

2008

Kang S. Park and Marsha Park v. Gary B. Stanford : Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca3



Part of the [Law Commons](#)

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

Attorneys for Defendant/Appellant; Russell S. Walker; Reid W. Lambert; Anthony M. Grover; Woodbury & Kesler, P.C..

Attorneys for Plaintiffs/Appellees; Keith W. Meade; Cohne, Rappaport & Segal, P.C..

Recommended Citation

Brief of Appellant, *Park v. Stanford*, No. 20080574 (Utah Court of Appeals, 2008).

https://digitalcommons.law.byu.edu/byu_ca3/1020

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH COURT OF APPEALS

KANG S. PARK and MARSHA PARK

Plaintiffs/Appellees,
vs.

GARY B. STANFORD,

Defendant/Appellant.

APPELLANT'S OPENING BRIEF

Court of Appeals Case No. 20080574-CA

District Court Civil Case No. 050900073

Appeal from the Judgment and Order of the Third Judicial
District Court of Salt Lake County, State of Utah, Honorable Anthony B. Quinn

Attorneys for Defendant/Appellant

Russell S. Walker
Reid W. Lambert
Anthony M. Grover
WOODBURY & KESLER, P.C.
265 East 100 South, Suite 300
Salt Lake City, Utah 84111-3358

Attorneys for Plaintiffs/Appellees

Keith W. Meade
COHNE, RAPPAPORT & SEGAL, P.C.
257 East 200 South, Suite 700
Salt Lake City, Utah 84111

(Oral Argument Requested)

FILED
UTAH APPELLATE COURTS
NOV 10 2008

IN THE UTAH COURT OF APPEALS

KANG S. PARK and MARSHA PARK

Plaintiffs/Appellees,
vs.

GARY B. STANFORD,

Defendant/Appellant.

APPELLANT'S OPENING BRIEF

Court of Appeals Case No. 20080574-CA

District Court Civil Case No. 050900073

Appeal from the Judgment and Order of the Third Judicial
District Court of Salt Lake County, State of Utah, Honorable Anthony B. Quinn

Attorneys for Defendant/Appellant

Russell S. Walker
Reid W. Lambert
Anthony M. Grover
WOODBURY & KESLER, P.C.
265 East 100 South, Suite 300
Salt Lake City, Utah 84111-3358

Attorneys for Plaintiffs/Appellees

Keith W. Meade
COHNE, RAPPAPORT & SEGAL, P.C.
257 East 200 South, Suite 700
Salt Lake City, Utah 84111

(Oral Argument Requested)

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
STATEMENT OF JURISDICTION	1
STATEMENT OF THE ISSUES PRESENTED FOR REVIEW	1
STATEMENT OF DETERMINATIVE LAW	3
STATEMENT OF THE CASE	4
I. Nature of the Case	4
II. Course of Proceedings	5
III. Disposition in Court Below	6
IV. Statement of Facts	7
A. Stanford's Involvement in the Purchase of the Ogden Property ...	7
B. Stanford Makes Payments to the Parks Pursuant to his Guarantee .	9
C. Mr. Park Purchases the Security Mutual Note & Forecloses	11
SUMMARY OF THE ARGUMENT	17
ARGUMENT	20
I. THE DISTRICT COURT INCORRECTLY GRANTED SUMMARY JUDGMENT WHERE STANFORD'S GUARANTEE AMOUNT WAS AMBIGUOUS	20
II. THE DISTRICT COURT ERRED BY NOT GIVING STANFORD CREDIT TOWARDS HIS \$500,000.00 GUARANTY FOR PAYMENTS HE MADE TO THE PARKS AS A GUARANTOR	23
A. Stanford Should Have Been Given Credit For The Payments He Made To The Parks As A Guarantor	23
B. Where The Parks Knew The Payments Stanford Gave Them Came From Stanford They Should Have Applied Those Payments Towards His Guarantee Liability	26

III. THIS CASE SHOULD BE REMANDED TO THE DISTRICT COURT TO REDUCE THE JUDGMENT AMOUNT PURSUANT TO UTAH CODE ANN. § 57-1-32	30
CONCLUSION	43
ADDENDUM	44
CERTIFICATE OF SERVICE	45

TABLE OF AUTHORITIES

Cases

<u>Broward County v. Cont'l Gas. Co.</u> , 243 F. Supp. 118 (S.D. Fla. 1965)	23
<u>Central Blacktop v. Town of Cicero</u> , 519 N.E. 2d 972 (Ill. App. Ct. 5th Div. 1988)	27, 28, 29
<u>Ford v. American Express Fin. Advisors, Inc.</u> , 2004 UT 70, 98 P.3d 15	21, 22
<u>Hyland Elec. Supply Co. v. Franchi Bros. Const. Corp.</u> , 378 F.2d 134 (2d Cir. 1967)	22, 28, 29
<u>Mead Corp. v. Dixon Paper Co.</u> , 907 P.2d 1179 (Utah Ct. App. 1995)	27, 33
<u>Monmouth Plumbing Supply Co. v. McDonald</u> , 147 A. 627 (N.J. 1929) . . .	23, 24, 25, 26
<u>Peterson v. The Sunrider Corp.</u> , 2002 UT 43, 43 P.3d 918	18, 21
<u>Orvis v. Johnson</u> , 2008 UT 2, 177 P.3d 600.	1, 2, 26
<u>St. Paul Fire & Marine Inc. Co. v. Dakota Elec. Supply Co.</u> , 309 F.2d 22 (8th Cir. 1962)	23, 27, 28, 29
<u>State v. Archambeau</u> , 820 P.2d 920 (Utah Ct. App. 1991)	5
<u>State v. Irwin</u> , 924 P.2d 5 (Utah Ct. App. 1996)	4, 6
<u>State v. Lopez</u> , 873 P.2d 1127 (Utah 1994)	5
<u>State v. Lopez</u> , 886 P.2d 1105 (Utah 1994)	4
<u>Surety Life Ins. Co. v. Smith</u> , 892 P.2d 1 (Utah 1995)	4, 30, 31
<u>Wyandotte Coal & Lime Co. v. Wyandotte Pav. & Constr. Co.</u> , 154 P. 1012 (Kan 1916)	29

Statutes

Utah Code Ann. § 57-1-32 *passim*

Utah Code Ann. § 78A-4-103(2)(j) 1

Utah Code Ann. § 78A-3-102(4) 1

Rules

Utah Rule of Appellate Procedure 24(a)(5)(B) 2

Utah Rule of Civil Procedure 56(c) 7

STATEMENT OF JURISDICTION

This Court has jurisdiction over this appeal pursuant to Utah Code Ann. § 78A-4-103(2)(j), because this appeal has been transferred to this Court from the Utah Supreme Court, pursuant to Utah Code Ann. § 78A-3-102(4).

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

The issues on appeal are as follows:

1. Whether the district court erred in entering summary judgment against Appellant Gary B. Stanford (“Stanford”) in the amount of \$1,009,872.35 where there was a question of fact and ambiguity as to whether Stanford’s guarantee was limited to a total amount of \$500,000.00.

This Court reviews a district court’s legal conclusions and ultimate grant or denial of summary judgment for correctness and views the facts and all reasonable inferences drawn therefrom in the light most favorable to the nonmoving party. *Orvis v. Johnson*, 2008 UT 2, ¶ 6, 177 P.3d 600. Stanford preserved this issue below in his memoranda in opposition to Plaintiffs’ motions for summary judgment and in a hearing before Judge Quinn. (R. 161-168; 501-503; 781 Hearings Tran. at 9-11.)¹

2. Whether the district court erred by not giving Stanford credit for payments which Stanford made to the Plaintiffs where the Plaintiffs knew the payments came from Stanford and not the debtor.

¹ Citation conventions as used in this brief are as follows: “R.” refers to the record on appeal, “Hearings Tran.” refers to the transcript of the hearings held before Judge Quinn on March 13, 2006, February 16, 2007, and April 29, 2008, and included in the record on appeal at page 781, “Add. Ex.” refers to an exhibit included in this brief’s Addendum.

This Court reviews a district court's legal conclusions and ultimate grant or denial of summary judgment for correctness and views the facts and all reasonable inferences drawn therefrom in the light most favorable to the nonmoving party. Orvis, 2008 UT 2, ¶

6. Stanford preserved this issue below by motion and at a hearing before Judge Quinn.

(R. 168-170; R. 781 Hearings Tran. at 9-11.)

3. Whether the district court should reduce the \$1,009,872.35 judgment amount by the difference between the fair market value of the commercial property which the Plaintiffs foreclosed on and purchased where Utah Code Ann. § 57-1-32 requires such a reduction.

Due to the exceptional procedural circumstances of this case, this issue was not preserved on appeal below. Pursuant to Utah Rule of Appellate Procedure 24(a)(5)(B), Stanford provides the following statement of grounds for seeking review of this new issue:

In April of 1994, Stanford and his business associate Richard Buckway ("Buckway") entered into an agreement with the Parks to purchase a commercial real estate property in Ogden, Utah (the "Ogden Property"). (R. 82.) The parties later agreed that as part of the Ogden Property purchase, Snowmass, LLC ("Snowmass") would assume the Parks' obligation to pay a first position deed on the Ogden Property in favor of Security Mutual Life Insurance Company ("Security Mutual"). (R. 154.) Snowmass assumed the Security Mutual loan and the Parks were released from liability on the Security Mutual Note. (R. 160.)

On or about July 1, 1995, Snowmass and the Parks executed a Trust Deed Note wherein Snowmass promised to pay the Parks \$645,683.27. (R. 3.) Stanford signed the Note in his individual capacity as a guarantor. (R. at 4.)

In December of 2007, the Parks purchased the Security Mutual Note back. (R. at 601; 616-619.) After granting summary judgment in favor of the Parks, the district court issued its final judgment against Stanford on June 3, 2008. (R. 759-763.) The Judgment's total amount was \$1,009,872.35, and was comprised of \$500,000.00 in principal based on Stanford's guarantee, \$508,463.91 in interest on the principal amount, and \$1,408.44 in costs. (R. 760.) At the time the Judgment was issued, the Parks were the holders of the Security Mutual Note and had not begun any foreclosure proceedings on the Ogden Property.

However, on June 26, 2008, the Parks' legal counsel, Keith W. Meade ("Meade") issued a Notice of Trustee's Sale which scheduled a public auction of the Ogden Property on July 31, 2008. (A copy of the Notice of Trustee's Sale is included in this brief's Addendum as Exhibit "A.") The public auction was held on July 31, 2008, and the Parks purchased the Ogden Property for a credit bid of \$200,000.00. (A copy of the bid price is included in this brief's Addendum as Exhibit "B.") The Parks had previously submitted expert testimony that the Ogden Property's market value as of April 21, 2006, was between \$425,000.00 and \$450,000.00. (R. 430-431.)

Utah Code Ann § 57-1-32 requires that a court deduct the fair market value of a property on the date of its sale pursuant to a trust deed from any judgment amount rendered against a debtor. Utah Code Ann § 57-1-32 (2008). The Utah Supreme Court has extended this protection to guarantors as well. See Surety Life Ins. Co. v. Smith, 892 P.2d 1, 3 (Utah 1995). Accordingly, a guarantor must be afforded the benefit of having any potential judgment against him reduced by the fair market value of the property on the date of its sale. The Utah Supreme Court has stated that the purpose of this protection is to prevent a creditor from receiving a double recovery where he nets not only a deficiency judgment but also the property itself. Id.

In this case, the issue of whether the Parks' judgment should have been reduced by the difference between the fair market value of the Ogden Property and their \$200,000.00 purchase price was never presented to the district court because the facts giving rise to this issue had not yet occurred. Even though the Parks had purchased the Security Mutual Note while the case was still before the district court, they had not yet foreclosed on the Ogden Property or purchased the Property prior to the court's final judgment.

A litigant who fails to raise an issue before the district court is generally barred from raising it for the first time on an appeal. State v. Lopez, 886 P.2d 1105, 1113 (Utah 1994). However, this Court has recognized an exception to this rule where "exceptional circumstances" are present. State v. Irwin, 924 P.2d 5, 7 (Utah Ct. App. 1996). Utah courts have carved out this "exceptional circumstances" exception as a "safety device,"

to assure that ‘manifest injustice’ does not result from the failure to consider an issue on appeal.” *Id.* quoting *State v. Archambeau*, 820 P.2d 920, 923 (Utah Ct. App. 1991).

