

1978

Park City Utah Corporation, A Corporation, and
City Development Corporation, A Corporation v.
Ensign Company, A Limited Partnership :
Appendix

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

PARK CITY UTAH CORPORATION,)
a corporation, and CITY)
DEVELOPMENT CORPORATION, a)
corporation,)
Plaintiffs-Respondents,)
vs.)
ENSIGN COMPANY, a limited)
partnership,)
Defendant-Appellant.)

No. 15410

APPENDIX

Submitted by Appellant and containing
relevant portions of the record on appeal.

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CONTAINING RELEVANT PORTIONS OF THE RECORD ON APPEAL

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COMPLAINT

1. Plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Utah with its principal place of business in Summit County, Utah.

2. The defendant Ensign Company is a limited partnership organized and existing under and by virtue of the laws of the State of California; that the remaining defendants are all corporations duly organized and existing under and by virtue of the laws of the State of Utah.

3. On or about the 24th day of January, 1967, the Major-Blakeney Corporation and Robert W. Ensign entered into an agreement, Exhibit A attached hereto. Said agreement in part provides for the division of property acquired and to be acquired by the parties and which said property is located within the boundaries of the Park City West quadrangle as identified by the United States Geological Survey, field check date 1955, Summit County, Utah.

4. Thereafter, all of the interest of Robert W. Ensign in and to the agreement, Exhibit A, and in the property which is the subject matter of this action was assigned by the said Robert W. Ensign to Ensign Company, a limited partnership. Subsequently, the defendants Ski Park City West, Inc., and Aspen Grove, Inc.,

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acquired an interest in Exhibit A and in and to the property which is the subject matter of this action.

5. On or about June 26, 1968, Major-Blakeney Corporation assigned and transferred to plaintiff all of its right, title and interest in and to the agreement, Exhibit A, and in and to the properties then acquired and to be acquired by the parties and which constitute the subject matter of this action.

6. On July 31, 1968, the plaintiff, Park City Utah Corporation, and one of the defendants, Ensign Company, caused to have transferred to William S. Richards certain properties to be held by the said William S. Richards and thereafter distributed to plaintiff and the defendant Ensign Company and their assigns as set forth in said agreement and pursuant to future instructions to be received from Ensign Company and Park City Utah Corporation.

7. The defendants Aspen Grove, Inc., and Ski Park City West, Inc., claim an interest in some of the properties which are the subject matter of this litigation.

8. From time to time since the 24th day of January, 1967, the parties have agreed to and completed the division of certain properties and interest in properties as contemplated by the agreement, Exhibit A.

9. On or about the 24th day of March, 1970, the defendant Aspen Grove, Inc., with the knowledge of the other defendants, by letters instructed the said William S. Richards to make a division of certain property held by him between Aspen Grove, Inc., and Park City Utah Corporation. Plaintiff agreed to the division of property as outlined in the March 24, 1970 letter.

Thereafter, and pursuant to the March 24, 1970 letters received from the defendant Aspen Grove, Inc., William S. Richards submitted to plaintiff and defendants copies of deeds and other

documents preparatory to the division of the properties as requested by Aspen Grove, Inc., and approved by plaintiff. In addition, the plaintiff submitted to said defendants and to the said William S. Richards a proposed division of other properties in accordance with the agreements herein referred to.

10. Pursuant to the March 24, 1970 letters and at the request of the defendants, and with plaintiff's approval, certain properties have in fact been transferred by the said William S. Richards for the benefit of the defendants.

11. The defendants Aspen Grove, Inc. and Ski Park City West, Inc., by and through John Hansen, attorney and officer of the defendant Ski Park City West, Inc., subsequently advised the said William S. Richards that the defendants Ski Park City West, Inc., and Aspen Grove, Inc., would not ratify and accept the division of properties as previously outlined in the letters of March 24, 1970 by Aspen Grove, Inc., and as accepted by plaintiff.

12. A dispute now exists between plaintiff and the defendants concerning the division of properties and interests in properties subject to the agreement, Exhibit A, and to subsequent agreements between the parties, and until said dispute is settled,

the said William S. Richards cannot divide and distribute the properties and interests in properties as contemplated by the parties pursuant to said agreement.

13. The dispute which has arisen between plaintiff defendants is such that the plaintiff and said defendants cannot exercise their rights and duties with reference to the utilization, sale and transfer of properties which are the subject matter of this action, until said dispute is settled.

14. William S. Richards claims no interest, legal, equitable, possessory or otherwise, in and to the subject properties and has executed his consent to quit-claim said property

pursuant to order of the court, a copy of said consent is attached hereto, marked Exhibit B, and made a part hereof to the same extent and effect as if set out herein in full.

15. In addition to the properties held by the said William S. Richards there are other properties to be divided between plaintiff and defendants; that the dispute between the parties is such that plaintiff and defendants cannot exercise their rights and duties with reference to the utilization, sale and transfer of said properties until said dispute is settled.

16. The land which constitutes the subject matter of the March 24, 1970 letters referred to above is located in Summit County, State of Utah and is more particularly described in

Exhibits C and D attached hereto. Pursuant to said letter, the property described in Exhibit C and D should be conveyed to the parties as therein indicated.

17. The land described in Exhibits E and F attached hereto constitutes the remaining part of the land to be divided between the parties and is located in Summit County, State of Utah. It does not include the land described in the March 24, 1970 letters. Exhibit E is that land which plaintiff proposes should be conveyed to plaintiff. Exhibit F is that land which plaintiff proposes should be conveyed to defendants. The division of lands as set forth in Exhibits E and F is fair and equitable. Land parcels described in Exhibits E and F are identified by corresponding numbers in the map marked Exhibit G, attached hereto.

18. The defendants by virtue of their refusal to agree as to the conveyance of property have breached their agreement with plaintiff and plaintiff is entitled to a reasonable attorneys' fee.

WHEREFORE, plaintiff prays:

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(1) For judgment declaring and determining the property rights of plaintiff and defendants.

(2) For reasonable attorneys' fees and for plaintiff's costs incurred and further relief.

DATED this 2nd day of February, 1971.

EXHIBIT A TO COMPLAINT

AGREEMENT

This agreement made the Twenty-fourth day of January, 1967, by and between The Major-Blakeney Corporation, a corporation, hereinafter referred to as Major, and Robert W. Ensign, hereinafter referred to as Ensign:

WITNESSETH:

Whereas, Major, through its managing officer Robert Major, originally discovered and investigated certain real property lying within the U.S.G.S. Park City West Quadrangle, Utah, to determine the feasibility of developing the same into a recreational ski resort for profit, and has consequently received various commitments from the owners thereof to sell and/or lease said land to Major for such purposes; and,

Whereas, Major has qualified with the state of Utah, through its officer Robert Major, to construct and develop fixed engineering works such as highways, roads, bridges, dams, hydroelectric systems, water supply and similar projects related to the development of a ski resort, by virtue of the corporate engineering license No. 7378 and said officer's individual engineering license No. A11956; and,

Whereas, Major has further qualified with the state of Utah, Business Regulation Division, for the highest financial bid limit category "Class I", permitting said corporation to engage in the above mentioned engineering field unlimited by dollar amount; and,

Whereas, it is the purpose hereof that Major cause various land parcels to be conveyed in fee simple and/or sub-leased to Ensign, pursuant to Major's agreements with the owners now pending, thereafter to be developed by Major into a ski resort as more fully described hereinbelow;

NOW THEREFORE, in exchange for the mutual promises herein made and other valuable consideration, Major and Ensign agree as follows:

Purchase of Land

1. Henceforth neither Major or Ensign, directly or indirectly, shall acquire and/or lease real property the boundaries of the Park City West Quadrangle, U.S.G.S. Department of The Interior field check date 1955, outside the provisions of this agreement unless mutually consented to in writing by these parties.
2. Land purchases will be consummated through an escrow company bonded and

licensed in California, with similar affiliations in Utah. During the course of development, escrows will be opened from time to time by Major according to its agreement with the owners of the land to be acquired hereunder, wherein escrow instructions will direct that Major and Ensign or their respective nominees acquire title separately to plots of land equal in size and situated in substantially equivalent locations. Promissory notes representing the balance due for the purchase price of said land parcels, which notes may be secured by mortgages or other security

instruments, shall likewise be executed separately by Ensign and Major in equal amounts and terms covering separate but equal land parcels, as herein defined. Every cash payment shall release land free and clear of all encumbrances on the basis of three acres released to four acres paid for.

3. In every escrow for the purchase of land hereunder there shall be provided, in appropriate form, an easement for ingress and egress together with a reservation allowing installation of utilities sufficient to serve any portion of the land being conveyed, which easement shall conform in width and location to the best standards of land planning as defined by the local governing agency according to their subdivision specifications in this regard. Said easement shall be comprised of equal portions of the property to be granted Ensign and Major, respectively. At such time in the future as all or any part of the subject land is lawfully subdivided, thereupon, Major and Ensign, or their successors in interest, shall execute such tract maps and other documents as may be necessary and proper prerequisites to the recordation of subdivision plats, which may adjust minor variations of original bearings and distances in order to comply with sound land planning principles and the objectives herein stated. In any event, it is intended that parcels of land purchased hereunder shall at all times have legal unrestricted access from the Utah State highway for ingress and egress in favor of Ensign, Major and parties claiming under them.

4. Prior to opening any of the aforesaid escrows, Major shall present to Ensign the agreement entered into between Major and the land owners and Ensign shall have the right to either approve or disapprove the next proposed purchase thereunder. In the event any such proposed purchase is not approved by Ensign, Major may continue with the purchase of the rejected portion for its own account and shall

provide access, according to the Master Paln hereinafter described, for adjoining land previously conveyed to Ensign pursuant to paragraph "3." hereof.

5. Ensign shall be responsible for paying any and all cash consideration, fees, charges and other costs initially and subsequently required to acquire good title to the land which will be conveyed through escrows; this to include installments that become due upon promissory notes secured by mortgages or other security instruments, covering encumbered land thus purchased. Provided, however, such costs and charges as can reasonably be determined prior to opening escorw shall be enumerated by Major for Ensign's approval. Ensign may reject those costs which are unreasonable, excessive or unnecessary compared with customary costs charged by competing firms of good reputation. If rejected charges are not modified to levels charged by the average of three such competing firms,

Ensign hereby reserves the right to engage the most reasonable competing firm to accomplish the objectives cited.

Land to be Leased

6. Major is to acquire a leasehold interest in the real property westerly of Utah State Highway 248, between the 7,000 and 10,000 elevations, known as the Snyderville area, comprising approximately 3000 acres initially with contingent rights upon approximately 5,000 additional acres; all of said acreage presently in private ownership. Additionally, Major will execute use-permit applications with the U. S. Government Bureau of Land Management, covering approximately 1,000 acres, to allow use of said Bureau's land which adjoins the privately owned land above mentioned, for the recreational ski-run purposes hereinbefore set forth. Major shall sub-lease to Ensign the land encompassed by the aforesaid leasehold and use-permit in the form which finally emanates from negotiations now pending between Major and the land owners. However, Ensign shall not be compelled to undertake the obligations under any sub-lease, permit or otherwise, until the final form and terms thereof have been approved by Ensign. Failure to approve such terms will in no way affect Ensign's interest acquired or to be acquired in land not under lease or use-permit.

7. Based upon rental and deposit schedules previously delivered to the land owners of land to be leased hereunder, which schedules were approved by them

pending execution of formal lease agreements, Major shall sub-lease to Ensign the respective private property holdings shown, during the initial terms, for the consideration outlined as follows:

Condas Land

- a. Up to \$100,000.00 gross receipts per season: Major shall receive 4.8% thereof

From.. 100,000.00	"	"	to \$200,000.00:	"	"	"	5.8%	"
From.. 200,000.00	"	"	to \$300,000.00:	"	"	"	6.8%	"
From.. 300,000.00	"	"	to 400,000.00:	"	"	"	7.5%	"
From.. 400,000.00	"	"	to 500,000.00:	"	"	"	7.8%	"
From.. 500,000.00	"	"	to 600,000.00:	"	"	"	7.9%	"
Over.. 600,000.00	"	"	to.....:	"	"	"	8.7%	"
- b. Upon the completion of one or more new chair-lifts during any calendar year, equalling not less than 2,500 lineal feet, for the subsequent 4 ski seasons the rate above \$600,000.00 gross receipts shall revert to 4.8%, 5.8%, 6.8%, 7.5%, 7.8%, 7.9%, and 8.7%, in that order, for succeeding \$100,000.00 bracket.
- c. The foregoing percentage of gross receipts rates shall include off-season maintenance of existing ski runs without further expense to Ensign, as more fully described hereinafter under "Planning, Development and Engineering."
- d. Upon Ensign's approval and execution of the sub-lease herein referred to, a lease deposit in the sum of \$10,000.00 shall be deposited by Ensign, payable in two equal installments 120 days apart if desired. Said deposit shall be applied upon the 4th operating ski season sub-lease rental.

