2006

Kirkpatrick MacDonald v. Michael Nielsen : Brief of Appellee

Utah Court of Appeals

IN THE UTAH COURT OF APPEALS

KIRKPATRICK MACDONALD,	:	
	:	
Plaintiff/Appellee,	:	Case No. 20060177-CA
vs.	:	(Consolidated with Case No. 20060614)
	:	
MICHAEL NIELSEN,	:	District Court Case No. 040500403
	:	
Defendant/Appellant.	:	

BRIEF OF APPELLEE

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SUMMIT COUNTY, STATE OF UTAH, HONORABLE BRUCE C. LUBECK

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JURISDICTIONAL STATEMENT

This Court has jurisdiction over this appeal pursuant to Utah Code Ann. § 78-2a-3(2)(j), because this appeal has been transferred to this Court from the Utah Supreme Court, pursuant to Utah Code Ann. § 78-2-2(4). See R. at 410, 458.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

The issue presented on appeal is as follows:

1. Whether the district court correctly entered summary judgment in favor of MacDonald on the personal loan.

A district court's decision to grant or deny summary judgment is reviewed for correctness. Harline v. Barker, 912 P.2d 433, 438 (Utah 1996). "Because entitlement to summary judgment is a question of law, [an appellate court is to] accord no deference to the trial court's resolution of the legal issues presented." Id. In conducting this *de novo* review, the appellate court should "apply the same standard as that applied by the trial court." Durham v. Margetts, 571 P.2d 1332, 1334 (Utah 1977). The standard applied by the trial court is set forth in Utah R. Civ. P. 56(c). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Utah R. Civ. P. 56(c).

These issues were preserved in the trial court by motion. See R. at 016 (MacDonald's motion); R. at 037-53 (opposition memorandum); R. at 252-99 (reply memorandum); R. at 309-18 (Ruling and Order).

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES AND RULES

Appellee does not believe that interpretation of any constitutional provisions, statutes, ordinances, rules, or regulations will be determinative of this appeal.

STATEMENT OF FACTS

In the 1980s and 1990s, certain real estate developers began purchasing property located to the north of Kimball Junction in Summit County with an eye toward developing the land into large, high-end residential parcels. Among these developers were Appellant Michael Nielsen ("Nielsen") and Appellee Kirkpatrick MacDonald ("MacDonald").

In or about 1997, Nielsen, his wife, and two other individuals—John Gaskill ("Gaskill") and David Gillette ("Gillette")—were the principals of a Utah limited liability company called Redhawk Management LLC ("Redhawk Management"). Gaskill and Gillette, jointly, through an LLC of their own (called Redhawk Investors, LLC), owned 50% of Redhawk Management, and Nielsen and his wife, through an LLC of their own (called Nielsen Redhawk LLC ("Nielsen Redhawk")), owned the other 50%. See R. at 111-12.[1]

Among other holdings, Redhawk Management had (until 1997) owned 100% of another LLC, known as Redhawk Development LLC ("Redhawk Development"). Id. at 112. Redhawk Development owned substantial real estate holdings in the area north of Kimball Junction in Summit County. Because Redhawk Management wholly owned Redhawk Development at the time, Redhawk Management (e.g., Nielsen, Gillette, and Gaskill) had total control over the company and over the real estate holdings. Id. at 115.

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[1] Helpful graphic depictions of these sometimes-confusing relationships between the various business entities are included in the record at pages 112-119.

In approximately 1997, the owner of Redhawk Development—at that time, Redhawk Management, owned in turn by Nielsen, Gillette, and Gaskill—sold 12.5% of Redhawk Development to MacDonald Redhawk Investors ("MRI"), a Utah limited partnership, for $2.5 million. Id. at 0115-16. MRI was and is owned partially by MacDonald and partially by a foreign investor. Id. at 115. MRI was a passive investor, and was given "Class A" membership in Redhawk Development, meaning that MRI had no right to participate in management of the company. Id. That is, even after making its $2.5 million investment and owning 12.5% of the company, MRI had no say in company management; those decisions continued to be made by Nielsen, Gillette, and Gaskill.

