2011

Murray Towers, LLC v. Bjorn T. Bang : Brief of Appellant

Utah Court of Appeals

Rod Andreason; Kirton and Mcconkie; Attorney for Defendants and Appellees.
Zachary E Peterson; Paul P Burghardt; Richards, Brandt, Miller and Nelson; Attorneys for Plaintiffs and Appellants .

IN THE UTAH COURT OF APPEALS

MURRAY TOWERS, LLC, a Utah limited liability company, and BRAD OLSEN Plaintiffs and Appellant, vs. BJORN T. BANG aka BILL BANG; LAKELINE DEVELOPMENT, L.C., a Utah limited liability company; and SUZANNE LARSON aka SUSANNE BANG, Defendants and Appellees.	Appeal No. 20110049–CA

APPELLANT'S BRIEF

Appeal from final order entered in the Third Judicial District, Honorable Mark Kouris

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PARTIES TO THE PROCEEDING

The front page caption contains the names of all parties involved in this dispute.

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JURISDICTION

This court has jurisdiction over this matter pursuant to Utah Code Ann. § 78A-4-104(2)(j)(2010). This is an appeal from a final order dated March 10, 2011.

ISSUE, STANDARD OF REVIEW & PRESERVATION

Issue: Did the trial court err in ruling that the judgment debtor was entitled to claim an offset of $130,000 against the judgment for removing the encumbrance against the company's property?

Standard of review: This Court should review the "trial court's factual findings for clear error[,] and [ ] review its conclusions of law for correctness." *Salt Lake City v. Bench*, 2008 UT App 30, ¶5, 177 P.3d 655. The amount of the judgment and the propriety of the judgment were not appealed by defendants. The only issue was whether defendants were entitled to a credit against the judgment. To the extent this ruling involved equitable considerations, those portions of the ruling should be reviewed for abuse of discretion; however, the trial court's ruling also involved legal determinations which should be reviewed for correctness.

Preservation: This issue was preserved by defendants' Memorandum in Opposition to Motion to Stay Sheriff's sale, Motion to Strike and Memorandum in Support. (R. at 569-582; 583-91.)

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES, AND REGULATIONS

None.

Statement of the Case

This appeal arises from a relatively straightforward business dispute. The underlying facts are not in dispute and any factual dispute was resolved at trial and is the law of the case after defendants decided not to appeal the judgment. The only issue is whether defendants' post–judgment act of removing the encumbrance against the property entitled them to an offset against the money judgment.

Facts

Appellant Murray Towers, LLC is a Utah limited liability company owned by two members, Appellant Brad Olsen and Appellee Lakeline Development, L.C., which each own 50% of the company. Appellee Bjorn Bang is a member of Lakeline Development, L.C. (R. at 44-45.) In February, 2004, Murray Towers acquired real property located at 50 East Columbia Avenue in Salt Lake City and this property comprised all or substantially all of Murray Towers' assets. (R. at 45.) On August 19, 2004, Lakeline obtained a loan from Prisbrey Investment Company in the amount of $130,000. (R. at 46.) The Prisbrey loan was guaranteed by Bang in his individual capacity and secured by a trust deed recorded against the Murray Towers property. (R. at 46.) In addition to guaranteeing the loan personally, Bang also executed a trust deed on behalf of Murray Towers as its manager. (R. at 46.)

Although the proceeds from the Prisbrey loan were the property of Murray Tower, Bang used the proceeds from the loan for his own personal benefit. (R. at 46.) Olsen did not authorize the trust deed to be recorded against the Property and Murray Towers did not hold a meeting of the members to discuss the trust deed on the Property. (R. at 46.)

Upon learning of the unauthorized encumbrance on the property, plaintiffs, Murray Towers and Olsen, brought suit against defendants, Bang and Lakeline, asserting numerous causes of action, including constructive fraud, breach of fiduciary duty and conversion. (R. at 44-50.) Defendants asserted a counterclaim to dissolve the company, distribute and sell the company's assets, and wind up the company's affairs. (R. at 57-58.) Plaintiffs prevailed on their breach of fiduciary duty claim which resulted in a judgment against defendants in the amount of $146,683.80. The trial court denied defendants' counterclaim to dissolve the company.