Russell Land

- e. Up to \$100,000.00 gross receipts per season: Major shall receive \$3.50 per acre
- | | | | | | | | | | |
|-------------------|---|---|------------------|---|---|---|------|---|---|
| From.. 100,000.00 | " | " | to \$200,000.00: | " | " | " | 4.50 | " | " |
| From.. 200,000.00 | " | " | to 300,000.00: | " | " | " | 5.25 | " | " |
| From.. 300,000.00 | " | " | to 400,000.00: | " | " | " | 6.00 | " | " |
| From.. 400,000.00 | " | " | to 500,000.00: | " | " | " | 6.75 | " | " |
| From.. 500,000.00 | " | " | to 600,000.00: | " | " | " | 7.50 | " | " |
| Over.. 600,000.00 | " | " | to.....: | " | " | " | 8.25 | " | " |
- f. Upon the completion of one or more new chair-lifts during any calendar year, totalling not less than 2,500 lineal feet, for the subsequent 4 ski seasons the rate above \$600,000.00 gross receipts shall revert to \$3.50, \$4.50, \$5.25,

- \$6.00, \$6.75, \$7.50 and \$8.25 per acre, in that order, for succeeding \$100,000.00 brackets.
- g. The above stated "gross receipts", in this Russell section and the "Condas land" section, is defined as income derived and limited to the specific land area section named and excluding such income from any and all other areas, adjoining or otherwise. Separate accounting ledgers shall be maintained by Ensign separating receipts as between the Russell and Condas areas.
- h. The foregoing dollars-per-acre rates shall include off-season maintenance of existing ski-runs without further expense to Ensign, as more fully described hereinafter under "Planning, Development and Engineering".

- i. Upon Ensign's approval and execution of the sub-lease covering the land in this section, a lease deposit in the sum of \$5,000.00 shall be deposited by Ensign, payable in two equal installments 120 days apart if desired. Said deposit shall be applied upon the 4th operating ski season sub-lease rental for this land area.

U. S. Government and Miscellaneous Land

- j. As to land areas not included within the foregoing Condas or Russell sections, that may be utilized in conjunction with the subject ski resort under lease and/or use permits, Ensign shall pay to Major the actual cost according to the terms thereof plus an additional \$2.00 per acre of land thus encompassed, per season, to help defray Major's expense in the off-season maintenance of any ski-run segments thereon, without further expense to Ensign therefor.

Planning, Development and Engineering

8. It is the intention hereof that in substance Major is both selling and leasing ski resort land to Ensign, any form to the contrary notwithstanding, and in conjunction therewith Major is to implement such sale and lease herein by performing certain acts and providing services and/or materials furnished by others competent to do so, as may be necessary to complete the physical elements of the ski resort; this to include, but not limited to, project planning, site preparation, off-site preparation and structures. As developer, Major shall exercise over-all control and direction of the entire project receiving

payment therefor from Ensign

covering any and all overhead, supervision and disbursements of any nature or kind whatever needed to complete the project as hereinafter recited.

9. Major shall cause to be prepared a Master Plan for the entire commercial and/or residential ground site area delineating building plots, roadways, easements, landscaping, engineering structures and ski runs. Based thereon various maps, profiles, surveys and structure plans will be prepared from time to time, in accordance with applicable governmental requirements, preceding the physical construction of improvements therein described. Prior to commencing work upon the foregoing drawings, or any of them, Ensign must authorize the same in writing; thereupon, funds necessary to defray their cost shall be placed in escrow with instructions to release the funds on receipt of completed drawings together with appropriate lien releases, receipts or affidavits of payment evidencing complete discharge of the obligation. The sums set forth below, opposite the scope and identity of the drawings to be produced, are inclusive and no further amounts shall be authorized Major whether for airline fares, per diem, local transportation or similar out-of-state extra expenses incurred while supervising conduct of the work, to wit:

- k. Ground Site Evaluation: Studies shall be made and written reports furnished as to storm water drainage

and erosion, domestic water sources, soils survey, community services, governmental zoning-planning regulations, title reports, waste disposal, public or private utilities. Cost: \$1,800.00

1. Project Master Plan: In intermediate scale, there shall be provided a boundary survey; serial terrain photographs, topographic-contour maps, soils plan, zoning and land use plan, street patterns, building sites, utility and public areas, plan, drainage courses, tract restrictions and covenants including architectural controls, general specifications and elevation layouts. Cost: \$5,700.00.
- m. Governmental Tentative Maps: For the initial and subsequent land developments, constituting only portions of the Master Plan, proposed for completion in stages over a period of time, a large scale "tentative map" (containing the street lay-out, lot dimensions, topography of 1 ft. contour intervals, utility-drainage easements and public dedications) in greater detail than

said Master Plan shall be prepared and presented at formal hearings before the various city, county and state commissions for their recommendations and approvals. Cost per lot shown: \$15.00

- n. Governmental Final Maps: After conforming a "final map" and collateral exhibits to the conditions of approval resulting from appearances before the aforesaid tentative map hearings and obtaining through Ensign signatures upon the required face sheet certificates of all parties holding title to land previously conveyed to him, a subdivision bond shall be posted pursuant to statute by said owners and thereafter said final subdivision map will be filed of record. Cost per lot filed: \$27.00
- o. Governmental Improvement Plans: Following recordation of the final map, street profiles and plans, domestic water supply and waste disposal designs, electric power and gas supply plans will be prepared as working drawings complying with any and all codes and regulations together with engineering department recommendations. Cost per lot included: \$45.00
- p. Grading Plans: Prior to the construction of any buildings and/or engineering structures, including earth moving, there shall be prepared a large scale grading plan encompassing final site designs and necessary ski-run earth contour changes. Cost per lot or plot shown: \$19.00
- q. Architectural Schematic Drawings: To preserve continuity, theme and aesthetic value for the project as a whole, thereby protecting the interests of Major and

Ensign, Major shall engage competent, reputable architects to provide all preliminary elevation and floor plan studies for buildings proposed to be erected upon plots of land where Ensign and/or Major has retained control thereof. Such preliminary plans will be prepared pursuant to the desires of any plot owner thus involved, consistent with the Master Plan, at these costs:

Up to 1,000 square feet of building area for .50¢ per sq. ft.

The next 4,000 square feet of area shall equal .45¢ per sq. ft.

Above the 5,000 square foot previous total shall equal .38¢ per sq. ft.

r. Architectural Working Drawings: Upon the design approval, above mentioned, as governed by the Master Plan, the architects shall promptly furnish

final, complete working drawings including all mechanical, electrical and structural engineering therefor based upon the said preliminary design and complying with applicable codes, rules and regulations required by public authority prerequisite to construction. Final design costs are as follows:

Up to 1,000 square feet of building area shall equal .50¢ per sq. ft.

The next 4,000 square feet of area shall equal

.45¢ per sq. ft.

Above the 5,000 square foot previous total
shall equal .38¢ per sq. ft.

s. Drawings, Plans and Maps Not Included: Ensign shall employ a ski chair-lift firm to design and install such lift facilities as may be contemplated by the express provisions of the Master Plan, subject to Major's over-all supervision and coordination of all such firms incident to the project. Other plans, maps, drawings and reports not specifically recited herein are excluded from Major's scope of responsibility.

10. Major shall cause to be constructed any and all streets, utilities, building sites, ski-runs, buildings and structures of any kind or nature whatsoever that may be developed upon the real property under the direct or indirect control of Ensign, or company in which he is a managing officer. Excluded therefrom are chair-lifts, trams or other such conveyances used to transport skiers into or upon ski slopes. On the basis of final governmental approved working plans, covering items hereinbelow captioned "Bid Contracts," Major shall submit to Ensign a lump sum bid price for the completion of such work. At that juncture Ensign must approve or reject said bid within 10 calendar days. Upon rejecting a bid, Ensign shall obtain bids from other "Class 1" firms, covering the same plans and specifications. Thereupon, Major shall have the option of revising its bid to equal the average of the three lowest bids

submitted to Ensign, in which case Major must be awarded the contract in the revised amount. Failure to revise a bid, in this respect, will abrogate Major's construction right as to that specific contract together with any liability for the outcome thereof. Funds for paying the contract amounts shall be placed in escrow beforehand earmarked for disbursement semi-monthly as the work progresses, subject to verification by Ensign that labor and materials thus far installed are not exceeded by funds released according to an impartially validated cost breakdown previously deposited in escrow. Appropriate lien releases for all labor and

materials furnished to the date of disbursement must be provided Ensign prior to the release of funds. At the time construction contracts are executed, Ensign must be furnished with a certified list of suppliers who will contribute material to the said construction, which list will be used by Ensign to verify the sufficiency of lien releases thereby received. Major covenants with Ensign to furnish the best skill and judgment of its officers and employees in providing business administration and superintendence of the project as a whole using every effort to keep upon the work at all times an adequate supply of workmen and materials securing its execution in the best, soundest and most expeditious manner consistent with the interests of Ensign, covering the following:

- t. Survey Field Staking: Prior to preparing ski-runs, survey stakes shall be placed in ground locations to control and delineate the limits thereof according to the Master Plan, for the guidance of equipment crews. Cost per lineal foot of ski-run center-line: \$.22¢
- u. Ski-Slope Clearing and Surface Grading: Pursuant to the survey staking above mentioned, ski runs shall be prepared in such a manner as to permit skiers use thereof without obstruction within the run when the official packed snow depth measurement equals 10 inches or more above the natural ground. The cost per acre shall be limited by the Utah State Highway Department's average unit low bid price list for the year 1965 applicable to similar work.
- v. Streets: At no expense to Ensign, Major shall install paved streets and paved rolled-curbs not less than 32 feet wide for the paved road-bed nor less than 50 feet wide of total dedication and/or easement area, as depicted on the Master Plan, for lots or parcels as they are released to Ensign free and clear according to the terms of paragraph "2," hereinbefore recited. Until it shall likewise be released, land lying between Ensign's released property and the ski terminal complex shall be traversed with a good winter-use oil surfaced road, sufficient to carry heavy traffic from

the state highway to said terminal, at no expense whatever to Ensign. Major shall provide full and complete lien releases for any and all work covered hereby.

- w. Bid Contracts for Utilities: Waste disposal and drainage systems, domestic water supply, electric power, gas supply and telephone service shall be provided under appropriate contract awards in conformity with plans and specifications encompassed by paragraph "9." herein.
- x. Bid Contracts for Buildings and Structures: Commercial buildings, housing, airstrips, parking areas, dams, reservoirs, bridges, basins, open enclosures, landscaping, excavations under grading plans and all manner of similar construction will be completed according to the Master Plan under contract awards as outlined above.
- y. Ski-run Maintenance: At no further expense to Ensign, Major shall provide off-season maintenance of the ski runs to insure conservation of the original surface developed under paragraph "u." herein. This to include erosion control, removal of storm debris and boulders, fallen tree removal and landslide dispersion up to ten thousand cubic feet. For that portion of landslides over said latter quantity, Major must meet

an average of the three lowest bids submitted, to remedy the effects of such slide, in accordance with the procedure above mentioned.

General Conditions

11. Major and Ensign, as to their separate interests, agree that all liability insurance, compensation insurance and fire insurance, where appropriate, shall be carried by each party for the protection of the other as to those hazards that should be reasonably expected to arise in connection with the business enterprises contemplated herein. This coverage shall be to indemnify and save each other harmless from and against any and all claims, loss, damage, injury and liability however caused, resulting from these respective business activities.
12. In the event Major and/or Ensign defaults in the performance of an act required hereunder, after 10 days written notice to the defaulting party should said default remain uncured the party not in default may cure it and thereupon will succeed to any benefits available as a consequence. The failure by one of the

parties at any time to require performance by the other of any provision hereof, shall in no way affect the right to thereafter enforce the same. Nor shall the waiver by either party of any breach be taken or held to be a waiver of any succeeding breach, or as a waiver of any provision itself. If either party brings suit to compel performance of or to recover for

breach of any condition herein, the losing party shall pay reasonable attorney fees and costs to the other.

13. It is a primary purpose of this Agreement to establish separate, distinct proprietary interests in the proposed ski resort as between Major and Ensign; and no partnership, joint venture or equivalent significance shall be attributed hereto. Major shall be shown on any and all signs or other advertising forms as "Developer" and Ensign shall be designated "Proprietor or "Operator" thereon. Further, this Agreement shall not be assigned or transferred in whole or part, except that the parties may contract with others fully in reliance hereon.

14. It is expressly agreed that this written contract embodies the entire agreement of the parties in relation to the subject matter, and that no understandings, verbal or otherwise, in relation thereto, exist except as hereinabove expressly set forth. No change, supplementation or modification hereon shall be valid unless it is in writing and signed by both of the parties. However, without further writing required should it appear that any of the terms herein contained are in conflict with any rule of law or statutory provision, said terms shall be deemed inoperative to the extent of such conflict and thereby modified to conform.

15. Neither party hereto shall be held responsible for damages caused by delay or failure to perform hereunder, when the delay or failure is due to fire, strikes, flooding, snow storms, other acts of God, war, riots, public authorities acting

unreasonable or delays caused by public carriers, all or any of which cannot be reasonably forecast and/or provided against.

16. All notices shall be in writing and will be effective upon personal delivery or registered mailing, postage prepaid, directed to the address of Major or Ensign, as shown beneath their signatures below. Notice shall be deemed given 48 hours after depositing the same in a United States Post Office in California.

