1984

Haggis Management, Inc. v. Turtle Management, Inc., Jeoffrey Meacham, Stephen Mccaughey And Dan Lee Briggs : Brief of Plaintiff Appellant

IN THE SUPREME COURT OF THE STATE OF UTAH

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HAGGIS MANAGEMENT, INC., a Utah corporation,	:	
Plaintiff-Appellant,	:	
vs.	:	Case No. 19017
TURTLE MANAGEMENT, INC., JEOFFREY MEACHAM, STEPHEN McCAUGHEY and DAN LEE BRIGGS,	:	
Defendant-Respondents.	:	

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BRIEF OF PLAINTIFF APPELLANT

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APPEAL FROM SUMMARY JUDGMENT OF THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE PHILLIP FISHLER

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IN THE SUPREME COURT OF THE STATE OF UTAH

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HARDY MANAGEMENT, INC., a Utah corporation,	:	
Plaintiff-Appellant,	:	
vs.	:	Case No. 19017
TERILE MANAGEMENT, INC., JEOFFREY MEACHAM, STEPHEN McCAUGHEY and DAN LEE BRIGGS,	:	
Defendant-Respondents.	:	

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IN THE SUPREME COURT OF THE STATE OF UTAH

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	:	
Plaintiff-Appellant,	:	Case No. 19017
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vs.	:	
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TURTLE MANAGEMENT, INC.,	:	
JEOFFERLY MEACHAM, STEPHEN	:	
McCAUGHEY, and DAN LEE BRIGGS,	:	
	:	
Defendants-Respondents.	:	

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BRIEF OF PLAINTIFF-APPELLANT

NATURE OF THE CASE

This is an action to collect approximately $137,000.00 due on a promissory note executed in conjunction with the sale of a private club in Salt Lake City, Utah. In September of 1981, judgment was entered against defendant Turtle Management, Inc., which subsequently filed for protection under the Bankruptcy Act. The action then continued against the individual defendants who had executed a guarantee of the promissory note. After the default and bankruptcy of the principal debtor, Turtle Management, Inc., the Plaintiff retook possession of the business and later sold it to a third entity. In conjunction with the original sale, Plaintiff-Appellant retained a security interest in some of the

personal property located on the business premises. The central issue is whether as a matter of law, the Plaintiff's disposition of this collateral was commercially reasonable and if not, whether the disposition should bar the Plaintiff from any recovery under the original promissory note, irrespective of the value of the collateral or an opportunity for the Plaintiff to establish the fair market value of the property at the time of its disposition, since the collateral had been appraised by experts employed by both the Appellant and Respondents.

DISPOSITION IN THE LOWER COURT

On January 26, 1983, Judge Phillip Fishler entered an Amended Summary Judgment dismissing Plantiff's Complaint against the individual defendants in this action who had signed a written guarantee of the Promissory Note given by Turtle Management, Inc., to Haggis Management, Inc., as partial consideration for the purchase-sale of The Haggis, a private club in Salt Lake City, Utah. The Amended Summary Judgment did not set forth any reason for dismissal of the complaint (R. p. 435), but the minute entry reflects that the Court ruled, as a matter of law, that the sale of the collateral was not made in a commercially reasonable manner and, therefore, Plaintiff was barred from any deficiency judgment under the rule prescribed in Pioneer Dodge Center Vs. Glaubensklee, 649 P. 2d 28 (Utah 1982).

RELIEF SOUGHT ON APPEAL

Appellant requests that the Amended Summary Judgment of the Trial Court be reversed and this action be remanded for trial.

STATEMENT OF FACTS

This is an action arising out of the sale of a private club located in Salt Lake City, Utah, on the corner of Fourth South and West Temple. In the spring of 1978, Jeoffrey Meacham, approached the Appellant with an offer to buy the private club (R. 362). The actual entity which was going to purchase the club was a corporation which the individual defendants were going to form, known as Turtle Management. The negotiations between the parties culminated in the sale agreement dated July 7, 1978, for the sale of the private club (R. pps. 6-21).

The essential terms of the agreement were that the Respondents would pay to the Appellant $350,000 for the private club, payable $100,000 down and the balance of $250,000 pursuant to a promissory note (R. p. 6). Included in the sale was the assignment of a leasehold interest to the real property (R. p. 20); significant leasehold improvements which cost about $140,000 to install (R. p. 362), and having a replacement cost of $250,000 to $300,000 (R. p. 363); furnishings and equipment (these were the only items in which a security interest was retained and are listed on page 295 and 296 of the record); inventory; a

management contract for 20 years for 10% of the gross receipts (deposition of Terrell Smith, R. pps. 447-55); equipment leases; private club liquor license; approximately 7,000 members and the name and good will of the club.

