

1989

Kelly Howard v. Robert E. Buhler : Brief of Respondent

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca1



Part of the [Law Commons](#)

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

Donald J. Purser; M. Taylor Florence; Purser, Overholt and Okazaki; Attorneys for Respondent.
Robert B. Hansen; Attorney for Appellant.

Recommended Citation

Brief of Respondent, *Howard v. Buhler*, No. 890073 (Utah Court of Appeals, 1989).
https://digitalcommons.law.byu.edu/byu_ca1/1578

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

UTAH COURT OF APPEALS
BRIEF

UTAH
DOCUMENT
KFU
50
.A10
DOCKET NO. 890073-CA

UTAH COURT OF APPEALS

KELLY HOWARD,)
Appellant,) Case No. 890073
vs.) Category - 14b
ROBERT E. BUHLER,)
Respondent.)

BRIEF OF RESPONDENT

Appeal from Judgment of the
Third Judicial District Court of Salt Lake County
State of Utah
Honorable James S. Sawaya

ROBERT B. HANSEN
Attorney for Appellant
838-18th Avenue
Salt Lake City, Utah 84102
Telephone: (801) 322-5804

DONALD J. PURSER
M. TAYLOR FLORENCE
PURSER, OKAZAKI & BERRETT
Attorneys for Respondent
39 Post Office Place
Third Floor
Salt Lake City, Utah 84101
Telephone: (801) 532-3555

FILED

AUG 31 1989

COURT OF APPEALS

UTAH COURT OF APPEALS

KELLY HOWARD,)
Appellant,) Case No. 890073
vs.) Category - 14b
ROBERT E. BUHLER,)
Respondent.)

BRIEF OF RESPONDENT

Appeal from Judgment of the
Third Judicial District Court of Salt Lake County
State of Utah
Honorable James S. Sawaya

ROBERT B. HANSEN
Attorney for Appellant
838-18th Avenue
Salt Lake City, Utah 84102
Telephone: (801) 322-5804

DONALD J. PURSER
M. TAYLOR FLORENCE
PURSER, OKAZAKI & BERRETT
Attorneys for Respondent
39 Post Office Place
Third Floor
Salt Lake City, Utah 84101
Telephone: (801) 532-3555

TABLE OF CONTENTS

JURISDICTION	6
STATEMENT OF ISSUES	6
STATEMENT OF CASE	6
A. NATURE OF THE CASE	6
B. STATEMENT OF FACTS AND EVIDENCE SUPPORTING TRIAL COURT'S JUDGMENT	8
SUMMARY OF ARGUMENTS	14
ARGUMENT I THIS APPEAL HAS NOT BEEN FILED IN GOOD FAITH SINCE ALL CREDIBLE EVIDENCE SUPPORTS THE TRIAL COURT'S FINDING OF ACCORD AND SATISFACTION	15
a. Standard of Review of Lower Court's Decision	16
b. The Trial Court's Judgment Comports with Utah Law Respecting Accord and Satisfaction	18
i.) An Executed Release of All Claims is not Necessary to a Finding of Accord and Satisfaction	22
ARGUMENT II THIS APPEAL DOES NOT PRESENT ANY NOVEL QUESTIONS OF FIRST IMPRESSION WHICH WOULD WARRANT THIS COURT ESTABLISHING A NEW EVIDENTIARY STANDARD TO PROVE ACCORD AND SATISFACTION	24
ARGUMENT III DEFENDANT IS ENTITLED TO AN AWARD OF HIS REASONABLE COSTS AND ATTORNEY'S FEES INCURRED IN RESPONDING TO THE INSTANT APPEAL	27
CONCLUSION	28

TABLE OF CASES AND AUTHORITIES

CASES

<u>Alaska Creamery Products, Inc. v. Wells</u> , 373 P.2d 505 (Alaska 1962)	24
<u>Allen v. Bissinger & Co.</u> , 62 Utah 226, 219 P. 539 (1923)	20
<u>Brown v. Brown</u> , 744 P.2d 333 (Utah Ct. App. 1987)	26
<u>Browning v. Equitable Life Assurance Society</u> , 94 Utah 532, 72 P.2d 1060 (1937)	24
<u>Cheney v. Rucker</u> , 381 P.2d 86 (Utah 1963)	23
<u>Christensen v. Abbott</u> , 595 P.2d 900 (Utah 1979)	16
<u>Golden Key Realty, Inc. v. Mantas</u> , 699 P.2d 730 (Utah 1985)	22
<u>Harline v. Campbell</u> , 728 P.2d 980 (Utah 1986)	17
<u>Jaramillo v. Farmer's Insurance Group</u> , 669 P.2d 1231 (Utah 1983)	19
<u>Lawrence Construction Co. v. Holmquist</u> , 642 P.2d 382 (Utah 1982)	23
<u>Search v. Union Pacific Railroad Co.</u> , 649 P.2d 48 (Utah 1982)	16
<u>Sugarhouse Finance Co. v. Anderson</u> , 610 P.2d 1369 (Utah 1980)	18

TABLE OF CASES AND AUTHORITIES

STATUTES, RULES, AND CONSTITUTIONAL PROVISIONS

Constitution of Utah, Article VIII, Section 3	6
Rules 3 and 4, Rules of Utah Court of Appeals	6

JURISDICTION

This Court's jurisdiction is proper pursuant to Article VIII, Section 3, of the Constitution of the State of Utah, and Rules 3 and 4, Rules of the Utah Court of Appeals. Plaintiff is appealing from the Third Judicial District Court's entry of Judgment in favor of Defendant on Defendant's affirmative defense of accord and satisfaction.

STATEMENT OF ISSUES

Whether the trial court abused its discretion in finding an accord and satisfaction when all credible evidence and trial testimony supports such a determination.

Whether Respondent is entitled to an award of costs and attorney's fees incurred in responding to this frivolous and unwarranted appeal.

STATEMENT OF THE CASE

A. Nature of the Case

Plaintiff, Kelly Howard (hereinafter referred to as "Plaintiff" or "Howard"), initiated the instant proceeding below as a personal injury action against Defendant, Robert E. Buhler (hereinafter referred to as "Defendant" or "Buhler"). On June 7 and 8, 1988, this proceeding came on regularly for trial before the Honorable James S. Sawaya, Third District Court Judge, with the right to a jury having been waived by both parties. Both parties proceeded to put on evidence in their respective cases in chief.

