

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

COMMERCIAL SETTLEMENTS, INC.

Plaintiff,

v.

1775 PENNSYLVANIA AVENUE
LIMITED PARTNERSHIP, et al.,

Defendants.

C.A. No. 0012628-94

Calendar #9
Judge Ann O'Regan Keary

1775 PENNSYLVANIA AVENUE
LIMITED PARTNERSHIP, et al.,

Cross-Plaintiffs,

v.

CARR REALTY, L.P. and
CARR REALTY CORPORATION,

Cross-Defendants.

CARR REALTY CORPORATION,
on its own behalf
and as general partner of
CARR REALTY, L.P.,

Cross-Plaintiff,

v.

EDWARD J. LENKIN, individually
and as general partner of
1775 PENNSYLVANIA AVENUE
LIMITED PARTNERSHIP,

and

JUDY LENKIN, aka JUDY LENKIN
LERNER, individually and
as general partner of
1775 PENNSYLVANIA AVENUE
LIMITED PARTNERSHIP,

and

MELVIN LENKIN,)
)
Cross-Defendants.)
_____)

ANSWER TO COMPLAINT IN INTERPLEADER AND CROSS CLAIM

AND

CROSS CLAIM AGAINST
EDWARD J. LENKIN, JUDY LENKIN AND MELVIN LENKIN
(Action Involving Real Property)

Carr Realty Corporation, on its own behalf and as general partner of Carr Realty, L.P., submits this answer to the Complaint in Interpleader and to the Cross Claim of 1775 Pennsylvania Avenue Limited Partnership, Edward J. Lenkin, Judy Lenkin and Melvin Lenkin, and files its Cross Claim against Edward J. Lenkin, Judy Lenkin and Melvin Lenkin.

ANSWER TO THE COMPLAINT IN INTERPLEADER

In response to the numbered paragraphs of the Complaint in Interpleader, Defendant Carr Realty Corporation ("Carr"), on its own behalf and as general partner of Defendant Carr Realty, L.P., states as follows:

1. Carr lacks sufficient knowledge to respond to the allegation that Plaintiff possesses "Certificates for 43,377 Partnership Units in Defendant Carr Realty, L.P. (the "Units") with a market value of approximately \$1,000,000." Carr admits it is entitled to the return of the Units, and denies that Defendants 1775 Pennsylvania Avenue Limited Partnership, Edward J. Lenkin, Judy Lenkin and Melvin Lenkin ("the Lenkins") have any rights in the Units. Carr denies Plaintiff cannot determine who

is entitled to the Units, as the plain terms of the Escrow Agreement make clear that Carr is entitled to the Units. Carr admits this Court has jurisdiction over this action and the parties.

2. Carr lacks sufficient knowledge to respond to the allegations of paragraph 2.

3. Denied to the extent paragraph 3 alleges Carr Realty, L.P. has the capacity to be sued in the courts of the District of Columbia.

4. Carr lacks sufficient knowledge to respond to the allegations of paragraph 4, except to deny any allegation that 1775 Pennsylvania Avenue Limited Partnership has the capacity to be sued in the District of Columbia.

5. Carr lacks sufficient knowledge to respond to the allegations of paragraph 5.

6. The Escrow Agreement speaks for itself. Carr further states that the plain terms of the Escrow Agreement make clear that Carr is entitled to the Units.

7. Denied.

8. The Escrow Agreement speaks for itself. Carr further states that the plain terms of the Escrow Agreement make clear that Carr is entitled to the Units.

9. Carr admits the first sentence of paragraph 9 and further states that Exhibit B to the Complaint in Interpleader speaks for itself.

10. Carr lacks sufficient knowledge to respond to the

allegations of paragraph 10, except to deny that the Lenkins' November 11, 1994 letter was in the form required by the Escrow Agreement.

11. The Escrow Agreement speaks for itself. Carr further states that the plain terms of the Escrow Agreement make clear that Carr is entitled to the Units.

12. Carr admits the first sentence of paragraph 12. Carr denies the second sentence of paragraph 12 and further states that the plain terms of the Escrow Agreement make clear that Carr is entitled to the Units.

13. Carr admits the first sentence of paragraph 13. Carr denies the second sentence of paragraph 13 and further states that the plain terms of the Escrow Agreement make clear that Carr is entitled to the Units. Carr lacks sufficient knowledge to respond to the third sentence of paragraph 13.

14. Carr lacks sufficient knowledge to respond to the allegations of paragraph 14.

15. The Escrow Agreement speaks for itself. Carr denies any allegation that it is obligated to reimburse any part of plaintiff's "legal fees and related costs" and states that the Lenkins are solely responsible for the reimbursement of such fees and costs.

16. Any allegation not specifically admitted is denied.

17. Carr denies that the Lenkins have any right to the Units or to any other relief.

**ANSWER TO THE CROSS CLAIM ASSERTED BY
1775 PENNSYLVANIA AVENUE LIMITED PARTNERSHIP,
MELVIN LENKIN, EDWARD J. LENKIN AND JUDY LENKIN**

FIRST DEFENSE

In response to the numbered paragraphs of the Cross Claim, Cross-Defendant Carr Realty Corporation ("Carr"), on its own behalf and as general partner of Cross-Defendant Carr Realty, L.P., responds as follows:

1. No response is necessary to the statements in paragraph 1, except Carr denies the Lenkins have stated any claim, and denies the Lenkins are entitled to any of the relief they request.
2. Carr lacks sufficient knowledge to respond to the allegations of paragraph 2, except to deny that 1775 Pennsylvania Avenue Limited Partnership has the capacity to sue in the courts of the District of Columbia.
3. Carr lacks sufficient knowledge to respond to the allegations of paragraph 3.
4. Carr lacks sufficient knowledge to respond to the allegations of paragraph 4.
5. Carr lacks sufficient knowledge to respond to the allegations of paragraph 5.
6. Denied to the extent paragraph 6 alleges Carr Realty, L.P. has the capacity to be sued in the courts of the District of Columbia.
7. Admitted.

