

1999

Wydredge, LLC v. Airport Partners, LLC and Brent Parrish: Brief of Appellant

Utah Court of Appeals

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COA
IN THE ~~UTAH SUPREME~~ COURT

WYDREDGE, L.L.C., a Utah limited
Liability Company,

Appellant,

vs.

AIRPORT PARTNERS, L.L.C. a Utah
Limited Liability Company and J.
BRENT PARRISH, individually,

Appellee.

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Case No. 990786-SC
Priority No. 15

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BRIEF OF APPELLANT

THIS IS AN APPEAL FROM THE FINAL ORDER OF THE COURT GRANTING
APPELLEE'S MOTION FOR SUMMARY JUDGMENT

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FILED

Utah Court of Appeals

JAN 18 2000

Julia D'Alesandro

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BRIEF OF APPELLANT

JURISDICTION

The Supreme Court has jurisdiction in this matter pursuant to §78-2-2(3)(j) in that this is an appeal from a final judgment of a Court of Record over which the Court of Appeals does not have original appellate jurisdiction. This case is subject to assignment to the Court of Appeals.

STATEMENT OF ISSUES AND STANDARD OF REVIEW

DID THE TRIAL COURT ERR IN GRANTING APPELLEE'S MOTION FOR SUMMARY JUDGMENT? DID THE COURT ALSO ERR IN REFUSING TO STAY THE RELEASE OF LIS PENDENS DURING THIS APPEAL.

Wydredge claims it entered into a contract with Brent Parrish and there were sufficient facts and details regarding their agreement so as to have an enforceable contract. At a very minimum, if there was dispute regarding the parties' intent in that contract, then that was an issue for the fact finder. The Court erred in concluding that the agreement was vague and lacked sufficient material terms.

The standard of review on appeal requires the appellate court to accord no deference to the trial court's legal conclusions given to support its grant of summary judgment. The trial court's ruling is to be reviewed for correctness. There is no presumption of correctness. See Schurtz v. BMW of N.A.M., Inc. 814 P.2d 1108 (Utah 1991) and In Re General Determination of the Rights to the Use of All the Water 982 P.2d 65, 69 (Utah 1999). The appellate court is also required to view the facts and all reasonable inferences in a light most favorable to the plaintiff. See Neiderhauser Builders & Development Corp. v. Campbell 824 P.2d 1193 (Utah Court App. 1992).

DETERMINATIVE STATUTES

There are no statutes, constitutional provisions, rules or regulations whose interpretation would be determinative or of importance to this appeal.

STATEMENT OF THE CASE

I. NATURE OF THE CASE.

This is an appeal from the trial court's granting of the appellee's Motion for

Summary Judgment.

II. COURSE OF THE PROCEEDINGS.

Wydredge initiated legal action against Airport Partners and Brent Parrish alleging that a contract existed between it and the defendants which contemplated a joint venture between the parties for the construction and operation of a hotel on property owned by the defendants. After Wydredge initiated its legal action, defendants filed a Motion for Summary Judgment. The motion was argued before the Honorable Sandra Peuler on August 2, 1999.

III. DISPOSITION AT TRIAL COURT.

Following oral arguments on Defendants' Motion for Summary Judgment, the Honorable Sandra Peuler granted defendants' motion orally from the bench. The formal order granting defendants' motion was signed by the court on August 30, 1999. That Order and Judgment are attached as part of the addendum to this brief.

STATEMENT OF FACTS

Wydredge is a limited liability company that owns and operates the Comfort Suites Hotel in Ogden, Utah. Homer Cutrubus ("Cutrubus") is one of the members of that limited liability company. (*Cutrubus deposition, pages 11 & 12 R-179.*)

Sometime during a trip in the fall of 1997, the paths of Brent Parrish ("Parrish") and Cutrubus crossed. Parrish made inquiries of Cutrubus regarding a possible joint enterprise between Wydredge and him to construct a hotel and engage in a hotel business on property owned by Parrish in Salt Lake City, Utah near the airport.

(Cutrubus deposition page 14 R-180.) Cutrubus told Parrish that if he wanted to know more about the hotel business, he could call the managers of the Ogden Comfort Suites, Barry Eldredge ("Eldredge") or Clayton Wyman ("Wyman"). Eldredge and Wyman are also members of Wydredge, L.L.C. *(Cutrubus deposition page 15 R-180.)*

Parrish did call and made arrangements to meet with Eldredge and Wyman at a restaurant near his airport property. *(Parrish deposition page 5 R-203).* During this discussion, Parrish initially suggested that he pay Wydredge a consulting fee to do preliminary work necessary for him to develop the property and operate a hotel. *(Wyman deposition, page 32 R-222.)* Eldredge and Wyman traveled to Tucson to investigate franchise opportunities for Parrish. *(Wyman deposition, page 38 R-224).* Wyman also indicated to Parrish that as another option Wydredge would be interested in managing the hotel with a long-term management contract. *(Wyman deposition page 33 R-222).*

Following these initial discussions, Parrish came to Wydredge and told them he could not get financing and wanted Wydredge to be his partner in a joint venture for the hotel project. *(Wyman deposition page 33 R-222.)* A meeting was held at the Comfort Suites Hotel in Ogden on November 20, 1998. Parrish was present together with all members of Wydredge. Parrish told Wydredge that he had land that was free and clear that would be the site for a new hotel and about \$650,000

cash that he would be willing to put up. He was willing to provide the land and cash, but did not want to have any liability as far as the long-term financing or mortgage responsibility was concerned. (*Cutrubus deposition page 19 R-181.*) (*Rumpsa Affidavit R-170.*)

