

1979

James G. Cutrubus, dba 7 C's Motors v. Call Investment Company, A Utah Partnership, And S. M. Horman : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

JAMES G. CUTRUBUS, D/B/A /
7 C's MOTORS /

Plaintiff and /
Appellant, /

VS. /

Case No. 16617
(14608)

CALL INVESTMENT COMPANY, /
a UTAH PARTNERSHIP, and /
S. M. HORMAN /

Defendants and /
Respondents /

BRIEF OF APPELLANT

Appeal from the Judgment of the
District Court of Box Elder County
Honorable VeNoy Christoffersen, Judge

Henry S. Nygaard, Esq.
1100 Boston Bldg.
Salt Lake City, Utah 84111

James G. Cutrubus, D/B/A
7 C's Motors
4850 So. 354 E.
Ogden, Utah 84403

David Lloyd
606 Newhouse Bldg.
Salt Lake City, Utah 84111

Pro Se., Appellant

Attorneys for Respondents

FILED

APR 5 1979

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IN THE SUPREME COURT OF THE
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JAMES G. CUTRUBUS, D/B/A
7 C's MOTORS

Plaintiff and
Appellant,

VS.

CALL INVESTMENT COMPANY,
a UTAH PARTNERSHIP, and
S. M. HORMAN

Defendants and
Respondents.

Case No. 16617
(14608)

BRIEF OF APPELLANT

STATEMENT OF THE KIND OF CASE

This is an action brought by James G. Cutrubus, D/B/A 7 C's Motors, Plaintiff and Appellant, Pro Se, for the return of all structures, buildings, signs, equipment, and other items located on real estate which was sold to Respondent S. M. Horman. Contract clearly stated, that all "structures, buildings, signs, equipment, and other items" were not included in the sale of the property. Respondent Horman then subsequently sold real estate to Call Investment Company with no regard as to his contractual and moral obligations set forth by the agreement, whereby Call Investment Company denied Appellant's rightful claim to his property. The action filed herein seeks to establish priority, reserved by the Appellant, on ownership of the above referenced property, that they were "in fact not" a part of the real estate sale as contract clearly stated, and Appellant's rights and wishes were intentionally, and maliciously disregarded.

DISPOSITION IN LOWER COURT

The Lower Court denied the right of the Appellant to be heard, and to the right of a Due Process trial and hearing through the Courts. Appellant was also denied his right to representation of Counsel. The Lower Court also denied Appellant's Motion and Order to Set Aside Summary Judgment, notwithstanding the fact, that Appellant's attorney, Robert Echard, had withdrawn from the case, and had so informed the Court. Attorney Echard also informed the Lower Court, by letter, that "he found it difficult to understand the ruling made in the Memorandum Decision inasmuch as the Appellant was left without legal representation. Appellant was without knowledge of this decision until so informed by letter from former Attorney Echard."

RELIEF SOUGHT ON APPEAL

The Appellant seeks reversal of the Judgment and final Order of the Lower Court which denied the Appellant the right of a Due Process trial and hearing as to the Claim set forth by the Appellant, as well as the right to representation by Counsel resulting from the withdrawal of counsel, Robert Echard, from representation of the Appellant. The Appellant also seeks that the Ruling of the Lower Court be reversed, that he have his day in Court, and the right to be heard, that the Court review all evidential matters and facts not yet heard before the Lower Court, that the Appellant be restored his rightful ownership to all his Claims, including General and Punitive, and any other such relief that the Court deem reasonable.

STATEMENT OF FACTS

For brevity and clarity in this Brief, the references will be made to S. M. Horman, and Call Investment Company as Horman, and Call. References to James G. Cutrubus, D/B/A 7 C's Motors, will be made as Cutrubus.

A complaint was filed with the Lower Court July 11, 1978, by Cutrubus against Horman and Call, stating that on or about the 25th of August 1977, Cutrubus entered into an Option Agreement with Horman, wherein Horman was granted an Option to purchase the real property described in attached "Appeal Exhibit A", provided all structures, buildings, signs, equipment, and other items attached to said property, were not conveyed in said transaction. Horman exercised his contract by letter September 2, 1977, delivered to Cutrubus September 5, 1977, and instructed Cutrubus to remove "all structures, buildings, signs, equipment, and other items attached to the property", as more specifically described in Paragraph 5a of the Option, of the above mentioned letter (Appeal Exhibit B). That the letter from Horman allows 90 days for the removal of Appellant's property. That Paragraph 5a referenced in Horman's letter also allows that "no penalties shall be assessed due to unusual delays in removal of these possessions." That Horman's letter further states that closing be completed "no later than September 6, 1977 through the Hillam Abstracting and Insurance Agency in Brigham City. That details of the closing were deliberately withheld from the closing agent Hillam, who would have properly prepared the documents from the Option, and the letter of September 2, 1977, and restricted the "property and possessions" legally owned by Cutrubus, from the Deeds.