IN WITNESS WHEREOF, Major and Ensign have hereunto set their hands on the date first above mentioned.

The Major-Blakeney Corporation

/s/ R. W. Ensign

/s/ R. W. Major

By
Robert W. Ensign

By
Robert Major, President
Post Office Box 49765
Los Angeles, California 90049

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ORDER

The above entitled matter came on for hearing at a special setting pursuant to the previous Order of the court on the 7th day of May, 1971, before the Honorable Maurice Harding, on defendants' Motions to join City Development Corporation and William S. Richards as additional parties, to consolidate the case of Ski Park City West, Inc., vs. Major-Blakeney Corporation et al, Civil No. 4119, with the above entitled matter, and defendants' Objections to Notice of Readiness for Trial; and,

plaintiff's Motion for Immediate Trial Setting and further argument of plaintiff's Motion for Partial Summary Judgment. Plaintiff was represented by Gary A. Frank of Richards & Rich and the defendants were represented by Arthur H. Nielsen of Nielsen, Condor, Hansen & Henroid. The parties, by and through their counsel, having entered into a stipulation in open court with respect to the above matters as evidenced by the Transcript of Proceedings, the original of which is attached hereto as

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Exhibit "A", and the court having heard the stipulation of the parties and being fully advised in the premises and good cause appearing therefore, and upon motion of counsel,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. That City Development Corporation be, and it is hereby, made a party plaintiff in the above entitled matter and the case of Ski Park City West, Inc., vs. Major-Blakeney Corporation, et al, Civil No. 4119, be, and the same is hereby, consolidated with the above entitled matter.

...

4. That with respect to the property located in Park City West Plat No. 1, a subdivision of Section 36, Township 1 South, Range 3 East; and, Section 31, Township 1 South, Range 4 East, Salt Lake Base & Meridian, Summit County, Utah, it is hereby ordered that the property be divided, awarded and confirmed to the parties as follows:

...

5. That with respect to the property located in Park City West Plat No. 2, a subdivision of Section 1, Township 2 South, Range 3 East; and, Section 36, Township 1 South, Range

3 East, Salt Lake Base & Meridian, Summit County, Utah, it is hereby ordered that the property be divided, awarded and confirmed to the parties as follows:

...

6. That the said William S. Richards is hereby authorized to make, execute and deliver to the parties in his capacity as escrow holder-trustee, without warranty and without recourse, any and all documents as are necessary to effectuate the transfer of title of the property as set forth in paragraphs 4 and 5 above.

7. That the parties execute and deliver to the other any and all documents necessary to completely effectuate the transfer of title of the property as set forth in paragraphs 4 and 5 above, and to take such steps as are necessary to remove any cloud heretofore created by the respective parties as it pertains to that property divided, awarded and confirmed to the other.

8. That the division relating to Park City West Plat No. 1, set forth in paragraph 4 above, is without prejudice to the claims of the respective parties; provided, however, that any

recovery or recourse of either party be, and it is hereby, limited and is to be satisfied solely from Lots 20, 21, 22 and 23 of said Plat No. 1, the title to which is to be retained by said William S. Richards, escrow holder-trustee, pending further order of the court.

9. That plaintiff's complaint and the counterclaim of the defendant Ski Park City West, Inc., insofar as they relate to Park City West Plat No. 2, a subdivision more particularly

described in paragraph 5 above, be, and the same are hereby, dismissed.

10. That this Order is to establish ownership by the parties of the property as described in this Order and there shall be no alteration or modification of the division of property set forth in paragraphs 4 and 5 above, and the marketability of said property shall in no way be impaired by the parties or this Order.

DATED this 21st day of May, 1971.

BY THE COURT:

Maurice Handberg
DISTRICT JUDGE

STIPULATION

The parties above named, by and through their respective counsel of record, hereby stipulate as follows:

1. That the property which constitutes the subject matter of the instant proceeding and which was not included in the previous Order of the Court entered on the 21st day of May, 1971, may be awarded, divided and confirmed to the respective parties pursuant to the map and three (3) pages of legal descriptions collectively marked Exhibit A and by this reference incorporated herein the same as if fully set forth.

2. That with respect to the property located in Park City West Plat No. 1 that has not heretofore been divided by and between the parties, it is hereby stipulated that the same may be divided, awarded and confirmed as follows:

TO THE PLAINTIFF PARK CITY UTAH CORPORATION:

... R - 204

-

TO THE DEFENDANT SKI PARK CITY WEST, INC.,
a corporation:

... R - 205

8. That the parties hereto recognize that there are presently several executory real estate contracts involved in the Park City West project wherein property is being acquired for the project from original sellers and certain properties within these

original acquisitions are being sold to third party purchasers. With respect to these transactions, it is hereby agreed and stipulated as follows:

A. That for the protection of the existing original sellers and third party purchasers the defendants shall without restriction or limitation, except as herein provided, apply third party purchaser proceeds to original seller obligations.

B. On receipt of third party proceeds ^{not heretofore assigned} and pending

disbursements thereof to original seller obligations, the defendants shall deposit said proceeds in a separate trust account, establishment, terms and conditions of withdrawal therefrom to be subject to the approval of plaintiff. It is the intent hereof that said proceeds are to be segregated from the general funds, accounts and expenditures of defendants and applied only to original seller obligations, and are to be received and held in trust by the defendants to insure performance of the obligations to original sellers.

C. In the event of a default by a third party purchaser, the parties hereto agree and stipulate that the property shall be resold and the proceeds thereof applied to any outstanding original seller obligation as provided for in subparagraph B above.

(1) Should there be a deficiency between the proceeds of the resale and the outstanding original seller obligations, said deficiency shall be the sole responsibility of the defendants.

(2) Should it not be necessary to resell the property reclaimed by the project from a defaulting third party purchaser to meet the obligations to original sellers, then said property shall be divided between plaintiff and the defendant Ski Park City West, Inc., on a fifty-fifty basis, taking into consideration the uses and intended development of surrounding property.

D. It is further agreed and stipulated that the above stated procedure of permitting defendants to apply third party purchaser proceeds to original seller obligations is an accommodation by plaintiff to defendants and shall not be construed or interpreted as a waiver, modification or alteration of the other basic agreements between the parties, and should defendants

fail to perform as herein provided, this procedure may be revoked by plaintiff and the original contractual prohibition against this payment procedure shall be reinstated and enforced.

E. It is further agreed and stipulated that the above stated payment procedure does not alter, amend or modify defendants' obligations to original sellers or third party pur-

chasers and in the event of default by defendant, plaintiff may invoke all of its rights and remedies that exist against defendants.

DATED this 23 day of July, 1971.

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JUDGMENT ON STIPULATION

Based on the Stipulation of the parties dated the 23 day of July, 1971, and on motion of Gary A. Frank, of Richards, Richards, attorneys for plaintiffs, and the Court being fully advised in the premises, and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows

1. That with respect to the property located in Park City West Plat No. 1, a subdivision of Section 36, Township 1 South, Range 3 East; and, Section 31, Township 1 South, Range 4 East, Salt Lake Base & Meridian, Summit County, Utah, it is hereby ordered that the property be divided, awarded and confirmed to the parties as follows:

TO THE PLAINTIFF PARK CITY UTAH CORPORATION:

...

TO THE DEFENDANT SKI PARK CITY WEST, INC., a corporation:

...

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2. That with respect to the property described in Exhibits E, F and G of plaintiffs' Complaint on file herein,

is hereby ordered that the property be divided, awarded and confirmed to the parties as follows:

TO THE PLAINTIFF PARK CITY UTAH CORPORATION:

...

TO THE DEFENDANT SKI PARK CITY WEST, INC., a corporation:

...

3. That William S. Richards is hereby authorized to make, execute and deliver to the parties in his capacity as escrow holder-trustee, without warrant and without recourse, any and all documents as are necessary to effectuate the transfer of property as set forth in paragraphs 1 and 2 above.

4. That the parties execute and deliver to the other any and all documents necessary to assign and/or convey their interest in that property divided, awarded and confirmed to the other, and to take such steps as are necessary to remove any cloud on the marketability of said property.

...

IT IS FURTHER ORDERED that for the protection of the existing original sellers and third party purchasers the defen-

dants shall without restriction or limitation, except as hereby provided, apply third party purchaser proceeds to original seller obligations.

A. On receipt of third party proceeds and pending disbursements thereof to original seller obligations, the defendant shall deposit said proceeds in a separate trust account, the establishment, terms and conditions of withdrawal therefrom to be subject to the approval of plaintiff. It is the intent hereof that said proceeds are to be segregated from the general funds, accounts and expenditures of defendants and applied only to original seller obligations, and are to be received and held in trust by the defendants to insure performance of the obligations to original sellers.

B. In the event of default by a third party purchaser, the property shall be resold and the proceeds thereof applied to any outstanding original seller obligation as herein provided above.

(1) Should there be a deficiency between the proceeds of the resale and the outstanding original seller obligation,

said deficiency shall be the sole responsibility of the defendant.

(2) Should it not be necessary to resell the property reclaimed by the project from a defaulting third party purchaser to meet the obligations to original sellers, then said property shall be divided between plaintiff and defendant Ski.

City West, Inc., on a fifty-fifty basis, taking into consideration the uses and intended development of surrounding property.

IT IS FURTHER ORDERED that the above stated procedure of permitting defendants to apply third party purchaser proceeds to original seller obligations shall not be construed or interpreted as a waiver, modification or alteration of any other basic agreement or agreements between the parties and should the defendants fail to perform as herein ordered, this payment procedure is without prejudice to plaintiff to revoke the same and reinstate the original contractual prohibition against said payment procedure.

IT IS FURTHER ORDERED that the above stated payment procedure does not alter, amend or modify defendants' obligations to original sellers or third party purchasers and is without prejudice to plaintiff invoking all of its rights and remedies against defendants in the event of breach or default.

IT IS FURTHER ORDERED that this Judgment, together with the Order previously entered by the Court on the 21st day of May, 1971, constitutes a full and complete determination of the matters presented by the above entitled action.

DATED this 22nd day of July, 1971.

BY THE COURT:

Theresa A. Jones
DISTRICT JUDGE

ORDER TO SHOW CAUSE

Based on the verified Affidavit filed herein and upon motion of Don R. Strong, Attorney for plaintiffs, and the court being fully advised in the premises,

IT IS HEREBY ORDERED that the defendant Ensign Company, by and through its general partner Robert Ensign, and the defendant Ski Park Co. West, Inc., by and through its president, or through some other officer or director, and, the defendant Aspen Grove, Inc. [whose name has been changed to National Property Management, Inc.] by and through its president, or through some other officer or director, be and they all are hereby ordered and directed to appear before J. Robert Bulk one of the judges of the above entitled court, in his courtroom at the Utah County Courthouse, Provo, Utah, on the 28th day of June 1977, at the hour of 8:00 o'clock A.M., to then and there show cause, if any they may have, why they should not be held in contempt of court for violation of the Order dated May 21, 1971, and Judgment dated July 23, 1971, previously entered in the above entitled matter; and, further to show cause, if any they may have, why they should not be compelled to forthwith comply with such Order and Judgment; and, further to show cause, if any they may have, why a receiver should not be appointed to collect and apply funds upon

certain obligations described in said Order and Judgment; all of which

matters have been set forth in the Affidavit attached hereto.

DATED this 5th day of June 1974

BY THE COURT:

[Signature]
DISTRICT JUDGE

MEMORANDUM DECISION

Plaintiffs filed a motion, supported by an affidavit, for an order to show cause in the above entitled action, seeking to have defendants held in contempt of court for an alleged violation of an order, dated May 21, 1971, and a judgment, dated July 23, 1971, in this case. Plaintiffs also asked to have defendants compelled to comply with the order and judgment, and for the appointment of a receiver to collect and apply funds to carry the aforesaid order and judgment into effect.

The order to show cause was duly issued and defendants moved to dismiss it, alleging insufficient grounds for its issuance, and its vagueness and ambiguity, and that sufficient reasons for the appointment of a receiver had not been stated.

The matter came on for hearing on the order to show cause and the motion for its dismissal on October 23, 1974, the court reserving a ruling on the motion to dismiss until the plaintiffs had had an opportunity to present evidence in support of the order to show cause, and after taking the testimony of Dr. Joseph L. Krofcheck, the plaintiffs not tendering any

further evidence other than the files and records of the court, and after considering the arguments of counsel, the court now holds:

1. That defendants are not guilty of contempt of court, since nothing was shown to indicate any intentional violation of the provisions of the aforesaid order or judgment.

2. That no facts were shown that would warrant the appointment of a receiver.

3. That title and possession of some of the land divided to the plaintiff, Park City Utah Corporation, by the aforesaid order and judgment are now in jeopardy because of certain foreclosure actions in this court, which were initiated by reason of the failure to pay the obligations for which the land was the security.

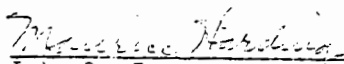
4. That the order, dated May 21, 1971, and the judgment, dated July 23, 1971, in this cause are valid and binding on the parties hereto and require the defendants, among other things, to pay and discharge the purchase money obligations on the land divided to plaintiff, Park City Utah Corporation, it being provided that the funds for such purpose shall come from certain third party purchasers, except in case of a deficiency as provided by the provision of the judgment mentioned in 4. B (1).

