

1988

Joseph Brozda, Warren T. Christensen v. Houston Investors Limited, Donald Houston ,H. Clark Houston, and Linford Orton : Brief of Respondent

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

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IN THE UTAH COURT OF APPEALS

DOCKET NO. 880044-CA

JOSEPH BROZDA and WARREN T.
CHRISTENSEN,

Plaintiffs-Respondents,

vs.

HOUSTON INVESTORS LIMITED,
a Utah limited partnership,
DONALD HOUSTON, H. CLARK
HOUSTON, and LINFORD ORTON,

Defendants-Appellants.

Case No. 880044-CA

BRIEF OF RESPONDENTS

APPEAL FROM PARTIAL SUMMARY JUDGMENT OF THE
FIFTH JUDICIAL DISTRICT COURT, IRON COUNTY, STATE OF UTAH
THE HONORABLE ROBERT F. OWENS, DISTRICT JUDGE PRO-TEM

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COURT OF APPEALS

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GUIDE TO ABBREVIATIONS

Throughout this brief, Respondents use the following reference abbreviations:

1. "R" Refers to the record on appeal. This "R" is followed by a page number and/or paragraph.
2. "App. Brief" Refers to Appellants' Brief, followed by a reference to a page number.

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JURISDICTION OF THE COURT OF APPEALS

Notice of appeal was filed with the Utah Supreme Court. On or about January 22, 1988, this case was assigned to the Court of Appeals pursuant to Utah Code Ann. § 78-2a-3(2)(h). Jurisdiction is proper.

NATURE OF THE PROCEEDINGS

The Respondents, limited partners in a Utah limited partnership, filed suit in the Fifth Judicial District Court for an accounting, an order dissolving the partnership and winding-up its affairs, and for damages against the general partners.

After substantial discovery, the Respondents filed a Motion for Partial Summary Judgment. The District Court entered a Partial Summary Judgment, finding that Respondents were entitled, as a matter of law, to an order dissolving the partnership and requiring winding-up. The Appellants have appealed from a portion of that Partial Summary Judgment.

STATEMENT OF ISSUES

1. Whether Respondents, limited partners, are entitled to an order of dissolution pursuant to the operation of Utah Code Ann. § 48-2-16 as a matter of law.

2. Whether Respondents can be required to make capital contributions to a limited partnership beyond their initial contributions, in the absence of a provision in the Certificate of Limited Partnership requiring additional contributions, and if so, whether said requirement is a defense to partnership dissolution.

DETERMINATIVE STATUTES

The following statutes are determinative of the issues before the Court:

Utah Code Ann. § 48-2-16:

Withdrawal or reduction of limited partner's contribution.

(1) A limited partner shall not receive from a general partner or out of partnership property any part of his contribution until:

(a) All liabilities of the partnership except liabilities to general partners and to limited partners on account of their contributions, have been paid or there remains property of the partnership sufficient to pay them;

(b) The consent of all members is had, unless the return of the contribution may be rightfully demanded under the provisions of paragraph (2); and,

(c) The certificate is canceled or so amended as to set forth the withdrawal or reduction.

(2) Subject to the provisions of paragraph (1) a limited partner may rightfully demand the return of his contribution:

(a) On the dissolution of a partnership; or

(b) When the date specified in certificate for its return has arrived; or,

(c) After he has given six months' notice in writing to all other members, if no time is specified in the certificate either for the return of the contribution or for the dissolution of the partnership.

(3) In the absence of any statement in the certificate to the contrary, or of the consent of all members, a limited partner, irrespective of the nature of his contribution, has only the right to demand and receive cash in return for his contribution.

(4) A limited partner may have the partnership dissolved and its affairs wound up when:

(a) He rightfully but unsuccessfully demands the return of his contribution; or,

(b) The other liabilities of the partnership have not been paid, or the partnership property is insufficient for their payment as required by paragraph (1)(a) and the limited partner would otherwise be entitled to the return of his contribution.

Utah Code Ann. § 48-2-1:

"Limited partnership" defined.

A limited partnership is a partnership formed by two or more persons under the provisions of the next section, having as members one or more general partners and one or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership.

Utah Code Ann. § 48-2-2:

Formation.

(1) Two or more persons desiring to form a limited partnership shall:

(a) Sign and swear to a certificate, which shall state:

. . .
5th The term for which the partnership is to exist.

. . .
7th The additional contributions, if any, agreed to be made by each limited partner and the times at which, or events on the happening of which, they shall be made.

8th The time, if agreed upon, when the contribution of each limited partner is to be returned.

. . .

Utah Code Ann. § 48-2-14:

Relation of limited partners inter se.

Where there are several limited partners the members may agree that one or more of the limited partners shall have a priority over other limited partners as to the return of their contributions, as to their compensation by way of income, or as to any other matter. If such an agreement is made, it shall be stated in the certificate, and in the absence of such a statement all the limited partners shall stand upon equal footing.

Utah Code Ann. § 48-2-17(1):

Liability of limited partner to partnership.

(1) A limited partner is liable to the partnership:

(a) For the difference between his contribution as actually made and that stated in the certificate as having been made; and,

(b) For any unpaid contribution which he agreed in the certificate to make in the future at the time and on the conditions stated in the certificate.

STATEMENT OF THE CASE

A. Nature of the Case. The Plaintiffs/Respondents are two limited partners in a Utah limited partnership. These partners made initial contributions in 1974. Thereafter, pursuant to so called "assessments", these partners made additional voluntary contributions. When the Respondents ceased paying "assessments" in 1982, the Appellants, general and limited partners, purported to forfeit the Respondents' partnership interests. The Respondents filed suit for an accounting, to dissolve the partnership and to receive a return of their capital contributions. They also sued the general partners for damages.

The partnership has asserted that Respondents are not entitled to dissolve the partnership and that since Respondent partners had not made certain contributions, their interests in the partnership were forfeited.

B. Course of the Proceedings. The Respondents and Appellants both filed Motions for Summary Judgment. The Respondents sought to have the Court determine as a matter of law that they were entitled to a dissolution of the partnership. The Appellants' Motion sought a judgment that Respondents' partnership interests had been forfeited to the Appellants. (R 199; R 275)

The Respondents' Motion was argued September 4, 1985, before the Honorable Christian Ronnow, sitting as Associate District Judge. (R 277) After oral argument and submission of memoranda, Judge Ronnow requested the Respondents to prepare a form of Summary Judgment. (R 278)

Judge Ronnow was disqualified prior to entry of Judgment and Judge Robert F. Owens was assigned to hear the matter. Judge Owens heard argument on Summary Judgment on August 27, 1986. Judge Owens entered an order but thereafter indicated it was not a final order. (R 368) On October 14, 1987, Judge Owens entered a final and appealable order and incorporated his findings and order of August 27, 1986, therein. (R 421) The Appellants' Motion was indirectly denied when the Court granted Respondents' Motion for Summary Judgment. (R 359, ¶7; R 360, ¶14)

C. Disposition in Trial Court. The District Court entered a partial Summary Judgment for Respondents that, among other things, the partnership was dissolved and should begin winding-up. The District Court also ruled that the limited partners had no legal obligations to perform a partnership obligation known as the "White" contract or for other partnership liabilities beyond their contributions.

The issue of the specific share of partnership assets to which the Respondents would be entitled after dissolution and payment to creditors was reserved for trial. The Respondents' claims for damages against the general partners were also reserved.

D. Statement of Relevant Facts. The following facts are undisputed in the record. These facts arise primarily from the unrefuted affidavits submitted in connection with Motions for Summary Judgment.

1. On December 20, 1973, Don Houston, as purported General Partner, executed a real estate contract for the purchase of real property known as the "White" property located in Iron County, Utah. (R 203, ¶9; R 241)

2. The terms of the "White" contract required annual payments for a period of fifteen (15) years commencing in 1974. (R 291, ¶ 3; R 242)

3. Several months after Don Houston's execution of the "White" Contract, on July 26, 1974, Respondent Warren Christensen executed an "Agreement of Limited Partner" to become a limited partner in Houston Investors Ltd. (R 202, ¶ 5; R 231)

4. On that same date, July 26, 1974, Respondent Joseph Brozda executed an "Agreement of Limited Partner" to become a limited partner in Houston Investors Ltd. (R 209, ¶5; R 232)

5. The Certificate of Limited Partnership for Houston Investors Ltd., drafted by Appellants' counsel, was filed with the Iron County Clerk Nov. 13, 1974. (R 467, p.28:5-8; R 202, ¶5)

6. The Respondents were advised prior to their execution of the "Agreement of Limited Partner", that the limited partnership would invest in real estate located in the State of Utah. (R 202, ¶ 4; R 209, ¶ 4)

7. The Respondents did not at any time execute any Agreement for the purchase of the "White" property, or other real or personal property subsequently purchased by the limited partnership. (R 206, ¶ 31; R 461, ¶ 8; R 213, ¶ 31; R 458, ¶ 8)

8. In August, 1974, Respondent Brozda made an initial capital contribution to the limited partnership of \$10,500. (R 458, ¶ 3)

9. In August, 1974, Respondent Christensen made an initial capital contribution to the limited partnership of \$10,000. (R 461, ¶ 3)

10. Subsequent to 1974, the Appellant limited partnership incurred considerable debt to purchase substantial real property, including the "Farrow" and "Grimshaw" properties, and the "Fotheringham" water rights. The partnership also repurchased, for \$51,000, a limited partnership interest from Don Houston, one of the general partners. (R 467, p. 79) The partnership entered into long term obligations with State Bank of Southern Utah and others. (R 467, Ex.E, p.3; R 203, ¶10-15; R 210, ¶10-15; R 211, ¶16; R 204, ¶16; R 250; R 257; R 258)

11. The Respondents were not aware of the "Farrow", "Grimshaw" or "Fotheringham" purchases and other partnership obligations until after the purchases and debts had been concluded and contracted. (R 203, ¶11-13,17; R 210, ¶11-13,17)

12. Partnership debts in 1981, arising from said obligations, exclusive of the "White" contract debt, totaled at least \$372,670.60. (R 467, Ex. E, p.3)

13. The limited partnership sent to the Respondents various "assessments" from 1974 to 1982. (R 204, ¶19; R 211, ¶19)

14. From its assessments and contributions, the limited partnership has paid, and kept current, the accrued obligations of the "White" contract. (R 291, ¶5)

15. Between 1974 and 1982, pursuant to the "assessments" made by the limited partnership, the Respondent Christensen made contributions to the limited partnership in the sum of \$46,345.08. (R 202, ¶6,19,20)

16. Between 1974 and 1982, pursuant to the "assessments" made by the limited partnership, the Respondent Brozda made contributions to the limited partnership in the sum of \$43,303.62. (R 209, ¶6,19,20)