That Horman then simultaneously transferred and sold said real property to Call with the full knowledge of the conditions set forth by the agreement. That the transactions (unbeknown to Cutrubus) were executed simultaneously ("Appeal Exhibits C & D") on September 8, 1977, and deeds were recorded September 9, 1977, 5 minutes apart. Horman further relinquished to Call all interest in said property belonging to Cutrubus, and thus maliciously disregarded Cutrubus's interests. For a man of such financial stature, with real estate expertise and known land values, who in his deposition of November 7, 1978 (exhibit file with court) readily admits, would have this Court believe that he took a \$20,000 loss within an approximate 24hr period.

Cutrubus was unaware that the real estate had changed simultaneously, and was not discovered until late November 1977. In Depositions taken November 7, 1978, on Horman and Call, and in Appellant's complaint, it is apparent that Cutrubus would not have done business with Call.

Appellant's original attorney, David J. Knowlton, having failed to appear in Appellant's behalf, and subsequently having failed to answer, allowed Default Judgment to come about. A continuance was requested of the Lower Court, by the Appellant, but request was denied. On or about April 1, 1978, Appellant solicited the services of Attorney Findley P. Gridley, who unsuccessfully attempted to have the Default set aside. Motion to Set Aside Default was denied, and Counterclaim was dismissed, both without prejudice, June 14, 1978. On February 26, 1978, Attorney Robert R. Echard, Mr. Gridley's associate, withdrew from the case. Appellant has been without counsel, and unable to acquire legal assistance since that time. Complexity of the case and the involvement of previous attorneys, has made it uninviting to other attorneys, and have been refused on every instance, hence the reason for

Appellant filing this Brief Pro Se. It is Appellant's desire not to offend the Court, but Appellant feels that he was not adequately, and properly represented by former attorneys. Files and other legal matter pertaining to this case were not relinquished to the Appellant until March 26, 1979, and April 2, 1979 some 30 days after withdrawal, making it extremely difficult for Appellant to solicit new legal representation to adequately represent himself.

On April 18, 1979, I received a copy of a letter dated April 11, 1979 to the Judge of the Lower Court making reference to a Memorandum Decision against this Appellant. It apparently had been sent to Attorney Echard in error, and he responded to the Lower Court and making reference to previous court actions, "so that the Court will not inadvertently make incorrect ruling in this matter." The Lower Court was contacted immediately on the 19th of April 1:30 PM by telephone and Appellant requested the Lower Court allow Appellant time to secure new counsel. Appellant express his difficulty in acquiring new counsel, even to the extent of approaching, and requesting the assistance of the Utah Bar Association.

ARGUMENT

POINT I

APPELLANT WAS ENTITLED TO REPRESENTATION BY COUNSEL
AND/OR CONTINUANCE OF TRIAL.

This Court has established the general standards of the authority of the Court to grant or deny a continuance of a trial and the general basic grounds and premises that should be used in making a determination as to whether or not a continuance should be allowed.

Rule 40(b) of the Utah rules of Civil procedure sets the general

perimeters of the basis of denying or granting a Motion for postponement of a trial, leaving the matter to the discretion of the Court.

The Courts have generally found that there are limitations of the right of discretion in the Court, and in the case of Bairas v. Johnson, et al, 13Ut. 2d 269, 373 p.2d 375 (July, 1962), this Court reversed the Lower Court and found abuse of discretion on the part of the Court where there was a refusal to grant an additional five-week continuance, even though the Plaintiff had previously been granted a three-month continuance because of his inability to personally attend trial, and the Court held that that where there was no evidence of malingering and where the original three-month continuance was based upon the advice of the Plaintiff's physician's statement as to the ability of the party to be present, that the Court did abuse its discretion in compelling the trial to go forward and in disallowing a continuance. The Court further examined the reasonableness of the exercise of the discretion of the Court and found that it was:

In accord with the most fundamental traditions of our

legal system, that a party should be afforded every reasonable opportunity to be in attendance at his trial.

The Court further held in the Bairas case, that it was not essential, that there be an accompanying Affidavit in a request for the continuance of trial, and stated that Rule 40 (b) of the Utah Rules of Civil Procedure does not expressly require an Affidavit to accompany a Motion for Continuance.

