

1983

Marathon Ranching Co. Ltd., and Hans W. Roeck v. Synergetics, A Utah Limited Partnership. By And Through Its General Partner. Lancer Industries. Inc. , A Corporation; And Addland Enterprises, Inc. : Appendix

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors. Ronald C. Barker and Robert L. Lord; Attorneys for Respondents

Recommended Citation

Supplemental Submission, *Synergetics v. Marathon Ranching*, No. 19143 (1983).
https://digitalcommons.law.byu.edu/uofu_sc2/4703

This Supplemental Submission is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT OF THE STATE OF UTAH

SYNERGETICS, A Utah Limited)
Partnership, by and through)
its general partner, LANCER)
INDUSTRIES, INC., a)
corporation; and ADDLAND)
ENTERPRISES, INC.,)

Plaintiffs-Respondents,)

vs.)

MARATHON RANCHING CO.,)
LTD., and HANS W. ROECK,)

Defendants-Appellants,)

Case No. 19143

APPENDIX

APPEAL FROM A JUDGMENT OF THE THIRD JUDICIAL
DISTRICT COURT OF SALT LAKE COUNTY

Honorable Phillip R. Fishler, Judge

Ronald C. Barker
2870 South State Street
Salt Lake City, Utah 84115-3692
Attorneys for Synergetics,
Plaintiff-Respondent

Robert L. Lord
431 South 300 East, #444
Salt Lake City, Utah 84111
Attorney for Addland Enterprises, Inc.,
Plaintiff-Respondent

Joel R. Dangerfield
Ronald W. Goss
ROE AND FOWLER
340 East Fourth South
Salt Lake City, Utah 84111
Attorneys for Defendants-Appellants

FILED

SEP 1 - 1993

← Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

SYNERGETICS, A Utah Limited)
Partnership, by and through)
its general partner, LANCER)
INDUSTRIES, INC., a)
corporation; and ADDLAND)
ENTERPRISES, INC.,)

Plaintiffs-Respondents,)

vs.)

MARATHON RANCHING CO.,)
LTD., and HANS W. ROECK,)

Case No. 19143

Defendants-Appellants,)

APPENDIX

APPEAL FROM A JUDGMENT OF THE THIRD JUDICIAL
DISTRICT COURT OF SALT LAKE COUNTY

Honorable Phillip R. Fishler, Judge

Ronald C. Barker
2870 South State Street
Salt Lake City, Utah 84115-3692
Attorneys for Synergetics,
Plaintiff-Respondent

Robert L. Lord
431 South 300 East, #444
Salt Lake City, Utah 84111
Attorney for Addland Enterprises, Inc.,
Plaintiff-Respondent

Joel R. Dangerfield
Ronald W. Goss
ROE AND FOWLER
340 East Fourth South
Salt Lake City, Utah 84111
Attorneys for Defendants-Appellants

APPENDIX

Record Page

"A"	7-15-82	-	minute entry allowing 5 days after denial of interlocutory appeal for Roeck to appear for taking of his deposition	063
	8-2-82	-	order re minute entry	090-092
"B"	8-9-82	-	minute entry requiring defendants to produce documents by 8-16-82 and to appear for deposition by 8-27-82	110
	8-17-82	-	order re minute entry	137-138
"C"	8-26-82	-	minute entry requiring Roeck to appear for deposition by 9-3-82 or default will be entered.	144
	9-28-82	-	order re minute entry	167-168
"D"	9-3-82	-	pages from Roeck's aborted deposition	14-15
"E"	9-8-82	-	motion to strike and for default judgment	
"F"	11-18-82	-	minute entry allowing Roeck 10 days to produce documents and submit to deposition and not leave until excused	222
	11-30-82	-	order re minute entry	223-225
"G"	12-29-82	-	minute entry granting default judgment	252
"H"	2-14-83	-	minute entry Court on its own motion orders hearing on defendants' objections to proposed order	258
	2-23-83	-	minute entry changing hearing date	264
"I"	2-25-83	-	minute entry re hearing, defendants represented, orders filing of affidavit re damages, quiets title to boat in plaintiffs, denies motion for lein on Canadian land, etc.	265

see directed insert

APPENDIX

Record Page

"J" - 3-14-83 - Judgment	279-282
"K" Amended Complaint Supplemental agreement	030-039

APPENDIX

		<u>Record Page</u>
"I" - 3-14-83 -	Judgment	279-282
"K"	Amended Complaint Supplemental agreement	030-039
"L"	Copy of unreported decision of the Utah Supreme Court in case #16237 filed January 3, 1980	(Page 34 of brief)

THIRD JUDICIAL DISTRICT
COUNTY OF SALT LAKE - STATE OF UTAH

MINUTE ORDER

Case C-82-1822
Time P.M.
Date 7-15-82

MAKACH S. HAN HIN ET AL.

Ronald Banker

Here PHILIP R. FISLER

Judge

Joe Bergsma

J. BLV

Clerk

J. WINSWORTH

Reporter

Steno

- Based on the return of the garnishee and the affidavit of the garnishee and the affidavit of the garnishee, the Court orders the garnishee to pay the amount of the debt to the creditor.
- If appearing to the Court that the garnishee has failed to file the proper form and an answer filed stating that the garnishee is indebted to the defendant, the Court may order the defendant to have and recover of the garnishee.

To the best of the Court's knowledge, the Court orders that

Debt related stay proceeding is argued to the Court by respective counsel. The Court being fully advised in the premises grants the debt related stay and orders the debt appear for disposition at Mr. Banker's convenience within 5 days after final determination by the apparent Court.

AUG 2 1982

W. Montgomery Jones
JONES AND JONES
1340 Munras Avenue
Monterey, California 93940
Telephone: (408) 373-3771

W. Starling Evans, Clerk of the Court
By W. Starling Evans Deputy Clerk

William G. Fowler
Bryce E. Roe
Joel R. Dangerfield
ROE AND FOWLER
340 East Fourth South
Salt Lake City, Utah 84111
Telephone: (801) 328-9841
Attorneys for Defendants

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

SYNERGETICS, a Utah Limited Partnership, by and through its general partner, LANCER INDUSTRIES, INC., a corporation
ADDLAND ENTERPRISES, INC.,
Plaintiffs,
vs.
MARATHON RANCHING CO., LTD.,
HANS W. ROECK and JOHN DOES
#1 thru 10,
Defendants

ORDER STAYING
PROCEEDINGS PENDING
APPEAL

Civil No. C-82-1822

This matter having come on for hearing on July 15, 1982, upon consideration of the motion of Marathon Ranching Co., Ltd., and Hans W. Roeck, defendants in the above-captioned matter, for a stay of proceedings pending appeal and within which to appear, and to file an answer or responsive pleading to plaintiffs' amended complaint, and the court having considered the pleadings on file and the arguments of counsel, and good cause appearing therefor, it is hereby

ORDERED that the aforementioned defendants shall be, and they hereby are, granted a stay of these proceedings pending appeal and an extension of time, without date, within which to answer plaintiffs' amended complaint pending denial of the Utah Supreme Court of their petition for an appeal or resolution by said court of the issues presented on appeal.

