

1986

Joan Debry, and Robert J. Debry v. Occidental/  
Nebraska Federal Savings Bank, and KYM C.  
Meehan, dba, Resort Property Management and  
Lodging : Brief of Appellant

Utah Supreme Court

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Verden E. Bettilyon; Woodbury, Bettilyon and Kesler; Attorneys for Respondent.

H. Brian Davis; Attorney for Appellants.

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#### Recommended Citation

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DOCKET NO. 21003

IN THE UTAH SUPREME COURT

JOAN DEBRY, and  
ROBERT J. DEBRY,

Appellants,

vs.

OCCIDENTAL/NEBRASKA FEDERAL  
SAVINGS BANK, and KYM C. MEEHAN,  
dba, RESORT PROPERTY MANAGEMENT  
AND LODGING,

Respondents.

Case No. 21003

#13b

APPELLANTS' BRIEF

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Salt Lake City, Utah 84109

**FILED**

JUL 3 1986

IN THE UTAH SUPREME COURT

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JOAN DEBRY, and	)	
ROBERT J. DEBRY,	)	
	)	
Appellants,	)	
	)	
vs.	)	
	)	
OCCIDENTAL/NEBRASKA FEDERAL	)	Case No. 21003
SAVINGS BANK, and KYM C. MEEHAN,	)	
dba, RESORT PROPERTY MANAGEMENT	)	
AND LODGING,	)	
	)	
Respondents.	)	

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APPELLANTS' BRIEF

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## ISSUES

1. Did the Stipulation and Order waive DeBry's rights to their personal property ("equipment package")?

2. Do the parties' actions previous to and subsequent to the Stipulation and Order indicate that such a waiver was not part of the agreement under the Rule of Practical Construction?

3. Was the award of attorney's fees to Occidental improper?

4. Did Occidental have any rights to the supersedeas bond after the withdrawal of the notice of appeal?

5. Is DeBry now entitled to attorney's fees for his efforts in defending Occidental's attempts at the supersedeas bond?

## STATEMENT OF THE CASE

### Underlying Facts:

1. The appellants (plaintiffs below) Joan and Robert DeBry [hereinafter referred to as DeBry] owned a condominium in Park City, Utah. In December of 1984, DeBry relinquished ownership of the condominium to Nebraska Savings (the predecessor to the instant Appellee) under a deed in lieu of foreclosure. (Record at 043.)

2. On November 9, 1984, before the settlement agreement was reached, DeBry's attorney sent a letter to Verden E. Bettilyon, the attorney representing Nebraska Savings, to the effect that DeBry would like to recover certain personal property, termed an "equipment package," which DeBry described as "silverware, mixmaster, and other items." DeBry had separately paid \$1,200.00 for these goods. (Addendum, Exhibit A, Record at 54.)

3. A more complete description of this "equipment package" is given at Record 6-7. This equipment package was not part of the security agreement securing the mortgage, but was separately selected and purchased by DeBry as personal property, unattached to the real property underlying the mortgage. (Record at 59.)

4. A separate "furniture package" was part of the secured property under the mortgage. This "furniture package" was personal property which came with the condominium, mostly consisting of furniture. (Record at 78-79.)

5. On November 14, 1984, DeBry and Nebraska Savings entered into a stipulation which states:

"By this Stipulation and through this Court's Order, plaintiffs hereby release and forgive all claims and causes of action held against Verden Bettilyon, successor trustee, and Nebraska Savings and Loan Association, a Nebraska corporation. Additionally, the said defendants release and forgive all claims and causes of action held against plaintiffs Robert and Joan DeBry. Said mutual release shall be effective against all claims held by these parties now or hereafter arising due to the real and personal property and improvements described above."

(Addendum, Exhibit B, Record at 63.)

6. The "described above" property referred to in the Stipulation is the following:

Unit No. C11, Sun Creek Condominiums, a Utah condominium project, together with a 3.39 percent individual ownership interest in the common areas and facilities of said condominiums, as identified and established in the Record of Survey Map filed of record May 3, 1982, as Entry No. 190970 and the "Declaration and By-laws of Sun Creed(sic) Condominiums" recorded May 3, 1982, as Entry No. 191971 in Book M0218 at pages 637-80, and the Amendments to said declaration and By-laws recorded in Summit County, Utah.

(Id.)

7. On December 5, 1984, an Order was signed, which essentially repeated and gave effect to the stipulation. (Addendum, Exhibit C, Record at 64.)

8. On December 18, 1984, after the Stipulation and Order had been signed, Verden E. Bettilyon wrote to Mr. DeBry and stated: "Please contact Mr. Polichette at the condominium to make arrangements to pick up your equipment package." (Addendum, Exhibit D, Record at 55.)

9. When DeBry relinquished control of the condominium, the equipment package was at least 90% complete. Nevertheless, on the appointed day, when DeBry went to inventory and remove the property, they discovered that it had already been removed. They were told it had been placed in storage. Appellants were subsequently told that at the time Nebraska's agent had removed the property, no inventory had been taken, and that only a small portion of it was actually in storage. (Record at 2-3.)



10. On December 20, 1984, Mr. DeBry responded by letter to Mr. Bettilyon to the following affect:

Dear Mr. Bettilyon:

We did make arrangements with Mr. Polichette to pick up the equipment package. However, when we arrived, everything (except for a couple of miscellaneous items) was gone.

To our knowledge the equipment was all present and accounted for when the bank took possession. Thus, it appears that your agents have lost or stolen the merchandise.

Please undertake to locate the missing equipment or arrange to pay for the loss. (Addendum, Exhibit E, Record at 56.)

11. On June 25, 1985, DeBry brought suit against Occidental Nebraska Federal Savings Bank [the successor to Nebraska Savings, hereinafter referred to as Occidental] to cause them to replace or repay DeBry for the equipment package. The suit also named as a defendant Kym C. Meehan, Occidental's property manager. (Record at 1-3.)

