

1979

Imperial-Yum Production Credit Association v. Earl Hunter and Lavon Hunter et al : Brief of Appellant

Utah Supreme Court

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James M. Dunn; Attorneys for Plaintiff-Respondent;

Macoy A. McMurray and Robert J. Dale; Attorneys for Defendants-Appellants;

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IN THE SUPREME COURT
OF THE STATE OF UTAH

IMPERIAL-YUMA PRODUCTION
CREDIT ASSOCIATION, a
corporation,

Plaintiff and
Respondent,

vs.

EARL HUNTER and
LAVON HUNTER, his wife,

Defendants and
Third Party
Plaintiffs and
Appellants,

Case No. 16202

vs.

GLS LIVESTOCK MANAGEMENT,
INC., a Utah corporation,
and GEORGE L. SMITH,

Third Party
Defendants.

BRIEF OF APPELLANT

Appeal from the Judgment of the
Third District Court for Salt Lake County
Honorable James S. Sawaya, Judge

James M. Dunn of
JARDINE, LINEBAUGH, BROWN & DUNN
400 Commercial Security Bank Bldg.
79 South State Street
Post Office Box 11503
Salt Lake City UT 84147

Macoy A. McMurray and
Robert J. Dale of
McMURRAY & ANDERSON
800 Beneficial Life Tower
36 South State Street
Salt Lake City UT 84111

Attorneys for Plaintiff-
Respondent

Attorneys for Defendants-
Appellants

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Attorneys for Plaintiff-
Respondent

Macoy A. McMurray and
Robert J. Dale of
McMURRAY & ANDERSON
800 Beneficial Life Tower
36 South State Street
Salt Lake City UT 84111

Attorneys for Defendants-
Appellants

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BRIEF OF APPELLANT

STATEMENT OF THE KIND OF CASE

This is an action by Imperial-Yuma against Earl and LaVon Hunter to recover an amount alleged to be owing on account under a level line of credit arrangement evidenced by a promissory note together with attorney's fees. Involved is the accuracy of an accounting prepared by

Imperial-Yuma and debtor identification. Also involved is the propriety of an award of attorney's fees to Imperial-Yuma where a counterclaim with multiple issues was involved with no effort being made to segregate the legal services rendered in connection with the counterclaim and other matters.

DISPOSITION IN THE LOWER COURT

The case was tried to the court without a jury. The District Court awarded Plaintiff judgment against Defendants, Earl Hunter and LaVon Hunter, jointly and severally, in the sum of \$9,135.93, together with attorney's fees in the sum of \$4,000.00 and costs.

At the time of the trial, the Third Party Defendants, GLS Livestock Management, Inc. and George L. Smith, were bankrupt and, accordingly, the Defendants' Third Party Complaint was not pursued.

RELIEF SOUGHT ON APPEAL

Defendants-Appellants, Earl Hunter and LaVon Hunter, seek a reversal of the judgment of the trial court by eliminating all charges against an "Earl H. Hunter" and eliminating the award for attorney's fees.

IDENTIFICATION OF THE PARTIES AND EXPLANATION OF ABBREVIATIONS

Earl Hunter and Lavon Hunter, his wife, Defendants and Appellants, are herein referred to as the "Defendants," or where appropriate, by their names. Imperial-Yuma Production Credit Association,

the Plaintiff and Respondent, is herein referred to as the Plaintiff or where appropriate, as "Imperial-Yuma". Third party Defendants GLS Live-stock Management, Inc. and George L. Smith are referred to herein as "GLS" and "Smith", respectively.

"R" refers to a page reference in the record of the case.

"T" refers to a page reference in the transcript of the case.

STATEMENT OF FACTS

Imperial-Yuma is seeking to recover from Earl Hunter and LaVon Hunter (his wife) \$5,439.41 and interest under a level line of credit arrangement evidenced by a promissory note together with attorney's fees.

Earl Hunter and his wife contend that the accounting prepared and submitted by Imperial-Yuma contains charges for which the Defendant Earl Hunter and his wife are not responsible, and that the accounting submitted involves a mistake in debtor identification; that specifically, the Defendant, Earl Hunter is being improperly charged for amounts owed by some other person named "Earl H. Hunter".

Defendants Earl Hunter and LaVon Hunter contend that the Plaintiff's own accounting and supporting documentation show that there is nothing owed to Imperial-Yuma.

Defendants Earl Hunter and LaVon Hunter further contend that Imperial-Yuma failed to comply with Defendants' power of attorney in charging Defendants' account for drafts drawn by Smith on "Earl H. Hunter".

Furthermore, Earl Hunter and LaVon Hunter contend that the trial court erred in awarding an attorney's fee of \$4,000 to Imperial-

It is in view of the fact that there was no effort made by counsel for the Plaintiff to segregate his services rendered to recover on the account from those services rendered in connection with the defense of a counterclaim involving multiple issues and those services rendered in connection with other matters.

The background facts are as follows: In 1973 the Defendants, Earl and LaVon Hunter, invested in a cattle feeding operation -- GLS. Earl Hunter was contacted at the outset by Smith (T-119) who was engaged in the cattle feeding and cattle investment business (T-6). Earl Hunter eventually put \$15,000 into the deal (T-120), which was the total amount that Earl Hunter was to have invested (T-120-124). It was Smith who put together and managed the cattle feeding pool (T-7).

Imperial-Yuma is a finance company operating in the Imperial Valley of California (T-5, 84). The company loaned money to those who invested in cattle feeding operations (T-41). It has no offices nor personnel in the State of Utah (T-84). Its dealings with Earl Hunter were through Smith and one John Q. Midgley (T-69), the latter being Earl Hunter's accountant. Imperial-Yuma generally dealt with customers through men like Smith (T-44), though one of the documents prepared by Imperial-Yuma (Exhibit 9) provided that Smith was "not an agent for Imperial-Yuma".

Earl Hunter and his wife were given a level line of credit for some thirty thousand dollars (T-38), evidenced by a promissory note

(Exhibit 6), though there was never any loan to the Hunters for that amount (T-38-39).

One particular document (Exhibit 8, Appendix A) authorized Imperial-Yuma to pay drafts drawn on Earl Hunter which were signed by Smith. This particular document was essentially a power of attorney. It contained the following language:

This will be your authority to pay drafts drawn on Earl Hunter and signed by George L. Smith, whose specimen signature appears below.

This document was signed by Earl Hunter and LaVon Hunter and contained the specimen signature of Smith (Exhibit 8), (T-18). This document (Exhibit 8) constituted Smith's sole authority (T-84, 85). The document was treated by Imperial-Yuma as an authorization by Earl Hunter and his wife, authorizing Imperial-Yuma to pay to Smith drafts drawn by Smith on Earl Hunter in connection with the loan (T-18).

