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DOC # 20190022138

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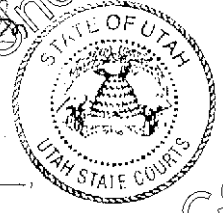
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The Order of the Court is stated below:  
Dated: May 23, 2019 11:17:22 AM

/s/ G MICHAEL WESTFALL  
District Court Judge



STATE OF UTAH  
COUNTY OF: Washington  
I hereby certify that the document to  
which this certificate is attached is a  
full, true and correct copy of the  
original filed in the Utah State Courts.  
WITNESS my hand and seal  
this 23 day of May  
20 19  
DISTRICT JUVENILE COURT:



G. Michael Westfall CLERK

IN THE FIFTH JUDICIAL DISTRICT COURT OF WASHINGTON COUNTY  
STATE OF UTAH

TELEGRAPH TOWER, LLC, a Nevada  
Limited Liability Company, JARED  
CHRISTIANSEN and BRADLEY S.  
HARRELL,

Plaintiffs,  
v.

CENTURY MORTGAGE, LLC, a Utah  
limited liability company, dba Century  
Mortgage Company, et al.;

Defendants.

FINAL JUDGMENT

Civil No. 100503310

Judge G. Michael Westfall

This matter came on regularly for trial on June 11, 12, 14, 15, 18 and 19, 2018, and  
September 25, 2018, with hearings on various issues relating thereto being held on other dates,  
before the above-entitled Court, the Honorable G. Michael Westfall, District Court Judge,  
presiding. On April 2, 2019, Plaintiffs Telegraph Tower, LLC, and Jared Christiansen, filed and  
served their Motion for Entry of Final Judgment. No party timely opposed the Motion for Entry  
of Final Judgment, and the Court hereby grants the motion. Accordingly, the Court enters this

Final Judgment to resolve all issues and claims not specifically resolved by prior orders of the Court, and to reflect the Court's rulings in a form that may be recorded in the Washington County Recorder's Office.

#### **PARTIES AND REPRESENTATION**

Bryce D. Panzer of Blackburn & Stoll, LC, represented the Plaintiffs Telegraph Tower, LLC, and Jared Christiansen ("Plaintiffs"). Defendant Century Mortgage, LLC, a Utah limited liability company, dba Century Mortgage Company ("Century Mortgage") did not appear at the trial, and the Court duly entered the default of Century Mortgage at the outset of the trial.

Bradley S. Harrell appeared *pro se*.

Bruce C. Jenkins of Jenkins Bagley, PLLC, appeared on behalf of the following Defendants: Jean E. Rankin or her successor as Trustee of the Jean E. Rankin Trust, dated December 27, 1989; Doloryce O. Foster; Ray Schmutz Family Trust, Mary Lou Schmutz as Survivor Trustee, dated May 11, 1990; Charles R. Lambert and Lorena Lambert; E.J. Foremaster and Beatrice Foremaster, Trustees of the E.J. Foremaster Family Trust, dated July 5, 2006; Lane Foote and Marian Foote; Albert Leroy Warner, as Trustee of the Albert Leroy Warner Trust, dated August 13, 1998; Ray Schmutz Family Partnership; Charles Wilson, Successor Trustee of the George C. Peacock and Marjory Schmid Peacock Revocable Trust, dated September 22, 1994; Walter Cox and Jeannene J. Cox, as Trustees of the Cox Revocable Trust, dated November 15, 1999; Jack W. Doxey and Denise M. Doxey; Gwen Ludlow, Trustee of the Ludlow Trust, dated May 6, 1986; Robert Ludlow; Delmer Harris; Richard L. Burch (collectively referred to as the "VF Parties"); and A. Morley Wilson and Mary Ellen Wilson (the "Wilsons").

Defendants Lyle Stringham and Barbara Stringham (the "Stringhams") were represented

by Russell S. Mitchell of Jones, Waldo, Holbrook & McDonough, PC (Mr. Mitchell is now affiliated with Kirton McConkie law firm). Defendant Harris Property Investments, LLC (“Harris Property”), was represented by David R. Ward of Ward & King, PLLC.

Defendants G. Dustin Gillman and Brian D. Larkin appeared *pro se*.

Nathan K. Fisher of Fisher & Hunter, LLC, represented B.A. Robinson & Sons Constr., Inc., Creative Excavating, Inc., and Sure Design Concrete, Inc. (collectively, the “Lien Claimants”), with respect to certain post-trial matters. The claims of the Lien Claimants were resolved by a Judgment and Rule 54(b) Certification entered herein on May 14, 2014 (the “2014 Judgment”), and no appeal was taken from said Judgment with respect to their claims.

