

1986

Joseph Chapman and Myrna Chapman v. Dennis B. Chapman and Nancy S. Chapman : Brief of Appellant

Utah Supreme Court

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Jay Fitt; Attorney for Respondents.

George H. Mortimer; Attorney for Appellants.

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SUPREME COURT OF UTAH

STATE OF UTAH

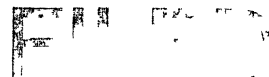
JOSEPH CHAPMAN and
MYRNA CHAPMAN,
Plaintiffs and Respondents
vs.
DENNIS B. CHAPMAN and
NANCY S. CHAPMAN,
Defendants and Appellants.

No. 21000

APPELLANTS' BRIEF

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FEB 10 1996

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APPELLANT'S BRIEF

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STATEMENT OF ISSUE PRESENTED ON APPEAL

The issues presented by this appeal are:

1. Was summary judgment improperly granted under Rule 56 (c) because the record shows that there are genuine issues of material fact and that plaintiff (respondent) is not entitled to a judgment as a matter of law?

2. Should the summary judgment be reversed because plaintiffs filed and prosecuted two suits, one under Civil No. 65,441 and the other under Civil No. 65,617, which were consolidated as Civil No. 65,441 prior to filing the MOTION FOR SUMMARY JUDGMENT under Civil No. 65,441 but which file did not contain defendants' ANSWERS TO INTERROGATORIES and ANSWERS TO REQUESTS FOR ADMISSIONS alleging genuine issues of material fact which the Court did not consider in granting plaintiffs' MOTION FOR SUMMARY JUDGMENT?

STATEMENT OF FACTS

1. The complaint which was filed on December 15, 1983, alleges that on or about August 1, 1976, defendants, for value received, executed a promissory note as makers in favor of plaintiffs as payees in the principal amount of Eleven Thousand Seven Hundred and Sixty Dollars and Sixty-six cents (\$11,760.66) with interest to be compounded quarterly at the rate of 8% per annum; that said principal amount is due and unpaid; that interest is due and unpaid; and prays for judgment for principal, interest and attorneys fees. (Record P 1 , paragraphs 3, 4, and 6 and P 2 last paragraph)

2. The SUMMONS and a copy of the COMPLAINT were served on defendants on December 29, 1983. (Record P 3, 4, 5) The Civil No. of the copy of the COMPLAINT was blank but the Civil No. on the SUMMONS was 65,617. The Civil No. blank on the COMPLAINT has now been filled in as 65,441 and the number 65,617 on the SUMMONS has been changed to 65,441. (Record P 1, 3)

3. On January 24, 1984, defendants filed an answer under Civil No. 56,617 but that number has been crossed out and number 65,441 has been handwritten in its place. (Record P 6). The answer denied the allegations of the complaint and interposed these affirmative defenses:

First, that the promissory note was not executed for value received and is unenforceable for failure of consideration.

Second, that the defendants executed the promissory note under duress imposed upon them by plaintiffs.

Third, that the statute of limitations had run on the promissory note.

Fourth, that plaintiffs entered into a partnership or joint venture with defendants and made an assumption of risk with respect to the principal amount sought to be recovered.

Fifth, that plaintiffs had waived any right to the principal sum and interest claimed in the action.

Sixth, that plaintiffs are estopped from claiming any repayment of money expended by them in the business venture in which they and defendants participated and from claiming any

interest on such expenditures.

Seventh, that plaintiffs are guilty of laches with respect to the claims made in the complaint. (Record P 6,, 7, 8)

4. Defendants also included a COUNTERCLAIM with the ANSWER (Record P 6, 8, 9, 10, 11) but it is not an issue in the summary judgment so no further reference is made thereto in this BRIEF.

5. On February 3, 1984, plaintiffs filed and served on defendants three INTERROGATORIES under Civil No. 65,617. This has now been changed to 56,441. (Record P 12, 13) INTERROGATORY ONE related to the counterclaim and is not dealt with herein. INTERROGATORY TWO related to the Seventh affirmative defense and asked in what manner plaintiffs had waived their right to principal and interest under the promissory note. INTERROGATORY THREE asked for identification of any written documents other than the promissory note which existed between the parties.

