

1986

Israel Pagan v. Joseph N. Cannon, Dorius Black,
Alpha Leasing Company, Robert D. Apgood,
Joseph N. Cannon, Dorius Black, and Richard
McKean, Alpha Leasing Company, Bill Brown
Realty, Scott Peatross, Stewart Title Company of
Utah, Tommy W. Sisk, Capitol Thrift and Loan, and
Merlyn Hanks : Brief of Respondent

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc1

 Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Mark S. Miner; Attorneys for Respondent.

Kay M. Lewis; Kevin V. Olsen; Jensen and Lewis; Attorneys for Appellant.

Recommended Citation

Brief of Respondent, *Pagan v. Cannon*, No. 860072.00 (Utah Supreme Court, 1986).
https://digitalcommons.law.byu.edu/byu_sc1/813

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

UTAH
DOCUMENT
KFU
50
IN THE SUPREME COURT
DOCKET NO. 860072 STATE OF UTAH

ISRAEL PAGAN)
)
)
Plaintiff-Respondent,)
)
vs.)
JOSEPH N. CANNON, DORIUS)
BLACK, ALPHA LEASING,)
COMPANY, a partnership,)
ROBERT D. APGOOD, JOSEPH N.)
CANNON, DORIUS BLACK, and)
RICHARD McKEAN, doing)
business under the name and)
style of ALPHA LEASING)
COMPANY, BILL BROWN)
REALTY, INCORPORATED,)
SCOTT PEATROSS,)
PERSONALLY, STEWART TITLE)
COMPANY OF UTAH, TOMMY W.)
SISK, CAPITOL THRIFT & LOAN,)
a financial corporation, and)
MERLYN HANKS,)
Defendants-Appellant.)
)

860072-CA
Case No. 20295

BRIEF OF RESPONDENT

Appeal of Capitol Thrift & Loan, a financial corporation, from a judgment rendered in the Third Judicial District Court, the Honorable J. Dennis Frederick Presiding.

MARK S. MINER
525 Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111
Attorney for Respondent

KAY M. LEWIS
KEVIN V. OLSEN
JENSEN & LEWIS
320 South 300 East, Suite 1
Salt Lake City, Utah 84111
Attorneys for Appellant

FILED
APR 1 1985

Clerk, Supreme Court, Utah

IN THE SUPREME COURT
STATE OF UTAH

ISRAEL PAGAN)	
)	
)	
Plaintiff-Respondent,)	
)	
vs.)	
JOSEPH N. CANNON, DORIUS)	
BLACK, ALPHA LEASING,)	
COMPANY, a partnership,)	
ROBERT D. APGOOD, JOSEPH N.)	
CANNON, DORIUS BLACK, and)	
RICHARD McKEAN, doing)	Case No. 20295
business under the name and)	
style of ALPHA LEASING)	
COMPANY, BILL BROWN)	
REALTY, INCORPORATED,)	
SCOTT PEATROSS,)	
PERSONALLY, STEWART TITLE)	
COMPANY OF UTAH, TOMMY W.)	
SISK, <u>CAPITOL THRIFT & LOAN,</u>)	
<u>a financial corporation,</u> and)	
MERLYN HANKS,)	
Defendants-Appellant.)	
)	

BRIEF OF RESPONDENT

Appeal of Capitol Thrift & Loan, a financial corporation, from a judgment rendered in the Third Judicial District Court, the Honorable J. Dennis Frederick Presiding.

MARK S. MINER
525 Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111
Attorney for Respondent

KAY M. LEWIS
KEVIN V. OLSEN
JENSEN & LEWIS
320 South 300 East, Suite 1
Salt Lake City, Utah 84111
Attorneys for Appellant

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES PRESENTED ON APPEAL.	1
STATEMENT OF THE CASE.	2
SUMMARY OF ARGUMENT.	6
ARGUMENT	8
POINT I THE JURY'S VERDICT WAS SUPPORTED BY A PLETHORA OF EVIDENCE.	8
POINT II THE TRIAL COURT DID NOT ERR WHEN IT DENIED MOTIONS FOR DIRECTED VERDICT AND FOR JUDGMENT NOTWITHSTANDING THE VERDICT.	16
POINT III THE COURT PROPERLY INSTRUCTED THE JURY	18
POINT IV STEWART TITLE COMPANY OF UTAH NEVER APPEALED THE \$2,000.00 JUDGMENT WHICH WAS RENDERED AGAINST THEM	20
POINT V CAPITOL THRIFT & LOAN DID NOT FILE A MOTION FOR A NEW TRIAL.	21
CONCLUSION	22

ADDENDUM

August 18, 1980 Merlyn Hanks Letter to Stewart Title (Exhibit 1-P)
August 19, 1980 Check No. 3303 payable to Joseph N. Cannon (Exhibit 7-P)
July 30, 1980 Earnest Money Receipt and Offer to Purchase (Exhibit 23)
July 30, 1980 Earnest Money Receipt and Offer to Purchase (Exhibit 23A)
August 18, 1980 Statement of Account signed by Joseph N. Cannon (Exhibit 27-D)
Borrower's Statement signed by Joseph N. Cannon (Exhibit 37-D)
Extension and Modification Agreement and Disclosure Statement (exhibit 39-D)
Capitol Thrift & Loan's Jury Instruction No. 11 (TR-309) (Exhibit "A")
Capitol THrift & Loan's Jury Instruction No. 12 (TR-310) (Exhibit "B")
Jury Instruction of Joseph N. Cannon, Richard McKean & Alpha
Leasing Company (TR-252) (Exhibit "C")
Motion for Substitution of Party Plaintiff and Respondent (Exhibit "D")

TABLE OF AUTHORITIES

CASES

	<u>Page</u>
<u>Behrens v. Raleigh Hills Hospital Inc.,</u> 675 P.2d 1179 (1983).	20
<u>Cintron v. Milkovich,</u> 611 P.2d 730.	8
<u>Cordner v. Clinger's, Inc.,</u> 15 Utah 2d 85	19
<u>Devas v. Noble,</u> 13 Utah 2d 133.	8
<u>E.A. Strout Western Realty v. W. C. Foy & Sons,</u> 665 P.2d 1320	8
<u>Evans v. Gaisford,</u> 247 P.2d 431.	20
<u>Fleming v. Fleming Felt Co.,</u> 7 Utah 2d 293, 323 P.2d 712	8
<u>Gossner v. Dairymen Associates, Inc.,</u> 611 P.2d 713 (1980)	8
<u>Mecham v. Foley,</u> 120 Utah 416, 235 P.2d 497.	20
<u>Porcupine Reservoir Company v. Lloyd Keller,</u> 15 Utah 2d 318.	22
<u>Shupe v. Menlove,</u> 18 Utah 2d 130.	19
<u>Ute-Cal Land Development v. Sather,</u> 605 P.2d 1240 (1980).	8
<u>Watters v. Querry,</u> 626 P.2d 730.	8

IN THE SUPREME COURT
STATE OF UTAH

ISRAEL PAGAN)	
)	
)	
Plaintiff-Respondent,)	BRIEF OF RESPONDENT
)	
vs.)	
JOSEPH N. CANNON, DORIUS)	
BLACK, ALPHA LEASING,)	
COMPANY, a partnership,)	
ROBERT D. APGOOD, JOSEPH N.)	
CANNON, DORIUS BLACK, and)	
RICHARD McKEAN, doing)	Case No. 20295
business under the name and)	
style of ALPHA LEASING)	
COMPANY, BILL BROWN)	
REALTY, INCORPORATED,)	
SCOTT PEATROSS,)	
PERSONALLY, STEWART TITLE)	
COMPANY OF UTAH, TOMMY W.)	
SISK, <u>CAPITOL THRIFT & LOAN,</u>)	
<u>a financial corporation,</u> and)	
MERLYN HANKS,)	
Defendants-Appellant.)	
)	

STATEMENT OF ISSUES PRESENTED ON APPEAL

1. Whether the evidence supports a finding of conspiracy to defraud.
2. Whether the trial court erred by allowing the matter to go to the jury and not granting a directed verdict or judgment notwithstanding the verdict in favor of the Appellant.
3. Whether the trial court erred in its instructions which were given to the jury.
4. Whether Stewart Title Company of Utah appealed the judgment which was rendered against them to the Utah Supreme Court.
5. Whether Capitol Thrift & Loan, a financial corporation can appeal a jury verdict without first filing and arguing a motion for a new trial; and, thereby

deny the Trial Court the opportunity to correct any errors that might have been made during the trial.