Procedural History

Prior to trial, both parties submitted proposed findings of facts and conclusions of law. (R. at 157-167 (defendants); 168-172 (plaintiffs).) Significantly, defendants contested every claim asserted against them. Specifically, defendants argued that the evidence at trial would demonstrate that plaintiffs had consented to the encumbrance on the property and use of the loan proceeds by Bang and that plaintiffs had not been damaged by the encumbrance on the property. (R. at 157-67.) Defendants also argued the company was deadlocked and needed to be dissolved. (R. at 165.)

On January 20, 2010, this matter was tried before the Honorable Mark Kouris in Third Judicial District Court. (R. at 173-74.) Thereafter, the parties submitted trial briefs discussing the evidence and issues at trial. (R. at 177-200 (defendants); 201-09 (plaintiffs).) Again in their trial brief, defendants argued that the evidence at trial demonstrated that plaintiffs consented to loan and suffered no harm when the property was encumbered. Defendants argued the evidence at trial demonstrated that they

breached no fiduciary duties and caused no harm to plaintiffs. In addition, defendants argued that the evidence at trial required the trial court to dissolve the company. (R. at 177-200.) Finally, if the trial court was inclined to grant plaintiffs relief, defendants argued they should be given the opportunity to promptly repay the Prisbrey loan before the entry of judgment. (R. at 195.)

In its ruling, the trial court determined that defendants had not offered sufficient evidence to support that the members of the company were at an impasse or to demonstrate the company needed to be dissolved. (R. at 612, p. 4). The trial court determined that defendants owed a fiduciary duty, breached their fiduciary duty, and damaged plaintiffs in the amount of $130,000.00 plus attorney fees. (R. at 612, p. 4). As a result, a judgment was entered against defendants in the amount of $146,683.80. (R. at 275-81.) Defendants moved to modify this judgment, and that motion was denied. (R. at 282-307; 328-359; 439-40.) After the trial and denial of the requested modification, defendants ceased making payments on the Prisbrey loan and forced plaintiffs to make these loan payments in order to prevent the loan from going into default. (R. at 613, p. 19:11-13, 20:3 – 21:18.)

On September 2, 2010, defendants stipulated to the entry of a Charging Order and Order of Foreclosure against Bang's interest in Lakeline Development, LLC. (R. at 430-35.) Plaintiffs immediately began working to schedule a Sheriff's sale pursuant to the Order of Foreclosure and scheduled a Sheriff's sale of Bang's interest in Lakeline Development L.C. for December 7, 2010. While plaintiffs were conducting these activities, defendants negotiated with the holder of the trust deed on the Prisbrey Loan in

order to have the trust deed released from the property. (R. at 613, p. 9: 16-23.) This negotiation, however, did not result in the loan being paid in full. Instead, the defendants simply negotiated for the removal of the trust deed from the property. (R. at 613, p. 9: 16-23.) As a result of the efforts to remove the trust deed, on October 20, 2010, defendants delivered a check for $16,683.80 and letter to plaintiffs demanding a full satisfaction of the judgment for $146,683.80. (R. at 537.) The letter explained that defendants had unilaterally elected to have the trust deed released from the property and that they expected a full credit against the money judgment. Defendants did not seek permission from plaintiffs or the trial court before requesting to substitute performance under the judgment. Thereafter, on December 1, 2010, defendants filed a Motion to Stay the Sheriff's sale and for expedited consideration. (R. at 531-568.)

On December 6, 2010, the trial court ordered that the Sheriff's sale be stayed until December 10, 2010, and would be permanently stayed if defendants paid $26,000 into the trial court's trust account for additional attorney fees and damages by December 10, 2010 at 10:00 am. (R. at 613.) Ultimately, the trial court granted the defendants' requested offset in an Order dated March 10, 2011. (R. at 608-11.) Plaintiffs appeal the trial court's decision to grant the defendants an offset for their unilateral post-judgment acts which substituted performance under the judgment and which were not supported by credible evidence to support the requested offset.

Summary of Argument

This action arose when defendants improperly encumbered and used business assets for their own personal use. Plaintiffs brought suit arguing that defendants had

breached fiduciary duties owed to the business and its members and sought monetary relief for this breach.

