

1996

Merlin Morrison, Sr., Kathleen Kelly, Edna Morrison, Jim Morrison, John Morrison, Merlin Morrison Jr., and Marjorie M. Stead v. West One Trust Company : Brief of Appellant

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF
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IN THE UTAH COURT OF APPEALS

In the Matter of the Estate of :
Merlin Morrison, Sr.,

Deceased. :

BRIEF OF APPELLANTS

Kathleen Kelly, Edna Morrison, :
Jim Morrison, John Morrison,
Merlin Morrison Jr. and
Marjorie M. Stead, :

Case No. 960060-CA

Plaintiffs and Appellants, :

vs. :

Priority No. 15

West One Trust Company, :

Defendant and Appellee. :

APPEAL FROM AN ORDER OF THE THIRD JUDICIAL DISTRICT COURT DATED
OCTOBER 31, 1995, THE HONORABLE FRANK G. NOEL PRESIDING

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Attorneys for Respondent

ORAL ARGUMENT REQUESTED

APR 30 1996

COURT OF APPEALS

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ORAL ARGUMENT REQUESTED

I. PARTIES TO THE PROCEEDINGS

All the parties to this proceeding are identified in the caption.

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IV. STATEMENT OF JURISDICTION

The Utah Court of Appeals has jurisdiction of this appeal pursuant to Utah Code Ann. § 78-2-2(3)(k) (1953 as amended).

V. ISSUES PRESENTED FOR REVIEW AND THE STANDARD OF REVIEW

a. The issues presented for review and the standards of review are:

1. Issue #1: Does Utah Code Ann. § 75-3-1006 (1953 as amended) and other Utah statutory and case law preclude a probate court from ordering heirs, who have received a previous distribution pursuant to that same court's prior order, to disgorge their distributions in order to pay the estate's attorneys fees, in view of the fact that the previous distribution came from funds which were the proceeds of the sale of property where the sale document provided that the purchaser would only buy the property if the money would be so distributed?

2. Standard of Review #1: A court's conclusions of law in civil cases are reviewed for correctness. United Park City Mines Co. v. Greater Park City Co., 870 P.2d 880, 885 (Utah 1993).

3. Issue #2: If the probate court's distribution of December 23, 1992 can be set aside, is the sale of the Ninth South property void or voidable?

4. Standard of Review #2: A court's conclusions of law in

civil cases are reviewed for correctness. United Park City Mines Co. v. Greater Park City Co., 870 P.2d 880, 885 (Utah 1993).

5. Issue #3: Does Judge Noel's Order dated October 31, 1995 violate the doctrine of the law of the case in light of the Order dated December 23, 1992?

6. Standard of Review #3: A court's conclusions of law in civil cases are reviewed for correctness. United Park City Mines Co. v. Greater Park City Co., 870 P.2d 880, 885 (Utah 1993).

VI. DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES AND REGULATIONS

Section 75-3-1006 of the Utah Code Annotated (1953 as amended) provides:

(1) Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim, and the right of any heir or devisee or of a successor personal representative acting in their behalf, to recover property improperly distributed or the value thereof from any distributee is barred at the later of:

(a) as to a claim by a creditor of the decedent, one year after the date of the decedent's death; and

(b) as to any other claimant and any heir or devisee, at the later date of:

(i) three years after the decedent's death;

or

(ii) one year after the time of distribution thereof.

(2) This section does not bar an action to recover property or value received as the result of fraud.

Utah Code Ann. § 75-3-1006 (1953 as amended).

Prior to 1992, Section 75-3-1006 provided:

(1) Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim, and the right of any heir or devisee or of a successor personal representative acting in their behalf, to recover property improperly distributed or the value thereof from any distributee is forever barred at the later of:

(a) three years after the decedent's death; or

(b) one year after the time of distribution thereof.

(2) This section does not bar an action to recover property or value received as the result of fraud.

1975 Utah Laws, ch. 150, § 4.

Laws of Utah, 1992, ch. 179, § 18 provides:

The amendments to Sections 75-3-801, 75-3-803, 75-3-806, 75-3-807, 75-3-1003, and 75-3-1006 shall apply only to the estates of decedents who die on or after the effective date of this act [July 1, 1992]. All other amendments shall be effective for all estates upon the effective date of this act.

1992 Utah Laws, ch. 179, § 18.

VII. STATEMENT OF THE CASE

A. Nature of the Case, Course of Proceedings, Disposition in the Lower Court.

NATURE OF THE CASE:

1. Merlin R. Morrison Sr. ("Sr.") died intestate on January 17, 1983.

2. Sr.'s survivors included his widow ("Edna"), four sons

(Merlin R. Morrison Jr. ("Jr."), John Morrison, James Morrison, and Floren Morrison), two daughters (Marjorie M. Stead and Kathleen Kelly), and three children of a deceased daughter (collectively "Morrison distributees").

3. Between 1967 and 1978, Sr. and Jr. purchased three pieces of real property. Each of the three properties was conveyed by warranty deed to Sr. and Jr. as "joint tenants with full rights of survivorship, and not as tenants in common." On the date of Sr.'s death, the record title on each of the properties remained unchanged. Sometime after Sr.'s death, Jr. conveyed the properties to himself and Edna as joint tenants.