In April 1998, certain debts owed by Redhawk Management came due, and Redhawk Management apparently made a capital call on its shareholders. Gillette and Gaskill, as 50% owners, contributed an additional $60,000 in cash to Redhawk Management. In order to maintain his LLC's 50% ownership in the company, Nielsen also needed to contribute $60,000 to Redhawk Management. Apparently, however, Nielsen did not have ready cash available to match Gillette's and Gaskill's additional investment, and asked MacDonald for a loan. See R. at 030. MacDonald did not own any direct interest in Redhawk Management, but because MRI owned a 12.5% passive interest in Redhawk Development (an entity wholly owned by Redhawk Management), MacDonald had some interest in seeing Redhawk Management pay its debts. Accordingly, MacDonald agreed to loan Nielsen $60,000, and MacDonald and Nielsen memorialized this personal loan in a written memorandum from MacDonald to Nielsen. Nielsen initialed the memorandum, evidencing his agreement with its terms. Id. The memorandum states in its entirety as follows:

> At your request, in order to see that local vendors' long overdue invoices are paid, I have today wired to your Red Hawk Ranch account at Zions the sum of $60,000. I understand that Messrs. Gaskill and Gillette have also advanced $60,000 toward local vendor payables.
>
> *As we agreed, I would like to consider this as a loan to you personally*. Since you and Red Hawk Investors [Gillette's and Gaskill's LLC] are the Managing Members of Redhawk Management, which is solely responsible for the development and financing of the property, I believe that it is more appropriate that this advance come from you than me. And as I am aware of your own finances, I am happy to make this loan to you. Let's make it for 1 year. Interest free if paid within a year; 10% if not, for whatever reason. We may eventually recast it in some other manner, depending upon how things develop.
>
> Could you be so kind as to initial this Fax and send a copy back to me so that my files show this as our intent?
>
> Many thanks!

Id. (emphasis added) (a copy of this loan memorandum is also attached hereto, in the Addendum, as Exhibit A). As noted in the memorandum, MacDonald wired $60,000 to Nielsen's account. Id. Nielsen does not ever say, in his affidavit supporting his opposition to the summary judgment motion, what he did with the funds, id. at 054-60, although he does state that "the intended purpose of the loan [was] to pay Project vendors," id. at 057, and argues later that "all of the loan proceeds" went "not to Nielsen but to" Redhawk Development, id. at 050. For the purposes of summary judgment below, and for the purposes of this appeal, MacDonald does not dispute (because irrelevant) that Nielsen used the borrowed funds for his contribution to Redhawk Management for payment of business debts associated with the Redhawk real estate project.[2]

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[2] However, if there are subsequent proceedings in this matter, whether in the original case or in the third-party complaint proceedings, MacDonald does intend to look into whether the loan proceeds actually did go to pay debts associated with the real estate holdings.

It is undisputed that Nielsen never repaid the loan. And there is no evidence that the parties ever agreed upon a "recasting" of the loan.

In the summer of 1998, Gillette and Gaskill sold their interest in Redhawk Management, and, thereafter, the only owners of Redhawk Development were Nielsen Redhawk (Nielsen's LLC) and MRI (MacDonald's partnership). Id. at 118-19.

In July 1999, MacDonald sent a letter to Nielsen reminding him of the loan, and demanding repayment. See id. at 027, 032. Still, Nielsen did not repay the loan.

By late 1999, the relationship between MacDonald and Nielsen had deteriorated to the extent that MacDonald felt that he could no longer do business with Nielsen. On or about August 30, 1999, MRI filed a lawsuit in Third District Court seeking dissolution of Redhawk Development through arbitration. See R. at 245-50. Neither Kirkpatrick MacDonald nor Michael Nielsen, as individuals, were ever made parties to that lawsuit or to the ensuing arbitration proceeding.

From Third District Court, the case proceeded to arbitration before a panel of three arbitrators, chaired by James Holbrook ("Mr. Holbrook"). That panel first determined that MRI was entitled to 60% of the assets of Redhawk Development, and that Nielsen Redhawk was entitled to 40% of those same assets. Id. at 265. The panel then asked both parties for "baseball-style"[3] arbitration proposals for the partitioning of the company's real property holdings. Pursuant to that request, both parties submitted "baseball-style" proposals for the

[3] A "baseball-style" arbitration proposal is where both parties submit proposals and the arbitrator is bound to pick one proposal or the other in its entirety, without altering either of the proposals in any way.

partitioning of the real property held by the company. See id. at 265-89. Those proposals were limited to real property, and did not make any suggestions for the division of any other company assets. The panel eventually selected Nielsen's baseball-style proposal for the division of the real property; that ruling is, in part and indirectly, the subject of a related appeal also pending in this Court. See MacDonald Redhawk Investors v. The Ridges at Redhawk, LLC, Case No. 20051063-CA (pending).

