

2016

**Zions First National Bank, Plaintiff-Appellee, v. Shayne D. Crapo,
Defendant-Appellant.**

Utah Supreme Court

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IN THE UTAH SUPREME COURT

ZIONS FIRST NATIONAL BANK,

Plaintiff-Appellee,

v.

SHAYNE D. CRAPO,

Defendant-Appellant.

PUBLIC

Appellate Case No. 20160218-SC

District Court Case No. 140907019

BRIEF OF THE APPELLANT

Appeal from the Third District Court, Salt Lake County, from an Order Granting
Summary Judgment Before Honorable Barry Lawrence

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Pursuant to Utah Rule of Appellate Procedure 24(a), Defendant-Appellant Shayne Crapo (“Crapo”), by and through his undersigned counsel of record, hereby submits his Opening Brief:

LIST OF PARTIES

The parties to this appeal are identified in the caption herein.

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JURISDICTION OF THE SUPREME COURT

The Utah Supreme Court has jurisdiction in this matter pursuant to Utah Code § 78-2-2(3)(j) (2002) (appeal from final judgment).

ISSUES AND STANDARDS OF REVIEW

ISSUE I:

Did the trial court err by granting summary judgment in favor of Plaintiff because a genuine issue of material facts exists as to Plaintiff being estopped from collecting the debt in question? (Issue Preserved: R. 554-570, attached at Addendum 1)

Standard of Appellate Review: In reviewing a summary judgment the Court examines the trial court's legal conclusions for correctness, and view the facts and all reasonable inferences drawn therefrom in the light most favorable to the non-moving party. *Smith v. Four Corners Mental Health Ctr.*, 2003 UT 23, ¶¶ 2, 13, 70 P.3d 904. The Court will allow the summary judgment to stand "only if the movant is entitled to judgment as a matter of law on the undisputed facts." *Kilpatrick v. Wiley, Rein & Fielding*, 909 P.2d 283, 1289 (Utah Ct. App. 1996).

ISSUE II:

Did the trial court err by granting summary judgment in favor of Plaintiff because a genuine dispute of material fact exists as to whether Plaintiff actually charged off the debt in question? (Issue Preserved: R. 554-570, attached at Addendum 1)

Standard of Appellate Review: In reviewing a summary judgment the Court examines the trial court's legal conclusions for correctness, and view the facts and all reasonable inferences drawn therefrom in the light most favorable to the non-moving

party. *Smith v. Four Corners Mental Health Ctr.*, 2003 UT 23, ¶¶ 2, 13, 70 P.3d 904.

The Court will allow the summary judgment to stand “only if the movant is entitled to judgment as a matter of law on the undisputed facts.” *Kilpatrick v. Wiley, Rein & Fielding*, 909 P.2d 283, 1289 (Utah Ct. App. 1996).

STATEMENT OF THE CASE

A. Nature of the Case

This is a collection case filed by Zions Bank (“ZB”) seeking to collect on a \$250,000 promissory note executed by Appellant on December 29, 2006.

B. Course of Proceedings

ZB filed this action on October 9, 2014. (Rec. 1-3) On November 7, 2014, Crapo answered the complaint. (Rec. 18) The parties conducted all fact discovery through June 2015.

On July 27, 2015, ZB filed its motion for summary judgment. (Rec. 229) On July 30, 2015, Crapo filed a cross motion for summary judgment. (Rec. 318) Both parties filed opposition memoranda to the cross motions for summary judgment. (Rec. 375; 446) On January 8, 2016, the trial court conducted oral arguments on the cross motions for summary judgment. (Rec. 793)

On January 22, 2016, the trial court granted ZB’s motion for summary judgment and denied Crapo’s motion for summary judgment. (Rec. 554) On January 25, 2016, ZB filed its motion for an award of attorneys’ fees and costs. (Rec. 571)

On February 8, 2016, Crapo filed his notice of non-opposition to the motion for attorneys’ fees and costs. (Rec. 600) On February 8, 2016, the trial court entered a final

judgment against Crapo, awarding ZB a total of \$320,704.61 in damages, attorneys' fees, and costs. (Rec. 610)

On March 9, 2016, Crapo filed his amended notice of appeal with the trial court. (Rec. 648, 653)

C. Disposition at Trial Court

On January 22, 2016, the trial court entered its order granting ZB's motion for summary judgment and denying Crapo's motion for summary judgment. (Rec. 554)

STATEMENT OF FACTS

1. On December 29, 2006, Crapo entered into a Home Equity Line Credit Agreement and Disclosure (the "Note") with ZB in the principal amount of \$250,000.00. (Rec. 402)

2. Crapo defaulted under the Note. (Rec. 2, ¶ 6)

3. On October 20, 2010, ZB sent a demand letter to Crapo, requesting payment for the full amount of the loan. (Rec. 403; 421)

4. The following month, in November 2010, ZB sent a second letter to Crapo demanding payment. (Rec. 403; 421-22)

5. Between sending these letters in 2010 and filing this lawsuit in 2014, ZB took no steps to collect the amounts allegedly owing under the Loan. (Rec. 403; 421-22)

6. During that time of inaction, on or about January 6, 2011, ZB charged off the Loan by approving an internal "Charge Off Request". (Rec. 428) A true and correct legible copy of the Charge Off Request is attached as an addendum hereto as Addendum 2. (Rec. 428; 550-551)

7. The internal Charge Off Request states:

[Crapo] has indicated he wants to repay the loan but does not have the financial means to do so at this time. It is recommended this loan be charged off due to the lack of collateral and transferred to Recovery Department for further collection efforts. An asset search will be completed to determine if assets exist to attach to a judgment.

(Rec. 428; Addendum 2; 563)

8. Three years later, in January 2014, Crapo received a 1099-C Cancellation of Debt IRS form (the “1099-C”) from Zions. (Rec. 403; 414)

9. The present lawsuit was not filed until October 9, 2014. (Rec. 1-3)

10. A 1099-C Form is sent to a debtor when “an applicable financial entity (a lender) has discharged (**cancelled or forgiven**) a debt” owed by the person who receives the form. (emphasis added). (Rec. 414)

11. In Box 4 of the 1099-C, Zions described the purpose of the discharge as “FORGIVEN DEBT AMT 3 YRS NO PAYMENT.” (Rec. 414)

12. Upon receipt of this form, the IRS informed Crapo that he was “required to include the discharged amount in [his] income” and that a failure to do so would result in “a negligence penalty or other sanction.” (Rec. 414)

13. As a result, Crapo included the full \$250,000.00 value of the Loan as income in his 2013 tax return. (Rec. 403)

14. The 1099-C also had tax consequences for Zions. (Rec. 420)

15. In Zions’ 2013 financial disclosures, Zions’ assets are reduced by the amount of “loan losses,” such as the amount of the Loan. (Rec. 420; 430-438)

16. Moreover, Zions' income was reduced by the amount of "loan losses," such as the amount of the Loan. (Rec. 420; 430-438)

17. The 1099-C decreased Zions' tax burden while simultaneously increasing Crapo's tax burden for the tax year 2013. (Rec. 403; 420; 430-438)

SUMMARY OF ARGUMENT

Crapo created a genuine issue of material fact as to whether ZB is estopped from collecting the debt in this case. This dispute of fact consisted of ZB's approved Charge Off Request dated January 6, 2011 (Rec. 428 and Addendum 2), the 1099-C issued by ZB to Crapo in January 2014 stating "FORGIVEN DEBT", and no action taken by ZB from November 2010 to October 9, 2014, almost four years, to collect on the note. The trial court should have denied ZB's motion for summary judgment on the basis of these factual disputes. This Court should reverse the trial court's order granting summary judgment and remand this matter to the trial court for a trial on the merits.