STATEMENT OF THE CASE

Israel Pagan, the Respondent herein, had been severely injured in a blasting accident at Kennecott Copper Corporation. (TR-540) As a result thereof, his face and head was severely disfigured. In addition thereto, his brain was injured to an extent that he had little or no abstract thinking ability. (TR-538) He did not speak English nor could he read or write the English language. (TR-538) His Intelligence Quotient was in the low to normal range. (TR-540, 542) His mentality was such that he did not comprehend or understand the real estate transaction. (TR-541, 743, 744, and 745)

On or about the 30th day of July, 1980, Scott Peatross, a real estate agent of Bill Brown Realty, obtained the signature of Israel Pagan on an Earnest Money Receipt, in which Israel Pagan agreed to sell his house and lot at 118 West Locust Street, Midvale, Utah to Dorius Black, a well known and notorious land developer, who describes himself as a businessman, who engages in real estate opportunities as he finds them available. (TR-490). Dorius Black had never inspected or seen the house and lot nor did he make any payments thereon nor did he ever intend to own or possess the Pagan property. (TR-197, 492)

On the 18th day of August, 1980, the disfigured and retarded Israel B. Pagan did appear at the Salt Lake City offices of Stewart Title Company of Utah for the purpose of closing the real estate transaction. There was also present Dorius Black, Joseph N. Cannon, Tommy Sisk, Scott Peatross, Jack Rhoades, and Emilio Ortiz. Merlyn Hanks of Capitol Thrift & Loan, was present

previous to the closing, he having delivered to Stewart Title Company of Utah, the funds necessary to carry out the transaction along with the necessary Trust Deeds, Notes and other documents which had been previously been prepared by Merlyn Hanks at the office of Capitol Thrift & Loan. (Tr-615)

Prior to the closing date of August 18, 1980, Merlyn Hanks for and on behalf of Capitol Thrift & Loan, at the instance and request of Dorius Black, appraised the Israel Pagan home for the approximate amount of \$43,100.00 for bank loan purposes. (TR-612) (See Exhibit 43P) On the closing date as aforesaid, Merlyn Hanks, as loan officer for Capitol Thrift & Loan delivered to Stewart Title Company of Utah a check for \$32,325.00. For some reason known only to Merlyn Hanks, the \$32,325.00 check had been made out to one Joseph Cannon. Neither Joseph Cannon nor Merlyn Hanks was able to explain why the check was made out to Joseph Cannon, when in truth and in fact, the buyer of the house and lot was Dorius Black. Joseph Cannon denied ever endorsing the check and he further denied that he received any of the money whatsoever. Joseph Cannon further denied that he was the buyer or that he purchased the Pagan house and affirmatively testified that his only purpose in being at the closing was to be a guarantor of loans and purchases of Dorius Black. (Tr-567)

At the closing, Merlyn Hanks requested Stewart Title to withhold and deliver back to Merlyn Hanks and Capitol Thrift & Loan a check or draft in the amount of \$4,848.75. (TR-616) This "kick back" check in the amount of \$4,848.75 was to be delivered to Dorius Black as a finders fee, Dorius Black was required to deliver the check back to Capitol Thrift & Loan to be credited to his past due account. (TR-497). Dorius Black denied having any interest in or taking any

title to the Pagan property, and further denied being liable for the making of any loans or the borrowing any money on the Pagan property. He admits receiving \$4,848.75, which was credited to his past due account. (TR-499) Capitol Thrift & Loan and Merlyn Hanks admittedly drew the Trust Deed, which encumbered the Pagan house and lot in the amount of \$32,325.00. The Trustor of the Deed was Joseph N. Cannon a "straw man," which was brought into the transaction by Dorius Black, under mysterious circumstances, which even Joseph Cannon did not understand. (TR-618) As stated before, Dorius Black denied being the purchaser of the Pagan home. Joseph N. Cannon also denied being the purchaser of the Pagan home, and alleges that he went to Stewart Title Company of Utah at the sole request of Dorius Black for the purpose of being a Guarantor of a loan. (TR-562) Joseph N. Cannon admitted that he had never seen Israel Pagan before or since the August 18, 1980 closing. Joseph N. Cannon admitted receiving a check from Stewart Title Company of Utah, which he deposited in the account of Alpha Leasing for the sole purpose of "laundering" said funds. (TR-566) Joseph N. Cannon denies receiving any of the money personally. (TR-566) Joseph N. Cannon admits that the partnership of Alpha Leasing did not know that he deposited the money in their account. (TR-566) Joseph N. Cannon further testified that all of the money went to Dorius Black from the Alpha Leasing account. (TR-567) Joseph N. Cannon further testified that he had no knowledge of the fact that the house was to be deeded to him from Israel Pagan. (TR-568) Joseph N. Cannon further denied signing the Trust Deed and Note for \$32,325.00, and he attempts to justify his signature thereon by the statement that he did not realize what he was signing. (TR-569) Joseph N.

Cannon further admitted that he never put one cent of his money in the real estate transaction, and in addition thereto, he further testified that he made no payments whatsoever on the trust deed and note and, that he, had no equity in the Pagan property. In fact, he admitted that he had never seen the property; and that he did not even know that the property had been deeded to him. Joseph N. Cannon testified that the note, trust deed, second trust deed, note from Joseph N. Cannon to Israel Pagan, and the escrow agreements had his signature thereon, but he had no memory of signing the documents and no memory of their contents. He further had no recollection of signing the closing statement, nor did he have any memory of the figures or contents set forth therein. (TR-573) Joseph N. Cannon admitted receiving a check for \$13,471.57 and disclaimed any interest therein. (TR-575) Joseph N. Cannon further denied that he made a credit report to Capitol Thrift and freely admitted that he made no payments on the note which he signed as a principal party at the closing. (TR-576)

Dr. William W. Barrett, a psychiatrist of considerable experience, who had practiced in the Salt Lake County area for more than twenty-five (25) years, and who was licensed to practice in the State of Utah, with excellent references and excellent credentials, examined Israel Pagan; and as a result of the examination, the doctor testified that Israel Pagan would not understand the real estate transaction nor would he understand or comprehend the buying and selling of his home. The doctor further testified that Israel Pagan could not read or write the English language and that his mentality was in the low-normal range. (TR-534-541)

Israel Pagan had no memory of selling his house in Midvale, nor did he remember going to Stewart Title Company of Utah to sign some papers. (TR-744)

He testified that he had never been to school and that he did not know what happened to his home. (TR-744)

SUMMARY OF ARGUMENT

The jury unanimously found by clear and convincing evidence that Capitol Thrift & Loan, through its agent, Merlyn Hanks and its real estate promoter and finder, Dorius Black; and a judgment proof "straw man", who did business under the name and style of Joseph Cannon, and all of them, did engage in a civil conspiracy to defraud the mentally deficient Israel Pagan out of his house and lot, by engaging in a confidence game, incident to the real estate in question. The jury assessed damages in the amount of \$12,000.00 compensatory and \$4,000.00 punitive. The evidence clearly showed that Merlyn Hanks and Capitol Thrift and Loan were fully aware of the fact that the "notorious" Dorius Black was acting in concert with Joseph N. Cannon.