8. Denied.
9. Denied.
10. Denied.
11. Denied, except Carr admits it executed non-binding letters of intent and Exhibits A-D are true and correct copies.
12. The 1775 Pennsylvania Avenue Letter of Intent speaks for itself.
13. Denied.
14. Denied.
15. Denied, except Carr admits it did not acquire the Chase loan.
16. Denied.
17. Denied, except Carr admits the Lenkins were not entitled to any escrowed Units unless Carr acquired one or more Lenkin properties in addition to 1775 Pennsylvania Avenue.
18. Denied, except Carr admits it entered into a Purchase Agreement for 1775 Pennsylvania Avenue, N.W. on or about December 29, 1993 and agreed to enter into an Escrow Agreement.
19. Denied, except Carr admits it entered into an Escrow Agreement on or about February 25, 1994 and Exhibit E is a true and correct copy.
20. Denied.
21. Denied.
22. The Purchase Agreement speaks for itself.
23. The Purchase Agreement speaks for itself.
24. Denied.

25. Denied.
26. Melvin Lenkin's July 18, 1994 letter speaks for itself.
27. The documents referenced in paragraph 27 speak for themselves.
28. Carr repeats and incorporates its responses to paragraphs 1-27.
29. Denied.
30. Denied.
31. Denied.
32. Denied.
33. Denied.
34. Carr repeats and incorporates its responses to paragraphs 1-27.
35. Denied.
36. Denied.
37. Denied.
38. Denied
39. Denied.
40. Carr repeats and incorporates its responses to paragraphs 1-27.
41. Denied as to all but the "Other Negotiations" paragraph in the 1775 Pennsylvania Avenue Letter of Intent and the "Other Negotiations," "Right of First Refusal" and "Transaction Expenses" paragraphs in the Other Properties Letter of Intent. Admitted as to the Purchase Agreement.

42. The documents referenced in paragraph 42 speak for themselves. All other allegations are denied.

43. Denied.

44. Carr repeats and incorporates its responses to paragraphs 1-27.

45. The Purchase Agreement speaks for itself. All other allegations are denied.

46. Denied.

47. Denied.

48. Carr repeats and incorporates its responses to paragraphs 1-27.

49. The Purchase Agreement speaks for itself.

50. Denied.

51. Denied.

52. Carr repeats and incorporates its responses to paragraphs 1-51.

53. Denied.

54. Denied.

55. Denied.

56. All allegations not specifically admitted are denied.

57. Carr denies Cross-Plaintiffs are entitled to any of the relief they request.

58. Carr denies Cross-Plaintiffs are entitled to a jury.

SECOND DEFENSE

59. The Cross Claim fails to state a claim upon which relief may be granted.

THIRD DEFENSE

60. No enforceable oral agreements exist concerning the possible purchase by Carr of properties owned or controlled by Cross-Plaintiffs.

FOURTH DEFENSE

61. Carr was never under any binding obligation to purchase any Lenkin property other than 1775 Pennsylvania Avenue, N.W.

FIFTH DEFENSE

62. Cross-Plaintiffs do not seek equitable relief and are not entitled to the Units.

SIXTH DEFENSE

63. Cross-Plaintiffs' claims are barred by the doctrine of ratification.

SEVENTH DEFENSE

64. Cross-Plaintiffs' claims are barred by the doctrine of waiver.

EIGHTH DEFENSE

65. Cross-Plaintiffs' claims are barred by the doctrine of estoppel.

NINTH DEFENSE

66. Cross-Plaintiffs' claims are barred by the statute of frauds.

TENTH DEFENSE

67. Cross-Plaintiffs' claims are barred by the parole evidence rule.

ELEVENTH DEFENSE

68. Cross-Plaintiffs' claims are barred by the Integration Clause of the Purchase Agreement for 1775 Pennsylvania Avenue, N.W.

TWELFTH DEFENSE

69. Cross-Plaintiffs' claims are barred by the doctrines of mutual mistake and unilateral mistake.

THIRTEENTH DEFENSE

70. The 1775 Pennsylvania Avenue Purchase Agreement is void and unenforceable due to Cross-Plaintiffs' fraudulent inducement and concealment of material facts.

FOURTEENTH DEFENSE

71. Carr acted in good faith at all times. Cross-Plaintiffs' bad faith prevented Carr from engaging in continued negotiations over the possible acquisition of properties owned or controlled by Cross-Plaintiffs.

FIFTEENTH DEFENSE

72. Cross-Plaintiffs have failed to plead fraud with particularity.

SIXTEENTH DEFENSE

73. Cross-Plaintiffs have not sustained any damage as a result of the statements and conduct of which they complain.

SEVENTEENTH DEFENSE

74. Cross-Plaintiffs have failed to allege facts sufficient to warrant the imposition of punitive damages.

CROSS CLAIM AGAINST EDWARD J. LENKIN, JUDY LENKIN AND MELVIN LENKIN

This is an action by Carr Realty Corporation, on its own behalf and as general partner of Carr Realty, L.P., against Edward J. Lenkin, Judy Lenkin and Melvin Lenkin individually, and against Edward J. Lenkin and Judy Lenkin as general partners of 1775 Pennsylvania Avenue Limited Partnership, for mutual mistake/recision, fraudulent inducement, negligent misrepresentation, and breach of the implied duty of good faith and fair dealing.

JURISDICTION

1. This Court has jurisdiction over this Cross Claim and the parties pursuant to D.C. Code §§ 11-921, 13-422 and 13-423, as amended.