5. That it was not shown that the defendants had received any proceeds from third party purchasers which should have been applied to discharge the obligations sued upon in the aforesaid foreclosure actions, or that should have been otherwise applied pursuant to the aforesaid order and judgment, or that any such proceeds had been diverted to other channels.

The court is aware that the basic documents referred to in the judgment provide for payment of certain land purchases in the named area to be paid by only one of the parties, but the provisions of those documents have not been incorporated in toto in the order or judgment in this cause, and are not now before the court for consideration.

The order to show cause should be and is hereby dismissed.

Dated this 6th day of November, 1974.



Judge Pro Tem.

MOTION TO VACATE AND
SET ASIDE ORDER
CONCERNING EXECUTION
DATED APRIL 8, 1975

Defendants, Ensign Co., Ski Park City West, Inc. and
Aspen Grove, Inc. hereby respectfully move the above entitled
court to enter an order herein vacating and setting aside that
certain order dated April 8, 1975 relating to Plaintiff's
"Motion to Have the Final Decrees herein enforced", dated
December 8, 1974 and to an unwritten "Motion for leave to
execute", upon the following grounds and for the following
reasons:

1. Immediately after the hearings which took place
on February 27 and March 28th, 1975, Defendants entered into
settlement negotiations with counsel for the Plaintiffs and for
one Dr. Joseph L. Krofcheck who evidently claims to own and who

apparently holds title to most or all the land divided to Park City Utah Corporation in 1971 in this action. In view of such settlement discussions, Defendants, and Counsel for Defendants did not deem it necessary or appropriate to go forward with the litigation while such settlement discussions were proceeding.

2. The subject order dated April 8, 1975 was entered

at the special instance and request of Counsel for the Plaintiff without prior notice to Counsel for Defendants and at a time when discussions were still proceeding. Counsel for Defendants wrote a letter to the Court and to Counsel for Plaintiffs stating the understanding of Counsel for Defendants with respect to the lack of need to proceed with the litigation while settlement discussions were proceeding. A copy of such letter is annexed hereto marked exhibit "A" and is by this reference a part hereof.

3. Settlement discussions are still proceeding between Dr. Krofcheck on the one hand and Defendant's representatives on the other, all of whom presently reside in California. The entry of the subject order has unnecessarily complicated such settlement discussions because of the attitude and position of one Robert W. Major which attitude and position is known to both sides and to the Court, by reason of prior experience in this and related litigation.

4. Said Joseph L. Krofcheck is the real party in interest by his own testimony in open court on October 22, 1974 to the effect that he owns the property divided to Plaintiff Park City Utah Corporation in this proceeding and is the real client of the attorney appearing ostensibly for the Plaintiffs herein, hence the Court improperly entered the subject Order at the demand of one not even a party hereto.

5. Counsel for Defendant did not receive notice that such order had been entered until he received a copy of such order in the mail on May 16, 1975.

6. In Civil No. 4275 pending in the District Court of Summit County, State of Utah, Defendants and others were granted leave to attach and did attach the property divided to Plaintiff Park City Utah Corporation in this action. In addition, Defendants and others were given the right to garnish and did garnish all obligations owed by Dr. Joseph L. Krofcheck to Plaintiffs, including Plaintiff Park City Utah Corporation, and did further garnish any and all obligations of every kind

and description owed by the Defendants in this proceeding to the Plaintiffs including those, if any, owed to the Plaintiff Park City Utah Corporation. It is inconsistent, confusing and inappropriate to permit Plaintiffs or any of them any execution upon the property or assets of the Defendants, or any of them, when the Defendants have heretofore attached such land and even their own obligations, if any, to the Plaintiffs, including the Plaintiff Park City Utah Corporation.

7. The Defendants in this matter have extensive counterclaims against the Plaintiffs and have made such the subject of Civil Action 4275. Defendants have further claim and still claim the right to offset their claims against any obligations they may have to the Plaintiffs. This Court should not permit Plaintiffs to avoid or defeat Defendants right of offset by granting Plaintiffs leave to execute at this point in Civil Number 4143, while Civil 4275 still pends unresolved.

The Court has permitted Plaintiffs (Defendants in Civil No. 4275) to file an extensive counterclaim in Civil No. 4275 to which Defendants (Plaintiffs in 4275) must reply, and forcing which there must be further proceedings in 4275 to clarify the issues. Defendants are requesting the Court in Civil No. 4275 to either permit Defendants (Plaintiffs in 4275) to raise all complaints and to finally litigate all causes of action which Defendants have against Plaintiffs or to enter an order in an appropriate form to permit an interlocutory appeal to the Utah Supreme Court to decide what issues Defendants are entitled to raise in Civil No. 4275 by affirmative claim or by defense to Plaintiffs (Defendants in Civil No. 4275) counterclaim in said Civil No. 4275. It is highly inappropriate for this Court to enter additional orders in this litigation granting Plaintiffs essentially all of the relief Plaintiffs have demanded as Defendants in Civil 4275 and as to which Defendants have defenses and offsets as set forth in Civil No. 4275 before such claims are litigated to a conclusion in Civil 4275. Great injustice has been and will continue to be the result of such procedure.

8. The subject order is ambiguous as to what "Defendants" it actually refers to. It broadly assumes that all "Defendants" have a duty to pay for Major's land; yet, whether or not the Defendant Ski Park City West, Inc. and the Defendant Aspen Grove, Inc. ever had any affirmative obligations enforceable by Major is an issue which remains to be litigated in Civil No. 4275. Such issue was earnestly sought to be litigated when this action, Civil No. 4143, and Civil Action 4119, also pending in Summit County, were consolidated for trial. The Court specifically refused to determine such issue in the trial of Civil No. 4119 and such was raised as an issue in Civil 4275 and still remains an issue in 4275. It is inappropriate for this Court to enter orders in this litigation (or in Civil No. 4119 for that matter) granting Major or his corporations--or Krofcheck, who is not even a party, relief on the basis of an assumption by Major which is earnestly contested by Ski Park City West, Inc. and Aspen Grove, Inc.

9. Even if Defendants, or some of them, are ultimately found to have an obligation to pay for Major's land, notwithstanding Major's breaches of contracts, and notwithstanding the fact that the Court has granted Defendants (Plaintiffs in Civil No. 4275) leave to attach and garnish even Defendants' own obligations to Major and his Park City Utah Corporation, still no execution should be issued in this

action for the reason that the land divided to Major's Park City Utah Corporation in this matter has been paid for for the most part and, with respect to the only parcels which have not been paid for, the fault lies outside the control of the Defendants.

In this regard, Defendants represent as follows as to the present status of the contracts for purchases of land: include parcels divided to Plaintiff Park City Utah Corporation by virtue of the stipulated division herein in 1971:

...

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(f) Elwood Nielsen Purchase. A parcel acquired from Elwood Nielsen has been partially paid for by Ensign or Ski Park City West, Inc. notwithstanding the fact that no portion thereof was sold to any "third-party purchaser". Elwood Nielsen assigned his interest as seller in a portion thereof to Downey State Bank. None of the Defendants had the financial ability to pay the sums that became due on the Downey State Bank parcel, and by reason thereof a foreclosure action was instituted and proceeded to a Sheriff's sale. The portion subject to the foreclosure action was a part of the land in the Nielsen tract divided to Major's Park City Utah Corporation. Plaintiffs were named in said foreclosure action as is shown by the files and records in said foreclosure action, Civil No. 4473-A filed in this Court. Plaintiffs had full opportunity to pay but refused to pay the sums becoming due Downey State Bank and further failed, neglected and refused to redeem the

land subject to said foreclosure action from the Sheriff's sale notwithstanding the fact that Krofcheck claims to have substantial funds, assets and resources and ample financial ability. By reason of said failure to redeem, said land has apparently passed to the purchasers at the foreclosure sale. The amount of the judgment in favor of Downey State Bank for which such land was sold was the total sum of \$37,744.42 including attorney's fees and Sheriff's fees and other costs unnecessarily incurred by reason of Plaintiffs failure to use some of their resources to pay for the said land and thus preserve it to themselves. Plaintiffs or Krofcheck obviously should have paid for such land and could have made claim in Civil No. 4275 against Ensign Co., for reimbursement for said payment, consistent with Majors erroneous legal theory that he can continue to make Ensign Co. (and Ski Park City West, Inc.) pay for land for Major even though Major has totally breached all of his duties to Ensign Co. and Ski Park City West, Inc. under the documents Major calls the "basic agreements".

...

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Wherefore, Defendants earnestly submit that the only appropriate action for this Court to take at this time in reference to said Order Dated April 8, 1975 is to vacate and set said order aside.

Dated this 5th day of June, 1975.

MOTION FOR ORDER VACATING
WRIT OF EXECUTION

Defendants hereby respectfully move the above entitled Court to make and enter an Order herein vacating, setting aside and discharging that certain Writ of Execution issued by the Clerk of the above entitled Court on or about May 15, 1975 upon the following grounds and for the following reasons:

1. The Proceedings ostensibly brought by Defendants upon which said Writ of Execution was issued were not brought by the real party in interest as required by Rule 17, Utah Rules of Civil Procedure. Joseph L. Krofcheck claims to own the rights of the Defendants as Assignee or in some other capacity, yet he is not a party to the captioned litigation, has not brought any proceedings therein in his own name, and has never made any proper showing in fact that he is the real party in interest as he asserts.

2. Said Writ of Execution was issued pursuant to an Order concerning execution dated April 8, 1975 which Order

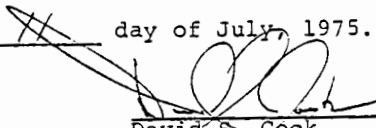
should be vacated and set aside for the reasons set forth in Defendant's Motion dated June 5, 1975.

3. Said Order dated April 8, 1975 pursuant to which Plaintiffs have procured the issuance of said Writ of Execution was erroneously entered at the instance of Plaintiffs who are no longer, and perhaps never were the real parties in interest inasmuch as Joseph L. Krofcheck

claims to have all of the right, title, interest and estate of the Plaintiffs in and to the real property which was the subject of Civil No. 4143 by his statements in open Court and by reason of the recitals in said Writ of Execution.

4. The Court's Attention is directed to Rule 17(a), Utah Rules of Civil Procedure, which specifically provides that every action shall be prosecuted in the name of the real party in interest and to the following two cases: Wilson vs. Kiesel, 9 U. 397, 35 Pac. 488; and Lynch vs. MacDonald 12 U. (2d) 427, 367 P.2d 464.

DATED this 11 day of July, 1975.


 David S. Cook
 SPRINGHAM AND LARSEN

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EXHIBIT E

The following amounts listed under Price of Land are sums which were paid or appear reasonably sure to be paid to the original sellers of the property whose names appear opposite said amounts. The amounts listed under Investment Revenue constitute funds received or committed to by various third party investors prior to the final Order and Judgment in Civil No. 4143, dated July 23, 1971. Interest amounts have not been included since the interest on the obligations approximately equals the interest which accrues on the principal investments, under the original contract terms.

<u>AMOUNTS FOR PRICE OF LAND</u>	<u>AMOUNTS FOR INVESTMENT REVENUE</u>	<u>NAMES OF</u>
\$ 31,800.00		Osborn; Se
31,800.00		Ellsworth;
31,800.00		Cannon; Se
31,800.00		Salisbury;
120,000.00		Richards;
12,000.00		Russell; Se
325,000.00		Lott; Sell
<u>78,080.00</u>		Neilsen; Se
 \$ 662,280.00 Total		

\$ 30,000.00	Wood; Inve
90,000.00	Hirsch; Im
30,000.00	Hashida; L
30,000.00	Brighton; P
30,000.00	Duffin; Im
25,000.00	Muller; Im
288,000.00	Gaskin; Im
22,500.00***	Krofcheck;
50,000.00	Muller; Im
25,000.00	Cox; Invest
<u>45,000.00</u>	Shure; Inve
 \$ 665,500.00 Total	

NOTE:

In addition to the sum of \$22,500.00 shown here, investor Krofcheck made further investment of \$23,825.00 (includes interest) in an adjoining ref which funds were received directly or indirectly by defendants in Civil 4143, and would not have been invested except for the plaintiffs' influence in the matter.

DOWNEY BANK PURCHASE

FORECLOSURE SALE ON 4-9-74.
REDEMPTION PERIOD PENDING.
ON EXTENSION BY COURT.
\$28,600. CLAIMED DUE + INT.
TO REDEMPTION.

