

1992

Walter P. Larson and Sybil Larson v. Stephen P.
Bruno, Dennis W. Gay, James Hogle, Jr., and Owen
C. Hogle et al. : Brief of Appellant

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

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IN THE UTAH COURT OF APPEALS

WALTER P. LARSON and SYBIL LARSON,)

Plaintiffs and Appellants,) APPELLANTS' BRIEF

v.)

Case No.

STEPHEN P. BRUNO, DENNIS W. GAY,
JAMES HOGLE, JR., and OWEN C.
HOGLE, et al.,)

92-0879-01

Priority No. 16

Defendants and Appellees.)

APPEAL FROM AN ORDER GRANTING A MOTION FOR SUMMARY JUDGMENT
DISMISSING PLAINTIFFS' CLAIM BY THE THIRD JUDICIAL DISTRICT
COURT, SALT LAKE COUNTY, STATE OF UTAH, JUDGE RICHARD H.
MOFFATT, PRESIDING.

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and Owen C. Hogle

FILED

DEC 31 1992

COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

WALTER P. LARSON and SYBIL LARSON,)
Plaintiffs and Appellants,) APPELLANTS' BRIEF
v.) Case No.
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STATEMENT OF JURISDICTION

Jurisdiction of this appeal rests with the Utah Supreme Court under Utah Code Annotated Section 78-2-2(3)(j). Pursuant to the authority vested in that court, the case was poured-over to this Court on December 24, 1992.

STATEMENT OF THE ISSUES

Did the trial court err when it granted the motion for summary judgment, dismissing as defendants James Hogle, Jr. and Owen C. Hogle [hereinafter "appellees"], in spite of appellees' failure to demonstrate that there was no genuine issue of material fact and that they were entitled to judgment as a matter of law. In reviewing the trial court's ruling, this Court must view all facts and inferences in light most favorable to appellants and give no deference to the trial court's legal conclusions. Krantz v. Holt, 819 P.2d 352 (Utah 1991). See also Sanderson v. First Security Leasing Company, 201 Utah Adv. Rep. 18, 19 (1992).

DETERMINATIVE STATUTES

This appeal arises out of the trial court's granting of a motion for summary judgment making Rule 56 of the Utah Rules of Civil Procedure the determinative statute. That Rule is set forth verbatim in the addendum.

STATEMENT OF THE CASE

1. NATURE OF THE CASE. This is an appeal from the Judgment and Order entered on July 7, 1992, granting appellees' motion for summary judgment.

2. COURSE OF PROCEEDING. The appellants filed their original complaint on July 27, 1983. In that complaint appellants alleged a claim based upon breach of contract and negligent misrepresentation. R. 2-5 On June 8, 1984, appellants filed an amended complaint wherein they essentially alleged the same claims as in their original complaint. R. 106-110 On August 30, 1988, the trial court granted appellees' motion for partial summary judgment dismissing the appellants' claim based upon negligent misrepresentation. R. 325-326 On October 7, 1988, the trial court apparently granted appellees' motion for summary judgment by ruling that appellees could not, as a matter of law, be held liable as principals and therefor should be dismissed as defendants. R. 436 Then, a mere four days later, on October 11, 1988, the trial court ordered the case to proceed to trial. R. 437 After further delays, on March 14, 1989, the trial court entered an order allowing appellants to file an amended complaint restating the first two causes of action and adding a third cause of action based upon fraud because the "complaint states a cause of action on its face". R. 581-582. On December 12, 1989, the trial court once again denied appellees' motion for summary judgment. R. 715-716 On February 28, 1990, the trial court in a minute entry ruled that "the facts [are] not so certain that a Summary Judgment could be granted as a matter of law." R. 735-736 Finally, the trial court, reversing its prior orders, entered an order granting appellees' motion for summary judgment. R. 891

3. DISPOSITION BY THE TRIAL COURT. On July 7, 1992, the the trial court entered an order granting of appellees' latest motion for summary judgment. It is from this order¹ that the appellants are appealing.

RELEVANT FACTS

1. That the appellants were the owners and operators of an automobile dealership known as Larson Ford Sales [hereinafter "Larson Ford"] which declared Chapter 11 bankruptcy in 1982.

2. That in January 1983 appellants were approached by Stephen P. Bruno and Dennis Gay [hereinafter "Bruno and Gay" respectively] regarding the sale of Larson Ford. R. 883

3. That Bruno and Gay were later identified as agents acting for and on behalf of appellees. R. 883 In fact, appellees personally told appellants that Bruno and Gay would be working with appellants to effectuate the transfer of Larson Ford from appellants to appellees. R. 884 That during all negotiations with Bruno and Gay, appellants were told that Bruno and Gay were acting for and on behalf of appellees. R. 883

4. That on January 15, 1983, Walter Larson attended a meeting with Bruno, Gay, and James Hogle, Jr. and was told

1. The trial court entered a minute entry dated June 12, 1992, indicating that appellees' latest motion for summary judgment had been granted. R. 891 Apparently an order was entered on or about July 7, 1992. However, at the time of the drafting of this brief such order had not been made part of the record. Although there is no dispute between the parties that such an order was entered.

that the defendants (appellees, Bruno and Gay) were all principals of the earnest money offer made for the purchase of Larson Ford. R. 884

