

1990

Leon H. Saunders, Robert Felton, Saunders Land
Investment Corp., White Pine Ranches, and White
Pine Enterprises v. John C. Sharp and Geraldine Y.
Sharp : Brief of Appellant

Utah Court of Appeals

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Donald J. Winder; Kathy A.F. Davis; Winder & Haslam; Attorneys for Appellee.

Robert M. Anderson; Glen D. Watkins; Bruce Wycoff; Anderson & Watkins; Attorneys for Appellants.

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 900332-CA IN THE UTAH COURT OF APPEALS

LEON H. SAUNDERS; ROBERT FELTON;
SAUNDERS LAND INVESTMENT CORP.,
a Utah corporation; WHITE PINE
RANCHES, a Utah general
partnership; and WHITE PINE
ENTERPRISES, a Utah general
partnership;

Plaintiffs/Appellants,

vs.

JOHN C. SHARP and GERALDINE Y.
SHARP,

Defendants/Appellees.

Case No.
900332-CA

Priority 16

APPELLANTS' BRIEF

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT
OF SALT LAKE COUNTY, STATE OF UTAH
THE HONORABLE J. DENNIS FREDERICK,
DISTRICT JUDGE PRESIDING

Robert M. Anderson, Esq. (0108)
Glen D. Watkins, Esq. (3397)
Bruce Wycoff, Esq. (4448)
ANDERSON & WATKINS
700 Valley Tower
50 West Broadway
Salt Lake City, Utah 84101-2018
Telephone: (801) 532-1700
Attorneys for Appellants

Donald J. Winder, Esq.
Kathy A.F. Davis, Esq.
WINDER & HASLAM
175 West 200 South, #4000
Salt Lake City, Utah 84110
Attorneys for Appellees

AUG 27 1990

LEON H. SAUNDERS; ROBERT FELTON;
SAUNDERS LAND INVESTMENT CORP.,
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RANCHES, a Utah general
partnership; and WHITE PINE
ENTERPRISES, a Utah general
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VS .

Defendants/Appellees.

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Glen D. Watkins, Esq. (3397)
Bruce Wycoff, Esq. (4448)
ANDERSON & WATKINS
700 Valley Tower
50 West Broadway
Salt Lake City, Utah 84101-2018
Telephone: (801) 532-1700
Attorneys for Appellants

Donald J. Winder, Esq.
Kathy A.F. Davis, Esq.
WINDER & HASLAM
175 West 200 South, #4000
Salt Lake City, Utah 84110
Attorneys for Appellees

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II. JURISDICTIONAL STATEMENT

The Order that is the subject of this appeal is a final order of the Third Judicial District Court of Salt Lake County. The Utah Court of Appeals has jurisdiction of this matter pursuant to Utah Code Ann. § 78-2a-3(2)(j). Pursuant to Rule 42, Utah Rules of Appellate Procedure, this appeal was transferred to the Court of Appeals for disposition by order of the Utah Supreme Court dated June 25, 1990.

III. STATEMENT OF ISSUES PRESENTED ON APPEAL, AND STANDARD OF APPELLATE REVIEW

Issues For Review and Standard of Review.

(a) Did the district court err in awarding compound interest? The availability of interest is a question of law; the reviewing court gives no deference to the district court's views of legal questions, reviewing the decision instead for correctness. See, Ron Case Roofing & Asphalt Paving, Inc. v. Blomquist, 773 P.2d 1382, 1385 (Utah 1989).

(b) Did the district court err in entering an Order granting relief exceeding the nature and issues raised by the pleadings and not granted at the hearing? Since this issue involves only a legal principle and review of written material, the district court's decision is subject to no deference. See, Ron Case Roofing & Asphalt Paving, Inc. v. Blomquist, 773 P.2d at 1385.

(c) Did the district court err in awarding attorneys' fees not compensable under the parties' contract? The interpretation of a contract's provisions is a question of law; in reviewing questions of law the district court's legal conclusions are reviewed de novo. See, 50 West Broadway v. Redevelopment Agency of Salt Lake, 784 P.2d 1162, 1171 (Utah 1989); In re Infant Anonymous 760 P.2d 916, 918 (Utah App. 1988). Cf. Carr v. Enoch Smith Co., 781 P.2d 1292, 1296 (Utah App. 1989).

IV. STATEMENT OF THE CASE

A. NATURE OF THE CASE

After a bench trial, the district court entered a money judgment against Appellants ("White Pine") and in favor of Appellees (the "Sharps"). That September 28, 1988 Judgment (the "Judgment") was the subject of an earlier appeal by White Pine in this Court's Case No. 880710-CA.¹ All issues involved in this appeal involve post-judgment actions taken by the district court during the pendency of that appeal. During White Pine's appeal of the judgment it posted a supersedeas bond and obtained a stay of execution (the "Stay"). This Stay continued unchallenged for a

¹ This Court's disposition of that case is now the subject of a pending Petition for Writ of Certiorari before the Utah Supreme Court, Petition No. 900360.

year, when the Sharps moved the district court to supplement the Judgment and to increase the amount of the bond.

The parties briefed the issues and thereafter argued their positions at a hearing. At the hearing, the district court granted the Sharps relief "as prayed". Thereafter, the Sharps presented an order that was legally incorrect in two respects: (1) it provided for compound interest; (2) it vacated the previously imposed Stay, an issue that was not raised by the pleadings, not raised by the parties, and not ruled on by the district court. Even though White Pine filed specific objections to that order, the district court executed it as submitted.

Because of an obvious legal error in that initial order (it included future interest) the Sharps submitted an amended order that did not provide for future interest, but was otherwise unchanged. White Pine again objected, and the district court again executed the order as submitted. White Pine appeals from those parts of the amended order providing for compound interest and vacating the Stay.

In addition, White Pine appeals from the district court's award of attorneys' fees to the Sharps on the ground that award is contrary to the parties' agreement, premature, and beyond the district court's subject matter jurisdiction.

B. STATEMENT OF RELEVANT FACTS

On December 16, 1988, after the Judgment was entered, White Pine moved the district court for a stay of the Judgment pending appeal and for approval of a supersedeas bond in the amount of \$65,158.77, which included the shortfall calculated in the Judgment, along with interest through June 30, 1989. (R. 1509). The Sharps opposed that motion, arguing the supersedeas bond should be \$310,287.31. (R. 1561). Thereafter, the district court set the amount of the bond at \$79,793.36, and on January 20, 1989 White Pine posted a supersedeas bond in that increased amount. (R. 1742). Once again, on January 23, 1989, the Sharps objected, arguing that White Pine "should be required to obtain a reputable surety with a solid background upon which the Sharps may rely for security against losses resulting from an unsuccessful appeal" (R. 1700).

Finally, based upon the stipulation of White Pine and the Sharps, the district court entered its Order Re: Supersedeas Bond on March 17, 1989 (the "Stay"). (R. 1725). That Order established two critical matters: (1) the form of security for the bond (Lot 1, White Pine Ranches Subdivision Phase I, as recorded in the offices of the Summit County Recorder) was determined to be good and sufficient; and (2) Lot 1 would be considered for security for

increases, if any, in the supersedeas bond amount at a hearing to be held after November 19, 1989. (R. 1726).

On November 3, 1989, in accordance with para. 3 of that March 17, 1989 Order, the Sharps filed their Request for Hearing on (1) a previously filed Motion to Supplement Judgment; (2) their request for additional attorneys' fees; and (3) their request for an increase in the supersedeas bond amount. (R. 1765). On December 11, 1989, the Sharps filed their Second Motion to Supplement Judgment and Motion to Increase Liability on Bond, in which the Sharps again requested, inter alia, the district court to increase the amount of the supersedeas bond. (R. 1774). At no time did the Sharps request the district court to order White Pine to post additional, or different, security.

The district court heard that Motion on February 12, 1990. At the conclusion of the hearing on that Motion, the district court granted the Sharps' Motion "as prayed". (R. 2059, 2135).

When the Sharps presented their proposed Order on the Sharps' Second Motion to White Pine's counsel, however, the Order said nothing about increasing the amount of the supersedeas bond; instead it required White Pine "to post additional security" in the amount of \$136,800.99 on or before March 15, 1990. (R. 2073; Add. 11). That Order (the "Initial Order") was entered on March

16, 1990, the same day White Pine served its objections to the Order. (R. 2078).

