

1992

Keith C. Holt, Joyce S. Holt v. Manuel Katsanevas : Brief of Appellant

Utah Court of Appeals

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Nick J. Colessides; Attorney for Katsanevas.

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 920225

IN THE UTAH COURT OF APPEALS

KEITH C. HOLT and JOYCE S. HOLT,	:	
	:	
Plaintiffs/Appellants,	:	BRIEF OF APPELLANTS
	:	
vs.	:	
	:	
MANUEL KATSANEVAS,	:	Appellate No. 920225-CA
	:	
Defendant/Appellee.	:	Priority No. 16

Appeal from the Third District Court, Judge Brian

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FILED

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COURT OF APPEALS

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IN THE UTAH COURT OF APPEALS

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	:	
Plaintiffs/Appellants,	:	BRIEF OF APPELLANTS
	:	
vs.	:	
	:	
MANUEL KATSANEVAS,	:	Appellate No. 920225-CA
	:	
Defendant/Appellee.	:	Priority No. 16

Appellants Keith C. Holt and Joyce S. Holt, through their counsel, submit the following brief in support of their appeal from a summary judgment entered against them in the Third District Court by Judge Pat Brian.

I. JURISDICTION OF THE COURT OF APPEALS

UCA 78-2-2(3)(j) confers jurisdiction upon the Supreme Court to decide this appeal from a final judgment. The Court of Appeals has acquired jurisdiction under UCA 78-2a-3(2)(j) due to assignment by the Supreme Court.

II. ISSUES PRESENTED FOR REVIEW AND STANDARD OF APPELLATE REVIEW

There are two primary and several secondary issues of law and fact. In rough order of importance, these are:

A. Is an oral modification of a written real estate contract taken out of the statute of frauds by part performance. The Appellate Court shows no deference to the legal conclusions of the trial court in granting summary judgment, reviewing them instead for correctness. Krantz v. Holt, 819 P.2d 352 (Utah 1991); Larsen v. Overland Thrift & Loan, 8818 P.2d 1316 (Utah App. 1991).

B. Was there manifest error in granting summary judgment because 1) genuine issues of material fact prevented summary judgment and 2) viewed in the light most favorable to the appellants, the facts do not support summary judgment. Summary judgment is appropriate only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. In reviewing an order granting summary judgment, the Appellate Court views the facts and inferences in the light most favorable to the non-moving party. Krantz and Larsen, *supra*.

C. Should the trial court have amended its Findings, made additional Findings, and amended its Judgment pursuant to Rule 52 based upon the above errors in granting summary judgment.

The standard of review for throwing out Findings of Fact is that the finding must be clearly erroneous. A finding is clearly erroneous if it is against the great weight of the evidence or if the Court is otherwise definitely and firmly convinced that a mistake has been made. State vs. Walker, 743 P.2d 191 (Utah 1987), and Rule 52(a), U.R.C.P.

D. Should the trial court have granted the Holts' motion for new trial based upon the above errors in granting summary judgment. The standard for review is that a ruling on a motion for a new trial will not be disturbed on appeal except when there is a clear abuse of the Court's discretion. Jensen v. Thomas, 570 P.2d 695 (Utah 1977).

E. Should the trial court have granted the Holts' motion for relief from judgment under Rule 60 based upon the above errors in granting summary judgment. The standard for review of Rule 60(b) motions appears to be that the Supreme Court will reverse the trial court's ruling only when there has been an abuse of discretion. Larsen v. Collins, 684 P.2d 52 (Utah 1984).

III. CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES AND REGULATIONS

In the Holts' view, there are no constitutional provisions, statutes, ordinances, rules, or regulations whose interpretation is determinative of this appeal.

IV. STATEMENT OF THE CASE

A. Nature of the Case, Course of Proceeding, and Disposition in the Court Below

The Holts brought a declaratory judgment action against defendant Manuel ("Mike") Katsanevas desiring determination of how a certain payment should be applied upon a Uniform Real Estate Contract. The trial court granted Mr. Katsanevas' motion for summary judgment in a Memorandum Decision entered November 4, 1991 and a Judgment entered November 27, 1991. The Holts, through new counsel, brought motions under Rules 52, 59, and 60(b) seeking to overturn the summary judgment. These motions were denied and the Holts appealed.

B. Statement of Facts

1. On or about April 2, 1979, the Holts and the Katsanevas brothers entered into a Uniform Real Estate Contract under which the Katsanevas brothers agreed to purchase from the Holts real property in Salt Lake City known as 280 West South Temple for the sum of \$275,000. (See Uniform Real Estate Contract, Record pp. 105-107, Appendix Exhibit 1.)

2. Pursuant to the contract, the Katsanevas brothers paid \$25,000 down and agreed to make equal monthly payments of \$2,400 each. The contract prohibited prepayment, stating: "After the first 120 months of payments, The Buyer, at his option at any time, thereafter may pay amounts in excess of the monthly

payments upon the unpaid balance. . . ." The contract provided that the Katsanevas brothers would be entitled to a warranty deed after the Holts had received the full purchase price. (See Uniform Real Estate Contract, Record pp. 105-107, Appendix Exhibit 1.)

3. Beginning in late 1981 or early 1982, Keith Holt and the Katsanevas brothers had several conversations in which the Katsanevases disclosed they were negotiating with Triad which wanted to buy 280 West South Temple for around \$3,000,000. The Katsanevases recognized that the Uniform Real Estate Contract would not give them title until the purchase price was paid and also prohibited prepayment. They wanted the Holts to convey 280 West South Temple and accept a security interest in other property. (See Second Affidavit of Keith Holt, paragraphs 2-4, Record pp. 209-219, Appendix Exhibit 9; Manuel Katsanevas Deposition, pp. 16-21, Appendix Exhibit 7.)

4. Around the summer of 1982, Keith Holt met with the Katsanevas brothers to discuss the terms for releasing 280 West South Temple. Also present were the attorney for the Katsanevas brothers and Robert Bailey, a senior loan officer at Continental Bank. Second Affidavit of Keith Holt, paragraph 6, Record pp. 209-219, Appendix Exhibit 9; Affidavit of Robert Bailey, paragraph 5, Record 205-207, Appendix Exhibit 10; Manuel Katsanevas Deposition, pp. 16-24 (issues of date, persons present), Appendix Exhibit 7.

5. After the Katsanevas brothers rejected two plans, the parties agreed orally upon a third plan as follows:

(a) The Holts would convey title to 280 West South Temple to the Katsanevas brothers when requested in order to permit them to sell the property to Triad. This conveyance was made about February 7, 1984. Second Affidavit of Keith Holt, paragraph 11, Record pp. 209-219, Appendix Exhibit 9.

(b) The Katsanevases would give the Holts collateral to secure the remaining purchase price of the property. The Katsanevases gave the Holts a trust deed and assignment of contract on February 13, 1984. Assignment of Contract (for Security), Record pp. 122-124, Appendix Exhibit 4; Trust Deed, Record pp. 111-112, Appendix Exhibit 3.

(c) In order to clear title to 280 West South Temple, the Katsanevases would pay off a lien held by Continental Bank. The Katsanevases paid Continental Bank the sum of \$46,386.51 on or about December 21, 1983. Receipt, Record p. 116, Second Affidavit of Keith Holt, paragraph 13, Record pp. 209-219, Appendix Exhibit 9.

(d) When the regular payments made by the Katsanevases had reduced the principal sum under the Uniform Real Estate Contract to \$46,386.51, the payment to Continental Bank would be applied and the contract would be paid in full. This last agreement gives rise to the present lawsuit. Keith Holt and Robert Bailey say there was such an agreement. Manuel Katsanevas

says there was not. The trial court found there was no agreement. Keith Holt Affidavit, paragraph 4, Record 138-139, Appendix Exhibit 8; Second Affidavit of Keith Holt, paragraphs 7-9, Record pp. 209-219, Appendix Exhibit 9; Affidavit of Robert Bailey, paragraphs 7-9, Record pp. 205-207, Appendix Exhibit 10; Manuel Katsanevas Deposition, pp. 23,24,26,27, Appendix Exhibit 7 (disputes agreement on application of payment); Memorandum Decision, Findings of Fact No. 12, Record pp. 175-178, Appendix Exhibit 11 (finding no agreement).

6. Although there is no explicit written modification of the original contract stating how to apply the \$46,386.51, several documents allude to it. Findings of Fact Nos. 8 and 9 of the Memorandum Decision are based on such documents. To understand their significance, one must understand that prior to the Katsanevases' payment of \$46,386.51 to Continental Bank, the principal balance due on the Uniform Real Estate Contract was about \$217,500. These provisions in question are:

(a) An Assignment of Contract (for Security) dated February 13, 1984, prepared by the Katsanevases' attorney and signed by the Katsanevases but not the Holts, stated in part:

This Assignment is given for the purpose of security payment of an indebtedness, in the principal sum of approximately \$172,000 owed by the Assignor [the Katsanevases], payable to the order of the Assignee [the Holts] pursuant to an agreement between the Assignor and Assignee.

[Terms in brackets do not appear in original.] Record pp. 122-124, Appendix Exhibit 4.

(b) A Trust Deed dated February 13, 1984 on a form filled out by the Katsanevases' attorney and signed by the Katsanevases but not the Holts stated in part:

For the purpose of securing payment of the indebtedness evidenced by a real estate contract dated April 2, 1979 in the principal sum of \$250,000, payable to the order of the Beneficiary [the Holts] at the times, in the manner and with interest as therein set forth,. . .
[Terms in brackets do not appear in original.] Record pp.111-112, Appendix Exhibit 3.

(c) A Release dated March 15, 1984, prepared by the Katsanevases' attorney for the purpose of releasing Steven Katsanevas from liability under the Uniform Real Estate Contract, was signed by the Holts and stated in the recitals as follows:

Whereas, the above referred to obligation due to the undersigned [the Holts] in the sum of \$172,000 (as more particularly described in the Trust Deed and Assignment of Contract) has been assumed by Manuel Katsanevas.
[Terms in brackets do not appear in original.] Record pp. 126-128, Appendix Exhibit 5.

(d) A schedule allocating payments between principal and interest and showing the remaining principal balance has been sent monthly to both the Holts and the Katsanevases by a bank acting as escrow agent since at least March, 1982. It shows that interest was being charged on about \$215,162 in March, 1983. This schedule did not reduce principal for the \$46,386.51 payment by the Katsanevases to Continental

Bank, which is consistent with the oral agreement asserted by the Holts. Manuel Katsanevas did not object to it until late 1989 and used it for tax purposes in 1983 and subsequent years. Second Affidavit of Keith Holt, paragraphs 12-14, and attachment, Record pp. 209-219, Appendix Exhibit 9; Manuel Katsanevas Deposition, pp. 39-44, Appendix Exhibit 7.

(e) A letter dated March 17, 1986, sent by the Holts to Manuel Katsanevas and signed by the Holts, stated:

For your files, we are sending you the following information on the real estate contract you have with us.

The pay off to Continental Bank for \$45,313.92 you made in December 1983 is to be deducted off the bottom of our contract not the top.

Your payment will be complete with us when your balance reaches \$45,313.92 or approximately your payment #182.

You, Steve and your attorney agreed to this in lieu of 2% raise in the contract or the payment of our income taxes for 1983.

Second Affidavit of Keith Holt, Record pp. 209-219, Appendix Exhibit 6.

Again, Manuel Katsanevas did not object until late 1989.

The depositions of Manuel Katsanevas and Keith Holt were published under URCP Rule 32 and by Judge Brian's order dated January 2, 1992, Record pp. 254-257.

V. SUMMARY OF ARGUMENTS

A. Utah case law has long recognized that if a party has changed his position by performing an oral modification so that it would be inequitable to permit the other party to found a claim upon the original agreement as unmodified or defeat the former's claim by setting up a defense that performance was not according to the written contract, after he has induced or consented to the former going forward, the modified agreement should be held valid.

B. Summary judgment against the Holts was manifest error due to the following facts:

1. The Holts and Katsanevases, each for new consideration, orally agreed to modify their original Uniform Real Estate Contract. Part of that modification was an agreement to apply the Katsanevases' payment to Continental Bank to the "bottom" of the contract.

2. In reliance upon the oral modification, the Holts conveyed title to the Katsanevases, permitted payment to Continental Bank, and accepted alternate security for the purchase price.

3. Documents drafted by the Katsanevases' attorney which mentioned \$172,000 were ambiguous in light of the oral agreement, were signed after the Holts' performance, and were reasonably understood by the Holts to not be intended as a modification of the oral agreement.

VI. ARGUMENT

There is manifest error when summary judgment is granted despite the existence of genuine issues of material fact. Rule 56(c), U.R.C.P.; Benchmark, Inc. v. Salt Lake Valley Mental Health Board, Inc., 175 Utah Adv. Rep. 13 (Utah 1991). The

existence of an enforceable oral agreement to apply the \$46,386.51 payment to the contract when principal had been reduced to that figure is a genuine issue of material fact which precludes summary judgment.

The trial court may have believed that such an oral agreement was not enforceable because it fell within the Statute of Frauds, U.C.A. 25-5-1, et seq. This was an error of law.