6. On May 11, 1984, defendants filed and served their ANSWER TO INTERROGATORIES under Civil No. 65,617 in which INTERROGATORY TWO was answered as follows:

Dennis B. Chapman and Joseph Chapman had a conversation about the business arrangement shortly before the promissory note was signed by defendants in which Joseph asked defendants to convert the business relationship which began as a partnership or joint venture from that initial relationship into a loan so that he, Joseph, could claim the money he had paid into the partnership or joint venture as a bad debt on his income tax return and demanded that defendants sign

said promissory note as evidence of a loan relationship. Defendants said they did not want to have such a debt instead of the partnership or joint venture relationship. Joseph said he would not demand payment on said promissory note if they signed it, thereby waiving any right to the principal or interest, and became overbearing toward defendants so that they signed said promissory note under duress.

They answered INTERROGATORY THREE that no such written agreements exist.

This paper and is not in the Record. Upon examination of the Record in preparing this BRIEF I went to the Clerk's Office to determine if it had been left in Civil No. 65,617. It was not there, so I examined the Civil Register for Civil No. 56,617 and found that it had not been entered in it. I have a distinct recollection of personally serving it on the attorney for defendant at his office, and its receipt is acknowledged on my file copy as it was on the original I recall filing. The Clerk and his deputy were unable to account for its absence. Because of this missing document I distinctly recall filing right after serving it on defendants, I am attaching a copy to the ADDENDUM TO PLAINTIFFS' BRIEF.

7. Plaintiffs filed a REQUEST FOR ADMISSIONS under Civil No. 65,617. It was dated February 1, 1984, served by mail on February 2, 1984, and filed on February 3, 1984. (Record P 16, 17) It referred to two attached exhibits, EXHIBIT "A" and EXHIBIT "B" but they were not attached. An ADDEMDUM TO REQUEST FOR ADMISSIONS under Civil No. 65,617 was signed, filed and served on February 3 to which said EXHIBIT "A" AND EXHIBIT "B" were attached.

The Civil No. 65,617 on the REQUEST FOR ADMISSIONS and on the ADDENDUM thereto have now been changed to Civil No. 65,441. (Record P. 18, 19, 20) A SECOND REQUEST FOR ADMISSIONS under Civil No. 65,441 was filed on February 10, 1984, which referred to attached EXHIBIT "C", EXHIBIT "D" AND EXHIBIT "E" but they were not attached. (Reccord P 21, 22, 23) On February 27, 1984, an ADDENDUM TO SECOND REQUEST FOR ADMISSIONS was filed to which said EXHIBIT "C", EXHIBIT "D" AND EXHIBIT "E" were attached. (Record P 24, 25, 26, 27, 28, 29)

8. On April 25, 1984, plaintiffs filed under Civil No. 65,441 a MOTION TO COMPEL DISCOVERY, alleging that defendants has failed or refused to reply to the second request for admissions and its addendum which had been served in February, 1984. (Record P 30, 31).

9. On May 1, 1984, defendants' attorney, George H. Mortimer, wrote a letter to Jay Fitt, Esq., plaintiffs' attorney, a photocopy of which was filed on May 3, 1984, (Record P 32) referring to Mr. Mortimer's efforts to get from Mr. Fitt a copy of each of EXHIBIT "C", EXHIBIT "D" and EXHIBIT "E" and which had not yet been received. (Record P 32)

10. On May 7, 1984, Mr. Fitt wrote a letter to Mr. Mortimer sending him a copy of each of said exhibits. (Record P 33)

11. On May 11, 1984, I personally served on defendants behalf on plaintiffs' attorney a single ANSWER TO REQUESTS FOR ADMSSIONS under Civil No. 65,617. Its receipt was acknowledged

on the front page of the original and my file copy. I distinctly recall going directly from his office to the Clerk's Office and filing it with the ANSWER TO INTERROGATORIES mentioned in paragraph 6 above. It is not in the Record, however, so I went through the same rocedure described there and for the same reason include a copy thereof in the ADDENDUJM TO PLAINTIFFS' BRIEF.

With respect to the REQUEST FOR ADMISSIONS request 1 to admit or deny that defendants signed the original of the promissory note of which EXHIBIT "A" was a photocopy, defendants admitted "that each signed the original of a promissory note of which the copy attached to the ADDENDUM is a photocopy but each avers that he and she signed it under duress." Request 2 to admit or deny writing and signing the letter EXHIBIT "B", defendant Dennnis Chapman admitted writing and signing it. Request 3 to admit or deny that defendants received value for the promise to pay the sum of \$11,760.66 at 8% interest to plaintiffs was denied. With respect to the SECOND REQUEST FOR ADMISSIONS and its ADDENDUM, requests 1, 2, 3 and 4, which asked defendants to admit or deny receiving certain sums of money on specified dates for specific purposes, each request was denied; requests 5, 6 and 7, which asked defendants to admit or deny writing the letters of EXHIBIT "C", EXXHIBIT "D" and EXHNIBIT "E", defendant Dennis Chapman admitted writing them but averred that he did so under duress from plaintiff Joseph Chapman, his uncle; request 8,