Capitol Thrift & Loan admittedly drafted the Trust Deed and the Note in the amount of \$32,325.00, with prescribed interest at the rate of 22%, which was to be paid in interest installments of five (5) monthly payments, followed by a single installment of \$32,518.72. Capitol Thrift & Loan, by and through its agent, Merlyn Hanks was well acquainted with Dorius Black. They had direct knowledge of his character and reputation and they participated with him in sharing a "kick back" payment of \$4,848.75, which Capitol Thrift & Loan in turn "pocketed" by claiming a payment on Dorius Black's past due account. The sale price of \$44,000.00 was never considered, once the property was deeded by Israel Pagan to Joseph Cannon. The agreement to provide Israel Pagan with a mortgage of \$24,000.00 was disregarded. Upon Joseph Cannon receiving title, Capitol Thrift &

Loan immediately encumbered the property with a \$33,225.00 Trust Deed, which was to be paid by the judgment proof Joseph Cannon as Trustor. This sum accrued interest at the rate of 22%, which was to be paid in five (5) monthly principal interest installments, followed by a single principal and interest installment of \$32,518.72. Under no circumstances could Joseph Cannon meet these terms. The wrongdoers, Merlyn Hanks, Capitol Thrift & Loan, Joseph Cannon, and Dorius Black did immediately receive the sum of \$13,471.57, over and above the agreed first mortgage price. The judgment proof promoters did pocket the money and refuse to pay on said mortgage in any respect; nor did they ever take possession of the property; they just took the funds knowing that their Trust Deeds would be foreclosed long prior to the due date on the contracts which supposedly existed between Joseph Cannon and Israel Pagan. Merlyn Hanks, as agent, servant and employee of Capitol Thrift & Loan, viewed and talked to the disfigured and mentally deficient Israel Pagan when he delivered the closing documents prior to the closing. (TR-762, 763).

The jury's verdict was amply supported by direct, obvious evidence, which clearly reflected, by clear and convincing evidence, the joint and concerted actions by the Appellants. Capitol Thrift & Loan participated in the "switching" of the buyers; the concealing and shifting of the true parties to the transaction; and with the skill and finesse of the experienced land developers, deprived the mentally demented Israel Pagan of his house and lot.

ARGUMENT

POINT I

THE JURY'S VERDICT WAS SUPPORTED BY A PLETHORA OF EVIDENCE.

The jury heard the witnesses, weighed the evidence, and made extensive findings of fact by answering special interrogatories. In every instance, the evidence sustained the jury's findings. This being the case, this Court has consistently held that it is both the prerogative and the duty of the Supreme Court to review the evidence and every inference that may be fairly and reasonably drawn therefrom in the light most favorable to the Plaintiff; Devas v. Noble, 13 Utah 2d 133. Also Fleming v. Fleming Felt Co., 7 Utah 2d 293, 323 P.2d 712. This Court very recently held in the case of E.A. Strout Western Realty v. W. C. Foy & Sons, 665 P.2d 1320, that it is a prerogative of the jury to resolve issues of fact, and the accepted rules of appellant review preclude the Supreme Court from substitution its judgment for that of the jury on issues of fact. Citing Watters v. Querry, Utah, 626 P.2d 445 (1981). The Court stated as follows: "On appeal, we view the evidence in the light most supportive of the verdict." Citing Cintron v. Milkovich, Utah 611 P.2d 730. This Court assumes that the jury believed those aspects of the evidence which sustained its findings and judgment. Citing Gossner v. Dairymen Associates, Inc., Utah 611 P.2d 713 1980. The Court went on to say, we will upset a jury verdict only on a showing that the evidence so clearly preponderates in favor of the Appellant that reasonable people would not differ on the outcome of the case. Citing Ute-Cal Land Development v. Sather, Utah, 605 P.2d 1240 (1980).

SUPPORTING EVIDENCE

Israel Pagan, the Respondent herein, was an elderly man, who had been severely injured in a blasting accident while working as a powder monkey for Kennecott Copper Corporation. With the compensation that he received for his injuries, he purchased a house and lot at 118 West Locust Street, Midvale, Utah. He could not read or write the English language; and by reason of his disfigured face and head, he was commonly referred to as a rather "childish" individual. He lived for many years in the Midvale house. He only associated with Puerto Rican people; and by reason of his facial injuries, he was commonly referred to as a character. He had little or no ability to think abstractly and relied heavily upon his Puerto Rican friends in making simple and ordinary decisions. The jury quickly and correctly observed and concluded that Israel Pagan's mental equipment were such that before he was permitted to testify, a prominent psychiatrist was called to the stand and testified concerning the mentality, reasoning ability and mental condition. The psychiatrist testified that Israel Pagan would not comprehend or understand a confidence game or the real estate transaction which deprived him of his home. The Plaintiff, Israel Pagan had no memory of the transaction and held no ill will against the individuals who defrauded him of his property. (TR-271-276)

Appellants insist that the evidence is such that the jury's findings be overturned and found the other way as a matter of law. Appellants fail to acknowledge that the jury listened carefully to the witnesses for nearly three days. The jury from their advantaged position and being in close proximity to the

witnesses were given the opportunity not only to observe, hear, and exclusively judge the credibility of the witnesses but were also under proper instructions, permitted to weigh the evidence and to make special findings of fact therefrom. It was the jurors prerogative to make an appraisal of the witnesses, to know, understand and to test their capacity to tell the truth and to remember. The jury concluded that Israel Pagan was no match for the skilled land developers. There can be little doubt that Israel Pagan was "tricked out" of his property.

Appellants would have this Court believe that Merlyn Hanks, the principal loan officer of Capitol Thrift & Loan; Joseph Cannon; Dorius Black; Tommy Sisk, were completely innocent of the civil conspiracy to defraud Israel Pagan. The Appellants would have this Court disregard the physical and mental appearance of Israel Pagan. Mr. Pagan was not only mentally deficient but also physically disfigured, in that his face had been severely injured in a blasting accident. Any casual observer would have immediately recognized that Mr. Pagan would not and could not understand the real estate transaction and the buying and selling of his home. (TR-541) Any casual observer would immediately recognize the fact that Israel Pagan could not read or write the English language. A casual observer would immediately recognize the fact that his mentality was in the low-normal range. The taking of his home was in effect " like taking candy from a baby". Merlyn Hanks knew this! Dorius Black also knew this! Joseph Cannon not only knew of Israel Pagan's demented condition, but openly exploited it with the advice and counsel of Dorius Black.

TESTIMONY OF DR. WILLIAM BARRETT

In support of the foregoing, we feel compelled to set forth the testimony of Dr. William Barrett concerning the mentality and physical appearance of Israel Pagan. With regard thereto, at pages (TR-550-551), he testified as follows:

Q So would it be a fair statement to say that it's difficult to assess the actual mental capacity of an individual? You can within limits, but to assess the actual mental capacity is difficult at best?

A THERE IS NO QUESTION ABOUT THAT. AS I INFERRED, IT WAS MY OPINION, AND I ARRIVED TO MY OPINION, I DO THIS EVERY DAY. SO IT MAY BE MY OPINION IS A LITTLE BIT MORE DISCRETE, A LITTLE BETTER THAN SOMEBODY ELSE'S.

Q In your opinion, I think you said that he was in the low normal range?

A THAT'S WHAT I SAID.

Q Now, the low normal range would mean what with respect to his capabilities of understanding?

A BETWEEN 80 AND 90, HE COULD HANDLE THE ENGLISH LANGUAGE. HE COULD TAKE CARE OF HIMSELF. HE WOULD HAVE TROUBLE IN UNDERSTANDING THE FOREIGN WORD IN THE LANGUAGE FORM. HE WOULDN'T BE ABLE TO READ VERY WELL. HE WOULD PROBABLY STILL BE READING CHILDREN'S BOOKS IF HE COULD READ. HE WOULD AT LEAST BE ABLE TO WATCH TELEVISION AND UNDERSTAND WHAT THEY WERE TALKING ABOUT. HE DOES KNOW WHO THE PRESIDENT IS.

Q Apparently he was able to settle with Kennecott and buy a home?

