

1998

Karl I. Truman v. William M. Dalton : Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca2

 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.

Ken Chamberlain; Chamberlain Associates; Attorneys for Plaintiff-Appellant.

Joseph Harlan Burns; Attorney for Appellee William M. Dalton; John G. Mulliner; Attorney for Appellee.

Recommended Citation

Brief of Appellant, *Truman v. Dalton*, No. 981354 (Utah Court of Appeals, 1998).
https://digitalcommons.law.byu.edu/byu_ca2/1698

This Brief of Appellant 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.

BRIEF

UTAH
DOCUMENT
KFU
50

981354-CA

A10

IN THE UTAH COURT OF APPEALS OF THE STATE OF UTAH

DOCKET NO. _____

* * * * *

KARL I. TRUMAN,)
)
Plaintiff-Appellant,)
)
-vs-)
)
WILLIAM M. DALTON, and)
AUDIT ACCOUNTING AUTHORITY)
LTD.)
)
Defendants-Appellees,)

Case No. 981354-CA

Priority No. 15

* * * * *

BRIEF OF APPELLANT

* * * * *

APPEAL FROM THE SIXTH JUDICIAL DISTRICT COURT
OF SEVIER COUNTY, STATE OF UTAH
Honorable David L. Mower, District Judge

Ken Chamberlain [0608]
Chamberlain Associates
Attorneys for Plaintiff-Appellant
225 North 100 East
Richfield, Utah 84701
Telephone: (801) 896-4461

Joseph Harlan Burns
Attorney for Appellee William M. Dalton
965 South Main, Suite 4
P.O. Box 6330
Cedar City, Utah 84721-6330

John G. Mulliner
Attorney for Appellee
Audit & Accounting Authority, Ltd.
363 North University Avenue, Suite 103
P.O. Box 1045
Provo, Utah 84603

FILED
Utah Court of Appeals
NOV 13 1998
Julia D'Alesandro
Clerk of the Court

IN THE UTAH COURT OF APPEALS OF THE STATE OF UTAH

* * * * *

KARL I. TRUMAN,)	
)	
Plaintiff-Appellant,)	
)	Case No. 981354-CA
-vs-)	
)	
WILLIAM M. DALTON, and)	Priority No. 15
AUDIT ACCOUNTING AUTHORITY)	
LTD.)	
)	
Defendants-Appellees,)	

* * * * *

BRIEF OF APPELLANT

* * * * *

APPEAL FROM THE SIXTH JUDICIAL DISTRICT COURT
OF SEVIER COUNTY, STATE OF UTAH
Honorable David L. Mower, District Judge

Ken Chamberlain [0608]
Chamberlain Associates
Attorneys for Plaintiff-Appellant
225 North 100 East
Richfield, Utah 84701
Telephone: (801) 896-4461

Joseph Harlan Burns
Attorney for Appellee William M. Dalton
965 South Main, Suite 4
P.O. Box 6330
Cedar City, Utah 84721-6330

John G. Mulliner
Attorney for Appellee
Audit & Accounting Authority, Ltd.
363 North University Avenue, Suite 103
P.O. Box 1045
Provo, Utah 84603

TABLE OF CONTENTS
BRIEF OF APPELLANT

	<u>Page</u>
STATEMENT OF JURISDICTION	1
STATEMENT OF ISSUES PRESENTED FOR REVIEW	1
CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES, AND REGULATIONS	2
STATEMENT OF THE CASE	3
NATURE OF THE CASE, COURSE OF PROCEEDINGS AND DISPOSITION IN THE COURT BELOW	4
STATEMENT OF FACTS	4
SUMMARY OF ARGUMENT	7
ARGUMENT	8
POINT I A DEBT CANNOT BE PARTIALLY FORGIVEN WITHOUT CONSIDERATION	8
POINT II A DISPUTE REGARDING INTEREST AND THE RATE OF CALCULATION OF INTEREST DOES NOT CREATE A DISPUTE JUSTIFYING AN ACCORD	8
POINT III TRUMAN'S CPA MANIFESTED THAT A PRIMA FACIE CASE WAS MADE	10
POINT IV THE CREDIT AGENCY AGREEMENT CONSTITUTED A FIDUCIARY TRUST WHICH WAS CONVERTED AS A CHOSE-IN-ACTION .	11
POINT V THE CASES ARE UNIFORM THAT MATHEMATICAL CALCULATION CAN TOTALLY LIQUIDATE A CLAIM	13
POINT VI FIDUCIARY RELATIONSHIP OF AUDIT AND ACCOUNTING WAS SEVERELY BREACHED RESPECTING CREDITOR TRUMAN	15

A. THE FAILURE OF AUDIT AND ACCOUNTING THE PRINCIPAL DEFENDANT-APPELLEE AND THE REAL TARGET OF THIS ACTION COMMITTED ABSTRUSE BUT VIOLENT BREACH OF A HIGH DEGREE OF TRUST AND CONFIDENCE	15
B. WHEN IT WAS A SETTLED COMPROMISE THERE IS NOTHING TO SHOW WHAT TRUMAN COULD EXPECT	17
CONCLUSION	17
ADDENDUM	
Debt Collection Guarantee Claim Form	1
Defendant Audit and Accounting's Exhibit 29 June 10, 1992 ALERT Collection Notice	2
Defendant Audit and Accounting's Exhibit 30, June 23, 1992 letter to Joseph Harlan Burns	3
Defendant Audit and Accounting's Exhibit 34, August 14, 1992 letter from J. Harlan Burns to Audit and Accounting	4
Defendant Audit and Accounting's Exhibit 35, August 18, 1992 letter to Joseph Harlan Burns	5
Plaintiff's Exhibit 37, Summary of Billy Dalton Account with Minersville Feed & Supply	6
Defendant Audit and Accounting's Exhibit 33, July 29, 1992 letter to J. Harlan Burns	7
Plaintiff's Exhibit 16, American Collection Association's check dated 12/23/93 to Minersville Feed & Supply for \$266.66	8

AUTHORITIES CITED

CASES

Allen-Howe Specialties v. U.S. Const. Inc., 611 P.2d 705, 710 (Utah 1980)	15
Air Van Lines Inc. v. Buster, 673 P.2d 774 (Alaska 1983)	14
Burk vs. Peter, 202 P.2d 543, 115 U 58 (Utah 1949) . .	12
Burns vs. Northern Pacific RY Co., 134 F.2d 766	8
Chicago M.& St. P. RY Co. vs. Clark, CA2 92 F 968, 835 CCA 120	10
Clark Leasing Corporation v. White Sands Forest Products Inc., 535 P.2d 1077 87 N.M. 451 (1975) . . .	14
Colman vs. Utah State Land Board, 795 P.2d 622, 624 (Utah 1990)	2
F.M.A. Financial Corp. v. Build Inc., 404 P.2d 670; 17 Utah 2d 80 (1965)	14
In re: Robin, et al. Binette, 300 N.W. 798, 799, 211 Minn. 223 (Minn. 1943)	9
In re: Estate of Bartell, 776 P.2d 885 (Utah 1989) . .	12
Marton Remodeling v. Jensen, 706 P.2d 607 (Utah 1985) .	14
Metropolitan Life Insurance Company v. Richter, 49 P.2d 94, 96. (Okl. 1935)	14
Modern Dust Bag Co., Inc. vs. Commercial Trust Co., Ct. Chancery Del. 104 A.2d 378	9
Reid vs. Mutual of Omaha Insurance Co., 776 P.2d 896 (Utah 1989)	12
State vs. Pena, 869 P.2d 932, 936 (Utah 1994)	2,12
State vs. Mitchell, 769 P.2d 817 (Utah 1989)	12
Scharf vs. BMG Corp., 700 P.2d 1068, 1070 (Utah 1985) .	12
Sugarhouse Finance Company vs. Anderson, 610 P.2d 1369 (Utah 1980)	8,13
Tuttle vs. Tuttle, 53 Mass. 46 AM D.C. 701 (1899) . . .	10