Dismissal and Attorney's Fees:

12. Occidental made a motion to dismiss based on the stipulation and order. (Record at 12-13.) Occidental's motion was granted at a hearing that counsel for DeBry failed to attend because of some confusion about the hearing date. (Record at 51-53.) Mr. Bettilyon, counsel for Occidental, also went ahead with a motion for, and obtained a judgment for, attorney's fees in the amount of \$994.75. (Addendum, Exhibits F and G, Record at 37-41.)

Subsequent Procedural Matters:

13. On October 18, 1985 (other motions having been heard in the interim) DeBry moved for stay of judgment of Occidental's judgment for attorney's fees, based on the fact that the dispute had not yet been resolved as to the other defendant. (Record at 107.) This was probably unnecessary since no Rule 54(b) certification had been made in this multi-party suit.

14. At the hearing on DeBry's motion on November 4, 1985, considerable discussion was had as to whether there was any just reason for delay of Nebraska's judgment. (Record at 167.) The court denied DeBry's motion to stay the judgment.

15. DeBry understood the lower court's November 4, 1985 denial of the motion to stay, especially in light of the discussion about there being no just reason for delay as a Rule 54(b) certification, and filed a Notice of Appeal to the Utah Supreme Court on November 15, 1985. (Record at 123-128.)

16. DeBry posted a supersedeas bond in the lower court to cover the amount of the \$994.75 judgment for attorney's fees. (Record at 141-143.)

17. Occidental did not submit its proposed order from the November 4, 1985 hearing until December 16, 1985. The proposed order did not contain any reference to Rule 54(b), nor use any Rule 54(b) operative language. (Addendum, Exhibit H, Record at 152-153.)

18. DeBry then made an objection to the form of the order and submitted a proposed order copying exactly the language of Nebraska's proposed order, but including the Rule 54(b) operative language. (Addendum, Exhibit I, Record at 149-151.) This motion was denied.

19. On January 15, 1986, DeBry made a motion to withdraw their notice of appeal in the Utah Supreme Court based on the fact that there was not, as previously thought, a final Rule 54(b) final order in the instant multi-party suit. (Addendum, Exhibit J, Record at 169.)

20. Occidental consented to this motion. (Addendum, Exhibit K, Record at 170.) DeBry's motion was therefore granted. (Record at 171.)

21. Thereafter, on February 19, 1986, Occidental made a motion for the supersedeas bond to be paid to Nebraska. (Addendum, Exhibit L, Record at 156.)

22. A different district court judge, Scott M. Daniels, was presiding at the March 3, 1986 hearing on Occidental's Motion to Obtain the Bond. Judge Daniels granted Nebraska's motion. (Record at 160.)

### Present Procedural Setting

23. Thereafter, on March 4, 1986, DeBry made a motion to reinstate the appeal at the Utah Supreme Court, or in the alternative, a motion for a writ of mandamus. This motion was based on the grounds that Nebraska and the lower court had placed DeBry in the "Catch-22" situation of not issuing a Rule 54(b) final appealable order and acting as if a final judgment was issued by letting Occidental collect the supersedeas bond. The motion also asked for attorney's fees. (Record at 162-164.)

24. The Utah Supreme Court considered DeBry's motion as one for interlocutory appeal. (Record at 190.) Based on that ruling, the parties are now before the court.

### SUMMARY OF THE ARGUMENT

1. Since the lower court's order of dismissal is essentially a summary judgment, the facts should be construed in favor of DeBry.

2. The Stipulation and Order do not contemplate that DeBry relinquish their personal property which was not secured by the mortgage, which property is known as an "equipment package". The Stipulation and Order does contemplate a waiver as to the personal property known as a "furniture package", which was secured as part of the mortgage.

3. Occidental, through Mr. Bettilyon, wrote letters to DeBry both before and after the Stipulation and Order were signed, which letters were to the effect that DeBry should come and get their equipment package. These acts show that DeBry had the right to the equipment package under the Rule of Practical Construction.

4. The award of attorney's fees to Occidental was inappropriate since there was no bad faith. The letters of Mr. Bettilyon alone indicate the basis for this suit. Moreover, the award of attorney's fees was obtained at a hearing which DeBry's counsel did not attend and at which Occidental's counsel, Mr. Bettilyon, failed to inform the court of the above-mentioned letters, even though he personally had written them.

5. Occidental had no right to obtain the supersedeas bond once the notice of appeal had been withdrawn. The appeal was moot, and there was no Rule 54(b) final judgment. To give the bond to Occidental would amount to giving Occidental the benefit of a final judgment without giving DeBry and appealable order--a "Catch 22" situation.

6. DeBry should be awarded attorney's fees for having to deal with Occidental's bad faith and contradictory actions in attempt to obtain the supersedeas bond.

## ARGUMENT

### POINT I

#### THE FACTS SHOULD BE CONSTRUED IN THE LIGHT MOST FAVORABLE TO DEBRY

The Order of Dismissal and Judgment, along with the Findings of Fact, are a result of Occidental's motion to dismiss. The Order and Judgment is a ruling on the merits based on the motion. Hence, it is in essence a summary judgment. For this reason, the facts on appeal should be construed in the light most favorable to DeBry. In addition, the policy in favor of giving a party his day in court indicates that this summary form of judgment should be reversed if there is a triable issue of fact and if there is a substantial basis for appellant's claim.

### POINT II

#### THE STIPULATION AND ORDER DID NOT WAIVE DEBRY'S RIGHTS TO THE EQUIPMENT PACKAGE

Occidental contends that the stipulation and order arrived at contemplate the plaintiffs giving away their "equipment package." Occidental cites paragraph 5 of the stipulation which reads:

" . . . plaintiffs hereby release and forgive all claims and causes of action held against . . . Nebraska Savings and Loan. . .