PROVIDED, HOWEVER, That Should The Utah Supreme Court Deny The Petition For An Appeal It Is Further

ORDERED that defendants shall produce the documents requested and produce Hans W Roeck for the taking of his deposition at the office of counsel for plaintiff at 2870 South State Street, Salt Lake City, Utah, 84115, pursuant to plaintiffs Notice of Taking of Deposition and Request For Production of Documents dated June 5, 1981, and defendants shall file an answer or responsive pleading to plaintiffs' amended complaint, all within 5 business days after receiving notice of entry of an order denying their petition for an appeal or entry of a mandate to the District Court resolving the issues presented on appeal in plaintiff's favor.

DATED this 2nd day of August, 1982

BY Kathy Crotapas
Clerk
Deputy Clerk

Phillip R. Fishler
Phillip R. Fishler
District Judge

ATTORNEY'S CERTIFICATE

In accordance with Local Rule 2.9(b), Rules of Practice in the District Courts and Circuit Courts of the State of Utah, Joel R. Dangerfield, Roe and Fowler, attorneys for defendants Marathon Ranching Co., Ltd., and Hans W. Roeck, hereby certify that on the 16th day of July, 1982, I served the foregoing proposed Order Staying

Proceedings Pending Appeal upon the following counsel of record by mailing copies thereof in the United States mails, postage prepaid, addressed as follows:

Ronald C. Barker, Esq.
Attorney for Plaintiffs Synergetics
and Lancer Industries, Inc
2870 South State Street
Salt Lake City, Utah 84115

Robert L. Lord, Esq.
Attorney for Plaintiff Addland
Enterprises, Inc.
431 South 300 East
Salt Lake City, Utah 84111


Joel R. Dangerfield, Esq.

CERTIFICATE OF SERVICE

Copies of the foregoing order were served by the clerk of the court by depositing the same in the United States mails, postage prepaid, and addressed as shown below, this ____ day of _____, 1982.

Joel R. Dangerfield
Roe and Fowler
340 East Fourth South
Salt Lake City, Utah 84111

Ronald C. Barker, Esq.
Attorney for Plaintiffs Synergetics
and Lancer Industries, Inc
2870 South State Street
Salt Lake City, Utah 84115

Robert L. Lord, Esq.
Attorney for Plaintiff Addland
Enterprises, Inc.
431 South 300 East
Salt Lake City, Utah 84111

Clerk of the Court

By _____ Deputy Clerk

FILMED

THIRD JUDICIAL DISTRICT

COUNTY OF SALT LAKE - STATE OF UTAH

Synergetics et al

MINUTE ORDER

Case C 82-1822

Time pm

Date 8/9/82

Marathon Ranching Co

Plaintiff: W. Montgomery Jones N/P
R. Barker ✓

Hon. Philip Fishler Judge

K Grotspas Clerk

Defendant: J. Dangerfield

S Kelly N/P Reporter

G Unsworth Sheriff

arguements by August 16, 1982 at 5:00 pm to Mr. Barker.
Def't appear in S.L.C No later than Aug 27, 1982
def't produce documents

Based upon motion of plaintiff's counsel court orders _____

Based on the failure of def't to appear in response to an order of the court and as ordered by plaintiff's counsel court orders _____ shall issue for def't. Retainable _____ for _____

Based on written stipulation of respective counsel between of plaintiff's counsel and good cause appearing therefor court orders the above case be and the same is hereby dismissed without prejudice.

It appearing to the court that a writ of garnishment was issued in the proper form and an answer filed stating that the garnishee is indebted to the defendant. It is ordered that the defendant have and receive of the garnishee _____

for the use and benefit of the plaintiff in the sum of \$ _____

attorneys to work out the date. Plt's request
for attorney fees are denied.

FILMED

AUG 19 1982

AUG 17 RECD

Ronald C. Barker
Attorney for Synergetics
2870 South State Street
Salt Lake City, Utah 84115-3692
Telephone (801) 486-9636

Ronald C. Barker

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

---ooOoo---

SYNERGETICS, et al.,)
 Plaintiffs,)
 vs.) ORDER
MARATHON RANCHING CO., LTD.,) C-82-1822
HANS W. ROECK and JOHN DOES)
#1 thru 10,)
 Defendants.)

---ooOoo---

Plaintiffs' motion for sanctions for failure of the defendant Roeck to appear for the taking of his deposition as ordered by the Court and for failure of the defendants to produce documents as order, and motion to require delivery of boat to storage and to disclose the whereabouts of the boat, and defendants' motion for protective order concerning discovery came on regularly for hearing at the hour of 2:00 p.m. on August 9, 1982, before the Honorable Philip R. Fishler, District Judge. Plaintiff Synergetics appeared by and through its attorney, Ronald C. Barker. The defendants appeared by and through their attorney, Joel R. Dangerfield. Oral arguments were presented by counsel. The Court having considered memorandums and affidavits filed in connection with said motion, and good cause appearing therefor, it is hereby

ORDERED, as follows:

1. That defendants are ordered to produce the documents heretofore requested to be produced by 5 p.m. on August 16, 1982, said documents to be produced at the office of counsel for Synergetics, 2870 South State Street, Salt Lake City, Utah
2. That the defendant Hans W. Roeck is ordered to appear at the office of counsel for Synergetics, 2870 South State Street, Salt Lake City, Utah, at a time to be arranged between counsel, but no later than August 27, 1982.
3. Plaintiffs' motion for sanctions are denied at this time, subject to renewal should defendants fail to comply with the

terms of this order.

4. Plaintiffs' motions to require delivery of the boat to be placed into storage and motion to disclose the whereabouts of the boat are denied at this time, without prejudice to the right of plaintiffs to renew said motions at a later time should they desire to do so after the taking of the deposition of Mr. Roeck and production of said documents.

Dated the 17th day of August, 1982.

BY THE COURT:

Walter Fisher
District Judge

ATTEST
W STERLING EVANS
CLERK
BY Barbara Bohne
Deputy Clerk

APPROVED AS TO FORM:

Ronald C. Barker
Ronald C. Barker, attorney for Synergetics

Robert L. Lord
Robert L. Lord, attorney for ~~Wanda Wanda~~
~~Wanda~~ Addland Enterprises, Inc.

Jacob R. Dangerfield
Jacob R. Dangerfield, attorney for ~~plaintiff~~ defendants
Marathon Ranching Co 220 + Home
W. Roeck

THIRD JUDICIAL DISTRICT
COUNTY OF SALT LAKE - STATE OF UTAH

MINUTE ORDER

Case 0-82-1322
Time 1:30 PM
Date 9-26-92

[Signature]
Plaintiff

[Signature]
Defendant

[Signature]
[Signature]
[Signature]
[Signature]

Hon. Philip F. Luckin Judge
[Signature] Clerk
[Signature] Reporter
[Signature] Staff

- Based on the terms of the stipulation of counsel of the defendant and the plaintiff, court orders the case to be dismissed without prejudice.
- Based on the terms of the stipulation of counsel of the plaintiff and the defendant, court orders the case to be dismissed without prejudice.
- Based on the terms of the stipulation of counsel of the plaintiff and the defendant, court orders the case to be dismissed without prejudice.
- Based on the terms of the stipulation of counsel of the plaintiff and the defendant, court orders the case to be dismissed without prejudice.
- Based on the terms of the stipulation of counsel of the plaintiff and the defendant, court orders the case to be dismissed without prejudice.
- Based on the terms of the stipulation of counsel of the plaintiff and the defendant, court orders the case to be dismissed without prejudice.
- Based on the terms of the stipulation of counsel of the plaintiff and the defendant, court orders the case to be dismissed without prejudice.
- Based on the terms of the stipulation of counsel of the plaintiff and the defendant, court orders the case to be dismissed without prejudice.