The matter was fully presented, argued and submitted and the trial court's decision thereon taken under advisement. The trial court thereafter submitted its Memorandum Decision dated September 21, 1988, finding in favor of Defendant.

On October 14, 1988, the trial court entered its Order, Findings and Entry of Judgment in favor of Defendant on his affirmative defense of accord and satisfaction. A copy of said Order, Findings and Entry of Judgment is attached hereto as "A" to the addendum. The Findings of the trial court read in pertinent part as follows:

1. . . . it was stipulated by counsel and agreed by the Court that the issue of accord and satisfaction would be considered by the Court, and if Defendant prevailed on the issue, that it would be dispositive of all other issues.

2. The Court on the issue of the affirmative defense of accord and satisfaction, finds that on July 8, 1986, Christine Kirchoff, on behalf of Defendant's liability insurer offered Plaintiff the amount of \$8,000.00 as settlement of all claims arising out of the automobile accident at issue herein. On or about this same date, Plaintiff accepted the settlement figure in the amount of \$8,000.00. Therefore, the parties expressed a mutual assent or meeting of the minds with regard to the settlement figure and a binding accord and satisfaction had been achieved.

Record of proceedings, at 289. (The Record will hereinafter be referred to as "R. at ____").

On November 4, 1988, Appellant filed his Notice of Appeal from said Judgment.

B. Statement of Facts and Evidence Supporting Trial Court's Judgment.

On November 9, 1985, Plaintiff was involved in an automobile accident with Defendant, allegedly resulting in bodily injury to Plaintiff. Following the accident, Plaintiff communicated with Ms. Christine Kirchoff, a claims adjustor for Defendant's insurer, American Concept Insurance Company (hereinafter referred to as "American Concept"). On January 24, 1986, Plaintiff and Ms. Kirchoff agreed by telephone to settle all of Plaintiff's claims arising out of the automobile accident for the sum of \$2,834.00. Transcript of proceedings, testimony of Christine L. Kirchoff, at 96-7. (Hereinafter referred to as "Tr. at ____").

Ms. Kirchoff was thereafter contacted by Plaintiff on May 20, 1986, and was advised that Plaintiff was going to withhold executing the Release upon which they had previously agreed. Tr. at 97-98.

On or about May 29, 1986, Plaintiff entered into a Fee Agreement with his present counsel, Robert Hansen, which provides that Hansen would receive, "50% of excess over insurance company's written offer to settle for a certain amount, which ever is lower" Defendant's Exhibit 44, a copy of which is attached

hereto as "B" to the addendum, see also, Tr. at 58-60. Thus, Plaintiff was compelled under his unorthodox fee agreement with counsel to mislead Defendant's insurer into believing it was settling the case and providing him written settlement documents. This fee agreement then contemplated authorizing Plaintiff's counsel to proceed with a legal action against Defendant in breach of this agreement. Tr. at 59.

On July 8, 1986, Plaintiff called Ms. Kirchoff and explained a computer programming course which he was interested in and which would provide him with a certificate of employability even though he had never graduated from high school. The cost of the course was \$3,700.00, and in analyzing the case, Ms. Kirchoff at that point in time made Plaintiff an offer of settlement in the amount of \$8,000.00. At that time Plaintiff agreed to settle his claims in full with Defendant for \$8,000.00, as a novation of the earlier settlement agreement. Tr. at 99-100, 101-105. Ms. Kirchoff did condition this settlement upon receipt of Plaintiff's educational contract to justify the increased settlement figure. Plaintiff performed this condition by sending a copy of his contract to Ms. Kirchoff. Tr. at 102. Defendant's Exhibit 17, a copy of which is attached hereto as "C" to the addendum.

On August 6, 1986, Ms. Kirchoff dispatched a letter to Plaintiff requesting that he comply with the terms of their

settlement agreement. The letter stated as follows:

On July 8, 1986, we made a settlement with you for injuries sustained in the above-captioned incident contingent upon our receiving a copy of the school contract for your computer training.

Defendant's Exhibit 12, a copy of which is attached hereto as "D" to the addendum.

On or about August 8, 1986, Plaintiff sent a letter with the education contract to Ms. Kirchoff stating:

Enclosed is the contract from the school which I am attending (Mountainwest College).

Please send me my release form for \$8,000.00 on which we agreed.

Defendant's Exhibit 14, a copy of which is attached hereto as "E" to the addendum.

Ms. Kirchoff sent the Release from as requested, accompanied by a memo dated August 8, 1986, in which she stated: "Please sign and have notarized the enclosed Release so that we may conclude your claim." Defendant's Exhibits 13 and 16 respectively, attached hereto as "F" and "G" to the addendum.

Ms. Kirchoff received no reply from Plaintiff until October 13, 1986, when she received a copy of the Complaint initiating the action below.

Plaintiff wholly misstates Ms. Kirchoff's testimony at trial with respect to the \$8,000.00 settlement. Plaintiff claims Ms.

Kirchoff did not testify that he accepted the \$8,000.00 offer, but only that he was "ready" to settle. However, as a review of the transcript indicates, Plaintiff had agreed with Ms. Kirchoff respecting a settlement agreement in complete satisfaction of his claims. Ms. Kirchoff's testimony at trial is as follows:

Q. Did there come a time when you had an opportunity, you received another telephone call from Kelly Howard concerning this matter prior to--excuse me, we talked about a letter or conversation of July 8?

A. Yes.

Q. Why don't you tell the court who initiated the call and what was discussed during the conversation?

A. On July 8 Kelly would have had to initiate the call to me since he didn't have a phone. Kelly indicated at that point in time he felt he was ready to settle the claim. I said "are you sure? I do not wish to pressure you." He said, "I am ready."

* * *

Q. Based upon the totality of the events which led up to the filing of this lawsuit, what, if any, understanding did you have and do you have today as to whether or not his claim had been concluded by both parties?

A. I believe it was concluded. I offered, he accepted.

Q. But were there any [reservations] on his acceptance such as "but I want to review it with an attorney"?

A. In August of 1986, no. I had no knowledge there was an attorney until October 9.

Tr. at 101, 105.

