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**IN THE THIRD JUDICIAL DISTRICT COURT
OF SALT LAKE COUNTY, STATE OF UTAH**

WILLIAM and ANNA SEARS

Plaintiffs,

vs.

787, LLC; RYAN GARRETT, an individual;
DANIEL GRANDERATH, an individual; and
JOHN DOE

Defendants.

COMPLAINT

Case:

Judge

Plaintiffs, William (“Bill”) and Anna Sears (hereinafter referred to as the “Searses”), through counsel, hereby complain and allege the following against Defendants, 787, LLC (hereinafter referred to as “787”), Ryan Garrett (hereinafter referred to as “Garrett”) and John Doe (collectively referred to as the “Defendants”):

INTRODUCTION

Defendant 787 entered into two separate agreements with the Searses, both of which are demonstrated with promissory notes. Defendants have defaulted in their obligations incurred under each of the notes and have ignored demands for payment, giving rise to this action.

PARTIES

1. Plaintiff Bill Sears is a resident of Salt Lake County, State of Utah.

2. Plaintiff Anna Sears is a resident of Salt Lake County, State of Utah.

3. 787, LLC is a Utah business with its primary place of business located at 11959 Waterhouse Court Riverton, Utah.

4. Upon information and belief, John Doe is a Utah business with its primary place of business located in Utah.

5. Ryan Garrett is a resident of Salt Lake County, State of Utah.

6. Upon information and belief, Daniel Granderath is a resident of Salt Lake County, State of Utah.

JURISDICTION

7. Jurisdiction is proper in the Third Judicial District Court of Salt Lake County, State of Utah, pursuant to Utah Code §78A-5-102.

8. Venue is proper in Salt Lake County, State of Utah, pursuant to Utah Code §78B-3-307.

FACTUAL BACKGROUND

9. On July 26, 2018, 787 entered into an agreement with the Searses wherein the Searses would provide 787 with \$200,000, as evidenced by a promissory note (hereinafter the "First Note"). *See Exhibit A.*

10. The First Note acknowledges the receipt of \$200,000 and contains a promise to repay the \$200,000 within 12 months, together with interest at the rate of 10 percent.

11. Payments were made toward the First Note, but \$14,000 is still outstanding.

12. On December 13, 2018, 787 entered into a second agreement with the Searses wherein they would provide 787 \$120,000, as evidenced by a promissory note (herein after the "Second Note"). *See Exhibit B.*

13. The Second Note acknowledges the receipt of \$120,000 and contains a promise to repay the original amount of \$120,000 together with interest at the rate of 10 percent; however, in the event of default, the interest rate was to increase to 15%.

14. No payments were made were made toward the Second Note.

15. Upon information and belief, the Second Note was secured by 787's ownership stake in the 6th Street Cottages project at 600 East 12447 South, Draper, UT 84020.

16. Upon information and belief, some of the property secured by the Second Note was transferred to defendant John Doe.

FIRST CAUSE OF ACTION
Breach of Contract
(As to 787, Garrett, and Daniel)

17. Plaintiffs incorporate by reference all of the above paragraphs.

18. A breach of contract claim requires four essential elements: First, the existence of a contract; Second, performance by the party seeking recovery; Third, breach of the contract by the other party; and Fourth, damages as a result of the breach. *Carmichael v. Higginson*, 402 P.3d 146 (2017).

19. The Searses made offers to loan funds to 787 in exchange for repayment with interest. 787 accepted those offers.

20. The Searses agreed to pay a sum of \$200,000 for the First Note, which was acknowledged as received, meaning the Searses performed their obligations under the First Note.

21. Payments toward the First Note were made, but never completed, leaving a remaining balance of \$14,000.

22. 787 has stopped making payments toward the First Note.

23. 787 is in breach because they failed to perform their obligations.

24. Plaintiffs have been damaged as a result.

SECOND CAUSE OF ACTION

**Breach of Contract
(As to 787 and Garrett)**

25. Plaintiffs incorporate by reference all of the above paragraphs.

26. The Searses agreed to pay a sum of \$120,000 for the Second Note which was acknowledged as received by the Defendants, meaning the Searses performed their obligations under the Second Note.

27. The Second Note is secured by 787's ownership stake in the 6th Street Cottages project at 600 East 12447 South, Draper, UT 84020.

28. No payments have been made toward the Second Note.

29. Upon information and belief, some of the property secured by the Second Note was transferred to defendant John Doe.

30. 787 is in breach because they failed to perform their obligations.