There was no direct contact between Earl Hunter and Imperial-Yuma (T-44, 69). No one in the Imperial-Yuma office had any direct contact with Hunter in generating the loan (T-37-38). Imperial-Yuma never dealt with borrowers directly. They got authorizations to deal with people like Smith (T-44). Dealings between Imperial-Yuma and Hunter were through Smith (T-128). Imperial-Yuma sent the papers to Earl Hunter and his wife through Smith (T-69). Smith was the contact (T-43, 69).

Smith issued drafts and then went to his bank; his bank then sent them to Imperial-Yuma's bank; and Imperial-Yuma's bank then

inquired of Imperial-Yuma as to whether or not Imperial-Yuma wanted to pick up the drafts or not. Thereupon, Imperial-Yuma would issue a check out of or against Earl Hunter's account to pay the particular draft. It may have been for cattle or feed or it might have been for medicine or whatever (T-18). It was Smith who had the information and filled in the items of information called for on the drafts (T-64).

There came a time when Hunter wanted to get out of the deal (T-126). He so notified Imperial-Yuma (T-126). Imperial-Yuma told Hunter that he could get out, that he owed \$3,900, and that if he wanted to discontinue the program he would have to pay the \$3,900 (T-126).

Earl Hunter had his accountant write to Imperial-Yuma and tell them that Hunter wanted to get out but needed an accounting (T-126, 127). Hunter later received a letter from Thomas Heim (Imperial's attorney) stating that they were going to file suit (T-127). Thereupon, on June 13, 1975, Earl Hunter wrote to Thomas Heim (Exhibit 23) indicating that they, the Hunters, had been trying to get out of the program and needed an accounting to resolve discrepancies in the claims for the amount owed. At one point some \$4,000 had been claimed. In April of 1975, \$7,366.66 was claimed, and at the time of the lawsuit, Imperial-Yuma was claiming \$5,439.41 together with interest and attorneys fees (T-78, 126, and Exhibit 23).

Prior to and at the time of the lawsuit, there was a dispute regarding the number of head of cattle (T-84). The dispute concerned some twenty-odd head (T-84, 97). Imperial-Yuma was not clear on the status of the cattle when the question was first raised, but in the

course of the litigation Exhibit 19 was eventually prepared by Imperial-Yuma (T-85), as a full accounting of the entire deal. It was prepared for Imperial's benefit in order to expedite the collection of the loan (T-85). Claude Nichols of Imperial-Yuma prepared the summary (T-76), realizing that there was a dispute as to the number of cattle. The accounting prepared by Imperial-Yuma purports to show all of the charges against and credits allowed to Earl Hunter.

At the trial Imperial-Yuma submitted Exhibit 18 as containing all of the receipts and credits allowed to Earl Hunter (T-39). Mr. Nichols, testifying for Imperial-Yuma, stated that Exhibit 18 represented credits to which Earl Hunter was entitled (T-66). Nichols was not aware of any disputes with respect to the accuracy of the credits (T-67). In fact, counsel for Imperial-Yuma stipulated at the trial that Exhibit 18 contained credits that Earl Hunter was entitled to (T-67).

Exhibit 16 was introduced by Imperial-Yuma as containing all of the charges by way of draft or loan which were made against Earl Hunter's account (T-33). Exhibit 16 was the basis for the charges set forth on Exhibit 19 (T-34). With respect to the charges (Exhibit 16), it was Smith who filled in the information on the drafts and then sent them in the commercial stream to Imperial-Yuma for payment (T-64).

In examining Exhibit 16, however, it is apparent that that exhibit contains charges not just against the Defendant, Earl Hunter, but also charges against an "Earl H. Hunter".

There is no question about the identity and name of the Defendant, Earl Hunter. "Earl Hunter" is his full name (T-118). He has

no middle initial or middle name and does not use any. The Defendant is simply Earl Hunter (T-118). His wife's name is LaVon W. Hunter. She sometimes goes by the name of LaVon Hunter (T-118). All of the documentation relating to the initiation of the transaction attests to the fact that it was Earl Hunter who was involved and not "Earl H. Hunter". See, for example, Exhibits 1, 2, 3, 4, 5, 6, 7, 8 (Appendix A), 9, 10, 11, 15, and 22.

In spite of the preciseness of Exhibit 8 (Appendix A) with respect to drawing of drafts for "Earl Hunter", Imperial-Yuma accepted drafts drawn by Smith for an "Earl H. Hunter" and charged the same to the Defendant Earl Hunter (Exhibit 16), without making any effort whatsoever to contact Hunter (T-58). Imperial-Yuma's own witness, however, Claude Nichols, admitted that Imperial-Yuma had a duty, and that it would have been prudent for it to report to Earl Hunter and inquire about it (T-94-95). Earl Hunter testified that had he been contacted by Imperial-Yuma with respect to the irregularity and the drawing of funds for persons other than himself, he would have cancelled the power forthwith (T-122-123). And the witness for Imperial-Yuma conceded that if they been told not to honor the agency granted by Hunter, that he (Hunter) was revoking it, they would have honored the request (T-95).

Imperial-Yuma's own witness (Claude Nichols), on cross-examination, admitted that he did not know how monies advanced by Imperial-Yuma (T-93) were used by Smith.

Smith was involved in many cattle feeding pools and many deals all across the country (T-51). At the time of Hunter's dealings,

Imperial-Yuma had about thirty-four (34) loans of the type involving Earl Hunter -- transactions with Smith (T-41, 42, 47). Imperial-Yuma did not have any way of knowing how many loans it would have had at any time involving Smith; they did not keep track of the number (T-43). Imperial-Yuma was financing only a portion of Smith's cattle feeding pools (T-51). Imperial-Yuma was probably in five or six other pools right in that area (T-51, 52). The number of people in the various pools would differ (T-52) and would involve people throughout the United States (T-52) and, in addition to that, there are a number of other pools that Smith might have had that were being financed with other companies or where other investors were involved (T-52). Mr. Richter of Imperial-Yuma did not have any idea how many other pools with other investors might have been involved (T-52). Imperial-Yuma could have been dealing with some thirty-two (32) pools (T-72) through Smith (T-42). How many people named "Hunter", with whom Smith might have been dealing throughout the country, we will never know.

The promissory note evidencing the level line of credit extended to Earl and LaVon Hunter provided for attorney's fees (Exhibit 6).