For the use and benefit of the plaintiff in the sum of \$ _____

*From case - Depositions Dispositive Counsel Court orders
that state that we are to appear by Sept 3, 1992 you
are appointed - if not doesn't come then you default
where the matter is*

SEP 2 1982

BY *Fathy Grotopas*

Ronald C. Barker
Attorney for Synergetics
2870 South State Street
Salt Lake City, Utah 84115-3692
Telephone 486-9636

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

---oo0oo---

SYNERGETICS, et al.,)
Plaintiffs,)

vs.) ORDER

MARATHON RANCHING CO., LTD.,) C-82-1822
HANS W. ROECK and JOHN DOES)
#1 through 10,)
Defendants.)

---oo0oo---

Defendant's motion for a protective order seeking to excuse the defendant Hans W. Roeck from complying with the prior order of this Court which required that he appear for the taking of his deposition in Salt Lake City on or before August 27, 1982, came on regularly for hearing at the hour of 2:00 p.m. on the 26th day of August, 1982, before the Honorable Philip R. Fishler, District Judge. Plaintiff Synergetics appeared by and through its attorney, Ronald C. Barker. Plaintiff Addland Enterprises, Inc. appeared by and through its attorney, Robert L. Lord. The defendant Marathon Ranching Co., Ltd. and Hans W. Roeck appeared by and through their attorney, Joel R. Dangerfield. Oral arguments were presented by counsel, the Court having reviewed the file, motion and memoranda filed in support thereof, being fully advised in the premises, and good cause appearing therefor, it is hereby

ORDERED, as follows:

1. That the prior order of this Court is hereby modified so as to permit the defendant, Hans W. Roeck, to appear at the office of counsel for Synergetics, 2870 South State Street, Salt Lake City, Utah, at a time to be arranged between counsel for the taking of his deposition in the above-entitled case, but in no event later than September 3, 1982.

2. In the event that Hans W. Roeck fails to appear within the time mentioned above it is further ordered that upon ex-party application of counsel for plaintiffs the answer of the defendants will be struck and default judgment entered in favor of plaintiff and against defendants for the relief requested in the amended complaint filed herein.

Dated the 28th day of September 1982.

BY THE COURT:

Harold R. Fisher
District Judge

APPROVED AS TO FORM:

Ronald C. Barker
Ronald C. Barker, attorney for Synergetics

Robert L. Lord
Robert L. Lord, attorney for Addland Enterprises, Inc.

Joel R. Dangedfield
Joel R. Dangedfield, attorney for defendants

BY Kathy Grotapas
CLERK
Deputy Clerk

1 A I DON'T REMEMBER THE ADDRESS.
2 Q WHAT IS THE TELEPHONE NUMBER?
3 A I DON'T REMEMBER THE TELEPHONE NUMBER.
4 Q IF WE CALLED INFORMATION WOULD THEY BE ABLE
5 TO GIVE IT TO US?
6 A IT'S UNLISTED.
7 Q WHAT IS THE STREET ADDRESS OF THE HOME?
8 A I JUST ANSWERED THAT.
9 Q ANSWER AGAIN, PLEASE.
10 A I SAID I DON'T KNOW.
11 Q WHAT IS THE NAME OF THE FRIEND WHOSE HOUSE
12 IT IS?
13 A T-O-M-M.
14 Q THAT'S THE LAST NAME?
15 A YES.
16 Q WHAT IS THE FIRST NAME?
17 A BEVERLY.
18 Q IT'S A SINGLE WOMAN?
19 A YES.
20 Q WHY IS IT YOU HAPPEN TO HAVE A PHONE IN THE
21 HOME OF A SINGLE WOMAN IN CANADA?
22 A I LIKE IT. I LIKE HER.
23 Q DO YOU STAY THERE WITH HER?
24 MR. ANDERSON: I'LL OBJECTION.
25 THE WITNESS: DO YOU MEAN IF I HAVE INTERCOURSE

1 WITH HER?

2 MR. ANDERSON: I'LL OBJECT. IT'S IMPERTINENT
3 AND SCANDALOUS.

4 IF YOU WANT TO ANSWER, YOU CAN.

5 THE WITNESS: I THINK I'M GOING TO QUIT THIS,
6 OKAY? I'M GOING TO WALK OUT.

7 AND I HAVE A LAWSUIT AGAINST THESE GENTLEMEN
8 IN CANADA JUST STARTING.

9 THE BOAT DOESN'T EXIST ANYMORE. IT SUNK.
10 AND I'LL SEE YOU MAYBE SOME TIME THE NEXT
11 THREE YEARS.

12 GOOD-BYE, GENTLEMEN.

13 MR. ANDERSON: MR. ROECK, I WOULDN'T SUGGEST
14 THAT YOU LEAVE THE DEPOSITION. IT WOULD BE MY COUNSEL
15 THAT YOU STAY.

16 THE WITNESS: I KNOW. OKAY. I DO NOT WISH
17 TO OBEY YOUR COUNSEL.

18 BYE BYE.

19 MR. ANDERSON: LET ME STATE FOR THE RECORD
20 THAT MR. ROECK'S BEING ADVISED THAT HIS FAILURE TO STAY
21 AT THE DEPOSITION WILL RESULT IN A STRIKING OF THE PLEADINGS
22 OF THE CASE, AND THAT I SO ADVISED MR. ROECK.

23 MR. BARKER: IT MAY SO SHOW.

24 THANK YOU.

25 (WHEREUPON, THE TAKING OF THE DEPOSITION
WAS CONCLUDED AT 9:15 A.M.)

Ronald C. Barker
Attorney for plaintiff Synergetics & Lancer
2879 South State Street
Salt Lake City, Utah 84115-3692
Telephone 486-9636

Robert L. Lord
Attorney for Addland Enterprises, Inc.
431 South 300 East #444
Salt Lake City, Utah 84111
Telephone 328-4241

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

---oo0oo---

SYNERGETICS, a Utah limited)
partnership, by and through)
it's general partner, LANCER)
INDUSTRIES, INC., a corpora-)
tion, and ADDLAND ENTERPRISES,)
INC.,)

Plaintiffs,)

vs)

MARATHON RANCHING CO., LTD.,)
HANS W. ROECK and JOHN DOES)
#1 through 10,)

Defendants.)