A judgment is the end result of the litigation. During the litigation a cause of action is turned into a judgment through the introduction of competent evidence to prove the value of a cause of action. Some causes of action are more difficult to value than others. For example, the value of pain and suffering is much more difficult to establish than a garden variety claim for breach of contract or property damage. As in this matter, the litigation of these claims is the opportunity for the parties to establish and contest the damages for an alleged wrong. If Murray Towers and Olsen wanted only to have the encumbrance of the property removed, they would have sought injunctive or other equitable relief. Instead, Murray Towers and Olsen sought to convert an improper encumbrance and breach of fiduciary duty claim into a monetary judgment.

The trial court erred when it granted defendants a $130,000 offset for its unilateral decision to negotiate the removal of the encumbrance from the property. Defendants did not obtain plaintiffs' or the trial court's consent to substitute performance of the judgment. In addition, defendants offered no evidence to support that the removal of the encumbrance conferred a value of $130,000 to plaintiffs. This Court should reverse the trial court's grant of an offset and allow plaintiff's to collect their judgment against defendants.

Argument

I. The trial court erred when it credited defendants with an offset against the judgment for unilaterally removing the encumbrance to the property after judgment was entered.

Defendants cannot dictate the manner in which the valid judgment can be satisfied. Similarly, defendants cannot avoid paying a valid judgment by curing the wrong after judgment is entered. The law with respect to the means and methods of satisfying a valid judgment is clear: "As a general rule, a judgment for the payment of money can be satisfied only in money, unless the judgment provides for, or the owner of the judgment agrees to, some other mode of payment." *ADA Enterprises, Inc. v. Thompson*, 132 N.W.2d 244, (Wisc. 1965) (citations omitted); *see also Home State Bank v. Potokar,* 617 N.E.2d 1302 (Ill. Ct. App. 1993); Heller *v. Lee*, 474 N.E.2d 856 (Ill. Ct. App. 1985); *Norwest Bank Nebraska v. Philips Realty Co.*, 594 N.W.2d 3 (Iowa 1999). In this case, defendants satisfied neither of the exceptions to the general rule requiring the payment of money to satisfy the judgment.

First, the terms of the judgment did not provide for some other mode of payment or performance of the judgment. The judgment unequivocally was for $146,683.60. It is undisputed that defendants did not pay this amount to plaintiffs as the judgment required.[1] Instead, defendants tendered a check for $16,683.60 and an "Acknowledgement of Satisfaction and Release of Trust Deed Note" in an attempt to satisfy the judgment and requested plaintiffs sign a satisfaction of judgment. Plaintiffs rejected this attempt to satisfy the judgment.

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1 In fact as discussed in Point II, defendants did not pay $130,000 to a third party.

With respect to payment of the Prisbrey loan and removal of the encumbrance, defendants previously attempted to amend the judgment to require plaintiffs to use the proceeds from the judgment to pay off the Prisbrey loan. Specifically, defendants filed a Motion to Alter or Amend Judgment in which they specifically requested the judgment be amended to require plaintiffs to use the proceeds from the judgment to pay off the Prisbrey Loan. (R. at 283.) This requested relief was denied. (R. at 439-440.) Having failed at trial which resulted in the judgment and having failed in a second attempt to amend the judgment, defendants resorted to self-help measures and substituted a document releasing the trust deed in lieu of paying the judgment. Such self-help measures have uniformly been rejected by courts. *See id.*

For example, in *Ada Enterprises*, Ada Enterprises owned a parcel of land adjacent to the Thompsons. Ada excavated along the property line in order to level the property. The Thompsons sued Ada for the excavation and recovered a judgment in the amount of $4,900 for the damage to the property. *See Ada Enterprises*, 132 N.W.2d at 246. **After** judgment was entered, Ada graded and improved the property in attempt to cure the damage it had caused during the excavation and which was the subject matter of the judgment. Ada then argued that its improvements had satisfied the judgment and that forcing it to pay the judgment after making the improvements would result in unjust enrichment to the Thompsons. *See id.*

