

1993

Jacobsen v. Jacobsen : Brief of Appellee

Utah Court of Appeals

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DOCKET NO.

IN THE UTAH COURT OF APPEALS

930496

JOYCE K. JACOBSEN (Kalanquin),)

Plaintiff and Appellant/)
Cross Appellee)

vs.)

SHIRLEY F. JACOBSEN,)

Defendant and Appellee/)
Cross-Appellant,)

Court of Appeals
Case No. 930496-CA

Priority No. 16

BRIEF OF APPELLEE
SHIRLEY JACOBSEN

AN APPEAL AND CROSS APPEAL FROM THE
FIRST JUDICIAL DISTRICT COURT OF THE
STATE OF UTAH, COUNTY OF CACHE,
THE HONORABLE GORDON J. LOW PRESIDING

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Argument Priority Classification #16

FILED

JUN 27 1994

COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

JOYCE K. JACOBSEN (Kalanquin),)		
)	
Plaintiff and Appellant/)		
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)	Case No. 930496-CA
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PRELIMINARY STATEMENT

The Plaintiff and Appellant in this appeal is Joyce K. Jacobsen, also known as Joyce Kalanquin, who will be referred to as "Kalanquin". The Defendant and Appellee is Shirley F. Jacobsen, who will be referred to as "Jacobsen".

Kalanquin filed a Complaint for divorce on July 23, 1986 in the First Judicial District Court for Cache County, referred hereto as the "divorce action". The Trial Court entered an Order concerning the parties' property on August 28, 1987. This Order will be referred to as the "Property Order".

On November 27, 1987 Kalanquin filed a motion entitled "Motion To Set Aside Divorce Decree and for a New Trial on the Issues of Property Settlement", which will be referred to as "Motion To Set Aside". A hearing on the Motion To Set Aside was held on May 24, 1993 and the Trial Court denied Kalanquin's Motion and the Trial Court entered an Order denying Kalanquin's Motion To Set Aside on June 30, 1993, hereinafter referred to as "Order".

References to the reporter's transcript of the hearing on May 24, 1993 will be by the designation of "R.T."

STATEMENT OF JURISDICTION

The jurisdiction of the Utah Court of Appeals in this matter is pursuant to Utah Code Annotated §78-2A-2(i) (Utah Code Annotated 1953 as amended).

STATEMENT OF ISSUES AND STANDARD OF REVIEW

Issues on Reply to Plaintiff's Appellant Brief

1. Did the Trial Court correctly determine that Kalanquin had not met her burden of proof at the May 24, 1993 hearing and did the Trial Court correctly deny Kalanquin's Motion To Set Aside?

2. Did Kalanquin waive any right or claim she had to Jacobsen's property when she entered a binding Stipulation on August 27, 1987, which was approved by the Trial Court in an Order dated August 28, 1987?

3. Were Kalanquin's Interrogatories and Requests for Production of Documents submitted to Jacobsen prior to the May 24, 1994 hearing repetitive and abusive, and properly terminated?

Issues on Cross Appeal

1. Did the Trial Court error in refusing to award Jacobsen his attorney's fee and costs of Court at the May 24, 1993 hearing and should Jacobsen be awarded his attorney's fees and costs of court for this appeal and the prior hearing against Kalanquin and her attorney?

The standard for review is whether the Findings of Fact and Order of June 30, 1993, are clearly erroneous. Utah Rules of Civil Procedure, Rule 52(a); Epstein v. Epstein, 741 P.2d 974, 977 (Utah App. 1987). In domestic relation matters, Trial Courts are afforded broad discretion as long as that discretion is exercised within the confines of legal precedence. Whitehead v. Whitehead, 193 Utah Adv. Rep. 8, 9 (Utah App. 1992), Cummings v. Cummings, 821 P.2d 472, 474-75 (Utah App. 1991). The Appellate Court must presume the correctness of the Trial Court's decision absent "manifest injustice or inequity that indicates a clear abuse of . . . discretion." Hansen v. Hansen, 736 P.2d 1055, 1056 (Utah App. 1987). In order to successfully challenge the Trial Court's findings, the Appellant is required to marshall all the evidence supporting the Court's finding and demonstrate that the evidence is insufficient to support that finding. Scharf v. BMG Corp., 700 P.2d 1068, 1070 (Utah 1985).

STATUTES AND RULES

Rule 11, Utah Rules of Civil Procedure

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name who is duly licensed to practice in the state of Utah. The attorney's address also shall be stated. A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certification by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry

it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

Rule 52(a), Utah Rules of Civil Procedure

(a) **Effect.** In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58A; in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court. The trial court need not enter findings of fact and conclusions of law in rulings on motions, except as provided in Rule 41(b). The court shall, however, issue a brief written statement of the ground for its decision on all motions granted under Rules 12(b), 50(a) and (b), 56, and 59 when the motion is based on more than one ground.

Rule 33, Utah Rules of Appellate Procedure

(a) **Damages for delay or frivolous appeal.** Except in a first appeal of right in a criminal case, if the court determines that a motion made or appeal taken under these rules is either frivolous or for delay, it shall award just damages, which may include single or double costs, as defined in Rule 34, and/or reasonable attorney fees, to the prevailing party. The court may order that the damages be paid by the party or by the party's attorney.

(b) **Definitions.** For the purposes of these rules, a frivolous appeal, motion, brief, or other paper is one that is not grounded in fact, not warranted by existing law, or not based on a good faith argument to extend, modify, or reverse existing law. An appeal, motion, brief, or other paper interposed for the purpose of delay is one interposed for any improper purpose such as to harass, cause needless increase in the cost of litigation, or gain time that will benefit only the party filing the appeal, motion, brief, or other paper.

Section 30-3-3, Utah Code Annotated (1953 as amended)

(1) In any action filed under Title 30, Chapter 3, 4, or 6, and in any action to establish an order of custody, visitation, child support, alimony, or division of property in a domestic case, the court may order a party to pay the costs, attorney fees, and witness fees, including expert witness fees, of the other party to enable the other party to prosecute or defend the action. The order may include provision for costs of the action.

(2) In any action to enforce an order of custody, visitation, child support, alimony, or division of property in a domestic case, the court may award costs and attorney fees upon determining that the party substantially prevailed upon the claim or defense. The court, in its discretion, may award no fees or limited fees against a party if the court finds the party is impecunious or enters in the record the reason for not awarding fees.

(3) In any action listed in Subsection (1), the court may order a party to provide money, during the pendency of the action, for the separate support and maintenance of the other party and of any children in the custody of the other party.

(4) Orders entered under this section prior to entry of the final order or judgment may be amended during the course of the action or in the final order or judgment.

Section 78-27-56, Utah Code Annotated (1953 as amended)

(1) In civil actions, the court shall award reasonable attorney's fees to a prevailing party if the court determines that the action or defense to the action was without merit and not brought or asserted in good faith, except under Subsection (2).

(2) The court, in its discretion, may award no fees or limited fees against a party under Subsection 91), but only if the court:

(a) finds the party has filed an affidavit of impecuniosity in the action before the court; or

(b) the court enters in the record the reason for not awarding fees under the provisions of Subsection (1).

STATEMENT OF THE CASE

This is an appeal from a denial of Plaintiff's Motion To Set Aside. Jacobsen responds to that appeal and also cross-appeals from the order of the District Court denying his claim of attorney's fees and costs of Court from Kalanquin and her attorney. Jacobsen requests the Court award him his attorney's fees and court costs for the Motion To Set Aside and this appeal from Kalanquin and her attorney.

STATEMENT OF FACTS AND COURSE OF PROCEEDINGS

Kalanquin and Jacobsen were married on June 30, 1976. Prior to their marriage, Kalanquin and Jacobsen owned real property and personal property which each had acquired as premarital property. Kalanquin and Jacobsen separated from each other on July 20, 1986.

On July 23, 1986, Kalanquin filed a Complaint for Divorce against Jacobsen in the First Judicial District Court, Cache County, Utah. An Order to Show Cause Hearing was held on Kalanquin's Order to Show Cause before Judge John F. Walquist on October 17, 1986. At the Order to Show Cause Hearing, Kalanquin's attorney questioned Jacobsen extensively regarding his family limited partnership and his assets. Transcript of October 17, 1986 hearing pages 30-38.

On May 1, 1987, a pre-trial conference was held before Judge Walquist. At the pre-trial conference the parties and their attorneys were instructed by Judge Walquist to meet together

outside the courtroom and write a list of the properties of the parties which was in question and the properties that each party owned. Transcript of May 1, 1987 Hearing, pages 6 and 7. The parties met with their attorneys and Kalanquin's attorney, John Caine, wrote a list of the properties. A copy of the list is attached hereto as Addendum No. "1". After the list was made, Judge Walquist asked if there were any questions concerning the property of the parties and the parties' attorneys indicated that since the parties had been meeting for approximately one hour and twenty minutes, that he did not have any questions at this time and if Kalanquin's attorney needed to ask more questions he would take the deposition of Jacobsen. Transcript of May 1, 1987 Hearing, pages 14 and 15.

At the pre-trial conference on May 1, 1987, Kalanquin was granted a divorce from Jacobsen with the issue of property settlement to be heard by the court at a trial scheduled for August 27 and 28, 1987. Kalanquin's attorney was ordered by the court to prepare the Divorce Decree. Kalanquin's attorney did not prepare the Divorce Decree. It was prepared by Jacobsen's attorney and sent to Kalanquin's attorney to review. Kalanquin's attorney did not submit the Divorce Decree to the court until September 17, 1987.

Prior to the divorce, both Kalanquin and Jacobsen conducted extensive discovery and investigation into each other's property, assets and income. Interrogatories were exchanged between the parties and lists of the parties properties and income, together

with their claims as to each other's property were exchanged between the parties and filed with the Trial Court pursuant to Judge Walquist's Order. Transcript of May 1, 1987 Hearing, page 10; see also, Plaintiff's Evidence of Financial Status and Summary of Property attached as Addendum No. "2" and Defendant's Summary of Property attached as Addendum No. "3". Also, Kalanquin's attorney met with Jacobsen's accountant personally to discuss income that was earned from Jacobsen's properties.

On the day of trial, August 27, 1987, Kalanquin and Jacobsen entered into a Stipulation regarding the issues of premarital property and income, property settlement, alimony, and payment of attorney's fees. A copy of the Stipulation is attached as Addendum No. "4". Both parties reviewed the Stipulation with their attorneys and executed it. Both parties had the benefit and opportunity to ask their attorney's questions about the Stipulation and receive legal advice and guidance before they signed it. The Stipulation was presented to the Trial Court on August 27, 1987 and it was approved by Judge VeNoy Christofferson. District Court Minute Entry August 27, 1987.

Jacobsen's attorney prepared an Order which incorporated the terms and conditions of the Stipulation of the parties. The Order was signed by Judge VeNoy Christofferson on August 28, 1987. A copy of the Order dated August 28, 1987 is attached as Addendum No. "5".

On November 27, 1987, Kalanquin's attorney, John Caine filed a motion entitled "Motion to Set Aside Divorce Decree and for a New

Trial on the Issues of Property Settlement." Subsequently, Kalanquin terminated John Caine as her attorney. For a while, Kalanquin was represented by Vernon Romney; however, Kalanquin did not prosecute the Motion To Set Aside until Jacobsen filed an Order To Show Cause because Kalanquin refused to execute a Satisfaction of Judgment releasing her Judgment for \$644.00 against Jacobsen as set forth in paragraph 2 of the August 28, 1987, Order which had been paid by Jacobsen. Kalanquin was brought before the court on Jacobsen's Order To Show Cause for contempt and she was ordered by the court to execute the Satisfaction of Judgment and pay Jacobsen's attorney's fees and costs.

Kalanquin then hired Attorney Raymond N. Malouf, her fourth attorney. Discovery was exchanged by the parties. Kalanquin's attorney submitted three (3) sets of Interrogatories and Requests for Production of Documents. Hearings were held by the Trial Court concerning the numerous and abusive discovery requests on November 12, 1992 and February 16, 1993 and finally the Trial Court terminated Kalanquin's discovery because she did not follow the direction of the Trial Court, she abused the discovery and the discovery undertaken was "entirely unjustifiable". See page 6 of Judge Gordon Low's Memorandum Decision dated May 7, 1993, attached hereto as Addendum No. "6".

On May 24, 1993 a hearing was held on Kalanquin's Motion to Set Aside before Judge Gordon J. Low in the First Judicial District Court for Cache County, Utah. After a full day hearing, Judge Low denied Kalanquin's Motion to Set Aside and on June 30, 1993 an

Order was entered by the court. A copy of the June 30, 1993 Order is attached as Addendum No. "7".

SUMMARY OF THE ARGUMENTS

1. The Trial Court properly dismissed Kalanquin's Motion To Set Aside after a full day hearing was held on May 24, 1993. At the hearing, Kalanquin had the burden of proof to prove her claims set forth in her Motion To Set Aside. Kalanquin did not present sufficient evidence at the hearing and the Trial Court denied her Motion To Set Aside with very specific findings on the record.

2. The Trial Court properly dismissed Kalanquin's Motion To Set Aside because the parties had entered into a Stipulation on August 27, 1987 which was signed by each party and their counsel. The Stipulation was approved by the District Court and the Property Order incorporating the Stipulation was entered by the District Court on August 28, 1987. In paragraphs 2 and 3 of the Stipulation Kalanquin waived any right or claim she had to Jacobsen's property and equity principles are not available to her to reinstate rights and privileges she voluntarily contracted away simply because she has come to regret the Stipulation.

3. Extensive discovery was conducted by the parties prior to the August 27, 1987 Stipulation. Kalanquin's Interrogatories and Requests for Production of Documents prior to the May 24, 1993 hearing on the Motion To Set Aside were repetitive and abusive. The Trial Court properly terminated discovery.

4. The Trial Court found that Kalanquin's discovery requests were abusive and entirely unjustifiable. Furthermore, the Trial Court denied Kalanquin's Motion To Set Aside and Jacobsen should be awarded his attorney's fees in defending the Motion To Set Aside and in responding to this appeal pursuant to either Rule 11 of the Utah Rules of Civil Procedure, Rule 33 of the Utah Rules of Appellate Procedure, or Utah Code Ann. § 78-27-56.

ARGUMENT

I.

A HEARING ON KALANQUIN'S MOTION TO SET ASIDE WAS HELD ON MAY 24, 1993, AND KALANQUIN HAD THE BURDEN OF PROOF TO PROVE HER CLAIMS. KALANQUIN DID NOT PRESENT SUFFICIENT EVIDENCE AND THE TRIAL COURT DENIED HER MOTION TO SET ASIDE WITH VERY SPECIFIC FINDINGS ON THE RECORD.

Kalanquin's Motion to Set Aside claimed that property and assets had not been disclosed by Jacobsen. Nothing was done on Kalanquin's Motion to Set Aside until approximately five (5) years after it was filed. Finally, a trial was held on May 24, 1993. A review of the May 24, 1993 Hearing transcript shows that the properties that Kalanquin is claiming were not disclosed were properties that she had knowledge of either through disclosure by Jacobsen or through the fact that she had seen the property and participated with Jacobsen in sales of the properties.

Paragraph 8 of the Stipulation and paragraph 10 of the court's Order of August 28, 1987, provides that there has been a full disclosure of property acquired during the marriage. Many of the properties that she claims were not disclosed to her in Appendix A

and B of her Brief were acquired prior to the marriage and were not required to be disclosed pursuant to the Stipulation.

Jacobsen filed a Motion To Dismiss Kalanquin's Motion To Set Aside which the court did not grant and the Court required the parties to present evidence at a Hearing on May 24, 1993. From the very beginning of the Hearing, Judge Low instructed Kalanquin and her attorney what he wanted them to show at the Hearing. Judge Low instructed Kalanquin as follows: "That's enough of that. Show me some property you didn't know about and show me why I'm to believe that she didn't know about it. And had she known about it, it would have changed the result of the Stipulation." R.T. 12. After the Court's clear instructions, Kalanquin and her attorney still ignored what Judge Low wanted and the Court had to instruct them numerous times again and again what they needed to show. R.T. 24, 25, 26, 30 and 31.

After a full morning of evidence and prior to the lunch break, Judge Low asked Mrs. Kalanquin what relief she was seeking. R.T. 158. Judge Low could not obtain a straight response from Kalanquin. Finally, she indicated that she was requesting to be reimbursed for services that she had rendered to Jacobsen during the marriage. R.T. 162. This was the first time that the court or Jacobsen had heard a request for reimbursement of services. R.T. 162 and 163.

Upon cross-examination of Kalanquin she acknowledged that she was the licensed real estate broker for Western Realty Company which was owned by Jacobsen. R.T. 184. She also acknowledged that

she had prepared closing papers for every lot that was sold in a subdivision of Jacobsen's known as King Clarion Hills. R.T. 185. Finally, the court found that Kalanquin had signed eighty-eight (88) deeds concerning the transfer of lots from the subdivision known as King Clarion Hills. R.T. 195.

The Trial Court made very specific findings on the record concerning the claims for each parcel of property that Kalanquin asserted was not disclosed to her. Beginning on page 322 of the trial transcript Judge Low makes his findings. First, he indicates that he is relying on what he terms "operative documents". R.T. 322. The documents that he is relying on are the May 1, 1987 minute entry with attachments, Plaintiff's Evidence of Financial Status, Defendant's Summary of Property and the Stipulation of the parties. From these documents and the evidence presented to him in a full day of trial, he finds that the Weston, Idaho property was disclosed to Kalanquin. R.T. 323 and 324.

In discussing the term "disclosure" as used in paragraph 9 of the Stipulation, the Trial Court found as follows:

But when you say disclosure, I - - I don't think there's any requirement, and I'm not going to require anybody here to go back and make a disclosure of legal descriptions. There was a discovery period for that purpose if it was needed. It was disclosed. It was obviously not undisclosed property.

R.T. 325.

Regarding the commercial lot on 666 North Main, Logan, Utah, the Trial Court found that it was disclosed and was a matter of public record. R.T. 325 and 326. The Trial Judge found that the Cherry Creek properties in Richmond, Utah, were disclosed. R.T.

326. Furthermore, he found that the Kane County properties and the Navajo Hills property were disclosed and, in fact, that Kalanquin had been at the property by her own testimony. R.T. 326 and 327. The Court went on to state as follows:

These people were both represented by counsel; both knew of the properties; both could have obtained all they wanted to know about them from the public records without any further obligation of disclosure.

R.T. 327.

Other properties that were raised by Kalanquin were found by the Trial Court to be disclosed which included Lot 5 of the Knowles Subdivision (R.T. 328), Unit Number 285 West on 600 North of Meadow Village property (R.T. 328), Val-View Subdivision .31 acres remainder property (R.T. 328) and the lots and remainder parcels in the King Clarion Hills Subdivision (R.T. 328 and 329).

In the Trial Court's findings, Judge Low had some questions of whether the Family Limited Partnership was disclosed. The Trial Court found that the Family Limited Partnership was known to the Plaintiff and thus was disclosed. R.T. 330. In fact, Judge Low found that Kalanquin knew about the Family Limited Partnership during the summer of 1987 and when she signed the Stipulation. R.T. 333.

With regards to paragraph 9 of the Stipulation concerning the disclosure of property acquired during the marriage, Judge Low ruled as follows:

The saving clause in the Property Settlement Agreement and in the Order is not a savings clause allowing you to go back and reevaluate the property. It's not a saving clause that you can go back and say, "Well, I - - I'm having second thoughts about this."

It is a very specific and limited saving clause; and that is, that if there's undisclosed property or debts which later become disclosed, then go back. There is none. Every - - every item of this property was known to the Plaintiff prior to the Stipulation being signed.

It is, Mrs. Kalanquin, that your own testimony exactly that you knew of every one of these items of property. (Emphasis added.)

R.T. 333.

The Trial Judge in further instruction to Kalanquin stated as follows:

The point is this - - the point is this, I can only - - I can only rule on the testimony I have before me. And the testimony I have before me is, is that you knew about the Partnership even though he didn't tell you. He didn't tell you about it but you knew about it. It was disclosed.

R.T. 334.

Judge Low further went on to hold as follows:

That the testimony of Mr. Jacobsen was very clear as to what was owned or wasn't owned, and there has been no testimony by you to the contrary. And you've known about that stuff. It's not because you have a lack of discovery about it. That's clear, and you walked on the ground and looked at it. The records are clear about it.

The testimony is undisputed as to what was disclosed and what was known, what was on the record; and I cannot find, based upon everything I have heard here today, that there is any undisclosed assets as of the time of the divorce. And the operative time here is August - - just a minute. What was the - - what was the date of the Stipulation?

MR. WILLMORE: 27th, August 27th.

THE COURT: That is the operative date. As of August 27th, all the testimony before this Court is, is that the Plaintiff was aware of the different parcels and locations of the property, whether disclosed by the Defendant or not.

R.T. 334 and 335.

Even in Kalanquin's Brief to the court there are no cites to the trial record of undisclosed property or that she did not have knowledge of the property. Kalanquin's brief is void of any references to the trial record supporting her claims of nondisclosure.

In Kalanquin's brief she cites several cases which are not applicable to her case because a hearing was held on May 26, 1993. The first case cited is Boyce v. Boyce, 609 P.2d 928 (Utah 1980). The simple distinction between the present case and the Boyce case is that the trial court did not allow the wife to have a hearing on her Motion to Set Aside the Divorce Decree on the grounds of fraud. The Supreme Court in the Boyce case remanded the case for a hearing. In the present case, a hearing was held and Judge Low told Kalanquin and her attorney what they need to present to the Court. Judge Low made very specific and clear findings based upon the evidence presented to him. Unlike the Boyce case, Kalanquin had her opportunity of a full day hearing before the Trial Court and she did not present any convincing evidence to the Trial Court sufficient for the Trial Court to make any findings in her favor concerning the Motion to Set Aside.

Because a hearing was held by the Trial Court this Court must review the Findings of Fact to determine whether they are clearly erroneous. If they are not clearly erroneous then the Order and Findings of the Trial Court Judge must stand. Utah Rules of Civil Procedure, Rule 52(a); Epstein v. Epstein, 741 P.2d 974, 977 (Utah App. 1987).

The findings of a trial court are clearly erroneous if it can be shown that they are against the clear weight of evidence or that they induce a definite and firm conviction that a mistake has been made. Maughan v. Maughan, 770 P.2d 156, 159 (Utah App. 1989); Weston v. Weston, 773 P.2d 408, 410 (Utah App. 1989). At the hearing, Kalanquin did not meet her burden of proof and present evidence to the Trial Court of her claims. The Findings of Fact by Judge Low are clearly supported by the evidence and the appeal of Kalanquin should be denied.

II.

THE STIPULATION BETWEEN THE PARTIES IS A BINDING CONTRACT WHICH WAS SANCTIONED AND APPROVED BY THE DISTRICT COURT IN THE FORM OF AN ORDER AND AS SUCH KALANQUIN WAIVED ANY RIGHT OR CLAIM SHE HAD TO JACOBSEN'S PROPERTY.