In the instant matter before this Court, the issues involved were very technical issues as to what constituted a valid claim, or Judgment as against the property of the Appellant; together with the priorities and amount of such claims, and in addition to the issue in the present matter before the Court was a serious and important Claim of the Appellant against the Defendants who are the Respondents presently before the Court, namely

Horman and Call, which required the expertise and guidance of an Attorney at Law in order to prevail in this matter at the time of Court.

As has been previously stated in the Statement of Facts, original counsel for the Appellant failed to appear, and the subsequent associate attorneys, more specifically Attorney Echard, who withdrew, it was not represented to the Court by the withdrawing counsel as to why he withdrew, and was not a dilatory tactic on the part of the Appellant to delay the trial or Court, but there was a serious rift between the previous counsel for the Appellant and the Appellant, necessitating the seeking of new counsel. The matter before the Court was not jury trial nor was there danger of a decrease in value of the security, namely the possessions and property of the Appellant, which was the subject matter of the action brought before the Court. The Appellant was totally unable to find any attorney who would be willing to assume the task of a fair and reasonable representation of the Appellant without benefit of having previously had research, and discovery whatsoever, and a reasonable opportunity for preparation as against both the claims of all of the other parties, as well as the presentation of the Appellant's Claim against the Defendants in the Lower Court.

In 48 A. L. R. 2d 1156, there is a large compendium of cases dealing with a right of a continuance based upon the withdrawal or discharge of counsel in civil cases. It is generally agreed that there should be no continuance of a trial by the wilful discharge by a party of his attorney where it would appear that the intent is to seek delay in the action.

In Finch v. Wallberg Dredging Company, 76 Id. 246, 281 P. 2d 136 (Supreme Court of Idaho, 1955), the Court held where Plaintiff's attorney withdrew from the action three days before the date set for trial of a complicated case and where the Plaintiff engaged another attorney to represent

him, that because of the complexity of the action and the immediate other urgent matters of engaged counsel, the counsel was unable to familiarize himself with the facts and the law of the case in the short interval of time before the court date, or trial date, and the Court was so apprised at the time the trial of the matter was called, the refusal of the Trial Court to allow a continuance was a abuse of discretion.

In Leija v. Concha, 39 SW. 2d 948 (Texas Civil App., 1931), the Trial Court refused to grant a continuance in order to permit new counsel to acquaint himself with a case where the plaintiff's counsel withdrew because of the refusal of the plaintiff to accept counsel's recommendation of settlement in the action, the Court held that the denial of a continuance constituted an abuse of discretion in that the Plaintiff had a right to be represented by counsel and that such right is a valuable right, and in order for counsel to properly represent a client, counsel must have an opportunity to familiarize himself with the facts and law of the case.

In Griffin v. Russell, 161 Ky. 471, 170 SW 1192 (Supreme Court of Kentucky, 1914), the Court held that the Trial Court committed reversible error in overruling a Motion for a Continuance and in forcing the Defendant into trial, even though the Defendant thereafter succeeded in procuring a competent lawyer to represent him trial. The Supreme Court Holding:

It is well known that very few lawyers, however able they may be, can properly defend an important case involving complicated issues of fact and nice questions of law, upon the spur of the moment, but preparation is not only proper, but necessary, for the orderly, prompt administration of justice, as well as for the protection of the client's interest, and that, by postponing the trial for a day Defendant would have had an opportunity of recovering from the misfortunes shown by his Affidavit.

In Fidelity-Phoenix Fire Insurance Company v. Oliver, 25 Tenn. App. 114, 152 SW 2d 254 (1941), was a matter wherein Defendant's counsel asked for a continuance until the next term of the Court on the ground that counsel was engaged in trying another case, and the Court set the case for trial nine days later, whereupon counsel withdrew from the case and Defendant, being informed by counsel of his withdrawal, retained other counsel four days thereafter, and the new counsel on the trial date moved to set aside a Default Judgment in the case entered by the Court two days before, the Court held that the Court had abused its discretion in denying such Motion, since the Court had failed to continue the case a sufficient time to permit the Defendant to employ other counsel and enable the new counsel to investigate the case and make a defense.

