

2008

# Golden Meadows Properties L.C., Golden Meadows Properties LLC v. Michael Strand and Cari Allen : Brief of Appellant

Utah Court of Appeals

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James C. Swindler; Prince, Yeates Geldzahler; Wayne Petty; Moyle and Draper; attorney for appellee. Michael Strand, Cari Allen; pro se.

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IN THE UTAH COURT OF APPEALS

<p>GOLDEN MEADOWS PROPERTIES L.C., aka GOLDEN MEADOWS PROPERTIES LLC</p> <p>Plaintiff and Appellee,</p> <p>vs.</p> <p>MICHAEL STRAND and CARI ALLEN,</p> <p>Defendants and Appellants.</p>	<p>ADDENDUM</p> <p>District Court No. 070700488</p> <p>Appellate Court No. 20080838-CA</p>
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APPEAL FROM SECOND JUDICIAL DISTRICT COURT  
DAVIS COUNTY, STATE OF UTAH

THE HONORABLE JUDGE GLEN R. DAWSON, PRESIDING

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FILED  
UTAH APPELLATE COURTS

AUG 10 2009

## ADDENDUM

1. Utah Code §78-36-10.3. §78-27-56. Utah Rules of Civil Procedure 56(e) and (c) and, Utah R. Evid. 613 (b).

Courtesy Copies of Documents Supporting Defendants Claims for Oral Argument filed  
07/25/08

2. April 25, 1983 \$2,000 check by Strand (d.b.a. B.I. Associates) to Nupetco Associates and (Wayne Petty) Moyle & Draper for legal fee's / Excerpts of Attorney Dan Jackson's billing statements dated June 30, 1985 [sic] 1983 and November 20, 1985.
3. Affidavit of Michael Strand dated March 20, 1985. (Civil No. C 85-0351W)
4. Second Amended Complaint dated September 23, 1985. (Civil No. C 85-0351W)
5. Affidavit of Lohr Livingston dated March 1985 (Civil No. C 85-0351W)
6. Attorney Dan Jackson's Affidavit dated February 28, 2008.

(b) At the evidentiary hearing held in accordance with Subsection (2)(a):

(i) the court shall determine who has the right of occupancy during the litigation's pendency; and

(ii) if the court determines that all issues between the parties can be adjudicated without further proceedings, the court shall adjudicate those issues and enter judgment on the merits.

(3) (a) In an action for unlawful detainer in which the claim is for nuisance and alleges an act that would be considered criminal under the laws of this state, the court shall hold an evidentiary hearing within ten days after the day on which the complaint is filed to determine whether the alleged act occurred.

(b) The hearing required by Subsection (3)(a) shall be set at the time the complaint is filed and notice of the hearing shall be served upon the defendant with the summons at least three calendar days before the scheduled time of the hearing.

(c) If the court, at an evidentiary hearing held in accordance with Subsection (3)(a), determines that it is more likely than not that the alleged act occurred, the court shall issue an order of restitution.

(d) If an order of restitution is issued in accordance with Subsection (3)(c), a constable or the sheriff of the county where the property is situated shall return possession of the property to the plaintiff immediately.

(e) The court may allow a period of up to 72 hours before restitution may be made under Subsection (3)(d) if the court determines the time is appropriate under the circumstances.

(f) At the evidentiary hearing held in accordance with Subsection (3)(a), if the court determines that all issues between the parties can be adjudicated without further proceedings, the court shall adjudicate those issues and enter judgment on the merits.

(g) "An act that would be considered criminal under the laws of this state" under Subsection (3)(a) includes only the following:

(i) an act that would be considered a felony under the laws of this state;

(ii) an act that would be considered criminal affecting the health or safety of a tenant, the landlord, the landlord's agent, or other person on the landlord's property;

(iii) an act that would be considered criminal that causes damage or loss to any tenant's property or the landlord's property;

(iv) a drug- or gang-related act that would be considered criminal;

(v) an act or threat of violence against any tenant or other person on the premises, or against the landlord or the landlord's agent; and

(vi) any other act that would be considered criminal that the court determines directly impacts the peaceful enjoyment of the premises by any tenant.

(4) (a) At any hearing held in accordance with this chapter in which the tenant after receiving notice fails to appear, the court shall issue an order of restitution.

(b) If an order of restitution is issued in accordance with Subsection (4)(a), a constable or the sheriff of the county where the property is situated shall return possession of the property to the plaintiff immediately.

(5) A court adjudicating matters under this chapter may make other orders as are appropriate and proper. 2007

#### 78-36-10. Judgment for restitution, damages, and rent — Immediate enforcement — Treble damages.

(1) (a) A judgment may be entered upon the merits or upon default.

(b) A judgment entered in favor of the plaintiff shall include an order for the restitution of the premises as provided in Section 78-36-10.5.

(c) If the proceeding is for unlawful detainer after neglect or failure to perform any condition or covenant of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease or agreement.

(d) (i) A forfeiture under Subsection (1)(c) does not release a defendant from any obligation for payments on a lease for the remainder of the lease's term.

(ii) Subsection (1)(d)(i) does not change any obligation on either party to mitigate damages.

(2) The jury or the court, if the proceeding is tried without a jury or upon the defendant's default, shall also assess the damages resulting to the plaintiff from any of the following:

(a) forcible entry;

(b) forcible or unlawful detainer;

(c) waste of the premises during the defendant's tenancy, if waste is alleged in the complaint and proved at trial;

(d) the amounts due under the contract, if the alleged unlawful detainer is after default in the payment of amounts due under the contract; and

(e) the abatement of the nuisance by eviction as provided in Sections 78-38-9 through 78-38-16.

(3) The judgment shall be entered against the defendant for the rent, for three times the amount of the damages assessed under Subsections (2)(a) through (2)(e), and for reasonable attorney fees.

(4) (a) If the proceeding is for unlawful detainer, execution upon the judgment shall be issued immediately after the entry of the judgment.

(b) In all cases, the judgment may be issued and enforced immediately. 2007

#### 78-36-10.5. Order of restitution — Service — Enforcement — Disposition of personal property — Hearing.

(1) Each order of restitution shall:

(a) direct the defendant to vacate the premises, remove his personal property, and restore possession of the premises to the plaintiff, or be forcibly removed by a sheriff or constable;

(b) advise the defendant of the time limit set by the court for the defendant to vacate the premises, which shall be three calendar days following service of the order, unless the court determines that a longer or shorter period is appropriate under the circumstances; and

(c) advise the defendant of the defendant's right to a hearing to contest the manner of its enforcement.

(2) (a) A copy of the order of restitution and a form for the defendant to request a hearing as listed on the form shall be served in accordance with Section 78-36-6 by a person authorized to serve process pursuant to Subsection 78-12a-2(1). If personal service is impossible or impracticable, service may be made by:

(i) mailing a copy of the order and the form to the defendant's last-known address and posting a copy of the order and the form at a conspicuous place on the premises; or

(ii) mailing a copy of the order and the form to the commercial tenant defendant's last-known place of business and posting a copy of the order and the form at a conspicuous place on the business premises.

(b) A request for hearing by the defendant may not stay enforcement of the restitution order unless:

(i) the defendant furnishes a corporate bond, cash bond, certified funds, or a property bond to the clerk of the court in an amount approved by the court

- (a) local police;
  - (b) a sheriff;
  - (c) a peace officer;
  - (d) a city attorney;
  - (e) a county attorney;
  - (f) a district attorney;
  - (g) the attorney general;
  - (h) the Department of Public Safety;
  - (i) the Office of Recovery Services of the Department of Human Services;
  - (j) the Insurance Department;
  - (k) the Department of Commerce;
  - (l) the Benefit Payment Control Unit or the Payment Error Prevention Unit of the Department of Workforce Services;
  - (m) the state auditor; or
  - (n) the State Tax Commission.
- (2) Except for the Office of Recovery Services, if a governmental entity listed in Subsection (1) seeks a record, the entity shall obtain the record as follows:
- (a) if the record is a nonprotected record, by request in writing that:
    - (i) certifies that an official investigation is being conducted; and
    - (ii) is signed by a representative of the governmental entity that is conducting the official investigation; or
  - (b) if the record is a protected record, by obtaining:
    - (i) a subpoena authorized by statute; or
    - (ii) other legal process:
      - (A) ordered by a court of competent jurisdiction; and
      - (B) served upon the financial institution.
- (3) If the Office of Recovery Services seeks a record, it shall obtain the record pursuant to:
- (a) Subsection 62A-11-104(7);
  - (b) Section 62A-11-304.1;
  - (c) Section 62A-11-304.5; or
  - (d) Title IV, Part D of the Social Security Act as codified in 42 U.S.C. 651 et seq.
- (4) A financial institution may not give notice to any person named or referenced within the record disclosed pursuant to Subsection (2)(a).
- (5) In accordance with Section 78-27-48, the agency conducting the official investigation that obtains a record from a financial institution under this section shall reimburse the financial institution for costs reasonably and directly incurred by the financial institution. 2005

#### 78-27-50.5. Liability of financial institutions.

A financial institution is not liable to any person named or referenced within a record:

- (1) for any disclosure that is the result of a subpoena, order, or request made pursuant to Sections 78-27-45 through 78-27-50 if the financial institution reasonably believes that the subpoena, order, or request is properly made under Sections 78-27-45 through 78-27-50; or
- (2) for any disclosure or action taken in good faith pursuant to a data match or administrative subpoena provided for by the statutes listed in Subsection 78-27-50(3). 1999

#### 78-27-51. Inherent risks of skiing — Public policy.

The Legislature finds that the sport of skiing is practiced by a large number of residents of Utah and attracts a large number of nonresidents, significantly contributing to the economy of this state. It further finds that few insurance carriers are willing to provide liability insurance protection to ski area operators and that the premiums charged by those carriers have risen sharply in recent years due to confusion as

to whether a skier assumes the risks inherent in the sport of skiing. It is the purpose of this act, therefore, to clarify the law in relation to skiing injuries and the risks inherent in that sport, to establish as a matter of law that certain risks are inherent in that sport, and to provide that, as a matter of public policy, no person engaged in that sport shall recover from a ski operator for injuries resulting from those inherent risks. 1979

#### 78-27-52. Inherent risks of skiing — Definitions.

As used in this act:

- (1) "Inherent risks of skiing" means those dangers or conditions which are an integral part of the sport of recreational, competitive, or professional skiing, including, but not limited to:

- (a) changing weather conditions;
- (b) snow or ice conditions as they exist or may change, such as hard pack, powder, packed powder, wind pack, corn, crust, slush, cut-up snow, or machine-made snow;
- (c) surface or subsurface conditions such as bare spots, forest growth, rocks, stumps, streambeds, cliffs, trees, and other natural objects;
- (d) variations or steepness in terrain, whether natural or as a result of slope design, snowmaking or grooming operations, and other terrain modifications such as terrain parks, and terrain features such as jumps, rails, fun boxes, and all other constructed and natural features such as half pipes, quarter pipes, or freestyle-bump terrain;
- (e) impact with lift towers and other structures and their components such as signs, posts, fences or enclosures, hydrants, or water pipes;
- (f) collisions with other skiers;
- (g) participation in, or practicing or training for, competitions or special events; and
- (h) the failure of a skier to ski within the skier's own ability.