On August 27, 1986, Jacobsen, Kalanquin and their attorneys entered into a Stipulation. On November 27, 1987, Kalanquin, through her attorney, John Caine, filed with the District Court a Motion to Set Aside. Kalanquin's Motion to Set Aside was based upon paragraph 9 of the Stipulation which states as follows:

9. Disclosure. Each of the parties acknowledged that a full and complete disclosure of all property and debts incurred or acquired during the marriage has been made and should other property or debts later be discovered, an Equitable Order would have to be entered at such time. (Emphasis added.)

A careful reading of paragraph 9 focuses on the disclosure of property and debts "acquired during the marriage". This paragraph ties directly in with the other terms and conditions of the parties Stipulation. Kalanquin and Jacobsen each reviewed and voluntarily

signed the Stipulation concerning their property which they owned prior to marriage and the income generated from their premarital property.

The Stipulation provides in paragraph 1 that Kalanquin is to receive her three (3) parcels of real property. Furthermore paragraph 2 provides that Jacobsen was to pay Kalanquin \$644.00 as a full and final property settlement between the parties. In paragraph 2 both parties waived any present or future claims that either party had against the other.

The parties also considered the premarital property and income of both Kalanquin and Jacobsen in paragraph 3 of the Stipulation which provides as follows:

3. Premarital Property. Plaintiff and Defendant stipulate and agree that each has extensive property which they owned prior to marriage or inherited prior to marriage. Plaintiff and Defendant stipulate and agree that neither shall make a claim for any property which either owned prior to marriage, and by virtue of this Stipulation Plaintiff and Defendant agree to forever waive any claim to any premarital property or inherited property. Furthermore, Plaintiff has asserted a claim requesting a share of income derived from premarital property that Defendant has sold prior to the date of divorce. Plaintiff hereby waives any claim which she may have in the past, present and future concerning income derived from premarital property presently owed or sold prior to the date of divorce.

Therefore, the Stipulation provided that each party was to receive their own real property together with premarital and inherited property. Paragraph 3 provides that Kalanquin was waiving any claims she had to the property or income derived from the sale of Jacobsen's premarital or inherited property. Also, Kalanquin specifically waived any claim for income she may have

from the premarital property of Jacobsen which he sold prior to the date of divorce. Finally, because Kalanquin had made a claim for income she waived any claim she had to past, present and future income derived from premarital property presently owned or sold prior to the date of divorce.

The parties had conducted extensive discovery prior to the divorce. Interrogatories and Requests for Production of Documents had been exchanged between the parties prior to August 27, 1987. Judge Walquist in a hearing on May 1, 1987, instructed the parties to go out of the courtroom and list the properties that the parties currently own. Transcript of May 1, 1987 Hearing, pages 6 and 7. A document was jointly prepared by Kalanquin, Jacobsen and their attorneys at the hearing and presented to Judge Walquist. See Addendum No. "1" and page 6 of May 1, 1987 transcript. After the parties had made the list of properties they returned to the court and Judge Walquist asked the parties if further questions were needed he would place the parties under oath. Transcript of May 1, 1987 Hearing, page 14. Kalanquin's attorney responded he had no further questions of Jacobsen and if he desires to he will take the deposition of Jacobsen. Transcript of May 1, 1987 Hearing, page 15.

At the May 1, 1987 hearing Judge Walquist ordered the parties to file summaries of property owned by the parties and to complete discovery by July 13, 1987. Transcript of May 1, 1987 Hearing, page 10. The parties exchanged summaries of property and filed them with the court pursuant to Judge Walquist's Order. See

Addendum Numbers "2" and "3". Kalanquin did not conduct or request any further discovery or depositions after the May 1, 1987 hearing.

However, prior to the discovery cut off date, Jacobsen submitted a second set of interrogatories and request for production of documents. The interrogatories asked Kalanquin about her claims for property and income from twelve (12) different subdivision developments and land owned by Jacobsen. Kalanquin's attorney responded by hand writing his answers in the margins. A copy of the hand written answers is attached as Addendum No. "8". This Exhibit shows clearly Kalanquin had knowledge of all of Jacobsen's properties because they were disclosed and identified by Jacobsen in the second set of interrogatories.

Kalanquin was very mindful of Jacobsen's properties. She simply was not a housewife who was unfamiliar with Jacobsen's business affairs. Kalanquin was the broker for Jacobsen's company known as Western Realty Co. R.T. 184. Her attorney, John Caine stated at the May 1, 1987 Hearing with Judge Walquist that they were "business partners and that they did everything together." Transcript of May 1, 1987 Hearing, pages 14 and 15. Kalanquin kept records and opened files for each lot that was sold by Jacobsen from the King Clarion Hills Subdivision. R.T. 185.

Clearly, the parties had ample time to investigate and prepare for the trial. After the parties had investigated the case and prepared for trial, a Stipulation was executed on August 27, 1987. This matter was filed on July 23, 1986 and the trial was scheduled for August 27, 1987. During this one year and one month period

extensive discovery occurred between the parties and the parties had ample time to prepare for the trial. The parties entered the Stipulation and made the waivers set forth in paragraph 3 based upon the exchange of information and their knowledge of the case.

When parties to a stipulation have negotiated the stipulation with the advice and assistance of counsel, the courts are very reluctant to relieve a party from a negotiated stipulation. In fact, the Utah Court of Appeals has held that "There is an institutional hesitancy to relieve a party from a Stipulation negotiated and entered into with the advice of counsel". Birch v. Birch, 771 P.2d 1114, 1116 (Ut. App. 1989); Richins v. Delbert Chipman and Sons Co., 817 P.2d 382, 385 (Ut. App. 1991).

The Utah Supreme Court in the case of Land v. Land, 605 P.2d 1248, 1250, (Utah 1980) referring to a divorce stipulation or settlement agreement stated as follows;

It must, however, be added that when a decree is based upon a property settlement, forged by the parties and sanctioned by the Court, equity must take such agreement into consideration. Equity is not available to reinstate rights and privileges voluntarily contracted away simply because one has come to regret the bargain made. Accordingly, the law limits the continuing jurisdiction of the Court where a property settlement has been incorporated into the decree, and the outright abrogation of the provisions of such an agreement is only to be resorted to with great reluctance and for compelling reasons. Land v. Land, 605 P.2d at 1250. (Emphasis added.)

In the present case, the parties exchanged enormous amounts of information and discovery concerning their properties through meetings, court hearings and formal discovery. Also, each party performed their own investigation. The August 27, 1987,

Stipulation of Jacobsen and Kalanquin was a voluntary agreement of the parties. The provisions of paragraphs 9, 1 and 3 of the Stipulation dovetail to insure all aspects of the parties' premarital and marital property are addressed. Paragraph 9 specifically refers to ". . . property and debts incurred or acquired during marriage". Paragraph 1 refers to three homes acquired during marriage and awarded to Kalanquin. Paragraph 3 awards each party their own premarital and inherited property and specifically refers to Kalanquin's asserted claims for income from Jacobsen's premarital property, and she waives all claims she may have to income from Jacobsen's premarital property.

Clearly, Kalanquin and Jacobsen voluntarily contracted away all of their rights and privileges in each others property. She has come to regret the bargain of the Stipulation and equity is not available to reinstate her rights and privileges she voluntarily contracted away. Where the Stipulation was incorporated into the Order, the courts cannot abrogate the provisions concerning property unless there are compelling reasons. Land v. Land, 605 P.2d at 1250.

A Hearing on Kalanquin's Motion to Set Aside was held on May 24, 1993 and the Trial Court found no merit whatsoever to Kalanquin's claims and dismissed her Motion. R.T. 335. At the Hearing she could not meet her burden of proof and it is interesting to note that she does not once cite to the Hearing record any evidence of her claims. Kalanquin's Brief simply argues the Trial Judge was wrong, and there is no showing of plausible

evidence that was presented to the Trial Court. Her Appendix A and B was not part of the trial record and is attached to mislead this Court as she tried to mislead the Trial Court.

It is interesting to note that even though the August 27, 1987 Stipulation is binding upon the parties, prior to Kalanquin signing the Stipulation she had already made the decision to file an action to reopen the case. In her deposition she stated that she signed the Stipulation knowing that she was going to file the Motion to Set Aside. See page 10 of Kalanquin's deposition dated June 15, 1988 attached as Addendum No. "9".

The Stipulation meant nothing to Kalanquin when she signed it and it means nothing now. However, as Kalanquin states in her Brief the Stipulation is a binding contract between the parties. Page 10 of Appellant's Brief. Because it is a binding contract, the Court should dismiss Kalanquin's appeal. This divorce is still being litigated almost seven (7) years after the date of divorce, which has placed a tremendous burden upon Jacobsen's health through stress and affected him financially. The Court should dismiss Kalanquin's appeal.

III.

DISCOVERY WAS CONDUCTED EXTENSIVELY PRIOR TO THE AUGUST 27, 1987 STIPULATION OF THE PARTIES. KALANQUIN'S DISCOVERY REQUESTS PRIOR TO THE MAY 24, 1994 HEARING IN THREE SEPARATE SETS OF INTERROGATORIES WERE REPETITIVE AND ABUSIVE, AND PROPERLY TERMINATED BY THE TRIAL COURT.

Kalanquin states in her Brief that Judge Low erred in terminating her discovery requests. As previously pointed out,

extensive discovery occurred prior to the parties entering into the Stipulation on August 27, 1987. Interrogatories and Requests for Production of Documents had been exchanged by the parties. At a May 1, 1987 hearing, Kalanquin's attorney commented to the court that he had spoken extensively with Jacobsen outside of the courtroom for one hour and twenty minutes and that if he needed to take Mr. Jacobsen's deposition he would. Transcript of May 1, 1987 Hearing, page 15. Furthermore, Kalanquin's attorney had met personally with Jacobsen's accountant, Gary Jones, to review the accounting for the property known as King Clarion Hills developed by Jacobsen and a partner.

Prior to the May 24, 1993 hearing, Kalanquin's fourth attorney, Raymond Malouf submitted three (3) sets of Interrogatories to Jacobsen. Jacobsen responded to the First Set of Interrogatories. The responses were not as Kalanquin thought they should be.

Jacobsen then filed a Motion to Dismiss and on November 12, 1992 the parties, together with counsel, appeared before the court on Jacobsen's Motion to Dismiss. After the parties had made arguments to the court concerning Jacobsen's Motion to Dismiss, the Trial Court carefully instructed Kalanquin and her attorney to submit to Jacobsen within thirty (30) days Interrogatories and Requests for Production of Documents which requested information concerning specific parcels of property that Kalanquin claimed were not disclosed to her in the original divorce action. See pages 79 and 80 of November 12, 1992 transcript. On December 15, 1992,

Jacobsen's counsel received from Kalanquin's counsel a Second Set of Interrogatories and Requests for Production of Documents. The questions were very general and sought information concerning property and income of Jacobsen for a time period from July 23, 1986 through September 17, 1987. The discovery requests were not specific as ordered by the court but simply a fishing expedition.

Jacobsen objected to Kalanquin's Second Set of Interrogatories and requested that the court award him his attorney's fees against Kalanquin and her attorney pursuant to Rule 11 of the Utah Rules of Civil Procedure or Utah Code Ann. § 78-27-56. At the hearing on February 16, 1993, the court again carefully instructed Kalanquin and her counsel what discovery was permissible and provided very specific instructions for questions that should be asked by Kalanquin and her attorney. See pages 6 through 9 of February 16, 1993 transcript and page 32 of February 16, 1993 transcript.

The Trial Court established a time schedule for the discovery. Kalanquin was to submit to Jacobsen the Interrogatories as instructed by the Court in the February 16, 1993 hearing by March 1, 1993. On March 1, 1993, Kalanquin submitted Interrogatories consisting of two (2) questions with numerous subparts. The subparts basically required an accounting of all property ever owned by Jacobsen. As pointed out in the Objection filed by Jacobsen, by the time all questions with subparts were answered there were 2,308 questions.

Jacobsen then filed with the court a Memorandum and Motion requesting a protective order from the discovery on April 2, 1993.

Prior to this date, on March 9, 1993 Kalanquin had submitted to Jacobsen further Interrogatories described as the "First Amendment" which were filed with the court on March 25, 1993. The Interrogatories together with the "First Amendment" with all the subparts of the potential questions amounted to 9,900 questions. Because of the abusive and burdensome nature of the discovery requests, Jacobsen moved the court for a protective order.

On May 7, 1993, Judge Low issued a Memorandum Decision reviewing the history of the discovery requests in this case. In the Memorandum Decision, the Trial Court denied Jacobsen's Motion to Dismiss and it denied Kalanquin's Motion to Compel. The court also set the matter for trial on May 24, 1993. The Trial Court went on to hold as follows:

Whatever evidence the plaintiff has in support of her position that there is undisclosed property she can present at the time of trial. No further requests and no further motions to compel will be entertained and the request by the defendant for sanctions will be taken under advisement.

Page 6 of May 7, 1993 Memorandum Decision.

Concerning the discovery requests, the court made the following findings:

The court finds specifically that in fact the plaintiff has abused discovery and ignored the direction by this court with respect to limitations thereon. The discovery undertaken is entirely unjustifiable. The discovery was allowed in aid of the motion to set aside the decree, which requires the plaintiff to demonstrate that there is further undiscovered evidence. Whatever information the plaintiff has she may present to the court in support of that motion and the court will issue an order accordingly. Counsel for the defendant is directed to

prepare a formal order in conformance therewith.
(Emphasis added.)

Pages 6 and 7 of May 7, 1993 Memorandum Decision.

An Order was prepared by Jacobsen's counsel outlining the date of trial, termination of discovery requests and the fact that sanctions would be taken under advisement at the trial of the matter.

Kalanquin's assertions that Judge Low erred in terminating her discovery requests are unfounded. Clearly, in each of the hearings concerning the discovery requests, Judge Low specifically outlined the questions which were allowed and the areas of discovery which were permissible. Kalanquin and her attorney chose to ignore the instructions of Judge Low and proceeded to submit abusive Interrogatories and Requests for Productions of Documents numbering 2308 questions and 9900 questions. Every effort was made by the Trial Court to allow Kalanquin to make proper discovery requests. That is why the court specifically found that Kalanquin had ". . . abused discovery and ignored the direction by this court with respect to limitations thereon." This is also why the Court found that, "The discovery undertaken is entirely unjustifiable." See page 6 of May 7, 1993 Memorandum Decision.

Kalanquin's discovery requests were abusive and unduly burdensome. They simply became a "fishing expedition" concerning all property ever owned by Jacobsen instead of focusing on the areas as instructed by Judge Low. Interrogatories should not be conducted as a "fishing expedition" in hope that something may be uncovered. State Road Commission v. Petty, 412 P.2d 914, 918 (Utah

1966). Discovery requests should be confined within proper limits and in this case the proper limits were set by Judge Low and not complied with by Kalanquin and her attorney. Therefore, the abusive discovery requests by Kalanquin and her attorney were properly terminated by the court.

IV.

BECAUSE KALANQUIN'S DISCOVERY REQUESTS WERE FOUND BY THE TRIAL COURT TO BE ABUSIVE AND WERE TERMINATED, AND BECAUSE THE TRIAL COURT DENIED KALANQUIN'S MOTION TO SET ASIDE, JACOBSEN SHOULD BE AWARDED ATTORNEY'S FEES IN DEFENDING THE MOTION TO SET ASIDE AND IN RESPONDING TO THIS APPEAL.

As set forth in point III., the Trial Court specifically found in its Memorandum Decision dated May 7, 1993 that Plaintiff abused discovery and ignored the instructions of the court. Also, a full day of trial occurred on May 24, 1993 and at the end of the evidence, the court denied each and every allegation of Kalanquin and denied her Motion to Set Aside. At the trial, Jacobsen's counsel requested the court on two (2) separate occasions to award Jacobsen court costs and attorney's fees each time, the Trial Court refused to award court costs and attorney's fees without stating a reason for the denials. R.T. 321 and 339.

At the trial, Jacobsen's counsel submitted that there were three (3) bases for awarding attorney's fees against Kalanquin and her attorney which were: Utah Rules of Civil Procedure, Rule 11, Utah Code Ann. § 78-27-56, and Utah Code Ann. § 30-3-3. On this appeal, Jacobsen asserts that it is a "frivolous appeal" pursuant to Utah Rule of Appellate Procedure, Rule 33, and Jacobsen requests

the Court to award him court costs and attorney's fees pursuant to Rule 33.

Rule 11 of the Utah Rules of Civil Procedure provides that a document signed by an attorney is not to be submitted to the opposing party for an improper purpose ". . . such as to harass or cause unnecessary delay or needless increase in the cost of litigation." The sets of Interrogatories submitted by Kalanquin to Jacobsen were signed by Kalanquin's attorney, Mr. Raymond N. Malouf. In the Second Set of Interrogatories submitted by Kalanquin to Jacobsen, there were 2,308 potential questions. The Third Set of Interrogatories submitted by Kalanquin to Jacobsen contained 9,900 potential questions. Judge Low found that Kalanquin and her attorney abused discovery, ignored the direction of the Court and the discovery undertaken was "entirely unjustifiable". May 7, 1993 Memorandum Decision, page 6.

The abusive discovery requests by Attorney Ray Malouf caused an excessive and needless increase in the cost of litigation. At the Hearing on May 24, 1993, Judge Low stated "This is a very difficult case, and it's been through three inches worth of file now by way of discovery. As far as I can tell, discovery's producing nothing but attorney's fees, period." Rule 11 provides that if a court document is signed in violation of the Rule, then the court can impose upon the attorney and/or the party an appropriate sanction which may include an order to pay the other party's amount of reasonable expenses, including reasonable attorney's fees.

Whether specific conduct amounts to a violation of Rule 11, is a question of law for the Court. Taylor v. Estate of Taylor, 770 P.2d 163, 172 (Utah App. 1989). Furthermore, this Court has ruled that if a Rule 11 violation is shown then the Trial Court is required to impose an appropriate sanction. Taylor v. Estate of Taylor, 770 P.2d at 171. Letters were sent by Jacobsen's attorney to Kalanquin's attorney explaining that Kalanquin's pursuit of the Motion to Set Aside was unfounded and totally improper. See January 6, 1992 letter and March 23, 1992 letter, which are attached hereto as Addendum "10".

Pursuant to Utah Code Ann. § 78-27-56, in any civil action the court may award reasonable attorney's fees to a prevailing party if the court determines that the action was without merit and not brought or asserted in good faith. In this case, the Trial Court should have found that the Motion to Set Aside was without merit and was not asserted in good faith.

The greatest evidence of lack of good faith on the part of Kalanquin is shown by her testimony in her Deposition on June 15, 1988, where she states:

QUESTION: Did you know at the time that you signed this agreement that you were going to bring a motion to try and set aside this decree?

ANSWER: Yes.

Deposition of Joyce Jacobsen, June 15, 1988, page 10, lines 2-6.

Mrs. Kalanquin went on further to state:

QUESTION: Let me ask the question, then you may answer. You signed this, knowing then that you were going to either through John Caine or another attorney, you were

going to come back in and set the Decree aside -- the Stipulation aside, which you had signed?

ANSWER: Yes.

Deposition of Joyce Jacobsen, June 15, 1988, page 10, lines 10-15.

At Kalanquin's deposition she asserted that Jacobsen had approximately \$200,000.00 in bank accounts but she had no evidence of this claim. She was questioned as follows:

QUESTION: But you don't have any record of it in your documents?

ANSWER: No.

QUESTION: Where did you get the figure \$200,000.00?

ANSWER: I'm just supposing that amount.

Deposition of Joyce Jacobsen, June 15, 1988, page 41, lines 6-10.

At the hearing on May 24, 1993, as each parcel of claimed undisclosed property was addressed, Kalanquin and her attorney had no proof to support her claims. Judge Low became frustrated by the claims of Kalanquin. Concerning the 666 North Main property also known as the Bonanza Development property, Judge Low stated:

THE COURT: Here's what concerns me. I could go to this property right now on this issue. It's evident for me -- to me from a fact that, one, she's involved in some of the purchases and knew of them; second, she had a copy of these deeds; three, she knew that this property was owned by the -- the development company; and she knew what was there or had access to it. Mr. Malouf, I can't see how she can possibly argue before this Court now that she didn't know specifically which lots were which lots. It doesn't make it a particle of difference.

In the -- the interrogatory was answered very carefully that this was a property, including building and lots, worth \$200,000. That is full disclosure. There's just no necessity going back any further. I can hold right now as a matter of law that property was disclosed, and

I'm going -- I'm going to do so. Proceed to the next one. That is a closed issue. (Emphasis added.)

R.T. 71 and 72.

Numerous times throughout the day long hearing Judge Low made comments such as:

THE COURT: Now, just -- just a minute. We -- I -- we've gone all the way around this darn thing; and, Mr. Malouf, I'm going to put you with the burden right now. Do you have evidence as to what the value of that strip was in 1986? Because right now, on a spectrum of items you need to testify to, you haven't covered any. (Emphasis added.)

R.T. 104.

THE COURT: Denied. Absolutely denied. This case has been going on now -- this motion has been going on since 1986 -- or 1987. Absolutely denied. If you're unprepared at this time or unable at this time to present testimony as to what the undisclosed property was, one, and what it was worth, two, then you do not carry your burden of proof; and I'm so holding. Now, let's go to the next piece of property. (Emphasis added.)

R.T. 108.

THE COURT: But understand me a minute. I am not going back and retrying this case. Absolutely not. If it was made aware to her that there was property, and she -- and she didn't expand on that discovery or she didn't -- she certainly was aware of the property. I mean, let's see, Navajo Hills is right there, and she made no claim to it. It's also listed on existing property number ten. And I'd be darned if I'm going to retry this case. I'm not going to.

R.T. 113.

The Hearing transcript is full of numerous times when Judge Low found that the property had been disclosed to Kalanquin and that she had not met her burden of proof. This evidences a lack of good faith on the part of Kalanquin and that her claims were without merit. At the Hearing she testified she had personally

been to the properties. She testified she was a real estate broker and involved in Jacobsen's transfers. R.T. 114. She testified she had signed deeds transferring some of the property. R.T. 207 and 208. Clearly, these facts demonstrate a lack of good faith and claims without merit.

Utah Rules of Appellate Procedure, Rule 33 states:

. . . if the court determines that a motion made or appeal taken under these rules is either frivolous or for delay, it shall award just damages, which may include single or double costs as defined in Rule 34, and/or reasonable attorney's fees, to the prevailing party.

Rule 33 defines "frivolous appeal" as ". . . one not grounded in fact, not warranted by the existing law, or not based on a good faith argument to extend, modify or reverse existing law." It is interesting to note that the Brief of Kalanquin does not cite at all to the transcript of the Hearing on May 24, 1993 to present evidence to this Court of her claims. Once again, this was a full day hearing wherein Kalanquin was provided ample opportunity to show the Trial Court that specific property acquired during the marriage had not been disclosed to her. Clearly, she did not meet that burden. Judge Low stated as follows:

"The Court: Just a minute. Let me finish. You knew about it. You knew about every one of those other pieces of property. You may not have known the details of the Navajo Hills and just exactly which lots had been sold or not and which -- what interest, if any, was in able acres or north acres and so forth.

But the testimony of Mr. Jacobsen was very **clear as** to what was owned or what wasn't owned, and there's been no testimony by you to the contrary. And you've known about that stuff. That's not because you have a lack of discovery about it. That's clear, and you walked on the ground and looked at it. The records are clear about it.