In Lowe v. Arlington, 453 SW. 2d 379 (Texas Civil App.), the Court held that in an action of eminent domain, which sought to deprive a party of his property and where the Defendant's attorney had withdrawn from the case, it was the duty of the Court to continue the case for a sufficient length of time to allow the Defendant to employ other counsel and to enable new counsel to investigate the case and make a defense, in that no person should be deprived of his property or denied any of his rights except by Due Process of Law. Inasmuch as the Appellant was deprived of his right of Due Process of Law, in this lawsuit, and no evidence of oral proceedings, or transcript reported by the Court Reporter of the Lower Court (Appeal Exhibit "E") fully manifests and evidences the total inability of the Appellant to represent himself as a Plaintiff, and claimant with a complete lack of understanding of any proceeding of law. That the Appellant being totally incapable of representing himself, both as to the validity, and the amount of the Claims against the Defendants, with the ac-

tion seeking to deprive him of his buildings, structures, signs, equipment, and other items located on certain real estate. In addition, the Appellant had a valid Claim which he was totally incapable of pursuing by reason of lack of counsel.

In Gonzales v. Harris, 542 P. 2d 842 (Supreme Court of Colorado, November 1975), the Supreme Court of Colorado stated that the denial of a Motion for a Continuance because of the unavoidable absence of a party during litigation is grounds for the granting of a new trial, in that the attendance of litigant is necessary for a fair presentation of his case.

The Colorado Supreme Court further stated in both the Gonzales v. Harris, *supra*, and Layne v. Gooding, *supra*, That:

**The trial Court's legitimate concern for the prevention of delay in the trial of cases should not prejudice the substantial rights of parties by forcing them to go to trial without being able to fairly present their case.

In Western Union Telegraph Company v. Suit, 153 Fla. 490, 15 So.2d 33 (1943), the Court held that it was improper to deny a continuance where it appears that the party acted with the requisite diligence and good faith, and that substantial prejudice would result from a refusal to delay the cause.

In State v. Blakeslee, 131 Mont. 47, 306 P. 2d 1103 (1957), where the Defendant's previously engaged attorney was allowed to withdraw and new counsel made a Motion for Continuance three days prior to trial and the same was denied. The Court held that the same constituted reversible error, the Court stating that it was of no importance how much time the Defendant and his original attorney might have had to prepare for trial since inherent in the appointment of new counsel was a recognition of the

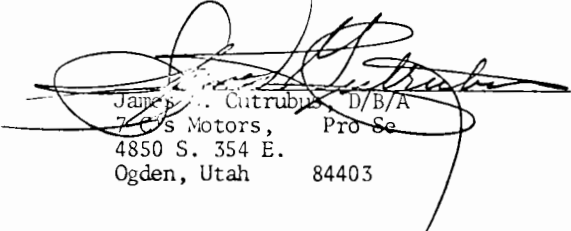
need of counsel, and since this was so, it was also necessary that the attorney should be made effective to present his defense by being given proper time for preparation.

CONCLUSION

It is submitted to this Honorable Court, that the Appellant, now appearing Pro Se, herein was the Plaintiff wherein the Defendants were seeking to deprive the Appellant of valuable Structures, buildings, signs, equipment, and other items of personal property, and that in addition thereto, the Appellant had filed a Claim against the Defendants, which Claim has not been adjudicated on its merits, and that the Appellant was totally incapable of handling the defense of his position to the claim of the other parties, as well as in the presentation of his Claim by reason of Appellant being without counsel at the time of the presentation of his matter before the Court, and that there is no evidence before the Court to indicate that in any way the loss of counsel was due to any dilatory tactics on the part of the Appellant, and that as a result of the refusal of the Court to grant an original continuance, and to set aside summary judgment, on a matter which had been in litigation only for a very short period of time from the date of inception of the action to the date of final Court order, and that there was no evidence of any irreparable injury to any of the other parties in the action by reason of such continuance, that the refusal of the Court to grant to the Appellant an opportunity to obtain new counsel and grant to such counsel a minimal period of time to become acquainted with the law and facts necessary for the defense of the position of the Appellant, that the denial of Appellant's right of a due Process of Law, and his day in Court, constituted an abuse

of discretion and denied to the Appellant not only valuable property right, but the loss forever of the right to pursue a valid claim as against the Defendants in the action below.

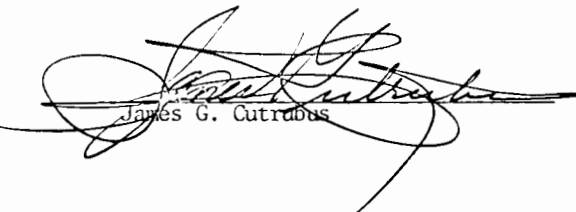
Respectfully submitted,



James G. Cutruba, D/B/A
7 C's Motors, Pro Se
4850 S. 354 E.
Ogden, Utah 84403

CERTIFICATE OF MAILING

A copy of the foregoing Brief of Appellant was mailed this 7th Day of November 1979, to the following: Henry S. Nygaard, Esq. Attorney for S. M. Horman, 1100 Boxton Bldg., Salt Lake City, Utah 84111; and David Lloyd Esq., Attorney for Call Investment Company, 606 Newhouse Bldg., Salt Lake City, Utah 84111, Postage Paid.