NOTICE OF HEARING

MOTION TO STRIKE
DEFAULT JUDGEMENT

C-82-1822

---oo0oo---

Come now the above-named plaintiffs, by and through their respective counsel, Ronald C. Barker and Robert L. Lord, and move the court for an order striking the answer of the defendants in the above-entitled matter and entering judgment by default in favor fo plaintiffs and against defendants as follows, it appearing from the affidavit of Ronald C. Barker, and the transcript of the depositions scheduled for hearing on September 3, 1982 and the filed herein, as follows

1 That the defendant Roeck failed to submit to the taking of his deposition within the meaning of the order of this court dated August 19, 1982, wherein the Court ordered that the defendants produce certain documents on or before August 19, 1982, and that the defendant Roeck submit to the taking of his deposition on or before September 3, 1982 and

2 That the defendants failed to produce all of the documents

as ordered within the time required under the terms of that order or at all. See affidavit filed herewith

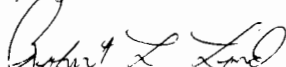
3. That after having appeared for the taking of his deposition that the defendant Roeck stated that the boat which is the subject matter of the lawsuit has been sunk and no longer exists, left the room where the deposition was being taken against the advice of his attorney, and refused to permit the deposition to continue or to be completed.

WHEREFORE, plaintiffs move the court for an order striking defendants' answer and counterclaim filed herein, for judgment by default for the relief therein requested, and for such other and further relief as the Court deems proper. This motion is made ex-party pursuant to the provisions of the Order of the Court entered herein about August 19, 1982.

Dated the 8th day of September, 1982.



Ronald C. Barker, attorney for
Synergetics



Robert L. Lord, attorney for
Addland Enterprises

ORDER AND JUDGMENT

Upon reading of the foregoing motion, the transcript of the partial deposition taken September 3, 1982, the affidavit of Ronald C. Barker filed in support thereof, having examined the file in this matter, it appearing to the satisfaction of the Court that the defendants have willfully failed to comply with the lawful orders of this Court and that the conduct of the defendants has frustrated attempted discovery by plaintiffs and has interfered with the orderly progress of this lawsuit, the Court being fully advised in the premises, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

4. That the answer and counterclaim of the defendants are hereby struck from the pleadings herein and the default of said defendants is hereby entered.

5. That judgment is hereby entered in favor of plaintiffs and against defendants, jointly and severally, in the sum of \$ _____, together with costs incurred herein in the amount of \$ _____, for a total judgment of \$ _____.

6. That the transaction wherein and whereby plaintiffs sold the boat mentioned in the pleadings to defendants is declared to be void and of no force or effect whatever by reason of the fraud and deceit practiced by defendants upon plaintiff as more particularly described in the pleadings herein; title to the following described boat (to the extent that the boat or its remains may exist) is hereby quieted in favor of plaintiff and against defendants and all persons claiming by, under or through defendants, or either of them, and that the plaintiffs are the owners thereof, free and clear of any and all claims of the defendants or of any person or organization claiming by, under or through the defendants, or either of them:

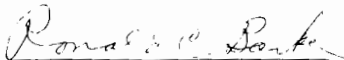
Dated the 8th day of September, 1982.

BY THE COURT:

District Judge

CERTIFICATE OF MAILING

I hereby certify that I caused a copy of the foregoing to be mailed, postage prepaid, the 8th day of September, 1982, to Joel R. Dangerfield, Esq., 340 East 4th South, Salt Lake City, Utah 84111.


Ronald C. Barker

THIRD JUDICIAL DISTRICT
County of Salt Lake - State of Utah

Synergetics
Marathon Ranching Co.

CASE NO. C 82-1822

Type of hearing Div _____ Annul _____ Supp Order _____ OSC _____ Other
Present Plaintiff _____ Defendant _____
P Atty R. Bunker _____ Summons _____ Stipulation _____
D Atty J. Dangerfield / R. Guss _____ Waiver _____ Publication _____
Sworn & Examined _____ Date of Pttf/Delt Entered _____
Pttf _____ Deft _____ Date 11/15/82
Judge PHILIP B. FISHLER
Clerk _____ Reporter KATHY GROTEPAS
Baillif _____ Bailiff SHARYN KELLY

ORDERS

GENE UNSWORTH

Custody Evaluation Ordered _____ Custody Awarded To _____
Visitation Rights _____

Pttf/Delt Awarded Support \$ _____ x _____ = _____ Per Month
Pttf/Delt 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
Pttf/Delt to Maintain Debts and Obligations
Pttf/Delt to Maintain Insurance on Minor Children
Restraining Order Entered Against _____
Pttf/Delt 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 Pttfs 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

ARGUMENTS

Based on written stipulation of respective counsel/motion of Plaintiff's counsel, court orders defendant
has 10 days to appear for his deposition
and is not to leave from the deposition
until counsel excuses him. Deft's have
10 days to produce documents.

NOV 3 1982

W. Sterling Evans, Clerk 3rd Dist. Court
By *Ruth J. [Signature]* Deputy Clerk

Ronald C. Barker
Attorney for plaintiff
2870 South State Street
Salt Lake City, Utah 84115-3692
Telephone 486-9636

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

---ooOoo---

SYNERGETICS, a Utah Limited Partnership, by and through its general partner, LANCER INDUSTRIES, INC., a corporation, and ADDLAND ENTERPRISES, INC.,

Plaintiffs,

vs.

MARATHON RANCHING CO., LTD., HANS W. ROECK and JOHN DOES #1 thru 10,

Defendants.

ORDER

C-82-1822

---ooOoo---

Plaintiffs' motion and supplemental motion to strike defendant's answer, for default judgment and/or for sanctions for failure to produce documents as ordered by the Court and failure to submit to the taking of the deposition of Hans W. Roeck, and motion to require boat to be placed in storage pending disposition of this case, defendants' motion for sanctions for failure of plaintiffs to respond to defendants' discovery and plaintiffs' objections to said discovery, came on regularly for hearing before the Honorable Phillip R. Fishler, District Judge, at the hour of 10:00 am on the 18th day of November, 1982. Plaintiffs Synergetics and Lancer Industries, Inc. appeared by and through their attorney, Ronald C. Barker. The defendants appeared by and through their

attorneys, Joel R. Dangerfield and Ronald W. Goss. Oral arguments were presented by counsel. The Court having considered arguments of counsel, memorandums of authorities submitted by counsel, being fully advised in the premises and good cause appearing therefor, it is hereby

ORDERED, as follows:

1. The issues pertaining to injunctive relief are deferred for a later evidentiary hearing to be specially scheduled before the Court. Counsel for plaintiffs is directed to present evidence at that time with respect to costs and expenses incurred in connection with attempted depositions, motions, etc. pertaining thereto. Award of attorney fees and costs are deferred to that hearing.

2. Defendants are ordered to produce the defendant Hans W. Roeck for the taking of his deposition at the office of counsel for plaintiff in Salt Lake City, Utah, within ten (10) days after the date of this hearing, to-wit: on or before November 29, 1982.

3. Defendants are ordered to produce for inspection and copying on or before November 29, 1982, all documents requested by counsel for plaintiffs in the request for production of documents submitted by plaintiffs under date of June 5, 1982.

4. In the event that defendants fail to comply with this order within said time the Court will feel compelled to strike defendants' answer and to enter judgment by default herein.

5. Plaintiffs are ordered to respond to defendants' discovery within fifteen (15) days from the date of said hearing, to wit: on or before December 3, 1982.

Dated the 29th day of November, 1982.

