

1991

Jim Pratt Hansen; et al. v. George Sutton, et al. : Brief of Appellant

Utah Supreme Court

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Earl Spafford; L. Charles Spafford; Scott B. Mitchell; Spafford & Spafford; Attorneys for Plaintiffs/Appellants.

Unknown.

Recommended Citation

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UTAH SUPREME COURT
BRIEF

DOCKET NO: 910053-CA

IN THE SUPREME COURT OF UTAH

APPEAL NO: 910053

Defendants/Respondents.

ADDENDUMS TO APPELLANTS' OPENING BRIEF

EARL S. SPAFFORD (3051)
L. CHARLES SPAFFORD (4416)
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A Professional Corporation
425 East 100 South
Salt Lake City, Utah 84111
(801) 363-1234

Attorneys for the Plaintiffs

IN THE THIRD JUDICIAL DISTRICT COURT, FOR SALT LAKE COUNTY

STATE OF UTAH

-----ooo0ooo-----

JIM PRATT HANSEN; RODNEY F.
GORDON; MFT FINANCIAL, INC.
a Utah corporation;
MURRAY FIRST THRIFT AND LOAN
COMPANY, a Utah corporation;
and MFT MORTGAGE CO., a Utah
corporation,
Plaintiffs,

vs.

GEORGE SUTTON, individually
and as Commissioner of the
Department of Financial
Institutions of the State of
Utah and as
Commissioner in Possession of
the Industrial Loan Guaranty
Corporation of Utah and as
Trustee of the retained assets
of Murray First Thrift and Loan
Co.; ELAINE B. WEIS,
individually and as former
Commissioner of the
Department of Financial
Institutions of the State of
Utah; MERVIN BORTHICK,
individually and as former
Commissioner of the
Department of Financial Institu-

COMPLAINT
(BREACH OF CONTRACT;
INTENTIONAL INTERFERENCE
CONTRACTUAL RELATIONS)

Civil No.

Judge

tions of the State of Utah;
THE DEPARTMENT OF
FINANCIAL INSTITUTIONS OF THE
STATE OF UTAH; THE
INDUSTRIAL LOAN GUARANTY
CORPORATION OF UTAH;
JOHN DOES 1-20; ABC
CORPORATIONS 1-20; AND XYZ
PARTNERSHIPS 1-20.

Defendants.

-----ooo0ooo-----

For their Complaint, Plaintiffs allege as follows:

GENERAL ALLEGATIONS

I

Plaintiffs Rodney F. Gordon and Jim Pratt Hansen are and at all relevant times were residents of Salt Lake County, State of Utah.

II

At relevant times, Plaintiffs MFT Financial, Inc. (MFTF), Murray First Thrift and Loan Co. (MFT & L) and MFT Mortgage Co. (MFTM) were corporations organized and authorized to do business in the State of Utah. At relevant times, MFT & L was an industrial loan corporation operating under Utah law.

III

Plaintiffs Gordon and Hansen are controlling shareholders and members of the Board of Directors of Plaintiff MFTF. Plaintiffs Gordon and Hansen are and at relevant times were officers and/or directors of Plaintiff MFT & L and MFTM.

IV

Upon information and belief, Defendant Elaine B. Weis is and at all times was a resident of the State of Utah. At relevant times, Defendant Weis was the Commissioner of the Department of Financial Institutions of the State of Utah.

V

At all relevant times, Defendant Mervin Borthick was a resident of the State of Utah. At relevant times, Defendant Borthick was the Commissioner of the Department of Financial Institutions of the State of Utah.

VI

Defendant George R. Sutton is and at all relevant times was a resident of the State of Utah. Defendant Sutton is and at relevant times was (1) the Commissioner of the Department of Financial Institutions of the State of Utah; (2) the Commissioner in Possession of the Industrial Loan Guaranty Corporation of Utah; and (3) the Trustee of the retained assets of MFT & L.

VII

Defendant Department of Financial Institutions is an agency of the State of Utah.

VIII

At relevant times, Defendant Industrial Loan Guaranty Corporation of Utah (ILGC) was a non-profit corporation organized and operated under the laws of the State of Utah. In or around

August of 1986, the Department of Financial Institutions of the State of Utah seized the ILGC and, at all relevant times, Sutton has acted as Commissioner in Possession of the ILGC.

IX

Defendants John Does 1-20; ABC Corporations 1-20; and XYZ Partnerships 1-20 are fictitious entities which may be liable to Plaintiffs in whole or in part and which will be added hereto by amendment when their true identities are learned.

X

Each of the Defendants named herein acted on behalf of and as agent for each of the other Defendants named herein.

XI

Each of the contracts alleged herein was entered into and was to have been performed in the County of Salt Lake, State of Utah.

XII

All of the conduct, transactions and occurrences alleged herein took place in the County of Salt Lake, State of Utah.

COUNT ONE

(BREACH OF CONTRACT - HANSEN, GORDON, MFT & L,
MFTF and MFTM v. BORTHICK, WEIS, and the
DEPARTMENT OF FINANCIAL INSTITUTIONS
OF THE STATE OF UTAH)

XIII

Plaintiffs reallege the allegations contained in

paragraphs I through XII above as though fully set forth herein and further allege as follows.

XIV

On or about March 14, 1979, Defendant Borthick, acting in his capacity as the Commissioner of the Department of Financial Institutions of the State of Utah, issued an order placing certain restrictions upon the operations of Plaintiff MFT & L on the asserted grounds that MFT&L was:

1. Conducting its business in an unsound and unsafe manner;
2. Pursuing plans which jeopardized the position of its thrift holders;
3. Operating with an impairment of capital.
4. Had violated a law applicable to industrial loan corporations.

(A true and correct copy of said Order is attached hereto as Exhibit "A" and incorporated herein by reference).

XV

Under the above-referenced Order, Defendant Borthick also recommended certain corrective action required to be taken in order for MFT&L to avoid having "the Commissioner of Financial Institutions, under authority of Section 7-2-1 Utah Code Ann. 1953, as amended, to forthwith take possession of the business and property of Murray First Thrift & Loan Co" (See Exhibit "A"

attached hereto), including the following:

1. Within thirty days from the above date, and not later than April 13, 1979: Murray First Thrift & Loan Co. shall submit a written plan to the Commissioner of Financial Institutions for full divestiture to be accomplished within 180 days from its affiliate companies with the exception of MFT Leasing, which status is negotiable. Affiliates are as follows:

M.F.T. Financial, Inc.	(Parent Company)
MFT Mortgage Corp.	(Wholly-owned Subsidiary)
MFT Leasing	(Wholly-owned Subsidiary)
Lon Investment Co.	(50% owned Subsidiary)

The guaranty by Murray First Thrift & Loan Co. of credit lines, or any other obligations of affiliates, must be eliminated before the required divestiture.

2. Effective immediately: No further advances, re-writes of present receivables, or the entering into of any other transactions through, with, or for the following individuals and entities are allowed without the specific written approval of the Commissioner of Financial Institutions.

1. Alternate Energy Systems	11. James Lang
-----------------------------	----------------

- | | |
|------------------------------|-------------------------------|
| 2. American Land Programs | 12. Johnson Land Company |
| 3. Baseline Sacramento Prop. | 13. Maurice Hall |
| 4. Brooke Grant | 14. Mont Blanc Realty |
| 5. Delta Milling | 15. Murray First |
| 6. Elbert Ranch Company | Financial Europe |
| 7. Erland Stenberg | 16. Reading Holding Co. |
| 8. Franklin Johnson | 17. Ross Lare Realty |
| 9. Glendon Johnson | 18. Trailerrancho Corp. |
| 10. Howard Harmer | 19. Trailerrancho Holding Co. |

or any other individual or entity having a direct or indirect business relationship.

3. Effective immediately: There are to be no future advances to, or re-writes of, present receivables from M. F. T. Financial Inc.

(Subject to approval by the Commissioner of Financial Institutions, a reasonable dividend may be paid on the net earnings of Murray First Thrift & Loan Co.)

4. Within 180 days Murray First Thrift & Loan Co. must arrange for a majority of its Board of Directors to consist of individuals not employed by Murray First Thrift & Loan Co. or its affiliates. The appointments of new directors will be subject to approval by the Commissioner of Financial Institutions.

(See Exhibit "A" attached hereto).

XVI

At the time of Defendant Borthick's March 14, 1979 Order,

above-referenced, approximately eighty-percent (80%) of the stock of MFT&L's parent corporation, MFTF, was owned by MFT Holding Company aka Reading Holding Company, which in turn was one-hundred percent (100%) owned by R. Howard Harmer, Cora Beth Harmer, Franklin Johnson and Glendon Johnson.

XVII

Upon information and belief, in large part because of the restrictions imposed upon MFT&L under the March 14, 1979 Order, R. Howard Harmer, Cora Beth Harmer, and R. Howard Harmer, Trustee for Glendon Johnson and Franklin Johnson, as "Sellers," entered into a Stock Purchase Agreement dated October 6, 1980, whereby said parties sold their stock in MFT Holding Company aka Reading Holding Company to Irving Financial Corporation for the purchase price of \$16,000,000.00.

XVIII

At all relevant times, Plaintiffs Gordon and Hansen were controlling shareholders, officers and/or directors of Irving Financial Corporation.

XIX

On or about December 31, 1980, and pursuant to negotiations between Irving Financial Corporation and Defendant Borthick, then acting as Commissioner of Financial Institutions, regarding Irving's purchase of the stock of MFT Holding Company, above-referenced, Defendant Borthick issued an Order essentially

providing for the approval of Irving's purchase of the stock of MFT Holding Company and the lifting of the restrictions in the prior March 14, 1979 Order, on the condition precedent that Irving inject certain specified new capital into MFT&L. (A true and correct copy of the December 31, 1980 Order is attached hereto as Exhibit "B" and incorporated herein by reference).

XX

Subsequently, on or about July 17, 1981, Defendant Borthick and Irving Financial Corporation entered into a modified agreement whereby the Department of Financial Institutions agreed to remove the restrictions placed on MFT&L on the following conditions:

A minimum of \$1,900,000 in cash is contributed to Thrift in the form of paid-in capital.

The contributions to capital and the reorganization of MFT Holding, MFT Financial, Lon Investment, and MFT Mortgage will be carried out as detailed in the "Pro Forma Balance Sheet" dated July 1, 1981 expeditiously and in conformity with governing regulations and statutes.

2. None of the cost associated with the proposed reorganization will be passed on to Thrift.

3. A letter is received from ownership outlining the involvement of and/or obligations to Franklin Johnson, Glendon Johnson and Howard Harmer.

4. A letter detailing how the loan for

\$2,600,000 with Commercial Security Bank and the All Inclusive Trust Deed for \$5,600,000 will be serviced by Bonneville Development.

5. Management of Thrift meets the approval of the Department.

6. The Department is assured access to the books and records of the holding companies.

7. A resolution is received, signed by all members of the Board of Directors of the holding company, Irving Financial Corp., stating that it is their intention to operate Murray First Thrift and Loan with the expressed purpose of strengthening it and that operations will be conducted within the purview of laws and regulations.

8. The Department will continue to approve all dividends paid to or transfers of cash from Thrift to the holding company.

9. Any obligations of the holding company and related parties to Thrift will be paid according to the terms enumerated on the obligation.

(A true and correct copy of the July 17, 1981 letter from Defendant Borthick to the Board of Directors of Irving Financial Corporation is attached hereto as exhibit "C" and incorporated herein by reference).

XXI

Said agreement was modified again by letter dated July 30, 1981 from MFTF to and executed by Defendant Borthick to provide that the \$1,900,000 in cash to be contributed to MFT&L in

the form of paid in capital was reduced to the sum of \$1,800,000. (A true and correct copy of the July 30, 1981 letter is attached hereto as Exhibit "D" and incorporated herein by reference.).

XXII

The "reorganization" plan referred to in the July 17, 1981 modified agreement contemplated, inter alia, that Irving Financial Corporation was to be and in fact was merged into MFT Holding Company, with MFT Holding Company as the surviving entity, which would and subsequently did change its name to Irving Financial Corporation. (A true and correct copy of the Certificate of Merger of Two Domestic Corporations is attached hereto as Exhibit "E" and incorporated herein by reference.)

XXIII

Thus, the "reorganization" plan negotiated by Plaintiffs and Borthick contemplated the corporate death of what was then Irving Financial Corporation.

XXIV

The "reorganization" plan also contemplated that additions to or replacement of capital of MFT&L would be made by Plaintiffs in the following amounts:

- (a) \$2,100,000 principal equity in All Inclusive Trust Deed together with accrued interest;
- (b) \$2,706,000 in cash;

- (c) \$900,000 in accounts receivable;
- (d) 39% interest in Bel Marin Keys property with agreed upon value of \$4,356,000; and
- (e) replacement of deferred profit on Schticting-Mayflower Note of \$1,700,000.

XXV

Plaintiffs were intended third-party beneficiaries of the July 17, 1981 agreement as modified by the July 30, 1981 letter, above-referenced, and have substantially satisfied their duties and obligations arising thereunder.

XXVI

In spite of Plaintiff's substantial compliance with the terms of said agreement, Defendants have failed and refused to perform their end of the bargain. Specifically, on or about July 22, 1982, and after Plaintiffs had injected approximately \$11,900,000 in new and replacement capital into MFT&L in accordance with the July 17, 1981 agreement, Defendants Weis and the Department of Financial Institutions seized the business and property of MFT&L and MFTM, purporting to act under authority under §7-2-1, U.C.A.

XXVII

Defendants Weis' and the Department of Financial Institution's seizure of the business and property of MFT&L and MFTM was a breach of the July 17, 1981 agreement and Plaintiffs have suffered damages thereby in an amount to be proven at trial,

but not less than \$11,900.000.

Wherefore, Plaintiffs pray for Judgment against Defendants as follows:

(1) For compensatory damages in an amount to be proven at trial, but not less than \$11,900,000, together with interest thereon from the date of Judgment until paid.

(2) For such other and further relief as the court may deem just and proper.

COUNT TWO

(BREACH OF CONTRACT - MFT and MFTF
V. SUTTON, DFI, AND ILGC)

XXVIII

Plaintiffs reallege the allegations of paragraphs I through XII above as though fully set forth herein and further allege as follows.

XXIX

On or about December 13, 1982, Plaintiffs and Defendants entered into a Purchase and Assumption Agreement ("P & A Agreement") pursuant to which a majority of MFT & L's assets and liabilities were transferred to First Security Financial, Inc. The assets of MFT & L not transferred to First Security (the "retained assets") were to be held in trust for the benefit of certain creditors of MFT & L and the owners of MFT & L.

XXX

Pursuant to the P & A Agreement, Sutton and the DFI promised to terminate any role or responsibility which they might have with respect to the retained assets within six months. The parties further agreed that, at such time, "at the option of MFT's Board of Directors, the trust may continue or may be terminated. In either event, however, exclusive control of the retained assets shall be held by the MFT Board." (See Exhibit "F" attached hereto).

XXXI

Alternatively, the P & A Agreement contained an implied promise that Sutton and the DFI would turn over the retained assets to MFT & L and terminate their role in connection therewith at the earliest possible time consistent with Sutton's statutory responsibilities.

XXXII

Under the terms of the P & A Agreement, Sutton and the DFI further agreed not to impede any sale or development of the retained assets by MFT & L.

XXXIII

Plaintiffs have performed all of their obligations under the P & A Agreement.

XXXIV

However, despite Plaintiffs' repeated demands, Sutton and the DFI have failed and refused to turn over the retained assets

to MFT & L and, by virtue thereof, Plaintiffs have been damaged in an amount to be determined at trial, but not less than \$11,700,000.

XXXV

In or around November, 1987, over Plaintiffs' vigorous objections, Sutton and the DFI sold MFT & L's interest in one of the retained assets, i.e., the Bel Marin Keys property, for the purchase price of approximately \$11,000,000.

XXXVI

At the time of said sale, MFT & L was involved in negotiations for the sale of the property, one of which included an offer to purchase the property for approximately \$64,000,000.

XXXVII

By selling the BMK property over MFT & L's objections during the course of said negotiations, Sutton and the DFI breached their obligation under the P & A Agreement not to impede MFT & L's efforts to sell or develop the property and, by virtue thereof, MFT & L has been damaged in an amount to be determined at trial, but not less than \$11,700,000.

XXXVIII

Sutton's and the DFI's decision to sell the BMK property was based upon the improper motive of obtaining cash to funnel to the by then defunct ILGC.

XXXIX

Sutton's and the DFI's sale of the BMK property in order to obtain cash for the defunct ILGC was in breach of their implied obligations of good faith and fair dealing under the P & A Agreement.

XXXX

Sutton's sale of MFT & L's interest in the BMK property in order to obtain cash for the defunct ILGC was in breach of his fiduciary obligations under the P & A Agreement as trustee of the retained assets.

XXXXI

Plaintiffs have been damaged by Defendants' breaches of the P & A Agreement, above-referenced, in amount to be determined at trial, but not less than \$11,700,000.

XXXXII

The ILGC and Sutton, acting in his capacity as Commissioner in Possession of the ILGC, induced the DFI and Sutton, acting in his capacity as trustee over the retained assets, to sell the BMK property thus breaching his contractual and fiduciary obligations to MFT & L under the P & A Agreement. By encouraging said breach, the ILGC and Sutton breached their obligations of good faith and fair dealing under the P & A Agreement.

Wherefore, Plaintiffs pray for judgment against Defendants as follows:

(1) For compensatory damages in an amount to be determined at trial, but not less than \$11,700,000, together with interest thereon from the date of judgment until paid.

(2) For such other and further relief as the Court may deem just and proper.

COUNT THREE

(INTENTIONAL INTERFERENCE WITH CONTRACTUAL
RELATIONS - MFT & L and MFTF V. SUTTON AND ILGC)

XXXXIII

Plaintiffs reallege the allegations contained in paragraphs I through XII and XXVIII through XXXXII above as though fully set forth herein and further allege as follows.

XXXXIV

Sutton's and the ILGC's inducement of the breach of the P & A Agreement, above alleged, constitutes intentional interference with Plaintiffs' contractual relations.

XXXXV

Plaintiffs have been damaged by said interference in an amount to be proven at trial, but not less than \$11,700,000.

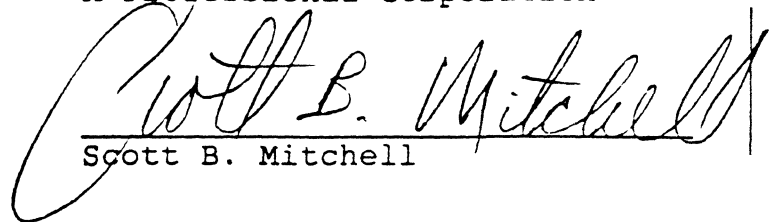
Wherefore, Plaintiffs pray for judgment against Sutton and the ILGC as follows:

(1) For compensatory damages in an amount to be determined at trial, but not less than \$11,700,000, together with interest thereon from the date of judgment until paid.

(2) For such other and further relief as the court may deem just and proper.

DATED this 5th day of June, 1990.

SPAFFORD & SPAFFORD
A Professional Corporation



Scott B. Mitchell



M. HATHESON
GOVERNOR

DEPARTMENT OF FINANCIAL INSTITUTIONS

10 West 3rd South - Suite 331

Salt Lake City, Utah 84101

Phone (801) 533 5461

March 14, 1979

C. B. DODD
CHIEF EXAMINER

S. C. VEINON
DEPUTY ADMINISTRATOR
CONSUMER CREDIT

Findings of the November 30, 1978 state examination of Murray First Thrift & Loan Co. have resulted in the Department of Financial Institutions concluding that Murray First Thrift & Loan Co. is:

1. Conducting its business in an unsound and unsafe manner.
2. Pursuing plans which jeopardize the position of the thrift-holders.
3. Operating with an impairment of capital.
4. Has violated a law applicable to industrial loan corporations.

In order to assure corrective action is taken, the following measures are recommended by the Department of Financial Institutions and would meet the needs of the department. If the management of Murray First Thrift & Loan Co. chooses to not cooperate with the Department of Financial Institutions in resolving the problems, there would be no alternative but for the Commissioner of Financial Institutions, under authority of Section 7-2-1 Utah Code Annotated 1953, as amended, to forthwith take possession of the business and property of Murray First Thrift & Loan Co.

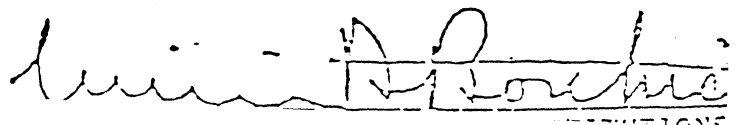
EXHIBIT "A"
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Effective immediately: There are to be no future advances to, or re-writes of, sent receivables from M. F. T. Financial Inc. (Subject to approval by the Commissioner of Financial Institutions, a reasonable dividend may be paid on the earnings of Murray First Thrift & Loan Co.)

Effective immediately: Executive compensation shall be reduced by a minimum of 10,000. Executive compensation is defined as the total salary and bonuses of Ward Vetter, Dean Christensen and Glen Groo. Future "bonuses" must be based on income and have approval of the board of directors.

Within 180 days Murray First Thrift & Loan Co. must arrange for a majority of its board of directors to consist of individuals not employed by Murray First Thrift & Loan Co. or its affiliates. The appointments of new directors will be subject to approval by the Commissioner of Financial Institutions.

Murray First Thrift & Loan Co. will submit a general ledger trial balance, commercial and instalment loan trial balance, and a trial balance of all leases held by both Murray First Thrift & Loan Co. and MFT Leasing each month to the Commissioner of Financial Institutions. Murray First Thrift & Loan Co. shall immediately submit such trial balances for the close of business February 28, 1979, and continue to submit the same for each month-end from that date forward. This material shall be received by the Commissioner of Financial Institutions no later than the 10th day of the following month. If deemed necessary, the Commissioner of Financial Institutions may request such information as of the close of business on any date.


WILLIAM A. LOUCHE



THOMSON
FOR

THE STATE OF UTAH
DEPARTMENT OF FINANCIAL INSTITUTIONS
10 West 3rd South - Suite 331
Salt Lake City, Utah 84101
Phone (801) 533 5461
March 14, 1979

C. D. GUINN
CHIEF CLERK

S. C. VERNON
DEPUTY ADMINISTRATOR
CONSUMER CREDIT

Conclusions & Orders for Murray First Thrift & Loan Co.

Within thirty days from the above date, and not later than April 13, 1979:
Murray First Thrift & Loan Co. shall submit a written plan to the Commissioner of
Financial Institutions for full divestiture to be accomplished within 180 days
of its affiliate companies with the exception of MFT Leasing, which status is
variable. Affiliates are as follows:

- | | |
|-------------------------|-----------------------------|
| M. F. T. Financial Inc. | (Parent Company) |
| ✓ MFT Mortgage Corp. | (Wholly-owned Subsidiary) |
| MFT Leasing | (Wholly-owned Subsidiary) |
| ✓ Lon Investment Co. | (50% owned Subsidiary) |

Any guaranty by Murray First Thrift & Loan Co. of credit lines, or any other obligations of affiliates, must be eliminated before the required divestiture.

Effective immediately: No further advances, re-writes of present receivables, or the entering into of any other transactions through, with, or for the following individuals and entities are allowed without the specific written approval of the Commissioner of Financial Institutions.

- | | |
|-------------------------------------|---------------------------------|
| 1. Alternate Energy Systems | 11. James Lang |
| 2. American Land Programs | 12. Johnson Land Company |
| ✓ 3. Baseline Sacramento Properties | 13. Maurice Hall |
| 4. Brooke Grant | 14. Mont Blanc Realty |
| ✓ 5. Delta Milling | 15. Murray First Financial Euro |
| 6. Elbert Ranch Company | 16. Reading Holding Co. |
| 7. Erland Stenberg | 17. Ross Lare Realty |
| 8. Franklin Johnson | 18. Trailerrancho Corp. |
| 9. Glendon Johnson | 19. Trailexrancho Holding Co. |
| 10. Howard Harmer | |

or any other individual or entity having a direct or indirect business relationship with Franklin or Glendon Johnson.

1. The deposit by Irving Financial Corporation into escrow of the unencumbered sum of \$2,340,000 cash or certificates of deposit acceptable to the Commissioner to be contributed to capital of Murray First Thrift and Loan Co.;

2. The deposit into escrow of the sum of \$482,000 cash to pay delinquent interest on a note in the amount of \$3,000,000 executed by Alternate Energy System in favor of Murray First Thrift and Loan Co.;

3. The above deposits shall be available for release from the escrow upon the issuance of the final Order of the Commissioner dissolving the March 14, 1979, Order and compliance with paragraph 5 hereof.

4. Irving Financial Corporation shall be given until the 1st day of April, 1981, to deposit such monies into escrow. If such deposits are not made by such date, this Order shall not become effective. In the event part of the money required has been deposited into escrow before April 1, 1981, and the balance of said funds are not so deposited, the funds so deposited together with any earnings thereon during the period thereof while on deposit shall be returned to Irving Financial Corporation;

5. Simultaneous with the injection of the new capital into Murray First Thrift and Loan Co. and the payment of the interest on said Alternate Energy System note, the acquisition by Irving Financial Corporation of the stock of Murray First Thrift and Loan Co. and its parent corporation as above described shall be approved and ratified.

DATED this 31st day of December 1980.

EXHIBIT "B"
By [Signature]
Commissioner of Financial

ORDER

WHEREAS, on the 14th day of March, 1979, the undersigned, as Commissioner of Financial Institutions of the State of Utah, issued an Order placing certain restrictions on the operations of Murray First Thrift and Loan Co. of Salt Lake City, Utah, a copy of which Order is attached hereto and;

WHEREAS, Irving Financial Corporation, a Utah corporation, proposes to acquire the capital stock of MFT Holding Company which in turn will own in excess of 80 percent of the stock of MFT Financial, Inc., the parent company of Murray First Thrift and Loan Co. and;

WHEREAS, management of Irving Financial Corporation has proposed to contribute additional capital into Murray First Thrift and Loan Co. in the manner hereafter set forth which injection of capital will cure the defects in the capital structure of Murray First Thrift and Loan Co. noted in the report of the examination of that company dated November 3, 1978, and;

WHEREAS, the management of Irving Financial Corporation has proposed management and an independent board of directors for Murray First Thrift and Loan Co. which proposed management and directors are acceptable to this Department;

NOW THEREFORE, it is hereby ordered that upon meeting the following conditions, the restrictions placed on the operations of Murray First Thrift and Loan Co. by the attached order dated March 14 1979 will be --

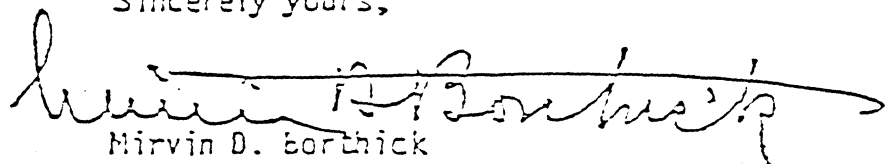
8. The Department will continue to approve all dividends paid to or transfer of cash from Thrift to the holding company.

9. Any obligations of the holding company and related parties to Thrift will be paid according to the terms enumerated on the obligation.

The Department will impose such restrictions and constraints that are deemed necessary upon finding actions taken in violation of regulations and statutes and/or finding actions judged to be detrimental to the stability of Thrift.

The restrictions will be removed concurrently with the infusion of \$1,900,000 of capital in the form of cash and the rest of the reorganization as outlined in the "Pro Forma Statement" with the understanding that the merging and reorganization of MFT Financial and MFT Holding may take up to but not to exceed 180 days.

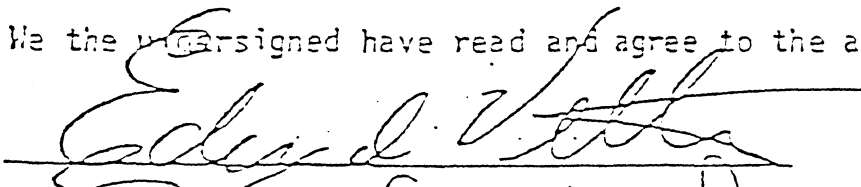
Sincerely yours,


Mirvin D. Borthick
Commissioner

MDB:bj

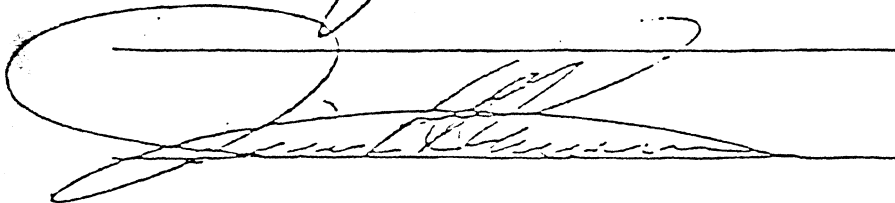
Copy to: Robert Bischoff

We the undersigned have read and agree to the above conditions:









REORGANIZATION PLAN

IRVING FINANCIAL CORPORATION

M.F.T. HOLDING CO., INC.

M.F.T. FINANCIAL, INC.

MURRAY FIRST THRIFT & LOAN CO.

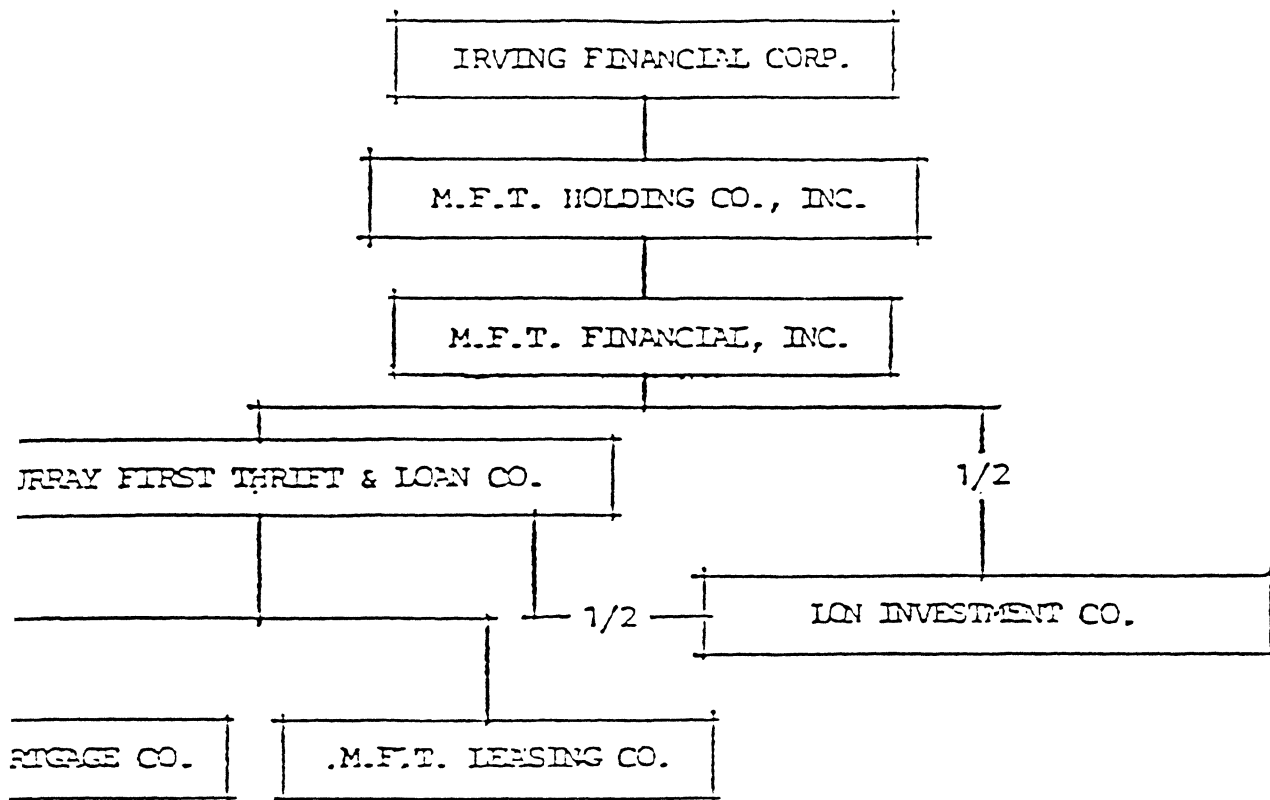
and

RELATED COMPANIES

1 JULY 1981

AC2797

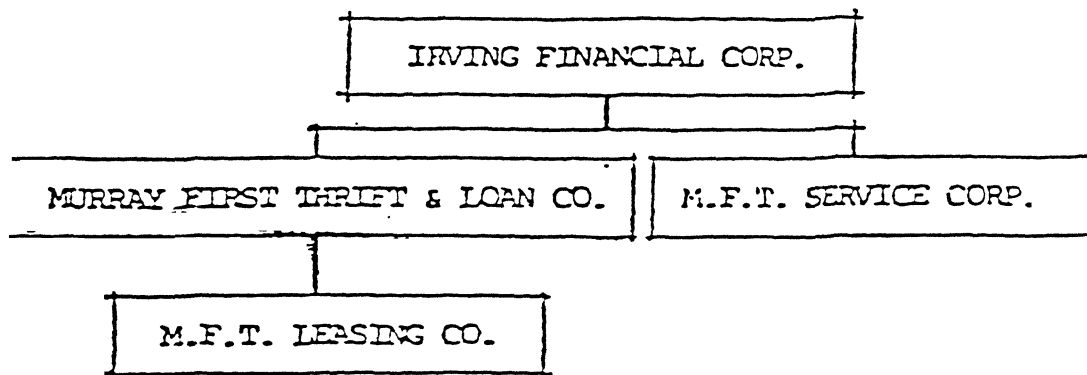
6 October 1980



A02798

PROPOSED REORGANIZATION PLAN

1 JULY 1981



A02799

MURRAY FIRST THRIFT & LOAN COMPANY

PRO FORMA BALANCE SHEET

A02800

PRO FORMA BALANCE SHEET

ASSETS

(Note 1)	\$ 4,992,296	
certificate of deposit - MFT		
erve fund	540,000	
certificate of deposit - FSB		
tingency fund	<u>239,214</u>	\$ 5,771,510
nts receivable and residual value		
ie 2)	40,957,592	
allowance for losses	<u>725,000</u>	40,232,592
receivable - IFC (Note 3)		326,844
in all inclusive trust deeds		
iyable		2,100,000
receivable & equity interest in		
Marin Keys (Note 4)		4,256,585
receivables & accrued interest		723,846
in real estate contracts		998,435
l expenses		177,840
ent in subsidiaries (Note 5)		1,468,084
ssets		143,735
ent in real estate held for sale		
6)		<u>3,958,242</u>
Total assets		<u>\$60,157,713</u>

LIABILITIES & STOCKHOLDERS' EQUITY

iyable (Note 7)	1,120,275	
interest	873,904	
payable & accrued expenses (Note 7)	677,610	
s payable (Note 8)	1,424,314	
abilities	6,909	
ertificates	43,071,179	
ated capital debentures	<u>1,011,000</u>	
Total liabilities		48,185,191
ock & other capital accounts		
)		<u>11,972,522</u>
Total liabilities & stockholders		
equity,		<u>\$60,157,713</u>

anying notes are an integral part of this pro-forma balance sheet.

AG2801

- 1 The cash accounts consist of cash amounts in checking accounts and cash invested in time certificates of deposits.

Cash increased by approximately \$2,930,000 from the following sources

- a. The sale of Irving Commons, proceeds from which sales were contributed to Murray First Thrift in the amount of \$1,900,000.
- b. A time certificate of deposit of approximately \$540,000 at First Security Bank, held in reserve for payment to the Salt Lake City School Board for Irving Commons, will be released and contributed to Murray First Thrift and Loan upon the leasing of space to a financial institution such as a branch of Murray First Thrift and Loan Company upon approval by the Utah State Commissioner of Financial Institutions of the location.

~~Cash held in savings contributed to Murray First Thrift by the parent company in the amount of approximately \$239,300 as a reserve fund.~~

- d. Cash in the amount of approximately \$197,400 contributed to Murray First Thrift by the contemplated liquidation of its subsidiary, Lon Investment Company.
- e. Cash contributed to Murray First Thrift from its subsidiary Murray First Thrift Mortgage Company of approximately \$53,300.

- 2 Accounts receivable are made up of interest bearing installment notes, lease contracts, commercial interest-bearing notes, residual value of leased equipment, real estate contracts and other receivables of a similar nature.

- 3 Irving Financial Corporation purchased all of the stock of Murray First Thrift Mortgage Corporation and the installment note from Lon Investment Co.. This residual amount will be self liquidating during the reorganization process.

4 Bel Marin Keys

Present Involvement

Murray First Thrift & Loan

1. "Undivided interest"	\$1,400,000
2. Notes or mortgages receivable	<u>-0-</u>
Total	\$1,400,000

MFT Mortgage Corporation

1. Note receivable	3,000,000
2. Accrued interest receivable	<u>456,585</u>
Total	3,456,585

AC2802

Effect of Reorganization

Murray First Thrift & Loan

1. Undivided interest in EMX equal to 21.1% in 987 acres at cost	\$3,356,585
2. Note receivable (480 acres)	<u>900,000</u>

Total interest held by MFT \$4,256,585

E 5 This amount of \$1,468,084 is the investment at equity of Murray First Thrift and Loan Company in its only remaining subsidiary Murray First Thrift Leasing Company.

E 6 Real estate held for sale is essentially real estate which has been foreclosed on or repossessed.

E 7 The increases in notes payable, accounts payable, and accrued expenses come from the assumption of additional notes of Lon Investment Company in its liquidation and the disposition of Murray First Thrift Mortgage Company.

E 8 The mortgages payable are secured by the real estate as enumerated in the note 6 above.

E 9 Increases in cash and property assets of Murray First Thrift and Loan Company, have been accomplished primarily by:

- a. The sale of Irving Commons (see note 1a above)
- b. The liquidation of Lon Investment Co., and the transfer of most of its assets to Murray First Thrift and Loan Company.
- c. The disposition of Murray First Thrift Mortgage Company.

These changes have resulted in an increase in the capital of Murray First Thrift and Loan Company of approximately \$2,900,000.

The liquidation of Lon Investment Company and the disposition of Murray First Thrift Mortgage Company left Murray First Thrift and Loan Company with only one subsidiary namely Murray First Thrift Leasing Company. The Murray First Thrift Leasing Company is an entirely compatible and complimentary business to Murray First Thrift and Loan Company and the continued existence of the parent-subsidary relationship should enhance the future progress of both of them.

A02803

NARRATIVE DESCRIPTION

The respective Boards of Directors of Murray First Thrift & Loan Co., M.F.T. Financial, Inc., M.F.T. Holding Company and Irving Financial Corporation have taken action to recapitalize, reorganize and consolidate their respective organizations. The purpose of the action is to more effectively provide for the capital needs of the thrift subsidiary, consolidate the various layers of companies, which were formed in response to historical needs, but impose structural barriers to meeting the emerging banking requirements of the 1980's, and to provide a streamlined organizational structure which will increase the profitability of the company and its subsidiaries.

Phase I of the plan is addressed primarily for the elimination of corporation duplication and overlapping and the infusion of additional capital into Murray First Thrift. This step is accomplished by the following:

A. Equity in Irving Commons is sold to Bonneville Development Corporation for \$4,000,000 with a cash down payment of \$1,900,000 and an all inclusive deed of trust for \$2,100,000.

B. Irving Financial purchases from Lon Investment Company and Murray First Thrift for \$4,985,000 their interest in the Mayflower property and the East Park on the Jordanelle for which Irving gives these entities the \$1,900,000 in cash and the \$2,100,000 AIDT and a note for \$985,000. The \$985,000 note is paid from Irving to Murray First Thrift and Lon Investment Company in the following manner:

1. \$540,000 CD
2. \$239,214 reserve bond fund
3. \$ 71,794 rent reserve
4. \$851,008 total, and a note from Irving Financial for \$33,992. (The transfer of these cash funds to Murray First Thrift and Lon Investment has been as their interests so appear.)

C. Lon Investment purchases from M.F.T. Mortgage a new note for \$3,000,000 secured by the Bel Marin property for which Lon Investment pays M.F.T. Mortgage \$2,100,000 secured by the AIDT on the Irving School and a note for \$900,000. M.F.T. Mortgage sells the Lon note of \$900,000 to the loan company for which the loan company pays \$628,854 to the Mortgage Company for the Lon Investment note of \$900,000, plus \$276,146 of furniture and fixtures carried at book value of Murray First Thrift.

D. M.F.T. Mortgage dividends up to Murray First Thrift the following assets. Interest on the Bel Marin Note, \$456,585, cash of \$53,296, real estate contract receivable of \$364,835 and the land from Irving Financial of \$623,854 for a total contribution to capital of \$1,498,571.

\$1,498,570. Liabilities of M.F.T. Mortgage to Murray First Thrift and other notes payable of \$981,762 are transferred, a note to parent of \$195,585, an account payable and accrued expense of \$132,600. The net effect of contribution to capital is \$770,000 to Murray First Thrift & Loan Co.

1. The following assets are now left in M.F.T. Mortgage: The building at 135 So. Main, cash carried at a book value of \$540,560. The furniture and fixtures are carried at a book value of \$276,146, for a total of \$678,398. The building has a mortgage with a balance of \$63,000 remaining. The total book value of the building would be \$603,560. This leaves the mortgage company transferring these assets for a total of \$816,706.

E. At this point Lon Investment is ready for liquidation and its remaining receivable from Irving of \$133,992 and its liability to M.F.T. Mortgage of \$900,000 are then transferred 1/2 of the assets to M.F.T. Financial, Inc. and 1/2 to Murray First Thrift. The liabilities are handled in the same manner, 1/2 to M.F.T. Financial, Inc. and 1/2 to Murray First Thrift.

F. Murray First Thrift's investment in subsidiaries consists only in M.F.T. Leasing. They are compatible and compliment each and remain unchanged.

7/6/81

MURRAY FIRST THRIFT & LOAN CO.

PRO FORMA BALANCE SHEET WORKSHEET

	Present Balance Sheet	Proposed Additions	Proposed Reductions	Pro Forma Balance Sheet
and Short Term Investments	\$ 2,841,658	\$1,500,000 ⁽¹⁾ 542,000 ⁽²⁾ 180,000 ⁽³⁾ 600,000 ⁽⁴⁾		\$ 5,663,658
Accounts receivable	41,363,143	930,000 ⁽⁵⁾ 3,000,000 ⁽⁶⁾	\$ 600,000 ⁽⁷⁾	44,693,143
Provision for Losses	<u>725,000</u> 40,638,143			<u>725,000</u> 43,968,143
Receivables & Accrued Interest	723,846		131,000 ⁽⁷⁾	592,846
Investment in Real Estate Contracts	998,435			998,435
Deferred Expenses	177,840			177,840
Investment in Subsidiaries	5,461,988		3,482,000 ⁽⁶⁾	1,979,988
Assets	143,735			143,735
Investment in Real Estate Held for Sale	4,734,388			4,734,388
Mortgages Payable	1,424,314			1,424,314
	<u>3,310,074</u>			<u>3,310,074</u>
Property & Equipment				
Less Accumulated Depreciation	<u>276,146</u>			<u>276,146</u>
ASSETS	<u>\$54,571,865</u>			<u>\$57,110,865</u>
<u>LIABILITIES & STOCKHOLDERS' EQUITY</u>				
Accounts Payable	168,545			168,545
Accrued Interest	873,904			873,904
Notes Payable & Accrued Expenses	388,540			388,540
Liabilities	6,909			6,909
	43,071,179			43,071,179

The following are footnotes explaining the additions and reductions from the balance sheet of Murray First Thrift & Loan Co. which result in an increase of Murray First Thrift & Loan Co.'s capital of \$2,539,000:

NOTE 1

\$1,500,000 cash will be contributed to Murray First Thrift & Loan Co. by its parent which will come from the sale of Irving Commons which is the down payment and will be received by the parent company on the date of said sale which will be before December 31, 1980.

NOTE 2

A \$542,000 time certificate of deposit at First Security Bank, which at the present time is a reserve for payment to the Salt Lake City School Board in conjunction with Irving Commons, will be contributed to Murray First Thrift & Loan Co. by its parent. This reserve can be released contemporaneously with the leasing of space to a financial institution such as a branch of Murray First Thrift & Loan Co. as discussed with Commissioner Borthick.

NOTE 3

A \$180,000 time certificate of deposit at First Security Bank, which at the present time is a contingency reserve connected with the bonds of Irving Commons, will be contributed by Murray First Thrift & Loan Co.'s parent and the encumbrance on this time certificate of deposit can be released contemporaneously with the leasing of space to a financial institution such as a branch of Murray First Thrift & Loan Co. as discussed with Commissioner Borthick.

NOTE 4

\$600,000 cash will be contributed to Murray First Thrift & Loan Co. by its parent which will come from the sale of The Attic in Evanston, Wyoming. It is expected that this will be available from the sale of The Attic shortly after January 1, 1981.

NOTE 5

A \$930,000 note receivable will be a receivable from the buyers of the Irvings Commons complex and this note would be payable in semi-annual payments at 10% interest over a 30 year period. This note will be secured by a trust deed. Also, additional notes in a total amount of \$2,070,000 will be contributed increasing note receivables in a like amount. This additional note will also be from the same purchase of the complex. The \$930,000 amount is used because it is felt that this does not exceed the guideline of acceptable receivables not exceeding 10% of Murray

TE 6

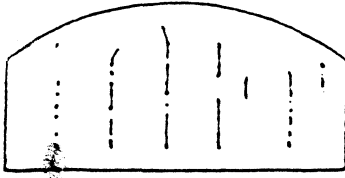
M.F.T. Mortgage Corp. will dividend up to its parent company, Murray First Thrift & Loan Co., the \$3,000,000 note and accrued interest \$482,000 which is secured by 450 acres of Bel Marin property. This would put the receivable directly in Murray First Thrift & Loan Co. and reduce the investment it has in its subsidiary M.F.T. Mortgage Corp. This would clear up the problem of Murray First Thrift & Loan Co. having investment in its subsidiary in excess of 10% of its capital and surplus. However, at this point, Murray First Thrift & Loan Co. would then have the \$3,000,000 receivable secured by the Bel Marin property which would be in excess of 10% of its capital and surplus. The interest due of \$482,000 through December 31, 1980, would be brought current by part of the assets coming in.

TE 7

Note receivable from Mountain Valley Realty in the amount of \$131,000 is to be taken out after the interest of \$131,000 is brought current by part of the assets coming in.

E 8

The net increase in capital in Murray First Thrift & Loan Co. as a result of the above listed items would be \$2,539,000.



MFT FINANCIAL, INC.

135 SOUTH MAIN STREET · SALT LAKE CITY, UTAH 84111 · (801) 521-1111

July 30, 1981

Mirvin D. Borthick
Commissioner of Financial Institutions
State of Utah
10 West Broadway, Suite 331
Salt Lake City, UT 84101

Dear Commissioner:

The following is an update and a schedule of our progress in our reorganization as has been outlined to you in previous correspondence.

We are closing the loan transaction with Commercial Security Bank today at 1:00. At that time an officer of CSB will drive to Evanston and deliver the signed documents to the title company, who will record same and issue the title policy to CSB. With this confirmation, the officer will telephone CSB and they will release all the funds as outlined to you previously.

Commissioner, we have run into one practical problem, or snag which I need your concurrence with. As outlined to you in previous correspondence, we agreed to have \$1,900,000 in cash go to Murray First Thrift for its capital account. When we initially negotiated the loan with CSB, we had to estimate some of the pay-offs and cash flow needs to the best of our ability. At the time we felt comfortable with the figures that we had presented to you. However, in the pre-closing conferences held yesterday and the day before, in obtaining specific figures, plus accrued interest, plus other costs that have occurred to clear the title, we are going to have a shortage in funds of approximately \$50,000 to \$75,000, but in no event more than \$100,000 for the miscellaneous payments referred to above.

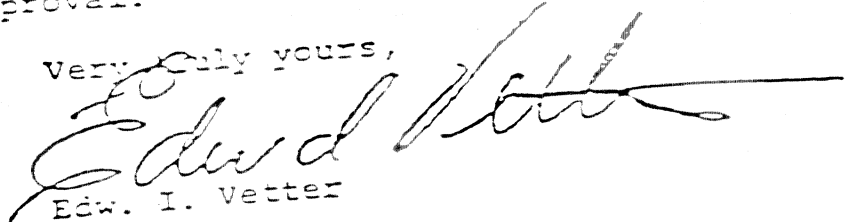
My request is the following: that we reduce the \$1,900,000 to \$1,800,000. As we have discussed in the past, we still have sufficient room in our capital account to meet all the requirements with this adjustment and I would appreciate your concurrence in this adjustment in lowering this amount to go into Murray First Thrift & Loan Co.

July 31, 1981

Mirvin D. Borthick
Page 2

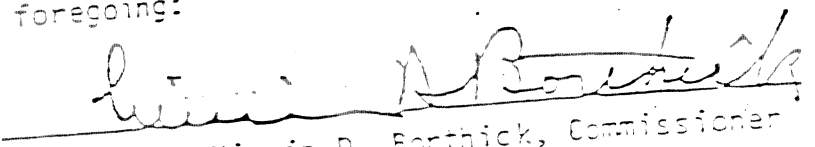
I have spoken to Bob Bischoff about the situation as it presented itself with the final numbers. He concurred with this plan subject to your approval.

Very truly yours,


Edw. I. Vetter
President

EIV/jm

I hereby acknowledge and approve the foregoing:


Mirvin D. Borthick, Commissioner



Office of Lt. Governor/Secretary of State

CERTIFICATE OF MERGER

OF

TWO DOMESTIC CORPORATIONS

I, DAVID S. MONSON, Lt. Governor/Secretary of State of the State of Utah, hereby certify that duplicate originals of Articles of Merger of

IRVING FINANCIAL CORPORATION

into

M.F.T. HOLDING COMPANY, changing their name to
IRVING FINANCIAL CORPORATION

the survivor

duly signed and verified pursuant to the provisions of the Utah Business Corporation Act, have been received in my office and are found to conform to law.

ACCORDINGLY, by virtue of the authority vested in me by law, I hereby issue this Certificate of Merger of

IRVING FINANCIAL CORPORATION

M.F.T. HOLDING COMPANY, changing their name to
IRVING FINANCIAL CORPORATION

into

and attach hereto a duplicate original of the Articles of Merger.

File No. #70799

*IN TESTIMONY WHEREOF, I have
hereunto set my hand and affixed the
Great Seal of the State of Utah at Salt
Lake City, this 14th day of
September A.D. 1978*

DAVID S. MONSON

LT. GOVERNOR/SECRETARY OF STATE

EXHIBIT E

149k
81
PLAN AND ARTICLES OF MERGER
Filing Clerk MC Fees \$25.00

RECEIVED
1981 SEP 16 PM 2:26
CLERK OF COURTS
SALT LAKE CITY

The corporations named herein do hereby adopt this Plan and these Articles of Merger pursuant to Section 16-10-66, Utah Code Annotated (1953 as amended) and do consent and agree to all of the terms and conditions set forth herein.

I. NAMES

The name of the corporation to be merged is Irving Financial Corporation, a Utah corporation

The name of the corporation into which it is to be merged is MFT Holding Company, Inc., a Utah corporation hereinafter designated "Surviving Corporation." MFT Holding Company does also hereby change its name to Irving Financial Corporation.

II. SHARES, MEETING AND VOTING

The shareholders of Irving Financial Corporation, duly approved and adopted these Plan and Articles of Merger on the 31st day of July, 1981, in the manner prescribed by the Utah Business Corporation Act. That corporation has one class of stock with 48,131 shares of common stock issued, outstanding and entitled to vote. The number of shares which voted for the approval and adoption was 48,131 or 100% of the total outstanding shares. The number of shares which voted against the approval and adoption was 0 or 0% of the total outstanding shares.

The shareholders of MFT Holding Company duly approved and adopted these Plan and Articles of Merger on the 1st day of July, 1981, in the manner prescribed by the Utah Business Corporation Act. That corporation has one class of stock with 720,000 shares of common stock issued, outstanding and entitled to vote. The number of shares which voted for the approval and adoption was 720,000 or 100% of the total outstanding shares. The number of shares which voted against the approval and adoption was 0 or 0% of the total outstanding shares.

III. TERMS AND CONDITIONS

A. Time. The merger shall be effective when this document is delivered to the Secretary of State of the State of Utah and has been stamped "FILED".

B. Law. The laws which are to govern the terms of this merger are the laws of Utah. The surviving corporation shall continue to be governed by its existing Articles of Incorporation and by-laws.

C. Effect of Merger. Upon the effective date of such merger, the following results shall occur.

(1) The two corporations which are parties to the Plan and Merger shall be a single corporation, which shall be the surviving corporation provided for in the Plan of Merger.

(2) The separate existence of all corporation's parties to the Plan of Merger, except the Surviving Corporation provided for in the Plan of Merger, shall end.

(3) Such Surviving Corporation shall have the rights, privileges, immunities and powers and shall be subject to all duties and obligations of a corporation organized under the Utah Business Corporation Act.

(4) Such Surviving Corporation shall thereupon and thereafter possess all of the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the merged corporations; and all property, real, personal and mixed and all debts due on whatever account, including subscriptions to shares and all other choices in action, and all and every other interest, of or belonging to or due to each of the corporations so merged, shall be taken and deemed to be transferred to and vested in such Surviving Corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger.

(5) Such Surviving Corporation shall henceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged, and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger had not taken place, or such Surviving Corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger.

IV. MANNER AND BASIS OF CONVERTING SHARES

Irving Financial Corporation, the corporation to be merged into MFT Holding Company, has 48,131 shares of Common Stock issued and outstanding. Each share of Irving Financial Corporation shall be converted into 14.96 shares of MFT Holding Company and each shareholder of Irving Financial Corporation shall receive shares or fractional shares of MFT Holding Company based upon that conversion ratio and the number of Irving Financial Corporation which they own.

The Plan and these Articles of Merger were executed in duplicate by the respective President and Secretary of each of the corporations and verified by the respective Secretary this 31st day of July, 1981.

IRVING FINANCIAL CORPORATION

By: Rod Gordon Pres.

Rod Gordon, President

ATTEST:

Frank Nelson
Frank Nelson, Secretary

STATE OF UTAH)

: ss.

COUNTY OF SALT LAKE)

I, Gedy Bjornedal, a Notary Public, hereby certify that on the 31st day of July, 1981, Rod Gordon and Frank Nelson, personally appeared before me, who, being by me first duly sworn, severally declared that they are the persons who signed the foregoing document as President and Secretary, respectively of Irving Financial Corporation, and that the statements contained are true.

DATED this 31st day of July, 1981.

Gedy Bjornstal
NOTARY PUBLIC
Residing in Salt Lake County

My Commission Expires:

10-28-84

VERIFICATION

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

Frank Nelson, being first duly sworn, deposes and states:
that he is the Secretary of Irving Financial Corporation, that he
has read the Plan and Articles of Merger and knows the contents
thereof and that the same contains a truthful statement of the Plan
and Articles as adopted by the Corporation.

ATTEST:

Frank Nelson
~~Jim Hansen~~, Secretary

By: Frank Nelson
~~Joe Beesley~~
MFT HOLDING COMPANY
By: Rod Gordon
Rod Gordon, President

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

I, Gedy Bjornstal, a Notary Public, hereby
certify that on the 31st day of July, 1981, Rod Gordon and Frank
Nelson, personally appeared before me, who, being by me first duly
sworn, severally declared that they are the persons who signed the
foregoing document as President and Secretary, respectively of
MFT Holding Company and that the statements contained are
true.

DATED this 31st day of July, 1981.

Gedy Bjornstal
NOTARY PUBLIC
Residing in Salt Lake County

My Commission Expires:

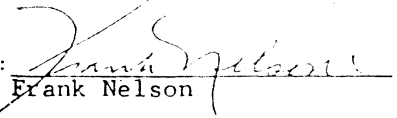
10-28-84

VERIFICATION

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

Frank Nelson, being first duly sworn, deposes and states:
that he is the Secretary of MFT Holding Company, that he has
read the Plan and Articles of Merger and knows the contents
thereof and that the same contains a truthful statement of the
Plan and Articles as adopted by the Corporation.

By:


Frank Nelson

November 5, 1982

Industrial Loan Guaranty Corporation
c/o Richard (Skip) Christensen, President
10 West 300 South
Salt Lake City, UT 84010

RE: Acquisition of Certain Assets and
Assumption of Certain Liabilities
of Murray First Thrift

Dear Skip:

The purpose of this letter is to clarify the terms and conditions of the trust arrangement with Valley Bank & Trust Co., which trust will be established in connection with the reorganization of MFT.

First, after six months, at the termination of the Department of Financial Institution's statutory responsibility with regard to the assets and liabilities retained by MFT, the Department will promptly terminate any role it may have and all responsibility with respect thereto. At such time, at the option of MFT's Board of Directors, the trust may continue or may be terminated. In either event, however, exclusive control of the retained assets shall be held by the MFT Board.

Second, the Department of Financial Institutions and Elaine Weis will not impede any sale or development of assets retained by MFT and with regard to such assets, will act in accordance with the recommendation of the committee (consisting of Bryce Petty as representative of the office of the Attorney General, Robert Beckstead as representative of the ILGC and Rodney F. Gordon and Jim P. Hansen as representatives of the owners of MFT); provided, however, that such recommendation is reasonable and will not cause the Department or Elaine Weis to violate any law, or be subject to any liability.

Third, to the extent necessary to preserve any tax benefits relating to Irving Commons, MFT's interest in Irving Commons shall not be transferred to the trust; such interest

"EXH"

Industrial Loan Guaranty Corporation

Page 2

November 5, 1982

shall be subject, however, to the same terms and conditions as if it had been transferred to the trust.

Finally, all parties involved will use all reasonable efforts to cause the Board of Education to modify the sale agreement regarding Irving Commons to provide that the failure to make the required payments since July 22, 1982, will not constitute a default.

Very truly yours,


MURRAY FIRST THRIFT & LOAN CO.
Board of Directors

M.F.T. FINANCIAL, INC.
Board of Directors

By 

Its 

Agreed to and accepted by
the Industrial Loan Guaranty Corporation
this 5th day of November 1982:


President

Institutions of the State of	:
Utah; MERVIN BORTHICK,	:
individually and as former	:
Commissioner of the Department	:
of Financial Institutions	:
of the State of Utah;	:
THE DEPARTMENT OF FINANCIAL	:
INSTITUTIONS OF THE	:
state of Utah; THE INDUSTRIAL	:
LOAN GUARANTY CORPORATION	:
OF UTAH; JOHN DOES 1-20; ABC	:
CORPORATIONS 1-20; and XYZ	:
PARTNERSHIPS 1-20,	:
	:
Defendants.	:

Defendants George Sutton, acting in his capacity as Commissioner in Possession of the Industrial Loan Guaranty Corporation ("ILGC") and the ILGC hereby respectfully submit this memorandum of points and authorities in support of their Motion to Dismiss, in its entirety, plaintiffs' Complaint.

FACTUAL BACKGROUND

In or about August, 1986, George Sutton, acting as Commissioner of the Department of Financial Institutions, took possession of the ILGC pursuant to Chapters 2 and 8A of Title 7 of the Utah Code Annotated. See, plaintiffs' Complaint, paragraph VIII. In conjunction with such possession, the Commissioner initiated a supervisory proceeding before the Third Judicial District Court entitled In the Matter of the Possession of the Industrial Loan Guaranty Corporation, Civil No. C86-5924, pursuant to U.C.A. § 7-2-2. This supervisory proceeding with respect to the ILGC has not been completed and

continues before the Third Judicial District Court, the Honorable Richard H. Moffat presiding.

Similar possessory proceedings were initiated with respect to Murray First Thrift & Loan in or about July 1982. The Murray First Thrift & Loan possessory proceedings have not been concluded and continue before the Third Judicial District Court, the Honorable John A. Rokich presiding.

During the course of the above-identified possessory proceedings, plaintiffs herein have participated in several different lawsuits and/or other proceedings wherein the matters contained in plaintiffs' Complaint have been raised and resolved against the plaintiffs. For the reasons set forth below, all of plaintiffs' claims against George Sutton, acting in his capacity as Commission in Possession of the ILGC, and the ILGC, must be dismissed for failure to state a claim upon which relief may be granted.

ARGUMENT

I.

COUNT I OF PLAINTIFFS' COMPLAINT MUST BE
DISMISSED BECAUSE IT FAILS TO STATE A CAUSE OF ACTION
AGAINST THE COMMISSIONER IN POSSESSION OF THE ILGC,
AND ILGC, AND THEREFORE MUST BE DISMISSED

On its face, Count I does not purport to state a cause of action against George Sutton, acting in his capacity as Commission in Possession of the ILGC and/or the ILGC. To the extent Count I is deemed to apply, these

defendants incorporate by reference all of the arguments and authorities contained in Point I in the Memorandum Supporting Motion to Dismiss filed on behalf of the State of Utah and other defendants. In addition to the foregoing, these defendants assert that Count I of plaintiffs' Complaint must be dismissed for the reason that such action is in violation of the stay provided by U.C.A. §7-2-7 which, in essence, prohibits the present action until such time as the Court, for cause shown, annuls, modifies, or conditions such stay. Accordingly, Count I of plaintiffs' Complaint must be dismissed against these defendants.

POINT II

PLAINTIFFS ARE BARRED AND OTHERWISE HAVE NO CAPACITY, TO BRING COUNT II OF THEIR COMPLAINT AGAINST THE RESPONDING DEFENDANTS

In Count II of their Complaint, plaintiffs allege that they and the defendants entered into a Purchase and Assumption Agreement ("P&A Agreement"). Plaintiffs make no attempt to distinguish which plaintiffs and/or which defendants were actually parties to such agreement.

The P&A Agreement to which plaintiffs refer was signed only by the corporate plaintiffs, to wit: Murray First Thrift & Loan Company; MFT Financial Inc.; and MFT Mortgage Company. With respect to the responding defendants, the ILGC did execute the P&A Agreement, but George Sutton did not

execute the same either individually or in any official capacity.

The foregoing facts and circumstances highlight the inadequacy of Count II of plaintiffs' Complaint with respect to these responding defendants. Specifically, plaintiffs allege in paragraphs XXX, XXXI, XXXII, XXXIV, and XXXV that "Sutton" and the DFI (Department of Financial Institutions) made various promises in the P&A Agreement which have been breached. In these paragraphs, plaintiffs fail to distinguish the capacity in which, if any, Commissioner Sutton was acting when he allegedly made and breached such promises. Such a failure to distinguish is not surprising in light of the fact that Mr. Sutton did not sign the P&A Agreement and was not Commissioner of Financial Institutions at the time the P&A Agreement was signed. Plaintiffs also did not allege that the ILGC made any of the same promises.

The only paragraph in which Commissioner Sutton, acting in his capacity as Commission in Possession of the ILGC, and the ILGC are identified is paragraph XXXII which reads as follows:

The ILGC and Sutton, acting in his capacity as Commissioner in Possession of the ILGC, induced the DFI and Sutton, acting in his capacity as trustee over the retained assets, to sell the BMK property thus breaching his contractual and fiduciary obligations to MFT&L under the P&A Agreement. By encouraging said breach, the ILGC and Sutton breached their obligations

of good faith and fair dealing under the P&A Agreement.

When the first sentence of this paragraph is analyzed, it is clear that plaintiffs allege no breach of contract on behalf of the ILGC, or Sutton, acting in his capacity as Commission in Possession of the ILGC. Rather, it is Mr. Sutton, acting in his capacity as "trustee over the retained assets of MFT&L" who breached his contractual and fiduciary obligations.

In the final sentence of paragraph XXXII, plaintiffs assert that by encouraging the breach of the P&A Agreement, the ILGC (who was a signatory to the P&A Agreement) and Sutton (who was not a signatory to the P&A Agreement in any capacity) breached an obligation of good faith and fair dealing. This allegation constitutes the only allegation in all of Count II in which plaintiffs assert that the ILGC, or the Commissioner in Possession of the ILGC, breached a contractual duty.

In view of these facts and circumstances, these responding defendants assert that Count II of plaintiffs' Complaint must be dismissed for the following reasons:

A. Violation of U.C.A. § 7-2-7.

Utah Code Annotated § 7-2-7(1) reads as follows:

Except as otherwise specified in Subsection (2), a taking of an institution or other person by the commissioner under this chapter shall operate as a stay of the commencement or continuation of: (a) any judicial, administrative, or other

proceeding against the institution, including service of process; (b) the enforcement of any judgment against the institution; (c) any act to obtain possession of property of or from the institution; (d) any act to create, perfect, or enforce any lien against property of the institution; (e) any act to collect, assess, or recover a claim against the institution; and (f) the setoff of any debt owing to the institution against any claim against the institution. Upon application and after notice and hearing, the court may, for cause shown, terminate, annul, modify, or condition the stay.

By its terms, subsection (1) of § 7 prohibits the commencement or continuation of any judicial proceeding against the institution, including service of process. There can be no doubt that the filing of this lawsuit constitutes a "judicial" or "other proceeding" against the ILGC.

The language of this section is unambiguous and therefore it is no surprise that there is no case law interpreting the stay imposed by U.C.A. § 7-2-7. However, the case law addressing the automatic stay imposed by § 362 of the United States Bankruptcy Code, 11 U.S.C. § 362, which is similar to this statute, is instructive. It has been repeatedly held that actions taken in violation of the § 362 automatic stay are null and void and without any effect whatsoever. See, e.g., In re Ward, 837 F.2d 124 (3rd Cir. 1988). Since plaintiffs have not sought or received a termination or modification of the stay contained in U.S.C.

§ 7-2-7, this action is in violation of such statute and must be dismissed.

B. Plaintiffs' Claims are Barred by the Doctrine of Res Judicata and/or Collateral Estoppel.

Since the Commissioner took possession of the business and property of Murray First Thrift & Loan ("MFT&L") in 1982, there have been at least three proceedings in which the Commissioner's decision to maintain control of the assets of MFT&L and the Commissioner's decision to sell the BMK property have been, or should have been, raised by the plaintiffs. These three proceedings are as follows:

1. Nelson, Hansen, and Gordon, et al. v. First Security Financial, et al., filed in the United States District Court for the Northern District of California, Civil No. C862894;

2. Harris, et al. v. Elaine B. Weis, et al., filed in the United States District Court for the District of Utah, Central Division, Civil No. C87-0041S; and

3. In the Matter of the Possession by the Banking Commissioner of the Business and Property of Murray First Thrift & Loan, filed in the Third Judicial District Court, Salt Lake County, Utah, Civil No. C82-5951, wherein the Court entered its Order approving the sale of Bel Marin Keys.

For the Court's reference, copies of the Complaint and the Judgment relative to Item 1 are attached hereto as Exhibits "A" and "B" respectively. With respect to Item 3 above, attached hereto as Exhibits "C," "D," and "E" are the Motion to Approve Sale of Bel Marin Keys; Objection to Motion and Order Approving Sale of Bel Marin Keys.

As shown by the attached exhibits, plaintiffs specifically raised a breach of the P&A Agreement in both the action filed in the Federal Court for the Northern District of California, and in the Third Judicial District Court, Salt Lake County, State of Utah, in the MFT&L possessory proceedings. With respect to the federal action filed in California, a judgment was entered dismissing with prejudice each and every claim brought by the plaintiffs. Count X of the plaintiffs' Complaint in that action alleged a breach of the P&A Agreement. With respect to the action filed in the Third Judicial District Court, the Commissioner, having deciding to sell the BMK property, filed a motion seeking court approval of his decision. In response thereto, plaintiffs filed their objection wherein they set forth the very same allegations they now claim constitute a breach of the P&A Agreement. (See Exhibit "D.") In response to these allegations, the Court specifically made the following conclusion of law:

This hearing on the proposal sale by BMK
is not the appropriate time to raise
challenges to whether the Commissioner is

validly in possession of, or has title to, BMK or any of the other assets of MFT&L. Those questions should have been raised long ago in these proceedings, but in any event, this is not the time or place for those questions to be briefed and argued. The court having approved two (2) prior sales of MFT&L's interest in BMK by the Commissioner in Possession of the business and property of MFT&L, and no objection having been raised during the consideration by the court of either of those sales as to the validity of the Commissioner's retaining that asset in possession, the parties have waived any objection they did not raise but could have raised, during the proceedings on those prior sales.

See Exhibit "E," Conclusion of Law, para. 4.

Issues respecting the Commissioner's possession and/or control of the retained assets of MFT&L, and the Commissioner's decision to sell Bel Marin Keys, having been previously and unsuccessfully raised by the plaintiffs, cannot now be raised again. Accordingly, Count II of plaintiffs' Complaint must be dismissed.

C. Plaintiffs' Allegations of Breach of the P&A Agreement Resulting From the Commissioner's Continued Possession of the Assets of MFT&L is Barred by the Statute of Limitations.

As alleged in plaintiffs' Complaint (see para. XXIV), the Commissioner took possession of the business and property of MFT&L and Murray First Thrift Mortgage on or about July 22, 1982. On or about December 13, 1982, the parties entered into the P&A Agreement (see para. XXIX). Pursuant to the P&A Agreement, Sutton allegedly was to

terminate his role with respect to retained assets within six months or, in the alternative, to turn over the retained assets at the earliest possible time consistent with his statutory responsibilities. See, paras. XXX and XXXI. According to such allegations, Sutton breached such obligations under the P&A Agreement by retaining such assets as early as 1983. Since more than six years have passed since the occurrence of such breach, plaintiffs' claims are barred by U.C.A. § 78-12-23.

D. None of the Plaintiffs Have Standing and/or Capacity to Bring This Action.

Since there is no allegation that the individual defendants are third party beneficiaries of the P&A Agreement under Count II, and since the corporate defendants were dissolved substantially more than two years prior to the filing of this action, neither the individual nor the corporate plaintiffs have standing or capacity to bring this action. Accordingly, Count II of plaintiffs' Complaint must be dismissed.

For the reasons stated above, and for the reasons stated in Point II of the Memorandum Supporting Motion to Dismiss filed on behalf of the State of Utah, which reasons are incorporated and adopted herein, Count II of plaintiffs' Complaint must be dismissed.

III.

COUNT III OF PLAINTIFFS' COMPLAINT IS
BARRED BY THE GOVERNMENTAL IMMUNITY STATUTE

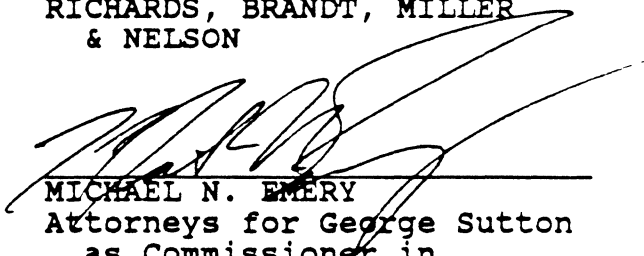
These responding defendants hereby adopt and incorporate the arguments contained in Point III of the Memorandum in Support of Motion to Dismiss filed on behalf of the State of Utah. As set forth in such memorandum, plaintiffs have failed to comply with the governmental immunity statute and, as a consequence, Count III of the plaintiffs' Complaint must be dismissed.

CONCLUSION

For the reasons set forth above, plaintiffs' Complaint, and each and every cause of action therein set forth, must be dismissed.

DATED this 16th day of July, 1990.