At the conclusion of the Plaintiff's case, counsel for Imperial-Yuma delineated the service he had rendered and stated that a fair attorney's fee in this matter would be \$7,164, based upon his time involvement (T-103-105); however, he made no allocation with respect to the prosecution of the action for recovery on account and the defense of the Counterclaim (T-110). The Counterclaim embraced multiple

causes of action and generally centered on fraud and security violations (T-108). Smith, Imperial-Yuma, and GLS Livestock were all joined as Defendants (R-52). The Counterclaim raised serious issues. As a matter of fact, if Hunter had been successful in that action, it would have eclipsed the complaint being prosecuted (T-109). The issues involving the sale of securities were very serious (T-109). There was also a Motion to Certify a Class (T-116). Counsel for Imperial recalled that there was not only a Counterclaim but a Motion to Certify a Class and he supposed that the total amount of recovery that the class would have been seeking would have exceeded a million dollars. There was no question in his mind that the Counterclaim was being prosecuted seriously (T-109). Numerous other cases had been filed similar to the instant case involving Imperial-Yuma and Earl Hunter.

Nevertheless, without any allocation of time and services between matters involving the attempt to recover on the account and defending the Counterclaim and services involving other matters, and notwithstanding all of the problems that had been involved in the accounting, the trial court awarded \$4,000 attorney's fees to the Plaintiff (R-293). The Hunters contend that without any proper allocation and with no evidence supporting the same, there is no justification for the award of any legal expense whatsoever, let alone the \$4,000.

CASES CITED

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<u>Estate of Rolater</u> , 542 P.2d 219 (Okla. 1975)	20
<u>Fox v. Grand Union Tea Co.</u> , 236 S.W.2d 561 (Tex. App. 1951). . .	16
<u>McCracken v. Citizens' National Bank of Akron</u> , 249 P. 652 (Colo. 1926)	16
<u>Memorial Hospital v. Woolf</u> , 134 A.2d 397 (R.I. 1957)	15
<u>Nelson v. Newman</u> , 583 P.2d 601 (Utah 1978)	22
<u>Seidenbach's v. Titus Radio Corp.</u> , 102 P.2d 168 (Okla. 1940) . .	19
<u>State v. Johnson</u> , 293 S.W.2d (Mo. 1956).	17
<u>Stubbs v. Hemmert</u> , 567 P.2d 168 (Utah 1977)	22
<u>Torrance National Bank v. Enesco Federal Credit Union</u> , 285 P.2d 737 (Calif. 1955).	20

TEXTS CITED

3 Am. Jur. 2d Agency §29, p.437.	20
29 Am. Jur. 2d Evidence §231, p.281.	14
65 C.J.S. Names §15, p.41.	15

ARGUMENT

POINT I

THE COURT ERRED IN ALLOWING AS CHARGES AGAINST THE DEFENDANTS, EARL HUNTER AND LAVON HUNTER, CHARGES AGAINST AN "EARL H. HUNTER". THE PLAINTIFF'S OWN EVIDENCE SHOWS THAT THE DEFENDANTS, EARL HUNTER AND LAVON HUNTER, ARE NOT INDEBTED TO THE PLAINTIFF AT ALL.

Plaintiff, in its accounting for Earl Hunter, has included charges against another person -- an "Earl H. Hunter" (Exhibit 16). Plaintiff sued Earl Hunter and LaVon Hunter but then by its own testimony and records (Exhibit 16) showed that certain charges were not attributable to Earl Hunter at all but were attributable to an "Earl H. Hunter" (see Exhibit 16).

Plaintiff's only testimony and records showed total account charges of \$30,320.86 (Exhibit 16). Of those charges, however, \$9,206.28 were for the account of "Earl H. Hunter" and not Earl Hunter as shown by Plaintiff's own documentary records. (See Exhibit 16). The only charges arguably proved against Earl Hunter by Plaintiff are those on Plaintiff's records with Earl Hunter designated as account debtor, which amount to \$21,114.58 (Exhibit 16). The Plaintiff submitted Exhibit 18 as containing all of the receipts and credits allowed to Earl Hunter (T-39).

There is no controversy with respect to the credits. Claude Nichols, testifying for Imperial-Yuma, stated that Exhibit 18

represented credits to which Earl Hunter was entitled (T-66). Nichols was not aware of any disputes whatsoever with respect to the accuracy of the credits (T-67). In fact, counsel for Imperial-Yuma stipulated at the trial that Exhibit 18 contained credits that Earl Hunter was entitled to (T-67).

Since there is no question as to the credits to which Earl Hunter is entitled, which amount to \$25,452.82 (see Exhibit 18), the credits more than offset the charges of \$21,114.58 which, again, are the only charges arguably attributable to Earl Hunter. By the Plaintiff's own testimony, accounting, and records, the Defendants Earl Hunter and LaVon Hunter owe nothing.

There is no question about the identity and the name of the Defendant Earl Hunter. Uncontroverted testimony establishes that he is "Earl Hunter" (T-118). He has no middle initial or middle name and does not use any (T-118). The defendant is simply Earl Hunter (T-118). His wife's name is LaVon W. Hunter. She sometimes goes by the name of LaVon Hunter (T-118). All of the documentation relating to the initiation of the transaction attests to the fact that it was Earl Hunter who was involved and not an "Earl H. Hunter" (see Exhibits 1, 2, 3, 4, 5, 6, 7, 8 [Appendix A], 9, 10, 11, 15, and 22). Imperial-Yuma did not even attempt to prove by verbal or documentary testimony or evidence, that the Defendant Earl Hunter was one and the same person as "Earl H. Hunter".

Neither the Court nor the Defendant Earl Hunter has any way of determining who "Earl H. Hunter" is. The charges applied by Imperial-Yuma to the accounts of "Earl H. Hunter" therefore should not be assessed

to Defendant Earl Hunter; this is only fair and particularly important since all the facts pertaining to Defendant Earl Hunter's account, as well as the "Earl H. Hunter" account, were in the exclusive possession of the Plaintiff. In addition, since Smith was involved in many cattle feeding pools, deals, etc., there was every chance for confusion and mistakes (see T-51 and Statement of Facts, pages 8 and 9).

At the conclusion of the trial, after the parties had rested and immediately following the closing arguments of counsel for the respective parties, counsel for Imperial-Yuma (recognizing the confusion), moved the trial court to reopen the case to allow Plaintiff to try to establish that the Defendant Earl Hunter was "Earl H. Hunter". The court appropriately denied the motion and Plaintiff, significantly, has not appealed from that ruling. The parties have had their day in court and the time therefore has passed for Plaintiff to unravel the confusion, redo the accounting, or try and show that Earl Hunter is "Earl H. Hunter" or is liable for "Earl H. Hunter's" obligations.