In Allen v. Kingdon, 723 P.2d 394, 396-397 (Utah 1986), the Supreme Court stated:

The rule is well settled in Utah that if the original agreement is within the statute of frauds, a subsequent agreement that modifies any of the material parts of the original must also satisfy the statute. Golden Key Realty, Inc. v. Mantas, 699 P. 2d 730, 732 (Utah 1985). An exception to this general rule has been recognized where a party has changed position by performing an oral modification so that it would be inequitable to permit the other party to found a claim or defense on the original agreement as unmodified. White v. Fox, 665 P.2d 1297, 1301 (Utah 1983) (citing Bamberger Co. v. Certified Productions, Inc., 88 Utah 194, 201, 48 P.2d 489, 492 (1935), aff'd on rehearing, 88 Utah 213, 53 P.2d 1153 (1936)).

In Utah Mercur Gold Min. Co. v. Hershel Gold Min. Co., 103 Utah 249, 134 P.2d 1094, 1097 (1943), the Court stated:

Whether the legal label given to the basis of plaintiffs' claimed right to continue in possession of the property is equitable estoppel, irrevocable license, or an oral contract for a written extension taken out of the statute of frauds because of partial performance is not so important. These concepts are but forms designed to serve a more ultimate principle that no one shall induce another to act on promise of reward for such act and then after obtaining the benefit of the same repudiate the contract.

In Bamberger, supra, the Court stated:

As stated by Mr. Justice Cordozo, then justice of the Court of Appeals of New York, . . . : "Sometimes the resulting disability has been characterized as an estoppel, sometimes as a waiver. * * * We need not go into the question of the accuracy of the description. * * * The truth is that we are facing a principle more nearly ultimate than either waiver or estoppel, one with roots in the yet larger principle that no one shall be permitted to found any claim upon his own inequity or take advantage of his own wrong. * * * The statute of frauds was not intended to offer an asylum of escape from that fundamental principle of justice."

We accept this principle. If a party has changed his position by performing an oral modification so that it would be inequitable to permit the other party to found a claim upon the original agreement as unmodified or defeat the former's claim by setting up a defense that performance was not according to the written contract, after he has induced or consented to the former going forward, the modified agreement should be held valid.

Bamberger at 492.

The trial court may have believed that the figure of \$172,000 which appeared in the Assignment of Contract and the Release concluded the matter. The proper interpretation of this figure requires resolution of factual issues. Any uncertainty with respect to construction of a contract should be resolved against the party whose attorney drafted the agreement. Sears v. Riemersma, 655 P.2d 1105 (Utah 1982). \$172,000 would approximate the unpaid principal whether the \$46,386.51 was applied to the "top" or the "bottom" of the contract. See illustration.

TOP OF
CONTRACT

\$46,386
(Paid)

\$172,000
(Unpaid)

BOTTOM OF
CONTRACT

\$172,000
(Unpaid)

\$46,386
(Paid)

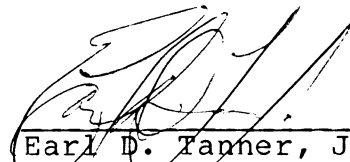
The Assignment of Contract and Release came after the Katsanevases had paid Continental Bank and the Holts had delivered title to 280 West South Temple. In fact, the only document referring to \$172,000 which was signed by the Holts was the Release which occurred about a month after transfer of title and grant of new security. The purpose of the document was to release Steve Katsanevas from liability under the Uniform Real Estate Contract and \$172,000 was only mentioned in the recitals. It was not an occasion for negotiating how the \$46,386.51 was to be applied. Keith Holt did not believe that the Release changed the initial oral agreement in any fashion. Second Affidavit of Keith Holt, paragraphs 15-17, Record pp. 209-219, Appendix Exhibit 9.

VII. CONCLUSION

The error of the trial court in granting summary judgment is manifest. There were genuine issues of material fact arising out of the oral modification of the Uniform Real Estate Contract. The trial court's Finding No. 12 that there was no agreement was clearly erroneous. For the same reasons, there was a manifest abuse of discretion in refusing the Holts' motions under Rules 59 and 60(b).

The Holts respectfully urge the Court to vacate the entire Memorandum Decision and Judgment and remand this matter for trial with instructions concerning the enforceability of the oral modifications to the Uniform Real Estate Contract.

DATED this 20th day of April, 1992.




Earl D. Tanner, Jr.
Attorney for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of April, 1992,
four true and correct copies of the foregoing BRIEF OF APPELLANT
were hand delivered to:

Nick J. Colessides, Esq.
Attorney for Appellee
466 South 400 East
Salt Lake City, Utah 84111



APPENDIX TO
BRIEF OF APPELLANT

<u>Exhibit</u>	<u>Description</u>
1	Uniform Real Estate Contract dated April 12, 1979
2	Colessides Letter to Holts dated November 7, 1983
3	Trust Deed dated February 13, 1984
4	Assignment of Contract (for Security) dated February 13, 1984
5	Release dated March 15, 1984
6	Holts Letter to Katsanevas dated March 17, 1986
7	Deposition of Manuel Katsanevas
8	Affidavit of Keith Holt
9	Second Affidavit of Keith Holt
10	Affidavit of Robert Bailey
11	Memorandum Decision

44.02

EXHIBIT 1

UNIFORM REAL ESTATE CONTRACT

1. THIS AGREEMENT, made in duplicate this 2nd day of April, A. D., 1979,
by and between Keith C. Holt and Joyce S. Holt, husband and wife,
hereinafter designated as the Seller, and Manuel Katsanevas and Steve Katsanevas,

hereinafter designated as the Buyer, of the City and County of Salt Lake,
State of Utah,

2. WITNESSETH: That the Seller, for the consideration herein mentioned agrees to sell and convey to the buyer,
and the buyer for the consideration herein mentioned agrees to purchase the following described real property, situate in
the county of Salt Lake, State of Utah, to-wit: 280 West South Temple
More particularly described as follows: ADDRESS

Beginning at the Southwest Corner of Lot 2, Block 85,
Plat "A", Salt Lake City Survey, and running thence
East 8 rods; thence North 10 rods; thence West 8 rods;
thence South 10 rods to the point of beginning.

3. Said Buyer hereby agrees to enter into possession and pay for said described premises the sum of Two
Hundred Seventy-Five Thousand----- Dollars (\$ 275,000.00)
payable at the office of Seller, his assigns or order
strictly within the following times, to-wit: Twenty-Five Thousand Dollars (\$ 25,000.00)
cash, the receipt of which is hereby acknowledged, and the balance of \$ 250,000.00 shall be paid as follows:
consecutive equal monthly payments of \$2400.00, the first of which shall
be due on October 1, 1979, and a like amount on the 1st day of each
month thereafter, until the balance together with interest is paid in
full. Interest shall be charged from September 1, 1979, on all unpaid
portions of the purchase price at the rate of nine (9%) percent per
annum for the first 120 monthly payments, and then at a rate which shall
be the greater of eight (8%) percent per annum or not more than two (2)
percentage points below the then current prime interest rate of
Banker's Trust.

Possession of said premises shall be delivered to buyer by the 1st day of May, 1979.

4. Said monthly payments are to be applied first to the payment of interest and second to the reduction of the
principal. ~~XXXXXXXXXXXXXXXXXXXX After the first 120 months XXXXXXXXXXXXXXXXXXXX~~
~~XXXXXXXXXXXXXXXXXXXX of payments XXXXXXXXXXXXXXXXXXXX~~
after ~~XXXXXXXXXXXXXXXXXXXX~~ The Buyer, at his option at anytime, there
may pay amounts in excess of the monthly payments upon the unpaid balance subject to the limitations of any mortgage
or contract by the Buyer herein assumed, such excess to be applied either to unpaid principal or in prepayment of future
installments at the election of the buyer, which election must be made at the time the excess payment is made.

5. It is understood and agreed that if the Seller accepts payment from the Buyer on this contract less than according
to the terms herein mentioned, then by so doing, it will in no way alter the terms of the contract as to the forfeiture
hereinafter stipulated, or as to any other remedies of the seller.

6. It is understood that there presently exists an obligation against said property in favor of Citizens
National Bank with an unpaid balance of
\$ 71,287.18, as of April 1, 1979.

7. Seller represents that there are no unpaid special improvement district taxes covering improvements to said prem-
ises now in the process of being installed, or which have been completed and not paid for, outstanding against said prop-
erty, except the following None

8. The Seller is given the option to secure, execute and maintain loans secured by said property of not to exceed the
then unpaid contract balance hereunder, bearing interest at the rate of not to exceed nine percent
(9%) per annum and payable in regular monthly installments; provided that the aggregate monthly installment
payments required to be made by Seller on said loans shall not be greater than each installment payment required to be
made by the Buyer under this contract. When the principal due hereunder has been reduced to the amount of any such
loans and mortgages the Seller agrees to convey and the Buyer agrees to accept title to the above described property
subject to said loans and mortgages.

9. If the Buyer desires to exercise his right through accelerated payments under this agreement to pay off any obli-
gations outstanding at date of this agreement against said property, it shall be the Buyer's obligation to assume and
pay any penalty which may be required on prepayment of said prior obligations. Prepayment penalties in respect
to obligations against said property incurred by seller, after date of this agreement, shall be paid by seller unless
said obligations are assumed or approved by buyer.

10. The Buyer agrees upon written request of the Seller to make application to a reliable lender for a loan of such
amount as can be secured under the regulations of said lender and hereby agrees to apply any amount so received upon
the purchase price above mentioned, and to execute the papers required and pay one-half the expenses necessary in ob-
taining said loan, the Seller agreeing to pay the other one-half, provided however, that the monthly payments and
interest rate required, shall not exceed the monthly payments and interest rate as outlined above.

11. The Buyer agrees to pay all taxes and assessments of every kind and nature which are or which may be assessed
and which may become due on these premises during the life of this agreement. The Seller hereby covenants and agrees
that there are no assessments against said premises except the following:

Property is within Salt Lake City and is subject to assessments
made thereby. There are no assessments as of the date hereof.

The Seller further covenants and agrees that he will not default in the payment of his obligations against said property.

12. The Buyer agrees to pay the general taxes after May 1, 1979

13. The Buyer further agrees to keep all insurable buildings and improvements on said premises insured in a company acceptable to the Seller in the amount of not less than the unpaid balance on this contract, or \$_____ and to assign said insurance to the Seller as his interests may appear and to deliver the insurance policy to him.

14. In the event the Buyer shall default in the payment of any special or general taxes, assessments or insurance premiums as herein provided, the Seller may, at his option, pay said taxes, assessments and insurance premiums or either of them, and if Seller elects so to do, then the Buyer agrees to repay the Seller upon demand, all such sums so advanced and paid by him, together with interest thereon from date of payment of said sums at the rate of % of one percent per month until paid.

15. Buyer agrees that he will not commit or suffer to be committed any waste, spoil, or destruction in or upon said premises, and that he will maintain said premises in good condition.

16. In the event of a failure to comply with the terms hereof by the Buyer, or upon failure of the Buyer to make any payment or payments when the same shall become due, or within twenty (20) days thereafter, the Seller, at his option shall have the following alternative remedies:

A. Seller shall have the right, upon failure of the Buyer to remedy the default within five days after written notice, to be released from all obligations in law and in equity to convey said property, and all payments which have been made theretofore on this contract by the Buyer, shall be forfeited to the Seller as liquidated damages for the non-performance of the contract, and the Buyer agrees that the Seller may at his option re-enter and take possession of said premises without legal processes as in its first and former estate, together with all improvements and additions made by the Buyer thereon, and the said additions and improvements shall remain with the land become the property of the Seller, the Buyer becoming at once a tenant at will of the Seller; or

B. The Seller may bring suit and recover judgment for all delinquent installments, including costs and attorneys fees. (The use of this remedy on one or more occasions shall not prevent the Seller, at his option, from resorting to one of the other remedies hereunder in the event of a subsequent default); or

C. The Seller shall have the right, at his option, and upon written notice to the Buyer, to declare the entire unpaid balance hereunder at once due and payable, and may elect to treat this contract as a note and mortgage, and pass title to the Buyer subject thereto, and proceed immediately to foreclose the same in accordance with the laws of the State of Utah, and have the property sold and the proceeds applied to the payment of the balance owing, including costs and attorney's fees; and the Seller may have a judgment for any deficiency which may remain. In the case of foreclosure, the Seller hereunder, upon the filing of a complaint, shall be immediately entitled to the appointment of a receiver to take possession of said mortgaged property and collect the rents, issues and profits therefrom and apply the same to the payment of the obligation hereunder, or hold the same pursuant to order of the court; and the Seller, upon entry of judgment of foreclosure, shall be entitled to the possession of the said premises during the period of redemption.

17. It is agreed that time is the essence of this agreement.

18. In the event there are any liens or encumbrances against said premises other than those herein provided for or referred to, or in the event any liens or encumbrances other than herein provided for shall hereafter accrue against the same by acts or neglect of the Seller, then the Buyer may, at his option, pay and discharge the same and receive credit on the amount then remaining due hereunder in the amount of any such payment or payments and thereafter the payments herein provided to be made, may, at the option of the Buyer, be suspended until such time as such suspended payments shall equal any sums advanced as aforesaid.