31. Plaintiffs have been damaged as a result.

THIRD CAUSE OF ACTION

**Breach of the Covenant of Good Faith and Fair Dealing
(As to 787 and Garrett)**

32. Plaintiffs incorporate by reference all the above paragraphs.

33. By entering into an agreement, the Searses and 787 both "impliedly promise not to intentionally do anything to injure the other party's right to receive the benefits of the contract." *Eggett v. Wasatch Energy Corp.*, 2004 UT 28, ¶ 14.

34. By refusing to perform their obligations under the contract, and by intentionally withholding benefits from the Searses, 787 has intentionally interfered with the Searses' right to receive the benefits of the agreements.

35. Specifically, 787 have withheld the anticipated benefits of the First Note and Second Note from the Searses by refusing to pay them back in accordance with the terms of the agreements.

36. Defendants further breached the covenant by transferring property that should be securing the Second Note.

37. Plaintiffs have been harmed by Defendant's actions.

FOURTH CAUSE OF ACTION

**Unjust Enrichment
(As to All Defendants)**

38. Plaintiffs incorporate by reference all the above paragraphs.

39. By paying \$320,000 to 787, Plaintiff conferred a benefit on Defendants.

40. 787 was and is fully aware of the benefits they received from the Searses, and this is evidenced by the fact that 787 have made payments to the Searses to try and satisfy the obligations under the First Note.

41. 787 accepted and retained the funds (benefit) conferred by the Searses while only repaying a portion of the total sum.

42. 787's acceptance and retention of the Searses' funds, under these circumstances, is inequitable.

FIFTH CAUSE OF ACTION

**Fraudulent Transfer under Utah Code Ann. § 25-6-202(1)(a)
(As to All Defendants)**

43. Plaintiffs incorporate by reference all the above paragraphs.

44. Under Utah Code Ann. § 25-6-202(1)(a)-(b):

(1) "a transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation: (a) with actual intent to hinder, delay, or defraud any creditor of the

debtor; or (b) the debtor was insolvent at the time or became insolvent as a result of the transfer or obligation.”

45. Defendants intended on defrauding the Seares when they transferred the property to John Doe.

46. The transfer of the property to John Doe should be voided.

SIXTH CAUSE OF ACTION

Civil Conspiracy (As to All Defendants)

47. Plaintiffs incorporate by reference all the above paragraphs.

48. To prove civil conspiracy, five elements must be shown: (1) a combination of two or more persons, (2) an object to be accomplished, (3) a meeting of the minds on the object or course of action, (4) one or more unlawful, overt acts, and (5) damages as a proximate result thereof.” *Waddoups v. Amalgamated Sugar*, 54 P.3d 1054 (Utah 2002).

49. Defendants conspired together to deprive Plaintiffs of the benefits of the Agreement.

50. Defendant 787 and Garrett were aware of the obligations of the Agreement.

51. Upon information and belief, John Doe was aware of the Agreement.

52. Defendants were aware that the property located at 600 East 12447 South, Draper, UT 84020, was meant to secure the Promissory Notes and sought to deprive Plaintiffs of the security.

53. Defendants 787 and Garrett fraudulently transferred the property to John Doe.

54. Defendants acted together to implement their plan.

55. Defendants knew that their actions would cause damage to Plaintiffs.

56. Defendant's actions manifested a reckless indifference toward and a disregard of the rights of Plaintiffs.

57. The damages suffered by Plaintiffs were a foreseeable consequence of Defendants' actions.

58. Plaintiffs were proximately and directly damaged as a consequence of Defendants' acts and are entitled to damages arising therefrom.

REQUEST FOR RELIEF

The Searse's request the following relief:

- A. Compensatory damages for costs and damages incurred in an amount to be determined at trial, but not less than \$134,000;
- B. Void the transfer of the property to John Doe;
- C. An order holding Ryan Garrett personally liable;
- D. Prejudgment and post judgment interest as allowed by law;
- E. Reasonable attorney fees as allowed by law and contract;
- F. Any other relief the Court deems equitable and just.

DATED June 18, 2021.

/s/ Zachary T. Hadley
ZACHARY T. HADLEY
Attorney for Plaintiffs

Exhibit A

PROMISSORY NOTE

Page 1 of 2

On this date of July 26, 2018, in return for valuable consideration received, the undersigned "Borrower[s]" 787 LLC jointly and severally promise to pay to, the "Lender" Anna Sears, the sum of Two Hundred Thousand Dollars (\$200,000), together with interest, at a flat-fixed rate of Ten Percent (10%) of the loaned amount for total payment of Two Hundred Thousand Dollars (\$200,000).