I. CRAPO CREATED A GENUINE DISPUTE OF MATERIAL FACT AS TO WHETHER ZB WAS ESTOPPED FROM COLLECTING THE NOTE.

Under Utah law, a party is estopped from pursuing its claims if the following three elements are met:

- (1) a statement, admission, act, or failure to act by one party inconsistent with a claim later asserted;
- (2) reasonable action or inaction by the other party taken or not taken on the basis of the first party's statement, admission, act or failure to act; and
- (3) injury to the second party that would result from allowing the first party to contradict or repudiate such statement, admission, act, or failure to act.

Youngblood v. Auto-Owners Ins. Co., 2007 UT 28, ¶ 14, 158 P.3d 1088.

In this case, Crapo created a genuine dispute of material fact as to whether ZB is estopped from asserting its claims and collecting the value of the Note from Crapo.

A. A Genuine Dispute of Material Fact Exists Relating to the First Element of Estoppel

Crapo demonstrated a genuine factual dispute regarding the first element of estoppel. In this regard, Crapo demonstrated that ZB took no actions to collect on the Note for four years. (Rec. 403; 420-21) Crapo testified in his declaration that for the time period of November 2010 to the date of filing this action, ZB had taken no action against Crapo to collect the debt. (Rec. 403) ZB confirmed its failure to take action to collect the note, testifying that it sent Crapo demand for payment in November 2010, but did not take action that Crapo would have been aware of until it filed this lawsuit in October 2014. (Rec. 420-21)

When ZB communicated with Crapo more than 3 years after demanding payment of the Note, the communication was in the 1099-C form in January 2014. The record shows that in January 2014, ZB sent the 1099-C to Crapo, affirmatively stating that the Note was “FORGIVEN DEBT.” (Rec. 414) Moreover, three years before issuing the 1099-C, ZB internally stated its intent to charge off the debt, albeit stating that it would conduct an asset search to determine if any judgment could be collected. (Rec. 428) The date of this Charge Off Request is January 2011, three years prior to ZB issuing the 1099-C stating the debt was forgiven. The trial court should have denied summary judgment in light of these disputed facts.

B. A Genuine Dispute of Material Fact Exists in Relation to the Second Element of Estoppel

Crapo created a genuine dispute of material fact in relation to his actions in reliance on ZB's statements, admissions, and acts. Because ZB told Crapo that the Note was "FORGIVEN DEBT," (Rec. 414), Crapo included the full value of the Note in his income for the tax year 2013. (Rec. 403) Importantly, the only communication Crapo had from the bank prior to the lawsuit being filed in October 2014 consisted of two demand letters four years earlier in October and November 2010, and the 1099-C sent to Crapo in January 2014. Whether Crapo's inclusion of the "forgiven debt" on his income tax returns constituted reasonable reliance on ZB's issuance of the 1099-C is a question of fact for the jury. Moreover, because ZB had discharged the Note, taken no steps to collect on the Note for four years, and told Crapo the Note was "FORGIVEN DEBT," Crapo has not made additional payments nor has he maintained the financial flexibility to do so. A genuine dispute of material fact therefore exists as to whether Crapo took reasonable actions based on ZB's affirmations.

In its order granting summary judgment, the trial court relied heavily on the reasoning that Crapo failed to satisfy the second element of estoppel because ZB never communicated any intent to discharge the debt at issue, and therefore given the lack of communication or other indication that the debt had been discharged, Crapo's inclusion of the 1099-C amount in his income taxes was not reasonable. (R. 566-68)

The trial court's reasoning ignores the language in the 1099-C, which clearly and plainly communicated that Crapo's debt had been "forgiven." Importantly, by issuing the

1099-C, Zions communicated much more than just a general potential discharge of debt by stating in Box 4 of the 1099-C that the debt at issue was “FORGIVEN DEBT”. This information clearly raises an issue of fact as to what ZB intended in communicating to Crapo that the debt was “forgiven,” and whether ZB still intended to collect the debt. The trial court should have therefore denied ZB’s motion for summary judgment.

The anti-waiver provision in the Note likewise does not prevent ZB’s inaction between November 2010 and October 2014 from being an issue of fact relevant to Crapo’s reliance. The anti-waiver provision states:

Delay in Enforcement. We may delay or waive the enforcement of any of our rights under this Agreement without losing that right or any other right. If we delay or waive our rights, we may enforce that right at any time in the future without advance notice. For example, not terminating your account for non-payment will not be a waiver of our right to terminate your account in the future if you have not paid.

(Rec. 564)

While by itself the mere delay in enforcing a right may prevent such delay from creating an issue of fact, this case does not involve a mere delay. Importantly, the delay was coupled with ZB’s affirmative statement to Crapo that his debt had been forgiven. This statement was never explained away by ZB that the 1099-C was only administratively required to put ZB into compliance with IRS regulations, or that ZB was still enforcing its rights under the Note despite having communicated that the debt had been forgiven. The dispositive question in regards to the second element of estoppel is whether Crapo’s actions were reasonable on the basis of ZB’s statement, admission, act or failure to act. Here, not only was there a failure to act, there was a statement or

admission that the debt had been forgiven. Therefore, the anti-waiver provision in the Note should not prevent ZB's delay from being an issue of fact.

C. A Genuine Dispute of Material Fact Exists in Relation to the Third Element of Estoppel

Crapo created a genuine dispute of material fact in relation to the third element of estoppel by showing that he will be injured if ZB is allowed to contradict and repudiate its prior affirmations. Crapo has already paid taxes on the full value of the Note. (Re. 403) Furthermore, Crapo has relied upon ZB's affirmations and has taken no steps to pay the Note or to create the financial ability to pay the Note. Therefore, should ZB be allowed to retract its prior acts and statements, Crapo would be harmed by paying the value of a Note he reported to the IRS as income and that he understood to have been forgiven.