MacDonald does not believe that the arbitration panel, in issuing its award, ever considered the subject of the $60,000 personal loan from MacDonald to Nielsen. Nielsen claims otherwise, but has no admissible evidence to support this contention. Despite Nielsen's claims below, see R. at 042, and on appeal, see Aplt. Br., at 5, there is absolutely no mention of the personal loan anywhere in Nielsen's baseball-style arbitration proposal, see R. at 265-73. There is no mention of the loan in MacDonald's baseball-style arbitration proposal. Id. at 275-89. Although Nielsen mentions Redhawk Development "financials that would include the loan obligation" and claims that these "financials" were used in the arbitration proceedings, see id. at 047, Nielsen does not ever cite to or produce any such "financials." Rather, Nielsen cites only to the following in support of his assertion that the loan was accounted for in the arbitration:

- "One of the liabilities that Nielsen specifically took into account *in his mind* when making his proposal as to how to divide the properties was the loan at issue in this case." Id. at 043 (emphasis added); see also Aplt. Br., at 5.
- The loan "should have been, and Nielsen *believes* [was], booked as liabilities of" Redhawk Development. R. at 045 (emph. added); see also Aplt. Br., at 7.
- "Nielsen understood MacDonald to have agreed that the loan . . . was part and parcel of the arbitration," and "Nielsen relied on the *impression* that he

> received from MacDonald during the entirety of the arbitration proceeding that such loan was being resolved as part of the dissolution." R. at 045 (emphasis added); see also Aplt. Br., at 8.

In short, the record does not include a single document associated with the arbitration panel's decision that even mentions or alludes to the $60,000 loan. Other than these subjective "impressions," "understandings," and "beliefs" in his own "mind," the only thing Nielsen can point to is a memory of Mr. Holbrook having stated at a post-decision hearing that the loan "was included in the 40/60 split" of equity in Redhawk Development. See R. at 046; see also Aplt. Br., at 8. As discussed below, at page 14, this statement is hearsay and in any event has a perfectly innocuous explanation.

On the other side of the ledger, indicating that the loan was not considered by the arbitration panel, is a 2004 letter from Nielsen's own attorney, four years after the arbitration award, discussing the issues that remained to be decided by the arbitration panel, and acknowledging that "a dispute exists regarding a claimed personal loan from Kirk MacDonald to Mike Nielsen" and stating that "Nielsen submits that the matter is not amenable to adjudication in this [arbitration] or any other forum." See R. at 293.

STATEMENT OF THE CASE

When Nielsen persisted in refusing to pay the amount due under the loan, MacDonald filed suit in the Third District Court, Summit County. Id. at 001-06. Nielsen answered, id. at 010-15, and the parties agreed on a discovery schedule, id. at 355-57. Nielsen, however, did not ever provide his Rule 26 initial disclosures as agreed upon, id. at 356-57, and so MacDonald proceeded to move for summary judgment.

MacDonald's summary judgment motion was simple: MacDonald made a personal

loan to Nielsen for $60,000, and Nielsen never repaid that loan. Because those facts are undisputed, MacDonald asked the district court to enter summary judgment in his favor in the amount of the loan plus prejudgment interest. Id. at 019-34.

Nielsen responded by filing a memorandum in opposition to the motion. In that response brief, Nielsen did not dispute MacDonald's assertion that there had been a loan, and did not dispute MacDonald's assertion that the loan had never been repaid by Nielsen to MacDonald. However, Nielsen claimed, *inter alia*, that the loan had been taken into account in the arbitration and therefore denied any further obligation to repay it. Id. at 037-53.

MacDonald filed a reply brief, pointing out, *inter alia*, that: not one single document associated with the arbitration panel's award ever once mentioned the $60,000 personal loan; neither MacDonald nor Nielsen was ever made parties to the arbitration; there was no evidence that the loan had been considered by the panel in issuing its award; it was otherwise undisputed that the loan existed and had not been "recast"; and that Nielsen had not repaid it. Id. at 252-99.