The testimony is undisputed as to what was disclosed and what was known, what was on the record; and I cannot find, based upon everything I've heard here today, that there is any undisclosed assets as of the time of the divorce. And the operative time here is August -- just a minute. What was the -- what was the date of Stipulation?

Mr. Willmore: 27th, August 27.

R.T. 334 and 335.

Clearly, the Appeal of Kalanquin is not grounded in fact or warranted by existing law. She had an opportunity to present to the Trial Court evidence concerning her claims of undisclosed property acquired during the marriage. She could not meet that burden. As previously stated, Kalanquin has not cited one (1) reference to the trial record showing that she presented to the court undisclosed evidence. She simply refers to a list of property that she has attached as Appendix B. Over and over again Kalanquin asserts that substantial assets were not disclosed. However, nowhere does she point to the record showing that they were proven to Judge Low at the Hearing on May 24, 1994. Judge Low specifically addressed in his findings at the end of the Hearing each parcel of property or subdivision and found that there had been full disclosure. On this basis, the Appeal is frivolous because it is not grounded in any facts whatsoever cited by Kalanquin. Furthermore, the Appeal is not warranted by the existing law. Therefore, this Court should award Jacobsen his court costs and attorney's fees for this frivolous Appeal.

Jacobsen had incurred \$4,896.00 of attorney's fees through the hearing which was presented to the Court in the form of an

Affidavit and is attached hereto as Addendum "11". This Affidavit included no time for the day long Hearing and preparation of the June 30, 1993 Order which increased Jacobsen's attorney's fees to more than \$6,000.00. Since the hearing and in the preparation of this Appeal, Jacobsen has incurred additional attorney's fees in the amount of \$2,724.25 which is supported by the Affidavit for Attorney's Fees attached hereto in Addendum "12".

Jacobsen cross appealed the Court's denial of attorney's fees. This Court should award Jacobsen his attorney's fees at the time of the trial and for this Appeal. Jacobsen requests the Court of Appeals to enter judgment against Kalanquin and Kalanquin's attorney pursuant to Rule 11 of the Utah Rules of Civil Procedure and Rule 33 of the Utah Rules of Appellate Procedure or Utah Code Ann. § 78-27-56 in the amount of \$8,724.25.

CONCLUSION

The Trial Court correctly and properly dismissed Kalanquin's Motion To Set Aside. A complete Hearing was held on May 24, 1993 and Kalanquin did not prove any undisclosed property. Furthermore, the August 27, 1986 Stipulation between Kalanquin and Jacobsen which was approved by the District Court is binding upon Kalanquin and she waived any right or claim she had to Jacobsen's property.

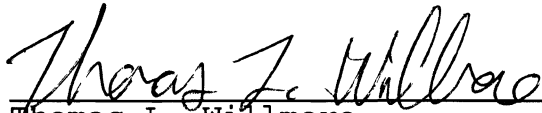
The Trial Court correctly and properly terminated discovery because Kalanquin and her attorney's discovery requests were abusive and burdensome, and clearly ignored the instructions of the Trial Court.

The Trial Court improperly denied Jacobsen's claims for attorney's fees and costs of Court against Kalanquin and her attorney. Pursuant to Rule 11 or Utah Code Ann. § 78-27-56, Jacobsen should be awarded his attorney's fees and costs of Court for the hearing on the Motion To Set Aside and pursuant to Rule 33 of the Utah Rules of Appellate Procedure, Jacobsen should be awarded attorney's fees and costs of Court in defending this appeal.

The Court should affirm the decision of the Trial Court.

DATED this 24 day of June, 1994.

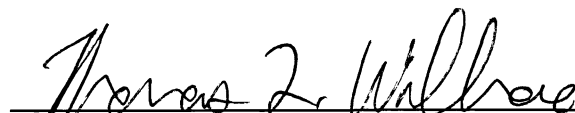
OLSON & HOGGAN, P.C.



Thomas L. Willmore
Attorneys for Defendant/Appellee

MAILING CERTIFICATE

I hereby certify that I mailed four (4) exact copies of the foregoing Brief Of Appellee to Plaintiff/Appellant's Attorney, Michael Isbell and Raymond N. Malouf, of Malouf & Malouf Law Offices, at 150 East 100 North, Suite D, Logan, Utah, 84321, postage prepaid in Logan, Utah, this 24 day of June, 1994.



Thomas L. Willmore

ADDENDUMS

- Addendum 1 May 1, 1987 Minute Entry with John Caine's Notes Listing Property
- Addendum 2 Plaintiff's Evidence of Financial Status and Summary of Property Dated July 13, 1987
- Addendum 3 Defendant's Summary of Property dated July 17, 1987
- Addendum 4 Stipulation of August 27, 1987
- Addendum 5 Order of August 28, 1987
- Addendum 6 Memorandum Decision of Judge Gordon J. Low dated May 7, 1993
- Addendum 7 Order Denying Motion To Set Aside dated June 30, 1994
- Addendum 8 Kalanquin's Attorney's Handwritten Answers to Jacobsen's Second Set of Interrogatories
- Addendum 9 Deposition of Joyce Kalanquin dated June 15, 1988, pages 10 and 41
- Addendum 10 January 6, 1992 Letter and March 23, 1994 Letter to Raymond N. Malouf
- Addendum 11 Affidavit of Thomas L. Willmore for Attorney's Fees and Court Costs dated May 24, 1993
- Addendum 12 Affidavit of Thomas L. Willmore for Attorney's Fees and Court Costs dated June 24, 1994

ADDENDUM "1"

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
IN AND FOR THE
COUNTY OF CACHE, STATE OF UTAH**

Joyce K. Jacobsen

Plaintiff

Shirley Jacobsen

Defendant

MINUTED ENTERED 111 1 1 7

CASE NUMBER 25033

VE NOY CHRISTOFFERSEN, Judge

John F. Wahlquist, Judge

George Parker, Court Reporter

..... Dean Olsen, Court Reporter

1011 Campbell, Court Clerk

TPAI

Now is the time set for the Trial in the above entitled case. The plaintiff and her attorney - John Caine - and the defendant and his attorney - Tom Willmore - are all present in court.

Parties agree to have divorce granted to both of them today on irreconcilable difference grounds. Plaintiff's counsel calls Joyce K. Jacobsen who is sworn and examined. Her maiden name of Joyce Elfrena Kalanquin is to be restored.

Defense calls Shirley Jacobsen who is sworn and examined. Plaintiff's counsel is to prepare the papers for the Court to sign to finalize the divorce. A trial for property distribution will be necessary and is set for August 27, 28, 1987.

Three documents concerning marital property prepared by counsels are discussed. They are incorporated in the file prior to this minute entry. Further discovery concerning the marital property will have a cut off date of July 13, 1987 with simultaneous filings to be in the Clerk's office by that day. On July 14, counsels may check the file and look at the property documents filed by the opposite counsel.

Recess is called to discuss the matter of temporary alimony. It is stipulated by both parties that temporary alimony will continue until property distribution is completed. No permanent alimony will be asked. Temporary alimony of \$322.00 per month is to be paid through the Clerk of the Court to the plaintiff.

Restraining order concerning marital assets is to remain in effect.

Court is dismissed.

1 WAUTPP Summary Sheet

		Net to Seller	Joyce's share 25, 33.3, 50%
Lots & Homes Sold			
Glen wood Hills Sub.	2 Lots & 2 Homes	\$17,991	\$8,996
Grand View Hills Sub.	13 Lots	172,020	43,005
Bonanza Dev Co	1 Lot & 1 Home	53,000 ($\frac{1}{2}$)	26,500
Bridlewood Hills Sub.	2 Lots	45,000 31,250 ($\frac{5}{14}$)	2,250
Cherry Creek	2 Lots	20,000	5,000
East of Meadow Village	3 Lots	39,000	9,750
King Clarton Hills	65 Lots	489,000 +	276,229
Lake Edge Hills	5 Lots	47,000	11,750
Meadow Village	3 Lots & 1 Home	126,486	63,243
Random Sales	4 Lots & 1 Home	17,633	8,816
Val View	8 Lots & 2 Homes	143,129	35,782
Richmond lots	5 Lots	19,500	6,494
		113 Lots	\$1,153,759
			\$497,815
		21 Homes	
		16 Town Homes	

113 Lots plus 21 Homes

Accounts

- ① First Security Bank - Checking
S.F. JACOBSON \$4,469.00
- ② First Federal Savings
S.F. JACOBSON 449.07
- ③ Family ~~Trust~~ L.P/s. no. \$.
no Trust.
- ④ Bridlewood Hills.
First Security Bank
- ⑤ King Clarion Hills
First Sec. Bank -
- ⑥ Pyramid Invest. Co.
First Sec Bank
- ⑦ Western Realty & Development -
1st Interstate Bank
- ⑧ Bonanza Dev.
1st Security Bank -
- ⑨ Bridger Land Broadcasting (Team. Aug)
1st Security Bank &

Joyce JACOBSEN - 1st Interstate Bank
Checking - Savings
Joyce JACOBSEN - Imperial Savings
in California - 100⁰⁰

Joyce K. JACOBSEN Rev. Trust -
Safe deposit Box 1st Interstate
Bank. 250⁰⁰ in Bonds

Western Real Estate - Garden City A/C
Zions 1st National

J. K. J. Investments Co. Closed in
1st Interstate Bank 1982

Savings A/C
1st Federal
STATE SAVINGS | closed

Bank of America - San Diego closed 1984

Existing Property

- $\frac{1}{5}$ $\frac{1}{2}$
- ① County Club Home 1994
 - ② " " " 1996
 - ③ Bear Lake House (Cabin)
 - ④ Western Ex. Suites Bldg - 668 N. Main Logan
 - ⑤ Richmond Lots - 15 acres Cherry Creek
 - ⑥ Lake Edge Hills - 5 lots + 2 acres
 - ⑦ Grandview Hills - 2 partial dev. lots $\frac{1}{2}$ each
 - ⑧ Bridlewood Hills - $\frac{1}{6}$ PTK in 80 acres undeveloped
 - ⑨ Weston Bldg. (6700⁰⁰) Tax benef.
 - ⑩ Navajo Hills - 27 acres
 - ⑪ ~~Meadow~~ Knolls Lot 1 Bldg lot
 - ⑫ Meadow Village Condo (Townhouse)
 - ⑬ Nibley House -
 - ⑭ Twin Pines Condo -
 - ⑮ Bldg lot at SALTON SEA -

17- Miniature Golf - Bldg Lot 1 1/2 acre

18-

ADDENDUM "2"

JOHN T. CAINE #0536 of
RICHARDS, CAINE & ALLEN
Attorney for Plaintiff
2458 Washington Boulevard
Ogden, Utah 84401
Telephone: 399-4191

IN THE DISTRICT COURT
COUNTY OF CACHE, STATE OF UTAH

JOYCE K. JACOBSEN,	:	
	:	
Plaintiff,	:	PLAINTIFF'S EVIDENCE OF
	:	FINANCIAL STATUS
vs.	:	
	:	
SHIRLEY FELT JACOBSEN,	:	Civil No. 24033
	:	5
Defendant.	:	

COMES NOW the Plaintiff above named, by and through her attorney, John T. Caine and hereby submits the following financial status:

MARITAL INTEREST PROPERTY

I. Starting Gross & Net Worth

a. Financial Statements	\$134,321	\$116,031
b. Checking & Savings Accounts		\$ 14,507
c. Car		\$ 5,000
d. Personal Property & Notes		\$ 37,826
e. Real Property	\$119,500	\$ 91,714
		=====
	Net Worth	\$149,047

II. Income Earned \$ 53,926

III. Ending Gross & Net Worth

a. Financial Statements	\$365,154	\$257,025
b. Checking Account	Number	\$ 302
c. Savings Account	25033-33	\$ -0-

JUL 15 1987

SETH S. ALLEN, Clerk

Deputy

d. Car & Trailer		\$ 11,500
e. Personal Property		\$ 41,268
f. Real Property	\$299,000	\$204,272
		=====

Net Worth	\$257,025
-----------	-----------

IV. Exemptions

a. Business Partnership Inequity	\$ 63,617
b. Development Partnership Promissory Note - Glenwood Lot	\$ 6,400
c. Inheritance	\$134,934
	=====

Total Exemption	\$204,951
-----------------	-----------

V. Summary

a. Current Net Worth	\$257,025
b. Plus Income	\$ 53,926
c. Less Starting Net Worth	-\$149,047
d. Less Exemptions	-\$204,951
	=====

Total Marital Interest Property divided by 2	-\$ 43,047
--	------------

PLAINTIFF'S PROPERTY AS OF JUNE 30, 1976

I. Real Property

	<u>Sold</u>	<u>Price</u>	<u>Equity Interest</u>
a. Twin Pines #C	3/25/77	\$28,500	\$ 8,783
b. Salton Sea Lot #82			\$ 3,000
c. Alpine Blvd. Lot			\$ 20,000
d. Peutz Valley Home	6/07/77	\$53,000	\$ 38,500
e. Peutz Valley Road 4.5	11/8/78	\$22,500	\$ 21,431
			=====

Total Equity	\$ 91,714
--------------	-----------

II. Personal Property

a. Car - Toronado	\$ 5,000
b. Furniture, etc.	\$ 15,000
	=====

Total	\$ 20,000
-------	-----------

III. Receiveable Notes

a. Viehweg (Newton Home)	\$ 13,054
b. Johnson (Tri-Plex)	\$ 9,772
	=====

Total Notes Due \$ 22,826

IV. Cash on Hand \$ 14,507

TOTAL NET WORTH \$149,047

I. STARTING GROSS & NET WORTH

a. Financial Statements:

1974 - \$187,809	\$134,973
1975 - \$122,186	\$104,927
1977 - \$147,456	\$127,135
1978 - \$271,019	\$206,704
1980 - \$342,750	\$217,374
1981 - \$310,886	\$218,713
1982 - \$420,154	\$311,296
1982 - \$324,352	\$226,965
1983 - \$372,297	\$266,481
1985 - \$317,929	\$216,757
1986 - \$365,154	\$257,025

(Estimate) 1986 - \$134,321 \$116,031

II. INCOME (Income Tax Records)

1977	\$17,406
1978	\$10,185
1979	\$13,236
1980	\$ 6,420
1981	\$ 7,209
1982	-\$ 3,279
1983	-\$ 42
1984	\$ 5,085
1985	-\$ 2,521
1986	\$ 647
	=====

Total Income \$53,926

III. EXEMPTIONS

a. Western Realty Business Partnership Inequities	\$ 63,617
b. Development Partnership Promissory Note (Glennwood Subdivision Lot - SF)	\$ 6,400
c. Inheritance	
1. Cash	\$ 14,972
2. Real Property - Net	\$ 91,714
3. Personal Property (Given \$13,248; Had \$15,000)	\$ 28,248

	\$134,934
	=====
Total Exemptions	\$204,951

IV. SUMMARY

a. Current Worth - Net	\$257,025
b. Plus Income Earned	\$ 53,926
c. Less Starting Net Worth	-\$149,047
d. Less Exemptions	-\$204,951
	=====
Total Marital Interest Property divided by 2	-\$ 43,047

SUMMARY OF PLAINTIFF'S CLAIM OF DEFENDANT'S

INCOME DURING MARRIAGE

1. Property Sales Gross	\$1,815,122	
Joyce 1/3 (1/3 purchase & development; 1/3 SF; 1/3 Joyce)		\$605,041
2. Bonanza Development Company Rents	\$ 216,150	
Joyce 1/2		\$108,075
3. Mortgage/Equity (3 homes; office building)	\$ 61,688	
Joyce 1/2		\$ 30,844
4. Bonanza Development Company		

Management Fee	\$ 33,800	
Joyce 1/2		\$ 16,900
5. Interest Earned	\$ 22,175	
Joyce 1/2		\$ 11,088
6. Western Realty & Development Company Partnership Office expense reimbursement; Joyce full reimbursement		\$ 63,617
7. Glennwood Hills Lot Loan Payment		\$ 6,400
		=====
		\$841,965

DEFENDANT'S INCOME DURING MARRIAGE

1. Property Sales:

Bridlewood Hills 1/6th	\$ 7,500
Bonanza Development Co. 1/2	\$ 53,000
Cherry Creek	\$ 20,000
East of Meadow Village	\$ 39,000
Grandview Hills	\$121,000
Alan E. Beard - Home & Lot + Lot	\$ 37,250
King Clarion Hills (Purchased before and after marriage, but developed after marriage)	\$975,466
Kirtland Addition - Lots 20,21,22	\$ 15,000
Lake Edge Hills	\$ 36,000
Lake Edge Hills - Billie Cottle	\$ 11,000
Meadow Village - Unit 1 & 2 1/2	\$ 83,230
Meadow Village - Unit 3; Lots 21, 2 3 and 4 1/2	\$ 16,000
Meadow Village - Unit 3; Lots 25 through 32 1/2	\$ 19,500

Pyramid Invetment 2 shares	\$ 33,176
Val View No. 2 4 Lots	\$ 53,000
Val View No. 2 Homes & Lots	\$160,500
Glennwood Hills 2 Lots & 2 Homes	\$110,000
Richmond Lots - 5	\$ 19,500
	=====

2. Interest	\$ 22,175
3. Rents	\$216,150
4. Management Fees - Bonanza	\$ 33,800
5. Mortgage/Equity Share (Principal payments made on three properties)	\$ 61,688
6. Vehicles & Furniture	No claim
7. Western Realty & Development Company	\$ 63,617
8. Glennwood Lot purchase - Partners in developing	\$ 6,400
	=====
Total (Net: \$1,815,122)	\$2,216,952

KCH Contacts and Sales carried by SF - See attached

MORTGAGE/EQUITY PAYMENTS

Estimates from Income Tax Returns (See attached)

1. Country Club Home	\$9,211.83 ?	\$15,128.43
2. Lake Edge Hills Home	\$5,916.60 ?	
3. Western Executive Suite Building		\$45,000.00
4. Meadow Village (Jeffry's Unit)		-0-
5. Meadow Village (Vana's Unit)		\$ 1,559.85
		=====
		\$61,688.28

SF MORTGAGE INTEREST PAID
Taken from SF's Income Tax Papers

Homes:

1976		\$ 1,414
1977	N/R	\$ 1,927
1978	N/R	\$ 1,927
1979		\$ 1,713
1980	N/R (Just Joyce's)	\$ 1,713
1981		\$ 2,582
1982		\$ 2,214
1983	N/R	\$ 1,927
1984	N/R	\$ 1,927
1985	N/R	\$ 1,927
		=====
		\$19,271

Western Executive Suite Building/Bonanza Development Co.:

1976	N/R	
1977	N/R	
1978	N/R	
1979	N/R	
1980		-\$ 934
1981		\$ 1,505
1982		\$ 1,217
1983		\$ 3,458
1984		\$ 9,828
1985		\$ 3,690

RENTAL INCOME

1. Western Executive Suites	11 years	1/2	\$189,300
2. Miniature Golf	10 years	1/2	\$ 15,000
3. Bonanza House	11 months	1/2	\$ 750
4. Radio Station Receiving Station	10 years	1/2	\$ 3,000
5. Stokes Oxygen Tanks	5 years	1/2	\$ 4,500
6. Meadow Village (Vana's Unit)	10 months		\$ 3,600
			=====
			\$216,150

DONANZA MANAGEMENT INCOME

\$260.00 per month/Management Fee = \$3120 per year

\$3120 per year X 10 years 10 months = \$ 33,800
=====

VEHICLE PAYMENTS

1. Mark V Lincoln 1977	\$ 13,500
2. Mark V Lincoln 1978 (plus trade in on Joyce's car)	\$ 9,000
3. Bronco Ford 1983	\$ 7,000
	=====
	\$ 31,500

No Claim

FURNITURE, ETC.

No Claim

SF'S BRIDGERLAND BROADCASTING COMPANY

Purchased/Built:

Sold:

1979 Income Tax Return

Interest Received	\$ 2,880
Principle Received	
	=====

BRIDGERLAND PROPERTY

From 1978 Income Tax Return

Purchased: 1974

Sold 1978	\$ 18,821
	=====

CAPITAL PRESERVATION FUND

1980 Income Tax Return (Dividend Income) \$670
=====

SF JACOBSEN FAMILY LIMITED PARTNERSHIP


Income Tax Returns (Net Income)

1984 \$14,929
1985 -\$28,928

PARTNERSHIPS, INSTALLMENT SALES & CAPITAL GAINS

See attached

RESPECTFULLY SUBMITTED this 13th day of July, 1987.


JOHN T. CAINE
Attorney for Plaintiff

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the above and foregoing Summary to counsel for the Defendant, Thomas L. Willmore, Attorney at Law, 31 Federal Avenue, Logan, Utah 84321, postage prepaid this 13th day of July, 1987.

PAM PORTIUS, Secretary

Lake Edge Hills Home

Original loan January 1, 1973 16.5/15 yr. \$10,000

Refinanced 1976?

Owe May 1, 1987 \$ 3,761.4

Payments \$159.00 per month @ 8%?

\$1,908 per year 10 yrs = 19,080 10 mos = 1590 = \$20,670

Principle/Equity Interest of Joyce

June 30, 1976 to June 30, 1977 @	6 mos = 228.50	=	475.9
77	78 @ 6 mos = 247.45	=	515.4
78	79 @ 6 mos = 268.00	=	558.2
79	80 @ 6 mos = 290.25	=	604.6
80	81 @ 6 mos = 314.35	=	654.8
81	82 @ 6 mos = 340.45	=	709.1
82	83 @ 6 mos = 368.70	=	768.0
83	84 @ 6 mos = 399.30	=	831.7
84	85 @ 6 mos = 432.45	=	900.8
85	86 @ 6 mos = 468.35	=	975.5
86 10 mos.	87 @ 6 mos = 507.20	=	873.4
	4 mos = 366.20	=	
<hr/>			
\$ 5,916.1			

Refinanced 1976? Extra money?