WEST
W. BERLING EVANS
CLERK
Deputy Clerk

BY THE COURT

Paul A. Sheen
District Judge

BY

Kathy Groves

FOREGOING PROPOSED ORDER APPROVED AS TO FORM:

Ronald C. Barker
Ronald C. Barker, attorney for plaintiffs
Synergetics and Lancer Industries, Inc.

Ronald W. Jones
Attorney for defendants

THIRD JUDICIAL DISTRICT
County of Salt Lake - State of Utah

Philip R. Fishler
 Plaintiff
 vs
Gene Unsworth
 Defendant

CASE NO CS2-1322

Type of hearing Div _____ Annul _____ Supp _____ Order _____ OSC _____ Other

Present Ptt Dft Summons _____ Stipulation _____
 Waiver _____ Publication _____
 P Atty *R. Fishler* Dft Default of Ptt/Dft Entered _____
 D Atty _____ Date *12/29/13*
 Sworn & Examined _____ Judge **PHILIP R. FISHLER**
 Ptt _____ Dft _____ Clerk: **KATHY GROTEPAS**
 Others _____ Reporter: **SHARYN KELLY N/P**
 Bailiff: _____

GENE UNSWORTH

ORDERS

Custody Evaluation Ordered Custody Awarded To _____
 Visitation Rights _____

Ptt/Dft Awarded Support \$ _____ x _____ = _____ Per Month
 Ptt/Dft 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
 Ptt/Dft to Maintain Debts and Obligations
 Ptt/Dft to Maintain Insurance on Minor Children
 Restraining Order Entered Against _____
 Ptt/Dft 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 Dft to appear in response to an order of the court and on motion of Ptt's counsel, court orders _____ shall issue for Dft _____
 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~~ *stipulation* of respective counsel/motion of Plaintiff's counsel, court orders _____
with motion to strike answer + enter default judgment is granted

THIRD JUDICIAL DISTRICT
COUNTY OF SALT LAKE - STATE OF UTAH

FILE NO. CS2-1522

Plaintiff
vs
Defendant
Mountain Ranching

Attorney Present
Ronald C. Barker
Robert S. Lord
Montgomery Jones
Ronald Suss

Plaintiff
vs
Defendant
Crotapas

JUDGE
Hon. Philip Fisher
DATE February 14, 1983

Based upon the Court's own
motion, the Court orders a hearing be
held on defendant's objections to the
proposed order. This hearing is
scheduled for Wednesday, February 23,
1983 at 1:30 p.m.

THIRD JUDICIAL DISTRICT
 COUNTY OF SALT LAKE - STATE OF UTAH

FILE NO C 82-1822

TITLE: (✓ PARTIES PRESENT)

COUNSEL: (✓ COUNSEL PRESENT)

Synergetics	:	Ronald Barker
vs	:	Robert L. Lord
Marathon Ranching	:	Montgomery Jones
	:	Ronald Goss

Kathy Grotepas

CLERK

HON. Philip Fishley

REPORTER

DATE February 23, 1983

BAILIFF

Based on the Court's own motion,
 the Court orders the hearing on defendant's
 objection to proposed order is continued to
 Friday, February 25 1983 at 1:30 p.m.

called counsel February 23 1983

FILE

THIRD JUDICIAL DISTRICT
COUNTY OF SALT LAKE - STATE OF UTAH

FILE NO. C 82-1822

(✓) PARTIES PRESENT	:	COUNSEL:	(✓) COUNSEL PRESENT
Synergetics	:		Robert Jones ✓
vs	:		Ronald Barker ✓
Marathon Ranching	:		Joel Dangerfield ✓
	:		Montgomery Jones N/P
	:		Ronald Goss ✓

Kathy Grotapas
 Sharlyn Kelly
 June Unsworth

CLERK
 REPORTER
 BAILIFF

HON. Philip Fishler
 DATE: February 25, 1983

JUDGE

Defendants objection to a proposed order comes now on regularly before the Court. Appearances as shown above. Based upon requirements, the Court orders judgment may enter for damages upon the filing of appropriate affidavits concerning punitive and actual damages. Title of the boat is vested in the plaintiff, but no lien may be asserted in the judgment on Canadian property.

MAR 14 1983

H. Dixie Hinder, Clerk 3rd Dist. Court
By *K. Ojeda* Deputy Clerk

Ronald C. Barker
Attorney for plaintiff
2870 South State Street
Salt Lake City, Utah 84115-3692
Telephone: (801) 486-9636

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

---oo0oo---

SYNERGETICS, a Utah Limited Partnership, by and through its general partner, LANCER INDUSTRIES, INC., a corporation and ADDLAND INDUSTRIES, INC.,)

Plaintiffs,)

vs.)

MARATHON RANCHING CO., LTD., HANS W. ROECK and JOHN DOES #1 through 10,)

Defendants.)

*Bk 177 No 2515
3-14-83 8:01 A.M.*

JUDGMENT

C-82-1822

---oo0oo---

Plaintiffs' motion for an order striking the answer of the defendants in the above-entitled matter and for entry of judgment by default in favor of plaintiffs and against the defendants Marathon Ranching Co., Ltd. and Hans W. Roeck, and for an order dismissing defendants' counterclaim pursuant to the provisions of Rules 37(b)(2)(C), URCP, and other applicable Rules, for failure to comply with various orders of the Court compelling production of documents and requiring Hans W. Roeck to appear individually and as an officer of Marathon Ranching Co., Ltd. for the taking of his deposition, came on regularly for hearing before the Honorable Philip R. Fishler, District Judge, at the hour of 2:00 p.m. on the

29th day of December, 1982. Plaintiffs were represented by Ronald C. Barker and defendants were represented by Ronald W. Goss.

Oral arguments were presented by counsel for the parties. The Court having considered said arguments and the matters on file herein, including various orders compelling discovery and the order made pursuant to the hearing held November 18, 1982 (dated November 29, 1982), which required the defendant Hans W. Roeck to appear at the office of counsel for plaintiff in Salt Lake City, Utah, for the taking of his deposition on or before November 29, 1982, and which compelled the defendants to produce all documents requested in plaintiffs' request for production of document dated June 5, 1982 on or before November 29, 1982 under penalty of the striking of defendants' pleadings in the event of failure to comply, counsel for defendants having admitted in open Court that the defendants have failed to comply with the requirements of that order, and good cause appearing, it is hereby

ORDERED, ADMITTED AND DECREED as follows:

1. That the answer and counterclaim of the defendants on file herein are hereby struck and the default of said defendants is hereby entered in accordance with the provisions of Rules 37(b)(2)(C), FRCP, and other applicable rules, for failure to submit to discovery and to comply with lawful orders of the Court compelling discovery.

2. That plaintiffs are hereby awarded judgment against defendants Marathar Ramalingam, et al. for the amount of \$100,000.00 and

and severally, in the sum of \$352,000.00 damages for conversion of the vessel mentioned below, provided however, that upon prompt return of said vessel in good condition and state of repair and upon application of the defendants to the Court for an order allowing credit, the Court may order that this portion of the judgment shall be deemed to have been satisfied; however, if said vessel is not returned promptly or is not returned in good condition or state of repair, the Court reserves for later hearing and determination the amount of credit to be allowed against this portion of the judgment for the return of the vessel.