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EXHIBIT "DOWNEY BANK PURCHASE"

COLOR KEY:

- = DEFENDANTS' LAND PAID FOR & RELEASED IN OCTOBER 1973
- = DEFENDANTS' APARTMENT LAND PURCHASE & RELEASE, 1974
- = LAND AWARDED PLAINTIFFS NOT RELEASED OR PAID FOR SINCE 1969
- = LAND AWARDED PLAINTIFFS NOT RELEASED OR PAID FOR SINCE 1970 (UNDER FORECLOSURE)

DEFENDANTS PURCHASED & OBTAINED RELEASES FOR CONDOMINIUMS IN THESE LAND PARCELS DURING 1974

ENTRY 123307
REC. 5/29/74

ENTRY NO. 124685
REC. 10/19/74
BOOK OF PLATS, D.R. (PHASE I)

RELEASED TO PLAINTIFFS

LAST PAYMENT MADE WAS FOR 9/10/70 RELEASE

PAST DUE FOR RELEASE (NOW IN FORECLOSURE)

PAYMENTS & RELEASES WERE DUE ON:

4/1/71
5/1/71
5/1/72

RELEASED PRIOR TO 1971, TO THE DEFENDANTS & PLAINTIFFS

DEFENDANTS OBTAINED RELEASE OF THIS PORTION OF LOTT LAND ON 10/5/73. (SEE PAGE 3)

PAST DUE FOR RELEASE TO PLAINTIFFS (SEE PAGE 3 HEREOF)

PREVIOUSLY RELEASED TO DEFENDANTS & PLAINTIFFS; PRIOR TO 1971.

1" = 400'

DATE: 12-6-74

PARTIAL RELEASE OF MORTGAGE

KNOW ALL MEN BY THESE PRESENTS:

THAT DOWNEY STATE BANK of Downey, Idaho, in consideration of the sum of TEN AND NO/100 DOLLARS and other good and valuable consideration to it paid by MAJOR-BLAKENEY CORPORATION, a California Corporation, the receipt of which is hereby acknowledged, do hereby release to said MAJOR-BLAKENEY CORPORATION, its heirs and assigns, all of that certain parcel of land bounded and particularly described as follows, to-wit:

Part of the Southwest Quarter of Section 31, Township 1 South, Range 4 East of the Salt Lake Base and Meridian, described as follows:

PARCEL 7:

Beginning at a point (coordinates N 1721.3 E. 1000) 721.3 feet North of the Southwest corner (coordinates N 1000 E 1000) of said Section 31, and running thence South along the Section line 203 feet to a point (coordinates N 1518.3 E 1000); thence East 850 feet to a point (coordinates N 1518.3 E 1850); thence North 203 feet to a point (coordinates N 1721.3 E 1850); thence West 850 feet to the point of beginning, and containing approximately 4 acres.

TO HAVE AND TO HOLD the same to said MAJOR-BLAKENEY CORPORATION, its heirs and assigns, free and discharged from the lien of a certain Mortgage executed by the MAJOR-BLAKENEY CORPORATION, a California Corporation, party of the first part therein to ELWOOD L. NIELSEN and LOIS L. NIELSEN, his wife, the parties of the second part therein, the said ELWOOD L. NIELSEN and LOIS L. NIELSEN, his wife, have heretofore assigned their interest in and to said Promissory Note and Mortgage by that certain Assignment recorded April 18, 1967 in Book M-10 at Page 570, the said mortgage being recorded in the office of the County Recorder of Summit County, State of Utah, in Book M-10 of Mortgages, on page 565 Entry No. 105005 on the 18th day of April, 1967.

The balance of property covered by said Mortgage is not affected by this Release.

IN WITNESS WHEREOF, the undersigned corporation has caused these presents to be executed by its officers hereunto duly authorized and its corporate seal to be hereunto affixed this 22nd day of June, 1970.

Attest:

DOWNEY STATE BANK BY SECURITY
Its Attorney in Fact

Secretary

By:

Vice President

STATE OF UTAH

) ss

6-1-67 12:53 - 351-353

Security Title Co.

Assignment of Mortgage

KNOW ALL MEN BY THESE PRESENTS, That ELWOOD L. NIELSEN and LOIS L. NIELSEN, his wife,

the part 100 of the first part for and in consideration of the sum of TEN AND NO/100 DOLLARS and other good and valuable consideration ~~xxxxxx~~ of the United States of America, to them in hand paid by THE DOWNEY STATE BANK

the part 7 of the second part, the receipt whereof is hereby acknowledged, do as by these presents, grant, bargain, sell, assign, transfer and deliver unto the said part of the second part a certain Indenture of Mortgage, bearing date the 1st day of May one thousand nine hundred and sixty seven made and executed by THE MAJOR-BLAZNEY CORPORATION to ELWOOD L. NIELSEN and LOIS L. NIELSEN recorded on the day of 19 in Book of Mortgages, at page in the office of the County Recorder of the Summit County of

Parcel 10:*All in Township 1 South - Range 4 East*

Beginning at a point (coordinates North 1364.3 East 1445.2) 364.3 feet North and 445.2 feet East of the Southwest corner (coordinates North 1000 East 1000) of said Section 31, and running thence East 269 feet to a point (coordinates North 1364.3 East 1714.2); thence South 347.6 feet to a point (coordinates North 1016.5 East 1714.2); thence South 347.6 feet to a point (coordinates North 1016.5 East 1714.2); thence South 88°33' West along South line, Section 31, 269.8 feet to a point (coordinates North 1009.9 East 1445.2); thence North 354.4 feet to the point of beginning, and containing approximately 2.17 acres.

Parcel 11:

Beginning at a point (coordinates North 1364.3 East 1714.2) 364.3 feet North and 714.2 feet East of the Southwest corner (coordinates North 1000 East 1000 of said Section 31, and running thence South 347.6 feet to a point (coordinates North 1016.5 East 1714.2) on the South line of Section 31; thence North 83°33' East along the South line of said Section 31, 628.8 feet to a point (coordinates North 1032.3 East 2342.3); thence North 3°34' West 332.58 feet to a point (coordinates North 1364.3 East 2322.2) thence West 608. feet to the point of beginning, and containing approximately 4.82 acres.

Parcel 12:

Beginning at a point (coordinates North 2255.3 East 1850) 1255.3 feet North and 350 feet East of the Southwest corner (coordinates North 1000 East 1000 of said Section 31 and running thence South 891 feet to a point (coordinates North 1364.3 East 1350.0) thence East 472.2 feet to a point (coordinates North 1364.3 East 2322.2) thence North 3°34' West 311.72 feet to a point (coordinates North 1675.6 East 2302.3); thence South 39°50' East 1034.5 feet to a point (coordinates North 1672.4 East 3337.3) which point is at the intersection with the West right of way line of Utah State Highway (9243 between Kimball Junction and Park City); thence North 58°12' West 399.1 feet along the West right of way of said Utah State Highway to a point (coordinates North 1733.1 East 2273.1) which point is also point of curve in said right of way line; thence Northwesterly along the West right of way along a curve to the right 323.2 feet to a point on the curve (coordinates North 2255.3 East 2396.7) which point is common with point in Parcel No. 1; thence West 766.7 feet to point of beginning, and containing approximately 13. acres.

EXHIBIT P-1

112361

Entry No. 112361 Book 11
 REC'D 12-21-70 at 1:26 P.M.
 REQUEST of Park City West Ski

ASSIGNMENT OF CONTRACTS

WANDA T. SERIC OF, SUMMIT CO.

KNOW ALL MEN BY THESE PRESENTS:

The undersigned ENSIGN COMPANY, a limited partnership with its principal office at 27916 Silver Spur Road, Rolling Hills Estates, California, Assignor herein, does hereby for valuable consideration, sell, assign transfer and set over unto: WILLIAM S. RICHARDS, as Trustee hereinafter called "Assignee" each of the following:

1. All of the right title, estate and interest of the Assignor as seller in that certain installment contract of sale dated January 1, 1969, wherein the Assignor appears as seller and E. REED GASKIN and JEAN H. GASKIN, appear as Buyer, and wherein the terms and conditions with respect to the sale of certain property in Summit County, Utah are particularly set forth. Said real property is described as follows:

Part of the Southeast quarter of the Northeast quarter of Section 36, Township 1 South, Range 3 East, Salt Lake Meridian, and part of the South $\frac{1}{2}$ of the Northwest quarter of Section 31, Township 1 South, Range 4 East, Salt Lake Base and Meridian; described as follows:

Beginning at the Northwest corner of the Southeast quarter of the Northeast quarter of said Section 36; thence South $89^{\circ}51'$ East 1270.5 feet to the East line of said Section 36; thence South 47 feet; thence North $89^{\circ}30'$ East 649 feet; thence North 47 feet; thence South $89^{\circ}51'$ East 491 feet to a point 264 feet West of Utah State Highway No. 248; thence South 165 feet; thence East 264 feet; thence South $0^{\circ}13'$ East 840 feet along said Highway; thence West 2674.5 feet to the accepted West line of the Southeast quarter of the Northeast quarter of said Section 36; thence North $0^{\circ}23'$ East 1005 feet to the place of beginning.

Said contract is referred to in that certain Notice of Contract recorded February 21, 1969 in Book M-20 at Page 131 as Entry No. 108647 of the records of the County Recorder of Summit County, Utah.

2. All of the right title, estate and interest of the Assignor as purchaser in that certain Option to Purchase (duly exercised by the Assignor) dated September 2, 1968 and wherein the terms and conditions with respect to the sale of certain real property located in Summit County, Utah are particularly set forth. Said property is described as follows:

Part of the East half of Section Thirty-six (36), Township One (1) South, Range Three (3) East, and part of Section Thirty-one (31) Township One (1) South, Range Four (4) East of the Salt Lake Base and Meridian, described as follows:

BEGINNING at a point 1920.3 feet North of the Southwest corner of said Section 31 and running thence South 46.5 feet; thence North 89°27' West 1315.02 feet, more or less, to the West line of the East half of the Southeast quarter of said Section 36; thence North 0°31' East 763.7 feet along an established fence line; thence East 28.7 feet; thence on the accepted West line of the

BOOK M-20 PAGE 223

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Southeast quarter of the Northeast quarter of said section 36, North 0°23' East 1364.7 feet, more or less, to the Northwest corner of the Southeast quarter of the Northeast quarter of said Section 36; thence South 89°51' East 1270.5 feet to the East line of said Section 36; thence South 47 feet; thence North 89°30' East 649 feet; thence North 47 feet; thence South 89°51' East 491 feet to a point 264 feet West of Utah State Highway No. 248; thence South 165 feet; thence East 264 feet; thence South 0°17' East 1917.6 feet along said highway to a point East of beginning; thence West 1411.8 feet to beginning. containing 129.323 acres, more or less.

ENSIGN COMPANY, a limited partnership

By [Signature]
General partner

App. 52

PLAINTIFFS' MOTION TO
HAVE THE FINAL DECREES HEREIN
ENFORCED

COME NOW, plaintiffs in the above captioned suit who move this court under Rules 65A, 66 and 69 of the Utah Rules of Civil Procedure, to enforce its final Order and Judgment herein by requiring defendants to cease activities in defiance thereof and compelling them to affirmatively comply with certain provisions therein providing for the payment of funds upon mortgages and other debt which encumber land awarded plaintiffs hereunder.

THIS MOTION is made on the ground that certain mortgages and other security instruments encumbering land awarded plaintiffs herein are in substantial default and the obligation to discharge such indebtedness rests on defendants under the terms of the said final decrees herein.

THIS MOTION is further based on the points and authorities annexed hereto, the testimony of witnesses and documentary evidence to be introduced by plaintiffs at the time of hearing as well as the files and records of this lawsuit.

DATED this 8th day of December 1974.


DON R. STRONG

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AFFIDAVIT OF DAVID S. COOK
IN SUPPORT OF DEFENDANTS'
MOTION TO DISMISS ORDER TO
SHOW CAUSE

David S. Cook, being first duly sworn on oath, deposes and says:

1. Affiant has personally represented Defendants in these and other proceedings involving the Plaintiffs since 1971 and has personal knowledge of each of the matters herein after set forth.

4. Both the subject Order and Judgment on Stipulation were drafted entirely by Robert W. Major and/or his counsel.

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ORDER

Defendants' motions dated June 5, 1975, and July 11, 1975, seeking to vacate this Court's prior Order dated April 8, 1975, and the execution thereof, which motions were heard and argued by the parties during the month of September herein; and, the Court having duly considered the issues and determined that the final decrees of May 21, 1971, and July 23, 1971, whereby certain real property was divided and awarded to the parties and the defendants were ordered to discharge certain monetary obligations to the original sellers of the plaintiff's property, are final and valid judgments binding upon all parties in the above-entitled action; and, further, the Court having determined that the time for appeal of the within proceeding having expired in the year 1971, and that Joseph L. Krofcheck was at no time a party herein but acquired his interest in the aforementioned real property as a purchaser from the plaintiffs subsequent to the final judgments and as an assignee of certain rights of said plaintiffs in and to such judgments; now, therefore,

IT IS HEREBY ordered that defendants' motions dated June 5, 1975, and July 11, 1975, seeking to vacate this Court's prior Order of April 8, 1975, and the execution thereof, and join Joseph L. Krofcheck as a party

to the above-entitled action, be, and the same are hereby, denied.

DATED this 6th day of December 1975.

BY THE COURT:

Robert W. Ensign
Judge

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MOTION TO STAY PROCEEDINGS

COME NOW the defendants and move the Court for an order pursuant to Rule 62(b), Utah Rules of Civil Procedure, to stay the execution of that certain order in the Court's file dated November 1975, and the writ of execution dated the 15th day of May, 1975, that has its basis upon the order of April 8, 1975, until such time as the Court has an opportunity to consider and rule upon the motion under Rule 60, Utah Rules of Civil Procedure, which has been filed simultaneously with this Motion to Stay Proceedings.