- (2) "Injury" means any personal injury or property damage or loss.

- (3) "Skier" means any person present in a ski area for the purpose of engaging in the sport of skiing, nordic, freestyle, or other types of ski jumping, using skis, sled, tube, snowboard, or any other device.

- (4) "Ski area" means any area designated by a ski area operator to be used for skiing, nordic, freestyle, or other type of ski jumping, and snowboarding.

- (5) "Ski area operator" means those persons, and their agents, officers, employees or representatives, who operate a ski area. 2006

#### 78-27-53. Inherent risks of skiing — Bar against claim or recovery from operator for injury from risks inherent in sport.

Notwithstanding anything in Sections 78-27-37 through 78-27-43 to the contrary, no skier may make any claim against, or recover from, any ski area operator for injury resulting from any of the inherent risks of skiing. 1986

#### 78-27-54. Inherent risks of skiing — Trail boards listing inherent risks and limitations on liability.

Ski area operators shall post trail boards at one or more prominent locations within each ski area which shall include a list of the inherent risks of skiing, and the limitations on liability of ski area operators, as defined in this act. 1979

#### 78-27-55. Repealed.

#### 78-27-56. Attorney's fees — Award where action or defense in bad faith — Exceptions.

- (1) In civil actions, the court shall award reasonable attorney's fees to a prevailing party if the court determines that the

action or defense to the action was without merit and not brought or asserted in good faith, except under Subsection (2).

(2) The court, in its discretion, may award no fees or limited fees against a party under Subsection (1), but only if the court:

(a) finds the party has filed an affidavit of impecuniosity in the action before the court; or

(b) the court enters in the record the reason for not awarding fees under the provisions of Subsection (1).

1988

**78-27-56.5. Attorney's fees — Reciprocal rights to recover attorney's fees.**

A court may award costs and attorney's fees to either party that prevails in a civil action based upon any promissory note, written contract, or other writing executed after April 28, 1986, when the provisions of the promissory note, written contract, or other writing allow at least one party to recover attorney's fees.

1986

**78-27-57. Attorney's fees awarded to state funded agency in action against state or subdivision — Forfeit of appropriated monies.**

Any agency or organization receiving state funds which, as a result of its suing the state, or political subdivision thereof, receives attorney's fees and costs as all or part of a settlement or award, shall forfeit to the General Fund, from its appropriated monies, an amount equal to the attorney's fees received.

1981

**78-27-58. Repealed.**

2003

**78-27-59. Immunity for transient shelters.**

(1) As used in this section, "transient shelter" means any person which provides shelter, food, clothing, or other products or services without consideration to indigent persons.

(2) Except as provided in Subsection (3), all transient shelters, owners, operators, and employees of transient shelters, and persons who contribute products or services to transient shelters, are immune from suit for damages or injuries arising out of or related to the damaged or injured person's use of the products or services provided by the transient shelter.

(3) This section does not prohibit an action against a person for damages or injury intentionally caused by that person or resulting from his gross negligence.

1986

**78-27-60. Limited immunity for architects and engineers inspecting earthquake damage.**

(1) A professional engineer licensed under Title 58, Chapter 22, Professional Engineers and Land Surveyors Licensing Act, or an architect licensed under Title 58, Chapter 3a, Architects Licensing Act, who provides structural inspection services at the scene of a declared national, state, or local emergency caused by a major earthquake is not liable for any personal injury, wrongful death, or property damage caused by the good faith inspection for structural integrity or nonstructural elements affecting health and safety of a structure used for human habitation or owned by a public entity if the inspection is performed:

(a) voluntarily, without compensation or the expectation of compensation;

(b) at the request of a public official or city or county building inspector acting in an official capacity; and

(c) within 30 days of the earthquake.

(2) The immunity provided for in Subsection (1) does not apply to gross negligence or willful misconduct.

1997

(a) (i) "Amusement park" means any permanent indoor or outdoor facility or park where amusement rides are available for use by the general public.

(ii) "Amusement park" does not include a ski resort, a traveling show, carnival, or fair.

(b) "Amusement ride" means a device or attraction at an amusement park which carries or conveys passengers along, around, or over a fixed or restricted route or course or allows the passenger to steer or guide it within an established area for the purpose of giving its passengers amusement, pleasure, thrills, or excitement. "Amusement ride" includes:

(i) any water-based recreational attraction, including all water slides, wave pools, and water parks; and

(ii) typical rides, including roller coasters, whips, ferris wheels, and merry-go-rounds.

(c) "Intoxicated" means a person is under the influence of alcohol, a controlled substance, or any substance having the property of releasing toxic vapors, to a degree that the person may endanger himself or another, in a public place or in a private place where he unreasonably disturbs other persons.

(d) "Operator" means any person, firm, or corporation that owns, leases, manages, or operates an amusement park or amusement ride and all employees and agents of the amusement park.

(e) "Rider" means any person who is:

(i) waiting in the immediate vicinity of an amusement ride in order to get on the ride;

(ii) in the process of leaving the ride but remains in its immediate vicinity; or

(iii) a passenger or participant on an amusement ride.

(2) An amusement park shall inform riders in writing, where appropriate, of the nature of the ride, including factors which would assist riders in determining whether they should participate in the ride activity and the rules concerning conduct on each ride. Information concerning the rules of conduct may be given verbally at the beginning of each ride segment or posted in writing conspicuously at the entrance to each ride.

(3) Riders are responsible for obeying the posted rules and verbal instructions of the amusement ride operator.

(4) A rider may not:

(a) board or dismount from an amusement ride except at a designated area;

(b) board an amusement ride if he has a physical condition that may be aggravated by participation on the ride;

(c) disconnect, disable, or attempt to disconnect or disable, any safety device, seat belt, harness, or other restraining device before, during, or after movement of the amusement ride has started except at the express instruction of the operator;

(d) throw or expel any object from an amusement ride;

(e) act in any manner contrary to posted or oral rules while boarding, riding, or dismounting from an amusement ride; or

(f) engage in any reckless act or activity which may injure himself or others.

(5) A rider may not board or attempt to board any amusement ride if he is intoxicated.

(a) An operator of an amusement park ride may prevent a rider who is perceptibly or apparently intoxicated from boarding an amusement ride.

(b) An operator who prevents a rider from boarding an amusement ride under this section, is not criminally or

## **Rule 56. Summary judgment.**

(a) For claimant. A party seeking to recover upon a claim, counterclaim or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move for summary judgment upon all or any part thereof.

(b) For defending party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought, may, at any time, move for summary judgment as to all or any part thereof.

(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 as to any 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.

(d) Case not fully adjudicated on motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of affidavits; further testimony; defense required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the pleadings, but the response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. Summary judgment, if appropriate, shall be entered against a party failing to file such a response.

(f) When affidavits are unavailable. Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits made in bad faith. If any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order

**Rule 613. Prior statements of witnesses.**

(a) Examining witness concerning prior statement. In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

(b) Extrinsic evidence of prior inconsistent statement of witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in Rule 801(d)(2).

**ADVISORY COMMITTEE NOTE**

This rule is the federal rule, verbatim. Subsection (a) abandons the position in *Queens Case*, 129 English Reports 976 (1820), requiring that the cross-examiner, prior to examining a witness about his written statement, must first show the statement to the witness and is comparable to the substance of Rule 22(a), Utah Rules of Evidence (1971). The substance of Subsection (b) was formerly in Rule 22(b), Utah Rules of Evidence (1971).

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IN THE SECOND JUDICIAL DISTRICT COURT  
STATE OF UTAH, BOUNTIFUL DIVISION

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GOLDEN MEADOWS PROPERTIES, L.C.,

AKA

GOLDEN MEADOWS PROPERITES, L.L.C.,

Plaintiff,

vs.

MICHAEL W. STRAND AND CARI ALLEN,

Defendants.

COURTESY COPIES OF DOCUMENTS  
SUPPORTING DEFENDANTS CLAIMS  
FOR ORAL ARGUMENT

Civil No. 070700488


Judge Glen R. Dawson

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Attached hereto are courtesy copies of documents that support the facts, arguments, and contentions set forth in the Defendant's Rule 59 Motion for New Trial and to Amend Judgment for Irregularities in the Proceeding. These documents are referenced in the Motion, and may be

referenced during Oral Argument. The documents are provided in whole, rather than in abridged format, so that the context surrounding them may be fully discerned. Accordingly, because of their voluminous nature, they are provided in this format.

