

2009

# Michael Ward v. Caroline Coats Graydon : Brief of Petitioner

Utah Court of Appeals

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Bruce D. Panzer; Blackburn & Stoll; Attorney for Appellee.

Brad C. Smith; Stevenson & Smith; Attorney for Appellant.

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IN THE UTAH COURT OF APPEALS

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MICHAEL WARD,

Case No. 2009-14 CA

Petitioner and Appellant,

Trial Court No. 08-03379

vs.

CAROLINE COATS GRAYDON,

Respondent and Appellee.

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BRIEF OF PETITIONER MICHAEL WARD

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On Appeal from the Third District Court for Salt Lake County  
Honorable Denise P. Lindberg

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Bryce D. Panzer, A2509  
Blackburn & Stoll, LC  
257 East 200 South Suite 800  
Salt Lake City, Utah 84111

Attorney for Respondent/Appellee

Brad C. Smith, No. 6656  
Stevenson & Smith, P.C.  
3986 Washington Boulevard  
Ogden, Utah 84403

Attorney for Petitioner/Appellant

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257 East 200 South Suite 800  
Salt Lake City, Utah 84111

Attorney for Respondent/Appellee

Brad C. Smith, No. 6656  
Stevenson & Smith, P.C.  
3986 Washington Boulevard  
Ogden, Utah 84403

Attorney for Petitioner/Appellant

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BRIEF OF PETITIONER MICHAEL WARD

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**JURISDICTION**

The Utah Court of Appeals has jurisdiction over this case pursuant to Utah Code Ann. § 78A-4-103(2)(c).

**STATEMENT OF THE ISSUES**

1. Does a joint tenant of real property owe any fiduciary duty to a co-tenant? The existence of a duty and its contours presents a question of law, which is reviewed for correctness. McLaughlin v. Schenk, 220 P.3d 146, 153 (Utah 2009). This issue was
2. In the event that a joint tenant is involved in a divorce action, if the other spouse, though not on title, is given rights and authority over the real property subject to the joint tenancy, does that spouse also acquire duties to the joint tenant not

involved in the divorce? The existence of a duty and its contours presents a question of law, which is reviewed for correctness. McLaughlin v. Schenk, 220 P.3d 146, 153 (Utah 2009).

3. Did the trial court err in (a) granting summary judgment in favor of Defendant Caroline Coats Graydon and (b) denying Plaintiff's motion for summary judgment against Defendant Caroline Coats Graydon? The grant or denial of a motion for summary judgment presents a question of law, which is reviewed for correctness. R & R Indus. Part. L.L.C. v. Utah Property and Cas. Ins. Guar. Ass'n, 199 P.3d 917 (Utah 2008).

## **STATEMENT OF THE CASE**

### **Nature of the Case:**

This is an appeal from a final judgment of the Third District Court, the Honorable Denise P. Lindberg presiding over a hearing on cross motions for summary judgment.

### **Course of the Proceedings Below:**

On 26 February 2008, Petitioner Ward ("Ward") filed a complaint against Peter Coats and Respondent Caroline Coats Graydon ("Graydon"), seeking damages related to the foreclosure of real property in which he was a part owner. On 3 March 2009, Ward filed a motion for summary judgment in the case. On 27 March 2009, Graydon filed a cross-motion for summary judgment in the case.

**Disposition by Trial Court:**

On 20 July 2009, a hearing was conducted on the cross motions for summary judgment before the Honorable Denise P. Lindberg. Based upon that proceeding, in an order dated 17 August 2009, the Trial Court

- (a) denied Ward's motion for summary judgment against Graydon,
- (b) granted Graydon's motion for summary judgment against Ward, and
- (c) awarded costs to Graydon as against Ward.

**STATEMENT OF FACTS**

- 1 By virtue of a series of property transactions, in late 2005, Ward became joint owner with Peter Coats of two adjacent parcels of property in South Jordan, Salt Lake County, State of Utah. One parcel consisted of 18 acres, the other of 22 acres [hereinafter "North Parcel" and "South Parcel" respectively]. Ward owned an undivided 98.2% interest, and Peter Coats owned an undivided 90.18% interest. Addendum A, Affidavit of Plaintiff Michael Ward, ¶ 2, Addendum B, Affidavit of David Ward, ¶ 2.
- 2 Peter Coats and Graydon were previously married, having been divorced in a bifurcated proceeding. Addendum A, Affidavit of Plaintiff Michael Ward, ¶ 3, Addendum B, Affidavit of David Ward, ¶ 3.
- 3 Graydon asserted claim to both the North and South Parcels by virtue of her marriage. In asserting her claims, Graydon caused a lis pendens and other documents to be filed with the Office of the Salt Lake County Recorder to reflect

her claim of interest in both the North and South Parcels. Addendum A, Affidavit of Plaintiff Michael Ward, ¶ 4; Addendum B, Affidavit of David Ward, ¶ 4.

4. Both the North and South Parcels were subject to Trust Deeds in favor of Peter Coats' mother, Isabel Coats. Isabel Coats is also the grandmother of Ward, who is the nephew of Peter Coats. Addendum A, Affidavit of Plaintiff Michael Ward, ¶ 5; Addendum B, Affidavit of David Ward, ¶ 5.
5. As a part of the divorce proceeding between Graydon and Peter Coats, Graydon was granted a special power of attorney to deal with marital property, including its sale and disposition. Addendum A, Affidavit of Plaintiff Michael Ward, ¶ 6; Addendum B, Affidavit of David Ward, ¶ 6. A copy of the court order granting a power of attorney to Defendant Caroline Coats Graydon is attached hereto as Addendum C.
6. Graydon testified that she was granted a power of attorney to deal with the marital property. Peter Coats and Graydon were under an obligation to sell the marital property. Addendum D, Deposition of Caroline Coats Graydon.
7. In the fall of 2005, Isabel Coats proceeded to foreclose on her Trust Deeds over both the North and South Parcels. Addendum A, Affidavit of Plaintiff Michael Ward, ¶ 7; Addendum B, Affidavit of David Ward, ¶ 7.
8. In a quiet title action brought by Isabel Coats, Graydon requested the Court grant a temporary restraining order forbidding the sale of the property. Ultimately Graydon and Isabel Coats entered into a stipulation. Addendum A, Affidavit of Plaintiff Michael Ward, ¶ 8; Addendum B, Affidavit of David Ward, ¶ 8.

- 9      The Amended Stipulation<sup>1</sup> required Isabel Coats' cooperation in the sale of the properties, agreed to a cancellation of the Notice of Default and recognized Isabel Coats' ownership of an undivided 9 82% interest in both the North and South Parcels Addendum A, Affidavit of Plaintiff Michael Ward, ¶ 8, Addendum B, Affidavit of David Ward, ¶ 8 A copy of the Amended Stipulation is attached hereto as Addendum E
- 10     Subsequent to the entry of the Stipulation, Isabel Coats transferred her ownership interest in the North and South Parcels to Ward in consideration of One Hundred Fifty Thousand Dollars (\$150,000 00) Addendum A, Affidavit of Plaintiff Michael Ward, ¶ 9, Addendum B, Affidavit of David Ward, ¶ 9 A copy of the deed transferring Isabel Coats' interest to Ward is attached as Addendum F
- 11     Isabel Coats commenced a second foreclosure proceeding against both the North and South Parcels in the spring of 2006 Addendum A, Affidavit of Plaintiff Michael Ward, ¶ 13, Addendum B, Affidavit of David Ward, ¶ 13
- 12     By the fall of 2006, Graydon filed another motion for a temporary restraining order The matter was contested in an evidentiary hearing on converting Graydon s temporary restraining order motion into a preliminary injunction, which was held before the Honorable Tyrone E Medley on 5 December 2006 At the conclusion of that hearing, Judge Medley concluded that Graydon had not presented a case adequate for the issuance of a preliminary injunction, and therefore dissolved the temporary restraining order and denied the request for a

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<sup>1</sup> The Amended Stipulation merely corrected aspects of the property description The substantive terms of the Amended Stipulation were identical to those of the original Stipulation

preliminary injunction. Addendum A, Affidavit of Plaintiff Michael Ward, ¶ 14; Addendum B, Affidavit of David Ward, ¶ 14.

13. Following the dissolution of the temporary restraining order, Isabel Coats proceeded with the foreclosure sale. Addendum A, Affidavit of Plaintiff Michael Ward, ¶ 15; Addendum B, Affidavit of David Ward, ¶ 15.
14. The foreclosure sale was scheduled for 14 February 2007. Addendum A, Affidavit of Plaintiff Michael Ward, ¶ 16; Addendum B, Affidavit of David Ward, ¶ 16.
15. In the month prior to the Trustee's Sale, Peter Coats worked diligently to procure a purchaser for the property. Addendum A, Affidavit of Plaintiff Michael Ward, ¶ 17; Addendum B, Affidavit of David Ward, ¶ 17.
16. In the weeks and days preceding the foreclosure sale, Peter Coats was the procuring cause of various offers of purchase. One of the offers for purchase involved only the North Parcel, and was for the sum of Five Million Two Hundred Thousand Dollars (\$5,200,000.00). Ward and Peter Coats accepted that offer. Addendum A, Affidavit of Plaintiff Michael Ward, ¶ 18; Addendum B, Affidavit of David Ward, ¶ 18.
17. Graydon did not accept this offer. Addendum A, Affidavit of Plaintiff Michael Ward, ¶ 19; Addendum B, Affidavit of David Ward, ¶ 19.
18. In the weeks and days preceding the Trustee's Sale, both Peter Coats and Graydon made proposals and/or demands of conditions for closing. Addendum A, Affidavit of Plaintiff Michael Ward, ¶ 20; Addendum B, Affidavit of David Ward, ¶ 20.



19. As a condition of closing, Graydon required Peter Coats agree to have his portion of the sales proceeds deposited into an escrow account pending the resolution of their divorce. Addendum G, Deposition of Carolyn Graydon, 11:12-12:14.
20. None of the offers to purchase were ever accepted since Graydon would not accept any offer. Addendum A, Affidavit of Plaintiff Michael Ward, ¶ 21; Addendum B, Affidavit of David Ward, ¶ 21.
21. Graydon was, at all time relevant, a licensed real estate agent and loan officer. Because of this experience, Graydon knew that if she postponed reaching an agreement on the terms of the sale and/or postponed the closing, she could effectively hold the sale hostage. Addendum A, Affidavit of Plaintiff Michael Ward, ¶ 22; Addendum B, Affidavit of David Ward, ¶ 22.
22. Ward indicated to both Graydon and Peter Coats that he would accept any reasonable proposals for closing instruction which either of them might propose. Addendum A, Affidavit of Plaintiff Michael Ward, ¶ 24; Addendum B, Affidavit of David Ward, ¶ 24.
23. No sale offer was accepted and the North Parcel was subject to a foreclosure sale on 15 March 2007. Addendum A, Affidavit of Plaintiff Michael Ward, ¶ 25; Addendum B, Affidavit of David Ward, ¶ 25.
24. Accordingly, the property was sold at a Trustee's Sale on 15 March 2007, for the sum of Three Million Six Hundred Thousand Dollars (\$3,600,000.00). Addendum H, Amended Trustee's Deed Following Trustee's Sale.
25. Had Graydon and Peter Coats agreed to accept the highest offer, Ward would have been entitled to 9.82% of \$5.2 million, or \$510,640.00. Instead, Ward

received only \$195,397.28, representing 9.82% of the excess proceeds.

Addendum A, Affidavit of Plaintiff Michael Ward, ¶ 27; Addendum B, Affidavit of David Ward, ¶ 27.

26. Subsequent to the Trustee's Sale, on 10 November 2008, Judge Atherton entered a supplemental decree of divorce in Graydon's and Peter Coats' divorce action. Pursuant to the Supplemental Decree, Graydon was awarded damages against Peter Coats, which damages amounted to the portion of the sales proceeds she would have received had the property sold for \$5.2 million. Addendum I, Supplemental Decree of Divorce, ¶ 15-15.
27. Ward brought an action for damages for the loss of the benefit of the offer for \$5.2 million against Graydon and Peter Coats. Addendum J, Memorandum in Support of Defendant Caroline Graydon's Motion for Summary Judgment.
28. Ward moved for Summary Judgment on 3 March 2009. The Court denied his motion, awarded summary judgment to Graydon, and dismissed Ward's complaint against Graydon with prejudice. Graydon was also awarded costs as against Ward. Addendum K, Order On Summary Judgment Motions and Judgment.
29. The trial court granted summary judgment in favor of Ward as against Peter Coats. Addendum K, Order On Summary Judgment Motions and Judgment.
30. Peter Coats sought to have the trial court reverse its judgment, but his motion was denied. Addendum L, Minute Entry and Order.

## **SUMMARY OF ARGUMENT**

The Trial Court's decision should be reversed. As a result of the unique relationship inherent in joint ownership of property, Utah courts have recognized a fiduciary duty existing between co-tenants of real property. Under the circumstances of this case, Respondent Graydon, in effect, became a co-tenant of Petitioner Ward. She not only exercised control over the jointly owned property in a manner consistent with ownership, but also sought and was awarded damages for a breach of fiduciary duty from a co-tenant. As a result, Graydon acquired the obligations of co-tenancy, including an obligation to protect the interests of her co-tenant. When through her breach of this obligation, Graydon prevented the sale of property, her actions caused Ward a substantial economic injury. As a result, Graydon is liable to Ward, and the Trial Court's granting of summary judgment should be reversed.

## **ARGUMENT**

In granting summary judgment to Graydon, the Trial Court failed to recognize that under the facts of this case, Graydon had in effect become a co-tenant with Ward and Peter Coats, and therefore had obligations to each of them. Pursuant to these obligations, Graydon had a duty to act in the best interest of her co-owners. When she and Peter Coats were unable to overcome their personal differences and agree to a sale that would be beneficial to all of the co-owners, Graydon breached this obligation, in the process injuring Ward. Although Graydon claims that she is entitled to benefits of ownership without any of its ancillary obligations, the facts clearly indicate otherwise.

## I. Joint Tenants of Real Property Owe A Fiduciary Duty to Co-Tenants

Because of the nature of the special relationship that exists between co-tenants, the law recognizes a fiduciary duty in such relationships. In *Olwell v. Clark*, the Utah Supreme Court recognized that “[i]t is established law that co-tenants stand in a unique relationship of confidence and trust by reason of their community of interest.” 658 P.2d 585, 587 (1982) (citing 20 Am. Jur. 2d *Cotenancy and Joint Ownership* §2). In light of the mutual obligations that joint ownership of a property imposes upon co-tenants, the Utah Supreme Court has determined that in Utah, such a relationship includes a fiduciary duty.<sup>2</sup> *Id.*

In articulating, in part, the nature of this unique relationship and fiduciary duty, the Utah Supreme Court noted that co-tenancy gives rise to a presumption that “any act calculated to protect the property against a lien or sale, or otherwise, will be presumed

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<sup>2</sup> Petitioner recognizes that in addition to *Olwell*, there is case law in Utah indicating that the existence of a fiduciary duty for co-tenants is a factual question related to the specific circumstances of a given situation. Although *Olwell* has likely supplanted these decisions by equating a co-tenants’ relationship of confidence and trust with a general fiduciary duty, those decisions support the finding of a fiduciary duty in the specific facts and circumstances of this case. For example, in *Chourmos v. Evona Inv. Co.*, the Utah Supreme Court stated that joint tenants generally stand in a confidential or fiduciary relationship to each other “that prohibits one taking advantage of the others.” 93 P.2d 450, 453 (1939). And in *Rio Algon Corp. v. Jimco Ltd.*, the Utah Supreme Court noted that “[a] fiduciary relationship between co-tenants is usually found when one co-tenant of real property undertakes to act on behalf of another co-tenant or takes advantage of other co-tenants.” 618 P.2d 497, 506 (1980). Thus, in 1983, a year after the *Olwell* decision, the Utah Supreme Court found a fiduciary duty existed between co-tenants when one suffered default on the property, and then extinguished the interest of the others by purchasing it at the resulting foreclosure sale. In the present case, the parties to this action stood in a confidential or fiduciary relationship to each other because Graydon and Peter Coats were under an affirmative duty to sell the property. Graydon had been granted, by the Court, a power of attorney to act for Peter Coats. Graydon had filed a lis pendens on the property, and the property was in the process of being foreclosed on. As a result of such relationship, the parties had an obligation to act in their mutual best interest. As will be shown, Respondent Graydon breached this obligation.

to be for the benefit of all cotenants.” *Sweeney Land Co. v. Kimball*, 786 P.2d 760, 762 (1990). Conversely, any act, including a sale or foreclosure, that diminishes the value of a property is thus presumed to be to the detriment of all the co-tenants. Actions by a co-tenant that adversely affect the interests of the other co-tenants violate the confidence and trust inherent in this community of interest, and may be a breach of a co-tenant’s fiduciary duty.

Included in a co-tenant’s fiduciary duty is a duty of loyalty and good faith and fair dealing. As famously stated by Justice Cardozo in *Meinhard v. Salmon*, this duty of includes “something stricter than the morals of the market place[;] [n]ot honesty alone, but the punctilio of an honor the most sensitive, is then the standard.” 164 N.E. 545, 546 (N.Y. 1928). As a part of his or her heightened legal duties of loyalty and good faith and fair dealing, a co-tenant is under an obligation to act in behalf of the community of interest, with undivided loyalty to the other co-tenants. “The law requires [co-tenants] to be true to their trust and honest in their dealings with each other . . . each is supposed to protect the rights of all others.” *Holbrook v. Carter*, 431 P.2d 123, 125 (Utah 1967)(concur). Failure to act honestly, fairly, and in good faith with regards to the jointly owned property is breach of a co-tenant’s fiduciary obligations.

Throughout the events related to the present case, Petitioner Ward has acted in accordance with this fiduciary duty. Under the imminent threat of the pending foreclosure, Ward assisted in procuring purchase offers for the parcels of land. When a bona fide offer of \$5.2 million was made for just the North Parcel, Ward agreed to the sale in an effort to avoid foreclosure. Furthermore, in an effort to protect the mutual interests of the co-tenants by expediting such sale, Ward indicated to both Graydon and

Peter Coats that he would accept *any* reasonable proposals for closing the sale, as required by the pending divorce between them. Unfortunately, because of the acrimony of the extraneous divorce proceedings, Graydon and Peter Coats failed to reciprocate in this community of interest, and no sale of the property was ever concluded, leaving the North Parcel to be foreclosed on for a substantially reduced price. As a result, Ward received only \$195,397.28 for his ownership in the property, over \$315,000 less than he should have received had Graydon and Peter Coats agreed to the terms of the sale. Despite having fulfilled his own obligations, Ward's co-tenants', through their acts and omissions, breached their fiduciary duties. Such breach was the direct and proximate cause of Ward's injuries.