5. That in February 1983 Walter Larson personally gave the appellees a guided tour of the entire Larson Ford dealership. During this tour, Larson answered all of the appellees' questions concerning the dealership and, once again was told by appellees that Bruno and Gay would be working with appellants to effectuate the details of appellees' takeover of Larson Ford. R. 884

6. That on January 7, 1983, Wardley Real Estate Company approached Walter Larson to obtain a listing agreement to sell Larson Ford. R. 637 On January 13, 1983, an earnest money offer was made to Wardley for the purchase of Larson Ford by Western Slope Development. That offer was subject to certain conditions. R. 637, 652-653

7. That on February 4, 1983, an earnest money receipt and offer to purchase Larson Ford was signed by Bruno, Gay and assigns. R. 638

8. That during a meeting on February 18, 1983, attended by all appellants and appellees it was agreed that all the contingencies under the February 4, 1983, offer were to be removed by February 25, 1983. R. 638, 884

9. That in February 1983, during a meeting at Larson Ford attended by Walter Larson, Bruno, Gay, and Owen Hogle, Walter Larson was informed that the appellees, through their attorneys, were communicating with the bankruptcy court concerning a possible loan to Larson Ford. R. 884 At the

time the appellees entered into the agreements to purchase Larson Ford from appellants, as debtors in possession, Larson Ford was in Chapter 11 bankruptcy. R. 636

10. That appellees continued to visit Larson Ford. In fact, it was common knowledge at the dealership that appellees were purchasing Larson Ford. R. 884

11. That on March 2, 1983, appellees along with their agents, Bruno and Gay, signed a Finders Fee agreement wherein they agreed to pay Wardley Corporation \$75,000.00 for the purchase of Larson Ford. R. 668, 885

12. That in March 1983 Owen Hogle, and others, informed Walter Larson that they had hired a general manager for Larson Ford. R. 638-639, 885

13. That on March 5, 1983, an Agreement in Escrow was executed by Walter Larson and HBGH, Inc., an intended corporation. That Agreement expressly incorporated the terms and conditions of the February 4, 1983, Earnest Money Receipt and Offer. R. 639, 670-672A, 885

14. That on March 11, 1983, following the instructions of Owen Hogle, Walter Larson deposited all outstanding shares of Larson Ford into escrow. R. 886

15. That on March 14, 1983, Owen Hogle re-hired all the employees of Larson Ford and assumed all responsibility for and the operation of Larson Ford. In fact, Owen Hogle conducted a "Going out for business" sale. Owen Hogle paid employees and assumed the role of an owner and operator of Larson Ford. R. 886-887

16. That appellees represented to the United States

Bankruptcy Court that they were purchasing Larson Ford. R. 886-887, 880

17. That Owen Hogle and Gay filed personal financial statements with the Bankruptcy Court. Furthermore, these documents refer not only Owen Hogle as one of the investors in the purchase of Larson Ford, but a certain anonymous investor who had cash reserves available of half a million dollars (James Hogle, Jr. certainly has such wealth). R. 640, 887

18. That after executing agreements and leading appellants to believe that appellees were purchasing Larson Ford, appellees failed to support Larson Ford's bankruptcy plan, failed to negotiate with Ford Motor Company, failed to substitute collateral agreements with various banks to which Larson Ford owed money, failed to supply needed capital to Larson Ford, and failed to subsequently execute other agreements to fully carry out the terms of the March 5, 1983, agreement. R. 888-889

19. That appellees made no effort to contact the creditors of Larson Ford or Ford Motor Company. R. 889 And, prior to the approval of an alternative plan in the bankruptcy court, appellees withdrew their support of Larson Ford's bankruptcy plan and abandoned Larson Ford. R. 890

SUMMARY OF ARGUMENT

Some of the cases presented to this Court involve questionable issues of either facts or law. Some cases presented to this Court actually involve clear issues with

obvious solutions. Unfortunately, some cases presented to this Court should not be in this Court. This case is one which should not even be considered by this Court.

The trial court in this case was unable to clearly resolve the issues presented to it and decisively rule. And, when the trial court finally made a decision, the decision was wrong.

The appellants have alleged that the appellees breached a contract, were guilty of making negligent misrepresentations and committed fraud.

The appellees were in fact very clever in stealing appellants' business. The appellees did not personally sign any contracts. Instead, they had their acknowledged agents sign on appellees' behalf. Then appellees successfully argued to the trial court that they could not breach a contract they did not personally sign. Of course, this Court will not trip over such a specious argument. Appellees should be and are liable for the actions of their agents. This includes being subject to a lawsuit based upon the breach of such contract.

Appellees were not so clever in the negligent misrepresentations and fraud they committed. First, they personally told appellants that appellants were dealing with appellees' agents in effectuating the sale of Larson Ford. Second, appellees represented to the United States Bankruptcy Court that they were purchasing Larson Ford from appellants. Third, appellees actually took over the daily operation of Larson Ford.

The appellees' misrepresentations and fraud were not the

product of smoke and mirrors but of bold face lies. Shockingly, the trial court refused to recognize that appellants had raised issues of fact and that appellees were not entitled to a judgment as a matter of law.