By the end of that meeting, all present had agreed to investigate the feasibility of the project with the understanding that if there were no major environmental or financing problems, the parties would go forward with the project under the terms agreed to at that meeting. (*Rumpsa Affidavit R-170.*) Both before and during this meeting, it was made clear to Parrish that Wydredge would have to have a controlling interest. (*Cutrubus deposition pages 48-49 R-188.*) Cutrubus had expertise with financing arrangements for hotel property and Wyman and Eldredge each had expertise in operating and managing hotel property. (*Cutrubus deposition page 28 R-183 and pages 62-65 R-192.*) (*Wyman deposition pages 2-7 R-215-216.*) Parrish had cash and land, but no ability to arrange long-term financing. Accordingly, Parrish responded by saying "49% of a hotel is better than 100% of nothing so I have no problems with that". (*Cutrubus deposition page 28 R-183.*) (*Wyman deposition page 31 R-222.*)

To insure there were no misunderstandings, Cutrubus requested Parrish to summarize what everyone agreed to and fax it to Jim Rumpsa ("Rumpsa"), (another member of Wydredge) so that Rumpsa could work with Parrish to put the agreement

in writing. (*Rumpsa Affidavit R-170.*) That written summary was requested so that if certain objective criteria were met, the project could move forward under defined terms. Wydredge wanted this agreement in place prior to investing its time and expertise. (*Rumpsa Affidavit R-170.*) Parrish was also eager to get the project under way and faxed his typed summary of the conclusion of the meeting before the end of that day. (*Rumpsa Affidavit R-170.*) That faxed summary provided that a formal and legal agreement would be drawn and signed by all members prior to the first shovel being turned for the project. (*Exhibit 17 R-298-300.*)

Parrish had already made an initial agreement with Hawthorne Suites and paid them \$5,000.00 toward a new franchise opportunity. When the joint venture agreement was verbally made with Parrish, it was decided that a different franchise would be used and Wydredge obtained a refund of the \$5,000.00 for Parrish even though it was originally paid as a non-refundable fee. (*Wyman deposition pages 55-57 R-228.*) In this context, Parrish wrote Wydredge confirming that they could enter into a “mutually exciting and profitable venture.” (*Exhibit 15 R-287.*)

Following the November 20, 1997 meeting and December 1, 1997, numerous drafts of a proposed agreement were exchanged between Parrish and Rumpsa and several conversations were had regarding it. (*Rumpsa Affidavit R-171*) (*Parrish deposition page 17 R-206.*) (*Exhibit 19 R-304.*) This agreement contemplated a new entity to be formed between the parties in developing the hotel project and their

respective percent interests was based upon the understanding between Parrish and Cutrubus that Parrish wanted to be a partner in the hotel project but did not want to be responsible for the financing. Cutrubus insisted he would not be a partner in any situation unless he had control. Parrish agreed to these terms. (*Cutrubus deposition pages 48-49 R-188.*)

After exchanging several drafts of a proposed agreement, an agreement dated December 1, 1997 was finally signed by the parties. (*Exhibit A R-74-75.*) Parrish signed this agreement sometime between December 11 and December 13, 1997. (*Parrish deposition page 10 R-205.*) *This Agreement is contained in the Addendum to this Brief.*

The December 1 agreement, after defining its purpose and the relative interests of the partners, sets forth only two remaining criteria to be satisfied, upon which “the undersigned parties will build and operate the subject hotel.” The two criteria to be satisfied were “determination that such a lodging facility can be constructed on the subject parcel without any significant or unusual site costs, and financing can be obtained for 60% or more of the total projected costs at an interest rate not to exceed 1% over prime.” With respect to the first criteria, Eldredge hired a company to do an environmental study and then canceled that study when Parrish told him he had already completed one and there were no significant problems. As for the financing aspect, based on Wydredge’s prior successful operation of Comfort

Suites of Ogden, the loan for which was financed by First Security Bank and the personal financial strength of Homer and Phidia Cutruba, First Security Bank committed to providing financing terms at a rate clearly more favorable than that set forth in the December 1, 1997 letter agreement. (*Rumpha Affidavit R-171.*)

Prior to the signing of the December 1, 1997 letter agreement, Parrish had taken the Wydredge partners to the property that was to be used for development. He showed them some monitoring holes that he claimed were the result of some kind of earlier contamination on the property, but all of that was solved and that this property was capable of permitting construction of a hotel facility. (*Cutruba deposition page 16 R-180.*)

On December 8, 1997, Parrish mailed Cutruba a letter with documentation demonstrating he was financially capable of generating over \$1 million in cash which he could use to pay off all debt on the land and contribute the land as well as the \$650,000 cash as his capital investment to the project. (*Parrish deposition page 9 R-204.*) (*Exhibit 16 R-296-297.*) He requested a projected time table which Wydredge provided soon thereafter. (*Parrish deposition page 15 R-206. Exhibit 18 R-302.*) In this regard, Wyman prepared a checklist of items that needed to be accomplished in order to be able to break ground on the hotel by the projected date of June 15, 1999. (*Exhibit 3 R-231.*)

By the time the December 1, 1997 letter agreement was signed by all parties,

Wyman was 99% certain that a hotel could be constructed on the site and operated profitably. This was based on the proformas that he had developed, a physical inspection of the site as well as assurances from Parrish that the environmental situation was not a problem. (*Wyman deposition page 10 R-217.*) Parrish had also told Wyman that before he bought the property, he had determined that he was going to be able to build a hotel on the property and there was no problem with any contamination. (*Parrish deposition page 8 R-204.*) (*Wyman deposition page 11 R-217.*)

The proformas prepared by Wyman were premised upon a \$5.1 million dollar loan at 9% interest amortized for a 15-year period. (*Wyman deposition page 13 R-217.*) (*Exhibit 8 R-266.*) Therefore, Parrish was going to put up assets valued at over \$1 million dollars while Wydredge would be accepting the liability of a \$5 million dollar debt and taking on the responsibility of supervising the construction of the project and ultimately operating the hotel. Not only was Wyman manager of the Comfort Suites in Ogden, he had extensive prior hotel experience. (*Wyman deposition pages 2-7 R-215-216.*)

Cutrubus met with and arranged for a commitment from First Security Bank to provide the financing for the proposed hotel project. (*Cutrubus deposition pages 30-42 R-184-187.*) (*Exhibit 6 R-233 thru 246.*) Subsequent and better financial commitments were reaffirmed and obtained from First Security Bank by Cutrubus.