Purpose of the Loan - The purpose of the loan is: improvements for property located within the 6th Street Cottages Subdivision. Address: 600 East 12447 South

Term of the Loan The term of the loan is for 12 months from when the funds are received by the borrower.

Terms of Repayment: This loan shall be repaid under the following terms: Full payment will be made on or before 12 months from when the funds were received by the borrower. All payments shall be first applied to interest and the balance to principal.

Late Fees: In the event that a payment due under this Note is not made within five (5) days of the time set forth herein, the Borrower shall pay an additional late fee in the amount of 2 % of the outstanding balance for each 30 days the payment is due. The late fee due will be prorated for payments made before each additional 30 day period.

Payment: Monthly interest payments in the amount of \$1,666.67 shall be be paid to Lender on or before the 5th of each month until the balance is paid in full.

Place of Payment - All payments due under this note shall be made by wire transfer to the lenders business account, or at such other place as the holder of this note may designate in writing.

Prepayment - This Note may be prepaid in whole or in part at any time without penalty.

Default - In the event of default, the borrower[s] agree to pay all costs and expenses incurred by the Lender, including all reasonable attorney fees (including both hourly and contingent attorney fees as permitted by law) for the collection of this Note upon default, and including reasonable collection charges (including, where consistent with industry practices, a collection charge set as a percentage of the outstanding balance of this Note) should collection be referred to a collection agency.

Acceleration of Debt - In the event that the borrower[s] fail to make any payment due under the terms of this Note, or breach any condition relating to any security, security agreement, note, mortgage or lien granted as collateral security for this Note, seeks relief under the Bankruptcy Code, or suffers an involuntary petition in bankruptcy or receivership not vacated within thirty (30) days, the entire balance

of this Note and any interest accrued thereon shall be immediately due and payable to the holder of this Note.

Page 2 of 2

Joint and Several Liability - All borrowers identified in this Note shall be jointly and severally liable for any debts secured by this Note.

Modification - No modification or waiver of any of the terms of this Agreement shall be allowed unless by written agreement signed by both parties. No waiver of any breach or default hereunder shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

Transfer of the Note - The borrowers hereby waive any notice of the transfer of this Note by the Lender or by any subsequent holder of this Note, agree to remain bound by the terms of this Note subsequent to any transfer, and agree that the terms of this Note may be fully enforced by any subsequent holder of this Note.

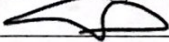
Severability of Provisions - In the event that any portion of this Note is deemed unenforceable, all other provisions of this Note shall remain in full force and effect

Choice of Law - All terms and conditions of this Note shall be interpreted under the laws of the State of Utah.

Signed, this day of July 26, 2018

Garrett Daw

Borrower(s) Full Name: 787, LLC



Borrower(s) Signature: 787, LLC
Daniel Granderath

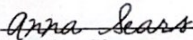
Borrower(s) Full Name: 787, LLC



Borrower(s) Signature: 787, LLC

Anna Sears

Lender Full Name: Anna Sears



Lender Signature: Anna Sears

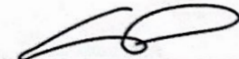
Exhibit B

PROMISSORY NOTE

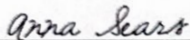
FOR VALUE RECEIVED, 787 LLC, a Utah Limited Liability Company ("Maker"), promises to pay Anna Sears, an Individual ("Holder"), One Hundred Twenty Thousand Dollars (\$120,000.00).

Note

1. Payments. The principal on the obligation represented hereby shall be repaid in full on or before November 1, 2019.
2. Pre-Payment Penalty. Maker will not pay a pre-payment penalty if Note is paid in full before maturity date.
3. Interest. The obligation shall bear simple interest at the rate of Ten Percent (10%) per annum. All interest shall be due and payable at principal repayment.
4. Security. This Note shall be secured by Makers ownership stake in the 6th Street Cottages project.
5. Default. In the event that the Maker defaults on this Note, the Maker agrees to increase the interest rate to Fifteen Percent (15%) per annum until Note is fully paid.
6. Construction. This Note shall be governed by the laws of the State of Utah.



787, LLC
Maker



12-13-2018 7:09 AM PST

Anna Sears
Holder