During the trial, Phyllis Buhler, Mr. Buhler's wife, testified that during the traffic citation hearing held on or about January 23, 1986, Plaintiff was asked if he had been fully compensated for his claims arising out of this automobile accident by Buhler's insurer. According to Mrs. Buhler, Plaintiff indicated that he had settled the case with Buhler's insurance company. Tr. at 90-91.

In the deposition taken of Plaintiff on October 22, 1987, the following hypothetical question was asked of Plaintiff as well as his accompanying response:

Q. Okay. Let me ask you sort of a hypothetical question. If you called her [Kirchoff] up and you said, I want to settle this case for \$8,000, and you discussed your school contract and she said okay, send me the school contract and I'll send you a release and we can conclude your claim and you never said anything more to her, do you think it's reasonable for her to believe that you had settled the claim?

MR. HANSEN: I am going to object to that as calling for a conclusion in the form that it's posed, a legal conclusion.

Q. (By Mr. Florence) Can you answer?
MR. HANSEN: Go ahead and answer.

THE WITNESS: I would imagine so, yes.

(Howard depo. tr. at 69-70). Thus, by Plaintiff's own admission, a reasonable person would have properly believed that Plaintiff had settled his claim.

Nothing in any of the correspondence dispatched to Ms. Kirchoff by Plaintiff indicates that Plaintiff was not willing to settle his claims with Ms. Kirchoff on July 8, 1986. In fact, Plaintiff's testimony at trial was as follows:

Q. You never told Ms. Kirchoff you did not intend to settle this case, did you?

A. No, I didn't.

Q. Nor did you communicate to her that it was not your intention to conclude the . . . matter?

A. That was not my intention.

Q. Yes, you never disclosed that to her, did you?

A. No, I didn't.

Tr. at 50-51.

Plaintiff knew that Ms. Kirchoff was attempting to settle this matter with him. Tr. at 47-48, 68. Yet, Plaintiff never "corrected" Ms. Kirchoff's perception of the situation and, in fact, at trial he equivocated as to whether or not he had actually settled, stating that he "might have settled for \$8,000.00." Tr. at 68.

When judged by the standard of objective reasonableness, all conduct of Plaintiff indicated that he had settled this case with

Ms. Kirchoff. After the fact, he has asserted that it was not his intent at the time to settle the claim, but that intent was never communicated to Ms. Kirchoff. Thus, under the circumstances, a reasonable person would have understood that Plaintiff had settled his claim.

SUMMARY OF ARGUMENTS

1. The instant appeal is simply unfounded since all credible evidence set forth above supports the trial court's finding. In view of the deference to be accorded the trial court in reviewing the evidence and assessing the credibility of the witnesses, Plaintiff has failed to set forth even a single legally cognizable error of the lower court. In an attempt to avoid the judgment below, Plaintiff now claims that he had some unexpressed ulterior motives in securing a settlement agreement with Defendant's insurance carrier. However, these unexpressed and improper motives are insufficient to avoid a binding accord and satisfaction. Under the objective test applied under Utah law, a reasonable person would have believed that Plaintiff had settled his claim.

2. The meritless questions raised in the instant appeal do not involve novel questions of first impression which would warrant the establishment of a new burden of proof to prove accord and satisfaction. The degree of proof required to establish an accord and satisfaction must be the same as that required to establish the

existence of any contract; i.e., a preponderance of the evidence. Where, as here, there is sufficient credible evidence to support such a finding, the trial court must be upheld. Further, even if a higher standard of proof were required, such a standard would be easily satisfied by the facts in the instant case.

3. Defendant is entitled to an award of costs and attorney's fees incurred in responding to this frivolous appeal. Plaintiff has not identified any alleged error on the part of the trial court, but simply wants this Court to retry the facts of the case. A reasonable inquiry into applicable law and the record below demonstrates the patent impropriety of the instant appeal.

ARGUMENT I

THIS APPEAL HAS NOT BEEN FILED IN GOOD FAITH SINCE ALL CREDIBLE EVIDENCE SUPPORTS THE TRIAL COURT'S FINDING OF ACCORD AND SATISFACTION

Plaintiff improvidently argues that there is insufficient evidence to support the trial court's finding of accord and satisfaction. This contention is absolutely contrary to the evidence established below. From a review of nothing more than the Statement of Facts above, the propriety of the trial court's judgment should be readily apparent. However, after setting forth the appropriate standard of review, Defendant will illustrate how the trial court's judgment is in accord with controlling Utah law as applied to the evidence in this case.

a. Standard of Review of Lower Court's Decision

Plaintiff is asking this Court to retry the facts of this case rather than review the legal sufficiency of the trial court's findings. The issue on appeal is not whether there was a binding accord and satisfaction, but whether there was sufficient evidence for the trial judge to so find.

The trial court's finding of accord and satisfaction must be upheld since sufficient credible evidence exists to sustain such a finding. In Christensen v. Abbott, 595 P.2d 900 (Utah 1979), the Court upheld the trial court's finding of accord and satisfaction where there was sufficient credible evidence to support that determination. Id. at 902. The Court declared:

After a careful review of the record, we cannot say, in deference to the trial court's prerogative to adjudge the credibility of witnesses, that the court's findings are not supported by credible evidence as to the parties' intentions regarding the cancellation of the note.

Id.

Further, this Court is to review the evidence below in the light most favorable to the trial court's findings. Where there is sufficient credible evidence to support that finding, this Court must sustain them. Search v. Union Pacific Railroad Co., 649 P.2d 48 (Utah 1982). Search sets forth the deference to be accorded the trial judge's findings of fact in a non-jury trial:

As we have frequently stated, in a non-jury trial it is the trial judge's prerogative to find facts - including judging the credibility of witnesses, weighing the reliability of other evidence, and drawing fairly derived and reasonable inferences therefrom. On Appeal this Court reviews the evidence in a light most favorable to the trial court findings. Where there is competent evidence to support the findings this Court must sustain them.

Id. at 50 (citations omitted).

It is clear from the foregoing Statement of Facts that the overwhelming weight of the evidence supports the trial court's findings and judgment. Therefore, Plaintiff has not met his burden of overcoming the presumption of validity afforded the lower court's decision. "It is incumbent upon the appellant to marshall all of the evidence in support of the trial court's findings and to then demonstrate that even when viewed in the light most favorable to the factual determinations made by the court, that the evidence is insufficient to support its findings." Harline v. Campbell, 728 P.2d 980, 982 (Utah 1986) (footnote omitted).