TEXT REFERENCES

1 AmJur2d p. 474, Accord and Satisfaction §7	14
1 AmJur2d p. 507, Accord and Satisfaction §37	15

STATUTES

Title 12, Chapter 1, Utah Code Annotated 1953	1,2,6
§59-2-1101, Utah Code Annotated 1953	10
§59-12-104(a)(b), Utah Code Annotated 1953	10
§70A-2-105(1), Utah Code Annotated 1953	4
§78-2a-3(2)(j), Utah Code Annotated 1953, as amended .	1
Rule 41(b), Utah Rules of Civil Procedure	4,12

IN THE UTAH COURT OF APPEALS OF THE STATE OF UTAH

* * * * *

KARL I. TRUMAN,)
)
Plaintiff-Appellant,)
)
-vs-)
)
WILLIAM M. DALTON, and)
AUDIT ACCOUNTING AUTHORITY)
LTD.)
)
Defendants-Appellees,)

BRIEF OF APPELLANT

Case No. 981354-CA

* * * * *

STATEMENT OF JURISDICTION

This is an appeal from a Judgment of Dismissal entered by the Sixth Judicial District Court, Honorable David L. Mower, Judge on April 13, 1998. The Court of Appeals has jurisdiction of this appeal under §78-2a-3(2)(j), Utah Code Annotated 1953, as amended.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

A. Can a debt collection agency¹ to which the debt is assigned forgive without consideration a portion of the assigned debt and bind the creditor inasmuch as the assignment authorizes the agency to compromise?

B. Does a denial by debtor that the claimed amount of the debt is not due (excessive) create a dispute upon which an accord (for satisfaction) can be predicated for absence of liquidation?

¹Recognized: Title 12, Chapter 1, U.C.A. 1953.

C. Does a dispute only in the method or rate of interest payable constitute the type of dispute that makes the debt unliquidated?

Standard of Review

The standard of review for summary judgment (in this case equivalent of a non-suit under Rule 41(b), U.R.C.P.) is that the Appellate Court is to accept the material allegations of the non-moving party's pleading as true and the trial court's ruling should be affirmed only if it clearly appears that the non-moving party can prove no set of facts to support a cause of action. (Colman vs. Utah State Land Board, 795 P.2d 622, 624 [Utah 1990])

Similarly, in reviewing a grant of summary judgment under Rule 56 (or a non-suit) an appellate court may reverse the trial court only if "there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law in which event the case comes to the appellate court presenting only issues of law" and the appellate court will accord the decision of the trial court no deference but will review that decision for correctness. (State vs. Pena, 869 P.2d 932, 936 [Utah 1994])

Issues for Appeal Reserved in the Trial Court

The rights of the Plaintiff-Appellant were reserved for appeal by allegations in his complaint which stated a cause of action dismissed after presenting the case in chief.

**CONSTITUTIONAL PROVISIONS, STATUTES,
ORDINANCES, RULES, AND REGULATIONS**

Title 12, Chapter 1, Utah Code Annotated 1953, as amended.

STATEMENT OF THE CASE

Appellant Karl I. Truman ("Truman") was a creditor who assigned by contract a debt due Truman from Dalton in the amount of \$58,905.09 (Addendum 1). At the trial Truman produced a certified public accountant who testified to and laid a foundation for a summary under Rule 1006 of the Rules of Evidence showing that over \$50,000 (Ex. 37) was due at the commencement of the suit and at the time of trial using "very" [or "extremely"] (Tr. 27, Ex. D-7) "conservative (Tr. 23; 27) interest figures"², (Tr. 26). The 1-1/2% per month was not used but the I.R.S. guidelines were applied to show that an amount exceeding \$51,000 was still due at the time of trial (as well as the time the debt was assigned by Truman to Audit and Accounting). All payments made by Dalton were credited in the Summary (Tr. 26).

Appellee Audit and Accounting, imperiously asserting its unlimited contractual authority to compromise claims asserted that the proposed compromise was effectual. Truman assuming high trust in Audit and Accounting, (Addendum 1) approved a settlement of \$10,000 to be paid presently and \$10,000 to be paid in twelve monthly installments of \$833.33 (without adding any interest to the continuing unpaid installments). No consideration was given Truman or suffered by Dalton for the forgiveness.

The original creditor (Truman) lost approximately 75% of his present claim as a result of the assignment to the collection

²In this case the interest was not improper; it was decidedly lower than both (1) the legal rate; and (2) the rate provided in the invoices [1-1/2% per month].

agency (Audit and Accounting) and even if the contract for compromise was valid a provisional obligation of \$58,905.09 was compromised for \$20,000, half to be paid "up front" and the other half in monthly installments of \$833.33 for twelve months. [Truman to receive but one-half of that or \$5,000 over a period of time.]

**NATURE OF THE CASE, COURSE OF PROCEEDINGS
AND DISPOSITION IN THE COURT BELOW**

In this case Truman's (the Creditor's) complaint as inferred above was dismissed at the end of Truman's case by a Summary Judgment or a non-suit under Rule 41(b), U.R.C.P. (Tr. 50-53).

STATEMENT OF FACTS

In 1992 Appellant Karl I. Truman ("Truman") assigned to a collection agency, Appellee Audit and Accounting an open account for goods³ sold to Appellee William M. Dalton ("Dalton") under a course of dealing running for years [unnumbered] but at least through June 6, 1992 (the "Debt"). The Debt was understood as between Audit and Accounting and Truman to be \$58,905.09 (Addendum 1). Audit and Accounting proceeded with a demand letter for that amount to Dalton (Ex. D-29; Addendum 2). Dalton duplicitously denied the amount as (1) being too high, or whether or not high, (2) interest was illegally compounded. (Ex. D-30; Addendum 3) The record shows that, using simple interest at

³§70A-2-105(1)

I.R.S. rates as a guideline⁴, and though the invoices for goods mostly all were signed the actual balance was far in excess of \$20,000 even far more than what Dalton acknowledged was due (Tr. 27; confirmed by Audit and Accounting - Addendum 3). With little persuasion Audit and Accounting inveigled Dalton (please see Addenda 3 and 4) we concede (or assert) that Dalton and Audit and Accounting conspired (with obstructionism) that there was an interest or principal differential (Ex. D-30, D-34 and D-35 annexed hereto as Addenda 3, 4 and 5).

Thus, Audit and Accounting agreed with Dalton that there was a dispute and since the amount "could be compromised" under the debt-collection assignment contract, Audit and Accounting negotiated a compromise in which Dalton and Audit and Accounting agreed to a total liability of \$20,000, \$10,000 at first and twelve monthly payments of \$833.33 (the equivalent of \$10,000) without any interest on the deferred \$10,000 which move would wind up the affair (Ex. D-35). Dalton paid the \$10,000. (Ex. D-36) Of that \$10,000 the Audit and Accounting gave Truman \$5,000 as Truman's contractual share (Tr. 40).

Truman admits that he contracted to assign and did lawfully assign the debt, as is possible under the Utah Debt Collection Act (Chapter 1, Title 12, U.C.A. 1953); Audit and Accounting to receive one-half of the amount collected and Truman also agreed that Audit and Accounting could compromise the claim

⁴The invoices all called for interest at 1-1/2% per month (Tr. 29 lines 17-19).

on any reasonable basis (Addendum 1). When the payments (at least those to Truman) ceased, Truman repudiated the debt-assigning contract because among the first monthly obligations Dalton had defaulted and Truman demanded a return of the right to collect (the account) back from Audit and Accounting to Truman. There is evidence that this occurred yet there is a letter refusing Truman's request to return the account (debt) to Truman (Ex. D-25 through D-29).