17. On or about August 12, 1982, the Respondents received from the limited partnership "assessments" of \$8,000 each, a portion of which was intended to make a payment on the "Grimshaw" property purchase. (R 204, ¶22; R 212, ¶22; R 259)

18. The Respondents refused to pay the "assessments" of 1982, and have made no contributions to the partnership since that time. (R 205, ¶23; R 212, ¶23; R 291)

19. In November, 1982, the Respondent's counsel received a letter from the Appellant's counsel stating that the Appellants intended to vote the Respondents out of the partnership and to keep Respondents' investments unless the Respondents paid the "partnership assessment". (R 205, ¶24; R 212, ¶24; R 262)

20. The Appellants subsequently voted to remove the Respondents from the partnership and terminate their partnership interests. (R 205, ¶26-27, R 212, ¶26-27)

21. The Certificate of Limited Partnership does not authorize the partners to forfeit another partner's interest in partnership assets by the vote of the partners or otherwise. (R 206, ¶35-36; R 214, ¶35-36)

22. The Certificate of Limited Partnership does not authorize the partnership to "assess" the limited partners and does not require limited partners to make capital contributions beyond their initial contributions. (R 206, ¶33-34; R 214, ¶33-34; R 216)

23. The Respondents made voluntary contributions to the partnership for several years, but have never made any agreement requiring them to do so. (R 457, ¶2,6-7; R 460, ¶2,6-7; R 358, ¶4)

24. The Certificate of Limited Partnership does not specify a time for either the return of capital contributions or for the dissolution of the partnership. (R459, ¶12; R462, ¶11; R216)

25. In July, 1985, Respondents gave six months' notice in writing to all other partners for the return of their contributions or for dissolution of the partnership. (R 458, ¶9; R 461, ¶9)

26. The partnership has not returned any of the Respondents' capital contributions and has not voluntarily dissolved. (R 458, ¶10; R 461, ¶10)

SUMMARY OF ARGUMENT

Contrary to statutory mandate, the Certificate of Limited Partnership does not specify a time or the conditions under which the partnership would be dissolved and contributions returned. No partnership term or date for return of capital can be implied. After appropriate demand and elapse of time, the Respondent limited partners were, therefore, entitled to an order dissolving the partnership pursuant to Utah Code Ann. § 48-2-16, as a matter of law.

Neither the Certificate of Limited Partnership nor any other writing provides that limited partners are required to make additional partnership contributions beyond their initial contribution. Utah law mandates that such requirements be in the certificate. The Respondents were entitled to an order that contributions, subsequent to their initial contributions, were voluntary and that Appellants are not entitled to require additional contributions.

The Respondents, as limited partners, have no obligation to retire partnership obligations. The liabilities of limited partners to the partnership must be set forth in the certificate and are not necessarily coextensive with partnership obligations. Consequently, the refusal of limited partners in this case to pay "assessments" to retire all partnership debt is not a defense to the order dissolving the partnership.

ARGUMENT I

THE RESPONDENTS ARE ENTITLED TO DISSOLUTION OF THE LIMITED PARTNERSHIP AS A MATTER OF LAW PURSUANT TO UTAH CODE ANNOTATED 48-2-16.

Utah Code Ann. § 48-2-2, states in pertinent part:

Two or more persons desiring to form a limited partnership
shall:

(a) sign and swear to a certificate
which shall state:

5th The term for which the partnership
is to exist.

8th The time, if agreed upon, when the
contribution of each limited partner is to be
returned.

(Emphasis added.)

In the present case the Certificate provides no term of
the partnership, no time for dissolution, and no time for return
of contributions. (R 459, ¶11; R 462, ¶11; R 216 ¶ v; R 359, ¶8)

Utah Code Ann. § 48-2-16 provides in part:

(2) Subject to the provisions of paragraph (1), a
limited partner may rightfully demand the return of his
contribution:

- (a) On the dissolution of a partnership; or
- (b) When the date specified in the certificate for its return has arrived; or
- (c) After he has given six months' notice in writing to all other members, if not time is specified in the certificate either for the return of the contribution or for the dissolution of the partnership.

(4) A limited partner may have the partnership
dissolved and its affairs wound up when:

- (a) He rightfully but unsuccessfully demands return of his contribution;
- (b) The other liabilities of the partnership have not been paid, or the partnership is insufficient for their payment as required by paragraph (1)(a) and the partner would otherwise be entitled to the return of his contribution.

Since the Certificate of Limited Partnership makes no provision for a time to return contributions or for the dissolution of the partnership, the Respondents invoked the provisions of the foregoing statute by demanding return of their contributions in writings served on each of the partners. (R 459, ¶11; R 462, ¶11; R 216; R 359, ¶8; R 458, ¶9; R 461, ¶9) At the time of Summary Judgment, six months had elapsed since demand had been made, and no contributions had been returned to the Respondents. (R 360, ¶9) Instead of dissolving the partnership, Appellants continued to maintain that Respondents were liable to pay assessments, and that their partnership interests had been forfeited.

After reviewing the undisputed Affidavits submitted in connection with Summary Judgment, the District Court found that the Respondents were limited partners, that there were no provisions in the certificate of limited partnership for the return of contributions or dissolution of the partnership (R 359, ¶8), and that the Respondents had properly requested return of their contributions or dissolution. (R 360, ¶9) The District Court concluded that Utah Code Ann. § 48-2-16 required the dissolution of the partnership and entered its judgment accordingly. (R 360, ¶5)

When a limited partnership certificate, contrary to Utah law, states no time for dissolution, no partnership term, and no time for return of capital contributions, Utah Code Ann. § 48-2-16 provides mechanisms for the limited partners to

dissolve the partnership. If no such mechanism were provided, limited partners could become trapped in a limited partnership without their consent or agreement. Such would be contrary to the entire concept of a partnership. Respondents' entitlement to dissolution in this case is even more compelling, where Appellants continued to incur new debts and obligations after the initial contributions of the partners and, thereafter, sought to extract unauthorized assessments to pay said debts, and purported to forfeit Respondents' interest when they refused to pay assessments.

Although Utah Code Ann. § 48-2-16 is dispositive of this issue, the Appellants' brief virtually ignores the statute. The Appellants' brief does not address the facts that no provision for return of capital or dissolution is found in the certificate, and that return of contributions or request for dissolution has been properly demanded.

Instead of addressing Utah Code Ann. § 48-2-16, the Appellants weakly argue that the partnership certificate should be construed as having a fifteen year term corresponding to the length of the "White" contract and that the partnership should not be dissolved prior to that time. (App. brief, p. 8) Firstly, this theory is raised for the first time on appeal, and should not be considered by this Court. First Equity Corp. of Florida v. Utah State University, 544 P. 2d, 887 (Utah 1975); Davis v. Mulholland, 475 P.2d 834 (Utah 1970). Secondly, the gravamen of the Appellants' untimely argument is that the

Respondents allegedly knew that the "White" contract had a fifteen year term so that this knowledge by itself should imply a fifteen year partnership term and dissolution date.

The Appellants cite no language in the Certificate of Limited Partnership that can be so construed. Neither is there evidence that the Respondents executed any agreement to be bound by the provisions of the "White" contract, or to incorporate any of its terms into the partnership certificate or agreement.

Appellants cite no authority for the proposition that a material term of the written partnership certificate can be implied or fashioned by the Court from a limited partner's mere knowledge of the terms of a partnership contract with a third party. Appellants' proposition would require a re-writing of the certificate, not a matter of construction. The Utah Supreme Court has repeatedly held that Courts should not presume to fashion contract terms to which the parties did not agree. Bekins Bar V Ranch v. Huth, 644 P.2d 455 (Utah 1983); Beisinger v. Behunin, 584 P.2d 801 (Utah 1978). It is well-recognized that an ambiguous document should be construed against its draftsman. 17 AmJur 2d Contracts §276; R 457, p.28. There is no evidence that the Respondents agreed to be bound to the terms of the "White" contract, or that the partnership could not be dissolved during the term of the "White" contract. (R 358, ¶4) This Court should not, by implication, construction or otherwise, fashion a new contract term to which the parties did not agree.

Utah law requires that the term of the partnership and

the date at which contributions are to be returned be stated in the certificate. These important provisions are not found in the partnership certificate in this case. The Utah Legislature anticipated a circumstance in which a limited partnership certificate would fail to comply with the statutory mandate, and provided in Utah Code Ann. § 48-2-16 the mechanism by which limited partners could obtain dissolution of the partnership. This Court should affirm the District Court's decision that the Respondents were entitled to an order of dissolution of the partnership pursuant to Utah Code Ann. § 48-2-16.

ARGUMENT II

THE RESPONDENTS CANNOT BE REQUIRED TO MAKE ADDITIONAL CONTRIBUTIONS TO THE PARTNERSHIP.

Paragraph VIII of the Certificate of Limited Partnership sets forth the initial contributions of various limited partners. (R 220, ¶ VIII) There are no provisions in the certificate or in any other writing wherein the limited partners agreed to pay additional contributions to the partnership. (R 216; R 358, ¶4-5)

The District Court ruled as a matter of law that Respondents were not obligated to make any capital contribution to the partnership beyond their initial contributions. (R 360, ¶2)

This ruling was based, in part, upon Utah Code Ann. § 48-2-2(1), which states in pertinent part:

Two or more persons desiring to form a limited partnership shall:

(a) sign and swear to a certificate which shall state:

7th The additional contributions, if any, agreed to be made by each limited partner and the times at which, or events on the happening of which they shall be made.

(Emphasis added.)

The language of the statute is mandatory. The persons forming a partnership "shall" include a provision for requiring additional contributions if the same are to be required. The clear implication is that, if no such provision is made in the certificate, there is no agreement to make any additional contributions.

In the present case, there is no issue that the certificate does not require the payment of additional contributions. (R 458, ¶ 4, 7; R 461, ¶ 4,7; R 359, ¶5; R 216) As a matter of law, this Court should rule that the limited partnership may not compel additional contributions even if voluntary contributions are made after receiving "assessments". (R 204, ¶ 20; R 211, ¶ 20; R 358, ¶4)

The Appellants respond to the clear mandatory language of Utah Code Ann. § 48-2-2(1) by stating, in effect, that the legislature did not mean what it said when it provided that certificates "shall" provide for additional contributions if they are to be required. The Appellants, without authority, glibly state "such contributions do not have to be set out in the certificate of limited partnership". (App.Brief, p.8) The Appellants attempt to support this strained position by arguing that the requirements of the law were only intended to protect

third parties and that the partners inter se can make any agreement in any form they desire. (App.Brief, p.8-9)

The Appellants admit that they have no Utah authority to support their position that an agreement to pay additional contributions need not be in the certificate, but refer to the Utah case of Rond v. Yeaman-Yordan-Hale Productions, 681 P.2d 1240 (1984). That case is inapposite. The issue in Rond was whether a limited partnership was created even though the partnership certificate had not been filed, in circumstances where neither the rights of third parties nor a partners' claim of limited liability was involved. The Rond Court found that under those circumstances a partnership had been created. The Court noted, citing Brown v. Brown, 15 Ariz. App.333, 488 P.2d 689 (1971) that the statutory filing or recording requirements are for the protection of third persons. 681 P.2d at 1242.