This Court has held that the “exceptional circumstances” exception is not a precise doctrine “which may be analyzed in terms of fixed elements, as it is a descriptive term used to memorialize an appellate court’s judgment that even though an issue was not raised below . . . unique procedural circumstances nonetheless permit consideration of the merits of the issue on appeal.” *Id.* at 8. Such “unique procedural circumstances” existed in *State v. Lopez*, 873 P.2d 1127 (Utah 1994), where the Utah Supreme Court noted that a change in the law or the settled interpretation of the law which arose after trial justified consideration of the appellant’s issue raised for the first time on appeal. *Id.* at 10.

In this case, “exceptional circumstances” exist which permit this Court’s consideration of an issue which was impossible to raise in the district court. As set forth above, the facts giving rise to Stanford’s claim that his judgment should be reduced by the difference in the fair market value of the Ogden Property and the Parks’ \$200,000.00 purchase price did not occur until *after* the court had already entered judgment against him. Accordingly, like the appellant in *Lopez*, it was impossible for Stanford to raise this issue prior to the entry of the judgment against him.

Stanford contends that there are sufficient facts in the record on appeal to demonstrate the viability of this issue where the Parks held the Security Mutual Note in their favor against Stanford and where there the Ogden Property was appraised at

\$425,000.00 to \$450,000.00. (R. 601; 616-619; 430-431.) Moreover, the intent of the “exceptional circumstances” exception would be served in this case where absent review of this issue Stanford will be potentially be liable for a judgment which should be reduced by no less than \$225,000.00. Furthermore, as a guarantor, the Utah Supreme Court has extended § 57-32-1 to Stanford and Stanford is therefore entitled to its protection. Additionally, consideration of this issue is germane to the other issues presented on this appeal where the issue concerns the amount of the judgment which Stanford should ultimately be liable for.

Utah appellate courts permit the review of an issue not presented to a trial court as a “safety device” to assure that “manifest injustice” does not result. State v. Irwin, 924 P.2d at 8. In this case, such a safety mechanism is necessary to consider whether the district court’s judgment amount should be reduced as a matter of law by virtue of U.C.A. § 57-32-1. Additionally, a judgment against Stanford for \$200,000.00 to \$250,000.000 more than it should be constitutes the type of manifest injustice the “exceptional circumstances” exception was meant to prevent where the Parks also now own the Ogden Property.

Stanford did not present this issue below because the facts giving rise to this issue had not yet occurred. It was not because he simply neglected it or because his legal counsel at the time chose not to argue it as tactical strategy. The unique procedural

circumstances of this case rendered it impossible for Stanford to raise this issue below.

Accordingly, Stanford respectfully asks the Court to permit review of this issue on appeal.

STATEMENT OF DETERMINATIVE LAW

Stanford believes that interpretation of the following rule and statute may be determinative of portions of this appeal.

Utah Rule of Civil Procedure 56(c)

(c) *Motion and proceedings thereon.* The motion, memoranda and affidavits shall be in accordance with Rule 7. The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

Utah Code Ann. § 57-1-32

At any time within three months after any sale of property under a trust deed as provided in Section 57-1-23, 57-1-24, and 57-1-27, an action may be commenced to recover the balance due upon the obligation for which the trust deed was given as security, and in that action the complaint shall set forth the entire amount of the indebtedness that was secured by the trust deed, the amount for which the property was sold, and the fair market value of the property at the date of sale. Before rendering judgment, the court shall bind the fair market value of the property at the date of sale. The court may not render judgment for more than the amount by which the amount of the indebtedness with interest, costs, and expenses of sale, including trustee's and attorney's fees, exceeds the fair market value of the property as of the date of the sale. In any action brought under this section, the prevailing party shall be entitled to collect its costs and reasonable attorney fees incurred.

STATEMENT OF THE CASE

I. Nature of the Case

This case involves the Parks' double recover of a debt which Stanford had guaranteed. Stanford signed various documents wherein he guaranteed Snowmass'

payments to the Parks. Stanford's guarantee was limited to a total amount of \$500,000.00. However, when Snowmass failed to fulfill its obligation, Stanford paid the Parks over \$750,000.00 of his own money to honor his guarantee. Notwithstanding Stanford's payments in excess of his personal guarantee, the Parks sought, and received, a judgment against Stanford for over a million dollars.

II. Course of Proceedings

The Parks filed a Complaint against Stanford seeking to recover an alleged \$761,948.00 debt which Stanford had guaranteed. Soon after filing their Complaint, the Parks moved for partial summary judgment and sought a determination that: (1) Stanford was liable to them based upon his guarantee, and (2) that Stanford was not entitled to offset over \$750,000.00 in payments which he had made to the Parks against his guarantee. The Parks argued that a July 1995 Trust Deed Note constituted the final and integrated agreement between the parties and that pursuant to that Note, Stanford was liable for \$500,000.00 plus interest on that principal amount.

In August of 2006, the Parks filed another motion for summary judgment which sought a final judgment against Stanford based on his personal guarantee. Stanford filed opposing memoranda to the Parks' motions for summary judgment wherein he argued that there were genuine issues of fact regarding the amount of his guarantee and whether his personal payments to the Parks in accordance with his guarantee should be credited

towards that guarantee. Hearings on the motions for summary judgment were held before Judge Quinn on March 13, 2006, February 16, 2007, and April 29, 2008.

III. Disposition Below

At the March 13, 2006, hearing on the Parks' motion for partial summary judgment, Judge Quinn concluded as a matter of law that none of Stanford's payments could be applied towards his \$500,000.00 guarantee. Judge Quinn stated from the bench that since there was no evidence that Stanford had directed the Parks to apply his personal payments towards his guarantee, he was not entitled to an offset of those payments as matter of law. On June 5, 2006, the court issued an Order reiterating its ruling at the March 13, 2006, hearing. (A copy of this Order is included in this brief's addendum as Ex. F.) In its Order, the court also stated that it could not determine as a matter of law what amount Stanford was liable for by virtue of his guarantee.

At a hearing on April 29, 2008, Judge Quinn granted the Parks' remaining motion for summary judgment. On June 3, 2008, the trial court entered a Judgment against Stanford in the total amount of \$1,009,872.35, together with interest at 15% per annum. (A copy of the Judgment is included in this brief's addendum as Ex. F.) This amount was comprised of \$500,000.00 in principal, \$508,463.91 in interest on the principal amount, and \$1,408.44 in costs. Stanford filed a notice of appeal on July 2, 2008.

IV. Statement of Facts

A. Stanford's Involvement in the Purchase of the Ogden Property

1. On April 1, 1994, Gary B. Stanford ("Stanford") and Richard Buckway ("Buckway") entered into a real estate purchase contract ("REPC") with Kang and Marsha Park (the "Parks") (R. 210; Add. Ex. C.)²
2. Pursuant to the REPC, Stanford and Buckway agreed to purchase a commercial real estate property in Ogden, Utah (the "Ogden Property") from the Parks for \$1,000,000.00. (R. 210; Add. Ex. C.)
3. The REPC provided that Stanford would personally guarantee the payment of \$500,000.00 plus interest. (R. 213; Add. Ex. C.)
4. The REPC also provided that Stanford and Buckway would be responsible for Mr. Kang's obligations on a Deed of Trust and Security dated March 12, 1992, between Mr. Kang and Security Mutual Life Insurance Company ("Security Mutual").
5. The Ogden Property was subject to the Security Mutual Trust Deed which carried a balance of approximately \$266,484.40 at the time the parties' executed the REPC. (R. 215; Add. Ex. C.)
6. Stanford and Buckway took possession of the Ogden Property in May of 1994 and soon after began to make monthly payments to the Parks. (R. 202.)

² A copy of the April 1, 1994, REPC is included in this brief's addendum as Exhibit "C."

7. Since there had not yet been an official closing on the Ogden Property, the Parks' attorney at the time Frederick S. Prince, Jr. ("Prince") sent a letter to Stanford and Buckway which summarized the REPC's essential terms. (R. 224-228.)

8. In the letter, Prince summarized Stanford's guarantee as follows, "[t]his can only be interpreted as limiting Dr. Stanford's liability to the \$500,000 amount" and later stated that Dr. Stanford's liability was limited to \$500,000.00 (R. 225-226.)

9. In approximately October of 1994, the parties mutually agreed to modify the terms of the REPC. Prince sent Stanford and Buckway another letter on October 11, 1994, confirming the new contract terms. In that letter, Prince wrote that "Dr. Stanford will personally guarantee the Note, but his guarantee will be limited to a maximum liability of \$500,000." (R. 230-231.)

10. In connection with the Ogden Property purchase, the parties also agreed that Snowmass, LLC ("Snowmass"), a limited liability company which Stanford and Buckway were members of, would assume the Security Mutual Note. (R. 202.)

11. On October 24, 1994, Prince sent Stanford and Buckway a letter setting forth the essential terms of the modified REPC.³ The letter stated that the purchase price would be reduced from \$1,000,000.00 to \$900,000.00. With respect to Stanford's

³ A copy of the October 24, 1994, contract is included in this brief's addendum as Exhibit "D"

guarantee, the Parks' attorney reiterated that "his guarantee will be limited to a maximum liability of \$500,000." (R. 233-235; Add. Ex. D.)

12. At the end of the letter, Prince included the language "AGREED AND ACCEPTED" and included signature lines for Stanford, Buckway, and the Parks. (R. 235; Add. Ex. D.)

13. Stanford, Buckway, and the Parks each signed the letter thereby accepting the REPC's new terms. (R. 235; Add. Ex. D.)

14. Each of the recitals in the aforementioned documents were consistent with Stanford's intent that he only be liable on his guarantee for a maximum amount of \$500,000.00. (R. 204.)

15. Pursuant to their obligation, Stanford and Buckway arranged for Snowmass to assume the Security Mutual Note in approximately June of 1995. (R. 204.)

16. Once Snowmass had arranged for assumption of the Security Mutual Note, the Parks' attorney prepared a Trust Deed Note dated July 1, 1995, (the "July Trust Deed") in the principal amount of \$645,683.27. (R. 3-10.)⁴

17. The July Trust Deed identified Snowmass as the Borrower rather than Stanford and Buckway like the previous documents had. (R. 3; Add. Ex. E.)

⁴ A copy of the July 1, 1995, Trust Deed Note is included in this brief's addendum as Exhibit "E."

18. The July Trust Deed contains the following guarantee language with respect to Stanford,

By his signature, individually, on this note, Gary B. Stanford agrees to unconditionally guarantee the payment of this note, but in no even shall Gary B. Stanford's liability (excluding portions thereof attributable to interest and costs) when added to any deficiency judgment which may be entered against him by virtue of his guaranty of the Security Mutual Life Insurance Co. note (excluding interest and costs), exceed the sum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000).

(R. 4; Add. Ex. E.)

19. The July Trust Deed's language that Stanford's \$500,000.00 guaranty excluded portions attributable to interest was contrary to Stanford's intention as well as Prince's summation of the guarantee. (R. 205.)

20. Buckway stated that it was always his and Stanford's intent that Stanford not guarantee any more than \$500,000.00 of the total purchase price. (R. 370.)

21. J.R. Christensen, a silent partner of Snowmass from 1994-1995 also stated that Stanford's guarantee was not to exceed \$500,000.00. (R. 282.)

22. The July Trust Deed also states that "all other instruments evidencing or securing the indebtedness hereunder are hereby made part of this Note and are deemed incorporated herein in full." (R. 4; Add. Ex. E.)

B. Stanford Makes Payments to the Parks Pursuant to his Guarantee

23. After taking possession of the Ogden Property, Snowmass began making payments to the Parks pursuant to the REPC. (R. 202.)

24. Those payments partially paid the amount owing to the Parks and partially paid the amounts owing on the Security Mutual Note. (R. 308.)

25. However, in 1994 and 1995, Snowmass missed several payments it was required to make pursuant to the July Trust Deed. (R. 159; 203-205.)

26. When Snowmass failed to make these payments, Mr. Park contacted Stanford directly to demand payment based on Stanford's personal guarantee. (R. 205; 211-261.)

27. To honor his personal guarantee, Stanford made payments to the Parks in excess of \$750,000.00. These payments were made to fulfill the Parks' obligation under the Security Mutual Note, Snowmass' obligation under the Security Mutual Note, Snowmass' payment obligation under the July Trust Deed, and Stanford's guarantee of the July Trust Deed. (R. 160; 206; 263-280.)

28. When Stanford made personal payments to the Parks, he did so believing that the Parks would credit those payments towards his \$500,000.00 guarantee. (R. 161; 207.)

29. Had Stanford known that the Parks were not crediting his personal payments towards his \$500,000.00 guarantee, Stanford would not have made the payments upon the Parks' demand. (R. 161; 207.)

30. At times Stanford would transfer his own funds into Snowmass' bank account so that Snowmass could make its payment to the Parks. (R. 159.)