Under the standard of review employed by this Court, Plaintiff has failed to set forth even sufficient factual contentions to justify this appeal. Plaintiff has further failed to identify any cognizable error upon which this appeal may be based, since there is abundant evidence to support the trial court's finding and no suggestion that the trial court abused its discretion.

**b. The Trial Court's Judgment Comports
With Utah Law Respecting Accord and Satisfaction**

An accord and satisfaction arises when the parties to an agreement or cause of action agree that a different performance, to be made in substitution of the performance originally claimed by the Plaintiff, will discharge the obligations stated under the original agreement or cause of action. Sugarhouse Finance Co. v. Anderson, 610 P.2d 1369, 1372 (Utah 1980). As the Court set out in Sugarhouse Finance there are four necessary elements to an accord and satisfaction:

1. A proper subject matter;
2. Competent parties;
3. An assent or meeting of the minds of the parties; and
4. A consideration given for the accord.

Id.

It is well recognized in Utah that the agreement to settle a disputed or uncertain cause of action constitutes valid consideration for the accord and satisfaction. "Where the underlying claim is disputed or uncertain ('unliquidated'), the obligor's assent to the definite statement of performance in the accord amounts to sufficient consideration, as it constitutes a surrender of the right to dispute the initial obligation." Id. (footnote omitted).

The settlement of Plaintiff's bodily injury claim was a proper subject matter for a contract of accord and satisfaction. It is common for persons injured in automobile accidents to make monetary settlements with claims adjusters negotiating on behalf of their insureds. In the instant case, Plaintiff and Ms. Kirchoff negotiated and settled Plaintiff's claim as a matter of course.

Plaintiff and Ms. Kirchoff are both competent parties and were so at the time of entering the settlement contract.

Both parties agreed to the essential terms of the contract, i.e., that Plaintiff would release all claims in exchange for \$8,000.00, provided he substantiate this increased amount by sending his educational contract. Plaintiff signed a letter stating those terms and indicating that he "agreed" to the terms. Ms. Kirchoff testified that she understood that a settlement had likewise been reached with Plaintiff.

The standard used to determine whether a party to an accord and satisfaction contract mutually assented to its terms is judged by an objective standard of what a "reasonable" person would have understood from the party's language or acts. The Utah case law on this subject is clear. In Jaramillo v. Farmer's Insurance Group, 669 P.2d 1231 (Utah 1983), the Court was called upon to consider the effect of a settlement agreement reached in compromise of a personal injury action against State Farm Insurance Company's

insured. In finding the settlement agreement to be binding upon the Plaintiff, the Court declared:

In light of the stipulation of the parties, it is clear that Plaintiff outwardly accepted State Farm's terms of settlement. Any contrary intentions he may have had were left unexpressed and were not otherwise disclosed. It is well established in the law that unexpressed intentions do not effect the validity of a contract.

Id. at 1233.

In reaching the conclusions set forth above, the Court relied upon the earlier decision, Allen v. Bissinger & Co., 62 Utah 226, 219 P. 539 (1923), for the following proposition:

The apparent mutual assent of the parties, essential to the formation of a contract, must be gathered by the language employed by them, and the law imputes to a person an intention corresponding to the reasonable meaning of his words and acts. It judges of his intentions by his outward expressions and excludes all questions in regard to his unexpressed intention. If his words or acts judged by a reasonable standard manifest an intention to agree to the matter in question, that agreement is established and it is immaterial what may be the real but unexpressed state of his mind upon the subject.

Jaramillo, 669 P.2d at 1233.

When judged under a reasonable standard, the outward expressions of Plaintiff as set forth in detail above, rather than any unspoken intentions he now claims to have had, establishes a binding accord and satisfaction. During the telephone conversation

on July 8, 1986, Plaintiff and Ms. Kirchoff agreed to settle Plaintiff's bodily injury claim for \$8,000.00. As execution of the settlement agreement, Plaintiff sent his education contract as well as a signed letter to Ms. Kirchoff which stated in part, "please send me my release form for \$8,000.00 on which we agreed." Therefore, based upon the objective standard, reasonable minds would have understood that the parties had settled this dispute.

Plaintiff cites no authority in support of his proposition that the parties had not entered an accord and satisfaction. Instead, Plaintiff attempts to distinguish the authorities cited by Defendant. Plaintiff's attempts to distinguish Sugar House Finance Co., 610 P.2d 1369 (Utah 1980) are ineffectual since Defendant cited the Sugar House Finance case to set forth the four necessary elements of an accord and satisfaction. Plaintiff likewise attempts to distinguish Jaramillo v. Farmers Insurance Group, 669 P.2d 1231 (Utah 1983), and Allen v. Bissinger & Co., 219 P. 539 (1923). However, those cases are cited by Defendant to establish the proper standard under contract law for evaluating whether the parties expressed the requisite mutual assent or "meeting of the minds." In that regard, Plaintiff admits that an objective standard is to be used in analyzing the issue of mutual assent and quotes the Allen decision as follows: "There is no substantial conflict in the evidence, the most important part of

which consists of written communications between the parties." Plaintiff relies on this one sentence to claim that here all critical communications were oral rather than in writing. However, a review of the above facts indicates that by Plaintiff's own letter received August 8, 1986, he had memorialized the substance of the settlement agreement reached with Ms. Kirchoff on July 8, 1986.

Therefore, the Allen case (and as more recently cited with approval in the Jaramillo case) provides clear precedent for finding a binding contract of accord and satisfaction here.

i.) An Executed Release of all Claims is not Necessary to a Finding of Accord and Satisfaction.

An accord and satisfaction need not be in writing. Golden Key Realty, Inc. v. Mantas, 699 P.2d 730, 732 (Utah 1985); Christensen v. Abbott, 595 P.2d 900, 902 (Utah 1979). An appellate court will sustain the trial court's finding of accord and satisfaction if there is sufficient credible evidence respecting accord and satisfaction. Christensen 595 at 902. See also, Cheney v. Rucker, 381 P.2d 86 (Utah 1963).

In Lawrence Construction Co. v. Holmquist, 642 P.2d 382 (Utah 1982) a general contractor filed suit to foreclose a mechanic's lien on a ski lodge construction project and the defendant subcontractor sought to enforce a previous settlement agreement

entered into with the general contractor respecting settlement of certain claims arising out of the construction project. The trial court found that a valid accord and satisfaction had been entered between the general and subcontractors. The general contractor appealed and the trial court's decision was upheld by the Utah Supreme Court.