Whether or not Truman repudiated his debt assignment contract the payments stopped coming but the checks that were paid for the monthly \$833.33 were divided by Audit and Accounting retaining one-half and in one case when the monthly payment was in default Audit and Accounting obtained an attorney to collect the payment. The attorney charged \$150 and Audit and Accounting assigned the cost of the attorney's legal work to the putative one-half interest of Truman, sending him \$266.66 (one-half of \$833.33 minus the \$150) remaining unforgiven indebtedness (Ex. D-16; Addendum 8) For some time not specified in the record, checks for \$416.60 were sent to Truman who returned the checks or at least failed to negotiate them. (Admitted by Truman in the pleadings.)

Truman filed this action which was tried to the court on March 30, 1998 (without a jury). At the end of Truman's case, the evidence to Truman; stood totally: (1) a CPA's summary of the account calculated, that \$50,482.07 was due to Truman; and (2) as acknowledged by both Audit and Accounting and Dalton that

all the raw data consisting of the invoices supporting the CPA summary under Rule 1006 was in court. Proofs (1) and (2) were admitted into evidence as Exhibit 37 (Tr. 37).

The court treated the Defendants-Appellees' response as a motion to dismiss and consequently a ruling on a summary judgment by and for both Defendants, not necessarily under Rule 41(b) but in any event validating the written contract, giving to Audit and Accounting authority to compromise the debt.

SUMMARY OF ARGUMENT

A collection agency acquired an assignment of a merchant's delinquent account assumed to be \$58,905.09 with authority given to collection agency to compromise the amount of indebtedness if indebtedness could be reasonably satisfied.

Audit and Accounting compromised what was really a debt, calculated by the CPA summary (under Evidence Rule 1006) to exceed \$50,000 without incorporating the invoice-recited interest, for \$20,000: \$10,000 up-front and twelve monthly installments of \$833.33.

The admitted residue after the \$20,000 was forgiven by agreement between the collection agency and the debtor with no consideration for the reduction but for the stated reason to advance (hurry up) collection.

Collection agency (Audit and Accounting) was, by the assignment contract, creditor's fiduciary.

ARGUMENT

POINT I

A DEBT CANNOT BE PARTIALLY FORGIVEN WITHOUT CONSIDERATION.

The trial court admitted Exhibit 37 (Tr. 37), a summary prepared by CPAs Morris and Morris showing all activity on the open account for farm supplies, feed, seed and equipment, large and small (Tr. 38). The accountant testified that the interest rate was "reasonable" as being among the lowest of all barometers recognized in its tradition. The CPA testified that he did not carefully canvass each invoice but those which he did see at large all contained a signature either by Dalton or someone acting for him. The CPA did not offer a summary calculating interest either on a compounded or a 1-1/2% monthly interest basis (Tr. 29, lines 17-19). Truman offered and there was admitted in evidence that which is simple interest at the I.R.S. rates. There was no reason for the parties to dissimulate a dispute. No consideration for the amounts given by Audit and Accounting was shown; therefore, Truman should be able to pursue the balance. (Sugarhouse Finance Company vs. Anderson, 610 P.2d 1369 [Utah 1980]) The trial court should have regarded the compromise by Dalton to be invalid for lack of consideration.

POINT II

A DISPUTE REGARDING INTEREST AND THE RATE OF CALCULATION OF INTEREST DOES NOT CREATE A DISPUTE JUSTIFYING AN ACCORD.

In the case of Burns vs. Northern Pacific RY Co., (CCA Minn. 134 F.2d 766, 770) it is held:

A person cannot create a "dispute" [in interest calculations] sufficient as consideration for compromise for a mere refusal to pay an undisputed claim.

A "dispute" as a basis for an action exists only where there is a matter of either law or fact asserted on one side and denied on the other. (In re: Robin, et al. Binette, 300 N.W. 798, 799, 211 Minn. 223 [Minn. 1943]) Interest is excluded in the computation.

A "dispute" to invoke the doctrine of accord and satisfaction must be an honest, genuine, or bona fide dispute advancing in good faith and resting on the substantial basis, or founded on some reasonable, tenable, or plausible ground, but the dispute must be in fact an honest, not untenable claim but based upon solid foundation and there must be some justification therefor and not a mere arbitrary refusal to pay. (Modern Dust Bag Co. vs. Commercial Trust Co., Ct. Chancery Del. 104 A.2d 378, 380, 381 [Del. 1954])

Within the rule that a promise by a creditor, having a liquidated and undisputed demand against his debtor which is wholly due and payable, who discharges the residue upon receiving payment of a part is *nudum pactum*, a demand is not a disputed demand merely because a debtor refuses to pay or recognize it.

The reason for this is clearly stated by language in the following case that:

If this [view recognizing dispute as to the amount due as the basis of an accord] were true no case would ever arise for the application of the rule. It is disputed, within the meaning of the rule only, when it is so far disputable as

to present a proper case for litigation.
(Chicago M. & St. P. RY Co. vs. Clark, 92 F 968,
985, 835 CCA 120; Tuttle vs. Tuttle, 53 Mass. 46
AM D.C. 701 [1899])

POINT III

TRUMAN'S CPA MANIFESTED THAT A PRIMA FACIE CASE WAS MADE.

Exhibit 37 was admitted by the Court (Tr. 36). The summary (Ex. 37 consisting of four pages) demonstrates the following:

1. On the first page of the summary admitted under Rule 1006 of the Utah Rules of Evidence begins March 13, 1990 when Dalton had "cleared off" his account and made his initial charge of \$107.32.

It is notable that the summary is absolute, unchallenged, compact and comprehensive.

2. In the left hand column is the date of every invoice.

3. In the second column is the number of every invoice (demonstrating without objection by the party that the raw data was all available).

4. The third column shows the amount charged.

5. The fourth column shows sales tax (farm products are not subject to sales tax [§59-2-1101; §59-12-104(a)(b)]).

6. The fifth column shows credits or payments.

7. The sixth column shows the balance (\$50,482.07; p. 4 of the Summary).

8. The seventh column shows that interest is only

calculated at the end of the year (the only entry on page 2 of Ex. 37 is dated 12-31-90). It continues to be remarkable because of its obvious completeness, incisiveness, compact and comprehensive accuracy. On the last page of Exhibit 37 the certified public accountant has shown the total of all invoices and sales tax, the total of all payments and credits, adds interest at the conservative rate as demonstrated hereinabove, and shows an ending balance of \$51,988.07.

POINT IV

THE CREDIT AGENCY AGREEMENT CONSTITUTED A FIDUCIARY TRUST WHICH WAS CONVERTED AS A CHOSE-IN-ACTION.

A collection agency under a written contract is *ipso facto* a fiduciary and Audit and Accounting, having willfully aborted the process of pursuing collection and refusing to reassign the indebtedness to creditor created a tortious conversion obligating Audit and Accounting to make the creditor (Truman) whole.

The credit agency agreement constituted a fiduciary trust the principal of which was tortiously converted as a chose-in-action. A breach of the fiduciary relationship is a tort and conversion thus giving Truman a direct right of action against Audit and Accounting, the collection agency, for conversion of his claim making Audit and Accounting liable for payment of the entire amount due by reason of frustration of the process and retention in their so-called "trust-account" (Tr. 56).

A fiduciary has a responsibility to go forward with the

proof. The summary judgment (Rule 41(b), U.R.C.P. non-suit) is not sufficient to carry the affirmative defenses of either party (the Appellees jointly).

In the case of Burk vs. Peter (115 U 58, 202 P.2d 543 [1949]) this Court said in a promissory note case that:

***There is no necessity under the pleadings for plaintiff to do more than present the note in evidence. Having done so, the burden would shift to defendant to present evidence in support of his affirmative defense of no consideration.