C. Mr. Park Purchases the Security Mutual Note & Forecloses

31. On or about December 19, 2007, Mr. Park purchased the Security Mutual Note which was secured by the Ogden Property. (R. 616.)

32. On June 3, 2008, the district court entered its Judgment against Stanford in the amount of \$1,009,872.35. (R. 759-761.)

33. After the district court's Judgment was entered, Mr. Park began foreclosure proceedings on the Security Mutual Note.

34. On June 26, 2008, the Parks' attorney, Keith W. Meade, acting as successor trustee, issued a Notice of Trustee's Sale of the Ogden Property. See Add. Ex. A.

35. The Trustee's Sale was held on July 31, 2008. Id.

36. The Parks were the only bidder at the Trustee's Sale and purchased the Ogden Property with a credit bid of \$200,000.00. See Add. Ex. B.

37. The estimated fair market value of the Ogden Property as of April 21, 2006, was between \$425,000.00 and \$450,000.00 according to the Parks' expert. (R. 430-431.)

SUMMARY OF THE ARGUMENT

The district court incorrectly granted summary judgment in favor of the Parks where contractual ambiguities and questions of fact infested the case. While it is undisputed that Stanford signed the July Trust Deed as a guarantor, the unresolved

question of how much of Snowmass' obligation he guaranteed should have precluded the district court's grant of summary judgment.

The July Trust Deed purportedly caps Stanford's guarantee at \$500,000.00. However, it also provides that Stanford is liable for any interest on that \$500,000.00 amount, thereby exposing Stanford to liability on his guarantee well in excess of \$500,000.00. While on its face this language may not appear ambiguous, the July Trust Deed incorporates by reference prior agreements entered into between the parties which unambiguously limit Stanford's guarantee to \$500,000.00 total. The incorporation of these previous agreements calls into question whether Stanford's guarantee should include interest on the \$500,000.00 principal amount and given this ambiguity, summary judgment was inappropriate.

The district court also erred by concluding as a matter of law that Stanford was not entitled to credit for the payments he made to the Parks pursuant to his guarantee. Courts have held that when a guarantor makes payments to the lender on behalf of the borrower, those payments are credited against the guarantor's guarantee amount. In this case, the facts show that Stanford paid the Parks at least \$750,000.00 on behalf of Snowmass pursuant to his guarantee and at the Parks' request. Accordingly, as a matter of law, the district court should have applied those payments to Stanford's \$500,000.00 guaranty. Stanford contends that where he made at least \$500,000.00 in payments his guaranty was extinguished and the district court's Judgment should be vacated.

Additionally, the district court erroneously focused its inquiry on whether Stanford and the Parks had an agreement as to how Stanford's personal payments would be applied. Stanford contends that the operative question is not whether Stanford directed the Parks to apply his payments to his guarantee, but whether the Parks knew that payments they received came from Stanford and not Snowmass. The law is well settled that when a lender receives a payment on a debt from the guarantor, or from the debtor with the guarantor's funds, and that creditor has actual knowledge that the guarantor is the source of the payment, the creditor is required to apply that payment towards the guaranteed debt. Accordingly, where the Parks knew they had received money from Stanford, his payments should be credited against his \$500,000.00 guarantee as a matter of law.

Finally, the district court should reduce the \$1,009,872.35 judgment amount by the difference between the fair market value of the Ogden Property on the day of the trustee's sale and the Parks' \$200,000.00 purchase price. Utah Code Ann. § 57-1-32 applies to property that is subject to and ultimately sold by virtue of a trust deed. The purpose of this statute is to prevent a creditor from receiving the double recovery of a judgment as well as the underlying property. The Utah Supreme Court has extended § 57-1-32's reach to guarantors and therefore Stanford is entitled to such protection. Stanford therefore asks this Court to remand this case to the district court for proceedings consistent with § 57-1-32.

ARGUMENT

I. THE DISTRICT COURT INCORRECTLY GRANTED SUMMARY JUDGMENT WHERE STANFORD'S GUARANTEE AMOUNT WAS AMBIGUOUS

The maximum amount of Stanford's guarantee was ambiguous and therefore summary judgment was inappropriate. The Utah Supreme Court has held that "a motion for summary judgment may not be granted if a legal conclusion is reached than an ambiguity exists in the contract and there is a factual issue as to what the parties intended." Peterson v. The Sunrider Corp., 2002 UT 43, ¶ 14, 43 P.3d 918 (internal quotation omitted). The district court concluded that Stanford was liable for not only his \$500,000.00 principal guarantee, but also \$508,463.91 in interest on that principal amount. (R. 759-761.) Stanford contends that the July Trust Deed's guaranty is ambiguous as to whether Stanford's guarantee includes interest on the \$500,000.00 principal amount where previous agreements incorporated into the July Trust Deed did not contemplate such interest.

A contract provision is deemed ambiguous if "it is capable of more than one reasonable interpretation because of 'uncertain meanings of terms, missing terms or other facial deficiencies.'" Peterson, 2002 UT 43 at ¶19. When determining whether a contract term is ambiguous "the court is not bound to consider only the language of the contract" but "[a]ny relevant evidence must be considered." Id.

In this case, the July Trust Deed contains the following guarantee language,

By his signature, individually, on this note, Gary B. Stanford agrees to unconditionally guarantee the payment of this note, but in no even shall Gary B. Stanford's liability (excluding portions thereof attributable to interest and costs) when added to any deficiency judgment which may be entered against him by virtue of his guaranty of the Security Mutual Life Insurance Co. note (excluding interest and costs), exceed the sum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000).

(R. 4; Add. Ex. E.) At first blush, this language may not appear ambiguous. However, the July Trust Deed also includes an incorporation clause which provides as follows, "[s]uch Security Instruments and all other instruments evidencing or securing the indebtedness hereunder are hereby made part of this Note and are deemed incorporated herein in full." (Id.) Accordingly, the previous agreements related to the sale of the Ogden Property became part of the July Trust Deed and those documents evidence an ambiguity as to Stanford's guarantee amount.

The first document incorporated into the July Trust Deed which demonstrates the ambiguity is a September 27, 1994, letter from the Parks' attorney, Prince, to Stanford and Buckway. (R. 224-228.) In this letter, Prince outlines the terms of the original REPC. (Id.) Prince characterizes Stanford's personal guarantee as "\$500,000 plus interest" but then states that "[t]his can only be interpreted as limiting Dr. Stanford's liability to the \$500,000 amount." (R. 225.) Based on Prince's letter, he states that Stanford will be liable for \$500,000 plus interest but then immediately limits Stanford's liability to only being interpreted as \$500,000. This document, incorporated into the July

Trust Deed, illustrates the ambiguity of Stanford's guarantee which even the Parks recognized.

The second document incorporated into the July Trust Deed was Prince's October 11, 1994, letter to Stanford and Buckway which details some modifications to the REPC. (R. 230-231.) In that letter, Prince summarizes the essential terms of the deal and repeats his statement that Stanford's guarantee "will be limited to a maximum liability of \$500,000." (R. 231.) Unlike Prince's September 27, 1994, letter he does not state that Stanford's guarantee is for \$500,000.00 plus interest. Accordingly, this letter also evidences the ambiguity surrounding Stanford's guarantee and whether it also includes interest.

The third document incorporated into the July Trust Deed is an October 24, 1994, letter from Prince to Stanford and Buckway which also served as a contract between the parties. The letter confirms the terms of the Ogden Property purchase and outlines the essential terms of the deal. (R. 233-235.) With respect to Stanford's personal guarantee, the document provides, "Dr. Stanford will personally guarantee the Note, but his guarantee will be limited to a maximum liability of \$500,000." (R. 234.) Stanford, Buckway and the Parks all signed the October 24, 1999, agreement. (R. 235.) Consequently, all parties agreed that Stanford's guarantee would be limited to a maximum amount of \$500,000.00 without any mention of interest on that principal

amount. This agreement, incorporated into the July Trust Deed, also evidences the ambiguity of the Stanford guarantee.

In addition to the documents incorporated into the July Trust Deed, any other “relevant evidence” may be considered when determining whether Stanford’s guarantee is ambiguous. Peterson, 2002 UT 43, at ¶ 19. In this case, Stanford, Buckway, and J.R. Christensen, all partners of Snowmass, stated that it was always intended that Stanford’s maximum guarantee liability be limited to a total of \$500,000.00. (R. 205; 282; 370.) Therefore, these statements provide further evidence that Stanford’s total guarantee liability was to be capped at \$500,000.00 total and not \$500,000.00 plus interest as provided in the July Trust Deed.

The July Trust Deed’s guaranty provision is ambiguous. The documents and agreements incorporated into the July Trust Deed differ from the July Trust Deed’s guarantee provision where they do not add interest to the \$500,000.00 maximum guarantee. Stanford contends that the district court should not have granted summary judgment and awarded the Parks \$508,463.91 in interest in addition to the \$500,000.00 principal guarantee amount given the uncertainty in the parties’ executed documents. Moreover, Stanford, Buckway, and Christensen’s statements that Stanford’s liability was to be only \$500,000.00 sheds further light on this ambiguity. Accordingly, the district court’s Judgment should be vacated and the case should be remanded to the district court

for further proceedings to clarify whether Stanford's \$500,000.00 guarantee was inclusive or exclusive of interest.

In the trial court, the Parks repeatedly argued that the July Trust Deed was a fully integrated document and therefore the prior documents and agreements set forth above were superseded and effectively merged into the July Trust Deed. (R. 85-89.) The Parks were mistaken.

As set forth above, the July Trust Deed contains an incorporation clause not an integration or merger clause. In Ford v. American Express Fin. Advisors, Inc., 2004 UT 70, ¶ 27, 98 P.3d 15, the Utah Supreme Court noted that the integration clause in that case specifically stated it "supersede[s] all prior and contemporaneous agreements, negotiations and representations (written and oral)." In this case, the July Trust Deed contains no such language. Nowhere in the July Trust Deed does it purport to supersede all prior agreements between the parties, it merely incorporates the prior agreements as a part of that document. And, as set forth above, the incorporated documents render Stanford's guarantee amount ambiguous. Accordingly, the district court's Judgment and grant of summary judgment should be vacated.

II. THE DISTRICT COURT ERRED BY NOT GIVING STANFORD CREDIT TOWARDS HIS \$500,000.00 GUARANTY FOR PAYMENTS HE MADE TO THE PARKS AS A GUARANTOR

The district court erred in concluding as a matter of law that Stanford was not entitled to credit for over \$750,000.00 in payments he personally made to the Parks as

Snowmass' guarantor. (R. 391-392.) At the March 13, 2006, hearing on the Parks' motion for partial summary judgment, the court stated that it was comfortable granting partial summary judgment since there was no evidence of an understanding between the parties with respect to the application of Stanford's payments to the Parks. (R. 781 Hearings Tran. at 14.) In an order dated June 5, 2006, the district court stated that "as a matter of law, none of the payments made to date by Stanford . . . can be applied so as to reduce the \$500,000.00 personal guaranty from Stanford to the plaintiffs." (R. 391.)

The district court erred on two grounds: (1) when a guarantor makes a payment directly to the lender, that payment is credited against the guarantor's guaranty limit, see Monmouth Plumbing Supply Co. v. McDonald, 147 A. 627, 628 (N.J. 1929), and (2) when a lender accepts a payment from a guarantor or debtor, and knows that the payment has come from the guarantor's funds, the lender is required to apply that payment towards the guarantor's debt. See St. Paul Fire & Marine Inc. Co. v. Dakota Elec. Supply Co., 309 F.2d 22, 25 (8th Cir. 1962); see also Broward County v. Cont'l Gas. Co., 243 F. Supp. 118 (S.D. Fla. 1965). Accordingly, the question of whether there was an agreement between the parties concerning how Stanford's payments should be applied is irrelevant.

A. Stanford Should Have Been Given Credit For The Payments He Made To The Parks As A Guarantor

The district court should not have entered a judgment against Stanford where he had already satisfied his guarantee. Stanford fulfilled his \$500,000.00 guaranty to the Parks where he paid them over \$750,000.00 in monthly payments as Snowmass'

guarantor. A guarantor's payment of a borrower's debt, to the extent it is covered by a contract, discharges the guarantor from further liability. Monmouth Plumbing Supply Co., 147 A. at 627. While Monmouth Plumbing is not controlling precedent on this Court, its fact pattern is identical to that of this case and it is therefore instructive and persuasive.⁵

In Monmouth Plumbing, the plaintiff extended credit to the defendant's son on the grounds that the defendant guarantee his son's account. Id. The defendant agreed and guaranteed his son's account up to a maximum amount of \$250. Id. The son was unable to pay his debts to the plaintiff and the defendant paid the plaintiff a total of \$268.90 on behalf of his son. Id. The plaintiff continued extending credit to the defendant's son until the son's indebtedness amounted to \$462.22. Id. The defendant's son was unable to pay that amount and the plaintiff filed a lawsuit against the defendant based on his guarantee and demanded that the defendant pay him the \$250 he had guaranteed. Id. The trial court ruled in favor of the defendant and held that the defendant's prior payment of \$268.90 to the plaintiff discharged the defendant from any further obligation on his guarantee. Id.