RICHARDS, BRANDT, MILLER
& NELSON



MICHAEL N. EMERY
Attorneys for George Sutton
as Commissioner in
Possession of the ILGC, and
the ILGC

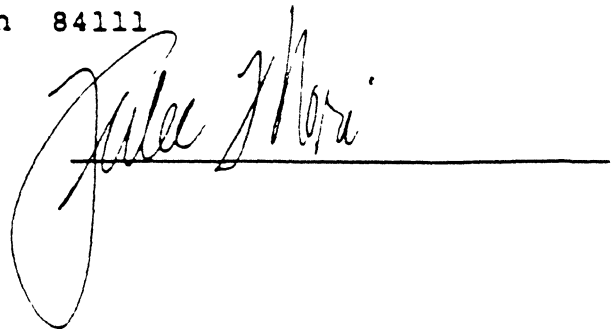
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was hand delivered on this 16th day of July, 1990, to the following counsel of record:

Bryce H. Pettey
Reed M. Stringham
ATTORNEY GENERAL'S OFFICE
236 State Capitol
Salt Lake City, Utah 84114

Scott B. Mitchell
SPAFFORD & SPAFFORD
425 East 100 South
Salt Lake City, Utah 84111

ILGC/MIS/MNE

A handwritten signature in cursive script, appearing to read "Julie Mori", is written over a horizontal line.

DATE 30 May 86 TIME 2:15 PM
BUS RES 135 So Main
UPON Dean Christensen
SINGL CONSTABLE MURRAY REC. S.L. COUNTY, UTAH
Scott Williams DEPUTY

ORIGINAL
FILED
MAY 30 1986
WILLIAM L. WHITTAKER
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MELVIN M. BELLI, SR., ESQ.
PHILIP L. STIMAC, ESQ.
LAW OFFICE OF MELVIN BELLI, SR.
722 Montgomery Street
San Francisco, California 94111
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

K 86 2894

FRANK A. NELSON, JR., STIM PRATT
HANSEN, RODNEY F. GORDON, BONNEVILLE
CALIFORNIA CORPORATION, a Utah
Corporation, MURRAY FIRST THRIFT AND
LOAN COMPANY, a Utah Corporation,
MFT FINANCIAL, INC., a Utah Corpora-
tion, MFT MORTGAGE COMPANY, a Utah
Corporation, and IRVING INVESTORS,
LTD., a Utah Limited Partnership.

CIVIL NO.

C O M P L A I N T
JURY TRIAL DEMANDED

Complaint for:

Plaintiffs,

vs.

FIRST SECURITY FINANCIAL, INC.,
a Utah Corporation, FIRST SECURITY
CORPORATION, a Delaware Corporation,
ELAINE B. WEIS, individually,
ELAINE B. WEIS, as Trustee,
INDUSTRIAL LOAN GUARANTY
CORPORATION OF UTAH, a Utah
Corporation, R. HOWARD HARMER,
individually, R. HOWARD HARMER,
Trustee, GLENDON JOHNSON, MERVIN
BORTHICK, Individually,
RIENK KAMER, BERNARD
WHITNEY, ALTERNATE ENERGY SYSTEMS,
INC., a/k/a SHILO RESOURCES, a
Nevada Corporation, EDWARD I. VETTER,
DEAN C. CHRISTENSEN, GLEN W. GROO,
CAPITOL THRIFT AND LOAN, a Utah
Corporation, RICHARD CHRISTENSEN,
HOME SAVINGS OF AMERICA, S.A.,
a California Corporation,
TICOR, a California Corporation,
PFEIFFER MORRISON ACCOUNTANCY

1. RACKETEER INFLUENCED
AND CORRUPT ORGANIZA-
TION (RICO) VIOLATIONS
2. CIVIL RIGHTS VIOLATIONS
3. SECURITIES FRAUD
4. DISSOLUTION OF JOINT VENTURE
(Also Seeking An Accounting
and Appointment of a Receiver)
5. TORTIOUS INTERFERENCE
WITH CONTRACT
6. COMMON LAW FRAUD
7. BREACH OF CONTRACT
(LAND PURCHASE
CONTRACT)
8. BREACH OF CONTRACT
(STOCK PURCHASE
AGREEMENT)

1 CORPORATION, a California Corporation, 9.

2
3 Defendants.

BREACH OF CONTRACT
(REORGANIZATION PLAN
AGREEMENT QUALIFYING
BEL MARIN KEYS AS
SUITABLE CAPITAL)

-
- 4 10. BREACH OF PURCHASE
5 AND ASSUMPTION
6 AGREEMENT
7 11. VIOLATION OF CALIFORNIA
8 SUBDIVIDED LANDS ACT
9 12. UNLAWFUL ENCUMBRANCE OF
10 LAND PREVIOUSLY SOLD BY
11 UNRECORDED CONTRACT
12 13. FAILURE TO DISCLOSE
13 NONCOMPLIANCE WITH
14 SUBDIVIDED LANDS ACT

15
16 The Plaintiffs, by and through counsel Melvin M. Belli,
17 Sr., Philip L. Stimac, complain of the Defendants and allege as
18 follows:
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1 Act of 1934, as amended, 15 USC Section (a)(A), in that certain
2 of the Defendants, in violation of Section 10b of the Securities
3 Exchange Act of 1934, as amended, 15 USC Section 78J(b), and
4 Securities and Exchange Commission Rule 10b5 thereunder, 17 CFR
5 240.10b-5.

6 5. Jurisdiction of this Court is also invoked
7 under the provisions of Section 22 of the Securities Act of
8 1933, as amended, and 15 USC Section 770v), in that certain of
9 the claims asserted herein in Plaintiffs' Fourth Cause of Action
10 are based upon and arise from the conduct of certain of the
11 Defendants in violation of Section 17 of the Securities Act of
12 1933, as amended, 15 USC Section 77(q).

13 6. Jurisdiction of this Court is also invoked
14 under the provisions of 15 USC, Section 1703, in that certain of
15 the claims asserted herein in Plaintiffs' Sixth Cause of Action
16 are based upon and arise from the conduct of certain of the
17 Defendants in violation of the above-described provision, 15 USC
18 Section 1703.

19 7. Each of the named Defendants herein has engaged
20 in acts, practices, and courses of conduct which have operated
21 as breaches of contracts, breaches of fiduciary duties and
22 relationships, violation of the California Subdivided Lands Act,
23 and various other acts of tortious and/or fraudulent conduct.
24 Said Defendants have further willfully and knowingly entered
25 into various combinations and conspiracies to defraud Plaintiffs
26 in contravention of the laws of the State of California.

1 Jurisdiction of this Court over the balance of all such causes
2 of action alleged herein is ancillary and pendent to this
3 Court's jurisdiction over the claims described in paragraphs 1
4 through 7 above.

5 VENUE

6 8. Plaintiff Bonneville California Corporation was
7 formed by Plaintiffs Jim Pratt Hansen, Frank A. Nelson, Jr., and
8 Rodney F. Gordon, for the purpose of acquiring and developing a
9 1,070 acre parcel of real estate in Marin County, California,
10 known as "Bel Marin Keys" which is located in the District of
11 California, Northern Division. Negotiations, contractual
12 arrangements, escrows, compliance with the California Subdivided
13 Land Act, and specific monetary and equitable relief sought by
14 the Plaintiffs, all prescribe the proper venue of this action to
15 be the District of California, Northern Division.

16 9. The District of California Northern Division is
17 also the proper venue for this action because Defendants' First
18 Security Corporation, First Security Financial, and Industrial
19 Loan Guaranty Corporation submitted either a Purchase and
20 Assumption Agreement or subsequent bank applications to the
21 Federal Reserve Bank which is located at 101 Market Street, San
22 Francisco, California, pursuant to the written agreement
23 concerning Bel Marin Keys property. The above referenced
24 agreement or applications were false, inaccurate, against public
25 policy and public laws, and were submitted for the purpose of
26 misleading and/or perpetrating a fraud upon the Plaintiffs. the

1 Federal Reserve System, and members of the general public.

2 10. The District of California, Northern Division
3 is also the proper venue for this action because Defendant Home
4 Savings and Loan Association is a California Corporation who
5 purchased 100 acres of "Bel Marin Keys" and subsequently had
6 certain contractual relationships with some of the Plaintiffs
7 regarding said property.

8 11. The District of California, Northern Division
9 is also the proper venue for this action because Defendant TICOR
10 is a California Corporation with offices in said judicial
11 district who issued certain policies of title insurance covering
12 the property known as Bel Marin Keys located in said district.
13 Defendant TICOR also loaned money to certain Defendants and held
14 a security interest to said property. Certain agents and/or
15 officers of Defendant TICOR (who were also sellers of Bel Marin
16 Keys) also met with Plaintiffs in Los Angeles, California and
17 made certain representations concerning the title to Bel Marin
18 Keys.

19 12. The District of California, Northern Division
20 is also the proper venue for this action because
21 Pfeiffer-Morrison Accountancy Corporation is a California
22 professional corporation and was the CPA retained by Defendants
23 herein to audit its books, more particularly, transactions
24 relating to the Bel Marin Keys property, its cost base and its
25 accounting for sale of 100 acres to Home Savings of America,
26 S.A. located in said district.

1 13. The District of California, Northern Division,
2 is also the proper venue for this action because a Joint Venture
3 was created among the parties involving the development, sale,
4 manacement and distribution of profits of the Bel Marin Keys
5 property which is located in this judicial district, pursuant to
6 Exhibit "D".

7 Since the resolution of this matter involves
8 interest in property in Marin County, California, this judicial
9 district is the necessary and proper forum.

10 PARTIES

11 14. Plaintiff Jim Pratt Hansen, Frank A. Nelson,
12 Jr., and Rodney F. Gordon are individuals residing in Salt Lake
13 County, State of Utah, and at all times pertinent hereto, have
14 been jointly and individually engaged in building construction,
15 land development, municipal leasing, municipal bonds, and the
16 operation of financial institutions. Plaintiffs were desirous
17 of owning, acquiring, holding, and developing the property known
18 as Bel Marin Keys in Marin County, California in conjunction
19 with certain other business, real estate and banking endeavors
20 which they were engaged in.

21 15. Bonneville California was a Utah corporation
22 which was wholly owned and operated by Plaintiffs Jim Pratt
23 Hansen, Frank A. Nelson, Jr. and Rodney F. Gordon. The
24 exclusive purpose of Bonneville California Corporation was to
25 acquire, manage and develop the Bel Marin Keys property.

26 16. Home Savings and Loan was a California

1 corporation who owned 100 acres in Bel Marin Keys and also owned
2 an option to purchase the entire parcel. They became joint
3 venturers with the Plaintiffs and certain of the Defendants by
4 virtue of a Purchase and Assumption Agreement which was executed
5 on November 15, 1982, a Settlement Agreement between the
6 Plaintiffs and Howard Harmer, other written documents, and the
7 conduct of the parties.

8 17. Irving Investors, Ltd. is a Utah limited
9 partnership which was the source of major investment into the
10 Bel Marin Keys property.

11 18. TICOR is a California corporation and is a
12 title company domiciled in California. TICOR issued certain
13 policies of title insurance covering the property known as Bel
14 Marin Keys located in Marin County, California, at least one of
15 which was inaccurate and inconsistent. TICOR also had a real
16 and actual ownership interest in Bel Marin Keys. During the
17 time that TICOR was involved with the Bel Marin Keys
18 transaction, they were concurrently holding stock to MFT. These
19 events gave rise to a fiduciary duty which was owed and
20 subsequently breached by TICOR.

21 19. The Pfeiffer-Morrison Accountancy Corporation
22 is a California professional corporation and was the CPA firm
23 retained by the seller of Bel Marin Keys property to perform an
24 audit relative to the property.

25 20. Elaine B. Weis, while acting as both an
26 individual and purporting to act as Commissioner of Financial

1 Institutions for the State of Utah unlawfully seized assets of
2 Plaintiffs as more specifically set forth herein.

3 21. Elaine B. Weis was also a signator to the
4 Purchase and Assumption Agreement of November 15, 1982 and was a
5 joint venturer with other parties to that Agreement.

6 22. Elaine B. Weis, "Trustee" became a Trustee in
7 Law and in Fact upon delivery of Plaintiffs' property into her
8 care, custody and control. She functioned as an agent of the
9 Plaintiffs pursuant to a Court decree dated November 15, 1980
10 and thereafter held Plaintiffs' property for the benefit of the
11 Plaintiffs and not in the purported capacity of Financial
12 Institutions. The principal asset of Plaintiffs is MFT's
13 interest in the Bel Marin Keys property which the Defendant Weis
14 administered or caused to be administered as Trustee contrary to
15 the interest of Plaintiffs as herein stated.

16 23. First Security Corporation is a Delaware
17 corporation doing business as one of the largest bank holding
18 institutions in the State of Utah and is the parent company of
19 First Security Financial.

20 24. First Security Financial is a Utah corporation
21 formed for the purpose of acquiring the substantial assets of
22 MFT.

23 25. Industrial Loan Guaranty Corporation is a Utah
24 corporation which guarantees certain deposits of thrift
25 institutions in that state.

26 26. R. Howard Harmer owned a one-third interest in

1 Reading Holding Company and had contractual and other
2 relationships with Plaintiffs. He negotiated and signed the
3 Stock Purchase Agreement (see Exhibit "A") with Plaintiffs for
4 the purchase of all the outstanding shares of MFT stock without
5 disclosing to Plaintiffs that he had previously pledged said
6 shares to TICOR. He also entered into a Joint Venture Agreement
7 with the Plaintiffs and then subsequently conspired with Home
8 Savings to defeat the terms and spirit of said agreement.

9 27. R. Howard Harmer, Trustee, acted as Trustee
10 for Defendant Glendon Johnson and other parties.

11 28. Bernard Whitney obtained certain loans from
12 MFT and was subsequently convicted of land sales fraud.

13 29. Rienk Kamer obtained certain loans from MFT
14 and was subsequently convicted of land sales fraud.

15 30. Irving Financial Corporation was involuntarily
16 placed in bankruptcy subsequent to the unlawful takeover of
17 MFT. This bankruptcy petition was signed and filed by R. Howard
18 Harmer, Franklin Johnson and Glendon Johnson, the original
19 sellers of the Bel Marin Keys property to the Plaintiffs.
20 Irving Financial Corporation was placed in an involuntary
21 bankruptcy notwithstanding the fact that both R. Howard Harmer
22 and his accountancy firm had provided detailed information as to
23 the solvency of Reading Holding Company.

24 31. Alternate Energy Systems, Inc., aka Shilo
25 Resources, was a spin-off company of Capital Planning
26 Associates, Inc., in which R. Howard Harmer owned a substantial

1 interest and played an active role in its management in that R.
2 Howard Harmer was president and chief executive officer of both
3 Alternate Energy Systems and Capital Planning and became chief
4 executive officer of Reading Holding Company, and R. Howard
5 Harmer received his interest in Reading Holding Company and in
6 Bel Marin Keys property as consideration for arranging the sale
7 of Bel Marin Keys to Reading Holding Company.

8 32. Capital Planning Associates, Inc. was the
9 parent company of Alternate Energy Systems, Inc. and transferred
10 substantially all of the acreage of Bel Marin Keys to Alternate
11 Energy Systems, Inc. The fact that Capital Planning Associates
12 retained approximately 100 acres of Bel Marin Keys prevented the
13 Plaintiffs from properly recording their deed pursuant to
14 California law. Capital Planning Associates is also the subject
15 of a massive ongoing securities fraud investigation in the
16 Northern District of California.

17 23. Edward J. Vetter was a minority shareholder of
18 the outstanding shares of MFT Financial, Inc. and had a ten-year
19 employment contract with Reading Holding Company. He was both
20 an officer and director of MFT, MFT Financial, and MFT Mortgage
21 and used this position to further his own financial interest in
22 violation of the fiduciary duties which he owed to the
23 corporations of which he was both an officer and director as
24 well as his fiduciary and contractual relationship with the
25 Plaintiffs. He subsequently entered a guilty plea in a federal
26 criminal case which was commonly referred to as "the biggest

1 land sale fraud in United States history." The subject matter
2 of this case included security interests in the Bel Marin Keys
3 property.

4 34. Dean C. Christensen was a director and a chief
5 operating officer of MFT pursuant to an employment contract.

6 35. Glen W. Groo was a director and the treasurer
7 of MFT pursuant to a ten-year employment contract.

8 36. Each of the Defendants named in Paragraphs
9 17, 19, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 have
10 acquired a financial or other interest in the Bel Marin Keys
11 property in violation of the fiduciary duties which they owed to
12 the Plaintiffs and/or the corporations which they served.

13 37. Capital Thrift and Loan was a competing thrift
14 and loan enterprise. The president of that firm, Richard A.
15 Christensen, was also the president of the Industrial Loan
16 Guaranty Corporation at the time the purported Commissioner of
17 Financial Institutions took control of MFT. Through a series of
18 highly questionable bookkeeping methods, and in conspiracy with
19 First Security Corporation and, Elaine Weis, Capital Thrift and
20 Loan disposed of their worthless assets by commingling them with
21 MFT's good assets. Contemporaneously, Richard A. Christensen
22 became the president of First Security Financial.

23 GENERAL ALLEGATIONS

24 38. The Nelson group consists of Frank A. Nelson,
25 Jim Pratt Hansen and Rodney F. Gordon. The Nelson group is a
26 group of sophisticated bankers and businessmen having many years

1 of experience in the banking industry and other fields.

2 39. Frank A. Nelson, Jr., is a past president of
3 the Utah Banker's Association and a past president of Murray
4 State Bank and the St. George Bank. He has been actively
5 involved in the banking industry since 1946.

6 40. Jim Pratt Hansen has 15 years' experience and
7 has taught college courses in comprehensive finance development
8 planning including municipal finance, community redevelopment,
9 planning, municipal bonds and tax-exempt leasing, and formation
10 of special taxing districts. Prior to that, he had significant
11 work-related experience in business organization and
12 restructuring, planning and analysis.

13 41. Rodney F. Gordon was a vice president for MFT
14 for ten (10) years and was a director of that firm, he wrote the
15 Compliance and Direct Loan Manual for that firm. He was a
16 director for United Bank and was in charge of the Installment
17 Loan Department for that firm and also served as Internal
18 Auditor for all lending documents for United Bank.

19 42. The MFT Group consists of the Plaintiffs MFT
20 Company, MFT Financial Inc. and MFT Mortgage Company affiliated
21 Corporations which have operated Utah's third largest thrift
22 institution, a company that made \$1.8 million in the last year
23 of its operation. By Defendants First Security Financials own
24 audit, the company's net worth increased \$2.7 million between
25 the time that Elaine B. Weis took control of that firm until
26 First Security Financial commenced operations five months later.

1 43. In 1979 the MFT group was controlled by
2 Reading Holding Company. Reading Holding Company was owned in
3 equal shares by Defendants Howard R. Harmer, Glendon Johnson and
4 Franklin Johnson

5 44. On or about October 1, 1980, Bel Marin Keys
6 was a parcel of real estate located in Marin County, California
7 that consisted of approximately 1,070 acres of land highly
8 suitable for development. Defendant Home Savings owned 100
9 acres of Bel Marin Keys as well as an option to purchase the
10 entire parcel for \$10.7 million dollars. Bel Marin Keys was
11 subject to the California Subdivision Land Act and was an
12 ongoing residential development which upon completion would have
13 a value of approximately \$180 million. (This figure formed the
14 basis for the distribution of profits pursuant to the Joint
15 Venture Agreement and for repayment to the plaintiffs of their
16 investment as land holding costs defined in the purchase
17 assumption agreement and other documents.)

18 45. On or about October 2, 1980, the Nelson Group
19 formed the Bonneville California Corporation for the sole
20 purpose of acquiring, holding, and investing the Bel Marin
21 property.

22 46. On or about October 6, 1980, the Nelson Group
23 through Irving Financial Corporation entered into a Stock
24 Purchase Agreement (see Exhibit A) wherein they agreed to
25 purchase for the sum of \$16.5 million (\$16,500,000.00). This
26 agreement was signed by defendants R. Howard Harmer, Glendon Johnson, and Franklin Johnson.

1 Harmer, R. Howard Harmer, Trustee, Glenda D. Johnson, and
2 Plaintiffs James P. Hansen and Rodney F. Gordon.

3 47. On or about October 10, 1980, the Nelson Group
4 through Bonneville California Corporation entered into a
5 Contract of Sales (see Exhibit B) wherein they purchased from
6 Reading Holding Company for the sum of \$7 million the property
7 known as Bel Marin Keys which is located in Marin County,
8 California.

9 48. On December 18, 1980, plaintiffs Frank A.
10 Nelson, Jr. and Jim P. Hansen were informed by TICOR that the
11 stock of Reading Holding Company which R. Howard Harmer had
12 contractually agreed to sell to them had been previously
13 pledged, as well as 80% of the stock of MFT Financial.

14 49. On or about July 17, 1981, the Nelson Group
15 entered into an agreement with Mirvin D. Borthick, Commissioner,
16 Department of Financial Institutions, State of Utah, wherein
17 Commissioner Borthick acting on behalf of the Department of
18 Financial Institutions agreed to remove a then existing
19 impairment order which had been enforced since March 14, 1979,
20 for infractions involving capital violations involving the Bel
21 Marin property and affiliated parties.

22 50. One of Commissioner Borthick's conditions for
23 lifting the above mentioned restrictions was that the corporate
24 structure of MFT be reorganized and simplified. Borthick
25 additionally expressly mandated that plaintiffs refrain from
26 entering into any transactions "...through. with or for..."

1 following individuals and entities ... Franklin Johnson, Glendon
2 Johnson, Howard Harmer, Johnson Land Company, Murray First
3 Financial Europe, Reading Holding Company ... or any other
4 individual or entity having a direct or indirect business
5 relationship with Franklin or Glendon Johnson."

6 51. Borthick's agreement also provided that
7 executive compensation shall be reduced by a minimum of
8 \$100,000. This agreement specifically defined executive
9 compensation as being the "total salary and bonuses of Edward I
10 Vetter, Dean Christensen and Glen Grob." Additionally, the
11 Commissioner specifically required that future bonuses must be
12 based on net income and have the approval of the board of
13 directors.

14 52. Attached to the July 17, 1981, letter of
15 agreement was a pro forma balance sheet which listed and
16 approved Bel Marin Keys as being a qualified asset of MFT and
17 valued it at \$4.2 million.

18 53 Also attached to Borthick's letter of
19 agreement of July 17, 1981, was the impairment order which was
20 in effect when the plaintiffs acquired their interest in MFT.
21 A final attachment to Borthick's letter of agreement of July 17,
22 1981, was a Reorganization Plan for MFT. The letter agreement
23 as well as its attachments are herein incorporated by reference
24 and attached to this complaint (see Exhibit C).

25 54. In addition to the above mentioned
26 restrictions by Borthick, relative to the capital and

1 reorganization of MFT, the Commissioner insisted that the
2 plaintiffs infuse additional sums to bolster the capital of the
3 company. The plaintiffs complied with this and all other
4 requirements of Commissioner Borthick.

5 55. On or about November 1, 1981, Commissioner
6 Mervin Borthick resigned his position with the Department of
7 Financial Institutions.

8 56. It was clear to Plaintiffs or to counsel who
9 the interim or acting commissioner was from the time of
10 Commissioner Borthick's resignation until Commissioner Elaine B.
11 Weis took office in May of 1982.

12 57. Despite the fact that Commissioner Borthick
13 had specifically prohibited bonuses without the approval of the
14 Board of Directors, Defendants Edward I. Vetter, Dean
15 Christensen and Glen W. Groo awarded themselves bonuses and/or
16 other salary benefits which totalled \$500,000 from the funds
17 that plaintiffs had infused pursuant to their agreement with
18 Commissioner Borthick.

19 58. On or about May 31, 1982, Elaine B. Weis was
20 appointed Commissioner of Financial Institutions. Despite the
21 fact that MFT had attempted to conduct and operate its affairs
22 pursuant to their contractual agreement with the previous
23 Commissioner Borthick, Elaine B. Weis took possession of MFT on
24 July 22, 1982. This takeover by Commissioner Weis was
25 unwarranted, untimely and unlawful and was perpetrated in total
26 disregard of an eight-page letter submitted to her by the

1 plaintiffs then counsel the day before the takeover wherein he
2 stated:

3 "That this law firm ... and our clients have
4 on several occasions requested the Department to
5 respond to specific questions concerning the
6 treatment by your Department of certain assets of
7 MFT. The Department has never responded to these
8 requests ... the Department is not free to ignore
9 its own regulations and to selectively enforce those
10 regulations which it chooses to or arbitrarily not
11 enforce the regulations which it chooses not to.
12 The Department has a responsibility to respond to
13 good faith requests for clarification of issues
14 raised by financial institutions.
15 The acts of the Department in respect to MFT have
16 been unwarranted, arbitrary, capricious, and
17 intolerable. The capital of MFT has been increased
18 and not decreased by the transactions entered into
19 by MFT and its affiliated companies." (Emphasis
20 added)

21 59. Subsequent to this time, Commissioner Weis
22 placed MFT in a conservatorship and then participated in the
23 negotiations and execution of a Purchase and Assumption
24 Agreement whereby First Security Financial, a subsidiary of
25 First Security Bank, acquired the deposits, loans, leases, as
26 well as the main office building of MFT.

27 60. Prior to the takeover, Commissioner Weis in
28 violation of state law, general principles of fairness, and in
29 conspiracy with other defendants who would stand to be
30 financially enriched by her actions, met with senior officers of
31 First Security Bank and others for the purpose of discussing,
32 forming and implementing a plan whereby First Security
33 Corporation could acquire the substantial assets of MFT and
34 defeat any legal or equitable and capital interests of the
35 plaintiffs.

1 61. The Plaintiffs attempted to take the necessary
2 lawful action through local Utah counsel to preserve and protect
3 their rights both to the written agreement with the defendants
4 as well as other third parties.

5 62. Their attempts were met by repeated acts of
6 duress, threats of criminal prosecution, threats of unwarranted
7 civil suits and unwarranted administrative harassment.

8 63. Defendants and each of them released and or
9 disseminated information to the general press concerning the
10 takeover of MFT, which was false, misleading and inaccurate and
11 which specifically portrayed the Plaintiffs as being responsible
12 for certain financial conditions of that firm, when in fact they
13 were the victims of the wrongs herein alleged and were never
14 permitted to manage their company.

15 64. As a result of this publicity, Plaintiff Jim
16 P. Hansen during the period August 15 to October 15, 1982
17 received numerous threats from telephone calls at all hours of
18 the day and night from depositors and/or other individuals which
19 caused him and his family to be greatly upset and disturbed in
20 the enjoyment of their home and family life.

21 65. On or about October 10, 1982. Plaintiff Frank
22 A. Nelson, Jr. received telephone calls, which included threats
23 of great bodily injury and/or death.

24 66. On November 15, 1982, Plaintiffs and
25 Defendants entered into a Purchase and Assumption Agreement
26 which purportedly was entered into in good faith by all parties

1 in an attempt to provide a just and equitable distribution of
2 certain assets, including Bel Marin Keys property and other
3 assets infused by Plaintiff pursuant to the terms of Exhibits
4 "A", "B" and "C".

5 67. Under the factual background which is
6 specifically described in Paragraphs 63, 64, 65, 66, 67 and in
7 an attempt to salvage their assets which had been wrongfully
8 seized, the Plaintiffs signed the Purchase and Assumption
9 Agreement (Exhibit D) on November 15, 1982.

10 68. Under the factual background which is
11 specifically described in paragraphs 63, 64, 65, 66, 67, 68, the
12 Defendants insisted that the plaintiff sign a mutual release
13 prior to the execution of a Purchase and Assumption Agreement.
14 (Exhibit E)

15 69. Plaintiff reserves the right to make a direct
16 and/or collateral attack on the provisions of the mutual release.

17 70. Notwithstanding the information contained in
18 Paragraphs 70 and 71, it is Plaintiff's contention that the
19 terms of the mutual release expressly excluded "Claims based
20 upon the failure of a party to perform in accordance with the
21 terms of the Purchase and Assumption Agreement dated
22 November 15, 1982. ... (and) Any claims that any of the parties
23 may have against Edward I. Vetter, Dean G. Christensen or Glen
24 F. Croo."

25 71. This agreement was subject to prior approval
26 by the Federal Reserve Board.

1 72. The Purchase and Assumption Agreement was
2 prepared and drafted by counsel for the Defendant First Security
3 who insisted upon the distribution of not more than seven copies
4 and also required the Plaintiffs to agree to maintain
5 confidentiality with regard to its contents.

6 73. Despite this fact that the preparation of the
7 Purchase and Assumption Agreement was in the exclusive control
8 of Defendant First Security, Plaintiffs have discovered at least
9 four additional versions, none of which bore Plaintiff's
10 signature. The various versions of this Agreement have either
11 significant alterations and/or deletions.

12 74. Based on information and belief and thorough
13 and good faith investigative measures by Plaintiffs, it has been
14 discovered that there have been at least five separate and
15 unsigned versions of this agreement presented, or otherwise
16 distributed, to such governmental entities as the Federal
17 Reserve Bank of San Francisco, and the Third District Court of
18 Utah, Salt Lake city, Utah.

19 75. Plaintiffs have been ready to perform and have
20 in fact performed the terms of the Purchase and Assumption
21 Agreement.

22 76. Defendants and each of them have breached the
23 terms of this agreement and have prevented Plaintiffs from
24 performing as more specifically set forth below.

25 77. Defendants and each of them but most
26 specifically R. Howard Harmer have intentionally secreted

1 maliciously and fraudulently acted and conspired, and encouraged
2 others to so act and conspire in a manner so as to defeat the
3 legal and equitable rights of the Plaintiffs as co-joint
4 venturers pursuant to the Purchase and Assumption Agreement.

5 1.

6 FIRST CAUSE OF ACTION

7 VIOLATION OF THE RACKETEER INFLUENCED AND
8 CORRUPT ORGANIZATIONS ACT "RICO"

9 78. As a separate and distinct cause of action
10 against Defendants, First Security Corporation, First Security
11 Financial, Inc., Elaine B. Weis, Industrial Loan Guaranty
12 Corporation of Utah, Glen Groo, R. Howard Harmer, Clendon
13 Johnson, Edward I. Vetter, Plaintiffs allege as follows:

14 79. Plaintiffs reallege all of the allegations set
15 forth in Paragraphs 1 through 78 as though fully set forth
16 herein.

17 80. This First Cause of Action arises out of the
18 Defendants violations of the Racketeer Influenced and Corrupt
19 Organizations Act U.S.C., Sections 1961 through 1969. The Court
20 has jurisdiction over the subject matter of this cause of action
21 pursuant to 18 U.S.C., Section 1965.

22 A. PREDICATE OFFENSES

23 First Predicate Offense

24 Bankruptcy Fraud

25 81. Title 18 U.S. Code, Section 152 prohibits the
26 submission of false claims in any proceeding under Title 11

1 Bankruptcy Act by a person, agent, proxy, attorney or as agent,
2 proxy, attorney knowing the same to be false or inaccurate. It
3 further prohibits any false entry in any document affecting or
4 relating to the property or affairs of a bankrupt.

5 82. Defendants Alternate Energy System, Inc., R.
6 Howard Harmer, First security Bank, Elaine B. Weis, Glendon
7 Johnson, and affiliates, alter egos, assignees, alleged
8 assignees of each and aided and abetted by others not presently
9 known to Plaintiffs filed or caused to be filed claims in
10 bankruptcy knowing the same to be false and of no force and
11 effect or knowing that such claims had been paid off,
12 compromised, or discharged by exchange for reasonable
13 consideration for the purpose of furthering a scheme to defraud
14 the Plaintiffs of their property and right to benefit thereof.

15 83. Certain of the Defendants amended, caused to
16 be altered, or back dated documents in the official file of the
17 Bankruptcy Court which materially affected the rights of
18 Plaintiffs and legitimate claimants of a debtor under Chapter
19 11.

20 84. Through the actions set forth above, the
21 Plaintiffs were deprived of their property. This predicate
22 offense placed the property of the Plaintiffs in a remaining
23 bankruptcy proceeding and estate which are being dissipated to
24 the Defendants and their agents.

25 Second Predicate Offense

1 85. The subject matter of the sale of that
2 business involved securities and constituted a purchase of
3 securities within the language, meaning, intent and
4 interpretation of the Securities Exchange Act of 1934, 15
5 U.S.C., Section 78(a)(1), et seq and in particular Section 10b
6 of the said act 15 U.S.C., 78J(b) and Rule 10-b5, 17 C.F.R.
7 240.10b-5 promulgated under said act in that the business sold
8 constituted a profit making enterprise and a percentage thereof
9 and interest therein was sold and the loans, leases, and
10 deposits thereby sold were securities within the meaning of the
11 statutes, rules and regulations as heretofore referred to. The
12 Defendants violated said acts by making the misrepresentations,
13 coercive statements and threats heretofore referred to in this
14 Complaint in connection with the execution of said agreement and
15 thereby violated the terms and provisions of the Securities Act
16 and rules and regulations heretofore referred to. Such acts
17 constitute predicate offenses under the RICO statutes in that 18
18 U.S.C. 1961 defines racketeering activity and the consequent
19 offense as including "fraud in the sale of securities".

20 86. As a direct and proximate result of said
21 racketeering activity the Plaintiffs were deprived of their
22 assets, to wit the ongoing business of MFT, the securities and
23 other assets associated and connected therewith which have been
24 transferred to corrupt enterprises to wit: First Security
25 Financial Inc., which is involved in interstate commerce; and a
26 portion of said assets were transferred to the care, custody and

1 control of Elaine B. Weis and Industrial Loan Guaranty
2 Corporation of Utah through the violations of the aforesaid
3 statutes which constitute a corrupt enterprise and which
4 enterprise and enterprises to and are involved in interstate
5 commerce.

6 Third Predicate Offense

7 Interference with Commerce by Threats or Violence

8 87. 18 U.S.C. 1961 of the RICO statute provides
9 that extortion as heretofore defined is a predicate offense and
10 constitutes racketeering activity. The Defendants have violated
11 the foregoing sections and have extorted the Plaintiffs in that
12 they have threatened to initiate unjustified criminal
13 proceedings against them if they did not execute the November
14 15, 1982 Agreement, Exhibit "D" attached hereto and incorporated
15 herein by reference, and in fact caused the Plaintiff Frank A.
16 Nelson to be indicted and charged with a crime, but later caused
17 said action to be dismissed against him as without merit.

18 88. The Defendants effected such extortion by
19 stating that they were causing the Attorney General to
20 investigate the Plaintiffs, and the Attorney General of the
21 State of Utah did in fact do so and spent a large sum of money
22 investigating the Plaintiffs but without developing any cause of
23 action against them since the Plaintiffs capitulated to the
24 extortion and executed the Exhibit "D", November 15, 1982
25 Agreement.

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1 fraud as part of this scheme.

2 B. RICO VIOLATIONS

3 93. Plaintiffs repeat and incorporate by reference
4 all of the paragraphs heretofore set forth in this Cause of
5 Action.

6 94. Each of the foregoing offenses occurred on two
7 (2) or more occasions within the last ten (10) years and
8 constituted a repetitive pattern of racketeering activity.

9 95. Pursuant to 18 U.S.C. 1964(c) the Plaintiffs
10 are entitled to treble damages and attorneys fees for all
11 damages proximately and directly resulting from the wrongs
12 herein alleged.

13 96. The funds diverted from the mail fraud were
14 processed, in part, into a corporation known as Murray First
15 Financial of Europe which constitutes a corrupt organization and
16 enterprise within the meaning of the RICO statute.

17 97. All of the foregoing violations were
18 perpetrated by the Defendants for the purpose of depriving the
19 Plaintiffs of their assets and wrongfully taking and converting
20 said assets and causing said assets to be paid over to corrupt
21 enterprises engaged in interstate commerce.

22 98. Prior to July 22, 1982, Plaintiffs owned and
23 conducted an industrial loan mortgage and land development
24 business with principal offices in Salt Lake County, Utah.
25 Prior to July 22, 1982, Plaintiffs owned a number of valuable
26 properties located in Marin County, California known as the Bel

1 Marin Keys property.

2 99. On or about July 22, 1982, the Department of
3 Financial Institutions, by and through Elaine B. Weis purporting
4 to act as Commissioner, acting in concert and conspiracy and
5 aided and abetted by each of the other Defendants in this Cause
6 of Action seized and took control of all of Plaintiffs' business
7 and property, book, papers and records, all unlawfully and
8 without due process of law. Thereafter, in all of her
9 transactions with Plaintiffs or involving Plaintiffs' business,
10 property or assets, Defendant Weis continued to act in concert
11 and conspiracy with each of the other Defendants herein and each
12 of the other Defendants aided and abetted her in said unlawful
13 acts and Defendants herein, continue to unlawfully act as set
14 forth herein as of the date of the filing of this Complaint.

15 100. After taking control of Plaintiffs'
16 business, property, and assets, including books, papers and
17 records as described herein, Weis in concert and conspiracy with
18 and aided and abetted by, each of the other Defendants:

19 (a) unlawfully, on two or more occasions
20 during 1982 by interstate telephone, by threats,
21 coercion and duress, including telling Plaintiffs
22 that if they did not do as Defendants instructed
23 them to do, Defendants would cause criminal charges
24 to be brought against Plaintiffs, and telling
25 Plaintiffs that if they did not do as Defendants
26 instructed them to do, Defendants would cause a

1 proliferation of civil law suits which would ruin
2 and bankrupt each of the Plaintiffs and the
3 Plaintiffs' principal owners. Defendants forced
4 Plaintiffs to sign a certain document which
5 Defendants denominated "Purchase and Assumption
6 Agreement" dated November 15, 1982 and signed
7 December 13, 1982 and January 7, 1983 (a copy of
8 which is attached hereto as Exhibit "D").

9 (b) Operated Plaintiffs' business and dealt
10 with Plaintiffs' properties and other assets at a
11 profit and converted said profit to the benefit of
12 Defendants First Security Corporation, First
13 Security Financial, Inc., Vetter, Christensen,
14 Groo, Industrial Loan Guaranty Corporation of Utah,
15 and others and to the other Defendants herein
16 without accounting to or paying over all or any
17 portion thereof to the Plaintiffs to whom said
18 profits rightfully and lawfully belonged; and

19 (c) Sold off assets of Plaintiff MFT
20 Mortgage without any right to do so and converted
21 the proceeds of such unlawful sales to the benefit
22 of Defendants First Security Corporation, First
23 Security Financial, Inc., Vetter, Christensen,
24 Groo, Industrial Loan Guaranty Corporation of Utah,
25 and others without accounting to or paying over all
26 or any portion thereof to the Plaintiff MFT to

1 which said proceeds rightfully and lawfully
2 belonged;

3 (d) unlawfully placed, caused to be placed,
4 permitted to be placed some or all of one or more
5 mortgages, trust deeds or other encumbrances on the
6 Del Marin Keys property in which Plaintiffs had an
7 interest and subordinated the interests of
8 Plaintiffs to Defendants Christensen, Groo and
9 Vetter without authority to do so. From these
10 actions, one or more of the Defendants realized
11 gain or benefit to the detriment of Plaintiffs.
12 Defendants deliberately withheld from Plaintiffs,
13 the proceeds of such mortgage or mortgages to whom
14 said proceeds, rights or privileges rightfully and
15 lawfully belonged;

16 (e) unlawfully sold off, traded or otherwise
17 disposed of a number of properties including
18 properties in Idaho, Utah and California which
19 properties belonged to Plaintiffs and converted the
20 proceeds of such sales to the benefit of one or
21 more of the Defendants without accounting or paying
22 over all or any portion thereof to the Plaintiffs
23 to whom said proceeds rightfully and lawfully
24 belonged;

25 (f) held and continues to hold, various
26 property interests, cash and other assets which

1 rightfully and lawfully belong to the Plaintiffs
2 from which Defendants have derived and are
3 continuing to derive substantial gain and benefit;

4 (g) held and continue to hold title to
5 Plaintiffs' interest in and to the said Bel Marin
6 Keys property and failed and refused to allow
7 Plaintiffs to improve, deal with, attempt to sell
8 or finance or develop said property by reason of
9 which conduct, Defendants have greatly damaged
10 Plaintiffs;

11 (h) blocked and made impossible various
12 financing and development plans proposed by
13 Plaintiffs for the Bel Marin Keys property;

14 (i) encumbered Plaintiffs' interest in the
15 Bel Marin property.

16 101. Certain properties and assets of Plaintiffs
17 which were taken by Defendants on or about July 22, 1982 were
18 "securities" and the said taking thereof by Defendants
19 constituted a "purchase" within the language, meaning and intent
20 of the Securities Exchange Act of 1934, 15 U.S.C. section
21 78(a)(a) et seq., and, in particular, section 10(b) of the said
22 act, 15 U.S.C. section 78j(b) and Rule 10b-5, 17
23 C.S.R. 240.10-b5. promulgated under said Act.

24 102. In making and conveying to Plaintiffs the
25 threats described above, Defendants did so on two or more
26 occasions during 1981 and 1982 and did so by means of interstate

1 telephone and the United States mail.

2 103. In "purchasing" Plaintiffs' securities
3 (stocks, interest in real estate sales agreement, notes,
4 evidence of indebtedness, investment and lease contracts),
5 Defendants acted knowingly and willfully, that is, with
6 "scienter", and in the manner and by the means and conduct
7 described above engaged in two or more acts, practices or
8 courses of business which operated as a fraud or deceit on
9 Plaintiffs within the language, meaning and intent of Section
10 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. Section
11 78J(b) and Rule 10b-5, 17 C.F.R. 240.-20-(b)-5.

12 104. Such acts of Defendants, whereby Defendants
13 obtained money and property from Plaintiffs by means of false or
14 fraudulent pretenses, representations or promises and which
15 caused Plaintiff to "sell" certain securities of Plaintiffs to
16 Defendants First Security Corporation, First Security Financial,
17 Inc., Vetter, Christensen, Groo, Industrial Loan Guaranty
18 Corporation of Utah, and others, and the entity, association and
19 enterprise (trusteeship conservatorship, trust, or
20 however otherwise denominated) under the nominal direction and
21 authority of Defendant Weis, included:

22 (a) threats that Defendants would cause
23 criminal actions to be brought against Plaintiffs
24 and Plaintiffs' principals;

25 (b) threats that Defendants would cause a
26 proliferation of Civil lawsuits against Plaintiffs

1 and their principals which said litigations would
2 bankrupt Plaintiffs and their principals;

3 (c) false material statements that said
4 Defendant Weis and the entity or association and
5 enterprise created by Defendants to conduct
6 Plaintiffs' business and hold and maintain
7 Plaintiffs' assets, would be operated in a manner
8 that was fair to and would protect Plaintiffs
9 interests.

10 105. The acts of Defendants set forth above
11 constitutes "racketeering activity" within the language, meaning
12 and intent of 18 U.S.C. Section 1961(a)(B).

13 106. The acts of Defendants set forth above
14 constitute a "pattern of racketeering activity" within the
15 language, meaning and intent of 18 U.S.C. Section 1961 (a)(5).

16 107. As aforesaid, Defendants unlawfully seized
17 and took control of Plaintiffs' business, property and assets
18 and books, papers and records on or about July 22, 1982, and
19 forced Plaintiffs to sign, contrary to Plaintiffs' wishes, will
20 and best interests, the "Purchase and Assumption Agreement"
21 dated November 15, 1982, and attached hereto as Exhibit "D".

22 108. Subsequent to July 22, 1982, to date, Weis
23 acquired, established, and operated, in concert and conspiracy
24 with and aided and abetted by each of the other Defendants, a
25 trusteeship, and/or joint venture, and/or association or
26 conservatorship, and used the assets, which Defendants had

1 unlawfully taken from Plaintiffs.

2 109. Subsequent to each of the occurrences
3 described above, Defendants received income directly from the
4 pattern of racketeering activity described herein, and used such
5 income or the proceeds of such income in the acquisition of
6 interest in or the establishment or operation of "enterprises"
7 to wit: an ongoing trusteeship, joint venture, association or
8 conservatorship, one or more and a corporation, to wit, First
9 Security Financial Corporation.

10 110. The trusteeship, joint venture, association,
11 conservatorship, and corporation, described above, constituted
12 an "enterprise" within the language, meaning and intent of 18
13 U.S.C. Sections 1961(a)(4) and 18 U.S.C. Section 1962(a).
14 Defendant First Security Financial is also an enterprise within
15 the meaning of said statute.

16 111. The acts and conduct of Defendants described
17 in this Cause of Action and the preliminary allegations herein
18 constitutes the use of income or proceeds of such income derived
19 by Defendants by a pattern of racketeering activity, as
20 aforesaid, in the acquisition of any interest in or the
21 establishment of or the operation of an enterprise (to wit: the
22 entity or association whereby Weis, acting in concert and
23 conspiracy with and aided and abetted by each of the other
24 Defendants) within the language, meaning and intent of 18
25 U.S.C. Section 1962(a).

26 112. The acquisition of an interest in or the

1 establishment of or the operation by Defendants by use of
2 facilities of interstate commerce.

3 113. The enterprise aforesaid was engaged in and
4 its activities affected interstate commerce.

5 114. As a direct and proximate result of
6 Defendants' acquisition of an interest in, establishment of,
7 operation of, or all of the aforesaid "enterprises" as defined
8 in 18 U.S.C. Section 1961(a)(4), Plaintiffs sustained
9 substantial loss, damage and injury. Plaintiffs estimate their
10 said loss, damage and injury to be not less than \$50,000,000.00
11 Said loss constitutes a "racketeering enterprise injury" within
12 the scope and intended protection of the said Racketeer
13 Influenced and Corrupt Organizations Act, 18 U.S.C. Section
14 1961-1964 and all inclusive provisions relating thereto.

15 115. Plaintiffs are entitled, by reason of
16 Defendants' aforesaid violations of 18 U.S.C. Sections
17 1961-1964, to treble their actual damages of \$50,000,000.00 or
18 \$150,000,000.00 plus Plaintiffs' costs of suit including a
19 reasonable attorney's fee pursuant to 18 U.S.C. Section 1964(c).

20 116. On information and belief, in effecting the
21 aforesaid violations of the Racketeer Influenced and Corrupt
22 Organizations Act, Defendants, in concert and conspiracy and
23 aiding and abetting each other, acted knowingly, willfully,
24 intentionally, wantonly, and maliciously. This claim is,
25 therefore, an appropriate cause for the award of punitive
26 damages, and \$40,000,000.00 is a reasonable amount to be so

1 awarded.

2 WHEREFORE, Plaintiffs pray for judgment against
3 Defendants as follows:

- 4 1. For damages in excess of \$50,000,000 trebled to
5 \$150,000,000.
- 6 2. For punitive damages in the amount of
7 \$40,000,000.
- 8 3. For attorneys fees.
- 9 4. For interest at the highest legal rate.
- 10 5. For costs of Court herein.
- 11 6. For such other relief as the Court may deem
12 just and proper.

13 II.

14 SECOND CAUSE OF ACTION

15 VIOLATION OF CIVIL RIGHTS

16 117. As a separate and distinct cause of action
17 against Defendants, First Security Corporation, First Security
18 Financial, Inc., Elaine B. Weis, Elaine B. Weis, Trustee,
19 Industrial Loan Guaranty Corporation of Utah, TICOR, R. Howard
20 Harmer, Trustee, Glendon Johnson, Alternate Energy Systems,
21 Inc., f/k/a/ Capital Planning Associates, Edward I. Vetter, Dean
22 C. Christensen, Glen W. Groo, Home Savings of America, S.A.,
23 Mervin Borthick, Commissioner of Financial Institutions, Mervin
24 Borthick, Plaintiffs allege as follows:

25 118. Plaintiffs reallege all of the allegations
26 set forth in Paragraphs 1 through 117 as though fully set forth

1 herein.

2 119. Prior to July 22, 1982, the Plaintiffs owned
3 and conducted an industrial loan mortgage and land development
4 business with principal offices in Salt Lake County, Utah.

5 Prior to July 22, 1982, Plaintiffs owned a number of valuable
6 properties and interests in valuable properties particularly a
7 property located in Marin County, California known as the Bel
8 Marin Keys property.

9 120. On or about July 22, 1982, the Department of
10 Financial Institutions by and through Elaine B. Weis purporting
11 to act as commissioner of Financial Institutions of the State of
12 Utah and, acting in concert and conspiracy and aided and abetted
13 by each of the other Defendants in this Cause of Action, seized
14 and took control of all of Plaintiffs' business and property,
15 books, papers and records, unlawfully and without due process of
16 law and without affording Plaintiffs rights to equal protection
17 of law. Thereafter, in all of her transactions with Plaintiffs,
18 or involving the business, property or assets of Plaintiffs,
19 Weis continued to act in concert and conspiracy with each of the
20 other Defendants herein and each of the other Defendants in this
21 Cause of Action aided and abetted her in her said unlawful acts
22 and Defendants continue to unlawfully act as of the date of the
23 filing of this Complaint.

24 121. After taking control of Plaintiffs' business
25 and property, assets, books, papers and records as described in
26 paragraph 5 above, Weis, in concert and conspiracy with and

1 aided and abetted by each of the other Defendants:

2 (a) Unlawfully, on two (2) or more occasions
3 during 1982 by interstate telephone by threats,
4 coercion and duress including telling Plaintiffs
5 that if they did not do as Defendants instructed
6 them to do Defendants would cause criminal charges
7 to be brought against Plaintiffs and Plaintiffs'
8 principal owners and telling Plaintiffs that if
9 they did not do as Defendants instructed them to
10 do, that Defendants would cause a proliferation of
11 civil lawsuits which would ruin and bankrupt each
12 of the Plaintiffs and the Plaintiffs' principal
13 owners and Defendants forced Plaintiffs to sign a
14 certain document which Defendants denominated
15 "Purchase and Assumption agreement" dated November
16 15, 1982. which was signed December 13, 1982, by
17 Defendants and January 7, 1983 by Plaintiffs, a
18 copy of which is attached hereto as Exhibit "D",

19 (b) Defendant Weis and subsequently
20 Defendant Weis, "Trustee" operated Plaintiffs'
21 business and dealt with Plaintiffs' property and
22 other assets at a profit and converted the profit
23 to the benefit of Defendant First Security
24 Corporation and First Security Financial without
25 accounting to or paying over all or any portion
26 thereof to the Plaintiffs whom said profits

1 rightfully and lawfully belonged;

2 (c) Said Defendants sold off assets of MFT
3 Mortgage without any right to do so and converted
4 the proceeds of such unlawful sales to the benefit
5 of Defendants First Security Corporation and First
6 Security Financial without accounting to or paying
7 over all or any portion thereof to the Plaintiff
8 Murray First Thrift to whom said proceeds
9 rightfully and lawfully belonged;

10 (d) Said Defendants unlawfully placed,
11 caused to be placed, permitted to be placed one or
12 more mortgages on the interest Plaintiffs' owned in
13 a very valuable property located in Marin County,
14 California, known as the Bel Marin Keys property
15 without authority to do so from which one or more
16 of the Defendants realized gain or benefit and
17 without gain or benefit to Plaintiffs or without
18 paying over the proceeds of such mortgage or
19 mortgages to Plaintiffs to whom said proceeds
20 rightfully and lawfully belonged;

21 (e) Said Defendants unlawfully sold off,
22 traded or otherwise disposed of a number of
23 properties in Lemhi County, Idaho, Summit County,
24 Utah and Salt Lake County, Utah which said property
25 belonged to Plaintiffs and converted the proceeds
26 of such sales to the benefit of one or more of the

1 Defendants without accounting or paying over all or
2 any portion thereof to the Plaintiffs to whom said
3 proceeds rightfully and lawfully belonged;

4 (f) Said Defendants held and continue to
5 hold various property interests, cash and other
6 assets which rightfully and lawfully belong to the
7 Plaintiffs from which Defendants have derived and
8 are continuing to derive substantial gain;

9 (g) Said Defendants held and continue to
10 claim Plaintiffs' interest in and to the said Bel
11 Marin Keys property and fail and refuse to allow
12 Plaintiffs to improve, deal with, attempt to sell
13 or finance or develop said property by reason of
14 which conduct, Defendants have greatly damaged
15 Plaintiffs;

16 (h) Said Defendants blocked and made
17 impossible various financing and development plans
18 proposed by Plaintiffs for the Bel Marin Keys
19 property;

20 (i) Said Defendants encumbered Plaintiffs'
21 interest in the Bel Marin property.

22 122. The acts and conduct of the Defendants
23 described above constitute a violation of Plaintiffs' rights as
24 guaranteed by:

25 (a) the Fourth Amendment to the Constitution
26 of the United States ("The right of the people to

1 be secure in their persons, houses, papers, and
2 effects, against unreasonable searches and
3 seizures, shall not be violated:)

4 (b) The Fifth Amendment to the Constitution
5 of the United States ("no person shall be deprived
6 of ... property, without due process of law; nor
7 shall private property be taken for public use
8 without just compensation"); and

9 (c) the Seventh Amendment to the
10 Constitution of the United States ("In suits at
11 common law...the right of trial by jury shall be
12 preserved"); and

13 (d) the Fourteenth Amendment to the
14 Constitution of the United States ("...nor shall
15 any state deprive any person of life, liberty or
16 property without due process of law; nor deny to
17 any person within its jurisdiction the equal
18 protection of the law.")

19 123. The violations of Plaintiffs' Constitutional
20 rights as described above, are made civilly actionable by 42
21 U.S.C., Sections 1983 and 1988. Plaintiffs are entitled to
22 judgment against Defendants and each of them in the amount of
23 the damages proximately caused to Plaintiffs by Defendants'
24 unlawful violation of Plaintiffs' civil rights, which said amount
25 Plaintiffs estimate to be \$16,000,000 plus prejudgment interest
26 thereon and the award of Plaintiffs' attorneys' fees, as

1 provided by 18 U.S.C. Section 1983.

2 124. On information and belief, in effecting the
3 aforesaid violations of Plaintiffs' Constitutional rights,
4 Defendants, in concert and conspiracy and in aiding and abetting
5 each other, acted knowingly, intentionally, wilfully, wantonly
6 and maliciously. This claim is, therefore, an appropriate case
7 for the award of punitive damages. \$40,000,000 is a reasonable
8 amount to be so awarded.

9 WHEREFORE, Plaintiffs and each of them pray for
10 judgment against the Defendants named in this Cause of Action,
11 jointly and severally as follows:

- 12 1. For general damages in the sum of \$16,000,000.
- 13 2. For punitive damages in the sum in excess of
14 \$40,000,000.
- 15 3. For a reasonable attorneys fee.
- 16 4. For costs of Court herein.
- 17 5. For such further relief as the Court may deem
18 just and proper.

19 III.

20 THIRD CAUSE OF ACTION

21 SECURITIES FRAUD

22 125. As a separate and distinct cause of action
23 against Defendants, First Security Corporation, Elaine B. Weis,
24 First Security Financial, Inc., Elaine B. Weis, Trustee,
25 Industrial Loan Guaranty Corporation of Utah, TICOR, R. Howard
26 Harmer, R. Howard Harmer, Trustee, Glendon Johnson, Alternate

1 Energy Systems, Inc., f/k/a/ Capital Planning Associates, Edward
2 I. Vetter, Dean C. Christensen, Glen W. Groo, Home Savings of
3 America, S.A., Mervin Borthick, Commissioner of Financial
4 Institutions, Mervin Borthick, Plaintiffs allege as follows:

5 126. Plaintiffs reallege all of the allegations
6 set forth in Paragraphs 1 through 125 as though fully set forth
7 herein.

8 127. Defendants First Security Corporation,
9 Elaine B. Weis, First Security Financial, Industrial Loan
10 Guaranty Corporation of Utah, TICOR, R. Howard Harmer, Glendon
11 Johnson, Alternate Energy systems, Inc., Edward I. Vetter, Dean
12 C. Christensen, Glen W. Groo, Mervin Borthick and others induced
13 Plaintiffs to buy, sell or otherwise acquire or dispose of
14 securities including stocks, notes, leases, mortgages, bonds
15 while concealing from Plaintiffs pertinent and essential
16 information requisite to make decisions relating to such
17 purchase or sale.

18 128. The shares and interests in certain companies
19 sold by Defendants to Plaintiffs and the shares of MFT Financial
20 and MFT conveyed by them and the leases, deposits, loans and
21 real estate security interests constitute securities within the
22 meaning of Section 3 of the Securities Exchange Act of 1934 as
23 amended 15 U.S.C. section 78 (c)(10).

24 129. The participation in the leases, loans,
25 deposits and other assets sold to Defendants constitute
26 securities within the meaning of Section 2(1) of the Securities

1 Act of 1933, as amended, 15 U.S.C. Section 77b(1), in that the
2 interests obtained constituted investment contracts with the
3 Plaintiffs and each investor member of the Plaintiffs and of
4 Plaintiffs MFT, MFT Financial and MFT Mortgage as sellers by
5 investing money in income producing property to be managed by
6 others. The success of the Plaintiffs' investment depended upon
7 the skill and management of the Defendants and each of them.

8 130. The Defendants, and each of them, by the use
9 of instrumentalities of interstate commerce, mainly the
10 telephone, telegraph and mails, in connection with the sale of
11 the securities aforesaid, and as material inducements to effect
12 such sale, engaged in devices, schemes, and artifices to defraud
13 the Plaintiffs. made untrue statements of material facts and
14 misleading omissions of material facts, and engaged in acts,
15 practices, and a course of business which operated and continues
16 to operate as a fraud and deceit upon the Plaintiffs in
17 violation of Section 10 of the Securities Exchange Act of 1934,
18 15 U.S.C. Section 78(b) as amended, and Securities and Exchange
19 Commission Rule 10b-5 thereunder, 17 C.F.R. Section 240.10b-5.

20 131. The aforesaid misrepresentations of and
21 omissions of the Defendants were made by them knowingly and
22 intentionally with knowledge that they were making the
23 representations and with full knowledge of the falsity thereof
24 and were further made in reckless, willful and wanton disregard
25 of the truth, and for the specific and express purpose of
26 misleading, deceiving and defrauding the Plaintiffs.

1 132. The Plaintiffs had no knowledge of the false
2 and misleading nature of the above-described misrepresentations
3 and omissions of material facts; and the Plaintiffs, therefore,
4 reasonably and justifiably relied upon the representations and
5 omissions of the Defendants and each of them. The Plaintiffs
6 would not have purchased the share of MFT Financial as provided
7 by the reorganization plan of July 1981, and Plaintiffs would
8 not have sold or transferred the leases and loans of MFT in the
9 manner demanded by the Defendants and would not have financed
10 the purchase of the majority of the shares of MFT Financial and
11 of all the shares of MFT if the misrepresentations and omissions
12 of the above-described material facts had not been made by the
13 Defendants or had the falsity of the misrepresentations and the
14 nature of the omissions been known to them.

15 133. The above-described fraudulent conduct was
16 committed and the above-described fraudulent misrepresentations
17 and omissions were made in connection with the purchase and sale
18 of securities by Defendants in interstate commerce, and
19 constitute untrue statements of material fact or omissions to
20 state material facts necessary to make the statements made in
21 light of the circumstances in which they were made, not
22 misleading, within the prohibition of Section 17 of the
23 Securities Act of 1933, as amended, 15 U.S.C. Section 77(q).

24 134. The above-described fraudulent conduct was
25 committed by the Defendants in interstate commerce, and
26 constituted an act, practice and course of business which

1 operates. has operated. and would operate as a fraud or deceit
2 upon Plaintiffs within the prohibition of Section 17 of the
3 Securities Act of 1933, as amended, 15 U.S.C. Section 77(q).

4 135. The sales of shares in MFT Financial which
5 were sold directly by Defendants Vetter, Harmer, Christensen and
6 Groo, and indirectly by Defendant Johnson, and TICOR; and the
7 notes, leases, loans, deposits, mortgages, trust deeds, etc.,
8 sold directly or otherwise disposed of by Defendant Weis are
9 securities as that term is defined by Section 2(1) of the
10 Securities Act of 1933, as amended 15 U.S.C. Section 79b(1).

11 136. The sales of shares set forth in the
12 preceding paragraph above were made by Defendants using
13 instrumentalities of commerce and communications in interstate
14 commerce and of the United States mails.

15 137. The Defendants, pursuant to the conspiracy
16 herein set forth, and aided and abetted by each of the other
17 Defendants, made the following misstatements of material facts.
18 Each such misrepresentation was made in the furtherance of the
19 aforesaid conspiracy:

20 (a) That the shares of stock in MFT
21 Financial were unencumbered and could be pledged to
22 finance the assets necessary to achieve an 80%
23 ownership of MFT Financial; and

24 (b) That the net worth certificates issued
25 under the November 8, 1982, qualified as capital
26 under Utah and Federal law;

1 (c) That MFT Financial and MFT each owned
2 fifty percent of the outstanding shares of Lon
3 Investment Company free and clear of any claim or
4 encumbrance;

5 (d) That Murray First Financial of
6 Europe, B.V. was merely a corporate shell which had
7 been organized and had never conducted business. It
8 was also represented that Murray First Financial of
9 Europe, B.V. had been written off in 1979 in the
10 amount of its organizational expense;

11 (e) That the Bel Marin Keys property, a
12 material assets of Reading and its subsidiaries,
13 was at a stage of development which would permit
14 reasonably prompt liquidation thereof so as to
15 convert disqualified real estate holdings of MFT to
16 liquid, admissible assets;

17 (f) That all of the provisions of the
18 leases, conveyances, deeds, mortgages and other
19 transactions involving the Bel Marin Keys property
20 were in accordance with law and that the property
21 was suitable for investment;

22 (g) That if Plaintiffs completed the
23 purchase of MFT Financial and reorganized pursuant
24 to Exhibit "C", the State of Utah Department of
25 Financial Institutions would permit the injection
26 of Plaintiffs' assets into MFT, and by that device,

1 MFT would be capitalized in a manner consistent
2 with the laws and regulations of the State of Utah
3 related to industrial loan corporations and that
4 the certain order of impairment then existing
5 against the operations of MFT and its capital would
6 be lifted, and, further, that the necessary costs
7 and attorneys fees to be incurred in order to
8 qualify for the same would be paid by Reading
9 Holding Company;

10 (h) That if Plaintiffs executed the Purchase
11 and Assumption Agreement (Exhibit "D") they would
12 manage and control certain assets as provided.

13 (i) That certain assets of MFT Financial,
14 MFT and Reading in the form of loans and accounts
15 payable were bona fide obligations of the makers
16 and would be paid in accordance with their terms
17 and amortization schedules related thereto;

18 (j) That there was not less than a
19 \$3,000,000 tax loss carry forward accrued to MFT
20 Financial and its affiliates which could be
21 utilized by the Plaintiffs for their benefit;

22 (k) That notes payable from Reading to
23 Alternate Energy Systems, Inc., had been satisfied
24 and that the beneficial interests therein were
25 available to one or more of the Plaintiffs by
26 assignment;

1 (1) That the Defendants had in all ways
2 operated the Plaintiffs' business in accordance
3 with the law;

4 (m) That the President of the Defendant
5 Industrial Loan Guaranty Corporation of Utah as a
6 representative for MFT and purported to represent
7 the interests of MFT in negotiating the terms of
8 the Purchase and Assumption Agreement.

9 (n) That the sale of the assets and
10 liabilities of MFT to Defendant First Security
11 Financial was a part of the Purchase and Assumption
12 Agreement and was to be approved by the Federal
13 Reserve Board as a condition precedent to its going
14 into effect.

15 138. In connection with the sales of shares
16 described below, the Defendants omitted to state the following
17 facts necessary to make the statements they made, under the
18 circumstances in which they were made, not misleading. Each
19 such omission was made pursuant to the aforesaid conspiracy.

20 (a) That literally millions of dollars of
21 loans receivable by MFT were loans to affiliates
22 which had been affected by some of the Defendants;
23 that the loans were in default, and they were being
24 consistently rolled over instead of paid, and that
25 they would never be paid and that the majority of
26 such loans involved the various interests of the

1 Defendants in the Del Marin Property;

2 (b) That a note payable to Plaintiff, MFT
3 Mortgage by Alternate Energy Systems in the sum of
4 \$3,000,000. was not a bona fide note obligation,
5 but was an illusory affiliate transaction effected
6 by the Defendants and each of them, and that said
7 note would never be paid and that Defendant
8 Alternate Energy Systems was utterly incapable of
9 paying the aforesaid note and that the very
10 issuance of the security therefor was a violation
11 of Section 11000.1 of the California Business and
12 Professions Code;

13 (c) That fifty percent of the shares of Lon
14 Development Corporation purported to be held by MFT
15 Financial had, in fact, been pledged as security
16 for payment of an obligation in the sum of \$525,000
17 due and owing to Carlsburg Financial Corporation by
18 MFT Financial, as guarantor, which pledge had, in
19 fact, been made to avoid payment of personal
20 indebtedness by certain of the Defendants;

21 (d) That contrary to the statement that MFT
22 was worthless, Murray First Financial of Europe,
23 B.V. had, in fact, been for a number of years the
24 core of an international fraud which had not less
25 than \$65,000,000 on its books and that the shares
26 of stock in Murray First Financial of Europe,

1 B.V. had until January 18, 1981, been under the
2 care, custody and control of Defendants Vetter,
3 Christensen, Goo, Johnson and Harmer. Said
4 transaction had been monitored by Defendants
5 Borthick and Weis who participated in and
6 engineered a subsequent concealment of the fraud;

7 (e) That the shares of stock in Murray First
8 Financial of Europe, B.V. had, in fact, been
9 removed from the books of Plaintiffs MFT & MFT
10 Financial. The removal was concealed from the
11 Plaintiffs who were shareholders thereof; and the
12 same shares traded to a subsidiary of Defendant
13 Alternative Energy Systems, Inc., in exchange for
14 its interest in the Bel Marin Keys property;

15 (f) That the Alternate Energy Systems, Inc.,
16 note described above was to have been assigned to
17 the Plaintiffs for their use and benefit; however,
18 surreptitiously and maliciously and with the intent
19 to defraud the beneficial ownership was assigned to
20 one Steven B. Anderson, "Trustee", and the
21 transaction was concealed from Plaintiffs by the
22 Defendants;

23 (g) That notwithstanding written and verbal
24 assurance to the contrary the fraudulent scheme and
25 design resulted in numerous criminal convictions
26 that operated from the beginning and continues to

1 operate in an unlawful and fraudulent manner as of
2 the date of filing;

3 (h) Certain of the Defendants herein had
4 utilized nominees to effect numerous loan
5 transactions from MFT which resulted in carrying on
6 the books of MFT loan obligations which would never
7 be paid and did not constitute good capital in MFT
8 and that the majority of said transactions both
9 quantity and dollar amount, involved directly and
10 indirectly the Bel Marin property;

11 (i) That in connection with the transactions
12 described above involving the Bel Marin Keys
13 property, Defendants herein and others unknown
14 violated state laws and county ordinances;

15 (j) The transactions described herein had a
16 connection with the conduct of MFT, MFT Financial
17 and other of Reading's affiliate corporations,
18 committed acts of criminal fraud of which, when
19 published and made known would subject MFT to
20 ridicule and contempt in the financial community
21 and damage the good will of MFT, and all Defendants
22 conspired to fraudulently and unlawfully convert
23 the assets of MFT to their own use and benefit;

24 (k) That Defendants omitted to disclose that
25 Defendants Vetter, Christensen and Groo had created
26 and caused to be created a quid pro quo by and

1 between MFT and Commercial Security Bank, holder of
2 the majority of indebtedness pursuant to which said
3 Vetter, Christensen and Groo could not be
4 discharged as employees of MFT which agreement
5 deprived Plaintiffs of a substantial incident of
6 their ownership direct control of MFT Financial;

7 (l) That it was the intent of Defendants to
8 use Plaintiffs' good assets to replace the
9 worthless and fraudulent assets of Defendants and
10 to conceal the fact from Plaintiffs;

11 (m) That Richard A. Christenson was acting
12 in his own interest and that of his own thrift and
13 loan company, Capitol Thrift and Loan, rather than
14 in his fiduciary capacity described above.

15 (n) That Richard A. Christenson had in
16 conspiracy with the other Defendants negotiated a
17 position as President of First Security Financial,
18 Inc. and subsequently commingled the assets of said
19 Capitol Thrift and Loan with those of Plaintiffs
20 and to conceal the same from Plaintiffs.

21 139. The above described fraudulent conduct was
22 committed in connection with the purchase and sale of securities
23 by Defendants in interstate commerce and constituted acts,
24 practices and a course of business which operates and has
25 operated and would operate and has continued to operate as a
26 fraud and deceit upon the Plaintiffs within the prohibition of

1 Section 17 of the Securities Act of 1933, as amended, 15 U.S.C.
2 Section 77(q).

3 140. In addition to the damage alleged in
4 paragraph 15 above, the aforesaid fraudulent conduct entitles
5 Plaintiffs to prejudgment interest on Plaintiffs' investment,
6 punitive damages, a reasonable attorney's fee and their costs
7 incurred in prosecution of this action.

8 141. Each of the misstatements and omissions as
9 set forth above constitute a separate and independent violation
10 of Section 17a of the Securities Act of 1933.

11 142. The shares which were purchased by the
12 Plaintiffs herein are those provided for in the October 6, 1980
13 agreement, a copy of which is attached to this Complaint as
14 Exhibit "A", in connection with which damages have been
15 sustained as heretofore set forth. The interest and business
16 which the Plaintiffs sold was pursuant to the Purchase and
17 Assumption Agreement dated November 15, 1982, a copy of which is
18 attached hereto as Exhibit "D".

19 WHEREFORE, Plaintiffs pray for judgment against
20 Defendants named, jointly and severally, as follows:

- 21 1. For general damages in the amount of
22 \$16,000,000.
- 23 2. For punitive damages in the amount of
24 \$40,000,000.
- 25 3. For reasonable attorneys fees.
- 26 4. For cost of Court herein.

1 5. For other relief as deemed just and
2 appropriate by this Court of Law.

3
4 IV.

5 FOURTH CAUSE OF ACTION
6 JOINT VENTURE DISSOLUTION, ACCOUNTING, AND
7 APPOINTMENT OF RECEIVER, PURSUANT TO THE
8 UNIFORM PARTNERHSIP ACT

9 143. As a separate and distinct cause of action
10 against Defendents, R. Howard Harmer, Industrial Loan Guaranty
11 Corporation of Utah and First Security Financial, Inc., First
12 Security Corporation, and Elaine B. Weis, Plaintiffs allege as
13 follows:

14 144. Plaintiffs reallege all of the allegations
15 set forth in Paragraphs 1 through 143 as though fully set forth
16 herein.

17 145. Plaintiffs allege that at all times all
18 Plaintiffs and all Defendants named in this Cause of Action did
19 in fact, in law, and in equity, enter into, create, and act in
20 furtherance of a Joint Venture pursuant to the Purchase and
21 Assumption Agreement (see Exhibit B) executed on November 15,
22 1982, as well as other written and oral agreements relating to
23 the management, development and sale of that property known as
24 Bel Marin Keys.

25 146. The parties to this Joint Venture were
26 Plaintiffs Frank A. Nelson, Jr., Jim P. Hansen, Rodney F

1 Gordon, Bonneville California Corporation, Irving Investors,
2 Ltd., MFT Financial, Inc., MFT Mortgage Company, Murray First
3 Thrift and Loan, and Defendants First Security Corporation,
4 Elaine D. Weis, Trustee, Industrial Loan Guaranty of Utah, R.
5 Howard Harmer, and Home Savings of America, S.A.

6 147. Pursuant to the terms of the Purchase and
7 Assumption Agreement, other supplemental documentation, oral
8 agreements and/or the conduct of the parties, the general nature
9 of the Joint Venture was as follows:

10 (a) Plaintiffs individually and/or
11 collectively made a net contribution of
12 approximately \$9.9 million, which was represented
13 by their interest in the Bel Marin Keys property.