James G. Cutruba

OPTION

EXHIBIT

"A"

WITNESSETH THAT BY THESE PRESENTS:

JAMES G. CUTRUBIS - DBA TC'S MOTORS
SALT LAKE CITY, UTAH - hereinafter referred to as "Seller", hereby agrees to sell and convey unto
S. M. HORNALL -
SALT LAKE CITY, UTAH - hereinafter referred to as "Buyer", as follows:

PROPERTY: Seller hereby gives and grants to Buyer and to his heirs and assigns for a period of THIRTY DAYS hereinafter referred to as "First Option Period", the exclusive right and privilege of purchasing the following described real property located at FIRTHAM DR. & MAIN ST., SALT LAKE CITY, County of SALT LAKE, State of UTAH, and more particularly described as follows: SEE ATTACHED EXHIBIT "A".

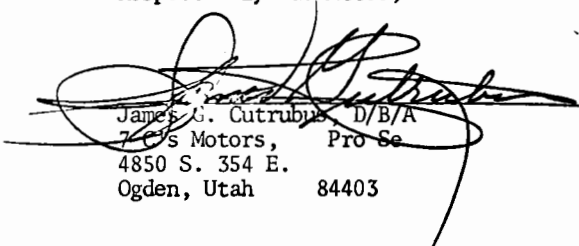
Seller with all water rights appurtenant thereto or used in connection therewith.
 Said real property and improvements, if any, shall hereinafter be referred to as "The Property".

PRICE: The total purchase price for said property is TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) Dollars, payable in lawful money of the United States, whereby within one month of the date of this option and any extension thereof as herein provided, shall be first applied on the purchase price. The balance shall be paid as follows: (A) ONE HUNDRED SIXTY-FOUR THOUSAND FIVE HUNDRED DOLLARS (\$164,500.00) DOLLARS IN CASH PAYABLE UPON CLOSING TO SELLER; (B) FIFTY THOUSAND DOLLARS (\$50,000.00) DOLLARS PAYABLE TO BARON R. BERRETT & DAVID S. MATTHEIS, WHOM AGREEMENT SAID DISCLOSED UNDER PARAGRAPH 2A OF THE AGREEMENT OF PURCHASE AND SALE DATED JULY 1, 1976 BETWEEN SELLER AND BERRETT AND MATTHEIS. UNDER PARAGRAPH 2B, 2C, 2D, AND 2E.

3. EXTENSION OF OPTION. Upon payment by Buyer to Seller of an additional sum of NONE (\$ NONE) Dollars, cash or by certified check.

of discretion and denied to the Appellant not only valuable property right but the loss forever of the right to pursue a valid claim as against the Defendants in the action below.

Respectfully submitted,



James G. Cutrubus, D/B/A
7 C's Motors, Pro Se
4850 S. 354 E.
Ogden, Utah 84403

CERTIFICATE OF MAILING

A copy of the foregoing Brief of Appellant was mailed this 7th Day of November 1979, to the following: Henry S. Nygaard, Esq. Attorney for S. M. Horman, 1100 Boxton Bldg., Salt Lake City, Utah 84111; and David Lloyd Esq., Attorney for Call Investment Company, 606 Newhouse Bldg., Salt Lake City, Utah 84111, Postage Paid.



James G. Cutrubus

OPTION

EXHIBIT
"A"

KNOW ALL MEN BY THESE PRESENTS:

That JAMES G. CUTRUBUS - DBA 7CL MOTORS
of OGDEN, UTAH - hereinafter referred to as "Seller, hereby agrees for and in consideration of TEC 1 Motor (\$108)
paid by S. M. HOLMAN -
of SALT LAKE CITY, UTAH - hereinafter referred to as "Buyer", as follows:

1. PROPERTY: Seller hereby gives and grants to Buyer and to his heirs and assigns for a period of THIRTEEN DAYS from the date hereof, hereinafter referred to as "First Option Period", the exclusive right and privilege of purchasing the following described real property located at FISHBURN DR. & MAIN ST., BIRGHAM CITY, County of COLLIER, State of UTAH, and more particularly described as follows: SEE ATTACHED EXHIBIT "A".