Having created a genuine dispute of material fact in relation to the elements of estoppel, the Court should have denied ZB's motion for summary judgment and conducted a trial on the merits. This Court should therefore reverse the trial court's decision and remand this case for trial.

II. REGARDLESS OF ANY CONFLICT BETWEEN MAJORITY AND MINORITY COURTS RELATIVE TO THE ISSUANCE OF A 1099-C, ZB WAS NOT ENTITLED TO JUDGMENT AS A MATTER OF LAW ON THE BASIS OF *F.D.I.C. v. CASHION*.

In granting summary judgment in favor of ZB, the trial court expressly adopted the view of the Fourth Circuit Court of Appeals in *F.D.I.C. v. Cashion*, 720 F.3d 169 (4th Cir. 2013), which held that mere issuance of a 1099-C does not constitute a discharge of debt. In expressly adopting the view in *Cashion*, the trial court expressly rejected the view of

the Arizona Court of Appeals in *AmTrust Bank v. Fossett*, 224 P.3d 935 (Ariz. Ct. App. 2009), which held that issuance of a 1099-C constitutes *prima facie* evidence of discharge. Without needing to determine which side of the fence Utah falls in relation to views adopted by either *Cashion* or *AmTrust*, the *Cashion* decision should not have been the legal basis for granting summary judgment in favor of ZB.

Cashion is easily distinguishable from the present case. In *Cashion*, the key to the court's decision in deciding that the bare issuance of a 1099-C does not prove discharge of debt was that the debtor's "*sole* evidence" of the discharge was the 1099-C and that *Cashion* provided no "contextual clues needed to decide between" whether his debt was discharged or not. *Id.* at 180 (emphasis added).

The facts in this case are vastly different. Here, Crapo provided the trial court with additional proof of the discharge, giving the trial court ample "contextual clues" that a genuine factual dispute existed in relation to the Note being forgiven. For example, not only did Crapo receive a 1099-C, the 1099-C contained an affirmative statement by ZB describing the Note as "FORGIVEN DEBT." On top of that, ZB discharged Crapo's debt and took no steps to collect on the Note for four years. While the internal charge off request stated that ZB would conduct an asset and determine whether a judgment could be collected, this was never communicated to Crapo, and this determination for charge off was made more than 3 years before ZB expressly told Crapo the debt had been forgiven, and 3.5 years before ZB actually filed suit to collect the Note. Moreover, ZB was able to reduce its tax burden as a result of issuing the 1099-C, while simultaneously

increasing Crapo's. Taken together, these facts provide sufficient "contextual clues" that render *Cashion* inapplicable and require a reversal of the trial court's summary judgment.

The cases cited to by the trial court to further support its grant of summary judgment actually support Crapo's position in this appeal. The trial court's supportive case law appears at page 558 of the record. The majority of these cases demonstrate that issuance of a 1099-C, along with additional evidence, will, at the very least, give rise to disputed factual issues surrounding discharge of debt. *See* Rec. at 558, citing *Hart v. Credit Serv. Co., Inc.*, 2014 WL 5293600, *3 (D. Colo. 2014) ("Plaintiff's mere receipt of a 1099-C form did not constitute extinguishment of his underlying debt."); *Mennes v. Captial One, N.A.*, 2014 WL 1767079, at *6 (W.D. Wis. 2014) ("Given that the regulation requires the filing of Form 1099-C regardless whether the debt has actually been discharged, and that actual discharge of the debt is only one of the identifiable events that triggers the filing of a 1099-C form, I find the IRS interpretation persuasive and agree with the majority of courts addressing this issue that without additional evidence, the filing of a 1099-C form does not by itself evidence debt cancellation as a matter of law."); *Ware v. Bank of Am. Corp.*, 9 F. Supp. 3d 1329, 1341 (N.D. Ga. 2014) ("Plaintiff has failed to point the court to any documentary or testamentary evidence, or binding or even persuasive legal authority to support his claim that the 1099-C extinguished his obligation to pay the debt, or that Defendant cancelled or forgave the debt . . .").

CONCLUSION

The Court should reverse the trial court's order granting summary judgment in favor of ZB and remand this case back to the trial court for a trial on the merits.


DATED this 24th day of August, 2016.

KIRTON McCONKIE


Richard J. Armstrong
Attorneys for Appellant

WORD COUNT CERTIFICATION

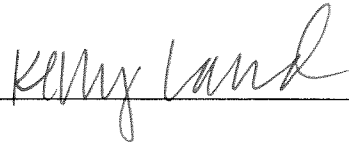
I hereby certify that this brief complies with the word limitations in Utah R. App. P. 24(f) and contains 3,318 words according to the word count function in Microsoft Word 2010.


Richard J. Armstrong

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of August, 2016, two true and correct copies of the foregoing ***BRIEF OF THE APPELLANT***, along with an electronic version of the brief on CD, was mailed in the U.S. mail, postage prepaid, to the following:

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ADDENDA

ADDENDUM 1

THIRD DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH
SALT LAKE DEPARTMENT

FILED DISTRICT COURT
Third Judicial District

JAN 22 2016

SALT LAKE COUNTY

By

Deputy Clerk

ZIONS FIRST NATIONAL BANK,

Plaintiff,

vs.

SHAYNE D. CRAPO,

Defendant.

**ORDER GRANTING THE
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

Case No.: 140907019

Judge: Barry G. Lawrence

Plaintiff asserts a deficiency claim against the Defendant for the amount due and owing under a note – \$250,000 plus interest, costs and fees. Discovery has closed, and both parties have filed cross-motions for summary judgment. Plaintiff argues that the facts are undisputed that \$250,000 remains due and owing from the Defendant and seeks a judgment against him in the amount of \$289,069.86 through May 31, 2015, plus interest of \$18.77 per day thereafter.¹ In response, Defendant does not dispute that he has failed to pay the amount due under the note, but asserts defenses based on the Plaintiff's alleged discharge of the obligation. Defendant primarily argues that by virtue of the Plaintiff issuing a 1099-C tax form to him for the 2013 tax year, the Plaintiff is deemed to have discharged his debt and/or is barred by the doctrines of waiver and estoppel from pursuing its claims.

¹ Those amounts were supported by the Affidavit of Rex Goodwin and were not disputed by Defendant.

Accordingly, the principal question for the Court is this: What effect does the issuance of the 1099-C have on Plaintiff's claims? On one hand, Plaintiff argues that the 1099-C is simply a tax reporting tool and does not effectuate a discharge of the indebtedness, and thus Defendant's defense are unsupported and summary judgment is warranted.² On the other hand, Defendant initially seemed to argue that the 1099-C precludes Plaintiff from asserting a claim as a matter of law. However, even the cases Defendant relies upon suggest that the 1099-C form only constitutes *some evidence* of a discharge, creating a question of fact for the jury; it does not in and of itself create a legal bar to collection. The Court concludes – based on the applicable tax rules, I.R.S. authorities, and persuasive majority of the case law – that the 1099-C does not effectuate or otherwise constitute evidence of a discharge. That, plus the dearth of any other evidence supporting an alleged discharge by Plaintiff, supports summary judgment in favor of Plaintiff.