14 (b) The Joint Venture was required to
15 reimburse, distribute, and pay over to the
16 Plaintiffs the above sums which the Purchase and
17 Assumption Agreement defined as "land holding
18 costs", together with interest thereon at the rate
19 of 9% per annum.

20 (c) Plaintiffs Frank A. Nelson, Jr., Jim P.
21 Hanson, and Rodney F. Gordon were to be reimbursed
22 for costs, which amounted to approximately \$300,000.

23 (d) Plaintiffs Frank A. Nelson, Jr., Jim P.
24 Hansen, and Rodney F. Gordon were to actively
25 participate in the management and control of the
26 Bel Marin Keys property.

1 (e) Thereafter profits were to be
2 distributed as follows: Irving Financial
3 Corporation was to receive 51% of the profits,
4 Murray First Thrift and Loan was to receive 39%; R.
5 Howard Harmer, his successors and assigns, were to
6 receive a portion of the Irving Financial
7 Corporation share on a dollar-for-dollar basis up
8 to a maximum of \$4.6 million. The other defendants
9 were to receive a monetary distribution of the
10 profits from MFT 39% share according to the formula
11 set forth in paragraph 147 of the Purchase and
12 Assumption Agreement.

13 148. Plaintiffs further allege that at all times
14 this Joint Venture was created pursuant to and subject to the
15 Uniform Partnership Act. All parties have affirmed the creation
16 and existence of a Joint Venture through their acts and conduct
17 and admissions, as well as through the execution of certain
18 written documents.

19 149. Plaintiffs also had certain legal and
20 equitable rights pursuant to the Uniform Partnership Act,
21 including but not limited to the right to inspect the books of
22 the Joint Venture, and the right to be involved and informed
23 with all aspects of the development of the property.

24 150. Plaintiffs allege that the only capital
25 contributions made relative to this Joint Venture agreement were
26 made by Bonneville California Corporation or Plaintiffs Frank A.

1 Nelson, Jr., James P. Hansen, or Rodney F. Gordon, or Murray
2 First Thrift and Loan.

3 151. Defendants and each of them have violated and
4 continue to violate the terms and provisions of the Joint
5 Venture agreement and have failed and refused to account for and
6 pay over to Plaintiffs proceeds from the operation of the Joint
7 Venture as specifically set forth below:

8 (a) Plaintiffs have not been reimbursed
9 their capital contribution on the Bel Marin Keys
10 property in the amount of \$9.9 million, or any part
11 thereof, pursuant to the Joint Venture Agreement.

12 (b) Plaintiffs did not receive their share
13 of the profits pursuant to the Joint Venture
14 Agreement.

15 (c) Plaintiffs did not receive any sums
16 whatsoever for their costs, pursuant to the Joint
17 Venture Agreement.

18 152. Plaintiffs were excluded from participating
19 in the management and control of the Joint Venture by the
20 defendants, especially Elaine B. Weis, Trustee; Industrial Loan
21 Guaranty Corporation; and First Security Corporation.

22 153. Defendants and each of them have usurped and
23 continue to usurp the authority and/or governing rights of the
24 Plaintiffs to manage, operate and/or participate in the affairs
25 of the Joint Venture. This usurpation is in direct violation
26 with not only the Joint Venture Agreement but also with general

1 principles of fairness, law and equity.

2 154. The Defendants and each of them have
3 wrongfully acquired and/or delegated the management and control
4 of Plaintiffs' interest to third parties in violation of
5 principles of fairness, equity, general law and public policy
6 and the provisions of the Purchase and Assumption Agreement.

7 155. The Defendants, and each of them, have and
8 continued to refuse Plaintiffs Frank A. Nelson, Jr.; Jim P.
9 Hansen; and Rodney F. Gordon, their right and/or rights of
10 management and control of the Bel Marin Keys property pursuant
11 to the Purchase and Assumption Agreement.

12 156. Defendants, and each of them, have expressly
13 denied and are continuing to deny Plaintiffs certain rights
14 afforded them under the Uniform Partnership Act, including but
15 not limited to the right to be informed on essential matters of
16 the Joint Venture, the right to inspect the books, and the right
17 to be dealt with in good faith by other members of the Joint
18 Venture.

19 157. Defendants, and each of them, have refused
20 and continue to refuse to distribute to the Plaintiffs their
21 lawful pro rata share in the profits of this joint venture.

22 158. Plaintiffs have made several and repeated
23 requests and/or demands on Defendants, and each of them, for
24 performance under both the Joint Venture Agreement and the
25 purchase and Assumption Agreement.

26 159. Plaintiff has performed all conditions,

1 covenants and promises required to be performed by them in
2 accordance with the terms and conditions of the joint venture
3 and/or purchase and assumption agreement. Any failure by
4 Plaintiffs to perform in accordance with these written
5 agreements was factually and legally caused by Defendants
6 fraudulent, malicious, self-serving acts and/or a result of a
7 repeated and ongoing conspiracy on the part of one or more of
8 the Defendants.

9 160. Since the commencement of the joint venture,
10 disagreements and disputes have arisen between the Plaintiffs
11 and First Security Financial, Inc.; First Security Corporation;
12 Elaine B. Weis, Trustee; Industrial Loan Guaranty Corporation;
13 R. Howard Harmer; Edward I. Vetter; Dean C. Christiansen; Glen
14 W. Groo; and Home Savings of America, S.A., regarding matters of
15 policy in the operation of the Joint Venture business.
16 Defendants on several occasions have, and are continuing to
17 appropriate great sums of money from the joint venture account
18 for their own use without Plaintiffs' knowledge, approval or
19 consent. Feelings between Plaintiffs and Defendants have become
20 bitter, antagonistic and generally unworkable.

21 161. Plaintiffs are entitled to dissolution of
22 the joint venture by a Court decree, pursuant to Sections 15037
23 Uniform Partnership Act, in that Defendants' conduct has
24 prejudicially affected the carrying on, and continues to
25 prejudice the carrying on, of the joint venture purposes and
26 businesses. It has become impossible to carry on the business

1 of the joint venture to Plaintiffs' and Defendants' mutual
2 advantage. The only capital in the Joint Venture has been
3 property, cash, and other assets infused by Plaintiffs.

4 162. Defendants First Security Financial, Inc.;
5 and First Security Corporation; Industrial Loan Guarantee
6 Corporation; and Elaine B. Weis, Trustee; and each of them,
7 individually and through their agents and/or attorneys, have
8 repeatedly acted for and in behalf of the Joint Venture,
9 affirmed the existence and creation of the Joint Venture, and
10 have made certain oral and written representation to the
11 Plaintiffs and other individuals concerning the nature of the
12 Joint Venture.

13 163. Defendants, and each of them, have
14 maintained and are continuing to maintain a disbursement account
15 whereby funds have been paid and are presently being paid on a
16 regular basis in violation of the Joint Venture Agreement.

17 164. Plaintiff is entitled to dissolution of this
18 Joint Venture by Court decree in that Defendants' conduct has
19 unfairly, unlawfully and prejudicially affected the carrying on
20 of the Joint Venture's business and it has become impossible to
21 carry on the business to Plaintiffs' and Defendants' mutual
22 advantage.

23 165. Defendants Elaine B. Weis, Trustee, as well
24 as certain other Defendants and/or other individuals presently
25 unknown, are in possession of the Joint Venture books, assets
26 and accounts. The amounts of Joint Venture assets and

1 liabilities are unknown to Plaintiff and cannot be ascertained
2 without an accounting of profits and losses that occurred during
3 the operation of the joint venture business, specifically, the
4 duties and obligations of certain of the Defendants to restore
5 Plaintiffs those amount of capital contribution which they
6 solely invested in the Bel Marin Keys property.

7 166. The Joint Venture agreement provides that in
8 addition to receiving the capital contribution for Bel Marin and
9 MFT in the amount of \$11.4 Million Dollars, Plaintiffs are also
10 to receive the reasonable value of their services in connection
11 with the development of this property and certain other profits
12 in an amount to be proved at trial, plus interest.

13 167. Plaintiffs have demanded a full and complete
14 accounting from Defendants, and each of them, but Defendants
15 have, and continue to refuse to settle accounts and divide the
16 partnership assets and liabilities with Plaintiffs.

17 168. Unless a Receiver is appointed by the Court
18 to take possession of, care for the interest of Plaintiffs and
19 Defendants in this Cause of Action, and manage and operate the
20 joint venture assets and property, such property and assets are
21 in danger of being lost, removed, materially destroyed, wasted,
22 fraudulently conveyed, or otherwise depleted, in that proceeds
23 from the sale of assets and other sums are wrongfully being
24 distributed.

25 WHEREFORE, Plaintiffs prays judgment against
26 Defendants, and each of them, as follows:

- 1 1. For an order that the Joint Venture be
- 2 dissolved;
- 3 2. For an accounting of Joint Venture affairs from
- 4 July 22, 1982 to the present date; that the account be settled
- 5 between Plaintiffs and Defendants. and that Plaintiffs have
- 6 judgment against Defendants for such sums as may be found due
- 7 and owing to Plaintiffs under such an accounting;
- 8 3. For the appointment of a receiver to take over
- 9 the management and control of the interest of Plaintiffs and
- 10 Defendants in this Cause of Action, to wind up joint venture
- 11 affairs, to control Joint Venture business until winding up is
- 12 completed, and to keep Joint Venture assets until the division
- 13 between joint venture named herein;
- 14 4. For punitive damages in the amount of Forty
- 15 Million Dollars (\$40,000,000);
- 16 5. For cost of suit herein occurred; and
- 17 6. For such other and further relief as the Court
- 18 may deem proper.

1 V.

2 FIFTH CAUSE OF ACTION

3 CLAIMS FOR TORTIOUS INTERFERENCE WITH BENEFICIAL
4 EXISTING AND POTENTIAL ECONOMIC RELATIONSHIPS AND CONTRACTS

5 169. As a separate and distinct cause of action
6 against Defendants, First Security Financial, Inc., First
7 Security Corporation, Elaine B. Weis, Industrial Loan Guaranty
8 Corporation of Utah, R. Howard Harmer, Glendon Johnson, Edward
9 I. Vetter, Dean C. Christensen, Home Savings of America, S.A.,
10 TICOR, Plaintiffs allege as follows:

11 170. Plaintiffs reallege all of the allegations
12 set forth in Paragraphs 1 through 169 as though fully set forth
13 herein.

14 171. The Defendants have for improper purposes and
15 by improper means destroyed the Plaintiffs' rights and benefits
16 which it was going to accrue by virtue of Exhibits "A", "B", "C"
17 and "D" attached to this contract.

18 172. The improper purpose for which the Defendants
19 have committed these wrongful acts was to obtain the end and
20 objective of depriving the Plaintiffs of the opportunity of
21 entering into the Thrift and Loan industry and to deprive them
22 of their assets.

23 173. The improper means by which the Defendants
24 have attempted to accomplish and, in fact, have accomplished
25 these objectives are described by all of those allegations set
26 forth in the preceding paragraphs.

1 174. As a direct and proximate result of the
2 wrongful actions and improper objectives of the Defendants all
3 of which were malicious and intentional, and the Plaintiffs
4 have, in fact, been deprived of the benefits which they would
5 have accrued pursuant to the terms and provisions of Exhibits
6 "A", "B", "C" and "D", and have been deprived of their
7 opportunity to engage in the thrift and loan industry and have
8 been deprived of \$11,700,000 of their assets.

9 175. The Plaintiffs have suffered actual damages
10 in the amount of \$11,700,000 plus loss of profit in the amount
11 of \$8,300,000. Therefore, the Plaintiffs have been damaged in
12 actual damages in the amount of \$20,000,000.

13 176. The Plaintiffs are entitled to punitive
14 damages in the amount of \$40,000,000.

15 177. The Plaintiffs are entitled to interest at
16 the highest legal rate.

17 WHEREFORE, all Plaintiffs pray for judgment against
18 all Defendants, jointly and severally under this Third Cause of
19 Action as follows:

- 20 1. For \$20,000,000 actual damages.
- 21 2. For \$40,000,000 punitive damages.
- 22 3. For interest at the highest legal rate.
- 23 4. For costs of Court.
- 24 5. For such other relief as the court may deem
25 just and proper.

VI.

SIXTH CAUSE OF ACTION

COMMON LAW FRAUD

178. As a separate and distinct cause of action against Defendants, First Security Corporation, Elaine B. Weis, First Security Financial, Inc., Elaine B. Weis, Trustee, Industrial Loan Guaranty Corporation of Utah, TICOR, R. Howard Harmer, R. Howard Harmer, Trustee, Glendon Johnson, Alternate Energy systems, Inc., f/k/a Capital Planning Associates, Edward I. Vetter, Dean C. Christensen, Glen W. Groo, Home Savings of America, S.A., Mervin Borthick, Commissioner of Financial Institutions, Mervin Borthick, Plaintiffs allege as follows:

179. Plaintiffs reallege all of the allegations set forth in Paragraphs 1 through 178 as though fully set forth herein.

180. All of the misrepresentations and omissions made by the Defendants as referred to in this Complaint of Action were made intentionally.

181. All of said misrepresentations and omissions were made with the intent that the Plaintiffs rely thereupon.

182. The Plaintiffs did, in fact, rely upon said misrepresentations.

183. Said misrepresentations were regarding presently existing facts which the Plaintiffs were entitled reasonably to rely upon.

184. The Plaintiffs were damaged as a direct and

1 proximate result of such reliance.

2 185. Such reliance was reasonable.

3 186. The Plaintiffs were damaged in the amount of
4 \$16,000,000 actual damages.

5 187. The misrepresentations of the Defendants were
6 intentional and willfully made and the Plaintiffs are entitled
7 to damages in the amount of \$40,000,000.

8 WHEREFORE, Plaintiff prays for judgment against the
9 Defendants on this Fifth Cause of Action as follows:

10 1. For general damages in the amount of
11 \$16,000,000.

12 2. For punitive damages in the amount of
13 \$40,000,000.

14 3. For reasonable attorneys fees.

15 4. For costs of Court herein.

16 5. For interest at the highest legal rate.

17 6. For such other relief as the Court may deem
18 just and proper.

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VII.

SEVENTH CAUSE OF ACTION

BREACH OF CONTRACT IN CONNECTION WITH

THE BEL MARIN KEYS PROPERTY PURCHASE AGREEMENT

188. As a separate and distinct cause of action against Defendants, R. Howard Harmer, Glendon Johnson, Plaintiffs allege as follows:

189. Plaintiffs reallege all of the allegations set forth in Paragraphs 1 through 188 as though fully set forth herein.

190. On or about October 10, 1980, Plaintiffs and Defendants entered into a written agreement, a copy of which is attached hereto as Exhibit "A" and made a part thereof.

191. Plaintiff has performed all conditions, covenants, and promises required by them to be performed in accordance with the terms and conditions of the contract. The reason that Plaintiffs did not record either this contract or the deed that was created to the terms of this contract are more specifically stated in the Eleventh and Thirteenth Cause of Action.

192. On or about October 10, 1980, Defendants and each of them breach the contract by failing to disclose certain facts which were required by Section 2985.51 of the California Civil Code. Defendants and each of them further breached said contract on December 17, 1982, by placing and or allowing to be placed certain encumbrances on said property.

1 193. Defendants refused and continue to refuse to
2 acknowledge any legal or equitable rights which Plaintiffs have
3 pursuant to said contract and have through a conspiracy with
4 other Defendants converted the property to their own use.

5 194. At all times Defendants and each of their
6 actions and conduct surrounding this transaction have been
7 malicious and oppressive to the Plaintiffs and has been induced
8 by fraud.

9 195. As a result of Defendants breach of the
10 contract, Plaintiff has incurred damages in the sum of
11 \$16,000,000.

12 WHEREFORE, Plaintiff prays judgment against
13 Defendants and each of them as follows:

14 1. For out of pocket damages in the amount of
15 \$11.4 million.

16 2. For benefit of the bargain damages in the
17 amount of \$100 million.

18 3. For punitive damages in the amount of
19 \$40 million.

20 4. For reasonable attorneys' fees in accordance
21 with the terms of the contract.

22 5. For interest at the highest legal rate.

23 6. For cost of suit herein incurred.

24 7. For such other relief as the Court may deem
25 just and proper.

VIII.

EIGHTH CAUSE OF ACTION

BREACH OF CONTRACT IN CONNECTION WITH

THE STOCK PURCHASE AGREEMENT

196. As a separate and distinct cause of action against Defendants, R. Howard Harmer, Glendon Johnson, Plaintiffs allege as follows:

197. Plaintiffs reallege all of the allegations set forth in Paragraphs 1 through 196 as though fully set forth herein.

198. On or about October 10, 1980, Irving Financial corporation and Defendants entered into a written agreement, a copy of which is attached hereto as Exhibit "B" and made a part hereof. By the terms of that contract, Irving Financial agreed to dissolve itself and transfer all likes and interests to that business to MFT Financial, and Defendants agreed to execute and did in fact execute that agreement which gave right to Plaintiffs' rights. The contract was made for the benefit of Plaintiffs in that it permitted and described the Reorganization Plan (as provided in Exhibit "C") wherein the Plaintiffs became shareholders of MFT Financial. Paragraph 17.2 of this contract specifically provides that any other contracts which were executed contemporaneously with the Stock Purchase Agreement are included in and constitute the entire agreement between the parties. The Stock Purchase Agreement and the Land Sale Contract (Exhibit "A") were in fact executed simultaneously

1 and cross-referenced.

2 199. Plaintiff has performed all conditions,
3 covenants, and promises required by them to be performed in
4 accordance with the terms and conditions of this contract.

5 200. On or about December 18, 1980, Defendant R.
6 Howard Harmer breached this contract when it was discovered that
7 prior to the execution of this agreement with Plaintiffs, he had
8 previously pledged all of the outstanding shares of MFT
9 Financial to TICOR.

10 201. On or about October 1, 1981, Defendants and
11 each of them breached the contract by the discovery that
12 unlawful parcelization had been affected.

13 202. On or about October 18, 1980, Defendants and
14 each of them breached the agreement by their failure to convey
15 full legal and marketable title pursuant to Paragraph 5.2 of the
16 Agreement.

17 203. As a result of Defendants' breaches of the
18 contract, Plaintiff has incurred additional damages.

19 204. Defendants conduct has been fraudulent,
20 malicious and oppressive. Plaintiffs are entitled to punitive
21 damages in the amount of \$40,000,000.

22 WHEREFORE, Plaintiff prays judgment against
23 Defendants as follows:

24 1. For compensatory damages in the sum of \$11.4
25 million.

26 2. For interest at the highest legal rate.

1 3. For punitive damages in the amount of
2 \$40,000,000.

3 4. For reasonable attorneys' fees.

4 5. For cost of suit herein accrued and for such
5 other relief as the court deems proper.

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7 IX.

8 NINTH CAUSE OF ACTION

9 BREACH OF CONTRACT (REORGANIZATION PLAN AGREEMENT
10 QUALIFYING BEL MARIN KEYS AS SUITABLE CAPITAL)

11 205. As a separate and distinct cause of action
12 against Defendants, Mervin Borthick, Elaine B. Weis, Plaintiffs
13 allege as follows:

14 206. Plaintiffs reallege all of the allegations
15 set forth in Paragraphs 1 through 205 as though fully set forth
16 herein.

17 207. By exchange of correspondence in the period
18 of June 5, 1981 through July 30, 1981, Plaintiffs and Defendants
19 agreed in writing as follows:

20 (a) Commissioner Mervin D. Borthick, acting
21 on behalf of the Department of Financial
22 Institutions, agreed to remove a then existing
23 impairment order which had been enforced March 14,
24 1979, for infractions involving capital violations
25 involving the Bel Marin Keys property and
26 affiliated parties.

1 (b) The corporate structure of MFT would be
2 reorganized and simplified.

3 (c) The Plaintiffs were refrained from
4 entering into certain transactions with certain
5 individuals (some of which are Defendants or their
6 alter egos).

7 (d) Executive compensation was to be reduced
8 by an amount of \$100,000 (executive compensation
9 was defined as being the total salary and bonuses
10 of Edward J. Vetter, Dean Christensen and Glen Groo.

11 (e) The Commissioner specifically required
12 that future bonuses must be based on net income and
13 that they have the approval of the Board of
14 Directors.

15 (f) The Bel Marin Keys property was approved
16 by the Commissioner acting on the behalf of the
17 Department of Financial Institutions as being a
18 qualified asset of MFT.

19 (g) The value of Bel Marin Keys property was
20 determined by the Commissioner acting on behalf of
21 the Department of Financial Institutions was valued
22 at \$4.2 million.

23 (h) A flowchart reorganization plan was
24 attached to and incorporated into the various
25 letters of agreement.

26 (i) The Commissioner insisted that the

1 Plaintiffs infuse additional sums to both the
2 capital of MFT.

3 (j) The written contract of the parties is
4 contained in their correspondence as follows:

5 A commitment letter from
6 Commercial Security Bank stating that a loan
7 was made to Plaintiffs and that the proceeds
8 from this loan qualify to satisfy the capital
9 requirements of MFT.

10 *Exhibit C-1*. A letter to the Plaintiff
11 from Commissioner Borthick, dated July 17,
12 1981, with attachments describing the
13 reorganization plan of MFT.

14 Exhibit C-2. A letter from the
15 president of MFT Financial to Commissioner
16 Borthick confirming the amount which was
17 infused as additional capital pursuant to the
18 Commissioner's demands. (This letter
19 agreement was also signed by the
20 Commissioner.)

21 Exhibits A, B and C are attached to
22 this complaint and made a part hereto.

23 208. The correspondence between Plaintiffs and
24 Defendants were received in the ordinary course of mail and were
25 sent in the ordinary course of mail, postage prepaid, addressed
26 to the respective parties.

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1 209. Plaintiffs have performed all conditions,
2 covenants, and promises required by them to be performed in
3 accordance with the terms and conditions of the contract.

4 210. On or about July 22, 1982, Defendants and
5 each of them breached the contract by preventing Plaintiffs from
6 operating their business pursuant to the written agreements and
7 other breaches.

8 211. Defendants conduct has been fraudulent,
9 malicious and oppressive. Plaintiffs are entitled to punitive
10 damages in the amount of \$40,000,000.

11 WHEREFORE, Plaintiffs pray judgment against
12 Defendants and each of them as follows:

13 1. For compensatory damages in the sum of
14 \$25,000,000.

15 2. For interest at the highest legal rate.

16 3. For punitive damages in the amount of
17 \$40,000,000.

18 4. For reasonable attorneys' fees.

19 5. For cost of suit herein incurred and for such
20 other relief as the court deems proper.

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1 X.

2 TENTH CAUSE OF ACTION

3 BREACH OF PURCHASE AND ASSUMPTION AGREEMENT

4 ACTION FOR RESCISSION

5 212 As a separate and distinct cause of action
6 against Defendants, First Security Financial, Inc., Elaine B.
7 Weis and Industrial Loan Guaranty Corporation of Utah, Inc.,
8 Plaintiffs allege as follows:

9 213. Plaintiffs reallege all of the allegations
10 set forth in Paragraphs 1 through 212 as though fully set forth
11 herein.

12 214. On or about November 15, 1982, Plaintiffs and
13 Defendants entered into a written agreement, copy of which is
14 attached hereto as Exhibit "D" and made a part hereof.

15 215. By the terms of this agreement a Joint
16 Venture was created for the purpose of managing, selling,
17 developing and distributing the profits of the Bel Marin Keys
18 property.

19 216. This contract also provided that Plaintiffs
20 would have full management and control rights pursuant to the
21 Joint Venture agreement and that they would share in the
22 distribution of assets, including and specifically Bel Marin
23 Keys property. Plaintiffs were also entitled to retain the
24 business of MFT, except for certain assets which were described
25 in the Purchase and Assumption Agreement.

26 217. Plaintiffs have performed all conditions,

1 covenants and promises required by them to be performed in
2 accordance with the terms and conditions of the contract. On or
3 about November 20, 1982, and continuing to the present,
4 Defendants and each of them have breached and continue to breach
5 the terms of this agreement as more specifically set forth in
6 the next paragraph. Defendants have not recognized nor do they
7 now recognize Plaintiffs as joint venturers.

8 218. Defendants have not allowed Plaintiffs to
9 participate in the management and control of the Bel Marin Keys
10 property.

11 219. Defendants and each of them have failed to
12 distribute profits and or proceeds pursuant to the Purchase and
13 Assumption Agreement.

14 220. Defendants and each of them have failed to
15 submit a complete and accurate copy of the Purchase and
16 Assumption Agreement which Plaintiffs signed to the Federal
17 Reserve Board for approval.

18 221. Defendants and each of them have encumbered,
19 wasted, encouraged others to do the same, and converted to their
20 own use and the use of others the property of MFT, which they
21 obtained and are holding in trust for Plaintiff pursuant to the
22 written contract.

23 222. Commencing January of 1983 and continuing to
24 the present, Plaintiffs have made repeated written and oral
25 requests to Defendants asking them for performance under the
26 contract. As a result of the Defendants' breach of the contract

1 Plaintiffs have been damaged in the sum of \$25,000,000.

2 223. Defendants conduct has been fraudulent,
3 malicious and oppressive. Plaintiffs are entitled to punitive
4 damages in the amount of \$40,000,000.

5 WHEREFORE, Plaintiff prays judgment against
6 Defendants and each of them as follows:

7 1. For compensatory damages in the sum of
8 \$25,000,000.

9 2. For interest at the highest legal rate.

10 3. For punitive damages in the amount of
11 \$40,000,000.

12 4. For reasonable attorneys' fees.

13 5. For cost of suit herein accrued and for such
14 other relief as the court deems proper.

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XI.

ELEVENTH CAUSE OF ACTION

VIOLATION OF CALIFORNIA SUBDIVIDED LANDS ACT

224. As a separate and distinct cause of action against Defendants, First Security Corporation, First Security Financial, Inc., Elaine B. Weis, Elaine B. Weis, Trustee, Industrial Loan Guaranty Corporation of Utah, Inc., TlCOR, R. Howard Harmer, R. Howard Harmer, Trustee, Alternate Energy Systems, Inc., f/k/a Capitol Planning Associates, Edward I. Vetter, Dean C. Christensen, Glen W. Groo, Home Savings of America, Inc., Pfeiffer-Morrison Accountancy Corporation, Mervin Borthick, Plaintiffs allege as follows:

225. Plaintiffs reallege all of the allegations set forth in Paragraphs 1 through 224 as though fully set forth herein.

226. Section 10029 of the California State Business and Professions Code provides for the sale of real property through the instrumentality of a contract provided that the period of time for performance thereof extends beyond one year.

227. Defendants divided a parcel of property consisting of 1,157 into more than 5 parcels and sold said parcels to various parties; one of said divided parcels was a parcel consisting of 940 acres which was sold to Plaintiff on October 10, 1980 at which time Plaintiff entered into and became bound by the terms and conditions of the Land Purchase Agreement

1 incorporated herein as Exhibit "B".

2 228. By so dividing the parcel into more than 5
3 parcels, Defendants became subject to the California Subdivided
4 Lands Act, Section 11000, et seq. of the California Business and
5 Professions Code.

6 229. Defendants failed to comply with the
7 California Subdivided Lands Act in the following specific ways:

8 (a) They failed to comply with Section 11010
9 which requires notice of intention to sell or lease;

10 (b) Failed to comply with Section 11010.1
11 which requires notice of intention to issue note secured by
12 individual lots in unrecorded subdivision;

13 (c) Defendants have violated Section 11013.1
14 by selling lots within a subdivision subject to a blanket
15 encumbrance which does not have a release clause as defined in
16 Section 11013.1.

17 (d) Defendants failed to comply with Section
18 11018.2 by selling the property without first obtaining a public
19 report from the commissioner.

20 230. Plaintiffs first learned of the violations as
21 they relate to the contract of sale described in paragraph 6
22 above on March 2, 1982.

23 WHEREFORE, Plaintiffs pray for damages against the
24 Defendants as follows:

25 1. Lien on the property as provided by law
26 superior to that of the Defendants and any of them who claim an

1 interest superior to that of Plaintiffs.

2 2. For the full amount of their investment in the
3 properties which amount exceeds \$14,815,237.00.

4 3. For interest at the highest legal rate.

5 4. For punitive damages in the amount of
6 \$40,00,000.00.

7 5. For attorneys fees.

8 6. For Court costs.

9 7. For such other and further relief as the Court
10 may deem just and proper

11
12 XII.

13 TWELFTH CAUSE OF ACTION

14 UNLAWFUL ENCUMBRANCE OF LAND PREVIOUSLY SOLD

15 BY UNRECORDED CONTRACT

16 231. As a separate and distinct cause of action
17 against Defendants, First Security Corporation, First Security
18 Financial, Inc., Elaine B. Weis, Elaine B. Weis, Trustee,
19 Reading Holding Company, aka MFT Holding Company, Alternate
20 Energy Corporation, f/k/a Capitol Planning Associates, Edward I.
21 Vetter, Dean C. Christensen, Glen W. Groo, Home Savings and Loan
22 of America, Inc., Pfeiffer-Morrison Accountancy Agency
23 Corporation, Mervin Borthick, Plaintiffs allege as follows:

24 232. Plaintiffs reallege all of the allegations
25 set forth in Paragraphs 1 through 231 as though fully set forth
26 herein.

1 233. Section 2985.2 of the California Civil Code
2 provides that it is a public offense for a seller of real
3 property under an unrecorded sales contract to thereafter cause
4 an encumbrance to be placed upon such property when which
5 encumbrance, together with existing encumbrances thereon exceeds
6 the amount then due under the contract, or under which the
7 aggregate amount of any periodic payments exceeds the periodic
8 payments due on the contract, excluding any pro rata amount for
9 insurance and taxes.

10 234. After entering into the unrecorded contract
11 for the sale of the Bel Marin Keys property represented by
12 Exhibit "B", the Defendants and each of them willfully and
13 knowingly placed encumbrances upon such property and in fact
14 entered into such agreements to sell said property in amounts
15 exceeding the amounts of payments due under said contract and in
16 violation of said statute.

17 235. As a direct proximate result of said
18 violations Plaintiffs were damaged and are continuing to suffer
19 damages.

20 WHEREFORE, Plaintiffs pray damages for the full
21 investment and interest in said property and for further relief
22 as follows:

23 1. Lien on the property as provided by law
24 superior to that of the Defendants and any of them who claim an
25 interest superior to that of Plaintiffs.

26 2. For actual damages in the amount of

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1 \$14,815,237.00

2 3. For interest at the highest legal rate.

3 4. For punitive damages in the amount of

4 \$40,000,000.00

5 5. For attorneys fees.

6 6. For costs of Court herein.

7 7. For such other and further relief as the Court
8 deems just and proper.

9
10 XIII.

11 THIRTEENTH CAUSE OF ACTION

12 FAILURE TO DISCLOSE NONCOMPLIANCE WITH SUBDIVIDED LANDS ACT

13 236. As a separate and distinct cause of action
14 against Defendants, First Security Corporation, First Security
15 Financial, Inc., Elaine B. Weis, Elaine B. Weis, Trustee,
16 Industrial Loan Guaranty Corporation of Utah, TICOR, R. Howard
17 Harmer, R. Howard Harmer, Trustee, Alternate Energy Corporation,
18 Inc. f/k/a Capitol Planning Associates, Edward I. Vetter, Dean
19 C. Christensen, Glen W. Groo, Home Savings of America, Inc.,
20 S.A., Pfeiffer-Morrison Accountancy Corporation, Mervin
21 Borthick, Plaintiffs allege as follows:

22 237. Plaintiffs reallege all of the allegations
23 set forth in Paragraphs 1 through 236 as though fully set forth
24 herein.

25 238. Section 2985.51 of California Civil code
26 provides that every real property sales contract entered on or

1 after January 1, 1978 where the real property that is the
2 subject of such contract resulted from a division of real
3 property shall contain or have contained therein a statement
4 indicating the fact that the division creating the parcel to be
5 conveyed: (1) was made in compliance with the provisions of the
6 Subdivisions Map Act and local ordinances adopted pursuant
7 thereto, or (2) was exempt from the provisions, (3) was the
8 subject of a waiver with a copy of such waiver attached, or (4)
9 was not subject to provisions of the Act or and local amendments
10 adopted thereto.

11 239. The Real Estate Sales Contract incorporated
12 herein as Exhibit "B" contains none of the statements set forth
13 in paragraph 233 and as such violates the provisions of Section
14 2585.51 as amended.

15 240. Section 2585.51 provides for relief at the
16 "sole option of the Vendee" whereby the contract of sale may be
17 voided and in such event the Vendee or his successors in
18 interest shall be entitled to damages from the Vendor or his
19 successors and assigns.

20 WHEREFORE, Plaintiffs pray for relief in this cause
21 of action against Defendants jointly and severally as follows:

22 1. Lien on the property as provided by law
23 superior to that of the Defendants and any of them who claim an
24 interest superior to that of Plaintiffs.

25 2. For a return of investment in the amount of
26 \$7,000,000.

- 1 3. For interest thereon at the rate of 9% per
2 annum as prescribed by law.
3 4. Civil penalty in the amount of \$500.
4 5. For attorneys fees and costs.
5 6. For such other relief as the Court deems just
6 and proper.

7 DATED: May 29, 1986.

8 LAW OFFICES OF MELVIN M. BELLI, SP.

9
10
11 By _____

12 Melvin M. Belli, Sr.

13
14
15 By Philip L. Stimac

16 Philip L. Stimac

17 Attorneys for Plaintiffs
18
19
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25

THE BELLI
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SAN FRANCISCO CALIF 94111

EXHIBIT B TO ADDENDUM 2

FILED
Jul 15 7 13 PM '88

U.S. DISTRICT
COURT
NORTHERN DISTRICT OF CALIFORNIA

ENTERED IN CIVIL DOCKET 7-15-88 19

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

FRANK A. NELSON, JR., et al.,	)	No. C 86-2894 EFL
)	
Plaintiffs,	)	JUDGMENT
)	
vs.)	
)	
FIRST SECURITY FINANCIAL, INC.,)	
et. al.)	
)	
Defendants.)	
_____)	

Pursuant to Fed. R. Civ. P. 58 and Local R. 260-1 and
for the reasons set forth in the Order of Dismissal with
Prejudice entered by the Court July 8, 1988,

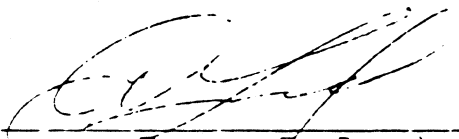
IT IS HEREBY ORDERED AND ADJUDGED that plaintiffs, an
each of them, take nothing by their action; that plaintiffs'
action, and each and every claim therein, is dismissed on the
merits and with prejudice as against all defendants served in
this action; and that defendants HOME SAVINGS OF AMERICA, F.A.;
TICOR; BRUCE MORRISON and PFEIFFER-MORRISON ACCOUNTANCY

JUDGMENT

ENTERED

1 CORPORATION each recover of the plaintiffs their respective cos
2 of action. Plaintiffs shall be jointly and severally liable fo
3 the costs.

4
5 Dated: July 15, 1988

6
7 
8 Eugene F. Lynch
United States District Judge

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Salt Lake County Utah

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H Dixon Hindley, Clerk 3rd Dist. Court
Deputy Clerk

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Commissioner of Financial Institutions in
Possession of the Business and Property
of Murray First Thrift and Loan
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Telephone: (801) 533-5319

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

IN THE MATTER OF THE	:	MOTION TO APPROVE SALE
POSSESSION BY THE BANKING	:	OF BEL MARIN KEYS PROPERTY,
COMMISSIONER OF MURRAY FIRST	:	TO ENTER INTO STIPULATION,
THRIFT AND LOAN, A UTAH	:	AND TO EXERCISE OPTION
CORPORATION.	:	
	:	Civil No. C82-5951
	:	Judge John A. Rokich

George Sutton, Commissioner of Financial Institutions of the State of Utah, as Commissioner in possession of the business and property of Murray First Thrift and Loan Company ("Commissioner", unless the text clearly indicates the reference is not to Mr. Sutton as Commissioner in possession of the business and property of Murray First Thrift and Loan), hereby moves the Court to approve the sale of the 39% undivided interest of Murray First Thrift and Loan Company ("MFT&L") in that certain property in Marin County, California, commonly referred to as the Bel

Marin Keys property ("BMK"), and, as necessary corollaries thereto, to authorize him to execute a stipulation to judgment and to exercise an option on a parcel of land adjacent to BMK. In support thereof, the Commissioner presents the following:

A. APPROVAL OF THE SALE OF BEL MARIN KEYS

1. Almost four and one-half (4-1/2) years ago, the Asset Preservation Fund Committee ("Committee"), formed pursuant to paragraph B.2. of the "Petition for Approval for a Plan of Reorganization of the Business and Property of Murray First Thrift and Loan Co." ("Petition", a copy of paragraph B.2 of which is attached hereto and is incorporated herein by reference as Exhibit C) which was filed with the Court on November 5, 1987, voted to add as a member of the Committee the Trustee in Bankruptcy of Irving Financial Corporation ("Trustee") in the matter styled In re: Irving Financial Corporation, Case No. 82-C-02706 (Banky. D. Utah), inasmuch as Irving Financial Corporation ("IFC") owns the other 61% undivided interest in BMK. The Committee also voted that all inquiries as to the development or sale of BMK should be directed to the Trustee. The Trustee would then report on any proposals to the Committee. Two prior sales of BMK approved by this Court and the Bankruptcy Court have failed to close, although substantial payments totalling Four Million Dollars (\$4,000,000.00) were forfeited to the Trustee and the Commissioner as liquidated damages when those sales failed to

close. The Trustee has now negotiated the sale encompassed in Agreement 1. Although the Trustee resigned from the Committee approximately one (1) year ago due to conflicts of interest between said Trustee and other members of the Committee, the Trustee nevertheless has reported to the Committee that this sale is the best offer of which the Trustee is aware, that the Trustee believes the sale price to be fair, and that the Trustee believes the sale to be in the best interests of IFC.

2. Under the terms of the proposed sale, which terms are more fully set forth in the document titled "Original Agreement of Purchase and Escrow Instructions with Counterparts" ("Agreement 1", a copy of which is attached hereto and is incorporated herein by reference as Exhibit A), the Trustee will sell the 61% undivided interest of IFC in BMK and the Commissioner will sell the 39% undivided interest of MFT&L in BMK to Bel Marin Keys Development Associates ("Associates") for Ten Million Nine Hundred Eighty-Eight Thousand Eight Hundred Eighty-One Dollars (\$10,988,881.00). This amount, together with the Four Million Dollars (\$4,000,000.00) forfeited as liquidated damages from the prior sales, totals Fourteen Million Nine Hundred Eighty-Eight Thousand Eight Hundred Eighty-One Dollars (\$14,988,881.00). An additional term and condition is the release of both the IFC and MFT&L estates from any claims of any kind or nature arising out of the earlier sale of BMK, including, but not limited to, the

Four Million Dollars (\$4,000,000.00) forfeited as liquidated damages, the warranting against claims of interest in BMK or the Enstar parcel (see paragraphs under C below) by certain persons or entities, and the agreement to hold harmless and indemnify the IFC and MFT&L estates against any claims of those certain persons or entities.

3. The managing general partner of Associates is Southmark Pacific Corporation ("Pacific"), which is a wholly-owned subsidiary of Southmark Corporation ("Southmark"). Financial reports provided to the Trustee show Pacific with assets of \$194,323,243.00 and total equity of \$19,076,350.00, and Southmark with assets of \$2,516,027,000.00 and total equity of \$753,121,000.00. (A copy of the financial reports provided to the Trustee is attached hereto and is incorporated herein by reference as Exhibit B.)

4. Closing on Agreement 1 will take place on or about November 1, 1987. At that time, Associates will pay to the Trustee Six Million Eight Hundred Eighteen Thousand Eight Hundred Eighty-One Dollars (\$6,818,881.00) in certified funds drawn on a bank or savings and loan association insured by FDIC or FSLIC, cashier's check drawn on a bank or savings and loan association, or other immediately available and acceptable funds, plus Four Million One Hundred Seventy Thousand Dollars (\$4,170,000.00) in promissory notes payable within one (1) year of the closing date,

bearing interest at the rate of ten percent (10%) per annum, issued by Associates and guaranteed by Pacific and Southmark.

5. Pursuant to paragraph B.2. of the Petition, a motion to recommend to the Commissioner that he move the Court to approve the sale of MFT&L's interest in the BMK property and approve his signing of Agreement 1 was presented to the Committee on September 29, 1987. The vote was two (2) in favor, and two (2) opposed. Those voting in favor of the motion were the representatives of the Commissioner and the representative of the Industrial Loan Guaranty Corporation ("ILGC"), which is a claimant against MFT&L's interest in the BMK property. The two negative votes were by the representatives of the owners of MFT&L. However, paragraph B.2. also provides that the Commissioner will abide by the directions of the Committee unless doing so would cause the Commissioner to violate the law or become subject to personal liability. It is the opinion of the Commissioner, and counsel to the Commissioner, that inasmuch as attempts have been made over a number of years to develop or market the entire BMK property, and extensive efforts have been made these last four and one-half (4-1/2) years by the Trustee to do so, that this sale, which is very real, and has been negotiated over nearly a years time, is in the best interests of MFT&L and its claimants. Among those claimants are the ILGC, which in turn will soon be faced with the claims of approximately 20,000 depositors in other

thrift and loan corporations now in the possession of the Commissioner. Were the Commissioner to reject this sale, it could subject him to personal liability to the ILGC, these 20,000 depositors, and the State of Utah. Furthermore, pursuant to the Findings, Conclusions and Order of the Court approving the Petition, which was entered November 22, 1982 (a copy of the relevant pages of which is attached hereto and is incorporated herein by reference as Exhibit D), the Commissioner may do what is necessary to develop or protect the interest of MFT&L in BMK. It is the opinion of the Commissioner, upon advice of counsel, that this sale is necessary to protect the value of BMK, inasmuch as there is no telling when another opportunity might be found to sell or develop to property.

6. Based upon the representations by the Trustee, and the review of the proposed sale and legal advice by counsel for the Commissioner, the Commissioner believes this sale will be in the best interest of MFT&L, and the claimants against the assets of MFT&L still in the Commissioner's possession, and moves the Court to approve his signing of Agreement 1.

B. THE STIPULATION TO JUDGMENT

7. In order to convey clear title to Associates under the provisions of the Bankruptcy Code, the Trustee has brought an action against the Commissioner under § 363(h) of the Bankruptcy Code. (A copy of the complaint is attached hereto and is incor-

porated herein by reference as Exhibit E.) Under § 363(h) (a copy of the provisions of which is attached hereto and is incorporated herein by reference as Exhibit F), the Trustee can sell both the interest of the bankruptcy estate and the interests of any co-owners in property in which the debtor had, at the time of the commencement of the bankruptcy case, an undivided interest as a tenant in common, joint tenant, or tenant by the entirety, if:

- (1) partition in kind of such property among the bankruptcy estate and such co-owners is impracticable;
- (2) sale of the bankruptcy estate's undivided interest in such property would realize significantly less for the bankruptcy estate than sale of such property free of the interests of such co-owners;
- (3) the benefit to the bankruptcy estate of a sale of such property free of the interests of co-owners outweighs the detriment, if any, to such co-owners; and
- (4) such property is not used in the production, transmission or distribution, for sale, of electric energy or of natural or synthetic gas for heat, light or power.

8. In response to the complaint that has been filed by the Trustee against the Commissioner, the Commissioner can only respond as follows to the above four (4) criteria under which the Trustee seeks to sell MFT&L's interest in BMK as well as IFC's interest:

- (1) The partition is not only impracticable, but it is illegal under California law.

(2) The Trustee has informed the Commissioner that the sale of IFC's interest in BMK by itself would realize significantly less to the bankruptcy estate than the sale of that property free of MFT&L's interests in that property, and the Commissioner has no reason to doubt those representations by the Trustee.

(3) The Commissioner is aware of the efforts of the Trustee over the last four and one-half (4-1/2) years to develop or sell BMK. Not only would the benefit to the IFC estate outweigh the detriment to MFT&L's interest, but the Commissioner believes it is in MFT&L's interests, and would benefit the MFT&L estate, for this sale to Associates to take place under the terms set forth in Agreement 1.

(4) To the best knowledge of the Commissioner, the BMK property is not used in the production, transmission or distribution, for sale, of electric energy or of natural or synthetic gas for heat, light or power.

9. Inasmuch as it appears that all of the criteria have been met under § 363(h) for the Trustee to obtain judgment against the Commissioner, the Commissioner moves the Court to authorize him to enter into a stipulation to judgment in this matter in the form attached hereto and incorporated herein as Exhibit G.

C. EXERCISE OF OPTION ON ENSTAR PARCEL

10. In addition to their interests in BMK, the IFC estate and MFT&L also have a right to exercise an option on an option to purchase some 640 acres adjacent to the BMK property. This adjacent property is commonly referred to as the Enstar

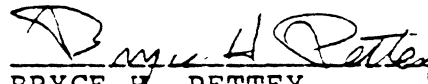
parcel. Associates is desirous of obtaining the Enstar parcel as well as the BMK property. As a necessary part of the sale of BMK, the Trustee and the Commissioner have, subject to approval by the respective courts, executed an agreement styled "Original Exercise of Option Right and Agreement of Purchase and Escrow Instructions with Counterparts" ("Agreement 2", a copy of which is attached hereto and incorporated herein by reference as Exhibit H), under which the Trustee of IFC and the Commissioner will exercise their option on the option to purchase the Enstar parcel. The price will be Four Million Eleven Thousand One Hundred Nineteen Dollars (\$4,011,119.00), of which all but Three Hundred Thirty Thousand Dollars (\$330,000) will be in cash, with the balance being a note from Associates guaranteed by Pacific and Southmark.

11. Immediately prior to the closing on BMK, the closing will take place on the Enstar parcel and the funds received by the Trustee and the Commissioner will be paid to the holder of the first trust deed and the holder of the second trust deed and another party claiming an interest in the Enstar parcel. Neither the Trustee nor the Commissioner will receive any gain or incur any loss in their respective estates for the exercise of this option and the subsequent sale on the Enstar parcel to Associates.

12. Inasmuch as the exercise of the option on the Enstar parcel is necessary to accomplish the sale of MFT&L's interest in BMK under Agreement 1, and such exercise will be accomplished at no cost to the MFT&L estate, the Commissioner moves the Court to approve his signing of Agreement 2 under which that option will be exercised.

WHEREFORE, the Commissioner respectfully moves the Court: (a) to approve his actions in signing Agreement 1, under which MFT&L's interest in BMK will be sold under the conditions set forth in Agreement 1; (b) to authorize him to execute the Stipulation to Judgment on the suit by the IFC Trustee under § 363(h) of the Bankruptcy Code; and (c) to approve his actions in signing Agreement 2, under which MFT&L will exercise its option to obtain the option on the Enstar parcel.

DATED this 1st day of October, 1987.


BRYCE H. PETTEY
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of October, 1987, a true and correct copy of the foregoing was hand-delivered to each of the following:

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2480 South Alden Street
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Dwight H. Pottay

CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE ORIGINAL DOCUMENT ON FILE IN THE DISTRICT COURT OF SALT LAKE COUNTY, UTAH

DATE

3/1/87
Lynn A. Jenkins
DEPUTY CLERK

EXHIBIT D TO ADDENDUM 2

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Telephone: (801) 538-2400

Vicki Felt

Attorney for Objectors

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

IN THE MATTER OF THE)	OPPOSITION TO MOTION TO
POSSESSION BY THE BANKING	)	APPROVE SALE OF BEL MARIN
COMMISSIONER OF MURRAY FIRST	)	KEYS PROPERTY, TO ENTER INTO
THRIFT AND LOAN, A UTAH	)	STIPULATION, AND TO EXERCISE
CORPORATION.	)	OPTION
)	
	)	Civil No. C82-5951

Judge Rokich

This Opposition is filed on behalf of Rodney F. Gordon, Jim P. Hansen and Bonneville California Corporation as the duly authorized representatives by this Court's order of the owners of Murray First Thrift & Loan Co., and on behalf of MFT Financial Inc. and MFT Mortgage Corp. ("Objectors") in response and opposition to the Motion To Approve Sale Of Bel Marin Keys Property, To Enter Into Stipulation, And To Exercise Option, dated October 1, 1987, filed herein on behalf of the Commissioner of Financial Institutions ("Commissioner's Motion").

Objectors strongly oppose and object to the Commissioner's Motion on the following grounds:

1. The Commissioner is without any lawful power or authority upon which any of the relief or approval sought under

the Commissioner's Motion could be granted or given.

2. The failure on the part of the Commissioner, or his counsel, to provide Objectors with reasonable and timely notice of the Commissioner's Motion and of the hearing thereon has deprived Objectors of their Constitutional right to be afforded procedural and substantive due process. The notice of the hearing on the Commissioner's Motion given to Objectors failed even to comply with applicable court rules concerning notice. Notwithstanding Objectors' very substantial and predominant interest in Bel Marin Keys and its proposed sale, Objectors were never advised of the proposed sale or given any opportunity to participate in the negotiation or establishment of any of the terms and conditions of the proposed sale. Objectors first received a copy of the Commissioner's Motion when Objectors' counsel was served with a copy of the Commissioner's Motion on October 1, 1987. Given the very substantial and complex nature of the ownership of Bel Marin Keys and the terms of the proposed sale, Objectors are entitled, as a matter of basic Constitutional due process to be afforded a reasonable amount of time within which to review the proposed sale, to give careful consideration of its terms and provisions, to insure that all of its terms and conditions of the proposed sale are reasonable and in the best interests of Objectors and of the other owners of Murray First Thrift & Loan Co. and that there are no higher or better offers or proposals for the sale or other

disposition of Bel Marin Keys. The lack of due and proper notice is particularly violative of Objectors' Constitutionally protected right to due process in this instance because of the simultaneous and closely related proceedings that have been initiated in Bankruptcy Court by the Trustee of the bankrupt estate of Irving Financial Corporation. Objectors have simply not been given anything like sufficient and reasonable notice and opportunity to consider and deal with the matters that are related to and involved in the proposed sale in a manner whereby Objectors' vital and substantial interests can be protected.

3. The proposed sale of Bel Marin markedly affects the interest of Objectors. The proposed sale apparently turns on the ability of the purchaser to procure from Bel Marin Keys, Ltd. ("BMK") a release of any right or claim to the \$4,000,000.00 which it previously deposited with the Trustee. There is no evidence that BMK, or its partners or successors, have any intention to release any of their claims. To the contrary, Objectors are advised that BMK or its successor will commence an action against the Trustee to recover all sums paid pursuant to prior agreements. The Court should not approve a sale of Bel Marin which turns on a contingency unlikely to be satisfied.

4. The proposed sale of Bel Marin Keys is precluded by the provisions of §363(f) of the Bankruptcy Code in that the proposed sale constitutes a clearly sub rosa plan.

5. The proposed sale of Bel Marin Keys is precluded

by the following provisions of California state law, among others:

A. §11024 of the California Business and Professions Code which recognizes the sale of real estate by unrecorded contract.

B. §2985.2 of the California Civil Code which limits the authority of a seller of real property under an unrecorded real estate contract from any subsequent sale or encumbrance involving an amount greater than the seller's then equity in the subject real property. The proposed sale clearly violates the provisions of §2985.2.

C. §2985.1 of the California Civil Code which prohibits fee title holders from transferring their fee interest in real property previously sold by an unrecorded contract without an accompanying assignment of such contract to the purchaser. No assignment of Bonneville California Corporation's contract is proposed.

D. The §2985.2 of the California Civil Code which also secures to Bonneville California Corporation all of the rights afforded thereby.

6. The transaction, including all of its subparts, under which Murray First Thrift & Loan Co. ("MFT") in Bel Marin Keys established a joint venture. This joint venture was to have

been managed by Asset Development Associates whose sole shareholders were Objectors Rodney F. Gordon and Jim P. Hansen. MFT's interest in Bel Marin Keys under this joint venture was limited to a 39% participation in development profits after all land acquisition costs had been reimbursed to Objectors. No steps have ever been taken by any party to terminate the joint venture. Objectors are entitled under the provisions of the Uniform Partnership Act to restitution of contributed capital prior to any distribution of development profits.

7. Objectors, as managers of the joint venture, as provided in the Purchase And Assumption Agreement to which MFT formally consented and agreed, have contacted several qualified buyers who have offered, subject to reasonable contingencies, including good and marketable title and planning and zoning approval, a purchase price of not less than \$64,000,000.00 for Bel Marin Keys. Objectors are in possession of a reliable appraisal reflecting that Bel Marin Keys had a value as of 1985 of \$69,000,000.00 assuming good and marketable title and planning and zoning approval.

8. Pursuant to their responsibility and authority, Objectors obtained an official funding by the Marin County Planning Department that the Enstar parcel of real property was not necessary or even desirable to include with Bel Marin Keys for Master Plan approval purposes. Initially the joint venture desired to acquire the Enstar property solely for access to San

Francisco Bay. However, subsequently the desired access was acquired under threat of condemnation making the Enstar property unnecessary to the development of Bel Marin Keys.

9. Neither by law nor by agreement does the Commissioner hold the assets as receiver or as commissioner in possession, but as a trustee for any claimants whose claims have been approved pursuant to paragraph B of the Commissioner's Plan of Reorganization approved November 22, 1982. By subsequent court order Elaine B. Weis was made trustee rather than Valley Bank & Trust for the benefit of the claims approved by the Court and the owners represented by Court order by Jim Hansen and Rodney Gordon.

10. Submitted herewith is a Notice of Intent to Terminate the Trust and to exercise the sole option of Murray First Thrift & Loan to control the retained assets described in paragraph 3 of the Purchase and Assumption Agreement and incorporated by the contemporaneous order of the Court dated November 22, 1982 and by letter agreement dated November 5, 1982 by and between Industrial Loan Guaranty Corporation and Murray First Thrift & Loan, MFT Financial, Inc. and MFT Mortgage which letter is incorporated by reference in the above-described Court order. Said letter agreement is also cross-referenced on the Deed of Trust executed by the Commissioner of Financial Institutions as a lien on the Bel Marin Keys property.

11. Objectors allege that in approving this sale the

Commissioner is not acting in her fiduciary capacity for the owners which by Order of this Court are both beneficiaries and trustors.

DATED this 7 day of October, 1987.

Ray G. Martineau, Jr.

Ray G. Martineau

Attorney for Objectors

Certificate Of Service

I hereby certify that a true and correct copy of the foregoing Opposition To Motion To Approve Sale Of Bel Marin Keys Property, To Enter Into Stipulation And To Exercise Option was served upon the individuals on the attached sheet by mailing a copy thereof, postage prepaid this 7 day of October, 1987.

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David L. Wilkinson
Stephen G. Schwendiman
Bryce H. Pettey - *hand delivered*
130 State Capitol Building
Salt Lake City, Utah 84114

THIS IS A TRUE COPY OF
THE FILE IN THE T.
SALT LAKE COUNTY STAFF

3970
Handwritten signature

FILED IN DISTRICT OFFICE
SALT LAKE COUNTY, UTAH

OCT 26 2 01 PM '87

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Kate Goodrich

Attorney for Owners

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

IN THE MATTER OF THE)	
POSSESSION BY THE BANKING	)	OFFER OF PROOF
COMMISSIONER OF MURRAY FIRST)	
THRIFT AND LOAN, A UTAH	)	CIVIL NO. C82-5951
CORPORATION.	)	Judge John A. Rokich

I. INTRODUCTION.

Jim P. Hansen, Rodney F. Gordon, Frank A. Nelson, Murray First Thrift & Loan Co. ("MFT&L"), MFT Financial Inc., and Jim P. Hansen and Rodney F. Gordon in their capacity as "owner's representatives" pursuant to the order of this Court heretofore entered in these proceedings ("Owners"), pursuant to the provisions of Rule 103(a)(2), Utah Rules of Evidence and pursuant to the leave of this Court previously granted, hereby offer the hereinafter described evidence that was previously offered by Owners at the October 8, 1987 hearing, which evidence will conclusively prove and establish the following:

1. That all of the assets of MFT&L, including its interest in the Bel Marin Keys property are now property within the exclusive management, control and jurisdiction of the Board

of Directors of MFT&L.

2. That at no time has the Commissioner of Financial Institutions of the State of Utah ("Commissioner") or this Court had any legally enforceable right to manage, control or exercise any power, authority or jurisdiction whatsoever over the Bel Marin Keys property, or MFT&L's interest therein or thereto.

3. That any action taken by the Commissioner or this Court to exercise any such power, authority or jurisdiction over the Bel Marin Keys property, or to interfere with the MFT&L Board of Directors' exclusive right to manage and control the same, would constitute:

(a) An unlawful taking of property by the State of Utah with out just compensation.

(b) An unlawful taking of property without due process of law.

(c) An unlawful taking of property without procedural due process.

(d) An unlawful taking under color of state law in violation of Owners' constitutionally and statutorily protected civil rights.

(e) An unlawful interference by the State of Utah with the Owners' contract rights in violation of Article I, Section 10 of the Constitution of the United States, and of Article I, Section 18 of the Constitution of Utah.

4. That the Motion To Approve Sale Of Bel Marin Keys Property, To Enter Into Stipulation, And To Exercise Option filed herein dated October 1, 1987 and all proceedings herein related thereto are but an effort on the part of the Commissioner to secure this Court's consent to, approval of and participation in such an unlawful taking and unlawful violation of Owner's fundamental constitutional rights.

5. That the proposed form of Findings, Conclusions And Order On Commissioner's Motion To Approve Sale Of Bel Marin Keys Property, To Enter Into Stipulation, And To Exercise Option ("Proposed Order").

(a) Is nothing more than a further effort on the part of the Commissioner to secure this Court's consent to, approval of and participation in such an unlawful taking and unlawful violation of Owners' fundamental constitutional, statutory and common law rights.

(b) Is not supported by the record herein.

(c) Is contrary to the facts and the law as the same have been established by the record herein in that the Proposed Order covers issues with respect to which no notice was provided to Owners, with respect to which Owners were not permitted, nor properly prepared, to submit evidence relating to such issues and the proposed order covers and deals with factual determinations and issues that were never properly

before the Court.

(d) Is contrary to and in clear and obvious violation of applicable law.

6. That this Court committed prejudicial and reversible error in refusing to permit Owners to submit through the sworn testimony of Jim P. Hansen, Lynn A. Jenkins and others, any of the evidence that is the subject of this Offer Of Proof.

7. That Owners' counsel was not given due, proper and timely notice of the subject Motion or of the proposed Findings, Conclusions and Order thereby depriving Owners' of their constitutional and civil rights by unlawful state action under color of state law.

8. That given the very substantial nature and extreme complexity of the rights and interests of the parties holding interests in the Bel Marin Keys property, the complex and voluminous documents giving rise to such rights and interests and the long and involved nature of the factual and historical background of the dealings and transactions out of which such rights and interests arose, and given the very complex nature of the documents that have been prepared to evidence the very complex proposed sale transaction of the Bel Marin Keys property, justice, common sense and the very substantial statutory, common law and constitutional rights involved dictate that all interested parties be given proper and timely notice and a reasonable opportunity to carefully study and review all relevant

facts, issues and considerations that must be taken into account and properly dealt with.

II. OFFER OF PROOF.

Owners hereby renew their Offer of Proof that will establish through the sworn testimony of Jim P. Hansen, Lynn A. Jenkins and others and through the documentary evidence submitted herewith and conclusively prove (i) that all of the assets of MFT&L are properly within the exclusive management, control and jurisdiction of the Board of Directors of MFT&L, (ii) that at no time has the Commissioner or this Court had any legally enforceable right to manage, control or exercise any power, authority or jurisdiction whatsoever over the Bel Marin Keys property, or MFT&L's interest therein or thereto, (iii) that any effort by the Commissioner or this Court to exercise any management, control or jurisdiction over the Bel Marin Keys property, or to interfere with the right of the MFT&L Board of Directors to exercise its rights as aforesaid, constitutes the unlawful taking of Owners' property in violation of Owners' constitutional, statutory and common law rights referred to above, (iv) that both the Commissioner's Motion and the Proposed Order are nothing more than an effort on the part of the Commissioner to secure this Court's consent to, approval of and participation in such an unlawful taking and unlawful violation of Owners' most fundamental constitutional, statutory and common

law rights, and (v) that Owners and their counsel have not been given the due, proper and timely notice necessary to satisfy the most basic constitutional requirements of due process:

III. CONCLUSION

The dictates of reason, equity and due process require that the evidence Owners have heretofore proffered and that Owners hereby offer to submit must be received and considered by this Court as a condition precedent to the entry of any order dealing with or disposing of any interest of MFT&L in the Bel Marin Keys property.

DATED this ____ day of October, 1987.

Ray G. Martineau, Attorney for
Hansen, Gordon, Nelson, Murray
First Thrift & Loan Co., MFT
Financial Inc. and Jim P.
Hansen and Rodney F. Gordon as
Owners Representatives

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Offer Of Proof was served upon the following individuals by hand delivering a copy to each of said individuals at the addresses shown below or in open court this 30th day of October, 1987:

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I CERTIFY THAT THIS IS A TRUE COPY OF AN
ORIGINAL DOCUMENT ON FILE IN THE THIRD
DISTRICT COURT, SALT LAKE COUNTY, STATE OF
UTAH.

DATE

3-7-90

Shirley K. Emery

FILED

James

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IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

IN THE MATTER OF THE	:	FINDINGS, CONCLUSIONS AND
POSSESSION BY THE BANKING	:	ORDER ON COMMISSIONER'S
COMMISSIONER OF MURRAY FIRST	:	MOTION TO APPROVE SALE
THRIFT AND LOAN, A UTAH	:	OF BEL MARIN KEYS PROPERTY,
CORPORATION.	:	TO ENTER INTO STIPULATION,
	:	AND TO EXERCISE OPTION
	:	
	:	Civil No. C82-5951
	:	Judge John A. Rokich

The motion of George Sutton, Commissioner of Financial Institutions of the State of Utah ("Commissioner"), as Commissioner in possession of the business and property of Murray First Thrift and Loan Company ("MFT&L") for the Court to approve the sale of the 39% undivided interest of Murray First Thrift and Loan Company in that certain property in Marin County, California, commonly referred to as the Bel Marin Keys property ("BMK"), to authorize him to execute a stipulation to judgment, and to

exercise an option on a parcel of land adjacent to BMK and to sell that parcel, came before the Court at the appointed time of 10:00 a.m. on Thursday, October 8, 1987. The Commissioner was represented by Bryce H. Pettey, Assistant Attorney General. Also appearing were William H. Oexle, Esq., representing the interests of Gordon Hall; Randy B. Birch, Esq., representing the Vickers-Castle Pines group; Robert L. Stolebarger, representing D. Frank Wilkins, Trustee in Bankruptcy for Irving Financial Corporation; Lynn A. Jenkins, appearing pro se; Thomas S. Taylor, Jr., Esq., representing Linda M. Jenkins; Philip C. Pugsley, Esq., representing the Commissioner as receiver of the Industrial Loan Guaranty Corporation; Paul J. Toscano, Esq., representing the interests of Gordon Hall; Ray G. Martineau, Esq., representing M. P. Hansen, Rodney F. Gordon, Bonneville California Corporation, MFT Financial, MFT&L, and MFT Mortgage; Thomas T. Billings, Esq., representing Grant Thornton as receiver of Charter Thrift & Loan, Copper State Thrift and Loan, USA Financial dba Inter-Link Thrift, and Western Heritage Thrift & Loan; Don B. Allen, representing First Security Corporation and First Security Financial; Michael Simondi, Esq., representing Southmark Corporation and Southmark Pacific Corporation; Kevin J. Sutterfield, Esq., representing Jack and Lerona West; and Wayne Smith, Esq., representing Mr. and Mrs. Hans Strauss.

At the conclusion of the proceedings on October 8, 1987, the Court continued the hearing until 8:00 a.m. on October 14, 1987, to reconsider, if necessary, its ruling at the end of the proceedings on October 8, 1987, and to consider other matters taken under advisement at the October 8, 1987 proceedings.

Based upon the pleadings, the evidence presented, and the legal arguments made at the hearing, the Court hereby enters the following:

FINDINGS OF FACT

1. The Commissioner in possession of the business and property of MFT&L has possession of MFT&L's 39% undivided interest in BMK.

2. Under the provisions of the agreements signed in November and December of 1982, when First Security Financial ("FSF") purchased most of the assets and assumed most of the liabilities of MFT&L, a committee ("Committee") was created to advise the Commissioner on how to handle the assets of MFT&L not purchased by FSF, insofar as that advice did not require the Commissioner or the Department of Financial Institutions to violate any law or be subject to any liability. Although the committee originally consisted of four (4) members, Hon. D. Frank Perkins was added as a fifth member in the Spring of 1983. Judge Perkins was authorized by the Committee and the Commissioner to take the lead in discussions with potential purchasers or devel-

opers of MFT&L's interests in BMK. Although Judge Wilkins resigned from the Committee in late 1986, this authorization by the Committee and the Commissioner was never withdrawn.

3. Two prior sales of BMK, to Venture Corporation for \$12,000,000 and to Bel Marin Keys Development, Ltd., for \$13,500,000, were approved by this Court in March of 1984 and September of 1985, respectively, but both of those sales failed to close.

4. Judge Wilkins, in his capacity as Trustee of IFC and in his capacity as the contact person for MFT&L's interest in BMK, negotiated a sale of IFC's and MFT&L's interests in BMK to a group named Bel Marin Keys Development Associates ("Associates"). The managing general partner of Associates is Southmark Pacific Corporation, which is a wholly owned subsidiary of Southmark Corporation.

5. On September 29, 1987, the Committee voted 2-2 on a motion that the Committee recommend to the Commissioner that he recommend approval to the Court of the sale of MFT&L's interest in BMK under the terms of the agreements with Associates attached as exhibits to, and incorporated by reference into, the Commissioner's motion. The conflicts of the two (2) members of the Committee voting against the motion were noted, in that they claim a direct ownership interest in BMK, and they represented they had a competing offer or offers. As the tie vote offered no

guidance to the Commissioner, he proceeded under other provisions of the Order entered by this Court on November 22, 1982, that the Commissioner was to take such action as was necessary to protect the undivided 39% interest of MFT&L in BMK, and he determined that approval of the sale to Associates was in the best interests of the MFT&L estate.

6. The motion to approve the sale of MFT&L's interest to Associates was noticed for hearing on October 8, 1987, at 9:00 a.m.

7. Prior to the hearing, written objections were filed by Lynn A. Jenkins, Dye Corporation, Linda M. Jenkins, and Jim Ansen, Rodney F. Gordon and Frank A. Nelson. At the October 8 hearing, Mr. Oexle announced the competing offer of Dye Corporation, presented in the form of an objection to the sale to Associates, was withdrawn. At the October 8 hearing, oral objections to the sale of BMK to Associates were made by Messrs. Birch, Oexle, Toscano, Jenkins and Martineau, and at the continuation of the hearing on October 14, 1987, oral objections to the stipulation to judgment were made by Messrs. Jenkins and Martineau.

8. At the hearing, competing offers to the Associates offer were presented by (a) Jack Vickers III and Castle Pines Corporation, together with FCB, which offered to buy IFC's and MFT&L's interests in BMK alone (without the necessity of exercising the option to purchase, and then selling to them, the Enstar

parcel), and (b) a group represented by Mr. Martineau, which wanted to create a joint venture to develop BMK. The Court was also informed by counsel for the Trustee that an offer from VMS to purchase both BMK and Enstar would be presented in proceedings in the Bankruptcy Court relating to the intent of the Trustee of IFC to sell IFC's interest in BMK.

9. Under the Associates plan, which the Commissioner recommended be approved, a deposit of \$250,000 had already been made, and another \$250,000 would be paid upon approval of the Offer by both Courts. The \$500,000 would be non-refundable should Associates decide not to close on November 3, 1987 (the new closing date, as amended at the hearing due to the original closing date of November 1, 1987 being on a Sunday). IFC and MFT&L would be required to exercise their option to obtain an option on approximately 640 acres adjacent to BMK, known as the Enstar parcel, and to purchase the Enstar parcel. The total purchase price paid by Associates would be \$15 million, of which \$11 million would be in cash and \$4 million in notes maturing in one (1) year, with payment guaranteed by both Southmark Pacific Corporation and its parent Southmark Corporation. Approximately \$10.97 million would be applied by IFC and MFT&L to purchase BMK and \$4.03 million of which would be applied by IFC and MFT&L to purchase the Enstar parcel (of which \$1,925,373.00 will be paid to Enstar Corporation (the holder of the first trust deed),

\$1,000,000.00 will be paid to Gibraltar Savings (the holder of the second trust deed), and \$1,100,000.00 (\$770,000.00 in cash and \$330,000.00 in notes) will be paid to Hans Michael Strauss (who, with Robert J. Eves, is the owner of the Enstar parcel). IFC and MFT&L will then convey title to both BMK and Enstar to Associates. MFT&L will receive \$2,653,804.55 in cash and \$1,626,300.00 in notes for its 39% undivided interest in BMK. In addition, two former principals in Bel Marin Keys Development Ltd. ("Ltd.") agreed to release, hold harmless and indemnify IFC and MFT&L against any claims of Gordon Hall, another former partner in Ltd. Finally, Associates required that BMK be sold through the provisions of § 363(h) of the Bankruptcy Code.

10. The IFC Trustee testified that the Associates offer had been negotiated over a period of many months by the trustee and his agents, and that having heard the offers presented at the hearing, he still recommended Associates offer be accepted, as its principals knew the property better, their commitment in non-refundable cash was greater, and their offer was in writing. He also testified as to appraisals on the property, and that he believed the price being offered by Associates represented the fair market value of BMK as it now is.

11. The Commissioner also recommended the sale to Associates be approved, testifying he relied upon the Trustee's recommendation, but that he was also aware of the extensive

efforts over many years to market BMK, and that in his experience in dealing with real estate the real value is what someone will pay for it. He also testified he believed that if this sale to Associates, which has been negotiated over many months and is almost certain to close, is not approved, it is possible BMK might not be sold for several more years and even then it might be sold at a lower price, which would not be beneficial to the MFT&L estate.

12. The agreements entered into with Associates and other parties to the sale of BMK to Associates, including the exercise on the option and sale of the Enstar parcel, and the stipulation to judgment in the adversary action brought by the Trustee of IFC against the Commissioner, were attached to and incorporated into the Commissioner's motion that was circulated to the parties to provide for a sale of MFT&L's 39% undivided interest in BMK free and clear of all liens.

13. The motion to authorize the Commissioner to stipulate to judgment in an adversary action brought by the IFC Trustee seeking authority of the United States Bankruptcy Court to sell both IFC's and MFT&L's interests in BMK were included in the motion circulated to all parties, and no objections thereto were presented at the October 8, 1987 proceedings.

14. The approval by the United States Bankruptcy Court on October 9, 1987, of the sale of IFC's interests in BMK to

Associates under the provisions of the agreements with Associates mooted the question of reconsideration by this Court of its Order entered during the October 8, 1987 proceedings.

Based upon the foregoing Findings, the Court enters the following:

CONCLUSIONS OF LAW

1. Adequate notice of the hearing on the Commissioner's motion to sell MFT&L's 39% undivided interest in BMK, to stipulate to judgment, and to exercise the option on and sell the Enstar parcel was given to all parties.

2. All parties asserting secured liens or other encumbrances against MFT&L's interest in BMK received notice of these proceedings.