PARTIES

2. Cross-Plaintiff, Carr Realty Corporation ("Carr"), is a Maryland corporation with its principal place of business in Washington, D.C. Carr Realty Corporation brings this action on its own behalf and as general partner of Carr Realty, L.P.. Carr Realty, L.P. is a Delaware limited partnership with its principal

place of business in Washington, D.C.

3. Cross-Defendant, Edward J. Lenkin, is a citizen and resident of Maryland. Carr brings this action against Edward J. Lenkin as an individual and as general partner of 1775 Pennsylvania Avenue Limited Partnership, which is a District of Columbia limited partnership with its principal place of business in Washington, D.C.

4. Cross-Defendant, Judy Lenkin, also known as Judy Lenkin Lerner, is a citizen and resident of Maryland. Carr brings this action against Judy Lenkin as an individual and as general partner of 1775 Pennsylvania Avenue Limited Partnership.

5. Cross-Defendant, Melvin Lenkin, is a citizen and resident of Maryland and the limited partner of 1775 Pennsylvania Avenue Limited Partnership.

6. Cross-Defendants, Edward J. Lenkin, Judy Lenkin and Melvin Lenkin, are collectively referred to as "the Lenkins".

NATURE OF THE CASE

7. Carr brings this action to recover equitable relief and damages to which it is entitled as a result of the Lenkins' conduct. Carr and the Lenkins were negotiating the possible purchase of several properties in Washington, D.C. that were owned or controlled by the Lenkins. Carr believed it had entered into non-binding Letters of Intent with regard to five of the Lenkin properties. Carr further believed the Purchase Agreement for one of those properties -- 1775 Pennsylvania Avenue, N.W. -- expressly superseded the Letters of Intent and

did not impose any binding obligations upon Carr to purchase any other Lenkin properties. The Lenkins now claim that these documents, combined with oral representations, impose binding, enforceable obligations upon Carr to purchase additional Lenkin properties. The Lenkins' claims make clear that either Carr and the Lenkins were mutually mistaken as to the terms of their agreements and that there was no meeting of the minds with respect to material terms of those agreements, or that the Lenkins engaged in a calculated campaign to defraud Carr and to violate their duty of good faith and fair dealing.

FACTS

8. In early 1993, Melvin Lenkin approached Oliver T. Carr, Jr., Chairman and Chief Executive Officer of Carr Realty Corporation, to determine whether Carr was interested in purchasing certain properties owned or controlled by Melvin Lenkin and/or his family. The parties began negotiating to determine whether Carr was interested in some or all of eleven different Lenkin properties.

9. At all relevant times during the negotiations, the Lenkins were represented by the law firm of Ginsburg, Feldman & Bress, Chartered, which has extensive experience in real estate matters.

10. Preliminary negotiations narrowed the list of properties in which Carr was interested to five: 1775 Pennsylvania Avenue, N.W.; 1050 17th Street, N.W.; 1300 19th Street, N.W.; 2501 M Street, N.W.; and 1818 N Street, N.W. Carr

and the Lenkins continued to discuss these properties and conducted preliminary due diligence review of the properties.

11. Melvin Lenkin also requested that Carr acquire the loan held by Chase Manhattan Bank on another Lenkin property, 4250 Connecticut Avenue, N.W. ("4250 Loan"). Melvin Lenkin hoped Carr would grant him favorable terms on a new loan and relieve him of the burden of the existing loan.

12. After further negotiations, on September 27, 1993, Carr, the Lenkins and the 1775 Pennsylvania Avenue Limited Partnership signed a letter of intent "summariz[ing] the principal terms and conditions of the proposed acquisition" of certain interests in land located at 1775 Pennsylvania Avenue, as well as the 4250 Loan ("1775 Pennsylvania Letter"). A true and correct copy of the 1775 Pennsylvania Letter is attached as Exhibit 1.

13. Carr and the Lenkins signed an additional letter of intent on September 27, 1993 "summariz[ing] the principal terms and conditions of the proposed acquisition" of certain other Lenkin properties ("Other Properties Letter"). The "other Lenkin properties" are 1050 17th Street, 1300 19th Street, 2501 M Street, and 1818 N Street. A true and correct copy of the Other Properties Letter is attached as Exhibit 2.

14. The Other Properties Letter contains the following provision:

Carr LP and Lenkin understand and acknowledge that (except with respect to the paragraphs entitled "Other Negotiations", "Right of

First Refusal" and "Transaction Expenses" above) no legal obligations are created by this letter and that neither Carr LP, any partnership nor Lenkin shall have any legal obligations with respect to the proposed Acquisition (except with respect to the paragraphs entitled "Other Negotiations", "Right of First Refusal" and "Transaction Expenses" above, which are intended to be and shall be legally binding) unless and until a Definitive Agreement with respect to the Properties is negotiated, executed and delivered by both parties, and then only as provided therein.

15. Carr believed when it signed the Other Properties Letter, and continues to believe, that the aforementioned provision of the Other Properties Letter imposes no obligation upon Carr to purchase any Lenkin property, and further believed, and continues to believe, that the "Other Negotiations," "Right of First Refusal," and "Transaction Expenses" paragraphs impose no obligation upon Carr to purchase any Lenkin property.

16. The Lenkins allege that, at the time they negotiated and signed the Other Properties Letter, they believed the provision quoted in paragraph 14 above required Carr to purchase some or all of the Other Properties.

17. The Lenkins did not inform Carr at the time the Other Properties Letter was negotiated and signed that they believed said Letter imposed any binding obligation upon Carr to purchase any Lenkin property.

18. The Other Properties Letter also provides that the acquisition of any property would be subject to the approval of the Board of Directors of Carr Realty Corporation and the

partners of the partnerships that own each property.