As stated above, the promissory note was secured only by the equipment and furniture which was located at the business (deposition of J. Meacham, p. 39 and Exhibit 1). In conjunction with the bankruptcy proceeding of Turtle Management, this property was appraised as having a value of $15,000 if removed from the premises or $30,000 in place (R. pps. 146, 262). The plaintiff, in computing the amount due on the promissory note credited the defendants with the full $30,000 value (R. 146). Most, if not all of the collateral is still located at the premises at 4th South and West Temple in Salt Lake City, Utah, and is still subject to inspection or further appraisal.

The three major principals of Turtle Management, Jeoffrey Meacham, Stephen McCaughey, and Dan Briggs, jointly and severally guaranteed the promissory note in the sum of $250,000 (R. pps. 8-10). Pursuant to the terms of the purchase and sale agreement of July 7, 1978, the defendants took possession and began operation of the Haggis Club on or about October 1, 1978.

After acquiring the private club, Turtle Management made substantial changes in the operation and management of the club

which resulted in significant decreases in the gross revenues after September of 1978. This precipitated the filing of an action against Haggis Management and its principals for breach of non-competition agreement and resulting damages. In that action the trial court found a technical breach of the non-competition agreement had occurred in that one of the principals of Haggis Management had worked part time at a private club located at Park City, Utah. The Court found, however, that Turtle Management did not suffer any damages as a result of this breach and awarded nominal damages. This action was appealed to this Court which affirmed the lower court's decision. Turtle Management, Inc. v. Haggis Management, 645 P. 2d 667 (Utah 1982).

In July of 1980, Turtle Management ceased making the monthly installments of $4,950.25 as required by the Promissory Note and the principal balance of $167,379.89 minus adjustment for the value of the collateral remains unpaid (R. p. 91). Concurrently therewith, Turtle Management closed the Haggis Club and abandoned the premises. In approximately October of 1980, Turtle Management filed bankruptcy in the United States District Court of Utah.

Immediately prior to the time the private club ceased operation, Turtle Management had ceased making the monthly payments on the lease for the Shubrick Building location, resulting in the lease being in default of approximately $17,000

(R. p. 352). Also, the principals of Turtle Management, who are also the guarantors and individual defendants in this action, failed to renew the private club liquor license or bring the club into conformance with the Utah State Liquor laws resulting in the private club license lapsing (Deposition of Terrell Smith, p. 25). Since the liquor license had been cancelled the club ceased operations and lost all of its 7,000 members. The Respondents made no further attempt to do anything in regards to the Club or its assets except filing a bankruptcy proceeding for the corporation in October of 1980.

The Trustee in the bankruptcy proceeding, Judith Bolden, Esq., requested that two appraisals be made of the tangible assets which were held as security for the promissory note. The principal due at this time was $167,379.89. The Respondents obtained an appraisal from The Antiquer valuing the items at approximately $32,000.00. The defendant, Stephen McCaughey, has a copy of that appraisal in his possession (R. p. 103). Plaintiff-Appellant obtained an appraisal from Joseph Steinbrick of Restaurant Store and Equipment Supply valuing the property at $30,000.00 if left in place on the premises of the Shubrick Building or $15,000.00 if it was removed and sold (R. p. 353). As a result of the fact that outstanding indebtedness exceeded the value of the assets to such a great extent, the Trustee abandoned

the assets to the Appellant on December 17, 1980.

After the abandonment of the Club by the Respondents, the Appellant retook possession of the premises where the private club was operated and decided to restore the premises to its original condition and reopen the club if a new license could be obtained. The Appellants expended an additional $80,000 restoring the premises and paying back rent (Deposition of Terrell Smith p. 70).

While the Haggis Club was operated by Turtle Management, it had accumulated a record of numerous violations of the Utah Liquor Laws and Regulations. Also, the license which had existed in the old name had been cancelled so the principals of Haggis Management formed a new non-profit corporation in order to apply for the replacement license (Deposition of Terrell Smith, p. 27). The new corporation, Sesiee, Inc. applied for the private club liquor license. An application was submitted to the Utah Liquor Control Commission and after a hearing before that body, a new license was issued.