which asked defendants to admit or deny that no articles of partnership involving defendant and plaintiffs and/or others were ever prepared or signed, defendants admitted it but averred that plaintiff Joseph Chapman told defendant Dennis Chapman that he (Joseph) would take the responsibility of getting them prepared but never did; request 9, which asked defendants to admit or deny that at no time had they provided the plaintiff with an accounting of their business activities in the manufacture of doll houses for sale, was denied and defendants averred that the books which defendant Dennis Chapman kept on said business were always available to plaintiff Joseph Chapman on request; and request 10, which asked defendants to admit or deny that they made certain specific payments to on specified dates, was admitted in part but otherwise denied.

12. On October 23, 1984, plaintiffs served a MOTION FOR SUMMARY JUDGMENT in Civil No. 65,617 and stated "Plaintiff's Affidavit will submitted to the Court hereafter." No copy of this MOTION is present in the Record and it remains in the file of Civil No. 65,617.

13. On November 8, 1984, PLAINTIFFS' AFFIDAVIT under Civil No. 65,617 was filed and it was entered in Civil No. 65,411. (Record P 34 through 48) 14. On December 3, 1984 plaintiffs filed a REQUEST FOR RULING in Civil No. 65,617. No copy of it is in the Record. It remains in Civil No. 65, 617.

15. On December 6, 1984 the Court made a MINUTE ENTRY in Civil No. 65,617 (65,441), which is filed in Civil No. 65,411, declining to rule on the MOTION FOR SUMMARY JUDGMENT until appropriate steps had been taken to consolidate Civil No. 65,617 with Civil No. 65,441 which the Court found to involve the same matter. (Record P 49)

16. On June 4, 1985 plaintiffs filed a MOTION TO CONSOLIDATE AN (sic.) ORDER under Civil No. 64,441; 65,617. The Court signed the ORDER on June 26, 1984. (Record P 52, 53)

17. On the same day, June 4, 1984, plaintiffs filed a MOTION FOR SUMMARY JUDGMENT under Case No. 65,441; 65,617 alleging that EXHIBIT "A" and EXHIBIT "B" were attached thereto, but they were not, and stated that "Plaintiff's affidavit will be submitted to the Court hereafter." (Record P 50, 51)

18. On July 22, 1984, plaintiffs filed another MOTION FOR SUMMARY JUDGMENT under Case No. 65,441, 65,617 alleging again that EXHIBIT "A" and EXHIBIT "B" were attached theeto, but they were not, and again stated "Plaintiff's Affidavit will be submitted to the Court hereafter." (Record P 54, 55)

19. On August 20, 1985, an AFFIDAVIT OF PLAINTIFF, Joseph Chapman, was filed. (Record P 56, 57)

20. On September 5, 1985, plaintiffs filed a REQUEST FOR RULING. (Record P 59, 59)

21. On September 12, 1985 the Court made a MINUTE ENTRY granting summary judgment for the principal amount of

\$11,760.66 plus \$7,335.93 interest with costs to plaintiff based only on the affidavit, promissory note and correspondence submitted. The question of attorneys fees was reserved for further hearing at the request of either party. (Record P 60, 61) No such request has been made.

22. On October 9, 1985, plaintiff filed an AFFIDAVIT AS TO COSTS. (Record P 62, 63)

23. On October 9, 1985, the Court signed a JUDGMENT consisting of FINDINGS OF FACT and CONCLUSIONS OF LAW. (Record P 64, 65, 66)

24. On November 5, 1985, defendants filed a NOTICE OF APPEAL in the consolidated cases No. 65,441 and No. 65,617 and a NOTICE OF INTENT TO MOVE TO VACATE HEARING SET FOR NOVEMBER 8, 1985, in both Civil No. 65,441 and 65,617. The hearing was to explore the finances of defendants by plaintiffs which defendants deemed premature in view of the NOTICE OF APPEAL. (Record P 67, 68, 69)

25. On November 8, 1985, the Court made a MINUTE ENTRY in Case Number 65,441 striking the hearing. (Record P 71)

26. On December 27, 1985, the OFFICE OF THE CLERK of the SUPREME COURT OF UTAH acknowledged that record index on appeal was filed that day and set February 5, 1986, as the due date for Appellant's brief. (Record P 72)

27. The DOCKETING STATEMENT was filed on December 24, 1985. (Record P 73 through 78)

SUMMARY OF ARGUMENT

1. The summary judgment was improperly granted because Rule 56 (c) provides that summary judgment may be rendered only if the relevant documents on file "show that there is no genuine issue as to any material fact." There are several genuine issues of material fact in the present case revealed by the relevant documents.