The following additional parties did not appear at the trial: Defendants Craig Hopkinson, as trustee of the CTTZ, Inc., Defined Benefits Pension Plan; Bonnie Thompson, as Successor Trustee of the Leland Alvin Laub Trust dated August 25, 1997 amended August 15, 2002 (who, by order of the Court entered October 17, 2011, was substituted as a Defendant in lieu of IRA Express, Inc., fbo Leland A. Laub); Robert K. Hanson and Donna A. Hanson, Trustees of the Hanson Family Trust, dated May 1, 1993; Lanyle Brown; Donald C. Whitaker, Trustee of the Donald Carlyle Whitaker Revocable Living Trust, dated July 28, 1997; Layne Johnson and Nancy Johnson; and L. Warren Cox and Trina Kay Cox, as Trustees of the L. Warren Cox Living Trust, dated August 8, 1997. The foregoing parties, together with G. Dustin Gillman, are hereinafter referred to as the “Remaining Investor Defendants.”

The VF Parties, the Stringhams, Harris Property, and the Remaining Investor Defendants are hereinafter referred to collectively as the “Investor Defendants.”

#### **BACKGROUND AND PRIOR ORDERS**

For purposes of providing context to this Final Judgment, this action involved disputes regarding a loan that Plaintiffs claimed was agreed to be advanced by the Defendants referred to as the “Investors Defendants,” for the construction of a mixed-use commercial building (the “Project”) located at 82 East Telegraph Road, Washington, Washington County, Utah (the “Property”). The legal description of the Property is as follows:

All of Lot 4 and the North ½ of Lot 5, Block 22, Washington Town Re-Survey, according to the Official Plat thereof, on file in the Office of the Recorder, Washington County, State of Utah.

Parcel No. W-56-A.

Among other things, the loan was alleged to have been arranged by Century Mortgage, as purported agent for the Investor Defendants, and was allegedly evidenced by various instruments, including a Construction Loan Agreement and Assignment of Trust Account (the “Loan Agreement”), a Trust Deed Note, dated as of April 26, 2010 (the “Trust Deed Note”), and a Trust Deed with Assignment of Rents, dated as of April 26, 2010 (the “Trust Deed”). The Trust Deed was recorded in the Washington County Recorder’s Office on May 6, 2010, as Doc. #20100014820.

The claims by and against certain parties have been resolved by prior orders of the Court, which, insofar as they may affect record title to or the status of the Trust Deed, are summarized as follows:<sup>1</sup>

1. All of the claims by and against Defendants Kimberly Meredith, Jenni Meredith, and Tiffany Meredith (the “Merediths”) were previously resolved by stipulation and the Court’s order dismissing such claims was entered on January 14, 2014. Among other things, the

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<sup>1</sup> These summaries are not intended to modify or supplant the prior orders or judgments of the Court, but are intended to provide context to the rulings and orders set forth herein.

Merediths disclaimed any interest in the Property, and specifically disclaimed any interest as beneficiaries under the Trust Deed.

2. The 2014 Judgment reformed the Trust Deed Note and Trust Deed to delete Plaintiff Bradley S. Harrell as a holder, investor, and/or beneficiary therein.

3. By various previous orders, the claims of Plaintiff Bradley S. Harrell against the VF Parties, Harris Property, and the Stringhams were dismissed with prejudice. The 2014 Judgment also dismissed with prejudice the claims of Plaintiff Bradley S. Harrell against the Remaining Investor Defendants. No appeal was taken by Bradley Harrell from said orders or the 2014 Judgment, and they are final orders.

4. The claims of the Lien Claimants with respect to the Property were resolved in the 2014 Judgment, which held that the mechanic's liens asserted by the Lien Claimants were valid, determined the amounts owed on each lien, held that the liens encumbered the Property and were of equal priority (between the three mechanic's liens), and had priority over other claims against the Property, excepting only the Trust Deed.

5. Plaintiffs' claims against Defendants Donald Larkin and Stephen Larkin were stayed by said Defendants' filing of bankruptcy petitions under Chapter 7 of the United States Bankruptcy Code, which petitions were filed in the U.S. Bankruptcy Court for the District of Utah, as Case Nos. 14-20290 and 14-20198. Plaintiffs pursued their claims against Defendants Donald Larkin and Stephen Larkin in connection with the bankruptcy cases in Adversary Proceeding No. 14-02103. No counterclaims were asserted by Defendants Donald Larkin and Stephen Larkin against Plaintiffs in the bankruptcy adversary proceeding, and a final judgment has been entered in said adversary proceeding. Defendants Donald Larkin and Stephen Larkin were

witnesses at the trial of this matter, but did not seek to prosecute any counterclaims they had previously filed in this case.