19. Carr believed when it signed the Other Properties Letter, and continues to believe, that the provisions referred to in paragraph 18 above mean that neither Carr nor the Lenkins could enter into binding obligations for the purchase or sale of any Lenkin property absent such approval.

20. The Lenkins had not obtained final approval from their partners for the sale of any of the Other Properties at the time the Other Properties Letter was negotiated and signed.

21. The Lenkins allege that, at the time they negotiated and signed the Other Properties Letter, they believed said Letter required Carr to purchase some or all of the Other Properties whether or not Carr obtained approval from its Board of Directors and whether or not the Lenkins obtained the consent of the partners of each partnership.

22. The Lenkins did not inform Carr of the position stated in paragraph 21 above at the time the Other Properties Letter was negotiated and signed.

23. Both Letters of Intent provided Carr would "commence due diligence reviews" of the Lenkin properties after the Letters were signed.

24. Carr believed when it signed the 1775 Pennsylvania and Other Properties Letters, and continues to believe, that the final terms of any acquisition would incorporate changes in price and other terms as a result of the complete due diligence review.

25. The common practice in the real estate profession

is to reset the terms of a potential acquisition of real property, including price, according to the results of a complete due diligence review.

26. The Lenkins allege that, at the time they negotiated and signed the 1775 Pennsylvania and Other Properties Letters, they believed the Letters required Carr to purchase some or all of the Lenkin Properties according to the precise terms of the Letters, including price, regardless of the results of Carr's complete due diligence review.

27. The Lenkins did not inform Carr of the position stated in paragraph 26 above at the time the 1775 Pennsylvania and Other Properties Letters were negotiated and signed.

28. After the Letters of Intent were signed, Carr attempted to obtain from the Lenkins the information that was necessary to conduct due diligence on 1775 Pennsylvania Avenue and the Other Properties. Carr and the Lenkins also attempted to negotiate the purchase of the 4250 Loan from Chase Manhattan Bank.

29. During the negotiations over the 4250 Loan, the Lenkins refused to agree to conditions similar to those connected with the existing loan. For example, the Lenkins refused to give Carr the same hazardous materials representation that they had given to Chase Manhattan Bank and demanded that Carr pay a 3% broker's commission to Edward J. Lenkin.

30. The Lenkins' negotiating position on the 4250 Loan adversely and irreparably affected the completion of due

diligence and the negotiation of final terms for 1775 Pennsylvania Avenue and the Other Properties.

31. Because of the actions of the Lenkins, it was necessary in November 1993 to focus solely on 1775 Pennsylvania Avenue and the 4250 Loan in the hope that at least one acquisition could be completed by the end of 1993.

32. The Lenkins agreed that due diligence and further negotiations on the Other Properties would be delayed until after the 1775 Pennsylvania acquisition was complete.

33. At this time, the Lenkins demanded a purchase price for 1775 Pennsylvania of approximately \$5,000,000 in limited partnership units of Carr Realty, L.P. (together with Carr's assumption of the outstanding debt), an amount \$1,000,000 greater than the purchase price stated in the 1775 Pennsylvania Letter.

34. Carr refused to accept a 25% increase in the amount of limited partnership units. After additional negotiations, Carr suggested it would pay \$5,000,000 in units if \$1,000,000 of the units (43,377 units) were placed in escrow pending the proposed acquisition of the Other Properties. The Lenkins agreed.

35. Carr, the Lenkins and Chase Manhattan Bank continued to negotiate over Carr's acquisition of the 4250 Loan, but were unable to reach agreement on acceptable terms. The Lenkins agreed to proceed with the sale to Carr of 1775 Pennsylvania Avenue without Carr acquiring the 4250 Loan.

36. On December 29, 1993, Carr, the Lenkins and the 1775 Pennsylvania Avenue Limited Partnership executed a Real Estate Purchase Agreement ("Purchase Agreement") for the Lenkins' interest in 1775 Pennsylvania Avenue. A true and correct copy of the Purchase Agreement is attached as Exhibit 3.

37. With respect to the potential acquisition by Carr of the Other Properties, the Purchase Agreement provides that \$1,000,000 of limited partnership units in Carr Realty, L.P. would be placed into escrow and released in the following circumstances:

(i) If at least three (3) of the four (4) Lenkin Properties are purchased by Purchaser within one hundred eighty (180) days following the Closing Date, all of the Escrowed Units shall be released to Seller.

(ii) If, for any reason other than Purchaser's default under binding purchase agreements therefor (after all conditions precedent to Purchaser's obligations thereunder have been satisfied or waived), less than three (3) Lenkin Properties are purchased by Purchaser, then, for each Lenkin Property less than three (3) purchased by Purchaser, the amount of Escrowed Units released to Seller shall be reduced by one-third.

(iii) If Purchaser and the owner of a Lenkin Property enter into a binding purchase agreement therefor and Purchaser breaches its obligation to close under any such agreement (after all conditions precedent to Purchaser's obligations thereunder have been satisfied or waived), one-third of the Escrowed Units shall be released to Seller with respect to each such Lenkin Property (up to the total amount of Escrowed Units).

(iv) Any Escrowed Units which remain in escrow more than one hundred eighty (180)

days following the Closing Date shall be returned to Purchaser.

38. Carr believed when it signed the Purchase Agreement, and continues to believe, that the provision quoted in paragraph 37 above imposes no obligation upon Carr to purchase any Lenkin property, and that the escrowed units would be returned to it if it did not purchase any other Lenkin property.

39. The Lenkins allege that, at the time they negotiated and signed the Purchase Agreement, they believed the Other Properties Letter required Carr to purchase some or all of the Other Properties.