2. The relevant documents to be considered by the Court are enumerated in Rule 56 (c) to be "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any." In this case the Court made its ruling on "the strength of the affidavit, promissory note, and correspondence submitted." The Court did not take into consideration the pleadings. Nor did the Court consider the answers to interrogatories, and admissions on file, probably because they were not before him in view of the circumstances explained in paragraphs 6 and 10 above.

3. If the Court had taken into consideration the pleadings, even without considering the answers to interrogatories and the admissions on file, and even more strongly if they are considered, the following genuine issues of material fact should have made it apparent that summary judgment could not properly be granted:

A. The genuine issue as to duress and misrepresentation by plaintiff Joseph Chapman upon his nephew Dennis Chapman in the signing of the promissory note and some of the correspondence.

B. The genuine issue as to failure of consideration for the promissory note.

C. The genuine issue as to the nature of the business relation between plaintiffs and defendants at the start, which defendants say was a partnership and plaintiffs say was that of borrower and lender.

(D) The genuine issue whether plaintiffs had waived the right to and is estopped from making demand for payment of principal and interest under the promissory note.

While defendants submit that all of these genuine issues exist, it is not necessary that the court find that they do all exist to bar summary judgment, any one is quite sufficient.

The decision granting summary judgment is therefore erroneous. It should be reversed and the case remanded for trial.

ARGUMENT

The decision of this Court will involve a consideration of the wording of Rule 56 (C) which, in relevant part, reads as follows:

...The judgment sought shall be rendered forthwith 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...

This Court has had many opportunities to apply this quoted

sentence in cases where summary judgment had been improperly rendered because at least one genuine issue of material fact existed.

In DISABLED AMERICAN VETERANS ETC. V. HENDRIXSON, 340 P 2d 416, 9 Utah 152 (1959) the question of fact was presented as to whether plaintiff was a corporation having right to sue in its own name. The Court held (1) that this question of fact precluded entry of summary judgment and (2) that if any material fact asserted by plaintiff is contradicted by defendant the facts as stated by the defendant must on such motion be taken as true. The material facts about the promissory note asserted by plaintiffs here are contradicted by defendants in their answer, as well as in their ANSWERS TO INTERROGATORIES and ANSWERS TO REQUESTS FOR ADMISSIONS. They must be accepted as true.

In SINGLETON V. ALEXANDER, 431 P 2d 126, 10 Utah 2d 292 (1967) summary judgment was rendered despite an issue of fact as to whether water had been on the floor of a launromat long enough to establish negligence on the proprietors. This Court reversed and remanded the case for trial. So here there are similar genuine issues of material fact that cannot properly be decided on summary judgment but must be tried.

On a like complex question of fact involving the quantity and reasonable value of attorney's services, this Court reversed a summary judgment and remanded the case for trial in

HATCH V. SUGARHOUSE FINANCE COMPANY, 434 P 2d 758, 20 Utah 2d 156 (1967). The questions of fact in the present case are equally as complex as the one in HATCH. This case should also be reversed and remanded for trial.

In WILLDEN V. KENNECOTT COPPER CORPORATION, 476 P 2d 687, 25 Utah 2d 96 (1970) summary judgment was granted despite a dispute over the question whether a patient in an ambulance was to pay for the ride or receive it as a gratuitous accomodation. This is an issue concerning construction of a contract, just as in this case there is an issue of construction of the promissory note. In swillden this Court reversed and remanded with instructions. Defendants submit that this Court should do the same here.

In JUDKINS V. TOONE, 492 P 2d 980, 27 Utah 2d 17 (1970) summary judgment was granted for specific performance of an earnst money agreement despite material facts outside the document which raised genuine issues. This Court set aside the judgment and remanded the case for trial. So here there are genuine issues of material fact outside the affidavit, the promissory note and correspondence which raise genuine issues of material fact. The Court should follow JUDKINS as precedent for setting aside the judgment in this case and remand it for trial.

In RICH V. McGOVERN, 551 P 2d 1266 (1976) summary judgment was granted despite an issue of fact connected with the execution of a purchase contract involving conduct of one

party alleged to amount to misrepresentations and fraud. This court reversed and remanded holding that this issue of fact could not properly be decided by summary judgment and required a trial. In the present case there is an issue of duress and misrepresentation on plaintiffs' part which likewise requires a trial to resolve.