In Reid vs. Mutual of Omaha Insurance Co. (776 P.2d 896 [Utah 1989]):

***[Mutual] has a burden of marshalling the supporting evidence and then demonstrating that the trial court's finding on this point lacks adequate record support under the clearly erroneous standard. (In re: Estate of Bartell, 776 P.2d 885 [Utah 1989]; State vs. Mitchell, 769 P.2d 817 [Utah 1989]; Scharf vs. BMG Corp., 700 P.2d 1068, 1070 [Utah 1985])

Rather, the bank only disputed the corporation's damage claim while the bank did have the burden of going forward with the evidence to show that plaintiff's harm was not as great ***.

***It did not carry a 'burden of proof' because it was not asserting an affirmative defense.

Marshalling the defendant's evidence.

"Every scrap" (Pena supra) of the opposition's evidence must be marshalled. We marshal the evidence for them:

1. The debt collection guarantee of June 4, 1992 showing an amount due from Dalton to Truman was \$58,905.09 to the debt collection guarantee (Addendum 1) specifically giving the collection agency the authority to compromise any claim.

2. The claim was distinctly compromised (Ex. D-35).

3. We will admit that Dalton paid everything that Dalton agreed to pay to the collection agency Audit and Accounting, first the \$10,000 (\$5,000 of which Audit and Accounting retained) and payments of \$833.33 per month commencing on the 15th day of October, 1992 for twelve consecutive months, interest free for a total account settlement of \$20,000 (Ex. D-36).

4. Dalton and Audit and Accounting, in combination or at the very prudent and honorable performance of Judge J. Harlan Burns (retired) every check was admitted in evidence as Exhibits D-1, D-21 through D-28, D-38 and D-39. Some were missing but we acknowledge that Dalton paid all twelve of the checks; paid however to Audit and Accounting which retained (most of) the same in its "trust account" (Tr. 56). We respectfully and willingly submit that the evidence presented by the Defendants-Appellees and particularly Dalton performed according to the compromise agreement.

POINT V

THE CASES ARE UNIFORM THAT MATHEMATICAL CALCULATIONS CAN TOTALLY LIQUIDATE A CLAIM.

It is fundamental that there is no consideration where a dispute only as to amount due is used as a predicate for a creditor to forgive a portion of the debt, Sugarhouse Finance Company v. Anderson, 610 P.2d 1369 (Utah 1980).

If an account can be exactly determined by application of rules of arithmetic a debtor's obligation payment of a part of

the creditor's invoices will not render an amount and the basis of an Accord and Satisfaction to be liquidated, Air Van Lines Inc. v. Buster, 673 P.2d 774 (Alaska 1983).

Under the Utah case of Marton Remodeling v. Jensen, 706 P.2d 607 (Utah 1985) there must be some dispute other than that one party's arithmetic is different from the others where arithmetic calculations can be made with precise accuracy.

In the case of a liquidated claim or demand, some consideration for an asserted release of the unpaid balance must be made (or paid) and a part payment of a lesser sum cannot support an alleged accord, Clark Leasing Corporation v. White Sands Forest Products Inc., 535 P.2d 1077 87 N.M. 451 (1975).

Where a claim is for a definite and undisputed amount which is past due, an agreement by the creditor to take a lesser amount, which is paid, does not discharge the whole debt, as the creditor receives only a portion of what he is entitled to and there is no consideration for a new agreement, F.M.A. Financial Corp. v. Build Inc., 404 P.2d 670; 17 Utah 2d 80 (1965).

A liquidated claim is one which can be determined with exactness from the agreement between the parties or by arithmetical process, AmJur2d Vol. 1 p. 474, Accord and Satisfaction §7. If the amount due is calculable upon investigation the claim is liquidated and therefore not the basis for an accord and satisfaction, Metropolitan Life Insurance Company v. Richter, 49 P.2d 94 at p. 96. (Okla. 1935).

The universal rule is that where a claim or demand is

liquidated the payment of only part of the debt affords no consideration for an agreement by the creditor to discharge the unpaid residue or balance of the debt. Corpus Juris Secundum, Vol 1, Pg. 507, Accord and Satisfaction §37.

The payment of a part of a debt does not discharge it, even though the debtor exacts a promise that it will do so. The debtor, by making part payment is doing nothing more than he is legally obligated to do and therefore he gives the creditor no consideration for the promise that part payment will be accepted to discharge the entire debt, Allen-Howe Specialties v. U.S. Const. Inc., 611 P.2d 705, 710 (Utah 1980).

POINT VI

**FIDUCIARY RELATIONSHIP OF AUDIT AND ACCOUNTING
WAS SEVERELY BREACHED RESPECTING CREDITOR
TRUMAN.**

**A. THE FAILURE OF AUDIT AND ACCOUNTING, THE
PRINCIPAL DEFENDANT-APPELLEE AND THE REAL
TARGET OF THIS ACTION COMMITTED ABSTRUSE
BUT VIOLENT BREACH OF A HIGH DEGREE OF
TRUST AND CONFIDENCE.**

In this case one would have expected to see either a witness who would testify to the fact, a document which would manifest the fact, or a non-existent but in the natural order of human nature that Audit and Accounting was not deficient; in the following absolutes:

1. Audit and Accounting neither pleaded in its answer or what would probably have required a defense [affirmative] of confession and avoidance.

2. There is no evidence to be found where Truman was

ever consulted before he received the first pathetic \$5,000 of a \$50,000+ obligation due him. Ten (10%) percent of all he could hope to get before the compromise was even dissimulated, let alone contractually-integrated to reduce the \$50,000 debt to a \$20,000 compromised settlement (please see Addendum 3).

3. There is nothing in the record to show that when the \$5,000 was submitted to Truman that this represented anything other than just an installment to demonstrate with pride Audit and Accounting's tenacious pursuit of the Dalton debt.

4. Five thousand (\$5,000) dollars would come as a relative shock having an expectation that his entire \$50,000+ was methodically a great expectation of which he would receive no less than \$25,000 [when the maximum he could have received was only one-half \$10,000, of his share the present value of which was \$4,737.50]. A small thing (the lower "present value") but demonstrative.

5. Audit and Accounting's Fiduciary - an institution of trust and confidence - never did plead any answer (Tr. 15; 20-25) or assert an affirmative defense necessarily required by Rule 9, U.R.C.P. to show avoidance of a confessed debt.

Audit and Accounting knew that the beneficiary of the fiduciary trust would automatically interpret the conduct as evidence of a radical compromise of his assigned (given away) debt.

6. Addendum 1, the debt-assuming instrument, begins with a self-defined Code of Ethics. At the time Truman received

the first \$5,000 he had the right to fear: (a) that might be all he could get; (b) that was one-tenth of what he would (should) get; (c) that the legal rate of interest would not be enforced against Dalton on any deferred payment; (d) we have got to hang our heads and admit that the payment of \$5,000 without any explanation should have given immediate rise to an obligation and redress of loss of Truman to mitigate his damages. There is no evidence that Truman was even ever given copies of at least five letters (Ex. D-29, D-33, D-34 and D-35 attached as Addenda 2, 7, 4 and 5).

B. WHEN IT WAS A SETTLED COMPROMISE THERE IS NOTHING TO SHOW WHAT TRUMAN COULD EXPECT.

In the way of monthly - or any other periodic - follow-up Truman would have at least known the need to consult an attorney but there was no reason to do that because the documents sent to Truman showed that he was "represented by an attorney" because he was billed and he paid for the entire amount of attorneys' fees out of his thus-diminished amount of the expectation of continuing payments.

We recognize that we did not plead the opposite of an affirmative defense against Dalton or Audit and Accounting nor did we hint nor suggest that they file one. We did serve, and following the rule, file a certificate that interrogatories had been asked which inquire into these subjunctives.

CONCLUSION

An almost astonishing series of events occurred since June 4, 1992, the date of the debt assignment (Addendum 1). This

document recites the total debt to be \$58,905.09.