Rejecting Ada's argument that its acts performed after the judgment had satisfied the judgment, the Wisconsin Court stated: "We view the alleged acts of Ada as an attempt unilaterally to substitute performance of its choice for the fulfillment of the

judgment." *Id.* at 248. The Wisconsin Court further noted, that "[h]ad Ada previously made an adequate repair, as it now claims to have done, the action, if brought at all, would have produced a different judgment. Ada's attempt to force acceptance of a different requital for its wrong, notwithstanding the judgment, is, in essence an attempt to reopen and to relitigate the controversy." *Id.* at 249. In addition, Ada attempted to argue that making it pay the judgment would create a windfall for the Thompsons and that the Thompsons knew of the repairs and did not object. *See id.* The court summarily rejected this argument as well: "judicial policy is and should be so strongly against continuing the litigation of controversies once adjudicated that Ada should not now be permitted to seek, in effect, a reopening or modification of the judgment by litigating the adequacy of the repair or the extent of the windfall Ada's own acts may have conferred on the Thompsons." *Id.*

Similarly, the Tenth Circuit rejected arguments similar to the ones advanced by the defendants in this matter. In *Republic Resources Corp. v. ISI Petroleum West Caddo Drilling Program 1981*, the defendants entered into a stipulation to convey clear marketable title to an oil well interest. *See id.*, 836 F.2d 462, 464 (10th Cir. 1987). Defendants failed to deliver clear title to plaintiffs, and plaintiffs obtained a default under the stipulation and a judgment for the liquidated amount of $150,000 set forth in the stipulation. *See id.* at 464-65. After entry of the judgment, defendants conveyed clear title to the well interest to plaintiffs as of the date required in the stipulation. Defendants argued that they were no longer in default of the stipulation and should be relieved from the judgment. *See id.*

For purposes of the defendants' argument, the Tenth Circuit assumed the conveyance after the judgment would have satisfied the defendants' obligations under the stipulation. *See id.* at 465. Notwithstanding this fact, the Tenth Circuit stated: "defendants should not be relieved from the judgment. A party who has breached a contract and has been ordered by a court to pay damages should not be allowed to free itself from paying by complying with the contract after the judgment has been entered." ***Id.***

This matter presents the same issues as in *Ada Enterprises* and *Republic Resources*. A party commits a wrong, fails to rectify the wrong prior to the entry of a money judgment, and after the judgment is entered comes to believe that simply correcting the wrong is a preferable alternative to paying the judgment entered against it. Defendants committed a wrong when they improperly encumbered the business' asset and used the money for their own personal benefit. Defendants refused to pay off the loan and remove the encumbrance from the property. In fact, plaintiffs requested defendants to pay off the loan and remove the encumbrance for several years prior to filing suit. Defendants' actions required plaintiffs to file this action in order to right the wrong. Plaintiffs proved that defendants' acts were improper and proved the value of the improper acts in the form of a judgment against defendants. **Defendants had the opportunity to defend against the entry of this judgment and have not appealed the entry of the judgment with respect to whether it was proper or as to the amount.** In addition, defendants requested that the trial court modify the judgment to require the proceeds to be used to satisfy the loan. Defendants' request to modify the judgment was

denied.

Having lost at every conceivable turn, defendants opted to take matters into their own hands in order to avoid paying a valid judgment to plaintiffs. The trial court did not grant defendants' requested relief to modify the judgment to provide some alternate form of satisfaction, and plaintiffs did not accept defendants' attempt to satisfy the judgment through a release of the trust deed. Accordingly, this Court should reverse the trial court's decision to allow the defendants an offset for the "Acknowledgement of Satisfaction and Release of Trust Deed Note."

The judgment did not contain any provision allowing defendants the option of choosing between paying the amount of the judgment or providing proof that the encumbrance was removed. The trial court erred when it allowed defendants to have an offset in the amount of $130,000 for removing the encumbrance to the property. Defendants had the opportunity to either never encumber the property in the first place or at the very least remove the encumbrance prior to having judgment entered against them. In either case, had defendants corrected the wrong prior to the entry of the judgment, the outcome of the trial would likely have been different. *See Ada Enterprises*, 132 N.W.2d at 249 ("[h]ad Ada previously made an adequate repair, as it now claims to have done, the action, if brought at all, would have produced a different judgment."). Defendants did neither prior to entry of judgment, and a valid judgment was entered for this wrong. Defendants cannot relitigate this case by curing the wrong that led to the judgment after the judgment was entered. Accordingly, defendants are not entitled to an offset for unilaterally removing the encumbrance to the property after the judgment was entered.