After some delay, the district court heard oral argument on MacDonald's motion on January 9, 2006. MacDonald and his counsel were present for oral argument, but neither Nielsen nor his counsel appeared. Id. at 309. MacDonald's counsel presented oral argument, and the district court asked questions of counsel, and following the presentation the matter was submitted for decision.

The district court issued a written ruling and order the next day, granting MacDonald's motion, and finding that the loan memorandum was unambiguous and required Nielsen, personally, to re-pay MacDonald, personally, the amount of $60,000 plus prejudgment

interest. Id. at 309-18. The ruling by the court ended the case, because it represented a summary judgment against Nielsen on all claims.

In the days following the issuance of the January 10 opinion, MacDonald's counsel prepared a judgment for signature and mailed it to Nielsen's counsel for review and comment. Nielsen objected, claiming the interest amount was too much, id. at 319-20, and MacDonald re-submitted the order with a lower face amount. The district court signed that re-submitted order on January 24, 2006, in the amount of $100,304.66. Id. at 340-42.

On January 19, 2006, *after* the district court had issued its ruling granting summary judgment and during the period in which counsel were haggling over the form of the judgment, Nielsen filed a motion seeking leave to file a third-party complaint naming as third-party defendants Redhawk Development and MRI. Id. at 327-33. MacDonald opposed the motion on the grounds that, in view of the district court's ruling, the case was over, and on the additional ground that the motion was untimely because Nielsen had missed the agreed-upon deadline for adding additional parties. Id. at 343-76.

On June 2, 2006, the district court granted the motion, and allowed Nielsen to file a third-party complaint. Id. at 429-44. However, the district court also certified as final and appealable that part of its order that granted summary judgment to MacDonald on the loan. Id. at 442-43.

Nielsen appealed from both the January 10 and June 2 orders from the district court, id. at 397-400, 453-54, and those two appeals have since been consolidated.

SUMMARY OF THE ARGUMENT

This appeal is simple and straightforward. It involves a loan from MacDonald to Nielsen that, by its plain terms, was a personal loan from one individual to another. It is undisputed that the loan was never "recast" or repaid. And there was absolutely no admissible evidence before the district court suggesting that the loan was part of the arbitration award. Nielsen owes MacDonald the money, and the district court correctly recognized that. For all of these reasons, and as more fully discussed below, the district court's grant of summary judgment in favor of MacDonald should be affirmed in its entirety.

ARGUMENT

I. THE LOAN IS, ON ITS FACE, AN UNAMBIGUOUS PERSONAL LOAN FROM MACDONALD TO NIELSEN

The loan memorandum states plainly that the loan is "a loan to you [Nielsen] personally." See R. at 030. This plain language should end the inquiry. The Utah Supreme Court has stated that "[i]f the language within the four corners of the contract is unambiguous, the parties' intentions are determined from the plain meaning of the contractual language, and the contract may be interpreted as a matter of law." See WebBank v. American Gen. Annuity Serv. Corp., 2002 UT 88, ¶19, 54 P.3d 1139; see also Plateau Min. Co. v. Utah Div. of State Lands, 802 P.2d 720, 725 (Utah 1990). Here, the contract could not be plainer: It is a personal loan from MacDonald to Nielsen, due in one year, with interest accruing after one year. Nielsen has not repaid this loan, and is therefore liable to MacDonald thereon.

II. THE LOAN AGREEMENT WAS NEVER "RECAST"

Nielsen spends much rhetorical energy focused on the single sentence in the promissory note that says that the parties "may eventually recast [the loan] in some other manner, depending upon how things develop." R. at 030. Nielsen reads this language as indicating the parties' intent, *from the very beginning*, that the loan not be a personal loan. See Aplt. Br., at 11 (stating that Nielsen understood the loan to have been automatically "recast" upon the departure of Gaskill and that Nielsen "treated the obligation as 'recast'")[4]. This leap is entirely unwarranted, because the document simply doesn't say what Nielsen wants it to say.

If the parties had intended the arrangement to automatically change into something else with Gaskill's then-anticipated exit from Redhawk Development, they could easily have provided for this in the loan documentation. They did not do so. The most that can be said is that the parties agreed to consider a future "recast[ing]" of the transaction, depending upon future events, which is—at most—simply an agreement to agree. But there is no evidence anywhere in the record that any actual "recasting" of the loan agreement ever occurred.