A. June 10, 1992 ALERT LETTER FROM Audit and Accounting to Dalton putting a demand on Dalton for \$58,905.09 [the amount in the debt assignment] (Ex. D-29; Addendum 2).

B. June 23, 1992 (Ex. D-30; Addendum 3) Audit and Accounting advises Dalton's attorney that "our accounting department totaled all of the outstanding and unpaid invoices of Dalton Farms, many signed and many unsigned. We totally omitted any and all interest and service charge figures and calculations, adding principal amounts only, resulting in a total amount due of \$62,117.55." This letter, from Truman's trustor urges Dalton to establish evidence to diminish the true balance.

C. June 26, 1992 (Ex. D-32) a letter from J. Harlan Burns, attorney for Dalton, to Audit and Accounting stating that he has had an accountant review each invoice and added interest and that at a rate of 18.5% and the maximum amount owing is \$5,245.86. "Please send me the basis of your accounting that would substantiate a balance of \$62,117.55. I will send you our accounting as soon as I have it in type-written form."

D. The letter of June 29, 1992 (Ex. D-33; Addendum 7) is a surreptitious letter from Audit and Accounting to Dalton's attorney stating that they have

***delivered two (2) packets containing photocopies of the delinquent outstanding and unpaid invoices to Minersville Feed by your client Bill Dalton.

These invoices totaled \$62,117.55 principal only, excluding any and all interest or service charges. We have not received any proof of

payments to substantiate your client's disputation of this amount of \$62,117.55, and therefore must assume that it is a correct figure.

To avoid enforcement of payment by Billy Dalton Farms by litigation, we need to make a settlement and conclude this matter immediately. Please respond with evidences of credits and payments which my client (Audit and Accounting) has not credited to Dalton and a cash settlement offer within 10 days to avoid civil action. (Addendum 7)

E. The August 5, 1992 letter (Ex. D-20) to Truman stating that there is a discrepancy of \$58,905.09 which must be either in interest and/or payments which have not been credited or that they have credited too many payments. "It looks like we have Billy Dalton and Harlan Burns on the run, let's keep it up and respond as soon as possible if you can. If you have questions call me at 1-800-974-4341."

F. The August 14, 1992 letter (Ex. D-34; Addendum 4) from Dalton's attorney is a writing of curiosity stating that "a copy of the painstaking rehabilitation of the account based upon your invoices and the proper simple interest charged at the legal rate. You will notice without going back into the old account for the proper legal credits, the current amount reveals a balance owing of \$25,130.92 ***." The second item contained in this letter is an unethical offer of settlement *** the amount of \$20,000. a. \$10,000 in fifteen days from when your written acceptance of the settlement offer. b. \$10,000 within one year from the date of your acceptance of the settlement offer." (Ex. D-34) No copy to Truman.

G. August 18, 1992 (Ex. D-35; Addendum 5) is the indicative date of Audit and Accounting's letter to Joseph Harlan Burns, Esq., attorney for Dalton setting out method of paying the \$20,000 (\$10,000 by September 5, 1992; and \$833.33 paid on the 15th of each month beginning October 15th for twelve consecutive months interest free).

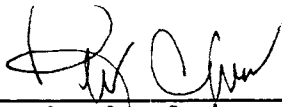
H. An August 28, 1992 (Ex. D-36) letter from J. Harlan Burns to Audit and Accounting submitting the \$10,000 check as a total account settlement of \$20,000.

The Trial Court's Judgment of Dismissal should be reversed because of manifest error.

Respectfully submitted,

CHAMBERLAIN ASSOCIATES

By



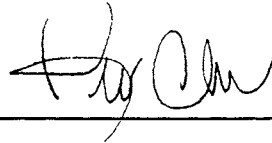
Ken Chamberlain
Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that two (2) copies of the foregoing Brief of Appellant were mailed to the following by U.S. regular mail, postage prepaid, on this 13th day of November, 1998:

Joseph Harlan Burns
Attorney for William M. Dalton
905 Three Fountains Drive
Cedar City, Utah 84720

John G. Mulliner
Attorney for Audit & Accounting Authority, Ltd.
363 North University Avenue, Suite 103
P.O. Box 1045
Provo, Utah 84603



Tab 1

CODE OF ETHICS

- I. Justice, equity and confidence constitute the foundation of the credit structure.
- II. Agreements and contracts are sacred and should not be breached by either party.
- III. The interchange of credit information must be based upon confidence, cooperation and reciprocity.
- IV. It shall be deemed unethical to be a party to unwarranted assignments or transfers of a distressed debtor's assets, nor should creditors participate in secret arrangements.
- V. Creditors should cooperate for the benefit of all in adjustment or liquidation of insolvent estates.
- VI. Creditors should render all possible assistance to honest debtors in distress.
- VII. Dishonest debtors should be exposed and make restitution.
- VIII. Cooperation, fairness and honesty must dominate in all distressed debtor proceedings.
- IX. Expensive administrative procedures in the rehabilitation or liquidation of a distressed debtor shall be avoided at all times.
- X. Creditors should cooperate and uphold the integrity, dignity and honor of the credit profession in all their dealings.

TERMS AND CONDITIONS OF EMPLOYMENT

We agree to notify the AUDIT & ACCOUNTING AUTHORITY of payments paid directly to us as the creditor. The creditor, for value received hereby assigns to the AUDIT & ACCOUNTING AUTHORITY hereinafter called Assignee, the listed accounts and/or claims for collection by Assignee. Creditor hereby consenting, directing and agreeing, that Assignee may bring suit in its own name upon all or any such accounts and/or claims as in the discretion of Assignee may seem necessary or proper. The account(s) and/or claim(s) listed are assigned subject to Assignee's discretion in effecting settlement or collection, are warranted to be legally due and unpaid as listed. Creditor further agrees to cooperate with Assignee in the collection of these accounts or claims and to furnish Assignee such records and evidences of indebtedness or liability as Assignee may at any time hereafter reasonably need or request. This account is not at present listed with other collectors or attorneys. A fifty-percent (50%) commission is charged on payments made to the company or to creditor. Commissions will be due Company if account is withdrawn while considered active. Agency will retain all interest as part of the collection fee. You are authorized to endorse for deposit, and collect such negotiable instruments as you may receive, made payable to me as creditor in payment of accounts, and on payments made direct to me. I authorize you to deduct your commission from any monies due me from collections made by you. To partially compensate you for work done on accounts, where there is no recovery, and to offset cost losses when court costs are advanced by you, any interest earned or accrued, that may be collected shall be retained by you. This agreement shall apply to all claims heretofore assigned and to all claims hereafter assigned. Creditor agrees to indemnify and save harmless the AUDIT & ACCOUNTING AUTHORITY and its employees from and against any and all loss, cost, damage, claims or injury on account of any matter or thing made, done, permitted or neglected by the agency in connection with the information forwarded to the agency on accounts. Legal costs of Attorney, suit and processing fees for prosecution of civil cases, if required, shall be creditor's obligation. To start this highly effective service, complete the information requested on reverse side and forward to ATTORNEY'S CREDIT SERVICE, Box 1515, Provo, Utah 84603-1515



Attorney's Credit Service
 1110 Professional Building
 Post Office Box 1515
 Provo City, Utah 84603-1515
 Telephone: (801) 226-3539
 Toll Free: (800) 525-4343

DEBT COLLECTION GUARANTEE

AUDIT & ACCOUNTING AUTHORITY, LTD.
 "Nationwide Credit Collection Network"

CLAIM FORM

You now have the professional collection service used by credit grantors in all 50 states and fully guaranteed to recover collection accounts receivable or we will replace this Collection Certificate at No Charge until such sum has been collected. This Iron-Clad 1000% Guarantee has no time limit and no size of account limit. Absolutely, positively, the best in the business. Our guarantee is unconditional, straightforward and the very best in the industry. To get the best results, use this service as soon as your accounts become past due. Notify the Attorney's Credit Service of any and all payments made direct to your office by using the toll-free 800 Telephone service listed at the left side of this certificate or contact us by mail at our office address located at the left. See reverse side for terms and conditions of employment. Creditor listed below assigns the following legally due and unpaid account(s) for collection.



