

1993

William Christopulos and Elvira Christopulos v. Cory Curtis and Arwella Curtis : Brief of Appellant

Utah Court of Appeals

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Kyle W. Jones; Attorney for Appellee.

Cory and Arwell Curtis; Pro Se.

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930340

IN THE COURT OF APPEALS
STATE OF UTAH

CORY CURTIS &
ARWELLA CURTIS
~~PLAINTIFFS~~ AND APPELLANTS
Defendants
vs.

WILLIAM CHRISTOPULOS &
ELVIRA CHRISOPULOS
~~DEPENDANTS~~ AND APPELLEES
Plaintiffs

APPELLANT'S BRIEF

NO.

910900664

PRIORITY #15

93-0340-CA

This appeal is taken from the judgment of the Third District Court of Salt Lake County, State of Utah, Judge James Sawaya presiding.

Kyle Jones
Beneficial Life Tower
36 South State St.
Salt Lake City, Utah 84111

Attorney for the Appellee

Cory & Arwella Curtis
312 W 2000 N #D
Layton, Utah 84041

Pro-Se

FILED
Utah Court of Appeals

JUN 07 1993

Mary T. Neenan
Mary T. Neenan

TABLE OF CONTENTS

Table of Authorities.....	3
Jurisdiction.....	4
Statement of Issues & Controlling Law.....	4
Statement of the Case.....	6
Summary of Arguments.....	10
Arguments.....	11
Conclusion.....	16

TABLE OF AUTHORITIES

Plateau Mining v. Utah Division of Lands and Forestry, 802 P.2d 720, 725 (Utah 1990)

Dalton v. Jerico Construction Co., 642 P.2d 748 (Utah)

Faulkner V. Farnsworth, 665 P.2d 1292, 1293 (Utah 1983);

C.J. Realty v. Willey, 758 P.2d 923, 928 (Utah App. 1988)

Gordon v. CRS Consulting Engineers, 820 P.2d 492 (Utah App 1991)

Sears v. Riemersma, 655 P.2d 1105, 1107 (Utah 1982); 17A AM.

Jur. 2D Contracts & 339 (1991)

Wilburn, 748 P.2d at 585;

Winegar v. Froerer Corp., 813 P.2d 104, 107 (Utah 1991)

Winegar, 813 P.2d at 108

JURISDICTION

Jurisdiction to hear this appeal is conferred on the Court of Appeals by Utah Code annotated 78-2a(2)(K) (1992)

STATEMENT OF ISSUES & CONTROLLING LAW

The following is presented to the court for review.

1- Did Judge Sawaya/the Third District Court err and rewrite a contract improvidently entered into at arms length or change the bargain indirectly because of supposed equitable principles by ruling in favor of the Plaintiffs. The Note at issue clearly does not specify any semi annual payment amounts that were due, yet the court ruled that specific semi- annual payments were not made, bringing the Note into default.

Dalton v. Jerico Construction Co., 642 P2d 748 (Utah 1982).

2. Did Judge Sawaya/the Third District Court err in granting the Plaintiffs a Summary Judgment when there was a genuine issue of material fact.

"Summary Judgment is appropriate... when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law". Winegar v. Froerer Corp., 813 P.2d 104, 107 (Utah 1991). "Whether ambiguity exists in a contract is a question of law." Winegar, 813 P.2d at 108; Plateau Mining Co. v. Utah division of State Lands and Forestry, 802 P.2d 720, 725 (Utah 1990); Gordon v. CRS Consulting Engineers, 820 P2d 492 (Utah App 1991)

"A Contract provision is ambiguous if it is capable of more than one reasonable interpretation because of uncertain meanings of terms missing terms, or other facial deficiencies." Winegar, 813 P.2d at 108 (quoting Faulkner v. Farnsworth, 665 P.2d 1292, 1293 (Utah 1983); C.J.Realty v. Willey, 758 P.2d 923, 928 (Utah App. 1988))

3. Did Judge Sawaya/the Third District Court err by ruling in favor of the Plaintiffs when in fact it is a fundamental principle of contract law that "any uncertainty with respect to construction of a contract should be resolved against the party who ha[s] drawn the agreement." Sears v. Riemersma, 655 P.2d 1105, 1107 (Utah 1982) Wilburn, 748 P.2d at 585

4. Did Judge Sawaya/the Third District Court err by rendering a final judgment during the pre-trial conference (after having already denied Plaintiffs motion for summary judgment) without any new evidence being brought forth? Is this the purpose and intent of the pre-trial conference or was this a breach of Judicial Procedure? Utah code (1.08 (7)).