(Cutrubus deposition page 82 R-197.) (Exhibit 11 R-270-285.) Wydredge was able to obtain a franchise with Choice Hotels for the project. The franchise was granted in the name of Parrish, but was obtained because of Wydredge's previous contact with Comfort Suites. *(Wyman deposition pages 57-58 R-228-229.)*

Parrish had recommended an architect and final design plans were developed. *(Rumpsa Affidavit R-172.)* The expenses for obtaining the initial architectural plans were paid for by Wydredge. *(Wyman deposition page 42 R-225.)* A soil's report was also completed in connection with the architectural plans. *(Wyman deposition page 27 R-221.)*

Parrish was requested to deposit his financial commitment into a bank account which he refused to do until Articles of Organization and an Operating Agreement were finalized. *(Rumpsa Affidavit R-172.)* On April 2, 1998, all members of Wydredge and Parrish met to review proposed Articles and an Operating Agreement which had been prepared by Rumpsa. Parrish requested one change in the Articles of Organization to require a unanimous vote rather than a majority, before the new company could be dissolved. Parrish complimented Rumpsa on doing an excellent job and that all of his concerns were addressed. The Articles of Organization were signed by the parties. *(Rumpsa Affidavit R-172-173.) (Exhibit 21 R-306-307) & (Exhibit 22 R-309-313.)*

At this meeting, Parrish indicated that the Operating Agreement was

conceptually okay, but he wanted to do a little checking before signing it just to make sure it was "all legal and everything". (*Rumppsa Affidavit R-173.*) *The Articles of Organization and proposed Operating Agreement are contained in the Addendum to this Brief.*

During this meeting also, Parrish indicated that although he had previously agreed to contribute the land and \$650,000 cash, he had neglected to net out his income tax liabilities from the proceeds of some real estate and because of this he would only be able to contribute \$200,000 cash and the land. After some discussion, it was agreed this would still be acceptable but Parrish's ownership would be adjusted to 35% and Wydredge's to 65%. Everyone was willing to commit to these revised terms and the project was still a go. (*Cutrubus deposition page 81 R-196.*) (*Exhibit 10 R-268.*) (*Rumppsa Affidavit R-173.*)

Following that meeting, Rumppsa made several efforts to contact Parrish by phone about signing and recording the documents. Finally, on April 17, 1998, Parrish responded by faxing a new operating agreement which he had drafted. (*Rumppsa Affidavit R-173.*) The substance of the new proposed operating agreement was significantly different from that which Parrish had agreed to at the April 2nd meeting and which was anticipated by the December 1, 1997 letter agreement and all prior discussions. The most significant of the differences in his newly proposed operating agreement was a change in the percentage of ownership of the hotel. He

proposed a 50-50 ownership arrangement which was in total contradiction to all of the discussions that had occurred between he and Wydredge for all of the months preceding that time. (*Rumpsa Affidavit R-173.*) (*Exhibits 26 & 27 R-318-328.*)

At all times Parrish had been informed by Cutrubus that Wydredge would not go into any partnership arrangement without having control. Parrish had always understood this and agreed to the terms, but then subsequently rescinded that agreement. (*Rumpsa Affidavit R-173-174.*)

Wydredge initiated legal action against Parrish requesting specific performance and/or damages and in connection therewith filed a Lis Pendens on the property owned by Parrish.

Parrish filed a Motion for Summary Judgment and claimed that the Lis Pendens was improper and should be declared invalid.

The Summary Judgment hearing was conducted by the Honorable Sandra Peuler on August 2, 1999. Judge Peuler orally granted Defendant's Motion for Summary Judgment and ordered the Lis Pendens removed. A formal judgment and order were prepared by Parrish's counsel and signed by the court on August 30, 1999.

Wydredge filed this appeal and in connection therewith filed a Motion to Stay the Release of its Lis Pendens pending this appeal. The Judge denied that motion and ordered the Lis Pendens released.

SUMMARY OF ARGUMENT

Wydredge contends that the December 1, 1997 letter agreement, the discussions leading up to the signing of that agreement and the discussions that occurred thereafter together with the signing of the Articles of Organization and discussions relative to the Operating Agreement all formed a valid and enforceable contract. The trial court erred in concluding as a matter of law that the December 1, 1997 letter agreement was vague and lacked sufficient material terms so as to render it enforceable. The Court also erred by failing to consider the oral discussions that occurred between the parties both before and following the signing of that agreement in concluding whether an enforceable contract had been entered into.

Since this was an action for specific performance, the Court erred in ordering Wydredge's Lis Pendens to be dismissed pending this appeal.

ARGUMENT

Summary Judgment is appropriate only when no genuine issue of material facts exist and the moving party is entitled to judgment as a matter of law. *Ehlers & Ehlers Architects v. Carbon County* 805 P.2d 789 (Utah App. 1991). In order for Wydredge to successfully oppose a Motion for Summary Judgment and have the issue determined by a fact finder, it is not necessary for Wydredge to prove its legal theory, only that it show facts controverting the facts stated in the moving

party's motion. Salt Lake City Corp. v. James Constructors, Inc. 761 P.2d 42 (Utah App. 1988). In a contract dispute, summary judgment is only appropriate if there is no conflict in the intent of the parties as to the terms of the agreement to be enforced. If such a conflict exists, the agreement is to be determined by a fact finder. Colonial Leasing Co. v. Larsen Bros. Constr. Co. 731 P.2d 483 (Utah 1986).

The threshold question of whether a contract is ambiguous is admittedly a question of law. (Seashores Inc. v. Hancey 738 P.2d 645, 648 (Utah App. 1997) but the appellate court can only affirm summary judgment if the undisputed material facts concerning the party's intent and existence of ambiguity demonstrate the successful moving party's position is correct as a matter of law. Fashion Place Inv., LTD. v. Salt Lake County/Salt Lake Mental Health, et al. 776 P.2d 941 (Utah App. 1989).