Vows 6th year = 0.327 = $\frac{1}{2}$ " ^{53.76} 107.53 = (SF=53.76) per year principle paid
 7 SF = $\frac{1}{2}$ yr 0.361 = $\frac{1}{2}$ " ^{59.36} 118.71 = (SF=59.36) $\frac{1}{2}$ = 59.36
 8 SF = 1 mo. 0.399 = (131.21) = 1 mo. = \$ 10.94
 9 ~~SF = 1 mo. 0.441.~~

$$SF = 1.4 + 1\frac{1}{2} \text{ mos} =$$

Installment Sales Capital Gains

Bonanza Dev Co. 87-0027933

1976		544
1977		8,712
1978	Land/Bridgerland '74-78=18,821, Land/Amznco '67-78=7163 200 Sh Bridgerland '73-78=6,968, Land/Toolson '76-78=35,000,	32,570
1979	D Schedule # 2	6,714
1979	D Schedule # 3	2,177
1980	Form 6252	460
1980	Form 6252	9,068
1981		1,505
1982	Bonanza	1,217 4,056
1983	Bonanza	3,458
1984	Bonanza	9,828
1985	Bonanza	3,690

Country Club Drive Home

Original Loan January 1, 1969 7.25% \$ 35,000
 Refinanced 1976 ? Extra money ?
 Owe May 1, 1987 — \$ 10,082

Payments \$ 255.⁰⁰ per month for 10 yrs 10 months
 \$3,060 per year 10 yrs \$30,600 10 months 2550 \$33,150

Principle/Equity Interest of Joyce

June 30, 1976 to June 30, 1977 @	6 mos = 280.88 6 mos = 302.05	-	582.93
77 to	78 @ 6 mos = 302.05 6 mos = 324.63	=	626.68
78 to	79 @ 6 mos = 324.63 6 mos = 348.95	=	673.58
79 to	80 @ 6 mos = 348.95 6 mos = 375.03	=	723.98
80 to	81 @ 6 mos = 375.03 6 mos = 403.20	=	778.23
81 to	82 @ 6 mos = 403.20 6 mos = 433.48	=	836.68
82 to	83 @ 6 mos = 433.48 6 mos = 466.03	=	899.51
83 to	84 @ 6 mos = 466.03 6 mos = 494.03	=	960.06
84 to	85 @ 6 mos = 494.03 6 mos = 527.98	=	1,022.01
85 to	86 @ 6 mos = 527.98 6 mos = 567.00	=	1,134.00
86 to 10 mos. 87 @	6 mos = 567.00 4 mos = 407.17	=	974.17

\$ 9,211.8

Refinanced 1976 - ? Extra money?

8 th year	= 1.605	= 561.76	per year principle paid
9	= 1.726	= 604.10	" " "
10	= 1.855	= 649.25	
11	= 1.994	= 697.90	
12	= 2.143	= 750.05	
13	= 2.304	= 806.40	
14	= 2.477	= 866.95	
15	= 2.663	= 932.05	
16	= 2.823	= 988.05	
17	= 3.017	= 1,055.95	
18	= 3.240	= 1,134.00	
19	= 3.490	= (1,221.50)	* 4 months = 407.17

D.T.S
Meadow Village
Condo

Original Loan 9/1/79 10% \$33,109.14

Owe 5/1/87 32,883.84

Payments \$307.30 per month 40 yr loan

~~to 1 yr~~ $1\frac{1}{2}$ mos (1 yr $1\frac{1}{2}$ months)

September 1, 1985 to September 1, 1986 = SF = $5\frac{1}{2}$ mos

March 14, 1986 to September 1, 1986 @ 107.53 = 49.28 591.4

September 1, 1986 to ~~September~~ ^{March 14}, 1987 @ 118.71 = $6\frac{1}{2}$ mos ~~64.30~~ 64.3 771.6

March 14, 1987 to May 1, 1987 @ 131.21 = $1\frac{1}{2}$ 16.40 196.8

\$129.98

\$1,559.85

4 th year	= $\frac{4.570}{1.061}$	= 457.00	per year principle paid
5	= $\frac{4.949}{1.119}$	= 494.90 ✓	
6	= $\frac{5.360}{1.245}$	= 536.00	
7	= $\frac{5.805}{1.348}$	= 580.50 ✓	
8	= $\frac{6.287}{1.460}$	= 628.70 ✓	
9	= $\frac{6.809}{1.581}$	= 680.90 ✓	
10	= $\frac{7.374}{1.712}$	= 737.40 ✓	
11	= $\frac{7.986}{1.854}$	= 798.60 ✓	
12	= $\frac{8.649}{2.008}$	= 864.90 ✓	
13	= $\frac{9.367}{2.175}$	= 936.70 ✓	
14	= $\frac{10.144}{2.355}$	= 1,014.40 ✓	
15	= $\frac{10.986}{2.550}$	= 1,098.60	

CONTRACTS	
Being carried during	
Marriage:	3 1.2 5
@ 10% interest	3 5.7 0
	5 6.5 0
	5 8.5 0
	5 8.5 0
	4 5.0 0
	6 7.5 0
	5 5.0 0
	5 3.5 0
	6 6.2 5
	6 6.2 5
	6 1.5 0
	7 2.5 0
	6 1.5 0
	8 0.0 0
	8 2.5 0
1	3 9.5 9
	6 5.0 0
	6 1.5 0
	9 0.0 0
	9 0.0 0
	9 0.0 0
	5 4.5 0
	9 0.0 0
1	0 5.0 0
1	3 8.7 5
1	1 3.0 0
1	3 8.2 5
	6 5.0 0
1	3, 0.0 0
<hr/>	
#	2.3 2, 2.5 4. T
	T

KCH Contracts
Being Carried by SF
May 1, 1987

During Marriage:

1. Lot 537	11/01/85	William Smith Park	3,125.00 42,500.00
2. Lot 540	10/09/84	Margaret S. Starks	<u>3,570.00</u>
3. Lot 541	10/09/84	Dean L. Larsen	<u>5,650.00</u>
4. Lot 542	10/09/84	Carl Rosslyn Kearn	<u>5,850.00</u>
5. Lot 543	10/09/84	J. Wayne Felix	<u>5,850.00</u>
6. Lot 817	10/6/76	Wayne F. Palmer	<u>4,500.00</u>
7. Lot 1001	3/23/78	Woodside Real Estate	<u>6,750.00</u>
8. Lot 1004	1/20/78	Higley - Fairbourn, Inc	<u>5,500.00</u>
9. Lot 1006	8/4/77	Higley - Fairbourn, Inc	<u>5,350.00</u>
10. Lot 1007	12/01/77	American Bldg Compts	<u>6,625.00</u>
11. Lot 1011	12/01/77	American Bldg Compts	<u>6,625.00</u>
12. Lot 1010	5/25/77	Brent H. Griffiths	<u>6,150.00</u>
13. Lot 1020	3/23/78	Thomas J. Halliday	<u>7,250.00</u>
14. Lot 1021	12/16/77	Rulon W. Waite	<u>6,150.00</u>
15. Lot 1022	4/13/78	Stephen D. Croft	<u>8,000.00</u>
16. Lot 1023	3/7/78	Norman N. Kuch	<u>8,250.00</u>
17. Lot 1008	11/1/78	Higley - Fairbourn, Inc.	<u>13,959.30</u>
18. Lot 1014	4/4/78	Marlow D. Jaques	<u>6,500.00</u>
19. Lot 1016	3/14/84	Rulon W. Waite	Reconveyed 2/10/86 <u>6,150.00</u>
20. Lot 1102	2/14/80	Higley - Fairbourn	<u>9,000.00</u>
21. Lot 1110	6/12/79	Lynn B. Niederhauser	<u>9,000.00</u>
22. Lot 1111	8/15/79	Lynn B. Niederhauser	<u>9,000.00</u>
23. Lot 1112	4/28/79	David Paul Williams	<u>5,450.00</u>
24. Lot 1103	5/28/82	Gorman W. Irwin	<u>9,000.00</u>
25. Lot 1106	12/16/82	L. Bruce Jensen	<u>10,500.00</u>
26. Lot 1201	4/25/84	Kim M. Coombs	<u>13,875.00</u>
27. Lot 1202	2/16/83	Stanley K. Stoll	<u>11,300.00</u>
28. Lot 1205	8/30/83	Scott M. Carter	<u>13,825.00</u>
29. Lot 1207	12/17/85	Vaughn T. Covington	<u>6,500.00</u>
30. Lot 1208	8/8/83	Clearfield Realty, Inc.	<u>13,000.00</u>

Being Carried by S.F.

Year by Year

10% interest pay-off in three years with $\frac{1}{2}$ down:

1976	1	4,500
------	---	-------

1977	5	30,900
------	---	--------

1978	9	56,209
------	---	--------

1979	3	23,450
------	---	--------

1980	1	9,000
------	---	-------

1981	0	-0-
------	---	-----

1982	2	19,500
------	---	--------

1983	3	38,125
------	---	--------

1984	6	40,945
------	---	--------

1985	2	9,625
------	---	-------

1986	0	-0-
------	---	-----

1987	0	-0-
------	---	-----

30 lots		\$ 232,254
---------	--	------------

These figures and terms indicate S.F. received this amount, \$232,254, in cash for lot sales these years at King Clavon Hills in Farmington, Utah

Compared to Income
Tax Returns

Land Development Gross Incomes:

	Income Tax:	KCH Sales	Difference
1976	242,533 29,504	18,000	---
1977	309,050 62,659	123,600	60,941
1978	37,000 10,255	224,836	187,836 224,581
1979	69,800 7,396	93,800	24,000 86,404
1980	25,842 6,420	36,000	10,158 29,580
1981	11,000	0	0
1982	28,519	78,000	49,481
1983	26,508	152,500	125,992
1984	-0-	163,780	163,780
1985	-0-	38,500	38,500
1986	-0-	-0-	-0-
			<u>\$599,747</u>

Unreported KCH Gross Income.

ADDENDUM "3"

RECEIVED
JUL 17 1987
CACHE COUNTY CLERK

Thomas L. Willmore 4256
HARRIS, PRESTON, CHAMBERS & WILLMORE
Attorneys for Defendant
31 Federal Avenue
Logan, Utah 84321

IN THE FIRST JUDICIAL DISTRICT COURT OF CACHE COUNTY
STATE OF UTAH

JOYCE K. JACOBSEN	*	
Plaintiff,	*	
vs.	*	DEFENDANT'S SUMMARY OF PROPERTY
SHIRLEY FELT JACOBSEN	*	Civil No. 25033
Defendant.	*	

COMES now the Defendant, and pursuant to this Court's Order on May 1, 1987, the Defendant by and through counsel hereby submits to the Court his summary of marital property and values of said properties.

MARITAL PROPERTY HELD IN PLAINTIFF'S NAME

1. 1774 Country Club Drive, Logan, Utah

Appraised value: \$110,000.00

Mortgage (88,000.00)

Total Equity \$ 22,000.00

Defendant's share of the total equity from this property is \$11,000.00.

Number 25033-34

JUL 17 1987
SETH S. ALLEN, Clerk
Deputy

2. 4095 South Main, Nibley, Utah

Appraised value: \$ 80,000.00

Mortgage: (46,262.00)

Loan from Defendant
to Plaintiff (has
not been paid back) (5,725.95)

Improvements to home: (1,512.00)
paid for by Defendant
(has not been reimbursed)

Total Equity (\$26,500.05)

Defendant's share of total equity from this property is
\$13,250.02.

3. 165 East 100 North #3, Logan, Utah

Appraised value: \$ 43,500.00

Mortgage: none

Loan from Defendant (10,250.00)
(has not been paid back)


Total Equity: \$ 33,500.00

Defendant's share of total equity from this property is
\$16,750.00

PREMARITAL PROPERTY OR INHERITANCE PROPERTY
HELD IN PLAINTIFF'S NAME

1. North Shore Estates Lot #82, Salton Sea, California -

Plaintiff acquired this lot in 1969 and Defendant is not making
any claim in this property because it is Plaintiff's premarital
or inherited property.

2. Alpine Blvd. Lot, Alpine, California - Plaintiff acquired this lot in March, 1985 and Defendant is not making any claim in this property because it is Plaintiff's premarital or inherited property. *should be* 

PREMARITAL PROPERTY HELD IN PLAINTIFF'S NAME

1. 1796 Country Club Drive, Logan, Utah - Defendant and his deceased wife purchased the property on July 11, 1956. Defendant's home was constructed 1960. Plaintiff has not made any contributions to this property and she is not entitled to any equity in it. See Exhibit "A" attached hereto.

2. Bear Lake Cabin, Lake Edge Hills Estate Lot 32, Garden City, Utah - Defendant and his deceased wife purchased the property on July 14, 1970. The cabin was constructed 1971. Plaintiff has not make any contributions to this property and she is not entitled to any equity in it. See Exhibit "B" attached hereto.

3. Lake Edge Hills Estates Lots - Defendant purchased the property in 1961. Plaintiff has not made any contributions to this property and she is not entitled to any equity in it. See Exhibit "B" attached hereto.

4. Bonanza Development Office Building, Logan, Utah- Defendant and Blaine W. Hancey purchased the property on March 11, 1968. Office Building was constructed in 1971. Plaintiff has not made any coutributions to this property and she is not

entitled to any equity in it or income from it. See Exhibit "C" attached hereto.

5. Miniature Golf Course, Logan, Utah - Defendant and Blaine W. Hancey purchased the property on August 20, 1968. Miniature Golf Course was constructed in 1969. Plaintiff has not made any contributions to this property and she is not entitled to any equity in it or income from it. See Exhibit "C" attached hereto.

6. Cherry Creek property, Richmond, Utah - Defendant purchased the property on April 4, 1966. Plaintiff has not made any contributions to this property and she is not entitled to any equity in it or income from it. See Exhibit "D" attached hereto.

7. Bridlewood Hills Subdivision, Hyde Park, Utah, 76 acres undeveloped - Defendant and Franklin W. Gunnell purchased the property on August 27, 1971. Some development has occurred recently. Plaintiff has not made any contributions to this property and she is not entitled to any equity in it or income from it. See Exhibit "E" attached hereto.

8. Grandview Hills Subdivision 2 lots, Providence, Utah - Defendant and his deceased wife purchased the property on February 15, 1961. Plaintiff has not made any contribution to this property or development of it and she is not entitled to any equity in it or income from it. See Exhibit "F" attached hereto.

9. Navajo Hills, Blanding, Utah, 25 acres of raw desert land - Defendant purchased the property in 1961. Plaintiff has not made any contribution to this property or development of it and she is not entitled to any equity in it or income from it. See Exhibit "G" attached hereto.

PLAINTIFF'S CLAIMS FOR INCOME FROM
THE SALE OF DEFENDANT'S PROPERTY

Plaintiff has asserted claims for portions of Defendant's income from various properties which Defendant sold during marriage. The bulk of these properties were acquired prior to marriage. Plaintiff did not assist or contribute to their development nor did she contribute any money to the development of these properties. Furthermore, the income derived from the sale of these properties was used to pay expenses of development, for the parties support and maintenance and divided between business partners in most cases. The income has been spent by the parties.

The following is a list of properties which Plaintiff is claiming a share of income from even though the income has been spent for the parties' benefit:

1. King Clarion Hills Subdivision, Kaysville, Utah- Defendant purchased 140 acres in 1961 and developed it in various stages. Plaintiff claims income from 65 lots; however, only 54 lots were sold after June 30, 1976, the date of marriage. On September 3, 1975 a joint venture was entered into between

Defendant and Clair D. Berntson Construction Company to develop the remaining property. Plaintiff did not participate in the development of this property and she did not contribute any money to its development.

2. Meadow Village Subdivision, Logan, Utah - Defendant purchased this land in the early part of June, 1976 prior to their marriage on June 30, 1976. A partnership was entered into between Defendant, Lynn Toolson and Elray Robinson to develop this property. Plaintiff did not participate in the development of this property and she did not contribute any money to its development.

3. Grandview Hills Subdivision, Providence, Utah - Defendant purchased this land on February 15, 1961. Plaintiff did not participate in the development of this property and she did not contribute any money to its development.

4. Val View Subdivision, Logan, Utah - Defendant purchased this land in 1973 and 1974. Plaintiff did not participate in the development of this property and she did not contribute any money to its development.

5. Bonanza Development property, Logan, Utah - Defendant and Blaine W. Hancey purchased this property as a partnership on August 20, 1968. The partnership sold the property. Plaintiff did not participate in the development of this property or in its sale and she did not contribute any money to its development.

6. Lake Edge Hills Estate, Garden City, Utah - Defendant and his deceased wife purchased this property in 1961. Plaintiff did not participate in the development of this property and she did not contribute any money to its development.

7. Glenwood Hills, Logan, Utah - Plaintiff and Defendant each purchased two lots. Plaintiff told Defendant he would construct a home on her lot which was subsequently sold and the \$5,000.00 profit from it was paid to Plaintiff. Plaintiff did not participate in the development or sale of the other property in Glenwood Hills and she did not contribute any money to its development.

8. Cherry Creek, Richmond, Utah - Defendant purchased this property on April 4, 1966. This ground is still raw land and Plaintiff has not participated in the development of this property and she has not contribute any money to its development.

9. Richmond, Utah property and other "random sales"- Defendant purchased these properties prior to marriage. Plaintiff did not participate in the development of these properties and she did not contribute any money to their development.

10. Bridlewood Hills Subdivision, Hyde Park, Utah. Defendant and Franklin W. Gunnell purchased the property on August 27, 1971. A partnership has been formed with six individuals to develop this property. Plaintiff has not

participated in the development of this property and she has not contributed any money to its development.

The issues before the Court on Plaintiff's claim for income from properties which were sold during marriage can be broken down into two areas (1) the income from the sales is no longer in existence because it was used to support Defendant and Plaintiff; and, (2) Plaintiff did not participate in the development of this property and she did not contribute any money to its development.

DATED this 17 day of July, 1987.

HARRIS, PRESTON, CHAMBERS & WILLMORE

Thomas L. Willmore

Thomas L. Willmore
Attorney for Defendant

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the above and foregoing DEFENDANT'S SUMMARY OF PROPERTY to the Plaintiff's Attorney, John T. Caine, 2568 Washington Blvd., Ogden, Utah 84401 on this 17 day of July, 1987.

Thomas L. Willmore

Jacobsen. summary

WARRANT DEED

S. F. Jacobsen and Patricia F. Jacobsen, husband and wife,
and Richard A. Willits and Judith H. Willits, husband and wife

grantor of Logan County of Cache, State of Utah, hereby
CONVEY and WARRANT to S. F. Jacobsen and Patricia F. Jacobsen,
husband and wife, as joint tenants, not as tenants in common with
full rights of survivorship.

grantee of Logan
for the sum of \$10.00 and other goods and valuable considerations
the following described tract of land in Rich County, State of Utah:

LAKE EDGE HEIGHTS LOT 32

Beginning at a point North 2123.10 feet and East
578.46 feet from the Southwest corner of Section 28,
Township 14, North, Range 5 East, Salt Lake Base and Meridian
and running thence North 148.90 feet; thence East 132.16
feet; thence South 44.50 feet; thence South 30'00" West
106.23 feet; thence South 81 degrees 05' West 80.00 feet
to the point of beginning.

WITNESS, the hands of said grantors, this 14th day of July A. D. 1970

Signed in the presence of

STATE OF UTAH

County of Cache

ss.

On the 14th day of July
A. D. 1970 personally appeared before me
S. F. Jacobsen, Patricia F. Jacobson,
Richard A. Willits, and Judith H. Willits

the signers of the within instrument, who duly
acknowledged to me that they executed the same.

RECORDING DATA

Entry No.

Fee \$

RECORDED ☐ INDEXED ☐
PLATTED ☐ ABSTRACTED ☐
COMPARED ☐ DELIVERED ☐

Recorded August 3, 1970 Filing No. F11,864
At 10:20 AM/PM In Book F2 Page 220
Fee \$2.40 Zarea B. Jeasop, Rich County Recorder
Z.B.J.

Commission expires: May 5, 1974
Residing in Logan, Utah

HICKMAN ABSTRACT COMPANY

220

LOGAN, UTAH

FEE. \$1.00

of Official Records
By *Sula P. Mortensen* Cache County Recorder
Deputy

WARRANTY DEED

L. Hanson and Virginia S. Hanson,
husband and wife,

grantors of Logan City County of Cache State of Utah, hereby
CONVEY and WARRANT to

S. F. Jacobson and Patricia F. Jacobsen, husband and
wife, as joint tenants and not as tenants in common,
with full rights of survivorship,

grantee s of Logan City, Cache County, State of Utah
for the sum of \$10.00 and other valuable consideration
the following described tract of land in Cache County State of Utah

All of Lots 35 to 43, inclusive, and all lots 50 to 54, inclusive,
of SUNSET VISTA PARK, as shown by Extended Amendment No. 1 plat
recorded 28 November 1952 as filing No. 260139, and situate in
the Southwest quarter of Section 25, Township 12 North, Range One
East of the Salt Lake Base and Meridian. ✓



WITNESS, the hands of said grantors, this 11th day of July A. D 1956.

Signed in the presence of

E. L. Hanson
Virginia S. Hanson

STATE OF UTAH }
County of Cache } 35,

On the 11th day of July
A D 1956 personally appeared before me

E. L. Hanson and Virginia S.
Hanson, husband and wife,

RECORDING DATA

The signers of the within instrument, who duly
acknowledged to me that they executed the same.

Sula P. Mortensen
Notary Public
Commission expires 15 June 1958
Residing in Logan, Utah

HICKMAN ABSTRACT COMPANY Logan, Utah

BOOK 115 PAGE 1
WARRANTY DEED

GEORGE M. HARRIS, a single man,

grantor of Hermosa Beach . County of Los Angeles
CONVEY and WARRANT to

California
State of CALIF., hereby

BLAIN W. HANCEY and

S. F. JACOBSEN

grantee of Logan, Cache County, Utah
for the sum of
the following described tract of land in Logan, Cache

County, State of Utah:

Beginning at a point 128.5 feet South of the Northwest Corner of Lot 3, Block 22, Plat "A" Logan Farm Survey and running thence East 100 feet; thence North 33 feet to the North line of grantor's property; thence East 98 feet; thence South 110 feet; thence West 198 feet; thence North 77 feet to the place of beginning, and situate in the Southeast quarter of Section 28, Township 12 North, Range 1 East of the Salt Lake Meridian.

Subject to a right of way for ingress and egress to adjoining property over the following:

Beginning at the said point 128.5 feet South of the Northwest corner of the said Lot 3 and running thence East 100 feet; thence South 5 feet; thence West 100 feet; thence North 3 feet to the place of beginning.

WITNESS, the hand of said grantor, this 20th day of August A.D. 1968.

Signed in the presence of

STATE OF CALIFORNIA

County of LOS ANGELES

On the 20th day of August
A.D. 1968 personally appeared before me

George M. Harris, a single man,

Entry No.

RECORDING DATA

349645

Fee \$ 2.20

RECORDED ☐ INDEXED ☐
PLATTED ☐ ABSTRACTED ☐
COMPARED ☐ DELIVERED ☐

STATE OF UTAH }
COUNTY OF CACHE }
FILED AND RECORDED FOR
77 C Harris
SEP 19 11 44 AM '68

IN BOOK 115 OF RECORD
PAGE 1
GRETTA B. SMITH
COUNTY RECORDER

MARILYN M. LIDDELL
NOTARY PUBLIC
STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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

Notary Public

SPECIAL WARRANTY DEED

[CORPORATE FORM]

BERTHANA INVESTMENT COMPANY, a Utah corporation
a corporation organized and existing under the laws of the State of Utah, grantor, with its principal office
at Ogden, County of Weber, State of Utah, hereby CONVEYS and
WARRANTS only as against all claiming by, through or under it to

S. F. JACOBSEN and BLAINE W. HANCEY

grantee s of Logan City, Cache County, State of Utah
for the sum of \$10.00 and other valuable consideration
the following described tract of land in Logan City, Cache County, State of Utah:

Part of Lot 3, Block 22, Plat "A" Logan Farm Survey, described as follows:

Beginning at the Southwest corner of said Lot 3, and running thence
North 124.5 feet; thence East 198 feet; thence North 26 feet, more
or less to a point of record 150.7 feet North of the South line of
said Lot 3; thence East 198 feet; thence South 150.7 feet; thence
West 396 feet to beginning, and being situate in the Northwest quarter
of Section 34, Township 12 North, Range 1 East of the Salt Lake Base
and Meridian.