II. Payment of the judgment would not result in a windfall to plaintiffs, and any claim for a credit or offset should be litigated in the collateral action to dissolve the company.

The trial court erred when it concluded that an offset was necessary to prevent plaintiffs from receiving a double recovery and erred when it allowed defendants to reopen and attached the judgment. Once a judgment is entered and defendant fails to appeal the validity or amount of the judgment, a judgment debtor cannot claim that satisfying the judgment will result in a windfall or double recovery to the judgment plaintiff. Beyond the policy reasons for not allowing a judgment debtor to reopen the controversy after a judgment is entered and not allowing a judgment debtor to dictate the method of performance, the facts of this case demonstrate that payment of the judgment would not result in a windfall or a double recovery.

Underlying the entry of the judgment against these defendants is a business dispute between equal partners in a business. This dispute erupted when one partner improperly breached fiduciary obligations owed to the other by encumbering the business asset and using the proceeds for his own personal use. In fact in this action, defendants asserted a counter claim to dissolve the business, Murray Towers LLC, and to sell all of the company's assets. (R. at 57-58.) Prior to trial, defendants submitted proposed Findings of Fact and Conclusions of Law, which if proven at trial, would have resulted in a determination that defendants did not improperly encumber the property, did not deprive plaintiffs of use of the property, caused plaintiffs no harm, and breached no fiduciary duties owed to plaintiffs. (R. at 157-67.) Moreover, the proposed findings argued that the company was at an impasse and should be dissolved. (R. at 157–67.)

These issues were litigated at trial, and defendants did not appeal the result of the trial on all issues. The defendants' trial brief, which was filed after the trial, is illuminating as to the issues presented at trial. (R. at 177-200.) Again in their trial brief, defendants argued that the evidence at trial demonstrated that plaintiffs consented to loan and suffered no harm when the property was encumbered. Defendants argued the evidence at trial demonstrated that they breached no fiduciary duties and caused no harm to plaintiffs. In addition, defendants argued that the evidence at trial required the trial court to dissolve the company. (R. at 177-200.) Finally, defendants argued that if the trial court was inclined to grant plaintiffs relief that defendants should be given the opportunity to promptly repay the Prisbrey loan before the entry of judgment. (R. at 195.)

In its ruling, the trial court determined that defendants have not offered sufficient evidence to support that the members of the company were at an impasse or to demonstrate the company needed to be dissolved. (R. at 612, p. 4). The trial court determined that defendants owed a fiduciary duty, breached their fiduciary duty, and damaged plaintiffs in the amount of $130,000.00 plus attorney fees. (R. at 612, p. 4). As a result, a judgment was entered against defendants in the amount of $146,683.80. (R. at 275-81.) Defendants moved to modify this judgment, and that motion was denied. (R. at 282-307; 328-359; 439-40.)

The litigation of all these issues at trial is critical to understanding why the payment of the judgment does not result in a windfall or double recovery. Namely, a party's entitlement to a credit or an offset has no bearing on this judgment. Defendants have not appealed the amount or validity of the judgment and have lost the right to

contest the amount of the judgment or that payment of the judgment will result in a double recovery. Furthermore, the issues of offsets, credits, and unjust enrichment may be properly asserted in the collateral action for dissolution of the company, which defendants filed after this action was commenced and is currently pending before Judge Medley, civil no. 110911506.

As further example, plaintiffs have their own claims for offsets, credits, or unjust enrichment for amounts defendants owe to them for the operation and expenses of the business. Indeed, in moving for a stay of the sheriff's sale and request for a credit for paying off the Prisbrey loan, defendants acknowledged that plaintiffs had made a demand for additional amounts owed for property taxes paid on the property ($23,459.21)[2] and environmental remediation of the property ($50,701.41). (R. at 537-38.) If the defendants believed that payment of the Prisbrey loan would result in a windfall, double recovery, or unjust enrichment to plaintiffs, the place to litigate this issue was at trial or in the collateral action for dissolution. The judgment is the name of the company and the encumbered asses was a company asset. Defendants unilateral decision to remove the Prisbrey loan and to obtain a release of the trust deed note on the property cannot be used to reopen the litigation on the breach of fiduciary duty or to modify the valid judgment entered against them.