In this case, Wydredge claims that the December 1, 1997 letter agreement, the April 2, 1998 Articles of Organization and all of the conversations it had with Parrish preceding and following those agreements were sufficiently clear and precise so as to constitute a valid and enforceable contract. Judge Peuler granted Defendant's Motion for Summary Judgment exclusively on the basis of the December 1, 1997 letter agreement claiming it to be vague and lacking in sufficient material terms with regard to the rights and responsibilities of the parties thereby rendering it unenforceable. Wydredge disagrees with this conclusion but more

importantly, claims that any vagueness that may have existed in that agreement was adequately covered by the oral conversations it had with Parrish both before and after that agreement was signed. At a very minimum, the Judge should have permitted a trial to consider the evidence of all parties in determining their intent and whether or not an enforceable contract existed.

It was also error for the trial court to order the release of the Lis Pendens pending this appeal. With the Lis Pendens now released, Wydredge will effectively be prevented from pursuing its main theory of relief in this case, that of specific performance. During the pendency of this appeal, Parrish is now free to encumber, sell or otherwise make it impossible for Wydredge to obtain the relief that it has requested in its underlying legal action.

The very theory and purpose of a Lis Pendens should continue pending an appeal. The term Lis Pendens signifies pending litigation and since plaintiff's appeal continues this litigation the Lis Pendens should remain since it "charges the public with notice of outstanding claims and causes one who deals with property involved in pending litigation to do so at his peril. See Hidden Meadows Dev. Co. v. Mills, 590 P.2d 1244 (Utah 1979).

From the depositions and affidavits submitted with Wydredge's Response to the Summary Judgment Motion, it was uncontroverted that it was Parrish who approached the plaintiff with the idea of going into a hotel business partnership. Parrish was going to put up land and cash. He could not obtain financing on his own.

Wydredge was going to arrange for the financing and guarantee all of the long-term debt. Wydredge was going to use their expertise and connections to go forward with a franchise name and operate the facility. Parrish agreed that because of those divisions of responsibilities and his own inability to proceed by himself, he would accept Cutrubus' condition that Cutrubus maintain control and the partnership arrangement would be based on a 51% - 49% split. The December 1, 1997 letter agreement was executed by all parties after considerable discussions and negotiations before and many reaffirmations of the agreement thereafter.

This is not a dispute over uncertainty in contract terms. This is not a dispute because the December 1, 1997 letter agreement is vague. This is a dispute only because Parrish decided that he did not like the agreement he made and wanted to change the percentage of ownership. This is a breach of contract, pure and simple.

While the December 1, 1997 letter agreement may not have contained all of the specificity that might ultimately be included in an operating agreement for a new company, Parrish agreed to and signed Articles of Organization for the new company and specifically deleted the provision that would have allowed Wydredge the right to dissolve the corporation by majority vote. With the change, any dissolution would have required Parrish' agreement. The Operating Agreement for the new entity that was submitted to Parrish for signature contained all of the provisions relative to his concern. He agreed those provisions constituted their agreement . There was only a dispute about his percent of ownership and that came

about well after a binding agreement had been made.

There were considerable discussions and negotiations that occurred and led up to the December 1, 1997 letter agreement. All of these discussions are relevant to the meaning of the contract. See Hall v. Custom Craft Fixtures, Inc. 937 P.2d 1142 (Wash App. Div 2 1997) “Agreements and negotiations prior to or contemporaneous with the adoption of a writing must be considered when determining the meaning of the writing whether or not integrated” at page 1147.

The mere fact that the December 1, 1997 letter agreement may not contain all of the terms that were contemplated to be included in a subsequently executed operating agreement does not cause this contract to be voidable for vagueness. In Nixon & Nixon v. John New & Associates. 641 P.2d 144 (Utah 1982), the trial court had held that the contract in question was too vague to be enforceable. In overturning the trial court’s decision, the Supreme Court stated that a contract need not provide for every collateral matter or possible contingency to be enforceable. The court stated that the contract only need be “sufficiently certain in its essential terms and the obligations and rights of parties were adequately defined to support specific performance” at page 146.

Similarly in C&W Corp v. General Biometrics 896 P.2d 47. (Utah App. 1995) the court stated that “it is not necessary that the contract contain all of the particulars of the agreement. The crucial question is whether the parties agreed on the essential terms...” At page 52. The court went on to say that if a writing is not

sufficient to establish meaning, resort may be had to extraneous evidence manifesting the intention of the parties.


In Shields v. Harris 934 P.2d 653 (Utah App. 1997) the court also stated that a contract can be specific enough to be enforceable and still need to rely on parole evidence to effectuate its terms. At page 656.

All of the essential terms in this contract were provided for in the December 1, 1997 letter agreement as supplemented by discussions and other documents. The parties understood their rights and obligations that would have permitted them and indeed obligated them to go forward with the joint venture.

CONCLUSION

The written documents and the parties' oral discussions were sufficiently clear and covered enough essential terms so as to create an enforceable contract. At least it was sufficiently clear so as to entitle plaintiff to a trial to determine issues of intent, breach and damages. The court compounded it's error by ordering the Lis Pendens dismissed pending this appeal.


Respectfully Submitted this 17th day of January, 2000.


Brian R. Florence

CERTIFICATE OF SERVICE

I hereby certify that I am employed by Brian R. Florence, attorney for appellant, that I served the attached Brief of Appellant herein, upon the parties by placing a true and correct copy thereof in an envelope and causing the same to be mailed, first class, postage prepaid, on the 17th day of January, 2000, to the following:

Roger J. McConkie, Esq.
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ADDENDUM

1. December 1, 1997 letter agreement.
2. Articles of Organization.
3. Proposed Operating Agreement.
4. Order Granting Summary Judgment.
5. Judgment.
6. Minute Entry Releasing Lis Pendens.
7. Order Releasing Lis Pendens.