The Rond decision does not support the Appellants' proposition that partnership terms statutorily mandated to be in the certificate may, nevertheless, be omitted and be left to the verbal agreement of partners inter se. The Rond Court recognized that Utah Code Ann. § 48-2-2 describes numerous separate items which must be in the certificate. There was no question that the contents of the certificate in Rond were adequate to satisfy the statute. The Court simply held that, in some limited circumstances, the failure to file a certificate is not fatal to the existence of the partnership. The Rond opinion, dealing specifically with the filing requirement has no application here.

The New Mexico Court in Haefer v. Hall, 75 N.M. 751, 411 P.2d 230 (1966), cited in Appellants' brief, ruled on the same narrow issue as the Rond Court. The New Mexico Court held that failure to record a certificate of limited partnership did not affect the existence of a limited partnership and that the recording requirement is intended to protect third parties. That case does not support the Appellants' much broader proposition that the statutory scheme mandating the contents of partnership certificates is intended to protect only third parties, and the partners inter se may ignore the statutory requirements. In fact, the Haefer Court stressed that, generally, in order to obtain the privilege of limited liability, limited partners must conform to statutory requirements. 411 P.2d at 232.

The Colorado Court of Appeals in Mahon v. Harst, 738 P.2d 1190 (1987) considered whether partners could make an oral agreement regarding the removal and substitution of general partners. That Court held that such an agreement was not precluded because it was not within the purview of the Colorado statute which set forth matters required to be in the certificate. In short, such an oral agreement may be acceptable so long as the subject of the agreement is not statutorily required to be in the certificate.

In the present case, those matters which Appellants allege to have been orally agreed among the partners are statutorily required to be in the certificate. Unlike the filing requirement discussed in Rond, the provisions which are

absent in the subject partnership certificate were not required by the legislature to be in the certificate only for the purposes of protecting third parties. The requirement that the certificate state whether additional contributions are to be required is intended to protect limited partners from the very abuses practiced by Houston Investors Ltd.

The Utah Legislature has given some direction regarding the relationship and agreements of limited partners inter se. Utah Code Ann. § 48-2-14, provides that several limited partners may agree as to

"priority over other limited partners as to return of their contributions, as to their compensation by way of income, or as to any other matter. If such Agreement is made, it shall be stated in the certificate, and in the absence of such a statement all the partners shall stand upon equal footing."

Thus, the Legislature has provided that partners may agree among themselves as to their relationships, but this that such agreements must be included in the partnership certificate.

Notwithstanding the disputed allegation of Appellants' brief, raised for the first time in this appeal, that there was an agreement to retire the "White" contract debt, the certificate in the present case is good evidence that the partners were aware that their relationships inter se were to be set forth in the certificate. For example, in Paragraph X, the partners provided that there shall be no priority among them. (R 223, ¶X) In addition, in Paragraph XXII the partners agreed that certain provisions of the partnership agreement can be amended by

a vote of the partners, but that the rights of the partners interest regarding the percentage interest of any limited partner in the partnership could not be altered by vote. (R 228)

The Appellants would have this Court first disregard the statutory language, requiring that the certificate state whether additional contributions would be required of limited partners, and then recognize belated and untimely allegations of verbal agreements to make additional contributions. The Appellants have given inadequate reason and no authority to disregard the legislative mandate of Utah Code Ann. § 48-2-2. This Court should affirm the District Court's ruling that Respondents could not be required to make additional partnership contributions, as a matter of law.

ARGUMENT III

LIMITED PARTNERS' REFUSAL TO RETIRE PARTNERSHIP DEBTS IS NOT A DEFENSE TO DISSOLUTION OF THE PARTNERSHIP.

The Appellants argue that the Respondent limited partners are obligated to continue contributing to the partnership and are not entitled to dissolution of the partnership until partnership obligations are paid. Appellants argue that this is the case even though no written agreement exists to pay such obligations, because the Respondents allegedly knew at the time they became limited partners that the partnership had a long term obligation on the "White" contract. (App.Brief 4,6,9; R 290, ¶3)

The law of limited partnership contemplates that the obligations of limited partnerships and general partners will be greater than the liability of the limited partners, and that the partnership may enter into obligations with third parties which the limited partners are not obligated to retire. Utah Code Annotated 48-2-1 states:

A limited partnership is a partnership formed by two or more persons under the provisions of the next paragraph, having as members one or more general partners and one or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership.

(Emphasis added.)

The obligations of limited partners to the partnership are statutorily limited. Utah Code Annotated 48-2-17(1) states:

Liability of limited partner to partnership:

(1) A limited partner is liable to the partnership:

(a) For the difference between his contribution as actually made and that stated in the certificate as having been made; and,

(b) For any unpaid contribution which he agreed in the certificate to make in the future at the time and on the conditions stated in the certificate.

(Emphasis added.)

Consequently, Limited partners are not obligated to retire partnership debts, but are only liable to the extent they have not paid contributions specified and agreed in the certificate.

Nevertheless, the Appellants urge that Respondents should be required to contribute additional amounts and be prevented from dissolving the partnership simply because of their

knowledge that the "Wnite" contract was a long term agreement. Appellants would have the Court ignore the fact that Appellants have assessed and collected from its limited partners for partnership debts far in excess of the payment on the "White" contract. The assessments which Respondents refused to pay, for example, were for substantial obligations such as the "Grimshaw" property. It is not disputed that subsequent to Respondents' payment of their initial contributions, the Appellants incurred debts to purchase the "Farrow" and "Grimshaw" properties and "Fotheringham" water rights, and assessed the Respondents for these purchases. The Respondents had no knowledge of and had not agreed to be assessed for these purchases. When General Partner Don Houston decided to sell one of his limited partnerships, the partnership obligated itself to purchase this partnership for \$51,000. (R 467, p.79:3) The partnership also borrowed more than \$76,000 from the State Bank of Southern Utah, and incurred other obligations. (R 467, p.64, Depo. Ex.E, p.3) Recent assessments are for much more than the "White" payment which Appellants offer as an excuse for their actions. In 1981, for example, of a total partnership debt of \$573,693.76, only \$201,023.16 was for the "White" contract. (R 467, Ex.E p.3)

While the Appellants now argue that Respondents should be required to assist in retiring the "White" debt, historically they have acted as if the Respondents were obligated to retire all partnership debts. Clearly, the partnership pretended it had "carte blanche" authority to assess the Respondents for any

number of partnership obligations and did so for many years.

Appellants argument on appeal that Respondents cannot exercise their statutory rights to dissolve this partnership and, contrary to the partnership certificate and Utah law, should be required to pay the "White" contract, is a disingenuous diversion from Appellants' historical conduct of assessment for substantial partnership obligations far beyond the "White contract. (R 467, p.79:3)

There is no authority for the Appellants' proposition and conduct that the obligation of limited partners is coextensive with partnership obligations. All statutory authority is to the contrary. The argument that Respondents were required to make additional contributions to retire partnership obligations and are not entitled to dissolution until obligations have been retired is repugnant to Utah law and must be rejected.

CONCLUSION

This was a proper case for entry of Summary Judgment. There are no disputes regarding material facts. All issues were properly decided as matter of law.

The Respondents each agreed to contribute approximately \$10,000 to a limited partnership. On the request of the partnership, and without a requirement to do so, each contributed a total of more than \$40,000.00. When the Respondents stopped contributing to the partnership and requested a return of their contributions or dissolution, almost eleven years after their

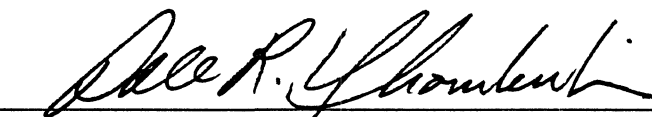
initial contributions, the Appellants refused. In the absence of statutorily mandated provisions in the Partnership Certificate stating the time for dissolution and return of capital or a provision requiring additional capital contributions, the Respondents were entitled to exercise the statutory mechanisms for dissolution and to obtain an order dissolving the partnership.

The Appellants' argument that the Respondents are not entitled to dissolution because they knew about a long term partnership obligation, and should, therefore, be required to assist in retiring extensive partnership debts, is contrary to a host of Utah law and the recognized theory of limited partnership. The liability of limited partners is not coextensive with the obligations of the partnership. Consequently, the refusal of Respondents to assist in the retirement of partnership obligations is not a defense to dissolution of the partnership.

The Respondents request this Court to affirm and sustain the well-supported partial Summary Judgment of the District Court.

DATED this 26th day of May, 1988.

JONES, WALDO, HOLBROOK & McDONOUGH



DALE R. CHAMBERLAIN
Attorney for Plaintiffs/Respondents
249 East Tabernacle
Suite 200
St. George, Utah 84770
Telephone: (801) 628-1627

IN THE UTAH COURT OF APPEALS

JOSEPH BROZDA and WARREN T.
CHRISTENSEN,

Plaintiffs-Respondents,

vs.

HOUSTON INVESTORS LIMITED,
a Utah limited partnership,
DONALD HOUSTON, H. CLARK
HOUSTON, and LINFORD ORTON,

Defendants-Appellants.

PROOF OF SERVICE

Case No. 880044-CA

I do hereby certify that on the 26th day of May, 1988,
I did cause 4 copies of the foregoing Respondents Brief to be
served on Michael W. Park, counsel for Appellants at 110 North
Main Street, Suit H, P. O. Box 765, Cedar City, Utah 84720, by
depositing the same in the United States first class mail,
postage prepaid.


DALE R. CHAMBERLAIN

C E R T I F I C A T E O F
L I M I T E D P A R T N E R S H I P
O F
H O U S T O N I N V E S T O R S L I M I T E D

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HOUSTON INVESTORS LIMITED

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C E R T I F I C A T E O F
L I M I T E D P A R T N E R S H I P

I

Name of Partnership: HOUSTON INVESTORS LIMITED
hereinafter called The Partnership.

II

Character of business to be conducted by the Partnership shall include, but not be limited to investing funds and monies in any and all property of every kind and nature.

III

Location and principal place of business shall be in Iron County, State of Utah:

Houston Investors Limited
c/o Linford Orton
Midvalley Road
R.F.D. 1 Box 34
Cedar City, Utah 84720

The within document shall constitute not only the agreement between the parties, but shall also act as a Certificate of Formation of Limited Partnership, and the General Partner shall cause it to be filed in the office of the County Recorder of each county in which the situs of partnership property is located and the county which is the location of the principal place of partnership business, in accordance with the provisions of the Uniform Limited Partnership Act.