A HE WAS ABLE TO SETTLE WITH KENNECOTT AND BUY A HOME.

Q So would it be a fair statement to say that if an individual were dealing with him through an interpreter, that that individual dealing with him would rely as much on the interpreter as Mr. Pagan would rely on the interpreter to make sure that everything was going the way it was supposed to go?

A I THINK THAT'S WHAT AN INTERPRETER IS FOR, YES.

Q So if the interpreter felt that things were right and expressed that to Mr. Pagan, then Mr. Pagan would obviously feel they were right as well?

A I WOULD AGREE WITH THAT.

Q Are you aware of what his mental capacity would have been four years ago, August 18 of 1980?

A I CAN PRESUME THAT IT WAS ABOUT THE SAME AS IT IS TODAY. WE DON'T DETERIORATE THAT FAST.

Q But that's a presumption; is it not?

A THAT IS A PRESUMPTION.

Q So you have no way of knowing whether or not he has increased or decreased since that period of time?

A I WOULD HAVE NO KNOWLEDGE ABOUT THAT.

The Court's attention is called to the jurors answers to Special Interrogatories No. 1 and 11 which are as follows:

No. 1. Did Capitol Thrift & Loan Company, through its agent, Merlyn Hanks, by clear and convincing evidence engage in a civil conspiracy to defraud plaintiff incident to the transaction in question?

Answer: YES

No. 11: If you found by clear and convincing evidence that Capital Thrift and Loan, through its agent, Merlyn Hanks, engaged in a civil conspiracy incident to the transaction in question, what damage, if any, do you find was caused to the plaintiff:

Compensatory \$12,000.00 (not to exceed \$24,000.00)

Punitive \$ 4,000.00

Merlyn Hanks and Capitol Thrift & Loan knew that Dorius Black was a land developer who engaged in such opportunities as he found available. (TR-490) They also knew that if someone brought him a profitable real estate transaction, that he would consider it. They knew that he was not a licensed real estate man. (TR-490) Merlyn Hanks knew that Dorius Black never intended to buy the Pagan home. (TR-493) Capitol Thrift & Loan participated in the division of the Pagan money by having Tommy Sisk of Stewart Title Company of Utah deduct from the purchase price, the sum of \$4,848.75, which went directly into Capitol Thrift & Loan's account. Dorius Black was paid this amount as a finders fee and this money was subsequently credited on the indebtedness that Dorius Black had supposedly incurred with Capitol Thrift & Loan.

Merlyn Hanks, as loan officer, had made an appraisal on the Pagan home. (TR-611, 624) (Exhibit 43P) Merlyn Hanks wrote a letter which is marked Plaintiff's Exhibit 1, (TR-609), which accompanied a check in the amount of \$32,325.00 (Exhibit 38) (Tr-185), both of which were given to Tommy Sisk and Stewart Title Company of Utah by Merlyn Hanks personally on the morning of the closing. The \$32,325.00 check showed Joseph Cannon as the payee and was allegedly endorsed by Joseph Cannon. (Although Joseph Cannon has denied the endorsement) See (Exhibit 38) Merlyn Hanks admitted writing the letter, preparing the check to Joseph Cannon, preparing the Trust Deeds and Notes, and instructing Stewart Title Company to disperse a check back to Capitol Thrift & Loan in the amount of \$4,848.75. (TR-615, 616, 618) Merlyn Hanks further directed Stewart Title Company of Utah to give the remainder of the funds to Joseph N. Cannon. Merlyn Hanks prepared the Trust Deed, (Exhibit P-33) and the Promissory Note (Exhibit P-32) between Joseph N. Cannon and Capitol Thrift & Loan, which provided that the \$32,325.00 was to be paid back in five installments, the interest, with a balloon payment requiring the note to be paid in full at the end of six months. Even though Merlyn Hanks appraised the home, drew all documents, prepared all letters of instructions, he denied in open court that he knew that this transaction involved Israel Pagan's home. (TR-620) He (Hanks) further denied that he knew that Joseph Cannon had proclaimed and had testified under oath that he never purchased the Pagan home, and further was unable to explain why Joseph Cannon never received any of the money from the sale; or, why Cannon claimed to be nothing more than a Guarantor of the loan. (TR-620) Merlyn Hanks testified and admitted that Capitol Thrift & Loan

foreclosed on the Trust Deed and Note under his direction (TR-628) for the sum of \$39,300.00. In addition thereto, he received approximately \$5,000.00 in the form of a payment on Dorius Black's loan. (TR-641). By the conspiracy and fraud herein Capitol Thrift and Loan obtained the Pagan home, which was worth \$44,000.00 for the sum of \$32,325.00. Merlyn Hanks admitted preparing the business loan in the name of Joseph Cannon for household or agricultural purposes. (See Exhibit 32) The Trust Deed (Exhibit 19) was allegedly signed by Joseph Cannon and notarized by Merlyn Hanks. (Joseph Cannon denies signing the foregoing described documents as a purchaser of the property and alleges that he only signed them as a Guarantor) Merlyn Hanks admits that neither Dorius Black nor Joseph Cannon ever made any payments whatsoever on the loan. (TR-646)

Joseph Cannon denies receiving any of the money from the sale of the house. He also denied that he knew that the Pagan house was to be deeded to him from Israel Pagan. He in fact testified that he had no knowledge of the contents of any of the documents that he signed; and alleges that "I don't believe that I realized all of the documents that I was signing", and that he recalls no details. He admitted that he never put one cent of his money into the transaction. He claimed no equity in the house at all. (TR-569) He further admits that he never saw the Pagan House, never looked in it, and never seen it up to and including the date of the trial. (August 22, 1984) Joseph Cannon denied that the Pagan property had ever been deeded to him and had no memory of signing of any of the Trust Deeds, including the Trust Deed to Israel Pagan. (See Exhibit 33) (TR-571) When questioned about the documents, Joseph Cannon testified as follows:

Q Do you recall signing that?

A AS I PREVIOUSLY INDICATED, I DON'T RECALL ALL OF THE DOCUMENTS THAT I SIGNED AT THAT CLOSING.

Q Or their contents, I take it?

A CORRECT. (TR-572)

Joseph Cannon freely admitted that he contributed nothing to the sale or the transaction and that all he did was go to Stewart Title and sign his name on the documents as a Guarantor and for that, he received a check in the amount of \$13,471.57. Joseph Cannon admitted that he never intended to make any payments on the house. He admits laundering the money through the Alpha Leasing account. He denies making any applications for a loan. (TR-582) He does not know what happened to the \$32,000.00. (TR-584) Joseph Cannon admits that he was very experienced in handling real estate transactions, having attended at least 10 closings prior to August 10, 1980. (TR-589) Joseph Cannon admits that he is skilled and adept in managing businesses, having been a manager partner with Alpha Leasing, Mc Kean Construction, Gritton and Associates. He further admitted that he had considerable business experience and had attended college. He admitted that he was judgment proof. (TR-561) (TR-577) (TR-857).

Capitol Thrift and Loan; Joseph Cannon and Douris Black all profited heavily from the fraud and conspiracy which defrauded the plaintiff of his home. Capitol Thrift ended up with the home worth \$44,000.00 and \$4,848.75 in cash which was returned to the Loan Company by Stewart Title to be credited on the due account of Dorius Black. Joseph Cannon received a check in the amount of \$13,471.57 for merely signing the closing documents! He never intended to be liable for any documents that he signed. He never paid one cent on any of the notes or trust deeds, in fact he denies that he ever signed them or

knew of their contents. Dorius Black and Joseph Cannon divided the "spoils". Tommy Sisk, the expert closing officer, who was acting in a fiduciary relationship should have easily detected the fraud by merely totaling the closing papers as follows:

First Trust Deed	—————\$32,325.00(Tr-186)
Second Trust Deed	—————\$24,000.00 (Tr 192)
Total encumbrances	—————\$56,325.00 (Tr 186)
Purchase Price	—————\$44,000.00 (Tr-186)

The fraud was obvious, the property was encumbered for \$12,325.00 more than it was worth. The closing statement failed to show the First Trust Deed transaction. All dealings between Capitol Thrift and Loan and Joseph Cannon and Dorius Black were carefully concealed. A casual glance at the Earnest Money receipt (Exhibit-23) (Tr-197) also reflects the fraud perpetuated on the mentally demented Israel Pagan.