Thus, despite Nielsen's implications to the contrary, the loan is, on its face, a personal loan to Nielsen, and the loan was never recast as anything else.

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[4] Apparently, in Nielsen's view, the alleged "recasting" magically and automatically occurred, without any communication on this point between the parties, upon Gaskill's exit from Redhawk Development. Nielsen does not even claim that this alleged "recasting" occurred through any actual subsequent re-negotiation between the parties. The problem with Nielsen's argument in this regard is that nothing in the loan agreement even hints at an automatic "recasting" for any reason.

III. EVEN IF RESORT TO PAROL EVIDENCE WERE APPROPRIATE, THAT EVIDENCE DOES NOT HELP NIELSEN

Even if resort to parol evidence were appropriate, that evidence, when considered as a whole, is of no assistance to Nielsen. When one looks at the entire loan agreement, it remains plain that this really was a personal loan to Nielsen, just as the loan memorandum itself unambiguously indicates.

At the time the loan was made, Redhawk Development was managed entirely by Redhawk Management, an entity in which MacDonald played no role. Redhawk Management was owned 50/50 by Nielsen and his wife, on the one hand, and Gillette and Gaskill, on the other. According to the loan memorandum, Gillette and Gaskill had "advanced $60,000 toward local vendor payables." See R. at 030. Because Nielsen and his wife represented the other half of Redhawk Management, they also needed to make a contribution to those payables or their interest in the company would have been diluted. However, the Nielsens were apparently short of cash at the time. MacDonald agreed to loan Nielsen the $60,000 needed to match the cash contribution made by Gillette and Gaskill. This was a loan by MacDonald to Nielsen personally, to enable Nielsen to meet his obligations as a member of Redhawk Management (again, an entity in which MacDonald played no role) and so that his interest in that entity would not be diluted relative to Gillette and Gaskill.

The material parol evidence, then, indicates that the loan agreement is exactly what it purports to be: a personal loan from MacDonald to Nielsen. The fact that Nielsen may have used the loan proceeds to make an additional investment in Redhawk Management is immaterial.

IV. THE LOAN WAS NOT A PART OF THE ARBITRATION

Finally, Nielsen argues that the loan was taken into account by the arbitration panel in connection with the 1999 arbitration award. The problem with this argument is that there is not a single piece of admissible evidence supporting it. A party opposing a summary judgment motion, in order to defeat that motion, must do more than merely "rest upon the mere allegations or denials of his or her pleading." See Jensen v. IHC Hospitals, Inc., 944 P.2d 327, 339 (Utah 1997). Rather, the nonmovant must, "by affidavits or as otherwise provided in [Rule 56], . . . set forth specific facts showing that there is a genuine issue for trial." Id. That is, once the moving party has met its burden of proving a lack of a genuine factual issue, the nonmovant "bears the burden of providing some evidence, by affidavit or otherwise, in support of the essential elements of his or her claim." Id. Indeed, Rule 56(e) itself states that when a motion for summary judgment is supported by evidence,

> an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

Utah R. Civ. P. 56(e); see also Chapman v. Chapman, 728 P.2d 121, 122 (Utah 1986) (stating that "[a] party may not rely on allegations in his pleadings to defeat a motion for summary judgment"). The nonmovant cannot meet this burden merely by submitting "conclusory or speculative assertions." See Orvis v. Johnson, 2006 UT App 394, ¶¶11, 16.

Nielsen has not met this burden. MacDonald has discharged his burden of demonstrating that a personal loan exists and has not been recast or repaid. To avoid summary judgment, Nielsen must then come forward with admissible evidence supporting

his position. And this he has not done—there is no admissible evidence that the personal loan was ever taken into account in the arbitration.

As an initial matter, the arbitration was to dissolve Redhawk Development; neither Kirkpatrick MacDonald, as an individual, nor Michael Nielsen, as an individual, were parties to the arbitration, and therefore any personal obligations or debts between those individuals personally were simply never before the panel. Nielsen's counsel at the time, Mr. Stolebarger, repeatedly took this position in discussions with MacDonald's counsel. Mr. Stolebarger even implied as much in writing, when he stated that the "loan to Nielsen by MacDonald" was one of the issues outstanding between Nielsen and MacDonald, but argued that the dispute about the loan "is not amenable to adjudication in this or any forum." See R. at 293.