Such mutual release shall be effective against all claims held by these parties now or hereafter arising due to the real and personal property and improvements described above." (Addendum, Exhibit B, Record at 63.)

The "described above" property is the following:

Unit No. C11, Sun Creek Condominiums, a Utah condominium project, together with a 3.39 percent individual ownership interest in the common areas and facilities of said condominiums, as identified and established in the Record of Survey Map filed of record May 3, 1982, as Entry No. 190970 and the "Declaration and By-laws of Sun Creed(sic) Condominiums" recorded May 3, 1982, as Entry No. 191971 in Book M-218 at pages 637-80, and the Amendments to said declaration and By-laws recorded in Summit County, Utah. (Id.)

The only personal property that would be included in this would be if interest in the common area were held as personal property (as is sometimes the case) or if part of these improvements or property were part of the condo purchase.

The latter is the case in this instance. With the mortgage, DeBry signed a security agreement (Record at 78) which included as collateral certain furniture, which is listed as an attachment to the security agreement. (Record at 79.) Occidental admits that this furniture is the personal property contemplated by the above stipulation. (Record at 79.) Occidental, however, confuses this "furniture package" provided with the condominium with DeBry's "equipment package," which DeBry bought separately and was not part of the secured property underlying the mortgage.

The mixers, knives, and plates, etc. (equipment package) were personal belongings of the plaintiffs. What if the plaintiffs had left a suitcase of clothes, or perhaps their wedding rings in the condominium? This stipulation simply does not relate to such items, especially since both before and after the settlement agreement, the message from Occidental was essentially, "come and get your property."

### POINT III

UNDER THE "RULE OF PRACTICAL CONSTRUCTION" THE  
AGREEMENT WAS THAT THE "EQUIPMENT PACKAGE"  
WOULD BE RETURNED TO PLAINTIFFS

The "Rule of Practical Construction" is firmly entrenched in Utah contract law. The following statement by the Utah Supreme Court is most illuminating:

This rule of practical construction is predicated on the common sense concept that "actions speak louder than words." Words are frequently but an imperfect medium to convey thought and intention. When the parties to a contract perform under it and demonstrate by their conduct that they knew what they were talking about, the courts should enforce their interest.

Appellants correctly claim that this doctrine of practical construction can only be applied when the contract is ambiguous, and cannot be used when the contract is unambiguous. That is undoubtedly a correct general statement of the law. But the question involved in such cases is ambiguous to whom? Words frequently mean different things to different people. Here, the contracting parties demonstrated by their



motions that they knew what the words mean and were intended to mean. Thus, even if it be assumed that the words alone might mean one thing to the members of the court, where the parties have demonstrated by their actions and performance that to them the contract meant something quite different, the meaning and intention of the parties should be enforced. In such a situation, the parties by their actions have created the "ambiguity" required to bring the rule into operation. If this were not the rule, the courts would be enforcing one contract when both parties have demonstrated that they meant and intended the contract to be quite different.

Bullough v. Sims, 400 P.2d 20, 16 Ut.2d 304, 308-09 (Utah 1965).

The parties' actions in this case are very clear that they intended the Stipulation not to cover the "equipment package." The parties' intentions are spelled out very clearly in a series of three letters sent back and forth both before and after the Stipulation was signed.

On November 9, 1984, the plaintiffs attorney sent a letter to Mr. Bettilyon (enclosing the Stipulation) and mentioning that the plaintiffs would like to get their "equipment package" or offering to sell it to Nebraska Savings. (Addendum, Exhibit A, Record at 54.)

The Stipulation was signed four days later on November 14, 1983. The Order enforcing the Stipulation was signed on December 5, 1983. (Addendum, Exhibit B and C, Record at 63-64.)

On December 8, 1983, after the Stipulation and Order were signed, Mr. Bettilyon sent a letter back to the plaintiffs telling them they could make arrangements to pick up the equipment package. (Addendum, Exhibit D, Record at 55.)

In a letter dated December 20, 1983, the plaintiffs replied that they had made arrangements to pick up the equipment package but that when they went to pick it up, it was mostly gone. (Addendum, Exhibit E, Record at 56.)

These letters demonstrate what the parties' real intentions were under the "rule of practical construction." These letters clearly show that the "equipment package" was not to be included in the release under the Stipulation and Order. They also evidence that Mr. Bettilyon was less than completely candid in his representations to the lower court.

#### POINT IV

#### THE AWARD OF ATTORNEY'S FEES TO OCCIDENTAL IS INAPPROPRIATE

Mr. Bettilyon, Occidental's attorney, was able to get an award for \$994.75 at a hearing which DeBry's counsel failed to attend, the hearing being held on Occidental's motion to dismiss. Mr. Bettilyon went ahead with the hearing and obtained an order of dismissal despite the fact that he knew there had been some problems with the hearing date.

In addition, he failed to disclose to the court the fact that he was personally aware of two letters that he had personally written to the DeBrys telling them to come and get their property. One of these letters was written before the stipulation was signed and one after.

By Utah statute, attorney's fees are awarded when they are provided for by contract or when there has been bad faith. §78-27-56, Utah Code Annotated; Cady v. Johnson, 671 P.2d 149 (Utah 1983).

The existence of the letters referred to demonstrate the assertable right to the property. If any bad faith occurred, it was Mr. Bettilyon's not informing the court of the existence of these letters and going ahead in the absence of counsel to obtain a dismissal and even attorney's fees.

#### POINT V

#### OCCIDENTAL HAD NO RIGHT TO THE SUPERSEDEAS BOND ONCE THE NOTICE OF APPEAL WAS WITHDRAWN

As set forth in the statement of the case, DeBry filed a notice of appeal on November 15, 1985. The appeal was taken from the judgment entered August 16, 1985, as apparently made final by the ruling of November 4, 1985.