I. The 1099-C Form and Pertinent Regulations

It is undisputed that Defendant failed to make any payments to Plaintiff beginning in 2010. In early 2014, Plaintiff issued a Form 1099-C to Defendant for the 2013 tax year. That form, entitled “Cancellation of Debt” (“Form”), stated \$250,000 as the “amount of debt discharged.” Notably, the reason given for the code was signified as “Identifiable Event Code ‘H’.” The instructions on the face of the Form provided the following guidance to the Defendant:

You received this form because a Federal Government agency or an applicable financial entity (lender) *has discharged (canceled or forgiven) a debt you owed or because an identifiable event has occurred* that either is or is deemed to be a discharge of a debt of \$600 or more. . . . *If an identifiable event has occurred but the debt has not actually been*

² Plaintiff also argues that there could not have been a discharge because any discharge would constitute a “credit agreement” subject to the statute of frauds, Utah Code Ann. § 25-5-4(1)(f). Defendant counters that only a “note or memorandum of the agreement,” is required (*id.*), which is satisfied by the 1099-C Form and the Charge Off request. Because the Court concludes that there was no evidence of a discharge, it need not address this argument.

discharged, then include any discharge debt in your income in the year that it is actually discharged, unless an exception or exclusion applies to you in that year.

(Def.'s Mem. In Supp. of Summ. J. Ex. A2 (Cancellation of Debt)) (emphasis added.)

This cancellation process was done pursuant to 26 C.F.R. § 1.6050P-1. That regulation sets forth the reporting requirements for a lender as follows:

(a) Reporting requirement—(1) In general. Except as provided in paragraph (d) of this section, any applicable entity (as defined in section 6050P(c)(1)) that discharges an indebtedness of any person (within the meaning of section 7701(a)(1)) of at least \$600 during a calendar year must file an information return on Form 1099-C with the Internal Revenue Service. Solely for purposes of the reporting requirements of section 6050P and this section, a discharge of indebtedness is deemed to have occurred, except as provided in paragraph (b)(3) of this section, if and only if there has occurred an identifiable event described in paragraph (b)(2) of this section, whether or not an actual discharge of indebtedness has occurred on or before the date on which the identifiable event has occurred.

Id. (emphasis added.) Thus, consistent with the Form itself, two things are clear: First, that the purpose of this regulation and document is to effect I.R.S. tax reporting requirements. Second, that a discharge of indebtedness for tax purposes includes *both* actual discharges as well as other events that are *not actual* discharges.

26 C.F.R. § 1.6050P-1 subpart (b)(2) lists the eight recognized “identifiable events,” seven of which appear to reflect *actual* discharges, including: 1) a discharge in bankruptcy, *id.* at sec. 1.6050P-1(b)(2)(A); 2) a “cancellation or extinguishment” for various reasons, *id.* at 1.6050P-1(b)(2)(B), (C), (D) and (E); and 3) “a discharge of indebtedness” based on an agreement or based on the creditor’s decision to discharge the debt.” *Id.* at sec. 1.6050P-1(b)(2)(F) and (G). The eighth identifiable event, stated in sub-paragraph H, allows a lender to identify the reason for the issuance of the 1099-C where there has not been an *actual* discharge:

(H) In the case of an entity described in section 6050P(c)(2)(A) through (C), *the expiration of the non-payment testing period*, as described in § 1.6050P-1(b)(2)(iv).

26 C.F.R. § 1.6050P-1(b)(2)(H)(emphasis added.). The Form Plaintiff issued in this case clearly and unambiguously reflects “Identifiable Event Code ‘H’,” referring to the expiration of a “testing period,” as opposed to an *actual* discharge, cancellation or extinguishment.

II. Case Law Interpreting the Form 1099-C

Each party has cited to case law supporting their position. Plaintiff asks the Court to adopt the majority position, the lead case for which is *F.D.I.C. v. Cashion*, 720 F.3d 169 (4th Cir. 2013). There, also on summary judgment, the court addressed the issue whether “the introduction into evidence of the 1099–C Form create[d] a genuine issue of material fact as to whether the Note had been cancelled or assigned.” *Id.* at 177. The court concluded:

The plain language of the regulation leads us to conclude that filing a Form 1099–C is a creditor’s required means of satisfying a reporting obligation to the IRS; it is not a means of accomplishing an actual discharge of debt, nor is it required only where an actual discharge has already occurred.

* * *

The IRS, the administrative agency charged with the obligation of implementing IRC § 6050P through its regulations, thus treats the Form 1099–C as a means for satisfying a reporting obligation and not as an instrument effectuating a discharge of debt or preventing a creditor from seeking payment on a debt. Moreover, as the IRS correctly noted in the foregoing Information Letters, nothing in the relevant statute or regulations prohibits collection following the filing of a Form 1099–C.

Id. at 179 (emphasis added).

In *Cashion*, the debtor argued, just as the debtor argues here, that the 1099-C Form constitutes prima facie evidence of an intent to discharge the loan, and that it would be up to the lender to demonstrate a contrary intention, thereby creating a factual dispute. The court in *Cashion* rejected that view, which it referred to as the view of “a small minority of the lower courts.” *Id.* at 178.

Notably, the court in *Cashion* also relied on the IRS's own interpretation of the regulations as manifested in two IRS Information Letters:

In the first, the IRS addressed a creditor's concern that filing the Form 1099-C would constitute a written admission that it had discharged the debt and would therefore make debtors unwilling to pay on their obligations. Citing subsection (a) of the regulations discussed above, the IRS responded that it "does not view a Form 1099-C as an admission by the creditor that it has discharged the debt and can no longer pursue collection." I.R.S. Info. 2005-0207. In the second letter, the IRS assured a concerned creditor that filing a Form 1099-C satisfies the reporting requirements of statute and implementing regulations, neither of which "prohibit collection activity after a creditor reports by filing a Form 1099-C." I.R.S. Info. 2005-0208.

Id. at 179.