Tab 1

December 1, 1997

Mr. J. Brent Parrish, Member
Airport Partners, L.L.C.
1399 South 700 East, Suite 1
Salt Lake City, Utah 84105

Dear Brent:

Thank you for your recap of the points agreed upon at our meeting of November 20, 1997. This will serve as an agreement between Airport Partners, L.L.C., J. Brent Parrish and Wydredge, L.L.C. relative to the construction and operation of a hotel on the property adjacent to the Salt Lake City Airport as more specifically described in Lawyers Title Insurance Corporation's title insurance policy no. 136-00-573954.

The feasibility of constructing on this site a hotel with approximately 100 rooms will be investigated. Such efforts will likely include, but not be limited to, obtaining preliminary indications of interest in project financing from qualified lenders, obtaining a preliminary appraisal, obtaining initial architectural plans, and possibly obtaining commitments regarding construction and term loan financing for the subject property. The two named partners, Airport Partners, L.L.C. and Wydredge, L.L.C., shall share the cost of all such efforts on a 49%-51% basis, respectively, which expenses will be paid by both partners as incurred.

Upon the determination that such a lodging facility can be constructed on the subject parcel without any significant or unusual site costs, and that financing can be obtained for 60% or more of the total projected cost at an interest rate not to exceed 1% over prime relative to the term loan (minimum 15 year amortization and 5 year balloon), the undersigned parties will build and operate the subject hotel under the following terms and conditions.

- 1) A new entity will be formed with Airport Partners, L.L.C. holding 49% of such entity and Wydredge, L.L.C. holding 51% of such entity. The operating agreement for this entity, or other similar agreement shall specify, among other things, terms under which one or more members may dispose of their interest.
- 2) Airport Partners, L.L.C. and/or J. Brent Parrish will contribute \$650,000 cash and no more, less expenses paid as described in paragraph two above, as necessary - when necessary, to such entity and contribute the subject property, valued at \$850,000 for purposes of this transaction, free and clear of all liens and encumbrances excepting those reflected in Section I of the referenced title insurance policy, and excepting items 1,2,3,4,5,8 and 9 in Section II of the referenced title insurance policy, to equal a full 49% share.
- 3) Wydredge, L.L.C. will contribute its expertise in constructing the hotel, and in obtaining both construction and long-term financing for the project, as well as any additional cash or personal guarantees that may be necessary to build the hotel or finance its initial opening.
- 4) Wydredge, L.L.C., will utilize its expertise to assist the new entity in hiring an individual to manage the hotel, and will oversee the performance of such management, monitoring all operating costs relative to budget, etc., as well as to provide guidance with respect to the marketing of rooms, etc. The owner of the hotel (new entity) will pay Wydredge, L.L.C. 5% of gross rents on a monthly basis for these services and expertise.

- 5) No compensation of any kind nor any distributions to members and or owners will be made until such time as the hotel has been able to generate sufficient cash to continue operating effectively without having such funds available for use. All individuals signing this agreement will exercise appropriate diligence and commitment to the project to maximize its success, including Wydredge and its members to maximize use of its contacts for financing and managing the project, and Airport Partners and Brent Parrish maximizing use of contacts with the prior owner and with the City and State.

Airport Partners, L.L.C. and Mr. Brent Parrish acknowledge that part of the benefit that Wydredge, L.L.C. brings to this transaction is its contacts and relationships with potential sources of financing. In conjunction therewith, Airport Partners and Mr. Brent Parrish agree to keep such contacts and any resulting agreements confidential, as well as agreeing not to use such contacts for personal benefit.

The intent of this letter is to set forth those points that have been agreed to by Wydredge, L.L.C., J. Brent Parrish and Airport Partners, L.L.C. such that all parties can have assurance as they invest time and money relative to the possible construction and operation of a hotel, that such investments will lead to a known and agreed outcome.

The undersigned warrant that they are duly authorized to sign this agreement on behalf of the indicated entity.

Signed:


WYDREDGE, L.L.C., by

H & P Investments, by


Homer K. Outtrubus


Phida K. Outtrubus

Barry B. Eldredge 

Clayton Wyman 

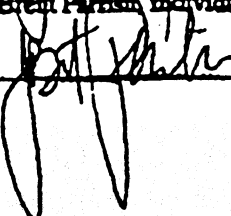
James P. Rumpes 

Agreed:

AIRPORT PARTNERS, L.L.C., by


J. Brent Parrish

J. Brent Parrish individually



Tab 2

ARTICLES OF ORGANIZATION
OF
INTERMOUNTAIN LODGING, L.L.C.

We, the undersigned natural persons of age of 21 years or more being members of the indicated limited liability companies, pursuant to the Utah Limited Liability Company Act, do hereby enter into and adopt the following Articles of Organization.

ARTICLE I
NAME

The name of this limited liability company is Intermountain Lodging, L.L.C.

ARTICLE II
DURATION

The period of this limited liability company's duration is 50 years, or to terminate upon an event of dissolution not accompanied by the consent which would be required in order to continue, pursuant to Utah Limited Liability Company Act and the operating agreement of this limited liability company. Notwithstanding anything in the Utah Limited Liability Company Act to the contrary, upon the occurrence of an event of dissolution the existence of this limited liability company shall continue upon the consent of a unanimous vote of the ~~majority~~ ⁷⁵ in interest of its members.

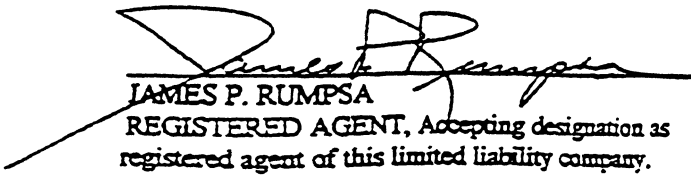
ARTICLE III
PURPOSES

The purpose of this limited liability company shall be to conduct any lawful business for which limited liability companies may be organized under the Utah Limited Liability Company Act, as from time to time authorized by its managers, in any, or if not, its members, including, but not limited to:

- (a) To enter into any lawful arrangement for sharing profits, union of interest, reciprocal association or cooperative association with any corporation, association, partnership, individual, for the carrying on of any business and to enter into any general or limited partnership for the carrying on of any business.
- (b) To conduct business anywhere in the world.