## **II. Respondent Graydon Was In Effect a Co-Tenant**

As a result of her interest in, and exercise of control over, the North and South Parcels, Graydon functioned as a co-tenant of the property, and is therefore subject to a fiduciary duty. It is undisputed that Peter Coats and Ward were co-tenants of the property at issue. It is also undisputed that Graydon's sole interest in the property was a marital claim, derivative through Peter Coats' interest. In this action, Graydon claims that she was never on title to the property, and therefore did not owe any duties to Ward. Nevertheless, as indicated by her actions in this proceeding, as well as the divorce proceeding between she and Peter Coats, Graydon has exerted legal authority over, and interest in, the property sufficient to establish her status, in effect, as a co-tenant.

#### **A. Graydon Has Exercised Ownership Authority Over the Property**

Graydon's sole interest in the North and South Parcels is a marital claim which arose by virtue of her marriage to Peter Coats. Although not a "legal interest" in the sense that her name does not appear on title, Graydon nevertheless has exercised her marital interest sufficient to impose at least some of the obligations of co-tenancy upon her. A marital asset is subject to a court's powers of equitable division under Utah Code Ann. §30-3-5(1) ("[w]hen a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property, debts, or obligations, and parties.") Utah's divorce statute provides that a decree vesting marital property in one spouse takes effect "when a decree of divorce is rendered." *Id.* While a spouse's interest in marital property is in some sense "inchoate," upon commencement of the divorce, it vests. Although Utah courts have not explored this particular point, courts in other states have. For example, the Kansas Court of Appeals held

Prior to the filing of a petition for divorce, a spouse may dispose of his or her personal property without regard to the other spouse. At that time, a spouse possesses only an inchoate interest in real estate held by the other spouse. The filing for divorce, however, has a substantial effect upon the property rights of the spouses. At that moment, each spouse becomes the owner of a vested but undetermined interest in all the property individually or jointly held. The court is obligated to divide the property in a just and equitable manner regardless of the title or origin of the property. Except for those rights which vest by virtue of the filing of the divorce action, [this law] in no way change[s] the interest of one spouse in the property held by the other, or the ability of the other spouse to convey, sell or give away such property.

*In re Marriage of L. T. Watson*, 22 P.3d 1081, 1085 (Kan. Ct. App. 2001), citing *Cady v. Cady*, 581 P.2d 358, 358 (Kan. 1978).

Thus, equitable distribution schemes, like Utah's, recognize that a spouse's interest in the property of the other spouse goes through several phases. During the

course of the marriage and before the pendency of any divorce, property owned by each spouse in their own name is that spouse's separate property. See, e.g., Utah Code Ann. § 30-2-2 ("[c]ontracts may be made by a wife, and liabilities incurred and enforced by or against her, to the same extent and in the same manner as is if she were unmarried"), Utah Code Ann. § 30-2-5(2) ("[t]he wages, earnings, property, rents, or other income of one spouse may not be reached by the creditor of the other spouse to satisfy a debt, obligation, or liability of the other spouse"). To further illustrate, had Peter Coats died prior to the finalization of the decree, the claims against the property would be resolved based upon the laws of descent and distribution, not domestic relations.

Upon the commencement of her divorce action, Graydon's interest was converted to a vested, though inchoate, right. The inchoate right was unascertained, unallocated, but fully vested. This inchoate right sprang to a full, fee-simple ownership upon the final entry of a decree of distribution pursuant to the court's equitable powers. Utah's divorce statute clearly envisions such a result in the language that gives the court the right, "upon entry of a decree," to enter equitable orders regarding property. Utah Code Ann. § 30-3-5(1). As a matter of law, upon the commencement of the divorce in 1999, Graydon had a vested interest, though inchoate, in the marital property. At that point, the rights and interests of Graydon became sufficiently similar to those of a co-owner to impose the duties and obligations of co-ownership upon her. The Utah Court of Appeals indicated as much when it held that a fiduciary relationship may exist between a husband and wife before a divorce decree is entered. *Morgan v. Morgan*, 875 P.2d 563, 565 (1994), citing *Glover v. Glover*, 242 P.2d 298, 300 (Utah 1952).



In addition, Graydon has actually acted in many respects as a co-owner of the property, further suggesting that equity demands she be accountable as co-owner. As a part of the unrelated divorce proceeding between Graydon and Peter Coats, Graydon was granted a special power of attorney to deal with the marital property, including its sale and disposition. Pursuant to this power of attorney, which gave Graydon the authority to act on behalf of Peter Coats (the co-tenant of Ward), Graydon engaged in a series of actions related to the property that only an owner of such property could. When Isabel Coates attempted to foreclose on the North and South Parcels in the fall of 2005, Graydon filed court actions requesting a temporary restraining order forbidding Isabel Coates from executing the trustee's sale. As a result, Isabel Coates was forced to enter into a stipulated agreement with Graydon to cancel the default and cooperate in the sale of the property.

Graydon also exercised ownership rights over the property when she caused a lis pendens to be filed on the property several years after the commencement of her divorce from Peter Coats.<sup>3</sup> And in accordance with her special power of attorney, Graydon entertained offers of purchase for the property and entered into agreements for the marketing and sale of the property. Perhaps most damning, in two separate legal actions, one against Peter Coats, and the other against Petitioner Ward, Graydon asserted claims that in effect accused both men of breaching their fiduciary duties to

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<sup>3</sup> Utah law only authorizes a lis pendens in two circumstances: (1) when an action involves a claim "affecting the title" to real property; or (2) when an action is filed "affecting the right of possession of real property." Utah Code Ann. § 78B-6-1303(1). "The recording of a lis pendens serves as a warning to all persons than any rights or interest they may acquire in the interim are subject to the judgment or decree." *Winters v. Shulman*, 977 P.2d 1218, 1222 (Utah Ct. App. 1999), quoting *Bagnall v. Suburbia Land Co.*, 579 P.2d 914, 916 (Utah 1978).

Graydon by refusing to cooperate in the sale of the property. As all of these examples illustrate, Graydon exercised an ownership interest over the property in multiple and various forms, all of which were authorized by law.

Yet, despite her obvious assertion of control over the property in the present action, Graydon is seeking to separate the benefits of her 'marital interest' from its innate obligations. She seeks to retain the benefits of legal ownership while escaping the obligations. This she cannot do. *Lawson v. Woodmen of the World*, 53 P.2d 432, 435 (Utah 1936) ("They seek to accept the benefits of the contract but avoid the full force of its obligations. This they cannot do. When one having the right to accept or reject a transaction takes and retains the benefits thereunder, he becomes bound by the transaction and cannot avoid its obligation or effect by taking a position inconsistent therewith.")

#### **B. Graydon is Estopped From Asserting That She is Not a Co-Tenant**

Since Graydon has asserted in other legal actions the rights she would have as a co-tenant of the property, she is estopped from claiming that she is not a co-tenant in this action. Following the foreclosure of the North Parcel, Graydon sought and obtained damages from Peter Coats for the failure to sell the property for the amount included in one of the sales offers. In the extraneous divorce proceeding between Graydon and Peter Coats, Graydon alleged that the failure to sell the North Parcel for \$5.2 million had damaged her in the amount of \$523,508.00, the difference between what she had received from the excess proceeds of the Trustee's Sale and what she would have received had the property sold for the \$5.2 million offer. The grounds for this assertion

came from Graydon's claim that Peter Coats owed her a duty, and the breach of that duty was the cause of her pecuniary injury. The existence of the duty alleged by Graydon could only arise if Graydon had a legally cognizant ownership interest in the property, to which Peter Coats would be bound by a fiduciary duty. Had the property been sold at a trustee's sale prior to the initiation of divorce proceedings, Graydon would not have had a claim against Peter Coats, as no such duty would have existed. But as a result of the divorce proceedings, Graydon obtained an inchoate ownership of the property, including both the benefits and obligations that such ownership included. Judge Atherton recognized as much when she awarded Graydon damages of \$523,508.00—an amount calculated based on the failure to sell the North Parcel for \$5.2 million.

In spite of this judicial recognition of Graydon's ownership interest in the property, Graydon is once again attempting to retain the benefits of such ownership while escaping the obligations. Her assertion that she is not a co-tenant or co-owner in this action is simply unfair given the unequivocal position she has taken in her divorce action. Graydon is in the difficult position of having asserted against Peter Coats in the divorce action the very claim Ward is asserting against her in the present action. If judgment in favor of Graydon's was appropriate in the divorce action, judgment in favor of Ward in this action is equally appropriate.

As is illustrated by the foregoing, Peter Coats, Ward, and Graydon stood in a unique relationship to one another. In the words of *O'well*, they shared a "community of interest." Graydon was unquestionably and incontestably a part of that community of interest, as is evidenced by her exercise of her ownership interest in the property in

question, including her ability to recover damages for the breach of a co-owner's duty. She was, for all intents and purposes, a co-tenant. But while Graydon seeks to divorce the benefits of her association in that community from the obligations membership imposes, she, in fact, cannot. Inherent in the relationship of trust and confidentiality that Graydon shared with Peter Coats and Ward is the fiduciary duty of co-tenancy.

The undisputed fact is that Graydon and Peter Coats could not arrange their affairs as to be able to accept the \$5.2 million offer for the premises. As a result, the parties lost the benefit of that sale, and the property was sold at a trustee's sale for \$3.6 million. Despite having made efforts to cooperate with both of his co-tenants, Ward suffered as a result of Graydon and Peter Coats' inability to fulfill their duty to one another and Petitioner Ward.

### **III. The Trial Court Erred in Granting Summary Judgment to Graydon and in Denying Summary Judgment to Ward**

Because Graydon was, in effect, a co-tenant, and as such owed duties to Ward, the Trial Court erred in granting summary judgment to Graydon and denying summary judgment to Ward and dismissing his Complaint. In an Order On Summary Judgment Motions and Judgment, the Trial Court granted summary judgment to Graydon "for the reasons set forth in Defendant Graydon's memoranda." In her Memorandum In Support of Motions for Summary Judgment By Defendant Caroline Graydon, Graydon included three points in favor of her motion for summary judgment: (A) Graydon was not a co-tenant in the North Parcel, (B) a co-tenant has no duty to sell real estate, and (C) Ward either suffered no damage, or was the sole cause of his loss. As will be shown,

Graydon's points are insufficient to support summary judgment, and therefore the Trial Court erred in granting it to Graydon.

A. As has been illustrated, Graydon was, in effect, a co-tenant in the North Parcel. Although Graydon claimed to have no legal interest in the North Parcel, and therefore could not owe any duties to Ward, her exercise of control over the property indicates otherwise. Furthermore, the award of damages in the divorce action that Graydon received as a result of the failure to sell the North Parcel for \$5.2 million is premised on the legal interest Graydon claims not to have had.

B. Although a co-tenant may not have a general duty to sell real estate, co-tenants do have fiduciary duty by virtue of their unique relationship of trust and confidence. And in the specific context of this case, that fiduciary duty included a duty to sell the North Parcel to stave off an impending foreclosure action that would, and did, substantially lessen the remuneration the co-tenants received. Furthermore, Graydon is estopped from using this as a defense, as she asserted the same argument in her divorce proceedings.

C. It is clear that Ward has suffered an injury, just as Graydon suffered an injury for which she recovered in her divorce proceeding. Instead of receiving his percentage of the proceeds of a \$5.2 million sale of the North Parcel, Ward received a substantially smaller amount based on the price of the sale of the North Parcel following foreclosure. Had it not been for the inability of Graydon and Peter Coats to agree terms allowing the \$5.2 million sale, Ward would not have been injured. Ward was not the cause of his injury, but made every effort to avoid it. It was the breach of Graydon's and Peter Coats's obligations to Ward that were the direct and proximate cause of his harm.

As a result, the Trial Court erred in granting summary judgment to Graydon. Likewise, as has been illustrated, the Trial Court erred in refusing to grant summary judgment to Ward and dismissing his Complaint with prejudice.


### **CONCLUSION**

In this case, Respondent Graydon exercised considerable control over the disposition of property that she had obtained an ownership interest in through her marriage to, and subsequent divorce from, Peter Coats. In the exercise of this legal authority, Graydon took on not only the benefits of this ownership (including the right to damages for a breach of fiduciary duty), but also the obligations associated with joint ownership of property. As the specific circumstances of this case show, Graydon had an ownership interest in the property, and used that interest in furtherance of her personal interests. In so doing, Graydon acquired the duties associated with the ownership of such property, duties which she has enforced against Peter Coats. Her claim that despite her ability to benefit from such ownership, she was under no obligation to Ward, is simply disingenuous, and to allow her to sustain such a proposition is to award her a windfall.

For the foregoing reasons, Petitioner Ward respectfully requests that the Trial Court's granting of summary judgment to Graydon be reversed and remanded, and that the Trial Court's denial of Ward's motion for summary judgment also be reversed and remanded, and an instruction be given to enter an order granting summary judgment in favor of Petitioner Ward.

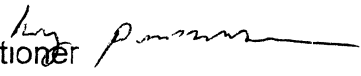
RESPECTFULLY SUBMITTED this 2nd day of June 2010

Stevenson and Smith, P C



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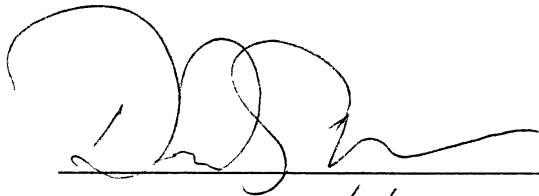
Brad C. Smith  
Attorney for Petitioner



## CERTIFICATE OF SERVICE

I hereby certify that I mailed, postage prepaid, two true and correct copies of the foregoing document to.

Bryce D. Panzer  
BLACKBURN & STOLL, L.C.  
257 East 200 South, Suite 800  
Salt Lake City, UT 84111-2142  
Attorney for Respondent

  
6/2/2010



# Addendum A

Affidavit of Plaintiff Michael Ward

Brad C. Smith, No. 6656  
STEVENSON & SMITH, P.C.  
3986 Washington Blvd.  
Ogden, Utah 84403  
Tel.: (801) 399-9910  
Fax: (801) 399-9954

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

MICHAEL WARD,

Plaintiff,

vs.

CAROLINE COATS GRAYDON, and  
PETER COATS,

Defendants.

AFFIDAVIT OF MICHAEL WARD

CIVIL NO. 080903379

JUDGE: Denise P. Lindberg

STATE OF UTAH )

ss.

County of Weber )

I, Michael Ward, being fully sworn depose and state:

1. My name is Michael Ward. I am the Plaintiff in the above titled case, I am over the age of 18 and I have personal knowledge of the facts and if called upon would testify as follows:
2. By virtue of a long series of property transactions, in late 2005, Plaintiff and Defendant Peter Coats became joint owners of two parcels of property in South Jordan, Utah, hereinafter referred to as the North and South Parcels, respectively. Plaintiff owned an undivided 9.82% interest, and Peter Coats owned an undivided 90.18% interest.
3. Defendant Peter Coats and Defendant Caroline Coats Graydon were previously

consideration of \$150,000.00 and other consideration.

10. Defendant Caroline Coats Graydon has asserted a claim, in other litigation, that Michael Ward interfered with her ability to sell the property.

11. Defendant Caroline Coats Graydon has claimed that she had buyers ready, willing and able to purchase both parcels of property in the fall of 2005 for an amount in excess of \$5,000,000.00.

12. Defendant Caroline Coats Graydon never sold the property and, following December 2005, took no further action to attempt to sell the property.

13. Isabel Coats commenced a second foreclosure proceeding against the two parcels in the spring of 2006.

14. By the fall of 2006, Defendant Caroline Coats Graydon filed another motion for temporary restraining orders. The matter was contested in an evidentiary hearing on converting Defendant Caroline Coats Graydon's motion for temporary restraining order into a preliminary injunction was held before the Honorable Tyrone Medley on 5 December 2006. At the conclusion of said hearing, Judge Medley concluded that Defendant Caroline Coats Graydon had not presented a case adequate for the issuance of a preliminary injunction, and therefore dissolved the temporary restraining order.

15. Following the dissolution of the temporary restraining order, Isabel Coats proceeded with the foreclosure sale.

16. The foreclosure sale was set for 14 February, 2007.

17. In the month prior to the trustee's sale, Defendant Peter Coats worked diligently to procure a purchaser for the property.

18. In the weeks and days proceeding the foreclosure sale, Defendant Peter Coats

Coats Graydon as she goaded Peter coats into bidding on the property beyond his present ability to perform, which had the effect of causing David Ward, who bid on behalf of a group of investors, to pay a higher price for property than he would have absent her actions.

27. Had Defendants accepted either of the offers made prior to the sale, Plaintiff would have been entitled to 9.82% of \$5.2 million or \$510,640.00. Instead, Plaintiff received only \$195,397.28, representing 9.82 % of the excess proceeds.

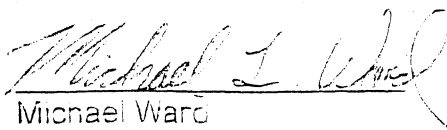
28. Plaintiff was one of the successful purchasers at the trustee's sale and was allowed a credit of 9.82% of the excess proceeds against his share of the purchase price.

29. The amount attributed to Plaintiff, \$195,397.28, represents 9.82% of the Trustee's Sale proceeds after satisfaction of the two Trust Deeds encumbering the property.

30. In order to facilitate the sale, Plaintiff agreed that his 9.82% would be treated as junior to the two Trust Deeds, in order to attempt to maximize the sales proceeds.

31. As the direct and proximate result of the Defendants' acts and/or omissions Plaintiff has been damaged in the amount of not less than \$315,242.72.

32. The contents of this Affidavit are true and accurate based upon my own personal knowledge.

  
Michael Ward  
Affiant

SUBSCRIBED AND SWORN to before me this 19 day of February, 2009

  
NOTARY PUBLIC

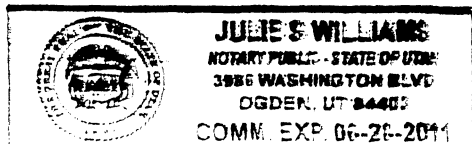


Exhibit B  
Affidavit of David Ward

Brad C. Smith, No. 6656  
STEVENSON & SMITH, P.C.  
3986 Washington Blvd.  
Ogden, Utah 84403  
Tel.: (801) 399-9910  
Fax: (801) 399-9954

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

MICHAEL WARD,

Plaintiff,

vs.

CAROLINE COATS GRAYDON, and  
PETER COATS,

Defendants.

AFFIDAVIT OF DAVID WARD

CIVIL NO. 080903379

JUDGE: Denise P. Lindberg

STATE OF UTAH )

:ss.

County of Weber )

I, David Ward, being fully sworn depose and state:

1. My name is David Ward. I am the father of Michael Ward in the above titled case, I am over the age of 18 and I have personal knowledge of the facts and if called upon would testify as follows:
2. By virtue of a long series of property transactions, in late 2005, Plaintiff and Defendant Peter Coats became joint owners of two parcels of property in South Jordan, Utah, hereinafter referred to as the North and South Parcels, respectively. Plaintiff owned an undivided 9.82% interest, and Peter Coats owned an undivided 90.18% interest.
3. Defendant Peter Coats and Defendant Caroline Coats Graydon were previously married, having been divorced in a bifurcated proceeding. Said divorce action was

finalized on 10 November 2008.