Summary judgment was also granted in the case IN RE WILLIAMS ESTATES, 348 P 2d 683, 10 Utah 2d 83 (1960) despite an issue of fact whether a contract had been entered into and performed. Defendants have raised this same issue here with respect to the promissory note. This Court reversed and remanded the WILLIAMS case and it should do the same here.

In RELIABLE FURNITURE CO. V. FIDELITY & GUAR. INS. UNDER., 398 P2d 685, 16 Utah 2d 211 (1965) summary judgment was rendered despite an issue of fact whether a release was obtained by duress or fraud. This Court reversed and remanded the case when the record was held not to show as a matter of law that there was no duress or fraud in obtaining the release. The summary judgment rendered in this case should likewise be reversed and remanded.

Defendants respectfully submit that the actions which defendants have said the Court should take should be taken even if the ANSWER TO INTERROGATORIES and ANSWER TO REQUESTS FOR ADMISSIONS are not considered by the Court because they are not of Record. The pleadings are specifically mentioned in Rule 56 (c) as papers that must be taken into consideration.

Defendants' ANSWER to the COMPLAINT disputes plaintiffs' position on every issue just as definitely as do the ANSWER TO INTERROGATORIES and the ANSWER TO REQUESTS FOR ADMISSIONS. DISABLED AMERICAN VETERANS ETC. V. HENRIXSON and HOLBROOK COMPANY V. ADAMS, 542 P 2d 191 (1975) hold that if any material fact asserted or averred by plaintiff is contradicted by defendant, the facts as averred or stated by the defendant must be accepted as true.

CONCLUSION

In the light of the foregoing facts and argument, defendants respectfully submit that this Court should reverse the summary judgment and remand the case for trial. Only in this way can justice be done to defendants.

Respectfully submitted,


George H. Mortimer

ADDENDUM TO PLAINTIFFS' BRIEF

1. JUDGMENT, including FINDINGS OF FACT and CONCLUSIONS OF LAW
2. ANSWER TO INTERROGATORIES
3. ANSWER TO REQUESTS FOR ADMISSIONS

JAY FITT
Attorney for Plaintiff
1325 South 800 East, Suite 200
Orem, Utah 84058
(801) 225-5550

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

--oooOooo--

JOSEPH CHAPMAN and MYRNA
CHAPMAN,

JUDGMENT

Plaintiffs,

vs.

DENNIS B. CHAPMAN and NANCY S.
CHAPMAN,

Defendants.

Case No. 65,441

--oooOooo--

Upon consideration of Plaintiffs' Motion for Summary Judgment, the affidavit, promissory note, and correspondence submitted, the Court makes the following:

FINDINGS OF FACT

1. That the promissory note executed by Defendants in the amount of \$11,760.66 payable to Plaintiffs and dated August 1, 1976, evidenced a loan repayable under its terms.

2. Defendants failed to continue payments on the promissory note after May, 1979.

3. Plaintiffs' filed their Complaint against Defendants on December 9, 1983.

4. Interest which has accrued and which is unpaid as of September 11, 1985, amounts to \$7,335.93.

Upon consideration of the aforesaid Findings of Fact, the

Court makes the following:

CONCLUSIONS OF LAW

1. That the promissory note executed by Defendants in the amount of \$11,760.66 payable to Plaintiffs and dated August 1, 1976 is valid and enforceable.

2. That Plaintiffs brought their cause of action against Defendants within six years of Defendants default in payments on the promissory note which six years is the period of limitations of actions founded upon an instrument in writing and that Plaintiffs' Complaint to obtain judgment on the promissory note is not barred by the statute of limitations.

3. That Plaintiffs are entitled to judgment against Defendants, jointly and severally, in the amount of \$11,760.66 as principal and \$7,335.93 as interest, with interest accrued thereon at the rate of 12% per annum until paid.

4. That Plaintiffs be awarded their costs of this action in the amount of \$50.00 as filing fees and \$9.75 as fees for service of process.

5. That the matter of attorney's fees be reserved for consideration at the request of either party upon proper notice.

WHEREFORE, it is the judgment of this Court that Plaintiffs be awarded judgment against Defendants, jointly and severally, in the amount \$11,760.66 as principal, \$7,335.93 as interest, and \$59.75 as costs, with interest thereon at the rate of 12% per annum until paid.

IT IS FURTHER ORDERED that the matter of attorney's fees be and the same is hereby reserved for further hearing which the

Court will consider upon the request of either party and upon proper notice being given.

DATED this 9th day of ~~September~~^{Oct}, 1985.