Dated this 20<sup>th</sup> day of July, 2008

  
\_\_\_\_\_  
JUDSON PITTS  
Attorney for Defendants

1. Golden Meadows Properties' Objection to Machinery & Hardware Supply's Motion for Relief From the Automatic Stay filed on May 6, 2003. Order For Relief From the Automatic Stay filed June 4, 2003 (Case No. 02-37988JAB).
2. July 21, 2000 personal guarantee document. Trustee's Deed filed on November 19, 2003 and Nupetco Associates check no. 7075 to Ralph Petty Esq dated November 20, 2003. Page one of the Abstract of Title for the Property.
3. Affidavits of John Caine, Nathan Drage and Howard Johnson filed September 10, 2007 (Golden Meadows Properties vs. Cari Allen - Case No. 040700433 Judge Memmott).
4. Ruling on Defendant's Motion to Set Aside Default Judgment filed October 31, 2007 and Order filed November 1, 2007 (Golden Meadows Properties vs. Cari Allen - Case No. 040700433 Judge Memmott).
5. Golden Meadows Complaint against Allen dated June 22, 2004 and served on March 25, 2008 (Case no. 040700433 Judge Memmott).
6. Cari Allen's Verified Answer and Counterclaim dated April 23, 2008 (Golden Meadows Properties vs. Cari Allen - Case no. 040700433 Judge Memmott).
7. Attorney Dan Jackson's Affidavit dated February 28, 2008 filed by the Defendants in Opposition to the Motion to Strike the Affidavit of Michael Strand and Cari Allen and in Opposition to the Motion for Summary Judgment (Golden Meadows v. Michael Strand and Cari Allen – Case No. 070700488).
8. Excerpts of Attorney Dan Jackson's billing statements dated June 30, 1985 and November 20, 1985.
9. Partial accounting list between Neuman Petty et al and Michael Strand et al titled "From June 1, 1982" with the notation that on April 25, 1983 \$2,000 was paid by Strand et al to Nupetco Associates and (Wayne Petty) Moyle & Draper for legal fee's and supporting check

number 0211922.

10. Excerpts of the Amended Counterclaim filed by Petty et al dated June 19, 2008 (pg. 6 – with a September 3, 1987 notation that Nupetco Associates paid Strand’s legal fees to Daniel W. Jackson). Michael Strand, individually and as successor in interest to MINGO OIL COMPANY, MINGO OIL PRODUCERS, and other MICHAEL STRAND entities v. NEUMAN PETTY, NUPETCO ASSOCIATES, and KAMCO WYOMING CORPORTION, and other NEUMAN PETTY entities (Case No. 070915796 Judge Iwasaki)
11. Affidavit of Michael Strand dated March 20, 1985 (Michael Strand v. Bill Taylor, Gary Harris and The Citizens Bank - Civil No. C85-03515W).
12. Affidavit of Lohr Livingston dated March 19 , 1985 (Michael Strand v. Bill Taylor, Gary Harris and The Citizens Bank - Civil No. C85-0351W).
13. Affidavit of David Floor dated March 20, 1985 (Michael Strand v. Bill Taylor, Gary Harris and The Citizens Bank - Civil No. C85-0315W).
14. Affidavit of Michael Strand dated July 10, 1985 (Michael Strand v. Bill Taylor, Gary Harris and The Citizens Bank - Civil No. C895-0315W).
15. Affidavit of David Floor dated July 10 , 1985 (Michael Strand v. Bill Taylor, Gary Harris and The Citizens Bank - Civil No. C85-0315W).
16. Complaint filed by Michael Strand against The Citizens Bank (Michael Strand vs. The Citizens Bank - Civil No. 1-37731) dated July 23, 1985.
17. Motion for Temporary Restraining Order filed by Strand dated July 23, 1985. TRO entered on July 25, 1985 and \$20,000 bond posted by Nupetco Associates for Strand (Michael Strand vs. The Citizens Bank - Civil No. 1-37731).
18. Motion to Join Nupetco Associates as Additional Plaintiff dated June 28, 1985 (Michael Strand v. Bill Taylor, Gary Harris and The Citizens Bank - Civil No. C85-0315W).

19. Motion for Preliminary Injunction filed by Michael Strand on September 5, 1985 and, Minute Entry dated September 4, 1985 denying the Motion for Preliminary Injunction (Michael Strand vs. The Citizens Bank - Civil No. 1-37731).
20. Stipulation and Motion for Judgment of Dismissal dated September 12, 1985 and Judgment of Dismissal. Order Authorizing Release of Funds entered September 12, 1985. Check No. 1114 for \$20,000 from the Davis County Clerk to Michael Strand and copy of the check endorsed to Neuman Petty by Michael Strand (Michael Strand vs. The Citizens Bank - Civil No. 1-37731).
21. Second Amended Complaint against Bill Taylor, Gary Harris and The Citizen's Bank dated September 23, 1985 and Ruling entered September 15, 1989 (Michael Strand and Nupetco Associates v. Bill Taylor, Gary Harris and The Citizens Bank - Civil No. C85-0315W).
22. Withdrawal of Counsel filed by Attorney Dan Jackson dated April 12, 1988 (Michael Strand vs. The Citizens Bank - Civil No. 1-37731.)
23. Ruling by the Honorable Judge Morris entered on June 4, 2008 (DIANE DIMEO, personal Representative of the Estate of Eleanor Amelia Millie Newberry Strand, Deceased v. Nupetco Associates – Case No. 060700354).
24. Correspondence between attorney's Wayne Petty and Ralph Petty, Sidney Baucom, and Frank Wilkins dated December 8, 2005. Correspondence between attorney Mark Tolman and Michael Strand dated May, 10, 2007. Correspondence between James Swindler and Mark Tolman dated July 12, 2007.
25. Verified Complaint Michael Strand, individually and as successor in interest to MINGO OIL COMPANY, MINGO OIL PRODUCERS, and other MICHAEL STRAND entities v. NEUMAN PETTY, NUPETCO ASSOCIATES, and KAMCO WYOMING CORPORTION, and other NEUMAN PETTY entities (Case No. 070915796 Judge Iwasaki) filed November 6, 2007.

CUSTOMER'S RECEIPT

AMOUNT	\$ 2,000.00
EXCHANGE	
TOTAL	2,000.00



4-25-83 sit  
Date

Nupetco and  
Moyle &  
Draper  
Paid to

No. 0211922

First Interstate Bank of Utah, N.A.

Main 02 Office  
AC-80

 <b>First Interstate Bank</b>	First Interstate Bank of Utah, N.A.	<div>31-2 1240</div>
		No. 0211922
<u>B.I. Associates</u> PURCHASED BY		<u>April 25, 19 83</u>
PAY TO THE ORDER OF <u>***NUPETCO AND MOYLE &amp; DRAPER***</u>		<u>\$2,000.00</u>
FIRST INTERSTATE BANK OF UTAH, N.A. <b>2000 AND 00 CTS</b>		
<b>CASHIER'S CHECK</b>		 AUTHORIZED SIGNATURE

⑈0211922⑈ ⑆124000025⑆ 3210101 0100000⑈

LAW OFFICES  
STRINGHAM, SABIN, BRADLEY & ARROWSMITH

A PROFESSIONAL CORPORATION

40 EAST SOUTH TEMPLE

SUITE 310

SALT LAKE CITY, UTAH 84111

(801) 363-1919

RICHARD H. BRADLEY\*  
JAMES A. ARROWSMITH\*  
DANIEL W. JACKSON\*  
EDWARD L. CLISSOLD

\*A PROFESSIONAL CORPORATION

McCUNE OFFICE  
200 NORTH MAIN  
SALT LAKE CITY, UTAH 84103  
(801) 328-1501

OF COUNSEL  
DON A. STRINGHAM  
NEIL R. SABIN

June 30, 1983

Michael W. Strand  
P. O. Box 2519  
Salt Lake City, UT 84110

STATEMENT

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Balance from April 30, 1983 billing:	\$4,591.00
Payment of 5-17-83	(1,000.00)
Payment of 5-31-83	(4,000.00)
May billings:	
DWJ FEES	3,224.75
PARALEGAL FEES	323.50
June billings:	
DWJ FEES	2,250.00
Clerk Fees	2,470.00
Costs Advanced	
Copies	125.05
Filing fees	32.00
TOTAL DUE	<hr/> \$7,925.55

DWJ MAY

STRAND

15.75 x 75  
1,181.75

5-2-83

8:45-9:00	.25 hour	Phone conversation with MIke re: Mingo Oil hearing.
10:15-11:00	.75	Preparing for hearing.
11:00-12:30	1.50	Hearing re: Mingo Oil Producers
12:30-1:00	.50	Rehash of hearing.
3:30-4:30	1.00	Editing memorandum and affidavit for opposition to Hammons motion for summary judgment in promissory note case.
4:30-5:00	.50	Meeting wiht Strand and Newman Petty.

5-3-83

9:30-11:45	2.25 hours	Meeting before and then hearing in Hammons motion for summary judgment.
3:15-3:45	.50	Responses to re2uests for production of documents.
4:45-5:45	1.00	Research re: relief from summary judgment.

5-4-83

9:30-9:45	.25	Phone conversation with Strand re: current developments.
4:00-4:30	.50	Bullshit.
4:30-6:00	1.50	Strategy meeting with Wayne Petty and Newman Petty, Strand.
3:45-4:00	.25	Heariang on continuance of Adv. Pro. Mingo Oil hearing.