4. Defendant Peter Coats and Defendant Caroline Coats Graydon were joint tenants of their marital property, however Defendant Caroline Coats Graydon had no ownership and was not on title. Defendant Caroline Coats Graydon asserted a claim to both the North and South Parcels by virtue of her marriage. In asserting her claims, Defendant Caroline Coats Graydon caused various *Lis Pendens* and other documents to be filed with the Office of the Salt Lake County Recorder to reflect her claim of interest in both the North and South Parcels.

5. Both the North and South Parcels were subject to Trust Deeds in favor of Peter Coats' mother, Isabel Coats. Isabel Coats is also the grandmother of Plaintiff Michael Ward, who is the nephew of Peter Coats.

6. As part of the divorce proceeding, Defendant Caroline Coats Graydon was granted a power of attorney to deal with the marital property, including its sale and disposition.

7. Isabel Coats proceeded to foreclose on her Trust Deeds over the two parcels in the fall of 2005.

8. The Amended Stipulation required Isabel Coats' cooperation in the sale of the property; the parties agreed to a cancellation of the Notice of Default and recognized Isabel Coat's ownership of an undivided 9.82% interest in both the north and south parcels.

9. Subsequent to the entry of the Stipulation, Isabel Coats transferred her ownership interest in the North and South Parcels to Plaintiff Michael Ward in consideration of \$150,000.00 and other consideration.

10. Defendant Caroline Coats Graydon has asserted a claim, in other litigation, that Michael Ward interfered with her ability to sell the property.

11. Defendant Caroline Coats Graydon has claimed that she had buyers ready, willing and able to purchase both parcels of property in the fall of 2005 for an amount in excess of \$5,000,000.00.

12. Defendant Caroline Coats Graydon never sold the property and, following December 2005, took no further action to attempt to sell the property.

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14. By the fall of 2006, Defendant Caroline Coats Graydon filed another motion for temporary restraining orders. The matter was contested in an evidentiary hearing on converting Defendant Caroline Coats Graydon's motion for temporary restraining order into a preliminary injunction was held before the Honorable Tyrone Medley on 5 December 2006. At the conclusion of said hearing, Judge Medley concluded that Defendant Caroline Coats Graydon had not presented a case adequate for the issuance of a preliminary injunction, and therefore dissolved the temporary restraining order.

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16. The foreclosure sale was set for 14 February, 2007.

17. In the month prior to the trustee's sale, Defendant Peter Coats worked diligently to procure a purchaser for the property.

18. In the weeks and days proceeding the foreclosure sale, Defendant Peter Coats was the procuring cause of various offers of purchase. At least one of the offers of



purchase was to purchase the only North Parcel for \$5,200,000.00. Plaintiff Michael Ward and Defendant Peter Coats accepted that offer.

19. Defendant Caroline Coats Graydon did not accept this offer.

20. In the weeks and days preceding the Trustee's Sale, both Defendants made proposals or demands for conditions for closing. Plaintiff told both Defendants that he would accept either set of offers. Defendants never agreed on a set of closing instructions and did not accept any offer.

21. None of the offers to purchase were ever accepted since Defendant Caroline Coats Graydon would not accept any offer.

22. Defendant Caroline Coats Graydon was, at all relevant herein, a licensed real estate agent and loan officer. Because of this experience, Defendant Caroline Coats Graydon knew that if she postponed reaching an agreement on the terms of the sale and/or postponed the closing, she could effectively stop the closing from occurring.

23. Defendant Caroline Coats Graydon postponed reaching an agreement on the terms of the sale and/or postponed the closing on Lot 5 of Shadow Ridge, and stopped the closing from occurring.

24. Plaintiff Michael Ward indicated to both Defendants that he would accept any reasonable proposals for closing instruction which either of them might propose.

25. Accordingly, the property was sold at Trustee's Sale on 15 March 2007, for the amount of \$3,600,000.00. After the satisfaction of the costs of sale, attorneys' fees, interest and principal, there was left, as excess proceeds of \$1,989,789.03.

26. During the 15 March 2007 sale, I was present and heard Defendant Caroline Coats Graydon as she goaded Peter coats into bidding on the property beyond his

present ability to perform, which had the effect of causing myself, who bid on behalf of a group of investors, to pay a higher price for property than he would have absent her actions.

27. Had Defendants accepted either of the offers made prior to the sale, Plaintiff would have been entitled to 9.82% of \$5.2 million or \$510,640.00. Instead, Plaintiff received only \$195,397.28, representing 9.82% of the excess proceeds.

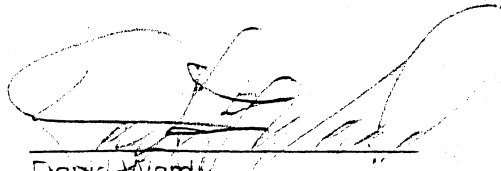
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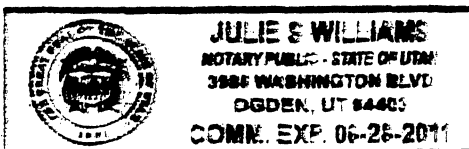
31. As the direct and proximate result of the Defendants' acts and/or omissions, Plaintiff has been damaged in the amount of not less than \$315,242.72.

32. The contents of this Affidavit are true and accurate based upon my own personal knowledge.

  
Dave Ward  
Affiant

SUBSCRIBED AND SWORN to before me this 12 day of February, 2009.

  
NOTARY PUBLIC



### Mailing Certificate

I HEREBY CERTIFY that on the \_\_\_\_\_ day of February, 2009, I mailed a true and correct copy of the foregoing document via U.S. Mail, postage pre-paid, to the following individual(s):

Bryce D. Panzer  
BLACKBURN & STOLL, L.C.  
257 East 200 South, Suite 800  
Salt Lake City, UT 84111-2142  
Attorney for Caroline Coats Graydon

Peter M. Coats  
7981 South 2760 West  
West Jordan, UT 84088-4652  
Defendant *Pro Se*

---

# Addendum B

Affidavit of Plaintiff David Ward

Brad C Smith No 6656  
STEVENSON & SMITH P C  
3986 Washington Blvd  
Ogden Utah 84403  
Tel (801) 399-9910  
Fax (801) 399-9954

---

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

---

MICHAEL WARD

Plaintiff

vs

CAROLINE COATS GRAYDON and  
PETER COATS

Defendants

**AFFIDAVIT OF DAVID WARD**

CIVIL NO 080903379

JUDGE Denise P Lindberg

---

STATE OF UTAH )

ss

County of Weber )

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19 Defendant Caroline Coats Graydon did not accept this offer.

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present ability to perform which had the effect of causing myself who bid on behalf of a group of investors to pay a higher price for property than he would have absent her actions

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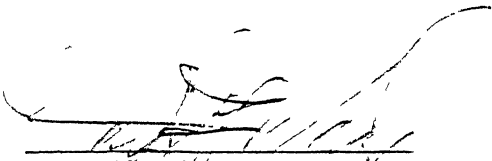
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32 The contents of this Affidavit are true and accurate based upon my own personal knowledge.

  
\_\_\_\_\_  
David Ward  
Affiant

SUBSCRIBED AND SWORN to before me this 12 day of February 2009

  
\_\_\_\_\_  
NOTARY PUBLIC



### **Mailing Certificate**

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Bryce D. Panzer  
BLACKBURN & STOLL, L.C.  
257 East 200 South, Suite 800  
Salt Lake City, UT 84111-2142  
Attorney for Caroline Coats Graydon

Peter M. Coats  
7981 South 2760 West  
West Jordan, UT 84088-4652  
Defendant *Pro Se*

---

# Addendum C

Order Granting Power of Attorney to  
Defendant Caroline Coats Graydon

 COPY

ALVIN R. LUNDGREN (#5605)  
ALVIN R. LUNDGREN, L.C.  
5105 W OLD HWY STE 200  
MT. GREEN, UT 84050  
TEL (801) 876-4422  
Attorney for Petitioner

ENTERED IN REGISTRY  
OF JUDGMENTS  
DATE 09/07/05

FILED DISTRICT COURT  
Third Judicial District

SEP 16 2005

SALT LAKE COUNTY

By [Signature] Deputy Clerk

IN THE THIRD DISTRICT COURT  
SALT LAKE COUNTY, UTAH

CAROLINE HAYES COATS

Petitioner

v.

PETER COATS

Respondent

ORDER

Civil No. 014902286

Judge Leslie A. Lewis

Commissioner Bradford

A hearing was held on July 7, 2005 before the Honorable Frank G. Noel sitting for Commissioner Bradford. Petitioner was present with her attorney, Alvin R. Lundgren. Respondent was present with his attorney Steven Horner. The court considered the facts, pleadings, affidavits and arguments submitted by Petitioner. Respondent submitted no affidavit but presented argument.

After consideration of the foregoing the court enters the following order:

Petitioner is granted power of attorney to sign for Peter M. Coats regarding the sale of Lots 4 and 5, Shadow Ridge Estates, Phase 4, Salt Lake County, Utah and for the property known as the South Jordan Property, more fully described as:

BEG S 88°50' W 4.587 FT & S 651.76 FT FR NE COR LOT 66, CLOVER RIDGE SUB. S 34°43'34" W 138.323 FT, S 15°21'03" W 188.83 FT, S 3°39'36" W 163.57 FT, S 20°27'08" E 69.79 FT, S 76°08'52" E 155.36 FT, S 64°28'31" E 200.9 FT, S 23°33'28" E 91.68 FT, S 10°56'19" E 402.3 FT, E 732.177 FT TO W LINE OF JORDAN RIVER, N 29°54'01" E 336.184 FT, N 7°22'27" W 270.659 FT, N 51°28'14" W 161.537 FT, N 39°50'14" W 174.322 FT, N 27°25'10" W 170.262 FT, W 348.189 FT, WLY ALG 620 FT RADIUS CURVE TO R 4.62 FT, S 87°38'20" W 60 FT, W 322.52 FT, N 43°01'38" W 223.131 FT TO BEG 22 5- A.C. 0457-1626 0454-2804



and

BEG NE COR LOT 66, CLOVER RIDGE SUB; S 40°41' E 66.6 FT; S 29°03'48" E 82.82 FT; S 8°54'12" E 177.83 FT; S 13°42'31" W 189.14 FT; S 20°52'51" W 159.92 FT; S 34°43'34" W 24.457 FT; S 43°01'38" E 233.131 FT; E 322.52 FT; N 87°38'20" E 60 FT; ELY ALG 620 FT RADIUS CURVE TO L 4.62 FT; E 348.189 FT TO WLINE OF JORDAN RIVER; N 27°25'10" W 38.061 FT; N 5° 38'20" W 117.441 FT; N 21°43'06" E 293.569 FT; N 42°30'10" E 185.301 FT; N 58°05'10" E 74.469 FT; N 31°13'43" E 140.562 FT; N 13°56'07" E 134.448 FT; S 88°50' W 1258.843 FT TO BEG. 18.21AC. 6457-1826 6459-2797 6988-2035 7036-2262

Judgment is granted for Petitioner and against Respondent for unpaid child support of \$17,653.00 representing unpaid child support through July, 2005 and unpaid alimony of \$5196.00.

Respondent's contempt is certified for the following:

1. On June 8, 2001 the Respondent executed a mortgage in the amount of \$245,500 against the marital residence, which had previously been debt free in direct contravention of this court's order dated May 17, 2001.
2. Order October 3, 2002: Contempt on failure to deposit child support was certified. Respondent has 48 hours to resolve; Attorney fees reserved. Respondent did not pay the arrearage as ordered. Respondent did not pay attorney fees as ordered.
3. Order January 6, 2003: Respondent's contempt certified: Failed to make direct support deposits; Disposed of marital assets; Assaulted Petitioner in presence of children, violating protective order; Petitioner awarded \$750 in attorney fees for hearing. Attorney fees have not been paid..
4. Respondent sold marital property on Lover's Lane for \$200,000 in violation of this Court's orders.

5. The Respondent accepted an offer on Lot 4 in the summer of 2004. Petitioner agreed at that time to share the proceeds with him, however, since she did not agree to allowing him to keep all but a small amount of the proceeds, he deliberately caused the sale to fail.
6. On February 3, 2005 and again April 12, 2005 the parties agreed and this Court ordered the parties to participate in mediation and for the Respondent to cooperate in the sale of Lot 5. Respondent appeared about two weeks ago to sign some of the closing documents, but refused to sign the deed. There is no evidence that Lot 5 has closed.
7. Respondent sold Lot 4 to his brother, arranged for a closing and signed the documents, but then instructed his brother to not bring in the funds to close. This Lot has not closed.
8. Respondent was first served discovery in 2001. He was again served discovery in January 2005. He, his former attorney and present attorney have been requested to cooperate with discovery. Respondent last agreed in open court to cooperate with discovery. This agreement was included in the May 17, 2005 order, but neither Respondent nor his attorney have provided any responses.
9. Respondent's attorney Steven Homer has possession of subpoenaed documents and has not made those available to Petitioner's counsel, notwithstanding the May 17, 2005 order.
10. Respondent is in arrears of child support of \$17,653 and alimony of \$5196.00 and has paid nothing for approximately 14 months.

These items are certified for contempt.

Petitioner is granted her attorney fees for this Order to Show Cause. Petitioner's counsel shall submit an affidavit of fees and copy to Respondent's counsel, who shall have ten days to respond.

014902286

Recommended:

Dated: \_\_\_\_\_

Judge Franklin G. Noel

IT IS SO ORDERED

Dated: 8-31-05

Judge Leslie A. Lewis

Approved as to Form:

Dated: 7/7/03

Alvin R. Lundgren  
Attorney for Petitioner

Dated: \_\_\_\_\_

Steven Homer  
Attorney for Respondent

#### CERTIFICATION

I, certify that I am over age 18, not a party to the foregoing, and that a true and correct copy of the Order was sent facsimile and postage prepaid to the below listed persons on July 7, 2005

Steve Homer  
9225 S Redwood Road  
West Jordan, UT, 84088-6510

Alvin R. Lundgren

# Addendum D

Deposition of Caroline Coats Graydon



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

---

MICHAEL WARD,

Plaintiff,

vs.

CAROLINE GRAYDON and  
PETER COATS,

Defendants.

---

Civil No. 080903379

Judge Denise E. Lindberg

Deposition of:

CAROLINE HAYES GRAYDON

September 11, 2008

9:30 a.m.

Location: LAW OFFICES OF BLACKBURN & STOLL  
257 East 200 South, Suite 800  
Salt Lake City, Utah

Reporter: Melinda J. Andersen  
Certified Shorthand Reporter  
Notary Public in and for the State of Utah

1           Q.       Do you recall one of the issues involved in that  
2 hearing was an allegation that there was an offer that had  
3 been extended on both parcels that was about a year old at  
4 that point, and I think your claim was that Mr. Michael Ward  
5 somehow interfered with that offer or failed to accept it when  
6 he should not have. Do you recall that being an issue?

7           A.       I remember the issue, yes.

8           Q.       Is that the offer that you're saying you believe  
9 you accepted for \$7.5 million on both parcels?

10           MR. PANZER: Let me just object to the question on  
11 the grounds that it's ambiguous. As you well know Caroline  
12 had via the divorce action power of attorney order. So are  
13 you asking her did she individually accept an offer or in her  
14 capacity as power of attorney for Peter Coats?

15           Q.       Fair enough. Let me ask a better question. Let's  
16 use January 1, 2007 as a fixed date in time. Prior to January  
17 1, 2007 do you believe that you in your individual capacity  
18 ever accepted any offer of purchase of either the north or the  
19 south or both parcels?

20           A.       No.

21           Q.       Prior to 1 January 2007 do you believe that you in  
22 your role as an attorney in fact for Peter Coats or in some  
23 other agency relationship with Peter Coats ever accepted an  
24 offer for the purchase of the north or the south or both  
25 parcels?

1 A. I think so.

2 Q. You believe so?

3 A. I believe so.

4 Q. Is that the \$7.5 million offer that you're talking  
5 about?

6 A. I think so.

7 Q. And you believe that was for both parcels?

8 A. Yes.

9 Q. And that was an offer as I recall that was  
10 presented to you through Brent Overson; is that correct?

11 A. Probably it was. I'm not sure.

12 Q. Let's now focus again on January 1, 2007. After  
13 January 1, 2007 was there ever an offer that you in your  
14 individual capacity ever accepted for the north or the south  
15 or both parcels?

16 A. Not in writing.

17 Q. Is there any offer that you in your individual  
18 capacity accepted otherwise than in writing?

19 A. Verbally. Everyone knew that I didn't need -- I  
20 had --

21 MR. PANZER: Just answer the question.

22 Q. Did you ever accept an offer not in writing after  
23 January 1, 2007 in your individual capacity?

24 A. No.

25 Q. Did you ever accept any offers for the north or

1 the south or both parcels in any representative capacity after  
2 January 1, 2007?

3 A. Not in writing, but verbally, yes.

4 Q. Tell me whose offer did you accept in that  
5 representative capacity verbally?

6 A. David Hagen.

7 Q. How did you manifest that acceptance verbally to  
8 Mr. Hagen?

9 A. I didn't speak with Mr. Hagen, I spoke with the  
10 title company.

11 Q. What title company did you speak to?

12 A. United and I spoke with Corey.

13 Q. Do you know Corey's last name?

14 A. No.

15 Q. Do you recall when you spoke with Corey?

16 A. Yes, a couple days before the thing was supposed  
17 to close, and also the day that the closing was scheduled. I  
18 don't know the exact date, but it was the date it was supposed  
19 to close.

20 Q. So it's your testimony that there was in fact a  
21 scheduled closing?

22 A. Yes.

23 Q. Do you recall what month that scheduled closing  
24 was in?

25 A. March.

# Addendum E

## Amended Stipulation

BRUCE D. PANZER (42509)  
BLACKBURN & STOLL, LC  
Attorney for Defendant Caroline Coats Graddon  
257 East 200 South, Suite 800  
Salt Lake City, Utah 84111  
Telephone (801) 221-7900  
Fax (801) 221-7955  
E-mail bpanzer@blackburn-stoll.com

---

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

SALT LAKE DEPARTMENT STATE OF UTAH

---

ISABEL COATS individually and as  
Trustee of the ISABEL COATS TRUST

Plaintiff

AMENDED STIPULATION

v

PETER COATS CAROLINE COATS  
FARF WEST BANK, R.C. WILLEY  
BONNEVILLE BILLING &  
COLLECTION COLLECTION CENTER  
CALVARY PORTFOLIO CACV OF  
COLORADO and REEVES RIVERSIDE  
RANCH, LLC

Civil No. 050910907

Judge Tyrone Medley

Defendants

---

Plaintiff Isabel Coats individually and as trustee of the Isabel Coats Trust ("Isabel") and Defendant Caroline Coats Graddon ("Caroline") individually and as attorney-in-fact for Peter M. Coats are entering into this Amended Stipulation for the purpose of correcting minor errors in the legal descriptions of the subject Real Property contained in the Stipulation previously signed by the parties. The Amended Stipulation otherwise contains the same terms and conditions as

the Subdivision previously executed and is being entered into to memorialize the subdivision between these parties that was placed on the record in open court on October 5, 2005.