347745

\$2.00

STATE OF UTAH } ss
COUNTY OF CACHE }
FILED AND RECORDED FOR
HICKMAN LAND TITLE CO.
APR 8 11 49 AM '68

IN BOOK 111 OF RECORD
PAGE 877
GRETTA B. SMITH
COUNTY RECORDER
DEPUTY

The officers who sign this deed hereby certify that this deed and the transfer represented thereby was duly
authorized under a resolution duly adopted by the board of directors of the grantor at lawful meeting duly
held and attended by a quorum.

In witness whereof, the grantor has caused its corporate name and seal to be hereunto affixed by its duly
authorized officers this 11 day of March, A. D. 19 68

Attest:

Carl B. Austin
Secretary.

BERTHANA INVESTMENT COMPANY

by

LEE A. BROWN

President.



On the 11 day of March, A. D. 19 68 personally
appeared before me Lee A. Brown & Carl B. Austin
who, being by me duly sworn, did say that They are the President and Secretary

respectively of the Berthana Investment Company
said instrument was signed in behalf of said corporation by authority of

and Carl B. Austin Secretary

and the aforesaid officers acknowledged to me that said corporation executed the same

Commission expires March 24, 1971
Residing in Logan, Utah

The Land Title Company

BOOK 119 PAGE 295

WARRANTY DEED

FREEMAN F. McKINNON, individually and as surviving partner of the Olof Nelson Construction Company, and ERMA N. McKINNON, his wife, granters of Salt Lake City, and HELEN H. NELSON (widow of Wilmar Nelson)

grantor of Logan City, County of Cache
CONVEY and WARRANT to

S. F. Jacobsen

State of Utah, hereby
COUNTY OF CACHE) SS
352250 FILED AND RECORDED FOR
HICKMAN LAND TITLE CO.
2.60 MAY 15 4 51 PM '69

grantee of Logan City, Cache County, State of Utah IN BOOK 119 OF RECORD
for the sum of \$10.00 and other valuable consideration PAGE 295
the following described tract of land in Cache County, State of Utah: RECORDER
D. B. H. O. P.

A part of the South half of the Northwest quarter and a part of the North half of the Southwest quarter of Section 23, Township 14 North, Range 1 East of the Salt Lake Base and Meridian, described as follows, to-wit:

Beginning at a point 36 rods South of the Northeast corner of the South half of the Northwest quarter of said Section 23; thence West 18 rods; thence North 36°50' West 20 rods; thence West 56 rods 10 feet more or less to a point 386 feet more or less East of the East boundary of the State Highway, said point being on the West line of the old right of way of U. I. C. Railroad Company; thence South 10°55' East along the West line of said Right of way 1182.3 feet; thence Southeasterly 50 feet; thence South 59 feet more or less to the center of Cherry Creek; thence East along center of said Creek 66 feet; thence following the meanderings up the center of said Cherry Creek in a general northeasterly direction to a point in the center of said creek which is 22 rods West of a point 19 rods South of beginning; thence East 22 rods to a point 19 rods South of beginning, said point being 12 rods South of Cherry Creek Bridge; thence North 19 rods to the place of beginning, containing 22.78 acres more or less. *

Together with a right of way for ingress and egress to the above described property being 32 feet in width, 16 feet on each side of a center line described as follows, to-wit:

Beginning at a point in the East boundary line of Highway 91, 159 feet South of the North line of said Southwest quarter and 16 feet North of the extreme South line of said Grantor's land, thence east and parallel with the said South line 10.5 chains be it more or less to the west boundary of the old right of way of the U. I. C. Railroad Company, containing 0.51 acres, more or less.

This deed is given in the liquidation of the assets of the Olof Nelson Construction Company, a partnership.

WITNESS, the hands of said grantor s, this 4th day of April, A. D. 1966.

Signed in the presence of

Marilyn B. Brown

Notary Public

Residing in Salt Lake City

Freeman F. McKinnon
Erma N. McKinnon
Helen H. Nelson

STATE OF UTAH

County of Cache

On the 4th day of April
A. D. 1966 personally appeared before me

Freeman F. McKinnon

Erma N. McKinnon



the signer of the within instrument, who duly acknowledged up me that he executed the same.

Marilyn B. Brown

Notary Public

Commission expires: Feb. 28, 1966

Residing in Salt Lake City

RECORDING DATA

Entry No.

Fee \$

RECORDED ☐ INDEXED ☐PLATTED ☐ ABSTRACTED ☐COMPARED ☐ DELIVERED ☐

STATE OF UTAH)

County of Cache) SS

On the 14th day of November, 1968, personally appeared before me HELEN H. NELSON, a widow, the signer of the within instrument, who duly acknowledged to me that she executed the same.

Notary Public for Utah
Residing at Logan, Utah

LAND TITLE COMPANY My Commission expires:

BOOK 119 PAGE 295

2-19-72

BOOK 140 PAGE 540

WARRANTY DEED

TED J. WILSON AND DIXIE WILSON

grantor s of Logan, County of Cache, State of Utah, hereby
CONVEY and WARRANT to

S. F. Jacobsen and Franklin W. Gunnell

grantee s of Logan, Utah
for the sum of Ten Dollars (\$10.00) and other valuable consideration
the following described tract of land in Cache County, State of Utah:

All of the North One half of the Southwest quarter of Section Twelve (12) in
Township Twelve (12) North of Range One East of the Salt Lake Meridian, Contain-
ing (80) Eighty Acres. x

Also a right of way in common with others over the following property, to-wit:
Commencing at the Northwest corner of the Southwest quarter of the Southwest
quarter of section 12, Township 12 North, Range 1 East of the Salt Lake Base and
Meridian, and running thence South 80 rods; thence East 1 rod; thence North 80
rods; thence West 1 rod to the place of beginning. x

WITNESS, the hand s of said grantor s, this 27th

day of August

A. D. 1971

Signed in the presence of

STATE OF UTAH
County of Cache

On the 27th day of August
A. D. 1971 personally appeared before me

Ted J. Wilson and Dixie Wilson,
husband and wife,



By signed of the within instrument, who duly
acknowledged to me that he executed the same.

Notary Public
Commission expires Feb. 16, 1975
Residing in Logan, Utah

RECORDING DATA

Entry No.

364570

Fee \$2.20

RECORDED ☐ INDEXED ☐
PLATTED ☐ ABSTRACTED ☐
COMPARED ☐ DELIVERED ☐

STATE OF UTAH } SS
COUNTY OF CACHE }
FILED AND RECORDED FOR
PROCTOR LAND TITLE CO.
JUN 11 3 52 PM '72

IN BOOK 140 OF RECORD
PAGE 540
GRETTA B. SMITH
COUNTY RECORDER
DEPUTY

130

LAND TITLE COMPANY

BOOK 140 PAGE 540

"THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD SEEK COMPETENT ADVICE."

Recorded at Request of _____

373518

STATE OF UTAH
COUNTY OF CACHE
FILED AND RECORDED FOR
JUN 21 10 04 AM '73

at _____ M. Fee Paid \$ _____

#2.60

by _____ Dep. Book _____ Page _____ Ref.: _____

Mail tax notice to _____ Address _____

BOOK 156 OF RECORD
PAGE 38
GRETIA B. SMITH
COUNTY RECORDER
DEPUTY

QUIT-CLAIM DEED

Franklin W. Gunnell, El Marie Gunnell, his wife, S. F. Jacobsen and Patricia Jacobsen, his wife,

of Salt Lake City & Logan County of Salt Lake and Cache, State of Utah, hereby
QUIT-CLAIM to

BRIDLEWOOD HILLS DEVELOPMENT COMPANY, a Utah Partnership.

of Logan, Cache County, Utah

grantee
for the sum of
DOLLARS,and other good and valuable consideration
the following described tract of land in Cache County,
State of Utah:All of the North 1/2 of the Southwest quarter of Section 12
in Township 12 North of Range 1 East of the Salt Lake Base
Meridian. Containing 80 acres more or less.Also a right-of-way in common with others over the following
property, to-wit:Commencing in the Northwest corner of the Southwest
quarter of the Southwest quarter of Section 12, Township
12 North Range 1 East of the Salt Lake Base Meridian and
running thence South 80 rods, thence East 1 rod, thence
North 80 rods, thence West 1 rod to the place of beginning.WITNESS the hand of said grantor J, this 30th day of
March, A. D. one thousand nine hundred and seventy three

Signed in the presence of

STATE OF UTAH,

Cache
19th

day of June

A.D. 19 73

appeared before me FRANKLIN W. GUNNELL, EL MARIE GUNNELL, his wife,
JACOBSEN and PATRICIA JACOBSEN, his wife
the parties of the within instrument, who duly acknowledged to me that they executed the
same.

My commission expires Aug. 1, 1973

Residing in

Notary Public

WARRANTY DEED

GEORGE E. BANKHEAD and ANNA H. BANKHEAD,
husband and wife,

grantor & of Providence, County of Cache, State of Utah, hereby
CONVEY and WARRANT to

S.F. JACOBSEN and PATRICIA F. JACOBSEN,
husband and wife, as joint tenants with
full right of survivorship and not as
tenants in common,

grantee & of Logan
for the sum of Ten Dollars
the following described tract of land in

Cache

Cache

County, State of Utah:

Beginning at a point North 0°03' West 950 feet
from a point North 89°41' East 301.5 feet from
the South quarter corner Section 14, Township
11 North, Range 1 East of the Salt Lake Base
and Meridian; running thence North 89°41' East
250.0 feet; thence North 0° 03' West 790.0 feet;
thence South 89°41' West 250.0 feet; thence South
0°03' East 790.0 feet; ~~thence South 89°41' East~~
~~250.0 feet; thence South 0°03' East 790.0 feet~~
to the point of beginning. Containing 4.56 acres. X

WITNESS, the hands of said grantors, this 15th

day of February

A.D. 1961

Signed in the presence of

Charles P. Olson

George E. Bankhead
Anna H. Bankhead

STATE OF UTAH } ss.
County of Cache

On the 15th day of February
A.D. 1961 personally appeared before me

GEORGE E. BANKHEAD and ANNA H.
BANKHEAD, husband and wife,



for the within instrument, who duly
acknowledged to me that he executed the same.

Commission expires: *Dec 31, 1964* Notary Public
Residing in Logan, Utah

RECORDING DATA

Entry No. 349227 Fee \$ 2.00

RECORDED ☐ INDEXED ☐
PLATTED ☐ ABSTRACTED ☐
COMPARED ☐ DELIVERED ☐

STATE OF UTAH } ss.
COUNTY OF CACHE }
FILED AND RECORDED FOR
HICKMAN LAND TITLE CO.
AUG 19 11 40 AM '68

IN BOOK 114 OF RECORD
PAGE 250
GRETTA B. SKITH
COUNTY RECORDER
DEPUTY

HICKMAN ABSTRACT COMPANY

BOOK 114 PAGE 250

LOGAN, UTAH

132

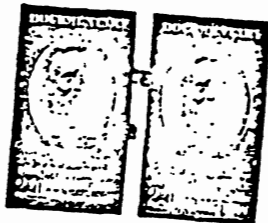
WARRANTY DEED

GEORGE E. BANKHEAD and ANNA H. BANKHEAD,
husband and wife,

grantors of Providence County of Cache State of Utah, hereby
CONVEY and WARRANT to S.F. JACOBSEN and PATRICIA F. JACOBSEN
husband and wife, as joint tenants, with
full right of survivorship and not as
tenants in common,

grantee of Logan Cache
for the sum of Ten Dollars
the following described tract of land in Cache County, State of Utah:

Beginning at a point North 0°03' West 950 feet
from a point North 89°41' East 781.5 feet from
the South quarter corner Section 14, Township
11 North, Range 1 East of the Salt Lake Base and
Meridian; running thence North 0°03' West 790.0
feet; thence South 89°41' West 230.0 feet; thence
South 0°03' East 790.0 feet; thence North 89°41'
East 230.0 feet to the point of beginning. Con-
taining 4.20 acres.



4.00 stamp

WITNESS, the hand of said grantor, this 15th day of February A.D. 19 61

Signed in the presence of

Charles P. Olson

George E. Bankhead
Anna H. Bankhead

STATE OF UTAH } ss.
County of Cache

On the 15th day of February
A.D. 19 61 personally appeared before me

GEORGE E. BANKHEAD and ANNA H.
BANKHEAD, husband and wife.



of the within instrument, who duly
acknowledged that they executed the same.

Commission expires: Jan 31, 1964 Notary Public
Residing in Logan, Utah

RECORDING DATA

Entry No. 335536 Fee \$ 2.00

RECORDED ☐ INDEXED ☐
PLATTED ☐ ABSTRACTED ☐
COMPALED ☐ DELIVERED ☐

STATE OF UTAH } ss.
COUNTY OF CACHE }
FILED AND RECORDED FOR
HICKMAN LAND TITLE CO.
JUL 28 10 09 AM '65

IN BOOK 82 OF RECORD
PAGE 783
BRETTE B. SMITH
COUNTY RECORDER
DEPUTY

HICKMAN ABSTRACT COMPANY

LOGAN, UTAH 700

135

ADDENDUM "4"

Thomas L. Willmore 4256
HARRIS, PRESTON, CHAMBERS & WILLMORE
Attorneys for Defendant
31 Federal Avenue
Logan, Utah 84321

IN THE FIRST JUDICIAL DISTRICT COURT OF CACHE COUNTY
STATE OF UTAH

JOYCE K. JACOBSEN	*	
Plaintiff,	*	
vs.	*	S T I P U L A T I O N
SHIRLEY FELT JACOBSEN	*	Civil No. 24033
Defendant.	*	25033

Comes now the Plaintiff and the Defendant and in consideration of their mutual covenants and conditions herein set forth the parties do stipulate, contract and agree one with the other as follows:

Whereas, the Plaintiff has filed a complaint for divorce, and;

Whereas, the parties are desirous of stipulating and agreeing each with the other concerning the property and debts, and the parties respectfully request the court to approve and grant the provisions of said agreement and incorporate them in any divorce decree which may be issued.

Now, therefore, the parties hereby agree with each other as follows:

1. Real Property. Plaintiff and Defendant agree and stipulate that three homes have been acquired during the course of the marriage. The parties stipulate and agree that Plaintiff

Number 25033-37

AUG 27 1987

SETH S. ALLEN Clerk

is to have as her sole and separate property these three homes which are described as follows:

(a) 17⁷~~4~~ Country Club Drive, Logan, Utah, which is more particularly described as follows:

All that part of Lot 52, SUNSET VISTA PARK, as shown by the Extended Amendment No. 1 Plat recorded November 28, 1952, as filing No. 260139 and situate in the Southwest Quarter of Section 25, Township 12 North, Range 1 East of the Salt Lake Meridian, described as:

Beginning at the Northeast corner of said Lot 52, and running thence South 0 degrees 38' East on the East line of said lot 131.5 feet; thence South 89 degrees 23' West 105 Feet; thence North 0 degrees 37' West 131.5 feet to the North line of said Lot 52; thence East 105 feet to the POINT OF BEGINNING.

(b) 4095 South Main Street, Nibley, Utah, which is more particularly described as follows:

Part of the Southeast quarter of Section 28, Township 11 North, Range 1 East of the Salt Lake Base and Meridian, described as follows:

Beginning at a point in the West right-of-way line of a State highway which point is 40 rods and 1-1/2 feet North and 4 rods more or less West from the southeast corner of said section 28, running thence West 180 feet, thence North 15 feet, thence West 342 feet of record (418 feet by measurement) to an existing partition fence, thence Northeasterly 275 feet along this partition fence to a point 247 feet measured Northerly along the West right-of-way line of said State Highway and 430 feet West from the said West right-of-way line of State Highway, thence East 430 feet, thence Southerly 247 feet more or less to the point of beginning.

(c) 165 East 100 North #3, Logan, Utah, more particularly described as follows:

Unit 17: Building C: TWIN PINES CONDOMINIUMS, as described in that certain Declaration of Covenants, Conditions, and Restrictions of Twin Pines, a Condominium Project recorded 3 July 1973 as Filing No. 373769 in Book 156 of O.R., Page 443 in the office of the Recorder of Cache County, Utah, and which unit is further described and depicted in that certain map of Twin Pines Condominiums filed 3 July 1973 as Filing No. 373768 in the office of the Recorder of Cache County, Utah, together with an undivided 5.047% ownership interest in the common areas.

2. Property Settlement. As and for a payment for difference in property received by the parties, Defendant agrees to pay Plaintiff the lump sum of \$644.00. Said payment together with the other provisions of this Stipulation constitute a full and final property settlement between Plaintiff and Defendant and Plaintiff and Defendant hereby waive any present or future claims either may have against the other.

3. Premarital Property. Plaintiff and Defendant stipulate and agree that each has extensive property which they owned prior to marriage or inherited prior to marriage. Plaintiff and Defendant stipulate and agree that neither shall make a claim for any property which either owned prior to marriage, and by virtue of this Stipulation Plaintiff and Defendant agree to forever waive any claim to any premarital property or inherited property. Furthermore, Plaintiff has asserted a claim requesting a share of income derived from premarital property that Defendant has sold prior to the date of divorce. Plaintiff hereby waives any claim which she may have in the past, present and future concerning

income derived from premarital property presently owed or sold prior to the date of divorce.

4. Personal Property. The parties have effected to their mutual satisfaction a division of all personal property (acquired during marriage or prior to marriage) in which they had an interest, either singularly or jointly; and all such property which Plaintiff or Defendant now has in his or her control and possession shall remain his or her sole and separate property respectively, free from any claim whatsoever on the part of the other party.

5. Payment of Debts and Obligations. Plaintiff agrees to be liable and responsible for all debts and obligations concerning the three homes mentioned in paragraph 1 above. Furthermore, Plaintiff agrees to indemnify and hold Defendant harmless from any loss, demand or claim regarding any debts or obligations concerning the three homes stated in paragraph 1. Furthermore, Plaintiff agrees and stipulates to pay any and all debts and obligations which she has incurred individually since the date of separation on or about July 1, 1986, and furthermore, to indemnify and hold Defendant harmless from said debts.

Defendant agrees to pay all debts and obligations that are in his name and furthermore he agrees to hold Plaintiff harmless therefrom and indemnify Plaintiff from any and all debts and obligations which he has incurred individually since the date of separation on or about July 1, 1986.

6. Alimony. Plaintiff and Defendant agree and stipulate that neither will make any further claim upon the other for alimony or maintenance. Plaintiff and Defendant each agree to completely and forever waive any right of alimony or maintenance they may have against the other.

7. Western Realty & Development Company. Plaintiff and Defendant stipulate and agree that the business known as Western Realty & Development Company shall be the sole and separate property of Plaintiff. Plaintiff shall receive the right to use and transact business under the name of Western Realty & Development Company. Furthermore, Plaintiff shall receive from Defendant the realty sales signs which he has in his possession. Plaintiff shall not have any claim or right to the furniture and furnishings owned by Western Realty & Development Company. Said furniture and furnishings shall be the sole and separate property of the Defendant. Plaintiff shall take all necessary efforts to remove Defendant's name from any and all records and obligations involving Western Realty & Development Company. Furthermore, Plaintiff shall be responsible and liable for all debts and obligations of Western Realty & Development Company which have arisen since the date of separation on or about July 1, 1986 and all debts which may arise in the future and shall indemnify and hold Defendant harmless therefrom.

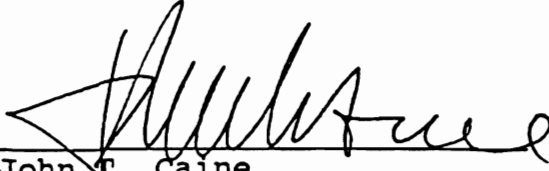
8. Voluntary Contract. Plaintiff and Defendant acknowledge that they execute this Stipulation of their own free will and

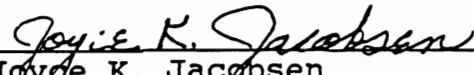
choice believing it to be in their best interests and both parties agree to hold their respective counsel harmless from any liability resulting herefrom and acknowledge that they made this decision on their own accord.

9. Disclosure. Each of the parties acknowledge that a full and complete disclosure of all property and debts incurred or acquired during the marriage has been made and should other property or debts later be discovered, an equitable order would have to be entered at such time.

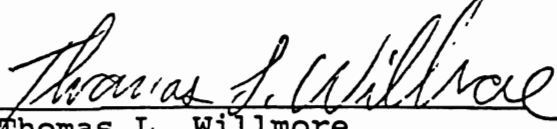
10. Attorney's Fees and Court Costs. Plaintiff and Defendant stipulate and agree that each will pay their own attorney's fees and costs of Court incurred in this action if this divorce is obtained upon this Stipulation Agreement.

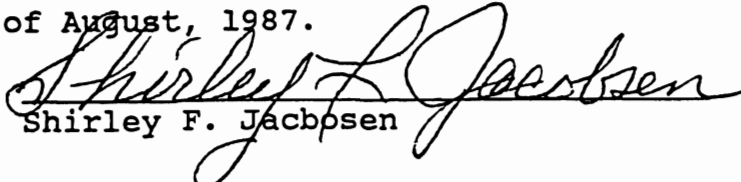
DATED this 27 day of August, 1987.


John T. Caine
Attorney for Plaintiff


Joyce K. Jacobsen

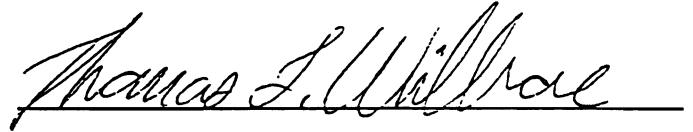
DATED this 27 day of August, 1987.


Thomas L. Willmore
Attorney for Defendant


Shirley F. Jacobsen

CERTIFICATE OF HAND DELIVERY

I hereby certify that I hand delivered a true and correct copy of the above and foregoing STIPULATION to the Plaintiff's Attorney, John T. Caine, 2568 Washington Blvd., Ogden, Utah 84401 on this 27 day of August, 1987.

A handwritten signature in cursive script, reading "Thomas L. Wilhoite", is written over a horizontal line.

Jacobsen.Stipulation

ADDENDUM "5"

Thomas L. Willmore 4256
HARRIS, PRESTON, CHAMBERS & WILLMORE
Attorneys for Defendant
31 Federal Avenue
Logan, Utah 84321

RECEIVED

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CACHE COUNTY CLERK

IN THE FIRST JUDICIAL DISTRICT COURT OF CACHE COUNTY
STATE OF UTAH

JOYCE K. JACOBSEN

*

Plaintiff,

*

O R D E R

vs.

*

SHIRLEY FELT JACOBSEN

*

Civil No. 24033

Defendant.

*

25033

THIS matter came on regularly for hearing before the above entitled Court on the 27th day of August, 1987, the Honorable VeNoy Christoffersen presiding. The Plaintiff was present in person and was represented by her attorney, John T. Caine, and Defendant was present in person and was represented by his attorney, Thomas L. Willmore; and the Court having heard the evidence and having received and read the Stipulation agreed to by the parties and filed herein, and being fully advised in the premises, and good cause appearing, it is hereby ORDERED that the Stipulation made and entered into by the parties hereto be and the same is hereby incorporated herein by reference.