6. Defendant Century Mortgage did not appear at the trial, and its default on Plaintiffs' claims was entered. A Judgment Against Century Mortgage, LLC (in favor of Plaintiffs) was entered on March 14, 2019. Among other things, this Judgment states as follows:

"This judgment takes into account an offset against the Construction Loan Agreement, Trust Deed Note, and Trust Deed, for all amounts, if any, owed by Telegraph Tower, LLC, to Century Mortgage thereunder, and there is nothing owed and/or remaining owed to Century Mortgage on the loan represented thereby."

7. Defendant Brian Larkin appeared at the trial, but did not prosecute his counterclaims, and said counterclaims were not preserved in the Stipulated Pretrial Order, entered herein on June 7, 2018. On January 15, 2019, the Court entered its Findings and Order Re: Plaintiffs' Claims Against Brian Larkin, holding that Plaintiffs' claims against Defendant Brian Larkin would be dismissed.

8. By separate orders, the claims of Plaintiffs against the VF Parties, the Stringhams, and Harris Property have been dismissed with prejudice. The dismissal was based on the Court's determination and holding that Century Mortgage lacked actual authority (express or implied) or apparent authority to execute the Loan Agreement on behalf of said parties, and, therefore, said parties were not parties to, or responsible for performing under, the Loan Agreement. The Plaintiffs concede that their claims against the Remaining Investor Defendants are based upon the same facts and evidence as Plaintiffs' claims against the VF Parties, the Stringhams, and Harris Property, and should therefore be governed by the same rulings as the Court has made

with respect to the VF Parties, the Stringhams, and Harris Property.

9. On March 15, 2019, the Court entered its Decision and Order for Determination that Investors Have No Interest in the Trust Deed, granting Plaintiffs' Motion for Determination that Investors Have No Interest in the Trust Deed (the "Trust Deed Motion"), and holding that the Investor Defendants, i.e., the persons identified as the beneficiaries in the Trust Deed, have no interest in the Trust Deed. The Lien Claimants filed a Motion for Clarification and Declaration and Joinder in the Trust Deed Motion (the "Lien Claimants' Motion"), which seeks a declaration that any debt secured by the Trust Deed has been fully offset, and that the Trust Deed secures no remaining debt. Although the Court has not technically ruled on the Lien Claimants' motion, it seeks essentially the same relief as the Trust Deed Motion, and should be granted.

10. The Stringhams assigned their interests as beneficiaries under the Trust Deed (being an undivided 1.77% interest as beneficiaries) to the Wilsons, pursuant to an Assignment of Trust Deed, which was recorded in the Washington County Recorder's Office on July 1, 2010, as Doc. # 20100021772.

#### **FINAL ORDER AND JUDGMENT**

In order to resolve all remaining motions, issues and claims not specifically resolved by prior orders or rulings of the Court, and to reflect the Court's rulings in a form that may be recorded in the Washington County Recorder's Office, the Court now enters this Final Judgment.

It is therefore

**ORDERED, ADJUDGED AND DECREED** as follows:

1. Plaintiffs' claims against the Remaining Investor Defendants are hereby dismissed with prejudice.

2. The Trust Deed Motion is granted, and the Court orders that the Investor Defendants and the Wilsons have no interests as beneficiaries under the Trust Deed.

3. The Lien Claimants' Motion is hereby granted, and it is ordered that any debt secured by the Trust Deed has been fully offset and the Trust Deed secures no remaining debt.

4. To give record notice of the effect of the Court's previous orders with respect to the Trust Deed, it is further ordered that:

A. The Merediths have previously stipulated, and the Court has ordered, that the Merediths have no interest as beneficiaries under the Trust Deed.

B. The Court previously ordered that the Trust Deed was reformed to delete Bradley S. Harrell as a beneficiary thereunder.

C. The Trust Deed, recorded in the Washington County Recorder's Office on May 6, 2010, as Doc. #20100014820, is hereby reconveyed and released as an encumbrance on the Property. It is further ordered that the Trust Deed does not have priority over the claims of the Lien Claimants as set forth in the 2014 Judgment.