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2 After entry of the judgment, defendants also stopped making payments on the Prisbrey loan. Plaintiffs had to step forward to incur additional costs to prevent a default on the Prisbrey loan and the consequences to the business of a default. (R. at 613, p. 19:11-13, 20:3 – 21:18.). The trial court ordered defendants to repay the amounts spent to keep the loan from going into default; however, the trial court did not address the amounts owed for property taxes and environmental remediation costs.

In the course of requesting relief from the judgment, defendants offered no proof of the amounts paid on the Prisbrey loan. Rather, defendants only provided a document that removed the encumbrance from the property. Defendants, however, did not offer evidence of the amount paid to the holder of the trust deed. *See, e.g.*, *Heller v.* Lee, 474 N.E. 2d 856, 858 (Ill. Ct. App. 1985) (judgment debtor failed to offer evidence to show plaintiff accepted real estate in lieu of cash to satisfy judgment); *Norwest Bank Nebraska v. Phillips Realty Co.*, 594 N.W. 2d 3, 9 (Iowa 1999) (same). Defendants used the loan proceeds for their own personal benefit, but defendants have offered no evidence that the loan has been repaired.

At the hearing on the motion to stay the sheriff's sale, defendants admitted that the Prisbrey loan had not been paid in full in order to obtain the release of the trust deed. (R. at 613, p. 9: 16-23.) Because the Prisbrey loan has not been paid, defendants can offer no evidence or argument that plaintiffs will not at some future point be partners with or litigating against the Prisbrey loan noteholder if defendants default on the Prisbrey loan. Defendants maintain a 50% interest in Murray Towers LLC, and thus, a strong possibility exists that any creditor of defendants would seek to execute on this interest in the event of default. The only thing the defendants did was negotiate for release of the trust deed on the property and then demand satisfaction of a judgment for $146,683.60. Defendants have provided no evidence or proof, because it does not exist, that their subsequent acts of removing the encumbrance has benefitted Plaintiffs in the amount of $130,000. Rather, defendants' unilateral post–judgment acts had two consequences to plaintiffs: (1) it deprived plaintiffs of the opportunity to provide evidence of competing offsets or

credits to limit defendants' ability to reduce or modify the amount owed under the judgment, and (2) it merely substituted one creditor for another–as the Prisbrey loan noteholder essentially stepped into plaintiffs' shoes. In either case, defendants' acts do not provide a substantial benefit to plaintiffs to warrant the trial court's decision to provide a $130,000 offset against the valid judgment.

Moreover, as the trial court noted, the trial went beyond the amount owed on the Prisbrey loan. (R. at 613, p. 6: 8-18.) To be sure, the amount of the trust deed encumbering the property was the primary amount of damages; however, the trial addressed broader issues and the judgment resulted from a breach of fiduciary duty. Once the value of the claim is proven at trial—taking into account any and all issues between the parties—and after the judgment is entered, defendants cannot collaterally attack the judgment or reopen the controversy through subsequent acts.

Accordingly, the trial court erred when it concluded that defendants were entitled to an offset because to conclude otherwise would result in a double recovery to plaintiffs. After the entry of the judgment, the denial of the motion to amend the judgment, and the running of the time to appeal the judgment, the trial court should not have allowed defendants the opportunity to reopen the judgment through unilateral acts done after entry of the judgment. In addition, defendants offered no evidence to demonstrate its subsequent acts conferred a benefit equal to the amount of the judgment in order to support the double recovery argument. Because defendants have not offered evidence in the action to dissolve the company, the trial court erred in giving defendants a credit for getting the Prisbrey trust deed removed from the property.

CONCLUSION

Based on the foregoing, plaintiffs request this Court to reverse the trial court's grant to defendants of an offset in the amount of $130,000 for defendants' act of removing the encumbrance. Plaintiffs should be allowed the opportunity to collect the full amount of the judgment. Any claims for an offset can be properly asserted in the collateral action. In addition, plaintiffs are entitled to their attorney fees and costs consistent with the trial court's grant of fees and costs below.

DATED this 20 day of June, 2011.