3. That the plaintiffs are the owner of an ocean going vessel known as the "ENTERPRISE", hull serial number WNZ G03550275, Serical number GM 256A, length 53.9 feet, Builders Hull No. W0151, built in 1975, which vessel is a sail boat with an oil screw, and is the subject matter of various contracts and agreements between some of the parties hereto, including an agreement of May 23, 1980, between Marathon Ranching Co. Ltd. by Hans W. Roeck, President of Addland Enterprises Inc., a California Corporation, by Constance T. Sutton, Treasurer, and a bill of sale to said vessel dated May 23, 1980, and the agreement of March 17, 1981. Title to said vessel is hereby quieted in plaintiffs against the claims of defendants and all persons claiming by, under or through the defendants.

4. Defendants Marathon Ranching Co., Ltd. and Hans W. Roeck are ordered to forthwith return the vessel described in ¶ 2 above to plaintiffs and to execute such documents as are necessary or

convenient to re-register said vessel in the names of plaintiffs or their nominee.

5. Plaintiffs are awarded damages against the defendants Marathon Ranching Co. Ltd. and Hans W. Roeck of \$100,000.00 for the rental value of said vessel during the period while it was being used and detained by defendants.

6. For punitive damages against the defendants Marathon Ranching Co. Ltd. and Hans W. Roeck of \$200,000.00 based upon fraud and misrepresentations by said defendants.

7. Any and all contracts and agreements between plaintiffs, or any of them, and defendants, or any of them, are hereby declared to be rescinded and void so far as the obligations of plaintiffs thereunder are concerned.

8. Plaintiffs are awarded their costs incurred herein upon filing of an appropriate memorandum of costs.

Dated the ^{14th} 3rd day of March, 1983.

BY THE COURT:

ATTEST
H. DIXON HINDLEY
CLERK
By K. Grotedal
Deputy Clerk

Paul R. Fisher
District Judge

I hereby certify that on the 3rd day of March, 1983, I caused a copy of the foregoing to be mailed, postage prepaid, to each of the following persons at the addresses indicated:

Joel Dangerfield, Esq. and Ronald W. Goss, Esq.
340 East Fourth South, Salt Lake City, Utah 84111

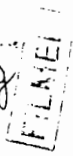
Mr. W. Montgomery Jones, Esq.
1340 Munras Avenue, Monterey, California 93940

Ronald C. Barker

Ronald C. Barker
Attorney for plaintiff Synergetics & Lancer
2870 South State Street
Salt Lake City, Utah 84115-3692
Telephone 486-9636

Dir 23 2 19 11 1972

W. Mrs. Youngberg



Robert L. Lord
Attorney for Addland Enterprises, Inc.
431 South 300 East #444
Salt Lake City, Utah 84111
Telephone 325-4241

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

---ooOoo---

SYNERGETICS, a Utah limited)
partnership, by and through)
its general partner, LANCER)
INDUSTRIES, INC., a corpora-)
tion, and ADDLAND ENTERPRISES,)
INC.,)

Plaintiffs,)

vs.)

AMENDED COMPLAINT

MARATHON RANCHING CO., LTD.,)
HANS W. ROECK and JOHN DOES)
#1 thru 10,)

Defendants.)

---ooOoo---

Come now the plaintiffs, pursuant to the provisions of Rule 15(a), URCP, and amend their complaint on file herein, the defendants having failed to answer or to file a motion for summary judgment herein, said complaint having not heretofore been amended by plaintiffs. The body of the complaint is hereby amended to include the following additional allegations:

5. The Court has jurisdiction over the defendants under the Utah Long Arm statute, 78-22-25, et seq., for the following reasons:

(a) Jurisdiction established under the Utah Act may be exercised by the Utah Courts regardless of when the claim arose, as provided by 78-27-28.

(b) Defendants have had significant minimal contacts with the State of Utah as indicated below. The policy of the statute (as declared in 78-27-22, UCA, 1953) is to "ensure maximum protection to citizens of this state (the provisions of this act) should be applied as as to assert jurisdiction over nonresident defendants to the fullest extent permitted by the due process clause of the United States Amendment to the United States Constitution."

(c) Defendants have "transacted" business within the State of Utah within the meaning of 78-27-24(1), UCA, 1953.

(d) Defendants have by their acts and omissions been responsible for the "causing of any injury within this state whether tortious . . ." within the meaning of 78-27-24(3), UCA, 1953.

6. The acts done by defendants which resulted in said "minimal contacts" in the State of Utah; constituted the "transacting of business" in the State of Utah; and which resulted in "injury within this state" include but are not limited to the following acts by defendants:

(a) Prior to execution of the agreement of May 23, 1980, (copy attached to defendants' memorandum of April 14, 1982) the defendant Roeck, acting for himself and for Marathon Ranching Co., Ltd. ("MARATHON") made several telephone calls to offers and agents of the plaintiffs Synergetics and Lancer into the State of Utah, to discuss the transaction which is the subject matter of plaintiffs' complaint herein. Said telephone calls were a part of the plan and scheme to defraud the plaintiffs as alleged in the original complaint herein. Most or all of the misrepresentations alleged in the original complaint herein were made by Roeck to persons in the State of Utah who represented Synergetics and Lancer during said telephone conversations.

(b) After execution of said agreement of May 23, 1980, and as a part of the plan and scheme to defraud the defendant Roeck came to the State of Utah and engaged in negotiations to change the terms of the agreement of May 23, 1980. Roeck, while acting for himself and as agent of Marathon Ranching Co., Ltd. negotiated, drafted and signed a new agreement dated March 17, 1981, modifying the terms of the May 23, 1980, agreement. A copy of said agreement of March 17, 1981, is attached hereto as exhibit "I" and is made a part hereof by reference thereto.

(c) Defendant Roeck has from time to time, as a part of said plan and scheme to defraud, made numerous telephone calls to agents of Synergetics and Lancer in the State of Utah, following execution of the May 23, 1980, agreement, and both before and following the March 17, 1981, agreement, and has written various letters


to said organizations in the State of Utah, including but not limited to a letter of November 24, 1981, a copy of which is annexed hereto as exhibit "II" as a part of defendants' said plan and scheme to defraud plaintiffs.

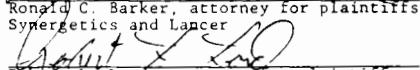
(d) Defendant caused purported title to certain real property in Canada to be sent to plaintiffs Synergetics and Lancer in Utah, as a part of defendants' plan and scheme to defraud. A copy of Roeck's letter directing a Canadian attorney to forward said title (Caveat) to be mailed to said plaintiffs in Utah is attached hereto as exhibit "III". A copy of a letter from Roeck mailed to said plaintiffs in the State of Utah concerning said title is attached as exhibit "IV."

(e) Defendant Roeck, as part of his plan and scheme to defraud plaintiffs, sent a telegram into the State of Utah on or about June 10, 1981, a copy of which is attached hereto as exhibit "V."

WHEREFORE, plaintiffs pray for judgment as requested in their original complaint herein.

Dated the 23rd day of April, 1982.