In upholding the earlier decision, the Court declared:

The stipulation and letter sent to National Mechanical by their terms indicate they were merely to memorialize a previous oral agreement made between the parties. That the parties contemplated subsequent execution of a written instrument as evidence of their agreement did not prevent the oral agreement from binding the parties. ... If a written agreement is intended to memorialize an oral contract, a subsequent failure to execute the written document does not nullify the oral contract. ...

In our view the prior agreement was an executory accord and as such constitutes a valid enforceable contract. 'An accord is an agreement between parties, one to give up or perform, the other to receive or accept, such agreed payment or performance in satisfaction of a claim.' Browning v. Equitable Life Assurance Society, 94 Utah 532, 72 P.2d 1060 (1937). In Alaska Creamery Products, Inc. v. Wells, Alaska 373 P.2d 505, 511 (1962), the court defined an executory accord as 'an agreement that an existing claim shall be discharged in the future by the rendition of a substituted performance.' See also, 6 Corbin, Contracts, §1269 at 75-76 (1962).

Id. at 384 (citations omitted).

Therefore, as in the Lawrence decision, the receipt of the signed Release of All Claims for \$8,000 was not necessary prior to finding a binding oral accord and satisfaction entered into by Plaintiff and Ms. Kirchoff on July 8, 1986. As in Lawrence, the record here supports the conclusion that an enforceable accord and satisfaction was reached by the parties. Further, the accord and satisfaction was in no way conditioned upon receipt of the executed settlement agreement and therefore, Plaintiff's continued claims regarding the release are both misplaced and irrelevant.

ARGUMENT II

**THIS APPEAL DOES NOT PRESENT ANY NOVEL QUESTIONS
OF FIRST IMPRESSION WHICH WOULD WARRANT THIS
COURT ESTABLISHING A NEW EVIDENTIARY STANDARD
TO PROVE ACCORD AND SATISFACTION**

Despite Plaintiff's rather desperate claims to the contrary, this is not an unusual case of first impression. Lawrence Construction, 642 P.2d 382 (Utah 1982), clearly establishes the propriety and enforceability of an oral accord and satisfaction. Id. at 384. Further, when viewed in the light most favorable to the factual determinations made by the lower court, all evidence in this case supports that court's findings. Therefore, this Court must uphold the trial court's judgment. Harline v. Campbell, 728 P.2d 980, 982 (Utah 1986).

This case certainly does not justify the announcement of a new legal standard requiring proof by clear and convincing evidence to establish an accord and satisfaction. Rather, this Court is to uphold the trial court's finding where there is sufficient credible evidence to support that determination. Christensen v. Abbott, 595 P.2d at 902. After a review of the above facts, and in deference to the trial court's prerogative to adjudge the credibility of the witnesses, it is contrary to reason for Plaintiff to claim that the court's findings are not supported by credible evidence.

Additionally, Plaintiff argues that policy considerations require a heightened degree of proof to establish an accord and satisfaction. However, the true public policy consideration at issue here involves Plaintiff's unorthodox fee agreement with counsel. That agreement required Plaintiff to actively mislead Defendant's insurance carrier into believing that it was negotiating a good faith settlement of Plaintiff's personal injury action. That level of deception in negotiating a settlement agreement as well as the subsequent breach of that agreement should be strongly discouraged. "The law favors the resolution of controversies and uncertainties through compromise and settlement rather than through litigation" 15 Am.Jur. 2d Compromise and Settlement §5 (1976). Therefore, if any consideration of public policy is implicated here, it requires affirmance of the

lower court's judgment since it encourages sincere and honest negotiated settlements.

Plaintiff cites Brown v. Brown, 744 P.2d 333 (Utah Ct. App. 1987), in support of his claim for a more demanding burden of proof. However, Brown has no application to a controversy involving accord and satisfaction. Brown involves a situation where the Plaintiff remains silent during a purported settlement conference with the defendant and counsel for both parties. The issue in Brown essentially involved whether counsel could enter a binding agreement for the plaintiff with plaintiff manifesting no assent to the terms thereof. Here, however, Plaintiff initiated all relevant contact with Ms. Kirchoff, agreed by telephone on July 8, 1986, to settle his claims and memorialized his intention to settle through the letter received by Ms. Kirchoff on August 8, 1986. Thus, Plaintiff's reliance upon the Brown decision is unfounded.

Further, Plaintiff grossly mischaracterizes Holder v. Holder, 9 Utah 2d 163, 340 P.2d 761 (1959). That case did not, as Plaintiff claims, increase "the required proof from clear and convincing to proof beyond a reasonable doubt in an annulment suit." Holder simply coalesces the previously established majority position "that the presumption of legitimacy will prevail unless the contrary is proved beyond a reasonable doubt." Id. at 763.

(footnote omitted). This case, therefore, in no way supports Plaintiff's claim for an increased burden of proof here.

Thus, it is readily apparent that this case does not require a change of the legal evidentiary standards necessary to establish a binding contract or, more particularly, an accord and satisfaction. Moreover, even if a higher evidentiary standard was required, it is certain that, when viewed in the most favorable light, all evidence adduced below supports the lower court's findings and judgment.

ARGUMENT III

DEFENDANT IS ENTITLED TO AN AWARD OF HIS REASONABLE COSTS AND ATTORNEY'S FEES INCURRED IN RESPONDING TO THE INSTANT APPEAL

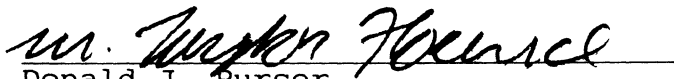
As the foregoing arguments plainly illustrate, the instant appeal is not based on any legally supportable grounds. Plaintiff has filed this frivolous proceeding simply as a means of interposing delay and in an attempt to compel a more advantageous settlement from Defendant in order to avoid the unnecessary and additional expenses incurred in responding to this appeal. Reasonable inquiry into the facts of record and existing legal authority would have clearly indicated the impropriety of the instant appeal.

Therefore, Defendant respectfully seeks damages and single or double costs, including reasonable attorney's fees from Plaintiff, pursuant to Rules 33 and 40, R. Utah Ct. App.