This motion is made upon the grounds and for the reasons that, as is shown by the affidavit of David S. Cook, and as is shown by the files and records of the Court, that no notice of said order which is a final order on which a right of appeal exists, was given to the defendants as is required by Rule 5, Utah Rules of Civil Procedure.

Said motion is further based upon the fact that there has been filed against Robert W. Ensign, as general partner of the

Ensign Company, a notice of entry of sisterstate judgment, a copy of which is attached hereto, and by reference made a part hereof. Based upon said notice of entry of sisterstate judgment, it is imperative that the defendants have relief under Rule 60, Utah Rules

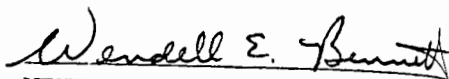
of Civil Procedure, and have a fair opportunity, in the spirit of due process of law as the Utah Rules of Civil Procedure are patterned to afford, so as to allow for the filing of such motions under the rules to have the Court's order reconsidered, to request formal findings by the Court as provided by Rule 52, Utah Rules of Civil Procedure, and to avail itself of rights of appeal under the Utah Rules of Civil Procedure.

Unless the Court issues an order staying the execution of the judgment until such time as a full inquiry can be made into the irregularities surrounding the final order of the Court dated November 6, 1975, that has never been served on the defendants, irreparable harm will occur; and the defendants will be denied their rights provided for under the Utah Rules of Civil Procedure, and will be denied due process of law.

WHEREFORE, the defendant, Ensign Company, both for itself and on behalf of all other defendants, pray that the Court make and enter its order, pursuant to Rule 62, Utah Rules of Civil Procedure, staying the execution of the order of November 6, 1975, and any and all proceedings based thereon until such time as a full and complete hearing of the matter of the irregularities can be heard under

the Rule 60 motion filed simultaneously herewith.

DATED this 12th day of October, 1976.



WENDELL E. BENNETT
Attorney for Defendant Ensign
370 East 500 South, Suite 100
Salt Lake City, UT 84111

O R D E R

Based upon the foregoing Motion, and good cause appearing
therefore, it is

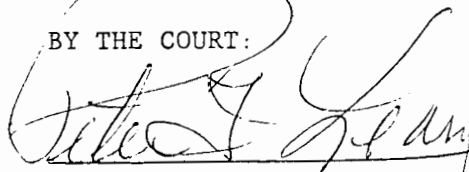
ORDERED, ADJUDGED, AND DECREED that the execution of any
any proceedings to enforce the Court's order dated the 6th day of
November, 1975, and all other proceedings based upon said order be

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and the same are, hereby stayed; and all proceedings based thereon
are also stayed until such time as a hearing can be held upon the
Rule 60 motion filed by the defendant, Ensign Company, on its own
behalf, and on behalf of the other defendants; which motion shall
be heard upon notice given pursuant to the Utah Rules of Civil
Procedure to all attorneys of record in the above case.

DATED this 12th day of October, 1976.

BY THE COURT:



District Judge

NOTICE OF ENTRY OF SISTER STATE JUDGMENT

Joseph L. Kropfcheck, In Pro Per Judgment Assignee 4123 Ballena Drive Encino, Calif. 91436	(213) 738-6484 (213) 393-0411 Ext. 7585
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES, (Van Nuys Branch)	
JUDGMENT CREDITOR JOSEPH L. KROPFHECK, Assignee of Judgment	
JUDGMENT DEBTOR ENIGN COMPANY, a limited partnership, ROBERT W. ENIGN: General Partner	
NOTICE OF ENTRY OF SISTER STATE JUDGMENT	Case Number 11152173

- 1 TO JUDGMENT DEBTOR (Name) **ENIGN COMPANY, a limited partnership, ROBERT W. ENIGN: General Partner; 6931 Crest Road, Palos Verdes Peninsula, Los Angeles County, California.**
- 2 YOU ARE NOTIFIED
- a A court judgment against you in the amount of (unpaid balance) \$ **73,653.53** has been entered in the records of this court pursuant to the application of judgment creditor* (Name) **JOSEPH L. KROPFHECK**
- b This judgment is based upon the judgment of **July 23, 1971, in Civil # 4143, with confirming orders of 4-8-75 and 11-6-75, together with Writ of Execution of 5-15-75;**
Name of sister state
UTAH
Title of sister state court
SUMMIT COUNTY DISTRICT COURT
Date of judgment
JULY 23, 1971, plus orders of 4-8-75 and 11-6-75, together with Writ of Exec., 5-15-75
Amount of judgment \$
\$73,653.53
- c Unless you file with this court a motion to vacate this judgment within 10 days after service upon you of this Notice of Entry of Judgment, this court may issue a Writ of Execution, which could result in garnishment of your wages, taking of your money or property, or other relief.

Dated

John J. Gammeter, Acting

Clerk

By **W. J. MIRLY** Deputy

(SEAL)

3. ☒ NOTICE TO THE PERSON SERVED: You are served
- a. ☐ As an individual judgment debtor
- b. ☐ Under the fictitious name of:
- c. ☒ On behalf of **ENIGN COMPANY, a limited partnership, doing business in Summit County, State of Utah**
- Under ☐ CCP 416 10 (Corporation) ☐ CCP 416 80 (Minor)
- ☐ CCP 416 20 (Defunct Corporation) ☐ CCP 416 70 (Incompetent)
- ☒ CCP 416 40 ~~(Partnership)~~ ☐ CCP 416 90 (Individual)
- ☐ Other:

* Judgment creditor shall personally serve this notice on judgment debtor pursuant to CCP 413 10 et seq.

RC 20
JENSRNG 6/75
CCP 1710 30

NOTICE OF ENTRY OF SISTER STATE JUDGMENT

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Form Approved For the
Judicial Court of California
Effective January 1, 1975

ORDER

Plaintiffs' motion to have the Order dated May 21, 1971, and the on Stipulation dated July 23, 1971, herein enforced having come on for before the court on February 27, 1975, and February 28, 1975, and have argued by the parties, and duly considered by the court; and, the court determined said decrees are final and valid, and binding upon the parties, it being the duty of the defendants to pay and discharge the purchase obligations on the land divided to plaintiff Park City Utah Corporation of which obligations are now in default; now, therefore,

IT IS HEREBY ORDERED that within 14 days from and after said February 1975, hearing date the defendants shall certify in writing to this court providing a copy thereof to plaintiffs, the amounts of principal and interest and other costs and expenses attributable thereto, currently due and owing upon original purchase money obligations encompassing land divided to plaintiff Park City Utah Corporation sufficient to obtain releases of title to said plaintiff which are currently due for release, according to the terms of said purchase money obligations; and,

IT IS FURTHER ORDERED, that plaintiffs' motion for leave to execute and the same is hereby, granted as to the amounts herein referred to for to discharge outstanding purchase money obligations for the release of title therefrom embracing land divided herein to the defendant Park City Utah Corporation; and,

IT IS FURTHER ORDERED, that should defendants fail to so provide the balances currently due and owing as hereinabove required, or should they

a valid, verified difference between such balances, to that extent the balances certified to by the original purchase money obligees shall be taken as the correct amounts due and owing from defendants herein for the release of land originally divided to said plaintiff Park City Utah Corporation.

DATED this 8th day of April 1975.

BY THE COURT:

Maurice Harding
Judge

MOTION FOR RELIEF FROM ORDER
DATED NOVEMBER 6, 1975

COMES NOW the defendant Ensign Company, both for itself and all other defendants, pursuant to Rule 60(b), and moves the Court for relief from the Court's order dated November 6, 1975. Said motion is based on the grounds and for the reason, as is shown by the affidavit of David S. Cook, and is also shown by the files and records of the Court, that the order of November 6, 1975, was never served upon the defendants, nor was notice received by any of the defendants regarding said order until after a notice of entry of sisterstate judgment was served upon Robert W. Ensign, general partner of the Ensign Company, after which a review of the court file revealed the existence of said order.

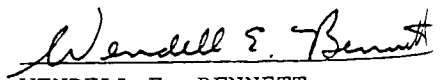
Said order, and a preceding order dated April 8, 1975, to which a motion to vacate and set aside order concerning execution dated April 8, 1975, was filed and was ruled upon by that order dated November 6, 1975, are used as the basis of a money judgment in an execution and also being applied for by way of sisterstate

judgment in the state of California in the sum of \$73,653.53; judgment is unsupported by any findings of fact made by the Court or conclusions of law based upon findings of fact by the Court. Irregularity could not have been objected to or appealed from, inasmuch as the defendants did not have notice of the entry of the order upon which said judgment and execution was based.

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WHEREFORE, the defendants pray that the Court grant relief under Rule 60(b), Utah Rules of Civil Procedure, and allow the defendants the time provided under the Rules of Civil Procedure to file such motions with the District Court as are appropriate, requiring the making of findings of fact and conclusions of law, allowing for motions to alter or amend such findings and conclusions and any order based thereon, and allowing the defendants their right of appeal within the times provided under the rules, in that they have never been served a copy of the order or any other pleadings related to said order or growing out of said order, as is required until Rule 5, Utah Rules of Civil Procedure.

DATED this 12th day of October, 1976.


 WENDELL E. BENNETT
 Attorney for Defendant Ensign
 370 East 500 South, Suite 10
 Salt Lake City, UT 84111

AFFIDAVIT
OF DAVID S. COOK

DAVID S. COOK, being first duly sworn on oath, deposes and says:

1. Affiant has been representing Defendants in the captioned matter since late summer of 1971.

2. Affiant attended the hearing set by the Court on February 27, 1975 with respect to "Plaintiffs Motion to Have the Final Decrees Herein Enforced" dated December 8, 1974.

3. Affiant thereafter, on April 8, 1975, advised the Court and counsel for plaintiffs concerning the status of settlement discussions that it was, at said hearing, agreed that the parties would enter into. See Exhibit "A" to "Motion to Vacate and Set Aside Order Concerning Execution Dated April 8, 1975," dated June 5, 1975.

4. Affiant thereafter, on May 16, 1975, received in the mail a copy of that certain Order dated April 8, 1975, on file herein. Said Order dated April 8, 1975 was entered and the time periods therein specified passed before Affiant, as counsel for defendants, was given any notice thereof whatsoever by counsel

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for the plaintiff.

5. Thereafter, on June 5, 1975, Affiant prepared the "Motion to Vacate and Set Aside Order Concerning Execution Dated April 8, 1975" on file herein dated June 5, 1975, and Affiant further prepared and filed that certain "Motion for Order Vacating Writ of Execution" dated July 11, 1975 on file herein.

6. Several hearings were held before the Honorable Judge Maurice Harding concerning said motions and various motions in related case, to-wit, Summit County 4275, during the summer and fall of 1975.

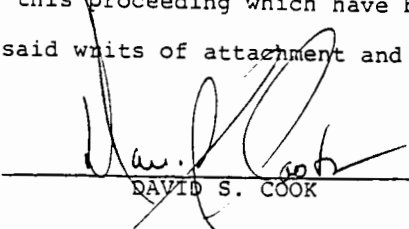
7. In the course of proceedings, Affiant, on behalf Defendants, made various motions, including a motion that Joseph L. Krofcheck be made a party plaintiff, and Affiant prepared Order making Joseph L. Krofcheck a party plaintiff and sent the same down to the Honorable Maurice Harding, but the same was never entered.

8. The very first notice, and only notice, which Affiant has received of the entry of that certain Order on file here dated November 6, 1975, was when Affiant received a photocopy of said Order on October 1, 1976 from John T. Heaney, Los Angeles counsel for defendant Ensign Company.

9. The first and only notice Affiant had of that certain "Praecipe" to the clerk for issuance of writs of execution, dated May 15, 1975, was when Affiant received a copy of said document from said John T. Heaney on October 1, 1976.

10. Affiant has knowledge that in connection with Summit County Civil No. 4275, writs of attachment and garnishment have been issued against Joseph L. Krofcheck and others to secure claims made in that litigation against the Plaintiffs in this litigation and that said writs of attachment and garnishment attach and garnish all claims which said Joseph L. Krofcheck has against the defendants herein as security for the claims made in said Summit County Civil No. 4275, and that said Joseph L. Krofcheck is in breach and violation of the terms of said writs issued in said Civil No. 4275 in attempting to enforce

claims against defendants in this proceeding which have been attached under the terms of said writs of attachment and garnishment.



DAVID S. COOK

R.- 812

AFFIDAVIT OF ROBERT W. ENSIGN

22 The undersigned, ROBERT W. ENSIGN, being first duly
23 sworn, deposes and says:

24 1. I am a former partner, both general and limited,
25 of defendant ENSIGN COMPANY in the above-entitled matter. As
26 such, I have personal knowledge of the matters hereinafter set
27 forth and if called as a witness could competently testify as
28 follows.