DeBry understood the lower court's statements at the November 4, 1985 hearing about no just reason for delay as a Rule 54(b) certification. However, because of the lower court's subsequent refusal to include the Rule 54(b)

operative language in the order, DeBrys made a motion to withdraw their notice of appeal. Occidental's counsel knew that the grounds for the motion to withdraw the notice of appeal was the lack of the Rule 54(b) certification, and yet consented to the motion.

Nevertheless, after DeBry's motion to withdraw was granted by the Utah Supreme Court, Occidental's counsel made a motion at the lower court to obtain the supersedeas bond DeBry had posted for the purpose of the appeal.

Since there was no Rule 54(b) certification, the appeal was moot. The appeal, and therefore the bond, were moot. The bond should have been returned to DeBry.

Nevertheless, the district court granted Occidental's motion. Unexpectedly, a different judge was presiding at the hearing on Occidental's motion to obtain the bond. It is appellants' brief that despite appellants attempts to explain, the Judge simply didn't understand the procedural setting of the case.

Granting Occidental's motion to obtain the bond gave Occidental the effect of a final judgment; even better, Occidental could automatically execute on that judgment, yet DeBry had no order from which he could appeal--a "Catch 22" situation.

POINT VI

DEBRY IS NOW ENTITLED  
TO ATTORNEY'S FEES

As stated, counsel for Occidental knew that DeBry had made the motion at this Court to withdraw the notice of appeal on the grounds that, contrary to previous belief, there was no Rule 54(b) certification. Occidental was willing to consent to this motion.

It was plainly in bad faith for Occidental to then turn around and move at the lower court to obtain the bond from an appeal that was then moot. DeBry should be entitled to attorney's fees for having to deal with these contradictory actions.

DeBry has made motions at both the district court and have at the Utah Supreme Court for dealing with these actions of Occidental. DeBry renews this motion now. We have attached as Addendum, Exhibit M, the Affidavit of H. Brian Davis, counsel for DeBry in support of attorney's fees in the amount of \$900.00.

CONCLUSION

WHEREFORE, DeBrys pray the following:

1. That the order and judgment entered August 16, 1985 be reversed both with regard to the order of dismissal and the attorney's fees. And that any findings of fact and conclusions of law pursuant thereto be vacated.

2. That the ruling of the district court of November 4, 1985, granting the supersedeas bond to Occidental be reversed.

3. That the case be remanded for further proceedings.

4. That DeBry be awarded attorney's fees in the amount of \$900.00 for having to deal with Occidental's contradictory actions with regard to the supersedeas bond.

DATED this 26<sup>th</sup> day of June, 1986.

H. Brian Davis  
H. BRIAN DAVIS

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing APPELLANTS' BRIEF was mailed this 26<sup>th</sup> day of June, 1986, by depositing same in the U.S. Mail, postage prepaid, to the following:

Verden E. Bettilyon  
WOODBURY, BETTILYON AND KESLER  
Attorneys for Defendant Occidental/  
Nebraska Federal Savings Bank  
2677 East Parley's Way  
Salt Lake City, Utah 84109

H. Brian Davis

*Robert J. DeBry & Associates*

*Attorneys at Law*

*965 East 4800 South, Suite 2*

*Salt Lake City, Utah 84117*

801 262-8915

November 9, 1984

H A N D D E L I V E R E D

Mr. Verden Bettilyon  
353 East 200 South  
Salt Lake City, Utah

Re: DeBry

Dear Verden:

Enclosed please find the Deed and Stipulation on the Suncreek Inn unit.

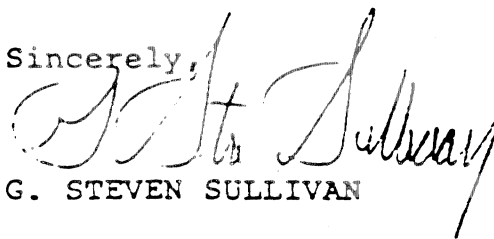
Bob tells me there is still certain personal property in the unit. Apparently, when the unit was purchased, a separate "equipment package" was also paid for. This included silverware, mixmaster, and other items. The cost of the package was \$1,200.00.

Bob and Joan will sell the property to your client for \$800.00. Such equipment would obviously make the unit immediately rentable.

If your clients have no interest in the property, the DeBrys will remove it this weekend.

Please let me know.

Sincerely,



G. STEVEN SULLIVAN

GSS/ck

G. STEVEN SULLIVAN - A3870  
ROBERT J. DEBRY - A0849  
ROBERT J. DEBRY & ASSOCIATES  
Attorney for Plaintiff  
965 East 4800 South, Suite 2  
Salt Lake City, Utah, 84117  
Telephone: (801) 262-8915

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY  
STATE OF UTAH

---

ROBERT J. DEBRY & JOAN R. DEBRY,	)	
	)	
Plaintiffs,	)	STIPULATION
	)	
vs.	)	
	)	
VERDEN E. BETTILYON, Successor	)	
Trustee and NEBRASKA SAVINGS AND	)	Civil No. C-84-02639
LOAN ASSOCIATION F.A., a Nebraska	)	
corporation,	)	
	)	
Defendants.	)	(Judge Dean E. Condor)
	)	
	)	

---

COME NOW, Robert J. DeBry and Joan R. DeBry ("DeBry") by their attorney, G. Steven Sullivan and Verden E. Bettilyon, Successor Trustee, pro se, and Attorney at Law, Verden E. Bettilyon, and Nebraska Savings and Loan Association, F.A. ("Nebraska").

The parties hereby stipulate as follows:

1. The above-entitled case shall be dismissed with prejudice.



2. DeBry agrees to execute a quit claim deed to the real property located in Summit County, State of Utah and more particularly described as follows:

Unit No. C-11, Sun Creek Condominiums, a Utah condominium project, together with a 3.39 percent undivided ownership interest in the common areas and facilities of said condominiums, as identified and established in the Record of Survey Map filed of record May 3, 1982, as Entry No. 190970 and the "Declaration and By-Laws of Sun Creek Condominiums" recorded May 3, 1982, as Entry No. 190971 in Book M-218 at Pages 637-80, and the Amendments to said Declaration and By-Laws recorded in Summit County, Utah.