In name-confusion cases, the courts have long recognized the necessity of plaintiffs establishing that the party being sued is the party actually obligated on the debt or claim. Where there is an identity of names, there is a weak presumption of identity of persons. A general statement of the law is found in 29 Am. Jur. 2d Evidence §231, p. 281:

It is generally held that identity of names gives rise to a presumption of identity of persons, or is prima facie evidence thereof. This principle has sometimes been recognized by statute

and has frequently been applied in criminal, as well as civil, proceedings. At best, however, the presumption of identity of person from identity of name is ordinarily deemed to be an inference of a slight and inconclusive character; it is a weak presumption which may be shaken by the very slightest proof of facts or showing of circumstances which produces a doubt of identity.

This presumption, however, applies only insofar as the names are identical. If the names are not identical, there arises a presumption that the names refer to different persons:

There is a presumption that names which are not the same refer to different persons [65 C.J.S. Names §15, p.41].

In Memorial Hospital v. Woolf, 134 A.2d 397 (R.I. 1957), the plaintiff, Memorial Hospital, sued the defendant, Eunice F. Kalver, for recovery of hospital fees. In its pleadings, the plaintiff identified the defendant's name as "Eunice F. Kalver." At trial, the plaintiff introduced a deposition and hospital records which evidenced that one "E. J. Kalver" had been admitted into and had received services at the plaintiff hospital. The court held that the name "Eunice F. Kalver" and the name "E. J. Kalver" lacked sufficient identity and that the presumption of identity therefore did not arise. The court stated:

The defendant Eunice F. Kalver's name on the Writ and her name in the deposition and the hospital records are different. Consequently there is lacking that similarity of names which is prima facie proof of identity. In 20 Am. Jur. Evidence §204, it is stated at

page 204: 'There is presumption of identity of persons where the names are the same, but no such presumption prevails as between the Christian name of one and the initials of another, the surnames being the same.' There is, therefore, a vital lack in the evidence against defendant Eunice [Id. at 399].

In Fox v. Grand Union Tea Company, 236 S.W.2d 561 (Tex. App. 1951), plaintiff sued defendant Grand Union Tea Company for injuries which allegedly resulted from use by plaintiff of shampoo. The shampoo label stated that it was distributed by "Grand Union Company". Plaintiff alleged that the shampoo was manufactured and distributed by defendant through a salesman who delivered shampoo in a vehicle bearing the name "Grand Union". The court held that there was no presumption of identity between the name "Grand Union Tea Company" and the name "Grand Union". The court stated:

This inference arising from an identity of names has been described as '...a weak one, and that it is liable to be shaken by the slightest proof of facts or showing of circumstances which produce doubt of identity.'

The same authority states that, 'There is a presumption that names which are not the same refer to different persons', and that, 'A mere similarity of part of a name with another name will not establish a presumption of identity of person.' [Id. at 563].

In McCracken v. Citizens' National Bank of Akron, 249 P. 652 (Colo. 1926), the court held that the burden of proof was on the

plaintiff to establish that the defendant, Frank McCracken, was the individual as the execution debtor named in a Sheriff's Deed as "F. M. McCracken":

But we meet with a difficulty here. The defendant in the ejectment action is Frank McCracken; whereas, the execution debtor named in the sheriff's deed is F. M. McCracken. There was no proof that they are one and the same person, but plaintiff wants us to assume that they are, without any proof. It would be a dangerous precedent to establish to say that presumptively Frank and F. M. are the same. We fear that it would lead to complications in real estate titles; so we must not do it. F. M. may be Fred M., or an entirely different man, with any Christian name commencing with the letter F. We do not look upon this as a merely nonvital or immaterial technicality. The question is substantive -- whether one man's property is being sold for another man's debt. The proof is deficient in this regard, and the burden is upon plaintiff to establish the identity of defendant with the execution debtor named in the sheriff's deed, when their names are as different as this [Id. at 653; emphasis added].

In State v. Johnson, 293 S.W.2d (Mo. 1956), defendant, William Johnson, was being prosecuted for grand larceny. At trial the prosecution introduced evidence showing that one "Wm. Andrew Johnson" had been convicted of careless and wreckless driving in a previous proceeding. The court held that no presumption of identity existed between the defendant's name, "William Johnson" and the name of "Wm. Andrew Johnson." Specifically, the court stated the rule as follows:

[N]o such presumption prevails as between the Christian name of one and the initials of another, the surname being the same [Id. at 911].

In the instant case, with no evidence of any kind having been introduced to establish the identity of Defendant Earl Hunter and "Earl H. Hunter", the indebtedness of "Earl H. Hunter" must not be laid at the feet of Defendant Earl Hunter.

POINT II.

IMPERIAL-YUMA FAILED TO COMPLY WITH
DEFENDANTS' POWER OF ATTORNEY IN
CHARGING DEFENDANTS' ACCOUNT FOR
DRAFTS DRAWN BY SMITH ON "EARL H.
HUNTER".

The only authorization ever given by Defendant Earl Hunter to Smith was one document, essentially a power of attorney, which reads as follows:

This will be your authority to pay
drafts drawn on Earl Hunter and
signed by George L. Smith, whose
specimen signature appears below.
[See Exhibit 8, Appendix A]

No authorization of any kind was ever given by Defendant Earl Hunter for his account to be charged for any loan made pursuant to "Earl H. Hunter" drafts. Notwithstanding the total absence of any such authority from Defendants, Imperial-Yuma honored drafts drawn by Smith in the name of "Earl H. Hunter" and charged the Defendant Earl Hunter with those drafts. See Exhibit 16, Appendix B.

Having failed to establish that Earl Hunter is "Earl H. Hunter" or is otherwise obligated for the indebtedness of "Earl H. Hunter"

(See Point I, supra), and having failed to comply with Earl Hunter's power of attorney to Smith, it was incumbent upon Imperial-Yuma, as the Plaintiff and moving party, to prove that Earl Hunter received the proceeds or benefits thereof from the loan to "Earl H. Hunter". This, Plaintiff never did. See, e.g., Seidenbach's v. Titus Radio Corp., 102 P.2d 168, 170 (Okla. 1940), holding that in collection actions on open accounts, the defendant's denial of plaintiff's claims places in issue all allegations concerning the account ("and plaintiff [has] the burden of proving the account and the balance alleged to be due thereon, regardless of whether or not the defendant introduced any evidence").

In the instant case, Smith issued drafts for "Earl H. Hunter" to his bank, the Bank of America, and Imperial-Yuma then issued its checks, payable to the Bank of America, to cover those drafts (see T-16 and Exhibit 16, Appendix B). By Plaintiff's own admission, it has no idea where the funds went after payment by Imperial-Yuma to Smith's bank (T-18), and Smith himself never testified at the trial. Claude Nichols, testifying on behalf of Imperial-Yuma, admitted he did not know what was done with the money Imperial-Yuma advanced (T-63). It therefore can only be assumed at this point that the loan proceeds were applied to "Earl H. Hunter's" interest in the cattle group, rather than to the interest of the Defendant Earl Hunter. What is clear is that Imperial-Yuma offered no evidence that the loan proceeds for "Earl H. Hunter" were credited to Earl Hunter's interest in the cattle group rather than to "Earl H. Hunter's" interest.