Together with all water rights appurtenant thereto or used in connection therewith.
(Said real property and improvements, if any, shall hereinafter be referred to as "The Property").

2. PRICE: The total purchase price for said property is TWO HUNDRED FIFTEEN THOUSAND (\$20,000.00) Dollars, payable in lawful money of the United States, strictly within the following time limits: \$10,000.00 paid for this option and any extension thereof as herein provided, shall be first applied on the purchase price, and the balance shall be paid as follows: (A) ONE HUNDRED SIXTY-FOUR THOUSAND NINE HUNDRED NINETY (\$164,990.00) DOLLARS IN CASH PAYABLE UPON CLOSING TO SELLER; (B) FIFTY THOUSAND & NO/100 (\$50,000.00) DOLLARS FIFTEEN DAYS AFTER CLOSING TO SELLER, WHICH PAYMENT SHALL DISCHARGE THE BUYER'S OBLIGATION TO SAID BERRETT & MATTHEWS UNDER PARAGRAPH 2 OF THE AGREEMENT OF PURCHASE AND SALE DATED JULY 1, 1976 BETWEEN SELLER AND BERRETT AND MATTHEWS.
THIS IS UNDER PARAGRAPHS 15, 16, 17, AND 18. (B)

3. EXTENSION OF OPTION. Upon payment by Buyer to Seller of an additional sum of NONE (\$NONE) Dollars, cash or by cashed check, prior to the expiration of the first option period, this option shall be extended for NONE months, hereinafter referred to as "Second Option Period". Upon Buyer's payment to Seller of a further sum of NONE (\$NONE) Dollars, prior to the expiration of the second option period, this option shall be extended for a third period of NONE additional months, hereinafter referred to as "Third Option Period".

4. EXERCISE OF OPTION. This option shall be exercised by written notice to Seller on or before the expiration of the first option period, or if extended, the expiration of the second or third option periods as the case may be. Notice to exercise this option or to extend the option for a second or third option period, whether personally delivered or mailed to Seller at his address as indicated after Seller's signature hereto, by registered or certified mail, postage prepaid, and postmarked on or before such date of expiration, shall be timely and shall be deemed actual notice to Seller.

5. EVIDENCE OF TITLE.

5.1. Promptly after the execution of this option, Seller shall deliver to Buyer for examination such abstracts of title, plat maps, and other evidences of title as the Seller may have. In the event this option is not exercised by Buyer, all such evidences of title shall be immediately returned without expense to Seller.

5.2. In the event this option is exercised as herein provided, Seller agrees to pay all abstracting expenses and to furnish a policy of title insurance in the name of the Buyer.

5.3. Upon examination of the title should reveal defects in the title, Buyer shall notify Seller in writing the nature of such defects and forthwith take all reasonable action to clear the title. If the Seller does not clear title within a reasonable time, Seller may do so at Seller's expense. Seller agrees to make final conveyance by Warranty Deed by 20% OF THE PURCHASE PRICE in the event of sale of other than real property. If either party fails to perform its obligations under this agreement, the party at fault agrees to pay all costs of enforcing this agreement, or any right arising out of the breach thereof, including a reasonable Attorney's fee.

5.4. ALL STRUCTURES, BUILDINGS, SIGNS, EQUIPMENT OR OTHER ITEMS ATTACHED TO THE PROPERTY ARE THE POSSESSIONS OF THE SELLER, WHO RESERVES THE RIGHT TO RETAIN POSSESSION THEREOF. SELLER SHALL HAVE 45 DAYS AFTER RECEIPT OF WRITTEN REQUEST TO CLIMB AND REMOVE SUCH POSSESSIONS FROM THE PROPERTY. NO PENALTIES SHALL BE ASSESSED DUE TO UNUSUAL DELAYS IN REMOVAL OF THESE POSSESSIONS.