A copy of the Quit Claim Deed is attached as Exhibit 1.

Said Deed is accepted by Nebraska in lieu of foreclosure and Nebraska hereby waives and forever gives up its right to seek a deficiency judgment against DeBry.

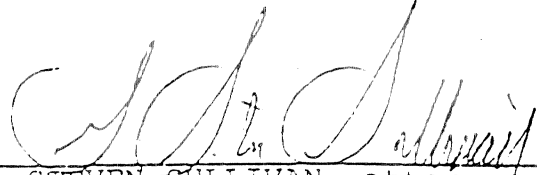
3. Nebraska accepts the condo unit in its present condition without any warranties of any kind by DeBry.


4. This Stipulation is specifically and expressly limited to the above-captioned matter. Plaintiffs do not release nor forgive any claim held against Laluni Corp., a Utah corporation; Richards Woodbury Mortgage Corp., a Utah corporation; GHB Construction, Inc., a Utah corporation; Cornwall, Evans and Fife, a Utah corporation; and Harold N. Wilkinson, an individual. Such entities and

individuals are all defendants in another court action factually related to the present. (Civil No. C-84-1931.)

5. By this Stipulation and through this Court's Order, plaintiffs hereby release and forgive all claims and causes of action held against Verden Bettilyon, successor trustee and Nebraska Savings and Loan Association, a Nebraska corporation. Additionally, the said defendants release and forgive all claims and causes of action held against plaintiffs Robert and Joan DeBry. Said mutual release shall be effective against all claims held by these parties now or hereafter arising due to the real and personal property and improvements described above.

DATED this 14 day of November, 1984.

  
\_\_\_\_\_  
G. STEVEN SULLIVAN, attorney  
for Robert DeBry

  
\_\_\_\_\_  
VERDEN E. BETTILYON, attorney  
for Nebraska Savings and Loan  
Association, F.A.

ROBERT J. DEBRY - A0849  
G. STEVEN SULLIVAN - A3870  
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Telephone: (801) 262-8915

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

---

ROBERT J. DEBRY & JOAN R. DEBRY,	)	
	)	
Plaintiffs,	)	ORDER
	)	
vs.	)	
	)	
VERDEN E. BETTILYON, Successor	)	
Trustee and NEBRASKA SAVINGS AND	)	Civil No. C-84-02639
LOAN ASSOCIATION F.A., a Nebraska	)	
corporation,	)	
	)	
Defendants.	)	(Judge Dean E. Condor)
	)	

---

Upon reading the foregoing Stipulation and good cause appearing therefore, it is thereby ordered as follows:

1. The above entitled case shall be dismissed with prejudice.

2. DeBry agrees to execute a quit claim deed, a copy of which is attached hereto, to the real property located in Summit County, State of Utah, and more particularly described as follows:

Unit No. C-11, Sun Creek Condominiums, a Utah condominium project, together with a 3.39 percent undivided ownership interest in the common areas and

facilities of said condominiums, as identified and established in the Record of Survey Map filed of record May 3, 1982, as Entry No. 190970 and the "Declaration and By-Laws of Sun Creek Condominiums" recorded May 3, 1982, as Entry No. 190971 in Book M-218 at Pages 637-80, and the Amendments to said Declaration and By-Laws recorded in Summit County, Utah.

Said Deed is accepted by Nebraska in lieu of foreclosure and Nebraska hereby waives and forever gives up its right to seek a deficiency judgment against DeBry.

3. Nebraska accepts the condo unit in its present condition without any warranties of any kind by DeBry.

4. Such dismissal shall not affect, release or forgive Laluni Corp., a Utah corporation; Richards Woodbury Mortgage Corp., a Utah corporation; GHB Construction, Inc., a Utah corporation; Cornwall, Evans and Fife, a Utah corporation; and Harold N. Wilkinson, an individual. Such entities and individuals are presently defendants in a separate legal action factually related to the present court action. (Civil No. C-84-1431).

5. The above-named parties hereby mutually release and forgive all claims and causes of action held now or hereafter arising from the real and personal property and improvements described above.

DATED this 5 day of Dec, 1984.

STATE OF UTAH  
COUNTY OF SALT LAKE )

BY THE COURT:

I, THE UNDERSIGNED, CLERK OF THE DISTRICT COURT OF SALT LAKE COUNTY, UTAH, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND FULL COPY OF AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH CLERK.  
WITNESS MY HAND AND SEAL OF SAID COURT  
THIS 11th day of December 1984

  
JUDGE DEAN E. CONDER

WOODBURY, BETTILYON AND KESLER

ATTORNEYS AT LAW

WALLACE R. WOODBURY  
VERDEN E. BETTILYON  
JOHN T. KESLER  
W. RICHARDS WOODBURY  
JEFFREY K. WOODBURY

353 EAST 200 SOUTH  
SALT LAKE CITY, UTAH 84111  
TELEPHONE (801) 364-4324

December 18, 1984

Robert Debry  
965 East 4800 South #2  
Salt Lake City UT 84117

Dear Bob:

Please contact Mr. Polichette at the condominium to make arrangements to pick up your equipment package.

Sincerely,



Verden E. Bettilyon

*Robert J. De Bry & Associates*

*Attorneys at Law*

*965 East 4800 South, Suite 2*

*Salt Lake City, Utah 84117*

801 262-8915

RJD vs  
Bettilyon

December 20, 1984

VERDEN E. BETTILYON  
Woodbury, Bettilyon and Kesler  
Attorneys at Law  
353 East 200 South  
Salt Lake City, Utah 84111

Dear Mr. Bettilyon:

We did make arrangements with Mr. Polichette to pick up the equipment package. However, when we arrived, everything (except for a couple of miscellaneous items) was gone.