5-5-83

9:30- 11:00	1.50	Travel to Farmington, hearing on Mingo Oil; meeting with First Sec. Bank. Mark Carpenter.
12:00-2:00	2.00	Meeting with Strand, John Caine re: upcoming Mingo hearing.'
3:40-3:55	.25	Phone conersation with Bob Cleary re; Prarie Gold.
4:15-4:30	.25	Drafting subpoena for William Shaw.
4:30-5:00	.50	Drafting Subpoena for William Shaw.
5:30-5:55	.50	Phone conversation with Rolf Berger

'RAND- DWJ .AY

19 x 15 - 14

-6-83			
11:15-12:30	1.25	Meeting with William Shaw re: First Sec.. Bank's accounting of Jammons funds.	
12:30- 2:00	1.50	REviewing with Strand, Wayne Petty and Newman Petty the information from First Sec. Bank.	
2:35-2:50	.25	Reviewing proposed order submitted in the promissory note case-Hammons.	
3:15-4:15	1.00	Reviewing transcript of Hearing in Adv. Pro. 82PM-0203.	
-11-83			
9:00-10:00	1.00	Review transcript of Davis county hearing.	
10:00-11:00	1.00	Attend hearing Mingo Oil Prod. vs. Trustee.	
11:00-11:30	.50	Review current position and future strategy	
-16-83			
9:15-10:00	.75	Drafting notice of disclosure haering research on notice.	
11:00-11:30	.50	Finalizing notice of disclosure.	
3:00-4:15	1.25	Reviewing money problems and related matters for meeting with Petty.	
4:45-9:15 l	4.50	Meeting with Strand, Petty, Wayne Petty, re things to do.	
5-20-83			
4:00-4:15	.25	Phone conversation Wayne Petty.	
2:00-3:00	1.00	Drafting new repayment agreement.	
3:00-5:15	1. 25	Meeting with Wayne Petty re: repayment agreement, relationship of Petty-Strand.	
4:00-6:45	2.75	Waiting for MIke until 5:15 then meeting wi Wayne, Newman Petty and Mike re: agreement.	
5-25-83			
8:00-8:15	.25	Meeting with clerk re Strand reconsiderat of ETC judgment.	

DWJ  
STRAND MAY

5-25-83  
3:45-4:00 .25 Phone conversation. *9.75 x 75 = 6937*

5-26-83  
10:45-11:00 .25 Phone conversation with MIke re: recent developments.

4:15-4:30 .25 Phone conversation with Wayne Petty re: Heyrend motion.

5:00-5:15 .25 Phone conversation Strand re: repayment agreement.

5-27-83  
11:00-11:30 .50 Reveiwing Adv. Pro. NO 0940 file.

3:30-7:00 3.50 Meeting with Strand, Petty, re: finalizing agreements.

5-30-83  
10:15-12:30 2.25 Drafting reply letter to Mike Sheppard re: reply to Barbers letters.

5-31-83  
9:30-10:30 1.00 Attend supp order hearing Hammons.

12:15-12:30 .25 Phone conversation Dwayne Gillman re: objection to disclosure.

6-1-83  
9:00-9:45 .75 Edit letter to MIke Sheppard.

TOTAL DWJ 42.75 hours at 75.00 ea. = 3,206.25

Shelley  
5- 6-83  
10:30-11:15 .75 Getting Shaw subpoena issued.

5-16-83  
12:00-7:00 7.00 Putting together and mialing of Notice of hearing for Plan of Reorganization.

Total Shelley 7.75 hours at 30.00 = 232.50

Law Office  
**JACKSON & WILKINSON**  
A Professional Corporation  
40 East South Temple, Suite 310  
Salt Lake City, Utah 84111  
(801) 538-0645

Daniel W. Jackson

November 20, 1985

Michael Strand  
P. O. Box 2519  
Salt Lake City, UT 84111

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S T A T E M E N T

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FOR SERVICES RENDERED through November 15, 1985:

ATTORNEY'S FEES:

Daniel W. Jackson	101.5	hrs @ \$100.00	\$10,150.00
Jeffrey W. Wilkinson	84.45	hrs @ 70.00	5,911.50
Donna Somma	16.	hrs @ 25.00	400.00

COSTS ADVANCED:

Phone calls, service and filing fees	288.05
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PREVIOUS BALANCE DUE	9,461.32
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PAYMENT (thank you)	13,000.00
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CREDIT	<u>(3,538.68)</u>
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TOTAL BALANCE DUE AND OWING	\$13,210.87
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An itemization of the services rendered will be  
furnished upon any request

DWJ TIME

Strand	11/1	9:15-9:30	.25	Phone conversation with Mike re settlement with trustee
Strand	11/1	2-3	1.00	Meeting with Ron Jackson IF representative
Strand	11/3	2:30-3:30	1.00	Finalizing settlement of GMA suit
Strand	11/3	4-5	1.00	Meeting about Trustee contempt action re letter to creditors
Strand	11/4	9:30-11	2.00	Drafting settlement agreement with trustee
Strand	11/7	1:45-3	1.25	Meeting with Dwayne Gillman re settlement
Strand	10/4	2:30-3:30	1.00	Meeting with Mike Re ne cases, minutemen settlement
Strand	11/8	4-5	1.00	Discuss options to prevent enforcement of Minutemen judgment
Strand	11/8	5-5:30	.50	Phone conversations with Michael Heyrend and Mike re Settlement of Minutemen suit
Strand	11/9	9:30-10	.50	Phone conversation with Wayne Petty re settlement agreement
Strand	11/10	8:30-9	.50	Phone conversation re settlement and bargaining position with Petty
Strand	11/10	12-1:45	1.75	Meeting with Wayne Petty Newman, and Strand re settlement agreement with trustee
Strand	11/10	4-4:30	.50	Phone conversation re Petty problem
Strand	11/11	10-10:15	.25	Phone conversation with Mike re settlement Nupecto sale
Strand	11/11	1:30-2	.50	Phone conversation with Duane re exclusion of Petty from settlement
Strand	11/11	2-3	1.00	Phone conversation Wayne Petty re Terms of settlement and exclusion of Petty from settlement agreement
Strand	11/17	3-4	1.00	Phone conversation with Wayne Petty and Judge Wilkins re settlement
Strand	11/21	10-11	1.00	Meeting with Dwayne Gillman re settlement
Strand	11/21	12:30-1	.50	Editing settlement agreement in Overland Dome
Strand	11/21	2-2:30	.50	Editing settlement agreement in Overland Dome
Strand	11/21	6-7:45	1.75	Editing, redrafting settlement agreement re Overland Dome
Strand	11/18	10:30-11	.50	Phone conversation re settlement agreement with Hammons
Strand	11/22	11-12	1.00	Editing, settlement agreement



3. On February 7, 1985, Affiant caused demand to be made on Defendant Bill Taylor for the return of said stock.

4. On February 26, 1985, Defendant Taylor responded to Affiant's prior demand and stated that the stock in question had been sold and the proceeds applied to the loan between Plaintiff and Defendant Citizens.

5. On February 22, 1982, Plaintiff executed a Promissory Note whereby he promised to pay Defendant Citizens \$390,000. Said Promissory Note obligation was secured by a Trust Deed on Plaintiff's residence and by an airplane hangar located at the Salt Lake International Airport.

6. At no time did Affiant authorize the sale of said stock or the application of the proceeds of that unauthorized sale to the loan in question.

7. At no time were the 40,500 shares of Global Oil Company stock pledged as security for the repayment of the loan.

8. By agreement dated October 11, 1984, Plaintiff and Defendants renewed the obligation evidenced by the Promissory Note.

9. At the time of the unauthorized sale of the stock in question, Plaintiff had complied with all the terms of the October extension.

10. Following his written demand, Affiant had a telephone conversation with Defendant Taylor in which Affiant again requested the return of the stock. During that conversation, Defendant Taylor asked Affiant if he had made any additional payments on the obligation evidenced by the Promissory Note. Affiant responded that he had not made any payments pending the return of the stock. Defendant Taylor stated that based on the circumstances he would notice the Affiant's house for Trustees sale.

11. On February 21, 1985, said Notice of Trustee's sale scheduled for March 21, 1985 was attached to Affiant's residence by Defendant Citizens. Affiant does not have sufficient funds available to purchase the house at the Trustee's sale. Affiant also believes that Defendant Citizens intends to sell Plaintiff's airplane hangar located at the Salt Lake International Airport.

12. Affiant considered the statements by Defendant as a threat that if Affiant did not ratify the unauthorized sale of the stock and the application of the proceeds therefrom to his indebtedness, Defendants would sell his residence at a Trustee's Sale and thereby cause substantial irreparable harm to his financial condition; reputation and personal relationships.

13. Affiant had an appraisal done on his residence in 1981. Said Appraisal shows the residence to be valued at \$428,400. Citizens presently holds a secured position behind a first mortgage of approximately \$60,000.00.

Dated this 20<sup>th</sup> day of March, 1985.

Michael Strand

MICHAEL STRAND

Subscribed and sworn to before me this 26<sup>th</sup> day of March, 1985.

William J. Hinkley

NOTARY PUBLIC, residing at

Salt Lake County,

My Commission Expires:

3-28-87

DANIEL W. JACKSON  
JEFFREY W. WILKINSON  
JACKSON & WILKINSON  
40 East South Temple, Suite 310  
Salt Lake City, UT 84111  
Telephone (801) 538-0645  
Attorney for Michael Strand

Wayne G. Petty  
MOYLE & DRAPER  
600 Deseret Plaza  
N. 15 East First South  
Salt Lake City, UT 84111  
Telephone (801) 521-0250  
Attorney for Nupeco Associates

PAUL J. BAFFER  
Clerk  
Oct 1 8 10 AM '85

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
Central Division

MICHAEL STRAND and NUPETCO	)	
ASSOCIATES, A Utah Limited	)	
Partnership,	)	
	)	
Plaintiffs,	)	SECOND AMENDED COMPLAINT
	)	
vs.	)	
	)	
BILL TAYLOR, GARY HARRIS,	)	Civil No. C85-0315W. G
and THE CITIZENS BANK,	)	
	)	
Defendants.	)	

Plaintiffs, Michael Strand, by and through his attorney, Daniel W. Jackson, and Nupetco Associates, by and through its attorney, Wayne Petty, respectively, Complain and allege against the Defendants as follows:

JURISDICTION

1. Plaintiff, Michael Strand, is a resident of Utah, residing at 1199 South 1500 East, Bountiful, Utah.

2. Nupetco Associates is a Utah Limited Partnership with its principal place of business at 2006 South 900 East, Salt Lake City, Utah.

3. Defendant Bill Taylor (hereinafter referred to as Taylor), is a resident of the State of Utah and an Assistant Vice President of Defendant The Citizens Bank.

4. Defendant Gary Harris (hereinafter referred to as Harris), is a resident of the State of Utah and the President of Defendant The Citizens Bank.

5. Defendant The Citizens bank (hereinafter referred to as Citizens), is a banking institution organized and operated in the State of Utah with offices in Salt Lake City and Ogden, Utah.