On appeal, the New Jersey Supreme Court affirmed the trial court's ruling and held that "[t]he accepted rule is that the payment by the guarantor of the principal debt to the extent that it is covered by the contract of guaranty discharges him from any further

⁵ No cases from within this jurisdiction have yet to comment on whether a guarantor's payment on behalf of the borrower should be applied to offset the guarantor's maximum liability.

liability thereon.” Id. at 628. The court held that the defendant’s payments totaling \$268.90, a total exceeding his \$250 guarantee, “wiped out any further obligation on the part of the defendant with relation to the payment of his son’s debt to the plaintiff.” Id.

As in Monmouth Plumbing, Stanford guaranteed a borrower’s (Snowmass) debt to a lender (the Parks). (R. 4.) As in Monmouth Plumbing, Stanford’s guarantee was limited to a fixed amount of \$500,000.00. (Id.) As in Monmouth Plumbing, Snowmass was unable to make the payments as required by the REPC and July Trust Deed. (R. 205; 211-261.) As in Monmouth Plumbing, the Parks sought payment of Snowmass’ obligation from Stanford as the guarantor. (Id.) As in Monmouth Plumbing, Stanford made payments to the Parks on behalf of Snowmass with his own money in order to honor his personal guarantee. (R. 160; 206; 263-280.) As in Monmouth Plumbing, the amount Stanford paid to the Parks exceeded his guarantee maximum of \$500,000.00 where he paid them in excess of \$750,000.00. (Id.) As in Monmouth Plumbing, the Parks brought an action against Stanford for an amount which Stanford has already paid. And as in Monmouth Plumbing, this Court should hold that Stanford’s guaranty liability was extinguished by virtue of his payments to the Parks.

The facts show that Stanford gave the Parks over \$750,000.00 in payments at their request and on behalf of Snowmass. (R. 160; 206; 263-280.) Stanford either made those payments personally or transferred his funds into Snowmass’ account who then made the payment to the Parks. (R. 159.) Based on these facts, the district court erred by not

applying these payments towards his \$500,000.00 guaranty liability. Had the district court properly done so, Stanford's guaranty liability would have been "wiped out" just as the defendant in Monmouth Plumbing and the Parks' claim against Stanford on the guarantee would be without merit.

In the district court, the Parks denied that Stanford was making payments to them in his capacity of a guarantor. (R. 318.) The Parks asserted that while they did receive payments from Stanford, there was no reference to his guarantee. (R. 317-318.) Stanford notes that these facts, even if true, merely create a material issue of fact which further supports Stanford's contention that summary judgment was inappropriate. When considering the Parks' motions for summary judgment, the trial court, as well as this Court, is obligated to view "the facts and all reasonable inferences drawn therefrom in the light most favorable to the nonmoving party." Orvis, 2008 UT 2, ¶ 6. Pursuant to this standard, the district court erred by refusing to apply Stanford's payments to his guarantee and granting the Parks' motion where a genuine issue of material fact existed.

Additionally, Stanford asserts that the district court's ruling and resulting Judgment awards the Parks a double recovery on Stanford's guarantee. The court's Judgment gave the Parks the benefit of over \$750,000.00 in payments pursuant to Stanford's guarantee and then allowed them to pursue Stanford for an additional \$500,000.00 because he had not yet "honored" his guarantee. Such a ruling is

unconscionable and should be vacated. Moreover, to deny Stanford the benefit of his personal payments to the Parks renders his \$500,000.00 guaranty limit meaningless.

B. Where The Parks Knew The Payments Stanford Gave Them Came From Stanford They Should Have Applied Those Payments Towards His Guarantee Liability

The district court erred in granting summary judgment against Stanford based on its conclusion that he was required to direct the Parks to apply his payments towards his guarantee. (R. 781 Hearings Tran. at 14.) Generally, when a lender accepts a payment from a guarantor, and knows that the payment has come from the guarantor, the lender is required to apply that payment towards the guarantor's debt. See St. Paul Fire & Marine Inc. Co. v. Dakota Elec. Supply Co, 309 F.2d 22, 25 (8th Cir. 1962); Central Blacktop v. Town of Cicero, 519 N.E. 2d 972, 976 (Ill. App. Ct. 5th Div. 1988). In this case, the Parks demanded, and accepted, payments from Stanford which they knew came from him and therefore the Parks should have credited those payments to Stanford's guarantee.

In Central Blacktop, a subcontractor brought an action against a surety seeking money due on a project. 519 N.E. 2d at 973. The Town of Cicero was also a defendant in the action and was the beneficiary of the plaintiff's work. Id. The plaintiff had hired a contractor, Joint Venture, to perform road construction. Id. Cicero tendered a check to Joint Venture for its work on the project and Joint Venture then gave that check to Central. Id. Joint Venture asserted that the payment to Central was made with the understanding that it would be applied to the Cicero account. Id. Central argued that it

had the option of choosing which account to apply the check. The trial court disagreed with Central and held that it was obligated to apply the money it received to the account was that was guaranteed by a surety. Id. at 975.

On appeal, the trial court's ruling was affirmed and the Illinois Court of Appeals held that where the creditor knows the source of the funds it has received, the surety has the right to have that payment applied towards his guaranty. Id. The decision in Central Blacktop is supported by the Second Circuit Court of Appeals holding in Hyland Elec. Supply Co. v. Franchi Bros. Const. Corp., 378 F.2d 134 (2d Cir. 1967), wherein the court held that when funds creditor receives funds it knows originated with the surety, the creditor must apply those funds to the guaranteed debt. The Eight Circuit Court of Appeals followed suit where it noted that where a surety itself makes a payment to the debtor and the creditor knows the debtor's funds came from the surety, that money must be applied to the guarantor's debt. St. Paul Fire & Marine Ins. Co., 309 F.2d at 25.

Stanford acknowledges that the cases cited above differ in their factual posture where those cases involved a debtor who had two separate debts with a single lender. However, the relevant principle in those cases is applicable to the case at hand; namely, that when a lender knows the source of its payment is the guarantor, the lender must apply that payment to the guarantor's guaranteed debt. Accordingly, the operative inquiry is whether the lender knows the payment it receives is from a guarantor, and not whether the parties had an agreement as to the application of a payment.

In this case, as in the case of Central Blacktop, Hyland Elec., and St. Paul Fire & Marine Inc. Co., the district court should have focused its inquiry on whether or not the Parks knew the \$750,000.00 they received from Stanford was actually from him and not Snowmass. Instead, the district court erroneously focused its inquiry on whether there was an agreement between the parties regarding how Stanford's payments should have been applied. (R. 781 Hearings Tran. at 13-14.)

In the court below, the Parks argued that Stanford was not permitted to control the application which either the debtor or the creditor makes of a payment and cited the case of Wyandotte Coal & Lime Co. v. Wyandotte Pav. & Constr. Co., 154 P. 1012 (Kan 1916) in support on their contention. (R. 90.) However, Wyandotte is distinguishable where the debtor made the payment to the lender and the surety sought to have the debtor's payment applied to the debt which the surety had guaranteed. Id. at 1013. In this case, Stanford is not seeking credit for payments which Snowmass made to the Parks, he is seeking credit for payments he made, thereby removing this case from the purview of Wyandotte.

The district court erred as a matter of law by focusing its inquiry on whether the Parks and Stanford had an arrangement regarding Stanford's payments. The district court should have focused on whether the Parks knew that Stanford was paying them personally rather than Snowmass. As set forth above, there was at the very least a genuine issue of material fact regarding this question and summary judgment was therefore inappropriate.

III. THIS CASE SHOULD BE REMANDED TO THE DISTRICT COURT TO REDUCE THE JUDGMENT AMOUNT PURSUANT TO UTAH CODE ANN. § 57-1-32

If this Court does not vacate the district court's Judgment for the reasons set forth above, it should still vacate the Judgment and remand the case to the district court to determine how much the Judgment should be reduced by pursuant to Utah Code Ann. § 57-1-32 (the "Act"). The Act requires that a lender credit the fair market value of a property secured by a sued upon note against a borrower's debt. Pursuant to the Act, the Parks' Judgment against Stanford should be reduced by the difference between the fair market value of the Ogden Property at the time of its sale and its ultimate sale price.

The Act provides in relevant part,

Before rendering judgment, the court shall find the fair market value of the property at the date of sale. The court may not render judgment for more than the amount by which the amount of the indebtedness with interest, costs, and expenses of sale, including trustee's and attorney's fees, exceeds the fair market value of the property as of the date of the sale.

U.C.A. § 57-1-32 (2008). The Utah Supreme Court has stated that the purpose of this Act is to "prevent[] trust deed lenders from obtaining excessive recoveries." Surety Life Ins. Co. v. Smith, 892 P.2d 1, 2 (Utah 1995). The Utah Supreme Court has also extended the Act's protection to guarantors.

In Surety Life, the defendants signed a promissory note and trust deed in connection with a construction loan. Id. The defendants signed the note and deed in their official capacity as partners in a general partnership but also as personal guarantors. Id.

The Lender, Surety Life, later declared a default of the loan and proceeded to foreclose on certain property which was secured by the trust deed. Id. Surety was the only bidder at a trustee's sale and acquired the property for a credit bid of \$1,536,000.00. Id. On the day of the trustee's sale, the fair market value of the property was \$1,860,000.00 and the total unpaid balance on the promissory note was \$1,839,000.00. Id. However, Surety claimed a deficiency of \$303,000.00 and brought an action against the guarantors for the deficiency. Id. The trial court awarded summary judgment against the defendants. Id.

On appeal, the defendants argued that the trial court erred because the court should have extended the Act's protections to them as guarantors, and therefore Surety's claimed deficiency should have been reduced by the fair market value of the property. Id. The Utah Supreme Court agreed. The court stated that "[i]t is clear from the plain language of the Act that its protection apply to *any action* to recover the balance due on the obligations secured by a trust deed . . . The Act makes no distinction as to whether the action is brought against the debtor or a guarantor." Id. at 3. While the court ultimately held that Surety was barred from bringing its action against the defendants because of a statute of limitations, the court noted that even if the action had been timely filed, Surety would have been required to credit the fair market value of the property to its deficiency. Id. The court stated that this credit would "thereby prevent[] Surety from receiving a double recovery from the [Defendants] as either guarantors or debtors." Id.

In this case, Snowmass was originally obligated to make payments to the Parks for amounts owing on the Security Mutual Note. (R. 154; 214; Add. Ex. C.) Stanford guaranteed Snowmass' obligation on the Security Mutual Note and the Note was secured by the Ogden Property. (Id.) However, in December of 2007, the Parks purchased the Security Mutual Note back. (R. 616.) The Parks later declared the Note in default and on June 26, 2008, their legal counsel gave notice that the Ogden Property would be sold at public auction to be held on July 31, 2008. (Add. Ex. A.) The Parks purchased the Ogden Property for \$200,000.00 as the only bidders at the trustee's sale; a bargain considering the Parks' own expert had previously appraised the property at \$425,000.00 to \$450,000.00. (R. 430-431; Add. Ex. B.) Now, with the Ogden Property in their possession, the Parks have also received a judgment against Stanford for over a million dollars, essentially receiving the double recovery the Act and the Utah Supreme Court have prohibited.

The Parks' judgment should be reduced by the difference between the fair market value of the Ogden Property on the day of its sale and the Parks' \$200,000.00 purchase price. As the Parks' expert testified, that Property is worth at least \$425,000.00, and therefore at the very least, the Parks' judgment should be reduced by \$225,000.00. However, where the Act requires that a court determine the fair market value of the property as of the day of sale, this Court should remand this case to the district court to make this determination.

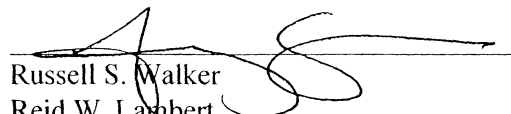
Furthermore, Stanford should be entitled to the protections of the Act where his right to relief from the Ogden Property has been extinguished. This Court has recognized that “a guarantor, upon payment of the guaranteed obligation, has a right of subrogation to any collateral pledged as security.” Mead Corp. v. Dixon Paper Co., 907 P.2d 1179, 1182 (Utah Ct. App. 1995). This protection ensures that a guarantor always has collateral to fall back on in order to be repaid for any debts it pays. However, in this case the collateral is unavailable since it is now owned by the Parks. Consequently, Stanford has no recourse against the Ogden Property for subrogation. This fact underscores the importance of applying the Act’s protection to Stanford.