4. West One Trust Company ("West One") was appointed as successor personal representative for the Estate of Sr.

COURSE OF PROCEEDINGS AND DISPOSITION IN THE LOWER COURT:

1. On May 31, 1988, West One filed suit against Jr. and Edna seeking an order to have them convey the three properties to Sr.'s estate, Civil No. 880903555 ("adversary proceeding").

2. On December 3, 1991, Judge Noel granted Jr. and Edna's motion for summary judgment against West One.

3. On April 28, 1992, Jr. offered to buy the property located at Ninth South and State Street ("Ninth South property"). See Exhibit "A" (Morrison Offer, April 28, 1992).

3. On December 23, 1992, the Judge Noel entered an Order in the instant case, Probate No. 833900955 ("estate proceeding") requiring, in relevant part:

(a) West One to accept the offer of the Morrisons to buy the Ninth South property, if West One had not completed the sale of the Ninth South property by December 21, 1992.

(b) Distribution of "the proceeds from the sale of the Ninth South property, net of any closing costs, [to] be immediately distributed to the heirs of the Estate in the event the Ninth South property is sold pursuant to the Morrisons' offer." See Exhibit "B" (Order, December 23, 1992).

4. On September 2, 1993, a three-judge panel of the Court of Appeals of Utah reversed the trial court's summary judgment in the adversary proceeding. See West One Trust Co. v. Morrison, 861 P.2d 1058 (Utah App. 1993).

5. On October 27, 1994, a jury returned a "no cause" verdict in Edna and Jr.'s favor in the subsequent trial in the adversary proceeding, which judgment was entered on November 21, 1994.

6. On or about November 17, 1994, West One filed a petition for approval of attorney fees incurred in its suit against Edna and Jr. in the estate proceeding.

7. On or about December 27, 1994, Judge Noel entered an interim order approving West One's petition for approval of attorney fees, subject to a determination of claim priority, in the estate proceeding.

8. On February 9, 1995, Edna and Jr. filed a motion to determine claim priority in the estate proceeding.

9. On October 31, 1995, Judge Noel entered an order stating, in relevant part: "2. The previous distribution to the heirs in the amount of \$326,000.00 from the sales proceeds of the 900 South Property was improper and sufficient funds should be repaid on a pro rata basis so that the claims against the estate may be satisfied." See Exhibit "C" (Order, October 31, 1995).

10. On November 30, 1995, the Morrison heirs filed a Notice of Appeal of Judge Noel's October 31, 1995 order.

B. Statement of the Facts Related to the Issues Presented for Review.

1. On or about December 23, 1992, Judge Noel entered an Order in the instant case, Probate No. 833900955 ("estate proceeding") requiring, in relevant part:

(a) West One to accept the offer of the Morrisons to buy the property located at Ninth South and State Street ("Ninth South property"), if West One had not completed the sale of the

Ninth South property by November 21, 1992.

(b) Distribution of "the proceeds from the sale of the Ninth South property, net of any closing costs, [to] be immediately distributed to the heirs of the Estate in the event the Ninth South property is sold pursuant to the Morrisons' offer." See Exhibit "B" (Order, December 23, 1992).

2. On February 9, 1995, Edna and Jr. filed a motion to determine claim priority in the estate proceeding.

3. On October 31, 1995, Judge Noel entered an order stating, in relevant part: "2. The previous distribution to the heirs in the amount of \$326,000.00 from the sales proceeds of the 900 South Property was improper and sufficient funds should be repaid on a pro rata basis so that the claims against the estate may be satisfied." See Exhibit "C" (Order, October 31, 1995).

VIII. SUMMARY OF ARGUMENT

The Ninth South property should never have been considered an asset of the estate because it was held in joint tenancy with full rights of survivorship by the decedent and one of his sons. Because the Ninth South property should not be considered an asset of the estate, the proceeds from its sale cannot be reached to repay the estate's attorneys fees.

Assuming that the Ninth South property was an asset of the

estate, this Court should reverse the probate court's reversal of its earlier ruling ordering the distribution of the sale proceeds of the Ninth South property, which now requires the distributees of the proceeds of the sale of the Ninth South property to repay the estate for its attorneys fees, because Utah Code Ann. § 75-3-1006 (1953 as amended) bars claims to recover property improperly distributed one year after the time of distribution thereof.

Third, if this Court affirms the probate court's order, it should also render the sale of the Ninth South property void or voidable.

Finally, based on West One's failure to present this case in a different light when it sought to order the Morrison distributees to repay the estate, this Court should reverse Judge Noel's latter order because it is violative of the law of the case doctrine.

IX. ARGUMENT

A. THE NINTH SOUTH PROPERTY WAS NOT AN ASSET OF THE ESTATE AND THE PROCEEDS FROM ITS SALE SHOULD NOT BE USED TO PAY THE ESTATE'S ATTORNEYS FEES.