This Court, having reviewed the IRS regulations, the language of the IRS letters, and the Form 1099-C and its underlying procedure, agrees with and adopts the rule adopted by *Cashion*. See also *Hart v. Credit Serv. Co., Inc.*, 2014 WL 5293600, *3 (D. Colo. 2014) ("Plaintiff's mere receipt of a 1099-C form did not constitute extinguishment of his underlying debt."); *Mennes v. Capital One, N.A.*, 2014 WL 1767079, at *6 (W.D. Wis. 2014) ("Given that the regulation requires the filing of Form 1099-C regardless whether the debt has actually been discharged, and that actual discharge of the debt is only one of the identifiable events that triggers the filing of a 1099-C form, I find the IRS interpretation persuasive and agree with the majority of courts addressing this issue that without additional evidence, the filing of a 1099-C form does not by itself evidence debt cancellation as a matter of law."); *Ware v. Bank of Am. Corp.*, 9 F. Supp. 3d 1329, 1341 (N.D. Ga. 2014) ("Plaintiff has failed to point the court to any documentary or testamentary evidence, or binding or even persuasive legal authority to support his claim that the 1099-C extinguished his obligation to pay the debt, or that Defendant cancelled or forgave his debt..."); *United States v. Reed*, 2010 WL 3656001, at *2 (E.D. Tenn. 2010) ("However, a Form 1099-C, as a matter of law, does not operate

to legally discharge a debtor from liability on the claim that is described in the form.”); *Capital One, N.A. v. Massey*, 2011 WL 3299934, at *3 (S.D. Tex. 2011)(“With respect to the first issue, a 1099–C is issued to comply with IRS reporting requirements. I.R.S. Ltr. Rul.2005–0207, 2005 WL 3561135 (Dec. 30, 2005). The IRS does not view a 1099–C as a legal admission that a debtor is absolved from liability for a debt. *Id.* The IRS’s interpretation of regulations over which it has authority are given great deference. *See Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843–45, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). Thus, this court adopts the view that a 1099–C does not discharge debtors from liability. Therefore, the fact that Plaintiff issued a 1099–C in relation to the Borrowers’ indebtedness is irrelevant and does not raise a genuine issue of material fact in this suit.”)

The regulation and the Form are both clear and unequivocal – the issuance of the 1099-C signifies *either* an actual discharge *or* some other identifiable event. It is a “means of satisfying a reporting obligation to the IRS; it is not a means of accomplishing an actual discharge of debt.” *Cashion*, 720 F.3d at 179; *see also* 26 C.F.R. § 1.6050P-1. The Form does not, in and of itself, effectuate a discharge, nor does it constitute evidence of a discharge, *especially* in this case where the form made clear that the reason for the issuance of the Form was due to “Identifiable Event ‘H’,” which signified the “expiration of the non-payment testing period” and not an actual discharge, cancellation or extinguishment. *Compare* 26 C.F.R. § 1.6050P-1(b)(2)(H) to 26 C.F.R. § 1.6050P-1(b)(2)(A)-(G).

Defendant relies on the minority view – that the Form constitutes *some evidence* of a discharge. At oral argument, Defendant acknowledged that the only case of which he was aware that similarly involved a sub-part H identifiable event, is *Amtrust Bank v. Fossett*, 224 P.3d 935 (Ariz. Ct. App. 2009). There, the court concluded that the “issuance of the Form 1099–C is *prima facie*

evidence that it had discharged their debt within the meaning of Arizona law.” *Id.*, at 937. This Court rejects that case and the minority view, for two reasons. First and foremost, that conclusion is at odds with the plain language and meaning of the IRS regulations and procedures. Second, in *Amtrust Bank*, that court addressed a specific provision of Arizona law governing discharges.

Defendant also relies heavily upon *In re Reed*, 492 B.R. 261 (Bankr. E.D. Tenn. 2013). There, however, the court expressly *excluded* the subpart H identifiable event provision from its analysis: “Subsections (b)(2)(i)(H) and (b)(2)(iv) concern a non-payment testing period consisting of a minimum of 36 months, increased by any months during which a creditor is precluded from engaging in collection activity due to bankruptcy or other applicable law, *and has no bearing on the court’s determination.*” *Id.* at 267 (emphasis added.) So, that case does not provide support for Defendant’s position here.

The bottom line is that the majority view is consistent with the IRS regulations and reporting scheme; the minority view is not. This is especially so in this case – where the noted reason for the Form is *not* an actual discharge, extinguishment or cancellation, 26 C.F.R. § 1.6050P-1(b)(2)(A)-(G), but for an altogether different reason. 26 C.F.R. § 1.6050P-1(b)(2)(H). Accordingly, the Court agrees with the majority view and rejects the notion that the issuance of the Form effectuated a discharge, or otherwise resulted in a discharge of Defendant’s obligation, or that the issuance of the Form constitutes any evidence of a discharge.

III. Analysis of Other Evidence to Determine Whether a Discharge Occurred

Having concluded that the issuance of the Form itself did not effectuate a discharge, and is not, standing alone, evidence of Plaintiff’s discharge, the Court must now determine whether there are any other facts from which a fact-finder could conclude that Plaintiff has discharged Defendant’s

debt and/or given up the right to collect on the amount owed from Defendant. *See Cashion*, 720 F.3d at 181 (noting that its holding is limited to cases “where the 1099–C Form is the only evidence of debt discharge before the Court.”) Defendant relies on three pieces of evidence: 1) the written-in language on the Form; 2) Plaintiff’s internal charge off request; and 3) Plaintiff’s alleged inaction.

Plaintiff disputes that any of these three facts constitute any evidence of a discharge or an intent to discharge. Plaintiff has submitted a declaration (Goodwin Decl.), and supplemental declaration from Rex Goodwin, its Vice President of Consumer Loan Servicing. (Pl.’s Combined Reply, Ex. A, Goodwin Supp. Decl.). Mr. Goodwin stated, among other things, that “Zions issued the 1099-C solely for purposes of complying with applicable tax laws and had no intent to waive its claims against Crapo.” Goodwin Decl. at ¶ 15. And, that “Zions has never at any time taken any action to grant an actual release forgiveness or discharge of Crapo’s debt to Zions.” (Pl.’s Combined Reply, Ex. A, Goodwin Supp. Decl. at ¶ 8). Mr. Goodwin also declared that none of the actions at issue here were ever *intended* to waive Plaintiff’s right to collect against Defendant. *Id.*, at ¶¶ 6-8. Defendant has failed to rebut any of Goodwin’s testimony with any other evidence, aside from the three facts they rely upon, and so those facts are deemed admitted, unless any of the other pieces of evidence controverts that testimony. *See* U.R.C.P. 56(a)(4). Each will be addressed.

A. The Form 1099-C

Defendant argues that even under the holding from *Cashion*, the Form evidences a discharge because in the “Debt Description” box, Plaintiff stated: “FORGIVEN DEBT AMT 3 YRS NO PAYMENT.” Defendant argues that Plaintiff was only required to provide the type of indebtedness – i.e., “consumer debt” – and that by using the term “forgiven” indicates an intent to discharge.

The Court is not persuaded by this argument. That document, taken as a whole, is simply

a reporting mechanism to the IRS. *See supra*. It reflects an accounting procedure that is not intended to be a means whereby a creditor can extinguish a debt or whereby a debtor may be exonerated from all payment. When viewed in the totality – given the general purpose of the form, along with the fact that it references an identifiable event (H) that excludes an extinguishment, cancellation or discharge – this document cannot be construed as evidence of Plaintiff's discharge of defendant's debt or of Plaintiff's intent to waive its right to collect from Defendant; nor can any specific language in the Form be construed to constitute evidence of a discharge. *See supra*.