19. The Seller on receiving the payments herein reserved to be paid at the time and in the manner above mentioned agrees to execute and deliver to the Buyer or assigns, a good and sufficient warranty deed conveying the title to the above described premises free and clear of all encumbrances except as herein mentioned and except as may have accrued by or through the acts or neglect of the Buyer, and to furnish at his expense, a policy of title insurance in the amount of the purchase price or at the option of the Seller, an abstract brought to date at time of sale or at any time during the term of this agreement, or at time of delivery of deed, at the option of Buyer.

20. It is hereby expressly understood and agreed by the parties hereto that the Buyer accepts the said property in its present condition and that there are no representations, covenants, or agreements between the parties hereto with reference to said property except as herein specifically set forth or attached hereto None.

21. The Buyer and Seller each agree that should they default in any of the covenants or agreements contained herein, that the defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, which may arise or accrue from enforcing this agreement, or in obtaining possession of the premises covered hereby, or in pursuing any remedy provided hereunder or by the statutes of the State of Utah whether such remedy is pursued by filing a suit or otherwise.

22. It is understood that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors, and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the said parties to this agreement have hereunto signed their names, the day and year first above written.

Signed in the presence of

Lucie E. Holt
Grace S. Holt
Seller
Margaret Kalsman
Steve Kalsman
Buyer

Approved Form:
BLANK NO. 100-5 GEN PRINTING CO. - WASHINGTON

To

Uniform Real Estate Contract

No

EXHIBIT "A"

To be attached to a Uniform Real Estate Contract dated April 2, 1979, between Keith C. Holt and Joyce S. Holt, sellers, and Manuel Katsanevas and Steve Katsanevas, buyers. Property is located at 280 West South Temple, Salt Lake City, Utah. Contract is in the amount of \$275,000.00.

The following changes are acceptable to the buyers:

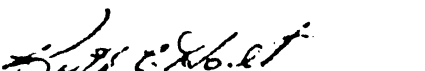
ITEM #6 - That the Citizens National Bank loan as stated will be transferred to Continental Bank and Trust Company with a balance of \$65,000.00.

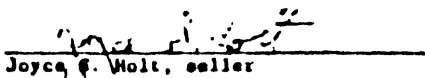
ITEM #8 - That the buyers acknowledge and approve the interest rate stated as 9% will be 11-1/2% for the Continental Bank loan.

DATED THIS 16 DAY OF April, 1979


Manuel Katsanevas, buyer


Steve Katsanevas, buyer


Keith C. Holt, seller


Joyce S. Holt, seller

RAB/jd

EXHIBIT
'A-3'

EXHIBIT 2

LAW OFFICES
NICK J. COLESSIDES
466 SOUTH 400 EAST
SALT LAKE CITY, UTAH 84111
801 521-4441

November 7, 1983

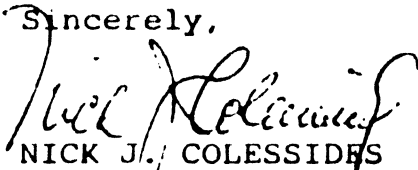
Mr. & Mrs. Keith Holt
721 North 300 East
Richfield, Utah 84701

Re: Crownburger II - Continental Bank Loan

Dear Mr. & Mrs. Holt,

Confirming our telephone conversation today this will acknowledge (as per the agreement made by you and Manuel Katsanevas on September 27, 1983) that Manuel Katsanevas is given the right to pay in full the promissory note payable to Continental Bank & Trust Company in the approximate amount of \$48,000.00 or such lesser amount as due to the bank and thus obtain a release of the first mortgage upon the "old" Crownburger property, which release of mortgage shall be filed or recorded with the Salt Lake County Recorder's Office. The amount paid to the Bank by Katsanevas shall reduce the principal sum, owed to you under the real estate contract, by the same amount.

Sincerely,


NICK J. COLESSIDES
Attorney at Law

NJC:ssc

cc: Manuel Katsanevas

EXHIBIT: 4 DATE: 2-27-91
WITNESS: Holt
NED A. GREENIG: RPR/CSR

EXHIBIT
"C"

EXHIBIT 3



Western States Title Company

WHEN RECORDED, MAIL TO:

NICK J. COLESSIDES
466 South 4th East
Salt Lake City, Utah 84111

Space Above This Line for Recorder's Use

6.50
REQ. 9-1
FEB 17 3 12 PM '84
NICK J. COLESSIDES
SALT LAKE COUNTY, UTAH

3906636

TRUST DEED

THIS TRUST DEED is made this 13th day of February, 19 84,
between MANUEL KATSANEVAS and STEVE KATSANEVAS, as Trustor,
whose address is 118 North 300 West, Salt Lake City, Utah 84103
(Street and Number) (City) (State)
WESTERN STATES TITLE COMPANY, as Trustee,* and
KEITH C. HOLT and JOYCE S. HOLT
721 North 300 East, Richfield, Utah 84701, as Beneficiary.

Trustor hereby CONVEYS AND WARRANTS TO TRUSTEE IN TRUST, WITH POWER
OF SALE, the following described property situated in Salt Lake County, Utah:

SEE ATTACHED EXHIBIT "A"
WHICH BY REFERENCE IS
INCORPORATED HEREIN AND
MADE A PART HEREOF.

Together with all buildings, fixtures and improvements thereon and all water rights, rights of way,
easements, rents, issues, profits, income, tenements, hereditaments, privileges and appurtenances
thereunto now or hereafter used or enjoyed with said property, or any part thereof;

FOR THE PURPOSE OF SECURING payment of the indebtedness evidenced by a promissory
note in the principal sum of \$ 250,000.00, payable to the order of
Beneficiary at the times, in the manner and with interest as therein set forth, and payment of any
sums expended or advanced by Beneficiary to protect the security hereof.

Trustor agrees to pay all taxes and assessments on the above property, to pay all charges and
assessments on water or water stock used on or with said property, not to commit waste, to maintain
adequate fire insurance on improvements on said property, to pay all costs and expenses of collec-
tion (including Trustee's and attorney's fees in event of default in payment of the indebtedness se-
cured hereby and to pay reasonable Trustee's fees for any of the services performed by Trustee
hereunder, including a reconveyance hereof.

The undersigned Trustor requests that a copy of any notice of default and of any notice of sale
hereunder be mailed to him at the address hereinbefore set forth.

[real estate contract dated April 2, 1979.]

Manuel Katsanevas
Steve Katsanevas

STATE OF UTAH

COUNTY OF

ss.

On the 13th day of February, 19 84, personally appeared before me

MANUEL KATSANEVAS and STEVE KATSANEVAS

, the signers

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

EXHIBIT: 9 DATE: 2-27-84

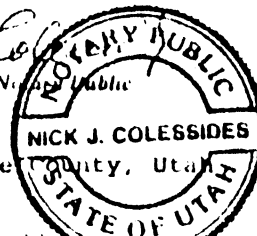
WITNESS: NED A. GREENIG: RPR/CSR

My Commission Expires:

2-23-87

Residing at:

Salt Lake



*NOTE: Trustee must be a member of the Utah State Bar, a bank, building and loan association, savings and
loan association authorized to do such business in Utah, a corporation authorized to do trust business in
Utah, or a title insurance or abstract company authorized to do such business in Utah.

5532 1633

EXHIBIT 'A'

PARCEL NO. 2:

BEGINNING at the Southwest corner of Lot 4, Block 96, Plat "A", Salt Lake City Survey, and running thence North 130 feet; thence East 49.5 feet; thence South 7 feet; thence East 97 feet; thence South 47 feet; thence West 83 feet; thence South 76 feet; thence West 63.5 feet to the point of BEGINNING.

TOGETHER WITH AND SUBJECT TO a right of way described as follows:

BEGINNING at a point 116 feet North from the Southwest corner of Lot 4, aforesaid, and running thence North 14 feet; thence East 15 rods; thence South 14 feet; thence West 101 feet; thence South 40 feet; thence West 20 feet; thence North 40 feet; thence West 126.5 feet to the point of BEGINNING.

* * *

EXHIBIT B-2

2025032 PM1534

EXHIBIT 4

466 South 4th East
Salt Lake City, Utah 84111

3906635

ASSIGNMENT OF CONTRACT
(FOR SECURITY)

SALT LAKE COUNTY,
UTAH
EB 17 3 12 PM '84
ck J. Celestides
EQ 06
8.5
Shell Hunt
Lowell Hurst

This Assignment, made and entered into this 13th day of February, 1984, by and between MANUEL KATSANEVAS and STEVE KATSANEVAS, 118 North 300 West, Salt Lake City, Utah 84103, hereinafter referred to as "ASSIGNOR", and KEITH C. HOLT and JOYCE HOLT, hereinafter referred to as "ASSIGNEE".

WITNESSETH:

WHEREAS, under date March 7, 1966, the within described land was sold on a Uniform Real Estate Contract to Wilson Hotel Corporation, a Utah Corporation, said contract having been recorded on March 6, 1966, as Entry No. 2145298, in Book 2435 at page 217 of the official records of Salt Lake County Recorder's Office; and

WHEREAS, the said contract through subsequent assignments, has been assigned to Assignor; and

WHEREAS, the parcel of land subject matter of this Assignment is more particularly described in the attached Exhibit "A" which by reference is incorporated herein and made a part hereof; and

WHEREAS, reference is hereby made to the Uniform Real Estate Contract for all of the terms, conditions, and provisions thereof, and

EXHIBIT
E-1

EXHIBIT: 8 DATE: 2-27-84
WITNESS: Holt

WHEREAS, the Assignees desire to acquire from the Assignors all of the right, title and interest of the Assignors in and to the said written agreement as and for purposes of security for the indebtedness due to Assignees.

NOW, THEREFORE, it is hereby mutually agreed as follows:

1. That the Assignors in consideration of the Payment of Ten Dollars and other good and valuable consideration, the receipt of which is hereby acknowledge, assign to the Assignees, all their right, title and interest in and to the aforesaid Uniform Real Estate Contract of March, 1984, concerning the above described property.

2. That to induce the Assignees to pay the said sum of money and to accept the said contract as and for Security, the Assignors hereby represent to the Assignees as follows:

a. That the Assignors have duly performed all the conditions of the said contract.

b. That the contract is now in full force and effect and that the unpaid balance of said contract is approximately \$29,000.00, with interest paid to the 1st day of February, 1984.

c. That said contract is assignable.

THIS ASSIGNMENT is given for the purpose of securing payment of an indebtedness, in the principal balance sum of approximately \$172,000.00 owed by the Assignor, payable to the order of the Assignee pursuant to an agreement between the Assignor and Assignee.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seal the day and year first above written.

Manuel Hernandez
Steve Hernandez
(Assignor)

STATE OF UTAH)
 : ss
COUNTY OF SALT LAKE)

On the 13th day of February, 1984, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that they executed the same.

My commission expires:

2-23-87

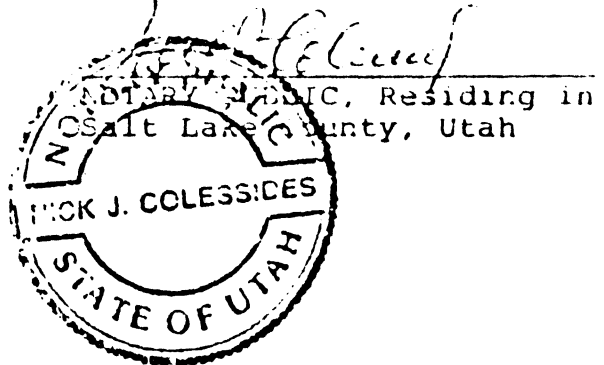


EXHIBIT
E-3

EXHIBIT 'A'

PARCEL NO. 2:

BEGINNING at the Southwest corner of Lot 4, Block 96, Plat "A", Salt Lake City Survey, and running thence North 130 feet; thence East 49.5 feet; thence South 7 feet; thence East 97 feet; thence South 47 feet; thence West 83 feet; thence South 76 feet; thence West 63.5 feet to the point of BEGINNING.

TOGETHER WITH AND SUBJECT TO a right of way described as follows:

BEGINNING at a point 116 feet North from the Southwest corner of Lot 4, aforesaid, and running thence North 14 feet; thence East 15 rods; thence South 14 feet; thence West 101 feet; thence South 40 feet; thence West 20 feet; thence North 40 feet; thence West 126.5 feet to the point of BEGINNING.

* * *

EXHIBIT
E-4

8005532 201632

EXHIBIT 5

RELEASE

WHEREAS, MANUEL KATSANEVAS and STEVE KATSANEVAS have entered into an agreement to purchase certain land from the undersigned; and

WHEREAS, the undersigned is owed approximately the sum of \$172,000.00 as of the date hereof; and

WHEREAS, the undersigned is the Beneficiary under a certain Trust Deed recorded February 17, 1984, and an Assignment of Contract (For Security) recorded February 17, 1984; and

WHEREAS, the above referred to obligation due to the undersigned in the sum of \$172,000.00 (as more particularly described in the Trust Deed and Assignment of Contract) has been assumed by Manuel Katsanevas.

NOW, THEREFORE, in consideration of Ten Dollars and other good and valuable consideration

The undersigned KEITH C. HOLT and JOYCE HOLT, jointly and severally, hereby release and discharge STEVE KATSANEVAS and only STEVE KATSANEVAS, and his heirs, executors and personal representatives from the obligation to pay to the undersigned any and all remaining balance of the sum which is due and payable to the undersigned as a result of the Trust Deed and

EXHIBIT

F-1

EXHIBIT: 10 DATE 2-27-91
WITNESS: Holt
NEED A. GREENIG RPR/CSR

Assignment of Contract (For Security) as aforesaid.