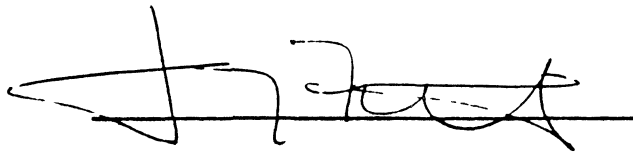
BY THE COURT:

51
David Sam, District Judge

CERTIFICATE OF MAILING

I hereby certify the a copy of the foregoing was mailed, postage prepaid on this 26 day of September, 1985, to:

George Mortimer, Esq.
Attorney for Defendants
3687 North Littlerock Drive
Provo, Utah 84604



[Handwritten scribbles]

IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR UTAH COUNTY - STATE OF UTAH

JOSEPH CHAPMAN and
MYRNA CHAPMAN,

Plaintiffs,

vs.

DENNIS B. CHAPMAN and
NANCY S. CHAPMAN,

Defendants.

ANSWER TO INTERROGATORIES

Civil No. 65617

Dennis B. Chapman and Nancy S. Chapman answer plaintiffs interrogatorie
as follows:

INTERROGATORY One:

In paragraph 5 of your counterclaim you state that "...Dennis mistakenly paid Joseph \$740.00 in money over a period starting in October 1976 and ending in December 1978..." State how and when and how much each payment was made.

ANSWER. Dennis made the following payments were made to Joseph Chapman c
the dates, in the amounts and the manner stated below:

<u>Date</u>	<u>Amount</u>	<u>Manner of Payment</u>
October 19, 1976	\$150.00	Check
November 15, 1976	\$150.00	Check
December 2, 1976	\$150.00	Check
January 22, 1977	\$150.00	Check
August 1978	\$10.00	Cash

September	1978	\$30.00	Cash
November	1978	\$50.00	Cash
December	1978	\$50.00	Cash

INTERROGATORY TWO:

State in what manner Plainantiffs waived their right to the principal and interest under the note you executed to them on 1 August 1976, in the amount of \$11,760.66 at 8% interest.

ANSWER. Dennis B. Chapman and Joseph Chapman had a conversation about the business relationship shortly before the said promissory note was signed by defendants in which Joseph asked defendants to convert the business relationship which began as a partnership or joint venture from that initial relationship into a loan so that he, Joseph, could claim the money he had paid to the partnership or joint venture as a bad debt on his income tax return and demanded that defendants sign said promissory note as evidence of a loan relationship. Defendants said they did not want to have such a debt instead of the partnership or joint venture relationship. Joseph said he would not demand payment on said promissory note if they signed it, thereby waiving any right to the principal or interest, and became overbearing toward defendants so that they signed said promissory note under duress.

INTERROGATORY THREE.

State whether any written agreements exist between Plaintiffs, or wit her of them, and Defendants, or either of them, which have a date of 1975 through the present date, except for the said promissory note.

ANSWER. No such written agreements exist.

September	1978	\$30.00	Cash
November	1978	\$50.00	Cash
December	1978	\$50.00	Cash

INTERROGATORY TWO:

State in what manner Plaintiff's waived their right to the principal and interest under the note you executed to them on 1 August 1976, in the amount of \$11,760.66 at 8% interest.

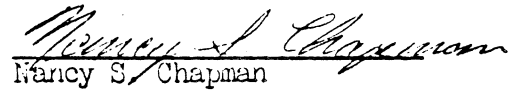
ANSWER. Dennis B. Chapman and Joseph Chapman had a conversation about the business relationship shortly before the said promissory note was signed by defendants in which Joseph asked defendants to convert the business relationship which began as a partnership or joint venture from that initial relationship to a loan so that he, Joseph, could claim the money he had paid to the partnership or joint venture as a bad debt on his income tax return and demanded that defendants sign said promissory note as evidence of a loan relationship. Defendants said they did not want to have such a debt instead of the partnership or joint venture relationship. Joseph said he would not demand payment on said promissory note if they signed it, thereby waiving any right to the principal interest, and became overbearing toward defendants so that they signed said promissory note under duress.

INTERROGATORY THREE.

State whether any written agreements exist between Plaintiff's, or either of them, and Defendants, or either of them, which have a date of 1975 through the present date, except for the said promissory note.

ANSWER. No such written agreements exist.


Dennis B. Chapman


Nancy S. Chapman

STATE OF UTAH)
)SS:-
County of Utah)

Dennis B. Chapman and Nancy S. Chapman, being duly sworn, depose and say that they have carefully studied the INTERROGATORIES submitted to them as defendants in the above identified civil action, that the answers to the INTERROGATORIES are true to the knowledge of each of them. Subscribed and sworn to before me by Dennis B. Chapman and Nancy S. Chapman, known to me and known to be the defendants in the above-identified action, this 11th day of May, 1984.