Again, the Court notes that the majority view of the reported cases is that even where the "Identifiable Event" is noted to be "a discharge, extinguishment or cancellation" that does not effectuate a discharge, and does not result in a lender's loss of collection rights. *Cashion, supra*. If a lender reports a "discharge, extinguishment, or cancellation" through a 1099-C form, and that does not create a factual dispute of a discharge, neither can the use of the word "forgiven" on that same Form. Moreover, although the notation on the Form uses the phrase "forgiven debt," it references "3 yrs," which is a reference to the testing period in Identifiable Event Code H. See Goodwin Supp. at ¶7 (wherein he stated that the "forgiven debt" language was used "not because of an actual forgiveness, but simply as another description of the expiration of the 36 month testing period without receiving a payment.")

In sum, the use of the phrase "forgiven debt" – in the context of a document that is intended to be an IRS reporting tool, and on which the "identifiable event" references something other than an *actual* discharge – simply does not result in the cancellation or discharge of the debt, nor did it deprive Plaintiff of its right to pursue a claim against Defendant.

B. The Charge Off Request

Plaintiff next points to the “Charge Off Request” (“Charge Off”) form dated January 6, 2011. (Def.’s Mem. In Supp. Ex C). That is an internal Zions document that was not communicated to Defendant at the time. The plain language of Plaintiff’s internal document, however, does *not* provide evidence of a discharge, or an acknowledgment by Plaintiff that it was giving up its right to collect a deficiency from Defendant. In fact, that document expressly states just the opposite:

[Defendant] has indicated he wants to repay the loan but does not have the financial means to do so at this time. *It is recommended this loan be charged off due to a lack of collateral and transferred to Recovery Department for further collection efforts.* An asset search will be completed to determine if assets exist to attach to a Judgment.

Id. (Emphasis added.)

The Charge Off document makes clear that although Plaintiff may “charge off” the loan for purposes of internal accounting, it had every intention of trying to collect on the loan, after ascertaining whether collection efforts would be fruitful or futile. The Charge Off document does not provide any evidence supporting an actual discharge; nor does it convey an intent, by Plaintiff, to relinquish its right to collect from Defendant.

C. The Alleged Period of Delay

Finally, Defendant argues that Plaintiff’s delay supported an intent to discharge. Plaintiff’s last communication with Defendant to collect on the loan was in 2010, and it internally issued the Charge Off in January, 2011. There was a period of inactivity for approximately three years – from January 2011 until the Form was issued in early 2014. Plaintiff filed this lawsuit in October, 2014. Defendant cites no authority that supports their position – which effectively would shorten Plaintiff’s 6-year statute of limitations governing this contract action.

In response, Plaintiff argues that a period of inaction does not constitute evidence of intent

to discharge and that the parties' contract expressly bars this argument. The Home Equity Line Credit Agreement and Disclosure ("Note"), (Def.'s Mem. In Supp. Ex. A1), contains the following provision:

Delay in Enforcement. We may delay or waive the enforcement of any of our rights under this Agreement without losing that right or any other right. If we delay or waive our rights, we may enforce that right at any time in the future without advance notice. *For example, not terminating your account for non-payment will not be a waiver of our right to terminate your account in the future if you have not paid.*

Id. at 5 (emphasis added.)³ In response, Defendant argues that Plaintiff waived this provision, relying on *ASC Utah, Inc. v. Wolf Mountain Resorts, L.C.*, 2010 UT 65, 245 P.3d 184, which involved a dispute between a lessor, Wolf Mountain, and lessee, ASCU. After ASCU sued Wolf Mountain in state court, and after a few years of litigation, Wolf Mountain moved to compel arbitration. ASCU argued that it waived the right to arbitrate, but Wolf Mountain relied on a no-waiver provision in the parties' lease, similar to the provision at issue here.⁴ The Court held that Wolf Mountain waived that provision — but not due to inaction or delay, but rather because its affirmative conduct in litigating for three years was “inconsistent with an intent to arbitrate.” *Id.*, ¶ 40.

Here, Defendant presents no facts to support a waiver of the “Delay in Enforcement” provision, other than the alleged delay itself. Allowing a party to avoid the consequences of a no

³ Plaintiff also argues that this provision bars *all* of Defendant's waiver and estoppel arguments because even if Plaintiff did something that could be construed to waive its right to collect from Defendant, they would nonetheless be excused from that waiver and could nonetheless “enforce that right at any time in the future.” *Id.* Although that is a plausible interpretation of that provision, that issue was not fully briefed, so the Court does not base its ruling on that provision alone.

⁴ That provision provided: “Failure of a party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future time said right or any other right it may have hereunder. *Id.*, ¶ 37.

delay provision by arguing inaction – as opposed to affirmative acts constituting a waiver as in *Wolf Mountain* – would render the provision meaningless. Stated differently, a provision that contemplates that a party may delay, and should not be penalized for a delay, cannot be nullified by a delay; such a result would be nonsensical and would render the provision meaningless. *Encon Utah, LLC v. Fluor Ames Kraemer, LLC*, 2009 UT 7, ¶ 28 (“In interpreting a contract, we look for a reading that harmonizes the provisions and avoids rendering any provision meaningless.”) The Court cannot, under the applicable rules of construction, interpret the parties’ contract as suggested by Defendant. *See id.*

In light of the clear and unambiguous contract provision permitting Plaintiff to delay enforcement, any delay on Plaintiff’s part cannot give rise to the fact or inference that Defendant was entitled to have his loan discharged. Here, where Defendant argues no other facts in support of his argument, the Delay in Enforcement provision trumps Defendant’s argument that Plaintiff’s alleged delay constitutes evidence of a discharge.

Accordingly, all of the facts before the Court, even when considered in the light most favorable to Defendant, does not support a discharge of Defendant’s obligation, and does not create a dispute of fact that can defeat Plaintiff’s Motion for Summary Judgment.

IV. Analysis of Crapo's Defenses

Even though Defendant cannot demonstrate an actual discharge of his indebtedness, the Court must nonetheless determine whether either of Defendant’s affirmative defenses – waiver or estoppel – can defeat Plaintiff’s claim; or, at least whether there are questions of fact that preclude judgment at this time. The Court thus analyzes whether, based upon Plaintiff’s actions, it has waived its right to collect on the indebtedness owed, or is estopped from asserting that right.

A. Waiver

The touchstone of the doctrine of waiver is an *intent* to relinquish a known right. *Rees v. Intermountain Health Care, Inc.*, 808 P.2d 1069, 1073 (Utah 1991) (“We have stated that [a] waiver is the intentional relinquishment of a known right”) Here, Defendant argues that through Plaintiff’s actions, it intentionally relinquished its right to collect from Defendant. However, there is no evidence to support that Plaintiff *intended* to give up its collection rights viz-a-viz Defendant.