STATEMENT OF THE CASE

This case has to do with an ambiguously worded second mortgage (real estate contract) that was drafted by a real estate salesman. The Note makes mention of "Semi-Annual Payments" but it does not stipulate any specific amounts nor does it identify if the "payments" were to be made towards the principal, interest, or a combination of the two. Consequently, one of the parties involved (the Plaintiffs, who were not the original holders of the note) assumed that the payments were to be towards interest in a specific amount while the other party (the Defendants) assumed that the payments were optional payments towards principal.

Shortly after the transaction was originally consummated, the original holder of the note subordinated it to William and Elvira Christopoulos (the Plaintiffs/Appellees). Within one to two months after the subordination, the Plaintiffs sent the Curtis' (the Defendants/Appellants) a schedule of monthly payments. Said payment schedule was not part of the original note and does not constitute a binding contract between the Plaintiffs and the Defendants. Even if said payment schedule was a binding contract, it also neglects to specify whether the payments were being made towards interest, principal or a combination of the two and the payment amounts are not specified in the Note.

The Defendants wanted to make payments towards the balloon payments from time to time rather than make the total payments at the time they became due. They were therefore willing to make semi annual payments for a time. The Dispute arose when the

Defendants chose not to make a semi-annual payment and the Plaintiffs accused them of being in default.

When the first balloon payment eventually came due, the Defendants tried to pay the specified amount of the balloon payment minus the total amount of semi-annual payments which had previously been paid towards principal but the Plaintiffs refused said payment claiming that the previous payments were interest payments not principal payments.

The Plaintiffs motioned for a Summary Judgment which was denied by Judge Sawaya on 2/13/92. A non-Jury trial was set for 9/22/92 but during the pre-trial conference Judge Sawaya told the Defendant in the presence of the Plaintiffs Legal Council that if he (the Defendant) did not work out a settlement with the Plaintiffs, he would rule in favor of the Plaintiffs at trial. The Judge admitted the Note was ambiguous but said he could only assume what the intent of the note must have been.

Following the pretrial conference the Plaintiffs resubmitted a motion for Summary Judgment which the Judge granted even though no new evidence had been presented.

STATEMENT OF FACTS

* On February 1st 1987 the Defendants, signed a trust deed note in the amount of \$13,500.00 constituting a second mortgage on a home located at 4284 South Albright Dr. in Holiday Utah. The original holder of the note was Darrell B. Hincks.

* The Defendants never met or personally dealt with Mr. Hincks. The transaction was handled by Mr. Hincks' agent and business partner, Mr. Eric Glenn. Mr. Glenn was the one who drafted the trust deed note in behalf of Mr. Hincks'. Shortly after the transaction was made the note was subordinated to the Plaintiff.

* The note stipulates that the \$13,500.00 with a 5.7% per annum interest on the unpaid balance be paid in three balloon payments on the following dates;

\$4,000.00 2/1/1992

\$4,000.00 2/1/1997

\$5,500.00 (together with accrued interest) 2/1/2002

* The note is quite specific about the amounts of the balloon principle payments and the dates they are to be paid. It is also clear that all accrued interest is to be paid at the time of the last balloon payment.

* Nowhere in the note is there any specific amounts of "interest only" payments prior to the last balloon payment.

The ambiguous part of the note is that it makes mention of "Semi-Annual Payments", but it does not stipulate any amounts nor does it identify if the "payments" were to be made toward the principal, interest, or a combination of the two.

* The Defendants made 6 payments of approximately \$384.75 each at various times. It was the Defendants contention that said payments were paid towards the principle amount of the first balloon payment in the note and that they were optional since no amount is specified by the note. The Plaintiffs contention was that said payments were "interest only" payments and that the note went into default when the payments stopped.