The Jury heard the evidence; the Jury examined all the documents; the Jury was properly instructed; the Jury answered 18 questions and made 18 findings in Resondent's favor and against the appellants; the jury deliberated over a two day period; Their findings and award of damages are correct. The Judgments and verdict should be affirmed.

POINT II

THE TRIAL COURT DID NOT ERR WHEN IT DENIED MOTIONS FOR DIRECTED VERDICT AND FOR JUDGMENT NOTWITHSTANDING THE VERDICT

The elements of fraud and conspiracy to defraud Israel Pagan out of his property, were established by clear and convincing evidence. Dorius Black, a "notorious" land developer gathered up Joseph Cannon, a "straw man" and

promoter, who between them and with the help and direction of Merlyn Hanks of Capitol Thrift & Loan, skillfully and by way of a confidence game deprived Israel Pagan of \$24,000.00. Neither Dorius Black nor Joseph Cannon had any equity in the Pagan home, nor did they intend to buy the home, nor did they intend to rent or live in it; the transaction was nothing more than a " sham," in which, the skilled promoters deprived a mentally deficient man of his property. Dorius Black denied purchasing the home, admittedly had never been on the premises, nor did he ever intend to purchase or live in the home. He signed the Earnest Money Receipt solely for the purpose of taking advantage of Israel Pagan, or to put it in his words: " to increase and strengthen his business interests". Joseph Cannon denies that Israel Pagan ever deeded him the home; denies signing the Note and Trust Deeds; denies signing the escrow agreement, denies knowing the contents of any of the documents that he signed; and alleges that he only participated in the transaction as a Guarantor. Joseph Cannon denies receiving any money, admits making no payments whatsoever on the property; and as of the day of the trial, admitted that he was judgment proof.

Merlyn Hanks and Capitol Thrift & Loan admitted drafting the Note, Trust Deeds, and other documents. Merlyn Hanks further admitted that he notarized Joseph Cannon's signature on all the documents and provided all of the funds for the transaction; and that the transaction was carried out according to his instructions which were set forth in a letter to Stewart Title Company of Utah. He denies being at the closing but admits being at Stewart Title Company of Utah prior to the closing. Both, Israel Pagan and Emilio Ortiz testified that Merlyn Hanks talked to both Israel Pagan and Emilio Ortiz prior to the closing,

in addition thereto, Merlyn Hanks admitted going to the Pagan property, appraising the property, prior to supplying the money, documents and details of the closing to Stewart Title Company of Utah. Merlyn Hanks further admitted receiving back from the transaction, a check in the amount of \$4,848.75.

The Court and the jury listened carefully for three days to fourteen (14) witnesses, after which the Court carefully instructed the jury on the law; and after nearly eight hours, over a two day period, of deliberation, the jury made eighteen special findings of fact and rendered their judgment accordingly.

The facts, not only substantiated the Plaintiff's case, but overwhelmingly supported the jury's verdict by clear and convincing evidence. Their verdict should be affirmed.

POINT III

THE COURT PROPERLY INSTRUCTED THE JURY

Appellants complain that the Court erred in giving Instruction No. 21. The objectionable parts of this instruction were offered and submitted to the Court by the Appellants; in their proposed instruction No. 11 and 12; which are annexed hereto and by reference made a part hereof.

(This instruction did not in any way apply to the Appellant. A casual glance at the instruction reveals that this instruction applied only to the Defendant Alpha Leasing, who is not a party to this appeal. In fact, the jury in their special Verdict No. 6, found that Joseph Cannon was not an agent of Alpha Leasing and in Special Verdict No. 10, exonerated Alpha Leasing. Therefore, Instruction No. 21 has no application to this appeal.) The legal effect of Instruction 21; is set forth verbatim in Appellants requested Instruction No. 12.

(TR-310) See also, Appellants requested instruction No. 11; (Tr-310); Appellants are estopped from objecting to the own proposed instructions.

The Courts attention is also called to appellants requested instructions No. 7; 8; 9; 11; 12; 13; (Tr-303 to Tr-311); all of which were given in substance by the Court. This Court has repeatedly held that you cannot request that the Court give an instruction and later complain when your instruction is given. This is exactly what appellants are doing in this case. Capitol Thrift's proposed instruction No 12; (Tr-310) which is annexed hereto as an exhibit; reads as follows: "You may in your discretion award such damages, if and only if, you find from a "preponderance" of the evidence that said defendant's acts were wilful and malicious." Also see Capitol Thrifts proposed instruction No. 11, (Tr-309) which was given by the Court which reads as follows: "before punitive damages may be awarded, you must find the issues in favor of the plaintiff and against the individual defendants, and further you must find by a "preponderance" of the evidence that the individual defendant's conduct in injuring the plaintiff was wilful and malicious." The instructions complained of were prepared and submitted to the Court by appellants herein. They should not be allowed to object when their proposed instructions were given in substance by the Court. See, Shupe v. Menlove, 18 Utah 2nd, 130; also Cordner v. Clinger's, Inc., 15 Utah 2nd 85.

With regard to Instruction No.26, Respondent represents to the Court that Instruction No. 26 is proper in all respects. This instruction is clearly set forth on page 185, of the Jury Instruction Forms for the State of Utah; and has been given by the Utah Courts, as a proper instruction for the past twenty years. See

Mecham v. Foley, 120 Utah 416, 235 P.2d 497 and Evans v. Gaisford, Utah, 247 P.2d 431.

Behrens. v. Raleigh Hills Hospital Inc., Utah, 675 P.2d 1179 (1983), does not apply to the instant case in fact or in law and has no bearing thereon. Respondents assert and allege that the instructions by the Court were proper in all respect. The Court's attention is called to the fact that in each instance, the Court in its special verdict with regard to Joseph Cannon; Capitol Thrift & Loan; and Stewart Title Company respectfully requested that the jury make findings with regard to clear and convincing evidence. In each instance, the jury found by clear and convincing evidence that Joseph Cannon, Capitol Thrift & Loan and Stewart Title Company of Utah, did, by clear and convincing evidence, engage in a civil conspiracy to defraud the Plaintiff.

It was only after the special verdict was made and entered that the Court issued a judgment based on the jury verdict.

POINT IV

STEWART TITLE COMPANY OF UTAH NEVER APPEALED THE \$2,000.00

JUDGMENT WHICH WAS RENDERED AGAINST THEM

The only party that has appealed in the above-entitled action is Capitol Thrift and Loan.

Stewart Title Company of Utah made no appeal, hence the judgment against them must be affirmed.

The Court's attention is called to the fact that when the jury returned with their special verdict, there was a conference at the bench; (Tr-466) this, conference was held prior to the clerk reading the verdict. At this conference,

there was a discussion among all counsel with regard to the awarding of punitive damages. The Defendant's counsel, and all of them, urged the Court to not permit the jury to return to the jury room for further deliberation; Defendant's counsel, and all of them, agreed with the Court and concurred with the Court that the special verdict as was returned by the jury, was legally correct; and, that award of punitive damages was proper and that punitive damages can be determined from the nature and type of wrongful conduct. Defense counsel having convinced the Court that the Court was correct in its rulings, and that the special verdict was legally proper, should now be barred from claiming any error in the special verdict, in that if there was any error, it was at the urging and concurring by defense counsel with the Court. Appellant should not be permitted to object and appeal the Court's rulings which they requested the Court to uphold and adopt.

