

1986

# Jenny Jensen Shelton v. Montgomery Marcellus Shelton : Brief of Appellant

Utah Court of Appeals

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Elliott Levine; attorney for appellant.

Kent H. Murdock; Ray, Quinney & Nebeker; attorney for respondent.

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## Recommended Citation

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UTAH COURT OF APPEALS  
BRIEF

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DOCKET NO. 860227-CA

IN THE SUPREME COURT

OF THE STATE OF UTAH

JENNY JENSEN SHELTON,

Plaintiff/Appellant,

vs.

MONTGOMERY MARCELLUS SHELTON,

Defendant/Respondent.

)  
)  
)  
)  
)  
)  
)

*860227-CA*

CASE NO. 860394

PRIORITY NO. *138*

APPELLANT'S BRIEF

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY

THE HONORABLE PHILIP R. FISHLER, PRESIDING

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Suite 150  
Salt Lake City, Utah 84111

**FILED**

DEC 1 1986

Clerk, Supreme Court, Utah

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

---

JENNY JENSEN SHELTON,	)	
	)	
Plaintiff/Appellant,	)	
vs.	)	
	)	
MONTGOMERY MARCELLUS SHELTON,	)	CASE NO. 860394
	)	
Defendant/Respondent.	)	PRIORITY NO. 138

---

APPELLANT'S BRIEF

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY  
THE HONORABLE PHILIP R. FISHLER, PRESIDING

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

---

JENNY JENSEN SHELTON,	)	
	)	
Plaintiff/Appellant,	)	
vs.	)	
	)	
MONTGOMERY MARCELLUS SHELTON,	)	CASE NO. 860394
	)	
Defendants/Respondent.	)	PRIORITY NO.

---

BRIEF OF APPELLANT

STATEMENT OF ISSUES PRESENTED ON APPEAL

A. Did the trial court err by failing to make a threshold determination as to whether the contested terms of the Appellant's Decree of Divorce and subsequent Judgment were in the nature of support and alimony as opposed to terms of a property settlement.

B. Did the trial court err by, in essence, ruling that Appellant's \$3,100.00 debt to Respondent was not dischargeable in Bankruptcy.

C. Did the trial court err by ruling that Appellant's \$3,100.00 debt constituted an executory contract and as such was non-dischargeable in Bankruptcy.

STATEMENT OF FACTS

Appellant (Defendant in the lower Court) was granted a Decree of Divorce from the Respondent (Plaintiff in the lower court) on December 14, 1981, said Decree being entered on December 18,

1981.(R27-22) Paragraph 4 of the Decree awarded the Appellant the parties' condominium as his sole and separate property. Under other provisions of the Decree Appellant was to pay Respondent certain sums of money. Respondent brought Appellant into court, pursuant to an Order to Show Cause, on March 29, 1982 when he failed to pay an amount of \$3,100.00 pursuant to the Decree of Divorce. A stipulated judgment (R30-32) was entered into by the parties whereby Respondent was awarded a judgment against the Appellant in the amount of \$3,100.00. Further, Respondent was to remain on the title of the condominium (formerly Appellant's sole and separate property) until such time as the \$3,100.00 judgment was paid in full with interest. A judgment to this effect was entered by the court on April 7, 1982.(R30-32)

On August 18, 1982 Appellant filed a Chapter 7 Bankruptcy in the U.S. Bankruptcy Court for the Central District of Utah (Case No. 82M-2060) wherein he listed Respondent's \$3,100.00 judgment as one of his debts. This debt was discharged by Order of the Bankruptcy Court on October 25, 1982.