* The Defendants motioned for a Summary Judgment which was denied by Judge Sawaya on 2/13/92

* The case was set for a non-jury trial before Judge Sawaya on 9/22/92

* In the pretrial Conference on 9/14/92, Judge Sawaya acknowledged that the note was very ambiguous but said that the court could only assume what the intent of the note was. Judge Sawaya told the Defendant in the presence of the Plaintiffs Council that if he (the Defendant) did not work out a settlement with the Plaintiffs prior to the trial, he (Judge Sawaya) would have to rule in favor of Plaintiffs in Court.

* The Defendants did not try to settle with the Plaintiffs because they knew that the Plaintiffs had little if any motivation to agree to a fair settlement since he knew he would win in Court based on the comments of the Judge.

* Although no new evidence was produced during the pretrial, the Plaintiffs resubmitted a motion for summary judgment which was granted by Judge Sawaya on 10/22/92

* The Defendants motioned to Amend Judgment on 10/27/92 based upon the insufficiency of the evidence to justify the decision.

* Motion to amend judgment by the Defendants was denied by Judge Sawaya on 11/23/92

SUMMARY ARGUMENT

1- THE NOTE DID NOT EXPRESSLY REQUIRE THE PAYMENT OF ANY CERTAIN AMOUNT UNTIL THE FIRST BALLOON PAYMENT WAS DUE FEBRUARY 1, 1992. SAID BALLOON PAYMENT WAS MADE BY THE DEFENDANT BUT REJECTED BY THE PLAINTIFF. BY RULING IN FAVOR OF THE PLAINTIFF, THE COURT WENT OUTSIDE THE BOUNDS OF THEIR JURISDICTION AND "REWROTE" THE CONTRACT TO PROVIDE A SPECIFIC AMOUNT OF "INTEREST ONLY SEMI-ANNUAL PAYMENTS".

2- THERE ARE QUESTIONS OF FACT RELATING TO THE EXTRINSIC EVIDENCE IN THIS CASE THAT SHOULD HAVE PRECLUDED A SUMMARY JUDGMENT.

3- BECAUSE OF THE UNCERTAINTY WITH RESPECT TO THE VAGUE AND QUESTIONABLE CONSTRUCTION OF THE CONTRACT, IT SHOULD HAVE BEEN RESOLVED AGAINST THE PARTY WHO HAS DRAWN THE AGREEMENT.

4- BY "ASSUMING" THE INTENT OF THE NOTE, RENDERING A FINAL VERDICT DURING THE PRE-TRIAL CONFERENCE AND GRANTING A MOTION FOR SUMMARY JUDGMENT AFTER HAVING ONCE DENIED SAID MOTION, JUDGE SAWAYA SHOWED PERSONAL BIAS AND PREJUDICE AND MADE A PROCEDURAL BREACH.

5- THE DEFENDANT HAS ACQUIRED EVIDENCE PREVIOUSLY UNAVAILABLE TO THE COURT INDICATING THAT ERIC JOHNSON, THE DRAFTER OF THE NOTE DID NOT INTEND TO HAVE SPECIFIC AMOUNTS OF INTEREST ONLY SEMI-ANNUAL PAYMENTS.

ARGUMENT

1- THE NOTE DID NOT EXPRESSLY REQUIRE THE PAYMENT OF ANY CERTAIN AMOUNT UNTIL THE FIRST BALLOON PAYMENT WAS DUE FEBRUARY 1, 1992. SAID PAYMENT WAS MADE BY THE PETITIONER BUT REJECTED BY THE RESPONDENT. THE COURT HAS REWRITEN THE CONTRACT IN FAVOR OF THE PLAINTIFF.

An objective reading of the language of the Note reveals that the first payment called for is a \$4,000.00 principal payment on February 1, 1992. It is true that the Note does refer to "semi-annual payments commencing August 1 and February 1 semi-annually", however, the Note does not state the amount of any such payments nor does it state whether such payments constitute payment of principle or interest.