Imperial-Yuma was therefore granted judgment by the District Court against Defendant Earl Hunter for its loans or drafts drawn on "Earl H. Hunter" without any authorization from Defendant Earl Hunter and without any evidence that the loan proceeds or any portion thereof ever went to him or were applied to his interest in the cattle group.

In accepting drafts drawn by Smith for an "Earl H. Hunter" and charging the same to the Defendant Earl Hunter (Exhibit 16), Imperial-Yuma made no effort at all to contact Hunter (T-58). Imperial-Yuma's own witness, however, Claude Nichols, admitted that Imperial-Yuma had a duty and that it would have been prudent for it to report any irregularity to Earl Hunter and inquire about it (T-94-95). The undisputed evidence was that Earl Hunter had been trying to get out of the deal already at that time (T-126-127), and that had he been contacted by Imperial-Yuma with respect to the irregularity and the drawing of funds for persons other than himself, he would have cancelled the power forthwith (T-122-123). The witness for Imperial-Yuma conceded that if they been told not to honor the agency granted by Hunter, that Hunter was revoking it, they would have honored the request (T-95).

It is fundamental that an instrument creating the power of attorney must be strictly construed. E.g., Estate of Rolater, 542 P.2d 219 (Okla. 1975); 3 Am. Jur. 2d Agency, §29, p.437.

In Torrance National Bank v. Enesco Federal Credit Union, 285 P.2d 737 (Calif. 1955), for example, the court held that a credit union was not responsible for payment of an unauthorized overdraft check drawn on a bank by an official of the credit union:

[P]ersons dealing with an assumed agent... are bound at their peril, if they would hold the principal, to ascertain not only the fact of the agency but the nature and extent of the authority, and in case either is controverted, the burden of proof is upon them to establish it [Id. at 742].

Significantly, the court also held that the bank had failed to establish that the credit union "received or retained or benefitted by the use of the monies loaned by the bank" to the credit union official (Id.; emphasis added).

In the instant case, since Imperial-Yuma failed to comply with Defendant Earl Hunter's power of attorney and failed to establish that Earl Hunter received, retained, or benefitted from the money loaned, Plaintiff Imperial-Yuma and not Defendant must bear the loss resulting from Plaintiff's actions in honoring unauthorized draws.

POINT III.

THE COURT ERRED IN ALLOWING THE PLAINTIFF ATTORNEY'S FEES.

The trial court erred in awarding the Plaintiff \$4,000 attorney's fees because the only evidence introduced by counsel for the Plaintiff was his total time expenditure and the reasonable value thereof with no allocation whatsoever being made for services rendered for recovery on account as opposed to services rendered for defense of

the counterclaim (T-110).

The law on this issue is well established in the State of Utah. Nelson v. Newman, 583 P.2d 601, 603-04 (Utah 1978), is directly on point:

The promissory notes contained a clause whereby Plaintiff Nelson agreed to pay 'all costs of collection including reasonable attorney's fees' if the notes were placed with an attorney for collection. Defendant's counsel, whose reasonable hourly rate was \$35, testified that he had expended in excess of 56 hours in defense of plaintiffs' claims and prosecution of defendant's counterclaims, and the Court found that \$1,935 was a reasonable fee under the circumstances of this case. Defendant's counsel testified that he had expended these hours on the entire case, and 'had no idea' what portion of that time was attributable to the collection of the notes. We have previously held that the contractual liability for payment of attorney's fees extends only to the amount necessary for the enforcement of the contract (here the collection of the notes).

Defendant is entitled to reasonable attorney's fees for the collection of the notes as noted ante, but he failed in his burden of proof with regard to the amount of time necessarily spent for that purpose.

Consequently, no attorney's fees were allowed.

The Court in Nelson cited Stubbs v. Hemmert, 567 P.2d 168 (Utah 1977), which held that attorney's fees are chargeable to an opposing party only if there is a contractual or statutory provision for the award of attorney's fees and that attorney's fees are not recoverable

for the defense of a counterclaim.

In the instant case, the promissory note (which only established a level line of credit) likewise provided for attorney's fees incurred in collection on the note. As a part of the same action, however, Earl Hunter and LaVon Hunter filed a Counterclaim and a Motion for a Determination That a Class Action Shall be Maintained, for Class Certification, and Amendment of Counterclaim and Third Party Complaint; Plaintiff's counsel acknowledged that this was a very significant matter (T-108). The Counterclaim contained multiple causes of action alleging common law fraud and violations of federal and state securities statutes (R-52-65). The affirmative defenses in Defendants' Answer (R-14-17) merely asserted the allegations of the Counterclaim.

At the conclusion of his case, Plaintiff's counsel delineated his services and testified only that he had a cumulative total of 137.28 hours involved exclusive of trial time (T-104), and that based upon his hours worked and the rate charged, a fair attorney's fee would be \$6,864.00, plus additional time for trial, all totaling \$7,164.00 in attorney's fees (T-105).

On cross-examination, Plaintiff's counsel admitted that while he kept accurate time records of everything he did, he "made no allocations as between the various aspects of the case in terms of time" (T-110). He conceded that he had not allocated

his time nor the value of his services to the prosecution of the Plaintiff's promissory note claims as opposed to the defense of Defendant's Counterclaim (T-110).

Accordingly, Nelson is dispositive of this issue in the instant case: The Plaintiff failed in its proof and thus no attorney's fees should have been awarded.

CONCLUSION

The Defendant Earl Hunter has been improperly charged for amounts owed by "Earl H. Hunter". Imperial-Yuma never even attempted to prove that Earl Hunter and "Earl H. Hunter" are one and the same person. The burden of proof is on the Plaintiff to establish the identity of "Earl H. Hunter", especially since Plaintiff accepted unauthorized drafts. Plaintiff has not met that burden of proof. Charges drawn on a person with a name similar to that of the Defendant should not be laid at his feet.

In addition, Imperial-Yuma failed to comply with Defendant's power of attorney and then failed to meet its burden of proving that the monies advanced on Smith's drafts for "Earl H. Hunter" went to the Defendants Earl and LaVon Hunter or accrued to their benefit.