IV

The name and place of residence of the General Partner is:

Donald Houston
175 North Jackson, #107
San Jose, California 95116

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V

The Partnership shall commence as of the filing date of this Agreement and shall continue for a period of from the date thereof unless sooner terminated or extended as hereinafter provided.

VI

The Partnership may be terminated or extended by agreement of General and Limited Partners having at least fifty-one percent interest in the Partnership.

VII

Where there are three or more General Partners, only two of the General Partners are required to sign documents, notes, and execute conveyances, notes, deeds of trust, and all other loan documents and applications on behalf of the Partnership.

VIII

The Proportional interests of the parties in said partnership and their contributions are as follows:

<u>Name & Address</u>	<u>Contribution</u>	<u>% Interest</u>	<u>Down Payment</u>	<u>Due 1974</u>
1. Warren T. Christensen, 15328 Via Palomino, Monte Sereno, California 95030	\$10,000.00			
2. George T. Flynn III, P. O. Box 516, Stinson Beach, Calif. 94970	\$10,000.00			
3. J. Patrick Quigley 6412 Paso Los Cerritos, San Jose, Calif. 95120	\$10,000.00			

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	<u>Name & Address</u>	<u>Contribution</u>	<u>Interest</u>	<u>Down Payment</u>	<u>Due 1974</u>
4.	A. J. Flood, 175 North Jackson, #107 San Jose, Calif. 95116	\$10,000.00			
5.	H. Clark Houston 612 East 300 So., St. George, Ut., 84770	\$10,000.00			
6.	Donald Houston 175 North Jackson #107, San Jose, Calif., 95116	\$10,000.00			
7.	Linford Orton R.F.D. 1 Box 34, Cedar City, Ut., 84720	\$10,000.00			
8.	Joseph Brozda San Jose Calif	14,500.00			
9.					
10.					

IX

A Limited Partner may assign his right to receive his share of the profits and distribution of assets, but said Limited Partner's assignee shall not become a substituted Limited Partner except upon the written consent of all the General Partners. The admission of an assignee of a Limited Partner as a substituted Limited Partner shall be conditioned on:

- (i) The assignment instrument being in form and substance satisfactory to the General Partners;
- (ii) The assignor and assignee named herein executing and acknowledging such other instrument or instruments as the General Partners may deem necessary or desirable to effectuate such admission;
- (iii) The assignee's written acceptance and adoption of all of the terms and provisions of this Agreement, as the same may have been amended; and
- (iv) Such assignee paying or obligating himself to pay, as the General Partner may determine, all reasonable expenses connected with such admission, including, but not limited to, the cost of preparing, filing, and publishing any amendment of the Certificate of Limited Partnership to effectuate such admission.

The failure or refusal of the General Partner to grant the aforesaid consent shall not affect the validity and effectiveness as an assignment of Limited Partnership interest in profits and losses, provided such instrument is in form satisfactory to the General Partner, and a duly executed and acknowledged counterpart is filed with the Partnership. The preceeding paragraphs shall apply to the procedure for substituting Partners in the place of Partners who hold original partnership interests created by this agreement, and no new person shall be admitted as a Limited Partner to purchase a newly created interest except upon such terms and conditions as may be approved in writing by the General Partner. Such approval shall take the form of an amendment to this Partnership Agreement and the Certificate of Limited Partnership.

IX (Continued)

If any Limited Partner shall assign his interest prior to the expiration of the term hereof without receiving the consent of the General Partner, such assignment shall not cause or constitute a dissolution of this Partnership. The assignee shall have no right to any information or accounting of the Partnership's transactions or to inspect the Partnership's books. Upon giving notice of the assignment to the General Partners of the Partnership, the assignee shall be entitled to receive only a return of the contribution to capital and to share of profits to which his assignor would otherwise be entitled, diminished by the assignor's respective share of the losses, if any.

In the event that a new substituted Limited Partner is permitted as herein provided, the General Partner of the Partnership shall file a new Certificate of Limited Partnership which sets forth the respective interests of the continuing and substituted partners. The consent of any of the other limited partners shall not be required to effectuate such substitution.

X

There shall be no priority of any partner over any other partner as to the distribution of assets or profits. Undistributed profits or losses of the Partnership shall be applied, on a pro rata basis determined by percentage interest in the Partnership, to the capital accounts of each partner. The percentage of profits to be distributed shall be determined annually based upon the financial solvency and future plans of the Partnership and distributed on a pro rata basis determined by percentage interest in the Partnership.

XI

No partner shall have the right to demand and receive Partnership property other than upon dissolution or termination of the Partnership pursuant to the provisions of this certificate. In the event of dissolution or termination of the Partnership, the General Partner shall have the right either to distribute to the Partners, in satisfaction of their rights hereunder, undivided interests in Partnership assets or to sell the Partnership assets and distribute the proceeds. The assets or proceeds shall be distributed to the Partners in

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XI (Continued)

proportion to their then respective Partnership interests.
No payment shall be made to any partner for any balance in his capital account.

XII

- A. Additional Limited Partners may be admitted with the written consent of all partners.
- B. Substituted Limited Partners and additional General Partners may be admitted with the consent of all General Partners.

XIII

Any of the Partners, General or Limited, may engage in or possess an interest in other business ventures of every nature and description independently or with others and neither the Partnership nor the Partners shall have any right by virtue of this Agreement in and to such independent ventures or to the income or profits derived therefrom.

XIV

In conformity with the Corporation Code of the State of Utah and its provisions pertaining to Limited Partnerships, the Limited Partners shall not take part in the management of the business or transact any business for the Partnership, and shall have no power to sign or to bind the Partnership.

XV

The Limited Partners, jointly and separately, hereby irrevocably constitute and appoint the General Partners their true and lawful attorney, in their name, place and stead, to make, execute, acknowledge and record the following:

- (i) This Certificate of Limited Partnership under the laws of the State of Utah and a Certificate of Business Under Fictitious Firm Name, where appropriate; and any other certificate or other instrument which may be required to be filed by the Partnership under the laws of the State of Utah, and;

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XV (Continued)

(ii) Any and all amendments of the instruments described in the preceding (i), provided the same are consistent herewith or have been authorized by the particular Limited Partner. The foregoing power of attorney shall survive the delivery of any assignment by a Limited Partner of the whole or any portion of his limited partnership interest, and any assignee of a Limited Partner does hereby constitute and appoint the General Partners his power of attorney in the same manner and force, and for the same purposes, as the assignor.

XVI

The Partnership shall maintain full and accurate books at its principal office as shall be designated for such purposes by the General Partners and all Partners shall have the right to inspect and examine such books at reasonable times. If said books are to be kept at any place other than at the principal office of the Partnership, all Limited Partners shall be immediately notified in writing. The books shall be closed and balanced at the end of each year. The General Partners agree to deliver to each Limited Partner within ninety (90) days after expiration of each year of the Partnership, a balance sheet and a profit and loss statement, together with a statement showing the capital accounts of each Partner, the distribution to each Partner and the amount thereof reportable for tax purposes. A vote of the majority in interest of the Limited Partners can order an audit of the Partnership books at the expense of the Partnership by an independent certified public accountant designated by the Limited Partners.

XVII

This contract shall be binding upon and inure to the benefit of the parties hereto their heirs, successors in interest and assigns. The parties hereto for themselves, their heirs, successors in interest and assigns promise to execute all documents necessary to give effect to this agreement. Notices provided for herein may be given personally or delivered by mail to the last known address of the person to be notified, as shown on the Partnership records.

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XVIII

Each Limited Partner by executing this Agreement, represents:

(a) That he is over the age of twenty-one (21) years and experienced in business affairs, and

(b) That the interest being purchased is for long term investment and without current intention of resale.

XIX

No Limited Partner may sell, assign, or transfer all or any part of his interest herein or any part of his interest in the Limited Partnership without first complying with the terms of this paragraph. Any sale made without so first complying shall not be a sale of any interest herein in this Limited Partnership. Any Limited Partner desiring to sell or otherwise dispose of his interest in the Limited Partnership shall mail or deliver a copy of the binding terms upon which an offeree has agreed to purchase his interest in the Partnership and the name and address of the offeree to the General Partners and Limited Partners.

For a period of thirty (30) days after delivery of said offer to the General Partners, or until rejected by the General Partners, whichever occurs first, the outgoing partner may not sell his interest in this Limited Partnership to anyone other than to the Partnership in accordance with the terms hereof.

Transmittal of the offer by the outgoing partner to the Partnership shall constitute an offer by the outgoing partner to sell his interest to the Partnership or to any one of the Partners upon the same terms and conditions as set forth in the offer of the outgoing partner. The Partnership may elect to purchase the outgoing partners interest with partnership funds or may elect to offer the interest to the Partners. When offered to the Partners those electing to purchase the interest shall do so pro rata, as determined by their respective interests in the Partnership at the time.

In the event that the Partnership of any partner does not wish to purchase the entire interest offered for sale, the outgoing shall be relieved of the provisions of this Article, and he may thereupon sell his interest in the Partnership to the

XIX (Continued)

person named in his offer, but in no event for a price less than, or upon terms more favorable than, stated in the offer of sale made to the Partnership. The selling partner shall have a sixty (60) day period in which to make said sale. Thereafter the said interest may only be sold after it has again been first offered to the Partnership as required above.

In the event the Partnership interest is sold or assigned to the person named in said offer, it shall be effective only to give said person the right to receive the share of profits, losses and net cash receipts to which the outgoing partner would otherwise be entitled; it shall not give said person the right to become a substituted Limited Partner unless the requirements of Article IX hereof are satisfied. Resales of interest purchased hereunder to persons other than limited partners must be in compliance with this Article.

XX

- A. The death or legal incapacity of one or more Partner shall not terminate the Partnership, but his rights to receive a share of the profits, losses and net cash receipts on the happening of such an event shall devolve on his personal representative, or in the case where the Partnership interest is held in joint tenancy, shall pass to the surviving joint tenant subject to the terms and conditions of this Agreement, and the company shall continue as a Limited Partnership. The estate of the Partner shall be liable for all his obligations as a Partner. However, in no event shall such personal representative become a substituted Partner unless the requirement of Article XI hereof are satisfied.
- B. In the case of the death or legal incapacity of a General Partner, the Partnership shall not terminate. The remaining General Partners and the surviving joint tenant (or personal representative when no joint tenant exists), shall continue the business of the Partnership.

XXI

The General Partners may purchase an interest in the Partnership in the same manner that a Limited Partner may purchase an interest in the Partnership, and in that event the General Partner shall make such a purchase, he shall be entitled to all the rights in the Partnership which would be granted any Limited Partner.