8. CLOSING ADJUSTMENTS. All risk of loss and destruction of property and expenses of insurance shall be borne by Seller until date of possession. At time of closing of sale, property taxes, rents, insurance, interest and other expenses of property shall be prorated as of date of possession. All other taxes, including documentary taxes, and all assessments, mortgages liens and other liens, encumbrances or charges against the property of any nature, shall be paid by Seller, except
XXXXX

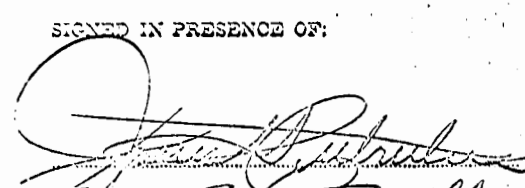
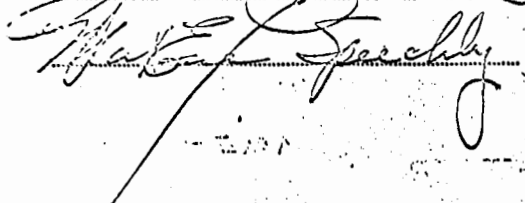
7. POSSESSION. Seller agrees to surrender possession of the property on or before ^{TWENTY-FIVE} FIVE (25) days following written notice of the exercising of this option by Buyer.

6. The Seller recognizes M/R Real Estate Company (Broker and Agent) through its salesman M/R as the Real Estate Broker with whom Seller listed this property for sale, and Seller agrees to pay a commission to said Broker equal to M/R% of the gross sale price, or the minimum recommended by the Salt Lake Real Estate Board for sale of this type of property, whichever be greater; and Seller hereby authorizes the agent to withhold such commission from the proceeds of sale at time of closing.

3. If this option be not exercised on or before the dates specified herein for exercise of same, the option shall expire of its own force and effect and the Seller may retain such option monies as have been paid to the Seller as full consideration for the granting of this option.

IN WITNESS WHEREOF, the Seller hereunto has set his name this 25th day of AUGUST 1977.

SIGNED IN PRESENCE OF:

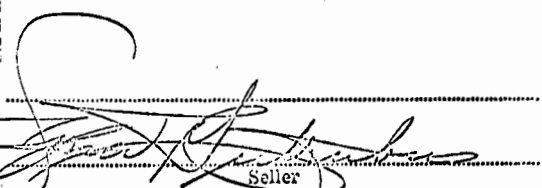

Seller
Address of Seller: 4850 S. 354E
OGDEN, UTAH

EXHIBIT
"B"

September 2, 1977

Mr. James G. Cutrubus
dba 7 C's Motors
4850 South 354 East
Ogden, Utah

Dear Mr. Cutrubus:

Pursuant to paragraph 4 of the Option Agreement entered into between us on August 25, 1977, I hereby exercise the option granted me therein to purchase the real property located in Box Elder County, Utah, as more particularly described on Exhibit "A" to said Option Agreement.

You are to deem this letter written notice of such exercise.

Pursuant to paragraph 5A of said Option Agreement, I hereby make written request of you to claim and remove all structures, buildings, signs, equipment, or other items attached to the real property covered by said Option within ~~45~~ ⁴⁰ days after your receipt of this letter.

to S.M. Horman
Inasmuch as I need evidence of ownership of the property in order to obtain a fair consideration of my rezoning petition by the Brigham City Planning Commission, I am asking that the transaction be closed no later than Tuesday, September 6, through the Hillam Abstracting and Insurance Agency in Brigham City. I will notify you within the next day or so regarding the details, but would appreciate it very much if in the meantime you would make all necessary arrangements on your part to effectuate the closing.

Thank you.

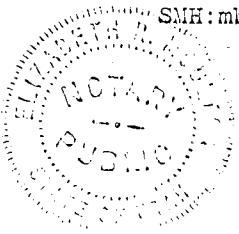
Sincerely yours,

S. M. Horman

S. M. Horman

Witnessed by David S. Mathis, agent for S.M. Horman
9-5-77 *X David S. Mathis*

SMH:mb



Exhibits
"C"

WARRANTY DEED

JAMES G. CUTRUBUS, a single man, GRANTOR
of Tremonton, County of Box Elder, State of Utah, hereby conveys
and warrants to

S. M. NORMAN and VEOMA H. NORMAN, husband and wife, as joint
tenants with full rights of survivorship,

GRANTEES
of Salt Lake City, County of Salt Lake, State of Utah, for the
sum of TEN AND NO/100----(\$10.00)-----DOLLARS and other good
and valuable consideration, the following described tracts of land
in Box Elder County, State of Utah:

Beginning at a point located 1080.5 feet South
and 2274.85 feet East of the Northwest Corner
of Section 25, Township 9 North, Range 2 West,
Salt Lake Meridian, such point being also lo-
cated on the South line of Fishburn Drive, thence
South 150.00 feet, thence East 150.00 feet to
the West line of U. S. Highway 89-91, thence
North 0°45'30" East 134.80 feet along said West
line of Highway; thence to the left of the arc
of a curve whose radius is 15.00 feet a distance
of 23.76 feet, thence West 136.79 feet to the
point of beginning.