To our knowledge the equipment was all present and accounted for when the bank took possession. Thus, it appears that your agents have lost or stolen the merchandise.

Please undertake to locate the missing equipment or arrange to pay for the loss.

Sincerely,

*Robert J. De Bry*  
ROBERT J. DEBRY

RJD/llk

Verden E. Bettilyon (0314)  
Woodbury, Bettilyon and Kesler  
2677 East Parley's Way  
Salt Lake City, Utah 84109  
Telephone (801) 485-6963

IN THE THIRD JUDICIAL DISTRICT COURT OF UTAH, *Entered on E-1*  
IN AND FOR SUMMIT COUNTY

-----

JOAN DEBRY, and ROBERT J. DEBRY	:	ORDER AND JUDGMENT
PLAINTIFF		
vs.	:	Civil No. 8384
OCCIDENTAL/NEBRASKA FEDERAL SAVINGS BANK, and KYM C. MEEHAN, dba, RESORT PROPERTY MANAGEMENT AND LODGING,	:	
Defendants	:	

-----

Defendant Occidental/Nebraska Federal Savings Bank's ("Occidental Nebraska") Motion to Dismiss came on for hearing before the above entitled court on the 5th Day of August, 1985. The Defendant, Occidental Nebraska was represented by Verden E. Bettilyon of the firm of Woodbury, Bettilyon and Kesler and the Plaintiffs were not represented by counsel or present in court. The court having heard the testimony of Occidental Nebraska and argument of counsel and having entered its Findings of Facts and Conclusion of Law:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Plaintiff's Complaint as to Occidental Nebraska Federal Savings Bank is dismissed with prejudice.

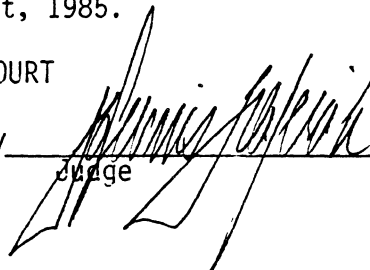
2. Judgment is entered against Plaintiffs, Joan Debry and Robert J. Debry in favor of Occidental Nebraska Federal Savings Bank in the amount \$994.75.

DATED this 8th day of August, 1985.

COURT

By

Judge

A handwritten signature in black ink, appearing to read "William J. ...", is written over a horizontal line. The signature is stylized and cursive.



Verden E. Bettilyon (0314)  
Woodbury, Bettilyon and Kesler  
2677 East Parley's Way  
Salt Lake City, Utah 84109  
Telephone (801) 485-6963

IN THE THIRD JUDICIAL DISTRICT COURT OF UTAH,  
IN AND FOR SUMMIT COUNTY

-----  
JOAN DEBRY, and ROBERT J. DEBRY

PLAINTIFF

vs.

OCCIDENTAL/NEBRASKA FEDERAL SAVINGS  
BANK, and KYM C. MEEHAN, dba, RESORT  
PROPERTY MANAGEMENT AND LODGING,

Defendants

:  
FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

:  
Civil No. 8384

:

:

-----  
Defendant Occidental/Nebraska Federal Savings Bank's ("Occidental  
Nebraska") Motion to Dismiss came on for hearing before the above entitled  
court on the 5th Day of August, 1985. The Defendant, Occidental Nebraska  
was represented by Verden E. Bettilyon of the firm of Woodbury, Bettilyon  
and Kesler and the Plaintiffs were not represented by counsel or present in  
court. The court having heard the testimony of Occidental Nebraska and  
argument of counsel, makes and enters its Findings of Fact:

FINDING OF FACT

1. On May 2, 1984, Robert J. Debry and Joan R. Debry filed an action  
in the Third Judicial District Court in Salt Lake County, State of Utah,  
Case No. C84-02369 against Verden E. Bettilyon, successor Trustee and  
Nebraska Savings and Loan Association, F.A., now known as  
Occidental/Nebraska Federal Savings Bank ("Occidental Nebraska"). The

purpose of said law suit, among other things, was seeking an injunction to prevent the foreclosure sale of a condominium unit located in Park City, Utah, known as Unit C-11 of the Suncreek Condominiums.

2. On November 14, 1984, Robert J. Debry and Joan R. Debry ("Debry") entered into a Stipulation in said case No. C84-02369 with Verden E. Bettilyon, Successor Trustee and Occidental Nebraska for the dismissal of the case. The said Stipulation provided at paragraph 5 as follows:

"5. By this Stipulation and through this Court's Order, Plaintiffs hereby release and forgive all claims and causes of action held against Verden Bettilyon, successor trustee and Nebraska Savings and Loan Association, a Nebraska corporation. Additionally, the said defendants release and forgive all claims and causes of action held against plaintiffs Robert and Joan DeBry. Said mutual release shall be effective against all claims held by these parties now or hereafter arising due to the real and personal property and improvements described above."

3. On December 5, 1984, Judge Dean E. Condor entered an Order affirming the Stipulation in said case Number C84-02639, which provided at paragraph 5 as follows:

"5. The above-named parties hereby mutually release and forgive all claims and causes of action held now or hereafter arising from the real and personal property and improvements described above."

4. That Plaintiff's Complaint against Defendant Occidental Nebraska concerns personal property located in the condominium unit C-11 of Suncreek condominium and any such action was discharged by the mutual release entered into by the parties and by the order of the court.

5. That Defendant's counsel, Verden E. Bettilyon, has expended 8.80 hours of time in the defense of this matter and that at his billing rate total attorney fees amount to \$968.00. That expenses of which have been expended by the attorney amount to \$26.75, for a total of \$994.75.