DATED this 15th day of March, 1984.

Keith C. Holt
KEITH C. HOLT

Joyce Holt
JOYCE HOLT

EXHIBIT 6

Manuel Katsanevas
118 North 300 West
Salt Lake City, Utah 84103

March 17, 1986

Dear Mike,

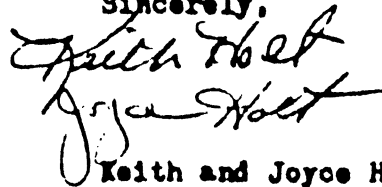
For your files, we are sending you the following information on the real estate contract you have with us.

The pay off to Continental Bank for \$45,313.92 you made in December 1983 is to be deducted off the bottom of our contract not the top.

Your payment will be complete with us when your balance reaches \$45,313.92 or approximately your payment #182.

You, Steve and your attorney agreed to this in lieu of 2% raise in the contract or the payment of our income taxes for 1983.

Sincerely,


Keith and Joyce Holt

20

EXHIBIT: 11 DATE: 2-27-91
WITNESS: Holt
NEED A GREENING: RPR/CSR

EXHIBIT 7

11-2-90

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Case No. 90 09 03536

Judge Pat Brian

),

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[illegible]

1000 2000 3000 4000 5000 6000 7000 8000 9000 10000 11000 12000 13000 14000 15000 16000 17000 18000 19000 20000 21000 22000 23000 24000 25000 26000 27000 28000 29000 30000 31000 32000 33000 34000 35000 36000 37000 38000 39000 40000 41000 42000 43000 44000 45000 46000 47000 48000 49000 50000 51000 52000 53000 54000 55000 56000 57000 58000 59000 60000 61000 62000 63000 64000 65000 66000 67000 68000 69000 70000 71000 72000 73000 74000 75000 76000 77000 78000 79000 80000 81000 82000 83000 84000 85000 86000 87000 88000 89000 90000 91000 92000 93000 94000 95000 96000 97000 98000 99000 100000

TAKEN AT; 466 South 400 East, Salt Lale City, Utah

DATE: February 27, 1991

REPORTED BY: Ned A. Greenig, CSR



(801) 363-7939

1 APPEARANCES OF COUNSEL:

2
3 For Plaintiff:

Paul D. Lyman, Esq.

4 Attorney at Law

5 250 North Main

6 Richfield, Utah 84701

7 Tel: (801) 896-6812

8
9
10 Nick J. Colessides, Esq.

11 Attorney at Law

12 466 South 400 East

13 Salt Lake City, Utah 84111

14 Tel: (801) 521-4441

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I N D E X

<u>DEPONENT</u>	<u>EXAMINED BY</u>	<u>PAGE</u>
MANUEL KATSANEVAS	MR. LYMAN	4

E X H I B I T S

<u>MARKED</u>	<u>PAGE</u>
---------------	-------------

(None marked.)

February 27, 1991

3:47 p.m.

P R O C E E D I N G S

MANUEL KATSANEVAS,

called as a witness, being duly sworn,
was examined and testified as follows:

EXAMINATION

BY MR. LYMAN:

Q. Your name is Manuel Katsanevas, is that
correct?

A. Yes.

Q. And you're the defendant in this action?

A. Yes.

Q. Do you go by some other name other than Manuel?

A. They call me Mike but I go by Manuel.

Q. And how old are you, sir?

A. Fifty-two.

Q. ~~And~~ let's go on to your educational
background. First of all, how long have you lived in
Salt Lake Valley?

A. Since 1948.

Q. And did you graduate from high school?

A. Yes.

Q. Did you graduate from college?

A. No.

Q. Where did you go to high school at?

1 A. South High in Salt Lake City.

2 Q. And did you attend any college?

3 A. No.

4 Q. Have you had any training, technical training
5 or any kind of other training like that since you
6 completed high school?

7 A. No.

8 Q. Were you ever in the military?

9 A. Yes.

10 Q. Did you get any kind of technical training in
11 the military?

12 A. I was in the Signal Corps.

13 Q. So other than Signal Corps related training you
14 got no other training?

15 A. No.

16 Q. What would you consider your profession to be?

17 A. I'm a restaurateur.

18 Q. And how long have you held that type of
19 occupation?

20 A. Since 1961.

21 Q. What did you do prior to 1961?

22 A. I worked for Rio Grande Railroad.

23 Q. That was it?

24 A. Purity Biscuit before that.

25 Q. Those are the only two places you worked from

1 the time you graduated from high school through 1961?

2 A. Yes.

3 MR. COLESSIDES: Mr. Katsanevas, may I ask you
4 a speak a little bit louder because the reporter over
5 here must be able to hear you. So you've got to make
6 sure that he's able to hear you and not this fellow.

7 THE WITNESS: Okay.

8 Q. (By Mr. Lyman) What kind of work did you do
9 for the biscuit company?

10 A. It was just making cookies and stuff, you know.

11 Q. Cook, baker?

12 A. Bakery work.

13 Q. And for the railroad?

14 A. I graduated as a diesel mechanic.

15 Q. Did no cooking or things like that for the
16 railroad?

17 A. No.

18 Q. 1961 you said you became a restaurateur?

19 A. Yes.

20 Q. What did you do in 1961 that makes you so that
21 you feel like you can say that today?

22 A. I opened the Stadium Cafe at 67 East Second
23 South. Wait. It was just east of West Temple. I think
24 that's 67.

25 Q. And did you do this alone?

1 A. With two of my brothers.

2 Q. And those brothers are?

3 A. Nick and Jim.

4 Q. We've heard mention of a Steve. Was Steve
5 involved in this?

6 A. No.

7 Q. And so you, Nick and Jim ran Stadium
8 Restaurant for how long?

9 A. Three and a half years.

10 Q. And then what did you do?

11 A. Then we opened the Athenian.

12 Q. And you've owned the Athenian since then?

13 A. Up to 1978.

14 Q. What happened in 1978?

15 A. We sold it.

16 Q. And did Steve ever get involved with the
17 Athenian?

18 A. Yes.

19 Q. In 1978 what did you then do?

20 A. We didn't do anything at first.

21 Q. You were unemployed?

22 A. Right.

23 Q. For how long?

24 A. Year and a half. Almost two years.

25 Q. Then what did you do?

1 A. We bought the Keith Holt property.

2 Q. So in 1978 you sold the Athenian. A year and a
3 half later you bought the Keith Holt property?

4 A. Yes.

5 Q. And who is we that bought it?

6 A. Steve and I.

7 Q. And that's Steve Katsanevas, your brother?

8 A. Yes.

9 Q. And what did you do with the Holt property?

10 A. We opened up Crown Burgers which is a
11 restaurant, fast food restaurant.

12 Q. Now, how long has Crown Burgers been open?

13 A. Crown Burgers was started in '78 on Second
14 South by another brother and brother-in-law. Our
15 location was in '79.

16 Q. And is there still a Crown Burgers today?

17 A. ~~Yes~~

18 Q. ~~Are~~ you still involved in it today?

19 A. Yes.

20 Q. Is that your only business interest?

21 A. Yes.

22 Q. In 1979 you opened up a Crown Burgers on the
23 Keith Holt property you said?

24 A. Yes.

25 Q. Was that your primary location?

1 A. That was my location, yes.

2 Q. Is it still the primary location?

3 A. No. North Temple is.

4 Q. It moved and when did it move?

5 A. 1983.

6 Q. I want to go back to 1979 and the original
7 transaction. Earlier today we've discussed a document
8 which has been marked Exhibit 1 in the Holt deposition.
9 I want to hand you that document and tell me what that
10 document is?

11 A. This is the document that we bought the
12 property from Keith Holt.

13 Q. And with this document here you dealt directly
14 to negotiate this with the Holts or how did you
15 negotiate this purchase?

16 A. With the Holts.

17 Q. Who ~~negotiated~~ what? Tell me how it happened.

18 A. Steve and I approached Keith, and when we came
19 down to the final deal we brought Nick in to make sure
20 that everything was --

21 Q. Nick being Nick Colessides?

22 A. Yes.

23 Q. Now, you said that you and Steve talked to
24 Keith. You never talked to Joyce about this deal, did
25 you?

1 A. Not that I recall.

2 Q. She was in name only a part of this business
3 deal, is that correct?

4 A. I think Joyce at that time was not -- didn't
5 exist.

6 Q. Didn't exist?

7 A. Let me see it. I can't remember. I'm not
8 sure. I know we dealt with Keith.

9 Q. You didn't deal with his wife, though, whoever
10 she may have been?

11 A. Right.

12 Q. Do you recall the first time that either you --
13 do you recall the first time that you spoke with Keith
14 about the potential of purchasing his property?

15 A. I remember we had one meeting at Denny's.

16 Q. You had a meeting at Denny's?

17 A. On North Temple.

18 Q. Who was present?

19 A. Steve and I and Keith.

20 Q. And in that one meeting at Denny's did you work
21 out the whole deal?

22 A. I don't remember. I don't think we worked out
23 totally. I think that that was pretty well the
24 beginning. I think we didn't complete it then, no.

25 Q. Did you have other meetings?

1 A. I don't recall the specifics, but I presume
2 that we did.

3 Q. Do you know whether or not Steve had any
4 meetings with Keith that you weren't present for?

5 A. No. I don't know of any.

6 Q. Were there any meetings that you had with Keith
7 that Steve wasn't present?

8 A. I don't recall any.

9 Q. But there could have been meetings when you
10 weren't present, is that correct?

11 A. I don't know.

12 Q. You just have no idea?

13 A. No.

14 Q. Who made the first proposal to either buy or
15 sell this ~~piece~~ of property?

16 A. ~~You~~ mean with Keith?

17 Q. ~~Yes~~, sir.

18 A. I really don't know who made the first
19 proposal.

20 Q. As you negotiated, is it fair to say that there
21 was give and take with regard to how the negotiations
22 went?

23 A. Yes.

24 Q. You offered some things, he offered some
25 things, and you worked them all into the contract. Is

1 that fair to say?

2 A. We got to the final of 275 at nine percent.

3 Q. But it wasn't all your proposal and it wasn't
4 all Keith's proposal, was it?

5 A. No. I think he asked for more.

6 Q. But eventually you negotiated what the contract
7 shows in Exhibit 1?

8 A. Right.

9 Q. What was your relationship with Keith Holt at
10 that time?

11 A. We were friends.

12 Q. You had neighboring businesses, isn't that
13 correct?

14 A. Yes.

15 Q. What kind of business were you running next
16 door to his property?

17 A. We had the Athenian supper club.

18 Q. And did he allow you to use his property for
19 any reason?

20 A. I think at one time we were paying him some
21 rent to use part of the parking, but we didn't do it
22 any longer because he was never available.

23 Q. But you worked with him?

24 A. Yes, we worked with him.

25 Q. And for some time there was an arrangement

1 about parking on his property?

2 A. A paid arrangement.

3 Q. And throughout this time period did you folks
4 get along together or not get along together?

5 A. We got along.

6 Q. Any big disputes?

7 A. No.

8 Q. Any little disputes?

9 A. No.

10 Q. Would it be fair to say that you considered
11 yourself a friend of Keith Holt's?

12 A. I would say so.

13 Q. And you probably assumed that he was your
14 friend as well?

15 A. Yes.

16 Q. Would the same relationship apply to your
17 brother Steve?

18 A. Yes.

19 Q. So the three of you were fairly good friends?

20 A. Yes.

21 Q. Did you know about his family, who his wife and
22 kids were?

23 A. Yes.

24 Q. Did he know about yours as well?

25 A. Yes.

1 about parking on his property?

2 A. A paid arrangement.

3 Q. And throughout this time period did you folks
4 get along together or not get along together?

5 A. We got along.

6 Q. Any big disputes?

7 A. No.

8 Q. Any little disputes?

9 A. No.

10 Q. Would it be fair to say that you considered
11 yourself a friend of Keith Holt's?

12 A. I would say so.

13 Q. And you probably assumed that he was your
14 friend as well?

15 A. Yes.

16 Q. Would the same relationship apply to your
17 brother Steve?

18 A. Yes.

19 Q. So the three of you were fairly good friends?

20 A. Yes.

21 Q. Did you know about his family, who his wife and
22 kids were?

23 A. Yes.

24 Q. Did he know about yours as well?

25 A. Yes.

1 Q. The same with Steve, did he know about Steve?

2 A. Yes.

3 Q. If someone were to die, would he be the type of
4 person that would go to your family member's funeral or
5 vice versa?

6 MR. COLESSIDES: Well, we'll object to that.
7 That's close to speculation. I don't know if anybody
8 died where would he go. I don't know if he attends
9 funerals or not, and I don't know if that's relevant to
10 this proceedings.