This Court must not be misled by appellees and their arguments nor must this Court be deceived by the trial court's error. Instead, this Court must view all facts and inferences in light most favorable to appellants and it must accord no deference to the trial court's legal conclusions. In so doing, this Court will correct the trial court's error and remand this case to the trial court for a trial.

ARGUMENT

I.

THE TRIAL COURT ERRED WHEN IT GRANTED APPELLEES' MOTION FOR SUMMARY JUDGMENT.

Rule 56(c) of the Utah Rules of Civil Procedure provides, in part, that a summary judgment shall be granted only if "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

A. THERE ARE GENUINE ISSUES AS TO MATERIAL FACTS.

The appellants in the form of an affidavit have raised weighty questions of fact surrounding the appellees' involvement in the purchase of Larson Ford. R. 883-890 It should be noted that the appellees have never filed any affidavits admitting to or controverting the facts set forth in Walter P. Larson's affidavit. In fact, it must be noted that appellees never filed any affidavit in support of their

motion for summary judgment.

In his affidavit, and answers to interrogatories, Walter P. Larson has alleged that the appellees were in fact the individuals who were purchasing Larson Ford. The appellees have never denied that fact, since they could not truthfully do so. In his affidavit, Walter P. Larson further alleged that appellees visited Larson Ford, that appellees (specifically Owen C. Hogle) took over the daily operation of Larson Ford, that appellees dismissed employees of Larson Ford, that appellees hired employees for Larson Ford, that appellees conducted sales at Larson Ford and that appellees paid the bills of Larson Ford. R. 790-791, 886

Further evidence that the appellees were in fact purchasing, and certainly misleading appellants into believing that appellees were purchasing, Larson Ford can be found in the various agreements executed by the parties. On March 2, 1983, appellees signed a Finder's Fee Agreement wherein they personally agreed to pay Wardley Corporation the sum of \$75,000.00 for its services in the acquisition of Larson Ford. R. 668

Furthermore, appellees (although they agreed to do so) failed to make any effort to satisfy Ford Motor Credit, failed to provide substitute collateral to creditors of Larson Ford and, as a final death blow, appellees failed to support their own bankruptcy plan which directly led to the approval of another competing plan and appellants' loss of all economic benefits from Larson Ford. R. 859-862, 888-889

Based upon these undisputed facts, the questions which

must be asked and answered is how the appellees can claim that they had no involvement in the purchase of Larson Ford?

More importantly, how can the trial court even consider granting a summary judgment in favor of appellees when confronted with these facts?

In reviewing the facts, this Court must assume the truthfulness of appellants' allegations and supporting evidence and it must not give any deference to the trial court's legal conclusions. Krantz v. Holt, 819 P.2d 352, 353-354 (Utah 1991)

Based upon the facts of this case, it is submitted that the trial court erred in granting appellees' motion for summary judgment based upon the facts of this case.

B. APPELLEES ARE NOT ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW.

The appellants have set forth three causes of action in their (second) amended complaint. R. 487-499

1. BREACH OF CONTRACT.

The first cause of action is based upon breach of contract. R. 493

On March 5, 1983, an Agreement and Escrow was signed by HBGH, Inc. (an intended corporation) and Walter P. Larson for the sale and purchase of Larson Ford. R. 670-673² That Agreement and Escrow incorporated the February 4, 1983, Earnest Money Receipt and Offer to Purchase and Addendum. R.

2. In the record the last page of the Agreement and Escrow, should be numbered 673 but is not numbered at all.

673-674

The February 4, 1983, Earnest Money Receipt was signed by Bruno and Gay as "purchaser" and by Mr. Larson as "seller". R. 674 The Agreement and Escrow was also executed by the same parties in the same capacity. R. 673

Under the Agreement and Escrow the "purchaser" agreed "to infuse the necessary capital" into the business. R. 672

The appellees failed to comply with any of the conditions of that agreement.

As set forth under point II below, the appellees are, as they should be, held liable for a breach of contract signed by their agents.

2. NEGLIGENT MISREPRESENTATION.

A second cause of action in appellants' second amended complaint is based upon negligent misrepresentation.

The Utah Supreme Court in Christenson v. Commonwealth Land Title Insurance Company, 666 P.2d 302, 305 (Utah 1983), defined the elements of negligent misrepresentation as follows:

"(1) one having a pecuniary interest in a transaction, (2) is in a superior position to know material facts, and (3) carelessly or negligently makes a false representation concerning them, (4) expecting the other party to rely and act thereon, and (5) the other party reasonably does so and (6) suffers loss in that transaction, the representor can be held responsible if the other elements of fraud are also present."

Let us examine the facts of this case. First, the appellees certainly had a pecuniary interest in the sale and purchase of Larson Ford. The appellees personally, and through their agents, Bruno and Gay, told appellants that they [appellees] wanted to purchase Larson Ford. Second, the

appellees were in a superior position to know material facts. The appellees knew the exact nature of their relationship with Bruno and Gay, they knew of their own capacity to purchase and also to operate Larson Ford and they knew about Larson Ford's bankruptcy because their attorney was intimately involved in that bankruptcy. Third, appellants made careless and negligent false representation. Appellees represented that they would purchase Larson Ford, they represented that Bruno and Gay were their agents, they represented that they would support Larson Ford's bankruptcy plan, they represented that they would contact Ford Motor Company, and they represented that they would provide substitute collateral to Larson Ford's creditors to allow appellants to retrieve their collateral.