The parties agree as follows:

Caroline is entering into this Subdivision individual and with the intent to bind Peter M. Coats ("Peter") to the extent Caroline has been authorized to act as Peter's attorney-in-fact under that certain order dated August 7, 2005 and entered in Coats v. Coats, Civil No. 01-4902286 (Third District Court, Salt Lake County, Utah) (assigned to District Judge Leslie A. Lewis) on September 6, 2005.

2. The real property that is the subject of this Subdivision is located in South Jordan, Salt Lake County, Utah, and is described as follows:

A. The "South Parcel"

BEGINNING at a point South 88°50'00" West 4587 feet and South 65°17'00 feet from the Northeast corner of Lot 66 of Clover Ridge Subdivision, according to the official plat thereof on file in the office of the Salt Lake County Recorder, said point also being approximately North 11°2 feet and East 2227 feet and North 88°50' East 1455 feet from the Southwest corner of Section 23, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence along said subdivision and along Beckstead Ditch and following 7 courses thence South 34°43'34" West 138.223 feet thence South 15°21'02" West 188.830 feet thence South 03°20'36" West 165.570 feet thence South 20°27'08" East 69.790 feet thence South 76°08'52" East 155.560 feet thence South 64°28'31" East 200.900 feet thence South 23°33'28" East 91.680 feet thence leaving said subdivision but continuing along the Beckstead ditch South 10°56'10" East 402.30 feet thence leaving the Beckstead ditch East 732.177 feet to the West line of the Jordan River thence along the West line of the Jordan River the following 5 courses thence North 29°54'01" East 236.184 feet thence North 07°22'27" West 270.650 feet thence North 51°28'14" West 165.537 feet thence North 39°50'14" West 174.322 feet thence North 27°26'10" West 170.263 feet thence leaving the West line of the Jordan River West 148.180 feet to a point on a 20,000 foot radius curve to the right (Bearing to center North 87°242' East Delta = 06°25'37" thence along the arc of said curve 4620 feet thence South 87°38'20" West 60.00 feet thence West 222.520 feet thence North 47°01'52" West 222.520 feet to the point of beginning.

Tax serial no 27-22-376-020

B The "North Parcel"

BEGINNING at the Northeast Corner of Lot 6 of CLOVER RIDGE SUBDIVISION according to the official plat thereof on file in the office of the Salt Lake County Recorder said point also being approximately North 77° 11' 00" East 2,387 feet and North 88° 50' East 4,577 feet from the Southwest corner of Section 2 Township 7 South Range 1 West Salt Lake Base and Meridian and running thence along said subdivision and along Beckstead Ditch and the following 6 courses thence South 46° 41' 00" East 666.00 feet thence South 29° 07' 48" East 828.20 feet thence South 08° 54' 12" East 1,778.30 feet thence South 17° 42' 11" West 189.140 feet thence South 20° 52' 11" West 159.920 feet thence South 34° 43' 34" West 24.457 feet thence leaving said subdivision and Beckstead ditch South 42° 01' 38" East 222.131 feet thence East 122.520 feet thence North 87° 38' 20" East 60.000 feet to a point on a 620.000 foot radius curve to the left (Bearing to center is North 87° 38' 20" East Delta = 00° 25' 37" thence along the arc of said curve 462 feet thence East 548.184 feet to the West line of the Jordan River thence along the West line of the Jordan River the following 7 courses thence North 27° 24' 10" West 38.061 feet thence North 05° 38' 20" West 117.441 feet thence North 21° 43' 06" East 293.564 feet thence North 42° 30' 10" East 187.361 feet thence North 58° 05' 10" East 74.469 feet thence North 31° 13' 42" East 140.562 feet thence North 13° 56' 07" East 134.448 feet thence leaving the West line of the Jordan River South 88° 50' 00" West 1258.840 feet to the point of beginning

Tax serial no 27-23-376-010

The North and South Parcels are collectively referred to as the "Real Property."

3 Isabel agrees to cause to be executed and recorded cancellations of the following described notices of default

A Notice of Default recorded April 19, 2005 as Entry No. 0052437 in Book 91-9 at Page 6457 which pertains to that certain Trust Deed dated September 21, 1995 (the "1995 Trust Deed"), recorded in the Salt Lake County Recorder's Office on October 2, 1995 as Entry No. 0180751 in Book 7240 at Page 212 and

B Notice of Default recorded April 19, 2005 as Entry No. 0052430 in Book 91-9 at Page 6464 which pertains to that certain Trust Deed (the "1996 Trust Deed") recorded



in the Salt Lake County Recorder's Office on June 1, 1999, as Entry No. 7371565, in Book 8282, at Page 5341.

4. Isabel agrees to cooperate fully in any sale of the Real Property, or of either the North or South Parcels, by Caroline, provided that the amounts owed to Isabel (as secured by the 1995 and 1999 Trust Deeds) will be paid in full as a consequence of such sale(s). Such cooperation includes signing a contract(s) of sale and any necessary closing documents, removing easements on the Real Property that are impediments to a sale, assisting in resolving other title issues, and participating in obtaining any necessary court order(s) authorizing or facilitating the sale(s). If only one of the parcels is proposed to be sold, then the contract for sale shall contain reasonable provisions preserving the development value of the retained parcel, including requiring the creation (or preservation) of easements across the sold parcel for access to the retained parcel, and otherwise dealing with development issues.

5. The interest rate on the principal indebtedness secured by the 1995 and 1999 Trust Deeds will be increased to eighteen percent (18.0%) per annum, effective as of August 15, 2005. If the indebtedness has not been paid on or before April 5, 2006 (six months after the date this agreement was reached between the parties), monthly payments equal to interest accrued on the indebtedness will commence and be due and payable.

6. Isabel will cooperate in providing information to Caroline regarding payments made and interest accrued on the obligations, and will supply a copy of the promissory note secured by the 1995 Trust Deed.

7. Caroline's motion for a temporary restraining order and preliminary injunction are hereby withdrawn.

8. Caroline and Isabel agree that Isabel is the owner of an undivided 982<sup>00</sup> interest in the Real Property, as a tenant in common. Isabel acknowledges and agrees that she does not own any other interest in the Real Property, except as the holder of the above-referenced Trust Deed.

9. Caroline agrees that a three percent (3<sup>00</sup>) commission will be paid to Mike Ward if he is the procuring cause in securing a buyer for the Real Property, for either the North or South Parcels.

DATED this \_\_\_\_ day of December, 2005

\_\_\_\_\_  
Isabel Coats, individually and as trustee of the  
Isabel Coats Trust

\_\_\_\_\_  
Caroline Coats Graydon

Approved by counsel:

BLACKBURN & STOLL, LC

\_\_\_\_\_  
Bryce D. Panzer  
Attorneys for Caroline Coats Graydon

STEVENSON & SMITH, P.C.

\_\_\_\_\_  
Brad C. Smith  
Attorneys for Plaintiff

# Addendum F

Deed Transferring Isabel Coats'  
Interest to Ward

Brad C Smith  
Stevenson & Smith P.C.  
3986 Washington Blvd.  
Ogden, UT 84403

12/06/2005 08:10 PM #128624  
Book - 9226 Pg - 6686-6687  
GARY M. DITT  
RECORDER, SALT LAKE COUNTY, UTAH  
STEVENS & SMITH  
BRAD C SMITH  
3986 WASHINGTON BLVD  
OGDEN UT 84403  
BY: EPH, DEPUTY - 01 2 P.

SPECIAL WARRANTY DEED

ISABEL M. COATS, Trustee of the Isabel M. Coats Trust, GRANTOR, hereby CONVEYS and WARRANTS against all claiming by, through or under ISABEL M. COATS, an undivided 9.82% interest to MICHAEL WARD, GRANTEE, for the sum of TEN DOLLARS (\$10.00) and other valuable considerations the following tracts of land in Salt Lake County, State of Utah:

See Attached Exhibit "A".

WITNESS the hand of said Grantor this 9 day of November, 2005.

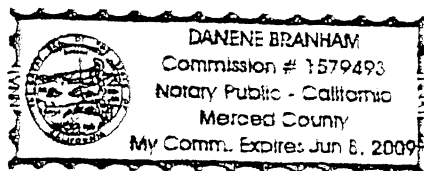
Isabel M. Coats  
ISABEL M. COATS, Trustee  
of the Isabel M. Coats Trust

STATE OF CALIFORNIA)

County of MERCED )  
SS.

ON NOVEMBER 9, 2005 — 2005

ISABEL M. COATS, being sworn, did acknowledge to me that she is the Trustee of Isabel M. Coats Trust and that she executed the foregoing document as the act of said trust.



Danene Branham  
NOTARY PUBLIC

Exhibit "A"

parcel one:

BEG NE COR LOT 66, CLOVER RIDGE SUB; S 40-41" E 66.6 FT; S 29-03'48" E 82.82 FT; S 8-54'12" E 177.83 FT; S 13-42'31" W 189.14 FT; S 20-52'51" W 159.92 FT; S 34-43'34" W 24.457 FT; S 43-01'38" E 233.131 FT; E 322.52 FT; N 87-38'20" E 60 FT; E'LY ALG 620 FT RADIUS CURVE TO L 4.62 FT; E 348.189 FT TO W LINE OF JORDAN RIVER; N 27-25'10" W 38.061 FT; N 5-38'20" W 117.441 FT; N 21-43'06" E 293.569 FT; N 42-30'10" E 185.301 FT; N 58-05'10" E 74.469 FT; N 31-13'43" E 140.562 FT; N 13-56'07" E 134.448 FT; S 88-50' W 1258.843 FT TO BEG.

Serial No. 27-23-376-019

parcel two:

BEG S 88-50' W 4.587 FT & S 651.76 FT FR NE COR LOT 66, CLOVER RIDGE SUB; S 34-43'34" W 138.323 FT; S 15-21'03" W 188.83 FT; S 2-29'36" W 163.57 FT; S 20-27'08" E 69.79 FT; S 76-08'52" E 155.36 FT; S 64-28'31" E 200.9 FT; S 33-33'28" E 91.68 FT; S 10-56'19" E 403.3 FT; E 732.177 FT TO W LINE OF JORDAN RIVER; N 29-54'01" E 336.184 FT; N 7-22'27" W 270.659 FT; N 51-28'14" W 165.537 FT; N 39-50'14" W 174.332 FT; N 27-25'10" W 170.263 FT; W 348.189 FT; W'LY ALG 620 FT RADIUS CURVE TO R 4.62 FT; S 87-38'20" W 60 FT; W 322.52 FT; N 43-01'38" W 233.131 FT TO BEG.

Serial No. 27-23-376-020

# Addendum G

Deposition of Carolyn Graydon

# CONDENSED TRANSCRIPT

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

In the Matter of the )  
Foreclosure of Property )  
Located at 11741 South )  
Lampton View Drive, South )  
Jordan, Utah, 84065, )  
formerly owned by Peter )  
M. Coats. )  
----- )

Deposition of:  
CAROLINE GRAYDON

Caroline Graydon,  
Petitioner.

Misc. No. 070906540  
Judge Trease

November 14, 2007 \* 11:12 a.m.

Location: Blackburn & Stoll  
257 East 200 South, Suite 800  
Salt Lake City, Utah 84111

Reporter: HEATHER WHITE, RPR  
Notary Public in and for the State of Utah



## CITICOURT

THE REPORTING GROUP

170 South Main Street, Suite 300  
Salt Lake City, Utah 84101

PH: 801.532.3441 FAX: 801.532.3414 TOLL FREE: 877.532.3441

1 A. Throughout the year.  
2 Q. Do you recall at the preliminary  
3 injunction hearing we had discussion about offers  
4 that were received and pending during December of  
5 2005 (sic)?

6 A. Are you talking about the hearing at  
7 the --

8 Q. A year ago, yes.

9 A. Yeah. A year ago?

10 Q. In December of 2006 I think is when the  
11 hearing was.

12 A. Wow.

13 Q. Admittedly time flies.

14 A. Go ahead, what was the question again?

15 Q. My question was, do you recall during the  
16 hearing on the temporary restraining order and  
17 preliminary injunction that was held before Judge  
18 Medley in December of 2006, talking about offers that  
19 Mr. Overson obtained, I believe on your behalf, in  
20 December and in the weeks prior to that in December  
21 2005?

22 A. Yes, the dates I don't know, but I recall  
23 talking about the offers.

24 Q. Okay. Do you recall what property  
25 Mr. Overson's offers that he acquired covered?

1 A. I believe that most of them were for the  
2 whole entire, both north and south parcels.

3 Q. The entire 40 acres?

4 A. Uh-huh (affirmative).

5 Q. Do you recall how much those offers were  
6 for?

7 A. I believe they were anywhere from 8.3 to  
8 down, clear down to three for the -- three million.  
9 I mean, there was a wide range.

10 Q. 8.3 million was the high?

11 A. Something like that.

12 Q. That would be just a shade over \$200,000  
13 per acre; is that correct?

14 A. Yes.

15 Q. I understand at some point in the divorce  
16 action, Judge Lewis granted you power of attorney to  
17 deal with all of the marital property; is that  
18 correct?

19 A. Yes.

20 Q. Can you tell me what actions you took in  
21 reliance on the power of attorney to sell the  
22 property or otherwise dispose of it?

23 A. Yes, we marketed the property, we -- I  
24 corresponded with several perspective buyers, got  
25 some, probably eight or nine letters of intent

1 through Mark, what's his name? I can't think of his  
2 name, give me a minute, I'll think of his name.

3 Q. Through someone named Mark?

4 A. Through someone named Mark. We listed it  
5 on the MLS. We -- we had a problem getting Isabel  
6 and/or Mike's signature on the listing agreement, so  
7 we did list it with the -- on the, you know, on the  
8 notes that it was subject to third-party approval for  
9 the other part. And we -- we really tried to market  
10 it.

11 Q. Can you tell me what you've done to market  
12 it or to otherwise use the authority granted to you  
13 by the Court in the power of attorney since December  
14 of 2005?

15 A. Yes, I went to the recorder's office and  
16 attempted to have some of these things removed.

17 Q. Okay.

18 A. And without Isabel, since she was the one  
19 who had signed on the easements, I could not remove  
20 them myself.

21 Q. Okay.

22 A. And also with the title company, Sundance  
23 Title in particular, Kim Engar --

24 Q. I am sorry, Kim?

25 A. Engar.

1 Q. Engar, okay.

2 A. Yeah. We had several discussions, she  
3 spoke with their attorney, I mean, trying to figure  
4 out how we could get the power of attorney to be  
5 something that they would accept prior to a final  
6 divorce resolution. And we -- she -- they tried  
7 every which way they could twist and turn it. But  
8 their underwriter, there's no way any title company  
9 is going to approve it. And we talked with other  
10 ones, and they had the same problem.

11 Q. When did you have the discussions with, is  
12 it Ms. Engar?

13 A. Uh-huh (affirmative).

14 Q. When did you discuss that with Ms. Engar?

15 A. Ever since I was granted the power of  
16 attorney, clear up until maybe the foreclosure sale.

17 Q. Okay. And do you know particularly what  
18 their difficulty was with the power of attorney?

19 A. The fact that in a divorce proceeding -  
20 and I wasn't aware of this either until -- but that  
21 even though there's orders that are made all along,  
22 until there is a final outcome that combines  
23 everything, that those orders in previous can -- can  
24 be appealed after the final trial. And therefore,  
25 they couldn't ensure the -- a clear title for someone



# Addendum H

Amended Trustee's Deed  
Following Trustee's Sale

When Recorded Return to:  
Brad C. Smith  
Stevenson & Smith, P.C.  
3986 Washington Boulevard  
Ogden, Utah 84403

10085500  
5/11/2007 09:58 PM 5201-00  
Book - 9408 Pg - 1071-1073  
PARTY - M. OTT  
RECORDED, SALT LAKE COUNTY, UT  
STEVENSON & SMITH, PC  
3986 WASHINGTON BLVD  
OGDEN UT 84403  
BY EPH. LEWIS - 00134

**AMENDED TRUSTEE'S DEED  
FOLLOWING TRUSTEE'S SALE**

Whereas, on 13 April 2007, Brad C. Smith, as Successor Trustee, recorded a Notice of Default and Notice of Election to Sell Property Under Trust Deed as Entry No. 9694114 in the Office of the Salt Lake County Recorder (said Notice of Default pertaining to a Trust Deed dated 21 September 1995, and was recorded in the office of the Salt Lake County Recorder as Entry No. 6180751, in Book 7240, at Page 2128), regarding the following property in Salt Lake County, Utah:

**PARCEL ONE (North Parcel; Tax Serial No. 27-23-376-019):**

BEGINNING at the Northeast Corner of Lot 66, CLOVER RIDGE SUBDIVISION, according to the official plat thereof on file in the office of the Salt Lake County Recorder, said point also being approximately North 1772.1 feet and East 2138.3 feet and North 88°50' East 14.57 feet from the Southwest corner of Section 23, Township 3 South, Range 1 West, Salt Lake Base and Meridian, and running thence along said subdivision and along Beckstead Ditch and the following 6 courses; thence South 40°41'00" East 66.600 feet; thence South 29°03'48" East 82.820 feet; thence South 08°54'12" East 177.830 feet; thence South 13°42'31" West 189.140 feet; thence South 20°52'51" West 159.920 feet; thence South 34°43'34" West 24.457 feet; thence leaving said subdivision and Beckstead ditch South 43°01'38" East 233.131 feet; thence East 322.520 feet; thence North 87°38'20" East 60.000 feet to a point on a 620.000 foot radius curve to the left (Bearing to center is North 87°38'20" East, Delta = 00°25'37"); thence along the arc of said curve 4.620 feet; thence East 348.129 feet to the West line of the Jordan River; thence along the West line of the Jordan River the following 7 courses: North 27°25'10" West 38.061 feet; thence North 05°38'20" West 117.441 feet; thence North 21°43'06" East 293.569 feet; thence North 42°30'10" East 185.301 feet; thence North 58°05'10" East 74.469 feet; thence North 31°13'43" East 140.562 feet; thence North 13°56'07" East 134.448 feet; thence

leaving the West line of the Jordan River South 88°50'00" West  
1258.843 feet to the point of beginning