Judge Noel's Order dated October 31, 1995 should be reversed insofar as it requires the Morrison distributees to return their distribution from the sales proceeds of the Ninth South property

to the estate for payment of attorneys fees. In West One Trust Co. v. Morrison, this Court remanded this case to the trial court so that a jury could determine whether Sr. and Jr. intended to hold the Ninth South property as "partners" or "joint tenants." 861 P.2d 1058 (Utah App. 1993). At trial, the jury found that Sr. and Jr. intended to hold the Ninth South as joint tenants, thereby defeating West One's claim that the estate had an interest in the Ninth South property.

In In the Matter of the Estates of Ashton, this Court reversed a trial court's ruling that real property held in joint tenancy by a husband and wife was part of the husband's estate. 898 P.2d 824 (Utah App. 1995). In reversing the trial court's ruling, the Ashton court held that "[w]hen title to property is held in joint tenancy with right of survivorship, a rebuttable presumption exists that the title holders intended to create a valid joint tenancy." Id. at 826. West One failed to rebut this presumption to the satisfaction of the jury at the trial of the instant case. Concomitantly, when Sr. died on January 17, 1983, legal and equitable title to the Ninth South property should have passed to Jr., Sr.'s joint tenant, by operation of law--and not into Sr.'s estate.

Nonetheless, West One held title to the Ninth South property at the time Jr. and Edna purchased it on or about December 23, 1992 so that the sale proceeds would be distributed to the Morrison distributees under the terms and conditions of Jr.'s offer. See Exhibit "A" (Morrison Offer, April 28, 1992; see Exhibit "B" (Order, December 23, 1992).

However, as discussed earlier, the Ninth South property was never properly part of the estate. To charge the Morrison distributees with West One's attorneys fees would be inconsistent with the jury's finding that the Ninth South property was not part of the estate. Consequently, West One should not be allowed to compel the distributees of the proceeds of the Ninth South property to repay the estate from those proceeds inasmuch as the Ninth South property was never properly part of the estate. Therefore, this Court should reverse that portion of Judge Noel's Order dated October 31, 1995 which purports to compel the Morrison distributees to repay the estate's attorneys fees out of the proceeds of the sale of the Ninth South property.

B. ASSUMING THAT THE NINTH SOUTH PROPERTY, OR THE PROCEEDS FROM THE SALE THEREOF, IS AN ASSET OF THE ESTATE, AND THE

DISTRIBUTEES ARE LIABLE FOR THE ESTATE'S CLAIMS, SECTION 75-3-1006 OF THE UTAH CODE ANNOTATED BARS THE ESTATE'S RIGHT TO COMPEL REPAYMENT OF THE DISTRIBUTION TO THE ESTATE.

Assuming arguendo that: 1) the Ninth South property is deemed to be an asset of the estate, and 2) the Morrison distributees are liable for the estate's claims, West One's claim against the distributees is barred by Utah Code Ann. § 75-3-1006 (1953 as amended). At the time of Sr.'s death, Section 75-3-1006 provided:

(1) Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim, and the right of any heir or devisee or of a successor personal representative acting in their behalf, to recover property *improperly distributed* or the value thereof from any distributee is forever barred at the later of:

- (a) three years after the decedent's death; or
- (b) one year after the time of distribution thereof.

(2) This section does not bar an action to recover property or value received as the result of fraud.

1975 Utah Laws, ch. 150, § 4 (emphasis added). Although this statute was amended in 1992, the coordinating clause provided that the amendment would "apply only to the estates of decedents who die on or after the effective date of this act [July 1, 1992]." 1992 Utah Laws, ch. 179, § 18.

Like the doctrines of res judicata and collateral estoppel, statutory bars like Utah Code Ann. § 75-3-1006 further the public

policy of stabilizing the interests of a decedent's beneficiaries. See also Pitts v. Hamrick, 228 F.2d 486, 490-491 (4th Cir. 1955) (denying claim for federal estate taxes based on probate court's fixing of widow's share of estate, regardless of whether done erroneously, without showing of collusion or fraud); Hart v. Burke, 108 F.2d 82, 85 (3d Cir. 1939) (denying bank's claim to recover judgment out of assets of estate in hands of individual distributees).

In the instant case, the decedent died on January 17, 1983. The sale proceeds of the Ninth South property were distributed on or about December 23, 1992. See Exhibit "A" (Morrison Offer, April 28, 1992), see Exhibit "B" (Order, December 23, 1992). West One did not claim that the distribution of the sale proceeds of the Ninth South property was improper until its Response to Jr.'s Motion to Determine Claim Priority on March 3, 1995--at least 26 months after the distribution. Thus, under the plain and obvious language of Section 75-3-1006(1)(b) of the applicable statute, West One has been barred from claiming that the distribution was improper since December 24, 1993.

Furthermore, as discussed in Section I of appellant's brief, the distributees of the sale proceeds of the Ninth South property are not liable for claims against the estate because the Ninth

South property was not an asset of the estate. Moreover, West One has never claimed that the Ninth South property was sold, and the sale proceeds distributed, fraudulently. Therefore, West One's claim against the distributees of the sale proceeds of the Ninth South property is barred under Utah Code Ann. § 75-3-1006 (1953 as amended).

C. A DECISION SETTING ASIDE THE DECEMBER 23, 1992 DISTRIBUTION SHOULD RENDER THE SALE OF THE NINTH SOUTH PROPERTY VOID OR VOIDABLE.