40. The Lenkins did not inform Carr of the position stated in paragraph 39 above at the time the Purchase Agreement was negotiated and signed.

41. The Purchase Agreement further provides, in an integration clause,

This Agreement and the Exhibits attached hereto . . . and the letter agreement dated August 11, 1993 between certain of the Principals and Purchaser . . . constitute the entire agreement between the parties with respect to the transactions contemplated herein, and it supersedes all prior oral or written agreements, commitments or understandings with respect to the matters provided for herein. No representations or warranties have been made by Purchaser, Seller or the Principals except as specifically set forth in this Agreement, and in particular, no oral or written expression, or nonverbal conduct of a person intended by such person as a substitute for oral or written expression, will be attributed to Purchaser, Seller or the Principals as a warranty or representation, except as specifically set forth in this Agreement.

42. The Lenkins requested that the Integration Clause quoted in paragraph 41 contain the reference to the August 11, 1993 letter agreement.

43. Carr believed when it signed the Purchase Agreement, and continues to believe, that the Integration Clause quoted in paragraph 41 above expressly supersedes the Letters of Intent and any oral representations made by Carr or the Lenkins.

Carr never represented to the Lenkins that the Integration Clause had any meaning inconsistent with this interpretation.

44. The Lenkins allege that, at the time they negotiated and signed the Purchase Agreement, they believed the Integration Clause quoted in paragraph 41 above did not supersede the Letters of Intent and did not supersede any oral representations made by Carr or the Lenkins.

45. The Lenkins did not inform Carr of the position stated in paragraph 44 above at the time the Purchase Agreement was negotiated and signed.

46. The Purchase Agreement also provides,

If [Carr] does not acquire a Lenkin Property for any reason, [Carr and the Lenkins] agree to negotiate in good faith for the possible substitution of one (1) of the properties listed on Exhibit II attached hereto for the Lenkin Property not purchased by [Carr].

The properties listed in Exhibit II are 1133 Connecticut Avenue, N.W.; 1717 DeSales Street, N.W.; 2121 Virginia Avenue, N.W.; and 440 First Street.

47. Carr believed when it signed the Purchase

Agreement, and continues to believe, that the provision quoted in paragraph 46 above did not impose upon it any obligation to purchase any Lenkin property.

48. The Lenkins allege that, at the time they negotiated and signed the Purchase Agreement, they believed Carr was obligated under the Other Properties Letter and the Purchase Agreement to purchase one or more of the Other Properties or Substitute Properties.

49. The Lenkins did not inform Carr of the position stated in paragraph 48 above at the time the Purchase Agreement was negotiated and signed.

50. The Purchase Agreement required Carr to deliver 43,377 limited partnership units into escrow to be held pursuant to the post-closing escrow agreement. Carr complied with this requirement. The Agreement also required Carr and the Lenkins to deliver at closing an executed post-closing escrow agreement, an unexecuted copy of which is attached to the Purchase Agreement as Exhibit DD. Carr, the Lenkins, the 1775 Pennsylvania Avenue Limited Partnership and the escrow agent, Commercial Settlements, Inc., entered into the Post-Closing Escrow Agreement on February 25, 1994. A true and correct copy of the Post-Closing Escrow Agreement is attached as Exhibit 4.

51. The Post-Closing Escrow Agreement provides that the limited partnership units are to be distributed by Commercial Settlements in the following manner:

a. "In the event that Purchaser acquires a

Lenkin Property, you shall deliver one-third of the Units to Seller . . . for each Lenkin property so acquired (up to the total amount of units deposited hereunder)."

- b. "In the event that you receive a written statement from Purchaser ("Purchaser's Notice") stating that (a) Purchaser has elected not to purchase two (2) or more Lenkin Properties . . . or (b) Seller has refused to enter into agreements to sell two (2) or more Lenkin Properties to Purchaser or is in default . . . under such agreements, and that a copy of Purchaser's Notice has been delivered to Seller, then with respect to each Lenkin Property in excess of one (1) for which you receive a Purchaser's Notice, you shall deliver one-third of the Units to Purchaser . . . except that if you receive written notice from Seller or Seller's counsel within three (3) days after receipt of Purchaser's Notice that Seller disputes Purchaser's right to receive such Units and directs you not to make the foregoing delivery, you shall not deliver such Units to Purchaser but shall instead retain them or, if appropriate, interplead the Units in a court of competent jurisdiction."
- c. "In the event that you receive a written statement from Seller . . . ("Seller's Notice") stating that Purchaser is in default under a binding agreement to purchase a Lenkin Property, and that a copy of Seller's Notice has been delivered to Purchaser, then with respect to each Lenkin Property for which you receive a Seller's Notice . . . you shall deliver one-third of the Units to Seller . . . except that if you receive written notice from Purchaser or Purchaser's counsel within three (3) days after receipt of Seller's Notice that Purchaser disputes Seller's . . . right to receive such units and directs you not to make the foregoing delivery, you shall not deliver such Units to Seller . . . but shall instead retain them or, if appropriate, interplead the Units in a court of competent jurisdiction."
- d. "If, on or before the date which is one hundred eighty (180) days from the date

hereof, you have not received either instructions from Seller and Purchaser indicating that Purchaser has acquired the Lenkin Properties or Purchaser's Notice or Seller's Notice with respect to all Lenkin Properties, you shall return all undelivered Units to Purchaser"

52. Carr believed when it signed the Post-Closing Escrow Agreement, and continues to believe, that the provisions quoted in paragraph 51 above impose no obligation upon Carr to purchase any Lenkin property, and that the escrowed limited partnership units would be returned to it if it did not purchase any other Lenkin property.