11 Q. (By Mr. Lyman) Go ahead and answer the
12 question.

13 A. I think he would, yes.

14 Q. Did you meet with him on a daily basis?

15 A. No.

16 Q. How many times a week do you think he'd come by
17 your place or you'd go by his place of business?

18 MR. COLESSIDES: In what period of time?

19 Q. (By Mr. Lyman) Again in 1979 at the time the
20 contract was negotiated.

21 A. In '79, you say?

22 Q. Yes, sir, when you purchased the property.

23 A. We were buying gas from him so we probably saw
24 him once, twice a week.

25 Q. Did he eat at your restaurant?

1 A. Yes.

2 Q. About the same number of times?

3 A. Not that often, no.

4 MR. COLESSIDES: He's asking you about 1979
5 whether or not he was eating at your restaurant. Did
6 you have a restaurant in 1979? That's what he's asking
7 you.

8 THE WITNESS: We opened in '79 in October
9 26th.

10 Q. (By Mr. Lyman) You had the Athenian supper
11 club. Did he ever eat there?

12 A. He ate there, yes.

13 Q. And was that open in 1979?

14 A. No. It was open but we didn't own it.

15 Q. Now, let's go from 1979 until sometime in 1982
16 or 1983. During that time period were there any
17 problems with your relationship, your business
18 relationship, with Keith Holt?

19 A. No.

20 Q. You paid him the payments and everything was
21 fine?

22 A. Yes.

23 Q. Your business was going well, I assume?

24 A. It was.

25 Q. We have earlier identified Exhibit 2. It's

1 entitled Escrow Agreement. Is that the escrow agreement
2 that underlay the uniform real estate contract that's
3 Exhibit 1?

4 A. It looks like it.

5 Q. Is that your signature on page 2, sir?

6 A. Yes.

7 Q. And would that be Steve's signature right by
8 yours?

9 A. I'd say so.

10 Q. And that was part of your 1979 agreement as
11 well?

12 A. True.

13 Q. And you'd make your payments to the escrow
14 agent and not worry about what happened from there, is
15 that right?

16 A. If I recall, yes.

17 Q. In 1982 or '83 someone approached somebody, and
18 dealing again with the parties to this lawsuit, about
19 some kind of a it's been called a collateral exchange.
20 It's been called a payment. But some kind of business
21 transaction that was to take place. Are you familiar
22 with that transaction?

23 A. Yes.

24 Q. When did either you, your brother or Keith
25 first have a discussion about that transaction?

1 A. I don't remember the exact dates.

2 Q. Roughly give me a ballpark. Give me a year.

3 A. I'm thinking that it had to be sometime in '82.

4 Q. What was the catalyst that made you or your
5 brother or Keith have this discussion for the first
6 time?

7 A. We needed to transfer the collateral to North
8 Temple.

9 Q. Who's we?

10 A. Well, actually me and my brother. Actually it
11 was just me because I was the only one moving there.

12 Q. Your brother being Steve that you referred to?

13 A. Yes.

14 Q. You needed to transfer to North Temple why?

15 A. Because we had sold the South Temple property.

16 Q. And who had you sold it to?

17 A. Triad.

18 Q. And when did that transaction close?

19 A. I think it closed sometime in the early part of
20 '83. I'm not -- it didn't really close until sometime
21 in June of '83 because that's when Steve got his first
22 payment.

23 Q. And that's when you sold the property to Triad?

24 A. Yes.

25 Q. When did you first approach -- well, did you

1 approach Keith Holt or Steve -- did you or Steve
2 approach Keith Holt about this transaction prior to the
3 closing of the Triad deal?

4 A. Yes.

5 Q. And who was the first person to approach you,
6 you or was it Steve?

7 A. I don't remember.

8 Q. Do you recall when it happened more
9 specifically than that?

10 A. I don't know the specifics.

11 Q. Do you recall where it would have been?

12 A. No. I don't recall.

13 Q. Would it have been in Salt Lake or in
14 Richfield?

15 A. I think the beginning had to be in Salt Lake.

16 Q. Do you recall who would have been present?

17 A. I don't recall who was present at the time.

18 Q. Do you recall what was discussed?

19 A. Just the transfer of the collateral.

20 Q. What specifically did you propose doing?

21 A. To transfer it to North Temple.

22 Q. Transfer what?

23 A. The amount of money that we owed Keith.

24 Q. You lost me on that one. You were going to
25 transfer the amount of money you owed Keith to North

1 Temple?

2 A. He was going to take collateral on North Temple
3 because we needed the title on South Temple, Triad
4 needed it.

5 Q. Then you needed the title on South Temple
6 cleared, is that correct?

7 A. Yes.

8 Q. Because you'd told Triad you'd do that, isn't
9 that correct?

10 A. Well, they had to have clear title, yes.

11 Q. And you didn't get your money unless you got
12 that title cleared, isn't that right?

13 A. I presume it's right, yes.

14 Q. Well, is it right?

15 A. Yes, it's right.

16 Q. So you approached Keith or maybe Steve
17 approached Keith. Do you know which one it was?

18 A. I don't recall.

19 Q. But you were in on the deal?

20 A. Yes. It was my deal.

21 Q. You approached Keith and said we want to
22 exchange the collateral from the South Temple address to
23 the North Temple address?

24 A. Yes.

25 Q. Were you building a new Crown Burgers on North

1 Temple?

2 A. Yes.

3 Q. And when was that begun?

4 A. I think sometime in -- it had to be sometime in
5 April.

6 Q. Of 1982?

7 A. '83.

8 Q. And when was the construction completed, sir?

9 A. The latter part of October of the same year.

10 Q. And do you recall what Keith Holt's response
11 was when you first approached him about the collateral
12 transfer?

13 A. He didn't seem to have any objection.

14 Q. You said a few minutes ago that you felt like
15 you were friends with Keith?

16 A. Yes.

17 Q. At the time that these 1983 transactions were
18 going on, did you also consider yourself to be a friend
19 of Keith's?

20 A. Yes.

21 Q. Did you have any contact with him?

22 A. Mainly business contact, yes.

23 Q. Did he ever come eat at Crown Burgers?

24 A. Yes.

25 Q. He didn't have a business going then or did he,

1 if you know, sir?

2 A. I'm not sure if he had one. I think he had
3 moved to Fifth West. He had a little like gas station
4 there. I'm not sure if it was a little bit later or if
5 it was at that time.

6 Q. When you discussed this transaction, would you
7 have discussed it at your Crown Burger restaurant?

8 A. Most likely, yes.

9 Q. Do you recall any place other than Crown Burger
10 where you ever held a discussion about the 1983
11 transaction?

12 A. No.

13 Q. You don't know whether or not Steve had any
14 dealings with Keith concerning this 1983 transaction
15 that you were not a party to, do you?

16 A. I don't think that he had because that was my
17 deal really.

18 Q. What do you mean by it was your deal?

19 A. I was the one moving to North Temple, not
20 Steve. Steve was not going to go to North Temple.

21 Q. Had you bought him out?

22 A. Triad had bought him out.

23 Q. So he took his Triad money and he was going to
24 be finished with Crown Burgers?

25 A. Right.

1 Q. Did he go start another business somewhere?

2 A. No.

3 Q. The goal was then to have him out of the whole
4 transaction, isn't that correct?

5 A. Not at the time.

6 Q. When did that become something you were
7 seeking?

8 A. He wanted to be released later I think it was
9 '84.

10 Q. Was anyone else in partnership or in any other
11 kind of arrangement with you in the operation of the new
12 Crown Burgers, the North Temple Crown Burgers?

13 A. No. Just me and my wife.

14 Q. What's your wife's name?

15 A. Rayola.

16 Q. Did Rayola participate in any of these
17 discussions?

18 A. No.

19 Q. When you approached Keith about the 1983
20 transaction, you said he responded favorably. What did
21 you do when he responded favorably? What was your next
22 step to get it done?

23 A. We didn't do anything. Then he found out that
24 the bank would not transfer.

25 Q. When did that occur?

1 A. I don't really know if it was in '82 or if it
2 was in '83. I think it was in '83.

3 Q. What did he tell you?

4 A. That the bank -- you know, there was a \$46,000
5 note and we had to pay that.

6 Q. Did he tell you that directly or did you talk
7 to Bob Bailey at any point?

8 A. I never talked to Bob Bailey at any time.

9 Q. Do you know who Bob Bailey is?

10 A. From according to everything, he's supposed to
11 be at Continental Bank.

12 Q. Have you ever met him, that you know of?

13 A. I never recall meeting him.

14 Q. Was he ever at any meeting that you had?

15 A. I don't recall that either.

16 Q. You say Keith then came and told you they
17 wouldn't do the deal unless the note was paid?

18 A. Yes.

19 Q. What did you then propose doing?

20 A. Well, we needed the thing so we proposed that
21 we had to pay it.

22 Q. When you made that proposal, what did Keith
23 think about that?

24 A. At that time he said that he wanted to put the
25 \$46,000 on the end of the contract.

1 Q. And what did you think of that proposal?

2 A. I didn't agree to it.

3 Q. Did he make any other alternative proposals?

4 A. He said about paying the tax on the \$46,000,
5 you know, for me to pay the tax on it.

6 Q. And was there any other proposal?

7 A. And also he proposed that we move the interest
8 rate from nine percent to eleven percent.

9 Q. And what did you say to his three proposals?

10 A. I didn't agree to any of them.

11 Q. Do you recall any specific meeting where you
12 discussed those three proposals?

13 A. I don't recall the specific meetings. I do
14 recall that, you know, they were brought up.

15 Q. If you don't recall any meeting, I guess you
16 can't tell me who was present and who discussed them
17 then, can you?

18 A. No, I really can't. Just, you know, it was
19 just -- I can't remember exactly who was there.

20 Q. Well, what happened next then? He'd made the
21 proposals. You've said no. What was the next thing
22 that occurred?

23 A. We paid the note. Nick made the arrangements
24 and we paid the note.

25 Q. Earlier today we've seen a document, it was

1 Exhibit 4 in the Holt deposition. I'd like to ask you
2 to tell me if you have ever seen that letter before?

3 A. I have seen it.

4 Q. That's you that's referred to down as the very
5 last entry on the left-hand side, CC Manuel Katsanevas,
6 is that correct?

7 A. Yes.

8 Q. It makes reference to a September 27th
9 meeting. What happened in that September 27th meeting,
10 if you can recall?

11 A. I can't recall what happened.

12 Q. So you don't recall where the meeting took
13 place or who would have been present either then?

14 A. I think that it was done by phone but I'm not
15 sure. I'm not sure, you know, if we did it by phone or
16 not. I just can't remember, you know, the specifics of
17 it.

18 Q. Your attorney, Nick Colessides, he wouldn't
19 have been there though, would he?

20 A. I don't know. I have no idea if he would have
21 or not.

22 Q. How would he have come up with the information
23 that he provides in this particular Exhibit 4?

24 A. Well, he knew the specifics because I dealt
25 mainly through him.

1 Q. So you would have told him?

2 A. Yes.

3 Q. The last sentence says, The amount paid to the
4 bank by Katsanevas shall reduce the principal sum owed
5 to you under the real estate contract by the same
6 amount. It doesn't make reference to whether that
7 reduction would happen immediately or at the end of the
8 contract, does it?

9 A. I don't know if it does or not.

10 Q. Read the last sentence and see.

11 A. He makes you believe that it will happen
12 immediately.

13 Q. You draw the inference then that it would
14 happen immediately, is that correct?

15 A. That was my understanding all along. I never
16 agreed to anything different.

17 Q. Now, you heard Mr. Holt earlier say that his
18 memory is different?

19 A. True.

20 Q. So you two disagree on that point. Did you
21 ever sign any document which specifically laid out what
22 your agreement was with Mr. Holt?

23 A. I don't recall signing any document.

24 Q. Did you ever write anything down and ask Mr.
25 Holt to sign it and say this is how we're going to

1 handle the payment of the \$46,000?

2 A. I don't believe so. I don't know.

3 Q. Isn't it true that there was no document that
4 either of you signed where you specifically laid out the
5 terms of how the \$46,000 would be handled?

6 A. Say that again.

7 Q. Isn't it true that there is no document that
8 specifically lays out the terms of how the \$46,000 would
9 be handled which both you and Mr. Holt have signed?

10 A. There is no document.

11 Q. I'm going to show you a document that's Exhibit
12 3. Recognizing your name doesn't appear on that paper,
13 do you still -- do you recognize this document or not?

14 A. Yes.

15 Q. What is it, sir?

16 A. It shows a check for \$46,000 that was received,
17 you know.

18 Q. This is the \$46,000 that we've been referring
19 to, right?

20 A. Yes.

21 Q. It says it was paid by Steve?

22 A. Well, it was paid by Steve but I borrowed the
23 money.

24 Q. But it was on your behalf?

25 A. Yes.

1 Q. So even though it lists Steve's name, it was
2 your deal?

3 A. Right.

4 Q. Do you know if there's any document that Steve
5 ever signed that characterized the arrangement of how
6 the \$46,000 would be handled under the contract?

7 A. There is no document.

8 Q. I'm going to hand you four documents. They're
9 numbered 7, 8, 9 and 10. The first, a cover letter from
10 your attorney to Mr. Holt that makes reference to what
11 are in fact documents 8, 9 and 10, is that correct? Go
12 ahead and take a look at it and see if that's what that
13 first letter is.

14 A. Okay.

15 Q. This first document No. 7, it's a cover letter,
16 is that correct?

17 A. What do you mean by a cover letter?

18 Q. Saying enclosed are three documents. CC Manuel
19 Katsanevas is at the bottom. Did you ever receive a
20 copy of this letter?