It is important to note that the Initial Order vacated the district court's year-old Order Staying Proceedings if such additional security was not posted by March 15, 1990. In other words, the prior Stay was effectively vacated before the order vacating it was entered. The Initial Order was entered even though the Sharps never requested that the Stay be vacated, and the issue was neither raised nor ruled on at the February 12, 1990 hearing. (R. 2110-2137). In other words, White Pine never knew there was any possibility the Stay would be vacated until after the district court signed the erroneous Initial Order.

On March 16, 1990, White Pine also served its Motions for Continuance of Order Staying Enforcement of Judgment Pending Appeal and Approval of Supersedeas Bond. (R. 2078). As set forth in that Motion, the surety had theretofore filed a financial statement with the district court indicating that the net worth of the surety in March 1989 totaled \$220,000.00, more than (1) the sum of the initial Judgment and (2) the increase ordered by the district court. (R. 2082). Accordingly, White Pine requested the district court to enter an Order (1) staying enforcement of the judgment pending final determination by this Court; and (2) declaring that

the existing security be considered adequate, and in full compliance with the Judgment and stay. (R. 2083).

On April 16, 1990, White Pine filed its Motion for Relief from Judgment on the grounds that the Initial Order exceeded the relief requested by the Sharps, and accordingly was void. (R. 2098). The Initial Order provided for future interest through August 1, 1990, and in its supporting memorandum, White Pine pointed out that it was erroneous for the Initial Order to award future interest. (R. 2106). In the meantime, on April 30, 1990, the Sharps served their proposed Amended Order omitting the award of future interest. (R. 2203; Add. 22). On May 7, 1990 the district court announced it would execute the Amended Order upon its presentation, and otherwise denied White Pine's Motion. (R. 2168).

On May 1, 1990, six weeks after the Initial Order had been entered, the Sharps filed their memorandum in opposition to White Pine's motion for a continuance of the Stay and, for the first time, objected to the sufficiency of the existing security. (R. 2159). On May 8, 1990, White Pine filed its reply, (1) pointing out that the Sharps never objected to the sufficiency of the security until April 30, 1990, and (2) requesting an evidentiary hearing to determine whether the real property presently securing the bond was sufficient pending appeal. (R. 2170-2173).

White Pine further demonstrated in its reply that the Sharps were merely re-litigating arguments they had already made in their January 1989 objection to the initial bond. As pointed out in White Pine's reply, "the form and nature of the security has been approved by the Court, and its acceptability is now the law of the case. The only issue remaining is whether the security is sufficient to guarantee the payment of unsecured fees, costs and interest, which the Court has found to be \$216,594.34 as of August 1, 1990." (R. 2172-2173).

On May 11, 1990, White Pine filed its present appeal of the Initial Order (R. 2194) pursuant to an order extending White Pine's Time for Appeal (R. 2095). Three days later, on May 14, 1990, the district court entered the Amended Order re: Defendants' Second Motion to Supplement Judgment and Motion to Increase Liability on Bond (the "Amended Order") (R. 2197; Add. 16).

The Amended Order corrected the future interest problem contained in the Initial Order, but it did not correct the remaining deficiencies. Accordingly, White Pine objected to the Amended Order before it was entered (R. 2175) and, thereafter, on May 24, 1990 filed its Amended Notice of Appeal for the purpose of appealing the Amended Order (R. 2217).

The Amended Order states, at paragraph 2:

The Judgment entered in this matter on September 26, 1988 is hereby supplemented

through February 12, 1990, by the amount of
\$231,636.97 for a total judgment of
\$938,053.02 as of February 12, 1990.

(R. 2198; Add. 9) (emphasis added). This provision results in the impermissible compounding of interest.

The Amended Order also granted the Sharps their attorneys' fees through October 31, 1989, even though the Sharps had not yet prevailed in any appeal -- a condition precedent of the Judgment for an award of any additional attorneys' fees. In that regard, the Judgment provided, in pertinent part:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Judgment shall be supplemented and augmented in the amount of the Sharps' reasonable attorney's fees as established by affidavit and as incurred after August 31, 1988, in preparation of the Findings, Conclusions and Judgment, in responding to any post-trial motions, in collecting said Judgment by execution or otherwise, and after prevailing in any appeal.

(R. 2183; Add. 4) (emphasis added).

Moreover, under the Amended Order the Stay of Execution Pending Appeal was lifted as of March 15, 1990, two months before the Amended Order was entered on May 14, 1990. (R. 2198; Add. 17). The Initial Order, which was entered March 16, 1990, contained the same language:

Plaintiffs are ordered to post additional security as a supersedeas bond for the continued stay of the execution of the Judgment pursuant to the Order Re: Supersedeas Bond dated March 17, 1989 in the amount of \$136,800.99 on or before March 15, 1990. If Plaintiffs fail to do

so by March 15, 1990, the Order Staying Proceedings dated January 31, 1989 shall be automatically vacated and the Sharps shall be allowed to proceed to execute on the Judgment entered in the above captioned matter.

(R.2073-74, 2202; Add. 11-12; 21).

Both orders, therefore, required White Pine to post increased security before either order was entered, thereby precluding any opportunity for White Pine to comply with the orders and avoid a lifting of the stay. The district court was never requested to order a lifting of the stay, and that matter was never addressed at the February 12, 1990 hearing on the Sharps' motion (R. 2110-2137).

At the time the Amended Order was entered on May 14, 1990, White Pine's Motions for Continuance of Order Staying Enforcement of Judgment Pending Appeal and Approval of Supersedeas Bond (R. 2082) had been pending before the district court for almost two months. Even though White Pine was entitled to a stay of execution on the money Judgment as a matter of right,² and had requested a hearing on the Stay and the adequacy of the security for the previously filed supersedeas bond (R. 2173), the district court declined to hold such a hearing or to permit White Pine to argue its entitlement to the Stay. Instead, the district court simply

² See Jensen v. Schwendiman, 744 P.2d 1026, 1027 (Utah App. 1987) and discussion at Point VI, B, infra.

entered the Amended Order lifting the Stay, without giving White Pine any opportunity either to demonstrate that the existing security was adequate or to post some other adequate security.

As a result of all these actions by the district court, White Pine claims it committed three errors: (1) the district court erred in ordering compound interest; (2) the district court erred in entering an order lifting the stay even though that relief was never requested, never argued, and never ruled upon at the hearing; and (3) the district court erred in awarding additional attorneys' fees.

V. SUMMARY OF ARGUMENTS

The orders prepared by the Sharps' counsel and entered by the district court erroneously allow compound interest.

The district court lacked subject matter jurisdiction to revoke or lift the Stay once the Stay had been approved; even if the district court had that power, it could not award relief that had not been requested in the Sharps' pleadings, had not been briefed or argued by the parties, and had not been granted in the district court's oral ruling.

Finally, the district court lacked subject matter jurisdiction to supplement the Sharps' attorneys' fees once White Pine had appealed the Judgment. Even if the district court had such

authority, it failed to make the findings of fact required in connection with an award of attorneys' fees.

All of these legal errors by the district court make the orders entered by the district court void. Accordingly, this Court should reverse the orders appealed from.

VI. ARGUMENT

A. THE AMENDED ORDER IMPERMISSIBLY COMPOUNDS INTEREST.

Compound interest is "interest on interest, in that accrued interest is added periodically to the principal, and interest is computed upon the new principal thus formed; . . ." Mountain States Broadcasting Co. v. Neale, 783 P.2d 551, 554 (Utah App. 1989) (quoting, 45 Am.Jur. 2d Interest and Usury § 76 (1969)).

Due to the general judicial disfavor of interest on interest, compound interest is not permitted unless the parties contract otherwise, or unless the statute providing for interest on judgments expressly requires compounding.³ See, e.g., Watkins & Faber v. Whiteley, 592 P.2d 613, 616 (Utah 1979); Estate Landscape & Snow Removal Specialists, Inc. v. Mountain States Tel. & Tel. Co., 793 P.2d 415, 420 (Utah App. 1990); Neale, 783 P.2d at 555.

In this case, the original September 26, 1988 Judgment separately listed various amounts owing by categories, along with

³ Utah Code Ann. § 15-1-4 does not permit compound interest. See, Estate Landscape, 793 P.2d at 420.

interest rates thereon or per diems for each separate amount. Nowhere in that Judgment is there a total judgment amount. (R. 2182; Add. 3).