CONCLUSION

For the foregoing reasons, Stanford respectfully ask this Court to vacate the district court’s Judgment and remand the case to the district court for proceedings consistent with its order.

DATED this 10th day of November, 2008.

WOODBURY & KESLER, P.C.


Russell S. Walker
Reid W. Lambert
Anthony M. Grover
Attorneys for Defendant/Appellant

ADDENDUM

- Exhibit A: Notice of Trustee's Sale
- Exhibit B: Bid Price
- Exhibit C: April 1, 1994, REPC
- Exhibit D: October 24, 1994, Agreement
- Exhibit E: July 1, 1995, Trust Deed Note
- Exhibit F: June 5, 2006, Order Granting Partial Summary Judgment
- Exhibit G: June 3, 2008, Judgment

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of November, 2008, I mailed two true and correct copies of the foregoing **APPELLANT'S OPENING BRIEF** postage prepaid, by First-Class U.S. Mail to the following:

Keith W. Meade
COHNE, RAPPAPORT & SEGAL, P.C.
272 East 200 South, Suite 700
Salt Lake City, UT 84111




EXHIBIT “A”

— Russ WALKER

— 6/30/08 —

359 4320

Bid Price
\$200,000
by Beneficiary

NOTICE OF TRUSTEE'S SALE

On the 31st day of July, 2008, at the hour of 3:00 p.m., of said day, just outside the east main entrance of the Weber County Second District Courthouse, 2525 Grant Avenue, Ogden, Utah, Keith W. Meade, as Successor Trustee, will sell at public auction, to the highest bidder, for cash, in lawful money of the United States, all payable at the time of sale, the following described property, situated in the Weber County, State of Utah, and described as follows, to-wit:

PARCEL 1:

Part of Lots 2 and 3, Block 30, Plat "A", of Ogden City Survey: Beginning at a point 2 feet East from the Southwest Corner of said Lot 2 and running thence West 67.485 feet; thence North 330 feet; thence East 65.485 feet; thence South 206 feet; thence East 2 feet; thence South 124 feet to the point of beginning.

Together with ½ of the vacated street abutting thereon.

01-026-0011

PARCEL 2:

Part of Lot 2, Block 30, Plat "A", Ogden City Survey: Beginning at a point 2 feet East of the Southwest Corner of said Lot 2 and running thence East 66.5 feet; thence North 234 feet; thence West 2.5 feet; thence North 96 feet; thence West 66 feet; thence South 206 feet; thence East 2 feet; thence South 124 feet to the point of beginning.

TOGETHER WITH a perpetual right to use the following described tract of land for a road way to wit: a part of Lot 9, Block 30, Plat "A", Ogden City Survey: Beginning at a point 2 rods West of the Northeast Corner of said Lot 9 and running thence South 20 rods; thence West 3 rods; thence North 12 feet, thence East 37 ½ feet; thence North 318 feet; thence East 12 feet to the point of beginning. As created by Warranty Deed recorded December 17, 1884, in Book S of Deeds at Page 107.

01-026-0010

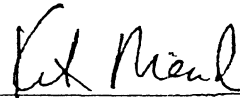
Said property is also known by the street address of 550 24th Street, Ogden, Ogden, UT 84401.

Said sale will be made without covenant or warranty regarding title, possession or encumbrances to satisfy the obligation secured by and pursuant to the power of sale conferred in the Trust Deed dated March 12, 1992, executed by Kang S. Park, as Trustor, in which Associated Title Company was named as Trustee and Mutual Life Insurance Company of Lincoln, Nebraska as Beneficiary, filed for record on March 17, 1992 as Entry No. 1170790 in Book 1621, Pages 1098-1122, Records of the County Recorder of Weber County, Utah.

The current Beneficiary of the Trust Deed is the Kang S. Park IRA and the record owner of the property as of the recording of the Notice of Default is Snowmass, L.C.

Bidders must be prepared to tender to the Trustee a \$5,000.00 cashier's check at the sale and a cashier's check for the balance of the purchase price within 24 hours after the sale.

DATED this 26th day of June, 2008.



Keith W. Meade, Successor Trustee
COHNE, RAPPAPORT & SEGAL
257 East 200 South, Suite 700
Salt Lake City, UT 84111
Telephone: (801) 532-2666
Office Hours: 9:00 - 4:30 Monday - Friday

EXHIBIT “B”

— Russ WALKER

— 6/30/08 —

359 4310

Bid Price
\$200,000
by Beneficiary

NOTICE OF TRUSTEE'S SALE

On the 31st day of July, 2008, at the hour of 3:00 p.m., of said day, just outside the east main entrance of the Weber County Second District Courthouse, 2525 Grant Avenue, Ogden, Utah, Keith W. Meade, as Successor Trustee, will sell at public auction, to the highest bidder, for cash, in lawful money of the United States, all payable at the time of sale, the following described property, situated in the Weber County, State of Utah, and described as follows, to-wit:

PARCEL 1:

Part of Lots 2 and 3, Block 30, Plat "A", of Ogden City Survey: Beginning at a point 2 feet East from the Southwest Corner of said Lot 2 and running thence West 67.485 feet; thence North 330 feet; thence East 65.485 feet; thence South 206 feet; thence East 2 feet; thence South 124 feet to the point of beginning.

Together with ½ of the vacated street abutting thereon.

01-026-0011

PARCEL 2:

Part of Lot 2, Block 30, Plat "A", Ogden City Survey: Beginning at a point 2 feet East of the Southwest Corner of said Lot 2 and running thence East 66.5 feet; thence North 234 feet; thence West 2.5 feet; thence North 96 feet; thence West 66 feet; thence South 206 feet; thence East 2 feet; thence South 124 feet to the point of beginning.

TOGETHER WITH a perpetual right to use the following described tract of land for a road way to wit: a part of Lot 9, Block 30, Plat "A", Ogden City Survey: Beginning at a point 2 rods West of the Northeast Corner of said Lot 9 and running thence South 20 rods; thence West 3 rods; thence North 12 feet; thence East 37 ½ feet; thence North 318 feet; thence East 12 feet to the point of beginning. As created by Warranty Deed recorded December 17, 1884, in Book S of Deeds at Page 107.

01-026-0010

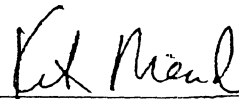
Said property is also known by the street address of 550 24th Street, Ogden, Ogden, UT 84401.

Said sale will be made without covenant or warranty regarding title, possession or encumbrances to satisfy the obligation secured by and pursuant to the power of sale conferred in the Trust Deed dated March 12, 1992, executed by Kang S. Park, as Trustor, in which Associated Title Company was named as Trustee and Mutual Life Insurance Company of Lincoln, Nebraska as Beneficiary, filed for record on March 17, 1992 as Entry No. 1170790 in Book 1621, Pages 1098-1122, Records of the County Recorder of Weber County, Utah.

The current Beneficiary of the Trust Deed is the Kang S. Park IRA and the record owner of the property as of the recording of the Notice of Default is Snowmass, L.C.

Bidders must be prepared to tender to the Trustee a \$5,000.00 cashier's check at the sale and a cashier's check for the balance of the purchase price within 24 hours after the sale.

DATED this 26th day of June, 2008.



Keith W. Meade, Successor Trustee
COHNE, RAPPAPORT & SEGAL
257 East 200 South, Suite 700
Salt Lake City, UT 84111
Telephone: (801) 532-2666
Office Hours: 9:00 - 4:30 Monday - Friday

EXHIBIT “C”



REAL ESTATE PURCHASE CONTRACT

This is a legally binding Contract. Utah State Law requires that licensed real estate agents use this form, but the Buyer and the Seller may legally agree in writing to alter or delete provisions of this form. If you desire legal or tax advice, consult your attorney or tax advisor.

EARNEST MONEY RECEIPT

The Buyers Richard Buckway & Gary B. Stanford offers to purchase the Property described below and delivers to Brokerage as Earnest Money Deposit \$ 10.00 in the form of Cash to be deposited within three business days after Acceptance of this offer to purchase by all parties.

N/A Received by Paula Park on 1 April 1994 (Date)
Brokerage Phone Number

OFFER TO PURCHASE

1. PROPERTY 550 - 24th Street, Ogden, Utah
City Ogden County Weber State Utah
1.1 Included Items: Unless excluded herein, this sale shall include all fixtures presently attached to the Property, plumbing, heating, air conditioning and venting fixtures and equipment, water heater, built-in appliances, light fixtures and bulbs, bathroom fixtures, curtains and draperies and rods, window and door screens, storm doors, window blinds, awnings, installed television antenna, satellite dishes and system, wall-to-wall carpets, automatic garage door opener and transmitter(s), fencing, trees and shrubs. The following personal property shall also be included in this sale and conveyed under separate Bill of Sale with warranties as to title: None

1.2 Excluded Items: The following items are excluded from this sale: _____

2. PURCHASE PRICE AND FINANCING: Buyer agrees to pay for the Property as follows:

\$ 10.00 Earnest Money Deposit

\$ _____ Existing Loan: Buyer agrees to assume and pay an existing loan in this approximate amount presently payable at \$ _____ per month including principal, interest (presently at _____ % per annum), ☐ real estate taxes, ☐ property insurance premium, and ☐ mortgage insurance premium. Buyer agrees to pay any transfer and assumption fees. Seller ☐ shall ☐ shall not be released from liability on said loan. Any net differences between the approximate balance of the loan shown above and the actual balance at Closing shall be adjusted in ☐ Cash ☐ Other _____

\$ _____ Proceeds from New Loan: Buyer reserves the right to apply for any of the following loans under the terms described below:
☐ Conventional ☐ FHA ☐ VA ☐ Other _____ Seller agrees to pay \$ _____ toward Discount Points and Buyer's other loan and closing costs to be allocated at Buyer's discretion.
☐ For a fixed rate loan, Amortized and payable over _____ years, interest shall not exceed _____ % per annum, monthly principal and interest payment shall not exceed \$ _____ or
☐ For an Adjustable Rate Mortgage (ARM), Amortized and payable over _____ years, initial interest rate shall not exceed _____ % per annum, initial monthly principal and interest payments shall not exceed \$ _____, Maximum Life Time interest rate shall not exceed _____ % per annum.

\$ _____ Seller Financing (See attached Seller Financing Addendum)

\$ _____ Other: Refer to Addendum(s)

\$ _____ Balance of Purchase Price in Cash at Closing

\$ 1,000,000 Total Purchase Price

2.1 Existing/New Loan Application: Buyer agrees to make application for a loan specified above within _____ calendar days (Application Date) after Acceptance. Buyer will have made Loan Application only when Buyer has (a) completed, signed, and delivered to the Lender the initial loan application and documentation required by the Lender; and (b) paid all loan application fees as required by the Lender. Buyer will continue to provide the Lender with any additional documentation as required by the Lender. If within seven calendar days after receipt of written request from Seller, Buyer fails to provide to Seller written evidence that Buyer has made Loan Application by the Application Date, then Seller may, prior to the Qualification Date below, cancel this Contract by providing written notice to Buyer. The Brokerage, upon receipt of a copy of such written notice, shall release to Seller and Seller agrees to accept as Seller's exclusive remedy the Earnest Money Deposit without the requirement of any further written authorization from Buyer.

2.2 Qualification: Buyer and the Property must qualify for a loan for which application has been made under section 2.1 within _____ calendar days (Qualification Date) after Acceptance. The Property is deemed qualified if, on or before the Qualification Date, the Property, in its current condition and for the Buyer's intended use, has appraised at a value not less than the Total Purchase Price. Buyer is deemed qualified if, on or before the Qualification Date, the Lender verifies in writing that Buyer has been approved as of the verification date.

2.3 Qualification Contingency: If Seller has not previously voided this Contract as provided in Section 2.1 and either the Property or Buyer has failed to qualify on or before the Qualification Date, either party may cancel this Contract by providing written notice to the other party within three calendar days after the Qualification Date; otherwise Buyer and the Property are deemed qualified. The Brokerage, upon receipt of a copy of such written notice, shall return to Buyer the Earnest Money Deposit without the requirement of any further written authorization of Seller.