XXII

This Partnership Agreement is subject to amendment only by a vote of a majority in interest of the Partners, and such amendment shall be effective as of such date as may be determined by them, provided however, that no such amendment which affects the percentage interest of the General Partner in the Partnership profits or the duties or obligations of the General Partner hereunder, shall be binding upon the General Partner without the General Partner's consent in writing first had and obtained and further provided, however, that no such amendment which affects the percentage interest of any Limited Partner in the Partnership assets or profits or the limited liability or any such Limited Partner shall be binding upon such Limited Partner without such Limited Partner's consent in writing first had and obtained.

XXIII

The paragraph headings in no way define, limit, extend or interpret the scope of this Agreement or of any particular paragraph.

XXIV

Each party hereto agrees to execute with acknowledgment or affidavit, if required, any and all documents and writings which may be necessary or expedient in the creation of this Partnership and the achievement of its purposes, specifically including the Certificate of Limited Partnership and all amendments thereto as well as any cancellation thereof. Such documents and writings shall be executed in a timely fashion.

XXV

In the event that any provision of this Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever, the validity of the remainder of this Agreement.

XXVI

This Agreement and the rights of the parties hereunder shall be interpreted in accordance with the laws of the State of Utah.

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XXVII

A Partner may be hired by the Partnership to render services for remuneration under the same terms and conditions as would be applicable to any non-partner.

XXVIII

General and Limited Partners owning 51% of the Partnership Interests shall have the right to remove any General Partner at any time upon the happening of any of the following events without terminating the Partnership:

(a) The filing of a petition in bankruptcy against said General Partner, or;

(b) An adjudication of insanity or incompetency of said General Partner in any judicial proceedings, or commitment of said General Partner to a mental institution, or;

(c) The death of a General Partner.

The giving of written notice to such General Partner, his executor, administrator or assignee, signed by the other General and Limited Partners owning 51% of the Partnership interest and setting forth the effective date of termination, shall terminate all powers of said General Partner as of the effective date but shall not terminate or alter his right to share in profits or his right to a distribution of assets as elsewhere provided in this certificate.

XXIX

When the context in which words are used in this Agreement indicates that such is the intent, words in the singular number shall include the plural and vice-versa.

XXX

This Partnership Agreement may be executed in counterparts and each such counterpart shall be an original document.

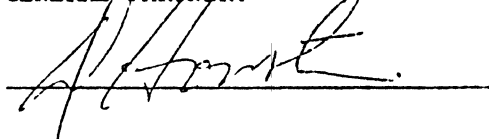
Exhibit B
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XXX (Continued)

In the event of such execution in counterparts, the original executed copies, taken as a whole, shall constitute the Partnership Agreement.

IN WITNESS WHEREOF, the Partners have hereunto set their hands this 30 day of Oct 1971.

GENERAL PARTNER:



LIMITED PARTNERS:

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AGREEMENT OF LIMITED PARTNER

The undersigned hereby expressly states and acknowledges that he is a partner in the limited partnership of Houston Investors Ltd., and has read the Certificate of Limited Partnership which is attached hereto and hereby gives his consent to the name of the partnership, the principal place of business and location of said partnership, and to all of the terms and conditions of said limited partnership and does hereby promise and agree to abide by the terms of said limited partnership and pursuant to Paragraph XV does jointly and separately hereby irrevocably constitute and appoint the general partners to this limited partnership agreement, his true and lawful attorney, in his name, place and stead, to make, execute, acknowledge and record and sign all of the documents set forth in Paragraph XV.

DATED this 7 day of July, 1974.

Walter S. C. F. Jr.

AGREEMENT OF LIMITED PARTNER

The undersigned hereby expressly states and acknowledges that he is a partner in the limited partnership of Houston Investors Ltd., and has read the Certificate of Limited Partnership which is attached hereto and hereby gives his consent to the name of the partnership, the principal place of business and location of said partnership, and to all of the terms and conditions of said limited partnership and does hereby promise and agree to abide by the terms of said limited partnership and pursuant to Paragraph XV does jointly and separately hereby irrevocably constitute and appoint the general partners to this limited partnership agreement, his true and lawful attorney, in his name, place and stead, to make, execute, acknowledge and record and sign all of the documents set forth in Paragraph XV.

DATED this 26th day of July, 1974.

Joseph E. Bouda, III

25 North 17th St.

San Jose, CA 95111

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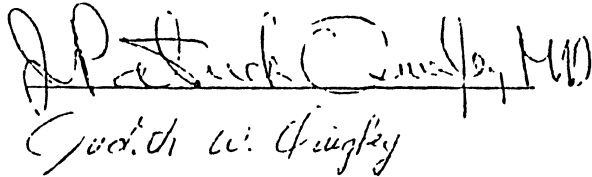
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AGREEMENT OF LIMITED PARTNER

The undersigned hereby expressly states and acknowledges that he is a partner in the limited partnership of Houston Investors Ltd., and has read the Certificate of Limited Partnership which is attached hereto and hereby gives his consent to the name of the partnership, the principal place of business and location of said partnership, and to all of the terms and conditions of said limited partnership and does hereby promise and agree to abide by the terms of said limited partnership and pursuant to Paragraph XV does jointly and separately hereby irrevocably constitute and appoint the general partners to this limited partnership agreement, his true and lawful attorney, in his name, place and stead, to make, execute, acknowledge and record and sign all of the documents set forth in Paragraph XV.

DATED this 24 day of July, 1974.


Judith W. Gungley

AGREEMENT OF LIMITED PARTNER

The undersigned hereby expressly states and acknowledges that he is a partner in the limited partnership of Houston Investors Ltd., and has read the Certificate of Limited Partnership which is attached hereto and hereby gives his consent to the name of the partnership, the principal place of business and location of said partnership, and to all of the terms and conditions of said limited partnership and does hereby promise and agree to abide by the terms of said limited partnership and pursuant to Paragraph XV does jointly and separately hereby irrevocably constitute and appoint the general partners to this limited partnership agreement, his true and lawful attorney, in his name, place and stead, to make, execute, acknowledge and record and sign all of the documents set forth in Paragraph XV.

DATED this 3 day of July, 1974.

H. Clark Houston

AGREEMENT OF LIMITED PARTNER

The undersigned hereby expressly states and acknowledges that he is a partner in the limited partnership of Houston Investors Ltd., and has read the Certificate of Limited Partnership which is attached hereto and hereby gives his consent to the name of the partnership, the principal place of business and location of said partnership, and to all of the terms and conditions of said limited partnership and does hereby promise and agree to abide by the terms of said limited partnership and pursuant to Paragraph XV does jointly and separately hereby irrevocably constitute and appoint the general partners to this limited partnership agreement, his true and lawful attorney, in his name, place and stead, to make, execute, acknowledge and record and sign all of the documents set forth in Paragraph XV.

DATED this 7 day of July, 1974.

Anthony J. Indelicato

AGREEMENT OF LIMITED PARTNER

The undersigned hereby expressly states and acknowledges that he is a partner in the limited partnership of Houston Investors Ltd., and has read the Certificate of Limited Partnership which is attached hereto and hereby gives his consent to the name of the partnership, the principal place of business and location of said partnership, and to all of the terms and conditions of said limited partnership and does hereby promise and agree to abide by the terms of said limited partnership and pursuant to Paragraph XV does jointly and separately hereby irrevocably constitute and appoint the general partners to this limited partnership agreement, his true and lawful attorney, in his name, place and stead, to make, execute, acknowledge and record and sign all of the documents set forth in Paragraph XV.

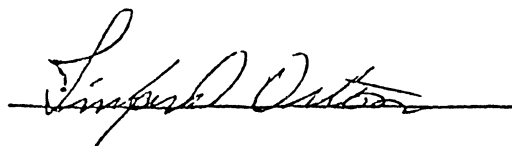
DATED this 1 day of July, 1974.

George T. Flynn, Jr. p.v.

AGREEMENT OF LIMITED PARTNER

The undersigned hereby expressly states and acknowledges that he is a partner in the limited partnership of Houston Investors Ltd., and has read the Certificate of Limited Partnership which is attached hereto and hereby gives his consent to the name of the partnership, the principal place of business and location of said partnership, and to all of the terms and conditions of said limited partnership and does hereby promise and agree to abide by the terms of said limited partnership and pursuant to Paragraph XV does jointly and separately hereby irrevocably constitute and appoint the general partners to this limited partnership agreement, his true and lawful attorney, in his name, place and stead, to make, execute, acknowledge and record and sign all of the documents set forth in Paragraph XV.

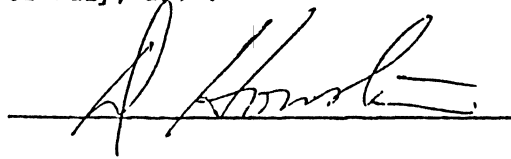
DATED this 11th day of ^{November} ~~July~~, 1974.



AGREEMENT OF LIMITED PARTNER

The undersigned hereby expressly states and acknowledges that he is a partner in the limited partnership of Houston Investors Ltd., and has read the Certificate of Limited Partnership which is attached hereto and hereby gives his consent to the name of the partnership, the principal place of business and location of said partnership, and to all of the terms and conditions of said limited partnership and does hereby promise and agree to abide by the terms of said limited partnership and pursuant to Paragraph XV does jointly and separately hereby irrevocably constitute and appoint the general partners to this limited partnership agreement, his true and lawful attorney, in his name, place and stead, to make, execute, acknowledge and record and sign all of the documents set forth in Paragraph XV.

DATED this 7 day of July, 1974.

A handwritten signature, appearing to be "A. H. Hunsick", is written over a horizontal line.

Michael W. Park
Attorney at Law

110 North Main Street, Suite F, Cedar City, Utah 84720
801 686-3879

December 30, 1975

Mr. Clair Hulet
Clerk of the Court
Iron County Courthouse
Parowan, Utah 84761

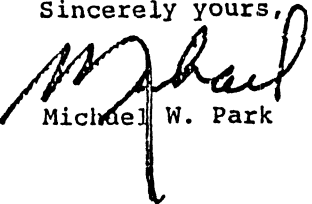
Re: Houston Investors Ltd.

Dear Mr. Hulet:

Enclosed herewith please find an Agreement of Limited Partner.

Please file same with the Houston Investors Ltd. partnership.

Sincerely yours,


Michael W. Park

MWP/mt
Encl.

AGREEMENT OF LIMITED PARTNER

DEC 31 1975
Carroll
C. H. Carroll
f Carroll & Hellet
Copy

The undersigned hereby expressly states and acknowledges that he is a partner in the limited partnership of Houston Investors Ltd., and has read the Certificate of Limited Partnership which is attached hereto and hereby gives his consent to the name of the partnership, the principal place of business and location of said partnership, and to all of the terms and conditions of said limited partnership and does hereby promise and agree to abide by the terms of said limited partnership and pursuant to Paragraph XV does jointly and separately hereby irrevocably constitute and appoint the general partners to this limited partnership agreement, his true and lawful attorney, in his name, place and stead, to make, execute, acknowledge and record and sign all of the documents set forth in Paragraph XV.