21 A. I'm sure I did. I don't recall.

22 Q. You don't recall when or where?

23 A. No.

24 Q. But you don't doubt that you received it at
25 some point?

1 A. No.

2 Q. You've just taken a moment while you were
3 looking at document 7. Also look at 8, 9 and 10. Are
4 you familiar with documents 8, 9 and 10?

5 MR. COLESSIDES: That's a compound question.
6 Why don't you just ask him one at a time so he can
7 identify them. Otherwise I will object.

8 Q. (By Mr. Lyman) That's fine. Your counsel has
9 a good idea. This first document, Exhibit 9, are you
10 familiar with that document? I mean Exhibit 8?

11 A. It looks right.

12 Q. What's it's entitled?

13 A. Assignment of Contract for Security.

14 Q. What's the purpose of that document, if you
15 know?

16 A. I think that this was the North Temple that we
17 gave Keith for security, collateral.

18 Q. You think it's what?

19 A. It's collateral for the North Temple property
20 to Keith.

21 Q. Is it the document that conveys the collateral
22 to him?

23 A. I'd say so.

24 Q. And is that your signature on page 3?

25 A. Yes.

1 Q. And your brother Steve's below it?

2 A. Yes.

3 Q. And a legal description of the North Temple
4 property. Is that this Exhibit A that's attached to it?

5 A. I assume it is.

6 Q. Who prepared Exhibit 8?

7 A. Nick had to prepare that.

8 Q. Your attorney?

9 A. Yes.

10 Q. Did you participate in the preparation of it or
11 did he do it solely?

12 A. He did it under my direction, yes.

13 Q. What did you tell him to do?

14 A. I think it was, you know, to transfer the
15 property as agreed, you know, to give it to Keith for
16 security.

17 Q. Did you give him any of the information that's
18 contained in it or did he go get the information
19 himself?

20 A. I presume that he had the information here from
21 before.

22 Q. So you wouldn't have provided him any new
23 information, just said let's get it transferred, is that
24 correct?

25 A. I presume. I don't know.

1 Q. Do you know whether you ever met with him
2 specifically to say I need you to prepare an assignment
3 of contract for security?

4 A. He did all the paperwork for me, you know, and
5 I presume I had to tell him to do it.

6 Q. Did you ever meet with him to do that?

7 A. I had to do it either by phone or by -- in
8 person, but I don't remember exactly.

9 Q. The second document there that's entitled Trust
10 Deed, is that your signature down at the bottom?

11 A. That is.

12 Q. Along with your brother's?

13 A. Yes.

14 Q. And do you understand what the trust deed did
15 as part of this transaction?

16 A. I think it's just in case we default on Keith
17 Holt's payment.

18 Q. This is Exhibit 9. Was this what put a lien on
19 your North Temple property, this trust deed? Is that
20 what put the lien on your North Temple property to
21 protect Keith Holts interest?

22 A. I wasn't aware that there was a lien.

23 Q. It created an interest in Keith Holt in your
24 property, though, didn't it?

25 A. I don't know the laws on that.

1 Q. Who did you rely on to make sure it was done
2 correctly?

3 A. My attorney.

4 Q. Again Nick. All right. Let's go to Exhibit
5 10. It's entitled Release. Now, if we look at the last
6 page, your signature doesn't appear on this document?

7 A. No.

8 Q. Are you familiar with that document?

9 A. I remember that Steve was released on it.

10 Q. I made a mistake a few minutes ago which I'd
11 like to go back and correct. I said that Exhibit 7
12 referred to 8, 9 and 10. I was wrong in that, wasn't
13 I. It only refers to 8 and 9. This No. 10 was a
14 separate transaction, wasn't it?

15 A. I have no idea how it was connected.

16 Q. So you relied on your attorney to put all this
17 stuff together, is that correct?

18 A. The legal stuff, yes.

19 Q. And you told him you wanted it done but you
20 didn't tell your attorney how to do it, is that right?

21 A. I gave him the specifics, you know, what we
22 were supposed to get out of it, yes.

23 Q. So you told him what the deal was and he put
24 the deal together from there, is that correct?

25 A. I'd say so.

1 Q. In page 3 of Exhibit 8 there's a \$712,000
2 figure which has been referenced earlier today. I'd
3 like you to read over the paragraph and then look up
4 when you get done reading the paragraph. Have you read
5 that paragraph?

6 A. Yes.

7 Q. Who came up with the \$712,000 figure?

8 A. At that time I would say that we came up with
9 it from the balance. Subtracted, you know.

10 Q. Who is we?

11 A. Well, mainly me, and I conveyed it to Nick
12 because I knew how much I owned and I know how much I
13 paid, you know, like the \$46,000 note.

14 Q. So it's your testimony that you told Nick to
15 put \$712,000 in that contract?

16 A. I don't remember but I probably did.

17 Q. Did Steve do it?

18 A. No.

19 Q. Did Nick come up with the number on his own?

20 MR. COLESSIDES: Objection. How would he
21 know? You're asking him to speculate as to whether or
22 not I came up with it on my own.

23 THE WITNESS: There was a number to come up,
24 there was a balance, you know.

25 Q. (By Mr. Lyman) Did Nick come up with the

1 balance or did you?

2 A. I don't think Nick came up with the balance.

3 Q. You believe you did?

4 A. I believe so.

5 Q. And you obtained that balance by doing what?

6 A. By subtracting the \$46,000.

7 Q. Now, you took that off of the -- off of which
8 balance?

9 A. Whatever balance was at the time. I can't
10 remember. You know, it was an approximate. I don't
11 know if it was exact or not.

12 Q. And where would you have gotten the number to
13 subtract the \$46,000 from?

14 A. From my statement.

15 Q. From your escrow statement?

16 A. Yes.

17 Q. In Exhibit 10 that same \$712,000 figure is
18 used. Is the source of that figure exactly the same
19 source as we've been talking about in Exhibit 8?

20 A. I presume that it would be.

21 Q. Now, if I understand correctly, what you did
22 was you took the \$46,000, in terminology that Mr. Holt
23 used, off of the top of the obligation, is that correct?

24 A. Yes.

25 Q. Mr. Holt said it should have come off the

1 bottom of the obligation, isn't that correct?

2 A. That's what he's saying, yes.

3 Q. So you disagree with -- if he's right, that
4 figure is wrong, the \$712,000 is wrong, isn't it?

5 A. If he's right.

6 Q. What was the purpose again of releasing Steve
7 from the obligation under the original contract?

8 A. He didn't have an interest in the North Temple
9 property.

10 Q. You were going to operate it alone?

11 A. Yes.

12 Q. You're aware that in the original real estate
13 contract that's Exhibit 1 there was an express
14 prohibition against prepayments, aren't you?

15 A. Yes.

16 Q. And so by your deducting the money off the top,
17 this \$46,000 off the top, that violated the express
18 provision in your first contract, didn't it?

19 MR. COLESSIDES: Objection. It asks for a
20 legal conclusion. Ask him what he knows.

21 Q. (By Mr. Lyman) Go ahead and answer the
22 question.

23 MR. COLESSIDES: Do you know? That's a legal
24 conclusion you're answering now. You're saying it's a
25 violation. Do you know if it's a violation?

1 THE WITNESS: I didn't make it voluntarily.
2 That's the problem.

3 Q. (By Mr. Lyman) What do you mean?

4 A. It was agreed because we could not transfer the
5 title. I didn't want to make it. I had to borrow the
6 money to make it, so it wasn't like I had \$46,000 and
7 wanted to pay it.

8 Q. But your action in paying it ran contrary to
9 what your agreement was in 1979, didn't it?

10 A. But we agreed to pay it, you know. He allowed
11 us to pay it because there was no other course.

12 Q. But you didn't answer my question.

13 MR. COLESSIDES: Objection. That's
14 argumentative. I think he testified on direct
15 examination when you asked him specifically about
16 Exhibit 4, counsel. What he said was, he said when Mr.
17 Holt allowed him to make it, that appears to be a
18 waiver. Now, if you want to argue the legal points, I
19 will argue the legal points with you. But if you want
20 to ask him specifically what in fact he did, you're more
21 than welcome to ask him. But when you're asking him to
22 draw legal conclusions, he's not capable of doing that.

23 MR. LYMAN: I'm not asking him to draw legal
24 conclusions. I just want to apply what common sense
25 would tell him. He signed an agreement. I want to know

1 if his understanding of the 1979 agreement he in fact
2 did something that was contrary to it, and I think I can
3 ask that question.

4 MR. COLESSIDES: You can ask him if he did
5 something contrary, yes.

6 MR. LYMAN: And I just did and he didn't give
7 an answer to that.

8 MR. COLESSIDES: That's not what you asked
9 him. If he thinks it was contrary. But the answer that
10 he gave you was it was something that he did not do
11 voluntarily and he was allowed to do it anyway because
12 of the waiver.

13 MR. LYMAN: What you're doing is making your
14 argument and that's lovely and we appreciate it. I
15 think I understand your argument.

16 MR. COLESSIDES: Ask him the question and see
17 what he wants to answer.

18 Q. (By Mr. Lyman) Was your action in taking the
19 \$46,000 off the top contrary to what you agreed to do in
20 the 1979 contract?

21 MR. COLESSIDES: Objection. With that in mind,
22 go ahead and answer.

23 THE WITNESS: No.

24 Q. (By Mr. Lyman) Why not?

25 A. Because it was necessary in order for me to --

1 I didn't want to pay it, but we agreed with Mr. Holt
2 that was the only way to release the contract, to
3 release the mortgage. There was no other alternative.

4 Q. We agreed. Who agreed with Mr. Holt then?

5 A. We did, Keith Holt and I and Steve, I guess,
6 because Steve was at the time, you know.

7 Q. So your understanding was it was allowed
8 because you had an agreement with Mr. Holt, is that
9 correct?

10 A. Because it was involuntary. I didn't want to
11 make it. I had to make it.

12 Q. You had to make the \$46,000 because the bank
13 demanded it, is that correct?

14 A. Right.

15 Q. We have discussed earlier a letter which is
16 Exhibit 11. Now, it's addressed to you. Do you recall
17 ever receiving this letter?

18 A. I don't recall ever receiving this letter.

19 Q. Never?

20 A. Never.

21 Q. Have you read the letter through?

22 A. I've seen it here before.

23 Q. Do you recall any kind of conversation that
24 would be anything similar to the contents of this
25 letter?

1 A. I don't recall any conversation in 1986 with
2 Keith.

3 Q. So your testimony is you didn't talk to Keith
4 Holt in 1986?

5 A. True.

6 Q. Did you talk --

7 MR. COLESSIDES: Now, wait a minute. That's
8 not what he -- totally, he did not talk to him at all in
9 1986?

10 THE WITNESS: About this matter.

11 MR. COLESSIDES: Well, I'll object as to
12 foundation, but the record is going to show something
13 different when you and I get through with this thing.

14 Q. (By Mr. Lyman) So you never talked to him
15 about this matter in 1986?

16 A. No.

17 Q. Did you talk to him about anything else?

18 A. No.

19 Q. So you had no conversation with him in 1986?

20 A. No business conversation.

21 Q. Any business conversations in 1985 with Mr.
22 Holt, did you have any of those?

23 A. No.

24 Q. Do you receive monthly statements from the
25 escrow agent telling you how your payment was applied,

1 that is, how much went to principal and how much went to
2 interest?

3 A. Yes.

4 Q. Have you received those payments since 1979?

5 A. We receive them, but I don't ever go to them
6 unless I need them. I don't handle the books.

7 Q. At any point from 1979 through 1989, did you
8 ever contact the escrow agent and tell them that they
9 had done something wrong in how they calculated the
10 principal portion and the interest portion of your
11 payment?

12 A. No.

13 Q. So it was fine. As far as you know, everything
14 was done correctly?

15 A. I have never noticed the statements before
16 that. I was just making my \$2400 payment.

17 Q. Mr. Holt earlier today testified that you
18 contacted him in '86 about the time of this letter and
19 presented him a revised or a different breakdown of how
20 much money should be applied to principal and interest.

21 A. I never recall giving him any such document.

22 Q. Did you ever prepare such a document?

23 A. Not in '86.

24 Q. At any time did you?

25 A. When I saw him in '89, sometime in '89, which

1 at that time I knew that we was ready for the ten years
2 and at that time I approached him and told him that I
3 had checked my books and that it was wrong and that I
4 wanted them corrected and to correct the interest rate
5 because it had changed. And I gave him at that time,
6 what do you call it where it calculates from start to
7 finish?

8 Q. Principal and interest breakdown?

9 A. No. Amortization schedule. I told him that
10 according to my figures I noticed that the \$46,000 was
11 not taken out at the beginning. And according to my
12 figures, I was going to be through much sooner than it
13 showed on the bank.

14 Q. So your testimony is the first time you ever
15 did an amortization breakdown like you just described
16 was in '89. You didn't do one any sooner than that?

17 A. I never gave him one sooner than that. I don't
18 know if I had one before that. I just realized from,
19 like I say, when I checked through that the contract was
20 up and we was to renew it that the \$46,000 was not taken
21 out.

22 Q. And then is when you sent the new schedule to
23 him, is that correct?

24 A. I never sent it to him. I gave it to him.

25 Q. You gave it to him face-to-face?

1 A. In 1989.

2 Q. It's your testimony then you never looked to
3 see if the correct amount of interest and principal were
4 being applied to your account until 1989?