On January 31, 1986 Appellant issued an Order to Show Cause (R44-44) against the Respondent requesting that the Court order the Respondent to release all right, title, and interest in the condominium to the Appellant, pursuant to the terms of the April 7, 1982 Judgment (R30-32), due to the fact that the \$3,100.00 debt had in essence been satisfied pursuant to the debt being discharged in Appellant's Bankruptcy. The trial court denied the requested relief and entered the ORDER DENYING DEFENDANT'S MOTION

(R<sup>62-63</sup><sub>75-76</sub>) and accompanying FINDINGS OF FACT AND CONCLUSIONS OF LAW (R<sup>64-66</sup><sub>77-80</sub>) which are appealed from herein.

### ARGUMENT

#### POINT I

THE TRIAL COURT ERRED BY FAILING TO MAKE A THRESHOLD DETERMINATION AS TO WHETHER THE CONTESTED TERMS OF THE PARTIES' DECREE OF DIVORCE AND SUBSEQUENT JUDGMENT WERE IN THE NATURE OF SUPPORT AND ALIMONY AS OPPOSED TO TERMS OF A PROPERTY SETTLEMENT

The case law, in this State, is well established regarding the guidelines a court must follow in determining the dischargeability in Bankruptcy of obligations created under a divorce decree. It is the duty of the court to look to substance rather than to the form of the divorce decree - obligations which are not in the nature of alimony but are part of a property settlement are dischargeable in Bankruptcy. (SEE: NITZ v. NITZ, 568 F2d 148 [U.S.C.A. 10th Cir., 1977]; IN RE WARNER, 5 BR 434 [Bkrty. D. Utah, 1980]; HOLT v. HOLT, 672 P2d 738 [Utah, 1983]; BECKMANN v. BECKMANN, 685 P2d 1045 [Utah, 1984].)

All these cases enforce the provisions of 28 U.S.C.A. §523(a)(5), nondischargeability in Bankruptcy of a debt to a former spouse for alimony to, maintenance for, or support of such spouse, in connection with a divorce decree. However, the determination as to whether the obligations created under a decree of divorce are nondischargeable, as alimony and/or support, or dischargeable, as a property settlement, is left to the individual court asked to make such an interpretation.

In the present case, the trial court, though asked by Appellant to make such a determination, failed to make the



requisite threshold determination (i.e. was the obligation nondischargeable, as alimony and/or support, or dischargeable, as a property settlement). In failing to do such the trial court committed reversible error.

## POINT II

THE TRIAL COURT ERRED BY, IN ESSENCE, RULING THAT APPELLANT'S \$3,100.00 DEBT TO RESPONDENT WAS NOT DISCHARGEABLE IN BANKRUPTCY

The trial court by ruling as it did, in essence ruled that Appellant's \$3,100.00 debt to the Respondent was not dischargeable in Bankruptcy. This ruling of the trial court is repugnant to 11 U.S.C.A. §523(a)(5) and the case law previously cited under Point I above.

It is clear upon the face of the Decree of Divorce (R21-22) and the Judgment (R20-22) that both parties relinquished their rights to alimony and support and, further, that Appellant's \$3,100.00 obligation arose from the property settlement portion of the Decree of Divorce. As such the trial court erred by not following the established guidelines (as set forth in the cases cited under Point I above) in making a determination as to the dischargeability in Bankruptcy of Appellant's obligations under the Decree of Divorce.

## POINT III

THE TRIAL COURT ERRED BY RULING THAT APPELLANT'S \$3,100.00 DEBT CONSTITUTED AN EXECUTORY CONTRACT AND AS SUCH WAS NON-DISCHARGEABLE IN BANKRUPTCY

The trial court, in its ruling (R63-63 / 75-76), construed Appellant's obligation as an executory contract and thus nondischargeable in Bankruptcy. This ruling was erroneous as the

court went beyond the legal parameters to which it was bound in determining the dischargeability of obligations created pursuant to a Decree of Divorce.