In the event this Court determines that the distributees of the sale proceeds of the Ninth South property should repay West One for its attorneys fees, the sale of the Ninth South property from West One to Jr. and Edna should be rendered void or voidable. Under the terms of Judge Noel's Order dated December 23, 1992,

If West One has not completed the sale of the property located at Ninth South and State Street ("Ninth South property") in Salt Lake City, Utah, by December 21, 1992, West One is to accept the offer of the Morrisons dated on or about April 28, 1992, at the price of \$340,000.00 subject only to those conditions set forth in the Morrisons' offer, assuming that the Morrisons' offer remains outstanding at that time.

See Exhibit "B" (Order, December 23, 1992). Jr.'s offer provides, in relevant part, that "[t]he proceeds from the sale of the fore said [sic] property will be held in Escrow. Only the

costs directly attributable to the sale, IE Court Costs Attorney Fees, Taxes and Closing Costs and a winding down of the Estate will be paid from the Escrow account [sic]. The remaining funds will be distributed to the Heirs, A.S.A.P [sic]." See Exhibit "A" (Morrison Offer, April 28, 1992).

Were this Court to require the Morrison distributees to repay West One's attorneys fees out of the sale proceeds of the Ninth South property, the conditions of Jr.'s offer to purchase the Ninth South property would not be satisfied. Specifically, affirming Judge Noel's October 31, 1995 Order would violate the condition that the sale proceeds of the Ninth South property be distributed to the Morrison distributees. Concomitantly, in concert with requiring the Morrison distributees to repay West One's attorneys fees, this Court should also void the sale of the Ninth South property--or allow Jr. to void the sale--and order the purchase price, with interest at the highest legal rate, returned to Jr.

D. JUDGE NOEL'S ORDER DATED OCTOBER 31, 1995 SHOULD BE REVERSE BECAUSE IT VIOLATES THE LAW OF THE CASE DOCTRINE.

West One's failure to present any new material facts in seeking an order requiring the Morrison distributees to repay the estate for its attorneys fees warrants reversal of Judge Noel's

Order dated October 31, 1995. In Thurston v. Box Elder County, the Supreme Court of Utah observed that "[t]he 'law of the case' is a legal doctrine under which a decision made on an issue during one stage of a case is binding in successive stages of the same litigation." 892 P.2d 1034, 1037 (Utah 1995). The doctrine "rests on 'good sense and the desire to protect both court and parties against the burdens of repeated reargument by indefatigable diehards.'" Id. (quoting In re Dep't of Energy Stripper Well Exemption Litig., 821 F. Supp. 1432, 1434 (D. Kan. 1993)). "The 'law of the case' doctrine . . . promotes a measure of predictability in . . . cases by creating a kind of presumption that the court's prior rulings, even if not certified as final under Rule 54(b), were correct and should stand." Salt Lake City Corp. v. James Constr., Inc., 761 P.2d 42, 45 n.5 (Utah App. 1988).

Here, Judge Noel's Order dated October 31, 1995 effectively reverses what was achieved in his Order dated December 23, 1992, which effected the sale of the Ninth South property and the distribution of the proceeds. Compare Exhibit "B" (Order, December 23, 1992) and Exhibit "C" (Order, October 31, 1995). Yet, no new facts were brought before Judge Noel to change the posture of this case between the two orders.

As the James Constructors court held "[t]he law of the case doctrine is particularly applicable when . . . a subsequent motion fails to present the case in a different light, such as when no new, material evidence is introduced." James Constructors, 761 P.2d at 45. Therefore, because there is no justification why Judge Noel should not be bound by his prior ruling with regard to the distribution of the proceeds of the sale of the Ninth South property, this Court should reverse Judge Noel's Order dated October 31, 1995.

X. CONCLUSION

Wherefore, premises considered, the Morrison distributees ask that this Court reverse Judge Noel's Order dated October 31, 1995, and remand this matter to the probate court for further proceedings consistent with the positions set forth herein.

RESPECTFULLY SUBMITTED this 30th day of April 1996.


ADAMSON & SUMMERHAYS
Attorneys for Plaintiffs/Appellants


LOWELL V. SUMMERHAYS

CERTIFICATE OF HAND-DELIVERY

I hereby certify that two (2) true and correct copies of the foregoing BRIEF OF APPELLANTS (Kelly, Morrison, Morrison, Morrison, Morrison, and Stead v. West One Trust Company) were hand-delivered , this 30th day of April 1996, to the office of the following:

Clark W. Sessions
Dean C. Andreasen
CAMPBELL, MAACK & SESSIONS
One Utah Center, Thirteenth Floor
201 South Main Street
Salt Lake City, Utah 84111

A large, stylized handwritten signature in black ink, likely belonging to Clark W. Sessions, is written over a horizontal line.

XI. ADDENDUM

Exhibit "A" -- Morrison Offer, April 28, 1992.

Exhibit "B" -- Order, December 23, 1992.

Exhibit "B" -- Order, October 31, 1995.

Exhibit "C" -- Utah Code Ann. § 75-3-1006 (1953 as amended).