53. The Lenkins allege that, at the time they negotiated and signed the Post-Closing Escrow Agreement, they believed that the Other Properties Letter continued to require Carr to purchase additional Lenkin properties.

54. The Lenkins did not inform Carr of the position stated in paragraph 53 above at the time the Post-Closing Escrow Agreement was negotiated and signed.

55. After the acquisition of 1775 Pennsylvania Avenue was complete, Carr continued its efforts to conduct due diligence on the Other Properties.

56. The Lenkins thwarted Carr's efforts to continue due diligence by attempting to limit due diligence to a physical inspection of the properties, and attempting to prevent financial and other reviews of the properties.

57. Carr's limited and restricted due diligence review of the Other Properties disclosed numerous concerns about the

physical and financial status of the Other Properties that materially affected the non-binding terms of the proposed acquisition. In light of this review, Carr determined it could not purchase 1050 17th Street and 1818 N Street. Carr attempted to negotiate with the Lenkins over appropriate terms for 1300 19th Street and 2501 M Street.

58. On July 18, 1994, Melvin Lenkin wrote to Oliver Carr and accused Carr of breaching the Letters of Intent. Lenkin claimed Carr was obligated to acquire the Other Properties subject to the terms of the Other Properties Letter, and that Carr had the right to conduct only a physical inspection of the properties. Lenkin demanded the escrowed limited partnership units as well as reimbursement of his legal fees. A true and correct copy of the July 18 letter is attached as Exhibit 5.

59. Carr and the Lenkins subsequently agreed to extend the time period of the escrow to and including October 1, 1993.

60. Carr attempted to continue negotiations over 1300 19th Street and 2501 M Street, and also attempted to open negotiations over two of the Substitute Properties -- 1133 Connecticut Avenue and 2121 Virginia Avenue.

61. On October 3, 1994, Melvin Lenkin acknowledged no purchase agreement had been reached on any of the Other Properties, but demanded the forfeiture of \$500,000 in escrowed limited partnership units "for not buying four buildings." A true and correct copy of the October 3 letter is attached as Exhibit 6.

62. Carr and the Lenkins were unable to reach agreement on terms for 1300 19th Street and 2501 M Street, and Carr was unable to engage in meaningful discussions with the lenders who held notes on 1133 Connecticut Avenue and 2121 Virginia Avenue.

63. Pursuant to the Post-Closing Escrow Agreement, Carr delivered the "Purchaser's Notice" to the escrow agent and counsel for the Lenkins on November 10, 1994.

64. On November 11, 1994, the Lenkins objected to the return of the escrowed limited partnership units to Carr.

65. The escrow agent initiated this action on December 13, 1994, citing the Lenkins' instruction not to return the escrowed units to Carr.

COUNT ONE

(Mutual Mistake/Recision)

66. Carr adopts and incorporates by reference herein paragraphs 1-65 set forth above.

67. When it negotiated and signed the Purchase Agreement, Carr believed the Letters of Intent and the Purchase Agreement imposed no obligation to purchase any properties from the Lenkins other than 1775 Pennsylvania Avenue.

68. The Lenkins allege that, when they negotiated and signed the Purchase Agreement, they believed the Letters of Intent and the Purchase Agreement obligated Carr to purchase additional Lenkin properties.

69. When it negotiated and signed the Purchase

Agreement and Post-Closing Escrow Agreement, Carr believed the 43,377 escrowed limited partnership units would be returned to it if it did not purchase any Lenkin properties in addition to 1775 Pennsylvania Avenue.

70. The Lenkins allege that, when they negotiated and signed the Purchase Agreement and Post-Closing Escrow Agreement, they believed they would receive the escrowed limited partnership units because Carr was obligated to purchase additional Lenkin properties.

71. When it negotiated and signed the Purchase Agreement, Carr believed it was not obligated to pay money or limited partnership units to the Lenkins in addition to the \$4,000,000 in limited partnership units described in the Purchase Agreement, because Carr believed it was not obligated to purchase any Lenkin properties in addition to 1775 Pennsylvania Avenue.

72. The Lenkins allege that, when they negotiated and signed the Purchase Agreement, they believed they were entitled to money or limited partnership units in addition to the \$4,000,000 in limited partnership units described in the Purchase Agreement, because, as they allege, they believed Carr was obligated to purchase additional Lenkin properties.

73. When they negotiated and signed the Purchase Agreement for 1775 Pennsylvania Avenue, Carr and the Lenkins held diametrically opposite beliefs about the terms of their agreement.

74. When they negotiated and signed other agreements,

letters and documents that were related to the Purchase Agreement for 1775 Pennsylvania Avenue, such as the Post-Closing Escrow Agreement, Carr and the Lenkins held diametrically opposite beliefs about the terms of their agreement.

75. These opposing beliefs involved material terms.

76. As a result of their mutual misunderstanding as to the material terms of their agreements, Carr and the Lenkins never achieved a meeting of the minds with respect to the purchase of 1775 Pennsylvania Avenue and the establishment of the post-closing escrow.

77. Carr is entitled to rescission of the 1775 Pennsylvania Avenue Purchase Agreement and related agreements, letters and documents, including the Post-Closing Escrow Agreement, and to such other relief as is necessary to place the parties in the same positions they held before they signed the Purchase Agreement and related documents.

COUNT TWO

(Fraudulent Concealment and Inducement)

78. Carr adopts and incorporates by reference herein paragraphs 1-65 set forth above.

79. At the time the Letters of Intent were negotiated and signed, the Lenkins intentionally, and with intent to defraud, concealed from Carr their position that the Letters of Intent imposed binding obligations upon Carr to purchase Lenkin properties.

80. At the time the Letters of Intent were negotiated

and signed, the Lenkins intentionally, and with intent to defraud, concealed from Carr their position that the Letters of Intent imposed binding obligations upon Carr to purchase Lenkin properties on the terms stated in those Letters, regardless of the results of Carr's due diligence review.