6. This Court has jurisdiction over the first cause of action pursuant to 18 U.S.C. §1964(c). The Court has jurisdiction over the second, third and fourth causes of action which constitute claims based on State Law which are pendant to and involve the same facts and circumstances as the federal action.

7. Venue for this action is proper in the Federal District Court of Utah pursuant to 28 U.S.C. §1391(a) and 18 U.S.C. § 1965(a).

## GENERAL ALLEGATIONS

8. Defendant Citizens is a commercial bank operating in the State of Utah which has branch offices in Salt Lake City and Ogden, Utah. Said business was organized and operates under the laws of the State of Utah as a full service banking institution. In pursuance of the business of Citizens, the means of interstate commerce are employed on a daily basis.

9. Defendant Citizens constitutes an "enterprise" as that term is defined in 18 U.S.C. §1964(4) which is engaged in and the activities of which affect interstate commerce.

10. Defendants Taylor and Harris are employed by and associated with Defendant Citizens and act as officers of that enterprise.

11. Prior to February 24, 1981, Plaintiff Strand directed David Floor to open a special account at that brokerage firm in the name of Phillip Johnson and The Citizens Bank. Thereafter, Plaintiff Strand delivered Global Oil Company certificate Number SL-001172 representing 50,000 shares of common stock to Mr. Floor with instructions that the shares represented thereby be deposited in that account. At the time said account was opened, Phillip Johnson was an officer and employer of Defendant Citizens and was acting as their agent in

actions in question.

connection with the transaction. Thereafter on January 9, 1985 Defendant Taylor deposited the same Global Oil Company stock back into account #114325 and directed David Floor to sell said shares of stock at the best available price over the next five days. Shortly thereafter, on January 23, 1985 Defendants Harris and Taylor authorized the sale of said shares by Olsen & Company. Said sale was ordered by Defendants Harris and Taylor without judicial foreclosure or notice to Plaintiffs and Plaintiffs did not authorize or direct the sale of said stock. See Affidavit of Bill Taylor a copy of which is attached hereto as Exhibit "B".

19. On February 17, 1985, Plaintiff Strand formally demanded that Defendants Taylor and Citizens return the stock to his possession. Said demand is evidenced by a letter from James N. Barber acting as Attorney for Plaintiff to Defendant Taylor which is attached hereto as Exhibit "C".

20. By letter dated February 26, 1985, and attached hereto as Exhibit "D," Defendant Taylor acknowledged receipt of Plaintiff Strand's demand for return of the stock and explained that the stock had been sold and the proceeds applied to a debt between Plaintiff Strand and the Defendant Bank.

21. The obligation mentioned in Defendant Taylor's letter of February 26, is the renewal of Note Number 32-10156-0 in the principal amount of \$390,000 and evidence by a promissory

note dated February 22, 1982. Said promissory note which is attached hereto as Exhibit "E" was secured by a Trust Deed on Plaintiff Strand's residence located at 1199 South 1500 East, Bountiful, and an airplane hanger located at the Salt Lake International Airport.

22. The loan identified in paragraph 21 represents the renewal of an earlier loan between Defendant Citizens and Plaintiff Strand.

23. On February 11, 1983, Defendant Citizens and Plaintiff Strand entered into an agreement whereby they agreed to defer payment of the debt. Said extension of the obligation is evidenced by letter agreement which is attached hereto as Exhibit "F".

24. The Same parties entered into a second agreement on November 29, 1983 whereby they agreed to accept certain payments from Plaintiff Strand and defer repayment of the total debt. Said agreement is attached hereto as Exhibit "G".

25. Again on October 11, 1984, Plaintiff Strand and Defendant Citizens entered into a third agreement whereby Defendant Citizens agreed to accept payment of \$30,000 from Plaintiff Strand and defer satisfaction and repayment of the debt evidenced by the note in question. Said agreement is evidenced by writing executed on October 11, 1984, and attached hereto as

Exhibit "H". Pursuant to said agreement, Plaintiff Strand remitted to Defendant Citizens \$30,000 from November 1, 1984 through January 22, 1985.

26. On or about February 19, 1985, Defendant Taylor caused notice of trustee's sale of Plaintiff's residence to be given. Said sale of the collateral securing the above-mentioned note was set by Defendants for March 21, 1985. Said Notice is attached hereto as Exhibit "I".

#### FIRST CAUSE OF ACTION

##### Racketeer Influence and Corrupt Organization Violation

27. Plaintiff Strand realleges the allegations contained in paragraphs 1 through 26 as if fully stated herein.

28. Defendant Citizens is a commercial enterprise which is engaged in and the activities of which affect interstate commerce.

29. During all times material hereto, Defendants Taylor and Harris were employed by said enterprise, and as Assistant Vice-President and President of Defendant Citizens those Defendants participated as principals in the conduct of the affairs of the enterprise.

30. On or about January 24, 1985, Defendants Harris and Taylor authorized the sale of 40,500 shares of Global Oil common stock which they had previously removed from the special account at Olsen & Company. Acting pursuant to said authorization, Olsen & Company sold said shares and delivered the proceeds thereof to Defendant Citizens.

31. Said shares were previously held in the special account by Phillip Johnson and Defendant Citizens under the bailment in which Plaintiff Strand entrusted said shares to the protection and control of Phillip Johnson and Defendant Citizens for the sole and exclusive purpose of repaying certain overdrafts of Overland Oil Field Construction Inc.

32. At no time, were Defendants Citizens, Harris, or Taylor the legal or beneficial owners of said shares of stock.

33. At the time of the sale in question, Plaintiff Nupetco Associates was the lawful owner of said shares of Global Oil Company common stock.

34. Said sale of the 40,500 shares of common stock of Global by Defendants Harris and Taylor constitutes a chargeable violation of §76-6-404, Utah Code Annotated, 1953 as amended, in that Defendants Harris and Taylor committed theft by exercising unauthorized control over the property of another with a purpose to deprive him thereof.

35. Pursuant to §76-3-203, U.C.A., said offense is punishable by imprisonment for more than a year and constitutes a predicate act or predicate offense under 18 U.S.C. §1961(1)(A).

36. Following said sale, Defendants Harris and Taylor have failed and refused to return said shares of common stock to Plaintiff Strand. In addition, said Defendants have caused notice of a trustee's sale to be issued against Plaintiff's Strand's residence. Said notice was issued after Plaintiff Strand demanded the return of the shares of stock and following his refusal to authorize the application of the proceeds from the sale of said stock to the indebtedness secured by that residence.

37. The authorization of said trustee's sale under the present circumstances constitutes a threat by Defendants Harris and Taylor to do an act which would not in itself substantially benefit the individual defendants but which would harm substantially Plaintiff Strand with respect to his financial condition, reputation and personal relationships.

38. Said act of authorizing and directing notice of Trustee's sale was undertaken by Defendants Harris and Taylor after they had exercised control over the property of another to wit, the common stock of Global Oil and said acts were done with

the purpose of permanently depriving the lawful owner possession of the stock.

39. Said threat of Trustee's sale constitutes a chargeable violation of §76-6-406, U.C.A., Theft by Extortion, which is punishable by imprisonment for more than a year and constitutes a predicate act or predicate offense under 18 U.S.C. §1961(1)(A).

40. Prior to November 1984, Defendants had renewed the loan between Defendant Citizens and Plaintiff Strand which was originally evidenced by Promissory Note Number 32-10156-0. As described above, on several occasions, those parties entered into agreements both implicit and express whereby the repayment or satisfaction of said debt was deferred. All these renewals, the last of which occurred on October 11, 1984, constitute extensions of credit as that term is defined in 18 U.S.C. §891(1).

41. Pursuant to 18 U.S.C. §891(4) the repayment of any extension of credit includes the repayment, satisfaction or discharge in whole or in part of any debt resulting from or in connection with that extension of credit.

42. To collect an extension of credit is defined in 19 U.S.C. § 891(5) to mean to induce in any way any person to make repayment thereof.

43. Collection by extortionate means is defined by 18 U.S.C. §891(7) to include any means involving the use of, an express or implicit threat or use of violence or other criminal means to cause harm to the person's reputation, property or any person.

44. Defendants Harris and Taylor's unauthorized sale of the Global stock and application of the proceeds therefrom to repayment of the previous extension of credit constitute a theft of said property and the repayment of a portion of an extension of credit by the use of criminal means and is an indictable act under 18 U.S.C. §894.

45. Said application of the proceeds of the sale to the loan and the issuance of the notice of Trustee's sale to induce Plaintiff Strand to ratify said application of proceeds constitutes an attempt to collect an extension of credit by the use of extortionate means and constitutes an act indictable under 18 U.S.C. §894.

46. Both the unauthorized application of the proceeds of the theft and the threat of sale of Plaintiff Strand's residence if he did not ratify said illegal acts, are predicate acts or predicate offenses under 18 U.S.C. §1961(1)(5).

47. Section 17(a) of the Securities Act of 1933 provides that it shall be unlawful for any person in the offer or sale of any securities by the use of any means or instruments of transportation or communications in interstate commerce or by the use of the mails, to directly or indirectly-

(2) obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. . .

48. At the time Defendants Harris and Taylor offered the 40,500 shares of common stock of Global Oil, for sale, they did not disclose to Olsen & Company or to the purchaser of said shares that they knew Defendant Citizens were not the lawful owners of that stock and that they did not have authorization from the Plaintiffs for the offer or sale.

49. Said lack of ownership or authorization, was a material fact the disclosure of which was necessary in order to make the statements made, i.e., the directive to sell the stock, not misleading.

50. Said material omission was employed by Defendants Harris and Taylor in order to obtain money or property by means of the material omissions and the unauthorized sale of said stock.

51. Said offer and sale of the securities were accomplished by the use of means and instruments of communication in interstate commerce and by the use of the mails.

52. The failure of Defendants to disclose the illegal and unauthorized nature of the offer and sale of the securities constitutes a violation of §17(a)(2) of the Securities Act of 1933.