By ruling in favor of the Respondent, the Court rewrote the contract to provide for a certain payment "amount" and rewrote the contract to stipulate that said payment was an "interest only" payment. The judgment of the Court was not supported by law or facts. Indeed, it is not for a Court to rewrite a contract improvidently entered into at arms length or to change the bargain indirectly because of supposed equitable principles. *Dalton v. Jerico Construction Co.*, 642 P2d 748 (Utah 1982). Respondents predecessor dictated the terms of the Note and then had his agent draft the Note. The

Respondent must live with the terms of the Note without outside intervention from the Court.

2. EVEN IF THE COURT FINDS AN AMBIGUITY IN THE NOTE, THERE ARE QUESTIONS OF FACT REGARDING EXTRINSIC EVIDENCE WHICH PRECLUDE SUMMARY JUDGMENT

Alternatively, the Court may have found that the Note is sufficiently ambiguous as to warrant the admission of parol or extrinsic evidence relevant to determining whether the Note requires any certain semi annual payment. However, there are questions of fact which should have precluded any summary judgment in this case.

"Summary judgment is appropriate... when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. "Winegar v. Froerer Corp., 813 P.2d 104, 107 (Utah 1991). "Whether ambiguity exists in a contract is a question of law."Winegar, 813 P.2d at 108; Plateau Mining Co. v. Utah division of State Lands and Forestry, 802 P.2d 720, 725 (Utah 1990); Gordon v. CRS Consulting Engineers, 820 P.2d 492 (Utah App 1991)

" A contract provision is ambiguous if it is capable of more than one reasonable interpretation because of 'uncertain meanings of terms missing terms, or other facial deficiencies.'" Winegar, 813 P.2d at 108 (quoting Faulkner v. Farnsworth, 665 P.2d 1292, 1293 (Utah 1983); C.J. Realty v. Willey, 758 P.2d 923, 928 (Utah App. 1988)

In this case there were significant questions of fact regarding the extrinsic evidence which the Respondent had proffered in their motion papers or which they may have

introduced at trial. At a minimum, the Petitioner was entitled to an opportunity to respond to the evidence which may have been put forth by the Respondent, to cross examine any witnesses and to produce additional extrinsic evidence for consideration by the Court.

3. AT BEST, THE EXTRINSIC EVIDENCE WAS INCONCLUSIVE AND THE NOTE SHOULD HAVE BEEN CONSTRUED AGAINST ITS DRAFTER

Once ambiguity has been found in a contract, and extrinsic evidence is deemed inconclusive, irrelevant, or unavailable, a court still uncertain as to the intention of the parties should construe ambiguities against the drafter of the contract. Wilburn, 748 P.2d at 585; see *Sears v. Riemersma*, 655 P.2d 1105 (Utah 1982); 17A AM. Jur. 2D Contracts & 339 (1991).

It is a fundamental principle of contract law that "any uncertainty with respect to construction of a contract should be resolved against the party who ha[s] drawn the agreement." *Sears v. Riemersma*, 655 P.2d 1105, 1107 (Utah 1982).

In this case the Respondents did not produce any relevant extrinsic evidence regarding the intent of the parties. Their "extrinsic evidence" consisted of an affidavit of one of the Plaintiffs who was not even a party to the original contract and had no part whatsoever in the negotiation or drafting of the Note. The extrinsic evidence posited by the Respondent was profoundly inconclusive, and the Note should have been construed against its drafter, the Respondents predecessor in interest.

**4. BY RENDERING A FINAL VERDICT DURING PRE-TRIAL
CONFERENCE, JUDGE SAWAYA SHOWED PERSONAL BIAS AND PREJUDICE
AND MADE A PROCEDURAL BREACH.**

As mentioned under "Applicable Facts" in this docketing Statement, in the Pre-Trial Conference, Judge Sawaya acknowledged that the note was ambiguous but said that the court could only assume what the intent of the note was. He told the Petitioner in the presence of the Respondents Council that if he did not work out a settlement with the Respondent prior to the trial, he, (Judge Sawaya) would rule in favor of the Respondent at trial.

According to the rules of Pre-Trial Conference (1.08 (7)) See also the enclose "Order for Pre-Trial Settlement Conference and for Appearance of Counsel and Parties" document which was issued by the Third District Court. "The purpose of Pre-Trial Conference is to effect a settlement of the case". In addition to "Settlement", "Other problems such as withdrawal of counsel, failure to respond to discovery, witness problems, trial conflicts, requests for continuances, etc, will be resolved at the conference".