The Amended Order, however, purports to "supplement" the original Judgment by the total amount of \$231,636.97, \$151,670.63 of which represents interest. (R. 2199-2200; Add. 18-19). Unlike the Judgment, however, the Amended Order included a "total Judgment of \$938,053.02." (R. 2198; Add. 17).

Pursuant to Utah Code Ann. § 15-1-4, this total Judgment amount of \$938,053.02 -- including the \$151,670.63 of interest included therein -- bears interest from and after February 12, 1990 at the annual rate of 12%. Thus, every year White Pine will be required to pay \$18,200.36 of compounded interest on the \$151,670.63 of interest that the Amended Order added to the original Judgment. Under the Neale definition of "compound interest", the Amended Order unquestionably creates a situation where interest is impermissibly compounded.

On May 8, 1990, a week before the Amended Order was entered, White Pine filed an objection to the Amended Order which read, in pertinent part, as follows:

The Amended Order purports to create a judgment as of February 12, 1990 in the total amount of \$938,053.02. Pursuant to Utah Code Ann. § 15-1-4. This total sum, including interest, would bear interest at 12%. This

constitutes an impermissible compounding of interest.

(R. 2177). White Pine even went so far as to submit to the district court a proposed Supplemented Judgment which avoided the compounding problem. (R. 2187-2190).

The district court nevertheless entered the Amended Order which has been designated in the court records as a Judgment (R. 2197; Add. 16). By their drafting, the Sharps have created a Judgment which gives them \$18,200.36 per year of compound interest to which they are not entitled. That award is contrary to law and should be reversed.

B. THE DISTRICT COURT ERRED IN LIFTING THE PREVIOUSLY IMPOSED STAY

As with the compounding of interest, the Sharps inserted in the Amended Order a provision lifting the Stay which is legally improper. The first time White Pine had any idea the Sharps were seeking to have the Stay lifted was when White Pine's counsel received the Sharps' proposed Initial Order. Once again, White Pine objected explicitly to the inclusion of this provision (R. 2177-78), but the district court nevertheless executed the Sharps' order. During the pendency of its appeal of this money Judgment, White Pine was entitled to the stay as a matter of right upon the posting of adequate security. See, Jensen v. Schwendiman, 744 P.2d 1026, 1027 (Utah App. 1987). The district court accordingly erred

as a matter of law in lifting the Stay in the absence of any request that it do so and in denying White Pine a hearing on the issues surrounding the issuance of a supersedeas bond. Moreover, once the Stay was granted, the district court lacked subject matter jurisdiction to revoke it.

1. The Sharps' Pleadings Did Not Request That The Stay Be Lifted.

In their November 3, 1989 Request for Hearing, the Sharps requested only an increase in the amount of the supersedeas bond. Similarly, the Sharps' December 11, 1989 Second Motion requested only that the amount of the bond be increased. Indeed, after White Pine filed its objections to the Sharps' Second Motion, the Sharps replied: "It is not unreasonable to require [White Pine] to increase the amount of their supersedeas bond." (R. 2042). (emphasis added).

The Sharps made reference to increasing the amount of the bond three different times. They never, however, requested (1) any different security, or (2) that the Stay be lifted. In fact, at the hearing on the Sharps' Second Motion, their counsel framed this issue in terms of only "why the bond should not be increased." (R. 2113). All the argument at the February 12, 1990 hearing on the Sharps' Second Motion focused on the increased amount, if any, of the supersedeas bond.

When the Sharps' counsel submitted the Initial Order, however, it contained two provisions that were devastating to White Pine, and which had been totally unaddressed by the Sharps' pleadings: (1) White Pine was ordered to post additional security in the amount of \$136,800.90; and (2) the Stay was automatically lifted if White Pine had not filed the additional bond by March 15, 1990, two days before the Initial Order was even entered. Because the posting of additional security and the lifting of the Stay had never been requested, argued, or ruled on, White Pine was unfairly and unjustifiably surprised by the inclusion of these provisions in the Initial Order.

This Court has ruled such an order is void as a matter of law. See, Hendricks v. Interstate Homes, Inc., 745 P.2d 475, 478 (Utah App. 1989). The rule announced in Hendricks reflects a longstanding recognition that Utah courts have no subject matter jurisdiction to grant relief not sought by the pleadings.

In Stockyards Nat. Bank v. Bragg, 67 Utah 60, 245 P. 966 (1925), the Bank sought to enforce two mortgages which had been executed on behalf of minors by their guardian. The guardian executed those mortgages only after receiving district court authorization, and the district court thereafter ordered foreclosure. In the minors' appeal of the foreclosure decree the bank argued that no pleading, petition, affidavit or other

triggering device was necessary to invoke the court's jurisdiction.

Id. at 973. In reversing the foreclosure decree, the Court wrote:

It is fundamental that a petition or pleading of some kind is the juridical means of investing a court with jurisdiction of subject-matter to adjudicate it, and a judgment which is beyond or not supported by pleadings must fall. . . . A fact apparent from the mandatory record, showing that fundamental law was disregarded in the establishment of the judgment, will render it null and void for all purposes.

Id.

In Cooke v. Cooke, 67 Utah 371, 248 P. 83 (1926), the Court addressed the extent to which a California custody decree was entitled to full faith and credit. In its discussion of that issue, the Court recognized that

there is no principle better established than what is not juridically presented cannot be juridically decided. Just as elemental is it that pleadings are the juridical means of investing a court with jurisdiction of the subject-matter to adjudicate it and that a judgment or decree beyond or not within them is a nullity, for the court is bound by its record. These are immutable elements.

Id. at 104. See also, Voyles v. Straka, 77 Utah 171, 292 P. 913, 914 (1930) ("it would be improper in any case to award a judgment for what is not demanded.")

All these authorities compel the conclusion that the district court's lifting of the Stay was erroneous. White Pine had no notice whatsoever that the Sharps were seeking to have the Stay lifted. All of the Sharps' pleadings requested only that the

amount of the bond be increased. White Pine had no opportunity to present any evidence regarding the propriety of the lifting of that Stay or the adequacy of the existing bond. Instead, White Pine was unfairly, and without warning, devastated by an order lifting the Stay two days before the Order lifting it was even entered. Due process and controlling authority require more than this. Parties and their counsel cannot be permitted to put any result they desire in a proposed order in the hope that the order will be signed, as happened here. The lifting of the Stay was reversible error.

In Jensen v. Schwendiman, 744 P.2d 1026 (Utah App. 1987), this Court considered the appropriate standards to be applied in granting stays pending appeal. In the case of money judgments such as the one the district court granted the Sharps, an appellant is entitled to a stay as a matter of right upon the posting of a supersedeas bond. See, id. at 1027. In this case White Pine had posted that bond a year earlier and was expecting only to increase the amount of that bond. It was never given that opportunity, however, because the Initial Order required it to post additional security two days before the Order requiring it to do so was even entered. By inserting this unprayed-for, unbriefed and unawarded provision into the Initial Order, the Sharps and the district court divested White Pine of the Stay it was entitled to as a matter of right.

2. The District Court Lacked Subject Matter Jurisdiction To Lift Or Revoke The Stay.

Moreover, Utah R. Civ. P. 62(d) permits a district court only to approve a supersedeas bond. It is silent regarding the district court's power to revoke a stay once it becomes effective. The United States Court of Appeals for the Seventh Circuit, interpreting the functionally identical federal rule, addressed this issue in In re Fed. Facilities Realty Trust, 227 F.2d 651 (7th Cir. 1955). In that case the court directly confronted the issue whether a district court has "a continuing power to revoke a stay previously granted". Id. at 654. In specifically holding district courts have no such power to revoke stays, the court wrote:

When the supersedeas becomes effective, the appellant obtains thereby a valuable right to have the status quo preserved until his appeal is heard and decided. Indeed, this right may be more valuable to him than the right of appeal, since we can conceive of a situation in which execution of the judgment while an appeal is pending might render the appeal moot. The provisions of the cited rules seem clearly to contemplate that the trial court's reserved power is exhausted when the court approves a supersedeas bond and the stay becomes effective. A different interpretation would have the effect of leaving a litigant's rights in a supersedeas ever subject to the jurisdiction of the trial judge until the appeal is finally decided.

We conclude, therefore, that District Court had no jurisdiction to vacate the stay order previously entered or to take any action, for, on perfection of the appeal and entry of the order for supersedeas, jurisdiction over the supersedeas as well as of the judgment was transferred to this court.