53. The offering and sale of the securities by Defendants Harris and Taylor represent an offense involving fraud in the sale of securities and constitutes a predicate act or offense under 18 U.S.C. §1961(1)(D).

54. The above described acts constitute a "pattern of racketeering activity" as that term is defined by 18 U.S.C. § 1961(5), to wit, at least two chargeable or indictable acts one of which occurred after the effective date of §1961 and the last of which occurred within ten years after the commission of the prior act.

55. Defendants Harris and Taylor engaged in this pattern of racketeering activity in connection with their employment with Defendant Citizens and in relation to their conduct of the business affairs of that enterprise.

56. The above-described acts constitute a violation of 18 U.S.C. §1962(c) and subjects those defendants to Plaintiff Strand's private action remedies as provided by 18 U.S.C. §1964(c).

57. Said acts of Defendants have deprived Plaintiff Strand of possession of the 40,500 shares of common stock of Global Oil. On March 4, 1985, demand was made upon Plaintiff Strand to return said shares to Plaintiff Nupetco Associates or make payment of the value thereof. Pursuant to said demand and as a result of Defendants' refusal to return the stock, Plaintiff Strand has become indebted to Plaintiff Nupetco Associates in the total amount of \$368,550.

58. The Defendants' pattern of racketeering activities have therefore damaged Plaintiff Strand in the amount of the purchase price of said shares at the time he was required to deliver the same to Plaintiff Nupetco Associates. Pursuant to 18 U.S.C. §1964(c) Plaintiff Strand may recover from Defendants Harris and Taylor, threefold the damages he has suffered and the costs of suit, including reasonable attorney's fees.

WHEREFORE, the Plaintiff Strand prays for Judgment against Defendants Taylor and Harris jointly and severally under the First Cause of Action as Follows:

1. For the award of treble damages as provided by law in the amount of \$1,105,650 plus prejudgment interest at the rate of 12% from January 23, 1985.

2. For costs of suit, including reasonable attorney's fees as provided by 18 U.S.C. §1964(c); and

3. For any other relief the Court deems just and reasonable.

#### SECOND CAUSE OF ACTION

##### Utah Racketeering Influences and Criminal Enterprise Violation

59. Plaintiffs reallege the allegations contained in paragraphs 1 through 58 as if fully stated herein.

60. Defendants unauthorized sale of the Global common stock constitutes the exercise of unauthorized control over the property of another with the purpose to deprive the lawful owner thereof and constitutes an illegal act committed for financial gain to wit, theft.

61. Said acts of Defendants Taylor and Harris in exercising control over the stock in question constitute racketeering as that term is defined by §76-10-1602 (1)(q), U.C.A.

62. Plaintiffs are informed and believe and on the basis of that information and belief allege that Defendants Taylor and Harris authorized the issuance of Notice of Trustee's Sale involving Plaintiff Strand's residence following Plaintiff Strand's refusal to ratify their misappropriation of the proceeds of their illegal sale of the Global stock.

63. Said threat of a trustee's sale of Plaintiff Strand's residence can not in itself substantially benefit Defendants Taylor and Harris but will cause Plaintiff Strand substantial harm with respect to his financial condition, reputation, and personal relationships.

64. Said act constitutes extortion as that term is defined by 76-6-406(1)(i), U.C.A.

65. Defendants' threats to sell Plaintiff Strand's residence at a trustee's sale, following his refusal to ratify Defendants missappropriation of the Global Stock was done for the explicit reason of coercing Plaintiff Strand's acquiesce in the Defendants' prior illegal acts and constitutes an attempt to commit theft by extortion.

66. Pursuant to §76-10-1602(1)(g) and (x), said act constitutes racketeering by Defendants Taylor and Harris.

67. Defendant Taylor's application of the proceeds from the unauthorized sale of the Global stock to the renewed obligation between Plaintiff Strand and Defendant Citizens constitutes the collection of an extension of credit by use of criminal means, i.e., theft.

68. Said use of criminal means to collect the extension of credit is an act of racketeering as that term is defined by §76-10-1602(1)(k).

69. The sale of the securities in question by Defendant's Harris and Taylor without disclosure of the fact that they nor Defendant Citizens was the owner of said shares constitutes an act of fraud in the sale of securities and pursuant to §76-10-1602(1)(u) constitutes racketeering by said Defendants.

70. The various acts enumerated above which were undertaken by Defendants Taylor and Harris establish a pattern of racketeering activity as defined by §76-10-1602(4).

71. Said pattern of racketeering activity was employed by Defendants' Harris and Taylor as employees of Defendant Citizens, an enterprise, to conduct the business activities of that enterprise and constitutes a violation of §76-10-1603(3).

72. As a result of the pattern of racketeering, Plaintiff Strand has suffered damages in the amount of \$368,550 and

Plaintiff Nupetco has suffered the loss of the value of the securities in question. Pursuant to §76-10-1605 Plaintiffs may recover from Defendants Taylor and Harris, treble damages, the costs of suit, including reasonable attorney's fees, and any punitive damages the court may deem reasonable.

WHEREFORE, the Plaintiffs pray for judgment against Defendants Taylor and Harris jointly and severally under the Second Cause of Action, as follows:

1. For an award of treble damages as provided by law in the amount of \$1,105,650 plus prejudgment interest at a rate of 12% from January 23, 1985.
2. For costs of suit, including reasonable attorney's fees as provided by §76-10-1605(i);
3. For Punitive damages in an amount the Court determines to be appropriate; and
4. For any other relief the Court deems just and reasonable.

### THIRD CAUSE OF ACTION

#### Conversion

73. Plaintiff Strand reallege the allegations made in paragraphs 1 through 72 as if fully stated herein, Plaintiff Nupetco realleges the allegations made in paragraph 1 through 26 and 60 through 72 as if fully stated herein.

74. As the Bailor of said shares of common stock of Global Oil, Plaintiff Strand had a right to regain possession of said shares from Defendant Citizens.

75. On or about, February 7, 1985, Plaintiff Strand requested the Defendant Citizens to return the stock in question to his possession.

76. Defendant refused to return said stock or conforming shares of Global Oil common stock to the possession and control of Plaintiff Strand, notwithstanding repeated written requests for its return.

77. Said acts constitute conversion of the common stock which has damaged Plaintiff Strand in the amount of \$368,550.

WHEREFORE, Plaintiff Strand prays for Judgment against all Defendants jointly and severally under the Third Cause of Action, as follows:

1. For an award of actual damages in the amount of \$368,550 plus prejudgment interest at the rate of 12% per annum from January 23, 1985.

2. For punitive damages for the intentional conversion of the property in an amount to be determined at trial; and

3. For any other relief the court deems just and reasonable.

#### FOURTH CAUSE OF ACTION

##### Conversion

78. Plaintiff Strand reallege the allegations made in paragraphs 1 through 77 as if fully stated herein. Plaintiff Nupetco realleges the allegations contained in paragraph 1 through 26 and 60 through 77 as if fully stated herein.

79. Plaintiff Nupetco Associates is the owner of said shares of common stock of Global Oil.

80. Defendants sale of said common stock constitutes an intentional conversion of Plaintiff Nupetco Associates' ownership interest which has damaged Plaintiff Nupetco Associates in an amount to be determined at trial.

WHEREFORE, Plaintiff Nupetco prays for judgment against all Defendants jointly and severally under the Fourth Cause of Action as follows:

1. For an award of actual damages in an amount to be determined at trial plus prejudgment interest at the rate of 12% per annum upon the amount from January 23, 1985.

2. For punitive damages for the intentional conversion of the shares of common stock in an amount to be determined at trial; and

3. For any other relief the Court deems just and reasonable.

Dated this 23rd day of September, 1985.

JACKSON & WILKINSON  
40 East South Temple, Suite 310  
Salt Lake City, UT 84111

by 

DANIEL W. JACKSON

MOYLE & DRAPER  
600 Deseret Plaza  
N. 15 East First South  
Salt Lake City, UT 84111

by 

WAYNE G. PETTY

Plaintiff's Addresses:

Michael Strand; 1199 South 1500 East, Bountiful, UT 84010

Plaintiff Nupetco Associates; 2006 South 900 East, Salt Lake City, Utah 84106

DANIEL W. JACKSON  
BRADLEY, ARROWSMITH & JACKSON  
40 East South Temple, Suite 310  
Salt Lake City, UT 84111  
Telephone (801) 363-1919

MAR 21 9 11 AM '85  
JAL: L. HALL  
CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
Central Division

MICHAEL STRAND,	)	
	)	
Plaintiff,	)	AFFIDAVIT
	)	
vs.	)	
	)	
BILL TAYLOR, GARY HARRIS,	)	Civil No. C85-0315W
and THE CITIZENS BANK,	)	
	)	
Defendants.	)	

AFFIDAVIT

STATE OF UTAH       )  
                          : ss  
COUNTY OF SALT LAKE)

Comes now Lohr Livingston, being first duly sworn,  
deposes and says:

1. Prior to September, 1982, Affiant was a Senior Vice  
President of The Citizens Bank.

2. Pursuant to his duties with The Citizen Bank, Affi-  
ant participated as the Loan Officer in relation to February 22,  
1982 loan from the Bank to Plaintiff Mike Strand.

3. Prior to the execution of the Promissory Note evidencing said indebtedness, the bank extended certain short term advances to Plaintiff in anticipation of the closing of said loan.

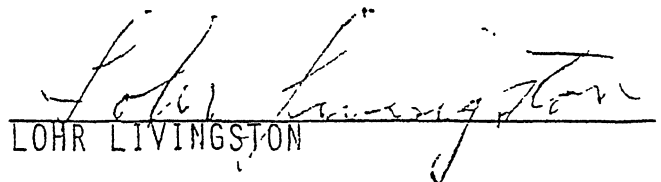
4. Prior to the negotiations between the parties relative to the loan in question and the advancement of monies in reliance on the closing of the loan, Plaintiff had repaid all obligations between himself and The Citizens Bank.

5. The exclusive collateral for the loan of February 22, consisted of Plaintiff's personal residence and a airplane hanger which was owned by Plaintiff.