Exhibit “A”

April 28 1992

Merlin R. Morrison
1341 SanDomar Dr.
Mountain View, CA. 94043
415-961-4653

Mr. Gilbert M. Bean.
Personal Trust Officer
West One Trust

RE: Estate of Merlin R. Morrison Sr.
Account Number 21003451

Dear Mr. Bean

Enclosed is an offer to purchase real property
900 South State Street from the M.R. Morrison, Estate

Sincerly

A handwritten signature in cursive script, reading "Merlin R. Morrison Jr.", written in dark ink.

Merlin R. Morrison Jr.

001100

Legend

Yes(X)

No(-)

EARNEST MONEY RECEIPT

DATE: April 28, 1992

The undersigned Buyer Edna and Merlin R. Morrison Jr. hereby deposits with ~~XX~~
 as EARNEST MONEY the amount of One Thousand and No/100 Dollars (\$ 1,000.00)
 in the form of Funds Escrowed with Metro Title Insurance Co. S.L.C. Utah
 which shall be deposited in accordance with applicable State Law.

Brokerage

Phone Number

Received by

OFFER TO PURCHASE

1. PROPERTY DESCRIPTION The above stated EARNEST MONEY is given to secure and apply on the purchase of the property situated at SEC 900
South State Street in the City of Salt Lake City County of Salt Lake
 subject to any restrictive covenants, zoning regulations, utility or other easements or rights of way, government patents or state deeds of record approved by B
 accordance with Section G. Said property is owned by The estate of Merlin Morrison Sr. as sellers, and is more particularly des
 as: .43 acres measuring 130.07' x 144', Sidwell #16-07-154-001

CHECK APPLICABLE BOXES:

☐ UNIMPROVED REAL PROPERTY ☐ Vacant Lot ☐ Vacant Acreage ☐ Other _____
☒ IMPROVED REAL PROPERTY ☒ Commercial ☐ Residential ☐ Condo ☐ Other _____

(a) Included Items. Unless excluded below, this sale shall include all fixtures and any of the items shown in Section A if presently attached to the pr
 The following personal property shall also be included in this sale and conveyed under separate Bill of Sale with warranties as to title: _____

(b) Excluded Items. The following items are specifically excluded from this sale: _____

(c) CONNECTIONS, UTILITIES AND OTHER RIGHTS. Seller represents that the property includes the following improvements in the purchase
☒ public sewer ☒ connected ☐ well ☐ connected ☐ other _____ ☒ electricity ☒ connected
☐ septic tank ☐ connected ☐ irrigation water / secondary system ☐ ingress & egress by private easement
☐ other sanitary system _____ # of shares _____ Company _____ ☐ dedicated road ☐ paved
☒ public water ☒ connected ☐ TV antenna ☐ master antenna ☐ prewired ☐ curb and gutter
☐ private water ☐ connected ☒ natural gas ☒ connected ☐ other rights _____

(d) Survey. A certified survey ☐ shall be furnished at the expense of _____ prior to closing, ☒ shall not be fur

(e) Buyer Inspection. Buyer has made a visual inspection of the property and subject to Section 1 (c) above and 6 below, accepts it in its present p
 condition, except: Buyer to make a final enspection prior to closing.

2. PURCHASE PRICE AND FINANCING. The total purchase price for the property is Three Hundred Forty Thousand
and No/100 Dollars (\$ _____) which shall be paid as f

\$ 1,000.00 which represents the aforescribed EARNEST MONEY DEPOSIT:
 \$ -0- representing the approximate balance of CASH DOWN PAYMENT at closing.
 \$ -0- representing the approximate balance of an existing mortgage, trust deed note, real estate contract or other encumbrance to be assumed by
 which obligation bears interest at _____ % per annum with monthly payments of \$ _____
 which include: ☐ principal; ☐ interest; ☐ taxes; ☐ insurance; ☐ condo fees; ☐ other _____
 \$ -0- representing the approximate balance of an additional existing mortgage, trust deed note, real estate contract or other encumbrance
 assumed by Buyer, which obligation bears interest at _____ % per annum with monthly payments of \$ _____
 which include: ☐ principal; ☐ interest; ☐ taxes; ☐ insurance; ☐ condo fees; ☐ other _____
 \$ -0- representing balance, if any, including proceeds from a new mortgage loan, or seller financing, to be paid as follows: _____

\$ 339,000.00 CASH in Escrow
 Other _____

\$ 340,000.00 TOTAL PURCHASE PRICE

If Buyer is required to assume an underlying obligation (in which case Section F shall also apply) and/or obtain outside financing, Buyer agrees to use be
 to assume and/or procure same and this offer is made subject to Buyer qualifying for and lending institution granting said assumption and/or financing. Buye
 to make application within N/A days after Seller's acceptance of this Agreement to assume the underlying obligation and/or obtain the new fina
 an interest rate not to exceed N/A %. If Buyer does not qualify for the assumption and/or financing within N/A days after Seller's ac
 of this Agreement, this Agreement shall be voidable at the option of the Seller upon written notice. Seller agrees to pay up to N/A mortgage loan
 points, not to exceed \$ N/A. In addition, seller agrees to pay \$ N/A to be used for Buyer's other loan costs.