It is further ordered according to the terms of said Stipulation as follows:

1. That Plaintiff shall have as her sole and separate property the three homes which have been acquired during marriage. The three homes are described as follows:

25033-38
Jc

AUG 28 1987

SETH S. ALLEN, Clerk

(a) 1744 Country Club Drive, Logan, Utah, which is more particularly described as follows:

All that part of Lot 52, SUNSET VISTA PARK, as shown by the Extended Amendment No. 1 Plat recorded November 28, 1952, as filing No. 260139 and situate in the Southwest Quarter of Section 25, Township 12 North, Range 1 East of the Salt Lake Meridian, described as:

Beginning at the Northeast corner of said Lot 52, and running thence South 0 degrees 38' East on the East line of said lot 131.5 feet; thence South 89 degrees 23' West 105 Feet; thence North 0 degrees 37' West 131.5 feet to the North line of said Lot 52; thence East 105 feet to the POINT OF BEGINNING.

(b) 4095 South Main Street, Nibley, Utah, which is more particularly described as follows:

Part of the Southeast quarter of Section 28, Township 11 North, Range 1 East of the Salt Lake Base and Meridian, described as follows:

Beginning at a point in the West right-of-way line of a State highway which point is 40 rods and 1-1/2 feet North and 4 rods more or less West from the southeast corner of said section 28, running thence West 180 feet, thence North 15 feet, thence West 342 feet of record (418 feet by measurement) to an existing partition fence, thence Northeasterly 275 feet along this partition fence to a point 247 feet measured Northerly along the West right-of-way line of said State Highway and 430 feet West from the said West right-of-way line of State Highway, thence East 430 feet, thence Southerly 247 feet more or less to the point of beginning.

(c) 165 East 100 North #3, Logan, Utah, which is more particularly described as follows:

Unit 17: Building C: TWIN PINES CONDOMINIUMS, as described in that certain Declaration of Covenants, Conditions, and Restrictions of Twin Pines, a Condominium Project recorded 3 July 1973 as Filing No. 373769 in Book 156 of O.R., Page 443 in the office of the Recorder of Cache County, Utah, and which unit is further described and depicted in that certain map of Twin Pines Condominiums filed 3 July 1973 as Filing No. 373768 in the office of the Recorder of Cache County, Utah, together with an undivided 5.047% ownership interest in the common areas.

2. That Defendant is ordered to pay the lump sum of \$644.00 to the Plaintiff as a full and final property settlement between Plaintiff and Defendant and that Plaintiff and Defendant waive any present or future claims either may have against the other's property.

3. That Plaintiff shall have as her sole and separate property the premarital property and property which she inherited prior to marriage. That Defendant shall have as his sole and separate property the premarital property and property which he inherited prior to marriage. That Plaintiff and Defendant have forever waived any claim either may have against the other's premarital property or inherited property. That Plaintiff waives any and all claims she may have against Defendant for income derived from Defendant's premarital property which was sold prior to the date of divorce or is now presently owned.

4. That each party shall have as their sole and separate property all the property which Plaintiff or Defendant now has in his or her control and possession and neither party shall make

any claim whatsoever upon the personal property of the other party.

5. Plaintiff shall be liable and responsible for all debts and obligations concerning the three homes mentioned in paragraph 1 above. Plaintiff shall indemnify and hold Defendant harmless from any loss, demand or claim regarding and debts and obligations concerning the three homes. Plaintiff shall be responsible for the debts and obligations which she has incurred individually since the date of separation on or about July 1, 1986, and Plaintiff shall indemnify and hold Defendant harmless from said debts.

6. Defendant shall pay all debts and obligations which he has incurred for his benefit and he shall indemnify Plaintiff and hold her harmless from any and all debts which he has incurred individually since the date of separation on or about July 1, 1986.

7. That Plaintiff and Defendant are not entitled to any permanent alimony or spousal support because each has waived any right or claim for such alimony or support.

8. That Plaintiff shall have as her sole and separate property the right to use and transact business under the name of Western Realty & Development Company. Plaintiff shall receive from Defendant the realty sales signs. Plaintiff shall not have any claim or right to the furniture and furnishings owned by Western Realty & Development Company. Said furniture and

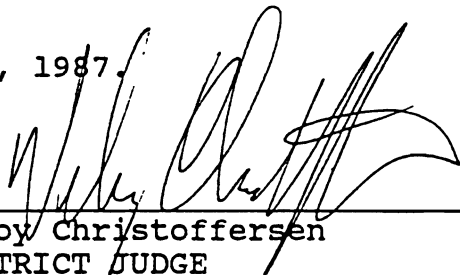
furnishings shall be the sole and separate property of the Defendant. Plaintiff shall take all necessary efforts to remove Defendant's name from any and all records and obligations involving Western Realty & development Company and Plaintiff shall be responsible and liable for all debts and obligations of Western Realty & Development Company which have arisen since the date of separation on or about July 1, 1986, and all debts which may arise in the future. Plaintiff shall indemnify Defendant and hold him harmless from any demand or claim concerning the debts of Western Realty & Development Company.

9. It is understood that Plaintiff and Defendant the said Stipulation of their own free will and choice, believing it to be in their best interests and both parties shall hold their respective counsel harmless from any liability resulting therefrom.

10. That it has been represented to the Court that a full and complete disclosure of all property and debts incurred or acquired during the marriage has been made and should other property or debts later be discovered, an equitable order would have to be entered at such time.

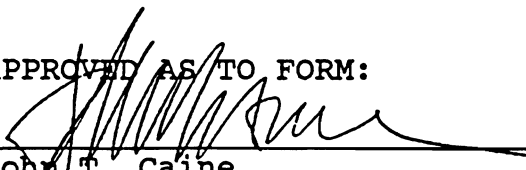
11. That Plaintiff and Defendant shall pay their own attorney's fees and costs of court incurred in this action.

DATED this 28th day of August, 1987.



VeNoy Christoffersen
DISTRICT JUDGE

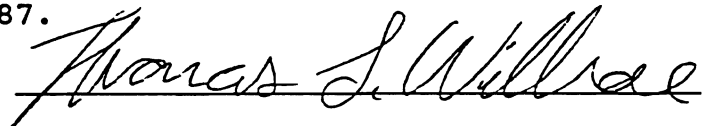
APPROVED AS TO FORM:



John T. Caine
Attorney for Plaintiff

CERTIFICATE OF HAND DELIVERY

I hereby certify that I hand delivered a true and correct copy of the above and foregoing ORDER to the Plaintiff's Attorney, John T. Caine, 2568 Washington Blvd., Ogden, Utah 84401 on this 27 day of August, 1987.



Thomas S. Willard

Jacobsen.ORDER

Jacobsen.order

ADDENDUM "6"

Originally the matter was before the Court upon a Motion to Set Aside the Divorce Decree and for New Trial on issues of property settlement. The record more particularly reflects that the parties were married on the 30th day of June, 1976, and later divorced based upon a Stipulation entered the 27th day of August, 1987, with an Order relative to property pursuant to said Stipulation entered the 28th day of August, 1987, and the Findings and Decree entered on the 22nd day of September, 1987. A Motion to Set Aside that Divorce Decree was filed the 30th day of November, 1987, by the Plaintiff on the basis that there could be a reopening of the case in the event

other assets were discovered which were therefore undisclosed for purposes of the Stipulation. Said reservation was memorialized in paragraph 10 of the property distribution Order.

In her Motion to Set Aside the Divorce Decree and for a New Trial on the issues of property settlement, the Plaintiff alleges that subsequent to entering into the settlement, she discovered additional amounts of money were received by the Defendant through the sale of property owned in a real estate development known as King Clarion Hills. Thereafter discovery was initiated. Since that time there have been numerous documents and pleadings filed before the Court requesting further discovery. The reading of the Stipulation itself in paragraph 10 of the Order allows for a reevaluation and equitable distribution of the property should other undisclosed assets be discovered.

Mr. Raymond Malouf, counsel for the Plaintiff, entered his appearance on the 2nd day of December, 1991. On the 19th day of February, 1992, the first round of discovery requests began, wherein the Defendant requested the Plaintiff to "state all facts and circumstances supporting her allegation in paragraph 8 of the affidavit dated December 13, 1991", wherein she states, "there are more properties that have not been disclosed to me of which I am aware and of which I am prepared to describe." In response, the Plaintiff, after giving a history

of the case, rather vaguely and variously described certain property transactions which were apparently unknown to her prior to the execution of the Stipulation in the settlement. Again in interrogatory #2 there is a request relative to what other properties were not disclosed by the Defendant to the Plaintiff. In answer thereto the Plaintiff again variously described a number of lots and properties. Interrogatories and Answers continued, with allegations, as to discovery made by the Plaintiff relative to property and transactions of the Defendant previously undisclosed. There followed a series of Motions to Compel and other interrogatories filed by each party.

It became apparent that rather than relying upon information she had relative to undisclosed properties Plaintiff sought to identify the same through further discovery and demands for production upon the Defendant. On the 4th day of December, 1992, the Defendant filed a Motion to Dismiss on the basis that the Plaintiff was simply trying to relitigate and reopen the entire divorce, then almost five (5) years old.

The memorandum in support of the Motion to Dismiss states a number of legal grounds as to why the Plaintiff should not succeed on her Motion to Set Aside the Decree or for New Trial. Most importantly, however, the Court is concerned with respect to the reservation found in the Order and the Stipulation allowing for reevaluation and distribution of

undiscovered property. The most salient point of the Motion to Dismiss is that at no time has the Plaintiff ever demonstrated with particularity just what property she is alleging was not disclosed. A review of the Answers and Interrogatories would essentially confirm that allegation. Moreover, the Defendant continues to allege that all the property had and always has been disclosed.

The burden with respect to the demonstration of other discovered property is not upon the Defendant, but upon the Plaintiff. Though the Stipulation and Order allow for a reevaluation or for an equitable order redistributing property or assets later discovered, that is not a guarantee that the Defendant should provide that discovery nor come in and defend the prior distribution or to reopen the entire history of his financial affairs. Certainly, if any presumption lies, it should be in favor of the distribution previously provided and the burden falls squarely upon the Plaintiff to demonstrate that other property, undiscovered, or undisclosed existed and to identify the same with specificity.

In response to some of the Motions to Compel and other pleadings before the Court, a Memorandum Decision was issued the 2nd day of November, 1992, setting this matter for a hearing and identifying that some discovery had been made and outlining what discovery could thereafter be undertaken.

A subsequent hearing was conducted on the 12th day of November, 1992, wherein the Motion to Dismiss was taken under advisement by the Court. The issues were limited to the properties or accounts receivable and assets between the time the divorce was filed and the time the decree was signed. The Court set a sixty (60) day review at that time for January 12, 1993. Further discovery requests were filed thereafter by the Plaintiff. Responses were made and objections were filed. On the 22nd day of January, 1993, a Summary of Discovery was filed by the Plaintiff. In said Summary the Plaintiff stated, "if Plaintiff must she will present her case with court documents and other evidence, she prefers to have a complete disclosure from the Defendant." On the 16th day of February, 1993, the parties appeared in court and the Court again outlined what discovery was permissible and limited the same. Very specific instructions were given to the Plaintiff at that time with respect to what discovery requests could be made in aid of the Plaintiff's Motion. A time schedule was established. The Plaintiff was to submit to the Defendant certain interrogatories by March 1, 1993. On said date Plaintiff submitted interrogatories consisting of essentially two (2) questions with various subparts. The subparts would require an accounting and reconstruction, by the Defendant, resulting in hundreds of potential answers to questions "described by the

Defendant as 2,308." The Court ordered on the 16th day of February, 1993, that the Defendant return answers by March 10, 1993. The memorandum indicates that the Defendant was unable to do so as he had been hospitalized for a hip replacement on March 4, 1993. On March 9, 1993, the Plaintiff submitted a second set of interrogatories described as a "first amendment" which were actually filed with the Court on the 25th day of March, 1993. The Defendant argues that those interrogatories would require over 9,000 answers. The Court has reviewed the same, together with the status of discovery.

At this time the Court is going to deny the Motion to Dismiss, it is likewise denying all Motions to Compel, and all discovery is hereby terminated, this matter is set for trial on the 21st day of May, 1993. Whatever evidence the Plaintiff has in support of her position that there is undisclosed property she can present at the time of trial. No further requests and no further Motions to Compel will be entertained and the request by the Defendant for sanctions will be taken under advisement.

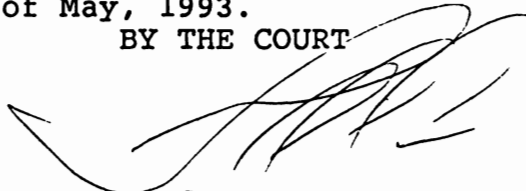
The Court finds specifically that in fact the Plaintiff has abused discovery and ignored the direction by this Court with respect to limitations thereon. The discovery undertaken is entirely unjustifiable. The discovery was allowed in aid of the Motion to Set Aside the Decree, which requires the

Jacobsen vs. Jacobsen
#862025033
Page 7

Plaintiff to demonstrate that there is further undiscovered evidence. Whatever information the Plaintiff has she may present to the Court in support of that Motion and the Court will issue a Order accordingly. Counsel for the Defendant is directed to prepare a formal Order in conformance herewith.

Dated this _____ day of May, 1993.

BY THE COURT

A handwritten signature in black ink, appearing to read 'Gordon J. Low', is written over the printed name and title.

Gordon J. Low
District Court Judge

Case No: 862025033 DA

Certificate of Mailing

I certify that on the 17th day of May, 1993,

I sent by first class mail a true and correct copy of the
attached document to the following:

THOMAS L. WILLMORE
Atty for Defendant
P.O. BOX 525
LOGAN UT 84321

RAYMOND N. MALOUF
Atty for Plaintiff
150 EAST 200 NORTH #D
LOGAN UT 84321

District Court Clerk

By: 
Deputy Clerk

ADDENDUM "7"

Thomas L. Willmore (#4256)
OLSON & HOGGAN, P.C.
Attorneys for Defendant
88 West Center
P.O. Box 525
Logan, Utah 84321
Telephone (801) 752-1551

93 JUN 15 PM 9 19

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF UTAH, IN AND FOR THE COUNTY OF CACHE

JOYCE KALANQUIN,)	
)	FINDINGS OF FACT AND
Plaintiff,)	ORDER
)	
vs.)	
)	
SHIRLEY F. JACOBSEN,)	8620
)	Civil No. 25033
Defendant.)	
)	

This matter came before the Honorable Gordon J. Low on Plaintiff's Motion To Set Aside Divorce Decree and for a new trial on the issues of property settlement on May 21, 1993. The Plaintiff was present and represented by her attorney, Raymond N. Malouf, and the Defendant was present and represented by his attorney, Thomas L. Willmore. The parties presented evidence and testimony to the Court and the Court having received the evidence and testimony of the parties and being fully advised in the premises, now makes and enters the following:

FINDINGS OF FACT

1. Plaintiff and Defendant were married on June 30, 1976.
2. On July 23, 1986, Plaintiff filed a Complaint for divorce against the Defendant in the First Judicial District Court, Cache County, Utah.

HOGGAN, P.C.
KEYS AT LAW
WEST CENTER
BOX 525
AN 84323-0525
752-1551

TON OFFICE.
EAST MAIN
BOX 115
N UTAH 84337
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3. Until the trial of this matter, both Plaintiff and Defendant conducted extensive discovery and investigation into each other's property, assets and income.

4. During the divorce proceedings, both Plaintiff and Defendant were represented by legal counsel.

5. On August 27, 1987 Plaintiff and Defendant, together with their attorneys, entered into a Stipulation regarding the issues of property settlement, alimony and payment of attorney's fees.

6. The Stipulation was presented to Judge Christoffersen of the First Judicial District Court on August 27, 1987 and on August 28, 1987 an Order was signed by Judge VeNoy Christoffersen which incorporated the terms and conditions of the Stipulation of the parties concerning the issues of alimony, property settlement and attorney's fees.

7. The Court in making its Findings of Fact specifically mentioned and looked to the following exhibits and documents: May 1, 1987 minute entry by the Clerk of the First Judicial District Court, Cache County, Utah; Plaintiff's evidence of financial status; Defendant's summary of property; Answers To Interrogatories And Requests For Production Of Documents by Plaintiff and Defendant; Stipulation of the parties dated August 27, 1987; and, Order of the Court dated August 28, 1987.

8. The Court finds that Plaintiff has filed her Motion To Set Aside pursuant to paragraph 10 of the August 28, 1987 Order. Furthermore, the Court finds that the term "disclosure" as used in paragraph 10 means either a disclosure by the Defendant to the Plaintiff, independent knowledge of the Plaintiff concerning property, or knowledge of the Plaintiff concerning property pursuant to her own investigation.

9. The Court finds that the term "remainder property" includes small parcels of land and protection strips owned by the Defendant in the various subdivisions he developed. The Court finds that the remainder parcels were disclosed to Plaintiff or could have been discovered by her. The Court finds that these

remainder parcels had no value according to the testimony and evidence presented at trial.

10. The Court finds that Lot 2, Block 10, Weston City, Franklin County, Idaho, was disclosed to the Plaintiff.

11. The Court finds that the commercial property of Bonanza Development Company located at 666 North Main, Logan, Utah, 84321, and the surrounding property owned by the Bonanza Development Company was disclosed to Defendant.

12. The Court finds that all property owned by the Plaintiff in Cherry Creek, Cache County, Utah, was disclosed to the Plaintiff.

13. The Court finds that all lots, remainder property and property of the Plaintiff in Grand View Hills Subdivision, Cache County, Utah, was disclosed to the Defendant.

14. The Court finds that all property of the Defendant in the Knowles Subdivision, Cache County, Utah, was disclosed to the Defendant.

15. The Court finds that all property of the Defendant in the Val-View Subdivision, Cache County, Utah, and any remainder property in said subdivision was disclosed to the Defendant.

16. The Court finds that Defendant's property located in Meadow Village, Cache County, Utah, and any remainder property was disclosed to the Defendant.

17. The Court finds that Defendant's property located in King Clarion Hills Subdivision, Davis County, Utah, together with any remainder property in said subdivision was disclosed to the Defendant.

18. The Court finds that any of Defendant's property in the Navajo Hills Subdivision or surrounding the Navajo Hills Subdivision in Kane County, Utah, was disclosed to Defendant.

19. The Court finds that Defendant's interest in the Pyramid Investment Company, Penal County, Arizona, was disclosed to Defendant.

20. The Court finds that Defendant's interest in the S.F. Jacobsen Family Limited Partnership was disclosed to Defendant because she obtained a copy of the Family Limited Partnership document prior to the date of divorce and had knowledge concerning it through the summer of 1987.

21. The Court finds that Defendant's partnership interest in the Bridlewood Hills Development Company was disclosed to Plaintiff.

22. The Court finds that Defendant's interest in any and all real estate contracts and accounts receivable was disclosed to Plaintiff.

23. The Court finds that sanctions and attorney's fees should not be awarded by the Court to Defendant against Plaintiff and her attorney and the Court finds that each party should pay their own attorney's fees and costs of Court incurred in this matter.

Based upon the foregoing Findings of Fact, the Court now makes and enters the following:

ORDER

It is hereby ORDERED, ADJUDGED and DECREED as follows:

1. Plaintiff's Motion To Set Aside Divorce Decree and for a new trial on the issues of property settlement is hereby denied because Defendant's interests in real property, partnerships, accounts receivable or real estate contracts were disclosed to Plaintiff by Defendant or Plaintiff knew about the property because of her relationship with the Defendant or her independent investigation of Defendant's assets.

2. Plaintiff's claims against Defendant's property and assets pursuant to Plaintiff's Motion To Set Aside Divorce Decree and for a new trial on the issues of property settlement is hereby denied concerning the following real property, accounts receivable, partnership interests and assets: Lot 2, Block 10, Weston City, Franklin County, Idaho; Bonanza Development Company property

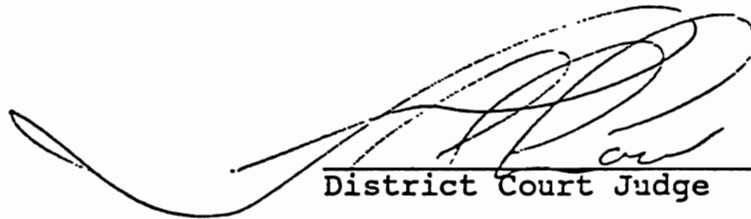
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UTAH 84337
7-3885

located at 666 North Main, together with adjoining property; Cherry Creek, Cache County, Utah; Grand View Hills Subdivision, Cache County, Utah, together with remainder property interests in said Subdivision; Lot 5, Knowles Subdivision, Cache County, Utah; Defendant's interests in Meadow Village, Cache County, Utah; Val-View Subdivision, Cache County, Utah, and any remainder property in the Val-View Subdivision; King Clarion Hills Subdivision, Davis County, Utah and any remainder property in the King Clarion Hills Subdivision; Navajo Hills Subdivision, and any real property owned by Defendant located in Kane County, Utah; Pyramid Investment Company, Penal County, Arizona; Bridlewood Hills Development, Company, Cache County, Utah; the S.F. Jacobsen Family Limited Partnership; accounts receivable and real estate contracts.

3. The Court hereby denies Defendant's request for sanctions and attorney's fees against the Plaintiff and Plaintiff's attorney.


DATED this 30th day of June, 1993.



District Court Judge

CERTIFICATE OF HAND DELIVERY

I hereby certify that I hand delivered an exact copy of Findings Of Fact and Order to Plaintiff's Attorney, Raymond N. Malouf at the First Judicial District Court, 140 North 100 West, Logan, Utah, 84321, this 14th day of June, 1993.



Thomas L. Willmore

1 HOGGAN, P.C.
RNEYS AT LAW
VEST CENTER
D. BOX 525
UTAH 84323-0525
1) 752-1551

NTON OFFICE:
3 EAST MAIN
D BOX 115
ON. UTAH 84337
1) 257 3885

wpd/tlw/d/jacob.fof
N-3903.3

ADDENDUM "8"

Thomas L. Willmore 4256
HARRIS, PRESTON, CHAMBERS & WILLMORE
Attorneys for Defendant
31 Federal Avenue
Logan, Utah 84321

IN THE FIRST JUDICIAL DISTRICT COURT OF CACHE COUNTY
STATE OF UTAH

JOYCE K. JACOBSEN	*	
Plaintiff,	*	
vs.	*	DEFENDANT'S SECOND SET
	*	OF INTERROGATORIES AND
SHIRLEY FELT JACOBSEN	*	AND REQUEST FOR PRODUCTION
	*	OF DOCUMENTS
Defendant.	*	Civil No. 25033

COMES now the Defendant by and through his attorney, Thomas L. Willmore, and hereby serves the following Interrogatories and Request for Production of Documents on the Plaintiff, Joyce K. Jacobsen to be answered under oath in accordance with Rules 33 and 34 of the Utah Rules of Civil Procedure.