In September of 1980, Haggis Management instituted this action against Turtle Management and the guarantors of the note; Scottie Scheetz, Stephen Donaghey and Dan Briggs. Judgment was entered against Turtle Management in September of 1980, but [illegible] the [illegible] upon the filing of the bankruptcy in

October of 1980. The action proceeded as to the individual guarantors. In December of 1980, Weslee, Inc., obtained the new private club license and began business as "The Fiasco".

The Fiasco was operated throughout the first three quarters of 1981. In the summer of 1981, the decision was made to attempt to resell the club. Inquiries were sent out to potentially interested purchasers (R. p. 255), and eventually the club was sold to a corporation named Chianti Management, Inc., which was operated by some gentlemen who had another private club in Salt Lake City (Deposition of Terrell Smith, pps. 31-33).

The sale agreement to Chianti was executed July 22, 1981. The sale agreement was similar in form to the one utilized with Turtle Management in that the buyer was assigned a lease for the Shubrick Building which had been renegotiated by the Appellant (Deposition of Terrell Smith, p. 40). Also, they received leasehold improvements, assignment of a management contract between the club and the management company, the private club liquor license, a lease and other intangible assets including good will and the name. All of those assets had been acquired after Turtle Management abandoned the club.

In addition to the assets mentioned above, however, the sale to Chianti also included certain equipment and furnishings. These items included such things as tables and equipment used on the

premises as well as decorations and are listed in the Record on pages 295 and 296. It is the disposition of these assets alone that give rise to Respondents' defense to the note.

At the time of the sale of the new club (in that a new liquor license had been obtained) to Chianti, the collateral had been abandoned by the bankruptcy trustee. The Respondents did not receive notice of this sale through inadvertance on the part of the Appellant. Respondents claim more than one sale occured after their clients abandoned the club, but this issue is not addressed since Appellant concedes that at least one sale occured.

Pursuant to the Purchase and Sale Agreement between Appellant and Turtle Management of July 7, 1978 (R. p. 6) all notices required relative to the parties' obligations were sent to Turtle Management at 76 West 4th South, Salt Lake City, Utah 84101. This is the address of the bankrupt business.

It is conceded that no notice of the sale to Chianti was sent to the individual guarantors. They had actual knowledge of the abandonment in the Bankruptcy Court (Mr. Meacham signed the Petition for Turtle Management). The assets which were the collateral were listed on Exhibit "A" to the contract (R. p. 16). The rest of the subject matter of the sale (license, lease, membership, etc.) was unsecured. Also, the assets were subject to a lease in favor of the bankrupt corporation (R. p. 11, paragraph

A).

Appellant has acknowledged that Respondents are entitled to a credit for the fair market value of $30,000.00 (Deposition of Terrell Smith, p. 38). While Mr. Smith testified that it would cost $400,000 to $500,000 to recreate this bar, substantially all that would be attributable to the fixtures and improvements (Deposition of Terrell Smith, pps. 36-37) which now are attached to the realty and belong to the landlord. The equipment which the collateral was and is worth its appraised value of $30,000.00 (Deposition of Terrell Smith, p. 38, R. p. 352).

ARGUMENT

I

THE COMMERCIAL REASONABLENESS OF DISPOSITION OF COLLATERAL IS A QUESTION OF FACT TO BE GOVERNED BY UCC §§9-504(3) AND 9-507(1), WHICH PRECLUDES SUMMARY JUDGMENT

To sustain the Summary Judgment, entered by the trial court, which dismissed Appellant's case, the pleadings, depositions, affidavits and admissions must demonstrate no genuine issue of material fact. Further, this must be demonstrated while resolving all doubt or uncertainty in favor of the Appellant. Rule 56 U.R.C.P.; Bowen v. Riverton City, 656 P. 2d 434 (Utah, 1982).

To summarize the facts, the record demonstrates the sale of this business to Turtle Management was guaranteed by the

respondents. The original sale price was $350,000.00 (Deposition of Terrell Smith, p. 34). The collateral in which a security interest was retained at the time of sale was worth about 10% of the sale price (R. p. 352, deposition of Terrell Smith, p. 38, 112). Turtle Management filed bankruptcy and abandoned this collateral to Appellant at the appraised value of $30,000. No attempt to bid on these items or protect their interests in regards to this disposition appears on behalf of Respondents. Respondents also obtained a professional appraisal (R. p. 107). The Appellant retook possession of the business and rehabilitated it at a cost of about $80,000 (Deposition of Terrell Smith, p. 70) and obtained a new liquor license and lease. The business was resold later to Chianti Management. The Appellant concedes that Respondents are entitled to credit for the fair market value of the collateral ($30,000.00), and can establish that value by expert testimony, leaving a principal balance due of $137,379.89.