ARTICLE IV
REGISTERED OFFICE AND REGISTERED AGENT

The registered office of this limited liability company in the State of Utah shall be 895 W. Riverdale Road, Ogden, Utah 84405. The registered agent at this address shall be James P. Rumpsa.


JAMES P. RUMPSA
REGISTERED AGENT, Accepting designation as
registered agent of this limited liability company.

DEPOSITION

ARTICLE V
CONTINGENT AGENT

THE DIRECTOR OF THE DIVISION OF CORPORATIONS AND COMMERCIAL CODE OF THE DEPARTMENT OF COMMERCE is hereby appointed the agent of this limited liability company for service of process if the above-designated agent has resigned, the agent's authority has been revoked, or the agent cannot be found or served with the exercise of reasonable diligence.

ARTICLE VI
MEMBERS

Names and addresses of the members of this limited liability company are:

NAME	ADDRESS
Airport Partners, L.L.C. A Utah Limited Liability Company	1399 South 700 East, Suite 1 Salt Lake City, Utah 84105
Wydredge, L.L.C. A Utah Limited Liability Company	895 West Riverdale Road Ogden, Utah 84405

ARTICLE VII
LIMITED LIABILITY

No member, manager or employee of this limited liability company shall be personally liable for the limited liability company's obligations or liabilities.

AIRPORT PARTNERS, L.L.C.
A Utah Limited Liability Company

By: 
J. BRENT PARRISH, Member

WYDREDGE, L.L.C.
A Utah Limited Liability Company

By: 
BARRY B. ELDREDGE, Member

Tab 3

OPERATING AGREEMENT
INTERMOUNTAIN LODGING, L.L.C.

The undersigned, as signatories to this Agreement, do hereby enter into this Operating Agreement at Ogden, Weber County, Utah effective this _____ day of March, 1998, under the name style of Intermountain Lodging, L.L.C., (the "LLC").

I
INTRODUCTION

The parties have this day formed a limited liability company for the primary purpose of operating a company to acquire, sell, lease, use, own, manage, operate, and act in every other way upon hotel, motel, and similar accommodations, real property, fixtures, and personal property incidental thereto, and for the purpose of conducting any other lawful business.

II
BUSINESS

The principal place of business of the LLC shall be 1150 W. 2150 S., Ogden, Utah 84401, or such other address to which the business may from time to time be moved.

III
DURATION OF THE LLC

The LLC shall commence immediately, upon the signing of this Agreement, and shall continue for a term of not to exceed fifty (50) years thereafter unless terminated sooner by operation of law or by agreement between the parties or reenacted after such primary term for such additional periods as is unanimously determined by the members.

IV.
OWNERSHIP

The undersigned members agree to share in all post formation capital contributions (except as described below), profits, losses, and surplus of the LLC according to the percentage of their ownership. Each member owns an undivided interest in the business and company as follows:

NAME	PERCENTAGE
Wydredge, L.L.C.	51%
Airport Partners, L.L.C.	49%

V.
CAPITAL CONTRIBUTIONS

Airport Partners, L.L.C. will contribute \$650,000 cash and no more, when necessary, and contribute the approximately 3.15 acre parcel adjacent to the Salt Lake City Airport as more fully described in Lawyers Title Insurance Corporation's policy no. 136-00-573954, valued at \$850,000 for purposes of this transaction, free and clear of all liens and encumbrances excepting those reflected in Section I of the referenced title insurance policy, and excepting items 1,2,3,4,5,8 and 9 in Section II of the referenced title insurance policy, to equal a full 49% share. Wydredge, L.L.C. will contribute its expertise in constructing the hotel, and in obtaining both construction and long-term financing for the project, as well as any additional cash or personal guarantees that may be necessary to build the hotel or finance its initial opening.

Six months or more after the original certificate of occupancy is issued, the members may contribute in proportionate amounts any additional capital deemed necessary for the operation of the LLC, provided, however, that in the event that any member deems it advisable to refuse or fails to contribute his share of any or all of the additional capital, then the other members or any one of them may contribute the additional capital not paid in by such refusing member and shall receive therefore an increase in the proportionate share of the ownership or interest in the entire company in direct proportion to the said additional capital contributed. Unless otherwise agreed, the right to make up additional capital contributions of a refusing member shall be available in the same order as the right to purchase in the case of withdrawal or death of a member, set forth in Paragraphs XVI and XVII.

VI PURPOSE

The purpose of the LLC is to acquire, sell, lease, use, own, manage, operate, and act in every other way upon hotel, motel, and similar accommodations, real property, fixtures, and personal property incidental thereto, and to conduct any other lawful business.

VII DIVISION OF PROFITS AND LOSSES

Each of the members shall own an interest in the LLC as set forth in Paragraph IV, entitled "Ownership", except as the same may hereafter vary or change as provided in Paragraph V, entitled "Contributions of Capital". All profits and losses of the LLC enterprise shall be shared by each of said members according to the percentage of interest each member owns. A separate capital account shall be maintained for each member. No member shall make any withdrawals from capital without prior approval of the LLC. If the capital account of the member becomes impaired, his share of subsequent LLC profits shall be first credited to his capital account until that account has been restored.

VIII RIGHTS AND DUTIES OF THE PARTIES

The members agree to mutually undertake the responsibilities for business operations and in that regard, each shall have a contributory responsibility of time and effort to the LLC. LLC decisions and actions shall be decided by a majority in interest of the members, at meetings regularly called with notice to all members. For purposes of determining a "majority in interest", a member's interest will be his interest in profits and losses as set forth in Paragraph VII, and a majority will mean more than fifty percent (50%).

IX COSTS AND EXPENSES

Salaries or individual compensation may be payable to members, with consent of the LLC, for services rendered in the operation of the LLC. The LLC may from time to time employ one or more other managers or other representatives or employees at designated wages.