...ownership ... shall be made as set forth in Section S. Seller agree ... and marketable title to the proper ...
...encumbrances and exceptions noted herein, ... by ☒ a current policy of title insurance in the amount of purchase price ☐ an abstract of title brought
...an attorney's opinion (See Section H).
4. **INSPECTION OF TITLE.** In accordance with Section G, Buyer shall have the opportunity to inspect the title to the subject property prior to closing. Buyer shall
subject to any existing restrictive covenants, including condominium restrictions (CC & B's) Buyer ☐ has not reviewed any condominium CC & B's prior to signing this
5. **VESTING OF TITLE.** Title shall vest in Buyer as follows: Euna and Merlin R. Morrison Jr. and Son,
as joint tenants, with full rights of survivorship and not as tenants in
common
6. **SELLERS WARRANTIES.** In addition to warranties contained in Section C, the following items are also warranted: _____

Exceptions to the above and Section C shall be limited to the following: _____

7. **SPECIAL CONSIDERATIONS AND CONTINGENCIES.** This offer is made subject to the following special conditions and/or contingencies which must be
prior to closing: See addendum.

8. **CLOSING OF SALE.** This Agreement shall be closed on or before June 15, 19 92 at a reasonable location to be used
subject to Section Q. Upon demand, Buyer shall deposit with the escrow closing office all documents necessary to complete the purchase in accord
this Agreement. Prorations set forth in Section R shall be made as of ☐ date of possession ☒ date of closing ☐ other _____

9. **POSSESSION.** Seller shall deliver possession to Buyer on closing unless extended by written agreement of parties.

10. **AGENCY DISCLOSURE.** At the signing of this Agreement the listing agent _____ represents () Seller ()
and the selling agent N/A represents (X) Seller () Buyer. Buyer and Seller confirm that prior to signing this A
written disclosure of the agency relationship(s) was provided to him/her. () () Buyer's initials () () Seller's initials.

11. **GENERAL PROVISIONS.** UNLESS OTHERWISE INDICATED ABOVE, THE GENERAL PROVISION SECTIONS ON THE REVERSE SIDE HEREOF HAVE
ACCEPTED BY THE BUYER AND SELLER AND ARE INCORPORATED INTO THIS AGREEMENT BY REFERENCE.

12. **AGREEMENT TO PURCHASE AND TIME LIMIT FOR ACCEPTANCE.** Buyer offers to purchase the property on the above terms and conditions. Seller
have until 5:00 (AM/PM) June 1, 19 92 to accept this offer. Unless accepted, this offer shall lapse and the Agent shall return the E
MONEY to the Buyer.

Merlin R. Morrison Jr. 4-28-92 1341 SanDomar Dr. Mtn' View Ca.
(Buyer's Signature) (Date) (Address) (Phone) (SSN)
(415) 961-4653
(Buyer's Signature) (Date) (Address) (Phone) (SSN)

CHECK ONE

☐ **ACCEPTANCE OF OFFER TO PURCHASE:** Seller hereby ACCEPTS the foregoing offer on the terms and conditions specified above.

☒ **REJECTION.** Seller hereby REJECTS the foregoing offer. _____ (Seller's Initials)

☒ **COUNTER OFFER.** Seller hereby ACCEPTS the foregoing offer SUBJECT TO the exceptions or modifications as specified below or in the attached Addendum
presents said COUNTER OFFER for Buyer's acceptance. Buyer shall have until 5 (AM/PM) JUNE 1, 19 92 to accept it
specified below.

PURCHASE PRICE TO BE \$440,000 CASH, SUBJECT TO APPROVAL
OF MARRIOTT TRUST CO.

Merlin R. Morrison Jr. 5-12-92 2:30 PM 107 S. MAIN ST. 537-6909
(Seller's Signature) (Date) (Time) (Address) (Phone) (SSN)

WEST ONE TRUST CO
(Seller's Signature) (Date) (Time) (Address) (Phone) (SSN)

CHECK ONE:

☐ **ACCEPTANCE OF COUNTER OFFER.** Buyer hereby ACCEPTS the COUNTER OFFER

☐ **REJECTION.** Buyer hereby REJECTS the COUNTER OFFER. _____ (Buyer's Initials)

☐ **COUNTER OFFER.** Buyer hereby ACCEPTS the COUNTER OFFER with modifications on attached Addendum.

Merlin R. Morrison Jr. _____
(Buyer's Signature) (Date) (Time) (Buyer's Signature) (Date) (SSN)

DOCUMENT RECEIPT

State Law requires Broker to furnish Buyer and Seller with copies of this Agreement bearing all signatures. (One of the following alternatives must therefore be used)

A. ☐ I acknowledge receipt of a final copy of the foregoing Agreement bearing all signatures:

SIGNATURE OF SELLER

SIGNATURE OF BUYER

Date _____ Date _____

Date _____ Date _____

B. ☐ I personally caused a final copy of the foregoing Agreement bearing all signatures to be mailed on _____, 19 _____

Certified Mail and return receipt attached hereto to the ☐ Seller ☐ Buyer. Sent by _____

ADDENDUM TO EARNEST MONEY SALES CONTRACT

THIS ADDENDUM dated the _____ between
Buyer(s), and M Morrison Estate, as Seller(s).