The appellants, of course, trusted and relied upon the representations made by appellees. The appellants transferred stock into escrow, they relinquished the daily operation of Larson Ford to appellees and they signed agreements to sell their family business, Larson Ford, to appellees. Under all the circumstances of this case, appellants' reliance can only be characterized as reasonable.

Finally, and tragically, appellants have suffered a great loss. The appellants have not only lost a family business, started by Walter P. Larson's father, but they have lost over a million dollars because of the intolerable conduct of the appellees. R. 862-863

Viewing all facts and inferences in light most favorable to appellants and according no deference to the trial court's

conclusions, this Court must reverse the trial court's granting of appellees' motion for summary judgment.

3. FRAUD

A third cause of action alleged a claim based upon fraud.

The Utah Supreme Court recently defined fraud as "a false representation of an existing material fact, made knowingly or recklessly for purpose of inducing reliance thereon upon which the plaintiff reasonably relies to his detriment." Atkinson v. IHC Hospitals, Inc., 798 P.2d 733, 737 (Utah 1990).

Examination of the facts of this case clearly demonstrates that appellees have committed a fraud upon appellants. Appellees have admitted that they met with appellants for the purpose of extending the time within which conditions contained in the Earnest Money Agreement had to be satisfied. R. 880-881, 884 Appellees further admitted that Owen Hogle filed personal financial statements with the United States Bankruptcy Court indicating that he intended to purchase Larson Ford. R. 886-887 Appellee, Owen Hogle, as the owner of Larson Ford provided a dealer bond so that Larson Ford could legally operate as an automobile dealer within the State of Utah. R. 880 Furthermore, Owen Hogle wrote memos outlining procedures which employees of Larson Ford had to follow. R. 880-881

These admissions by the appellees, coupled with the undisputed facts that appellees went into appellants'

business, assumed all responsibility for operating the automobile business and operated the business until the eleventh hour of the bankruptcy vote and then totally withdrew leaving appellants to turn slowly in the wind, all support appellants' claim that they were the victims of a fraud perpetrated by appellees.

Induced by this fraud, appellants broke off all other discussions concerning the sale of Larson Ford with other prospective buyers. After all, if appellees were purchasing Larson Ford, how could appellants continue to negotiate for the sale of Larson Ford with other buyers? R. 860

Appellants' reliance was reasonable and these false representations of appellees led to the appellants losing their business, their homes and income from their business. R. 862-863

The appellees misled the appellants into believing that the appellees were in fact purchasing Larson Ford. In the end, however, appellees failed to support appellants' bankruptcy plan, a plan appellees helped draft. As a final act of deception, appellees switched their support in the Bankruptcy Court from appellants' plan to the only other plan, filed by Stephen Wade Pontiac, an unsecured creditor of Larson Ford who was owed \$130.00. R. 861

After the Wade plan was approved, appellees were paid all money they had invested in Larson Ford and their attorneys recovered all the legal fees expended.

As a final interesting note concerning appellants' claim of fraud, appellants have learned that appellees and the

other named defendants have a history of joint real estate dealings. And, appellees' current counsel had previously represented Bruno, HGBH, appellants and Larson Ford. R. 862

Appellants have stated a claim based upon fraud and have presented facts to support such claim. Based thereon, this Court must remand this matter to the trial court so that a trial on the issues may be held.

II.

THE KNOWLEDGE OF APPELLEES' AGENTS MUST BE IMPUTED TO APPELLEES, AS SUCH APPELLEES ARE LIABLE FOR THE ACTS OF THEIR AGENTS.

The State Supreme Court long ago ruled that the contract of the agent is the contract of the principal, and the principal, though not named in the contract may sue and be sued thereon. Zeese v. Siegel's Estate, 534 P.2d 85, 88 (Utah 1975).

The Supreme Court of Utah has further ruled that even though there was no contract between the plaintiff and defendant, the knowledge of the agent is imputed to the principal where the principal entrusted handling of its interest in the specific transaction to the agent. FMA Financial Corporation v. Hansen Dairy, Inc., 617 P.2d 327, 329-330 (Utah 1980).

These principles are also applied to claims of fraud.

"A person may be charged with fraud even though he is not a party to the transaction into which the complainant is induced, by the misrepresentation, to enter, particularly where such third person profits from the fraud and retains the benefits thereof, although he may be liable even though he receives no benefit from the transaction. To render one liable in an action of deceit, no

privity of contract between the plaintiff and defendant need be shown, the character of the representee being sufficient.

One who wilfully makes false representations which are to be fraudulently used by another as an inducement to a third person to enter into a contract with the person repeating them is as much guilty of deceit as the latter and is equally liable to the party deceived." 37 Am Jur 2d, Fraud and Leceit, Sec. 308

Appellants have alleged that appellees personally told them that Bruno and Gay were appellees' agents. R. 883-884

In resolving this dispute, this Court must view the facts and inferences in the light most favorable to appellants. Applying this standard of review to this case, the only conclusion this Court reach is that Bruno and Gay were agents representing appellees and that appellees must be bound by the acts of their agents.