The LLC will utilize the services of Efficiency Management, L.L.C. to operate its properties. Efficiency Management, L.L.C. has agreed to utilize its expertise to assist the LLC in hiring an individual to manage its properties and will oversee the performance of such management, monitoring all operating costs relative to budget and so forth, as well as providing guidance with respect to the marketing of rooms, etc. The LLC will pay Efficiency Management, L.L.C. 5% of gross rents on a monthly basis for these services and expertise.

X
MANAGEMENT DUTIES AND RESTRICTIONS

- A. Except as provided in Subparagraphs "B" and "C" of this Section, all members shall have proportionate rights in the management of the LLC. No member shall, without the consent of the other members, endorse any note or act as an accommodation party, or otherwise become surety for any person in any transaction involved in the LLC. Without the consent of the LLC, no member shall on behalf of the LLC borrow or lend money, or make, deliver or accept any commercial paper, or execute any mortgage, security agreement, bond, or lease, or purchase or contract to purchase, or sell or contract to sell any property for or of the LLC. No member shall, except with the consent of the other members, mortgage, grant a security interest in its share in the LLC or in the LLC capital assets or property. Neither shall any member do any act detrimental to the best interests of the LLC or which would make it impossible to carry on the ordinary purpose of the LLC.
- B. The LLC may from time to time elect to designate one of its members as General Manager for the LLC. Such person so designated shall have authority to execute all instruments in the name of the LLC, except that all members shall execute instruments of indebtedness which responsibility shall not be delegated to the Manager.
- C. Barry B. Eldredge is hereby designated as General Manager for a period of one (1) year from April 1, 1998, and thereafter until a successor is elected and qualifies, to act in accordance with the provisions of Subparagraph "B" of this part, and specifically to execute documents in conjunction with the construction and operation of commercial facilities, except as limited by the prior paragraph that all members shall execute instruments of indebtedness.
- D. Barry B. Eldredge will have management responsibilities over the accommodation aspects of the business, as well as over food and beverage sale and related entertainment aspects of the business.
- E. H & P Investments will have management responsibilities over the financial and the business organizational aspects of the business.

XI
BANKING

All funds of the LLC shall be deposited in its name in such checking account or accounts as shall be designated by the members. All withdrawals therefrom are to be made upon checks which must be signed by two representatives designated by the members.

XII
BOOKS

The LLC books shall be maintained at the offices of Wydredge, L.L.C., 1150 W. 2150S., Ogden, Utah 84401, and each member shall have access thereto. The books shall be kept on a calendar year basis and shall be closed and balanced at the end of each year. An audit shall be made as of the closing date, by a firm of certified public accountants selected by a majority of the members, if a request for such audit is made in writing by any member and mailed or delivered to the other members. Each of the parties to this agreement hereby covenants and agrees to cause all known business transactions pertaining to the purpose of the LLC, to be entered properly and completely into said books. The LLC will furnish annual financial statements to the members, and prepare tax returns at least two weeks prior to the tax return due date or any duly extended due date, furnishing copies to all members at least two weeks before they are filed by the LLC.

XIII. INSURANCE

During the course of the term for which this LLC is formed, the LLC shall carry liability insurance in such amounts as are deemed appropriate unanimously by the members.

XIV. VOLUNTARY TERMINATION

The LLC may be dissolved at any time by agreement of all the members, in which event the members shall proceed with reasonable promptness to liquidate the LLC. The assets of the LLC shall be issued and distributed in the following order:

- A. To pay or provide for the payment of all LLC liabilities to creditors other than members, and liquidating expenses and obligations;
- B. To pay debts owing to members other than for capital and profits;
- C. To pay debts owing to members in respect to capital; and
- D. To pay debts owing to members in respect to profits.

XV. WITHDRAWAL OF MEMBER BY SALE

Any member who shall be desirous of selling his share and interest in the LLC shall give the right of first refusal to all members other than the selling member to purchase said share and interest at the price equal to two and one half times the average gross revenues of all related facilities and operations for the previous two years, or on such other terms as are mutually agreeable. Such revenues shall be verified by audit and determined using generally accepted accounting principles and the accrual method of accounting. Each member electing to purchase the selling member's share and interest shall have the right to purchase that percentage of the share being sold which is equal to the result of dividing his respective percentage of the LLC by the total percentage of all members electing to purchase such share and interest.

XVI. DEATH OF A MEMBER

In the event of the death of a member the remaining members shall have the option to purchase the deceased member's share and interest from the deceased's heir or heirs. If one or more members elect to purchase the deceased member's share and interest, the deceased's interest shall be valued and sold in accordance with the provisions of Paragraph XV entitled "Withdrawal of Member by Sale" and the proceeds distributed to the heir or heirs within ninety (90) days of an election by a remaining member or members to purchase such share and interest. If the deceased's share and interest is not sold the LLC shall, as soon as practicable, provide a document by which the heir or heirs personally affirm and accept all the terms, conditions and provisions of this Operating Agreement binding themselves to the same in writing, and select a designated representative of the deceased member as an acting member in his place.

XVII. DISTRIBUTION

Prior to dissolution, the members shall determine funds available for distribution, at least on a quarterly basis. Upon liquidation, a reasonable reserve shall be established to cover expenses anticipated during and/or following dissolution. Liquidation of the LLC need not be delayed provided that such

amounts are properly escrowed and arrangement made for performance of such services as may be required in the interest of the LLC.

XVIII
VIOLATION OF THIS AGREEMENT

Any member who shall violate any of the terms, conditions, and provisions of this agreement shall keep and save harmless the LLC property and shall also indemnify the other then Members from any and all claims, demands and actions of every kind and nature whatsoever which may arise out of or by reason of such violation of any of the terms and conditions of this agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands effective the day and month first above written.

AIRPORT PARTNERS, L.L.C.
A Utah Limited Liability Company

WYDREDGE, L.L.C.
A Utah Limited Liability Company

by: _____
J. BRENT PARRISH, Member

by: _____
BARRY B. ELDREDGE, Member

Tab 4

FILE. DISTRICT COURT
Third Judicial District

AUG 30 1999

By R. Anderson
SALT LAKE COUNTY
Deputy Clerk

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

WYDREDGE, L.L.C., a Utah limited
liability company,

Plaintiff,

vs.