The following terms are hereby incorporated as part of the Agreement:

1. Seller agrees to provide Buyer with the following items within five (5) days following the Effective Date, which is the date of the last to sign the Earnest Money Sales Contract (the "Effective Date").
 - A. All rental agreements, leases, financial statements, credit reports, etc., applicable to the Tenants occupying the property.
 - B. All service contracts, roof or equipment warranties, insurance policies, latest tax bill(s) and other written agreements or notices which affect the property.
 - C. All notes, deeds, security agreements, easements and encumbrances affecting the property.
 - D. A complete and current rent roll, showing all escalations, percentage rentals, options, etc., and including a schedule of all Tenant deposits and fees.
 - E. A written inventory of all items of Personal Property to be conveyed to Buyer at close of escrow.
 - F. Complete construction drawings, specifications, Tenants' improvements, and an A.L.T.A. survey of the property.
 - G. Any soils reports done by Seller to determine the presence of hazardous wastes on or about the subject property.
2. Buyer shall have thirty (30) days following the Effective Date to inspect the physical condition of the Property, including, but not limited to, soils conditions and the presence or absence of hazardous materials on or about the Property, the structural and physical conditions of the buildings, roofs, HVAC and other equipment, parking lot and ground water conditions, etc., and to notify the Seller in writing that Buyer approves the same. If Buyer fails to approve the physical condition of the Property within the specified time, this Agreement shall be null and void and Buyer's entire deposit shall be returned, and Buyer and Seller shall have no further obligations hereunder.
3. Seller shall deliver a preliminary title report to Buyer within fourteen (14) days from the Effective Date.
4. Seller agrees to disclose to Buyer any and all information which Seller has regarding the condition of the Property, including, but not limited to, the presence and location of asbestos, PCB transformers, other toxic, hazardous or contaminated substances, and underground storage tanks in, on, or about the Property.

5. In the event of any conflict between the terms of this Addendum and the Agreement, the terms of this Addendum shall prevail.

6. The proceeds from the sale of the fore said property will be held in Escrow.

Only the costs directly attributable to the sale, IE Court Costs Attorney Fees, Taxes and Closing Costs and a winding down of the Estate will be paid from the Escrow Account.

The remaining funds will be distributed to the Heirs, A.S.A.P.

The undersigned Buyer and Seller accept and agree to the foregoing.

Buyer: Edna and Merlin R. Morrison Jr.

Date: 4-28-91

By *Edna and Merlin R. Morrison Jr.*

Seller: _____

Date: _____

By: _____

Its: _____

Exhibit “B”

1. If West One has not completed the sale of the property located at Ninth South and State Street ("Ninth South property") in

Salt Lake City, Utah, by December 21, 1992, West One is to accept the offer of the Morrisons dated on or about April 28, 1992, at the price of \$340,000.00 subject only to those conditions set forth in the Morrisons' offer, assuming that the Morrisons' offer remains outstanding at that time.

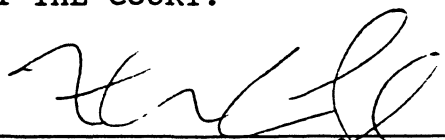
2. The proceeds from the sale of the Ninth South property, net of any closing costs, shall be immediately distributed to the heirs of the Estate in the event the Ninth South property is sold pursuant to the Morrisons' offer.

3. The Estate shall remain open during the pendency of West One's appeal of this Court's Order of Summary Judgment and Withdrawal of Remaining Claims entered December 3, 1991.

4. The law firm of Campbell Maack & Sessions shall immediately pay to the law firm of Haley & Stolebarger the sum of \$100.00 as a result of the failure of Mr. Sessions to appear at the hearing scheduled by the Court on November 6, 1992. Said payment shall be made solely from the funds of Campbell, Maack & Sessions.

Dated Dec. 23, 1992.
DATED November 23, 1992.

BY THE COURT:


The Honorable Frank G. Noel

APPROVED AS TO FORM:

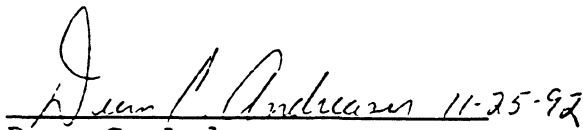

Dean C. Andreasen
Attorney for West One Trust Co.

Exhibit “C”

FILED DISTRICT COURT
Third Judicial District

OCT 31 1995

CLARK W. SESSIONS (2914)
DEAN C. ANDREASEN (3981)
CAMPBELL MAACK & SESSIONS
One Utah Center, Thirteenth Floor
201 South Main Street
Salt Lake City, Utah 84111
Telephone: (801) 537-5555

SALT LAKE COUNTY
[Signature]
Deputy Clerk

Attorneys for West One Trust Company

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

IN THE MATTER OF THE ESTATE OF	:	
	:	ORDER
MERLIN R. MORRISON, SR.,	:	
	:	833900953
Deceased.	:	833900957
	:	Probate No. 83390055ES
	:	
	:	Judge Frank Noel

The Motion to Determine Claim Priority (the "Motion") of Merlin R. Morrison, Jr. came on regularly for consideration by the Court. The Court reviewed the Motion, the memoranda filed in support and opposition thereto, and other pleadings filed in this action. The Court issued its Minute Entry dated October 20, 1995. Based on the foregoing, the court rules as follows:

1. The attorneys' fees in question incurred by West One Trust Company are a cost of administration and have priority over the payment of taxes.