Indeed, the loan between Nielsen and MacDonald was never mentioned in briefing or in the competing baseball proposals. See R. 265-89. Despite Nielsen's characterization that he took the loan into account "in his mind" in putting together his baseball proposal, that proposal is entirely dedicated to dividing up real property, and does not address any other assets or liabilities. Id. at 265-73.

As for Nielsen's claim that Mr. Holbrook told the parties orally that the loan was included in the 40/60 split of equity, that statement is rank hearsay and is inadmissible. See Utah R. Evid. 801, 802. MacDonald does not believe the statement was ever uttered, and, if it was, is being taken out of context by Nielsen and could mean any number of things. For instance, Mr. Holbrook could have meant that he understood that Nielsen had received extra capital—or at least maintained his capital standing relative to Gillette and Gaskill—in

Redhawk Management by making the $60,000 contribution, and that this extra capital in Redhawk Management was taken into account by the panel in reaching the 40/60 split of equity in Redhawk Development; if this is what Mr. Holbrook meant, the statement would have no bearing on the personal loan at whatsoever.[5]

In short, there is nothing other than Nielsen's own after-the-fact, self-serving affidavit to indicate that the loan was ever a part of the arbitration proceeding. To the contrary, none of the documents filed with the arbitrators, including the baseball proposal ultimately adopted by the panel, ever mention the loan in any way.

CONCLUSION

The loan is simple and straightforward. By its plain terms, it is a personal loan from MacDonald to Nielsen. It is undisputed that the loan was never recast or repaid. And there was absolutely no admissible evidence before the district court suggesting that the loan was part of the arbitration. For all of the foregoing reasons, the district court's grant of summary judgment in favor of MacDonald should be affirmed in its entirety.

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[5] This explanation would also dispose of any argument Nielsen might make regarding consideration. See Aplt. Br., at 17. If Nielsen received capital (or at least maintained his 50/50 ownership of Redhawk Management relative to Gillette and Gaskill), then he received consideration.

DATED this 16th day of October, 2006.

JONES, WALDO, HOLBROOK & McDONOUGH

By: _____

James S. Lowrie
R. L. Knuth
Ryan M. Harris
Attorneys for Plaintiff/Appellee

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of October, 2006, I caused to be sent, via hand-delivery, two (2) true and correct copies of the foregoing **BRIEF OF APPELLEE** to the following:

David W. Scofield
PETERS SCOFIELD PRICE
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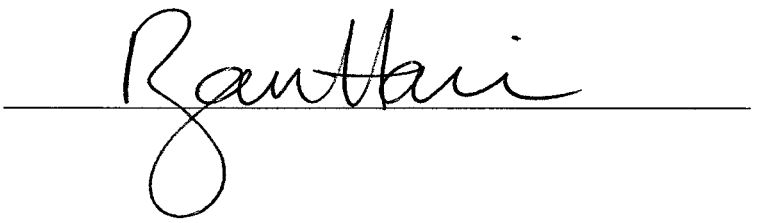
111 East Broadway
Salt Lake City, Utah 84111



ADDENDUM

Tab A

FAX 98

MacDonald & Cie
114 West 78th Street New York City 10024
Voice 212-580-7990 Fax 212-580-8058
KirkMacD@Worldnet.ATT.net

To: Michael Neilson
Cc: The Count
Maitre Etienne Heilporn
From: Kirkpatrick MacDonald
Date: 23 April 1998
Re: Loan

At your request, in order to see that local vendors' long overdue invoices are paid, I have today wired to your Red Hawk Ranch account at Zions the sum of $60,000. I understand that Messrs. Gaskill and Gillette have also advanced $60,000 toward local vendor payables.

As we agreed, I would like to consider this as a loan to you personally. Since you and Red Hawk Investors are the Managing Members of Red Hawk Management, which is solely responsible for the development and financing of the property, I believe that it is more appropriate that this advance come from you than me. And as I am aware of your own finances, I am happy to make this loan to you. Let's make it for 1 year. Interest free if paid within a year; 10% if not, for whatever reason. We may eventually recast it in some other manner, depending on how things develop.

Could you be so kind as to initial this Fax and send a copy back to me so that my files show this as our intent?

Many thanks!

4.23.98

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