3. CLOSING: This transaction shall be closed on or before _____ 19 _____. Closing shall occur when (a) Buyer and Seller have signed and delivered to each other (or to the escrow/title company) all documents required by this Contract, by the Lender, by written escrow instructions and by applicable law; and (b) the monies required to be paid under these documents have been delivered to the escrow/title company in the form of cashier's check, collected or cleared funds. Seller and Buyer shall each pay one-half (1/2) of the escrow Closing fee, unless otherwise agreed by the parties in writing. Taxes and assessments for the current year, rents and interest on assumed obligations shall be prorated as set forth in this Section. Unearned deposit on tenancies shall be transferred to Buyer at Closing. Prorations set forth in this Section shall be made as of ☐ date of Closing ☐ date of possession ☐ other _____.

4. POSSESSION: Unless otherwise agreed in writing by the parties, Seller shall deliver possession to Buyer within _____ 1 _____ hours after Closing.

5. CONFIRMATION OF AGENCY DISCLOSURE: At the signing of this Contract the listing agent _____ N/A _____ represents Seller ☐ Buyer and the selling agent _____ N/A _____ represents ☐ Seller ☐ Buyer. Buyer and Seller confirm that prior to signing this Contract, the agency relationship was provided to him/her () Buyer's Initials () Seller's Initials.

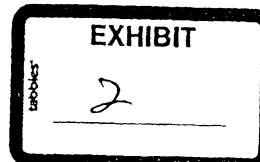
6. TITLE TO PROPERTY AND TITLE INSURANCE: (a) Seller has or shall have at Closing the title to the Property and agrees to convey such title to Buyer by a general warranty deed free of financial encumbrances as warranted under Section 10.6; (b) Seller agrees to pay for and furnish Buyer at Closing with a current standard form owner's policy of title insurance in the amount of the Total Purchase Price; (c) the title policy shall conform with Seller's obligations under subsections (a) and (b) above. Unless otherwise agreed under subsection 8.4, the commitment shall conform with the title insurance commitment provided under Section 7.

7. SELLER DISCLOSURES: No later than _____ calendar days after Acceptance, Seller will deliver to Buyer the following Seller Disclosures: (a) a Seller property condition disclosure for the Property signed and dated by Seller; (b) a commitment for the policy of title insurance required under Section 6; to be issued by the title insurance company chosen by Seller, including copies of all documents listed as Exceptions on the Commitment; (c) a copy of all loan documents relating to any loan now existing which will encumber the Property after Closing; and (d) a copy of all leases affecting the Property not expiring prior to Closing. Seller agrees to pay any title commitment cancellation charge under subsection (b).

8. GENERAL CONTINGENCIES: In addition to Qualification under Section 2.2, this offer is (a) subject to Buyer's approval of the content of each of the items referenced in Section 7 above; and (b) ☐ is ☐ is not subject to Buyer's approval of an inspection of the Property. The inspection shall be paid for by Buyer and shall be conducted by an individual/company of Buyer's choice. Seller agrees to fully cooperate with such inspection and a walk-through inspection under Section 11 and to make the Property available for the same.

8.1 Buyer shall have _____ calendar days after Acceptance in which to review the contents of Seller's disclosures and, if the inspection contingency applies, to complete and evaluate the inspection of the Property and to determine if it is, in Seller's sole discretion, the content of Seller's Disclosures (including Property Inspection) is acceptable.

9. If _____ has not delivered a written objection to Seller regarding a Seller Disclosure or the Property Inspection within the time provided in subsection 8.1,



210

~~8.4 Buyer objects. Buyer and Seller shall have seven calendar days, after receipt of the objections to resolve Buyer's objections. Seller may, at Seller's option, elect to resolve Buyer's objections. If Buyer's objections are not resolved within the seven calendar days, Buyer may void this Contract by providing written notice to Seller within the same seven calendar days. The Brokerage, upon receipt of a copy of Buyer's written notice, shall return to Buyer the Earnest Money Deposit without the requirement of any further written authorization from Seller. If this Contract is not voided by Buyer, Buyer's objection is deemed to have been waived. However, this waiver does not affect those items warranted in Section 11.~~

~~8.4 Resolution of Buyer's objections under Section 8.3 shall be in writing and shall be specifically enforceable as covenants of this Contract.~~

~~9 SPECIAL CONTINGENCIES. This offer is made subject to Refer to Addendums/Exhibits. The terms of attached Addendum # *** are incorporated into this Contract by this reference. **Refer to Addendums/Exhibits~~

~~10 SELLER'S LIMITED WARRANTIES. Seller's warranties to Buyer regarding the condition of the Property are limited to the following:~~

~~10.1 When seller delivers possession of the Property to Buyer, it will be broom clean and free of debris and personal belongings.~~

~~10.2 Seller will deliver possession of the Property to Buyer with the plumbing, plumbed fixtures, heating, cooling, ventilating, electrical and sprinkler systems, appliances and fireplaces in working order.~~

~~10.3 Seller will deliver possession of the Property to Buyer with the roof and foundation free of leaks known to Seller.~~

~~10.4 Seller will deliver possession of the Property to Buyer with any private well or septic tank serving the Property in working order and in compliance with governmental regulations.~~

~~10.5 Seller will be responsible for repairing any of Seller's moving related damage to the Property.~~

~~10.6 At Closing, Seller will bring current all financial obligations encumbering the Property which are assumed in writing by Buyer and will discharge all such obligations which Buyer has not so assumed, and~~

~~10.7 As of Closing, Seller has no knowledge of any claim or notice of an environmental, building or zoning code violation regarding the Property which has not been resolved.~~

~~11 VERIFICATION OF WARRANTED AND INCLUDED ITEMS. Before Closing, Buyer may conduct a "walk through" inspection of the Property to determine whether or not items warranted by Seller in Section 10.1, 10.2, 10.3 and 10.4 are in the warranted condition and to verify items included in Section 11 are presently on the Property. If any item is not in the warranted condition, Seller will correct, repair or replace it as necessary or, with the consent of Buyer, escrow an amount at Closing to provide for such repair or replacement. The Buyer's failure to conduct a "walk through" inspection or to claim during the walk through inspection that the Property does not include all items referenced in Section 11 or is not in the condition warranted in Section 10, shall not constitute a waiver by Buyer of Buyer's rights under Section 11 or of the warranties contained in Section 10.~~

~~12 CHANGES DURING TRANSACTION. Seller agrees that no changes in any existing leases shall be made, no new leases entered into, and no substantial alterations or improvements to the Property shall be made or undertaken without the written consent of the Buyer.~~

~~13 AUTHORITY OF SIGNERS. If Buyer or Seller is a corporation, partnership, trust, estate or other entity, the person executing this Contract on its behalf warrants his or her authority to do so and to bind Buyer or Seller.~~

~~14 COMPLETE CONTRACT. This instrument together with its addenda, any attached exhibits, and Seller Disclosures constitute the entire Contract between the parties and supercedes and replaces any and all prior negotiations, representations, warranties, understandings or contracts between the parties. This Contract cannot be changed except by written agreement of the parties.~~

~~15 DISPUTE RESOLUTION. The parties agree that any dispute or claim relating to this Contract, including but not limited to the disposition of the Earnest Money Deposit, the breach or termination of this Contract or the services relating to this transaction, shall first be submitted to mediation in accordance with the Utah Real Estate Buyer/Seller Mediation Rules of the American Arbitration Association. Disputes shall include representations made by the parties, any Broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the Property to which this Contract pertains, including without limitation, allegations of concealment, misrepresentation, negligence and/or fraud. Each party agrees to bear its own costs of mediation. Any agreement signed by the parties pursuant to the mediation shall be binding. If mediation fails, the procedures applicable and remedies available under this Contract shall apply. Nothing in this Section 15 shall prohibit any party from seeking emergency equitable relief pending mediation. By marking this box ☐ and adding their initials, the Buyer () and the Seller () agree that mediation under this Section 15 is not mandatory but is optional upon agreement of all parties.~~

~~16 DEFAULT. If Buyer defaults, Seller may elect to either retain the Earnest Money Deposit as liquidated damages or to return the Earnest Money Deposit and sue Buyer to enforce Seller's rights. If Seller defaults, in addition to return of the Earnest Money Deposit, Buyer may elect to either accept from Seller as liquidated damages a sum equal to the Earnest Money Deposit or to sue Seller for specific performance and/or damages. If Buyer elects to accept the liquidated damages, Seller agrees to pay the liquidated damages to Buyer upon demand. Where a Section of this Contract provides a specific remedy, the parties intend that the remedy shall be exclusive regardless of rights which might otherwise be available under common law.~~

~~17 ATTORNEY'S FEES. In any action arising out of this Contract, the prevailing party shall be entitled to costs and reasonable attorney's fees.~~

~~18 DISPOSITION OF EARNEST MONEY. The Earnest Money Deposit shall not be released unless it is authorized by (a) Section 2, Section 8.3 or Section~~

~~15 (b) separate written agreement of the parties, or (c) court order.~~

~~19 ASSUMPTION. Except for express warranties made in this Contract, the provisions of the Contract shall not apply after Closing.~~

~~20 RISK OF LOSS. All risk of loss or damage to the Property shall be borne by Seller until Closing.~~

~~21 TIME IS OF THE ESSENCE. Time is of the essence regarding the dates set forth in this transaction. Extensions must be agreed to in writing by all parties. Performance under each Section of this Contract which references a date shall be required absolutely by 5:00 PM Mountain Time on the stated date.~~

~~22 FACSIMILE (FAX) DOCUMENTS. Facsimile transmission of any signed original document and retransmission of any signed facsimile transmission shall be deemed as delivery of an original. If the transaction involves multiple Buyers or Sellers, facsimile transmissions may be executed in counterparts.~~

~~23 ACCEPTANCE. Acceptance occurs when Seller or Buyer, responding to an offer or counteroffer or the offer or counteroffer, where noted to indicate acceptance, and (b) communicates to the other party or the other party's agent that the offer or counteroffer has been signed as required.~~

~~24 OFFER AND TIME FOR ACCEPTANCE. Buyer offers to purchase the Property on the above terms and conditions. If Seller does not accept this offer by 10 ☐ AM ☐ PM Mountain Time April 3, 19 94, this offer shall lapse and the Brokerage shall return the Earnest Money Deposit to Buyer.~~

~~(Buyer's Signature) Richard Buckway (Offer Date) 4-1-94 (Buyer's Signature) Gary B. Stanford (Offer Date) _____~~

~~The above date shall be the Offer Reference Date.~~

~~(Notice Address) _____ (Phone) _____ (Notice Address) _____ (Phone) _____~~

ACCEPTANCE / REJECTION / COUNTER OFFER

CHECK ONE

☐ Acceptance of Offer to Purchase. Seller Accepts the foregoing offer on the terms and conditions specified above.

~~(Buyer's Signature) K.S. PARK (Date) 4-1-94 (Time) 4-1-94 (Seller's Signature) Marsha Park (Date) _____ (Time) _____~~

~~(Notice Address) _____ (Notice Address) _____~~

~~☐ Rejection. Seller Rejects the foregoing offer. _____ (Seller's initials) _____ (Date) _____ (Time)~~

~~☐ Counter Offer. Seller presents for Buyer's Acceptance the terms of Buyer's offer subject to the exceptions or modifications as specified in the attached Counter Offer # _____~~

~~Page 2 of 2 pages Seller's Initials () Date _____ Buyer's Initials () Date _____~~

AL .NDUM # 1 /COUNTER OFFER to _____
TO
REAL ESTATE PURCHASE CONTRACT

This is an ADDENDUM/COUNTER OFFER to that REAL ESTATE PURCHASE CONTRACT (the "REPC") with an Offer Reference Date of _____, 19_____, including all addenda and counter offers, between _____, as Buyer, and _____, as Seller. The following terms are hereby incorporated as part of the REPC, and to the extent these terms modify or conflict with any provisions of the REPC, these terms shall control. All other terms of the REPC not modified shall remain the same.

1) The Buyers are Richard Buckway and Gary B. Stanford, or Assigns (to our corporation).

2) The Buyers will sign an All-Inclusive Trust Deed with Rent Assignments and an All-

Inclusive Promisory Note for \$1,000,000.00 with Richard Buckway and Gary B. Stanford as

Makers and K. S. Park and Marsha Park as Holders. The Note will be repaid as follows:

a) Five Hundred Thousand Dollars of the \$1,000,000.00 note will be paid at an

interest rate of Seven percent (7%) with a 30 year amortization. Commencing August 1, 1994,

the monthly note payment on this portion of the loan will be \$3,326.51, payable to the

Parks at the following Address: 1760 South 2500 East, Salt Lake City, Utah 84108 in

Certified Funds. During only May 1994, June 1994, and July 1994, the monthly payment due

the Parks will be 2,172.48. An Additional \$3,362.09 (\$3,326.51 - \$2,172.48 X three months)

will be added onto the One Million Dollar Note.

b) Five Hundred Thousand Dollars of the Million Dollar Note amount will be interest

free for Twenty Four Months or until May 1, 1996. At that time, in twenty four months, the

interest rate will be set at seven percent for the term of balance of the 20 year financing,

and the payments will then be increased to \$6,650.00 for the balance of the term of the

(continued on page 2)..