It is not the purpose of the Pre-Trial Conference to render a verdict in the case prior to the Trial Date. By rendering a premature verdict in favor of the Respondent, Judge Sawaya greatly hindered the Petitioners' potential ability to negotiate any kind of a reasonable settlement, therefore the Respondent made no attempts at settlement. Such biased actions on the part of Judge Sawaya constitute a serious breach of Judicial Procedure.

5. ADDITIONAL EVIDENCE HAS SURFACED THAT CLARIFIES THE MEANING AND INTENT OF THE NOTE, SHOWING THAT NO INTEREST PAYMENTS WERE INTENDED TO BE PART OF THE CONTRACT.

The Petitioner has just recently obtained a copy of another Note that was drafted by the same agent, Mr. Eric Glenn, using the same Trust Deed Note Form. It was drafted about two weeks earlier than the note at issue was drafted. In this particular Note, the parties agreed upon specific "interest" payments with a specified "amount". This note provides evidence that the drafter of the Note at issue was knowledgeable and competent enough to have specified if the payments were to have been a "specified amount" towards "interest".

CONCLUSION

Based upon the five above mentioned Issues of Appeal, the Petitioners, Cory & Arwella Curtis submit to the Utah Court of Appeals that the Summary Judgment rendered by the Judge Sawaya is not supported by the Law or Facts for the following reasons;

1- The Note does not expressly require any specified interest payments to be made prior to the last balloon payment and the Court has no authority to rewrite the contract improvidently, at arms length, after the fact.

2- A Summary Judgment is inappropriate in this case because there was significant and genuine issue of material fact. The Petitioner is entitled to an opportunity to respond to the evidence at trial for consideration by the Court.

3- At best, the extrinsic evidence was inconclusive and the Note should have been construed against its drafter.

4- By rendering a Pre-Trial Verdict, the Judge committed a serious break of Judicial Procedure.

5- Additional evidence has surfaced that could not have been made available to the Court at the time of trial. This evidence proves that the drafter had previously drafted a Note with specific "Interest" payments in specified "amounts". The drafter was therefore knowledgeable and competent enough to have made these types of specifications had there been an agreement between parties to do so.

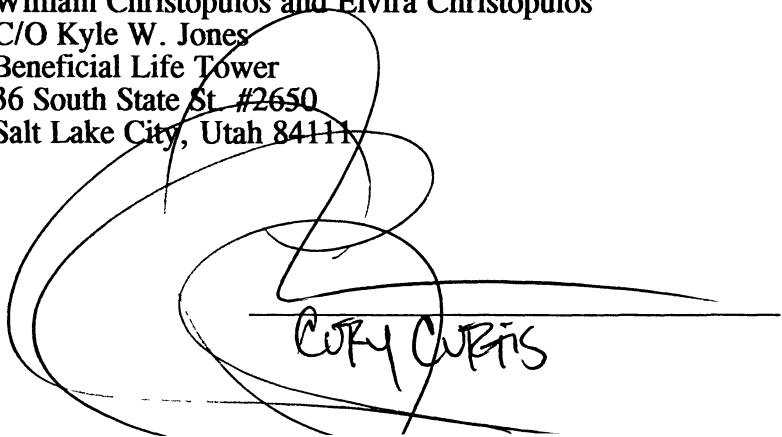
The Defendant/Appellant respectfully requests this court to reverse the district court's grant of the Plaintiffs Motion for Summary Judgment and remand the case for trial on the merits previously stated.