Also, beginning 1080.5 feet South and 1848 feet
East of the Northwest Corner of said Section 25,
said point being also the Northeast corner of
Lot 1 Block 2 Lindsay Park Plat 1, Brigham City
Survey, running thence East 426.85 feet, more or
less, to West line of the Continental Oil tract,
thence South 150 feet, thence East 150 feet, thence
South 0°45'30" West 292.33 feet, more or less, to
the North line of Maynard H. Victor tract, thence
South 89°11' West 567.32 feet, thence North 447.63
feet to point of beginning.

WITNESS the hand of said Grantor this 8TH day of September,
1977.

James G. Cutrubus
James G. Cutrubus

STATE OF UTAH)
COUNTY OF WEBER) ss.

On the 8TH day of September, 1977, personally
appeared before me JAMES G. CUTRUBUS, the signer of the within
instrument, who duly acknowledged to me that he executed the
same.

Marlin K. Jensen
Notary Public

Residing at Huntsville, Utah

My Commission Expires:

June 9, 1978

ABSTD. IN BOOK

2 OF Sec PAGE 25-7-2

Index



S. M. Horman and Veoma H. Horman, husband and wife,
of Salt Lake City County of Salt Lake State of Utah hereby CONVEY and
WARRANT TO Call's Investment Company, a partnership

GRANTORS

of Brigham City County of Box Elder
TEN AND NO/100 ----- (\$10.00) -----
the following described tract of land in Box Elder

GRANTEE
State of Utah, for the sum of
----- DOLLARS
County, State of Utah.

Beginning at a point located 1080.5 feet South and 2274.85 feet East of the Northwest Corner of Section 25 Township 9 North, Range 2 West, Salt Lake Meridian, such point being also located on the South line of Fishburn Drive, thence South 150.00 feet, thence East 150.00 feet to the West line of U.S. Highway 89-91, thence North 0°45'30" East 134.80 feet along said West line of Highway; thence to the left on the arc of a curve whose radius is 15.00 feet a distance of 23.76 feet, thence West 136.79 feet to the point of beginning.

Also, Beginning 1080.5 feet South and 1848 feet East of the Northwest Corner of said Section 25, said point being also the Northeast Corner of Lot 1 Block 2 Lindsay Park Plat 1, Brigham City Survey, running thence East 426.85 feet, more or less, to West line of the Continental Oil tract, thence South 150 feet, thence East 150 feet, thence South 0°45'30" West 292.33 feet, more or less, to the North line of Maynard H. Victor tract, thence South 89°11' West 567.32 feet, thence North 447.63 feet to point of beginning.

WITNESS the hand of said Grantors, this 8th day of September A.D. 1977

Signed in the presence of

S. M. Horman
Veoma H. Horman

STATE OF UTAH
County of

} ss.

On the 8th day of September

A.D. 1977

Personally appeared before me S. M. Horman and Veoma H. Horman,

the signers of the within instrument, who duly acknowledged to me that they executed the same.

Residing at *See, Utah*

My Commission Expires: 3-24-80
(NOTARY SEAL)

EXHIBIT: *P-4*
WITNESS: *Horman*
DATE: *11-7-78*
Linda Van Tassell, CSR

Recording Data
Fees \$ *58065.11* Serial No.
Entry No.

Platted ☐ Indexed ☒
Recorded ☐ Abstracted ☐
Compared ☐ Page ☐

RECORDED SEP 9 1977 TIME 1:55 PM

SEE \$ *4.50* BOOK *296* PAGE *12*

MARGARET S. EVANS, RECORDER
BOXELDER COUNTY, UTAH

Margaret Evans
ATTO. IN BOOK *2* OF *Page 25-7-*

Use black typewriter ribbon only

Adopted by Ogden Board of Realtors

GEORGE A. PARKER
OFFICIAL AND CERTIFIED SHORTHAND REPORTER

Deposition Notary

August 30, 1979

Home Address

Logan, Utah 84321
Phone: 752-5394
(Area Code 801)

JAMES G. CUTRUBUS
4850 South 354 East
Ogden, Utah 84403

re: Cutrubus Vs. Call Investment (Box Elder
County #14608)

Dear Mr. Cutrubus:

I've been handed by the Clerk of the District Court a
Request for Preparation of Transcript in the above-entitled
matter.

A search through the docket entries in the case indi-
cates there were no oral proceedings had in court, and I
therefore presume that no transcript is available or
necessary.

Yours very truly,

George A. Parker
Court Reporter.

P/p

cc: Clerk's File.