29 2. Affiant states that the ENSIGN COMPANY is a
30 now dissolved limited partnership formed in 1967 for the specific
31 purpose of developing real property in and around Snyderville,
32 Utah into a large commercial, recreational ski resort to be

R - 813

1 known as "Ski Park City West." The project was originally a joint
2 venture by and between the ENSIGN COMPANY and the Major-Blakeney
3 Corporation. The Major-Blakeney Corporation was owned and con-
4 trolled by Robert W. Major who also owned and controlled other
5 entities, including PARK CITY UTAH CORPORATION and CITY DEVELOP-
6 MENT CORPORATION, which from time to time participated in various
7 phases of the development and ultimately became the assignee of

8 certain contractual rights of the Major-Blakeney Corporation,
9 The ENSIGN COMPANY bore the responsibility for financing the
10 joint venture while Mr. Major's entities bore responsibility
11 planning, developing and maintaining the ski resort itself.

12 3. Affiant states that through a series of assign-
13 and transfers, all with the knowledge and consent of Mr. Major,
14 his various entities, the ENSIGN COMPANY had by October, 1969,
15 exchanged all of its rights, duties and responsibilities in con-
16 nection with said joint venture for shares of the common stock of
17 a publicly held corporation known as "SKI PARK CITY WEST, INC."
18 Thus, at the time the within litigation was commenced by PARK
19 UTAH CORPORATION and CITY DEVELOPMENT CORPORATION in February
20 1971, ENSIGN COMPANY's only interest in the outcome thereof was
21 as a shareholder in one of the other named defendants.

22 4. Affiant states that the action as brought by PARK
23 CITY UTAH CORPORATION and CITY DEVELOPMENT CORPORATION was not
24 seeking monetary damages but only asking for a judicial division of
25 the various parcels of real property involved in the project.
26 much as neither affiant nor the ENSIGN COMPANY had any control over
27 such a division, affiant did not actively participate in the litigation
28 but relied on the attorneys employed by SKI PARK CITY WEST, INC.

29 5. Affiant states that he was aware that in or
30 about July of 1971 a division of the parcels, as requested
31 by the complaint, was accomplished by means of a stipulated
32 judgment. Although affiant was also aware that SKI PARK CITY

1 WEST, INC. had certain still pending counterclaims and other
2 actions against Mr. Major and his various entities arising
3 from the joint venture, he was under the impression that that
4 portion of the litigation which sought a division of the property
5 had been resolved, and he did not believe that the ENSIGN
6 COMPANY, as a shareholder, had any direct interest in the
7 remaining portion of the litigation.

8 6. Affiant states that on June 30, 1971 ENSIGN
9 COMPANY's stockholdings in SKI PARK CITY WEST, INC. were
10 exchanged for stock in another publicly held corporation known
11 as Life Resources Incorporated. Subsequent to this exchange,
12 by agreement dated December 31, 1971, the shares of Life
13 Resources Incorporated were distributed to the partners of
14 ENSIGN COMPANY and said limited partnership was officially
15 dissolved.

16 7. Affiant states that, the ENSIGN COMPANY,
17 being no longer involved with SKI PARK CITY WEST, INC., he
18 heard little about any of the pending litigation in Utah in-
19 volving the Park City resort until September 28, 1976 at
20 which time he was served by a Los Angeles County Deputy Sheriff
21 with a copy of a document filed in the Superior Court for
22 California entitled "Notice of Entry of Sister State Judgment."
23 A copy of said notice is marked Exhibit "A," attached hereto
24 and incorporated herein by this reference as if set forth at
25 length. Prior to this time, affiant was unaware that any
26 monetary judgment had been entered (or even sought) in connection
27 with the Utah action seeking a distribution of land.

28 8. Prior to the September 28, 1976 service of
29 Notice of Entry of Sister State Judgment, affiant states th
30 he has never been personally served with any other notices,
31 motions, orders or judgments in connection with this litiga
32 and has not in the last five (5) years been in direct commu

1 with, nor has affiant at any time been provided with copies
2 any notices, orders or judgments by the attorney representi
3 the prime corporate defendant DAVID ~~S~~ COOK.

MEMORANDUM DECISION

The above matter came on regularly for hearing upon def
dants' Motion for Relief from Order Dated November 6, 1976, the
defendants appearing by and through their counsel Wendell E. Be
and the plaintiff appearing by and through its counsel Don R. S
The matter was argued and submitted to the Court for its decis
taken under advisement, and the Court now being fully advised i
premises, and good cause appearing, finds:

1. That the following documents are contained in the f
separate files pertaining to the above matter:

- a. Order dated May 21, 1971. (Attached hereto as
Exhibit I).
- b. Judgment on Stipulation dated July 23, 1971
(Attached hereto as Exhibit 2).

c. Praecipe to the Clerk for Issuance of the Writs of Execution dated May 15, 1975. (Attached hereto as Exhibit 3).

d. Praecipe to the Sherriffs of Summit and Salt Lake Counties, dated May 15, 1975. (Attached hereto as Exhibit 4).

e. Writ of Execution dated May 15, 1975. (Attached hereto as Exhibit 5).

f. Order, dated November 6, 1975. (Attached hereto as Exhibit 6).

2. That a purported order dated April 8, 1976, does not appear in any of the files and the Court has been unable to ascertain the reason for its absence.¹ Counsel for plaintiff furnished to the court copies of a purported order dated April 8, 1975, in the forms attached hereto as Exhibits 7a and 7b.

3. That the court has been unable to locate any minute entries regarding Exhibits 6 and 7.

4. That the pertinent parts of the Judgment on Stipulation are:

"IT IS FURTHER ORDERED that for the protection of the existing original sellers and third party purchasers the defendants shall without restriction or limitation, except as herein provided, apply third party purchaser proceeds to original seller obligations.

A. On receipt of third party proceeds and pending disbursements thereof to original seller obligations, the defendants shall deposit proceeds in a separate trust account, the establishment, terms and conditions of with-

drawal therefrom to be subject to the approval of plaintiff. It is the intent hereof that said proceeds are to be secured from the general funds, accounts and expenditures of defendant and applied only to original seller obligations, and are to be received and held in trust by the defendants to insure performance of the obligations to original sellers.

B. In the event of default by a third party purchaser, the property shall be resold and the proceeds thereof applied to any outstanding original seller obligation as herein provided above.

(1) Should there be a deficiency between the proceeds of the resale and the outstanding original seller obligations, said deficiency shall be the sole responsibility of the defendants.

IT IS FURTHER ORDERED that the above stated procedure of permitting defendants to apply third party purchase proceeds to original seller obligations shall not be construed or interpreted as a waiver, modification or alteration of any other basic agreement or agreements between the parties; should the defendants fail to perform as herein ordered, the payment procedure is without prejudice to plaintiff to re-voke the same and reinstate the original contractual prohibition against said payment procedure.

IT IS FURTHER ORDERED that the above statement payment procedure does not alter, amend or modify defendant's obligations to original sellers or third party purchasers and is without prejudice to plaintiff invoking all of its rights and remedies against defendants in the event of breach or default."

1. The docket reflects the filing of an Order April 28, 1975.

That no monetary amount is specified in said Judgment.

5. That the pertinent parts of the purported order of

8, 1975 are:

"IT IS HEREBY ORDERED that within 14 days from and after said February 27, 1975, hearing date the defendants shall certify in writing to this court, providing a copy thereof to plaintiffs, the amounts of principal and interest, and other costs and expenses attributable thereto, currently due and owing upon original purchase money obligations encompassing land divided to said plaintiff Park City Utah Corporation sufficient to obtain releases of property to said plaintiff which are currently due for release, according to the original terms of said purchase money obligations; and,

IT IS FURTHER ORDERED, that should defendants fail to so provide the said balances currently due and owing as hereinabove required, or should there be a valid, verified difference between such balances, to that extent the balances certified to by the original purchase money obligees shall be taken as the correct amounts due and owing from defendant herein for the release of land originally divided to said plaintiff Park City Utah Corporation."

That said purported order also contains the following:

"IT IS FURTHER ORDERED, that plaintiffs' motion for leave to execute, be, and the same is hereby granted as to the amounts herein referred to sufficient to discharge outstanding purchase money obligations for the release of land therefrom embracing land divided herein to the defendant Park City Utah Corporation; and also

That no monetary amount is specified in said Order.

6. That on or about the 15th day of March, 1975, counsel for plaintiff, directed the Clerk to issue Writs of Execution based upon the leave granted Plaintiff to execute contained in the purported Order of April 8, 1975.²

7. That on or about the 9th day of June, 1975, after the purported entry of the order dated April 8, 1975, and after the issuance of Writs of Execution by the Clerk of the Court, the defendants filed a Motion to Vacate and Set Aside Order Concerning Execution dated April 8, 1975, and on the 14th day of July, 1975, filed a Motion For Order Vacating Execution.

2. Nothing is contained in the files, records, or minute entries of the Court found the defendants in default under the purported order or that evidence was presented at any time to the Court for its determination of the monetary amount, if any, due plaintiff from defendant. The only reference to a monetary sum is contained in Exhibit 3.

That the Motion to Vacate and Set Aside Order Concerning Execution dated April 8, 1975, was based upon the following grounds:

- 1) Settlement negotiations were in process between the parties;
- 2) Plaintiff was not the real party in interest;
- 3) Defendants have offsetting grounds against the plaintiff which are the subject of a separate action, and
4. That said order was obtained without notice to defendant.

That the Motion For Order Vacating Execution was based on the grounds that the Order of April 8, 1975, was erroneously entered and that the plaintiff was not the real party in interest.

8. The court ruled upon defendants' motion and an order was entered on November 6, 1975, as follows:

"It is hereby ordered that defendants' motions dated June 5, 1975, and July 11, 1975, seeking to vacate the court's prior order of April 8, 1975, and the execution thereof and join Joseph L. Krofcheck as a party to the above entitled action be and the same is hereby denied."

9. That no money judgment was entered by the above entitled court.

The Court concludes:

1) That it cannot set aside the Order dated November 6, 1975, heretofore entered by the above-entitled court, and defendant's motion should be denied.

2) The Clerk of the District Court of Summit County should be restrained from issuing any further executions until such time as the above entitled court/ ^{after notice and a hearing} enters a proper money judgment.

3) That the Sheriff of Summity County, Utah and the Sheriff of Salt Lake County, Utah, should be restrained from executing on the property of the defendants pursuant to the Writ of Executions heretofore issued by the Clerk of Summit County on the 15th day of May, 1975.

IT IS HEREBY ORDERED as follows:

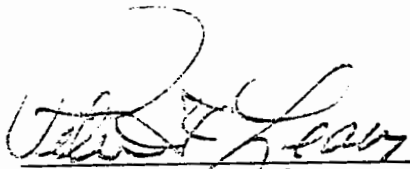
1. That defendants' motion is denied.
2. That the Clerk of the District Court of Summit County, State of Utah, is enjoined and restrained from issuing any Writ of Execution until the Court/ ^{after notice and a hearing} enters a proper money judgment.

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3. That the Sheriff of Summit County, Utah, and the Sheriff of Salt Lake County, Utah, are enjoined and restrained from executing on the property of the defendants pursuant to the Writs of Execution issued by the Clerk of the District Court of Summit County, Utah, on the 15th day of May, 1975.

4. That the order staying proceedings made and entered on the 12th day of October, 1976, be, and the same is hereby vacated.

Dated this 9/25 day of June, 1977.


DISTRICT JUDGE

PLAINTIFF'S AND ITS JUDGMENT ASSIGNEE,
JOSEPH L. KROFCHECK'S, MOTION FOR
PARTIAL SUMMARY JUDGMENT

PLAINTIFF and its Judgment Assignee, DR. JOSEPH L. KROFCHECK, M.D., respectfully move this Court for summary judgment in the amount of \$ against the above-named defendants as partial enforcement of, and request, that certain Judgment on Stipulation dated July 23, 1971, and on July 26, 1971, herein.

THE GROUNDS FOR THIS MOTION are as follows:

1. Said Judgment on Stipulation dated July 23, 1971, has been decreed by the above-entitled Court to be a valid, subsisting decree, binding on the parties thereto.

2. The Court has further determined that one Joseph L. Krofcheck, M.D., acquired his interest in the subject judgment as an assignee of the same and as a purchaser of plaintiff's real property awarded under such judgment.

3. Said judgment, dated July 23, 1971, ordered the defendants to satisfy their outstanding purchase money obligations encumbering the land awarded to plaintiff, later purchased by assignee Krofcheck, sufficient to cause the release of such property thereunder to plaintiff and third party purchaser.

4. The defendants defaulted on some of said obligations, encumbering the property awarded plaintiff under the said judgment, by failing to satisfy the same in order for certain land awarded plaintiff and sold by the latter to Dr. Joseph L. Krofcheck, M.D. to be released therefrom.

5. The Court has confirmed the foregoing facts and has granted plaintiff's prior motion for leave to execute against defendants under said judgment on July 23, 1971, and by virtue of Orders rendered, after plenary hearing herein, subsequent to said original Judgment on Stipulation.

6. The defendants have attacked said judgment as well as the subsequent Orders based thereon, and have divested themselves of, or concealed, assets, during the intervening 6 years, subject to execution thereunder; and, said defendants have at no time sought to meet their obligations pursuant to said judgment and Orders, involving the claims made in the within motion.

7. Under date of June 21, 1977, this Court ruled, in sum effect, that there remains one factual issue left for determination herein, namely: the current money amount due from defendants to plaintiff and/or Dr. Krofcheck, for the former having defaulted under the said July 23, 1971, Judgment on Stipulation and the subsequent Orders based thereon.