3. The agreements tentatively entered into with Associates call for the sale of the subject property free and clear of all liens and encumbrances. Copies of those agreements were circulated with, and were attached as exhibits to and were incorporated by reference into, the Commissioner's motion, and that motion and notice of hearing on that motion were circulated to all interested parties, including all parties asserting secured liens or other encumbrances against MFT&L's interest in BMK. This Court has the power, in a receivership, which is an equity proceeding, to authorize the sale of property free and clear of liens, with the liens attaching to the proceeds of the

sale. Notice having been given to all affected parties, it is justified and appropriate and will be beneficial to the MFT&L estate to sell the property free and clear of all liens.

4. This hearing on the proposed sale of BMK is not the appropriate time to raise challenges to the whether the Commissioner is validly in possession of, or has title to, BMK or any of the other assets of MFT&L. Those questions should have been raised long ago in these proceedings, but in any event, this is not the time or place for those questions to be briefed and argued. The Court having approved two (2) prior sales of MFT&L's interest in BMK by the Commissioner in possession of the business and property of MFT&L, and no objections having been raised during the consideration by the Court of either of those sales as to the validity of the Commissioner's retaining that asset in possession, the parties have waived any objections they did not raise but could have raised, during the proceedings on those prior sales.

5. Utah Code Ann. § 7-2-12(1) (1981) gives the Commissioner broad authority in connection with the liquidation of assets of an institution in his possession. The Commissioner's decision to sell MFT&L's 39% undivided interest in BMK to Associates was made rationally, and the reasons for his decision were fully articulated at the hearing. Under the applicable standard of review set forth in Utah Code Ann. §§ 7-2-1(4) and 7-

2-12(1) (1981), a determination such as the one made in this instance to join in the sale to Associates may not be overruled by the Court unless it is found to be arbitrary, capricious, fraudulent or otherwise contrary to law. The decision involved here was not arbitrary, capricious, fraudulent or otherwise contrary to law, and thus it must be approved by this Court.

WHEREFORE, IT IS HEREBY ORDERED:

1. The sale of MFT&L's interest in Bel Marin Keys is approved under the terms set forth in the attachments to the Commissioner's motion to approve that sale, including the exercising of the option on the Enstar parcel and the purchase thereof.

2. To aid the Commissioner in selling the 39% undivided interest of MFT&L in BMK free and clear of all liens and to give the purchaser and others involved in the transaction the assurance that clear title is being purchased, the Commissioner is hereby authorized to stipulate to judgment in the adversary proceeding initiated by the IFC Trustee seeking the authority of the United States Bankruptcy Court to sell both IFC's and MFT&L's interests in BMK.

3. The motion for a stay of this Court's Order herein is denied.

DATED this 27 day of October, 1987.

I CERTIFY THAT THIS IS A TRUE COPY OF AN ORIGINAL DOCUMENT ON FILE IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH.

DATE May 17, 1990
Deborah J. Sherman
DEPUTY COURT CLERK

John A. Rokich
JOHN A. ROKICH
District Judge

ATTEST
H. DIXON HINDLEY

Clerk

ADDENDUM 3

WILLIAM S. SUTTON (3031)
DAVID L. SUTTON (3031)
WILLIAM S. SUTTON (3031)
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A Professional Corporation
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Attorneys for the Plaintiffs

IN THE THIRD JUDICIAL DISTRICT COURT, FOR SALT LAKE COUNTY

STATE OF UTAH

-----ooo0ooo-----

JIM PRATT HANSEN; RODNEY F.
GORDON; MFT FINANCIAL, INC.
a Utah corporation;
MURRAY FIRST THRIFT AND LOAN
COMPANY, a Utah corporation;
and MFT HOLDINGS CO., a Utah
corporation,
Plaintiffs,

vs.

GRANT SUTTON, individually
and as Commissioner of the
Department of Financial
Institutions of the State of
Utah and as
Commissioner in Possession of
the Industrial Loan Guaranty
Corporation of Utah and as
Trustee of the retained assets
of Murray First Thrift and Loan
Co.; ELAINE B. WEIS,
individually and as former
Commissioner of the
Department of Financial
Institutions of the State of
Utah; HERVIN BORTHICK,
individually and as former
Commissioner of the
Department of Financial Institu-
tions of the State of Utah;
THE DEPARTMENT OF
FINANCIAL INSTITUTIONS OF THE
STATE OF UTAH; THE
INDUSTRIAL LOAN GUARANTY
CORPORATION OF UTAH;
ACR DOCS 1-20; AND

RESPONSE TO MOTION
TO DISMISS

Civil No. 90093241 CN

Judge Timothy R. Hanson

COMMITMENTS 1-20; AND THE
PARTNERSHIPS 1-20.

Defendants.

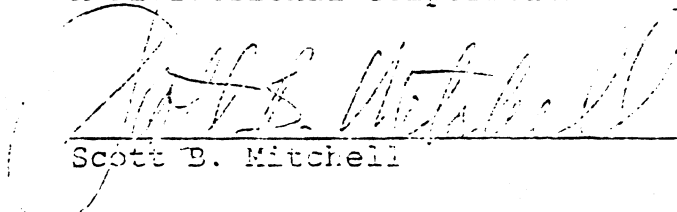
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Plaintiffs hereby respond to the Motion To Dismiss filed on behalf of the State of Utah Department of Financial Institutions; Elaine Weis; and George Sutton individually, as Commissioner of Financial Institutions of the State of Utah, and as Trustee of the Retained Assets of Murray First Thrift and Loan Co., as more fully set forth in the following Memorandum of Points and Authorities.

DATED this 7th day of August, 1990.

SPAFFORD & SPAFFORD

A Professional Corporation


Scott B. Mitchell

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IN THE THIRD JUDICIAL DISTRICT COURT, FOR SALT LAKE COUNTY

STATE OF UTAH

-----ooo0ooo-----

JIM PRATT HANSEN; RODNEY F.
GORDON; MFT FINANCIAL, INC.
a Utah corporation;
MURRAY FIRST THRIFT AND LOAN
COMPANY, a Utah corporation;
and MFT MORTGAGE CO., a Utah
corporation,
Plaintiffs,

vs.

GEORGE SUTTON, individually
and as Commissioner of the
Department of Financial
Institutions of the State of
Utah and as
Commissioner in Possession of
the Industrial Loan Guaranty
Corporation of Utah and as
Trustee of the retained assets
of Murray First Thrift and Loan
Co.; ELAINE B. WEIS,
individually and as former
Commissioner of the
Department of Financial
Institutions of the State of
Utah; MERVIN BORTHICK,
individually and as former
Commissioner of the
Department of Financial Institu-
tions of the State of Utah;
THE DEPARTMENT OF
FINANCIAL INSTITUTIONS OF THE
STATE OF UTAH; THE
INDUSTRIAL LOAN GUARANTY
CORPORATION OF UTAH;
JOHN DOES 1-20; ABC

MEMORANDUM OF POINTS
AND AUTHORITIES

Civil No. 90093241 CN

Judge Timothy R. Hanson

COMPLAINTS 1-20; AND NYN
PLAINTIFFS 1-20.

Defendants.

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Plaintiffs submit the following memorandum of points and authorities in response to the Motion To Dismiss filed by the Utah State Department of Financial Institutions ("DFI"), Elaine Weis, and George Sutton.

I Response to Point I

In point I of their Motion to Dismiss, Moving Defendants argue that Count One of the Complaint is barred by certain statutes of limitations and by governmental immunity. These arguments will be addressed in order below.

A. Statutes of Limitations

(i) UCF §78-12-23

Defendants' first argument is that the breach of contract cause of action alleged in Count One of the Complaint is barred by §78-12-23 because it was not brought within the six year period of limitations set forth in that statute. The cause of action alleged in Count One arose on July 22, 1982; the instant action was filed on or about June 5, 1990, nearly eight years later.

What Defendants fail to take into account, however, is Utah's saving statute, §78-12-40, UCA, which provides as follows:

If any action is commenced within due time and . . . if the plaintiff fails in such action or upon a cause of action otherwise than upon the merits, and the time limited either by law or contract for commencing the same shall have expired, the plaintiff . . .

plaintiffs' cause of action within one year
has been . . . barred.

(Exhibit B).

As Defendants are obviously well aware, Plaintiffs brought suit against them in the United States District Court For The District Of Utah, Central Division, Civil No. C-87-0041S, on January 22, 1987. That action, which is captioned Harris et al. v. Weis et al., was filed well within the six year limitations period set forth in §70-12-23. Thereafter, Plaintiffs filed three amended complaints. In each complaint, Plaintiffs alleged various state law causes of action in addition to their federal claims. For example, in their Third Amended Complaint, Plaintiffs alleged state law causes of action for breach of contract, unjust enrichment and punitive damages based upon the following factual allegations:

(24) On or about July 17, 1981, Mirvin D. Borthick, acting as the commissioner of the Utah Department of Financial Institutions, represented to the Murray Plaintiffs that if certain conditions were satisfied, restrictions on the operations of Murray Thrift would be removed . . . On or about July 30, 1981, the Restriction Removal Conditions were amended so that Defendants were required to contribute only \$1.2 to Murray First Thrift rather than the \$1.9 million stated in Exhibit B. . . .

(25) In full reliance upon the representations of Marvin D. Borthick as stated in the Restriction Removal

Condition 8, Plaintiffs Hansen, Nelson and Gordon, directly and through related entities, began making substantial contributions to the capital of MFT Financial and Murray Thrift. Said contributions to the capital of the said entities were made in reliance on the Restriction Removal Conditions exceeded the sum of eleven million dollars (\$11,000,000.00).

(26) On or about July 22, 1982, Elaine B. Weis, purporting to act as the commissioner of the Utah Department of Financial Institutions, took possession of the assets of Murray Thrift.

(27) At the time of the seizure of the assets of Murray Thrift, the Murray Plaintiffs had been timely fulfilling all of the Restriction Removal Conditions. The seizure of the assets of Murray Thrift prevented said Plaintiffs from completing the fulfillment of the Restriction Removal Conditions. Among the assets seized by the Utah Department of Financial Institutions were assets the Murray Plaintiffs had been contributing to the capital of Murray Thrift and MFT Financial in reliance upon the representations of Commissioner Borthick.

(28) The seizure of the assets of Murray Thrift gave rise to a dispute between the Murray Plaintiffs and the commissioner of the Utah Department of Financial Institutions. The Murray Plaintiffs claimed that the

as well as various amounts as they contributed substantial sums of money and property in reliance upon the representations of Commissioner Beachick. (See paragraphs 24-28 of the Third Amended Complaint a copy of which is filed herewith as Exhibit "1").

The Third Amended Complaint was ordered stricken on September 30, 1988, due to Plaintiffs' failure to obtain leave of the federal court before filing same. See Rule 15(a), F.R.C.P. (A true and correct copy of the Order granting Defendant's motion to strike the Third Amended Complaint is filed herewith as Exhibit "2"). However, the order striking the Third Amended Complaint did not become final and appealable until the remainder of the Harris case was dismissed on June 6, 1989. See, e.g. Novell v. Cuyahoga County Hospital, 463 N.E.2d 111 (Ohio App. 1983) (order granting motion to strike complaint is appealable only if it serves to extinguish Plaintiff's entire claim); Korugnik v. Solkowitz, 379 So.2d 166 (Fla. App. 1980) (order granting defendant's motion to strike amended complaint was not a final appealable order where no judgement was entered); and Branch v. European Autohaus, Ltd., 424 N.E.2d 6 (Ill. App. 1981) (order granting motion to strike complaint was not final appealable order in view of pending counterclaim). (A true and correct copy of the June 6, 1989 Order of Dismissal is filed herewith as Exhibit "3").

Accordingly, for purposes of UCA §78-12-40, Plaintiffs cannot be said to have "failed" on their state law causes of action, above-described, until the entry of the June 6, 1989,

Since the filing of the first action, it follows that Plaintiffs had until June 5, 1980, to re-file the instant action in accordance with §78-12-40. It is not a coincidence that Plaintiffs did in fact re-file the instant action on June 5, 1980.

Defendants may attempt to argue that §78-12-40 is inapplicable to this case because the causes of action alleged in the Harris case, i.e. breach of contract, unjust enrichment and punitive damages, are somewhat different from the breach of contract cause of action alleged in Count One of the Complaint in the case at bar. While it may be true that the causes of action in the respective cases are somewhat different, the Supreme Court of Utah has held that the causes of action do not have to be identical for purposes of §78-12-40:

The tolling statute [i.e., §78-12-40] requires only that the claim or claims for relief stated in the second action arise out of the transaction or occurrence or which the claim or claims in the first action were founded.

Foil v. Bollinger, 601 P.2d 144, 151 (Utah 1979) (citing Williams v. Nelson, 145 P. 39 (Utah 1914)); see also Woosley v. Hi-Plains Harveststore Inc. 550 F. Supp. 161, 165-66 (D.C. Okla. 1981) (42 USC § 1983 action substantially the same as state law conspiracy action for purposes of Oklahoma savings statute virtually identical to §78-12-40, UCA); and Bradley v. Barnett, 687 S.W.2d 53, 55 (Tex. App. 1985) (A new suit will not be barred by limitations merely because it is different from the cause of action originally and timely pled, unless the cause of action is wholly based upon and grows out of a new, distinct or different

transmission and occurrence than that relied on in the original action of action").

The allegations of the Third Amended Complaint, set forth above, make it crystal clear that Count One of the Complaint in the case at bar "arises out of the transaction or occurrence on which the claim or claims in the [Harris] action were founded." 601 P.2d at 151.

In short, Count One of the instant action is not barred by the six year period of limitations set forth in §78-12-23, UCA, because substantially the same claim was made in the Harris case (which was filed within the six year limitations period) and the instant action was filed within one year of the dismissal of the Harris case in accordance with §78-12-40, UCA.

(ii) U.C.A §16-10-100

Defendants now assert that the corporate plaintiffs are barred from asserting Count One because of the two year period of limitations set forth in U.C.A § 16-10-100. This assertion is misplaced for the same reason discussed above in connection with §78-12-23, i.e., because of the one year extension provided in §78-12-40, with one necessary addition.

The corporate Plaintiffs were involuntarily dissolved by the State of Utah on December 31, 1984. Even under Defendants' interpretation of §16-10-100 (which, as discussed below, is mistaken), corporate Plaintiffs had until December 31, 1986 to commence their lawsuit against Defendants. Plaintiffs did exactly that.

On May 30, 1981, Plaintiffs filed suit in the United States District Court for the Northern District of California, civil no. 886-2084. In that action (captioned Frank A. Nelson et al. v. First Security Financial Inc. et al.) Plaintiffs alleged various federal and state law causes of action based, inter alia, upon the following factual allegations:

(49). On or about July 17, 1981, the Nelson Group entered into an agreement with Mirvin D. Borthick, Commissioner, Department for Financial Institutions, State of Utah, wherein Commissioner Borthick acting on behalf of the Department of Financial Institutions agreed to remove a then existing impairment order which had been enforced since March 14, 1979, for infractions involving capital valuations involving the Bel Marin property and affiliated parties.

(50). One of Commissioner Borthick's conditions for lifting the above mentioned restrictions was that the corporate structure of MFT be reorganized and simplified. Borthick additionally expressly mandated that plaintiffs refrain from entering into any transactions "...through, with, or for the following individuals and entities ... Franklin Johnson, Glendon Johnson, Howard Harmer, Johnson Land Company, Murray First Financial Europe, Reading Holding Company ... or any other individual or entity having a direct or indirect business relationship with Franklin or Glendon Johnson."

.....

(54). In addition to the above mentioned restrictions by Borthick, relative to the capital and reorganization of MFT, the Commissioner insisted that the plaintiffs infuse additional sums to bolster the capital of the company. The plaintiffs complied with this and all other requirements of Commissioner Borthick.

.....

(58). On or about May 31, 1982, Elaine B. Weis was appointed Commissioner of Financial

institutions. Despite the fact that NIT had attempted to conduct and operate its affairs pursuant to their contractual agreement with the previous Commissioner Borzhink, Elaine A. Weis took possession of NIT on July 22, 1982. This takeover by Commissioner Weis was unwarranted, untimely and unlawful ...

(See paragraphs 49, 50, 54 and 58 of the Nelson Complaint a copy of which is on file as Exhibit "A" to the Motion To Dismiss filed by the ILGC and George Sutton, acting in his capacity as Commissioner in possession of the ILGC).

Clearly, the "transactions and occurrences" giving rise to the claims asserted by Plaintiffs against Defendants in the Nelson case are identical to those giving rise to the claims asserted in both the Harris case and the case at bar.

Upon Defendants' motion, however, the Nelson case was dismissed without prejudice on the grounds of improper venue on November 18, 1985. (A true and correct copy of the Order of Dismissal is attached to Plaintiffs' Response to the ILGC's and Sutton's Motion to Dismiss as Exhibit "E"). In accordance with §78-12-40, Plaintiffs re-filed their claims against Defendants in the Harris case on January 22, 1987.

Thus, Plaintiffs originally filed their claims against Defendants within the two year period of limitations set forth in U.C.A §16-10-100. Because the claims asserted in both the Harris case and the case at bar arise out of the same "transaction or occurrence" as those originally asserted in the Nelson case, §78-12-40 tolled the two year period of §16-10-100 and, consequently, the breach of contract cause of action asserted in Count One was

timely filed.

Thus, even under Defendants' interpretation of UCA §16-10-100, corporate Plaintiffs' action against them was timely filed. However, Defendants interpretation of §16-10-100 is clearly mistaken. By its own terms that section only applies to "pre-dissolution" causes of action. Post-dissolution actions are governed by UCA §16-10-101, which has no period of limitations and which provides as follows:

Notwithstanding the dissolution of a corporation . . . by the issuance of a certificate of dissolution by the Division of Corporations and Commercial Code..., the corporate existence of such corporation shall nevertheless continue for the purpose of winding up its affairs in respect to any property and assets which have not been distributed or otherwise disposed of prior to such dissolution, and to effect such purpose such corporation may sell or otherwise dispose of such property and assets, sue and be sued, contract, and exercise all other incidental and necessary powers.

(Emphasis added).

B. Governmental Immunity

Plaintiffs concede that in order for Defendant Weis to be held personally liable for the damages alleged in Count One they must allege that she acted fraudulently, maliciously, or with gross negligence. See Madsen v. Borthick, 769 P.2d 245 (Utah 1988). Plaintiffs further concede that no such allegations have been made in their Complaint.

However, Plaintiffs believe that there is ample evidence to establish that Weis did in fact act fraudulently, maliciously and with gross negligence in connection with her

...is illegal in Count One. Accordingly, Plaintiffs request
that this court is amend their Complaint in order to make the
appropriate allegations.

II Response to Point II

In Point II of their memorandum, Defendants make three
arguments in support of their contention that Count two of the
Complaint fails to state a claim: (1) that there is no allegation
of fraud or malice against Sutton and, therefore, that he is
immune from suit; (2) that neither MFT nor MFTF having standing
to bring the claims asserted therein because of the Certificates
of Involuntary Dissolution which were issued against them in
December 1984; and (3) that a cause of action for breach of
fiduciary duty is barred by the Utah Governmental Immunity Act.
As will be demonstrated below, these arguments have very little
merit. To the extent that they do have merit, however, Plaintiffs
respectfully request the court's leave to amend the Complaint in
order to make the appropriate corrections.

(1) Plaintiffs Move the Court For Leave To Amend Their Complaint To Allege Fraud And Malice Against Sutton

Plaintiffs concede that they have failed to make the
necessary allegations of fraud or malice against Sutton and,
therefore, move the court for leave to make the appropriate
amendments.

(2) MFT and MFTF Clearly Have Standing To Prosecute Count Two

Defendants' argument that MFT and MFTF are barred from

...including Count Two...of the two year limitation period set forth in §16-10-100, UCA, has been addressed by Plaintiffs in their Response to Point 3, above, and will only briefly be reiterated here.

As was pointed out above, §16-10-100 applies only to pre-dissolution causes of action, not post-dissolution causes of action such as those alleged in the case at bar. Furthermore, Defendants' argument fails to take into account the savings provisions of §78-12-40, UCA. Thus, even if §16-10-100 were applicable to this case (which it clearly is not), Plaintiffs commenced the Nelson case well within the two year period set forth in that statute.

(3) Plaintiffs' Claim For Breach Of Fiduciary Duty Arises Out Of A Contract For Which Immunity Has Been Waived

The following provision was incorporated into the Purchase and Assumption Agreement (which is at the heart of Count Two) by virtue of the November 22, 1982 Order of the Honorable Phillip R. Fishler entered in the Matter of the Possession by the Banking Commissioner of Murray First Thrift and Loan, a Utah Corporation, 82C-5951:

The assets of MFT not acquired by First Security Financial, Inc. as provided in the

plan of reorganization shall be transferred by the Commissioner to a bank mutually agreed upon by the owners of MFT and the Commissioner to hold in trust for the purpose of providing a fund to satisfy claims of (a) the creditors of MFT . . . and (b) the owners of MFT.

(A true and correct copy of the Petition For Approval Of A Plan

of Property, Insurance On The Business And Property Of Many Firms. Plaintiff Anderson Co. is attached to Plaintiffs' Response to Sutton's and the ILGC's Motion to Dismiss as Exhibit "G" and the December 22, 1982 Order incorporating its terms into the Purchase and Assumption Agreement is attached hereto as Exhibit "4").

On June 26 1984, Judge Rokich appointed the Commissioner of Financial Institutions of the State of Utah (at that time Elaine Weis, Sutton's predecessor) as trustee over the retained assets. On October 1, 1987, Sutton filed his Notice Of Change Of Commissioner in the possessory proceedings in which he gave notice that he had taken over the responsibilities of the Commissioner of Financial Institutions "by operation of law" (See Exhibits "5" and "6" attached hereto). The trusteeship of the retained assets was one of those responsibilities. Accordingly, Plaintiff's breach of fiduciary duty cause of action is contractual.

The State of Utah has expressly waived its immunity with respect to actions "arising out of contractual rights or obligations." See §63-30-5, UCA. Accordingly, Defendants may not assert the defense of governmental immunity in connection with Plaintiffs' breach of fiduciary duty cause of action.

III Response To Point III

Plaintiffs concede that Count Three of their Complaint must be dismissed as to Sutton because no notice of claim or undertaking has been filed in accordance with sections 63-30-12

and 16, UCL. However, the remaining arguments in Point III of Defendants' memorandum are without merit.

Defendants' argue that "the corporate plaintiffs were dissolved in December 1984, three years before the cause of action accrued, and therefore have no standing to assert such a claim." (See P.6 of Defendants memorandum). Again, Defendants are apparently referring to the two year statute of limitations set forth in §16-10-100 and, again, Plaintiffs incorporate their responses to the same argument made by Defendants in Points I and II of their memorandum.

Of course Defendants would like to have this court believe that the Utah corporations statutes leave a dissolved corporation defenseless after the expiration of two years into the post-dissolution, winding-up period. In point of fact, §16-10-101, which has no period of limitations, specifically provides that a dissolved corporation has the power to sue and be sued during the course of winding-up its affairs.

Defendants also fail to advise the court that the ILGC is not a "governmental entity" and, therefore, is not entitled to protection under the Governmental Immunity Act. Accordingly, parts A and B of Point III of Defendants' memorandum are inapplicable to Plaintiffs' claim against the ILGC.

Finally, Defendants argue that the legal theory of intentional interference with contractual relations is inapplicable to the facts alleged in Count Three because Sutton (and presumably the ILGC) are parties to the P&A Agreement. The

of the contract. (See p. 5 of Defendant's Memorandum.)

While it is, of course, true that one party to a contract cannot be liable for the tort of interference with contract for inducing a breach by himself or of the other contracting party, see, e.g. Leigh Furniture and Carpet Co. v. Tison, 957 P.2d 293, 361 (Utah 1992), that is not what is alleged in Count Three. The contractual obligations, interference with which is alleged in Count Three, were owed by Sutton, in his capacity as Commissioner in Possession of Murray First Thrift and Loan, and the Department of Financial Institutions to MFT and MFTF. With respect to these obligations, the ILSC and Sutton, acting in his capacity as Commissioner in Possession of the ILSC, had no responsibilities or rights. Their inducement of the breach of these obligations was clearly tortious. See, e.g. Restatement of Torts (2d) 3766 ("One who intentionally and improperly interferes with the performance of a contract . . . between another and a third person by inducing or otherwise causing the third person not to perform the contract, is subject to liability to the other from the failure of the third person to perform the contract").

Thus, the tort of intentional interference with contractual relations clearly applies to the facts of this case.

CONCLUSIONS

For the foregoing reasons, Plaintiff respectfully

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MADE THIS _____ Day of August, 1966.

SPENCER & SPENCER
A Professional Corporation

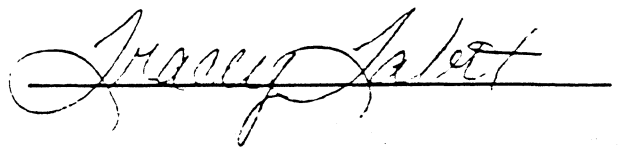
Scott E. Mitchell

CERTIFICATE OF MAILING

I do hereby certify that on the 7th day of August, 1990
I did cause to be placed in the U.S. mail, postage prepaid, a
true and correct copy of the foregoing RESPONSE TO MOTION TO
DISMISS and MEMORANDUM OF POINTS AND AUTHORITIES addressed to the
following:

R. Paul Van Dam
Attorney General
Reed M. Stringham
Assistant Attorney General
236 State Capitol
Salt Lake City, UT 84114

Michael N. Emery
RICHARDS, BRANDT, MILLER &
NELSON
Key Bank Tower, Suite 700
50 South Main Street
P.O. Box 2465
Salt Lake City, UT 84110

A handwritten signature in cursive script, reading "Tracy Lett", is written over a horizontal line.

Robert M. McDonald (2175)
MCDONALD & BULLEN
Attorneys for Plaintiffs
American Plaza III
47 West 200 South #450
Salt Lake City, Utah 84101
Telephone: (801) 359-0999

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

RECEIVED
MAY 2 1987
OFFICE OF JUDGE
DAVID SAM

GARY S. HARRIS; GARY S. HARRIS, :
acting derivatively for and on :
behalf of CITIZENS BANKSHARES, :
INC., a Utah corporation; THRIFT :
HOLDING COMPANY, a corporation :
and CHARTER THRIFT & LOAN, a :
corporation; MFT MORTGAGE COM- :
PANY, a corporation, FRANK A. :
NELSON, JR., JIM P. HANSEN, and :
RODNEY F. GORDON; RAPHAEL MECHAM; :
MURRAY FIRST THRIFT & LOAN CO., :
a corporation; and MFT FINANCIAL, :
INC., a corporation, :

Plaintiffs, :

vs. :

ELAINE B. WEIS, individually, :
ELAINE B. WEIS, in her capacity :
as Commissioner of the Depart- :
ment of Financial Institutions :
of the State of Utah; GEORGE R. :
SUTTON; GEORGE R. SUTTON, in his :
capacity as Assistant Commis- :
sioner of the Department of Fin- :
ancial Institutions of the State :
of Utah; THE STATE OF UTAH; :
DARWIN M. LARSEN; INDUSTRIAL :
LOAN GUARANTY CORPORATION, a :
Utah corporation; ROBERT B. :
BECKSTEAD; M.D. BORTHICK; DEAN :
G. CHRISTENSEN; RICHARD A. :
CHRISTENSON; W. HAROLD DOBSON; :
JOHN A. FIRMAGE, JR.; ROBERT L. :
HOWE; EDWARD M. JAMISON; JOHN C. :

VERIFIED THIRD
AMENDED COMPLAINT

Civil No. C-87-0041-S

JARMAN; RUSSELL B. JEX; CHARLES :
 E. JOHNSON; IRENE JORGENSEN;
 T. KAY LYMAN; RICHARD D. PAUL; :
 ED H. THRONDSSEN; RICHARD A.
 VAN WINKLE; DR. TERRY WARNER; :
 REED SAUNDERS; KELLY MCQUAID;
 CHRISTOPHER SWANER; DUANE :
 BULLOUGH; ROBERT M. BRIDGE;
 RANDALL J. FLORENCE; H.A. RUDY, :
 D.G. BUCK; JOHN G. SORENSEN, JR.;
 J. GORDON SORENSEN; STEVE FACER; :
 ROY MOORE; FIRST SECURITY
 CORPORATION, a corporation; :
 FIRST SECURITY FINANCIAL, a
 corporation; THRIFT HOLDING :
 COMPANY, a Utah corporation,
 currently in control of an adver-:
 sarial receiver; CHARTER THRIFT
 AND LOAN COMPANY, a corporation :
 currently in the hands of an
 adversarial receiver in :
 possession; DOES 1 through 40, :
 :

Defendants.

JURISDICTION

Plaintiff's Complain of Defendants as follows:

1. The claims set forth in the Fifth, Seventh, Twelfth and Fourteenth causes of action alleged civil actions arising under the laws of the United States and the matter in controversy exceeds the sum of \$10,000.00 exclusive of interests and costs. Jurisdiction is vested in this Court pursuant to the provisions of 28 U.S.C. Section 1331.

2. The claims set forth in the Fifth and Twelfth causes of action allege violations of the Securities Exchange Act of 1934 and jurisdiction is vested in this Court pursuant to the provisions of Section 27 of the Securities Exchange Act of 1934, 15 U.S.C. Section 78aa.

3. The Seventh and Fifteenth causes of action seek to redress the deprivation under color of state law of Plaintiff's rights, privileges and immunities secured by the Constitution and Statutes of the United States. Jurisdiction is vested in this Court pursuant to the provisions of 28 U.S.C. Section 1343.

VENUE

4. All of the individual Defendants are residents of Salt Lake County, Utah. The Corporate Defendants are all incorporated pursuant to the laws of the State of Utah and/or are licensed to do business and were doing business in the State of Utah at all times mentioned herein. The claims and causes of action herein stated arose in Salt Lake County, Utah. Venue is properly laid in this Court pursuant to 28 U.S.C. Section 1391.

PARTIES

5. Gary S. Harris is a resident of Weber County, Utah, and at all times mentioned herein, was a shareholder in Citizens Bankshares, Inc., a Utah corporation (hereinafter "Citizens").

6. Thrift Holding Company (hereinafter "Thrift Holding") is a Utah corporation and conducted a thrift and loan business in the State of Utah. Thrift Holding was a wholly owned subsidiary of Citizens.

7. Charter Thrift & Loan (hereinafter "Charter") is a Utah corporation and conducted a thrift and loan business in the State of Utah. Charter was a wholly owned subsidiary of Thrift Holding.

8. Frank A. Nelson, Jr., Jim P. Hansen and Rodney F. Gordon

are residents of Salt Lake County, State of Utah, and were duly elected directors of Murray First Thrift & Loan Company, MFT Financial, Inc., and MFT Mortgage Corporation. Raphael Mecham is a resident of the State of Arizona and a duly elected director of MFT Financial, Inc.

9. Murray First Thrift & Loan Company (hereinafter "Murray Thrift") is a Utah corporation and conducted a thrift and loan business in the State of Utah.

10. MFT Mortgage Corporation (hereinafter "MFT Mortgage") is a Utah corporation. MFT Mortgage is wholly owned subsidiary of Murray Thrift.

11. MFT Financial, Inc., (hereinafter "MFT Financial") is a Utah corporation and is the holder of all of the stock of Murray Thrift.

12. Mirvin D. Borthick was the duly appointed commissioner of the Utah Department of Financial Institutions until November 1, 1981, when he was succeeded by Elaine B. Weis.

13. Elaine B. Weis was the duly appointed commissioner of the Utah Department of Financial Institutions from May 31, 1982 to September 11, 1987, when she was succeeded by George R. Sutton.

14. George R. Sutton is the current commissioner of the Utah Department of Financial Institutions. The Department of Financial Institutions is an agency of the State of Utah.

15. The Industrial Loan Guaranty Corporation (hereinafter "ILGC") is a Utah non-profit corporation, engaged in insuring

depositors in various thrift and loan operations in the State of Utah.

16. The following Defendants are members of the ILGC, who performed and/or ratified the acts and participated in the agreements described the Eighth Cause of Action: M.D. Borthick, Dean G. Christensen, Richard A. Christenson, W. Harold Dobson, John A. Firmage, Jr., Robert L. Howe, Edward M. Jamison, John C. Jarman, Russell B. Jex, Charles E. Johnson, Irene Jorgensen, T. Kay Lyman, Richard D. Paul, Ed H. Throndsen, Richard A. Van Winkle, Dr. Terry Warner, Robert B. Beckstead, Reed Saunders, Kelly McQuaid, Christopher Swaner, Duane Bullough, Robert M. Bridge, Randall J. Florence, H.A. Rudy, D.G. Buck, John G. Sorensen, Jr., J. Gordon Sorensen, Steve Facer and Roy Moore. Said Defendants and the ILGC are hereinafter jointly referred to as the "ILGC Defendants".

17. First Security Corporation (hereinafter "FSC") is a Delaware corporation engaged in the commercial banking business in the State of Utah.

18. First Security Financial (hereinafter "FSF") is a Utah corporation with its principal place of business in the State of Utah. FSF is a wholly owned subsidiary of FSC.

19. Darwin M. Larsen is a resident of Weber County, State of Utah and Ed H. Throndsen are residents of Salt Lake County, State of Utah.

DESIGNATIONS OF PARTIES

20. Frank A. Nelson, Jr., Jim P. Hansen, Rodney F. Gordon,

Murray Thrift, MFT Financial and MFT Mortgage will hereinafter be jointly referred to as the "Murray Plaintiffs".

21. First Security Corporation, First Security Financial Corporation, Mirvin D. Borthick, Elaine B. Weis, George R. Sutton, as the Commissioner of Financial Institution, and the State of Utah and other parties named in paragraph 29 will hereinafter be referred to as "Contract Defendants".

22. Gary S. Harris acting individually and acting derivately for and on behalf of Citizens, Thrift Holding and Charter will hereinafter be jointly referred to as the "Harris Plaintiffs".

DERIVATIVE CLAIM ALLEGATIONS

23. On or about April 29, 1988, pursuant to the July 17, 1987 Report and Recommendation of the Honorable Calvin Gould, United States Matistrate, Plaintiff Gary S. Harris made demand on Citizens. Harris was informed and believed Anna Drake, Esq. to be the trustee for Citizens and demand was made upon her. Harris was subsequently informed that Richard R. Nelson was acting trustee for Citizens and demand was made upon Nelson. Copies of said demand letters are attached hereto as Exhibit A and incorporated herein by reference. As of the date of this Complaint, no response has been received and further demand would be futile.

GENERAL ALLEGATIONS RELATING TO THE MURRAY PLAINTIFFS

24. On or about July 17, 1981, Mirvin D. Borthick, acting as the commissioner of the Utah Department of Financial Institutions, represented to the Murray Plaintiffs that if

certain conditions were satisfied, restrictions on the operations of Murray Thrift would be removed (said statements and representations are hereinafter referred to as "Restriction Removal Conditions"). A copy of the statements and representations made by the commissioner are attached hereto as Exhibit B and incorporated herein by reference. On or about July 30, 1981, the Restriction Removal Conditions were amended so that Defendants were required to contribute only \$1.8 million to Murray Thrift rather than the \$1.9 million stated in Exhibit B. A copy of the amended Restriction Removal Conditions are attached hereto as Exhibit C and incorporated herein by reference.

25. In full reliance upon the representations of Mirvin D. Borthick as stated in the Restriction Removal Conditions, Plaintiffs Hansen, Nelson and Gordon, directly and through related entities, began making substantial contributions to the capital of MFT Financial and Murray Thrift. Said contributions to the capital to the said entities were made in reliance on the Restriction Removal Conditions exceeded the sum of eleven million dollars (\$11,000,000.00).

26. On or about July 22, 1982, Elaine B. Weis, purporting to act as the commissioner of the Utah Department of Financial Institutions, took possession of the assets of Murray Thrift and began conducting management of the business operations of Murray Thrift.

27. At the time of the seizure of the assets of Murray Thrift, the Murray Plaintiffs had been timely fulfilling all of

the Restriction Removal Conditions. The seizure of the assets of Murray Thrift prevented said Plaintiffs from completing the fulfillment of the Restriction Removal Conditions. Among the assets seized by the Utah Department of Financial Institutions were assets that the Murray Plaintiffs had been contributing to the capital of Murray Thrift and MFT Financial in reliance upon the representations of Commissioner Borthick.

28. The seizure of the assets of Murray Thrift gave rise to a dispute between the Murray Plaintiffs and the commissioner of the Utah Department of Financial Institutions. The Murray Plaintiffs claimed that the seizure was wrongful inasmuch as they had contributed substantial sums of money and property in reliance upon the representations of Commissioner Borthick.

29. The dispute between the Murray Plaintiffs and the commissioner of Utah Department of Financial Institutions was resolved by a Purchase and Assumption Agreement dated November 15, 1982, by and between FSC,FSF, Elaine B. Weis, acting as commissioner of the Utah Department of Financial Institutions, the State of Utah by and through its agent Elaine B. Weis, the Industrial Loan Guaranty Corporation of Utah, a Utah corporation (hereinafter "ILGC")(the foregoing named parties to the agreement are hereinafter jointly referred to as the "Contract Defendants") and MFT Financial, MFT Mortgage and Murray Thrift. A true and accurate copy of the Purchase and Assumption Agreement (hereinafter "Purchase Agreement") is attached hereto as Exhibit D and incorporated herein by reference.

FIRST CAUSE OF ACTION

(Accounting of excluded property)

30. The Murray Plaintiffs incorporate by reference, as if fully set forth herein, the general allegations.

31. The Purchase Agreement provided that certain assets of Murray Thrift would be purchased by FSF. The assets included in the purchase were set forth on the balance sheet dated July 22, 1982, attached to the Purchase Agreement.

32. Paragraph 3 of the Purchase Agreement specifically excluded from the Purchase Agreement certain assets, to wit: an undivided thirty-nine percent (39%) ownership interest in the Bel Marin Keys, a parcel of land situated in the State of California (hereinafter "Bel Marin Property") having a value of \$4,346,000.00; an ownership interest in the Mountain View property, a parcel of land situated near Bear Lake in the State of Utah, having a value of \$580,000.00; the Leonard Lewis and Temple Street commercial loans, which were offset by liabilities also excluded from the Purchase Agreement; an ownership interest in the Irving School property, described in the Purchase Agreement as the Investment in Irving Commons, which consisted of a parcel of land situated in Salt Lake County, Utah (hereinafter "Irving Property"), having a value of \$2,295,410.00; a Chatillion, Inc., commercial loan which was offset by liabilities also excluded from the Purchase Agreement. The assets excluded from the Purchase Agreement will hereinafter be referred to as

"Excluded Assets".

33. The Purchase Agreement provided that the excluded assets would be delivered to Valley Bank as trustee and that said assets would be released to the Murray Defendants after the passage of six (6) months. The trust provisions of the Purchase Agreement were confirmed by the ILGC in a letter dated November 5, 1982, which is attached hereto as Exhibit E. The trust provisions of the Purchase Agreement were confirmed by Elaine B. Weis in paragraph B(1) of the Petition for Approval of Plan of Reorganization filed in the Third Judicial District Court in and for Salt Lake County, State of Utah, on November 10, 1982. A copy of the Petition is attached hereto as Exhibit F.

34. After seizing the excluded assets, Elaine B. Weis refused to place said assets in the trust and retained possession, control and dominion of said assets.

35. On or about December 17, 1982, only four (4) days after the Purchase Agreement was signed, Elaine B. Weis executed and delivered a trust deed describing the Bel Marin property wherein the ILGC was named as beneficiary. A copy of said Trust Deed is attached hereto as Exhibit G and incorporated herein by reference. Said Trust Deed was in direct violation of the terms and provisions of the Purchase Agreement and was in excess of the powers granted to Elaine B. Weis as commissioner of the Utah Department of Financial Institutions.

36. The Murray Plaintiffs are informed, and on the basis of such information believe, that Elaine B. Weis executed and

delivered a second trust deed describing the Bel Marin property granting another lien in favor of the ILGC. Said act was in violation of the terms and provisions of the Purchase Agreement and in excess of the powers of Elaine B. Weis as commissioner of the Utah Department of Financial Institutions.

37. The Murray Plaintiffs are informed, and on the basis of such information believe, that the Bel Marin property was sold in November, 1987, and that the proceeds were distributed to various of the Contract Defendants. Said conveyance was in direct violation of the terms and provisions of the Purchase Agreement and was in excess of the powers granted to the commissioner of the Utah Department of Financial Institutions.

38. Despite repeated demands, the Contract Defendants have failed and refused to deliver to the Murray Plaintiffs all or any portion of the excluded property or the proceeds of sale of said excluded property.

39. The Murray Plaintiffs are entitled to an accounting from the Contract Defendants as to the current status of all excluded property, all income received by the Contract Defendants from the excluded property, all liens granted or imposed against the excluded property and the reasons therefor, all proceeds of sale of the excluded property or any portion thereof and the application and disbursement of the sale proceeds.

40. In the event such accounting establishes that liens were wrongfully granted or imposed, income as been improperly retained or disbursed, that excluded property has been wrongfully sold or

that sales proceeds have been improperly retained or disbursed, the Murray Plaintiffs are entitled to such remedies as the Court deems just. The Murray Plaintiffs reserve all claims and causes of action that may be revealed by such accounting.

SECOND CAUSE OF ACTION

(Accounting of unpurchased property)

41. The Murray Plaintiffs incorporate by reference, as if fully set forth herein, the general allegations and paragraph 29 of the First Cause of Action.

42. At the time of the execution of the Purchase Agreement, the Murray Plaintiffs held ownership interest in property not included within the balance sheet of July 22, 1982, which is attached to the Purchase Agreement (hereinafter "Unpurchased Property"). Among the items of Unpurchased Property were surface and mineral rights in three (3) parcels of real property situated in Summit County, Utah; contract rights and reversionary rights with respect to the sale of property situated at 5899 South State Street, Salt Lake City, Utah; ownership interest in a parcel of land in Lemhi County, Idaho.

43. The Unpurchased Property was also seized by the commissioner of the Utah Department of Financial Institutions on July 22, 1982.

44. The Murray Plaintiffs have made repeated demands upon the Contract Defendants to return the Unpurchased Property, but said Defendants failed and refused to do so. The Murray Plaintiffs are entitled to an accounting as to the current status

of the Unpurchased property, all income generated by the unpurchased property, all liens granted or imposed against the unpurchased property and the reasons therefor, and the amounts of all proceeds of sale of the unpurchased property and the disbursement of said proceeds.

45. In the event such accounting establishes the liens were wrongfully granted or imposed, income has been improperly retained or disbursed, that the excluded property has been wrongfully sold or that sale proceeds have been improperly applied, the Murray Plaintiffs are entitled to such remedies as the Court deems just. The Murray Plaintiffs retain all claims and causes of action against the Contract Defendants as revealed by the accounting.

THIRD CAUSE OF ACTION

(Accounting of receivership profits)

46. The Murray Plaintiffs incorporate by reference, as if fully set forth herein, the general allegations and paragraph 31 of the First Cause of Action.

47. After the date of the seizure of the assets of Murray Thrift on July 22, 1982, Murray Thrift operations generated profits of approximately \$2.4 million (hereinafter "Receivership Profits"). The receivership profits were not included in the assets to be purchased pursuant to the Purchase Agreement. The Agreement involved only those assets shown on the balance sheet dated July 22, 1982.

48. The Murray Plaintiffs are entitled to an accounting of

all receivership profits.

49. In the event that such accounting establishes that the receivership profits were misappropriated or unlawfully retained or disbursed, the Murray Plaintiffs are entitled to judgment for the amounts of such profits that were misappropriated, unlawfully retained or disbursed. The Murray Plaintiffs reserve all claims and causes of actions against the Contract Defendants that may be revealed by such accounting.

FOURTH CAUSE OF ACTION

(Breach of contract)

50. The Murray Plaintiffs incorporate by reference, as if fully set forth herein, the general allegations in paragraphs 31-38 of the First Cause of Action.

51. The failure of the Contract Defendants to transfer the excluded property to the trustee and the subsequent failure and refusal of the Contract Defendants to deliver the excluded property to the Murray Plaintiffs constituted a breach of the terms and provisions of the Purchase Agreement.

52. By reason of said breach, the Contract Defendants are liable to the Murray Plaintiffs for damages in a sum to be determined at trial.

FIFTH CAUSE OF ACTION

(Federal Securities violations)

53. The Murray Plaintiffs incorporate by reference, as if fully set forth herein, the general allegations in paragraphs 31-38 of the First and Eighth cases of action.

54. The Purchase Agreement constituted the purchase and sale of securities as that term is defined in the Securities Exchange Act of 1934.

55. In connection with the purchase and sale of securities pursuant to the Purchase Agreement, the Contract Defendants obtained money or property by means of untrue statements of material facts and by omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading in the following particulars:

(a) The Contract Defendants stated to the Murray Plaintiffs that the excluded property would be transferred to a trustee to be held for a period of six (6) months to satisfy the provisions of the Utah Bulk Sales Act and thereafter the excluded assets would be returned to the Murray Plaintiffs. Such statement was false and made for the purpose of inducing the Murray Plaintiffs to enter into the Purchase Agreement. The Contract Defendants had full knowledge that the excluded property would be retained and used for the benefit of the Contract Defendants. Only four (4) days after the Contract Defendants executed the Purchase Agreement, Elaine B. Weis executed and delivered a trust deed wherein the ILGC was beneficiary (see Exhibit G).

(b) The Contracts Defendants omitted to state to the Murray Plaintiffs that the Contract Defendants intended to immediately impose liens against the excluded property in

favor of some of the Contract Defendants and to thereafter appropriate the excluded property to their own use and benefit.

(c) The Contract Defendants omitted to state to the Murray Plaintiffs that the unpurchased property which was seized prior to the Purchase Agreement would be retained by the Contract Defendants and appropriated to the use and benefit of the Contract Defendants.

(d) The Murray Plaintiffs incorporate the allegations of the Eighth cause of action.

56. By reason of the statements and omissions, the Contract Defendants and the ILGC Defendants engaged in certain transactions, practices and business conduct which operated as a fraud or deceit upon the Murray Plaintiffs. Said transactions, practices and business conduct were carried out with full knowledge on the part of the Contract Defendants and the ILGC Defendants that they were contrary to the representations previously made. The acts and omissions to act on the part of the Contract Defendants and the ILGC Defendants constituted a violation of Section 10 of the Securities Exchange Act of 1934 and rules promulgated thereunder.

57. The Murray Plaintiffs are entitled to damages in an amount to be determined at trial.

SIXTH CAUSE OF ACTION

(State securities violations)

58. The Murray Plaintiffs incorporate by reference, as if

fully set forth herein, the general allegations in paragraphs 31-38 of the First Cause of Action and paragraphs 53-57 of the Fifth Cause Action.

59. The transactions described in the Purchase Agreement were made by means of untrue statements of material fact and omissions to state material facts necessary in order to make the statements, in light of the circumstances under which they were made, not misleading.

60. The Murray Plaintiffs did not know the false statements and omissions and, in the exercise of reasonable care, could not have known.

61. By reason of said false statements and omissions Plaintiffs are entitled to judgment in a sum to be determined at trial together with interest at the rate of 12% per annum plus reasonable costs and attorneys fees incurred in the prosecution of this action.

62. By reason of the false statements and omissions, Plaintiffs are entitled to judgment in a sum three (3) times the amount of the damages to be determined by the Court together with interest, costs and attorneys fees.

SEVENTH CAUSE OF ACTION

(Civil Rights violations)

63. The Murray Plaintiffs incorporate by reference, as if fully set forth herein, the general allegations and all of the allegations of the First, Second, Third, Fourth, Fifth, Sixth and Eighth causes of action.

64. The acts and omissions to act on the part of Mirvin Borthick and Elaine Weis were made under color of state law as commissioners of the Utah State Department of Financial Institutions.

65. The acts and omissions to act on the part of Mirvin Borthick and Elaine Weis were in deprivation of the Murray Plaintiffs rights, privileges and immunities under the Constitution and laws of the United States.

66. The acts and omissions to act on the part of Mirvin Borthick and Elaine Weis constitute a violation of Plaintiffs' civil rights and Defendants Borthick and Weis are liable to Plaintiffs for damages in accordance with the provisions of the Federal Civil Rights Act, 42 U.S.C., §1983.

67. By reason of the acts and omissions to act on the part of Defendants Borthick and Weis, Plaintiffs have been damaged in a sum to be determined at trial.

EIGHTH CAUSE OF ACTION

(Breach of Contract)

68. On November 8, 1982, the Board of Trustees of the ILGC passed a resolution which authorized the participation of the ILGC in the transaction involving the reorganization and reopening of MFT. A true and correct copy of the minutes of said board meeting is attached hereto as Exhibit H.

69. A Petition for Approval of a Plan of Reorganization of the business property of MFT was filed by the commissioner of the Utah Department of Financial Institutions on November 10, 1982.

Paragraph A(4) of said Petition provided that FSF would commence business with a total capital account in excess of \$20 million. Of that sum, seventeen million was to be in net worth certificates and capital maintenance notes subscribed by the ILGC and its members. See Exhibit F.

70. On November 19, 1982, at a meeting of the ILGC, the ILGC Defendants unanimously passed the following resolution:

"Resolved, that the action of the Board of Trustees approving the participation of the ILGC in the transaction intended to accomplish the reorganization and reopening of MFT be ratified in all aspects."

A true and accurate copy of the minutes of said meeting is attached hereto as Exhibit I.

71. On November 22, 1982, the Honorable Philip R. Fishler, Third Judicial District Court, Salt Lake County, State of Utah, entered an order approving the Petition filed by the Commissioner. Paragraph 3 of said order states that the subscription of the net worth certificates and capital maintenance notes by the ILGC and its members is expressly approved. A true and correct copy of said Order is attached hereto as Exhibit J.

72. Subsequent to the resolution of the ILGC (see Exhibit I) and the court order (see Exhibit J), the ILGC Defendants refused to subscribe to the net worth certificates. The Murray Plaintiffs relied upon the resolution of the ILGC and acted to their detriment. The representation of the Contract Defendants induced the Murray Plaintiffs to enter into the Purchase Agreement.

73. The refusal of the ILGC Defendants to subscribe to the net worth certificates is contrary to the resolution passed by the ILGC, in breach of the Purchase Agreement and in direct violation of the court order and has resulted in the Murray assets being used by Elaine B. Weis and the ILGC Defendants to satisfy claims of depositors of unrelated insured financial institutions all to damage of the Murray Plaintiffs. By reason thereof, the Murray Plaintiffs are entitled to damages to be determined by the evidence at trial.

NINTH CAUSE OF ACTION

(Unjust enrichment)

74. The Murray Plaintiffs incorporate by reference, as if fully set forth herein, the general allegations and the allegations of the First, Second and Third causes of action.

75. By reasons of the acts and omissions to act on the part of the Contract Defendants, (exclusive of the State of Utah) said Defendants have been unjustly enriched at the expense and to the detriment of the Murray Plaintiffs.

76. By reason of said unjust enrichment, the Murray Plaintiffs are entitled to judgment against the Contract Defendants (exclusive of the State of Utah) in a sum to be determined at trial.

TENTH CAUSE OF ACTION

(Slander of title)

77. The Murray Plaintiffs incorporate by reference, as if fully set forth herein, the general allegations and the

allegations of the First, Second and Third causes of action.

78. The acts and omissions to act on the part of the Contract Defendants constitutes a slander of the title to Plaintiffs' property and the Murray Plaintiffs have been damaged thereby.

79. By reason of said slander of title, the Murray Plaintiffs are entitled to judgment against the Contract Defendants in a sum to be determined at trial.

ELEVENTH CAUSE OF ACTION

(Punitive Damages)

80. The Murray Plaintiffs incorporate by reference, as if fully set forth herein, the general allegations and the allegations of the First-Tenth causes of action.

81. The acts and omissions to act on the part of the Contract Defendants (exclusive of the State of Utah on tort claims) and ILGC Defendants were done maliciously with intent to injure the Murray Plaintiffs and/or with reckless disregard to the rights of the Murray Plaintiffs.

82. By reason thereof, the Murray Plaintiffs are entitled to punitive damages in a sum to be determined at trial.

GENERAL ALLEGATIONS RELATING TO THE HARRIS PLAINTIFFS

83. On or about June 1, 1984, Defendant Weis, acting in her capacity as commissioner of the Utah Department of Financial Institutions approached Harris and Charter regarding the acquisition of Continental Thrift & Loan (hereinafter "Continental") an insolvent thrift and loan in the State of Utah.

84. Pursuant to said negotiations, on or about November 27, 1984, a Purchase Agreement was signed by Harris, in his capacity as president of Charter, representatives of the Utah Department of Financial Institutions and representatives of the ILGC.

85. In November, 1984, Charter was induced by Defendant Weis to purchase \$2,400,000.00 worth of ILGC net worth certificates from ILGC in connection with Charter's acquisition of Continental Thrift & Loan.

86. Charter did purchase said net worth certificates, relying on the representations of Defendant Weis, that said net worth certificates were acceptable capital to state and federal regulators and prior applications to the Federal Reserve Bank of San Francisco by Citizens (a member of Federal Reserve System as a bank holding company under Regulation "Y") was not required to obtain Federal Reserve approval of Charter acquiring Continental.

87. After all parties had finalized the Charter-Continental transactions in late November, 1984, federal regulators refused to accept the net worth certificates as primary or secondary capital. See Exhibit K.

88. Said refusal, in part caused the collapse of Citizens, Charter and Thrift Holding.

TWELFTH CAUSE OF ACTION

(Federal Securities violations)

89. The Harris Plaintiffs incorporate by reference, as if fully set forth herein, the general allegations.

90. The net worth certificates issued by the ILGC and sold

by Weis constituted the purchase and sale of securities as that term is defined in the Securities Exchange Act of 1934.

91. In connection with the purchase and sale of securities pursuant to the purchase agreement, Weis and the ILGC obtained property by means of untrue statements of material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading in the following particulars:

(a) That ILGC had obligated, and would obligate itself to pay Charter and First Security Financial the sums stated and to perform other obligations according to the terms stated in the ILGC net worth certificates;

(b) That the securities, and specifically the dollar amounts shown on the face of the notes, were fully backed by the credit of ILGC;

(c) In the case of Charter, Weis and the ILGC represented to Gary Harris that the ILGC net worth certificates would be accepted by the federal regulators as capital assets for the purpose of determining the liquidity of Charter required by federal law and Federal Reserve regulations.

92. These representations were untrue, among other reasons, because:

(a) Neither Weis nor the ILGC directors had the ability to pay any holder of the ILGC promissory notes pursuant to the terms of the notes executed by the ILGC, nor did Weis or ILGC otherwise have the ability to otherwise perform their obligations

thereunder, because ILGC was insolvent at the time the notes were issued;

(b) Neither Weis nor the ILGC directors had any realistic means of raising the required funds on behalf of ILGC sufficient to enable ILGC to pay the notes according to their terms;

(c) Weis and the ILGC directors had been informed by the FDIC that the ILGC notes were unacceptable to the federal regulators, and would not be considered by the FDIC in determining the liquidity of any Utah thrift institution.

93. By reason of the statements and omissions, Weis and ILGC engaged in certain transactions, practices and business conduct which operated as a fraud or deceit upon the Harris Plaintiffs. Said transactions, practices and business conduct were carried out with full knowledge on the part of Weis and ILGC that they were contrary to the representations previously made. The acts and omissions to act on the part of Weis and ILGC constituted a violation of Section 10 of the Securities Exchange Act of 1934 and rules promulgated thereunder.

94. The Harris Plaintiffs are entitled to damages in an amount to be determined at trial.

THIRTEENTH CAUSE OF ACTION

(State Securities violations)

95. The Harris Plaintiffs incorporate by reference, as if fully set forth herein, the general allegations and paragraphs 90-92 of the Twelfth Cause of Action.

96. The Harris Plaintiffs did not know the false statements

and omissions and, in the exercise of reasonable care, could not have known.

97. By reason of said false statements and omissions, the Harris Plaintiffs are entitled to judgment in a sum to be determined at trial together with interest at the rate of 12% per annum plus reasonable costs and attorneys fees incurred in the prosecution of this action.

98. By reason of the false statements and omissions, the Harris Plaintiffs are entitled to judgment in a sum three (3) times the amount of the damages to be determined by the Court together with interest, costs and attorneys fees.

FOURTEENTH CAUSE OF ACTION

(Gary Harris Against Defendants Weis, Sutton,
Larsen and Throndsen for Defamation)

99. Gary S. Harris hereby incorporates all of the allegations of this complaint into this claim.

100. Harris was associated with banking industry in Northern Utah for 21 years, from 1964 to 1985, during which time he acquired a valuable statewide and regional reputation as a competent, conservative and honest banking executive. His statewide reputation within the banking industry was enhanced by his tenure as a director of the Utah Bankers' Association from 1983 to 1985.

101. Harris had a business reputation in the State of Utah as a competent banker, worthy to hold positions of public trust. He served as a chairman of the Northern Division, Utah, American

Cancer Society, and served on the Board of Directors of the Red Cross; for 30 years Harris has held leadership positions in the LDS Church, exercising stewardship over church funds, and properties.

102. Defendant Weis, on numerous occasions in September and October 1986, with no reasonable grounds for believing them to be true, made false and defamatory statements about Harris. The exact content of the statements are presently unknown to Harris, but the innuendo of the statements includes the following:

(a) That Harris had taken \$11,000,000.00 from Charter, that the bulk of the stolen funds were taken by Harris to Idaho, to build houses, and that Weis did not know Harris' whereabouts;

(b) That Harris had run Citizens Bank as his own personal, private bank, that he had gutted Citizens financially and then started the same process on Charter.

103. An ordinary listener would understand the defamatory statements to mean that Harris was dishonest and had absconded to places unknown with the funds of Charter and Citizens Bank, and could not be found by authorities.

104. Weis knew the foregoing statements were false at the time she made them, because she knew that no funds were stolen, or otherwise wrongfully taken by Harris from Citizens Bank or from Charter.

105. Weis knew, or should have known, that the demise of Citizens Bank was caused by a \$9,000,000.00 real estate trade made in March or April 1985 by a director, Darwin Larsen, who was

then acting de facto, as the chief executive officer of Citizens' Bank.

106. Moreover, Weis knew, or should have known, at the time she made the defamatory statements set forth above, that the FBI had investigated Citizens' Bank after its closure in 1985 and reported no wrongdoing by Harris.

107. In addition, Weis had a full time bank examiner from the Department of Financial Institutions of the State of Utah employed full time at Charter from approximately March, 1985 until Weis seized Charter on June 30, 1986. During the entire 16 months that her employee and representative was present at Charter, every transaction in which Harris was involved was examined in complete detail. The State examiner did not discover or report any wrongdoing by Harris.

108. The Federal Reserve Bank audited the books and records of Citizens Bankshares, and all of this subsidiaries and affiliates, including Charter Thrift and Citizens' Bank, every year during the time Harris was involved with these entities. The last Federal Reserve review during the time Harris was involved with Charter and citizens was conducted in June, 1985. At that time no defalcations were reported. Under its rules, any misconduct, defalcation, misappropriation, or self dealing must be reported. No wrongful act, or questionable transactions by Harris or members of his family were found by the Federal Reserve.

109. In spite of the facts known to Weis, she made further

false statements about Harris, announcing in October 1986 that the Department of Financial Institutions and the Federal Deposit Insurance Corporation ("FDIC") were bringing criminal charges against Harris. At the time she made these statements, Weis had no reasonable grounds for believing them to be true.

110. The ordinary listener would understand this statement to mean that Harris had engaged in dishonest or criminal conduct and that criminal charges had been brought against Harris for wrongfully taking funds from Charter or Citizens' Bank. Listeners did so understand Weis' statements.

111. On or about September 15, 1986, on Channel 5 TV in Salt Lake City, Utah, Defendant Sutton made false and defamatory statements about Harris, the exact content of which is unknown to Harris at this time, but the innuendo of which is that Harris had committed the most egregious defalcation in the history of the Department of Financial Institutions for the State of Utah. This statement was made soon after the conviction of Val Costley for embezzlement of \$5,400,000.00 from Family Bank.

112. Ordinary listeners would understand Sutton's statements to mean that Harris had embezzled more than \$5,400,000.00 from Charter Thrift and Citizens' Bank. Listeners did so understand Sutton's statements.

113. Plaintiff is informed and believes that Sutton also falsely stated that Harris had stolen \$11,000,000.00 which was the direct cause of the demise of Charter, and had used family, business, friends and shell corporations to effect his thefts.

Such statements were false in their entirety.

114. At the time he made the statements, Sutton had no reasonable grounds for believing them to be true.

115. At the time Weis and Sutton made the statements alleged herein, they knew that such statements would be republished by others, and they made the defamatory statements intending that such republications would occur.

116. The defamatory statements originated by Weis and Sutton were republished by defendants Larsen and Throndsen, who made such republications with knowledge that the statements were false.

117. Such statements proximately caused Harris special damages to his business and property, including but not limited to curtailment of credit, denial of loan applications, and demands for additional collateral, disruption of a partnership, and the creation of additional burdens if all of Harris' business dealings, all to his damage in an amount subject to proof at trial, but not less than \$7,000,000.00 as to each defendant.

118. Defendants' statements have caused Harris to be stigmatized in the banking industry and to be shunned and avoided, and have caused disruption in his family relationships, created anxiety, and emotional distress, all to Harris' damage in an amount subject to proof at trial, but in no event not less than \$8,500,000.00 as to each Defendant.

119. Weis, Sutton, Larsen and Throndsen published the foregoing defamatory statements about Harris willfully,

purposefully and maliciously. Plaintiff is therefore entitled to punitive damages to be determined at trial.

FIFTEENTH CAUSE OF ACTION

(Civil Rights violations)

120. The Harris Plaintiffs incorporate by reference, as if fully set forth herein, the general allegations and all of the allegations of the Twelfth, Thirteenth and Fourteenth causes of action.

121. The acts and omissions to act on the part of Elaine Weis and George R. Sutton were made under color of state law as commissioner of the Utah State Department of Financial Institutions.

122. The acts and omissions to act on the part of Elaine Weis and George R. Sutton were in deprivation of the Harris Plaintiffs' rights, privileges and immunities under the Constitution and laws of the United States.

123. The acts and omissions to act on the part of Elaine Weis and George R. Sutton constitute a violation of Plaintiffs' civil rights and Defendants Sutton and Weis are liable to Plaintiffs for damages in accordance with the provisions of the Federal Civil Rights Act, 42 U.S.C., §1983.

124. By reason of the acts and omissions to act on the part of Defendants Weis, and Sutton, the Harris Plaintiffs have been damaged in a sum to be determined at trial.

SIXTEENTH CAUSE OF ACTION

(Punitive Damages)

125. The Harris Plaintiffs incorporate by reference, as if fully set forth herein, the general allegations and the allegations of the Twelfth-Fifteenth causes of action.

126. The acts and omissions to act on the part of the ILGC, Weis, Sutton, Larsen and Throndsen were done maliciously with intent to injure the Harris Plaintiffs and with reckless disregard to the rights of the Harris Plaintiffs.

127. By reason thereof, the Harris Plaintiffs are entitled to punitive damages in a sum to be determined at trial.

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

(a) Pursuant to the First, Second and Third causes of action an Order and Judgment for an accounting and judgment in favor of the Murray Plaintiffs and against the Contract Defendants in an amount determined by the information obtained from such an accounting;

(b) Pursuant to the Fourth cause of action, judgment in favor of the Murray Plaintiffs and against the Contract Defendants for breach of contract in an amount to be determined at trial;

(c) Pursuant to the Fifth cause of action, judgment in favor of the Murray Plaintiffs and against the Contract Defendants and ILGC Defendants for violations of the Federal Securities Laws in an amount to be determined at trial;

(d) Pursuant to the Sixth cause of action, judgment in favor of the Murray Plaintiffs and against the Contract Defendants and

ILGC Defendants for violations of the Utah State Securities Laws in an amount to be determined at trial, and in an amount three (3) times the consideration paid for the securities, together with interest, costs and attorneys fees;

(e) Pursuant to the Seventh cause of action, judgment in favor of the Murray Plaintiffs and against the Contract Defendants for violations of the Federal Civil Rights Acts, said judgment to be in an amount to be determined at trial together with interest, costs and attorneys fees;

(f) Pursuant to the Eighth cause of action, judgment in favor of the Murray Plaintiffs and against the ILGC Defendants in an amount to be determined at trial;

(g) Pursuant to the Ninth cause of action, judgment in favor of the Murray Plaintiffs and against the Contract Defendants in an amount to be determined at trial;

(h) Pursuant to the Tenth cause of action, judgment in favor of the Murray Plaintiffs and against the Contract Defendants in an amount to be determined at trial;

(i) Pursuant to the Eleventh cause of action, judgment in favor of the Murray Plaintiffs and against the Contract Defendants and the ILGC Defendants for punitive damages in an amount to be determined at trial;

(j) Pursuant to the Twelfth cause of action, judgment in favor of the Harris Plaintiffs and against Defendants ILGC and Weis for violations of the Federal Securities Laws in an amount to be determined at trial;

(k) Pursuant to the Thirteenth cause of action, judgment in favor of the Harris Plaintiffs and against Defendants ILGC and Weis for violations of the Utah State Securities Laws in an amount to be determined at trial and judgment in a sum three (3) times the consideration paid for the securities, together with interest, costs and attorneys fees;

(l) Pursuant to the Fourteenth cause of action, judgment in favor of Gary S. Harris and against Defendants Weis, Sutton, Larsen and Thronksen for compensatory and punitive damages in a sum to be determined at trial;

(m) Pursuant to the Fifteenth cause of action, judgment in favor of the Harris Plaintiffs and against Defendants Weis and Sutton in an amount to be determined at trial;

(n) Pursuant to the Sixteenth cause of action, judgment in favor of the Harris Plaintiffs and against Defendants Weis, Sutton, Larsen, Thronksen and ILGC for punitive damages in a sum to be determined at trial;

(o) Interest on all of the above judgments, costs of court, attorneys fees and such other and further relief as the Court deems just.

DATED this 23 day of May, 1988.

MCDONALD & BULLEN BY:



Robert M. McDonald
Attorney for Plaintiffs

Frank A. Nelson
FRANK A. NELSON

Jim P. Hansen
JIM P. HANSEN

Rodney F. Gordon
RODNEY F. GORDON

ACKNOWLEDGMENT

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

On the _____ day of May, 1988, personally appeared before me Frank A. Nelson, Jr., Jim P. Hansen and Rodney F. Gordon who stated to me that they have read the factual allegations contained in the foregoing Complaint under the headings Jurisdiction, Venue, Parties, General Allegations Relating to Murray Plaintiffs, and the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh causes of action and said factual allegations are true and correct to the best of their information, knowledge and belief and they signed the foregoing Verified Third Amended Complaint in my presence.

SUBSCRIBED AND SWORN TO before me this 23rd day of May, 1988.

Arnette E. Bjork
NOTARY PUBLIC
Residing at Salt Lake County, Utah

My Commission Expires:

12/21/91

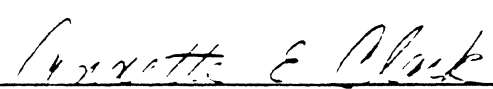

GARY S. HARRIS

ACKNOWLEDGMENT

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

On the _____ day of May, 1988, personally appeared before me Gary S. Harris who stated to me that he has read the factual allegations contained in the General Allegations Relating to the Harris Plaintiffs and the Twelfth, Thirteenth, Fourteenth, Fifteenth and Sixteenth causes of action and said factual allegations are true and correct to the best of his information, knowledge and belief and he signed the Verified Third Amended Complaint in my presence.

SUBSCRIBED AND SWORN TO before me this 23RD day of May, 1988.



NOTARY PUBLIC
Residing at Salt Lake County, Utah

My Commission Expires:

12/31/90

SEP 30 1988

MARKUS B. ZIMMER, CLERK

BY
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

GARY S. HARRIS, et al.,)

Plaintiffs,)

vs.)

ELAINE B. WEIS, et al.,)

Defendants.)

RULING AND ORDER

Case No. 87-C-0041-S

This matter comes before the court on plaintiffs' and defendants' objections to the magistrate's report and recommendation advising the court to 1) dismiss plaintiffs' second amended complaint, and 2) grant Rule 11 sanctions against the plaintiffs in the amount of \$100 to each answering defendant. Also pending before this court are defendants' motion to 1) strike plaintiffs' objections to the report and recommendation, 2) strike plaintiffs' 3rd amended complaint, and 3) grant additional Rule 11 sanctions.

Before addressing the objections, some background may be helpful. On November 25, 1987, this court adopted the prior reports and recommendations of the magistrate, dated July 17, 1987, July 23, 1987 and August 10, 1987, granting, in part, defendants' motions to dismiss. Resolution of these reports and recommendations was significantly delayed by conflicts between plaintiffs and their counsel. The court, however, in an abundance of caution,

allowed plaintiffs until December 21, 1987 to amend the complaint to cure defects noted by the magistrate, stating, "All claims recommended for dismissal, which cannot be cured by filing an amended complaint, will be dismissed with prejudice." As indicated by the minute entry of November 20, 1987, and the ruling of November 25, 1987, the court took particular caution to insure plaintiffs were properly notified of its decision.

On December 21, 1987, Robert M. McDonald, on plaintiffs' behalf, requested until December 31, 1987 to file a second amended complaint. The court granted the request. On January 4, 1988, Mr. McDonald again moved for an extension of time until January 15, 1988. The court again accommodated. The second amended complaint was filed January 15, 1988 by Richard J. Leedy, who has been replaced by Mr. McDonald as plaintiffs' counsel. Defendants were granted extensions of time and were allowed to file briefs in excess of page limitations to support their motions to dismiss the second amended complaint. Because the second amended complaint did not cure "glaring errors" in the first amended complaint, which the court had brought to plaintiffs' attention, the magistrate recommends dismissal of the second amended complaint and Rule 11 sanctions against plaintiffs in the amount of \$100 per answering defendant.

On May 20, 1988, defendants Johnson and Jarman objected to the report and recommendation for two reasons. First, it did not address all of the grounds for dismissal raised by Johnson and Jarman, including

- (1) There is no private right of action under Section 17(a) of the 1933 Securities Act;
- (2) Plaintiffs' civil rights claims do not allege a constitutional violation and do not allege conspiracy with the requisite particularity;
- (3) Plaintiffs' fraud claims fail to satisfy the particularity requirements of Rule 9(b) of the Federal Rules of Civil Procedure; and
- (4) Plaintiffs' RICO and RICE claims fail to adequately allege the requisite elements of those alleged violations.

Second, the amount awarded under Rule 11 (\$100 per defendant) was allegedly insufficient to compensate for their fees. They request a sanction of \$5,080.

On May 23, 1988, plaintiffs, through new counsel Robert M. McDonald, objected to dismissal of the second amended complaint and sanctions for the following reasons:

(a) [T]he basis giving rise to the recommendation arose by reason of the negligence of prior counsel who drafted the Second Amended Complaint and failed to correct the defects specifically enumerated by the magistrate; (b) a litigant with a meritorious (sic) claim should not be penalized by the inability of counsel to properly state his claim and comply with simple procedural rules; (c) the Magistrate's recommendation is moot inasmuch as Plaintiffs have filed a Third Amended Complaint which they are permitted to do without leave of Court pursuant to Rule 15, F.R.C.P. inasmuch as no

responsive pleading has been filed; (c) the Third Amended Complaint (a copy of which is attached) and the Memorandum filed with this objection demonstrates that Plaintiffs have meritorious (sic) claims and that the problems leading to the Magistrate's recommendation have been corrected and are not dispositive of Plaintiffs' claims.