From the foregoing Findings of Fact the court makes and enters its

CONCLUSIONS OF LAW

1. That the cause of action by the Plaintiff is entirely without merit and was filed in bad faith.

2. In accordance with the provisions of 78-27-56 Utah Code Annotated, Occidental Nebraska Federal Savings and Loan is entitled to attorney fees in the amount of \$994.75.

3. The sum of \$994.75 is a reasonable sum to be paid as attorney fees for the defense of the action.

DATED this 8th day of August, 1985.

COURT

By

Judge

CRAIG G. ADAMSON  
MARK A. LARSEN  
Attorneys for Defendant Meehan  
310 South Main St., Suite 1330  
Salt Lake City, Utah 84047  
Telephone: (801) 521-6383

---

IN THE THIRD JUDICIAL DISTRICT COURT OF SUMMIT COUNTY  
STATE OF UTAH

---

JOAN DEBRY and	)	
ROBERT J. DEBRY,	)	
	)	ORDER
Plaintiffs,	)	
	)	
v.	)	
	)	
OCCIDENTAL/NEBRASKA FEDERAL	)	Civil No. 8384
SAVINGS BANK and KYM C.	)	
MEEHAN, dba, RESORT PROPERTY	)	
MANAGEMENT AND LODGING,	)	
	)	
Defendants.	)	

---

On November 4, 1985, plaintiffs' Motion for Stay of Judgment came on for hearing before the above-captioned Court, the Honorable J. Dennis Frederick presiding. Plaintiffs were represented by H. Brian Davis. Defendant Kym C. Meehan was represented by Mark A. Larsen. Defendant Occidental/Nebraska Federal Savings Bank was not represented.

The defendant Kym C. Meehan's Motion to Dismiss, which was previously scheduled for hearing on the same date, was withdrawn pursuant to notice of counsel.

Based upon the oral argument of counsel, the documents on file, and the Court being fully advised in the

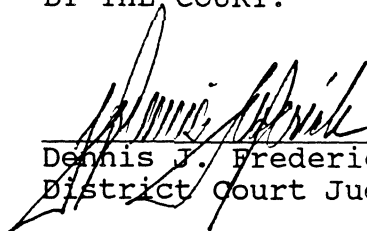
premises hereof, IT IS HEREBY ORDERED, ADJUDGED AND DECREED  
as follows:

1. Plaintiffs' Motion for Stay of Judgment is denied.

2. This matter is referred to the Fifth Judicial  
Circuit Court in and for Summit County, Utah, in which all  
further proceedings in this matter shall occur.

Dated this 16 day of <sup>Dec</sup>~~November~~, 1985.

BY THE COURT:

  
\_\_\_\_\_  
Dennis J. Frederick  
District Court Judge

H. BRIAN DAVIS - A4307  
ROBERT J. DEBRY - A0849  
ROBERT J. DEBRY & ASSOCIATES  
Attorneys for Plaintiffs  
965 East 4800 South, Suite No. 2  
Salt Lake City, Utah 84117  
Telephone: (801) 262-8915

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

JOAN DEBRY, and	)	
ROBERT J. DEBRY,	)	
	)	
Plaintiffs,	)	PLAINTIFFS' PROPOSED
	)	ORDER
vs.	)	
	)	
OCCIDENTAL/NEBRASKA FEDERAL	)	
SAVINGS BANK, and KYM C. MEEHAN,	)	Civil No. 8384
dba, RESORT PROPERTY MANAGEMENT	)	
AND LODGING,	)	
	)	
Defendants.	)	

On November 4, 1985, plaintiffs' Motion for Stay of Judgment came on for hearing before the above-captioned Court, the Honorable J. Dennis Frederick presiding. Plaintiffs were represented by H. Brian Davis. Defendant Occidental/Nebraska Federal Savings Bank was not represented.

The defendant Kym C. Meehan's Motion to Dismiss, which was previously scheduled for hearing on the same date, was withdrawn pursuant to notice of counsel.

Based upon the oral argument of counsel, the documents on file, and the Court being fully advised in the premises hereof, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Plaintiffs' Motion for Stay of Judgment is denied. This denial of Stay of Judgment shall be deemed to be an express determination pursuant to Rule 54(b), Utah Rules of Civil Procedure, by the Court that there is no just reason for delay, and the Court expressly enters a final judgment on the claim of the plaintiff against the defendant Occident/Nebraska Federal Savings Bank.

2. This matter is referred to the Fifth Circuit Court in and for Summit County, Utah, in which all further proceedings in this matter shall occur.

DATED this \_\_\_\_ day of \_\_\_\_\_, 1985.

BY THE COURT:

By: \_\_\_\_\_  
J. DENNIS FREDERICK  
*file unsigned*

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing ORDER was mailed this 21<sup>st</sup> day of November, 1985 by depositing same in the U.S. Mail, postage prepaid, to the following:

Verden E. Bettilyon  
WOODBURY, BETTILYON AND KESLER  
Attorneys for Defendant Occidental/  
Nebraska Federal Savings Bank  
2677 East Parley's Way  
Salt Lake City, Utah 84109

Craig G. Adamson  
Attorney for Defendant Meehan  
310 South Main, Suite 1330  
Salt Lake City, Utah 84101

---



W. BRIAN DAVIS - A4307  
ROBERT J. DEBRY - A0849  
ROBERT J. DEBRY & ASSOCIATES  
Attorneys for Plaintiffs  
965 East 4800 South, Suite No. 2  
Salt Lake City, Utah 84117  
Telephone: (801) 262-8915

IN THE UTAH SUPREME COURT

JOAN DEBRY, and	)	
ROBERT J. DEBRY,	)	
	)	
Plaintiffs/	)	
Appellants,	)	
	)	
vs.	)	MOTION TO WITHDRAW
	)	NOTICE OF APPEAL
	)	
OCCIDENTAL/NEBRASKA FEDERAL	)	
SAVINGS BANK,	)	Case No. 21003
	)	
Defendant/	)	
Respondent.	)	
	)	

COME NOW plaintiffs/appellants and hereby make this Motion to Withdraw their Notice of Appeal in the above captioned matter. The Notice of Appeal was filed November 15, 1985.