**PARCEL TWO (South Parcel Tax Serial No. 27-23-376-020;**

BEGINNING at a point South 88°50'00" West 458.7 feet and  
South 65°1'760 feet from the Northeast corner of Lot 66 of  
Clover Ridge Subdivision according to the official plat  
thereof on file in the office of the Salt Lake County Recorder  
said point also being approximately North 1119.2 feet and  
East 2133.7 feet and North 88°50' East 145.57 feet from the  
Southwest corner of Section 20 Township 3 South Range 1  
West Salt Lake Base and Meridian and running thence  
along said subdivision and along Beckstead Ditch and  
following 7 courses thence South 34°40'34" West 138.320  
feet thence South 15°21'03" West 185.830 feet thence  
South 03°39'36" West 163.570 feet thence South 20°27'08"  
East 69.790 feet thence South 76°08'52" East 155.360 feet  
thence South 64°28'31" East 200.900 feet thence South  
33°33'28" East 91.680 feet thence leaving said subdivision  
but continuing along the Beckstead ditch South 10°56'19"  
East 403.30 feet thence leaving the Beckstead ditch East  
732.177 feet to the West line of the Jordan River thence  
along the West line of the Jordan River the following 5  
courses thence North 29°54'01" East 336.164 feet thence  
North 07°22'27" West 270.659 feet thence North 51°28'14"  
West 165.537 feet thence North 39°50'14" West 174.332  
feet thence North 27°25'10" West 170.263 feet thence  
leaving the West line of the Jordan River West 348.189 feet  
to a point on a 620.000 foot radius curve to the right (Bearing  
to center is North 87°12'43" East Delta = 00°25'37"); thence  
along the arc of said curve 4620 feet thence South  
87°38'20" West 60.00 feet thence West 322.520 feet  
thence North 43°01'38" West 233.131 feet to the point of  
beginning

Whereas said default was not cured within 90 days following said notice nor at  
any time thereafter and

Whereas Notice of Trustee's Sale was published in the Salt Lake Tribune a  
newspaper of general circulation in Salt Lake County Utah on 20 January 2007

27 January 2007 and 3 February 2007 the last date of publication being not less than 10 nor more than 30 days prior to the date of the sale and

Whereas said Notice of Trustee's Sale gave notice that a trustee's sale would be held on 14 February 2007 at 9:00 a.m. on the steps of the Salt Lake County Courthouse 450 South State Street Salt Lake City Utah and the property would be sold to the highest bidder at that time and

Whereas at 9:00 a.m. on 14 February 2007 Brad C. Smith Trustee announced publicly on the steps of the Salt Lake County Courthouse 450 South Main Street Salt Lake City Utah that the Trustee's sale would be postponed until 15 March 2007 at 9:00 a.m. at the same place and

Whereas a copy of said Notice of Trustee's Sale was sent to all persons having or claiming interests in the property of record and

Whereas the Notice of Trustee's Sale was posted on the property on 19 January 2007 and on 15 February 2007 and additional copies of the Notice of Trustee's Sale were posted at public places to-wit Fire Station No. 1, Salt Lake County Utah and the South Jordan Post Office Salt Lake County Utah and at the Salt Lake County Recorder's Office on 20 February 2007; and

Whereas Brad C. Smith as Successor Trustee conducted a public sale by identifying the property and publically calling for bids on Thursday 15 March 2007 at 9:00 a.m. on the steps of the Salt Lake County Courthouse 450 South State Street Salt Lake City Utah and

Whereas Brad C. Smith as Successor Trustee accepted the highest and best bid received at that time said bid being for the North Parcel alone (Tax Serial No 27-23-376-019) in the amount of \$3,600,000.00 from David F. Ward and

Whereas said \$3,600,000.00 bid for the North Parcel (Tax Serial No 27-23-376-019) was adequate to satisfy all obligations under both the 21 September 1995 Trust Deed and the 25 May 1999 Trust Deed (dated 25 May 1999 and recorded as Entry No. 7371565 in Book 8282 at Page 5341 in the office of the Salt Lake County Recorder) and

Whereas a Trustee's Deed was recorded on 21 March 2007 as Entry No. 10040292 in Book 9438 at Page 215 which Trustee's Deed contained minor errors in the description. This Amended Trustee's Deed is recorded to correct those errors

**NOW THEREFORE**, in consideration of the foregoing, Brax C. Smith, Successor Trustee, GRANTOR and holder of the power of sale over said property under the aforementioned trust deeds, hereby grants and conveys, without covenant or warranty of title, condition, or possession, express or implied:

an undivided  $1/8^{\text{th}}$  interest to Janet E. Ward and David F. Ward, Trustees of the Jeffrey D. Ward Trust, dated July 7, 1990;

an undivided  $1/8^{\text{th}}$  interest to Janet E. Ward and David F. Ward, Trustees of the Sharon Ward Trust, dated November 25, 1991;

an undivided  $1/6^{\text{th}}$  interest to Janet E. Ward and David F. Ward, Trustees of the Jeannie Ward Trust, dated June 6, 1996;

an undivided  $1/9^{\text{th}}$  interest to Janet E. Ward and David F. Ward, Trustees of the Michael L. Ward Trust, dated November 3, 1997;

an undivided  $2/9^{\text{th}}$  interest to Isabel M. Coats, Trustee of the Isabel M. Coats Trust, dated January 26, 1994;

an undivided  $1/18^{\text{th}}$  interest to Michael L. Ward; and

an undivided  $1/9^{\text{th}}$  interest to Janet E. Ward and David F. Ward, Trustees of the David Frederick Ward Trust, dated November 30, 1989;

each as GRANTEEES of the following described property:


**PARCEL ONE (North Parcel, Tax Serial No. 27-23-376-019);:**

BEGINNING at the Northeast Corner of Lot 66, CLOVER RIDGE SUBDIVISION, according to the official plat thereof on file in the office of the Salt Lake County Recorder, said point also being approximately North 1772.1 feet and East 2138.3 feet and North  $88^{\circ}50'$  East 14.57 feet from the Southwest corner of Section 23, Township 3 South, Range 1 West, Salt Lake Base and Meridian, and running thence along said subdivision and along Beckstead Ditch and the following 6 courses: thence South  $40^{\circ}41'00''$  East 66.600 feet; thence South  $29^{\circ}03'48''$  East 82.820 feet; thence South  $08^{\circ}54'12''$  East 177.830 feet; thence South  $13^{\circ}42'31''$  West 189.140 feet; thence South  $20^{\circ}52'51''$  West 159.920 feet; thence South  $34^{\circ}43'34''$  West 24.457 feet; thence leaving said subdivision and

Backstead ditch South 43°01'38" East 200.13 feet thence East 322.520 feet thence North 87°38'20" East 60.000 feet to a point on a 620.000 foot radius curve to the left (Bearing to center is North 87°38'20" East Delta = 00°25'37") thence along the arc of said curve 4.620 feet thence East 348.189 feet to the West line of the Jordan River thence along the West line of the Jordan River the following courses North 27°25'10" West 38.061 feet thence North 05°38'20" West 117.441 feet thence North 21°40'00" East 293.569 feet thence North 42°30'10" East 185.301 feet thence North 58°05'10" East 74.469 feet thence North 31°13'40" East 140.562 feet thence North 10°56'07" East 134.448 feet thence leaving the West line of the Jordan River South 88°50'00" West 1258.840 feet to the point of beginning

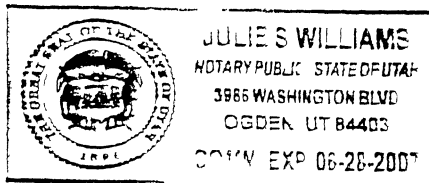
This deed is made pursuant to the power and authority of sale given to Grantor by law and that trust deed hereinbefore identified

DATED this 2 day of May 2007

  
 Brad C. Smith A Member of the  
 Utah State Bar Bar No. 6656  
 2605 Washington Blvd. Suite 300  
 Ogden UT 84401

STATE OF UTAH )  
 ) ss  
 County of Weber )

On this 2 day of May 2007 personally appeared before me Brad C. Smith Successor Trustee the signer of the within document who affirmed that the foregoing information was true and correct to the best of his knowledge belief and information and who acknowledged to me that he executed the same



  
 NOTARY PUBLIC

# Addendum I

## Supplemental Decree of Divorce

Supplemental Decree of Divorce @J



JD27403741

pages 10

014902286 COATS, PETER

FILED DISTRICT COURT  
Third Judicial District

HELLIE F WILLIAMS #5493  
ALLISON R LIBRETT #8859  
Attorneys for Petitioner  
CORPORON & WILLIAMS  
405 South Main Street Suite 700  
Salt Lake City Utah 84111  
Telephone 801-328-1162  
Facsimile 801-363-8243

NOV 11 2008

SALT LAKE COUNTY

By

Deputy Clerk

ENTERED IN REGISTRY  
OF JUDGMENTS  
DATE 11/2/08

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

CAROLINE HAYES GRAYDON ~~file~~  
CAROLINE HAYES COATS

SUPPLEMENTAL  
DECREE OF DIVORCE

Petitioner

-vs-

Civil No 014902286

PETER COATS

Judge Judith S. Atherton  
Comm. Michelle Blomquist

Respondent

THE ABOVE-CAPTION MATTER having come on regularly before the Court at the time of trial on October 7, 2008 for Respondent's contempt, and Petitioner having previously submitted her Verified Amended Trial Brief and having affirmed the facts and allegations contained therein in the requested relief therein, and Respondent's default having been previously entered by a Minute Entry and Order of the Court dated October 2, 2008 and Respondent's answer and pleadings having been stricken, and the court having previously entered its Supplemental Findings of Fact and Conclusions of Law based thereon and for good cause appearing therefore



## IT IS HEREBY ORDERED, ADJUDGED, AND DECIDED:

1 The parties were previously divorced by Decree of Divorce entered in this matter on June 3, 2005.

2 Petitioner was previously awarded the primary physical and legal custody of the parties' minor children within the parties' bifurcated Decree, and said custody is reconfirmed, and Petitioner is awarded the primary physical and legal custody of the parties' minor children, Audrey and Ashley.

3 Respondent shall not have any overnight parent-time based upon his violation of the prior court orders and shall be awarded daytime parent-time only. Respondent's Tuesday parent-time is discontinued. Respondent is awarded mid-week parent-time on Wednesday from 5:30 p.m. until 8:30 p.m. In the event the Court continues to award alternate weekends, Respondent's alternate weekend parent-time shall be from Friday at 5:30 p.m. until 8:30 p.m., Saturday from 9:00 a.m. until 8:30 p.m., and Sunday from 9:00 a.m. until 8:30 p.m. Holidays shall be pursuant to statute but from 9:00 a.m. until 8:30 p.m., or 7:00 p.m. as designated within the statute, with the exception of July 4<sup>th</sup> and July 24<sup>th</sup>. In the event that Respondent is desirous of expanded parent-time, then Respondent shall be responsible for paying for a private guardian ad litem and/or parent-time evaluation, and the foregoing parent-time shall continue until or unless a recommendation is made otherwise and the court deems it appropriate to modify or expand parent-time.

4 Based upon imputing minimum wage to Petitioner and based upon Respondent's income of \$9,397.00 per month, and the provisions of U.C.A. §78B-12-30, Respondent is ordered

to pay child support in the sum of \$1,562.00 per month, until such time as the eldest child attains the age of 18 years or graduates from high school in due course, whichever last occurs, at which time the child support shall reduce to the sum of \$952.00. The calculations are pursuant to the child support worksheets which are attached as Exhibit "A," and incorporated herein by reference. Further, said child support is ordered to be paid through an automatic transfer from Respondent's account to Petitioner's account on or before the first day of each month in which it is due.

5 Petitioner is hereby awarded income withholding, pursuant to U.C.A. §78B-12-113 and 114.

6 Petitioner shall maintain in force the health and accident insurance that she can secure through a private policy, currently in the sum of \$254.24, and Respondent is ordered to pay Petitioner the sum of \$118.00, each month, on or before the first day of each month, representing his share of the children's health insurance premium. The parties shall continue to share the health insurance premium associated with the minor children, as to each child, until that child attains the age of 18 years or graduates from high school in due course, whichever last occurs. Each party is ordered to pay one-half of the out-of-pocket costs of all reasonable and necessary uninsured medical, dental, orthodontic, optical, expenses incurred for the benefit of the minor children, including deductibles and copayments actually paid by Petitioner. Petitioner shall provide written verification of the cost and payment of the medical expense to Respondent within thirty (30) days of payment, and Respondent shall reimburse Petitioner, no later than thirty (30) days after proof is provided to him. The obligation to share uncovered medical expense shall continue until the children attain the

age of 18 years or graduate from high school in their normal and expected year of graduation whichever has occurred. Further given the minor acts of Respondent, if any therapeutic intervention is needed for the minor children, Respondent shall be responsible for any and all costs associated with the children's therapy.

7. Respondent is in arrears in his one-half share of uncovered medical expenses associated with the minor children, and judgment is entered in favor of Petitioner and against Respondent in the sum of \$854.37, together with post-judgment interest thereon at the rate of 12%.

8. Respondent is ordered to pay the sum of \$2,500.00, for his one-half share of the orthodontia for the minor children, which sum shall be paid directly to the provider or to Petitioner forthwith.

9. In the event that work-related child care becomes necessary, the parties are ordered to share those costs equally pursuant to U.C.A. §78B-12-214.

10. Each party is awarded the right to claim one child as a dependent for purposes of the calculation of his or her state and federal income taxes, so long as Respondent is current in his financial support obligation as of December 31<sup>st</sup> of any given tax year in which the child is to be claimed. Once there is one child remaining, the parties shall alternate that exemption, again, so long as Respondent is current in his support obligation.

11. There exist certain accounts that have been established for the benefit of the parties' minor children. Respondent is ordered to provide verification of those accounts and Petitioner shall be replaced as Trustee.

12 Each party is awarded all real and personal property and vehicles in his or her own possession.

13 Petitioner is hereby awarded the permanent use and possession and all right, title, and interest in the marital residence located at 132 of South Sweet Caroline Drive, Payson, Utah, and more particularly described as LOT 1 SHADOW RIDGE ESTATES PHASE 1 tax ID No. 27-35-352-009. Respondent is ordered to maintain the mortgage obligation encumbering the home and is ordered to remove the mortgage obligations from the marital residence no later than February 1, 2009. Respondent is ordered to Quit Claim the real property to Petitioner within seven (7) days of the entry of the Decree.

14 The parties interest in Lot 4, Shadow Ridge Estates phase 4, and more particularly described as follows: LOT 4 SHADOW RIDGE ESTATES PHASE 4 tax ID number 27-35-352-012, is awarded to Petitioner, and Respondent is ordered to transfer all right, title and interest in Lot 4 to Petitioner. Petitioner shall then sell that property, and if possible to Respondent's brother David F. Ward. The contract sales price of \$133,635.00 is the presumed sales price. From the proceeds of the sale of Lot 4, Petitioner is awarded the first \$61,128.02, for payment of marital debt. The balance of the proceeds shall be awarded to Petitioner as partial recompense for the amount owing by Respondent to Petitioner as set forth below, in paragraph 2. Respondent is ordered to cooperate fully in resolving the outstanding lawsuit between Petitioner and Respondent, and Respondent's brother David Ward, associated with Lot 4. Respondent shall indemnify Petitioner in the event of any judgment or future attorneys fees are incurred incident to that lawsuit.

15 The parties previously owned a parcel of real property, referred to as the North Parcel - South Jordan. This property was foreclosed upon and the trustee's sale netted \$3,500,000.00. An amount previously received either by Penninger or Respondent is hereby confirmed in each. However, Respondent caused prior sales to fail, including one for the North Parcel for \$5,200,000.00. Had Respondent cooperated in the sale of the North Parcel, the parties' proceeds therefrom would have been approximately as follows:

Total Sales Price	\$5,200,000.00
Commissions & Cost of Sales (7%)	<364,000.00>
1995 Trust Deed, 1996 Note & Escrow Smith Attorney's Fees (see P16)	<1,610,210.00>
Sub Total	\$3,225,789.00
Monroe Ward 9.82%	<316,771.48>
Balance to be Divided	<u>\$2,909,017.52</u>
- 2 equals	\$1,454,508.30

16 Due to the foreclosure sale to Respondent's relative, Penninger and Respondent each received approximately \$951,000.00 rather than \$1,454,508.30 for a difference of \$522,508.00 each. That loss and cost shall be assessed to Respondent and paid to Penninger as damages for Respondent's dissipation and contempt. The sum shall be paid to Penninger from the sale of the South Parcel of the South Jordan property as set forth below in paragraph 21.

17 Shortly prior to the parties' marriage, Respondent acquired an interest in a parcel of real property known as the South Parcel - South Jordan, and which is more particularly described

a. follows

BEGINNING at a point South 8° 50'00" West 458.7 feet and South 65° 06' 16" feet from the Northeast corner of Lot 66 of Clover Ridge Subdivision, according to the official plat thereof on file in the office of the Salt Lake County Recorder said point also being approximately North 1° 15.2 feet and East 2132.7 feet and North 88° 50' East 14.5 feet from the Southwest corner of Section 21 Township 3 South, Range 1 West Salt Lake Base and Meridian, and running thence along said subdivision and along Beckstead Ditch and following 7 courses thence South 5° 42'34" West 138.225 feet thence South 15° 21'02" West 188.830 feet thence South 0° 39'30" West 163.571 feet thence South 20° 27'08" East 69.790 feet thence South 70° 08'52" East 151.360 feet thence South 64° 28'31" East 200.900 feet thence South 31° 33'28" East 91.680 feet thence leaving said subdivision and continuing along the Beckstead ditch South 10° 56'19" East 402.30 feet thence leaving the Beckstead ditch East 722.17 feet to the West line of the Jordan River thence along the West line of the Jordan River the following 5 courses thence North 2° 54'02" East 336.184 feet thence North 0° 22'27" West 270.655 feet thence North 51° 28'14" West 163.537 feet thence North 39° 30'14" West 174.331 feet thence North 27° 25'10" West 170.262 feet thence leaving the West line of the Jordan River West 348.189 feet to a point on a 620.000 foot radius curve to the right (bearing to center is North 87° 12'43" East, Delta=00° 25'37"), thence along the arc of said curve 4.620 feet thence South 0° 38'20" West 66.00 feet thence West 322.720 feet thence North 43° 01'38" West 221.131 feet to the point of beginning

Substantial marital funds went into the property, the total of which Petitioner is not privy to due to the lack of discovery responses from Respondent. However, a 1997 Trust Deed previously encumbering the South Parcel was paid in full by the trustee's sale and foreclosure of the North Parcel, which was marital property, thus reducing the proceeds to Petitioner and Respondent by the sum of \$532,029.71. Given the diminishment of Petitioner's proceeds from the sale of that property by one-half of that sum, or \$266,164.81, Petitioner is awarded that sum from the sale of the South Parcel, as set forth below in paragraph 2.