On May 26, 1988, defendants Dobson and Van Winkle objected to the report and recommendation asserting that the Rule 11 sanctions should be increased to include all reasonable fees and costs incurred after the filing of the defective second amended complaint. They request \$3,284.00.

On June 8, 1988, defendants Johnson and Jarman moved 1) to strike plaintiffs' objection to the report and recommendation (together with the 3rd amended complaint), and 2) for further Rule 11 sanctions. They assert the following:

1. With regard to plaintiffs' Objection to Report & Recommendation of the United States Magistrate, plaintiffs chose not to offer any opposition whatsoever to Johnson's and Jarman's Motion to Dismiss the Second Amended Complaint prior to the Magistrate's determination of that motion despite every opportunity to do so. The objections they now raise, having never been raised before the magistrate, should not be considered by the Court.

2. With regard to plaintiffs' Third Amended Complaint, plaintiffs have already used their one free amendment under Rule 15 of the Federal Rules of Civil Procedure and therefore have no right to file the Third Amended Complaint absent leave of the Court. Further, plaintiffs' claims in this action, as stated in the Second Amended Complaint, have essentially been dismissed with prejudice and therefore plaintiffs have no right to amend their complaint without leave of the Court on that ground as well.

3. Plaintiffs, and particularly their counsel, Robert M. McDonald, have filed their Third Amended Complaint and Objection to Report & Recommendation of the United States Magistrate with no basis in fact or in law for filing those pleadings. Therefore, under Rule 11 of the Federal Rules of Civil Procedure, defendants Johnson and Jarman should be awarded their reasonable attorneys' fees incurred in bringing this motion.

On June 10, 1988, defendants Dobson and Van Winkle likewise filed a motion to strike. On that same day, state defendants' also joined in Johnson's and Jarman's motion to strike.

Considering the case history and the failure of plaintiffs to file a motion for leave of court to file a third amended complaint, the third amended complaint is not properly before the court and will not be considered. The court rejects plaintiffs' contention that leave is not required because no responsive pleadings were filed to the second amended complaint. Plaintiffs' Rule 15 opportunity to amend without leave was clearly used when the first amended complaint was filed on February 12, 1987 without defendants' consent and without leave of court. The court stretched the bounds of propriety first by allowing a second amended complaint after resolution of defendants' motions to dismiss was significantly delayed due to failure of the plaintiffs to timely address the magistrate's reports and recommendations, and second by granting two subsequent motions to extend time to file an amended complaint. In this situation, the contention that a third amended complaint,

submitted May 23, 1988, some five months after the court's final extended deadline, is allowed without leave of court and without a proper motion is frivolous at best. The court grants Rule 11 sanctions in the amount of the reasonable expenses incurred in moving to strike the third amended complaint, the amount of which will be determined upon further hearing. Defendants' motions to strike the third amended complaint are granted.

The court turns its attention to the second amended complaint and whether it cures the defective claims the magistrate previously recommended dismissing. If it does not, then, pursuant to the court's ruling of November 25, 1987, these claims will be dismissed with prejudice. Upon review of both the first amended complaint and the second, the court concludes that the defects were not curable or were not cured. The magistrate's report and recommendation of July 17, 1987, recommended dismissal of the claims of plaintiffs Harris, Hansen, Nelson, Gordon, and MFT Mortgage Company, found in the first, second, third, fifth, sixth, seventh, eighth (as to its derivative claims), and eleventh claims of the first amended complaint. The July 17th report and recommendation also recommended dismissal of the fourth claim for failure to state a claim, in that no private right of action exists under § 17 of the Securities Act of 1933. The eighth (as to claims for direct injury), ninth, and tenth claims were not recommended for dismissal.

sal. The eighth claim was asserted against "all defendants", the ninth against the State of Utah only, and tenth against defendants Weis, Sutton, Larsen, and Throndsen.

The court notes that the numbering of claims in the second amended complaint corresponds to the numbering of claims in the first, with one exception. The ninth claim in the first amended complaint is abandoned in the second and therefore claim ten in the first amended complaint corresponds to claim nine in the second. The only claim which follows the ninth claim in the second amended complaint is not numbered but corresponds to claim eleven of the first amended complaint.

The magistrate's report and recommendation of July 23, 1987 recommended dismissal of all claims against the State of Utah and its officers in their official capacity.

The magistrate's report and recommendation of August 10, 1987 recommended dismissal of the remaining claims found in the eighth claim (as to claims for direct injury) against the "non-state defendants" for failure to state a claim, i.e., failure to plead the elements of the claim with the requisite particularity. It also recommended dismissal of all claims of MFT Mortgage Company, since the latter could not assert derivative claims (not being a shareholder of any party) and asserted no claims for injury directly to itself. The issue of whether the eighth claim (as to

claims for direct injury) states a claim against the state defendants in their individual capacities remains open.

The claims of the first amended complaint which were not susceptible to curative amendment by plaintiffs Hansen, Nelson, Gordon, and MFT Mortgage Company and which have been recommended for dismissal under prior reports and recommendations adopted by this court are the first, second, third, fourth, fifth, sixth, seventh, eighth (as to derivative claims), ninth, and eleventh claims. The claims of the first amended complaint which were not susceptible to curative amendment by plaintiff Harris are the fourth and ninth claims. The claims susceptible to curative amendment by plaintiff Harris are the derivative claims found within the first, second, third, fifth, sixth, seventh, eighth and eleventh claims, but only upon condition that plaintiffs 1) make demand upon Citizens Bankshares, Thrift Holding Company, and Charter Thrift & Loan to bring a derivative action on behalf of Thrift Holding Company and Charter Thrift & Loan; 2) obtain permission of the state court supervising the receivership of Thrift Holding Company and Charter Thrift & Loan to bring suit on their behalf or against the receiver; 3) verify the second amended complaint; and 4) join Citizens Bankshares, Thrift Holding Company, and Charter Thrift & Loan as parties. The eighth claim (as to direct injury claims) remains in place against the state defendants

in their individual capacities; against the non-state defendants it is recommended for dismissal absent amendment sufficient to cure its pleading deficiencies. The remaining claim not recommended for dismissal is the tenth claim, which is plaintiff Harris' claim for defamation against defendants Weis, Sutton, Larsen, and Throndsen.

The state defendants are: Elaine B. Weis, George R. Sutton, State of Utah, Darwin M. Larsen, R. Scott Baker, Mary Amidan, and Robert S. Gale.

The non-state defendants are Stanley A. Anderson, Robert B. Beckstead, Mirvin D. Borthick, Dean G. Christensen, Richard A. Christenson, W. Harold Dobson, John A. Firmage, Jr., Larry E. Grant, Larry R. Hendricks, Robert L. Howe, Carl A. Hulbert, Edward M. Jamison, John C. Jarman, Russell B. Jex, Charles E. Johnson, Irene Jorgensen, Fred S. Kohlruss, Ronald C. Lease, T. Kay Lyman, Paul A. Miller, Richard D. Paul, Richard M. Robinson, Ed H. Throndsen, Richard A. Van Winkle, Dr. Terry Warner, First Security Corporation, a corporation, First Security Financial, and Does 1 through 40. The second amended complaint adds Thrift Holding Company and Charter Thrift and Loan.

Plaintiffs do not contend that the second amended complaint cures the defects in the first. To the contrary, plaintiffs' counsel "acknowledges that the Second Amended Complaint is deficient in many respects and unresponsive to the directives of the

magistrate." (Plaintiffs' Memorandum in Support of Objection to Magistrate's Report and Recommendation, March 23, 1988, p.4). Plaintiffs' counsel relies instead on a subsequent submission on May 23, 1988 of a third amended complaint which he asserts he can file without leave of court despite 1) the court's ruling of November 25, 1987 allowing plaintiffs until December 21, 1987 to file an amended complaint and requiring that plaintiffs be notified of the court's decision and 2) plaintiffs' counsel's own motions for extension of time to file the second amended complaint. The court therefore concludes that the second amended complaint was not well grounded in fact or warranted by existing law. Accordingly, the court grants defendants' motion for Rule 11 sanctions against the plaintiffs in the amount of the reasonable expenses incurred because of the filing of the defective second amended complaint, including a reasonable attorney's fee, to be determined upon further hearing.

Upon the basis of the foregoing,

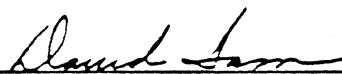
IT IS HEREBY ORDERED that the first, second, third, fourth, fifth, sixth, seventh, eighth (as to derivative claims and as to direct claims against the non-state defendants), ninth, and eleventh claims of the amended complaint, together with the corresponding claims of the second amended complaint, are dismissed on the merits and with prejudice.

IT IS FURTHER ORDERED that all claims against the State of Utah and its officers in their official capacities are dismissed on the merits and with prejudice.

This order does not dismiss the eighth claim of the amended complaint as replaced by the eighth claim of the second amended complaint, insofar as it asserts a claim against the state defendants in their individual capacities, nor does it dismiss the tenth claim of the amended complaint as replaced by the ninth claim of the second amended complaint. Aside from these exceptions, all claims and this entire action are hereby dismissed on the merits and with prejudice as to all defendants. Defendants are entitled to their costs.

DATED this 30th day of September, 1988.

BY THE COURT:



DAVID SAM
U.S. DISTRICT JUDGE

cc: attys 10/4/88:dp
Roy G. Haslam, Esq.
Sharon Green, Esq.
James R. Holbrook, Esq.
Gary F. Bendinger, Esq.
Peter W. Billings, Jr., Esq.
Jack C. Helgesen, Esq.
R. Stephen Marshall, Esq.
LeRoy S. Axland, Esq.
Kent H. Murdock, Esq.
Carman E. Kipp, Esq.
Stephen ~~11~~ Sorenson, AAG
Ray R. Christensen, Esq.
Gayle F. McKeachnie, Esq.
J. Michael Wilkins, Esq.
Allen M. Swan, Esq.

Geoffrey W. Mangum, Esq.
LeRoy S. Axland, Esq.

APR 21 1989

MARKUS B. ZIMMER, CLERK

BY [Signature]
DEPUTY CLERK

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DISTRICT

GARY S. HARRIS, et al.,)

Plaintiff(s),)

vs.)

R U L I N G

ELAINE B. WEIS, et al.,)

Defendant(s).)

Case No. 87-C-0041-S

On March 31, 1989, several defendants moved for entry of judgment dismissing all claims with prejudice in the above entitled matter. The time for responding to defendants' motion having now expired without any opposition having been filed, and it appearing to the court that all claims in the case have now been dismissed, defendants' motion is granted. The court requests the movants to coordinate with other defense counsel to prepare an appropriate final order and judgment for the court's signature and to circulate the same for approval as to form pursuant to Rule 13(e) of the Civil Rules of Practice.

DATED this 21st day of April, 1989.

4/25/89:dp
Copies mailed to counsel
listed on attached page

BY THE COURT:

[Signature]
DAVID SAM
U.S. DISTRICT JUDGE

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JUN 6 1989

BY MARKUS B. ZIMMER CLERK
DEPUTY CLERK

MAY 19 1989
OFFICE OF JUDGE
DAVID SAM

JUN 09 1989
3 READER

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ATTEST: A TRUE COPY
MARKUS B. ZIMMER, CLERK
UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

BY Sorenson
DEPUTY CLERK 6/11/89

Attorneys for Defendants Elaine B. Weis, George Sutton,
R. Scott Baker, Mary Amidan, Robert S. Gale and the
State of Utah

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

GARY S. HARRIS, et al.,)	
)	
Plaintiffs,	)	JUDGMENT OF DISMISSAL
	)	WITH PREJUDICE
vs.)	
)	
ELAINE B. WEIS, et al.,	)	Civil No. C 87-0041S
)	
Defendants.)	

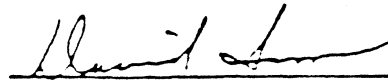
The court, having entered its Order of Entry of Judgment
on _____, 1989,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant
to Rule 54(b) Federal Rules of Civil Procedure, that all claims

237

in the Amended Complaint, together with the corresponding claims of the Second Amended Complaint are dismissed with prejudice.

DATED this 5th day of June, 1989.



Honorable Davis Sam
U. S. District Court Judge

Copies mailed to 6/6/89:dp
See attached list

FILED
UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
JUN 6 10 50 AM '89
HARRISON A. JEFFREY
CLERK
BY: MARY J. GILFILLAN

CERTIFICATE OF SERVICE

This is to certify that on the 18th day of ~~March~~^{May}, 1989, a true and correct copy of the foregoing ORDER OF ENTRY OF JUDGMENT was mailed, postage prepaid, to the following:

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FILED IN CLERK'S OFFICE
Salt Lake City, Utah

NOV 22 1982

W. S. [Signature]
By [Signature] Deputy Clerk

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

In the Matter of the Possession	)	FINDINGS OF FACT, CONCLUSIONS
by the Banking Commissioner of	)	OF LAW AND ORDER
Murray First Thrift and Loan, a)	
Utah corporation	)	Civil No. C82-5951
_____)	

The petition of the Commissioner of Financial Institutions for approval of the plan for the rehabilitation and reorganization of the business and property of Murray First Thrift and Loan Co. came on for hearing before the court on Monday, November 15, 1982 at 10:00 a.m. pursuant to notice as prescribed by the court in its order of November 7, 1982. The Department of Financial Institutions was represented by its counsel, Peter W. Billings and Albert J. Colton, the owners of Murray First Thrift and Loan Co., MFT Financial, Inc. by Douglas J. Parry and Jonathan A. Ruga, the Industrial Loan Guaranty Corporation by Herschel J. Saperstein and Philip C. Pugsley, First Security Corporation by Don B. Allen, Utah Pacific by Dennis R. Morrill and claimants Ford Motor Credit Co. by Stephen Roth, Glen R. Groo and Dean Christensen by Clark W. Sessions and Jim Telford by Joseph J. Palmer. The court having heard the evidence of Commissioner Elaine B. Weis and Richard A.

Van Winkle and the statements and stipulations of counsel, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Murray First Thrift and Loan Co. is an industrial loan corporation organized and existing under the provisions of Chapter 8 of Title 7, Utah Code Annotated and is an institution subject to the supervision and jurisdiction of the Department of Financial Institutions as provided in Section 7-1-501 (6), Utah Code Annotated as amended by Chapter 16, Laws of Utah, 1981.

2. On July 22, 1982 the Commissioner of Financial Institutions, pursuant to Section 7-2-1, Utah Code Annotated and an order of this court of the same date, took possession of the business and property of Murray First Thrift and Loan Co. as provided by law. The objections of the institution filed under Section 7-2-3 were dismissed with prejudice by order of the court dated August 23, 1982 and a subsequent motion to set aside said dismissal was denied by order of the court dated October 23, 1982.

3. On November 7, 1982 the Commissioner filed a petition for approval of a plan for the reorganization and rehabilitation of the business and property of Murray First Thrift and Loan Co. pursuant to Section 7-2-12 (1) and Section 7-2-18, Utah Code Annotated, as amended by Chapter 16, Laws of Utah, 1981. The court, as provided by said sections, set the matter for hearing on November 7, 1982 at 10:00 a.m. with notice as specified in its order of November 7, 1982. Proof of publication and service as provided by said order was duly filed.

4. The court called for any objections to the plan to be presented and the only objections submitted were on behalf of Ford Motor Credit Corp., James Telford, Glen F. Groo and Dean Christensen. Those objections were subsequently withdrawn, subject to acceptance of the First Security Corporation proposal, on stipulation of counsel entered into the record. No other objections were presented or filed.

5. The plan as presented by the Commissioner, included two proposals, one by First Security Corporation on behalf of a new subsidiary to be known as FS Financial and an alternative by Utah American Pacific Corporation. Basically both plans provided for the acquisition of the assets of Murray First Thrift and Loan Co. appropriate for a depository institution and the assumption of its deposit and debenture liabilities and those other liabilities incurred in the ordinary course of business of a thrift institution. The proposal of First Security Corporation also requires the implementation of various agreements between FS Financial and the Industrial Loan Guaranty Corporation and/or the owners of Murray First Thrift and Loan Co. and between the Industrial Loan Guaranty Corporation and the owners of Murray First Thrift and Loan Co., all as included in the petition filed by the Commissioner.

6. Assets not acquired by the proposed purchaser will be held by the Commissioner to meet and discharge liabilities not assumed as may be approved by the court as provided in Chapter 2 of Title 7. The assets retained by the Commissioner under the First Security Corporation proposal are adequate for the purpose of meeting such claims. Those claims already filed are in dispute

either as to liability or amount, or both. Other claims may be filed within the statutory period, but review of the records of Murray First Thrift and Loan Co. and the publicity given to these proceedings make such possibility unlikely. The Industrial Loan Guaranty Corporation has agreed to make contributions to an Asset Preservation Fund to be established in connection with the administration of said assets. The contributions to be made to that Fund by the Industrial Loan Guaranty Corporation have been expressly approved by the Commissioner and are found to be necessary and appropriate.

7. FS Financial proposes to commence business with a total capital account in excess of \$20 million, consisting of \$875,000 capital stock and \$375,000 surplus, paid in cash by First Security Corporation, with the balance in subordinated debentures of Murray First Thrift and Loan Co. assumed by FS Financial, the subordinated debentures of MFT Financial, Inc. voluntarily assumed by FS Financial and \$17 million in net worth certificates and capital maintenance notes subscribed by the Industrial Loan Guaranty Corporation and its members. In addition, the ILGC is providing assistance of \$2 million in cash and contingent payments of up to an additional \$3 million to cover potential losses on assets acquired by FS Financial. The contributions and assistance provided by the Industrial Loan Guaranty Corporation were authorized by Section 7-8a-13 (6) and Section 7-2-18, Utah Code Annotated, have been expressly approved by the Commissioner of Financial Institutions and are hereby found to be necessary and appropriate.

8. FS Financial has offered to exchange its subordinated debentures for those subordinated debentures of MFT Financial, Inc. sold to the general public in the approximate amount of \$1,012,000. No assets of Murray First Thrift and Loan Co. are being acquired in consideration of such assumption. The Department of Financial Institutions has agreed to recognize such debentures as additional capital for the purposes of Section 7-8-5, which the court finds is appropriate under the circumstances. The court further finds that the net worth certificates and capital maintenance notes to be subscribed by the Industrial Loan Guaranty Corporation and its members are fully authorized by law and the regulations of the Department of Financial Institutions and that the subscription of the net worth certificates and capital maintenance notes by the Industrial Loan Guaranty Corporation and its members has been expressly approved by the Commissioner and that the subscription of the net worth certificates and capital maintenance notes by the Industrial Loan Guaranty Corporation and its members is necessary and appropriate.

9. The Commissioner recommended the approval of the proposal submitted by First Security Corporation, but if the acquisition by First Security Corporation and its subsidiary FS Financial be not approved by the Board of Governors of the Federal Reserve System as required by the provisions of the Bank Holding Company Act, the Commissioner be authorized to accept the American Pacific plan, subject to modification by agreement between the Commissioner and American Pacific to meet the requirements of Chapter 2 and Chapter 8 of Title 7. Ruling on the alternative

proposal of American Pacific is reserved pending action by the Board of Governors of the Federal Reserve System on the First Security Corporation proposal.

10. First Security Corporation is the largest bank holding company in the state of Utah with assets in excess of \$4 billion and a net worth as of September 30, 1982 in excess of \$300 million. It operates as subsidiaries banks in the states of Utah, Idaho and Wyoming and conducts financially related businesses through its other subsidiaries. The recommendation of the Commissioner was based on the financial strength of First Security Corporation, its experience in the financial services industry and the confidence of the general public in its operations. In addition, the proposal of First Security Corporation to dispose of the claims of Ford Motor Credit Corp. as revised on the record was accepted by Ford Motor Credit Corp. and Utah American Pacific Corporation was not willing to meet that proposal.

11. The proposal of First Security Corporation provides that FS Financial will assume payment for the professional fees (legal, accounting and consulting) of the Commissioner, relating to the possession by the Commissioner of the business and property of Murray First Thrift and Loan Co. on July 22, 1982 and subsequent events, as allowed and approved by the court to a maximum amount of \$200,000, the application of said amount to be made in accordance with Section 7-2-14. The court finds the provisions for compensation of counsel, accountants and consultants heretofore made by the Commissioner as provided in Section 7-2-14 and approved by the court in its order of August 12,

1982 to be reasonable and that the accounting for such fees and expenses up to October 31, 1982 as heretofor submitted by the Commissioner should be approved for payment as provided in Section 7-2-14.

12. The only alternative to approval of either of the proposals as submitted by the Commissioner is liquidation of the assets of Murray First Thrift and Loan Co. and payment of claims as provided in Chapter 2 of Title 7, which procedure will be adverse to the best interests of the depositors and other creditors of Murray First Thrift and Loan Co.

Based on the foregoing findings of fact the court enters the following conclusions of law:

1. The approval of the proposal submitted by First Security Corporation, as revised on November 15, 1982 to incorporate the matters referred to in the letter from Murray First Thrift and Loan Co. and MFT Financial to First Security Corporation dated November 5, 1982 and included in the petition filed by the Commissioner, is in the best interests of the depositors and other creditors of Murray First Thrift and Loan Co.

2. The plan as submitted by the Commissioner for acceptance of the proposal of First Security Corporation, and the procedure for handling the claims not assumed by First Security Corporation as set forth in Part B of the petition of the Commissioner and the stipulations of counsel is not arbitrary, capricious, fraudulent or contrary to law and is in the best interest of depositors and other creditors of Murray First Thrift and Loan Co.

3. Subject to the approval of the acquisition of the assets and assumption of liabilities of Murray First Thrift and Loan Co. by First Security Corporation by the Board of Governors of the Federal Reserve System as required by Section 4(c)(8) of the Bank Holding Company Act of 1956, all objections to the actions of the Commissioner with respect to Murray First Thrift and Loan Co. from and after July 22, 1982 should be dismissed with prejudice.

Accordingly, it is hereby ordered, adjudged and decreed:

1. That the purchase and assumption agreement submitted by First Security Corporation, as revised on November 15, 1982 to incorporate the matters referred to in the letter from Murray First Thrift and Loan Co. and MFT Financial to First Security Corporation dated November 5, 1982 and included in the petition filed by the Commissioner, be and it is hereby approved and the Commissioner is authorized to execute the same and carry out its provisions.

2. The plan for the handling of claims against the assets of Murray First Thrift and Loan Co. as set forth in Part B of the petition of the Commissioner, the establishment of the Asset Preservation Fund as described in the letter from Murray First Thrift and Loan Co. and MFT Financial to the Industrial Loan Guaranty Corporation dated November 5, 1982 and included in the petition filed by the Commissioner, and the procedures for the handling of the claims of Ford Motor Credit Corp., James Telford, Leonard J. Lewis, Glen F. Groo and Dean Christensen as stipulated on the record by all counsel concerned, and each of them, are hereby approved. In implementing Part B of the petition, the Commissioner

may, subject to the approval of the court as required by Section 7-2-12 (2), take such action as may be necessary or appropriate to develop or protect the undivided 39% interest of Murray First Thrift and Loan Co. in Bel Marin Keys, including but not limited to granting a security interest therein to provide funds for such purposes, without limitation as to amount.

3. That the contributions to be made by the Industrial Loan Guaranty Corporation to the Asset Preservation Fund be and the same are hereby expressly approved. The contributions and assistance provided by the Industrial Loan Guaranty Corporation hereinabove referred to in Paragraph 7 of the court's Findings of Fact be and the same are hereby expressly approved. The subscription of the net worth certificates and capital maintenance notes by the Industrial Loan Guaranty Corporation and its members, hereinabove referred to in Paragraph 8 of the court's Findings of Fact, be and the same is hereby expressly approved. The execution and delivery of the promissory note of the Industrial Loan Guaranty Corporation to FS Financial pursuant to Paragraph 9(c) of the Purchase and Assumption Agreement of First Security Corporation be and the same is hereby expressly approved. That all undertakings, payments, commitments and obligations of the Industrial Loan Guaranty Corporation under, pursuant to or contemplated by the Purchase and Assumption Agreement of First Security Corporation and by both letters dated November 5, 1982 above referred to, be and the same are hereby expressly approved.

4. Subject to the approval of the acquisition by First Security Corporation by the Board of Governors of the Federal Reserve System, all objections to the actions of the Commissioner

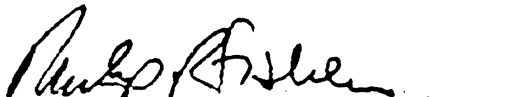
with respect to Murray First Thrift and Loan Co. from and after July 22, 1982 are hereby dismissed with prejudice.

5. The payment of the expenses of administration of the Commissioner to and including October 31, 1982 as heretofor prayed is approved and the Commissioner is directed to pay the same as provided in Section 7-2-14.

6. That upon consummation of the purchase and assumption agreement of First Security Corporation the Commissioner is directed to prepare and file with the court for approval an accounting for the business and property of Murray First Thrift and Loan Co. to such date, including payment of the expenses of administration since October 31, 1982.

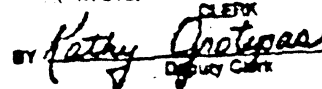
DATED this 22^d day of November, 1982.

BY THE COURT



Philip R. Fishler
District Judge

Approved as to Form.


Peter W. Billings

TEST
W. STERLING EVANS
CLERK
BY 
Deputy Clerk


Don B. Allen


Douglas J. Parry

Herschel J. Saperstein
Herschel J. Saperstein

Clark W. Sessions
Clark W. Sessions

Stephen Roth
Stephen Roth

Joseph J. Palmer 11/24/82
Joseph J. Palmer

STATE OF UTAH)
COUNTY OF SALT LAKE) SO

I, THE UNDERSIGNED, CLERK OF THE DISTRICT COURT OF SALT LAKE COUNTY, UTAH, DO HEREBY CERTIFY THAT THE ANNEXED AND FOREGOING IS A TRUE AND FULL COPY OF AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH CLERK.

WITNESS MY HAND AND SEAL OF SAID COURT THIS 28 DAY OF August 19 87

M. DIXON LINDLEY, CLERK

BY [Signature] DEPUTY

BERMAN & ANDERSON
Trustee of Irving Financial
Corporation and Attorney
for Trustee
50 South Main Street, Suite 1250
Salt Lake City, Utah 84101
Telephone: (801) 323-2200

FILED IN CLERK'S
Salt Lake City.

JUL 26 1984

H. Dixon Hindley, Clerk
By R. G. G. G. Di

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

IN THE MATTER OF THE : ORDER
POSSESSION BY THE BANKING :
COMMISSIONER OF MURRAY : Civil No. 882-5951
FIRST THRIFT AND LOAN, a :
Utah corporation. : (Judge Philip R. Fishler)

The Petition of the Trustee of Irving Financial Corporation and his attorneys seeking authorization for Robert L. Stolebarger as Depository under that certain Agreement heretofore approved by the Court on the 27th day of March, 1984, to pay to the Commissioner of Financial Institutions for the State of Utah, in her capacity of Custodian of the assets of Murray First Thrift and Loan, a pro-rata share equaling thirty-nine percent (39%) of those certain proceeds received under said Agreement to date, which pro-rata share equals ninety-seven thousand five hundred dollars (\$97,500.00), plus interest earned thereon, and authorization for the Commissioner to pay out of said proceeds

those certain administrative expenses incurred by the Trustee in connection with his efforts to enhance, preserve and develop the real property that is the subject of said Agreement, which administrative expenses are payable in the amount of thirty-one thousand sixty-two dollars and eleven cents (\$31,062.11), came on for hearing before the Court on Wednesday, July 25, 1984, at the hour of 7:45 a.m. pursuant to notice. The Trustee of Irving Financial Corporation was represented by its counsel, D. Frank Wilkins, Robert L. Stolebarger and Donovan C. Snyder; the Department of Financial Institutions for the State of Utah was represented by its counsel, Bryce H. Pettey, Assistant Attorney General for the State of Utah; the principals of Murray First Thrift and Loan, Jim P. Hansen, Frank A. Nelson, Jr. and Rodney F. Gordon, were represented by their counsel, James N. Barber and Richard Cahoon; and Glen R. Groo and Dean Christensen were represented by their counsel, Clark W. Sessions. The Court having reviewed the Petition, having noted and reviewed objections to said Petition, having heard the statements and representations of counsel, having noted the subsequent withdrawal of all of said objections, and having noted no other objections on file or presented at said hearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. ~~That the Commissioner of Financial Institutions for the State of Utah be appointed to serve in the capacity of Trustee of the assets of Murray First Thrift and Loan and that said appointment be deemed to be in compliance with this Court's prior Order entered on the ____ day of November, 1982.~~

2. That Robert L. Stolebarger, as Depository under

that certain Agreement heretofore approved by the Court on the 27th day of March, 1984, is authorized to pay over to the Commissioner of Financial Institutions for the State of Utah, in her capacity of Trustee and Custodian of the assets of Murray First Thrift and Loan, a pro-rata share equaling thirty-nine percent (39%) of certain proceeds received under said Agreement to date, which pro-rata share equals ninety-seven thousand five hundred dollars (\$97,500.00), plus interest earned thereon; and

3. That the Commissioner of Financial Institutions for the State of Utah, in her capacity of Trustee and Custodian of the assets of Murray First Thrift and Loan, be authorized to pay out of those certain proceeds, above-referenced, certain administrative expenses incurred by the Trustee of Irving Financial Corporation identified in the Petition, which administrative expenses are payable in the amount of thirty-one thousand sixty-two dollars and 11 cents (\$31,062.11).

DATED this 26th day of July, 1984.

BY THE COURT:

Philip R. Fishler
PHILIP R. FISHLER, District Judge

Approved as to form:

D. Frank Wilkins
D. FRANK WILKINS

ATTEST
H. DIXON HINDLEY
CLERK

By K. Goleman
Deputy Clerk

Robert L. Stolebarger
ROBERT L. STOLEBARGER

Bryce H. Petty
BRYCE H. PETTEY

STATE OF UTAH)
COUNTY OF SALT LAKE) 96

I, THE UNDERSIGNED, CLERK OF THE DISTRICT COURT OF SALT LAKE COUNTY, UTAH, DO HEREBY CERTIFY THAT THE ANNEXED AND FOREGOING IS A TRUE AND FULL COPY OF AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH CLERK.

WITNESS MY HAND AND SEAL OF SAID COURT THIS 14TH DAY OF April 19 87

H. DIXON HINDLEY, CLERK
BY Mark Fairclough DEPUTY

James N. Barber
JAMES N. BARBER
Richard Cahoon
RICHARD CAHOON
Clark W. Sessions
CLARK W. SESSIONS

STATE OF UTAH)
COUNTY OF SALT LAKE) 96

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WITNESS MY HAND AND SEAL OF SAID COURT
THIS 14TH DAY OF APRIL 1984

M. DIXON HINDLEY, CLERK

BY *Clark W. Sessions* DEPUTY

FILED IN CLERK'S OFFICE
Salt Lake County Utah

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Telephone: (801) 533-5319

007 1 1987

H. Dixon Hindley, Clerk 3rd Dist. Court
By _____ Deputy Clerk

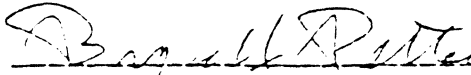
IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

IN THE MATTER OF THE	:	NOTICE OF CHANGE
POSSESSION BY THE BANKING	:	OF COMMISSIONER
COMMISSIONER OF MURRAY FIRST	:	
THRIFT AND LOAN, A UTAH	:	Civil No. C82-5951
CORPORATION.	:	Judge John A. Rokich

On Friday, April 17, 1987, Elaine B. Weis resigned as Commissioner of Financial Institutions of the State of Utah. Governor Norman H. Bangerter appointed George Sutton as Commissioner of Financial Institutions of the State of Utah effective upon Ms. Weis' resignation. Mr. Sutton was confirmed by a vote of the Senate on May 20, 1987. Therefore, by operation of law, George Sutton is now Commissioner of Financial Institutions in possession of the business and property of Murray

First Thrift and Loan Company, and should be ~~admitted as such~~
in all pleadings hereinafter filed in this proceeding.

DATED this 30th day of September, 1987.


BRYCE H. PETTEY
Assistant Attorney General

SCOTT B. MITCHELL (5111)
EARL S. SPAFFORD (3051)
SPAFFORD & SPAFFORD
A Professional Corporation
425 East 100 South
Salt Lake City, Utah 84111
(801) 363-1234

Attorneys for the Plaintiffs

IN THE THIRD JUDICIAL DISTRICT COURT, FOR SALT LAKE COUNTY

STATE OF UTAH

-----ooo0ooo-----

JIM PRATT HANSEN; RODNEY F.
GORDON; MFT FINANCIAL, INC.,
a Utah corporation;
MURRAY FIRST THRIFT AND LOAN
COMPANY, a Utah corporation;
and MFT MORTGAGE CO., a Utah
corporation,

Plaintiffs,

vs.

GEORGE SUTTON, individually
and as Commissioner of the
Department of Financial
Institutions of the State of
Utah and as
Commissioner in Possession of
the Industrial Loan Guaranty
Corporation of Utah and as
Trustee of the retained assets
of Murray First Thrift and Loan
Co.; ELAINE B. WEIS,
individually and as former
Commissioner of the
Department of Financial
Institutions of the State of
Utah; MERVIN BORTHICK,
individually and as former
Commissioner of the
Department of Financial Institu-
tions of the State of Utah;

Civil No. 90-0903241CN

Judge Timothy R. Hanson

THE DEPARTMENT OF
FINANCIAL INSTITUTIONS OF THE
STATE OF UTAH; THE
INDUSTRIAL LOAN GUARANTY
CORPORATION OF UTAH;
JOHN DOES. 1-20; ABC
CORPORATIONS 1-20; AND XYZ
PARTNERSHIPS 1-20.

Defendants.

-----ooo0ooo-----

SUPPLEMENTAL MEMORANDUM IN RESPONSE TO MOTION TO DISMISS FILED BY
DFI, SUTTON, AND WEIS; AND REPLY IN SUPPORT OF MOTION FOR LEAVE
TO FILE AMENDED COMPLAINT; AND MOTION TO STRIKE NOTICE TO SUBMIT
FOR DECISION

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Plaintiffs file this supplemental memorandum in response to
the Reply Memorandum of Weis, Sutton and Department of Financial
Institutions Supporting Motion to Dismiss. This supplemental
memorandum is necessary because said Defendants' Reply Memorandum
is replete with misrepresentations of the facts and the law
relevant to this case. Additionally, Plaintiffs hereby reply in
support of their Motion for Leave to File Amended Complaint and
move to strike the Notice to Submit for Decision which Defendants
have filed in connection with their Motion to Dismiss.

I. Defendants' Notice To Submit For Decision Was Filed
Prematurely

Defendants filed their Reply Memorandum in support of their
Motion to Dismiss on August 20, 1990. On that same date,
Defendants filed their Notice to Submit for Decision in connection

with their Motion To Dismiss.

Rule 4-501(1)(d) of the Code of Judicial Administration provides that a "Notice to Submit for Decision" may be filed upon the expiration of five days after the filing period for a reply memorandum. Because Defendants' Notice to Submit for Decision was filed on the same date as their Reply Memorandum, it is premature and should be stricken.

II. Supplemental Response To Motion To Dismiss

Defendants' Reply Memorandum is replete with misrepresentations of the facts and law relevant to this case.

First, Defendants frivolously assert that Utah's savings statute, Utah Code Annotated § 78-12-40, "does not assist Plaintiff Murray First Thrift Mortgage Co. (sic) because that entity was not a party to Harris [i.e. Harris et al. v. Weis et al., civil no. C-87-00415, (U.S. District Court of Utah 1987)]" (See Defendants' Reply Memorandum at p.2).

A simple review of the caption and the allegations of the Verified Third Amended Complaint in the Harris case suffices to demonstrate that MFT Mortgage Co. was clearly a party plaintiff in that action. (See Exhibit "1" filed with Plaintiffs' Response to Defendants' Motion to Dismiss). Because Defendants have asserted that the Third Amended Complaint was "without legal effect" (discussed further below), Plaintiffs have attached hereto as

Exhibit "Z" a copy of the Second Amended Complaint which was filed in the Harris case and which also clearly shows that MFT Mortgage Co. was a party plaintiff in that case. Defendants' assertion to the contrary is ludicrous.

Defendants next argue that the one year saving provisions of Section 78-12-40, UCA, are inapplicable to this case because "the Third Amended Complaint in Harris has no relation to Count One [of the Complaint in the case at bar]. . . . It mentions the facts on which Count One is based, but does so only as background information. No claim in Harris is based upon the conduct that plaintiffs allege amount (sic) to a contract in Count One." (See p. 2 of Defendants' Reply Memorandum). Again, this argument is frivolous.

Although the factual allegations upon which Count One of the Complaint in the case at bar is based are alleged in the "General Allegations Relating to the Murray Plaintiffs" section of the Third Amended Complaint in the Harris case (See pp. 6-8 of Exhibit "1" filed with Plaintiff's response to Defendants' Motion To Dismiss), the "general allegations" are also specifically incorporated into each of the First through Eighth and the Tenth and Eleventh Causes of action of that Complaint. Accordingly, Defendants' argument that "no claim in Harris is based upon the conduct that Plaintiffs allege amount (sic) to a contract in Count One" is meritless.

Defendants also fatuously assert that "The Harris complaint alleged only a breach of a Purchase and Assumption agreement." (See p. 2 of Defendants' Reply Memorandum). Again, a simple review of the Third Amended Complaint (see Exhibit "1" filed with Plaintiffs' Response Memorandum) as well as the Second Amended Complaint (see Exhibit "2" attached hereto), clearly demonstrates that Defendants' contention is ludicrous. Therein, Plaintiffs' allege causes of actions for Defendants' violations of federal and state securities laws, federal civil rights laws, federal and state racketeering laws, and various other causes of action, in addition to alleging a breach of the Purchase and Assumption Agreement.

In short, the breach of contract cause of action alleged in Count One of the Complaint in the case at bar clearly arises out of the "transaction or occurrence" alleged in each of the various Complaints in the Harris case and, therefore, is subject to the saving provisions of UCA Section 78-12-40. Foil v. Bollinger, 601 P.2d 144, 151 (Utah 1979).

Defendants next argue that Section 78-12-40 is inapplicable because "The Third Amended Complaint [in Harris] was filed without leave of court or consent of defendants [and] [c]onsequently, that complaint was without legal effect." (See Defendants' Reply Memorandum at p. 2).

Assuming, for argument's sake, that the Third Amended

Complaint in the Harris case was "without legal effect," Defendants are not helped thereby. All of the Complaints filed in the Harris case (the original, the First, Second and Third Amended Complaints), alleged substantially the same "transaction or occurrence" as is alleged in the case at bar. The provisions of the Third Amended Complaint were set forth in Plaintiffs' Response memorandum for purposes of example only. In this regard, the following allegations were made by Plaintiffs in the Second Amended Complaint:

20. On or about July 17, 1981 the Defendant State of Utah, through its Department of Financial Institutions and in conspiracy and consort with the other defendants, proposed an agreement in writing which agreement was affirmed and accepted by Plaintiffs Hansen, Nelson and Gordon and others.

21. Pursuant to this agreement, Plaintiffs Hansen, Nelson and Gordon were to become owners of controlling stock interests (not less than 80%) in Murray First Thrift & Loan, MFT Financial, MFT Mortgage and MFT Leasing Company by investing their personal cash, certain personal assets and assets of associates into said companies' capital account in an amount of approximately \$11,100,000 A time frame was set forth to accomplish reorganization and the issuance of shares in MFT Financial for the infusion of capital which was subsequently extended by mutual agreement. The capital was infused by Plaintiffs for stock interest provided in the form and in the manner demanded by defendants. However, on July 22, 1982, prior to final reorganization and issuance of shares, Murray first Thrift was seized by the State of Utah and such seizure included the capital infused by Plaintiffs for which shares had not yet been issued pending completion of reorganization.

(See paragraphs 20-21 of Exhibit "Z" attached hereto).

Clearly, the "transaction or occurrence" alleged in the Second

Complaint in the Harris case was "without legal effect," Defendants are not helped thereby. All of the Complaints filed in the Harris case (the original, the First, Second and Third Amended Complaints), alleged substantially the same "transaction or occurrence" as is alleged in the case at bar. The provisions of the Third Amended Complaint were set forth in Plaintiffs' Response memorandum for purposes of example only. In this regard, the following allegations were made by Plaintiffs in the Second Amended Complaint:

20. On or about July 17, 1981 the Defendant State of Utah, through its Department of Financial Institutions and in conspiracy and consort with the other defendants, proposed an agreement in writing which agreement was affirmed and accepted by Plaintiffs Hansen, Nelson and Gordon and others.

21. Pursuant to this agreement, Plaintiffs Hansen, Nelson and Gordon were to become owners of controlling stock interests (not less than 80%) in Murray First Thrift & Loan, MFT Financial, MFT Mortgage and MFT Leasing Company by investing their personal cash, certain personal assets and assets of associates into said companies' capital account in an amount of approximately \$11,100,000 A time frame was set forth to accomplish reorganization and the issuance of shares in MFT Financial for the infusion of capital which was subsequently extended by mutual agreement. The capital was infused by Plaintiffs for stock interest provided in the form and in the manner demanded by defendants. However, on July 22, 1982, prior to final reorganization and issuance of shares, Murray first Thrift was seized by the State of Utah and such seizure included the capital infused by Plaintiffs for which shares had not yet been issued pending completion of reorganization.

(See paragraphs 20-21 of Exhibit "Z" attached hereto).

Clearly, the "transaction or occurrence" alleged in the Second

Amended Complaint in Harris is the same as that out of which Count One in the case at bar arises. Accordingly, even if the Third Amended Complaint is disregarded, the one year tolling period set forth in Section 78-12-40 is applicable to this case. See Foil, supra.

The same reasoning applies to Defendants' argument that the instant action was not timely filed because the Third Amended Complaint "was stricken September 30, 1988 for failure to obtain leave to amend." (See Defendants' Reply Memorandum at p. 3). Even if the Third Amended Complaint "failed" within the meaning of Section 78-12-40 on September 30, 1988 (the date of the entry of the order striking the Third Amended Complaint) rather than on June 6, 1989 (the date that the order striking the Third Amended Complaint became final and appealable) Defendants' argument fails because there is absolutely no dispute that the Second Amended Complaint did not "fail" until the entry of the June 6, 1989, Order of Dismissal. (See Exhibit "3" filed with Plaintiffs' Response to Defendants' Motion To Dismiss).

Finally, Defendants argue that the two-year statute of limitations contained in UCA Section 16-10-100 bars Plaintiffs' assertion of Count One because the cause of action alleged therein "arose two years before [the corporate plaintiffs'] dissolution in 1982." (See Defendants' Reply Memorandum at p. 4). This argument

is misplaced for two reasons.

First, while Defendants breached the contract alleged in Count One on July 22, 1982, by seizing the assets of Murray First Thrift and Loan, the parties thereafter entered into the Purchase and Assumption agreement on December 13, 1982, in order to settle their dispute. Accordingly, the P & A Agreement was essentially an "accord and satisfaction" agreement which suspended Defendants' obligations under the July 17, 1981 contract alleged in Count One. See, e.g. Restatement of Contracts, Second, Section 281, which provides as follows:

(1) an accord is a contract under which an obligee promises to accept a stated performance in satisfaction of the obligor's existing duty. Performance of the accord discharges the original duty.

(2) Until performance of the accord, the original duty is suspended.

(Emphasis added).

Comment (b) to Section 281 explains that "the accord entitles the obligor to a chance to render the substituted performance in satisfaction of the original duty. Under the rule stated in Subsection (2), the obligee's right to enforce that duty is suspended subject to the terms of the accord until the obligor has had that chance." (Emphasis added).

The Utah Supreme Court subscribes to Section 281 of the Restatement of Contracts, Second. See Morton Remodeling v. Jensen,

706 P. 2d 607, 609-10 (Utah 1985); and Bennion v. LeGrand Johnson Const. Co., 701 P. 2d 1078, 1082 (Utah 1985).

Accordingly, Plaintiffs' right to enforce the breach of contract alleged in Count One was suspended until Defendants breached their obligations under the P & A Agreement in 1987. It follows that Count One is a post-dissolution cause of action subject to UCA Section 16-10-101, not a pre-dissolution cause of action subject to the two-year period of limitations set forth in Section 16-10-100.

Defendants also misrepresent the nature of Section 16-10-100 and attempt to mislead this Court into believing that that section applies to post-dissolution as well as pre-dissolution rights of action of a dissolved corporation. That is simply and clearly not the case. That section expressly applies only to "any remedy available to or against [a dissolved corporation] for any right or claim existing . . . prior to such dissolution." (Emphasis added).

Section 16-10-101 specifically authorizes a dissolved corporation to "sue and be sued" during the course of winding up its affairs and places no time limit upon that right. Courts interpreting statutes similar to Section 16-10-101 (i.e. statutes having no limitations period for bringing post-dissolution actions) have generally held that post-dissolution actions must be brought within a "reasonable" period of time. See, e.g. Blackerby v.

Monarch Equipment, 259 S.W.2d 683, 685 (Ky. App. 1953).

Furthermore, even if the two-year period set forth in Section 15-10-100 is applicable, the instant case is still timely. As demonstrated in part A(ii) of Plaintiffs' Response to Point I of Defendants' Motion To Dismiss, the Nelson case (which was filed May 30, 1986 in the U.S. District Court for the Northern District of California and which alleged causes of action based upon the same "transaction or occurrence" as is alleged in both the Harris case and the case at bar) was filed by Plaintiffs well within the two-year limitations period of Section 15-10-100. The Nelson case was dismissed as to Defendants on November 10, 1986, without prejudice, on the grounds of improper venue. Plaintiffs re-filed their claims against Defendants in the Harris case on January 22, 1987, well within the one year period set forth in UCA Section 78-12-40. When the Harris case was dismissed as to Defendants on June 6, 1989, for jurisdictional reasons, Plaintiffs filed the instant action, again within the one-year period of Section 78-12-40.

Accordingly, even if the two-year period of limitations set forth in Section 15-10-100 is applicable to this case, the Complaint was timely filed by virtue of the saving provisions of Section 78-12-40.

III Reply to Defendants' Response To Plaintiffs' Motion For Leave To Amend Complaint

In arguing that Plaintiffs' Motion For Leave To Amend Complaint should be denied, Defendants assert that

Such motion should be denied because plaintiffs have not submitted a proposed amended complaint for the Court and defendants to review. This kind of failure is fatal to a motion to amend. Behrens v. Raleigh Hills Hospital, Inc., 675 P.2d 1179,1182 (Utah 1983).

(See Defendants' Reply Memorandum at p. 4).

Again, Defendants attempt to mislead the Court. By no stretch of the imagination can the Behrens Court be construed to have held that the failure to submit a proposed amended complaint is "fatal to a motion to amend." In point of fact, the Behrens Court specifically rejected the argument which Defendants' are making in the case at bar.

In Behrens, the Court stated that

Although a trial court may deny a motion to amend for a movant's failure to present a written motion and a proposed amended complaint . . . that rule does not govern this case.

675 P.2d at 1182 (emphasis added).

The court explained as follows:

Prior to trial, plaintiff filed a written motion to amend the complaint. Plaintiff's motion included the language to be added to the complaint, i.e., "Plaintiff prays for

punitive damages in the amount of \$50,000.00." That motion was improperly denied by the trial court. The motion was renewed after the trial court granted a new trial. The defendant did not object to plaintiff's failure at that time to file a proposed complaint. Indeed, the defendant knew precisely what the issues were with respect to the motion to amend and filed a lengthy and well-researched memorandum on the issue of punitive damages. Under the circumstances, plaintiff's first motion to amend was sufficient. It was again error to deny the renewed motion.

In their written motion to amend, Plaintiffs have requested that they be allowed to amend their complaint to allege that Defendant Weis acted "fraudulently, maliciously or with gross negligence" (see pp. 9-10 of Plaintiffs' response memorandum) and to allege that Sutton acted with "fraud or malice." (See p. 10 of Plaintiffs' response memorandum). Under the Behrens holding, Plaintiffs' motion is clearly sufficient.

However, to be on the safe side, Plaintiffs have filed herewith a copy of the proposed Amended Complaint.

IV Plaintiffs Have Not "Discharged" Defendants From The Claim Alleged In Count I

In Point III of their Reply Memorandum, Defendants argue that Plaintiffs have "discharged" them from the claim alleged in Count One. This argument is meritless.

As was pointed out in part II above, the P & A Agreement was essentially "an accord and satisfaction" agreement suspending

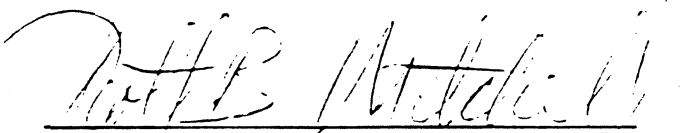
Defendants' obligations under the July 17, 1981 contract alleged in Count One of the Complaint. However, as was also pointed out, that "suspension" only lasted until Defendants disregarded their obligations to Plaintiffs under the P & A Agreement.

Conclusion

For the foregoing reasons Plaintiffs respectfully submit that Defendants' Motion To Dismiss must be denied. Plaintiffs further request that they be allowed to amend their complaint in the form attached hereto. Finally, Plaintiffs submit that Defendants' Notice To Submit For Decision should be stricken as premature.

DATED this 27th day of August, 1990.

SPAFFORD & SPAFFORD
A Professional Corporation


Scott B. Mitchell

CERTIFICATE OF MAILING

I do hereby certify that on the 30th day of August, 1990, I did cause to be placed in the U.S. mail, postage prepaid, a true and correct copy of the foregoing SUPPLEMENTAL MEMORANDUM IN RESPONSE TO MOTION TO DISMISS FILED BY DFI, SUTTON, AND WEIS; AND REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE AMENDED COMPLAINT; AND MOTION TO STRIKE NOTICE TO SUBMIT FOR DECISION the following:

R. Paul Van Dam
Attorney General of Utah
236 State Capitol Building
Salt Lake City, Utah 84114

Michael N. Emery
Richards, Brandt, Miller & Nelson
50 South Main Street, Suite #700
Salt Lake City, Utah 84144

Handwritten Signature

Richard J. Leedy
Attorney for Plaintiffs
230 East 300 South, Suite 1010
Salt Lake City, Utah 84102

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

GARY S. HARRIS; GARY S. HARRIS,)
acting derivatively for and on)
on behalf of THRIFT HOLDING)
COMPANY, a corporation and CHARTER)
THRIFT & LOAN, a corporation; MFT)
MORTGAGE COMPANY, a corporation;)
FRANK A. NELSON Jr, JIM P. HANSEN,)
and RODNEY F. GORDON, acting)
individually and derivatively for)
and on behalf of MURRAY FIRST)
THRIFT & LOAN CO., a corporation,)
and MFT FINANCIAL, INC., a corp-)
oration,)

Plaintiffs,)

vs.)

ELAINE B. WEIS, individually;)
ELAINE B. WEIS, in her capacity as)
Commissioner of the Department of)
Financial Institutions of the State)
of Utah; GEORGE R. SUTTON; GEORGE)
R. SUTTON, in his capacity as)
Assistant Commissioner of the)
Department of Financial Institu-)
tions of the State of Utah; THE)
STATE OF UTAH; DARWIN M. LARSEN;)
R. SCOTT BAKER; R. SCOTT BAKER, in)
his capacity as a duly authorized)
representative and agent of the)
Utah Commissioners of Financial)
Institutions; MARY AMIDAN; MARY)
AMIDAN, in her capacity as a duly)
authorized representative and agent)
of the Utah Commissioner of)
Financial Institutions; ROBERT S.)
GALE; ROBERT S. GALE, in his cap-)
acity as a duly authorized repre-)
sentative and agent of the Utah)

SECOND AMENDED COMPLAINT

DEMAND FOR JURY TRIAL

Civil No. C 87-0041 S

Commissioner of Financial Institu-)
tions; STANLEY A. ANDERSON; ROBERT)
B. BECKSTEAD; MIRVIN D. BORTHICK;)
DEAN G. CHRISTENSEN; RICHARD A.)
CHRISTENSON; W. HAROLD DOBSON;)
JOHN A. FIRMAGE, JR.; LARRY E.)
GRANT; LARRY R. HENDRICKS; ROBERT)
L. HOWE; CARL A. HULBERT; EDWARD M.)
JAMISON; JOHN C. JARMAN; RUSSELL B.)
JEX; CHARLES E. JOHNSON; IRENE)
JORGENSEN; FRED S. KOHLRUSS; RONALD)
C. LEASE; T. KAY LYMAN; PAUL A.)
MILLER; RICHARD D. PAUL; RICHARD M.)
ROBINSON; ED H. THRONDSSEN; RICHARD)
A. VAN WINKLE; DR. TERRY WARNER;)
FIRST SECURITY CORPORATION, a corp-)
oration; FIRST SECURITY FINANCIAL,)
a corporation; THRIFT HOLDING)
COMPANY, a Utah corporation,)
currently in control of an)
adversarial receiver; CHARTER)
THRIFT AND LOAN COMPANY, a corpora-)
tion currently in the hands of an)
adversarial receiver in possession;)
DOES 1 through 40,)
))
Defendants.)
)

Plaintiffs allege:

I.

JURISDICTION AND VENUE

1. The jurisdiction of this court is invoked under Title 28 U.S.C. section 1331 et seq. as to the First through Fifth Claims, and the Eighth Claim; and under Title 18 U.S.C. sections 1961-1964 as to the Sixth and Seventh Claims. This court's jurisdiction over the Ninth and Tenth Claims is pendent to its jurisdiction over the federal claims for relief.

2. Venue as to each defendant is laid in the central division of this judicial district under 28 U.S.C. section 1391

(b) and (c), and 1393, and 18 U.S.C. section 1965 in that (a) one or more of the defendants resides, maintains an office, transacts business, has an agent, or is found within this district and division, (b) plaintiffs' claims arose in this district and division, (c) the offer and sale of securities herein complained of took place in this district and division, (d) the violations of securities law set forth in this complaint took place in this district and division, (e) the defendants made, sent, telephoned or caused to be made, sent or telephoned into this district and division false and misleading statements in connection with the sale of securities. Through such misrepresentations and related nondisclosures plaintiffs were induced to agree to, and did, pay consideration for the issuance of Industrial Loan Guarantee Corporation notes.

II.

PLAINTIFFS

3. Plaintiff Gary S. Harris ("Harris") is a resident of Weber County, Utah. Harris was a major shareholder, director, officer and managing agent of Thrift Holding Company, ("Thrift Holding") and its subsidiary, Charter Thrift & Loan ("Charter") both of which are Utah corporations. Harris brings this action individually on his own behalf and derivatively on behalf of Thrift Holding and Charter. Defendant Weis, acting under color of state law, seized Thrift Holding Company and Charter on or about June 30, 1986, and thereupon usurped the functions of the shareholders, directors, officers, and principal managing agents

of Thrift Holding and Charter and has at all time since June 30, 1986 exercised exclusive management control over all operations of Thrift Holding and Charter, claiming that she in doing so she has acted as "receiver in possession." Any demand served upon Weis to initiate this action against herself, the State of Utah or the other defendants who were her co-conspirators, including directors of Industrial Loan Guaranty Corporation of Utah ("ILGC") a Utah corporation, would be futile, and a useless act. The making of any such demand prior to initiating this action is therefore excused.

4. Plaintiffs Frank A. Nelson, Jr. ("Nelson"), Jim P. Hansen ("Hansen"), and Rodney F. Gordon ("Gordon") are residents of Salt Lake County, Utah; directly and indirectly they are the principal shareholders of the Murray First entities and infused more than \$11,000,000 of their personal assets into Murray First Thrift & Loan pursuant to an agreement dated July 17, 1981, to which all defendants were or became parties.

5. Plaintiff Murray First Thrift & Loan Co. ("Murray First") is a Utah corporation, wholly owned by plaintiff MFT Financial, Inc. ("MFT Financial"). The majority of the stock of MFT Financial is owned by Nelson, Hansen and Gordon. MFT Mortgage Company, a Utah corporation, is a wholly owned subsidiary of MFT Financial. These three corporate entities and Nelson, Hansen and Gordon are collectively referred to herein as the "Murray First entities."

6. Nelson, Hansen and Gordon bring this action individually, each on his own behalf, and derivatively on behalf of Murray First Thrift & Loan, MFT Financial, and MFT Mortgage Company. Defendant Weis, acting under color of state law, seized Murray First on July 22, 1982 and MFT Financial on or about August 26, 1982. Defendant Weis has usurped the functions of the shareholders, directors, officers and principal managing agents of the Murray First entities and has at all times since usurping said functions exercised exclusive management control over all operations of Murray First and MFT Financial, claiming that she in doing so she has acted as "receiver in possession by deliberately failing to file tax returns and other documents requisite to maintaining Murray First entities in good standing. Any demand served upon Weis to initiate this action against herself, the State of Utah or the other defendants who were her co-conspirators, including directors of Industrial Loan Guaranty Corporation of Utah ("ILGC") a Utah corporation, would be futile, and a useless act. The making of any such demand prior to initiating this action is therefore excused.

7. Defendant Elaine B. Weis ("Weis") is the Commissioner of Financial Institutions for the State of Utah.

8. Defendant George R. Sutton ("Sutton") is the Deputy Commissioner of Financial Institutions for the State of Utah. Weis and Sutton are collectively referred to herein as the "Public Servant" defendants.

9. Defendants Darwin S. Larsen ("Larsen"), Scott Baker ("Baker"), Mary Amidan ("Amidan") and Robert Gale ("Gale") are residents of Weber County, and acted as the representatives and agents of defendant Weis in conducting the affairs of Charter Thrift and Loan; such agency and employment of Baker, Amidan and Gale was formally acknowledged by Weis on or about July 31, 1986; plaintiff Harris is informed and believes, and on that ground alleges that a de facto agency existed for many months before July 31, 1986. Larsen, Baker, Amidan and Gale are each sued individually and as agents of Weis and the other defendants.

10. Stanley A. Anderson, Robert B. Beckstead, Mirvin D. Borthick, Dean G. Christensen, Richard A. Christenson; W. Harold Dobson, John A. Firmage, Jr., Larry E. Grant, Larry R. Hendricks, Robert L. Howe, Carl A. Hulbert, Edward M. Jamison, John C. Jarman, Russell B. Jex, Charles E. Johnson, Irene Jorgensen, Fred S. Kohlruess, Ronald C. Lease, T. Kay Lyman, Paul A. Miller, Richard D. Paul, Richard M. Robinson, Ed H. Throndsen, Richard A. Van Winkle, and Dr. Terry Warner served at various times as the directors of ILGC from March 22, 1982 to July 31, 1986. They are collectively referred to herein as the "ILGC directors." Each of the defendants named in this paragraph is a resident of this judicial district as set forth in attached Exhibit 1.

11. Defendant First Security Financial Corporation is a Utah corporation, an industrial loan corporation with thrift powers, doing business in Salt Lake City as a thrift institution.

12. The true names of defendants Does 1 through 40 are presently unknown to plaintiffs, who will amend this complaint to allege their true names, when they become known. Defendants First Security Financial and Does 1 through 20 are each thrift or banking institutions who at relevant times owned one or more industrial loan corporation with thrift powers doing business in this judicial district as a thrift institution. One or more employees of each defendant named in this paragraph served as a director of ILGC during the relevant time period. The defendants named in this paragraph are collectively referred to herein as the "private party" defendants.

13. Does 21 through 40 are bonding companies and sureties for the State of Utah. The Utah State Auditor has refused to identify Does 21 through 40 to plaintiffs' counsel. Plaintiffs will amend this complaint when their identities have been ascertained.

14. Defendant State of Utah is one of the United States, and was admitted to statehood in 1896.

15. The ILGC directors, Weis, Sutton, Larsen, Baker, Amidan, Gale and the private party defendants were the agents of each other, and the State of Utah, in committing the wrongful acts alleged, and each acted in the course and scope of such agency in committing the misrepresentations and failures to disclose which are alleged herein. The ILGC directors, Weis, Sutton, Larsen, Baker, Amidan, Gale, the private party defendants, and the State of Utah ratified each of the acts of

the other defendants committed pursuant to such agency and employment.

16. Weis, Sutton, Larsen, Baker, Amidan, Gale and each of the ILGC directors conspired and agreed to commit the wrongful acts alleged herein, and the overt acts alleged were committed in furtherance of their conspiracy.

17. Defendants Thrift Holding Company and Charter Thrift & Loan Company are defendants because they are in the antagonistic hands of a defendant receiver and/or receiver in possession and/or trustee however characterized who willfully refused, declined and neglected to bring this action on behalf of said parties.

18. ILGC is a Utah non-profit corporation, organized under the laws of the State of Utah, organized with the stated purpose "to guarantee full payment of account obligations of members up to ten thousand dollars for each account," later increased to fifteen thousand dollars. Neither the enabling legislation, nor the Articles of Incorporation grant general corporate powers to the ILGC. Plaintiffs are informed and believe, and on that ground allege that the ILGC lacked authority to issue securities.

V.

FIRST CLAIM

(Against Defendants Weis, Sutton, and
the ILGC directors)

19. Plaintiffs hereby incorporate all of the allegations of this complaint into this claim.

20. On or about July 17, 1981 the Defendant State of Utah, through its Department of Financial Institutions and in conspiracy and consort with the other defendants, proposed an agreement in writing which agreement was affirmed and accepted by Plaintiffs Hansen, Nelson and Gordon and others.

21. Pursuant to this agreement, Plaintiffs Hansen, Nelson and Gordon were to become owners of controlling stock interests (not less than 80%) in Murray First Thrift & Loan, MFT Financial, MFT Mortgage and MFT Leasing Company by investing their personal cash, certain personal assets and assets of associates into said companies capital account in an amount of approximately \$11,100,000. Other corporate affiliates of those companies were to be dissolved including Reading Holding Company, Irving Financial Corporation, and other "affiliates and related entities." A time frame was set forth to accomplish reorganization and the issuance of shares in MFT Financial for the infusion of capital which was subsequently extended by mutual agreement. The capital was infused by Plaintiffs for stock interest provided in the form and in the manner demanded by defendants. However, on July 22, 1982, prior to final reorganization and issuance of shares, Murray First Thrift was seized by the State of Utah and such seizure included the capital infused by Plaintiffs for which shares had not yet been issued pending completion of reorganization.

22. On October 6, 1982, by order of the Third District Court the ILGC was appointed as agent for the State of Utah to

negotiate a sale of assets of Murray First Thrift & Loan to several qualified purchasers together with the Plaintiffs who were designated as owners and owners' representatives acting for and in behalf of Murray First Thrift & Loan.

23. On November 3, 1982 by subsequent order of the Third District Court, Defendant Weis was prohibited from interfering or even participating in negotiations for the sale of the banking function of Murray First Thrift & Loan. Her role was limited to submission of any agreement reached between Plaintiffs Hansen, Nelson, and Gordon and ILGC and First Security Bank to the Federal Reserve Board with her recommendation for approval.

24. On November 5, 1982 a series of agreements between ILGC, First Security and the Plaintiffs were executed and a purchase and assumption agreement agreed to involving all of the parties hereto. As part and parcel of said agreement the capital invested by Hansen, Nelson and Gordon set forth in paragraph 19 above, was "retained" for their benefit and use and for the benefit and use of the Murray First entities and by specific terms of the agreements were to be conveyed to an independent trust to be managed by Hansen and Gordon pending approval of the purchase and assumption agreement by the Federal Reserve Board.

25. Commencing on or about November 15, 1982 and ending in June 1986, ILGC issued securities in the form of (1) promissory notes pursuant to the purchase and assumption agreement executed by the Murray First entities with a total face value of \$7,000,000 issued November 15, 1982; and an additional \$3,000,000

issued over a period of time ending in December 1986; and (2) promissory notes issued to other thrift investors in the total face amount of at least \$13,000,000 which plaintiffs are informed and believe were issued at various times between November 1984 and June 1986. In all cases the promissory notes were secured by or offset against the Plaintiffs Hansen, Gordon and Nelson assets infused into Murray First Thrift according to the July 17, 1981 uncompleted agreement.

1. On or about November 1984 Charter was induced by Weis to purchase \$2,400,000 worth of ILGC promissory notes from ILGC in connection with Charter's acquisition of Continental Thrift & Loan. Weis had seized Continental Thrift on the basis that its capital was impaired. Plaintiffs are informed and believe, and on such grounds allege that ILGC notes, in the total face amount of not less than \$23,000,000 were issued by the ILGC directors as obligations of ILGC, at the behest of Weis, and were purchased by other thrift institution investors, in addition to the \$2,400,000 sold to Charter.

26. On November 15, 1982 Murray First Thrift, MFT Financial, and MFT Mortgage, Rodney F. Gordon, Frank A. Nelson, and Jim P. Hansen entered into a purchase and assumption agreement with ILGC, First Security Financial, and Weis. Gordon, Hansen and Nelson retained assets in Murray First Thrift & Loan together with the other interests of the Murray First entities specifically acknowledged. In addition, consideration totaling \$10,000,000 to ILGC for ILGC promissory notes in the amount of

\$10,000,000 were issued to First Security Financial. As a result of the purchase and assumption agreement, \$7,000,000 in ILGC notes were issued to First Security Financial on or about November 15, 1982 and \$3,000,000 in notes were issued to First Security Financial by December 31, 1986. All of the consideration for \$10,000,000 in ILGC promissory notes issued to First Security Financial were paid by the capital assets which were the property of Hansen, Nelson and Gordon and the Murray First Thrift entities.

27. Plaintiffs are informed and believe, and on that ground allege, that ILGC directors issued and Weis induced sales of ILGC notes to the following entities in the amounts set forth:

- (a) \$3,000,000 to Commerce Financial Thrift;
- (b) \$2,000,000 to Copper State Thrift;
- (c) \$4,000,000 to Interlake Thrift;
- (d) \$2,000,000 to Western Heritage Thrift.

28. The securities purchased by plaintiffs as well as similar securities purchased by other investors were issued by ILGC for the following purposes: (i) to induce the Murray First entities to enter into the purchase and assumption agreement, and (ii) to replace the capital which Plaintiffs Hansen, Gordon and Nelson had infused pursuant to the July 17, 1981 agreement, and (iii) to induce Charter to acquire Continental Thrift; plaintiffs are informed and believe that (iv) ILGC promissory notes in the face amount of \$3,000,000 were sold on or about February 17, 1984 to Commerce Financial Thrift by Weis to induce Commerce to

acquire Cottonwood Thrift and Loan, which had been seized by Weis on the grounds that its capital was impaired; (v) plaintiffs are further informed and believe that ILGC promissory notes in the face amount of \$2,000,000 were sold in December 1984 to Kent Brown and W. Hendricks by Weis to induce Hendricks and Brown to acquire Western Heritage Thrift and Loan, which had been seized by Weis on the grounds that its capital was impaired; (vi) ILGC promissory notes in the face amount of \$2,000,000 were sold (at dates unknown to plaintiffs,) to Copper State Thrift by Weis to induce Copper State Thrift to acquire American Fidelity Thrift and Loan, which had been seized by Weis on the grounds that its capital was impaired; (vii) \$4,000,000 in ILGC promissory notes were sold to Freedom Savings and Loan in connection with its acquisition of Interlake Thrift which had been seized by Weis on the grounds that its capital was impaired.

29. Plaintiffs are informed and believe that the promissory notes were issued by ILGC, and sold by Weis, in part to evade ILGC's obligations to depositors of Cottonwood Thrift, American Fidelity Thrift, Continental Thrift, Western Heritage Thrift and Interlake Thrift.

30. The securities issued by ILGC and sold by Weis to the Murray First entities and Charter Thrift were securities within the meaning of Section 2 of the Securities Act of 1933, 15 U.S.C. Section 77b(1) and Section 3(a)(10) of the Securities Exchange Act of 1934, 15 U.S.C. section 78c(a)(10).

31. Said securities were offered and sold to Hansen, Nelson and Gordon through the Murray First entities and Charter by use of instrumentalities of transportation and telephone and wire communications in interstate commerce and the mail, including but not limited to interstate telephone calls from Weis to Hansen, soliciting the sale of ILGC notes in which she made fraudulent misrepresentations alleged herein, and a telephone conference call from Weis in Utah to Hansen in Idaho and to Mendell Berthwick in Hawaii, wherein Weis stated that Honolulu Federal Savings and Loan (who had earlier agreed in principal to acquire Murray First Thrift and Loan by replacing the assets invested pursuant to the July 17, 1981 agreement) to acquire Murray First Thrift & Loan or any of its assets it would be required to purchase ILGC securities, and letters more fully described below.

32. In connection with the offering and sale of said securities defendant Weis acted as an underwriter within the meaning of Section 2(11) of the Securities Act of 1933, 15 U.S.C. section 77b(11). Weis was an active participant in the offering and sale in that, among other things, plaintiffs are informed and believe that: (i) Weis systematically solicited investors, including Charter, W. Hendricks, Kent Brown, Freedom Savings & Loan, and Copper State Thrift, among others, to purchase the notes issued by ILGC; (ii) Weis was and held herself out to be ILGC's advisor and the exclusive agent for placement of these securities; (iii) acceptances were communicated to Weis and the terms of purchase were negotiated by Weis in each instance; (iv)

the directions, representations, warranties and recommendations made by Weis were the significant factor in inducing the Murray First entities to pay for the notes issued to First Security Financial, and in inducing Harris to make the investment decision to acquire the ILGC securities in the name of Charter, and but for her representations and directions the Murray First entities would not have entered into the purchase and assumption agreement nor would plaintiffs have parted with any consideration for ILGC notes.

33. But for the directions, representations, warranties and recommendations of defendant Weis, Charter would not have acquired Continental Thrift, and Harris would not have made the investment decision which caused Charter to purchase ILGC notes in the amount of \$2,400,000.

VI.

SECOND CLAIM

(Against Defendant Weis, Sutton, the ILGC Directors
and the Private Party defendants under
Section 12(2) of the 1933 Securities Act)

34. Plaintiffs hereby incorporate all of the allegations of this complaint into this claim.

35. In making such offers and sales, Weis and the ILGC director defendants made untrue statements of material fact, and omitted to state material facts necessary in order to make the statements, in light of the circumstances under which they were made, not misleading to the Murray First entities and to Charter

as described below.

36. In connection with each sale, Weis and the ILGC directors represented to plaintiffs, among other things:

(a) That ILGC had obligated, and would obligate itself to pay Charter and First Security Financial the sums stated and to perform other obligations according to the terms stated in the ILGC promissory notes;

(b) That the securities, and specifically the dollar amounts shown on the face of the notes, were fully backed by the credit of ILGC;

(c) In the case of Murray First entities, that Weis and ILGC could and would fully perform under the terms of the purchase and assumption agreement and return the capital to Hansen, Nelson and Gordon infused through the July 17, 1981 agreement.

(d) In the case of Charter, the defendants represented to Gary Harris that the ILGC notes would be accepted by the federal regulators as capital assets for the purpose of determining the liquidity of Charter required by federal law and Federal Reserve regulations.

37. These representations were untrue, among other reasons, because:

(a) Neither Weis nor the ILGC directors had the ability to pay any holder of the ILGC promissory notes pursuant to the terms of the notes executed by the

ILGC, nor did Weis or ILGC otherwise have the ability to otherwise perform their obligations thereunder, because ILGC was insolvent at the time the notes were issued;

(b) Neither Weis nor the ILGC directors had any means in reality of raising the required funds on behalf of ILGC sufficient to enable ILGC to pay the notes according to their terms;

(c) Weis and the ILGC directors had been informed by the FDIC that the ILGC notes were unacceptable to the federal regulators, and would not be considered by the FDIC in determining the liquidity of any Utah thrift institution.