In determining the dischargeability of obligations arising pursuant to a Decree of Divorce, the court is limited to the guidelines established by NITZ v. NITZ, 568 F2d 148 [U.S.C.A. 10th Cir., 1977]; IN RE WARNER, 5 BR 434 [Bkrtey. D. Utah, 1980]; HOLT v. HOLT, 672 P2d 738 [Utah, 1983]; BECKMANN v. BECKMANN, 685 P2d 1045 [Utah, 1984] and the provisions of 28 U.S.C.A. §523(a)(5). These guidelines do not allow the court to construe provisions of a divorce decree as an executory contract, but only as nondischargeable, as alimony and/or support, or dischargeable, as a property settlement. Since the trial court wholly ignored and went beyond these guidelines in reaching its ruling, its ruling is erroneous.

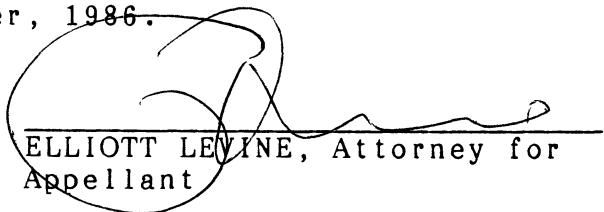
#### CONCLUSION

It is clear that the trial court, in reaching its decision, appealed herein, completely ignored the law, as established in Utah, regarding the dischargeability in Bankruptcy of obligations created pursuant to the terms of divorce decrees.

Lacking the appropriate legal foundational basis, the trial court committed reversible error in reaching its decision.

Wherefore, Appellant requests that this court, on review, reverse the decision of the lower court and remand the matter for further hearing consistent with the appropriate legal guidelines under the law of this state.

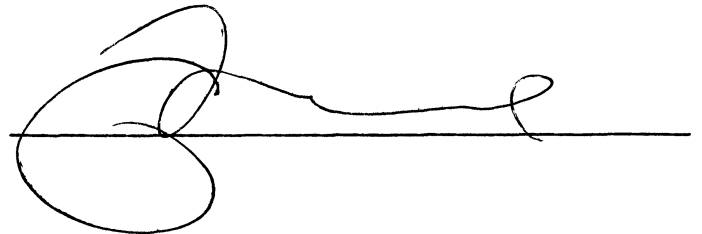
Dated this 1st day of December, 1986.

  
ELLIOTT LEVINE, Attorney for  
Appellant

CERTIFICATE OF MAILING

The undersigned hereby certifies that, pursuant to the Utah Rules of Appellate, they mailed 4 true and correct copies of the foregoing document, postage prepaid, on this 1st day of December, 1986, to:

KENT H. MURDOCK, Attorney  
400 Deseret Bldg.  
79 South Main Street  
P.O.B. 45385  
Salt Lake City, Utah 84145-0385

A handwritten signature in dark ink, appearing to be 'Kent H. Murdock', is written over a solid horizontal line. The signature is stylized with large loops and a long horizontal stroke.

## **ADDENDUM**

**FILMED**  
KENT H. MURDOCK of  
RAY, QUINNEY & NEBEKER  
Attorneys for Plaintiff  
400 Deseret Building  
Salt Lake City, Utah 84111 1996  
Telephone: 532-1500

**JUDGMENT**

CLERK OF DISTRICT COURT  
SALT LAKE COUNTY, UTAH

DEC 17 8 55 AM '81

W. STERLING EVANS, CLERK  
3RD DIST COURT

BY *[Signature]*  
DEPUTY CLERK

*BE 168 Ex. 212*  
*12-18-81 8:50 AM*

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

-----oo0oo-----

JENNY JENSEN SHELTON, :  
Plaintiff, : DECREE OF DIVORCE  
v. :  
MONTGOMERY MARCELLUS SHELTON, : Civil No. D-81-867  
Defendant. :

-----oo0oo-----

This matter having come on for hearing on the 9th day of December, 1981, before the Honorable Maurice D. Jones, Judge of the above-entitled Court, Plaintiff appearing in person and by and through her attorney, Kent H. Murdock, and Defendant having failed to appear but having signed a Stipulation for Settlement dated 26 August 1981, and a Stipulation of Reinstatement and Jurisdiction dated 30 September 1981, the Court having considered the Complaint and having heard the sworn testimony of Plaintiff, and the Court being fully advised in the matter and having heretofore entered its Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. That Plaintiff is awarded a Decree of Divorce from Defendant, severing the bonds of matrimony heretofore existing between them and terminating the contract of marriage. Good cause having been shown, therefore, this Decree shall become final and absolute in accordance with the following provisions on the 17 of December, 1981, after having been signed by the Court and filed into the Record of Actions by the Clerk.