DATED this 10 day of December, 1975.

John P. Carroll

G. Rand Beacham and
Dale R. Chamberlain of
JONES, WALDC, HOLBROOK & McDONOUGH
Attorneys for Plaintiffs
One South Main, Suite 300
St. George, UT 84770

*1985
claim filed*

IN THE FIFTH JUDICIAL DISTRICT COURT FOR
IRON COUNTY, STATE OF UTAH

---ooo0ooo---

JOSEPH BROZDA and WARREN T.
CHRISTENSEN,

Plaintiffs,

vs.

HOUSTON INVESTORS LIMITED,
a Utah limited partnership,
DONALD HOUSTON, H. CLARK
HOUSTON and LINFORD
ORTON,

Defendants.

:
:
: AFFIDAVIT OF
JOSEPH BROZDA
IN SUPPORT OF MOTION
FOR PARTIAL SUMMARY JUDGMENT

: Civil No. 10337
:
:
:

---ooo0ooo---

STATE OF)
:ss:
County of)

Plaintiff Joseph Brozda, being first duly sworn upon his
oath deposes and says:

1. I am one of the plaintiffs in the above entitled
matter and make this affidavit of my own personal knowledge. The
headings found herein are for convenience of the Court only.
They are not intended to constitute a portion of the affidavit.

CONTRIBUTIONS TO HOUSTON INVESTORS LIMITED

2. I am a resident of the State of California and have been a resident of California at all times relevant to this action.

3. Prior to August 6, 1974 at a specific time now unknown to me, I was solicited in the State of California by Mr. Don Houston to invest in a California limited partnership known as Houston Investors Ltd.

4. Don Houston represented that the limited partnership would invest capital contributions in real estate located in the State of Utah. Mr. Houston represented that he had already done this several times with great financial success.

5. On the 26th day of July, 1974, I executed an "Agreement of Limited Partner" wherein I agreed to all of the terms and conditions of the Certificate of Limited Partnership of Houston Investors Ltd. which was attached to the Agreement. I believe the California Certificate of Limited Partnership (Exhibit A) was altered and amended to conform to Utah law and this certificate was filed with the Iron County Clerk on November 13, 1974.

(Exhibit B)

6. Between August, 1974 and January, 1982, I contributed \$43,303.62 to Houston Investors Ltd.

7. On execution of the agreement of limited partnership, it was my understanding that my initial investment was all that would be necessary or required.

8. Prior to executing the Agreement of Limited Partnership and making my initial contribution, I was not aware

of the specific liabilities of the partnership under the "White" Contract.

LIMITED PARTNERSHIP INVESTMENTS

9. I have been advised that on December 20, 1973, prior to the affiant's entry into the limited partnership, Don Houston, as general partner for Houston Investors Ltd., a limited partnership, executed a real estate contract for the purchase of property located in Iron County, Utah known as the "White" property. (Exhibit C)

10. On February 23, 1976, Houston Investments, Ltd., by its reputed general partners, H. Clark Houston and Linford Orton, executed an "agreement" to purchase the real property located in Iron County known as the "Farrow" property. (Exhibit D)

11. The affiant was not notified or advised of the purchase of the "Farrow" property at or prior to its purchase.

12. In June, 1979, the partnership purchased 12 acre feet of underground water right known as the "Fotheringham Water" for the sum of \$6,000.00. (Exhibit E)

13. The affiant was not advised of this purchase until early 1982.

14. In December, 1979, Houston Investors Ltd. purchased a limited partnership from the defendant Don Houston and agreed to pay Mr. Houston \$56,100 for said partnership. (Exhibit F)

15. The limited partners were assessed by the partnership for the purchase of Mr. Houston's partnership.

16. On July 23, 1981, Houston Investors Ltd., by its reputed general partner, H. Clark Houston, executed an earnest money receipt and offer to purchase property located in Iron County known as the "Grimshaw" property. (Exhibit G)

17. The defendant was not advised of the purchase of the "Grimshaw" property until August 12, 1982. (Exhibit H)

18. On November 17, 1982, several of the partners, without the affiant's consent, agreed that the partnership interest in the Grimshaw property should be transferred to those parties who would agree to pay the partnership's debts thereon. (Exhibit I)

19. Affiant has received various assessments and requests for funds from the general partners which the affiant has been told were necessary to make payments on the White, Grimshaw and other contracts.

20. The affiant paid these "assessments" until 1982, believing that these payments were additional voluntary capital contributions to the partnership which would be used to liquidate partnership debts.

21. On November 18, 1981, the general partners reported the equity value of each limited partnership was \$97,000. (Exhibit E)

ALLEGED FORFEITURE OF AFFIANT'S PARTNERSHIP INTEREST

22. On or about August 12, 1982, the affiant received a request for \$8,000, a portion of which was to make the payment on the Grimshaw property.

23. Affiant refused to pay the assessments requested in the letter of August 12, 1982 and has made no additional capital contributions to the limited partnership since January, 1982.

24. On November 30, 1982, the affiant's attorney, Mr. James Rodriguez, was advised by Mr. Michael Park, counsel for the defendants, of the partners' intent to vote the affiant out of the partnership and to keep his investment unless the affiant paid "partnership assessments". (Exhibit J)

25. On December 7, 1982, H. Clark Houston, general partner, advised the affiant by letter that he was required to pay \$1,668.27 to the partnership by January 11, 1982 or he would be deemed to have left the partnership. (Exhibit K)

26. On January 19, 1983, the affiant's counsel was advised by Michael Park that failure to pay the sum requested in the letter of December 7, 1982 would forfeit the affiant's interest in the partnership. (Exhibit L)

27. The defendants have voted to remove the affiant from the partnership and terminate his partnership interest. The defendants consider that the affiant is no longer a limited

partner and has no interest whatsoever in said partnership.
(Defendant's supplemental answers to plaintiff's first set of interrogatories).

AFFIANT'S RIGHTS AND LIABILITIES

28. The affiant is not and never has been a partner in any partnership with the defendants or any of them except Houston Investors Ltd., a Utah limited partnership.

29. Affiant has executed no partnership agreement or document except the "Agreement of Limited Partner".

30. The only written documents expressing the relationship, rights and responsibilities of the general partners and limited partners of Houston Investments Ltd. are the "Agreement of Limited Partner" and the "Certificate of Limited Partnership" filed in Iron County in November, 1974. (Exhibit B)

31. The affiant did not execute any agreement for the purchase of the White property or other real or personal property purchased by the limited partnership.

32. The affiant did not make any agreements, contracts or statements with the defendants or other third persons with regard to any liability to pay the debts of Houston Investments Ltd. except for the "Agreement of Limited Partner" and the "Certificate of Limited Partnership" described heretofore.

33. There is no provision in the Certificate of Limited Partnership or any amendment thereto creating any liability to

the limited partners beyond their capital contributions.

34. There is no provision in the certificate of limited partnership or any amendments thereto for the assessment of limited partners for any purpose.

35. There is no provision in the Certificate of Limited Partnership or any amendment thereto authorizing the forfeiture or other termination of a limited partners' interest in the partnership by the vote of the general partners or limited partners, without the written consent of the limited partner whose interest is affected.

36. At no time have I agreed or represented in writing or otherwise that any of my interest in the limited partnership was or could be terminated or forfeited.

FURTHER AFFIANT SAITH NAUGHT.

DATED this 8th day of July, 1985.

Joseph Brozda
JOSEPH BROZDA

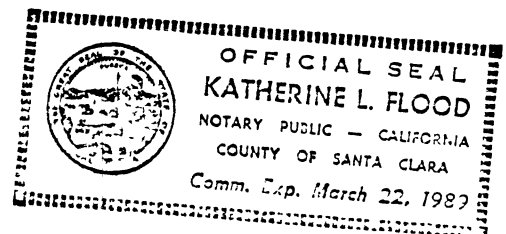
Subscribed and sworn to before me this 8th day of August, 1985.

Katherine L. Flood
NOTARY PUBLIC
Residing in San Jose, California

My Commission Expires:

March 22, 1989

DRC785Rc:jj



G. Rand Beacham and
Dale R. Chamberlain of
JONES, WALDO, HOLBROOK & McDONOUGH
Attorneys for Plaintiffs
One South Main, Suite 300
St. George, UT 84770

*Filed
1985
Clear*

IN THE FIFTH JUDICIAL DISTRICT COURT FOR
IRON COUNTY, STATE OF UTAH

---ooo0ooo---

JOSEPH BROZDA and WARREN T.
CHRISTENSEN,

Plaintiffs,

vs.

HOUSTON INVESTORS LIMITED,
a Utah limited partnership,
DONALD HOUSTON, H. CLARK
HOUSTON and LINFORD
ORTON,

Defendants.

:
:
: AFFIDAVIT OF
WARREN T. CHRISTENSEN
IN SUPPORT OF MOTION
FOR PARTIAL SUMMARY JUDGMENT

:
: Civil No. 10337

---ooo0ooo---

STATE OF)
:ss:
County of)

Plaintiff Warren T. Christensen, being first duly sworn
upon his oath deposes and says:

1. I am one of the plaintiffs in the above entitled
matter and make this affidavit of my own personal knowledge. The
headings found herein are for convenience of the Court only.
They are not intended to constitute a portion of the affidavit.

CONTRIBUTIONS TO HOUSTON INVESTORS LIMITED

2. I am a resident of the State of California and have been a resident of California at all times relevant to this action.

3. Prior to August 6, 1974 at a specific time now unknown to me, I was solicited in the State of California by Mr. Don Houston to invest in a California limited partnership known as Houston Investors Ltd.

4. Don Houston represented that the limited partnership would invest capital contributions in real estate located in the State of Utah. The real estate would be sold in small parcels to liquidate partnership debts and no additional contribution would be necessary. Mr. Houston represented that he had already done this several times with great financial success.

5. On the 26th day of July, 1974, I executed an "Agreement of Limited Partner" wherein I agreed to all of the terms and conditions of the Certificate of Limited Partnership of Houston Investors Ltd. which was attached to the Agreement. I believe the California Certificate of Limited Partnership (Exhibit A) was altered and amended to conform to Utah law and this certificate was filed with the Iron County Clerk on November 13, 1974.

(Exhibit B)

6. Between August, 1974 and January, 1982, I contributed \$46,345.08 to Houston Investors Ltd.

7. I was advised by Don Houston that my initial contribution was all that would be necessary or required.

8. Prior to executing the Agreement of Limited Partner and making my initial contribution, I was not aware of the specific liabilities of the partnership under the "White" Contract.