38. In making the offers and sales, Weis and the ILGC directors induced, forced, and otherwise manipulated Hansen, Nelson and Gordon and the Murray entities, Harris, Charter and other investors to pay consideration for said securities and representations and warranties including those set forth above and representations and warranties and terms of the purchase and assumption agreement and "mutual release" supplement thereto, that omitted to state material facts necessary in order to make such representations not misleading, in light of the circumstances under which they were made. In this connection, neither Weis nor the ILGC directors ever disclosed to Plaintiffs in connection with any sale of ILGC notes, any of the following:

(a) That ILGC was insolvent;

(b) Neither Weis nor the ILGC directors had any intention of paying Charter, First Security, or any other holder of the ILGC promissory notes pursuant to the terms of the notes executed by the ILGC or of otherwise performing their obligations thereunder, because ILGC was insolvent at the time the notes were issued, and in truth and in fact intended to pay and did pay off notes with the Hansen, Nelson and Gordon assets.

(c) Weis had no intention of fulfilling her obligation and exercising her authority to require the members of the ILGC to make pro rata contributions to pay the notes when they became due, in the event ILGC was unable to pay them;

(d) Weis had no intention of fulfilling her obligation and exercising her authority to increase the capital of ILGC by assessments levied against its members.

(e) Weis and the ILGC directors had no intention of performing the contractual obligations assumed by Weis and the ILGC under the purchase and assumption agreement with the Murray entities and the July 17, 1981 agreement to which Hansen, Nelson and Gordon were signatories and sole investors of the capital assets.

(f) Weis and the ILGC directors knew that the ILGC promissory notes were unacceptable to the federal regulators, and would not be considered by the FDIC in determining the liquidity of any Utah thrift institution.

39. No later than January 1, 1983 and long before the sale to Charter, Weis and the ILGC directors knew, but did not disclose to Charter or Gary Harris, that a massive and systematic fraud on investors had already been committed in the sale of ILGC promissory notes.

40. To the extent that the ILGC directors did not actually know some or any of the facts set forth in the foregoing paragraphs, or did not know the falsity of some or any of the fraudulent representations, at the time of the solicitations and sales to Plaintiffs, said defendants in the exercise of reasonable care, should have known of said facts or said falsity.

41. At all material times, plaintiffs were not aware that the defendants' representations to them were untrue nor were they aware of the misleading character of Weis' solicitations. In making their investments in ILGC securities the plaintiffs were also unaware of the material matters not disclosed by Weis and the ILGC directors.

42. Under Section 12(2) of the Securities Act of 1933, 15 U.S.C. section 77-1(2), Weis and the ILGC directors are jointly and severally liable to repay the consideration paid by the Murray First entities and Charter with interest, or to pay

damages. Plaintiffs stand ready, willing and able to take all actions necessary to rescind the transactions wherein the securities were purchased including both the July 17, 1981 agreement for the purchase of controlling interest in MFT by the investment of \$11,000,000 and the purchase and assumption agreement by all parties by which those assets invested would be retained and returned after Federal Reserve Board approval.

43. Plaintiffs did not discover, and through the exercise of reasonable diligence, could not have discovered that defendants' representations and omissions, as described above, were false and misleading, until at least July 31, 1986.

44. All of the defendants knowingly aided and abetted the violations of Section 12(2) set forth in this count.

45. All of the defendants knowingly conspired and agreed to perform the acts which constitute the violations set forth in this count, and performed acts in furtherance of said conspiracy.

46. All of the defendants knowingly conspired and agreed to conceal the acts of omission which constitute the violations set forth in this count, and performed acts in furtherance of said fraudulent concealment.

VII.

THIRD CLAIM

dismissed
(Against Defendant Weis, Sutton, the ILGC Directors

and the Private Party defendants under

Section 10 of the 1933 Securities Act, and Rule 10b-5)

47. Plaintiffs hereby incorporate all of the allegations of

this complaint into this claim.

48. The conduct of the defendants as alleged above constituted a device, scheme, or artifice to defraud the plaintiffs.

49. Defendants, directly or indirectly, by the use of means or instrumentalities of interstate commerce, or the mails, employed a device, scheme or artifice to defraud plaintiffs, made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and engaged in acts, practices, and courses of business which operated as a fraud and deceit upon plaintiffs, all in connection with the purchase or sale of securities, and all in violation of Section 10 of the Securities Act of 1933, 15 U.S.C. section 78-j and rule 10b-5.

50. Defendants made such misrepresentations or omissions intentionally, knowingly, or recklessly, intending that plaintiffs would rely thereon.

51. Plaintiffs reasonably relied on said misrepresentations, omissions, and other violation of Section 10 and Rule 10b-5, and were damaged and injured thereby.

52. All of the defendants knowingly aided and abetted the violations of Section 10 and Rule 10b-5 set forth in this count.

53. All of the defendants knowingly conspired and agreed to perform the acts which constitute the violations of Section 10

and Rule 10b-5 set forth in this count, and performed acts in furtherance of said conspiracy.

54. Plaintiffs are entitled to recover from defendants the consideration paid for said securities, or in the alternative, to recover damages from defendants, including punitive damages.

VIII.

FOURTH CLAIM

denied
(Against Defendant Weis and the ILGC Director Defendants under Section 17 of the 1933 Securities Act)

55. Plaintiffs hereby incorporate all of the allegations of this complaint into this claim.

56. Weis and the ILGC directors misrepresented the facts as set forth herein, and refused to disclose said material considerations with the intent to induce Charter and the Murray First entities to purchase said securities. Each of said defendants knew of the untruth of their representations and were aware of the nondisclosed information set forth above. Plaintiffs were unaware that said representations were false and misleading, and justifiably relied on said misrepresentations and nondisclosures in purchasing said securities.

57. To the extent that any of the ILGC directors did not know of the falsity of said misrepresentations or omissions at the time of each offer and sale, each was so unaware only because said defendant intentionally and willfully acted to be shielded from the truth by willfully refusing to conduct the thorough and immediate investigation reasonably required in the circumstances.

Such refusal was in willful and reckless disregard of said defendants' responsibilities to ascertain and disclose to plaintiffs the truth of such misrepresentations and material omissions. Defendants' duty to conduct such an investigation arises from the following, among other things:

(a) Weis acted as the underwriter, and as a participant in effecting the sales of worthless notes to Charter and converting the capital assets of the plaintiffs and of the Murray First entities and others. Weis held herself out to plaintiffs as a skilled advisor who would not offer or recommend an issue without having thoroughly investigated the issue and without fully disclosing all material risks. Before and during Weis' solicitations to plaintiffs Weis had participated in the day to day operations of ILGC. As a result of this pre-existing relationship, and in light of Weis' superior knowledge concerning ILGC, and the securities at issue, Weis knew that plaintiffs relied on the financial advice and investment recommendations of Weis and that plaintiffs believed Weis would not recommend ILGC securities as an investment to them without having thoroughly investigated the issue and without fully disclosing all material considerations to the plaintiffs, and in the case of personal plaintiffs, Hansen, Nelson and Gordon, relied on Weis to perform her fiduciary obligation to

them with respect to the retained assets described above.

(b) The ILGC directors endorsed and authorized the issuance of the ILGC promissory note securities, and made direct and material representations and warranties to plaintiffs in the transactional documents, with the intent and purpose of convincing the plaintiffs that they were purchasing valid and binding ILGC obligations. The ILGC directors also knew that the plaintiffs reasonably believed in good faith that Weis was acting on ILGC's behalf and for ILGC's benefit in promoting said securities.

58. Because of said misrepresentations and material omissions, Weis and the ILGC directors violated Section 17 of the Securities Act of 1933, 15 U.S.C. section 77q, in offering and selling said securities to plaintiffs.

59. As a proximate result of such violations, plaintiffs Nelson, Hansen, Gordon, and the Murray First entities have been damaged in an amount of at least \$2,400,000 and such other amount as may be proven at trial, which amounts plaintiffs are entitled to recover from said defendants, jointly and severally.

Dismissed

IX.

FIFTH CLAIM

(Against Defendant Weis, Sutton, the ILGC Directors
and the Private Party defendants under
Section 10 of the Securities Exchange Act of 1934
and Rule 10b-5)

60. Plaintiffs hereby incorporate all of the allegations of this complaint into this claim.

61. Because of the misrepresentations and material omissions, Weis and the ILGC directors violated Section 10 of the Securities Exchange Act of 1934, and Rule 10b-5 promulgated thereto, in the sale of said securities to plaintiffs.

62. As a proximate result of such violations, plaintiffs Nelson, Hansen, Gordon, and the Murray First entities have been damaged in an amount of at least \$10,000,000 and such other amounts as may be proven at trial, which amounts plaintiffs are entitled to recover from said defendants, jointly and severally.

63. As a proximate result of such violations, plaintiffs Harris and Charter have been damaged in an amount of at least \$2,400,000 and such other amounts as may be proven at trial, which amounts plaintiffs are entitled to recover from said defendants, jointly and severally.

X.

SIXTH CLAIM

(Against all Defendants under 18 U.S.C. section 1962(c))

64. Plaintiffs hereby incorporate all of the allegations of

*RICO
Dismissed*

this complaint into this claim.

65. At all material times the ILGC was an enterprise engaged in, and whose activities affected interstate commerce, in that, among other things, its deposit guaranty business and securities sales were conducted through interstate transactions. In addition, Weis, ILGC, the ILGC directors, and the private party defendants were an enterprise within the meaning of 18 U.S.C. section 1961(4) and 1962(c) for the purpose of issuing, selling and defaulting on ILGC promissory notes.

66. Weis, the ILGC directors and the private party defendants were each employed by or associated with said enterprise(s) in that, among other things:

(a) Weis was associated with the enterprise(s) as she sold ILGC promissory notes to the plaintiffs and other thrift institutions by means of, among other things, written and oral communications and interstate telephone calls to the plaintiffs.

(b) the ILGC directors were associated with the enterprise(s) through their approval and authorization of the issuance of worthless ILGC promissory notes, which they had the authority to control.

(c) the private party defendants were associated with the enterprise(s) by virtue of their active participation as members in ILGC, in part through the employment of their employees as directors of ILGC. The private party defendants were also associated with

the enterprise(s) by participation in ILGC's decision making process, specifically in the systematic and intentional undercapitalization of ILGC, which occurred through their control over the affairs of ILGC.

67. Weis, the ILGC directors, and the private party defendants participated directly or indirectly in the conduct of the affairs of the enterprise(s) through a pattern of racketeering activity by each committing two or more acts involving securities fraud in violation of federal law, indictable mail or wire fraud, all in violation of 18 U.S.C. sections 1341, 1343, 1510, in furtherance of a systematic scheme to defraud the private party plaintiffs of their assets by and through Murray First entities, and in furtherance of another systematic scheme to defraud Gary Harris and Charter, and schemes to defraud other investors in the sale of various issues of ILGC promissory notes, and then default on the notes and force the purchaser thrift institutions into receivership. These acts included:

(a) Weis, with intent to defraud plaintiffs and other investors and for the benefit of ILGC, systematically and willfully made and caused to be made repeated and knowingly false and misleading statements to plaintiffs and other investors and purposefully concealed from them material facts about ILGC and the promissory note securities for the purpose of inducing plaintiffs and other investors to purchase them, as set

forth in detail above. In furtherance of the fraudulent scheme, Weis, the ILGC directors and the private party defendants used interstate mails and wires, including repeated mailings and telephone calls from Utah to California, in connection with the Murray First Thrift Purchase and Assumption Agreement, and repeated telephone calls from Utah to Idaho to promote the scheme to defraud Gary Harris and Charter.

(b) In connection with the scheme to defraud the Murray First entities, Weis, the ILGC directors and some of the private party defendants caused to be transported in interstate commerce forged, altered or counterfeited documents, including different fraudulent versions of the Murray First Purchase and Assumption Agreement, and the disposition of Hansen, Nelson and Gordon's retained assets therein. Four different fraudulently altered versions of the Murray First Purchase and Assumption Agreement were sent by mail by the defendants or their agents in furtherance of the defendants' scheme to defraud the Murray First entities: (i) one from Elmer Tucker, First Security Bank mailed to the Federal Reserve of San Francisco (Dec. 10, 1982); (ii) one from Don Allen, First Security Bank mailed to the Federal Reserve of San Francisco; (iii) one from Weis mailed to the Federal Reserve Board in Washington, D.C. (Nov. 9, 1982);

(iv) a later version mailed by First Security to the Federal Reserve Bank in San Francisco (April 1986).

(c) Weis, the ILGC directors, and the private party defendants willfully endeavored to obstruct and prevent their employees and others not associated with the enterprise from communicating information to the criminal justice system or to the public concerning the mail and wire frauds alleged in this count, by misrepresentations, and by destroying or withholding records relating to these frauds. Furthermore, as described above, Weis and the ILGC directors committed violations involving federal securities fraud and Weis falsely accused the plaintiff Gary Harris of stealing funds from Charter, and absconding to Idaho with them.

68. Each of the defendants knowingly aided and abetted each of the acts and omissions of the others.

69. As a proximate result of the participation of Weis, the ILGC directors and the private party defendants in the conduct of said enterprise(s)' affairs through a pattern of racketeering activity in violation of 18 U.S.C. section 1962(c) Gary Harris and Charter have suffered injury to their business and property and loss in the amount of at least \$2,400,000 each, plus other damages to be proved at trial.

70. As a proximate result of the participation of Weis, the ILGC directors and the private party defendants in the conduct of said enterprise(s)' affairs through a pattern of racketeering

activity in violation of 18 U.S.C. section 1962(c) Nelson, Hansen and Gordon having been induced by defendant Borthick and subsequently by defendant Weis and members of the ILGC to purchase controlling interest in the Murray First entities by a series of agreements which the defendants had no intention of honoring. And the Murray First entities have suffered injury to their business and property and loss in the amount of at least \$10,000,000 each, plus other damages to be proved at trial.

71. Pursuant to 18 U.S.C. section 1964(c), plaintiffs are entitled to recover treble damages, costs and attorney's fees from defendants.

XI.

SEVENTH CLAUSE

*Full
Amended*
(Against all Defendants under 18 U.S.C. section 1962(c))

72. Plaintiffs hereby incorporate all of the allegations of this complaint into this claim.

73. Weis, the ILGC directors, and the private party defendants conspired to conduct said enterprise(s) through the pattern of racketeering activity described above in the sale of ILGC securities to plaintiffs and other investors.

74. As a proximate result of the participation of Weis, the ILGC directors and the private party defendants in the conduct of said enterprise(s)' affairs through a pattern of racketeering activity in violation of 18 U.S.C. section 1962(c) Harris and Charter have suffered injury to their business and property and

loss in the amount of at least \$2,400,000 each, plus other damages to be proved at trial.

75. As a proximate result of the participation of Weis, ILGC directors and the private party defendants in the conduct of said enterprise(s)' affairs through a pattern of racketeering activity in violation of 18 U.S.C. section 1962(c) Nelson, Hansen, Gordon and the Murray First entities have suffered injury to their business and property and loss in the amount of at least \$10,000,000 each, plus other damages to be proved at trial.

76. Pursuant to 18 U.S.C. section 1964(c), plaintiffs are entitled to recover treble damages, costs and attorney's fees from defendants.

XII.

EIGHTH CLAIM

(Against all Defendants under 42 U.S.C. section 1983)

77. Plaintiffs hereby incorporate all of the allegations of this complaint into this claim.

78. At times relevant to this claim Weis purported to act as the Commissioner of Financial Institutions; Borthick was her predecessor also purporting to act in the same capacity. Sutton was the Deputy Commissioner of Financial Institutions for the State of Utah. These defendants were responsible at various times for the supervision and control of others who acted as agents, employees and consultants to the State of Utah, while purporting to act on behalf of the State of Utah were in fact

acting for their own benefit and for the purposes of the other defendants and conspirators herein.

79. In doing the acts alleged the public servant defendants purported to act under authority of state law but were in reality acting for themselves under color of law and under color of the statutes, regulations, customs and usages of the State of Utah, including the provisions of Title 7 of the Utah code, governing financial institutions.

80. The ILGC directors, and the private party defendants combined and conspired with the public servant defendants to deny the plaintiffs their federal constitutional rights to due process and equal protection of the laws. The concerted action between the private party defendants, the ILGC directors and the public servant defendants constitutes state action for the purposes of 42 U.S.C. section 1983.

81. The public servant defendants and the ILGC director defendants deliberately misinterpreted and abused their power and authority to regulate plaintiffs' thrift institutions. Plaintiffs have been singled out for oppressive decisions; the public servant defendants have imposed unreasonable, arbitrary and capricious conditions on the individual plaintiffs and Murray First Thrift, and Charter including, but not limited to, inducing and requiring them to purchase stock in the Murray First entities and requiring them to purchase ILGC notes, and inducing private plaintiffs Hansen, Nelson, Gordon and Murray First Thrift & Loan, MFT Mortgage and MFT Financial through their president Jim P.

Hansen to enter into the purchase and assumption agreement and ancillary agreements dated November 5, 1982 and November 15, 1982. Plaintiffs have been the victims of intentional and purposeful discrimination by the public servant and ILGC director defendants. State officials Weis, Borthick, Sutton and their agent Richard A. Christenson deliberately misinterpreted the powers of the Commissioner and ILGC and have purposely singled out the plaintiffs for such misinterpretations. Such unequal application of the law and regulations constitutes a denial of equal protection of the laws.

82. Plaintiffs were deprived of their federal constitutional rights because they were selectively treated by the public servant defendants acting in concert with the ILGC directors, and the private party defendants. Unfair, discriminatory and burdensome conditions and requirements were imposed on plaintiffs which were not imposed on other similarly situated thrift institutions. More particularly, such conditions and requirements were not imposed on the private party defendants in the operation of their affiliated thrift institutions.

83. The selective treatment of plaintiffs by the public servant defendants was based on impermissible considerations; namely, an intent to cover up the mismanagement and insolvency of ILGC by issuing notes and Net Worth Certificates and planned to plunder the assets of the private plaintiffs and of plaintiffs' corporations and to accord preferential treatment to the private party defendants and their affiliates.

84. The defendants acted with malicious intent to deprive plaintiffs of due process and equal protection of the laws, and the concerted acts of the defendants caused such deprivations to occur. The defendants' concerted action under color of law has deprived plaintiffs of rights, privileges, and immunities secured to them by the Constitution and laws of the United States; particularly their rights not to be deprived of property without due process of law and just compensation, guaranteed by the Fifth and Fourteenth Amendments to the Constitution; and their rights to the equal protection of the laws guaranteed under the Fourteenth Amendment.

85. In addition to general damages, plaintiffs are entitled to punitive damages as may be proved.

86. As the direct and proximate result of the acts of the defendants alleged above, plaintiffs have suffered out of pocket pecuniary losses and damages to their business and property, including the loss to the Murray First entities of not less than \$13,000,000 in Murray First assets conveyed to First Security Financial for no consideration; plaintiffs Harris, Hansen, Nelson and Gordon have suffered anxiety and emotional distress; their reputations have been impaired, and they have been compelled to expend substantial sums of money and much of their time pursuing fruitless applications and submissions to Commissioner Weis.

87. As a direct and proximate result of defendants' violations of law; including their fraudulent sale of securities, plaintiffs have been injured in their business and property and

have sustained actual damages the full extent of which cannot be presently calculated, but which exceeds the sum of \$23,000,000.

88. Plaintiffs' damages include, but are not limited to: (a) increased development costs for Bel Marin Keys; (b) the loss of the going business value of the thrift institutions owned by the plaintiffs; (c) the loss incurred through expenditures for court costs and necessary legal expenses ;and (d) the loss of reputation as competent businessmen in the financial community.

Unrevised

XIII.

NINTH CLAIM

(Plaintiff Harris Against defendants Weis, Sutton, Larsen, and Throndsen for Defamation.)

89. Plaintiff Harris hereby incorporates all of the allegations of this complaint into this claim.

90. Harris was associated with the banking industry in Northern Utah for 21 years, from 1964 to 1985, during which time he acquired a valuable statewide and regional reputation as a competent, conservative and honest banking executive. His statewide reputation within the banking industry was enhanced by his tenure as a director of the Utah Bankers' Association from 1983 to 1985.

91. Harris had a business reputation in the State of Utah as a competent banker, worthy to hold positions of public trust. He served as a chairman of the Northern Division, Utah, American Cancer Society, and served on the Board of Directors of the Red Cross; for 30 years Harris has held leadership positions in the

LDS Church, exercising stewardship over church funds, and properties.

92. Defendant Weis, on numerous occasions in September and October 1986, with no reasonable grounds for believing them to be true, made false and defamatory statements about Harris. The exact content of the statements are presently unknown to Harris, but the defamatory gist of the statements includes the following:

(a) That Harris had taken \$11,000,000 from Charter, that the bulk of the stolen funds were taken by Harris to Idaho, to build houses, and that Weis did not know Harris' whereabouts;

(b) That Harris had run Citizens Bank as his own personal, private bank, that he had gutted Citizens financially and then started the same process on Charter.

93. An ordinary listener would understand the defamatory statements to mean that Harris had absconded to places unknown with the funds of Charter and Citizens' Bank, and could not be found by authorities.

94. Weis knew the foregoing statements were false at the time she made them, because she knew that no funds were stolen, or otherwise wrongfully taken by Harris from Citizens' Bank or from Charter.

95. Weis knew, or should have known, that the demise of Citizens' Bank was caused by a \$9,000,000 real estate trade made in March or April 1985 by a director, Darwin Larsen, who was then

acting de facto, as the chief executive officer of Citizens' Bank.

96. Moreover, Weis knew, or should have known, at the time she made the defamatory statements set forth above, that the FBI had investigated Citizens' Bank after its closure in 1985 and reported no wrongdoing by Harris.

97. In addition, Weis had a full time bank examiner from the Department of Financial Institutions of the State of Utah employed full time at Charter from approximately March, 1985 until Weis seized Charter on June 30, 1986. During the entire months that her employee and representative was present at Charter, every transaction in which Harris was involved was examined in complete detail by him. Not once did the State examiner discover or report any wrongdoing by Harris.

98. Furthermore, the Federal Reserve Bank audited the books and records of Citizens Bankshares, and all of its subsidiaries and affiliates, including Charter Thrift and Citizens' Bank, every year during the time Harris was involved with these entities. The last Federal Reserve review during the time Harris was involved with Charter and Citizens was conducted in June 1985. At that time no defalcations were reported. Under its rules, as Weis knew, any misconduct, defalcation, misappropriation, or self dealing must be reported. No wrongful act, or questionable transactions by Harris or members of his family were found by the Federal Reserve.

99. In spite of the facts known to Weis, she made further false statements about Harris, announcing in October 1986 that the Department of Financial Institutions and the Federal Deposit Insurance Corporation ("FDIC") were bringing criminal charges against Harris. At the time she made these statements, Weis had no reasonable grounds for believing them to be true.

100. The ordinary listener would understand this statement to mean that criminal charges had been brought against Harris wrongfully taking funds from Charter or Citizens' Bank. Listeners did so understand Weis' statements.

101. On or about September 15, 1986, on Channel 5 TV in Salt Lake City, Utah, defendant Sutton made false and defamatory statements about Harris, the exact content of which is unknown to Harris at this time, but the defamatory gist of which is that Harris had committed the most egregious defalcation in the history of the Department of Financial Institutions for the State of Utah. This statement was made soon after the conviction of Val Costley for embezzlement of \$5,400,000 from Family Bank.

102. Ordinary listeners would understand Sutton's statements to mean that Harris had embezzled more than \$5,400,000 from Charter Thrift and Citizens' Bank. Listeners did so understand Sutton's statements.

103. Plaintiff is informed and believes that Sutton also falsely stated that Harris stole \$11,000,000 which was the direct cause of the demise of Charter, and had used family, business

friends, and shell corporations to effect his thefts. Such statements were false in their entirety.

104. At the time he made the statements Sutton had no reasonable grounds for believing them to be true.

105. At the time Weis and Sutton made the statements alleged herein they knew that such statements would be republished by others, and they made the defamatory statements intending that such republications would occur.

106. The defamatory statements originated by Weis and Sutton were republished by defendants Larsen and Throndsen, who made such republications with knowledge that the statements were false.

107. Such statements proximately caused Harris special damages to his business and property, including but not limited to curtailment of credit, denial of loan applications, and demands for additional collateral, disruption of a partnership, and the creation of additional burdens in all of Harris' business dealings, all to his damage in an amount subject to proof at trial, but not less than \$7,000,000 as to each defendant.

108. Defendants' statements have caused Harris to be shunned and avoided, and have caused disruption in his family relationships, created anxiety, and emotional distress, all to Harris' damage in an amount subject to proof at trial, but in no event not less than \$8,500,000 as to each defendant.

109. Weis, Sutton, Larsen and Throndsen published the foregoing defamatory statements about Harris willfully,

purposefully and maliciously. Plaintiff is therefore entitled to punitive damages according to proof, but in no event less than \$10,000,000 as to each defendant.

XIV.

(Against all Defendants Under Utah Racketeering
Influences and Criminal Enterprise Act)

110. Plaintiffs hereby incorporate all of the allegations of this complaint into this claim.

111. The actions of the defendants and each of them, as alleged herein, constitute violations of Utah Code Ann. Section 76-10-1601 et. seq. (1953), as amended, and are the legal and factual causes of injury for which the defendants are liable and actual damage of no less than \$2,400,000 each as to Plaintiffs Harris, Thrift Holding Company and Charter Thrift & Loan, and \$10,700,000 each as to Plaintiffs Nelson, Hansen, Gordon, Murray First Thrift & Loan, MFT Financial, and \$1,000,000 as to Plaintiff MFT Mortgage, which sum should be trebled, and for costs of suit, reasonable attorneys' fees and punitive damages.

XV.

PRAYER

WHEREFORE, Plaintiffs demand judgment as follows:

1. Under the FIRST through EIGHTH, and the ELEVENTH CLAIM, for such general and special damages jointly and severally against each and every defendant above named defendant as may be established at the trial, but in no event less than \$2,400,000 each in favor of Plaintiffs Harris, Thrift Holding Company and

Charter Thrift & Loan, and \$10,700,000 each in favor of Plaintiffs Nelson, Hansen, Gordon, Murray First Thrift & Loan, MFT Financial, and \$1,000,000 as to Plaintiff MFT Mortgage, trebled on the SIXTH, SEVENTH, and EIGHTH CLAIMS against all defendants except the State of Utah.

2. Under the SIXTH and SEVENTH CLAIMS, an injunctive ord divesting all defendants from any interest in the property or future conduct of the enterprise, including divestiture of any trusteeships or receiverships exercised by defendant Weis in he capacity as trustee conservator receiver, or however characterized, and the ILGC.

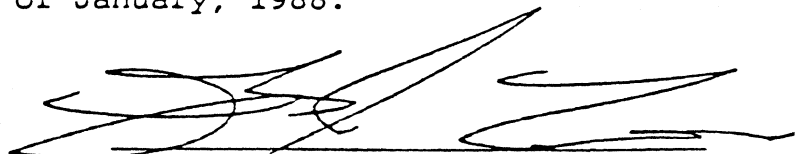
3. Under the NINTH CLAIM for such general and special damages against each and every defendant above named as may be established at the trial, but in no event less than \$7,000,000 special damages, \$8,500,000 general damages and \$10,000,000 each in favor of Plaintiff Harris.

4. Under the EIGHTH and TENTH CLAIMS, for reasonable attorneys' fees.

5. From an order of this court making Charter Thrift & Loan and Thrift Holding Company parties plaintiff to this action

6. For such other and further relief, including court costs, as the court deems just.

DATED this 15th day of January, 1988.



Richard J. Leedy
Attorney for Plaintiffs

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Attorneys for the Plaintiffs

IN THE THIRD JUDICIAL DISTRICT COURT, FOR SALT LAKE COU

STATE OF UTAH

-----ooo0ooo-----

JIM PRATT HANSEN; RODNEY F.
GORDON; MFT FINANCIAL, INC.
a Utah corporation;
MURRAY FIRST THRIFT AND LOAN
COMPANY, a Utah corporation;
and MFT MORTGAGE CO., a Utah
corporation,
Plaintiffs,

vs.

GEORGE SUTTON, individually
and as Commissioner of the
Department of Financial
Institutions of the State of
Utah and as
Commissioner in Possession of
the Industrial Loan Guaranty
Corporation of Utah and as
Trustee of the retained assets
of Murray First Thrift and Loan
Co.; ELAINE B. WEIS,
individually and as former
Commissioner of the
Department of Financial
Institutions of the State of
Utah; MERVIN BORTHICK,
individually and as former
Commissioner of the
Department of Financial Institu-
tions of the State of Utah;

AMENDED COMPLAINT
(BREACH OF CONTRACT;
INTENTIONAL INTERFERENC
CONTRACTUAL RELATIONS)

Civil No. 90-0903241CN

Judge Timothy R. Hanson

Department of Financial Institutions of the State of Utah;
THE DEPARTMENT OF
FINANCIAL INSTITUTIONS OF THE
STATE OF UTAH; THE
INDUSTRIAL LOAN GUARANTY
CORPORATION OF UTAH;
JOHN DCES 1-20; ABC
CORPORATIONS 1-20; AND XYZ
PARTNERSHIPS 1-20.

Defendants.

-----ooo0ooo-----

For their Complaint, Plaintiffs allege as follows:

GENERAL ALLEGATIONS

I

Plaintiffs Rodney F. Gordon and Jim Pratt Hansen are at all relevant times were residents of Salt Lake County, of Utah.

II

At relevant times, Plaintiffs MFT Financial, Inc. (Murray First Thrift and Loan Co. (MFT & L) and MFT Mortgage (MFTM) were corporations organized and authorized to do business in the State of Utah. At relevant times, MFT & L was an industrial loan corporation operating under Utah law.

III

Plaintiffs Gordon and Hansen are controlling shareholders and members of the Board of Directors of Plaintiff MFTF. Plaintiffs Gordon and Hansen are and at relevant times were officers and/or directors of Plaintiff MFT & L and MFTM.

IV

Upon information and belief, Defendant Elaine B. Weis is and at all times was a resident of the State of Utah. At relevant times, Defendant Weis was the Commissioner of the Department of Financial Institutions of the State of Utah.

V

At all relevant times, Defendant Mervin Borthick was a resident of the State of Utah. At relevant times, Defendant Borthick was the Commissioner of the Department of Financial Institutions of the State of Utah.

VI

Defendant George R. Sutton is and at all relevant times was a resident of the State of Utah. Defendant Sutton is and at relevant times was (1) the Commissioner of the Department of Financial Institutions of the State of Utah; (2) the Commissioner in Possession of the Industrial Loan Guaranty Corporation of Utah; and (3) the Trustee of the retained assets of MFT & L.

VII

Defendant Department of Financial Institutions is an agency of the State of Utah.

VIII

At relevant times, Defendant Industrial Loan Guaranty Corporation of Utah (ILGC) was a non-profit corporation organized

and operated under the laws of the State of Utah. In or August of 1986, the Department of Financial Institutions State of Utah seized the ILGC and, at all relevant times, has acted as Commissioner in Possession of the ILGC.

IX

Defendants John Does 1-20; ABC Corporations 1-20; Partnerships 1-20 are fictitious entities which may be li Plaintiffs in whole or in part and which will be added her amendment when their true identities are learned.

X

Each of the Defendants named herein acted on behal and as agent for each of the other Defendants named herein

XI

Each of the contracts alleged herein was entered in was to have been performed in the County of Salt Lake, Stat Utah.

XII

All of the conduct, transactions and occurrences al herein took place in the County of Salt Lake, State of Utah

COUNT ONE

(BREACH OF CONTRACT - HANSEN, GORDON, MFT & L,
MFTF and MFTM v. BORTHICK, WEIS, and the
DEPARTMENT OF FINANCIAL INSTITUTIONS
OF THE STATE OF UTAH)

XIII

Plaintiffs reallege the allegations contained in paragraphs I through XII above as though fully set forth herein and further allege as follows.

XIV

On or about March 14, 1979, Defendant Borthick, acting in his capacity as the Commissioner of the Department of Financial Institutions of the State of Utah, issued an order placing certain restrictions upon the operations of Plaintiff MFT & L on the asserted grounds that MFT&L was:

1. Conducting its business in an unsound and unsafe manner;
2. Pursuing plans which jeopardized the position of its thrift holders;
3. Operating with an impairment of capital.
4. Had violated a law applicable to industrial loan corporations.

(A true and correct copy of said Order is attached hereto as Exhibit "A" and incorporated herein by reference).

XV

Under the above-referenced Order, Defendant Borthick also recommended certain corrective action required to be taken in order for MFT&L to avoid having "the Commissioner of Financial Institutions, under authority of Section 7-2-1 Utah Code Ann.

1953, as amended, to forthwith take possession of the business and property of Murray First Thrift & Loan Co." (See Exhibit attached hereto), including the following:

1. Within thirty days from the above date, and not later than April 13, 1979: Murray First Thrift & Loan Co. shall submit a written plan to the Commissioner of Financial Institutions for full divestiture to be accomplished within 180 days from its affiliate companies with the exception of MFT Leasing, which status is negotiable. Affiliates are as follows:

M.F.T. Financial, Inc.	(Parent Company)
MFT Mortgage Corp.	(Wholly-owned Subsidiary)
MFT Leasing	(Wholly-owned Subsidiary)
Lon Investment Co.	(50% owned Subsidiary)

The guaranty by Murray First Thrift & Loan Co. of credit lines, or any other obligations of affiliates, must be eliminated before the required divestiture.

2. Effective immediately: No further advances, rewrites of present receivables, or the entering into of any other transactions through, with, or for the following individuals and entities are

allowed without the specific written approval of the
Commissioner of Financial Institutions.

- | | |
|------------------------------|--------------------------------------|
| 1. Alternate Energy Systems | 11. James Lang |
| 2. American Land Programs | 12. Johnson Land Company |
| 3. Baseline Sacramento Prop. | 13. Maurice Hall |
| 4. Brooke Grant | 14. Mont Blanc Realty |
| 5. Delta Milling | 15. Murray First
Financial Europe |
| 6. Elbert Ranch Company | 16. Reading Holding Co. |
| 7. Erland Stenberg | 17. Ross Lare Realty |
| 8. Franklin Johnson | 18. Trailerrancho Corp. |
| 9. Glendon Johnson | 19. Trailerrancho Holding Co. |
| 10. Howard Harmer | |

or any other individual or entity having a direct
or indirect business relationship.

3. Effective immediately: There are to be
no future advances to, or re-writes of, present
receivables from M. F. T. Financial Inc.

(Subject to approval by the Commissioner of
Financial Institutions, a reasonable dividend may
be paid on the net earnings of Murray First
Thrift & Loan Co.)

4. Within 180 days Murray First Thrift &
Loan Co. must arrange for a majority of its Board
of Directors to consist of individuals not
employed by Murray First Thrift & Loan Co. or its
affiliates. The appointments of new directors
will be subject to approval by the Commissioner
of Financial Institutions.

(See Exhibit "A" attached hereto).

XVI

At the time of Defendant Borthick's March 14, 1979, above-referenced, approximately eighty-percent (80%) of 1 of MFT&L's parent corporation, MFTF, was owned by MFT Holding Company aka Reading Holding Company, which in turn was or hundred percent (100%) owned by R. Howard Harmer, Cora Beth Harmer, Franklin Johnson and Glendon Johnson.

XVII

Upon information and belief, in large part because restrictions imposed upon MFT&L under the March 14, 1979 R. Howard Harmer, Cora Beth Harmer, and R. Howard Harmer, for Glendon Johnson and Franklin Johnson, as "Sellers," entered into a Stock Purchase Agreement dated October 6, 1980, where said parties sold their stock in MFT Holding Company aka Holding Company to Irving Financial Corporation for the purchase price of \$16,000,000.00.

XVIII

At all relevant times, Plaintiffs Gordon and Hansel controlling shareholders, officers and/or directors of Irving Financial Corporation.

XIX

On or about December 31, 1980, and pursuant to negotiations between Irving Financial Corporation and Defendant

Borthick, then acting as Commissioner of Financial Institutions regarding Irving's purchase of the stock of MFT Holding Company above-referenced, Defendant Borthick issued an Order essentially providing for the approval of Irving's purchase of the stock of MFT Holding Company and the lifting of the restrictions imposed by the prior March 14, 1979 Order, on the condition precedent that Irving inject certain specified new capital into MFT&L. A true and correct copy of the December 31, 1980 Order is attached hereto as Exhibit "B" and incorporated herein by reference.

XX

Subsequently, on or about July 17, 1981, Defendant Borthick and Irving Financial Corporation entered into a memorandum of understanding whereby the Department of Financial Institutions agreed to remove the restrictions placed on MFT&L on the following conditions:

A minimum of \$1,900,000 in cash is contributed to Thrift in the form of paid-in capital.

The contributions to capital and the reorganization of MFT Holding, MFT Financial, Lon Investment, and MFT Mortgage will be carried out as detailed in the "Pro Forma Balance Sheet" dated July 1, 1981 expeditiously and in conformity with governing regulations and statutes.

2. None of the cost associated with the proposed reorganization will be passed on to Thrift.

3. A letter is received from ownership outlining the involvement of and/or obligations to Franklin Johnson, Glendon Johnson and Howard Harmer.

4. A letter detailing how the loan for \$2,600,000 with Commercial Security Bank and the All Inclusive Trust Deed for \$5,600,000 will be serviced by Bonneville Development.

5. Management of Thrift meets the approval the Department.

6. The Department is assured access to the books and records of the holding companies.

7. A resolution is received, signed by all members of the Board of Directors of the holding company, Irving Financial Corp., stating that it is their intention to operate Murray First Thrift and Loan with the expressed purpose of strengthening it and that operations will be conducted within the purview of laws and regulations.

8. The Department will continue to approve all dividends paid to or transfers of cash from Thrift to the holding company.

9. Any obligations of the holding company and related parties to Thrift will be paid according to the terms enumerated on the obligation.

(A true and correct copy of the July 17, 1981 letter from Defendant Borthick to the Board of Directors of Irving Financial Corporation is attached hereto as exhibit "C" and incorporated herein by reference).

XXI

Said agreement was modified again by letter dated July 30, 1981 from MFTF to and executed by Defendant Borthick to provide that the \$1,900,000 in cash to be contributed to MFT in the form of paid in capital was reduced to the sum of \$1,800,000 (A true and correct copy of the July 30, 1981 letter is attached hereto as Exhibit "D" and incorporated herein by reference.

XXII

The "reorganization" plan referred to in the July 1, 1981 modified agreement contemplated, inter alia, that Irving Financial Corporation was to be and in fact was merged into MFT Holding Company, with MFT Holding Company as the surviving entity, which would and subsequently did change its name to Irving Financial Corporation. (A true and correct copy of the Certificate of Merger of Two Domestic Corporations is attached hereto as Exhibit "E" and incorporated herein by reference.)

XXIII

Thus, the "reorganization" plan negotiated by Plaintiff and Borthick contemplated the corporate death of what was then Irving Financial Corporation.

XXIV

The "reorganization" plan also contemplated that additions to or replacement of capital of MFT&L would be made by the Plaintiffs in the following amounts:

- (a) \$2,100,000 principal equity in All Inclusive Trust Deed together with accrued interest;
- (b) \$2,706,000 in cash;
- (c) \$900,000 in accounts receivable;
- (d) 39% interest in Bel Marin Keys property with agreed upon value of \$4,356,000; and
- (e) replacement of deferred profit on Schlichting-Mayflower Note of \$1,700,000.

XXV

Plaintiffs were intended third-party beneficiaries of the July 17, 1981 agreement as modified by the July 30, 1981 agreement above-referenced, and have substantially satisfied their duties and obligations arising thereunder.

XXVI

In spite of Plaintiff's substantial compliance with the terms of said agreement, Defendants have failed and refuse to perform their end of the bargain. Specifically, on or about July 22, 1982, and after Plaintiffs had injected approximately \$11,900,000 in new and replacement capital into MFT&L in accordance with the July 17, 1981 agreement, Defendants were notified by the Department of Financial Institutions seized the business.

property of MFT&L and MFTM, purporting to act under authority under §7-2-1, U.C.A. In seizing the property of MFT&L and Defendant Weis acted maliciously and/or with gross negligence.

XXVII

Defendants Weis' and the Department of Financial Institution's seizure of the business and property of MFT&L and MFTM was a breach of the July 17, 1981 agreement and Plaintiffs have suffered damages thereby in an amount to be proven at trial but not less than \$11,900,000.

Wherefore, Plaintiffs pray for Judgment against Defendants as follows:

(1) For compensatory damages in an amount to be proven at trial, but not less than \$11,900,000, together with interest thereon from the date of Judgment until paid.

(2) For such other and further relief as the court may deem just and proper.

COUNT TWO

(BREACH OF CONTRACT - MFT and MFTF
V. SUTTON, DFI, AND ILGC)

XXVIII

Plaintiffs reallege the allegations of paragraphs I through XII above as though fully set forth herein and do hereby allege as follows.

XXIX

On or about December 13, 1982, Plaintiffs and Defendants entered into a Purchase and Assumption Agreement ("P & A Agreement") pursuant to which a majority of MFT & L's assets and liabilities were transferred to First Security Financial, Inc. The assets of MFT & L not transferred to First Security Financial ("retained assets") were to be held in trust for the benefit of certain creditors of MFT & L and the owners of MFT & L.

XXX

Pursuant to the P & A Agreement, Sutton and the DFI promised to terminate any role or responsibility which they had with respect to the retained assets within six months. The parties further agreed that, at such time, "at the option of MFT's Board of Directors, the trust may continue or may be terminated. In either event, however, exclusive control of the retained assets shall be held by the MFT Board." (See Exhibit "F" attached hereto).

XXXI

Alternatively, the P & A Agreement contained an implied promise that Sutton and the DFI would turn over the retained assets to MFT & L and terminate their role in connection therewith at the earliest possible time consistent with SBA's statutory responsibilities.

XXXII

Under the terms of the P & A Agreement, Sutton and DFI further agreed not to impede any sale or development of retained assets by MFT & L.

XXXIII

Plaintiffs have performed all of their obligations under the P & A Agreement.

XXXIV

However, despite Plaintiffs' repeated demands, Sutton and the DFI have failed and refused to turn over the retained assets to MFT & L and, by virtue thereof, Plaintiffs have been damaged in an amount to be determined at trial, but not less than \$11,700,000. Sutton's failure and refusal to turn over the retained assets to MFT&L was done maliciously and with deliberate disregard for Plaintiffs' rights.

XXXV

In or around November, 1987, over Plaintiffs' vigorous objections, Sutton and the DFI sold MFT & L's interest in the retained assets, i.e., the Bel Marin Keys property, for a purchase price of approximately \$11,000,000. Sutton's sale of said property was done maliciously and in deliberate disregard for Plaintiffs' rights.

XXXVI

At the time of said sale, MFT & L was involved in negotiations for the sale of the property, one of which is an offer to purchase the property for approximately \$64,000.

XXXVII

By selling the BMK property over MFT & L's objection during the course of said negotiations, Sutton and the DFI breached their obligation under the P & A Agreement not to hinder MFT & L's efforts to sell or develop the property and, by doing so, MFT & L has been damaged in an amount to be determined at trial, but not less than \$11,700,000.

XXXVIII

Sutton's and the DFI's decision to sell the BMK property was based upon the improper motive of obtaining cash to fund the by then defunct ILGC.

XXXIX

Sutton's and the DFI's sale of the BMK property in order to obtain cash for the defunct ILGC was in breach of their implied obligations of good faith and fair dealing under the P & A Agreement.

XXXX

Sutton's sale of MFT & L's interest in the BMK property in order to obtain cash for the defunct ILGC was in breach

fiduciary obligations under the P & A Agreement as trustee of retained assets.

XXXXI

Plaintiffs have been damaged by Defendants' breaches of the P & A Agreement, above-referenced, in amount to be determined at trial, but not less than \$11,700,000.

XXXXII

The ILGC and Sutton, acting in his capacity as Commissioner in Possession of the ILGC, induced the DFI and Sutton, acting in his capacity as trustee over the retained assets, to sell the BMK property thus breaching his contractual and fiduciary obligations to MFT & L under the P & A Agreement. By encouraging said breach, the ILGC and Sutton breached their obligations of good faith and fair dealing under the P & A Agreement.

Wherefore, Plaintiffs pray for judgment against Defendants as follows:

(1) For compensatory damages in an amount to be determined at trial, but not less than \$11,700,000, together with interest thereon from the date of judgment until paid.

(2) For such other and further relief as the Court may deem just and proper.

COUNT THREE

(INTENTIONAL INTERFERENCE WITH CONTRACTUAL
RELATIONS - MFT & L and MFTF V. SUTTON AND ILGC)

XXXXIII

Plaintiffs reallege the allegations contained in paragraphs I through XII and XXVIII through XXXXII above as though fully set forth herein and further allege as follows.

XXXXIV

Sutton's and the ILGC's inducement of the breach of the P & A Agreement, above alleged, constitutes intentional interference with Plaintiffs' contractual relations.

XXXXV

Plaintiffs have been damaged by said interference in an amount to be proven at trial, but not less than \$11,700,000.

Wherefore, Plaintiffs pray for judgment against Sutton and the ILGC as follows:

(1) For compensatory damages in an amount to be determined at trial, but not less than \$11,700,000, together with interest thereon from the date of judgment until paid.

(2) For such other and further relief as the court may deem just and proper.

DATED this _____ day of _____, 1990.

SPAFFORD & SPAFFORD
A Professional Corporation

Scott B. Mitchell

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Attorney General
BRYCE H. PETTEY - 2593
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Attorneys for Defendants
236 State Capitol
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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

JIM PRATT HANSEN, ET AL.,	:	
Plaintiffs,	:	MOTION TO DISMISS
vs.	:	
GEORGE SUTTON, ET AL.,	:	Civil No. 900903241
Defendants.	:	Judge Timothy R. Hanson
	:	

Defendants State of Utah, Utah Department of Financial Institutions, Elaine Weis, and George Sutton individually, as Commissioner of Financial Institutions of the State of Utah, and as Trustee of the retained assets of Murray First Thrift and Loan, move to dismiss the complaint because it fails to state claims on which relief can be granted.

The accompanying memorandum supports this motion.

DATED this 13 day of July, 1990.

R. PAUL VAN DAM
Attorney General

Reed M. Stringham

REED M. STRINGHAM III
Assistant Attorney General
Attorney for Defendants

CERTIFICATE OF MAILING

This is to certify that I mailed a copy of the
foregoing MOTION TO DISMISS to the following this 13 day of
July, 1990:

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RICHARDS, BRANDT & MILLER
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Salt Lake City, Utah 84144

Scott Mitchell
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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

JIM PRATT HANSEN, ET AL.,	:	
Plaintiffs,	:	MEMORANDUM SUPPORTING
vs.	:	MOTION TO DISMISS
GEORGE SUTTON, ET AL.,	:	Civil No. 900903241
Defendants.	:	Judge Timothy R. Hanson
	:	

Defendants State of Utah, Department of Financial Institutions, Weis and Sutton have moved to dismiss the Complaint on grounds of statutes of limitations and governmental immunity. This memorandum supports that motion.

STATEMENT OF FACTS

1. This action arises from alleged misconduct in defendants' regulation of and dealings with MFT Financial, Inc., Murray First Thrift and Loan Co., and MFT Mortgage Co., Complaint, paras. 14-45.

2. Plaintiffs allege three causes of action against defendants. Counts One and Two contain claims for breach of contract. Count Three purports to allege a claim for interference with contractual relations.

3. Plaintiffs allege that their Count One claim for breach of contract arose on or about July 22, 1982.

4. Plaintiffs do not allege that Weis or Sutton acted with fraud or malice.

5. The plaintiff corporations MFT Financial (MFTF), Murray First Thrift & Loan (MFTL), and Murray First Thrift Mortgage (MFTM) were dissolved December 31, 1984. See Exhibit A, attached.

6. Plaintiffs did not submit a notice of claim as to the allegations of Count Three.

ARGUMENT

POINT I

COUNT ONE IS BARRED BY THE APPLICABLE STATUTES OF LIMITATION AND BY GOVERNMENTAL IMMUNITY

Plaintiffs allege in Count One of the Complaint that defendants Weis and the Department of Financial Institutions (DFI) breached a written contract consisting of letters and other documents. The contract, according to plaintiffs, provided that MFTL would be permitted to do business in the State of Utah if it met certain conditions imposed by Commissioner of Financial Institutions Mirvin Borthick. Plaintiffs allege that they met those conditions and that MFTL was prevented from doing business when Weis and DFI took possession of MFTL and MFTM on July 22, 1982. This purportedly amounts to a breach of contract. See Complaint, paras. 14-27.

Count One fails to state a claim because the breach of contract action is barred by the statutes of limitation in Utah

Code Ann. §§ 78-12-23, 16-10-100. Alternatively, Count One does not state a claim against Weis because she is immune under Utah Code Ann. § 63-30-4(4).

A. Statutes of Limitation

The corporate and individual plaintiffs sue on the basis of breach of contract in Count One. According to plaintiffs, the cause of action arose on July 22, 1982, the date the Department of Financial Institutions (DFI) took possession of MFTL.

Two statutes of limitation govern this claim. The first is Utah Code Ann. § 78-12-23 which limits to 6 years the period for suing on an instrument in writing. The second is Utah Code Ann. § 16-10-100. It requires a dissolved corporation to commence within 2 years after dissolution an action based on a right or claim it possesses at the time of dissolution.

These statutes of limitation bar Count One. More than 6 years have passed since the cause of action arose, so it fails under § 78-12-23. Additionally, the claims of the corporate plaintiffs are barred under § 16-10-100 because more than 2 years have passed since the date of dissolution in December, 1984.

B. Individual Immunity of Government Employees

The Utah Governmental Immunity Act narrowly defines the situations in which government employees may be sued. It states that its provisions contain the exclusive remedy for claims against those employees. Utah Code Ann. § 63-30-4(3); Madsen v. Borthick, 656 P.2d 627, 633 (Utah 1983). It also declares that no employee may be held personally liable for actionable conduct unless his acts are fraudulent or malicious. Id. § 63-30-4(4).

The necessity of an allegation of fraud or malice in the Complaint is demonstrated by the holding in Maddocks v. Salt Lake City Corp., 740 P.2d 1337 (Utah 1987). In that case, two Salt Lake police officers were sued for negligently failing to prevent a fellow officer from beating the plaintiff during an arrest. Id. at 1338. The Utah Supreme Court affirmed dismissal of the negligence claim against the officers because neither fraud nor malice was alleged. Id. at 1340.

In the instant case, there is no allegation that Weis acted fraudulently or maliciously. Thus, the Complaint fails to state a claim against her and should be dismissed.

POINT II

PLAINTIFFS ARE BARRED FROM ASSERTING THE CLAIMS ALLEGED IN COUNT TWO

Plaintiffs MFT and MFTF allege in Count Two of the Complaint that defendants Sutton and DFI breached a Purchase and Assumption agreement. The contract, according to plaintiffs, provided that plaintiffs would retain control of certain assets that were not transferred to First Security Financial under the Purchase and Assumption agreement. Plaintiffs allege the agreement was violated in November, 1987 when Sutton and DFI sold one of the assets, a parcel of land called the Bel Marin Keys. According to them, the sale gave rise to claims for breach of fiduciary duty, breach of contract, and breach of a covenant of good faith and fair dealing. See Complaint, paras. 28-42.

These allegations fail to state a claim. First, there is no allegation of fraud or malice against Sutton, so he is

immune from suit. See POINT I B, supra. Second, plaintiffs MFT and MFTF have no standing to assert such claims. These entities were dissolved in December, 1984, three years before the cause of action accrued. Cf. Utah Code Ann. § 16-10-100 (after dissolution, a dissolved corporation may assert claims that accrued before dissolution).

There is a third reason the allegations do not state a claim. A cause of action for breach of fiduciary duty against a government entity is barred by governmental immunity.

The Utah Governmental Immunity Act grants qualified immunity to government entities whose acts constitute governmental functions. Utah Code Ann. § 63-30-3. The Act contains a three step test for determining whether a government entity is immune. See Maddocks, 740 P.2d at 1340. The court must first decide whether the acts complained of constitute governmental functions. If so, those acts are immune. Utah Code Ann. § 63-30-3; Williams v. Carbon County Bd. of Ed., 780 P.2d 816, 818 (Utah 1989). The second step requires a determination of whether there is a waiver of this immunity. If such a waiver exists, the third step involves deciding whether there is an exception to the waiver.

A governmental function is:

any act, failure to act, operation, function, or undertaking of a governmental entity whether or not the act, failure to act, operation, function, or undertaking is characterized as governmental, proprietary, a core governmental function, unique to government, undertaking in a dual capacity, essential to or not essential to a government or government function, or could be performed by private enterprise or private persons.

Utah Code Ann. § 63-30-2(4). The conduct of which plaintiffs complain fits within this definition. The Complaint states the DFI breached fiduciary obligations to plaintiffs under the Purchase and Assumption agreement. The alleged improprieties are acts, functions or undertakings of a government entity, the DFI. The DFI is consequently entitled to the immunity conferred by § 63-30-3.

The second step is to determine whether DFI's immunity has been waived for breach of fiduciary duty. There is no such waiver in the Immunity Act. Therefore, DFI is immune.

POINT III

COUNT THREE IS BARRED

Plaintiffs MFTL and MFTF allege in Count Three that Sutton and the ILGC intentionally interfered with their contractual relations under the Purchase and Assumption agreement described in Count Two. The factual basis for this allegation is that the ILGC and Sutton, acting as Commissioner in Possession of the ILGC, induced DFI and Sutton, acting in his capacity of trustee of the Bel Marin Keys property, to sell the Bel Marin Keys and breach the Purchase and Assumption agreement.

These allegations fail to state a claim. First, defendant Sutton is immune because there is no allegation of fraud or malice. See POINT I B, supra. Second, the corporate plaintiffs were dissolved in December 1984, three years before the cause of action accrued, and therefore have no standing to assert such a claim. See POINT II, Supra. Third, plaintiffs failed to file a notice of claim pursuant to Utah Code Ann. § 63-

30-12. Fourth, plaintiffs failed to file an undertaking pursuant to Utah Code Ann. § 63-30-19. Fifth, the tort of interference with contractual relations does not apply to the facts as alleged.

A. Notice of Claim

A notice of any claim against a government entity or its employee must be submitted within one year after the claim arises. Utah Code Ann. § 63-30-12; Madsen v. Borthick, 769 P2d 245, 252 (Utah 1988). The notice must be submitted to the agency involved and to the Attorney General. Id. at § 63-30-12. A cause of action is barred if the plaintiff does not comply with the notice requirement. Id.

An exception to the notice requirement is contained in Utah Code Ann. § 63-30-5. It provides:

Immunity from suit of all government entities is waived as to any contractual rights or obligations shall not be subject to the requirements of Section . . . 63-30-12 . . .

This provision excludes contract actions from the notice of claim requirement. See Dalton v. Salt Lake Suburban Sanitary District, 676 P.2d 399, 400 (Utah 1984).

Plaintiffs allege in Count Three that Sutton and the ILGC intentionally interfered with their contractual relation. Such a cause of action, although referring to a contract, is an intentional tort. Restatement (Second) of Torts Ch. 37 P. 4 (1977). It does not arise out of a contractual obligation because the tort focuses on a breach of a duty that exists outside of a contractual obligation. Id. at § 766, comment b. ("There is a general duty not to interfere intentionally with

another's reasonable expectancies of trade with third persons"). Thus, the contract exception to the notice requirement has no application to a claim of interference with contractual relations.

Plaintiffs did not file a notice of the claim alleged in Count Three. Since they were required to do so, the charge in Count Three is barred.

B. Undertaking

In addition to a notice of claim, an undertaking in the amount of at least \$300 must be filed before a lawsuit against a government entity can be commenced. Utah Code Ann. § 63-30-19. Without the requisite undertaking, an action is subject to dismissal without prejudice. Hansen v. Salt Lake County, No. 21024, slip op. at 3-4 (Utah June 15, 1990). Like the notice requirement, the undertaking requirement does not apply to actions arising from contractual obligations. Utah Code Ann. § 63-30-5.

In the present case, plaintiffs have not filed an undertaking with respect to Count Three. Since their claim in Count Three is not contractual, failure to file an undertaking warrants dismissal of the count.

C. Legal Theory Inapplicable to Facts

The final reason Count Three fails is that the alleged facts do not state a claim under the legal theory of interference with contractual relations. Such a cause of action involves a contract between two persons and improper conduct by a third person that hinders the performance of the contract. Restatement

(Second) of Torts § 766. Thus, the cause of action is directed at the acts of a third person not a party to the contract. In the case at bar, defendant Sutton is not a third person who interfered with the contract. According to plaintiffs, he is a party to the contract. Complaint, Count Two. Any misconduct by Sutton is interference by a party to a contract which gives rise to a breach of contract claim rather than an interference with contractual relations claim. Therefore, Count Three does not state a claim against Sutton.

CONCLUSION

Count One of the Complaint alleges breach of contract. The claim fails because it is barred as to all defendants by statutes of limitation and barred as to defendant Weis by governmental immunity.

Count Two of the Complaint alleges breach of contract, breach of fiduciary duty, and breach of covenant of good faith and fair dealing. The corporate plaintiffs have no standing to assert these claims because they were dissolved three years before the cause of action accrued. Moreover, assuming they did have standing, their claims against Sutton and the claim of breach of fiduciary duty fail on the basis of governmental immunity.

Count Three also fails. The corporate plaintiffs have no standing to assert their claim. Even assuming they have standing, defendant Sutton is immune because there is no allegation of fraud or malice against him. Finally, dismissal of

Count Three is warranted by plaintiff's failure to submit a notice of claim and an undertaking, and by their failure to alleged facts on which a claim for interference with contractual relations can be based.

DATED this 13 day of July, 1990.

Reed M. Stringham III

REED M. STRINGHAM III
Assistant Attorney General
Attorney for Defendants

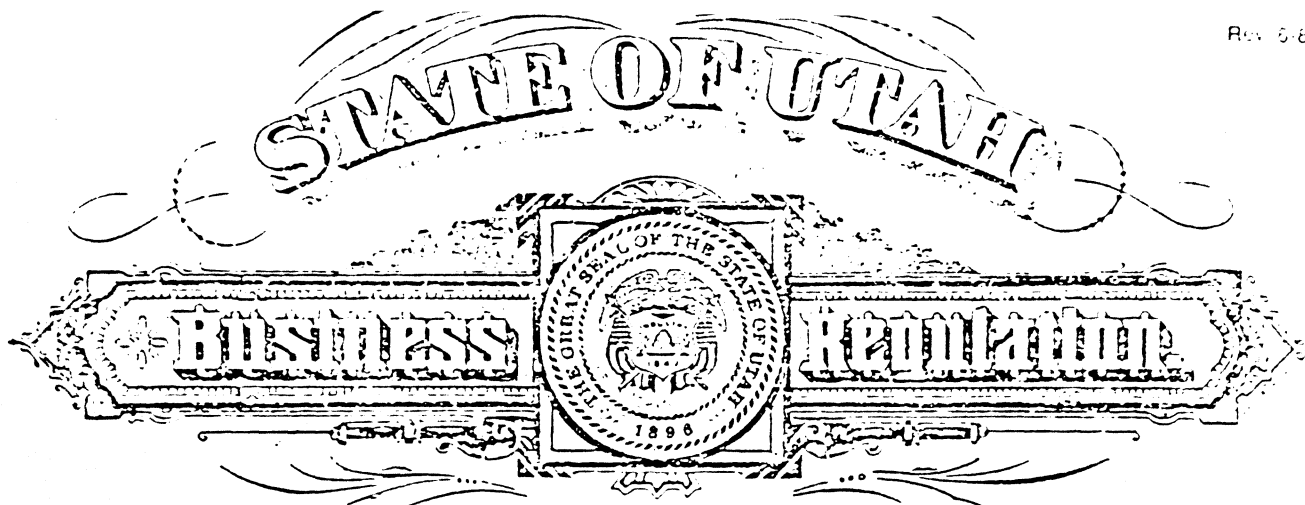
CERTIFICATE OF MAILING

This is to certify that I mailed a copy of the
foregoing MEMORANDUM SUPPORTING MOTION TO DISMISS to the
following this 13 day of July, 1990:

Michael Emery
RICHARDS, BRANDT & MILLER
50 South Main #700
Salt Lake City, Utah 84144

Scott Mitchell
SPAFFORD & SPAFFORD
485 East 100 South
Salt Lake City, Utah 84111

Reed Skyn
/



CERTIFICATE OF INVOLUNTARY DISSOLUTION
OF
MURRAY FIRST THRIFT & LOAN CO.....
055140

The Department of Business Regulation, Division of Corporations and Commercial Code, pursuant to Section 16-10-88.5 of the UTAH CORPORATION BUSINESS Act, hereby issues this Certificate of Involuntary Dissolution

FOR FAILURE TO FILE AN ANNUAL REPORT

055140
MURRAY FIRST THRIFT & LOAN CO.

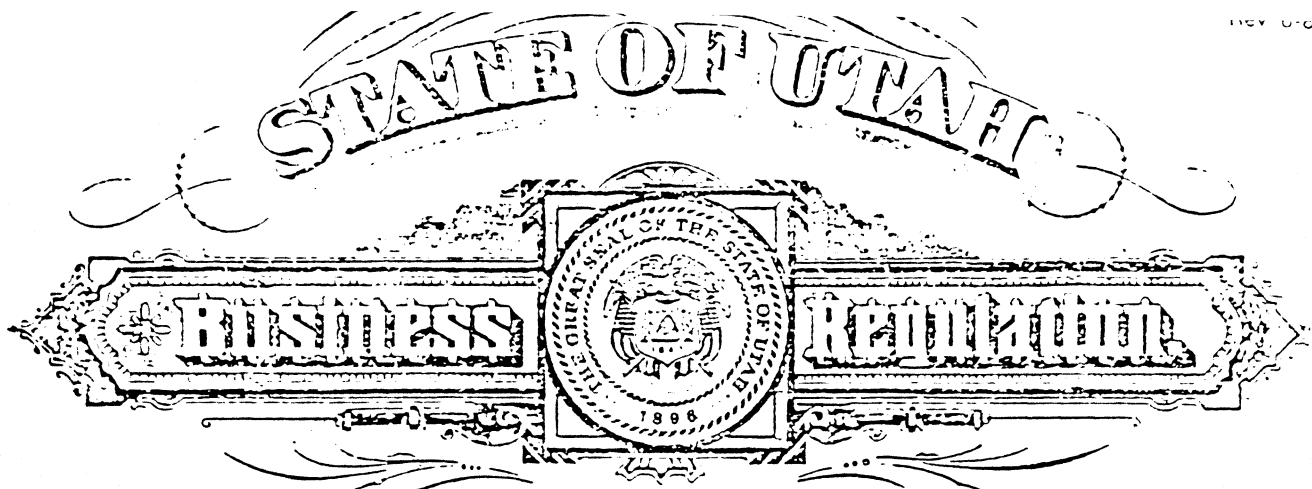
EDWARD I VETTER /PD
135 SOUTH MAIN
SALT LAKE CITY, UTAH
84111

055140
MURRAY FIRST THRIFT & LOAN CO.

DON C REEVE VD
2340 E 7163 S
SALT LAKE CITY, UTAH
84121

Dated this 31st day of
December A.D. 19 84

Randall R. Smart
Director, Division of Corporations and
Commercial Code



CERTIFICATE OF INVOLUNTARY DISSOLUTION
OF
M F T FINANCIAL INC.
029942

The Department of Business Regulation, Division of Corporations and Commercial Code, pursuant to Section 16-10-88.5 of the UTAH CORPORATION BUSINESS Act, hereby issues this Certificate of Involuntary Dissolution

FOR FAILURE TO FILE AN ANNUAL REPORT

029942
M F T FINANCIAL INC.

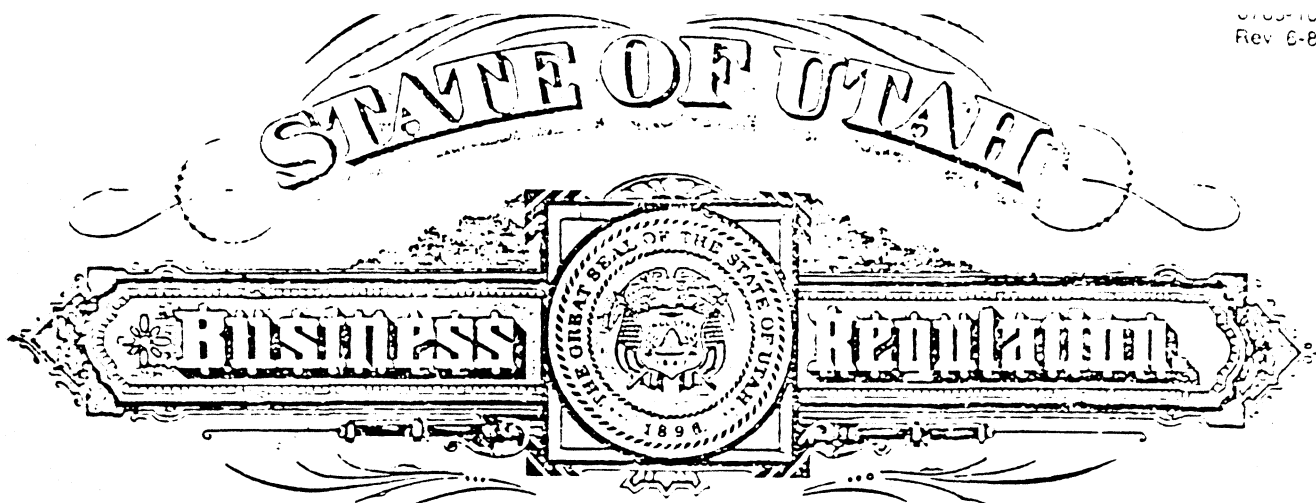
EDWARD I. VETTER P/D
135 SOUTH MAIN STREET
SALT LAKE CITY, UTAH
84111

029942
M F T FINANCIAL INC.

GLEN F. GROC VP
6959 WELLWOOD RD., #1K
MIDVALE, UTAH
84047

Dated this 31st day of
December A.D. 1984

Randall R. Smart
Director, Division of Corporations and
Commercial Code



CERTIFICATE OF INVOLUNTARY DISSOLUTION
OF
.....M. F. T. MORTGAGE CORP.....
054355

The Department of Business Regulation, Division of Corporations and Commercial Code, pursuant to Section16-10-88, 5..... of theUTAH CORPORATION BUSINESS..... Act, hereby issues this Certificate of Involuntary Dissolution

FOR FAILURE TO FILE AN ANNUAL REPORT

054355
M F T MORTGAGE CORP.

EDWARD I. VETTER P/D
135 SOUTH MAIN
SALT LAKE CITY, UTAH
84111

054355
M F T MORTGAGE CORP.

ROBERT J. SIDWELL VD
2088 DELMONT DRIVE
SALT LAKE CITY, UTAH
84117

Dated this31st..... day of
.....December..... A.D. 19 84.....

Randall R. Smart
Director, Division of Corporations and
Commercial Code

ADDENDUM 6

R. PAUL VAN DAM - 3312
Attorney General
REED M. STRINGHAM - 4679
Assistant Attorney General
Attorneys for Defendants
236 State Capitol
Salt Lake City, Utah 84114
Telephone: (801) 538-1016

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

[illegible]

Defendants Department of Financial Institutions, George Sutton individually, as Commissioner of the Department of Financial Institutions, and as trustee of the retained assets of Murray First Thrift and Loan Co., and Elaine Weis have moved to dismiss the complaint. Plaintiffs have filed an opposing memorandum, and this is defendants' reply to it.

POINT I

UTAH'S SAVINGS STATUTE
IS INAPPLICABLE

Defendants moved to dismiss Count One because it is asserted after the expiration of two statutes of limitation.

Plaintiffs contend Count One is saved because it "failed" in a federal court action within a year of the filing of the instant action. According to them, a similar claim was asserted on May 23, 1988 in a Third Amended Complaint in Harris et al. v. Weis et al., Civil No. C-87-0041-S (U.S. District Court for Utah 1987). See Plaintiffs' Exhibit 1, to their opposing memorandum. Since the Harris court struck the Third Amended Complaint on September 20, 1988 and such order became final on June 6, 1989, plaintiffs believe this action was filed within the one year grace period provided in Utah Code Ann. § 78-27-41.

Plaintiffs' argument fails for several reasons. First, it does not assist plaintiff Murray First Thrift Mortgage Co. because that entity was not a party to Harris and did not assert the claims in the Third Amended Complaint. Second, the Third Amended Complaint in Harris has no relation to Count One. The Harris complaint alleged only a breach of a Purchase and Assumption Agreement. It mentions the facts on which Count One is based, but does so only as background information. No claim in Harris is based on the conduct that plaintiffs allege amount to a contract in Count One. Therefore, the allegations in Harris cannot save Count One. Third, the filing of the amended complaint in Harris does not toll the running of the statutes of limitation. The Third Amended Complaint was filed without leave of court or consent of defendants. See Plaintiffs' Exhibit 2, "Ruling and Order," pp. 5-6. Consequently, that complaint was "without legal effect." Hoover v. Blue Cross & Blue Shield of Alabama, 855 F.2d 1538, 1544 (11th Cir. 1988)(quoting G. Wright

and Miller, Federal Practice and Procedure § 1485 at 421 (1971)).
Accord, Martin v. Hunt, 29 F.R.D. 14, 16 (D. Mass. 1961)(an
amended complaint, filed without court permission or opposing
party consent, "has no standing.") Gaumont v. Warner Bros.
Pictures Inc., 2 F.R.D. 45, 46 (S.D.N.Y. 1941). Since the Harris
complaint had no legal effect, plaintiffs cannot rely on it as a
basis for extending the limitation period. Fourth, even assuming
the Harris complaint is deemed to have legal effect, this action
is still not timely filed. The Third Amended Complaint failed
when it was stricken September 30, 1988 for failure to obtain
leave to amend. Since this action was commenced more than one
year later, it is not preserved by the savings statute.
Plaintiffs' contrary contention is unpersuasive. In light of the
Harris plaintiffs' ability to file the Third Amended Complaint
claims in state court or to seek leave to assert them in Harris,
it is not reasonable to conclude that the Third Amended Complaint
"failed" only when it became a final order for purposes of
appeal. The complaint must be deemed to have failed when it was
stricken.

Plaintiffs also argue Count One is not barred by the
two-year statute of limitation in Utah Code Ann. § 16-10-100.
They believe the two-year statute is inapplicable because it
governs pre-dissolution claims, whereas their action embodies a
post-dissolution claim for which there is no statute of
limitation under § 16-10-101.

This argument fails. It incorrectly assumes the claims
in Count One arose after dissolution, when in fact such claims

arose two years before dissolution in 1982. Thus, the statute on which plaintiffs rely is inapplicable. The argument also misconstrues the two statutes. Subsection 100 provides a two year survival period for remedies held by a dissolved corporation. Subsection 101, contrary to plaintiffs' contention, does not address the question of survival of actions. It only provides that corporate existence can continue in order to wind up corporate affairs after dissolution. The question of a corporation's legal existence after dissolution is not related to the question of the time period in which a corporation can assert its legal rights after dissolution. Therefore, plaintiffs distinction between pre- and post- dissolution claims is meritless. The two year limitation applies, and plaintiffs have failed to comply with it.