It follows that the order purporting to vacate the stay in a cause already on appeal was void *ab initio*, and that the stay continued in effect.

Id. at 655-56.

Because the Initial Order and the Amended Order lifted the stay, a result not raised or even suggested in the Sharps' pleadings, and because the district court lacked subject matter jurisdiction to revoke the Stay, this Court should reverse the district court's revocation and lifting of the Stay.

C. THE DISTRICT COURT ERRED IN ITS AWARD OF ADDITIONAL ATTORNEYS' FEES TO THE SHARPS.

As demonstrated in the preceding section of this brief, the district court granted a Stay which was irrevocable during the pendency of White Pine's appeal. The district court's January 31, 1989 Order Staying Proceedings itself reflects the permanency of the Stay:

IT IS HEREBY ORDERED that defendants, their agents or attorneys, are stayed and enjoined from undertaking any actions to execute, sell or notice for sale the property which is the subject of this action or take any other action to execute or enforce their rights under the judgment and that such stay shall remain in effect pending resolution of plaintiffs' appeal, which is currently pending in the Utah Court of Appeals, Appellate No. 880710-CA.

(R. 1704).

That Stay order continued: "However, defendants may schedule another hearing on or after November 12, 1989 to review the bond

amount." (R. 1704). This sentence grew out of a provision in the Judgment which provides:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Judgment shall be supplemented and augmented in the amount of the Sharps reasonable attorney's fees as established by affidavit and as incurred after August 31, 1988 in preparation of the Findings, Conclusions and Judgment, in responding to any post-trial motions, in collecting said Judgment by execution or otherwise, and after prevailing in any appeal.

(R. 2183; Add. 4).

The Judgment, therefore, circumscribed the Sharps' entitlement to additional attorneys' fees. The Sharps could only recover their fees incurred after August 31, 1988 in connection with three specified activities, and only after prevailing in any appeal. By its terms, the Sharps were entitled to attorneys' fees in these three limited areas only after the appellate process had been concluded in their favor. Any contrary reading creates an absurd result. If the Sharps do not prevail on appeal, and if the district court's Judgment is ultimately reversed, the Sharps will not be entitled to attorneys fees, and any interim award will become a meaningless gesture. Furthermore, as demonstrated below, the district court was without subject matter jurisdiction to order such supplementation during the appellate process.

White Pine expressed all these concerns in its December 27, 1989 Memorandum in Opposition to Defendants' Second Motion to

Supplemental Judgment and Motion to Increase Liability on Bond. (R. 1886-92). It specifically pointed out that in the event of an award of interim fees, "new appealable issues may be created, which may require the filing of a second notice of appeal. In the interest of judicial economy and because of the Court's order staying these proceedings until after [White Pine's] appeal is concluded, [the Sharps'] motion to supplement judgment should be denied." (R. 1888). White Pine also pointed out that the November 19, 1989 date was selected in the belief that the appeal would be concluded by that time (R. 1887).

1. The District Court Lacked Subject Matter Jurisdiction To Supplement The Judgment, Or To Award Additional Attorneys' Fees.

The foregoing events make clear that all concerned contemplated any supplementation of the Judgment would occur only if and after the Sharps prevailed on appeal. This is not only the plain language of the Judgment; it is the result dictated by law. It has long been established in Utah that a district court is divested of subject matter jurisdiction over a case while it is under advisement on appeal. See, White v. State of Utah, 137 U.A.R. 3, 3-4 (Utah 1990). This rule is in accord with other jurisdictions. See, e.g., Parks v. Atlanta Pub. School Sys. Bd. of Educ., 168 Ga. App. 572, 309 S.E.2d 645, 648 (1983) (trial court

judges have no jurisdiction to modify or supplement a judgment in any way once a notice of appeal has been filed).

In this case, the district court ignored this fundamental principle of law, expressed in its own Judgment. Any purported supplementation is void because the district court lacked subject matter jurisdiction to amend, modify or supplement the Judgment while it was on appeal. This result is not only compelled by the law; it also makes sense.

As pointed out in White Pine's objection to the requested supplementation, the award of additional attorneys' fees while the Judgment was on appeal would inevitably lead to a second appeal. That is exactly what occurred in this instance. Presumably, the Sharps presently feel free to go back again to the district court to obtain additional supplementation. Such an award would inevitably lead to yet a third appeal. Under the process followed by the Sharps and the district court there could be several interim awards, followed by several appeals. If the Utah Supreme Court grants White Pine's petition for certiorari and ultimately reverses the underlying Judgment, however, all such interim activity will become meaningless. This is an inefficient, wasteful, and absurd process.

Because the district court lacked subject matter jurisdiction to supplement the Judgment, this Court should rule that the Initial

Order and Amended Order are void and of no force. In that regard, it should direct the district court to take no further steps to amend, modify or supplement the Judgment until White Pine's appeal of that Judgment is concluded.

2. The Attorneys' Fees Awarded By The District Court Were Legally Improper.

The Judgment specifically awarded the Sharps additional attorneys' fees in three areas only: (1) preparing Findings, Conclusions, and the Judgment itself; (2) responding to post-trial motions; and (3) collecting on the judgment by execution or otherwise. (R. 2183; Add. 4). The Sharps did not appeal these limitations on their recovery, and they are now bound by them.

The documents submitted by the Sharps in connection with their request for additional attorneys fees are an undecipherable compilation of activities that in no way assign activities to those categories (R. 1514-58; 1791-1880). Although the Sharps claimed an entitlement to an additional \$104,906.23 in attorneys fees, (R. 1515; 1792), the vast majority of enumerated activities bear no apparent relevance to the areas where the Judgment authorized supplementation.

The most obvious example of the Sharps' attempts to go beyond the express terms of the Judgment is their effort to receive payment of attorneys' fees for time spent obtaining consents to

judgments from junior lienholders. (R. 1901-04; 1908; 1910-12; 1916-18; 1928; 1933-35; 1944-45; 1951; 1965; 1973-74; 1980-82; 1987; 2006; 2008-09). In a judicial foreclosure action all junior lienholders, whose interest would be affected by foreclosure, are necessary parties to the action. Utah Code Ann. § 78-37-3. See also, Dumont Corp. v. Arrington, 23 Utah 2d 66, 69, 457 P.2d 616, 618 (1969). In this case, the Sharps failed to name junior lienholders in their counterclaim. Since the entry of Judgment the Sharps attempted to correct their error and obtain Consents to Judgment from such junior lienholders; for those junior lienholders refusing to give their consent, the Sharps then commenced a totally separate action without notice to White Pine. (R. 1890). To compel White Pine to pay for such attorneys' fees is unreasonable and contrary to the express terms of the parties' contract or the Judgment.

Other examples of the Sharps' request for fees beyond the express terms of the Judgment include time spent (1) drafting letters to California counsel regarding prospective buyers (R. 1908); (2) preparing for and attending conferences regarding the development of White Pine Ski Resort (R. 1959, 1973, 1980); (3) having telephone conversations with Robert Hyde about an "interested" buyer of White Pine Ranches (R. 1945); (4) resolving and negotiating a release of mortgage executed by the Sharps on

May 24, 1956, in favor of James H. Newton and Bertha N. Newton (R. 1951-53; 1959); and (5) responding to J. Richard Rees' bankruptcy (R. 1901-04; 1908-12; 1915; 1951; 1963; 1987-88; 1997); (6) inspecting Park City Property (R. 1980); and (7) preparing motions on the Sharps' behalf (R. 2008).

Contrary to the district court's interim awards, the Judgment did not entitle the Sharps to recover attorneys' fees for every single act taken by their counsel. Due to the lack of any specificity, neither White Pine nor this Court could reasonably determine which of the Sharps' attorneys' fees are related to (1) preparing the findings, conclusions and judgment; (2) responding to post-trial motions; or (3) collecting the Judgment by execution or otherwise.

In this regard, the district court did disallow some of the more blatant examples of unauthorized fees totalling approximately \$25,000.00. (R. 2071-72; 2135; 2198-99; Add. 10, 18-19). This unsubstantiated, broad-brush approach is insufficient. The Utah Supreme Court has written that "on a number of occasions, we have held that attorney fees should be awarded on the basis of evidence and that findings of fact should be made which support the award." Cabrera v. Cottrell, 694 P.2d 622, 625 (Utah 1985).