There is not one fact before this Court that demonstrates an *intent* by Plaintiff to waive its right; in fact the record is entirely to the contrary. First, Mr. Goodwin testified that Plaintiff never intended to waive its rights. Second, the Form does not constitute evidence of an intent to waive; it is an accounting document that is distinct from the legal determination of whether a discharge has occurred, and, in this case, references an event that is *not* an actual discharge. Third, the language on the Charge Off demonstrates just the opposite—that Plaintiff intended to pursue collection efforts against Defendant after it determined whether Defendant had assets to pay so that its efforts would not be futile. Finally, Plaintiff’s alleged period of inaction cannot support a waiver. *Id.* (“[m]ere silence is not a waiver unless there is some duty or obligation to speak.”)

In sum, there is *no* evidence demonstrating that Plaintiff intended to waive its right to collect the indebtedness owed from Defendant; conversely, there is ample evidence that Plaintiff intended NOT to waive that right.

B. Estoppel.

A party asserting an estoppel theory has to prove three elements: 1) a statement, admission, act, or failure to act by one party *inconsistent* with a claim later asserted; 2) *reasonable action* or inaction by the other party taken or not taken on the basis of the first party’s statement, admission,

act or failure to act; and 3) injury to the second party that would result from allowing the first party to contradict or repudiate such statement, admission, act, or failure to act. *Youngblood v. Auto Owners Ins. Co.*, 2007 UT 28, ¶ 14, 158 P.3d 1088.

Based on the undisputed facts, Defendant cannot prove any of these elements. First, Plaintiff's current position – in seeking to collect from Defendant – is not inconsistent with its prior actions. As stated above, all of its prior actions demonstrated an *intent to collect* from Defendant; neither the Form, the Charge Off, nor Plaintiff's alleged delay⁵ is inconsistent with that intent. Stated differently, there is nothing in Plaintiff's course of conduct that would indicate that its decision to now pursue collection efforts against the Defendant is inconsistent with any of its prior actions.

Second, Defendant argues that he reasonably relied on Plaintiff's alleged "discharge" in the 1099-C Form to his detriment by paying taxes on his gain.⁶ However, it appears clear from the tax scheme – expressed in regulations and on the Form itself – that he was/is not required to pay taxes until the loan had been *actually discharged*, and that the Form did not do that. In fact, the I.R.S. instructions on the face of the Form clearly instruct taxpayers to pay taxes *not* when an "identifiable event has occurred but [when] the debt has . . . *actually* been discharged." (Def.'s Mem. In Supp. Of Summ. J. Ex. A2, Instructions for Debtor) ("If an identifiable event has occurred but the debt has not actually been discharged, then include any discharged debt in your income *in the year that it is*

⁵ *First Inv. Co. v. Andersen*, 621 P.2d 683, 687 (Utah 1980) ("[I]n order for silence to work an estoppel, there must be a legal duty to speak, or there must be something willful or culpable in the silence which allows another to place himself in an unfavorable position by reason thereof." (citation and quotations omitted)).

⁶ Other than the 1099-C Form, there were no communications from Plaintiff to Defendant concerning the alleged discharge. Accordingly, that is the only representation that he could have relied upon to his detriment, and is the only communication that can form the basis of an estoppel.

actually discharged[.]” (emphasis added)). Accordingly, because the Form did not convey an actual discharge, Defendant was not required to pay taxes; and he is not required to so pay unless and until an actual discharge occurs. Thus, Defendant cannot argue that he relied on the Form, or any other action taken by Plaintiff, when the document presented to him plainly indicated to him that he should not have acted in that manner.

Gold Standard, Inc. v. Getty Oil Co., 915 P.2d 1060 (Utah 1996), is instructive on the issue. There, the court held that a plaintiff could not rely on his belief, which was based on oral representations made by the defendant when he had “contrary written information” available to him. *Id.* at 1068. It follows that a person cannot rely on his mistaken subjective belief regarding his tax obligations, when the written form provided to him should have disabused him of such an obligation. Accordingly, Defendant’s mistake in paying his taxes appears to have been due to a mistake of law on his part; it was not caused by anything Plaintiff did. Thus, it follows that Defendant did not suffer to his detriment *as a result of* anything Plaintiff did.⁷ There is no basis for an estoppel.

V. **CONCLUSION AND ORDER**

To summarize, the Form did not discharge Defendant’s debt. Moreover, no other evidence submitted to the Court supports that Plaintiff discharged Defendant’s debt. Finally, Defendant has failed to prove that Plaintiff has waived its right to collect from him or is estopped from asserting that right. Thus, the amount of the note remains due and payable to Plaintiff and Plaintiff is entitled to summary judgment as a matter of law.


⁷ Moreover, Plaintiff argues that to the extent Defendant has paid taxes, he may seek a refund to undo any harm. The record was less than complete on this argument, and so the Court does not base its decision on that argument. Similarly, Defendant argues that it would be unfair to allow Zions to collect from Defendant after having received its own tax benefit by writing off the loan. However, there is no evidence in the record to support this contention.

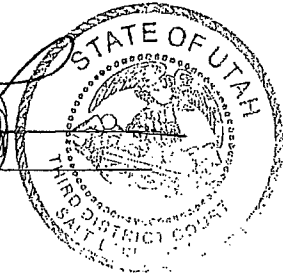
Accordingly, the Court ORDERS as follows:

1. Plaintiff's Motion for Summary Judgment is GRANTED.
2. Defendant's Motion for Summary Judgment is DENIED.
3. Plaintiff should draft and circulate a proposed Final Judgment to the Court in the amount of \$289,069.86 through May 31, 2015, plus interest of \$18.77 per day thereafter, as supported by Mr. Goodwin's Declaration.
4. Otherwise, no further order is required.

So ORDERED this 22ND day of January, 2016.

BY THE COURT:


Barry G. Lawrence
District Court Judge



CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 140907019 by the method and on the date specified.

MANUAL EMAIL: RICHARD J ARMSTRONG rarmstrong@kmclaw.com

MANUAL EMAIL: JACOB A GREEN jgreen@kmclaw.com

MANUAL EMAIL: JOSHUA L LEE jlee@btjd.com

MANUAL EMAIL: JAMES K TRACY jtracy@btjd.com

01/22/2016

/s/ DENICE RICHARDS

Date: _____

Deputy Court Clerk

ADDENDUM 2

CHARGE OFF REQUEST

[illegible]

Evaluated Locus Information Disclosure separately (purpose if additional space is needed)

[illegible]

Reason For Change Of Response (Describe the condition.)