The grounds for this motion are that, contrary to the previous belief of the appellants, there has not been a final order pursuant to Rule 54(b), Utah Rules of Civil Procedure. At a hearing held subsequent to the filing of the Notice of Appeal, the lower court clarified that the ruling previously thought to be a Rule 54(b) final order in a multi-party suit, was actually not such a final order.

DATED this 15 day of January, 1986.

ROBERT J. DEBRY & ASSOCIATES  
Attorneys for Plaintiffs/  
Appellants

By:

**PLEADING FILE**

SUPREME COURT OF UTAH  
STATE OF UTAH  
SALT LAKE CITY, UTAH  
February 10, 1986

Verden E. Bettilyon (0314)  
Woodbury, Bettilyon and Kesler  
2677 East Parley's Way  
Salt Lake City, Utah 84109  
Telephone (801) 485-6963

---

RESPONDENTS CONSENT TO  
WITHDRAWAL OF APPEAL

JOAN DEBRY and ROBERT J. DEBRY,  
Plaintiffs and Appellants,

v.

No. 21003

OCCIDENTAL/NEBRASKA FEDERAL SAVINGS  
BANK, and KYM C. MEEHAN, dba, RESORT  
PROPERTY MANAGEMENT AND LODGING,  
Defendants and Respondents.

COMES NOW, Respondent Occidental/Nebraska Federal Savings Bank by its attorney, Verden E. Bettilyon and hereby consents to the withdrawal of Appellants appeal. Attorney for Respondent will not appear at the hearing.

DATED this 10th day of February, 1986.

WOODBURY, BETTILYON & KESLER

  
Verden E. Bettilyon

MAILING AFFIDAVIT

I hereby certify that I mailed a true and correct copy of the foregoing RESPONDENTS CONSENT TO WITHDRAWAL OF APPEAL, postage prepaid, this 10th day of February, 1986, to the following: Robert J. DeBry, 965 East 4800 South, #2, Salt Lake City, Utah 84117



Verden E. Bettilyon (0314)  
Woodbury, Bettilyon and Kesler  
2677 East Parley's Way  
Salt Lake City, Utah 84109  
Telephone (801) 485-6963

IN THE THIRD JUDICIAL DISTRICT COURT OF UTAH,  
IN AND FOR SUMMIT COUNTY

-----  
JOAN DEBRY and ROBERT J. DEBRY

Plaintiffs

vs.

OCCIDENTAL/NEBRASKA FEDERAL SAVINGS  
BANK, et. al.

Defendants

:

MOTION FOR SUPERSEDEAS  
BOND TO BE PAID TO  
DEFENDANT, OCCIDENTAL/  
NEBRASKA FEDERAL SAVINGS  
BANK

:

: Civil No. 8384

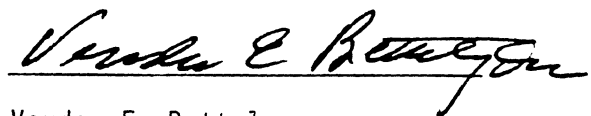
-----  
On the 15th day of November, 1985, an appeal was filed in the above case. On November 21, 1985 the Plaintiff filed a cash bond in the amount of \$994.75 with the court in lieu of a supersedeas bond.

On February 18, 1986, the above appeal was dismissed by the Supreme Court.

Defendant, Occidental/Nebraska Savings Bank now requests the court to enter an order, awarding the cash bond in the amount of \$994.75 to Defendant, Occidental/Nebraska Federal Savings Bank.

DATED this 19 day of February, 1986.

WOODBURY, BETTILYON & KESLER



Verden E. Bettilyon

H. Brian Davis  
Attorney for Appellants  
320 South 700 East, #21  
Salt Lake City, Utah 84102

IN THE UTAH SUPREME COURT

---

JOAN DEBRY, and	)	
ROBERT J. DEBRY,	)	
	)	
Appellants,	)	AFFIDAVIT OF
	)	H. BRIAN DAVIS
vs.	)	
	)	
OCCIDENTAL/NEBRASKA FEDERAL	)	Case No. 21003
SAVINGS BANK, and KYM C. MEEHAN,	)	
dba, RESORT PROPERTY MANAGEMENT	)	
AND LODGING,	)	
	)	
Respondents.	)	

---

STATE OF UTAH            )  
                              :   ss  
COUNTY OF SALT LAKE )

H. Brian Davis, having first been duly sworn, deposes and states as follows:

1. I make the following statements according to my personal knowledge.
2. I am an attorney representing the appellants in the above captioned case.
3. I have spent a total of at least twelve hours in dealing with Occidental's attempts to collect DeBry's supersedeas bond after DeBry's notice of appeal was withdrawn. These hours break down as follows:

<u>Description</u>	<u>Time</u>
Preparing for March 3, 1986 hearing at Third District Court	2 hours
Attending hearing on March 3, 1986	3 hours
Preparing Motion to Withdraw Notice of Appeal at Utah Supreme Court	2 hours
Preparing for and attending hearing on March 17, 1986	3 hours
Subsequent letters to district court with regard to disposition of case	1 hour
Preparing this issue and inclusion in appeal brief	<u>1 hour</u>
TOTAL	12 hours

4. At my normal billable rate of \$75.00 an hour, this would amount to \$900.00.

5. I consider this a conservative estimate.

DATED this 26 day of June, 1986.

H. Brian Davis  
H. BRIAN DAVIS

SUBSCRIBED AND SWORN to before me this 26th day of \_\_\_\_\_, 1986.



Expires:

May 29, 1989

Elaine Keith  
NOTARY PUBLIC  
Residing at: Salt Lake County