

would take the sum of Thirty-Six Thousand Five Hundred (\$36,500.00) Dollars. The closing statement which was prepared by Mr. Stilwell was introduced into evidence, and that closing statement as concerns this mortgage states "Amount of Second Mortgage, Thirty-Six Thousand Five Hundred (\$36,500.00) Dollars", and it appears that that sum was paid, if not in cash, by way of another mortgage to the Plaintiff at the time of closing. When this amount was paid through the offices of Samuel Stilwell, Mr. Stilwell, of course, was concerned only with the mortgage on the Virginia Apartments, the property to be purchased by his clients, and was not interested in the note itself. However, on that date the mortgage on the Virginia Apartments securing the March 15, 1975, note is marked "Paid and Satisfied in Full this 10th day of July, 1978," and is signed by James A. Harris. During the trial of this case, it came to light that Mr. Harris had lent money on some forty or fifty previous occasions, and had taken back notes and mortgages for the amounts lent. He testified that he was completely aware of what "Paid and Satisfied in Full" meant, and during the whole course of the hearing, characterized what he did as a release as opposed to payment in full. It was brought to the Court's attention that there were other properties covered by the original mortgage, and when certain of those parcels were sold, Mr. Harris signed a release as opposed to a paid and satisfied in full mortgage.

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This Court was impressed by the Defendant's and the Defendant's wife's total recall of the whole situation as opposed to the Plaintiff's sometime vague testimony as to what happened. It was the opinion of the Court from the testimony which was given and from observing the witnesses on the witness stand and hearing the direct and cross-examination of each of the witnesses that the Defendant and the Defendant's wife were the more credible two who testified; They testified that from the date of the execution of the May 15, 1975, note until the closing on July 10, 1978, that James A. Harris would call them on numerous occasions at times three and four times a week demanding payment of his note. No payments were made to him during this period of time except for one payment of approximately One Thousand Thirteen (\$1,013.00) Dollars, which was paid to him as a result of the sale of one of the properties upon which he had a mortgage.

*Samuel Stilwell
James A. Harris*

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