CONCLUSION

The overwhelming weight of the evidence presented to the trial court supports the finding of accord and satisfaction. The issues raised by Plaintiff in no way frame a proper challenge to the trial court's judgment. Plaintiff has not raised any supportable claim of error below, but rather seeks to have this Court re-evaluate the evidence and reach a different conclusion. Therefore, the judgment of the lower court must be upheld in its entirety and the instant appeal dismissed with damages, attorney's fees and costs awarded to Defendant.

RESPECTFULLY SUBMITTED this 25th day of August, 1989.


Donald J. Purser
M. Taylor Florence
PURSER, OKAZAKI & BERRETT, P.C.
39 Post Office Place
Salt Lake City, Utah 84101
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 25th ^{P/S} day of August, 1989, I caused four true and correct copies of the foregoing BRIEF OF RESPONDENT to be served upon the following by depositing copies thereof in the United States mails, postage prepaid, addressed as follows:

Robert B. Hansen
838-18th Avenue
Salt Lake City, Utah 84102

M. Taylor Florence
M. Taylor Florence

Tab A

FILED IN CLERK'S OFFICE
SALT LAKE COUNTY, UTAH

OCT 13 3 30 PM '88

H. DIANA HINDLEY CLERK
3rd DIST. COURT

BY [Signature]
DEPUTY CLERK

Donald J. Purser, 2663
M. Taylor Florence, 4835
PURSER, OKAZAKI & BERRETT
A Professional Corporation
39 Post Office Place
Salt Lake City, Utah 84101
Telephone: (801) 532-3555
Attorneys for Defendant Buhler

IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY

STATE OF UTAH

KELLY HOWARD,

Plaintiff,

vs.

ROBERT E. BUHLER,

Defendant.

2143208
10-14-88-8:04 am
ORDER, FINDINGS AND
ENTRY OF JUDGMENT
Civil No. C86-7662
(Judge James S. Sawaya)

On June 7, 1988, the above-referenced parties regularly appeared before the Court at the trial of this matter. Robert B. Hansen, Esq. appeared on behalf of the Plaintiff, and Donald J. Purser, Esq. and M. Taylor Florence, Esq. of Purser, Okazaki & Berrett, P.C. appeared on behalf of the Defendant. Both parties proceeded to put on evidence in their respective cases in chief. The matter was fully presented, argued and submitted, and the courts decision thereon taken under advisement.

The Court having considered the evidence and arguments of counsel, as well as the written memorandum submitted and all

EXHIBIT

other documents of record in this case, thereafter submitted its memorandum decision dated September 21, 1988, finding in favor of Defendant on his affirmative defense of accord and satisfaction. In support of said decision, the following findings of fact are submitted:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This is a personal injury case resulting from an automobile collision on November 9, 1985. The issues of liability, causation and damages were presented during the trial of this matter, as well as Defendant's affirmative defense of accord and satisfaction. It was stipulated by counsel and agreed by the Court that the issue of accord and satisfaction would be considered by the court, and if Defendant prevailed on the issue, that it would be dispositive of all other issues.

2. The Court, on the issue of the affirmative defense of accord and satisfaction, finds that on July 8, 1986, Christine Kirchoff, on behalf of Defendant's liability insurer offered Plaintiff the amount of \$8,000.00 as settlement of all claims arising out of the automobile accident at issue herein. On or about this same date, Plaintiff accepted the settlement figure in the amount of \$8,000.00. Therefore, the parties expressed a mutual assent or meeting of the minds with regard to this settlement figure and a binding accord and satisfaction had been

achieved.

3. The Court further finds that the settlement of the claims arising out of the automobile accident herein is the proper subject matter for an accord and satisfaction and that the parties thereto were competent to enter into such an agreement. Finally, the Court finds that there was valid consideration in the agreement to settle a disputed, uncertain cause of action sufficient to create a binding accord and satisfaction.

4. The finding of a valid accord and satisfaction is dispositive of this case and the Court, therefore, need not reach the issues of liability, causation and/or damages with respect to the personal injury claims herein.

5. Accordingly, it is hereby ordered that judgment be entered against Defendant, Robert E. Buhler, for the amount of \$8,000.00.

6. On file with the court and dated January 15, 1988, is a Notice of Offer of Judgment pursuant to Rule 68 of the Utah Rules of Civil Procedure in the amount of \$16,000. In as much as the judgment finally obtained by Plaintiff in this case was

significantly less than the \$16,000 heretofore offered, costs shall be taxed to the Plaintiff.

DATED this 13 day of October, 1988

ATTEST
H. DIXON HINDLEY

Clerk

James S. Sawaya
Judge James S. Sawaya
District Court Judge

S. Susan Day
Deputy Clerk

Submitted by:

Donald J. Purser
Donald J. Purser, Esq.
M. Taylor Florence, Esq.
PURSER, OKAZAKI & BERRETT, P.C.
39 Post Office Place
Salt Lake City, Utah 84101
Attorneys for Defendant

Tab B

No PHONE
SCHOOL - MT. WEST COLLEGE

CLIENT:

KELLY HOWARD
2317 SOUTH 500 EAST
SLC, UT. 84106

NEAREST RELATIVE: (for use in maintaining contact)

WAYNE HOWARD
R 595-6569
W 972-5955

This letter will set forth our agreement made on MAY 29 1986 concern
your representation by Robert B. Hansen in your claim against ROBERT E. BURL
which arose out of two car accident
on NOV. 9 1985 at 2100 So. + Redwood Road

You have hired me to represent you in the claim described above. I will attempt to
get a recovery by negotiating a settlement or by taking whatever legal action is deemed
necessary. I cannot promise that we will be successful or that you will receive any money.
If we are not successful, you will owe me nothing except expenses I have advanced. If we
are successful, you will pay me one-third (33 1/3 %) of any recovery received IF CASE GOES
PAST JURY SELECTION (25% IF IT DOESN'T)*

I will advance all court costs necessary to pursue your claim, but you will have to
repay me for those expenses even if we lose and no recovery is received. If a recovery is
received, the expenses will be taken out of that recovery in addition to my fees.

You authorize me to: (1) receive the proceeds of any recovery; (2) retain my
percentage of the gross recovery; (3) deduct from the proceeds any expenses advanced
by me; (4) deliver the balance to you; (5) execute all documents necessary to settle
or close the case; and (6) settle any liens out of any recovery.