81. At the time the 1775 Pennsylvania Avenue Purchase Agreement was negotiated and signed, the Lenkins intentionally, and with intent to defraud, concealed from Carr their position that the Letters of Intent imposed binding obligations upon Carr to purchase additional Lenkin properties even after the Purchase Agreement was signed.

82. At the time the 1775 Pennsylvania Avenue Purchase Agreement was negotiated and signed, the Lenkins intentionally, and with intent to defraud, concealed from Carr their position that they were entitled unconditionally to receive all of the escrowed limited partnership units.

83. At the time the 1775 Pennsylvania Avenue Purchase Agreement was negotiated and signed, the Lenkins intentionally, and with intent to defraud, concealed from Carr their position that prior oral representations were binding on the parties despite the language of the Integration Clause.

84. At the time the Post-Closing Escrow Agreement was negotiated and signed, the Lenkins intentionally, and with intent to defraud, concealed from Carr their position that they were entitled unconditionally to receive all of the escrowed limited partnership units and that Carr was obligated to purchase

additional Lenkin properties.

85. At all times, the Lenkins intentionally, and with intent to defraud, allowed and encouraged Carr to believe that they, the Lenkins, concurred in Carr's stated position that it had no binding obligation to purchase any Lenkin property in addition to 1775 Pennsylvania Avenue, and that it was entitled to the return of the escrowed limited partnership units if it did not purchase additional Lenkin properties.

86. The Lenkins intentionally, and with intent to defraud, executed the Letters of Intent, the 1775 Pennsylvania Avenue Purchase Agreement, and the Post-Closing Escrow Agreement even though the plain terms of those documents are diametrically opposed to the Lenkins' position that they were entitled unconditionally to receive all of the escrowed limited partnership units and that Carr was obligated to purchase additional Lenkin properties.

87. The Lenkins knew their concealment of their position was fraudulent.

88. The Lenkins knew their execution of the Letters of Intent, the 1775 Pennsylvania Avenue Purchase Agreement, and the Post-Closing Escrow Agreement was fraudulent.

89. The Lenkins concealed their position with respect to material facts and terms.

90. The Lenkins concealed their position with the knowledge and intention that Carr would rely both on their silence as to their true position and on their contrary

affirmative statements and conduct, by executing the Letters of Intent, executing the 1775 Pennsylvania Avenue Purchase Agreement, executing the Post-Closing Escrow Agreement, executing other agreements, letters and documents related to the Purchase Agreement, delivering 43,377 limited partnership units into escrow, closing on 1775 Pennsylvania Avenue, and expending large amounts of time and money attempting to negotiate with the Lenkins.

91. Carr acted and relied on the Lenkins' silence as to their true position and on their contrary affirmative statements and conduct, by executing the Letters of Intent, executing the 1775 Pennsylvania Avenue Purchase Agreement, executing the Post-Closing Escrow Agreement, executing other agreements, letters and documents related to the Purchase Agreement, delivering 43,377 limited partnership units into escrow, closing on 1775 Pennsylvania Avenue, and expending large amounts of time and money attempting to negotiate with the Lenkins.

92. Carr's reliance was reasonable.

93. Carr suffered damages as the direct result of its reasonable reliance on the Lenkins' intentionally false and fraudulent conduct.

94. As a result of the Lenkins' intentionally false and fraudulent conduct, Carr is entitled to rescission of the 1775 Pennsylvania Avenue Purchase Agreement and related agreements, letters and documents, including the Post-Closing Escrow

Agreement, and to such other relief as is necessary to place the parties in the same positions they held before they signed the Purchase Agreement and related documents.

COUNT THREE

(Negligent Misrepresentation or Concealment)

95. Carr adopts and incorporates by reference herein paragraphs 1-65 set forth above.

96. At the time the Letters of Intent were negotiated and signed, the Lenkins did not inform Carr of their position that the Letters of Intent imposed binding obligations upon Carr to purchase Lenkin properties.

97. At the time the Letters of Intent were negotiated and signed, the Lenkins did not inform Carr of their position that the Letters of Intent imposed binding obligations upon Carr to purchase Lenkin properties on the terms stated in those letters, regardless of the results of Carr's due diligence review.

98. At the time the 1775 Pennsylvania Avenue Purchase Agreement was negotiated and signed, the Lenkins did not inform Carr of their position that the Letters of Intent imposed binding obligations upon Carr to purchase additional Lenkin properties even after the Purchase Agreement was signed.

99. At the time the 1775 Pennsylvania Avenue Purchase Agreement was negotiated and signed, the Lenkins did not inform Carr of their position that they were entitled unconditionally to receive all of the escrowed limited partnership units.

100. At the time the 1775 Pennsylvania Avenue Purchase Agreement was negotiated and signed, the Lenkins did not inform Carr of their position that prior oral representations were binding on the parties despite the language of the Integration Clause.

101. At the time the Post-Closing Escrow Agreement was negotiated and signed, the Lenkins did not inform Carr of their position that they were entitled to receive all of the escrowed limited partnership units and that Carr was obligated to purchase additional Lenkin properties.

102. At all times, the Lenkins allowed and encouraged Carr to believe that they, the Lenkins, concurred in Carr's stated position that it had no binding obligation to purchase any Lenkin property in addition to 1775 Pennsylvania Avenue, and that it was entitled to the return of the escrowed limited partnership units if it did not purchase additional Lenkin properties.

103. The Lenkins executed the Letters of Intent, the 1775 Pennsylvania Avenue Purchase Agreement, and the Post-Closing Escrow Agreement even though the plain terms of those documents are diametrically opposed to the Lenkins position that they were entitled unconditionally to receive all of the escrowed limited partnership units and that Carr was obligated to purchase additional Lenkin properties.