The loan was transferred to Credit Management and downgraded in a timely manner. There were no policy exceptions noted at origination. The loan was originally secured by a 1st FD \$271 in Springdale Springs, UT which was later determined to be a 2nd FD behind a senior for \$472,000 with Wells Fargo. The property was originally valued at \$714,000 on 12/1/00 with 00% of FWH at \$628,320 leaving the bank equity of \$285,680 and \$188,320 at 20% of FWH later. The senior for Atlantic is a money from Cindy McGeeves of Credit Management dated 10/8/08, detailing the loan history including the discovery of the loan position and the subsequent investigation concerning same. During a 10/11 phone conversation with Mr. Crapo it was confirmed the property had been foreclosed in August 2010 and he is still in litigation against Wells Fargo and Lawyers Title (now out of business) concerning a title claim against the property. He has indicated he wants to repay the loan but does not have the financial means to do so at this time. It is recommended this loan be charged off due to the lack of collateral and transferred to Recovery Department for further collection efforts. ~~Mr. Crapo stated he would be completed to develop a plan to collect the loan and transfer it to a judgment.~~

It should also be noted since the Bank had not processed foreclosure through procedure completely, neither senior lender was required to notify the Bank of any proceedings.

CCC OR CLIENT MANAGEMENT REQUEST No

1. Have you ever been arrested? No	2. Has judgment ever obtained? (Attach copy, if yes) No	3. Has bankruptcy ever filed? (date & year) No
4. The responsibility for the debt for payment is US 10, explain reason for the assignment in line 1. The company		

(Print) Name of the party who Name: Walter Buzzard		Change of Party Credit Administration Committee	
Emp. no. 444		Change of Party Reason for Party Removal	
Emp. to Change of Registration from or to (if any) and when Eric A. Wilson		Date 1/16/2011	
Current Party Eric A. Wilson		Date 1/16/2011	
Current Party Eric A. Wilson		Date 1/16/2011	
Signature [Signature]		Signature [Signature]	

Gradat Schwinningstrasse

CC03 Ser 100 501200
ZIONS000015

00428

CHARGE OFF REQUEST

Branch/Dept. Name 41 Payson		Submitted by: Eric A Allman		Branch/Dept. Number UT-ZB05-0183		Date 1/6/11	
Borrower Name Shayne Crapo		Security/Collateral (description, value & basis for value) 2ndTD SFR located in Saratoga Springs, UT. Original appraised value was \$714,000 as of 8/21/06 with 88% FMV at \$628,320 leaving Bank equity of \$242,000 and \$156,320 at 88% FMV less senior lien. Senior lien foreclosed prior to loan coming to Credit Management leaving loan unsecured.					
Last Address [REDACTED]		FICO SCORE AT ORIGINATION N/A		N/A		Unknown	
Last Phone Number [REDACTED]		Credit Score App'd Unknown		Company		Guarantor	
Social Security Number [REDACTED]		Credit Officer Approved ILD		(Officer Name)		Unknown (Lending Limit)	
Borrower Name 0		Additional Approval N/A		(Approving Officer)		N/A (Lending Limit)	
Last Address 0		Additional Approval N/A		(Approving Officer)		N/A (Lending Limit)	
Last Phone Number [REDACTED]		Committee Approval N/A		(Committee Name)			
Social Security Number [REDACTED]							
FRB Code	760	SIC CODE	9999	NAICS CODE	99999	Collateral Code	6320
CRA Code	N/A	HMDA? Y/N	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Reg Q? Y/N	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Policy Exception Code	None
Customer & Note # [REDACTED]		Original Date 12/29/2006		Original Amount 250,000.00		Current Principal Balance 250,000.00	
Reversed Interest Amount 655.89		Total Amount of non-accrual interest 3,880.23		Date placed on non-accrual 11/19/10		Charge <input type="checkbox"/> DOWN <input checked="" type="checkbox"/> OFF	
Type (ILD, RE, Com'l, MC, OD) ILD		SIC# 9999		Days Past Due 128		Date Last Paid 9/1/2010	
12-Month History of Loan Grades 8, 6		Dealer Paper? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N		Recourse? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N		Legal Fees or Other to collect, \$ Unknown	

Related Loan Information (Attached separate page(s) if additional space is needed.)

Loan Number	Grade	Balance	Current Status	Collateral
[REDACTED]	6	2965	Current	Unsecured
[REDACTED]	6	4	Current	Unsecured
Company or Individual Individual		Cosigner/Guarantor		
Principals (if company) Employer		Name Crapo		
Entity (if company) Officer Comments on Financial Statements Loan is in liquidation, updated financials will not be requested.		Financial Statement Date 4/30/2006		
Financial Statement Date		Income (Annual) 955		
Annual Income		Net Worth 2011		
New Worth		Total Debt 3506		
Total Debt				

Reason For Charge Off Request (Describe the situation.)

The loan was transferred to Credit Management and downgraded in a timely manner. There were no policy exceptions noted at origination. The loan was originally secured by a 1st TD SFR in Saratoga Springs, UT, which was later determined to be a 2nd TD behind a senior lien of \$472,000 with Wells Fargo. The property was originally valued at \$714,000 on 8/21/06 with 88% of FMV at \$628,320 leaving the Bank equity of \$242,000 and \$156,320 at 88% FMV less the senior lien. Attached is a memo from Cindy McGinnis of Credit Management dated 10/9/08, detailing the loan history including the discovery of the lien position and the subsequent issues/resolutions concerning them. During a 1/6/11 phone conversation with Mr. Crapo it was confirmed the properties had been foreclosed in August 2010 and he is still in litigation against Wells Fargo and Lawyers Title (now out of business) concerning a title claim against the original collateral. He has indicated he wants to repay the loan but does not have the financial means to do so at this time. It is recommended this loan be charged off due to the lack of collateral and transferred to Recovery Department for further collection efforts. *An asset search will be completed to determine if assets exist to attach to a judgment.*

It should also be noted since the Bank had not requested notification should foreclosure commence, neither senior lender was required to notify the Bank of any proceedings.

OCC OR CREDIT MANAGEMENT REQUEST: No

Legal Action Taken? No	Has Judgment Been Obtained? (Attach copy, if yes) No	Has Bankruptcy Been Filed? (date, if yes) No
If the Responsibility for loss does not conform to CS 16, explain reason for the assignment of loss.		

Loan Officer Charge with Loss		Charge Off Approved <i>[Signature]</i>	
Name Margean Bezzant		Credit Administration Committee	
Employee # 4641		Charge off Date	
Zip code UT RDWVG 0864		Executive Committee Reviewed	
Signature Eric A Allman		Date 1/6/2011	
Current Officer Eric A Allman		C/O Entry Processed <i>[Signature]</i>	
Branch/Dept. 0183/CM		Division Manager <i>[Signature]</i>	
Approved			

Credit Administration

CC183:cor.frm 02/12/03
ZIONS000015