5 A. I never saw it, no. I never realized that the
6 money was not taken out.

7 Q. Although you did receive monthly breakdowns
8 from 1983 through 1989?

9 A. But like I say, I never looked at them. I
10 didn't have no reason to.

11 Q. So if I look at your income tax returns --
12 could I see them, please. They're prepared by a CPA
13 firm, is that correct?

14 A. Yes.

15 Q. This Terry Price & Wunderli or someone?

16 A. They was at that time. I have changed them.

17 Q. The interest that would be reflected though in
18 your 1985 income tax return would be that that was
19 reported to you from the escrow agent, isn't that right?

20 A. Yes. That should be right.

21 Q. And it should be incorrect because the \$46,000,
22 in your opinion, wasn't applied?

23 A. True.

24 Q. But if Mr. Holt is correct, that you agreed
25 that it should be applied at the end of the contract,

1 then it would be correct. It would be the proper amount
2 of interest, right?

3 A. If he's correct, yes.

4 Q. And isn't what this case all boils down to?

5 A. Apparently.

6 Q. If you're correct, this will save you at least
7 \$65,000, won't it?

8 A. Yes.

9 MR. LYMAN: No more questions.

10 EXAMINATION

11 BY MR. COLESSIDES:

12 Q. Just a couple questions. Mr. Katsanevas, at
13 the time the bank requested that you pay the \$46,000 did
14 you have the money to pay it?

15 A. No.

16 Q. Now, did you borrow the money?

17 A. Yes.

18 Q. Who did you borrow it from?

19 A. Steve Katsanevas.

20 Q. Did you pay him interest?

21 A. Yes.

22 Q. How much did you pay him interest?

23 A. Ten percent.

24 Q. Now, was there any necessity for you to prepay
25 voluntarily the \$46,000?

1 A. No.

2 Q. And when you discussed with Mr. Holt on
3 September 27th, when you discussed with him and he gave
4 you the right to pay the 46, 48 or \$46,000, did you
5 understand that to be a waiver of the agreement that is
6 shown as Exhibit 1 where it doesn't allow you to do any
7 prepayment?

8 MR. LYMAN: I'd object to this on the same
9 grounds you objected to me. It's drawing a conclusion.

10 MR. COLESSIDES: He can answer though.

11 THE WITNESS: That's the way I understood it.

12 Q. (By Mr. Colessides) When he says I'm going to
13 give you the right to pay that amount, did he say to you
14 I'm going to give it to you except something else or did
15 he condition the way he gave you that right?

16 A. At that time I don't think he did. Like I say,
17 we had talked about the other things before but I never
18 agreed to any of them.

19 Q. That would have been my next question.
20 In any of the three proposals that he made to you, is
21 there any proposal that you agreed upon?

22 A. No.

23 Q. In any event, you had to pay the \$46,000 to the
24 bank, did you not?

25 A. Yes.

1 Q. And that was something that the bank expected
2 you to pay?

3 A. Yes.

4 Q. The reason they expected you to pay is because
5 that's the only way they would release -- or they would
6 allow the transfer of the collateral rather?

7 A. Yes.

8 Q. Is there any other benefit that you would have
9 received as a result of the transfer of the collateral?

10 A. No.

11 MR. COLESSIDES: No more questions.

12 MR. LYMAN: I have no more either. Thank
13 you.

14 (Deposition concluded at 4:53 p.m.)

15 * * *

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CERTIFICATE OF DEPONENT

I, MANUEL KATSANEVAS, deponent herein,
do hereby certify and declare the within and foregoing
transcription to be my deposition in said action taken
on February 27, 1991; that I have read, corrected and do
hereby affix my signature to said deposition.

DATED this ____ day of _____, 1991.

DEPONENT

)
STATE OF UTAH) ss.

)
SUBSCRIBED and sworn to before me this
_____ day of _____, 1991.

NOTARY PUBLIC residing in

My Commission Expires:

1 CERTIFICATE OF REPORTER

2 STATE OF UTAH)
3 COUNTY OF SALT LAKE)
4

5 I, NED A. GREENIG, a notary public in and
6 for the State of Utah, do hereby certify that prior
7 to being examined, the witness, MANUEL KATSANEVAS,
8 had previously been duly sworn to tell the truth,
9 the whole truth, and nothing but the truth;

10 That said deposition was taken down by me
11 in shorthand on February 27, 1991, at the place
12 therein named, and thereafter pages 4 through 45
13 were reduced to typewriting under my direction.

14 I further certify that I am not of kin or
15 otherwise associated with any of the parties to said
16 cause of action, and that I am not interested in the
17 outcome thereof.

18 WITNESS my hand and seal this 1st day of
19 March 1991.

20
21 
22 NED A. GREENIG, RPR

23 My Commission Expires:
24 August 4, 1991.
25

EXHIBIT 8

Paul D. Lyman #4522
Attorney for Plaintiffs
250 North Main Street
Richfield, Utah 84701
Telephone: 896-6812

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

KEITH C. HOLT and JOYCE S. HOLT,	:	
	:	
Plaintiff,	:	AFFIDAVIT OF
	:	KEITH C. HOLT
vs.	:	
	:	
MANUEL KATSANEVAS,	:	
	:	
Defendant.	:	Civil No. 900903536
	:	Judge Pat Brian

STATE OF UTAH)
 : ss.
COUNTY OF SEVIER)

I, Keith C. Holt, after first being duly sworn, state as follows:

1. I am one of the Plaintiffs in this action and I am familiar generally with the facts underlying this transaction.
2. I have reviewed Manuel Katsanevas' Exhibit B, dated November 10, 1982, and I do not recall seeing it before and it has not been previously produced by Mr. Katsanevas.
3. At no time have I ever agreed to allow the \$46,386.51 to be immediately applied to reduce the principal amount due on the Katsanevas obligation.
4. The oral agreement between the parties was that the principal reduction would occur at the end of the contract, i.e., when the contract was paid down to \$46,386.51.

5. My letter of March 17, 1986, confirms our agreement and was written by me in response to a request by Manuel Katsanevas for written confirmation of our agreement. (See Exhibit 8.)

6. When I received the "Assignment of Collateral" along with the "Release" I trusted that they were correct, without checking to see that the approximate balance due on the obligation was correct. I did this because the purposes for both documents were not to agree on a principal balance, but to assign additional collateral and to release Steve Katsanevas.

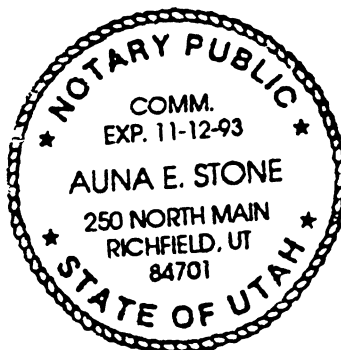
7. Immediately after receiving a letter dated February 2, 1990, from Manuel Katsanevas, through his attorney, which included amortization schedules showing the application of the \$46,386.51 in 1983, and not as the escrow agent had been applying the payments, I objected through my attorney.


DATED this 27th day of August, 1991.



KEITH C. HOLT

SUBSCRIBED AND SWORN to before me this 27th day of August, 1991.





NOTARY PUBLIC
Residing at Richfield, Utah
My Commission Expires 11-12-93

EXHIBIT 9

Earl D. Tanner #3187
Earl D. Tanner, Jr. #3188
TANNER, BOWEN & WILLIAMS
1020 Beneficial Life Tower
36 South State Street
Salt Lake City, Utah 84111
Telephone: (801) 538-2021

Attorneys for Plaintiffs

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

KEITH C. HOLT and JOYCE S. HOLT,	:	
	:	SECOND AFFIDAVIT OF
Plaintiffs,	:	KEITH C. HOLT
	:	
vs.	:	
	:	
MANUEL KATSANEVAS,	:	Civil No. 900903536
	:	Judge Pat Brian
Defendant.	:	

STATE OF UTAH)
 : ss.
County of _____)

KEITH C. HOLT, being duly sworn, deposes and says that:

1. I am one of the plaintiffs herein and an adult of sound mind. The representations set forth in this affidavit are based upon my personal knowledge.

2. After my wife and I had sold the 280 West South Temple property to Manuel (Mike) and Steven (Steve) Katsanevas, I often had lunch at the Crown Burger restaurant which they operated. Frequently, I would visit with Steve and Mike while there.

3. In late 1981 or early 1982, I had several lunchtime conversations with Mike and Steve at the Crown Burger concerning their desire to sell 280 West South Temple to Triad. They advised me that they were negotiating with Triad over terms. As the negotiations proceeded, they told me that Triad was offering them around \$3 million. This was a huge profit and they needed me that I should have held on to the property longer.

4. In our conversations, Mike and Steve acknowledged that our contract did not give them title until the purchase price was paid and also prohibited prepayment. They wanted my wife and I to release 280 West South Temple and accept a security interest in other property. If we refused, their negotiations with Triad would be jeopardized.

5. While negotiating with Steve and Mike, I had several reservations about substituting other property for 280 West South Temple. First, clearing the title would require paying off a lien held by Continental Bank. Second, if we let Steve and Mike pay off the Continental Bank loan and apply the payment immediately to our contract, we would lose the interest income that was an important part of our original deal. Third, if they were going to make a huge profit, I felt they should pay us something for making it possible.

6. Around summer of 1982, I met with Mike and Steve at the Crown Burger to discuss the terms for releasing 280 West South Temple. Present with us were Robert Bailey, a senior loan

officer at Continental Bank, and Nick Colessides, Mike and Steve's attorney.

7. We discussed three plans. The first plan called for Mike and Steve to pay our extra taxes caused by paying off Continental Bank. Mike and Steve rejected that. The second plan called for raising the interest rate on the contract by two percent (2%). Mike and Steve rejected that plan, too.

8. Our third plan was to apply the payment to Continental Bank to the end of our contract, that is, when their regular monthly payments had reduced the principal debt to the amount they had paid Continental Bank, we would credit that payment against principal and the contract would be paid off. Until that time, we would continue to earn interest as though the payment to Continental Bank had not been made.

9. Mike and Steve agreed to the third plan in the presence of Nick Colessides, Robert Bailey, and myself.

10. After the meeting, Robert Bailey congratulated me on making a good deal. We celebrated by picking up Lohr Livingston of Continental Bank and eating at Diamond Lil's.

11. It took more than a year for Mike and Steve's deal to close and for them to pay off Continental Bank. At no time did I disavow our oral agreement made at the Crown Burger in 1982. My wife and I permitted Mike and Steve to sell 280 West South Temple to Triad and accepted substitute collateral. I suppose they profited as handsomely as they had expected.

12. Continental Bank collected Mike and Steve's payments on the contract for us and made a record of the monthly payments, which showed the allocation between principal and interest and the remaining balance. This accounting was mailed monthly to both me and the Katsanevases. Continental Bank transferred their collection agreement to Union Bank, which transferred it in turn to Capital City Bank. The accounting continued to show principal, interest, and remaining balance. It has continued to be mailed to me and the Katsanevases. Copies of this accounting from March, 1982 to November, 1991 are attached as Exhibit "A".

13. As the bank's records show, Mike and Steve's payment to Continental Bank in December, 1983 of \$46,386.51 was not applied to the principal at that time for purposes of calculating interest. This was exactly the way it was supposed to be done under our oral agreement. When the principal is reduced to \$46,386.51, the Continental Bank payment will be applied and the debt will be paid off.

14. I don't recall any objection to the bank's accounting until late 1989.

15. My wife and I signed a Release in 1984 which stated we were owed approximately \$172,000 at that time.

16. The Release was prepared by Mike and Steve's attorney, Nick Colessides, in connection with substituting collateral and releasing Steve from the original contract. I did

not check the amount stated and thought it was only incidental to the main purpose--releasing Steve.

17. Although I didn't think about it at the time, there is a sense in which \$172,000 was due in 1984. The final \$46,386.51 had been paid when Mike and Steve paid Continental Bank. That left about \$172,000 unpaid. Under our oral agreement, however, interest would be calculated on a larger amount.

DATED this _____ day of November, 1991.

KEITH C. HOLT

Subscribed and sworn to before me this _____ day of November, 1991.