8. Neither the defendants, nor any party whatever, can refute that:

- (a.) certain real property awarded to plaintiff and sold to Dr. Krofcheck, under the said July 23, 1971, judgment, went through foreclosure in this Court, (Civil No. 4473-A), as a result of the defendants' failure to meet their obligations to plaintiff, and Dr. Krofcheck, under said judgment; and,
- (b.) Dr. Joseph L. Krofcheck, Judgment Assignee and purchaser of said land, had to raise \$98,000.00 cash to recover back most of said foreclosed land previously purchased by him from plaintiff prior to said foreclosure proceeding, as disclosed by the affidavits annexed to this motion.

WHEREFORE, there being no material issue of fact to litigate, and the subject judgment and Orders herein having clearly described defendants' legal duty thereunder, plaintiff and its assignee, Dr. Joseph L. Krofcheck, M.D., respectfully request this Honorable Court, as a matter of law, to grant the

motion herein, without prejudice to later enter any further claims due from defendants pursuant to and arising from said decree, or Ut: when, and if, the same are fully known to plaintiff and/or Dr. Krof:

DATED this 5th day of July 1977.


DON R. STRONG, Attorney to
Plaintiffs and Judgment As
Dr. Joseph L. Krofcheck [C
Ballina Dr., Encino, Calif
91436].

2.

AFFIDAVIT OF JOSEPH L. KROJCHECK

1 A F F I D A V I T

2 DOCTOR JOSEPH L. KROFCHECK, AFFIANT HEREIN, BEING FIRST
3 SWORN ON HIS OATH, DOES HEREBY STATE AS FOLLOWS:

4
5 1. Affiant has direct, personal knowledge of the mat:
6 hereinafter recited in this affidavit.

7 2. Affiant is the same party referred to in that cert:
8 Order of the Court dated the 6th day of November, 1975, in
9 Suit Number 4143 of the Summit County, Utah, District Court
10 by it was determined that affiant purchased plaintiff's real
11 property awarded under, and is an assignee of the plaintiff
12 rights to, the July 23, 1971, final judgment entered in said
13 action.

14 3. The said rights assigned to affiant pursuant to t
15 23, 1971, judgment includes the privilege of enforcing any
16 prerogatives embraced by said judgment, requiring the defe:

17 to discharge the monetary obligations against or in connection
18 with the land awarded plaintiff under such judgment, sufficient to
19 release and convey said land to affiant as plaintiff's assignee.

20 4. In furtherance of said right to enforce the July 23, 1971,
21 judgment, affiant's assignment permits him to execute, in his own
22 name or through plaintiff Park City Utah Corporation, against
23 defendants in amounts sufficient to discharge outstanding money
24 obligations for the release and conveyance to affiant of his land
25 covered by the judgment, as encompassed by the third paragraph of
26 that certain Order of the Court, dated April 8, 1975, filed in
27 said Civil Number 4143 action.

28 5. The real property described in Exhibit "A," annexed
29 hereto and by this reference incorporated herein, which has been
30 identified as "Parcels 8, 9, 10, 11, and 12," is precisely the
31 same real property, bearing corresponding identical parcel numbers,
32 as the realty set forth at the top of page 3, first paragraph,

1 of the subject July 23, 1971, final judgment (filed July 26, 1971)
2 in Civil Number 4143.

3 6. At no time did the defendants in said Civil Number 4143
4 lawsuit, or any of them, nor representatives of such defendants,
5 ever tender or otherwise discharge the monetary amounts due and
6 owing against the real property described in Exhibit "A" attached
7 hereto, as required by the provisions of the said July 23, 1971,
8 judgment appearing on pages 6 and 7 thereof (and as reaffirmed by:
9 the Court's Memorandum Decision dated June 21, 1977, page 2 thereof;
10 the Court's Order of November 6, 1975, paragraph 1, thereof; the
11 Court's Order of April 8, 1975, paragraph 1 thereof).

12 7. The defendants permitted the land covered by Exhi
13 to go into a foreclosure proceeding in the years 1974 and 1
14 which proceeding is identified as Civil Number 4473-A of th
15 Summit County District Court.

16 8. Affiant thereafter paid the sum of ninety-eight t
17 dollars (\$98,000) cash, by himself and through his agent or
18 Robert Colley, to Franklin D. Richards & Company (represent
19 its attorney Grant Macfarlane) and Richard Ringwood, to rec
20 back affiant's interest, subject to certain adverse claims
21 purported prior redemptioner, in all but two acres of the r
22 property covered by said Exhibit "A" hereto.

23 9. Said payees, Franklin D. Richards & Company and R
24 Ringwood, were the foreclosure sale purchasers of the land
25 scribed in Exhibit "A" to this affidavit who acquired said
26 perty at the Civil Number 4473-A sheriff's sale held on Apr
27 1975, in Summit County Utah.

28 10. Copies of the negotiated checks which emanated fr
29 affiant's account, evidencing payment to the said judicial
30 purchasers, are attached hereto as Exhibit "B," and by this
31 reference are incorporated herein.

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1 11. The defendants have at no time reimbursed or other
2 compensated affiant, or affiant's representatives, any porti
3 the said ninety-eight thousand dollars (\$98,000) cash expen
4 affiant to recover his said land embraced by Exhibit "A" he

5

6 Dated this 2 day of July, 1977.

Joseph L. Krofcheck
Joseph L. Krofcheck

7

AFFIDAVIT OF ROBERT W. ENSIGN

COMES NOW, ROBERT W. ENSIGN, being first duly sworn, and deposes and states as follows, to wit:

1. That he was the general partner of the defendant ENSIGN COMPANY, a limited partnership, now dissolved.

2. That the ENSIGN COMPANY sold all of its right, title and interest in and to all of the property in question in the plaintiff's motion for summary judgment to the defendant SKI PARK CITY WEST, INC. in the Fall of 1969.

3. That the ENSIGN COMPANY has had no dealings with that real property or any financial transaction involving that real property since the sale of said property in the Fall of 1969.

4. That the ENSIGN COMPANY has had no dealings with any monies received from the sale of any of the property referred to in Paragraphs 6, 7 and 8 of plaintiff's points and authorities in support of its motion for summary judgment,

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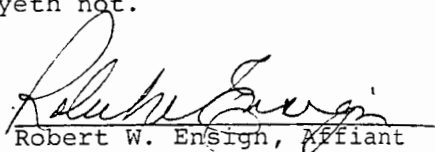
dated July 6, 1976, that is, the ENSIGN COMPANY did not receive or disburse any such funds or claim any entitlement to them.

5. That since the Fall, 1969, the ENSIGN COMPANY was not a party to any dealings with KROFCHECK, either having to do with the sale or purchase of land or any foreclosure proceedings concerning the same.

6. That based upon affiant's familiarity with the value of the land mentioned in the pleadings having to do with the motion for summary judgment, it is his opinion that the land in question is not worth \$98,000, but is worth a much smaller amount.

7. That the ENSIGN COMPANY did not mortgage or otherwise encumber the land mentioned in the plaintiff's motion for summary judgment.

FURTHER, affiant sayeth not.


Robert W. Ensign, Affiant

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JUDGMENT

The above matter came on regularly for hearing on the 18th day of 1977, before the Honorable James S. Sawaya, District Court Judge, upon plaintiff's and its Judgment Assignee's motion for partial summary judgment whereby said parties sought to implement the original Judgment Stipulation dated July 23, 1971, and modify the prior writ of execution herein, by requesting that judgment be entered in this action against the above named defendants in the sum of \$98,000.00. In opposition to the defendant Ensign Company appeared by and through its counsel Hon. Bennett, Esq., with the defendants Ski Park City West, Inc., and Associated Grove, Inc., (Name changed to National Property Management Inc.), appearing through their counsel, Clark R. Nielsen, Esq., of Nielsen, Hennrich, Gottfredson and Peck, attorneys of record; and, the plaintiff and its Judgment Assignee, Dr. Joseph L. Krofcheck, appearing by and through attorney Harold Mitchell, on behalf of Don R. Strong, counsel of record. Said motion for partial summary judgment having been argued by all of

parties in open court, as well as by written memoranda with affidavits and exhibits annexed thereto, and the Court having duly considered the merits of the dispute, and good cause appearing; now, therefore,

THE COURT FINDS: 1.) that, the original May 21, 1971, Order, the July 23, 1971, Judgment on Stipulation and all of those subsequent orders and decision executed by the Court in the years 1975 and 1977 in these proceedings, are valid and subsisting decrees the determinations therein and

directives of which are binding upon the plaintiffs, the Judgment Assignee, Ensign Company, Ski Park City West, Inc., and Aspen Grove, Inc. (changed, supra.), respectively: 2.) that, it was the duty and obligation of the named defendants herein, or any of them, to obtain the release from monetary encumbrances of that certain real property awarded to plaintiff Park City Utah Corporation, as described in said May 21, 1971, and July 23, 1971, original decrees: 3.) that, in consequence of said decrees and orders thereon, should the defendants, or any of them, fail to discharge the said financial obligations encumbering said real property, or any portion of the same, awarded to plaintiff under said original 1971, decrees, said defendants shall be liable in money damages in favor of the plaintiff and the latter's Judgment Assignee herein, to the extent necessary to compensate said plaintiff and assignee for the cash outlay required from them in order to recover back said real property, or, in the alternative, to compensate plaintiff and its assignee for the loss of such property in an amount equal to the fair market value of any realty not recovered by virtue of defendants' said default, said value deemed established as of the date the non-recovered property is finally beyond legal recovery on the part of

plaintiff and its said assignee; 4.) that, said three defendants did fail to discharge the financial obligations encumbering land awarded to said plaintiff, Park City Utah Corporation, described as parcels 8, 11 and 12, in said July 23, 1971, Judgment on Stipulation, (top of page therein), resulting in the foreclosure of the same pursuant to a decree of foreclosure in Civil No. 4473-A, of the above-captioned Court; 5.) that said Judgment Assignee, Dr. Joseph L. Krofcheck, M.D., did in fact recover all but two acres of said parcels 8 through 12, inclusive, subject to redemption claims therein, by paying the sum of \$98,000.00 cash to the judicial-sale purchasers of the Sheriff's foreclosure sale thereof; 6.) that the foregoing factual issues, embracing the questions of said foreclosure and the recovery payment of \$98,000.00, are materially uncontroverted by the defendants, or any of them; 7.) that, said Judgment Assignee, Dr. L. Krofcheck, M.D., is hereby determined to be a proper judgment creditor herein, entitled to pursue his legal remedies hereunder; 8.) that, to

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May 15, 1975, Writ of Execution herein is superseded and modified, requiring the same to be amended so as to reflect the current monetary award hereunder from the defendants to the plaintiff and its Judgment Assignee. Wherefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that judgment in the sum of ninety-eight thousand dollars, (\$98,000.00), be, and the same is awarded to plaintiff and its named Judgment Assignee, against defendants Ensign Company, Ski Park City West, Inc. and Aspen Grove, Inc. (Name changed to National Property Management, Inc.).

IT IS FURTHER ORDERED, that said principal award in the sum of ninety-eight thousand dollars (\$98,000.00) shall bear interest at the annual

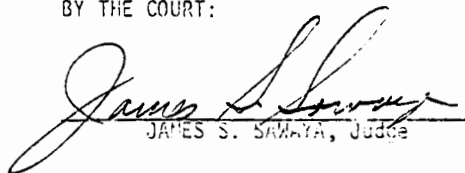
of 8%, as provided by Section 15-1-4 of the Utah Code Annotated, from and after the date of entry of the within judgment.

IT IS FURTHER ORDERED, that this Court's previous Order, dated the 8th day of April, 1975, granting plaintiffs' motion for leave to execute, be, and the same is hereby, affirmed, as to the aforesaid principal judgment award herein, together with legal interest as specified; and, the Clerk of this Court shall issue its amended writ of execution in conformance hereto.

IT IS FURTHER ORDERED, that by this judgment, plaintiff's and its assignee's motion for summary judgment is granted without prejudice to enter any additional claims subsequent hereto, which may be justly due from the defendants pursuant to or arising from the decrees, or any of the same, in this cause, when, and if, such claims are more fully known to said plaintiff and its assignee.

DATED this 6 day of Sept 1977.

BY THE COURT:


JAMES S. SAWAYA, Judge

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NOTICE OF APPEAL

Notice is hereby given that Ensign Company, a limited partnership, one of the defendants above named, hereby appeals to the Supreme Court of the State of Utah from the Judgment signed by the Hon. James S. Sawaya, on or about the 6th day of September, 1977, and the Order signed by the Hon. Peter F. Leary, on or about September 2, 1977, based upon his memorandum

decision dated the 21st day of June, 1977, and to all those
Orders dealt with therein.

DATED this 9th day of September, 1977.

Wendell E. Bennett

Wendell E. Bennett
Attorney for Appellant
370 East 500 South, Suite 100
Salt Lake City, Utah 84111

CERTIFICATE OF MAILING

I, Nanci Shino, hereby certify that on the 12th day of January, 1978, I mailed a true and correct copy of the foregoing Appendix, first-class, postage prepaid, to Don R. Strong, P. O. Box 124, Springville, Utah 84663.

Nanci Shino