This Court has reversed attorneys' fees awards when the district court failed to make the necessary findings and

conclusions. See, e.g., Matter of Estate of Grimm, 784 P.2d 1238, 1249 ("the absence in the record before us of findings and conclusions on the issue of attorneys' fees compels remand to the district court to correct that deficiency in the record").

In this case, perhaps because of the hopeless intermingling of activities in the billing records of the Sharps' counsel, the district court made no findings or conclusions whatsoever concerning the attorneys' fees that were properly awarded pursuant to the three categories authorized by the Judgment. Throughout the litigation of this issue, White Pine vigorously disputed the reasonability and appropriateness of the Sharps' claim for attorney fees. (R. 1388-92; 2115-17; 2131-34). White Pine even requested an evidentiary hearing on the attorneys' fee issue. (R. 2132). Disregarding all this, the district court awarded the Sharps nearly \$80,000.00 in attorneys' fees with no findings whatsoever. Findings are still required where, as here, the records presented are confused or difficult to segregate.

Accordingly, the district court's award of attorneys' fees should also be reversed because (1) the pleadings submitted by the Sharps do not relate to the areas in which additional attorneys' fees were authorized; and (2) the district court failed to make findings indicating how, if at all, the requested attorneys' fees were necessary, reasonable, authorized or justified.

VII. CONCLUSION

This appeal has resulted from the failure of the Sharps to recognize or honor even the most elemental limitations on their ability to obtain relief. Ignoring the long-standing and universal rule prohibiting the compounding of interest, they submitted an order awarding \$18,000 per year in compound interest.

The Sharps also ignored the long-standing axiom that a court cannot grant relief that has not been requested by the pleadings when they submitted an order revoking and lifting the Stay, a remedy they had not requested, which had not been briefed or argued, and which the district court was not authorized in any event to grant.

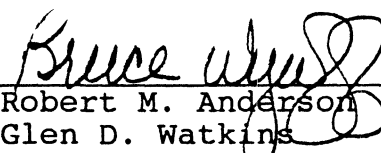
The district court erred when it executed the Initial Order and the Amended Order notwithstanding these legal principles. In addition, the district court lacked subject matter jurisdiction to execute either order. Finally, the district court committed reversible legal error when it entered its approval of the Sharps' disputed attorneys' fees without making any findings.

All the foregoing legal errors on the part of the district court require this Court to reverse the orders.

DATED: August 27, 1990.

ANDERSON & WATKINS

By


Robert M. Anderson
Glen D. Watkins
Bruce Wycoff

Attorneys for Appellants

CERTIFICATE OF SERVICE

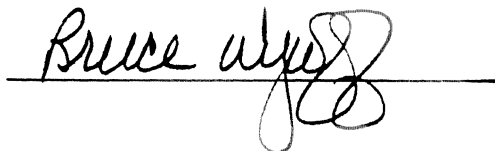
On this 27th day of August, 1990, I hereby certify that I caused to be mailed, via first-class United States mail, postage prepaid, four true and accurate copies of the foregoing Appellants' Brief to the following:

Donald J. Winder, Esq.
Kathy A. F. Davis, Esq.
WINDER & HASLAM
175 West 200 South, Suite 4000
Salt Lake City, Utah 84110
Attorneys for John C. and Geraldine Y. Sharp

John B. Anderson, Esq.
ANDERSON & HOLLAND
623 East 100 South
P.O. Box 11643
Salt Lake City, Utah 84147
Attorneys for Kenneth R. Norton dba Interstate Rentals,
Inc.

Stanford B. Owen, Esq.
Patrick L. Anderson, Esq.
FABIAN & CLENDENIN
215 South State Street, Suite 1200
P.O. Box 510210
Salt Lake City, Utah 84151
Attorneys for Commissioner of Financial Institutions as
Receiver for Tracy Collins Bank & Trust Company

Robert Felton, Esq.
310 South Main Street, Suite 1305
Salt Lake City, Utah 84101

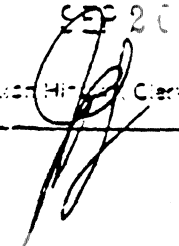


DECLARATION

FILED IN CLERK'S OFFICE
Salt Lake County Utah

Donald J. Winder, Esq. (#3519)
Kathy A. F. Davis, Esq. (#4022)
Tamara K. Prince, Esq. (#5224)
WINDER & HASLAM
175 West 200 South, Suite 4004
Salt Lake City, Utah 84101

SEP 20 1988

H. Dennis Frederick, Clerk 3rd Dist. Court
By  Deputy Clerk

Attorneys for Defendants Sharps

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

LEON H. SAUNDERS; ROBERT
FELTON; J. RICHARD REES;
SAUNDERS LAND INVESTMENT
CORPORATION, a Utah corpora-
tion; WHITE PINE RANCHES, a
Utah general partnership;
WHITE PINE ENTERPRISES, a
Utah general partnership,
Plaintiffs,

vs.

JOHN C. SHARP, and GERALDINE
Y. SHARP; ASSOCIATED TITLE
COMPANY, as Trustee, a Utah
corporation,
Defendants.

JOHN C. SHARP, and GERALDINE
Y. SHARP,

Counterclaim-Plaintiffs,

vs.

ROBERT FELTON, LEON H.
SAUNDERS; J. RICHARD REES;
SAUNDERS LAND INVESTMENT
CORPORATION, a Utah corpora-
tion; KENNETH R. NORTON dba

Blk 214 No. 2836
9-27-88-8:05 am

JUDGMENT

Civil No. C87-1621

Judge J. Dennis Frederick

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001370

WINDER & HASLAM
A PROFESSIONAL CORPORATION

INTERSTATE RENTALS, INC., :
and PAUL H. LANDES, indivi- :
dually; WHITE PINE RANCHES, :
a Utah general partnership, :
and WHITE PINE ENTERPRISES, :
a Utah general partnership, :
: :
Counterclaim-Defendants.:

This cause came on for trial before the Honorable J. Dennis Frederick on January 28, 1988 through January 29, 1988 and March 22, 1988 through March 25, 1988, with the defendants John C. and Geraldine Y. Sharp (hereinafter the "Sharps") appearing by counsel Donald J. Winder, Kathy A. F. Davis and Tamara K. Prince, the latter being admitted pro hac vice, and plaintiffs White Pine Ranches, White Pine Enterprises, Leon H. Saunders (hereinafter "Saunders"), Robert Felton (hereinafter "Felton"), J. Richard Rees and Saunders Land Investment Corporation appearing by counsel Robert M. Anderson, Glen D. Watkins and Mark R. Gaylord. Counterclaim defendant Kenneth R. Norton ("Norton") appeared through his counsel John B. Anderson, only to introduce a Stipulation and Indemnification Agreement between plaintiffs and counterclaim defendant Norton. Defendant Associated Title was never served in this action. Counterclaim defendant Paul H. Landes (hereinafter "Landes") was never served in this action.

Having heretofore made and entered its Findings of Fact and Conclusions of Law,

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NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiffs' Complaint be dismissed, no cause of action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Saunders, Felton, Interstate Rentals, Inc. and Norton are indebted, jointly and severally, to the Sharps in the following amounts:

a.	i.	Principal:	\$ 371,739.35
	ii.	Interest through	
		March 22, 1988:	\$ 171,033.54
	iii.	Late payment charge:	\$ 14,869.57
		TOTAL:	\$ 557,642.46

together with interest thereon at the per diem rate of \$183.32 from and after March 22, 1988.

b.	i.	Trustee's fees:	\$ 1,803.80
	ii.	Court Costs:	\$ 2,881.04
	iii.	Attorneys' fees through	
		August 31, 1988:	\$ 144,088.75

together with interest thereon at the rate of 10% per annum from the date of expenditure by the Sharps until paid by plaintiffs.