18. Petitioner is hereby awarded a judgment lien in her favor retroactive to the date of

the filing of her petition for the sum due and owing to her by Respondent, as set forth in paragraph 2. Further, Respondent is ordered to remove any trust deeds or notes or other encumbrances on the South Parcel that he placed on the South Parcel subsequent to the commencement of this action.

19 Respondent is ordered to pay Petitioner, Petitioner's attorney fees and court costs in the total sum of Petitioner in the amount of \$240,220.67 which shall be paid from the sale of the South Parcel of the South Jordan property, as set forth below in paragraph 2.

20 In addition to Petitioner receiving \$6,126.02 from the sale of Lot 4 Respondent is ordered to pay the sum of \$10,000.00 to Petitioner representing one-half of the \$20,000.00 which Petitioner paid to Brent Overton, the parties' realtor.

21 Respondent would have been entitled to equity in the Sweet Caroline drive property in the sum of \$237,500.00 and would have been entitled to the sum of \$36,253.49 from Lot 4. Given the award of those two properties and the equity therein to Petitioner, Petitioner would then have "owed" Respondent the sum of \$272,753.49. However, those sums shall be offset against what Respondent owes Petitioner and the calculations are as follows:

Dissipation/contempt/North Parcel	\$522,508.00
One-half 1995 trust deed note	\$266,164.85
Attorney's fees	\$240,220.67
Total owed to Petitioner	\$1,029,892.92

22 Therefore, of the \$1,029,892.92, less the equity owed to Respondent of \$272,753.49 the total owed to Petitioner, therefore, is \$756,139.43 which is hereby reduced to judgment and shall

DATED this 11 day of July 2008

HONORABLE JUDGE JUDITH S. AHERTON  
DISTRICT COURT JUDGE  
THIRD DISTRICT  
SALT LAKE CITY

DATE \_\_\_\_\_

DEPUTY COURT CLERK



CERTIFICATE OF SERVICE

I hereby certify that on the 10 day of February 2008 I caused a true and correct copy of the foregoing Supplemental Decree of Divorce to be ~~by~~ mailed postage prepaid, and delivered by sent via facsimile to

Peter Coat  
798 South 2760 West  
West Jordan Utah 84088

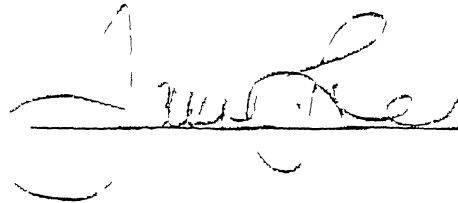
  
\_\_\_\_\_

EXHIBIT "A"

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

CAROLINE HAYES GRAYDON

v.

PETER COHEN

CHILD SUPPORT OBLIGATION WORKSHEET  
(SOLICITORS AND PATERNITY)

Base Combined Child Support Obligation Table  
78F-12-301(1)  
78F-12-302(2) Effective January 2001

Civil No. 01490228

	MOTHER	FATHER	COMBINED
1. Enter the # of natural and adopted children of this mother and father for whom support is to be awarded.			2
2a. Enter the mother's and father's gross monthly income (refer to instruction for definition of income).	\$ 1,015.00	\$ 5,390.00	
2b. Enter previously ordered alimony that is actually paid. (Do not enter alimony ordered for this case).	0.00	0.00	
3. Enter previously ordered child support. (Do not enter obligations ordered for the children in Line 1).	0.00	0.00	
3c. OPTIONAL: Enter the amount from Line 1b of the Children in Present Home Worksheet for either parent.	0.00	0.00	
4. Subtract Lines 2b, 2c, and 3c from 2a. This is the Adjusted Gross Income for child support purposes.	\$ 1,015.00	\$ 5,390.00	\$ 10,445.00
5. Take the COMBINED figure in Line 4 and the number of children in Line 1 into the Support Table. Find the Base Combined Support Obligation. Enter it here.			\$ 1,736.00
6. Divide each parent's adjusted monthly gross in Line 4 by the COMBINED adjusted monthly gross in Line 4.	10%	90%	
7. Multiply Line 5 by Line 6 for each parent to obtain each parent's share of the Base Support Obligation.	\$ 173.60	\$ 1,562.40	
8. BASE CHILD SUPPORT AWARD: Bring down the amount(s) from Line 6 or enter the amount(s) from the Low Income table re: U.S.A. 78F-12-205. (The parent(s) without physical custody of the child(ren) pay(s) the amount(s) for 12 months of the year.	\$ 174.00	\$ 1,562.00	

8. Which parent is the obligor? ( ) Mother (X) Father ( ) Both
9. Is the support award the same as the guideline amount in line 8? ( ) Yes (X) No  
If NO, enter the amount(s) ordered: \$ \_\_\_\_\_ (Father) \$ \_\_\_\_\_ (Mother) and answer number 10.
10. What were the reasons stated by the court for the deviation?  
 ( ) property settlement  
 ( ) excessive debts of the marriage  
 ( ) absence of need of the custodial parent  
 ( ) other: \_\_\_\_\_

Attorney Bar No. \_\_\_\_\_

( ) Electronic Filing

( ) Manual Filing

6/200

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

Caroline Haven Gravador

CHILD SUPPORT OBLIGATION WORKSHEET  
(SOLE CUSTODY AND PATERNITY)

v  
Pete Cook

Base Combined Child Support Obligation Table  
78U-11-301(1)  
DJ 78U-12-302(2) Effective January 200

Civil No. 01490228c

	MOTHER	FATHER	COMBINED
1. Enter the # of natural and adopted children of the mother and father to whom support is to be awarded			
2. Enter the father's and mother's gross monthly income. Enter 1 (Instructions for definition of income)	\$ 1,015.00	\$ 5,396.66	
3. Enter previously ordered alimony that is actually paid. (Do not enter alimony ordered in this case)	0.00	0.00	
4. Enter previously ordered child support. (Do not enter obligations ordered for the children in Line 1)	0.00	0.00	
5. OPTIONAL: enter the amount from Line 2 of the Children in Prison Home Worksheet for either parent	0.00	0.00	
6. Subtract Line 3, 4, and 5 from Line 2. This is the Adjusted Gross Income for child support purposes	\$ 1,015.00	\$ 5,396.66	\$ 10,411.66
7. Take the COMBINED figure in Line 6 and the number of children in Line 1 into the Support Table. Find the Base Combined Support Obligation. Enter it here			\$ 1,058.00
8. Divide each parent's adjusted monthly gross in Line 6 by the COMBINED adjusted monthly gross in Line 6	10%	90%	
9. Multiply Line 7 by Line 8 for each parent to obtain each parent's share of the Base Support Obligation	\$ 105.80	\$ 952.20	
10. BASE CHILD SUPPORT AWARD: Bring down the amount(s) from Line 9 or enter the amount(s) from the Low Income table per U.C.A. 78U-11-201. (The parent(s) without physical custody of the child(ren) pay(s) the amount(s) for 12 months of the year)	\$ 105.80	\$ 952.20	

11. Which parent is the obligor? ☐ Mother ☒ Father ☐ Both
12. Is the support award the same as the guideline amount in line 7? ☐ Yes ☐ No  
If NO, enter the amount(s) ordered: \$ \_\_\_\_\_ (rather than \$ \_\_\_\_\_) (Mother: see answer number 10)
13. What were the reasons stated by the court for the deviation?  
☐ property settlement  
☐ excessive use of the marriage  
☐ absence or need of the custodial parent  
☐ other: \_\_\_\_\_

Attorney Bar No. \_\_\_\_\_ ☐ Electronic Filing ☐ Manual Filing 6/200

KELLY WILLIAMS #349  
Attorney for Petitioners  
CORPORON & WILLIAMS, P.C.  
405 South Main Street, Suite 700  
Salt Lake City, Utah 84111  
Telephone: 801-374-1116  
Facsimile: 801-361-824

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

Caroline Hayes Grayson &  
Caroline Hayes Cook

Petitioners

-v-

Peter Cook

Respondent

NOTICE OF ENTRY  
(Order in Re Contempt Trial)

Civil No. 01490228

Judge: Judith S. Albrecht  
Clerk: Michelle Blomquist

TO THE ABOVE-NAMED RESPONDENT AND HIS COUNSEL:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE and be advised that the Order in Re Contempt Trial, was signed by the Court on the 1<sup>st</sup> day of November 2001. This notice is given pursuant to Rule 58A(d) of the Utah Rules of Civil Procedure.

DATED this 1<sup>st</sup> day of November 2001.

CORPORON & WILLIAMS, P.C.

KELLY WILLIAMS  
Attorney for Petitioners

DEPT. OF COURT CLERK, SALT LAKE COUNTY, UTAH

CERTIFICATE OF SERVICE

I hereby certify that on the 1<sup>st</sup> day of November 2001, I caused a true and correct copy of the foregoing to be ( ) mailed, postage prepaid, ( ) hand-delivered, ( ) sent via facsimile to:

Jared G. Parkinson  
623 East 100 South  
Salt Lake City, Utah 84101

Signature  
Jared G. Parkinson

KEELIE F WILLIAMS #3400  
Attorney for Petitioner  
CORPORON & WILLIAMS, P.C.  
405 South Main Street, Suite 700  
Salt Lake City, Utah 84111  
Telephone 801-328-1162  
Facsimile 801-365-8243

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

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Caroline Hayes Gravdon, aka  
Caroline Hayes Coats

Petitioner

-vs-

Peter Coats,

Respondent

NOTICE OF ENTRY  
(Supplemental Decree of Divorce)

Civil No. 014902286

Judge Judith S. Ainsworth  
Comm. Michelle Blomquist


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TO THE ABOVE-NAMED RESPONDENT AND HIS COUNSEL

YOU AND EACH OF YOU WILL PLEASE take notice and be advised that the Supplemental  
Decree of Divorce was entered by the Court on the 12<sup>th</sup> day of November 2008. This notice is given  
pursuant to Rule 58A(d) of the Utah Rules of Civil Procedure.

DATED this 15<sup>th</sup> day of November 2008

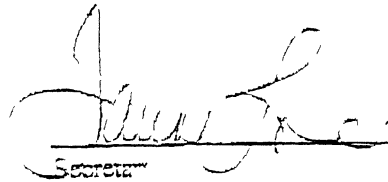
CORPORON & WILLIAMS P.C.

  
KEELIE F WILLIAMS  
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on the 15 day of November 2006 I caused a true and correct copy of the foregoing to be ☒ mailed, postage prepaid, ☐ hand-delivered, ☐ sent via facsimile to

Jared G. Parkinson  
620 East 100 South  
Salt Lake City, Utah 84102

  
\_\_\_\_\_  
Secretary

# Addendum J

Memorandum in Support of Defendant  
Caroline Graydon's Motion For  
Summary Judgment





BRYCE D. PANZER (A2509)  
BLACKBURN & STOLL, LC  
Attorneys for Defendant Caroline Graydon  
257 East 200 South, Suite 800  
Salt Lake City, Utah 84111  
Telephone: (801) 521-7900  
Fax: (801) 521-7965  
E-mail: bpanzer@blackburn-stoll.com

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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

SALT LAKE DEPARTMENT, STATE OF UTAH

---

MICHAEL WARD,

Plaintiff,

vs.

CAROLINE COATS GRAYDON and  
PETER COATS,

Defendants.

**MEMORANDUM IN SUPPORT OF  
MOTION FOR SUMMARY  
JUDGMENT BY DEFENDANT  
CAROLINE GRAYDON AND IN  
OPPOSITION TO PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT**

Civil No. 080903379

Judge Denise P. Lindberg

Hearing Requested

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Defendant Caroline Graydon submits the following memorandum in support of her Motion for Summary Judgment against Plaintiff Michael Ward, and in opposition to Plaintiff's Motion for Summary Judgment.

**STATEMENT OF THE CASE**

During a portion of the times relevant to this action, Defendant Peter Coats ("Coats") and Plaintiff Michael Ward ("Ward") were tenants in common with respect to two parcels of real estate located in South Jordan, Utah, with Coats owning an undivided 90.18% undivided interest

and Ward owning a 9 82% undivided interest Ward obtained his interest from his grandmother, Isabel Coats who is also Peter Coats' mother<sup>1</sup>

Defendant Caroline Graydon ("Graydon") was formerly married to Coats They were divorced by a decree entered in June 2005, however, the divorce proceeding remained pending for purposes of resolving property settlement and child custody issues (Third Dist Ct Salt Lake County, Case No 014902286) A supplemental and final decree was issued in the divorce case in November 2008, however, an appeal was filed and remains pending on behalf of Peter Coats

On March 15, 2007, one of the two parcels of real estate was foreclosed at a trustee's sale Prior to the trustee's sale, there was an opportunity to sell one of the parcels at a favorable price, \$5 2 million Graydon was agreeable to, and in fact in favor of, Coats and Ward selling the parcel for that price, however, she was unwilling to simply allow Coats to take his share of the proceeds and abscond Accordingly, Graydon communicated that she would relinquish her equitable interest in the property, as a marital asset, if the net proceeds attributable to Coats' interest would be escrowed pending further order or disposition in the divorce action Coats was apparently not interested in that condition

Plaintiff's Complaint seeks to recover damages from Coats and Graydon, based upon the extraordinary theories that the Defendants owed to Plaintiff certain unspecified duties to sell the parcel prior to the trustee's sale and, because they failed to cooperate in a sale, the foreclosure resulted in a loss to Plaintiff for which he believes the Defendants are liable

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<sup>1</sup> Although Plaintiff's memorandum refers to Isabel Coats in her individual capacity, her interests in the real estate and in the trust deeds (described below) were through the Isabel M Coats Trust As it does not appear to make any difference in this case, Graydon will also ignore the distinction

Defendant Graydon seeks summary judgment on these claims, on the ground that there is no legal basis upon which she can be liable to Plaintiff. For the same reasons, Plaintiff's motion for summary judgment should be denied.

### **GRAYDON'S RESPONSE TO PLAINTIFF'S MATERIAL FACTS**

Defendant Graydon responds to Plaintiff's Statement of Facts as follows:

1 This matter concerns two adjacent parcels of property in Salt Lake County, Utah, consisting of 18 acres and 22 acres. These parcels will be referred to herein as the "north parcel" and the "south parcel" respectively.

Response Admitted

2 By virtue of a long series of property transactions, in late 2005, Plaintiff and Defendant Peter Coats became joint owners of two large parcels of property in South Jordan, Utah, hereinafter referred to as the North and South Parcels, respectively. Plaintiff owned an undivided 9 82% interest, and Peter Coats owned an undivided 90 18% interest. Exhibit A, Affidavit of Plaintiff Michael Ward, ¶ 2, Exhibit B, Affidavit of David Ward, ¶ 2.

Response Admitted that Plaintiff became an owner of the North and South Parcels in late 2005, by virtue of a conveyance to him by Isabel Coats, as trustee of the Isabel M. Coats Trust. Denied that Peter Coats became an owner at that time, inasmuch as Peter Coats acquired an interest in the South Parcel by virtue of a Warranty Deed, recorded May 21, 1992, as Entry No. 5259386 (Appendix, Exhibit "A"), and an interest in the North Parcel by virtue of Special Warranty Deed, recorded June 1, 1999, as Entry No. 7371564 (App., Exhibit "B").

By virtue of a Quit-Claim Deed, recorded December 22, 1999, as Entry No. 7540445 (App., Exhibit "C"), the "Isabel M. Coats Trust, Walter Coats and Isabel M. Coats, Trustees" became the owner of an undivided 9 82% interest and Peter M. Coats the owner of an undivided 90.18% interest in both Parcels. The 9 82% interest held by the Isabel M. Coats Trust was

conveyed to Plaintiff Michael Ward pursuant to a Special Warranty Deed which was recorded on December 6, 2005, as Entry No 9573774 (App , Exhibit “D”)

3 Defendant Peter Coats and Defendant Caroline Coats Graydon were previously married having been divorced in a bifurcated proceeding Exhibit A, Plaintiff's Aff ¶ 3, Exhibit B D Ward Aff , ¶ 3

Response Admitted

4 Defendant Caroline Coats Graydon asserted claim to both parcels by virtue of her marriage In asserting her claims, Defendant Caroline Coats Graydon caused various Lis Pendens and other documents to be filed with the Office of the Salt Lake County Recorder to reflect her claim of interest in both the North and South Parcels Exhibit A Plaintiff's Aff , ¶ 4, Exhibit B, D Ward Aff , ¶ 4

Response Graydon admits that in the divorce case she asserted that the North and South Parcel were marital property subject to equitable division by the court Defendant Graydon denies that she caused various Lis Pendens and other documents to be recorded reflecting a claim of interest in both Parcels The affidavits of Plaintiff and his father David Ward, do not contain competent evidence to establish any of these allegations See Defendant Graydon's Motion to Strike Affidavits, filed herewith To the best of Graydon's current knowledge her divorce counsel filed a single lis pendens (App Exhibit “E”), which contained the descriptions of the North and South Parcels, in addition to other parcels of real estate

5 Both the North and South Parcels were subject to Trust Deeds in favor of Peter Coats' mother, Isabel Coats Isabel Coats is also the grandmother of Plaintiff Michael Ward, who is the nephew of Peter Coats Exhibit A, Plaintiff's Aff , ¶ 5, Exhibit B, D Ward Aff , ¶ 5

Response Graydon (a) admits that the South and North Parcel were subject to a trust deed executed by Peter Coats to Isabel M Coats and Walter M Coats joint trustees, as beneficiaries, which was recorded October 2, 1995, as Entry No 6180751 (App , Exhibit “F”) (hereinafter, the “1995 Trust Deed”), (b) admits that the North Parcel was subject to a trust deed

executed by Peter Coats to Isabel M Coats and Walter M Coats joint trustees as beneficiaries recorded June 1, 1999, as Entry No 7371565 (App , Exhibit “G”) (hereinafter, the “1999 Trust Deed”), and (c) admits that Isabel Coats is the grandmother of Plaintiff who is the nephew of Peter Coats Graydon denies that both Parcels were subject to both trust deeds however

6 The parties to the trust deeds Defendant Peter Coats and Isabel Coats have each explained, under oath, that the conveyance of the 9 82 % was intended to be superior to the trust deed interests A copy of these declarations are attached hereto as Exhibit C

Response Graydon admits that the affidavits contain statements to the effect that the conveyance of the 9 82% interest was intended to be superior to the trust deeds To the extent Plaintiff hereafter seeks to rely upon the affidavits for any other purpose, Graydon reserves the right to object thereto, on the grounds that the affidavits contain numerous statements that are simply inadmissible

7 As part of the divorce proceeding, Defendant Caroline Coats Graydon was granted a power of attorney to deal with the marital property , including its sale and disposition Exhibit A, Plaintiff's Aff , ¶ 6, Exhibit B, D Ward Aff , ¶ 6 A copy of the court order granting a power of attorney to Defendant Caroline Coats Graydon is attached hereto as Exhibit D Defendant Caroline Coats Graydon has also testified that she was granted a power of attorney to deal with the marital property Exhibit E, excerpts of Deposition of Caroline Coats Graydon (in excess proceeds litigation), 35 15-19 Exhibit J, excerpts of Deposition of Caroline Coats Graydon (in the present litigation), 7 10-14 (statement of Defendant Caroline Coats Graydon's counsel)

Response Graydon admits that the referenced court order was entered, which purported to grant her a “power of attorney to sign for Peter M Coats regarding the sale of” certain parcels, including the North and South Parcels Graydon denies any allegation respecting the scope of the order that exceeds its express terms Further, Coats contested the entry of the order, and recorded both a lis pendens (App., Exhibit “H”) and a Verified Notice of Appeal (App , Exhibit “I”) setting forth his contention that the order was invalid

8. Isabel Coats proceeded to foreclose on her Trust Deeds over the two parcels in the fall of 2005. Exhibit A, Plaintiff's Aff., ¶ 7; Exhibit B, D. Ward Aff., ¶ 7.

