

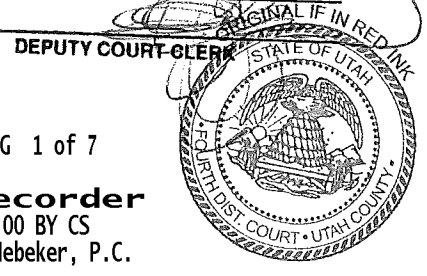
The Order of Court is stated below:

Dated: June 10, 2015
03:29:42 PM

/s/ DAROLD MCDADE
District Court Judge



I CERTIFY THAT THIS IS A TRUE COPY OF
AN ORIGINAL DOCUMENT ON FILE IN THE
FOURTH JUDICIAL DISTRICT COURT, UTAH
COUNTY, STATE OF UTAH.
DATE: 31 March 2016



STEVEN W. CALL (5260)
JONATHAN A. DIBBLE (0881)
RAY QUINNEY & NEBEKER P.C.
36 South State Street, Suite 1400
Salt Lake City, Utah 84111
Telephone: (801) 532-1500
scall@rqn.com
jdibble@rqn.com

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Jeffery Smith
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Attorneys for Plaintiff American West Bank

IN THE FOURTH DISTRICT COURT

IN AND FOR UTAH COUNTY STATE OF UTAH

AMERICANWEST BANK, f/d/b/a Far West
Bank, a division of American West Bank,

Plaintiff,

vs.

P80S900E, LLC, a Utah limited liability
company, judgment debtor, and MITCH B.
HUHEM, an individual, TED L. HANSEN, an
individual; DAVE TURNER, an individual;
UTAH RENTALS, a Utah company, and
JOHN DOES 1-10,

Defendants.

**SUMMARY JUDGMENT
AGAINST DEFENDANTS MITCH B.
HUHEM, TED L. HANSEN AND
DAVE TURNER**

Civil No. 119400527

Hon. Darold McDade

The Court having considered the Motion for Summary Judgment filed by American West Bank against Defendants Mitch B. Huhem, Ted L. Hansen and Dave Turner and having considered the memoranda of points and authorities and other documents and materials filed in

support and opposition to the Motion and for cause appearing, hereby makes its findings of undisputed facts and conclusions of law and order and judgment against the Defendants as follows.

**FINDINGS OF UNDISPUTED
FACTS AND CONCLUSIONS OF LAW**

1. On March 26, 2008, P80S900E, LLC (“**P80**”) entered into a loan transaction with Far West Bank, which was a division of AmericanWest Bank (“**AmericanWest**”). The loan was documented with a promissory note and other loan documents secured by a deed of trust recorded against the Monte Vista Apartment located in Provo Utah. The relevant loan documents are attached to AmericanWest’s Amended Complaint.

2. On May 27, 2009, Defendant Mitch Huhem (“**Huhem**”) executed a written guarantee in which he guaranteed the loan made to P80 by AmericanWest.

3. On March 29, 2011, Defendant Ted L. Hansen (“**Hansen**”) entered into a *Real Estate / LLC Agreement* in which Hansen purchased ownership of P80 which owned the Monte Vista Apartments. In connection with his purchase of the P80 company Defendant Hansen individually signed and executed a *Real Estate / LLC Agreement*.

4. The Court concludes that the language in the *Real Estate / LLC Agreement* is unambiguous that Defendant assumed the loan owing to AmericanWest as part of the sale and transfer of P80 from Defendant Huhem to Defendant Hansen.

5. Defendant P80 defaulted on its loan obligations owing to AmericanWest and AmericanWest foreclosed the Monte Vista Apartments. Thereafter, AmericanWest commenced

this deficiency action pursuant to *Utah Code Ann.* § 57-1-32.

6. A final judgment was signed and entered by the Court on January 27, 2012 against P80 in the amount of \$183,047.74 (the “**Final Judgment**”). The Final Judgment, which was certified final pursuant to Rule 54(b), remains unsatisfied.

7. AmericanWest moved the Court for summary judgment against Defendant Huhem pursuant to his written guarantee for the balance owing on the Final Judgment. Defendant Huhem did not oppose AmericanWest’s Motion for Summary Judgment. The Court concludes AmericanWest is entitled to summary judgment against Defendant Huhem pursuant to the terms of his commercial guaranty.

8. AmericanWest moved the Court for summary judgment against Defendant Hansen pursuant to his assumption of the P80 loan that he made pursuant to the *Real Estate / LLC Agreement* when Defendant Hansen purchased P80 from Defendant Huhem. AmericanWest is entitled to summary judgment against Defendant Hansen pursuant to Defendant Hansen’s assumption of the P80 loan made in the *Real Estate / LLC Agreement*.

9. AmericanWest has moved for summary judgment against Defendant Dave Turner (“**Turner**”). On December 1, 2011, Defendant Turner signed and delivered a check drawn on an account at US Bank in the amount of \$10,000.

