAS, the said purchaser has paid to said Trustee the said sum.

NOW, THEREFORE, THIS DEED WITNESSETH, that for and in consideration of the said sum, cash in hand paid, the receipt whereof is hereby acknowledged, the said R. Vance Golden, III, Trustee, does hereby grant and convey, unto the party of the second part, its successors and assigns, the following real estate:

All that parcel of land in Stafford District, Mingo County, State of West Virginia, as more fully described in Deed Book 206 at page 574, ID# 13260, being part of lot 9 in Ellis Heights, more particularly described as metes and bounds property.

By fee simple deed form Thelma Davis, widow as forth in book 206 at page 574 dated 01-24-1974, Mingo County Records, State of West Virginia.

Title reference: Deed Book 206 at page 575

Exhibit "F"



DECLARATION OF CONSIDERATION OR VALUE

The undersigned hereby declares that the total consideration paid for the real estate conveyed by this instrument is \$9,082.81.

WITNESS the following signature and seal.

R. Vance Golden, III

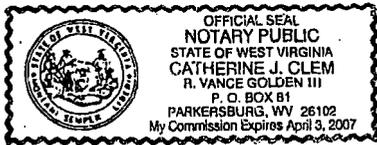
R. Vance Golden, III, Trustee

STATE OF WEST VIRGINIA
COUNTY OF WOOD, to-wit

The foregoing instrument was acknowledged before me on the 20 day of September 2001, by R. VANCE GOLDEN, III, Trustee.

My commission expires: April 3, 2007

Catherine J. Clem
Notary Public



This instrument was prepared under the direction of
R. VANCE GOLDEN, III, Attorney at Law
543 Fifth Street, Parkersburg, West Virginia
harperamos.td/113cc



Office of the Clerk of the County Court
Mingo County West Virginia 10-1-01
1997 The foregoing writing together with the certificate
of acknowledgment thereof, thereto annexed, was this day
admitted to record in said office. 3:27 PM
Recording Fee \$11.00 Clerk *[Signature]*

UNITED STATES BANKRUPTCY COURT
Southern District of West Virginia

AMC
01-110

Case Number: 01 - 21780

Arik C. Paraschos
652 Sixth Avenue
Huntington, WV 25701

IN RE (NAME OF DEBTOR)
Amos Azle Harper 234-54-7958
Lois Marie Harper 236-58-4362

DISCHARGE OF DEBTOR

It appearing that a petition commencing a case under title 11, United States Code, was filed by or against the person named above on 07/19/01, and that an order for relief was entered under chapter 7, and that no complaint objecting to the discharge of the debtor pursuant to 11 U.S.C. Sec. 727 (a) was filed within the time fixed by the court (or that a complaint objecting to discharge of the debtor was filed pursuant to 11 U.S.C. Sec. 727 (a) and, after due notice and hearing, was not sustained);

IT IS ORDERED THAT:

1. The above-named debtor is released from all dischargeable debts.
(See 11 U.S.C. Sec. 727, 523, and 524)
2. Any judgement heretofore or hereafter obtained in any court other than this court is null and void as a determination of the personal liability of the debtor with respect to any of the following:
 - (a) debts dischargeable under 11 U.S.C. sec. 523;
 - (b) unless heretofore or hereafter determined by order of this court to be nondischargeable, debts alleged to be excepted from discharge under clauses (2), (4), (6) and (15) of 11 U.S.C. Sec. 523(a);
 - (c) debts determined by this court to be discharged.
3. All creditors whose debts are discharged by this order and all creditors whose judgements are declared null and void by paragraph 2 above are enjoined from instituting or continuing any action or employing any process or engaging in any act to collect such debts as personal liabilities of the above-named debtor. 11 U.S.C. Sec. 524.

Date: 11/15/01

BY THE COURT
Ronald G. Pearson
UNITED STATES BANKRUPTCY JUDGE

5-1

RECEIVED
11/19/01

Exhibit "G"