Response. Denied in part, in that the notices of default were recorded on April 19, 2005. See App., Exhibit "J."

9 Defendant Caroline Coats Graydon requested from the Court entry of a temporary restraining order forbidding the sale of the property, asserting various grounds and bases. Ultimately, Defendant Caroline Coats Graydon and Isabel Coats entered into a Stipulation. Exhibit A, Plaintiff's Aff., ¶ 8; Exhibit B, D. Ward Aff., ¶ 8.

Response: Admitted. However, it should be noted that the motion for a TRO was asserted in a lawsuit originally brought by Isabel Coats, in which she alleged that she owned 100% of the North and South Parcels, and sought to quiet title accordingly. See pleadings and papers on file in Isabel Coats v. Peter Coats, et al., Third Dist. Ct. Case No. 050910905.

10. The Amended Stipulation<sup>2</sup> required Isabel Coats' cooperation in the sale of the property, agreed to a cancellation of the Notice of Default and recognized Isabel Coat's [sic] ownership of an undivided 9.82% interest in both the north and south parcels. Exhibit A, Plaintiff's Aff., ¶ 8; Exhibit B, D. Ward Aff., ¶ 8. A copy of the Amended Stipulation is attached hereto as Exhibit F.

Response: Admitted.

11. Subsequent to the entry of the Stipulation, Isabel Coats transferred her ownership interest in the North and South Parcels to Plaintiff Michael Ward in consideration of \$150,000.00 and other consideration. Exhibit A, Plaintiff's Aff., ¶ 9; Exhibit B, D. Ward Aff., ¶ 9. A copy of the deed transferring Isabel Coats' interest to Plaintiff is attached hereto as Exhibit G.

Response: Admitted.

12. Isabel Coats commenced a second foreclosure proceeding against the two parcels in the spring of 2006. Exhibit A, Plaintiff's Aff., ¶ 13; Exhibit B, D. Ward Aff., ¶ 13.

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<sup>2</sup> The Amended Stipulation merely corrected aspects of the property description. The substantive terms of the Amended Stipulation were identical to those of the original Stipulation.

Response: Admitted.

Response Admitted, except that Plaintiff neglects to mention that Isabel Coats had transferred ownership of the 1999 Trust Deed to various trusts controlled by David Ward Plaintiff's father and David Ward was therefore the party that commenced the foreclosure of the 1999 Trust Deed See Assignment of Interest in Trust Deed recorded December 21 2005 as Entry No 9588515 (App Exhibit "K")

13 By the fall of 2006 Defendant Caroline Coats Graydon filed another motion for a temporary restraining order The matter was contested in an evidentiary hearing on converting Defendant Caroline Coats Graydon's motion for temporary restraining order into a preliminary injunction was held before Judge Medley on 5 December 2006 At the conclusion of said hearing Judge Medley concluded that Defendant Caroline Coats Graydon had not presented a case adequate for the issuance of a preliminary injunction and therefore dissolved the temporary restraining order and denied her request for a preliminary injunction Exhibit A Plaintiff's Aff , ¶ 14 Exhibit B, D Ward Aff , ¶ 14

Response Admitted

14 Following the dissolution of the temporary restraining order, Isabel Coats proceeded with the foreclosure sale Exhibit A, Plaintiff's Aff , ¶ 15 Exhibit B, D Ward Aff , ¶ 15

Response Admitted, except, as noted above the 1999 Trust Deed was then owned by Plaintiff's father, David Ward, as trustee for various trusts

15 The foreclosure sale was set for 14 February, 2007 Exhibit A, Plaintiff's Aff , ¶ 16, Exhibit B D Ward Aff , ¶ 16

Response Admitted

16 In the month prior to the trustee's sale, Defendant Peter Coats worked diligently to procure a purchaser for the property Exhibit A, Plaintiff's Aff , ¶ 17, Exhibit B, D Ward Aff , ¶ 17

Response Disputed, and not established by competent evidence See Defendant Graydon's Motion to Strike Affidavits, filed herewith

17 In the weeks and days proceeding [sic] the foreclosure sale, Defendant Peter Coats

was the procuring cause of various offers of purchase. One of the offers of purchase was to purchase the north parcel only for \$5,200,000.00. Plaintiff Michael Ward and Defendant Peter Coats accepted that offer. Exhibit A, Plaintiff's Aff., ¶ 18; Exhibit B, D. Ward Aff., ¶ 18.

Response: Disputed in part, and not established by competent evidence. See Defendant Graydon's Motion to Strike Affidavits, filed herewith. The Plaintiff has not even presented to the Court the offer that he contends was made. Graydon believes that the offer to which Plaintiff refers is the Hagen REPC, which is described in the Graydon's Statement of Additional Material Facts, ¶ 4, below. *See also* App., Exhibit L.

18. Defendant Caroline Coats Graydon did not accept this offer. Exhibit A, Plaintiff's Aff., ¶ 19; Exhibit B, D. Ward Aff., ¶ 19.

Response: Although it is true, this statement is a non sequitur. Graydon did not own any legal interest in the North Parcel, and could not accept any offer to sell the property. Graydon was, however, agreeable to the sale of the North Parcel by Coats upon the terms set forth in an offer made by David Hagen, so long as the net proceeds (after payment of liens and costs of sale) attributable to Coats' interest in the property were escrowed. Upon that condition, Graydon was willing to release her *lis pendens* on the property. Depo. of Graydon, at 8:25-9:22 (told Corey at United Title, the closing agent); at 11:12-12:14 (told Peter Coats); at 12:15-13:1, 14:1-14:16:4; 29:20-30:24; 48:24-49:5 (told Michael Ward); at 27:12-18 (told various real estate agents). [The cited portions of the deposition of Graydon are set forth in the Appendix, Exhibit "M."]

19. In the weeks and days preceding the Trustee's Sale, both Defendants made proposals or demands for conditions for closing. Plaintiff told both Defendants that he would accept either set. Defendants never agreed on a set of closing instructions and did not accept any offer. Exhibit A, Plaintiff's Aff., ¶ 20; Exhibit B, D. Ward Aff., ¶ 20.



Response Graydon admits that, generally speaking, there were discussions and negotiations between the parties respecting the sale of the North Parcel and that Peter Coats did not, to Graydon's knowledge, agree to place the net proceeds of the sale in escrow pending further order in the pending divorce case. Inasmuch as Plaintiff does not provide any specific information regarding other "proposals or demand for conditions for closing," Defendant Graydon cannot admit or deny the remaining allegations of this paragraph. Regarding the statement that Defendants did not agree on a set of closing instructions and did not accept any offer, see Graydon's response to Para. 18 above.

20 None of the offers to purchase were ever accepted since Defendant Caroline Coats Graydon would not accept any offer. Exhibit A, Plaintiff's Aff. ¶ 21, Exhibit B, D Ward Aff., ¶ 21.

Response Graydon did not individually own any interest in the North Parcel, and could not individually accept any offer. As noted in response to Para. 18 above, Graydon was, however, agreeable to the sale of the North Parcel by Coats, so long as the net proceeds attributable to Coats' interest in the North Parcel were escrowed, so as to protect Graydon's legitimate interests in the North Parcel as marital property.

21 Defendant Caroline Coats Graydon required that Defendant Peter Coats agree to have his portion of the sales proceeds deposited into an escrow account pending the resolution of their divorce. Exhibit J, 11-12-12 14.

Response Admitted

22 Defendant Caroline Coats Graydon was, at all relevant [sic] herein, a licensed real estate agent and loan officer. Because of this experience, Defendant Caroline Coats Graydon knew that if she postponed reaching an agreement on the terms of the sale and/or postponed the closing, she could effectively hold the sale hostage. Exhibit A, Plaintiff's Aff. ¶ 22, Exhibit B, D Ward Aff., ¶ 22.

Response: Denied, not established by any admissible evidence, and irrelevant. See Defendant Graydon's Motion to Strike Affidavits, filed herewith.

23. Plaintiff Michael Ward indicated the [sic] both Defendants that he would accept any reasonable proposals for closing instruction which either of them might propose. Exhibit A, Plaintiff's Aff., ¶ 24; Exhibit B, D. Ward Aff., ¶ 24.

Response: Admitted.

24. No sale offer was accepted and the north parcel was subject to a foreclosure sale on 15 March 2007. Exhibit A, Plaintiff's Aff., ¶ 25; Exhibit B, D. Ward Aff., ¶ 25. Defendant Caroline Coats Graydon never accepted any offer in writing. Exhibit J, Deposition of Defendant Graydon, 8:12-9:3.

Response: Disputed. Insofar as Graydon is aware, both Coats and Ward accepted the Hagen REPC. See Hagen REPC, at App., Exhibit "L." It is admitted, however, that the sale to David Hagen did not close. Graydon did not individually own any interest in the North Parcel, and she admits that she did not individually accept any offer. However, Graydon was willing to consent to the sale of the North Parcel to David Hagen, and to release her lis pendens, so long as the net proceeds attributable to Coats' interest were escrowed pending further order of the divorce court. Depo. of Graydon, at 8:25-9:22 (told Corey at United Title, the closing agent); at 11:12-12:14 (told Peter Coats); at 12:15-13:1, 14:1-14:16:4; 29:20-30:24; 48:24-49:5 (told Michael Ward); at 27:12-18 (told various real estate agents).

25. At the trustee's sale, Defendant Caroline Coats Graydon goaded Defendant Peter Coats into bidding on the property, notwithstanding his inability to pay any amount he might bid. Defendant Peter Coats bid against his brother, David Ward, and increased the sales price to the benefit of Defendants and the detriment of David Ward, Plaintiff, and the other purchasers. Exhibit A, Plaintiff's Aff., ¶ 26; Exhibit B, D. Ward Aff., ¶ 26.

Response: Denied in part. Graydon admits that Coats bid on the North Parcel at the trustee's sale. There is no admissible evidence, however, establishing the remaining allegations

of this paragraph, or, in particular establishing that Graydon “goaded” Coats into bidding on the property, which is merely an opinion as to what Graydon said to Coats See Defendant Graydon’s Motion to Strike Affidavits filed herewith Further there was no detriment to the Plaintiff from Coats bids, as Plaintiff claimed a share of the increased purchase price

26 Accordingly the property was sold at Trustee's Sale on 15 March 2007, for the amount of \$3,600,000 00 After the satisfaction of the costs of sale attorneys' fees, interest and principal, there was left, as excess proceeds of \$1,989,789 03 These funds were accounted for by the trustee, Brad C Smith A copy of this accounting is attached hereto as Exhibit H A copy of the Amended Trustee's Deed Following Trustee's Sale is attached hereto as Exhibit K

Response Admitted The property was sold to the Ward family, including a 1/18th interest to Plaintiff

27 Plaintiff received 9 82% of the excess sales proceeds amounting to \$195,397 28 Because I was one of the successful purchasers at the trustee's sale, I was credited this amount against my portion of the foreclosure sales price Exhibit A, Plaintiff's Aff , ¶ 3, Exhibit B, D Ward Aff , ¶ 3

Response Admitted

28 Had Defendants accepted the highest offer, Plaintiff would have been entitled to 9 82% of \$5 2 million or \$510,640 00 Instead, Plaintiff received only \$195,397.28, representing 9 82% of the excess proceeds Exhibit A, Plaintiff's Aff , ¶ 27. Exhibit B, D Ward Aff , ¶ 27

Response Denied Graydon did not own an interest in the North Parcel, so her “acceptance” of an offer is a non sequitur Further, this statement assumes that the offer for \$5 2 million (which has not been presented to the Court by Plaintiff) actually closed, and Plaintiff has presented no evidence whatsoever that the sale would have, or was even likely, to close Furthermore, the statement that Plaintiff would have been entitled to \$510,640 00 depends upon his interests in the North and South Parcels not being subject to the 1995 Trust Deed and the

1999 Trust Deed. If that is the case, then the foreclosure sale of the property had no effect on Plaintiff's interests, and Coats' failure to agree to sell his interest in the North Parcel likewise had no effect on Plaintiff.

29 As the direct and proximate result of the Defendants' acts and/or omissions Plaintiff has been damaged in the amount of not less than \$315,242.<sup>72</sup> Exhibit A, Plaintiff's Aff., ¶ 31, Exhibit B, D. Ward Aff. ¶ 31.

Response Denied. See response to Para. 28 above. In addition, Plaintiff fails to deduct costs of sale and commissions that would have been payable from the proceeds had the sale actually closed. See Hagen REPC, App., Exhibit "L."

30 On 10 November 2008, Judge Atherton entered a supplemental decree of divorce in the Defendants' divorce action. A copy of that Supplemental Decree of Divorce is attached hereto as Exhibit I.

Response Admitted.

31 The Supplemental Decree was entered against Defendant Peter Coats after his pleadings were stricken in that action for his contumacious conduct. Defendant Caroline Coats Graydon was also awarded "damages" for Defendant Peter Coats' "dissipation and contempt." Exhibit I, ¶ 16.

Response Admitted, but only as specifically stated in the Supplemental Decree. The award to Graydon was specifically made because Judge Atherton found that Peter Coats caused "prior sales to fail, including one for the North Parcel for \$5,200,000.00." See Supplemental Decree, at ¶ 15. Accordingly, Judge Atherton awarded to Graydon an amount equal to 50% of the decrease in proceeds realized from the North Parcel, or \$523,508.00, which sum was ordered to be paid when the South Parcel is sold. Supplemental Decree, at ¶ 16.

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<sup>3</sup> Plaintiff has consistently maintained, both in this action and in other proceedings, that his ownership interest was not subject to the 1995 and 1999 Trust Deeds. See Complaint at ¶¶ 35 and 36, Plaintiff's Statement of Facts, ¶ 6 above, and materials referenced at Graydon's Statement of Additional Facts, ¶ 9, below.

32 The damages awarded to Defendant Caroline Coats Graydon amounted to the portion of the sales proceeds she would have received if the property had sold for \$5,200,000.00 Exhibit I, ¶¶ 15-16 Her "damages" were awarded to her from other property in which Plaintiff is also a 9 82% joint tenant Exhibit I ¶¶ 17-18 21-22

Response Denied in part, on the grounds that until entry of the Supplemental Decree Graydon's interest in the North Parcel was purely an equitable interest on the basis that Coats interest in the property was marital property In dividing the marital property, Judge Atherton recognized that but for Coats' failure to cooperate in the sale, the marital property would have yielded additional amounts, one-half of which would have been awarded to Graydon See Supplemental Decree, at ¶¶15 and 16

#### **GRAYDON'S STATEMENT OF ADDITIONAL MATERIAL FACTS**

Defendant Graydon maintains that the following additional material facts are not disputed, based upon the pleadings and the Deposition of Caroline Graydon

1 In connection with the divorce proceeding between Graydon and Coats (Third Dist Ct, Salt Lake County, Case No 014902286), Graydon's legal counsel caused to be recorded a Lis Pendens, which included descriptions of the North and South Parcels, to give notice of the pendency of the divorce proceeding Depo of Graydon, at 20 3-9, App. Exhibit "E "

2 Graydon did not own any legal interest in the North or South Parcels at any time pertinent to this proceeding Her only interest in the North Parcel was as marital property Depo of Graydon, at 48 7-14, and deeds set forth in App., Exhibits "A" through "D "

3. An offer for the sale of the North Parcel was made by David Hagen on February 13, 2007 (hereinafter, the “Hagen REPC”). Depo. of Graydon, at 18:14-19:22. A copy of deposition Exhibit 2, the Hagen REPC, is set forth in the Appendix, as Exhibit “L.”

4. While the Plaintiff’s Complaint alleges that the offer for the North Parcel was for a price of \$5.2 million, the Hagen REPC reflects that original offer was \$5.0 million. The price of \$5.2 million was made via a counteroffer that was apparently executed by both Coats and Michael Ward on March 5, 2007. App., Exhibit “L.”

5. The Hagen REPC identified Peter Coats and Michael Ward as the sellers, and did not identify Caroline Graydon as a seller. Para. 9 of Addendum No. 2 (which was a counteroffer by Coats and Michael Ward), stated as follows:

9. This sale is subject to Caroline Graydon signing a quit claim deed to the buyers.

App., Exhibit “L.”

6. Graydon was agreeable to a sale of the North Parcel pursuant to the Hagen REPC, and was willing to remove her lis pendens on the parcel and execute such other documents as may have been needed for a closing, so long as the net proceeds of the sale (i.e., after payment of the debts and costs of the sale) attributable to Coats’ interest in the property were placed in escrow pending a decision in the divorce action. Depo. of Graydon, at 8:25-9:22 (told Corey at United Title, the closing agent); at 11:12-12:14 (told Peter Coats); at 12:15-13:1, 14:1-14:16:4; 29:20-30:24; 48:24-49:5 (told Michael Ward); at 27:12-18 (told various real estate agents).

7. Although there was an order in the divorce action that prohibited Coats and Graydon from disposing of or encumbering marital assets, Graydon had good reason to fear that

Coats would violate the court order if he received the proceeds of sale. This was because Coats had violated the court's order before, by encumbering the marital home and by placing encumbrances and easements against the North and South Parcels. Depo. of Graydon at 49:14-50:17. These facts, in part, were the basis for Judge Lewis' order dated August 31, 2005, entered in the divorce action. See Exhibit "D" to Plaintiff's Memo.

8 Prior to the trustee's sale, Michael Ward took the position that his 9 82% undivided interest in the parcels was not subject to the liens arising from the trust deeds held by Isabel Coats. Complaint, ¶¶ 35 and 36.

9 In fact, in connection with other litigation between these parties, on February 20, 2007, immediately prior to the scheduled trustee's sale, Michael Ward and, oddly enough, Isabel Coats and David Ward, filed a motion for partial summary judgment seeking a ruling that Michael Ward's interest in the property was not subject to the 1995 and 1999 Trust Deeds. See Motion for Partial Summary Judgment and supporting Memorandum, filed in Isabel Coats v. Peter Coats, et al., Third Dist. Ct., Salt Lake County, Civil No. 050910905, copies of which are filed herewith as Exhibit "N." No ruling was ever issued on this Motion.