CONCLUSION

Based upon the foregoing, it is respectfully submitted that the trial court erred in granting appellees' motion for summary judgment. That in applying the stated standard for review, this Court must reverse the trial court's order and remand this case to the trial court for trial.

Dated this 31st day of December, 1992.

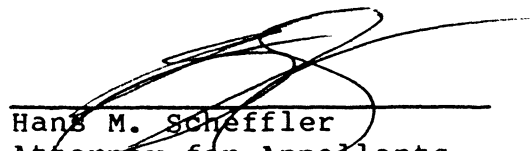


Hans M. Scheffler
Attorney for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of December, 1992, four true and correct copies of the foregoing were delivered to Harry Caston, attorney for appellees, at 10 East South Temple, Suite 1200, Salt Lake City, Utah.

Dated this 31st day of December, 1992.



Hans M. Scheffler
Attorney for Appellants

ADDENDUM

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Rule 56. Summary judgment.

(a) **For claimant.** A party seeking to recover upon a claim, counterclaim or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) **For defending party.** A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought, may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) **Motion and proceedings thereon.** The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) **Case not fully adjudicated on motion.** If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) **Form of affidavits; further testimony; defense required.** Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) **When affidavits are unavailable.** Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) **Affidavits made in bad faith.** Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

REALTOR TO: WARDLEY CORPORATION DEALER WARDLEY UTAH
Name of Broker Company

IN CONSIDERATION OF your agreement to use your efforts to present this offer to the Seller, I/we WESTERN SLOPE DEVELOPMENT CORP.
hereby deposit with you as earnest money the sum of \$ 3,000.00 Five Thousand and No/100 - - - - - DOLLARS
in the form of check to be deposited upon final acceptance of both parties
to secure and apply on the purchase of the property situated at: 5500 South State Street, known as Larson Ford
Murray City Salt Lake County, State of Utah
including any of the following items if at present attached to the premises: Plumbing and heating fixtures and equipment including boiler and oil tanks, water heaters, and burners, electric light fixtures excluding bulbs, bathroom fixtures, roller shades, curtain rods and fixtures, venetian blinds, window and door screens, linoleum, all shrubs and trees, and any other fixtures
except no exceptions
The following personal property shall also be included as part of the property purchased: See Addendum
The total purchase price of \$ 150,000.00 One Hundred Fifty Thousand and No/100 - - - - - DOLLARS
shall be payable as follows: \$ 5,000.00 which represents the aforesaid deposit, receipt of which is hereby acknowledged by you:
-0- when seller approves said: \$ 145,000.00 on delivery of deed or final contract of
sale which shall be on or before March 15 19 83 and \$ -0- each month commencing
SEE ADDENDUM
until the balance of \$ SEE ADDENDUM together with interest is paid; provided, however, that buyer at his option, at any time, may pay amounts in excess of the monthly
payments upon the unpaid balance, subject to the limitations of any mortgage or contract by the buyer herein assumed; interest at See Addendum on the unpaid portions of the
purchase price to be included in the prescribed payments and shall begin as of date of possession which shall be on or before March 15 19 83 All risk of loss and destruction
of property, and expenses of insurance shall be born by the seller until date of possession at which time property taxes, rents, insurance, interest and other expenses of the property shall be
incurred as of date of possession. All other taxes and all assessments, mortgages, chattel items and other liens, encumbrances or charges against the property of any nature shall be paid by
the seller except:
The following special improvements are included in this sale: Sewer ☐ - Connected ☐ Septic Tank and/or Cesspool ☐ Sidewalk ☐ Curb and Gutter ☐ Special Street Paving
☐ Special Street Lighting ☐ Cullinary Water (City ☐ Other Community System ☐ Connected ☐ Private ☐ (Legend: Yes (x) No (o))
Contract of Sale or Instrument of conveyance to be made on the approved form of the Utah Dept. of Business Regulation in the name of
To be determined prior to closing

This payment is received and offer is made subject to the written acceptance of the seller endorsed hereon within _____ days from date hereof, and unless so
approved the return of the money herein receipted shall cancel this offer without damage to the undersigned agent.

In the event the purchaser fails to pay the balance of said purchase price or complete said purchase as herein provided, the amounts paid hereon shall, at the option of the seller,
be retained as liquidated and agreed damages.

It is understood and agreed that the terms written in this receipt constitute the entire Preliminary Contract between the purchaser and the seller, and that no verbal statement made by
anyone relative to this transaction shall be construed to be a part of this transaction unless incorporated in writing herein. I further agree that execution of the final contract shall
abrogate this Earnest Money Receipt and Offer to Purchase.

WARDLEY CORPORATION Agent By De/OT RST
Broker Company

We do hereby agree to carry out and fulfill the terms and conditions specified above, and the seller agrees to furnish good and marketable title with abstract brought to date or at Seller's

option a policy of title insurance in the name of the purchaser and to make final conveyance by warranty deed or _____

In the event of sale of other than real property, seller will provide evidence of title or right to sell or lease, if either party fails to do so, he agrees to pay all expenses of enforcing this agree-
ment, or of any right arising out of the breach thereof, including a reasonable attorney's fee.