[] Seller [] Buyer shall have until _____ [] AM [] PM Mountain Time, _____, 19_____, to accept these terms in accordance with Section 23 of the REPC. Unless so accepted, this offer shall lapse.

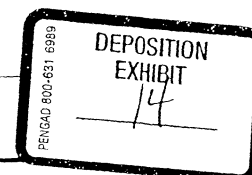
[] Buyer [] Seller Signature

Date

[] Buyer [] Seller Signature

Date

DEF 0242



ACCEPTANCE/REJECTION/COUNTER OFFER

212

ADDENDUM # 2 / COUNTER OFFER n _____
TO
REAL ESTATE PURCHASE CONTRACT

This is an ADDENDUM / COUNTER OFFER to that REAL ESTATE PURCHASE CONTRACT (the "REPC") with an Offer Reference Date of _____, 19____ including all addenda and counter offers, between _____, as Buyer, and _____, as Seller

The following terms are hereby incorporated as part of the REPC, and to the extent these terms modify or conflict with any provisions of the REPC, these terms shall control. All other terms of the REPC not modified shall remain the same.

loan. The entire One Million Dollar loan balance, plus interest, will be due (20) Twenty
years from the date of closing.

c) Monthly payments on the note will be due on the first day of each month. If the
monthly payments are not received by the tenth of the month there will be a late fee in the
amount of five percent (5%).

3) Gary B. Stanford will personally guarantee the payment of \$500,000.00 plus interest
and Richard Buckway will personally guarantee payment of the entire \$1,000,000.00 note
plus interest.

4) The Buyers specifically agree that in order to induce the Sellers to provide financing
for the sale of the Building, the Buyers hereby agree that they will not sell, transfer,
convey, contract to sell, mortgage, encumber, hypothecate, or otherwise assign any real or
personal property encumbered by the All-Inclusive Trust Deed Whether by lease option,
option to purchase, contract deed, or otherwise without the written consent and permission
of the Sellers, and that if they do so the Sellers shall have the right to declare any and
all amounts due under the One Million Dollar Note immediately due and payable without
continued on page 3...

[] Seller [] Buyer shall have until _____ [] AM [] PM Mountain Time, _____, 19____ to accept these terms in accordance with Section 23 of the REPC. Unless so accepted, this offer shall lapse.

DEF 0243

[] Buyer [] Seller Signature

Date

[] Buyer [] Seller Signature

Date

ACCEPTANCE / REJECTION / COUNTER OFFER

213

ADDENDUM # 3 /COUNTER OFFER, _____
TO
REAL ESTATE PURCHASE CONTRACT

This is an ADDENDUM/COUNTER OFFER to that REAL ESTATE PURCHASE CONTRACT (the "REPC") with an Offer Reference Date of _____, 19____, including all addenda and counter offers, between _____, as Buyer, and _____, as Seller

The following terms are hereby incorporated as part of the REPC, and to the extent these terms modify or conflict with any provisions of the REPC, these terms shall control. All other terms of the REPC not modified shall remain the same

regard to the maturity date. Also, in the event that the Buyers pledge the mortgaged property as security for the repayment of any obligation, the Sellers shall have the right to declare any and all amounts due under the One Million Dollar Note to be immediately due and payable without regard to the maturity date. The Ogden 550-24th Street Building will serve as the primary collateral for the One Million Dollars Note and Trust Deed.

5) The Buyers agree to purchase the Building in its "as-is-where-is" condition with all its faults, and further acknowledge that the Sellers have made no representation or warranties the Buyers regarding the building, its value or the operation thereof.

6. The Buyers have received and are aware of that certain Deed of Trust and Security Agreement dated March 12, 1992 between K. S. Park and Security Mutual Life Insurance Company of Lincoln, Nebraska, and hereby agree to be responsible for any and all obligations of the Trustor as detailed in said instrument. The Buyers also agree to fully indemnify the Sellers against any loss or claim that may result in the event of a call on the First Trust Deed by Security Mutual Life Insurance Company of Lincoln, Nebraska or their Assigns. The present balance on the Security Mutual Life Insurance Company Note is \$266,484.40 as of Continued...

[] Seller [] Buyer shall have until _____ [] AM [] PM Mountain Time, _____, 19____ to accept these terms in accordance with Section 23 of the REPC. Unless so accepted this offer shall lapse

DEF 0244

[] Buyer [] Seller Signature

Date

[] Buyer [] Seller Signature

Date

ACCEPTANCE/REJECTION/COUNTER OFFER

214

/ ENDUM # 4 /COUNTER OFFER _____
TO
REAL ESTATE PURCHASE CONTRACT

This is an ADDENDUM/COUNTER OFFER to that REAL ESTATE PURCHASE CONTRACT (the "REPC") with an Offer Reference Date of _____, 19____, including all addenda and counter offers, between _____, as Buyer, and _____, as Seller

The following terms are hereby incorporated as part of the REPC, and to the extent these terms modify or conflict with any provisions of the REPC, these terms shall control. All other terms of the REPC not modified shall remain the same

March 1, 1994. The Buyers further understand and agree that in the event of any call, they will immediately seek and obtain a new loan to replace the First Trust Deed in an amount not to exceed the then present Security Mutual Life Insurance Company loan balance.

7) The Sellers agree to subordinate to a new loan in the event of a call by the Security Mutual Life Insurance Company for an amount equal to the then-existing principal balance plus any closing costs of the First Trust Deed at the time of a call. Any subordination will only be based upon a new loan with an interest rate not to exceed nine percent (9%), and an amortization period of no less than Twenty Five (25) years.

8) The Buyers have received copies of certain contracts between the Sellers and Utah Legal Services, ISAT, and C-21 Gage Froerer Real Estate Company. (Refer to copies of the completed contracts).

9) The Closing shall occur on or before April 15, 1994, or as soon thereafter as the legal council or title company has completed the closing documentation. Prorations shall be as of April 15, 1994, or the actual date of closing if the documents are not ready on or before April 15, 1994.
continued...

☐ Seller ☐ Buyer shall have until _____ ☐ AM ☐ PM Mountain Time, _____, 19____, to accept these terms in accordance with Section 23 of the REPC. Unless so accepted, this offer shall lapse

DEF 0245

☐ Buyer ☐ Seller Signature

Date

☐ Buyer ☐ Seller Signature

Date

ACCEPTANCE/REJECTION/COUNTER OFFER

CHECK ONE

215

A .NDUM # 5 /COUNTER OFFER _____
TO
REAL ESTATE PURCHASE CONTRACT

This is an ADDENDUM/COUNTER OFFER to that REAL ESTATE PURCHASE CONTRACT (the "REPC") with an Offer Reference Date of _____, 19_____, including all addenda and counter offers, between _____, as Buyer, and _____, as Seller

The following terms are hereby incorporated as part of the REPC, and to the extent these terms modify or conflict with any provisions of the REPC, these terms shall control. All other terms of the REPC not modified shall remain the same.

10) The Parks will not provide title insurance for the Sale. The Buyers may order title insurance at their sole cost.

11) The only keys to the building are presently located at Gage Froerer Real Estate Company.

12) No lease deposit monies from either Utah Legal Services or ISAT will be transferred from the Sellers to the Buyers, but will be credited against the unpaid balance.

13) The Buyers are Richard Buckway and Gary B. Stanford, signing and guaranteeing both both jointly and as individuals. (As per item #3 of this contract).

14) The documents signed this date represent the entire agreement between the parties.

15) The Buyers acknowledge the receipt of the following documents: ISAT Lease, Utah Legal Services Lease, C-21 Gage Froerer Contract, Deed of Trust and Security Agreement dated 3-12-1992 between K. S. Park and Security Mutual Life Insurance Company of Lincoln, Nebraska, and a copy of the Title Insurance Policy issued in 1992 by Associated Title on the subject property to the Sellers.

[] Seller [] Buyer shall have until _____ [] AM [] PM Mountain Time, _____, 19_____, to accept these terms in accordance with Section 23 of the REPC. Unless so accepted, this offer shall lapse.

DEF 0246

[] Buyer [] Seller Signature

Date

[] Buyer [] Seller Signature

Date

CHECK ONE

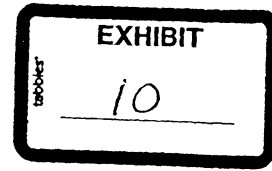
ACCEPTANCE/REJECTION/COUNTER OFFER

2116

EXHIBIT “D”

FREDERICK S. PRINCE, JR.
LAWYER

CITY CENTRE I, SUITE 900
175 EAST FOURTH SOUTH
SALT LAKE CITY, UTAH 84111
TELEPHONE (801) 524-1000
FAX (801) 524-1098



ALSO ADMITTED
IN CALIFORNIA

October 24, 1994

Mr. Richard Buckway
Dr. Gary B. Stanford
550 24th Street, Suite 110
Ogden, Utah 84401

RE: Buckway-Stanford Purchase from K.S. and Marsha Park

Gentlemen:

This will confirm our agreement to modify the payment terms of the Real Estate Purchase Contract between yourselves and my clients, Dr. and Mrs. Park. The essential terms of the agreement will be as follows:

1. The \$1,000,000 purchase price will be reduced to \$900,000.
2. The monthly payments shall be scheduled as follows:

From May 1, 1994 through April, 1995	\$2,172.48
From May 1, 1995 through October, 1996	3,325.61
From November 1, 1996 through the date upon which the Security Mutual Note is paid	6,650.00
Thereafter, until paid in full	5,604.83
3. A schedule showing amounts and application of all payments is attached hereto as Exhibit "A" and incorporated herein by this reference.
4. There will be no interest charged on the last \$400,000 portion of the Note until November 1, 1996.
5. Past due payments for September and October, 1994 will be paid by cashier's check upon your written assent to these modifications.
6. You will exercise your best efforts to assume the Note at Security Mutual, such assumption to be accomplished within sixty (60) days. It is understood that such

Mr. Richard Buckway
Dr. Gary B. Stanford
Ogden, Utah 84401
October 24, 1994

Page 2

assumption will not relieve the Parks from liability under the Security Mutual Note. Payments on the Note, until its due date, will be made by the Parks.

7. Concurrently with the assumption of the Security Mutual Note, the Parks will convey the property to Snowmass Highland Corp., a Utah corporation, by Special Warranty Deed, subject to a Second Deed of Trust to secure a Trust Deed Note containing the above terms.
8. The property is presently encumbered by a Trust Deed in favor of Security Mutual Life Insurance Company in the original principal amount of \$265,961, payable, including interest at the rate of nine percent (9%) per annum, in monthly payments of \$2,172. During the existence of this loan, the Parks will continue to make the payments. As you know, the SMLIC Note has a balloon payment payable of the entire unpaid principal in 7 years. The first portion of your Note to the Parks has a balloon just before this SMLIC balloon, so the Parks will have the funds to make this SMLIC balloon payment. In order to assist you in making this balloon payment, the Parks have agreed to subordinate to a new First Trust Deed Note. Any such Note must be based upon an interest rate not to exceed nine percent (9%) per annum and an amortization period of no less than 25 years, and must be in an amount not exceeding the then principal balance of the SMLIC Note plus closing costs.
9. Mr. Buckway will personally guarantee the Trust Deed Note. Dr. Stanford will personally guarantee the Note, but his guarantee will be limited to a maximum liability of \$500,000.
10. You will timely pay the insurance premiums due on the present policy, and, after closing, you will instruct the insurer to provide Dr. and Mrs. Park with an endorsement naming them as a co-insured as their interests may appear.

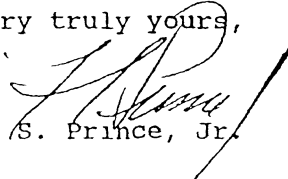
I will prepare a standard Trust Deed Note and Trust Deed. All documents will be delivered through an escrow to be established at a mutually acceptable title company.

Mr. Richard Buckway
Dr. Gary B. Stanford
Ogden, Utah 84401
October 24, 1994

Page 3

If the foregoing is satisfactory to you, please sign and return two copies of this letter to me. I will secure the signatures of Dr. and Mrs. Park and will return a fully executed original to you.