Notary Public

Residing at Provo, Utah

My commission expires March 24, 1987

George H. Mortimer
Attorney for Defendants
3687 North Littlerock Drive
Provo, Utah 84604
(801) 224-5647

IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR UTAH COUNTY - STATE OF UTAH

JOSEPH CHAPMAN and MYRNA CHAPMAN,	Plaintiffs,
vs.	
DENNIS B. CHAPMAN and NANCY S. CHAPMAN,	Defendants.

ANSWER TO REQUESTS FOR ADMISSIONS

Civil No. 65617

Defendants answer the REQUEST FOR ADMISSIONS, the ADDENDUM TO REQUEST FOR ADMISSIONS and the SECOND REQUEST FOR ADMISSIONS as follows:

A. REQUEST FOR ADMISSIONS AND ADDENDUM TO REQUEST FOR ADMISSIONS.

1. Admit or deny that you, or either of you, signed the original of the promissory note, a copy of which is attached hereto and marked as Exhibit "A".

No copy of a promissory note was attached to the REQUEST FOR ADMISSIONS as EXHIBIT "A". A copy of a promissory note was supplied with said ADDENDUM TO REQUEST FOR ADMISSIONS but it bears no legend that it is EXHIBIT "A".

ANSWER: Defendants admit that each signed the original of a promissory note of which the copy attached to the ADDENDUM is a photocopy but each avers that he and she signed it under duress.

2. Admit or deny that you, or either of you, wrote and signed the letter dated 23 November 1983, a copy of which is attached hereto and marked as Exhibit "B".

No copy of a letter dated 28 November 1983 was attached to the REQUEST FOR ADMISSIONS as EXHIBIT "B". A copy of a letter dated 28, Nov 1983 was supplied with said ADDENDUM TO REQUEST FOR ADMISSIONS but it bears no legend that it is EXHIBIT "B".

ANSWER: Defendant Denis B. Chapman admits that he wrote and signed the original of a letter dated 28, Nov 1983 addressed to "Dear Mr. Fitt" of which the copy attached to said ADDENDUM TO REQUEST FOR ADMISSIONS is a photocopy.

3. Admit or deny that you received value for your promise to pay the sum of \$11,760.66 at 8% interest to Plaintiffs.

ANSWER: We deny that we, or either of us, received value for our promise to pay the sum of \$11,760.66 at 8% interest.

B. SECOND REQUEST FOR ADMISSIONS

1. Admit or deny that you received from Plaintiff the sum of \$1,500.00 in June, 1975, to pay for concrete used in the foundation of your home.

ANSWER: We deny that we, or either of us, received from either plaintiff the sum of \$1500.00 in June 1975, to pay for concrete used in the foundation of our home.

2. Admit or deny that you received from Plaintiff the sum of \$1500.00 in July 1975, to pay, in part, for additional foundation work and to pay a loan to First Security Bank.

ANSWER: We deny that we, or either of us, received from either plaintiff the sum of \$1500.00 in July, 1975, to pay, in part, for additional foundation work

3. Admit or deny that you received from Plaintiff the sum of \$700.00 in August, 1975, to pay for lumber to be used in your home.

ANSWER. We deny that we, or either of us, received from either plaintiff the sum of \$700.00 to pay for lumber to be used in our home.

4. Admit or deny that you received from Plaintiff the sum of \$6,700.00 in September, 1975, for the purpose of purchasing plywood and masonite for the intended use of building doll houses for sale to the public.

ANSWER: We deny that the sum of \$6700.00 was received in September, 1975, for the stated purpose.

5. Admit or deny that you wrote the letter dated July 12, 1979, a copy of which is attached hereto as Exhibit "C".

No copy of a letter dated July 12, 1979, was attached to the SECOND REQUEST FOR ADMISSIONS as EXHIBIT "C". A copy of a letter dated 12 July 1979 was supplied to defendants' attorney by Jay Fitt with a covering letter dated May 7, 1984 marked EXHIBIT "C".

ANSWER: Defendant Dennis B. Chapman admits that he wrote a letter dated 12 July 1979 of which EXHIBIT "C" appears to be a photocopy but avers that it was written under the duress of a telephone call from his Uncle, Joseph Chapman, one of the plaintiffs herein.