The seller agrees in consideration of the efforts of the agent in procuring a purchaser, to pay said agent a commission of \$75,000.00

In the event seller has entered into a listing contract with any other agent and said contract is presently effective, this paragraph will be of no force or effect.

Date _____ Seller _____
Date _____ Seller _____
Western Slope Dev. Corp
by De- E/OT

3 (State law requires brokers to furnish copies of this contract bearing all signatures to buyer and seller. Dependent upon the method used, one of the following forms must be completed.)

RECEIPT

4 I acknowledge receipt of a final copy of the foregoing agreement bearing all signatures:

5 _____ Seller _____ Date _____ Purchaser _____ Date _____

6 I personally caused a final copy of the foregoing agreement bearing all signatures to be mailed to the ☐ Seller, ☐ Purchaser, on

7 _____ 19 _____, by registered mail and return receipt is attached hereto.

8 Broker _____ By _____

ADDENDUM

THIS IS AN ADDENDUM to that certain Earnest Money Receipt and Offer to Purchase dated January 13, 1983 wherein Western Slope Development Corp. appears as Purchaser of the property at 5500 South State Street, Murray, Utah, known as Larson Ford Sales:

Purchaser agrees to purchase all assets of Larson Ford including property lease, stock in the corporation, all parts, furniture, fixtures, signs, accessories, equipment and all other items used in the operation of Larson Ford, together with all liabilities of the business.

Seller agrees to furnish the Purchaser with a list of all Larson Ford assets. Seller agrees to furnish the Purchaser with a list of all Larson Ford's personal property. The assets and personal property should include but not be limited to: signs, furniture, fixtures, apparatus, equipment, machinery, tools, leasehold improvements, cars, accessories, parts and appliances and replacements thereto, if any, owned by Larson Ford and located on or attached to the premises or used in connection with the operation of the premises.

Seller agrees to make available to Purchaser's agent, at Larson Ford's place of business, all books, records and other personal documents.

Seller agrees to execute a "Non-Competition Agreement" agreeing not to open or operate a car dealership within a radius of ten (10) miles from Larson Ford for a period of five years, carrying with it a penalty of \$500,000.00 if Seller is found in violation of the Agreement.

Purchaser agrees to keep the Sellers covered on their present health insurance at the Seller's expense.

Purchaser agrees to allow the Seller to purchase cars or trucks for Seller's personal use at invoice price.

This offer is subject to and contingent upon the following:

1. Approval of Ford Motor Corporation of franchise transfer
2. Purchaser's inspection and approval of property lease, such approval to be in writing
3. Purchaser's inspection and approval of the list of the assets and the list of personal property, such approval and acceptance to be in writing
4. Purchaser accepting and approving the findings of his agent after the inspection of the books, records and other personal documents. Such acceptance and approval shall be in writing.

Closing shall be on or before March 15, 1983.

WESTERN SLOPE DEVELOPMENT CORP.

By: _____
"Purchaser"

Date

Date

"Seller"

IN CONSIDERATION OF your agreement to sell your efforts to produce and other...
check to be deposited upon final acceptance of both parties
3500 South State Street, known as Lagoon Park
City Salt Lake County, State of Utah
no construction
See Addendum
175,000.00 One Hundred Seventy Five Thousand and No/100
5,000.00
March 15, 1983
See Addendum
See Addendum
To be determined prior to closing
WARDLEY CORPORATION
Walter Pearson
2/4/83

RECEIPT
Walter Pearson
2/4/83
By registered mail and return receipt is obtained hereto.

ADDENDUM

THIS IS AN ADDENDUM to that certain Earnest Money Receipt and Offer to Purchase dated February 4, 1983 wherein Stephen P. Bruno, Dennis W. Gay and/or assigns appear as Purchasers of the business at 5500 South State Street, Murray, Utah, known as Larson Ford Sales:

The total purchase price to be \$175,000.00 to be paid in the form of cash notes or real estate deemed acceptable to the Seller.

Purchaser agrees to purchase all assets of Larson Ford, including property lease, stock in the corporation, all parts, furniture, fixtures, signs, accessories, equipment and all other items used in the operation of Larson Ford, together with all liabilities of the business.

Seller agrees to furnish the Purchaser with a list of all Larson Ford Assets. Seller agrees to furnish the Purchaser with a list of all Larson Ford's personal property. The assets and personal property should include but not be limited to: signs, furniture, fixtures, apparatus, equipment, machinery, tools, leasehold improvements, cars, accessories, parts and appliances and replacements thereto, if any, owned by Larson Ford and located on or attached to the premises or used in connection with the operation of the premises.

Seller agrees to make available to Purchaser's agent, at Larson Ford's place of business, all books, records and other personal documents.

Purchaser agrees to sign over to Seller all right, title, liability and all interest in the fire insurance claim currently in dispute.

Purchaser agrees to negotiate substitute collateral to accomplish release of Larson's personal liability to Citizens Bank, Zions First National Bank, Commercial Security Bank, Small Business Administration, and State Tax Commission. *and Fax to more*

Purchaser understands that there is an immediate cash flow problem at the business, and upon removal of all other contingencies, will be willing to influx needed capital into the business to keep it functioning during the escrow period.

