

1973

**Grant M. Robertson And Edith Williams Robertson, Aka Edith L. Robertson v. Donald W. Geis; Sloan Smith; Sloan Smith Associates, Ltd.; First Dividend Corporation, A Utah Corporation; And Intermountain Capital Corporation of Utah And Intermountain Capital Corporation of Utah v. John W. Robertson And Zelda Robertson : Brief of Defendant-Appellant, Intermountain Capital Corporation**

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IN THE  
**SUPREME COURT**  
OF THE  
**STATE OF UTAH**

GRANT M. ROBERTSON and  
EDITH WILLIAMS ROBERT-  
SON, aka EDITH L. ROBERT-  
SON, his wife,

*Plaintiffs-Respondents,*

vs.

DONALD W. GEIS; SLOAN  
SMITH; SLOAN SMITH ASSO-  
CIATES LTD. and FIRST DIVI-  
DEND CORPORATION, a Utah  
corporation,

*Defendants,*

and

INTERMOUNTAIN CAPITAL  
CORPORATION OF UTAH, a  
Utah corporation,

*Defendant-Appellant.*

Case No.  
12902

**BRIEF OF DEFENDANT-APPELLANT**  
**INTERMOUNTAIN CAPITAL CORPORATION**

Appeal from the Judgment of the Third District  
District Court for Salt Lake County, Honorable  
H. Croft, Judge.

WALTER P. FABER, JR. and  
R. BRUCE GORDON  
606 Newhouse Building  
Salt Lake City, Utah 84111

*Attorneys for Defendant-Appellant*  
*Intermountain Capital Corporation*

DAVID K. WINDER  
604 Boston Building  
Salt Lake City, Utah 84111  
*Attorney for Plaintiffs-Respondents,*  
*Grant M. and Edith L. Robertson*

L. DELOS DAINES  
822 Kearns Building  
Salt Lake City, Utah 84101  
*Attorney for Defendant Sloan Smith*  
*and Sloan Smith Associates Ltd.*

GERALD L. TURNER  
2525 South Main, Suite 14  
Salt Lake City, Utah 84115  
*Attorney for Defendant Donald W. Geis*

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MAR 30 1974

Clerk, Supreme Court, Utah

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BRIEF OF DEFENDANT-APPELLANT,  
INTERMOUNTAIN CAPITAL CORPORATION

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STATEMENT OF THE KIND OF CASE

This action was brought in the lower court by the owners of real property to remove a mortgage therefrom.

## DISPOSITION IN LOWER COURT

The Third District Court in and for Salt Lake County, the Honorable Bryant H. Croft presiding, granted judgment declaring the mortgage void.

## RELIEF SOUGHT ON APPEAL

Defendant-appellant, Intermountain Capital Corporation, the mortgagee, asks this Court to reverse the judgment of the lower court and direct entry of judgment that its mortgage on plaintiffs-respondents' property is valid and enforceable.

## STATEMENT OF FACTS

Defendant, Donald W. Geis, ("Geis"), an officer of Sloan Smith Associates Limited ("Associates"), (R-371), contacted plaintiffs ("Robertsons") in October or November, 1962 and encourage them to invest in a business in Central America operated by Associates (R-300-02, 307). As a result of discussions between Robertsons and Geis over a period of time, Robertsons agreed to transfer a portion of their property to Geis (R-311) who would then arrange a mortgage on the property to obtain the investment financing (R-309). Grant M. Robertson testified that Geis agreed that the Robertsons' property would not be mortgaged in excess of \$25,000.00 (R-314-15). Thereafter, Geis had a Memorandum Trust Agreement ("Agreement") prepared which he delivered to Robertsons on or about May 1, 1963 (R-331). Robertsons kept this Agreement in their possession for a week

or ten days without signing it and then had further discussion with Geis about certain changes in the Agreement which Robertsons wanted and to which they said Geis agreed. The changes were never made. Robertsons kept the original Agreement in their possession and signed it with full knowledge that the changes had not been made (R-331-34). Although the Agreement is dated May 1, 1963, Grant M. Robertson testified it was not signed until some time after that date (R-331). The Agreement did not limit the amount of the proposed mortgage (Ex. 2-P). Robertsons conveyed their property to Geis by deed dated May 1, 1963 (R-227, Finding of Fact No. 2).

Shortly thereafter, Geis deeded the property to First Dividend Corporation which mortgaged the same to Intermountain Capital Corporation ("Intermountain") on August 17, 1963 for a loan of \$60,000.00. First Dividend Corporation gave Intermountain a mortgage on the property received from Robertsons as well as mortgages on several other pieces of property to secure the \$60,000.00 (R-228, Finding of Fact No. 2).

Robertsons never discussed the investment or the Agreement with the individual defendant Sloan Smith prior to the time they transferred their property to Geis (R-444). There is no testimony and the lower court made no finding that Intermountain was privy to or knew anything about the conversations between Robertsons and Geis concerning the investment or mortgage prior to the time Robertsons delivered their deed to Geis.