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2. That as there are no children of this marriage, no child support payments will be paid by either party.

3. That neither party shall be required to pay alimony to the other.

4. That the condominium being purchased by the parties is awarded as the sole and separate property of Defendant and that Plaintiff shall execute all necessary documents to transfer her current interest to him.

5. That the video machine business is awarded to defendant as his sole and separate property.

6. That Defendant will pay to Plaintiff the sum of Four Thousand Dollars (\$4,000.00) as her settlement from the equity of the condominium and the video machine business. Such payments shall be made at the rate of Two Hundred Dollars (\$200.00) per month without interest. Payments in the amount of Five Hundred Dollars (\$500.00) have already been made, thereby reducing the total amount owed to Three Thousand Five Hundred Dollars (\$3,500.00) as of the date of this Decree.

7. That the 1978 Subaru Brat automobile is awarded to Plaintiff subject to her assuming all obligations associated with the vehicle.

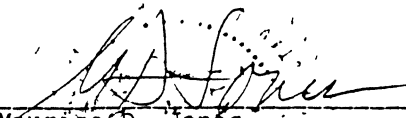
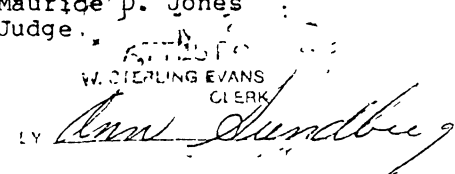
8. That Defendant shall pay all debts of the parties except those concerning the 1978 Subaru Brat automobile.

9. That Defendant's name shall hereafter be Jenny Jensen.

10. That each party shall bear his own attorney's fees in this matter.

DATED this 14 day of December, 1981.

BY THE COURT:

  
Maurice P. Jones  
Judge  
  
W. CLELLUNG EVANS  
CLERK

FILMED

FILED IN CLERK'S OFFICE  
Salt Lake County, Utah

APR 7 1982

W. Sterling Evans, Clerk and Dist. Court  
*[Signature]*

KENT H. MURDOCK of  
RAY, QUINNEY & NEBEKER  
Attorneys for Plaintiff  
400 Deseret Building  
Salt Lake City, Utah 84111  
Telephone: 532-1500

JUDGMENT

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

-----ooo0ooo----- *Pl. 170, NO. 485*  
*4-8-82 - 8:30 AM,*

JENNY JENSEN SHELTON, :  
Plaintiff, : JUDGMENT

vs. :

MONTGOMERY MARCELLUS SHELTON, : Civil No. D-81-867  
Defendant. :

-----ooo0ooo-----

Plaintiff's Order to Show Cause came on before the court for hearing, the Honorable Raymond S. Uno presiding, on March 29, 1982, at 9:00 a.m. The plaintiff appeared in person and was represented by Kent H. Murdock. The defendant appeared in person and was represented by Kerry D. Eagan. The parties conferred concerning the subject matter of the Order to Show Cause and thereupon stipulated in open court and upon the record to the terms of the judgment set forth below. Upon the basis of the stipulation of the parties, which was recited to the court and in which the plaintiff and the defendant and their respective lawyers concurred,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED,

1. That the plaintiff Jenny Jensen recover of the defendant Montgomery Marcellus Shelton the sum of Three Thousand One Hundred Dollars (\$3,100.00);

2. That defendant shall pay the sum of \$270.00 per month, due and payable on the first of each month, for eleven (11) consecutive months, commencing April 1, 1982, with a final payment of \$130.00 to the plaintiff due on the twelfth month.