c.		Delinquent property taxes:	\$ 20,368.62
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together with interest and penalties assessed thereon as provided by law, property taxes accruing for 1988, and post-judgment interest thereon at the rate of 12% per annum.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Judgment shall be supplemented and augmented in the amount of the Sharps' reasonable attorney's fees as established by affidavit and as incurred after August 31, 1988 in preparation of the Findings, Conclusions and Judgment, in responding to any post-trial motions, in collecting said Judgment by execution or otherwise, and after prevailing in any appeal.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Temporary Restraining Order entered in the above captioned matter by the Honorable Judith M. Billings on September 4, 1986 was wrongfully issued and it is hereby lifted and dissolved. The Sharps are hereby awarded judgment against the bond posted by plaintiffs with the Summit County Clerk in September, 1986 in the amount of \$2,400.00 and against the security posted by Tracy Collins Bank with the Clerk of this Court in the amount of \$28,570.63, and for which amounts the plaintiffs are not secured by the fair market value of the subject premises.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Lot 6 as described in the final recorded plat of White Pine Ranches Phase I and the unplatted property more particularly described on Exhibit "A" attached hereto or such portions thereof as may be sufficient to pay the amounts found to be due and owing under this Judgment, together with interest as set forth hereinabove and accrued costs herein, and expenses of sale, be sold at public auction by the Sheriff of Summit County, State of Utah, in the manner prescribed by law for such sales; that

said Sheriff, if and when the subject premises are sold by him, out of the proceeds of such sale shall retain first his costs, disbursements and commission, and then pay to the Sharps, or to their attorneys, the accrued and accruing costs of this action, then said sums for the Sharps' attorneys' fees, and the amount owing to the Sharps for principal, interest, costs and expenses of sale and maintenance, taxes, assessments and/or insurance premiums, together with accrued interest thereon, or so much of said sums as said proceeds will pay, and that the surplus, if any, shall be accounted for and paid over to the Clerk of this Court subject to this Court's further order.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all persons having an interest in the subject premises shall have the right, upon producing satisfactory proof of interest, to redeem the same within the time provided by law for such redemption; that from and after the expiration of the period of redemption as provided by law, that the plaintiffs above named, and each of them, and all persons claiming by, through or under them, or any of them, shall be forever barred and foreclosed of all right. title. interest and estate in and to the subject premises, and that from and after the delivery of the Sheriff's Deed to the subject premises that the grantees named therein be given possession thereof.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that if a deficiency results after due and proper application of the

proceeds of such Sheriff's Sale, the Sharps are hereby awarded a personal judgment against Saunders, Felton, Norton and Interstate Rentals, Inc., and each of them, jointly and severally, for the full amount of such deficiency.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Sharps shall have the right, at their request, to one connection to both plaintiffs' culinary, water and sewer systems on White Pine Ranches Phase I for a connection fee of \$2,000 each.

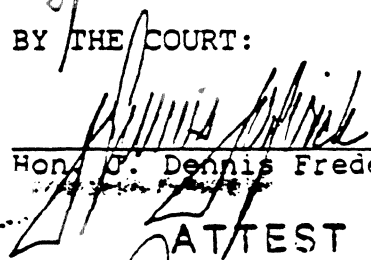
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a non-exclusive appurtenant easement shall run with the land, as a covenant running with the land or as an equitable servitude, as the case may be, in favor of and for the use and benefit of the unplatted acreage described on Exhibit "A" attached hereto and incorporated herein by reference and the owners and purchasers thereof (including the Sharps) and their invitees, guests, heirs and successors in interest, for utilities and for access to and the right to use as a means for ingress and egress for vehicular and pedestrian access over, under and across the private roadway (White Pine Lane) shown on the recorded final plat of White Pine Ranches Phase I, recorded with the Summit County Recorder; and a non-exclusive appurtenant easement to run with the land, as a covenant running with the land or as an equitable servitude, as the case may be, in favor of and for the use and benefit of White Pine Ranches

Phase I and the owners and purchasers thereof (including the Sharps) and their heirs and successors in interest for water lines, water tank and water systems over, under and across the subject premises near the southwest corner of the unplatted acreage as also shown on the final recorded plat of White Pine Ranches Phase I.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the final plat and Declaration of Protective Covenants recorded for White Pine Ranches Phase I with the Summit County Recorder's Office and the non-exclusive easements set forth above shall remain in full force and effect, and not be affected by the foreclosure ordered herein, a purchase at the Sheriff's Sale, or a subsequent redemption of the subject premises, other than a complete redemption thereof by the plaintiffs herein coupled with plaintiffs' declaration for the extinguishment of the non-exclusive easement in favor of the unplatted acreage.

DATED this 26th day of Sept., 1988.

BY THE COURT:


Hon. G. Dennis Frederick

ATTEST
H. DIXON HINDLEY
Clerk

By  Deputy Clerk

Donald J. Winder (#3519)
Kathy A. F. Davis (#4022)
Tamara K. Prince (#5224)
WINDER & HASLAM, P.C.
175 West 200 South, Suite 4000
Post Office Box 2668
Salt Lake City, Utah 84110-2668
Telephone: (801) 322-2222

Attorneys for Defendants Sharp

Third Judicial District

MAR 16 1990

SALT LAKE COUNTY

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

LEON H. SAUNDERS, et al.,	:	
Plaintiffs,	:	ORDER RE: DEFENDANTS'
-v-	:	SECOND MOTION TO SUPPLEMENT
	:	JUDGMENT AND MOTION TO
	:	INCREASE LIABILITY ON BOND
JOHN C. SHARP, et al.,	:	
Defendants.	:	
<hr/>		
JOHN C. SHARP, et al.	:	
Counterclaim-Plaintiffs,	:	
-v-	:	Civil No. C87-1621
	:	
	:	Judge J. Dennis Frederick
ROBERT FELTON, et al.,	:	
Counterclaim-Defendants.	:	

Defendants' Second Motion to Supplement Judgment and Motion to Increase Liability on Bond came on regularly for hearing before the Honorable J. Dennis Frederick on Monday, the 12th day of February, 1990 at the hour of 10:30 a.m. The Sharps were represented by their counsel Donald J. Winder and

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Kathy A. F. Davis. Plaintiffs were represented by their counsel Robert M. Anderson and Mark Gaylord. The Court, having reviewed the pleadings and memoranda on file herein, having heard the arguments of counsel, having received the proffers of counsel for the Sharps, and good cause appearing therefor, IT IS HEREBY ORDERED:

1. Taxes on Lot 1 as described in the final recorded plat of White Pine Ranches Phase I in the principal amount of \$2,271.48 plus penalties and interest thereon be paid on or before March 15, 1990. If the plaintiffs fail to pay the taxes due and owing on Lot 1 by March 15, 1990, the Order Staying Proceedings dated January 31, 1989 shall be automatically vacated and defendants shall be allowed to proceed to execute on the Judgment and this Order entered herein. Subsequent to the Court's ruling, Plaintiffs filed a Notice of Payment or Property Taxes Pursuant to the Court's Order dated February 22, 1990.

2. The Judgment entered in this matter on September 26, 1988 and the Order Re: Supersedeas Bond entered on March 17, 1989 are hereby supplemented through August 1, 1990 in the following amounts:

a. Attorney's fees reasonably and necessarily incurred by the Sharps from September 1, 1988 through October 31, 1989 in the amount of \$79,967.34, which amount excludes the following categories set forth in the Summary of Plaintiffs' Objections to Attorney's Fees presented as Defendants'

Exhibit 2 at the hearing (the "Summary"): "Settlement" in the amount of \$473.38; "Attorney's fees" in the amount of \$84.00; "Tracy Collins Appeal" in the amount of \$24,381.51 (for a total of \$24,938.89);

b. The pre-judgment interest accrued on the Judgment from the date it accrued on the principal or the date the attorney's fees, court costs or trustee's fees were paid through September 26, 1988 as follows:

(1) Principal from 3/2/88 to 9/26/88:	\$34,464.16
(2) Attorney's fees:	\$ 5,800.77
(3) Court costs:	\$ 249.63
(4) Trustee's fees:	\$ 230.93
TOTAL:	\$40,745.49

c. The post-judgment interest, excluding interest on payments made after October 31, 1989, accruing on the Judgment from the date thereof (September 26, 1988) through August 1, 1990 as follows:

(1) Principal (\$183.32 x 674 days):	\$123,557.68
(2) Attorney's fees:	
<u>Paid Prior to Judgment</u>	
(Second Affidavit of Albert D. Nystrom)	\$11,287.91
(\$28.20 x 274 days)	\$ 7,726.80
<u>Paid Post-Judgment</u>	
(Third Affidavit of Albert D. Nystrom)	\$ 5,446.29
(3) Court costs (\$.79 x 674 days):	\$ 532.46
(4) Trustee's fees (\$.49 x 674 days):	\$ 330.26
TOTAL:	\$148,881.40

d. The Order Re: Supersedeas Bond is supplemented in the amount of \$136,800.99, the amount of the Judgment as of

August 1, 1990 (\$976,009.98) less the security thereon (\$839,208.99). The Order Re: Supersedeas Bond awarding a supersedeas bond in the amount of \$79,793.36 (which was the anticipated interest accruing for one year post-judgment) together with the Tracy Collins bond in the amount of \$28,570.63, the cash bond of \$2,400 and Lot 6 and the unplatted property valued at \$728,445.00 secure the Judgment in the amount of \$839,208.99. The Judgment as of September 1, 1990, as supplemented herein, amounts to \$976,009.98 -- principal and pre- and post-judgment interest thereon in the amount of \$715,664.30, plus costs in the amount of \$228,740.93 plus pre- and post-judgment interest on such costs in the amount of \$31,604.75. See attached Exhibit "A," the Calculation of Supersedeas Bond.