In this regard, the Court's attention is invited to a serious policy consideration. In this computer and credit card age,

any decision by this Court which would uphold a trial court decision, laying at the feet of one in Earl Hunter's position charges that are directed to others with similar names, would set a dangerous and disastrous precedent. Where there is name confusion, the precedent to be established by this case should make it clear that creditors -- finance companies, banks, credit lenders --and all who have full charge of all accounting, must bear the burden of keeping records straight and seeing that charges are properly attributed to respective debtors and that customers are not left helpless in the face of poor accounting and record keeping procedures. Also, powers of attorney and authorized names and signatures should not be overlooked in a negligent or cavalier manner.

Finally, the case law in Utah has established the principle that contractual liability for payment of attorney's fees extends only to the amount necessary for the enforcement of the contract providing for recovery of attorney's fees. Plaintiff is entitled to attorney's fees incurred in collection on the note, but it failed in its burden of proving the amount of time expended in and the reasonable value of that effort. The trial court erred in awarding \$4,000 attorney's fees since counsel for the Plaintiff failed to apportion his fee between services rendered in connection with the Counterclaim, the Motion to Certify a Class, and the collection of the note. The Plaintiff has failed in its proof and is not entitled to attorney's fees.

The judgment of the trial court should be reversed. The Plaintiff has failed in its proof, both with respect to the accounting and attorney's fees.

Respectfully submitted,

McMURRAY & ANDERSON

By Robert J. Dale

Macoy A. McMurray and
Robert J. Dale
Attorneys for Earl and LaVon Hunter
Defendants-Appellants

Delivery Certificate

I hereby certify that I personally hand-delivered the foregoing Brief of Appellant to James M. Dunn of JARDINE, LINEBAUGH, BROWN & DUNN, Attorneys for Plaintiff-Respondent, 400 Commercial Security Bank Building, 79 South State Street, Salt Lake City, Utah, this 30 day of May, 1979.

Bruce F. Babcock

Appendix A, page 1

Date December 27, 1973

Imperial - Yuma Production Credit Association
Post Office Box 180
El Centro, California 92233

Gentlemen:

This will be your authority to pay drafts drawn on Earl Hunter
and signed by George L. Smith, whose specimen signature appears
below. This authority will remain in effect until cancelled by me in writing.

In addition this will be your authority to release information in regards to
my loan to _____ and/or _____.

Earl Hunter
Earl Hunter

Lavon Hunter
Lavon Hunter

George L. Smith
Specimen Signature
George L. Smith

Signed before me this 27th day of December, 1973.

William H. [illegible]
Notary Public

BILL OF SALE DRAFT (LIVESTOCK)

Drawn on **IMPERIAL-YUMA PRODUCTION CREDIT ASSOCIATION**

No.

January 22, 1974

PAY TO THE

ORDER OF

Producers Livestock Marketing Assn. - Yuma**One Thousand Seven Hundred Seventy-Two and 12/100**

\$ 1,772.12

PAYABLE
THROUGH**BANK OF AMERICA**
EL CENTRO, CALIFORNIA

Earl Hunter - Hanalei

PURCHASER

KNOW ALL MEN BY THESE PRESENTS That I, the Seller, signing hereunder and residing in the County of _____ State of _____ in consideration of the payment of the above draft do bargain and sell unto the association on which the above draft is drawn the herein described property, and hereby warrant to warrant and defend the title to said property against any person claiming the same or any part of it, and further warrant that the property as described herein is free and clear of any encumbrance or lien whatsoever except those for which consent to said sale and release of said lien is endorsed on this draft as provided for hereon.

NO. OF HEAD	CLASSIFICATION	BREED	AGE	BRAND AND MARKS	WEIGHT	PRICE	TOTAL DOLLARS
9.33	Calves	X Bred		Headin' West	3121.6	56.77	\$1,772.12
	Lot# 401	In Date: 1-7-74					
	Avg. Wt. 334.6						

Phma Windle Smith

BILL OF SALE DRAFT (LIVESTOCK)

Drawn on **IMPERIAL-YUMA PRODUCTION CREDIT ASSOCIATION**

No.

January 22, 1974

PAY TO THE
ORDER OF**Producers Livestock Marketing Assn. - Yuma****One Thousand Nine Hundred Eleven and 79/100**

\$ 1,911.79

PAYABLE
THROUGH**BANK OF AMERICA**
EL CENTRO, CALIFORNIA

Earl Hunter - Hanalei

PURCHASER

KNOW ALL MEN BY THESE PRESENTS That I, the Seller, signing hereunder and residing in the County of _____ State of _____ in consideration of the payment of the above draft do bargain and sell unto the association on which the above draft is drawn the herein described property, and hereby warrant to warrant and defend the title to said property against any person claiming the same or any part of it, and further warrant that the property as described herein is free and clear of any encumbrance or lien whatsoever except those for which consent to said sale and release of said lien is endorsed on this draft as provided for hereon.

NO. OF HEAD	CLASSIFICATION	BREED	AGE	BRAND AND MARKS	WEIGHT	PRICE	TOTAL DOLLARS
9.48	Calves	X Bred		Headin' West	3169.4	60.32	\$1,911.76
	Lot# 401	In Date: 1-10-74					
	Avg. Wt. 334.4						

Phma Windle Smith

BILL OF SALE DRAFT (LIVESTOCK)

Drawn on **IMPERIAL-YUMA PRODUCTION CREDIT ASSOCIATION**

No.

January 28, 1974

PAY TO THE
ORDER OF**Producers Livestock Marketing Assn. - Yuma****Six Thousand One Hundred Ninety-Two and 53/100**

\$ 6,192.53

PAYABLE
THROUGH**BANK OF AMERICA**
EL CENTRO, CALIFORNIA

Earl Hunter - Hanalei

PURCHASER

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NO. OF HEAD	CLASSIFICATION	BREED	AGE	BRAND AND MARKS	WEIGHT	PRICE	TOTAL DOLLARS
32.79	Calves	X Bred		HEADIN WEST	10373.2	56.77	\$6,192.53
	Lot# 410	In Date: 1-18-74					
	Avg. Wt. 316.4						

BILL OF SALE DRAFT

IMPERIAL-YUMA PRODUCTION CREDIT ASSOCIATION

No.

February 25, 1974

Drawn on

PAY TO THE
ORDER OF

CJS Livestock Management, Inc. --- TRUST ACCOUNT

Five Thousand Nine hundred and 18/100

PAYABLE
THROUGHEL CENTRO BRANCH
BANK OF AMERICA
EL CENTRO, CALIFORNIA

Earl Hunter

Hansel

KNOW ALL MEN BY THESE PRESENTS: That I, the Seller, signing hereunder and residing in the County of

State of

in consideration of the payment of the above draft, do bargain and sell unto the association on which the above draft is drawn the herein described property, and hereby bind myself to warrant and defend the title to said property against any person claiming the same or any part of it, and further warrant that the property as described herein is free and clear of any encumbrance or lien whatsoever except those for which consent to said sale and release of said lien is endorsed on this draft as provided for hereon.