As long as you are available for consultation, I will not settle your claim without
first consulting with you and getting your approval. However, if you move or leave town,
you agree to leave a phone number or address where you can be reached. You authorize me
to settle your case on your behalf at whatever amount I deem advisable if I cannot locate
you for a period of thirty (30) days.

If you settle this claim without my consent, you will still have to pay me the same
percentage of the final recovery as described above.

I may terminate this agreement by giving 30 days written notice. If I terminate
this agreement, I will not be entitled to my percentage; but you will still have to pay
me for any expenses which I have advanced. If you terminate this agreement for any
reason other than my misconduct or inability to act, I shall be entitled to my full fee
as described above. You must also repay any expenses which I have advanced for your
case within 20 days after any termination.

It is agreed that I might bring in other lawyers who will assist on your case. In
that case, I will pay those lawyers out of my fee. There will be no cost to you.

Date: August 7, 1986

Robert B. Hansen
ROBERT B. HANSEN

I accept the fee arrangement set forth in this letter.

EXHIBIT

Date: August 15, 1986

Kelly Howard
Client

* or 50% of excess over insurance \$8,000.00
company is written eight thousand other to settle for initial

Tab C

RETAIL INSTALLMENT CONTRACT/STUDENT ENROLLMENT AGREEMENT

This contract and all attached sheets are one agreement and all the information, clauses and covenants in this contract are incorporated in the attached sheets as though set out in full therein, however, if any clause, disclosure or covenant in this contract shall differ or be in conflict with any and all attached sheet or sheets, this contract and its covenants shall govern.

The undersigned school, college or university, hereinafter known as Seller, hereby sells and the undersigned student hereinafter known as Buyer, or you hereby purchases, subject to the terms and conditions herein set out, the following course(s) and materials

PROFESSIONAL COMPUTING PROGRAMMER course(s) as described in the school's catalog

Buyer's Name (Mr) (Mrs) (Ms) (Miss) MR KELLY E. HOWARD

starting MAY 14, 19 86 to be given at the following location 3018 LINDBERG DRIVE

(801) 485-6221. You understand that you shall attend the Morn Afternoon Day ✓ Eve

Area _____ Phone _____
session for _____ consecutive weeks/months Total number of hours 720 Total number of Semester/Quarter Units —

ANNUAL PERCENTAGE RATE:
The cost of your credit as yearly rate
15%

FINANCE CHARGE
The dollar amount the credit
will cost you.

\$ 153.64

AMOUNT FINANCED
The amount of credit provided to you on your behalf.
1,250.⁰⁰

TOTAL OF PAYMENTS
The amount you will have paid after you have made all payments as scheduled.
1403.64

TOTAL SALES PRICE
The total cost of your purchase on credit including your down payment and/or registration fee of \$ 100
\$ 3,222.64

YOUR PAYMENT SCHEDULE WILL BE $65(1 - 0.50^n) + 11250 \cdot 0.50^{n-1}$ IN ANNUAL PAYMENTS FOR n PERIODS.

Number of payments	Amount of each payment	When payments are due		54 (1/1/74)
18	\$ 1178	Monthly <input checked="" type="checkbox"/>	Beginning June 1, 1966	and on the same day of each month
		weekly <input type="checkbox"/>	thereafter until paid in full.	

If Buyer should need additional training and/or extended training the Buyer will be charged at the rate of \$~~50~~ 60 per hour/week/month 2/16 (Initial)
You will be required to maintain a passing grade of 70 % at all times.

THE POLICY OF THE SCHOOL IS: tuition and fees are due and payable on first day of attendance.

1. Payments will be made at the office of the Seller or Seller's assignee.
2. In event of default of Buyer in the payment of any installment, if such default shall continue for a period of 10 days, Seller may collect a delinquency charge not exceeding 5% of such installment or \$5 00, whichever is less minimum \$1 00 provided that such delinquency charge may be collected not more than once on any installment.
3. If Buyer defaults in the performance of his/her obligation hereunder, including the making of any payment provided for herein when due and payable, the Seller, at his/her option and without notice to Buyer, may declare the whole amount unpaid hereunder immediately due and payable.
4. In the event that the holder of this contract prevails in any action to enforce the terms or provisions hereof, Buyer agrees to pay reasonable attorney fees and actual court costs. Buyer warrants that all of the statements made in the Buyer's statement are true and correct.
5. Buyer is entitled to pay in advance the remaining unpaid balance due hereunder and receive a pro rate refund of the FINANCE CHARGE computed in accordance with the actuarial method.

This contract embodies the whole agreement between these parties, and the Buyer agrees that no representation, warranty or guaranty has been made to him/her which is not expressly set forth herein, and that all the benefits hereof accruing to the Seller, shall also accrue to Seller's assignee or any subsequent assignee. No transfer, renewal, extension or assignment of this contract shall release Buyer from his/her obligation hereunder.

Time is of the essence of this contract, and all terms and designations herein contained shall be deemed to have the number, gender and entity applicable to parties who execute this contract. The term Seller shall be deemed to include any assignee or subsequent holder of this contract. If any part or provision hereof is contrary to the provisions of law in any state wherein this contract may be executed, the remaining provisions shall be binding and effective nevertheless.

NOTICE TO BUYER: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) You can repay the full amount due under this agreement at any time and obtain a partial refund of the finance charge if it is \$1 or more. Because of the way the amount of this refund will be figured, the time when you prepay could increase the ultimate cost of credit under this agreement. (4) If you desire to pay off in advance the full amount due, the amount of the refund you are entitled to, if any, will be furnished upon request. (5) This agreement is not binding until accepted by Seller.

ITEMIZATION OF THE AMOUNT FINANCED

1. CASH PRICE
- a. Tuition..... \$ 3600⁰⁰
- b. Registration Fee..... \$ 100⁰⁰
- c. Incidental Fees..... \$ NONE
- d. Supplies..... \$ INCLUDED
- e. Books..... \$ INCLUDED
- f. _____ % Sales Tax..... \$ 161⁰⁰
2. TOTAL CASH PRICE..... \$ 3761⁰⁰
3. LESS DEDUCTIONS
- a. Registration Fee..... \$ 100⁰⁰
- b. DEPOSIT..... \$ 100⁰⁰ 3-10-86
- c. Back Cover..... \$ 90⁰⁰ 4-10-86
- d. Other..... \$ —
4. TOTAL DEDUCTIONS..... \$ ~~200~~ 100⁰⁰
5. UNPAID BALANCE OF CASH PRICE
(2 less 4)..... \$ 3661⁰⁰
6. AMOUNT FINANCED..... \$ 3661⁰⁰

The entire amount financed will be applied to your accounts.