6. The 40,500 shares of Global stock were not pledged as collateral for the February loan.

7. At the time of the execution of the February loan, all collateral including the stock in question prior loans or other obligations of Plaintiff, were released from any and all security interests held by the Bank.

Dated this 17th day of March, 1985.

  
LOHR LIVINGSTON

Subscribed and sworn to before me this 10<sup>th</sup> day of  
March, 1985.

My Commission Expires:

9-28-87

*[Signature]*  
NOTARY PUBLIC, residing at  
*[Signature]*

IN THE SECOND JUDICIAL DISTRICT COURT OF DAVIS COUNTY

BOUNTIFUL DEPARTMENT, STATE OF UTAH

2008 FEB 29 P 1:07  
SECOND DISTRICT COURT

GOLDEN MEADOWS PROPERTIES, L.C., )  
AKA GOLDEN MEADOWS PROPERTIES, )  
L.L.C., )

Plaintiff, )

vs. )

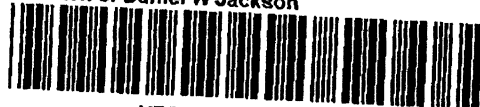
MICHAEL W. STRAND AND CARI )  
ALLEN, )

Defendants. )

AFFIDAVIT OF DANIEL W. JACKSON

Civil No. 070700488  
Judge Glen R. Dawson

Affidavit of Daniel W Jackson



VD24163033

070700488 STRAND, MICHAEL W pages:

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

I, Daniel W. Jackson being first duly sworn depose and say:

1. I have been a member of the Utah State Bar since 1979. I am over 21 years of age and have personal knowledge of the facts contained herein and would testify to those facts if called as a witness in this case.

2. From July, 1981 through approximately the summer of 1989, I represented Michael W. Strand ("Strand") in numerous transactional and litigation matters.

3. In the course of my representation of Strand, I met Neuman C. Petty ("Petty") and from the late summer of 1981 through the winter of 1988, I had occasion on innumerable

occasions to meet with Strand and Petty, travel with Strand and Petty and witness interactions between the two individuals.

4. On or about September 14, 1982, C.I.T. Corporation obtained a judgment against Strand for \$342,826.76 with 12% interest from September 2, 1982, together with \$3,200.00 attorney fees, and \$115.25 costs in which the transcript of judgment was filed on September 16, 1982, as Civil No. 9576, docket no. S-345, Davis County Clerk's Office.

5. At the time the above-described transcript of judgment was filed, Strand was the owner of the real property more particularly described as:

04-062-0203  
All of Lot 203, CANYON CREST PLAT NUMBER "9," a subdivision of part of Section 28, Township 2, North, Range 1 East, Salt Lake Meridian, in the City of bountiful, according to the official plat thereof.

Which I understand is the subject matter of the above-captioned action and was the personal residence of Strand and his wife.

6. Following the filing of the above-described transcript of judgment, Strand and Petty engaged in a course of business dealings under which Strand would assign his assets to Petty and Petty would provide Strand with money to conduct his business affairs and cover his personal living expenses.

7. In furtherance of this course of business, I had several conversations with Strand and Petty wherein I described the effects of assignments of interest and foreclosures on the interests of judgment creditors and discussed with Strand and Petty approaches that could be employed to protect assets owned by Strand from the reach of his numerous creditors including but not limited to C.I.T. Corporation.

8. Strand and Petty employed my advice and entered into several assignments of interest wherein Strand would assign personal property to Petty or his alter ego Nupetco Associates based upon Petty's financing of Strand's livelihood.

9. Following such assignments, Strand would continue to retain control of the underlying asset for the benefit of himself and Petty.

10. One such assignment occurred on April 27, 1983, when for the consideration of one dollar and other good and valuable consideration, Strand and his wife assigned a mortgage held by them in a car dealership in Burley, Idaho to Nupetco Associates. (Exhibit 1)

11. On October 11, 1985, Strand obtained a judgment in the Third Judicial District Court against the mortgagors of the above-referenced mortgage declaring the mortgage to be valid with an unpaid balance of principal and interest in the amount of \$522,769.72. (Exhibit 2)

12. Strand's assignment of that mortgage to Petty was made in consideration of Petty's promise to protect Strand's ownership in the real property described above in paragraph 5 and to continue to work in cooperation with Strand to further their joint business interests.

13. Petty did not release public notice of the above-described assignment until October 18, 1985, just days after he obtained title to Strand's personal residence. (Exhibit 3)

14. Between April, 1983 and September, 1985, I was personally present on several occasions wherein Strand and Petty discussed the debt owing on Strand's personal residence and how to deal with that debt and the other creditors of Strand while allowing Strand to retain the possession, use and beneficial ownership of that property.

15. The plan that emerged from these meetings and discussions was that Petty would either purchase the debt owed to Citizens Bank directly from the Bank and foreclose the

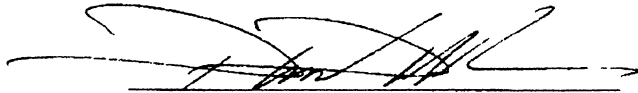
indebtedness for Strand's protection or bid at any foreclosure sale scheduled by the creditor bank and acquire the property free and clear of all similar liens.

16. In both of the scenarios described above, Petty was acquiring the property for the benefit of Strand in consideration of the various assignments, transfers and conveyances of personal property given by Strand to Petty in furtherance of their ongoing business arrangement.

17. Throughout 1984, 1985 and 1986, Strand and Petty worked in absolute concert to obtain the full benefit of the Idaho mortgage. This included cooperative legal actions ongoing in Utah and Idaho in the name of Strand and Petty. (Exhibit 4)

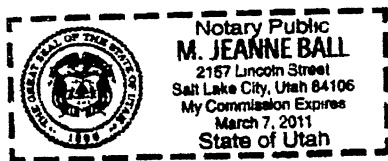
18. The actions of Petty and Strand throughout the period in question were directed at maximizing the value of Strand's assets for the purpose of benefitting both Strand and Petty.


DATED this 28th day of February, 2008

  
DANIEL W. JACKSON

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

Before me a Notary Public, in and for said state, on this 28th day of February, 2008, personally appeared Daniel W. Jackson to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.



  
Notary Public

## **EXHIBIT 1**

WHEN RECORDED MAIL TO:

Wayne G. Petty, Esq.  
MOYLE & DRAPER, P.C.  
600 Deseret Plaza  
#15 East First South  
Salt Lake City, Utah 84111

ASSIGNMENT OF MORTGAGE


Michael W. Strand and Lois Strand, Assignors, in consideration of One Dollar and other good and valuable consideration, paid by Nupetco Associates, 2006 South 900 East, Salt Lake City, Utah 84105, Assignee, hereby assign unto the Assignee, its successors and assigns, a certain Second Mortgage made by Leland Martineau, Charles Waters and Magic Valley Property, a partnership comprised of the aforementioned individuals, as Mortgagors, to Michael W. Strand and Lois Strand, Mortgagees, given to secure indebtedness between the parties in varying amounts, but in excess of \$200,000, dated the 10th day of June, 1980, recorded on the 24th day of September, 1980, in the office of the recorder of the County of Cassia, State of Idaho, as Entry No. 129331, covering the following described premises situated in said County:

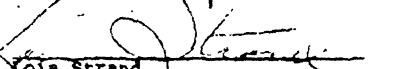
Lots 18, 19 and 20, Block 3, Johnson's Subdivision  
to the City of Burley, County of Cassia, State of Idaho.

Together with the bond or note or obligation described in said Mortgage, and the monies due and to grow due thereon with the interest.

To have and to hold the same unto the Assignee and to the successors, legal representatives and assigns of the Assignee forever.

IN WITNESS WHEREOF, Assignors have duly executed this Assignment the 27<sup>th</sup> day of April, 1983.

  
Michael W. Strand

  
Lois Strand

STATE OF UTAH

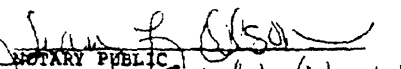
COUNTY OF Salt Lake

ss.

On the 27 day of April, 1983, personally appeared before me Michael W. Strand and Lois Strand, the signers of the foregoing instrument, who duly acknowledged to me that they executed the same.

My Commission Expires:

4-10-85

  
NOTARY PUBLIC

Residing at:

Salt Lake City, Ut

129331

SECOND MORTGAGE


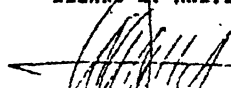
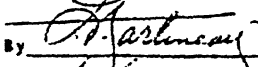
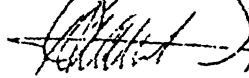
LELAND MARTINEAU, of Salt Lake City, Salt Lake County  
State of Utah, and CHARLES WATERS, and MAGIC VALLEY PROPERTY,  
a partnership comprised of the aforementioned individuals, of  
Burley, County of Cassia, State of Idaho, mortgagors, hereby  
MORTGAGE to MICHAEL W. STRAND and LOIS STRAND, mortgagees  
of Bountiful, Davis County, State of Utah for the sum of  
TEN (\$10,00) DOLLARS the following described tract of land in  
Burley, County of Cassia, State of Idaho:

Lots 18, 19, and 20 Block 3, Johnson's Subdivision  
to the City of Burley, County of Cassia, State of Idaho

This Second Mortgage is given to secure the indebtedness  
between the parties in varying amounts, but presently in excess  
of \$200,000.00.

The mortgagors agree to pay all taxes and assessments on  
said premises and a reasonable attorney's fee in case of foreclosure.

WITNESS the hands of said mortgagors, this 10TH day of  
June, 1980.

  
LELAND A. MARTINEAU  
  
CHARLES WATERS  
MAGIC VALLEY PROPERTY  
a partnership  
By  Partner  
 Partner

STATE OF UTAH ss.  
COUNTY OF SALT LAKE

On this 10th day of June, 1980, personally appeared before me Leland A. Martineau, the signer of the within instrument, who duly acknowledged to me that he executed the same.