10. U.S. Bank dishonored the check because of insufficient funds in the checking account. On January 5, 2012, notice regarding the dishonored check was served via certified mail on Defendant Turner pursuant to *Utah Code Ann.* § 7-15-2. Defendant Turner has failed to pay the \$10,000.00 dishonored check.

11. AmericanWest is entitled to summary judgment against Turner for the dishonored check. Pursuant to Utah Code Ann. § 7-15-1, AmericanWest is entitled to summary judgment for the check amount of \$10,000, prejudgment interest in the amount of \$3,227.40 through March 24, 2015 pursuant to Utah Code Ann. 15-1-1(2), prejudgment interest in the amount of \$2.74 per diem from March 25, 2015 through the entry of Judgment and for reasonable attorneys' fees.

ORDER AND JUDGMENT

Based upon the foregoing Findings of Uncontroverted Facts and Conclusions of Law, the Court makes summary judgment in favor of AmericanWest against Defendants Mitch Huhem, Ted Hansen and Dave Turner as follows:

1. AmericanWest's Motion for Summary Judgment against the Defendants Mitch Huhem and Ted Hansen is hereby granted.

2. Judgment is made in favor of AmericanWest against Defendants Huhem and Hansen, jointly and severally, in the principal amount of \$183,047.74 based upon the unpaid principal balance of the Final Judgment heretofore made against P80.

3. Judgment is made in favor of AmericanWest against Defendants Huhem and Hansen, jointly and severally, for prejudgment interest in the amount of \$121,217.74 from January 1, 2012 through March 24, 2015 and prejudgment interest per diem in the amount of \$105.32 from March 25, 2015 through the entry of this Judgment based upon the pre-judgment default rate of interest used in the Final Judgment which was based upon the P80 loan documents pursuant to Utah Code Ann. 15-1-1(2).

4. Judgment is made against Defendants Mitch Huhem and Ted Hansen, jointly and severally, in favor of AmericanWest for reasonable attorneys' fees and costs in this action. Counsel for AmericanWest shall submit to the Court an attorneys' fee affidavit pursuant to Utah R. Civ. P. 73(b) (2). Any objection to the Affidavit by Defendants Huhem and Hansen shall be filed with the Court within fourteen (14) days after service of the Affidavit. The Court will make a separate order augmenting this Judgment by the amount of reasonable fees determined by the Court.

5. The Judgment against Defendants Huhem and Hansen shall bear post-judgment interest at the rate of interest of 21% per annum based upon the post-judgment interest rate on the Final Judgment which was based upon the P80 loan documents pursuant to Utah Code Ann. 15-1-4(2)(a).

6. AmericanWest's Motion for Summary Judgment against the Defendant Turner is hereby granted.

7. Judgment is hereby made against Defendant Turner, pursuant to Utah Code Ann. § 7-15-1 for the dishonored check signed by Defendant Tuner in the amount of \$10,000, prejudgment interest in the amount of \$3,227.40 from the date of the dishonored check through March 24, 2015 pursuant to Utah Code Ann. § 15-1-1(2), and for prejudgment interest in the amount of \$2.74 per diem from March 25, 2015 through the entry of this Judgment.

8. Judgment is made in favor of AmericanWest against Defendants Turner for reasonable attorneys' fees incurred in this action which pertain to the claims against Defendant Turner. Counsel for AmericanWest shall submit to the Court an attorneys' fee affidavit pursuant

to Utah R. Civ. P. 73(b) (2). Any objection to the Affidavit by Defendant Turner shall be filed with the Court within fourteen (14) days after service of the Affidavit. The Court will make a separate order augmenting the judgment made against Defendant Turner by the amount of reasonable fees determined by the Court.

9. The Judgment against Defendant Turner shall accrue post-judgment interest at the legal post-judgment rate of interest provided for by law pursuant to Utah Code Ann. § 15-1-4(3) (a).

10. The judgments made herein are final as to the matters ruled upon there being no further claims to be resolved in the case.

11. Pursuant to the Utah State District Court's E-filing Standard No. 4, and Utah R. Civ. P. 10(e), this Order does not bear the handwritten signature of the Judge but displays an electronic signature at the upper right-hand corner of the first page of this Judgment.

*** End of Document ***

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of June, 2015 I electronically filed the foregoing **proposed *Summary Judgment Against Defendants Mitch B. Huhem, Ted L. Hansen and Dave Turner*** with the Clerk of Court using the Utah Trial Court / ECF filing system which gave notification of such filing to the following:

Mark Stubbes
FILLMORE SPENCER, LLC
3301 North University Avenue
Provo, UT 84604
Attorney for Ted Hansen and Dave Turner

Charles Hanna
1717 West 270 South
Provo, UT 84601

Victor D. Huhem
HUHEM LAW FIRM PLLC
6001 Oakland Hills Drive
Lida Vista Office Building
Fort Worth, Texas 76112
Attorney for Mitchell Huhem

/s/ Carrie Hurst