I hereby guarantee payment of all obligations of the Buyer (Student) hereunder to the Seller (School) or its assignee

Guarantor
Sign Here _____ Date _____

Print Name _____

Address _____

City _____ State _____ Zip _____

Home Tel () _____ Work Tel () _____

Social Security No _____

NAME: YIAUNTAIN 1135 OFFICE

Seller: 3098 HIGHWAY DRIVE

Address - 3010 PROSPECT DRIVE

By signing below Buyer (Student) acknowledges a receipt of a complete and true copy of this Retail Installment Contract and agrees to all the terms and conditions including those set forth on the reverse side.

Buyer *[Signature]* Date *5-10-76*

Print Name KEVIN D HOWARD

Address 282 LELAND HIL

City SALT LAKE CITY State UT Zip 84111

Home Tel (801) 486-3801 Work Tel (801) 323-3323

Social Security No 5061 01-221

By LC [Signature] Title [Signature] Date 3/1/2002

City SALT LAKE CITY State UT Zip 84106

Additional terms of contract

NOTICE: See reverse side for additional terms of contract.

Tab D

AMERICAN CONCEPT INSURANCE COMPANY



August 6, 1986

Kelly Howard
1065 Garnette
Salt Lake City, UT 84116

RE: Our Insured: Robert Buhler
Our File #: 15362
Date of Loss: 11/9/85

Dear Mr. Howard,

On July 8, 1986 we made a settlement with you for injuries sustained in the above captioned incident contingent upon our receiving a copy of the school contract for your computer training.

As of this date, the above mentioned information has not been received. If you are still interested in settling your claim, please provide American Concept with a copy of your education contract so that we may conclude this matter.

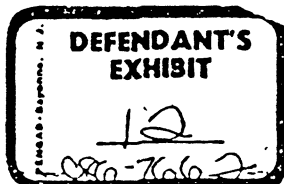
If you have any questions, please feel free to contact the undersigned.

Sincerely,

Christine L. Kirchoff
Claims Representative

CLK:1km

Enc.



EXHIBIT

Tab E

AUG

AUG 8 1985

Kelly Howard

1065 Gornett St.

SLC, Utah 84116.

Dear Chris:

Enclosed is the contract
from the school which I am
attending (Mountain West College).

Please send me my release
form for \$8,000.00 on which we
agreed.

Cordially yours
Kelly Howard.

EXHIBIT

AUG 8 1985

Tab F

KNOW ALL MEN BY THESE PRESENTS:

That the Undersigned, being of lawful age, for the sole consideration of Eight thousand and no/100-----
----- Dollars (\$ 8,000.00)
to the undersigned in hand paid, receipt whereof is hereby acknowledged, do/does hereby and for my/our/its heirs, executors,
administrators, successors and assigns release, acquit and forever discharge Robert Buhler and American Concept
Insurance Company

and his, her, their, or its agents, servants, successors, heirs, executors, administrators and all other persons, firms, corporations,
associations or partnerships of and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of
service, expenses and compensation whatsoever, which the undersigned now has/have or which may hereafter accrue on account
of or in any way growing out of any and all known and unknown, foreseen and unforeseen bodily and personal injuries and prop-
erty damage and the consequences thereof resulting or to result from the accident, casualty or event which occurred on or
about the 9th day of November, 1985, at or near 2100 South and Redwood Road, Salt
Lake City, Utah

It is understood and agreed that this settlement is the compromise of a doubtful and disputed claim, and that the payment
made is not to be construed as an admission of liability on the part of the party or parties hereby released, and that said releasees
deny liability therefor and intend merely to avoid litigation and buy their peace.

The undersigned hereby declare(s) and represent(s) that the injuries sustained are or may be permanent and progressive
and that recovery therefrom is uncertain and indefinite and in making this Release it is understood and agreed, that the under-
signed rely(ies) wholly upon the undersigned's judgment, belief and knowledge of the nature, extent, effect and duration of said
injuries and liability therefor and is made without reliance upon any statement or representation of the party or parties hereby
released or their representatives or by any physician or surgeon by them employed.

The undersigned further declare(s) and represent(s) that there may be unknown or unanticipated injuries resulting from the above
stated accident, casualty or event and in making this Release it is understood and agreed that this Release is intended to include such
injuries.

The undersigned further declare(s) and represent(s) that no promise, inducement or agreement not herein expressed has been
made to the undersigned, and that this Release contains the entire agreement between the parties hereto, and that the terms
of this Release are contractual and not a mere recital.

This Release expressly reserves all rights of the person, or persons, on whose behalf the payment is made and the rights of all
persons in privity or connected with them, and reserves to them their right to pursue their legal remedies, if any, including but not
limited to claims for contribution, property damage and personal injury against the undersigned or those in privity or connected with
the undersigned.

THE UNDERSIGNED HAS READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT.

Signed, sealed and delivered this _____ day of _____, 19____.

CAUTION: READ BEFORE SIGNING BELOW †

_____	_____ LS
Witness	
_____	_____ LS
Witness	
_____	_____ LS
Witness	

STATE OF _____ }
COUNTY OF _____ } SS.

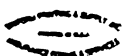
EXHIBIT

On the _____ day of _____, 19____, before me personally appeared _____

to me known to be the person(s) named herein and who executed the foregoing Release and _____ acknowledged to me
that _____ voluntarily executed the same.

My term expires _____, 19____

Notary Public



Tab G

1065 garnetti		Mountain View
CITY, STATE	Salt Lake City, UT 84116	DATE 8/8/86
SUBJECT		

MESSAGE Our File 15362

Kelly,
Please sign and have notarized the
enclosed release so that we may
conclude your claim

7700
RMA
8/12

ORIGINATOR - DO NOT WRITE BELOW THIS LINE
REPLY. SIGNED [Signature]

REPLY.	

SUSPENSE COPY

EXHIBIT