Feed Reimbursement \$5,000.00

Interest 19.18

SELLER

0000501918

BILL OF SALE DRAFT (LIVESTOCK)

IMPERIAL-YUMA PRODUCTION CREDIT ASSOCIATION

No.

March 8, 1974

Drawn on

PAY TO THE
ORDER OF

Producers Livestock Marketing Association

One Thousand Eight and 01/100

PAYABLE
THROUGHEL CENTRO BRANCH
BANK OF AMERICA
EL CENTRO, CALIFORNIA

Earl Hunter

Hansel

KNOW ALL MEN BY THESE PRESENTS: That I, the Seller, signing hereunder and residing in the County of

State of

in consideration of the payment of the above draft, do bargain and sell unto the association on which the above draft is drawn the herein described property, and hereby bind myself to warrant and defend the title to said property against any person claiming the same or any part of it, and further warrant that the property as described herein is free and clear of any encumbrance or lien whatsoever except those for which consent to said sale and release of said lien is endorsed on this draft as provided for hereon.

NO. OF HEAD	CLASSIFICATION	BREED	AGE	BRAND AND MARKS	WEIGHT	PRICE	TOTAL DOLLARS
5.57	Calves			Head in West	1482.37	68.00	1,008.01
	Lot 401	In Date 1-15-74					
	Avg. Wt. 266.						

Phyllis Will Smith SELLER

BILL OF SALE DRAFT (LIVESTOCK)

IMPERIAL-YUMA PRODUCTION CREDIT ASSOCIATION

No.

March 8, 1974

Drawn on

PAY TO THE
ORDER OF

Producers Livestock Marketing Association

One Thousand Nine Hundred Forty and 80/100

PAYABLE
THROUGHEL CENTRO BRANCH
BANK OF AMERICA
EL CENTRO, CALIFORNIA

Earl Hunter

Hansel

KNOW ALL MEN BY THESE PRESENTS: That I, the Seller, signing hereunder and residing in the County of

State of

in consideration of the payment of the above draft, do bargain and sell unto the association on which the above draft is drawn the herein described property, and hereby bind myself to warrant and defend the title to said property against any person claiming the same or any part of it, and further warrant that the property as described herein is free and clear of any encumbrance or lien whatsoever except those for which consent to said sale and release of said lien is endorsed on this draft as provided for hereon.

NO. OF HEAD	CLASSIFICATION	BREED	AGE	BRAND AND MARKS	WEIGHT	PRICE	TOTAL DOLLARS
11.00	Calves			Head in West	3261.3	59.51	1,940.80
	Lot 402	In Date 2-12-74					
	Avg. Wt. 272.5						

BILL OF SALE DRAFT (LIVESTOCK)

No.

April 2,

\$ 179.76

Drawn on IMPERIAL-YUMA PRODUCTION CREDIT ASSOCIATION

PAY TO THE ORDER OF Producers Livestock Marketing Association
One Hundred Seventy Nine and 76/100

PAYABLE THROUGH

EL CENTRO BRANCH
BANK OF AMERICA
EL CENTRO, CALIFORNIA

Earl Hunter - Hanalei

PURCHASER

KNOW ALL MEN BY THESE PRESENTS That I, the Seller, signing hereunder and residing in the County of _____ State of _____ in consideration of the payment of the above draft do bargain and sell unto the association on which the above draft is drawn the herein described property, and hereby warrant and defend the title to said property against any person claiming the same or any part of it, and further warrant that the property as described herein is free of any encumbrance or lien whatsoever except those for which consent to said sale and release of said lien is endorsed on this draft as provided for hereon.

NO. OF HEAD	CLASSIFICATION	BREED	AGE	BRAND AND MARKS	WEIGHT	PRICE	TOTAL DOLLARS
1.15	Calves			Headin West	276.6	65.00	179.76
	Lot #402	In Date 2-22-74					
	Avg. Wt. 241.						

Phyllis W. Smith

BILL OF SALE DRAFT

No.

April 4,

\$ 191.80

Drawn on IMPERIAL-YUMA PRODUCTION CREDIT ASSOCIATION

PAY TO THE ORDER OF GLS Livestock Management, Inc. - Double "S" Cattle Company
One Hundred Ninty One and 80/100

PAYABLE THROUGH

EL CENTRO BRANCH
BANK OF AMERICA
EL CENTRO, CALIFORNIA

Earl Hunter - Hanalei

PURCHASER

KNOW ALL MEN BY THESE PRESENTS That I, the Seller, signing hereunder and residing in the County of _____ State of _____ in consideration of the payment of the above draft do bargain and sell unto the association on which the above draft is drawn the herein described property, and hereby warrant and defend the title to said property against any person claiming the same or any part of it, and further warrant that the property as described herein is free of any encumbrance or lien whatsoever except those for which consent to said sale and release of said lien is endorsed on this draft as provided for hereon.

Management - Lot #401 - Total 38.36 hd

000000191

BILL OF SALE DRAFT

No.

April 8,

\$ 17.50

Drawn on IMPERIAL-YUMA PRODUCTION CREDIT ASSOCIATION

PAY TO THE ORDER OF Ernst & Ernst
Seventeen and 50/100

PAYABLE THROUGH

EL CENTRO BRANCH
BANK OF AMERICA
EL CENTRO, CALIFORNIA

Earl Hunter - Hanalei

PURCHASER

KNOW ALL MEN BY THESE PRESENTS That I, the Seller, signing hereunder and residing in the County of _____ State of _____ in consideration of the payment of the above draft do bargain and sell unto the association on which the above draft is drawn the herein described property, and hereby warrant and defend the title to said property against any person claiming the same or any part of it, and further warrant that the property as described herein is free of any encumbrance or lien whatsoever except those for which consent to said sale and release of said lien is endorsed on this draft as provided for hereon.

Preparation 1040

000000125

Drawn on **IMPERIAL-YUMA PRODUCTION CREDIT ASSOCIATION** No. May 3, 1974 **90-884**
 PAY TO THE ORDER OF **Producers Livestock Marketing Association** \$ 2,107.70 **1222**
Two Thousand One Hundred Seven and 70/100 DOLLARS
 PAYABLE THROUGH **BANK OF AMERICA** **Earl H. Hunter - Hanalei**
EL CENTRO, CALIFORNIA PURCHASER

KNOW ALL MEN BY THESE PRESENTS, That I, the Seller, signing hereunder and residing in the County of _____ State of _____, in consideration of the payment of the above draft, do bargain and sell unto the association on which the above draft is drawn the herein described property, and hereby bind myself to warrant and defend the title to said property against any person claiming the same or any part of it, and further warrant that the property as described herein is free and clear of any encumbrance or lien whatsoever except those for which consent to said sale and release of said lien is endorsed on this draft as provided for hereon.