POINT II

PLAINTIFFS' MOTION TO AMEND SHOULD BE DENIED

Defendants Weis and Sutton moved to dismiss Counts One and Two on grounds of governmental immunity. Since individuals can be sued under the Governmental Immunity Act only if fraud or malice is alleged, Counts One and Two do not state claims against Sutton and Weis. Plaintiffs concede this, but seek leave to amend and make an allegation of fraud and malice against Weis and Sutton. Such motion should be denied because plaintiffs have not submitted a proposed amended complaint for the Court and defendants to review. This kind of failure is fatal to a motion to amend. Behrens v. Raleigh Hills Hospital, Inc. 675 P.2d 1179, 1182 (Utah 1983).

POINT III

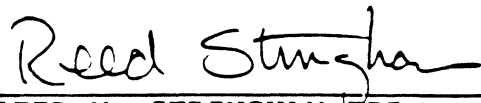
PLAINTIFFS HAVE DISCHARGED DEFENDANTS
FROM THE CLAIM ALLEGED IN COUNT I

Plaintiffs' opposing memorandum reveals an independent basis for dismissing Count One. In Exhibit 1 to that memorandum, the Third Amended Complaint in Harris, supra, the plaintiffs allege that commissioner Mirvin Borthick entered into certain agreements with plaintiffs and that Commissioner Elaine Weis violated the agreements. Paragraphs 24-27. They then declare that a "dispute" arose because of the violation, but that it was "resolved by a Purchase and Assumption Agreement dated November 15, 1982." Paragraphs 28-29.

The factual basis of the "dispute" referred to in Harris is identical to the factual basis of Count One in this action. Both refer to violation of agreements between plaintiffs and Borthick. Since plaintiffs' contractually resolved the Harris "dispute," they also resolved the claim alleged in Count One. They have discharged defendants from the allegations of Count One, so the claim stated therein fails.

DATED this 20 day of August, 1990.

R. PAUL VAN DAM
Attorney General



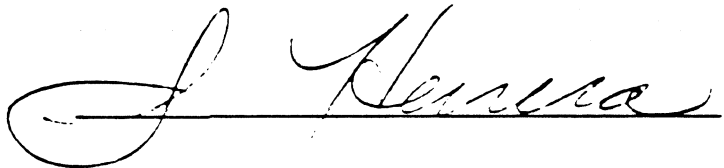
REED M. STRINGHAM III
Assistant Attorney General
Attorney for Defendants

CERTIFICATE OF MAILING

This is to certify that I mailed a copy of the foregoing REPLY MEMORANDUM OF WEIS, SUTTON AND DEPARTMENT OF FINANCIAL INSTITUTIONS SUPPORTING MOTION TO DISMISS to the following this 20 day of August, 1990:

Michael Emery
RICHARDS, BRANDT & MILLER
50 South Main #700
Salt Lake City, Utah 84144

Scott Mitchell
SPAFFORD & SPAFFORD
485 East 100 South
Salt Lake City, Utah 84111

A handwritten signature in cursive script, appearing to read "J. Herrera", is written over a horizontal line.

Institutions of the State of	:
Utah; MERVIN BORTHICK,	:
individually and as former	:
Commissioner of the Department	:
of Financial Institutions	:
of the State of Utah;	:
THE DEPARTMENT OF FINANCIAL	:
INSTITUTIONS OF THE	:
state of Utah; THE INDUSTRIAL	:
LOAN GUARANTY CORPORATION	:
OF UTAH; JOHN DOES 1-20; ABC	:
CORPORATIONS 1-20; and XYZ	:
PARTNERSHIPS 1-20,	:
	:
Defendants.	:

Defendants George Sutton, acting in his capacity as Commissioner in Possession of the Industrial Loan Guaranty Corporation ("ILGC Commissioner") and the Industrial Loan Guaranty Corporation ("ILGC") hereby respectfully submit this reply to Plaintiffs' Response to Motion to Dismiss.

I.

INTRODUCTION: IDENTIFICATION OF DEFENDANTS

From the face of plaintiffs' Complaint, it appears that plaintiffs have sued various defendants in a variety of capacities. For example, George Sutton is sued (1) individually, (2) as Commissioner of the Department of Financial Institutions of the State of Utah, (3) as Commissioner in Possession of the Industrial Loan Guaranty Corporation of Utah, and (4) as Commissioner or trustee of the retained assets of Murray First Thrift & Loan Company. In response to defendants' argument that plaintiffs had failed to

identify what capacity, if any, George Sutton was acting with respect to each cause of action set forth in the Complaint, plaintiffs responded by arguing that the capacity in which Mr. Sutton was acting was obvious and that, by focusing on such distinctions, plaintiffs argue that each of their claims states a valid cause of action. To fully understand the deficiencies of plaintiffs' Complaint, one must begin by distinguishing among the defendants.

A. Department of Financial Institutions.

Based upon a legislative finding that it "is in the public interest to strengthen the regulation, supervision, and examination of persons, firms, corporations, associations, and other business entities furnishing financial services to the people of this state," U.C.A. § 7-1-102, the legislature created a state agency known as the State Department of Financial Institutions. U.C.A. § 7-1-201. Such Department of Financial Institutions is responsible for the execution of the laws of this state relating to all financial institutions and other persons subject to Title VII and relating to the business conducted by each. Id.

B. Commissioner of Financial Institutions.

The chief executive officer of the Department of Financial Institutions ("DFI") shall be the Commissioner of Financial Institutions, who shall be appointed by the Governor, with the consent of the Senate. U.C.A. §§ 7-2-201 and 202.

The Commissioner has all the functions, powers, duties, and responsibilities with respect to institutions, persons, or businesses subject to the jurisdiction of the DFI including power to adopt and issue rules consistent with the purposes provisions of Title VII, the power to supervise the conduct, operation, and management of financial institutions, and all other powers, duties, and responsibilities as shall be necessary or appropriate to carry out the provisions and purposes of Title VII. U.C.A. §§ 7-1-301, 304, 307, 309, 313 and 321.

C. Commissioner in Possession.

In addition to all the powers contained in Article III of Chapter 1 of Title VII cited above, the Commissioner is given specific authority to take possession of a financial institution upon the making of certain findings. U.C.A. § 7-2-1. Upon taking possession of an institution, the Commissioner is vested by operation of law with the title to and the right to possession of all assets, the business, and property of the institution, and he may do all things necessary to preserve its assets and business, and shall rehabilitation, reorganize, or liquidate the affairs of the institutions in a manner he determines to be in the best interests of the institution's depositors and creditors. U.C.A. §§ 7-2-1 and 12. The institution may resume business only with the consent

of and upon the conditions approved by the Commissioner.
U.C.A. § 7-2-4.

In conjunction with possession, the Commissioner shall commence in the appropriate district court, an action to provide the court supervisory jurisdiction to review the actions of the Commissioner. U.C.A. § 7-2-2. The actions of the Commissioner are subject to review of the court. The court has jurisdiction to hear all objections to the actions of the Commissioner and may rule upon all motions and actions coming before it. U.C.A. § 7-2-2(3) (emphasis added).

The taking of an institution by the Commissioner under Chapter 2 operates as a stay of the commencement or continuation of any judicial, administration, or other proceeding against the institution. U.C.A. § 7-2-7. Instead, all such claims against the institution are noticed, filed, allowed, or disallowed, and/or reviewed in the possessory or supervisory proceeding pursuant to U.C.A. § 7-2-6.

In or about November 1982, Elaine B. Weis, the Commissioner of Financial Institutions, took possession of Murray First Thrift & Loan pursuant to U.C.A. § 7-2-1, et seq. Upon taking possession, the Commissioner initiated an action before the Third Judicial District Court, Salt Lake County, State of Utah, entitled In the Matter of the Possession of the Banking Commissioner of Murray First Thrift & Loan, a Utah corporation, Civil No. C82-5951. Such action is still pending

before the Third Judicial District Court, the Honorable John A. Rokich presiding.

In or about July 1986, Elaine B. Weis, the Commissioner of Financial Institutions, took possession of the Industrial Loan Guaranty Corporation. Upon taking possession, the Commissioner initiated an action before the Third Judicial District Court entitled In the Matter of the Possession of the Industrial Loan Guaranty Corporation of Utah by the Commissioner of Financial Institutions of the State of Utah, Civil No. C86-5924. Such action is still pending before the Third Judicial District Court, the Honorable Richard H. Moffat presiding.

In 1987, Elaine B. Weis resigned as Commissioner of Financial Institutions of the State of Utah. Governor Norman Bangertter appointed George Sutton as Commissioner of Financial Institutions of the State of Utah. Mr. Sutton was confirmed by a vote of the Senate on May 20, 1987, and therefore, by operation of law, succeeded to all of the duties, responsibilities, and powers of the office of Commissioner.

D. Industrial Loan Guaranty Corporation.

After finding that it was in the public interest for thrift deposits to be insured, the legislature enacted Chapter 8A of Title VII which required the thrift institutions to establish the Industrial Loan Guaranty Corporation ("ILGC"). U.C.A. §§ 7-8A-2 and 5. As a financial institution,

the ILGC was subject to the jurisdiction of the Department of Financial Institutions and the Commissioner. U.C.A. §§ 7-1-501 and 7-8A-7, et seq.

In or about July 1986, Elaine Weis, Commissioner of Financial Institutions, took possession of the ILGC. Since July 1986, the Commissioner has been in continuous possession of the ILGC. The Order Granting Possession issued by the Third Judicial District Court, Salt Lake County, State of Utah, which authorized the Commissioner's possession of the ILGC specifically restrained and enjoined "all officers, trustees, employees, agents or attorneys of the ILGC, and all other persons, . . . from disposing of any of the property of the ILGC, from interfering with the Commissioner's right to take possession of the ILGC or with the Commissioner's possession of the ILGC, or from taking any action on behalf of or in the name of the ILGC . . ." (See Exhibit "C" attached to plaintiffs' Memorandum in Opposition.) Accordingly, once the Commissioner took possession, the ILGC undertook no action except by and through the Commissioner, acting in his official capacity as Commissioner in Possession of the ILGC.

II.

PLAINTIFFS' CLAIMS AGAINST THESE DEFENDANTS FOR BREACH OF CONTRACT MUST BE DISMISSED.

In its opening memorandum, these defendants identified ambiguities in plaintiffs' Complaint relating to

the capacity, if any, Commissioner Sutton was being sued by plaintiffs. On page 4 of plaintiffs' response, plaintiffs restate their breach of contract claims against these defendants as follows:

Simply put, the ILGC and Sutton, acting in his capacity as Commissioner in Possession of ILGC, breached their obligation of good faith and fair dealing under the P&A Agreement when they induced the sale of the BMK property in violation of that agreement.

In other words, since the ILGC could only act through Commissioner Sutton, and since Commissioner Sutton was in possession of both the ILGC and Murray First Thrift & Loan, he breached obligations of good faith and fair dealing when he convinced himself to sell the BMK property. Accepting, for purposes of argument, plaintiffs' interpretation of the Complaint as set forth in their responsive memorandum, the claims for breach of contract still must be dismissed for failure to state a claim upon which relief can be granted.

As admitted by plaintiffs, the Commissioner's act of taking possession of the ILGC in 1986 operated as a stay of the commencement or continuation of any judicial administrative or other proceeding against the ILGC or its property. U.C.A. § 7-2-7(1). Nevertheless, plaintiffs filed their Complaint and now request this Court defer its decision on the Motion to Dismiss while they seek an order from Judge Moffat, the judge assigned to the ILGC possessory proceedings, granting them

relief from the aforementioned stay. This request to defer decision, however, is not accompanied by any authority indicating that such deferral is the proper procedure, or any authority contradicting defendants' cases which indicate that an act taken in violation of the stay is null and void. Moreover, since plaintiffs can only proceed if they convince Judge Moffat to execute an order granting relief from the stay, they can provide this Court and these parties with no assurance as to if or when such an order will be forthcoming.

From an equitable perspective, plaintiffs' request for the Court to defer its decision should not be granted. Both plaintiffs and their counsel were well aware of the stay provisions contained in U.C.A. § 7-2-7. Such knowledge is unequivocally demonstrated by the Order to Show Cause which plaintiffs sought and received from Judge Rokich, the judge assigned to the Murray First Thrift & Loan possessory proceedings, Civil No. C82-5951, which directed certain individuals to appear before Judge Rokich and respond to allegations that they had violated the same Utah statute which plaintiffs have chosen to ignore in this case. Attached hereto as Exhibit "A" is a true and accurate copy of the Order to Show Cause executed by Judge Rokich at the request of plaintiffs' counsel on March 6, 1990. Plaintiffs, having ample time to seek the appropriate order from Judge Moffat, have simply chosen not to do so. Such a willful violation of U.C.A.

§ 7-2-7 cannot support an equitable request to this Court to defer its decision.

With respect to Commissioner Sutton, acting in his capacity as Commissioner in Possession of the Industrial Loan Guaranty Corporation, plaintiffs assert that he breached his contractual duty of good faith and fair dealing when he convinced himself, acting as Commissioner in Possession of Murray First Thrift & Loan, to sell Bel Marin. Plaintiffs, however, failed to point out that Commissioner Sutton did not and could not sign the P&A Agreement in his capacity as Commissioner in Possession of the ILGC. The P&A Agreement, as alleged by plaintiffs, was executed in 1982, and possession of the ILGC was not taken until 1986. Accordingly, plaintiffs' own Complaint demonstrates that the Commissioner, in his capacity as Commissioner in Possession of the ILGC, could have no contractual obligations of good faith and fair dealing toward plaintiffs.

As a further basis upon which plaintiffs' breach of contract claims must fail, defendants have asserted the doctrine of collateral estoppel and/or res judicata. In this regard, defendants identified the Nelson case filed in the Federal District Court for the Northern District of California, the Harris case filed in the Federal District Court for the District of Utah, and the Murray First Thrift & Loan possessory proceedings presently pending before the Third

Judicial District Court, Salt Lake County, State of Utah. In all such actions, plaintiffs alleged, or could have alleged, the same causes of action set forth in the second and third claim for relief in the case at bar. In all such actions, plaintiffs have failed.

In an attempt to distinguish the Nelson case (see Exhibit "A" to defendants' memorandum), plaintiffs argue that the judgment entered therein, which dismissed all claims on the merits and with prejudice as against all defendants served in this action (including ILGC and Commissioner Sutton), is not relevant because such defendants were previously dismissed from the Nelson case on the ground of improper venue. Plaintiffs argue that such prior dismissal was without prejudice and not on the merits, and therefore cannot trigger the doctrine of res judicata.

Plaintiffs' argument, however, fails to recognize the provisions of Rule 54(b), Federal Rules of Civil Procedure. This rule provides, in part, that in the absence of a specific determination by the judge:

[a]ny order or other form of decision, however designated, which adjudicates fewer than all the claims or rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(Emphasis added.) Thus, the order dismissing the Utah defendants on venue grounds in the Nelson case did not "terminate the action as to any of the claims or parties" and "the order . . . is subject to revision at any time before the entry of judgment" Thereafter, plaintiffs continued with their action in the Nelson case until the court entered its judgment on or about July 15, 1988. By its terms, this order dismissed plaintiffs' action, together with each and every claim therein set forth on the merits and with prejudice as against all defendants served in this action. By dismissing the Nelson case as against all defendants served in the Nelson case. (See Exhibit "B," Defendants' Memorandum.) Such language clearly constitutes a revision of the prior Order of Dismissal on venue grounds. Otherwise, the court could have simply dismissed the action without referencing a specific class of defendants, or it could have dismissed the action against all "remaining" defendants. Instead, the court chose to enter an order dismissing the case with prejudice as against all defendants "served" in the action.

These defendants are aware of no efforts by plaintiffs to either appeal the final order in the Nelson case or to "correct" the language of such judgment pursuant to Rule 60B, Federal Rules of Civil Procedure. In the Harris case, however, the similar case subsequently filed before the

Federal Court for the District of Utah, plaintiffs sought and received from Judge Sam a modification of the order dismissing all claims with prejudice, to one dismissing certain claims for lack of jurisdiction. No such efforts were undertaken with respect to the Nelson case and, accordingly, the doctrine of res judicata bars the re-litigation of all claims which were, or could have been, litigated in the Nelson case.

In addition to the Nelson case, these defendants argued that plaintiffs' second and third claims for relief are barred by the order approving the sale of Bel Marin Keys entered by the Third Judicial District Court in the Murray First Thrift & Loan possessory proceedings. At the time the Commissioner proposed to sell Bel Marin Keys, plaintiffs raised objections which were nearly identical to the claims for relief set forth in the case at bar. By approving the sale, the Court specifically rejected plaintiffs' claims and, in conjunction therewith, the Court found that such claims had been waived by plaintiffs' failure to raise the same earlier in the possessory proceedings.

In response, plaintiffs merely dispute whether Judge Rokich's order directly applies to their claims and argue that they in fact did raise such issues earlier in the possessory proceedings. In support of such argument, plaintiffs attach as an exhibit (Exhibit "I") their Memorandum in Support of Motion to Transfer the Retained Assets which was

filed in May 1987, in support of a motion originally filed by Mr. Lynn Jenkins. What plaintiffs fail to disclose to the Court is that the motion to transfer the retained assets was argued to the Court on June 1, 1987 and, after considering the same, the Court denied such motion. Attached hereto as Exhibit "B" is a certified copy of the Minute Entry reflecting the Court's decision.

As a final basis for dismissing plaintiffs' second claim for relief, defendants assert that such claims for breach of contract are barred by the statute of limitations. In response, plaintiffs allege that Sutton's decision to sell the Bel Marin Keys property in 1987 was a breach of the P&A Agreement occurring not more than six years ago, and that, in any case, the Utah savings statute (U.C.A. § 78-12-40), extends the statute of limitations for one year after the order finally dismissing the Harris case.

These defendants hereby adopt the arguments and authorities set forth in the reply memorandum filed by the Attorney General's Office wherein it is demonstrated that plaintiffs' attempt to file the Third Amended Complaint in the Harris case was null and void. Since neither the ILGC nor Sutton, in his capacity as Commissioner in Possession of the ILGC, were named as defendants in the Harris case (until the Third Amended Complaint), the Utah savings statute cannot apply to these defendants.

Moreover, plaintiffs' assertion that the decision to sell Bel Marin Keys constitutes a new breach is insufficient to satisfy the statute of limitations. On the face of plaintiffs' Complaint, and in the Complaint filed in the Nelson case, it is clear that plaintiffs' viewed the Commissioner's decision to retain Bel Marin Keys to be in breach of the P&A Agreement as early as 1983. The Commissioner's decision to sell such property is merely the culmination of the breach which allegedly occurred when the Commissioner first failed to turn over the property. If the refusal to perform under a contract constitutes a new breach each and every day a party continues to refuse to perform, the statute of limitations contained in the Utah Code would be meaningless. By their argument, plaintiffs are requesting this Court to view the Commissioner's retention and subsequent sale of the Bel Marin Keys property as a new breach. Since, on the face of plaintiffs' Complaint, such conduct does not constitute a new breach, plaintiffs' claim for breach of contract is barred by the statute of limitations.

III.

PLAINTIFFS' CLAIM FOR RELIEF FOR TORTIOUS INTERFERENCE OF CONTRACT MUST FAIL

With respect to plaintiffs' third claim for relief for tortious interference of contractual relations, these defendants have asserted that such claim must be dismissed

on the grounds of sovereign immunity. In response, plaintiffs have admitted that Count III must be dismissed as to Commissioner Sutton because no notice of claim or undertaking has been filed in accordance with the Governmental Immunity Act. With respect to the ILGC, however, plaintiffs assert that the ILGC is not a "governmental entity" and, therefore, is not entitled to the act's protection.

As shown above, the Commissioner took possession of the ILGC in 1986. Upon taking possession, the Commissioner was vested by operation of law with the title to and the right to possession of all of the ILGC's assets, business, and property. U.C.A. § 7-2-1(2)(b). The order granting possession entered by the Third Judicial District Court specifically restrained all officers, trustees, employees, agents, or attorneys of the ILGC from taking any action on behalf of or in the name of the ILGC. (See, Exhibit "C" attached to plaintiffs' Memorandum in Opposition.) Accordingly, since the ILGC could only act by and through the Commissioner, and since the Commissioner is immune under the governmental immunity act there is no separate cause of action for tortious interference against the ILGC.

IV.

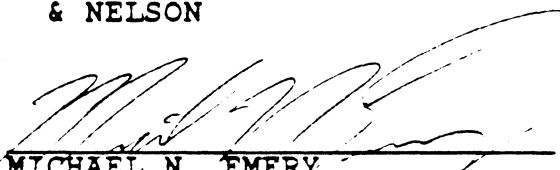
CONCLUSION

The case at bar represents another, in a long line of attempts, to recover for wrongs allegedly incurred in 1981.

These attempts have transversed several courts in different states with the same result: plaintiffs have failed to state a valid cause of action. Defendants have been compelled to spend substantial time and funds in the defense of these attempts. Accordingly, for the reasons set forth above, defendants are entitled to a final and swift resolution of plaintiffs' claims.

DATED this 23 day of August, 1990.

RICHARDS, BRANDT, MILLER
& NELSON



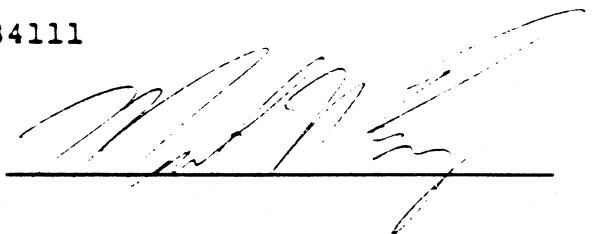
MICHAEL N. EMERY
Attorneys for George Sutton
as Commissioner in
Possession of the ILGC, and
the ILGC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was hand delivered on this 22 day of August, 1990, to the following counsel of record:

Bryce H. Pettey
Reed M. Stringham
ATTORNEY GENERAL'S OFFICE
236 State Capitol
Salt Lake City, Utah 84114

Scott B. Mitchell
SPAFFORD & SPAFFORD
425 East 100 South
Salt Lake City, Utah 84111

A handwritten signature in dark ink, appearing to be "Reed M. Stringham", is written over a horizontal line.

ILGC/RM/MNE

EARL S. SPAFFORD (3051)
SCOTT B. MITCHELL (5111)
SPAFFORD & SPAFFORD
A Professional Corporation
425 East 100 South
Salt Lake City, Utah 84111
(801) 363-1234

Attorneys for Murray First Thrift and Loan Co.

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

IN THE MATTER OF THE POSSESSION	:	
BY THE BANKING COMMISSIONER OF	:	ORDER TO SHOW CAUSE
MURRAY FIRST THRIFT & LOAN,	:	
a Utah corporation.	:	
<hr/>		
MURRAY FIRST THRIFT & LOAN CO.,	:	Civil No. C82-5951
a Utah corporation,	:	
Petitioner,	:	Judge John A. Rokich
v.	:	
<hr/>		
RANDALL R. SMART, as Former	:	
Director of the Division of	:	
Corporations and Commercial Code,	:	
State of Utah; PETER VAN ALSTYNE,	:	
as Director of the Division of	:	
Corporations and Commercial Code :	:	
of the State of Utah; and the	:	
Division of Corporations and	:	
Commercial Code;	:	
Respondents.	:	

Having carefully considered the Petition For Order To Show Cause And For Extraordinary Writ filed on behalf of Murray First Thrift and Loan Co., and finding good cause therefor,

IT IS HEREBY ORDERED that Respondent Randall R. Smart, as former Director of the Division of Corporations and Commercial Code, and Respondent Division of Corporations and Commercial

Code shall appear before this Court on the 26 day of

10:00 A.M.

March, 1990 and show cause, if any they have, why they should not be held in contempt of the authority of this Court by reason of their violation of the § 7-2-7(7), Utah Code Annotated (1983), automatic stay in place in these proceedings in the issuance of Certificate of Involuntary Dissolution #055140.

IT IS FURTHER ORDERED that Respondent Peter Van Alstyne, as Director of the Division of Corporations and Commercial Code of the State of Utah, and Respondent Division of Corporations and Commercial Code shall appear before this Court on that same date and show cause, if any they have, why an Extraordinary Writ should not be issued by this Court compelling said Respondents to reinstate the corporate charter of Murray First Thrift and Loan Co. nunc pro tunc as of December 31, 1984, and prohibiting said Respondents from any further violation of the automatic stay.

DATED this 4 day of March, 1990.

John A. Rokich
John A. Rokich
District Court Judge

CERTIFICATE OF HAND-DELIVERY

I do hereby certify that as an employee of Spafford & Spafford, P.C., attorneys for the petitioner herein, Murray First Thrift and Loan Co., I did cause to be hand-delivered, a true and correct copy of the foregoing PETITION FOR ORDER TO SHOW CAUSE AND FOR EXTRAORDINARY WRIT and ORDER TO SHOW CAUSE to the following on this 8th day of March, 1990.

Randall R. Smart
257 East 200 South, #640
Salt Lake City, Utah 84111

Peter Van Alstyne
Director of the Division of Corporations
and Commercial Code
Heber M. Wells Building
160 East Third South
Salt Lake City, Utah 84111

Randall R. Smart

County of Salt Lake - State of Utah

In re the matter of the possession
by the banking Commissioner of
Murray 1st District
Defendant

CASE NO. C-82-5951

Type of hearing: Div. _____ Annul. _____ Supp. Order _____ OSC. _____ Other _____
Present: Pltff. _____ Deft. _____ Summons _____ Stipulation _____
P. Atty: Lynn Jensen Waiver _____ Publication _____
D. Atty: Mr. Petty & Mr. Martineau [X] Default of Pltff/Deft Entered
Sworn & Examined: Date: 10-1-87
Pltff: _____ Judge: Thomas A. Reisch
Deft: _____ Clerk: E. Jensen
Others: _____ Reporter: _____
Bailiff: J. Tingey

ORDERS:

- ☐ Custody Evaluation Ordered ☐ Custody Awarded To _____
☐ Visitation Rights _____
☐ Pltff/Deft Awarded Support \$ _____ x _____ = _____ Per Month
☐ Pltff/Deft Awarded Alimony \$ _____ Per Month/Year ☐ Alimony Waived
☐ Payments to be made through the Clerk's Office. _____
☐ Atty. fees to the _____ in the amount of _____ ☐ Deferred
☐ Home To: _____
☐ Furnishings To: _____ Automobile To: _____
☐ Each Party Awarded their Personal Property
☐ Pltff/Deft. to Maintain Debts and Obligations
☐ Pltff/Deft. to Maintain Insurance on Minor Children
☐ Restraining Order Entered Against _____
☐ Pltff/Deft. Granted Judgment for Arrearage in the Sum of \$ _____
☐ 90-Day Waiting Period is Waived
☐ Divorce Granted To _____ As _____
☐ Decree To Become Final: ☐ Upon Entry ☐ 3-Month Interlocutory
☐ Former Name of _____ Is Restored
☐ Based on the failure of Deft to appear in response to an order of the court and on motion of Pltffs counsel, court orders _____ / _____ shall issue for Deft. _____
Returnable _____ Bail _____
☐ Based on written stipulation of respective counsel/motion of Plaintiff's counsel, and good cause appearing therefor, court orders the above case be and the same is hereby dismissed without prejudice.
☐ Based on written stipulation of respective counsel/motion of Plaintiff's counsel, court orders _____

Pltff's motion to transfer assets is argued & submitted.
The Court having considered, denies the motion.

CLERK OF DISTRICT COURT
SALT LAKE COUNTY, UTAH

10-1-87
Clerk

ADDENDUM 8

WILLIAM F. HALL (5011)
 CHRISTOPHER P. HALL (5012)
 MICHAEL D. HALL (5111)
 HALL & HALL
 A Professional Corporation
 105 West 100 South
 Salt Lake City, Utah 84111
 (801) 360-1234

Attorneys for the Plaintiffs

IN THE THIRD JUDICIAL DISTRICT COURT, FOR SALT LAKE COUNTY

STATE OF UTAH

-----0000000-----

JIM PRATT HANSEN; RODNEY F.
 GORDON; MFT FINANCIAL, INC.
 a Utah corporation;
 MURRAY FIRST THRIFT AND LOAN
 COMPANY, a Utah corporation;
 and MFT MORTGAGE CO., a Utah
 corporation,
 Plaintiffs,

vs.

GEORGE SWETON, individually
 and as Commissioner of the
 Department of Financial
 Institutions of the State of
 Utah and as
 Commissioner in Possession of
 the Industrial Loan Guaranty
 Corporation of Utah and as
 Trustee of the retained assets
 of Murray First Thrift and Loan
 Co.; ELAINE B. WEIS,
 individually and as former
 Commissioner of the
 Department of Financial
 Institutions of the State of
 Utah; KERVIN BORTHICK,
 individually and as former
 Commissioner of the
 Department of Financial Institu-
 tions of the State of Utah;
 THE DEPARTMENT OF
 FINANCIAL INSTITUTIONS OF THE
 STATE OF UTAH; THE
 INDUSTRIAL LOAN GUARANTY
 CORPORATION OF UTAH;
 JOHN DOWNS 1-20; ABC

RESPONSE TO MOTION
 TO DISMISS

Civil No. 90093241 CN

Judge Timothy E. Hanson

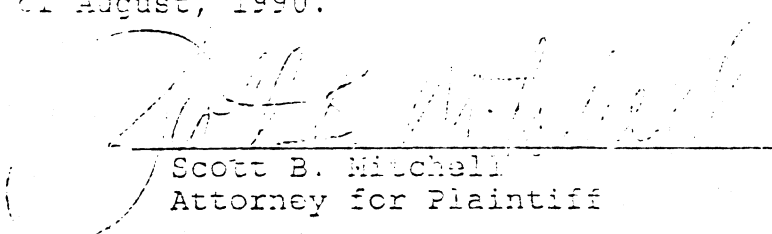
FINANCIAL INSTITUTIONS OF THE
STATE OF UTAH; THE
INDUSTRIAL LOAN GUARANTY
CORPORATION OF UTAH;
JOHN DOES 1-20; ABC
CORPORATIONS 1-20; AND XYZ
PARTNERSHIPS 1-20.

Defendants.

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Plaintiffs hereby respond to the Motion To Dismiss filed by
the Industrial Loan Guaranty Corporation of Utah and George
Sutton, acting in his capacity as Commissioner in Possession of
the Industrial Loan Guaranty Corporation, as more fully set forth
in the following Memorandum of Points and Authorities.

DATED this 7th day of August, 1990.



Scott B. Mitchell
Attorney for Plaintiff

SCOTT E. MERRILL (PLA')
SPAFFORD & SPAFFORD
A Professional Corporation
415 East 100 South
Salt Lake City, Utah 84111
(801) 352-1234

Attorneys for the Plaintiffs

IN THE THIRD JUDICIAL DISTRICT COURT, FOR SALT LAKE COUNTY

STATE OF UTAH

-----ooo0ooo-----

JOHN BRATH HANSEN; ROBERT E.
GORDON; MFF FINANCIAL, INC.
a Utah corporation;
MURRAY FIRST THRIFT AND LOAN
COMPANY, a Utah corporation;
and MFF MORTGAGE CO., a Utah
corporation,

Plaintiffs,

vs.

GEORGE SUTTON, individually
and as Commissioner of the
Department of Financial
Institutions of the State of
Utah and as
Commissioner in Possession of
the Industrial Loan Guaranty
Corporation of Utah and as
Trustee of the retained assets
of Murray First Thrift and
Loan Co.; ELAINE B. WEIS,
individually and as former
Commissioner of the
Department of Financial
Institutions of the State of
Utah; ALVIN BORTNICK,
individually and as former
Commissioner of the
Department of Financial
Institutions of the State of

MEMORANDUM OF
POINTS AND AUTHORITIES

Civil No.90-093241CN

Judge Timothy R. Hanson

Utah: THE DEPARTMENT OF
FINANCIAL INSTITUTIONS OF THE
STATE OF UTAH, THE
INDUSTRIAL LOAN GUARANTY
CORPORATION OF UTAH;
JOHN DOES 1-20; ABC
CORPORATIONS 1-20; AND XYZ
PARTNERSHIPS 1-20.

Defendants.

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Plaintiffs submit the following memorandum of points and
authorities in response to George Sutton's and the ILGC's Motion
to Dismiss.

I RESPONSE TO POINT I

Moving Defendants are correct, Count One of the Complaint
does not purport to state a claim for relief against Sutton or
the ILGC. Accordingly, moving Defendants have no standing to seek
dismissal of Count One

II RESPONSE TO POINT II

In Point II of their memorandum, moving Defendants first
assert that "Plaintiffs make no attempt to distinguish which
Plaintiffs and/or which defendants were actually parties to such
agreement, [i.e., The Purchase and Assumption Agreement]." (See
Defendants' memorandum at P.4) This assertion is obtuse. In the
first place, Defendants are intimately familiar with the identity
of the parties to the P&A Agreement. In the second place, had
Defendants taken the time they would have found the following
identification of parties and claim under the heading "Count Two"

on page 18 on the Complaint:

(Breach of Contract- MFT and MFTF v. Sutton,
BFI, and ILGC)

Defendants next assert that "George Sutton did not execute the same [i.e., the P&A Agreement] either individually or in any official capacity." (See Defendants' memorandum at pp.4-5).

True enough, Sutton did not sign the P&A Agreement. However, as Defendants are well aware, Sutton's predecessor, Defendant Elaine Weis, did execute the P&A Agreement as "Commissioner of Financial Institutions." (A true and correct copy of the P&A Agreement is filed herewith as exhibit "A"). On October 1, 1967, Sutton filed with the Third Judicial District Court his Notice of Change of Commissioner in which he gave notice that he had assumed Elaine Weis' responsibilities as Commissioner in Possession of the business and property of Murray First Thrift and Loan by "operation of law." (A true and correct copy of said Notice is filed herewith as Exhibit "B"). Accordingly, in his own words, Sutton became a party to the P&A Agreement by "operation of law."

Defendants next assert that "In these paragraphs [i.e., XXX, XXXI, XXXII, XXXXIV (sic), and XXXV], plaintiffs fail to distinguish the capacity in which, if any, Commissioner Sutton was acting when he allegedly made and breached [the various

promises alleged therein]." (See Defendants' Memorandum at 7-8).

If Defendants are truly confused as to which of Sutton's capacities Plaintiffs are alleging he was acting in connection with the above-referenced paragraphs, then their remedy is to move this court for a more definite statement in accordance with Rule 12(e), FRCP, or better yet, to simply send Plaintiffs a set of interrogatories. However, under no set of circumstances is Defendants' confusion a ground for dismissal.

Furthermore, Defendants are well aware of the capacity in which Sutton was acting when he refused to turn over the retained assets to Plaintiffs and when he subsequently sold the Bel Marin Keys property. Their feigned ignorance is simply a bad faith attempt to waste the time of all concerned, including this court's.

Defendants next point to paragraph XXXII of the Complaint, which reads as follows:

The ILGC and Sutton, acting in his capacity as Commissioner in Possession of the ILGC, induced the BFI and Sutton, acting in his capacity as trustee over the retained assets, to sell the BMK property, thus breaching his contractual and fiduciary obligations to MFT&L under the P&A Agreement. By encouraging said breach, the ILGC and Sutton breached their obligations of good faith and fair dealing under the P&A Agreement.

and fatuously assert that:

When the first sentence of this paragraph is analyzed, it is clear that plaintiffs allege no breach of

contract on behalf of the ILGC, or Sutton, acting in his capacity as Commissioner in Possession of the ILGC. Rather, it is Mr. Sutton, acting in his capacity as "trustee over the retained assets of MFTSL" who breached his contractual and fiduciary obligations.

(See Defendant's memorandum at pp.5-6).

Defendants' decision to ignore the second sentence of the quoted paragraph is transparent. Simply put, the ILGC and Sutton, acting in his capacity as Commissioner in Possession of ILGC, breached their obligation of good faith and fair dealing under the PIA Agreement when they induced the sale of the EMK property in violation of that Agreement. No amount of obfuscation on Defendants' part can render this allegation confusing or illegitimate.

Response to Part A of Point II

After reciting the above-discussed litany of nonsense and irrelevance regarding the allegations of the Complaint, Defendants finally get to the real gist of their argument in point II of their memorandum: that Plaintiff's are stayed from prosecuting this action against the ILGC by reason of the provisions of UCA § 7-2-7(1).

Filed herewith as Exhibit "C" is a true and correct copy of the Order Granting Possession of the ILGC. The first thing to note about both the Order Granting Possession and § 7-2-7(1) (set forth at P.7 of Defendants' memorandum) is that both of them

ap, is only to actions against the ILGC, not to actions against Sutton.

Plaintiffs concede, however, that they must obtain the permission of Judge Moffat in the ILGC possessory proceeding, CGS-5904, before they may continue to prosecute this action against the ILGC. Accordingly, attached hereto as Exhibit "D" is a true and correct copy of the Motion To Lift Stay which Plaintiffs have filed in that case. Plaintiffs respectfully request that this court await the outcome of said Motion before deciding whether the instant action should be dismissed against the ILGC.

Response to Part B of Point II

In part B of point II of their memorandum, Defendants urge that dismissal is warranted on the grounds of res judicata and/or collateral estoppel. In support of this request Defendants direct the court's attention to three cases in which they contend Sutton's "decision to maintain control of the assets of MFTAL and [Sutton's] decision to sell the BMK property, have been or should have been, raised by the plaintiffs":

- (1) Nelson et al. v. First Security et al., hereinafter referred to as the Nelson case.
- (2) Harris et al. v. Weis et al., hereinafter referred to as the Harris case.
- (3) In the Matter of the Possession by the

Banking Commission of the Business and
Property of Turkey Place Thrift & Loan,
hereinafter referred to as the MPT
Necessory Proceedings.

With respect to the Nelson case (which was filed in the United States District Court for the Northern District of California, civil no. C86-2594), Defendants attempt to mislead the court by asserting that "a judgement was entered dismissing with - prejudice each and every claim brought by the plaintiffs. Count X of the Plaintiffs' Complaint in that action alleged a breach of the PIA Agreement." (See Defendants' memorandum at P.9).

As Defendants are well aware, the Judgement of dismissal with prejudice to which they refer was entered nearly two years after Defendants were dismissed from the Nelson case on the ground of improper venue. Filed herewith as Exhibit "E" is a true and correct copy of the Order of Dismissal entered in the Nelson case on November 10, 1986, providing as follows:

It is ORDERED that plaintiffs' complaint is dismissed without prejudice on the ground that venue in the Northern District of California is improper as to these defendants ...

(Emphasis added).

Professor Moore explains the effect of a dismissal on the ground of improper venue as follows:

While a judgement dismissing an action . . . for improper venue . . . is res judicata as to that which was adjudged, it is, of course,

and not prejudice the merits. This is error so if the order of dismissal does not state that it is without prejudice, since Rule 41 (b) recognizes that a dismissal for . . . improper venue . . . merely deals with a precondition that, unsatisfied, precludes the court from going forward with the case and determines the merits of plaintiff's substantive claim.

5 Moore's Federal Practice, Para 41.14, pp. 41-197 (emphasis added).

In short, when Plaintiffs filed suit against Defendants and others in the Northern District of California, Defendants asked that court to dismiss the case against them on the ground of improper venue. The California court did just that, without prejudice. Plaintiffs then filed the Harris case in the United States District Court for the District of Utah, Central Division, civil no. 87C-00418, alleging substantially the same claims against Defendants as in the Nelson case. Defendants requested that Judge Sam dismiss the Harris case on the ground, inter alia, that Defendants were immune from suit in federal court by virtue of the Eleventh Amendment to the United States Constitution and, again, Judge Sam did just that.

It is interesting to note that the original Judgement of Dismissal in the Harris case (which was prepared by Defendants' counsel), purported to dismiss all of Plaintiffs' claims against Defendants, including Plaintiffs' state law claims, with prejudice. However, Plaintiffs thereafter moved for relief under

Rule 60 (b), FRCP, on the ground that Judge Sam had intended to dismiss the state law claims for lack of jurisdiction, rather than on the merits, and, therefore, that the dismissal should have been without prejudice. Filed herewith as Exhibit "F" is a true and correct copy of the Order Granting Relief Under Rule 60(b)(1) signed by Judge Sam on July 9, 1990.

Thus, Plaintiffs' state law claims against Defendants in the Harris case were dismissed because the federal court's only jurisdiction over said claims was pendant to Plaintiffs' federal causes of action and, once the federal causes of action were dismissed, the federal court no longer had subject matter jurisdiction over the state claims.

A Utah Supreme Court case directly on point with the case at bar is Pearl v. Nu Creation Creme Inc., 669 P.2d 873 (Utah 1983). In that case, the plaintiffs had previously filed a complaint against the same defendants in the United States District Court for the District of Utah alleging a federal cause of action based upon Section 5 of the Federal Trade Commission Act and also alleging four state law fraud causes of action. The federal claim was subsequently dismissed on the basis that there was no private right of action under the federal statute. As in the case at bar, because the federal court's only jurisdiction over the state law claims was pendant to the federal claim, the

court had also dismissed the state law claims for lack of jurisdiction.

The plaintiffs thereafter filed suit in Utah state court alleging the same state law fraud claims as they had alleged in the federal action and, in addition, they alleged a claim for negligent misrepresentation. As in the case at bar, the defendants moved for dismissal of the negligent misrepresentation claim on the grounds of res judicata. The Supreme Court reversed the trial court's order granting the defendants' motion, holding as follows:

Since the merits of the instant claim were not adjudicated, and could not have been adjudicated, in the federal court action, the doctrine of claim preclusion under res judicata does not bar assertion of the claim of negligent misrepresentation in the state courts.

569 P.2d at 877 (footnote omitted).

Accordingly, because the causes of action asserted in the case at bar were not, and could not have been, adjudicated in either the Nelson case or the Harris case the doctrine of res judicata is inapplicable.

Defendants next argue that Judge Rokich's order in the MFT Possessory Proceedings authorizing the Commissioner to sell the BKK property is somehow res judicata with respect to the Complaint in the case at bar. This argument is frivolous.

In the first place, in approving the sale of the ENK property by the Commissioner, Judge Rokich was simply accepting the Commissioner's representations that he was authorized to sell said property pursuant to authority granted in UCA §7-2-12(1) and that the Commissioner's determination to sell the property was not "arbitrary, capricious, fraudulent or otherwise contrary to law" within the meaning of UCA §7-2-1(4) (1981). (See pp.10-11 of Exhibit "E" attached to Defendants' memorandum). Judge Rokich had neither the power to nor the intention of authorizing Defendants to breach their contractual obligations to Plaintiffs.

Furthermore, the order (which was drafted by Defendants' counsel) specifically states that it does not address "whether the Commissioner is validly in possession of, or has title to, ENK or any other assets of MFTSL." The further statement that "These questions should have been raised long ago in these proceedings . . ." misrepresents the record in that case and ignores the fact that Plaintiffs were contractually entitled to terminate the Commissioner's trusteeship at anytime they believed such a termination was in their best interest. Filed herewith as Exhibits "G" and "H", respectively, are true and correct copies of the Petition For Approval of Plan of Reorganization filed by the Commissioner and the November 5, 1982, letter from MFTSL to and countersigned by the ILCC in which it is specifically agreed

that ILGCL would have the option to terminate the Commissioner's trusteeship.

Finally, filed herewith as Exhibit "I" is a true and correct copy of the Memorandum In Support Of Motion To Transfer The Retained Assets filed by Plaintiffs in May 1987, which demonstrates that Plaintiffs had in fact previously raised the issue as to the validity of the Commissioner's possession of the BMX property.

In short, Plaintiffs have never had their day in court with respect to the claims alleged in the case at bar and there is absolutely no basis for invoking the doctrines of res judicata and/or collateral estoppel.

Response To Part C of Point IV

In part C, Defendants argue that Count two of the Complaint is barred due to the expiration of the period of limitations set forth in UCA § 78-12-23. Defendants base this argument on the assertion that "According to [the Complaint], Sutton breached [his] obligations under the PSA Agreement by retaining such assets as early as 1983." (See Defendants' memorandum at p.11).

Defendants' argument is meritless for three reasons. First, moving Defendants are Sutton, acting in his capacity as Commissioner in Possession of the ILGC, and the ILGC. The only allegations in Count Two against said Defendants relate to

Sutton's inducement of the sale of the DMK property in order to secure funds to bail out the defunct ILGC. Said inducement did not take place until after the ILGC was seized by the Commissioner in 1986. Accordingly, the instant action was commenced well within the six year period set forth in §78-12-23. Neither Sutton nor the ILGC has standing to seek dismissal of any the other claims in Count Two.

Second, Defendants did not breach their agreement to turn over the assets to Plaintiffs until Plaintiffs exercised their contractual option to terminate the Commissioner's trusteeship. Filed herewith as Exhibit "J" is a true and correct copy of the Notice Of Intent To Terminate The Trust which was filed by Plaintiffs on October 7, 1987. Again the instant action was commenced well within the six year limitations period of §78-12-23.

Finally, Defendants have failed to take into account the savings provisions of UCA §78-12-40. That statute, as it relates to this case, has been fully discussed in the memorandum which Plaintiffs have filed in response to the Department of Financial Institution's Motion To Dismiss which is incorporated herein. Suffice it to say that Plaintiffs had one year within which to re-file the instant action following the dismissal of the Harris case on June 6, 1989, which is exactly what they have done.

Response To Part D of Point VII

Defendants next argue that Count Two must be dismissed because "the corporate defendants (sic) were dissolved substantially more than two years prior to the filing of this action. . . ." (See Defendants' Memorandum on P.11). Apparently, Defendants are referencing the two year limitations period set forth in UCA §16-10-100, relating to pre-dissolution causes of action of dissolved corporations. Again, that statute's relation to this case has been fully addressed in Plaintiffs' Response to the DFI's Motion To Dismiss and is incorporated herein. Suffice it to say that §16-10-100 is on its face not applicable to the case at bar because this is a post-dissolution action, not a pre-dissolution action. It is §16-10-101 that applies to post-dissolution actions such as the case at bar, and that section has no period of limitations.

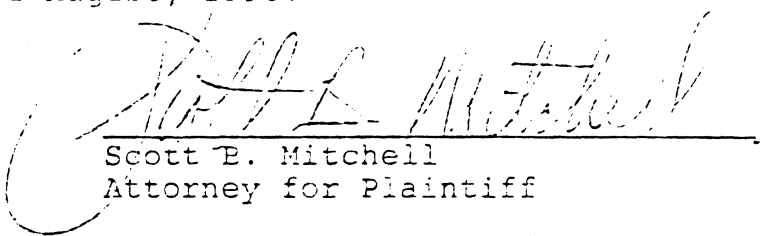
III Response To Point III

Finally, Defendants incorporate the arguments set forth in point III of the DFI's memorandum in support of its Motion To Dismiss and argue that Count Three of the Complaint is barred under the Government Immunity Act. In response to this argument, Plaintiffs incorporate their response to the DFI's arguments in this regard.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully submit that Defendants' Motion To Dismiss must be denied.

DATED this 7th day of August, 1990.



Scott B. Mitchell
Attorney for Plaintiff

CERTIFICATE OF MAILING

I do hereby certify that on the 7th day of August, 1990
I did cause to be placed in the U.S. mail, postage prepaid, a
true and correct copy of the foregoing RESPONSE TO MOTION TO
DISMISS and MEMORANDUM OF POINTS AND AUTHORITIES addressed to the
following:

R. Paul Van Dam
Attorney General
Reed M. Stringham
Assistant Attorney General
236 State Capitol
Salt Lake City, UT 84114

Michael N. Emery
RICHARDS, BRANDT, MILLER &
NELSON
Key Bank Tower, Suite 700
50 South Main Street
P.O. Box 2465
Salt Lake City, UT 84110

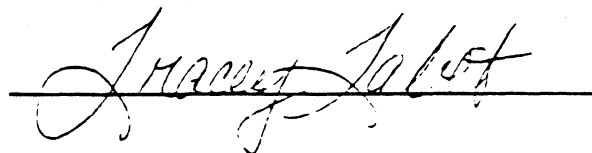
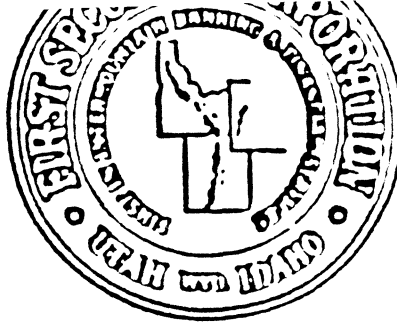
A handwritten signature in cursive script, reading "Tracy Talbot", is written over a horizontal line.

EXHIBIT A TO ADDENDUM 8



PURCHASE AND ASSUMPTION AGREEMENT

This Agreement is made as of the 15th day of November, 1982 by and between the parties hereinafter described, and relates to the purchase of certain assets and assumption of certain liabilities of Murray First Thrift & Loan Company.

A. Parties.

First Security Corporation, a Delaware corporation headquartered in Utah ("FS Corp.")

First Security Financial, a newly organized Utah corporation ("FS Financial")

Elaine B. Weis, solely in her capacity as Commissioner of Financial Institutions of the State of Utah ("Commissioner")

Industrial Loan Guaranty Corporation of Utah, a Utah corporation ("ILGC")

MFT Financial, Inc., a Utah corporation ("MFT Financial")

MFT Mortgage Corporation, a Utah corporation ("MFT Mortgage")

Murray First Thrift & Loan Company, a Utah corporation, ("MFT") as represented herein by its board and by the Commissioner.

PREPARED BY
RAY, QUINNEY & NEBEKER
ATTORNEYS AT LAW
400 DESERET BUILDING
79 SOUTH MAIN
SALT LAKE CITY, UTAH 84111
TELEPHONE 801-832 1800

EXHIBIT" 1

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MFT Financial, Inc., a Utah corporation ("MFT Financial")

MFT Mortgage Corporation, a Utah corporation ("MFT Mortgage")

Murray First Thrift & Loan Company, a Utah corporation, ("MFT") as represented herein by its board and by the Commissioner.

Recognizing that some of the parties hereto have limited participation in the transactions described herein, the inclusion of any person or corporation as a party does not suggest and shall

not be construed to the effect that any obligations are undertaken or liabilities assumed or rights created for the benefit of any such party, except as expressly set forth in this Agreement.

B. Exhibits. The following exhibits are attached to this Agreement and incorporated herein as part of the Agreement:

Exhibit A - Balance Sheet of MFT as of July 22, 1982

Exhibit B - Pro Forma Balance Sheet of FS Financial upon completion of the transactions contemplated

Exhibit C - Summary Description of Terms of MFT Subordinated Debentures and MFT Financial Subordinated Debentures

Exhibit D - Schedule of Contingent Liabilities or Executory Contracts Not Assumed by FS Financial

C. Recitals of Facts.

1. MFT has been an operating industrial loan corporation under the laws of the state of Utah.

2. Pursuant to statutory authority and under order of the Third Judicial District Court of the State of Utah in and for Salt Lake County (the "State Court"), the Commissioner took possession of the business of MFT on July 22, 1982. Since that date, the Commissioner has been supervising operation of the business of MFT and seeking a plan of reorganization or liquidation, including the possibility of a purchase transaction such as described herein.

3. This Agreement represents a definitive agreement as a follow up of various letter proposals previously requested by the Commissioner and submitted by FS Corp., and this Agreement also constitutes the offer to purchase by FS Financial strictly according to the terms and conditions stated herein.

4. This Agreement also constitutes part of a plan of reorganization of the business and affairs of MFT under Sections 7-2-12(1) and 7-2-18 Utah Code Annotated 1953, as amended, and related statutes, and the plan described herein is deemed by the parties hereto to be in the best interest of the depositors and creditors of MFT. (Unless otherwise noted, all statutory references are to Utah Code Annotated, 1953, as amended, and all regulatory references are to the Department of Financial Institutions Regulations for industrial loan corporations, as amended.)

5. FS Financial is or will be upon consummation of the transactions contemplated herein a wholly-owned subsidiary of FS Corp.

6. FS Corp. is a corporation whose sole business consists of holding the stock of other corporations for the purpose of controlling the management and affairs of such other corporations.

Based on the foregoing facts and in consideration of the premises and the mutual covenants herein, the parties hereby represent, warrant, agree and covenant as follows:

AGREEMENTS, COVENANTS AND REPRESENTATIONS.

1. Position of FS Financial. FS Financial has been formed as a Utah corporation and, upon consummation of the terms of this Agreement, will have transferred to it by the Commissioner all licenses and authorities previously owned by MFT relating to operation as an industrial loan corporation with thrift deposit powers. FS Financial will have capital stock of \$875,000 plus surplus of \$375,000 paid in cash upon the commencement of operations. As more fully explained herein and illustrated in the attached Pro Forma Balance Sheet designated as Exhibit B, FS Financial will have total Capital (rounded to 000's) of \$20,172,000, consisting of \$875,000 capital stock and \$375,000 surplus as stated, \$7,000,000 of new net worth certificates, \$910,000 in the carry-over of subordinated capital debentures of MFT, \$1,012,000 in subordinated capital debentures assumed from MFT Financial and \$10,000,000 in capital maintenance notes issued pursuant to ILR: 009.2.

2. Position of FS Corp. The offer of FS Financial to effect purchase of certain assets and assume certain liabilities as stated in this Agreement is made with the full approval and consent of its parent, FS Corp. While FS Corp. is not undertaking any express obligations by this Agreement, other than a separate guaranty to Moore Financial under an agreement referenced herein for information only, it is understood to be

part of the circumstances underlying this Agreement that FS Corp. is a holding company with substantial resources of its own and through its affiliated financial institutions, and that the potential of its financial support and its public reputation are and will be of substantial value to FS Financial.

3. Purchase of Assets. FS Financial will acquire from the Commissioner, acting on behalf of MFT, all of the assets of MFT and the assets of its then subsidiary, MFT Leasing, shown on the July 22, 1982 Balance Sheet, including the license with thrift deposit powers as above stated, with the following exceptions:

<u>Description</u>	<u>Stated Value</u>
Bel Marin Keys Interests (39%) (subject, however, to a profit share retained for FS Financial per paragraph 13)	\$4,346,000
Mountain Valley Property	580,000
Leonard Lewis and Temple Street Commercial Loans including accrued interest	75,000
Investment in Irving Commons	\$2,295,410
Chatillon Inc. Commercial Loan including accrued interest	\$442,000

The assets to be acquired and the exclusions stated have reference to the assets described in Exhibit A, the Balance Sheet of MFT dated July 22, 1982. In addition, as part of the usual course of acquisition, FS Financial shall receive insurance

policies and all of the books of account, customer records, and documents of every nature relating to the business of MFT, except those records covering excluded assets.

All agreements and rights connected with any assets and/or any liabilities of MFT shall be retained by or assigned to, as the case may be, the party who is to own such asset or deal with such liability pursuant to this Agreement.

4. Assumption of Liabilities--General. As part of the consideration for the purchase of assets above described, FS Financial will assume all of the liabilities of MFT (and the liabilities of MFT Leasing as consolidated) described in the balance sheet of MFT dated July 22, 1982 (Exhibit A) and trade obligations of MFT incurred prior to July 22, 1982, if any, not reflected in Exhibit A, in an aggregate amount not to exceed Ten Thousand Dollars (\$10,000), with the following exceptions:

<u>Description</u>	<u>Stated Amount</u>
Liabilities Assumed from a Related Party	\$542,000
Liability assumed from a Related Party-Leonard Lewis	\$75,000
Deferred Taxes Payable	\$586,000
Contingent and Unstated Liabilities and those on Exhibit D	

As part of the assumption, FS Financial will have restored certain setoffs, if any, amounting to approximately

\$30,000 taken by Commercial Security Bank from accounts of MFT Mortgage and MFT Financial since July 22, 1982 or will effect a setoff thereof against obligations due MFT by MFT Financial, in the same amount. No liabilities or obligations of any nature, either of MFT, MFT Financial or of related or affiliated parties, will be assumed by FS Financial other than those expressly shown on Exhibit A, with the exclusions noted above, or otherwise expressly provided for in this Agreement. FS Financial does acknowledge that it will undertake all obligations related to the thrift business acquired which arise after closing and relate to transactions occurring after closing.

5. Assumption of Liabilities--MFT Financial.

Referenced herein for information only, by reason of valid policy and business considerations determined by it, FS Financial will voluntarily assume the liabilities of MFT Financial to the extent of the Capital Debentures of MFT Financial (according to their terms) reportedly sold to members of the public in an amount not to exceed \$1,012,200 principal amount and excluding debentures or other obligations noted on Exhibit D herein. Such liabilities will be assumed in accordance with the terms of each such instrument or by any instruments which may be exchanged therefore, or upon other terms which may be negotiated between FS Financial and the holders of such instruments.

6. Payments and Expenses During Administration.

(a) During the time since July 22, 1982 while the affairs of MFT have been under jurisdiction of the Commissioner,

certain assets have been converted to cash and certain cash payments have been made to satisfy certain liabilities, including specifically the payment of the secured obligations of MFT and MFT Leasing to Security Pacific Finance Corporation and Commercial Security Bank.

(b) FS Financial will assume payment for the professional fees (legal, accounting and consulting) of the Commissioner acting for MFT, relating to the possession by the Commissioner of MFT on July 22, 1982 and subsequent events, as allowed and approved by the State Court having jurisdiction over the business and property of MFT under Chapter 2 of Title 7, up to a maximum amount of \$200,000, and the application of said amount shall be made in accordance with Section 7-2-14.

(c) FS Financial agrees that the Commissioner may pay from funds collected from MFT customers any obligations due or to become due prior to the closing hereunder on account of credit life insurance premiums and hazard insurance premiums on property held as security for obligations to MFT.

(d) To the extent of the changes in the financial condition of MFT resulting from those transactions and other changes in assets and liabilities of MFT resulting from actual operations since July 22 which have not materially changed the net values reflected on that balance sheet (Exhibit A), the assets and liabilities will be purchased and assumed as adjusted for those changes, and otherwise in accordance with the express terms of

this Agreement. Any balance of administrative expenses may be paid by the Commissioner in accordance with Section 7-2-14 and consistent with subparagraph (b) above.

7. Assumption of Deposit and Related Liabilities.

FS Financial will assume the obligations for payment of interest on the liabilities of MFT since July 22 which would normally have borne interest had the Commissioner not possessed the business of MFT, in accordance with the following general terms as may be more fully refined in agreements with depositors before or after FS Financial commences operations:

(a) Interest on Thrift Certificates of MFT will be paid to the holders thereof from July 22, 1982 to maturity of each respective instrument at the rate stated in each such instrument, and thereafter at the current market rate as determined by the board of FS Financial.

(b) Interest on MFT's Thrift Passbook Savings Accounts will be paid at MFT's regular pass book rate and based on MFT's regular terms from July 22, 1982.

(c) Interest will be paid to holders of dishonored checks which were issued for withdrawals of passbook or certificate deposit accounts, if those funds are redeposited in either thrift passbook savings accounts or thrift certificates according to terms to be established by FS Financial. Interest

will be paid from July 22, 1982 at the applicable passbook or certificate rate and will be credited at the end of six months.

(d) Interest will be paid on all subordinated capital debentures of MFT from July 22, 1982 to the date of maturity of each such instrument at the rate stated in each such instrument.

8. Ford Motor Credit Company. In an effort to settle a contingent liability of MFT currently in litigation, FS Financial has offered to Ford Motor Credit Company the amount of \$145,000, in consideration of assignment to FS Financial of its claims against MFT and withdrawal of any objection to the Court's approval of this Agreement, which offer was accepted subject to fulfillment of the terms and conditions hereof.

9. Support from ILGC.

(a) Cash. On the closing date of purchase described herein, ILGC will make a cash payment to FS Financial in the amount of \$2,000,000, which amount shall not be subject to reimbursement by FS Financial or out of assets acquired by it, but may be subject to separate reimbursement under certain conditions specified in paragraph 13 hereof. A second payment to FS Financial will be made on the anniversary date three years later by ILGC in the amount of \$1,000,000 and a third payment will be made by ILGC one year later in the amount of \$2,000,000. Provided, however, that the second and third payments or any part

thereof will be requested and made only in the event that FS Financial sustains losses on the sale or collection of acquired assets below the respective values shown on the records of MFT and incorporated in Exhibit A, at least equal to the amount of the second and third cash payments made by ILGC. The remaining value, if any, of the assets on which such losses were sustained will be transferred to ILGC if FS Financial requests the second and third payments or any part thereof or at a prior time by separate mutual agreement between ILGC and FS Financial.

(b) Investment Fund. On the date FS Financial commences operations, ILGC will deposit its full investment fund balance in a thrift account with FS Financial earning an interest rate of 5 percent per annum. In 1983, after ILGC has received its annual assessment from its members, ILGC will deposit 50 percent of its additional investment funds in the same or similar account with FS Financial at the rate of 5 percent per annum. In 1984, after ILGC has received its annual assessment from its members, ILGC will deposit 25 percent of its additional investment funds in the same or a similar account at the rate of 5 percent per annum. Those deposits will be maintained in that account until a date at least three years from the closing date of this transaction. Thereafter, ILGC will deposit with FS Financial a percentage of its investment funds at least equal to the percentage ratio which

the total deposits of MFT then bear to the total thrift deposits in the state of Utah, earning interest at regular market rates.

(c) Net Worth Certificates. On the closing date of the transaction contemplated hereby ILGC will purchase net worth certificates to be issued by FS Financial in the principal amount of \$7,000,000 pursuant to authority of ILR: 009.2. The certificates will have a maturity of ten years. Consideration for the certificates will be in the form of a promissory note from ILGC with payment terms corresponding to those of the certificates. It is the intent hereof that the certificates described in this subparagraph will be reduced and discharged as a setoff against the note of ILGC in the event of unenforceability of the ILGC note by reason of a Federal bankruptcy petition by or against ILGC. Prior to closing, the counsel to ILGC will provide an unqualified legal opinion assuring that result.

(d) Additional Certificates. In the event of operating losses by FS Financial during the first three years of operations, ILGC will purchase up to \$3,000,000 of additional net worth certificates as a setoff to such losses on the same terms and conditions as the certificates described in the preceding subparagraph. Such additional certificates will be purchased by ILGC within 30 days after presentation to ILGC from FS Financial of a demand with supporting information concerning said operating losses.

(e) Capital Maintenance Notes. Pursuant to a separate agreement between Moore Financial Group, Inc. (MFGI), incorporated herein by reference, FS Financial, ILGC and individual members of the ILGC, MFGI will purchase from FS Financial capital maintenance notes in the total aggregate amount of \$10,000,000, in accordance with ILR: 009.2. The notes issued by FS Financial to MFGI shall be guaranteed by FS Corp. The notes shall have a maturity of 90 days, renewing automatically for eleven (11) consecutive 90 day periods, shall be in multiples of \$1,000,000, and shall bear a rate of interest equal to one percent below the simple interest equivalent of the 30-day dealer commercial paper rate as published in the Federal Reserve Publication H-15, during the first year, 0.75% below such rate in the second year and 0.50% below such rate in the third year. MFGI shall notify FS Financial of the interest due by the 20th day of the month preceeding the maturity date, which shall be December 1, March 1, June and September 1, with the first note maturing March 1, 1983. Interest will be computed based on the weekly average of the simple interest equivalent of the 30-day dealer commercial paper rate for the immediately preceeding calendar quarter.

(f) Resolutions and Opinions. The covenants and obligations of ILGC and the several obligations of its members as described in this paragraph or otherwise in this Agreement, shall be supported, respectively, by (1) resolutions of the board of

trustees of ILGC and an unqualified legal opinion of its counsel regarding its authority to incur the subject obligations; and (2) resolutions of the board of the ILGC members or their parent companies, as applicable, which purchase capital maintenance notes under subparagraph (e) above at the request of ILGC and in accordance with the separate agreements therein mentioned.

(g) Assessments. It is intended that FS Financial will, upon commencing operations under this Agreement, be a regular member of ILGC subject to payment of its share of the normal annual statutory assessments in accordance with Chapter 8a of Title 7. However, ILGC expressly agrees that if ILGC is required to make any special or extra assessments of its members (assuming statutory authority to do so), for purposes of discharging any of its obligations expressly described in this Agreement, FS Financial will not be required to fund any part of such special assessment.

10. Regulatory Forbearance. The Commissioner shall issue a letter exempting FS Financial from sanctions or penalties and assuring that the Commissioner will take no adverse action against FS Financial for a period of thirty-six months from the date of commencement of operations with respect to the following: Violation of any provision of Chapter 8 of Title 7 or regulations of the Department of Financial Institutions by reason of the acquisition of the assets or assumption of the liabilities of

MFT as provided in paragraphs 3 and 4 hereof or the holding of deposits of or other funds supplied by the ILGC or its members as provided in paragraph 9 hereof or the growth in the business of FS Financial based on such transactions. Provided, however, that FS Financial shall bring itself into compliance with all statutory and regulatory requirements then in effect by the anniversary date thirty-six months from the date of commencement of operations of FS Financial.

11. Interim Access.

Between the date of approval of this Agreement by the Commissioner and by the State Court and the date of assumption of operations of the business of MFT purchased and assumed hereunder by FS Financial, the Commissioner shall grant permission, and MFT Financial and MFT Mortgage consent, that personnel of FS Corp. and/or FS Financial, including but not necessarily limited to auditors (internal or outside), and personnel dealing with operations, marketing, advertising and properties, shall have access to all premises heretofore occupied by MFT and to the records of MFT, during normal business hours and without interrupting normal business procedures, for the purpose of preparing to commence operations in accordance with the terms of this Agreement as soon as practicable.

12. Occupancy of Premises.

(a) Main Building. The Commissioner agrees, upon closing of this transaction, to convey by special warranty deed to FS Financial or its nominee, all right title and interest in and to the Murray First Thrift Building at 135 South Main Street, Salt Lake City, Utah, subject to liens, easements, encumbrances and other matters of record. In order to accommodate such conveyance the Commissioner, by agreement with MFT Mortgage, shall cause that a default judgment or a stipulated judgment shall be taken in connection with the action in the State Court having the effect of reinstating the record title to said building in the name of MFT. MFT Mortgage expressly agrees to cooperate in effecting such proceedings and documenting the same.

With respect to the building MFT Mortgage hereby warrants and represents that a first mortgage exists in the principal amount of Seven Hundred Eighty-Nine Thousand Dollars (\$789,000.00) in favor of Western Mortgage Loan Corporation or its assignee, acknowledges that said mortgage is in default of payment, and further represents and warrants that no other liens, easements or encumbrances exist except statutory liens for accruing real estate taxes and any usual and normal easements for utilities or other requirements of occupation of the building. Any rentals due or to become due from MFT to MFT Mortgage on the building prior to closing of this transaction shall be cancelled and discharged in

consideration of the payment by FS Financial of past due first mortgage note payments and interest on said note, and the other mutual covenants of this Agreement.

Any policy of title insurance required by FS Financial shall be requested and issued at its own cost and by its own arrangement.

(b) Branches. FS Financial or its nominee shall be entitled to undertake the obligations of MFT with respect to occupancy of the branch facilities and the leases relating thereto for the five branches previously operated by MFT; provided, however that FS Financial shall not be obligated to undertake said leases and, with consent of the Commissioner in rejecting executory contracts, shall reject such leases as FS Financial shall determine should be rejected. A designation of such leases to be rejected shall be made by FS Financial to the Commissioner prior to the closing date of this transaction, and documents appropriate thereto shall be part of the closing. A final order of the State Court shall be entered rejecting and declaring null and void any such leases not assumed by FS Financial.

(c) MFT, MFT Mortgage, and MFT Financial, acting for themselves with intent to bind their respective officers, directors, shareholders, subsidiaries or other principals, agree not to enter the premises occupied by FS Financial in accordance with this paragraph after closing of this transaction or to assert

any right of occupancy with respect to any such premises, and further agree not to interfere in any manner with the occupancy or the operation of the industrial loan business as contemplated by FS Financial hereafter.

13. Bel Marin Keys Unit 5 (1,034 acres).

Notwithstanding the exclusion of the interests of MFT in the Bel Marin Keys Property as an asset purchased pursuant to paragraph 3 hereof, it is the intent of this Agreement that FS Financial shall have some economic benefit from the proceeds of development or profits arising from the sale or development of the Bel Marin Property. To that purpose the parties hereto agree that the following provisions outline the general purposes and intents relating to the Bel Marin Property and that the parties affected by such properties shall engage in such additional agreements and contracts, in good faith, as may be necessary to implement the intent hereof. The interests of FS Financial and of ILGC stated in this paragraph are subject to the rights of MFT, through the Commissioner, to arrange for payment of claims against MFT not assumed by FS Financial hereunder.

(a) FS Financial has the right to convey or assign to its nominee, including any affiliated corporation, the interests undertaken by FS Financial in the proceeds and profits of Bel Marin according to this paragraph (without creating thereby an operating loss as said term is contemplated by paragraph 9(d)

above). For purposes of its business, including the joint venture hereinafter described FS Financial may retain on its books a receivable set up in consideration of its transfer of the interests in Bel Marin to its nominee, according to such net value as FS Financial may determine. FS Financial agrees, however, to cooperate in every reasonable way for the purposes of implementing the development and/or sale of Bel Marin as may be suited to the protection of the interests obtained by it and held directly or indirectly, without, however undertaking any specific financial obligations with respect thereto.

(b) The development costs, including but not necessarily limited to costs of obtaining all federal and state regulatory approvals for the proposed development, shall be borne sixty-one percent (61%) by Irving Financial Corporation (or its successors or assigns) and thirty-nine percent (39%) by MFT (or its successors or assigns) up to the time that a joint venture for development of the property is formed.

(c) It is intended that a joint venture between the present owners of the Bel Marin property or their successors or assigns and others, shall be created for the purposes of developing or selling said property. It is anticipated that Home Savings and Loan Association of California may be a party to the joint venture, but other lenders or financial contributors to the venture may be obtained as subsequently agreed. It will be the

responsibility of the joint venture to pursue the development of the entire acreage included in the Bel Marin properties. Alternatively, the joint venture may determine to sell interests prior to development, a matter not intended to be finally determined in this Agreement.

(d) Out of the first proceeds of sale or profits of the development of Bel Marin arising from the 39% undivided interest held by MFT (without reference to any deduction or setoff for the carrying cost on the records of MFT), it is agreed that ILGC shall be reimbursed to the extent of Two Million Dollars (\$2,000,000.00) for the advance it shall make pursuant to paragraph 9(a) herein in connection with the purchase and assumption of the liabilities of MFT contemplated hereby.

(e) In the event ILGC is required to fund additional payments beyond the first \$2,000,000.00 to FS Financial pursuant to paragraph 9(a) hereof, such losses will be reimbursed to ILGC by the joint venture out of the proceeds of profits of development to the extent such losses exceed One Million Dollars (\$1,000,000.00) principal amount, provided that ILGC shall recover the first \$1,000,000 of losses from the profits derived from the 39% interest in Bel Marin in excess of Twelve Million Dollars (\$12,000,000.00); provided further that such loss reimbursement shall be subject and inferior to FS Financial's profit interest in Bel Marin granted pursuant to Paragraph 13(g) hereof.

(f) In the event ILGC receives loans or other assets (irrespective of value) in consideration of funds advanced by it pursuant to subparagraph 9(a) herein, and ILGC subsequently receives funds from the Bel Marin project as stated in subparagraphs (d) and (e) of this paragraph 13, then any loans or other assets and proceeds thereof received by ILGC will in turn be assigned to Irving Financial Corporation, an affiliate of MFT Financial Corporation, and will become property of Irving Financial.