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So long as defendant is current in the payment of his obligations hereunder, plaintiff shall not be entitled to execute upon the judgment. In the event of default, however, plaintiff shall be entitled to issuance of appropriate process from the court and the clerk of the court upon presentation of an affidavit showing the defendant to be in default hereunder;

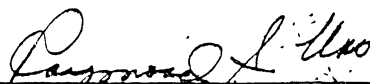
3. Paragraph 4 of the Decree of Divorce, entered herein on December 17, 1981, is amended to read as follows:

4. That the condominium being purchased by the parties shall remain the joint property of plaintiff and defendant until plaintiff shall have received from defendant the sum of Three Thousand One Hundred Dollars (\$3,100.00), exclusive of amounts paid to plaintiff on or before March 31, 1982. Upon receipt of the aforesaid sum of money, plaintiff shall execute all necessary documents to transfer her interest to defendant.


4. In the event that defendant defaults in any payment due hereunder, it is agreed by the parties that, at the sole instance of plaintiff, the condominium shall be listed for sale in a commercially reasonable manner, the defendant agreeing to vacate the premises and to leave the same in good order and repair and to do all other things necessary to effectuate a sale. Upon sale, it is agreed that the proceeds thereof shall be used first to satisfy the indebtedness secured by a Trust Deed thereon in favor of Zions First National Bank, N.A., second to pay the expenses of sale, third to pay the remaining balance due plaintiff hereunder, and the remainder, if any, shall belong to the defendant. Nothing contained in this paragraph shall be construed to limit whatever other remedies plaintiff may have to enforce the terms and obligations hereof.

DATED this 31 day of March, 1982.

BY THE COURT:

  
Raymond S. Uno  
Judge

ATTEST  
W. STERLING EVANS  
CLERK

BY   
Deputy Clerk



ELLIOTT LEVINE(USB #1939)  
Attorney for Defendant  
261 East 300 South  
Suite 150, Stewart Title Bldg  
Salt Lake City, Utah 84111  
(801)265-6420

FILED IN CLERK'S OFFICE

MAR 18 3 17 PM '86

SERVED Jenny Shelton/Elaine  
THE TO DEF  
PERIOD 1530  
DATE 3-14-86  
ADDRESS 324 S Highland  
BY [Signature]

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

JENNY JENSEN SHELTON,

Plaintiff,

VS.

MONTGOMERY MARCELLUS SHELTON,

Defendant.

ORDER TO SHOW CAUSE

CASE NO. D-81-867

## NOTICE

The Motion for Order to show Cause having been presented to the Court, and good cause appearing therefrom for the issuance of an ORDER TO SHOW CAUSE:

NOW, THEREFORE, it is hereby ORDERED that the Plaintiff, JENNY JENSEN SHELTON, appear before the Domestic Calendar Commissioner, Sandra N. Peuler, located at the Metropolitan Hall of Justice, 240 East 400 South, Salt Lake City, Utah, on the 1<sup>st</sup> day of April, 1986 at the hour of 3 P.M., to then and there show cause, if any she has, why the Defendant should not be granted the following:

1. The issuance of a Court order requiring the Plaintiff to execute, forthwith, all necessary documents to transfer her interest in and to the parties condominium to Defendant pursuant

LEASE SERVE:  
ENNY SHELTON  
ONSUMER SALES & SERVICE  
924 Highland Dr.  
olladay, Utah

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to the terms of the prior order of this Court dated March 31,  
1982.

DATED this 31<sup>st</sup> day of Jan., 1986.