The disposition of this case is fully addressed and controlled by §70A-9-507(1), U.C.A. (1953 as amended, 1965) which states:

> (1) If it is established that the secured party is not proceeding in accordance with the provisions of this part, disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the debtor or any person entitled to notification or

> whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by a failure to comply with the provisions of this part (emphasis added) * * *

This Court has construed §70A-9-507(1) to also require in the case of defective notice of disposition, that the secured party has the burden of proving the fair value of the collateral. Zions First National Bank v. Hurst, 570 P. 2d 103 (Utah, 1977). The overwhelming authority supports this position as cited below.

When the business was resold to Chianti, Appellant neglected to give notice to the guarantors. It was not an intentional omission as suggested by Respondents' counsel but a mistake because they did not know it was required. Neither the Statute nor the Agreement specifically requires such notice and Respondents had already been informed of the abandonment of the collateral by the bankruptcy trustee and obtained an appraisal of the items (R. p. 107). After this action was commenced, Appellant became aware of the requirement to give notice of the disposition to the guarantors that was mandated in F.M.A. Financial Corp. v. Pro Printers, 590 P. 2d 803 (Utah 1979)

The lower court, citing Pioneer Dodge Center v. Glaubensklee, 649 P. 2d 29 (Utah, 1982) held that if there was no notice then the secured party is automatically barred from any recovery whatsoever regardless of the market value of the collateral. It

is in fact, the imposition of strict liability on the secured party contrary to §70A-9-507(1), U.C.A. (1953, as amended, 1965) contrary to the separation of powers reserved to the legislature in Article V and VI of the Constitution of Utah; and contrary to Zions First National Bank v. Hurst, 507 P. 2d 1031 (Utah 1977).

Respondents cite several cases in which deficiency judgments were denied the secured party after a trial. No case cited supports the position taken by the trial court that if no notice is given no deficiency can ever be recovered. Further, the Utah cases relied upon by Respondents do not address the situation present in this case, where the secured party is prepared, through expert appraisals, to establish the fair market value of the collateral.

In Pioneer Dodge Center v. Glaubensklee, 649 P. 2d 29 (Utah, 1982), a deficiency was barred in the unreasonable disposition of a used car after trial. This decision does not indicate any attempt on behalf of the secured party to establish the fair market value of the collateral. Further, to compare the disposition of a used car loan (where the loan proceeds usually are 100% committed to the purchase of the collateral and which has a definite market and method of resale) to the resale of equipment (worth 10% of the note proceeds) partially securing the proceeds of the sale of a private liquor club, is illogical.

Respondents have also relied of F.M.A. Financial Corporation v. Pro Printers, 369 P. 2d 803 (Utah, 1979); Chrysler Credit Corp. v. Burns, 562 P. 2d 233 (Utah 1977); and Strevell Patterson Co., v. Francis, 649 P. 2d 741 (Utah 1982). Again, none of these cases addresse the situation where the secured party establishes the fair market value of the collateral and obtains a judgment after credit for that value has been allowed to the judgment debtor. None of these cases assert that, if there is no notice to guarantors, as a matter of law, no deficiency is recoverable.

The issue of what, if any, setoff is due the debtor when the collateral is sold without notice has been addressed by this Court in Zions First National Bank v. Hurst, 570 P. 2d 1031 (Utah, 1977). Failure of a creditor to give notices does not preclude him from obtaining a deficiency judgment. In the Zions case, which was also against guarantors, this Court stated at page 1033:

> * * * More importantly, the usual rule is that failure to so notify does not release the debtor from any deficiency (emphasis added), but upon such failure he may get credit for (or recover) only for any loss caused by the failure to so notify (citing 70A-9-507 U.C.A., 1953). In that connection inasmuch as the airplanes sold for $72,500, they would have to have brought nearly three times that amount, that is $200,000 or more, before the proceeds therefrom would have relieved the defendant of any liability under this guaranty. We are not persuaded that there has been any substantial and prejudicial error or that any injustice has resulted in holding him to his agreement.