POINT V

CAPITOL THRIFT & LOAN DID NOT FILE A MOTION FOR A NEW TRIAL

The above-entitled cause was tried by a jury under proper instructions. The jury rendered their verdict and as a judgment was issued accordingly. The Appellant, Capitol Thrift & Loan at no time filed a motion for new trial. This procedure prevented the Court from correcting any errors which might have been made. The purpose of a motion for new trial, where the cause is tried by a jury, is to permit and allow the trial judge to correct any errors that might have been made in the heat of battle. Respondents take the position that no errors were

made by the Court, and that the trial court's judgment should be affirmed. Respondents further take the position that if there was any error, that Appellants should have filed a motion for new trial prior to appealing to the Supreme Court. See Porcupine Reservoir Company v. Lloyd Keller, 15 Utah 2nd 318; which held: "Counsel must give trial court opportunity to correct claimed error before asking appellate court to reverse verdict and judgment thereon."

CONCLUSION

The jury, under proper instructions and a plethora of evidence, by way of a special verdict found that Capitol Thrift & Loan and its agent, Merlyn Hanks, by clear and convincing evidence, did engage in a civil conspiracy to defraud the Plaintiff incident to the transaction in question.

The jury by special verdict, also found that Stewart Title Company of Utah, through its agent, Tommy Sisk, engaged in a civil conspiracy to defraud the Plaintiff incident to the transaction in question.

The jury by special verdict, also found that Joseph Cannon, individually, by clear and convincing evidence, engaged in a civil conspiracy to defraud the Plaintiff incident to the transaction in question.

The jury having found by clear and convincing evidence, assessed compensatory damages of \$12,000.00 and punitive damages of \$4,000.00 against Capitol Thrift & Loan.

The jury having found by clear and convincing evidence, found that Joseph Cannon individually engaged in a civil conspiracy to defraud the Plaintiff, an awarded \$12,000.00 compensatory damages and \$4,000.00 punitive damages.

The special verdict was then submitted to the Court, and the Court after considering various motions by the Defendants, entered judgment against Capitol Thrift & Loan, Stewart Title Company of Utah, and Joseph N. Cannon, in accordance with the damages awarded in the jury's special verdict.

In each instance, the jury's verdict was supported by clear and convincing evidence. The judgment should be affirmed.

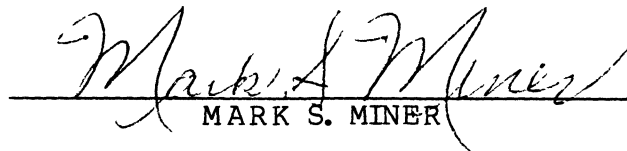
Respectfully submitted this 11th day of April, 1985.

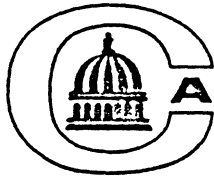


MARK S. MINER
Attorney for Respondent
525 Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111
Phone 363-1449

CERTIFICATE OF HAND DELIVERY

I hereby certify that I hand delivered four (4) true and correct copies of the foregoing BRIEF OF RESPONDENT to Kay M. Lewis and Kevin V. Olsen, 320 South 300 East, Suite 1, Salt Lake City, Utah 84111; this 11th day of April, 1985.


MARK S. MINER



CAPITOL THRIFT AND LOAN

1200 CONTINENTAL BANK BUILDING • PHONE 532-6545
~~P.O. BOX 1173~~ • SALT LAKE CITY, UTAH 84147

August 18, 1980

Stewart Title Guaranty Company
333 South 200 East
Salt Lake City, Utah 84111

Gentlemen:

Enclosed is our check in the amount of \$32,325.00, your acceptance of which guarantees Capitol Thrift and Loan title insurance in that amount covering the following:

1. That fee simple title to the property described as:
The north 50 feet of the south 100 feet of the west 98
Block 4 Amundson Subdivision
is in the name of Joseph N. Cannon.
2. That the attached Deed of Trust be recorded as a first
Trust Deed subject to no liens or incumbrances except for
current taxes and assessments.
3. Disburse the enclosed funds as follows:
 - a. \$4,848.75 to Capitol Thrift and Loan
 - b. Your fees for recording and the title insurance policy.
 - c. The remainder of the funds to Joseph N. Cannon
or as he directs.

In the above disbursement, we recommend that Joseph N. Cannon's name be on all checks so as to prove "consideration" in this matter.

Yours truly,

Merlyn Hanks
Real Estate Loans

EXHIBIT P-1

Received into evidence (TR-505)

MH:ib

Attachments

333 SOUTH 2ND EAST 355-4783
SALT LAKE CITY, UTAH 84111

CITY CENTER OFFICE
VALLEY BANK & TRUST CO.
1325 SOUTH MAIN STREET
SALT LAKE CITY, UTAH 84115
97-154/1240

STEWART
TITLE & UTAH I347I 57

PAY

TO JOSEPH N. CANNON

THE

ORDER

OF

August 19, 1980 \$ 13,471.57

PAY

0003303 12400154510 031108

105 0001347157

JOSEPH N. CANNON
Heritage Plaza Suite 201
4685 Highland Drive
Salt Lake City, Utah 84117

ALPHA LEASING CO.
Heritage Plaza Suite 201
4685 Highland Drive
Salt Lake City, Utah 84117

EXHIBIT 7-P

Received into evidence (TR-505)

17

PLAINTIFF'S
EXHIBIT
23



EARNEST MONEY RECEIPT AND OFFER TO PURCHASE

This is to be a legally binding form, if not understood so, other advice

TO: C-21 HAWK KIRKPATRICK SELLER Utah, July 11 1980
Name of Broker Company

IN CONSIDERATION OF your agreement to use your efforts to present this offer to the Seller, I/we D. Blunk
hereby deposit with you as earnest money the sum of \$ 1000.00 DOLLARS
in the form of Handwritten Note Payable to D. Blunk
to secure and assure on the purchase of the property situated at:

Midvale City Salt Lake County, State of UTAH
including any of the following items if at present attached to the premises: Plumbing and heating fixtures and equipment including stoves and oil tanks, water heaters and burners, electric
light fixtures including bulbs, bathroom fixtures, roller shades, curtain rods and fixtures, venetian blinds, window and door screens, linoleum, all shrubs and trees, and any other fixtures
except NO EXCEPT

The following personal property shall also be included as part of the property purchased: as listed by Hawk Kirkpatrick

The total purchase price is \$ 44,000 DOLLARS

shall be payable as follows: \$ 1000.00 which represents the aforesaid deposit, receipt of which is hereby acknowledged by you:
when seller approves same: \$ 1000.00 on delivery of deed or final contract of

sale, which shall be on or before July 11 1980 and \$ 43,000.00 each month commencing

July 11 1980 and approximately for 44,000

Contract: Payments to Walker Bank, Seller provides appraisal

ONE YEAR payments deferred July 11 1981 paid to 1-7-1981

1,170.00 per month, amortized payment: 6% for 36 years, paid for two

years. Balance paid on third year July 11 1982

until the balance of \$ 24,000 together with interest is paid; provided, however, that buyer at his option, at any time may pay amounts in excess of the monthly

payments upon the unpaid balance, subject to the liquidation of any mortgage or contract by the buyer herein assumed interest at 11% per annum on the unpaid portions.

purchase price to be included in the prescribed payments and shall begin as of date of possession which shall be on or before July 11 1980 All risk of loss and destruction

of property, and expenses of insurance shall be born by the seller until date of possession at which time property taxes, rents, insurance, interest and other expenses of the property shall be

paid as of date of possession. All other taxes and all assessments, mortgages, chattel liens and other liens, encumbrances or charges against the property shall be paid by

the seller except: NO EXCEPT

The following special improvements are included in this sale: Sewer ☒ Connected ☒ Septic Tank and/or Cesspool ☐ Sidewalk ☐ Curb and Gutter ☒ Special Street Paving

☒ Special Street Lighting ☐ Culinary Water (City) ☒ Other Community System ☐ Connected ☒ Private ☐ (Specify: Yes (x) No ())

Contract of Sale or Instrument of conveyance to be made on the approved form of the Utah Dept. of Business Regulation in the name of

T. R. Kirkpatrick & Co. Inc. 2705 1st St. Salt Lake City, UT 84111

This payment is received and offer is made subject to the written acceptance of the seller and shall be on or before July 11 1980 days from date hereof and unless to

approve the return of the money herein received shall cancel this offer without damage to the undersigned agent

In the event the purchaser fails to pay the balance of said purchase price or complete said purchase as herein provided, the amounts paid herein shall, at the option of the seller

be retained as liquidated and agreed damages.