"Since 1951"

CHECK HERE IF YOU NEED MORE FORMS

No. 111940

Your Name (Creditor's Firm Name): <u>Minersville Feed & Supply</u>		Your Phone: <u>801-386-2222</u>	Date of This Invoice: <u>6/9/9.</u>
Your Street Address: <u>88 East 100 So. Minersville</u>	City: <u>Utah</u>	State: <u>Utah</u>	Zip Code: <u>84752</u>
Name of Debtor (Full Name / Initials): <input checked="" type="checkbox"/> Mr. <input type="checkbox"/> Mrs. <input type="checkbox"/> Firm	<u>Billy Dalton Farms</u>		
Street Address: <u>290 W 200th. - P.O. Box 105</u>	Debtor's Phone Number: <u>801-386-2374</u>		
City: <u>Minersville, Utah</u>	State: <u>Utah</u>	Zip Code: <u>84752</u>	<input type="checkbox"/> We intend to use litigation on this account, if necessary, and we authorize A A A to select a collection attorney to demand payment. Please notify debtor of our intent to sue.
Alternate Address (Relative / Reference): <u>0105</u>	Amount Owning: <u>\$58,905.00</u>		
Debtor's Employer (If known): <u>(Self-employed)</u>	Alternate Phone Number:	Plus Valid Delinquent Charges (Interest): <u>\$</u>	
Debtor's Employment Address (If known):	Total Amount Due: <u>\$58,905.00</u>		Print Authorized Name (Creditor): <u>Ken Truman</u>

DO NOT SUBMIT ACCOUNTS AS THEY BECOME PAST DUE. DO NOT SUBMIT BANKRUPT OR SKIPS.

1117

Tab 2



"Nationwide Credit Collection Network"

Hilltop Professional Building
Post Office Box 1515
Provo City, Utah 84603-1515
Telephone: (801) 226-3539
Toll Free: (800) 525-4343



BILLY DALTON
290 W 200 N
MINERSVILLE UT 84752

Total Due \$ 58,905.09
Creditor Minersville Feed & Supply
Date 6-10-92

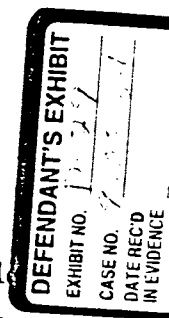
An audit of your creditor's accounts receivable verifies an unpaid debt which we have been employed to collect from you. You are hereby advised that the AUDIT & ACCOUNTING AUTHORITY is now exercising its legal right to demand the entire debt due and must now be paid upon receipt of this notice.

Public Law 95-109, Section 809 requires you to be notified that unless the validity of this debt, or any portion thereof referred to by this letter is disputed within thirty days of receipt of this notice, this debt is assumed to be valid. If you notify the AUDIT & ACCOUNTING AUTHORITY in writing within thirty days that this debt, or any portion thereof, is disputed we will provide you with verification of the debt or judgement.

Remit payment in full to: **AUDIT & ACCOUNTING AUTHORITY**
National Credit Audit Box 1515
Provo City, Utah 84603-1515

You must remit payment to this office within seven(7) days to avoid all additional collection activity which could result in costly litigation. If we do not receive payment on this debt, we will assume that you do not intend to pay the claim against you, upon which we will proceed with remedies available by law to enforce payment. This is an attempt to collect a debt. any information obtained will be used for this purpose.

If you force us into court and we prove this case against you, you will be liable for all of the additional court costs, fees, and expenses. Return this letter with your payment to insure proper credit to your delinquent account.



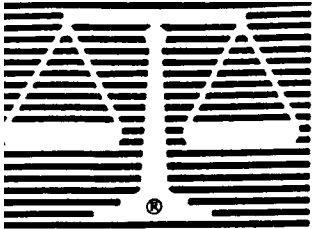
Telephone (801) 226-3539

ARTHUR - STANLEY - YORK AND ASSOCIATES, P.C.



ICA's mission is to provide information, education and support to those in the credit industry.
ICA's 72,000+ plus members represent all segments of the industry: retail firms, banks, credit unions.

Tab 3



CREDIT SERVICE

"Nationwide Credit Collection Network"

Hilltop Professional Building
Post Office Box 1515
Provo City, Utah 84603-1515
Telephone: (801) 226-3539
Toll Free: (800) 525-4343

June 23, 1992

Joseph Harlan Burns, Esquire
Attorney-at-Law
P.O.Box 6330
Cedar City, Utah 84721-6330

RE: MINERSVILLE FEED & SUPPLY vs. BILLY DALTON FARMS

Dear Mr. Burns:

It was a pleasure speaking with you recently regarding the above matter. Our accounting department totaled all of the outstanding unpaid invoices of Dalton Farms, many signed and many unsigned. We totally omitted any and all interest and service charge figures and calculations, adding principal amounts only, resulting in a total amount due of \$62,117.55.

Please supply us with all of Dalton's payments to the Minersville Feed & supply, or other credits resulting in a smaller figure than \$62,117.55. Also, please provide our firm with your client's "reasonable" cash settlement offer which you and I discussed via telephone. Time is of the essence in this matter, please respond as soon as possible.

Thank you,

Paul Kennedy
Paul J. Kennedy, Director/Operations
AUDIT & ACCOUNTING AUTHORITY, LTD.

DEFENDANT'S EXHIBIT
EXHIBIT NO. D 36
CASE NO. 82-1013-1
DATE REC'D IN EVIDENCE
CLERK [Signature]



ARTHUR - STANLEY - YORK AND ASSOCIATES, P.C.

ICA's mission is to provide information, education, and support to those in the credit industry.
ICA's 72,000-plus members represent all segments of the industry: retail firms, banks, credit unions.



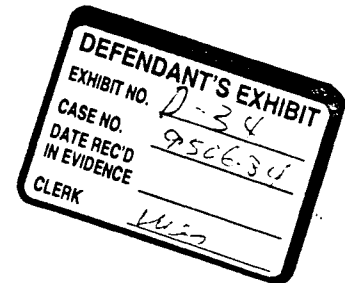
Tab 4

JOSEPH HARLAN BURNS
ATTORNEY AT LAW, #0507
97 NORTH MAIN STREET #22
P.O. BOX 6330
CEDAR CITY, UTAH 84721-6330
(801) 586-8922

District Court
Judge, Retired
(1971-1987)

August 14, 1992

AUDIT & ACCOUNTING AUTHORITY, Ltd
Mark Wilson, Legal Affairs
Certified, Return Receipt
Hilltop Professional Building
P.O. Box 1515
Provo City, UT 84603



RE: BILLY DALTON FARMS vs. MINERSVILLE FEED AND SUPPLY

Dear Mr. Wilson:

In response to your letter of July 29, 1992, and our telephone conversation of about the same date I am enclosing the following:

1. A copy of the painstaking rehabilitation of the account based upon your invoices and the proper simple interest charge at the legal rate.

You will note that without going back into the old account for the proper and legal credits, the current account reveals a balance owing of \$25,130.92 including monthly interest. Its the Dalton enterprise position that the old account was paid and that the \$25,000. was made on the new account. If you go back into the "old account and deduct improper interest, improper charges, and the compounding of interest contrary to the provisions of the Utah law the account is and will be more favorable to our position.

2. The second item contained in this letter is an **OFFER OF SETTLEMENT** of any and all outstanding balances, charges and business dealings to date between Billy Dalton Farms and Minersville Feed and Supply Company upon the payment to your client the sum and amount of TWENTY-THOUSAND (\$20,000) DOLLARS.