Nothing could be closer to this factual situation than the facts

in Zions, supra. In this action, the collateral would have to have been sold for over five times it appraised value. What Appellant urges is the opportunity to establish their case and that no injustice would be suffered by the Respondents, albeit that they would have to stand by their original promise.

Besides the pronouncement in Zions, supra, and the requirements of §70A-9-507(1) U.C.A. (1953) this Court affirmed this position after its decision in F.M.A. v. Pro Printers, 590 P. 2d 803 (Utah, 1979). In Utah Bank and Trust v. Quinn, 622P. 2d 793 (Utah 1980) any apparent conflict between the Zions and F.M.A. cases was resolved in favor of the position taken here by Appellant at page 796:

> Zions First National Bank v. Hurst, Utah 570 P. 2d 1032 (1977), has been cited as holding that the failure to give notice does not prevent the granting of a deficiency judgment.
>
> * * *
>
> However, this Court's decision in FMA Financial Corp. v. Pro Printers, Utah, 590 P. 2d 803 (1979), has been cited for exactly the opposite rule. In the FMA case no notice had been given. The finder of fact concluded no commercially reasonable sale had been held. The inventory had been sold for a fraction of what it was worth on the books of all concerned and it was sold at a private sale with three bidders. Two of the bidders were what is referred to as "accommodation bidders," persons bidding with no real intention of making a purchase, and a third bidder anticipated an immediate profit on resale. While the FMA case does not contain language susceptible of the interpretation that a failure to give notice of the pending sale precludes any deficiency, the Court did not stop its

inquiry after recognizing the failure to give written notice. The Court considered the issue of whether the sale had been conducted and in a commercially reasonable fashion. In that case, there is also circumstantial evidence that the inventory was in fact of a value equal to or greater than the debt. Our analysis of many of the apparent conflicting holdings in other jurisdictions finds similar implications. It is noted that there must be some basis in fact for the presumption indulged that the security has a value equal to or greater than the debt.

* * *

We hold that, on the facts of this case, the issue were properly presented to the jury. The burden of proving that the sale was conducted in a commercially reasonable manner was on the bank and carried by the bank.

In this case, there are expert appraisals that the debt exceeded the value of the collateral by 550%. The issue of whether the sale was commercially reasonable is on Appellant, but is an issue of fact. The Appellant solicited sales and interested buyers prior to the sale (R. pps. 265-6) and credited Respondents with the full value of the appraisal ($30,000.00), without adjustment for repairs, cleaning, missing inventory, etc. The private liquor club is an unusal item much like the exotic cars in Utah Bank and Trust v. Quinn, 622 P. 2d 707 (Ut. 1980). This case meets every standard required since 1980 regarding issues of fact which preclude summary judgment and require this matter be remanded for trial.

The decision in Utah Bank and Trust v. Quinn, supra, adopting the reasoning in Clark Leasing Corp. v. White Sands Forrest Products, Inc., 87 N.M. 451, 535 P. 2d 1077 (1975) is followed by the vast majority of states which have adopted the Uniform Commercial Code and ruled on this notice issue: Alabama, First Alabama Bank of Montgomery N.A. v. Parsons, 34 U.C.C. Rep. 1467 (9/24/82); Alaska, Weaver v. O'Meara Motor Co., 452 P. 2d 87 (Alaska 1969); Arkansas, Universal C.I.T. Credit Co. v. Rone, 248 Ark. 665, 453 S.W. 2d 37 (1970); Colorado, Community Management Ass'n of Colorado Springs v. Tonsely v. Ford Motor Credit Co, 505 P. 2d 1314 (Colo. 1973); Connecticut, Savings Bank of New Britain v. Booze, 34 C.S. 632, 382 A. 2d 226 (1977); Delaware, Associates Financial Services Co., Inc. v. DiMarco, (Del. super) 383 A. 2d 296 (Del. 1978); Florida, Bank of Oklahoma, N.A. v. Little Judy Industries, Inc., (Fla. App.) 387 So. 2d 1002 (1980); Georgia, Zohbe v. First National Bank of Cobb County, 162 G. A. 604, 292 S.E. 2d 444 (1982); Hawaii, Liberty Banks v. Honolulu Provodoring, Inc., 650 P. 2d 576 (Ha. 1982); Idaho, Mack Financial Corp v. Scott, 100 Id. 889, 606 P. 2d 993 (1980); Illinois, National Bank of Chicago v. Jackson, 92 Ill A3 928, 416 N.E. 2d 358 (1981); Indiana, Indiana Hale v. Owen Country State Bank, 370 N.E. 2d 918 (Ind., 19[illegible]; Kansas, Westgate State Bank v. Clark, 231 Kan 81, 64[illegible] P. 2d 961 (1982); Michigan, Jones v. Morgan, 58 Mich. App.