AIRPORT PARTNERS, L.L.C., a
Utah limited liability company and J.
BRENT PARRISH, individually,

Defendants.

ORDER

Civil No. 980909956
Judge Sandra Peuler

The Court heard arguments concerning the Defendants' Summary Judgment Motion on August 2, 1999, at 11:00 a.m. Defendants were represented by John P.

Ashton. The Plaintiff was represented by Brian R. Florence.

Having reviewed and considered the pleadings, together with the memoranda and arguments submitted by counsel;

IT IS HEREBY ORDERED that:

1. The December 1, 1997 letter agreement is vague and lacks sufficient material terms with regard to the rights and responsibilities of the parties thereunder, which renders the letter agreement unenforceable. Accordingly, the Defendants' Motion for Summary Judgment, that the letter agreement is not an enforceable contract, is granted.

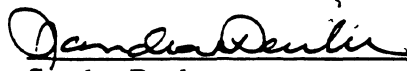
2. Because the December 1, 1997 agreement is not enforceable, the Defendants' Motion for Summary Judgment, with regard to the claim for reimbursement of costs and expenses, is denied.

3. The Plaintiff has no interest in the property underlying the dispute between the parties. Accordingly, the *lis pendens* filed by the Plaintiff is improper and shall be removed by the Plaintiff.


4. The Defendants are entitled to appropriate costs from Plaintiff pursuant to Rule 54(d) of the *Utah Rules of Civil Procedure*.

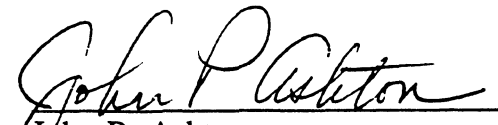
DATED this 30 day of Aug, 1999.

BY THE COURT:


Sandra Peuler
District Court Judge

APPROVED AS TO FORM:


Brian R. Florence
Attorney for Plaintiff


John P. Ashton
Attorney for Defendants

Tab 5

LED DISTRICT COURT
Third Judicial District

AUG 30 1999

SALT LAKE COUNTY
By R. Grotas
Deputy Clerk

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

WYDREDGE, L.L.C., a Utah limited
liability company,

Plaintiff,

vs.

AIRPORT PARTNERS, L.L.C., a
Utah limited liability company and J.
BRENT PARRISH, individually,

Defendants.

JUDGMENT

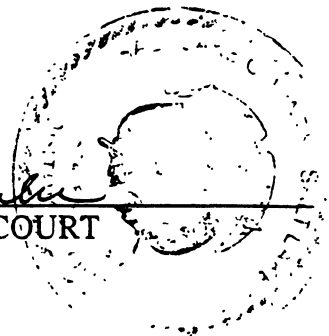
Civil No. 980909956
Judge Sandra Peuler

The Court heard arguments pertaining to this action, the Honorable Sandra Peuler, District Court Judge, presiding, and the Court having duly rendered its judgment,

It is Ordered and Adjudged that the Plaintiff recover nothing from the Defendants, that the action be dismissed with prejudice, and that the Defendants recover court costs from Plaintiff pursuant to Rule 54(d) of the *Utah Rules of Civil Procedure*.

DATED this 30 day of August, 1999.

Sandra Peuler
CLERK OF THE COURT



Tab 6


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

WYDREDGE, L.L.C., a Utah	:	MINUTE ENTRY
limited liability company,	:	
Plaintiff,	:	CASE NO. 980909956
vs.	:	
AIRPORT PARTNERS, L.L.C., a Utah	:	
limited liability company and	:	
J. BRENT PARRISH, individually,	:	
Defendants.	:	

Before the Court is a Notice to Submit for Decision on plaintiff's Motion to Stay Release of Lis Pendens. The Court having reviewed the pleadings filed in this matter, now enters the following ruling.

Plaintiff's Motion is denied based upon the reasons as set forth in defendants' Memorandum. Counsel for defendant is directed to prepare an Order consistent with this ruling.

Dated this 30 day of November, 1999.



SANDRA N. PEULER
DISTRICT COURT JUDGE

WYDREDGE V. AIRPORT
PARTNERS

PAGE TWO

MINUTE ENTRY

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Minute Entry, to the following, this 30 day of November, 1999:

Brian R. Florence
Attorney for Plaintiff
5790 Harrison Blvd.
Ogden, Utah 84403

John P. Ashton
Roger J. McConkie
Attorneys for Defendants
175 East 400 South, Suite 900
Salt Lake City, Utah 84111

_____

Tab 7

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

WYDREDGE, L.L.C., a Utah limited
liability company,

Plaintiff,

vs.

AIRPORT PARTNERS, L.L.C., a
Utah limited liability company and J.
BRENT PARRISH, individually,

Defendants.

**ORDER DENYING MOTION TO
STAY RELEASE OF LIS PENDENS**

Civil No. 980909956
Judge Sandra Peuler

The Court has reviewed the pleadings filed in connection with plaintiff's Motion to Stay Release of Lis Pendens. Having reviewed the arguments set forth therein, and consistent with the Court's prior ruling in this case, the plaintiff's Motion to Stay Release of Lis Pendens is **DENIED**.

The plaintiff's complaint does not affect the title to the subject property. Moreover, none of the alleged agreements grant the plaintiff any ownership right in the property. In addition, plaintiff does not claim an ownership interest in the property and admits having filed the lis pendens only to prevent the defendant from further developing that property. Title to the property is vested in the defendants and the outcome of any appeal will not


affect the title to or possession of the property. Therefore, this Court will not stay the release of the lis pendens which was released by the Court's prior order and judgment.

DATED this ____ day of December, 1999.

BY THE COURT:

Sandra Peuler, District Court Judge

APPROVED AS TO FORM:



Brian R. Florence, Attorney for Plaintiff

John P. Ashton, Attorney for Defendant

GUARANTY - Wydział Gospodarki Krajowej