Seller represents that the total monies due to all creditors exclusive of any interest on sales tax or SBA, is no more than \$2,100,000.00. In the event that the total monies due to all creditors is more than \$2,100,000.00, the amount over \$2,100,000.00 shall be deducted from the purchase price and downpayment respectively.

Seller agrees to execute a "Non-Competition Agreement" agreeing not to have an ownership interest in a Ford dealership within a radius of five (5) miles from Larson Ford for a period of five years, carrying with it a penalty of \$500,000.00 if Seller is found in violation of the Agreement.

Purchaser agrees to honor an agreement with Salt Lake School District for "loaner" cars.

Purchaser agrees to furnish the Sellers with two (2) demos through August, 1983, at no cost.

This offer subject to approval of Purchaser's and Seller's attorneys of final Buy-Sell Agreement, and approval of the Federal Bankruptcy Court.

Purchaser agrees to allow the Seller to purchase cars or trucks for Seller's personal use at invoice price.

This offer subject to and contingent upon the following:

1. Approval of Ford Motor Corporation of franchise transfer or acceptable solution to the franchise
2. Purchaser's inspection and approval of property lease, such approval to be in writing
3. Purchaser's inspection and approval of the list of the assets and the list of personal property, such approval and acceptance to be in writing
4. Purchaser accepting and approving the findings of his agent after the inspection of the books, records and other personal documents. Such approval and acceptance shall be in writing.

All contingencies shall be removed in writing by noon, Tuesday, February 22, 1983.

Buyer agrees to pay to Wardley Corporation a finder's fee of \$75,000.00 to be paid at closing. Closing shall be on or before March 15, 1983.

Date: _____

Date: 2/4/83

[Signature] Purchaser
[Signature] Purchaser
Walter Larson Sellers

FINDER'S FEE AGREEMENT

IN CONSIDERATION of the service performed by Wardley Corporation in effecting the acquisition of all of the shares of common stock of Larson Ford Sales, Inc., together with all of the remaining issued and outstanding shares of Larson Ford Sales, Inc., we hereby agree to pay a finder's fee in the amount of \$75,000.00.

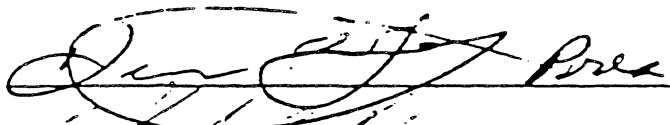
SAID \$75,000.00 shall be paid as follows:

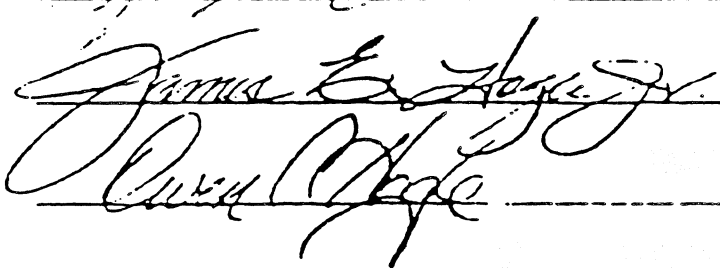
The sum of \$37,500.00 shall be due and payable at the time of transfer of stock from Larson Ford Sales, Inc./Walter Park Larson to the undersigned. At that time we hereby agree to sign a Promissory Note in the amount of \$37,500.00. Said note shall bear interest at the rate of 12% per annum, based on the diminishing principal balance. Said note shall be payable in twelve equal monthly installments of approximately \$3,331.88, due on the first day of each month beginning thirty (30) days from the date of the note. All monthly installments shall be applied first to interest and second to the reduction of principal.

THE SAID NOTE shall be secured by an assignment of stock of equivalent value. Any installment not received within five (5) days of the due date shall create a default under said note and entitle the holder to seek recourse under the security. At holder's option, any such late payment may be accepted with the payment of a late penalty of 10% of such payment.

IF THE NOTE IS collected by an attorney after default in the payment of principal and interest, the undersigned, jointly and severally, agree to pay all costs and expenses of collection including a reasonable attorney's fee.

DATED THIS 2 day of March, 1983.





AGREEMENT AND ESCROW

AN AGREEMENT dated this 5th day of March, 1983, by and between HBGH, INC. (an intended corporation) hereinafter referred to as "Purchasers" and WALTER PARK LARSON, hereinafter referred to as "Seller".

RECITALS

1. Seller is the owner of all of the issued and outstanding common shares of Larson Ford Sales, a Delaware corporation, and further represents that he is authorized to represent any parties claiming an interest in said stock for the purpose of carrying out the objectives of this Agreement.

2. Larson Ford Sales has filed a petition for relief under Chapter 11 of the Bankruptcy Act which is presently pending before the United States Bankruptcy Court for the District of Utah.

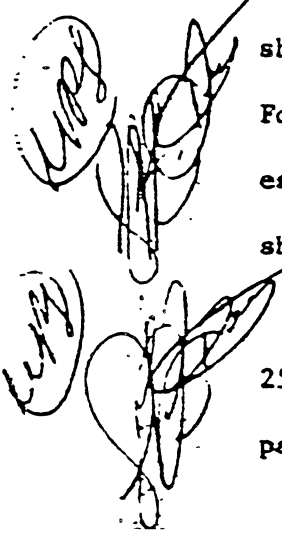
3. Seller is an officer and director of Larson Ford Sales and is authorized to execute this Agreement on behalf of Larson Ford Sales insofar as this Agreement affects the implementation of the debtor's plan of reorganization and the day-to-day operation of the business of Larson Ford Sales.