This sum is payable as follows:

- a. \$10,000. within fifteen (15) days following your written acceptance of the settlement offer.
- b. \$10,000.# within one (1) year from the date of your acceptance of the settlement offer.

It has been my advise to Mr. Dalton to settle this lawsuit on the above basis as the costs of litigation on the instant account and related matters will far exceed that amount for both parties in the event litigation commences.

I will expect your answer within ten (10) days one way or the other as we both recognize that this matter should be concluded. Stated another way, the local reputation and business conduct of all concerned are best served by a settlement.

Sincerely yours,



JOSEPH HARLAN BURNS
Attorney at Law

cc. Billy Dalton

Enclosure

lc

Tab 5



"Nationwide Credit Collection Network"

Hilltop Professional Building
Post Office Box 1515
Provo City, Utah 84603-1515
Telephone: (801) 226-3539
Toll Free: (800) 525-4343



August 18, 1992

Joseph Harlan Burns, Esquire
P. O. Box 6330
Cedar City, Utah 84721-6330

RE: MINERSVILLE FEED & SUPPLY vs. BILLY DALTON FARMS

Dear Mr. Burns:

Let this letter serve as your official authorization to settle and as an accord in satisfaction stipulating the following terms as agreed:

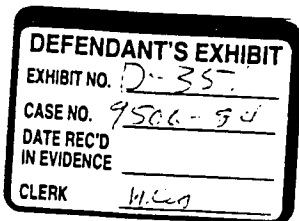
\$10,000. paid by Sept. 5, 1992.
(and)
\$833.33 paid on the 15th of each
month beginning Oct. 15,
1992 for 12 consecutive
months, interest free.

Draft all checks and remittances made payable to:

Minersville Feed Supply and
Audit & Accounting Authority

Deliver, by mail, to: Attorneys Services
Box 1515
Provo, Utah 84603-1515

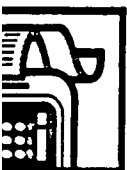
Thank you for your assistance in this matter, helping to avoid a costly and time consuming civil trial.



Sincerely,
M. Wilson

Mark Wilson, Director
AUDIT & ACCOUNTING AUTHORITY, LTD.
ATTORNEYS CREDIT SERVICES, INC.

cc: Karl Truman/Minersville



ARTHUR - STANLEY - YORK AND ASSOCIATES, P.C.

ICA's mission is to provide information, education and support to those in the credit industry.
ICA's 72,000-plus members represent all segments of the industry: retail firms, banks, credit unions.



Summary of Billy Dalton ACCOUNT WITH MILLERSVILLE FEED & SEED

Date	Invoice	Charge Amount	Sales Tax	Payment Credits	Balance	Interest	Percent of Annual Balance
3-13-90	27121	\$107.32			\$107.32		
3-7-90	64489	1,190.75			1,298.07		
4-2-90	27017	172.76			1,470.83		
3-12-90	27118	68.00			1,538.83		
3-17-90	27175	8.48	0.51		1,547.82		
3-19-90	27188	60.04			1,607.86		
3-24-90	27334	127.70			1,735.56		
3-26-90	27348	151.30			1,886.86		
3-26-90	27228	3,794.28			5,681.14		
3-26-90	27352	38.09			5,719.23		
4-3-90	27447	51.46			5,770.69		
4-3-90	27249	1,745.96			7,516.65		
4-5-90	10	722.06			8,238.71		
4-17-90	176	54.84			8,293.55		
4-18-90	193	14.20			8,307.75		
4-24-90	291	295.88			8,603.63		
4-27-90	326	42.41			8,646.04		
4-30-90	366	374.94			9,020.98		
5-8-90	467	72.00			9,092.98		
5-10--90	527	70.95			9,163.93		
5-20-90	530	37.97			9,201.90		
5-19-90	675	93.11			9,295.01		
5-21-90	702	207.58			9,502.59		
5-24-90	740	359.84			9,862.43		
5-29-90	793	32.24			9,894.67		
6-1-90	846	294.83			10,189.50		
6-4-90	872	183.40			10,372.90		
6-5-90	894	1,088.97			11,461.87		
6-8-90	948	165.21			11,627.08		
6-12-90	988	421.65			12,048.73		
6-13-90	1023	45.45			12,094.18		
6-15-90	1053	114.06			12,208.24		
6-23-90	1190	109.88			12,318.12		
6-25-90	1270	113.48			12,431.60		
6-27-90	1320	1,087.41			13,519.01		
6-26-90	1287	145.28			13,664.29		
7-9-90	1475	353.11			14,017.40		
7-11-90	1505	77.76			14,095.16		
7-16-90	1578	316.39			14,411.55		
7-20-90	1639	350.04			14,761.59		
7-26-90	1755	40.32			14,801.91		
7-27-90	1770	143.33			14,945.24		
7-28-90	1795	194.49			15,139.73		

PLAINTIFF'S EXHIBIT
EXHIBIT NO. 37
CASE NO. 9506-84
DATE REC'D
IN EVIDENCE

7-30-90	1814	215.10			15,587.57		
8-3-90	1870	749.44	0.25		16,337.26		
8-5-90	1896	261.61			16,598.87		
8-14-90	2030	289.84			16,888.71		
8-14-90	2025	72.11			16,960.82		
8-21-90	2112	135.50			17,096.32		
8-24-90	2160	888.89			17,985.21		
8-29-90	2226	86.95			18,072.16		
9-1-90	2260	149.94			18,222.10		
9-12-90	2433	839.06			19,061.16		
9-15-90	2454	74.24	0.22		19,135.62		
9-10-90	2394	136.20			19,271.82		
9-20-90	2509	736.93	0.37	45.00	19,964.12		
9-26-90	2603	113.46			20,077.58		
10-1-90	2668	37.99			20,115.57		
10-12-90	2833	126.90			20,242.47		
10-17-90	2887	2,827.37			23,069.84		
10-18-90	2899	241.80			23,311.64		
10-24-90	2941	176.00			23,487.64		
11-2-90	3028	15.00			23,502.64		
11-9-90	3085	1,003.89			24,506.53		
11-16-90	3137	171.38	0.15		24,678.06		
11-21-90	3173	6.00			24,684.06		
11-27-90	3269	76.41			24,760.47		
12-2-90	3309	41.78			24,802.25		
12-13-90	3412	392.23			25,194.48		
12-15-90	3436	286.99			25,481.47		
12-24-90	3571	9.54			25,491.01		
12-28-90	3630	744.00			26,235.01		
12-31-90	3645	47.00			26,282.01	1,319.47	10.00
1-2-91	3679	823.73			27,105.74		
12-26-90	3476	1,025.12			28,130.86		
1-3-91	3684	7.00			28,137.86		
1-3-91	3688	102.00			28,239.86		
1-11-91	3829	344.72			28,584.58		
1-16-91	3863	19.08			28,603.66		
1-19-91	3892	3.36			28,607.02		
1-21-91	3898	38.77			28,645.79		
1-15-91	3793	1,065.96			29,711.75		
1-25-91	3750	1,159.20			30,870.95		
1-29-91	3981	8.55			30,879.50		
1-30-91	4056	84.02			30,963.52		
2-14-91	4178	41.71			31,005.23		
2-19-91	4228	3.20			31,008.43		
2-20-91	4236	29.97			31,038.40		
3-1-91	4381	25.90			31,064.30		