Notary Public
Residing in: _____

My Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of November,
1991, a true and correct copy of the foregoing SECOND AFFIDAVIT
OF KEITH C. HOLT was mailed, postage prepaid, to the following:

Nick J. Colessides, Esq.
Attorney for Defendant
466 South 400 East
Salt Lake City, Utah 84111-3303

41.58

10	03-01-82	28	1609.39	790.61	232,31'
11	04-01-82	31	1775.78	624.22	231,691.24
12	05-01-82	30	1713.88	686.12	231,005.12
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14	07-01-82	30	1704.11	695.89	229,674.99
15	08-01-82	31	1755.60	644.40	229,030.59
16	09-01-82	31	1750.67	649.33	228,381.26
17	10-01-82	30	1689.40	710.60	227,670.66
18	11-01-82	31	1740.28	659.72	227,010.94
19	12-01-82	30	1679.25	720.75	226,290.19
20	01-01-83	31	1729.73	670.27	225,619.92
21	02-01-83	31	1724.60	675.40	224,944.52
22	03-01-83	28	1553.04	846.96	224,097.56
23	04-01-83	31	1712.96	687.04	223,410.52
24	05-01-83	30	1652.63	747.37	222,663.15
25	06-01-83	31	1702.00	698.00	221,965.15
26	07-01-83	30	1641.93	758.07	221,207.08
27	08-01-83	31	1690.87	709.13	220,497.95
28	09-01-83	31	1685.45	714.55	219,783.40
29	10-01-83	30	1625.79	774.21	219,009.19
30	11-01-83	31	1674.07	725.93	218,283.17
31	12-1-83	30	1614.70	785.30	217,497.87
32	01-1-84	31	1662.52	737.48	216,760.39
33	02-01-84	31	1656.88	743.12	216,017.27
34	03-01-84	29	1544.67	855.33	215,161.94
35	04-02-84	32	1697.72	702.28	214,459.66
36	05-01-84	29	1533.53	866.47	213,593.19
37	06-01-84	31	1632.67	767.33	212,825.86
38	07-01-84	30	1574.39	875.57	212,070.19

SALT LAKE CITY, UTAH

Crown Burger 11
118 No 300 West
SLC UT 84103

Fort AG-4

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Monthly Payment 2,400.00

9% Interest

365 dy.

DATE	DESCRIPTION	DEBIT	Interest	Principle	BALANCE
	July 1 Paid to	# of Days	Interest	Principle	
3-3-86		28	1,351.42	1,048.58	194,692.24
4-01-86		29	1372.18	1007.82	193,684.42
5-01-86		30	1432.73	967.27	192,717.15
6-01-86		31	1473.10	926.90	191,790.25
7-01-86		30	1,418.72	891.28	190,898.97
8-01-86		31	1,456.51	841.49	189,867.48
9-01-86		32	1,499.13	801.87	188,765.61
10-01-86		30	1,397.93	1002.07	187,743.44
11-01-86		32	1,493.11	916.89	187,046.55
12-1-86		28	1,271.37	1108.61	185,937.94
12-3-86		30	1,315.43	1034.57	184,913.37
3-3-87		33	1,504.69	575.31	184,004.01
3-2-87		28	1,270.48	1,127.52	182,856.49
4-1-87		30	1,352.37	1,047.63	181,741.36
5-1-87		30	1,343.13	1,054.87	180,716.41
6-1-87		31	1,355.87	1,044.11	179,744.56
7-1-87		31	1,355.87	1,044.11	178,744.56
8-4-87		34	1,498.23	901.77	177,814.53
9-4-87		31	1,357.18	1,040.81	176,773.71
10-4-87		32	1,394.82	1,005.18	175,768.53
11-5-87		30	1,300.21	1,079.79	174,668.74
12-2-87		39	1,249.00	1,151.00	173,517.74
1-5-88		37	1,543.00	717.00	172,700.74
2-3-88		26	1,104.15	1,295.85	171,404.89
3-2-88		28	1,150.16	1,219.84	170,185.05
4-9-88		34	1,422.56	777.44	169,207.91
5-4-88		30	1,248.26	1,151.74	168,056.71
6-2-88		29	1,198.44	1,201.56	166,855.15
7-1-88		29	1,193.13	1,206.87	165,648.28
8-1-88		30	1,222.00	1,178.00	164,470.28
9-1-88		30	1,253.75	1,146.25	163,324.03
10-1-88		30	1,208.15	1,191.85	162,138.18
11-1-88		30	1,235.97	1,164.03	160,974.15
12-1-88		30	1,187.51	1,212.49	159,941.64
1-5-89		30	1,375.54	1,024.46	158,737.20
2-1-89		27	1,056.80	1,343.20	157,394.00
3-1-89		28	1,086.67	1,313.33	156,080.67
4-1-89		31	1,193.05	1,306.95	154,573.72
5-1-89		30	1,145.64	1,254.36	153,419.36
6-1-89		31	1,174.24	1,225.76	152,293.60
7-1-89		30	1,129.49	1,270.51	151,423.09
8-1-89		31	1,157.43	1,242.57	150,775.52
9-1-89		31	1,147.93	1,252.07	149,925.97

In revolving items for deposit or collection this bank acts only as depositor's collection agent. All items are credited subject to payment in cash and any credit given for such items is conditional and provisional until the proceeds thereof in money shall have been actually received by the bank. Items may, if credit has been given, be

charged back whether or not the item itself can be returned. Items may be sent for collection through the Federal Reserve Bank subject to all conditions imposed by that bank. Items on other local banks will be handled through the Bank Lake Clearing House Association and are also subject to its rules and regulations.

The lowest rate available from either of my agents.

The Index Rate shown on the reverse side, if marked as the Reference Rate for this loan, is an independent index (such as another lender's prime lending rate) over which Lender has no control. If the index becomes unavailable during the term of this loan, Lender may designate a substitute index.

The Base Rate shown on the reverse side, if marked as the Reference Rate for this loan, is set by Lender in its sole discretion. Lender may subsequently designate an independent index as the Lender Rate, but will notify Borrower before doing so.

The Reference Rate in effect at any time on this note is available from Lender.

Mo. payment 2400.00

KEITH HOLT/CROWN BURGER II

.085

148,925.45 Fixed

[illegible]

EXHIBIT 10

Earl D. Tanner #3187
Earl D. Tanner, Jr. #3188
TANNER, BOWEN & WILLIAMS
1020 Beneficial Life Tower
36 South State Street
Salt Lake City, Utah 84111
Telephone: (801) 538-2021

Attorneys for Plaintiffs

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

KEITH C. HOLT and JOYCE S. HOLT,	:	
	:	AFFIDAVIT OF
Plaintiffs,	:	ROBERT A. BAILEY
	:	
vs.	:	
	:	
MANUEL KATSANEVAS,	:	Civil No. 900903536
	:	Judge Pat Brian
Defendant.	:	

STATE OF UTAH)
 : ss.
County of Salt Lake)

ROBERT A. BAILEY, being duly sworn, deposes and says
that:

1. I am an adult of sound mind and have personal
knowledge of the matters set forth in this affidavit.

2. In 1982, I was Vice-President of Continental Bank's
Mortgage Lending Department and Commercial Lending Department, as
well as being a senior lending officer.

3. That summer I was working with Keith C. Holt in an
effort to obtain an SBA loan for him. Part of the collateral for

that loan was to be a Uniform Real Estate Contract in which Keith and his wife were sellers, and Manuel and Steven Katsanevas were buyers. Under this contract, Keith and his wife had sold the Katsanevases' property at 280 West South Temple.

4. I had been told by Keith that the Katsanevases wished to sell 280 West South Temple to Triad and substitute other land as security for their debt to the Holts. Since the changes could affect Keith's application for the SBA loan, I went along with him to talk with the Katsanevases.

5. We met with them before lunch at their Crown Burger restaurant around the summer of 1982. Present were Keith, myself, the Katsanevas brothers, and a third person whose name I don't recall but may have been their attorney.

6. Keith Holt had a loan from Continental Bank that was secured by 280 West South Temple. In order for the Katsanevases to sell the property to Triad, the loan had to be cleared off. They were willing pay off the loan.

7. Keith made three proposals: First, he offered to make the substitution if they would pay his increased income taxes for that year. They declined this plan. Second, he offered to substitute collateral if they would raise the interest rate on the contract. They declined the second offer.

8. Keith's third plan was to apply the payment to Continental Bank to the end of the contract. They would continue making their regularly monthly payments until the principal

balance was reduced to the amount of their payment to Continental Bank. At that time, their payment would be credited to the contract which would then be paid in full.

9. Keith and the Katsanevas brothers agreed to the third plan. I remember them standing and shaking hands on the deal.

10. Outside the Crown Burger after the meeting, I told Keith that he had come out "smelling like a rose" and that this arrangement would work fine for his SBA loan. We picked up Lohr Livingston, the commercial officer at Continental Bank working with Keith, and had lunch at Diamond Lil's.

DATED this 29th day of November, 1991.

Robert A. Bailey
ROBERT A. BAILEY

Subscribed and sworn to before me this 29th day of
November, 1991.

Judy M. Panek
Notary Public
Residing in: Salt Lake City

My Commission Expires:

November 19, 1992

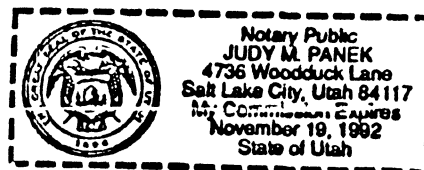


EXHIBIT 11

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

KEITH C. HOLT and JOYCE	:	MEMORANDUM DECISION
C. HOLT,	:	Case No. 900903536 CN
Plaintiffs,	:	Judge Pat B. Brian
vs.	:	
MANUEL KATSANEVAS,	:	
Defendant.	:	

Defendant's motion for summary judgment and plaintiff's motion for summary judgment came on regularly for hearing, pursuant to notice, on the 18th day of October, 1991, before the Honorable Pat Brian, Judge. Plaintiffs were represented by their attorney Paul Lyman, and defendant was represented by his attorney Nick J. Colessides. The Court, having reviewed the memoranda, affidavits, and exhibits, submitted by the parties, and having heard argument of counsel on behalf of both parties, makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On or about April 2, 1979, in Salt Lake County, Utah plaintiffs and defendant entered into a Uniform Real Estate Contract, (the "Contract"), whereby Manuel Katsanevas and Steven Katsanevas

agreed to purchase from plaintiffs certain real property, located in Salt Lake County, Utah, the ("Holt property") and agreed to pay to plaintiffs, in consideration thereof, the sum of \$275,000.00.

2. Pursuant to said Contract, Manuel Katsanevas and Steven Katsanevas agreed to pay consecutive equal monthly payments of \$2,400.00 to the plaintiffs beginning October 1, 1979, and continuing thereafter until the entire principal balance of the contract was paid in full. Defendant has made timely each and every monthly payment due to the plaintiffs under the Contract.
3. Sometime in late 1982, while Katsanevas was involved with Triad Corporation for the exchange of real properties, including the "Holt property", Katsanevas asked and received from plaintiffs, permission to enter into the exchange and transfer the security interest to the new property, and for Katsanevas to pay the "approximately \$50,000.00 indebtedness".
4. Sometime in late 1983, defendant approached the plaintiffs requesting that the plaintiffs allow the collateral, subject matter of the parties' Contract, to be exchanged.
5. The plaintiffs agreed to the transfer in the collateral exchange agreement whereby the collateral, subject matter of the Contract, would be transferred from the South Temple property (280 West South Temple) to the North Temple property.
6. In order to release the South Temple property, plaintiffs informed the defendant Manuel Katsanevas that plaintiffs' bank, Continental Bank and Trust Company, (the "Bank"),

required that a pre-existing loan (loan #1-6566) needed to be paid off before the collateral could be transferred.

7. As requested by plaintiffs and plaintiffs' Bank, defendant Manuel Katsanevas paid on December 21, 1983, plaintiffs' loan #1-6566 to the plaintiff's Bank. Plaintiffs by letter dated November 7, 1991 authorized and consented that the defendant Manuel Katsanevas pay off the loan #1-6566 to plaintiffs' Bank.
8. Plaintiffs agreed to reduce the principal sum due under the contract by the sum of \$46,386.51.
9. The plaintiffs and defendants executed and delivered to each other various documents including a Release, an Assignment of Contract, and a short form Trust Deed, wherein they recited that the then existing indebtedness was the sum of approximately \$172,000.00, which balance assumes that the payment of \$46,386.51 was applied to the then balance of the contract, at the time that it was made.
10. It was necessary for defendant Manuel Katsanevas to borrow the \$46,386.51 in order to pay off the plaintiffs' loan #1-6566.
11. The payment of plaintiffs' loan #1-6566 was not a gift, nor was it intended to plaintiff to bestow any other financial benefit upon plaintiffs; the payment was made at the request of plaintiffs' Bank, for the benefit of the plaintiffs, and thus plaintiffs' Bank allowed the exchange of the collateral.
12. There is no writing or other agreement requiring defendant to apply the \$46,386.51 payment for any purpose other than

as having been applied when made. There was no agreement whereby defendant agreed to apply the payment of \$46,386.51 to the bottom of the Contract.

CONCLUSIONS OF LAW

1. Plaintiffs are required to apply the \$46,386.51 payment to the then balance of the Contract, as of the date the same was made to plaintiffs' Bank, to-wit December 21, 1983.
2. Plaintiffs are not entitled to a windfall.

ORDER

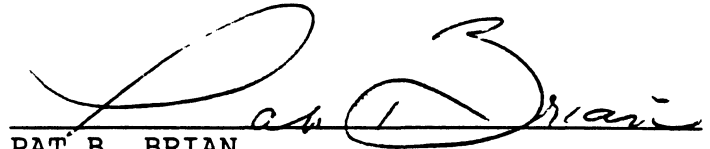
The Court having made it's Findings of Fact and Conclusions of Law, now therefore,

IT IS ORDERED, ADJUDGED and DECREED as follows:

1. Plaintiffs' Motion for Summary Judgment is denied.
2. Defendant's Motion for Summary Judgment is granted.

DATED this 4 day of November, 1991.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Pat B. Brian", is written over a horizontal line.

PAT B. BRIAN
DISTRICT COURT JUDGE