Ronald C. Barker, attorney for plaintiffs
Synergetics and Lancer


Robert L. Lord, attorney for plaintiff
Addland Enterprises, Inc.

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

ROBERT D. KENT, JR., being first duly sworn, on his oath deposes and says at all times material herein he was an officer and agent of the plaintiffs Synergetics and Lancer Industries, Inc. and has personal knowledge of the matters alleged in this affidavit and according is competent to testify with respect to said matters. that each of the following statements is true of his own knowledge except for statements made on information and belief and as to each such statement he believes it to be true:

1 That he has read the original complaint and the first amended complaint in the above-entitled matter and is familiar with the statements of fact contained therein: that

each of said statements is true of his own knowledge except as otherwise noted.

2. That he has talked by telephone with the defendant Hans W. Roeck on numerous occasions while Affiant was in the State of Utah, many of which calls came from Roeck who stated that he was calling from California, Canada and other places, that the subject matter of said telephone conversations related to the transactions mentioned in the original complaint herein, and included many of the representations alleged to have been misrepresentations in the original and amended complaints herein.

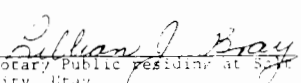
3. That Affiant was present when the agreement of March 17, 1981, was negotiated, drafted by Roeck, and signed by Roeck, all of which occurred in the State of Utah. Affiant signed said agreement, exhibit "I" hereto, in the State of Utah.

4. The documents, copies of which are annexed hereto as exhibits "II," "III," "IV," and "V" were received by Affiant as a part of his duties for plaintiffs Synergetics and Lancer and were obtained by Affiant from the records of said corporation, that said documents are part of the business records of said plaintiffs which are kept in the usual course of the business of plaintiffs and are a part of their business records.

Dated the 23rd day of April, 1982.



Robert S. Kent, Jr.

Subscribed and sworn to before me the 23rd day of April, 1982.


Notary Public residing at Salt Lake City, Utah

My commission expires: 2-1-85

I hereby certify that I caused a copy of the foregoing to be delivered the 23rd day of April, 1982, to the office of William G. Fowler and Joel R. Dangerfield, Esq., 450 East 4th South, Salt Lake City, Utah 84111


Ronald C. Barker

AGREEMENT RE THE 160 ACRES OF LAND AT HELENE LAKE, SASKATCHEWAN

*Spec
importance*

Made this 17th day of March, 1981, between the Seller and Purchaser of the sailing ketch "Enterprise", i.e., Synergetics, A Utah Limited Partnership and Marathon Ranching Co., Ltd.,

WHEREAS, Marathon Ranching Co., Ltd., or their agent or assign has deeded 160 acres of land, legally described as:

NW 1/4 of S13 T5S2 R16 W3rd

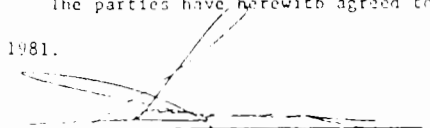
in the course of the boat transaction (sale), to Synergetics, on or about May 23, 1980, and whereas Synergetics in turn has given to Marathon Ranching Co., Ltd., an option to repurchase said lands for the sum of \$100,000.00, AND

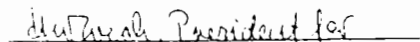
WHEREAS, it has now become necessary for Marathon Ranching Co., Ltd. or their agents and assigns to deal with these lands in preparation for a subdivision and other investors' participation,

IT IS THEREFORE HEREWITH granted by Synergetics to Marathon Ranching Co., Ltd., or their agent or assign to deal with these lands in any way necessary and fit, as long as Synergetics will not lose or have diminished their right to the \$100,000.00.

IT IS HEREBY FURTHER AGREED by the parties hereto, that, overriding and negating all previous agreements, the only lands to be encumbered by the boat "Enterprise" transaction shall be the: NW 1/4 of S13 T5S2 R16 W3rd. A new Caveat shall be drawn and recorded and the old Caveat showing the: NE 1/4 S13 T5S2 R16 W3rd shall be voided and deeded back to Marathon Ranching Co., Ltd.

The parties have herewith agreed to the above this 17th day of March, 1981.


SYNERGETICS, A Utah Limited Partnership


Marathon Ranching Co., Ltd.

and Y.M.S., A Utah Partnership

001 Exhibit
"11"

H.W. Roeck
P.O. Box 1070
Pebble Beach, CA 93953 USA

NOV 30 1981

November 24, 1981

Mr. Robert Kent
c/o Y. M. S. & Synergetics
P. O. Box 11838
Salt Lake City, Utah 84147

WITHOUT PREJUDICE

Dear Bob:

I am writing this letter to you in order to effect a possible settlement of our affairs.

Before I make this proposal I like to point out, that the attitude of the parties that represent an interest in the boat and their claims, that the boat was stolen and then the boat should be surrendered with forfeiture of all the monies, time, effort and material and the trade object being forfeited, has made me, to say the least, very passive.

I have put out my best effort to resell the boat and found this to be next to impossible. I do not think that you or your associate will have very much success in trying to help with the sale, either. The market for selling a sail boat such as this is as good as dead with little prospect of a sale in the future.

As far as a settlement goes, I can propose the following: You will remember that you had given me free reign to deal with the property you traded for on the boat and I have now succeeded in subdividing the same. A good friend of mine is Justice of the Peace in the North Battleford area and has been of great help in doing so. I presume he had the right connections to achieve this.

I am preparing now a brochure entailing a description of the land together with a plat map to start selling this subdivision, which should produce a gross profit of \$320,000.00 per one quarter section. This will amount to \$2,000.00 per acre and, since the acreage is going to be depicted as survival acreage, this is a most reasonable price. Consider that the acreage will be sold in 10 acre plots for only \$20,000.00 total. I will then take 10% down payment, which is \$2,000.00 and will finance the balance of \$18,000.00 over a period between three (and for five years) at only 10% interest. The lump sum of \$18,000.00 will have a due date in 3 years and will have an amortization for a 30 year period, which would make payments on the purchaser very easy.

The marketing of this land can be done mostly by mail and the interested purchasers can travel into North Battleford, either by car or by air plane where an experienced realtor will drive them to the site and show the 10 acre plot.

The lake shore frontage features, as you know, a sandy beach and will be reserved in part for joint usership. A boat dock will be installed where the purchasers can keep their boat.

My proposal now for a settlement with you and the other interest holders is to the extent, that the company deed to you free and clear of any encumbrances this subdivided land in the form of two one quarter sections and whereby the parties then will release each other from any further claims whatsoever. The interest holders in the boat 'Enterprise' could then easily pay off General Electric from the incoming sales proceeds from that subdivision.

Let me hear from you in writing your thoughts in this matter and that of you interest holders.

Hoping that all is well with you and your family.

Yours very truly,

Haws.

Hans W. Roock

DUTCH CREEK HOLDINGS, LTD.
P. O. Box 7129
CARMEL BY THE SEA, CALIFORNIA 93921 U.S.A.