6. Admit or deny that you wrote the letter dated July 12, 1979, a copy of which is attached hereto as Exhibit "D".

No copy of a letter dated July 12, 1979, was attached to the SECOND REQUEST FOR ADMISSIONS as EXHIBIT "D". A copy of a letter dated July 12, 1979 marked "letter #2" and EXHIBIT "D" was supplied to defendants' attorney by Jay Fitt with a covering letter dated May 7, 1984.

ANSWER: Defendant Dennis B. Chapman admits that he wrote a letter dated July 12, 1979 of which EXHIBIT "D" appears to be a part thereof. Defendant Dennis B. Chapman's recollection is that EXHIBIT "C" and EXHIBIT "D" are parts of the same letter rather than being two separate letters. In any event the letter marked EXHIBIT "D" was also written under the same duress as EXHIBIT "C".

7. Admit or deny that you wrote the letter dated November 2, 1981, a copy of which is attached hereto as Exhibit "F".

No copy of a letter dated November 2, 1981, was attached to the SECOND REQUEST FOR ADMISSIONS as EXHIBIT "F". A copy of a letter dated Nov 2 1981 was supplied to defendants' attorney by Jay Fitt with a covering letter dated May 7, 1984

ANSWER: Defendant Dennis B. Chapman admits that he wrote a letter dated Nov 2 1981 of which EXHIBIT "F" appears to be a photocopy but states that it was written under duress of a communication from his Uncle, Joseph Chapman, shortly before the letter was written.

8. Admit or deny that no articles of partnership involving you or either of you and the Plaintiff and/or others were ever prepared or signed.

ANSWER: No articles of partnership involving defendants or either of them and plaintiffs or either of them were ever, to defendants' knowledge, prepared or signed but defendants aver that plaintiff Joseph Chapman told Defendant Dennis B. Chapman that he (Joseph) would take the responsibility of having

such articles of partnership prepared for signature by all the parties. Plaintiff Joseph Chapman failed ever to submit such articles to defendants for approval and signature.

9. Admit or deny that at no time have you provided the Plaintiff with an accounting of your business activities in the manufacturing of doll houses for sale.

ANSWER: Defendant Dennis B. Chapman denies that he did not at any time provide the Plaintiff with an accounting of the business activities in the manufacture of doll houses for sale but, on the contrary, avers that the books which he, Dennis B. Chapman, kept on the said business activities were always available to plaintiff, Joseph Chapman, upon request.

10. Admit or deny that you made payments to the Plaintiff as follows:

- a) On or about 21 Oct. 1976, \$150.00
- b) On or about 4 Dec. 1976, 300.00
- c) On or about 11 Aug. 1978, 10.00
- d) On or about 15 Sept. 1978, 30.00
- e) On or about 1. Nov. 1978, 50.00
- f) On o about 21 Dec. 1978, 50.00
- g) About Jan. 1979, 50.00
- h) About Feb. 1979, 50.00
- i) About Mar. 1979, 50.00
- j) About Apr. 1979, 50.00
- k) About May, 1979, 50.00

ANSWER: Defendant Dennis B. Chapman admits that he made the payments stated in items a), b), c), d), e) and f) but denies that the payments stated in items g), h), i), j) or k) were made by him. Defendant Nancy S. Chapman denies that she made the payments stated in items g), h), i), j) or k).

STATE OF UTAH)
)SS:-
County of Utah)

Dennis B. Chapman
Nancy S. Chapman

Dennis B. Chapman and Nancy S. Chapman, being duly sworn, depose and say that they have carefully studied the requests for admissions submitted to them as defendants in the above identified civil action, that they interpret some of the requests to be directed or apply to one of them only, that the answers each has given to the requests that apply to them individually are true to the knowledge of the one making the answer, and that the answers to the requests that apply to both of them are true to the knowledge of each of them. Subscribed and sworn to before me by Dennis B. Chapman and Nancy S. Chapman, known to me and known to be the defendants in the above-identified action, this 11th day of May, 1984.

George H. Mortimer
Notary Public

Residing at Provo, Utah

My commission expires March 24, 1987

SUPREME COURT OF UTAH

STATE OF UTAH

JOSEPH CHAPMAN and
MYRNA CHAPMAN,
Plaintiffs and Respondents
vs.
DENNIS B. CHAPMAN and
NANCY S. CHAPMAN,
Defendants and Appellants.

No. 21000

CERTIFICATE OF SERVICE

I, George H. Mortimer, attorney for defendants-appellants hereby certify that I have caused four (4) copies of the annexed APPELLANTS' BRIEF to be served by messenger on Jay Fit, Esq., attorney for plaintiffs-respondents, 1325 South 800 East, Orem, Utah 84058 at this 5th day of February, 1986.


George H. Mortimer