*James F. McPherson*  
DISTRICT COURT JUDGE

ATTEST  
H. DIXON HINDLEY  
Clerk

By *[Signature]*

Deputy Clerk

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**FILMED**

**FILED IN CLERK'S OFFICE**  
Salt Lake City, Utah

APR 18 1986

H Dixon Hindley, Clerk 3rd Dist Court  
By R. G. Grotas Deputy Clerk

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

-----oo0oo-----

JENNY JENSEN SHELTON,	:	
	:	ORDER DENYING DEFENDANT'S
Plaintiff,	:	MOTION
	:	
v.	:	
	:	
MONTGOMERY MARCELLUS SHELTON,	:	Civil No. D-81-867
	:	
Defendant.	:	Judge Fishler

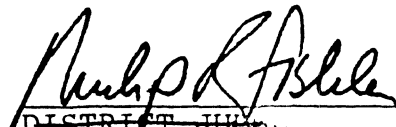
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Pursuant to Order to Show Cause issued by the Court, defendant's motion for "the issuance of a court order requiring the plaintiff to execute, forthwith, all necessary documents to transfer her interest in and to the parties' condominium to defendant pursuant to the terms of the prior order of this Court dated March 31, 1982" came on for hearing before the Court, the Honorable Philip R. Fishler presiding, on Tuesday, April 1, 1986, at 3:00 p.m., the plaintiff appearing in person and by her lawyer Kent H. Murdock, and the defendant appearing by his lawyer Elliott Levine. The Court, having reviewed the case file and motion

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papers, and having heard arguments for and against defendant's motion, and deeming itself fully advised in the premises, hereby ORDERS that defendant's motion is denied on the merits. DATED this 18<sup>th</sup> day of April, 1986.

BY THE COURT:

  
~~DISTRICT JUDGE~~  
*Acting Commissioner*

1603x

ATTEST  
H. DIXON HINDLEY  
CLERK  
By K. Gotebas  
Deputy Clerk

FILED IN CLERK'S OFFICE  
Salt Lake City, Utah

JUN 10 1986

H. Dixon Hindley, Clerk 3rd Dist. Court  
By R. G. Goteppa  
Deputy Clerk

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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

-----oo0oo-----

JENNY JENSEN SHELTON,	:	FINDINGS OF FACT AND
	:	CONCLUSIONS OF LAW IN
Plaintiff,	:	SUPPORT OF ORDER DENYING
	:	DEFENDANT'S MOTION
v.	:	
MONTGOMERY MARCELLUS SHELTON,	:	Civil No. D-81-867
Defendant.	:	Judge Fishler

-----oo0oo-----

Defendant obtained an Order to Show Cause returnable on April 1, 1986. At a hearing on that date before the Court, defendant appearing by his counsel Elliott Levine, and plaintiff appearing in person and by her counsel Kent H. Murdock, and the Court, having considered the Order to Show Cause and defendant's arguments in support of the relief sought and plaintiff's Opposition to Show Cause, etc. the Exhibits thereto, and plaintiff's arguments against the relief sought by defendant, and deeming itself fully advised in the premises, now enters its Findings of Fact and Conclusions of Law.

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FINDINGS OF FACT

1. This Court entered a Judgment in this action on April 7, 1982, in which paragraph 3 provides:

3. Paragraph 4 of the Decree of Divorce, entered herein on December 17, 1981, is amended to read as follows:

"4. That the condominium being purchased by the parties shall remain the joint property of plaintiff and defendant until plaintiff shall have received from defendant the sum of Three Thousand One Hundred Dollars (\$3,100.00), exclusive of amounts paid to plaintiff on or before March 31, 1982. Upon receipt of the aforesaid sum of money, plaintiff shall execute all necessary documents to transfer her interest to defendant."

2. Plaintiff has not been paid the sum of \$3,100.00 by defendant.

3. Defendant owes plaintiff, after payments previously made, the sum of \$2,560.00 as of June 1, 1982. Interest on that amount at 12% per annum from June 1, 1982, through April 1, 1986, totals \$1,177.60 and accrues at the rate of \$.84 per day.