Respecting said interrogatories, you are requested to answer each question fully and completely in writing within thirty (30) day after service. Such interrogatories shall be considered continuing or amended or supplemental answers to said interrogatories must be served and filed should other additional information be available to, or acquired by you, pertaining to the following interrogatories, which would make incorrect, incomplete and misleading any of the answers given by you at this time.

Respecting said Request for Production of Documents you are requested to produce the following documents for inspection and copying or a copy of the following documents at the office of Thomas L. Willmore, 31 Federal Avenue, Logan, Utah on or before 10:00 o'clock a.m., August 14, 1987.

INTERROGATORIES

INTERROGATORY NO. 1. Please state the specific amount of your inheritance and/or premarital property which was applied to the purchase of the following properties:

- a. 1774 Country Club Drive, Logan, Utah. \$ 35,000 + interest
 - b. 4095 South Main, Nibley, Utah; \$ 12,600 + interest
 - c. 165 East 100 North, Logan, Utah. \$ 27,500 + interest
- \$ 75,100. = \$ 119,29

INTERROGATORY NO. 2. Please state all facts and evidence and please identify all documents which may support your claim to any interest in or monies from the following properties:

- a. Glenwood Hill Subdivision; \$ 6,400 lot payment - Note not paid
- b. Grandview Hills Subdivision; Wife's share, Office work, Brokers
- c. Bonanza Development Company; Wife's share, purchase & sale during marriage. Rent collection & book 4
- d. Bridlewood Hills Subdivision; Principal/Equity payments during marriage
- e. Cherry Creek; Wife's share of 3 lots sold - 1 lot purchase & sale during marriage
- f. Meadow Village Development; Wife's share of purchase and sale of 32 town homes and lots purchased and sold during marriage.
- g. King Clarion Hills Subdivision; Wife's share of many lots developed & sold during marriage
- h. Lake Edge Hills; Wife's share of 5 lots developed and sold during marriage
- i. Val View Subdivision; Wife's share of 4 lots purchased and sold South of Val View - - - during marriage - Also other lots

- j. Defendant's Bear Lake cabin; - only share of principal paym
made.
- k. 1796 Country Club Drive, Logan, Utah; - only share of princ
payments made.
- l. Navajo Hills. - no claim - passive, pre-marital property.

INTERROGATORY NO. 3. For each of the following properties please state and set forth specifically any contribution you have made to those properties in your time, money or efforts to develop and with regards to each such contribution please state the specific amount of time, money or what your efforts to develop have entailed:

- a. Glenwood Hill Subdivision; - Furnished money for 2 lots to SF to build 2 homes and sell. P
of advertising, office work - writing
- b. Grandview Hills Subdivision; - closing sales etc -
Advertising 80%, offers written, esc
and closing work, files of work
- c. Bonanza Development Company; - Rents collected, deposit slips, property sale co-brokered - escrow
etc
- d. Bridelwood Hills Subdivision; - Offer written on sale, escrowed, file work & effort.
- e. Cherry Creek; - Advertisements - 80% - office maintenance, etc. (b covered)
- f. Meadow Village Development; - Advertised - paid 80% - wrote off, filed & escrowed all monies, brokers sales. Purchased during marriage
- g. King Clarion Hills Subdivision; - 75 plus lots sold during marriage. Offers written, money escrowed, & most purchased during marriage.
- h. Lake Edge Hills; - Wife's share of 5 lots developed and sold during marriage. Some advertising - Joyce paid 80%.
- i. Val View Subdivision; - South of Val View 4 lots purchased & sold during marriage
- j. Defendant's Bear Lake cabin; - Principal reduction/equity during marriage only
- k. 1796 Country Club Drive, Logan, Utah; - Principal Equity/reduction during marriage only
- l. Navajo Hills. - no claim - passive pre-marital property

INTERROGATORY NO. 4. With regards to your answer to Interrogatory No. 21 of Defendant's First Set of Interrogatories, please state your basis and each and every fact supporting your

3. Copies of all documents, memoranda, correspondence, etc., upon which Plaintiff relies regarding her answer to Interrogatory No. 3.

4. Copies of all documents, memoranda, correspondence, etc., upon which Plaintiff relies regarding her answer to Interrogatory No. 4.

5. Copies of all documents, memoranda, correspondence, etc., upon which Plaintiff relies regarding her answer to Interrogatory No. 5.

6. Copies of all documents, memoranda, correspondence, etc., upon which Plaintiff relies regarding her answer to Interrogatory No. 6.

7. Copies of all documents, memoranda, correspondence, etc., upon which Plaintiff relies regarding her answer to Interrogatory No. 8.

8. Copies of your income tax return for 1986 and all W-2 forms for 1986.

9. Copies of any and all appraisals which have been performed on California property which includes the building lot at Salton Sea and San Diego property. *None*

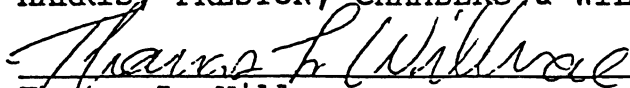
10. Please produce for inspection or for copying the deposit register for the trust account and regular checking Account for Western Realty & Development Company. *Regular/general checking you have in check register - the deposit register -*

11. Please produce for inspection or copying all the check register and all return checks for the trust account of Western

Realty & Development Company.

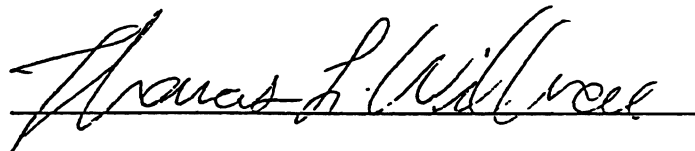
DATED this 13th day of July, 1987.

HARRIS, PRESTON, CHAMBERS & WILLMORE


Thomas L. Willmore
Attorney for Defendant

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the above and foregoing DEFENDANT'S SECOND SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS to Plaintiff's Attorney, John T. Caine, 2568 Washington Blvd., Ogden, Utah 84401 on this 13th day of July, 1987.



Jacobsen. Interrogatories

claim to one-half of the commissions paid to Defendant in the amount of \$5,862.00. *Wife's share - 50%*

INTERROGATORY NO. 5. Regarding your answer to Interrogatory No. 21 of Defendant's First Set of Interrogatories will you please state your basis and each and every fact supporting your claim to a "partnership reimbursement of overhead" in the amount of \$20,675.00. *Joyce's labors paid 80% of WRE Dev. Co rent, utilities, etc. SF paid 20% SF and "Development Co. paid nothing - a "free ride" at Joyce's 80% expense*

INTERROGATORY NO. 6. With respect to your answer to Interrogatory No. 21 of Defendant's First Set of Interrogatories will you please state the basis for and each and every fact in support of your claim for "office work compensation" in the amount of \$29,100.00. *Shirley promised to pay me Joyce \$300.00 per month salary when Secretary of work (her monthly pay for 4 hours work per day for 5 days per week). Joyce worked longer - no F same work plus other work*

INTERROGATORY NO. 7. Do you claim to be a business partner in the business of Western Realty & Development Company? *Yes!*

INTERROGATORY NO. 8. If your answer to the preceding interrogatory was in the affirmative please state your basis for such claim and each and every fact which supports said claim that you are a business partner in Western Realty & Development Company. *See Exhibit "A"*

REQUEST FOR PRODUCTION OF DOCUMENTS

1. Copies of any documents, memoranda, correspondence, etc., upon which Plaintiff relies regarding her answer to Interrogatory No. 1.

2. Copies of all documents, memoranda, correspondence, etc., upon which Plaintiff relies regarding her answer to Interrogatory No. 2.

Partnership

1. Western Realty paid all the rent, ^{telephone,} utilities, overhead of office suite 101 (5 rooms plus bath room).
 - A. SF Jacobsen and Dev Co paid nothing
 - I. SF used office for his complete business - all his papers, accounts, records, plats, etc and check book at his office only

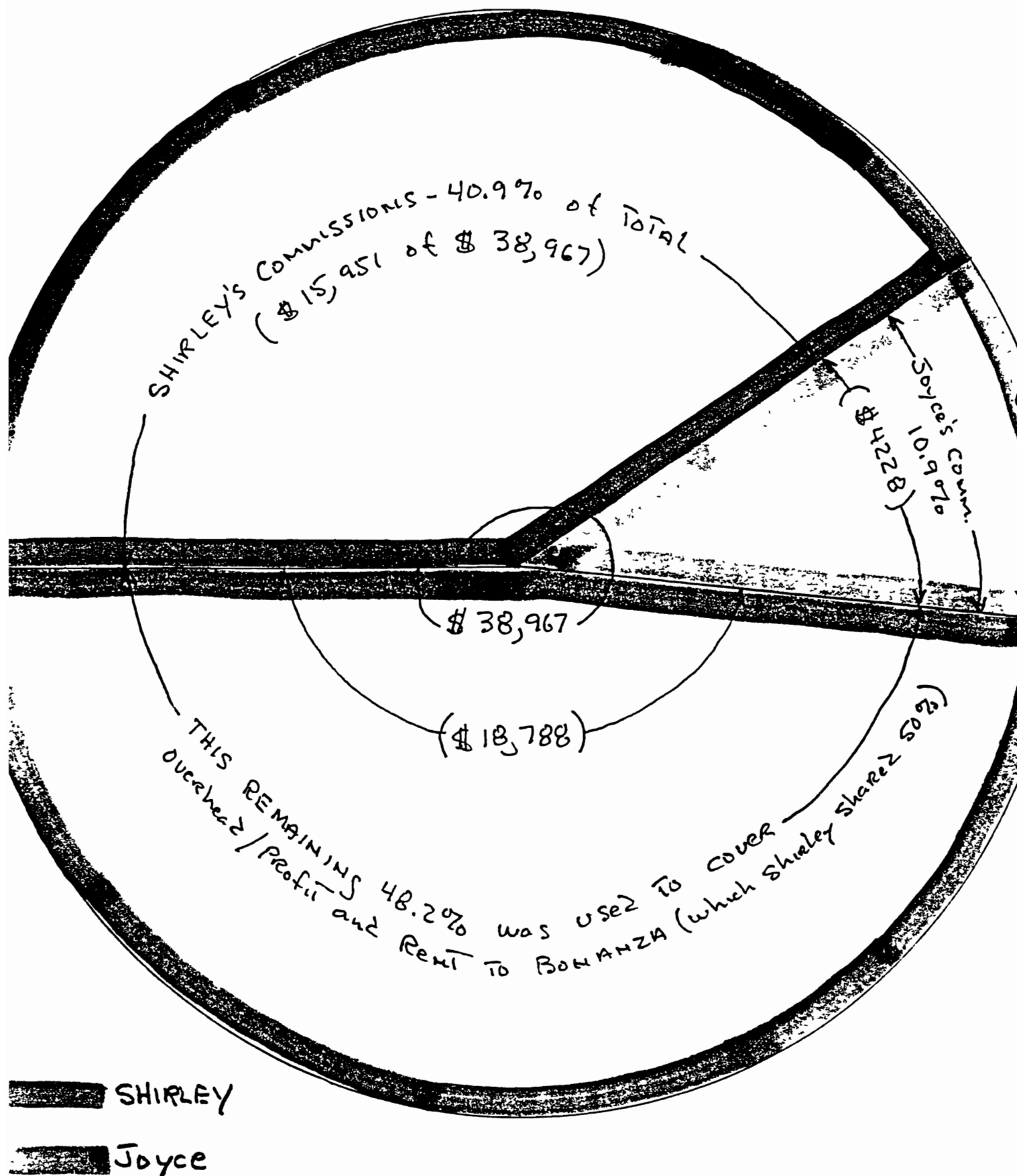
II.

2. Western Realty (Joyce's ^{efforts}) paid 80% of all rent, telephone, utilities, overhead of office. SF
 - A. SF allowed ~~20%~~ of a portion of his Land Dev. Co. to run thru the Realty company to pay 20% of the rent, telephone, utilities, overhead of office.
 - I. SF owes Joyce ^{\$63,617} ^{reimbursement} for 50/50 partnership share
 - II. Plus a share of the Land Development office rent that was never paid (WR @ \$350.00 per month = \$4200.00 per year \div 2 for Land Dev. rent = \$2100 (Land Dev. owed per year \times 10 years = \$21,000). WR was paid 10% management & ^{collection} fee. 10% of \$21,000 = \$2,100
3. SF owes Joyce (WR) \$63,617 expense re-adjustment and \$2,100 Land Dev. Co. rent Total \$65,717
4. Joyce & SF in business partnership before marriage - license loan of money for development & construction
5. Check signature card - both names - Sec. of State Register - both names

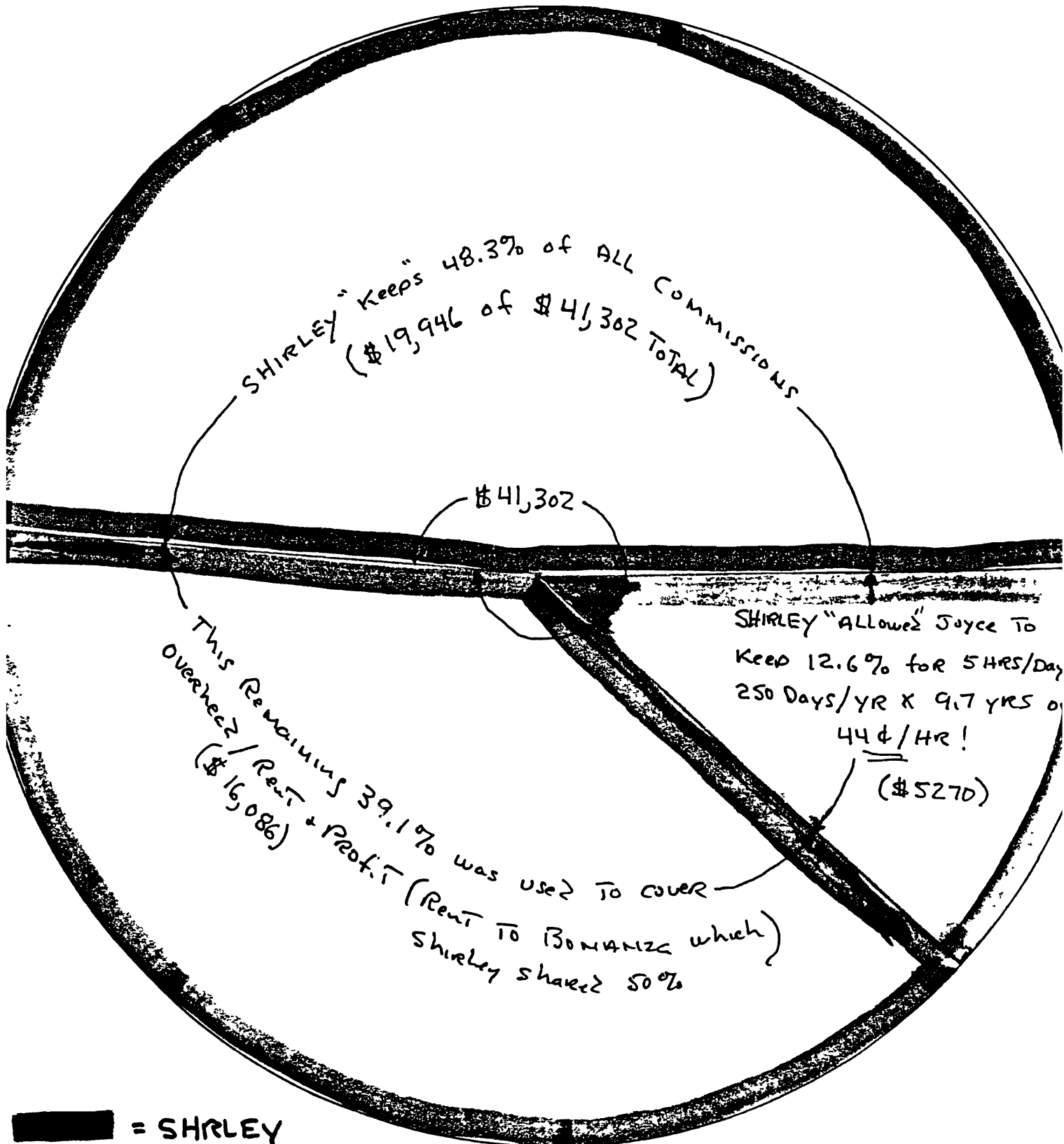
Exhibits:

- | | |
|----------------------|-------------------------------|
| 1. Check register | 6. Glenwood lots & homes sale |
| 2. Pie chart | 7. SF sale files |
| 3. Ads | 8. SF purchase Warranty deed |
| 4. Sam Bloxham check | 9. Plats |
| 5. " " | |

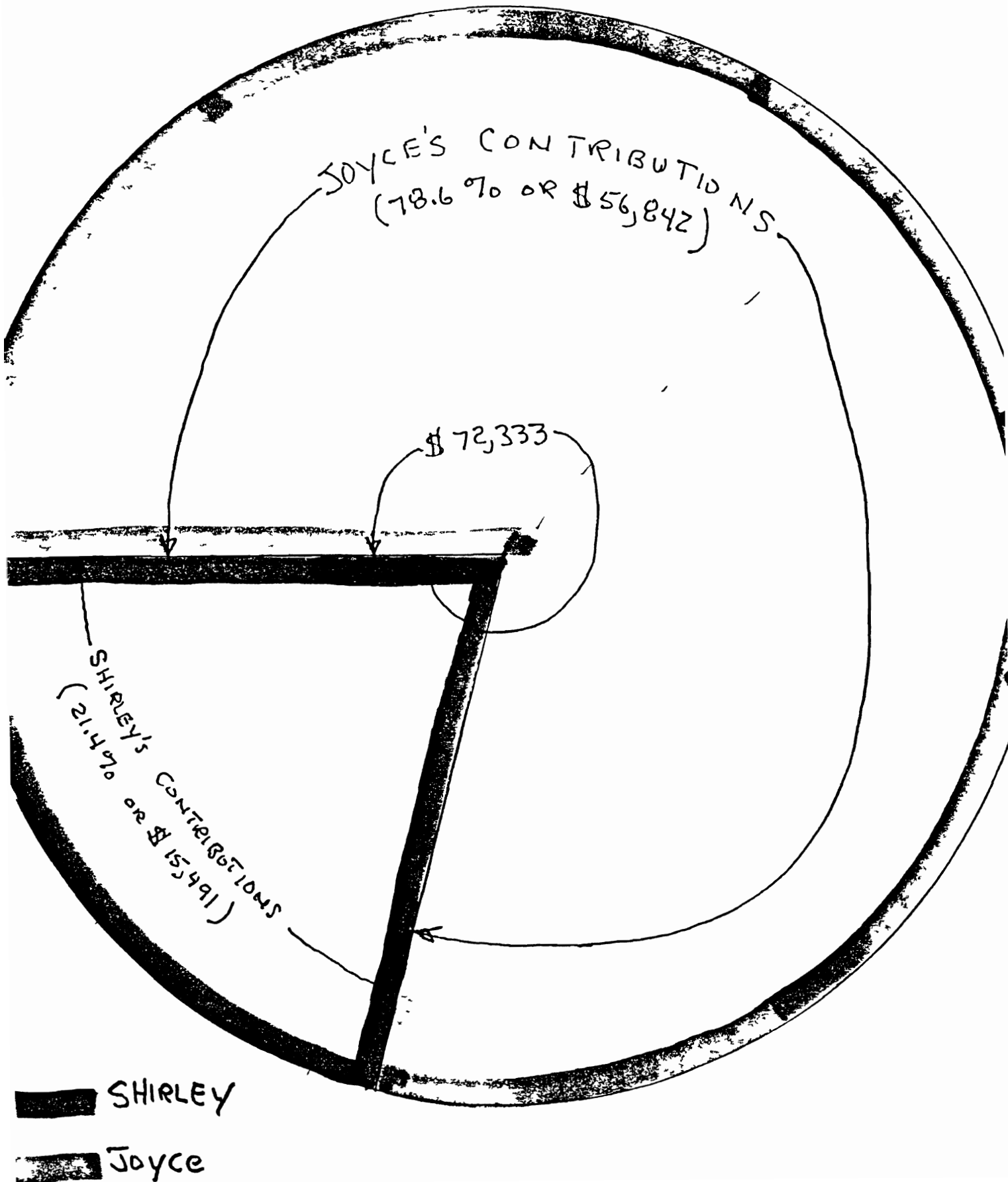
and Joyce (Late 1975 Then Early 1980)



Properties - Late 1973 Thru Spring of 1980.



AT WESTERN REALTY + DEVELOPMENT CO.
(Feb. 14-75 Thru Aug. 20-83)



RENEWAL
APPLICATION TO TRANSACT BUSINESS UNDER AN ASSUMED NAME

1534 OCT 15 11 09 16

Assumed Name Department
160 East 3rd South
P.O. Box 5801
Salt Lake City, Utah 84110
Telephone 530-6008

FILING INSTRUCTIONS:

1. Filing Fee: \$10.00
2. File in Duplicate
3. Type or print must be legible
4. Check payable to: State of Utah

*****Filing shall be effective for a period of 5 years from the date of approval*****

1. The assumed name is Western Realty & Development Company
2. The nature of the business is Real Estate
3. Business address 666 North Main Logan Utah 84321
(Street) (City) (State) (Zip Code)
4. Registered agent (MUST BE UTAH RESIDENT AT STREET ADDRESS).

S. F. Jacobsen
(Name)

1796 Country Club Drive
(Street Address)

Logan UT 84321
(City) (State) (Zip Code)

5. Name or names of the person or persons owning, and transacting business, with their address, are as follows: If same as agent, please check. (☒)

Names*

Addresses

*If the applicant is a corporation, said corporation must be incorporated/qualified in the State of Utah and be in good standing.

Signatures of Persons Named Above

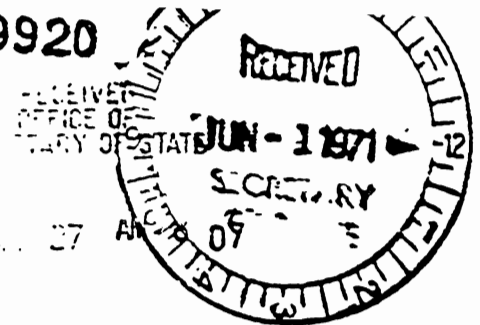
S. F. Jacobsen

251/9236410/15/84

10.00

Filing Fee: \$1.00

A 09920



1971 JUN 27 AM 09

CERTIFICATE

(Regarding transacting of business under an assumed name)

The undersigned, who are (is) carrying on, conducting or transacting business under an assumed name, certify that the assumed name is

WESTERN REALTY & DEVELOPMENT COMPANY

Complete Address.

929 North Main Street, Logan, Utah 84321

And that the full true name or names, of the person or persons owning, and the person or persons carrying on, conducting or transacting such business with their post office addresses are as follows:

Names	Addresses
<u>Rex T. Fuhrman</u>	<u>1772 East 1400 North, Logan, Utah</u>
<u>S. F. Jacobsen</u>	<u>1796 County Club Drive, Logan, Utah</u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>

Rex T. Fuhrman
S. F. Jacobsen

Signatures of persons named above

RENEWAL
APPLICATION TO TRANSACT BUSINESS UNDER AN ASSUMED NAME

1534 OCT 15 11 3 16

Assumed Name Department
160 East 3rd South
P.O. Box 5801
Salt Lake City, Utah 84110
Telephone 530-6008

FILING INSTRUCTIONS:

1. Filing Fee: \$10.00
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1. The assumed name is Western Realty & Development Company
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3. Business address 666 North Main Logan Utah 84321
(Street) (City) (State) (Zip Code)
4. Registered agent (MUST BE UTAH RESIDENT AT STREET ADDRESS).