455, 228 N.W. 2d 419 (1975); Minnesota, Fedders Corp. v. Taylor, 473 F. Supp. 961 (U.S.D.C. Minn. 1979); Mississippi, Walker v. V.M. Box Motor Co., Inc., 325 So. 2d 905 (Miss., 1976); Missouri, Wirth v. Heavey, 508 S.W. 2d 263 (Mo. App., 1974); Montana, First National Park Bank v. Johnson, 553 F. 2d 599 (C.A. 9th, 1977); Nebraska, State Bank of Litchfield v. Lucas, 210 Neb. 400, 315 N.W. 2d 238 (1982); Nevada, Levers v. Rio King Land & Investment Co., 93 Nev. 95, 560 P. 2d 917 (1977); New Jersey, Franklin State Bank v. Parker, 346 A. 2d 632 (N.J. 1975); New Mexico, [(see Clark Leasing supra cited with approval in Utah Bank and Trust v. Quinn, 622 P. 2d 793 (Utah, 1980)]; New York, G.E.C.C. v. Durante Bros. and Sons, Inc., 433 NYS 2d 574 (1980); North Carolina, Hodges v. Norton, 29 N.C. App. 193, 223 S.E. 2d 848 (1976); North Dakota, State Bank of Towner v. Hansen, 302 N.W. 2d 760 (M.D., 1981); Ohio, United States v. Willis, 593 F. 2d 247 (C.A. 6th, 1979); Oklahoma, Beneficial Finance Co. v. Young 612 P. 2d 1357 (Okla., 1980); Oregon, All-States Leasing Co. v. Ochs, 42 Or. App. 319, 600 P. 2d 899 (1979); Pennsylvania, United States v. Chatlins Department Store 506 F. Supp. 108 (DCED Pa. 1980); Rhode Island, Associated Capital Services Corp. v. Riccardi, 408 A. 2d 930 (R.I. 1979); Tennessee, I.T.T. Industrial Credit Co. v. Rector, 34 U.C.C. Rep. 379 (Tenn., May, 1982); Texas, United States v. White House Plastics, 501 F. 2d 692 (C.A. 5th, 1974); Washington, United

Yates v. Cawley, 464 F. Supp. 189 (DCED, Wash., 1979).

Another corollary issue related to the reasonableness of the disposition and the lack of notice is whether such notice was futile or meaningless. Two of the guarantors were directors, officers and stockholders of Turtle Management (Deposition of J. Meacham, p. 7). They had notice, as such, of the abandonment of the collateral at a value of $30,000 by the bankruptcy trustee, but made no objecion nor attempt to buy the goods then. The Agreement provided that all notices required should be addressed to Jeofffrey Meacham, c/o Haggis, 79 West 400 South, Salt Lake City, Utah 84101 (R. p. 15). That address was abandoned and mail forwarded to Mr. Meacham had been returned. Appellant did not know where Mr. Meacham and Mr. Briggs could be notified (R. p. 353).

There is a significant dispute in this case whether Appellant could have given notice to two of the guarantors and whether it was a futile and meaningless gesture in that they had made no effort to bid into the bankruptcy proceedings. These questions intensify the need for a trial and a resolution of the many unresolved facts in order to determine if the disposition was commercially reasonable.

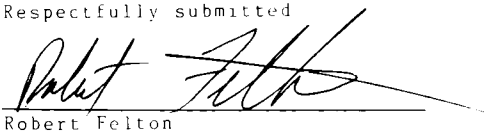
CONCLUSION

The summary judgment was improvidently granted. This is

especially true in light of the absence of any basis for it issuance except the reference to the Pioneer Dodge case, supra. The lower court never inquired into any of the depositions which were published. The pleadings demonstrate that the collateral was worth about 20% of the debt. This is not the resale of a used car but the abandonment, bankruptcy, and reversion of a licensed business and all the attendant rights and obligations normally associated with such an entity.

This action should be remanded for trial and the Summary Judgment reversed. The disposition of the collateral and the damage suffered by the Respondents, if any, is an issue of fact as interpreted by the vast majority of states and determined by the Court in Utah Bank & Trust v. Quinn, 622 P. 2d 793 (Utah, 1980).

Respectfully submitted



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