4. Plaintiff is a joint owner with defendant of the real property (the "Condominium") located in the County of Salt Lake, State of Utah, described as:

Unit 416, Building 19, of Aix La Chapelle, a Utah Condominium project according to the record of Survey Map filed for record as Entry No. 3304961 in Book 79-6 of Plats at page 243, together with the appurtenant undivided ownership interest in the common areas and facilities, all of which is defined and described in the Declaration of Covenants, Conditions, Restrictions, and By-Laws as Entry No. 3304960 in book 4896 at pages 437 through 475 of Official Records;

5. Plaintiff has not conveyed her interest in the Condominium to defendant and remains a joint owner thereof.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties and subject matter of this action.

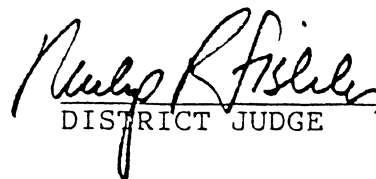
2. Plaintiff owns the Condominium in joint tenancy with defendant.

3. Plaintiff is not obligated to convey her interest in the Condominium to defendant unless and until defendant pays plaintiff the sum of \$2,560.00, together with accrued interest at the rate of twelve percent (12%) per annum from and after June 1, 1982, to the date of payment, which payment is a condition precedent to plaintiff's obligation to convey.

4. A discharge in bankruptcy, if any, of defendant's obligations under paragraphs 1 and 2 of this Court's Judgment entered April 7, 1982, would not affect the condition precedent described in No. 3 above, which is a separate and independent obligation of the parties. The obligations of the parties constitute an executory contract, and defendant cannot compel performance of plaintiff's obligation unless and until he performs his obligation described in No. 3 above.

DATED this 9<sup>th</sup> day of June, 1986.

BY THE COURT:

  
DISTRICT JUDGE

ATTEST  
H. DIXON HINDLEY  
CLERK

By K. Grotzinger  
Deputy Clerk

FILED IN CLERK'S OFFICE  
Salt Lake City, Utah

JUN 10 1986

H. Dixon Hindley, Clerk 3rd Dist. Court  
By R. Grotas Deputy Clerk

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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

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JENNY JENSEN SHELTON,	:	
	:	ORDER DENYING DEFENDANT'S
Plaintiff,	:	MOTION
	:	
v.	:	
	:	
MONTGOMERY MARCELLUS SHELTON,	:	Civil No. D-81-867
	:	
Defendant.	:	Judge Fishler

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Pursuant to Order to Show Cause issued by the Court, defendant's motion for "the issuance of a court order requiring the plaintiff to execute, forthwith, all necessary documents to transfer her interest in and to the parties' condominium to defendant pursuant to the terms of the prior order of this Court dated March 31, 1982" came on for hearing before the Court, the Honorable Philip R. Fishler presiding, on Tuesday, April 1, 1986, at 3:00 p.m., the plaintiff appearing in person and by her lawyer Kent H. Murdock, and the defendant appearing by his lawyer Elliott Levine. The Court, having reviewed the case file and motion

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papers, having heard arguments for and against defendant's motion, deeming itself fully advised in the premises, and having entered its Findings of Fact and Conclusion of Law herewith, hereby

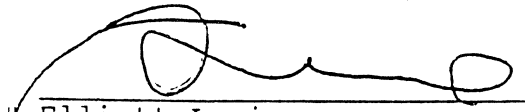
ORDERS that defendant's motion is denied on the merits.

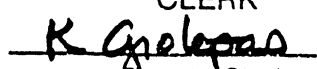
DATED this 9<sup>th</sup> day of June, 1986.

BY THE COURT:

  
DISTRICT JUDGE

APPROVED AS TO FORM:

  
Elliott Levine  
Attorney for defendant

ATTEST  
H. DIXON HINDLEY  
CLERK  
By   
Deputy Clerk

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