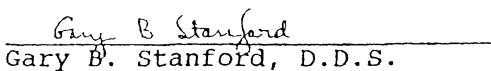
Very truly yours,


F. S. Prince, Jr.

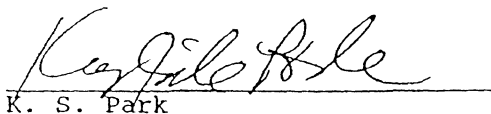
FSP/slp
Attachment: Exhibit "A"

AGREED AND ACCEPTED:

Dated: 10-24-94 
Richard Buckway

Dated: 10/24/94 
Gary B. Stanford, D.D.S.

AGREED AND ACCEPTED.

Dated: 10/28/94 
K. S. Park


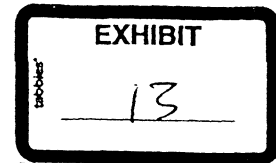
Dated: 10 25-94 
Marsha Park

EXHIBIT “E”

TRUST DEED NOTE



\$645,683.27

July 1, 1995
Ogden, Utah

FOR VALUE RECEIVED, SNOWMASS, L.C., a Utah limited liability company, ("Borrower" herein) promises to pay to the order of Kang S. Park and Marsha Park, and the successors and assigns of such lenders ("Lender" herein), the principal sum of SIX HUNDRED FORTY-FIVE THOUSAND, SIX HUNDRED EIGHTY-THREE and 27/100 DOLLARS (\$645,683.27) with interest thereon from July 1, 1995, computed on monthly balances on the basis of a 365-day year, at the rates set forth on Exhibit "A" attached hereto and incorporated herein by this reference. Principal and interest shall be payable in lawful money of the United States, by Certified or Cashier's Check, at such place as any holder hereof may designate in writing.

Principal and interest shall be due and payable as set forth on Exhibit "A." Monthly payments on Exhibit "A" will amortize this loan and amounts stated as payable to Security Mutual Life Insurance Company, the holder of an underlying First Trust Deed. Monthly payments shall include any additional amounts required by Security Mutual for pro rations and reserves. The holder of this note shall be responsible to make all payments on the Security Mutual Life Insurance note, and shall be responsible for any and all late charges on the Security Mutual note so long as payment has been received from Borrower in accordance with the terms contained herein. As described on Exhibit "A," the monthly payments shall be scheduled as follows:

From August 1, 1995 through October, 1996	\$3,325.61
From November 1, 1996 through the date upon which the Security Mutual Note is paid in full	\$6,650.00
Thereafter, until paid in full	\$5,604.83

Each payment shall be applied first to accrued interest and the balance to the reduction of principal. Any such installment not paid when due (including the portion attributable to the Security Mutual note) shall bear interest thereafter at the rate of fifteen percent (15%) per annum until paid. A late fee of 5% of the amount due will be assessed if a payment is not received by the 10th day of any month.

The obligations of this Note shall be joint and several. Borrower and Borrower's legal representatives, successors, and assigns, and all endorsers and persons liable or to become liable on this Note, severally and expressly waive diligence, presentment, demand, protest, notice of any kind whatsoever, and any exemption under any homestead exemption laws or any other exemption or insolvency laws. Every such person further hereby consents to any extension of the time of payment hereof or other modification of the terms of payment of this Note, the release of all or any part

168
mm

237

of the security herefor, or the release of any party liable for the payment of the debt evidenced hereby at any time and from time to time at the request of anyone now or hereafter liable therefor. Any such extension or release may be made without notice to any of such persons and without discharging their liability.

By his signature, individually, on this note, Gary B. Stanford agrees to unconditionally guarantee the payment of this note, but in no event shall Gary B. Stanford's liability (excluding portions thereof attributable to interest and costs) when added to any deficiency judgment which may be entered against him by virtue of his guaranty of the Security Mutual Life Insurance Co. note (excluding interest and costs), exceed the sum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000).

This Note has been issued pursuant to and is secured by that certain Deed of Trust with Assignment of Rents dated July 1, 1995 between Borrower and Lender (the "Security Instruments"). Such Security Instruments and all other instruments evidencing or securing the indebtedness hereunder are hereby made part of this Note and are deemed incorporated herein in full. Any default which continues beyond any applicable grace period stated in the Security Instruments or in any condition, covenant, obligation, or agreement contained in any of the Security Instruments shall constitute a default under this Note and shall entitle Lender to accelerate the maturity of the entire indebtedness hereunder and take such other actions as may be provided for in the Security Instruments or in this Note.

In any action or proceeding to recover any sum herein provided for, no defense of adequacy of security or that resort must first be had to security or to any other person shall be asserted. All of the covenants, provisions, and conditions herein contained are made on behalf of, and shall apply to and bind the respective distributees, personal representatives, successors, and assigns of the parties hereto, jointly and severally. Each and every party signing or endorsing this Note binds himself as principal and not as surety.

It is the intent of Borrower and Lender to comply at all times with the usury and other applicable United States federal laws or laws of the State of Utah (to the extent not preempted by federal law, if any) now or hereafter governing the interest payable on this Note or the Security Instruments, to the extent any of the same are applicable hereto. If the laws of the State of Utah or the United States are revised, repealed, or judicially interpreted so as to render usurious any amount called for under this Note or the Security Instruments, or any other instrument contracted for, charged, taken, reserved, or received with respect to the indebtedness secured or evidenced hereby, or the maturity of this Note is accelerated as herein provided, or if any prepayment by Borrower results in Borrower's having paid any interest in excess

of that permitted by law, then it is Borrower's and Lender's intent that, notwithstanding any provision to the contrary contained in this Note or in the Security Instruments (a) all excess amounts theretofore collected by Lender be credited to the principal balance of this Note (or, if this Note has been paid in full, refunded to Borrower), and (b) the provisions of this Note immediately be deemed reformed, and the amount thereafter collectible hereunder and thereunder reduced, without necessity of the execution of any new document, so as to comply with the then applicable law.

The nonexercise by the holder of any of the holder's rights hereunder in any instance shall not constitute a waiver thereof in that or any subsequent instance. If this Note is placed in the hands of an attorney for collection after any default, Debtor promises to pay all costs of collection and a reasonable sum as attorneys' fees, whether suit is brought or not.

Time is of the essence of this Note and of the payments and performances hereunder and under the Security Instruments in connection herewith.

This Note is to be construed in all respects and enforced according to the laws of the State of Utah.

SNOWMASS, L.C.,
a Utah limited liability company

By: Gary B. Stanford
Gary B. Stanford
Managing Member

By: Richard Buckway
Richard Buckway
Managing Member

Richard Buckway
Richard Buckway, Individually

Gary B. Stanford
Gary B. Stanford, Individually,
as limited in this Note.

Note approved as to form:


Kang S. Park 5/28/95
Kang S. Park (Lender)

Marsha Park 8-28-95
Marsha Park

EXHIBIT “F”

FILED DISTRICT COURT
Third Judicial District

Keith W. Meade (Bar No. 2218)
COHNE, RAPPAPORT & SEGAL, P.C.
257 East 200 South, Suite 700
Salt Lake City, UT 84111
Telephone: (801) 532-2666
Attorney for Plaintiffs

JUN - 5 2006
SALT LAKE COUNTY 
By _____ Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY

STATE OF UTAH

KANG S. PARK and MARSHA PARK, Plaintiff, vs. GARY B. STANFORD, Defendant.	ORDER Civil No. 050900073 Judge: Anthony B. Quinn
---	--

This matter came before the Court on Monday, March 13, 2006, at 9:00 a.m. The plaintiff was represented by counsel Keith W. Meade. The defendant was represented by counsel M. Darin Hammond.

The Court, having considered the pleadings filed in connection with the plaintiffs' Motion for Summary Judgment, including all of the affidavits filed by the defendant, and having considered the discussion of counsel, and otherwise being advised in the matter, and for the additional reasons articulated by the Court during the course of the hearing,

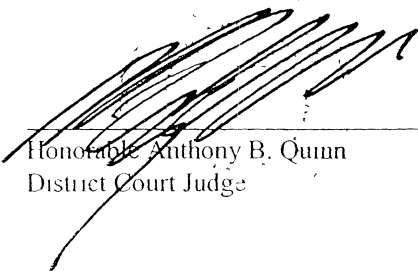
ORDERS AS FOLLOWS:

I. The Court determines, as a matter of law, that none of the payments made to date by Gary Stanford or Snowmass can be applied so as to reduce the \$500,000.00 personal guaranty from Stanford to the plaintiffs.

2. The Court believes, at present, that it cannot determine as a matter of law that there would not be a deficiency judgment in favor of Security Mutual should Snowmass, LLC default on its obligation to Security Mutual, and for that reason, the Court denies the balance of the plaintiffs' Motion for Summary Judgment, which requested a determination of the principal amount which remains owing on the defendant's personal guaranty.


DATED this 5th day of ~~March~~ June, 2006.

BY THE COURT:



Honorable Anthony B. Quinn
District Court Judge

APPROVED AS TO FORM AND CONTENT :



M. Darin Hammond
Smith Knowles
Attorneys for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed,
postage fully prepaid, on the 28 day of March, 2006, to the following:

M. Darin Hammond
SMITH KNOWLES
4723 Harrison Blvd., Suite 200
Ogden, UT 84403

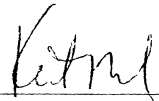


EXHIBIT “G”

FILED DISTRICT COURT
Third Judicial District

JUN - 3 2008

By VP
SALT LAKE COUNTY
Deputy Clerk

Keith W. Meade (Bar No. 2218)
COHNE, RAPPAPORT & SEGAL, P.C.
257 East 200 South, Suite 700
Salt Lake City, UT 84111
Telephone: (801) 532-2666
Facsimile: (801) 355-1813
keith@crslaw.com
Attorneys for Plaintiff

ENTERED IN REGISTRY
OF JUDGMENTS
DATE 06/05/08

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY

STATE OF UTAH

KANG S. PARK and MARSHA PARK, Plaintiff, vs. GARY B. STANFORD, Defendant.	JUDGMENT Civil No. 050900073 Judge: Anthony B. Quinn
---	---

This matter came before the Court for hearing on Tuesday, April 29, 2008. The plaintiffs were represented by counsel, Keith W. Meade, of Cohne, Rappaport & Segal. The defendant was represented by counsel, M. Darin Hammond, of Smith Knowles.

The Court, having considered the pleadings filed by the parties, as well as pleadings previously filed in this matter, as well as the argument of counsel, and having determined that there are no genuine issues of material fact based upon the pleadings previously filed and filed in connection with this motion,

Judgment @J

JD26645921
050900073 STANFORD, GARY B pages:

709

ORDERS, ADJUDGES AND DECREES as follows:

1. The plaintiffs be and hereby are awarded judgment against the defendant, Gary B. Stanford in the following amounts.

- a. \$500,000.00 principal;
- b. \$285,401.98 in accrued interest on principal through January 31, 2008;
- c. \$190,722.95 in accrued interest on delinquent payments through January 31, 2008; and
- d. \$5,842.98 in accrued interest on late fees, said amount taking into consideration the \$5,000.00 reduction set forth in the plaintiffs' January 3, 2007 Memorandum; and
- e. \$14,169.00 in additional accrued interest on principal through April 30, 2008; and
- f. \$12,627.00 in additional accrued interest on delinquent payment through April 30, 2008.

The total of the foregoing is \$1,008,463.91, together with judgment at the default rate provided in the Note of 15% per annum, plus costs of collection.

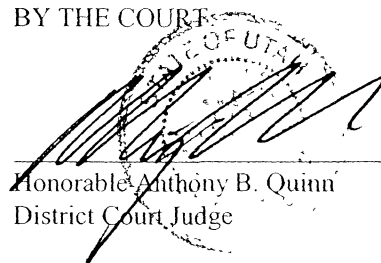
2. In addition, the plaintiffs have submitted a Memorandum of Costs, and the plaintiffs are further awarded those costs in the amount of \$1,408.44.

3. The TOTAL JUDGMENT is \$1,009,872.35 plus interest at the default rate of 15% per annum as provided for in the guaranteed note and writ of collection, all until paid.

4. It is FURTHER ORDERED that the plaintiffs endorse on the face of the original Note given by Snowmass, LLC to Security Mutual Life Insurance Company the following: "The right to obtain a deficiency judgment based on this Note has been waived pursuant to the judgment entered in Civil No. 050900073 in the Third District Court, Salt Lake City, State of Utah in the matter entitled *Kang S. Park and Marsha Park v Gary B. Stanford*." The endorsement shall be placed on the Note as reflected in **Exhibit "A"** attached to this Judgment.

DATED this 3 day of May, 2008.

BY THE COURT



Honorable Anthony B. Quinn
District Court Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **JUDGMENT** was mailed, postage fully prepaid, on the 2nd day of May, 2008, to the following:

M. Darin Hammond
SMITH KNOWLES
4723 Harrison Blvd., Suite 200
Ogden, UT 84403