The lower court held that Intermountain had actual or constructive knowledge of the Agreement between Geis

and Robertsons, and since the court found that Geis and Sloan Smith committed a fraud on Robertsons then Intermountain's mortgage was invalid (R-236-37, 241).

## ARGUMENT

### POINT I.

THE ROBERTSONS KNOWINGLY CONVEYED THE PROPERTY TO GEIS AND AGREED IN WRITING TO THE PLACING OF AN ENCUMBRANCE THEREON AND THUS CANNOT AVOID THE RIGHTS OF INTERMOUNTAIN WHO THEREAFTER ADVANCED MONIES AND RECEIVED BACK A MORTGAGE IN ACCORDANCE WITH THE TERMS OF ROBERTSONS' PRIOR WRITTEN AGREEMENT.

The agreement signed by the Robertsons and Geis (Ex. 2-P) provides in material part as follows:

1. That the land described above be transferred to Donald W. Geis to be used by Sloan Smith Associates Ltd. as collateral for the purpose of securing purchases of certain equipment.
2. That the above mentioned property may not be used as collateral for purchasing equipment for a period beyond ten (10) years.
3. That Sloan Smith Associates Ltd. will pay interest on the above described property in the amount of ten percent (10%) per year based upon the funds obtained against this property.

This is the Agreement with which Intermountain is charged with knowledge. In connection with this Agreement the record indicates as follows:

1. The Robertsons discussed with Geis over some period of time an agreement whereby their property would be used as collateral (R-311).

2. Subsequent to these discussions Geis had a Memorandum Trust Agreement prepared which was supposed to have reflected the agreements reached during the above discussions (R-331).

3. The Robertsons kept this Agreement in their possession for ten days to two weeks without signing it. They felt that in drafting the Agreement Geis had omitted certain important matters which they (the Robertsons) felt should have been included. In discussing these omissions with Geis, they were assured by Geis that he would re-draft the Agreement to conform with their desires (R-333).

4. Subsequent to this discussion, the Robertsons held the Agreement a few more days and then signed it, knowing full well that the changes they suggested to Geis had not been made (R-333). This is reflected by Mr. Robertson's testimony on direct examination when asked why he signed the Agreement:

Q. Did you have any conversation with Mr. Geis about making the changes in the areas you mentioned when you ultimately gave it to him?

A. None beyond saying I wasn't pleased with the way it read.

property may be encumbered. As has been previously stated there is no finding that Intermountain was aware of the discussions between the Robertsons and Geis but even if Intermountain had been aware of these discussions there is nothing contained therein which would have lead Intermountain to believe that the Robertsons had not carefully considered the arrangement whereby their property was to have been encumbered. Mr. Robertson's own testimony brings out the fact that this arrangement was not a hurried one, but rather was entered into after an extended period of deliberation and discussion. If Robertsons were dissatisfied with the Agreement it was incumbent upon them and not Intermountain to see to it that the Agreement conformed to their understandings.

The lower court anticipated that his decision concerning the validity of the mortgage might be overturned and provided for this contingency by stating:

In the event that the mortgage of Intermountain Capital as against the plaintiff's property is for any reason not voided and set aside, then plaintiffs are entitled to an additional judgment against the defendants Donald W. Geis and Sloan Smith of \$42,500.00 this being the fair market value of the property described in Exhibit P-1 at the time plaintiffs conveyed it to Donald W. Geis (R-235-36, Conclusion of Law No. 1).

Granting a judgment in favor of Robertsons against Geis and Associates would seem to be the most equitable method of handling the problem. Intermountain should

not be penalized for relying on the Agreement between Robertsons and Geis. Intermountain did not draft the Agreement, was not a party thereto and is not charged with knowledge of the discussions leading up to its execution.

### CONCLUSION

Because plaintiffs after careful deliberation signed the Memorandum Trust Agreement which authorized the property to be encumbered and contained no written limitation on the amount of the encumbrance to be placed on the property, and because plaintiffs conveyed their property to Geis for the express purpose of obtaining financing by pledging their property as collateral, the fact that the lower court charged Intermountain with knowledge of what the Memorandum Trust Agreement contained cannot invalidate Intermountain's mortgage. The mortgage should be held valid and the Robertsons' claim against Geis and Associates should be satisfied by way of a money judgment.

Respectfully submitted,

WALTER P. FABER, JR. and  
R. BRUCE GORDON  
606 Newhouse Building  
Salt Lake City, Utah 84111

*Attorneys for Defendant-  
Appellant, Intermountain  
Capital Corporation*

## CERTIFICATE OF SERVICE

I hereby certify that I served two copies of the foregoing brief on David K. Winder, 604 Boston Bldg., Salt Lake City, Utah; L. Delos Daines, 822 Kearns Bldg., Salt Lake City, Utah, and Gerald L. Turner, 2525 South Main, Suite 14, Salt Lake City, Utah, this 30th day of March, 1973.

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