10 Plaintiff's complaint alleges as follows:

36 In order to facilitate the [trustee's] sale, Plaintiff agreed that his 9 82% would be treated as junior to the two Trust Deeds, in order to attempt to maximize the sales proceeds.

However, Plaintiff has not presented any written instrument whatsoever that reflects his agreement to subordinate his 9 82% interest in the property to the trust deeds.

11 Graydon never took any actions to restrain or prevent Plaintiff from selling the 9 82% interest in the property that he owned. Depo. of Graydon at 49:10-13.

12 The divorce court's order granting to Graydon the "power of attorney to sign for Peter M. Coats regarding the sale of [certain properties]" was not effective, in the eyes of title companies that were involved with the properties, since the divorce was not final and the order granting the power of attorney was subject to appeal. November 14, 2007, Depo. of Caroline Graydon, at 34:15-37:25 [excerpts of this deposition are set forth in the Appendix, as Exhibit "O"].

### **ARGUMENT**

Plaintiff's motion for summary judgment is premised upon the theory that his cotenant owed him a fiduciary duty to sell the North Parcel for an advantageous price, prior to its foreclosure. That argument has no merit whatsoever, moreover, the claim cannot be asserted against Caroline Graydon, as she was never Plaintiff's cotenant. In addition, since Plaintiff maintains that his ownership interest in the property was not subject to the trust deeds, then either (a) he suffered no damage because his ownership interest was not foreclosed, or (b) if he voluntarily and effectively subordinated his ownership to the trust deeds, as he alleges he did, then Plaintiff is the sole cause of any losses that he suffered.

### **POINT I**

#### **DEFENDANT GRAYDON WAS NOT A COTENANT IN THE NORTH PARCEL.**

The undisputed facts establish that Caroline Graydon's interest in the North Parcel was purely an equitable interest in Coats' 90.18% interest, due to its character as a marital asset. She did not own a legal interest in the North Parcel at any time material to Plaintiff's claims. Her interest arose solely from the fact that Coats' 90.18% interest in the property was marital.



property, and was therefore subject to an equitable division in the divorce action. Her lis pendens affected only Coats' interest in the North Parcel.

Since Graydon owned no legal interest in the North Parcel, she had no cotenancy relationship with Plaintiff, and could not owe any duties to Plaintiff. Accordingly, even if a cotenant has a duty to sell real estate (a point that is disputed and will be discussed below), Defendant Graydon was not a cotenant and could have no liability to Plaintiff for any acts or omissions.

To the extent Plaintiff is asserting that Graydon had the authority to act for Coats, pursuant to the court order granting her a power of attorney, then Plaintiff's claims would still lie solely against Coats, since Coats was the principal and Graydon was merely the agent. A power of attorney is merely a species of a principal-agent relationship. Actions by an agent within the scope of the agent's authority are, in legal contemplation, the actions of the principal. *See* 2A C.J.S. *Agency* §§ 344 and 353 (2003). In short, Graydon did not individually become a cotenant of Plaintiff merely because the divorce court entered an order authorizing her to execute documents as attorney in fact for Coats.<sup>4</sup>

## **POINT II**

### **A COTENANT HAS NO DUTY TO SELL REAL ESTATE.**

There is simply no authority for the proposition that a cotenant owes a fiduciary duty, or any duty, to sell his interest in property. The cotenant's remedy is purely statutory, i.e., the filing

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<sup>4</sup> Further, as discussed elsewhere, the divorce court's order giving Graydon a power of attorney to "sign for Peter M. Coats regarding the sale of [certain properties]" was subject to dispute and appeal, and was ineffective in the eyes of title insurers, since it was not a final order.

of a partition action under Utah Code Ann §78B-6-1201, et seq (formerly Utah Code Ann § 78-39-1 et seq ), and seeking a partition by sale. The Utah Supreme Court has noted that “Partition in this state is a statutory action. The right to partition and the relief that can be administered are prescribed and fixed by [the statute]’ *Larsen v. Davnes*, 122 P 2d 429, 430 (Utah 1942), *rev’d on rehr’g on other grounds*, 133 P 2d 785 (Utah 1943). Despite having owned his interest for over a year prior to the trustee’s sale, Plaintiff did not file a partition action to compel a sale.

Plaintiff argues that Defendants owed a fiduciary duty to sell the property, because a cotenant owes fiduciary duties to his cotenant. The cases cited by Plaintiff do not stand for that proposition. *Chournos v. Evona Inv. Co.*, 93 P 2d 450 (Utah 1939), involved a co-lessee’s claim for specific performance of a right of first refusal in a lease agreement. The Court held that the co-lessee’s tender of performance did not comply with the terms of the right of first refusal, and refused an order of specific performance. The Court also noted that had either of the two co-lessee’s ended up with the property pursuant to the right of first refusal, the other co-lessee could have compelled the other cotenant to share the property so acquired. This was because, as partially quoted in Plaintiff’s memorandum, “Generally, as between tenants in common and joint tenants, a confidential relationship exists that prohibits one taking advantage of the other by buying the title to the property.” *Id.* at 453. This case had nothing to do with the sale of property subject to a tenancy in common.<sup>5</sup>

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<sup>5</sup> If anything, *Chournos* supports an argument by Peter Coats that Michael Ward’s acquisition of an interest in the North Parcel as part of the trustee’s sale constitutes a breach of fiduciary duty.

The other case cited by Plaintiff, *Rio Algom v Jimco Ltd*, 619 P 2d 497 (Utah 1980) actually supports Defendant's position by noting that a fiduciary relationship does not arise from the mere fact of cotenancy. Instead, the Court stated

A fiduciary relationship between cotenants is usually found when one cotenant undertakes to act on behalf of another cotenant, or takes advantage of other cotenants often in the course of acquiring paramount title or ousting other cotenants

Id. at 506. There are simply no facts in this matter establishing that either Defendant undertook to act on behalf of Plaintiff, or acquired or attempted to acquire paramount title or to oust other cotenants.<sup>6</sup> Plaintiff urges that the overall circumstances establish a fiduciary duty because "each had an obligation to act for their mutual best interest." Plaintiff's Memo at p. 11, fn. 2. But that argument is circular, and there is no evidence that Peter Coats (or Caroline Graydon, despite the fact she is clearly not a cotenant) undertook to act on behalf of Plaintiff, or to take advantage of Plaintiff.

Plaintiff also argues that he is simply asking for what was awarded to Graydon in the divorce proceeding.

There is simply no authority for the proposition that a cotenant of real estate has any obligation to another cotenant to sell his interest, or to cooperate in the sale of the entire property, regardless of the circumstances. A cotenant's sole right and remedy is to seek a partition or partition by sale of the subject property, pursuant to the partition statute.

### **POINT III**

#### **THE UNDISPUTED FACTS ESTABLISH THAT EITHER PLAINTIFF**

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<sup>6</sup> If anything, the undisputed facts establish that Michael Ward, in concert with his father, David Ward, acquired paramount title as to Peter Coats, and could be held liable for such actions.

**SUFFERED NO DAMAGE, OR, ALTERNATIVELY,  
PLAINTIFF WAS THE SOLE CAUSE OF HIS LOSS.**

Plaintiff has asserted, both in this lawsuit and in another one that his 9 82% interest in the North and South Parcels was not subject to the trust deeds. If his interest was not subject to the trust deeds as he has alleged and argued then the foreclosure did not affect his interests and he suffered no damages, as a matter of law. He retained his 9 82% interest notwithstanding the trustee's sale. However, in an effort to bolster his claim in this case, Plaintiff asserts that he simply agreed, at the time of the trustee's sale, that his interests would be subject to, and therefore foreclosed by, the trustee's sale. This tactic does not improve his position, but instead places him on the horns of the following dilemma:

Either (a) Plaintiff's interests were not in fact foreclosed, because there was no written instrument that subordinated his interest, and therefore his "agreement" was ineffective, or (b) if Plaintiff's agreement to subordinate was effective, then that unilateral and voluntary agreement was the sole cause of his damages. A subordination agreement is subject to the statute of frauds, Utah Code Ann. § 25-5-1, et seq., and is not effective unless it is in writing and signed by the party to be charged therewith. *Cf. Metrobank for Savings v. Nat'l Community Bank*, 620 A.2d 433 (N.J. Super. Ct. App. Div. 1993) (mortgage is an interest in real estate, so subordination must satisfy statute of frauds). Accordingly, notwithstanding Plaintiff's current contention, since there was no instrument signed by him that established his subordination, it was not effective and the foreclosure did not affect his interest.

Alternatively, had Plaintiff not agreed to "subordinate" his 9 82% interest to the trust deeds, then, according to his own argument and sworn testimony, his interest would not have

been foreclosed and he would not have been damaged. He cannot blame his cotenant's failure to agree to a sale of the property for any loss — he can only blame himself.

#### **POINT IV**

##### **ADDITIONAL DISPUTED ISSUES OF MATERIAL FACT PRECLUDE SUMMARY JUDGMENT TO PLAINTIFF.**

If the Court otherwise concludes that Plaintiff has asserted a legal basis for recovery against Graydon, summary judgment is nevertheless precluded by material issues of disputed fact.

First, Graydon disputes Plaintiff's claim that she was unwilling to agree to a sale of the North Parcel. The cited deposition testimony establishes that Graydon was willing, in fact desirous, that the property be sold. The only condition she imposed was that the net proceeds of the sale, to the extent attributable to Coats' interest only, be deposited in escrow until the divorce court dealt with the issue. This was a reasonable condition by Graydon, particularly given Coats' previous behavior in violating the divorce court's prohibition on disposition or encumbering of assets. Accordingly, the failure of the sale must be blamed wholly on Coats. If Graydon somehow owed a duty to Plaintiff, that duty was not breached, as her behavior was reasonable under the circumstances.<sup>7</sup>

Second, to the extent Plaintiff's claims against Graydon are premised upon her failure to exercise the authority purportedly granted to her by the divorce court's power of attorney order, it

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<sup>7</sup> In effect, Plaintiff argues that Graydon was under a legal duty to release her lis pendens on the property, and allow Coats to receive all of the net proceeds of sale. However, Plaintiff cites, and can cite to, absolutely no legal authority for the proposition that Graydon must subordinate her own financial interests to those of Plaintiff. By analogy, would the Plaintiff argue that a judgment creditor of Coats would be obligated to release its judgment lien to allow the sale to close, even if the judgment creditor was not paid, or was not paid in full?

is disputed that order effectively allowed Graydon to exercise any power to sell the North Parcel. There were several reasons for this. Coats had recorded a lis pendens setting forth his claim that the order was invalid (App., Exhibit "H"), and Coats' attorney had filed an appeal from the order, and had recorded the notice of appeal (App. Exhibit "I"). In addition, the order was not a final order and could be reversed or modified on appeal. No title insurer in its right mind would insure a conveyance executed by Graydon under authority of the court's order, where the order could be invalidated.

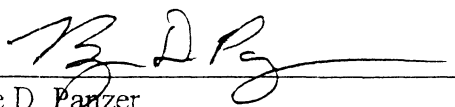
Third, Plaintiff has presented no evidence to establish the actual amount of his damages, assuming that he is otherwise entitled to relief, since the Hagen REPC involved real estate brokers and commissions, and costs of sale. Plaintiff admits this defect in his supporting memorandum, but has provided no evidence of what those deductions would have been.

### CONCLUSION

Based on the foregoing, Plaintiff's motion for summary judgment should be denied, and Graydon's motion for summary judgment should be granted. As stated in Graydon's motion, the Court should reserve for further consideration Graydon's claim, as set forth in her Fourth Defense, to an award of attorney's fees and costs incurred herein, pursuant to Utah Code Ann. §78B-5-825 (recodified from §78-27-56).

. DATED this 27<sup>th</sup> day of March, 2009.

BLACKBURN & STOLL, LC

  
Bryce D Panzer  
Attorneys for Defendant Caroline Graydon

# Addendum K

Order On Summary Judgment Motions  
and Judgment

BRYCE D PANZER (A2509)  
BLACKBURN & STOLL, LC  
Attorneys for Defendant Caroline Graydon  
257 East 200 South, Suite 800  
Salt Lake City, Utah 84111  
Telephone (801) 521-7900  
Fax (801) 521-7965  
E-mail bpanzer@blackburn-stoll.com

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

---

MICHAEL WARD,

Plaintiff.

**ORDER ON SUMMARY JUDGMENT  
MOTIONS AND JUDGMENT**

vs

CAROLINE COATS GRAYDON and  
PETER COATS,

Defendants.

Civil No 080903379  
Judge Denise P Lindberg

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Plaintiff's Motion for Summary Judgment and Defendant Caroline Graydon's Motion for Summary Judgment came on regularly for hearing on July 20, 2009, before the above-entitled Court, the Honorable Denise P Lindberg, District Court Judge, presiding. Brad C Smith of Stevenson & Smith, P.C., appeared on behalf of Plaintiff Michael Ward, Bryce D. Panzer of Blackburn & Stoll, LC, appeared on behalf of Defendant Caroline Coats Graydon, and Peter Coats appeared representing himself.

The Court having considered the motions, the memoranda filed by Plaintiff and Defendant Graydon (the Court having noted that Defendant Peter Coats had not filed any



opposition to the Plaintiff's Motion for Summary Judgment), and the arguments presented at the hearing, and good cause appearing, it is hereby ordered, adjudged and decreed as follows

1 Defendant Caroline Graydon's Motion to Strike Affidavits is hereby granted as to those portions of the affidavits identified in her motion

2 Plaintiff's Motion for Summary Judgment against Defendant Caroline Graydon is denied, and Defendant Caroline Graydon's Motion for Summary Judgment against Plaintiff is hereby granted for the reasons set forth in Defendant Graydon's memoranda. Accordingly, Plaintiff's Complaint against Defendant Caroline Graydon is hereby dismissed, with prejudice

3 On the ground that Defendant Peter Coats defaulted by filing no opposition to the Plaintiff's Motion for Summary Judgment, said motion is hereby granted as against Defendant Peter Coats. Accordingly, judgment is hereby granted in favor of Plaintiff Michael Ward and against Defendant Peter Coats for the sum of \$315,242.72, together with interest thereon at the post-judgment rate of 2 4% per annum

4. Costs are hereby awarded to Defendant Caroline Graydon as against Plaintiff

5. Costs are hereby awarded to Plaintiff Michael Ward as against Defendant Peter Coats

DATED this \_\_\_\_ day of \_\_\_\_\_, 2009

BY THE COURT

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Denise P. Lindberg  
District Court Judge

Approved as to form

STEVENSON & SMITH, P.C

Brad C. Smith 7-29-09

Brad C. Smith

Attorneys for Plaintiff

BLACKBURN & STOLL, LC

\_\_\_\_\_  
Bryce D. Panzer

Attorneys for Defendant Caroline Graydon

\_\_\_\_\_  
Peter Coats. Defendant pro se

# Addendum L

## Minute Entry and Order

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IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH  
SALT LAKE DEPARTMENT

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Michael Ward  
Plaintiff/Petitioner, :

MINUTE ENTRY AND ORDER

vs

: Case No 080903379

Caroline Coats Graydon and Peter Coats  
Defendant/Respondent :

Judge Denise Posse Lindberg

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Before the Court is Defendant Coats' Rule 59 motion to re-open proceedings or alternatively, his Rule 60 motion for relief from judgment. The Court DENIES both motions.

Coats was a co-defendant with Graydon (his ex-wife) in a lawsuit brought by Plaintiff Michael Ward. Plaintiff sued defendants claiming they were his co-tenants on a parcel of real property and that they had breached their fiduciary duty to him to cooperate in the sale of the property. Plaintiff alleged that the co-defendants' failure to cooperate resulted in the loss of an advantageous sale, having the property go to foreclosure, and in resulting damages to Plaintiff.

On or about March 5, 2009, Plaintiff filed a motion for summary judgment. Graydon opposed the motion and filed her own counter-motion for summary judgment. Although Coats admitted receiving copies of the motions, he did not respond. The matter was argued before the Court on July 20, 2009. Plaintiff and Graydon appeared through counsel. Despite not responding in writing, Coats appeared pro se at the hearing and was allowed to make argument. At the conclusion of the hearing the Court denied Plaintiff's motion for summary judgment as to Graydon and granted Graydon's motion for summary judgment, dismissing her from this action. However, the Court granted Plaintiff's summary judgment motion against Coats. An Order memorializing the Court's judgment was signed August 17, 2009.

On August 31, 2009, Coats, now represented by counsel, filed the present motion. Plaintiff has opposed the motion and explained why Coats is not entitled to relief from judgment.

under either Rule 59 or Rule 60. The Court agrees entirely with Plaintiff's analysis and incorporates it herein by reference. The analysis therein more than adequately supports the Court's determination that Coats' motions fail

Coats suggests that part of his inaction is explained by emotional problems he was experiencing. However, his own affidavit makes clear that while, for a short period, he was placed under a limited conservatorship, that conservatorship ended, effective January 2009. Therefore, the Court concludes that whatever problem affected Coats' ability to act on his own behalf, it ended as of January 2009 when the conservatorship terminated. Since this occurred months before Plaintiff's summary judgment motion was briefed and heard, the Court gives no weight to this argument.

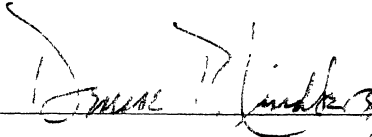
Finally, Coats argues he "did not understand the concept of 'Summary Judgment.'" While a pro se litigant is "entitled to every consideration that may reasonably be indulged," Allen v. Friel, 2008 UT 56, ¶11, 194 P.3d 903:

[a]s a general rule, a party who represents himself will be held to the same standard of knowledge and practice as any qualified member of the bar . . . Further, 'reasonable' indulgence is not unlimited indulgence. Rather it is meant to assign to judges the responsibility of informing a self-represented party of matters such as the date of trial, his right to a trial by jury, . . . [etc.] Reasonable considerations do not include the need to interrupt proceedings to translate legal terms, explain legal rules, or otherwise attempt to redress the ongoing consequences of a party's decision to function in a capacity for which he is not trained.

Id. (internal citations omitted).

Based on the foregoing, Coats' Rule 59 and Rule 60 motions are DENIED

So Ordered by the Court this 10<sup>th</sup> day of December, 2009.

  
Judge Denise Posse Lindberg  
By \_\_\_\_\_  
STAMP USED AT DIRECTION OF JUDGE

UTAH  
DEC 10 2009

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 080903379 by the method and on the date specified.

MAIL: CRAIG S COOK 3645 E 3100 S SALT LAKE CITY, UT 84109

MAIL: BRYCE D PANZER 257 E 200 S STE 800 SALT LAKE CITY UT  
84111-2048

MAIL: BRAD C SMITH 3986 WASHINGTON BLVD OGDEN UT 84403

Date: 12/16/09

J. Gleitli

Deputy Court Clerk