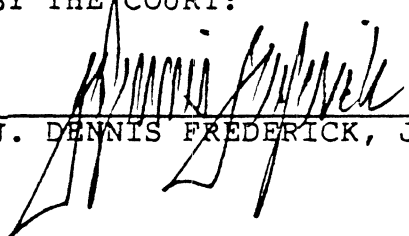
3. The attorney's fees requested with regard to the "Settlement," in the amount of \$473.78, and "Tracy Collins Appeal," in the amount of \$24,381.51, as set forth on the Summary are taken under advisement.

4. Plaintiffs are ordered to post additional security as a supersedeas bond for the continued stay of the execution of the Judgment pursuant to the Order Re: Supersedeas Bond dated March 17, 1989 in the amount of \$136,800.99 on or before March 15, 1990. If Plaintiffs fail to do so by March 15, 1990, the Order Staying Proceedings dated January 31, 1989 shall be automatically vacated and the Sharps shall be allowed

to proceed to execute on the Judgment entered in the above captioned matter.

DATED this 16th day of March, 1990.

BY THE COURT:



J. DENNIS FREDERICK, Judge

CERTIFICATE OF SERVICE

I hereby certify that I caused true and correct copies of the foregoing proposed ORDER RE: DEFENDANTS' SECOND MOTION TO SUPPLEMENT JUDGMENT AND MOTION TO INCREASE LIABILITY ON BOND and THIRD AFFIDAVIT OF ALBERT D. NYSTROM to be hand delivered on this 17th day of March, 1990, to the following:

Stanford B. Owen, Esq.
Patrick L. Anderson, Esq.
FABIAN & CLENDENIN
215 South State Street, 12th Floor
Post Office Box 510210
Salt Lake City, Utah 84151

Robert M. Anderson, Esq.
Glen D. Watkins, Esq.
Mark R. Gaylord, Esq.
ANDERSON & WATKINS
700 Valley Tower Building
50 West Broadway
Salt Lake City, Utah 84101-2018

and to be mailed, postage prepaid, on this 17th day of March, 1990, to the following:

John B. Anderson, Esq.
ANDERSON & HOLLAND
Post Office Box 11643
Salt Lake City, Utah 84147

Tamara K. Prince

CALCULATION OF SUPERSEDEAS BOND

Trust Deed Note

(a) Principal	\$371,739.35
(b) Interest - March 22, 1988	171,033.54
(c) Interest - March 22, 1988 through September 26, 1988 (\$183.32 x 188 days)	34,464.16
(d) Late Payment Penalty	<u>14,869.57</u>
SUBTOTAL:	\$592,106.62

(e) Post-Judgment Interest -- September 26, 1988 through August 1, 1990 (\$183.32 x 674 days)	<u>123,557.68</u>
SUBTOTAL:	\$715,664.30

Costs

(a) Trustees Fees	\$ 1,803.80
(b) Court Costs	2,881.04
(c) Attorney's Fees	
(i) Awarded in Judgment	144,088.75
(ii) Third Affidavit plus fees requested in Motion less fees in amount of \$24,938.89 under advisement	<u>79,967.34</u>
SUBTOTAL:	\$228,740.93

Interest

(a) Legal Fees paid to August 1, 1990 (\$24,461.00 plus pre-judgment interest of \$5,800.77)	\$ 30,261.77
(b) Trustees Fees to August 1, 1990 (\$.49 x 674 days plus pre-judgment interest of \$230.63)	560.89
(c) Court costs to August 1, 1990 (\$.79 x 674 days plus pre-judgment interest of \$249.63)	<u>782.09</u>
SUBTOTAL:	\$ 31,604.75
<u>TOTAL:</u>	<u>\$976,009.98</u>

CALCULATION OF SUPERSEDEAS BOND
(Page 2)

Security

(a)	Lot 6 and Unplatted Property	\$728,445.00
(b)	Temporary Restraining Order Bonds	
	(i) Cash Bond	2,400.00
	(ii) Tracy Collins Bank and Trust Co. Bond	28,570.63
(c)	Supersedeas Bond	<u>79,793.36</u>
	TOTAL: (With Tracy Collins Bond)	\$839,208.99

Additional Security Necessary

(a)	Judgment as of August 1, 1990	\$976,009.98
(b)	<u>LESS:</u> Present Security	<u>839,208.99</u>
	ADDITIONAL SECURITY NEEDED: (With Tracy Collins Bond)	\$136,800.99

Donald J. Winder (#3519)
Kathy A. F. Davis (#4022)
WINDER & HASLAM, P.C.
175 West 200 South, Suite 4000
Post Office Box 2668
Salt Lake City, Utah 84110-2668
Telephone: (801) 322-2222

MAY 14 1990

Attorneys for Defendants Sharp

RECEIVED

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

LEON H. SAUNDERS, et al.,	:	AMENDED
Plaintiffs,	:	ORDER RE: DEFENDANTS'
-v-	:	SECOND MOTION TO SUPPLEMENT
	:	JUDGMENT AND MOTION TO
	:	INCREASE LIABILITY ON BOND
JOHN C. SHARP, et al.,	:	
Defendants.	:	
<hr/>		
JOHN C. SHARP, et al.	:	
Counterclaim-Plaintiffs,	:	
-v-	:	
ROBERT FELTON, et al.,	:	
Counterclaim-Defendants.	:	

214 2836

Civil No. C87-1621

Judge J. Dennis Frederick

Defendants' Second Motion to Supplement Judgment and Motion to Increase Liability on Bond came on regularly for hearing before the Honorable J. Dennis Frederick on Monday, the 12th day of February, 1990 at the hour of 10:30 a.m. The Sharps were represented by their counsel Donald J. Winder and Kathy A. F. Davis. Plaintiffs were represented by their

counsel Robert M. Anderson and Mark Gaylord. The Court, having reviewed the pleadings and memoranda on file herein, having heard the arguments of counsel, having received the proffers of counsel for the Sharps, and good cause appearing therefor, IT IS HEREBY ORDERED:

1. Taxes on Lot 1 as described in the final recorded plat of White Pine Ranches Phase I in the principal amount of \$2,271.48 plus penalties and interest thereon be paid on or before March 15, 1990. If the plaintiffs fail to pay the taxes due and owing on Lot 1 by March 15, 1990, the Order Staying Proceedings dated January 31, 1989 shall be automatically vacated and defendants shall be allowed to proceed to execute on the Judgment and this Order entered herein. Subsequent to the Court's ruling, Plaintiffs filed a Notice of Payment or Property Taxes Pursuant to the Court's Order dated February 22, 1990.