It is understood and agreed that the terms written in this receipt constitute the entire Preliminary Contract between the purchaser and the seller and that no verbal statement made by

any party relative to the transaction shall be construed to be a part of this transaction unless incorporated in writing and signed by both parties. The receipt of the final contract shall

cancel this receipt and offer to purchase.

By D. Blunk Agent By T. R. Kirkpatrick & Co. Inc.

we do hereby agree to carry out and fulfill the terms and conditions specified above, and the seller agrees to furnish good and marketable title with abstract brought to date or at Seller's

option a policy of title insurance in the name of the purchaser and to make final conveyance by warranty deed on July 11

in the event of sale of other than real property, seller will provide evidence of title or right to sell or lease (if either party fails to do, he agrees to pay all expenses of enforcing this agree

ment or of any right arising out of the breach thereof including a reasonable attorney's fee

The seller agrees in consideration of the efforts of the agent in procuring a purchaser, to pay said agent a commission of

in the event seller has entered into a listing contract with any other agent and said contract is presently effective, this provision will be of no force or effect

Date 7-30-80 Israel B. Pagin Seller

Date 7-30-80 Stewart Escrow Buyer

1000 EM.

BUYER - add 19,000 at closing

Contract on Balance (\$24,000)

304R am.

1ST YR Payment Def.

1ST. AUG. 1 81 - INT. ONLY -

Payable Monthly Pay fr. Aug. Sept. 1 81 - Sept. 1 83

Balloon For. March 83

EXHIBIT 23-P

Received into evidence (TR-510)
See also (TR-203)

Unish copies of this contract bearing all signatures to Buyer and seller. Dependent upon the method used, one of the following forms must be completed.

RECEIPT

Receipt of the above sum of money by the Seller, and the receipt of the above sum of money by the Buyer, is hereby acknowledged.

Seller _____ Date _____ Buyer _____

Final copy of this receipt shall be retained by the Seller.

This ☐ be a legally binding form, if not understood see other advice

STATEMENT OF ACCOUNT

FILE 4838

ELL BROWN REALTY
Real Estate Co.

R CANNON, JOSEPH N. DATE August 18, 1980

ERTY ADDRESS 118 LOCUST, MIDVALE, UTAH

ERS NAME PAGAN, Israel B. POSSESSION DATE 8/18/80

ITEMS	Expenses		Credits	
chase Price	44,000	00	xx	xx
urance Premium Unexpired			xx	xx
Insurance Policy for:			xx	xx
erves:			xx	xx
sing Fee	30	00	xx	xx
ording	10	00	xx	xx
row Fees	37	50		
osit to			1,000	00
rtgage Balance Assumed by Buyers at:	xx	xx		
rtgage Balance Assumed by Buyers at:	xx	xx		
rtgage Balance Assumed by Buyers at: Second Deed of Trust on Property	xx	xx	24,000	00
rest Due and Assumed at:				
rest Due and Assumed at:				
res Assumed by Buyer to: 8/18/80	xx	xx	224	07
Util. to be Read & Paid by Seller	xx	xx		
To date of Possession				
rtgage Assumption Fee				
wer				
tal	44,077	50	25,224	07
lance			18,853	43
lancing Totals	44,077	50	44,077	50

marks:

EXHIBIT 27-D

Received into evidence (TR-601)

Stewart Title of Utah
BROADWAY PLAZA - SUITE 330, 250 EAST BROADWAY
SALT LAKE CITY UTAH 84111 - PHONE 355-4783

Accepted:
Joseph N. Cannon

BORROWER'S STATEMENT

I, Joseph N. Cannon, hereby state that the loan dated August 18, 1980, was strictly a business related loan for the benefit of Alpha Leasing Company for which I am a general partner. Said funds were not used for personal, family, household, or agricultural purposes. Alpha Leasing Company assumes now and always did assume responsibility for repayment of this loan.

ALPHA LEASING COMPANY

Joseph N. Cannon
Joseph N. Cannon, General Partner

EXHIBIT 37-D

Received into evidence (TR-600)

EXTENSION AND MODIFICATION AGREEMENT AND
DISCLOSURE STATEMENT



Capitol Thrift and Loan ("LENDER") DEBTOR(S) Cannon, Joseph N.
1200 Continental Bank Building
P.O. Box 11837
Salt Lake City, Utah 84147 ADDRESS 4709 Kelly Circle
Salt Lake City, Utah 84117

DISCLOSURES REQUIRED BY LAW

Original date of note or contract: 8-18-1980, Original Loan # 053532
Original beginning balance: \$ 32,325.00, Interest paid to -9-22-80 1-3-1

The above described obligation of DEBTOR(S) is amended and/or modified as follows:

Unpaid balance as of date hereof
of the above account \$ 32,325.00
Other charges (describe)
Interest \$ 1,978.91
Insurance: Dec. \$
A & H \$
Other \$
Amount Financed
(1, 2, & 3) \$ 34,303.91
FINANCE CHARGE \$ * *
Total of Payments
(4 & 5) \$ *
ANNUAL PERCENTAGE
RATE * * %

INSURANCE:

CREDIT LIFE and DISABILITY INSURANCE is not required to obtain this Extension and/or Modification. No charge is made for credit insurance and no credit insurance is provided unless Debtor checks the appropriate statement:

I desire additional Credit Life and Disability Insurance.

I desire additional Credit Life Insurance only.

I do not want additional Credit Life or Disability Insurance.

Date: _____

PROPERTY INSURANCE for this transaction must be obtained by the DEBTOR through his own broker agent. This transaction does not include property insurance.

PAYMENT SCHEDULE: DEBTOR hereby agrees to pay the LENDER the "Total of Payments" shown as follows:

Fifty Three (53) monthly payments of \$900.00 beginning March 2, 1981, followed by the unpaid balance together with accumulated interest on August 2, 1985.

SECURITY: This loan is secured by those security interests created or existing and securing the obligation referred to in the above mentioned note or contract together with the following described additional security (if any):

NOTE: Interest will be charged at the rate of Eighteen percent (18.00%) per annum or ten (10) percentage points above the Prime Interest Rate, whichever is greater, accruing from and after the date hereof. (Prime Interest Rate is defined as the rate charged by large U.S. Money center banks to their best business borrowers as quoted in the Wall Street Journal.) The interest rate on this note shall be adjusted on the 1st day of each month, when applicable, and interest shall accrue at such rate for the entire month.

EXTENSION AND MODIFICATION PROVISIONS

1. The above described obligation is still outstanding and LENDER is the owner and holder of same.
2. It is mutually agreed that the principal and interest payable under said obligation shall be paid as set forth in the "PAYMENT SCHEDULE" above.
3. It is mutually agreed that this AGREEMENT shall not be construed as constituting payment of said obligation and that said obligation, and all Notes, Contracts and Security Instruments evidencing and securing same, shall in all respects, except as expressly extended and/or modified herein, remain in full force and effect.

RECEIPT AND EXECUTION

The undersigned DEBTOR(S) acknowledge(s) receipt of a copy of the above statement prior to the consummation of the above described transaction and executes this AGREEMENT as of this 27 day of February, 1981.

LENDER: Capitol Thrift and Loan
1200 Continental Bank Building
P.O. Box 11837 Salt Lake City, Utah 84101

DEBTOR(S)

Joseph N. Cannon
Cannon, Joseph N.