LIMITED PARTNERSHIP INVESTMENTS

9. I have been advised that on December 20, 1973, prior to the affiant's entry into the limited partnership, Don Houston, as general partner for Houston Investors Ltd., a limited partnership, executed a real estate contract for the purchase of property located in Iron County, Utah known as the "White" property. (Exhibit C)

10. On February 23, 1976, Houston Investments, Ltd., by its reputed general partners, H. Clark Houston and Linford Orton, executed an "agreement" to purchase the real property located in Iron County known as the "Farrow" property. (Exhibit D)

11. The affiant was not notified or advised of the purchase of the "Farrow" property at or prior to its purchase.

12. In June, 1979, the partnership purchased 12 acre feet of underground water right known as the "Fotheringham Water" for the sum of \$6,000.00. (Exhibit E)

13. The affiant was not advised of this purchase until early 1982.

14. In December, 1979, Houston Investors Ltd. purchased a limited partnership from the defendant Don Houston and agreed to pay Mr. Houston \$56,100 for said partnership. (Exhibit F)

15. The limited partners were assessed by the partnership for the purchase of Mr. Houston's partnership.

16. On July 23, 1981, Houston Investors Ltd., by its reputed general partner, H. Clark Houston, executed an earnest money receipt and offer to purchase property located in Iron County known as the "Grimshaw" property. (Exhibit G)

17. The defendant was not advised of the purchase of the "Grimshaw" property until August 12, 1982. (Exhibit H)

18. On November 17, 1982, several of the partners, without the affiant's consent, agreed that the partnership interest in the Grimshaw property should be transferred to those parties who would agree to pay the partnership's debts thereon. (Exhibit I)

19. Affiant has received various assessments and requests for funds from the general partners which the affiant has been told were necessary to make payments on the White, Grimshaw and other contracts.

20. The affiant paid these "assessments" until 1982, believing that these payments were additional voluntary capital contributions to the partnership which would be used to liquidate partnership debts.

21. On November 18, 1981, the general partners reported the equity value of each limited partnership was \$97,000. (Exhibit E)

ALLEGED FORFEITURE OF AFFIANT'S PARTNERSHIP INTEREST

22. On or about August 12, 1982, the affiant received a request for \$8,000, a portion of which was to make the payment on the Grimshaw property.

23. Affiant refused to pay the assessments requested in the letter of August 12, 1982 and has made no additional capital contributions to the limited partnership since January, 1982.

24. On November 30, 1982, the affiant's attorney, Mr. James Rodriguez, was advised by Mr. Michael Park, counsel for the defendants, of the partners' intent to vote the affiant out of the partnership and to keep his investment unless the affiant paid "partnership assessments". (Exhibit J)

25. On December 7, 1982, H. Clark Houston, general partner, advised the affiant by letter that he was required to pay \$1,668.27 to the partnership by January 11, 1982 or he would be deemed to have left the partnership. (Exhibit K)

26. On January 19, 1983, the affiant's counsel was advised by Michael Park that failure to pay the sum requested in the letter of December 7, 1982 would forfeit the affiant's interest in the partnership. (Exhibit L)

27. The defendants have voted to remove the affiant from the partnership and terminate his partnership interest. The defendants consider that the affiant is no longer a limited partner and has no interest whatsoever in said partnership. (Defendant's supplemental answers to plaintiff's first set of interrogatories).

AFFIANT'S RIGHTS AND LIABILITIES

28. The affiant is not and never has been a partner in any partnership with the defendants or any of them except Houston Investors Ltd., a Utah limited partnership.

29. Affiant has executed no partnership agreement or document except the "Agreement of Limited Partner".

30. The only written documents expressing the relationship, rights and responsibilities of the general partners and limited partners of Houston Investments Ltd. are the "Agreement of Limited Partner" and the "Certificate of Limited Partnership" filed in Iron County in November, 1974. (Exhibit B)

31. The affiant did not execute any agreement for the purchase of the White property or other real or personal property purchased by the limited partnership.

32. The affiant did not make any agreements, contracts or statements with the defendants or other third persons with regard to any liability to pay the debts of Houston Investments Ltd. except for the "Agreement of Limited Partner" and the "Certificate of Limited Partnership" described heretofore.

33. There is no provision in the Certificate of Limited Partnership or any amendment thereto creating any liability to the limited partners beyond their capital contributions.

34. There is no provision in the certificate of limited partnership or any amendments thereto for the assessment of limited partners for any purpose.

35. There is no provision in the Certificate of Limited Partnership or any amendment thereto authorizing the forfeiture or other termination of a limited partners' interest in the partnership by the vote of the general partners or limited partners, without the written consent of the limited partner

whose interest is affected.

36. At no time have I agreed or represented in writing or otherwise that any of my interest in the limited partnership was or could be terminated or forfeited.

FURTHER AFFIANT SAITH NAUGHT.

DATED this 9 day of ^{Aug.}~~July~~, 1985.

Warren T. Christensen

WARREN T. CHRISTENSEN

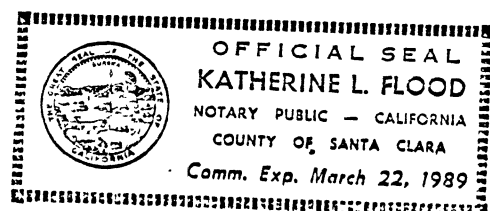
^{August}~~July~~, 1985. SUBSCRIBED AND SWORN to before me this 9th day of

Katherine L. Flood
NOTARY PUBLIC
Residing in *San Jose, California*

My Commission Expires:

March 22, 1989

DRC785R:jj



MICHAEL W. PARK
PARK, BRAITHWAITE & EVES
110 North Main Street, Suite H
Cedar City, UT 84720
Telephone: 586-6532

IN THE FIFTH JUDICIAL DISTRICT COURT IN AND FOR
IRON COUNTY, STATE OF UTAH

JOSEPH BROZDA and WARREN T.)	
CHRISTENSEN,)	AFFIDAVIT OF
)	DONALD HOUSTON
Plaintiffs,)	
)	
vs.)	
)	Civil No. 10337
HOUSTON INVESTORS LIMITED,)	
a Utah limited partnership,)	
DONALD HOUSTON, H. CLARK)	
HOUSTON and LINFORD ORTON,)	
)	
Defendants,)	

STATE OF UTAH)
 ss.
COUNTY OF IRON)

Defendant, DONALD HOUSTON, being first duly sworn
deposes and says:

1. The property which is the subject matter of
this litigation is located in Iron County, State of Utah.

2. The parties entered into a partnership
agreement for the purchase of certain property known as "The
White Property". A copy of said agreement is attached to the
complaint and marked Exhibit "A".

3. By the terms of Exhibit "A", the partners

agreed to make payment as follows:

- A. Total Purchase Price: \$339,350.00
- B. Down Payment due on or before 12/30/73 20,000.00
- C. Balance of \$319,350.00 bearing interest at the rate of 6% per annum, payable as follows:
 - 1. Payment due on or before 6/1/74: \$15,000.00
(plus interest on balance remaining from 1/1/74)
 - 2. Payment due on or before 11/1/74: 15,000.00
(plus interest on balance remaining from 6/1/74)
 - 3. \$289,350.00 balance remaining after 11/1/74 payment to bear interest at the rate of 6% per annum, amortized in equal monthly payments over a 15-year period. Buyers reserving right to make annual payments.

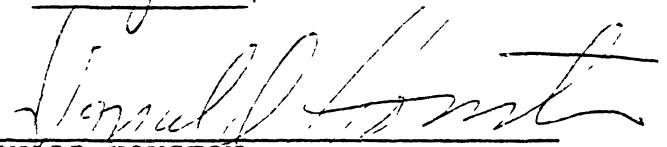
All of the partners, including plaintiffs, were aware of the terms of Exhibit "A" prior to entering into the partnership. In addition, all of the partners, including plaintiffs, were aware that the initial contribution made by each partner would be supplemented by additional payments as set forth in Exhibit "A".

4. Plaintiffs have failed to make their share of payments in accordance with their commitment to the partnership and in accordance with Exhibit "A".


5. The other partners have been required to make their share of said payments as agreed. Said plaintiffs have failed and refused to make said payments, thereby violating their commitment under the partnership agreement and Exhibit "A", and it is the contention of defendants that plaintiffs

have no further interest in the partnership and all interest of plaintiffs is forfeited to the other partners.

DATED this 3 day of Sept, 1985.


DONALD HOUSTON

SUBSCRIBED and SWORN to before me this ____ day of _____, 1985.


NOTARY PUBLIC

Residing at: 57. Brown, Va.

My Commission Expires:

11-21-88

MICHAEL W. PARK (2516)
PARK & BRAITHWAITE
110 North Main, Suite H
Cedar City, UT 84720
Telephone: (801) 586-6532

FIFTH JUDICIAL DIST. COURT
IRON COUNTY
FILE
AUG 8 1986
Carroll H. Hilt

IN THE FIFTH JUDICIAL DISTRICT COURT IN AND FOR
IRON COUNTY, STATE OF UTAH

JOSEPH BROZDA and WARREN T.)
CHRISTENSEN,)

Plaintiffs,)

vs.)

HOUSTON INVESTORS LIMITED,)
a Utah Limited Partnership,)
DONALD HOUSTON, H. CLARK)
HOUSTON and LINFORD)
ORTON,)

Defendants,)

AFFIDAVIT OF
LINFORD ORTON

Civil No. 1037

STATE OF UTAH)
COUNTY OF Iron) ss.

LINFORD ORTON, after being first duly sworn,
deposes as follows:

1. The partnership known as Houston Investors was organized in 1974 for the purpose of purchasing certain property known as the "White Property". The description of that property and the payment schedule for said property is attached to Plaintiff's complaint.

2. At the time the White Property was purchased,

the Defendants, and this affiant, felt that the purchase price was very reasonable and that the property would increase in value substantially.

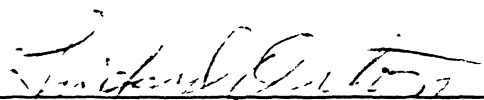
3. Affiant was contacted by other parties from 1974 to 1978, concerning having a share in the partnership.

4. The property increased in value from the time of its purchase until approximately 1978 when property values in Iron County did not increase and tended to decrease.

5. The Plaintiffs, Joseph Brozda and Warren T. Christensen, asked for the return of their partnership contribution at a time when the property had decreased in value and when the partnership contribution was not returned to them, said Plaintiffs discontinued making their payments and all other partners had to increase their payments to pay for the interests of Joseph Brozda and Warren T. Chrisensen.

6. The partnership known as Houston Investors has always operated on the basis that each partner was entitled to one vote and during each meeting of the partnership, each partner was entitled to one vote and the majority of votes determined what the partnership would do.