2. The Judgment entered in this matter on September 26, 1988 is hereby supplemented through February 12, 1990 by the amount of \$231,636.97 for a total Judgment of \$938,053.02 as of February 12, 1990. The supplementation includes the following amounts:

a. Attorney's fees reasonably and necessarily incurred by the Sharps from September 1, 1988 through October 31, 1989 in the amount of \$79,967.34, which amount excludes the following categories set forth in the Summary of Plaintiffs' Objections to Attorney's Fees presented as Defendants'

Exhibit 2 at the hearing (the "Summary"): "Settlement" in the amount of \$473.38; "Attorney's fees" in the amount of \$84.00; "Tracy Collins Appeal" in the amount of \$24,381.51 (for a total of \$24,938.89);

b. The pre-judgment interest accrued on the Judgment from the date it accrued on the principal or the date the attorney's fees, court costs or trustee's fees were paid through September 26, 1988 as follows:

(1) Principal from 3/22/88 to 9/26/88:	\$34,464.16
(2) Attorney's fees:	\$ 5,800.77
(3) Court costs:	\$ 249.63
(4) Trustee's fees:	\$ 230.93
TOTAL:	\$40,745.49

c. The post-judgment interest, excluding interest on payments made after October 31, 1989, accruing on the Judgment from the date thereof (September 26, 1988) through February 12, 1990 as follows:

(1) Principal (\$183.32 x 504 days 9/26/88 - 2/12/90):	\$ 92,393.28
(2) Attorney's fees:	
<u>Paid Prior to Judgment</u>	
(i) (Second Affidavit of Albert D. Nystrom 9/27/88 - 10/31/89):	\$11,287.91
(ii) (\$28.20 x 104 days 10/31/88 - 2/12/90):	\$ 2,932.80
<u>Paid Post-Judgment</u> (9/26/88 - 2/12/90)	
(i) (Third Affidavit of Albert D. Nystrom \$5,446.29 - \$1,781.26, (interest backed out, 2/13/90 - 8/1/90, 169 days x \$10.54):	\$ 3,665.03
	\$ 17,885.74

(3) Court costs	
(\$.79 x 504 days	
9/26/88 - 2/12/90):	\$ 398.16
(4) Trustee's fees:	
(\$.49 x 504 days	
9/26/88 - 2/12/90)	\$ 246.96
TOTAL:	\$110,924.14

3. The Order Re: Supersedeas Bond entered on March 17, 1989 is hereby supplemented through August 1, 1990 in the following amounts:

a. Attorney's fees reasonably and necessarily incurred by the Sharps from September 1, 1988 through October 31, 1989 in the amount of \$79,967.34, which amount excludes the following categories set forth in the Summary of Plaintiffs' Objections to Attorney's Fees presented as Defendants' Exhibit 2 at the hearing (the "Summary"): "Settlement" in the amount of \$473.38; "Attorney's fees" in the amount of \$84.00; "Tracy Collins Appeal" in the amount of \$24,381.51 (for a total of \$24,938.89);

b. The pre-judgment interest accrued on the Judgment from the date it accrued on the principal or the date the attorney's fees, court costs or trustee's fees were paid through September 26, 1988 as follows:

(1) Principal from 3/22/88	
to 9/26/88:	\$34,464.16
(2) Attorney's fees:	\$ 5,800.77
(3) Court costs:	\$ 249.63
(4) Trustee's fees:	\$ 230.93
TOTAL:	\$40,745.49

c. The post-judgment interest, excluding interest on payments made after October 31, 1989, accruing on the Judgment

from the date thereof (September 26, 1988) through August 1, 1990 as follows:

(1) Principal (\$183.32 x 674 days):		\$123,557.68
(2) Attorney's fees:		
<u>Paid Prior to Judgment</u>		
(Second Affidavit of Albert D. Nystrom)	\$11,287.91	
(\$28.20 x 274 days)	\$ 7,726.80	
<u>Paid Post-Judgment</u>		
(Third Affidavit of Albert D. Nystrom)	\$ 5,446.29	\$ 24,461.00
(3) Court costs (\$.79 x 674 days):		\$ 532.46
(4) Trustee's fees (\$.49 x 674 days):		\$ 330.26
TOTAL:		\$148,881.40

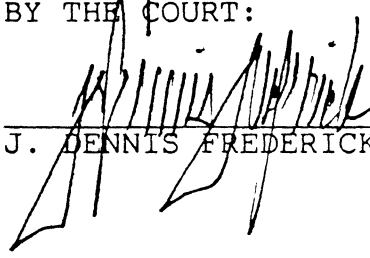
d. The Order Re: Supersedeas Bond is supplemented in the amount of \$136,800.99, through August 1, 1990 (\$976,009.98) less the security thereon (\$839,208.99). The Order Re: Supersedeas Bond awarding a supersedeas bond in the amount of \$79,793.36 (which was the anticipated interest accruing for one year post-judgment), together with the Tracy Collins bond in the amount of \$28,570.63, the cash bond of \$2,400 and Lot 6 and the unplatted property valued at \$728,445.00 previously secured the Judgment in the amount of \$839,208.99. See attached Exhibit "A," the Calculation of Supersedeas Bond.

4. The attorney's fees requested with regard to the "Settlement," in the amount of \$473.78, and "Tracy Collins Appeal," in the amount of \$24,381.51, as set forth on the Summary are taken under advisement.

5. Plaintiffs are ordered to post additional security as a supersedeas bond for the continued stay of the execution of the Judgment pursuant to the Order Re: Supersedeas Bond dated March 17, 1989 in the amount of \$136,800.99 on or before March 15, 1990. If Plaintiffs fail to do so by March 15, 1990, the Order Staying Proceedings dated January 31, 1989 shall be automatically vacated and the Sharps shall be allowed to proceed to execute on the Judgment entered in the above captioned matter.

DATED this 14th day of May, 1990.

BY THE COURT:



J. DENNIS FREDERICK, Judge

CERTIFICATE OF SERVICE

I hereby certify that I caused true and correct copies of the foregoing proposed AMENDED ORDER RE: DEFENDANT'S SECOND MOTION TO SUPPLEMENT JUDGMENT AND MOTION TO INCREASE LIABILITY ON BOND to be mailed, first class, postage prepaid, on this 30 day of April, 1990, to the following:

Stanford B. Owen, Esq.
Patrick L. Anderson, Esq.
FABIAN & CLENDENIN
215 South State Street, 12th Floor
Post Office Box 510210
Salt Lake City, Utah 84151

Robert M. Anderson, Esq.
Glen D. Watkins, Esq.
ANDERSON & WATKINS
700 Valley Tower Building
50 West Broadway
Salt Lake City, Utah 84101-1018

John B. Anderson, Esq.
ANDERSON & HOLLAND
Post Office Box 11643
Salt Lake City, Utah 84147

David L. Gladwell
Chapter 7 Trustee
Post Office Box 3205
Ogden, Utah 84409

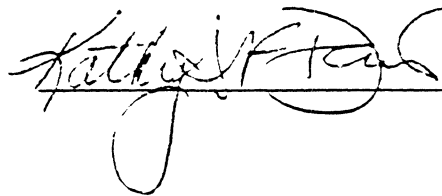


EXHIBIT "A"
CALCULATION OF SUPERSEDEAS BOND

Trust Deed Note

(a) Principal	\$371,739.35
(b) Interest - March 22, 1988	171,033.54
(c) Interest - March 22, 1988 through September 26, 1988 (\$183.32 x 188 days)	34,464.16
(d) Late Payment Penalty	<u>14,869.57</u>

SUBTOTAL: \$592,106.62

(e) Post-Judgment Interest -- September 26, 1988 through August 1, 1990 (\$183.32 x 674 days)	<u>123,557.68</u>
---	-------------------

SUBTOTAL: \$715,664.30

Costs

(a) Trustees Fees	\$ 1,803.80
(b) Court Costs	2,881.04
(c) Attorney's Fees	
(i) Awarded in Judgment	144,088.75
(ii) Third Affidavit plus fees requested in Motion less fees in amount of \$24,938.89 under advisement	<u>79,967.34</u>

SUBTOTAL: \$228,740.93

Interest

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(b) Trustees Fees to August 1, 1990 (\$.49 x 674 days plus pre-judgment interest of \$230.63)	560.89
(c) Court costs to August 1, 1990 (\$.79 x 674 days plus pre-judgment interest of \$249.63)	<u>782.09</u>

SUBTOTAL: \$ 31,604.75

TOTAL: \$976,009.98

CALCULATION OF SUPERSEDEAS BOND
(Page 2)

Security

(a)	Lot 6 and Unplatted Property	\$728,445.00
(b)	Temporary Restraining Order Bonds	
	(i) Cash Bond	2,400.00
	(ii) Tracy Collins Bank and Trust Co. Bond	28,570.63
(c)	Supersedeas Bond	<u>79,793.36</u>
	TOTAL: (With Tracy Collins Bond)	\$839,208.99

Additional Security Necessary

(a)	As of August 1, 1990	\$976,009.98
(b)	<u>LESS:</u> Present Security	<u>839,208.99</u>
	ADDITIONAL SECURITY NEEDED: (With Tracy Collins Bond)	\$136,800.99