APPROVED: _____
Loan Officer

NEW LOAN # 053685

DATE	GL NUMBER	DESCRIPTION	DEBIT	CREDIT
2-27-81 JZ	113	A/R - Cannon, Joseph N. #053685 Extend Loan #053532 with 2978.91 interest owing to 1-2-81 added to balance	34303.91	

PAYEE. DETACH THIS STATEMENT BEFORE DEPOSITING CHECK

EXHIBIT 39-D
Received into evidence (TR-600)

JURY INSTRUCTION NO. 11

In addition to the actual damages plaintiff alleges he has sustained, he also seeks to recover punitive or exemplary damages against the defendants. If you find the issues in favor of the plaintiff and that he is entitled to recover actual damages, you may also consider whether the plaintiff is entitled to such punitive damages.

Before punitive damages may be awarded, you must find the issues in favor of the plaintiff and against the individual defendants, and further you must find from a preponderance of the evidence that the individual defendants' conduct in injuring the Plaintiff was wilfull and malicious. If you so find, you may award, if you deem it proper to do so, such sum as in your judgment would be reasonable and proper as a punishment to that defendant for such wrongs, and as a wholesome warning to others not to offend in like manner. If such punitive damages are given, you should award them with caution and you should keep in mind that they are only for the purpose just mentioned and are not the measure of actual damage. Such damages must not exceed ~~the sum of \$500,000.00~~ the amount prayed for by the plaintiff.

EXHIBIT "A"
Capitol Thrift's Proposed Jury
Instruction No. 11 (TR-309)
Given in substance

JURY INSTRUCTION NO. 12

If you find that plaintiff suffered damage as a proximate result of the conduct of any of the defendants on which you base a finding of liability, you may then consider whether you should award punitive or exemplary damages against such defendant for the sake of example and by way of punishment. You may in your discretion award such damages, if, but only if, you find by a preponderance of the evidence that said defendant's acts were wilful or malicious in the conduct on which you base your finding of liability.

In arriving at any award of punitive damages, you are to consider the following:

1. The reprehensibility of the conduct of the defendant.
2. The amount of punitive damages which will have a deterrent effect on the defendant.
3. That the punitive damages must bear a reasonable relation to the actual damages.

EXHIBIT "B"
Capitol Thrift's Proposed Jury
Instruction No. 12 (TR-310)
Given by the Court

310

Gim
rly

JURY INSTRUCTION NO. _____

If you find that Plaintiff suffered damage as a proximate result of the conduct of any of the Defendants on which you base a finding of liability, you may then consider whether you should award punitive damages against such Defendant for the sake of example and by way of punishment. You may in your discretion award such damages, if, but only if, you find by a preponderance of the evidence that said Defendants' acts were willful or malicious in the conduct on which you base your finding of liability.

In arriving at any award of punitive damages, you are to consider the following:

1. The reprehensibility of the conduct of the Defendants.
2. The amount of punitive damages which will have a deterrent effect on the Defendants.
3. That the punitive damages must bear a reasonable relation to the actual damages.

MARK S. MINER
Attorney for Plaintiff-Respondent
525 Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111
Telephone: 363-1449

IN THE SUPREME COURT
STATE OF UTAH

ISRAEL PAGAN)	
)	
)	
Plaintiff-Respondent,)	MOTION FOR SUBSTITUTION
)	OF PARTY PLAINTIFF AND
vs.)	RESPONDENT
JOSEPH N. CANNON, DORIUS)	
BLACK, ALPHA LEASING,)	
COMPANY, a partnership,)	
ROBERT D. APGOOD, JOSEPH N.)	
CANNON, DORIUS BLACK, and)	
RICHARD McKEAN, doing)	Case No. 20295
business under the name and)	
style of ALPHA LEASING)	
COMPANY, BILL BROWN)	
REALTY, INCORPORATED,)	
SCOTT PEATROSS,)	
PERSONALLY, STEWART TITLE)	
COMPANY OF UTAH, TOMMY W.)	
SISK, <u>CAPITOL THRIFT & LOAN,</u>)	
<u>a financial corporation,</u> and)	
MERLYN HANKS,)	
Defendants-Appellant.)	
)	

COMES NOW, Leonor` C. Pagan, the only daughter of Israel B. Pagan, and respectfully petitions the Court that she be substituted as the party Plaintiff and Respondent herein, in accordance with the provisions of Rule 25-A of the Utah Rules of Civil Procedure; and in support of said motion, alleges as follows:

1. That Israel B. Pagan was her father.
2. That Israel B. Pagan is and was the Plaintiff and Respondent in the above-entitled cause.

EXHIBIT "D"

3. That Leonor C. Pagan is a proper party to be appointed the Plaintiff and Respondent in the above-entitled cause.

4. That Israel B. Pagan died on January 17, 1985.

5. That Israel B. Pagan left a Last Will and Testament, which has been deposited in the District Court of Salt Lake County, State of Utah, Probate No. P-85-333, along with a Petition for Formal Probate of Will and Petition for Appointment of Leonor C. Pagan as Personal Representative of the Estate of Israel B. Pagan..

6. That the Last Will and Testament of Israel B. Pagan specifically provides that your Petitioner, Leonor C. Pagan, daughter of Israel B. Pagan, is appointed the Personal Representative of the Estate of Israel B. Pagan, with the further provision that she be permitted to act without bond.

7. That the above-entitled cause was on appeal when Israel B. Pagan died. Said appeal having been filed by Capitol Thrift & Loan as Appellants in the above-entitled Court on October 15, 1984.

8. That Leonor C. Pagan, personally and Leonor C. Pagan as the Personal Representative of the Estate of Israel Bonilla Pagan, is entitled to be substituted as party Plaintiff and Respondent, as made and provided by Rule 25-A(1) of the Utah Rules of Civil Procedure.

9. That the judgment appealed by Capitol Thrift & Loan, is a judgment based upon a jury verdict which awarded Israel B. Pagan the sum of \$12,000.00 general damages and \$4,000.00 punitive damages against Capitol Thrift & Loan.

10. That as made and provided in Rule 25-A of the Utah Rules of Civil Procedure, as amended, a motion for substitution of a proper party Plaintiff is required.

11. That Leonor C. Pagan is in every way qualified, both personally and as the Personal Representative of the Estate of Israel B. Pagan, to be substituted as the proper party Plaintiff and Respondent herein.

WHEREFORE, Leonor C. Pagan, personally, and as Personal Representative of the Estate of Israel B. Pagan, respectfully moves the Court that she be appointed the proper party Plaintiff and Respondent in the above-entitled cause; and for such other and further relief as the Court deems proper.

DATED this 8th day of April, 1985.



Attorney for Leonor C. Pagan, Petitioner and Personal Representative of
the Estate of Israel B. Pagan

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of foregoing MOTION FOR SUBSTITUTION OF PARTY PLAINTIFF AND RESPONDENT to Richard N. Cannon, 431 South 300 East, Suite 106, Salt Lake City, Utah 84111; Richard L. Ashton, 57 West 200 South, Suite 400, Salt Lake City, Utah 84101; Robert D. Merrill, 50 South Main Street, Suite 1600, Salt Lake City, Utah 84101; Kay M. Lewis, 320 South 300 East, Suite 1, Salt Lake City, Utah 84111; Dorius Black, 5813 West Cascade Drive, Morgan, Utah 84050; Scott W. Cameron, 800 McIntyre Building, 68 South Main Street, Salt Lake City, Utah 84101; Duane A. Burnett, 110 West Center, Bountiful, Utah 84010; by depositing same in the United States Mail at Salt Lake City, Utah this 8th day of April, 1985.



STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

LEONOR C. PAGAN , being first
duly sworn, deposes and says that she has read the foregoing
MOTION FOR SUBSTITUTION OF PARTY PLAINTIFF AND RESPONDENT
and knows the contents thereof and the same is true.

Leonor C. Pagan
LEONOR C. PAGAN

SUBSCRIBED AND SWORN to before me this 8th day of April, 198

11/12, 1986.
Commission Expires



Mark S. Myers

Commission Expires: _____