DATED this 6 day of August, 1986.



LINFORD ORTON

On the 6th day of August, 1986, personally appeared before me LINFORD ORTON, the signer of the within instrument who duly acknowledged to me that he executed the same.

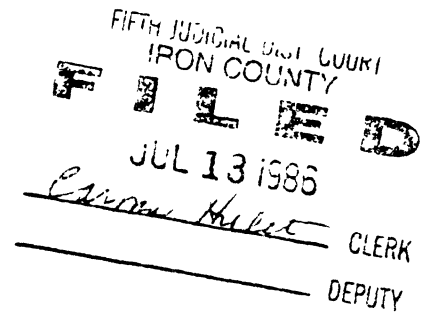
Donna Bullock
NOTARY PUBLIC
Residing at: *Corona City, UT*
My Commission Expires: *11/1-88*

MAILING CERTIFICATE

I do hereby certify that on the 7th day of August, 1986, a true and correct copy of the foregoing was mailed, first class, postage prepaid to G. Rand Beacham and Dale R. Chamberlain of JONES, WALDO, HOLBROOK & McDONOUGH, One South Main, Suite 300, St. George, UT 84770.

Donna Bullock
Secretary

G. Rand Beacham and
Dale R. Chamberlain of
JONES, WALDO, HOLBROOK & McDONOUGH
Attorneys for Plaintiffs
One South Main, Suite 300
St. George, UT 84770
Telephone: (801) 628-1627



IN THE FIFTH JUDICIAL DISTRICT COURT FOR
IRON COUNTY, STATE OF UTAH

---ooo0ooo---

JOSEPH BROZDA and WARREN T.
CHRISTENSEN,

Plaintiffs,

vs.

HOUSTON INVESTORS LIMITED,
a Utah limited partnership,
DONALD HOUSTON, H. CLARK
HOUSTON and LINFORD
ORTON,

Defendants.

SUPPLEMENTAL AFFIDAVIT OF
JOSEPH BROZDA IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT

Civil No. 10337

---ooo0ooo---

STATE OF CALIFORNIA)
 : ss
COUNTY OF SANTA CLARA)

Plaintiff Joseph Brozda, being first duly sworn, deposes
and says:

1. I am one of the Plaintiffs in the above-entitled matter
and make this Affidavit of my own personal knowledge.

2. I made the voluntary contributions to the Defendant
limited partnership from 1974 to January 1982 in the sum of

\$43,303.62.

3. That the initial contribution made in August 1974 was \$10,500.00.

4. The initial contribution of \$10,500.00 is the only contribution required by the Certificate of Limited Partnership.

5. After payment of the initial partnership contribution, I received periodic assessments which I was told would be necessary to make payments on the White, Grimshaw and other contracts.

6. All payments after the initial contribution were made as voluntary additional contributions to the partnership in order to assist in liquidating partnership debts.

7. I have not at any time in writing or verbally agreed to make continuing or future additional contributions to the partnership. Rather, I evaluated each contribution and voluntarily paid contributions believing that I was free to stop making these contributions at any time.

8. I have not at any time agreed verbally or in writing to be responsible to pay any partnership debt or obligation.

9. That in July 1985 I sent to all members of the Defendant partnership a request for return of my contributions. (See exhibits attached.)

10. Six months have elapsed since I sent these notices, but I have received no return of contribution.

11. The Certificate of Limited Partnership does not state either a time when contributions will be returned or the dissolution of the partnership.

12. The liabilities of the partnership on the White, Grimshaw, and other contracts and liabilities have not been paid, and partnership property is insufficient for payment of liabilities.

FURTHER YOUR AFFIANT SAITH NAUGHT.

DATED this 17th day of June, 1986.

Joseph Brozda
Joseph Brozda

Subscribed and sworn to before me this 17th day of June, 1986.

Katherine L. Flood
Notary Public

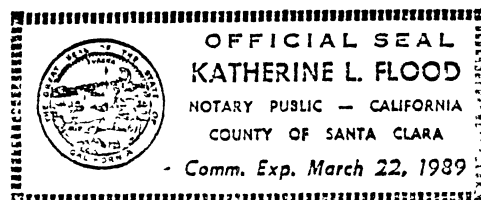
Residing At:

My Commission Expires:

March 22, 1989

675 E. Santa Clara St.
San Jose, Ca 95112

C2-4:sb



G. Rand Beacham and
Dale R. Chamberlain of
JONES, WALDO, HOLBROOK & McDONOUGH
Attorneys for Plaintiffs
One South Main, Suite 300
St. George, UT 84770
Telephone: (801) 628-1627

FIFTH JUDICIAL DIST. COURT
IRON COUNTY
FILED
JUL 13 1986
Carmen Hillet CLERK
DEPUTY

IN THE FIFTH JUDICIAL DISTRICT COURT FOR
IRON COUNTY, STATE OF UTAH

---ooo0ooo---

JOSEPH BROZDA and WARREN T.	:	
CHRISTENSEN,	:	
	:	SUPPLEMENTAL AFFIDAVIT OF
Plaintiffs,	:	WARREN T. CHRISTENSEN IN
	:	SUPPORT OF MOTION FOR
vs.	:	SUMMARY JUDGMENT
	:	
HOUSTON INVESTORS LIMITED,	:	Civil No. 10337
a Utah limited partnership,	:	
DONALD HOUSTON, H. CLARK	:	
HOUSTON and LINFORD	:	
ORTON,	:	
	:	
Defendants.	:	

---ooo0ooo---

STATE OF CALIFORNIA)
 : ss
COUNTY OF SANTA CLARA)

Plaintiff Warren T. Christensen, being first duly sworn,
deposes and says:

1. I am one of the Plaintiffs in the above-entitled matter
and make this Affidavit of my own personal knowledge.

2. I made the voluntary contributions to the Defendant
limited partnership from 1974 to January 1982 in the sum of

\$46,345.08.

3. That the initial contribution made in August 1972 was \$10,000.00.

4. The initial contribution of \$10,000.00 is the only contribution required by the Certificate of Limited Partnership.

5. After payment of the initial partnership contribution, I received periodic assessments which I was told would be necessary to make payments on the White, Grimshaw and other contracts.

6. All payments after the initial contribution were made as voluntary additional contributions to the partnership in order to assist in liquidating partnership debts.

7. I have not at any time in writing or verbally agreed to make continuing or future additional contributions to the partnership. Rather, I evaluated each contribution and voluntarily paid contributions believing that I was free to stop making these contributions at any time.

8. I have not at any time agreed verbally or in writing to be responsible to pay any partnership debt or obligation.

9. That in July 1985 I sent to all members of the Defendant partnership a request for return of my contributions. (See exhibits attached.)

10. Six months have elapsed since I sent these notices, but I have received no return of contribution.

11. The Certificate of Limited Partnership does not state either a time when contributions will be returned or the dissolution of the partnership.

12. The liabilities of the partnership on the White, Grimshaw, and other contracts and liabilities have not been paid, and partnership property is insufficient for payment of liabilities.

FURTHER YOUR AFFIANT SAITH NAUGHT.

DATED this 12 day of June, 1986.

Warren T. Christensen

Warren T. Christensen

Subscribed and sworn to before me this 12th day of June, 1986.

Katherine L. Flood

Notary Public

Residing At:

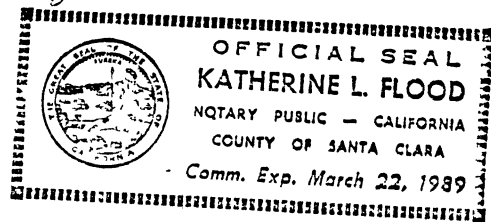
675 E. Santa Clara St.

San Jose, Ca 95112

My Commission Expires:

March 22, 1989

C2-5:sb



MICHAEL W. PARK (2516)
PARK & BRAITHWAITE
110 North Main, Suite H
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FIFTH JUDICIAL DIST COURT
IRON COUNTY
FILED
AUG 3 1986
Carmel Huie CLERK
DEPUTY

IN THE FIFTH JUDICIAL DISTRICT COURT IN AND FOR
IRON COUNTY, STATE OF UTAH

JOSEPH BROZDA and WARREN T. CHRISTENSEN,)	
)	
Plaintiffs,)	AFFIDAVIT OF
)	DONALD HOUSTON
vs.)	
)	
HOUSTON INVESTORS LIMITED,)	
a Utah Limited Partnership,)	Civil No. 10337
DONALD HOUSTON, H. CLARK)	
HOUSTON and LINFORD)	
ORTON,)	
)	
Defendants,)	

STATE OF UTAH)
COUNTY OF Iron) ss.

DONALD HOUSTON, after being first duly sworn,
deposes as follows:

1. The partnership known as Houston Investors was organized in 1974 for the purpose of purchasing certain property known as the "White Property". The description of that property and the payment schedule for said property is attached to Plaintiff's complaint.

2. At the time the White Property was purchased,

the Defendants, and this affiant, felt that the purchase price was very reasonable and that the property would increase in value substantially.

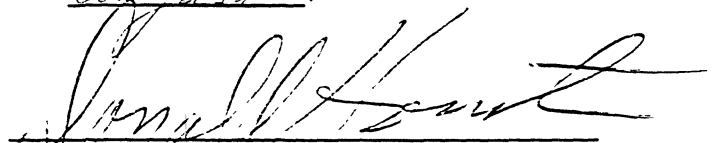
3. Affiant was contacted by other parties from 1974 to 1978, concerning having a share in the partnership.

4. The property increased in value from the time of its purchase until approximately 1978 when property values in Iron County did not increase and tended to decrease.

5. The Plaintiffs, Joseph Brozda and Warren T. Christensen, asked for the return of their partnership contribution at a time when the property had decreased in value and when the partnership contribution was not returned to them, said Plaintiffs discontinued making their payments and all other partners had to increase their payments to pay for the interests of Joseph Brozda and Warren T. Chrisensen.

6. The partnership known as Houston Investors has always operated on the basis that each partner was entitled to one vote and during each meeting of the partnership, each partner was entitled to one vote and the majority of votes determined what the partnership would do.

DATED this 5th day of August, 1986.


DONALD HOUSTON

On the 5th day of August, 1986, personally appeared before me DONALD HOUSTON, the signer of the within instrument who duly acknowledged to me that he executed the same.

Christa L. Collins
NOTARY PUBLIC
Residing at: Farvick, Utah
My Commission Expires: 6/24/90

MAILING CERTIFICATE

I do hereby certify that on the 7th day of August, 1986, a true and correct copy of the foregoing was mailed, first class, postage prepaid to G. Rand Beacham and Dale R. Chamberlain of JONES, WALDO, HOLBROOK & McDONOUGH, One South Main, Suite 300, St. George, UT 84770.

Donna Bullock
Secretary