104. The Lenkins' concealment of their position at the time the letters and agreements were negotiated and signed was negligent.

105. The Lenkins' execution of the Letters of Intent, the 1775 Pennsylvania Avenue Purchase Agreement, and the Post-Closing Escrow Agreement was negligent.

106. The Lenkins concealed their position with respect to material facts and terms.

107. The Lenkins knew or should have known that Carr would act and rely on their concealment of their position and on their contrary affirmative statements and conduct, by executing the Letters of Intent, executing the 1775 Pennsylvania Avenue Purchase Agreement, executing the Post-Closing Escrow Agreement, executing other agreements, letters and documents related to the Purchase Agreement, delivering 43,377 limited partnership units into escrow, closing on 1775 Pennsylvania Avenue, and expending large amounts of time and money attempting to negotiate with the Lenkins.

108. Carr acted and relied on the Lenkins' concealment of their position and on their contrary affirmative statements and conduct, by executing the Letters of Intent, executing the 1775 Pennsylvania Avenue Purchase Agreement, executing the Post-Closing Escrow Agreement, executing other agreements, letters and documents related to the Purchase Agreement, delivering 43,377 limited partnership units into escrow, closing on 1775 Pennsylvania Avenue, and expending large amounts of time and money attempting to negotiate with the Lenkins.

109. Carr's reliance was reasonable.

110. Carr suffered damages as the direct result of its

reasonable reliance on the Lenkins' negligent conduct.

111. As a result of the Lenkins' negligent conduct, Carr is entitled to rescission of the 1775 Pennsylvania Avenue Purchase Agreement and related agreements, letters and documents, including the Post-Closing Escrow Agreement, and to such other relief as is necessary to place the parties in the same positions they held before they signed the Purchase Agreement and related documents.

COUNT FOUR

(Breach of Duty of Good Faith and Fair Dealing)

112. Carr adopts and incorporates by reference herein paragraphs 1-65 set forth above.

113. The Lenkins had the duty to exercise good faith and fair dealing toward Carr under the Letters of Intent, the Purchase Agreement, and the Post-Closing Escrow Agreement.

114. The Lenkins breached their duty of good faith and fair dealing by accusing Carr of breaching the Letters of Intent and the Purchase Agreement and by claiming entitlement to the escrowed limited partnership units, rather than negotiating with Carr over the possible purchase of Lenkin properties.

115. The Lenkins breached their duty of good faith and fair dealing by demanding that Carr purchase the Other Properties according to the terms of the Other Properties Letter, regardless of the results of Carr's due diligence review.

116. The Lenkins breached their duty of good faith and fair dealing by claiming Carr had no right to conduct due

diligence other than a physical inspection of the properties.

117. The Lenkins breached their duty of good faith and fair dealing by forcing litigation over the disposition of the escrowed limited partnership units rather than adhering to the clear terms of the Purchase and Post-Closing Escrow Agreements.

118. Carr suffered damages as a direct result of the Lenkins' breaches of their duty of good faith and fair dealing.

PRAYERS FOR RELIEF

WHEREFORE, Cross-Plaintiff Carr Realty Corporation, on its own behalf and as general partner of Carr Realty, L.P., demands judgment as follows:

A. Entry of judgment in favor of Carr on the Complaint in Interpleader, the return to Carr of the 43,377 limited partnership units held by Plaintiff, and an order requiring 1775 Pennsylvania Avenue Limited Partnership, Edward J. Lenkin, Judy Lenkin and Melvin Lenkin to indemnify Commercial Settlements for its attorney's fees and costs;

B. Dismissal of the Cross Claim filed by 1775 Pennsylvania Avenue Limited Partnership, Edward J. Lenkin, Judy Lenkin and Melvin Lenkin;

C. Recision of the 1775 Pennsylvania Avenue Purchase Agreement and all related agreements, letters and documents, including the Post-Closing Escrow Agreement; the return to Carr of the limited partnership units received as consideration for Carr's purchase of that property; the return to Carr of the

43,377 limited partnership units placed in escrow under the terms of the Purchase and Post-Closing Escrow Agreements; the return of all dividend payments made to the Lenkins, with interest; the reassumption by the Lenkins of all notes, loans, or mortgages on the property; and the payment to Carr of the fair market value of all improvements made by Carr to the property since Carr assumed possession of it;

D. An award of damages in an amount exceeding one million dollars against Edward J. Lenkin, Judy Lenkin and Melvin Lenkin for their fraudulent inducement and concealment, negligent misrepresentations, and breaches of the duty of good faith and fair dealing, such amount to include attorneys fees and all other costs incurred by Carr while negotiating the purchase of 1775 Pennsylvania Avenue and the potential purchase of other Lenkin properties, as well as attorneys fees and all other costs incurred by Carr in litigating this action;

E. An award of \$10,000,000 in punitive damages individually against Edward J. Lenkin, Judy Lenkin and Melvin Lenkin for their fraudulent conduct;

F. An award of interest on all sums owed to Carr by Edward J. Lenkin, Judy Lenkin and Melvin Lenkin from the date of their first wrongful act;

G. An award of costs, attorneys fees, and such other relief as the Court deems just and proper.

Respectfully submitted,

WILLIAMS & CONNOLLY

By

Paul Martin Wolff

D.C. Bar No. 90217

Gerson A. Zweifach

D.C. Bar No. 349266

John T. Parry

D.C. Bar No. 433397

725 Twelfth Street, N.W.

Washington, D.C. 20005

(202) 434-5000

Attorneys for Carr Realty, L.P. and
Carr Realty Corporation

Dated: March 20, 1995