2. The previous distribution to the heirs in the amount of \$326,000.00 from the sales proceeds of the 900 South Property was

improper and sufficient funds should be repaid on a pro rata basis so that the claims against the estate may be satisfied.

3. The personal representative is instructed to take steps necessary to address these issues and to close the estate.

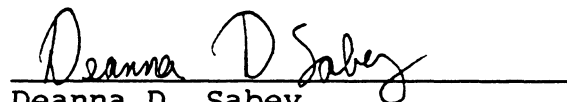
DATED this 31st day of Oct 1995.

BY THE COURT:


FRANK G. NOEL
District Judge

Approved as to Form:

PATRICIA A. O'RORKE
& ASSOCIATES


Deanna D. Sabey

CERTIFICATE OF SERVICE

I herewith certify that I am a member of and/or employed by the law firm of CAMPBELL MAACK & SESSIONS, One Utah Center, Thirteenth Floor, 201 South Main Street, Salt Lake City, Utah and that in said capacity and pursuant to Rule 5(b) Utah Rules of Civil Procedure, a true and correct copy of this ORDER was served upon the following by first-class mail, postage prepaid on this 25 day of February 1995:

Lowell V. Summerhays, Esq.
ADAMSON & SUMMERHAYS
448 East 6400 South, Suite 314
Murray, Utah 84107

Deanna D. Sabey, Esq.
PATRICIA A. O'RORKE & ASSOCIATES
Suite 470, 6995 Union Park Center
Midvale, UT 84047

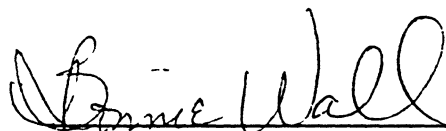


Exhibit “D”

ample, the personal representative may be liable to a creditor if he violated the provisions of § 75-3-807. The preceding section describes the fundamental liability of the distributees to unbarred claimants to the extent of the value received. The last sentence emphasizes that a personal representative who fails to disclose

matters relevant to his liability in his closing statement and in the account of administration he furnished to distributees, gains no protection from the period described here. A personal representative may, however, use § 75-3-1001, or, where appropriate, § 75-3-1002 to secure greater protection.

COLLATERAL REFERENCES

Am. Jur. 2d. — 31 Am. Jur. 2d Executors and Administrators §§ 1307 to 1313.

C.J.S. — 34 C.J.S. Executors and Administrators §§ 731 to 733, 977.

Key Numbers. — Executors and Administrators ⇐ 437(2), 537(5).

75-3-1006. Limitations on actions and proceedings against distributees.

(1) Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim, and the right of any heir or devisee or of a successor personal representative acting in their behalf, to recover property improperly distributed or the value thereof from any distributee is barred at the later of:

- (a) as to a claim by a creditor of the decedent, one year after the decedent's death; and
- (b) as to any other claimant and any heir or devisee, at the later of:
 - (i) three years after the decedent's death; or
 - (ii) one year after the time of distribution thereof.

(2) This section does not bar an action to recover property or value received as the result of fraud.

History: C. 1953, 75-3-1006, enacted by L. 1975, ch. 150, § 4; 1992, ch. 179, § 11.

Amendment Notes. — The 1992 amendment, effective July 1, 1992, deleted "forever" before "barred" near the end of the introductory language of Subsection (1); added new Subsection (1)(a) and the introductory paragraph in Subsection (1)(b); and redesignated former Subsections (1)(a) and (1)(b) as (1)(b)(i) and (1)(b)(ii).

Editorial Board Comment. — This section describes an ultimate time limit for recovery by creditors, heirs and devisees of a decedent from distributees. It is to be noted: (1) § 75-3-107 imposes a general limit of three years from death on one who must set aside an informal probate in order to establish his rights, or who must secure probate of a late-discovered will after an estate has been administered as intestate. Hence the time limit of § 75-3-107 may bar one who would claim as an heir or devisee sooner than this section, although it would never cause a bar prior to three years from the decedent's death. (2) This section would not bar recovery by a supposed

decedent whose estate has been probated. See § 75-3-412. (3) The limitation of this section ends the possibility of appointment of a personal representative to correct an erroneous distribution as mentioned in §§ 75-3-1005 and 75-3-1008. If there have been no adjudications under § 75-3-409, or possibly §§ 75-3-1001 or 75-3-1002, estate of the decedent which is discovered after administration has been closed may be the subject of different distribution than that attending the estate originally administered.

The last sentence excepting actions or suits to recover property kept from one by the fraud of another may be unnecessary in view of the blanket provision concerning fraud in Chapter 1. See § 75-1-106.

Coordinating Clause. — Laws 1992, ch. 179, § 18 provides: "The amendments to Sections 75-3-801, 75-3-803, 75-3-806, 75-3-807, 75-3-1003, and 75-3-1006 shall apply only to the estates of decedents who die on or after the effective date of this act [July 1, 1992]. All other amendments shall be effective for all estates upon the effective date of this act."