Terri Hurst  
Notary Public  
Residing at Salt Lake City, Utah

My Commission Expires:

July 1, 1981

STATE OF ~~UTAH~~ <sup>UTAH</sup>  
COUNTY OF ~~CESSA~~ <sup>SALT LAKE</sup> ss.

On the 10th day of June, 1980, personally appeared before me Charles Waters, the signer of the within instrument, who duly acknowledged to me that he executed the same.

Terri Hurst  
Notary Public  
Residing at: Salt Lake City

My Commission Expires:

July 31, 1981

STATE OF UTAH  
COUNTY OF SALT LAKE

On the 10th day of June, 1980, personally appeared before me LELAND A. MARTINEAU, a partner in Magic Valley Property, who duly acknowledged to me that he executed the same.

Terri L. Hurst  
Notary Public  
Residing at: Salt Lake City

My Commission Expires:

July 1, 1981

SEP 21 10 29 AM '80  
COUNTY CLERK  
SALT LAKE CITY  
K. E. NOTARIAL  
SALT LAKE CITY  
84111

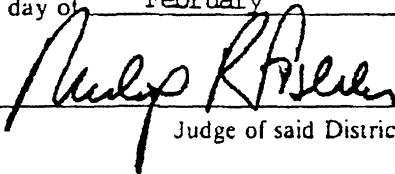
125331

## **EXHIBIT 2**

**United States of America**  
**In the District Court of the Third Judicial District**  
**In and for Salt Lake County, State of Utah**

I, Philip R. Fishler, Presiding Judge of the District Court of the Third Judicial District, in and for the County of Salt Lake, State of Utah, do hereby certify that said Court is a Court of Record, having a Clerk and a seal; that H. Dixon Hindley who signed the attestation, is the duly elected and qualified County Clerk of the County of Salt Lake, State of Utah, and was at the time of signing said attestation Ex-Officio Clerk of the said District Court; that said signature is his genuine handwriting; and that all his official acts as such Clerk are entitled to full faith and credit. And I further certify that said attestation is in due form of law.

Witness my hand this 21 day of February A.D. 19 86

  
\_\_\_\_\_  
Judge of said District Court

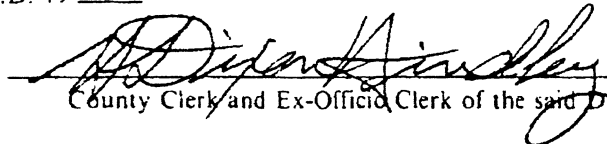
STATE OF UTAH

COUNTY OF SALT LAKE

} ss.

I, H. Dixon Hindley, County Clerk and Ex-Officio Clerk of said District Court of the County of Salt Lake, State of Utah, do hereby certify that the Honorable Philip R. Fishler whose name is subscribed to the preceding certificate, is one of the Judges of said Court, duly commissioned and qualified, and that the signature of said Judge to said certificate is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 21 day of February A.D. 19 86

  
\_\_\_\_\_  
County Clerk and Ex-Officio Clerk of the said District Court

# THE GURU

ST. Louis  
Larson & Bussell.

Plaintiff,

vs.

BL. 201 NO. 2752  
11-1-85 - 8:35 a.m.

**Defendants.**

1. The mortgage attached hereto as Exhibit "A" is a valid mortgage given to the plaintiff, Michael Strand by Leland Martineau and Charles Waters to secure an obligation of \$327,989.25 which obligation was incurred on or about May 24, 1979 and which obligation bears interest at the rate of 8% from July 1, 1980 to July 1, 1981 and 12% per annum thereafter until paid in full, with an unpaid balance of principle and interest as of October 11, 1985 of \$522,769.72.
2. That any defenses which defendants may have against the validity of said mortgage under either Utah or Idaho law are hereby waived.

STATE OF UTAH

ss.

COUNTY OF SALT LAKE

I, H. DIXON HINDLEY, Clerk in and for the County of Salt Lake and Ex-Officio Clerk of the District Court of the Third Judicial District in and for Salt Lake County, State of Utah, do hereby certify that the foregoing is a full, true and correct copy of the original \_\_\_\_\_

---

1 Copy of Order and Judgment (Oct. 31, 1985)

Michael W. Strand and MLK Investment  
vs.  
Leland A. Martineau, Charles Waters,  
Magic Valley Motors, Inc. and Magic  
Valley Properties

Case No. C-83-5680

as appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand  
and affixed my official seal, this 21st

day of February, A.D. 19 86

H. Dixon Hindley Clerk  
By Maguire Snyder Deputy Clerk

3. That pursuant to Section 78-37-1 UCA (as amended 1953), that plaintiffs are required to foreclose said mortgage against the property which is located in Cassia County, State of Idaho before proceeding against the personal assets of the defendant Martineau.
4. That all other claims which either party to this action may have against the other, with the exception of those defenses specifically waived in paragraph 2 are hereby reserved and remain pending in this Court.

DATED this 11th day of October, 1985.

Scott Daniels  
 SCOTT DANIELS  
 DISTRICT COURT JUDGE

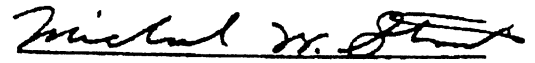
ATTEST  
 H. DAVID HINCHLEY  
 Clerk  
David Busch  
 Dist. Clk. Clerk

### **EXHIBIT 3**

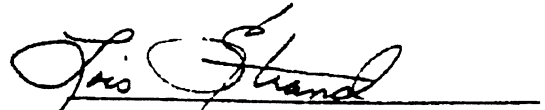
NOTICE OF ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS, that Michael W. Strand and Lois Strand, of the County of Davis, State of Utah, hereby give notice that the judgement obtained against Leland A. Martineau, Charles Waters, Magic Valley Motors, Inc., and Magic Valley Properties, a partnership, dated October 11, 1985, in the District Court of the Third Judicial District Court in and for Salt Lake County, State of Utah (a copy of which is attached as Exhibit "A") is subject to and governed by that certain Assignment of Mortgage wherein Michael W. Strand and Lois Strand as assignors, assigned to Nupetco Associates, 2006 South 900 East that certain obligation which is secured by a certain second mortgage made by Leland A. Martineau, Charles Waters and Magic Valley Properties a copy of which is attached as Exhibit "B".

IN WITNESS whereof this 18<sup>th</sup> day of October, 1985.

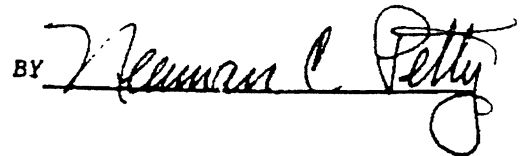


MICHAEL W. STRAND



LOIS STRAND

NUPETCO ASSOCIATES

BY 

## **EXHIBIT 4**

PARSONS, SMITH, STONE & FLETCHER

WILLIAM A. PARSONS  
RICHARD K. SMITH  
RANCOLPH C. STONE  
WM. KENT FLETCHER

ATTORNEYS AT LAW  
137 WEST 13TH STREET  
BURLEY, IDAHO 83318

P O BOX 910  
TELEPHONE  
(208) 678-8382

December 27, 1985

Mr. John T. Caine  
Attorney at Law  
2568 S. Washington Blvd.  
Ogden, Utah 34401

Dear John:

I am writing to you so that it is clear what Neuman will be asking you to obtain.

Based on the Judgment that you obtained in Civil Case C-83-5680 in the Third Judicial District of the State of Utah we filed on behalf of Nupetco the foreclosure of the Mortgage as the same had been assigned by Strand.

Martineau now has moved to dismiss the action and raises a couple of issues and the most important issue is the statute of limitations. In view of the provision of the Judgment that any defenses which they may have against the validity of the Mortgage either under Utah or Idaho law are hereby waived, I would appreciate a transcript as to what was waived. It could be argued that the validity of the mortgage was waived but I am confident that the limitations of action will be an issue. I am enclosing a copy of Idaho Code 5-214A which is the limitation of the section that I am concerned about.

Assuming for a moment that the defendants prevail in that Nupetco is barred from bringing its action, then can you not proceed against the personal assets of Martineau by virtue of the Judgment?

As you can see, John, I need all the help I can get so that our client is protected.

Even if the waiver was totally complete I am still somewhat concerned about the first paragraph of the statute as it was not recorded in the courthouse.

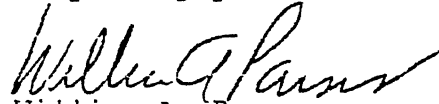
If the mortgage does not survive in Idaho, then perhaps we would be in a position to sue on the Judgment as a foreign judgment with the amount due of \$522,000.00. The only problem with that is that there is an intervening tax lien to the State of Idaho but which may expire by the lapse of time.

Page 2 - John T. Caine  
December 27, 1985

I guess another possibility would be for Nupetco to buy out Equitable and hope that there was a default in that regard.

I have somewhat rambled in this letter but I wanted to have you aware of the problems I am facing in the foreclosure and a copy of the transcript would certainly help insofar as what that waiver really means.

Very truly yours,

  
William A. Parsons

WAP:rt  
Enc.

cc: Neuman C. Petty

PARSONS, SMITH, STONE & FLETCHER

WILLIAM A. PARSONS  
RICHARD A. SMITH  
RANDOLPH C. STONE  
WM. KENT FLETCHER

ATTORNEYS AT LAW  
137 WEST 13TH STREET  
BURLEY, IDAHO 83318

P.O. BOX 910  
TELEPHONE  
(208) 678-8382

April 29, 1986

John T. Caine  
Attorney at Law  
2568 South Washington Blvd.  
Ogden, Utah 84401

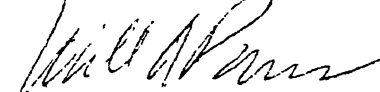
Neuman Petty  
Nupetco  
2006 South 9th East  
Salt Lake City, Utah 84105

RE: Nupetco Associates v. Martineau, et al

Gentlemen:

Enclosed are copies of the Answer, Motion for the  
Payment of Costs and Motion to Set Aside Foreign Judgment which  
have been filed in the above case.

Very truly yours,



William A. Parsons

WAP:rt  
Enc.