(g) As an additional inducement to the purchase and assumption undertaken by FS Financial pursuant to this Agreement, FS Financial will receive for itself a share of the net profits relating to Bel Marin in the amount of 25% of the net profits realized from the 39% undivided interest in Bel Marin previously held by MFT. In accordance with subparagraph (d) of this paragraph 13, ILGC may be reimbursed up to \$2,000,000 principal amount from said 39% interest, and amounts payable to FS Financial under this subparagraph shall be the next priority after said \$2,000,000 or any part thereof, or the carrying cost to MFT of \$4,346,000, whichever is higher, provided that ILGC may be reimbursed thereafter an additional \$1,000,000 pursuant to subparagraph (e) hereof. For purposes of this subparagraph "net profits" to FS Financial will mean those profits realized from the ultimate share of the joint venture profits and shall include

proceeds from sales of any part or parts of the Bel Marin Property, profits from development other than sales which may include fees earned by the joint venture as a development agent, together with all proceeds of rentals, leases and other income from the Bel Marin Property through the joint venture, after deducting the 39% carrying cost from the records of MFT (without interest) and lawfully incurred costs of management and administration of the joint venture, costs of development, costs of sales, interest costs on debt incurred for development and similar expense items of a usual and lawful nature in connection with the development and/or sale of such projects. Moreover, the definition of net profits as contemplated herein may be modified by definitive agreements in connection with the joint venture, for all of which the parties hereto affected by the venture agree to cooperate in good faith toward the purposes thereof.

(h) One of the assets of MFT purchased by FS Financial hereunder is a receivable from affiliates, and an affiliate owing part thereof is MFT Financial. Unless other express arrangements are made for actual payment or satisfactory collateral for payment from said affiliate to FS Financial, FS Financial would agree that said receivable from the affiliates in the amount of approximately \$782,000 can be paid out of net profits of MFT Financial's share of the profits from Bel Marin. To the extent such amount cannot be recovered out of MFT

Financial's share, a portion thereof, not to exceed Three Hundred Ninety-One Thousand Dollars (\$391,000) shall be discharged by Irving Financial, but only out of the proceeds which it receives from its sixty-one percent (61%) interest in the Bel Marin project. To the extent the foregoing provisions do not result in collection of the full Seven Hundred Eighty-Two Thousand Dollars (\$782,000), the loss shall be borne by the ILGC as part of the Three Million Dollars (\$3,000,000) referred to in Paragraph 9(a).

(i) Notwithstanding that ILGC will receive no interest on the advanced \$2,000,000.00 pursuant to paragraph 9(a) and 13(d) herein, ILGC will receive interest at a rate equivalent to the then ninety (90) day treasury bill rate on the remaining amounts due ILGC for reimbursement pursuant to paragraph 13(e) above up to the maximum of \$3,000,000.00, all to be charged against the proceeds of the development of the 39% undivided interest in Bel Marin as above said.

14. Federal Reserve Approval.

By reason of the status of FS Corp. as a bank holding company, consummation of its acquisition of the shares of FS Financial and the related acquisition by FS Financial of the assets of MFT and assumption of its liabilities under the terms and conditions stated herein shall be subject to prior approval

of the Federal Reserve Board. FS Corp. expressly agrees to pursue diligently, under the most expeditious application method available, the approval of the Federal Reserve Board after obtaining agreement of the Commissioner and other parties to this Agreement.

15. State Court Approval.

This Agreement shall not be effective until approval hereof by the State Court having jurisdiction of the Commissioner's proceedings relating to the Commissioner's possession of MFT and of any other courts having jurisdiction of related cases which are necessary in order to have the acquisition contemplated hereby lawful and binding, together with lapse of all appeals periods relating to court orders or judgments, or waiver of appeals by parties who may have such rights of appeals. By being a party to this Agreement MFT Financial and MFT Mortgage agree that they are estopped from disputing the terms and conditions of this Agreement and the acquisition by FS Financial which shall be implemented pursuant hereto. All parties hereto and their principals, as shall be defined by separate agreement, shall execute a mutual release relating to these matters.

16. Closing Date. The closing date for this transaction shall be established as soon as practicable after the approving order of the State Court and after an application has been filed by FS Corp. with the Federal Reserve Board, enabling it to

estimate the time period within which approval may be expected. It is agreed that time is of the essence of this Agreement and appropriate expeditious action by all parties shall be taken toward the closing.

17. Representations and Warranties. As material inducements to FS Corp. and FS Financial for entering this Agreement and their performance as set forth herein, the respective parties hereto make the following warranties and representations each as to its or her separate participation herein:

(a) The Commissioner represents and warrants, subject to the disposition by the state court of proceedings described in paragraph 15:

(1) that she is the duly appointed and acting Commissioner of Financial Institutions of the State of Utah;

(2) that the financial statement of MFT dated July 22, 1982 (Exhibit A) was prepared from the records of MFT by Deloitte, Haskins & Sells, as her agent, and that said statement fairly represents the financial condition of MFT and its then subsidiary, as reflected by such records, to the best of her knowledge;

(3) that she has the authority to act with respect to possession of the business of MFT and to act for the purpose of selling certain assets and allowing assumption of certain liabilities (and disallowing the assumption of other liabilities) as expressly set forth in this Agreement, and further that she has the lawful power to effect, with the approval of the State Court, the reorganization of the business of MFT contemplated herein;

(4) that title to all properties and assets of MFT are under control of the Commissioner, subject to the encumbrances or charges shown in the books and records of MFT or otherwise described in this Agreement; and

(5) that she has furnished to FS Corp. all relevant information in her possession with respect to the assets and liabilities of MFT purchased or assumed hereby, reasonably calculated to permit FS Corp. to make a business decision with respect to this transaction.

(b) FS Corp. represents and warrants that it is a duly organized and existing corporation under the laws of the State of Delaware, and that it is a bank holding company subject to regulation of the Federal Reserve Board under the terms of the Bank Holding Company Act of 1956, as amended, and other applicable

law, that its sole business consists of holding the stock of other corporations for the purpose of controlling the management of affairs of such other corporations, that it is headquartered in the State of Utah with its principal offices at 79 South Main Street, Salt Lake City, and that as a holding company it is exempt from qualification under the laws of the State of Utah notwithstanding its headquarters here.

(c) FS Financial represents and warrants that it is a duly organized and existing corporation under the laws of the State of Utah, that on closing of the transaction contemplated hereby it will have the lawful paid-in capital for such corporation and that it will have a total capital structure of the form and in the amount stated in paragraph 1 of this Agreement, that upon consummation of this transaction it will operate as a duly authorized and licensed industrial loan corporation of the State of Utah, subject only to any limitations and conditions expressly stated herein. FS Financial also represents that, while it has no commitment with respect to employees of MFT, it will give due consideration to employing any such persons as it may elect upon commencing its operations.

(d) ILGC represents and warrants that it is a duly organized and existing corporation under the laws of the State of Utah with its sole purpose being that of an industrial loan

guaranty corporation pursuant to Chapter 8a of Title 7 of the Utah Code Annotated 1953, as amended, and has due and lawful powers to continue to operate in such capacity, and has the due and lawful rights and authorities to engage in the payments, commitments, and obligations contemplated by this Agreement.

(e) MFT Financial represents and warrants that it is a corporation duly organized and existing under the laws of the State of Utah, is the 100% shareholder of MFT, and is duly authorized by its board of directors to engage in the transactions, commitments and obligations expressly set forth in this Agreement, and it further represents that MFT Leasing was the only subsidiary of MFT as of July 22, 1982, and that said subsidiary was merged into MFT pursuant to the laws of Utah on or about November 12, 1982.

(f) MFT Mortgage represents and warrants that it is a duly organized and existing corporation under the laws of the State of Utah, currently holds record title to the building occupied by MFT at 135 South Main, and is duly authorized by its board of directors to engage in the transactions, obligations and commitments described herein including the agreement for default or stipulated judgment permitting conveyance by the Commissioner's special warranty deed of all MFT's right, title and interest in said building to FS Financial or its nominee.

With respect to the respective authorities of MFT Financial and MFT Mortgage under subparagraphs (e) and (f) above, each shall provide to FS Financial at closing certified copies of the resolutions of the respective boards of directors approving these transactions.

18. Indemnities.

MFT Financial indemnifies FS Corp. and FS Financial and agrees to hold them harmless from and against any claims, losses or expenses, including, but not limited to, attorneys fees and court costs arising out of any claim asserted by or in connection with the rights of a party named J. Telford, the purported holder of certain subordinated capital debentures of MFT Financial, Inc., and any offsetting obligation owed by him or collateral held or purported to be held by him associated with MFT Financial or MFT, whether or not any such claims are asserted informally or through administrative or judicial action, but expressly including an indemnity against any additional funds which FS Corp. or FS Financial may have to pay to said party in the event of an unfavorable administrative or judicial determination to which FS Corp. and/or FS Financial may be party, and after dispute by them. In this connection, FS Corp. and FS Financial expressly agree to give notice to MFT Financial with respect to any claim asserted by J. Telford with respect to the matters described in this subparagraph, and to permit MFT Financial,

through its own attorneys and at its own cost, to undertake the defense of any such action or proceeding or informal claim.

19. Miscellaneous Agreements.

(a) The agreement of FS Financial to assume the subordinated capital debentures of MFT Financial pursuant to paragraph 5 hereof contemplates that the pending lawsuit against MFT Financial and its principals shall be released and discharged upon closing of this transaction, or suspended or otherwise agreed to by stipulation with all other parties that claims asserted therein shall not be transferred as claims against FS Corp. or FS Financial in any manner.

(b) Neither FS Corp. nor FS Financial shall assume any liability of any nature for tax consequences, if any, to MFT or its shareholder, by reason of the agreements contained herein or the possession of MFT by the Commissioner leading to these agreements. In like manner, FS Corp. and FS Financial shall have no obligation to file tax returns for any current or past years or deal in any manner with tax obligations of MFT.

(c) In connection with the approval of the State Court and other actions as provided in paragraph 15 hereof concerning the Commissioner's power to sell certain assets and permit assumption of certain liabilities of MFT according to this

Agreement, special counsel to the Commissioner, Fabian & Clendenin, shall provide a legal opinion addressed to the Commissioner assuring the legal basis for the Commissioner's lawful authority both to possess MFT and to sell its assets and permit assumption of its liabilities on the terms and conditions expressed in this Agreement by supporting her lawful right, power and authority to make the representations specified in paragraph 17(a) herein.

(d) All parties to this Agreement agree one with another that no press releases, verbal or written, shall be volunteered to or given at the request of representatives of any media with respect to the transactions contemplated hereby unless the same have been approved by ILGC, and that approval thereof shall not be unreasonably withheld. While nothing herein can limit the right of media representatives to extract information from public records and from attendance at court hearings or other public proceedings involving these matters, the parties recognize that public interest is at stake as well as individual interests of the parties hereto, and the parties mutually desire to provide correct and meaningful information to the public without permitting misleading statements or incomplete information to be submitted knowingly through the media.

(e) Closing of the transactions contemplated hereby shall be further conditioned upon compliance with all other

applicable state and federal statutes and regulations, if any, not expressly described herein.

(f) Any written notices to any party hereto arising out of or required by this Agreement shall be given in writing personally delivered or postage prepaid U.S. First Class Mail, to each party at the office and address respectively placed beside the signature of each party below.

(g) All representations and warranties contained herein shall survive the closing.

(h) MFT Financial and MFT Mortgage agree on behalf of themselves and their officers, directors and affiliates, to refrain from making any verbal or written disparaging or critical remarks concerning FS Corp., FS Financial, ILGC or the Commissioner in any public setting, to the press or in any court pleadings or proceedings (except by way of defense to legal actions from other parties), or to any depositor or creditor of MFT or MFT Financial, referring to any matters connected with this Agreement or circumstances giving rise hereto. In like manner, all other parties hereto agree on behalf of themselves and their respective officers, directors and affiliates to refrain from making such verbal or written disparaging or critical remarks concerning MFT Financial or MFT Mortgage, their officers, directors or affiliates;

(i) This Agreement shall be governed by and construed with reference to the laws of the State of Utah, and shall be liberally construed for the purposes stated herein.

(j) This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

(k) This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(l) Except with reference to the professional fees and expenses covered in Paragraph 6, which may include services relating hereto, all parties shall bear their own respective fees and expenses incurred in connection with preparation and implementation hereof.

IN WITNESS WHEREOF, the parties have hereunto executed this Agreement as of the date first above written.

FIRST SECURITY CORPORATION

Date of Execution: 12-13-82 By *Spencer F. Eccles*
Spencer F. Eccles, Chairman
Address: VICE PRESIDENT

First Security Corporation
Attn: Spencer F. Eccles, Chairman
79 South Main Street
200 Deseret Building
Salt Lake City, Utah 84111

FIRST SECURITY FINANCIAL

Date of Execution: 12/13/81 By Ed. Cummings,
President ~~Chairman~~

Address:

First Security Financial
Attn: C. S. Cummings, Chairman
79 South Main Street
1100 Deseret Building
Salt Lake City, Utah 84111

INDUSTRIAL LOAN GUARANTY
CORPORATION OF UTAH

Date of Execution: 12/13/82 By James B. Bechtold
Chairman, Board of Trustees
President

Address:

Industrial Loan Guaranty
Corporation of Utah
Attn: President
10 West 300 South
Room 530
Salt Lake City, Utah 84101

Date of Execution: 12/13/82 By Elaine B. Weis
Elaine B. Weis, Commissioner of
Financial Institutions

Address:

Department of Financial Institutions
Attn: Elaine B. Weis, Commissioner
10 West 300 South
Room 331
Salt Lake City, Utah 84101

MURRAY FIRST THRIFT & LOAN
COMPANY

Date of Execution: _____

By _____

Jim P. Hansen
Chairman of the Board

Address:

MFT FINANCIAL, INC.

Date of Execution: _____

By _____

Vice President

Address:

MFT MORTGAGE COMPANY

Date of Execution: _____

By _____

President

Address:

MURRAY FIRST THRIFT & LOAN COMPANY AND SUBSIDIARY

Exhibit A

CONSOLIDATED BALANCE SHEET AS OF JULY 27, 1982 (UNAUDITED)

<u>ASSETS</u>	<u>COMMENTS</u>		<u>LIABILITIES AND STOCKHOLDER'S EQUITY</u>	<u>COMMENTS</u>	
CASH:	1		THIRIFT:		
Accounts with debit balances		\$ 741,896	Passbook	13	\$ 6,906
Accounts with credit balances		(475,863)	Certificates	14	40,831
Net		<u>266,033</u>	SUBORDINATED CAPITAL DEBENTURES	15	309
TIME CERTIFICATES OF DEPOSIT AND			NOTES PAYABLE	16	631
SAVINGS ACCOUNTS	2	<u>1,031,754</u>	LIMITS OF CREDIT:	17	
RECEIVABLES:			Security Pacific Finance Corporation		2,421
Interest-bearing notes:			Commercial Security Bank		2,000
Installment	3	32,115,305	LIABILITIES ASSUMED FROM A RELATED PARTY	18	616
Commercial	3	1,709,806	ACCRUED INTEREST PAYABLE:		
Real estate contracts	3	3,164,889	Thrift passbook		36
Lease financing - net	4	9,175,192	Thrift certificates		1,430
Accrued interest receivable	5	1,675,513	Subordinated capital debentures		19
Other receivables	6	1,610,375	Other		221
Total receivables		<u>48,350,100</u>	ACCOUNTS PAYABLE AND ACCRUED EXPENSES		339
Less allowance for losses:			DEFERRED TAXES PAYABLE	19	586
Loan receivables		850,171	RESERVE FOR CONTINGENCIES	21	<u>100</u>
Lease financing		767,821	TOTAL LIABILITIES		<u>37,077</u>
Net receivables		<u>46,732,108</u>	COMMITMENTS AND CONTINGENCIES	20,21	
PRIVITY IN REAL ESTATE CONTRACTS	7	2,827,387	STOCKHOLDER'S EQUITY:		
REAL ESTATE HELD FOR SALE	8	7,798,995	Common stock - \$1 per value:		
RECEIVABLE FROM PARENT AND AFFILIATES	9	1,393,693	authorized, 3,000,000 shares; issued		
INVESTMENT IN IRVING CREDIT	10	2,295,410	and outstanding, 1,873,043 shares		1,873
OTHER ASSETS	11	145,234	Additional capital		4,971
PROPERTY AND EQUIPMENT - NET	12	204,377	Retained Earnings:		
			Appropriated		1,754
			Unappropriated (deficit)		(871)
			Total stockholder's equity		<u>7,754</u>
TOTAL ASSETS		<u>\$64,765,191</u>	TOTAL LIABILITIES AND EQUITY		<u>\$64,765,191</u>

NOTE: The consolidated balance sheet includes the accounts of Murray First Thrift & Loan (the Company) and its 100% owned subsidiary, MST Loan. All significant intercompany accounts have been eliminated.

The Company is a wholly owned subsidiary of MFT Financial, Inc. which is majority-owned by Irving Financial Corporation.

See accompanying commentary to the consolidated balance sheet.

The Notes to this Balance Sheet are an integral part hereof and incorporated by reference.

EXHIBIT B

FIRST SECURITY FINANCIAL
PRO FORMA BALANCE SHEET
DECEMBER 1, 1982

(In Thousands)

Assets	Unaudited 7-22-82	Adjustments	Pro Forma 12-1-82	Liabilities	Unaudited 7-22-82	Adjustments	Pro Forma 12-1-82
		(15) 70					
		(1) 2,000		Thrift Deposits:			
		(2) 1,250		Passbook	8,987		8,987
		(7) 1,000		Certificates	40,351	(7) 1,000	41,351
Cash	318	(14) 10,000	14,638	Total Deposits	47,758	1,000	48,758
TCD's and Savings	1,052		1,052				
Interest Bearing Notes:				Accrued Interest-Deposits	1,468	(13) 2,350	3,818
Installment	32,115		32,115	Accts Pay & Accrued Exp.	339	(8) 200	539
Commercial	1,709	(5) (390)	1,319	Notes Payable	831		831
R.E. Contracts	3,185		3,185	Mortgage		(11) 789	789
Lease Financing	9,135		9,135	Lines of Credit			
Accrued Interest Rec.	1,878	(5) (127)	1,549	Security Pacific	2,422		2,422
Other Receivables	1,830		1,830	Commercial Security	2,000		2,000
Less: Allowance for Losses	(1,118)	(12) 570	(548)	Accrued Interest-Debt	243		243
Equity in R.S. Contracts	2,927		2,927	Liabilities from Related Party	817	(10) (817)	-0-
R.E. Held for Sale	7,799	(5) (4,348)	3,451	Deferred Taxes	586	(9) (586)	-0-
Receivable from Affiliate	1,394	(10615) (812)	782	Reserve for Contingencies	100	(3) 45	145
Investment in Irving	2,295	(5) (2,295)	-0-				
Property & Equipment	204	(11) 1,250	1,254	Total Liabilities	56,162	3,181	59,343
Other Assets	148		148				
Note from ILGC-10 Yr. Notes		(4) 7,300	7,300	Capital:			
				Capital Maintenance Notes		(14) 10,000	10,000
Total Assets	64,345	15,170	79,515	Subordinated Debentures	910	(8) 1,012	1,922
				Net Worth Certificates		(4) 7,000	7,000
(1) Cash from ILGC		2,300				(2) 1,250	
(2) Capital Stock Paid in Cash		1,250		Capital Stock	7,273	(12) (7,273)	1,250
(3) Increase Ford Motor Reserve		45		Total Capital	8,183	11,383	20,173
(4) Net Worth Certificates		7,000		Total Liabilities & Capital	64,345	15,170	79,515
(5) Assets Not Acquired:							
Bel Marin		4,348		(8) MFT Financial Subordinated Deb.		1,912	
Irving Commons		2,295		(9) Deferred Taxes Not Assumed		586	
Chauillon Notes & Accrued Interest		442		(10) Liabilities from Related Party			
Lewis Notes & Accrued Interest		75		Net Against Rec. from Affiliate		542	
(6) Expenses of Administration		200		Leonard Lewis Note Not Assumed		75	
(7) Deposit from ILGC		1,000		(11) Building Acquired		1,050	
				(12) Adjust Allowance for Losses		870	
				(13) Accrued Int. on Deposits & Debentures		2,350	
				(14) Capital Maintenance Notes-ILGC		10,000	
				(15) Payment on Irving Financial Note		70	

SUMMARY OF CERTAIN INSTRUMENTS

Subordinated Capital Debentures of Murray First Thrift & Loan Co. ("MFT") have been issued, at least, between 1966 and 1979, at interest rates varying from 6-1/2% to 9-1/2% (or Citibank prime rate, whichever is greater). All such debentures are subordinated to senior indebtedness, defined generally as debt to banks, trust companies, re-discount companies, financial institutions and insurance companies, and thrift certificates.

M.F.T. Financial, Inc. has issued Capital Debentures which are subordinated as to payment from the general assets of the issuer to certain senior indebtedness for money borrowed, requiring notice by the issuer to the holders of such senior indebtedness in the event the Debentures are declared due before maturity for any reason. The subordination is in effect only in the event of bankruptcy or other insolvency proceedings of the issuer or if the Capital Debentures are declared due prior to maturity. The issuer may agree with holders of the Capital Debentures to modify the terms under certain conditions and in any event, no recourse may be had for the indebtedness against any stockholder, officer or director of the issuer or its successor.

SCHEDULE OF LIABILITIES NOT ASSUMED

As a supplement to paragraph 4 of the foregoing Agreement, and while not necessarily an exclusive list, the following described alleged liabilities of MFT or its parent, or any expenses, losses or damages associated therewith, are not assumed by FS Financial:

1. Any obligations or claims of any nature held or purported to be held by Mr. Lou Cook (N. George Daines, III, attorney) with respect to debentures of MFT Holding Company or its successors, or any collateral associated therewith;
2. Board of Education claim or crossclaim on Irving Commons;
3. Claims of present or prior attorneys of MFT for fees and expenses, except as such fees may be covered by paragraph 6, and except to the extent that attorneys' fees may be included in the account entitled 'Accounts Payable and accrued Expenses' on the MFT Balance Sheet as of July 22, 1982. In addition, as to any attorneys' fees owed prior to such date but subsequently collected by F.S. Financial from debtors, F.S. Financial shall pay said fees. Finally, other legal fees and expenses of MFT incurred in connection with collection of its assets at the request or direction of the Commissioner since July 22, 1982 shall be borne by F.S. Financial;
4. Obligations purportedly due Ford Motor Credit, except as described in paragraph 8;
5. Employment contracts with or employment benefits claimed by: (1) Glen Groo, (2) Dean Christensen, (3) Edward Vetter, (4) Scott Baker or (5) any other employee;
6. Any claim by Leonard Lewis for fees (except as may be included in item 3 above) or percentage of profits claimed due on sale of certain assets of MFT;
7. Carrier Brokers suit in Davis County;
8. Any claims relating to alleged cross guaranties of obligations of any affiliates;
9. Any and all additional liabilities of MFT or any of its affiliates not shown on Exhibit A now existing or which may arise at any time in the future, whether now or hereafter in litigation; and
10. Debentures of MFT Financial held by J. Telford (\$320,000.00 book value principal amount) and preferred stock of MFT Financial (\$353,355.00 book value principal amount).

Exhibit D

EXHIBIT B TO ADDENDUM 8

FILED IN CLERK'S OFFICE
Salt Lake County Utah

007 1 1987

H. Dixon Hindley, Clerk 3rd Dist. Court
By Deputy Clerk

DAVID L. WILKINSON (#3472)
Attorney General
STEPHEN G. SCHWENDIMAN (#2891)
Chief, Assistant Attorney General
BRUCE H. PETTEY (#2593)
Assistant Attorney General
Tax & Business Regulation Div.
Attorneys for George Sutton,
Commissioner of Financial
Institutions in Possession
of the Business and Property
of Murray First Thrift and Loan
130 State Capitol Building
Salt Lake City, Utah 84114
Telephone: (801) 533-5319

IN THE THIRD JUDICIAL DISTRICT COURT

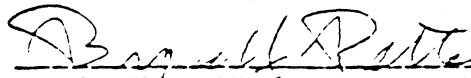
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

IN THE MATTER OF THE	:	NOTICE OF CHANGE
POSSESSION BY THE BANKING	:	OF COMMISSIONER
COMMISSIONER OF MURRAY FIRST	:	
THRIFT AND LOAN, A UTAH	:	Civil No. C82-5951
CORPORATION.	:	Judge John A. Rokich

On Friday, April 17, 1987, Elaine B. Weis resigned as Commissioner of Financial Institutions of the State of Utah. Governor Norman H. Bangerter appointed George Sutton as Commissioner of Financial Institutions of the State of Utah effective upon Ms. Weis' resignation. Mr. Sutton was confirmed by a vote of the Senate on May 20, 1987. Therefore, by operation of law, George Sutton is now Commissioner of Financial Institutions in possession of the business and property of Murray

~~First Thrift and Loan Company, and should be substituted as follows~~
in all pleadings hereinafter filed in this proceeding.

DATED this 30th day of September, 1987.


BRYCE H. PETTEY
Assistant Attorney General

JUL 31 1986

CLERK OF DISTRICT COURT
R. C. GARDNER

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY

STATE OF UTAH

In re:

THE POSSESSION OF THE INDUSTRIAL
LOAN GUARANTY CORPORATION OF
UTAH BY THE COMMISSIONER OF
FINANCIAL INSTITUTIONS OF THE
STATE OF UTAH.

ORDER GRANTING
POSSESSION

Civil No. C86-5924

Judge Moffat

This matter came on before the Court, ex parte, on the 31 day of July, 1986, pursuant to the Verified Petition filed by Elaine B. Weis, the duly appointed acting Commissioner of Financial Institutions of the State of Utah. The Petition asked the Court to authorize and empower possession of the Industrial Loan Guaranty Corporation of Utah ("ILGC") by the Commissioner, acting as receiver. Commissioner Weis was represented by Bryce H. Pettey, Assistant Attorney General.

The Court, having considered the Verified Petition and the representations of counsel, hereby finds:

1. The ILGC was organized in 1975 for the purpose of providing a type of guarantee to persons depositing money in member industrial loan corporations. A guaranty fund was formed and thereafter funded by assessing member institutions.

2. From 1975 to 1981 all industrial loan corporations which were authorized to accept deposits from the public were required to be members of the ILGC. In 1981 the statutes were amended to give industrial loan corporations the option of belonging to the ILGC or having their deposits insured by a federal deposit insurance agency.

In 1986 the Legislature mandated that all industrial loan corporations make the transit from ILGC membership to federal deposit insurance by a date certain.

3. Many of the largest and most financially sound former members of the ILGC have qualified for and now have federal deposit insurance and they are no longer members of the ILGC. Since the income of the ILGC is derived almost exclusively from assessments from member companies the termination of membership of these largest members has caused a significant reduction in the size of the assessment base and a consequent reduction in assessment income.

4. The withdrawal from membership of many of its larger members, the impact of changes in the law, its existing commitments made in connection with the rehabilitation and reorganization of member companies in which it participated, and probable demands on the guaranty fund as a result of the financially troubled condition of certain member institutions have all combined to put the ILGC in unsafe and unsound condition to conduct its business and has caused the ILGC to become or has put it in a position where it is about to become insolvent.

5. By reason of the foregoing, the Commissioner is authorized to take possession of the ILGC pursuant to Utah Code Annotated §7-8a-14 (1953, as amended). Upon taking possession, the Commissioner, as receiver, should be empowered to take and keep possession of the property of the ILGC and generally to do such acts respecting the property as the Court may authorize (Rule 66(e) U.R.C.P.). The Commissioner should also be authorized to perform the duties and carry out the obligations of the ILGC (Utah Code Annotated §7-8a-14 (1953, as amended)).

6. All conditions precedent under law for the Commissioner to take possession of the ILGC have been met.

7. It is important to the orderly administration of this receivership that other legal proceedings and actions by creditors not be permitted to interfere with the Commissioner's actions and activities as receiver.

8. All other conditions of law have been met.

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. Elaine B. Weis, the duly appointed and acting Commissioner of Financial Institutions of the State of Utah ("Commissioner"), and her special deputies or agents, be, and are hereby, authorized and empowered to take immediate possession of the Industrial Loan Guaranty Corporation of Utah ("ILGC") and thereupon the Commissioner, as receiver, be, and is hereby, vested by this Order and by operation of law with title to and the right to possession of all property of the ILGC and given the authority to perform the duties and as receiver and Commissioner in possession, with full powers including but not limited to all powers conferred upon the Commissioner under Chapter 2 of Title 7, Utah Code Annotated; the power to sue in her own name as receiver of the ILGC; the power to perform the duties and obligations of the ILGC; and all powers conferred upon receivers in accordance with the usages of courts of equity.

2. Upon the taking of possession of the ILGC, all officers, trustees, employees, agents or attorneys of the ILGC, and all other persons, except as may be expressly authorized by the Commissioner be, and are hereby, enjoined and restrained from disposing of any of the property of the ILGC, from interfering with the Commissioner's right to take possession of the ILGC or with the Commissioner's possession of the ILGC or from taking any action on behalf of or in the name of the ILGC, except as may be expressly authorized by the Commissioner or by the Court.

3. Upon the taking of possession of the ILGC, all persons be, and are heret ordered immediately to turn over to the Commissioner any and all property of the ILGC in their possession, custody or control.

4. Upon the taking of possession of the ILGC by the Commissioner, the commencement or continuation of any of the following be, and are hereby, stayed:

(a) Any judicial, administrative or other proceeding against the ILGC including service of process;

(b) Enforcement of any judgment against the ILGC;

(c) Any act to obtain possession of property of or from the ILGC;

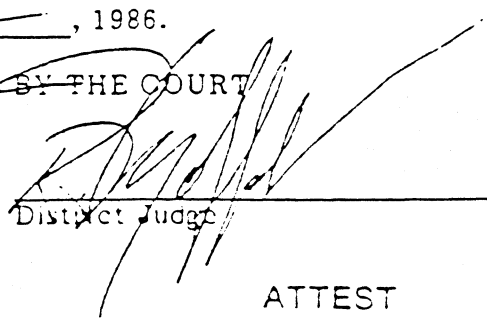
(d) Any act to create, perfect, or enforce any lien against property of the ILGC;

(f) The setoff of any debt owing to the ILGC against any claim against the ILGC.

5. No undertaking shall be required of the Commissioner in her capacity as receiver of the ILGC.

DATED this 31st day of July, 1986.

BY THE COURT


District Judge

ATTEST

H. DIXON HINDLEY

CLERK

By K. Anderson
Deputy Clerk

EXHIBIT D TO ADDENDUM 8

EARL S. SPAFFORD (3051)
SCOTT B. MITCHELL (5111)
SPAFFORD & SPAFFORD
A Professional Corporation
425 East 100 South
Salt Lake City, Utah 84111
(801) 363-1234

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

In re:

THE POSSESSION OF THE
INDUSTRIAL LOAN GUARANTY
CORPORATION OF UTAH BY THE
COMMISSIONER OF FINANCIAL
INSTITUTIONS OF THE STATE OF
UTAH,

MOTION TO LIFT STAY

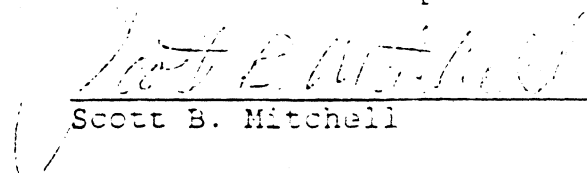
Case No. C86-5924

Judge Richard Moffat

Murray First Thrift and Loan Co. and MFT Financial, Inc., respectfully move the court for its Order lifting the automatic stay in place in these proceedings to allow movants to pursue their claims against the Industrial Loan Guaranty Corporation and George Sutton, in his capacity as Commissioner in Possession of the ILGC, as more fully set forth in the following Memorandum of Points and Authorities.

DATED this 2nd day of July, 1990.

SPAFFORD & SPAFFORD
A Professional Corporation


Scott B. Mitchell

EARL S. SPAFFORD (3051)
SCOTT B. MITCHELL (5111)
SPAFFORD & SPAFFORD
A Professional Corporation
425 East 100 South
Salt Lake City, Utah 84111
(801) 363-1234

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

In re:

THE POSSESSION OF THE
INDUSTRIAL LOAN GUARANTY
CORPORATION OF UTAH BY THE
COMMISSIONER OF FINANCIAL
INSTITUTIONS OF THE STATE OF
UTAH,

MEMORANDUM OF POINTS
AND AUTHORITIES

Case No. C86-5924

Judge Richard Moffat

Murray First Thrift and Loan Co. and MFT Financial
Inc., ("Movants") submit the following Memorandum of Points
and Authorities in support of their Motion To Lift Stay.

I BACKGROUND

(1) On July 31, 1986, this court issued its Order
Granting Possession pursuant to which the Commissioner of
Financial Institutions of the State of Utah (at the time
Elaine B. Weis, George Sutton's predecessor) was authorized
and empowered to take possession of the Industrial Loan
Guaranty Corporation of Utah ("ILGC") pursuant to Utah Code
Annotated 57-2a-14 (1953, as amended).

(2) Said Order Granting Possession also provides

that:

Upon the taking of possession of the ILGC by the Commissioner, the commencement or continuation of any of the following be, and are hereby, stayed:

(a) Any judicial, administrative or other proceeding against the ILGC, including service of process, ...

(3) On or about November 15, 1982, the ILGC, the Commissioner of Financial Institutions of the State of Utah, Movants, and others entered into a Purchase and Assumption Agreement ("P & A Agreement") pursuant to which First Security Financial Inc. purchased a majority of Murray First Thrift and Loan's assets and assumed a majority of Murray First Thrift and Loan's liabilities as well as certain of MFT Financial's liabilities. Those assets not purchased by First Security (the "retained assets"), including a particularly valuable piece of real property known as the Bel Marin Keys ("BMK") property, were to be held in trust and administered by the Commissioner of Financial Institutions for the benefit of certain creditors of Murray First Thrift and Loan and the owners of Murray First Thrift and Loan.

(4) Under the P & A Agreement, the Commissioner was obligated to turn over the retained assets, including the BMK property, to Movants for development or sale as soon as

possible consistent with the Commissioner's statutory responsibilities under UCA Section 7-2-1 et seq.¹

(5) However, over Movant's vigorous objections, in November of 1987, the Commissioner, purporting to act in his capacity as Commissioner in possession of Murray First Thrift and Loan, refused to turn over the retained assets to Movants, opting instead to sell the BMK property.

(6) Under the P & A Agreement, the ILGC paid First Security an initial \$2,000,000 and obligated itself to pay an additional \$3,000,000 upon the occurrence of certain conditions. The ILGC was to be reimbursed for said contributions out of the profits of sale or development of the BMK property.

(7) In order to obtain much needed cash for the by then defunct ILGC, Sutton, acting in his capacity as Commissioner in Possession of the ILGC, induced the sale of the BMK property even though Sutton was well aware of the fact that said sale would be in violation of his contractual obligations to Movants as Commissioner in Possession of MFT & L.

(8) On or about June 5, 1990, Movants filed suit against the ILGC, Sutton, acting in his capacity as

¹There is some disagreement as to exactly when the Commissioner was required to turn over the retained assets. However, for purposes of this Motion that dispute is irrelevant.

Commissioner in Possession of the ILGC, and others alleging causes of action for breach of contract and intentional interference with contractual relations, Third Judicial District Court civil no. 90-0903241 CN. At the time of the filing of said action, Movants were unaware of this court's July 31, 1986 Order, above-referenced, and were unaware that Chapter 2 of Title 7 of the Utah Code Annotated (which is entitled "Possession of Depository Institution By Commissioner") is applicable to these proceedings.

(9) On or about July 16, 1990, the ILGC and Sutton, acting in his capacity as Commissioner in Possession of the ILGC, filed a Motion To Dismiss said action action arguing, inter alia, that Movants are stayed from pursuing said action against the ILGC and Sutton by virtue of the automatic stay in place in this case.

I THE LAW

Section 7-2-7(3)(a), UCA provides for relief from the automatic stay as follows:

(3) On the motion of any party in interest and after notice and a hearing, the court may terminate, annul, modify, condition, or otherwise grant relief from the stay:

(a) for cause, including the lack of adequate protection of an interest in property of the party in interest.

While there is no case law interpreting Section 7-2-7(3)(a), courts have routinely lifted the federal bankruptcy stay, 11 USC Section 362(d), to allow a creditor to pursue its claims against a debtor in state court. See, e.g. In re Best Film and Video Corp, 46 B.R. 861 (Bkrtcy. E.D. N.Y. 1985); and In re Westwood Broadcasting Inc., 35 B.R. 47 (D.C. Hawaii 1983).

In the instant case, Movants respectfully request that this court lift the automatic stay to allow them to continue to liquidate their claims against the ILGC and Sutton in the same forum as Movants are litigating related claims against other defendants. Neither the ILGC not Sutton will be unduly prejudiced and the interests of judicial economy will be served by the granting of Movants' request.

DATED this 2nd day of July, 1990.

SPAFFORD & SPAFFORD
A Professional Corporation

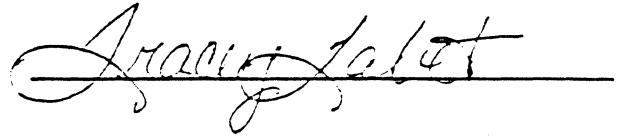


Scott B. Mitchell

CERTIFICATE OF MAILING

I do hereby certify that on the 2nd day of August, 1990, I did cause to be placed in the U.S. mail, postage prepaid, a true and correct copy of the foregoing MOTION TO LIFT STAY and MEMORANDUM OF POINTS AND AUTHORITIES, addressed to the following:

ALL NAMES AS LISTED ON THE MAILING MATRIX

A handwritten signature in cursive script, appearing to read "Isaac L. L. L.", is written over a horizontal line.

FILED

NOV 11 1986
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

53 KK

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FRANK A. NELSON, JR., et al.,
Plaintiffs,
vs.
FIRST SECURITY FINANCIAL,
INC., et al.,
Defendants.

IN CIVIL DOCKET

11/17/86

No. C-86-1894 EFL

ORDER OF DISMISSAL

~~PROPOSED~~

The motions of the defendants listed below to dismiss the complaint on the grounds of improper venue and lack of personal jurisdiction were heard on October 24, 1986 at 10:00 a.m. Having heard the arguments of counsel, read the pleadings on file, and determined that venue as to these defendants is improper and that it is not necessary to decide the issue of personal jurisdiction,

IT IS ORDERED that plaintiffs' complaint against the following defendants is dismissed without prejudice on the ground that venue in the Northern District of California is improper as to these defendants:

//

//

ORDER OF DISMISSAL

COPIES TO
CLERK OF COURT
NOV 13 1986

1 First Security Financial, Inc.

2 First Security Corporation

3 Elaine B. Weis, individually and as Trustee

4 Industrial Loan Guaranty Corporation of Utah

5 R. Howard Harmer, Individually and as Trustee

6 Glendon Johnson

7 Mervin Borthick

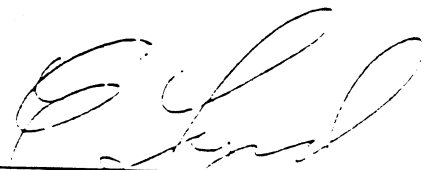
8 Edward I. Vetter

9 Dean C. Christenson

10 Glenn W. Groo

11 Richard Christenson

12
13 Dated: November 10, 1966

14
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19 EUGENE F. VYNCE
20 United States District Judge
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ORDER OF DISMISSAL

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28

1	4.	Glendon Johnson 2530 Sunnyside Drive Salt Lake City, Utah 84106
2		
3		Defendant
4		Capitol Thrift & Loan
5		Richard Christenson, Agent
6		1200 Continental Bank Building
7		Salt Lake City, Utah 84101
8		Defendant
9	5.	R. Howard Harmer
10		2694 Swasont Way
11		Salt Lake City, Utah 84117
12	6.	Clark W. Sessions
13		Dean C. Andreasen
14		SESSIONS & MOORE
15		400 First Federal Plaza
16		505 East 200 South
17		Salt Lake City, Utah 84102
18		Woodford G. Rowland
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20		San Rafael, California 94903
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22		Christensen and Glen F. Groo
23	7.	Duane R. Smith
24		POOLE, CANNON & SMITH
25		Prowswood Plaza, Suite 306
26		4885 South 900 East
27		Salt Lake City, Utah 84117
28		Mark Jones
29		BORTON, PETRINI & CONRON
30		P.O. Box 1527
31		1000 G Street, #350
32		Sacramento, California 95807
33		Attorneys for Defendant Edward I. Vetter
34	8.	John L. Hosack, Esq.
35		Scott A. Sommer, Esq.
36		TOBIN & TOBIN
37		One Post Street
38		San Francisco, California 94104
39		Attorneys for Defendant TICOR

27 //

28 //

CERTIFICATE
OF MAILING

2 I declare that:

3 I am employed in the City and County of San Francisco,
4 State of California. I am over the age of eighteen years and
5 not a party to the within cause. My business address is
6 The Alcoa Building, One Maritime Plaza, San Francisco, CA 94111

7 On November, 1986, I served the documents listed
8 herein: NOTICE OF PROPOSED ORDER and form of ORDER OF DISMISSAL
9 and letters to Ian Keye, Clerk to Judge Lynch, and to
10 Clerk, U.S. District Court

11
12
13 by personally hand-delivering true copies thereof to the
14 following address:

15 Kevin McLean, Esq.
16 Law Offices of Melvin M. Belli, Sr.
17 722 Montgomery Street
San Francisco, California 94111

18 Attorneys for Plaintiffs
19 Frank A. Nelson, Jr., et al.

20
21 I declare under penalty of perjury that the foregoing
22 is true and correct and that this declaration was executed
23 on November, 1986, at San Francisco, California.

24
25
26 ROB MCCONIHIE
27
28

1 MICHAEL TRAYNOR
COOLEY, GODWARD, CASTRO
2 HUDDLESON & TATUM
One Maritime Plaza, Suite 2000
3 San Francisco, California 94111
Telephone: (415) 981-5252

4 HERSCHEL J. SAPERSTEIN
5 PHILIP C. PUGSLEY
JOSEPH T. DUNBECK, JR.
6 WATKISS & CAMPBELL
310 South Main Street, Suite 1200
7 Salt Lake City, Utah 84101
Telephone: (801) 363-3300

8 *Defendants*

FILED

NOV 11 3 04 PM '86

WILLIAM J. WINTHROP
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CAL.

KK

9 IN THE UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

57-2-3

11 FRANK A. NELSON, JR., et al.,)
12 Plaintiffs,)
13 vs.)
14 FIRST SECURITY FINANCIAL,)
INC., et al.,)
15 Defendants.)
16

No. C 86-2894 EFL

NOTICE OF ORDER

17 TO THE PARTIES AND THEIR COUNSEL OF RECORD:

18 Please take notice that the attached Order of
19 Dismissal was filed in this action on November 10, 1986.

20
21 DATED: November 13, 1986

COOLEY, GODWARD, CASTRO
HUDDLESON & TATUM
MICHAEL TRAYNOR

22
23
24 By: *Michael Traynor*
Michael Traynor

25
26
27
28
NOTICE OF ORDER

EXHIBIT F TO ADDENDUM 8

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

JUL 11 1990

MARKUS B. ZIMMER, CLERK

BY
DEPUTY CLERK

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

* * * * *

GARY S. HARRIS, et al.,)

Plaintiff(s),)

vs.)

ELAINE B. WEIS, et al.,)

Defendant(s).)

ORDER GRANTING RELIEF
UNDER RULE 60(b)(1)

Civil No. 87-C-0041-S

* * * * *

Plaintiffs, Gary S. Harris, et al., have moved this court for relief from the June 5, 1989 Judgment of Dismissal to the extent that it relates to the ninth claim of the second amended complaint which alleges a state law claim for defamation.

This court has already indicated in its Order dated February 27, 1990, that it did not intend to dismiss that claim with prejudice but that dismissal was only for lack of jurisdiction. Accordingly, the relief requested by plaintiffs is hereby granted.

DATED this 9th day of July, 1990.

: attys 7/11/90sm

ay G. Martineau, Esq.
haron Green, Esq.
oy G. Haslam, Esq.
ames R. Holbrook Esq.
ary F. Bendinger, Esq.
eter W. Billings, Esq.
ack C. Helgesen, Esq.

ee mailing list attached

BY THE COURT:

DAVID SAM
U.S. DISTRICT JUDGE

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Asst. Atty. General
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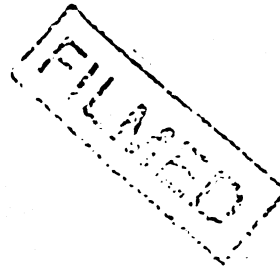
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EXHIBIT G TO ADDENDUM 8

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Albert J. Colton
Peter W. Billings, Jr.
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Telephone: (801) 531-8900



FILED IN CLERK'S OFFICE
SALT LAKE CITY
Nov 10 12 23 PM '92
CLERK
David L. Hallman

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

In the Matter of the	)	PETITION FOR APPROVAL OF A
Possession by the Banking	)	PLAN OF REORGANIZATION OF
Commissioner of Murray	)	THE BUSINESS AND PROPERTY
First Thrift and Loan, a	)	OF MURRAY FIRST THRIFT AND
Utah corporation	)	LOAN CO.
)	
	)	Civil No. 082-5951

Pursuant to the provisions of Section 7-2-12(1) and Section 7-2-18, Utah Code Annotated, the Commissioner of Financial Institutions submits the following plan for the reorganization and rehabilitation of the business and property of Murray First Thrift & Loan Co. ("MFT").

A. Purchase and Assumption Agreement -
First Security Corporation

1. Submitted herewith is a purchase and assumption agreement, attached as Exhibit I hereto, submitted by First Security Corporation, a bank holding company doing business in the State of Utah, on behalf of a newly organized industrial loan corporation to be known as First Security Financial, Inc. ("First



transferred by the Commissioner to a bank mutually agreed upon by the owners of MFT and the Commissioner to hold in trust for the purpose of providing a fund to satisfy claims of (a) creditors of MFT to the extent such claims, not assumed by First Security Financial under the plan of reorganization, are approved by the court for payment from the assets of MFT as provided in Chapter 2 of Title 7, and (b) the owners of MFT.

2. As provided in Chapter 2 of Title 7, all claims against the assets of MFT shall be filed with the Commissioner of Financial Institutions. The Commissioner, with the advice of a committee consisting of Robert Beckstead representing the ILGC, Jim P. Hansen and Rodney F. Gordon representing the owners of MFT, and Bryce Petty representing the office of the Attorney General, shall submit to the court all such claims with her recommendation as to approval or disapproval. The Department of Financial Institutions and Elaine Weis will not impede any sale or development of assets of MFT not purchased by First Security Financial and, with regard to such assets, will act in accordance with the recommendation of the committee; provided, however, that such recommendation is prudent and will not cause the Department or Elaine Weis to violate any law, or be subject to any liability.

3. To the extent necessary to preserve any tax benefits relating to Irving Commons, MFT's interest in Irving Commons shall not be transferred to the trust; such interest

shall be subject, however, to the same terms and conditions as if it had been transferred to the trust.

4. After expiration of the time for filing claims as provided in Chapter 2 of Title 7 and the final disposition of all claims timely filed, the Department will promptly terminate any role it may have and all responsibility with respect thereto. At such time, at the option of MFT's Board of Directors, the trust may continue or may be terminated. In either event, however, exclusive control of the assets not purchased by First Security Financial shall be held by the MFT Board.

5. The mutually agreed upon bank, as trustee, shall be authorized, with the approval of the court, to borrow against the assets of MFT in its custody, up to a maximum of \$300,000, as may be necessary to carry out the provisions of Paragraph 13 of the First Security Purchase and Assumption Agreement or to satisfy claims approved by the court. With the approval of the court, it may sell or otherwise dispose of any assets in its control to provide funds for the satisfaction of such claims as may be approved by the court.

6. All parties involved will use all reasonable efforts to cause the Board of Education to modify the sale agreement regarding Irving Commons-to-provide-that-the failure to -- make the required payments since July 22, 1982, will not constitute a default.

7. It is understood and agreed that all parties to the Purchase and Assumption Agreement shall use their best efforts to ensure that the office of the Attorney General will defend any and all claims against the assets not purchased by First Security Financial.

C. Alternative Plan -
American Pacific Corporation

1. As an alternative to the plan submitted by First Security Corporation, the Commissioner submits the proposal of American Pacific Corporation of Utah, a copy of which is attached hereto as Exhibit II.

2. American Pacific is a corporation organized to acquire certain assets and liabilities of MFT through the means of its subsidiary, a newly organized industrial loan corporation. The principals of American Pacific are from California, where they have had considerable success in operating depository institutions and rehabilitating depository institutions in distress.

3. The American Pacific subsidiary will have an initial capital of \$1 million with an additional capital of \$500,000 to be contributed within 120 days and an additional \$500,000 within 240 days.-- It will also have in its capital account the subordinated debentures of MFT, the debentures of MFT Financial it is assuming and \$7 million in subordinated

debentures subscribed by the Industrial Loan Guaranty Corporation.

4. To provide liquidity, the American Pacific subsidiary will have a standby commitment from Commercial Security Bank to purchase receivables up to \$10 million, deposits of the ILGC members in an aggregate of \$7 million and deposits of the ILGC in an amount of \$2 million. These deposits will be represented by certificates of deposit having maturities as provided in paragraph II of the American Pacific Proposal.

5. American Pacific will purchase all the assets of MFT and MFT Leasing except those described in Part I of Schedule 2 attached to its proposal and assume the deposit liabilities and the liabilities on dishonored checks of MFT and all other liabilities of MFT and MFT Leasing except those listed on Part II of Schedule 2 attached to its proposal.

6. Treatment of the liabilities of MFT not assumed and its assets not acquired will be handled in a manner similar to that provided in Part B hereof.


Wherefore the Commissioner prays:

1. That this petition be set for hearing before the court on November 15, 1982, at 10:00 a.m.

2. That at such hearing the court approve both plans and authorize the Commissioner to accept the plan of First Security Corporation, but if the acquisition by First Security Corporation and its subsidiary First Security Financial be not

approved by the Board of Governors of the Federal Reserve System,
the Commissioner be authorized to accept the American Pacific
plan as the same may be modified by agreement between the
Commissioner and American Pacific to meet the requirements of
Chapter 2 and Chapter 8 of Title 7, Utah Code Annotated.

Respectfully submitted this 2nd day of November, 1982.



Commissioner of Financial
Institutions

November 5, 1982

Industrial Loan Guaranty Corporation
c/o Richard (Skip) Christensen, President
10 West 300 South
Salt Lake City, UT 84010

RE: Acquisition of Certain Assets and
Assumption of Certain Liabilities
of Murray First Thrift

Dear Skip:

The purpose of this letter is to clarify the terms and conditions of the trust arrangement with Valley Bank & Trust Co., which trust will be established in connection with the reorganization of MFT.

First, after six months, at the termination of the Department of Financial Institution's statutory responsibility with regard to the assets and liabilities retained by MFT, the Department will promptly terminate any role it may have and all responsibility with respect thereto. At such time, at the option of MFT's Board of Directors, the trust may continue or may be terminated. In either event, however, exclusive control of the retained assets shall be held by the MFT Board.

Second, the Department of Financial Institutions and Elaine Weis will not impede any sale or development of assets retained by MFT and with regard to such assets, will act in accordance with the recommendation of the committee (consisting of Bryce Petty as representative of the office of the Attorney General, Robert Beckstead as representative of the ILGC and Rodney F. Gordon and Jim P. Hansen as representatives of the owners of MFT); provided, however, that such recommendation is reasonable and will not cause the Department or Elaine Weis to violate any law, or be subject to any liability.

Third, to the extent necessary to preserve any tax benefits relating to Irving Commons, MFT's interest in Irving Commons shall not be transferred to the trust; such interest

Industrial Loan Guaranty Corporation
Page 2
November 5, 1982

shall be subject, however, to the same terms and conditions as if it had been transferred to the trust.

Finally, all parties involved will use all reasonable efforts to cause the Board of Education to modify the sale agreement regarding Irving Commons to provide that the failure to make the required payments since July 22, 1982, will not constitute a default.


Very truly yours,

MURRAY FIRST THRIFT & LOAN CO.
Board of Directors

M.F.T. FINANCIAL, INC.
Board of Directors

By 

Agreed to and accepted by
the Industrial Loan Guaranty Corporation
this 5th day of November 1982:


President

RAY G. MARTINEAU
1800 Beneficial Life Tower
36 South State Street
Salt Lake City, Utah 84111
Telephone: (801) 538-2400

Attorney for Murray First
Thrift and Loan and
M.F.T. Financial

RECEIVED
MAY 25 4 51 PM '81
Stella Gunning
FILMED

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

IN THE MATTER OF THE POSSESSION)	MEMORANDUM IN SUPPORT OF
BY THE BANKING COMMISSIONER OF)	MOTION TO TRANSFER THE RE-
MURRAY FIRST THRIFT AND LOAN,)	TAINED ASSETS OF MURRAY FIRST
a Utah corporation,)	THRIFT AND LOAN TO A TRUST FOR
)	THE BENEFIT OF CREDITORS OF
)	MURRAY FIRST THRIFT AND LOAN
))
)	Civil No. C-82-5951
)	(Judge John A. Rokich)

This Memorandum is filed on behalf of Murray First Thrift and Loan Company and M.F.T. Financial, Inc. in support of the Motion to Transfer The Retained Assets Of Murray First Thrift And Loan To A Trust For The Benefit Of Creditors Of Murray First Thrift and Loan ("Jenkins' Motion") filed herein on behalf of Lynn A. Jenkins.

The Motion of Lynn A. Jenkins, appearing pro se, is in the best interest of Murray First Thrift and Loan, M.F.T. Financial, their owners, and creditors for the following reasons:

1. First Security Financial has no standing to object to the establishment of the trust of the retained assets of Murray First Thrift and Loan Co.

2. Jim P. Hansen as Chairman of the Board of M.F.T. Financial and Murray First Thrift and Loan heretofore entered into a certain agreement to establish the trust dated November 5, 1982 with the agreement of the Industrial Loan Guarantee Corporation which mandates the establishment of a trust of the kind sought by Lynn A. Jenkins, and control of the trust by the "M.F.T. Board." Attached hereto is Exhibit "I" and the Affidavit of Jim P. Hansen concerning the trust exclusive control and termination of the statutory responsibilities of the Department of Financial Institutions.


WHEREFORE, Murray First Thrift and Loan Co. and M.F.T. Financial urge this Court to grant Jenkins' Motion.

DATED this 29 day of May, 1987.


Ray G. Martineau

Certificate Of Hand Delivery

I hereby certify that a true and correct copy of the foregoing Memorandum In Support Of Motion To Transfer The Retained Assets Of Murray First Thrift And Loan To A Trust For The Benefit Of Creditors Of Murray First Thrift And Loan was


Jim P. Hansen

SUBSCRIBED AND SWORN to before me this 29 day of
May, 1987.

My Commission Expires:

July 18, 1987

Shirley K. Small
Notary Public

Residing at: Salt Lake City

Certificate Of Hand Delivery

I hereby certify that a true and correct copy of the
foregoing Affidavit Of Jim P. Hansen was hand delivered to the
following individuals at the addresses shown below this 29
day of May, 1987:

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2480 South Alden Street
Salt Lake City, Utah 84106

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310 South Main Street
Salt Lake City, Utah 84101

Shirley K. Smell

RECEIVED
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W. CLAYTON HANSEN
CLERK
[Signature]

RAY G. MARTINEAU
1800 Beneficial Life Tower
36 South State Street
Salt Lake City, Utah 84111
Telephone: (801) 538-2400

Attorney for Murray First
Thrift and Loan and
M.F.T. Financial

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

IN THE MATTER OF THE POSSESSION)
BY THE BANKING COMMISSIONER OF) AFFIDAVIT OF JIM P.
MURRAY FIRST THRIFT AND LOAN,) HANSEN DATED JUNE 1,
a Utah corporation,) 1987
)
)
)
)
) Civil No. C-82-5951
) (Judge John A. Rokich)

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

JIM P. HANSEN, being first duly sworn on oath, deposes
and says:

1. Affiant is an adult citizen and resident of the
United States of America and of the State of Utah and makes
this Affidavit on the basis of facts that are within the per-
sonal knowledge of Affiant.

2. Affiant was a duly appointed, qualified and acting
member of the Asset Preservation Committee ("Committee")

established pursuant to order of this Court, at all times material herein and Affiant is fully conversant with and has personal knowledge of all official actions taken by said Committee.

3. The Committee's authority never included the power or authority to change or modify in any respect the terms, provisions or substantive rights of the parties to the Purchase And Assumption Agreement that was entered into with the approval of this Court.

4. Bryce H. Pettey, as a member of said Committee suggested in January of 1983 that the conveyance of the retained assets should be delayed because the Commissioner's statutory authority would expire upon final approval of the Purchase And Assumption Agreement by the Federal Reserve Board (which approval Affiant has been informed was received in late February, 1983), and in no event could the involvement of the Commission extend beyond six months from and after September 7, 1982.

5. At no time did the Committee recommend that the Purchase And Assumption Agreement be changed and any change, amendment or modification thereto would necessarily have required the consent and approval of all parties thereto which parties included Murray First Thrift & Loan Co., M F T Financial Inc., M F T Mortgage Corp., Irving Financial

Corporation, Jim P. Hansen, Rodney F. Gordon, Frank A. Nelson, Jr. and William B. Hesterman.

6. Counsel for Murray First Thrift & Loan Co. advised the Committee in February of 1983 that a trust deed does not die or cease to exist for lack of a trustee.

7. Bryce H. Pettey, in his capacity as a member of the Committee and while acting for the Attorney General of the State of Utah as counsel for the owners of Murray First Thrift & Loan Co. and M F T Financial Inc., advised said owners and the Committee that to convey the retained assets to Valley Bank & Trust Co. would involve a "needless expense" for the then short remaining term of the Commissioner's statutory responsibility.

8. An order of this Court entered in the above-entitled proceedings on November 3, 1982 pursuant to a stipulation by and between all interested parties, directed that the Commissioner and her counsel (Fabian & Clendenin) refrain from any involvement in or interference with the Plan of Reorganization approved by this Court by a subsequent order entered herein dated November 22, 1982.

9. Pursuant to the aforementioned order dated November 3, 1982 the Commissioner was ordered to submit to the Federal Reserve Board the aforementioned Plan of Reorganization, including said Purchase And Assumption Agreement, for its approval.

10. A material, essential and cardinal element of the consideration for the aforementioned owners and their affiliates to enter into said Purchase And Assumption Agreement and related documents was the best efforts commitment on the part of the office of the Attorney General of the State of Utah to provide said owners and their affiliates with necessary and appropriate legal representation in connection with the above-entitled proceeding.

11. The Industrial Loan Guaranty Corporation, the party authorized by this Court to negotiate the terms of the Purchase And Assumption Agreement on behalf of the Commissioner, advised Affiant that no conflict of interest existed that might be adverse to said owners and their affiliates because the retained assets were to be conveyed into trust and the Commissioner's interest therein terminated promptly upon Murray First Thrift & Loan Co.'s ceasing to be a regulated institution, and for the further reason that the Commissioner was then and would thereafter be represented by counsel independent of the Attorney General's office.

12. Notwithstanding the foregoing facts, the Commissioner has continued unlawfully to act as Commissioner in possession of the business and property of Murray First Thrift & Loan Co. in clear, obvious and unlawful disregard of this Court's November 3, 1982 order, although additional orders

of this Court were subsequently entered designating Elaine B. Weis as custodian and trustee of said business and property for the benefit of the claimants of Murray First Thrift & Loan Co. as of July 22, 1982 and the aforementioned owners.

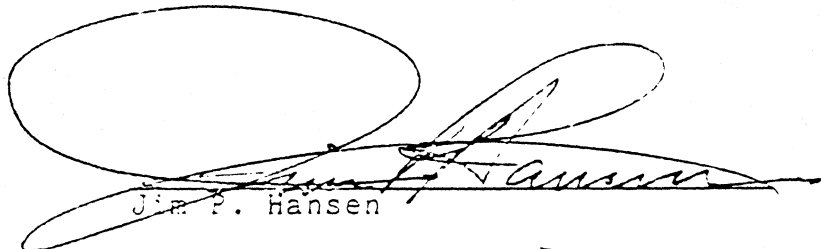
13. There have been no such claimants, other than for the owners of claims arising out of the terms of the Purchase And Assumption Agreement and related documents, at any time and there is therefore no existing reason whatsoever for Elaine B. Weis or the office of the Commissioner to retain any further or continuing power, authority, jurisdiction, control or possession over any of the retained assets, business or property of Murray First Thrift & Loan Co.

14. The aforementioned owners have, as a direct, reasonable and foreseeable consequence of the Attorney General's commitment to provide them with necessary and appropriate legal representation in connection with these proceedings, assumed that they would receive all of the benefits and be afforded all of the professional courtesies, confidences and obligations associated with and arising out of that attorney client relationship.

15. Said owners have in reliance upon the aforementioned attorney client relationships divulged confidences and have provided facts and information to Bryce H. Pettey on a continuing and ongoing basis until it became apparent that

Bryce H. Pettey was in fact representing, or attempting to represent, interests that were clearly adverse to and in conflict with the interests of said owners and their affiliates.

16. Based upon the foregoing facts and upon the advise and counsel of other attorneys whom Affiant and said owners have consulted, Affiant is of the strong belief that Bryce H. Pettey and the office of the Attorney General have clearly breached their professional obligations to Affiant, said owners and their affiliates, and that Bryce H. Pettey and the office of the Attorney General should be promptly disqualified from any further legal representation of any party to these proceedings, in addition to being subjected to such other action as may be necessary and appropriate arising out of such conflicts.

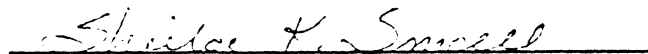



Jim P. Hansen

SUBSCRIBED AND SWORN to before me this 1st day of June, 1987.

My Commission Expire:

July 18, 1987


Notary Public
Residing at: Scotts Bluff City


Ray G. Martineau
Attorney for the Murray Entities

Certificate of Service

I hereby certify that a true and correct⁺ copy of the foregoing Affidavit Of Jim P. Hansen Dated June 1, 1987 was hand delivered to the following individuals at the addresses shown below this 1st day of June, 1987:

Bryce H. Pettey
Utah Attorney General's Office
130 State Capitol Building
Salt Lake City, Utah 84114

Don B. Allen, Esq.
79 South Main Street #400
Salt Lake City, Utah 84111

and that a true and correct copy was mailed to the following individuals, postage prepaid, at the addresses shown below:

Lynn A. Jenkins
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Robert D. Maack, Esq.
WATKISS & CAMPBELL
310 South Main Street
Salt Lake City, Utah 84101



THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
CLERK
CIVIL NO. C82-5951
"C. O. O."

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

IN THE MATTER OF THE)	MURRAY FIRST THRIFT & LOAN'S
POSSESSION BY THE BANKING	)	NOTICE OF INTENT TO DISSOLVE
COMMISSIONER OF MURRAY FIRST	)	TRUST AND OF ITS EXERCISE
THRIFT AND LOAN, A UTAH	)	OF ITS EXCLUSIVE OPTION
CORPORATION.	)	TO CONTROL THE ASSETS OF
	)	THE TRUST
)	
	)	Civil No. C82-5951

On November 5, 1982 a series of agreements executed pursuant to order of the Court dated November 3, 1982 established a procedure for processing claims and handling of retained assets of Murray First Thrift & Loan which were not sold to First Security Financial. The Commissioner was to convey said assets pursuant to those agreements to Valley Bank & Trust as Trustee during the period of time which the Commissioner was statutorily in control of the business of Murray First Thrift & Loan regulated institution. Her statutory authority was limited by the then existing statute to control "regulated depository institutions." Upon approval by the Federal Reserve Board of the Purchase and Assumption Agreement and/or at the end of six months which was the limit of her statutory authority, all interest in the retained assets would terminate and the assets returned to full and unrestricted control to the Board of Directors of Murray First Thrift & Loan. The law under which Murray was seized was

replaced on May 7, 1983 by a new law changing her authority. In any event, the option to control the assets were vested in the Board of Directors of Murray First Thrift & Loan.

The status of the Commissioner of Financial Institutions was formally changed from that as Commissioner to that as Trustee pursuant to said contract with the concurrence of the Board of Directors and principals of Murray First Thrift & Loan and MFT Financial on or about July 26, 1984.

Actions in the past year and the removal of the Commissioner of Financial Institutions has convinced the principals of Murray First Thrift & Loan that the trust is not being maintained for the benefit of the owners as required. The undersigned hereby states the intent of Murray First Thrift & Loan to terminate its trust upon proper accounting of the trust's assets and respectfully moves the Court for an order providing such accounting.

Murray First Thrift & Loan hereby exercises its sole option to control the assets retained per paragraph three of the Purchase and Assumption Agreement and from this date on will instruct the trustee of its desires with respect to treatment, management, and disposition of said assets.

Upon receipt and approval by the Court of the requested accounting by the trustee Murray First Thrift & Loan will release the trustee from any further responsibility therefore.

DATED this 7th day of October, 1987.

Jim P. Hansen
Jim P. Hansen, President
Murray First Thrift & Loan

SUBSCRIBED and sworn to before me this 7 day of
October, 1987.

Shirley A. Smoot
Notary Public
Residing: Salt Lake City, Utah

My Commission Expires:

July 19, 1991

I CERTIFY THAT THIS IS A TRUE COPY OF AN
ORIGINAL DOCUMENT ON FILE IN THE THIRD
DISTRICT COURT, SALT LAKE COUNTY, STATE OF
UTAH.

DATE 1-22-90
Gayle L. Baker

FILE NO. 900903241 CN

DEC 1 1990

TITLE: (✓) PARTIES PRESENT
JIM PRATT HANSEN, et al.,

COUNSEL: (✓) COUNSEL PRESENT

Plaintiffs,

Scott B. Mitchell

Attorney for Plaintiffs

Reed M. Stringham

Attorney for Defendant

vs.

Michael N. Emery

Attorney for Defendant

GEORGE SUTTON, individually and as
Commissioner of the Department of Financial
Institutions of the State of Utah, et al.,
Defendants.

CLERK

HON. TIMOTHY R. HANSON

JUD

REPORTER

DATE: Dec-18, 1990

BAILIFF

Before the Court is the Motion to Dismiss the plaintiffs' Complaint asserted by all defendants. Following argument of counsel, the Court took the matter under advisement to further consider the arguments of the attorneys, and review their written submissions. The Court has accomplished those tasks, and being otherwise fully advised, determines that the Motion to Dismiss requested by the defendants is well taken and should be granted. The Court grants the defendants' Motion to Dismiss for the reasons suggested and set forth in the defendants' moving papers, all showing to the Court that the plaintiffs' Complaint fails to state a cause of action upon which relief can be granted. Counsel for the defendant is requested to prepare an Order in conformity with Rule 52(a) of the Utah Rules of Civil Procedure regarding the basis for this decision. The Order should be submitted to the Court for review and signature pursuant to the Code of Judicial Administration.

TIMOTHY R. HANSON
DISTRICT COURT JUDGE

Copies to:

Scott B. Mitchell, Esq.

Reed M. Stringham, Esq.

Michael N. Emery, Esq.

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Attorney General
REED M. STRINGHAM - 4679
Assistant Attorney General
Attorneys for Defendants
236 State Capitol
Salt Lake City, Utah 84114
Telephone: (801) 538-1016

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

JIM PRATT HANSEN, ET AL.,	:	
Plaintiffs,	:	ORDER OF DISMISSAL
vs.	:	
GEORGE SUTTON, ET AL.,	:	Civil No. 900903241
Defendants.	:	Judge Timothy R. Hanson
	:	

Defendants State of Utah, Utah Department of Financial Institutions, Elaine Weis, and George Sutton individually, as Commissioners of Financial Institutions of State of Utah, and as Trustee of the retained assets of Murray First Thrift and Loan moved to dismiss this action pursuant to Rule 12(b)(6), Utah R. Civ. P. The Court granted the motion for the reasons stated in its December 18, 1990 memorandum decision.

IT IS ORDERED that this action is dismissed with prejudice for the reasons suggested and set forth in the defendants' moving papers.

DATED this 24 day of December, 1990.

HON. TIMOTHY R. HANSON
District Court Judge

CERTIFICATE OF MAILING

This is to certify that I mailed a copy of the
foregoing ORDER OF DISMISSAL to the following this 24th day of
December, 1990:

Michael Emery
RICHARDS, BRANDT & MILLER
50 South Main #700
Salt Lake City, Utah 84144

Scott Mitchell
SPAFFORD & SPAFFORD
485 East 100 South
Salt Lake City, Utah 84111



FILED
COURT

JAN 4 9 51 AM '91

THIRD JUDICIAL DISTRICT
SALT LAKE COUNTY
BY [Signature]
DEPUTY CLERK

SCOTT B. MITCHELL (5111)
SPAFFORD & SPAFFORD
A Professional Corporation
425 East 100 South
Salt Lake City, Utah 84111
(801) 363-1234

Attorney for the Plaintiffs

IN THE THIRD JUDICIAL DISTRICT COURT, FOR SALT LAKE COUNTY

STATE OF UTAH

-----ooo0ooo-----
JIM PRATT HANSEN, ET AL.,
Plaintiffs,

vs.

GEORGE SUTTON, ET AL.,
Defendants.

OBJECTION TO PROPOSED FORM
OF ORDER OF DISMISSAL

Civil No. 90093241 CN

Judge Timothy R. Hanson
-----ooo0ooo-----

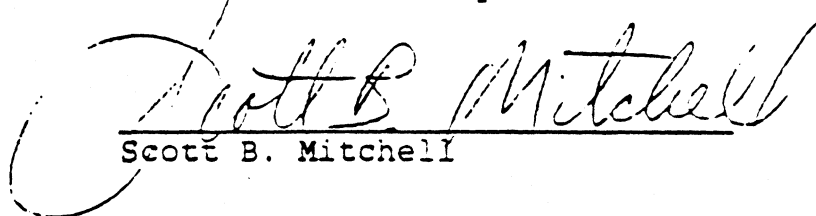
Plaintiffs hereby object to the proposed form of Order Of Dismissal submitted by Defendants on the ground that it fails to comply with Rule 52(a) of the Utah Rules of Civil Procedure. Specifically, Rule 52(a) requires a "brief written statement of the grounds for [the Court's] decision on all motions granted under Rule[] 12(b) . . . when the motion is based on more than one ground."

Because Defendants' motions to dismiss were based upon more than one ground, Plaintiffs request that the Order Of

Dismissal be amended to set forth the specific grounds for dismissal so that the process of appeal may be simplified.

DATED this 28th day of December, 1990.

SPAFFORD & SPAFFORD
A Professional Corporation


Scott B. Mitchell

CERTIFICATE OF MAILING

I do hereby certify that on the ^{31st}~~27th~~ day of December, 1990, I did cause to be placed in the U.S. mail, postage prepaid, a true and correct copy of the foregoing OBJECTION TO PROPOSED FORM OF ORDER OF DISMISSAL to the following:

Michael Emery
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50 South Main, #700
Salt Lake City, Utah 84144

R. Paul Van Dam
Attorney General
Reed M. Stringham
Assistant Attorney General
236 State Capitol
Salt Lake City, Utah 84114

Linda Luvill