5. Plaintiffs' claims against Donald Larkin and Stephen Larkin are dismissed without prejudice.

6. Plaintiffs' claims against Brian Larkin are dismissed with prejudice, no cause of action.

7. The counterclaims by Donald Larkin, Stephen Larkin, Brian Larkin, and Century Mortgage against Plaintiffs are dismissed with prejudice, no cause of action.

\*\*\*\*\*END OF ORDER\*\*\*\*\*

In accordance with the Utah State District Courts E-filing Standard No. 4, and URCP Rule 10(e), this Order does not bear the handwritten signature of the Judge or Clerk, but



instead displays an electronic signature at the upper right-hand corner of the first page.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 22<sup>nd</sup> day of April 2019, I caused a true and correct copy of **FINAL JUDGMENT** to be delivered via first-class mail, postage prepaid to the following, unless as noted below via electronic mail:

<p><i>Via electronic mail to:</i>  <u>ben@jenkinsbagley.com</u>                  cbb@jenkinsbagley.com                  jcp@jenkinsbagley.com                  Bruce Jenkins                  Carson B. Bagley                  James C. Purcell                  JENKINS BAGLEY, PLLC                  285 W. Tabernacle, Suite 301                  St. George, UT 84770</p>	<p><i>Via electronic mail to:</i>  <u>wfrazier@bangertersheppard.com</u>                  William E. Frazier                  BANGERTER SHEPPARD                  720 South River Rd., #A200                  St. George, UT 84790</p>	<p><i>Via electronic mail to:</i>  <u>david@wardandkinglaw.com</u>                  David R. Ward                  Autumn C. Begay                  WARD &amp; KING, PLLC                  4543 South 700 East #200                  Salt Lake City, UT 84107</p>
<p><i>Via electronic mail to:</i>  <u>warren@3palmsinc.com</u>                  Warren Cox                  Trina Kay Cox</p>	<p><i>Via electronic mail to:</i>  <u>rmitchell@joneswaldo.com</u>                  Russell S. Mitchell                  Jones Waldo                  301 North 200 East, #3-A                  St. George, UT 84770</p>	<p><i>Via electronic mail to:</i>                  FISHER &amp; HUNTER, LLC                  444 E. Tabernacle, Suite B-201                  St. George, UT 84770  <u>nathanf@fisherhunterlaw.com</u>  <u>davidh@fisherhunterlaw.com</u></p>
<p><i>Via electronic mail to:</i>                  Bradley Harrell                  DMC Utah, LLC  <u>brad.cargoglide@gmail.com</u></p>	<p>Jason Laub                  Successor Trustee of the                  Leland Laub Family Trust                  936 Cliffrose Way                  Severance, CO 80550</p>	<p>Brian Larkin                  2869 Crestview                  Santa Clara, UT 84765</p>
<p>Lanyle Brown                  3173 W. Santa Clara Drive                  Santa Clara, UT 84765</p>	<p>Layne Johnson                  Nancy Johnson                  753 West Casario Circle                  Washington, UT 84780</p>	<p>Walter Cox                  Jeannene Cox                  433 East 400 South                  St. George, UT 84770</p>
<p>Div. 5, Inc.                  PO Box 987                  Washington, UT 84780</p>	<p>Donald C. Whittaker                  2536 West Crestview Drive                  Santa Clara, UT 84765</p>	<p>G. Dustin Gillman                  965 West 8100 South                  Willard, UT 84340</p>
<p>Century Mortgage, LLC                  575 East 700 South                  St. George, UT 84770</p>	<p>Donald J. Larkin                  575 East 700 South                  St. George, UT 84770</p>	<p>Stephen M. Larkin                  627 East 160 South                  St. George, UT 84770</p>

Western Rock Products 851 Red Rock Road St. George, UT 84770	Fab-Tec Inc. 1547 S. Sandhill Drive Washington, UT 84780	Sunroc Corporation 1825 East 3850 South St. George, UT 84770
Larson Plumbing, Inc. 773 East Factory Drive St. George, UT 84790	Dixie Waste Services 605 North 1300 East St. George, UT 84770	Nanon W. Bulloch 410 South 1020 West Cedar City, UT 84720
Applied Geotechnical Engineering Construction 600 Sandy Parkway Sandy, UT 84070	Brundage Bone Concrete Pumping Bruce and Shauna Woods 350 West 700 South Pleasant Grove, UT 84062	Craig Hopkinson, Trustee of CTTZ, Inc. Defined Benefits Pension Plan 1842 Three Marys Place St. George, UT 84790

/s/ Bryce D. Panzer

Bryce D. Panzer