-5-91	4330	1,184.24			33,491.38
-4-91	4399	8,792.76			42,284.14
-12-91	4474	27.41		6,744.19	35,567.36
-15-91	4517	128.55	0.51		35,696.42
-22-91	4640	4.77			35,701.19
-26-91	4691	122.75			35,823.94
-28-91	4711	35.41			35,859.35
-2-91	4763	322.81			36,182.16
-4-91	4787	145.67			36,327.83
-10-91	4863	87.09			36,414.92
-18-91	5004	8.04			36,422.96
-23-91	5069	51.45			36,474.41
i-3-91	5223	394.22	0.06		36,868.69
i-9-91	5339	57.17			36,925.86
i-23-91	5494	77.28			37,003.14
i-28-91	5540	13.15			37,016.29
i-4-91	5622	121.52			37,137.81
i-6-91	5660	774.18			37,911.99
i-12-91	5792	177.37			38,089.36
i-20-91	5892	219.92	2.45		38,311.73
i-25-91	5981	388.58			38,700.31
i-29-91	6080	101.62			38,801.93
i-2-91	6106	241.06			39,042.99
i-5-91	6143	34.65			39,077.64
i-5-91	6151	380.70			39,458.34
i-7-91	6166	477.08	0.27		39,935.69
i-13-91	6264	117.16			40,052.85
i-17-91	6380	101.89			40,154.74
i-19-91	6399	655.70			40,810.44
i-22-91	6449	13.25			40,823.69
i-18-91	6405	55.36			40,879.05
i-27-91	6514	322.12			41,201.17
3-2-91	6600	128.77	1.03		41,330.97
3-4-91	6630	608.14			41,939.11
3-6-91	6659	423.44			42,362.55
3-13-91	6766	1,382.72	0.93		43,746.20
3-22-91	6882	1,260.70			45,006.90
3-26-91	6926	383.76			45,390.66
3-29-91	7009	354.48			45,745.14
3-13-91	7027	30.76			45,775.90
9-5-91	7089	578.57			46,354.47
9-9-91	7126	81.43			46,435.90
9-14-91	7208	68.95	1.12		46,505.97
9-25-91	7337	46.48			46,552.45
9-28-91	7436	180.25			46,732.70
10-3-91	7495	65.93			46,798.63

12-91	7599	16.35			46,873.90		
14-91	7603	55.40			46,929.30		
17-91	7634	142.81			47,072.11		
30-91	7742	1.70	0.10		47,073.91		
2-91	7779	9.54			47,083.45		
4-91	7788	159.74			47,243.19		
13-91	7911	62.40			47,305.59		
16-91	7930	1.36			47,306.95		
19-91	7951	77.32	0.12		47,384.39		
2-91	8035	27.61			47,412.00		
10-91	8160	15.67			47,427.67	3,589.03	9.00
7-92	8413	13.94	0.08		47,441.69		
3-92	8420	17.85			47,459.54		
2-92	8988	246.66			47,706.20		
2-92	8988				47,706.20		
25-92	9521	2,475.22			50,181.42		
5-92	9931	21.50			50,202.92		
7-92	9952	47.00			50,249.92		
18-92	10092	66.60			50,316.52		
21-92	10203	162.43			50,478.95		
10-92	10531	3.12			50,482.07		
09/01/92	PD TO AAA			10,000.00	40,482.07		
10/01/92	PD TO AAA			833.33	39,648.74		
11/01/92	PD TO AAA			833.33	38,815.41		
12/01/92	PD TO AAA			833.33	37,982.08	3,843.40	9.00
01/01/93	PD TO AAA			833.33	37,148.75		
02/01/93	PD TO AAA			833.33	36,315.42		
03/01/93	PD TO AAA			833.33	35,482.09		
04/01/93	PD TO AAA			833.33	34,648.76		
05/01/93	PD TO AAA			833.33	33,815.43		
06/01/93	PD TO AAA			833.33	32,982.10		
07/01/93	PD TO AAA			833.33	32,148.77		
08/01/93	PD TO AAA			833.33	31,315.44		
09/01/93	PD TO AAA			833.33	30,482.11	2,438.57	8.00
12/31/94						2,438.57	8.00
12/31/95						2,438.57	8.00
12/31/96						2,438.57	8.00
12/31/97						2,438.57	8.00
03/25/98						561.21	8.00
TOTALS		\$57,263.09	\$8.17	\$26,789.15	\$30,482.11	\$21,505.96	

SUMMARY:

TOTAL OF INVOICES & SALES TAX

\$57,271.26

TOTAL OF PMT & CREDITS:

26,789.15

\$21,505.96

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.

Machine-generated. Do not edit. Do not correct errors.

Tab 6



"Nationwide Credit Collection Network"

Hilltop Professional Building
Post Office Box 1515
Provo City, Utah 84603-1515
Telephone: (801) 226-3539
Toll Free: (800) 525-4343

July 29, 1992

J. Harlan Burns, Attorney
P. O. Box 6330
Cedar City, Utah 84721-6330

RE: Minersville Feed & Supply vs. Billy Dalton Farms

Dear Mr. Burns:

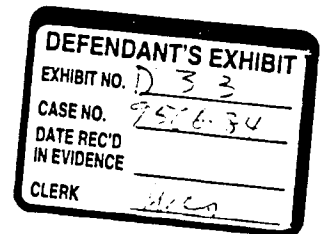
On June 6, 1992, our firm delivered two(2) packets containing photocopies of the delinquent outstanding and unpaid invoices owed to Minersville Feed by your client Bill Dalton.

These invoices totaled \$62,117.55 principal only, excluding any and all interest or service charges. We have not received any proof of payments to substantiate your clients disputation of this amount of \$62,117.55, and therefore must assume that it is a correct figure.

To avoid enforcement of payment by Billy Dalton Farms by litigation, we need to make a settlement and conclude this matter immediately. Please respond with evidences of credits and payments which my client has not credited to Dalton and a cash settlement offer within 10 days to avoid civil action.

Thank you,

Mark Wilson, Legal Affairs
AUDIT & ACCOUNTING AUTHORITY, LTD.



cc: Billy Dalton, Minersville, Utah
John G. Mulliner, Corporate Counsel



ARTHUR - STANLEY - YORK AND ASSOCIATES, P.C.

ICA's mission is to provide information, education and support to those in the credit industry.
ICA's 72,000-plus members represent all segments of the industry: retail firms, banks, credit unions.



Tab 7

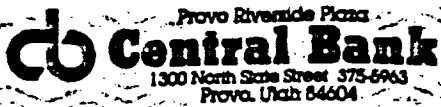
PROVO, UTAH 84603-1515

12/23 19 93

MINERSVILLE FEED & SUPPLY CO. \$ **266.66**

THE SUM 266 00 66 00

DOLLARS



Provo Riverside Plaza
1300 North State Street 375-6963
Provo, Utah 84604

Collection Remittance as per Statement

D. Beardall

⑈00225⑈ ⑆⑆24300327⑆07⑆ ⑆⑆⑆32 2⑈



ICA's mission is to provide information, education and support to those in the credit industry.
ICA's 72,000-plus members represent all segments of the industry: retail firms, banks, credit unions.



DIT SERVICE

DEBTOR'S INFORMATION:	CLIENT NO.	DATE LAST LISTING	COLLECTION SUMMARY FOR			CK. NO.	
				AMOUNT PAID TO AGENCY	AMOUNT PAID DIRECT TO YOU	AMOUNT DUE AGENCY	AMOUNT DUE YOU
BILLY DALTON FARMS			833.33				416.
LEGAL CONSULTATION & COUNSEL					150.00		
			833.33		150.00		416.

PLAINTIFF'S EXHIBIT
 EXHIBIT NO. 16
 CASE NO. 9506-84
 DATE REC'D IN EVIDENCE _____
 CLERK A. Co.

OUR CHECK ENCLOSED FOR → \$266.66
 PLEASE REMIT TO AGENCY →

TOTAL PAID TO AGENCY 833.33 **TOTAL PAID DIRECT TO YOU** 150.00 **TOTAL AMOUNT DUE AGENCY** 150.00 **TOTAL AMOUNT DUE YOU** 416.

CLIENT

IF CHECK RECEIVED

IF STATEMENT RECEIVED

AUDIT & ACCOUNTING AUTHORITY, LTD.
"Nationwide Credit Collection Network"

\$833.
TOTAL COLLECTION