4. Purchasers desire to purchase all of the issued and outstanding shares of Larson Ford Sales and desire further to manage the daily operations of Larson Ford Sales, including directing the formulation of the plan of reorganization for Larson

5. The parties desire to establish an escrow account with Harold R. Stephens, Attorney at Law, 320 South 300 East, Salt Lake City, Utah, 84111, telephone (801) 328-0645, to act as the escrow agent to carry out the terms and conditions of the escrow.

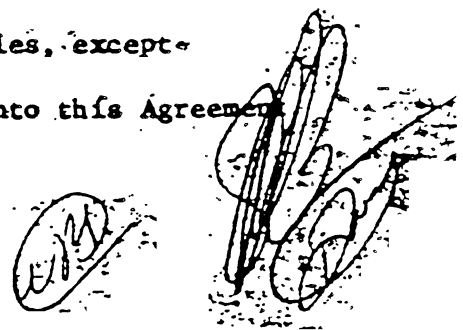
IN CONSIDERATION OF the mutual promises contained herein, the parties agree as follows:

A. Seller agrees to sell to Purchasers ^{58%}~~70%~~ of his shares of the common stock of Larson Ford Sales together with all of the remaining issued and outstanding shares of Larson Ford Sales. Seller shall deliver all of said shares, properly endorsed and assigned, to the escrow agent within 5 days from the execution of this Agreement, together with proper assignment of voting rights.

 B. Purchasers agree to pay Seller the sum of \$100,000.00 for ^{75% of}~~said~~ shares. Said payment shall be in the form of cash, which shall be due and payable upon acceptance and confirmation of Larson Ford Sales plan of reorganization. Delivery of said cash to the escrow agent shall be concurrent with the delivery of the subject shares.

C. Purchasers are hereby granted an option on remaining 25% shares of stock for the amount of \$75,000.00. Said option payment shall be due and payable upon transfer of Ford franchise.

D. The parties agree that the terms and conditions set forth in the Earnest Money Receipt and Offer to Purchase and Addendum dated February 4, 1983, by and between the parties, except as inconsistent with this Agreement, be incorporated into this Agreement.



Agreement shall be within ten days from the date of confirmation of the Larson Ford Sales plan of reorganization by the Bankruptcy Court.

F. Purchasers shall have the right to rescind the purchase agreement and escrow in the event that the Larson Ford Sales plan of reorganization is not approved by the Bankruptcy Court. Upon the occurrence of this event, the Purchasers have the right to rescind this Agreement. In that event the escrow agent is directed to return the subject cash to the Purchasers and the subject shares of stock to the Seller.

G. Purchasers agree to infuse the necessary capital to implement this agreement, excluding any further funds from Walter P. Larson.

H. Walter P. Larson and Larson Ford Sales, Inc. represent and agree to do all things necessary to maintain the Ford Motor Company franchise in continual force and effect until such time as it may be transferred.

I. The parties acknowledge that this Agreement is meant to be fully binding upon the parties and that subsequent to the execution of other agreements, the parties agree to cooperate fully in executing whatever other agreements and documents are necessary to fully carry out the terms and conditions of this agreement.

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

Escrow Agent, Harold R. Stephens



LARSON FORD SALES, INC.

BY: Walter Larson

ITS: Pres.

Walter Larson
Walter Park Larson, Seller

HBGH, INC., an intended corporation

BY: [Signature]

BY: [Signature]

"Purchasers"

[Signature] [Signature]

JUL - 7 1992

SALT LAKE COUNTY

By _____
Deputy Clerk

HARRY CASTON (4009)
MCKAY, BURTON & THURMAN
Attorneys for Defendants James Hogle, Jr.
and Owen C. Hogle
Suite 1200 Kennecott Building
10 East South Temple Street
Salt Lake City, Utah 84133
Telephone: (801) 521-4135

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

WALTER P. LARSON,	:	ORDER ON MOTION FOR
SYBIL LARSON and	:	SUMMARY JUDGMENT
JOHN LARSON,	:	
Plaintiffs and	:	
Counter-Defendants,	:	
	:	Civil No. C83-5542
v.	:	
STEPHEN P. BRUNO, DENNIS W.	:	
GAY, JAMES HOGLE, JR., and	:	
OWEN C. HOGLE, et al.,	:	Judge Richard H. Moffat
Defendants and	:	
Counter-Claimants.	:	

On the 12th day of June, 1992 at the hour of 9:00 a.m. came on to be heard Defendants James and Owen C. Hogle's Motion for Summary Judgment. The plaintiffs were represented by their counsel of record, John J. Borsos and Hans M. Scheffler. Defendants James and Owen C. Hogle were represented by their counsel of record, Harry Caston. The Court having heard the arguments of the parties, having reviewed the pleadings on file herein, having made its Findings of Fact and Conclusions of Law, and good cause appearing, it is hereby