MEMO
LETTER

Date: 10 9-80

to Andrew Hawrish, Barrister and Solicitor,
605 Investors Bldg.
Saskatoon, Sask. S7K 0J3
Canada

Subject: Caveat registration
boat vs. land trade

Dear Andrew:

Your last letter of June 17th., 1980 (copy of which is attached) deals with Robert Kent to sign the caveat you prepared to secure the land for him. I met with Mr. Kent and today here in Monterey and he asked me about the whereabouts of the caveat. Please be so kind to mail him the caveat to Salt Lake City for his file. I discussed with him the removal of the liens on the title of the lands he took into trade and that there was no rush as long as it is done eventually.

Hoping to see you before too long, I remit my kind regards:

Yours very truly:

Hans W. Roeck
Hans W. Roeck

Copy of this letter to Robert Kent, JR. P.O. Box 11838, Salt Lake City, Utah, 84143

Please reply

No reply necessary

SIGNED

DUTCH CREEK HOLDINGS, LTD.
P. O. Box 7129
CARMEL BY THE SEA, CALIFORNIA 93921 U.S.A.

Memo
LETTER

Date 10-10-80

Subject

Mr. Robert Kent,
P.O. Box 1138,
Salt Lake City, Utah, 84147

Dear Bob and Bud:

It was nice seeing you again in the Monterey area and having dinner with you both and getting our business at hand furthered.

I hope that you got out with the proper flight. I wrote that letter requesting the caveat from Andrew Hawrish right away and am attaching a copy of it for your convenience and reference. I also attach Hawrishes' letter of June 17th. 1980 for your file though you should be in possession of this one.

I hope that you take care of informing Addland Enterprises, Inc., as you want me to deal with Synergetics only, from now on.

Kind regards, until we see again.

Hans

Hans

Please reply

No reply necessary

SIGNED

PRINTED FROM **CEAR** INC. Townsend, Mass 01460

008

Exhibit
"77"

SLB083(1450)(4-0423405161)PD 06/10/81 1450

ICS IPMRNCZ CSP

4086252715 TDRN PEBBLE BEACH CA 55 06-10 0250P EST

PMS ROBERT KENT RPT DLY MGM, DLR

244 WEST 300 NORTH

SALT LAKE CITY UT 84147

DEAR BOB, I HAVE BEEN CONTINUOUSLY TRYING TO SELL THE BOAT BUT HAVE NOT BEEN SUCCESSFUL SO FAR. I WILL SEE YOU WITHIN 7 TO 10 DAYS FROM JUNE 10 IN SALT LAKE CITY TO SOLVE OUR DIFFERENCES. SORRY FOR THE DELAY AS I HAVE BEEN ON THE ROAD MOST OF THE TIME. YOURS TRULY

HANS W ROECK

PO BOX 7129

CARMEL CA 93921

NNNN

JUN 10

8F-1201 (RS-09)

6/11

Salem

Call / Mr.

Stray

714-222-0548

GECC - house

Financing

Co

H.H. Condit

6/19

ROCK

DLR

IN THE SUPREME COURT OF THE STATE OF UTAH

-----ooOoo-----

Empire Corporation,
Plaintiff and Respondent,

No. 16237

v.

F I L E D
January 3, 1980

Empire Credit, Inc.,
Defendant,

Ed T. Olsen and Marlene Sine,
Defendants and Appellants.

Geoffrey J. Butler, Clerk

PER CURIAM:

Defendants and appellants, Ed. T. Olsen and Marlene Sine, seek reversal of the trial court's order denying their motion to vacate the judgment, and a remand of the case to the District Court of Salt Lake County with directions to vacate the judgment and set the matter for trial.

On August 21, 1972, Empire Corporation filed a complaint against Empire Credit, Inc., Ed T. Olsen, and Marlene Sine, in which it was averred that Empire Credit, Inc., had executed a \$50,000 note in favor of Valley Bank and Trust Company, that only \$8,000 had been paid on it, and that prior to the commencement of the action Valley Bank and Trust Company had sold and assigned to Empire Corporation all of the bank's right, title and interest in the note.

In a second claim, Empire Corporation averred that defendants Olsen and Sine were "officers, directors and sole stockholders" of Empire Credit, and that Empire Credit was the alter ego of the individual defendants, making them jointly and severally liable on the note.

In a third claim, Empire Corporation averred that defendants Olsen and Sine having caused or permitted the corporate charter of Empire Credit to be suspended and having withdrawn the assets of the corporation for their own benefit, they were liable to Empire Corporation, a creditor, for the amount of the note. Judgment was demanded for \$45,500, with interest at 7 percent per annum from October 10, 1966, and for a reasonable attorney's fee in the sum of \$8,000, and for costs.

During the course of the proceedings, motions to dismiss, for leave to file a third party complaint, to dismiss the third party complaint, together with an answer to the

complaint were filed. The record, which does not include any transcript of testimony, is made up almost entirely of interrogatories, partial answers thereto, and motions for sanctions, and of judgments, motions, and memorandums related to them and totals 446 pages.

Finally, on July 30, 1976, the defendants' answer was stricken as a sanction for failing and refusing to answer the interrogatories submitted to them by the plaintiff, and their default was entered. Thereafter, to wit: on August 17, 1976, a default judgment which had been granted was set aside and the defendants were given 15 days in which to answer the interrogatories.

No answers to interrogatories were filed and on October 19, 1976, the court ordered, after a hearing, that the answer of the defendants be stricken and judgment be entered against them for the sum of \$84,760.28 together with costs incurred in the amount of \$26.50.

Thereafter affidavits, motions and counter motions were filed and on December 30, 1976, the court ordered that the judgment entered on October 19, 1976 be vacated and set aside on condition that defendants pay plaintiff \$1,000 for the use and benefit of its counsel and that they answer fully the interrogatories and requests for admission, and that they produce the documents which had lawfully been demanded of them; and in the event that they fail to comply with the conditions set out within 30 days, the motion to vacate the judgment would be denied. Defendants failed to comply with those conditions.

On January 18, 1977, the defendants filed their answer to the complaint of plaintiff which had been filed August 21, 1976. They also filed further answers to interrogatories.

Other motions were made, affidavits were filed and finally on July 18, 1977, the court ordered the defendants, within 10 days, to produce for inspection, etc. copies of tax returns. Other motions were made and on November 27, 1977, the court again ordered the defendants to fully comply with the terms of the order re: interrogatories, within 20 days and in the event they fail to do so the judgment entered October 19, 1976 would be confirmed. Further motions to set aside the judgment were made and argued. On January 8, 1979, an order was made denying all motions to set aside and vacate the judgment and the defendants now appeal from that order.

The matter of setting aside a judgment is a matter of discretion and this Court will not interfere with such matters unless an abuse of discretion on the part of the
No. 16237

trial judge is made to appear. Here the judges throughout the years this proceeding has been pending have exercised great patience and extended reasonable opportunities for the defendants, through their four successive attorneys to comply with court orders. Though it is true that the courts should be indulgent in setting aside default judgments to the end that controversies be resolved on their merits, it is also true that there must be an end to such patience and indulgence. Upon the basis of the circumstances shown in this record, we are not persuaded that the trial court abused its discretion in refusing to grant the motion to set aside the judgment.

Affirmed. Costs to plaintiff (respondent).

This opinion is not regarded as adding anything significant to existing law and hence is not to be published in the Utah Reporter or Pacific Reporter.

Maughan, Justice, having disqualified himself does not participate herein.