NO. OF HEAD	CLASSIFICATION	BREED	AGE	BRAND AND MARKS	WEIGHT	PRICE	TOTAL DOLLARS
13.03	Calves			Headin West	3668.8	57.45	2,107.70
	Lot #402	In Date 4-7-74					
	Avg. Wt. 281.5						

Phma Windle Smith SELLER

Drawn on **IMPERIAL-YUMA PRODUCTION CREDIT ASSOCIATION** No. October 10, 1974 **90-884**
 PAY TO THE ORDER OF **Headin West Cattle Company** \$ 2,099.49** **1222**
Two Thousand Ninety Nine Dollars and 49/100 DOLLARS
 PAYABLE THROUGH **BANK OF AMERICA** **Earl H. Hunter - Hanalei**
EL CENTRO, CALIFORNIA PURCHASER

KNOW ALL MEN BY THESE PRESENTS, That I, the Seller, signing hereunder and residing in the County of **RIVERSIDE** State of **CALIF.**, in consideration of the payment of the above draft, do bargain and sell unto the association on which the above draft is drawn the herein described property, and hereby bind myself to warrant and defend the title to said property against any person claiming the same or any part of it, and further warrant that the property as described herein is free and clear of any encumbrance or lien whatsoever except those for which consent to said sale and release of said lien is endorsed on this draft as provided for hereon.

September Feed

HEADIN WEST CATTLE COMPANY SELLER
 BY *Richard W. Dell*

Drawn on **IMPERIAL-YUMA PRODUCTION CREDIT ASSOCIATION** No. November 11, 1974 **90-884**
 PAY TO THE ORDER OF **Berylwood Feedyard** \$ 2,085.75** **1222**
Two Thousand Eighty Five Dollars and 75/100 DOLLARS
 PAYABLE THROUGH **BANK OF AMERICA** **Earl H. Hunter - Hanalei**
EL CENTRO, CALIFORNIA PURCHASER

KNOW ALL MEN BY THESE PRESENTS, That I, the Seller, signing hereunder and residing in the County of **Ventura** State of **Calif.**, in consideration of the payment of the above draft, do bargain and sell unto the association on which the above draft is drawn the herein described property, and hereby bind myself to warrant and defend the title to said property against any person claiming the same or any part of it, and further warrant that the property as described herein is free and clear of any encumbrance or lien whatsoever except those for which consent to said sale and release of said lien is endorsed on this draft as provided for hereon.

October Feed

BILL OF SALE DRAFT

No. December 10, 1974
s. 2,863.96

Imperial-Yuma Production Credit Association

TO THE Berylwood Feed Yard

One Thousand Eight Hundred Sixty Three and 96/100

PAYABLE THROUGH
EL CENTRO BRANCH
BANK OF AMERICA
EL CENTRO, CALIFORNIA

Earl H. Hunter - Hanalei

Earl H. Hunter - Hanalei

PURCHASER

KNOW ALL MEN BY THESE PRESENTS, That I, the Seller, signing hereunder and residing in the County of Ventura, State of California, in consideration of the payment of the above draft, do bargain and sell unto the association on which the above draft is drawn the herein described property, and hereby warrant and defend the title to said property against any person claiming the same or any part of it, and further warrant that the property as described herein is free of any encumbrance or lien whatsoever except those for which consent to said sale and release of said lien is endorsed on this draft as provided for hereon.

Mov. Feed

BERYLWOOD FEED YARD

M. Martin

BILL OF SALE DRAFT (LIVESTOCK)

No. December 30, 1974
s. 1,941.63

Imperial-Yuma Production Credit Association

PAY TO THE

ORDER OF

Producers Livestock Marketing Assn. - Yuma

One Thousand Nine Hundred Forty-One and 63/100

PAYABLE THROUGH

EL CENTRO BRANCH
BANK OF AMERICA
EL CENTRO, CALIFORNIA

Earl H. Hunter - Hanalei

Earl H. Hunter - Hanalei

PURCHASER

KNOW ALL MEN BY THESE PRESENTS, That I, the Seller, signing hereunder and residing in the County of Ventura, State of California, in consideration of the payment of the above draft, do bargain and sell unto the association on which the above draft is drawn the herein described property, and hereby warrant and defend the title to said property against any person claiming the same or any part of it, and further warrant that the property as described herein is free of any encumbrance or lien whatsoever except those for which consent to said sale and release of said lien is endorsed on this draft as provided for hereon.

NO. OF HEAD	CLASSIFICATION	BREED	AGE	BRAND AND MARKS	WEIGHT	PRICE	TOTAL DOLL.
12.95	X Bred Calves				3598.3	53.96	\$1,941.63
	Lot# 402	In Date: 4-29-74					
	Avg. Wt. 277.8						

B. Martinez

Imperial-Yuma Production Credit Association

No. April 9, 1975
s. 20.00

DRAWN ON

PAY TO THE

ORDER OF

Elmer Fox & Company

Twenty and no/100

PAYABLE THROUGH

BANK OF AMERICA, N.T. & S.A.
EL CENTRO, CALIFORNIA

Earl H. Hunter - Hanalei

Earl H. Hunter - Hanalei

PURCHASER

KNOW ALL MEN BY THESE PRESENTS, That I, the Seller, signing hereunder and residing in the County of Ventura, State of California, in consideration of the payment of the above draft, do bargain and sell unto the association on which the above draft is drawn the herein described property, and hereby warrant and defend the title to said property against any person claiming the same or any part of it, and further warrant that the property as described herein is free of any encumbrance or lien whatsoever except those for which consent to said sale and release of said lien is endorsed on this draft as provided for hereon.

Preparation 1040 F

04231104215

Drawn on **IMPERIAL-YUMA PRODUCTION CREDIT ASSOCIATION**

No. April 9,

PAY TO THE ORDER OF **GLS Livestock Management, Inc.**

One Hundred Ninty Five and 45/100

PAYABLE THROUGH **BANK OF AMERICA, N.T. & S.A.**
EL CENTRO, CALIFORNIA

Earl H. Hunter - Hanalet

Earl H. Hunter

KNOW ALL MEN BY THESE PRESENTS: That I, the Seller, signing hereunder and residing in the County of _____ State of _____, in consideration of the payment of the above draft, do bargain and sell unto the association on which the above draft is drawn the herein described property, and hereby warrant to warrant and defend the title to said property against any person claiming the same or any part of it, and further warrant that the property as described herein is free and clear of any encumbrance or lien whatsoever except those for which consent to said sale and release of said lien is endorsed on this draft as provided for herein.

Accounting

SELLER
#0000019545