Dated this 7th day of June 1993


Cory and Arwella Curtis

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and exact copy of the forgoing Notice, postage prepaid, by U.S. Mail, this 7th day of June, 1993 to the Plaintiffs;
William Christopulos and Elvira Christopulos
C/O Kyle W. Jones
Beneficial Life Tower
36 South State St. #2650
Salt Lake City, Utah 84111


Cory Curtis

WHEN RECORDED, MAIL TO:
WILLIAM CHRISTOPULOS

2742 Dearborn Street

Salt Lake City, Utah 84103

Space Above This Line for Recorder's Use

4412866

T-112753

Assignment of Trust Deed

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged,

DARRELL B. MINCKS

hereby assigns to WILLIAM CHRISTOPULOS and ELVIRA CHRISTOPULOS, his wife
as joint tenants with full rights of survivorship
all the beneficial interest and rights accrued or to accrue under that certain Trust Deed, together
with the indebtedness secured thereby, which Trust Deed is dated February 18, 1987
was executed by CORY CURTIS and ARWELLA CURTIS, his wife, as Trustor,
to UTAH TITLE AND ABSTRACT COMPANY, as Trustee,
was recorded on February 26, 1987, as Entry No. 4407697, in Book 5881
Page(s) 2808 of the records of the County Recorder of Salt Lake County,
Utah, and covers real property situated in said county described as follows:

All of Lot 5, VEGAS SUBDIVISION, according to the official plat thereof,
recorded in the office of the County Recorder of Salt Lake County, Utah.

KATIE L. DIXON
RECORDER
SALT LAKE COUNTY,
UTAH

MAR 6 12 30 PM '87

UTAH TITLE
DEP

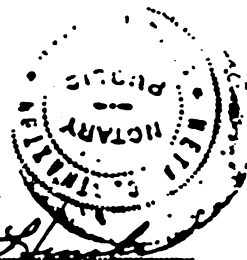
Bill Bogach
AND ASSOCIATES

75.00

Dated this 20th day of February

1987

Darrell B. Mincks
Darrell B. Mincks



STATE OF UTAH

COUNTY OF SALT LAKE

On the 20th day of February, 1987, personally appeared before me

DARRELL B. MINCKS

, the signer

of the foregoing instrument, who duly acknowledged to me that he executed the same.

Darrell B. Mincks
Notary Public

My Commission Expires

11-1-88

Residing at

Sandy Utan

BOOK 5886 PAGE 1971

Weber 200-2372

WOL 5881 115: 2808

(If Trustor a Corporation)

STATE OF UTAH
COUNTY OF

On the day of, A.D. 19....., personally
appeared before me, who being by me duly sworn,
says that he is the of
the corporation that executed the above and foregoing instrument and that said instrument was
signed in behalf of said corporation by authority of its by-laws (or by authority of a resolution
of its board of directors) and said acknowledged
to me that said corporation executed the same.

My Commission Expires:

Notary Public residing at:

009
KATIE L. RYAN
RECORDER
SALT LAKE COUNTY,
UTAH
FEB 26 1 10 PM '97
UTAH TITLE
DEP
Ruth Shogit
EVELYN PROCTOR

(NOT TO BE RECORDED)

REQUEST FOR FULL RECONVEYANCE

(To be used only when indebtedness secured hereby has been paid in full)

TO: TRUSTEE.

The undersigned is the legal owner and holder of the note and all other indebtedness secured
by the within Trust Deed, said note, together with all other indebtedness secured by said Trust
Deed has been fully paid and satisfied; and you are hereby requested and directed, on payment to
you of any sums owing to you under the terms of said Trust Deed, to cancel said note above men-
tioned, and all other evidences of indebtedness secured by said Trust Deed delivered to you here-
with, together with the said Trust Deed, and to reconvey, without warranty, to the parties desig-
nated by the terms of said Trust Deed, all the estate now held by you thereunder.

Dated....., 19.....

Mail reconveyance to

BOOK 5881 PAGE 2809

August 1, 1987

Cory and Arwella Curtis
4284 S. Albright Drive
Salt Lake City, Utah 84124

Dear Cory and Arwella Curtis,

As you are aware, the first payment on your note is due August 1, 1987. The amount due is \$384.75. The remainder of the payments are due as follows:

1. Aug. 1, 1987	\$384.75	16. Feb. 1, 1995	\$270.75
2. Feb. 1, 1988	\$384.75	17. Aug. 1, 1995	\$270.75
3. Aug. 1, 1988	\$384.75	18. Feb. 1, 1996	\$270.75
4. Feb. 1, 1989	\$384.75	19. Aug. 1, 1996	\$270.75
5. Aug. 1, 1989	\$384.75	20. Feb. 1, 1997	\$4,270.75
6. Feb. 1, 1990	\$384.75	21. Aug. 1, 1997	\$156.75
7. Aug. 1, 1990	\$384.75	22. Feb. 1, 1998	\$156.75
8. Feb. 1, 1991	\$384.75	23. Aug. 1, 1998	\$156.75
9. Aug. 1, 1991	\$384.75	24. Feb. 1, 1999	\$156.75
10. Feb. 1, 1992	\$4,384.75	25. Aug. 1, 1999	\$156.75
11. Aug. 1, 1992	\$270.75	26. Feb. 1, 2000	\$156.75
12. Feb. 1, 1993	\$270.75	27. Aug. 1, 2000	\$156.75
13. Aug. 1, 1993	\$270.75	28. Feb. 1, 2001	\$156.75
14. Feb. 1, 1994	\$270.75	29. Aug. 1, 2001	\$156.75
15. Aug. 1, 1994	\$270.75	30. Feb. 1, 2002	\$5,656.75

You might want to keep this letter for your records so that you may keep track of your payments.

Please make the checks payable to William and Elvira Christopolus.

Sincerely,

William and Elvira Christopolus
2742 Dearborn Street
Salt Lake City, Utah 84106
(801) 467-3828

Mr. & Mrs. William Christopolus
2742 Dearborn St.
SLC Utah 84106

1/30/92

Dear Bill,

As you are aware, my first payment to you of \$4,384.75 is due Saturday, February 1, 1992. Since my contention is that I am not in violation of our agreement until said payment is in default, please find enclosed, the unpaid portion of the first payment.

Contrary to your claims that I have made only four payments to you, I have enclosed a copy of the sixth payment that I made to you, which you deposited into your account on 03/19/90. It was check #810 for the amount of \$384.75. I have also sent a copy to the court and to your attorney.

This makes the remaining portion of the first payment as follows;

\$4,384.75	Total first payment amount
-2,308.50	Minus six payments previously paid
<u>\$2,076.25</u>	Enclosed remaining portion of total first payment.

I am expecting you to return the enclosed check since your contention is that the agreement has already been broken and have chosen to take legal action. I have enclosed a self addressed envelop for that purpose.

WARNING

By cashing or depositing the enclosed payment, you are accepting the first payment of \$4,384.75 as being PAID IN FULL!! If the check is not returned, cashed, or deposited within 15 days of the due date, I will stop payment on it.

Sincerely,

CORY R. CURTIS 11-84
OR ARWELLA CURTIS
168 WEST CENTER STREET 801 295-8985
NORTH SALT LAKE, UT 84054

CASHING OR DEPOSITING
THIS CHECK CONSTITUTES
PAYMENT IN FULL OF 2/1/92 PMT OF \$4,384.75
1-29-1992 10065 31-273/1240

Cory Curtis

PAY TO THE
ORDER OF

MRS. & MRS. WILLIAM CHRISTOPOLUS

\$2,076²⁵

TWO THOUSAND & SEVENTY SIX DOLLARS & 75/100 — DOLLARS



CITY CENTER OFFICE
GUARDIAN STATE BANK
142 EAST 200 SOUTH
SALT LAKE CITY, UTAH 84111

2nd MORTGAGE PMT OF 2/1/92

TRUST DEED NOTE

NOT DESTROY THIS NOTE: When paid, this note, with Trust Deed securing same, must be surrendered to Trustee for cancellation, before reconveyance will be made.

13,500.00

Salt Lake City, Utah

February 1, 1987

FOR VALUE RECEIVED, the undersigned, jointly and severally, promise to pay to the order of
DARRELL B. HINCKS

THIRTEEN THOUSAND, FIVE HUNDRED AND NO/100 ----- 13,500.00
DOLLARS (\$.....),

together with interest from date at the rate of FIVE & 07/100 per cent ($\frac{5.7}{100}$ %) per annum on

unpaid principal, said principal and interest payable as follows:
Semi-annual payments commencing August 1, and February 1, semi-annually.

\$4,000.00 principal balance due February 1, 1992

\$4,000.00 principal balance due February 1, 1997.