S. F. Jacobsen
(Name)
1796 Country Club Drive
(Street Address)
Logan UT 84321
(City) (State) (Zip Code)

5. Name or names of the person or persons owning, and transacting business, with their address, are as follows: If same as agent, please check. (☒)

Names*

Addresses

*If the applicant is a corporation, said corporation must be incorporated/qualified in the State of Utah and be in good standing.

251/9236410/15/84

10.00

Signatures of Persons Named Above

S. F. Jacobsen

ADDENDUM "9"

1 of the Court.

2 Q Did you know at the time that you signed this
3 agreement that you were going to bring a motion to try and
4 set aside this Decree?

5 A Yes.

6 Q And so you signed it, down under the--

7 A Duress.

8 Q Pardon me. Don't put words in my mouth.

9 A I'm sorry.

10 Q Let me ask the question, then you may answer.

11 You signed this, knowing then that you were going to
12 either through John Caine or another attorney, you were
13 going to come back in and set the Decree aside--the
14 Stipulation aside, which you had signed?

15 A Yes.

16 Q Did you tell Mr. Caine that?

17 A Yes.

18 Q What did he say?

19 A He said, "Fine. No problem. No problem with it."

20 Q At the time that you signed this document--
21 referring to Exhibit No. 1--did you know of any property that
22 Mr. Jacobsen had failed to disclose to you, that he had in
23 his possession?

24 A Yes.

25 Q And what was that property?

1 Q Did you give this information concerning these
2 family accounts to John Caine?

3 A No.

4 Q Who gave it to John Caine?

5 A He did that himself.

6 Q But you don't have any record of it in your
7 documents?

8 A No. No.

9 Q Where did you get the figure \$200,000.00?

10 A I'm just supposing that amount.

11 Q Does your supposition have any basis in fact?

12 A Only I know he didn't give away these properties.

13 Q Well now are we talking about 200 thousand in cash,
14 or real estate?

15 A We're talking about real estate that was converted
16 into cash money.

17 Q Okay.

18 And given to the children?

19 A Funneled off into an account for them.

20 Q When was it funneled?

21 A Apparently sometime during the marriage. I didn't
22 know about it.

23 Q Do you know whether or not he presently retains
24 any ownership over any of those funds?

25 A I doubt it.

ADDENDUM "10"

OLSON & HOGGAN, P.C.

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

L. BRENT HOGGAN
MILES P. JENSEN
BRUCE L. JORGENSEN
BRAD H. BEARNSON, P.C.
THOMAS L. WILLMORE
MARLIN J. GRANT
THOMPSON E. FEHR*
*LICENSED PATENT ATTORNEY

CHARLES F. OLSON (1916-1975)

January 6, 1992

56 WEST CENTER
P.O. BOX 525
LOGAN, UTAH 84321-0525
TELEPHONE (801) 752-1551
TELEFAX (801) 753-2699
TREMONTON OFFICE:
123 EAST MAIN
P.O. BOX 115
TREMONTON, UTAH 84337-0115
TELEPHONE (801) 257-8885

Raymond N. Malouf
MALOUF & MALOUF
150 East 200 North #D
Logan, Utah 84321

Re: Attempt by Joyce Kalanquin to Reopen Divorce Decree
Our File No. N-3903.3

Dear Ray:

I have had a chance to obtain Mr. Jacobsen's divorce file and review it with regards to Mrs. Kalanquin's request to reopen the divorce between herself and Mr. Jacobsen. I ask that you please provide to me through informal discovery several items concerning your client's most recent Affidavit dated December 13, 1991. First, in paragraph 8 of her Affidavit she makes the following claim, "There are other properties that have not been disclosed to me of which I am aware and which I am prepared to describe." Please have Mrs. Kalanquin list and describe those "other properties."

Next in paragraph 13 of her Affidavit, she indicates that Mr. Jacobsen had a "duty to repay a loan to me and to account for partnership expenses." We have no idea what she is claiming with regards to a loan from her and a full accounting of income and expenses was given to her of Western Realty. Please visit with Mrs. Kalanquin and find out specifically what she means by these matters and please let me know.

With regards to your client's allegation that there was a Restraining Order and nothing should ever have been sold, as I have informed you, Mr. Jacobsen was unable to sell the lot in the Knolls Subdivision. He could not sell the lot because of the judgment lien. If your client is insisting upon this position, it is important to note that it is your client that has violated the Restraining Order in that she has sold the home located in Nibley, Utah and she has also significantly encumbered her home on Country Club Drive through borrowing substantial money against it from First Federal Savings & Loan.

Raymond N. Malouf
January 6, 1992
Page 2

In paragraph 19 of Mrs. Kalanquin's Affidavit, she states "I believe he hid some of the property, or money from sales, during our marriage. I believe he failed to reveal the location and identity of property or proceeds from property." Please provide me any proof that you or your client may have concerning proceeds or hidden property. You must understand that your client has made this allegation through three (3) attorneys prior to your involvement. None of these allegations have ever been substantiated. In fact, her deposition was taken when Vernon Romney was representing her and no proof whatsoever was set forth in her Motion to Set Aside the Divorce Decree.

If your client is claiming that the Knolls lot was not disclosed, I have enclosed with this letter a copy of John Caine's notes which were written by him at the time of the Pre-Trial Hearing on May 1, 1987 at the request of Judge Wahlquist. Judge Wahlquist requested that the parties meet with their attorneys and list all of the existing property. As you can see, No. 11 of the hand written notes of Mr. Caine states that there was a lot known as the "Knolls Lot, 1 building lot." Also, after Mr. Vernon Romney had become involved in the Motion to Set Aside the Divorce Decree, Mr. Jacobsen's deposition was taken by Mr. Romney on June 15, 1988. On page 58 of the deposition, Mr. Jacobsen clearly disclosed the fact that he had a lot located in the Knolls Subdivision in the west part of Logan.

The allegations by Mrs. Kalanquin regarding undisclosed property and hidden assets is not new and has been alleged throughout all of the proceedings and has been investigated and dealt with by Mrs. Kalanquin's three (3) prior attorneys. Each time, all of the previous attorneys have come to the conclusion that there is nothing else there other than what was disclosed by Mr. Jacobsen. Therefore, this letter is notice to you and Mrs. Kalanquin that if she continues to press this matter and attempts to reopen the divorce, then we consider her action to be unmeritorious and in bad faith. Pursuant to Utah Code Annotated §78-27-56 and pursuant to Rule 11 of the Utah Rules of Civil Procedure, we will seek attorney's fees and costs from Mrs. Kalanquin and yourself. Too much time has passed since Mr. Romney's involvement. The matter was settled and a Stipulation was mailed to Mr. Romney to conclude the matter. Apparently, he failed to sign it. Furthermore, too much time has passed since the divorce of the parties. A lot of time and money will be spent needlessly by Mrs. Kalanquin and Mr. Jacobsen to relitigate the matter which has already been through her three (3) previous attorneys. This is truly an abuse of the legal system and Mr. Jacobsen has asked me to pursue any and all remedies he may have against Mrs. Kalanquin and yourself under Rule 11 if this matter is pursued.

Raymond N. Malouf
January 6, 1992
Page 3

Mr. Jacobsen is anxious to have this matter dismissed in full. Please visit with Mrs. Kalanquin regarding the contents of this letter. If she desires to pursue the case and face all of the consequences regarding it, then please furnish the requested information to me as soon as possible so that I may be prepared for a hearing.

Finally, I do not consider your objections to Commissioner Allphin's Order to include the fact that there would be a hearing on the same date for your request to reopen the divorce decree. Any hearing concerning the objections and Commissioner Allphin's Order should be heard separately from your claims to reopen the divorce. Therefore, if you are going to pursue the reopening of the divorce, please set a different date for a hearing on that matter so that we will have sufficient time to present arguments and evidence to the Court.

Sincerely yours,

OLSON & HOGGAN, P.C.

Thomas L. Willmore

Enclosure

TLW/nh
div/malouf.ltr

cc: S. F. Jacobsen

OLSON & HOGGAN, P.C.

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

March 23, 1992

L. BRENT HOGGAN
MILES P. JENSEN
BRUCE L. JORGENSEN
BRAD H. BEARNSON, P.C.
THOMAS L. WILLMORE
MARLIN J. GRANT
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TELEFAX (801) 753-2699

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123 EAST MAIN
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TREMONTON, UTAH 84338
TELEPHONE (801) 257-3581

Raymond N. Malouf
Attorney at Law
150 East 200 North 3D
Logan, Utah 84321

Re: *Jacobsen vs. Jacobsen*
Our File No. N-3903.3

Dear Ray:

My office received a telephone call from you on Friday, March, 20, 1992, wherein you indicated you would be responding to the Interrogatories I submitted to you in a few more days. As I have informed you all along, we consider this action to be frivolous and meritless. Mr. Jacobsen has dealt with the claims of Mrs. Jacobsen through three (3) prior attorneys and the matter was agreed to be dismissed by Mrs. Jacobsen's last attorney, Vernon Romney.

In order to conclude this matter once and for all, I must insist that the Interrogatories and Requests be answered by Wednesday, March 25, 1992. If I have not received Answers by that date, then Mr. Jacobsen has instructed me to file a Motion to Compel.

I have previously written you letters showing you where the property and assets of Mr. Jacobsen and Mrs. Jacobsen were discussed and disclosed. To maintain this action is ridiculous and only increases the attorney's fees that both parties are responsible for. I urge you to carefully review the unwarranted claims of Mrs. Jacobsen, which should be dismissed voluntarily. If they are not, Mr. Jacobsen has instructed me to pursue all available remedies he has against Mrs. Jacobsen.

Sincerely,

OLSON & HOGGAN, P.C.

Thomas L. Willmore

TLW;lm
cc: Shirley F. Jacobsen

jac)malo.ltr/tlw

FILE COPY

ADDENDUM "11"

Thomas L. Willmore (#4256)
OLSON & HOGGAN, P.C.
Attorneys for Defendant
88 West Center
P.O. Box 525
Logan, Utah 84321
Telephone (801) 752-1551

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF UTAH, IN AND FOR THE COUNTY OF CACHE

JOYCE KALANQUIN,)
)
Plaintiff,) AFFIDAVIT OF
) THOMAS L. WILLMORE
vs.)
)
SHIRLEY F. JACOBSEN,)
)
Defendant.) Civil No. 25033
)

STATE OF UTAH)
 : ss.
County of Cache)

THOMAS L. WILLMORE, being first duly sworn on oath, deposes and says:

1. I am an attorney licensed to practice law in the State of Utah and have been retained by the Plaintiff herein for the defense of Plaintiff's abusive Motion to Set Aside.

2. During the course of my representation of the Plaintiff in this action I have rendered the following services for and in behalf of the Plaintiff:

HOGGAN, P.C.
ATTORNEYS AT LAW
88 WEST CENTER
P.O. BOX 525
LOGAN, UTAH 84323-0525
TELEPHONE (801) 752-1551

<u>Date</u>	<u>Service</u>	<u>Hours</u>
10/10/91	Telephone conference with Shirley regarding Joyce refusing to sign satisfaction of Judgment	.25
10/17/91	Drafting and finalizing letter to Joyce Jacobsen regarding satisfaction of Judgment	.50

LOGAN OFFICE
88 WEST CENTER
P.O. BOX 115
LOGAN, UTAH 84337
TELEPHONE (801) 257-3885

10/31/91	Telephone conference with Shirley regarding Joyce not releasing judgement	.20
11/01/91	Drafting Motion, Affidavit and Order to Show Cause	1.00
12/03/91	Telephone conference with Shirley regarding Order to Show Cause and final preparation for hearing	.70
12/04/91	Telephone conference with Ray Malouf regarding checks and telephone conference with Vivian at Harris and Preston and telephone conference with Shirley	.40
12/05/91	Conference with Shirley and hearing in District Court	1.75
12/05/91	Conference with Shirley regarding documents and file	.30
12/05/91	Drafting Order on Order to Show Cause; letter to clerk and letter to Ray Malouf	.60
12/09/91	Finalizing Order and letters	.25
12/16/91	Reviewing Affidavit of Joyce and drafting letter to Shirley	.40
12/19/91	Drafting Objection to Hearing and letter to Shirley	.30
12/26/91	Conference with Shirley regarding allegations by Joyce and Joyce's attempt to re-open divorce	.70
12/26/91	Drafting letter to Ray Malouf regarding Motion to Re-open divorce	.50
12/26/91	Drafting letter to Ray Malouf regarding payments of temporary alimony and drafting Summary	.50
01/06/92	Finalizing two letters to Ray Malouf	.30
01/07/92	Telephone conference with Shirley regarding case	.20
01/31/92	Telephone conference with Ray Malouf regarding accounting	.25
02/13/92	Preparing and hearing in District Court	1.00

& HOGGAN, P.C.
 ATTORNEYS AT LAW
 WEST CENTER
 P.O. BOX 525
 UTAH 84323-0525
 (407) 752-1551

SALT LAKE CITY OFFICE:
 23 EAST MAIN
 P.O. BOX 115
 SALT LAKE CITY, UTAH 84101
 (407) 257-3885

02/15/92	Drafting Order on Order to Show Cause and letter to Judge Low; drafting Interrogatories and Request for Production	.75
02/18/92	Finalizing Order and Interrogatories to Joyce	.50
03/06/92	Telephone conference with Ray Malouf regarding case	.20
03/06/92	Conference with Shirley regarding case	.25
03/23/92	Drafting letter to Ray Malouf regarding Answers to Interrogatories	.25
04/06/92	Drafting Motion to Compel Answers to Interrogatories	.50
04/17/92	Conference with Shirley regarding divorce case	.30
04/17/92	Drafting Answers to Requests for documents	.30
04/17/92	Reviewing Joyce's Answers to Interrogatories and research for Motion for Summary Judgement	.80
05/02/92	Reviewing Joyce's Deposition, drafting Motion and Memorandum to Dismiss	2.00
06/03/92	Telephone conference with Ray Malouf regarding case	.25
06/05/92	Drafting Motion and Memorandum to Dismiss	1.75
06/23/92	Research regarding final divorce decree	.70
08/05/92	Drafting Answers to Interrogatories and Requests for Production of Documents	.70
08/05/92	Drafting Memorandum and reviewing of Court Pleading for Motion to Dismiss	1.00
08/06/92	Finalizing Answers to Interrogatories	.70
08/27/92	Telephone conference with Gary Jones regarding Affidavit	.20
08/27/92	Preparing Memorandum and locating documents to support Memorandum	1.40

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08/28/92	Drafting Affidavit for Gary Jones	.50
08/28/92	Drafting changes to Memorandum	1.25
09/01/92	Finalizing Motion; Memorandum to Dismiss, Affidavit of Gary Jones and letter to Gary Jones	2.50
09/04/92	Telephone conference with Gary Jones regarding Affidavit changes	.25
09/22/92	Telephone conference with Shirley regarding response to Motion to Dismiss	.25
09/25/92	Conference with Shirley and Jeff regarding Reply Memorandum	.60
09/29/92	Drafting and finalizing Reply Memorandum for Motion to Dismiss	2.00
10/01/92	Finalizing Reply to Memorandum in Opposition to Motion to Dismiss	1.00
10/08/92	Conference with Shirley regarding case and hearing	.30
10/30/92	Conference with Shirley and Jeff to prepare for divorce hearing	1.00
11/02/92	Preparing for Motion of Dismiss hearing	2.50
11/10/92	Conference with Shirley and Jeff regarding argument	.40
11/12/92	Preparing for hearing and hearing in District Court, conference with Shirley	2.70
12/15/92	Drafting Response to Interrogatories and Request to dismiss	.50
12/18/92	Finalizing Objection to Second Set of Interrogatories	.60
01/07/93	Reviewing Motion to Compel and Reviewing Judge Low's video taped Order at District Court	.50
01/07/93	Conference with Shirley regarding Answers to Interrogatories	.25
01/07/93	Drafting and finalizing Answers to Interrogatories	.75

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01/08/93	Conference with Shirley and Jeff and drafting changes to Response to Answers to Interrogatories	.75
02/15/93	Preparing Discovery Status and Motion to Limit; preparing for hearing	2.25
02/16/93	Drafting letter to Ray Malouf regarding tax returns and Interrogatory	.25
02/16/93	Conference with Shirley and hearing in District Court	2.00
03/04/93	Telephone conference with Jeff regarding Answers to Interrogatories	.25
03/09/93	Telephone conference with Jeff regarding Answers to Interrogatories	.20
03/16/93	Reviewing and finalizing Answers to Interrogatories	1.40
03/29/93	Drafting and finalizing Answers to Interrogatories; drafting Memorandum to Court regarding ending case	3.50
04/01/93	Drafting changes on Memorandum to Court regarding Dismissal	.75
04/02/93	Finalizing Memorandum for Dismissal and Protective Order	.75
04/15/93	Conference with Shirley and Jeff regarding case	.50
05/21/93	Conference with Shirley and Jeff to prepare for hearing	1.50
05/22/93	Preparation for Trial in District Court	<u>3.00</u>
	TOTAL	<u>57.60</u>

3. The usual and customary rate of legal services of the type rendered herein is \$85.00 per hour, bringing the total for legal services rendered, based upon the above-outlined hours, to \$4,896.00.

4. In connection with this matter, the firm of Olson & Hoggan, P.C. has incurred the following expenses:

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<u>Date</u>	<u>Item</u>	<u>Amount</u>
11/04/91	Costs advanced to District Court	\$ 5.00
11/07/91	Costs advanced to Cache County Sheriff for service of Order to Show Cause	\$ 7.00
04/06/92	Costs advanced to District Court to file Motion to Compel	<u>\$ 5.00</u>
TOTAL		<u>\$17.00</u>

DATED this 24th day of May, 1993.

OLSON & HOGGAN, P.C.

Thomas L. Willmore
Thomas L. Willmore

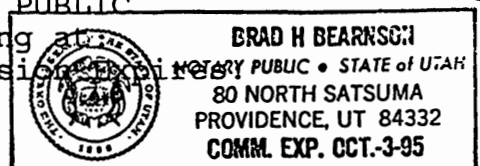
THOMAS L. WILLMORE, being first duly sworn on oath, deposes and says: That he has read the foregoing Affidavit, knows and understands the contents thereof, and that the same are true of his own knowledge, except as to those matters stated on information and belief; and as to such matters, he believes them to be true.

Thomas L. Willmore
Thomas L. Willmore

Subscribed and sworn to before me this 24th day of May, 1993.

BRAD H BEARNSON
NOTARY PUBLIC

Residing at
Commission Expires



OLSON & HOGGAN, P.C.
ATTORNEYS AT LAW
WEST CENTER
P.O. BOX 525
UTAH 84323-0525
(407) 752-1551

CERTIFICATE OF HAND DELIVERY

NOTARY OFFICE:
13 EAST MAIN
P.O. BOX 115
PROVIDENCE, UTAH 84337
(407) 257-3885

I hereby certify that I hand delivered an exact copy of Affidavit of Thomas L. Willmore to Plaintiff's Attorney, Raymond N.

Malouf at the First Judicial District Court, 140 North 100 West,
Logan, Utah, 84321, this 24th day of May, 1993.


Mary Lynn Hathaway

wpd/tlw/d/jacob.afa
N-3903.3

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PHONE 257-3885

ADDENDUM "12"

Thomas L. Willmore (#4256)
L. Brent Hoggan (#1512)
OLSON & HOGGAN, P.C.
Attorneys for Defendant
88 West Center
P.O. Box 525
Logan, Utah 84323-0525
Telephone (801) 752-1551

IN THE UTAH COURT OF APPEALS

STATE OF UTAH

JOYCE K. JACOBSEN (Kalanquin),)

Plaintiff and Appellant/)
Cross Appellee)

vs.)

SHIRLEY F. JACOBSEN,)

Defendant and Appellee/)
Cross-Appellant,)

AFFIDAVIT OF
THOMAS L. WILLMORE

Court of Appeals No. 930496-CA

Judge Gordon J. Low

STATE OF UTAH)

County of Cache) : ss.
)

THOMAS L. WILLMORE, being first duly sworn on oath, deposes
and says:

1. I am an attorney licensed to practice law in the State of
Utah and have been retained by the Plaintiff herein for the
initiation and prosecution of this action.

2. During the course of my representation of the Plaintiff in
this appeal I have rendered the following services for and in
behalf of the Plaintiff:

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ATTORNEYS AT LAW
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LOGAN, UTAH 84323-0525
(801) 752-1551

LOGAN OFFICE:
23 EAST MAIN
P.O. BOX 115
LOGAN, UTAH 84337
(801) 257-3885

	<u>Service</u>	<u>Hours</u>
05/09/94	Reviewing Appellate Brief and research regarding burden of proof	.80
05/10/94	Research on case law, reviewing Brief and conference with Shirley and Jeff regarding Brief and response	3.00
05/17/94	Drafting Brief for Court of Appeals	1.30
05/24/94	Drafting extension documents and working on Brief	.75
06/02/94	Drafting Appellate Brief	.50
06/04/94	Drafting Brief for Appeal	3.00
06/08/94	Reviewing transcripts from prior hearing regarding discovery and Judge's Order	2.00
06/08/94	Drafting Argument in Brief regarding hearing and Court's findings	1.50
06/14/94	Drafting Brief for Court of Appeals appeal	3.50
06/20/94	Drafting Points 3 and 4 of Brief	2.30
06/21/94	Conference with client to review arguments in Brief	.60
06/21/94	Drafting Brief	1.30
06/23/94	Drafting and revising Brief	6.50
06/24/94	Finalizing Brief	<u>5.00</u>
	TOTAL	32.05

3. The usual and customary rate of legal services of the type rendered herein is \$85.00 per hour, bringing the total for legal services rendered, based upon the above-outlined hours, to \$2,724.25.

& HOGGAN, P.C.
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 (41) 752-1551

SPRINGTOWN OFFICE:
 23 EAST MAIN
 P.O. BOX 115
 SPRINGTOWN, UTAH 84337
 (41) 257-3885

DATED this 24th day of June, 1994.

OLSON & HOGGAN, P.C.

Thomas L. Willmore
Thomas L. Willmore

THOMAS L. WILLMORE, being first duly sworn on oath, deposes and says: That he has read the foregoing Affidavit, knows and understands the contents thereof, and that the same are true of his own knowledge, except as to those matters stated on information and belief; and as to such matters, he believes them to be true.

Thomas L. Willmore
Thomas L. Willmore

Subscribed and sworn to before me this 24th day of June, 1994.



DONNA D. STEINER
NOTARY PUBLIC • STATE of UTAH
56 WEST CENTER
LOGAN, UT 84321
COMM. EXP. AUG-25-93

Donna D. Steiner
NOTARY PUBLIC
Residing at:
Commission Expires:

& HOGGAN, P.C.
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