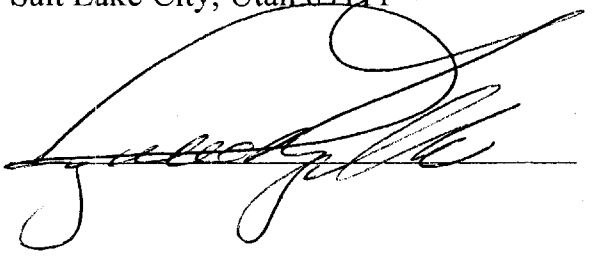
RICHARDS BRANDT MILLER NELSON

ZACHARY E. PETERSON
PAUL P. BURGHARDT
Attorneys for Plaintiffs and Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was mailed, first class, postage prepaid, on this 20th day of June, 2011, to the following:

Rod Andreason
KIRTON & MCCONKIE
60 East South Temple, Suite 1800
Salt Lake City, Utah 84111



ADDENDUM

PAUL P. BURGHARDT [10795]
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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

MURRAY TOWERS, LLC, a Utah Limited Liability Company and BRAD OLSEN, Plaintiffs, vs. BJORN T. BANG aka BILL BANG; LAKELINE DEVELOPMENT, L.C., A Utah Limited Liability Company; and SUZANNE LARSON aka SUZANNE BANG, Defendants.	**ORDER** Civil No. 070401854 Judge Mark Kouris

This matter came before the Court at two hearing on December 6, 2010 and December 15, 2010. The parties were represented at the hearing by their respective counsel of record. Having considered the pleadings and heard oral argument, and for good cause appearing, the Court here ORDERS as follows:

1. Defendants shall be entitled to an offset in the amount of $130,000 against the amount due under the final Judgment entered on May 10, 2010 for the post-judgment payment of $130,000 made by Defendants to a third-party creditor.

2. The sheriff's sale scheduled by Plaintiffs is hereby cancelled.

3. The $26,000 of funds deposited into Court by Defendants shall be released to Plaintiffs for additional interest and attorney fees incurred by Plaintiffs pursuant to the terms of the Judgment.

4. Defendants shall pay Plaintiffs an additional sum of $632 for attorney fees and collection costs under the Judgment.

IT IS SO ORDERED

DATED this 10 day of May, 2010.

BY THE COURT:

STATE OF UTAH THIRD DISTRICT COURT WEST JORDAN

HONORABLE MARK KOURIS
THIRD DISTRICT COURT JUDGE

APPROVED AS TO FORM:

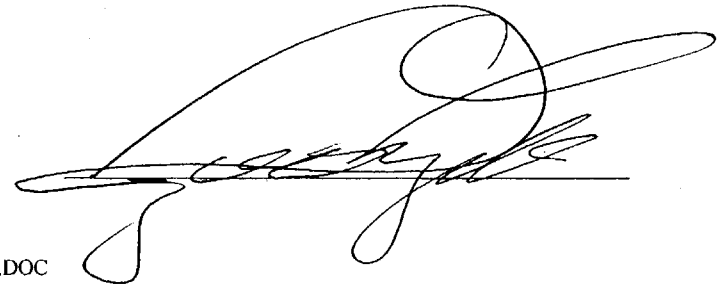
KIRTON & McCONKIE

Rod Andreason
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was emailed on this 24 day of February, 2011, to:

Rod N. Andreason
KIRTON & McCONKIE
60 East South Temple, 1800
Salt Lake City, Utah 84111



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Angalee Trujillo

From: Paul P Burghardt
Sent: Friday, February 25, 2011 11:23 AM
To: Angalee Trujillo
Subject: FW: Murray Towers
Attachments: oledata.mso; SS1481.pdf

Please put this on my calendar for next Friday (to send it out to the Court).

From: Paul P Burghardt
Sent: Friday, February 25, 2011 11:22 AM
To: 'Rod Andreason'
Subject: Murray Towers

Rod,

I have prepared the attached order for submission to the trial court in accordance with the Court of Appeals' Motion. I believe that the order accurately reflects what was done by the trial court at the two hearings on December 6 and December 15, 2010.

I would like to submit this proposed Order to the Court as soon as possible (in light of the Motion filed by the Utah Court of Appeals) and would appreciate it if you could respond as soon as you have time.

I am sending this via email pursuant to your previously requests to that effect. If I need to serve you with a hard copy, please notify me immediately.

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Richards Brandt
Miller Nelson
A Professional Law Corporation