\$5,500.00 principal together with accrued interest, due and payable on or before February 1, 2002. This note may be paid early without any penalty. Early full payment of the entire note will be subject to a payment based on \$10,000.00 at 10% interest deducting any payments made.

If payment is not received within 15 days after due date, a 5% late fee of monthly or semi-annual payments will be assessed.

Each payment shall be applied first to accrued interest and the balance to the reduction of principal. Any such installment not paid when due shall bear interest thereafter at the rate of N/A per cent ($\frac{N/A}{100}$ %) per annum until paid.

If default occurs in the payment of said installments of principal and interest or any part thereof, or in the performance of any agreement contained in the Trust Deed securing this note, the holder hereof, at its option and without notice or demand, may declare the entire principal balance and accrued interest due and payable.

If this note is collected by an attorney after default in the payment of principal or interest, either with or without suit, the undersigned, jointly and severally, agree to pay all costs and expenses of collection including a reasonable attorney's fee.

The makers, sureties, guarantors and endorsers hereof severally waive presentment for payment, demand and notice of dishonor and nonpayment of this note, and consent to any and all extensions of time, renewals, waivers or modifications that may be granted by the holder hereof with respect to the payment or other provisions of this note, and to the release of any security, or any part thereof, with or without substitution.

This note is secured by a Trust Deed of even date herewith.

4284 South Albright Drive

READ AND APPROVED

Darrell B. Hincks

DATE 2-18-87

**THIS TRUST DEED NOTE MAY BE SUBORDINATED ONE TIME ONLY EITHER FOR A SECOND OR ON A REFINANCE, PER THE AGREEMENT OF BOTH PARTIES.

Cory Curtis

Arwella Curtis

Arwella Curtis

UTAH TITLE AND ABSTRACT COMPANY

T-112045

TRUST DEED NOTE

NOT DESTROY THIS NOTE: When paid, this note, with Trust Deed securing same, must be surrendered to Trustee for cancellation, before reconveyance will be made.

\$5,000.00

Salt Lake City, Utah

January 20, 1987

FOR VALUE RECEIVED, the undersigned, jointly and severally, promise to pay to the order of
WILLIAM CHRISTOPULOS and ELVIRA CHRISTOPULOS, his wife as joint tenants
with Full rights of survivorship

FIVE THOUSAND AND NO/100 ----- DOLLARS (\$5,000.00),

together with interest from date at the rate of TEN per cent; (10.0%) per annum on
the unpaid principal, said principal and interest payable as follows:

Interest commences January 1, 1987.

\$100.00 or more each month commencing February 1, 1987, and \$100.00 or more
each month thereafter on the 1st day of each month until the entire principal
balance together with interest is paid in full.

Each payment shall be applied first to accrued interest and the balance to the reduction of principal. Any
such installment not paid when due shall bear interest thereafter at the rate of TWENTY
20.0 per cent (20.0%) per annum until paid.

If default occurs in the payment of said installments of principal and interest or any part thereof, or in
the performance of any agreement contained in the Trust Deed securing this note, the holder hereof, at its
option and without notice or demand, may declare the entire principal balance and accrued interest due and
payable.

If this note is collected by an attorney after default in the payment of principal or interest, either with
or without suit, the undersigned, jointly and severally, agree to pay all costs and expenses of collection including
a reasonable attorney's fee.

The makers, sureties, guarantors and endorsers hereof severally waive presentment for payment, demand
and notice of dishonor and nonpayment of this note, and consent to any and all extensions of time, renewals,
waivers or modifications that may be granted by the holder hereof with respect to the payment or other pro-
visions of this note, and to the release of any security, or any part thereof, with or without substitution.

This note is secured by a Trust Deed of even date herewith.

6733 South 1560 East
Salt Lake City, Utah 84121

READ AND APPROVED.

W. Christophulos
DATE 3-19-87 E.C.

Johanna D. Pinkus
Bue [Signature]

Copy For Your Files
IF YOU NEED IT. O.K.
BILL C

UTAH TITLE AND ABSTRACT COMPANY

Salt Lake 355-7533

Tooele 882-3511

Davis 867-2273

773-1653

534-0422

Weber 504-3511